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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM AIKEN COUNTY
COURT OF GENERAL SESSIONS

Hon. Jocelyn Newman
Circuit Court Case No. 1985-GS-02-00847

Appellate Case No.: 2023-000961

Timothy F. Green, ... Petitioner,

v.

State of South Carolina, ... Respondent.

APPENDIX

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The South Carolina Court of Appeals

The State, Respondent,

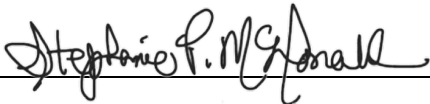
v.

Timothy Green, Appellant.

Appellate Case No. 2023-000961

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

	J.
	J.
	J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
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FILED
Feb 18 2026

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

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

The State, Respondent,

v.

Timothy Green, Appellant.

Appellate Case No. 2023-000961

Appeal From Aiken County
Jocelyn Newman, Circuit Court Judge

Unpublished Opinion No. 2025-UP-410
Submitted November 1, 2025 – Filed December 10, 2025

AFFIRMED

J. Falkner Wilkes, of Oakland, Mississippi, for
Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General W. Jeffrey Young, Deputy Attorney
General Donald J. Zelenka, and Senior Assistant Deputy
Attorney General Melody Jane Brown, all of Columbia;
and Solicitor John William Weeks, of Aiken, all for
Respondent.

PER CURIAM: Timothy Green filed an appeal contesting the trial court's order denying his motion for a new trial on his conviction for murder and sentence of life imprisonment. On appeal, Green argues the trial court erred by denying his motion for a new trial because the State's failure to maintain the original samples for DNA testing deprived Green of his right to due process under the South Carolina Constitution. We affirm pursuant to Rule 220(b), SCACR.

We hold this issue is not preserved for appellate review because Green did not present to the trial court his argument that the State's failure to maintain evidence in violation of his due process rights should be evaluated under Article 1, Section 3 of the South Carolina Constitution instead of the established framework of *Arizona v. Youngblood*¹ pursuant to the Fourteenth Amendment of the United States Constitution. See *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal."); *State v. Prioleau*, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) ("[A] party may not argue one ground at trial and an alternate ground on appeal."); *Youngblood*, 488 U.S. at 57 ("We therefore hold that unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law."); *State v. Reaves*, 414 S.C. 118, 125, 777 S.E.2d 213, 216 (2015) ("Where a defendant's right to a fair trial due to missing or destroyed evidence is at issue, the applicable standard is derived from the United States Supreme Court's opinion in [*Youngblood*].").

AFFIRMED.²

MCDONALD, HEWITT, and TURNER, JJ., concur.

¹ 488 U.S. 51 (1988).

² We decide this case without oral argument pursuant to Rule 215, SCACR.

John William Weeks, Esquire
The Honorable Jocelyn Newman

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
COURT OF GENERAL SESSIONS
Hon. Jocelyn Newman
Circuit Court Case No. 1985-GS-02-00847

Appellate Case No.: 2023-000961

Timothy F. Green, ... Appellant,

v.

State of South Carolina, ... Respondent.

BRIEF OF APPELLANT

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September 3, 2024.

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STATEMENT OF ISSUES ON APPEAL

1. Does the state's failure to preserve potentially exculpatory evidence combined with its failure to maintain proper records constitute a violation of due process under the South Carolina Constitution?

STATEMENT OF THE CASE

The Appellant is presently confined in the South Carolina Department of Corrections pursuant to order of commitment of the Aiken County Clerk of Court. Appellant was tried and found guilty of murder in 1986 (1985-GS-02-847). Appellant was sentenced to life imprisonment. Prior to the filing of the present action Appellant pursued a direct appeal and several post conviction relief actions including one action in federal court for habeas corpus relief. (1988-CP-02-237; 1989 federal habeas; 1992-CP-02-00433; 1993-CP-02-01352; 2004-CP-02-955). None of the foregoing resulted in relief from the Appellant's conviction or sentence.

Subsequent to the foregoing actions the legislature enacted legislation allowing for the post conviction testing of DNA evidence. *See* § 17-28-100. *Disclosure and use of test results; motion for new trial*. On November 29, 2012, Appellant filed an application for forensic DNA testing of evidence from his original murder trial (1985-GS-02-847). An ORDER GRANTING POST-CONVICTION DNA TESTING was issued on September 16, 2014 granting post-conviction DNA testing. Appellant was appointed counsel to represent Appellant in the proceedings. As a result of the aforementioned Order, SLED conducted DNA testing and determined that no biological matter could be detected on the articles tested. A SUPPLEMENTAL ORDER (DNA TESTING) was issued on October 13, 2015 requiring additional testing. SLED again conducted DNA testing and reported no biological matter being found. Appointed counsel took no further action. Appellant filed an Application for Post Conviction Relief (2017-CP-02-00064) alleging ineffective assistance of appointed counsel for failing to follow through after receiving the results of the DNA testing and actual innocence. A Conditional Order of Dismissal was issued March 30, 2021 staying that matter pending the

resolution of the present Rule 29 motion. J. Falkner Wilkes was retained. A Rule 29 Motion was filed seeking a new trial based on the SLED test results. On June 14, 2023 a hearing was convened on the Rule 29 Motion. As a result of the hearing the circuit court denied Appellant's Rule 29 Motion from which a timely notice of appeal was filed. This brief follows.

STATEMENT OF FACTSTestimony from the Criminal Trial March 5, 1986

Carolyn Johnson testified that she was visiting her neighbor Elizabeth Green on September 23rd 1985. 32. According to Johnson the Appellant joined her and Elizabeth Green at the apartment where he sat and drank some beer with them. Supp. R. 14-17. At that time three children were playing in the back room of the apartment. One of the children, three years old at the time, was the daughter of a neighbor, Phyllis Price. After Appellant talked with Elizabeth Green and Johnson he walked into the back of the apartment. Supp. R. 19. Appellant was the only adult in the back of the apartment. Supp. R. 19. Appellant was in the back of the apartment for fifteen or twenty minutes. Supp. R. 19. When the Appellant came back to where Johnson and Elizabeth Green were he was carrying Price's daughter. Supp. R. 19. The child was not moving or making any sounds. Supp. R. 20. Appellant told Liz (Elizabeth Green) that the child was asleep. 19. Appellant left out the back door to take the child to Price (the child's mother). After Appellant left she heard Price screaming. Supp. R. 19.

Hearing Price screaming Elizabeth Green and Johnson immediately ran across to Price's apartment. Supp. R. 20. Arriving almost immediately at Price's apartment she observed the child on the back porch where Appellant had laid her down. Supp. R. 21. Appellant asked Johnson to get a cold compress to put on her head. Supp. R. 21. Appellant was trying to wake up the child by rubbing her face and shaking her. Supp. R. 21. Johnson also testified that she saw Green attempting to perform chest compressions on the child. Supp. R. 22. Green first told Price that the child was sleeping but when Price saw blood coming from the child's nose and mouth and started screaming Green told her that "maybe she had took some poison." Supp. R. 44, l. 23-46, l.

3. Johnson testified that she later saw blood on the wall in the room where the children had been playing at Green's apartment. Supp. R. 22. Emma Simpkins testified that she saw the Appellant the afternoon the child died and that he had said to her that he felt as though he was being punished by God and if [the child] lived he wouldn't do anything wrong anymore. Supp. R. 34.

One of the children that was in the room playing with the deceased testified at Appellant's trial. She was four years old at the time of trial. Supp. R. 54. She testified that she was playing with the deceased and other child. Supp. R. 54. She testified that the Appellant was in the bathroom and the deceased walked in the bathroom. 54. When the deceased walked in the bathroom the Appellant told her to "get out of here". Supp. R. 55, l. 15-16. When she didn't leave the Appellant said "I'm going to beat you butt, [deceased child's name] and started kicking her in the stomach. Supp. R. 55, 17-23. The child witness testified that she saw blood on the wall and that the deceased was throwing up. Supp. R. 56. Appellant admitted that the deceased "threw up" on his shirt but said that he never saw any blood. Supp. R. 104-105.

Testimony from Timothy Green:

3 Q. When did you first see her [deceased]?

4 A. When I came back from Phyllis's house I went to
5 Minnie's and when I come back from Minnie's, Poo and them
6 come to the corner and told me that she was back there on
7 the floor asleep.

8 Q. Did you return then to your sister's house?

9 A. After I took the little girl [deceased], I returned back -
10 I went to carry Phyllis to the hospital.'
Crim.T. 102.

10 A. When Poo called me, I went back there and I
11 picked up the little girl [deceased] and she was laying like this.
12 I picked her up and she grabbed me around the neck and I
13 was coming out with her and I told my sister, she asked
14 me where was I going and I told her I'm going to take her

15 and I'll be right back. And when I got down the road she
16 threw some kind of fling on my shoulder and her eyes was
17 rolling back in her head and I was trying to ask her what
18 was wrong with her. I was shaking her like that because
19 you know, her eyes was going back in her head. So
20 Phyliss come to the door and she said, "Tim, what's
21 wrong?", and I said, "I don't know, she just threw up on
22 my shirt", 'cause there was a big stain on my shirt. She
23 went to screaming and hollering and Carolyn and my sister
24 came running and Teresa and you know, a lot of people
25 came running.
Supp. R. 104.

Forensic Investigator Steven Derrick testified that two days after the incident he received into evidence a blue shirt and a pair of trousers and a blue shirt that belonged to the Appellant. Supp. R. 35-36. SLED forensic serologist Patsy Habben testified that she tested six different stains on the shirt and found two to contain Group O, human blood along with saliva. Supp. R. 39-40. On one sample she found it to contain human blood but could not determine the blood type. Supp. R. 40-41. Three of the samples were negative for human blood. Supp. R. 41. Three samples were tested from the trousers with one being found to contain Group O, human blood. Supp. R. 42. Forty percent of the population has Group O blood. Supp. R. 43. Elizabeth Green, Timothy Green's sister, testified at the criminal trial that the Appellant had blood on him from a cut on his arm. Supp. R. 94. There appears to be no clear expert testimony as to the blood type for either the deceased or Timothy Green.

Dr. Joel Sexton, forensic pathologist, testified that there were numerous bruises in the deceased abdominal region and upper chest. Supp. R. 70. Sexton testified that the something had struck the child hard enough to lacerate the small intestines, the pancreas, and liver. There were also injuries to the head which caused hemorrhaging on the surface of the brain. Supp. R. 71-72.

The abdominal injuries resulted in the child's death. Supp. R. 72. Dr. Sexton testified that some of the deceased's injuries might cause vomiting. Supp. R. 76.

Stipulated Facts from the ORDER GRANTING POST-CONVICTION DNA TESTING

1. The physical evidence or biological material to be tested is available and is potentially in a condition that would permit the requested DNA testing (§17-28-90(8)(1));
2. The physical evidence or biological material to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced, or altered in any material aspect, or the testing itself may establish the integrity of the physical evidence or biological material (§17-28-90(8)(2));
3. The physical evidence or biological material sought to be tested is material to the issue of the applicant's identity as the perpetrator of, or accomplice to, the offense (§ 17-28-90(B)(3));
4. The DNA results of the physical evidence or biological material sought to be tested would be material to the issue of the applicant's identity as the perpetrator of, or accomplice to, the offense (§17-28-90(8)(4)).

(R. p. 2)

TESTIMONY FROM THE RULE 29 HEARING

At the Rule 29 hearing evidence showed that pursuant to the post-conviction Order for DNA testing SLED was not able to locate or identify the original samples from the criminal trial. R. 17-18; 58-70. According to SLED the original samples tested for the criminal trial no longer exist. R. 42-43. Because the original samples from the 1985 trial exist, SLED expert(s) examined the shirt and trousers and tested any area that appeared to have a stain that might possibly be

blood or body fluids. R. 17-19; 31. Pursuant to the post-conviction relief Order, SLED conducted testing on two different occasions without any tests being positive for blood or body fluids and thus no DNA results. R. 29-30.

The original samples tested by SLED for the criminal trial could not be located at the sheriff's office, the clerk's office or at SLED. Nor were there any records found explaining what happened to the samples. R. 60-70.

The Court ruled that the lack of DNA in two post conviction samples was not probative on the issue of guilt as the samples tested were different from the ones tested for the criminal trial. As to the State's inability to produce or account for the original samples the Court ruled that S.C. Code Section 17-28-360 provides that a custodian's failure to preserve evidence for subsequent testing, it is not entitle a person to any relief from a conviction. R. 78-79.

ARGUMENT**I. THE STATE'S FAILURE TO PRESERVE POTENTIALLY EXCULPATORY EVIDENCE COMBINED WITH ITS FAILURE TO MAINTAIN PROPER RECORDS CONSTITUTES A VIOLATION OF DUE PROCESS UNDER S.C. CONST. ART. 1, SEC. 3.**

In a prior action Appellant Timothy Green obtained post-conviction DNA testing to show that the blood or vomit allegedly found on his pants and shirt were not that of the deceased. At Green's murder trial in 1986 the State introduced evidence that blood and vomit had been found on Green's pants and shirt. The forensic pathologist at the criminal trial testified that the deceased's injuries could have caused nausea and vomiting. Although there was testimony during the criminal trial as to the blood typing from samples taken from Green's pants and shirt, there appears to have been no evidence offered as to the deceased's or Green's blood types. Green's post-conviction DNA action sought to obtain testing that would disprove that any of the blood or bodily fluids allegedly found were actually from the deceased. While the post-conviction DNA action resulted in SLED attempting to test for DNA twice, SLED was unable to find any evidence of bodily fluids. As a result, there was nothing to test for DNA. At that point it was believed that SLED tested the same samples it had blood type tested in the criminal trial 1986, and therefore, a finding of no biological matter seemed to refute testimony from Green's criminal trial that blood and vomit had been found on his clothing.

It not clear until the Rule 29 hearing in the present case that the original blood typing by SLED was performed from cuttings taken from Green's clothing and that SLED had been unable to locate those cuttings for the post-conviction DNA testing. Not only could SLED not locate the original samples for re-testing, it was unable to produce any record of how, when or why they

were destroyed. Not being able to locate the original samples cut from the Green's clothing, SLED proceeded to test any remaining stains that were visible on the pants and shirt still in evidence. It was this testing that revealed no biological material to support DNA testing. While the State argued at the Rule 29 hearing that the results of negative tests on anything other than the original samples lacks probative value, it is the State that has prevented Green from having the original samples tested. The inability of the State to produce the original samples or any records relating to their whereabouts or destruction, deprives Green of the ability to use DNA testing to prove that any blood or bodily fluids found on his clothing did not belong to the deceased. The State's failure to maintain the samples, combined with the complete lack of record keeping, constitutes gross negligence that denies Green's right to due process under S.C. Const. Art. 1. Sec. 3.

The scope of due process protection provided under the State Constitution in cases involving the loss or destruction of evidence by the State in a criminal case appears to be a novel issue in South Carolina. All reported South Carolina cases appear to address the issue under the Art. 14 of the U.S. Const. None appear to reach the issue under S.C. Const. Art. 1. Sec. 3. Appellant submits that this Court reject a strict application of Youngblood's¹ bright-line test and apply a more reasoned approach under S.C. Const. Art. 1. Sec. 3 as have many other state courts have under their own state constitutions.

Under the federal due process clause Youngblood and its progeny have set forth a very minimal level of protection for defendants in cases where the government has lost or destroyed evidence in a criminal case. Youngblood held that "unless a criminal defendant can show bad

¹Arizona v. Youngblood, 488 U.S. 51, 109 S.Ct. 333, 102 L.Ed.2d 281 (1988).

faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." State v. Reeves, 414 S.C. 118, 777 S.E.2d 213 (S.C. 2015). Many states have found Youngblood test too burdensome on a defendant and its protection of due process insufficient. Finding the preservation of a defendant's fundamental right to a fair trial to be a paramount consideration many states have interpreted their due process clauses to provide more protection than Youngblood allows.

All reported South Carolina cases on the loss or destruction of evidence to date appear to address issues involving the State's loss or destruction of evidence only under Amend. 14 and the limitations of Youngblood. In applying a Youngblood analysis under the Fourteenth Amendment our Supreme Court in Reeves commented for the first time on the potential for a different analysis under S.C. Const. Art. 1, Sec. 3. In Reeves the Court noted that a number of state courts have declined to follow the bad faith standard of Youngblood but found that Reeves had rested his argument solely on the Fourteenth Amendment to the United States Constitution. The Reeves Court was therefore unable to address the issue under the state due process clause. The issue as to the scope of protection provided by the our State constitutoin therefore appears to remain undecided.

A number of state courts have declined to follow the bad faith standard established in Youngblood based on state law grounds. *See, e.g., State v. Ferguson*, 2 S.W.3d 912, 917 (Tenn.1999) ("Because we deem the preservation of the defendant's fundamental right to a fair trial to be a paramount consideration here, we join today those jurisdictions which have rejected the Youngblood analysis in its pure form."); State v. Osakalumi, 194 W.Va. 758, 461 S.E.2d 504, 512 (1995) ("As a matter of state constitutional law, we find that fundamental fairness requires

this Court to evaluate the State's failure to preserve potentially exculpatory evidence in the context of the entire record.”); Commonwealth v. Henderson, 411 Mass. 309, 582 N.E.2d 496, 497 (1991) (“The rule under the due process provisions of the Massachusetts Constitution is stricter than that stated in the Youngblood opinion.”). State v. Reaves, 414 S.C. 118, 777 S.E.2d 213 (S.C. 2015). Appellant submits this Court should follow other states applying greater protections to a criminal defendant’s right to due process.

Youngblood’s requirement that a defendant prove bad faith on the part of the State is unreasonable and overly burdensome, especially as here where the State gives no explanation as to its inability to produce evidence that it admits was previously held in its custody. In the present case, other than it having been in its custody at one point, the State leaves all relevant facts concerning the whereabouts, loss or destruction of the evidence as a complete mystery. As in the present case, the State’s actions make it utterly impossible for a defendant to meet the Youngblood standard. Applying the Youngblood test in the present case fails to preserve a Green’s fundamental right to due process which, as stated in Ferguson, *supra*, was a paramount concern in those states rejecting the Youngblood test.

In addressing the question of what consequences flow from the State's loss or destruction of evidence alleged to have been exculpatory the court in Ferguson rejected the State's argument that because the evidentiary nature of the evidence can never be known, the appropriate analysis should inquire into the State's bad faith (or lack of it) in the destruction of the evidence. State v. Ferguson, 2 S.W.3d 912 (Tenn. 1999). In rejecting the bad faith requirement the Court in Ferguson noted:

Other states have recognized that A[t]here may well be cases in which the

defendant is unable to prove that the State acted in bad faith but in which the loss or destruction of evidence is nonetheless so critical to the defendant as to make a criminal trial fundamentally unfair. Youngblood, 488 U.S. at 61, 109 S. Ct. at 339, 102 L. Ed. 2d at 291 (Stevens, J., *concurring in the result*). These states have rejected a pure Youngblood analysis, focusing instead on the materiality of the unavailable evidence in determining whether a due process violation has occurred. *See, e.g., Ex parte Gingo*, 605 So. 2d 1237 (Ala. 1992); Thorne v. Department of Pub. Safety, 774 P.2d 1326 (Alaska 1989); State v. Matafeo, 737 P.2d 671 (Haw. 1990); Commonwealth v. Henderson, 532 N.E.2d 496 (Mass. 1991); State v. Osakalumi, 461 S.E.2d 504 (W. Va. 1995).

State v. Ferguson, 2 S.W.3d 912 (Tenn. 1999).

In rejecting the Youngblood analysis under its State constitution the Court in Ferguson went on to hold:

Because we deem the preservation of the defendant's fundamental right to a fair trial to be a paramount consideration here, we join today those jurisdictions which have rejected the Youngblood analysis in its pure form. In so doing, we adopt for Tennessee a balancing approach similar to the one espoused by the Supreme Court of Delaware in Hammond v. State, 569 A.2d 81, 87 (Del. 1989).

State v. Ferguson, 2 S.W.3d 912 (Tenn. 1999)

In McMillan v. State, CR-08-1954 (Ala. Crim. App. Nov 05, 2010) the Alabama courts adopted Vermont's balancing test (*Bailey test*) set forth in State v. Bailey, 144 Vt. 86, 475 A. 2d 1045, 1049 (1984) Under the Bailey test the court considers: (1) the degree of negligence or bad faith on the part of the government; (2) the importance of the evidence lost; and (3) other evidence of guilt adduced at trial.'..." McMillan v. State, CR-08-1954 (Ala. Crim. App. Nov 05, 2010). In McMillan the court reasoned that it is not in the interest of justice to permit the prosecution, in its unfettered discretion, to determine the favorable or unfavorable nature of potentially exculpatory evidence, and then allow the prosecution to destroy the evidence, thereby forcing the defendant to establish the favorable nature of evidence that no longer exists.

McMillan v. State, CR-08-1954 (Ala. Crim. App. Nov 05, 2010).

McMillan found that the “modern trend appears to be shifting away from the bright-line test established in Youngblood in favor of a balancing test. *See, e.g., Deberry v. State* (Del. 1983), 457 A.2d 744; Thorne v. Dep't. of Pub. Safety (Al. 1989), 774 P. 2d 1326; State v. Ferguson (Tn. 1999), 2 S.W.3d 912.” The McMillan court noted that in reversing a conviction where evidence had been lost and thus untestable, the Delaware Supreme Court ‘fashioned a multi-faceted analysis which, in effect, examines the type of evidence, the conduct of the police, and the significance of the evidence in the context of the total quantum of evidence available at trial. Deberry v. State, 457 A.2d 744 (Del. 1983).

In applying a more reasoned balancing test other State courts have considered several factors in determining whether a defendant's due process rights were violated by the missing evidence. This is based on the concerns that unfairness may result in situations 'in which the defendant is unable to prove that the State acted in bad faith but in which the loss or destruction of evidence is nonetheless so critical to the defense as to make a criminal trial fundamentally unfair.' Thorne v. Department of Public Safety, State of Alaska, 774 P.2d 1326 (Alaska 1989), at 1330, n. 9, *citing* Youngblood, 102 L.Ed. 2d at 291 (Stevens, J., concurring).

As pointed out in McMillan, Youngblood fails to take into account the materiality of the lost or destroyed evidence or the impact it has on the defendant's case. *See* Ferguson at 916-917:

The Vermont Supreme Court, in State v. Delisle (Vt. 1994), 162 Vt. 293, 648 A. 2d 632, 643, cited the following rationale for adopting a balancing test in its prior decision of State v. Bailey (1984), 144 Vt. 86, 475 A. 2d 1045, 1049, that takes into account '(1) the degree of negligence or bad faith on the part of the government; (2) the importance of the evidence lost; and (3) other evidence of guilt adduced at trial.' The court stated: 'We believe, however, that Youngblood is both too broad and too narrow. It is too broad because it would require the

imposition of sanctions even though a defendant has demonstrated no prejudice from the lost evidence. It is too narrow because it limits due process violations to only those cases in which a defendant can demonstrate bad faith, even though the negligent loss of evidence may critically prejudice a defendant. Because the Bailey test balances the culpability of the government's actions and the prejudice to a defendant, we adopt it as the state constitutional standard."").

McMillan v. State, CR-08-1954 (Ala. Crim. App. Nov 05, 2010).

In rejecting the Youngblood analysis the Tennessee courts adopted a balancing test to evaluate the State's loss of evidence considering:

1. The degree of negligence involved;
2. The significance of the destroyed evidence, considered in light of the probative value and reliability of secondary or substitute evidence that remains available; and
3. The sufficiency of the other evidence used at trial to support the conviction.

As observed by the Court in Ferguson States as the final arbiter of the its own Constitution, are always free to expand the minimum level of protection mandated by the federal constitution. South Carolina should provide no less protection than other states provide their citizens and adopt an appropriate balancing test under the our own State constitution.

At Green's criminal trial, based on (cuttings) samples taken from Green's clothing, the State offered testimony that there was blood and vomit found Green's clothing. At trial Green denied that was any blood was on his clothing. In present Rule 29 hearing Green's attempt to prove that there was no blood from the deceased on his clothing became an impossibility because the State could not locate and produce the actual samples relied on in the criminal trial. Nor could the State produce a chain of custody showing exactly what happened to the samples that had been tested as a part of the State's case at the criminal trial. All of which is contrary to the stipulated facts set forth in the ORDER GRANTING POST-CONVICTION DNA TESTING:

1. the physical evidence or biological material to be tested is available and is potentially in a condition that would permit the requested DNA testing (§17-28-90(8)(1));
2. the physical evidence or biological material to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced, or altered in any material aspect, or the testing itself may establish the integrity of the physical evidence or biological material (§17-28-90(8)(2));
3. the physical evidence or biological material sought to be tested is material to the issue of the applicant's identity as the perpetrator of, or accomplice to, the offense (§ 17-28-90(B)(3));
4. the DNA results of the physical evidence or biological material sought to be tested would be material to the issue of the applicant's identity as the perpetrator of, or accomplice to, the offense (§17-28-90(8)(4)).

R. p. 2.

It is a fundamental duty of the State as a custodian of evidence to safeguard the evidence and keep accurate records as to its location or disposal. Subsequent to Appellant's conviction S.C. Code § 17-28-320 *Offenses for which evidence preserved; conditions and duration of preservation* provides in pertinent part:

(A) A custodian of evidence must preserve all physical evidence and biological material related to the conviction or adjudication of a person for at least one of the following offenses:

(1) murder (Section 16-3-10);

SC Code 17-28-320 (A)(1).

Because the State offers no information whatsoever as to when it lost or destroyed the evidence it is impossible to know whether it was lost or destroyed before or after the 2009 effective date of S.C. Code § 17-28-320, or whether it was lost or destroyed in bad faith. The lack of proper record keeping constitutes an act of gross negligence that prevents Green the ability to establish bad faith under the Youngblood test. A Youngblood analysis is therefore

inadequate to protect Green's right to due process.

Given that modern DNA testing is capable of identifying a blood or saliva sample to a specific individual, the samples that were lost or destroyed are hugely significant to identifying the source of the blood or bodily fluids alleged to have been found on Green's clothing. Given that the majority of the State's case rested on the testimony of a child that was four years old at the time of trial, and therefore most likely three years old at the time of the incident, a proper weighing of all factors under a reasoned due process analysis under the South Carolina Constitution requires that Green's conviction be reversed and a new trial granted.

CONCLUSION

Based on the foregoing the decision of the circuit court should be reversed and the Appellant granted a new trial.

Respectfully submitted,
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September 3, 2024.

Oct 01 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Aiken County

The Honorable Jocelyn Newman, Circuit Court Judge

THE STATE,

Respondent,

v.

TIMOTHY F. GREEN,

Appellant.

Appellate Case No. 2023-000961

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

Does the state's failure to preserve potentially exculpatory evidence combined with its failure to maintain proper records constitute a violation of due process under the South Carolina Constitution?

RESPONDENT'S COUNTER-STATEMENT OF ISSUES ON APPEAL

Is a state constitutional due process issue preserved for appeal by general reference to a defendant's inability to conduct new DNA testing of cuttings from clothing where the circa 1985 cuttings were not located? Alternatively, does inability to conduct post-trial DNA testing allow a defendant to shift the burden of proof in a motion for a new trial?

STATEMENT OF THE CASE

Appellant, Timothy F. Green, was convicted by a jury in March of 1986 for the murder of his girlfriend's three-year-old child. This appeal is from the denial of a motion for a new trial heard in June of 2023.

The Murder Conviction

An Aiken County grand jury indicted Appellant at a December 1985 term for the child's murder. (See Att. 13, at 6; (1985-GS-02-847)). Jerry M. Screen, represented Appellant on the charge. A jury trial on the charge was held on March 5, 1986.¹ The Honorable Rodney A. Peeples presided. The jury found Appellant guilty of murder, and Judge Peeples sentenced him to imprisonment for the balance of his natural life. (See SR. p. 138-139).

DNA Testing Motion

On November 29, 2012, Appellant filed a motion seeking DNA testing. (R. p. 7). Appellant's blue shirt and trousers were admitted at trial. (SR. p. 36, 84). Trial testimony showed that the clothes were taken directly from Appellant, two days after the murder, with Appellant having confirmed that he was wearing the blue shirt on the day of the murder. (SR. p. 37). A SLED forensic serologist testified that there was "Group O" blood found on the shirt and on the pants. (SR. p. 40-42). However, given the time period at issue, DNA was not an available testing avenue. (See R. 57).² In September 2014, the Honorable Doyet A. Early, III, issued an order granting DNA testing. On January 15, 2016, SLED issued a report finding no DNA was

¹ According to the assertions in the 2017 PCR action return, Appellant was initially tried by a jury on January 20, 1986, but the jury was unable to reach a verdict and a mistrial was declared. (See C/A 2017-CP-02-0064, Return and Motion to Dismiss, p. 1).

² In discussing the factual context during the new trial motion, Judge Newman made these observations: "No one would have known in 1985 to utter the acronym DNA" and reasoning that the new testing was attempted to determine if there was previously unavailable evidence, *i.e.*, "it's not about presenting the wrong evidence" during the trial. (R. p. 57).

available for analysis. (R. 95-96). A second order was issued in October of 2015 to examine the clothes for “vomit stains” and possible testing for DNA. Again, the results were that nothing to test detected. (R. p. 32-35; p. 95-96). Appointed counsel, P. Andrew Anderson, Esquire, took no further action.

2017 PCR Action

On January 17, 2017, Applicant filed a *pro se* application for post-conviction relief (PCR) and made a number of claims, including that Mr. Anderson was ineffective in failing to file a PCR action concerning the testing, and also alleging innocence based on the results. (*See* C/A 2017-CP-02-00064).³ By consent order filed on March 30, 2021, the 2017 PCR action was stayed pending the outcome of the 2018 general sessions new trial motion.

The New Trial Motion

On April 8, 2018, while the PCR was pending, Appellant filed his new trial motion. (R. 7-10). The basis for the motion rested on the inability to conduct DNA testing that had been ordered. *Id.*

On June 14, 2023, a hearing was held on the new trial motion. The Honorable Jocelyn Newman presided. Applicant was represented by J. Falkner Wilkes, Esq. Judge Newman heard testimony, then also heard arguments by counsel for Appellant and counsel for the State. At the conclusion of the hearing, Judge Newman found denied relief on the record. (R. p. 78). No formal, written order followed. Appellant now appeals the denial of his motion.

³ The return to the 2017 application lists a number of prior challenges, including a direct appeal, *see State v. Green*, Op. No. 87-MO-114 (S.C.Sup.Ct. filed March 16, 1987); a 1988 PCR action; a 1989 federal habeas corpus action; a 1992 PCR action; a 1993 PCR action; and, a 2004 state petition for writ of habeas corpus. (*See* C/A 2017-CP-02-0064, Return and Motion to Dismiss, pp. 1-3). Applicant agrees with this history in his brief to this Court. (Appellant’s Brief, Statement of the Case).

RESPONDENT'S STATEMENT OF THE FACTS

As noted above, an Aiken County jury convicted Appellant of murder. The jury heard the following in finding Appellant guilty:

The victim's mother, Phyllis Price, testified that she had three children in September of 1985, one was three-year old Caronica and one was four-year old Ebony. (SR. p. 43-44). Her son was so small he was not yet walking. (SORA. p. 15). Ms. Price testified that on the morning of the murder, Caronica had no bruises, nor did she express any "distress" or "appear to be ill." (SR. p. 45). Caronica and Ebony together went to Elizabeth Green's home, a neighbor in the apartment complex. (S.R. p. 44). Elizabeth is Appellant's sister. At the time, Appellant was Ms. Price's boyfriend and stayed with her. (SR p. 32, 85). Elizabeth's daughter, Erica, was in Elizabeth's home, and Elizabeth testified Caronica ("Ronica") and Ebony ("Poo") came over. Carolyn Johnson was also present, and Elizabeth testified that Carolyn asked the children to go to the back when Carolyn "had to get into some of her drugs." (SR. p. 86-87). Elizabeth also testified that she saw Appellant that morning and asked him to come over. She wanted to tell him that her mother was ill, and he should "call home." (SR p. 86).

Ms. Johnson testified she was at Elizabeth's home, drinking with Elizabeth when Appellant came over and also drank with them, talked, and even looked in the refrigerator and the stove. (SR. p. 16-17, 29). Then, Appellant went toward the back of the apartment where the children were. Somewhere around fifteen or twenty minutes later, he returned and "had Coronica laying on his shoulder and he told Liz that she was back on her bed asleep." (SR. p. 19). Appellant left with the child to go to Ms. Price's home. Ms. Johnson heard Ms. Price scream shortly thereafter. (SR. p. 19). Ms. Johnson and Elizabeth went outside and saw Appellant had "laid her down on the back porch" and asked for Ms. Johnson to "go get a cold compress to put on her head." (SR. p. 21). He was "rubbing her face and shaking her and calling out to her" and

even tried chest compressions to revive her. (SR. p. 21-22). She testified that she later saw blood in Elizabeth's home. (SR. p. 21). While she could not say whether Appellant "did anything" to the victim, she testified that he and the children were the only ones in the back. (SR. p. 30-31).

Ms. Price testified that Appellant came to her with Ronica and expressed he thought she was sleeping. (SR. p. 45). When Ms. Price looked at the child, she "saw blood coming out of her nose and mouth" and that was when she screamed. (SR. p. 45-46). She asked what was wrong with the child, and Appellant "said maybe she had took some poison." (SR. p. 46). He later said "maybe she took some worm medicine" such as that given to dogs. (SR p. 46). That was, actually, what he later called the hospital to suggest. (SR p. 46). However, Ms. Price testified that the worm medicine had been taken out of her house approximately a week before the victim died. (SR p. 47-48). Ms. Price confirmed the blue shirt (the one tested) was the shirt Appellant had on when carrying her child who was bleeding. (SR. p. 50).

While only four-years old, Erica Green, testified. (SR. p. 52-53). Erica stated that she and "Poo and Ronica" were jumping on a bed, and that Appellant was with them. However, Appellant left to go into the bathroom. "Ronica walked in on Timmy and Timmy said, "get out of here, Ronica", and she didn't, then Appellant kicked the victim in the stomach area. Victim began to cry. (SR. p. 55, 57). She also recalled Appellant said to the victim he was "going to beat your butt, Ronica." (SR. p. 57). Erica testified there was blood on the wall, and that victim began throwing up in the yard. (SR. p. 56).

The afternoon that Coronica died, Emma Simpkins was in an area close by the apartments, near a flagpole in the park. Appellant approached her and stated that he felt as

though he was being punished by God and if Caronica lived he wouldn't do anything wrong anymore." (SR. p. 34).

An investigator obtained Appellant's shirt and trousers for testing. Appellant confirmed the shirt was the one he was wearing on the day of the murder. (SR. p. 35-38). SLED forensic serologist Patsy Habben testified that she tested the shirt, right sleeve, and two other samples from the shoulder area, two revealed type O blood diluted by saliva, but one shoulder-area sample was blood, but the testing was inconclusive on type. (SR. p. 40-41). Three other samples were negative. (SR. p. 41). Testing of the pants similarly showed type O, but not diluted, from the knee area. (SR. p. 42). On cross-examination, Appellant's attorney asked the percentage of individuals with type O, and Ms. Habben answered, "Approximately forty percent of the population." (SR. p. 43).

Forensic pathologist Dr. Joel Sexton, M.D., testified to the fatal injuries sustained, in addition to some minor injuries, "there was also some large bruises or contusions of the face. Both lips were swollen, the left eye was swollen and there was a large contusion on the right forehead. The internal examination revealed that in addition to these external injuries, there were multiple internal injuries ... bruises or contusions ... about three or four on the right side and three or four on the left side of the abdominal region plus one deep one here on the upper left chest. Internally, the organs, meaning the liver, the kidneys and other structures of that sort, also had injuries. Notably, a large laceration in the liver ... it was split in the middle and was bleeding from the large split ... In addition, there was injury to the small intestines ... Something had struck the child hard enough to press that portion of the body of the internal anatomy up against the interior and by pushing against the spine, had actually lacerated that portion of the small intestine. There was also injury to the pancreas ... All of this led to acute inflammation inside

the abdomen... So, in general the child had in the abdominal and chest region, primarily the abdominal region, contusions on the external surfaces, contusions in the muscle and tissue and injuries to the internal organs” and further “contusions of the scalp. Bruises where multiple injuries had occurred on top of the head, on the front of the head and on the back of the head” and “hemorrhage on the surface of the brain.” (SR. p. 70-72). He opined that “[t]he abdominal and head injuries caused her death. The abdominal injuries caused internal hemorrhage, which in spite of the surgery that was performed, she went into shock and did not come out of the shock and died during surgery. So, the abdominal injuries primarily, but the head injuries certainly, contributed to the cause of death.” (SR. p. 72). He further opined the injuries indicated they most likely were the result of “blows to this region of the body” and the injuries were inflicted “[o]n or about the day of death.” (SR. p. 73). When asked whether worming medication, Piperazine, would cause the injuries, he indicated it would not, and it does not even enter the body’s system but stays in the GI tract. (SR. p. 75, 82). Additionally, no Piperazine was found in the child’s tissue samples taken at autopsy. (SR. p. 82).

Elizabeth Green testified for the defense. She indicated first no one was in the back area of the house with the children then recalled a friend of hers, “Fred Bailey,” was in the house, though he did not go in the back where the children were. (SR. p. 90, 97, 99). She testified Appellant went to the back to use the bathroom but returned within “five to six minutes.” (SR. p. 91). According to Elizabeth, Appellant left and returned, but on one return, the “children” called him. He went back and came out almost immediately, carrying the victim. (SR. p. 93). Elizabeth testified Erica told Appellant the victim had fallen out of bed. (SR. p. 93). She saw no blood on the child, but saw some blood on Appellant “because he had a cut on his arm.” (SR. p. 94). She later saw Appellant trying to revive the child. (SR. p. 95).

Appellant also testified. He generally followed Elizabeth's testimony, and testified that the children told him the victim was "on the floor asleep," that he picked her up, and during the trip home, "she threw some kind of fling ... and her eyes were rolling back in her head..." (SR. p. 104). She threw up on his shirt, but he denied seeing any blood. (SR. p. 104-105).

Appellant's niece, Doris Green, testified she had seen Ms. Price hit "Poo" before. (SR. p. 114-115).

The jury rejected the defense and convicted Appellant of murder.

STANDARD OF REVIEW

“The decision whether to grant a new trial rests within the sound discretion of the trial court, and” an appellate “[c]ourt will not disturb the trial court’s decision absent an abuse of discretion.” *State v. Mercer*, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) (citing *State v. Johnson*, 376 S.C. 8, 11, 654 S.E.2d 835, 836 (2007); *State v. Simmons*, 279 S.C. 165, 166, 303 S.E.2d 857, 858 (1983)). “The deferential standard of review constrains” the reviewing court “to affirm the trial court if reasonably supported by the evidence.” *Mercer*, 381 S.C. at 167, 672 S.E.2d at 565.

ARGUMENT

Appellant's state constitutional due process challenge is not preserved for appeal as it was not raised to Judge Newman during the new trial motion. Alternatively, the record shows that Judge Newman did not abuse her discretion in denying the motion for a new trial where there was no new evidence that could have changed the result at trial.

Preservation Issue:

Appellant's argument rests on an alleged violation of due process under the South Carolina Constitution. (Appellant's Brief, at iii.). However, Appellant did not argue that due process was violated, nor did he cite to the South Carolina Constitution in his argument before Judge Newman. (*See* R. p. 76-78).⁴ The issue is not preserved for review.

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge" and if not raised and ruled upon, "will not be considered on appeal." *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003). "Constitutional questions must be preserved like any other issue on appeal." *State v. Langford*, 400 S.C. 421, 432, 735 S.E.2d 471, 477 (2012); *State v. McWee*, 322 S.C. 387, 391, 472 S.E.2d 235, 238 (1996) (issue "not preserved for review because at trial, appellant never cited any constitutional basis"); *State v. Varvil*, 338 S.C. 335, 339, 526 S.E.2d 248, 250 (Ct. App. 2000) ("[c]onstitutional arguments are no exception to the rule, and if not raised to the trial court are deemed waived on appeal") (citing *State v. Powers*, 331 S.C. 37, 501 S.E.2d 116 (1998)). The issue is procedurally barred and not available for review on the merits. However, even if available, the issue would not afford relief as the record shows that Judge Newman did not abuse her discretion in denying the motion for a new trial.

⁴ This is also consistent with Appellant's stated intent to show three issues which he listed: "One, do the test results now have any exculpatory value? Two, would any further testing be of benefit? And three, did SLED in 1985 in bad faith destroy the evidence knowing that someday it could be DNA tested ... or if there's any kind of bad faith." (R. p. 21; *see also* 48).

Alternative Merits Argument:

The application and subsequent order for post-conviction DNA testing was based on an “overbroad” belief that all material was available.⁵ (See R. p. 18). While the pants and shirt as admitted in trial were preserved and available, the specific, small cuttings originally tested for blood typing were not admitted exhibits and have not been located. (R. p. 18; S.R. p. 3). The review of the clothes pursuant to the DNA testing order showed no available DNA for testing. (R. p. 19, 26-30, 45-47). Testimony at the new trial motion hearing also demonstrated that the clerk’s office did not have any cuttings associated with original trial, nor did the sheriff’s department have evidence or any records related to the evidence from 1985. (R. p. 58-66 and 67). Lt. Clay Adams noted in this testimony that “back then, SLED typically worked [Aiken] crime scenes.” (R. p. 67, lines 15-17).

Applicant argued there was an absence of evidence and posited, “is Mr. Green entitled to relief if the State can’t show what it did with the samples?” (R. p. 71). Applicant argued that if “the State loses it ... that would be grounds to support a new trial.” (R. p. 71). He argued that since the State could not show what had happened to the cuttings, he was “entitled to relief and a new trial based on the presumption that it very well could have exculpatory value....” (R. p. 72).

“To prevail on a motion for a new trial based on after-discovered evidence, the moving party must show the evidence: (1) is such that it would probably change the result if a new trial

⁵ Notably, the burden is on the applicant for the testing to show the material is accessible to accomplish the testing: “(B) The court shall order DNA testing of the applicant’s DNA and the physical evidence or biological material upon a finding that the applicant has established each of the following factors by a preponderance of the evidence: (1) the physical evidence or biological material to be tested is available and is potentially in a condition that would permit the requested DNA testing;” S.C. Code Ann. § 17-28-90. Further, the applicant is required to show the “material sought to be tested would be material to the issue of the applicant’s identity as the perpetrator” and should the testing be “exculpatory” would “probably change the result of the applicant’s conviction....” § 17-28-90 (B)(4) and (5). As seen *infra*, Applicant does not meet any of these. However, since the motion at hand was made under Rule 29(b), SCRCrimP, the test remains that for 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. Wakefield*, Op. No. 28210, (S.C.Sup.Ct. filed June 20, 2024)(Howard Adv.Sh. No 23 at 32) (citing *State v. Spann*, 334 S.C. 618, 619–20, 513 S.E.2d 98, 99 (1999)). Here, Appellant misses the first necessary step – showing that new evidence exists. He similarly fails to recognize that the burden is squarely on him, the defendant, and not the State. *Id.* Further, our Supreme Court’s precedent finding that “[t]he granting of a new trial” based upon “after-discovered evidence is not favored,” *State v. Irvin*, 270 S.C. 539, 545, 243 S.E.2d 195, 197–98 (1978), stands in stark contrast to Applicant’s position that an inference is warranted that the after-discovered evidence, since he cannot locate and test it, would be exculpatory. *See also State v. Rhodes*, 44 S.C. 325, 327, 21 S.E. 807 (1895) (recognizing “the universally recognized doctrine is that applications of this kind should be scrutinized with great caution, in order to avoid delays, and prevent any obstructions to the administration of justice”). Even so, he asks this Court to rule not on the federal constitutional ground asserted in *State v. Reaves*, 414 S.C. 118, 777 S.E.2d 213 (2015), but on a state constitutional ground. (Appellant’s Brief, at 10-11).

In *Reaves*, our Supreme Court conducted a due process analysis under federal precedent based on destruction of evidence for trial. 414 S.C. at 125, 777 S.E.2d at 217. It is not after-discovered evidence, new trial evaluation, and is inapposite as are those out-of-state cases cited in *Reaves* and in Appellant’s brief as to a possible state constitutional due process violation. *See, for example, State v. Ferguson*, 2 S.W.3d 912, 917 (Tenn. 1999) (focus on the trial not after-discovered evidence and a new trial motion). Indeed, in *Ferguson*, the Tennessee Supreme Court cited to *California v. Trombetta*, 467 U.S. 479 (1984) and the caution that necessary preservation is limited to that evidence that shows “exculpatory value that was apparent before the evidence

was destroyed....” 2 S.W.3d at 917 (citing *Trombetta*, at 488-489). This is not easily connected to “new” testing sought years after the trial, by a method not even available at the time, with an at most unknown value. However, as discussed above, Judge Newman was not asked to consider our state constitutional provision and craft a possible exception different from that in *Reaves*. Even so, she considered the evidence and potential for exculpatory value in context of the trial – the precise test outlined for new trial motions. See *Wakefield*, *supra*, *Mercer*, *supra*, *Spann*, *supra*.

Specifically, Judge Newman considered the arguments for relief offered were based in large measure on the fact that DNA testing was ordered, but, upon drilling down to specifics, it would appear that the materials (the cuttings) were not actually available and Appellant (as the applicant in the DNA testing motion) could not have shown the material was actually available. As a result, Appellant would not have been entitled to an order for testing of those cuttings had that been known. (R. p. 79).⁶ Judge Newman then reasoned, “I don’t think the - - the benefit of the doubt as to missing evidence or inconclusive testing 38 years later.... Entitles Mr. Green to relief.” (R. p. 79). Notably, Judge Newman considered another portion of the Access to Justice Post-Conviction DNA Testing Act, the Preservation of Evidence Act, S.C. Code § 17-28-360, that addresses obligations to maintain certain evidence in certain cases. The legislative purpose was to secure material for later testing under the Post-Conviction DNA Testing Act. Notably, these Acts did not become law until January 1, 2009, long after Appellant’s 1986 trial. Even so, S.C. Code Ann. § 17-28-360 provides that a “[f]ailure of a custodian of evidence to preserve physical evidence or biological material pursuant to this article does not entitle a person to any

⁶ The State also correctly noted that Appellant could not show any potential value as several witnesses placed him with the victim at the time her massive injuries were sustained, and he admitted carrying her to her mother. (See SR. p. 21, 45, 55, 57, 93, and 104-105). Further, it was powerful testimony that Appellant concocted a “poison” story and admitted to feeling “punished” and promised he “wouldn’t do anything wrong anymore,” if the child lived. (See SR. p. 34. 46-48 and 82).

relief from conviction....” As Judge Newman found, that provision would not allow Appellant relief, which is a point she considered. (R. p. 78). Judge Newman denied relief. (R. p. 79). Essentially, Appellant showed no basis for the presumption that evidence would be exculpatory, thus, he cannot carry his burden under the new trial standard. There is no abuse of discretion in that ruling.

That said, though, the State maintains the argument on appeal is procedurally barred. Appellant is not entitled to have the issue heard for the first time on appeal. *Dunbar, supra*.

CONCLUSION

Based on the foregoing, Respondent submits that this Court should find the issue barred, or alternatively, without merit, and affirm the ruling of the lower court denying the motion for a new trial.

Respectfully submitted,

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October 1, 2024

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
COURT OF GENERAL SESSIONS
Hon. Jocelyn Newman
Circuit Court Case No. 1985-GS-02-00847

Appellate Case No.: 2023-000961

Timothy F. Green, ... Appellant,

v.

State of South Carolina, ... Respondent.

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ARGUMENT IN REPLY**I. THE APPLICANT’S ENTITLEMENT TO RELIEF UNDER STATE LAW WAS SUFFICIENTLY ARGUED BELOW TO PRESERVE THE ISSUE FOR APPELLATE REVIEW.**

The inability of the State to produce the original samples or any records relating to their whereabouts or destruction as a basis for relief was sufficiently argued below to allow appellate review. (Supp. R. 59, l. 22-61, l. 7). The Appellant argued below that he was entitled to relief based on the State’s post-trial loss of potentially exculpatory evidence, as well as its failure to maintain records relating to that evidence. Appellant argued that State’s failure to preserve the evidence and records, whether negligent or in bad faith, entitled him to relief. (Supp. R. 66, l. 22-Supp. R. 67, l. 7). While not specifically citing S.C. Const. Art. 1, Sec. 3, the Appellant’s argument was clear and therefore adequately preserved for appellate review.

The State asserts that Petitioner's argument is unpreserved. We disagree. While defense counsel could have articulated his objection more clearly, his objection adequately preserved the issue for this Court's review. *See State v. Brannon*, 388 S.C. 498, 502, 697 S.E.2d 593, 595 (2010) (“Error preservation rules do not require a party to use the exact name of a legal doctrine in order to preserve an issue for appellate review.”).

State v. Gamble, 405 S.C. 409, 747 S.E.2d 784, fn 3, (S.C. 2013).

CONCLUSION

Based on the foregoing the decision of the circuit court should be reversed and the Appellant granted a new trial.

Respectfully submitted,
s/J. Falkner Wilkes
J. Falkner Wilkes, 12893
248 Deerwood Park Drive
Oakland, MS 38948
(864) 282-1292
Counsel for Appellant

September 3, 2024

Sep 03 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
COURT OF GENERAL SESSIONS
Hon. Jocelyn Newman

Case No. 1985-GS-02-00847

Appellate Case No.: 2023-000961

Timothy F. Green, ... Appellant,

v.

State of South Carolina,..... Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
IN THE COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)
VS)
TIMOTHY F. GREEN #113830,)
Defendant.)
ORDER GRANTING POST-
CONVICITON DNA TESTING
Indictment No. 1985-GS-02-00847 (B379496)

This matter came before the Court on Applicant's Petition for Forensic DNA testing pursuant to South Carolina Code Ann. §17-28-10, *et. seq.* (the "Access to Justice Post-Conviction DNA Testing Act"). The hearing in this matter was originally set to be heard in Aiken County during an assigned term of Common Pleas/Non-Jury, however this Court was subsequently assigned to preside over a General Sessions term in Lexington County that week. Accordingly, the hearing was held at the Lexington County Courthouse on Wednesday, August 27, 2014. Counsel for the Applicant and the State consented to having this matter heard in Lexington County in lieu of Aiken County. At the hearing, the Applicant appeared with his attorney P. Andrew Anderson. The State was represented at the hearing by Deputy Solicitor David Miller and Assistant Solicitor Cassie Hall.

Following a jury trial, The Applicant was convicted of Murder and was sentenced to life in prison. The victim in this matter was the child of the Applicant's then girlfriend. Evidence was offered during the trial that blood consistent with the victim's blood type was found on the Applicant's clothing he was wearing at the time of his arrest. At the time of the Applicant's trial, DNA testing was not available to identify the blood found on the items of clothing any more specifically. At trial, the State's witness testified that approximately forty percent (40%) of the population had the same blood type as the blood found on the clothing. In fact, the Applicant claims that he has the same blood type as the blood found on his clothing.

After receiving this Petition, Applicant's attorney and the State's attorneys reviewed the various filings of the Applicant, including his previously filed application for PCR and appeals.

The attorneys met with the Aiken County Clerk of Court to review the evidence retained in the ~~2007~~ ^{September 27, 2014}

1. Copies - Mr. Green
Solicitor Miller
Andy Anderson
ACSO

[Signature]

[Signature]
C.C.C.P.&G.S.
[Signature]
Deputy Clerk

case. Following that review, the attorneys conferred with Captain Wendy Hall from the SLED Forensics Laboratory to determine its potential ability to analyze evidence in this case.

Following this preparation, the State and the Defense were able to stipulate to several facts required by the Act. Specifically, the parties stipulated as follows:

1. the physical evidence or biological material to be tested is available and is potentially in a condition that would permit the requested DNA testing (§17-28-90(B)(1));
2. the physical evidence or biological material to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced, or altered in any material aspect, or the testing itself may establish the integrity of the physical evidence or biological material (§17-28-90(B)(2));
3. the physical evidence or biological material sought to be tested is material to the issue of the applicant's identity as the perpetrator of, or accomplice to, the offense (§17-28-90(B)(3));
4. the DNA results of the physical evidence or biological material sought to be tested would be material to the issue of the applicant's identity as the perpetrator of, or accomplice to, the offense (§17-28-90(B)(4)).

At the hearing, counsel for the State additionally conceded that the testing methods available today were not available at the time of the Defendant's original trial, and that the physical evidence or biological material sought to be tested was not previously subjected to DNA testing.

This Court has reviewed the file in this matter and considered the arguments of counsel. After consideration of the material before the Court, I find as follows:

1. The first four (4) requirements of § 17-28-90 (B) have been met by stipulation.
2. The Applicant has met his burden of proof as to the remaining requirements of §17-28-90(B) by the preponderance of the evidence.
3. Scientific advances since Applicant's conviction have allowed DNA testing to be done, and further testing of the evidence in this case for the presence of the victim's DNA may serve to exonerate the Applicant.
4. In the event that it is determined the victim's DNA was NOT present on the Applicant's clothing, such DNA testing requested by the Applicant may serve to demonstrate Applicant's innocence.

A handwritten signature, possibly "MBC", with the number "42" written below it.

5. Applicant's clothing is currently in the possession of the Aiken County Clerk of Court and has been maintained in a controlled environment.
6. DNA testing of the Applicant's clothing should be performed in this case.
7. The Act does not allow for the appointment of expert witnesses in these matters. Accordingly, Applicant's motions for the appointment of a DNA expert and blood spatter expert are not properly before this court and are, therefore, denied.

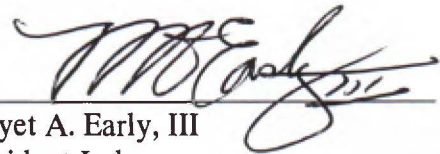
Based on the foregoing, I hereby find the Applicant has met his burden of proof as to the requirements of §17-28-90 by the preponderance of the evidence. Accordingly, it is ORDERED:

1. The Aiken County Sheriff's Office (ACSO) is hereby directed to obtain the items of Applicant's clothing entered into evidence in this case directly from the Aiken County Clerk of Court. A chain of custody form shall be completed to document the transfer of possession of these items to the ACSO.
2. Upon receipt of these items, the ACSO shall immediately transport the items to the SLED Forensics Laboratory for DNA testing in accordance with this Order.
3. Having determined that the Applicant is indigent, the costs of the DNA testing shall be paid by the State.
4. A sample of the Applicant's DNA has previously been acquired and has been entered into CODIS. Therefore, it is not necessary at this time for an additional sample to be submitted by the Applicant. If SLED determines that another sample needs to be submitted by the Applicant, they shall coordinate with the SCDOC to obtain a buccal swab from the Applicant.
5. If SLED requires an additional buccal swab from the Applicant, the sample taken of the Applicant's DNA for purposes of DNA testing pursuant to this Order shall be taken by a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, laboratory technician, or other appropriately trained health care worker.
6. Counsel for the Applicant and the solicitor have waived the right to be allowed to observe the taking of Applicant's sample, if that becomes necessary, as provided by §17-28-90(C). A complete chain of custody shall be maintained for the Applicant's DNA sample taken pursuant to this Order.

Handwritten signature and initials, possibly "JBE" and "A3", in black ink.

7. SLED shall report to the court, counsel for the Applicant, and the solicitor the results of all DNA database comparisons.
8. If SLED determines any additional known standard(s) must be obtained to complete the testing process, they are to notify the attorneys for the Applicant and the State. The attorneys shall then request such orders from this Court.
9. After testing is completed, the tested items are to be returned to the Aiken County Clerk of Court by the ACSO.
10. The items returned to the Clerk of Court shall be maintained with the other materials in the case record.

IT IS SO ORDERED!



Doyet A. Early, III
Resident Judge,
Second Judicial Circuit

September 16, 2014
Aiken, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	SUPPLEMENTAL ORDER
VS	)	(DNA TESTING)
	)	
	)	Indictment No. 1985-GS-02-00847
TIMOTHY F. GREEN #113830,	)	(B379496)
Defendant.	)	
	)	

This matter previously came before the Court on Applicant's Petition for Forensic DNA testing pursuant to South Carolina Code Ann. §17-28-10, *et. seq.* (the "Access to Justice Post-Conviction DNA Testing Act"). The Court granted the requested DNA testing (September 14, 2014). The applicant's clothing was tested by SLED; however, when no blood was detected, SLED stopped testing and the clothes were returned to the Aiken County Clerk of Court. The applicant's clothing must be retested for DNA, not just DNA found in blood. Accordingly, it is ORDERED:

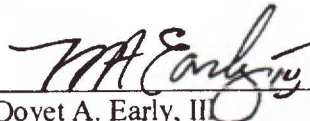
1. The Aiken County Sheriff's Office (ACSO) is hereby directed to obtain the items of Applicant's clothing entered into evidence in this case directly from the Aiken County Clerk of Court. A chain of custody form shall be completed to document the transfer of possession of these items to the ACSO.
2. Upon receipt of these items, the ACSO shall immediately transport the items back to the SLED Forensics Laboratory for DNA testing in accordance with this Order.
3. Having determined that the Applicant is indigent, the costs of the DNA testing shall be paid by the State.
4. A sample of the Applicant's DNA has previously been acquired and has been entered into CODIS. Therefore, it is not necessary at this time for an additional sample to be submitted by the Applicant. If SLED determines that another sample needs to be submitted by the Applicant, they shall coordinate with the SCDOC to obtain a buccal swab from the Applicant.

3 C. Copies A. Anderson

FILED October 15 2015
Cheryl Gustafson
 C.C.C.P. & G.S.
 Deputy Clerk

5. If SLED requires an additional buccal swab from the Applicant, the sample taken of the Applicant's DNA for purposes of DNA testing pursuant to this Order shall be taken by a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, laboratory technician, or other appropriately trained health care worker.
6. Counsel for the Applicant and the solicitor have waived the right to be allowed to observe the taking of Applicant's sample, if that become necessary, as provided by §17-28-90(C). A complete chain of custody shall be maintained for the Applicant's DNA sample taken pursuant to this Order.
7. SLED shall report to the court, counsel for the Applicant, and the solicitor the results of all DNA database comparisons.
8. If SLED determines any additional known standard(s) must be obtained to complete the testing process, they are to notify the attorneys for the Applicant and the State. The attorneys shall then request such orders from this Court.
9. After testing is completed, the tested items are to be returned to the Aiken County Clerk of Court by the ACSO.
10. The items returned to the Clerk of Court shall be maintained with the other materials in the case record.

IT IS SO ORDERED!



Doyet A. Early, III
Resident Judge,
Second Judicial Circuit

October 13, 2015
Aiken, South Carolina

APPENDIX 56

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
Timothy F. Green, #113830,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF GENERAL SESSIONS
FOR THE SECOND JUDICIAL CIRCUIT

MOTION FOR NEW TRIAL BASED ON
RESULTS OF DNA TESTING

Indictment No.: 1985-GS-02-00847
Warrant No.: B379496

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Robert J. Harte, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do, hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this 11 day of April, 2018.
C.C.P. & G.S., Aiken County, S.C.
Sherry D. Langley, Deputy Clerk

Now into Court comes the Applicant pursuant to Rule 29, SCRCrimP, by and through the undersigned, who moves this Court for a new trial in the above captioned criminal case:

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to order of commitment of the Aiken County Clerk of Court. Applicant was tried and found guilty of murder in 1986 (1985-GS-02-847). Applicant was sentenced to life imprisonment. Applicant pursued a direct appeal and several post conviction relief actions including one action in federal court for habeas corpus relief. (1988-CP-02-237; 1989 federal habeas; 1992-CP-02-00433; 1993-CP-02-01352; 2004-CP-02-955). None of the foregoing resulted in relief from the Applicant's conviction or sentence.

Subsequent to the foregoing actions the legislature enacted legislation allowing for the post conviction testing of DNA evidence. *See § 17-28-100. Disclosure and use of test results; motion for new trial.* On November 29, 2012, Applicant filed an application for forensic DNA testing of evidence from his original murder trial (1985-GS-02-847). An order was issued on September 16, 2014 granting post-conviction DNA testing pursuant to 17 SC ST Ch. 28, Art. 1.

Copies: Judge Keesley
Solicitor's Office
Attorney A. Anderson
Attorney J. Falkner Wilkens
Def: Timothy Green

Page 1 of 5

FILED April 11, 2018
Robert J. Harte
C.C.P. & G.S.
Sherry D. Langley
Deputy Clerk

Applicant was appointed counsel to represent Applicant in the proceedings. As a result of the aforementioned Order, certain articles of clothing were subjected to DNA testing by SLED. Upon information and belief, SLED's forensic analysis reported that no DNA was found on the evidence. Applicant submits that the lack of any DNA found on the articles of clothing in evidence is proof of innocence and would have contradicted the testimony and evidence offered by the prosecution at the Applicant's trial. Despite the Applicant's contention that the DNA test results were exculpatory, there appears to be no record of a hearing showing where appointed counsel presented evidence as to the DNA issue, nor any Order entered showing where the Court made any ruling as to exculpatory value of the test results.

Despite the potential evidentiary value of the lack of DNA, the record fails to show where counsel appointed for the Applicant took appropriate action on behalf of the Applicant to have a ruling as to the exculpatory value of the DNA test results, or to otherwise seek a new trial for the Applicant. Applicant submits that he sought to have a new trial and sought to have appointed counsel seek a new trial for the Applicant. Applicant submits that he was diligent in attempting to have a motion filed on his behalf seeking a new trial. Upon information and belief appointed counsel was never relieved by the Court from the Applicant's representation and therefore had a duty to seek a ruling as to the exculpatory value of the DNA test results and/or a new trial. As no Order has been entered ruling on the exculpatory value of the DNA test results, the Applicant's motion for a new trial is timely. Additionally, appointed counsel's failure to timely move for a ruling or otherwise to file a motion for a new trial constitutes an abandonment of the Applicant's cause such that Applicant should be entitled to equitable tolling of any statutory deadline for filing a motion for new trial.

On or about October 26, 2017, the Applicant filed from prison a document titled "APPLICATION FOR IMMEDIATE RELEASE PURSUANT TO POST-CONVICTION DNA RESULTS." The Applicant captioned the case in Common Pleas similar to a post conviction relief action but the application was not on a Form 5, Application for Post Conviction Relief, but rather a free form typed pro se document on plain paper. The Clerk of Court entered the case as a Common Pleas case under Case No.: 2017-CP-02-0064. The content of the document and the relief sought made clear that his action was requesting a new trial based on the results of post conviction DNA test results. The content and relief sought were clearly proper under Rule 29, SCRCrimP. The Clerk however, failed to file said Application in General Sessions under the Applicant's indictment.

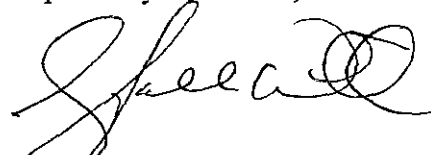
The State moved for summary judgment and the Court, construing it as a post conviction relief action based on the ineffective assistance of appointed DNA counsel, issued a Conditional Order of Dismissal on October 20, 2017. Applicant's case was conditionally dismissed based on a finding that a post-conviction relief action was not permitted pursuant to S.C. Code Ann. Section 17-28-60, which provides in part that "the performance of counsel pursuant to this article [appointed to obtain DNA testing] shall not form the basis of relief in any post-conviction relief proceeding." The Court held that a motion for new trial was the Applicant's exclusive remedy to raise the post-conviction DNA results. The Applicant responded to the Conditional Order of Dismissal, and to date, no Final Order of Dismissal has been entered. Based on the Court's ruling in its Conditional Order of Dismissal that Rule 29 is the only means of relief for the Applicant, the Applicant hereby moves for a new trial pursuant to Rule 29.

This motion should be considered timely based on the Applicant's having timely initiated

an attempt to gain relief based on DNA evidence, and his diligent efforts thereafter to pursue same. In addition, the doctrine of equitable tolling should apply to the issue of the Applicant's relief herein, as the Applicant can show that he was diligent and persistent in his attempts to obtain relief. He is further entitled to relief as the filing of the *pro se* APPLICATION FOR IMMEDIATE RELEASE PURSUANT TO POST-CONVICTION RELIEF DNA RESULTS should have been construed by the Clerk and the Court as a Rule 29 Motion, which would have allowed the issue of the DNA test results to be addressed.

The Applicant moves this Court to set a hearing on the matter in which the Applicant can produce evidence and argument on the issues, including the facts underlying issue of timeliness of his requests for relief, including the applicability of the doctrine of equitable tolling, as well as the importance of the DNA test results in relation to the testimony and evidence offered at his criminal trial.

Respectfully submitted,



J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
Attorney for Timothy Green

April 8, 2018.

CERTIFICATE OF SERVICE

I certify that I have served the Respondent, State of South Carolina, by placing a copy of same in the United States Mail, first class postage prepaid, addressed to the Solicitor of the Second Judicial Circuit, this 8th day of April, 2018, addressed as follows:

J. Strom Thurmond, Solicitor
SOLICITOR'S OFFICE
109 Park Avenue SE
PO Drawer 3368
Aiken, SC 29802

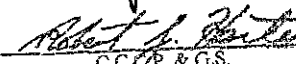
and to:

Robert J. Harte, Clerk of Court
Post Office Box 583
Aiken, SC 29802



J. Falkner Wilkes, 12893
144 Whitsett Street
Greenville, SC 29601
(864) 282-1292
Attorney for Timothy Green

April 8, 2018.

FILED April 11, 2018


C.C.P. & G.S.


Deputy Clerk

APPENDIX 61

State of South Carolina	)	Court of General Sessions
	)	Second Judicial Circuit
County of Aiken	)	Case No. 1985-GS-02-00847
	)	
	)	
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
Timothy F. Green,	)	
	)	
Defendant.	)	
	)	

June 14, 2023
Aiken, South Carolina

B E F O R E:

The Honorable Jocelyn Newman, Judge

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

Cassie Hall, Esquire
Samuel Grimes, Jr., Esquire
Attorney for the Plaintiff/State

J. Falkner Wilkes, Esquire
Attorney for the Defendant

Proceedings taken down electronically

Transcribed by:
Krystal J. Smith
Official Circuit Court Reporter III

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10	Redirect by Mr. Grimes.....	30
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15	Direct by Mr. Grimes.....	47
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APPENDIX 63

STATE'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1	Photograph		17
2	Photograph		17
3	Photograph		17
4	Photograph		17
5	Photograph		17
6	Photograph		17
7	Photograph		17
8	Photograph		17
9	Photograph		17
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11	Photograph		17
12	Serology Report 3/5/15		19
13	Serology Report 11/19/15		19
14	DNA Report		36
15	Evidence Property Receipt		52
16	Trial Transcript		58
17	SLED Chain of Custody		59

COURT REPORTER LEGEND

dashes --	intentional or purposeful interruption
	or change in thought
ellipses . . .	trailing off
[ph]	phonetically written
[sic]	written as said

1 JUNE 14, 2023

2 (WHEREUPON, the proceedings began at 2:09 p.m.)

3 MR. GRIMES: Your Honor, we have a PCR DNA case, Timothy
4 Green. Mr. Wilkes has filed a motion in that case, but we are
5 prepared to go forward with the hearing in that case.

6 THE COURT: Yes, sir. Let's do it.

7 MR. WILKES: Thank you, Your Honor. I believe my client
8 had filed a PCR, and it became immediately apparent that that
9 probably wasn't the proper vehicle for raising this issue. So
10 we filed a Rule 29 motion in addition to the PCR, and I think
11 that PCR case has been stayed pending this hearing.

12 So under Rule 29, we have moved for a new trial based on
13 the results of the DNA testing. At the time that the DNA
14 testing was done, there were believed to be samples that back
15 in 1985 had been blood typed, and that the blood type
16 testimony at the trial was that the blood type was the same as
17 the victim's. Also the same as my client's, but the same as
18 the victim's. My client contended that that -- that there was
19 no blood on him, there was no saliva, there was nothing on
20 him, and DNA testing would certainly reveal either that it
21 didn't belong to the victim or that it didn't exist.

22 And in fact, he obtained -- before my representation, he
23 had obtained through, I believe, Mr. Anderson, an order for
24 DNA testing. So DNA testing was done. SLED tested samples.
25 It came back with no DNA found. There was a further order, a

APPENDIX 65

1 supplemental order requesting SLED or ordering SLED to test
2 again for any type of biological -- I guess, human biological
3 matter for DNA. And they did that again, I think, and again
4 came back with nothing.

5 So at that time, it appeared that that might have
6 exculpatory value. We filed a rule -- he filed the PCR,
7 retained me, and I determined that that wasn't the procedural
8 vehicle that we needed to use and filed a Rule 29 motion.

9 Since that time, it has been -- and I had sent a letter
10 to Judge Keesley, I believe, at one point, and explained all
11 of this. And in my letter, I stated that the samples that
12 were tested were the samples that had been blood typed back in
13 1985, and we now believe that to be incorrect. It appears
14 that those samples don't -- don't exist -- didn't exist after
15 they tested.

16 I'm not sure what happened to them, but those weren't the
17 samples that were tested. SLED apparently took the original
18 clothing and looked for places that might have biological
19 matter, cut out samples, and tested them. So the samples that
20 were tested -- and they have witnesses that will explain all
21 that, but that's the dilemma we have now.

22 So the change in what we believed at the time we filed
23 the Rule 29 and represented was what we believed was DNA
24 testing was done on the same samples that was blood typed.
25 They were not. They were done on the same shirts, using cut

APPENDIX 66

1 outs of suspected, you know, places that looked like they
2 might have something testable, but it was not the actual
3 samples that were blood typed. So that's kind of a twist in
4 where we are now.

5 And I think SLED witnesses from forensic or lab -- I
6 don't know what we call them. Lab people will testify to what
7 they did, what they tested, and where we are with the results.

8 THE COURT: Okay. Yes, sir?

9 MR. GRIMES: Judge, my -- I'd just like to preface that
10 with -- and I think you may have a copy of it. There was a
11 September -- September 22nd, 2014, order that essentially made
12 testing of stuff in this case possible. And so on Page 2,
13 they cite some things from the 17-28-90, which kind of
14 controls this area of law. (1), (2), (3), and (4) are cited
15 in this order.

16 I think probably, first and foremost, there was a -- a
17 stipulation between other lawyers that were working on this
18 case. Mr. Anderson represented the -- and I'm probably going
19 to call him applicant. I think he's listed as defendant. But
20 we don't -- we don't do a whole lot of PCRs and appeals in our
21 office.

22 Anyway, Mr. Green, his lawyer, and the State had
23 stipulated that there was physical evidence or biological
24 material to be tested. It's available and potentially in a
25 condition that would permit the request of DNA testing.

APPENDIX 67

1 That's true, but maybe a little overbroad too because, as
2 you're going to hear in the testimony, the original cuttings
3 from the shirt and the pants that they blood typed, they
4 suspected they were blood at the time and they ultimately
5 blood typed them, and there was testimony about those in the
6 trial in 1985. Those cuttings don't exist.

7 So to the extent that this, number one, would reference
8 that material that was testified about and referenced at the
9 trial, it's inaccurate. And -- and really, because of what
10 they found -- and you're going to hear the testimony about the
11 shirt and the pants in this case. That one section -- well,
12 the State would contend that Section (b)(1), (b)(3), (b)(4),
13 and (b)(5) fail from the statute, but this one is essentially
14 going to be the limiting factor, because we're not even going
15 to get past step one. They're going to testify that they
16 didn't find anything that turned out to be testable for DNA or
17 resulted in any DNA.

18 So there was never any DNA analysis and nothing that they
19 examined from these clothings for were DNA or provided any
20 insight into this case at all. And I just wanted to kind of
21 explain what the purpose of the testimony was going to be
22 because there's -- there's a little bit of confusion between
23 where we are now and where the case was back in September of
24 2014.

25 THE COURT: So --

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1 MR. GRIMES: And there was a -- there was a 2015 order as
2 well, because initially when the -- the items were sent to --
3 to SLED, they -- they looked for DNA or they looked for blood
4 DNA. They didn't find any. They sent it back to the
5 Sheriff's Office. There was a subsequent order in 2015
6 essentially telling SLED don't just look for blood DNA, look
7 for other types of DNA.

8 So they went back to SLED for analysis on the shirt and
9 pants where they were looking for items of, I think, what they
10 suspected could have been vomit, and they made some cuttings.
11 They tested them. There was no DNA present. So that's where
12 we're going to end up at the end of the testimony, I believe.

13 THE COURT: So to just make sure I understand with a
14 visual aid, let's -- let's say this is the article of clothing
15 and these three spots are what are believed to be blood, I
16 suppose, blood of the victim. SLED comes in. They do a
17 cutting here, a cutting here, and a cutting here, and SLED
18 tests what they believe to be blood from the clothing. Right?
19 They do these cuttings?

20 MR. GRIMES: Right.

21 THE COURT: Test this?

22 MR. GRIMES: Correct.

23 MR. WILKES: In 1985.

24 THE COURT: In 1985.

25 MR. WILKES: Yes, ma'am.

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1 THE COURT: What we believed in this case when the post-
2 conviction DNA testing, they didn't do DNA testing, but they
3 tested these cuttings.

4 MR. WILKES: Yes.

5 THE COURT: We believed that these things were going to
6 be tested now for DNA, now that the technology is available,
7 when actually we don't know where these are, and what was
8 given to SLED to test for post-DNA -- post-conviction DNA
9 testing is this?

10 MR. WILKES: Exactly.

11 THE COURT: And they made some cuttings from this and
12 found nothing.

13 MR. WILKES: Exactly.

14 THE COURT: Which would make sense if --

15 MR. WILKES: Exactly.

16 THE COURT: -- if what -- what was to be tested is this
17 stuff over here?

18 MR. WILKES: Exactly.

19 THE COURT: That's not -- but this -- we don't know where
20 this is?

21 MR. WILKES: That is exactly right.

22 THE COURT: So this, some clipping, some additional
23 cuttings from this --

24 MR. WILKES: Yes.

25 THE COURT: -- were tested?

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1 MR. WILKES: That's exactly right.

2 THE COURT: Okay.

3 MR. WILKES: And so I think that will present the Court
4 with probably three issues. One, do the test results now have
5 any exculpatory value? Two, would any further testing be of
6 benefit? And three, did SLED in 1985 in bad faith destroy the
7 evidence knowing that someday it could be DNA tested? But --
8 or if there's any kind of bad faith.

9 THE COURT: Right.

10 MR. WILKES: But those would be the three basic issues, I
11 think, for the Court to decide.

12 THE COURT: Understood.

13 MR. GRIMES: And just to give some context to would there
14 be any benefit for further DNA testing and related, I guess,
15 analysis, this defendant was convicted in 1986 and was
16 sentenced to life in prison. The victim in this case was the
17 daughter of the defendant's girlfriend, and so the allegations
18 were essentially that the victim had beaten to death the -- in
19 his -- in his care -- the child that was in his care, and that
20 child's, I believe, older sister was a witness indicating acts
21 that had taken place between the defendant and that child, and
22 that the defendant took the victim to her mother's residence
23 and claimed that the child had consumed dog worm medicines.

24 What's significant about that, I think, is that the
25 defendant admitted to carrying the child after she had been

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1 injured and while she was bleeding. It was apparent once the
2 child was taken to the hospital that that wasn't the case
3 regarding the dog worm medicine. Law enforcement
4 investigated. They took his clothes at the time, and those
5 were sent to SLED for the analysis.

6 So at the time of the trial, the analysis that was
7 available was blood type analysis, and so there was a number
8 of cuttings taken. I think there were ultimately three that
9 provided any insight at all, maybe four on the shirt. I think
10 there were three that tested positive for blood. Two of those
11 tested positive for O-type blood, and one stain on the pants
12 tested positive for O-type blood.

13 And there was testimony from the SLED analyst at the time
14 that roughly 40 percent of the population has O-type blood.
15 Apparently, both the victim and the defendant had O-type
16 blood. So I don't know that anything in this testimony about
17 O-type blood really was conclusive to anything in the trial.
18 The trial didn't hinge on that testimony because it really
19 just put the two of them in a 40 percent of the population
20 category.

21 And anyways, the State's contention would be generally
22 that it wasn't probative -- particularly probative evidence in
23 the beginning because of the fact that they both had the same
24 blood type, and it's a common blood type. That the defendant
25 had admitted to carrying the child after the child had been

1 injured.

2 And then -- and then so as far as whether any of this
3 would be exculpatory, the State's contention is even if they
4 -- even if they found that the blood on the defendant's shirt
5 through DNA testing had been the defendant's or someone other
6 than the victim's, it wouldn't be exculpatory based on the
7 evidence that they had at the time of the trial.

8 And I will call Verona Herrera. She's no longer with
9 SLED, but she is here to testify.

10 THE COURT: Okay. Come on forward.

11 THE CLERK: The testimony you shall give the Court in
12 this case shall be the truth, the whole truth, and nothing but
13 the truth, so help you God?

14 THE WITNESS: Yes.

15 THE CLERK: Just state your full name for the Court,
16 spelling your last.

17 THE WITNESS: My name is Verona Herrera, H-e-r-r-e-r-a.

18 VERONA HERRERA, being first duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. GRIMES:

22 Q: Ms. Ferrera, if you could, give us some background about
23 -- you were a serologist at SLED?

24 A: At the beginning, I was a forensic evidence processing
25 technician, and then I became a serologist later on. Yes,

1 sir.

2 Q: Okay. If you could tell us briefly what that is and how
3 you would train in that area?

4 A: Forensics evidence processing is taking larger pieces of
5 evidence from a crime scene, testing those for questionable
6 stains to see if it's blood or saliva or semen, depending on
7 their request. We also tested for or collected for ownership
8 DNA, who wore a shirt, who may have touched a pen, that type
9 of thing. Serology was more confirming what the blood -- that
10 it is blood or non-human or human blood, confirming semen for
11 possible semen stains, and then forwarding that on to the DNA
12 department.

13 Q: All right. And how were you trained in that area?

14 A: That was all in-house training at SLED.

15 Q: And what -- what period of time were you training at
16 SLED, and then how long did you work doing serology at SLED?

17 A: I started with SLED in 2008. I believe my training was
18 about 6 to 9 months long. I don't remember exactly. It's
19 been just a little while, and I left SLED in November of 2019.

20 Q: So when you worked on this case, I believe it was in
21 2015. Is that roughly 6 or 7 years at SLED?

22 A: Yes, sir.

23 Q: All right. And maybe you don't recall exactly, but about
24 what portion of that time were you doing serology?

25 A: I think I started serology in late 2015 or 2016. I'm not

VERONA HERRERA - DIRECT BY MR. GRIMES

1 exactly sure, but the forensic evidence processing I did the
2 entire time. It just became a portion of serology.

3 Q: Okay. And were you familiar with SLED policies and
4 procedures at the time that you did the serology in this case?

5 A: In this case, it was technically evidence processing,
6 forensic evidence processing. I did not identify any fluids.
7 I only presumptively tested for them. So that would have been
8 in forensic evidence processing.

9 Q: Okay.

10 A: But I was aware of the policies and procedures, yes, sir.

11 Q: All right.

12 MR. GRIMES: Your Honor, before I move to have her
13 admitted as an expert --

14 VOIR DIRE

15 BY MR. WILKES:

16 Q: You do -- when you say presumptive testing, tell me what
17 the presumptive testing is?

18 A: Presumptive testing means that there is a possibility the
19 spot that was being tested is blood or semen or saliva. It
20 would be sent for further testing to confirm if it was blood
21 or not. If the -- if the area tests negative, it's not that
22 possible -- it's not possibly that stain.

23 Q: Okay. And you actually did the presumptive tests in this
24 case?

25 A: Yes, sir, I did.

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VERONA HERRERA - VOIR DIRE BY MR. WILKES

1 Q: Okay. And that was on the samples that were taken as a
2 result of the PCR order? This -- we're not talking about
3 1985?

4 A: No, sir. I was not there in 1985 and did not have access
5 to those samples.

6 MR. WILKES: I think I understand.

7 MR. GRIMES: At this time, we'd move to admit Ms. Herrera
8 as an expert in the field of evidence processing. I guess
9 serology would be unnecessary for this.

10 THE COURT: Any objection?

11 MR. WILKES: None.

12 THE COURT: She is so qualified.

13 DIRECT EXAMINATION

14 BY MR. GRIMES:

15 Q: I'm going to show you two groups of photographs. The
16 first one is State's Exhibit 1 through 4, and the second
17 grouping is State's Exhibit 5 through 8.

18 A: Yes, sir.

19 Q: All right. So are those the items of clothing that were,
20 well, examined? Is that the correct word?

21 A: Yes, sir.

22 Q: Okay. Are those the items of clothing that were examined
23 in this case by you? First of all, that's all of it? 1
24 through 8 is a shirt and a pair of pants?

25 A: That is correct. These are photographs. The first set

VERONA HERRERA - DIRECT BY MR. GRIMES

1 was taken when the items were first submitted, before any
2 testing was done because there were markings on here from
3 previous processing that I documented. And the second set of
4 photographs, 5 through 8, were after I had completed the
5 second processing or examination in 2015.

6 Q: So on 1 through 4, are there markings on those -- on
7 those clothes?

8 A: There are. Yes, sir.

9 Q: All right. And was that put there by you?

10 A: It was not.

11 Q: Okay. And then 5 through 8, are there additional
12 markings on the clothing?

13 A: There are two types of additional markings on the
14 clothing, both of which were made by me.

15 Q: Okay. And what is different about those two types of
16 markings?

17 A: The silver writing is where I processed for the test for
18 blood to see if any of the red spots were testing positive for
19 the presumptive test for blood. And then the second writing
20 is where I took the cuttings in 2015 with the second
21 processing.

22 Q: All right.

23 MR. GRIMES: At this time, the State would move to
24 introduce Exhibits -- State's Exhibits 1 through 8 into
25 evidence for the hearing.

VERONA HERRERA - DIRECT BY MR. GRIMES

1 MR. WILKES: No objection.

2 THE COURT: They're admitted without objection.

3 (WHEREUPON, State's Exhibits 1 through 8, photographs,
4 were admitted into evidence.)

5 BY GRIMES:

6 Q: So initially you examined these clothings, and I will
7 show you -- I'll just go ahead and mark them then. I'm going
8 to show you a March 5th what says serology analysis, March
9 5th, 2015, that has Verona --

10 A: Gibson.

11 Q: -- Gibson on the bottom of the first page. Is that an
12 analysis that you participated in?

13 A: It was, yes. That -- Gibson is my maiden name.

14 Q: Okay. And then this is signed by somebody else on the
15 back, but is this the examination that you conducted?

16 A: It is, yes. The policy at that time was that a forensic
17 serologist had to sign the reports. And until I passed the
18 rest of the training to become a forensic serologist, someone
19 else reviewed my work and then signed the report.

20 Q: But in that case, in that instance, you didn't do a
21 serology analysis; is that right?

22 A: Well, I did. I -- well, it wasn't -- it was presumptive
23 testing for the presence of blood, which can be part of
24 serology, but at the time I was a forensic evidence processing
25 technician who also did that type of testing.

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VERONA HERRERA - DIRECT BY MR. GRIMES

1 Q: All right. And this is the report that was issued March
2 5th, 2015, in relation to this evidence?

3 A: Yes.

4 Q: All right. And I'm going to show you a November 19th of
5 2015 report that's signed Verona Herrera on the second page.
6 That's State's Exhibit 10.

7 A: Yes, sir. That is the second time I processed this --
8 these items, and by that time I had finished the forensic
9 serology training and was a serologist.

10 Q: Okay. And I'm going to move to introduce State's Exhibit
11 9 and 10 into evidence for part of this hearing, but I wanted
12 to ask you about Item 9 real quick. So there are -- there are
13 two things on there listed. What -- what is it indicating in
14 regards to the pants, which is Item 1?

15 A: Item 1, the pants, the presumptive testing for blood was
16 negative and -- I'm sorry. Would you like me to go on?

17 Q: Item 2 is the shirt?

18 A: That is correct, and the presumptive testing for blood
19 was negative on that item as well.

20 Q: All right. So what is done to do a presumptive testing?

21 A: So the stain in question is swabbed with a sterile -- a
22 wet sterile -- it looks like a large Q-Tip kind of. There's
23 two chemicals dropped on that. If it changes to a bright pink
24 color, that is indicative that it could possibly be blood. If
25 there is no color change, then it's not cut and forwarded for

1 further testing.

2 Q: And so you tested those items with the -- with the Q-Tip,
3 I guess?

4 A: Well, each -- each stain is swabbed separately, tested,
5 and then you would go to the next stain and swab and test it.

6 Q: Okay. And -- and there was no indication that any blood
7 existed?

8 A: None of the areas that I tested were positive for the
9 presumptive test for blood, and there were -- there were
10 several.

11 Q: And specifically in that first examination --

12 MR. GRIMES: Your Honor, would you like to see this?

13 THE COURT: All right. Any objection to --

14 MR. WILKES: None, Your Honor.

15 THE COURT: Okay. So State's 9 is admitted. Is there
16 another one?

17 MR. GRIMES: State's 10.

18 THE COURT: Any objection to State's 10?

19 MR. WILKES: None, Your Honor.

20 (WHEREUPON, State's Exhibit Number 9, serology report
21 dated 3/5/15, and State's Exhibit Number 10, serology
22 report dated 11/19/15, were admitted into evidence.)

23 MR. GRIMES: And if I could hold this for just a few
24 seconds --

25 THE COURT: Sure. Absolutely.

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VERONA HERRERA - DIRECT BY MR. GRIMES

1 MR. GRIMES: -- to ask some questions on it.

2 BY MR. GRIMES:

3 Q: But in that initial examination when you were looking for
4 blood on the shirt and the pants, this was before the March
5 5th report?

6 A: That's correct.

7 Q: Did you -- were you aware that cuttings had already been
8 taken from the shirt --

9 A: Yes, sir, I was.

10 Q: -- and the pants? And did you have a discussion with
11 anybody about that?

12 A: Yes, sir. I spoke with Lt. Clay Adams of the Aiken
13 County Sheriff's Department and was told that those original
14 cuttings were not available.

15 Q: When you -- when you examined the clothes, it was obvious
16 that there were cuttings missing from them?

17 A: That is correct.

18 Q: In your examination of the clothes, did you -- did you
19 see if there was an area around the original cuttings that
20 were missing that could be relevant to more testing?

21 A: Yes. Those areas would have been -- would have been the
22 first place I would have looked to see if there was additional
23 staining. I did not see any, so I tested any other area on
24 the item of clothing that looked like it could potentially be
25 a blood stain.

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VERONA HERRERA - DIRECT BY MR. GRIMES

1 Q: Okay. And after you got the presumptive negative for any
2 other blood DNA on the shirt and the pants, they were sent
3 back to the Sheriff's Office; is that correct?

4 A: That is correct.

5 Q: All right. And then prior to this November 19th, 2015,
6 were you contacted regarding testing the items again or
7 checking the items again?

8 A: My supervisor at the time advised me that we were going
9 to retest or reexamine the items, see if any areas looked like
10 it could possibly be vomit stains and, if so, we were going to
11 take those areas and then forward them for further testing.

12 Q: Okay. Are you -- are you able to -- I mean, you said you
13 had a presumptive test with a reagent that determines whether
14 something is blood or not. Do you have a similar test for
15 vomit?

16 A: There is no test for vomit. Potentially, saliva testing
17 could be done, but usually if you're -- if you're analyzing
18 what you think may be vomit, it's just purely a DNA test.

19 Q: Okay. So when the items come back to SLED the second
20 time, did you reexamine any of the items?

21 A: I did, yes. I reexamined those items.

22 Q: And what were you looking for at this point?

23 A: Any areas that looked like the stain could possibly have
24 originated from vomit. It's pretty broad, so I took anything
25 that even closely appeared to be that type of staining.

1 Q: And are -- are those -- when you said you took anything,
2 you're saying you made additional cuttings?

3 A: I did, yes. I took cuttings.

4 Q: And are those cuttings on what are referenced in State's
5 Exhibit 10 where it's --

6 A: Yes, sir, they are.

7 Q: Okay. And just kind of -- so the pants are listed as
8 Item 1 and then the cuttings are listed as 1.1 and 1.2. The
9 shirt is listed on here as Item 2, and then there's cuttings
10 listed as 2.1. As the .1, that's -- or the -- the decimal and
11 then another number, those are all cuttings from the original
12 item to the original Item 1; is that correct?

13 A: That is correct. The way it was done is the parent item
14 is the item that originally came in. To denote that any
15 cuttings, swabs, or any other collections off of that item, it
16 would be, like, 1.1, 1.2, 1.3, so that there was no question
17 which item it came off of.

18 Q: And this report from you from November 19th of '15
19 indicates the Items 2.2, 2.3, 2.4, 2.1, 1.1, and 1.2. Those
20 are all the cuttings that you submitted to DNA for DNA
21 analysis off of those items; is that correct?

22 A: That is correct.

23 Q: All right. And so the -- are you familiar with the -- I
24 guess, the original 1985 paperwork from SLED related to the
25 analysis that they did?

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VERONA HERRERA - DIRECT BY MR. GRIMES

1 A: I looked at it at the time that I processed these items.
2 Yes, sir.

3 Q: Okay. And just -- I think we have it clear on the
4 record, but when that paperwork references A-1, A-2, A-3, A-4,
5 A-5, A-6, and then B-1, B-2, and B-3, none of those items are
6 any of the items that you tested or collected in 2015?

7 A: No, they were not. The only similarity of what I had
8 opposed to what was tested in 2000 -- I mean, in 1985 is the
9 actual shirt and the pants that those -- those items would
10 have been tested off of.

11 Q: So it -- so it's a similar type of numbering system where
12 this labels Item A as the shirt and then A-1, A-2, A-3, and so
13 on, and then it lists Item B as gray trousers, and then
14 there's subitems below that, but those subitems from 1985 are
15 what we were talking about not being available for testing?

16 A: I am not absolutely sure on that, that every 1, 2, 3, or
17 4 off of A was actually cut. Sometimes in the older case
18 files that I've looked at -- I was not there then, but that
19 also just indicated areas that were tested as well. So I am
20 unsure in this case if there were that many cuttings or if
21 that also indicated areas that were tested.

22 Q: All right. Perfectly fair. All of the items -- all the
23 subitems for 1 and 2 on those documents on Item 6, Exhibit 10,
24 are items that you cut from the original shirt and the
25 original pants yourself?

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VERONA HERRERA - DIRECT BY MR. GRIMES

1 A: That is correct, yes.

2 Q: Okay. And speaking of reviewing older cases, you just
3 mentioned you reviewed some older cases before in your work at
4 SLED?

5 A: Yes.

6 Q: Okay. Generally, those subitems or the cuttings exist;
7 is that correct?

8 Q: They have existed in some cases. Some cases they have
9 not. I'm unsure of what their practices were then. I wasn't
10 there, but there have been other cases where those cuttings
11 did not exist.

12 Q: Okay. So between -- well, between 1985 and 2015, that's
13 30 years?

14 A: Yes, sir.

15 Q: Before any examination that you began on this case?

16 A: That is correct.

17 Q: I do want to ask you -- so the items were tested, but
18 there was no DNA found. Is that unusual considering the shirt
19 was worn by somebody?

20 A: I mean, there can be several reasons that DNA wouldn't be
21 found. It could be that the concentration wasn't high enough
22 in that area. It could be that there was a shirt or something
23 else worn underneath it so you didn't get the DNA from the
24 individual. There's just a multitude of reasons.

25 Q: Well, let me ask you this. You weren't requested to do a

1 DNA analysis for item ownership?

2 A: No, sir. That was not a request.

3 Q: Okay. And how is that different from what you were
4 doing?

5 A: Ownership DNA is usually the person who is wearing the
6 shirt. So the neckline and the underarms if it's a short-
7 sleeved shirt, or the cuff areas, if it's a long-sleeved
8 shirt, are scraped and swabbed, and that swab is sent up
9 trying to collect the skin cells that were shed into the
10 fibers. That's trying to concentrate those skin cells into a
11 smaller area and to loosen them from the fabric and release
12 them mechanically rather than chemically. So it's just a
13 different type of testing.

14 Q: So you weren't asked to do DNA ownership testing in this
15 case?

16 A: No, sir. We don't typically do DNA ownership testing on
17 a shirt. We know who it came off of.

18 Q: And this was collected -- by -- by the testimony at the
19 trial, the record in this case, it was collected directly from
20 the defendant?

21 A: I believe that was the information we had. Yes, sir.

22 Q: If -- if investigators aren't aware of the person who was
23 wearing the shirt when they collected it, would SLED even do
24 DNA ownership testing?

25 A: Not typically, no.

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VERONA HERRERA - DIRECT BY MR. GRIMES

1 Q: Okay. Would that -- I guess that would be counter to the
2 policies that exist for what to test for?

3 A: Well, that is correct. It's -- it's not a probative
4 question that DNA can help answer, because if shirts are
5 washed together, potentially there could be a mixture of DNA
6 there which may or may not point to the -- to the person you
7 saw washing -- wearing it -- I'm sorry -- if they had just put
8 it on before it was taken off of them. There's a multitude of
9 reasons, but eyewitness testimony from the officer who took it
10 off of them usually is -- is more significant, and it also
11 doesn't waste the resources of testing something that we know
12 is taken off someone.

13 Q: Oh, that brings me to another point. You -- if -- if in
14 2015 -- I don't know anything about 1985. Really, you
15 probably don't either. But in 2015, would you do DNA testing,
16 other than a stain or something, if you knew that the suspect
17 who had been wearing the shirt and the victim lived together?

18 A: Unless it was like a blood stain or a semen stain,
19 something like that, no, there wouldn't be general touch
20 testing done on that item.

21 Q: And -- and again, the reason for that is?

22 A: You expect people who live in the same house to have each
23 other's DNA on their clothing.

24 Q: Okay. So as far as probative information from evidence
25 processing at SLED related to DNA, you're looking for some

VERONA HERRERA - DIRECT BY MR. GRIMES

1 type of fluid related to the incident?

2 A: Usually, yes, sir.

3 Q: Okay. There are two different colors of markings on
4 those -- on those clothing, and maybe you can look at it
5 again. I don't know.

6 A: Oh, I have the -- I have them, but I remember.

7 Q: Okay. On 5 through 8, what do those two different colors
8 indicate?

9 A: On 5 through 8, there's -- there may even be three
10 colors. There is the markings from the original processing in
11 1985. There's -- the silver is the -- the markings I made
12 when I tested for the presumptive test for blood. And the
13 black 1.1, 1.2, or -- or 2.1, 2.2 are the markings I cut when
14 I took cuttings from it. So there's potentially three colors.
15 I don't remember the color that the original '85 testing used.
16 It may be black as well, but that's the reason I used silver
17 the first time I processed it, so it would be a different
18 color than what originally was on there.

19 Q: Did you use a different color for any particular reason?

20 A: Just to try to denote the different times it had been
21 processed just -- just to limit confusion.

22 MR. GRIMES: Please answer any questions Mr. Wilkes has
23 for you.

24 THE COURT: Cross-examination.

25 MR. WILKES: Thank you, Your Honor.

VERONA HERRERA - CROSS BY MR. WILKES

1 CROSS-EXAMINATION

2 BY MR. WILKES:

3 Q: Were the DNA tests that were done the second time
4 pursuant to the second order -- were they done on the exact
5 same samples that you did the presumptive test for blood or
6 different?

7 A: Okay. Are you asking did I collect areas from the pants
8 and the shirt that I had tested for the presumptive test for
9 blood the first time?

10 Q: Yes.

11 A: Okay. No, sir. I do not believe any of those were the
12 same areas. I -- I am not absolutely positive, but I don't
13 think those were the same areas.

14 Q: Okay. Did you -- you chose the spots that looked like --
15 for the presumptive tests, did you choose the places on the
16 shirt that you would presumptive test?

17 A: Okay. When I processed it the first time, I tested any
18 areas that appeared to be blood visually --

19 Q: Okay. Did you --

20 A: -- with the shirt.

21 Q: Did you cut those out or just --

22 A: No.

23 Q: -- swabbed them?

24 A: I just circled them, swabbed them, and then wrote -- it
25 looks like -- it looks like an equal sign and PHEN beside it.

1 Q: Gotcha.

2 A: That indicates that it was a negative test. The name of
3 the test is abbreviated to PHEN. So . . .

4 Q: I understand. Did -- so tell me how did you -- there was
5 later samples submitted for DNA that could have been vomitus?

6 A: Right. Yes, sir.

7 Q: Did you choose the spots that could have been vomitus?

8 A: Yes, sir.

9 Q: And if I understood you correctly, you're saying that
10 they may or may not have been the same that you presumptively
11 tested?

12 A: They weren't. They would not have been all of the areas
13 that I presumptively tested.

14 Q: Okay.

15 A: But the stained area may have corresponded to an area
16 that was negative for blood or for the presumptive test for
17 blood. I don't have those cuttings in front of me, so I don't
18 really -- it wouldn't have noted that because I had already
19 tested for the blood.

20 Q: Okay. You had said, I think, that you were told by
21 somebody at the Sheriff's Office that the original cuttings no
22 longer existed. Do you remember who that was?

23 A: That was Lt. Clay Adams of the Aiken County Sheriff's
24 Office, and he just said that the original cuttings do not
25 exist.

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VERONA HERRERA - CROSS BY MR. WILKES

1 Q: Was anything else done to ascertain what happened to the
2 original cuttings?

3 A: Once they were returned from SLED, we have no control
4 over how they're handled or how or what could have happened to
5 them. To the best of my knowledge, those would have been
6 returned in 1985 with the evidence. That was common practice,
7 as far as I know. So I have no idea of what may have happened
8 to those. I don't know if they were admitted into court or
9 whether they weren't. It -- I have no idea and no way of
10 knowing after it leaves SLED.

11 Q: And -- but there is somebody -- Lt. Clay Adams would be
12 somebody that would have knowledge, I guess, of what they did
13 with those samples?

14 A: I have no idea where he just knew they didn't have them.
15 I don't know what he knows. I just know he told me they were
16 not submitting them. They did not have them.

17 Q: Okay.

18 MR. WILKES: Okay. No further questions. Thank you.

19 THE COURT: Anything further from this witness?

20 MR. GRIMES: Just -- just on that.

21 REDIRECT EXAMINATION

22 BY MR. GRIMES:

23 Q: You said there was an abbreviation, PHEN?

24 A: Yes.

25 Q: And that's for?

APPENDIX 91

VERONA HERRERA - REDIRECT BY MR. GRIMES

1 A: Phenolphthalein.

2 Q: Phenolphthalein? And that's the reagent that tells you
3 whether or not something is presumptive positive for blood?

4 A: There's a two-step process. It's the phenolphthalein
5 solution and also hydrogen peroxide are dropped on it.

6 Q: Okay. And does that destroy the DNA?

7 A: It does not. DNA testing can be done after that process
8 and routinely was.

9 Q: Do you -- do you know what was used in 1985 for test --
10 presumptive testing?

11 A: In the file that listed what the test was, I am not
12 familiar with that test at all. It's not a test that's still
13 used at SLED. So I don't know whether it would react the same
14 way or what the chemicals in it were.

15 Q: Are you familiar with whether or not the original
16 cuttings in this case were consumed in testing or returned to
17 the Sheriff's Office?

18 A: I have no idea.

19 Q: Okay. Generally, are items consumed in testing?

20 A: Not -- not in -- not in the time that I left SLED. In my
21 whole time at SLED, every effort was made not to consume -- to
22 consume testable items. There were times when it just wasn't
23 feasible not to, but that was always noted in a case file
24 somewhere.

25 Q: Okay. But are you aware of how -- how that would go in

1 1985?

2 A: I have no idea.

3 Q: Okay. Your communication with Lt. Adams is just that
4 those items didn't exist, so they weren't available for
5 testing?

6 A: That's -- that's what I was informed of. Yes, sir.

7 Q: And you wouldn't have any idea of where and how the items
8 don't exist anymore?

9 A: I have no idea.

10 Q: Okay.

11 THE COURT: All right. Thank you. You may step down.

12 THE WITNESS: Thank you.

13 THE COURT: Call your next witness.

14 MS. HALL: The State calls Jennifer Bartman.

15 THE CLERK: The testimony you shall give to the Court in
16 this case will be the truth, the whole truth, and nothing but
17 the truth, so help you God?

18 THE WITNESS: Yes.

19 THE CLERK: State your full name for the Court, spelling
20 your last.

21 THE WITNESS: My name is Jennifer Bartman, B-a-r-t-m-a-n.

22 JENNIFER BARTMAN, being first
23 duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. HALL:

JENNIFER BARTMAN - DIRECT BY MS. HALL

1 Q: Ms. Bartman, where are you currently employed?

2 A: I'm currently employed with the South Carolina Law
3 Enforcement Division, which is commonly referred to as SLED.

4 Q: What is your position there?

5 A: I am currently the technical leader of the DNA casework
6 department.

7 Q: How long have you held that position?

8 A: I've held that position since May of 2021.

9 Q: If you could briefly give us your educational background
10 that qualifies you for that position?

11 A: I have a bachelor's degree in biology from Hope College
12 in Michigan. I also have a master's degree in forensic
13 science with a concentration in forensic biology from Virginia
14 Commonwealth University in Virginia, Richmond, Virginia. I've
15 also completed approximately a year of on-the-job training at
16 SLED in the proper techniques and procedures of the SLED DNA
17 casework laboratory.

18 Q: So since being hired at SLED in that position, you've
19 received additional training?

20 A: Yes. That's correct.

21 Q: And have you been previously qualified as an expert in
22 the area of DNA analysis before?

23 A: Yes, I have.

24 MS. HALL: Your Honor, at this time, the State moves to
25 qualify Ms. Bartman as an expert in the field of DNA analysis.

JENNIFER BARTMAN - DIRECT BY MS. HALL

1 MR. WILKES: No objection.

2 THE COURT: So qualified.

3 BY MS. HALL:

4 Q: Ms. Bartman, if you could tell us how you became involved
5 in this case, what date you began working on this case?

6 A: According to the SLED chain of custody, I took the
7 evidence into my custody that I worked on December 15 of 2015,
8 and I began my work in January of 2016.

9 Q: Okay. And when you get a case for analysis, what
10 information do you have before starting that analysis?

11 A: Before starting analysis, I typically review the case
12 record, which may include any incident reports, packing slips
13 which will account for the items that are submitted to the
14 laboratory with the requests that are given at that time. If
15 there's any additional work that had already been done by
16 SLED, I would review those worksheets and results. For
17 example, in this case, I would have reviewed Verona Herrera's
18 worksheets and results prior to starting my analysis.

19 Q: And you would have her notes from those examinations, as
20 well as her reports?

21 A: Yes. That's correct.

22 Q: So if you could tell me after reviewing those items,
23 getting the evidence out of the evidence locker, what was the
24 process for you analyzing those cuttings?

25 A: For DNA analysis in this case, it was submitted as

JENNIFER BARTMAN - DIRECT BY MS. HALL

1 cuttings from items of clothing. So DNA is typically a four-
2 step process.

3 So the first step is extracting the DNA from whatever
4 substrate it's submitted on, whether it be clothing or a swab.
5 The next step is quantitation, which is where I determine how
6 much of DNA is present on the item.

7 Depending on those results, I then amplify the DNA, which
8 essentially is making billions of copies -- it's similar to a
9 copy machine -- of certain sections of the DNA, which is then
10 generated into a DNA profile if there is enough sufficient DNA
11 present to develop a profile.

12 Q: And what were you able to determine during that process
13 with each of the items Ms. Herrera just testified to, Items
14 1.1, 1.2, 2.1, 2.2, 2.3, and 2.4?

15 A: No DNA profile was developed from Items 1.1, 1.2, 2.1,
16 2.2, 2.3, or 2.4.

17 Q: So despite not finding any DNA profile, you still
18 followed through with the entire process of analyzing these
19 items as if there had been something found?

20 A: This conclusion on my report is after I made the -- went
21 through the entire process.

22 Q: All four steps --

23 A: Correct.

24 Q: -- were done on each of the items Ms. Herrera discussed?

25 A: That's correct. The full DNA process was performed on

JENNIFER BARTMAN - DIRECT BY MS. HALL

1 all of the items, and no DNA profile was developed from any of
2 them.

3 Q: I'm going to show you what's been marked as State's
4 Exhibit 11 for purposes of this hearing.

5 A: Okay.

6 Q: Is that the report you generated and signed after your
7 examination?

8 A: Yes, it is.

9 MS. HALL: Your Honor, the State would move to enter
10 State's Exhibit 11 for purposes of this hearing.

11 THE COURT: Any objection?

12 MR. WILKES: None, Your Honor.

13 THE COURT: State's 11 is admitted.

14 (WHEREUPON, State's Exhibit Number 11, DNA report, was
15 admitted into evidence.)

16 BY MS. HALL:

17 Q: And I believe we kind of talked about this maybe ad
18 nauseum, but the items that you tested, 1.1 through 2.4 on
19 State's Exhibit 11, are not the same items that were tested in
20 1985?

21 A: That's my understanding, yes.

22 Q: And the testing that you conducted on these items, was
23 that testing available in 1985?

24 A: No, it wasn't.

25 MS. HALL: Your Honor, I have no further questions for

1 this witness.

2 THE COURT: Cross-examination?

3 MR. WILKES: No questions, Your Honor.

4 THE COURT: Okay. Thank you. You may step down.

5 Call your next witness.

6 MR. GRIMES: Judge, we don't have any further witnesses.

7 THE COURT: Okay. Let me hear from you, Mr. Wilkes.

8 MR. WILKES: Thank you, Your Honor.

9 So, as I've said, we got into this with the PCR turned
10 into a Rule 59 motion and in the middle of the process
11 discovered that the lack of DNA may have a different meaning
12 now that we know that the original samples weren't tested.
13 Yet I must still present the issue remains of what happened to
14 the samples. We're absolutely convinced that those samples do
15 not exist. If they don't, where did they go? Because I have
16 a good faith/bad faith argument that I would have to make and,
17 of course, I don't have access to the records of SLED or Aiken
18 County.

19 So discovering that Lt. Clay Adams had knowledge that
20 these did not exist, I'm compelled to ask the Court to give us
21 the opportunity to have Aiken County officials, whoever had
22 those samples when they came back, come and explain where they
23 are or what happened to them. They may still be there.

24 And I think we can't conclude the hearing and have the
25 Court asked to make a ruling without that evidence because

1 that would be essential. And discovering that now, I would
2 ask for us to have that opportunity to either question Lt.
3 Adams or the custodian, or find out if they, in fact, do exist
4 or have they exhausted all means of locating them. We might
5 find out they're in the evidence vault in the courthouse.
6 There's no telling, but it doesn't sound like we've exhausted
7 law enforcement's ability to search and give an answer as --
8 that's conclusive.

9 So we would ask for the hearing to be continued or --
10 unless somebody can come up on short notice, that we continue
11 this to another time and allow us to call the appropriate
12 people at the Sheriff's Office.

13 THE COURT: What says the State?

14 MR. GRIMES: Your Honor, I would -- I would ask to
15 introduce the testimony of the SLED analyst at the trial of
16 this case. This is a Patsy Heaven [ph]. She testified about
17 this blood in the trial. The reason I think that's relevant
18 is because the Court is going to have to determine what any
19 further testing -- based on the statute in Section 100, would
20 any further testing be probative, be relevant.

21 And quite frankly, based on what happened in this trial,
22 the evidence in the trial, the allegations in the trial, the
23 testimony that came from the blood in this case and the
24 testimony that came here today, I don't -- I don't know that
25 they -- so if the -- the results of that testing can't really

1 be exculpatory, if that makes -- if it's not the victim's
2 blood, if it's the defendant's blood, they both have type O.

3 The jury knew that at the time of the trial. They knew
4 that it was type-O blood. They knew that the victim had type-
5 O blood. It wasn't any -- 40 percent of the population had
6 type-O blood. They knew that they weren't going to be able to
7 identify the defendant or the victim based on the fact that it
8 was type-O blood, and it could have been probative.

9 Blood type could have been probative under different
10 circumstances. Say the blood on the shirt was type-A blood,
11 and the victim had type-A blood and the defendant had type-O
12 blood. That would have been pretty probative. On the
13 circumstances of this trial, everybody had type-O blood, and
14 40 percent of this population had type-O blood. Nobody was
15 identified based on the type-O blood.

16 If this -- if these cuttings did exist and they were
17 analyzed for DNA and it turns out that it was not the victim's
18 DNA, that it's the defendant's or somebody else's, it's not
19 exculpatory because the jury in this trial never could
20 identify the victim's blood being on the defendant's shirt
21 based on the fact that it was type-O, the same type that the
22 defendant has.

23 And if anything, the testimony at trial didn't do
24 anything but say we looked at this. Nothing really came of it
25 helpful in this case. You're going to have to rely on the

1 eyewitness, which is what happened. And I would be happy to
2 make this a Court's exhibit. It's relatively short
3 testimonies, just a few pages, maybe four or five.

4 THE COURT: If that's the case, why did the court order
5 post-conviction DNA testing to begin with?

6 MR. GRIMES: Well, that's a -- that's a good question.
7 It's probably generously ordered to start with, I guess, but
8 the Court also didn't know that -- of course, blood stains, I
9 guess they probably would always examine, but just as Ms.
10 Herrera testified, they would expect the victim's blood to be
11 -- or victim's DNA to be on the defendant's clothing. They
12 would expect the defendant's DNA to be on the defendant's
13 clothing because they lived in the same house.

14 He was carrying her after she was injured. In this
15 trial, there was a witness to that. He admitted to it, I
16 believe. I don't -- I don't know how any of this would be
17 exculpatory, particularly considering the fact that he
18 admitted to carrying her after she was in a condition where
19 she was bleeding.

20 I don't want to be arguing against a prior finding, but
21 there's a little bit more information today than there was at
22 the time that that hearing occurred back in 2015, particularly
23 including the fact that everybody apparently agreed that there
24 were items that could be tested. I think they were thinking
25 about the cuttings, and they don't exist. So --

1 THE COURT: Well, but that's the issue now is whether the
2 cuttings exist. So -- and it's not that you're arguing
3 against a prior finding necessarily. It's a change in
4 position of the State. I know that everyone was under the
5 assumption at that time that the cuttings -- the specific
6 cuttings existed or that they still exist, and the question
7 now is whether they do. But assuming that they did exist,
8 everyone was on the same page and the testing was ordered.

9 So I understand all of the testimony today. I have a
10 visual aid. Right? But Mr. Wilkes's question right now is
11 going back to my visual aid. Where are these? Let's make
12 sure that these cuttings don't exist. And if they do, do they
13 not need to be tested?

14 If they exist, that puts us back in the position that
15 everyone was in when Judge Early signed the first order
16 granting the testing on September 16th, 2014. So do we not
17 need to determine whether we can reset to that position and
18 have these cuttings tested with the State's stipulations as --
19 as it was -- as they were at that time?

20 MR. GRIMES: Well, Your Honor, there was a September 16
21 order, which I think is -- that's the one you're referencing.
22 Then there was a subsequent order regarding re-testing the --
23 I think this is -- I'm trying to find which order it was, but
24 it was a subsequent order sending these items back to SLED. I
25 believe it was a 2015 order.

1 THE COURT: Right. But that's because in 2014 everybody
2 thought these cuttings existed. It turns out they didn't, and
3 what was tested in -- well, we don't know that they don't
4 exist, but they weren't used. What was tested based on the
5 2014 order was this; right? The remainder of the clothing
6 without the cuttings, and SLED says, well, there's no blood
7 here.

8 So then the -- the 2015 order, the subsequent order then
9 says, we'll take this with the cuttings removed and test it
10 for any biological material, any DNA, but that's still only
11 testing this.

12 MR. GRIMES: I think --

13 THE COURT: My question is where are these?

14 MR. GRIMES: Well, Your Honor, this order from October
15 13th, 2015, they came back to court. They were aware that
16 these cuttings didn't exist from 1985, and that conversation
17 between Ms. Herrera and Lt. Adams had already occurred and the
18 parties were aware that the items went to SLED and they were
19 tested for presumptive blood, and they came back to court.

20 And the result of that coming back to court was resending
21 those two items of clothing back up to SLED for more testing.
22 It wasn't anything to do with a search for what happened to
23 the cuttings that had kind of been undocumented for 30 years
24 or almost 40 years now.

25 So in 2015, the parties were in this same position, and

1 in 2015, the result of that was ordering the subsequent
2 testing and not ordering an examination of where these --
3 where these original 1985 cuttings were. And so I would say
4 that if that's what they wanted, they could have or probably
5 did request that back in 2015 before this order was issued and
6 -- but this was the order that was issued when everybody was
7 aware of the situation we are in right now.

8 MR. WILKES: May I respond?

9 THE COURT: Yes, sir.

10 MR. WILKES: I'm not sure that anyone knew that back in
11 2015. It doesn't say in either one of those orders that the
12 samples had been destroyed, so test some more samples. I
13 didn't see that, and it came as a surprise to me when I found
14 out that the samples were different. So -- so we have to get
15 back to what my client is entitled to under the first two
16 orders. We would simply ask for what we had stated earlier,
17 but I would like to say it's to the exculpatory value.

18 The State introduced evidence that there was the child's
19 blood on my client's shirt. We don't know what the jury took
20 as evidence. We don't know how they weighted evidence. And
21 if it turned out that that was not the child's blood on his
22 shirt and we could prove that through testing of the samples
23 that they found, that constitutes exculpatory evidence. And
24 that's where we are.

25 MR. GRIMES: Well, two things. One, I'm told that Lt.

1 Adams is available. I know Mr. Wilkes is here from out of
2 town. He can be over here probably in a few minutes, and we
3 can take some testimony from him.

4 THE COURT: Oh, we'll do that then.

5 MR. GRIMES: The -- the idea that the absence of DNA is
6 exculpatory when the presence of DNA was never proven, never
7 even discussed in this trial because they didn't even have DNA
8 in South Carolina --

9 THE COURT: The presence of blood was though.

10 MR. GRIMES: The presence of blood was testified to and
11 weighed by the jury, but they had no idea about DNA. And I
12 couldn't argue with the fact that if they said this was type-A
13 blood and it belonged to the victim, and the defendant had
14 type-O blood and this had to be the victim's blood in this
15 case and it turned out that that was not the victim's blood,
16 but that's not what happened in this trial.

17 And so the jury was aware of the existence of blood.
18 They were aware of the type of the blood. If that blood was
19 not the victim's blood, it doesn't prove that the defendant
20 didn't kill this child. All it -- all it does is call into
21 question some evidence that was in the trial. That's not --

22 THE COURT: Right. Calls into question, which --

23 MR. GRIMES: That's not exculpatory.

24 THE COURT: -- can be exculpatory.

25 MR. GRIMES: Exculpatory evidence goes to prove that the

1 defendant didn't commit the crime. That wouldn't disprove
2 anything. And if anything --

3 THE COURT: I haven't got a prosecutor brain, but the
4 jury would have wanted to know that that is random Jane Doe's
5 blood on his shirt and that the victim's blood is nowhere on
6 there. Right? That's potentially exculpatory.

7 MR. GRIMES: Well, maybe -- maybe we have a -- I agree
8 the jury would have wanted to know that, but I don't -- I
9 don't concede that that disproves the defendant committed the
10 crime, which maybe we have -- maybe we have a difference of
11 exculpatory versus just inconclusive.

12 But in any event, we would ask for probably 15 or 20
13 minutes so we can get Lt. Adams over here.

14 THE COURT: Absolutely.

15 MR. GRIMES: Okay.

16 THE COURT: And it's a motion for a new trial. It's not
17 a judgment of acquittal. I mean, it's -- right. It doesn't
18 -- that would not prove beyond a reasonable doubt that this
19 gentleman did not commit the crime. I wouldn't be completely,
20 you know, setting him free. It's a new trial where a jury can
21 -- a jury can consider all those things.

22 MR. GRIMES: But I would -- I would say that the
23 relevance of the blood type in this trial was just to show the
24 jury that we looked at it and nothing really happened from it.
25 We can't prove it or disprove it based on just being type of

1 blood.

2 And I don't know what the argument was or the reasoning
3 was. I didn't try this case. In fact, our current clerk of
4 court tried this case along with a prosecutor that's not here
5 anymore. So I don't know what their theory was, but plenty of
6 times SLED comes and testifies that, hey, we looked at this
7 evidence and it was examined. We can't tell you whether this
8 is the bullet that happened, we can't tell you whether it came
9 to the gun, but the jury wants to know that somebody looked at
10 it and tried to find the answer.

11 And it sounds like that's what happened in this case, and
12 that's why I'm making the point that this is not exculpatory
13 because they didn't -- there wasn't anything conclusive about
14 this blood type testimony at trial other than somebody looked
15 at it and we tried to figure it out.

16 THE COURT: There -- there really doesn't have to be
17 because, of course, nothing at that time mentioned DNA. We
18 didn't have that technology. DNA was a foreign concept to
19 people. Right?

20 So you don't have to have -- rely on DNA and gotten it
21 wrong. That's not the purpose of the statute. No one would
22 have known in 1985 to utter the acronym DNA in a trial.
23 Right? So it's not about presenting the wrong evidence. It's
24 presenting the case, and it turns out there is a way now to
25 test the evidence that may give some different result that may

SHANNON ROSENKRANTZ - DIRECT BY MR. GRIMES

1 have changed the outcome of the trial.

2 But yeah, let's take 15 -- 20 minutes and get Lt. Adams
3 here, and we'll continue with the hearing. In the meantime,
4 we can do a guilty plea or two. So let's stand down.

5 (WHEREUPON, there was a break in the proceedings from
6 3:16 p.m. until 4:15 p.m., after which the proceedings
7 resumed as follows.)

8 THE COURT: Are we ready to --

9 MR. GRIMES: We have two -- we have two witnesses.

10 THE COURT: Okay. Let's get the defendant back down.

11 (WHEREUPON, there was a pause in the proceedings, after
12 which the proceedings resumed as follows.)

13 THE COURT: All right. Yes, sir. We're back on the
14 record.

15 MR. GRIMES: The State calls Shannon Rosenkrantz.

16 THE CLERK: The testimony that you give the Court in this
17 case will be the truth, the whole truth, and nothing but the
18 truth, so help you God?

19 THE WITNESS: Yes.

20 SHANNON ROSENKRANTZ, being first
21 duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. GRIMES:

24 Q: Ms. Rosenkrantz, what is your position with the Clerk's
25 Office?

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SHANNON ROSENKRANTZ - DIRECT BY MR. GRIMES

1 A: I am the court administrator for General Sessions Court
2 for the Clerk of Court's Office.

3 Q: All right. You didn't work at the -- at the Clerk's
4 Office in 1985; right?

5 A: No, I did not.

6 Q: Okay. Does the clerk generally store inform -- exhibits
7 from trials that are tried in General Sessions in Aiken
8 County?

9 A: Yes.

10 Q: Okay. And do you all keep those in a particular
11 location?

12 A: Yes. We -- they are behind two locked doors.

13 Q: Okay. Were you able to find exhibits related to the
14 Timothy -- Timothy Green case from 1985 today?

15 A: Yes.

16 Q: All right. And what were the exhibits that were stored
17 with the Clerk's Office?

18 A: In the box that had the case number on it, there was a
19 folder, which was from an appeal that was filed, and then
20 there was also another envelope that had a bottle containing
21 liquid in it.

22 Q: All right. Was there any fabric cuttings that you were
23 able to find?

24 A: No, there was not.

25 Q: So just those two things in the box?

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SHANNON ROSENKRANTZ - DIRECT BY MR. GRIMES

1 A: Correct.

2 Q: And were you able to locate -- and I'm not entirely sure
3 what it is, but I think you're holding it. What is -- what is
4 that?

5 A: Apparently, back in 1985, they kept the exhibits listed
6 on a Rolodex card, and that is what I have in my hand.

7 Q: And what -- and what does it indicate about the exhibits?

8 A: That there are State's Exhibits Number 2, men's black
9 pants, Number 3, men's light blue sleeve shirt -- short sleeve
10 shirt, and Number 4, bottle of worm medicine.

11 Q: Okay.

12 A: And it also has on it that on -- there are some
13 handwritten notes that said on 9/29 of 2014, Number 2 pants,
14 Number 3 shirt sent to SLED per order. And then on 2/25 of
15 2015, State's Exhibit 2 and 3 returned from Aiken County
16 Sheriff's Office. And then State's Exhibit Number 2, pants,
17 black, State's Exhibit 3, blue shirt, sent to SLED per order
18 10/28 of '15. And then there is another Rolodex card which
19 has the -- what is in the envelope in the box, and it is three
20 appeal briefs on Timothy Green.

21 Q: So there's -- there's no Item 1 listed on that original
22 Rolodex card?

23 A: No, there is not.

24 Q: All right. And in the box with the items from this
25 trial, there -- there were no fabric cuttings?

CLAY ADAMS - DIRECT BY MS. HALL

1 A: There was not.

2 MR. GRIMES: Thank you. We don't have any further
3 questions.

4 THE COURT: Any cross-examination?

5 MR. WILKES: Yes, Your Honor. If I can have just a
6 second? I'm reading the transcript.

7 No questions.

8 THE COURT: Okay.

9 Thank you. You may step down.

10 Call your next witness.

11 MS. HALL: The State calls Lt. Clay Adams.

12 THE CLERK: The testimony you shall give in this case --
13 to the Court in this case shall be the truth, the whole truth,
14 and nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Thank you.

17 CLAY ADAMS, being first duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. HALL:

21 Q: Lt. Adams, where are you employed?

22 A: Aiken County Sheriff's Office.

23 Q: And in what capacity?

24 A: I am the lieutenant of forensic investigations.

25 Q: What all does that entail briefly? Not everything that

1 you do. Briefly.

2 A: Briefly, I oversee the day-to-day operations of our crime
3 scene investigators, our forensic drug lab, our forensic
4 processing lab, and the evidence custodians.

5 Q: Okay. So part of your job duties is to oversee evidence,
6 evidence that's logged into evidence with the Sheriff's
7 Office, every case that comes through the Sheriff's Office?

8 A: Yes, ma'am.

9 Q: And were you employed with the Sheriff's Office back in
10 2014?

11 A: I was.

12 Q: In that same capacity?

13 A: Yes, ma'am.

14 Q: Were -- at some point, were you contacted to look into
15 items of evidence that would be stored in reference to Timothy
16 Green's case, Sheriff's Office Case Number 85-01717?

17 A: Yes, ma'am.

18 Q: And were you able to locate any items of evidence at the
19 Sheriff's Office?

20 A: No, ma'am. In 2014, no, ma'am.

21 Q: Okay. So in 2014, you were contacted by SLED?

22 A: In 2014, we received a court order to have items that
23 were in the possession of the Clerk of the Court to be
24 transported to the State Law Enforcement Division for testing.

25 Q: Okay. All right. And I'm going to show you -- I believe

CLAY ADAMS - DIRECT BY MS. HALL

1 you have a copy -- the evidence property receipt held at the
2 Sheriff's Office. If you could review that for me?

3 A: Yes, ma'am.

4 Q: Is that an accurate copy of the property receipt held at
5 the Sheriff's Office?

6 A: It is. Yes, ma'am.

7 MS. HALL: Your Honor, we would move to enter State's
8 Exhibit 12 into evidence for purposes of this hearing.

9 THE COURT: Any objection?

10 MR. WILKES: I'm sorry. I was -- no objection.

11 THE COURT: I forget the number, but it's admitted.

12 MS. HALL: I'm sorry?

13 THE COURT: State's 12 is admitted.

14 (WHEREUPON, State's Exhibit Number 12, evidence property
15 receipt, was admitted into evidence.)

16 MS. HALL: Yes, Your Honor. And if I could hold on to it
17 just while I talk with the witness?

18 BY MS. HALL:

19 Q: Lt. Adams, if you could review that property receipt with
20 me? If -- what items are listed as being at the Sheriff's
21 Office in this case?

22 A: Currently, we are in possession of a black pair of pants,
23 State's Exhibit 2, and one blue shirt, State's Exhibit 3.

24 Q: And how did y'all come in possession of those two
25 specific items, State's Exhibit 2 and State's Exhibit 3?

APPENDIX 113

CLAY ADAMS - DIRECT BY MS. HALL

1 A: I acquired them from the Clerk of Court's Office.

2 Q: Pursuant to the order --

3 A: Yes, ma'am.

4 Q: -- that you referenced earlier? Okay. And what did you

5 do with those two items after you retrieved them from the

6 Clerk of Court?

7 A: Those two items were then -- a chain of custody was

8 initiated. Once I received them from the Clerk of Court, they

9 were transported to the Sheriff's Office, where they were

10 logged into our evidence facility and given a barcode, a

11 specific barcode number for each item. After those items were

12 logged into our facility, they were then transported to the

13 State Law Enforcement Division.

14 Q: And were any other items removed from those two exhibits

15 to your knowledge?

16 A: No, ma'am.

17 Q: So the items that you received from the Clerk's Office

18 were the exact items that were then sent to SLED?

19 A: Correct. Yes, ma'am.

20 Q: Listed on this evidence property receipt as Item 1 and 2,

21 and State's Exhibit 2 and 3?

22 A: Correct.

23 Q: Okay. Black -- Item Number 1, black pair of pants?

24 A: Yes, ma'am.

25 Q: And Item Number 2, a blue shirt?

1 A: Yes, ma'am.

2 Q: Okay. And do you currently have those two items in
3 custody of the Sheriff's Office?

4 A: I do. Yes, ma'am.

5 Q: Okay. And did you bring those items with you today?

6 A: Yes, ma'am.

7 MS. HALL: And, Judge, if we want to, we can open those
8 to review them, to make sure there's nothing else in there.

9 THE COURT: I don't know that that's necessary.

10 MS. HALL: Okay. I just want to make sure by the defense
11 that there's no issue with the items that are in that box.

12 MR. WILKES: There's none.

13 MS. HALL: Okay.

14 BY MS. HALL:

15 Q: And the evidence property receipt that's marked as
16 State's Exhibit 12 that we're discussing, those are the only
17 items, to your knowledge, that the Sheriff's Office has on
18 this case?

19 A: That is correct.

20 Q: There's nothing else related to the 1985 case, no other
21 items that the Sheriff's Office has?

22 A: No, ma'am.

23 Q: Okay. And did you look for any other possible evidence
24 at the Sheriff's Office prior to coming today?

25 A: Yes, ma'am.

CLAY ADAMS - DIRECT BY MS. HALL

1 Q: And the only items that you found were these two items
2 that you brought to court?

3 A: That's correct.

4 MS. HALL: I have no further questions. Please answer
5 any questions from the attorney.

6 THE COURT: Mr. Wilkes.

7 CROSS-EXAMINATION

8 BY MR. WILKES:

9 Q: You -- okay. So you're saying that you have looked for
10 any evidence that might exist relating to this case?

11 A: I've looked both in our file systems, our old file
12 systems, and in the actual evidence facility itself. Yes,
13 sir.

14 Q: Okay. So if there were cuttings that SLED tested and
15 SLED sent back to Aiken County, theoretically they would be in
16 that file? They should be in the file if they had been sent
17 back?

18 A: Yes, sir.

19 Q: Okay. Is there any paperwork other than -- the paperwork
20 that you've seen in the file relating to the evidence, is
21 there any mention of any cuttings, pieces, anything at all
22 that was returned, sent to SLED or returned from SLED?

23 A: The only evidence file that we have was generated in
24 2014, when I obtained the evidence from the Clerk of Court.
25 So no, sir, we don't have any files predating 2014.

CLAY ADAMS - CROSS BY MR. WILKES

1 Q: Okay. So -- and the evidence file that you have from
2 2014, why was that created?

3 A: Because we did not have an existing evidence file.

4 Q: And what was your role? Your role was picking up the
5 evidence from the clerk?

6 A: Yes, sir.

7 Q: Okay. And that's why that was created. So in 1985, you
8 have no records of any evidence existing in the Sheriff's
9 Office custody?

10 A: Of this case, no, sir.

11 Q: Would there be any paperwork, even if -- if the shirt and
12 pants were taken into evidence in 1985, presumably there would
13 have been some paperwork to show that at the Aiken County
14 Sheriff's Office if it was in there; right?

15 A: I have no clue who collected evidence in 1985. If it was
16 a sheriff's office employee, there should be. Yes, sir. If
17 -- but back then, SLED typically worked our crime scenes.

18 Q: Okay. And you would have -- when you looked, you had the
19 case number from '85. So you looked, and there is no records,
20 not just anything in a file, but there's no records from 1985
21 relating to evidence in this case?

22 A: That's correct.

23 Q: Okay. Would there -- are there other cases where there
24 -- there is evidence from 1985? Do y'all have evidence?

25 A: Yes, sir.

CLAY ADAMS - CROSS BY MR. WILKES

1 Q: You do? Okay. And would it be unusual for there to be
2 no entry or documentation from this case from those clothes
3 from 1985?

4 A: I --

5 Q: I mean, you have -- you have some cases where there's
6 evidence from 1985 in your custody still; right?

7 A: Correct. Yes, sir.

8 Q: Okay. Okay. But there's no explanation as to why
9 there's no records of the shirt and the pants from 1985, is
10 there?

11 A: No, sir. I don't have any documentation that these items
12 have ever been to the Sheriff's Office.

13 Q: Okay.

14 MR. WILKES: Nothing further.

15 THE COURT: Anything further from this witness?

16 MS. HALL: No, Your Honor.

17 THE COURT: Okay. Thank you. You can step down.

18 (WHEREUPON, there was a pause in the proceedings as
19 counsel conferred, after which the proceedings resumed as
20 follows.)

21 MR. GRIMES: Okay. Your Honor, we'd move to introduce
22 State's Exhibit 13, which is the testimony of Patsy Heaven.
23 She's a SLED analyst that tested about -- testified at trial
24 about the blood type. I don't think there's any objection
25 from the defense.

1 THE COURT: Any objection to State's 13?

2 MR. WILKES: None, Your Honor. Does the Court by chance
3 have the entire transcript in the record? Is that part of the
4 record yet? If it's not there --

5 THE COURT: I don't know. Let's ask the clerk.

6 MR. WILKES: And if it's not, let's just -- for the
7 record, let's submit the whole transcript as an exhibit, not
8 that -- just so the Court's file is complete.

9 THE COURT: So State's 13 -- State's 13 is admitted, but
10 let's also --

11 MR. WILKES: Under that strange rule that says if you
12 admit a part of something --

13 THE COURT: Yes.

14 MR. WILKES: Let's do the whole thing would be better.
15 And I have that if we can mark that.

16 THE COURT: It is in the file.

17 MR. WILKES: It is in the file?

18 THE COURT: Yes.

19 MR. WILKES: Yay, that was easy.

20 (WHEREUPON, State's Exhibit Number 13, trial transcript,
21 was admitted into evidence.)

22 MR. GRIMES: And the defense is reviewing our, I think,
23 final exhibit that we'll be submitting.

24 THE COURT: Okay.

25 (WHEREUPON, there was a pause in the proceedings, after

1 which the proceedings resumed as follows.)

2 MR. GRIMES: And, Judge, I think finally State's Exhibit
3 14, which is documentation from SLED regarding the items of
4 evidence just indicating who submitted them in the first place
5 in 1985, which it indicates is Investigator Stevens. I
6 believe the information is Investigator Stevens collected the
7 shirt and the pants directly from Timothy Green and took them
8 directly to SLED and -- for analysis. So this is the -- I
9 guess, the origination of the pants and shirt chain of
10 custody.

11 THE COURT: Any objection from the defense of State's 14?

12 MR. WILKES: None.

13 (WHEREUPON, State's Exhibit Number 14, SLED chain of
14 custody, was admitted into evidence.)

15 MR. GRIMES: Your Honor, I don't believe State's 14
16 indicates what happened to the cuttings after -- after they
17 were analyzed for blood type, whether they were consumed or
18 stored or where they were. We have testimony at the hearing
19 that they're not at SLED, they're not at the Sheriff's Office,
20 they're not at the Clerk's Office.

21 THE COURT: Okay. Mr. Wilkes, let me hear from you.

22 MR. WILKES: Thank you, Your Honor.

23 So, factually, I think we are -- we end with a mystery.
24 Exhibit 14, in fact, shows that S.M. Derrick [ph], I believe,
25 was the person submitting to SLED the sample, the cloth for

1 testing the blood -- for testing what was believed to be
2 blood. There's no signature on it from SLED showing who
3 received it, nor is there any paperwork or explanation from
4 the State on where it went after that.

5 So the dilemma is, is Mr. Green entitled to relief if the
6 State can't show what it did with the samples? I can't -- the
7 question of whether it's testable or not if it was there, it
8 was testable. It could be exculpatory. He could be entitled
9 to relief.

10 The fact that it ends in a mystery, I would submit to the
11 Court that it would be upon the State to show what happened to
12 it because the defendant would be entitled to -- to testing if
13 it existed. And we can only go so far. The property is in
14 the possession of the State and, if the State loses it, I
15 would submit that that would be grounds to support a new
16 trial.

17 I would ask the Court to address the issue of those
18 original pieces. I think that the original order for testing
19 does state that the testing was to be conducted on the items
20 of clothing, but that was clearly to challenge the question of
21 whether or not it was, in fact, the victim's blood.

22 So, Your Honor, we've ended in a mystery, unexplained
23 where it went. I can't see anything else that I can do to try
24 to help bring the evidence to the Court's attention or to help
25 discover where the samples might be so that my client could

1 have them tested.

2 And I would submit that based on the fact that the State
3 cannot explain what happened, I think my client would be
4 entitled to relief and a new trial based on the presumption
5 that it very well could have exculpatory value and he's been
6 robbed of that opportunity without any explanation. So we
7 would ask Your Honor to consider a new trial in this case.

8 THE COURT: From the State?

9 MR. GRIMES: Just a couple of things. I want to
10 reference Section 17-28-360, and I don't know if you have a
11 copy. We submitted a copy of it earlier today.

12 THE COURT: No, you did not for 360, but I do have it in
13 front of me. That's what I'm looking at.

14 MR. GRIMES: So I don't know what happened 37 years ago,
15 but I can't concede or wouldn't even begin to concede that
16 there was any sort of failure to keep up with this stuff. I
17 don't know that it existed after it was tested, but the
18 defense has alleged that there was essentially a failure to
19 maintain this stuff.

20 And in the middle of this, 17-28-360 discussing failure
21 to preserve evidence indicates the failure of a custodian of
22 evidence to preserve physical evidence or biological material
23 pursuant to this article does not entitle a person to any
24 relief from conviction or adjudication, and then goes on to
25 talk about if there is a subsequent trial, they can present

1 testimony about it, but they're not entitled to any relief at
2 all based on that. So I would reference that specifically to
3 the defense argument.

4 And then 17-28-90, which is kind of where we started this
5 hearing with 17-28-90(b)(1), the defense makes a showing that
6 the physical or biological material to be tested is available
7 and potentially in a condition that would permit the request
8 of DNA testing, and I know the parties in this case believe
9 that to be so, but specifically regarding the -- the original
10 1985 cuttings, it's not so.

11 And so the interesting thing about the situation we're
12 in, number one, it's not satisfied. So it never would have
13 been entitled to have the DNA testing conducted in the first
14 place. And so both 360 and 90(b)(1) get us to the same result
15 that there just wouldn't be any DNA testing or any relief
16 whatsoever, and that's, I think, appropriate under these
17 circumstances.

18 If the Court doesn't think that that is, at the very
19 least we're at 17-28-100 in the (b) section. It talks about
20 the three things that could happen. Either it's inculpatory,
21 exculpatory, or inconclusive. And I think, indisputably, we
22 have to be in the inconclusive area with this because the
23 results from the testing that was conducted don't do anything.
24 They didn't find any DNA, so they're not inculpatory or
25 exculpatory, and so the Court would decide what to do at that

1 point, would any additional DNA testing be fruitful or dismiss
2 the application.

3 And I think -- well, I know the purpose of discussing the
4 details of the examination with -- with Ms. Herrera were that
5 she examined all the clothing for potential evidence, more
6 than once actually, one specifically for blood DNA and then
7 again, and she actually took cuttings of things. I think her
8 testimony was anything that could possibly be thought that it
9 was vomit or something of that nature and submitted it to DNA
10 testing. I don't think that she necessarily believed that it
11 was going to be DNA, but just that they went through and
12 examined it and took the cuttings.

13 It appears that they pretty much tried everything that
14 could be tried. And so for that reason, if we're in this
15 inconclusive category, additional DNA testing wouldn't be
16 fruitful and so the application should be dismissed.

17 And then, finally, I think I was pretty inartful earlier
18 discussing it. In the transcript that we submitted, that's
19 the testimony at trial about the blood type, and I think my
20 point earlier was probably very inartful, but what I was
21 trying to convey was that the blood type evidence didn't turn
22 out to be inculpatory in the first place. And we can have
23 different opinions about that, but that was -- that was the
24 point I was trying to make, is that in order for it to become
25 exculpatory, it had to be inculpatory to begin with.

1 And as you can see in that transcript, the defense
2 counsel didn't even -- they asked one question about the --
3 the blood type in cross examination. We don't know what the
4 parties argued at the end of the trial because you'll see in
5 the transcript there's just parentheses, and then it says the
6 parties argued. Judge Peeples gave them 20 minutes to argue
7 each, and then there's just parentheses that says that they
8 argued.

9 So I don't know what they argued about, but this -- this
10 -- as I -- as I mentioned before, the blood type could have
11 been probative and inculpatory had it -- had it been stronger
12 evidence or had there been a disparity between the parties'
13 blood types, but what actually happened at trial was -- it
14 appears the State just said, we looked at this and it didn't
15 really come up to much. The defense counsel didn't even
16 cross-examine in any significant way, other than pointing out
17 the fact that 40 percent of people have the same blood type.

18 And so to that point and -- and specifically, I think
19 you'll see in the transcript that the case that was presented
20 was that the defendant was in charge of this child. There was
21 another child witness. I don't think it was disputed that he
22 was in charge of this child, that he's the person that brought
23 this child after the child was injured to the child's mother.

24 And this -- this statute, as it discusses, would this
25 evidence tend to -- or tend to be exculpatory and result in a

1 new trial, it's talking about -- and this is in 17-28-90. We
2 talked about (1) and then kind of skipping over (2), I think
3 (3) and (4) are the relevant subsections.

4 It talks about would this evidence be relevant in proving
5 the identity of the defendant as the perpetrator. His defense
6 was that the child drank this de-wormer or something that's in
7 evidence still at the Clerk's Office. There wasn't an
8 identity issue at the trial. In other words, he brought this
9 child to the mother. He was the person that was responsible
10 for this child.

11 The statement from the defense or the defendant was that
12 the child had drank this liquid, which caused the child to be
13 injured, and so the dispute at trial was not the identity of
14 the defendant. It was the cause of the injuries. And so to
15 that point, this DNA on the shirt of the defendant wouldn't
16 answer that question, and so it wouldn't necessarily exculpate
17 him in the defense that was presented at trial or really the
18 State's case that was presented at trial and shouldn't result
19 in a new trial. So that's kind of our three -- three-part
20 argument.

21 THE COURT: Yes, sir?

22 MR. WILKES: Judge, I think that the State introduced the
23 blood typing for a reason. It was clearly relevant to the
24 State's case or they wouldn't have done it. I don't think
25 that the exculpatory nature of the evidence is judged by

1 whether it's conclusive or -- or completely conclusive as to
2 innocence or guilt.

3 I think that it's clearly counter to what the State was
4 intending to prove, that the child's blood was on Mr. Green.
5 So it has exculpatory value. I don't think that's the
6 question.

7 Mr. Green wasn't actually in charge of the child. Mr.
8 Green had gone to the bathroom. The children were playing in
9 the back, and the testimony was he found the child on the
10 floor and brought the child out of the bedroom when he came
11 out of the bathroom. That was some of the testimony at the
12 trial. There was conflicting testimony, but that was some of
13 the testimony.

14 The -- so it is exculpatory. I don't think that's an
15 issue, and he was entitled to have it tested. That's *res*
16 *adjudicata*. That was not appealed. It was ordered.

17 I think the dilemma of it comes we're at a factual black
18 hole. We don't know where the samples are. If they were
19 here, I'm sure the Court would probably order the testing, but
20 the question now becomes they are clearly gone and there is no
21 explanation of where they went.

22 Does that entitle the defendant to relief? And I would
23 submit that it does simply because all of those things are out
24 of his control. It's -- arguably, is it -- I can't really
25 argue bad faith because we just don't know what happened to it

1 other than it could have been negligence, could have been bad
2 faith. It could have been anything, but I would submit that
3 he's still entitled to relief because it could have had
4 substantial exculpatory value.

5 And for that reason -- and it's a Rule 29 motion. So I
6 would ask the Court to grant the motion and give him a new
7 trial.

8 RULING

9 THE COURT: What I cannot get past is 17-28-360, failure
10 of a custodian of evidence to preserve physical evidence or
11 biological material does not entitle a person to any relief
12 from conviction. It's something the Court can consider, but
13 that in itself does not entitle Mr. Green to relief.

14 And I stand corrected that -- that the State did provide
15 me a written copy of 17-28-360. I didn't realize that that
16 was on the last page.

17 And so as to what has been tested, then we jump back to
18 17-28-100, Subsection (b), and I tend to agree with the State
19 that at best we're in an inconclusive category. There is no
20 additional DNA testing that anyone is requesting at this point
21 or that the Court can determine would be fruitful.

22 And so the alternatives there are the Court may allow
23 additional DNA testing or may dismiss the application. And so
24 for those reasons, I think the application must be dismissed.

25 The State's point is well taken that it's the defense's

1 argument that we're sort of beyond the threshold requirement
2 to get the testing done. I mean, I know everyone realized
3 that the specific cuttings were not available. Then, you
4 know, I hear the State's argument that -- that the requirement
5 of 17-28-90(b)(1) would not have been fulfilled and we
6 wouldn't even be here today.

7 That was stipulated to in a weird way, stipulated to
8 based on erroneous understandings of what was available, but
9 we are here. There was no dealing with that, etc., etc., but
10 -- but the point is well taken that had all of the facts been
11 known to the parties at the time, we wouldn't even be here
12 today. So I don't think the -- the benefit of the doubt as to
13 missing evidence or inconclusive testing 38 years later -- 38
14 years? I cannot do math right now. Thirty-eight years later
15 entitles Mr. Green to relief.

16 So I'm going to have to dismiss the application for all
17 those reasons and deny the relief requested.

18 MR. WILKES: Very good, Your Honor.

19 THE COURT: Thank you, folks.

20 (WHEREUPON, the proceedings ended at 4:51 p.m.)

21

22 --- END REQUESTED TRANSCRIPT ---

23

24

25

APPENDIX 129

State of South Carolina	)	
	)	Certificate
County of Florence	)	

I, the undersigned, Krystal J. Smith, notary public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 68, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Aiken County, South Carolina, on the 14th day of June, 2023, to the best of my ability based upon the audio and notes provided.

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

s/ Krystal J. Smith

Court Reporter

Florence, South Carolina

November 12, 2023



Robert J. Harte
Aiken County Clerk of Court
P.O. Box 583
Aiken, SC 29802
803-642-1715

July 24, 2024

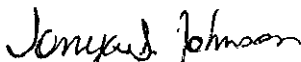
J. Falkner Wilkes
Attorney at Law
248 Deerwood Park Drive
Oakland, MS 38948

Re: 1985-GS-02-00847

Dear Mr. Wilkes,

Enclosed are copies of exhibits 1-14 that you had requested. Please let us know if you need any other documents.

Regards,


Tonya S. Johnson
Deputy Clerk

B379496

J. FALKNER WILKES*Attorney at Law*

248 Deerwood Park Drive
Oakland, Mississippi, 38948

Telephone: (864) 421-4618
jfalcknerwilkes@gmail.com

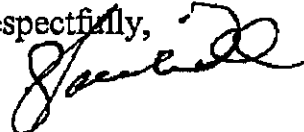
July 10, 2024

Robert J. Harte, Clerk
PO Box 583
Aiken, SC 29802

Dear Mr. Harte,

I represent Timothy F. Green in an appeal from a Rule 29 Motion hearing in the case of State v. Green, 1985-GS-02-00847. Exhibits 1-14 have been designated for inclusion in the Record on Appeal. I am hereby requesting a copy of any of those exhibits that are in the Clerk's file. If any are not in the Clerk's file could you please provide me with the custodian of records for those records. If it is convenient I would prefer you to scan and email me copies instead of mailing paper copies, but either would be fine.

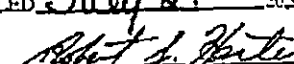
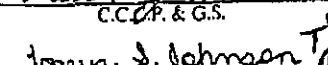
Respectfully,



J. Falkner Wilkes

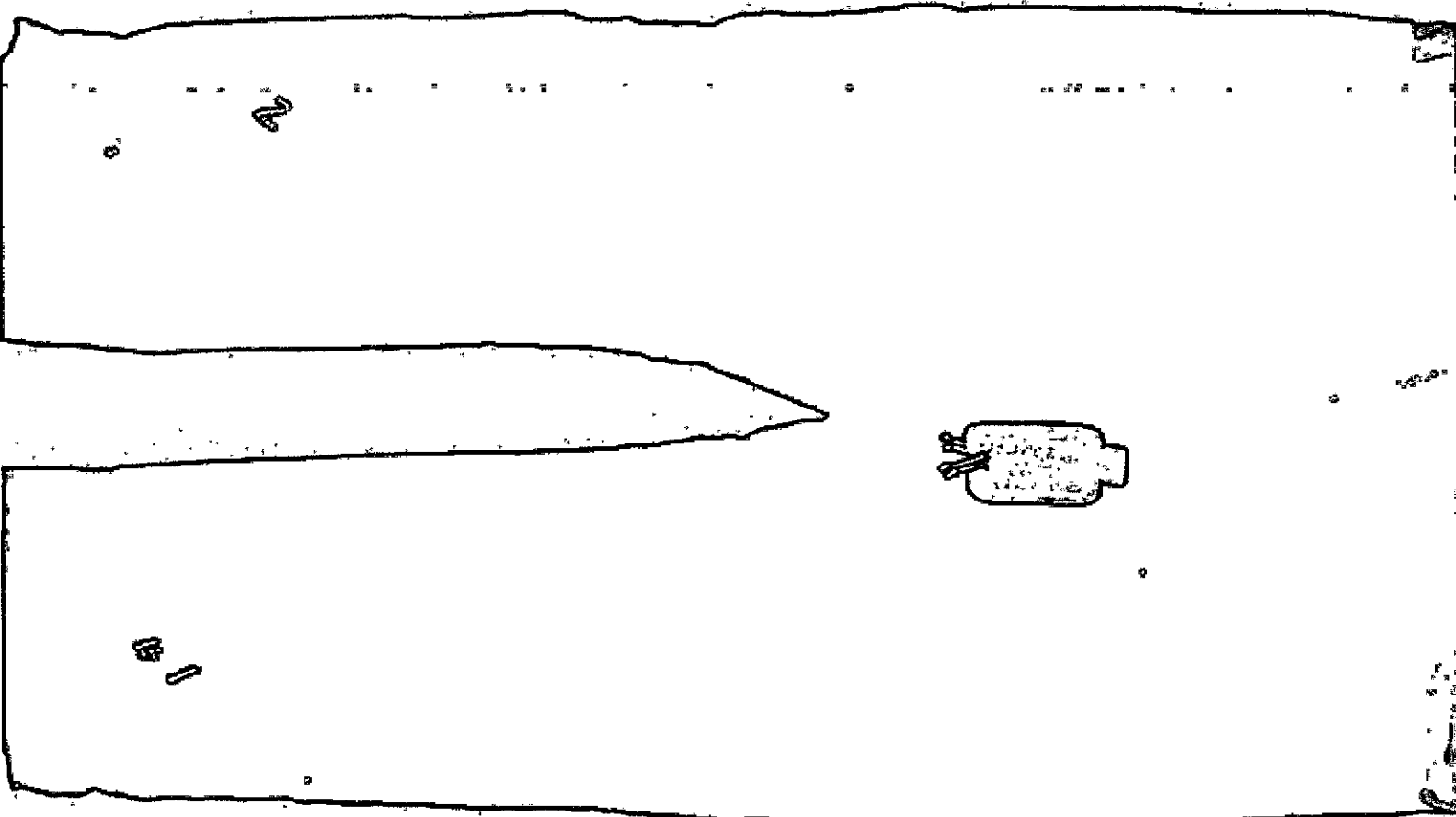
c:
Melody Jane Brown
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549
mbrown@scag.gov
(803) 734-6305

Counsel for Respondent

FILED July 24 2024

C.C.P. & G.S.

Deputy Clerk

STATE'S
EXHIBIT

6-14-23
JH



STATE'S
EXHIBIT

2 6-14-23
711

14-12552
LAW ENFORCEMENT
LABORATORY
FBI
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20535
PCG
Item 2.0

STATE'S
EXHIBIT

3 6-14-23
JHO

STATE'S
EXHIBIT

46-14-23
20

STATE'S
EXHIBIT

5

6-14-72

210

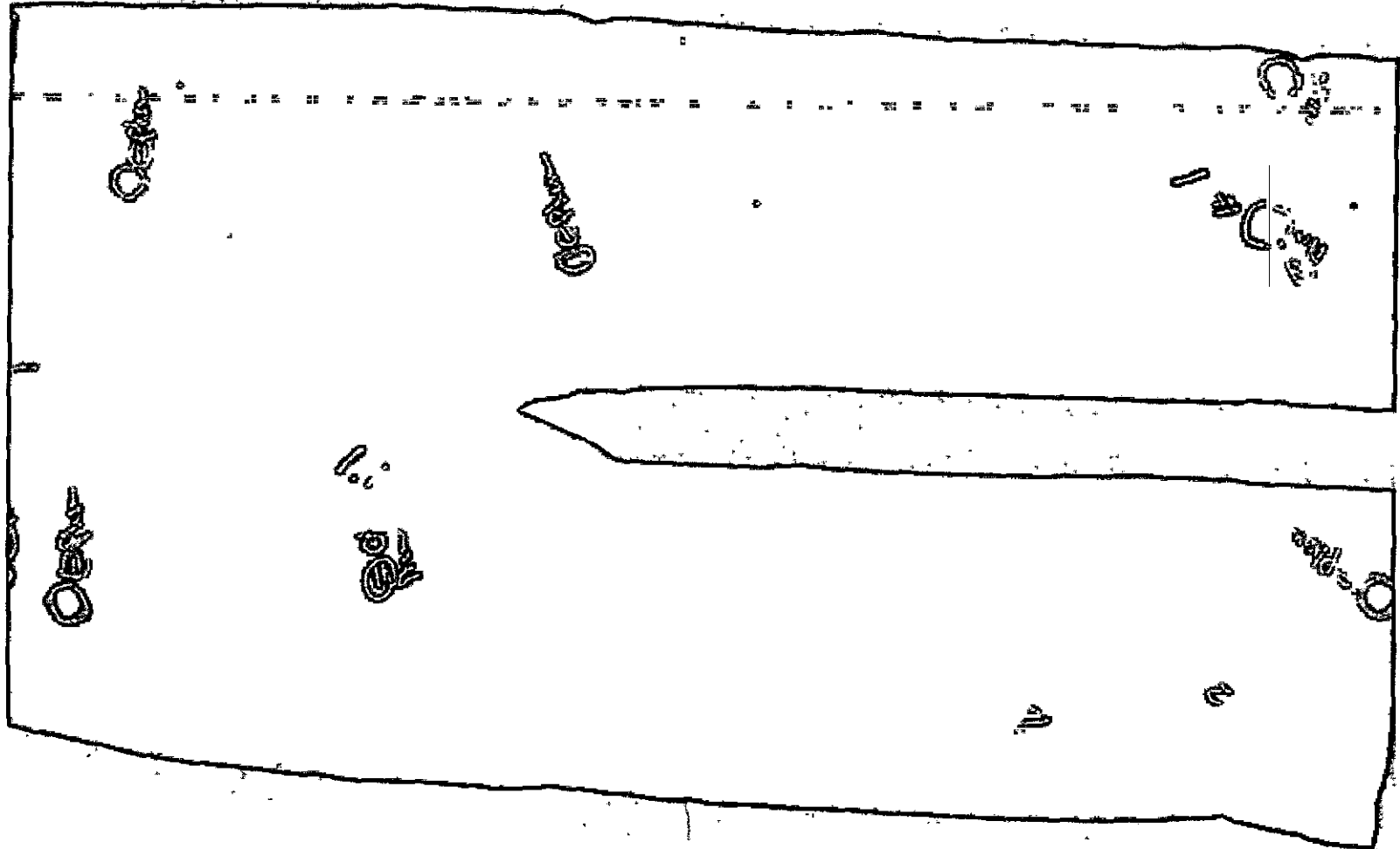
10/10/72

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10/10/72

STATE'S
EXHIBIT

66-14-23
ZK



STATE'S
EXHIBIT

7
6-14-03
JAP



F.C.
Y.H.
124-12552



L14-12552 VTH2.0 + SPA

STATES
EXHIBIT

8 0-14-23
SAD



1-14-23
L14-12552

APPENDIX 140

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

Lt. Clay Adams
Aiken County Sheriff's Office
420 Hampton Avenue NE
Aiken, SC 29801-4391

SEROLOGY ANALYSIS
March 05, 2015
SLED LAB: L14-12552
Your Case No: 85001717
Incident Date: 09/23/1985
[S] Timothy Green

Related Case: L85-05470

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

Mark A. Keel, Chief
South Carolina Law Enforcement Division

SUPPLEMENTAL REPORT

EVIDENCE PROCESSING

Items Submitted:

- 1 Pants
- 2 Shirt

Results of Examinations:

- 1 Presumptive testing for blood was negative.
- 2 Presumptive testing for blood was negative.

The examinations above were conducted by DNA Evidence Processing Technician Verona Gibson and were reviewed by Forensic Serologist Ashley Bell in the DNA Casework Department.



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

RECORD ON APPEAL PAGE 91

SLED LAB No. L14-12552

March 05, 2015

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.

This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below



Ashley Bell
Forensic Serologist



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

RECORD ON APPEAL PAGE 92

APPENDIX 142

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

Lt. Clay Adams
Aiken County Sheriff's Office
420 Hampton Avenue NE
Aiken, SC 29801-4391

SEROLOGY ANALYSIS
November 19, 2015
SLED LAB: L14-12552
Your Case No: 85001717
Incident Date: 09/23/1985
[S] Timothy Green

Related Case: L85-05470

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.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

SUPPLEMENTAL REPORT

EVIDENCE PROCESSING

Items Submitted:

Results of Examinations:

1	Pants		
1.1	Cutting from front, right, near crotch of pants	1.1	Item forwarded to the Serology and/or DNA Section.
1.2	Cutting from rear, right, thigh area of pants	1.2	Item forwarded to the Serology and/or DNA Section.
2	Shirt		
2.1	Cutting from front, stomach area of shirt	2.1	Item forwarded to the Serology and/or DNA Section.



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

RECORD ON APPEAL PAGE 93

Items Submitted:

2.2 Cutting from front, hem area of shirt

2.3 Cutting from rear, right, near underarm area of shirt

2.4 Cutting from rear, right, near bottom of shirt

Results of Examinations:

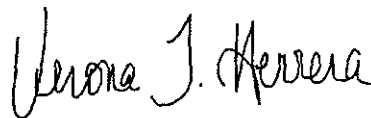
2.2 Item forwarded to the Serology and/or DNA Section.

2.3 Item forwarded to the Serology and/or DNA Section.

2.4 Item forwarded to the Serology and/or DNA Section.

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.

This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.



Verona T. Herrera
Forensic Serologist



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

APPENDIX 144

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

**STATE'S
EXHIBIT**

11 6-14-23
20

Lt. Clay Adams
Aiken County Sheriff's Office
420 Hampton Avenue NE
Aiken, SC 29801-4391

DNA ANALYSIS
January 15, 2016
SLED LAB: L14-12552
Your Case No: 85001717
Incident Date: 09/23/1985
[S] Timothy Green

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.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

DNA ANALYSIS

ITEMS ANALYZED:

- 1.1 Cutting from front, right, near crotch of pants
- 1.2 Cutting from rear, right, thigh area of pants
- 2.1 Cutting from front, stomach area of shirt
- 2.2 Cutting from front, hem area of shirt
- 2.3 Cutting from rear, right, near underarm area of shirt
- 2.4 Cutting from rear, right, near bottom of shirt

EXAMINATIONS

DNA analysis was performed on the items above using Short Tandem Repeat (STR) PCR DNA analysis. The results of the analysis are shown in the following table(s).



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RECORD ON APPEAL PAGE 95

RESULTS

No DNA profile was developed from items 1.1, 1.2, 2.1, 2.2, 2.3, or 2.4.

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.

This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.

Jennifer L. Bartman

Jennifer L. Bartman
Forensic Scientist



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

RECORD ON APPEAL PAGE 96

Table 1 - Identifier Plus

Case Items	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	TH01	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	D5S818	FGA	AMEL
1.1 Cutting from front, right, near crotch of pants	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
1.2 Cutting from rear, right, thigh area of pants	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2.1 Cutting from front, stomach area of shirt	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2.2 Cutting from front, hem area of shirt	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2.3 Cutting from rear, right, near underarm area of shirt	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2.4 Cutting from rear, right, near bottom of shirt	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

() = stochastic range - = no result Bold = major contributor Inc = Inconclusive



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

RECORD ON APPEAL PAGE 97



Aiken County Sheriff's Office
EVIDENCE/PROPERTY RECEIPT

Case Number 85-01717				
Officer Adams	Employee Number 4791			
Crime Type: Murder				
Name of Person Received From: Court order - General Sessions				
Defendants	1 Green, Timothy R.			
	3			
Victims	2			
	4			
Physical Address: 109 Park Ave				
Time: 15.15	Date: 9/29/14			
Laboratory examination to be performed (i.e. Latent, AFIS, Serology) Serology				
Item #	Quantity	Item Description (include color, brand, serial number, condition, unusual markings)		
1	1	Black pair of pants (States Exhibit 2)		
2	1	Blue shirt (States Exhibit 3)		
Last Entry				
Aiken County Sheriff's Office				
 A0051496				
Aiken County Sheriff's Office				
 A0051497				
Chain of Custody				
Item #	Date	Print Name	Signature	Purpose for Change
1-2	9/29/14	Cheryl S. Westall	Cheryl S. Westall	TOT ACSO
1-2	9/29/14	LT. Clay Adams	Clay Adams	Transport to ACSO
1-2	09-29-14	C.G. TURNER	C.G. Turner	LOG EVIDENCE
1-2	10-01-14	INV. MFD. Mott	MFD. Mott	SLT
1-2	02-23-15	INV. MFD. Mott	MFD. Mott	Return from SLT
1-2	02-25-15	Shannon D. Rosenkrantz	Shannon D. Rosenkrantz	return to Clerk of Court
1-2	10-29-15	LT. Clay Adams	Clay Adams	Transport to ACSO
1-2	10-28-15	C.G. TURNER	C.G. Turner	EVIDENCE RETURN
1-2	10/29/15	LT. Clay Adams	Clay Adams	Transport to SLT

ACSO Form AD400 (02/28/05)

**STATE'S
EXHIBIT**

136-14-23
20

1 Green told us that that was the shirt he had on during an
2 interview that I was present at, and to the best of my
3 memory and recall, he had it on that day. The trousers
4 were taken from the clothing room.

5 Q. You know who all had possession of that shirt,
6 where that shirt was from the time he took it off until
7 you got it?

8 A. Other than the fact that he had it on at the
9 times that I saw him.

10 Q. Yes, sir, but I'm asking you do you know who
11 had the shirt from the time he took it off of his body
12 until you got custody of it?

13 A. He took it off in my presence.

14 Q. On the 25th?

15 A. On the 25th.

16 Q. But you don't know where it was all the other
17 times. You don't know whether he had it or somebody else
18 had it during those two days interim, do you?

19 A. No, sir, I do not.

20 Q. Thank you.

21 MR. HARTE: That's all.

22 THE COURT: Thank you. Step down. Next
23 witness.

24 PATSY HABBEN being called and duly sworn,
25 testified as follows:

38

*Brenda A. Wingard**Certified Court Reporter**1763 Huckleberry Drive**Aiken, South Carolina 29801*

1 DIRECT EXAMINATION:

2 BY MR. HARTE:

3 Q. How are you employed, Ms. Habben?

4 A. I am a Forensic Serologist employed at SLED.

5 Q. What is your educational background?

6 A. I attended Columbia College for four years and
7 received a BA Degree in Biology. I have also attended
8 the FBI School of Serology and have received graduate
9 credit in this area from the University of Virginia.

10 Q. What is your experience in Serology?

11 A. I have been employed at SLED for approximately
12 eight years.

13 Q. Have you ever been qualified in the court of
14 law as an expert in Serology?

15 A. Yes, I have, many times.

16 MR. SCREEN: I'd so stipulate to that, Your
17 Honor.

18 THE COURT: Stipulate she's an expert in the
19 field of Serology. Thank you, ma'am

20 Q. What is Serology, please Ms. Habben?

21 A. Serology is the study of body fluids such as
22 blood, semen and saliva.

23 Q. Did you have an occasion to make some
24 examinations in relation to this case?

25 A. Yes, I did.

Shirt — stains 1, 2 + 3 = human blood

1 Q. I show you what has been marked as State's
 2 Exhibits #2 and #3 and ask you if you can identify these
 3 and tell us what you did with regards to those items.
 4 A. Yes, I can identify these items. They have my
 5 initials on them and what I did with each one was
 6 examined it for body fluids such as blood, semen and
 7 saliva. In particular, the blue
 8 shirt, I analyzed it for blood, saliva and semen. I
 9 checked six different stains on the shirt. The first
 10 stain, I checked to see if it was blood. It was positive
 11 for blood. After we checked it for blood we have to
 12 determine if the blood is human blood or animal blood.
 13 In this case it was positive for human blood. Then I
 14 wanted to find out what type of blood it was. All of you
 15 have a blood type of one of four groups; Group A, Group
 16 B, Group O or Group AB, so what I wanted to do was find
 17 out what blood type was on this shirt. In this case,
 18 sample #1 was Group O, human blood.
 19 Q. Can you tell us where that stain was?
 20 A. Yes, I can. This is the shirt with the tag in
 21 the back, on the front facing you. Sample #1 is on the
 22 right sleeve sorta like right here if I had the shirt
 23 on. Sample #2, I analyzed it also for body fluids and in
 24 this case it was negative for semen and positive for
 25 blood. Again, it was positive for human blood and the

Brenda A. Wingard
 Certified Court Reporter
 1765 Huckleberry Drive
 Aiken, South Carolina 29801

1 blood type again was Group O, human blood. I also
2 checked it for semen which was negative and the blood on
3 this shirt in sample #1 and #2 appeared to me to be very
4 dilute or watered down. So, I wanted to find out maybe
5 what it was that diluted this blood sample. I did another
6 test for saliva. To some people they call it spit, it's
7 just another name for spit. I tested for saliva to see
8 if maybe saliva had been mixed with this blood to dilute
9 it and it was positive for saliva also. So, on Sample
10 #2, which is located on this shirt, if I had on this
11 shirt it would be right here on the shoulder on the right
12 side as noted by this #2 here. So, it was Group O, human
13 blood and it was also mixed with saliva. Sample #3,
14 which again, is located on the shoulder area a little bit
15 behind here. I found human blood but the type was
16 inconclusive. I could not determine what type it was.
17 Samples #4, #5 and #6 were negative for blood. And that
18 was this shirt.

19 Q. That's State's Exhibit number --

20 THE COURT: No, sir, that's not an exhibit yet
21 because you're going to have to prove chain of custody
22 from the time State got it until it was -- you're going
23 to have to prove that -- I believe Mr. Derrick said he
24 witnessed the defendant taking the shirt off and handing
25 it to him and then he delivered it to SLED. He did

1 testify that he turned it over to SLED. Who did he turn
2 it over to at SLED?

3 MR. SCREEN: Who received the items at SLED?

4 A. I received the shirt and pants from Steve
5 Derrick.

6 Q. Where were they kept until --

7 A. These were secured in the Evidence Locker until
8 I had time to examine it and throughout the examination
9 of this shirt, it was secured in the Evidence Locker at
10 SLED.

11 Q. How about the pants?

12 A. Also the pants.

13 Q. Tell me about your examination in regards to
14 the pants.

15 A. On the pants, I examined three different
16 stains. The first stain was negative for semen, the
17 second stain was also negative for semen but it was
18 positive for blood. It was also positive for human blood
19 and the blood type on these pants was Group O, consistent
20 with the same blood type that was on the shirt. This
21 blood did not appear to be diluted. It was a
22 concentrated sample of blood as if it had been dropped on
23 there. It was not diluted. This sample was found on the
24 leg, denoted by the number two right here a little bit
25 below the knee area on the right leg. And sample #3 was

Brenda A. Wingard

Certified Court Reporter

1765 Huckleberry Drive

Aiken, South Carolina 29801

1 negative for semen and also for blood.

2 Q. Did you receive a sample of blood from Dr. Joel

3 Sexton?

4 A. I received a vial of blood from Steve Derrick,

5 labeled **Victim**

6 THE COURT: You may cross examine.

7 CROSS EXAMINATION:

8 BY MR. SCREEN:

9 Q. Ms. Habben, let me ask you, can you tell the

10 jury what percentage of persons in this population that

11 we live in, have O type blood?

12 A. Approximately forty percent of the population.

13 Q. Thank you very much. No further questions.

14 THE COURT: Any thing on redirect?

15 MR. HARTE: No, sir.

16 THE COURT: Thank you.

17 DIRECT EXAMINATION:

18 BY MR. HARTE:

19 (PHYLLIS PRICE being recalled to the stand.)

20 Q. I believe you testified you had three children

21 in September of 1985, is that correct?

22 A. Yes, sir.

23 Q. And is one of your children **Victim**?

24 A. Yes, sir.

25 Q. How old was **Victim**?

CHEMICAL LABORATORY FILE

SUBJECT:

VICTIM:

COUNTY:

AGENCY REQUESTED BY:

DATE RECEIVED:

Victim

Linethy Queen

Hiken

ACSD

9-25-85

AUTHORIZATION FOR DESTRUCTION

Signature

Date

Destroyed By: Signature

Date

Witness: Signature

Date

TYPE OF TEST:

Marijuana

Drugs

Flammable

Hair

Other:

☐

Blood Alcohol

☐

DRUG Screen

☐

Blood Group

☐

Semen

☐

Paint

Abber

SLED LAB NO.

185-5476

IMMEDIATE ☐

RECEIVED BY:

No. of letter

SERLOGY

TOXICOLOGY

ARSON

SLED CASES

STATE'S EXHIBIT

14

Conrad
9/25/85
Abber
Ad. Salvia
Sumner

EVIDENCE RETURN TO:

DATE:

COLUMBIAN COLLEGE
5X7 IN

checklist
couple for
envelopes
12/5/75
JES

LAB # 185-5470

NAME	Red Blood Cells + Anti -			
	<u>A</u>	<u>B</u>	<u>A,B</u>	<u>H</u>
Victim	-	-	-	+

Serum +	Red Blood Cells
<u>RA</u>	<u>RB</u>
+	+

Blood Group	RBC + Anti-
	<u>Le^a</u> <u>Le^b</u>
O	

Substances in
Saliva or oth
Body Fluid
(Speci

TO TOX Blood to tox 10-8-85

LAB # 185-5470

NAME	Red Blood Cells + Anti -				Serum + Red Blood Cells		Blood Group RBC + Anti-			Substances in Saliva or other Body Fluid (Spec)
	A	B	A,B	H	RA	RB	Le ^a	Le ^b		
T. Green	-	-	-	+	+	+	O			

BLOOD LAB NO. 185-5470
ITEM NO. _____

KNOWN BLOOD SAMPLE



ASSAILANT'S VICTIM'S NAME TIM GREEN

State Lab S-100-13

TO TOX _____

Rutherford, New Jersey 07070
Tim Green
10-10-85
CCH



SOUTH CAROLINA LAW ENFORCEMENT DIVISION
REQUEST FOR LABORATORY ANALYSIS

SLED CASE NO.

L 85-5470

COUNTY Aiken

Character:

SIC. UNIT FILE

LABORATORY DIVISION

Print or type all information except as noted

Do not write in this space

25 SEP 24 PM 4:37

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Contributing

Agency ORI SCO 20000

Contributing

Agency Case No. E-85

Reports should be mailed to:

Incident Type (Type of Crime)

Homicide

Incident Date

9/23/85

TO

Incident Address:

Name of Individual Receiving Report

Rank

Aiken Cnty S.D.648-9581

Department

Telephone Number

P.O. Box 462

Street Address or Post Office Box

Aiken S.C.29802

City

State

Zip Code

First Victim's Name

VictimD L Number,
SS No. or FBI No.

Race

Victim

Second

Victim's Name

D L Number,
SS No. or FBI No.

Race

Sex

DOB

Third

Victim's Name

D L Number,
SS No. or FBI No.

Race

Sex

DOB

(If more than 3 victims use additional sheet)

First

Subject's Name

Timothy Green

D L Number,

Race

Sex

DOB

Second

Subject's Name

D L Number,

SS No. or FBI No.

Race

Sex

DOB

Third

Subject's Name

D L Number,

SS No. or FBI No.

Race

Sex

DOB

(If more than 3 subjects use additional sheet)

AGREEMENT

The items submitted below will be examined with your assurance that the submitted specimens have not been nor will be submitted to any other laboratory or agency for Technical or Scientific examination.

Steven Derrick

PRINT Name Of Submitting Officer

SIGNATURE Of Submitting Officer

Specimens submitted for examination:

1) Blue shirt.2) Grey Trousers

EXAM REQ.

Blood Typing
from vomit is
on shirt
from victim.

EVIDENCE

Space for additional evidence is provided on reverse side.

Additional evidence (is) (circle one) listed on reverse side.
(is not)

SIGNATURE of person receiving evidence

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
REQUEST FOR LABORATORY ANALYSIS

Additional Evidence

P Nancy Skrabar

SLED CASE NO. L-85-5470

COUNTY Aiken

Character: S.C. LAW ENFORCEMENT DIVISION

Print or type all information except as noted

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SEP 23 PM 5:35

Do not write in this space

Contributing Agency ORI SC0 20000

Contributing Agency Case No. E-85-207

Reports should be mailed to:

Incident Type (Type of Crime) _____

Steven Derrick

INV.

Name of Individual Receiving Report

Rank

Incident Date 9/23/85

TO

Aiken Cnty S.C.

648-9581

Department

Telephone Number

PO Box 462

Street Address or Post Office Box

Aiken, S.C.

29802-2881

City

State

Zip Code

First Victim's Name

Victim

D L Number, SS No. or FBI No. _____

Race

Victim

Second Victim's Name

D L Number, SS No. or FBI No. _____

Race

Sex

DOB

Third Victim's Name

D L Number, SS No. or FBI No. _____

Race

Sex

DOB

(If more than 3 victims use additional sheet)

First Subject's Name

Timothy Green

D L Number, SS No. or FBI No. _____

Race

Sex

DOB

Second Subject's Name

D L Number, SS No. or FBI No. _____

Race

Sex

DOB

Third Subject's Name

D L Number, SS No. or FBI No. _____

Race

Sex

DOB

(If more than 3 subjects use additional sheet)

The items submitted below will be examined with your assurance that the submitted specimens have not been nor will be submitted to any other laboratory or agency for Technical or Scientific examination.

Steven Derrick

PRINT Name Of Submitting Officer

Steven M. Derrick

SIGNATURE Of Submitting Officer

Specimens submitted for examination

1) 2 tubes, blood Victim

EXAM REQ.

E Vaginal swabs

1) 2 Rape kit Victim

1) add. Evid. stands

A. rectal swabs

1) 3) white spray bottle stain

2) Rape

G. Omeas

1) 2 envelope, nail scrapings

3) blood type

Al fingernail scrapings

4) blood type

I. White & Green

Space for additional evidence is provided on reverse side.

Additional evidence (is) (circle one) listed on reverse side, (is not)

SIGNATURE of person receiving evidence

SOUTH CAROLINA LAW ENFORCEMENT DIVISION REQUEST FOR LABORATORY ANALYSIS

SLED CASE NO. L85-5470COUNTY Aiken

Print or type all information except as noted (Do not write in this space)

Contributing Agency ORI SCO 20000 Contributing Agency Case No. E-85New Case ☐ Additional Evidence ☐ Case Number _____Incident Type (Type of Crime) HomicideIncident Date 9/23/85 To _____

Incident Address _____

Reports should be mailed to:

Inv. Steven Derrick
Name of Individual Receiving Report

Rank _____

Department _____

Telephone number _____

Street Address or Post Office Box _____

City _____ State _____ Zip Code _____

If carbon copy is needed, list name & address on back

Name of First Victim

Victim

MIDDLE

D L Number _____
SS No., or FBI No. _____
Race **Victim**

Name of Second Victim

LAST

FIRST

MIDDLE

D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

Name of Third Victim

LAST

FIRST

MIDDLE

D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

(If more than 3 victims use additional sheet)

Name of First Subject

GreenTimothy

MIDDLE

Race B Sex M DOB _____

Subject LAST

FIRST

D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

Name of Second Subject

LAST

FIRST

MIDDLE

D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

Name of Third Subject

LAST

FIRST

MIDDLE

(If more than 3 subjects use additional sheet)

The items submitted below will be examined with your assurance that the submitted specimens have not been nor will be submitted to any other laboratory or agency for Technical or Scientific examination.

Patsy H. Habben

PRINT Name Of Submitting Officer

Patsy H. Habben
SIGNATURE of Submitting OfficerSpecimens submitted for examination: 1) Blue shirt

EXAM REQ.

2) Grey Trousers 3) One bottle Piperazine

Space for additional evidence is provided on reverse side.

Additional evidence (is) (circle one) listed on reverse side.
(is not)

048-824 (REV 8/83)

[Signature]
SIGNATURE of person receiving evidence

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
REQUEST FOR LABORATORY ANALYSISSLED CASE NO. 185-5470COUNTY AikenCharacter:

Print or type all information except as noted

Do not write in this space

ADDITIONAL
EVIDENCE

S.C. LAW ENFORCEMENT DIVISION

FEE CODE 9
Do not write in this space

PRH

Contributing
Agency ORI SCD 20000Contributing
Agency Case No. E-85-207

Reports should be mailed to:

CHEMISTRY LAB

Steven Derrick

TWO

Name of Individual Receiving Report

Rank

Incident Type (Type of Crime) HomicideIncident Date 7-23-88 TO Aiken Cnty Sheriff Dept 698-9581

Department

Telephone Number

Incident Address: P.O. Box 462

Street Address or Post Office Box

Aiken, S.C. 29802

City

State

Zip Code

First
Victim's NameVictimD L Number,
SS No., or FBI No. Race Sex DOB Second
Victim's Name D L Number,
SS No., or FBI No. Race Sex DOB Third
Victim's Name D L Number,
SS No., or FBI No. Race Sex DOB

(If more than 3 victims use additional sheet)

First
Subject's NameTimothy GreenD L Number, Race Sex DOB Second
Subject's Name D L Number,
SS No., or FBI No. Race Sex DOB Third
Subject's Name D L Number,
SS No., or FBI No. Race Sex DOB

(If more than 3 subjects use additional sheet)

The items submitted below will be examined with your assurance that the submitted specimens have not been nor will be submitted to any other laboratory or agency for Technical or Scientific examination.

S.M. Derrick

PRINT Name Of Submitting Officer

SIGNATURE Of Submitting Officer

Specimens submitted for examination: 17 one piece cloth blood lift

EXAM REQ.

Blood Type.

Space for additional evidence is provided on reverse side.

Additional evidence (is) (circle one) listed on reverse side.
(is not)

SIGNATURE of person receiving evidence

Additional Evidence

For PRH

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
REQUEST FOR LABORATORY ANALYSIS

SLED CASE NO. L-85-5470

COUNTY Aiken

Character: ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

Print or type all information except as noted

Do not write in this space

Contributing Agency ORI SC020000

Contributing Agency Case No. E-85-207

Incident Type (Type of Crime) Homicide

Incident Date 9/24/85 TO

Incident Address:

S.C. LAW ENFORCEMENT DIVISION

Do not write in this space

Reports should be mailed to:

SA Steven M. Derrick Inv.
Name of Individual Receiving Report Rank

Aiken City Sheriff 648-9581
Department Telephone Number

P.O. Box 462
Street Address or Post Office Box

Aiken, S.C. 29802-2881
City State Zip Code

INCIDENT

First Victim's Name Victim

D L Number, SS No. or FBI No. Victim

Race Victim

Second

Victim's Name

D L Number, SS No. or FBI No.

Race Sex DOB

Third

Victim's Name

D L Number, SS No. or FBI No.

Race Sex DOB

(If more than 3 victims use additional sheet)

First Subject's Name Timothy Green

D L Number, SS No. or FBI No.

Second

Subject's Name

D L Number, SS No. or FBI No.

Race Sex DOB

Third

Subject's Name

D L Number, SS No. or FBI No.

Race Sex DOB

(If more than 3 subjects use additional sheet)

SUBJECTS

The items submitted below will be examined with your assurance that the submitted specimens have not been nor will be submitted to any other laboratory or agency for Technical or Scientific examination.

Steven M. Derrick

PRINT Name Of Submitting Officer

Steven M. Derrick

SIGNATURE Of Submitting Officer

Specimens submitted for examination: two tubes of Def. Blood

EXAM REQ.

Group "O" blood found

TYPE:

EVIDENCE

Space for additional evidence is provided on reverse side.

Additional evidence (is) (circle one) listed on reverse side.
(is not)

LoPRH from LEP 11.15
10/23/85

SIGNATURE of person receiving evidence

**SOUTH CAROLINA LAW ENFORCEMENT DIVISION
REQUEST FOR LABORATORY ANALYSIS**

SLED CASE NO. L85-5470COUNTY Aiken

Print or type all information except as noted (Do not write in this space)

Contributing Agency ORI SCO 20000 Contributing Agency Case No. E-85New Case ☐ Additional Evidence ☐ Case Number _____Incident Type (Type of Crime) HomicideIncident Date 9/23/85 To _____

Incident Address _____

Reports should be mailed to:

Inv. Steven Derrick
Name of Individual Receiving Report Rank _____

Department _____ Telephone number _____

Street Address or Post Office Box _____

City _____ State _____ Zip Code _____

If carbon copy is provided, please list name & address on back

INCIDENT

VICTIMS

Name of First Victim Victim MIDDLEName of Second Victim LAST FIRST MIDDLEName of Third Victim LAST FIRST MIDDLE
(If more than 3 victims use additional sheet)D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

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Race _____ Sex _____ DOB _____

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Race _____ Sex _____ DOB _____

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Race _____ Sex _____ DOB _____

D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

SUBJECTS

Name of First Subject Green Timothy MIDDLEName of Second Subject LAST FIRST MIDDLEName of Third Subject LAST FIRST MIDDLE
(If more than 3 subjects use additional sheet)D L Number _____
SS No., or FBI No. _____Race B Sex M DOB _____D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

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SS No., or FBI No. _____

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SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

D L Number _____
SS No., or FBI No. _____

Race _____ Sex _____ DOB _____

AGREEMENT

The items submitted below will be examined with your assurance that the submitted specimens have not been nor will be submitted to any other laboratory or agency for Technical or Scientific examination.

Patsy H. Habben

PRINT Name Of Submitting Officer

Patsy H. Habben
SIGNATURE Of Submitting Officer

EVIDENCE

Specimens submitted for examination: A) Blue shirtB) Grey Trousers C) One bottle Piperazine(L) GASTRICBILEKIDNEYSTAIN FROM BLUE SHIRT

EXAM REQ.

Body fluids
Submitted 10/3/85
from Coroner's
Office to Lab.
Due to Resp.

Space for additional evidence is provided on reverse side.

Additional evidence (is) (circle one) listed on reverse side.
(is not)

046-824 (REV 8'83)

[Signature]
SIGNATURE of person receiving evidence

EVIDENCE TRANSFERRED

on Oct 3, 1985 at 3:45 PM
 (Date) (Time)

Name of Deceased Victim Autopsy No. FA85-23

Transferred at: SLED, COLUMBIA, S.C.

Description of Evidence:

1 styrofoam box with:

- ① 1 red stoppered glass tube tile
- ② portion of liver
- ③ " " kidney
- ④ " " brain

BY: Paul A. Sargent MD

Print Name: NABZ S-SEROWMD

Representing: Newberry Potomac

Newberry St. Hospital

TO: James J. Paschall

Print Name: James J. Paschall

Representing: SLED

SLED SEROLOGY WORKSHEET (X)

ABO GROUPING

CASE NO. LS5-5470

Serum on #2 > 1:100

Article No.	Item	Description of Stains	TAKY	Anti-Human	~~Group~~ AP	Elut.	Inhib.	(R)
A	blue shirt	1	+	+	-	NC in H how are	A, wk H	0
		2						
		3						
		4						
		5						
		6						
B	Bik pants	1 semen	+	+	-	0, all	+	0
		2 # Bld						
		3 semen						
D	blood	"O"						
E	vag swab				-			
F	rectal				-			
G	semen	No sperm seen						
H	f scrap	L R	-	+				
I	dish towel	2	+	+	-		A	
			+	+	-		B	
		3	+	+	-		nk A	
		No vomitus material noted						
J	cloak		+	+			A, H	

Divided stains mixed w/ #10, Salads, sweat.

Control "A" sweat? mco.

Poor slides

SLED CHEMISTRY LAB
RESULT SHEET**Victim**CASE NUMBER L85-5470

SUBJECT/VICTIM

DATE 12/5/85 HOURSSignature of Criminalist (KID)

- A. Six distinct stains were analyzed for blood on item A:
- A-1 Group "O" human blood found. Negative for semen
 - A-2 " " " " " " " " " "
 - A-3 Human blood found, grouping inconclusive. Negative for semen
 - A-4 Negative for blood
 - A-5 " " " "
 - A-6 " " " "
- B. Three (3) distinct stains were analyzed for blood and semen on item B:
- B-1 Negative for semen
 - B-2 Group "O" human blood found. Negative for semen
 - B-3 Negative for semen
- C.
- D. Group "O" blood found
 - E. Negative for semen
 - F. " " " "
 - G. Negative for spermatozoa
 - H. Negative for blood
 - I. Group "A" human blood found
 - J. Group "A" human blood found
 - K. Group "O" blood found.

State of South Carolina

RICHARD W. RILEY
Governor

Law Enforcement Division

J. PRESTON STROM
Chief

P. O. Box 21398

Phone (803) 758-6354
758-6000

COLUMBIA, S. C. 29221-9990

TO: Inv. Steven M. Derrick
P. O. Box 462
Aiken, SC 29802-2881

LABORATORY FILE NO.: L85-5470

DATE: 12-13-85

SUBJECT(S): Timothy Green

VICTIM(S): Victim

CONFIDENTIAL: This is an official report of the South Carolina Law Enforcement Division Chemistry Department and is to be used in connection with an official criminal investigation. The items and the results of laboratory examinations are reported below:

J. P. STROM

ITEM(S) SUBMITTED

RESULTS OF EXAMINATION(S)

Sept 25, 1985 Tim Green
A. Blue Shirt

A. Six distinct stains were analyzed for blood on item A:

A-1. Group "O" human blood found. Negative for semen.

A-2. Group "O" human blood found. Negative for semen.

A-3. Human blood found, grouping inconclusive. Negative for semen.

A-4. Negative for blood.

A-5. Negative for blood.

A-6. Negative for blood.

B. Gray trousers

B. Three (3) distinct stains were analyzed for blood and semen on item B:

B-1. Negative for semen

B-2. Group "O" human blood found. Negative for semen

B-3. Negative for semen.

Sept 26, 1985 9:20 AM
C. One bottle Piperazine *John Derrick*
(water wormer)

C. Piperazine found. *TB Ray Rachal 10/9/85*

I am a Chemist employed and certified by the South Carolina State Law Enforcement Division (SLED) to perform chemical and physical examination(s) on evidence submitted by Law Enforcement Agencies in criminal cases, and have been qualified in courts of record in the State of South Carolina to testify on such examination(s).

On _____, 19____, submitted the above item(s) to me for examination(s). I tested this (these) item(s) using accepted reliable forensic procedures approved by SLED and the above results reflect my conclusions based on my examinations.

- ☐ Chemical Test
☐ Microscopic
☐ Ultraviolet Spectroscopy
☐ Infrared Spectroscopy
☐ Atomic Absorption
☐ Electrophoresis
☐ Radio Immuno Assay

- ☐ Fluorescence Spectroscopy
☐ Thin Layer Chromatography
☐ Gas Chromatography
☐ Mass Spectrometry
☐ Liquid Chromatography
☐ X-Ray Spectroscopy
☐ Emission Spectroscopy

Sworn to before me this 16 day of
December, 19 85

Jamaica P. Pinckney
NOTARY PUBLIC

Arty R. Walker
CHEMICAL ANALYST

SLED
PLACE

12/16/85
DATE

My commission expires 83093

047-01-8/86

RECORD ON APPEAL PAGE 120

State of South Carolina

RICHARD W. RILEY
Governor

Law Enforcement Division

J. PRESTON STROM
Chief

P. O. Box 21398

Phone (803) 758-6354
758-6000TO: Inv. Steven M. Derrick
P. O. Box 462
Aiken, SC 29802-2881

COLUMBIA, S. C. 29221-9990

LABORATORY FILE NO.: L85-5470

DATE: 12-13-85

SUBJECT(S): Timothy Green

VICTIM(S): Victim

CONFIDENTIAL: This is an official report of the South Carolina Law Enforcement Division Chemistry Department and is to be used in connection with an official criminal investigation. The items and the results of laboratory examinations are reported below:

J. P. STROM

ITEM(S) SUBMITTED

RESULTS OF EXAMINATION(S)

D. Two tubes of blood from Victim

D. Group "O" blood found.

E. Vaginal swabs

E. Negative for semen.

F. Rectal swabs

F. Negative for semen.

G. Smears

G. Negative for spermatozoa.

H. Fingernail scrapings

H. Negative for blood.

I. White and green dish towel

I. Group "A" human blood found.

J. One piece cloth blood lift

J. Group "A" human blood found.

K. Two tubes of blood from Timothy Green

K. Group "O" blood found.

CC: Coroner Sue R. Townsend

I am a Chemist employed and certified by the South Carolina State Law Enforcement Division (SLED) to perform chemical and physical examination(s) on evidence submitted by Law Enforcement Agencies in criminal cases, and have been qualified in courts of record in the State of South Carolina to testify on such examination(s).

On 19 December, 19 85, I submitted the above item(s) to me for examination(s). I tested this (these) item(s) using accepted reliable forensic procedures approved by SLED and the above results reflect my conclusions based on my examinations.

- ☐ Chemical Test
☐ Microscopic
☐ Ultraviolet Spectroscopy
☐ Infrared Spectrometry
☐ Atomic Absorption
☐ Electrophoresis
☐ Radio Immuno Assay

- ☐ Fluorescence Spectroscopy
☐ Thin Layer Chromatography
☐ Gas Chromatography
☐ Mass Spectrometry
☐ Liquid Chromatography
☐ X-Ray Spectroscopy
☐ Emission Spectroscopy

Sworn to before me this 16 day of
December, 19 85

Jamarcus P. Dickinson
 NOTARY PUBLIC

My commission expires 8 30 93

047-018/80

D. P. Hall
 CHEMICAL ANALYST

SLED
 PLACE

12/16/85
 DATE

Sep 04 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
COURT OF GENERAL SESSIONS
Hon. Jocelyn Newman

Case No. 1985-GS-02-00847

Appellate Case No.: 2023-000961

Timothy F. Green, ... Appellant,

v.

State of South Carolina, ... Respondent.

SUPPLEMENTAL RECORD ON APPEAL

Alan McCrory Wilson
Melody Jane Brown
Donald J. Zelenka
John William Weeks
W. Jeffrey Young
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549
mbrown@scag.gov
(803) 734-6305

Attorneys for Respondent

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248 Deerwood Park Drive
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(864) 421-4618
jfalknerwilkes@gmail.com

Counsel for Appellant

1 STATE OF SOUTH CAROLINA :
2 COUNTY OF AIKEN : COURT OF GENERAL SESSIONS
3 STATE OF SOUTH CAROLINA :
4 Plaintiff : TRANSCRIPT OF RECORD
5 versus :
6 TIMOTHY F. GREEN :
7 Defendant :
8
9 March 5, 1986
Aiken, South Carolina
10
11 B E F O R E:
12
13 HONORABLE RODNEY A. PEEPLES, Judge.
14
15 A P P E A R A N C E S:
16
17 Robert Harte, Solicitor
18 appearing for and on behalf of the plaintiff
19
20 Jerry M. Screen, Attorney
21 appearing for and on behalf of the defendant.
22
23
24
25
See p. 53
Erika Green's Testimony
p. 40 - Shirt - Stains 1, 2 & 3 - human blood
p. 42 - pants - human blood "as if it had been dropped"

Group O blood

p. 94 - Cut on left arm
p. 99 - Blood on wall ???

Brenda A. Wingard
Certified Court Reporter
1765 Huckleberry Drive
Aiken, South Carolina 29801

		<u>I N D E X</u>			
	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1	-				
2	CAROLYN JOHNSON				
3	Mr. Harte	11		30	
4	Mr. Screen		22		31
5	PHYLLIS HILL PRICE				
6	Mr. Harte	31, 43		60	
7	Mr. Screen		48		
8	EMMA SIMPKINS				
9	Mr. Harte	33			
10	Mr. Screen		34		
11	STEVE DERRICK				
12	Mr. Harte	35, 65			
13	Mr. Screen		37		
14	PATSY HABBEN				
15	Mr. Harte	39, 66			
16	Mr. Screen		43		
17	ERICA GREEN				
18	Ms. Cox	53			
19	Mr. Screen		56		
20	MIKE TERRY				
21	Mr. Harte	61			
22	V. J. RAY				
23	Mr. Harte	62			
24	Mr. Screen		64		
25					

Brenda A. Wingard
 Certified Court Reporter
 1765 Huckleberry Drive
 Aiken, South Carolina 29801

I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
DR. JOEL SEXTON				
Mr. Harte	67			
Mr. Screen		75		
ROY PASCAL				
Mr. Harte	79			
Mr. Screen		83		
ELIZABETH GREEN				
Mr. Screen	84			
Mr. Harte		98		
TIMOTHY GREEN				
Mr. Screen	99		110	
Mr. Harte		106		
DORIS GREEN				
Mr. Screen	111			
Mr. Hart		115		
Charge of the Court	118			
Verdict of the Jury	129			

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
S-1	Photograph	32	
S-2	Blue Shirt	36	84
S-3	Trousers	36	84
S-4	Piperazine	66	

Brenda A. Wingard
 Certified Court Reporter
 1765 Huckleberry Drive
 Aiken, South Carolina 29801

ROCEEDINGS

THE COURT: In the trial of a civil case, the burden of proof is upon the party bringing the claim. That burden being by the prepondance of the evidence, by the greater weight of the evidence or by the greater amount of the truth. In a fraudulent civil action there is a second burden of proof by evidence that is convincing.

In a criminal case, General Sessions, in which we are now about to engage, that burden of proof is beyond a reasonable doubt. Not any sort of a doubt, not an imaginary, weak or fanciful doubt. My definition of a reasonable doubt is a doubt in which a person is honestly seeking the truth about a matter. I will explain in more detail to you during my charge on the law. Bear in mind in criminal court, ladies and gentlemen, that every person that comes into this court charged with a criminal offense is presumed in the eyes of the law, to be innocent of those charges until and unless the State removes that presumption of innocence by evidence satisfying you, the jury, of that guilt beyond a reasonable doubt.

You are not to be concerned during your deliberations... I've told you that you are the judge of the facts, I am a judge of the law. But you are not to

1 be concerned with any sentence that may be imposed, as to
2 whether anyone gets probation or fined or time in jail or
3 split sentence, part of one or part of both. You are not
4 to discuss that in your jury room or allow it to enter
5 into your deliberations. Our laws in regard to
6 imprisonment and release are so discombobulated. For
7 example, if I sentence somebody today, they get four
8 ninety day credits. They get credits for a year in jail
9 the minute I sentence them. They get another thirty days
10 credit in jail the minute I sentence them. There are a
11 lot of provisions that apply to that. Unless there's a
12 death penalty case, you're not concerned with sentencing
13 or whether somebody goes to jail or not. A lawyer knows
14 better than to get up here and argue. You find him
15 guilty, he'll go to jail. That's not proper argument
16 because he may get probation. He may get this or he may
17 get that. So that is not a matter for your concern,
18 please. I'd ask you to pass up the indictment list of
19 witnesses, gentlemen.

20 Ladies and gentlemen of the jury panel, give me
21 your attention please. We are about to draw a jury in
22 regard to Indictment 85-GS-02-847, the State versus
23 Timothy F. Green. Mr. Green, would you please stand and
24 face the jury panel? Thank you. Be seated, please. Is
25 there any member of this jury panel who is related by

1 blood or connected by marriage with the subject, Timothy
2 Green? If so, please stand.

3 (NO RESPONSE)

4 Ladies and gentlemen, in this indictment, the
5 State of South Carolina claims or alleges that on or
6 about September 23, 1985, in Aiken County, Timothy F.
7 Green did kill one, **Victim** by means of making an
8 assault and battery upon the body of one, **Victim**
9 a minor, being three years of age, causing severe
10 internal injuries. Said **Victim** did die in
11 Richmond County as a proximate result of that on
12 September 23, 1985, thereby constituting the crime of
13 murder. Is there any member of this jury panel that has
14 any information or knowledge about the alleged facts
15 contained in this indictment? If so, please stand.

16 (NO RESPONSE)

17 I am advised that the prospective or potential
18 witnesses in the trial of the case would be as follows:
19 Carolyn Johnson, Phyllis Hill Price, Emma Simpkins, V. J.
20 Ray, Jim Whitehurst, Patsy Habben, Roy Paschal, Steve
21 Derrick, Dr. Joel Sexton, Erica Green, and further, Tim
22 Green and Elizabeth Green. Any member of this jury panel
23 related by blood or connected by marriage with any of
24 those persons whose names I have just called as
25 prospective or potential witnesses in the trial of the

1 case? If so, please stand.

2 (NO RESPONSE)

3 Has any member of this jury panel been
4 approached by anyone or had this case discussed with them
5 in any manner whatsoever? If so, please stand.

6 (NO RESPONSE)

7 Any member of this jury panel know of any
8 reason why they could not give both the State of South
9 Carolina and the defendant at the bar, Timothy Green,
10 both a fair and impartial trial? If not, please stand.

11 (NO RESPONSE)

12 THE COURT: Any further questions by the State?

13 MR. HARTE: None, Your Honor.

14 THE COURT: By the defendant?

15 MR. SCREEN: None, Your Honor.

16 THE COURT: Madam Clerk, give us the jury. Ten
17 strikes for the defendant, five strikes for the State.

18 As your name is called, please come forward.

19 (Jury panel is selected; Ms. Irene Knight is
20 appointed forelady.)

21 THE COURT: Alternate is waived by both the
22 State and the defendant. It is understood, Madam Court
23 Reporter, in the event I'd have to excuse either of my
24 twelve jurors for business, personal or otherwise, the
25 State and the defense would go to verdict with less than

1 twelve jurors.

2 (Jury panel is duly sworn and thereafter
3 retired to jury room.)

4 THE COURT: Anything for the record before I
5 bring the jury in?

6 MR. HARTE: None from the State, Your Honor.

7 (Jury returns to open court room at 11:50 A.
8 M.)

9 THE COURT: Let the record reflect please,
10 Madam Court Reporter, we are proceeding in regard to
11 General Sessions Indictment 85-GS-02-847, State versus
12 Timothy F. Green. Mr. Green is present with his attorney
13 as is the Solicitor, representing the State. The jury
14 venire has been qualified, the panel selected, the
15 forelady appointed, the jury has been sworn and we are
16 now proceeding.

17 Madam Forelady, ladies and gentlemen, by this
18 indictment, which is the white sheet of paper I hold in
19 my hand, the State of South Carolina charges the
20 defendant at the bar, Timothy F. Green, with the offense
21 of murder here in Aiken County on or about September 23,
22 1985. To this indictment the defendant has plead not
23 guilty and that plea of not guilty places the burden of
24 proof upon the State, represented by your Solicitor, to
25 establish the guilt of the defendant beyond a reasonable

Brenda A. Wingard

Certified Court Reporter

1765 Huckleberry Drive

Aiken, South Carolina 29801

1 doubt. Because it is the law of this State that every
2 defendant that comes into this court, regardless of the
3 enormity of the charge made against him, is always
4 presumed or thought to be innocent of those charges until
5 or unless that presumption of innocence is removed by
6 evidence satisfying you, the jury, of his guilt beyond a
7 reasonable doubt. Now, the term reasonable doubt means
8 exactly what it implies. It does not mean any sort of a
9 doubt, ladies and gentlemen, because you and I know that
10 from our every day experiences in life, that one can have
11 any sort of a doubt about every matter that arises,
12 regardless of how serious or how trivial that matter may
13 be. The definition which I prefer, is that a reasonable
14 doubt is a substantial doubt for which a person honestly
15 seeking to find the truth can, in fact, give a reason.
16 Now under the Constitution of South Carolina, you, ladies
17 and gentlemen of the jury, are the sole and only judges
18 of the facts in this case. I don't know a thing in the
19 world about this case except what I have read or gleaned
20 from this indictment. This indictment is not evidence,
21 it is merely a legal document which contains the charges
22 as preferred by the State against the defendant. The
23 sole evidence by which you shall determine what the true
24 facts are in this case will come from testimony of
25 witnesses who testify from this witness stand under oath

1 and from any exhibits that may be introduced into
2 evidence. If this case is as the usual cases of this
3 nature, that are tried in this court, there will be
4 certain conflicting or contradictory testimony. Now, how
5 are you, and each of you, as conscientious members of
6 this jury panel, going to determine what the true facts
7 are from any conflict that may arise from the testimony?
8 I tell you, Madam Forelady and ladies and gentlemen of
9 the jury, that you will do that by using your good
10 judgment and by using your common sense and by passing
11 upon the believability or creditibility of the
12 witnesses. You have the right as a juror, to take into
13 consideration the interest, the bias, the prejudice of a
14 witness as well as the demeanor or behavior of a witness
15 upon the stand, anything that is in the record that will
16 aid or assist you in evaluating the testimony of the
17 several witnesses who shall testify during this case. As
18 you can readily see, Madam Forelady and ladies and
19 gentlemen of the jury panel, that is your duty under your
20 oath as jurors, to please pay close attention, to listen
21 to the witnesses, listen to the attorneys, listen to the
22 Court so that at the conclusion of this trial you will
23 then be in a posture to arrive at your verdict. The word
24 verdict being derived from the Latin phrase Veridicto,
25 meaning to speak the truth. Now, I share these brief

1 remarks with you because some of you may not previously
2 have had experience in the trial of a criminal case in
3 this State. This is merely an attempt on my part to
4 explain to you certain legal definitions and certain of
5 your duties under your oath as jurors in the trial of
6 this case. I hope it will be of some benefit to each of
7 you in arriving at a fair, a just and a true verdict.
8 Fair to the State of South Carolina and the citizens
9 residing therein, and fair to the defendant at the bar,
10 Timothy F. Green. Thank you.

11 Any exceptions to my opening comments by the
12 State?

13 MR. HARTE: None, Your Honor.

14 THE COURT: By the defendant?

15 MR. SCREEN: None, Your Honor.

16 THE COURT: All right, you may make a brief
17 opening statement, gentlemen.

18 (Opening statements presented by respective counsel.)

19 CAROLYN JOHNSON being called and duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION:

22 BY MR. HARTE:

23 Q. Ms. Johnson, where do you live?

24 A. Gloverville.

25 Q. Do you know the defendant, Timmy Green?

- 1 A. Yes.
- 2 Q. How long have you known him?
- 3 A. Almost a year.
- 4 Q. Do you know his sister?
- 5 A. Yes.
- 6 Q. Elizabeth Green?
- 7 A. Yes.
- 8 Q. How long have you known her?
- 9 A. Almost a year.
- 10 Q. Do you know Phyllis Price - Phyllis Hill Price?
- 11 A. Yes.
- 12 Q. How long have you known her?
- 13 A. Not long.
- 14 Q. Did you know all those people on September the
- 15 23rd of last year?
- 16 A. Yes.
- 17 Q. Did you know where Elizabeth Green lives?
- 18 A. Yes.
- 19 Q. Where does she live?
- 20 A. In the building next to me.
- 21 Q. What type of buildings are those?
- 22 A. Brick buildings - apartments.
- 23 Q. They are apartment buildings?
- 24 A. Yes.
- 25 Q. Who lives in that apartment with Elizabeth

1 Green?

2 A. Her kids.

3 Q. How many children does she have?

4 A. Five.

5 Q. Did you know where Phyllis Price lives?

6 A. Yes.

7 Q. Where did she live on September the 27th?

8 A. Right in back of me in an apartment building.

9 Q. So all three of you live in apartments in that

10 area?

11 A. Yes.

12 Q. How about Timothy Green? Do you know where he

13 was living?

14 A. Not really.

15 Q. Did you see him on occasion, in those

16 apartments?

17 A. Yes.

18 Q. Was he sort of going with somebody?

19 A. He was dating Phyllis.

20 Q. Dating Phyllis. Did he sometimes stay in that

21 apartment?

22 A. I guess.

23 Q. Did you know Victim

24 A. Yes.

25 Q. Who is Victim

- 1 A. Phyllis's daughter.
- 2 Q. How old was **Victim** do you know?
- 3 A. Three, I think.
- 4 Q. Did Phyllis have any other children?
- 5 A. Yes.
- 6 Q. How many?
- 7 A. She had another girl and a little boy.
- 8 Q. Was the other girl older or younger than
- 9 **Victim**
- 10 A. Older.
- 11 Q. Was the little boy older or younger?
- 12 A. Younger.
- 13 Q. So, **Victim** was the middle child?
- 14 A. Yes.
- 15 Q. On September the 23rd, the date that all of
- 16 this happened, did you have occasion to be in the
- 17 apartment of Elizabeth Green?
- 18 A. Yes.
- 19 Q. What time did you go over to that apartment?
- 20 A. It was about eight or a little after.
- 21 Q. Who was at the apartment when you got there?
- 22 A. Nobody but Liz and her little daughter.
- 23 Q. Were any of the other children around?
- 24 A. Not at that time when I went over there.
- 25 Q. Tell me what you'all did that day.

- 1 A. Liz walked down the hill to the store to help
2 me bring some packages back.
- 3 Q. Can you tell me about how long you were gone?
- 4 A. About thirty minutes.
- 5 Q. Was one of the things you bought, beer?
- 6 A. One quart.
- 7 Q. One quart of beer?
- 8 A. Yes.
- 9 Q. And did you start drinking it at that time?
- 10 A. After we got back to Liz's apartment.
- 11 Q. At that time, were any of the kids in the area?
- 12 A. Yes.
- 13 Q. Who was there and what were they doing?
- 14 A. After we went from the store, Phyllis's kids
15 came over there. **Victim** and another one to play with
16 Erica.
- 17 Q. How about the little boy? Was he too young?
- 18 A. He's not walking at all.
- 19 Q. So he would have been at home or somewhere
20 else?
- 21 A. Yes.
- 22 Q. What happened when they came over?
- 23 A. They just went to playing.
- 24 Q. Playing with the other children?
- 25 A. Yes.

1 Q. - What happened then
 2 A. Liz saw Timmy walking up and she called him.
 3 Q. Where was he when she saw him walking up?
 4 A. Let me see. In the back of the apartment
 5 walking in the back and he was going, like up a hill,
 6 sorta like a hill.
 7 Q. She called him?
 8 A. Yes.
 9 Q. Did he come over or did he go on or what did he
 10 do?
 11 A. He came over.
 12 Q. Did he stay for long?
 13 A. Yes.
 14 Q. How long did he stay?
 15 A. About ten minutes the first time.
 16 Q. And then where did he go after he left?
 17 A. I don't know. Phyllis called him at one point.
 18 Q. He left the apartment?
 19 A. Yes.
 20 Q. Did you see him come back?
 21 A. Yes.
 22 Q. How long was that?
 23 A. How long did he stay?
 24 Q. How long was he gone?
 25 A. I can't say for sure.

- 1 Q. - Do you know what brought him back?
- 2 A. No.
- 3 Q. What did he do when he came in?
- 4 A. He dranked almost a half a cup of beer and
- 5 talked with us a little while.
- 6 Q. Let me ask you, where were you in the
- 7 apartment?
- 8 A. Sitting near the back door near the window.
- 9 Q. What room?
- 10 A. Kitchen.
- 11 Q. And from where you were sitting, where was the
- 12 back door?
- 13 A. That was the back door.
- 14 Q. Right next to you?
- 15 A. Yes.
- 16 Q. Where was the front door in relation to where
- 17 you were sitting?
- 18 A. On my right.
- 19 Q. Could you see the front door-from where you
- 20 were sitting?
- 21 A. Yes.
- 22 Q. Did you pretty much sit in that same place all
- 23 morning?
- 24 A. Yes.
- 25 Q. Did you see anybody else come in or out of the

- 1 apartment?
- 2 A. No.
- 3 Q. Where were the children?
- 4 A. The last time they came in, they went back in
- 5 the back room to play.
- 6 Q. Who was in the back room?
- 7 A. Just the three girls.
- 8 Q. And their names are what?
- 9 A. **Victim** Erica and I don't know Phyllis's
- 10 other daughter's name.
- 11 Q. How about Stephanie, would that be it?
- 12 A. I don't know her real name.
- 13 Q. Ebony, does that sound right?
- 14 A. I never heard them call her anything but Poo.
- 15 Q. They had a nickname for her?
- 16 A. Yes.
- 17 Q. And they were in the back?
- 18 A. Yes.
- 19 Q. Can you tell us what is in the back of the
- 20 apartment? How many bedrooms?
- 21 A. Three.
- 22 Q. What else is back there?
- 23 A. The bathroom.
- 24 Q. Do you know which room they were in?
- 25 A. They were in Liz's bedroom.

1 Q. How do you know?

2 A. That's where she was telling me they was at and

3 from her bedroom you really can't hear.

4 Q. So when Timothy came back - you're talking

5 about the defendant seated next to Mr. Screen over here?

6 A. Yes.

7 Q. Tell me what happened.

8 A. When he came back he do what he usually do, he

9 look in the frige there and stove and he talked some more

10 and he went back in back.

11 Q. Was he the only adult that you saw go back in

12 the back that morning?

13 A. Yes, sir.

14 Q. How long was he back in there?

15 A. About fifteen or twenty minutes.

16 Q. When he came back out, describe what happened.

17 A. He had **Victim** laying on his shoulder and he

18 told Liz that she was back on her bed asleep.

19 Q. She was laying on his shoulder?

20 A. Yes.

21 Q. What happened then?

22 A. He took her over to her Mother, Phyllis.

23 Q. Did he go out the front door or the back door?

24 A. The back door and as he was going out of the

25 house I heard Phyllis screaming.

- 1 Q. Let me ask you this, when he came out with her
- 2 on his shoulder, describe how he was holding her.
- 3 A. He just had her laying up like this. Her head
- 4 was laying on his shoulder.
- 5 Q. From where you were, were you able to see her
- 6 face?
- 7 A. No.
- 8 Q. Was she moving at all while she was on his
- 9 shoulder?
- 10 A. No.
- 11 Q. Did she say anything or make any sounds?
- 12 A. No.
- 13 Q. And you say he went across the street. Did he
- 14 go directly across to Phyllis's apartment?
- 15 A. Yes.
- 16 Q. How long after he left did you hear the
- 17 screams?
- 18 A. I can't exactly remember.
- 19 Q. Was it less than a minute?
- 20 A. Well, it don't really take two minutes to walk
- 21 over to Phyllis's because her apartment is so close.
- 22 Q. What I'm trying to find out, was there any time
- 23 lapse between the time he went over there and the time
- 24 you heard the scream?
- 25 A. About a minute, I guess.

1 Q. - And when you heard the screams, what did you
2 do?

3 A. I turned and told Liz something was wrong and
4 we went over there.

5 Q. What did you see when you got over there?

6 A. Nothing but the child. She looked like she was
7 asleep.

8 Q. What was happening? Where was she?

9 A. He laid her down on the back porch and asked me
10 to go get a cold compress to put on her head.

11 Q. What did he then do?

12 A. He was trying to wake her up.

13 Q. How was he doing it?

14 A. Trying to get her to say something.

15 Q. How was he doing that?

16 A. Just rubbing her face and shaking her and
17 calling out to her.

18 Q. Did you see any blood?

19 A. No.

20 Q. Later on, did you see blood?

21 A. No, not from the child, I didn't.

22 Q. Not from the child?

23 A. No.

24 Q. Where did you see blood?

25 A. In Liz's apartment.

- 1 Q. - In Liz's apartment?
- 2 A. Yes.
- 3 Q. Where in Liz's apartment did you see blood?
- 4 A. On the wall side her bed.
- 5 Q. In the back room?
- 6 A. Yes.
- 7 Q. Where the children were?
- 8 A. Yes.
- 9 Q. Did you see Timothy do anything? Something
- 10 like CPR?
- 11 A. Yes.
- 12 Q. Resuscitation?
- 13 A. Yes.
- 14 Q. Describe what he was doing.
- 15 A. He just placed his hand on her chest and was
- 16 pressing it slightly.
- 17 Q. I want you up here at the microphone and I want
- 18 you to show the jury how hard he was pressing on the
- 19 child's stomach or chest.
- 20 A. Like this. He wasn't doing it very hard.
- 21 Q. Ms. Johnson, did you hear anybody say anything
- 22 about any worm medicine?
- 23 A. Not that day, I didn't.
- 24 Q. Later on you heard about that?
- 25 A. I heard about this in the courtroom.

1 Q. - Answer any questions Mr. Screen might have.

2 CROSS EXAMINATION:

3 BY MR. SCREEN:

4 Q. Ms. Johnson, you are a friend of Liz Green?

5 A. Yes.

6 Q. And you go over to her apartment frequently?

7 A. Yes, I did.

8 Q. And the morning in question, the 23rd of
9 September 1985, you were all over there drinking beer, is
10 that right?

11 A. After we came from the store.

12 Q. Well, you drank some beer over there, didn't
13 you?

14 A. Yes.

15 Q. In the kitchen?

16 A. Yes.

17 Q. What else did you'all have to drink?

18 A. That was it.

19 Q. You didn't drink any whiskey?

20 A. After they carried the child away.

21 Q. I'm talking about prior. Prior to this
22 incident happening, did you drink any whiskey?

23 A. That day we did.

24 Q. Was that moonshine?

25 A. No.

1 Q. - What was it?
 2 A. Seagrams Seven.
 3 Q. Seagrams Seven gin?
 4 A. No, just Seagrams Seven.
 5 Q. How much did you'all drink?
 6 A. Half a pint.
 7 Q. Half a pint of that, how much beer?
 8 A. Pardon me?
 9 Q. How much beer?
 10 A. A quart.
 11 Q. Who all was drinking that half pint of Seagrams
 12 Seven and that quart of beer?
 13 A. Liz and Timmy and I.
 14 Q. All right. How many drinks did you have?
 15 A. A cup of beer.
 16 Q. How about the whiskey?
 17 A. Well, you can't get very much out of a half a
 18 pint.
 19 Q. How much did you drink?
 20 A. A small glass.
 21 Q. How long did you say you and Liz and the
 22 defendant sat in the kitchen?
 23 THE COURT: Are we talking about eight o'clock
 24 in the morning or eight o'clock in the afternoon? Was
 25 this in the morning?

1 A. We drank the beer in the morning and we drank
2 the liquor in the afternoon.

3 THE COURT: This is eight o'clock in the
4 morning. Let me just take you back. What time did you
5 get over there?

6 A. It was about eight or a little after because
7 the store don't open 'till eight o'clock.

8 Q. And you went by Liz Green's house?

9 A. Yes.

10 Q. Did you go in the house?

11 A. Yes.

12 Q. Did you go in the back of the house at that
13 time?

14 A. Yes, I did.

15 Q. You went in her bedroom?

16 A. Bathroom.

17 Q. Did you go in Liz's bedroom?

18 A. No.

19 Q. All right. You had a conversation with her as
20 you'all walked to the store?

21 A. I went over there purposely to ask her to go
22 with me.

23 Q. And at some point you walked to the store with
24 her?

25 A. Right.

1 Q. How long did it take you'all to go to the store
2 and come back?

3 A. I never timed it.

4 Q. I'm asking you, have you got any idea?

5 A. About fifteen minutes, I guess.

6 Q. You walked back from the store along with
7 Elizabeth Green?

8 A. Right.

9 Q. What I'm trying to ask you now, Ms. Johnson,
10 when did you drink the whiskey? Did you drink it after
11 you came from the store or before you went?

12 A. We didn't drink it after we came from the
13 store. It was after twelve. I don't understand the
14 question.

15 Q. I'm asking you - you said that morning shortly
16 after eight o'clock you went over to Liz Green's house.

17 A. Right.

18 Q. You used the bathroom in that house.

19 A. Yes.

20 Q. All right, you got her and then you'all walked
21 down to the store.

22 A. Right.

23 Q. You said you stayed about fifteen minutes at
24 the store. I'm asking you, did you drink the whiskey
25 prior to going to the store or did you drink the whiskey

1 after you got back to the house?

2 A. No, we didn't drink it when we got back to the
3 house because we didn't even bring anything with us at
4 that time.

5 Q. All right. So, then other than you going in
6 the back of the house to the bathroom, when you went back
7 there to the bathroom the children weren't even there at
8 that point, isn't that right?

9 A. Wasn't nobody there when I got over there but
10 Liz and her daughter, Erica.

11 Q. All right, and isn't it a fact that you did not
12 go back in that bedroom anymore prior to Timmy coming
13 over there did you?

14 A. No.

15 Q. In fact, you did not go back to that bedroom
16 until after this incident was all over, isn't that right?

17 A. I only went back there when I first went over
18 to Liz house.

19 Q. You told me that. When you went to the
20 bathroom.

21 A. Right.

22 Q. Was that after all of this thing had
23 transpired?

24 A. Right. After all of it had happened and they
25 had took the child away.

1 Q. And you didn't go back there in the bedroom
2 when the children were back there playing, did you?

3 A. Not at the time, no.

4 Q. Did you go in to either one of the other two
5 bedrooms?

6 A. No.

7 Q. Do you know for a fact if anyone was in either
8 one of the other two bedrooms?

9 A. No, I can't say for a fact.

10 Q. And you've already testified on the fact that
11 you can't hear what's going on from the bedroom - from
12 Liz's bedroom, is that right?

13 A. From Liz's bedroom, no.

14 Q. So you didn't hear any noise or anything
15 unusual going on back there that morning with the
16 children, did you?

17 A. No.

18 Q. Now let's track the movement of the defendant
19 when he came in. What time did you say that he came into
20 the house?

21 A. I can't be sure. I wasn't watching the clock.

22 Q. Well, how long had you been there before he
23 came in?

24 A. Before Timmy came, 'bout an hour.

25 Q. About an hour. That's after you came back from

1 the store. All right, he walks in and you said he
2 checked the stove and the refrigerator and then he drinks
3 a cup of beer with you'all.

4 A. He didn't drink quite a full cup of beer.

5 Q. Then you said he went to the back of the house,
6 is that right?

7 A. Yes.

8 Q. Do you know where in the back this man went?

9 A. No, I didn't follow him back there.

10 Q. So, you don't know whether he went in that
11 bedroom or in the bathroom or anywhere, do you?

12 A. No, I don't.

13 Q. And while he was back there, you didn't hear
14 anything unusual or a sound or anything unusual going on
15 back there, did you?

16 A. No, I wasn't paying any attention.

17 Q. Did you'all have a radio on that morning?

18 A. Yes, we did.

19 Q. Where was the radio? In the kitchen?

20 A. In the living room.

21 Q. So, you'all could hear it from where you were
22 sitting?

23 A. Barely.

24 Q. All right. Do you know Liz Green's brothers?
25 Do you know if she has some brothers?

1 A. - Yes, sir.

2 Q. Is it safe to say she has two or three of them?

3 A. I guess.

4 Q. Do they live out there in that home?

5 A. I wouldn't know.

6 Q. Well, have you seen them out there on occasion?

7 A. Yes.

8 Q. Have you seen them at times that would lead you
9 to believe they may have spent the night there?

10 A. No.

11 Q. All right. You don't know then, you're not
12 telling these ladies and gentlemen that Timothy Green did
13 anything to this kid, are you?

14 A. I can't say what he did.

15 Q. You're not saying that he did anything, are
16 you?

17 MR. HARTE: Objection. He's asked the
18 question. She's answered it.

19 THE COURT: Sustained.

20 MR. SCREEN: I have no further questions.

21 THE COURT: Anything on cross?

22 REDIRECT EXAMINATION:

23 BY MR. HARTE:

24 Q. Ms. Johnson, when did you'all drink the liquor?

25 Was it before the ambulance came and got the child or was

1 it after the ambulance came?

2 A. It was after the ambulance had gone.

3 Q. Before that, you'all drank some beer, is that
4 correct?

5 A. Right, a quart.

6 Q. Nothing further.

7 RECROSS EXAMINATION:

8 BY MR. SCREEN:

9 Q. Was there anything else, did you'all consume
10 anything else - any drugs - were you doing anything else
11 in that house that morning?

12 A. No.

13 Q. Thank you.

14 THE COURT: Ma'am, was there anybody else back
15 in that room where the children were playing when Timmy
16 Green came in?

17 A. No.

18 THE COURT: Thank you, ma'am. Next witness.

19 PHYLLIS PRICE being called and duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION:

22 BY MR. HARTE:

23 Q. Ms. Price, where do you live?

24 A. Apartment C, Valley Homes in Gloverville.

25 Q. All right, you're going to have to get close to

1 that microphone and speak up just a little bit so I can
 2 hear you. If I can hear you, these jurors can hear you.
 3 Now tell me again where you live.
 4 A. Apartment 10 C, Valley Home Apartments in
 5 Gloverville.
 6 Q. Are those the apartments that Ms. Carolyn
 7 Johnson was just talking about?
 8 A. Yes.
 9 Q. How long have you lived in those apartments?
 10 A. Almost three years.
 11 Q. Who lived there back in September of 1985,
 12 September 23rd, who lived in that apartment with you?
 13 A. Me and my three kids and Tim.
 14 Q. When you say Tim, you're talking about the
 15 defendant, Timothy Green?
 16 A. Yes, sir.
 17 Q. How long did he live in that apartment with you
 18 and your kids?
 19 A. About eight or nine months.
 20 Q. And he was living there on September the 23rd?
 21 A. Yes, sir.
 22 Q. Now, I show you what's been marked as State's
 23 Exhibit #1 and ask you, just yes or no, --
 24 MR. SCREEN: May I approach the bench, Your
 25 Honor?

1 THE COURT: Certainly.

2 (Bench conference in the presence of the jury,

3 out of the hearing of the jury and off the record.)

4 Q. Can you tell me who this is a picture of?

5 MR. HARTE: I'm not going to show it to you

6 again. I withdraw it.

7 THE COURT: Ma'am, would you like to step down

8 while we call another witness? All right, next witness,

9 Mr. Solicitor.

10 EMMA SIMPKINS being called and duly sworn,

11 testified as follows:

12 DIRECT EXAMINATION:

13 BY MR. HARTE:

14 Q. Okay Ms. Simpkins, where do you live?

15 A. Sand Hills in Gloverville.

16 Q. Is that anywhere near these apartments we've

17 been talking about?

18 A. Well, it's not very far from there.

19 Q. Do you know the defendant, Timothy Green?

20 A. Well, I guess I've seen him around but not

21 really to know him.

22 Q. You know him when you see him?

23 A. Yes.

24 Q. Did you see him the afternoon this child died?

25 A. Yes.

1 Q. - Where was that?

2 A. Down in the project in the park.

3 Q. In the park?

4 A. Yes.

5 Q. Did you hear him say anything about what had

6 happened?

7 A. Yes.

8 Q. What did you hear him say?

9 A. Well, I was standing out by the flag pole and

10 he came up to me and told me that he felt as though he

11 was being punished by God and if **Victim** lived he

12 wouldn't do anything wrong anymore.

13 Q. Thank you. Answer any questions Mr. Screen may

14 have.

15 CROSS EXAMINATION:

16 BY MR. SCREEN:

17 Q. Mr. Green didn't tell you why he thought God

18 may have been punishing him, did he?

19 A. No, he didn't.

20 Q. The fact that all of you'all was standing

21 around there and were sad as to what had happened,

22 weren't you?

23 A. Well, that was before she had passed.

24 Q. I'm saying you were sad because she had to be

25 taken away in an emergency vehicle, is that right?

1 A. Quite naturally, yes.

2 Q. It's nothing unusual about him being concerned

3 about that child, is it?

4 A. No, I guess not.

5 Q. Thank you.

6 MR. HARTE: Nothing on redirect, Your Honor.

7 THE COURT: Thank you, step down. Next

8 witness.

9 STEVE DERRICK being called and duly sworn,

10 testified as follows:

11 DIRECT EXAMINATION:

12 BY MR. HARTE:

13 Q. State your name, please.

14 A. Steven Derrick.

15 Q. How are you employed?

16 A. Forensic Investigator with the Aiken County

17 Sheriff's Department.

18 Q. And as such, did you have an occasion to be

19 involved in the investigation of the death of **Victim**

20 **Victim**

21 A. Yes, sir, I did.

22 Q. And did you receive some clothes in regards to

23 this case?

24 A. Yes, sir, I did.

25 Q. When did you receive those clothes?

1 A. I believe it was on the 25th of September.

2 Q. Whose clothes were they?

3 A. Clothing that belonged to Timothy Green.

4 Q. I show you what has been marked as State's
5 Exhibit #2 and #3 and ask you if you can identify these?
6 That's number two.

7 A. Yes, sir.

8 Q. What is number three?

9 A. A blue shirt that belonged to Timothy Green.

10 Q. And number two?

11 A. It's a pair of trousers that belonged to
12 Timothy Green.

13 MR HARTE: I'm offering these in evidence at
14 this time.

15 THE COURT: Any objection?

16 MR. SCREEN: Yes, sir.

17 THE COURT: State your objection.

18 MR. SCREEN: I am concerned about chain of
19 custody, Your Honor - when these clothes were taken and
20 what time and how it relates to this incident.

21 THE COURT: It's unnecessary to prove chain of
22 custody on something that could not be altered or
23 changed, such as this. I'll let them admit them subject
24 to being linked up as to their probative value.

25 MR. HARTE: Thank you, Your Honor.

1 - (State's Exhibits #2 and #3, a blue shirt and a
2 pair of trousers, entered into evidence with objection.)

3 Q. What did you do then, Mr. Derrick?

4 A. I maintained custody of the clothes until such
5 time that I turned them over to the State Law Enforcement
6 Division for further analysis.

7 Q. Thank you. Answer any questions Mr. Screen may
8 have.

9 CROSS EXAMINATION:

10 BY MR. SCREEN:

11 Q. What time did you get these clothes?

12 A. It was in the morning time from the County
13 Detention Center.

14 Q. What date?

15 A. I believe it was the 25th.

16 Q. Which is two days after this alleged incident,
17 isn't that right?

18 A. Yes, sir.

19 Q. And what was your reason for taking those
20 clothes?

21 A. For scientific analysis for any stains that may
22 be on the clothes.

23 Q. You don't know if those are the same clothes
24 the defendant had on the day of this incident, do you?

25 A. The blue shirt I know to be because Timothy

1 Green told us that that was the shirt he had on during an
2 interview that I was present at, and to the best of my
3 memory and recall, he had it on that day. The trousers
4 were taken from the clothing room.

5 Q. You know who all had possession of that shirt,
6 where that shirt was from the time he took it off until
7 you got it?

8 A. Other than the fact that he had it on at the
9 times that I saw him.

10 Q. Yes, sir, but I'm asking you do you know who
11 had the shirt from the time he took it off of his body
12 until you got custody of it?

13 A. He took it off in my presence.

14 Q. On the 25th?

15 A. On the 25th.

16 Q. But you don't know where it was all the other
17 times. You don't know whether he had it or somebody else
18 had it during those two days interim, do you?

19 A. No, sir, I do not.

20 Q. Thank you.

21 MR. HARTE: That's all.

22 THE COURT: Thank you. Step down. Next
23 witness.

24 PATSY HABBEN being called and duly sworn,
25 testified as follows:

Brenda A. Wingard

Certified Court Reporter

1765 Huckleberry Drive

Aiken, South Carolina 29801

1 DIRECT EXAMINATION:

2 BY MR. HARTE:

3 Q. How are you employed, Ms. Habben?

4 A. I am a Forensic Serologist employed at SLED.

5 Q. What is your educational background?

6 A. I attended Columbia College for four years and
7 received a BA Degree in Biology. I have also attended
8 the FBI School of Serology and have received graduate
9 credit in this area from the University of Virginia.

10 Q. What is your experience in Serology?

11 A. I have been employed at SLED for approximately
12 eight years.

13 Q. Have you ever been qualified in the court of
14 law as an expert in Serology?

15 A. Yes, I have, many times.

16 MR. SCREEN: I'd so stipulate to that, Your
17 Honor.

18 THE COURT: Stipulate she's an expert in the
19 field of Serology. Thank you, ma'am

20 Q. What is Serology, please Ms. Habben?

21 A. Serology is the study of body fluids such as
22 blood, semen and saliva.

23 Q. Did you have an occasion to make some
24 examinations in relation to this case?

25 A. Yes, I did.

1 Q. I show you what has been marked as State's
2 Exhibits #2 and #3 and ask you if you can identify these
3 and tell us what you did with regards to those items.

4 A. Yes, I can identify these items. They have my
5 initials on them and what I did with each one was
6 examined it for body fluids such as blood, semen and
7 saliva. In particular, the blue
8 shirt, I analyzed it for blood, saliva and semen. I
9 checked six different stains on the shirt. The first
10 stain, I checked to see if it was blood. It was positive
11 for blood. After we checked it for blood we have to
12 determine if the blood is human blood or animal blood.
13 In this case it was positive for human blood. Then I
14 wanted to find out what type of blood it was. All of you
15 have a blood type of one of four groups; Group A, Group
16 B, Group O or Group AB, so what I wanted to do was find
17 out what blood type was on this shirt. In this case,
18 sample #1 was Group O, human blood.

19 Q. Can you tell us where that stain was?

20 A. Yes, I can. This is the shirt with the tag in
21 the back, on the front facing you. Sample #1 is on the
22 right sleeve sorta like right here if I had the shirt
23 on. Sample #2, I analyzed it also for body fluids and in
24 this case it was negative for semen and positive for
25 blood. Again, it was positive for human blood and the

Brenda A. Wingard

Certified Court Reporter

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Shirt - stains 1, 2 + 3 = human blood

1 blood_type again was Group O, human blood. I also
2 checked it for semen which was negative and the blood on
3 this shirt in sample #1 and #2 appeared to me to be very
4 dilute or watered down. So, I wanted to find out maybe
5 what it was that diluted this blood sample. I did another
6 test for saliva. To some people they call it spit, it's
7 just another name for spit. I tested for saliva to see
8 if maybe saliva had been mixed with this blood to dilute
9 it and it was positive for saliva also. So, on Sample
10 #2, which is located on this shirt, if I had on this
11 shirt it would be right here on the shoulder on the right
12 side as noted by this #2 here. So, it was Group O, human
13 blood and it was also mixed with saliva. Sample #3,
14 which again, is located on the shoulder area a little bit
15 behind here. I found human blood but the type was
16 inconclusive. I could not determine what type it was.
17 Samples #4, #5 and #6 were negative for blood. And that
18 was this shirt.

19 Q. That's State's Exhibit number --

20 THE COURT: No, sir, that's not an exhibit yet
21 because you're going to have to prove chain of custody
22 from the time State got it until it was -- you're going
23 to have to prove that -- I believe Mr. Derrick said he
24 witnessed the defendant taking the shirt off and handing
25 it to him and then he delivered it to SLED. He did

1 testify that he turned it over to SLED. Who did he turn
2 it over to at SLED?

3 MR. SCREEN: Who received the items at SLED?

4 A. I received the shirt and pants from Steve
5 Derrick.

6 Q. Where were they kept until --

7 A. These were secured in the Evidence Locker until
8 I had time to examine it and throughout the examination
9 of this shirt, it was secured in the Evidence Locker at
10 SLED.

11 Q. How about the pants?

12 A. Also the pants.

13 Q. Tell me about your examination in regards to
14 the pants.

15 A. On the pants, I examined three different
16 stains. The first stain was negative for semen, the
17 second stain was also negative for semen but it was
18 positive for blood. It was also positive for human blood
19 and the blood type on these pants was Group O, consistent
20 with the same blood type that was on the shirt. This
21 blood did not appear to be diluted. It was a
22 concentrated sample of blood as if it had been dropped on
23 there. It was not diluted. This sample was found on the
24 leg, denoted by the number two right here a little bit
25 below the knee area on the right leg. And sample #3 was

1 negative for semen and also for blood.

2 Q. Did you receive a sample of blood from Dr. Joel
3 Sexton?

4 A. I received a vial of blood from Steve Derrick,
5 labeled **Victim**

6 THE COURT: You may cross examine.

7 CROSS EXAMINATION:

8 BY MR. SCREEN:

9 Q. Ms. Habben, let me ask you, can you tell the
10 jury what percentage of persons in this population that
11 we live in, have O type blood?

12 A. Approximately forty percent of the population.

13 Q. Thank you very much. No further questions.

14 THE COURT: Any thing on redirect?

15 MR. HARTE: No, sir.

16 THE COURT: Thank you.

17 DIRECT EXAMINATION:

18 BY MR. HARTE:

19 (PHYLLIS PRICE being recalled to the stand.)

20 Q. I believe you testified you had three children
21 in September of 1985, is that correct?

22 A. Yes, sir.

23 Q. And is one of your children **Victim**

24 A. Yes, sir.

25 Q. How old was **Victim**

1 A. - Three.

2 Q. And did she live with you?

3 A. Yes, sir.

4 Q. On September the 23rd, the day that she died,

5 where were you that morning?

6 A. I was at home.

7 Q. What were you doing at home?

8 A. I was in the kitchen cooking..

9 Q. Did you know where **Victim** was?

10 A. Yes, sir.

11 Q. Where did you believe her to be?

12 A. I saw her go to Liz's house 'cause I was

13 standing at the back door when they went in.

14 Q. Who is they?

15 A. My two little girls, Ebony and **Victim**

16 Q. How old is Ebony?

17 A. Four.

18 Q. And **Victim** was three at the time?

19 A. Yes, sir.

20 Q. About what time was it when they went over

21 there?

22 A. Maybe about nine-thirty or ten.

23 Q. Had you seen your little girl, **Victim** that

24 morning?

25 A. Yes, sir.

1 Q. Had you seen her in days previous to that time?
2 A. Yes, sir.
3 Q. Did she appear to be ill or under any distress
4 or anything like that?
5 A. No, sir.
6 Q. Did you ever notice any bruises about her?
7 A. No, sir.
8 Q. Had you ever done anything that would have
9 caused bruises to be about her body?
10 A. No, sir.
11 Q. When was the next time you saw **Victim**
12 A. When Timmy brought her back home.
13 Q. Had you seen Timothy before that, that morning?
14 A. Yes, sir.
15 Q. Where was that?
16 A. He spent the night at my house.
17 Q. About what time did he leave the apartment?
18 A. He left a little before nine.
19 Q. When was the next time you saw him?
20 A. I don't know what time it was but the next time
21 I saw him he was bringing my little girl.
22 Q. Describe that to me.
23 A. Well, he told me to come get **Victim** because I
24 think she's asleep. So I went to the back door and I saw
25 blood coming out of her nose and mouth and I started

1 screaming and I asked him what was wrong with her. At
 2 first he told me she was asleep but then I recognized the
 3 blood. He said maybe she had took some poison.
 4 Q. Did he say what kind of poison he thought she
 5 took?
 6 A. Not at that time.
 7 Q. Later on did he say what kind of poison?
 8 A. He said maybe she took some worm medicine.
 9 Q. Some worm medicine?
 10 A. Yes.
 11 Q. Something you give to dogs?
 12 A. Yes.
 13 Q. When did he say that?
 14 A. After we was at the University Hospital he
 15 called to the Hospital and told them that on the 'phone.
 16 Q. Said something about worm medicine then?
 17 A. Yes, sir.
 18 Q. What happened after you saw the blood and
 19 started screaming? What happened then?
 20 A. I ran to my Mom's to call an ambulance. Well,
 21 I called and I couldn't talk so Liz took the 'phone and
 22 told them how to get to the apartment. I ran back home
 23 and Timmy had laid **Victim** down on the ground.
 24 Q. What was he doing?
 25 A. I wasn't looking what he was doing 'cause I was

1 laying on the ground crying and I wasn't looking at what
2 he was doing to her.

3 Q. Do you know anything about any worm medicine at
4 your house or anybody's house?

5 A. Well, Timmy had bought it 'cause he had a dog
6 and one of the dogs died and he got another one that
7 Sunday before **Victim** had died and David Glover had the
8 worm medicine in his car.

9 Q. You went a little fast for me. Timmy had
10 bought some worm medicine?

11 A. Yes, sir.

12 Q. Where was the worm medicine being kept?

13 A. Well, it was at my house.

14 Q. What happened to it when it left your house?

15 A. David Glover had got a dog and his dog had
16 worms and he wanted to use the worm medicine.

17 Q. David Glover?

18 A. Yes, sir.

19 Q. Where does he live?

20 A. He stays there in the project where we stays
21 at.

22 Q. When did he take the worm medicine out of your
23 house?

24 A. I don't know when he took it but he had took
25 the worm medicine about a week or so before my little

1 girl had died.

2 Q. Do you have any knowledge or any information

3 that that worm medicine ever got in the apartment of

4 Elizabeth Green?

5 A. No, sir.

6 Q. Answer any questions Mr. Screen may have.

7 CROSS EXAMINATION:

8 BY MR. SCREEN:

9 Q. Ms. Price, your children were up and out of the

10 house shortly after eight o'clock in the morning, is that

11 right?

12 A. After nine.

13 Q. Beg your pardon?

14 A. After nine.

15 Q. And they were out, you let them go over to

16 Elizabeth Green's house?

17 A. Yes.

18 Q. Did they go over there frequently?

19 A. Yes.

20 Q. You don't know if there was any worm medicine

21 or anything in Liz Green's house? You hadn't inspected

22 for that, had you?

23 A. No, sir.

24 Q. In fact, you don't know what happened to your

25 daughter, do you?

1 A. I know she's dead.

2 Q. Yes, ma'am, and I'm sorry about that. We'll

3 all agree on that but you don't know what caused her

4 death, who may have hurt her.

5 A. No, because I'm not a doctor.

6 Q. Did you have anything to drink that morning,

7 Ms. Price?

8 A. No.

9 Q. Ms. Price, how many children do you have? You

10 had three children prior to September 23, 1985, is that

11 right?

12 MR. HARTE: Your Honor, may we approach the

13 bench?

14 THE COURT: You may do so.

15 (Bench conference in the presence of the jury,

16 out of the hearing of the jury and off the record.)

17 THE COURT: Sustained.

18 Q. Ms. Price, let me ask you, were you here when

19 the SLED lady was testifying, that held up the blue

20 shirt?

21 A. Yes.

22 Q. I'm referring to this blue shirt. Do you

23 recall the defendant, Tim Green, having this shirt on or

24 a shirt similar to this?

25 A. Yes.

1 THE COURT: Having it on when, Mr. Screen?

2 MR. SCREEN: I'm talking about on the 23rd of
3 September, 1985.

4 A. Yes, that is the shirt he had.

5 Q. And the same shirt he had on when he was
6 carrying your daughter, Card **Victim** in his arms?

7 A. Yes.

8 Q. This is the same shirt he had on when you say
9 you saw blood coming out of her nose and mouth, is that
10 right?

11 A. Yes.

12 Q. I have nothing further.

13 MR. HARTE: Nothing on redirect.

14 THE COURT: Thank you, ma'am. Next witness.

15 ERICA GREEN being called and duly sworn,
16 testified as follows:

17 MR. SCREEN: Your Honor, may we approach the
18 bench?

19 THE COURT: You may do so.

20 (Bench conference in the presence of the jury,
21 out of the hearing of the jury and off the record.)

22 THE COURT: Madam Forelady, ladies and
23 gentlemen, I'll excuse you to go to lunch. Please do not
24 discuss this case, deliberate or decide what your verdict
25 should or would be in the trial of this case. Don't let

1 anybody approach you about the case. Swearing of the
2 bailiff's is waived.

3 (WHEREUPON the jury retired for lunch at 1:05
4 P.M.)

5 THE COURT: Mr. Harte and Mr. Screen, let me
6 emphatically state for the record, when we reconvene this
7 court and I ask for the next witness, if the witness
8 ain't here, the witness ain't going to be presented as
9 evidence in the trial of the case. That applies equally
10 to the State and equally to the defendant. Any problem
11 with any witnesses, ladies and gentlemen, that this Court
12 can help you with?

13 MR. HARTE: None, Your Honor.

14 MR. SCREEN: None, Your Honor.

15 THE COURT: Anything for the record before we
16 recess?

17 MR. SCREEN: None for the defense, Your Honor.

18 MR. HARTE: None for the State, Your Honor.

19 THE COURT: All right, the court will be in
20 recess for one hour, until five after two.

21 THE COURT: Dr. Joel Sexton, Forensic Pathology
22 expert will be called to testify. Please, I call to your
23 attention, that while the law is that you are allowed
24 broad latitude in cross examination, that when
25 questioning an expert, and I told a hundred new

1 prospective lawyers this as late as yesterday morning
2 you cannot ask a witness, "could it have been raining?",
3 "could it have been snowing?", "could it have been
4 sleeting?". You must put it in the terminology with a
5 reasonable degree of medical certainty. Is it more
6 likely than not or is it more probable than not? I tell
7 the Solicitor that, I tell the defense lawyer that. Any
8 of you have any questions about that? About my ruling?
9 Because I ain't going to get in any argument in front of
10 this jury and I ain't going to send them out to tell
11 you'all that again. Any questions about that Mr.
12 Solicitor?

13 MR. HARTE: No, sir, Your Honor.

14 THE COURT: Mr. Screen?

15 MR. SCREEN: No, sir.

16 THE COURT: Thank you. Anything for the record
17 before we bring the jury in?

18 MR. HARTE: Your Honor, our next witness is a
19 four year old child and I would request under the State
20 versus Sinclair that the public be asked to leave the
21 courtroom and also ask that the witness be allowed to sit
22 in the lap of the Victim Witness Coordinator.

23 THE COURT: With regard to your request that
24 people leave the courtroom, my discretion is to deny it.
25 Mr. Screen, what do you say about the request of sitting

1 in the Victim Witness Coordinator's lap?

2 MR. SCREEN: Your Honor, please, I understand
3 the tender years of this child but I want her to sit like
4 any other witness.

5 THE COURT: All right, Mr. Screen, I will
6 permit her to sit in a chair in front of the jury box
7 rather than up here and let her face the jury box.
8 Obviously, she's going to have to be postured so the
9 Court Reporter can hear that which she is saying. I'll
10 sustain the objection. I will not permit her to sit in
11 the lap of the Victim Witness Coordinator. Anything
12 else, gentlemen? Bring the jury in.

13 (WHEREUPON, at 2:25, the jury returned to the
14 jury box.)

15 X THE COURT: You may call your next witness.

16 ERICA GREEN being called and duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION:

19 BY MRS. COX:

20 THE COURT: Do you know what it means to tell
21 the truth?

22 A. (She ~~nods~~ nods her head, yes.)

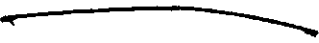
23 THE COURT: If somebody asks you a question,
24 you'll tell them what you know about it?

25 A. Yes.

1 - THE COURT: Erica, how old are you?
2 A. (She holds up four fingers.)
3 THE COURT: How many is that?
4 A. Four.
5 THE COURT: Do you go to Church?
6 A. Huh-uh.
7 THE COURT: Do you know what the Bible is?
8 A. Yes.
9 THE COURT: Does anybody read the Bible to you?
10 A. Yes.
11 THE COURT: And do you know that you are
12 supposed to tell the truth?
13 A. Yes.
14 THE COURT: Do you believe in Santa Claus?
15 A. Yes.
16 THE COURT: And do you know that if you do
17 things bad that you will be punished for it?
18 A. Yes.
19 THE COURT: Thank you. Now you just sit in
20 that chair and talk to this lady.
21 Q. Erica, you look at these people and tell
22 them, when I ask you these questions, you answer the
23 questions and tell them what happened, okay?
24 A. About **Victim**
25 Q. About **Victim**

- 1 A. - She was jumping on the bed.
- 2 Q. She was jumping on the bed? Was this back --
- 3 A. Me and Poo and **Victim**
- 4 Q. You'all were jumping on the bed? Was this at
- 5 your house that you'all were jumping on the bed?
- 6 A. At Stephanie's room.
- 7 Q. Okay. You'all were jumping on the bed, you and
- 8 Poo and **Victim** is that right?
- 9 A. (Nods yes).
- 10 Q. Was Tim back there with you'all?
- 11 A. Tim was in the bed.
- 12 Q. Did Tim go to the bathroom?
- 13 A. Tim was in the bathroom.
- 14 Q. And what did **Victim** do?
- 15 A. **Victim** walked in on Timmy and Timmy said, "get
- 16 out of here, **Victim** and she didn't.
- 17 Q. **Victim** didn't get out when Timmy told her to?
- 18 What did Timmy do?
- 19 A. Timmy was kicking her.
- 20 Q. Timmy was kicking her? Where did he kick her?
- 21 A. In the stomach.
- 22 Q. What did **Victim** do?
- 23 A. Nothing.
- 24 Q. Did she cry?
- 25 A. Yes.

Erica

1 Q. Was there any blood?
 2 A. She was sick.
 3 Q. Was there any blood?
 4 A. Yes.
 5 Q. Where was the blood?
 6 A. On the wall.
 7 Q. What happened then? Did **Victim** get up after he
 8 kicked her? Did she run off?
 9 A. She was throwing up.
 10 Q. She was throwing up?
 11 A. (Nods affirmative).
 12 Q. Where was she throwing up?
 13 A. In the yard.
 14 Q. No further questions.
 15 CROSS EXAMINATION:
 16 BY MR. SCREEN: 
 17 Q. I object to it but I will go into that at a
 18 later time.
 19 THE COURT: Notice objection for the record.
 20 Overruled.
 21 Q. Erica, how old are you? Four years old?
 22 A. (Holds up four fingers).
 23 Q. That's four years, right? Did you talk to this
 24 lady about this before you came here today?
 25 A. (Nods affirmative).

- 1 - THE COURT: How many times did you talk to her?
- 2 A. Just once.
- 3 Q. You talked to her for six months. Did anyone
- 4 tell you what to say? Did anyone tell you what you ought
- 5 to say here today?
- 6 A. (Shakes head negative).
- 7 Q. Tell me what you're saying, don't shake your
- 8 head.
- 9 A. Huh-uh.
- 10 Q. Did you see Tim hit **Victim**
- 11 A. Yeah.
- 12 Q. Where were they at?
- 13 A. We was in the room and he came out and she come
- 14 in the bathroom with Timmy and Timmy said, "get out of
- 15 that bathroom" and she didn't.
- 16 Q. She went in the bathroom with Timmy?
- 17 A. Timmy was finished and Timmy said, "I'm going
- 18 to beat your butt, **Victim**
- 19 Q. Where did he hit her?
- 20 A. In the stomach.
- 21 Q. With what? His hand or what?
- 22 A. With his foot.
- 23 Q. Did you tell your Mama that?
- 24 A. Not yet.
- 25 Q. You told your Mama?

- 1 A. - Yeah.
- 2 Q. Did you tell her that day?
- 3 A. (Shakes head yes).
- 4 Q. These people buy you anything to eat? This
- 5 nice lady sitting back here at the back, did they buy you
- 6 anything to eat?
- 7 A. Yeah.
- 8 Q. What did they buy you to eat?
- 9 A. A cookie and a soda.
- 10 Q. Did they talk to you before that or after that?
- 11 A. Yeah.
- 12 Q. Did they talk to you before?
- 13 A. Yeah.
- 14 Q. And then they bought you a cookie and a soda?
- 15 A. Yeah.
- 16 Q. Did you tell her that? That Tim hit **Victim**
- 17 Did you tell this lady back here that you saw Tim hit
- 18 **Victim**
- 19 A. Yeah.
- 20 Q. Do you know what it means to tell the truth?
- 21 A. Yeah.
- 22 Q. Are you telling us what you saw or are you
- 23 telling us what somebody told you to tell us?
- 24 A. No.
- 25 Q. Nobody told you to say anything?

1 A. - No.

2 Q. Did they take you and keep you with them for a

3 while?

4 A. Yeah.

5 Q. Was your Mother there?

6 A. Where?

7 Q. When you were with this lady.

8 A. Yeah.

9 Q. Not your Mother, this lady right here. See the

10 lady right there with the purple on, sitting in the back?

11 A. Yeah.

12 Q. Was your Mother with you when you talked to

13 that lady?

14 A. Yeah.

15 Q. Did you tell her that while your Mother was

16 with you?

17 A. Yeah.

18 Q. You did?

19 A. Yeah.

20 Q. I have nothing further, Judge.

21 THE COURT: Anything on redirect, Ms. Cox.

22 MRS. COX: No, Your Honor.

23 THE COURT: Thank you. You may take her back.

24 Ladies and gentlemen of the jury panel, you've

25 been listening to the testimony of Erica Green, age four,

1 and it may enter your mind as to her age as a witness,
2 which you must determine, as is true with any other
3 witness, is the believability and the creditability of
4 the testimony. Whether she understood the questions, as
5 to her memory, as to her telling the truth and it's up
6 for you to decide whether Erica Green understood the
7 seriousness of her appearance as a witness in this
8 criminal trial and it's up to you to decide if she
9 understood the questions I asked of her and the answers
10 that were given. Thank you, ma'am. You may call your
11 next witness *

12 MR. HARTE: The State would recall Phyllis
13 Hill.

14 PHYLLIS HILL recalled and reminded of her oath.

15 REDIRECT EXAMINATION:

16 BY MR. HARTE:

17 Q. Have you ever seen this bottle before, Ms.
18 Hill?

19 A. Yes, sir.

20 Q. Who did you get that bottle from?

21 A. David Glover had it. Tim had bought it for his
22 dog.

23 Q. Did you get this bottle back from David Glover?

24 A. Yes, sir.

25 Q. When did you get it back?

1 A. - After **Victim** had died.

2 Q. The same day?

3 A. It may have been the next two days.

4 Q. Who did you give this bottle to?

5 A. Mike Terry.

6 Q. Investigator from my office?

7 A. Yes, sir.

8 Q. Did you do anything to the bottle during the

9 time you had it after you got it from David Glover?

10 A. No.

11 Q. That's all I have.

12 THE COURT: Cross.

13 MR. SCREEN: None.

14 MIKE TERRY being called and duly sworn,

15 testified as follows:

16 DIRECT EXAMINATION:

17 BY MR. HARTE:

18 Q. State your full name, please.

19 A. William Michael Terry.

20 Q. Are you employed by me?

21 A. Yes.

22 Q. In what capacity?

23 A. Investigator.

24 Q. And as such, can you identify - in relation to

25 your job, did you receive this bottle?

1 A. - Yes, I did.

2 Q. Who did you receive it from?

3 A. Phyllis Hill.

4 Q. When did you receive it?

5 A. I think it was on the 25th of September.

6 Q. You think, or it was?

7 A. I'm pretty sure it was. I can get the Chain of

8 Custody Form and verify it.

9 Q. What did you do with it?

10 A. I turned it over to V. J. Ray.

11 Q. When did you turn it over to Mr. Ray?

12 A. The same day.

13 Q. And while it was in your possession, did you or

14 anyone else do anything with that bottle?

15 A. No, sir.

16 Q. Or the contents thereof?

17 A. No, sir.

18 Q. Answer any questions that Mr. Screen may have.

19 MR. SCREEN: None, Your Honor.

20 THE COURT: Step down. Next witneess.

21 V. J. RAY being called and duly sworn,

22 testified as follows:

23 DIRECT EXAMINATION:

24 BY MR. HARTE:

25 Q. Mr. Ray, how are you employed?

- 1 A. - Investigator with the Sheriff's Office.
- 2 Q. Were you so employed on September 23, 1985?
- 3 A. I was.
- 4 Q. Did you get a call in regards to the death of
- 5 **Victim** that day?
- 6 A. Yes, sir, I did.
- 7 Q. When did you first become aware there had been
- 8 an injury or a problem with **Victim**
- 9 A. It was about 10:30 P.M. in the night time.
- 10 Q. When was the first time you were able to go to
- 11 the residence of Elizabeth Green and the apartment
- 12 complex that we were talking about?
- 13 A. It was about twelve midnight, or shortly
- 14 thereafter.
- 15 Q. Where had you been during the time you found
- 16 out until you got there?
- 17 A. At the University Hospital in Augusta.
- 18 Q. Did you have occasion to look in the apartment
- 19 of Elizabeth Green?
- 20 A. I did.
- 21 Q. With regard to any dog worm medicine or
- 22 anything like that, did you specifically look for
- 23 anything like that?
- 24 A. I did. I looked in the bathroom cabinets and
- 25 the only thing I found was an empty Clorox bottle.

1 Q. - Empty Clorox bottle?

2 A. Right.

3 Q. I will ask you if you had occasion to come into

4 possession of this bottle?

5 A. I did.

6 Q. Did you receive it from Mike Terry on September

7 the 25th?

8 A. I did.

9 Q. And what did you do with it?

10 A. I turned it over to the forensic man, Steve

11 Derrick.

12 Q. When did you turn it over to him?

13 A. Same day.

14 Q. And during the time that it was in your

15 possession, did you or anyone else tamper or bother that

16 material in any way?

17 A. I did not.

18 Q. Answer any questions Mr. Screen may have.

19 CROSS-EXAMINATION:

20 BY MR. SCREEN:

21 Q. You said you looked in the bathroom, where else

22 did you look for that dog medicine?

23 A. I was in the whole house.

24 Q. But you didn't find it?

25 A. I didn't find anything in the house.

1 Q. - But that doesn't mean it wasn't in there.
 2 A That bottle wasn't.
 3 Q. If there was another bottle like that, you
 4 wouldn't know that, would you?
 5 A. No, sir.
 6 Q. Thank you, sir.
 7 MR. HARTE: Step down.
 8 STEVE DERRICK being called and reminded of his
 9 previous oath, testified as follows:
 10 DIRECT EXAMINATION:
 11 BY MR. HARTE:
 12 Q. Mr. Derrick, did you have occasion to receive
 13 this bottle?
 14 A. Yes, I did.
 15 Q. When did you receive it?
 16 A. I received it on September the 25th 1985.
 17 Q. From whom did you receive it?
 18 A. Investigator V. J. Ray.
 19 Q. What did you do with it?
 20 A. I maintained custody of the bottle until
 21 September the 26th of 1985, at which time I turned it
 22 over to the SLED chemist.
 23 Q. Who did you turn it over to at SLED Chemistry?
 24 A. Ms. Patsy Habben.
 25 Q. During the time it was in your possession, did

1 you or anyone else tamper with it or do anything to the
2 bottle or the contents?

3 A. Did nothing to the contents.

4 Q. How about to the bottle?

5 A. The bottle was dusted for latent prints.

6 Q. And you also put your initials on it?

7 A. That's correct.

8 Q. Thank you. Answer any questions for Mr.
9 Screen.

10 MR. SCREEN: No questions, Your Honor.

11 THE COURT: Witness excused.

12 PATSY HABBEN being called and reminded of her
13 oath, testified as follows:

14 DIRECT EXAMINATION:

15 BY MR. HARTE:

16 Q. Ms. Habben, I show what's been marked for
17 identification, State's Exhibit #4, and ask you if you
18 received that from Steve Derrick?

19 A. Yes, I did, on September 26, 1985.

20 Q. What did you with it?

21 A. I turned it over to our Toxicologist at SLED on
22 October 8, 1985.

23 Q. Where was it kept in between the time you
24 received it and you turned it over to the Toxicologist?

25 A. It was secured in the Evidence Locker.

1 Q. - Was anything done to the contents or the bottle
2 during that time?

3 A. No, it was not.

4 Q. And who is your Toxicologist?

5 A. Roy Paschal.

6 Q. Thank you. Answer any questions Mr. Screen may
7 have.

8 MR. SCREEN: No questions, Your Honor.

9 THE COURT: Thank you, step down. Next
10 witness.

11 DR. JOEL SEXTON being called and duly sworn,
12 testified as follows:

13 DIRECT EXAMINATION:

14 BY MR. HARTE:

15 Q. State your full name, please.

16 A. Dr. Joel Steven Sexton.

17 Q. Dr. Sexton, what is your educational
18 background?

19 A. Graduated from the University of Virginia in
20 1958 with a Bachelor Degree in Chemistry, was in the Navy
21 for three years.

22 MR. SCREEN: We are familiar with Dr. Sexton
23 and I would stipulate to his expertise.

24 THE COURT: He is qualified in the field as a
25 Forensic Pathologist?

1 MR. SCREEN: Yes.

2 THE COURT: Thank you.

3 Q. Dr. Sexton, how long have you been involved in
4 the field of Forensic Pathology?

5 A. Since 1968.

6 Q. During that time, how many autopsies have you
7 performed? Can you give us any idea?

8 A. Over three thousand.

9 Q. Have you testified in court on numerous
10 occasions as an expert?

11 A. Over three hundred times.

12 Q. Dr. Sexton, how are you employed now?

13 A. I am the Pathologist with the Newberry County
14 Memorial Hospital in Newberry, South Carolina.

15 Q. Would you define for the jury what Forensic
16 Pathology is?

17 A. Well first, a pathologist is a physician who,
18 after his medical training, specializes in the field of
19 pathology and during that time a person learns to examine
20 tissue, remove it surgically and determine if it has
21 cancer in it or not. This is often done with the frozen
22 section techniques while the patient is still asleep. A
23 Pathologist also is in charge of supervising the
24 laboratory that runs various procedures on urine, blood
25 and other fluids to help your physician to know if you

1 have a disease. And if you do have a disease or illness,
2 to know whether you're getting better or worse, depending
3 on the values of these various fluids that are analyzed.
4 A Pathologist is also the one doing autopsies on persons
5 dying in the hospitals. In those cases, it is to
6 determine why they didn't live a little longer or a
7 little more comfortably during their terminal illness.
8 In the case of a Forensic Pathologist, a Forensic
9 Pathologist does autopsies on persons dying suddenly or
10 violently where perhaps the cause of death is not clear
11 or when a violent death needs to have documentation, not
12 just as to the cause but as to the circumstances
13 surrounding the death. A person that was shot, it's
14 important to know whether they were shot while struggling
15 over a gun or shot in the back or lying in the floor or
16 what the circumstances were. A person that was
17 strangled, it is important to know if they were sexually
18 assaulted or if they were involved in some sort of
19 violent death, it is important to know whether they were
20 under the influence of some drug or chemical. But a
21 Forensic Pathologist is a physician with specialized
22 training who examines people who die suddenly or
23 violently to determine the cause of death and the
24 circumstances surrounding that death.

25 Q. Dr. Sexton, in September of 1985, did you have

1 occasion to examine the body of Victim

2 A. Yes, I did.

3 Q. Would you describe to us what you did and what
4 your findings were?

5 A. In a Forensic autopsy we take a great deal of
6 time on the external surfaces of the body trying to
7 document as many facts as we can as to what injuries may
8 be present and in general, the condition of the
9 individual. In examining the external surface of
10 Victim body, we noticed a number of superficial
11 injuries. These consisted of bruises, small circular
12 bruises or contusions on the upper part of the chest and
13 a number of small scars that indicate prior injuries.
14 These were on the knees, elbows as well as on the inner
15 aspect of the left arm and a few on the face. In
16 addition to these external injuries that were minor,
17 there was also some large bruises or contusions of the
18 face. Both lips were swollen, the left eye was swollen
19 and there was a large contusion on the right forehead.
20 The internal examination revealed that in addition to
21 these external injuries, there were multiple internal
22 injuries. These also, were bruises or contusions. In
23 the abdominal region, there were about three or four on
24 the right side and three or four on the left side of the
25 abdominal region plus one deep one here on the upper left

1 chest. Internally, the organs, meaning the liver, the
2 kidneys and the other structures of that sort, also had
3 injuries. Notably, a large laceration in the liver. The
4 liver is the largest organ in the body and it traverses
5 the whole aspect of the body as it goes from one side to
6 the other and in this case it was split in the middle and
7 was bleeding from the large split in the middle of it.
8 In addition, there was injury to the small intestines
9 that passed across the abdominal portion of the spine.
10 Something had struck the child hard enough to press that
11 portion of the body of the internal anatomy up against
12 the interior and by pushing against the spine, had
13 actually lacerated that portion of the small intestine.
14 There was also injury to the pancreas, which is an organ
15 which also passes straight across the internal portion of
16 the body, lying on top of the spine. All of this led to
17 acute inflammation inside the abdomen, which we call
18 peritonitis. So, in general the child had in the
19 abdominal and chest region, primarily the abdominal
20 region, contusions on the external surfaces, contusions
21 in the muscle and tissue and injuries to the internal
22 organs. As I mentioned, there were also contusions on
23 the face and under the scalp, there were contusions of
24 the scalp. Bruises where multiple injuries had occurred
25 on top of the head, on the front of the head and on the

1 back of the head. The examination of the brain showed
2 that there was also hemorrhage on the surface of the
3 brain.

4 Q. Dr. Sexton, you indicted that there were some
5 old scars or wounds and there were some fresh ones. Can
6 you tell us or give us an opinion, with a reasonable
7 degree of medical certainty, as to the time frame of the
8 age of the older ones?

9 A. The older ones were weeks to months old. It
10 takes about three weeks for a scar to form to the degree
11 that these were. So these were weeks or months old. I
12 can't say that they were not years old.

13 Q. Do you have an opinion, with a reasonable
14 degree of medical certainty, as to the cause of death of
15 **Victim**

16 A. Yes, I do.

17 Q. What is that opinion?

18 A. The abdominal and head injuries caused her
19 death. The abdominal injuries caused internal
20 hemorrhage, which in spite of the surgery that was
21 performed, she went into shock and did not come out of
22 the shock and died during surgery. So, the abdominal
23 injuries primarily, but the head injuries certainly,
24 contributed to the cause of death.

25 Q. Do you have an opinion, within a reasonable

1 degree of medical certainty, as to what would have caused
2 such an injury?

3 A. Yes, I do.

4 Q. What is that opinion?

5 A. Considering the multiplicity, that is, there
6 were multiple contusions on the abdomen, on the face, on
7 the chest, on the top of the head and the nature of the
8 internal injuries, this requires not just falling against
9 a flat surface but it would require falling on some
10 pointed surface or more likely, in my opinion, is from
11 blows to this region of the body.

12 Q. Do you have an opinion, within a reasonable
13 degree of medical certainty, as to when the fatal blow or
14 blows were struck?

15 A. On or about the day of death.

16 THE COURT: When did you make your
17 examination, Doctor?

18 A. I examined the body the following day, the 24th
19 of September. My records reflect the deceased died on
20 the 23rd of September.

21 THE COURT: If you had examined her four days or
22 two days, your opinion would not have differed?

23 A. That's correct. There is no change that occurs
24 after death as far as these injuries. These injuries
25 stay the same once death occurs. During life, the

1 healing process changes the appearance of the injury but
2 once death occurs, it would not change.

3 Q. Dr. Sexton, did you take any samples from
4 **Victim**

5 A. Yes, I did. We usually take tissue samples and
6 turn those over to the proper authorities for
7 investigation.

8 Q. And did you turn some samples over to State Law
9 Enforcement Laboratories?

10 A. Right. I gave some tissue samples to Roy
11 Pascal at the State Law Enforcement Division.

12 Q. Would you tell us what you gave him?

13 A. There were tissues from the body, pieces of
14 some of the internal organs and some bile.

15 Q. Some bile?

16 A. Some bile.

17 Q. What is that?

18 A. Bile is the fluid made by the liver that is
19 secreted to digest fats.

20 Q. After taking his samples and prior to
21 delivering to Mr. Pascal, did you do anything with them
22 other than preserve them?

23 A. No.

24 Q. Do you have an opinion, within a reasonable
25 degree of medical certainty, as to whether or not

1 intaking Piperazine would cause the injuries or problems
2 that you saw in this child?

3 A. No, they would not cause these injuries. It is
4 a medication that goes into the GI tract. If you swallow
5 something like a penny, it will come out the other end.
6 This medication does the same thing. It stays within the
7 GI tract and kills any parasites that might be in the GI
8 tract. It does not get into the body's system. No
9 medication of this sort could cause the injuries that I
10 saw in the body.

11 Q. Dr. Sexton, please answer any questions Mr.
12 Screen might have.

13 CROSS EXAMINATION:

14 BY MR. SCREEN:

15 Q. Dr. Sexton, would you briefly describe the
16 liver condition, the condition of the liver as you found
17 it? Specifically concerned about whether you found any
18 dead tissue and that kind of stuff.

19 A. Well, as I mentioned earlier, there was a tear
20 in the liver. The liver was examined at surgery and of
21 course, the liver tissue was removed so that they could
22 repair the remaining tissue and it was sent to the
23 laboratory in Aiken, then it was forwarded on to me and I
24 did the autopsy and those microscopic slides show changes
25 in the liver, what we refer to as necrosis, meaning the

1 liver tissue had died and a healing process has started.
2 These tissues that were forwarded to me did show
3 necrosis.

4 Q. Within a reasonable degree of medical
5 certainty, can you pin point about how long it would take
6 live tissue like that to reach a necrotic state?

7 A. To reach a necrotic state might take a few
8 minutes or hours depending on the circumstances but to
9 reach the stage where there is some necrosis or healing,
10 it might take a day or two or several days.

11 Q. Within a reasonable degree of medical
12 certainty, would a person who sustained a blow that would
13 cause the liver tissue to begin to die, what kind of
14 discomfort would likely accompany that?

15 A. It would vary, depending on the age and the
16 ability to withstand pain of an individual who is
17 injured. Some people have a very high pain threshold,
18 others do not. Some injuries of this sort do cause a lot
19 of pain, some do not. There is no way I can really say
20 how much discomfort this person would have. A person who
21 would have discomfort from it would tend to have
22 abdominal pain, might be a little nauseated, might tend
23 to vomit.

24 Q. Might vomit and be nauseated?

25 A. That's true but there is no way I could

1 prediet, on the finding of the autopsy, as to whether
2 this particular child would or would not have had
3 symptoms from the injury. Recognize, there are really
4 two injuries here. There is an injury that had occurred
5 and caused necrosis and was healing and there was a small
6 injury to the liver. And then there was the devastating
7 injury that occurred on or about the time of death that
8 completely separated the two lobes of the liver and
9 caused fatal hemorrhage. But at the time of the injury,
10 there was already some decomposing tissue there retained
11 under the capsule of this organ so it was more easily
12 damaged and then released into the abdominal cavity.

13 Q. All right sir, I would ask you if you found any
14 evidence of hemorrhaging, prior hemorrhaging from that
15 organ?

16 A. Yes, there was, like I said, in the capsule
17 there was damage to the liver. The liver is a structure
18 that has a thin capsule over it. There had been bleeding
19 inside the capsule that had not ruptured out into the
20 abdominal cavity.

21 THE COURT: Excuse me, when you say prior
22 hemorrhaging, are you talking about prior to his
23 examination, prior to death or prior to the time of the
24 alleged blow? Which time are you referring to? Before
25 September the 23rd of 1985?

1 A. That would be correct. Before the day of death
2 there was some prior hemorrhaging inside the organ and
3 some prior necrosis and repair of that area.

4 Q. Did you find any evidence of any seepage or
5 blood from that organ or any other internal organ, into
6 the abdominal area?

7 A. At the time the child was seen in the emergency
8 room and examined and at the time that I saw the child at
9 autopsy, yes, there was some of this bile smelling
10 hemorrhage that was inside the organ that had leaked out
11 into the body cavity at the time that the liver was split
12 open by the terminal injuries that occurred on or about
13 the day of death.

14 Q. Doctor, within a reasonable degree of medical
15 certainty, can you give us an age of the wound to the
16 scalp that you said you found a small clot on the brain?

17 A. The injuries to the head, including the blood
18 clot on the brain, were on or about the time of death.
19 They occurred that day. The blood, when it leaks out on
20 the surface of the brain, in a period of time becomes
21 solidified and develops a membrane over the surface of
22 this structure. There was no membrane and it was not
23 solidified, it simply was liquid blood in that area, so
24 it occurred on or about the time of death.

25 Q. Doctor, within a reasonable degree of medical

1 certainty, would a person, would a child, more likely
2 than not, with a child of the age of the decedent, lose
3 consciousness as a result of that blow?

4 A. Not as a result of the amount of hemorrhage
5 because it wasn't sufficient hemorrhage there to cause
6 pressure on the brain to cause the child to lose
7 consciousness. As far as the blow, whether it did or did
8 not cause unconsciousness, that's a variable that we just
9 cannot say just from looking at the injury. Injuries of
10 this sort in patients that I've see in the past, in some
11 cases it has caused unconsciousness and in some cases it
12 did not. There is no absolute certainty based on the
13 amount of bruising, as to whether the child was or was
14 not unconscious.

15 Q. All right sir, I have no further questions.

16 THE COURT: Anything on redirect?

17 MR. HARTE: None, Your Honor.

18 THE COURT: Thank you, you may step down. Any
19 objection to this witness being excused?

20 MR. SCREEN: None from the defense, Your Honor.

21 THE COURT: Thank you. Next witness.

22 ROY PASCAL being called and duly sworn,
23 testified as follows:

24 DIRECT EXAMINATION:

25 BY MR. HARTE:

- 1 Q. - State you full name for the record, please.
- 2 A. Roy B. Pascal.
- 3 Q. Mr. Pascal, how are you employed?
- 4 A. I am employed by the State Law Enforcement
- 5 Division, better known as SLED, as a Toxicologist.
- 6 Q. What is your educational background?
- 7 A. I received a Bachelor of Science Degree in
- 8 Chemistry from Baptist College in Charleston. Upon my
- 9 employment with SLED, I underwent an initial training
- 10 period and was supervised by the Chief and Assistant
- 11 Chief Chemist. I attended numerous lectures and seminars
- 12 by the companies that manufacture the instruments that we
- 13 use at SLED. I've attended advanced Toxicology courses
- 14 sponsored by Analyst Assistance Incorporated and also
- 15 advanced Toxicology courses at the Health and Science
- 16 Center in San Antonio, Texas. I've attended advanced
- 17 Toxicology courses sponsored by the Society of Forensic
- 18 Toxicology. I'm a member of the Southern Association of
- 19 Forensic Scientists and I'm a member of the Society of
- 20 Forensic Toxicology.
- 21 Q. How long have you been employed by SLED?
- 22 A. Approximately seven and a half years.
- 23 Q. And during that time, what has been your job
- 24 role?
- 25 A. As a Toxicologist, it is my responsibility to

1 receive evidence from requesting agencies and perform
2 analysis on that evidence.

3 Q. Towards what end? What is your purpose?

4 A. To test various body fluids for drugs, poisons
5 and alcohol and to present those findings in the courts
6 in South Carolina.

7 Q. Have you been declared as an expert in the
8 courts of South Carolina?

9 A. Yes, I have.

10 Q. Your Honor, I submit that he is an expert in
11 the area of Toxicology.

12 THE COURT: You may cross examine.

13 MR. SCREEN: I stipulate, Your Honor.

14 THE COURT: Thank you.

15 Q. Mr. Pascal, I show you what has been marked as
16 State's Exhibit #4 and ask you if you can identify this.

17 A. Yes, sir, I can.

18 Q. Did you receive that from Ms. Patsy Habben?

19 A. Yes, sir, I did.

20 Q. What did you do with that?

21 A. This was a bottle of Piperazine. I tested this
22 bottle to make sure the substance in this bottle was
23 indeed, Piperazine.

24 Q. And what was your finding as a result of the
25 testing?

1 A. - This bottle indeed, contains Piperazine, which
2 is a worm medicine.

3 Q. Your Honor, I would move that this be
4 introduced into evidence.

5 THE COURT: Any objection?

6 MR. SCREEN: No objection.

7 (Without objection, State's Exhibit #4, a
8 bottle of Piperazine, marked and entered.)

9 Q. Mr. Pascal, did you receive certain samples
10 from Dr. Joel Sexton?

11 A. Yes, I did.

12 Q. When did you receive those samples?

13 A. I received the samples on October 3, 1985.

14 Q. What did you do with those samples?

15 A. I submitted those samples to analysis.

16 Q. What samples did you receive and what did you
17 do with them and what were your findings?

18 A. I received a red stop tube, or vial, containing
19 some liver tissue, some kidney tissue and some brain
20 tissue. I analyzed those tissue specifically for the
21 substance, Piperazine.

22 Q. With what findings?

23 A. It was negative for Piperazine, no Piperazine
24 was found in those tissues.

25 Q. Thank you. Answer any questions Mr. Screen may

1 have..

2 CROSS EXAMINATION:

3 BY MR. SCREEN:

4 Q. Mr. Pascal, as a Toxicologist, within a
5 reasonable degree of medical certainty, is it more likely
6 or not that Piperazine would have been present several
7 days later?

8 THE COURT: Later than what?

9 MR. SCREEN: Later than the 23rd, the date of
10 death.

11 A. Once an individual is deceased or dies, the
12 breakdown of drugs ceases, so anything present at the
13 time of death would be detected in some form.

14 THE COURT: Whether it's two days or twenty
15 days?

16 A. That's correct, if they are properly preserved
17 and they were in this case.

18 Q. All right sir, I have nothing further.

19 THE COURT: Step down. Next witness.

20 MR. HARTE: That's all, Your Honor.

21 THE COURT: How about your shirt? Are you
22 going to introduce those exhibits?

23 MR. HARTE: Your Honor, I believe that I have
24 already done that.

25 THE COURT: No, sir.

1 MR. HARTE: I would move to have them introduced
2 at this time.

3 THE COURT: You'd offer the shirt and pants?

4 MR. HARTE: Yes, sir.

5 THE COURT: Any objection to State's #2 and
6 #3. Without objection, let them be marked as Exhibits.
7 State's #2 and #3.

8 (State's Exhibit #2, a blue shirt, and State's
9 Exhibit #3, a pair of trousers, marked and entered
10 without objection.)

11 THE COURT: All right, the State rests. You
12 may proceed Mr. Screen.

13 MR. HARTE: Your Honor, could Ms. Habben and
14 Mr. Pascal be allowed to return to Columbia Court?

15 THE COURT: Any objection?

16 MR. SCREEN: No.

17 THE COURT: Thank you. You may be excused.
18 Thank you ladies and gentlemen for being with us.

19 MR. SCREEN: The defense would call Elizabeth
20 Green.

21 ELIZABETH GREEN being called and duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION:

24 BY MR. SCREEN:

25 Q. Ms. Green, where do you live?

- 1 A. - Gloverville.
- 2 Q. Do you live in the apartment area commonly
- 3 referred as Valley Homes?
- 4 A. Yes.
- 5 Q. What is your apartment number?
- 6 A. Sixteen.
- 7 Q. How long have you lived at that place?
- 8 A. A year.
- 9 Q. Were you living there on the 23rd day of
- 10 September, 1985?
- 11 A. Yes.
- 12 Q. Ms. Green, what is your relationship to the
- 13 defendant, Timothy Green?
- 14 A. He is my brother.
- 15 Q. Do you know Phyllis Price or Phyllis Hill?
- 16 A. Yes.
- 17 Q. How long have you known her?
- 18 A. About a year.
- 19 Q. How did you come to know Phyllis Price at that
- 20 time?
- 21 A. She lived right across the street from me.
- 22 Q. Was she your brother's girlfriend?
- 23 A. Yes.
- 24 Q. Did he live with her?
- 25 A. Yes, he was.

- 1 Q. Was he living with her at her place on 9-23-85?
- 2 A. Yes.
- 3 Q. Ms. Green, I would ask you to take your mind
- 4 back to the 23rd day of September, 1985. I would ask you
- 5 if you recall seeing the defendant, Timothy Green?
- 6 A. Yes, I do.
- 7 Q. Where did you see him that day?
- 8 a. He was going across the hill and I called him.
- 9 My Mother was sick and she wanted him to call home.
- 10 Q. What time was that?
- 11 A. About ten to nine.
- 12 Q. Do you recall some children coming over to your
- 13 house that morning?
- 14 A. Yes.
- 15 Q. Who came over there, Ms. Green?
- 16 A. **Victim** and Poo.
- 17 Q. Who is Poo?
- 18 A. **Victim** sister, Phyllis's kids.
- 19 Q. **Victim** Poo and who else?
- 20 A. And Erica. Those are the only two that came
- 21 over.
- 22 Q. Is Erica your daughter?
- 23 A. Yes, Erica is my daughter.
- 24 Q. What time did they come over?
- 25 A. A little after nine, I believe.

1 Q. Did you talk with them or what did they do when
2 they came over to your house?

3 A. They sat down there in the kitchen with us and
4 Carolyn Johnson was present at the time. Then she asked
5 them to go play. She had to get into some of her drugs.

6 Q. Who asked them to go play?

7 A. Carolyn Johnson.

8 Q. Asked who to go play?

9 A. **Victim** Poo and Erica.

10 Q. Where did they go?

11 A. In the bedroom.

12 Q. You recall walking to the store with Carolyn
13 Johnson that day?

14 A. Yes, I do.

15 Q. What time did you'all go to the store?

16 A. That was eight-thirty or something to nine.

17 Q. Who was at home with the children when you'all
18 walked to the store?

19 A. Erica went. Nobody wasn't there but Erica.

20 Q. Where did the other two children go?

21 A. They wasn't there at that time.

22 Q. They didn't come - your testimony is that they
23 didn't come to your house until you returned from the
24 store?

25 MR. HARTE: Objection to the leading nature of

1 the question.

2 THE COURT: Please don't lead the witness.

3 Q. Did they come to your house before you went to
4 the store or after?

5 A. After I came from the store.

6 Q. Now, at your house, we're talking about Erica,
7 who is four years old.

8 A. Right.

9 Q. And how old was she then?

10 A. Four.

11 Q. How old was she on September the 23rd, 1985?

12 A. Four.

13 Q. Poo, how old is Poo?

14 A. Four.

15 Q. And how old is the other kid?

16 A. Three.

17 Q. Where did they go when you came from the store
18 and they came in?

19 A. When we came from the store, Carolyn went home
20 to get her bottle, some bootleg moonshine.

21 Q. What kind of bottles.

22 A. It was in a gin bottle but it was moonshine.

23 Q. Where were the children at that time?

24 A. They was in the kitchen when she got back and
25 she asked them would they go play until she did her

1 cocaine.

2 Q. Carolyn Johnson had cocaine that morning?

3 A. Yes.

4 Q. Where was the cocaine?

5 A. She had it in a brown bag about this big and
6 about this much was in it.

7 Q. Did you see her inhale any of that cocaine?

8 THE COURT: Mr. Screen, excuse me now. What
9 relevance does Carolyn Johnson have as to cocaine? Are
10 you going to be able to tie this up?

11 MR. SCREEN: Judge, Carolyn Johnson is a
12 witness who has testified previously for the State. She
13 says that she was at this lady's house on the morning in
14 question. She says she saw my client come in and she
15 testified as to a time period he was at the house. I
16 intend to show that she was under the influence of drugs
17 and liquors and didn't know who was coming and going and
18 that she was, in fact, drunk.

19 THE COURT: All right. Go ahead.

20 Q. I'll ask you again Ms. Green, did you see
21 Carolyn Johnson take any of the drugs?

22 A. Yes, I did.

23 Q. Did she drink any of that moonshine whiskey?

24 A. Every drop. Over half of the half a pint.

25 Q. Well, did you drink any of that with her?

1 A. - No, I didn't. I don't drink that slop.
 2 Q. Did your brother have any?
 3 A. He wasn't there at that time.
 4 Q. Oh, I see. So Carolyn had this cocaine and
 5 moonshine whiskey and you were sitting there. Where are
 6 the kids now?
 7 A. They was back there in the bedroom.
 8 Q. Who else was in the house?
 9 A. Nobody. Oh, yes it was. A friend of mine was
 10 there.
 11 Q. Who was that?
 12 A. Fred Bailey.
 13 Q. Fred Bailey was in the house, too?
 14 A. Yes, at that time.
 15 Q. How old is he?
 16 A. Forty-two.
 17 Q. He's your boyfriend?
 18 A. Yes.
 19 Q. Did Mr. Bailey have any of this contraband that
 20 you'all had with you?
 21 A. No.
 22 Q. What time did your brother, Tim, come in the
 23 house?
 24 A. Let me see. I don't remember the time too good
 25 but it had to be about nine-thirty or something.

- 1 Q. - Were the children in the back of the house at
- 2 that time?
- 3 A. Uh-huh.
- 4 Q. Did Mr. Tim Green go to the back of the house?
- 5 A. He went to the bathroom.
- 6 Q. How do you know he went to the bathroom?
- 7 A. Because he asked for the tissue and I got the
- 8 roll out of the bag and gave it to him.
- 9 Q. Did you hear him in the bathroom?
- 10 A. I heard the bathroom flush.
- 11 Q. How long was he back there in the bathroom?
- 12 A. About five or six minutes.
- 13 Q. Where did he go then?
- 14 A. He came back in the kitchen and sat at the
- 15 table with us and Carolyn. He asked for some of the beer
- 16 and she poured him some and he sat down and Phyllis
- 17 called him. He was in the back bedroom.
- 18 Q. Phyllis Hill, Phyllis Price?
- 19 A. Yes.
- 20 Q. She called Tim?
- 21 A. Yes.
- 22 Q. Where did he go then?
- 23 A. Went over to Phyllis's house.
- 24 Q. Did he ever go back over to your house?
- 25 A. Yes.

1 Q. - How long was he over to Phyllis's house?
 2 A. About five or ten minutes.
 3 Q. What did he do when he came back over to your
 4 house?. Now this is the second time.
 5 A. He sat down at the table, picked up his cup and
 6 started drinking again and then I said for him to go
 7 ahead and call Mama.
 8 THE COURT: Who was that drinking?
 9 A. Me, Carolyn Johnson and Tim.
 10 THE COURT: What was he drinking?
 11 A. Beer. A quart.
 12 THE COURT: Did he leave and go call your
 13 Mother at that point?
 14 A. Yes, he was going across the street to a lady
 15 named Minnie, to call. He was standing outside and was
 16 talking to some man out there in the yard. And the kids,
 17 they also were in the yard, too. Tim came back in the
 18 house. The kids came back in first then Tim came back in
 19 the house after he went and I said, "did you get her?",
 20 and he said, "Minnie's not home".
 21 Q. All right, did he go back in the back of the
 22 house where the children were again?
 23 a. Yes. Erica and them were calling him.
 24 Q. The children were calling Tim?
 25 A. Yes.

1 Q. Did you go back there too?

2 A. No.

3 Q. Well, how long was he back there when they

4 called him back?

5 A. No time at all.

6 Q. When did you next see him?

7 A. When he was coming through the kitchen.

8 Q. Was he carrying anything?

9 A. He had **Victim**.

10 Q. He had **Victim** How was he carrying her?

11 A. He had her sorta on - some sorta way like

12 this. But he didn't have but one arm around her.

13 Q. What happened then?

14 A. I said, "is she 'sleep?" and he said, "yeah",

15 he said Erica and them was calling him to get her up out

16 of the floor.

17 MR. HARTE: Objection, Your Honor. It would be

18 hearsay.

19 THE COURT: I'm going to allow it.

20 Q. Go ahead.

21 A. 'Cause he said Erica had done called previously

22 to say that she had fell out of the bed.

23 Q. Did you hear that?

24 A. Did I hear Erica call?

25 Q. Yes. Tim went back in the back.

- 1 A. - Yes.
- 2 Q. And he came back and had **Victim** in his arms?
- 3 A. Yes.
- 4 Q. Where did he go then?
- 5 A. He took her home.
- 6 Q. How far does Phyllis Price live from where
- 7 you'all were in the kitchen that day?
- 8 A. About as far as from here to the sidewalk out
- 9 there.
- 10 Q. All right. Did you go along with him? Did you
- 11 accompany him?
- 12 A. No. I was looking out the kitchen window. I
- 13 could see right to her house.
- 14 Q. Did you see anything unusual about **Victim**
- 15 except for the fact that she appeared asleep?
- 16 A. Nothing. Not a thing.
- 17 Q. Didn't see any blood?
- 18 A. No, I didn't. The only blood I saw was on Tim
- 19 because he had a cut on his arm. I asked him how did he
- 20 get it and that's that only blood I seen.
- 21 Q. Did you ever go over to Phyllis Price's house?
- 22 A. Yes, when she started hollering.
- 23 Q. Did you see your brother out there working with
- 24 **Victim**
- 25 A. Yes, I did, and he was definitely working with

1 her to be sure.

2 Q. What was he doing?

3 A. He was giving her mouth to mouth, he was
4 holding a wet cloth on her face and he was mashing. He
5 was sure trying to save that child's life, and he
6 wouldn't hurt no child no way.

7 MR. HARTE: Objection, Your Honor. It's
8 improper.

9 Q. Did you ever see Tim hit either one of those
10 children?

11 A. No. Tim is not the type to hit a child.

12 MR. HARTE: Objection to her opinion, Your
13 Honor.

14 Q. Just answer the questions that I ask. I said
15 did you ever observe your brother hitting either one of
16 the children? Just answer yes or no.

17 A. Okay.

18 Q. How long was he out there trying to revive
19 **Victim** that morning?

20 A. About fifteen to twenty minutes.

21 Q. Did Tim have on the clothes that they are
22 talking about, the pants and blue shirt?

23 A. I believe so, I'm not sure.

24 Q. Did you talk to the police about this, Ms.
25 Green?

1 A. Yes, I did:

2 Q. Did you tell them what you just testified to?

3 A. I told them part. I didn't tell them anything
4 about cocaine because they were there then to remove my
5 kids from the house. I was upset over this child. I was
6 upset about my kids. I didn't think of all of it. I
7 didn't want no more trouble than I already had so I only
8 told them part.

9 Q. Were your children taken at one point?

10 A. Yes, they were. From September the 25th until
11 January the 23rd.

12 Q. Ms. Green, you were sitting in the kitchen.
13 You were in the kitchen with Carolyn Johnson, Fred Bailey
14 and yourself.

15 A. Right.

16 Q. And Tim comes in --

17 MR. HARTE: Objection.

18 THE COURT: Sustained. You're leading the
19 witness. You can ask her a question but you can't rehash
20 the testimony, Mr. Screen.

21 MR. SCREEN: I understand.

22 Q. How many of you were sitting in the kitchen,
23 Ms. Green? Tell me who was in that kitchen.

24 A. Okay. At first it was only me and Carolyn
25 until Fred came over. When Fred came over, that's when

1 she went and got the cocaine and the moonshine. Tim
2 wasn't there at that time.

3 THE COURT: She's repeating what she has
4 already testified to. I'm not going to allow it. It's
5 the same question twice.

6 Q. Did Mr. Bailey ever go to the back of that
7 house?

8 A. To the back?

9 Q. Yes, where the children were, from your
10 personal knowledge?

11 A. No, I don't believe so.

12 Q. Did anyone else ever go back there?

13 A. Not to my know about. But I did go over to
14 Carolyn's house at one time. She was going to bring back
15 some more stuff.

16 Q. Have you ever seen any of that worm medicine
17 that they were talking about there?

18 A. Have I ever seen it?

19 Q. Have you ever seen that bottle?

20 A. Yes.

21 Q. Where did you see it?

22 A. He had it at the house at one time.

23 Q. He who?

24 A. Tim. Tim Green.

25 Q. You saw your brother with it at your house?

1 A. - Yeah, one time.

2 Q. How long ago was it? The day of this incident?

3 A. No.

4 Q. All right. Answer any questions the solicitor
5 might have.

6 CROSS EXAMINATION:

7 BY MR. HARTE:

8 Q. Ms. Green, you didn't tell this officer, when
9 you talked to him on October 2nd, anything about any
10 cocaine?

11 A. No, I didn't.

12 Q. You didn't tell him anything about any
13 moonshine?

14 A. No, I didn't.

15 Q. And that bottle of worm medicine was not in
16 your house on the day that **Victim** died, was it?

17 A. Not to my know about.

18 Q. And Mr. Bailey, you didn't tell him anything
19 about Mr. Bailey, did you?

20 A. No, I didn't. He was removing my kids. I was
21 upset.

22 Q. Mr. Bailey did not go in the back of that
23 house, did he?

24 A. Yes, he did.

25 Q. He did go in the back of the house? I thought

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1 you just told Mr. Screen he did not go in the back of the
2 house.

3 A. Oh, I thought you was talking about him. Who
4 are you talking about?

5 Q. Fred Bailey.

6 A. No, he didn't. I thought you was talking about
7 him.

8 Q. Fred Bailey never went in the back of that
9 house?

10 A. Not to my know abouts.

11 Q. Who was it that washed the blood off of the
12 walls?

13 A. Nobody, because if I had of washed something I
14 wouldn't have told the officers anything about it.

15 Q. So, the blood was still on the walls?

16 A. Whatever it was. 'Cause lipstick was in there
17 as well as nail polish.

18 Q. No further questions.

19 MR. SCREEN: I have no further questions.

20 THE COURT: Step down. Next witness.

21 TIMOTHY GREEN being called and duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION: .

24 BY MR. SCREEN:

25 Q. State your name for the record, please.

blood on wall?

- 1 A. Timothy Fitzgerald Green.
- 2 Q. Mr. Green, where were you living prior to
- 3 September 23, 1985?
- 4 A. Apartment 10 C.
- 5 Q. Where is that?
- 6 A. Gloverville Apartments.
- 7 Q. Who were you living with?
- 8 A. Phyllis Price.
- 9 Q. How long did you live with Ms. Price, Mr.
- 10 Green?
- 11 A. About eight months.
- 12 Q. Who else lived in that apartment along with you
- 13 and Phyllis Price?
- 14 A. Ebony, **Victim** and Bradley Hill.
- 15 Q. How many people?
- 16 A. Five.
- 17 Q. Two of you and three children?
- 18 A. Yes, sir.
- 19 Q. Are you the natural father of any of those
- 20 children, Mr. Green?
- 21 A. No, sir.
- 22 Q. These are Phyllis's children?
- 23 A. Yes, sir.
- 24 Q. Mr. Green, are you employed? Are you working?
- 25 A. At one time I was working at the Graniteville

- 1 Townsend Mills.
- 2 Q. Were you working on September the 23rd of 1985?
- 3 A. No, sir.
- 4 Q. Mr. Green, I'll ask you to bring your mind to
- 5 that date, September 23rd 1985, and I'll ask you if you
- 6 spent the prior night with Phyllis Price?
- 7 A. Yes, sir. I was there.
- 8 Q. What time did you leave the house that morning?
- 9 A. I left the house, it was about seven because I
- 10 was waiting on Fleming to come pick me up.
- 11 Q. Did you ever go over to your sister's house?
- 12 A. Yes, sir.
- 13 Q. What time did you go over to your sister's -
- 14 and we're talking about Elizabeth Green.
- 15 A. It was about eight-thirty or nine.
- 16 Q. And how long did you stay over there?
- 17 A. I went over there - I stayed maybe five
- 18 minutes. I was in there sitting down talking to Carolyn
- 19 and my sister. They was telling me about the conflict
- 20 between the fellows - about this girl that was sitting
- 21 over at Minnie's house.
- 22 Q. You stayed there about five minutes. Was that
- 23 when you drank the beer?
- 24 A. Yeah, I was sipping on some beer, yeah.
- 25 Q. Where did you go when you left there?

1 A. - My sister had told me that my Mother wanted me
2 to call her so if Diane was in the next apartment, I
3 could have gone over there because Diane called me and
4 she wanted to know was my car there. You know, they
5 wanted to go out.

6 Q. Just tell me where you went from there, Tim.

7 A. I went back to my sister's and she asked me did
8 I call. I told her, you know, I ain't had time.

9 THE COURT: We can't get into these
10 conversations, Mr. Screen.

11 Q. Just tell me what you did as a result of
12 something. Where did you go when you first left your
13 sister's house after you were sipping the beer?

14 A. I went to Phyllis's house, I mean to Minnie's
15 house.

16 Q. How long did you stay there?

17 A. Maybe a minute.

18 Q. And where did you go after that?

19 A. I come back to my sister's.

20 Q. Is this all in one little area?

21 A. Yes, sir.

22 Q. What did you do when you returned to your
23 sister's house?

24 A. I sat down and took another sip off the beer.

25 Q. Did you see **Victim** on the morning of

- 1 September the 23rd, 1985?
- 2 A. No, sir. I did not.
- 3 Q. When did you first see her?
- 4 A. When I came back from Phyllis's house I went to
- 5 Minnie's and when I come back from Minnie's, Poo and them
- 6 come to the corner and told me that she was back there on
- 7 the floor asleep.
- 8 Q. Did you return then to your sister's house?
- 9 A. After I took the little girl, I returned back -
- 10 I went to carry Phyllis to the hospital.
- 11 Q. All right, you're getting ahead of me now. You
- 12 went back to the back of the house -
- 13 MR. HARTE: Objection, he's leading the
- 14 witness.
- 15 THE COURT: Sustained.
- 16 Q. Mr. Green, did you ever go back to the back of
- 17 your sister's house?
- 18 A. Yes, sir.
- 19 Q. Did you go back there the first time, the
- 20 second time or both times?
- 21 A. I went back there the first time. I used the
- 22 bathroom but I didn't see anybody. I, you know, used the
- 23 bathroom and I come out and went to Minnie's to call my
- 24 Mom.
- 25 Q. All right sir. And did you at some point

1 return to that same apartment?

2 A. Yes, sir.

3 Q. Did you see Carolyn Johnson in there drinking
4 whiskey and smoking cocaine?

5 A. I didn't see her using but she was drinking.

6 Q. Did you see the presence of any?

7 A. Yes, sir.

8 Q. When did you go back to the back of the house
9 to check on the child?

10 A. When Poo called me, I went back there and I
11 picked up the little girl and she was laying like this.
12 I picked her up and she grabbed me around the neck and I
13 was coming out with her and I told my sister, she asked
14 me where was I going and I told her I'm going to take her
15 and I'll be right back. And when I got down the road she
16 threw some kind of fling on my shoulder and her eyes was
17 rolling back in her head and I was trying to ask her what
18 was wrong with her. I was shaking her like that because
19 you know, her eyes was going back in her head. So
20 Phyliss come to the door and she said, "Tim, what's
21 wrong?", and I said, "I don't know, she just threw up on
22 my shirt", 'cause there was a big stain on my shirt. She
23 went to screaming and hollering and Carolyn and my sister
24 came running and Teresa and you know, a lot of people
25 came running.

Brenda A. Wingard

Certified Court Reporter

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- 1 Q. - What did you do then?
- 2 A. I asked my sister what's wrong because, you
- 3 know, there was a whole bunch of stuff was drizzling on
- 4 my shirt.
- 5 Q. Was any of that stuff blood?
- 6 A. I didn't see any blood, no time, I didn't see
- 7 any blood.
- 8 Q. Did it have an odor to it?
- 9 A. It was stinking - it was smelling. That's the
- 10 reason why I asked by sister what could she have got hold
- 11 to.
- 12 Q. What did you do after you got over to Phyllis's
- 13 house?
- 14 A. I laid her down. She was acting like she was
- 15 going in and out of the state so I had, you know, she
- 16 acted like - probably one time, she acted like she had a
- 17 problem breathing so I was performing CPR on her.
- 18 Q. What do you know about CPR?
- 19 A. Coach Roy Starkes taught us in Junior High
- 20 School. Two courses, you know, of CPR. How to treat
- 21 people in shock, you know, when they're going in and out
- 22 of shock.
- 23 Q. Mr. Green, let me ask you, did you ever hit
- 24 **Victim**
- 25 A. No.

1 Q. - Did you kick her that day?
 2 A. No, sir.
 3 Q. Did you throw her up against the wall?
 4 A. No.
 5 Q. Have you ever seen anyone hit **Victim**
 6 A. No, sir.
 7 Q. Did you ever see her Mother hit her.
 8 A. Otherwise, spanking, you know.
 9 Q. Did you keep the children sometimes, Mr. Green?
 10 A. If I ever kept them, I always took them to
 11 somebody and put them there and before she got back, I'd
 12 go get them. She'd come back and they ain't there and
 13 she'd ask me who got my kids and I told her she's over at
 14 my sister's.
 15 q. Did you ever physically assault this child at
 16 any point, Mr. Green?
 17 A. No, sir.
 18 Q. Answer any questions the solicitor might have.
 19 CROSS EXAMINATION:
 20 BY MR. HARTE:
 21 Q. What kind of work do you do, Mr. Green?
 22 A. I'm not employed.
 23 Q. How do you normally make your living?
 24 A. Shooting pool or hustling.
 25 Q. Hustling pool?

1 A. - Yes, sir.

2 Q. At the time that this child got injured and

3 killed, you were living with the child's Mother, weren't

4 you?

5 A. Yes, sir.

6 Q. And you'all were on good terms, wasn't that

7 right?

8 A. Yes, sir.

9 Q. Isn't it a fact that at one time she had asked

10 you not to discipline the kids because they had come to

11 her about some problems they had had with you?

12 A. No, sir.

13 Q. That never happened?

14 A. No, sir. She come to me one time and the

15 little boy, he had some kind of stuff on his arm and she

16 told me her Mother was talking about she was going to

17 call the cops on me. I told her call them 'cause

18 whatever was wrong with the kid it needed to be found out

19 about. So I told her to tell her to call them. I wanted

20 to know what it is myself.

21 Q. Did you tell Phyllis at one time that if she

22 didn't start disciplining her kids that they would never

23 mind her?

24 A. I told her if she didn't start taking care of

25 the kids and keeping up with them that somebody

1 eventually would tell something on her because her Mother
2 had - she had recited to me one time that her Mother said
3 she was going to take the kids away from her.

4 Q. Because she thought the kids were being abused,
5 didn't she?

6 A. I don't know what the purpose, what she thought
7 was going on but this was before I really started moving
8 in with her. You know, staying there because I was going
9 home for about -

10 Q. Isn't it a fact that you told the Parameds and
11 the people at Aiken Community Hospital that you thought
12 that the child had taken some poison?

13 A. No, sir. I told them at the time because she
14 had threw up, they asked me what was that on my shirt. I
15 told them that was where she had thrown up on me.

16 Q. And didn't you tell them that you thought she
17 had taken poison?

18 A. I told them - that's the first thing that come
19 to my mind.

20 Q. And, in fact, she was treated at Aiken
21 Community Hospital for poison instead of for the injuries
22 that she had received, isn't that right?

23 A. I really don't know what they treated her for.

24 Q. Because of what you told them, isn't that
25 right?

1 A. - I don't know what they treated her for because
2 they asked me what was that coming out of her mouth and
3 why is her lip busted and Phyllis said her Mother told me
4 she had fallen in the park.

5 Q. And, in fact, at the time you were telling them
6 about wormer - dog wormer, this bottle of wormer was in
7 David Glover's car, wasn't it?

8 A. I didn't tell them about the de-wormer until I
9 had got back and they told me once I get home to check
10 and see what she could have got. I called back at the
11 hospital and told them to ask Phyllis where my de-wormer
12 was.

13 Q. And at the time you said that, it was in David
14 Glover's car, wasn't it?

15 A. I didn't never precisely say what it was.

16 Q. Do you dispute that, you say it was?

17 A. I never said what it was that she threw up.

18 THE COURT: Do you know where the wormer was on
19 September the 23rd?

20 A. No, sir, I don't know where it was.

21 THE COURT: You didn't know if it was in the
22 car or the house?

23 A. I don't know if it was in the car or the house,
24 I just know it was missing.

25 Q. But you know now where it was, don't you?

1 A. From what she apparently told me and told the
2 court.

3 Q. Are you the same Timothy Green that pled guilty
4 or was convicted of forgery by uttering a forged
5 instrument on August 12, 1981?

6 A. Yes, sir.

7 Q. Are you the same Timothy Green who was
8 convicted or pled guilty of housebreaking on October 6,
9 1982?

10 A. Yes, sir.

11 Q. No further questions.

12 THE COURT: Anything on redirect?

13 REDIRECT EXAMINATION:

14 BY MR. SCREEN:

15 Q. Mr. Green, other than those charges that Mr.
16 Solicitor has read you, have you ever been convicted of a
17 violent crime - attacking anybody?

18 A. No, sir.

19 Q. Your crime has been stealing, hasn't it?

20 A. Yes, sir.

21 Q. Thank you, sir.

22 THE COURT: Step down. Next witness.

23 MR. SCREEN: Your Honor, I would call Doris
24 Green.

25 DORIS GREEN being called and duly sworn,

1 testified as follows:

2 DIRECT EXAMINATION:

3 BY MR. SCREEN:

4 Q. Where do you live Ms. Green?

5 A. I live in New Ellenton right now with my Aunt.

6 Q. You employed?

7 A. No, sir.

8 Q. How far do you go to school?

9 A. I go to Silver Bluff now. Last year I went to

10 Midland Valley and also Silver Bluff.

11 Q. What year are you in at Silver Bluff?

12 A. All my years except for last year, I went to

13 Midland Valley.

14 Q. How are you classified? What grade are you in?

15 A. Eleventh.

16 THE COURT: How old are you?

17 A. Right now, I'm seventeen.

18 Q. Do you know the defendant, Timothy Green?

19 A. Yes, sir.

20 Q. What is your relationship to him?

21 A. He's my Uncle.

22 Q. All right, Ms. Green, I'll ask you if you know

23 Phyllis Price or Phyllis Hill?

24 a. Yes, I do.

25 Q. I ask you if you have ever lived in Valley

1 Homes?

2 A. Yes, I did.

3 Q. When did you live in Valley Homes?

4 A. I lived there last year for about six months
5 and I went home about, on or before March and I used to
6 go there week-ends to baby sit for Liz, which is my
7 Mother.

8 Q. Did you see Phyllis Price when you were living
9 there and those week-ends you'd go back there?

10 A. Yes, I did. I used to go over to her house
11 with friends. Some of my friends, Lynn Holloway and
12 Melissa Messousa, lived in Valley Homes.

13 Q. Did you ever see --

14 THE COURT: Mr. Screen, you need to tie down
15 the six months that she was living there. Is it the
16 first six months of 1985 - the last six months? You need
17 to be more precise, please.

18 Q. What months in 1985 did you live in Valley
19 Homes, Ms. Green?

20 A. In 1985?

21 Q. Yes, ma'am.

22 A. Probably from the end of August to somewhere in
23 about March. Several week-ends when I used to visit and
24 baby-sit --

25 THE COURT: The end of August of what year to

1 March?

2 A. Of 1984 and to 1985.

3 Q. Were you in Valley Homes on the 23rd day of
4 September 1985?

5 A. No, sir.

6 Q. During the time that you came to Valley Homes,
7 did you ever observe Phyllis Price hit or strike or do
8 anything to abuse her children?

9 A. Yes, I did.

10 Q. Would you relate those cases to the jury?

11 A. I used to go over to Phyllis's house with some
12 friends, Lynn Holloway and Melissa.

13 MR. HARTE: I believe he has got to lay a
14 better foundation, Your Honor, as to the time, before she
15 can testify.

16 MR. SCREEN: Dr. Sexton testified and laid out
17 a pretty lengthy period of time over which this kid could
18 have been scarred or hurt.

19 THE COURT: Also he testified that any prior
20 injuries would not have contributed to her death so
21 please tell me the probative value of that which you are
22 going into. Do you have further testimony you can link
23 up to the issues for trial in this case, Mr. Screen?

24 MR. SCREEN: This witness can. If she had
25 prior injuries - if she hit her on those occasions, at

1 least the jury needs to know about it.

2 THE COURT: All right, I'm going to let her
3 testify. Ask her the questions.

4 Q. I'll try not to get too remote in time, Ms.
5 Green, so don't carry me two years away and all of that.
6 When did you last, prior to September the 23rd 1985, use
7 that as a time frame, from that backtrack. When did you
8 last see and observe Phyllis Price hit and strike the
9 children?

10 A. It's hard to say. I've seen them hit on quite
11 a few occasions.

12 THE COURT: You are going to have to give at
13 least within a month, ma'am. I understand you couldn't
14 give a date but was it July or was it March or was it
15 April?

16 A. Okay, I had visited there in July with Liz for
17 the Fourth of July.

18 Q. Did you observe it then?

19 A. Well, I walked over there with Melissa and Lynn
20 and they were having something like a party, like a get
21 together, it wasn't really a party because there wasn't
22 that many people there, but they were having a party and
23 the kids were there and Phyllis told them to go in the
24 back room and play. She then called the little girl,
25 Poo, to go in the refrigerator and get her a beer or a

1 glass-or something, so she went in the kitchen to get the
2 beer or whatever it was she sent her after. She dropped
3 the glass out of the refrigerator onto the floor.

4 Phyllis came into the kitchen and was sweeping up the
5 glass while the little girl had gone back in the room but
6 she came back again and when she came back again, Phyllis
7 took the broom and hit her daughter with it.

8 Q. On any other occasion - was there any other
9 period of time that you saw her strike the kids?

10 A. Except for when she was sitting there screaming
11 and she leaned over the table --

12 THE COURT: Now, wait a minute, ma'am, you got
13 to tell us when.

14 A. On the same day when she was sweeping up the
15 glass she took the broom because the little girl came
16 back and she hit the girl with the broom. The little
17 girl was standing there hollering because she hit her
18 with the broom and then she took her hand and hit her in
19 the back and like, pushed her down the hallway, like back
20 toward the room, which she sent her to in the beginning.

21 Q. Answer any questions Mr. Solicitor might have.

22 CROSS EXAMINATION:

23 BY MR. HARTE:

24 Q. Ms. Green, you were over at - is Ms. Green your
25 Mother or your Aunt?

1 A. My Mother.

2 Q. So, Timothy Green would be your Uncle?

3 A. Yes, sir.

4 Q. You were over there either the afternoon or the
5 night of the 23rd, weren't you?

6 A. Yes, I was.

7 Q. In fact, you took some bed sheets off that bed
8 and took them to the Laundramat, didn't you?

9 A. No, sir, I didn't.

10 Q. You didn't?

11 A. I did not.

12 Q. Those bed sheets had blood on them, did they
13 not?

14 A. I have no idea. I didn't even see any bed
15 sheets. As a matter of fact, I didn't enter the bedroom.

16 Q. You are the same lady that was trying to get
17 little Erica in the car a few minutes before two o'clock
18 to drive her away?

19 A. That is a lie.

20 THE COURT: Are you speaking of today?

21 MR. HARTE: Yes.

22 A. That is a lie. One lady came to the bathroom
23 while Erica was in the bathroom using the bathroom and
24 said she had to take Erica right away. Erica was using
25 the bathroom and I told her to wait until she was

1 finished and I would take her back and she said that she
2 knew a short cut and she would take her back because the
3 Judge needed her right away.

4 Q. That was before lunch.

5 A. Yes, sir.

6 Q. Just before the end of lunch, weren't you
7 trying to get Erica in a car out here?

8 A. No, sir. I don't even have a car.

9 Q. I didn't say your car. I said a car.

10 A. No, sir.

11 Q. Didn't you come in here and try to get Erica
12 away from --

13 A. Yes, I told Erica that she could come sit with
14 us and she said she needed Erica to sit with them and I
15 wanted to know why she had Erica sit with them. I'm
16 Erica's sister and I don't know why she had Erica sit
17 with her. She had came over before and tried to get
18 Erica away from us.

19 Q. No further questions.

20 THE COURT: Anything on redirect?

21 MR. SCREEN: Nothing, Your Honor.

22 THE COURT: Step down. Next witness.

23 MR. SCREEN: Defense rests, Your Honor.

24 THE COURT: Anything in reply?

25 MR. HARTE: No, Your Honor.

1 THE COURT: Any requests of charge?

2 MR. SCREEN: I have notes from your last
3 charge. . That was satisfactory with me.

4 THE COURT: Any requests?

5 MR. HARTE: No, sir.

6 THE COURT: I will charge the law from State
7 versus Ferman Vaughn on voluntary intoxication, for your
8 information. How long you want to argue?

9 MR. SCREEN: Fifteen or twenty minutes, Your
10 Honor.

11 MR. HARTE: That will be fair enough.

12 THE COURT: Not to exceed twenty minutes a
13 side. Testimony has only taken two hours and thirty-
14 minutes. And so with that Madam Forelady, ladies and
15 gentlemen of the jury, you have now heard all the
16 testimony and evidence offered by both the State and the
17 defense. At this time, you will hear the closing
18 arguments and summations by the respective attorneys,
19 after which I will instruct you as to the law applicable
20 to the facts as you may find the facts to be. Please
21 give us your attention. Thank you. You may proceed.

22 (Closing summations by respective attorneys,)

23 THE COURT: Madam Forelady, ladies and
24 gentlemen of this jury, by this indictment, the State of
25 South Carolina charges the defendant at the bar, Timothy

1 F. Green, with the offense of murder. You will have this
2 indictment with you when you go into your jury room for
3 your deliberations and you may give it such reading at
4 that time as you deem proper although I instruct you, it
5 is not evidence, but merely a legal document containing
6 the charges as preferred by the State against this
7 defendant. Now, to this indictment, the defendant has
8 pled not guilty and that plea casts the burden of proof
9 upon the State to prove the defendant, because a person
10 charged with committing a criminal offense in South
11 Carolina is never required to prove one's self innocent
12 because in many instances that might not be possible. I
13 instruct you that it is a cardinal and important rule of
14 the law of evidence, that a defendant in a criminal
15 trial, no matter what the enormity of the charge made
16 against one may be, will always be presumed or thought to
17 be innocent of the crime for which he is indicted until
18 his guilt has been proven by evidence satisfying you, the
19 jury, of that guilt beyond a reasonable doubt. This
20 presumption of innocence does not cease but rather
21 accompanies the defendant from the time of one's
22 appearance throughout the trial and until you have
23 reached a verdict of guilt based upon the evidence
24 satisfying you of that guilt beyond a reasonable doubt.
25 The Supreme Court has said the presumption of innocence

1 is like a robe of righteousness placed about the
2 shoulders of the defendant and it remains with him and
3 assigns him to that class, the innocent, until that
4 presumptive robe of righteousness has been stripped from
5 his person by evidence satisfying you of that guilt
6 beyond a reasonable doubt. So, you can see it is not a
7 mere legal theory and neither is it just a legal phrase
8 and I say to you that it is a substantial right to which
9 everyone is entitled. Now, by the term reasonable doubt,
10 I do not mean some whimsical, imaginary, weak, fanciful
11 or slight doubt, because it is none of those, but rather
12 it is a substantial doubt arising out of the testimony or
13 lack of testimony in the case for which a person,
14 honestly seeking to find the truth, can give a reason.
15 If you have such a doubt in your mind as to whether or
16 not the State has proven this defendant guilty, you
17 should resolve that doubt in his favor and write a
18 verdict of not guilty and acquit him. If, however, on
19 the other hand, the State of South Carolina has
20 established his guilt beyond a reasonable doubt, it would
21 equally be your duty under your oath as jurors, to return
22 a verdict of guilty and to convict him. Now, under the
23 Constitution of the State of South Carolina you, ladies
24 and gentlemen of the jury, are the sole judges of the
25 facts in this case. It was my duty during the trial to

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1 rule upon the admissibility of testimony but the weight
2 or probative value of the evidence is entirely up to
3 you. It is your duty to weigh and consider the evidence
4 and so determine what the facts are from the testimony as
5 you heard it from the witnesses upon the stand. I cannot
6 intimate any opinion I may have about the facts in this
7 case and any innuendo or inference that you may have
8 gathered or gleaned from any action or ruling or saying
9 on my part as to what I may think the facts of this case
10 are, or should be, you will please disregard the same
11 because that certainly was not my intention because you
12 are the sole judges of the facts. Hence, you must
13 necessarily pass upon the creditibility or the
14 believability of the witnesses. You have the right to
15 believe many witnesses as opposed to one. You may
16 believe one witness as opposed to many. You may believe
17 a portion of what a witness tells you and disregard the
18 remainder or you may reject a witness' testimony in its
19 entirety, provided there is a sound reason in the record
20 for so doing. Further, in passing upon the believability
21 of witnesses, you may take into consideration the
22 opportunities for observation and knowledge of the
23 matters to which they have testified, as well as any
24 interest or bias or prejudice a witness may have. You
25 may further consider the demeanor or the behavior of the

1 witness upon the stand. In fact, you may consider
2 anything, which in your good judgment, tends to show
3 whether or not a witness is telling the truth. Your
4 objective being to find the truth whether it comes from a
5 witness for the State or from a witness for the
6 defendant. Having thus determined what the facts are, it
7 then becomes your duty to apply the law, as now being
8 charged by this Court to the facts, as found by you, and
9 thereby arrive at a true verdict. I instruct you that
10 the evidence of prior crimes is admissible only as
11 regards the creditability or the believability of a
12 witness. (A child is not disqualified as a witness simply
13 by reason of one's youth or age. There is no precise age
14 which determines a child's competency. This depends on
15 one's capacity and intelligence and understanding of the
16 difference between truth and falsehood and on one's
17 appreciation of one's duty to tell the truth. As with
18 any other witness, you are the sole judges of the
19 believability of a child who testifies. You may consider
20 one's age, one's demeanor on the stand, one's capacity to
21 observe facts and to recreate them, one's ability to
22 understand questions and to answer them intelligently.
23 Whether one impresses you as having an accurate memory
24 and recollection or is a truth telling individual or any
25 other facts and circumstances which impress you as

1 significant in determining one's believability. On the
2 basis of your consideration, you may give a child's
3 testimony such weight as you, in your good judgment, deem
4 or think that it is entitled.)

5 Now, ladies and gentlemen of the jury, by
6 direct evidence of a fact is meant, the testimony of
7 persons who have preceived its existence by means of
8 their senses, as when a person sees a crime committed and
9 comes into court and testifies as to what one saw.

10 By indirect or circumstantial evidence, is
11 meant the proof of some other fact or facts from which,
12 taken either singly or collectively, the existence of the
13 particular fact in question may be inferred as a
14 necessary consequence. Crime may be proven by
15 circumstantial evidence as well as by the direct
16 testimony of eye witnesses and the State can rely partly
17 on direct evidence and partly on circumstantial evidence
18 or can rely upon either or both. Circumstantial evidence
19 is good provided it meets the legal test. To the extent
20 that the State relies on circumstantial evidence, it must
21 prove all the circumstances relied on beyond a reasonable
22 doubt. They must be wholly and in every particular,
23 perfectly consistent with one another and they must point
24 conclusively, that is, to a moral certainty, to the guilt
25 of the accused to the exclusion of every other reasonable

1 hypothesis. That is, they must be absolutely
2 inconsistent with any other reasonable hypothesis and the
3 guilt of the accused. In the consideration of
4 circumstantial evidence, the jury must seek some
5 reasonable explanation thereof, other than the guilt of
6 the accused, and if such reasonable explanation be found,
7 one cannot convict on such evidence. The mere fact that
8 circumstances are strongly suspicious and the defendant's
9 guilt probable, is not sufficient to sustain a conviction
10 because the proof offered by the State must exclude every
11 reasonable hypothesis except that of guilt and must
12 satisfy you, the jury, beyond a reasonable doubt.

13 The two phrases, beyond a reasonable doubt and
14 proof to a moral certainty, are synonymous and the legal
15 equivalent of each other. These phrases connote,
16 however, a degree of proof distinguished from absolute
17 certainty and the reasonable doubt that the law in its
18 mercy, gives the benefit of the accused, is not a weak or
19 slight doubt but rather a serious or strong and well
20 founded doubt as to the truth of the charges.

21 Now, ladies and gentlemen, murder is defined in
22 Code Section 16-3-10 of the 1976 Code of Law as being the
23 unlawful killing of any person with malice aforethought,
24 either expressed or implied. This is the same as common
25 law murder. In order to convict one of murder, the State

1 must not only prove the killing of the deceased by the
2 defendant but that it was done with malice aforethought
3 and that proof must be beyond a reasonable doubt. Malice
4 is defined in the law on homicide as an unlawful killing,
5 as a term of art. That is a **Victim** term importing
6 wickedness and excluding just cause or excuse. It's
7 something that springs from wickedness, from depravity
8 from a heart void of social duty, and mischief. The
9 words express and imply do not mean different kinds of
10 malice but merely the manner in which the only kind known
11 to the law may be shown to exist, that is, either by
12 direct evidence or by inference. Malice may be expressed
13 as with previous threats of vengeance or lying in wait or
14 other circumstances, show directly that an intent to kill
15 was really entertained. Malice may also be inferred as
16 where though no express intent to kill was proven by
17 direct evidence, it is indirectly but necessarily
18 inferred from the facts and circumstances of the case
19 which is proven. Malice may be inferred from the
20 willful, deliberate and intentional doing of an unlawful
21 act without just cause or excuse. In other words, in
22 this general signification, malice means the doing of a
23 wrongful act intentionally and without justification or
24 excuse. But even if facts proven are sufficient to raise
25 an inference of malice such inference would be rebuttable

1 and it's for you, the jury, to determine from all the
2 evidence in the case, whether or not malice has been
3 established beyond a reasonable doubt. Now, ladies and
4 gentlemen, there must be malice aforethought and while
5 the law does not require malice shall exist for any
6 particular length of time before the commission of the
7 act, it must be aforethought. It must be a combination
8 of devious, evil intent and the act producing the fatal
9 results.

10 The State of South Carolina is not required to
11 prove motive. I charge you, some casual relationship must
12 exist between the defendant's alleged act and the death
13 of the deceased. This casual relationship is said to
14 exist when one's act was a proximate cause of the death.
15 A defendant is criminally liable, provided the necessary
16 intent or malice is present. If one's act was a
17 proximate cause of the death, if the death was a natural
18 and probable consequence of his act, the defendant's act
19 may be regarded as a proximate cause if it was a
20 contributing cause of the death. The defendant's act
21 need not be the sole cause of the death provided that it
22 be a proximate cause actually contributing to the death
23 of the deceased. If a wound causes a disease and death
24 results from it, the wound is the cause of death in the
25 eyes of the law and the act of the person who inflicted

1 the wound is a proximate cause therefor. The same is
2 true if death results from the combined effect of a wound
3 so inflicted and of a disease produced by, or contributed
4 to, by the wound but is otherwise if the disease is not
5 connected with the wound in the relationship of cause and
6 effect.

7 I charge you, ladies and gentlemen, it is the
8 law of this State that voluntary intoxication, whether
9 from alcohol or drugs, is never an excuse for or a
10 defense to crime, regardless of whether the crime is one
11 involving general or specific intent. A person who
12 volunteers or renders himself intoxicated is no less
13 responsible for his acts in such condition. If one
14 voluntarily drinks intoxicating liquor, wine or beer or
15 is under the influence of drugs and becomes intoxicated
16 to whatever degree, and if while in that condition,
17 commits an act which would be a crime if it had been
18 committed by a sober person, the fact of drunkenness
19 would not relieve the intoxicated person from
20 responsibility.

21 Ladies and gentlemen of the jury, your verdict
22 must be unanimous. All twelve of you must agree as to a
23 verdict of not guilty or a verdict of guilty. Please
24 derive no inference from the order in which I have stated
25 the forms of verdict to you. As very obviously, when you

1 state two things, you have to state them in some order.
2 At such time, Madam Forelady, as the jury has arrived at
3 a unanimous verdict, I would ask that you please, write
4 that verdict on the bottom right hand corner of this
5 indictment underneath the word "Verdict". You will see I
6 have written here "Guilty" or "Not Guilty". Those are
7 your two forms of verdict. Please write that verdict
8 from a unanimous jury and sign your name as "Forelady"
9 and knock on the door. We will bring you back into the
10 courtroom and receive your verdict at that time.

11 Any objections or additional requests by the
12 State?

13 MR. HARTE: No, Your Honor.

14 THE COURT: By the defendant?

15 MR. SCREEN: None, Your Honor.

16 THE COURT: All right. Madam Forelady, if
17 you'all need any crackers or soft drinks or Tylenol,
18 aspirin, whatever, cigarettes, anything we can get for
19 you to make your stay pleasant and comfortable as
20 possible, please let us know. You are excused to go to
21 your room. Take the exhibits into the jury room, along
22 with the indictment, and you may commence your
23 deliberations.

24 (WHEREUPON, the jury retired to deliberate at
25 4:20 P.M.)

1 (WHEREUPON, at 7:02 P. M., the jury returned to
2 open court to report its verdict.)

3 THE COURT: Madam Forelady, ladies and
4 gentlemen of the jury, have you arrived at a verdict?
5 A. Yes, we have, Your Honor.

6 THE COURT: Please hand it to the lady bailiff
7 and pass it up to the Clerk. Madam Clerk, you may
8 publish the verdict of the jury, please.

9 MADAM CLERK: Yes, Your Honor. We have case
10 number 85-GS-02-847, State versus Timothy F. Green,
11 indicted for murder. Verdict - guilty. Signed, Irene
12 Knight, Forelady.

13 MADAM CLERK: Madam Forelady, ladies and
14 gentlemen of the jury, if this be your verdict, so say
15 you all.

16 (ALL ANSWERED AFFIRMATIVE.)

17 THE COURT: Anything further from this jury .
18 before I excuse them, Mr. Solicitor?

19 MR. HARTE: No, sir, Your Honor.

20 THE COURT: Mr. Screen?

21 MR. SCREEN: No, sir, Your Honor.

22 THE COURT: Madam Forelady, ladies and
23 gentlemen of the jury, when I told you this morning
24 twelve dollars a day wasn't enough, now you know why.
25 It's not a pleasant thing serving on a criminal jury and

1 I realize that. It's not pleasant holding criminal
2 court. It just disturbs me greatly when some people live
3 as they do. You know, you bring children into this
4 world. I think you owe an obligation to them to try to
5 teach them right from wrong and protect them and feed
6 them and clothe them and take care of them. In twelve
7 years I've seen a lot of situations that are a lot of
8 heart break and misery and this case is no exception.
9 Little three year olds are human beings just like you and
10 I and it's a shame when something such as this occurs and
11 I realize it's not a pleasant case for you ladies and
12 gentlemen, to have to listen to. I've had worse, in
13 fact, all of them are bad. Let me please thank you for
14 having been willing to serve on the jury here this week.
15 I can't very well have jury trials without the services
16 of you good ladies and gentlemen who are willing to be
17 away from your jobs and from your families, your work,
18 your play and whatever. And you do indeed, perform a
19 valuable service to your county and to your state and I
20 thank you so much.

21 THE COURT: Anything for the record by the
22 State?

23 MR. HARTE: No, Your Honor.

24 THE COURT: By the defendant?

25 MR. SCREEN: Yes, Your Honor.

1 THE COURT: Be glad to hear from you, sir.

2 MR. SCREEN: On behalf of the defendant, I move

3 for judgment NOV and for a new trial.

4 THE COURT: Let the record reflect, he's moving

5 for a new trial. We don't have a JNOV. He's moving for

6 a new trial.

7 MR. SCREEN: All right, sir.

8 THE COURT: On what grounds?

9 MR. SCREEN: The weight of the evidence as

10 produced from witnesses that the jury heard, doesn't

11 support the verdict.

12 THE COURT: All right, Mr. Screen. As you so

13 well know, the admissibility of testimony, the rules of

14 evidence are upon the Court but the weight or the

15 believability is for the jury. That's their province.

16 The verdict is certainly a proper one. It depends on who

17 they believe. If they had believed the defendant's

18 testimony and brought in a verdict of not guilty, I'd

19 have no qualms with the jury. They believed the State's

20 witnesses or part of yours or all of theirs or whatever

21 portion, and they bring in a verdict of guilty. I have

22 no qualms with the jury and the verdict is entirely a

23 proper one and I respectfully decline to grant your

24 motion, sir.

25 Approach the bench for sentencing. All right

1 Mr. Solicitor, I have the prior record of the defendant
2 as was testified, or as you ask him on cross
3 examination. August 12 of 1981, conviction of forgery.
4 What was his sentence then?

5 MR. HARTE: Your Honor, his sentence was
6 eighteen months suspended upon eighteen months probation.

7 THE COURT: Straight probation for eighteen
8 months. Then October 6th of 1982, which was fourteen
9 months. While he was on probation he was convicted or
10 plead guilty to housebreaking October 6, 1982, according
11 to my notes. What was his sentence?

12 MR. HARTE: Five years suspended upon service
13 of thirty-seven months and thirty-eight months probation.

14 THE COURT: So, of that thirty-seven months --
15 how long were you in jail, Mr. Green?

16 MR. GREEN: A year and four months.

17 MR. HARTE: Your Honor, at that time he also
18 had five months of his previous sentence revoked to run
19 consecutive.

20 THE COURT: Five months consecutive, so he had
21 forty-two months and you served one year and four months
22 or two months.

23 MR. GREEN: Four months.

24 THE COURT: That's twelve and four is sixteen.
25 So you served sixteen months. That would be October 6th

1 of 1983 and another six months, that would be until April
2 the 6th of 1984 when you started your probation of thirty-
3 eight months so you're on probation at this time?

4 MR. POSEY: On parole.

5 THE COURT: You're on parole now?

6 MR. GREEN: Yes, sir.

7 THE COURT: Mr. Posey, check your files and see
8 if this man's on probation or on parole, Timothy Green.

9 MR. POSEY: He's on parole, Your Honor.

10 THE COURT: Parole? What happened to the
11 thirty-eight months probation the Judge ordered?

12 Be glad to hear from you Mr. Screen. Anything
13 you'd like to tell the Court?

14 MR. SCREEN: I don't know exactly what I can
15 tell you, Judge. I understand that you have very little
16 discretion, if any, in the imposition of sentence on a
17 conviction of murder. I would ask you if you decide to
18 revoke any of that time that's left, that you run it
19 concurrent with the sentence.

20 THE COURT: Well, if he's on parole that's a
21 matter within the purview of the Parole Board. If it's
22 on probation then it would be a matter that would be
23 before this Court. If it is probation, any objection to
24 taking it up at this time?

25 MR. SCREEN: No, sir.

1 THE COURT: Sure am interested in seeing the
2 recidivism rate, the return rate, the crime of the
3 probation and the Parole Office. I've had quite a number
4 here in the last two months. You been working while you
5 been in jail, Mr. Green?

6 A. No, sir.

7 THE COURT: All right, no credit for your jail
8 time. Captain Lewis, I would encourage the jail and
9 County Council to adopt a policy, I'm not saying in a
10 murder case that you might not want him to work outside
11 the fence but at least rather than just let them be dead
12 weight, I would encourage you to adopt a policy where
13 you're giving him credit for his jail time. That helps
14 him and it helps the County because you're getting some
15 free work out of them. I ain't talking about making up
16 the bed either. I talking about work. All right, you
17 got seven dollars and seventy-five cents, Mr. Green?

18 A. No, sir.

19 THE COURT: Any member of your family here got
20 it?

21 A. Yes, sir.

22 THE COURT: All right, if you would, come pay
23 the lady for me, please. Under the Governor's law,
24 everybody that goes to jail has to pay seven dollars and
25 seventy-five cents. You on parole or on probation?

1 Thank you, ma'am, otherwise the Clerk would
2 have had to keep a ledger card for twelve or fourteen
3 years or whenever it is that he will get out. Not
4 supposed to be eligible for twenty years but they got a
5 lot of gimmies, credits for work and a lot of other
6 things.

7 MR. POSEY: Your Honor, I can't find a Parole
8 Certificate in this file.

9 THE COURT: Is he on active supervision with
10 your office?

11 MR. POSEY: Yes, sir.

12 THE COURT: For parole or probation?

13 MR. POSEY: He's on parole.

14 THE COURT: So his probation hasn't started?

15 MR. POSEY: On provisional, but let me be sure,
16 Your Honor. Let me check on through this file.

17 THE COURT: It further reflects, Mr. Solicitor,
18 March 16, 1982 on that forgery, that he got a probation
19 then. November 30 of 1982, he had a housebreaking and
20 larceny and he got five months, unlawful possession of
21 Food Stamps, three months, forgery by uttering another
22 forgery, four months CS, I suppose is consecutive. Then
23 October of 1982, housebreaking - one count, five years
24 suspended, thirty-seven months probation.

25 MR. HARTE: That's the one I was giving to you

1 before, now the other one --

2 THE COURT: Why did you miss the other one?

3 MR. HARTE: Your Honor, on the Sheriff's
4 Department record, it just shows the indictment numbers
5 but didn't show the charges and on the SLED record it
6 didn't show at all.

7 THE COURT: Why don't you'all check with the
8 Probation Office for prior records also.

9 MR. HARTE: Well, normally they would have the
10 same thing on the SLED computer that we would.

11 THE COURT: No, sir, they don't. Here's
12 something additional. 'Course Mr. Sanders with Parole is
13 trying to get twenty-one new people so they can clear up
14 a hundred and thirty-three thousand undisposed of Arrest
15 Warrants at SLED. I don't know why the solicitor and the
16 police don't send them in or why they don't tap in to the
17 information the clerk sends in. I don't see why that's a
18 function of Parole.

19 Anything you want to tell me about this case?

20 MR. SCREEN: No, sir.

21 THE COURT: So, provisional parole, that's a
22 matter for the Parole Board. Be sure and include this in
23 your recidivist rate now. When he finishes provisional
24 parole, he will go into the thirty-eight months
25 probation?

1 MR. POSEY: Into the probation, yes, sir.

2 THE COURT: So he was still supposed to be in
3 jail but the Parole Board decided to let him out.

4 MR. POSEY: That's correct, Your Honor.

5 THE COURT: Thank you, Mr. Posey. Anything
6 else from the State?

7 MR. HARTE: No, sir.

8 THE COURT: Anything else from the defendant?

9 MR. SCREEN: No, sir.

10 THE COURT: Anything you want to tell me,
11 Timothy F. Green?

12 A. Yes, sir. I don't feel as though justice was
13 done here tonight and I feel as though I deserve another
14 trial in another county.

15 THE COURT: In another county?

16 A. Yeah, because you know, I don't feel like - I
17 feel like it was a racial matter here and that it was a
18 conflict.

19 THE COURT: A racial matter? All the parties
20 involved were of the same race.

21 A. I'm talking about family-wise, you know what
22 I'm saying?

23 THE COURT: Oh, it was family against family?

24 A. No, it wasn't family against family, it was
25 family against one person in general, one man.

1 THE COURT: Against you?

2 A. And I don't feel like in my heart that I could
3 kill a person and take a person's life and God is my
4 witness to that and I feel as though in the near future
5 he will deliver me. And I have faith in that.

6 THE COURT: Well, keep the faith. But you
7 understand, Mr. Green, that you picked the family, didn't
8 you?

9 A. I did what?

10 THE COURT: You picked the family. You
11 selected Phyllis Price Hill's family. You made that
12 choice, did you not? Well, as I mentioned earlier to the
13 jury just as they were leaving, that such an unpleasant
14 thing, it is really a tragedy when anybody loses their
15 human life, in particular, a three year old, that just
16 really didn't have a chance.

17 A. I lost my Mother, too. What is that? That
18 isn't nothing right, huh?

19 THE COURT: No credit for jail time. Seven
20 dollars and seventy-five cents has been paid. That
21 twenty dollar assessment for Community Corrections be
22 waived due to financial hardship. Sentence of the Court,
23 mandated by law, is that Timothy F. Green be confined to
24 hard labor upon the Public Works at Aiken County or in
25 the State Penitentiary for the balance of his natural

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1 life. Good luck to you, Mr. Green.

2 - - -END OF REQUESTED TRANSCRIPT- - -

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CERTIFICATE

I, the undersigned Brenda A. Wingard, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Criminal Court for Aiken County, South Carolina, on the 5th day of March, 1986.

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

April 1, 1986

Brenda A. Wingard
Court Reporter

Brenda A. Wingard
Certified Court Reporter
1765 Huckleberry Drive
Aiken, South Carolina 29801

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM AIKEN COUNTY
COURT OF GENERAL SESSIONS

Hon. Jocelyn Newman
Circuit Court Case No. 1985-GS-02-00847

Appellate Case No.: 2023-000961

Timothy F. Green, ... Petitioner,

v.

State of South Carolina,..... Respondent.

CERTIFICATE OF REDACTION

I certify that I have redacted the Petition and the Record on Appeal in accordance with the Supreme Court's Orders on the redaction of appellate records and other relevant rules.

Respectfully submitted,

s/J. Falkner Wilkers
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February 25, 2026

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v.

State of South Carolina,..... Respondent.

CERTIFICATE OF SERVICE

I certify that I served a copy of the Petition for Writ of Certiorari and the Appendix on the Respondent on the 25th day of February, 2026, by emailing copies of same to the AIS email address for counsel of record W. Jeffrey Young, S.C. Attorney General's Office, jyoung@scag.gov.

Respectfully submitted,

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