

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Greenville County

Letitia H. Verdin, Circuit Court Judge

ORLANDO SMITH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213673

APPENDIX

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SC COURT OF APPEALS

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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF
GENERAL SESSIONS

THE STATE OF)
OF SOUTH CAROLINA,)

-vs-

ORLANDO FONTE SMITH,)
DEFENDANT.)

98-GS-23-5212
TRANSCRIPT OF RECORD

JULY 17, 2000
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE LARRY R. PATTERSON

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

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Assistant Solicitor

C. TIMOTHY SULLIVAN, Esquire
Attorney for the Defendant

DAWN V. KOFFSKEY
Court Reporter

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VOIR DIRE

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INDEX TO EXHIBITS

NO EXHIBITS WERE ENTERED DURING THIS HEARING.

VOIR DIRE

1 THE COURT: BRING THE JURORS UP.

2 MR. SULLIVAN: DOES THE DEFENSE GET TEN ON MURDER?

3 THE COURT: TEN AND FIVE, YEAH.

4 MR. SULLIVAN: THANK YOU.

5 (PANEL ENTERS COURTROOM AT 11:15 A.M.)

6 THE COURT: LADIES AND GENTLEMEN, WE'RE GOING TO SELECT
7 A JURY IN THE CRIMINAL CASE OF THE STATE OF SOUTH CAROLINA
8 AND ORLANDO FONTE SMITH. MR. SMITH, WOULD YOU STAND UP AND
9 JUST FACE THE JURY PANEL, PLEASE?

10 (DEFENDANT COMPLIES)

11 THE COURT: DO ANY OF YOU KNOW MR. SMITH, WHO IS
12 STANDING HERE? IF YOU KNOW HIM, WOULD YOU PLEASE STAND.

13 (PAUSE) (NO RESPONSE) THANK YOU, SIR. YOU MAY BE SEATED

14 LADIES AND GENTLEMEN, THE ALLEGATIONS ARE MURDER
15 AND MR. SMITH PLEADS NOT GUILTY. THE ALLEGATION IS THAT ON
16 MAY THE 23RD, 1998 STEPHANIE CHRIS FORD QUINN WAS MURDERED BY
17 MEANS OF STRANGULATION. MR. SMITH PLEADS NOT GUILTY, AND
18 THAT'S THE REASON WE'RE HERE TODAY.

19 THE QUESTION I HAVE FOR YOU, DO ANY OF YOU KNOW
20 ANYTHING, HAVE YOU HEARD ANYTHING ABOUT THIS CASE? ALLEGEDLY
21 ON -- ON OR ABOUT MAY THE 23RD, 1998, THE DEATH OF STEPHANIE
22 CHRIS FORD QUINN BY MEANS OF ALLEGED STRANGULATION. DO ANY
23 OF YOU KNOW ANYTHING ABOUT THIS OR HAVE YOU HEARD ANYTHING
24 ABOUT THIS CASE? IF SO, WOULD YOU PLEASE STAND? (PAUSE)
25 (NO RESPONSE)

VOIR DIRE

1 ALL RIGHT. LADIES AND GENTLEMEN, DO ANY OF YOU
2 STEPHANIE CHRIS FORD QUINN, THE DECEASED? (PAUSE) (NO
3 RESPONSE) OKAY.

4 LADIES AND GENTLEMEN, THE ATTORNEYS IN THIS CASE
5 ARE MR. SULLIVAN AND MR. SEAY. WOULD Y'ALL STAND UP? (BOTH
6 COMPLY) DO ANY OF YOU KNOW THESE TWO LAWYERS? (PAUSE) (NO
7 RESPONSE) OKAY.

8 NOW, ONE OF THE JURORS KNOWS -- HIS NAME IS S-E-A
9 Y, THE SAME AS THIS MR. SEAY. THAT'S MR. SEAY SITTING BACK
10 THERE BECAUSE I KNEW HIS DADDY AND PLAYED BASKETBALL WITH HI
11 -- HIS DADDY, NOT HIM. (LAUGHTER) BUT Y'ALL ARE NOT RELATE
12 AS FAR AS THE TWO OF Y'ALL KNOW?

13 MR. SEAY: I'M NOT AWARE OF ANY RELATIONSHIP, YOUR
14 HONOR.

15 THE COURT: IT'S NOT THE MOST COMMON NAME IN GREENVIL
16 BUT IT'S -- AND IT'S UNUSUAL, BUT I JUST WANTED TO MAKE THAT
17 CLEAR SO THAT MR. SULLIVAN MAY WANT TO KNOW THAT I HAD
18 ALREADY QUESTIONED HIM ABOUT THAT DOWNSTAIRS WHEN I
19 QUALIFIED.

20 LADIES AND GENTLEMEN, IF YOU WOULD -- ARE ANY OF
21 YOU CLOSE FRIENDS OR HAVE ANY CLOSE FRIENDS OR RELATIVES WHO
22 WORK IN THE CIRCUIT SOLICITOR'S OFFICE OR THE PUBLIC
23 DEFENDER'S OFFICE? IF YOU DO, WOULD YOU PLEASE STAND?
24 (PAUSE) (NO RESPONSE) OKAY.

25 DO ANY OF YOU HAVE ANY CLOSE FRIENDS OR RELATIVES

VOIR DIRE

1 WHO WORK IN LAW ENFORCEMENT? (PAUSE) MY GOODNESS. I KNOW
2 THAT A COUPLE OF YOU HAVE SPOUSES THAT WORK IN LAW
3 ENFORCEMENT.

4 I'LL START WITH YOU. YOUR NAME?

5 JUROR 11: HALL BICKMAN.

6 THE COURT: ALL RIGHT. MS. BICKMAN, WHO DO YOU KNOW IN
7 LAW ENFORCEMENT?

8 JUROR 11: WELL, MY FATHER WAS A MAGISTRATE.

9 THE COURT: YOUR FATHER WAS A MAGISTRATE. WELL, HE WAS
10 IN LAW ENFORCEMENT. THAT'S CORRECT. WOULD THAT AFFECT YOUR
11 ABILITY TO BE FAIR AND IMPARTIAL IN A CRIMINAL CASE?

12 JUROR 11: NO.

13 THE COURT: THANK YOU SO MUCH.

14 YES, MA'AM, YOUR NAME FOR THE RECORD, PLEASE?

15 JUROR 143: MARTHA TAYLOR.

16 THE COURT: ALL RIGHT, MS. TAYLOR.

17 JUROR 143: AND MY HUSBAND IS IN LAW ENFORCEMENT.

18 THE COURT: YOUR HUSBAND IS IN LAW ENFORCEMENT. IS HE
19 WITH THE CITY OR THE COUNTY?

20 JUROR 143: SHERIFF'S DEPARTMENT.

21 THE COURT: THE SHERIFF'S DEPARTMENT?

22 JUROR 143: (INDICATES AFFIRMATIVE RESPONSE)

23 THE COURT: DO YOU THINK YOU COULD BE FAIR AND
24 IMPARTIAL IN A CRIMINAL CASE?

25 JUROR 143: YES, SIR, I DO.

VOIR DIRE

1 THE COURT: EVEN THOUGH YOUR HUSBAND IS IN LAW
2 ENFORCEMENT YOU WOULDN'T SIDE WITH LAW ENFORCEMENT OR YOU
3 WOULDN'T SIDE WITH THE DEFENDANT?

4 JUROR 143: NO, SIR.

5 THE COURT: YOU'D BE FAIR TO BOTH SIDES?

6 JUROR 143: YES, SIR.

7 THE COURT: THANK YOU SO MUCH.

8 YES, MA'AM, YOUR NAME?

9 JUROR 62: I'M NANCY HUDSON TYRELL (PHONETIC). MY
10 COUSIN A JUVENILE DELINQUENT JUDGE. SHE'S MY FIRST COUSIN IN
11 ATLANTA.

12 THE COURT: YOUR COUSIN? WOULD THAT AFFECT YOUR
13 ABILITY TO BE FAIR AND IMPARTIAL?

14 JUROR 62: NO, SIR.

15 THE COURT: THANK YOU SO MUCH.

16 YES, MA'AM?

17 JUROR 12: I'M VENITA BILLINGSLEA, AND MY HUSBAND IS A
18 INVESTIGATOR WITH THE COUNTY SHERIFF'S DEPARTMENT.

19 THE COURT: OKAY. AND WHAT'S HIS NAME?

20 JUROR 12: ADRIAN BILLINGSLEA.

21 MR. SULLIVAN: BILLINGSLEA?

22 JUROR 12: UH-HUH (AFFIRMATIVE). BILLINGSLEA.

23 MR. SULLIVAN: THANK YOU.

24 THE COURT: OKAY. COULD YOU BE FAIR AND IMPARTIAL IN
25 CRIMINAL CASE?

VOIR DIRE

1 JUROR 12: YES, SIR.

2 THE COURT: SINCE YOUR HUSBAND IS AN INVESTIGATOR?

3 JUROR 12: YES, SIR.

4 THE COURT: YOU'D BE FAIR TO BOTH SIDES?

5 JUROR 12: YES, SIR.

6 THE COURT: THANK YOU SO MUCH.

7 YES, MA'AM?

8 JUROR 40: NANCY FITZPATRICK. MY HUSBAND AND BROTHER
9 ARE FORMER POLICE OFFICERS AND I HAVE TWO NEPHEWS THAT ARE
10 CURRENTLY POLICE OFFICERS.

11 THE COURT: HOW LONG AGO WAS IT THAT YOUR HUSBAND
12 WORKED IN LAW ENFORCEMENT?

13 JUROR 40: TWENTY YEARS AGO.

14 THE COURT: TWENTY YEARS AGO?

15 JUROR 40: TWENTY YEARS AGO.

16 THE COURT: WHO DID HE WORK FOR?

17 JUROR 40: IT WAS IN ILLINOIS.

18 THE COURT: ILLINOIS?

19 JUROR 40: UH-HUH (AFFIRMATIVE).

20 THE COURT: COULD YOU BE FAIR AND IMPARTIAL IN A
21 CRIMINAL TRIAL?

22 JUROR 40: YES.

23 THE COURT: THANK YOU SO MUCH.

24 MR. SULLIVAN: THAT WAS FITZPATRICK?

25 JUROR 40: YES.

VOIR DIRE

1 THE COURT: ALL RIGHT. OKAY. LADIES AND GENTLEMEN,
2 I'M GOING TO READ OUT A LIST OF WITNESSES, AND IF YOU KNOW --
3 IF YOU WOULD LISTEN CAREFULLY, IT'S A PRETTY LONG LIST, IF
4 YOU KNOW ANY OF THESE FOLKS, I'M GOING TO ASK YOU TO STAND UP
5 AND TELL ME ABOUT IT. J.C. MAXWELL WITH THE GREENVILLE
6 COUNTY SHERIFF'S OFFICE; RAY ALLEN WITH THE GREENVILLE COUNTY
7 SHERIFF'S OFFICE; PAUL WILKERSON, MISSISSIPPI CRIME LAB; RON
8 SMITH WITH THE MISSISSIPPI CRIME LAB; D.S. ADAMS WITH EMS; M.
9 EDMONDS -- I DON'T KNOW THE FIRST NAME -- WITH EMS; DR.
10 MINETTE FROM THE GREENVILLE HOSPITAL SYSTEM; LISA KAISER WITH
11 SLED; KIMBERLY BLACK WITH SLED; NANCY SCRABA WITH SLED;
12 GRAYSON AMICK WITH SLED; THEODORE WALDMAN; MICHAEL
13 RICHARDSON; ERIC BURTS; LAVONDA SHAW; BRIAN PRATER; PAUL
14 SILVAGGIO, GREENVILLE COUNTY SHERIFF'S OFFICE; JEFF KINDLEY
15 WITH SLED; GENE DONOHUE WITH SLED AND JILL BERGMAN -- BERGEN
16 B-E-R-G-E-N -- B-E-R-G-E-N. DO ANY OF YOU KNOW ANY OF THESE
17 WITNESSES WHOSE NAMES I JUST CALLED? IF SO, WOULD YOU PLEASE
18 STAND? (PAUSE)

19 YES, MA'AM, YOUR NAME?

20 JUROR 111: MY NAME IS SANDRA PERRY. I KNOW MR. MARK
21 EDMONDS FROM EMS.

22 THE COURT: MR. MARK EDMONDS WITH EMS.

23 JUROR 111: YES, SIR. I GO TO CHURCH WITH HIM.

24 THE COURT: YOU GO TO CHURCH WITH HIM?

25 JUROR 111: YES.

VOIR DIRE

1 THE COURT: OKAY. I THINK MR. SEAY IS INDICATING TO ME
2 THAT'S THE WITNESS IN THIS CASE. MA'AM, IF HE WERE A WITNESS
3 IN THIS CASE -- I DON'T KNOW WHAT HE'S GOING TO TESTIFY TO,
4 BUT IF HE WERE A WITNESS, WOULD YOU BE FAIR AND IMPARTIAL AND
5 DECIDE THE CASE ON THE EVIDENCE AND TESTIMONY OR WOULD -- AND
6 HIS BEING A WITNESS WOULDN'T AFFECT YOUR ABILITY TO BE FAIR
7 AND IMPARTIAL?

8 JUROR 111: NO, SIR.

9 THE COURT: THANK YOU SO MUCH.

10 ALL RIGHT. LADIES AND GENTLEMEN, IS THERE ANYONE
11 WHO HAS BEEN THE VICTIM OF A VIOLENT CRIME OR ANY MEMBERS OF
12 YOUR FAMILY BEEN VICTIMS OF MURDER, ASSAULT AND BATTERY WITH
13 INTENT TO KILL OR OF A HIGH AND AGGRAVATED NATURE OR ANY
14 VIOLENT CRIME SUCH AS THAT? IF SO, WOULD YOU PLEASE STAND?
15 (PAUSE)

16 OKAY. YES, MA'AM, MS. BICKMAN?

17 JUROR 11: MY AUNT WAS MURDERED.

18 THE COURT: SHE WAS? HOW LONG AGO WAS THAT?

19 JUROR 11: ABOUT TEN YEARS AGO.

20 THE COURT: OKAY. WOULD THAT -- THE FACT THAT YOUR
21 AUNT WAS MURDERED, WOULD THAT AFFECT YOUR ABILITY TO BE FAIR
22 AND IMPARTIAL IN THIS TRIAL?

23 JUROR 11: NO, SIR.

24 THE COURT: WOULD YOU HEAR THE EVIDENCE AND FOLLOW YOUR
25 OATH AND DECIDE IT ONLY ON THE EVIDENCE AND TESTIMONY YOU

VOIR DIRE

1 HEARD IN THE COURTROOM AND THE LAW?

2 JUROR 11: YES, SIR.

3 THE COURT: THANK YOU SO MUCH, MS. BICKMAN.

4 YES, SIR, YOUR NAME, PLEASE?

5 JUROR 68: MY NAME IS BOBBY KAY. MY FATHER WAS A
6 VICTIM OF ASSAULT WITH INTENT TO KILL.

7 THE COURT: YOUR FATHER?

8 JUROR 68: YES.

9 THE COURT: HOW LONG AGO WAS THAT?

10 JUROR 68: IT'S BEEN TWENTY YEARS.

11 THE COURT: TWENTY YEARS AGO?

12 JUROR 68: YES, SIR.

13 THE COURT: WOULD THAT AFFECT YOUR ABILITY TO BE FAIR
14 AND IMPARTIAL IN THIS TRIAL?

15 JUROR 68: NO, SIR.

16 THE COURT: THANK YOU, SIR.

17 YES, MA'AM, YOUR NAME?

18 JUROR 53: DIANE HENSLEY. AND MY GRANDFATHER WAS
19 MURDERED ABOUT FORTY YEARS AGO.

20 THE COURT: FORTY YEARS AGO. COULD YOU BE FAIR AND
21 IMPARTIAL IN THIS TRIAL, BE FAIR TO THE DEFENDANT AND FAIR TO
22 THE STATE IN THIS MURDER TRIAL?

23 JUROR 53: YES.

24 THE COURT: THANK YOU, MA'AM.

25 YES, MA'AM, YOUR NAME?

VOIR DIRE

1 JUROR 59: BRENDA HOWARD. AN AUNT.

2 THE COURT: AN AUNT?

3 JUROR 59: YEAH.

4 THE COURT: HOW LONG AGO?

5 JUROR 59: ABOUT NINE OR TEN YEARS.

6 THE COURT: NINE OR TEN YEARS AGO. COULD YOU BE FAIR
7 AND IMPARTIAL IN THIS TRIAL, MA'AM, AND THAT WOULDN'T AFFECT
8 YOUR ABILITY TO BE FAIR AND IMPARTIAL?

9 JUROR 59: YES.

10 THE COURT: YOU WOULD BE FAIR?

11 JUROR 59: (INDICATES AFFIRMATIVE RESPONSE)

12 THE COURT: THANK YOU SO MUCH.

13 ANY ADDITIONAL QUESTIONS, MR. SULLIVAN?

14 MR. SULLIVAN: NONE FROM THE DEFENSE, YOUR HONOR.

15 THE COURT: MR. SEAY?

16 MR. SEAY: WAS THERE THREE OTHER WITNESSES?

17 THE COURT: OKAY. I'M SORRY. THE OTHER WITNESSES IN
18 THIS CASE, THEY MAY TESTIFY AND THEY MAY NOT. WE'LL JUST
19 HAVE TO SEE. IF YOU KNOW THESE THREE WITNESSES, PLEASE
20 STAND. SHANIKA GARRETT, RAMU VAUGHN -- RICO VAUGHN, SHIRLEY
21 JEAN ROBINSON VAUGHN. DO ANY OF YOU KNOW ANY OF THESE THREE
22 PEOPLE? (PAUSE) (NO RESPONSE)

23 OKAY. ANYTHING ELSE, GENTLEMEN?

24 MR. SEAY: NOTHING FURTHER FROM THE STATE, YOUR HONOR.

25 MR. SULLIVAN: NOTHING FROM THE DEFENSE, YOUR HONOR.

VOIR DIRE

1 THE COURT: ALL RIGHT. IT WILL BE TEN CHALLENGES FOR
2 THE DEFENSE, FIVE FOR THE STATE. TOTAL OF FIFTEEN, IF YOU
3 USE THEM. WE'LL SELECT THE JURY AT THIS TIME. MADAME CLERK
4 IF YOU WILL, CALL THE NAMES.

5 I'D ASK EACH JUROR JUST TO STAND UP WHERE YOU ARE
6 AND THE -- YOU'LL EITHER BE SEATED OR EXCUSED. IF YOU ARE
7 SEATED, JUST BRING WHAT YOU HAVE WITH YOU AND COME ON UP AND
8 TAKE A SEAT IN THE JURY BOX.

9 MADAME CLERK, LET'S SELECT THE JURY, PLEASE.

10 MADAME CLERK: JUROR NUMBER 31, JOSEPH DAVIS.

11 THE COURT: JUST STAND UP, PLEASE. MR. DAVIS? JUST
12 STAND UP RIGHT THERE WHERE YOU ARE. THAT'LL BE FINE.

13 MADAME CLERK: WHAT SAYS THE STATE?

14 MR. SEAY: PLEASE PRESENT THE JUROR IN THE TRIAL OF
15 THIS CASE.

16 MADAME CLERK: WHAT SAYS THE DEFENDANT?

17 MR. SULLIVAN: SWEAR THE JUROR, PLEASE.

18 MADAME CLERK: TAKE YOUR PLACE IN THE JURY BOOTH,
19 PLEASE.

20 JUROR NUMBER 131, BETTY SEYMORE. (PAUSE) WHAT
21 SAYS THE STATE?

22 MR. SEAY: PLEASE PRESENT THE JUROR.

23 MADAME CLERK: WHAT SAYS THE DEFENDANT?

24 MR. SULLIVAN: EXCUSE MS. SEYMORE FROM THIS MATTER,
25 PLEASE.

JURY SELECTION

1 MADAME CLERK: YOU ARE EXCUSED.

2 JUROR NUMBER 68, BOBBY KAY. (PAUSE) WHAT SAYS THE
3 STATE?

4 MR. SEAY: PLEASE PRESENT THE JUROR.

5 MADAME CLERK: WHAT SAYS THE DEFENDANT?

6 MR. SULLIVAN: SWEAR THE JUROR, PLEASE.

7 MADAME CLERK: TAKE YOUR PLACE, PLEASE.

8 JUROR NUMBER 111, SANDRA PERRY. (PAUSE) WHAT SAYS
9 THE STATE

10 MR. SEAY: PLEASE PRESENT THE JUROR.

11 MADAME CLERK: WHAT SAYS THE DEFENDANT?

12 MR. SULLIVAN: EXCUSE MS. PERRY, PLEASE.

13 MADAME CLERK: YOU ARE EXCUSED.

14 JUROR NUMBER 164, DONALD WARD. (PAUSE) WHAT SAYS
15 THE STATE?

16 MR. SEAY: (GESTURE)

17 MADAME CLERK: ADDITIONS, 164.

18 MR. SEAY: OKAY.

19 MADAME CLERK: WHAT SAYS THE STATE?

20 MR. SULLIVAN: EXCUSE MR. WARD, PLEASE.

21 MR. SEAY: PLEASE PRESENT THE JUROR.

22 MR. SULLIVAN: I'M SORRY. I THOUGHT I HEARD YOU SAY---

23 MR. SEAY: I'M SORRY. THAT'S ALL RIGHT.

24 MADAME CLERK: THANK YOU. YOU'RE EXCUSED.

25 JUROR NUMBER 83, JOHN LUTHER. (PAUSE) WHAT SAYS

JURY SELECTION

1 THE STATE?

2 MR. SEAY: PLEASE PRESENT THE JUROR.

3 MADAME CLERK: WHAT SAYS THE DEFENDANT?

4 MR. SULLIVAN: SWEAR THE JUROR, PLEASE.

5 MADAME CLERK: TAKE YOUR PLACE, PLEASE.

6 JUROR NUMBER 9, SHEILA BENNETT. (PAUSE) WHAT SAY
7 THE STATE?

8 MR. SEAY: PLEASE PRESENT THE JUROR.

9 MADAME CLERK: WHAT SAYS THE DEFENDANT?

10 MR. SULLIVAN: EXCUSE THIS JUROR IN THIS MATTER,
11 PLEASE.

12 MADAME CLERK: YOU MAY BE EXCUSED.

13 JUROR NUMBER 143, MARTHA TAYLOR. (PAUSE) WHAT
14 SAYS THE STATE?

15 MR. SEAY: PLEASE PRESENT THE JUROR.

16 MADAME CLERK: WHAT SAYS THE DEFENDANT?

17 MR. SULLIVAN: EXCUSE MS. TAYLOR.

18 MADAME CLERK: YOU'RE EXCUSED.

19 JUROR NUMBER 99, EVELYN NICHOLS. (PAUSE) WHAT
20 SAYS THE STATE?

21 MR. SEAY: PLEASE PRESENT THE JUROR.

22 MADAME CLERK: WHAT SAYS THE DEFENDANT?

23 MR. SULLIVAN: SWEAR THE JUROR, PLEASE.

24 MADAME CLERK: TAKE YOUR PLACE, PLEASE.

25 JUROR NUMBER 148, ROBERT WAGNER. (PAUSE) WHAT

JURY SELECTION

1 SAYS THE STATE?

2 MR. SEAY: PLEASE PRESENT THE JUROR.

3 MADAME CLERK: WHAT SAYS THE DEFENDANT?

4 MR. SULLIVAN: SWEAR THE JUROR, PLEASE.

5 MADAME CLERK: TAKE YOUR PLACE, PLEASE.

6 JUROR NUMBER 58, MARCIA HOPKINS. (PAUSE) WHAT
7 SAYS THE STATE?

8 MR. SEAY: PLEASE PRESENT THE JUROR.

9 MADAME CLERK: WHAT SAYS THE DEFENDANT?

10 MR. SULLIVAN: SWEAR THE JUROR, PLEASE.

11 MADAME CLERK: TAKE YOUR PLACE, PLEASE.

12 JUROR NUMBER 22, JOHN B. BURKHARDT, III. (PAUSE)
13 WHAT SAYS THE STATE?

14 MR. SEAY: PLEASE PRESENT THE JUROR.

15 MADAME CLERK: WHAT SAYS THE DEFENDANT?

16 MR. SULLIVAN: SWEAR THE JUROR, PLEASE.

17 MADAME CLERK: TAKE YOUR PLACE, PLEASE.

18 JUROR NUMBER 40, NANCY FITZPATRICK. (PAUSE) WHAT
19 SAYS THE STATE?

20 MR. SEAY: PLEASE PRESENT THE JUROR.

21 MADAME CLERK: WHAT SAYS THE DEFENDANT?

22 MR. SULLIVAN: EXCUSE MS. FITZPATRICK FROM THIS MATTER,
23 PLEASE.

24 MADAME CLERK: YOU ARE EXCUSED.

25 JUROR NUMBER 62, NANCY HUDSON. (PAUSE) WHAT SAYS

JURY SELECTION

1 THE STATE?

2 MR. SEAY: PLEASE PRESENT THE JUROR.

3 MADAME CLERK: WHAT SAYS THE DEFENDANT?

4 MR. SULLIVAN: EXCUSE THE JUROR IN THIS CASE, PLEASE,
5 MA'AM.

6 MADAME CLERK: YOU ARE EXCUSED.

7 JUROR NUMBER 135, BRENDA SIMS. (PAUSE) WHAT SAYS
8 THE STATE?

9 MR. SEAY: PLEASE PRESENT THE JUROR.

10 MADAME CLERK: WHAT SAYS THE DEFENDANT?

11 MR. SULLIVAN: SWEAR THE JUROR, PLEASE.

12 MADAME CLERK: TAKE YOUR PLACE, PLEASE.

13 JUROR NUMBER 60, TAMMY HOWARD. (PAUSE) WHAT SAYS
14 THE STATE?

15 MR. SEAY: PLEASE EXCUSE THIS JUROR FROM THE TRIAL OF
16 THIS CASE.

17 MADAME CLERK: YOU'RE EXCUSED.

18 JUROR NUMBER 59, BRENDA HOWARD. (PAUSE) WHAT SAY
19 THE STATE?

20 MR. SEAY: (GESTURE)

21 MADAME CLERK: 59.

22 MR. SEAY: PLEASE EXCUSE THE JUROR FROM THE TRIAL OF
23 THIS CASE.

24 MADAME CLERK: YOU'RE EXCUSED.

25 JUROR NUMBER 123, KATHERINE RICHARDSON. (PAUSE)

JURY SELECTION

1 WHAT SAYS THE STATE?

2 MR. SEAY: PLEASE PRESENT THE JUROR.

3 MADAME CLERK: WHAT SAYS THE DEFENDANT?

4 MR. SULLIVAN: EXCUSE MS. RICHARDSON IN THIS MATTER,
5 PLEASE.

6 MADAME CLERK: YOU'RE EXCUSED.

7 JUROR NUMBER 12, VENITA BILLINGSLEA. (PAUSE) WHAT
8 SAYS THE STATE?

9 MR. SEAY: PLEASE PRESENT THE JUROR.

10 MADAME CLERK: WHAT SAYS THE DEFENDANT?

11 MR. SULLIVAN: SWEAR THE JUROR, PLEASE.

12 MADAME CLERK: TAKE YOUR PLACE, PLEASE.

13 JUROR NUMBER 11, HALL BICKMAN. (PAUSE) WHAT SAYS
14 THE STATE?

15 MR. SEAY: PLEASE PRESENT THE JUROR.

16 MADAME CLERK: WHAT SAYS THE DEFENDANT?

17 MR. SULLIVAN: EXCUSE MS. BICKMAN, PLEASE.

18 MADAME CLERK: NINE.

19 JUROR NUMBER 132, HARLAN SHAW. (PAUSE) WHAT SAYS
20 THE STATE?

21 MR. SEAY: PLEASE PRESENT THE JUROR.

22 MADAME CLERK: WHAT SAYS THE DEFENDANT?

23 MR. SULLIVAN: SWEAR THE JUROR, PLEASE.

24 MADAME CLERK: TAKE YOUR PLACE, PLEASE.

25 NUMBER 147, PEGGY TURNER. (PAUSE) WHAT SAYS THE

JURY SELECTION

1 STATE?

2 MR. SEAY: PLEASE PRESENT THE JUROR.

3 MADAME CLERK: WHAT SAYS THE DEFENDANT?

4 MR. SULLIVAN: SWEAR THE JUROR, PLEASE.

5 MADAME CLERK: TAKE YOUR PLACE, PLEASE.

6 NUMBER 56, CLYDE HOPKINS. (PAUSE) WHAT SAYS THE
7 STATE?

8 MR. SEAY: PLEASE PRESENT THE JUROR.

9 MADAME CLERK: WHAT SAYS THE DEFENDANT?

10 MR. SULLIVAN: SWEAR THE JUROR, PLEASE.

11 MADAME CLERK: TAKE YOUR PLACE, PLEASE.

12 THE COURT: OKAY. ONE ALTERNATE. TWO AND ONE. TWO
13 FOR THE DEFENSE, ONE FOR THE STATE.

14 MADAME CLERK: JUROR NUMBER 65, STEPHANIE JENKINS.

15 (PAUSE) WHAT SAYS THE STATE?

16 MR. SEAY: PLEASE PRESENT THE JUROR.

17 MADAME CLERK: WHAT SAYS THE DEFENDANT?

18 MR. SULLIVAN: SWEAR THE JUROR, PLEASE.

19 MADAME CLERK: TAKE YOUR PLACE, PLEASE.

20 THE COURT: ALL RIGHT. OKAY. I'D ASK THE REMAINING
21 JURORS TO STEP BACK DOWNSTAIRS. YOU'RE GOING TO HAVE TO COME
22 BACK UP IN A FEW MINUTES WITH JUDGE WATSON'S SELECTION. BUT
23 LET ME ASK YOU TO STEP BACK DOWNSTAIRS FOR A FEW MINUTES.
24 THANK YOU SO MUCH.

25 (BALANCE OF PANEL DISMISSED AT 11:39 A.M.)

JURY SELECTION

1 THE COURT: ANY QUESTIONS ABOUT THE STRIKES OF THE
2 JURY, MR. SEAY?

3 MR. SEAY: NO QUESTIONS, YOUR HONOR.

4 THE COURT: MR. SULLIVAN?

5 MR. SULLIVAN: NONE FOR THE DEFENSE, YOUR HONOR.

6 THE COURT: OKAY. ALL RIGHT. LADIES AND GENTLEMEN,
7 YOU ARE THE JURY IN THIS CASE FOR THE STATE AND ORLANDO FONTE
8 SMITH. LADIES AND GENTLEMEN, YOU CANNOT DISCUSS THIS CASE
9 WITH ANYONE OR DO NOT PERMIT ANYONE TO TALK TO YOU ABOUT THIS
10 CASE, EITHER DURING THE DAY OR TONIGHT WHEN YOU GO HOME OR
11 TOMORROW. YOU CANNOT TALK TO ANYONE, NOT EVEN WITH EACH
12 OTHER, UNTIL THIS CASE IS OVER. IF ALL GOES WELL, WE'LL --
13 WE MAY FINISH IT SOMETIME TOMORROW ABOUT AROUND LUNCHTIME.

14 I'M GOING TO LET YOU STEP BACK TO THE JURY ROOM
15 JUST FOR A MINUTE BEFORE WE START, AND I'M PROBABLY GOING TO
16 ORDER YOU SOME LUNCH. Y'ALL JUST GO BACK AND WE'LL ORDER
17 YOUR LUNCH SO THAT ONCE WE GET READY TO REACH THAT TIME,
18 ABOUT ONE O'CLOCK, WE'LL HAVE IT HERE FOR YOU. OKAY? WHEN
19 WE BRING YOU BACK OUT, WE'LL START AND WE'LL GO FOR ABOUT AN
20 HOUR OR SO UNTIL ABOUT ONE O'CLOCK.

21 (JURY EXITS COURTROOM AT 11:40 A.M.)

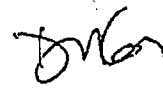
22 ---END OF REQUESTED PORTION OF TRANSCRIPT-----
23
24
25

CERTIFICATE

I, THE UNDERSIGNED, DAWN V. KOFFSKEY, OFFICIAL COURT REPORTER FOR THE 13TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 17TH DAY OF JULY, 2000.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

JANUARY 23, 2001



DAWN V. KOFFSKEY
COURT REPORTER

1 STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

2 COUNTY OF GREENVILLE

3
4 STATE OF SOUTH CAROLINA)

5 -V-)

TRANSCRIPT OF RECORD

6 ORLANDO F. SMITH,)
7 DEFENDANT)

98-GS-23-5212

8 MONDAY, JULY 17, 2000

GREENVILLE, SOUTH CAROLINA

9
10 B E F O R E:

THE HONORABLE LARRY R. PATTERSON, AND A JURY.

11
12 A P P E A R A N C E S:

13 DAVID SEAY, ASSISTANT SOLICITOR
14 305 E. NORTH STREET SUITE 325
 GREENVILLE, SC 29601
 ATTORNEY FOR THE STATE

15 C. TIMOTHY SULLIVAN, ESQUIRE
16 POST OFFICE BOX 2543
17 GREENVILLE, SC 29601
 ATTORNEY FOR THE DEFENDANT

I N D E X

1		
2	JURY SWORN	5
3	OPENING STATEMENTS BY:	
4	THE COURT	5
5	MR. SEAY	8
6	MR. SULLIVAN	13
7	JEFF MAXWELL	
8	DIRECT EXAMINATION	14
9	CROSS EXAMINATION	22
10	RAY ALLEN	
11	DIRECT EXAMINATION	24
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BRIAN PRATER

DIRECT EXAMINATION 66

GENE DONOHUE

DIRECT EXAMINATION 68

CROSS EXAMINATION 97

REDIRECT EXAMINATION 104

RECROSS EXAMINATION 106

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2			<u>I.D.</u>	<u>E.V.</u>		
3	S-2	PHOTOGRAPH		28		
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5	S-4	PHOTOGRAPH		28		
6	S-5	PHOTOGRAPH		28		
7	S-6	PHOTOGRAPH	17			
8	S-7	PHOTOGRAPH	17			
9	S-8	PHOTOGRAPH	17	18		
10	S-9	PHOTOGRAPH		28		
11	S-11	PHOTOGRAPH		28		
12	S-15	PHOTOGRAPH	35	36		
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14	S-32	LETTER 11-21	20			
15	S-33	PHOTOGRAPH	32	33		
16	S-34	PHOTOGRAPH	32	33		
17	S-35	PALM PRINT	45	48		
18	S-36	WAIVER OF RIGHTS FORM		66	86	
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(COURT RESUMES AT 12:20.)

THE COURT: ARE WE READY, GENTLEMEN.

MR. SULLIVAN: DEFENSE IS, YOUR HONOR.

MR. SEAY: THE STATE IS READY, YOUR HONOR.

THE COURT: BRING IN THE JURY.

(THE JURY RETURNS TO THE COURTROOM AT 12:25.)

THE COURT: LADIES AND GENTLEMEN, IF YOU
WOULD STAND AND RAISE YOUR RIGHT HAND PLEASE,
THE CLERK WILL SWEAR YOU TO TRY THE CASE.

PLEASE RESPOND BY SAYING I WILL WHEN YOU TAKE
THE OATH. IF YOU WILL SWEAR THE JURY PLEASE.

(THE JURY IS SWORN.)

THE COURT: ALL RIGHT. LET THE RECORD
REFLECT THE JURY HAS BEEN SWORN. LADIES AND
GENTLEMEN OF THE JURY, WE'RE ABOUT TO BEGIN THE
TRIAL OF A CRIMINAL CASE THE STATE OF SOUTH
CAROLINA AND ORLANDO FONTE SMITH. LADIES AND
GENTLEMEN, THIS CASE IS BASED ON THIS INDICTMENT
WHICH I HOLD IN MY HAND. IT'S AGAIN ALLEGING
MURDER. NOW THE DEFENDANT HAS PLEAD NOT GUILTY
TO THIS CHARGE. HIS PLEA OF NOT GUILTY PLACES
THE BURDEN OF PROOF UPON THE STATE OF SOUTH
CAROLINA TO PROVE HIM GUILTY BEYOND A REASONABLE
DOUBT. NO MATTER WHAT THE SERIOUSNESS OF THE

1 CHARGES ARE A CRIMINAL DEFENDANT IS NEVER
2 REQUIRED TO PROVE HIMSELF INNOCENT. THE STATE
3 MUST CONVINCE EACH OF YOU OF HIS GUILT BEYOND A
4 REASONABLE DOUBT. THEY HAVE THE BURDEN OF
5 PROOF. EVERY PERSON CHARGED WITH A CRIME IS
6 PRESUMED TO BE INNOCENT UNTIL YOU THE JURY HEARS
7 EVIDENCE THAT SATISFIES YOU OF HIS GUILT. THE
8 DEFENDANT IN THIS CASE IS PRESUMED TO BE
9 INNOCENT AT THIS TIME UNTIL YOU ARE SATISFIED OF
10 HIS GUILT BEYOND A REASONABLE DOUBT.

11 NOW LADIES AND GENTLEMEN, YOUR DUTY AS JURORS IS
12 TO FIND AND DETERMINE THE FACTS OF THIS CASE IF
13 YOU CAN. I WAS NOT PRESENT, THE LAWYERS WERE
14 NOT PRESENT, AND YOU WERE NOT PRESENT ON MAY THE
15 23RD, 1998, AT THE DATE AND TIME THIS INCIDENT
16 SUPPOSEDLY HAPPENED. YOU CAN HEAR THE TESTIMONY
17 AND THE EVIDENCE AND YOU DETERMINE WHAT HAPPENED
18 IF YOU CAN ON THAT DATE. YOU ARE THE SOLE
19 JUDGES OF THE FACTS. YOU ALL REPRESENT A CROSS
20 SECTION OF THIS COMMUNITY. YOU BRING INTO THIS
21 COURTROOM YOUR GOOD JUDGMENT, YOUR COMMON SENSE,
22 YOUR EVERYDAY EXPERIENCES IN LIFE, AND YOU
23 DETERMINE THE CREDIBILITY AND THE BELIEVABILITY
24 OF EACH AND EVERY WITNESS AND YOU DETERMINE WHAT
25 THE FACTS ARE, IF YOU CAN, APPLY THE FACTS TO

1 THE LAW, AND YOU WILL WRITE A VERDICT THAT
2 SPEAKS THE TRUTH IN THIS CASE.

3 WITH THOSE REMARKS WE'LL START JUST MOMENTARILY
4 BUT LET ME RE-EMPHASIZE TWO THINGS TO YOU. WE
5 CAN'T KEEP YOU SEPARATED FROM THE PUBLIC AND WE
6 ONLY DO THAT USUALLY IN DEATH PENALTY CASES, BUT
7 THAT'S TO SAY THAT THIS CASE IS NOT JUST AS
8 IMPORTANT SO WE TRUST YOU, LADIES AND GENTLEMEN,
9 NOT TO TALK TO ANYONE ABOUT THIS CASE OR LET
10 ANYONE DISCUSS THIS CASE WITH YOU UNTIL IT'S
11 OVER AND YOU HAVE REACHED YOUR DECISION. AFTER
12 THAT YOU CAN TALK TO ANYBODY YOU WANT TO IF YOU
13 WANT TO TALK TO THEM OR YOU DON'T HAVE TO, IT'S
14 UP TO YOU, BUT WHILE THIS TRIAL IS GOING ON YOU
15 CANNOT TALK TO ANYONE ABOUT THIS CASE. IF YOU
16 DID, I'D HAVE TO DECLARE A MISTRIAL AND THAT
17 WOULD NOT BE GOOD FOR ANYONE CONCERNED WITH THIS
18 PROCEEDING.

19 KEEP AN OPEN MIND THROUGHOUT THE TRIAL. WAIT
20 UNTIL YOU'VE HEARD ALL THE EVIDENCE AND
21 TESTIMONY. WAIT UNTIL THE ATTORNEYS HAVE A
22 CHANCE TO MAKE THEIR CLOSING ARGUMENTS AND I
23 EXPLAIN THE LAW BEFORE YOU START THINKING ABOUT
24 HOW YOU SHOULD DECIDE THE CASE.

25 LADIES AND GENTLEMEN, WE'LL HAVE OPENING

1 STATEMENTS IF THE ATTORNEYS CARE TO MAKE OPENING
2 STATEMENTS. AFTER THAT YOU WILL BEGIN HEARING
3 THE EVIDENCE AND TESTIMONY FROM WHICH YOU WILL
4 DETERMINE THE FACTS. AFTER ALL THE EVIDENCE AND
5 TESTIMONY IS IN, THE LAWYERS GET A CHANCE TO
6 MAKE THEIR CLOSING ARGUMENTS AND THEN I'LL
7 EXPLAIN THE LAW AND YOU'LL GO BACK AND REACH A
8 VERDICT IN THE CASE.

9 WE'LL BEGIN THE TRIAL WITH OPENING STATEMENTS.
10 FIRST FROM THE STATE, MR. SEAY.

11 OPENING STATEMENT BY MR. SEAY:

12 THANK YOU, YOUR HONOR. MAY IT PLEASE THE
13 COURT.

14 LADIES AND GENTLEMEN OF THE JURY, ON MAY 23,
15 1998 STEPHANIE CHRIS QUINN FORD WAS STRANGLED TO
16 DEATH, STRANGLED IN HER OWN APARTMENT, FLEETWOOD
17 MANOR HERE IN GREENVILLE COUNTY, THE VICTIM OF A
18 SENSELESS ACT OF VIOLENCE, AND STANDING BEFORE
19 YOU TODAY IS ORLANDO FONTE SMITH ON TRIAL FOR
20 HER MURDER.

21 NOW THROUGHOUT THE COURSE OF THE TRIAL THE STATE
22 WILL PRESENT A GREAT NUMBER OF WITNESSES, AS YOU
23 HEARD THEIR NAMES CALLED OUT EARLIER DURING THE
24 JURY SELECTION PROCESS, AND THE EVIDENCE
25 PRESENTED FROM THE STAND THERE BY THE STATE THAT

1 EVIDENCE WILL SHOW TO YOU THAT ON THAT FATEFUL
2 NIGHT, EARLY MORNING HOURS OF MAY 23, 1998,
3 ORLANDO FONTE SMITH, THE MAN SEATED RIGHT HERE,
4 WENT IN TO MS. QUINN'S APARTMENT, HE ATTACKED
5 HER, STRANGLED HER TO DEATH, AND LEFT HER THERE,
6 HER BLOODY HALF-NAKED LIFELESS BODY. THE
7 EVIDENCE WILL ALSO SHOW THAT HE NOT ONLY LEFT
8 BEHIND MS. QUINN DEAD, HE ALSO LEFT BEHIND HER
9 EIGHT MONTH OLD SON WHO WAS IN THE BACK
10 BEDROOM. AND ON THE NIGHT OF MAY 23 HER LIFE
11 WAS TAKEN.

12 NOW DURING THE COURSE OF THE TESTIMONY YOU'LL
13 ALSO HEAR SOME EVIDENCE ABOUT MS. QUINN AND HER
14 LIFE AND HER LIFE WAS HOST TO BOTH GOOD AND
15 BAD. WE READILY ACCEPT THAT. AND SOME OF THE
16 THINGS IN HER LIFESTYLE YOU MAY NOT AGREE WITH.
17 BUT DO NOT LOSE FOCUS, CHRIS QUINN AND HER
18 LIFESTYLE ARE NOT ON TRIAL TODAY, AND I ASK YOU
19 TO RECALL THAT DURING THE ENTIRE TRIAL. DON'T
20 LOSE SIGHT OF THOSE, FOLKS, IT'S NOT HER LIFE
21 THAT'S ON TRIAL. HER LIFESTYLE DID NOT ENTITLE
22 HER TO BE THE VICTIM OF SUCH A BRUTAL ACT.

23 NOW THE EVIDENCE AS IS PRESENTED THROUGH TODAY
24 AND TOMORROW AND WEDNESDAY WILL ALSO SHOW YOU
25 ONE OTHER THING, PROBABLY THE MOST IMPORTANT

1 THING, THAT ORLANDO FONTE SMITH LEFT BEHIND THAT
2 NIGHT WHEN HE LEFT HER APARTMENT AFTER KILLING
3 HER. HE LEFT BEHIND IDENTIFICATION, A BLOODY
4 PALM PRINT FOUND ON THE VICTIM'S ARM, AND YOU'LL
5 HEAR EXPERT TESTIMONY GOING INTO THE DETAILS
6 ABOUT THAT PALM PRINT. YOU'LL ALSO HEAR FROM
7 THE OFFICERS WHO TELL YOU ABOUT INCONSISTENT
8 STATEMENTS, ACTIONS OF THE DEFENDANT ORLANDO
9 FONTE SMITH. AND YOU'LL HEAR FROM LAY WITNESSES
10 WHO WERE PRESENT AT CHRIS'S APARTMENT THE NIGHT
11 PRIOR TO HER DEATH AND WHAT WAS GOING ON, WHO
12 WAS THERE, WHAT WAS HAPPENING IN HER LIFE RIGHT
13 BEFORE HER DEATH. AND THEN AT THE CONCLUSION OF
14 THE TRIAL WHERE ALL THE EVIDENCE HAS BEEN
15 PRESENTED YOU'LL BE ASKED TO RENDER A VERDICT ON
16 THE LAW AND HIS HONOR WILL PROVIDE YOU WITH THE
17 LAW, AND I'LL TELL YOU NOW THAT THE BURDEN IS ON
18 THE STATE TO PROVE ORLANDO FONTE SMITH KILLED
19 STEPHANIE CHRIS GORDON QUINN AND HE DID SO WITH
20 MALICE AFORETHOUGHT.

21 AND JUST TO TOUCH A MOMENT ON WHAT PROOF BEYOND
22 A REASONABLE DOUBT IS. PROOF BEYOND A
23 REASONABLE DOUBT IS NOT THE ELIMINATION OF ANY
24 DOUBT BECAUSE IT'S BEEN SAID BEFORE THAT THERE
25 ARE FEW THINGS IN THIS WORLD WITH WHICH WE CAN

1 SAY WITH ABSOLUTE CERTAINTY, AND IF THAT WERE
2 THE STANDARD, BEYOND ANY DOUBT THERE, NO ONE
3 WOULD BE FOUND GUILTY IN THE UNITED STATES. SO
4 IT'S A DOUBT FOR WHICH THERE IS A REAL REASON, A
5 CONCRETE BASIS, NOT SPECULATION, NO WHAT IFS,
6 POSSIBILITIES, ENDLESS ON AND ON. IT'S REAL,
7 IT'S REASONABLE, IT'S CONCRETE, THE BASIS FOR
8 THAT DOUBT. AND AS I SAID TO YOU TO FIND
9 ORLANDO FONTE SMITH GUILTY OF MURDER YOU MUST
10 FIND THAT HE KILLED INTENTIONALLY, UNLAWFULLY,
11 AND WITH MALICE AFORETHOUGHT.

12 NOW MALICE IS JUST A LEGAL THEORY OF CONCEPT. A
13 LOT OF, HIS HONOR WILL CHARGE YOU ON THE LAW
14 REGARDING MALICE, BUT SOME OF THE WAYS I'VE
15 HEARD IT REFERRED TO IS MALICE IS EVIDENCED BY
16 ACTIONS WHICH SHOW A MALIGNANT HEART IN THE
17 ACTOR. THAT SHOW THAT THE ACTS COMMITTED BY
18 THAT PERSON WERE DONE SO WITH A DEPRAVED SPIRIT
19 INTENT ON DOING WRONG. AND MALICE IS NOT
20 PREMEDITATION. MALICE CAN BE FORMED IN AN
21 INSTANT. THERE IS NO REQUIREMENT THAT MALICE BE
22 FORMED OR DONE OVER THE COURSE OF DAYS, THERE IS
23 NO PLANNING REQUIRED FOR MALICE, SO I WANT TO
24 TRY TO LET YOU KNOW THAT THAT'S NOT MALICE.
25 THAT MAY BE PREMEDITATION BUT THAT'S NOT

1 MALICE. AND IN FACT MALICE IS NOTHING MORE THAN
2 MEAN, JUST HOW MEAN DO YOU HAVE TO BE TO DO WHAT
3 WAS DONE TO CHRIS FORD QUINN STRANGLING HER TO
4 DEATH.

5 AS TO THE LAW I'D ALSO CAUTION YOU NOT TO
6 CONFUSE MALICE WITH MOTIVE. MOTIVE IS NOT AN
7 ELEMENT OF MURDER IN THIS STATE. MALICE IS.
8 MOTIVE IS NOT. AND THERE MAY BE CONCLUSIONS OR
9 INFERENCES THAT CAN BE DRAWN REGARDING WHAT THE
10 POSSIBLE MOTIVE WAS IN THIS CASE. THE STATE
11 WILL NOT SEEK TO PROVE TO YOU MOTIVE IN THIS
12 CASE BEYOND A REASONABLE DOUBT. IT IS NOT AN
13 ELEMENT OF MURDER. WHATEVER THE MOTIVE IS IT
14 CANNOT PROVIDE A SATISFACTORY EXPLANATION THAT
15 LEGITIMIZE OR JUSTIFY OR GIVE REASON TO HOW THIS
16 ACT COULD HAVE BEEN COMMITTED. AGAIN THE
17 SENSELESS ACT OF VIOLENCE.

18 AT THE CONCLUSION OF ALL THE EVIDENCE, BEFORE
19 HIS HONOR CHARGES YOU WITH THE LAW, I'LL HAVE AN
20 OPPORTUNITY TO SPEAK WITH YOU AGAIN AS WILL THE
21 DEFENSE. WHEN ALL OF THAT IS SAID AND DONE,
22 WHEN I STAND BEFORE YOU AT THE END OF THIS TRIAL
23 AND SPEAK TO YOU ONE LAST TIME I'LL ASK YOU TO
24 FIND ORLANDO FONTE SMITH GUILTY OF MURDER.
25 THANK YOU.

1 THE COURT: MR. SULLIVAN.

2 MR. SULLIVAN: MAY IT PLEASE THE COURT.

3 THE COURT: YES, SIR.

4 OPENING STATEMENT BY MR. SULLIVAN:

5 SOLICITOR SEAY.

6 I'M TIM SULLIVAN. I'M REPRESENTING ORLANDO
7 SMITH IN THIS CASE. AND I AGREE WITH PRETTY
8 MUCH EVERYTHING MR. SEAY SAID AND I'M GOING TO
9 BE BRIEF. THIS IS A SENSELESS ACT. NO QUESTION
10 ABOUT IT. SOMEBODY MURDERED CHRIS FORD. THERE
11 IS NO QUESTION ABOUT IT. AND THERE IS NO
12 QUESTION THAT ORLANDO SMITH'S PALM PRINT WAS
13 FOUND ON HER ARM. HIS GIRLFRIEND LIVED ACROSS
14 THE HALL FROM CHRIS. HE LIVED IN THE SAME
15 COMPLEX. THEY WERE SOMEWHAT FRIENDS. THEY HUNG
16 OUT TOGETHER SOMETIMES. HE HAD BEEN THERE EARLY
17 THAT NIGHT AND THERE WAS EVIDENCE THAT HE CAME
18 IN LATE, SAW HER DOOR OPENED, SAW HER ON THE
19 FLOOR, SHOOK HER TO SEE IF SHE WAS ALL RIGHT,
20 AND WHERE HE MADE THE MISTAKE WAS HE REALIZED
21 THAT SHE WAS DEAD AND HE DIDN'T WANT TO GET
22 INVOLVED. THERE IS NO QUESTION HIS PALM PRINT
23 IS THERE. HE TOLD THEM THE NEXT DAY. HE GAVE
24 FIRST OF ALL CONFLICTING STATEMENT, SAID I
25 REALLY DIDN'T KNOW WHAT HAPPENED. I WAS THERE

1 EARLIER THAT NIGHT. I LEFT. I CAME BACK, THE
2 DOOR WAS OPENED, I WENT IN AND CHECK ON HER.
3 SHE APPEARED DEAD. I SHOOK HER. FELT HER NECK,
4 I PANICKED. I LEFT. NO QUESTION. NO
5 QUESTION. SOMEBODY KILLED HER PRIOR TO THAT.
6 AND WE DEFEND THIS CASE I THINK I CAN PRESENT TO
7 YOU EVIDENCE AS TO WHO DID THE KILLING AND EVEN
8 THOUGH MR. SEAY SAID THEY DON'T HAVE TO HAVE
9 MOTIVE, UNLESS YOU ARE A SERIAL KILLER, THERE
10 WAS ALWAYS REASON. MAYBE NOT A MOTIVE BUT THERE
11 IS A REASON. I'LL PRESENT TO YOU THE REASON WHY
12 THIS OTHER INDIVIDUAL COMMITTED THIS HEINOUS
13 CRIME. SO BE PATIENT WHEN WE GO THROUGH ALL
14 THIS AND KEEP AN OPEN MIND AND WHEN WE'RE
15 THROUGH WITH EVERYTHING, I THINK YOU'LL FIND OUT
16 NO QUESTION THERE WAS, SHE WAS MURDERED, BUT IT
17 WAS NOT ORLANDO SMITH THAT DID IT. THANK YOU.

18 THE COURT: MR. SEAY, CALL YOUR FIRST
19 WITNESS.

20 MR. SEAY: THE STATE CALLS JEFF MAXWELL.

21 JEFF MAXWELL,

22 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

23 THE CLERK: STATE YOUR NAME FOR THE
24 RECORD.

25 A MY NAME IS JEFFREY CLARK MAXWELL.

JEFF MAXWELL --- DIRECT

15

1 THE CLERK: THANK YOU.

2 DIRECT EXAMINATION BY MR. SEAY:

3 Q DEPUTY MAXWELL, YOU ARE CURRENTLY EMPLOYED WITH
4 GREENVILLE COUNTY SHERIFF'S OFFICE, IS THAT
5 CORRECT?

6 A I AM.

7 Q AND WERE YOU SO EMPLOYED BACK ON MAY 23 OF 1998?

8 A THAT IS CORRECT.

9 Q AND DO YOU RECALL RECEIVING A DISPATCH TO
10 FLEETWOOD MANOR ON THE MORNING OF MAY 23, 1998?

11 A YES, I DID.

12 Q OKAY. AND THAT WAS, YOU WERE DISPATCHED OUT
13 THERE? THERE WAS A DEATH OUT THERE, IS THAT
14 CORRECT?

15 A THAT'S CORRECT.

16 Q OKAY. NOW FIRST OFF FLEETWOOD MANOR WHERE IS
17 THAT? IS THAT IN THE LOWER PART OF GREENVILLE
18 COUNTY? WHERE IS THAT?

19 A IT'S A COUPLE MILES SOUTH OF THE CITY OF
20 GREENVILLE SO LOCATED OFF, ABOUT A MILE OR SO
21 OFF OF AUGUSTA ROAD.

22 Q OKAY. AND DO YOU RECALL THE ADDRESS YOU WERE
23 GOING TO AT FLEETWOOD MANOR?

24 A IT WAS AT [REDACTED] WHICH WAS FLEETWOOD
25 MANOR APARTMENTS. THE [REDACTED] [REDACTED].

1 Q OKAY. AND WHEN YOU ARRIVED THERE AT THE
2 [REDACTED], WAS ANYBODY THERE WHEN YOU
3 ARRIVED AT THE APARTMENT?

4 A YES, THERE WAS A PERSON THERE.

5 Q OKAY. AND WAS THAT PERSON TED WALDMAN OR
6 THEODORE WALDMAN?

7 A THAT'S CORRECT.

8 Q OKAY. TELL ME A LITTLE BIT ABOUT WHERE THE
9 APARTMENT IS LOCATED, STEPHANIE QUINN'S
10 APARTMENT, WHERE WAS MS. QUINN'S APARTMENT
11 ACTUALLY LOCATED AT [REDACTED]?

12 A SHE WAS IN THE UPSTAIRS SECTION OF THE BUILDING
13 ON THE, IF YOU ARE GOING UP THE STAIRS HER
14 APARTMENT WOULD BE ON THE RIGHT TOP FLOOR.

15 Q ALL RIGHT. AND THAT'S A TWO STORY BUILDING, IS
16 IT NOT?

17 A THAT'S CORRECT, TWO STORY.

18 Q WHAT WAS MR. WALDMAN OR WHERE EXACTLY WAS MR.
19 WALDMAN WHEN YOU ARRIVED?

20 A HE WAS STANDING ON THE INSIDE OF THE APARTMENT
21 NEAR THE DOOR. HE WAS STILL TALKING TO OUR
22 DISPATCHER WHEN I ARRIVED.

23 Q OKAY. AND WHAT IF, HOW DID HIS CONDITION APPEAR
24 AT THE TIME OR HOW WAS HE ACTING?

25 A HE WAS TALKING PRACTICALLY NON-STOP INTO THE

1 PHONE AND I HAD TO TELL HIM, YOU KNOW, I'M HERE
2 NOW, HANG UP THE PHONE, TALK TO ME. AND HE WAS
3 JUST VERY NERVOUS AT THAT POINT.

4 Q LET ME ASK YOU TO TAKE A LOOK AT SOME
5 PHOTOGRAPHS. THESE HAVE BEEN MARKED STATE'S
6 EXHIBITS SIX, SEVEN, AND EIGHT, WE'D LIKE HAVE
7 MARKED FOR IDENTIFICATION AT THIS TIME.

8 (STATE'S EXHIBITS 6, 7, AND 8 PHOTOGRAPHS MARKED
9 FOR IDENTIFICATION.)

10 THE COURT: HAVE YOU SEEN THEM, MR.
11 SULLIVAN?

12 MR. SULLIVAN: I THINK I SAW THEM TODAY,
13 YES, SIR.

14 THE COURT: OKAY.

15 Q LET ME JUST SHOW YOU THOSE THREE AND IF YOU
16 WOULD JUST TAKE A MOMENT TO LOOK AT ALL THREE OF
17 THEM.

18 A (COMPLIES.)

19 Q NOW --

20 THE COURT: LET ME SEE THOSE. GO AHEAD.

21 Q DO ALL THREE OF THOSE PICTURES CONTAIN AN
22 ACCURATE REPRESENTATION OF THE SCENE AS YOU SAW
23 IT WHEN YOU ARRIVED?

24 A THEY DO.

25 Q I THINK HE'S TRYING TO HAND THOSE BACK.

1 A OKAY.

2 Q DOES ANY ONE PARTICULAR PHOTOGRAPH PROVIDE THE
3 MOST ACCURATE ANGLE FROM WHICH YOU SAW MS.
4 QUINN'S BODY IN THE APARTMENT?

5 A FROM WHERE I WAS STANDING I WOULD SAY THIS ONE
6 RIGHT HERE.

7 Q OKAY. ALL RIGHT. IF YOU WOULD JUST LET THE
8 RECORD REFLECT THAT'S STATE'S EXHIBIT NUMBER
9 EIGHT. I'LL LET YOU HOLD ON TO THAT FOR
10 ANOTHER.

11 MR. SEAY: FIRST OFF, YOUR HONOR, I'D LIKE
12 TO OFFER THIS STATE'S EXHIBIT EIGHT INTO
13 EVIDENCE AT THIS TIME.

14 THE COURT: ALL RIGHT. WITHOUT OBJECTION
15 IT'S IN EVIDENCE.

16 MR. SULLIVAN: NO OBJECTION.

17 THE COURT: OKAY.

18 (STATE'S EXHIBIT EIGHT PHOTOGRAPH RECEIVED IN
19 EVIDENCE.)

20 Q I'D LIKE TO COME BACK TO THE PICTURE IN A
21 MINUTE, BUT BESIDES TED WALDMAN, WHO ELSE DID
22 YOU HAVE CONTACT WITH THAT MORNING THERE AT THE
23 APARTMENT ON THE LANDING THERE BETWEEN, AT THE
24 APARTMENT THAT MORNING? WAS THERE SOMEONE ELSE
25 THAT YOU HAD CONTACT WITH WHILE YOU WERE

1 STANDING THERE AT HER DOORWAY, HER APARTMENT
2 DOORWAY?

3 A THAT'S CORRECT. AS I WAS SECURING THE SCENE
4 WITH SOME TAPE ORLANDO SMITH WALKED OUT [REDACTED]
5 WHICH DIRECTLY ACROSS FROM [REDACTED].

6 Q AND HOW DID MR. SMITH APPEAR TO YOU WHEN YOU
7 FIRST SAW HIM THERE, COMING OUT OF THAT OTHER
8 APARTMENT?

9 A HE WAS WEARING A PLAID SHIRT, KHAKI PANTS, HE
10 HAD A FISHING POLE IN ONE HAND, AND HE JUST
11 WALKED OUT OF THE APARTMENT, STARTED WALKING
12 DOWN THE STEPS.

13 Q WHAT IF ANYTHING DID HE SAY TO YOU AT THAT TIME?

14 A HE DID NOT SAY ANYTHING AT THAT TIME.

15 Q DID YOU ADDRESS HIM OR ANYTHING AT THAT POINT?
16 ATTEMPT TO TALK TO HIM AS HE WAS GOING DOWN THE
17 STAIRS?

18 A I DID. I ASKED HIM WHO HE WAS. WHERE HE
19 LIVED. HE STATED ORLANDO SMITH. HE LIVED AT, I
20 BELIEVE IT WAS [REDACTED], LET ME CHECK. THAT'S
21 CORRECT. HE STATED HE LIVED AT [REDACTED] AT
22 [REDACTED] AND I ASKED HIM WHY DID HE COME
23 OUT OF [REDACTED]. HE STATED THAT THAT'S WHERE HIS
24 GIRLFRIEND LIVED. HER NAME WAS LAVONDA SHAW AND
25 AT THAT POINT I KNOCKED ON THE DOOR AND MADE

1 CONTACT WITH MS. SHAW AND SHE STATED HE WAS HER
2 BOYFRIEND AND HE WAS THERE TO SEE HER.

3 Q OKAY. DID YOU ALSO DETERMINE ANYBODY ELSE THAT
4 WAS PRESENT IN MS. QUINN'S APARTMENT WHEN Y'ALL
5 ARRIVED THERE? WAS THERE ALSO A CHILD PRESENT?

6 A THERE WAS. THE EMS PERSONNEL, THEY FOUND A
7 YOUNG WHITE MALE BABY IN ONE OF THE BEDROOMS IN
8 THE APARTMENT.

9 Q AND LET ME HAND YOU UP AN ENVELOPE.

10 A OKAY.

11 (STATE'S EXHIBIT NUMBER 32 LETTER MARKED FOR
12 IDENTIFICATION.)

13 Q AND THAT'S GOES WITH THAT. IT'S BEEN MARKED
14 STATE'S EXHIBIT 32 FOR IDENTIFICATION PURPOSES.
15 IF YOU WOULD, WOULD YOU MIND OPENING THAT UP AND
16 TAKE A LOOK INSIDE AND CAN YOU IDENTIFY THE
17 CONTENTS.

18 A YES. I RECOGNIZE THIS LETTER.

19 Q IS, THAT'S A TWO PAGE, TWO PIECES OF NOTEBOOK
20 PAPER WITH WRITING, IS THAT CORRECT?

21 A THAT'S CORRECT.

22 Q AND AN ENVELOPE ALSO, IS THAT CORRECT?

23 A THAT'S CORRECT.

24 Q WHO DID YOU RECEIVE THAT FROM?

25 A FROM MS. SHAW.

1 Q IS THAT LAVONDA SHAW?

2 A THAT'S CORRECT, LAVONDA SHAW.

3 Q WHERE WAS THAT, DO YOU RECALL WHEN THAT WAS
4 DELIVERED TO YOU OR WHEN THAT WAS TURNED OVER TO
5 YOU?

6 A THAT WAS THE, NOVEMBER 21, 1999.

7 Q AND WHAT DID YOU DO WITH THAT ITEM ONCE YOU
8 RECEIVED IT FROM MS. SHAW?

9 A I PLACED THIS IT INTO PROPERTY AND EVIDENCE AT
10 THE SHERIFF'S OFFICE.

11 Q OKAY. IF YOU WOULD JUST PACKAGE THAT BACK UP AT
12 THIS TIME. I'D LIKE TO GO BACK TO I BELIEVE
13 STATE'S EXHIBIT EIGHT WHICH I BELIEVE I HANDED
14 BACK UP TO YOU WHICH HAS BEEN ADMITTED INTO
15 EVIDENCE. WOULD YOU PLEASE DESCRIBE THE
16 CONDITION OF THE APARTMENT THERE WHEN YOU WALKED
17 IN AS YOU FOUND IT? WHAT IF ANYTHING SEEMED OUT
18 OF PLACE, BLOOD, THAT SORT OF THING?

19 A THE COUCH HAD A GOOD AMOUNT OF WHAT APPEARED TO
20 BE BLOOD ON IT. THE VICTIM, SHE HAD A, YOU
21 COULD TELL SHE HAD BLOOD ON HER FACE. YOU COULD
22 ALSO TELL, WHAT APPEARED TO BE BLOOD ON THE
23 FLOOR.

24 Q AND WOULD YOU, IF YOU WOULD, TAKE A GOOD LOOK AT
25 HER BODY POSITION AGAIN AND IS THAT AN ACCURATE

1 REPRESENTATION OF HER BODY POSITION THERE, THE
2 WAY HER BODY IS POSITIONED, ARMS, HEAD, TORSO,
3 LEG, ANYTHING YOU CAN SEE IN THAT PHOTO ABOUT
4 HER BODY, IS THAT AN ACCURATE REPRESENTATION OF
5 HOW HER BODY APPEARED WHEN YOU INITIALLY
6 ARRIVED?

7 A IT IS ACCURATE.

8 MR. SEAY: ONE MOMENT PLEASE, YOUR HONOR.

9 THE COURT: LET ME SEE THAT PICTURE AGAIN.

10 MR. SEAY: NO FURTHER QUESTIONS AT THIS
11 TIME, YOUR HONOR.

12 THE COURT: ALL RIGHT, MR. SULLIVAN.

13 MR. SULLIVAN: JUST A COUPLE.

14 CROSS EXAMINATION BY MR. SULLIVAN:

15 Q THAT MORNING WHEN YOU ENCOUNTERED ORLANDO SMITH
16 HE HAD ON SHORTS, A PLAID SHIRT, HE HAD A
17 FISHING POLE MAYBE GOING FISHING, CORRECT?

18 A WELL, HE NEVER STATED THAT. HE HAD ON KHAKI
19 PANTS AND A PLAID SHIRT AND HE WAS CARRYING A
20 FISHING POLE, BUT HE NEVER STATED WHERE HE WAS
21 GOING.

22 Q DID YOU NOTICE ANYTHING UNUSUAL ABOUT, DID HE
23 HAVE ANY BRUISES ON HIS HANDS OR SCRATCH MARKS
24 ON HIS ARM OR ANYTHING LIKE THAT?

25 A I DIDN'T SEE ANY. I, AT THAT TIME I WASN'T

1 LOOKING FOR ANYTHING OF THAT NATURE.

2 Q BUT IF YOU HAD A VIOLENT CRIME SCENE AND SOMEONE
3 WALKS OUT VERY CLOSE TO THE SCENE AND YOU WOULD
4 SEE THESE SCRATCH MARKS AND EVERYTHING IT WOULD
5 TRIGGER SOMETHING, WOULDN'T IT?

6 A UH-HUH.

7 Q BUT YOU DIDN'T SEE ANYTHING, NOTHING LIKE THAT
8 CAUGHT YOUR ATTENTION ON MR. SMITH?

9 A NO, SIR.

10 Q OKAY. AND THEN MISTER, THE OTHER FELLOW THERE,
11 THEODORE WALDMAN OR WHATEVER?

12 A YES, SIR.

13 Q HE WAS IN THE BACK SEAT OF THE CAR SAID HE
14 WANTED A CIGARETTE, AND YOU SAID I DON'T HAVE
15 ANY.

16 A UH-HUH.

17 Q AND HE SAID THERE WAS SOME ON MY FRONT SEAT AND
18 YOU GOT THE CIGARETTE FOR HIM AND HE HAD A
19 MARIJUANA CIGARETTE WITH HIM, DIDN'T HE?

20 A IN THE CIGARETTE PACK, THAT'S CORRECT.

21 Q HE ADMITTED IT WAS HIS, DIDN'T HE?

22 A HE DID NOT ADMIT TO IT BEING HIS CIGARETTE.

23 Q BUT IT WAS IN HIS CIGARETTE PACK IN HIS CAR?

24 A THAT'S CORRECT.

25 MR. SULLIVAN: NOTHING FURTHER.

1 MR. SEAY: I DON'T BELIEVE I HAVE ANY
2 FURTHER QUESTIONS AT THIS TIME, YOUR HONOR.

3 THE COURT: THANK YOU. YOU MAY COME DOWN.
4 THE NEXT WITNESS, MR. SEAY.

5 MR. SEAY: ARE WE GOING TO ONE O'CLOCK?
6 IT'S A SCHEDULING MATTER. HE MAY BE, HE'S GOING
7 TO BE A LITTLE BIT LONGER.

8 THE COURT: WE'LL GO AHEAD AND START. I'M
9 GOING TO GO UNTIL THEIR FOOD GETS HERE. WHEN
10 THE FOOD GETS HERE JUST LET ME KNOW.

11 MR. SEAY: AT THIS TIME THE STATE WOULD
12 CALL RAY ALLEN.

13 RAY ALLEN, BEING
14 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

15 THE CLERK: STATE YOUR NAME FOR THE
16 RECORD.

17 A RAY WILSON ALLEN.

18 THE CLERK: THANK YOU.

19 DIRECT EXAMINATION BY MR. SEAY:

20 Q DEPUTY ALLEN, WHERE ARE YOU CURRENTLY EMPLOYED?

21 A GREENVILLE COUNTY SHERIFF'S OFFICE.

22 Q AND HOW LONG HAVE YOU BEEN SO EMPLOYED WITH
23 THEM?

24 A TOTAL OF EIGHT YEARS.

25 Q OKAY. AND WHAT WAS YOUR JOB TITLE OR

1 DESCRIPTION OR OCCUPATION BACK IN MAY OF 1998?

2 A I WAS A FORENSIC TECHNICIAN WITH THE DEPARTMENT
3 OF COMMUNITY SERVICES IN GREENVILLE COUNTY.

4 Q OKAY. AND WHAT KIND OF DUTIES DID YOU HAVE IN
5 THAT POSITION? WHAT WAS YOUR JOB? WHAT DID YOU
6 DO?

7 A I WAS A FORENSIC CRIME SCENE TECHNICIAN. I WOULD
8 RESPOND TO CRIME SCENES, WOULD DOCUMENT THE
9 SCENE EITHER WITH 35 MILLIMETER COLOR OR BLACK
10 AND WHITE PHOTOGRAPHY, VHS VIDEO. I WOULD
11 COLLECT AND PRESERVE EVIDENCE. I WOULD ALSO
12 PROCESS THE SCENE FOR LATENT OR PATENT
13 FINGERPRINTS. ALSO WOULD TAKE SHOE IMPRESSIONS,
14 TIRES IMPRESSIONS, THINGS OF THAT NATURE.

15 Q OKAY. AND ON MAY 23, 1998, IN THAT CAPACITY DID
16 YOU GO TO AN APARTMENT AT FLEETWOOD MANOR
17 APARTMENTS HERE IN GREENVILLE COUNTY?

18 A I DID.

19 Q OKAY. AND WHEN YOU ARRIVED JUST BRIEFLY WHAT
20 DID YOU DETERMINE? WHAT WAS THE NATURE OF THE
21 SCENE WHEN YOU ARRIVED?

22 A MYSELF AND TECHNICIAN JOHN GARRET HAD RESPONDED
23 TO THE SCENE IN REFERENCE TO A DEATH
24 INVESTIGATION. UPON ARRIVAL WE WENT UP TO THE
25 APARTMENT. THE DOOR WAS ALREADY OPEN. ENTERING

1 THE APARTMENT THERE WAS A SOFA ON THE OTHER
2 SIDE, IT WAS KIND OF FRONT LIVING ROOM AREA. WE
3 COULD SEE WHAT LOOKED TO BE SUSPECTED BLOOD ON
4 THE COUCH, THERE WAS PILLOW THAT HAD BLOOD ON
5 THE COUCH. THERE WAS BLOOD ON THE CARPET
6 DIRECTLY IN FRONT OF THE COUCH. JUST DOWN TO
7 THE RIGHT OF THE COUCH WAS A COFFEE TABLE AND TO
8 THE RIGHT OF THE COUCH WAS AN END TABLE. THE
9 VICTIM WAS LYING FACE UP, SHE WAS NOT CLOTHED
10 FROM THE WAIST DOWN. SHE HAD A BRA ON. HER
11 SHIRT WAS PULLED UP ABOVE THE BRA. HER HANDS
12 WERE KIND OF UP OVER HER HEAD. SHE HAD WHAT
13 APPEARED TO TRAUMA TO HER HEAD AND NECK AREA AND
14 HAD SUSPECTED BLOOD ABOUT HER HEAD AND FACE.

15 ALSO LOOKING AT HER ARM ON THE INITIAL ENTRY TO
16 THE SCENE, I OBSERVED SOME PATTERNS ON HER ARM
17 AS HER ARM WAS ABOVE, KIND OF LAYING ON HER
18 HEAD, THAT WERE TO ME ALMOST INDICATED LIKE
19 SEPARATIONS OF FINGERS, THERE WAS FOUR, TO BE
20 DISTINCT PATTERNS WHERE THERE WAS SUSPECTED
21 BLOOD, THEN A SPACE WITH NO BLOOD, AND THERE ARE
22 FOUR ABOUT FINGER WIDTH APART. MAYBE THINK THAT
23 MAYBE SHE HAD BEEN TOUCHED IN THAT AREA AND WE
24 DECIDED THAT WE WOULD PROCESS HER LATER TO SEE
25 IF WE COULD GET ANY SUSPECTED PRINTS OFF HER.

1 Q AND LET ME, MAY I APPROACH THE WITNESS, YOUR
2 HONOR, TO SHOW HIM SOME PHOTOGRAPHS. THIS
3 PHOTOGRAPH FIRST OF ALL, IS OF, THAT'S THE ONE
4 THAT'S BEEN ADMITTED INTO EVIDENCE ALREADY
5 STATE'S EXHIBIT EIGHT.

6 A THIS IS ONE OF THE PHOTOGRAPHS THAT OFFICER
7 GARRET TOOK 35 MILLIMETER COLOR PHOTOGRAPH OF
8 THE SCENE DEPICTING BASICALLY WHAT I JUST
9 DESCRIBED.

10 Q AND THAT'S AN ACCURATE REPRESENTATION, IS THAT
11 CORRECT?

12 A YES, IT IS.

13 Q WOULD YOU TAKE A LOOK AT, THESE HAVE BEEN MARKED
14 AS STATE'S TWO, THREE, FOUR, FIVE, NINE, AND
15 ELEVEN AT THIS TIME FOR IDENTIFICATION PURPOSES.
16 IF YOU WOULD JUST LOOK AT THOSE AND TELL ME
17 FIRST OFF IF THOSE ARE ACCURATE REPRESENTATION
18 OF THE SCENE, IF THOSE ARE ACCURATE PHOTOS OF
19 THE SCENE THERE AT FLEET WOOD MANOR ON THE 23?

20 A YES, THEY ARE.

21 Q OKAY.

22 THE COURT: CAN I SEE THOSE?

23 MR. SEAY: YES, YOUR HONOR.

24 MR. SEAY: YOUR HONOR, AT THIS TIME THE
25 STATE WOULD ASK THOSE PHOTOGRAPHS BE INTRODUCED

1 INTO EVIDENCE.

2 MR. SULLIVAN: WITHOUT OBJECTION.

3 THE COURT: WITHOUT OBJECTION THEY ARE IN
4 EVIDENCE.

5 MR. SEAY: THANK YOU, YOUR HONOR.

6 (STATE'S EXHIBIT 2, 3, 4, 5, 9, AND 11
7 PHOTOGRAPHS RECEIVED EVIDENCE.)

8 Q CAN YOU SEE THAT ALL RIGHT?

9 (PICTURES ARE PRESENTED ON A SCREEN.)

10 A YEAH.

11 Q AND IF YOU WOULD JUST TELL US WHAT IS THAT, WHAT
12 IS THIS PICTURE OF? WHAT DOES THIS PICTURE
13 DEPICT?

14 A THAT'S THE SHOT OF THE BACK OF THE APARTMENTS.
15 THAT'S THE BACK DOOR OF THE APARTMENT THAT WE
16 WERE IN.

17 Q OKAY. AND IS IT THE FIRST DOOR?

18 A I BELIEVE IT IS THE FIRST DOOR HERE.

19 Q RIGHT THERE?

20 A YES, SIR.

21 Q WOULD BE THE VICTIM'S APARTMENT?

22 A YES.

23 Q I DON'T KNOW THAT WE CAN SEE IT WITH THE GLARE.
24 THAT IS BETTER. NOW THIS IS THE COUCH, IS THAT
25 CORRECT?

1 A THAT'S CORRECT.

2 Q ALL RIGHT. AND THIS IS THE BLOOD HERE THAT WAS
3 FOUND ON THE COUCH AT THE SCENE, IS THAT
4 CORRECT?

5 A RIGHT.

6 Q OKAY. WHAT IS, WHAT ABOUT IN THIS AREA? COULD
7 YOU PLEASE TELL WHAT DESCRIBES OR WHAT THAT
8 SHOWS?

9 A THERE YOU CAN SEE SMALL AREAS WHAT APPEARED TO
10 BE A POOL OF BLOOD AND THERE ALSO SEEMED TO BE
11 SOME BLOOD PULLED DOWN ALMOST LIKE DRAGGING KIND
12 OF MARKS COMING THIS WAY.

13 Q THAT'S MUCH BETTER. IS THAT WHAT YOU ARE
14 TALKING ABOUT RIGHT HERE?

15 A YES.

16 Q THAT'S WHAT YOU SAY THAT APPEARED TO BE DRAG
17 MARKS WITH BLOOD?

18 A YES.

19 Q AND IN FACT MS. QUINN'S BODY WAS FOUND DOWN IN
20 HERE, IS THAT CORRECT?

21 A YES, IT WAS.

22 Q THIS PHOTOGRAPH HERE WAS THIS PHOTOGRAPH TAKEN
23 PRIOR TO TOUCHING OR MOVING MS. QUINN'S BODY AT
24 THE SCENE?

25 A YES, IT WAS. THIS IS HOW WE FOUND HER.

1 Q OKAY. NOW FROM THIS ANGLE, JUST TO ORIENT
2 EVERYONE, THE BLOOD WE SAW ON THE FLOOR IS UP AT
3 THIS END OF THE SOFA, IS THAT CORRECT?

4 A YES, IT IS.

5 Q AND HERE'S THE SAME SOFA WITH THE BLOOD ON THE
6 CUSHIONS AND BLANKET, IS THAT CORRECT?

7 A THAT'S CORRECT.

8 Q OKAY. AND WHEN YOU ARRIVED HER ARM WAS IN THIS
9 POSITION, IS THAT CORRECT?

10 A YES, IT WAS.

11 Q CLOTHING WAS ALL THE SAME POSITIONS?

12 A YES.

13 Q SHIRT PULLED UP WITH THE BRA EXPOSED, IS THAT
14 CORRECT?

15 A THAT'S CORRECT.

16 Q IN THIS PHOTO IS THIS JUST ANOTHER ANGLE THAT
17 THIS SHOWS FROM LOOKING OVER THE BODY, IS THAT
18 CORRECT?

19 A THAT'S CORRECT.

20 Q AND AGAIN HAS HER BODY BEEN MOVED DURING THE
21 POINT, DURING THE PRODUCTION OF THESE
22 PHOTOGRAPHS?

23 A NO, IT HAS NOT.

24 Q IF WE CAN TURN THE LIGHTS BACK UP FOR A SECOND.
25 (COMPLIES.)

1 Q BESIDES TAKING PHOTOGRAPHS THERE AT THE SCENE,
2 YOU ALSO WERE RESPONSIBLE, YOU AND OFFICER
3 GARRET WHO WAS ALSO ASSISTING YOU ON THIS,
4 RESPONSIBLE FOR COLLECTION OF EVIDENCE AT THE
5 SCENE, IS THAT CORRECT?

6 A YES, WE WERE.

7 Q AND IF YOU COULD, COULD YOU GIVE US A BRIEF
8 OVERVIEW OF THE STEPS THAT WERE TAKEN IN
9 COLLECTING EVIDENCE AND TYPES OF THINGS THAT
10 WERE COLLECTED, WHAT YOU WERE LOOKING FOR THERE
11 AT THE SCENE?

12 A WE COORDINATE THAT WITH THE INVESTIGATOR THAT
13 WAS INVESTIGATING, INVESTIGATOR DONOHUE WAS ON
14 THE SCENE, AND WE GO THROUGH AND WE LOOK FOR
15 ANYTHING THAT MAY HAVE HAD ANY CONTACT OR BE
16 RELATED TO THE CRIME. WE COLLECTED CLOTHING
17 ITEMS. WE COLLECTED THINGS THAT WE FELT MAY
18 HAVE BEEN HANDLED BY A SUSPECT THAT WAS IN THE
19 APARTMENT. THERE WAS SOME SUSPECTED BLOOD ON
20 THE COFFEE TABLE THAT WAS NEXT TO THE VICTIM, WE
21 TOOK SWABBINGS OF THAT. AND ONCE WE DID ALL
22 THAT AND THE VICTIM WAS REMOVED, ACTUALLY THE
23 VICTIM WAS REMOVED BEFORE WE DID THAT, THEN WE
24 PROCESS THE WHOLE APARTMENT TO SEE IF WE COULD
25 GET ANY LATENT FINGERPRINTS.

1 Q AND YOU, IN FACT, DID RECOVER SOME LATENT
2 FINGERPRINT, IS THAT CORRECT?

3 A YES, WE DID. THAT'S CORRECT.

4 Q SOME FROM ITEMS THAT WERE MOVEABLE SUCH AS DOOR
5 KNOBS OR DOORS THERE IN THE APARTMENT?

6 A THAT'S CORRECT.

7 Q AND THEN OTHERS THAT WERE PROCESSED LATER BACK
8 AT THE LEC OR THE LAW ENFORCEMENT CENTER, IS
9 THAT CORRECT?

10 A THAT'S CORRECT.

11 Q AND THOSE ARE SUBMITTED TO OUR, TO GREENVILLE
12 COUNTY'S LATENT PRINT DIVISION, IS THAT CORRECT?

13 A THAT'S CORRECT.

14 Q OKAY. AND ONCE Y'ALL FINISHED PROCESSING THE
15 SCENE THERE AT FLEETWOOD MANOR, IT'S MY
16 UNDERSTANDING THAT YOUR JOB WAS NOT YET
17 FINISHED, IS THAT CORRECT?

18 A THAT IS CORRECT. WE, THE VICTIM WAS TRANSPORTED
19 BY EMS TO THE LEC MORGUE WHICH IS BEHIND THE LAW
20 ENFORCEMENT CENTER TO CHECK TO SEE IF WE COULD
21 GET ANY ADDITIONAL EVIDENCE FROM MS. QUINN'S
22 BODY.

23 Q OKAY. AND WAS IT AT THIS TIME THAT YOU MADE
24 ARRANGEMENTS TO PHOTOGRAPH WHAT APPEARED TO BE A
25 PRINT ON MS. QUINN'S ARM?

1 A THAT'S CORRECT.

2 Q LET ME SHOW TO YOU AGAIN STATE'S EXHIBIT, THIS
3 IS 33 AND 34 FOR IDENTIFICATION PURPOSES AT THIS
4 TIME. DO YOU RECOGNIZE THOSE PHOTOS?

5 A YES, I DO.

6 Q OKAY. AND IN FACT WERE YOU THE ONE THAT TOOK
7 THESE PHOTOS?

8 A YES, I DID.

9 MR. SEAY: AT THIS TIME, YOUR HONOR, I ASK
10 THESE TWO EXHIBITS BE ADMITTED INTO EVIDENCE.

11 MR. SULLIVAN: WITHOUT OBJECTION.

12 THE COURT: WITHOUT OBJECTION THEY ARE
13 ADMITTED IN EVIDENCE.

14 (STATE'S EXHIBITS 33 & 34 PHOTOGRAPHS RECEIVED
15 IN EVIDENCE.)

16 Q I DON'T KNOW IF YOU CAN SEE THAT ALL RIGHT.
17 LIGHTS AREN'T DOWN.

18 THE COURT: I'M SORRY. YOU CAN TURN THE
19 LIGHTS DOWN. HE JUST STEPPED OUT FOR A MINUTE.
20 THE FOOD MUST BE HERE.

21 Q FIRST OFF, IS THIS A PHOTOGRAPH OF MS. QUINN'S
22 LEFT ARM, IS THAT CORRECT?

23 A YES, IT IS.

24 Q AND WHAT PORTION OF HER ARM WOULD THIS BE?

25 A IT'S THE, ABOUT THE BICEP AREA.

1 Q IT'S THE AREA BETWEEN THE ELBOW AND THE
2 SHOULDER?

3 A YES. YES, SIR.

4 Q AND DON'T KNOW THAT WE CAN BRING IT IN ENOUGH TO
5 SEE HERE EXACTLY BUT THIS AREA, KIND OF RIGHT IN
6 HERE I GUESS, WHAT IS BEING DEPICTED THERE?

7 A THIS IS A PATENT IMPRESSION OF RIDGE DETAIL THAT
8 WAS FOUND IN BLOOD ON HER ARM.

9 Q SO THAT'S THE AREA IN WHICH THE PRINT WAS FOUND?

10 A YES.

11 Q THAT YOU LOCATED AND IDENTIFIED, IS THAT
12 CORRECT?

13 A YES, SIR.

14 Q OKAY. LET ME SHOW YOU THIS ONE. AND YOU
15 RECOGNIZE THIS PHOTO AS WELL, IS THAT CORRECT?

16 A THAT'S CORRECT.

17 Q AND WHAT IS THIS, WHAT DOES IS THIS AN
18 ENLARGEMENT OF?

19 A THIS IS THE ENLARGEMENT OF THE PHOTO YOU SHOWED
20 PREVIOUSLY OF THE IMPRESSION WE HAD LOCATED.

21 Q AND THIS IS, JUST BE AN ENLARGEMENT OF THE PRINT
22 THAT WAS DEPICTED HERE, IS THAT RIGHT?

23 A THAT'S RIGHT.

24 Q OKAY. AND JUST TO CLARIFY, JUST THIS, THESE
25 SORT OF RIDGES ACROSS HERE IS WHAT YOU WERE

1 SEEING AS POSSIBLE IDENTIFIABLE PRINT, IS THAT
2 CORRECT?

3 A THAT'S CORRECT.

4 Q LET ME SEE IF THE LIGHTS WORK NOW.

5 (THE LIGHTS ARE RETURNED.)

6 Q ALONG WITH THE PHOTOGRAPHS TAKEN OF THE PRINT
7 THERE ON THE BICEP, DID YOU ALSO OBTAIN OTHER
8 SAMPLES FROM HER BODY AS FAR AS HAIR, FINGERNAIL
9 CLIPPINGS, THAT SORT OF THING?

10 A WE RECOVERED THREE INDIVIDUAL HAIRS OFF HER
11 BODY. WE ALSO TAKE FINGERNAIL CLIPPINGS, ROLL
12 IMPRESSIONS OF HER FINGERPRINTS. WE COLLECTED
13 SAMPLE OF THE HEAD HAIR, PUBLIC HAIR, WE DID A
14 COMBING OF THE PUBLIC HAIR, AND COLLECTED
15 CERTAIN ITEMS OFF HER BODY ALSO.

16 Q OKAY. AND THOSE ITEMS WERE COLLECTED AND
17 PRESERVED INTO EVIDENCE, IS THAT CORRECT?

18 A YES, SIR.

19 Q AND YOU TAKE FINGERNAIL CLIPPINGS FROM THE
20 VICTIM HERSELF, IS THAT CORRECT?

21 A THAT'S CORRECT, WE JUST BASICALLY TAKE CLIPPING
22 OF THE NAIL, THE CLIPPING OF THE FRONT OF THE
23 NAIL.

24 Q AND DO YOU ALSO, YOU ALSO TOOK KNOWN HAIR
25 SAMPLES FROM HER, PULLED ACTUAL HAIR SAMPLES

1 FROM HER, IS THAT CORRECT?

2 A THAT'S CORRECT.

3 Q LET ME SHOW YOU THESE TWO PHOTOGRAPHS STATE'S
4 EXHIBIT 15 AND 21. ASK IF YOU CAN IDENTIFY
5 THOSE?

6 A YES, I DO.

7 Q AND AGAIN ARE THOSE PHOTOGRAPHS OF THE VICTIM
8 STEPHANIE CHRIS FORD QUINN?

9 A YES, THEY ARE.

10 Q AND WHERE WERE THESE PHOTOGRAPHS TAKEN?

11 A THIS WAS TAKEN IN THE MORGUE BEHIND THE LEC.

12 MR. SEAY: YOUR HONOR, AT THIS TIME I ASK
13 THAT STATE'S EXHIBIT 21 AND 15 BE ADMITTED INTO
14 EVIDENCE.

15 MR. SULLIVAN: DID I SEE THOSE THIS
16 MORNING.

17 MR. SEAY: I THINK YOU DID.

18 MR. SULLIVAN: NO OBJECTION, YOUR HONOR.

19 THE COURT: WITHOUT OBJECTION THEY ARE IN
20 EVIDENCE.

21 (STATE'S EXHIBITS 15 & 21 PHOTOGRAPHS RECEIVED
22 IN EVIDENCE.)

23 Q YOU ALSO, IT'S MY UNDERSTANDING, ATTEMPTED TO
24 LOCATE OTHER POSSIBLE PRINTS ON HER BODY BEFORE
25 CONCLUDING YOUR FORENSIC WORK THAT DAY, IS THAT

1 CORRECT?

2 A THAT'S CORRECT. WE INITIALLY EXAMINED MS.
3 QUINN'S BODY AND LOCATED THE INITIAL PRINT.
4 LOOKED OVER HER BODY COMPLETELY TO SEE IF WE
5 COULD FIND ANYTHING ELSE, COLLECTED THE EVIDENCE
6 WE COLLECTED, THEN WE ATTEMPTED TO FIND ANY
7 OTHER PRINTS USING A METHOD THAT'S KNOWN AS
8 AMINO BLACK WHICH, REACTS WITH THE PROTEIN TO
9 BLOOD HOPING TO FIND ANY OTHER PRINTS ON HER
10 BODY BUT NONE WERE FOUND.

11 Q OKAY. THE AMINO BLACK YOU JUST MENTIONED, DID
12 YOU TREAT THE WHOLE BODY WITH IT?

13 A WE TREATED PRETTY MUCH FROM HER NECK DOWN, AREAS
14 THAT SHE MAY HAVE BEEN TOUCHED, WE PRETTY MUCH,
15 MOST OF HER TORSO, LEGS, AND ARMS.

16 Q AND THOSE RESULTS WERE NEGATIVE?

17 A THEY WERE NEGATIVE.

18 MR. SEAY: ONE MOMENT, YOUR HONOR. I DON'T
19 BELIEVE I HAVE ANY OTHER QUESTIONS AT THIS TIME,
20 YOUR HONOR.

21 THE COURT: MR. SULLIVAN.

22 MR. SULLIVAN: JUST ONE OR TWO, YOUR HONOR.

23 CROSS EXAMINATION BY MR. SULLIVAN:

24 Q ON YOUR REPORT YOU COLLECTED KNOWN, WHEN YOU SAY
25 KNOWN SAMPLES FROM HER, CORRECT?

1 A YES, SIR.

2 Q AND THEN YOU FOUND AN UNKNOWN SAMPLE FROM THE
3 VICTIM'S STOMACH AREA?

4 A YEAH, THERE IS THREE UNKNOWN SAMPLES.

5 Q ONE FROM THE STOMACH, ONE FROM THE NAVEL AREA,
6 AND ONE FROM THE LEG?

7 A YES.

8 Q AND THESE WERE COLLECTED AND SAVED, CORRECT?

9 A YES, THEY WERE PACKAGED AND PUT IN PROPER
10 EVIDENCE.

11 Q SO WHEN YOU SAY UNKNOWN, YOU MEAN THEY WEREN'T
12 HERS? THEY WERE SOMEONE ELSE'S?

13 A YEAH, THEY WERE NOT PULLED FROM HER.

14 Q THE OTHER THING, I DON'T KNOW HOW TO WORK THIS
15 MACHINE, ON THE FIRST PICTURE UP THERE, THE ONE
16 WITH THE BACK DOOR OF THE APARTMENT, YOU RECALL
17 THAT ONE?

18 A YES, SIR.

19 Q THOSE APARTMENTS, TO YOUR BACK, IF YOU WERE
20 STANDING THERE LOOKING AT THAT, TO YOUR BACK
21 WOULD BE FLEETWOOD DRIVE, CORRECT?

22 A I BELIEVE IT'S WOOD BACK THERE.

23 Q THE STREET COMES AROUND?

24 A YEAH.

25 Q THE ENTRANCE IS BACK DOWN TOWARD TO YOUR RIGHT

1 IF YOU WERE STANDING LOOKING, THE MAIN ENTRANCE?

2 A RIGHT.

3 Q AND YOU GO DOWN AND TAKE A LEFT TO GO INTO HER
4 APARTMENT?

5 A YES.

6 Q BUT RIGHT THERE BEHIND THERE, OFF OF THE ROAD,
7 DID YOU NOTICE A LITTLE DRIVEWAY GOING DOWN TO
8 THAT BACK DOOR OF THAT APARTMENT? TO A LITTLE
9 AREA PEOPLE PULLING DOWN THERE AND PARKING?

10 A I DON'T THINK THERE WAS A DRIVEWAY.

11 Q IT'S NOT PAVED THERE OR ANYTHING, JUST A PLACE
12 WHERE CARS HAD BEEN PULLING DOWN?

13 A I REMEMBER IT BEING KIND OF BEATEN DOWN. IT
14 LOOKED LIKED IT RECEIVED A LOT OF TRAFFIC. I
15 DON'T KNOW IF IT WAS ACTUALLY USED FOR VEHICLE
16 TRAFFIC THOUGH.

17 Q OKAY.

18 MR. SULLIVAN: NOTHING FURTHER. THANK YOU.

19 THE COURT: ALL RIGHT. THANK YOU, SIR.

20 MR. SEAY: NO FURTHER QUESTIONS.

21 THE COURT: WE'LL BREAK AT THIS TIME. THE
22 JURY'S LUNCH IS HERE. IF YOU'LL GO BACK AND
23 WE'VE GOT, BOTH THOSE JURY ROOMS ARE AVAILABLE.
24 THEY CAN USE THE REST ROOMS IN BOTH. Y'ALL HAVE
25 LUNCH AND AS SOON AS YOU FINISH WE'LL BRING YOU

1 BACK IN AND CONTINUE. THANK YOU SO MUCH. DO
2 NOT DISCUSS THE CASE AT THIS TIME.

3 (THE JURY EXITS THE COURTROOM AT 1:20.)

4 THE COURT: IN ABOUT 30-35 MINUTES.

5 MR. SEAY: OKAY.

6 THE COURT: WE'LL TAKE A RECESS FOR ABOUT
7 30 TO 35 MINUTES.

8 (COURT'S IN RECESS AT 1:20.)

9 (COURT RESUMES AT 2:10.)

10 THE COURT: BRING IN THE JURY.

11 (THE JURY RETURNS TO THE COURTROOM.)

12 THE COURT: ALL RIGHT. MR. SEAY.

13 MR. SEAY: THE STATE WOULD CALL PAUL
14 WILKERSON.

15 PAUL WILKERSON, BEING FIRST
16 DULY SWORN, TESTIFIED AS FOLLOWS:

17 THE CLERK: STATE YOUR NAME FOR THE
18 RECORD.

19 A PAUL SHERMAN WILKERSON, JR.

20 THE CLERK: THANK YOU.

21 DIRECT EXAMINATION BY MR. SEAY:

22 Q MR. WILKERSON, WHAT IS YOUR CURRENT JOB
23 DESCRIPTION AND PLACE OF EMPLOYMENT?

24 A I'M A SUPERVISOR OF THE LATENT PRINT SECTION IN
25 THE MISSISSIPPI CRIME LABORATORY IN JACKSON,

1 MISSISSIPPI.

2 Q AND HOW LONG HAVE YOU BEEN DOWN THERE?

3 A ALMOST A YEAR.

4 Q OKAY. AND PRIOR TO JOINING THE MISSISSIPPI
5 CRIME LAB, WHERE WERE YOU EMPLOYED?

6 A I WAS EMPLOYED BY THE FORENSIC DIVISION HERE IN
7 GREENVILLE COUNTY.

8 Q AND WHAT WAS YOUR JOB TITLE HERE?

9 A I WAS A LATENT PRINT EXAMINER.

10 Q AND WERE YOU WORKING IN THAT CAPACITY IN MAY OF
11 1998?

12 A YES, I WAS.

13 Q AND MORE SPECIFICALLY I GUESS WE'RE TALKING
14 ABOUT THE TIMEFRAME STARTING ABOUT MAY 26, MAY
15 23 TO MAY 30, 1998. WHAT TRAINING HAVE YOU BEEN
16 THROUGH TO QUALIFY YOU TO BE A LATENT PRINT
17 EXAMINER?

18 A I'VE A BACHELOR'S DEGREE IN PUBLIC
19 ADMINISTRATION FROM THE UNIVERSITY OF
20 MISSISSIPPI IN LAW ENFORCEMENT. I GRADUATED FBI
21 NATIONAL ACADEMY. I'VE ATTENDED THE BASIC
22 FINGERPRINT COURSE TAUGHT BY THE SOUTH CAROLINA
23 CRIMINAL JUSTICE ACADEMY. THE ADVANCED
24 FINGERPRINT COURSE TAUGHT BY THE FBI. THE
25 ADVANCE PALM PRINT IDENTIFICATION COURSE TAUGHT

1 BY THE PALM PRINT SYMPOSIUM. THE ADMINISTRATIVE
2 ADVANCE LATENT PRINT PROCEDURES COURSE SPONSORED
3 BY THE INTERNATIONAL ASSOCIATION FOR
4 IDENTIFICATION AND AS WELL AS BEING A CERTIFIED
5 LATENT PRINT EXAMINER BY THE INTERNATIONAL
6 ASSOCIATION OF IDENTIFICATION. IT'S ABOUT EIGHT
7 YEARS OF PRACTICAL EXPERIENCE.

8 MR. SULLIVAN: WE STIPULATE HE'S AN EXPERT
9 IN FINGERPRINTS.

10 THE COURT: THEY STIPULATE HIS EXPERTISE IN
11 FINGERPRINTS.

12 MR. SEAY: WE WOULD ACCEPT THAT STIPULATION
13 THAT HE'S AN EXPERT IN LATENT PRINT
14 EXAMINATION.

15 THE COURT: YES, SIR.

16 Q LET ME START OFF JUST TO ASK YOU IF YOU WOULD
17 TO, IF YOU WOULD TO START WITH ONE ENVELOPE AND
18 GO AHEAD AND TELL ME THE CONTENTS OF THAT
19 ENVELOPE?

20 A THIS IS AN ENVELOPE CONTAINING LATENT
21 FINGERPRINTS THAT IS NORMALLY SUBMITTED TO THE
22 LATENT FINGERPRINT SECTION HERE IN GREENVILLE
23 COUNTY. IT HAS CASE INFORMATION, THE DATE, AND
24 THE NAME OF THE PERSON WHO LIFTED PRINTS AND
25 OTHER INFORMATION. INSIDE THIS ENVELOPE THERE

1 ARE TWO LATENT PRINTS THAT WERE SUBMITTED. THIS
2 ONE IS FROM A HAND MIRROR IN A CLOTHES BASKET AT
3 [REDACTED], AND THIS ONE
4 IS FROM THE EDGE OF THE DOOR ON THE BATHROOM IN
5 THE BATHROOM AT THE SAME ADDRESS. ONE OF THESE
6 WAS IDENTIFIED AS BEING MADE BY THE VICTIM. THE
7 OTHER IS UNIDENTIFIED.

8 Q THAT IS STEPHANIE CHRIS FORD QUINN?

9 A YES, THAT'S CORRECT.

10 Q OKAY.

11 A AND IT WAS CHECKED ALSO AGAINST A MR. ERIC
12 BURTS, ORLANDO SMITH, AND THEODORE WALDMAN.

13 Q OKAY.

14 A THE OTHER ENVELOPE CONTAINS ONE LATENT PRINT,
15 EXTERIOR OF BEDROOM DRESSER DRAWER, AND IT IS
16 UNIDENTIFIED AND IT'S HAS BEEN CHECKED AGAINST
17 THE VICTIM AS WELL AS ORLANDO SMITH, ERIC BURTS,
18 AND THEODORE WALDMAN.

19 Q OKAY. AND THIS WAS NEGATIVE AS TO ALL THOSE
20 PERSONS?

21 A THAT'S CORRECT.

22 Q THEN THE FINAL ENVELOPE?

23 A THIS ONE CONTAINING SEVEN LATENT PRINTS. ALL
24 FOUR OF THESE WERE LIFTED OFF OF A WHITE PLASTIC
25 BAG FROM THE KITCHEN FLOOR WITH ICE HOUSE

1 CARTON. ALL FOUR OF THESE WERE IDENTIFIED AS
2 BEING MADE BY MR. THEODORE WALDMAN. THESE
3 THREE, THIS ONE IS FROM A MARLBORO CIGARETTE
4 PACK FROM THE FRONT SEAT OF GREENVILLE COUNTY
5 SHERIFF'S OFFICE VEHICLE ADAM 15. THE TELEPHONE
6 FROM THE LIVING ROOM FLOOR AND A WHITE PLASTIC
7 BAG FROM KITCHEN FLOOR WITH ICE HOUSE CARTON AND
8 THESE THREE ARE UNIDENTIFIED AS TO THE MAKER OF
9 THESE THREE.

10 Q DO YOU KNOW WHO THOSE ALL WERE COMPARED TO?

11 A MR. THEODORE WALDMAN, ORLANDO SMITH, THE VICTIM,
12 AND ERIC BURTS.

13 Q AND IT WAS NEGATIVE AS TO ALL THOSE PERSONS?

14 A YES, THAT'S CORRECT.

15 Q AND BASED ON YOUR EXPERIENCE AND QUALIFICATIONS
16 IN LATENT PRINTS EXAMINATION AS WELL AS
17 IDENTIFYING, IS IT UNUSUAL TO FIND PRINTS OF
18 PERSONS WHO HAVE BEEN IN AND KNOW A AREA OR BEEN
19 IN A ROOM OR HOME, IS IT UNUSUAL TO FIND THEIR
20 PRINTS THERE?

21 A TO FIND FINGERPRINTS?

22 Q PERSONS THAT ARE THERE CONSENSUALLY?

23 A NO, IT'S NOT UNUSUAL, NO.

24 Q LET ME HAND YOU THAT AND JUST ASK IF YOU CAN
25 TELL ME JUST WHAT THAT IS?

1 A THESE ARE WHAT ARE KNOWN AS A MAJOR CASE SET OF
2 PRINTS OBTAINED FROM ORLANDO FONTE SMITH. THAT
3 CONSISTS OF A KNOWN INK ROLLED FINGERPRINTS,
4 PALM PRINTS, AS WELL AS JOINT AND TIP
5 FINGERPRINTS. I HAVE ROLLED THESE.

6 Q THAT'S OF BOTH HANDS?

7 A YES, THAT'S CORRECT.

8 Q AND DID YOU ROLL THOSE BACK ON MAY 26, 1998, IS
9 THAT CORRECT?

10 A I BELIEVE THAT'S A CORRECT DATE, YES.

11 Q OKAY. LET ME SHOW YOU WHAT'S BEEN MARKED AS
12 STATE'S EXHIBIT 35 FOR IDENTIFICATION PURPOSES
13 AT THIS TIME. DO YOU RECOGNIZE THAT?

14 A YES, THIS IS A COPY OF ONE OF THOSE CARDS IN
15 THAT STACK THERE THAT I MADE AND MAILED TO MR.
16 RON SMITH AT THE MISSISSIPPI CRIME LABORATORY.

17 Q WHAT'S DEPICTED IN THERE?

18 A IT'S THE LEFT PALM PRINT OF A ROLLED IMPRESSION
19 OF THAT, AS WELL AS THE JOINTS AND THE FINGERS.
20 THEY HAVE WHAT WE CALL A WRITER'S PALM WHICH IS
21 THIS PORTION OF THE PALM WHICH DOESN'T NORMALLY
22 SHOW UP ON THAT, AS WELL AS A ROLLED PRINT OF
23 THE FINGER REGION OF THE PALM.

24 Q AND YOU ROLLED THAT PRINT?

25 A YES, I DID.

1 Q AND YOU IDENTIFIED THE PERSON WHOSE PRINT THAT'S
2 DEPICTED THERE AS ORLANDO FONTE SMITH, IS THAT
3 CORRECT?

4 A YES, I DID.

5 Q LET ME ALSO SHOW STATE'S EXHIBITS 33 AND 34
6 WHICH HAVE BEEN ALREADY ADMITTED INTO EVIDENCE
7 AND ASK IF YOU RECOGNIZE THOSE?

8 A YES, I DO.

9 Q OKAY. IF MAY I TAKE THOSE AND SHOW THEM TO YOU.
10 I'M GOING TO START BY SHOWING YOU STATE'S
11 EXHIBIT 34 AND YOU INDICATE YOU DO IN FACT
12 RECOGNIZE THIS PHOTO, IS THAT CORRECT?

13 A YES, I DO. THIS IS A COPY OF THE PHOTOGRAPH
14 THAT WAS PROVIDED TO ME FOR EXAMINATION.

15 Q AND IS IT ACCURATE TO STATE THAT THE AREA IN
16 WHICH THE PRINT IS FOUND IS IN THIS REGION?

17 A YES IT IS.

18 Q OKAY. AND THIS PHOTOGRAPH HERE, IS THIS ONE OF
19 THE ONES YOU FORWARDED TO MR. RON SMITH IN
20 MISSISSIPPI?

21 A YES, THIS IS THE PHOTOGRAPH THAT I FORWARDED TO
22 MR. SMITH.

23 Q AND THAT WAS ON OR ABOUT WHAT MAY 27TH, 1998, IS
24 THAT CORRECT?

25 A IN THAT TIMEFRAME, YES. I DON'T RECALL THE

1 EXACT DATE.

2 Q OKAY. THIS HAS BEEN MARKED AS STATE'S EXHIBIT
3 33 AND IS ALREADY IN EVIDENCE. IT'S THE REGION
4 THAT WE SEE ACROSS HERE. COULD YOU PLEASE TELL
5 US WHAT THAT IS AS FAR AS WHAT THIS PICTURE
6 REPRESENTS?

7 A THIS IS AN ENLARGEMENT OF THAT SECTION OF THE
8 PHOTOGRAPH ON A PREVIOUS PHOTOGRAPH THAT YOU
9 INDICATED. THIS IS A PALM PRINT. THIS RIDGE
10 DETAIL HERE IS CONSISTENT WITH THE RIDGE DETAIL
11 THAT'S FOUND ON THE LEFT PALM AND HYPER FINGER
12 REGION.

13 Q AND IN YOUR CAPACITY AS LATENT PRINT EXAMINER IN
14 GREENVILLE COUNTY AT THE TIME YOU REVIEWED BOTH
15 THE ROLLED PRINT OF ORLANDO FONTE SMITH AND THIS
16 PRINT HERE DID YOU ATTEMPT TO MAKE ANY
17 COMPARISONS BETWEEN THOSE PRINTS?

18 A YES, I DID. I EXAMINED THE PHOTOGRAPH AND
19 COMPARED IT WITH THE INK KNOWN PRINT OF ORLANDO
20 SMITH. AFTER EXAMINING THEM BOTH, I WAS
21 REASONABLY CERTAIN THAT THIS INK, THIS BLOOD
22 PRINT HERE ON THE VICTIM'S ARM HAD BEEN MADE BY
23 THE LEFT PALM OF ORLANDO SMITH, BUT I WAS, AS
24 YOU CAN SEE IT'S VERY DIFFICULT TO SEE IN ITS
25 CURRENT FASHION AND I DID NOT POSSESS THE

1 EQUIPMENT TO ENHANCE IT SO THAT I COULD BE
2 CERTAIN THIS WAS AN IDENTIFICATION.

3 Q AND WERE YOU AWARE AT THAT TIME THAT RON SMITH
4 HAD THIS EQUIPMENT AVAILABLE TO HIM IN
5 MISSISSIPPI?

6 A YES, I WAS.

7 Q AND IS THAT WHY YOU FORWARDED IT ON DOWN TO HIM,
8 THESE DOCUMENTS?

9 A THAT WAS ONE OF THE TWO REASONS. ONE IS HE DID
10 POSSESS THE COMPUTER ENHANCEMENT EQUIPMENT TO
11 MAKE THIS PHOTOGRAPH WHERE YOU COULD SEE IT
12 BETTER AND ALSO HE'S ONE OF THE FAIRLY RENOWNED
13 EXAMINERS WHEN IT COMES TO PALM PRINTS.

14 MR. SEAY: AT THIS TIME I ASK THAT STATE'S
15 EXHIBIT 35 BE ADMITTED INTO EVIDENCE AS THE
16 XEROX COPY OF THE KNOWN LEFT PALM PRINT OF
17 ORLANDO FONTE SMITH.

18 MR. SULLIVAN: NO OBJECTION.

19 (EXHIBIT 35 PALM PRINT IN EVIDENCE.)

20 Q AND YOU'VE HAD AN OPPORTUNITY TO REVIEW THESE ON
21 SEVERAL OCCASIONS, IS THAT CORRECT?

22 A THAT'S CORRECT.

23 Q BOTH WITH AND WITHOUT THE ENHANCEMENT EQUIPMENT?

24 A YES, I HAVE.

25 Q AND IS IT YOUR OPINION THAT THE PRINT SEEN HERE

RON SMITH --- DIRECT

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1 IS A MATCH WITH THE PALM PRINTS HERE?

2 A THERE IS ABSOLUTELY NO DOUBT THAT THE HAND THAT
3 MADE THAT INK PRINT ALSO MADE THE BLOODY PALM
4 PRINT ON THE VICTIM'S BODY.

5 Q THANK YOU, MR. WILSON. I DON'T BELIEVE I HAVE
6 ANY FURTHER QUESTIONS AT THIS TIME.

7 THE COURT: WILL YOU GET THE LIGHTS
8 PLEASE.

9 (COMPLIES.)

10 THE COURT: ALL RIGHT, MR. SULLIVAN.

11 MR. SULLIVAN: NO QUESTIONS.

12 THE COURT: YOU CAN COME DOWN. THANK YOU,
13 SIR.

14 MR. SEAY: AT THIS TIME THE STATE WOULD
15 CALL RON SMITH.

16 RON SMITH, BEING
17 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

18 THE CLERK: STATE YOUR NAME FOR THE
19 RECORD.

20 A MY NAME IS RON SMITH. S-M-I-T-H.

21 THE CLERK: YOU MAY BE SEATED.

22 DIRECT EXAMINATION BY MR. SEAY:

23 Q MR. SMITH, WHERE ARE YOU CURRENTLY EMPLOYED?

24 A WITH THE MISSISSIPPI CRIME LABORATORY IN
25 MERIDIAN, MISSISSIPPI.

1 Q WHAT'S YOUR JOB TITLE, DESCRIPTION THERE?

2 A WELL, I'M CLASSIFIED AS ASSOCIATE DIRECTOR WHICH
3 IS A REGIONAL LABORATORY MANAGER.

4 Q AND WHAT DO YOU DO THERE AS FAR AS PRINT
5 EXAMINATION AND THAT SORT OF THING WITH THE
6 MISSISSIPPI CRIME LAB?

7 A WELL, MY SPECIALTIES ARE IN LATENT PRINT
8 EXAMINATION AND CRIME SCENE EXAMINATION. ALONG
9 WITH MY DUTIES AS A SUPERVISOR OF THE REGIONAL
10 CRIME LABORATORY I AM CALLED UPON TO REVIEW
11 CASES OF ALL THE OTHER EXAMINERS IN THE STATE OF
12 MISSISSIPPI, THAT WORK FOR THE STATE CRIME LAB I
13 MIGHT ADD.

14 Q OKAY. AND HOW LONG HAVE YOU BEEN A LATENT PRINT
15 EXAMINER?

16 A I'VE BEEN EMPLOYED IN LATENT PRINT EXAMINATION
17 SINCE 1972.

18 Q OKAY. AND WHAT IF ANY SPECIAL TRAINING HAVE YOU
19 HAD THROUGH THE COURSE OF THOSE NUMEROUS YEARS
20 IN LATENT PRINT EXAMINATION?

21 A WELL, I BEGAN MY CAREER IN THE FIELD OF
22 FINGERPRINTS AND LATENT PRINT IDENTIFICATION IN
23 1972 WHILE EMPLOYED AS A FINGERPRINT TECHNICIAN
24 WITH THE FEDERAL BUREAU OF INVESTIGATION LOCATED
25 IN WASHINGTON, D.C. IN 1973 I ACCEPTED A

1 POSITION AS LATENT PRINT EXAMINER WITH THE
2 ALABAMA BUREAU OF INVESTIGATION LOCATED IN
3 MONTGOMERY, ALABAMA. I WAS EMPLOYED THERE
4 APPROXIMATELY A LITTLE OVER FOUR AND ONE HALF
5 YEARS, OBTAINED A POSITION OF ASSISTANT STATE
6 IDENTIFICATION OFFICER. IN JANUARY OF 1978 I
7 ACCEPTED A POSITION AS SENIOR LATENT PRINT
8 EXAMINER FOR THE STATE OF MISSISSIPPI AND I WAS
9 EMPLOYED OR HAD BEEN EMPLOYED WITH THAT AGENCY
10 SINCE THAT TIME. I WORKED FOR THE FIRST TEN
11 YEARS IN THE HEADQUARTERS LABORATORY AS
12 SUPERVISOR OF THE LATENT PRINT SECTION.

13 MR. SULLIVAN: MAY IT PLEASE THE COURT,
14 YOUR HONOR. I WAS FURNISHED AHEAD OF TIME HIS
15 QUALIFICATIONS. I'LL STIPULATE HE'S AN EXPERT
16 IN THIS FIELD.

17 THE COURT: STIPULATION IS HE'S AN EXPERT
18 IN THAT FIELD.

19 MR. SEAY: THANK YOU, YOUR HONOR.

20 Q OKAY.

21 MR. SEAY: CAN YOU GET THE LIGHTS FOR ME
22 AGAIN.

23 (COMPLIES.)

24 Q MR. SMITH, I'M GOING TO SHOW YOU WHAT'S BEEN
25 MARKED AS STATE'S EXHIBIT 34 IN EVIDENCE AT THIS

1 TIME. I JUST ASK YOU IF YOU RECOGNIZE THAT
2 PHOTOGRAPH?

3 A I DO.

4 Q OKAY. AND IS THIS A PHOTOGRAPH THAT WAS SENT TO
5 YOU IN MISSISSIPPI BY PAUL WILKERSON?

6 A IT WAS ONE OF THE SEVERAL THAT WAS SENT TO ME BY
7 SERGEANT WILKERSON, THAT IS CORRECT.

8 Q OKAY. AND THIS IS STATE'S EXHIBIT 33. DO YOU
9 ALSO RECOGNIZE THIS PHOTOGRAPH AS ONE OF THE
10 PHOTOGRAPHS SENT TO YOU BY PAUL WILKERSON?

11 A I DO.

12 Q OKAY. AND FINALLY I ASK YOU IF YOU RECOGNIZE
13 THIS XEROX COPY OF THE KNOWN LEFT PALM PRINT OF
14 ORLANDO FONTE SMITH?

15 A COULD YOU RAISE THAT HIGHER ON THE SCREEN. YES,
16 SIR, I DO. THANK YOU.

17 Q NOW YOU STUDIED THESE OR EXAMINED ALL THREE OF
18 THESE EXHIBITS, IS THAT CORRECT?

19 A THAT IS CORRECT.

20 Q OKAY. AND WHEN YOU ARE GOING THROUGH AND TRYING
21 TO EXAMINE AND DETERMINE IDENTIFICATION ON A
22 PRINT SUCH AS THIS ONE, COULD YOU TELL US WHAT
23 AND TELL THE JURY WHAT IT IS YOU ARE LOOKING FOR
24 AND HOW YOU DETERMINE WHETHER A PRINT MATCHES A
25 KNOWN PRINT THAT YOU HAVE?

1 A WELL, THE FIRST THING THAT I WILL OR ANY OTHER
2 LATENT PRINT EXAMINER WOULD DO IS EXAMINE THE
3 QUESTION EVIDENCE TO DETERMINE IF INDEED THERE
4 IS IDENTIFIABLE LATENT PRINT PRESENT OR A
5 VISIBLE PRINT AS IT WAS IN THIS CASE. NOW FOR A
6 PRINT TO BE OF VALUE FOR COMPARISON AND
7 IDENTIFICATION IT MUST CONTAIN SUFFICIENT
8 INDIVIDUAL CHARACTERISTICS TO BE USED FOR
9 COMPARISON. IN OTHER WORDS, IT HAS TO BE GOOD
10 ENOUGH TO IDENTIFY. AS I DID IN THIS CASE, I
11 EXAMINED THE PHOTOGRAPH, THE ENLARGED PRINT,
12 THIS ONE HERE BEFORE ME NOW, TO DETERMINE IF
13 INDEED IT CONTAINED SUFFICIENT RIDGE DETAIL TO
14 BE USED FOR COMPARISON PURPOSES AND I DETERMINED
15 IT DID INDEED CONTAIN SUFFICIENT INFORMATION TO
16 CONDUCT A COMPARISON WHICH I SUBSEQUENTLY DID.

17 Q OKAY. AND YOU USED THE KNOWN INK PRINT OF
18 ORLANDO FONTE SMITH TO MAKE THAT COMPARISON, IS
19 THAT CORRECT?

20 A OH, THAT IS CORRECT. THERE ACTUALLY WERE COPY
21 MACHINE REPRODUCTIONS OF KNOWN PRINTS BEARING
22 THAT NAME THAT I USED FOR COMPARISONS WITH THIS
23 PHOTOGRAPH.

24 Q AND DID, WHAT IF ANY SIMILARITIES DID YOU FIND
25 IN THE TWO PRINTS?

1 A WELL, UPON COMPARISON OF THE VISIBLE PRINT THAT
2 YOU SEE HERE WHICH IS A PALM PRINT, I FOUND A
3 SUFFICIENT AMOUNT OF INFORMATION TO CONDUCT THE
4 COMPARISON AS I MENTIONED EARLIER. WHEN I
5 COMPARED THAT WITH A KNOWN INK PALM PRINTS OF
6 THE LEFT HAND THAT BORE THE NAME ORLANDO SMITH,
7 I FOUND THAT THIS PRINT WAS MADE BY THE SAME
8 PERSON WHO MADE THE INK LEFT HAND PALM PRINT
9 BEARING THE NAME OF ORLANDO SMITH. IT IS A
10 POSITIVE IDENTIFICATION.

11 Q LET ME ALSO ASK YOU IN MAKING THAT POSITIVE
12 IDENTIFICATION THAT THIS PRINT WAS MADE BY THE
13 LEFT PALM OF ORLANDO FONTE SMITH ARE YOU ABLE,
14 WERE YOU ABLE TO LOOK AT THAT ALONG WITH THIS
15 PHOTOGRAPH ALONG WITH THIS INTERMEDIATE SHOT,
16 WERE YOU ABLE TO DETERMINE HOW MR. SMITH'S HAND
17 WOULD HAVE BEEN ON THAT ARM?

18 A YES, SIR, I WAS.

19 MR. SEAY: YOUR HONOR, IF YOU CAN TURN THE
20 LIGHTS ON. I HAVE ELIZABETH BROCK WITH OUR
21 OFFICE, A PARALEGAL IN OUR OFFICE, JUST TO USE
22 HER FOR MR. SMITH TO SHOW HOW THE PRINT WAS MADE
23 AS A DEMONSTRATION.

24 THE COURT: YES, SIR.

25 MR. SEAY: MRS. BROCK. MR. SMITH, IF YOU'D

1 STEP DOWN AND ASSIST ME HERE.

2 A THANK YOU, YOUR HONOR.

3 (THE WITNESS EXITS THE WITNESS STAND.)

4 Q I'M GOING TO HAVE YOU STAND, I THINK THE JURY
5 WILL BE ABLE TO SEE YOU. IF YOU WOULD, MR.
6 SMITH, IF COULD YOU SHOW HOW MR. SMITH'S OR
7 ORLANDO SMITH'S LEFT HAND WAS PLACED ON THE LEFT
8 ARM OF THE VICTIM STEPHANIE QUINN BASED ON YOUR
9 EXAMINATION OF THE PRINTS?

10 A THE DIRECTION THAT THE HAND WOULD HAVE BEEN
11 PLACED IN AND LOCATION?

12 Q YES, SIR.

13 A YES, SIR. AS I MENTIONED IT WAS THE LEFT HAND,
14 IT WOULD HAVE BEEN, PARDON ME, THIS POSITION
15 RIGHT HERE. ON THE BACK SIDE OF THE UPPER PART
16 OF THE ARM IN THAT POSITION.

17 Q OKAY.

18 A ACTUAL ANGLE A LITTLE BIT MORE LIKE THAT.

19 Q A LITTLE MORE LIKE THAT?

20 A UH-HUH.

21 Q SO SORT OF IN THE TRICEP-BICEP AREA?

22 A YES, SIR, REACHING AROUND THE BICEP. IT'S ON
23 THE BACK SIDE OF THE ARM IF THE FINGERS IF
24 INDEED THEY WERE EXTENDED TO REACH AROUND TO THE
25 BICEP AREA.

1 Q OKAY. ALL RIGHT. I BELIEVE THAT'S ALL I HAVE
2 FOR MRS. BROCK. I'D LIKE TO SHOW YOU SOME OTHER
3 PHOTOGRAPHS THAT HAVE BEEN PLACED INTO
4 EVIDENCE. YOU CAN HAVE A SEAT, MR. SMITH. I
5 APOLOGIZE.

6 A THAT'S ALL RIGHT.

7 (THE WITNESS RESUMES THE WITNESS STAND.)

8 Q IF WE COULD GET THE LIGHTS AGAIN TO SHOW HIM
9 THESE PHOTOGRAPHS.

10 (COMPLIES.)

11 Q MR. SMITH, THIS IS A PHOTOGRAPH OF THE VICTIM IN
12 THIS CASE STEPHANIE QUINN. DEPICTED HERE IS HER
13 LEFT ARM. CAN YOU TELL ME BASED ON YOUR
14 ANALYSIS OF THE OTHER PHOTOGRAPHS, IN THIS
15 POSITION IS THE PALM PRINT, WOULD THE PALM PRINT
16 BE VISIBLE IN THIS PHOTOGRAPH OR WOULD?

17 A NO, SIR. IT WOULD BE ON THE BACK SIDE OF THAT
18 ARM.

19 Q AND THAT WOULD BE THE PART THAT WOULD BE
20 DIRECTED TOWARDS THE FLOOR, IS THAT CORRECT?

21 A THAT IS CORRECT.

22 Q THIS IS ANOTHER, FROM ANOTHER ANGLE SHOWING THE
23 RELATIONSHIP OF THE BODY TO THE SOFA THERE AND
24 THE COFFEE TABLE. AGAIN WOULD THE PORTION OF
25 THE ARM WHICH CONTAINED ORLANDO SMITH'S PRINT BE

1 V I S I B L E F R O M T H I S A N G L E ?

2 A N O , S I R , I T W O U L D N O T .

3 Q O K A Y . I N Y O U R O P I N I O N A S A N E X P E R T I N T H E F I E L D
4 O F L A T E N T P R I N T E X A M I N A T I O N I S I T Y O U R O P I N I O N ,
5 W H A T I S Y O U R O P I N I O N A S T O W H E T H E R O R N O T T H E
6 P R I N T A S F O U N D O N M S . Q U I N N ' S B O D Y C O U L D I T H A V E
7 B E E N M A D E B Y W H I L E T H E B O D Y W A S I N S U C H A
8 P O S I T I O N A S T H I S ?

9 A I N T H A T E X A C T P O S I T I O N ?

10 Q Y E S , S I R .

11 A N O , S I R , T H A T ' S I M P O S S I B L E .

12 Q L E T M E G O B A C K T O T H E P H O T O G R A P H , T H E E N L A R G E D
13 P H O T O G R A P H , W H I C H I S A G A I N S T A T E ' S E X H I B I T 3 3
14 W H I C H H A S B E E N I N T R O D U C E D I N T O E V I D E N C E
15 A L R E A D Y . B A S E D O N Y O U R T R A I N I N G A N D E X P E R T I S E
16 I T W O U L D A P P E A R T H A T T H E P R I N T I S M A D E , T H A T
17 T H E R E W A S A C T U A L B L O O D O N T H E A R M W H E R E T H I S
18 P R I N T W A S M A D E , D I D T H A T A P P E A R T O B E T H E C A S E ?

19 A I ' M N O T Q U I T E S U R E I U N D E R S T A N D Y O U R Q U E S T I O N .

20 Q W E L L , T H E P R I N T I N T H E P H O T O A P P E A R S T O B E M A D E
21 O R L E F T I N B L O O D , W O U L D Y O U A G R E E W I T H T H A T ?

22 A W E L L , I F Y O U M E A N B Y L E F T I N B L O O D , W A S T H E
23 B L O O D P R E S E N T O N T H E A R M A N D T H E N T H E H A N D
24 T O U C H E D I N T O I T , N O , S I R , T H A T ' S N O T W H A T Y O U
25 S E E .

1 Q OKAY. TELL US WHAT WE DO SEE THEN, PLEASE SIR?

2 A WELL; BASICALLY WHAT YOU SEE IS A REPRODUCTION
3 OF THE RIDGE DETAIL OF THE PALM THAT WAS LEFT ON
4 THE ARM AT THE TIME IT WAS TOUCHED. FOR THIS TO
5 BE IN THIS CONDITION THERE MUST HAVE BEEN BLOOD
6 OR THIS RED SUBSTANCE, SINCE I DIDN'T TEST IT
7 FOR BLOOD MYSELF, IT MUST HAVE BEEN PRESENT ON
8 THE HAND AT THE TIME THE ARM WAS TOUCHED, NOT
9 BLOOD ON THE ARM AND THEN THE BARE HAND TOUCHED
10 INTO IT. THERE WAS BLOOD ON THE HAND AT THE
11 TIME THIS PRINT WAS MADE.

12 Q SO THE HAND OF ORLANDO SMITH LEFT HAND WOULD
13 HAVE HAD BLOOD ON IT AND THEN IN TOUCHING THE
14 VICTIM'S ARM, THE BLOOD WOULD HAVE BEEN
15 TRANSFERRED FROM HIS HAND TO HER BODY, IS THAT
16 CORRECT?

17 A THAT IS CORRECT. NOW I WANT TO MAKE SURE THAT
18 YOU UNDERSTAND, I DON'T KNOW THE PRINTS ARE
19 THOSE OF ORLANDO SMITH. I WAS NOT THE ONE WHO
20 TOOK THE PRINTS, BUT THE PRINT CARD THAT BORE
21 THAT NAME, YES, SIR, YOUR STATEMENT IS CORRECT.

22 Q OKAY.

23 MR. SEAY: IF I COULD HAVE ONE MOMENT, YOUR
24 HONOR. I DON'T HAVE ANY FURTHER QUESTIONS AT
25 THIS TIME. IF YOU'D ANSWER ANY QUESTIONS THE

1 DEFENSE COUNSEL MAY HAVE.

2 MR. SEAY: KEEP THOSE OFF A MINUTE. PUT
3 THAT ONE BACK.

4 MR. SEAY: THIS ONE?

5 MR. SULLIVAN: UH-HUH.

6 MR. SEAY: IS THAT GOOD?

7 MR. SULLIVAN: YEAH.

8 CROSS EXAMINATION BY MR. SULLIVAN:

9 Q IS IT POSSIBLE THAT IF SOMEONE FOUND HER, THAT
10 HER ARM WAS NOT LIKE THAT AT THE TIME THEY
11 TOUCHED HER, AND PLACED IT LIKE THAT LATER?

12 A WELL, I CERTAINLY WOULDN'T HAVE ANY KNOWLEDGE
13 ABOUT HOW THE BODY WAS MOVED, SO I DON'T HAVE AN
14 ANSWER FOR YOU.

15 Q IN OTHER WORDS, SOMEBODY COULD HAVE, HER ARM
16 COULD HAVE BEEN DOWN, SOMEBODY COULD HAVE SEEN
17 IF SHE WAS ALL RIGHT AND THE ARM MOVED THAT WAY?
18 IS THAT POSSIBLE?

19 A WELL, IT'S POSSIBLE THE ARM WAS MOVED, YES, SIR.
20 I WASN'T THERE SO I DON'T KNOW.

21 Q OKAY. YOU WASN'T THERE.

22 MR. SULLIVAN: NOTHING FURTHER.

23 REDIRECT EXAMINATION BY MR. SEAY:

24 Q LET ME ASK YOU, MR. SMITH, WE'RE TALKING ABOUT
25 THIS IS THE LEFT ARM IN WHICH THE LEFT HAND

1 PRINT OF WHO WE PREVIOUSLY IDENTIFIED ORLANDO
2 SMITH, IF THAT'S HIS LEFT PALM PRINT ON THAT
3 ARM, IF THAT ARM WERE DOWN BY HER SIDE HERE,
4 RUNNING DOWN ALONG HERE WHERE YOU SEE THAT
5 COUCH, WHAT WOULD YOU CONSIDER THE PROBABILITY
6 OR THE POSSIBILITY THAT THAT LEFT HAND PRINT
7 COULD BE LEFT THERE WHILE HER ARM WAS DOWN BY
8 HER SIDE?

9 A WITH THAT COUCH IN THAT POSITION? EVERYTHING
10 ELSE BEING EXACTLY THE SAME AS I SEE IT HERE?

11 Q YES, SIR.

12 A WELL, IT WOULDN'T REALLY BE POSSIBLE TO GET, IF
13 A BODY IS WITH THE BACK DOWN AND THE COUCH WHERE
14 IT IS, THERE WOULDN'T BE ROOM ENOUGH FOR YOU TO
15 GET IN THERE AND PUT A LEFT HAND IN THAT
16 POSITION, SO THAT BEING CONSIDERED, THAT WOULD
17 BE IMPOSSIBLE.

18 Q THANK YOU, MR. SMITH. I DON'T HAVE ANY FURTHER
19 QUESTIONS.

20 RECROSS EXAMINATION BY MR. SULLIVAN:

21 Q THE COUCH CLOSE LIKE THAT, SAY THE ARM WERE
22 DOWN, IF SOMEBODY WERE GOING TO TRY TO FEEL HER
23 ARM, WOULDN'T IT BE LOGICAL THAT THEY WOULD GO
24 DOWN AND PUT THEIR RIGHT HAND ON THE SOFA AND
25 REACH OVER HER TO HER ARM?

1 A YES, SIR, THAT MIGHT BE POSSIBLE BUT THE
2 DIRECTION OF THE PALM WOULD REFUTE THAT. THE
3 DIRECTION OF THE PALM WAS FROM THE TOP DOWN, NOT
4 THE OTHER WAY, SO TO PUT A HAND ON IT TO CHECK
5 FOR WHATEVER, THE PALM WOULD HAVE NOT BEEN IN
6 THAT POSITION, NO, SIR.

7 THE COURT: THANK YOU. YOU MAY COME DOWN.

8 MR. SEAY: MAY I JUST ASK ONE MORE
9 QUESTION, YOUR HONOR.

10 MR. SEAY: NEVER MIND, YOUR HONOR.

11 THE COURT: THANK YOU, SIR.

12 MR. SMITH: AM I FINALLY EXCUSED, YOUR
13 HONOR.

14 THE COURT: YES, SIR.

15 MR. SMITH: THANK YOU.

16 MR. SEAY: WE CALL MARK EDMONDS.

17 MARK EDMONDS, BEING FIRST
18 DULY SWORN, TESTIFIED AS FOLLOWS:

19 THE CLERK: STATE YOUR NAME FOR THE RECORD.

20 A MARK EDMONDS.

21 THE COURT: YOU WANT TO EXCUSE THESE PEOPLE
22 FROM MISSISSIPPI?

23 MR. SEAY: YES, YOUR HONOR.

24 THE COURT: OKAY. MR. CALVIN, YOU TELL
25 THEM THEY ARE EXCUSED. MR. SULLIVAN, YOU DON'T

1 HAVE ANY OBJECTION?

2 MR. SULLIVAN: NO OBJECTION.

3 DIRECT EXAMINATION BY MR. SEAY:

4 Q MR. EDMONDS, WHERE WERE YOU EMPLOYED BACK ON MAY
5 23, 1998?

6 A GREENVILLE COUNTY EMERGENCY MEDICAL SERVICES.

7 Q WHAT WAS YOUR POSITION WITH THEM?

8 A PARAMEDIC.

9 Q AND YOU ARE NO LONGER WITH THEM, IS THAT
10 CORRECT?

11 A NOT CURRENTLY FULL-TIME, NO.

12 Q YOU'VE GONE ON TO, YOU'RE AT THE CORONER'S
13 OFFICE, IS THAT CORRECT?

14 A THAT'S CORRECT.

15 Q BUT ON MAY 23, 1998, DID YOU GO OUT TO AN
16 APARTMENT AT FLEETWOOD MANOR HERE IN GREENVILLE
17 COUNTY?

18 A YES, SIR.

19 Q AND WAS THAT IN RESPONSE TO A DEATH OF A FEMALE
20 VICTIM?

21 A QUESTIONABLE DEATH, YES.

22 Q OKAY. WHEN YOU ARRIVED AT THAT SCENE, WHAT,
23 WHAT DO YOU NEED TO DO AT THAT POINT AS A
24 PARAMEDIC? WHAT, WAS YOUR JOB OUT THERE TO
25 DETERMINE WHETHER SHE WAS ALIVE OR DEAD?

1 A YES.

2 Q OKAY. AND HOW DO YOU GO ABOUT DOING THAT?

3 A IN THIS PARTICULAR CASE AS NORMAL CASES WE ENTER
4 THE HOME, RESIDENCE, OR WHEREVER THE PERSON MAY
5 BE AND WE CHECK FOR ANY SIGNS OF LIFE AND THAT
6 WOULD BE BREATHING, WHERE THEY HAVE A PULSE, AND
7 TO CONFIRM NO PULSE, NO HEART ACTIVITY, WE PLACE
8 THEM ON A HEART MONITOR.

9 Q DID YOU PLACE STEPHANIE CHRIS FORD QUINN ON THE
10 HEART MONITOR THAT DAY?

11 A YES, SIR.

12 Q WHAT DO YOU USE, WHAT DO YOU USE FOR YOUR HEART
13 MONITOR, WHAT'S THE ACTUAL EQUIPMENT?

14 A IT'S CALLED A LIFE PACK TEN MADE BY
15 PSYSIOCONTROL AND IT MEASURES THE HEART
16 ACTIVITY, WHETHER THERE IS ANY ELECTRICAL
17 IMPULSES IN THE HEART AT THE TIME.

18 Q AND DO YOU DO THAT BY ATTACHING SORT OF PATCHES
19 TO THE BODY?

20 A THAT'S CORRECT, ELECTRODES.

21 Q AND HOW MANY ELECTRODES DID YOU USE IN THIS
22 PARTICULAR CASE?

23 A THREE.

24 Q OKAY. IF YOU COULD DIM THE LIGHTS FOR ME
25 PLEASE. I SHOW YOU WHAT'S BEEN MARKED AND

1 ENTERED INTO EVIDENCE AS STATE'S EXHIBIT NINE I
2 BELIEVE. CAN YOU TELL ME IS THIS AN ACCURATE
3 REPRESENTATION OF THE SCENE AS YOU SAW IT WHEN
4 YOU ARRIVED?

5 A YES, SIR.

6 Q AND I DON'T KNOW IF YOU CAN MAKE IT OUT BUT IN
7 THIS AREA RIGHT HERE THERE APPEARS TO BE A
8 CONTACT PATCH AND THERE IS TWO OTHERS FOUND ON
9 HER BODY. IN THE COURSE OF PLACING THOSE
10 CONTACT PATCHES ON THERE, WHAT IF ANY
11 DISTURBANCE WAS MADE TO THE BODY?

12 A SHOULD HAVE NOT HAVE BEEN DISTURBANCE TO THE
13 BODY ITSELF. THE ONLY POSSIBILITY WE MIGHT HAVE
14 LIFTED THE SHIRT UPWARD TO PLACE THE TWO
15 ELECTRODES ABOVE THE BREAST AREA.

16 Q BUT WHEN YOU ARRIVED, WAS HER BRA ALREADY
17 EXPOSED AS IT IS IN THIS PHOTOGRAPH?

18 A YES, SIR.

19 Q OKAY. SO THE SHIRT WAS ALREADY PUSHED UP IN THE
20 SAME FASHION IT IS HERE?

21 A THAT'S CORRECT.

22 Q THANK YOU.

23 (LIGHTS ARE TURNED ON.)

24 Q AND AFTER ATTACHING THE CONTACT AND DETERMINE
25 THE FACT THAT MS. QUINN WAS DEAD, DID YOU HAVE

1 ANY FURTHER INVOLVEMENT THERE AT THE SCENE?

2 A THE ONLY INVOLVEMENT WE HAD WAS THE SMALL CHILD
3 THAT WE DISCOVERED IN THE BACK BEDROOM, THAT WAS
4 NOT CRYING EPISODE, BUT YOU COULD HEAR AN
5 ACTIVITY. WE WALKED TO THAT LOCATION AND FOUND
6 THE INFANT IN THE CRIB AND REMOVED THE INFANT
7 FROM THE SCENE AND WE REMOVED OUR EQUIPMENT AND
8 WAITED UNTIL THE CORONER AND THE INVESTIGATORS
9 ARRIVED ON THE SCENE.

10 Q OKAY. I DON'T BELIEVE I HAVE ANY FURTHER
11 QUESTIONS AT THIS TIME.

12 MR. SULLIVAN: NO QUESTIONS, YOUR HONOR.

13 THE COURT: THANK YOU, SIR. YOU MAY COME
14 DOWN.

15 MR. SEAY: YOUR HONOR, MAY WE APPROACH FOR
16 A SECOND.

17 (BENCH CONFERENCE.)

18 THE COURT: LADIES AND GENTLEMEN OF THE
19 JURY, WE'LL TAKE ABOUT A FIVE OR TEN MINUTE
20 RECESS AT THIS TIME. DO NOT DISCUSS THE CASE AT
21 THIS TIME. I'LL BRING YOU BACK IN IN ABOUT 10
22 OR 15 MINUTES.

23 (THE JURY EXITS THE COURTROOM AT 2:50.)

24 (COURT RESUMES AT 3:05.)

25 THE COURT: BRING IN THE JURY.

1 (THE JURY RETURNS TO THE COURTROOM.)

2 THE COURT: MR. SEAY.

3 MR. SEAY: THANK YOU, YOUR HONOR. AT THIS
4 TIME THE STATE WOULD CALL BRIAN PRATER.

5 BRIAN PRATER, BEING
6 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 THE CLERK: STATE YOUR NAME FOR THE RECORD.

8 A BRIAN KEITH PRATER.

9 DIRECT EXAMINATION BY MR. SEAY:

10 Q MR. PRATER, WHERE ARE YOU CURRENTLY EMPLOYED?

11 A I'M EMPLOYED AS A CORPORATE INVESTIGATOR FOR
12 B B & T BANK.

13 Q AND IN MAY OF 1998 WITH WHOM YOU WERE EMPLOYED?

14 A I WAS EMPLOYED AS A CRIMINAL INVESTIGATOR FOR
15 THE GREENVILLE COUNTY SHERIFF'S OFFICE.

16 Q AND YOU WERE SO EMPLOYED ON MAY 28, 1998?

17 A YES, SIR.

18 Q LET ME HAND YOU FIRST, THIS IS MARKED STATE'S
19 EXHIBIT 36 AT THIS TIME FOR IDENTIFICATION
20 PURPOSES, DO YOU RECOGNIZE THAT EXHIBIT?

21 A YES, SIR, I DO.

22 Q OKAY. AND WHAT IS THAT FORM?

23 A IT IS THE WAIVER OF RIGHTS FORM. IT'S A FORM
24 THAT'S USED BEFORE YOU, EXCUSE ME, QUESTION ANY
25 POTENTIAL DEFENDANT AND WHAT IT IS, IT'S GOT

1 SEVERAL SENTENCES AND A LOCATION FOR A POTENTIAL
2 DEFENDANT TO SIGN, WITNESSES, AND THE TIME YOU
3 READ IT AND WITNESSED TO THE SIGNATURE. EXCUSE
4 ME.

5 Q AND WHAT DATE WAS THAT EXHIBIT FILLED OUT?

6 A THIS HERE IS 5-28-98 MAY 28, '98.

7 Q OKAY. DOES YOUR SIGNATURE APPEAR ON THAT?

8 A YES, SIR.

9 Q AND WHY DOES YOUR SIGNATURE APPEAR THERE?

10 A I WITNESSED THE SIGNATURE OF THE DEFENDANT MR.
11 ORLANDO SMITH AND THE SIGNATURE OF INVESTIGATOR
12 GENE DONOHUE.

13 Q YOU ACTUALLY SAW MR. SMITH, ORLANDO SMITH, SIGN
14 THAT DOCUMENT, IS THAT CORRECT?

15 A YES, SIR, I VERIFIED THAT HE DID SIGN AND HE
16 ACKNOWLEDGED THAT IT WAS HIS SIGNATURE AND
17 THAT'S WHEN I WITNESSED IT.

18 Q OKAY. LET ME ALSO SHOW YOU MARKED AS STATE'S
19 EXHIBIT NUMBER 37 FOR IDENTIFICATION PURPOSES AT
20 THIS TIME, DO YOU RECOGNIZE THAT?

21 A YES, SIR, I DO.

22 Q OKAY. AND WHAT'S THE DATE ON THAT EXHIBIT
23 AGAIN?

24 A IT'S ALSO DATED MAY 28 OF '98 AND THE TIME WAS
25 5:23 P.M.

1 Q OKAY. IS THAT, THAT'S A STATEMENT GIVEN BY,
2 STATEMENT GIVEN BY THE DEFENDANT, IS THAT
3 CORRECT?

4 A YES, SIR, IT IS.

5 Q OKAY. AND AGAIN DOES YOUR SIGNATURE APPEAR ON
6 THERE?

7 A YES, SIR.

8 Q AND AGAIN WHY IS YOUR SIGNATURE ON THERE?

9 A I JUST VERIFIED THE SIGNATURE OF THE DEFENDANT
10 MR. ORLANDO SMITH AND ALSO VERIFY THE SIGNATURE
11 OF THE INVESTIGATOR GENE DONOHUE.

12 Q AND AGAIN MR. SMITH, ORLANDO FONTE SMITH'S
13 SIGNATURE APPEARS ON THAT EXHIBIT AS WELL?

14 A YES, SIR, IT DOES.

15 Q AND DO YOU SEE ORLANDO FONTE SMITH THE PERSON
16 YOU WITNESSED SIGN THAT IN THE COURTROOM TODAY?

17 A YES, SIR, IT'S THE GENTLEMEN SITTING AT THAT
18 TABLE THERE TODAY.

19 Q LET THE RECORD INDICATE HE POINTED TO THE
20 DEFENDANT. I DON'T BELIEVE I HAVE ANY FURTHER
21 QUESTIONS. PLEASE ANSWER ANY QUESTIONS DEFENSE
22 COUNSEL MAY HAVE.

23 MR. SULLIVAN: I DON'T HAVE ANY QUESTIONS.

24 MR. SEAY: I ASK MR. PRATER BE EXCUSED.

25 THE COURT: YOU CAN BE EXCUSED, MR.

1 PRATER.

2 MR. SEAY: THE STATE CALLS GENE DONOHUE.

3 GENE DONOHUE, BEING
4 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 THE CLERK: STATE YOUR NAME FOR THE RECORD.

6 A GENE DONOHUE, D-O-N-O-H-U-E.

7 THE CLERK: THANK YOU.

8 DIRECT EXAMINATION BY MR. SEAY:

9 Q AGENT DONOHUE, WHERE ARE YOU CURRENTLY EMPLOYED?

10 A I'M EMPLOYED AS SPECIAL AGENT WITH SOUTH
11 CAROLINA LAW ENFORCEMENT DIVISION COMMONLY
12 REFERRED TO AS SLED.

13 Q AND HOW LONG HAVE YOU BEEN EMPLOYED WITH THEM?

14 A I'VE BEEN WITH SLED SINCE DECEMBER 6 OF LAST
15 YEAR.

16 Q PRIOR TO THAT, WITH WHOM WERE YOU EMPLOYED?

17 A I WAS EMPLOYED WITH THE GREENVILLE COUNTY
18 SHERIFF'S OFFICE IN THE CRIMINAL INVESTIGATIONS
19 DIVISION.

20 Q AND YOU WERE SO EMPLOYED ON MAY 23 OF 1998?

21 A YES, SIR, I WAS.

22 Q IN FACT, HOW MANY YEARS TOTAL WERE YOU WITH THE
23 GREENVILLE SHERIFF'S OFFICE?

24 A ALMOST 15.

25 Q AND WHAT WAS YOUR, AGAIN WERE YOU AN

1 INVESTIGATOR AT THAT TIME?

2 A YES, SIR, I WAS INVESTIGATOR ASSIGNED TO THE
3 VIOLENT CRIME SCENE UNIT WITH RESPONSIBILITY IN
4 THE AREA OF VIOLENT CRIMES, SEXUAL ASSAULTS,
5 MURDERS, ANYTHING ALONG THAT LINE, ARMED
6 ROBBERIES.

7 Q OKAY. AND DID YOU, WERE YOU THE INVESTIGATOR
8 CALLED OUT TO [REDACTED] AT [REDACTED]
9 HERE IN GREENVILLE COUNTY ON MAY 23, 1998?

10 A YES, SIR, I WAS.

11 Q AND YOU WENT THERE AS PART OF A DEATH
12 INVESTIGATION, IS THAT CORRECT?

13 A YES, SIR, I DID.

14 Q OKAY. WHEN YOU ARRIVED THERE AT [REDACTED]
15 IN APARTMENT [REDACTED], WHO WAS THERE INITIALLY WHEN
16 YOU ARRIVED? WHO WAS AT THE SCENE AS FAR AS LAW
17 ENFORCEMENT AND?

18 A WHEN I ARRIVED ON THE SCENE DEPUTY MAXWELL WHO
19 TESTIFIED EARLIER, MASTER DEPUTY PHILLIPS,
20 SERGEANT WESTMORELAND, AND EMS WERE ON THE
21 SCENE. ALSO KENT DILL FROM THE CORONER'S OFFICE
22 WAS ON THE SCENE.

23 Q OKAY. AND I TAKE IT YOU WENT INTO APARTMENT
24 [REDACTED]?

25 A YES, SIR. FIRST I WAS BRIEFED BY THE PERSONNEL

GENE DONOHUE --- DIRECT

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1 ON THE SCENE. I SPOKE WITH DEPUTY CORONER DILL.
2 WE WENT INSIDE THE LOCATION TO OBSERVE VISUALLY,
3 JUST LOOKED AROUND, TO SEE WHERE THINGS WERE AND
4 THEN WE HAD THE IDENTIFICATION DIVISION COME IN
5 AND TAKE PHOTOGRAPHS OF THE SCENE AND BEGAN
6 PROCESSING.

7 Q OKAY.

8 MR. SEAY: IF I COULD, THE LIGHTS PLEASE.

9 (THE LIGHTS ARE DIMMED.)

10 Q I JUST WANT TO SHOW YOU A COUPLE PHOTOGRAPHS
11 FROM THE SCENE. IF YOU NEED TO, YOU CAN STEP
12 DOWN HERE IF IT'S TOO DIFFICULT TO SEE. I DON'T
13 KNOW IF THAT'S HARD TO SEE OR NOT.

14 A I CAN SEE ALL RIGHT.

15 Q YOU RECOGNIZE THIS PHOTO?

16 A YES, SIR, I DO.

17 Q AND WHOSE THE GIRL DEPICTED IN THE PHOTO?

18 A THAT'S STEPHANIE CHRIS FORD QUINN THE VICTIM.

19 Q IS THAT SUBSTANTIALLY HOW THE BODY WAS WHEN YOU
20 ARRIVED?

21 A YES, SIR, IT IS.

22 Q LEGS, ARMS, ALL THOSE THINGS IN THAT POSITION?

23 A YES, SIR.

24 Q ARE YOU FAMILIAR WITH THE BACK STEP AREA OF THE
25 VICTIM'S APARTMENT?

1 A YES, SIR. THIS IS, THE FIRST DOOR YOU COME TO
2 WOULD BE MS. QUINN'S APARTMENT, AND THE NEXT
3 DOOR WOULD BE THE DEFENDANT OR THE DEFENDANT'S
4 GIRLFRIEND'S APARTMENT, EXCUSE ME, MS. SHAW.

5 Q THIS DOOR HERE WOULD BE MS. SHAW'S BACK DOOR?

6 A YES, SIR.

7 Q AND THIS WOULD BE THE VICTIM'S --

8 A YES, SIR.

9 Q ---MS. QUINN'S?

10 A UH-HUH.

11 MR. SEAY: YOU CAN TURN THE LIGHTS BACK ON.

12 THANK YOU.

13 (THE LIGHTS ARE TURNED ON.)

14 Q NOW WHILE YOU WERE AT THE SCENE, DID YOU HAVE AN
15 OPPORTUNITY TO SPEAK TO A THEODORE WALDMAN?

16 A YES, SIR, I DID.

17 Q AND YOU STARTED THIS CONVERSATION WITH HIM THERE
18 AT THE SCENE, DID YOU ALSO, DID HE ALSO GO DOWN
19 TO THE LAW ENFORCEMENT CENTER AND GIVE YOU A
20 STATEMENT REGARDING ANY INFORMATION HE HAD
21 RELATING TO MS. QUINN'S DEATH?

22 A YES, SIR, HE DID.

23 Q AND THAT WAS IN THE FORM OF A WRITTEN STATEMENT,
24 IS THAT CORRECT?

25 A YES, SIR.

1 Q DID YOU ALSO SPEAK WITH A LAVONDA SHAW?

2 A YES, SIR, I DID.

3 Q OKAY. AND DID YOU SPEAK WITH HER THERE AT THE
4 SCENE?

5 A YES, SIR, I SPOKE TO HER AT HER APARTMENT.

6 Q OKAY. AND SHE DID NOT PROVIDE YOU WITH A
7 WRITTEN STATEMENT, IS THAT CORRECT?

8 A NO, SIR, JUST AN ORAL STATEMENT.

9 Q OKAY. AND DID YOU HAVE AN OPPORTUNITY TO SPEAK
10 TO ORLANDO SMITH AT THE SCENE?

11 A YES, SIR, I DID.

12 Q OKAY. WHERE DID YOU FIRST COME IN CONTACT WITH
13 ORLANDO SMITH AT THE SCENE?

14 A THE FIRST CONTACT I HAD WITH MR. SMITH WAS
15 OUTSIDE OF THAT BUILDING JUST TO THE RIGHT SIDE
16 OF THE FRONT ENTRANCE. AS YOU GO IN, THERE'S
17 APARTMENTS, THERE IS FOUR APARTMENTS PER
18 BREEZEWAY, I GUESS, FOR LACK OF A BETTER TERM.
19 THERE IS TWO ON THE BOTTOM FLOOR. THERE IS TWO
20 ON THE TOP FLOOR. AS YOU GO UP THE STAIRS AND
21 COME BACK AROUND, THE STAIRS COME BACK AROUND TO
22 PUT THE VICTIM'S APARTMENT ON THE RIGHT IS
23 ACTUALLY FACING THE BUILDING THAT'S ON THE LEFT
24 UPPER FLOOR. THE DEFENDANT'S GIRLFRIEND LIVES
25 ON THE UPPER RIGHT SIDE. JUST TO THE RIGHT SIDE

1 OF THE FRONT DOOR OF THE BUILDING IS WHERE I
2 FIRST ENCOUNTERED THE DEFENDANT.

3 Q AND WHILE YOU WERE, WHILE YOU ARE ON THE SUBJECT
4 OF DESCRIBING THE APARTMENT, CAN YOU GIVE US AN
5 ESTIMATION OF THE SIZE OR DISTANCE OF THAT
6 LANDING ON THE SECOND FLOOR BETWEEN MS. QUINN'S
7 APARTMENT DOOR, THE VICTIM, AND MS. SHAW'S
8 APARTMENT DOOR? ABOUT HOW FAR, APPROXIMATELY
9 HOW FAR A PART WOULD THEY BE?

10 A WITH JUST ESTIMATING I'D SAY SOMEWHERE BETWEEN
11 10 AND 12 FEET.

12 Q JUST A SHORT DISTANCE?

13 A YES, SIR.

14 Q WHAT DID YOU DO WHEN YOU FIRST CAME IN CONTACT
15 WITH ORLANDO SMITH OUTSIDE THE APARTMENT THERE?

16 A BASICALLY JUST ASKED HIM IF HE HAD HEARD
17 ANYTHING THAT EVENING, THE EVENING-MORNING
18 PRIOR, AND ALSO ASKED HIM IF HE WOULD ACCOMPANY
19 ME TO THE LAW ENFORCEMENT CENTER TO GIVE A
20 STATEMENT AS TO HIS ACTIVITIES THE EVENING
21 BEFORE.

22 Q OKAY. AND AT THIS TIME HE WAS JUST A POTENTIAL
23 WITNESS IN THE CASE?

24 A YES, SIR.

25 Q AND DID HE AGREE TO GO DOWN TO THE LAW

1 ENFORCEMENT CENTER?

2 A YES, SIR, HE DID.

3 Q DURING THE TIME YOU WERE OUT THERE ORLANDO SMITH
4 WAS OUT THERE AND LAVONDA SHAW, DID YOU ATTEMPT
5 TO LOCATE SOME PANTS?

6 A YES, SIR. I HAD GONE TO MS. SHAW'S APARTMENT TO
7 SPEAK WITH HER ALSO SINCE SHE WAS A NEIGHBOR.
8 SHE INFORMED ME THAT HER BOYFRIEND, WHO WAS THE
9 DEFENDANT, HAD BEEN OVER THERE THE EVENING
10 BEFORE AND HAD TOLD ME A SCENARIO WHERE HE HAD
11 COME HOME AND CHANGED HIS CLOTHES EARLY IN THE
12 MORNING HOURS OF THE SAME DAY ALONG ABOUT I
13 BELIEVE TWO OR THREE O'CLOCK IN THE MORNING.

14 MR. SULLIVAN: OBJECTION, IT'S HEARSAY
15 WHICH HE'S TALKING ABOUT.

16 THE COURT: SUSTAINED.

17 Q WELL, JUST BASED ON YOUR CONVERSATION WITH MS.
18 SHAW DID YOU ATTEMPT TO LOCATE SOME PANTS IN HER
19 APARTMENT?

20 A YES, SIR, I DID.

21 Q WHERE DID YOU LOOK IN HER APARTMENT?

22 A I LOOKED AT THE, IN THE BEDROOM, HER BEDROOM
23 AREA, AND ALSO AROUND THE LAUNDRY, IT'S NOT
24 ACTUALLY A ROOM, IT'S KIND OF BIFOLD DOORS IN
25 THE HALLWAY WHERE THE WASHER AND DRYER WOULD BE.

1 Q DID YOU LOCATE THE TYPE OF PANTS YOU WERE
2 LOOKING FOR?

3 A NO, SIR, I DIDN'T.

4 Q AND WERE THOSE KHAKI TYPE PANTS YOU WERE LOOKING
5 FOR?

6 A YES, SIR, THEY WERE.

7 THE COURT: I'LL INSTRUCT THE JURY TO
8 DISREGARD ANYTHING THAT MS. SHAW MAY HAVE TOLD
9 HIM OR ANYTHING HE'S TESTIFIED TO IN REGARD TO
10 THAT. SHE'D HAVE TO TESTIFY.

11 Q DID YOU ASK ORLANDO SMITH ABOUT THE PANTS?

12 A YES, SIR, I DID.

13 Q AND WHAT IF ANY RESPONSE DID HE GIVE?

14 A MR. SMITH TOLD ME THAT HE HAD NOT GOTTEN HOME
15 THAT EVENING AND CHANGED. THAT HIS GIRLFRIEND
16 DIDN'T KNOW WHAT SHE WAS TALKING ABOUT.

17 Q AND DID HE PROVIDE YOU WITH A PAIR OF PANTS THAT
18 DAY?

19 A YES, SIR, HE TOLD ME THAT HE DID OWN A PAIR OF
20 BEIGE PANTS AND I ACCOMPANIED HIM BACK TO HIS
21 MOTHER'S RESIDENCE WHICH IS L-102 IN THE SAME
22 COMPLEX AND HE PROVIDED ME WITH A PAIR OF BEIGE
23 PANTS.

24 Q LET ME SHOW YOU THE BAG AND THE ATTACHED
25 PROPERTY EVIDENCE SHEET. THE BAG IS MARKED AS

1 STATE'S EXHIBIT NUMBER 39 FOR IDENTIFICATION
2 PURPOSES AT THIS TIME. ARE YOU FAMILIAR WITH
3 THAT ITEM?

4 A YES, SIR.

5 Q OKAY. AND WHAT DOES THAT ITEM CONTAIN?

6 A YOU WANT ME TO OPEN IT UP?

7 Q YEAH, IF YOU'D LIKE TO GO AHEAD AND TAKE A
8 LOOK.

9 (OPENS THE EVIDENCE.)

10 A CONTAINS A PAIR OF BEIGE WORK PANTS.

11 Q OKAY. AND ARE THOSE THE SAME PANTS WHICH YOU
12 COLLECTED FROM ORLANDO SMITH AT HIS MOTHER'S
13 APARTMENT?

14 A YES, SIR, THEY ARE.

15 Q OKAY. AND YOU PLACED THOSE IN THE PROPERTY AND
16 EVIDENCE, IS THAT CORRECT?

17 A I SECURED THEM FROM ORLANDO AND I TURNED THEM
18 OVER TO JOHN GARRET WHO WORKED FOR THE FORENSIC
19 DIVISION AT THE TIME AND HE TRANSPORTED THE
20 PROPERTY AND EVIDENCE FORM.

21 Q AND THOSE APPEAR TO BE THE EXACT SAME PANTS --

22 A YES, SIR.

23 Q --- THAT ORLANDO SMITH GAVE YOU --

24 A YES, SIR.

25 Q ---ON MAY 23, 1998?

1 A YES, SIR.

2 MR. SEAY: YOUR HONOR, AT THIS TIME I'D
3 ASK THAT THIS BE ADMITTED INTO EVIDENCE.

4 MR. SULLIVAN: NO OBJECTION, YOUR HONOR.

5 THE COURT: OKAY. IT'S IN EVIDENCE WITHOUT
6 OBJECTION.

7 (STATE'S EXHIBIT NUMBER 39 PANTS RECEIVED INTO
8 EVIDENCE.)

9 Q AGENT DONOHUE, IF YOU WOULD, WOULD YOU PLEASE
10 REMOVE THOSE PANTS JUST SO WE CAN TAKE A LOOK AT
11 THEM.

12 (COMPLIES.)

13 MR. SEAY: AND WITH THE COURT'S PERMISSION
14 IF HE COULD WALK AROUND JUST TO HOLD THEM UP
15 THERE.

16 (THE WITNESS DISPLAYS THE PANTS.)

17 Q IF YOU'D JUST SHOW US THE BACK OF THEM. OKAY.
18 THANK YOU, AGENT DONOHUE. NOW FOLLOWING
19 OBTAINING THESE PANTS FROM ORLANDO FONTE SMITH
20 AT THE SCENE, DID YOU ALSO GO WITH HIM TO THE
21 LAW ENFORCEMENT CENTER?

22 A YES, SIR, I DID.

23 Q OKAY. AND WAS HE UNDER ANY OBLIGATION OTHER
24 THAN A WILLING WITNESS TO GO DOWN THERE?

25 A NO, SIR, HE WAS FREE TO LEAVE AT ANY TIME.

1 Q LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S
2 EXHIBIT 38 FOR IDENTIFICATION. DO YOU RECOGNIZE
3 THAT EXHIBIT?

4 A YES, SIR. THIS IS A STATEMENT THAT I OBTAINED
5 FROM MR. SMITH ON THAT DATE, THE 23RD.

6 Q OKAY. AND THAT'S THE SIGNED WRITTEN STATEMENT
7 OF ORLANDO FONTE SMITH, IS THAT CORRECT?

8 A YES, SIR.

9 Q AND IT WAS DATED MAY 23?

10 A YES, SIR. MAY 23 AT 1:25 IN THE AFTERNOON.

11 Q AND HE WAS GIVEN THE OPPORTUNITY TO TAKE A LOOK
12 AT THAT AND SIGN HIS NAME TO THAT, THAT HE HAD
13 READ IT AND UNDERSTOOD AND AGREED TO ITS
14 CONTENTS?

15 A YES, SIR.

16 Q AND THEN YOUR SIGNATURE APPEARS DOWN THERE?

17 A YES, SIR.

18 Q AS A WITNESS TO THAT, IS THAT CORRECT?

19 A YES, SIR.

20 MR. SEAY: YOUR HONOR, AT THIS TIME I'D ASK
21 THAT I BELIEVE STATE'S EXHIBIT 38 BE ADMITTED
22 INTO EVIDENCE.

23 MR. SULLIVAN: NO OBJECTION, YOUR HONOR.

24 THE COURT: OKAY. WITHOUT OBJECTION.

25 (STATE'S EXHIBIT NUMBER 38 STATEMENT RECEIVED IN

1 EVIDENCE.)

2 MR. SEAY: IF YOU COULD TURN DOWN THE
3 LIGHTS FOR ME PLEASE.

4 (THE LIGHTS ARE DIMMED.)

5 Q LET ME KNOW IF YOU HAVE TROUBLE READING THIS OR
6 SEEING THIS ONCE I GET IT UP THERE FOCUSED IN.
7 DO YOU NEED TO STEP BACK HERE.

8 A PROBABLY SO. IT'S TOO BLURRY. I'VE GOT A
9 COPY.

10 Q I'LL JUST GIVE IT TO YOU. I CAN'T GET IT IN
11 FOCUS TOO GOOD. I'LL LET YOU JUST READ IT.

12 MR. SEAY: IF YOU'D TURN THE LIGHTS BACK
13 ON.

14 (THE LIGHTS ARE TURNED ON.)

15 Q IF YOU'D JUST READ THAT ENTIRE DOCUMENT TO THE
16 JURY PLEASE.

17 A CASE NUMBER 1-98-60507 DATED 5/23/98 AT 1:25. I
18 ORLANDO FONTE SMITH DO HEREBY GIVE FREELY AND
19 VOLUNTARILY THIS STATEMENT TO INVESTIGATOR GENE
20 DONOHUE WHO IDENTIFIED HIMSELF AS BEING A DEPUTY
21 OF GREENVILLE COUNTY SHERIFF'S OFFICE
22 GREENVILLE, SOUTH CAROLINA. I HAVE BEEN ADVISED
23 THAT I DO NOT HAVE TO MAKE THIS OR ANY OTHER
24 STATEMENT. THAT WHAT I SAY CAN BE USED AGAINST
25 ME IN A COURT OF LAW. I HAVE BEEN ADVISED I

1 HAVE THE RIGHT TO COUNSEL OF AN ATTORNEY OF MY
2 CHOICE. THAT IF I AM FINANCIALLY UNABLE TO
3 OBTAIN AN ATTORNEY, THE COURT WILL APPOINT AN
4 ATTORNEY TO REPRESENT ME. I HAVE NOT BEEN
5 THREATENED OR PROMISED ANY REWARD TO MAKE THIS
6 STATEMENT.

7 I'M 24 YEARS OLD. I RESIDE AT [REDACTED]
8 [REDACTED] S. [REDACTED]. I HAVE A 12TH
9 GRADE EDUCATION. I CAN READ AND WRITE.

10 LAST NIGHT AT ABOUT 9:30 OR 10 I WENT TO CHRIS'
11 APARTMENT [REDACTED]. WHEN I GOT THERE A WHITE GUY
12 WAS THERE WHO I HAD SEEN AROUND BEFORE. I WENT
13 INSIDE AND CONVERSATED FOR AWHILE WHILE THE GUY
14 ROLLED A JOINT. ME AND THE WHITE GUY SMOKED A
15 JOINT AND I LEFT. I WENT ACROSS THE STREET IN
16 FRONT OF THE "B" BUILDINGS WITH SOME PEOPLE FROM
17 THE NEIGHBORHOOD. WE WAS ALL STANDING AROUND
18 CHILLING. I HAD BEEN OUTSIDE ABOUT 15 OR 20
19 MINUTES WHEN I SEEN THE WHITE GUY DROVE BY IN A
20 BLACK CAMERO. I STAYED OUTSIDE FOR AWHILE
21 LONGER AND WENT IN ABOUT 2 OR 3 IN THE MORNING.
22 I WENT TO MY GIRL LAVONDA'S HOUSE [REDACTED] AND WENT
23 TO BED. I GOT UP THIS MORNING TO GO FISHING AND
24 I SEEN ALL THE POLICE CARS OUTSIDE. END OF
25 STATEMENT. SIGNED BY ORLANDO SMITH AND

1 WITNESSED BY MYSELF.

2 Q AND UNDERSTANDING THAT'S THE FIRST WRITTEN
3 STATEMENT HE PROVIDED YOU REGARDING ANY
4 INFORMATION HE MAY HAVE ABOUT STEPHANIE CHRIS
5 FORD QUINN'S DEATH, IS THAT CORRECT?

6 A YES, SIR, IT IS.

7 Q LET ME ASK YOU SOME QUESTIONS ABOUT DURING THE
8 COURSE OF OR SUBSEQUENT TO THE AUTOPSY OF
9 STEPHANIE CHRIS FORD QUINN AND FURTHER
10 PROCESSING AT THE MORGUE, DURING YOUR
11 INVESTIGATION YOU ALSO FOUND, AS HAS BEEN
12 TESTIFIED EARLIER, THAT THERE WAS A PALM PRINT
13 FOUND ON MS. QUINN'S BODY, IS THAT CORRECT?

14 A YES, SIR.

15 Q OKAY. AND BASED ON THAT, DID YOU GO AND ATTEMPT
16 TO OBTAIN PRINTS, KNOWN PRINTS, FROM SUBJECTS
17 RELATED TO THIS INCIDENT?

18 A YES, SIR, I DID.

19 Q OKAY. AND WHO WERE THE THREE PEOPLE OR PEOPLE
20 THAT YOU OBTAINED PRINTS FROM?

21 A I OBTAINED PRINTS FROM THEODORE WALDMAN, ERIC
22 BURTS, AND MR. SMITH.

23 Q OKAY. AND ALL THOSE PERSONS GAVE THEIR CONSENT
24 TO HAVE THEIR PRINTS ROLLED, IS THAT CORRECT?

25 A YES, SIR, THEY DID.

1 Q AND IN FACT YOU WERE PRESENT WHEN, I BELIEVE,
2 WHEN MR. SMITH'S, WHEN ORLANDO FONTE SMITH'S
3 PRINTS WERE ROLLED, IS THAT CORRECT?

4 A YES, SIR, I WAS.

5 Q DO YOU RECALL AT ALL BACK ON THE 23 OF MAY 1998
6 ORLANDO SMITH'S APPEARANCE AS FAR AS HAIR
7 LENGTH, THAT SORT OF THING?

8 A HIS HAIR WAS SHORT. IT WAS, BUT IT WAS A LITTLE
9 BIT LONGER THAN IT IS RIGHT NOW. I COULDN'T
10 GIVE YOU AN EXACT LENGTH BUT IT WAS A LITTLE BIT
11 LONGER THAN IT IS RIGHT NOW.

12 Q OKAY. SOMETIME ON OR ABOUT MAY 28, 1998, SOME
13 FIVE DAYS AFTER MS. QUINN'S BODY WAS FOUND, WERE
14 YOU INFORMED THAT THE BLOODY PALM PRINT ON MS.
15 QUINN'S ARM MATCHED THE DEFENDANT ORLANDO FONTE
16 SMITH?

17 A YES, SIR, I WAS.

18 Q AND BASED ON THAT, WAS HE SUBSEQUENTLY ARRESTED
19 FOR MURDER?

20 A YES, SIR, HE WAS.

21 Q IN FACT, THAT WAS ON MAY 28, 1998, IS THAT
22 CORRECT?

23 A YES, SIR.

24 Q I'M GOING TO HAND YOU TWO EXHIBITS 36 AND 37
25 THAT WERE PREVIOUSLY MARKED FOR IDENTIFICATION

1 AND ASK YOU IF YOU'D START BY LOOKING AT EXHIBIT
2 36, I BELIEVE THE WAIVER FORM. DO YOU RECOGNIZE
3 THAT?

4 A YES, SIR. IT'S THE STANDARD ADVICE AND WAIVER
5 OF RIGHTS FORM THAT'S DATED ON THE 28TH OF MAY
6 1998 AT 5:23. THE WAIVER SIGNED BY ORLANDO
7 SMITH, WITNESSED BY BRIAN PRATER, AND MYSELF.

8 Q OKAY. LET ME ASK YOU, WHEN YOU BROUGHT ORLANDO
9 SMITH BACK TO THE LAW ENFORCEMENT CENTER, HOW
10 DID YOU APPROACH HIM AND WHAT WENT ON AS FAR AS
11 THIS RIGHTS FORM? HOW DID YOU HANDLE THAT?

12 A WHEN WE WENT TO ACTUALLY LOCATE THE DEFENDANT AT
13 HIS GIRLFRIEND'S RESIDENCE HE WAS PLACED UNDER
14 ARREST AT THAT TIME, HE WAS NOT FREE TO LEAVE,
15 AND HE WAS TRANSPORTED BACK TO THE LAW
16 ENFORCEMENT CENTER. AT THAT TIME WE GOT BACK TO
17 THE LAW ENFORCEMENT CENTER, THE ADVICE OF RIGHTS
18 WAS READ TO HIM, HE WAS ALLOWED TO LOOK BACK
19 OVER IT, AND THEN HE READ THIS WAIVER OF RIGHTS
20 AND SIGNED THAT HE UNDERSTOOD THAT AND HE WAS
21 WILLING TO TALK TO US AT THAT TIME.

22 Q OKAY. AND IF YOU WOULD JUST WHAT, COULD YOU
23 TELL US WHAT THOSE RIGHTS ARE THAT ARE
24 ENUMERATED?

25 A YES, SIR. BEFORE WE ASK YOU ANY QUESTIONS YOU

1 MUST UNDERSTAND YOUR RIGHTS. YOU HAVE THE RIGHT
2 TO REMAIN SILENT. ANYTHING YOU SAY CAN BE USED
3 AGAINST YOU IN COURT. YOU HAVE THE RIGHT TO
4 TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU
5 ANY QUESTIONS AND HAVE HIM WITH YOU DURING
6 QUESTIONING. IF YOU HAVE NO MONEY TO PAY A
7 LAWYER'S FEE, THE COURT WILL APPOINT ONE TO
8 REPRESENT YOU WITHOUT COST IF YOU WISH. IF YOU
9 DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER
10 PRESENT, YOU STILL HAVE THE RIGHT TO STOP
11 ANSWERING AT ANY TIME. YOU ALSO HAVE THE RIGHT
12 TO STOP ANSWERING ANY TIME UNTIL YOU TALK TO A
13 LAWYER.

14 Q AND WHAT WAS THE WAIVER OF RIGHTS THAT HE WAS
15 INFORMED OF THAT DAY?

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

23 Q AND DO YOU SEE ORLANDO SMITH IN THE COURTROOM
24 TODAY?

25 A YES, SIR, I DO.

1 Q COULD YOU PLEASE IDENTIFY HIM?

2 A HE'S SEATED AT THE DEFENSE TABLE.

3 Q LET THE RECORD REFLECT HE'S INDICATED THE
4 DEFENDANT. IS THERE ANY APPEARANCE THAT HE HAD
5 ANY TROUBLE UNDERSTANDING HIS RIGHTS OR HIS
6 WAIVER OF RIGHTS DURING YOUR INTERVIEW WITH HIM?

7 A NO, SIR.

8 Q WHAT EXHIBIT IS THAT, AGENT?

9 A THIS IS 36 AND 37.

10 MR. SEAY: I'D ASK THAT EXHIBIT 36 BE
11 PLACED IN EVIDENCE AT THIS TIME.

12 MR. SULLIVAN: NO OBJECTION.

13 THE COURT: WITHOUT OBJECTION.

14 (STATE'S EXHIBIT NUMBER 36 WAIVER OF RIGHTS FORM
15 RECEIVED IN EVIDENCE.)

16 Q NOW IF YOU WOULD TURN YOUR ATTENTION TO EXHIBIT
17 37 FOR IDENTIFICATION PURPOSES AT THIS TIME. DO
18 YOU RECOGNIZE THAT DOCUMENT?

19 A YES, SIR, I DO.

20 Q AND WHAT IS IT?

21 A IT'S A WRITTEN STATEMENT GIVEN BY ORLANDO FONTE
22 SMITH ON THE 28TH AND AT, IN REFERENCE TO THE
23 SAME INCIDENT WE INTERVIEWED HIM EARLIER ABOUT.
24 IT'S SIGNED BY MR. SMITH AND ALSO BY BRIAN
25 PRATER, AND MYSELF.

GENE DONOHUE --- DIRECT

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1 Q OKAY.

2 MR. SEAY: YOUR HONOR, I ASK THAT STATE'S
3 EXHIBIT 37 BE ADMITTED INTO EVIDENCE AT THIS
4 TIME.

5 MR. SULLIVAN: NO OBJECTION.

6 THE COURT: WITHOUT OBJECTION IT'S IN
7 EVIDENCE.

8 (STATE'S EXHIBIT NUMBER 37 STATEMENT RECEIVED IN
9 EVIDENCE.)

10 Q AGENT DONOHUE, CAN YOU PLEASE READ THAT
11 STATEMENT TO US I GUESS STARTING FROM THE TOP
12 WITH I ORLANDO FONTE SMITH?

13 A I ORLANDO FONTE SMITH DO HEREBY GIVE FREELY AND
14 VOLUNTARY THIS STATEMENT TO INVESTIGATOR GENE
15 DONOHUE AND INVESTIGATOR B.K. PRATER WHO HAVE
16 IDENTIFIED THEMSELVES TO ME TO BE DEPUTIES OF
17 THE GREENVILLE COUNTY SHERIFF'S OFFICE,
18 GREENVILLE, SOUTH CAROLINA.

19 I'VE BEEN ADVISED I DID NOT HAVE TO MAKE THIS OR
20 ANY OTHER STATEMENT AND THAT WHAT I SAY CAN BE
21 USED AGAINST ME IN A COURT OF LAW.

22 I'VE BEEN ADVISED I HAVE A RIGHT TO COUNSEL OF
23 AN ATTORNEY OF MY CHOICE. IF I'M FINANCIALLY
24 UNABLE TO OBTAIN AN ATTORNEY, THE COURT WILL
25 APPOINT AN ATTORNEY TO REPRESENT ME.

1 I HAVE NOT BEEN THREATENED OR PROMISED ANY
2 REWARD TO MAKE THIS STATEMENT.

3 I AM 24 YEARS OLD AND RESIDE AT [REDACTED]
4 [REDACTED] I HAVE A 12TH GRADE EDUCATION
5 AND I CAN READ AND WRITE.

6 I LIED THE OTHER NIGHT ABOUT WHAT HAPPENED
7 BEFORE I CAME HOME. IT WAS ABOUT 4 IN THE
8 MORNING AND I WAS GOING HOME TO MY GIRLFRIEND'S
9 APARTMENT. I STOPPED BECAUSE CHRIS' APARTMENT
10 DOOR WAS OPENED. I WENT IN AND I SEEN HER
11 LAYING ON THE FLOOR WITH HER PANTS DOWN. I SEEN
12 BLOOD ON HER AND THE FLOOR. I WAS TRYING TO SEE
13 WAS SHE ALL RIGHT. I NUDGED HER AND TRIED TO
14 SEE DID SHE HAVE A PULSE. I CHECKED FOR HER
15 PULSE ON HER NECK AND HER FOREARM BUT COULDN'T
16 FIND NONE. THEN I REALIZED SHE WAS DEAD. AFTER
17 THAT I LEFT, WENT TO MY GIRLFRIEND'S HOUSE, SAT
18 DOWN FOR A MINUTE, THEN I FELL ASLEEP. I DIDN'T
19 CALL THE POLICE BECAUSE I WAS SCARED AND DIDN'T
20 WANT TO BE INVOLVED.

21 Q DID HE DEMONSTRATE AT ALL WHAT HE WAS TALKING
22 ABOUT?

23 A YES, SIR. I ASKED HIM SEVERAL TIMES TO BE SURE
24 WHERE, YOU KNOW, WHERE HE TOUCHED THE VICTIM
25 WHEN HE WENT IN AFTER HE TOLD ME HE HAD GONE

1 BACK IN AND HE INDICATED HE TOUCHED HER IN THIS-
2 AREA AND ALSO ON HER ARM DOWN HERE IN THIS AREA.

3 Q ALL RIGHT. AND AT THE TIME HE GAVE THIS
4 STATEMENT HAD YOU INFORMED MR. SMITH, ORLANDO
5 SMITH, OF THE ACTUAL LOCATION OF THE BLOODY PALM
6 PRINT ON MS. QUINN'S BODY?

7 A NO, SIR, I DID NOT. I MERELY ASKED HIM WAS
8 THERE ANY REASON THAT HIS FINGERPRINTS WOULD BE
9 ON HER BODY AT ALL.

10 Q ALL RIGHT. AND THIS STATEMENT GIVEN AFTER HIS
11 ARREST, AND THE PRIOR STATEMENT HE HAD GIVEN TO
12 YOU ON MAY 23 WHEN HE WENT DOWN VOLUNTARILY TO
13 THE LEC WITH YOU TO TALK TO YOU ABOUT WHAT HE
14 KNEW, DID HE MENTION ANY OF THESE AT THAT
15 TIME --

16 A NO, SIR.

17 Q ---IN THAT STATEMENT?

18 A NO, SIR.

19 Q DID YOU ALSO INTERVIEW, YOU INTERVIEWED ALSO I
20 GUESS AT A LATER TIME AN ERIC BURTS, IS THAT
21 CORRECT?

22 A YES, SIR, I DID.

23 Q DID YOU INTERVIEW A MICHAEL RICHARDSON?

24 A I BELIEVE THAT NAME SOUNDS FAMILIAR. YES, SIR,
25 I DID.

1 Q AND ANOTHER ONE WAS MARCUS BARTON, IS THAT
2 CORRECT?

3 A YES, SIR.

4 Q AND ALL THOSE INTERVIEWS WERE AS A RESULT OF
5 YOUR INVESTIGATION OF MS. QUINN'S DEATH?

6 A YES, SIR, THEY WERE.

7 Q I HAND YOU THESE THREE PACKAGES OF PROPERTY AND
8 EVIDENCE PROPERTY OF GREENVILLE COUNTY. ARE YOU
9 FAMILIAR WITH THE CONTENTS OF EACH OF THOSE
10 PACKAGES?

11 A YES, SIR, I AM.

12 Q AND WERE THOSE ALL ITEMS COLLECTED BY YOU?

13 A YES, SIR, THEY WERE.

14 Q AND WHY WERE THOSE PARTICULAR ITEMS -- WELL,
15 FIRST OFF, WERE YOU MADE AWARE OF MS. QUINN'S
16 CAUSE OF DEATH?

17 A YES, SIR. INITIALLY AT THE SCENE WE WERE, WE
18 DIDN'T KNOW HER CAUSE OF DEATH DUE THAT THERE
19 WAS A LARGE AMOUNT OF BLOOD AT THE SCENE,
20 APPEARED TO BE DIFFERENT TYPES OF INJURIES TO
21 HER, NOT WANTING TO DISTURB ANY POTENTIAL
22 EVIDENCE ON HER BODY, WE DIDN'T LOOK ANY FURTHER
23 AT THAT TIME. WE WAITED UNTIL THE BODY WAS SENT
24 FOR AUTOPSY. AFTER I FINISHED INTERVIEWING THE
25 DEFENDANT AND HE WAS TAKEN BACK TO HIS APARTMENT

1 AND MR. WALDMAN INTERVIEW WAS COMPLETED, I WAS
2 ADVISED BY DEPUTY CORONER DILL THAT THE CAUSE OF
3 DEATH WAS STRANGULATION WITH SOME TYPE OF
4 LIGATURE.

5 Q WHAT IS LIGATURE?

6 A LIGATURE IS ANY TYPE OF STRING, CORD, THINGS OF
7 THAT NATURE THAT CAN BE USED TO WRAP AROUND
8 SOMEONE'S NECK AND STRANGLE THEM.

9 AT THAT POINT INITIALLY AT THE SCENE WE HAD
10 LOOKED BUT NOT KNOWING THAT WE WERE LOOKING FOR
11 A PARTICULAR, SOME TYPE OF LIGATURE, I WENT BACK
12 TO THE LOCATION, WAS LET BACK IN TO THE LOCATION
13 BY THE APARTMENT MANAGER. I LOOKED AROUND SOME
14 AT THAT POINT. ON THE BACK PORCH AREA THAT YOU
15 SHOWED IN THE PICTURE EARLIER, THERE WAS THIS
16 TYPE OF LIGATURE WITH A SMALL STICK ATTACHED TO
17 IT LOCATED THERE. THEN I PROCEEDED TO LOOK
18 AROUND THE ENTIRE APARTMENT COMPLEX JUST FOR
19 ANYTHING THAT MIGHT BE POSSIBLE EVIDENCE AND
20 NEAR A DUMPSTER IN THAT SAME GENERAL I FOUND
21 ANOTHER LIGATURE THAT WAS LAID OUT THERE.

22 Q AND WOULD YOU JUST SHOW US THE ONE THAT YOU'VE
23 GOT, YOU'VE FOUND I GUESS AT THE BACK AREA
24 BEHIND, BEHIND THE APARTMENT THERE?

25 (COMPLIES.)

1 A THAT'S IT RIGHT THERE.

2 Q OKAY. THAT WAS FOUND ON THE, BACK BEHIND THE --

3 A YES, SIR. IT WAS FOUND ON THE BACK PORCH AREA.

4 Q COULD YOU SHOW US THE OTHER LIGATURE YOU FOUND
5 BY THE DUMPSTER?

6 (COMPLIES.)

7 A THAT'S THERE.

8 Q BOTH OF THOSE ITEMS, IS THAT SUBSTANTIALLY THE
9 SAME CONDITION YOU FOUND THEM?

10 A YES, SIR, THEY ARE.

11 Q OKAY. AND AGAIN THESE ITEMS WERE COLLECTED JUST
12 AS POSSIBLE LIGATURE-TYPE THINGS THAT IS
13 CONSISTENT WITH WHAT YOU KNEW TO BE THE CAUSE OF
14 DEATH?

15 A YES, SIR. AFTER TALKING TO DEPUTY CORONER DILL,
16 THE PATHOLOGIST HAD ADVISED HIM THAT WHAT WE
17 WOULD POSSIBLY BE LOOKING FOR WAS SOMETHING
18 SMALL WITH SOME TYPE OF PATTERN ON IT BASED ON
19 THE INJURIES THAT HE OBSERVED AND MORE THAN
20 LIKELY A TYPE OF BRAIDED ROPE OR SOMETHING ALONG
21 THAT NATURE OF WHICH BOTH OF THESE ARE
22 CONSTRUCTED.

23 Q DID YOU HAVE AN OPPORTUNITY TO SEE THE LIGATURE
24 MARKS YOURSELF ON MS. QUINN'S NECK?

25 A YES, SIR, I DID.

1 Q AND FINALLY THE BELT, I THINK.

2 A YES, SIR, THIS WAS --

3 Q ---I JUST WANT TO NOTE WHERE YOU OBTAINED IT?

4 A THIS WAS OBTAINED FROM MR. BURTS, ERIC EUGENE
5 BURTS. THIS WOULD HAVE BEEN THREE DAYS LATER ON
6 THE 26TH. HE WAS INTERVIEWED ALONG WITH OTHER
7 PERSONS IN REFERENCE TO THIS CASE. IT WAS TOLD
8 TO ME THAT HE HAD BORROWED A BELT FROM SOMEONE
9 AND THAT HE HADN'T RETURNED THAT BELT. WHEN I
10 INTERVIEWED HIM I ASKED HIM IF HE HAD THAT BELT
11 IF HE WOULD TURN IT OVER TO ME WHICH HE DID.

12 Q AND THAT'S THE BELT?

13 A YES, SIR, IT IS.

14 Q COULD YOU JUST PULL THAT OUT, THE LEATHER BELT.
15 (COMPLIES.)

16 THE COURT: CAN YOU GET IT.

17 Q I HAVE A KEY ON ME. DID YOU GET IT?

18 A I THINK I GOT IT.

19 Q IT'S PRETTY TOUGH STUFF. OKAY. THANK YOU VERY
20 MUCH, AGENT DONOHUE.

21 LET ME ALSO ASK YOU THIS WITHOUT DISCUSSING THE
22 NATURE OF OR THE ACTUAL CONVERSATION, DURING THE
23 COURSE OF YOUR INVESTIGATION IN DEALING WITH THE
24 SLED LABORATORIES AND POTENTIAL EVIDENCE AND
25 THESE THINGS, DID YOU HAVE DISCUSSIONS WITH SLED

1 LABORATORY AGENTS WHO WOULD BE HANDLING FORENSIC
2 TESTING AND THAT SORT OF THING?

3 A YES, SIR, I DID. YES, SIR.

4 Q AND THAT WAS TO INFORM THEM OF THE STATUS OF
5 THE CASE AND?

6 A YES, SIR, I MAINTAINED CONTACT WITH THEM TO TELL
7 THEM WHAT TYPES OF TESTS THAT I NEEDED TO GET
8 RUN AND ALSO WHAT TYPES OF EVIDENCE WE HAD
9 ALREADY OBTAINED IN THAT CASE AND WHAT MIGHT AND
10 MIGHT NOT BE NECESSARY TO BE TESTED.

11 Q OKAY. AND LET ME SHOW YOU A PHOTOGRAPH MARKED
12 AS STATE'S EXHIBIT 15 AS WELL AS STATE'S EXHIBIT
13 21 WHICH I BELIEVE HAVE ALREADY BEEN ADMITTED
14 INTO EVIDENCE. I ASK YOU IF YOU RECOGNIZE THE
15 PHOTOGRAPHS OR THE WOMAN DEPICTED IN THEM?

16 A YES, SIR. THESE ARE PHOTOGRAPHS OF THE VICTIM
17 THAT WERE TAKEN DURING THE EXTERNAL EXAMINATION
18 PART OF THE AUTOPSY.

19 Q ALL RIGHT. AND IF I CAN SEE THOSE. BESIDE THE
20 ACTUAL LIGATURE MARK, BASED ON YOUR EXPERIENCE
21 COULD YOU TELL WHAT YOU THOUGHT WAS THOSE TWO
22 RATHER GOOD SIZED GOUGES IN THE SIDE OF HER NECK
23 WERE?

24 A YES, SIR. THERE WERE ACTUALLY A COUPLE MORE.
25 THEY APPEARED TO BE FROM THE VICTIM HERSELF

1 WHERE SHE'S ATTEMPTED TO GET WHATEVER'S AROUND
2 HER NECK OFF OF HER NECK. THEY APPEAR TO BE
3 SELF-INFLICTED.

4 Q AND BASED ON YOUR OBSERVATION OF THE VICTIM'S
5 LIGATURE MARKS, IN YOUR OPINION HOW DID IT
6 APPEAR THE LIGATURE, WHERE THE GREATEST FORCE OF
7 THE LIGATURE WAS VERSUS WHERE THE FORCE OF THE
8 PULL WAS COMING FROM. IF I'M CLEAR. I DON'T
9 KNOW IF I'M MAKING MYSELF CLEAR?

10 A I THINK I UNDERSTAND WHAT YOU ARE SAYING. IT
11 APPEARS THAT THE LIGATURE WOULD HAVE BEEN AROUND
12 THE NECK SOMEWHERE IN THIS FASHION WITH MOST OF
13 THE FORCE AGAINST THE RIGHT SIDE OF THE NECK
14 TOWARDS THE FRONT COMING AROUND THIS WAY BACK
15 TOWARDS THE LEFT BECAUSE THERE WAS, IF YOU LOOK
16 IN THE PICTURE, THERE WAS MORE, THERE IS SOME
17 BREAKS HERE WHICH APPEARS WHERE THE VICTIM WAS
18 TRYING TO DEFEND, TRYING TO GET IT OFF HER NECK.
19 WHEN YOU COME AROUND TO THE OTHER SIDE THERE IS
20 AN ABSENCE OF A MARK.

21 Q HERE? RIGHT HERE?

22 A IT WOULD BE ON THE BACK, THE LEFT SIDE RIGHT IN
23 HERE, AND THE GREATER MARK IS AROUND THIS WAY
24 WHICH WOULD APPEAR IT WAS COMING FROM BACK IN
25 THIS DIRECTION, BACK ON THIS SIDE.

1 MR. SEAY: IF YOU CAN GET THE LIGHTS FOR
2 ME. I JUST WANT TO CLARIFY THAT.

3 (THE LIGHTS ARE DIMMED.)

4 Q THAT BREAK OR INTERRUPTION, THIS BEING THE
5 LIGATURE MARK?

6 A YES, SIR.

7 Q IS THAT BREAK OR INTERRUPTION THAT YOU ARE
8 TALKING ABOUT OVER TOWARDS THIS WAY?

9 A YES, SIR. ACTUALLY START SORT OF IN THIS AREA
10 AND COME AROUND THE SIDE THIS WAY. WHICH THE
11 GREATEST FORCE WHICH WOULD BE THE RIGHT SIDE OF
12 THE NECK OVER IN HERE.

13 Q LET ME SHOW YOU THIS OTHER PHOTOGRAPH WHICH IS
14 STATE'S EXHIBIT 15. YOU CAN SEE, IS THAT THE
15 CONTINUATION?

16 A THIS IS, APPARENTLY THE REASON IT'S BROKEN HERE
17 IT APPEARS THAT THE VICTIM WAS PUTTING HER
18 FINGERS, RIGHT UNDERNEATH THERE IT IS LIKE
19 FINGERNAILS SCRATCHES WHERE SHE WAS ATTEMPTING
20 TO GET RID OF WHATEVER IT WAS OFF OF HER NECK.

21 Q OKAY. AND BASED ON THAT, WHAT YOU'VE SEEN AND
22 YOUR EXPERIENCE, AS I UNDERSTAND YOU, THAT THE
23 FORCE OR THE PULL ON THE LIGATURE WAS ACTUALLY
24 BEING EXERTED SOMEWHERE OVER HERE, A HAND OR
25 WHATEVER THAT WOULD BE PULLING SOMEWHERE OVER ON

1 THIS END --

2 A YES, SIR.

3 Q ---BASED ON THE LIGATURE MARKS?

4 A YES, SIR.

5 MR. SEAY: YOU CAN FLIP THOSE LIGHTS BACK
6 ON.

7 (THE LIGHTS ARE TURNED ON.)

8 Q AND AGAIN YOUR INVESTIGATION DID DETERMINE THAT
9 THE VICTIM YOU'VE SEEN IN THESE PHOTOGRAPHS FROM
10 APARTMENT [REDACTED] WAS STEPHANIE CHRIS FORD QUINN,
11 IS THAT CORRECT?

12 A YES, SIR, THAT'S CORRECT.

13 Q IN FACT, SHE LIVED THERE AT FLEETWOOD MANOR IN
14 GREENVILLE COUNTY, IS THAT CORRECT?

15 A YES, SIR, THAT'S CORRECT.

16 MR. SEAY: IF I MAY HAVE ONE MOMENT, YOUR
17 HONOR. I DON'T BELIEVE I HAVE ANY FURTHER
18 QUESTIONS AT THIS TIME. IF YOU'D ANSWER ANY
19 QUESTIONS THE DEFENSE MAY HAVE.

20 CROSS EXAMINATION MR. SULLIVAN:

21 Q OFFICER DONOHUE, JUST A FEW. YOU DEVELOPED
22 INITIALLY THREE PEOPLE YOU GOT SAMPLES FROM.
23 YOU HAD ERIC BURTS, THEODORE WALDMAN, AND
24 ORLANDO SMITH?

25 A YES, SIR.

1 Q NOW FROM ORLANDO AND THEODORE YOU GOT HAND,
2 PALM, BLOOD, AND HAIR?

3 A YES, SIR.

4 Q AND THEN FROM MR. BURTS YOU ONLY GOT PALMS AND
5 FINGERS?

6 A YES, SIR.

7 Q NOW YOU'VE BEEN IN COURT DURING THE TRIAL,
8 CORRECT?

9 A YES, SIR, I HAVE.

10 Q AND YOU HEARD THE TESTIMONY THAT THERE WERE
11 THREE UNKNOWN HAIRS FOUND ON MS. QUINN, PUBIC
12 HAIR, ONE ON HER, NEAR HER NAVEL OR HER STOMACH,
13 AND A HAIR ON HER LEG, CORRECT?

14 A YES, SIR, THAT'S CORRECT.

15 Q AS FAR AS I KNOW NOBODY SAID THEY MATCHED MR.
16 SMITH OR MR. WALDMAN?

17 A NO, SIR.

18 Q WHY DID YOU NOT TAKE HAIR FROM MR. BURTS?

19 A THIS, I CAN GO INTO IT IF YOU WANT ME TO, I HAD
20 ALREADY HAD STARTED HAVING SOME DISCUSSIONS WITH
21 THE SLED LAB AT THAT TIME AND WE DIDN'T FEEL IT
22 WAS NECESSARY TO TAKE SAMPLES FROM HIM AT THAT
23 TIME.

24 Q BUT YOU HAVE THREE UNKNOWNNS AND, THREE UNKNOWN
25 SAMPLES?

1 A YES, SIR.

2 Q AND THEY DON'T MATCH MR. SMITH, CORRECT?

3 A CORRECT.

4 MR. SEAY: OBJECTION, AS TO HIS OPINION AS
5 TO WHETHER THEY MATCH.

6 A EXCUSE ME. I DON'T KNOW WHETHER THEY MATCH OR
7 NOT. I RETRACT THAT. EXCUSE ME. THEY NEVER
8 WERE TESTED TO SEE IF THEY MATCHED.

9 Q THEN WHEN YOU GOT ORLANDO BACK DOWN THERE THAT
10 DAY YOU USED USUAL POLICE TECHNIQUES IN
11 QUESTIONING. YOU KIND OF, YOU TOLD HIM THEY HAD
12 FOUND PUBIC HAIRS THAT MATCHED HIM AND GO AHEAD
13 AND CONFESS, DID YOU GO AND TELL HIM THAT?

14 A I DON'T RECALL MENTIONING ANYTHING TO HIM ABOUT
15 HAIRS, NO, SIR.

16 Q AND THEN I'M JUST CURIOUS, WE HAVE THE FELLOW
17 FROM MISSISSIPPI, THE EXPERT ABOUT THE PRINTS,
18 YOU TOOK THE STATEMENT WHICH YOU JUST READ FROM
19 MR. SMITH ON THE 28 WHERE HE ADMITTED THAT HE
20 DID GO IN AND TOUCH HER, CORRECT?

21 A YES, SIR.

22 Q THE LETTER CONFIRMING THOSE WERE HIS PALM PRINTS
23 JUNE 26?

24 A UH-HUH.

25 Q A MONTH LATER. SO HOW DID YOU KNOW ON MAY 28

1 THAT THEY WERE HIS PALM PRINTS AND YOU DIDN'T
2 GET THE LETTER UNTIL SOMETIME IN JUNE?

3 A I BELIEVE I GOT NOTIFICATION FROM SERGEANT
4 WILKERSON. LET ME GO BACK THROUGH MY NOTES
5 RIGHT HERE REAL QUICK. YES, SIR, ON THE 28
6 SERGEANT WILKERSON NOTIFIED ME THAT THE PALM
7 PRINTS WERE IDENTIFIED AS BEING MADE BY ORLANDO
8 FONTE SMITH AND HE, THEY WERE PROVIDED TO BY
9 SERGEANT PAT HUGHES AND TECHNICIAN RANDY HELMS.
10 SUBJECT INFORMATION WAS PROVIDED BY MYSELF. ON
11 MAY 27 HE FORWARDED THE PHOTOGRAPHS AND COPIES
12 OF THE SUSPECT PRINTS WERE FORWARDED BY FEDERAL
13 EXPRESS TO MR. SMITH. THE REQUEST FOR
14 COMPARISON WAS CONDUCTED ON MAY 28, 1998. MR.
15 SMITH CONTACTED SERGEANT WILKERSON
16 TELEPHONICALLY WITH THE FOLLOWING RESULTS THAT
17 THE IMAGE OF THE LATENT PRINT FOUND ON THE
18 VICTIM'S LEFT BICEP IS IDENTIFIED AS BEING MADE
19 BY THE LEFT PALM PRINT OF ORLANDO FONTE SMITH.

20 Q YOU ARE SAYING ON THE 28 THEY HAD A PHONE
21 CONVERSATION?

22 A YES, SIR, HE NOTIFIED ME OF THOSE RESULTS.

23 Q AND IT TOOK HIM A MONTH TO WRITE A LETTER TO
24 CONFIRM THAT?

25 A SIR, I HAVE NO CONTROL OVER WHAT MR. SMITH DID.

1 Q WHEN YOU HAD INTERVIEWED MARCUS BARTON, I THINK
2 HIS NAME IS LAMARCUS BARTON, A MICHAEL ALLEN
3 RICHARDSON, BENNY FRANK IRBY, AS A RESULT OF
4 THOSE INTERVIEWS, WHAT KIND OF ACTIVITY WAS MR.
5 BURTS UP TO --

6 MR. SEAY: OBJECTION, YOUR HONOR, HE'S
7 TRYING TO GET AROUND BASIC HEARSAY. HE'S TRYING
8 TO GET IN STATEMENTS OF THESE WITNESSES WITHOUT
9 THEIR TESTIMONY.

10 MR. SULLIVAN: I'M NOT OFFERING IT FOR THE
11 TRUTH OF IT. I JUST WANT HIS CONCLUSION. HE
12 INTERVIEWED THEM. HE CAN DRAW A CONCLUSION FROM
13 WHAT THEY DID.

14 THE COURT: I WILL SUSTAIN THE OBJECTION AS
15 TO THE HEARSAY. RESTATE YOUR QUESTION, MR.
16 SULLIVAN.

17 Q DID YOU SUSPECT IN YOUR INVESTIGATION ANY DRUG
18 ACTIVITY?

19 A YES, SIR, I DID.

20 Q EXPLAIN THAT TO THE JURY --

21 MR. SEAY: OBJECTION, YOUR HONOR, AGAIN I
22 THINK HE'S TRYING TO GET INTO TELLING, BASICALLY
23 REPEATING, WITHOUT ASKING FOR WHAT OTHERS TOLD
24 HIM, HE'S TRYING TO GET IN WHAT WOULD BEST BE
25 SERVED BY A WITNESS TESTIFYING AS TO WHAT WAS

1 GOING ON THERE THAT NIGHT. NOT AGENT DONOHUE'S
2 RECOLLECTION OF WHAT THEY TOLD HIM.

3 THE COURT: I'M GOING TO OVERRULE THE
4 OBJECTION AT THIS TIME. GO AHEAD AND ANSWER THE
5 QUESTION.

6 A OKAY. I FIRST BECAME, FIRST THOUGHT DRUGS,
7 THERE WAS SOME DRUG ACTIVITY INVOLVED IN IT
8 BASED ON MR. SMITH'S STATEMENT SAYING HE HAD
9 SMOKED A JOINT WITH A GUY IN THE APARTMENT.
10 ALSO WHEN I WENT BACK TO LOOK FOR A LIGATURE OR
11 OTHER ITEMS OF EVIDENCE THAT I FOUND A CRACK
12 PIPE IN THE APARTMENT BEHIND THE TELEVISION SET.

13 Q WHEN YOU TURNED THINGS INTO THE EVIDENCE ROOM
14 AND COLLECTED STUFF IN THERE, ON THE PANTIES,
15 DID THEY HAVE A SANITARY PAD ON IT?

16 A I BELIEVE THERE WAS ONE ATTACHED TO THE PANTIES.

17 Q NOW JUST IN GENERAL, IN YOUR EXPERIENCE AS A
18 INVESTIGATIVE POLICE OFFICER, PEOPLE GET HOOKED
19 ON CRACK AND THEY GET TIGHT FOR MONEY --

20 MR. SEAY: OBJECTION, YOUR HONOR, THIS IS
21 ALL PURE SPECULATION AND SOMETHING THAT'S NOT
22 EVEN ABOUT ANYTHING IN THE FACTS IN EVIDENCE AT
23 THIS POINT. THIS IS PURE, HE'S JUST HUNTING,
24 GUESSING, STABBING IN THE DARK HERE.

25 THE COURT: WELL, LET ME HEAR THE

1 QUESTION. GO AHEAD AND LET ME HEAR THE

2 QUESTION.

3 Q IN YOUR EXPERIENCE HAVE YOU FOUND OUT THAT WHEN
4 PEOPLE START USING CRACK AND FOR TYPE OF MONEY
5 THAT GIRLS TURN TO PROSTITUTION?

6 MR. SEAY: RELEVANCE, YOUR HONOR.

7 THE COURT: I WOULD SUSTAIN THE OBJECTION.

8 Q FROM YOUR INVESTIGATION DO YOU KNOW HOW MANY
9 TIMES AND WHAT HOURS THAT MR. BURTS WAS AT THE
10 APARTMENT?

11 A THE LAST TIME, FROM MY INVESTIGATION, THAT HE
12 WAS THERE WAS AROUND MIDNIGHT AND THE FIRST TIME
13 WOULD HAVE BEEN I BELIEVE AROUND, SOMEWHERE
14 AROUND SIX O'CLOCK 6:30 SOMEWHERE, EARLY IN THE
15 EVENING.

16 Q SO ERIC BURTS, THEY CALL HIM DEE I THINK HIS
17 STREET NAME IS?

18 A YES, SIR.

19 Q HE WAS THERE AT SIX?

20 A YES, ABOUT 6-6:30 IN THAT AREA. AND RIGHT
21 AROUND MIDNIGHT.

22 Q AND THEN HE RETURNED ABOUT MIDNIGHT?

23 A UH-HUH.

24 Q DID Y'ALL COMPARE MS. QUINN PHONE RECORDS WITH
25 CALLS OUT DURING THAT PERIOD OF TIME?

1 A YES.

2 Q DID YOU KNOW HIS PAGER NUMBER?

3 A YES, SIR, I DID.

4 Q DID SHE CALL HIM ON HIS PAGER?

5 A YES, SIR, SHE DID.

6 Q NUMEROUS OCCASIONS?

7 A THE PHONE RECORDS I GOT WERE FOR ROUGHLY 24 HOUR
8 PERIOD, AROUND THE TIME OF HER DEATH, AND DURING
9 THAT TIME SHE PAGED HIM TWICE. EXCUSE ME,
10 THREE TIMES. CORRECT MYSELF.

11 Q SO DURING THAT PERIOD OF TIME FROM ABOUT FIVE
12 O'CLOCK UNTIL LATE IN THE EVENING SHE HAD PAGED
13 HIM THREE DIFFERENT OCCASIONS?

14 A YES, SIR.

15 Q IN YOUR EXPERIENCE AS A POLICE OFFICER
16 INVESTIGATOR, DO YOU HAVE ANY IDEA WHAT THESE
17 PAGES MIGHT RELATE TO?

18 MR. SEAY: I'M GOING TO OBJECT, YOUR HONOR,
19 ON THE RELEVANCE.

20 THE COURT: I SUSTAIN THE OBJECTION,
21 RELEVANCE.

22 MR. SULLIVAN: I HAVE NOTHING FURTHER AT
23 THIS TIME, YOUR HONOR.

24 REDIRECT EXAMINATION BY MR. SEAY:

25 Q LET ME JUST ASK YOU REAL BRIEFLY, AGENT DONOHUE,

GENE DONOHUE --- REDIRECT

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1 DO YOU HAVE THE PHONE RECORDS? IS THAT WHAT YOU
2 WERE REFERRING TO WHEN YOU WERE ANSWERING THE
3 EARLIER QUESTIONS? DID YOU HAVE A COPY OF THE
4 PHONE RECORDS?

5 A YES SIR.

6 Q WHAT DAY WAS THE FIRST TIME SHE FIRST PAGED THE
7 PAGER NUMBER OF ERIC BURTS?

8 A IT WAS ON MAY 22, 1998, AT 6:32 IN THE EVENING.

9 Q OKAY. WHAT ABOUT THE NEXT TIME?

10 A IT WAS MAY 22 AT 9:44.

11 Q OKAY. AND ANY OTHER PAGES?

12 A ON MAY 22 AT 11:54 P.M.

13 Q OKAY. AND THOSE ARE THE TIMES THAT IN FACT IT
14 APPEARS THAT ERIC BURTS' PAGER WAS CALLED FROM
15 THE VICTIM'S ---

16 A YES, SIR.

17 Q ---PHONE, AND THAT'S ALL THOSE RECORDS INDICATE,
18 RIGHT? THAT SOMEONE FROM THE VICTIM'S PHONE
19 NUMBER PAGED, MADE THAT PAGE, IS THAT CORRECT?

20 A YES, SIR, THAT'S CORRECT.

21 Q AND JUST TO BE CLEAR, YOU DIDN'T TAKE AN ACTUAL
22 WRITTEN STATEMENT FROM MR. BURTS, IS THAT
23 CORRECT?

24 A NO, SIR, I DIDN'T.

25 Q NOR DID YOU TAKE ANY WRITTEN STATEMENTS FROM

1 LAVONDA SHAW?

2 A NO, SIR, I DIDN'T.

3 Q OKAY.

4 MR. SEAY: I DON'T BELIEVE I HAVE ANY
5 FURTHER QUESTIONS AT THIS TIME, YOUR HONOR.

6 MR. SULLIVAN: JUST ONE MORE, YOUR HONOR.
7 RE CROSS EXAMINATION BY MR. SULLIVAN:

8 Q YOU WERE PRESENT IN THE COURTROOM WHEN I ASKED
9 THE FIRST OFFICER DID YOU NOTICE ANY MARKS ON
10 THIS MAN, SCRATCHES?

11 A NO, SIR, I DIDN'T.

12 Q AND YOU WERE UP CLOSE TO HIM, WALKING AROUND
13 WITH HIM?

14 A YES, SIR.

15 MR. SULLIVAN: NOTHING FURTHER.

16 THE COURT: THANK YOU, SIR.

17 MR. SEAY: YOUR HONOR, AT THIS TIME THE
18 STATE WOULD BE WILLING TO RECESS UNTIL IN THE
19 MORNING. WE HAVE DOCTORS AND SLED AGENTS COMING
20 IN.

21 THE COURT: YOU DON'T HAVE ANY MORE. WE
22 GOT AN HOUR TO GO.

23 MR. SEAY: I TRIED TO GET A HOLD OF A
24 COUPLE LAY WITNESSES THAT I WAS GOING PUT UP
25 LATER, BUT THEY WERE UNAVAILABLE AT THIS TIME.

1 THE COURT: ALL RIGHT. SO YOU DON'T HAVE
2 ANY MORE WITNESSES FOR THE DAY?

3 MR. SEAY: NO, SIR.

4 THE COURT: ALL RIGHT. LADIES AND
5 GENTLEMEN OF THE JURY, BE BACK AT NINE O'CLOCK
6 IN THE MORNING AND WE'LL FINISH THE CASE, OKAY.
7 REMEMBER DO NOT DISCUSS THE CASE WITH ANYONE. I
8 KNOW I SAW THE NEWS MEDIA IN HERE. YOU MAY SEE
9 SOMEBODY AT HOME AND ASK YOU IF THIS IS THE CASE
10 YOU ARE ON OR WHATEVER, JUST TELL THEM YOU CAN'T
11 TALK TO THEM ABOUT IT BECAUSE IF YOU DID YOU
12 WOULD BE DISCUSSING WITH SOMEBODY WHO HAS NOT
13 SEEN THE WITNESSES OR HEARD THE EVIDENCE AND WE
14 DON'T PERMIT THAT. IN TIMES PAST IN A CASE LIKE
15 THIS WE WOULD PUT YOU IN A MOTEL ROOM AND
16 SEGREGATE YOU BUT WE CAN'T AFFORD TO DO THAT IN
17 ANY CASES EXCEPT IN DEATH PENALTY CASES. AND
18 NOW THIS IS AN IMPORTANT CASE AND IF THE
19 ATTORNEYS ASKED ME TO ASK YOU UNDER OATH
20 TOMORROW IF YOU TALKED TO ANYBODY ABOUT IT, I'D
21 HAVE TO DO THAT, SO JUST TELL WHOEVER YOU SEE
22 TONIGHT THAT YOU CAN'T DISCUSS THE CASE WITH
23 THEM. YOU TELL THEM YOU ARE ON JURY DUTY AND
24 THAT'S ALL AND TELL THEM TOMORROW WHEN YOU GET
25 HOME YOU CAN TALK TO THEM ABOUT IT AND ANSWER

1 ANY QUESTIONS THEY HAVE OR WHATEVER, BUT JUST
2 DON'T TALK TO ANYBODY ABOUT IT TONITE. JUST
3 HAVE A GOOD EVENING OR GO BACK TO WORK AND CHECK
4 ON THE AUDITS OR WHATEVER YOU ALL NEED TO DO
5 TODAY OR FIX AIR CONDITIONERS OR WHATEVER AND
6 I'LL SEE YOU IN THE MORNING AT NINE O'CLOCK AND
7 WE'LL FINISH THE CASE TOMORROW, OKAY. THANK YOU
8 SO MUCH.

9 (THE JURY EXITS THE COURTROOM AT 4:05.)

10 THE COURT: WE RUSHED EVERYBODY THROUGH
11 THEIR LUNCH, MR. SEAY, THINKING YOU WERE GOING
12 TO KEEP ME HERE UNTIL ABOUT 5:30.

13 MR. SEAY: WE MOVED A LITTLE FASTER THAN I
14 ANTICIPATED, YOUR HONOR. I APOLOGIZE. I WILL
15 HAVE EVERYBODY HERE FIRST THING IN THE MORNING,
16 NO INTERRUPTION.

17 THE COURT: IN MY OPINION WE COULD HAVE
18 MOVED A WHOLE LOT FASTER THAN WE DID. THAT'S UP
19 TO Y'ALL. I DON'T WANT Y'ALL TO MISS ANYTHING
20 IN THE TRIAL OF YOUR CASE, BUT I WILL SEE Y'ALL
21 AT NINE O'CLOCK IN THE MORNING. WE'LL PICK UP
22 RIGHT HERE.

23 (THE COURT'S IN RECESS AT 4:05.)
24
25

1
2 I, THE UNDERSIGNED JANET M. RICH, OFFICIAL COURT
3 REPORTER FOR THE 16TH JUDICIAL CIRCUIT OF THE
4 STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT
5 THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE
6 TRANSCRIPT OF RECORD OF ALL THE TESTIMONY HAD
7 AND EVIDENCE INTRODUCED IN THE TRIAL OF THE
8 CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT
9 OF GENERAL SESSIONS FOR GREENVILLE COUNTY, SOUTH
10 CAROLINA, ON THE 17TH OF JULY, 2000.

11 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
12 COUNSEL NOR INTEREST TO ANY PARTY HERETO.

13
14
15 DECEMBER 27, 2000

16
17 *Janet M Rich*
18 JANET M. RICH
19
20
21
22
23
24
25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE)

COURT OF GENERAL SESSIONS
No. 98 GS 23 5212

3
4 STATE OF SOUTH CAROLINA)
5)
6)

versus)

TRANSCRIPT OF RECORD

7)
8 ORLANDO F. SMITH,)
9 Defendant.)
10 _____)

11 Greenville, South Carolina
12 July 18-19, 2000

13 B E F O R E :

14 HONORABLE LARRY R. PATTERSON, Judge, and a Jury

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

16 For the State:

DAVID SEAY, Esq.
OFFICE OF THE SOLICITOR

17
18 For the Defenadnt:

TIM SULLIVAN, Esq.

19 Reporter:

ANN CAMPBELL

20
21 HARRIET P. BENNETT
Reporter, Ninth Judicial Circuit
22 P. O. Box 1575
Mt. Pleasant, S. C. 29465
23
24
25

I N D E X

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1			
2			
3	Jury Voir Dire	*	
4	Jury Selection	*	
5	Opening Statements	**	
6	Witnesses Maxwell, Allen, Wilkerson		
7	Edmonds, Prater & Donohue	**	
8	(NOTE: **The above were taken by Dawn Koffsky, Reporter, on 7 17 2000)		
9	DOCTOR LARRY MINETTE		
10	By Mr. Seay	7	
11	By Mr. Sullivan		13
12	LISA KAISER		
13	By Mr. Seay	15	
14	By Mr. Sullivan		18
15	NANCY SKRABA		
16	By Mr. Seay	20	
17	By Mr. Sullivan		24
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3 REPORTER NOTE:

4 THE EXHIBITS LISTED ON THE PRECEDING
5 PAGE WERE FROM A LIST INCLUDED IN THE
6 FILE OF ANN CAMPBELL.

7 THE PAGE NUMBERS SHOWN INDICATE WHERE
8 SPECIFIC EXHIBITS WERE MENTIONED BY
9 NUMBER. ONLY ONE EXHIBIT WAS INTRO-
10 DUCED IN EVIDENCE IN HER RECORD.

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1 (The within matter continued on July 18, 2000 at 9:15
2 A.M.)

3 THE COURT: Bring the jury.

4 (Jury returned to Courtroom)

5 THE COURT: Okay, ladies and gentlemen of the jury, we
6 are ready to continue.

7 Mr. Seay?

8 MR. SEAY: Thank you, Your Honor. May it please the
9 Court? The State would call Dr. Larry Minette.

10 DR. LARRY MINETTE, being duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. SEAY:

14 Q. Dr. Minette, where are you currently employed?

15 A. With Pathology Associates in Greenville.

16 Q. All right, and what is your job as a forensic patholo-
17 gist? What does it entail?

18 A. I work with the autopsies, with the police, the Sher-
19 iff's Department, the Solicitor's Office, in conducting autop-
20 sies, and helping with scene analyses and performing the
21 autopsies.

22 Q. And you've been -- have you testified before on previous
23 occasions?

24 A. Yes, I have.

25 Q. At those times, were you qualified as an expert in the

DR. MINETTE ON DIRECT

1 field of forensic pathology?

2 A. Yes, I was.

3 MR. SULLIVAN: We would stipulate his expertise as a
4 forensic pathologist.

5 THE COURT: All right. It's stipulated he's a foren
6 pathologist.

7 BY MR. SEAY:

8 Q. I'd like to ask you about the autopsy you performed
9 Stephanie Chris Forte Quinn. Are you familiar with that
10 autopsy?

11 A. Yes.

12 Q. Okay. If you could -- this was an autopsy performed
13 Ms. Quinn, a 30 year old white female. Is that correct?

14 A. That's correct.

15 Q. Okay, and based on conducting the autopsy, what kind
16 evidence of external injuries did you see on Ms. Quinn's
17 Begin with any types of lacerations, abrasions, any sort
18 cuts, those sort of things?

19 A. Yes, there were several areas with gashes or lacerati
20 scratches, bruises.

21 Q. And I'd like to start off with -- if you'd get the
22 lights, please -- a photograph of the victim.

23 Now, if you can't see that from here, you're welcome
24 step back away from the screen if it's too grainy.

25 A. That's fine.

DR. MINETTE ON DIRECT

1 Q. And the marks here and here, . . . (Gesturing on photograph
2 shown on screen)

3 A. Yes.

4 Q. How would you describe those injuries?

5 A. Superficial abrasions or scratches.

6 Q. Okay, and did you during your autopsy consider these to
7 be self inflicted wounds?

8 A. I thought that they probably could have been from finger-
9 nails.

10 Q. And can you see right here -- there's a little bit of a
11 shadow?

12 A. Yes.

13 Q. And what happened here?

14 A. That is a gash of the center of the chin, overlying the
15 bone.

16 Q. Okay, and would that be a wound that would bleed?

17 A. Yes, it would.

18 Q. And there's a mark here and another one just below that
19 I don't believe you can see from there. What kind of injury
20 are we looking at there?

21 A. Those are more on the order of abrasions, superficial
22 scratches or abrasions.

23 Q. Okay. Now I'd like to draw your attention to this
24 line here, coming back around -- starts back here and here.
25 What do you make of those marks there?

DR. MINETTE ON DIRECT

1 A. That is an abrasion of the skin from a ligature or c
2 type of material that's around the neck.

3 Q. This is the -- the mark we see on the back of her ne
4 here, is this also a continuation of that same ligature
5 mark?

6 A. Yes, it is.

7 Q. Did you also discovery Ms. Quinn had a laceration ab
8 her left ear?

9 A. Yes.

10 Q. And would you describe that laceration as far as wha
11 kind of size we're talking about and the area of the head

12 A. Yes. Above the left ear on the left side of the he
13 was a gash approximately one and a fourth inch long and g
14 about a fourth of an inch.

15 Q. And is this the type of wound that would bleed consi
16 ably?

17 A. It would bleed, yes.

18 Q. I'd like to ask you now about -- what, if any, intern
19 injuries you saw during the course of your autopsy which
20 relates to her neck area?

21 A. Yes. Below the skin, the right side of the neck abov
22 the strap muscle was a hemorrhage, which is known as a
23 bruise, internal bruise.

24 Q. Okay, and based upon your examination at autopsy of M
25 Quinn on May 23, 1998, were you able to a reasonable degree

DR. MINETTE ON DIRECT

1 of certainty to determine the cause of death?

2 A. Yes.

3 Q. What was that cause of death?

4 A. Ligature strangulation.

5 Q. So that means something -- rope, cord, something -- was
6 placed around the neck until she choked to death. Is that
7 right?

8 A. That's true. Quite tight around the neck to cause
9 strangulation, suffocation, obstruction of air flow and blood
10 flow, and leading to death.

11 Q. It's my understanding you also provided SLED with a sex-
12 ual assault kit or evidence kit. Is that correct?

13 A. Yes.

14 Q. Okay. What is contained in the sexual assault kit?

15 A. Swabs and smears of the mouth, vagina, and anus.

16 Q. And during the collection of the sexual assault kit, did
17 you see anything else that struck you as visible injuries
18 or anything like that?

19 A. During the autopsy, I looked at the genital area and
20 internal genital area. I saw no injuries.

21 Q. Okay. Could you describe what I see in your autopsy is
22 listed as a defense wound to the left little finger?

23 A. Yes. The left little finger has an area approximately
24 one fourth of an inch which would -- raising of the skin
25 with abrasion, and it was reddened with some blood under

DR. MINETTE ON DIRECT

1 the skin which was raised, and that was gotten in the str
2 gle; therefore called a defense wound.

3 Q. Okay. In your review of ligature marks on the neck,
4 did it appear to you that the ligature was something that
5 went around the neck only one time?

6 A. It appeared to have gone around once or a little mor
7 than once, but I couldn't determine that it went around
8 twice or more, so that's correct.

9 Q. And did you perform toxicology on Ms. Quinn?

10 A. Yes.

11 Q. And do you have the results of those toxicology repo:

12 A. Yes.

13 Q. Would you tell us what those results were?

14 A. The urine showed -- the urine and blood both showed
15 cocaine and break-down products of cocaine, and the blood
16 analyzed for alcohol and also showed alcohol.

17 Q. Okay. Meaning that sometime prior to her death, she
18 consumed a quantity of these items?

19 A. Yes.

20 Q. One other question about the ligature mark. In the
21 photos, the ligature mark appears rather uninterrupted,
22 starting from the left strap muscle around.

23 Did you find interruptions or gaps between the ligatu
24 marks toward the front and left side of her neck?

25 A. Yes. The ligature mark was more continuous on the r

DR. MINETTE ON DIRECT

1 side and back, and on the left-left some interruption of the
2 abrasion mark.

3 Q. I don't believe I have any further questions at this
4 time.

5 Please answer any questions the Defense may have for
6 you.

7 CROSS EXAMINATION

8 BY MR. SULLIVAN:

9 Q. Just a couple, Doctor.

10 I believe the report on the alcohol -- the blood alcohol
11 was .13?

12 A. Yes. Zero point one three percent.

13 Q. And she had some traces of cocaine which had been ingested or
14 cocaine product?

15 A. Probably more than a trace, but it was present in blood
16 and urine, yes.

17 Q. And there was some testimony -- you weren't here yester-
18 day -- that there were three foreign or unknown samples of
19 hair found on the victim?

20 A. . . .

21 Q. Did you note that? I think on the stomach, navel and
22 legs? Pubic hairs?

23 A. I was aware that ID was picking up various hair sample
24 evidence but I was not directly involved, nor did I analyze
25 that.

DR. MINETTE ON CROSS

1 Q. And do you know whether or not from your examination
2 was there any semen found on the victim?

3 A. I did not . .

4 SOLICITOR: Objection, Your Honor. I believe that we
5 be outside of the scope of what he testified to, that he c
6 lected samples and submitted them.

7 WITNESS: I did not analyze the semen. I took spec
8 mens to be sent for the examination of semen.

9 BY MR. SULLIVAN:

10 Q. Would these be sent to SLED?

11 A. Yes.

12 Q. If someone using a small cord in the fashion it would
13 have to be used -- I guess it would be like this, to perfo
14 the strangulation? (Counsel gesturing)

15 A. Probably holding on to the cord with both hands.

16 Q. Doing this?

17 A. Yes.

18 Q. Is it a possibility their hands could be marked by th
19 force?

20 A. . .

21 Q. If it is enough to put the mark we saw on this young
22 lady's neck, would their hands possibly be indentated the
23 pretty soon after the event?

24 A. I think that would be less likely than the skin of the
25 neck. The skin of the hands is thicker than the skin of th

DR. MINETTE ON CROSS

neck.

Q. But is it possible you could have marks on the hands?

A. It may be possible.

Q. Nothing further. Thank you, Doctor.

THE COURT: You may be excused. Solicitor?

SOLICITOR: Nothing further.

THE COURT: May the doctor be excused?

SOLICITOR: Yes, sir.

(Doctor Minette excused by the Court)

SOLICITOR: State would call Lisa Kaiser.

LISA KAISER, being duly sworn,

testified as follows:

DIRECT EXAMINATION

BY MR. SEAY: I.

Q. Agent Kaiser, you're employed by the South Carolina Law Enforcement Division. Is that correct?

A. That's correct.

Q. And what is your job as an Agent with SLED?

A. I work for evidence processing as a forensic technician.

Q. Okay, and how long have you been with SLED doing that?

A. Approximately nine and a half years.

Q. And are you familiar with the SLED Lab Number L9812752?

A. Yes, I am.

Q. Involving the victim, Stephanie Quinn, Stephanie Chris Quinn, with the subject listed as Orlando Fonte Smith?

MS. KAISER ON DIRECT

1 A. Correct.

2 Q. Did you receive, I believe, items that were listed as
3 beige trousers, cushions from the left side of the victim's
4 sofa, cushions from the middle of victim's sofa, cushion
5 from the right side of victim's sofa, victim's shirt, blue
6 jeans, off-white panties with a feminine pad, and a ligatu
7 with a small stick?

8 A. Yes, I did.

9 Q. And in processing these items when you retrieved them
10 do you have contact with the lead investigators on these c
11 as well as sometimes Assistant Solicitors or others involv
12 in the prosecution of the case?

13 A. Yes. Before we process the items that we have for ev
14 dence, we always review the case, and on reviewing the case
15 either look at the incident report or either call the inve
16 gator and discuss the case with him before processing to
17 find out what is probative on the case.

18 Q. All right. What do you mean when you say what is prob
19 tive?

20 A. We try to look at what is the best evidence. A lot of
21 times at crime scenes there are a lot of items that are
22 collected, and we want to focus in and do the best job on
23 the items that we have that are probative.

24 Q. And did you get some information from the investigator
25 in this case regarding what kind of evidence needed to be

MS. KAISER ON DIRECT

1 tested and what they were looking for?

2 A. Yes. On this case -- what we do, in all of our files we
3 have a blue sheet -- what we call it -- to document any con-
4 versations we have with investigators about-- about
5 the case.

6 And in this case, I spoke with Gene Donohue, and he said
7 that there was a bloody palm print that was collected from
8 the victim, and that was going to be the most probative evi-
9 dence that we had on the case.

10 But I was to look at some other items that were col-
11 lected, which were the panties, which I did test for pre-
12 sumptive semen.

13 Q. And was anything detected? Was any semen detected?

14 A. No, there was not.

15 Q. Okay.

16 A. I also processed for ligature and a couch cushion.

17 And after speaking with Gene Donohue, I also confirmed this
18 with Christy of the Solicitor's Office.

19 Q. And the ligature with the small stick, was any blood or
20 semen detected on it?

21 A. No, there was not.

22 Q. Okay, and as to -- no tests have been done on a pair of
23 beige trousers, is that correct?

24 A. That's correct.

25 Q. As well as a cushion from the left side of the middle

MS. KAISER ON DIRECT

1 sofa?

2 A. That's correct.

3 Q. You did, however -- did you send off the cutting from
4 cushion in the middle of the sofa?

5 A. Yes, I did make a cutting from that cushion.

6 Q. Where did you forward that to?

7 A. I sent that to the DNA box, which is a secure refrig-
8 erated area where we place evidence to be picked up by oth-
9 technicians in the DNA Department.

10 Q. And as to the cushion on the right side of the sofa,
11 victim's shirt and blue jeans, was any testing done on the

12 A. No, sir.

13 Q. And the processing you testified was based on the fac-
14 that you all were looking for probative evidence and there
15 were conversations with the investigator in this case.

16 Is that correct?

17 A. That's correct.

18 Q. And you were provided with knowledge that there was a
19 bloody palm print found on the victim, is that correct?

20 A. That's correct.

21 Q. I don't have any further questions at this time. Plea-
22 answer any questions the Defense may have for you.

23 CROSS EXAMINATION

24 BY MR. SULLIVAN:

25 Q. The items that you examined, did you find anybody else

MS. KAISER ON CROSS

1 blood on the items beside the victim's?

2 A. No, sir. Well, I can't testify to whose blood it was. I

3 made a cutting from the cushion and sent that to DNA. They

4 would have to tell you whose blood that was.

5 Q. Did you do any testing on the semen, if it was semen?

6 A. Yes, a presumptive test, and it was negative.

7 Q. Negative -- no semen found?

8 A. Correct.

9 Q. Now, also sent to you were three unknown pubic hairs

10 collected from the victim. You did not test those?

11 A. No, sir, I did not. That was not sent to me.

12 Q. And you had -- are you aware that they had samples from

13 Mr. Smith and from Mr. Waldman. They weren't sampled against

14 them?

15 A. That was not submitted to evidence processing. It was

16 submitted to another department.

17 Q. Thank you.

18 SOLICITOR: No further questions.

19 THE COURT: Thank you, maam.

20 SOLICITOR: We would ask that she be excused at this

21 time.

22 THE COURT: Okay. Without objection.

23 (Witness excused by the Court)

24 SOLICITOR: Your Honor, at this time the State would

25 call Ms. Skraba.

1 NANCY SKRABA, being duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. SEAY:

5 Q. Agent Skraba, you are employed by the South Carolina
6 Law Enforcement Division. Is that correct?

7 A. Yes.

8 Q. And what is your job? In what capacity are you em-
9 ployed there?

10 A. I'm a forensic serologist and DNA analyst.

11 Q. Okay, and what does that basically mean?

12 A. I receive physical evidence from various law enforceme-
13 agencies throughout the State for analysis in investigation
14 of violent crimes.

15 Q. I perform biochemical analyses on body fluids and tes-
16 tify in Court as to my findings.

17 Q. And special training have you had in the field of recc-
18 nizing or finding DNA comparisons?

19 A. I have a Bachelor of Science Degree in medical technol-
20 from the University of South Carolina. I'm board certified
21 the American Society of Clinical Pathologists.

22 I have completed an in-house DNA training program as
23 required at SLED. In addition to my training at SLED, I
24 also attended several schools and seminars in my field of
25 serology and DNA analysis.

MS. SKRABA ON DIRECT

1 These include the F.B.I. DNA School in Quantico, Virginia,
2 where I received graduate credits at the University of Vir-
3 ginia.

4 SOLICITOR: Your Honor, at this time I'd ask that she be
5 qualified as an expert in the field of DNA examination and
6 analysis.

7 MR. SULLIVAN: No objection.

8 THE COURT: All right.

9 BY SOLICITOR:

10 Q. Agent Akraba, did you receive items listed as coming
11 from the case involving the victim, Stephanie Quinn?

12 A. Yes, I did.

13 Q. Okay, and, if you could, could you first tell us what
14 you received in relation to her case?

15 A. Yes. On October 28, 1998, I received a sexual assault
16 evidence collection kit on Stephanie Quinn, which included
17 a blood standard, hairs, vaginal swabs, oral swabs, rectal
18 swabs.

19 I also received a blood standard from Orlando Smith
20 and Theodore Waldman.

21 I received fingernail scrapings from the victim's right
22 hand and left hand.

23 On July 2nd, 1999, I received a cutting from the middle
24 cushion which was on the sofa.

25 Q. And did you also receive a swab from the coffee table

MS. SKRABA ON DIRECT

1 leg?

2 A. Yes.

3 Q. And the edge of the coffee table?

4 A. Yes, I did.

5 Q. Beginning with the sexual assault kit from the victim,
6 Stephanie Quinn, the blood standard you referred to, that's
7 her known blood?

8 A. Yes, it is.

9 Q. Okay, and what did you find when you examined first the
10 smear?

11 A. There was no spermatozoa identified.

12 Q. And as to the vaginal swab?

13 A. No semen identified.

14 Q. Oral swabs?

15 A. No semen identified.

16 Q. And the rectal swabs?

17 A. No semen identified.

18 Q. Based on those findings, I guess there is nothing for
19 you to do a comparison on, is that correct?

20 A. That's correct.

21 Q. As to the -- were you able to find or detect any blood
22 on the cuttings from the middle cushion of the victim's
23 sofa?

24 A. Yes. I identified human blood on the cushion.

25 Q. Were you able to determine whose blood that was?

MS. SKRABA ON DIRECT

1 A. Yes, I was.

2 Q. And whose blood was that?

3 A. Stephanie Quinn.

4 Q. Stephanie Quinn?

5 A. Yes.

6 Q. As to the swab from the coffee table leg, were you able
7 to detect any human blood?

8 A. No blood detected.

9 Q. And as to the swab from the edge of the coffee table,
10 was human blood detected?

11 A. No blood.

12 Q. And so, again, as to those two swabbings, there was no-
13 thing to perform a comparison to, is that correct?

14 A. That's correct.

15 Q. What DNA tests -- first off, did you find any blood in
16 the fingernail clippings of the right and left hands of the
17 victim?

18 A. Yes, I did. Human blood was identified on both.

19 Q. Okay. Were you able to conduct any DNA test on that
20 blood that was found?

21 A. The DNA was conducted on that sample. However, I did-
22 n't do the analysis of that.

23 Q. And it was considered, I believe, when you ran the test,
24 to be an insufficient amount to run the RSLP test -- DNA test,
25 is that correct?

MS. SHRABA ON DIRECT

1 A. That's correct.

2 Q. And were these fingernail clippings forwarded on to :
3 Grayson Amick for the PSR DNA testing?

4 A. Yes.

5 Q. I don't have any further questions at this time.

6 THE COURT: Mr. Sullivan.

7 CROSS EXAMINATION

8 BY MR. SULLIVAN:

9 Q. In the kit, you had a sample from Mr. Orlando Smith, I
10 believe. Correct?

11 A. A blood standard.

12 Q. This was to match against what you would examine as com-
13 ing from the table leg and stuff like that?

14 A. That's correct.

15 Q. And in all your examination, you found nothing that
16 matches Mr. Smith in your examination?

17 A. That's correct.

18 Q. Everything was the victim's?

19 A. Yes.

20 Q. Thank you.

21 SOLICITOR: I don't have anything further from the State
22 I'd ask that she be excused, Your Honor.

23 MR. SULLIVAN: No objection.

24 THE COURT: Without objection, you're excused. Thank
25 you.

1 (Witness excused from stand)

2 SOLICITOR: Your Honor, at this time the State would
3 call Grayson Amick to the stand.

4 GRAYSON AMICK, being duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY SOLICITOR:

8 Q. Agent Amick, are you employed with the South Carolina
9 Law Enforcement Division?

10 A. That's correct.

11 Q. And how long have you been with them?

12 A. About seven years.

13 Q. And what is your job description or duties there at
14 SLED?

15 A. Basically the same as Agent Skraba, forensic DNA and
16 serology.

17 Q. And how long have you been doing that?

18 A. I've been doing that for approximately three years.

19 Q. And what kind of training do you have to enable you to
20 do DNA analyses?

21 A. I have a B.S. in biology in 1989; have a PHD in bio-
22 chemistry from U.S.C. in 1993. I've been trained by Court-
23 qualified experts in the fields of forensic DNA analysis
24 and serology.

25 I've also attended several seminars and short courses

MR. AMICK ON DIRECT

1 in population genetics, forensic DNA analysis.

2 I have published in peer review journals and have been
3 involved in method development and validation at the lab, most
4 recently on PCR.

5 SOLICITOR: Your Honor, at this time I'd ask that he be
6 qualified as an expert in the field of DNA testing and
7 analysis.

8 MR. SULLIVAN: No objection.

9 THE COURT: Okay.

10 BY SOLICITOR:

11 Q. You mentioned PCR. What is PCR?

12 A. PCR is a type of DNA testing.

13 Q. And with this PCR testing, you're able to test smaller
14 quantities or amounts of blood and human fluids?

15 A. That's correct. The advantage being that you can test
16 a very small sample, single hair, or sweat. You can get an
17 answer relatively quickly and can work on degraded samples
18 as well.

19 Q. Agent Amick, do you recall receiving items for DNA test-
20 ing that listed the victim as Stephanie Chris Quinn?

21 A. I did receive some items that Nancy Skraba identi-
22 fied for you.

23 Q. And one of those items was from Stephanie Quinn?

24 A. Yes, it was.

25 Q. And did you develop DNA analysis of that blood or a DNA

MR. AMICK ON DIRECT

1 profile?

2 A. I did.

3 Q. Did you also receive blood that was taken from Orlando
4 Smith?

5 A. I did.

6 Q. And did you develop a DNA profile from that blood?

7 A. I did.

8 Q. And did you receive blood from Ted Waldman?

9 A. Theodore Waldman.

10 Q. Theodore Waldman.

11 A. I did.

12 Q. And did you develop a DNA profile from that blood?

13 A. Yes.

14 Q. By the way, did you receive fingernail clippings from
15 the victim, Stephanie Quinn, from both her left and right
16 hands?

17 A. I did.

18 Q. And were you able, based on the small amount of blood
19 that was there -- were you able to develop a DNA profile from
20 the clippings on both hands?

21 A. I was.

22 Q. And based on your expertise, training and qualifica-
23 tions, were you able to match -- make a match of the DNA
24 profile from the fingernail clippings to any of the three
25 persons I've spoken of?

MR. AMICK ON DIRECT

1 A. I did. The way the report is worded is that no DNA
2 profile unlike that of the victim, Stephanie Quinn, was devel-
3 oped from the items, the fingernail clippings.

4 In other words, the DNA profile from the fingernail clip-
5 pings matches the victim, Stephanie Quinn.

6 Q. The fingernail clippings with blood on them did match
7 Stephanie Quinn?

8 A. Yes.

9 Q. Thank you, Agent Amick. I don't have any further ques-
10 tions.

11 MR. SULLIVAN: No questions of this witness, Your Honor.

12 THE COURT: Thank you, sir.

13 (Witness excused by the Court)

14 SOLICITOR: Your Honor, at this time the State would call
15 Kimberly Black.

16 KIMBERLY T. BLACK, being duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY SOLICITOR:

20 Q. Agent Black, are you employed with the South Carolina
21 Law Enforcement Division?

22 A. Yes, I am.

23 Q. How long have you been employed there?

24 A. I've been working with them for a little over eight
25 years now.

MS. BLACK ON DIRECT

1 Q. And what's your job there or title at SLED?

2 A. I'm a forensic pathologist assigned to the trace evidence
3 department.

4 Q. How long have you been doing that?

5 A. I've been working in that department for a little over
6 five years.

7 Q. Okay, and what are your duties or job description, dut-
8 ties working in the trace evidence lab?

9 A. In the trace evidence department, we're responsible for
10 a variety of examinations. We're responsible for gun primer
11 analysis, gunpowder analysis, fiber analysis, paint and explos-
12 ives.

13 We're also responsible for hair analysis or hair compari-
14 sons.

15 In addition to that, we also analyze miscellaneous type
16 items such as plastics, miscellaneous metal fibers, and so
17 on.

18 Q. And are you familiar with having received certain samples
19 for -- in the trace evidence department related to SLED Lab
20 Number L 9812752?

21 A. Yes. I received a variety of hair samples.

22 Q. Okay, and just to -- could you please tell the items you
23 did receive regarding hair samples?

24 A. Yes. I received hair samples which were collected as
25 part of the criminal sexual assault kit from the victim,

MS. BLACK ON DIRECT

1 Stephanie Quinn. I also received hair samples which were a
2 part of a suspect evidence collection kit from a subject,
3 Orlando Smith.

4 Q. Let me ask you -- I hate to interrupt, but when you say
5 hairs, the two hair samples you received, these are hair
6 samples that are actually pulled or known to have come from
7 the individual, is that correct?

8 A. Yes. At the time that the criminal sexual assault kit
9 with these samples were taken from the victim, and also a kit
10 was taken from the suspect, there are three samples that are
11 typically taken.

12 A known head hair standard, a known public hair standard,
13 and public hair combings from each individual.

14 So when I referred to hair samples from those kits,
15 those were the items I was referring to.

16 Q. Okay.

17 A. I also received two items that were marked as vacuumings,
18 vacuuming A and Vacuuming B. I received a hair sample that
19 was actually collected from a ligature with a small stick.

20 I also -- there is duplication here -- received head
21 hair samples and pubic hair samples from Orlando Smith, in
22 addition to the hair samples that were submitted in the kit.

23 I received head hair samples and pubic hair samples from
24 a Theodore Waldman, as well as combings of the victim's pubic
25 hair, and there were some miscellaneous hairs taken from the

MS. BLACK ON DIRECT

1 victim's body, one hair from the victim's stomach, hair from
2 the victim's navel and hair from the victim's right knee.

3 There was an actual duplication here also. There was
4 also a known public hair standard and head hair standard taken
5 from Ms. Quinn, in addition to the samples in the kit.

6 Q. Okay, and once you receive all these items, are there
7 any special determinations or anything that need to be made as
8 to the probative value of this evidence as far as further
9 testing and analysis?

10 A. Yes. One of the things that we're interested in when we
11 are asked to do a hair comparison, in addition to being con-
12 cerned with where the hair evidence was collected from, the
13 location, we're also concerned with the relationship between
14 the suspect and the victim.

15 If we have reason to believe that the suspect and the
16 victim had a relationship, whether that be a marriage or a
17 friendship or simply an acquaintance relationship, in that
18 particular case we in most cases will not do a hair compari-
19 son.

20 For instance, if the suspect and victim were known to
21 travel together in the victim's car, if the suspect is known
22 to be in the victim's home, if the body is found in one of
23 those two locations, we, of course, would not be interested
24 in looking at that hair because we have reason to believe
25 that suspect has been in that location.

MS. BLACK ON DIRECT

1 The significance of the hair match in hair comparison
2 is basically to allow us to put a particular individual in
3 a particular location.

4 If that area -- if there is evidence that that individual
5 has been in that location, there is no longer any need for the
6 hair comparison.

7 Q. Okay, and were you aware in this case at any time when
8 you were either processing or after processing these items
9 that in this particular case a bloody palm print was found on
10 the victim's body?

11 A. Yes, that information was related to me after I had
12 processed some evidence.

13 Q. How long can hair -- will hair hang around or how long
14 does it last before it decomposes? Does it have a certain
15 life span?

16 A. There really isn't a decomposition on the hair itself.
17 We have had cases where bodies have been recovered and we
18 have actually been able to use the hair samples. Now, a
19 DNA analysis is done on any hair samples that are found.

20 As far as how long it will last on a particular loca-
21 tion, that depends on physical removal. Basically, if some-
22 one is vacuuming the carpet, they will remove some of the
23 hairs in the vacuum bag, and so on.

24 Q. And in this particular case, in this particular lab
25 number, what did you do with the hair samples -- all these

MS. BLACK ON DIRECT

1 hair samples that you received?

2 A. Basically in this particular case, I inventoried the
3 items that I had and marked them for return to the agency.

4 Q. And in your line of work, based on what you determined
5 from the hair samples versus a bloody palm print, is the
6 bloody palm print considered to be more probative than the
7 hairs?

8 A. It is more definitive information. We currently do have
9 a policy in our laboratory with hair samples that if there
10 is blood evidence, if there is DNA evidence, we do not do
11 a hair exam at the time.

12 Q. No further questions. Thank you.

13 CROSS EXAMINATION

14 BY MR. SULLIVAN:

15 Q. Did you receive samples from a Eric Burts, or just
16 from Mr. Smith and Mr. Waldman?

17 A. I'm sorry. What was the name?

18 Q. Did you receive just samples from Mr. Smith and Mr.
19 Waldman?

20 A. Yes, that's all I have indicated.

21 Q. And you did not receive anything from Eric Burts?

22 A. No, I have no record of that.

23 Q. Now, the foreign hair found on her stomach and navel
24 would be after she was undressed, correct?

25 A. If she was found without any clothing, yes, that would

MS. BLACK ON CROSS:

1 be . .

2 be . .

3 Q. She was found basically naked from the chest down.

4 A. Okay.

5 Q. And this would sound like an assault case specifically.
6 You wouldn't want to use those hair samples to really confirm
7 somebody's doing it or eliminate people?

8 A. . .

9 Q. I mean, you've got the hair samples in the pubic area.
10 Doesn't that put somebody pretty close to the situation?

11 A. Well, based on information that I have here with those
12 particular hair samples, taken from the stomach and navel and
13 the right knee, those would not necessarily be in the pubic
14 region.

15 We do have interest, however, if in some cases -- for
16 instance, if we have a situation where we have a suspect and
17 we have information that the suspect had no relationship with
18 the victim; for instance, a stranger that may have broken in
19 and may be a suspect in the case, then we would have an inter-
20 est in that case to look at those hairs as they compare to
21 that individual.

22 Q. Let's say this murder was a result of a botched rape
23 attempt, would you not want to know whose these unknown hair
24 samples are?

25 A. . .

Q. I mean, doesn't that make sense?

MS. BLACK ON CROSS

1 A. . . .

2 Q. If we think this man was trying to rape her, and we
3 find that hair doesn't match his, then maybe we're looking for
4 somebody else?

5 A. What you'll see with hair evidence is that it is very
6 mobile evidence, if you will. Any hairs found on the body
7 could have come from anyone who may have been at that location
8 where the body was found.

9 Had there been a particular suspect in the particular
10 case that you were able to determine, as I say, had no rela-
11 tionship, then we would have looked at those hairs to make a
12 comparison to the known individual.

13 We are not able at this point to just take hair without
14 some sort of standard to do comparison with and do the analy-
15 sis.

16 We depend on having standards from the particular indi-
17 viduals to see if we have a match with that individual.

18 And, as I stated, in this particular case because the
19 individuals here had a relationship with the victim, if
20 there had been a match it simply would have meant they had
21 been at that location, which I understand was an apartment.

22 Q. What if there had been no match? I mean, it wasn't
23 his on her stomach? What if it wasn't Mr. Waldman's on her
24 nude stomach?

25 A. It would simply mean that those hairs could have belonged

MS. BLACK ON CROSS

1 to anyone else who may have been in her apartment really at
2 any time. The lack of hair does not necessarily mean that
3 that individual wasn't involved in the case, just like the
4 presence of that hair doesn't mean they are involved.

5 It just simply states or would give you an indication
6 that that person has been at that location at some time.

7 Q. If this hair was put on her, I'm assuming, after her
8 clothes were taken down, that not's just some kind of little
9 hair just floating around. Correct?

10 A. It was my understanding that the body was found on the
11 floor or in a stairwell.

12 Q. On the floor.

13 A. So that her body would have been in contact with any
14 hair evidence that may have been on that floor or in the area.
15 If she had fallen or rolled down the stairs, then there is a
16 possibility that it could have been added to her body or
17 picked up by her body during that act.

18 Q. What if another person was -- for example, say hypo-
19 thetically Eric Burts' hair . . .

20 SOLICITOR: Objection to his using the name of Eric
21 Burts, Your Honor. I don't understand. If he's saying a
22 hypothetical person, that's not very hypothetical.

23 Q. Let's say matched that person, does that not put them
24 at the crime scene or a probability they're at the crime
25 scene?

MS. BLACK ON CROSS

1 A. Once again, the same would be true here. If there was a
2 relationship between that individual and the victim, it would
3 just simply indicate that she had been in that apartment at a
4 previous -- on a previous occasion.

5 If there is no established relationship between that indi-
6 vidual and the victim, there would be some significance in
7 finding hairs that match his in her apartment.

8 Q. Well, in this case, the hairs that were found -- you
9 knew Orlando Smith knew the girl, and you knew that Mr. Waldman
10 had been in there, so you said, well, I'm not going to
11 check because it might be theirs.

12 But why not check to eliminate them, and maybe they are
13 samples somewhere and you may find who they really belong to?

14 A. In order to properly do that without any kind of indica-
15 tion of the individual we're looking at, we would basically
16 have to get hair standards from anyone who had been in her
17 apartment at any time in -- just pulling a number out of the
18 air -- within the past year.

19 This would be very laborious and almost like a needle
20 in a haystack type comparison.

21 However, if there is an individual, a suspect or someone
22 that based on other information is a possibility, and that
23 the status is that that person did not have a relationship
24 with the victim or, more importantly, does not have a reason
25 to be at that location where the body is found, that would be

MS. BLACK ON CROSS

1 a test that we could perform.

2 However, I did not have that in this case.

3 Q. So these hairs, I presume, at still intact and could
4 be tested at some point in time if we had to?

5 A. Yes. I did not look at these hairs. They may or may
6 not be suitable for additional testing.

7 Q. Thank you, that's all.

8 SOLICITOR: Very quickly.

9 REDIRECT EXAMINATION

10 BY SOLICITOR:

11 Q. Agent Black, hairs found at the scene could just as
12 easily have come from persons working the scene, law en-
13 forcement or EMS, the coroner's office; anyone who has been
14 to a scene could deposit hairs, and it could have come from
15 them as well?

16 A. Yes, that is possible.

17 Q. And, again, the most you could say from hair evidence
18 is that someone has been at a scene at some time in the past,
19 and I believe you said it could have been within a year prior
20 to that.

21 Is that correct?

22 A. Yes, and once again, that's just a time that I basically
23 pulled out of the air. It would depend on, you know, how
24 clean the actual area is.

25 If it's a hallway or a common place like that, it could

MS. BLACK ON REDIRECT

1 be even longer than that.

2 Q. And if the struggle -- if the victim's body were found
3 on the floor, as in this case, and there was some struggle
4 and contact between her and her assailant there on the floor,
5 just as easily hairs could have transferred and picked up by
6 bodies on the floor?.

7 There's all sorts of ways for hairs to move about and
8 transfer from person to person, area to person and that
9 sort of thing. Is that correct?

10 A. Yes, sir.

11 Q. No further questions.

12 MR. SULLIVAN: Just one more.

13 RECROSS EXAMINATION

14 BY MR. SULLIVAN:

15 Q. In this case, to simply find pubic hair on her navel,
16 on her stomach, wouldn't the person likely be not dressed?

17 A. I have no indication that those were pubic hairs found
18 on her body. The only indication I have is that there was
19 hair evidence collected.

20 We don't know if those are pubic hairs, head hairs or
21 even body hairs. That determination was never made.

22 Q. What if you discovered they were pubic hairs, would it
23 change your opinion?

24 A. No, sir, it would not.

25 Q. Nothing further.

1 THE COURT: Did you examine these hairs, or are you
2 just talking about something you read?

3 A. No, sir. I did not examine the hairs.

4 Q. You haven't seen them, so you don't know?

5 A. No, sir. I do not know what type of hairs they are.

6 SOLICITOR: No further questions.

7 THE COURT: Thank you, maam.

8 SOLICITOR: May Ms. Black be excused?

9 (Witness excused by the Court)

10 SOLICITOR: Your Honor, at this time the State would call
11 Theodore Waldman.

12 THEODORE WALDMAN, being duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY SOLICITOR:

16 Q. Your name is Theodore Waldman, is that correct?

17 A. Yes, sir.

18 Q. How old are you?

19 A. Twenty-nine.

20 Q. And where do you currently reside?

21 A. Pittsburg, Pennsylvania.

22 Q. Are you originally from Pittsburg?

23 A. Yes, sir.

24 Q. Where you, however, in May of 1998 living here in
25 Greenville?

MR. WALDMAN ON DIRECT

1 A. Yes, sir.

2 Q. Where were you employed? Were you employed at that
3 time?

4 A. Yes, sir.

5 Q. Okay, where were you employed?

6 A. I was a painter, for Change of Color.

7 Q. As of May of 1998, approximately how long had you been
8 down here?

9 A. I would say approximately six to eight months.

10 Q. And when you came down here, you also carried with you
11 a little bit of a criminal record. Is that correct?

12 A. Yes, sir.

13 Q. In fact, you were on probation for possession with intent
14 to distribute cocaine or marijuana, is that correct?

15 A. Yes, sir.

16 Q. And also intimidation of a witness and a reckless en-
17 dangerment, is that correct?

18 A. Yes, sir.

19 Q. When you got down here and got employed, working for
20 the painting contractor, did you have occasion to meet
21 someone by the name of Stephanie Quinn?

22 A. Yes, sir.

23 Q. Where did you meet her?

24 A. At Burger King.

25 Q. Okay. Both of you just eating there or was she working

MR. WALDMAN ON DIRECT

1 there?

2 A. She was employed there. I had been eating there.

3 Q. Okay, and during your stay here in Greenville, approx-
4 imately how long had you known Stephanie Quinn?

5 A. Approximately one week.

6 Q. The weekend of May -- that began May 22nd, 1998, I be-
7 lieve it was Memorial Day weekend -- did you have plans with
8 Ms. Quinn for that weekend?

9 A. Yes, I did.

10 Q. And what plans did you have with her?

11 A. I had plans to go out the evening prior to Memorial
12 Day weekend to see the location of a Balloons Over Greenville
13 happening for Memorial Day, which was the following day.

14 Q. Is that Freedom Weekend Aloft that you're referring
15 to as that?

16 A. Yes.

17 Q. All right. So did you go over to her apartment at Fleet-
18 wood Manor on Friday, May 22nd, 1998?

19 A. Yes, I did.

20 Q. And did you -- you went by there right after work ini-
21 tially, is that correct?

22 A. Yes, sir.

23 Q. You spoke with her?

24 A. Yes, I did.

25 Q. And then at that time you left back out from her

MR. WALDMAN ON DIRECT

1 apartment, is that correct?

2 A. Yes, sir.

3 Q. Where did you go from there?

4 A. I went home to shower.

5 Q. All right, and you came back to her apartment that even-
6 ing, is that correct?

7 A. Yes, sir.

8 Q. Approximately what time was that?

9 A. I'm going to say approximately seven or seven thirty.

10 Q. Now, was there anybody -- was the victim home when you
11 got there the second time?

12 A. Yes.

13 Q. Okay. Were there other persons there?

14 A. Yes.

15 Q. Who all -- I don't know if you know any names, but who
16 all did you see there? Who else -- first, how many other peo-
17 ple were there?

18 A. That would be, I believe, two children and two other in-
19 dividuals. A man and a woman were there to pick up one of
20 the children. I was told one was her sister.

21 Q. Okay.

22 A. And I met a young lady from across the hall and her boy-
23 friend who I was introduced to as a gentleman named Orlando.

24 Q. Okay, and did you have a beer while you were there?

25 A. Yes, sir.

MR. WALDMAN ON DIRECT

1 Q. And what, if any, contact did you have with the fellow
2 you said was Orlando?

3 A. Very limited.

4 Q. Okay, and do you see the person named Orlando in the
5 Courtroom today?

6 A. Yes, I do.

7 Q. Would you please point him out for us?

8 A. Right there. (Indicating Defendant)

9 SOLICITOR: Let the record reflect he indicated the
10 Defendant)

11 BY SOLICITOR:

12 Q. Now, did you stay very late over there at her apartment
13 that night?

14 A. No, sir.

15 Q. When you left, was Orlando still there?

16 A. Yes, sir.

17 Q. Was the girl from across the hall still there?

18 A. No.

19 Q. And did you come back that night to the victim's apart-
20 ment after leaving there?

21 A. No, sir.

22 Q. What, if any, attempt did you make to contact the vic-
23 tim the next day?

24 A. I made a few phone calls.

25 Q. And were you able to reach Ms. Quinn?

A. No, sir.

MR. WALDMAN ON DIRECT

1 Q. Not having reached her by telephone, what did you do
2 next?

3 A. . .

4 Q. The next morning, May 23rd?

5 A. I drove over there.

6 Q. To Ms. Quinn's apartment?

7 A. Yes, sir.

8 Q. And let me ask you -- where was Ms. Quinn's apartment
9 located?

10 A. . .

11 Q. As far as the building itself it was in?

12 A. It would be up on the second floor.

13 Q. Okay, and did you go up to her apartment door?

14 A. Yes, sir.

15 Q. What did you find when you got up to her apartment door?

16 A. The door was adjacent about an inch or two inches.

17 Q. You mean partially open?

18 A. Partially open, yes.

19 Q. Okay. What did you do at that point?

20 A. I knocked on it.

21 Q. Okay. What happened when you knocked on it?

22 A. It opened a few inches more from my knock, and I called
23 out, hello, is anyone here.

24 Q. Did you get any response?

25 A. No, sir.

MR. WALDMAN ON DIRECT

1 Q. Okay, and what did you do after you didn't receive a
2 response?

3 A. I pushed the door open and, again, asked hello.

4 Q. Did you see anything unusual at that point?

5 A. Yes, I did. Burnt spots on the couch and floor.

6 Q. Did you see Ms. Quinn around?

7 A. Yes, I did. I saw her feet at first.

8 Q. And where was that?

9 A. At the other end of the couch on the floor, past the
10 coffee table.

11 Q. Okay. Did you attempt to touch her or move her?

12 A. No, sir.

13 Q. What did you do after finding her body there?

14 A. I dropped to one knee. To be honest I was sick to my
15 stomach. I then reached for the telephone to dial nine one
16 one.

17 Q. And did you dial nine one one?

18 A. Yes, sir.

19 Q. Okay, and were you instructed to do anything in parti-
20 cular while you were on the phone dialing nine one one?

21 A. Yes, I was.

22 Q. What was that?

23 A. I was asked to see if she was breathing.

24 Q. Did you touch her?

25 A. No, sir.

MR. WALDMAN ON DIRECT

1 Q: Did you check on her kid?

2 A. Yes, sir.

3 Q. What did you find when you did that?

4 A. I ran down the hall and to the right. In the last
5 room, due to crying, I could hear a small baby in a crib.

6 Q. Did you have to step over her body to get back there?

7 A. Yes, sir.

8 Q. Did you touch or move her body in doing that?

9 A. No, sir.

10 Q. And did you find her eight month old son back there in
11 the back bedroom?

12 A. Yes, sir.

13 Q. Let me ask you if you can identify two photographs.
14 If you have any trouble seeing from there, let me know and
15 you can step back some.

16 It may be difficult to see, but I want to show you
17 this photograph which is marked as State's Exhibit 8 and
18 placed into evidence.

19 Is this an accurate representation of the scene as you
20 found it when you arrived on the morning of May 23, 1998?

21 A. Yes.

22 Q. Is that an accurate reflection of Ms. Quinn's body posi-
23 tion from that angle?

24 A. Yes, sir.

25 Q. Let me also show you what's been marked and admitted into

MR. WALDMAN ON DIRECT

1 evidence as State's Exhibit Number 9. This is from a differ-
2 ent angle.

3 Is this an accurate representation of Ms. Quinn's body
4 position when you arrived at the scene?

5 A. Yes, sir.

6 Q. Okay, and you didn't touch her or move her from that
7 position?

8 A. No, sir.

9 Q. After calling nine one one and checking on the baby,
10 did you do anything to attempt to provide any assistance or
11 help?

12 A. Yes, I did.

13 Q. What did you do?

14 A. I went across the hall and knocked on the door adjacent
15 to hers, as well as down a flight of steps two doors below.

16 Q. What kind of distance would you estimate is between the
17 door of the victim's apartment and the door across that land-
18 ing?

19 A. Four or five feet.

20 Q. A small area?

21 A. Very small.

22 Q. And you knocked on the door across from the victim's
23 apartment, Stephanie Quinn, as well as the door down-
24 stairs? Apartment door downstairs, is that correct?

25 A. Yes, sir.

MR. WALDMAN ON DIRECT

1 Q. Did you receive any assistance?

2 A. No, sir.

3 Q. And did you wait at Ms. Quinn's apartment door for the
4 law enforcement to arrive?

5 A. Yes.

6 Q. And you were subsequently later interviewed by Investi-
7 gator Gene Donohue of the Greenville County Sheriff's Office.
8 Is that correct?

9 A. Yes, sir.

10 Q. And you provided him with a written statement at that
11 time, is that correct?

12 A. Yes, sir.

13 Q. And you also provided blood, hair and fingerprint samples,
14 is that correct?

15 A. Yes, sir.

16 Q. And you did so consensually?

17 A. Yes, sir.

18 Q. Thank you, Mr. Waldman. I don't have any further ques-
19 tions at this time.

20 MR. SULLIVAN: Just a couple.

21 CROSS EXAMINATION

22 BY MR. SULLIVAN:

23 Q. This happened over two years ago, so your memory may
24 not be perfect.

25 This is the statement you gave. Do you recognize that?

MR. WALDMAN ON CROSS

1 A. Yes, sir.

2 Q. Please read that. I want to ask you a few questions as
3 to time and some other things.

4 A. The entire statement?

5 Q. Uh hm. To refresh your memory.

6 A. (Beginning to read statement)

7 Q. You don't have to read it out loud. Just go ahead and
8 read it to yourself.

9 A. Okay. (Reading document) Yes, sir.

10 Q. You had gone by there in your work clothes and then went
11 home and showered and went back. I believe in your state-
12 ment you gave -- this was the very next morning. Correct?

13 A. Yes.

14 Q. And you said you got there from nine to nine thirty?

15 A. Yes.

16 Q. And that you stayed until about eleven o'clock?

17 A. Ten thirty to eleven, yes.

18 Q. Ten thirty, eleven. And you had met Chris at the
19 Burger King, correct?

20 A. Yes.

21 Q. Did you know she was married?

22 A. No.

23 Q. You didn't know where her husband was?

24 A. No.

25 Q. What kind of car do you drive? At that time, what were

MR. WALDMAN ON CROSS

1 you driving?

2 A. At that time, a black Camaro Z28, 1986 model.

3 Q. And in your statement, what kind of condition -- how was
4 Chris acting? Use your statement . . .

5 A. When I first arrived? Later?

6 Q. What you said here. Later -- right here.

7 A. Later, very jumpy, very wired.

8 Q. And read what you say in your statement right there.
9 Read that out loud.

10 A. I could tell she was wired and was drinking.

11 Q. And . . .

12 A. And she told me that she had been doing some cocaine
13 with the black guy in the room.

14 Q. Isn't it a fact that you and Orlando used a joint to-
15 gether that day or that evening in the apartment?

16 A. No, sir.

17 Q. In your statement, you said that you saw -- you were
18 afraid they were doing drugs and you -- and you said that you
19 used to be a drug person, and that you got out of there be-
20 cause of that?

21 A. Yes, sir.

22 Q. The next day when you went back and were interviewed by
23 Officer Donohue, you wanted a cigarette and he didn't have
24 any, and you got them out of your car, your Marlboro pack,
25 and found a joint in the cigarette pack in your car?

MR. WALDMAN ON CROSS

1 A. Yes, sir, a marijuana joint. Yes, sir.

2 Q. So do you use marijuana or not?

3 A. Yes, I do use marijuana. I do not use cocaine.

4 Q. And you deny sharing a joint with Orlando Smith in her
5 apartment that night?

6 A. Yes, sir.

7 Q. And isn't it another fact that Orlando left before
8 you did?

9 A. No, sir.

10 Q. You're saying you got there and then you
11 left, and he and Chris were there by themselves?

12 A. As far as I could see, yes, sir.

13 Q. I have nothing further of this witness.

14 REDIRECT EXAMINATION

15 BY SOLICITOR:

16 Q. Stephanie never told you that her husband was incarcer-
17 ated?

18 A. No, sir.

19 Q. No further questions.

20 THE COURT: Anything else?

21 MR. SULLIVAN: No further questions.

22 THE COURT: Thank you, sir.

23 (Witness excused from stand)

24 THE COURT: Any objection to him being excused?

25 MR. SULLIVAN: No objection.

1 THE COURT: Okay.

2 SOLICITOR: Call Eric Burts.

3 ERIC BURTS, being duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY SOLICITOR:

7 Q. Mr. Burts, how old are you?

8 A. Twenty-five.

9 Q. Okay, and what is your current occupation or job?

10 A. Painting.

11 Q. Okay, and were you here in Greenville back in May of
12 1998?

13 A. Yes.

14 Q. And you're a life-long resident of Greenville, is that
15 correct?

16 A. Yes.

17 Q. And you have been convicted of shoplifting, is that cor-
18 rect?

19 A. Yes..

20 Q. And I believe a fraudulent check, is that correct?

21 A. Yes.

22 Q. Did you know a girl named Chris Quinn?

23 A. Yes.

24 Q. And approximately how long did you know her?

25 A. For how long?

Q. For how long had you known her?

MR. BURTS ON DIRECT

1 A. About a year, year and a half.

2 Q. Was this during the time when she was living over
3 at Fleetwood Manor?

4 A. Yes.

5 Q. Okay, and did you see her very often?

6 A. Yes.

7 Q. Why is it you saw her?

8 A. I would deal crack to her.

9 Q. So you were selling it and she was buying it, is that
10 correct?

11 A. Yes.

12 Q. And do you recall having any contact with Chris Quinn
13 on May 22, 1998?

14 A. Yes.

15 Q. And do you recall the first contact you had with her?
16 Was that around six?

17 A. Yeah, about six, six thirty.

18 Q. Okay, and why did you have that contact with her?

19 A. Because she had paged me for some crack.

20 Q. And did you in fact go to her apartment?

21 A. Yes.

22 Q. And did you sell her that crack cocaine?

23 A. Yes.

24 Q. While you were there, that first time you went over
25 there that Friday evening, did anybody go with you?

MR. BURTS ON DIRECT

1 A. Yes, I had a couple of people with me.

2 Q. Was Marcus Martin one of them?

3 A. Yes.

4 Q. And did you have occasion to go in her apartment at
5 that time and use the phone?

6 A. Yes.

7 Q. After you concluded your business and using the phone,
8 what did you do next?

9 A. I left.

10 Q. Where did you go back -- where to?

11 A. To Augusta Hills.

12 Q. Okay, is that where you live or is that just another

13 ...

14 A. No, that's where I hang out at.

15 Q. Okay, and you're aware that Ms. Quinn lived there in
16 Fleetwood Manor?

17 A. Yes.

18 Q. Did you have occasion to go back there a second time
19 that night?

20 A. Yes.

21 Q. And did you go back to Fleetwood again to sell some
22 more crack?

23 A. Yes.

24 Q. And did you see a woman known as Shirley Jean at that
25 time?

MR. BURTS ON DIRECT

1 A. Yes.

2 Q. And what, if any, contact did you have with her?

3 A. Well, me and another guy took Shirley Jean and I guess
4 it would be her boyfriend to work, and when we come back
5 we -- well, when we took him to work we went to Augusta
6 Hills.

7 Q. Again?

8 A. Yes.

9 Q. Now, you came back a third time that night to Fleetwood
10 Manor, is that correct?

11 A. Yes.

12 Q. And why were you coming back a third time?

13 A. To sell her more crack.

14 Q. To the victim, Chris?

15 A. Yes.

16 Q. And approximately what time was this, the third time you
17 went back to Fleetwood?

18 A. That was around twelve. Around twelve o'clock.

19 Q. Okay, and you were accompanied by Michael Richardson and
20 Benny Irby, is that correct?

21 A. Yes.

22 Q. Okay. Let me ask you -- I show you what's marked as
23 State's Exhibit 2. Do you recognize that area in that
24 photo?

25 A. Yes.

MR. BURTS ON DIRECT

1 Q. What area is that?

2 A. That's the back door to Chris' apartment.

3 Q. And is that the door you went to the third time you went
4 to sell Chris crack?

5 A. Yes.

6 Q. And who all was there when you got to Chris' apartment
7 that night? The third time to the back door?

8 A. Well, it was her and one of her kids. I'm not sure which
9 one. And Orlando.

10 Q. Have you known Orlando long?

11 A. Yes.

12 Q. How long would you estimate?

13 A. Around fifteen or better years.

14 Q. Okay, and the person you named as Orlando just a second
15 ago as being with Chris at her apartment around midnight,
16 May 22, 1998, do you see him in the Courtroom today?

17 A. Yes.

18 Q. Could you please identify him for the Court?

19 A. Right here.

20 Q. Indicating the Defendant?

21 A. Yes.

22 Q. So you got there and Chris was there, as well as Orlando
23 and one of her children. Did you sell her any crack?

24 A. Yes.

25 Q. What did you do after you sold Chris the crack that third

MR. BURTS ON DIRECT

1. time?

2 A. Went -- left out the back door.

3 Q. Where did you go from there?

4 A. Back to Augusta Hills.

5 Q. What, if any, further contact did you have with Chris
6 Quinn that night?

7 A. After that?

8 Q. Yes.

9 A. None.

10 Q. Did you have any further contact with Orlando Smith
11 that night?

12 A. Uhuh.

13 Q. So when you left her apartment around midnight or a
14 little after, on May 22nd going into May 23rd, Chris and
15 Orlando and one of her children were there alive when you
16 left.

17 Is that correct?

18 A. Yes.

19 Q. Is it possible that when you were there the third time
20 that Orlando was aware you were delivering drugs to Chris?

21 A. Yes.

22 Q. No further questions.

23 CROSS EXAMINATION

24 BY MR. SULLIVAN:

25 Q. How long were you in the drug business?

MR. BURTS ON CROSS

1 A. A short amount of time. Probably a couple of months.

2 Q. And you were basically Ms. Quinn's supplier of crack
3 cocaine?

4 A. Yes. One of them.

5 Q. You had other customers?

6 A. Yes.

7 Q. Shirley Jean, I think?

8 A. Uh hm.

9 Q. And Chris -- the first time you went over it was around
10 six o'clock, and you were with a guy called Marcus Martin, is
11 that right?

12 A. Yes.

13 Q. And you took some crack cocaine, and did you get paid
14 for it?

15 A. Yes.

16 Q. You went back over again. Now, when you'd go over
17 there, there's a main entrance and there's a back door, but
18 you were going on the back side in the alley way, weren't
19 you?

20 A. Yes.

21 Q. To be more discreet?

22 A. Uh hm.

23 Q. And you went over again to make another delivery of crack
24 cocaine?

25 A. Yes.

MR. BURTS ON CROSS.

1 Q. And at one point -- at that time, I think you were with
2 Michael Richardson and a guy named Frank Irby, is that or-
3 rect?

4 A. Uh hm.

5 Q. And I believe you stated that -- you stated a white girl
6 at Fleetwood owed Marcus and me some money. Is that correct?

7 A. Excuse me?

8 Q. That a white girl in Fleetwood Manor owed you and Marcus
9 some money?

10 A. . .

11 SOLICITOR: Objection, Your Honor.

12 THE COURT: Why?

13 Q. You never made that statement?

14 SOLICITOR: Hearsay.

15 THE COURT: He just asked him if he made that state-
16 ment. I overrule the objection.

17 A. No.

18 BY MR. SULLIVAN:

19 Q. The last time you went over, according to you, was at
20 midnight?

21 A. Uh hm.

22 Q. And you claim you saw Orlando over there?

23 A. Yes.

24 Q. Did you claim you saw Orlando at an earlier time?

25 A. Excuse me?

MR. BURTS ON CROSS

1 Q. It was an earlier time you saw Orlando, not at mid-
2 night?

3 A. No, I saw him earlier and at midnight.

4 Q. After you went back to Augusta Hills, that's not far
5 from -- it's across from Augusta Road, isn't it?

6 A. Uh hm.

7 Q. This was about midnight. You took Mike's car, didn't you?

8 A. Yes.

9 Q. And you left this time by yourself?

10 A. Yes.

11 Q. And you stayed about two hours?

12 A. . .

13 Q. They had to page you to find you to bring the car back?

14 A. Yes.

15 Q. And you got back at 2:15, so you were gone for two hours
16 by yourself?

17 A. Yes.

18 Q. You came back and your statement -- pardon me -- you said,
19 I got some pussy or gone and got a trick. Is that what you
20 told the boys?

21 A. . .

22 SOLICITOR: Objection, Your Honor. He's not referencing
23 any statement . .

24 THE COURT: Let him see it.

25 (Counsel showing document to witness)

MR. BURTS ON CROSS

1 A. No. I didn't tell him -- I mean, he knew where I was
2 going, but he did not -- I mean, I did not state that to
3 him.

4 BY MR. SULLIVAN

5 Q. You had told me . .

6 A. Yeah.

7 Q. . . you had two hours and you were going out to have
8 sex. Correct?

9 A. Correct.

10 Q. And isn't it true that you went back over to Chris for
11 this adventure?

12 A. No.

13 Q. Had you ever slept with her before?

14 A. . .

15 SOLICITOR: Objection, Your Honor. Can we approach?

16 THE COURT: Well, it was just a simple question. Had he
17 ever slept with her before? He can answer that question.

18 A. No.

19 Q. Were you ever charged with selling crack?

20 A. No.

21 Q. You never gave any hair samples to the police, did you?

22 A. No.

23 Q. Nothing further.

24 SOLICITOR: A few questions, Your Honor.

25 THE COURT: I'm going to let the jury step out and

1 take just a short break. We've been in here a little
2 while, and -- about ten or fifteen minute recess.

3 Do not discuss the case at this time.

4 Thank you.

5 (Jury excused from Courtroom at 10:39 A.M.)

6 (Court stood in recess until 11:15 A.M., when the matter
7 resumed)

8 THE COURT: Mr. Sullivan, I didn't know -- I thought you
9 were referring to statements made -- that he made, but then
10 I find out that maybe he didn't make those statements; that
11 somebody else made those statements.

12 So that was what concerns me a little bit. I don't
13 know where you got the statement. I don't doubt that you
14 have them. You were looking at some statements, but I don't
15 know whose statements they are.

16 SOLICITOR: Your Honor, I believe those were the state-
17 ments of . . .

18 MR. SULLIVAN: Michael Richardson.

19 SOLICITOR: Michael Richardson as well as Frank Irby,
20 and what he was attempting to do was use the hearsay state-
21 ments and put words -- attribute words to Eric Burts without
22 their testimony.

23 Even so, I think he would be precluded from using that
24 anyway, to establish some sort of third party guilt on Mr.
25 Burts.

1 Anything in those statements is still not inconsistent
2 with the guilt of the Defendant and the evidence against Mr.
3 Smith.

4 THE COURT: What are these statements?

5 SOLICITOR: He's got them under subpoena, Your Honor.
6 Irby, at least.

7 MR. SULLIVAN: Michael is supposed to be here. Mr.
8 Richardson is incarcerated.

9 He was telling the Defendant this morning that he was
10 going to testify.

11 THE COURT: Well, you know, . .

12 SOLICITOR: I'd ask you to instruct the jury to disre-
13 gard anything referenced by these witnesses who haven't testi-
14 fied, Your Honor, that Mr. Sullivan is using.

15 THE COURT: How about that, did you use . .

16 MR. SULLIVAN: I didn't use anything from his.

17 THE COURT: You didn't use anything from Benny Frank
18 Irby?

19 MR. SULLIVAN: No, sir.

20 SOLICITOR: I thought there was a quote.

21 MR. SULLIVAN: I asked him if she owed him money.

22 THE COURT: If he owed . .

23 MR. SULLIVAN: If the girl -- no, if the girl owed him
24 any money.

25 THE COURT: Okay.

1 MR. SULLIVAN: And I learned it from that. In the ques-
2 tion I didn't say he said you said -- I asked, did she owe
3 you any . .

4 THE COURT: Okay.

5 MR. SULLIVAN: I can rephrase the question also.

6 SOLICITOR: I believe she answered the question, did
7 she owe him any money. The other time he was exhibiting a
8 statement allegedly made by Mr. Burts, based on statements of
9 other witnesses who have not testified in this case.

10 I don't think that testimony is relevant in any way. I
11 think it goes too far into third party guilt.

12 MR. SULLIVAN: I understand it's my theory of the case,
13 but I can ask -- I can rephrase it without using the state-
14 ment. I can ask point blank if he had sex after twelve
15 o'clock that night, and he can deny it or say he did or he
16 didn't.

17 THE COURT: The way you are going to have to do this --
18 when you were standing up there asking the question and you
19 gave it to him, I thought you were giving him his statement.

20 MR. SULLIVAN: No, they didn't take one from him.

21 SOLICITOR: That's what I was trying to clarify.

22 MR. SULLIVAN: They didn't take a statement, and I don't
23 have one from him.

24 SOLICITOR: He was orally interviewed, and I think
25 Agent Donohue testified to that, that he was interviewed.

1 That he did speak with him, but there is not a written
2 statement.

3 THE COURT: Okay. The proper way to do this is to ask
4 him if he had a conversation -- if he was with Michael
5 Richardson on May 22 just to lay a foundation, and then if
6 he told . .

7 SOLICITOR: Your Honor, I would still object.

8 MR. SULLIVAN: I can ask it another way.

9 THE COURT: Then you can call Richardson up then if he
10 contradicts him.

11 MR. SULLIVAN: He's here now and if he's not going to ca
12 him I'd like to have the Court bring him up.

13 THE COURT: If he's here, I would say the State has got
14 to make him available.

15 MR. SULLIVAN: Mr. Orlando saw him this morning. They
16 had a conversation this morning.

17 So I know he's down there.

18 THE COURT: Okay.

19 SOLICITOR: I still haven't made a decision on whether
20 I intend to call him personally, but I think he is here,
21 and I haven't had him sent back.

22 THE COURT: Okay. Michael Richardson is listed as a wit
23 ness by the State, and if he wants to call him he can call
24 him.

25 But the rules of evidence say that you've got to lay a

1 foundation. The day he had a conversation with Richardson,
2 if he had it, if he talked about going over there, and then
3 ask him straight up this or that, you know, and tell him
4 you're going to call Richardson. That's the way you're
5 supposed to do it.

6 MR. SULLIVAN: All right.

7 THE COURT: Okay, I've been informed by several individ-
8 uals that there's been some talking to witnesses as they
9 were leaving and in the hallway.

10 I'm going to instruct everybody in here that, you know,
11 you could be arrested if you say anything to a witness.

12 In the Courthouse here, I could hold you in contempt of
13 Court and sentence you to a year in jail, and you'd have to
14 serve every day of it.

15 So I'm not going to have any problem here in the Court-
16 house, and I would admonish all of you that if you were to
17 try to intimidate the witnesses outside this Courthouse, you
18 could be charged with that.

19 So I'm going to admonish everybody that is in this
20 Courthouse not to say anything or intimidate a witness in any
21 way. That's a very serious matter.

22 Okay, what do you want to do about Mr. Richardson? Do
23 you want to call him or not?

24 MR. SULLIVAN: If the State doesn't call him, I would
25 like to call him. He's downstairs. I'd call him in my

1 case if they're not going to. He's on the list and he's
2 here.

3 THE COURT: He is on the witness list. Is he down-
4 stairs?

5 DEPUTY: He came over on the van with us.

6 THE COURT: Would you make him available to Mr.
7 Sullivan to talk to. Thank you.

8 Now, I'm going to have to instruct the jury unless you
9 are going to -- are you going to call Richardson and go over
10 that statement with him?

11 Those questions you asked Mr. Burts?

12 MR. SULLIVAN: Yes, Your Honor.

13 THE COURT: All right. If you want to rephrase that then
14 Mr. Sullivan, and ask him if he admits or denies that he had
15 that discussion with Mr. Richardson, and it not only comes
16 in for the truth of the matter but for impeachment purposes,
17 you understand.

18 Okay.

19 MR. SULLIVAN: Okay.

20 THE COURT: You want to go into your examination with
21 him?

22 MR. SULLIVAN: I'd go into that one thing.

23 THE COURT: Okay.

24 SOLICITOR: Do I get a chance to redirect?

25 THE COURT: Yes.

MR. BURTS ON CROSS CONT'D.

1 SOLICITOR: Okay.

2 THE COURT: You would get a chance at redirect. Bring
3 the jury back in.

4 (Jury returned to Courtroom)

5 THE COURT: I had let them go ahead and order lunch, and
6 they wanted to go smoke, so that has been done.

7 THE COURT: All right, Mr. Sullivan, do you want to ask
8 a few more questions before Mr. Seay has redirect?

9 MR. SULLIVAN: Yes, sir.

10 CROSS EXAMINATION CONTINUED

11 BY MR. SULLIVAN:

12 Q. Now, you were with a fellow named Michael Allen
13 Richardson on the night of May 22nd, correct?

14 A. Yes.

15 Q. Into the early morning hours of the 23rd, is that
16 correct?

17 A. Yes.

18 Q. And sometime after midnight, you had left Fleetwood and
19 gone back to Augusta Hills?

20 A. Yes.

21 Q. And then you borrowed his car and was gone about two
22 hours, is that correct?

23 A. Yes.

24 Q. And when you got back did you have a conversation with
25 him?

MR. BURTS ON CROSS

1 A. No, not about, you know . .

2 Q. Did you talk to him about having sex?

3 A. No, what you had down in the statement was not what I
4 told him.

5 Q. What did you tell him?

6 A. I'm not sure exactly what I told him, but I know I did
7 not tell him -- did not state to him that I had -- I was gone
8 to trick or whatever you had stated there.

9 Q. You deny that?

10 A. Yes.

11 Q. Okay, I have nothing further.

12 THE COURT: All right.

13 REDIRECT EXAMINATION

14 BY SOLICITOR:

15 Q. After you returned from Fleetwood Manor that last time
16 you went there with Michael Richardson and Benny Irby, . .

17 A. Yes.

18 Q. . . and you all went back to Augusta Hills and you bor-
19 rowed Michael Richardson's car, . .

20 A. Yes.

21 Q. . . where did you go?

22 A. I went to a friend's house.

23 Q. Who is that friend?

24 A. Carolyn Bell.

25 Q. Where did she live at the time?

MR. BURTS ON REDIRECT

1 A. Pleasant Valley.

2 Q. And sometime shortly after -- sometime after Chris was
3 found dead, you met with Investigator Donohue, didn't you?

4 A. Yes.

5 Q. And in fact, you provided him with that information about
6 Carolyn Bell then, is that correct?

7 A. Yes.

8 Q. Had you ever had any problems with Chris?

9 A. No. Uh uh.

10 Q. How would you characterize your feelings or thoughts
11 about her?

12 A. Well, what you mean? Do you . .

13 Q. Did you like or dislike her?

14 A. . . mean what type of person she was? We was fine. She
15 wasn't no mean person, if that's what you're saying, you
16 know. No.

17 Q. And on May 22nd wasn't the first time you had ever had
18 drug dealings with her. Right?

19 A. Was it the first?

20 Q. That was not the first time you had had drug dealings
21 with her?

22 A. No.

23 Q. And was there any significant problems with her ability
24 to pay you for the drugs you sold her?

25 A. No.

MR. BURTS ON REDIRECT

1 Q. And back to when you met with Investigator Donohue follow-
2 ing Chris' death, when requested you did voluntarily give to
3 him finger and palm prints, as well as a belt?

4 A. Yes.

5 Q. Is that correct?

6 A. Yes.

7 Q. And it's your testimony here today that when you left
8 Fleetwood Manor and left Chris' apartment, Chris, Orlando and
9 one of her children were there alive when you left, is that
10 correct?

11 A. Yes.

12 Q. And you did not go back -- your testimony is you did nt
13 go back to Fleetwood Manor that evening?

14 A. No.

15 Q. That's not your testimony or, no, you didn't go?

16 A. I didn't go back.

17 Q. You did, however, go for a little bit of R and R and wen
18 to see Carolyn Bell, is that correct?

19 A. Yes.

20 Q. No further questions.

21 THE COURT: Any further questions.

22 RECROSS EXAMINATION

23 BY MR. SULLIVAN:

24 Q. When you talked to Officer Donohue, did you tell him
25 she lived in Piedmont Manor?

MR. BURTS ON RECROSS

1 A. Excuse me?

2 Q. Did you initially say she lived in Piedmont Manor?

3 A. Carolyn?

4 Q. Uh hm.

5 A. No. I said that Piedmont Manor is the area, but she
6 lives in Pleasant Valley.

7 Q. In your conversation with Officer Donohue when you gave
8 him your statement, you did not mention Pleasant Valley but you
9 said Piedmont Manor?

10 A. I could have. I could have mentioned Piedmont Manor,
11 but, I mean, he -- me and him was on line to where he knew I
12 was talking about a house and not an apartment,
13 because he was asking me for street numbers which I did not
14 know.

15 Q. No further questions.

16 REDIRECT EXAMINATION

17 BY SOLICITOR:

18 Q. Just to clarify, when you talked to Investigator Donohue
19 you told him you went to Carolyn Bell's house near Piedmont
20 Manor, is that correct?

21 A. Yes. I mean, I -- I couldn't say that I said Pleasant
22 Valley or Piedmont Manor, which one -- I don't remember that,
23 but I do recall he did know I was talking about a house and
24 I could have said Piedmont Manor.

25 I'm really not sure.

MR. BURTS ON REDIRECT

1 Q. And you didn't actually give a written statement, did
2 you?

3 A. No.

4 Q. No further questions.

5 THE COURT: Thank you, Mr. Burts. You can come down.

6 (Witness excused from stand)

7 SOLICITOR: State would call Lavonda Shaw.

8 LAVONDA SHAW, being duly sworn,

9 testified as follows:

10 DIRECT EXAMINATION

11 BY SOLICITOR:

12 Q. Ms. Shaw, how old are you?

13 A. Thirty-one.

14 Q. And where do you currently live?

15 A. At [REDACTED].

16 Q. And is that across the landing there -- right across
17 from the door of [REDACTED]?

18 A. Yes, it is.

19 Q. And how long have you lived in [REDACTED]?

20 A. For twenty-four years.

21 Q. And so you were living there in [REDACTED], Fleetwood
22 Manor, on or about May 23, 1998, is that correct?

23 A. That's correct.

24 Q. And at that time, who was living with you in your home?

25 A. My son and my daughter and Orlando Smith.

MS. SHAW ON DIRECT

1 Q. How old were your children at that time?

2 A. My son was ten and my daughter was seven.

3 Q. And Orlando Smith was living with you?

4 A. Yes.

5 Q. What was you all's relationship at that time?

6 A. He was my lover.

7 Q. And how long had you all been seeing each other?

8 A. About four years.

9 Q. And as of May 22-23, 1998, you all were still together,
10 is that correct?

11 A. That's correct.

12 Q. And did you also know the girl who lived across the
13 landing there from you in N108?

14 A. Yes.

15 Q. Did you know her as Chris Quinn?

16 A. Yes.

17 Q. Approximately how long had she lived there while you were
18 living in N107?

19 A. I'm not sure if it was a year, but close to a year.

20 Q. And did you know that she had a couple of children liv-
21 ing with her?

22 A. Yes.

23 Q. Was Ms. Quinn someone you had visited with on occasion?

24 A. Yes.

25 Q. And I want to take you to -- first off, would you

MS. SHAW ON DIRECT

1 estimate the size of that landing between the doors is small
2 or large?

3 A. Between my apartment door and hers?

4 Q. Yes.

5 A. Three to five steps from my door to hers.

6 Q. Three to five steps. Now, on the evening of May 22nd,
7 1998, approximately what time that evening did Orlando Smith
8 originally leave your apartment?

9 A. That Friday Night?

10 Q. Yes.

11 A. Six -- between six and seven that evening.

12 Q. Okay, and how was he dressed when he left your apart-
13 ment at that time?

14 A. Casually dressed.

15 Q. Okay. What was he wearing?

16 A. A pair of kahkis, a blue and red shirt.

17 Q. Was that a striped shirt?

18 A. Yes.

19 Q. And what was the condition of those clothes?

20 A. They were in good condition.

21 Q. Were they clean?

22 A. Yes.

23 Q. Were they pressed?

24 A. Yes. He was dressed to go out.

25 Q. Were his pants covered in paint, dirt, anything like

MS. SHAW ON DIRECT

1 that, that he wore out that night?

2 A. No.

3 Q. After he left, approximately six-- between six and seven
4 to go out when he was dressed, neatly dressed, approximately
5 what time did you see him next?

6 A. Probably between nine and ten o'clock that night.

7 Q. Where did you see him?

8 A. In my house.

9 Q. And what, if anything, did he do at that time?

10 A. He came in. He got a cigarette from me, got a beer
11 out of the refrigerator.

12 Q. Okay, and was Orlando still dressed the same as when he
13 left between six and seven?

14 A. Yes.

15 Q. When did you see him next after that visit, if you
16 know?

17 A. Between two thirty and three o'clock that morning.

18 Q. Okay, and let me ask you this. When he came in at that
19 hour, were you up or already in bed?

20 A. I was already asleep.

21 Q. And do you know what, if anything, he did when he came
22 in that night between two thirty and three?

23 A. I let him in. I went back into my bedroom to get in
24 bed and he took a shower.

25 Q. And anything unusual about that?

MS. SHAW ON DIRECT

1 A. About him taking a shower?

2 Q. Between two thirty and three in the morning?

3 A. That's something he normally wouldn't do.

4 Q. Did -- when he came in that night, between two thirty and
5 three A.M., did he mention anything to you about Chris Quinn,
6 the woman in apartment [REDACTED], being injured, dead or other-
7 wise?

8 A. No, he didn't.

9 Q. If he had such knowledge, is it something, based on
10 you all's relationship, that you would have expected him to
11 tell you about?

12 A. Yes.

13 Q. Now, let's go to the -- that was the wee morning hours,
14 two thirty to three A.M. on May 23rd.

15 The next morning, May 23, 1998, did you have occasion to
16 see anything unusual about him?

17 A. The next morning?

18 Q. Yes.

19 A. With him or . . .

20 Q. Yes. Well, in regards to police or anything like that?

21 A. Yes.

22 Q. What first grabbed your attention that morning when you
23 first got up? The police cars?

24 A. The whole court was full of police cars.

25 Q. And where was the Defendant when you saw the police cars?

MS. SHAW ON DIRECT

1 A. He was in my bedroom.

2 Q. Did you inform him of it?

3 A. Yes, I did.

4 Q. What did he then do?

5 A. He looked out the window with me.

6 Q. And did he stay in the apartment?

7 A. Yes, we both left out of the apartment at the same time
8 together.

9 Q. And what did he leave with at that time?

10 A. When he left out of the apartment?

11 Q. Yeah, did he leave with anything? Was he holding any-
12 thing when he left?

13 A. His fishing rod and fishing bucket that he fished with.

14 Q. And were you aware at that time that he had any plans to
15 go fishing that morning, prior to seeing him with the pole?

16 A. No, I didn't.

17 Q. And so from seeing the police there, the police at Chris'
18 apartment, did Orlando mention anything to you about knowing
19 what had happened to Chris at that time?

20 A. No, he didn't.

21 Q. If he had any knowledge about it, would you have expected
22 he would have provided that to you?

23 A. Yes.

24 Q. Did you have an occasion that morning to speak with In-
25 vestigator Donohue?

MS. SHAW ON DIRECT

1 A. Yes, I did.

2 Q. And did you allow him to come into your apartment to
3 look for the clothes that Orlando had been wearing the night
4 before, the ones you say he had gone out in; the casual dress
5 things?

6 A. Yes.

7 Q. And were those clothes discovered at that time by Investi-
8 gator Donohue or yourself in your home?

9 A. No, they were not.

10 Q. Okay. After your contact with Investigator Donohue at
11 the scene, did you ever have an opportunity -- another opportu-
12 nity to speak with Investigator Donohue?

13 A. Yes. He came back out a couple of times to talk to me.

14 Q. And you were aware that Orlando on May 23rd had gone down
15 to talk to the police, is that correct?

16 A. Yes.

17 Q. And the clothes that you say he was wearing the night
18 he left out to go out on March 22nd, 1998, did you ever see
19 those clothes again?

20 A. . .

21 Q. The pants or the shirt?

22 A. Yes.

23 Q. Did you see both, or one?

24 A. Just the pants.

25 Q. Where did you see those pants?

A. They were found in my son's bedroom.

MS. SHAW ON DIRECT

1 Q. But you saw them with your own eyes?

2 A. Yes.

3 Q. What was the condition of those pants when you saw them?

4 A. They had bloodstains on them.

5 MR. SULLIVAN: Objection, Your Honor. She is not qual-
6 ified to testify to the stains that may have been on the pants

7 A. He said it was blood.

8 THE COURT: Overrule the objection.

9 BY SOLICITOR:

10 Q. Ms. Shaw, what happened to those pants?

11 A. He threw them away.

12 Q. Orlando Smith?

13 A. Yes.

14 Q. And this was prior to his actual arrest for murder, is
15 that correct?

16 A. Yes.

17 Q. Are you currently seeing each other now?

18 A. No, we're not.

19 Q. But since this incident happened on May 23rd and his sub-
20 sequent arrest for murder, have you had contact with him at
21 times?

22 A. Yes.

23 Q. I want to back up and show you what's been marked State's
24 Exhibit 32 for identification and the envelope. I'm going to
25 ask you if you recognize the contents of that envelope that

MS. SHAW ON DIRECT

1 is marked State's Exhibit 32?

2 A. Yes.

3 Q. Is it in fact a two page letter written to you?

4 A. Yes, it is.

5 Q. And who is the letter from?

6 A. Orlando Smith.

7 SOLICITOR: Your Honor, at this time I'd ask that
8 State's Exhibit 32 be placed into evidence.

9 MR. SULLIVAN: Without objection, Your Honor.

10 THE COURT: Without objection, it's in evidence.

11 (Letter and envelope admitted in evidence without objec-
12 tion as State's Exhibit 32)

13 BY SOLICITOR:

14 Q. Could you please read that, ma'am?

15 A. (Witness reading State's Exhibit 32)

16 Q. Thank you, Ms. Shaw. I believe that I have previously
17 asked to have this admitted.

18 BY SOLICITOR:

19 Q. And you received that letter shortly after you were
20 asked to come in and interview about this case, isn't that
21 right?

22 A. Yes.

23 Q. Have you had another contact since you received that
24 letter from the Defendant regarding this case?

25 A. You mean at all? Up until now?

MS. SHAW ON DIRECT

1 Q. Up until now.

2 A. Yes.

3 Q. And has he asked you anything regarding your testimony
4 at trial?

5 A. Yes.

6 Q. What did he ask you regarding your testimony?

7 A. To change the time that he came in.

8 Q. And he did that as recently as June of this year, is
9 that correct?

10 A. Correct.

11 Q. Ms. Shaw, do you still have feelings for Orlando Smith?

12 A. Yes.

13 Q. And, Ms. Shaw, would you please identify or tell us if
14 you see Orlando Smith, the person you referred to throughout
15 your testimony in this Courtroom?

16 A. Yes.

17 Q. Would you please point him out to the Court and the
18 jury?

19 A. Yes. (Gesturing)

20 Q. Let the record indicate she's indicating the Defendant.

21 Thank you, Ms. Shaw. No further questions.

22 CROSS EXAMINATION

23 BY MR. SULLIVAN:

24 Q. Nice to see you, Ms. Shaw. Hadn't Orlando been fishing
25 some that week?

MS. SHAW ON DIRECT

1 A. He went fishing the Friday Night before.

2 Q. Isn't there a pond near the complex?

3 A. Yes, there is.

4 Q. So it wasn't unusual for him to be going out with a
5 bucket and fishing rod, was it?

6 A. No.

7 Q. Now, did you notice Orlando that morning or that -- that
8 morning when he came in between three and four -- whichever
9 one -- you saw him up close, right?

10 A. No, I didn't. I went and let him in and turned around
11 and went back to my bed.

12 Q. How about the next morning?

13 A. Yes, I seen him the next morning.

14 Q. You notice any scratches on his face or on him arms or
15 anything?

16 A. No, I didn't.

17 Q. And you say that Officer Donohue came to the house
18 looking for clothes?

19 A. Yes, sir.

20 Q. He did not find these pants in your son's room?

21 A. No, sir, he didn't check my son's room.

22 Q. Isn't it a fact that the shirt he was wearing that
23 morning was the same one he came in that night with? Isn't
24 it?

25 A. I can't answer that. I would assume that he had on

MS. SHAW ON CROSS

1 the same thing he left in. I wouldn't have reason to think he
2 would change clothes while he was out.

3 I haven't seen the shirt.

4 Q. And you all are not together any more, is that correct?

5 A. No, we're not.

6 Q. Were you all sort of friends with Chris?

7 A. Yes, we were.

8 Q. Were there any hard feelings between you and Chris, or
9 Chris and Orlando?

10 A. No, not to my knowledge.

11 Q. How well did you know her?

12 A. Did I know her?

13 Q. Uh hm.

14 A. I knew her pretty well.

15 Q. Did you know that she had a crack problem?

16 A. Yes, I did.

17 Q. Was there traffic in and out of there a good bit?

18 A. I wouldn't say a good bit. She would smoke crack in
19 spells. It wasn't an everyday thing. It wasn't an every other
20 day thing.

21 She might smoke crack this weekend, and probably she
22 wouldn't smoke again until another month.

23 Q. How do you describe her lifestyle in general then?

24 A. Basically she was a quiet person. She stayed to herself
25 unless she was wanting her drugs and then she would talk to

MS. SHAW ON CROSS

1 somebody.

2 After she would get her drugs, then she would become
3 more talkative, but she wouldn't really talk to people that
4 she didn't know. It's something she didn't do.

5 Q. Did you ever help her get money for drugs or anything?

6 A. I gave her money, yes.

7 Q. Did you pawn some things for her?

8 A. Yes, I did.. I pawned three rings of hers.

9 Q. And then you gave her the money?

10 A. No, it was my money.

11 Q. She owed you money?

12 A. Right.

13 Q. Okay. The rings she gave you. It wasn't taken from her
14 or anything like that?

15 A. No, sir. The rings were given to me probably a month
16 prior to her death.

17 Q. They were pawned about the 8th or so?

18 A. Of what?

19 Q. Of May -- about three weeks before?

20 A. Probably, yes.

21 Q. Now, had Orlando told you that he had seen a problem
22 with Chris, what would your reaction have been?

23 A. To call the police.

24 Q. And Orlando knew you enough to know that is what you
25 would want to do, didn't he?

MS. SHAW ON CROSS

1 A. Correct.

2 Q. If Orlando did not want to get involved, then it would
3 be reasonable for him not to tell you, isn't it?

4 A. No.

5 Q. If he did not want to get involved in this, and he knows
6 if he tells you that you would say, we're going to call the
7 police, then that's a reason for him not to tell you.

8 Correct?

9 A. No, that's not correct.

10 Q. But if he tells you about it, how is he going to stay
11 not involved?

12 A. If he didn't do anything, he wouldn't be involved. There
13 was no reason for him not to come tell me.

14 Q. Well, when I say involved, he just didn't want to be
15 involved in the whole thing at all. I don't mean involved in
16 her killing.

17 Let's just say . .

18 A. I know exactly what you're saying, and I still hold to
19 what I say. I still think he would have told me.

20 Q. Knowing you would call the police?

21 A. Yes.

22 Q. Did you see any blood on any shoes of Orlando's?

23 A. No, I didn't.

24 Q. How about shirt?

25 A. I've never seen the shirt, sir, since he left that even-
ing with it on.

MS. SHAW ON CROSS

1 I haven't seen it since.

2 Q. How about the next morning?

3 A. I haven't seen the shirt since.

4 Q. What did he have on when he came in?

5 A. I would assume the same thing he had on when he left
6 out. I know the pants were in my house.

7 Q. And it's your story he came home between two thirty and
8 three, and not four?

9 A. That's my story, yes.

10 Q. No further questions.

11 REDIRECT EXAMINATION

12 BY SOLICITOR:

13 Q. In fact, it was your testimony Orlando came in between
14 two thirty and three. That's not only your story, but is that
15 the truth?

16 A. That is the truth.

17 Q. No further questions.

18 RECROSS EXAMINATION

19 BY MR. SULLIVAN:

20 Q. Ms. Shaw, at what point in time did you tell Officer
21 Donohue about the bloody pants?

22 A. When did I tell him?

23 Q. Yes.

24 Q. I didn't. I told the Solicitor.

25 Q. How long after?

A. It was when I went to talk to Solicitor Seay back in
November of last year.

MS. SHAW ON CROSS

1 Q. So you're talking about several months or a good per-
2 iod of time? From May until -- about a year and a half?

3 A. Exactly, because my son was the one that find the pants
4 and I didn't want him involved.

5 Q. You didn't want him involved. Thank you.

6 SOLICITOR: No further questions.

7 THE COURT: Okay, you can step down. Thank you.

8 SOLICITOR: Ask that the witness be excused.

9 MR. SULLIVAN: No objection.

10 THE COURT: Without objection, you are excused.

11 (Witness excused by the Court)

12 SOLICITOR: Your Honor, at this time, the State would
13 rest.

14 MR. SULLIVAN: We would have a matter to take up, Your
15 Honor.

16 THE COURT: Yes, sir. That's the case for the State,
17 ladies and gentlemen, so I would ask that you all step out
18 just for a minute and let me listen to some motions.

19 Then I'll bring you back in.

20 (Jury excused from Courtroom at 1152 A.M.)

21 THE COURT: Are the pants in evidence? I wasn't paying
22 any attention.

23 SOLICITOR: No, we never had them.

24 THE COURT: I'm sorry?

25 SOLICITOR: We never had them. That's the pair of

1 pants he gave law enforcement.

2 THE COURT: How about the pair of pants they gave to him
3 that was supposed to have blood on them?

4 MR. SULLIVAN: There was no blood on them.

5 SOLICITOR: Ms. Shaw testified he took them from the resi-
6 dence; that he took them away and disposed of them. We never
7 had them. She never had possession of them but she saw them
8 with the blood.

9 THE COURT: Okay.

10 SOLICITOR: That he then removed them from the apart-
11 ment.

12 THE COURT: Okay, was that her testimony?

13 MR. SULLIVAN: Her testimony was that later on she found
14 a pair of kahki pants in her son's bedroom, and she thought
15 there was blood on them, but Orlando then took them and she
16 never saw them again.

17 THE COURT: Okay.

18 MR. SULLIVAN: I believe she testified he took them away.

19 SOLICITOR: Those particular pants are not in evidence.
20 These are the ones he provided to Investigator Donohue.

21 THE COURT: Okay.

22 MR. SULLIVAN: Judge, I don't think they've proven the
23 case at this point. They've got absolutely no motive. No-
24 body has testified about any animosity between Mr. Smith
25 and Ms. Quinn.

1 Everything -- all the witnesses say they were friends,
2 One witness said they were friendly.

3 There is no reason -- the only thing they've got, they
4 have got -- they had a chance. They had hair samples, they
5 had blood samples, and all these things were tested and nothing
6 ties them in.

7 They've got a palm print, which he admitted to them he
8 went in there and tried to rouse her up to see how she was,
9 and took a pulse and realized she was dead and he left, but
10 he didn't kill her.

11 That's their case, and I don't see where they have
12 proved a case beyond a reasonable doubt. I don't think there
13 is enough evidence to go to a jury.

14 They have these ligatures but they haven't put -- they've
15 got them in here but they don't match hers -- these things.
16 They don't have a murder weapon. They don't have anything from
17 him tying him to it except a palm print, and he has admitted
18 he was there.

19 Getting home at four or three thirty in the morning, I
20 don't think that makes that much difference. I don't remem-
21 ber the coroner establishing a time of death.

22 The last time he was seen in the apartment, if you believe
23 this Eric Burks, it was midnight, and he delivered some more
24 cocaine.

25 SOLICITOR: May I be heard, Your Honor? Your Honor, I

1 would say at this point -- I guess he's asking for a directed
2 verdict, but you must take the evidence in the light most
3 favorable to the State, and based on especially the expert
4 testimony of Ron Smith when he indicated that the position
5 of the palm print on the back -- that it was -- the blood had
6 to be wet enough to get on the Defendant and his hand and in
7 order for him to transfer that blood back onto the victim's
8 arm, that it ties him very closely to her time of death when
9 she was still actively bleeding.

10 As well as the fact that based on all the testimony it
11 has been unrefuted that the position in which her body was
12 found with numerous types of -- several different scenarios
13 were hypothesized by Mr. Smith, who stated that based on
14 the position of the palm and the hand, that it was impossible
15 to put that print on her -- on the victim's arm in the manner
16 it was while she lay there on the floor dead.

17 There is ample evidence that it is inconsistent, and it
18 mentions the lie about what went on, the failure to report imme-
19 diately, knowledge of the crime -- if you consider what the de-
20 fense said, even giving them that, there is ample evidence
21 he made an effort to cover up his involvement.

22 I think taking this in the light most favorable to the
23 State that there is no question that we've met our burden in
24 order to have this matter presented to the jury for their de-
25 termination.

1 THE COURT: I'm going to have to deny the motion.

2 MR. SULLIVAN: Yes, Your Honor.

3 THE COURT: Are you going to call some witnesses?

4 MR. SULLIVAN: Yes, I am, Your Honor.

5 THE COURT: All right. Mr. Smith, . .

6 DEFENDANT: Yes, sir.

7 THE COURT: . . it is often said that in a criminal trial
8 the most important decision that a Defendant has to make is
9 whether he will take the witness stand and testify and tell
10 the jury -- give the jury his testimony about this case, or
11 whether to remain silent.

12 Now, under our Constitution, you do not have to testify
13 in your own behalf, and if you choose not to, I would instruct
14 the jury that they could not consider that against you in any
15 way or under any circumstances or in any manner whatsoever.

16 But you've got the right -- you've got a constitutional
17 right to testify before this jury under oath and tell them
18 your story and give them your testimony, or you have a right
19 not to do that.

20 If you exercise your right not to testify, I would in-
21 struct the jury that that does not create any presumption
22 against you, and I would charge them that they could not
23 permit that fact to weigh in the slightest degree against you
24 if you did not testify.

25 Nor could they let that enter into their discussions

1 or deliberations in the jury room.

2 Under the Constitution of South Carolina and under the
3 Constitution of the United States, it is your prerogative to
4 remain silent, and the burden is always on the State to prove
5 that you're guilty beyond a reasonable doubt.

6 Do you understand you have a constitutional right to tes-
7 tify in front of this jury or you have the right not to tes-
8 tify? Do you understand that?

9 DEFENDANT: Yes, sir, I understand.

10 THE COURT: And the burden of proof is always on the
11 State. Do you understand that?

12 DEFENDANT: Yes.

13 THE COURT: Now, Mr. Seay tells me that he has maybe
14 some prior convictions, a burglary, and maybe a possession
15 of drugs or something in the last ten years.

16 DEFENDANT: Yes, sir.

17 THE COURT: And he may ask you about those. If he does,
18 I'll instruct the jury that they cannot consider that for any
19 other purpose other than the believability or credibility
20 of your testimony, and they cannot consider that as to your
21 guilt or innocence in this case.

22 Do you understand that?

23 DEFENDANT: Yes, sir, I do understand.

24 THE COURT: Now, you and your attorney have to make the
25 decision as to whether or not you want to testify.

1 Have you all made that decision?

2 DEFENDANT: Yes, sir, we have.

3 THE COURT: And what is your decision?

4 DEFENDANT: I do want to testify.

5 THE COURT: Okay. Let's take forty-five minutes. We'll
6 take a 45 minute break and start back at fifteen til one.
7 The jury's food is here. I'll let them go ahead and eat.

8 (Court stood in recess from 12:02 P.M. until 1:00 P.M.)

9 THE COURT: Mr. Sullivan, are you ready to go forward?

10 MR. SULLIVAN: Ready, Your Honor.

11 THE COURT: Bring the jury in.

12 (Jury returned to Courtroom.)

13 THE COURT: All right, we're ready to continue. Mr.
14 Sullivan?

15 MR. SULLIVAN: Defense is ready.

16 THE COURT: All right.

17 MR. SULLIVAN: Call Orlando Smith.

18 ORLANDO SMITH, being duly sworn,
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MR. SULLIVAN:

22 Q. Orlando, I know you're nervous, but speak up so I can
23 hear you and everyone on the last row here can hear you.
24 Okay?

25 A. Yes, sir.

MR. SMITH ON DIRECT

1 Q. If you don't understand or whatever, just stop me and
2 we'll talk about it.

3 You're Orlando Smith?

4 A. Yes, sir, I am.

5 Q. And you're the Defendant in this case?

6 A. Yes, sir, I am.

7 Q. Have you been present during the entire trial?

8 A. Yes, sir, I have.

9 Q. Now, you've been in trouble before, haven't you?

10 A. Yes, sir.

11 Q. I believe you had a burglary third, for which you got
12 probation, is that correct?

13 A. Yes, sir.

14 Q. And you had a shoplifting and you paid a fine, is that
15 correct?

16 A. Yes, sir.

17 Q. Okay. And none of these were violent crimes?

18 A. No, sir.

19 Q. Now, you're familiar with Fleetwood Manor, correct?

20 A. Yes, sir, I am

21 Q. Okay, how long has your mother lived out there?

22 A. We've been living out there for like fourteen or fif-
23 teen years.

24 Q. How old are you now?

25 A. I'm twenty-six years old.

MR. SMITH ON DIRECT

1 Q. Do you have any children?

2 A. Yes, I have one little girl. A four year old little girl.

3 Q. And do you support that child?

4 A. Yes, I do.

5 Q. Where are you employed?

6 A. I'm employed with Bernie's Landscaping Company.

7 Q. Okay, you've been present, and you know what this is
8 about, and you knew Chris Quinn. Correct?

9 A. Yes, sir, I know her very well.

10 Q. Ms. Shaw's apartment was upstairs at [REDACTED]. Correct?

11 A. Yes, sir.

12 Q. Over here, looking at it, Chris is in [REDACTED]?

13 A. Yes, sir.

14 Q. So you all were pals. Right?

15 A. Yes, sir.

16 Q. You and Ms. Shaw and Ms. Quinn socialize a bit?

17 A. Basically at the time Lavonda was my girlfriend, and
18 she socialize with Chris first. Me and Chris were more
19 closer than Lavonda was.

20 Q. Okay, and, of course, we get down to the events of Fri-
21 day, May 22nd, 1998.

22 Start back with that day and go through and tell us
23 what you did that day?

24 A. Well, basically we have a little pond behind our apart-
25 ment complex, and that week I had been doing a lot of fishing.

MR. SMITH ON DIRECT

1 so that day I had been fishing also.

2 And then I came home, took a nap and got up, and I
3 walked outside. Chris came outside, and she was -- she had
4 asked me something about would I watch the babies for her
5 while she ran to the store.

6 So it was either I watch the kids or Lavonda would
7 watch them, and she wanted me to come up to the apartment,
8 and so I went up to the apartment. You know, I thought nothing
9 of it.

10 She had a friend up there, and she introduced both of us,
11 you know, and ...

12 Q. Who was the friend?

13 A. ...

14 Q. Did he testify here today -- Mr. Waldman?

15 A. Uh hm, and basically I drank a beer, me and Mr. Waldman
16 smoked a joint, and me and Chris went in the back and we did
17 a little bit of cocaine.

18 And I stayed approximately, I guess, fifteen minutes at
19 the most.

20 Q. Was it between nine and ten -- somewhere in that range?

21 A. A little bit earlier -- about nine.

22 Q. Okay. You know what kind of car Mr. Waldman drove?

23 A. A black Camaro, like he stated.

24 Q. Was he still there when you left the apartment?

25 A. Yes, he was.

MR. SMITH ON DIRECT

1 Q. Where did you go after this?

2 A. After I left Chris' apartment, I walked across the street
3 in front of another set of apartments, the B building. They
4 all have letters on them.

5 It's like the second apartment coming in.

6 Q. Who was there? Who was with you and who was at the B
7 building, and what were you doing?

8 A. It was a lot of people out there that night, and bas-
9 ically we all drinking and smoking marijuana, and just were
10 basically partying out there.

11 Q. So when you left Chris', you went down to the B building?

12 A. To the B building. I went across the street in the
13 apartment complex.

14 Q. How long did you stay with this party crowd?

15 A. I would say I stayed -- I mean, that was two years ago,
16 but I know it was after two thirty, three, or something like
17 that.

18 Q. That's when you went home?

19 A. When I walked -- actually walked to Lavonda Shaw's house
20 . . .

21 Q. Uh hm.

22 A. . . no, that was four o'clock.

23 Q. How do you remember that?

24 A. How do I remember that? Because when I walked in after
25 I had left Chris' house and found her, we had a digital

MR. SMITH ON DIRECT

1 clock in the room, and me and Lavonda kind of had words about
2 me coming in so late, and I looked over there and it was four
3 o'clock.

4 Q. Okay. Now, had you been back to Chris' from the time you
5 left when Mr. Waldman was there until you came back about two
6 thirty or three -- in that range?

7 A. Excuse me. Would you repeat that?

8 Q. Had you been back to Chris' -- you were here when Eric
9 Burts said you were there at midnight.

10 Had you been at Chris', after you left and you left Mr.
11 Waldman there and went to the B building -- did you go back
12 to Chris' before you found her like she was?

13 A. No, I did not.

14 Q. So you were going home at about two thirty or three
15 o'clock. Right?

16 A. No, it was actually later. When I walked back across
17 the street, it was like quarter til four and I was talking to
18 somebody outside and went up the steps, you know.

19 Q. Tell us as best you can remember what happened when
20 you went upstairs?

21 A. Well, when I went up the steps, the door was cracked,
22 you know, and I looked in. Like I said, I know Chris -- me
23 and Chris were -- I'd just say me and Chris were close, and
24 we talked about a lot of stuff, and that wasn't like Chris
25 to leave her house open.

MR. SMITH ON DIRECT

1 She always kept her doors locked, and I went in and
2 Chris was on the floor. You know, I saw the blood, and I
3 went over to her, you know.

4 My first thought was she had OD'd because I knew she was
5 doing a lot of cocaine on that day, and that was my first
6 thought, and then I got to realizing, you know, there's a
7 lot of blood and stuff.

8 So I really didn't know what was going on. I checked and
9 moved her, and like those pictures are saying -- when I walked
10 in, the picture that they have and like that, she was kind
11 of in another position.

12 I mean, I touched her. That is my handprint. I mean,
13 I'm here to tell the truth to everybody today, but at first I
14 did not tell them because I did not want to be implicated.

15 I was already on probation. I had showed up. I had
16 drugs in my system. It was just a bad time, and I did not
17 want to be implicated. I did not want to be involved in no
18 way whatsoever, and I was scared.

19 Q. You did not call nine one one or anything like that?

20 A. No, I did not call nine one one.

21 Q. What did you do then?

22 A. I left.

23 Q. Where did you go?

24 A. I went to my ex-girlfriend's house, Lavonda Shaw.

25 Q. Which was right across?

A. Yes, sir.

MR. SMITH ON DIRECT

1 Q. About four or five paces -- about from here to the wall?

2 A. Yes, sir.

3 Q. Okay. Did you leave Chris' door open or closed?

4 A. I believe I -- I left it closed, if I'm not mistaken.

5 Q. You don't remember?

6 A. No.

7 Q. Okay, and I started representing you in this case, and,
8 like you say, you violated probation, and you were in McCormick
9 correct?

10 A. Yes, sir.

11 Q. And you were trying to get information to me about your
12 case, is that correct?

13 A. Well, when I was arrested, as you well know, I talked to
14 you a couple of days after I was arrested, and we talked no
15 more than like five minutes, until I get my probation time,
16 and the next time I talked to you was in the Courtroom.

17 And then I went and did the probation time, and I hadn't
18 talked to you since then until I recently had gotten out.

19 Q. But you wrote a letter which they've introduced to Ms.
20 Shaw. You wrote that back in October or November?

21 A. Yes, sir.

22 Q. And you were basically asking her about your case, trying
23 to find out what they had on you, stuff like that?

24 A. Yes, sir.

25 Q. And at that time you didn't know what I had, did you?

MR. SMITH ON DIRECT

1 A. No, I didn't know anything about my case except they
2 were trying to blame me.

3 Q. And I think in February of this year I sent you a dis-
4 covery package, is that correct?

5 A. Yes, sir.

6 Q. And then you knew what was up, correct?

7 A. Yes, sir.

8 Q. So when you wrote the letter, you didn't have this in-
9 formation and were curious, and you were trying to ferret some-
10 thing out. Correct?

11 A. Yes, sir.

12 Q. What about -- we've got two pair of pants now in this
13 case. What about the pants that Ms. Shaw claims she found
14 in her son's bedroom?

15 A. Well, about the pants, when I came in I took all my stuff
16 off and what the officer said or stated yesterday -- when I
17 came out of the door, he said he saw me -- the plaid shirt I
18 had on, and he said that's the same shirt I had on, and
19 as for the pants, when I took them off that night I had them
20 by the bed.

21 When I had got up that morning, you know, I hid those
22 pants.

23 Q. Did you get blood on them at Chris' house, do you think?

24 A. Yes. I most certainly did. When I touched her I had
25 blood on my hands.

MR. SMITH ON DIRECT

1 Q. Did you kneel down by her?

2 A. Yes, I did.

3 Q. So you didn't want to get involved so you hid the
4 pants?

5 A. Yes, I did.

6 Q. What about the pants in this bag? How did Officer
7 Donohue come about these?

8 A. Well, when Officer Donohue came in, he wanted to search
9 the house and, you know, we gave him permission, and he was
10 basically -- he wanted to know what I had on that night, you
11 know, and he was looking for something specifically, and I
12 guess from what I took it, he was looking for something
13 with blood on it.

14 And by that time, the pants wasn't there, but I had my
15 shirt on. He didn't believe I had that -- that I had that
16 shirt on. He didn't believe anything I said.

17 He was harrassing me a lot, you know, and he wasn't --
18 he just basically didn't think the clothes were them, and so
19 we went down to my mother's house.

20 Q. Now, you and Ms. Shaw were in 107, I think, and your
21 mother lived in L102?

22 A. Yes, she did.

23 Q. Okay, and you stay there sometimes too, don't you?

24 A. Yes, sir.

25 Q. You oftentimes went to your mom's?

MR. SMITH ON DIRECT

1 A. Yes, sir.

2 Q. You and Officer Donohue went to your mom's?

3 A. Yes.

4 Q. What occurred there?

5 A. He went through my closet and the pants that they have
6 there -- you know, I'm known for wearing kahki pants, you know.
7 I wear a casual type pants, and that's what I work in, and
8 he pulled those out and I guess they look more like what --
9 like something he was looking for, so those are the ones he
10 took.

11 Q. You didn't tell him these were the ones you had on?

12 A. No, I didn't.

13 Q. Now, when you went down to the station, tell us -- did
14 he check you for scratches and marks and things like that?

15 A. The morning that they found Chris dead, when I was walk-
16 ing out with my fishing pole and all of that, they had Mr.
17 Waldman in the back of a police car, the man that found Chris
18 after I found her.

19 And he pointed me out, and since then they were inter-
20 rogating me, and Mr. Donohue took me down that day, and he
21 interrogated me.

22 He made me take all my clothes off. He checked me for
23 scars and scratches, and which I didn't have any.

24 Q. And the first interview, you did not tell the complete
25 truth, did you?

MR. SMITH ON DIRECT

1 A. No, sir, I did not.

2 Q. Then you went back on the 28th and gave another state-
3 ment?

4 A. Yes, sir. They arrested me on the 28th.

5 Q. Again, were you afraid?

6 A. Well, basically what happened was when they arrested me
7 I was dead afraid. I was waiting -- they asked me did I want
8 a lawyer, and I said, yes, I'd rather wait for a lawyer, and
9 at that point in time, you know, Mr. Donohue started intimidat-
10 ing me.

11 He was like, excuse my language, but fuck that. When
12 your lawyer comes, we're not going to talk to him, and we
13 don't want to hear it.

14 They're going to call you sparky. We're going to give
15 you the life sentence, you know, and I'm scared. I'm scared.

16 So I signed a paper and I went and gave my statement of
17 what really happened.

18 Q. They didn't promise you anything?

19 A. Excuse me?

20 Q. This was your statement, correct?

21 A. Yes, sir, it was.

22 Q. Did you later -- the first time you left Chris' around
23 nine or ten o'clock, did you later see the Camaro?

24 A. Well, like I said, I left before Mr. Waldman, and, you
25 know, I saw the Camaro when I left.

MR. SMITH ON DIRECT

1 Q. During that day, around the complex and all, did you
2 see Mr. Burts over there?

3 A. Yes, I saw Mr. Burts several times.

4 Q. And you heard him testify that back then he was a crack
5 dealer, didn't you?

6 A. Yes, sir, I knew he sold crack.

7 Q. In the back we're seen the back porch where the steps go
8 up and Chris' door is the closer one and your and Ms. Shaw's
9 was the further one.

10 Back behind there, isn't that kind of a little clearing
11 area; that's where he would pull in with the drugs, rather
12 than come up in the front?

13 A. Yes. Cars can pull up there. You're very visible from
14 the parking lot to the little clearing and turn in.

15 Q. Did Chris owe you any money?

16 A. No, Chris did not.

17 Q. I think Ms. Shaw had loaned her money before, hadn't
18 she?

19 A. Yes, she had.

20 Q. She paid her back with some rings?

21 A. It was more than one occasion Lavonda let Chris borrow
22 some money or have cocaine.

23 Q. Did you know where Chris' husband was?

24 A. Yes, I did.

25 Q. Where was that?

MR. SMITH ON DIRECT

1 A. Chris' husband is in the penitentiary.

2 Q. Where was Chris working?

3 A. Chris was working at Burger King.

4 Q. And how many children did Chris have?

5 A. Chris had two little boys.

6 Q. When you found Chris that morning and she was dead, did
7 you know any children were in the room -- were in the apart-
8 ment anywhere?

9 A. I had completely forgot. I mean, just to walk up and
10 see someone dead like that, I had completely forgot her
11 child was there.

12 I wasn't -- my mind was not even set on that, but, you
13 know, the more that I think about it, if I had knew that child
14 was back there, I would have called the police then.

15 No matter what, I would have called the police then.

16 Q. Did you have any arguments or harsh words with Chris
17 that day, or that night?

18 A. No, sir, I did not.

19 Q. Answer any questions Mr. Seay may have.

20 CROSS EXAMINATION

21 BY SOLICITOR:

22 Q. You lived at Fleetwood Manor for fourteen years, didn't
23 you?

24 A. Yes, sir.

25 Q. Part of that time you lived with your mother, didn't

MR. SMITH ON CROSS

1 you?

2 A. Yes.

3 Q. And during that . .

4 A. The majority of that time I was there.

5 Q. And during that time, you also stayed with Lavonda Shaw
6 at Apartment [REDACTED]?

7 A. Yes, sir.

8 Q. And during the time you stayed with Lavonda Shaw in
9 N107, you came to know the victim, Chris Quinn, didn't you?

10 A. Yes, I did.

11 Q. And you testified a little while ago that you in fact
12 were closer to Chris than Lavonda. Is that right?

13 A. Yes, we were.

14 Q. And you all -- your testimony is that you often baby
15 sat for her. Correct?

16 A. Um, I really don't call it baby sitting. Five or ten
17 minutes while her and Lavonda may have gone to the store or
18 something, but if that's how you want to put it, you know.

19 Q. Okay.

20 A. I played with the kids a lot.

21 Q. And that evening of May 22nd, 1998, you had contact with
22 Chris, didn't you, earlier in the evening?

23 A. Yes, I did.

24 Q. This is when you were coming back from fishing?

25 A. No, I didn't.

MR. SMITH ON CROSS

1. Q. You said something about during the afternoon you were
2 outside when you saw Chris?

3 A. No, I said I was in front of the apartment when I saw
4 Chris, and she ask me to come up to her house.

5 Q. That's when you saw Ted Waldman?

6 A. That's when I met him, when I walked into the house.

7 Q. And you were there about fifteen minutes, correct?

8 A. Yes, I was.

9 Q. And in that fifteen minutes, you smoked crack cocaine
10 with Chris?

11 A. Yes, I did.

12 Q. And smoked marijuana? Correct?

13 A. Yes, I did.

14 Q. Is that the first time you ever smoked crack with
15 Chris?

16 A. No, sir.

17 Q. Did you have a habit at that time of using crack cocaine?

18 A. At that time I did have a habit of using cocaine.

19 Q. Let me ask you to take a look at a couple of things
20 here.

21 Q. This has been marked State's Exhibit 38. It's in evi-
22 dence. Do you recognize that?

23 A. Yes, I do.

24 Q. Is that the statement you gave Investigator Donohue on
25 May 23rd?

MR. SMITH ON CROSS

1 A. Yes.

2 Q. Of 1998?

3 A. Yes, I did.

4 Q. And in fact, you signed it?

5 A. Yes, I did..

6 Q. And above your signature it says, I have read the
7 above statement of one page, and it is true and correct as
8 best I recall it?

9 A. Yes, sir.

10 Q. I'll let you take a look at Exhibit 36. Do you recognize
11 that document?

12 A. Yes, I do.

13 Q. And that's a document that says what your rights are,
14 and that you waive those rights?

15 A. I waived those rights.

16 Q. And that's your signature that appears on this document?

17 A. That is my signature.

18 Q. And that was done May 28th, 1998?

19 A. Yes.

20 Q. I show you what's been marked as State's Exhibit 37,
21 a statement given by you on May 28, 1998. Is that cor-
22 rect?

23 A. Yes, it is.

24 Q. And again, your signature appears where you signed it?

25 A. That is my signature.

MR. SMITH ON CROSS

1 Q. And again, it says, I have read the above statement of
2 one page, and it is true and correct as best I recall?

3 A. Yes, sir.

4 Q. And in that first statement, you said, I went inside
5 and conversated for a while. Isn't that what you said in
6 that statement?

7 A. Yes, I did.

8 Q. Okay. You also say in that statement that you went
9 to Lavonda's house, N107, and went to bed, and you said you
10 went in about two or three in the morning.

11 Is that correct, what you stated on May 23rd?

12 A. That's my first statement.

13 Q. That's correct, on May 23rd, 1998.

14 In your statement on May 23, 1998, you make no mention
15 of having any knowledge of Chris Quinn's death?

16 A. No, sir, I made no mention whatsoever.

17 Q. And in that statement you don't mention anything about
18 what happened to the bloody hand, do you?

19 A. No, I don't.

20 Q. And then on May 28, 1998, you began your statement with,
21 I lied. Isn't that correct? Isn't that your wording?

22 A. Well, I signed the paper, but when he first asked me, he
23 put that down, but I signed the paper.

24 Q. Again, to go back to the bottom, it says above your
25 signature, I have read the above statement of one page, and

MR. SMITH ON CROSS

1 it is true and correct?

2 A. Yes.

3 Q. And you signed on this as being your statement?

4 A. I signed off on it, yes.

5 Q. And it begins, I lied?

6 A. Yes, it does.

7 Q. And in that statement, you changed the time now and say
8 you came in at four A.M. in your statement. Is that correct?

9 A. Yes, sir.

10 Q. And isn't it true when you gave the second statement,
11 that you were aware they had found your prints on her body?

12 A. . .

13 Q. On Chris' body? Didn't Investigator Donohue inform you
14 of that?

15 A. Yes.

16 Q. And that's when you told them you went inside the apart-
17 ment?

18 A. . .

19 Q. Chris' apartment -- and found her, is that correct?

20 A. Yes, that's when I told the truth about what really
21 happened.

22 Q. Let me see if I've got this right from your testimony.
23 You said she wasn't in the position she's in in these photo-
24 graphs?

25 A. No, she was not in the position.

MR. SMITH ON CROSS

1 Q. And according to you, you touched her and moved her?

2 A. Yes, I did.

3 Q. Okay. You didn't move her off the floor because you say
4 in your second statement she was on the floor. Correct?

5 A. No, when I walked in the house she was on the floor.

6 Q. Correct, which is where she is in those photographs ob-
7 tained during the trial?

8 A. Yes, sir.

9 Q. And you saw the blood on her at that time?

10 A. Yes, I did.

11 Q. So you did all this checking, right, to check on her
12 condition?

13 A. Yes, I did. Actually, before I actually knew she was de-
14 I tried to revolve . .

15 Q. Resuscitate her?

16 A. Yeah, just basically by shaking, you know. Like I said,
17 I thought she had OD'd.

18 Q. And her pants were off as you saw in the photos during
19 the trial?

20 A. Yes, they were.

21 Q. And her arms were up above her head as we saw on the
22 photographs?

23 A. No, they was not. No, sir.

24 Q. They were that way when you left her?

25 A. Yeah.

MR. SMITH ON CROSS

1 Q. That's your testimony today?

2 A. That's my testimony today.

3 Q. And when you gave your statement to Investigator Donohue
4 on May 28th of 1998, you stated at that time you nudged her
5 and tried to see if she had a pulse.

6 Correct?

7 A. Yes, I did all of that.

8 Q. And you nudged her with your foot?

9 A. No, I did not.

10 Q. But you nudged her?

11 A. Yes, sir.

12 Q. And you said, I checked for a pulse on her neck and
13 her forearm but couldn't find one. Isn't that what you said
14 back on May 28, 1998?

15 A. That's what I said.

16 Q. And you don't make any mention in the statement on May
17 28, 1998, of doing all this moving her around?

18 A. No, I did not go into full detail about me shaking her
19 and trying to get her to come back. I just stated that I
20 checked her for a pulse.

21 That's all I did.

22 Q. But you didn't mention any of that on May 28?

23 A. No, I did not.

24 Q. And on May 28, 1998, you still didn't mention the lo-
25 cation of the bloody pants?

MR. SMITH ON CROSS

1 A. On May 28th, I don't think that was brought up again
2 about the pants. Not that I recall.

3 Q. And today you heard Lavonda Shaw testify about seeing the
4 bloody pants, and you saying, yeah, that's blood on them?

5 A. Yes, I told her that.

6 Q. And so today your testimony is, yes, you did have on
7 bloody pants; you did dispose of them and hide them?

8 A. No, I did not dispose of them, and, yes, they had a littl
9 smear of blood on them.

10 Q. But you did not admit that until today?

11 A. Excuse me?

12 Q. You didn't admit that until today?

13 A. Admit that to who?

14 Q. Well, it's not in either one of your statements, is it?

15 A. Well, no, it isn't, and nobody -- after they arrest me, n
16 body ask me about any pants. The pants were never mentioned
17 again.

18 Q. But you were concerned about the pants during this entire
19 time, weren't you?

20 A. . .

21 Q. This is your letter to Lavonda Shaw, correct?

22 A. Yes, that is my letter.

23 Q. And you stated to her, and also if they ask about any
24 clothing items or what I had on, you tell them you simply
25 don't remember?

MR. SMITH ON CROSS

1 A. Yes, that is what I wrote.

2 Q. But you were trying to cover up the fact that you had
3 those bloody pants when you wrote this letter on November 7,
4 1999, weren't you?

5 A. Yes, I was.

6 Q. Let me go back to what you said about -- I believe you
7 said when you first -- during your testimony today that
8 you were scared, didn't you, when you saw her?

9 A. Yes, sir, I was.

10 Q. And yet at the same time your testimony is today that
11 you were concerned enough today to check on her?

12 A. Yes, sir, I was.

13 Q. And despite your knowledge that possibly one of her
14 children were staying with her that night, you were not
15 concerned enough to check to see if any of her children were
16 there, is that correct?

17 A. Well, when I had talked with Chris earlier, she had
18 stated that her oldest son was with a relative or something
19 and the youngest one was there, but at that time, during that
20 period of time, my mind was not even thinking about -- I
21 didn't go past Chris' body.

22 So, no, I did not think to go and check on the child.

23 Q. What do you -- how long were you in there checking on the
24 body, ten, fifteen, twenty minutes?

25 A. It was no more than five minutes.

MR. SMITH ON CROSS

- 1 Q. But during that time you never once checked to see if
2 any of her children were in there or okay?
3 A. No, I never went past her body.
4 Q. You never checked the rest of the apartment to . .
5 A. I went no where past her . .
6 Q. . . see if anybody was there?
7 A. . . living room.
8 Q. You came home, walked three, four, five steps, across
9 that landing, to Lavonda's door, is that correct?
10 A. Yes, I did.
11 Q. It's not a very big space, is it?
12 A. No, it's not.
13 Q. So after seeing Chris Quinn on the floor, dead and
14 bloody and half naked, your friend, the woman you said you
15 were close to, you walked -- your testi-
16 mony is you walked across the hall and went to bed?
17 A. Yes, I did.
18 Q. Didn't mention a word of it to Lavonda at that time?
19 A. Not that night, I did not.
20 Q. Didn't say anything that next morning either, when the
21 police arrived?
22 A. No, I did not.
23 Q. In fact, it wasn't until after you were arrested that you
24 told her, didn't you?
25 A. No, that is not true.
Q. And when you were provided -- when you said Investigator

MR. SMITH ON CROSS

1 Donohue was looking for clothes, you knew he was looking for
2 the clothes you were wearing the night of her murder, correct?

3 A. Yes, I had the idea he was.

4 Q. And when you took him to your mother's house and provided
5 him with these pants we've seen in this bag with paint and stuff
6 all over it, you knew then those weren't the pants he was
7 looking for, didn't you?

8 A. At that time, he took those pants. I did not provide
9 him with anything.

10 Q. But you saw him take the pants?

11 A. Yes, I did.

12 Q. And when you saw the pants, you knew those weren't the
13 ones he was looking for?

14 A. Actually, I told Mr. Donohue those are not the pants I
15 had on last night.

16 Q. You never tried to make an anonymous call or have someone
17 call to report a problem in Chris' apartment after you found
18 the body?

19 A. No, sir, I didn't.

20 Q. And when you went in there and her body was there on
21 the floor between the coffee table and the couch, as we saw in
22 the picture?

23 A. Yes, sir.

24 Q. Clothes off from the waist down, correct?

25 A. Yes, sir.

MR. SMITH ON CROSS

- 1 Q. Everything in the picture that you saw at the scene of
2 Chris' body is accurate, isn't it?
- 3 It's how you found her, isn't it?
- 4 A. As much as I can remember. As for clothes, you know,
5 yeah.
- 6 Q. And during the time -- you say until you went to bed that
7 night you continued to drink and do drugs?
- 8 A. No, I did not. I had consumed a lot of alcohol and
9 drugs before I had came out.
- 10 Q. And when you found the body, you didn't run back outside
11 and tell any of the people that might have been outside, did
12 you?
- 13 A. No one was outside.
- 14 Q. I thought you left some people outside?
- 15 A. Everybody was gone.
- 16 Q. Okay. So now everybody disappeared as soon as you did,
17 is that correct?
- 18 A. No. Everybody had went home.
- 19 Q. Let me make clear one point. The second statement you
20 gave Gene Donohue, . .
- 21 A. Yes.
- 22 Q. . . you did not decide to tell the story you told in
23 the second statement until after you were confronted with the
24 fact that they had found your print, is that correct?
- 25 A. No, I did not give my second statement until they had

MR. SMITH ON CROSS

1 arrested me and had me downtown.

2 Q. And it wasn't until after you were informed by Investiga-
3 tor Donohue that they in fact had your print on the victim's
4 body that you gave that statement.

5 Is that correct?

6 A. Yes, that's true.

7 Q. No further questions.

8 REDIRECT EXAMINATION

9 BY MR. SULLIVAN

10 Q. To clarify one thing, Orlando -- I don't want to mislead
11 you, but when you went in you saw the pictures of how she was
12 found when the police got there. Correct?

13 A. Yes, sir.

14 Q. Didn't you testify earlier that's now the position she
15 was in when you found her?

16 A. . .

17 Q. That you moved her trying to revive her?

18 A. Yes.

19 Q. Nothing further.

20 SOLICITOR: No further questions.

21 THE COURT: Thank you, you can step down.

22 (Defendant excused from stand)

23 THE COURT: Next witness?

24 MR. SULLIVAN: At this time we would call Raumell
25 Vaughn.

1 RAUMELL VAUGHN, being duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. SULLIVAN:

5 Q. I believe your nickname is Rico?

6 A. Yes, sir.

7 Q. Speak up. You have a soft voice. If I can hear you,
8 then all these jurors can hear you.

9 A. Yes, sir. Can you hear me now?

10 Q. Yes.

11 A. All right.

12 Q. You have been here in the trial the whole time waiting
13 to be called as a witness?

14 A. Yes, sir.

15 Q. How old are you, Rico?

16 A. Twenty-nine.

17 Q. Where do you reside?

18 A. Now I stay at [REDACTED].

19 Q. Going back to the events of May 22nd, 1998, where did
20 you reside at that time?

21 A. Apartment [REDACTED].

22 Q. The same -- [REDACTED]?

23 A. Yes, sir.

24 Q. Okay, and, of course, you know what happened about
25 Chris?

MR. VAUGHN ON DIRECT

1 A. Yes, sir.

2 Q. Tell the jury your recollection of any association with
3 Orlando that night?

4 A. That night?

5 Q. Uh hm, during the day until that night.

6 A. None. I saw him but we didn't talk or anything. I saw
7 him in passing.

8 Q. Okay. You're talking about in the back?

9 A. Yes.

10 Q. And how about any activity at Chris' apartment?

11 A. None. I came home about fifteen minutes or twenty min-
12 utes to twelve that Friday Night, and when I pulled up --
13 mind you, the building I was staying in then runs kind of
14 parallel to the building that Ms. Quinn was staying in.

15 Q. She was in L here, and O is here?

16 A. The N building faces the parking lot, and the O building
17 runs kind of around like this. (Gesturing) Forty-five degrees.

18 Q. Okay.

19 A. And when I pulled up, I observed three or four dudes
20 standing between the buildings, and I had -- and I had then
21 only been in the community like about a year at the time,
22 and that was unusual for me. I mean, people hangs out there
23 but they hang out mostly, you know, in front of my apart-

24 ment or in the parking lot.

25 And we had been out, and when I pulled out some guy was

MR. VAUGHN ON DIRECT

1 -- when I pulled up I saw some guy standing there, it arouse m
2 suspicion . .

3 SOLICITOR: Objection, Your Honor. I don't see the rele-
4 vance of this testimony at this time.

5 THE COURT: I'm going to let him testify who he saw out
6 there. The guys out there, standing back there.

7 A. I pulled up and I saw the guys standing in the back, and
8 like I said, it arouse my suspicion, so I went in so my girl-
9 friend would know that I was home. I wasn't coming in the
10 house but I was at home.

11 And as I walked up and knocked on the door, because I
12 didn't have a key, and she came to the door and she was scan-
13 tily dressed, and that even made me more suspicious.

14 I'm thinking -- because I'm thinking the dude by the apar-
15 ments maybe came out of my apartment. I don't know. I let
16 her know I'm around and I go back out and find nobody, and as
17 I'm walking down the strip the guys passed me coming down the
18 sidewalk.

19 Two guys held one guy in the middle, and they're telling
20 him, come on, they got to guy, and now they got their car back
21 there on the footwalk.

22 I didn't pay no attention to them right then, so I had
23 no reason to think that they was armed. The next morning when
24 Mr. Waldman pulled up, I was outside of my apartment.

25 He pulled up and went in Chris' apartment and found her

MR. VAUGHN ON DIRECT

1 and came back outside, and the whole day went on, and then
2 around six or seven that evening, that Saturday, it just dawn
3 on me that maybe . . .

4 SOLICITOR: Objection, Your Honor.

5 THE COURT: Sustain the objection to what he thinks.
6 He can only testify factually to what he . . .

7 BY MR. SULLIVAN:

8 Q. What did you see?

9 A. I saw three guys come up the sidewalk away from Ms.
10 Quinn's apartment. Two guys on each side of the one guy,
11 walking on the sidewalk, telling one guy, come on, and the
12 guy in the middle's pants would not stay up. They kept fall-
13 ing down.

14 They walked and met Mr. Smith at the end of the parking
15 lot, and that's when I saw him, right in front of the B
16 building where he said he was.

17 Q. You saw Mr. Smith at the B building?

18 A. The guys who walked down the sidewalk walked to him.
19 He came from across the street, and they met and talked and I
20 went on doing what I was doing.

21 Q. Did you recognize any of the three men?

22 A. Yes.

23 Q. Who did you recognize?

24 A. Mr. Burts.

25 Q. Which one was he?

MR. VAUGHN ON DIRECT

1 A. The guy that testified earlier was the guy in the
2 middle.

3 Q. The one whose pants were falling down. Answer any
4 questions Mr. Seay might have.

5 CROSS EXAMINATION

6 BY SOLICITOR:

7 Q. You didn't provide a written statement to the police,
8 did you?

9 A. No, but I talked to Mr. Donohue though.

10 Q. And in fact, the building in which Chris lived had four
11 apartments, is that correct?

12 A. Right.

13 Q. And just next to her building is another building
14 that contains four apartments, correct?

15 A. Actually the same building. It's another door in the
16 me building.

17 Q. So that's another four apartments?

18 A. Yes.

19 Q. And all you saw was out on the sidewalk around the
20 building?

21 A. The O building is different. It runs this way. Ms.
22 Quinn's building runs here. (Gesturing)

23 There's maybe twenty yards of space between the O
24 building and the N building, and there was a car parked
25 there.

MR. VAUGHN ON CROSS:

1 Q. Uh hm.

2 A. And that was unusual. I mean, nobody usually parks
3 there.

4 Q. But you saw a car parked there and you saw some guys
5 out there?

6 A. Right.

7 Q. You didn't have any conversation with them?

8 A. No.

9 Q. And these three guys went and talked to Orlando Smith,
10 didn't they?

11 A. Yes.

12 Q. No further questions.

13 MR. SULLIVAN: Nothing further, Your Honor.

14 THE COURT: Step down. Thank you.

15 (Witness excused from stand)

16 MR. SULLIVAN: Tynisha G. [REDACTED].

17 TYNISHA G. [REDACTED], being duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. SULLIVAN:

21 Q. You need to speak up so everybody can hear you. How old
22 are you?

23 A. Sixteen.

24 Q. I know you're nervous, but speak up. You're missing
25 school today because I subpoenaed you, is that correct?

T. G. [REDACTED] ON DIRECT

1 A. . . .

2 Q. You're familiar with the controversy -- what went on the
3 night that Chris was found, are you not?

4 A. Yes, sir.

5 Q. Okay. If you would, tell us of any contact that evening
6 and what you observed about Orlando Smith?

7 A. It was about six o'clock, and I was over there by Chris'
8 apartment, and she was asking me would I baby sit her kids
9 for her while she go for a baggy, and then she ask my friend
10 down the street, and we said no.

11 We was like no, and I went home and . . .

12 Q. Where do you live?

13 A. At B 102, across the street.

14 Q. Okay.

15 A. I went home and I think about eleven thirty or twelve
16 o'clock me and my sister was outside, and at eleven forty or
17 eleven forty-five I seen a black Camaro by Fleetwood, you know

18 That's all I know.

19 Q. Was the black Camaro driving by a black guy or a white
20 guy?

21 A. White.

22 Q. White guy. I have nothing further.

23 CROSS EXAMINATION

24 BY SOLICITOR:

25 Q. About what time was it that you saw the black Camaro on

T. G. [REDACTED] ON CROSS

1 Fleetwood?

2 A. Eleven forty or eleven forty-five.

3 Q. You were fourteen then?

4 A. Yes, sir.

5 Q. Your only contact with Chris that day was at six P.M.

6 when she asked you to babysit?

7 A. Yes, sir.

8 Q. No further questions.

9 MR. SULLIVAN: One other.

10 REDIRECT EXAMINATION

11 BY MR. SULLIVAN:

12 Q. How long were you out there with Orlando Smith?

13 A. For approximately thirty-five or forty minutes. That
14 night?

15 Q. Yes.

16 A. Uh hm.

17 Q. Nothing further.

18 RECROSS EXAMINATION

19 BY SOLICITOR:

20 Q. What time was that? Eight o'clock?

21 A. About eleven thirty.

22 Q. You were out there with him for thirty minutes around eleven
23 thirty?

24 A. Between eleven thirty and twelve thirty, and then I went
25 in the house.

T. G. [REDACTED] ON RECROSS

1 Q. You weren't with him the rest of the night?

2 A. No, sir.

3 Q. Thank you.

4 THE COURT: Come down. Thank you, maam.

5 (Witness excused from stand)

6 MR. SULLIVAN: Cherico Garrett.

7
8 CHERICO GARRETT, being duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. SULLIVAN:

12 Q. Speak up. If I can hear you, I'll know the others can
13 hear you.

14 A. Okay.

15 Q. You know what we're here about?

16 A. Yes, sir.

17 Q. How old are you?

18 A. Eighteen.

19 Q. You were sixteen at this time?

20 A. Yes, sir.

21 Q. Where do you live?

22 A. In B 102.

23 Q. That's where you lived back in May of 1998?

24 A. Uh hm.

25 Q. Okay, that night, Friday Night, May 22nd, tell the Court
and the jury of any association you had or observations you

C. GARRETT ON DIRECT

1 made with regard to Orlando Smith?

2 A. Well, like my sister said, we was outside on the parking
3 lot. Me and my sister and Orlando and a bunch more people,
4 and it was about eleven thirty or twelve.

5 Q. You were out there during that period of time?

6 A. Yes, sir.

7 Q. Did you observe a black Camaro also?

8 A. Yes, sir.

9 Q. With a white driver also?

10 A. Yes, sir.

11 Q. So you think you were with Orlando up to about twelve
12 thirty that night?

13 A. Yes, sir.

14 Q. Answer any questions Mr. Seay may have.

15 CROSS EXAMINATION

16 BY SOLICITOR:

17 Q. You weren't with Orlando Smith before eleven thirty?

18 A. No.

19 Q. And you weren't with him after twelve thirty from your
20 testimony?

21 A. No.

22 Q. And you didn't go in Chris Quinn's apartment that night?

23 A. No, sir.

24 Q. No further questions.

25 MR. SULLIVAN: One more question.

C. GARRETT ON REDIRECT

1 REDIRECT EXAMINATION

2 BY MR. SULLIVAN:

3 Q. Did you see Eric Burts that night?

4 A. Yes, sir.

5 Q. What time and where?

6 A. I guess it was about eleven thirty, twelve. I seen him
7 behind Chris' building.

8 Q. You . . .

9 A. With two other people.

10 Q. The same time you were with Orlando?

11 A. Sir?

12 Q. Is that the same time you were with Orlando?

13 A. Yes, sir.

14 Q. Nothing further.

15 THE COURT: Thank you, maam.

16 (Witness excused from stand)

17 MR. SULLIVAN: Michael Richardson.

18 MICHAEL A. RICHARDSON, being duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. SULLIVAN:

22 Q. Mr. Richardson, speak up so everybody can hear you. Okay?
23 You've got a soft voice.

24 A. All right.

25 Q. You're Michael Allen Richardson?

MR. RICHARDSON ON DIRECT

1 A. Yes, sir, I am.

2 Q. Do you remember an incident back in May of 1998 when a
3 young lady was found murdered in her apartment?

4 A. Yes, sir, I do.

5 Q. Do you recall giving a statement to Officer Donohue that
6 is dated May 24, 1998?

7 A. . .

8 THE COURT: Mr. Richardson, speak up. Speak into that
9 mike just a little bit so the jurors can hear you.

10 A. Yes, sir.

11 THE COURT: Okay, thank you.

12 BY MR. SULLIVAN

13 Q. I believe the gist of this, Mr. Richardson, is that on
14 May 22nd you had been at Augusta Hills with Eric Burts, is
15 that correct?

16 A. Yes, sir.

17 Q. And he wanted you to take him to Fleetwood Manor?

18 A. Yes, sir.

19 Q. Where did you all park when you went to Fleetwood
20 Manor?

21 A. In the back.

22 Q. That little dirt road back there?

23 A. Uh hm.

24 Q. Do you know why he was going there?

25 A. No, sir, I do not.

MR. RICHARDSON ON DIRECT

1 Q. Did Eric get out of the car?

2 A. Yes, sir, he did.

3 Q. Did you watch where he went?

4 A. I seen him go up the steps and inside the apartments.

5 Q. After that, you all went back to Augusta Hills, didn't
6 you?

7 A. Yes, sir, we did.

8 Q. And then Eric asked to borrow the car for himself,
9 didn't he?

10 A. Yes, sir, he did.

11 Q. And he stayed for about two hours, didn't he?

12 A. Yes.

13 Q. You had to beep him to get him back?

14 A. Yes, sir.

15 Q. And you had a conversation with him when he came back,
16 didn't you?

17 A. No, sir. I can't recall.

18 Q. Well, here's your statement.

19 A. (Examining document) Oh, yes, sir.

20 Q. Okay. What you told the officer about?

21 A. Uh hm.

22 Q. Would you read what Eric told you when he got back?

23 A. Okay. He gave me my keys and he told me that he had got
24 some pussy or had gone to -- gone on a trick.

25 Q. A trick?

MR. RICHARDSON ON DIRECT

1 A. Uh hm.

2 Q. Is that what Eric told you after he came back after
3 two hours?

4 A. Yes, sir.

5 Q. He got a trick?

6 A. He went and tricked.

7 Q. Nothing further.

8 CROSS EXAMINATION

9 BY SOLICITOR:

10 Q. Let me ask you something else about your statement.

11 Well, first off, you went over there -- you and Eric Burts
12 and another fellow went over there to Fleetwood Manor. Is
13 that right?

14 A. Yes, sir.

15 Q. Went around back?

16 A. Yes, sir.

17 Q. Eric went up the back stairs to go to an apartment in
18 there?

19 A. Yes, sir.

20 Q. And you saw -- when you were leaving around midnight, he
21 came back down the stairs?

22 A. Yes, sir, he did.

23 Q. And you in fact saw a white girl stick your head out
24 of that apartment door, didn't you?

25 A. Yes, she was white.

MR. RICHARDSON ON CROSS

1 Q. And then you all left Augusta Hills?

2 A. Yes.

3 Q. I mean, left Fleetwood?

4 A. Yes.

5 Q. Obviously you're incarcerated at this time, is that cor-
6 rect?

7 A. Yes, sir, I am.

8 Q. Okay, and, briefly, you do have a criminal history and
9 convictions for several counts of forgery as well as grand
10 larceny and housebreaking, is that correct?

11 A. Yes, sir.

12 Q. Thank you, I don't have any further questions.

13 MR. SULLIVAN: Just one more.

14 REDIRECT EXAMINATION

15 BY MR. SULLIVAN:

16 Q. From about midnight to two fifteen, you don't know where
17 Eric Burts was?

18 A. No, sir, I do not.

19 Q. Nothing further.

20 RECROSS EXAMINATION

21 BY SOLICITOR:

22 Q. From midnight to two fifteen, you don't know where
23 Orlando Fonte Smith was, do you?

24 A. No, I don't. I don't know him.

25 Q. And you don't know where Stephanie Chris Quinn was from

MR. RICHARDSON ON RECROSS

1 twelve to two fifteen?

2 A. I don't know them.

3 Q. No further questions.

4 MR. SULLIVAN: Nothing further.

5 THE COURT: Thank you, sir. You may come down.

6 (Witness excused from stand)

7 MR. SULLIVAN: Could I have about five minutes? I have a
8 witness I need to speak to for a minute.

9 THE COURT: Is this your last witness?

10 MR. SULLIVAN: Yes, sir. The last one. I just need to
11 talk to him a minute.

12 THE COURT: Go on out for two minutes, and we'll just
13 wait. Then we'll take a break.

14 (There was a brief recess in the proceeding after which
15 it was resumed)

16 MR. SULLIVAN: Henry Smith.

17 HENRY SMITH, being duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. SULLIVAN:

21 Q. Speak up so we can hear you.

22 A. Uh hm.

23 Q. Your name is Henry Smith?

24 A. Yes.

25 Q. Are you related to Orlando?

MR. H. SMITH ON DIRECT

1. A. Yes.

2. Q. How are you related to him?

3. A. I'm his uncle.

4. Q. Where do you reside?

5. A. Fleetwood Manor.

6. Q. Do you know a fellow named Eric Burts?

7. A. Yes.

8. Q. Do you know what kind of activities he's engaged in?

9. A. . .

10. SOLICITOR: Objection, Your Honor.

11. A. Yes.

12. SOLICITOR: Can we approach?

13. THE COURT: Mr. Burts has already testified. Let me hear
14. the next question.

15. BY MR. SULLIVAN: I just asked him if he knew.

16. THE COURT: You've got to establish how he knows.

17. BY MR. SULLIVAN:

18. Q. How do you know about activities Mr. Burts is involved
19. in?

20. A. Because I knew him personally, and he sold drugs.

21. Q. Did Eric talk to you about a relationship with a Chris
22. Quinn?

23. A. Yes.

24. Q. Did he ever tell you that he had a sexual relationship
25. with her?

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1 A. He said she gave good head.

2 Q. Anything else?

3 A. No.

4 Q. Thank you.

5 CROSS EXAMINATION

6 BY SOLICITOR:

7 Q. Did he sell you drugs, Mr. Smith?

8 A. Yeah, he have.

9 Q. So you were smoking crack cocaine and buying from him?

10 A. At that particular time.

11 Q. And you knew Chris Quinn too, didn't you?

12 A. Yes.

13 Q. You lived there in Fleetwood Manor, didn't you?

14 A. Yes.

15 Q. But you didn't go in her apartment on May 22nd or 23rd,
16 did you?

17 A. No.

18 Q. And you weren't present to see who was coming or going
19 from that apartment on May 23rd?

20 A. Oh, I saw Eric go in.

21 Q. Huh?

22 A. I saw him going back and forth, you know.

23 Q. Did you see Orlando going back and forth?

24 A. I didn't even see him. I didn't even know he had been
25 in there, but he did tell me that she wanted him to baby sit

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1 for her.

2 Q. Answer my question. You didn't see Orlando?

3 A. No, I didn't see him that day.

4 Q. You didn't see him that day?

5 A. No.

6 Q. Thank you, no further questions.

7 MR. SULLIVAN: Nothing further.

8 THE COURT: Thank you, you can step down.

9 (Witness excused from stand)

10 MR. SULLIVAN: Defense rests, Your Honor.

11 THE COURT: Reply, Mr. Seay? Do you have any reply
12 testimony?

13 SOLICITOR: No reply testimony.

14 THE COURT: All right, ladies and gentlemen, that's all
15 the evidence and testimony.

16 Let me let you step back and relax and rest for about
17 ten minutes, and we'll come back out to have closing argu-
18 ments and I'll charge you on the law, and you can go back
19 and deliberate to reach a verdict.

20 Okay, step back. Do not discuss the case at this time.

21 (Jury excused from Courtroom at 2:05 P.M.)

22 THE COURT: Okay. The only reason I let the testimony
23 in -- Mr. Seay objected -- about the relationship allegedly
24 between the victim, the deceased, and her relationship with
25 this gentleman, is because I don't recall any testimony of

1 the officers about searching her apartment or anything of that
2 nature and finding any money or anything like that.

3 Was there any testimony to that effect? I didn't catch
4 it at first because I didn't know much about the case, but I
5 didn't know whether all those police officers -- if they
6 found any money or anything like that in her apartment.

7 SOLICITOR: They did not make -- list anything as
8 recovered.

9 MR. SULLIVAN: There was none reported on any reports
10 or any testimony.

11 THE COURT: Any what?

12 MR. SULLIVAN: No testimony or any listed on the evidence
13 or inventory sheets.

14 THE COURT: So the question would be, if Mr. Burts went
15 up there three times to sell her drugs, did she have the
16 money to pay.

17 There's been some testimony that the lady across the
18 hall -- you know, she pawned her rings because she owed her
19 some money. I don't know.

20 SOLICITOR: Your Honor, again, I don't know how that
21 goes to the guilt or innocence of Mr. Smith. Those are things
22 concerning the victim herself.

23 THE COURT: Well, we've only got three people that's
24 been in that apartment that night to see her. We've got Mr.
25 Burts going back three times. According to his testimony,

1 he went there three times and sold her drugs three times.

2 SOLICITOR: Yes, sir, and nothing in that evidence is
3 inconsistent with the finding -- nothing inconsistent in the
4 fact he went and did that with Defendant being guilty.

5 There's nothing inconsistent with that.

6 THE COURT: Well, there's no testimony about how he was
7 paid -- he said he was paid, I think.

8 SOLICITOR: I believe he did. I don't think there is
9 any other -- I think he said she didn't owe him any money.

10 MR. SULLIVAN: But he lied about other things.

11 SOLICITOR: Whether or not he was selling drugs to her
12 or not, he established the times he was there, and there is
13 nothing inconsistent about that with the evidence that shows
14 Orlando Smith killed Ms. Quinn.

15 It's jumping over into this huge speculation of third
16 party guilt, and I think he's starting to cross the line.

17 THE COURT: Well, I don't think it's third party guilt
18 when you've got -- when there is direct evidence that there
19 were other men there seeing her that evening, and one of them
20 is a gentleman -- I don't know where he was from. I've for-
21 gotten.

22 SOLICITOR: Ted Waldman from Pennsylvania.

23 THE COURT: Yeah, he had a date with him or something,
24 and in his statement he said she was wired. I don't know.
25 I don't know.

1 MR. SULLIVAN: And then we've got Eric Burts who was over
2 there three times to sell her drugs. We've got him missing
3 for two hours.

4 No testimony where he was.

5 THE COURT: Well, he . . .

6 MR. SULLIVAN: He denied originally in the statement that
7 when he talked to Michael Richardson that he said those
8 things.

9 THE COURT: There was testimony -- and he was missing for
10 two hours. That's undisputed.

11 SOLICITOR: And he said where he was.

12 THE COURT: But there ain't nobody testified to confirm
13 where he was.

14 So . . .

15 SOLICITOR: Are we arguing a directed verdict motion
16 or what . . .

17 THE COURT: I'm not going to direct a verdict. I think
18 there is enough evidence to submit it to the jury.

19 But Mr. -- he's got to move for it. Make your motion.

20 MR. SULLIVAN: I would renew my motion that I made at the
21 end of the trial. There is no reason or there was no rea-
22 son for him to kill the girl, no reason shown.

23 THE COURT: He was there, and there is testimony by other
24 witnesses -- it's up to the jury to pass upon the credibility
25 or believability of the witnesses.

1 But as a Judge, that is not my job. I cannot even com-
2 ment on the facts. So in that regard, I don't know who the
3 jury should believe and who they should not believe. They
4 could believe Mr. Burts. They could believe the gentleman,
5 Waldman -- is that his name?

6 Or they could believe Mr. Smith or whoever. It's up to
7 them who they believe and what evidence they want to give
8 weight to. That's not my responsibility.

9 My responsibility is to consider if there is any evi-
10 dence to send it to the jury, for their deliberations,
11 and in fact there is testimony that he was there.

12 There is testimony about the pants, and there is --
13 his palm print is -- it was there. He admits to using
14 drugs with her that night.

15 Okay, I'm going to -- at this time I will say there is
16 sufficient circumstantial evidence. I don't know if those
17 pieces of rope or whatever they are -- I'm not sure they have
18 been connected in any way.

19 SOLICITOR: Investigator Donohue testified to where he
20 found it, and what he was looking for. He explained that
21 to the jury.

22 THE COURT: So I don't know how many things you put into
23 evidence, but you put a belt in too.

24 SOLICITOR: I don't believe I put the item in evidence,
25 but there was testimony regarding an item by Investigator
Donohue.

1 THE COURT: He just held them up. You didn't put them
2 in evidence.

3 SOLICITOR: That's correct. He identified them and said
4 where he got them, where they were collected.

5 THE COURT: Okay. All right. It could have only been
6 one of those. It looked to me like she only had one mark
7 about her neck.

8 Maybe it was two but -- whatever the evidence is, I'm
9 going to submit it to the jury. I'll let them decide.

10 Are you about ready for your closing arguments?

11 MR. SULLIVAN: Your Honor, I'd like a few minutes to kind
12 of get organized. I've got a lot of stuff.

13 THE COURT: All right, you've got ten minutes.

14 Not too long, but I'll give you ten minutes.

15 (Court stood in recess until 2:30 P.M.)

16 THE COURT: I'm just going to charge murder. That's
17 all.

18 MR. SULLIVAN: Have you got mere presence?

19 THE COURT: Yes, mere presence at the scene. Okay.

20 (Jury returned to Courtroom)

21 THE COURT: Ladies and gentlemen, we're ready for the
22 closing arguments by the attorneys.

23 Mr. Sullivan.

24 MR. SULLIVAN: May it please the Court?

25 THE COURT: Yes.

1 MR. SULLIVAN: Mr. Seay? I know you've paid attention.
2 I appreciate your attention. I know it's not a very pleas-
3 ant task, and looking at some of the pictures and all, but
4 let me preface this by saying I am sorry for this young lady
5 and for her family and these two kids who are left.

6 But in order for justice to be done, the rightful person
7 must be punished. If you punish the wrong person, it is
8 not only tragic for the victim but for the person who is con-
9 victed.

10 I'm going to take you through it, and I'm not going to
11 be very long.

12 I'd like to tell the story of this case. It's like a
13 shoe box. Let's say I put a cat in there and put a mouse in
14 there, close it up, tie it up, and come back and the mouse is
15 gone when I open it up, and the cat is licking its chops.

16 I know what's happened. No doubt.

17 Let's do the same thing. Let's put the mouse in there an
18 come back in a little while. When we open it up, there's a
19 hole in the side of the box. Did the mouse get away, or did
20 the cat get him?

21 Our position is that their case is full of holes. Things
22 they didn't do, things they should have done.

23 And I'll agree basically, and I think your decision will
24 come down to this. One of two people committed this heinous
25 crime.

1 (REPORTER NOTE: This closing argument is very diffi-
2 cult to hear)

3 Either Orlando Smith or Eric Burts.

4 Now, on that day it was kind of a festive day and every-
5 body was partying. May 22nd, weeking coming along, this
6 type thing.

7 On that date, Orlando is, as you know, friends with Chris.
8 She even thought enough of him to ask him to babysit and he
9 played with her children.

10 And that night with the crack cocaine, marijuana or
11 whatever, this is what was going on.

12 But they haven't charged -- Orlando is not charged with
13 ingesting drugs this night. He's charged with murder.

14 So they were partying there, and Theodore Waldman comes
15 by when he's there. He's got a date with Chris maybe. Chris
16 Orlando's testimony is that he leaves. He went out in front
17 of the B building, and two little girls testified they saw
18 a Camaro leave around eleven or eleven thirty, and that is the
19 kind of car Mr. Waldman drove.

20 I don't think he's a liar, but he said when he left
21 Orlando was still there.

22 So Orlando is hanging out with his friends and he goes
23 back home, and there is a discrepancy as to the time. I
24 don't think it matters whether it was eleven thirty or twelve
25 or two thirty or three.

1 There is no testimony from the medical people as to the
2 exact time of death, and that could be critical. He said some
3 time between midnight and three or four in the morning.

4 Orlando sees the door cracked, and he says, that's not
5 like Chris. He really knows her. She's got two kids and
6 she is more careful.

7 He cracks the door and goes in, and he sees her on the
8 floor, and he testified that because she had done a lot of
9 crack that night, and he knows of at least three occasions
10 Eric Burts made runs to Fleetwood with -- three times with
11 drugs -- he thought she may have OD'd or may have been un-
12 conscious.

13 So he handles her, and they made a big deal about the
14 way the palm print -- it could not have gotten there with her
15 hand up here, and he said, that's not the way he found her.

16 He finds her body and turns her a little bit, and in the
17 process he gets some blood on his hand. The forensic people
18 testified the only blood on his hand was Chris', and none from
19 anybody else.

20 He testified that he panicked. He's been in trouble be-
21 fore. He's on probation. He's been doing drugs. You heard
22 that.

23 Here he is, and he's a black guy with a white female vic-
24 tim, and I am in trouble. I can't help her any more. I'm
25 out of here.

1 He realizes this, and he goes home, takes a shower, and
2 he's got on his knee a splotch of blood, from kneeling down,
3 trying to see if she was breathing.

4 He tried to cover that up. The biggest thing he did
5 wrong in this case, he didn't pick the phone up right then and
6 call nine one one. If he had, he wouldn't be sitting here to-
7 day.

8 But he didn't. He panicked. He panicked to such an
9 extent that these kids that he had played with before, he
10 completely blanked out on them.

11 Even though one of them were saying somewhere else on
12 that night, he forgot about those kids, and I think he testi-
13 fied if he had remembered the kids he would have called the
14 police and gone to see about the kid. But he forgot all out
15 the kid.

16 The next day -- and that evening, Ms. Shaw, she sees him,
17 and not a mark on him. Not a scratch.

18 Officer Donohue takes him down and takes his shirt off,
19 checks his arms, his hands.

20 You saw the pictures of Chris, and she had fingernails.
21 She was trying to get this thing off and scratching, and they
22 took clippings.

23 None of this -- Orlando eventually told them what hap-
24 pened. He lied the first time because he was afraid, and
25 then he told them what happened. He said, I went in and found

1 her and I didn't tell anybody.

2 Here, I'll give you blood, hair, everything. Check me
3 out.

4 They got Waldman to do the same thing. Eric Burts
5 didn't do anything except fingerprints. I'll get to that
6 later.

7 Nothing in this case except that palm print matches
8 Orlando Smith. They've got hair samples, they've got blood
9 samples, got all that.

10 I am amazed -- when they've got a possible assault case,
11 they don't do unknown hair. Three hairs not from the victim
12 on her stomach, which had to get there after she was dis-
13 robed.

14 They don't check it. I'm really amazed at that, but
15 they don't. Nothing in this case -- here's another thing.

16 Why would he kill her? Everything you heard from
17 everybody was that they were friends. He babysat for her, he
18 played with her kids.

19 There's not been a single, single reason or idea or mo-
20 tive, and the Solicitor knew that because he mentioned in ope-
21 ing statement that we don't need one; we don't need a motive.

22 Well, you don't go around killing somebody for just the
23 heck of it, a friend, right across the hall from where you
24 live.

25 Now, let's look at the crack dealer, Eric Burts, and

1 another amazing fact. Admitted that he was going around
2 selling crack, a crack dealer, and he wasn't charged. Never
3 took a hair sample from him.

4 He lied on the stand when he denied having any kind of
5 sex relationship with the woman. They didn't pursue that.

6 We know that Chris had money problems at times. Un-
7 fortunately, her husband was in prison, and she had two kids.
8 She worked at Burger King and did not make a lot of money.

9 Crack can get expensive. Call it a rock or an egg --
10 Twenty Dollars a pop.

11 We know she bought some at six that night, and he
12 parked around behind the apartment. Didn't pull up in the
13 driveway. He's hiding.

14 He goes in and sells crack. Goes back over again and
15 sells some more. Goes back at midnight.

16 Now, was any money left, or was maybe a promise made --
17 look, I'm out of money; come back and we'll get together?

18 He leaves with his buddies and he is gone for two hours.
19 He borrowed his friend's car and they had to call him and say
20 get back. Two fifteen. Two hours that the best drug
21 dealer is missing, Eric Burts.

22 Now, what do you think happened? Think about it. He
23 goes over there, and she got the crack; no money; and there
24 is a promise of sex.

25 She's undressed, but the sanitary paper, and this blows

1 his mind. He kills her. You can't pay me any money, can't
2 have sex. Why would she disrobe unless she was going to do
3 something.

4 There's no evidence that he jerked off her clothes, or
5 that they were ripped, and there's no semen.

6 You heard the forensics expert testify there was no
7 semen. Nothing in the mouth, anally or vaginally. No semen.

8 But getting ready to have sex, and he realizes she is
9 having her period, and he flips. You got my dope, you got
10 no money, and now you can't come across, and he kills her.

11 He has got motive. You hear about it all the time.
12 Drug dealer gone bad, drug dealer gone bad.

13 That's what happened here. That's a reason. Not a good
14 one, but if you're a drug dealer you don't like it when
15 someone rips you off.

16 Mr. Smith was there, but mere presence at a crime site
17 is not enough, is not a crime.

18 What he did by not calling the cops is not maybe morally
19 right, but it's not a crime.

20 There is no motive in this case for Mr. Smith to hurt
21 this woman. A lying drug dealer had every reason in the world
22 to go back over there between twelve and two, thinks he's been
23 ripped off, and he kills her.

24 They never checked him for scratches. Never checked him
25 for marks on his arms. They didn't take any hair samples

1 from him.

2 He never even got arrested for being a drug dealer. I
3 don't know what the deal is there.

4 He's the one who had the reason and had the opportunity
5 to kill the girl.

6 He was missing for two hours. Did they bring anybody
7 in here to say, oh, I was with Eric those two hours? Did
8 they put anybody on that stand that said, oh, no, he came to
9 my house? He was missing for two hours.

10 No, sir, he wasn't with anybody, because he was over at
11 Chris' apartment and he killed her. Use your sense. He's
12 the only one who has a motive.

13 She already had the drugs, and he was getting ripped
14 off.

15 Thank you.

16 SOLICITOR: We're at the point in the trial where you
17 have heard all the evidence, all the testimony, evidence has
18 been submitted for you to see, the photographs, statements,
19 letters.

20 I want to take an opportunity right now to walk through
21 this case with you and talk about the facts. Not fiction,
22 not suspicion or speculation, and the elaborate story of
23 all these things that could have happened.

24 We start off with the day. We know from Eric Burts --
25 before I start on the testimony, let me remind you of one

1 things that I'm not sure I broached with you at the start of
2 the case.

3 That is one of the most important jobs that you all
4 have, and that is assessing credibility of witnesses. What
5 is believable? Is that person telling the truth?

6 Then you use your findings regarding credibility of
7 witnesses, and you assess what kind of physical evidence
8 has been submitted, and then you use your common sense.

9 Don't let -- don't lose sight of the fact that you
10 have common sense. You've got experience, and you can apply
11 all of that to this case in deciding what really makes sense
12 in this case.

13 Having said that, I'll start off with that evening. Eric
14 Burts said that he had delivered crack cocaine to the victim,
15 Stephanie Quinn, at her home, and I told you when we started
16 that there were some things about her life that weren't all
17 good.

18 But nonetheless, she paid him, and Investigator Donohue
19 testified in the phone records it in fact shows that Eric
20 Burts was paged around six or so that evening.

21 Eric Burts testified and told us and Investigator Donohue
22 on a prior occasion that, yes, I went over there and took some
23 drugs.

24 Investigator Donohue while testifying told you about
25 two other times the phone was used in Ms. Quinn's

1 apartment to page Eric Burts, and corresponding to each of
2 those times of pages to Ms. Quinn's apartment, Mr. Burts
3 testified that, yes, he went over there.

4 He testified the last time he went over there was around
5 midnight which was the last time he sold her some crack. He
6 said that when he left from her apartment out the back door,
7 he didn't hide that from you all. He didn't hide that from
8 the investigator when he originally spoke with him the day
9 after the incident in May of 1998.

10 Eric Burts said, I left and Chris Quinn, one of her
11 children, and Orlando Fonte Smith, this man seated right over
12 here -- three people there.

13 Ask yourselves what is inconsistent about any of that?
14 It matches up to the phone records. His testimony -- there's
15 no reason not to believe it.

16 He went ahead and told law enforcement, against his in-
17 terests, initially, yes, I was dealing drugs. Why would he
18 lie about the rest, and why do the phone records confirm that?

19 Now, during this time that he was delivering drugs, he
20 wasn't there the whole time, and you've heard from Theodore
21 Waldman, who was there some of the time at Chris' apartment
22 that evening, prior to midnight.

23 You've heard from him about when he came back the next
24 morning.

25 I asked you to take a hard look at that testimony from

1 Theodore Waldman. Is this somebody who is lying about what
2 he saw?

3 He gets up on the stand and he tells us he was over
4 there. He hadn't known this girl long. He comes by and he's
5 not happy with the situation, and by Mr. Smith's own admissio
6 there was cocaine and marijuana being consumed there in
7 Chris' apartment when Mr. Waldman arrives, just as he told
8 us.

9 He told you he had had trouble with the law, and he'd be
10 on probation.

11 He had had a drug problem with cocaine, and he didn't
12 need to be around it, so he left. He stated to you that when
13 he left Orlando Fonte Smith was there. He identified him in
14 Court before you.

15 The Defendant was still there with the victim in the
16 apartment. I believe it was in the neighborhood of ten thirt
17 maybe when he left.

18 We know from Eric Burts that Orlando Smith was still
19 hanging around there at midnight when Burts comes by to deliv
20 last bit of drugs to Chris.

21 We know Eric Burts told you that Chris Quinn didn't owe
22 him any money. He never had any problems with her. He said
23 didn't dislike her.

24 That's essentially the things that went on the night
25 before Chris Quinn's death.

1 Now, also we heard testimony from Lavonda Shaw, and we
2 heard about the clothes Mr. Smith went out in that night,
3 the night of the 22nd.

4 We heard he was dressed nicely -- casually but very
5 nicely, to go out. His clothes were clean. He was nicely
6 dressed. He went out, came back in, got a beer and cigar-
7 ette and left.

8 There is nothing in the record to refute that testimony
9 of Ms. Shaw. In fact, I think anyone who heard Ms. Shaw saw
10 that was not an easy thing for her to do; that it was diffi-
11 cult and it was upsetting.

12 She came to tell you the truth about what she knew that
13 Orlando had been up to that evening and the next day, and it
14 was not an easy thing for her to do. I think it was obvious
15 she was telling the truth.

16 So the next morning, there is no -- well, there is no
17 testimony after Eric Burts left there around midnight.
18 Michael Richardson -- the Defense placed im on the stand. He
19 said they left around midnight or so, and then they went back
20 to Augusta Hills.

21 There was no testimony from anybody that was with Mr.
22 Burts that night or any of the folks that saw -- allegedly saw
23 Mr. Burts, Rico Vaughn and those people, or Mr. Smith's
24 uncle, a user of crack cocaine himself and probably a client
25 of Mr. Burts -- no testimony in the record anywhere that said

1 any of those people noticed anything unusual about Eric Burts,
2 nothing.

3 No blood, no scratches, nothing. Nobody noticed anything
4 like that about him.

5 You know from the photographs you've seen earlier that
6 this was a rather bloody scene.

7 So the whole spiel we heard from defense counsel up
8 here about all this motive and everything from Mr. Burts to
9 believe is something a reasonable person -- you use your rea-
10 son -- cannot even consider. It is speculation, a hoax. It
11 is fiction. It is smoke and mirrors by the Defense because
12 they have nothing else.

13 During that evening, Ms. Quinn was killed, and we know
14 that. We heard testimony about her death from Dr. Minette,
15 outlining her autopsy.

16 You heard from the investigators and the initial offi-
17 cers on the scene. Everyone testified that was there on
18 that morning as to the position of Chris Quinn's body, and
19 you saw it there, her body wedged between the coffee table --
20 end of the coffee table and that sofa, her left arm cocked up
21 over her head.

22 You'll be able to take a look at those pictures, and I
23 encourage you to look at them. Look at how she is positioned
24 there.

25 Theodore Waldman -- his testimony was when he got there

1 that morning to talk to Chris and tell her why he left the
2 night before, and to check about the Freedom Weekend Aloft,
3 the door was cracked open.

4 He knocked and the door opened, and he sees blood. He
5 goes in a little further and he sees Chris' body. Now, at
6 this point, he testified to you that he didn't run, he didn't
7 hide.

8 He'd only known this girl for about a week or two. He
9 met her at Burger King. Nonetheless, what did he do? He
10 grabbed that phone.

11 After dropping to one knee, nearly sick to his stomach,
12 he called the police. He called nine one one, and he checked
13 on that child who was in the back bedroom.

14 After having known her only for a week or so. He didn't live
15 near her. He'd only met her at Burger King and been there
16 one other time.

17 But what did he do? He called the police.

18 I submit to you that that is reasonable action of a rea-
19 sonable person, if in fact they are not guilty of causing
20 her death.

21 Orlando Smith that morning -- you've heard the testimony
22 This is where he starts his whole cover-up. This is evidence
23 of his guilty knowledge and guilty fear.

24 He pops out of the apartment, the small landing between
25 the two doors, and did he say anything to the officers about,

1 oh, what happened? Is there anything wrong? I submit to
2 you, no, he didn't. Officer Maxwell testified to that,
3 and the reason he didn't is that he already knew.

4 He killed her. He knew how she died. He didn't need
5 to ask any questions.

6 He was questioned later on by Investigator Donohue that
7 day. He said he came in at two thirty or three, went home,
8 didn't go back out, didn't see a thing.

9 And at this point there doesn't seem to be anything to
10 connect him to the crime, no physical evidence, but he is
11 arrested for her murder on May 28, 1998.

12 He admits to Investigator Donohue that he is a liar.
13 Orlando Fonte Smith sat there and said that, yes, I was there.
14 Yes, I lied.

15 He told you he lied about seeing Chris on the floor
16 there, soaked in her own blood, half naked. The same Chris
17 Quinn who the Defendant testified not only did he know her,
18 not only did his girlfriend who he lived with across the
19 landing there from Ms. Quinn -- not only did they both know
20 her, but in fact Orlando Smith has said that he was closer to
21 Chris Quinn than Lavonda.

22 Use your common sense. Ask the question, is that believ-
23 able, that a man sits there and says they are such good
24 friends, living in such close proximity to the victim, and
25 had babysat for her on occasion -- he walks in there and

1 finds that scene, and nudges her around, he says; takes her
2 pulse in her forearm and her neck, he says; and walks those
3 three to five steps across the landing and goes to bed? No.

4 He doesn't mention it to his girlfriend.

5 Does any of that make sense? I submit to you, no, it
6 doesn't.

7 And it all goes back to evidence showing the guilty
8 knowledge. He couldn't tell anybody, because he had killed
9 her.

10 You heard some evidence also during this trial about
11 the pants. The bloody pants he had on that night.

12 Lavonda Shaw, with the Defendant sitting in here listen-
13 ing, told you she saw the pants. Now he says, oh, yeah, the
14 pants -- I got that on me while I was checking her out. He
15 has another explanation.

16 But he also told you that he hid those pants right off
17 the bat that night. He said he hid them under a bed, is what
18 he said, but he told you that evening, as soon as he got in.

19 He was already hiding stuff, already covering up his
20 crime, and he continues to do that.

21 His story is one that continues to evolve, each time he
22 tells us about it.

23 Now, I want to get to what is perhaps most important of
24 the evidence, and that's the bloody palm print.

25 You heard from Ron Smith from the Mississippi Crime Lab,

1 and you heard Ron Smith say he's a reknown expert in the
2 field, and he told you not only that without any doubt --
3 at least not disputed by the Defense -- that this is the palm
4 -- the partial palm print of the Defendant, Orlando Fonte
5 Smith, made by the transfer of blood from his hand to Chris'
6 arm, and there's no question it's his.

7 I would submit to you that obviously when that print
8 was made, there was a good deal of still wet blood at the time
9 Chris was laying there.

10 I would also submit to you that based on Mr. Ron Smith's
11 testimony, it is not only improbable but it is impossible the
12 Defendant placed that palm print on Ms. Quinn's left bicep
13 area, left hand, while she's laying on her back on the floor,
14 naked, legs spread, as Mr. Orlando Fonte Smith agrees she
15 was.

16 Even in his own testimony today, he admitted she was be-
17 tween the couch and the coffee table, and you may recall that
18 during the cross examination there was an image offered that
19 perhaps he went down and put his hand on the couch and
20 reached down and touched her left bicep, left arm, while it
21 was down by her side, to check on her.

22 You heard Ron Smith say absolutely not; the left hand
23 would be in the wrong direction.

24 With her arm in this position on the floor, they asked
25 Mr. Ron Smith, could a person leave that left palm print in

1 the same manner as left on the victim. No. That would be
2 impossible. No.

3 It would require such a convoluted twisting of her body
4 to get there, with the couch there, and the coffee table.

5 You have to imagine that you only have a small area of
6 room to maneuver around the body, as you can see from the
7 pictures.

8 In fact, part of her body is almost underneath part of
9 the coffee table. Look at that evidence very hard. Consider
10 it very carefully, because I submit to you it is crucial.

11 It shows that this palm print did not come to be on the
12 victim by accident or mere presence. It happened when he
13 killed her, and he left it on there during that process.

14 His story is inconsistent with the physical evidence,
15 and you must consider that. When he was provided the opportu-
16 nity, he decided to -- he testified to that and began to tell
17 you what happened. During his testimony, did he ever offer
18 to show you essentially how that could have happened? How
19 it could have gotten on there? How he was -- he said he had
20 nudged her and moved her.

21 Then he was so concerned that he wanted to resuscitate
22 her. He was that concerned about his next door neighbor, but
23 he was not concerned enough to call the police. Is that rea-
24 sonable?

25 You've been living across the hall from somebody for a

1 year. You find them brutally murdered, and yet there is no
2 effort made to go and check on the children. I submit to you
3 that is not believable.

4 To go back to the pair of pants we put into evidence,
5 you know, this was another attempt to sort of white-wash or
6 to clear off, and offer something up -- he said he didn't
7 really tell him when he offered up these pants that they were
8 what Investigator Donohue was looking for.

9 I talked to you about motive and malice and premedita-
10 tion at the start of this trial and I want to mention it
11 again, because once you have made a determination that Orlando
12 Fonte Smith is guilty of killing Stephanie Chris Quinn, on
13 or about May 23, 1998 -- once you determine that he did that
14 act and did kill her, you must consider malice.

15 I told you before that malice is just sort of a legal
16 concept, basically the principle of meanness, and you have to
17 ask yourselves was malice present in this case, and I would
18 submit to you that malice is here everywhere.

19 The evidence of the blood at the scene, the brutal
20 nature of what happened to her, the laceration to her head
21 that caused the bleeding -- how much malice, how much meanness
22 does it take to wrap something around -- a string or cord --
23 around Ms. Quinn's neck, pulling on it, while she struggles
24 to try to get it off, gasping?

25 How much meanness does it take to sit there and do

1 that? That's malice. I submit to you there is malice in this
2 case.

3 As I told you before, premeditation is not malice. Mr.
4 Smith when he walked past her, before he struck the first
5 blow, he need not have premeditated doing her harm. Only when
6 he struck out, he struck out with malice, and when he
7 strangled her he did that with malice, and he did not have
8 to plan this or give great thought to it.

9 Defense counsel in closing wanted to bring up a lot
10 about motive of Eric Burts, and motive of this person, who
11 -- you know, I guess it was a good story, good fiction, but
12 there is nothing in this record, when you consider all the
13 testimony you have heard, looked at evidence submitted to
14 you -- there is nothing in the record to substantiate any of
15 that story.

16 Motive is not an element of the crime anyway.

17 So let me tell you about this. Orlando Fonte Smith --
18 as I told you before, when you go back there I ask that you
19 find him guilty of murder, murdering Stephanie Quinn. What-
20 ever his motive in killing her, as I told you before, cannot
21 justify what happened.

22 Reasonable people do not require an explanation of why
23 it happened. You perhaps may want to speculate as to some
24 motive, and perhaps the motive was the drugs she had just
25 received. He admitted to being over there drinking and

1 smoking cocaine and marijuana.

2 Mr. Burts said Orlando Smith was there when he deliv-
3 ered the last bit of drugs. Did he want the drugs? Did he
4 take them from her?

5 Did he attempt to take them from her and when she
6 wouldn't relent he struck out and killed her? Possible motive
7 but, again, motive is not an element of the crime. I would ask
8 you to go back there and consider all the evidence you've
9 heard. Take a look at all the evidence, and I'm convinced
10 when you look at it, and especially the way the body was
11 positioned, the palm print, the way it was on there -- if
12 you stand behind a person and grab him by the left bicep --
13 the way she was found with her arm down by her side -- it
14 couldn't have happened.

15 Think about the ligature marks around her neck, and
16 perhaps the palm print may be consistent with something. You
17 heard there were interruptions here and pulling coming from
18 there.

19 I submit to you that with the direction of the palm
20 print and the ligature marks, it is equally possible that
21 that arm was used as a lever to pull on the ligature, taking
22 her life, choking the life out of her.

23 It is a very real possibility, based on physical evi-
24 dence, not speculation. Real physical evidence.

25 And, of course, the Defendant -- you heard his testimony

1 You heard his statements to the police, and he offered no
2 specifics. Investigator Donohue said he went like this
3 when he said I touched her on her forearm and her neck.

4 Look at the pictures and evidence. Look at the physical
5 evidence, and don't be misguided. Don't be swayed by all of
6 the speculation the Defense brought forward about the kind
7 of person Ms. Quinn may or may not have been.

8 It doesn't matter what she had bad in her life. She
9 did have the right to live and not be killed in this manner.
10 I ask you to look at all the evidence and return a verdict
11 that states that Orlando Fonte Smith is guilty of murdering
12 Stephanie Chris Fort Quinn.

13 Thank you.

14 THE COURT: Ladies and gentlemen, you have heard the evi-
15 dence and the testimony, and now it's my responsibility to
16 explain the law, and then you'll go back and write a verdict
17 in the case.

18 Now, ladies and gentlemen, this case comes to us on this
19 indictment which I hold in my hand. By this indictment, the
20 State of South Carolina charges the Defendant, Orlando Fonte
21 Smith, with murder, in Greenville County on May 23rd, 1998.

22 The he feloniously, wilfully and with malice aforethought
23 killed one Stephanie Chris Ford Quinn by means of stangula-
24 tion, and that the victim died as a proximate or direct result
25 of the strangulation.

1 Ladies and gentlemen, this indictment is simply a piece
2 of paper. It is not evidence in the case. It is simply the
3 vehicle which brings this case to Court, and you will write
4 your verdict on the back, either guilty or not guilty, when
5 you reach a unanimous verdict.

6 This piece of paper is not evidence. The fact that some-
7 one has been charged with a crime, the fact that someone has
8 been arrested for a crime, is not evidence of their guilt.

9 Ladies and gentlemen, you determine the facts of this
10 case from the evidence and testimony that you heard in this
11 Courtroom only.

12 That is what you use in determining the facts of this
13 case.

14 To this indictment, the Defendant, Orlando Fonte Smith,
15 has pled not guilty. His plea of not guilty places the
16 burden of proof upon the State of South Carolina to prove the
17 Defendant guilty beyond a reasonable doubt. That's the rea-
18 son the State got the last argument in the case, and in this
19 particular instance they have the burden of proof.

20 A person charged with committing a criminal offense in
21 South Carolina is never required to prove himself innocent.

22 Now, Mr. Foreman and ladies and gentlemen of the jury,
23 that is a cardinal and important rule of the law of evidence
24 in a criminal case.

25 No matter what the seriousness of the charges are, the

1 Defendant is always presumed to be innocent of the crime
2 for which he has been indicted until you, the jury, are con-
3 vinced by the evidence in the case that he is guilty beyond
4 a reasonable doubt.

5 Now, ladies and gentlemen, the presumption of innocence
6 is not a mere legal theory or legal phrase. That is a sub-
7 stantial right which all of us have; that is, that we are
8 presumed to be innocent of the crime charged until a jury of
9 twelve people, like you, hear the evidence that satisfies
10 you of his guilt beyond a reasonable doubt.

11 Now, ladies and gentlemen, as jurors in this case, you
12 have to find and determine what happened, if you can, on May
13 23, 1998.

14 Neither one of the lawyers were present when this inci-
15 dent happened, and I was not present and you were not pre-
16 sent. Ladies and gentlemen, you heard all the testimony in
17 the case surrounding the circumstances on May 23, 1998, and
18 you have to determine the facts of this case, apply the facts
19 that you determine, as you determine them to be, to the law as
20 I explain it to you, and you write a verdict that speaks the
21 truth in the case.

22 Now, ladies and gentlemen, it is your responsibility and
23 yours alone to pass upon the credibility and the believabil-
24 ity of all the witnesses in the case.

25 They came into this Courtroom and they testified in

1 your presence under oath. You were able to observe the wit-
2 nesses, and to observe the demeanor of the witnesses.

3 You can ask yourself, were they forthright? How did the
4 come to know the facts about which they testified?

5 Was there other evidence and testimony in the case that
6 made the testimony of that witness stronger or weaker?

7 Was there any reason for the witness to be biased or pre-
8 judiced in the case?

9 Ladies and gentlemen, as jurors, you have the right to
10 believe everything the witness tells you, or you could dis-
11 believe everything a witness tells you, and I know you
12 wouldn't do that lightly.

13 You can believe part of what a witness told you and you
14 can disbelieve a part of what a witness told you. You can
15 believe one witness as against several, or several witnesses
16 as against one.

17 You have the right to take into consideration any bias,
18 prejudice or interest that you feel any witness might have in
19 the case.

20 I say these things to emphasize to you, ladies and
21 gentlemen, that the weight you see fit to give to all the
22 evidence and testimony, the credibility and believability of
23 the witnesses, that is for your sole determination as jurors,
24 using your good judgment, your common sense, and your everyda-
25 experiences in life.

1 Now, ladies and gentlemen, the rules of evidence ordinar-
2 ily do not permit witnesses to express their opinions or con-
3 clusions. Normally we just want eye-witness testimony or
4 testimony of those people who have first hand knowledge of the
5 case.

6 An exception to this rule exists for those witnesses
7 whom we call expert witnesses, and you've heard us qualify
8 expert witnesses. The attorneys have asked that people be
9 qualified as experts.

10 These are witnesses who by education and experience have
11 become expert in some art, science, profession or calling,
12 and they may state an opinion as to relevant and material
13 matters in the case in which they profess to be expert, and
14 they may give their reasons for that opinion.

15 Ladies and gentlemen, you should consider any expert
16 opinion received in evidence and give it such weight as you
17 think it deserves.

18 If you should decide that the opinion of an expert
19 witness is not based upon sufficient education or exper-
20 ience, or if you should conclude that the reasons given in
21 support of the opinion are not sound, or that the opinion is
22 outweighed by other evidence, you may disregard the opinion
23 entirely.

24 Expert testimony is to be given no greater weight than
25 that of other witnesses, simply because he is an expert.

1 You are to evaluate that as you do other evidence or
2 testimony in the case, and give that opinion whatever weight
3 you think it deserves.

4 Now, ladies and gentlemen, as jurors in this case,
5 you have functions and responsibilities that are totally sep-
6 arate from mine.

7 I am prohibited by the Constitution from discussing the
8 facts with you, and I would not do that.

9 If I have done anything in this trial, any statements
10 I've made or any rulings, or any facial expressions -- if you
11 have gotten a feeling that I have a feeling about the facts
12 of this case, either for the State or for the Defense, you
13 disregard that.

14 More than any person in this Courtroom, I appreciate you
15 twelve people, thirteen right now, sitting there as citizens
16 of this community. I appreciate you being there to find and
17 determine the facts of this case, and I would not do -- I
18 would not do anything to influence your decision in that re-
19 gard, and I'm sure you wouldn't let me do that.

20 That is your duty and your responsibility, to find and
21 determine the facts.

22 Just as you are the fact-finders, you have to accept
23 the law as I explain it to you, apply the facts to the law,
24 and write a verdict that speaks the truth in this case.

25 Now, ladies and gentlemen, there are two types of

1 evidence which are generally presented during the trial.
2 There is direct evidence and there is circumstantial evidence.

3 Direct evidence is the testimony of a person who claims
4 to have actual knowledge of a fact, such as an eye witness.

5 Circumstantial evidence is proof of a chain of facts and
6 circumstances indicating the existence of a fact.

7 The law makes absolutely no distinction between the
8 weight or value to be given either direct or circumstantial
9 evidence, nor is a greater degree of certainty required of
10 circumstantial evidence than of direct evidence.

11 You should weigh all the evidence in the case. After
12 weighing all the evidence, if you are not convinced of the
13 guilt of the Defendant beyond a reasonable doubt, you must
14 find the Defendant not guilty.

15 Now, ladies and gentlemen, I will instruct you that dur-
16 ing the course of the trial evidence has been presented of
17 other crimes committed or prior convictions of the Defendant
18 and other witnesses.

19 This evidence was admitted for a limited purpose, and
20 I would instruct you now that you must not consider any evi-
21 dence of any prior conviction as to guilt
22 or innocence in this case.

23 This evidence was admitted and may be considered by
24 you if you conclude it is true only for the purpose of eval-
25 uating the credibility or believability of the testimony

1 presented by the Defendant, and for no other purpose.

2 You cannot and you must not consider a prior record, if
3 any, of the Defendant or any witness, particularly of the
4 Defendant, as any evidence of his guilt of the crime for which
5 he is now being tried.

6 You may give to this evidence such weight and such value,
7 if any, to which you find it is entitled on the sole issue
8 of credibility of the testimony offered by the Defendant him-
9 self, but not as evidence of his guilt of the crime with
10 which he is now charged.

11 Now, ladies and gentlemen, no statement may be consid-
12 ered by you made by the Defendant unless the State has proved
13 beyond a reasonable doubt that it was taken by the law en-
14 forcement officers and that the Defendant was given an explana-
15 tion of his Miranda Rights before making a statement.

16 That he fully understood the warnings and knowingly and
17 voluntarily elected to waive those rights.

18 You must further find beyond a reasonable doubt that
19 the statement was made and that it was made freely and volun-
20 tarily, under the totality of the circumstances.

21 In other words, I charge you that an alleged statement
22 of a Defendant cannot be considered against him unless he was
23 first advised of his right to remain silent; advised that
24 anything he said could be used in evidence against him in a
25 Court of Law; that he had a right to a lawyer and that if he

1 could not afford a lawyer one would be provided to him with-
2 out charge, and that he -- that if he elected to talk, he could
3 stop at any time.

4 If you find that the Defendant was so advised, you may
5 only consider his statement if you also find beyond a reason-
6 able doubt that he fully understood the warnings and neverthe-
7 less and knowingly elected to waive his rights.

8 I would charge you that a statement cannot be considered
9 against the Defendant if it was made through force, fear or
10 under duress or compulsion of any kind, or if it was induced
11 by any promise of lenience or reward.

12 It is your duty to determine from all the evidence be-
13 fore you whether the State has proven beyond a reasonable
14 doubt that the alleged statement of the Defendant was in fact
15 made freely and voluntarily.

16 Now, ladies and gentlemen, the State has the burden of
17 proving each and every element of a crime beyond a reasonable
18 doubt.

19 The elements of a crime are listed in the indictment, and
20 I will send it back to you. You will have the indictment
21 with you.

22 Any reasonable doubt you have in your deliberations
23 should be resolved in favor of the Defendant. The Defendant
24 is entitled to any reasonable doubt.

25 A reasonable doubt may exist because of evidence and

1 testimony or the lack of evidence and testimony in the case.

2 If you have a reasonable doubt as to the guilt of the
3 Defendant, he is entitled to that doubt and would be entit-
4 led to an acquittal or a verdict of not guilty.

5 Now, ladies and gentlemen, what is a reasonable doubt?
6 The South Carolina Supreme Court says that a reasonable doubt
7 is the kind of doubt that would cause a reasonable juror in
8 search of the truth to hesitate to act in the case.

9 The United States Supreme Court has put it this way.
10 The government has the burden of proof beyond a reasonable
11 doubt.

12 Some of you may have served in civil court, and you were
13 told that the burden of proof is by the greater weight or the
14 preponderance of the evidence.

15 In a criminal case, the proof must be more powerful
16 than that. It is beyond a reasonable doubt.

17 Proof beyond a reasonable doubt, ladies and gentlemen,
18 is proof that leaves you firmly convinced as to the Defendant
19 guilt.

20 Now, there are very few things in this world that we can
21 know with absolute certainty, and in criminal cases the law
22 does not require proof that overcomes every possible doubt.
23 If, based on your consideration of the evidence, you are
24 firmly convinced that the Defendant is guilty of the crime
25 charged, you must find him guilty.

1 If, on the other hand, you think there is a real possi-
2 bility that he is not guilty, you must give him the benefit of
3 the doubt and find him not guilty.

4 Ladies and gentlemen, those are the definitions of rea-
5 sonable doubt.

6 Now, the State must prove to you beyond a reasonable
7 doubt, number one, that Orlando Fonte Smith, the Defendant
8 here, did in Greenville County on or about May 23rd, 1998,
9 feloniously, wilfully and with malice aforethought, kill
10 Stephanie Chris Ford Quinn, by means of strangulation, and
11 that the victim died as a proximate result or direct result
12 of strangulation.

13 Now, all of those terms are pretty much self explana-
14 tory, except I need to define for you malice aforethought.
15 Ladies and gentlemen, the charge is murder. Murder is the
16 killing of one person by another with malice aforethought,
17 either express or implied.

18 In order to convict of murder, the State must not only
19 prove that the deceased was killed by the Defendant, but it
20 also must prove beyond a reasonable doubt that the killing
21 was done with malice aforethought.

22 Malice in the law of homicide is a term of art; that is,
23 a technical term, importing wickedness, and excluding just
24 cause or excuse.

25 It is something which springs from depravity, from a

1 heart devoid of social duty, and fatally bent on wrong-
2 doing.

3 Malice has been defined as the wrongful intent to
4 injure another and indicates a wicked or depraved spirit,
5 intent on doing wrong.

6 Now, the words express or implied malice do not mean
7 different kinds of malice, but merely the manner in which
8 the only kind known to the law can be shown to exist.

9 Malice is express when there are attitude and threats
10 or verbal threats of vengeance, or when other circumstances
11 show directly that the criminal purpose was entertained.

12 Now, the law says that if one intentionally kills
13 another with a deadly weapon, the implication of malice may
14 arise.

15 If facts are proven beyond a reasonable doubt suffi-
16 cient to raise an inference of malice to your satisfaction,
17 by the use of a deadly weapon, this inference would be
18 simply an evidentiary fact to be taken into consideration
19 by you, the jury, along with all the other evidence in the
20 case, and you may give it such weight as you determine it
21 should receive.

22 You may either accept or reject this permissive infer-
23 ence of malice, depending upon your review of the evidence in
24 the case.

25 Now, when we define murder as the unlawful killing with

1 malice aforethought, what do we mean by aforethought?

2 It simply means that while the law does not require
3 that malice exist for any particular length of time in the
4 mind, before the commission of the act in question, it must
5 be aforethought.

6 There must be a combination of the previous evil intent
7 and the act producing the fatal result.

8 The malice need not be in the mind of the one doing the
9 wrongful act any particular length of time before the act.
10 If it is present in the mind any length of time before the
11 act, and at the time of the act, accompanying and prompting
12 or causing the act, then its presence would be sufficient.

13 Now, Mr. Foreman and ladies and gentlemen of the jury,
14 you cannot hear any more evidence and testimony. Everything
15 that has been introduced into evidence I will send back
16 there for you to review and look at in your deliberation.

17 But the attorneys cannot ask any more questions or pre-
18 sent any more evidence or testimony. You have to decide
19 this case on the evidence and testimony that you have heard.

20 Ladies and gentlemen, you have two possible verdict,
21 guilty or not guilty of murder.

22 Those are the only two verdicts based on the evidence
23 that's been presented, and you have to determine, ladies
24 and gentlemen, if the State has proven each and every element
25 of the crime of murder stated in this indictment beyond a

1 reasonable doubt.

2 If so, your verdict is guilty. If the State has failed
3 to prove any one of these elements beyond a reasonable doubt,
4 your verdict would have to be not guilty.

5 Now, Mr. Foreman and ladies and gentlemen, every per-
6 son on the jury has an equal vote, an equal voice, and an
7 equal input into the case, but somebody has to preside back
8 there in the jury room, and that's your responsibility.

9 You preside, and everyone has equal input and an equal
10 vote.

11 When you reach a unanimous verdict in this case, turn
12 the light on, and we'll bring you back in here and take your
13 verdict.

14 If you should have any question about the law, I'll be
15 happy to answer those questions, as I said, but you cannot
16 hear any more evidence or testimony.

17 Let me let you step out for just a few minutes and see
18 if the attorneys would like me to go over and explain any
19 more law to you.

20 If not, I'll send the evidence back and the Bailiff
21 will tell you to begin your deliberations. Step back there and
22 just ask the Alternate to step in the hall.

23 (Jury excused from Courtroom at 3:37 P.M.)

24 MR. SULLIVAN: I don't remember mere presence, and you
25 said you would charge that.

1 THE COURT: Yeah, I did. Well, the -- okay.

2 I believe, Mr. Sullivan, that I explained to them in
3 detail that they had to prove that Mr. Smith feloniously,
4 wilfully and with malice aforethought killed her on that day
5 by strangling her, and I think by telling them they had to
6 prove beyond a reasonable doubt that he actually did the act,
7 that indicates that, you know, and it's certainly clear to
8 them that just being there is not the issue.

9 I think that I told them they had to prove this two
10 or three times, everything beyond a reasonable doubt, that
11 he willfully killed her on that day, and I think that takes
12 care of it.

13 I could have phrased it a little bit differently.
14 We phrase it differently in drug cases where we talk about
15 constructive and actual possession, and we say you've got
16 to prove they had dominion and control over it.

17 Just the fact they were out there doesn't mean they -- I
18 mean, just the fact that they were there doesn't mean they had
19 dominion and control.

20 That's when I specify mere presence, and I believe I
21 covered it. I really do.

22 MR. SULLIVAN: Since this is a murder case, Your Honor,
23 I would take an exception. I think you're probably right,
24 but I respectfully except to it.

25 THE COURT: Thank you very much. We'll be in recess

1 until we hear something.

2 Mr. Sullivan, have you gone over the evidence with the
3 Court Reporter, because she's a different Court Reporter
4 than we had yesterday?

5 SOLICITOR: We've had three. We picked a jury with
6 another one.

7 (Counsel examining exhibits)

8 THE COURT: Do the attorneys agree all exhibits are
9 present and accounted for?

10 We'll put that in the record, and then we'll send them
11 back and tell the Foreman to begin deliberations.

12 I'll speak to the lady out here.

13 (Jury instructed to commence deliberations at 3:41 P.M.)

14 (Alternate juror excused by the Court)

15 (Court stood in recess until 5:36 P.M.)

16 THE COURT: I'm going to let them go home and come back
17 and deliberate in the morning.

18 (Jury returned to Courtroom)

19 THE COURT: I told you that you could talk to anybody you
20 wanted to after you went home today, but you can't. Now more
21 than ever.

22 Don't discuss it with whoever you see tonight, if it's
23 a parent or spouse or child or friend, because those people
24 haven't seen the witnesses and heard the testimony, and it
25 makes all the difference in the world.

1 So I will trust you to go home. Do not talk to anybody
2 about this case. Do not let anybody talk to you about the
3 case. Okay?

4 If someone did or if you overheard someone talking about
5 this case, please report that to me, because that's very,
6 very serious.

7 Now, go home tonight and just relax, and come back in the
8 morning at nine o'clock. We'll let you all start back then.

9 Thank you so much for your time and the careful attention
10 you have paid to this case. Come back in the morning and you
11 can continue to deliberate, but don't take any of the evidence
12 with you.

13 Thank you so much. See you in the morning at nine o'clock.
14 (Jury excused for the evening. Court stood in recess un-
15 til July 19, 2000.)

16 (The jury continued deliberations at 9:00 A.M. Other busi-
17 ness taken up by the Court until 9:20 A.M.)

18 THE COURT: Bring the jury. Before you do, I understand
19 the jury has reached a verdict, and we might need some extra
20 law enforcement officers in here.

21 I don't know what the verdict is. I have no idea, and I'm
22 going to bring them in and take the verdict.

23 The only thing that concerns me is any emotional outburst
24 in the Courtroom, and I don't want that to happen, and if
25 there is any person -- if you feel like you cannot hear this

1 verdict, whatever it is, and contain your emotions, then I
2 would ask you to step outside, but if there is any emotional
3 outbursts, I would have to take you into custody and maybe hold
4 you in contempt of Court.

5 So if there is anyone here who does not feel like you
6 can hear this verdict and contain your emotions, please step
7 outside.

8 I don't want any emotional outburst. I don't want the
9 jury to be embarrassed or intimidated in any way. Okay.

10 If we have any problems, gentlemen, just take the person
11 in custody.

12 Bring the jury.

13 (Jury returned to Courtroom)

14 THE COURT: Mr. Foreman, I understand you all have reached
15 a verdict. Is that correct?

16 FOREMAN: We have, Your Honor.

17 THE COURT: Give it to the Bailiff, please.

18 (Verdict exhibited to the Court by the Bailiff)

19 THE COURT: Madam Clerk, would you publish the verdict,
20 please?

21 CLERK: Your Honor, this is Indictment 98 GS 23 5212, the
22 State versus Orlando Fonte Smith, indicted for murder. The
23 verdict is guilty. Signed by the Foreman, 7 19 2000.

24 If this is your verdict, please raise your right hand.

25 (All jurors raising their right hands)

THE COURT: Any question about the form of the verdict,
Mr. Sullivan?

1 MR. SULLIVAN: None, Your Honor.

2 THE COURT: Mr. Seay?

3 SOLICITOR: None, your Honor.

4 (Jury members excused by the Court)

5 THE COURT: Okay, Mr. Sullivan.

6 SOLICITOR: Your Honor, the victim's family would like
7 to address the Court prior to sentencing.

8 THE COURT: You know, Mr. Seay, that's fine with me but
9 I don't have any control over the sentence. Well, maybe I
10 do. It's thirty to life.

11 Okay.

12 SOLICITOR: Thirty to life -- I just wanted to make the
13 Court aware, if the Court wishes to hear from them, that they
14 would like to have that opportunity.

15 THE COURT: I'm sorry. It's thirty to life. I thought it
16 was just life.

17 Mr. Sullivan, you have anything?

18 MR. SULLIVAN: Your Honor, you heard the case. I think
19 the jury wrestled with it real hard. I think there is a
20 question still in my mind. Of course, I represent Orlando,
21 who is 24 years old and has a child. You heard a lot about
22 him.

23 I don't know what happened. The jury believed the prosecu-
24 tor's side -- he's 26. If you give the minimum amount, he'll
25 be an old man when he gets out. He'll be 56 years old. It's

1 a day to day thirty. It's not eighty-five or anything like
2 that.

3 I'd ask you to consider -- I know the circumstances and
4 nothing I can say will help this family, but the Court has
5 some discretion.

6 There's not a lot more I can say about it.

7 THE COURT: Okay. Before I hear from the Defendant, let
8 me hear from the victim's family.

9 SOLICITOR: Your Honor, this is the victim's mother.
10 B. J. Edmonds.

11 MS. EDMONDS: Your Honor, I heard him saying that Orlando
12 Smith would still be a young man in his fifties -- or he would
13 be an old man instead of a young man, and for two and a half
14 years, or two years and two months, I've tried to make sense
15 out of what I was informed was a senseless act of violence.

16 I don't know what in God's name would ever cause a per-
17 son to take another person's life, especially a mother of a
18 child.

19 Chris only got to live thirty years one month and twenty
20 three days. Why has become a word that has tormented me. It
21 is beyond imagination, and only Orlando Smith knows why he
22 killed my daughter.

23 My heart wrenching grief is not explainable. From the
24 second I learned of my daughter's death, until I was allowed
25 to see her, my arms ached, wanting to hold my daughter and

1 touch her, to tell her that this horrible thing didn't happen
2 to her.

3 When I saw my daughter, I couldn't tell her those things
4 because she was dead. Orlando Smith took away the very
5 breath that she drew, ending her life in seconds. That's
6 what I was told by Detective Donohue, that my daughter
7 lost consciousness within thirty seconds.

8 At first I thought that thirty seconds was not a long
9 time, that she didn't suffer long, and then there was --
10 later on I was looking at the second hand of a clock and think-
11 ing of my daughter, my child. That thirty seconds turned into
12 thirty minutes and then thirty years and then it turned into
13 forever.

14 When your child is in pain -- when your child is in pain,
15 that pain is forever, and I know my daughter suffered. As a
16 parent, we love our children from the moment they're born.
17 There's nothing in the world that we won't do for them, and
18 when I learned of my daughter's death it brought me to my
19 knees.

20 She was a gift from God, and remembering her birth, a
21 tiny perfect self, the happiness, love, the thrill, everything
22 in the wonder of her, God's gift, is really unexplainable.

23 The love I felt for my daughter it something that has
24 no words. Only the parent of a dead child can know the feel-
25 ing.

1 Chris and her children, Scottie, Trevor and Christen, have
2 been cheated out of the life of a family together. Scottie
3 will never know, will never have her mother beside her for
4 the most important events of her life, graduation, marriage,
5 the birth of her first child, for all the things we need our
6 mothers for.

7 Even a phone call just to say, I love you. Trevor
8 and Christen are only babies, but please imagine -- just
9 imagine the adjustments they've had to go through. I'm
10 sure Trevor asked over and over where is my momma. Christen
11 not being able to talk but knowing something is very wrong.

12 Children and babies know when something is not right.
13 They just can't express it.

14 The pain Chris' children will suffer for the loss of their
15 mother is unthinkable, especially the way she died. Murder is
16 the unthinkable word that only happens to other people, not
17 to us.

18 Chris' sisters had a bond and love that would have lasted
19 a lifetime had it not been for Orlando Smith. My daughters
20 loved each other with the greatest of loves. Now all they have
21 are memories.

22 Chris has what? Peace. Is now the time for me to reflect
23 on God's plan? Well, I haven't been able to get to God's plan
24 yet. I still want to see my daughter. I still want to touch
25 her.

1 I'm told all the time that she's at peace, she's with
2 God, she's all right, she's an angel or guardian angel, but
3 still there is no relief in those words for me.

4 This is what I want for my daughter. Your Honor, I
5 thought, what kind of impact could I possibly have upon you?
6 You never had the pleasure to meet my daughter, so all I can
7 do is pray that God will touch you and pray that I have articu-
8 lated to you the magnitude of Chris' life and death on her
9 children, her sisters, myself, and all those that love her.

10 My daughter's birth was not an accident, and my daughter's
11 death was not an accident. Orlando Smith, without even a
12 thought, violently beat her and strangled her, taking the
13 last breath. I imagine her struggling and trying to free her-
14 self. I know she was terrified.

15 Orlando Smith has been free for two years and two months
16 with no guilt or feelings. Your Honor, I beg of you, please
17 give him the maximum sentence of life in prison for the death
18 of my daughter, Chris, with no chance of parole so that he may
19 spend the rest of his life hopefully in misery with nothing to
20 think about but the precious life that he took from me and her
21 loved ones, her life.

22 That's all.

23 SOLICITOR: Thank you, Your Honor.

24 THE COURT: What was his record?

25 SOLICITOR: Burglary third and shoplifting. Simple

1 possession of marijuana.

2 MR. SULLIVAN: No violence, Your Honor.

3 THE COURT: All right, Mr. Smith, do you have anything
4 you want to say to the Court?

5 DEFENDANT: I have nothing to say, Your Honor. Nothing
6 whatsoever.

7 THE COURT: Okay, anything else?

8 MR. SULLIVAN: I think you've heard everything that can
9 be said at this point in time.

10 THE COURT: All right. His prior convictions are just
11 -- no assault and batteries or anything like that?

12 MR. SULLIVAN: None, Your Honor.

13 SOLICITOR: He doesn't have a conviction for assault
14 and battery, not according to the report I had.

15 MR. SULLIVAN: Burglary third and shoplifting. No re-
16 sisting, no disorderlies, no assaults, no CDVs.

17 THE COURT: Well, the Legislature has given me the respon-
18 sibility to decide between thirty and life without parole. I
19 guess it's not parole . .

20 SOLICITOR: It is a non-paroleable offense.

21 MR. SULLIVAN: And the thirty is basically a day for day.
22 No eighty-five percent on the murder.

23 THE COURT: All right, this is a long time now, and I've
24 tried a lot of murder cases.

25 I've never run across one exactly like this one. I can

1 sympathize with the mother of this girl because my sister
2 unfortunately died when she was twenty-eight.

3 I know my parents were never able to get over it, and I
4 am sure you will never get over the death of this girl.

5 Unfortunately, from what I've heard, there were a lot
6 of things going on that really shouldn't have been, and I'm
7 not sitting in judgment on anyone. A lot of people frequented
8 the apartment, the house, who shouldn't have been there, particu-
9 larly Mr. Burts.

10 My heart goes out to the mother of this girl. The girl
11 died a tragic death, and Mr. Smith had lived across the hall
12 from her for four years, as I understand it.

13 SOLICITOR: Ten months.

14 THE COURT: He and his girlfriend lived together about
15 four years.

16 MR. SULLIVAN: Correct.

17 THE COURT: And he never had a conviction for violence.
18 Murder is a terrible thing and the Legislature knows that.
19 The jury struggled for a long time. I don't know anything
20 about their deliberations.

21 Under the old law in every murder case we used to try, the
22 person was eligible for parole after twenty years, and I know
23 plenty of people who committed murders exactly like this one
24 that did serve twenty years.

25 There is no reason in the record why Mr. Smith would
have done this or why someone else did. It's not in the

1 record. He's never been a violent man, and, as I said, my
2 heart bleeds. I can understand how the mother feels.

3 If the Legislature has given me these parameters based
4 on all the surrounding facts and circumstances of Mr. Smith's
5 past life with no violent nature, I'm going to sentence him to
6 the State Department of Corrections for a period of thirty
7 years, without parole.

8 Thank you.

9 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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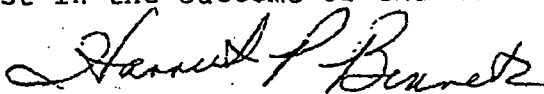
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25

CERTIFICATE

I, HARRIET P. BENNETT, Official Court Reporter for the Ninth Judicial Circuit of South Carolina, do hereby certify that the foregoing is a true and complete transcript of record in the captioned matter, prepared from the records of Ann Campbell to the best of my ability, as heard in the Court of General Sessions for Greenville County July 18-19, 2000.

FURTHER, I certify that I am neither of kin or counsel, nor do I have any interest in the outcome of the matter.



November 17, 2000

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Orlando F. Smith,

Appellant.

Appeal From Greenville County
Larry R. Patterson, Circuit Court Judge

Unpublished Opinion No. 2002-UP-372
Submitted March 25, 2002 - Filed May 23, 2002

APPEAL DISMISSED

Deputy Chief Attorney Joseph L. Savitz, III, of the
South Carolina Office of Appellate Defense, of
Columbia, for appellant.

Attorney General Charles M. Condon, Chief Deputy
Attorney General John W. McIntosh, and Assistant
Deputy Attorney General Donald J. Zelenka, all of
Columbia; Solicitor Robert M. Ariail, of Greenville,
for respondent.

PER CURIAM: Orlando F. Smith was indicted for the murder of Stephanie Chris Ford Quinn. A jury convicted Smith. The circuit judge sentenced Smith to thirty years imprisonment. Smith's appellate counsel filed a brief pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). Counsel additionally submitted a petition to be relieved from representation, asserting there are no directly appealable issues of arguable merit. Smith filed a pro se response.

After a review of the record, pursuant to Anders and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's petition to be relieved.¹

APPEAL DISMISSED.

GOOLSBY, CONNOR, and ANDERSON, JJ., concur.

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

STATE OF SOUTH CAROLINA

County of GREENVILLE County

In the Court of Common Pleas

ORLANDO F. SMITH

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

vs.

STATE OF SOUTH CAROLINA

Name of Respondent.

2002-CP-23-

APPLICATION FOR
POST-CONVICTION RELIEFFILED
CLERK OF COURT
GREENVILLE COUNTY, S.C.
JUL 17 A 9 03INSTRUCTIONS — 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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention McCormick Correctional Institution, Route Two-Box 100-
McCormick, SC 29899

2. Name and location of Court which imposed sentence Greenville County G.S.

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

- (a) _____
(b) _____
(c) _____

4. The date upon which sentence was imposed and the terms of the sentence:

- (a) July 19, 2000 Applicant was sentenced to thirty years imprisonment.
(b) _____
(c) _____

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
 (b) after a plea of not guilty Applicant plead "NOT GUILTY" and he is NOT GUILTY!
 (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes, however, due to counsels ineffective assistance, an ANDERS BRIEF was all that could be filed in this matter.

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. S.C. Court of Appeals
 ii. _____
 iii. _____

(b) the result in each such Court to which you appealed:

- i. Affirmed on ANDERS BRIEF
 ii. _____
 iii. _____

(c) the date of each such result:

- i. June 25, 2002
 ii. _____
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. _____
 ii. _____
 iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) _____
 (b) _____
 (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) My present conviction rests purely upon unsupported supposition,
 (b) no trial evidence was presented by the state which could have convicted me
 (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) _____
 (b) _____
 (c) _____

APPLICANT'S SUPPLEMENTAL CLAIMS

The applicant herein incorporates the following claims in support of this Post Conviction Relief Application; These claims follow page two of this application:

1. Counsel, pre-trial, failed to conduct proper and thorough investigation of the material facts of this case, thereby, rendering the final decision a most prejudicial one in view of the facts of this case.

2. Failure to properly raise objection to Judge Larry R. Patterson's refusal to direct a verdict acquitting appellant of murder resulted in applicant becoming procedurally barred to raise claim as his first right on direct appeal, which results in ineffective assistance of trial counsel and establishes a grave prejudice to applicant therefrom.

3. Counsels failure to subpoena certain of applicants witnesses resulted in eneeffective assistance of trial counsel and results in prejudice to this applicant.

4. That the combined - errors contributed by trial counsel led to a situation where the culmulative effect doctrine as to this instant case, is triggered due to the resulting prejudice it created to this applicant. *

5. Trial counsels failure to object to certain of the states trial evidence which had been inadmissible results in ineffective assistance of trial counsel in a case where the state prevailed in a matter which rests purely upon the factor of supposition however patently lacking in evidence. (Note; this is a case in which the court failed to view the evidence impartially and HAD the lower court to have made such an assessment, even in light most favorable to the state, See: State vs. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998) & State vs. Robinson, 344-S.C. 220, 543 S.E.2d 249 (Ct. App. 2001), it must direct a verdict of acquittal if there is no direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused if in which his guilt might be fairly and logically deduced. In the present case, the only 'evidence' (sic) merely raised the suspicion of the accused and was not sufficient to survive a directed verdict. See also: State vs. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000); and see; State vs. Hammitt, 341 S.C. 638, 535 S.E.2d 459 (Ct. App 20002). and see; State vs. Muhammed, 338 S.C. 22, 524 S.E.2d 637 (Ct. App. 20002) and see; State v. Bellinger, - 322 S.C. 196, 470 S.E.2d 851 (1996). - Other, omitted herein.

6. But for the errors & ommission of trial counsel, the result would have been favorable to this applicant.

7. But for counsels errors and ommissions, applicant would not presently stand unconstitutionally convicted of a crime applicant did not commit.

*a seperate brief will be submitted and made part of this application once legal counsel has been enguaged in this matter and upon proper and further investigation

CLAIMS:
continued

8. Counsel may not articulate valid reasons for the plethora of omissions and ineffective assistance afforded this applicant during jury trial of the case. see: Goodson v. United States 564 F.2d 1071 (4th Cir. 1977). (counsel's failure to subpoena alibi and other witness testimony is not an informed trial strategy and constitutes ineffective assistance of counsel).*

9. Counsel spent inadequate time in pre-trial (a) conference with this applicant, (b) in pre-trial investigation activity and was not (c) prepared for trial in this case.

10. Counsel's ineffectiveness was so pervasive, the applicant may be exempt from proving actual prejudice. See: Frett v. State @ 298 S.C. 54, 378, S.E.-2d 249 (1988).

11. Counsel's failure to motion, pre-trial for a psychological exam in view that applicant informed counsel he was at the periods both (a) on probation and (b) under the influence of drugs constitutes ineffective assistance of counsel, among other things, each being germane to this case and combined, does trigger doctrine of cumulative error, particularly where, as in the instant case, applicant is not guilty of having committed any crime whatsoever and was falsely accused and convicted due to ineffective counsel.

Note: applicant does not waive any right in this matter and this would include but is not limited to his right to submit and file any amended or supplemental legal grounds as to applicant may become aware upon further investigation of this entitled case.

NOTE: applicant will rely upon the case authority cited herein in addition to - other applicable case authority at period of evidentiary hearing of this matter.

NOTE: Applicant will subpoena witnesses at period of the evidentiary hearing of this case.

*While Washington v. State has been adopted in the state of South Carolina, Butler - (See: Butler v. State 288 S.C. 441, 334 S.E. 2d 813 (1985) Butler did not eliminate the 'Standard of making the proceedings a farce and mockery of justice' established in Crosby v. State, 241 S.C 40, 126 S.E.2d 843 (1962) however, did state that Strickland (Supra) is the preeminent authority for all other courts, state and U.S.-Federal. See: Butler, (Supra).

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? None

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? None

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? None

(d) any other petitions, motions or applications in this or any other Court?
None

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. NA

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. NA

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. NA

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. NA

ii. _____

iii. _____

iv. _____

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

i. NA - exception of the ANDERS BRIEF FILED BY THE S.C. Office of Appellate-

ii. Defense.

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

None

(a) which grounds have been presented:

i. NA

ii. _____

iii. _____

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

i. NA

ii. _____

iii. _____

15. If any ground set forth in (9) 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) NA

(b) _____

(c) _____

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

(a) your arraignment and plea? _____

(b) your trial, if any? AT PERIOD OF TRIAL: however, counsel was so ineffective I may as

well have simply appeared without any counsel!

(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? _____

17. If you answered "yes" to one or more parts of (16), list:

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

1. Timothy Sullivan

JOSEPH L. SAVITZ, III - SC Office of Appellate Defense.

ii. _____

iii. _____

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

i. TRIAL & SENTENCE

ii. APPEAL - ANDERS BRIEF

iii. _____

18. State clearly the relief you seek in filing this application.

(a) that conviction and sentences be vacated due to fact I am innocent. (b) that
new trial be ordered.

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

No.

STATE OF SOUTH CAROLINA

GREENVILLE

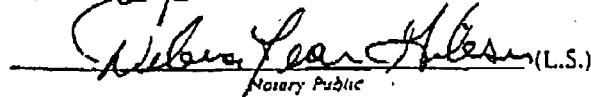
County of _____

VERIFICATION

I, ORLANDO F. SMITH, 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.



ORLANDO F. SMITH

SWORN to and subscribed before me this 10day of September, 2002
 (L.S.)
Notary Public
My Commission Expires: 11 Dec. 2007

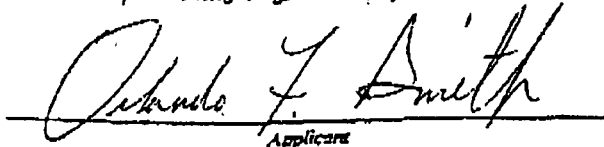
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
FROM H. W. W. W. W. W. W.

SEP 17 A 9 03

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, ORLANDO F. SMITH, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

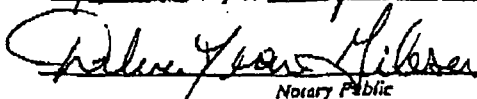
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.



Applicant

ORLANDO F. SMITH
PRO SE
McCORMICK CORRECTIONAL INSTITUTION
ROUTE TWO BOX 100
McCORMICK, SC 29899

SWORN or affirmed to and subscribed before me this

10 day of September, 2002

Notary Public

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Orlando F. Smith,
S.C.D.C. No. 267982)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. No. 02-CP-23-6327

RETURN

ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
MAY 23 2002

2002 MAY -6 PM 2:30

In response to the post-conviction relief application filed September 17, 2002, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections. The Applicant was indicted at the October 2001 term of General Sessions for the Greenville County Grand Jury for Murder (98-GS-23-5212). C. Timothy Sullivan, Esquire represented the Applicant on the charges. On July 17-19, 2000, the Applicant went to a trial by jury and was found guilty as indicted. The Honorable Larry R. Patterson sentenced the Applicant confinement for thirty (30) years.

A timely Notice of Appeal was filed on Applicant's behalf and an Anders brief was submitted on the Applicant's behalf by Joseph L. Savitz, III, of the South Carolina Office of Appellate Defense. The South Carolina Court of Appeals dismissed the appeal. State v. Orlando Smith, Op. No. 2002-UP-372 (S.C. Ct. App. filed May 23, 2002).

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "My present conviction rests purely upon unsupported supposition; no trial evidence was presented by the state which could have convicted me."

For the purpose of this Return, the Respondent construes the allegation as ineffective assistance of counsel. The Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections records, and the trial transcript by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

The Respondent denies the allegation that trial counsel was ineffective and demands strict proof thereof.

III.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

Allegations regarding ineffective assistance of counsel may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

WHEREFORE, Respondent requests an evidentiary hearing solely for the purpose of determining whether trial counsel was ineffective.

Respectfully submitted,

HENRY D. MCMASTER
Attorney General

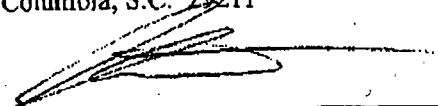
JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD ZELENKA
Chief Capital and Collateral Litigation

B. ALLEN BULLARD
Assistant Deputy Attorney General

CHRISTOPHER L. NEWTON
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: 

Attorneys for the Respondents

Columbia, South Carolina

May 2, 2003

STATE OF SOUTH CAROLINA) IN THE COMMON PLEAS COURT
) CASE NO: 02-CP-23-6327

COUNTY OF GREENVILLE)

Orlando F. Smith,)

Applicant)

vs.)

State of South Carolina,)

Respondent)

**MOTION TO COMPEL
 PRODUCTION OF EVIDENCE
 FOR SCIENTIFIC TESTING**

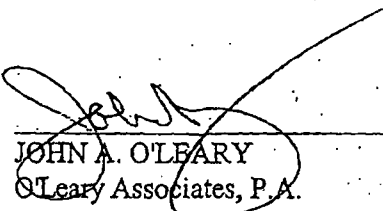
COPY

Now comes the Applicant, Orlando Smith, by and through his undersigned Counsel, John A. O'Leary, and moves this Honorable Court for an Order compelling the State, the South Carolina Law Enforcement Division and the Greenville County Sheriff's Department to produce all evidence collected and submitted in this matter based on the following:

1. The Applicant was convicted of murder and sentenced to a term of thirty years imprisonment on July 19, 2000.
2. Forensic evidence, specifically hair samples, and palm prints were collected in this matter and turned over to SLED for testing.
3. It appears that some evidence was tested while other forensic evidence and samples, specifically hair samples, were not as tested as testified to in the trial of this matter by Agent Kimberly Black of the State Law Enforcement Division. These samples if tested against the standard samples collected from the applicant, more likely than not would indicate that another person was present at the scene and are exculpatory in nature. Had these samples matched the State would have presented this evidence in their case in chief.

THEREFORE, the Defendant prays that an Order be granted or a hearing held compelling the State, by and through the State Law Enforcement Division and the Greenville County Sheriff's Department produce any and all hair and print samples, records, reports, memoranda, correspondence, notes and comparative standards as collected in this matter for independent review and/or analysis.

Respectfully Submitted,


 JOHN A. O'LEARY
 O'Leary Associates, P.A.
 2008 Lincoln Street
 Post Office Box 164
 Columbia, South Carolina 29202
 (803) 779-5556
 ATTORNEY FOR DEFENDANT

Columbia, South Carolina
October 13, 2003

CERTIFICATE OF SERVICE

I, the undersigned employee of O'Leary Associates, P.A., attorneys for Orlando Smith (SCDC#: 267982), certify that I have served the foregoing document(s) on the individual(s) listed below on October 13, 2003 by placing a copy of the same in the United States Mail, postage prepaid, and return address clearly affixed to the following address:

PERSON SERVED:

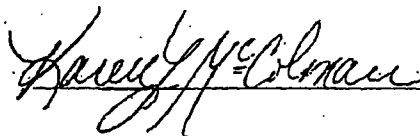
Christopher Newton, Esquire
 Office of the S.C. Attorney General
 1000 Assembly Street
 Post Office Box 11549
 Columbia, SC 29211-1549

ATTN: Keeper of Records
 Greenville County Sheriff's Department
 4 McGee Street
 Greenville, South Carolina 29601

ATTN: Keeper of Records-LABORATORY
 State Law Enforcement Division
 4400 Broad River Road
 Columbia, South Carolina 29221

DOCUMENTS:

MOTION TO COMPEL



Columbia, South Carolina / October 13, 2003

STATE OF SOUTH CAROLINA) IN THE COMMON PLEAS COURT
) CASE NO: 02-CP-23-6327
 COUNTY OF GREENVILLE)

Orlando F. Smith,)
 Applicant)
 vs.)
 State of South Carolina,)
 Respondent)

**ORDER TO COMPEL
 PRODUCTION OF EVIDENCE
 FOR SCIENTIFIC TESTING**

ENTERED COMPUTER

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 2003 OCT 31 A 10:32
 J. B. WICKENS

This matter comes before me on Motion of the Applicant, Orlando Smith, moving to compel the State, by and through the South Carolina Law Enforcement Division and the Greenville County Sheriff's Department to produce all evidence collected and submitted in this matter, including, but not limited to hair, blood and prints samples.

1. I find that the applicant was tried and convicted on the charge of murder in the General Sessions Court of Greenville County and was sentenced on or about July 19, 2000.

2. Forensic evidence, specifically hair samples, and palm prints were collected in this matter and turned over to SLED for testing. Comparison samples of like items were collected from the Applicant for review and testing.

3. It appears that not all evidence collected was tested and compared with the Applicant's comparative samples, and may give rise to the question of whether or not evidence exists which would indicate the presence and role of other individuals at the time of the murder.

4. It is ordered that the State Law Enforcement Division and the Greenville County Sheriff's Department produce and make available all physical evidence and samples collected in this matter for independent scientific testing by the Applicant.

5. It is further ordered that any and all comparison samples collected from the Applicant, Orlando Smith be produced for comparison purposes together with all inventory sheets, transmittal documents, work sheets and reports (either drafts or final) of such tests and or requested tests which were cancelled and or withdrawn.

ff
 S

6. This Order is to be complied with within 15 days of service of this Order. If comparison is not possible, or such items as ordered or not available, notice is to be given to the Court within 15 days.

IT IS SO ORDERED

This 24 day of October, 2003.

A handwritten signature in dark ink, appearing to read 'E. W. Miller', is written over a horizontal line.

Honorable Edward W. Miller
Judge, Greenville County Circuit Court.

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS

2002-CP-23-6327

ORLANDO SMITH,)
APPLICANT,)

VS.)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,)
RESPONDENT.)

ORIGINAL

October 22, 2003
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE.

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

JOHN A. O'LEARY, ESQ.
Attorney for the Applicant

CHRISTOPHER L. NEWTON, ESQ.
Assistant Attorney General
Attorney for the Respondent

HOLLIE M. JENKINS
Official Court Reporter

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

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(AW) CAROLYN BELL:

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E X H I B I T S

(There were no exhibits introduced.)

1 THE COURT: All right. Mr. Newton.

2 MR. NEWTON: Your Honor, the first case the State
3 would call would be Orlando Smith v. State of South
4 Carolina.

5 THE COURT: All right.

6 MR. NEWTON: Your Honor, I believe Mr. O'Leary has a
7 motion on behalf of his client.

8 MR. O'LEARY: Your Honor, I would move for a
9 continuance on the grounds that I filed the motion on the
10 13th, I believe, a motion to compel evidence.

11 During the review of the file, it was uncovered that
12 some of the evidence that was used, in particular,
13 comparisons of a palm print, was sent to the State of
14 Mississippi. It's referred to in the document which I
15 showed to the Court in chambers with counsel. That has
16 never been produced. And it's critical that a case for --
17 for the documents, the photographs that were used, and the
18 standards for the comparison to allow an independent
19 analysis.

20 In addition to that, the SLED records that were
21 forwarded to us, part of it was from a different file. It
22 was incomplete on its face. So I moved that the Court
23 order SLED to allow us to have access to the file, as well
24 as the Greenville Sheriff's Office.

25 There are other incidents of problems, too, that we

1 need to look at that were referred to. There's a belt in
2 question which -- it shows up in references. We have no
3 pictures or have not been able to see those particular
4 items. And we would ask the Court to give us an order to
5 compel both of those agencies to produce those documents
6 and items for examination, and to allow us a continuance on
7 this.

8 Your Honor, I would introduce into -- for the record
9 the copy of the document from Mississippi. And nowhere in
10 any of the discovery did those items appear, except for the
11 reference in the letter.

12 THE COURT: Well, I would normally be inclined to
13 consider that. There's an order in the file dated --
14 clocked in -- dated September 10th of this year, clocked in
15 with the Clerk's Office September 11th, substituting
16 counsel. And written on that order is, "This case is set
17 for trial in October and will not be continued." And
18 that's signed by our chief administrative judge, so.

19 MR. O'LEARY: Your Honor, the only thing I can say in
20 reference to that, I wasn't part of that. Mr. Henry was
21 the original counsel. I was substituted, I believe, on the
22 14th.

23 I have had an investigator out, who is taking
24 statements from some witnesses that were subsequently
25 discovered, which we felt are critical. But in addition to

1 that, this evidence -- my understanding is this evidence
2 that was referred to and was testified to, and yet we have
3 never had a chance to really look at it to allow us to
4 properly prepare.

5 In this case, my client was convicted and got 30
6 years. This is his only chance really to appear before the
7 Court and make a presentation.

8 And I can attest to the Court that I have communicated
9 with SLED. SLED indicated to me that the file was
10 available, but I would need an order to get it. And I
11 was -- it was my understanding that the only way I could
12 get the order was to appear in front Your Honor for that
13 order. And this is the first opportunity that I have had.

14 I've never requested a continuance, Your Honor.

15 THE COURT: Well I don't -- I mean, I will allow
16 you -- I'll allow you to collect that evidence, but I think
17 we're going to go ahead with the hearing today. And I'll
18 give you a certain amount of time to submit. I'll leave
19 the record open for a period of time. And we'll talk about
20 that at the conclusion of the hearing. But we need to go
21 ahead and get this thing rolling.

22 MR. O'LEARY: Your Honor, could I ask that I not be
23 the first up, that you allow me to --

24 THE COURT: Yes. We'll see if we don't have some
25 other matters that we can handle.

1 MR. O'LEARY: Thank you, Your Honor.

2 THE COURT: Yes, sir.

3 (WHEREUPON, the proceedings were recessed.)

4 THE COURT: All right. Mr. Newton.

5 MR. NEWTON: Your Honor, the first case the State
6 would call this morning -- or this afternoon would be
7 Orlando Smith v. State of South Carolina.

8 THE COURT: Okay.

9 MR. NEWTON: And, Your Honor, we did the motion for a
10 continuance this morning, which Your Honor denied.

11 And I believe we're ready to proceed on the hearing on
12 the merits, Your Honor.

13 THE COURT: All right.

14 MR. O'LEARY: Your Honor, the only thing I would like
15 to clear up with reference to this morning is that some of
16 that evidence may involve testimony by a witness. Would I
17 be allowed, at the time, after the analysis of it to come
18 back before the Court and put testimony on the record?

19 THE COURT: Yes. We'll see, you know, how essential
20 it is and what we can work out. Let's cross that bridge
21 when we come to it.

22 MR. O'LEARY: Okay.

23 THE COURT: But I'm allowing you to leave the
24 record -- we're going to hold the record open to submit
25 additional evidence.

ORLANDO SMITH-DIRECT BY MR. O'LEARY

7

1 MR. O'LEARY: Your Honor, this involves
2 post-conviction relief filed by my client, Orlando Smith.
3 I was only brought into this case approximately September
4 14th. And I've advised the Court of the other problems and
5 motions that we've filed.

6 At this time, I would like to call Mr. Smith to the
7 stand.

8 THE COURT: All right.

9 THE CLERK: Place your left hand on the Bible, please,
10 and raise your right hand.

11 WHEREUPON,

12 ORLANDO SMITH,
13 after first having been duly sworn, testified as follows:

14 THE CLERK: Thank you. You may be seated.

15 DIRECT EXAMINATION

16 BY MR. O'LEARY:

17 Q Mr. Smith, would you state your full name, please?

18 A Orlando Fante (phonetic) Smith.

19 Q And what was the crime you were charged with?

20 A I was charged on murder.

21 Q Who represented you in that matter?

22 A Attorney Timothy Sullivan.

23 Q Was he appointed or retained?

24 A He was appointed.

25 Q Now, you were convicted of the homicide the murder

1 of Ms. Chris Quinn; is that correct?

2 A Yes.

3 Q Now, in your dealings with your court-appointed
4 attorney, how many times did you have an opportunity to
5 meet with him?

6 A Possibly, I'm going to say four or five times before
7 my trial.

8 Q Okay. Did you supply him at any time with a list of
9 witnesses that would be of assistance to you?

10 A Yes, I did.

11 Q And did you supply him with the name of Bennie Irby?

12 A Yes.

13 Q Did you supply him with the name of Shirley Jean
14 Robinson?

15 A Yes, I did.

16 Q Did you supply him with the name of Carolyn Bell?

17 A Yes.

18 Q Did you also -- did you supply any other names?

19 A Yes.

20 Q Okay. Did you ask that those persons be interviewed
21 by him?

22 A I asked that all of them be interviewed and
23 subpoenaed.

24 Q Did he ever show you any of the documents or interview
25 sheets that he conducted interviews?

ORLANDO SMITH-DIRECT BY MR. O'LEARY

9

1 A No. He never interviewed any of them.

2 Q Did he, in fact, subpoena any of those witnesses to
3 court for your trial?

4 A Yes, he did.

5 Q Which witness did he subpoena? Did he do all of them
6 or any of them?

7 A He subpoenaed a couple of them. He -- some that he
8 subpoenaed never showed up and he never mentioned it to the
9 Judge.

10 Q Well, let me just take one of them. Was one of them
11 Ms. Shirley Jean Robinson?

12 A Yes.

13 Q She was subpoenaed?

14 A Yes, she was.

15 Q And who told you that?

16 A Who told me that she was subpoenaed?

17 Q Yes.

18 A He brought the subpoenas to my house.

19 Q Okay. And, at the day of trial, did she show up?

20 A No, she didn't.

21 Q And your testimony is that he never asked the Court to
22 enforce the subpoena?

23 A No, he didn't.

24 Q And what would Ms. Robinson have testified to?

25 A She was a crucial witness to my case, because she told

1 several people in my neighborhood that she also found the
2 dead body that I found. And she was scared. And she also
3 refused to call the police. And she touched this body, she
4 admitted this.

5 Q And this was where, at the apartment where the body of
6 the deceased was found?

7 A Yes, it was.

8 Q And did she pass this information on to who, your
9 girlfriend?

10 A She told my family members and people in the
11 neighborhood. But Mr. Sullivan -- the Sunday before I went
12 to trial, he brought the subpoenas and he didn't know where
13 she stayed. She stayed in the next building.

14 So, at the time, my girlfriend took the subpoena down
15 there. And she said that she wouldn't be coming because
16 she didn't want to be involved. And she never showed up.

17 Q Now, as to the second one, Carolyn Bell. Did you
18 advise him that there was a woman named Carolyn Bell that
19 was critical to your case?

20 A I advised him that that was going to be one of the
21 suspects -- part of their defense.

22 Q One of the persons that was involved in the
23 investigation was an Eric Burts; is that correct?

24 A Yes, it is. He was a suspect also.

25 Q And who is Eric Burts? Have you known him?

ORLANDO SMITH-DIRECT BY MR. O'LEARY

11

1 A Yes. We grew up together.

2 Q And did you see him at the apartment of the deceased
3 the evening before the homicide?

4 A I saw him several times.

5 Q How many times? To your knowledge, how many times did
6 he come to the apartment that evening?

7 A Three or four times.

8 Q And what was his purpose?

9 A He was selling the victim drugs.

10 Q That was admitted to in his -- the information given
11 to the police; is that correct?

12 A Yes. He admitted to it.

13 Q Do you -- is it your understanding that Mr. Burts had
14 an alibi for the alleged time of the killing?

15 A Yes. He was missing for two hours after 12:00 that
16 night. And he admitted on the stand that for those two
17 hours, he was at Carolyn Bell's house and they had sex.

18 Q And Carolyn Bell is the witness that you gave to your
19 attorney to subpoena; is that correct?

20 A Yes, I did.

21 Q Was your attorney ever able to talk to her?

22 A As far as I know, no one ever talked to her.

23 Q Did you -- are you aware that Ms. Bell has been found?

24 A Yes, I am.

25 Q Did you ask your attorney to give you the discovery

1 materials provided by SLED and the Greenville Sheriff's
2 Office?

3 A Yes, I did.

4 Q Did he provide you with any information from SLED with
5 reference to hairs or fibers?

6 A Yes.

7 Q Were any hairs ever analyzed by SLED?

8 A No.

9 Q Did he tell you what the status of those hairs was?

10 A He told me I didn't have anything to worry about
11 because the hairs did not match me.

12 Q Were they ever analyzed at all?

13 A No, they weren't.

14 Q Did you -- did he ever provide you with any
15 photographs prior to the time of the trial?

16 A No photographs.

17 Q Did you ever see any photographs, other than the day
18 of trial?

19 A Nothing.

20 Q Were there any objections made by counsel at trial to
21 the introduction of photographs?

22 A No, sir.

23 Q Were you aware that there was a video of the crime
24 scene?

25 A Do you mean VHS video --

ORLANDO SMITH-DIRECT BY MR. O'LEARY.

13

1 Q A video taken by law enforcement.

2 A No, I was not.

3 Q Did the -- so you never saw that video?

4 A This is the first time I'm hearing anything about
5 that.

6 Q Okay. Let me just back up one second. With reference
7 to a Michael Richardson, there's a Michael Richardson, was
8 he one of the witnesses, too?

9 A Yes, he was.

10 Q Isn't it true that he was supposedly there three or
11 four times that evening with Mr. Burts?

12 A Yes.

13 Q Was he subpoenaed at all by your attorney?

14 A No. He wasn't subpoenaed by my attorney.

15 Q Did he -- he, in fact, testified, though, isn't that
16 correct?

17 A He testified.

18 Q He was under subpoena by the State?

19 A Yes, by the State.

20 Q Did your attorney ever -- did you ever ask your
21 attorney to look into the issue of a palm print that was
22 found on the deceased?

23 A No. At the time I didn't.

24 Q Did he ever show you any documents of what the -- were
25 purportedly the comparison in standards used by law

1 enforcement in your case?

2 A There were no standards whatsoever mentioned. It was
3 just that the guy -- the expert witness from Mississippi
4 stated that they matched my hand prints. They compared
5 them.

6 Q Well, were you ever provided with a -- you never saw
7 the documents that were supposedly the basis for that?

8 A No, I didn't.

9 Q And your attorney never made an effort to have an
10 expert analyze that and cross-check as to law enforcement?

11 A No, he didn't. As I stated, he just basically got on
12 the stand and said, they match Orlando Smith.

13 Q Was it your understanding that there were three hairs
14 found upon the deceased that were unidentified?

15 A Three unknown hairs.

16 Q And isn't it true that SLED testified at the trial
17 that they weren't even compared?

18 A Yes.

19 Q But they never were tested; is that correct?

20 A They were never compared to mine. They weren't the
21 victim's hairs. And my lawyer told me the whole time they
22 were not mine. But the forensics specialist testified that
23 they never did compare them.

24 Q Did your attorney file a Brady motion for the
25 discovery materials prior to the time of the trial?

ORLANDO SMITH-DIRECT BY MR. O'LEARY

15

1 A Yes, he did.

2 Q At the time of trial, were there materials that were
3 presented by the State that had never been given to your
4 counsel?

5 A Yes.

6 Q Were any objections made by your attorney?

7 A No, there wasn't.

8 Q Were any objections made to the autopsy photographs
9 being introduced?

10 A Autopsy photographs?

11 Q The autopsy photographs being introduced at the trial.

12 A No objections.

13 Q Was there any objection or any discussion -- let me
14 back up. Was there any discussion with your attorney as to
15 did you ever -- were you ever asked for an explanation as
16 to how the print got on the body, your print?

17 A Was I ever asked to explain?

18 Q Yes.

19 A No, not in detail the way they characterize it in the
20 courtroom, no.

21 Q Did you -- so you never discussed that with him?

22 A I just basically said that I found the body and, you
23 know, I checked her for a pulse and she was dead.

24 Q Okay. And did you advise your attorney that there had
25 been another woman that had actually been at the scene and

1 moved the body before you?

2 A Yes, I did.

3 Q And that woman was not brought to court?

4 A She was not.

5 Q And the Court was never asked to enforce the subpoena
6 that you think was served on her?

7 A I don't think the Judge, that it was ever brought to
8 his attention. Because she was subpoenaed, but she didn't
9 show up. And he didn't mention it. And I didn't mention
10 it.

11 Q Was there any objection made or any discussion with
12 you prior to trial as to what ligatures that would -- that
13 the Government was planning on introducing or showing to
14 the jury?

15 A Nothing was said about those.

16 Q Did -- at the trial, was the -- did your attorney ever
17 object to the showing to the jury of two or three different
18 "ligatures," one of which was a belt that was never tied to
19 anything?

20 A Well, about the ligatures, the investigator got on the
21 stand and he testified that he found one on the back porch
22 and one approximately about 50 yards away from the
23 apartment building. And if you read in the discovery
24 report, the forensics lady said that a hair was attached to
25 one ligature, but she never did go into detail about it.

ORLANDO SMITH-DIRECT BY MR. O'LEARY

17

1 And, basically, they never put any one of them in evidence.
2 He just waved them to the jury.

3 Q Was there any objection made by waving -- the waving
4 to the jury by your attorney?

5 A No, there wasn't.

6 Q Let me ask you about one witness that you gave your
7 attorney a name for, Bennie Irby, are you aware of that
8 name?

9 A Yes.

10 Q And Mr. Irby -- is it your understanding that Mr. Irby
11 had given a belt that was found to -- or a belt to
12 Mr. Burts the very evening of the homicide?

13 A Yes, he did.

14 Q And was it the State's position that the belt that
15 they're waving around was the belt that Mr. Burts got from
16 Mr. Irby?

17 A Yes.

18 Q Was there any evidence to show that that was the belt?
19 Did Mr. Irby come in?

20 A Mr. Irby wrote a statement that that was the belt.

21 Q Did Mr. Irby ever -- do you know if the belt -- your
22 understanding is that Mr. Irby gave a statement saying he
23 gave a belt to Mr. Burts; correct?

24 A Yes.

25 Q Was there any testimony at the trial to show that the

1 belt that they're waving around is actually the one that
2 Mr. Irby gave him the night before?

3 A No, there wasn't.

4 As to the fact, did they bring Mr. Irby to verify that
5 that was the belt?

6 Q Yes.

7 A No, they didn't.

8 Q Has your attorney ever talked to Mr. Irby?

9 A No, he hasn't.

10 Q Has your attorney ever found Mr. Irby?

11 A No, he hasn't.

12 Q Have you ever seen any statements that were taken from
13 Mr. Irby by any private counsel or private investigator
14 that was brought into the case by your attorney?

15 A Yes. I've seen them.

16 Q But Mr. Irby was not there?

17 A No.

18 Q Was the -- one of the prime suspects in this was
19 Mr. Burts, is that your understanding?

20 A Yes. There was three suspects.

21 Q And Burts' alibi was that he was with Carolyn Bell;
22 correct?

23 A Yes, it was.

24 Q And you asked him to get Carolyn Bell; correct?

25 A Yes.

ORLANDO SMITH-DIRECT BY MR. O'LEARY

19

1 Q And he did not get Carolyn Bell?

2 A No.

3 Q Okay. His testimony was that he had been there and
4 had sex with her that morning in the two- or three-hour
5 span?

6 A His testimony was he borrowed the car from
7 Mr. Richardson. And Mr. Richardson's statement says that
8 Mr. Burts was missing for approximately two hours.

9 Mr. Burts was on the stand and he admitted that he was
10 missing for two hours, and for those two hours, he was over
11 at Carolyn Bell's house. No one brought Carolyn Bell to
12 verify if he was there or not, as his alibi. And they
13 asked me where I was after 12:00 and I had several alibis.

14 Q Let me back up one second. On Shirley Jean Robinson,
15 was there information that you had that Ms. Robinson had
16 observed Mr. Burts physically abuse the victim in this
17 case?

18 A Yes.

19 Q Was your attorney aware that there had been a
20 conversation between the deceased and her -- one of her
21 in-laws earlier the evening before? Are you aware of any
22 statement to that effect?

23 A Yes. She stated that she called her mother-in-law and
24 stated that she believed that a neighbor had stolen her
25 billfold.

1 Q Her wallet. That very evening before she was killed?

2 A Yes.

3 Q Is that correct?

4 A Yes.

5 Q Was that woman ever brought into court to verify
6 Mr. Burts' contention that he was paid for the crack?

7 A No, she wasn't.

8 Q Okay. Mr. Burts admitted under oath that he had been
9 there, at least, three times that evening selling crack;
10 isn't that true?

11 A Yes.

12 Q Did you ever ask your attorney for a psychological
13 evaluation? I noticed you raised that in the initial PCR
14 that you filed.

15 A No, I didn't.

16 Q Okay. At -- during the trial, had you ever seen any
17 of the photographs that were introduced into evidence?

18 A No, I hadn't.

19 Q Do you recall when your attorney saw those photographs
20 for the first time?

21 A In my transcript, my attorney made several remarks
22 when the photographs were introduced into evidence that --
23 one remark was, "Did I see those this morning?" And
24 another remark was, "Have I saw those?"

25 So that made me think that he hadn't saw them at all,

1 except for that morning.

2 Q At your trial, there was an in-court demonstration
3 using one of the court reporters or somebody as a subject.
4 Do you recall that?

5 A Yes.

6 Q Was there any objection made to that?

7 A No, there wasn't.

8 Q Okay. You testified at your trial; is that correct?

9 A Yes, I did.

10 Q And you admitted that you had given two contradictory
11 statements earlier; is that correct?

12 A Yes, I did.

13 Q And one of the reasons for those contradictory
14 statements was that you were scared; is that correct?

15 A Yes.

16 Q And you denied at the trial doing the homicide -- or
17 the killing?

18 A Yes, I do.

19 Q Now, Mr. Burts -- did you ever see any discovery
20 materials, even though he was the prime suspect with you,
21 the fact that the officers did or didn't take any hair
22 samples from him?

23 A Could you repeat the question, please?

24 Q Did you ever see anything in your discovery that law
25 enforcement -- even though Mr. Burts was a prime suspect in

1 the initial investigation, whether the law enforcement
2 personnel ever took hair samples or any type of DNA
3 samples?

4 A The only thing they took from Mr. Burts was a road
5 hand print, no DNA, nothing else.

6 Q And at the trial, there were three mysterious hairs
7 found on the body; is that correct?

8 A Yes, three unknown hairs.

9 Q And your understanding from the discovery materials is
10 that the body was partially clad, it was naked from the
11 waist down; is that correct?

12 A Yes.

13 Q And the hairs were found on the body in that
14 condition?

15 A One hair was found on the navel area, another hair was
16 found on the thigh area, and the third one was found on the
17 pubic area.

18 Q And SLED did no analysis and they returned them to the
19 county; is that correct?

20 A Well, actually --

21 Q If you know. You may not know.

22 A Actually, one forensics lab worker stated that -- at
23 one point on the transcript, she stated that she processed
24 the hairs after she had talked to the investigator. And
25 then when the Judge asked her had she saw the hairs, she

1 turned around and said she didn't see the hairs. But all
2 four of them said that they didn't test the hairs. They
3 didn't compare them.

4 Q So the hairs are there, but they never were compared.

5 Do you recall any objections being made by counsel
6 during the closing arguments when the Solicitor stated --
7 waved the ligatures, including the belt to the jury?

8 A No objection.

9 Q Was there any objection made when in closing argument
10 the Solicitor says, "It's obvious the witness is telling
11 the truth," referring to his witness? Any objection? Did
12 you ever hear any?

13 A No objection.

14 Q Okay. And there was no objection, to the best of your
15 knowledge, in the record as to the impropriety of doing an
16 in-court demonstration; correct, of where the blood was --
17 the print was supposedly on the body? No objection?

18 A No objection.

19 Q Was there any objection by your attorney from having
20 the hand analysis -- or the palm analysis done by the State
21 of Mississippi?

22 A Actually, at the time, I was very ignorant to the law
23 and I was just going with the flow. But as I started to
24 research my case, a lot of stuff wasn't adding up about the
25 fingerprint and the hand print. The guy came all the way

1 from Mississippi.

2 Q Did he ever bring you into court as -- because he was
3 appointed, did he ever bring you into court and make a
4 motion to the Court to have an independent investigator
5 appointed?

6 A No, no independent investigator.

7 Q So, to the best of your knowledge, there was no
8 independent investigation or independent analysis of some
9 of the physical evidence that was testified to?

10 A No. I had no help on my behalf.

11 Q Okay. Did you ever see the actual -- did your
12 attorney ever leave with you any of the discovery
13 materials, or photographs, or xerox copies of any
14 photographs? Nothing was left with you, or was there?

15 A I saw no photographs.

16 Q Okay. And there was -- was there any trial
17 preparation for you with reference to an explanation of how
18 you were going to explain the statements you made to the
19 Court as to how you touched the body?

20 A No.

21 Q Do you think it was critical that the body had been
22 touched or moved by somebody who had been in there earlier
23 that evening, like Shirley Robinson? Do you think that was
24 important?

25 A I think that was very critical to my case.

ORLANDO SMITH-DIRECT BY MR. O'LEARY

25

1 Q And you told your attorney?

2 A Yes, I did.

3 Q And he didn't produce it?

4 A He said, we will subpoena her and put her on the
5 stand.

6 Q Were you under the impression that the Court could
7 order somebody who is subpoenaed to be brought before the
8 Court to testify reluctantly?

9 A At the time, I was asking him what was going on, why
10 wasn't she here, why wasn't he sending for her. He was
11 like, we don't need her. I mean, it was -- it just wasn't
12 a big deal. He didn't take it seriously.

13 Q Were you ever provided in the discovery any type of
14 phone records or anything that were off of Mr. Burts phone?
15 Have you ever seen any of those?

16 A Yes.

17 Q Okay. Were they introduced at the trial or do you
18 remember?

19 A Introduced into evidence?

20 Q Yes.

21 A Or just basically introduced?

22 Q Yes.

23 A The investigator stated several times that he
24 called -- that the victim called -- beeped Mr. Burts and he
25 called back.

1 Q Mr. Burts, the crack dealer?

2 A Yeah.

3 Q The letter that you had written to your -- there was
4 evidence introduced at the trial that was not provided to
5 your counsel prior to the time of trial; isn't that correct?

6 A Yes.

7 Q And you don't recall any objection being made to doing
8 that, taking the Defense by surprise with anything? Do you
9 recall any objection?

10 A Well, basically, I mean, they used a letter that I had
11 written. And my lawyer didn't object to it. I didn't even
12 know they were going to use it. It wasn't in the discovery
13 package. And the lawyer that I had before you, he
14 interviewed Mr. Sullivan and Mr. Sullivan said the letter
15 took him by surprise.

16 Q But you didn't hear any objection to using it?

17 A No objection to the letter.

18 Q Okay. Did you ever hear at the trial any motions made
19 on the record by your counsel for a directed verdict at the
20 close of the State's trial -- the State's evidence?

21 A Basically, my lawyer made an indirect verdict (sic).
22 And the Prosecutor actually said, "I think what he's trying
23 to say, Your Honor, is he wants a motion for a directed
24 verdict."

25 As for my lawyer actually saying, Your Honor, I want a

ORLANDO SMITH-DIRECT BY MR. O'LEARY

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1 motion for a directed verdict. No, he didn't say it. He
2 indirectly spoke it.

3 Q Do you feel that you were adequately represented in
4 this matter?

5 A No, I do not.

6 Q Do you feel he had an obligation to serve the
7 subpoenas and obtain the witnesses that you gave to him?

8 A Yes, I do, most certainly.

9 Q And they were not provided?

10 A No, they were not.

11 Q Do you have anything else you'd like to say to the
12 Court at this point? Any other objection -- or reference
13 to your attorney and what he should or shouldn't have done,
14 in your opinion?

15 A Well, I feel like the Prosecutor made a big deal
16 because I was scared and I had two separate contradictory
17 statements. And every witness that he used had
18 contradictory statements, particularly Mr. Walden,
19 another -- an additional suspect. And Mr. Burts had
20 contradictory statements, different statements. And my
21 lawyer didn't attack those whatsoever. They gave two
22 different statements and got on the stand and gave a
23 totally different statement. And he had the discovery
24 papers and additional statements that they had gave before.
25 He never attacked that issue whatsoever.

1 MR. O'LEARY: Okay. Let me -- and just in closing
2 here, just a few last questions, Your Honor, and I'll turn
3 it over.

4 THE COURT: Yes.

5 (Pause.)

6 MR. O'LEARY: I have no further questions at this
7 time.

8 Answer any questions that the State may have.

9 THE COURT: All right. Cross-examination.

10 MR. NEWTON: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. NEWTON:

13 Q Mr. Smith, you say that -- you said your attorney did
14 issue a subpoena to Shirley Robinson; is that right?

15 A Yes.

16 Q Okay. But she did not show up for court?

17 A Actually, he brought the subpoenas to my apartment to
18 my house. And he didn't know anybody. He hadn't saw
19 anybody. He gave them to me and my girlfriend. And my
20 girlfriend actually took Shirley Jean's subpoena to her
21 house.

22 Q Okay. So there was a subpoena served on Ms. Robinson?

23 A Yes.

24 Q Okay. Now, your attorney cross-examined Mr. Burts,
25 didn't he?

1 A Yes, he did.

2 Q Okay. And your attorney got an opportunity to review
3 those photos before they were entered into evidence, didn't
4 he, the Judge let him look them over before the --

5 A Yes. He let him look at them right there in the
6 courtroom.

7 Q Okay. And with regard to the palm print, was it your
8 contention that you wanted to explain the palm print or
9 what? You said -- you mentioned something about testimony
10 about how the palm print got there.

11 Did you want to explain how the palm print got there
12 or was that something -- or was that a different matter
13 altogether?

14 A Could you repeat the question? Because I'm not
15 understanding the way you're directing it at me.

16 Q Okay. The issue of the palm print --

17 A Uh-huh.

18 Q -- you said that you -- I believe you testified that
19 you wanted to explain the palm print and your attorney did
20 not bring that up?

21 A Basically, they made a big deal as to how the palm
22 print got on the victim's arm. My lawyer never asked me,
23 well, which way did you turn the body, or, how did you
24 check it, or, you know, anything like that. So how could I
25 properly defend that?

1 Q Okay. But you didn't challenge the fact that you had
2 touched the body?

3 A No. I told him I did.

4 Q You just didn't get an opportunity to explain how you
5 touched it, is that it?

6 A Yeah.

7 Q Okay. And what materials do you claim were not
8 provided to your attorney in violation of Brady? What
9 exculpatory materials were not provided to your attorney?

10 A The letter that they put into evidence that I wrote
11 from the county.

12 Q And what -- and that letter was exculpatory?

13 A That letter -- my lawyer --

14 THE COURT: Make sure he knows what you're asking.

15 BY MR. NEWTON:

16 Q That letter was supposed to have been evidence that
17 would have helped clear your name -- clear you of these
18 charges?

19 A That letter -- no, the letter wouldn't have. I feel
20 like that Mr. Sullivan should have objected to the
21 Prosecutor using the letter, due to the fact that he didn't
22 get a chance -- I never knew about the letter. He claims
23 he didn't know about the letter. So how can we properly
24 defend the letter?

25 Q And this is a letter that you had sent to law

ORLANDO SMITH-CROSS BY MR. NEWTON

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1 enforcement that they used?

2 A No.

3 Q Okay.

4 A This is a letter that I sent home to an ex-girlfriend
5 of mine, and she turned it over to the Prosecutor.

6 Q Okay. But it's a letter you wrote yourself?

7 A Yes. I wrote the letter.

8 Q Okay. I just wanted to make sure I had that right.

9 And Mr. Irby, the fellow who was involved with the
10 belt, he testified at trial, did he not?

11 A No, he didn't.

12 Q He didn't testify, they just had a statement from him
13 about that belt?

14 A I have statements from him, Mr. Richardson, a lot of
15 people that were not used --

16 Q Okay.

17 A -- in the case.

18 Q All right. And you said your attorney never requested
19 a psychiatric evaluation. Is it your position that you
20 were not competent to go forward with that trial?

21 A Oh, I was very competent.

22 MR. O'LEARY: Let me clarify that for the Court, Your
23 Honor. It was psychological, not psychiatric. I don't
24 think -- there might be a slight difference.

25 THE COURT: Okay.

1 BY MR. NEWTON:

2 Q And that -- and the belt that the Prosecutor presented
3 to the jury during his closing arguments, that was the belt
4 that was entered into evidence; is that right?

5 A Yes.

6 Q And what exactly did the Solicitor say in his closing
7 argument that you believe was -- your attorney should have
8 objected to?

9 A One statement -- the Prosecutor made a lot of
10 statements that were untrue and saying -- I believe my
11 lawyer should have objected to one statement where he said
12 that I came home and I got -- I admitted that I hid some
13 clothing. And I hid it directly that night. And I had
14 already -- he's basically telling the jury that I said
15 something otherwise that I didn't testify to. And I think
16 my lawyer should have objected to that in the closing
17 argument.

18 Q Okay. The Judge instructed the jury after the -- or
19 before and after the closing arguments, didn't he? The
20 Judge talked to the jury and told them what they were
21 supposed to do and how they were supposed to apply the
22 law?

23 A Yes.

24 MR. NEWTON: No further questions, Your Honor.

25 MR. O'LEARY: Just a couple questions.

REDIRECT EXAMINATION

BY MR. O'LEARY:

Q Did your attorney just assume that that palm print was your print, in spite of the fact that the other woman had also touched the body?

A We just didn't go into it. We didn't go into in-depth details about it. They rolled my print. And they rolled the other two suspects prints. And they said it was my print. And I admitted that I touched the body.

Q So they just assumed that that particular --

A Yes.

Q -- print happened to be yours, even though she touched it, too?

A Yes. But later on, I found out about how the expert witness is supposed to explain the standards and the points, besides just saying that, yes, those are the same prints.

Q Let me just ask you one thing. You were asked a question about the belt --

MR. O'LEARY: Your Honor, I would call the Court's attention to Page 142 and 143 in the transcript. Actually, the belt was never introduced. The Court said on Page 143 -- excuse me, Page 142, "I don't believe they put the item into evidence. There's testimony regarding the item by Investigator Donahue. He just held them up. He didn't

1 put them into evidence."

2 So it was never introduced.

3 THE COURT: What line are you on?

4 MR. O'LEARY: Judge, it's in the second volume on Page
5 143 at the top.

6 THE COURT: All right.

7 MR. O'LEARY: So I just wanted to clarify that.

8 No further questions.

9 MR. NEWTON: Nothing, Your Honor.

10 THE COURT: All right. You can come down.

11 MR. O'LEARY: At this time, I'd like to call Carolyn
12 Bell.

13 THE CLERK: Place your left hand on the Bible, please,
14 and raise your right hand.

15 WHEREUPON,

16 CAROLYN BELL,

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

18 THE CLERK: Thank you. You may be seated.

19 State your full name for the record, please, and spell
20 your last name.

21 THE WITNESS: Carolyn Yvonne Yvette Bell, B-E-L-L.

22 DIRECT EXAMINATION

23 BY MR. O'LEARY:

24 Q And where do you live, Carolyn?

25 A Augusta Hills, Apartment 130.

CAROLYN BELL-DIRECT BY MR. O'LEARY

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1 Q Here in Greenville?

2 A Uh-huh.

3 Q Okay. You've -- when did you become aware of this --
4 that your name had come up into an investigation of a
5 homicide?

6 A I just happened to be out somewhere and somebody told
7 me my name was mentioned in a courtroom case, in a murder
8 trial somewhere.

9 Q Do you know an "Eric Burts"?

10 A Uh-huh.

11 Q Okay. And are you aware that this incident took
12 place -- the homicide took place of May 23rd, 1998?

13 A I'm sure it was around May something, you know. But
14 I'm not sure of the date.

15 Q Do you recall seeing Mr. Burts -- had you seen
16 Mr. Burts on a regular basis?

17 A I hadn't seen him in a while. I used to date Eric,
18 but I hadn't seen him in a while.

19 Q Do you recall that he showed up unexpectedly at your
20 house sometime after midnight on the 24th or the 23rd?

21 A Yeah. He showed up one night unexpectedly. Yes, he
22 did.

23 Q How long did he stay?

24 A Not long, 15 or 20 minutes.

25 Q And did you have sex with him?

1 A No.

2 Q Did you think it was a little strange that he showed
3 up at your house?

4 A Well, at the time, I thought it was, you know. I
5 hadn't seen him in a while.

6 Q And you did not have any sexual relationship with him;
7 correct?

8 A Huh-uh.

9 Q And he was there approximately 15 to 20 minutes?

10 A Uh-huh.

11 Q And that's the last you had seen him?

12 A That's the last I seen him.

13 Q Okay. And you were not contacted by counsel in this
14 case or by any party in this case?

15 A No, not until now.

16 Q Okay. You -- and you have been living in
17 approximately the same area of the city?

18 A No. At the time, I was staying with my grandparents.

19 Q Okay. But there was no effort by any investigator
20 that you would try to avoid or anything like that?

21 A Huh-uh.

22 Q Okay. And if Mr. Burts took the stand and said that
23 he had been at your house that night for a couple of hours
24 and had sex, would that be a lie?

25 A Yes, it would.

CAROLYN BELL-CROSS BY MR. NEWTON.

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1 MR. O'LEARY: Thank you.

2 MR. NEWTON: May it please the Court, Your Honor.

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. NEWTON:

6 Q Ms. Bell, what night did you say Mr. Burts came by
7 your house?

8 A I'm not sure of the date, sir, but I did see him. One
9 night, he did come by my house for about 15 or 20 minutes.
10 He didn't stay long at all.

11 Q Okay. And has Mr. Burts ever come to your house and
12 stayed for a couple of hours?

13 A No. I was staying with my grandparents. It wasn't
14 possible.

15 Q No. I mean, like has he ever showed up at your house
16 and stayed, you know -- stayed and hung out with you for a
17 couple of hours?

18 A No, not really. I usually just see Eric out in the
19 streets.

20 Q Okay Even though you said you were dating him?

21 A Yes. That was years prior.

22 Q Okay. But you don't recall what specific night it was
23 that he showed up for 15 minutes?

24 A Huh-uh.

25 Q Okay. And how long have you lived at the apartment

1 that you're living at where you are now?

2 A Almost five years.

3 Q Almost five years?

4 A (Witness nodded.)

5 Q Do you remember what the -- do you remember -- were
6 you staying with your grandparents around the time of July
7 17th, 2000?

8 A July 17th?

9 Q July 17th through the 19th of 2000?

10 A No. I wasn't staying with my grandparents then, no.

11 Q You weren't? Do you recall where you were staying?

12 A Augusta Hills, [REDACTED].

13 Q Okay. So you were staying at the apartments then?

14 A Uh-huh.

15 Q Okay. And you're saying you never had any contact
16 with anybody about this case?

17 A No, not relative to the investigators that called me.

18 Q You said investigators did call you, or you hadn't
19 heard anything?

20 A Just recently, they just starting getting in touch
21 with me.

22 Q Okay. At what times were you staying with your
23 grandmother? You mentioned that you were staying with your
24 grandmother during -- at some point.

25 A I moved out of my grandparents house in November of '99.

CAROLYN BELL-REDIRECT BY MR. O'LEARY

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1 MR. NEWTON: No further questions, Your Honor.

2 MR. O'LEARY: Just one last question.

3 REDIRECT EXAMINATION

4 BY MR. O'LEARY:

5 Q The investigator that you're talking about is the one
6 I sent to you; is that correct?

7 A Uh-huh.

8 Q Okay. Thank you.

9 And you're appearing here today under subpoena; is
10 that correct?

11 A Yes, it is.

12 MR. O'LEARY: Thank you.

13 I have no further questions.

14 THE COURT: Do you want to release her from the
15 subpoena?

16 MR. O'LEARY: Yes, Your Honor.

17 THE COURT: Any objection?

18 MR. NEWTON: No objection from the State, Your Honor.

19 THE COURT: All right. You are free to go or stay,
20 whatever you want to do.

21 MR. O'LEARY: Your Honor, at this time, I have no
22 additional witnesses pending the analysis of the documents
23 or evidence that I was hoping to get from SLED or the
24 Sheriff's Office.

25 THE COURT: All right. I'll hear from the State.

TIMOTHY SULLIVAN-DIRECT BY MR. NEWTON

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1 MR. NEWTON: Your Honor, the State would call Mr. Tim
2 Sullivan.

3 THE CLERK: Place your left hand on Bible, please, and
4 raise your right hand.

5 WHEREUPON,

6 TIMOTHY SULLIVAN,
7 after first having been duly sworn, testified as follows:

8 THE CLERK: Thank you. You may be seated.

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

10 THE COURT: Yes, sir.

11 DIRECT EXAMINATION

12 BY MR. NEWTON:

13 Q Mr. Sullivan, do you recall your representation of
14 Orlando Smith?

15 A Sure, I do. Yeah, I remember Orlando and his family.

16 Q Okay. And do you recall receiving discovery in
17 Mr. Smith's case?

18 A I received a packet from the Solicitor, David Seay,
19 and mailed a -- made a copy and mailed a copy to Orlando.

20 Q Okay. And did you go over that -- those discovery
21 materials with Mr. Smith?

22 A Yes, I did.

23 Q Okay. And Mr. Smith alleged that there were some
24 materials that were not provided to you in that discovery
25 packet that were used at trial. Do you recall what, if

TIMOTHY SULLIVAN-DIRECT BY MR. NEWTON

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1 any, of those materials might have been?

2 A There were two things. His ex-girlfriend, Ms. Shaw --
3 I wasn't aware of these facts and they weren't exculpatory.
4 There was no reason -- they didn't have to give them to me.
5 But she testified that the night in question that Orlando
6 hid some bloody pants underneath her son's bed. I wasn't
7 aware of that until she testified. But that wasn't
8 exculpatory.

9 And then the letter he wrote to her asking her to lie
10 about the time he got home. I showed it to him before they
11 put it in evidence. She identified it and said that she
12 had gotten it from him. He said, yes, he had written it.
13 So I had no objection to that. It wasn't exculpatory. It
14 really hurt him. And I didn't know about it.

15 Q Okay. And just to clarify, this is a letter Mr. Smith
16 himself had written?

17 A Yes. They showed it to us. They identified the
18 letter. Did you receive this? Yes. And then they came
19 over to us -- yes, that's the letter I received.

20 And I said, Orlando, have you looked at it? I was
21 surprised. What the heck is this? He said, I wrote her
22 from jail. And I said, is this a letter -- is this your
23 writing? And he said yeah. And so he identified it and
24 said it was his. He had written it to her.

25 Q Okay. So he had written a letter, basically, asking

1 her to lie about his -- the time he arrived home?

2 A Yeah. I wasn't aware of that fact until she -- until
3 I looked at it right then.

4 Q Okay. Was anything about that letter exculpatory?

5 A No. It was very damaging, as a matter of fact.

6 Q Okay. And were there any other materials presented at
7 trial that you did not receive as part of your discovery
8 materials?

9 A Not that I recall, no.

10 Q What about the photographs? Do you recall what the --
11 what, if any --

12 A They were of the crime scene. They weren't
13 inflammatory or highly prejudicial. And I thought they
14 helped me really because -- without getting too graphic,
15 there was a piece of evidence that I thought was critical.
16 And it was in the report. And it showed -- it was a -- she
17 was having her period. And there was a tampon there. And
18 that was, basically, part of my theory of the case of the
19 drug dealer getting mad because he couldn't have sex with
20 her.

21 He was the one that slapped her. And then she hit her
22 head and called the police on him for that and his drugs,
23 and he killed her. So I kind of wanted that in to bolster
24 that part of my case. And they were just crime scene
25 photos. There wasn't anything inflammatory about them.

TIMOTHY SULLIVAN-DIRECT BY MR. NEWTON

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1 Q Okay. And, at any time, did Mr. Smith deny that --
2 deny that he had actually touched the victim's body?

3 A He had told me. That's why I didn't want to go into a
4 lot of detail about it. He said he went in -- he saw a
5 door cracked and thought that was unusual, and that he had
6 gone in and saw her laying there.

7 And I think her arm was kind of -- he said he took her
8 and turned her over and checked her neck. And that's where
9 she was bleeding, back here behind her head. And he turned
10 her over. And that's how his print got there. So there
11 wasn't any question that he had been there and handled the
12 body. And then he left and didn't call the police right
13 then. That would have been a lot better, but.

14 Q Okay. And in preparation of this case, do you recall
15 what names of witnesses Mr. Smith might have given you?

16 A Basically, what he told me -- I had Carolyn Bell's
17 name from Burts' statement. But the others -- what I do in
18 these cases like that is these people usually are friends
19 or are known to the Defendant. I'll ask them to get them
20 all together, if they can.

21 And I went out to his apartment -- his sister's
22 apartment, I think, or his mom's apartment and met with all
23 of these people and interviewed them and gave them
24 subpoenas. And I would have -- I would either serve them
25 or have -- like, in this case, his girlfriend served them.

1 But that's how I effected that. But I called everybody I
2 thought -- I didn't get -- I never could find Carolyn Bell.

3 And Shirley Robinson did not show up under subpoena,
4 but all she was going to testify to is that she may have
5 handled the body. She went in, too, and didn't call the
6 police. But it didn't negate the fact that he had gone in
7 anyway and handled the body. So even though she didn't
8 show up, I didn't think she was super critical to the
9 Defense. I wish I could have gotten Carolyn Bell, to be
10 honest with you.

11 Q Okay. So, to your knowledge, there was nothing that
12 Shirley could have testified to that would have, basically,
13 exculpated this Defendant, other than saying she also had
14 gone into the apartment?

15 A I think there was something that Shirley may have said
16 or she may have said that -- this was a while ago -- that
17 she had seen Eric Burts slap the victim before, that she
18 had seen him mistreat her because -- over drugs I guess.
19 And that may have helped point some more fingers at the
20 drug dealer. But I think that was something that she could
21 have testified to.

22 But she was very reluctant. She said she wasn't
23 coming and she wasn't going to say anything when she got on
24 the stand. So she was going to be a very reluctant
25 witness. I didn't know if she was going to help me or not.

TIMOTHY SULLIVAN-DIRECT BY MR. NEWTON

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1 Q Okay. And were you able to get in contact with any of
2 the other witnesses that --

3 A Yeah, they were here. Several of them took the stand.
4 I had the subpoenas. And they came and testified about
5 seeing what they thought was Eric and two of his buddies
6 and they came down the steps. Some of the girls testified
7 that when Orlando was with them and they were sitting on
8 the curb, kind of just hanging out. They all came and
9 testified on his behalf.

10 Q Okay. And what steps did you take to attempt to
11 locate Ms. Carolyn Bell?

12 A They didn't have a number for her. They said they
13 thought she lived in these apartments. And I went out to
14 kind of search for her. But I never could locate her and
15 they never could furnish me a number for her. If I would
16 have had it, I certainly would have liked to have gotten
17 it.

18 Q Okay. And regarding Mr. Bennie Irby's testimony about
19 the -- or his statement about the belt, do you recall any,
20 you know -- any controversy about the belt being entered
21 into evidence or not being entered?

22 A No. I don't recall it being entered. Because it
23 seemed to me that one of the things -- and I thought it was
24 unusual that the Solicitor said somewhere that they had no
25 motive for this crime, which I thought helped us, and they

1 had no weapon. And so I thought those were things that
2 helped us. They had neither one, motive nor weapon. And
3 it was admitted.

4 Q And do you recall the Solicitor during his closing
5 arguments waving a belt at the jury?

6 A I don't recall that independently, no.

7 Q Okay. And do you recall the Solicitor making any
8 statements during his closing arguments that were
9 objectionable?

10 A No. Unless it's something, you know -- if he's
11 just -- there's certain parameters that you can allow. And
12 unless it's something, I think, that goes outside of that
13 and is highly prejudicial, I don't object. But I don't
14 remember anything that jumped out at me or I would have, I
15 would think.

16 Q And did the Judge in this case -- do you recall the
17 Judge giving an instruction to the jury based around their
18 position as triers of the facts?

19 A Yes. That whatever we say doesn't count, that the
20 lawyers don't, you know -- they can give their version and
21 all that, but it doesn't count. What they heard and what
22 they listened to -- and he's going to give them the law.
23 And they go by what they heard. -- that's a standard-type
24 charge, yeah.

25 Q Okay.

TIMOTHY SULLIVAN-DIRECT BY MR. NEWTON

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1 A And I argued the directed verdict at the end of the
2 State's case and again at the end of the trial.

3 Q And the Judge denied your motion for directed verdict?

4 A On both times.

5 Q Okay. And you cross-examined the State's witnesses in
6 this case?

7 A Yes, I did.

8 MR. NEWTON: No further questions, Your Honor.

9 THE COURT: All right. Cross.

10 MR. O'LEARY: Just a couple, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. O'LEARY:

13 Q Mr. Sullivan, on the discovery you provided, I think,
14 indirectly to me through Mr. Henry, I think.

15 A Yes.

16 Q You admit there was some stuff from another case that
17 was unrelated to it that was put into it?

18 A Oh, that stuff he showed today?

19 Q Yeah.

20 A I don't think that was ever used in this case. I
21 don't remember ever seeing that stuff he gave me.

22 Q Let me just ask you a couple of questions. Did you --
23 didn't you think it would be important if Ms. Robinson had
24 been in there and moved the body that it would be important
25 with reference to the initial position the officers found

1 it in, and also the possibility that that palm print may be
2 somebody elses?

3 A I don't recall. And I may be mistaken. I don't
4 recall her actually moving the body. I remember that she
5 had seen the body. And this is a while ago. I don't
6 recall her testimony or anything about her having actually
7 handled the body.

8 I think she went in. And I think they told me she had
9 gone in and saw the body and then left. She didn't call
10 the police either. They thought she should be as guilty as
11 he was about not calling the police when they found
12 somebody injured, but.

13 Q And you don't recall that she also had personally
14 witnessed Mr. Burts abusing this lady?

15 A I do recall that. I think she said she had seen him
16 slap him -- she had seen him slap her -- her, being the
17 victim -- one time.

18 Q Okay. Now, as to -- let me just ask you a question
19 about Benny Irby. Benny Irby's statement that was provided
20 by the police, are you aware that he also indicated that
21 there was money owed to Mr. Burts for the crack, and there
22 was a statement made by Mr. Burts?

23 A I think I argued that in my closing.

24 Q Irby didn't testify, though?

25 A But, I mean, I argued that that's why he killed her.

TIMOTHY SULLIVAN-CROSS BY MR. O'LEARY

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1 Because he went back. He went over to his buddy's about
2 midnight and sold the crack -- had given her crack and was
3 going back after he dropped him off to go back and have sex
4 with her because she couldn't pay for it. She didn't have
5 the money to pay for it.

6 Q Don't you recall that Mr. Burts was asked a question
7 by the Solicitor, "Did she have any trouble paying for the
8 drugs?"

9 And he said, "No."

10 And that was the extent of his testimony. You don't
11 recall that?

12 A I don't recall that.

13 Q Do you recall that there -- is it in your discovery
14 that there was a police report filed by Ms. Quinn the
15 grandmother, a relative of the deceased, that the deceased
16 had called her earlier that evening and said that her
17 wallet had been stolen from the apartment?

18 A I don't recall that, to be honest with you.

19 Q Do you think that would be important as to the issue
20 of Mr. Burts' credibility on the issue of being paid?

21 A Being paid. Well, I don't know. I mean, I'm not
22 trying to argue with you, John.

23 Q I'm not arguing.

24 A I don't know if she kept all the money in her wallet
25 or if she had made more money that day. She worked at

1 Burger King. So I don't remember that being critical.

2 Q But do you think it was critical, as the defense
3 attorney, that -- even a little strange that Mr. Burts,
4 who's a prime suspect, would borrow a belt that very
5 evening?

6 A Well, there was testimony earlier from some
7 people that -- Orlando and I got into it -- that he was
8 seen being carried about midnight and that she was still
9 there. I think some guy, Walden, testified that she was
10 still there at midnight. And he was being carried out by
11 two buddies and his pants kept falling down. So I figured
12 that was tied into that somehow.

13 Q Were you aware that Mr. Irby's statement indicated he
14 had gotten the belt earlier that evening?

15 A I don't remember that.

16 Q But you did not get Mr. Irby or put him on the stand
17 or interview him, did you?

18 A No.

19 Q Okay. It would have been important to see if the belt
20 that they actually had in Court was the same belt that
21 Mr. Burts supposedly turned in two or three days after the
22 homicide and brought voluntarily to the department. Don't
23 you think it would be important to know if that's the same
24 belt or not?

25 A Not really. I mean, I just don't see the point, but.

TIMOTHY SULLIVAN-CROSS BY MR. O'LEARY

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1 Q Well, the point would be that if he's given a belt
2 that night and it may have been the device used to strangle
3 her and it's now gone and he produces a different belt,
4 that might be significant?

5 A I don't recall there being a belt, as far as being the
6 weapon. I recall that the ligature marks were very narrow
7 on her neck.

8 Q Let me just go through that. You testified that at
9 the trial that the photographs -- the bloody photographs of
10 the scene were introduced without objection; is that
11 correct?

12 A That's correct.

13 Q And the morgue photograph, which is per se a gruesome
14 photograph, was introduced on Page 36 of the transcript and
15 you did not object to that?

16 A No.

17 Q Now, wouldn't you say that that would have some type
18 of a prejudicial effect upon members of any jury?

19 A They had already seen the photographs of her in the
20 floor with -- partially nude and everything. They had seen
21 that and seen the body, so I didn't think that was going to
22 hurt.

23 Q And you made no objections to any of those?

24 A No.

25 Q Okay. On -- one of the officers testified, the man

1 from Mississippi, there was hypotheticals if this happened
2 and this happened with reference to the ligature. Why
3 weren't -- why didn't you object on Page 58 of the
4 transcript to conjecture in hypothetical situations?

5 A I think he was -- I don't recall. I think he was an
6 expert and he just gives some hypotheticals of what could
7 have happened.

8 Q Well, you know, it could happen, but it's got to be
9 tied into the case. Wouldn't you think that would be a
10 little prejudicial?

11 A I didn't at the time. I mean, I made the comment
12 earlier that I wish I could try every case twice. But I
13 wish -- thinking back now, I wish I could have gotten
14 Carolyn Bell there.

15 Q You agree with me that Carolyn Bell's testimony, as
16 you just heard it here today, was significant in impeaching
17 the credibility of Mr. Burts, who was a prime suspect?

18 A I think it would have been, yes. I agree with that.

19 Q Now, let me just go on. You did not object to the
20 supposition and the hypotheticals that were given on or
21 about Page 58 of the transcript. Were there -- on Page 86
22 of the transcript -- there's two volumes of this thing,
23 too. Do you have your page there?

24 A Uh-huh. If I have the same volume.

25 What volume? The first one or the second one? I'm on

TIMOTHY SULLIVAN-CROSS BY MR. O'LEARY

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1 Page 86.

2 Q I think I've got the wrong volume. I'm sorry. I
3 apologize. I tried to keep them separate.

4 A Is this about the statement, his statement, Waiver of
5 Rights?

6 MR. O'LEARY: Your Honor, I'll back off of that.

7 BY MR. O'LEARY:

8 Q You didn't object on Page 92. And I think that's in
9 the bigger -- the thicker of the two. You didn't object to
10 the ligatures being shown to the jury, even though there
11 was no tie-in. Would you agree with me?

12 A I didn't object to that. It's not there, no.

13 Q They had three different items. They had one rope --
14 or some type of rope with a piece of wood or something on
15 it; is that correct, that wasn't objected to being shown to
16 the jury?

17 A They had some kind of a string they found with a stick
18 or something.

19 Q But there was no evidence ever that tied any of those
20 three items that they're waiving around in front of the
21 jury to this crime?

22 A They never did produce anything that they said was the
23 murder weapon.

24 Q But they did show it to the jury; is that agreed?

25 A I don't see it. If you say so, I agree with you.

1 Q That's on Page 92.

2 THE COURT: What line are you on?

3 MR. O'LEARY: I'm trying to find it, Judge. Let me
4 look in mine. It's particularly marked up. My -

5 MR. NEWTON: Your Honor, I think Line 11 is where he
6 starts -- he talks about these as possible ligature-type
7 things, Line 11 through 14.

8 THE COURT: Okay.

9 MR. NEWTON: I think that's where it starts.

10 BY MR. O'LEARY:

11 Q But there's no objection? That's my point.

12 A No.

13 Q There's no objection made to it, so we'll just move on
14 from that.

15 Was there any objection at any time made to the expert
16 coming in and giving his theory on how this all occurred,
17 even though the body may have been moved by somebody else?

18 A I wasn't - the thing -- Orlando said that he had
19 moved the body. And he had touched the body and he had
20 gotten blood on himself. So I didn't worry about that.

21 Q So you just assumed that that palm print was his
22 print?

23 A Well, what -- on the palm print, yeah, that and the
24 fact that -- what I thought was helping us on the expert
25 stuff was they told me that the hair they found and all

TIMOTHY SULLIVAN-CROSS BY MR. O'LEARY

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1 that were not Orlando's. I did have that information. And
2 they did not test the others. I thought that was strange.

3 Q But here is the deal, SLED testified they never
4 examined the hairs because they had the palm prints. So
5 there was never an examination conducted.

6 A They told me at one time they did do some hairs with
7 his hair and that they didn't match.

8 Q They never provided that in discovery. Where is that
9 in the testimony? Do you recall?

10 A No. I was told they had nothing but the palm print to
11 tie him to the -- and his statement. I didn't know about
12 the blood on the pants at that time.

13 Q On Book 2, Page 33, she said they didn't even examine
14 it. So you're taking the word that it doesn't match, and
15 they never checked it. It could have matched Burt's. All
16 they've got is the print.

17 A That was -- with those particular hairs, correct. She
18 was the SLED person and she said they didn't examine those.

19 Q She didn't examine?

20 A Yeah.

21 Q I mean, so how can she make a statement -- how can
22 anybody make a statement that it doesn't match his or
23 anybody. But that's a pretty important thing, those hairs,
24 aren't they?

25 A I thought so. I thought it was strange that they

1 didn't. I questioned her about it.

2 Q Did you make any motions on behalf of the Defendant
3 for an independent analysis?

4 A No, I didn't.

5 Q Did you ever make a motion to the Court to provide a
6 copy of the palm print and everything that was sent to
7 Mississippi, which is referred to in a correspondence that
8 was in the discovery? Did you ever get copies of what they
9 were actually looking at and trying to compare it to?

10 A I did with the palm print. But they had taken his
11 palm and had the palm print off of the body.

12 Q But you never saw those or asked for copies to have
13 somebody else look at it and either confirm or deny that?

14 A Not after he had admitted that he had gone in there
15 and touched the body and turned her over, no.

16 If he would have denied any knowledge of going in
17 there, I would have, of course. But when he said he went
18 in there and got bloody and turned her over, I didn't think
19 that was that critical.

20 Q But as it turns out at the trial, the absence of the
21 witness, for example, the one that testified today, was
22 really pretty critical?

23 A I'll agree with that. I would have liked to have
24 had -- if I could have found her, I would have liked to
25 have had Carolyn Bell there.

TIMOTHY SULLIVAN-CROSS BY MR. O'LEARY

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1 Q Let me just show you a copy of a letter sent from the
2 State of Mississippi. These are the documents that were
3 supposedly sent to Mississippi from Greenville. And that's
4 the testimony that was entered into Court. You've never
5 seen those documents; is that correct?

6 A No.

7 Q Did you ever -- were you ever provided with a
8 videotape of the crime scene?

9 A Until you mentioned it earlier -- or somebody, I
10 didn't even know there was one, to tell you the truth.

11 Q It's listed in the index. You never saw it?

12 A No. I had the pictures -- the pictures of the crime
13 scene. They have used them. I've had cases where they've
14 used videotapes before and shown them.

15 Q Did you ever discuss with Orlando the photographs and
16 ask him to verify whether this was accurate, as he saw it
17 when he came in there? Did you ever go over the
18 photographs with him?

19 A We looked at them that morning of the crime scene.
20 But, no I didn't go through and say, is that what you saw,
21 no.

22 Q "That morning," you mean the trial?

23 A Yeah.

24 Q Okay. Not before the trial?

25 A Not before the trial.

1 Q And you never had any real discussion with him as to
2 explain how he touched the body or where he touched the
3 body?

4 A He said he grabbed her on the shoulder -- around the
5 shoulder or top of her arm and turned her arm away from her
6 so he could check her pulse or neck.

7 Q Did you -- you are aware that Burts stated to, I
8 think, Richardson, or whoever was with him that evening,
9 that he had had sex and that's how he explained the
10 two-hour gap?

11 A They left the victim's apartment about midnight,
12 according to the testimony. And then went back to Augusta
13 Hills or wherever. And then Burts asked Richardson and the
14 boys in the car to be back in a little while. They had
15 something to do. He came back two hours later and said he
16 had gone to Carolyn Bell's and had sex and that's where he
17 had been for the last two hours.

18 Q And that's the police -- there's no statement saying
19 they even found Ms. Bell, did they?

20 A No.

21 Q So his alibi is he's with Ms. Bell having sex and
22 nobody even ever talked to her?

23 A I couldn't -- I didn't find it, no. They didn't
24 produce a statement from her. I got all the statements
25 from everybody else they had, but not her. As far as I

TIMOTHY SULLIVAN-CROSS BY MR. O'LEARY

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1 know, they never talked to her.

2 Q Did you ever make any objections in the closing
3 argument about when the Solicitor says, "It's obvious that
4 these witnesses for us are telling the truth"? I mean, did
5 you ever --

6 A No.

7 Q -- did you ever object to that?

8 They may have just have -- it's typical closing
9 argument.

10 A I didn't object to it.

11 Q But that was on Page 155.

12 Have -- when that lady didn't show up that was served
13 with this subpoena, had you told Orlando that the Court
14 could enforce subpoenas?

15 A I told them all when we were there that day before the
16 trial that if they didn't show up, they could be held in
17 contempt.

18 Q And when she didn't show up for trial and yet her
19 testimony would be she had seen Burts abuse the deceased
20 and that she was physically in the apartment after the
21 woman was killed and touched her --

22 A I don't remember the touching part about it. I
23 remember she said she had gone in and seen her.

24 Q Let's assume her statement says that. That would be
25 pretty important, wouldn't it?

1 A Yeah.

2 Q Could you have asked the Court, at that time, to
3 enforce the subpoena?

4 A They could probably -- Judge Pyle -- I mean, Judge
5 Patterson may have stopped and sent a deputy out to try and
6 find her, yeah.

7 Q But you didn't try to do that?

8 A (Witness shook head.)

9 Q Okay. Did you advise the Court at any time prior to
10 the actual start of the trial that you were having
11 difficulty finding Ms. Bell?

12 A No.

13 Q Okay. And you didn't ask the Court for any funds to
14 hire an investigator or anything?

15 A No. Usually, I can find these people. Sometimes I
16 go down to the Public Defender's Office and Zach will help
17 me go out on a manhunt sometimes.

18 Q But you find it's a little more difficult for older
19 guys like us to find people?

20 A Yeah.

21 Q You didn't -- you weren't able to find her?

22 A No. I wasn't able to find her.

23 Q Okay. Do you recall -- why wasn't -- and this is
24 really about the last question. Why didn't you object when
25 he's got these three ligatures that have no blood, they have

TIMOTHY SULLIVAN CROSS BY MR. O'LEARY

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1 no hair, they have nothing to tie into the killing? I
2 you think that's prejudicial in front of the jury?

3 A Well, in a -- at the time, I don't know what I was
4 thinking. I may have been thinking that, here, they've
5 three things. They don't know what they've got. They're
6 waving that stuff and guessing.

7 Q But don't you think that's prejudicial to swing these
8 things around?

9 A Well, they never did use them or tie them in. I
10 think -- they don't know what they have.

11 Q But you'll admit to the Court in the transcript we
12 just looked at, the Court says, "Well, you just held them
13 up and waved them to the jury?"

14 A Held them up and -- right.

15 Q Now, you think that -- did you object to that?

16 A No.

17 Q Okay.

18 A At the time, I guess -- I may have thought they were
19 going to try and tie it in and then they never did.

20 Q Yeah. But the point is, they're supposed to tie it in
21 before they show it, aren't they?

22 A Identify it, yeah.

23 Q And there was nothing ever done of that nature?

24 A No.

25 MR. O'LEARY: Judge, at this time, I have no further

1 questions, but I would ask that the witness may be subject
2 to recall, depending on what the other stuff shows that I'm
3 able to get from SLED.

4 THE COURT: Well, we'll cross that bridge when we come
5 to it.

6 MR. O'LEARY: I have no further questions at this
7 time.

8 THE COURT: Do you have any redirect?

9 MR. NEWTON: Nothing further from the State, Your
10 Honor.

11 EXAMINATION

12 BY THE COURT:

13 Q Mr. Sullivan, what efforts did you take to locate
14 Carolyn Bell?

15 A I tried to get the family to help me find her. And
16 then I tried -- they had no numbers. So I rode out through
17 there asking people, but, you know, I didn't have much to
18 go on. I had the complex. I didn't know her and never had
19 seen her.

20 Q Okay. Were you provided with an address or anything?

21 A No, just that she was in that area, and no phone
22 number.

23 Q All right. And --

24 A When they -- when Steve Henry got this case, I was
25 I told him I thought that she was still in the area. But I

TIMOTHY SULLIVAN-EXAMINATION BY THE COURT

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1 never had been able to find her. I told the same thing to
2 John O'Leary.

3 Q All right. What about -- did you file a Rule 5
4 discovery motion?

5 A Uh-huh. And they gave me the whole packet. The only
6 thing I was surprised about in the case was the letter that
7 Orlando had written to the former girlfriend, and that was
8 not exculpatory.

9 Q Well, that was introduced at this trial?

10 A Yes. I had not seen it until that morning.

11 Q It wasn't produced to you subject to -- with the other
12 discovery pursuant to Rule 5?

13 A No. They don't have an open-file policy over there.
14 They give me what they consider exculpatory, in their
15 opinion. And this was not exculpatory. This was where he
16 was asking the girlfriend to lie about the time he came in.

17 Q And there were two confessions made by Mr. Smith?

18 A In his first interview, he said that he knew nothing
19 about it.

20 Q All right.

21 A And then they came back and interviewed him again and
22 they told him -- I think something to the effect was that,
23 you might as well go ahead and tell us about it, we've got
24 your palm print.

25 Then he told them, I did go in and she was already

1 dead and I turned her to see if she was all right. And I
2 left. And I was panicked. I didn't want to get involved.
3 I was on probation. And I was having problems with drugs
4 myself. And I went across the hall and didn't call
5 anybody. I didn't kill her, but I found the body and
6 didn't call you.

7 He gave one saying no knowledge and one saying he
8 found the body, but wasn't involved in the killing.

9 Q Did -- and what are these bloody pants?

10 A When he went in and knelt by the body, he got blood
11 on, I guess, the knee or something. He took those off and
12 hid them under the girlfriend's son's bed. And the cops
13 came the next day. He had on a different pair of pants.

14 Later on after they broke up, she produced those pants
15 or told the cops about those pants, that he had hid some
16 bloody pants that night under the bed and that he later got
17 rid of them. She told the police that later. I think it
18 was after they broke up. They were not seeing each other
19 when she turned the letter in to the police.

20 Q And just so -- where did the blood come from? What
21 was the cause of death?

22 A Well, what had happened, she had an injury to the back
23 of her head back in this area somewhere.

24 Q Okay.

25 A And she had blood from that. What they think happened

TIMOTHY SULLIVAN-EXAMINATION BY THE COURT

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1 and what I think happened is the guy hit her, whoever. She
2 hit her head on the coffee table. There was some blood on
3 the coffee table. And then she was strangled. There was
4 some blood from her body. And he -- when he said he knelt
5 down to check her, he got blood on his hands and on his
6 pants. And then he hid the pants underneath the son of the
7 girlfriend in another bedroom. And then later, he
8 destroyed them. And the girlfriend told the police that
9 information.

10 I wasn't aware of that until the day of the trial
11 either. And then the letter, I wasn't aware of that
12 letter.

13 Q All right. And they never -- they didn't produce
14 that, I guess, inculpatory letter from your client?

15 A I did not see that. I was not aware of it until that
16 morning when this Ms. Shaw took the stand. David asked me
17 introduce this letter and I had no idea what they were
18 talking about until they brought it to the table. And I
19 read it. And Orlando was sitting by me, just like with
20 Mr. O'Leary there, and we looked at it.

21 And I said, "Did you write this?"

22 And he said, "Yes."

23 Q But you didn't object to it?

24 A He identified it as his. And she said that she had
25 received it from him. I did not object to it.

1 THE COURT: All right. I don't have anything else.

2 MR. NEWTON: Your Honor, just one follow-up, based on
3 your questions about the letter.

4 THE COURT: Okay.

5 REDIRECT EXAMINATION

6 BY MR. NEWTON:

7 Q Do you recall when Mr. Smith had sent that letter?

8 A I don't. I think it was while he was in the LEC. He
9 came back -- he was in the LEC and then he made bond. And
10 then he was out. And then they revoked 18 months of
11 probation. He went down the road for 18 months of that
12 probation to do that -- whatever he had to do with that
13 sentence. And then he came back and he kicked in his bond.
14 He was out when he went to trial. He was on bond.

15 Q Okay. And do you recall how long -- if it -- how long
16 before the trial did he send that letter?

17 A I don't recall. I assumed he was -- assuming he was
18 in an institution, probably six months to a year.

19 Q So --

20 A I don't recall the date on it.

21 Q Okay. So was this -- did he file -- did he send that
22 letter to his girlfriend before or after that -- before or
23 after you filed your Rule 5 motion?

24 A I don't recall that. I don't recall the date on the
25 letter. But the Rule 5 would be, I think, ongoing, the way

TIMOTHY SULLIVAN-REDIRECT BY MR. NEWTON

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1 I frame them. And if they got something late, they would
2 be under obligation, if it was exculpatory, to give it to
3 me.

4 Q Okay. And do you know when the Solicitor's Office
5 received that letter?

6 A She gave it to them. But I don't recall if she gave
7 it to them right away or if she waited until he got out and
8 then they broke up. He was seeing somebody else at the
9 time. I don't recall when she took it to them.

10 Q Okay. So you have no idea when the Solicitor's Office
11 received that letter?

12 A No. But it was -- they had it prior. They could have
13 given it to me prior to trial, if they wanted to. I know
14 that. They intended to use that without me knowing about
15 it. They were thinking they were not violating Rule 5 or
16 the Brady rule. And they probably weren't.

17 Q But you have no idea when they were provided with that
18 letter?

19 A No.

20 MR. NEWTON: No further questions.

21 MR. O'LEARY: Judge, could I just ask -- just possibly
22 ask one more question?

23 THE COURT: Yes. I want you to look at Rule 5(a)1(A)
24 and (a)1(B).

25 (Pause.)

1 THE COURT: Okay. Have you had an opportunity -- what
2 do you say now? Did it violate Rule 5?

3 THE WITNESS: Well, if you look at as a -- it's his
4 written statement. The statement was written by him.
5 There wasn't a duty to give it to me. They probably did,
6 yes, sir.

7 THE COURT: Okay. Have you got -- one question?

8 MR. O'LEARY: Just one.

9 RE CROSS-EXAMINATION

10 BY MR. O'LEARY:

11 Q Did you ever have a charge conference with the Court
12 for the charge the jury was going to hear?

13 A We had a conference. I like to do that before we do
14 openings (sic). Because you frame sometimes your
15 closing -- I mean the closing, not the opening, the
16 closing -- about what the charge is going to be.

17 Yeah. We talked about different charges. He was not
18 going to -- under the facts of this case, he was not going
19 to charge manslaughter. It was either going to be
20 murder -- it was either going to be "yes" or "no" on the
21 murder charge.

22 MR. O'LEARY: Okay. Thank you.

23 THE WITNESS: That was it. He was not going to charge
24 it.

25 THE COURT: Okay. Thank you, Mr. Sullivan.

1 MR. O'LEARY: Thank you, Mr. Sullivan.

2 THE COURT: Have you got anything else, Mr. Newton?

3 MR. NEWTON: No further evidence from the State, Your
4 Honor.

5 THE COURT: All right. We'll leave the record open
6 and get the report from --

7 How long are we going to -- you told me 60 days?

8 MR. O'LEARY: Judge, could I submit -- I thought I had
9 submitted one when I filed the motion to compel the turning
10 over of evidence from SLED. Could I produce the Court with
11 an order to SLED and to Greenville?

12 THE COURT: Get that done pronto.

13 MR. O'LEARY: I'll get it done tomorrow.

14 THE COURT: Okay. That would be great.

15 And then for 60 days, I'm going to hold it open to
16 accept it.

17 MR. O'LEARY: Thank you very much. I appreciate it.

18 MR. NEWTON: Your Honor, just one thing.

19 Regarding the Rule 5 matter, that, to what I can see,
20 was not brought up in his original application. And I
21 would like an opportunity as well to submit a brief
22 post-trial memorandum on that particular issue. Because
23 that was not raised in his original application.

24 THE COURT: Well, we heard it without objection at the
25 hearing.

1 MR. NEWTON: I understand, Your Honor. But I'd like
2 the opportunity to fully --

3 THE COURT: Okay. You've got 60 days, but don't cut
4 down a lot of trees doing this.

5 Thank you.

6 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the 13th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal in the Court of Common Pleas for Greenville County, South Carolina, on the 22nd day of October, 2003.

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

November 14, 2003

Hollie M. Jenkins

Hollie M. Jenkins, Court Reporter

My Commission Expires: 11-17-10

STATE OF SOUTH CAROLINA) IN THE COMMON PLEAS COURT
) CASE NO: 02-CP-23-6327
 COUNTY OF GREENVILLE)
)
 ORLANDO SMITH,)
) APPLICANT)
 vs.)
)
 STATE OF SOUTH CAROLINA,) MEMORANDUM IN SUPPORT OF
) POST CONVICTION RELIEF
)
 RESPONDENT.)

The Applicant, by and through his undersigned Counsel, would submit and show unto this Honorable Court the following:

BACKGROUND

The Applicant, Orlando Smith was charged with the crime of Murder before the Honorable Larry R. Patterson, General Sessions Court, Greenville, South Carolina, on July 18-19, 2000. During the trial of this matter, Mr. Smith was represented by court appointed counsel Timothy Sullivan of Greenville, South Carolina. Mr. Smith was convicted of the charge of murder and sentenced to 30 years confinement on or about July 19, 2000. Mr. Smith filed his application for Post Conviction Relief on the grounds of ineffective assistance of Counsel on or about September 17, 2002 (2002-CP-23-6327). A hearing was held before the Honorable Edward W. Miller on October 22, 2003, in the Common Pleas Court of Greenville, South Carolina. The Applicant, Orlando Smith, was represented by John A. O'Leary, of Columbia, South Carolina. The State was represented by Christopher L. Newton, Esquire, Assistant Attorney General of Columbia, South Carolina.

A motion having been filed by Orlando Smith, through his Counsel, John A. O'Leary, to Compel the Production of Scientific Evidence was heard in conjunction with the PCR scheduled for October 22, 2003. The Court took the testimony of Orlando Smith, Carolyn Bell and

Timothy Sullivan, Esq. The matter was held in abeyance with the record left open for the submission of scientific reports and other evidence gathered on behalf of the Petitioner Orlando Smith in response to the Court's Order pursuant to his Motion to Produce.

Counsel for Orlando Smith and representatives of O'Leary Associates, together with private investigators, were scheduled by the Greenville County Solicitors office and the Greenville County Sheriff's Office to review such evidence as ordered by the Court and this review took place on November 24, 2003, and December 3, 2003, in the offices of the Greenville County Solicitor and Sheriff.

The Applicant in his Application for Post Conviction Relief based his petition on numerous issues surrounding counsel's ineffectiveness in the preparation and execution of the defense in this matter. These matters were explored at the hearing conducted on October 22, 2003, in the Common Pleas Court of Greenville County. The issues and arguments are outlined below in the context of the scientific evidence and reports not available on October 22, 2003, to Counsel for Petitioner at the time of the hearing.

At the time of the trial, Counsel Timothy Sullivan failed to conduct proper and thorough investigation of the material facts of the case, rendering the final decision prejudicial with the facts now known to Petitioner. Counsel repeatedly failed to object to the State's prejudicial and inflammatory use of evidence presented and displayed to the jury without proper identification or ties to the charges. The actions taken by the State in the prosecution of this matter were not only inflammatory, but highly prejudicial to the Petitioner. Counsel for Mr. Smith on numerous occasions throughout the trial failed to properly object to evidence which had no basis in fact to the trial and was prejudicial and inflammatory.

The following are errors which were brought before the Court at the hearing for Post Conviction Relief on October 22, 2003.

I. Counsel, pre-trial, failed to conduct a proper and thorough investigation of the material facts of this case.

The testimony on page 60, lines 13-17, reveal that trial Counsel made no efforts to seek funds to hire investigators to assist in the location and interview of witnesses. At the hearing on October 22, 2003, Counsel Sullivan testified that he was unaware that there was a videotape of the crime scene (p. 57, trans. lines 9-10, PCR Hearing), where he was asked:

"Were you ever provided a videotape of the crime scene and the answer he gave to the Court was 'until you mentioned it earlier—or somebody, I didn't even know there was one to tell you the truth'. The video in question is extremely important, since it would have shown the original condition of the apartment. This video was provided to this office and should have been the subject of review by trial counsel and his client as to exactly what occurred when Mr. Smith admitted that he entered into the apartment and found the body and touched the body to determine her condition. In addition, the video reveals the condition of the apartment which gives insight to whether or not a struggle between a party or parties took place, which could have been the basis for the request for a manslaughter charge by trial Counsel for Mr. Smith. In this case, the video was never viewed and there were no photographs produced that would show clearly the condition to assist Counsel. No objections were ever made or issues raised to the Court by Mr. Sullivan regarding this issue. The evidence is critical, but was not produced under properly filed motions to defense counsel Sullivan. To conduct proper cross examination of the witnesses, specifically Officer Maxwell, who was the initial responding officer, the video was vital in that it refutes the initial reports written as to the crime scene by the initial responder. The video shows that shoes were not on the deceased, but in other areas of the apartment and that the lower half of the deceased's body was covered partially by pants as shown in the video. In the initial statements given by Officer Maxwell, he indicates that the body was nude from the waist down and that the shoes and socks were on the body, which is totally contradictory to what the video depicts. The failure to obtain this video, or in the alternative, for the prosecution to produce such video under properly filed discovery motions violates not only the minimum

standards required for a criminal defense trial lawyer, but likewise constitutes prosecutorial misconduct by not providing information and materials properly requested and motioned.

As to the photographs, numerous photographs were presented to the jury which, on their face, are highly prejudicial. No objections were made by Counsel, but more importantly, these photos were never viewed by trial Counsel until the morning of trial, as testified to on page 57, lines 15-25 of the PCR hearing transcript.

Q: Did you ever discuss with Orlando the photographs and asked to verify if this was accurate as to what he saw when he came in there? Did you ever go over the photographs with him.

A: We looked at them that morning of the crime scene, but no. I didn't go through and say is that what you saw, no.

Q: That morning, you mean the trial.

A: Yeah.

Q: Okay. Not before the trial.

A: Not before the trial.

This testimony alone, coupled with the testimony given on page 58 of the transcript when trial counsel was asked whether he ever had discussions with Mr. Smith regarding how he touched the body, photographs and the video would have been extremely critical, not only to refresh the memory of Mr. Smith, but likewise anticipate any arguments which could have been made by the State in the presentation of their case in chief.

Trial Counsel, by his own admission, at the Hearing for Post Conviction Relief, testified that no motions or efforts were made to seek independent testing or analysis of any scientific evidence collected to determine if this evidence would point to other suspects or rule out the defendant. This is imperative in this case as three hairs were found on the body, which was partially naked. On page 55-56 of the PCR transcript, trial Counsel was asked questions regarding the hairs, specifically:

Q: Did you make any motions on behalf of the Defendant for an independent analysis, which the answer by the Mr. Sullivan. line 4, page 56 was "No, I didn't". This lack of action by

Mr. Sullivan, taken in conjunction with the statements made by SLED at the trial where the hairs did not match and yet they were not examined was high prejudicial, inconsistent and irreparably damaged the defense. The matter could have been resolved by Counsel, making a motion to the trial Court for analysis of the hair in comparison to the other prime suspect, Mr. Burts.

In preparing for the trial, Mr. Sullivan indicated that subpoenas had in fact been served, one in particular on a witness named Shirley Robinson. The evidence available to Counsel was that Shirley Robinson had entered the apartment and found the body prior to the time his client, Orlando Smith, entered and as he stated found the body. Further, Ms. Robinson had evidence that she had seen Mr. Eric Burts, the other prime suspect slap the victim on a prior occasion and mistreat her over the issue of drugs (Page 44, line 15-21). When asked with reference to Shirley Robinson, Mr. Sullivan testified that: "I think there was something Shirley may have said or may have said this a while ago that she had seen Eric Burts slap the victim before and that she had seen him mistreat her because over drugs, I guess. That may have helped point some more fingers at the drug dealer, I think that is something that she could have testified to". The interesting point is that she was in fact subpoenaed. On cross examination at the hearing for Post Conviction Relief on October 22, 2003, the issue as to Shirley Robinson was brought up by Counsel for the Applicant when questions were asked with reference to enforcement of the subpoenas on page 59.

Q: When that lady didn't show up that was served with the subpoena, had you told Orlando that the Court could enforce subpoenas?

A: I told them all, when we were there that day before the trial that if they didn't show up that they could be held in contempt.

Q: And when she didn't show up for trial and yet her testimony would be that she had seen Burts abuse the deceased and that she was physically in the crime scene and touched the body?

A: I don't remember the touching part, I do remember she said she had gone in and seen her.

When questioned, Counsel Sullivan admitted that her testimony would be pretty important. When then asked, "Could you have asked the Court at that time to enforce the

subpoena?", the answer given by Mr. Sullivan was:

Q: "They could probably—Judge Pyle—I mean Judge Patterson may have stopped and sent a deputy out to try and find her, yeah:

Q: But you didn't try to do that?

A: Witness shook head.

The efforts by Mr. Sullivan as to the pre-trial preparation of this murder defense are clearly below the standard required of Counsel in such cases. As to other critical witnesses, specifically Ms. Carolyn Bell, which Counsel at the PCR hearing brought before the Court and she testified at the hearing, Mr. Sullivan indicated that he could not find her and he had no way to find her. However, her testimony would have been extremely important.

Further in his questioning, Mr. Sullivan indicated that he never advised the Court at any time prior to the beginning of the trial as to his difficulty in locating a critical witness such as Ms. Bell (pg. 60). To confirm the critical portion that Ms. Bell would have played, questions were asked on page 52 in which on line 12, Mr. Sullivan in response to a question, "But I wish, thinking back now, I wish I could have gotten Carolyn Bell there".

Q: Do you agree with me that Carolyn Bell's testimony was, as you just heard it here today, was significant in impeaching the credibility of Mr. Burts, which was a prime suspect.

A: I think it would have been, yes I agree with that.

The importance of Carolyn Bells' testimony was simply that Carolyn Bell was supposedly the alibi witness for Mr. Burts. Mr. Burts testified at the trial that he had delivered narcotics, specifically, cocaine and crack to the deceased three times on the evening prior to the homicide. In his testimony, Mr. Burts stated that he was paid for the narcotics. This would be relevant since Mr. Sullivan was totally unaware that there had been a report filed by Ms. Quinn, a relative of the deceased that she had been called earlier that evening and told that her wallet had been stolen from the apartment (Page 49, PCR transcript). This is important in that Mr. Burts testified that he was paid three times earlier in the evening for these drugs, which he personally delivered to the apartment. The fact that her wallet had been stolen could well have indicated to

the jury that there was in fact no money to be paid to Mr. Burts and that he had returned around 12:00 after he had left his "companions" and was unaccounted for approximately two hours after midnight, the approximate time that the crime took place.

More importantly, with reference to the facts gathered in preparation for the PCR hearing, Mr. Burts borrowed a belt earlier in the evening, and this case involved a strangulation and death by an unidentified weapon. The belt was given to Eric Burts by Benny Frank Irby's girlfriend. When asked about Mr. Irby on page 50 of the transcript of the PCR hearing, Mr Sullivan stated when questioned:

Q: Were you aware that Mr. Irby's statement indicated that he had gotten a belt earlier that evening?

A: I don't remember that.

Q: But you did not get Mr. Irby or put him on the stand or interview him, did you?

A: No.

Q: Would it have been important to see if the belt that they actually had in the Court was the same belt that Mr. Burts supposedly turned in 2-3 days after the homicide and brought voluntarily to the department. Don't you think it would be important to know if it was the same belt or not.

A: Not really, I mean I just don't see the point, but.

In investigating this case, Mr. Irby was located within the correctional system of South Carolina and interviewed once by Counsel O'Leary as well as by investigators hired by PCR Counsel. Attached is an affidavit of Mr. Danny Wayne McDaniel, who interviewed Mr. Irby at the Lee Correctional Institute in Bishopville. In both instances, Mr. Irby described the belt as long, thin and black. Upon receiving the evidence from the Greenville Solicitor's Office, and the Greenville County Sheriff's Office, photographs were taken and Investigator Danny McDaniel traveled again to the Lee Correctional Institute with the photos of the belt. Mr. Irby indicated he thought it was his belt, but not the same belt that was given to Mr. Burts. This evidence would have been available to trial counsel Sullivan had he in fact interviewed Mr. Irby. This Counsel received in his office on December 9, 2003, a letter marked as "Exhibit A, attached to the affidavit of Danny McDaniel" from Mr. Irby where he confirms in writing that the belt he

believed was given to Mr. Burts was a black skinny belt. The significance and point admittedly missed by Counsel Sullivan is simply that the belt that was turned in and waved before the jury during the trial was *not* the belt that was given that evening to Mr. Burts. One can only conclude and the jury could likewise have concluded that the belt that was given to Mr. Burts by Mr. Irby was not turned in to the department because this belt was used in the commission of the homicide and subsequently discarded.

The failure of Counsel to properly secure the evidence, including the photographs and the video of the scene are extremely important since it precluded proper preparation of his client for the testimony to be given at trial. The total failure of Counsel to even ask for an independent analysis as to the prints that were found on the body, is a gross deviation of acceptable practice since he had in his possession the testimony of Mrs. Shirley Robinson that he entered into the apartment and also touched the body. Mr. Sullivan concluded that the print on the body was his client's absent any background other than a guess that the print was made when his client admittedly touched the body.

The case before this Court is the most serious of the crimes in our society, specifically murder and for counsel to not properly investigate or attempt to locate and interview who are critical to the defense, is a gross deviation from any acceptable standard of practice and falls below any acceptable standard for trial attorneys. The advice given by Mr. Sullivan to Orlando Smith with reference to the penalty for failing to appear on a subpoena falls short in that the actual purpose of the subpoena is to ensure the appearance of a witness critical to the before the Court. No effort was made and an inadequate explanation was given to Mr. Smith when he said that the Court could hold the person in contempt, not that the Court would be forced to put the trial in abeyance and find the witness, upon request. No such effort was made and improper information and advice was given on this issue.

The failure of Counsel to object to the displaying of belts and other objects before the jury was totally improper since they were never linked to the crime. Counsel for Mr. Smith at the

PCR sent a second investigator, a crime scene specialist, in conjunction with Private Investigator McDaniel to examine the evidence objects, provided by the Solicitor's Office and Sheriff's Department. In his report, attached as "Exhibit B", M. Bruce Jernigan, a retired criminology instructor and senior crime scene analyst from the South Carolina Criminal Justice Academy, states in his documents that he examined the items in question, specifically the belt, the ligature and the long hair-like strand, which were all waved before the jury. He found, only on the ligature, evidence of blood. At trial, it was testified to that the ligature was found at the back door entrance, the exact place that Mr. Burts was seen entering and leaving on at least three occasions on the date of the murder. Mr. Sullivan's failure to object to the displaying of these objects before the jury is a gross deviation from acceptable trial practice. This combined with the failure to object to the photographs, which on their face show excessive amounts of blood and gore, including the autopsy pictures show a complete absence of a professional standard required of counsel. On page 54 of the PCR transcript, line 11-12, Mr. Sullivan admits that there is absolutely no objection made to the ligatures, as he did on previous examination on page 53, line 12.

Most egregious of the failure to object may well be the absence of objection and the logic as to the photographs. On page 42, where Sullivan did feel that blood from the injuries as well as the fact that she was in the middle of a menstrual period would have been inflammatory is hard to explain. (Pg 42, PCR trans.). He states there is nothing inflammatory about them. There is no way that a defense attorney can in good conscious say that bloody gruesome photographs of a crime scene together with bloody gruesome photos of an autopsy are not in some way prejudicial to his client. This falls beyond any acceptable standard of practice by trial counsel.

At the trial, Counsel was essentially sandbagged by the prosecution when a letter written to Smith's girlfriend referencing his request to dispose of bloody clothing which had been hidden by him in his girlfriend's apartment. When asked about his failure to object to this surprise correspondence from his client, on page 65, he stated, "I did not see that I was not aware of it

on the record to protect the defendant.

The prejudicial impact on the Defendant of such serious violations of Rule 5 can be measured against the standards of strict construction as set forth in State v. Blackmon 304 S.C. 270, 273, 403, S.E. 2d 660, 662 (1991). However, "if a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no need to employ rules of statutory interpretation.....When the terms of a statute are clear, the Court must apply those terms according to their literal meaning". State v. Morgan, 352 S.C. 359, 366-67, 574 S.E. 2d 203, 206-207 (Ct. App. 2002)

In addition, at the trial, a palm print was testified to, but there is nowhere in the testimony given at the trial that there was an identification as to the number of points of reference given by the experts. In essence, at the trial, there was simply a statement that the prints matched, absent a minimum number of points of identification or detail reference regarding the context of the match. When asked on cross examination at page 55, line 10, an answer was given: "I was told I had nothing but the palm print to tie him to and his statement, I don't know about the blood on the pants at that time".

Q: Book 2, page 33, she said that they didn't examine it, so you are taking the word that it doesn't match, they never checked it, it could have matched, Burts. All they've got is the print.

On page 56 of the PRC transcript, Attorney Sullivan was asked did you ever make a motion to the Court to provide a copy of the palm print or everything that was sent to Mississippi, which was referred to in a correspondence that was in the discovery and then further questioned did you ever get copies of what they were actually looking at and trying to compare it to?

A: I did with the palm print, but they had taken his palm and had the palm print off of the body.

Q: But you never saw those or asked for copies to have someone else look at it or wither confirm or deny that?

A: Not after he admitted that he had touched the body and turned her over, no.

This is again extremely significant since Mr. Sullivan had in his possession evidence that a second person had entered the apartment, Ms. Shirley Robinson. Further, he had evidence that Ms. Robinson herself touched the body, and it could well be that the print he assumed was his clients, was in fact Ms. Robinson's or some third party. Ms. Robinson was in fact subpoenaed to give testimony, but failed to appear and no action was taken by Counsel to secure her presence at the trial and to testify. Again, this falls well below the acceptable standard of trial counsel in the defense of such cases. The fact is that an independent analysis or comparison of the prints should have been conducted by Counsel upon proper motions for funds from the Court in the event that the defendant was unable to pay for such examination. The record shows nowhere at the time of trial was objection made as to the introduction of the print comparison, absent a proper foundation. Nowhere in the record is there testimony showing that a minimum number of points of reference were testified to by the (fingerprint) "experts" in this matter. Mere conclusions were offered to the Court and accepted blindly by Counsel for the Defense as fact. More importantly, is the fact that in Court demonstrations were given as to exactly how the print was placed upon the arm. No objections were made since counsel had not seen the picture or compared the prints to allow him the ability to cross examine or question this testimony. It was highly prejudicial to allow a person to testify as to how a print was placed; however, no objections were made. Counsel would have been hard pressed to properly examine on this matter, since he was totally unprepared for proper cross examination. No objections were made and when asked about photographs that were used at the trial by Ray Allen on direct and cross examination, Mr. Sullivan asked on page 36 of the trial transcript if he had seen the photographs that morning, the prosecutor casually indicated "I think you did", implying that Mr. Sullivan had in fact only seen the photographs on the morning of trial.

An examination of Paul Wilkerson on the latent prints taken at the scene, no objection was made in spite of the fact that Mr. Wilkerson stated on page 47 of the trial transcript that he was "reasonably certain that this matched".

Mr. Wilkerson testified on page 48 that he forwarded these prints to Mr. Ron Smith in Mississippi for enhancement and comparison. The prints were admitted into evidence as Exhibit 35 on page 48, with Mr. Sullivan stating "No objection" (page 48, line 18, trial trans.). The prints were then admitted on page 48-49 of the trial transcript, when he states that there is absolutely no doubt that the hand that made the imprint is also the bloody palm print of the victims body. The problem with this is that there were no points of comparison demonstrated to the jury, nor objections made. When given the opportunity for cross examination by Mr. Sullivan on this point, page 49, line 11, Mr. Sullivan says "No questions". This testimony was then followed by that of Mr. Ron Smith from the Mississippi Crime Lab, in Meridian Mississippi, proceeds on page 54-55 of the trial transcript to attempt to do an in court demonstration of how those print was placed and absolutely no objections were made.

This action was not only highly prejudicial, but likewise a surprise to counsel Sullivan, who, because of his inadequate preparation in comparison of the prints and employment of an expert to independently analyze exactly how the print was made, placed Counsel in to a position of being unable to properly examine the witnesses. Page 59 of the trial transcript on cross examination, of Mr. Ron Smith by Mr. Sullivan in essence asks is it possible that the arm was moved and the answer was "I wasn't there so I don't know". At which time Mr. Sullivan then states "No further questions", rather than making the obvious challenge that if he could not testify on this issue due to his non presence, how could he confidently place the palm print as it had been done at the time of the crime. This is extremely important since Mr. Sullivan had personal knowledge that another person had been on the property and touched the body as previously discussed. Had Counsel been properly prepared for trial, he would have anticipated the areas to which Ron Smith and Wilkerson would go during testimony and introduced the witness he had under subpoena to testify to the fact that she had entered the apartment and in fact touched and moved the body as critical to the evidence at hand. No proper foundation was made as to a comparison of the prints but, no objection was made by Mr. Sullivan and in one case Mr.

Wilkerson, no questions were even asked.

Testimony was given by Agent Black of the South Carolina Law enforcement Division (SLED) with reference to forensic pathology and trace evidence. She discussed in the trial the issue of the hair samples and confirmed that the three hair samples had been found, but that no tests had been run on the hair samples that had been found on the nude portion of the body. Her statement was simply that it was the SLED policy not to test the hair samples if there was blood evidence and in this case, there was blood evidence. The criticality of that is simply that there was a distinct impression that the hair samples were those of the defendant, Orlando Smith, since they were not tested and therefore the blood alone was sufficient to conclude that it was Orlando's hair. Prior to trial, Counsel Sullivan made no efforts to ask for an independent analysis or to ask the an Order of the Court to compel a hair sample be taken from the other main suspect, Mr. Burts. The three foreign hairs were found on the nude portion of the body and an independent examination or an order by the Court to compel the examination and comparison of the evidence with the co-suspect Mr. Burts would have been critical to the defense since it was the defendant's position was the homicide was committed by Mr. Eric Burts, rather than Orlando Smith. This was never done prior to the time of trial.

The errors committed by Counsel are basic errors, which fall well below any standard for trial counsel in a murder case. Assuming Mr. Sullivan had no money for independent examination, motions could have been made to the court on behalf of Mr. Smith and this simply was not done. Evidence was not gathered, nor witnesses interviewed by Counsel Sullivan. Several witnesses would have been critical to the defense, specifically Mr. Benny Irby and Ms. Carolyn Bell. The trial transcript shows clearly that the other prime suspect, Mr. Eric Burts testified that he had dealt crack to her on that day, at least three times and that he had been to the apartment just prior to the time of the murder and during the period in which the crime took place, (page 61, trial trans.). Mr. Burts, when asked if he had taken a car and left the company of other friends. stated he had been gone for approximately two hours, then brought the car back.

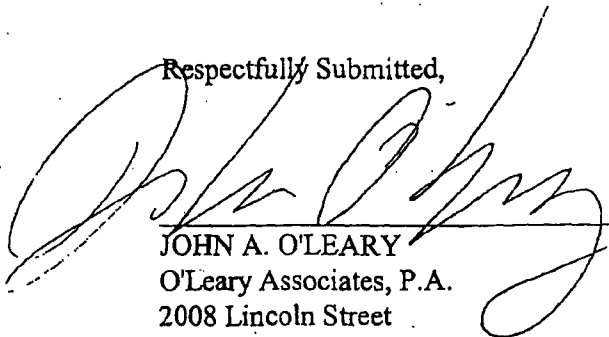
He admitted on page 70 that he had been with Carolyn Bell, but since this is the witness that counsel did not find and PCR Counsel located and procured testimony from at the hearing indicated that Mr. Burts.

Mr. Burts denied having sex or bragging about it with his friends upon his return. Mr. Richardson, a friend who had loaned him the car testified on page 132 of the trial transcript that Mr. Burts had in fact told him that he had gone on a "trick" (line 24, page 132), referring to the exchange of sex for drugs. The presence of Ms. Bell was critical to Eric Burts involvement in the crime. There is no question that Mr. Burts had been a drug dealer to the apartment on three occasions that night and had borrowed a belt, is unaccounted for during the time of the homicide and gives to law enforcement an alibi for the time period with one Carolyn Bell who is never found by the defense or interviewed by Law Enforcement. Ms. Bells's testimony is critical to the defense and the alibi of the other prime suspect Mr. Burts is critical to the belt that was loaned to Mr. Burts. The total failure of Counsel Sullivan to properly find, interview and subpoena these witnesses on behalf of his client constitutes a gross deviation form the acceptable practice of criminal law at the trial level.

Counsel has no valid reason for failing to properly represent Mr. Smith in this matter and his actions can in no way be informed trial strategy and constitutes on its face ineffective assistance of Counsel as recognized by the Court.

To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving Counsel's representation fell below an objective standard of reasonable, and but for trial counsel's errors, there is a reasonable probability the result of the trial would have been different. Underwood v. State 309 S.C. 560, 425, S.E. 2d 20 (1992). Simmons v. State 308 S.C. 481, 419 S.E. 2d 225, (1995). A reasonable probability is the probability that sufficient to undermine the confidence in the outcome of the trial. Strickland v. Washington 466 U.S. 668, 104 S. Ct. 2052, 80. L. Ed. 2d 674 (1984).

Respectfully Submitted,



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ATTORNEY FOR DEFENDANT

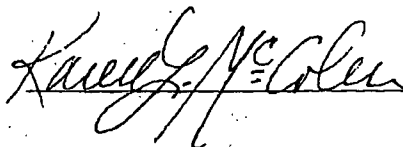
Columbia, South Carolina
December 16, 2003

CERTIFICATE OF SERVICE

I, the undersigned employee of O'Leary Associates, P.A., attorneys for Orlando Smith (SCDC#: 267982), certify that I have served the foregoing document(s) on the individual(s) listed below on December 16, 2003 by placing a copy of the same in the United States Mail, postage prepaid, and return address clearly affixed to the following address:

PERSON SERVED: Christopher Newton, Esquire
Office of the S.C. Attorney General
1000 Assembly Street
Post Office Box 11549
Columbia, SC 29211-1549

DOCUMENTS: MEMORANDUM IN SUPPORT OF POST CONVICTION RELIEF



Columbia, South Carolina / December 16, 2003

(Attachment D)
COPY

STATE OF SOUTH CAROLINA) IN THE COMMON PLEAS COURT
) CASE NO: 02-CP-23-6327
COUNTY OF GREENVILLE)
)
ORLANDO SMITH,)
)
APPLICANT)
)
vs.)
)
STATE OF SOUTH CAROLINA,)
)
)
RESPONDENT.)

AFFIDAVIT

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SOUTH CAROLINA
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GREENSBORO NC 27834
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Now comes John Allen O'Leary, having first been duly sworn and states the following:

1. That he is the Counsel for Orlando Fonte Smith in his application for Post Conviction Relief on the charge of murder pending before Greenville County Court of Common Pleas.

2. That this affiant made a complete and second review of the video received from the Greenville County Sheriff's Office in the case of Orlando Smith. Records indicate that such video was never produced or received in discovery by original trial counsel, Tim Sullivan, Esq. of Greenville, South Carolina.

3. Such video clearly depicts the outside perimeter of the building, together with a low walk through of the building and crime scene area.

4. Included in the walk through of the kitchen areas and the small porch area immediately to the rear of the kitchen.

5. A review of the video of the outside back porch area shows blood on the cement step area. Such blood would be exculpatory in nature since the evidence shows that the only subject seen in that immediate area at or about the time of the crime was Eric Burts, a prime suspect. In addition the evidence shows that the ligature was found on the back porch and was tested by an independent analysis and such ligature indicated the presence of blood. The ligature and the outside steps and blood area in the video were not tested by SLED.

6. At the post conviction relief hearing conducted before this Honorable Court on October 22, 2003, testimony given by attorney Tim Sullivan when asked on line 7 by Counsel at the PCR

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(Attachment D)

hearing:

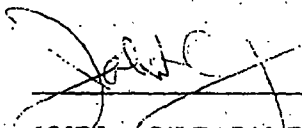
Q: Did you ever—were you ever provided with a videotape of the crime scene.

A: Until you mentioned it earlier, or somebody, I didn't even know there was one, to tell you the truth.

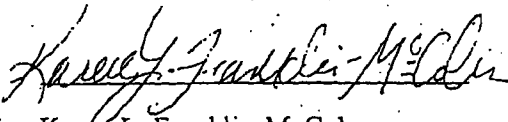
Further, at the PCR hearing in this matter, Mr. Sullivan stated that he had received some discovery materials on page 40. It was apparent upon his testimony that certain items were never received, specifically the video.

7. The evidence reviewed by affiant are clearly materials that should have been produced under Rule 5 of the SCRCrimP to trial Counsel and were critical to the analysis of the facts and circumstances surrounding the case by defense counsel in his prep for trial. Failure to produce such materials to counsel is a gross deviation from acceptable standards of criminal trial practice but likewise show a deliberate indifference to the mandatory rules set forth in Rule 5 by the South Carolina Courts on behalf of the Greenville County Solicitor's Office.

FURTHER AFFIANT SAYETH NAUGHT.


JOHN A. O'LEARY, Esquire

Sworn and Subscribed to me this 22nd day of December, 2003.



Karen L. Franklin-McColman
Notary Public for the State of South Carolina
My commission expires: May 14, 2011

(Attachment D)

COPY

STATE OF SOUTH CAROLINA) IN THE COMMON PLEAS COURT
) CASE NO: 02-CP-23-6327
 COUNTY OF GREENVILLE)
 State of South Carolina,)
)
 vs.) **AFFIDAVIT OF**
) **DANNY WAYNE MCDANIEL**
 Orlando Smith (SCDC#: 267982),)
)
 Defendant.)

PERSONALLY appeared before me, Danny Wayne McDaniel, who first being duly deposed, swears and says:

1. He is a private investigator licensed with the South Carolina Law Enforcement Division.
2. That he was hired by O'Leary Associates, P.A. to perform investigative services in the above matter.
3. That on November 24, 2003 he traveled to the Greenville County Solicitor's office and with the Solicitor and investigator, went to the Greenville Law Enforcement Center to view potentially exculpatory evidence in this matter.
4. That he was provided access to view and photograph the entire body of evidence within the possession of the Greenville County Sheriff's Department and Greenville County Solicitor's Office.
5. That he photographed several items of evidence, including a leather belt, a rope with a small stick attached, a dark-colored braided hair-piece and various other articles of evidence.
6. That on December 1, 2003 he traveled to Lee County Correctional Institution in Bishopville, South Carolina.
7. At the Institution, he was allowed supervised access to interview Benny Frank Irby and inmate housed at the Lee County Correctional Institution.
8. That he questioned Benny Frank Irby about the facts and circumstances surrounding Mr. Irby's knowledge of the events leading up to the incident in this matter. Specifically,

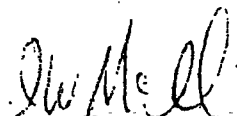
p. 28

Page 1 of 1

(Attachment D)

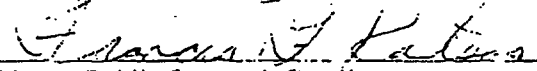
regarding the belt Mr. Irby had given to Eric Burts as described in the trial in this matter.

9. Mr. Irby stated to Affiant that Eric Burts was wearing very baggy shorts that were literally about to fall off as was the style at that time and Mr. Irby let Mr. Burts borrow a belt.
 10. That Affiant produced pictures of the belt that had been entered into evidence to Mr. Irby for his identification. The subject belt remains in the custody of the Greenville County Sheriff's Department.
 11. That Benny Frank Irby identified the belt in the photographs as being his, but not the belt loaned or given to Eric Burts on the date in question. This is confirmed in correspondence received from Mr. Irby dated December 5, 2003.
 12. That on December 3, 2003 Affiant and Bruce Jernigan, a retired SCCJA Instructor in Forensics, traveled to Greenville County Solicitor's Office to meet with and to test physical evidence in the custody of Greenville County Sheriff's Department and the Greenville County Solicitor's Office.
 13. That during this visit, while Mr. Jernigan tested physical evidence, Affiant photographed some of the testing procedures conducted by Mr. Jernigan.
 14. That Affiant was provided a copy of a letter from Mr. Irby dated December 5, 2003 advising attorney O'Leary that Mr. Irby had been transferred to the Tiger River Correctional Institution in Unadilla, South Carolina in case any further contact was necessary. Copy attached as Exhibit "A".
- FURTHER DEPONENT SAYETH NAUGHT.



 Danny Wayne McDaniel

SWORN TO AND SUBSCRIBED BEFORE ME
 This 19th day of December, 2003.



 Notary Public for South Carolina
 My Commission Expires: 3-14-11

p. 21

(Attachment D)

STATE OF SOUTH CAROLINA) IN THE COMMON PLEAS COURT
) CASE NO: 02-CP-23-6327
 COUNTY OF GREENVILLE)
)
 ORLANDO SMITH,)
) APPLICANT)
 vs.)
)
 STATE OF SOUTH CAROLINA,)
)
) RESPONDENT.)

AFFIDAVIT

ENTERED COMPUTER

FILED
CLERK
GREENVILLE
PAID \$

2003 DEC 23 P 2:06

Personally appeared before me M. Bruce Jernigan, who first being duly deposed, swears and states the following:

1. That he is a retired law enforcement officer, criminology instructor and supervisor with the South Carolina Criminal Justice Academy located at 5400 Broad River Road, Columbia, South Carolina. That further, he participated in, as an investigator, and personally instructed as a member of the staff as a member of the Criminal Justice Academy and served as a certified senior crime scene analyst for an excess of 30 years.
2. That he currently resides in the Columbia area.
3. That he was hired by O'Leary Associates P.A., to perform investigative services in the above captioned matter.
4. That in early December 2003, and SLED licensed Private Investigator Danny W. McDaniel, traveled to the Greenville County Solicitors Office and the Sheriff's Department to meet with staff and examine the evidence in this matter.
5. That during this visit physical evidence was tested and photographed in compliance with acceptable testing procedures and law enforcement practices.
6. The descriptions of the items examined personally by me and the steps taken as to the examination of each are as follows:

Item 1: A mans belt, size 40, color brown, made of vinyl.

eg. P. 22

Attachment D

Item 2: A length of cord, approximately 31 inches long and one quarter inch in diameter. The composition of the cord appeared to be natural and man made fiber. One end of the cord was tied around a small stick, which is 4 and one-half inches long and one quarter inch in diameter. This stick appears to have come from a tree or bush of some type, for the bark was still attached to the stick.

Item 3: A length of platted man-made fiber, color of which is dark brown or burgundy or reddish-brown. The fiber is platted in a fashion that human hair would be platted.

7. Initially, I examined each of the above items with a hand held magnifier, commonly known as a linen tester. This was done to see if any residue or stains were visible under magnification. No such stains were detected on items number 1 and 3. However, I did see a color variation on the bark of the stick that was tied to the cord listed above as Item 2. In addition, I noted that on the end of the cord near the stick, a small dark substance was visible that did not match any other area of the cord.

8. I concentrated my initial examination on Item 2, with the following results:

With a cotton swab that was slightly dampened with water, I gently wiped the area of color variation and applied it to the end of a Hemo-Stick, which has a small pad on the end that is used to detect the presence of blood. Upon application, there was an immediate reaction of color change, indicating the presence of blood. The Hemo-Stick used, is included in this report along with results of other tests conducted on Item 2. The Hemo-Stick is identified by the number 1. *(NOTE* When Item 2 was collected by the investigators, the item was marked for identification with the initials of the collector, which were placed on the end of the stick with what appears to be a felt tipped pen. The examination and tests conducted by me were done on the opposite end of the stick, and not around the area marked by the investigators. This was done to avoid contamination of any tests that I would conduct.)*

With a positive reaction of blood on the Hemo-Stick, I proceeded to conduct more detailed chemical examinations of the stick and the substance on the end of the cord, with the following results.

With a clean cotton swab, I swabbed the area previously tested and transferred the swabbing to a triangle of filter paper. I then processed the area of transfer with Phenolphthalein, a blood reactive chemical. When blood is present, the treated area will turn a bright pink in color. The swabbed area of filter paper reacted positively and a pink color was developed. This test area is included in this report and is identified with the number 2.

In addition, I conducted an additional test on the same area using the chemical O-Tolidine, also a blood reactive chemical. Like Phenolphthalein, O-Tolidine will react to the presence of blood, but the reaction color is blue rather than pink. Following the same procedure as noted

eg. P. 23

above, a positive reaction was achieved with a blue color appearing. This test area is included in this report and is identified with the number 3.

The Phenolphthalein process was used to test the end of the cord where the substance was observed. With a clean cotton swab, which had been dampened slightly with water, I swabbed the end of the cord thoroughly and transferred the swabbing to a triangle of filter paper. When the Phenolphthalein was applied to the filter paper, a very strong reaction was observed. This reaction was the strongest reaction of all the tests conducted. The test area is included in this report and is identified with the number 4.

9. Mr. Danny McDaniel took photographs of the items in question and the tests that were conducted, and it is my opinion that Item 2 bore traces of blood.

10. Items 1 and 3 did not reveal any evidence of blood traces or other evidence.

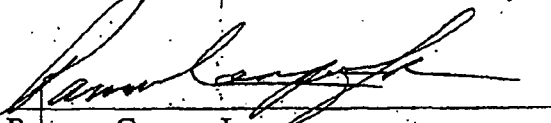
11. The aforementioned tests were conducted in the presence of staff members of the Greenville County Solicitor's Office, staff members of the Evidence Room of the Greenville County Sheriff's Department, and Mr. Danny McDaniel.

12. I affirm that the foregoing information is true and correct.

FURTHER AFFIANT SAYETH NAUGHT.


M. Bruce Jernigan, Retired
Criminology Instructor Supervisor
Certified Senior Crime Scene Analyst

Sworn and Subscribed to me this 22nd day of December, 2003.


Ransom Cooper, Jr.
Notary Public for the State of South Carolina
My commission expires: February 10, 2013

eg. P. 24

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

)
) IN THE COURT OF COMMON PLEAS
)

2002-CP-23-6327

Orlando Smith, # 267982

Applicant

v.

State of South Carolina

Respondent

ORDER OF DISMISSAL

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 17, 2002. The Respondent made its Return on May 2, 2003. An evidentiary hearing into the matter was convened on October 22, 2003, at the Greenville County Courthouse. The Applicant was present at the hearing and was represented by John O'Leary, Esquire. The Respondent was represented by Christopher L. Newton of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Testifying on behalf of the State was Timothy Sullivan, Esquire. This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Greenville County Clerk of Court and the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections. The Applicant was indicted at the October 2001 term of General Sessions for the Greenville County Grand Jury for Murder (98-GS-23-5212). C. Timothy Sullivan, Esquire represented the Applicant on the charges. On July 17-19, 2000, the

1
C. Sullivan

Applicant went to a trial by jury and was found guilty as indicted. The Honorable Larry R. Patterson sentenced the Applicant confinement for thirty (30) years.

A timely Notice of Appeal was filed on Applicant's behalf and an Anders brief was submitted on the Applicant's behalf by Joseph L. Savitz, III, of the South Carolina Office of Appellate Defense. The South Carolina Court of Appeals dismissed the appeal. State v. Orlando Smith, Op. No. 2002-UP-372 (S.C. Ct. App. filed May 23, 2002).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (1985).

At the hearing, the Applicant testified that he met with his trial counsel, Tim Sullivan, four or five times before trial. He stated that he had given Sullivan the names of several witnesses, including Benny Irby and Caroline Bell. The Applicant claimed that Sullivan never interviewed the witnesses, but did subpoena a couple of them. Shirley Robinson was subpoenaed but never appeared to testify, and Sullivan never requested that the court enforce the subpoena. The Applicant believed that these other witnesses could have helped to cast suspicion on Burks, one of the State's witnesses. Bell could have invalidated Burks' alibi, the Applicant claimed. He also stated that his trial counsel never objected to the photos of the victim, which he believed were overly prejudicial. The Applicant further testified that his trial counsel did not object to an alleged Rule 5 violation involving a letter that he had sent to his girlfriend. He stated as well that his trial counsel failed to object to the features being "waved" at the jury. The Applicant claimed also that his trial counsel never



requested a psychiatric evaluation and never requested that the hairs recovered at the scene be tested independently. Furthermore, his trial counsel never objected to the solicitor's comments that the witnesses were "telling the truth" or to the palm print analysis. Trial counsel failed as well to hire an investigator or to move for a directed verdict.

Caroline Bell testified that she knew Eric Burks, the State's witness. In fact, she stated that she had dated him for a while. She further testified that he had shown up one night for about fifteen minutes, but she never had sex with him. She also denied that Burks had ever spent a couple of hours over at her apartment or at her grandparents'. Tim Sullivan testified that he had discussed all of the discovery with the Applicant. Sullivan stated that the photos introduced at trial were not objectionable, nor was the palm print testimony, the ligatures, or the belt. Trial counsel further testified that he did not move for independent evaluation of the hairs or the palm print. Sullivan stated as well that he and the Applicant had examined the photos. He also said that he could never locate Caroline Bell, and did not object to the Solicitor's statements in closing about the witnesses being truthful. Sullivan admitted that he did not object to the introduction of the letter, despite having been only given a copy the morning of the trial.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71-1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); *Butler*, *Id.*

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate

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assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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 S.E.2d 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 S.E.2d at 625.

This Court does not find the Applicant's or his witness' testimony to be credible on the issues in this case. Trial counsel's testimony is found credible. This Court finds that the Applicant has failed to show that his trial counsel rendered ineffective assistance. While trial counsel's failure to object to the letter being provided the morning of the trial or to ask the judge to enforce his subpoena may have been deficient, this Court finds no prejudice to the Applicant from those errors. The Applicant had the opportunity to respond to the letter in his testimony, as well as to cross-examine his girlfriend, who had turned over the letter to the Solicitor. Shirley Robinson did not testify at the PCR hearing, so any evidence she might have offered is unavailable. Therefore, this Court finds that there is no reasonable probability that the result would have been different but for those errors. Regarding the failure to call witnesses and the failure to hire an investigator, this Court finds neither deficient performance nor prejudice. The witness offered by the Applicant, Caroline Bell, offered no testimony that this Court finds would have had a reasonable probability of affecting the outcome of

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the proceeding. Since Bell's testimony was the main thing that the investigator would have offered, no prejudice arose from the failure to hire an investigator. The photos offered to the trial court were not more prejudicial than probative, therefore this Court finds that no objection to them was warranted. The failure to test the hair samples or to challenge the palm print do not create a valid claim of ineffective assistance of counsel either. No evidence was presented to this Court that would show that either action would have had a reasonable probability of changing the result of the proceeding.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 227 for appropriate procedures after notice has been timely filed.



IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice, and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 31 day of March, 2007.

Edward W. Miller
Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

Myra C. [Signature]
South Carolina

ATTACHMENT A
Attachment A

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

2002-CP-23-6327

ORLANDO SMITH, #267982,
Pro-Se, APPLICANT,

VS.

RULE 59(e) MOTION TO ALTER AND AMEND

STATE OF SOUTH CAROLINA,
RESPONDENT.

NOW COMES the Applicant, Pro-Se, in the above-captioned Post-Conviction Relief matter, moving upon this Honorable Court Pro-Se, asking this Court to Amend its Order dated March 31, 2004, of which, was received by Applicant on April 07, 2004 via the McCormick Correctional Institutions Mailroom. Thus, in support of this respectful request the Applicant would show unto this Court the following:

In the Applicant's Application for Post-Conviction Relief filed on September 17, 2002, he alleged that his Trial Counsel was Ineffective. Also, in his MEMORANDUM IN SUPPORT OF POST-CONVICTION RELIEF and, in addition, at his Post-Conviction Relief hearing specifically the Applicant alleged that his attorney failed to provide him with reasonable professional assistance of counsel prior to and during his jury trial which transpired on July 18-19, 2000.

It was the Applicant's assertion that the State violated Brady and SCRCrIMP Rule 5(a)(1)(C) for failure to disclose at all before his trial of his criminal case a video tape of which was: 1) in the State's possession or known to the State; 2) pertained to the Applicant's guilt or punishment; and 3) was favorable impeachment material. Accordingly, this video tape was taken by the police, therefore, the prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in a criminal case, including the police according to Kyles v. Whitley, 514 U.S. 419, 437, 115 S. Ct. 1555, 131 L.Ed.2d 490 (1995). This video tape, of which, the Applicant at his Post-Conviction Relief Hearing testified he knew nothing of and Counsel at the hearing testified that he knew nothing of, this video tape. (PCR, Transcripts: pg. 12-13, lines 01-05; and pg. 57, lines 01-10).

It was the Applicant's position that this constituted Prosecutorial Misconduct because the prosecutor willfully or inadvertantly failed to give Applicant or his Trial Counsel access to this video tape of the crime scene to impeach the government's witnesses concerning their scenerio of the crime

(Attached #1)

scene investigation and findings.

Furthermore, it was the Applicant's assertion that Trial Counsel's own admittance of his lack of knowledge of this tape proves he failed to do an adequate pretrial investigation of his criminal case, of which, was as a matter of law deficient performance and this prejudiced the Applicant where if proper investigations would have been made by Trial Counsel this video tape could have been discovered, and commanded before his trial by jury and used effectively to impeach the Officer's testimony concerning the scene of the crime, of which, could have made the difference between his conviction or an acquittal.

The Order of this Court addressing the Applicant's Post-Conviction Relief allegation of Ineffective Assistance of Counsel and Prosecutorial Misconduct for a Brady and SCRCrIMP Rule 5 violation regarding this video tape neglects to make the necessary findings of fact and rulings of law to the Applicant's claims. The Applicant does not wish to waive this issue of Brady and SCRCrIMP Rule 5 violation due to prosecutorial misconduct or his Ineffectiveness of his Trial Counsel's failure to adequately do a pretrial investigation on these particular issues for appeal to the Supreme Court and accordingly, respectfully asks this Honorable Court's Amendment by way of an Order addressing these issues.

Respectfully Submitted,

Orlando F. Smith
MR. ORLANDO SMITH, #267982
PRO-SE, APPLICANT

MCCORMICK CORRECTIONAL INSTITUTION
386 REDEMPTION WAY [F-2-Aside]
MCCORMICK, SOUTH CAROLINA 29899

PRO-SE, REPRESENTATIVE.

MCCORMICK, SOUTH CAROLINA
THIS 1 DAY OF April, 2004.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
 2002-CP-23-6327

ORLANDO SMITH, #267982,)
PRO-SE, APPLICANT,)
)
 V.)
)
 STATE OF SOUTH CAROLINA,)
 RESPONDENT.)

CERTIFICATE OF SERVICE

The undersigned Applicant, Pro-Se, hereby certifies that a true copy of the enclosed RULE 59(e) MOTION TO ALTER AND AMEND, along with CERTIFICATE OF SERVICE in the above matter has been served on the Honorable Edward W. Miller, Presiding Circuit Judge on this 12 day of April, 2004, sent by United States Mail, postage prepaid, and addressed to the above party and all other parties as follows:

The Honorable Edward W. Miller
 Circuit Court Judge
 305 East North Street
 Greenville, South Carolina
 29601

Christopher Newton, Esquire
 Office of S.C. Attorney General
 Post Office Box 11549
 Columbia, South Carolina
 29211-1549

The Honorable Daniel E. Shearouse
 Clerk, South Carolina Supreme Court
 Post Office Box 11330
 Columbia, South Carolina
 29211

SIGNATURE:

Orlando F. Smith
 ORLANDO SMITH, #267982
PRO-SE, APPLICANT

SWORN TO AND SUBSCRIBED BEFORE ME
 THIS 12 DAY OF April, 2004.

Steve L. Young (SEAL)
 NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 8-28-2011

RECEIVED

APR 19 2004

[3]

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
C.A. NO. 02-CP-23-6327

ORLANDO SMITH,)
))
APPLICANT,))
))
VS.))
))
STATE OF SOUTH CAROLINA,)
RESPONDENT)

ORDER

ENTERED COMPUTER

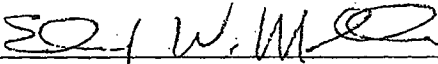
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSHER

2004 JUN 15 A 9:31

This matter is before me upon the Applicant Smith's Motion to Alter or Amend Judgment pursuant to S.C.R.C.P. 59(e).

The Applicant's Motion to Alter or Amend Judgment is denied.

IT IS SO ORDERED.


Edward W. Miller
Presiding Judge, Fifteenth Circuit

Greenville, South Carolina

Dated: 6/3/04

The South Carolina Court of Appeals

Orlando Smith,

Petitioner

v.

State of South Carolina,

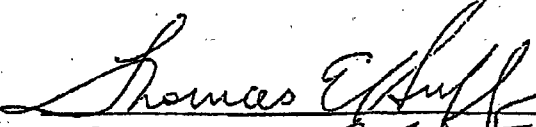
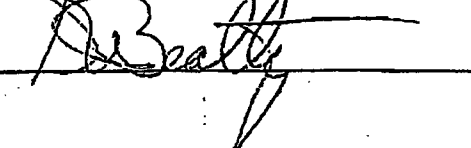
Respondent

ORDER

This matter is before the Court on a petition for a writ of certiorari following the denial of Petitioner's application for post-conviction relief.

Petitioner's counsel asserts that the petition is without merit and requests permission to withdraw from further representation. In addition, Petitioner filed a pro se petition.

After careful consideration of the entire record as required by Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), we deny the petition and grant counsel's request to withdraw.

 J.
 J.
 J.

Columbia, South Carolina
2006

FILED

06/12/06

Mr. Fletcher Mann Jr.
Clerk of Court
305 E. North St.
Greenville, SC 29601

Mr. Orlando F. Smith #267
BRCI Mur 212
4460 Broad River Rd.
Columbia, S.C 29210

Dear Mr. Mann

I Am Requesting An Application Form
For The "Post-Conviction DNA Procedures Act".
It Is My Understanding That This Bill Went
Into Effect On Jan 1, 2009 And Was Established
For Providing Procedures For DNA Testing For
Persons Convicted of Criminal Offenses For The
Purpose of Establishing The Identity of The
Perpetrator And To Allow Post-Convention Proceeding.
Section 17-28-10 et seq. Article 1

Enclosed Is A Self Addressed Envelope For
The Return of This Application To Me.

Thank You Very Much.

Sincerely, #267982

Orlando F. Smith

Sworn To Before me This 17TH

Day of February, 2009

Quail J. O'Neil

Notary Public For South Carolina

My Commission Expires:

My Commission Expires
August 25, 2015



South Carolina Court Administration

South Carolina Supreme Court
Columbia, South Carolina

1015 SUMTER STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201

March 19, 2009

Orlando F. Smith
BRCI
MUR 212
4460 Broad River Road
Columbia, SC 29210

Dear Mr. Smith:

Your inquiry has been received by this office and has been forwarded to this section for response.

Court Administration is in the process of developing the Application for Forensic DNA Testing as required by §17-28-40. The form will be distributed and posted on the SCJD website upon approval of the Supreme Court.

Should you desire additional assistance, please do not hesitate to contact this office.

Sincerely,
Court Services Section

S.L.E.D.

KATHRYN J.

FOIA/

Columbia

P.O. Box 2175

Columbia, South Carolina

29201

Mr. Orlando F. Smith #267
 PRC I Mur 212
 4460 Broad River Rd.
 Columbia, SC 29210

RE: Freedom of Information Act Request

Dear Ms. Richardson,

I'm Trying To Obtain A Copy of My Sled Lab Case Note Cover Sheet, All Sled Forensic Lab Sworn Testimonies Document Forms, And All Examination Work Sheets. I'm Also Requesting All Copies of Correspondence, Notes, Records, Reports And Memoranda.

My Lab Number Is L 98-12752.

The Arresting Agency Is Greenville County Sheriff Department I Have No Co-Defendants. The Victims Name Is Stephanie Quinn And This Crime Occured IN 1998.

Your Services Are Greatly Appreciated And I Thank You So Very Much.

Sincerely,
 Orlando F. Smith #267982
 Orlando F. Smith

RECEIVED

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

May 7, 2009

Orlando F. Smith, #267982
Broad River C.I. Mur 212
4460 Broad River Rd.
Columbia, SC 29210

RE: SLED Lab No.: L98-12752

Dear Mr. Smith:

A search of our database reveals that the above referenced file is currently housed at a contract storage facility in Columbia, and the retrieval and delivery fee is \$36.00. A money order in the exact amount of \$36.00 is required before the file will be ordered and any work begun. Please make your money order payable to the State Law Enforcement Division and address your envelope to SLED Public Information Office, PO Box 21398, Columbia, SC 29221-1398, ATTN: Kathryn Richardson. Please make sure your name and FOI#2009-136 are referenced on the money order. Depending on the number of pages contained in the file, there may be additional charges for copying and research.

Sincerely,

Kathryn J. Richardson
FOIA/Subpoena Compliance Coordinator

KJR/dls/FOI#2008-236



An Accredited Law Enforcement Agency
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

STATE OF SOUTH CAROLINA

COUNTY OF

Greenville

Name of applicant and Inmate number (if applicable)

OR

Orlando F. Smith #267982

IN THE INTEREST OF

Juvenile

v.

State of South Carolina

IN THE COURT OF (Select one)

☒ GENERAL SESSIONS☐ FAMILY COURT

JUDICIAL CIRCUIT

APPLICATION FOR

FORENSIC DNA TESTING

ORIGINAL INDICTMENT NO.

98 -GS- 5212

ORIGINAL PETITION NO.

-GS- -

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 continue an 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 end 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 or adjudicated.

I understand that DNA testing is only available if I have been convicted or adjudicated of an offense listed in S.C. Code Ann. § 17-28-30, that I am currently incarcerated for that offense, and that I am asserting that I am innocent of the offense. Further, if the conviction or adjudication was the result of a plea of guilty or nolo contendere, the application must be filed within seven years of the date of sentencing.

1. Identify the proceedings in which the applicant was convicted or adjudicated:

Jury Trial

2. Give the date of the entry of the judgment and sentence: July 19, 2000

and current place of incarceration: Broad River Correctional Institution

3. Identify all previous or ongoing proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from his conviction or adjudication:

(a) Appeal (Direct) Failure To Direct A Verdict of Acquittal

(b) PCR=Ineffective Assistance of Counsel

(c) Petition For Writ Certiorari = Same As (B)

(d) Federal Habeas Corpus = Same As (A) + (B)

4. Make a reasonable attempt to identify the physical evidence or biological material that should be tested:

Hairs & Ligatures

Identify specific type of DNA testing being sought: A Test That Would Show That The Evidence Is Not Linked To The Applicant.

5. Explain why the identity of the applicant was or should have been a significant issue during the original court proceedings, notwithstanding the fact that the applicant may have pled guilty or not contendere or made or is alleged to have made an incriminating statement or admission as to identity:

There Was 3 Suspects In This Crime

6. Explain why the physical evidence or biological material sought to be tested was not previously subjected to DNA testing, or if the physical evidence or biological material sought to be tested was previously subjected to DNA testing, provide the results of the testing and explain how the requester

DNA test would provide a substantially more probative result: Before Trial, Applicant Lawyer Told Him That DNA Was Done And Nothing Matched The Applicant. At Trial, Sled Agents Testified That DNA Comparisons Where Never Done.

7. Explain why if the DNA testing produces exculpatory results, the testing will constitute new evidence that will probably change the result of the applicant's conviction or adjudication if a new trial is granted and is not merely cumulative or impeaching: There Where 3 Suspects In This Case And DNA Testing Would Exclude The Applicant.

8. I assert that I am actually innocent of the listed offense, that this offense is listed in S.C. Code Ann. § 17-28-30 and that I am currently incarcerated for the listed offense. I attest that this application is made to demonstrate innocence and not solely to delay the execution of a sentence or the administration of justice.
9. If DNA testing is conducted and results are determined to be inculpatory by the Court, I understand that:
- (a) The Court may hold me in contempt of court if it determines that my assertion of actual innocence was intentionally false;
 - (b) The Court may assess the cost of any DNA testing against me;
 - (c) The South Carolina Department of Corrections may use this determination to deny good conduct credit; and,
 - (d) The Department of Probation, Parole, and Pardon Services can use this determination to deny parole.

Orlando F. Smith

Print Applicant Name

Orlando F. Smith

Signature of Applicant

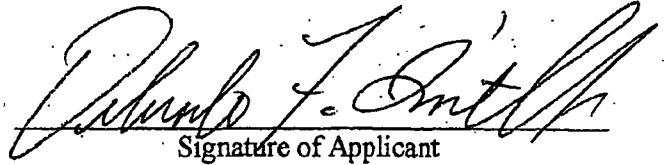
STATE OF SOUTH CAROLINA

County of

Greenville

VERIFICATION

I Orlando F. Smith, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof, and that the matters and allegations set forth are true.

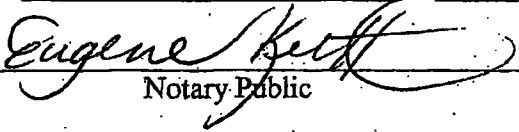

Signature of Applicant

SWORN to and subscribed before me this

16

day of

Dec2009


Notary Public

(L.S.)

My Commission Expires: My Commission Expires April 4, 2016

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

I Orlando F. Smith, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true.

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Orlando F. Smith
Signature of Applicant

SWORN to and subscribed before me this 16
day of Dec, 2009

Eugene R. [Signature]
Notary Public

(L.S.)

My Commission Expires: My Commission Expires April 4, 2016

2009-04-10-02

The Supreme Court of South Carolina

RE: Forms Required by the Access to Justice Post-Conviction
DNA Testing Act and Preservation of Evidence Act

ORDER

The above Acts, which are contained in Act No. 413 of 2008, require this Court to promulgate two forms. Accordingly,

IT IS ORDERED that pursuant to S.C. Code Ann. §17-28-40(A) (Supp. 2008), the **attached form SCCA DNA 101** entitled "Application for Forensic DNA Testing" is hereby approved for use in the Circuit and Family Courts of South Carolina. This form shall not be accepted for filing in any court until the Access to Justice Post-Conviction DNA Testing Act is implemented.¹

IT IS FURTHER ORDERED that pursuant to S.C. Code Ann. § 17-28-340(B)(1) (Supp. 2008), the **attached form SCCA DNA 102** entitled "Petition for an Order Allowing for Disposition of Physical Evidence or Biological Material" is approved for use in the Circuit and Family Courts of South Carolina.

s/Jean H. Toal _____ C.J.

s/John H. Waller, Jr. _____ J.

s/Costa M. Pleicones _____ J.

s/Donald W. Beatty _____ J.

s/John W. Kittredge _____ J.

Columbia, South Carolina
April 10, 2009

¹ Although the Access to Justice Post-Conviction DNA Testing Act was to be effective January 1, 2009, Section 89.127 of Act No. 414 of 2008, which imposed various budget cuts, provided that "[t]he provisions of the 'Access to Justice Post-Conviction DNA Testing Act' (Act 413 of 2008) are not required to be implemented until such time as general funds are appropriated or federal or other funds are received to begin implementation of the act."

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Orlando F. Smith, 267982,
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2010-CP-23- 7261

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210
2. Name and location of Court which imposed sentence Greenville County Court of General Sessions, 305 E. North Street, Greenville, SC 29601
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 1998-GS-23-5212; murder
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:

- (a) July 19, 2000; 30 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed and Conviction Affirmed.
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. May 23, 2002
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2002-UP-372
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

(a) After receiving a complete copy of his file from SLED, the Applicant discovered irregularities and information regarding evidence that was not tested. The Applicant attempted to file an Application under the Post-Conviction DNA Testing and Preservation of Evidence Act, which was not accepted due to funding issues. As a result, the Applicant has retained a private forensic scientist and an attorney to address this matter of newly discovered forensic evidence.

(b) The Applicant is requesting the release of the forensic evidence to Robert Bennett, R.Ph., Ph.D., for forensic testing.

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) On September 16, 2009, the Applicant received a complete copy of his file from SLED. Attached to this Application are six documents that were contained in the SLED file, which lead the Applicant to discover the existance of inconsistencies and/or irregularities with the information he had been told and what was presented at the trial regarding the forensic evidence.

(b) The Applicant submitted an Application under the Post-Conviction DNA Testing and Preservation of Evidence Act, which was returned to him with a copy of the South Carolina Supreme Court's Order dated April 10, 2009. Therefore, the Applicant tried but cannot pursue his claim under the Post-Conviction DNA Testing and Preservation of Evidence Act.

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? Yes.

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes.

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Application for Post Conviction Relief (2002-CP-23-6327)

- ii. Post Conviction Relief Appeal
- iii. Federal Petition for Habeas Corpus (C/A No. 6:07-327-RBH-WMC)
- iv. Certificate of Appealability on Federal Petition for Habeas Corpus (C/A No.

6:07-327-RBH-WMC)

(b) the name and location of the Court in which each was filed:

- i. Greenville County Court of Common Pleas
- ii. South Carolina Supreme Court
- iii. United States District Court, District of South Carolina
- iv. United States Court of Appeals, 4th Circuit

(c) the disposition thereof:

- i. Denied
- ii. Dismissed
- iii. Dismissed
- iv. Dismissed

(d) the date of each such disposition:

- i. March 31, 2004
- ii. June 12, 2006
- iii. _____
- iv. July 26, 2010

(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) The Applicant did not obtain a complete copy of his file from SLED until September 16, 2009. Since that time the Applicant has attempted to file an Application under the Post-Conviction DNA Testing and Preservation of Evidence Act and has privately retained Dr. Robert Bennett, Forensic Scientist.
 - (b) _____
 - (c) _____
- 17. Were you represented by an attorney at any time during the course of:
 - (a) your arraignment and plea? Yes.
 - (b) your trial, if any? Yes.
 - (c) your sentencing? Yes.
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? 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. C. Timothy Sullivan, PO Box 2543, Greenville, SC 29602
 - ii. Joseph Savitz and Robert Pachak, 1330 Lady Street, Suite 401, Columbia, SC 29201
 - iii. John A. O'Leary, 714 Calhoun Street, Columbia, SC 29201
 - (b) the proceedings at which each such attorney represented you:
 - i. Trial
 - ii. Direct appeal and PCR appeal.
 - iii. PCR

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

A new trial.

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

No.

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, Orlando F. Smith, 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.

Orlando F. Smith

SWORN to and subscribed before me this 25th
day of August, 2010.

John A. Blunt (L.S.)
Notary Public

My Commission Expires: 4/12/2016

7000 SEP - 1 PM 2:04
COUNTY OF RICHLAND
SOUTH CAROLINA
RECEIVED



SLED LABORATORY EVIDENCE INVENTORY SHEET

(Use ballpoint pen and press firmly. Print all information except where signature is required.)

FORM LAB-004
NOVEMBER 1993
Previous Editions
May Be Used

Lab Number L Sheet Number of
(Use more than one sheet if necessary.)

ITEM #	DESCRIPTION OF EVIDENCE: I.E. SUBJECT OR VICTIM'S (EVIDENCE TO INCLUDE SPECIFIC ARTICLES AS TO COLOR, ETC., IF DRUGS THEY ARE TO BE COUNTED, ETC.)	EXAMINATIONS REQUESTED
A ✓	SUSPECT EVIDENCE COLLECTION KIT (ORLANDO SMITH)	STANDARD
B ✓	SUSPECT EVIDENCE COLLECTION KIT (WALDMAN, THEODORE)	STANDARD
C ✓	ADULT SEXUAL ASSAULT EVIDENCE KIT (QUINN, STEPHANIE)	CHECK FOR SEMEN COMPARE WITH SUSP. STANDARDS
D ✓	BEIGE TROUSERS	ITEMS D THROUGH O CHECK
E ✓	PILLOW FROM FLOOR NEAR VICTIMS HEAD	FOR HUMAN BLOOD AND IF
F	CUSHION FROM LEFT SIDE OF SOFA	PRESENT TYPE IT AND COMPARE
G	CUSHION FROM MIDDLE OF SOFA	IT TO SUSPECT STANDARDS
H	CUSHION FROM RIGHT SIDE OF SOFA	WHICH ARE ITEMS A AND B.
I ✓	PLASTIC BAG 2 BLANKETS AND A PILLOW FROM SOFA	PLEASE CHECK ALL ITEMS
J ✓	VICTIMS SHIRT WITH SUSPECTED BLOOD STAINS	NOT JUST A SAMPLE OF A FEW
K	BLUE JEANS WITH SUSPECTED BLOOD STAINS	*ADDITIONALLY ON ITEM
L ✓	WHITE PANTIES WITH KOTEX	L CHECK FOR THE PRESENCE
M ✓	SWABBING OF SUSPECTED BLOOD (BOTTOM OF COFFEE TABLE LEG)	OF OTHER BODY FLUIDS..
N ✓	SWABBING OF SUSPECTED BLOOD (SIDE OF COFFEE TABLE)	PLEASE RETAIN ALL BLOOD
O ✓	GRAY PIECE OF CARPET WITH SUSPECTED BLOOD STAINS FROM LIVING ROOM FLOOR	EVIDENCE AFTER TESTING FOR POSSIBLE DNA COMPARE
P ✓	FILTER FROM EVIDENCE VAC (LABELED "A")	CHECK ITEMS P & Q FOR TRACE
Q ✓	FILTER FROM EVIDENCE VAC (LABELED "B")	EVIDENCE SUCH AS HAIR.
R ✓	SIGNATURE WITH SMALL STICK ATTACHED	CHECK FOR PRESENCE OF HUMAN BLOOD. IF PRESENT COMPARE
S ✓	MINT BOTTLE FASHIONED INTO CRACK PIPE	WITH STANDARDS.
T ✓	HEAD HAIR SAMPLES (SMITH, ORLANDO)	CHECK FOR SALIVA/COMPARE (SEE NEXT PAGE)

EVIDENCE SUBMITTED IN SEALED CONTAINER IS PROVISIONALLY ACCEPTED AS BEING CORRECTLY DESCRIBED LISTED ABOVE. CONTRIBUTORS AGREE THAT THE ACTUAL INVENTORY OF EVIDENCE CONDUCTED BY THE FIELD EXAMINER WILL BE THE CORRECT INVENTORY.

Delivered By: (Print)

Delivered By: (Sign)

Date



FLORIDA LABORATORY EVIDENCE INVENTORY SHEET

(Use ballpoint pen and press firmly. Print all information except where signature is required.)

FORM LAB-001
NOVEMBER 1994
Previous Editions
May Be Used

Lab Number L 98-1252

Sheet Number _____ of _____

(Use more than one sheet if necessary.)

ITEM #	DESCRIPTION OF EVIDENCE: I.E. SUBJECT OR VICTIM'S (EVIDENCE TO INCLUDE SPECIFIC ARTICLES AS TO COLOR, ETC., IF DRUGS THEY ARE TO BE COUNTED, ETC.)	EXAMINATIONS REQUESTED
1	✓ CSC Kit from Stephanie Quinn	E12540
	no panties	
2	✓ Suspect kit - Orlando Smith	
3	Blood - Theodore Waldman	DNA/hair
4	✓ Beige Trousers	
5	✓ Pillow from floor	
6	✓ Cushion from L side sofa	
7	✓ Cushion from middle of sofa	
8	Cushion from R side sofa	
9	Plastic bag - 2 blankets 1 pillow	
10	✓ Victim's shirt	
11	✓ Blue jeans	
12	✓ White panties w/ Kotex	
13	Swab from coffee table leg	
14	Swab from side of coffee table	
15	gray piece of carpet	
16	Vacuumings "A"	
17	Vacuumings "B"	
18	signature w/ small stick	
19	head hair samples from Orlando Smith	
20	pubic hair samples from Orlando Smith	

EVIDENCE SUBMITTED IN SEALED CONTAINER IS PROVISIONALLY ACCEPTED AS BEING CORRECTLY DESCRIBED AS LISTED ABOVE. CONTRIBUTORS AGREE THAT THE ACTUAL INVENTORY OF EVIDENCE CONDUCTED BY THE FLORIDA EXAMINER WILL BE THE CORRECT INVENTORY.

Paul Silvaggio

Delivered By (Print)

Delivered By (Sign)

12, 4-12, 15-20 K. Silvaggio 10-19-98 #1 box (Tox-Box) 10-19-98

1, 3, 5-20 (DNA-RNA) 10-19-98 - 13, 14 M. Silvaggio 10-19-98

SLEP LABORATORY

Case Note Cover Sheet

(Entry not always required in shaded areas)

RUSH

 H
 HT
Lab Number: L48-12752Examiner LGK

Original Submission

Page 1 of 11 Total Pages of Notes

Satisfactory Peer/Technical

Review Completed On: 8-11-99 By JAB
Date InitialsAnalysis Started On: 6-20-99Analysis Completed On: 6-30-99

Satisfactory Administrative Review

Completed On: 7-9-99 By JAB
Date Initials

Original Submission

Page 1 of _____ Total Pages of Notes

Satisfactory Peer/Technical

Review Completed On: _____ By _____
Date Initials

Analysis Started On: _____

Analysis Completed On: _____

Satisfactory Administrative Review

Completed On: _____ By _____
Date Initials

Original Submission

Page 1 of _____ Total Pages of Notes

Satisfactory Peer/Technical

Review Completed On: _____ By _____
Date Initials

Analysis Started On: _____

Analysis Completed On: _____

Satisfactory Administrative Review

Completed On: _____ By _____
Date Initials

USE ADDITIONAL COVER SHEET(S) IF MORE SUBMISSIONS ARE RECEIVED

DOCUMENTATION OF CONVERSATIONS RELATED TO THIS CASE

Date/Time	Person's Name Agency, Call Back No.	Summation of Conversation	Initials
2-8-99/9:05	Kimberly, Trace	Item 18 - Investigator wants us to look for blood appose to chair.	JAB
2-9-99/9:10	Kimberly, Trace	Item 18 - Go ahead & look for hair & collect transfer to her if we find change.	
2-9-99/11:25	Kimberly, Trace	Collect the hair and return to agency.	
11/99	Per Nanci, Straba	Solicitor asked for case to be Rushed.	
6-14-99	Gene Donahue	LMTC	
6-21-99	Gene Donahue	LMTC	



SLED LABORATORY

Case Note Cover Sheet

(Entry not always required in shaded areas)

 13
KTB

 Lab Number: L 98-12752 Examiner LGK

Original Submission

Page 1 of _____ Total Pages of Notes

Satisfactory Peer/Technical

Review Completed On: _____ By _____
Date Initials

Analysis Started On: _____

Analysis Completed On: _____

Satisfactory Administrative Review

Completed On: _____ By _____
Date Initials

Additional Submission

Page 1 of _____ Total Pages of Notes

Satisfactory Peer/Technical

Review Completed On: _____ By _____
Date Initials

Analysis Started On: _____

Analysis Completed On: _____

Satisfactory Administrative Review

Completed On: _____ By _____
Date Initials

Additional Submission

Page 1 of _____ Total Pages of Notes

Satisfactory Peer/Technical

Review Completed On: _____ By _____
Date Initials

Analysis Started On: _____

Analysis Completed On: _____

Satisfactory Administrative Review

Completed On: _____ By _____
Date Initials

USE ADDITIONAL COVER SHEET(S) IF MORE SUBMISSIONS ARE RECEIVED

DOCUMENTATION OF CONVERSATIONS RELATED TO THIS CASE

Date/Time	Person's Name Agency, Call Back No.	Summation of Conversation	Initials
6-29-99	Gene Donahue	He said that they had a bloody palm print on the victim from the suspect and most of the evidence would not need to be processed. He wants items 12.0 (panties) and 18.0 (signature) processed. Everything else can be returned. He wants me to ok this with the solicitor first.	RG
6-29-99	Christie Greenville Co. Sol. Office	She agreed with Gene but wants one cushion processed to prove victim was bleeding there.	RG

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

JAMES H. HODGES
GOVERNOR



ROBERT M. STEWART
CHIEF

Trace Department
January 21, 1999

SLED Lab No: L98-12752
Your Case No: 1-98-60507
Incident Date: 05-23-98
(S) Orlando Fonte Smith
(S) Theodore H. Waldman
(V) Stephanie Kris Ford Quinn

Inv. Gene Donohue
Greenville County Sheriff's office
4 McGee Street
Greenville, SC 29601

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEM(S) SUBMITTED

1. Hair samples from CSC Kit of victim, Stephanie Quinn
2. Hair samples from SEC Kit of suspect, Orlando Smith
16. Vacuumings "A"
17. Vacuumings "B"
18. Ligature with small stick
19. ~~Head hair samples from Orlando Smith~~
20. Pubic hair samples from Orlando Smith
21. Head hair samples from Theodore Waldman
22. Pubic hair samples from Theodore Waldman
23. Combing of victim's pubic hair
24. Hair from victim's stomach
25. Hair from victim's navel
26. Hair from victim's right knee
29. Known pubic hair from Quinn
30. Known head hair from Quinn

RESULTS OF EXAMINATION(S)

1, 2, 16-26, 29, 30

The hair evidence in this case has been preserved. Hair analysis will be considered once other definitive testing has been completed. This evidence will be returned to your agency and can be resubmitted to the SLED Forensic Laboratory for hair analysis in the future if the need arises.



TF ICE PROCESSING INVENTORY/WORKSHEET

Case Number L98-12752Victim Stephanie Quinn Race _____ Sex _____ Age _____Date 6-29-99Suspect Orlando Smith Race _____ Sex _____ Age _____Processors LGK(S) Theodore Waldman
Location of Assault _____

Analyst _____

Relationship _____

* See Blue Sheet for explanation *

Item #	Container #	Hair	Phen	AP	LL	I	Description/Notes	
6.0	E125536					*	Cushion from left side of sofa - No examination	
7.0	↓					✓	Cushion from middle of sofa - Beige/white material	
7.1	E03889		⊕			✓	Cutting from cushion (middle/center) - use control from cutting	
3.0	E125536					*	Cushion from right side of sofa - No examination	
4.0	E125534					*	Beige trousers - No examination	
10.0	E125534					*	Victim's shirt - No examination	
11.0	↓					*	Blue jeans - No examination	
12.0	↓	Y		⊗X3	⊕	✓	Off-white panties with femine pad - Size (L) - ⊗ A.P.S x 1 (panties), ⊗ A.P.S x 2 (f. pad)	
12.1	↓					✓	Hair collected from panties/Kotex - returned to agency ~~AP~~ - blood noted on pad (Kotex) - no cuttings made	
8.0	E126162	Y		⊗XL	⊗XL	⊕	✓	Ligature with small stick - small hair collected from ligature - returned to agency.
18.1	↓					✓	✓	Hair collected from ligature

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Orlando Fonte Smith,)
S.C.D.C. No. 267982,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
2010-CP-23-7261

RETURN AND MOTION TO DISMISS

In response to the post-conviction relief (PCR) application filed September 1, 2010, the Respondent would show this Court:

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant was indicted at the October 1998 term of the Greenville County Grand Jury for murder (1998-GS-23-5212). He was represented by C. Timothy Sullivan, Esquire.

After the State called the case to trial, the Applicant was found guilty. On July 19, 2000, the Honorable Larry R. Patterson sentenced the Applicant to thirty (30) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Smith, Op. No. 2002-UP-372 (S.C. Ct. App. filed May 23, 2002).

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

2002-CP-23-6327

The Applicant filed a PCR application on September 17, 2002 (2002-CP-23-6327). The Applicant raised the following issues:

1. Ineffective assistance of counsel:
 - a. Failed to conduct proper investigation.
 - b. Failed to properly object to denial of directed verdict motion.
 - c. Failed to subpoena witnesses.
 - d. Failed to object to certain State evidence.
 - e. Failed to seek psychological examination.

An evidentiary hearing was convened on October 22, 2003 at the Greenville County Courthouse. John O'Leary, Esquire represented the Applicant. The Honorable Edward W. Miller denied and dismissed the application by order filed March 31, 2004.

The Applicant filed a notice of appeal. Robert M. Pachak, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of a Johnson² petition. The South Carolina Supreme Court denied the petition for writ of certiorari on June 12, 2006.

Federal Habeas Corpus

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina (6:07-327-RBH-WMC). The Respondent submitted a motion for summary judgment on July 2, 2007. The Honorable William M. Catoe, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment dated January 23, 2008. On March 31, 2008, the Honorable R. Bryan Harwell, United States District Judge, issued an order granting the motion for summary judgment as to all but one (1) issue. On August 12, 2008, Judge Catoe issued a second report and recommendation to grant

² Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

the motion for summary judgment. On November 12, 2008, Judge Harwell granted the Respondent's motion for summary judgment and dismissed the petition with prejudice.

The Applicant filed a notice of appeal at the United States Court of Appeals for the Fourth Circuit. In an opinion filed August 10, 2010, the Court of Appeals denied a certificate of appealability and dismissed the appeal.

II.

In his current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "After receiving a complete copy of his file from SLED, the Applicant discovered irregularities and information regarding evidence that was not tested. The Applicant attempted to file an Application under the Post-Conviction DNA Testing and Preservation of Evidence Act, which was not accepted due to funding issues. As a result, the Applicant has retained a private forensic scientist and an attorney to address this matter of newly-discovered forensic evidence."
2. "The Applicant is requesting the release of the forensic evidence to Robert Bennett, R.Ph., Ph.D. for forensic testing."

For the purpose of this Return, the Respondent incorporates the Greenville County Clerk of Court records, the South Carolina Department of Corrections' records, and the prior PCR records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense he challenges in this application on July 19, 2000 and the Court of Appeals dismissed the appeal on May 23, 2002. The Applicant was therefore required to file his application before May 23, 2003. This application was filed on September 1, 2010, which was over seven (7) years beyond the time the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

IV.

The Court should also summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. (emphasis in original). If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the Respondent moves for a summary dismissal of the application because it is successive.

V.

The Respondent submits the Applicant's claim of newly- or after-discovered evidence is without merit. For an applicant to be granted a new trial based on after-discovered evidence, he must show the evidence: (1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching. State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) (citation omitted).

The Applicant has not shown that the alleged evidence meets any of the requirements for after-discovered evidence. Further, the Respondent notes the Applicant successfully argued (during the first PCR application process) to compel certain evidence from SLED and have that evidence subjected to scientific testing. The Respondent submits the Court should summarily dismiss this allegation.

VI.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VII.

WHEREFORE, the Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

December 22, 2010

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
2010-CP-23-7261

COUNTY OF GREENVILLE)

Orlando Fonte Smith,
S.C.D.C. No. 267982,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

CONDITIONAL ORDER OF DISMISSALFILED-CLERK OF COURT
GREENVILLE, S.C.
JAN 20 11:22

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 1, 2010. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant was indicted at the October 1998 term of the Greenville County Grand Jury for murder (1998-GS-23-5212). He was represented by C. Timothy Sullivan, Esquire.

After the State called the case to trial, the Applicant was found guilty. On July 19, 2000, the Honorable Larry R. Patterson sentenced the Applicant to thirty (30) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Smith, Op. No. 2002-

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

R39

UP-372 (S.C. Ct. App. filed May 23, 2002).

2002-CP-23-6327

The Applicant filed a PCR application on September 17, 2002 (2002-CP-23-6327). The Applicant raised the following issues:

1. Ineffective assistance of counsel:
 - a. Failed to conduct proper investigation.
 - b. Failed to properly object to denial of directed verdict motion.
 - c. Failed to subpoena witnesses.
 - d. Failed to object to certain State evidence.
 - e. Failed to seek psychological examination.

An evidentiary hearing was convened on October 22, 2003 at the Greenville County Courthouse. John O'Leary, Esquire represented the Applicant. The Honorable Edward W. Miller denied and dismissed the application by order filed March 31, 2004.

The Applicant filed a notice of appeal. Robert M. Pachak, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of a Johnson² petition. The South Carolina Supreme Court denied the petition for writ of certiorari on June 12, 2006.

Federal Habeas Corpus

The Applicant filed a petition for writ of habeas corpus in the United States District Court for the District of South Carolina (6:07-327-RBH-WMC). The Respondent submitted a motion for summary judgment on July 2, 2007. The Honorable William M. Catoe, United States Magistrate Judge, issued a report and recommendation to grant the motion for summary judgment dated January 23, 2008. On March 31, 2008, the Honorable R. Bryan Harwell, United States District Judge, issued an order granting the motion for summary judgment as to all but one

² Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

(1) issue. On August 12, 2008, Judge Catoe issued a second report and recommendation to grant the motion for summary judgment. On November 12, 2008, Judge Harwell granted the Respondent's motion for summary judgment and dismissed the petition with prejudice.

The Applicant filed a notice of appeal at the United States Court of Appeals for the Fourth Circuit. In an opinion filed August 10, 2010, the Court of Appeals denied a certificate of appealability and dismissed the appeal.

II.

In his current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "After receiving a complete copy of his file from SLED, the Applicant discovered irregularities and information regarding evidence that was not tested. The Applicant attempted to file an Application under the Post-Conviction DNA Testing and Preservation of Evidence Act, which was not accepted due to funding issues. As a result, the Applicant has retained a private forensic scientist and an attorney to address this matter of newly-discovered forensic evidence."
2. "The Applicant is requesting the release of the forensic evidence to Robert Bennett, R.Ph., Ph.D. for forensic testing."

III.

This Court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). Specifically, South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The Applicant was convicted of the offense he challenges in this application on July 19, 2000



and the Court of Appeals dismissed the appeal on May 23, 2002. The Applicant was therefore required to file his application before May 23, 2003. This application was filed on September 1, 2010, which was more than seven (7) years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.”

IV.

This Court further finds the current application should also be dismissed because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that

“could not have been raised . . . in the previous application.” Id. (emphasis in original). If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the application is dismissed.

V.

This Court finds the Applicant’s claim of newly- or after-discovered evidence is without merit. For an applicant to be granted a new trial based on after-discovered evidence, he must show the evidence: (1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching. State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) (citation omitted).

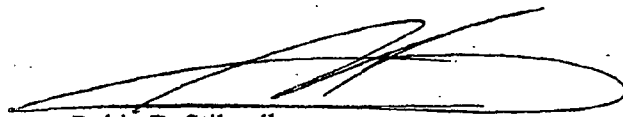
The Applicant has not shown that the alleged evidence meets any of the requirements for after-discovered evidence. Further, this Court notes the issue of DNA evidence raised in this PCR application was addressed during the Applicant’s first PCR application process. This allegation is dismissed.

VI.

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should

not become final by filing any reasons he may have with the Clerk of Court for Greenville County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 5 day of Jan, 2010.



Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	DOCKET NO.: 2010-CP-23-7261
	)	
Orlando F. Smith, 267982,	)	
Applicant,	)	
v.	)	RESPONSE TO CONDITIONAL
	)	ORDER OF DISMISSAL
STATE OF SOUTH CAROLINA,	)	
Respondent,	)	

This matter comes before the Court by way of an Application for Post Conviction Relief filed on September 1, 2010. The State submitted a Return and Motion to Dismiss and Conditional Order of Dismissal on or about December 22, 2010. On January 5, 2011, the Honorable Robin B. Stilwell signed the Conditional Order of Dismissal, which was filed on January 20, 2011. The Applicant, through counsel, received written notice of the Conditional Order of Dismissal on January 25, 2011.

In his Application, the Applicant made the following allegations as to why he is being held in custody unlawfully:

After receiving a complete copy of his file from SLED, the Applicant discovered irregularities and information regarding evidence that was not tested. The Applicant attempted to file an Application under the Post-Conviction DNA Testing and Preservation of Evidence Act, which was not accepted due to funding issues. As a result, the Applicant has retained a private forensic scientist and an attorney to address this matter of newly discovered forensic evidence. The Applicant is requesting the release of the forensic evidence to Robert Bennett, R.P.H., Ph.D., for forensic testing.

The Applicant would further explain this allegation and respond to the Conditional Order of Dismissal by submitting the below stated information and arguments in support of his claim of newly discovered evidence and his request for production of the hair and/or DNA evidence for testing by his privately retained forensic

scientist. A copy of a letter from Robert Bennett, R.P.H., Ph.D. and a copy of his curriculum vitae is attached.

In a PCR Action, the "burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). The Uniform Post Conviction Procedure Act provides that:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, knowingly, voluntarily or intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or inadequately raised in the original, supplemental or amended application.

S.C. Code Ann. § 17-27-90 (2003). Successive applications are disfavored and the burden is on the Applicant to establish that any ground raised in a subsequent application could not have been raised by him in a previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981). In Aice, the South Carolina Supreme Court made the following finding: "At some juncture judicial review must stop, with only the rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice. 305 S.C. at 451, 409 S.E.2d at 394.

By way of his Application, the Applicant is alleging newly discovered evidence and requesting that he be allowed to have the forensic evidence (hair) tested by a forensic scientist. To prevail on this claim the Applicant "must show the after-discovered evidence: 1) is such that it would probably change the result if a new trial were granted; 2) has been discovered since the trial; 3) could not in the exercise of due diligence been

discovered prior to trial; 4) is material; and 5) is not merely cumulative or impeaching.”

State v. Spann, 334 S.C. 618, 619, 513 S.E.2d 98, 99 (1999) (citing State v. Prince, 316 S.C. 57, 447 S.E.2d 177 (1993); See Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983).

In 2009, the South Carolina Legislature embraced the importance of using modern scientific technology to retest DNA and physical evidence by passing the “Access to Justice Post Conviction DNA Testing Act.” S.C. Code Ann. §17-28-10 (2009). By way of this Act, the Legislature set forth an Application and procedure by which a defendant may apply for forensic DNA testing. By way of an Order dated April 10, 2009, the South Carolina Supreme Court suspended the implementation of this Act until such time as funds are appropriated for the implementation of the Act.

After finding out about the “Access to Justice Post Conviction DNA Testing Act,” the Applicant wrote to the Greenville County Clerk of Court to obtain an Application and wrote to SLED to obtain a copy of his file. See S.C. Code Ann. §17-28-10 (2009). A copy of each letter is attached. The Applicant received a written response from SLED on May 7, 2009, and submitted the requested money order to obtain a copy of his file. A copy of this response is attached. The Applicant received his file from SLED on May 16, 2009. The Applicant had not previously received a complete copy of his SLED file from trial or PCR counsel.

After receiving the requested Application from the Greenville County Clerk of Court, the Applicant submitted his completed Application, a copy of which is attached to the PCR Application. In reply, the Application was returned to the Applicant with a copy

of the South Carolina Supreme Court Order dated April 10, 2009, a copy of which is attached to the PCR Application.

When the Applicant discovered that his DNA Application would not be processed by Greenville County, he began working on retaining private counsel and a forensic scientist. The Applicant also discovered that the SLED file contained information that was not previously known to him regarding the testing of evidence in his case.

Prior to trial, counsel informed the Applicant that no hairs that were taken into evidence matched his hair sample. Appendix pp. 395-6. At trial, Agent Kimberly Black from SLED testified as follows: "I received a hair sample that was actually collected from a ligature with a small stick... there were some miscellaneous hairs taken from the victim's body, one hair from the victim's stomach, hair from the victim's navel and hair from the victim's right knee". Appendix p. 159, lines 18-19, 25, p. 160, lines 1-2. Agent Black went onto explain that the hairs were not tested since there was a policy in place that they did not test hair evidence in cases with blood evidence. Appendix p. 162, lines 8-11.

After obtaining the complete SLED file, the Applicant discovered that Agent Black's testimony contradicted the information contained in the file. The Applicant attached the following pertinent documents to his PCR Application:

1. Evidence Inventory Sheets: These sheets reflect the ligature with small stick, but do not reference the hair found on the ligature. These sheets also reflect the instructions to test the ligature and small stick (Item 18).
2. Case Note Cover Sheets: Notes from 2/9/99 indicate that agent is to look for hair on Item 18 (ligature) and then a note is entered two hours later to "collect

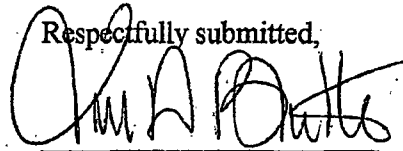
the hair and return to agency." Notes from 6/29/99 indicated that Gene Donahue wants the panties and ligature tested and "everything else can be returned" because "most of the evidence would not need to be processed." This note contradicts the letter Applicant's PCR counsel received stating that all evidence was returned to the Greenville County Sheriff's Department in March of 1999. A copy of this letter is attached.

3. Trace Department Report: This report lists the ligature as Item 18, but does not reference the hair testified to at trial. The Applicant did not see this report prior to trial and was not aware of the results that state that the hair evidence would be preserved for testing "in the future if the need arises."
4. Trace Worksheet: List the hairs from panties and small hair on ligature, which was "returned to agency".

attached to App
~~In the words of the SI-ED report, the Applicant submits that the need has arisen for these untested hairs to be tested. The Applicant further submits that if he would have had this information at the time of his trial or PCR hearing, he would have requested that these hairs be tested. Unfortunately, the funds have not been made available for the Applicant to obtain this testing through the "Access to Justice Post Conviction DNA Testing Act," but it is clear from this Act that the legislature understands the technological advancements made in the area of forensic science and the risk of wrongful imprisonment without the use of such advancements. The Applicant has not abandoned his claim due to the lack of funding and has retained private counsel and a private forensic scientist to conduct the testing.~~

Therefore, based upon the foregoing, the Applicant respectfully submits that specific reasons exist to support the Applicant's position that his Application should not be dismissed with prejudice. The Applicant would respectfully request that this Court allow his Application to proceed to a hearing to address this issue of newly discovered evidence and the Applicant's request for forensic testing.

Respectfully submitted,



Tricia A. Blanchette
Attorney for the Applicant
Post Office Box 12725
Columbia, South Carolina 29211
(803) 988-0008

February 11, 2011
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

DOCKET NO.: 2010-CP-23-7261

Orlando F. Smith, 267982,)

Applicant,)

v.)

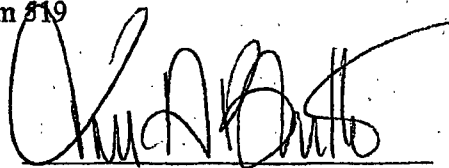
CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA,)

Respondent,)

I, Tricia A. Blanchette, Attorney for the Applicant, hereby certify that I hand delivered this 11th day of February 2011, a copy of an Response to Conditional Order of Dismissal to Karen C. Ratigan of the Attorney General's Office, at:

Office of the Attorney General
ATT: Karen C. Ratigan, Ast. AG
1000 Assembly Street, Room 819
Columbia, SC 29201



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008
Attorney for the Petitioner

February 11, 2011



MEDICAL-LEGAL SERVICES

INDEPENDENT LABORATORY SERVICES • TOXICOLOGY CONSULTATION
DNA TESTING, DRUG TESTING, AND FORENSIC ANALYSIS
 P.O. Box 32391, Charleston, SC 29417 Ph (843) 571-7488 Fax (843) 769-5336

February 11, 2011

Tricia A. Blanchette, Esq.
 PO Box 12725
 Columbia, SC 29211

RE: DNA testing experience of Robert Bennett, R.Ph., Ph.D.

Dear Ms. Blanchette,

Per your request I have summarized my experience in DNA testing. I am a full-time practicing Forensic Scientist and have testified in many cases in various Courts as an Expert Witness, including DNA.

I have provided SC BAR-approved Continuing Legal Education (CLE) seminars in Forensic Science, including DNA.

I have provided numerous DNA tests for Criminal cases, Paternity, Grandpaternity, Siblingship, other genetic relationships, DNA mapping for Estates (Probate), and Ancestry testing (determination of racial mix).

I perform DNA tests not only for forensic cases throughout South Carolina, but in various other states as well. I perform on average about a hundred DNA tests per year through my office.

The following is a sampling of some recent specific cases:

- DNA Expert Testimony, Murder trial of State v. Ethan Mack (Victim Kate Waring), Charleston, SC, September 2010 (Defense)
- DNA detection from children's toys, Kidnapping, Jerome R., San Miguel, CA, Feb. 2009 (Plaintiff)
- DNA detection from female clothing, Adultery, Todd B., Cornersville, TN, Oct. 2008 (Plaintiff)
- DNA detection from male clothing, Adultery, Susan W., Beaufort, SC, Oct. 2008 (Plaintiff)
- DNA detection from female hairbrush & tampons, Maternity, Robbie W., Charleston, SC, Oct. 2008 (Plaintiff)
- DNA Avuncular test, Estate of Mondell C. Greg K., Daytona Beach, FL, June 2008 (Plaintiff)
- DNA Siblingship Analysis, Estate of Mondell C., Jacquelyn B., Rolesville, NC, April 2008 (Plaintiff)
- DNA Analysis, Murder trial of State v. Jerry Buck Inman, Central, SC, September 2007 (Defense)
- Female DNA extraction from male underwear, Private adultery case, 2006 Bull Head City, AZ. (Plaintiff)
- Establishing Grandpaternity with DNA testing after the death of the alleged father, March 2005, Charleston, SC. (Plaintiff)
- DNA Analysis evaluation of suspect Jerome C. for the rape and robbery of Margaret S., 2003, Darlington, SC (Plaintiff)

CURRICULUM VITAE

Robert M. Bennett

BIOGRAPHICAL SUMMARY

Dr. Bennett holds two degrees from the Medical University of South Carolina: a Ph.D. (Doctorate) in Pharmaceutical Sciences (drug science/incl. toxicology) and a Pharmacy degree. He is a Registered Pharmacist and medical review officer for non-federally regulated drug and alcohol testing. Dr. Bennett is a full-time practicing Forensic Scientist and has testified in many cases in various Courts as an Expert Witness. Dr. Bennett has provided SC BAR-approved Continuing Legal Education (CLE) seminars in Forensic Science

As a Forensic Scientist, Dr Bennett has a significant array of resources to provide DNA analysis, DNA comparisons, drug testing, alcohol testing, toxicology, poisonings, sexual assault, semen/sperm analysis, microscopic hair and fiber comparisons, blood detection, spatter analysis, shoe prints, tire prints, handwriting analysis/forgery (Questioned Document Examination), fingerprinting, gun shot residue, ballistics, trajectory analysis, and forensic evidence and crime scene re-examination.

As a Forensic Toxicologist, Dr. Bennett's specialty is the application of the effects of substances on the human body in legal cases. Dr. Bennett has been affirmed by Court Order as an Expert Witness in Toxicology. Services provided include: Illegal drug trade and drug abuse such as detection in the environment and detection in the human body (drug and alcohol testing); Pharmacy/Pharmaceutical Toxicology such as prescription errors, dispensing errors, drug withdrawals from market, adverse drug reactions, allergic reactions, drug interactions, drug overdoses, herbals & dietary supplements, drug withdrawal syndrome, hospital errors, laboratory test result/procedure challenges; Environmental Toxicology such as mold, fungus, lead paint, pesticides, herbicides, latex, insect bites, and animal bites; Occupational (Industrial) Toxicology such as chemical exposure, solvent exposure, vapors, asbestos and other carcinogens, industrial gases, heavy metal exposure to cadmium, lead, manganese and chromium, drug testing in the workplace; Criminal Forensics such as DNA analysis, poisonings, drugs/alcohol and driving (DUI, DWI), breathalyzer, blood alcohol back calculations, sexual assault analysis, and semen/sperm analysis.

Dr. Bennett founded Charleston's first drug testing company over 20 years ago and has directed, performed, and/or reviewed over 29,000 drug tests. Dr. Bennett has provided numerous DNA tests for Criminal cases, Paternity, Grandpaternity, Siblingship, other genetic relationships, DNA mapping for Estates (Probate), and Ancestry testing (determination of racial mix). Dr. Bennett is the Toxicology Advisor to Charleston County (Family) Drug Court. Dr. Bennett was the Toxicologist overseeing the 5-year construction of the largest cable-stayed bridge in North America (2001-2005 Charleston, SC). Dr. Bennett introduced Carbohydrate Deficient Transferrin (CDT) testing for forensic use (to detect heavy alcohol use) and is the only forensic provider in the state.

CONTACT DATA

Address: P.O. Box 32391
Charleston, SC 29417
Phone: (843) 571-7488
Fax: (843) 769-5338
E-mail: RobertBennettPhD@Gmail.com

EDUCATION

1985-1991	Ph.D. in Pharmaceutical Sciences (drug science/incl. toxicology) Medical University of South Carolina Charleston, South Carolina
1977-1980	B.S. in Pharmacy (Pharmacist) Medical University of South Carolina Charleston, South Carolina
1975-1977	Psychology Major College of Charleston

CURRICULUM VITAE
Robert M. Bennett

Page 3

ADDITIONAL TRAINING

- 2008 Laboratory Training, Detection in Hair of a Single Exposure to Drugs. ChemTox Laboratories, Dr. Pascal Kintz, Strasbourg, France.
- 2008 Manufacturer Training: HIV detection by oral fluid, blood, or plasma. Ora-Sure Technologies Inc., E. Ramirez, Mt. Pleasant, SC.
- 2006 TeleSeminar: "State Drug-Testing Laws: Direct Answers to the Most Common Questions", William F. Current, Science and Technology Employer Solutions, Quest Diagnostics. Charleston, SC.
- 2005 TeleSeminar: "Workplace Drug Testing: Beyond the SAMHSA-5", Dr. Barry Sample, Director of Science and Technology for Employer Solutions, Quest Diagnostics. Charleston, SC.
- 2005 TeleSeminar: "How to Work With Your MRO", Robert Swotinsky, MD, Fallon Clinic, Charleston, SC.
- 2003 Classroom Training, five weeks: "S.C. Guardian *ad Litem* Program", Office of the Governor, State of South Carolina. Charleston, SC.
- 2002 Seminar: "Integrity and Ethics in Law Enforcement", U.S. Dept. of Justice, Charleston, SC.
- 2001 Seminar: "Judges and Attorneys Substance Abuse and Ethics", Medical University of South Carolina, Institute of Psychiatry, Charleston, SC.
- 1994 Short Course: "Implementing a Clinical Research Program", Annual AAPS Meeting, San Diego, CA.
- 1993 Seminar: "Violence in the Workplace", Charleston, SC.
- 1992 Factory Training: "Monoclonal Antibody Immunoassay Methodology for Drugs of Abuse Using a Robotic Clinical Chemistry Analyzer", Roche Diagnostic Systems, Waltherboro, SC.
- 1989 Factory Training: "Dialog Systems Computer Searching", Dialog, Inc. Charleston, SC.
- 1987 Short Course: "The NDA Process", 2nd Annual American Association of Pharmaceutical Scientists Meeting, Boston, MA.
- 1985 Short Course: "Technical Writing", Upjohn Training Program, Kalamazoo, MI.
- 1985 Short Course: "Novel Drug Delivery Systems", 132nd Annual American Pharmaceutical Association Meeting, San Antonio, TX.
- 1984 Factory Training: "Theory and Pharmaceutical Applications of Thermal Analysis-TGA, DSC, DTA", Perkin-Elmer/American Chemical Society Short Course, Kalamazoo, MI.

CURRICULUM VITAE
Robert M. Bennett

Page 5

"Forensic and Medical Experience with %CDT (Carbohydrate Deficient Transferrin): A New Blood Test for Heavy Alcohol Use. Judges and Attorneys Substance Abuse and Ethics Seminar, Continuing Legal Education Course, Medical University of South Carolina, Charleston, SC, December 2, 2005.

"Forensic Toxicology - How to use Toxicology in Workers' Compensation Cases", Continuing Legal Education Course. South Carolina Trial Lawyers Association 2005 Annual Convention, Hilton Head, SC, August 4, 2005.

"The Truth About Drug Testing", Dorchester County Guardian *ad Litem* Program, Continuing Education, Summerville, SC, February 2, 2005.

"The Truth About Drug Testing", Charleston County Department of Social Services, Charleston, SC, January 18, 2005.

"Alcohol and Substance Abuse Testing", Judges and Attorneys Substance Abuse and Ethics Seminar, Continuing Legal Education Course, Medical University of South Carolina, Charleston, SC, December 3, 2004.

"The Truth About Drug Testing", Charleston County Family Court Bar Continuing Legal Education Seminar, Jury Assembly Room, Charleston County Courthouse, Charleston, SC, November 19, 2004.

"Forensic Drug Testing", Charleston Association of Legal Assistants (CALA), Charleston, SC, November 17, 2004.

"Supervisor Training: Recognizing Drug and Alcohol Abuse in the Workplace", Palmetto Bridge Constructors, Inc., Charleston, SC, September 23, 2004.

"Carbohydrate Deficient Transferrin (CDT) Protein Testing for Heavy Alcohol Use", Charleston County Family Court Bar Liason Meeting, Charleston, SC, June 23 2004.

"Urine Drug Testing, Hair Drug Testing, and DNA Testing for Forensic Cases", Task Force Meeting, Lowcountry Children's Center, Charleston, SC, April 16, 2003.

"DNA Testing, Drug Testing, and Forensic Analysis", Women Lawyers Association (WLA), Charleston, SC, May 15, 2002.

"The True Benefits of Drug Testing in the Workplace", Tri-County Human Resource Management Association, Charleston, SC, February 17, 1997.

"Implementing a Drug Testing Program for County Government Employees", Colleton County Council Meeting, Walterboro, SC, September 3, 1996.

"Understanding the Consequences of Drug and Alcohol Abuse in the Workplace", Walterboro City Government, Walterboro, SC, July 30, 1996.

"Supervisor Training: Recognizing Drug and Alcohol Abuse in the Workplace", James Island Public Service District Charleston, SC, May 21, 1996.

"Understanding the Consequences of Drug and Alcohol Abuse in the Workplace", James Island Public Service District, Charleston, SC, April 10, 1996.

"Recognizing Drug and Alcohol Abuse in Firefighters", James Island Public Service District, Charleston, SC, March 27, 1996.

"Drug Detection using IONSCAN", Law Enforcement 100 Club, Charleston, SC, March 8, 1994.

CURRICULUM VITAE
Robert M. Bennett

SAMPLE CASE LISTINGS OF DR. BENNETT
(CONFIDENTIAL)

- 3D Ballistics Testimony, Post Conviction Relief, Murder conviction of Keno Williams, Case No.: 93-GS-30-503, Laurens County, Irmo, SC, October 26, 2010 (Defense)
- DNA Expert Testimony, Murder trial of State v. Ethan Mack (Victim Kate Waring), Charleston, SC, September 2010 (Defense)
- The Citadel v. Bobby M., Drug test evaluation, establishing causation. 2010 (Defense)
- Forensic Skeletal Analysis, Accessory to Murder, State v. Jonathan Capps, Allendale, SC, April. 2009 (Defense)
- Cognitive impairment & subsequent death related to Methylene Chloride exposure, WCC, Elton E. Greenville, SC April 2009 (Plaintiff)
- Testing of drug paraphernalia to identify drug residue, Roger T., Walhalla, SC, March 2009 (Plaintiff)
- Wrongful death, Whittlesby v. LODGIAN, LLC Charleston, SC, March 2009 (Defense)
- Murder trial of State v. Derek Maner, Allendale, SC, Feb. 2009 (Defense)
- DNA detection from children's toys, Kidnapping, Jerome R., San Miguel, CA, Feb. 2009 (Plaintiff)
- Detection of Lead poisoning in house painters, Joe G, Supervisor., Charleston, SC, Jan. 2009 (Employment)
- DNA detection from female clothing, Adultery, Todd B., Cornersville, TN, Oct. 2008 (Plaintiff)
- DNA detection from male clothing, Adultery, Susan W., Beaufort, SC, Oct. 2008 (Plaintiff)
- DNA detection from female hairbrush & tampons, Maternity, Robbie W., Charleston, SC, Oct. 2008 (Plaintiff)
- Identification of semen / sperm in condom found in food at restaurant, Horace H, Marietta, SC, Sept. 2008 (Plaintiff)
- DNA Avuncular test, Estate of Mondell C. Greg K., Daytona Beach, FL, June 2008 (Plaintiff)
- Murder trial of State v. Billy Shirar, Moncks Corner, SC, May 2008 (Defense)
- Murder trial of State v. Alben Warren, Walterboro, SC, May 2008 (Defense)
- Court Martial of Naval Officer, Chris H., Drug offense, Marine Corps Air Station, May 2008 Beaufort, SC (Defense)
- Detection of single drug exposure in hair, Smith R., April 2008, Strousburg, France, (Plaintiff)
- DNA Siblingship Analysis, Estate of Mondell C., Jacquelyn B., Rolesville, NC, April 2008 (Plaintiff)
- Handwriting Analysis (Questioned Document) on defamatory letters, Pierce F., 2008, Charleston, SC (Plaintiff)
- Swabbing of home for Methamphetamine, Meth Lab, WSPA-TV, Greenville, SC, Jan. 2008 (Media)
- DNA Analysis, Murder trial of State v. Jerry Buck Inman, Central, SC, September 2007 (Defense)
- Salmonella poisoning by Peter Pan brand Peanut Butter, Detection of Salmonella in product, 2007, (numerous clients), Goose Creek, SC (Plaintiff)
- Human saliva detection on child's underwear, Aggravated Sexual Battery, Oral copulation of a minor, Thomas N., 2007, Roanoke, VA (Defense)

CURRICULUM VITAE
Robert M. Bennett

Page 9

- Drug use evaluation to support Writ of Habeas Corpus in United States District Court to overturn murder conviction, March 2005, Charleston, SC. (Defense)
- Chemical exposure, WCC, Moore v. Johns Manville & Hoechst Celanese Corp. 2005, Greenville, SC (Plaintiff)
- Fraudulent misrepresentation of identity of Carsheme D. by unknown individual to defeat Court Ordered drug testing, Summerville, SC 2005 (Judge's order)
- Automobile fatality, evaluation of cognitive skills vs. motor skills at the time of the accident with a high blood alcohol concentration, 2005, Charleston, SC (Plaintiff)
- Narcotic drugs and alcohol interaction evaluation. Family Law, March 2005, Charleston, SC (Plaintiff)
- Cocaine use detection in parents of minor child, State of New Jersey, Dept. of Human Services, March 2005, Charleston, SC (Plaintiff)
- Narcotic drug cognitive impairment re: the Estate of William P., Last Will contest, 2005, Charleston, SC. (Defense)
- Chronic Hypersensitivity Pneumonitis (CHP) caused by the drugs Isoniazid and Rifampin. March 2005, Charleston, SC. (Plaintiff)
- Establishing Grandpaternity with DNA testing after the death of the alleged father, March 2005, Charleston, SC. (Plaintiff)
- Pesticide poisoning of an employee of S.C. Dept of Transportation. WCC, Feb. 2005 (Plaintiff)
- Drug therapy & blunt force trauma effect on Hepatitis C, WCC Jan. 2005, Charleston, SC. (Plaintiff)
- Salmonella food poisoning. Edwin L. Hood v. Angler's Mini Mart dba Church's Fried Chicken, October 2004, Moncks Corner, SC. (Plaintiff)
- Death by Versed® drug overdose in a local outpatient Orthopedic office. August 2004, Charleston, SC (Plaintiff)
- Physical injury leading to ALS, Leila C-J v. Charleston County Dept. of Social Services, establishing causation, WCC, July 2004, Charleston, SC (Plaintiff)
- Toxicological Investigation into the death of Palmetto Bridge Constructors, Inc. employee Miguel Rojas Lucas, 2004, Charleston, SC. (Defense)
- Toxicological evaluation of drugs in hair from hairbrush of female homicide victim Molly W., 2004, Mt. Pleasant, SC. (Plaintiff)
- The Citadel v. Jason K. (Commandant's Board) 2004, Drug test evaluation, establishing causation. (Defense)
- The Citadel v. Jason P. (Commandant's Board) 2004, Drug test evaluation, establishing causation. (Defense)
- The Citadel v. Marion F. (Commandant's Board) 2004, Drug test evaluation, establishing causation. (Defense)
- United States Coast Guard v. MK3 Officer Ian S., Drug test evaluation and re-test. October 2003, Charleston, SC. (Plaintiff)
- United States Department of the Army v. Major David T., Separation Board Hearing, Drug test results, October 2003, Charlotte, NC (Defense)
- Microscopic morphologic hair comparisons, Ira B., Wrongful termination, 2003, Charleston, SC (Defense)
- Toxicological Investigation into the suspicious death of John Dice II, 2003, Chambersburg, PA. (Plaintiff)

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

December 3, 2003

Mr. John A. O'Leary
Attorney at Law
P. O. Box 164
Columbia, SC 29202

RE: STATE OF S. C. vs. ORLANDO SMITH (SCDC #: 267982)
CASE NO.: 02-CP-23-6327

Dear Mr. O'Leary:

I have been informed by our Forensic Science Lab that all evidence concerning the above referenced case was returned to the Greenville County Sheriff's Office in March of 1999.

Sincerely,

M. J. Brown / mcp

Michael J. Brown, Lieutenant
Supervisory Special Agent
FOIA/Subpoena Compliance Coordinator

MJB/mcp



An Accredited Law Enforcement Agency

Phone (803) 737-0000 / Fax (803) 896-7041

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Orlando Smith, 267982,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2010-CP-23-7261

MOTION FOR DISCOVERY
IN POST CONVICTION RELIEF

OCT 28 PM 1:22
FILED - CLERK OF COURT
GREENVILLE CO. S.C.
DAVID B. WICKENS

COMES NOW the Applicant, by and through his undersigned attorney, and requests that this Court enter an Order for Order for Production of Discovery and for Scientific (DNA) Testing pursuant to S.C. Code Ann. §17-27-150(a) (2008).

This matter comes before the Court by way of an Application for Post Conviction Relief filed on September 1, 2010. The State submitted a Return and Motion to Dismiss and Conditional Order of Dismissal on or about December 22, 2010. On January 5, 2011, the Honorable Robin B. Stilwell signed the Conditional Order of Dismissal, which was filed on January 20, 2011. The Applicant, through counsel, received written notice of the Conditional Order of Dismissal on January 25, 2011.

In his Application, the Applicant made the following allegations as to why he is being held in custody unlawfully:

After receiving a complete copy of his file from SLED, the Applicant discovered irregularities and information regarding evidence that was not tested. The Applicant attempted to file an Application under the Post-Conviction DNA Testing and Preservation of Evidence Act, which was not accepted due to funding issues. As a result, the Applicant has retained a private forensic scientist and an attorney to address this matter of newly discovered forensic evidence. The Applicant is requesting the release of the forensic evidence to Robert Bennett, R.P.H., Ph.D., for forensic testing.

Thereafter, the Applicant, through counsel, filed a Response to Conditional Order of Dismissal, which is incorporated hereby reference. After a thorough review of the SLED file and case documents, the Applicant, through undersigned counsel, submits that the requested evidentiary items are necessary to properly prepare and present the Applicant's claims.

Therefore, the Applicant would move before this Court for the production of the following evidentiary items pursuant to S.C. Code Ann. §17-27-150(a) (2008):

At trial, Agent Kimberly Black from SLED testified as follows: "I received a hair sample that was actually collected from a ligature with a small stick... there were some miscellaneous hairs taken from the victim's body, one hair from the victim's stomach, hair from the victim's navel and hair from the victim's right knee". p. 30, lines 18-19, 25, p. 31, lines 1-2. On the Trace Processing Inventory Worksheet, attached to the PCR Application, a "hair collected from the ligature" is listed as inventoried evidence.

Pursuant to the SLED Trace Department Report:

The hair evidence in this case has been preserved. Hair analysis will be considered once other definitive testing has been completed. This evidence will be returned to your agency and can be remitted to the SLED Forensic Laboratory for hair analysis in the future if the need arises.

The Applicant would request the production and transfer of said hairs and ligature to his expert, Robert Bennett, R. Ph., Ph. D. A copy of his curriculum vitae is attached to the Response to Conditional Order of Dismissal. The Applicant would further request the production and transfer of any and all samples collected in the matter for comparison analysis.

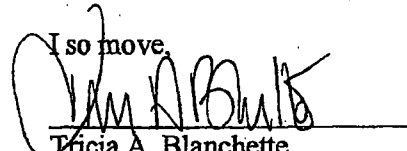
Due to his incarceration and prior submissions to the Court, Applicant no longer has a copy of his original Rule Five documents that were provided by trial counsel.

Therefore, Applicant, through counsel, respectfully requests a copy of his Rule Five documents.

The Applicant, through undersigned counsel, submits that the above listed evidentiary items and case materials are necessary to properly prepare and present his claims as is detailed in the Response to Conditional Order of Dismissal. Furthermore, the Applicant, through counsel, submits that this request is not being made as a fishing expedition, but it is only being submitted to the Court after a thorough review of all available case documents and materials.

THEREFORE, based upon the foregoing the Applicant respectfully requests that this Court hold a hearing and enter an Order for Discovery and for Scientific (DNA) Testing for the above listed physical evidence and case materials that are necessary for the presentation of the Applicant's case.

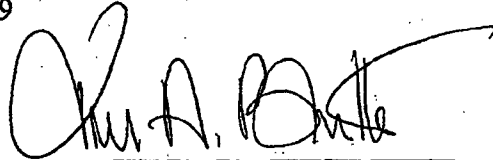
October 25, 2011
Columbia, SC

I so move.

Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	DOCKET NO. 2010-CP-23-7261
Orlando F. Smith, 267982,	)	FILED-CLERK OF COURT
Applicant,	)	GREENVILLE CO. S.C.
v.	)	CERTIFICATE OF SERVICE
STATE OF SOUTH CAROLINA,	)	JUD. B. WICKENSINER
Respondent,	)	

I, Tricia A. Blanchette, Attorney for the Applicant, hereby certify that that I placed in the United States Mail this 25th day of October 2011, a copy of Motion for Discovery in Post Conviction Relief to Karen C. Ratigan of the Attorney General's Office, at:

Office of the Attorney General
ATT: Karen C. Ratigan, Ast. AG
P.O. Box 11549
Columbia, SC 29211-1549



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008
Attorney for the Applicant

October 25 2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Orlando F. Smith, 267982,)
 Applicant,)
 v.)
)
 STATE OF SOUTH CAROLINA,)
 Respondent,)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2010-CP-23-7261

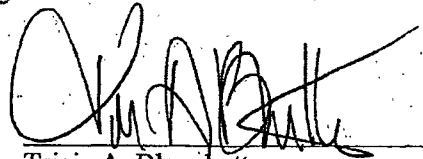
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CERTIFICATE OF SERVICE

FILED - CLERK OF COURT
 GREENVILLE CO. S.C.
 JAMES A. WILSON

I, Tricia A. Blanchette, Attorney for the Applicant, hereby certify that that I placed in the United States Mail this 25th day of October 2011, a copy of Motion for Discovery in Post Conviction Relief to Kathryn H. McCall of the Thirteenth Circuit Solicitor's Office, at:

13th Circuit Solicitor's Office
 ATT: Kathryn H. McCall
 305 E. North Street, Ste. 325
 Greenville, SC 29601



Tricia A. Blanchette
 PO Box 12725
 Columbia, SC 29211
 (803) 988-0008
 Attorney for the Applicant

October 25, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS
2010-CP-23-7261

ORLANDO SMITH)

APPLICANT)

vs.)

STATE OF SOUTH CAROLINA)

RESPONDENT)

ORIGINAL

TRANSCRIPT OF RECORD

November 10, 2011
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, Judge.

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

TRICIA A. BLANCHETTE, ESQ.
Attorney for the Applicant

KAREN C. RATIGAN, ESQ.
Attorney for the Respondent

APRIL HERRON
Official Court Reporter

There were no witnesses.

» > o < «

Certificate of Reporter 31

PLAINTIFF EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Case Note Coversheet	10	10