VOLUME III OF III

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Jasper County
Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BENJAMIN WALTER DUBOIS III,

APPELLANT

APPELLATE CASE NO. 2023-001307

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believe that those times should be held against the defense. Because the first continuance in the case, Your Honor, I had the flu and COVID -- COVID-19.

We would have ended up ending his case in the trial anyway. The only time I've ever asked for a continuance on any case, because I was ill. The second continuance was by the State, because they finally looked at the physical evidence in the case, located cell phones, and wanted the cell phones extracted.

I did not object to that continuance because of the evidence in the bottom of the box, and it could have been inculpatory or exculpatory. However, that still should not be held against Mr. DuBois. Additionally, the -- so that was the -- oh, yes, sorry, Your Honor, was because the jail -- he was leaving out of that SCDC, he was on several mental health medication. When he was transferred over to Jasper Jail, he didn't have an updated prescription, so he was not on his medication. Judge Bonds ruled that that was a government snafu, it was not a problem -- it was not the fault of the defense, it was not the fault of the State, and --

THE COURT: What was the medication that he was supposed to be getting and he wasn't getting at the

time?

MS. CARMODY: Geodon, Zoloft, those are the big ones. Those are the big ones, Your Honor.

THE COURT: What was the Geodon for?

MS. CARMODY: It's an anti-psychotic.

THE COURT: Okay.

MS. CARMODY: So Judge Bonds, you know, I did see since he'd been off his meds that I believed that there would be a competency issue at trial. Well, Judge Bonds didn't want to take a chance if we had a competency issue during trial, so he wanted to place him back on his meds. That is the reason for the last continuance.

Other than that, Your Honor, and they're on the record, I sent numerous emails to the Solicitor's Office. I tried other cases, you know, and kept telling them that this case needed to be resolved. The State also had in their possession a statement from Mr. Auman. I just got Mr. Auman statement in the fall. Additionally, Your Honor, the autopsy photographs, I didn't have the autopsy photographs in this case until the fall of '22.

So for the first five years, Your Honor, I didn't have autopsy pictures, I didn't have the second DNA report. I don't have -- didn't even know I would need

Highland's DNA to compare with the witness who just testified comparing only his DNA, and Mr. Jerry Holmes, didn't even know I would need it until the fall. Also, didn't even know anything about Mr. Auman who testified until the fall. Like I said, no autopsy photographs were provided.

So, Your Honor, those are -- you still get the standard for the speedy trial by which -- Your Honor, it's, you know, that the right was asserted, the reason for the delay, the State's response to that, and then whether there was prejudice. I believe that the State doesn't really have a response to why this case was delayed this long, other than, you know, an upheaval at the Solicitor's Office, which before in many cases has found that that's not a sufficient reason for the delay.

Even COVID-19, Your Honor, I tried a bunch of cases in front of Your Honor, you know, after the pandemic, so there's no -- I don't believe that that would be a valid excuse either for delaying this case. Also -- so that's for my speedy trial motion, Your Honor, I don't know if you want to rule on that separately, or if you want me to keep going.

Q. Keep going.

A. Okay. Your Honor, so I'll also be asserting

his motion to dismiss, based on the destruction of evidence in this case. So I mentioned earlier, and this is why it ties into the speedy trial as well. Holmes' said clothing was destroyed in the case, which is the victim's clothing, and you heard from Agent Garvin that the clothing on the victim should not have been cut off and thrown away.

And also the shoes from Julius Highland's cell were destroyed. Additionally, they never collected DNA from any other person in this case. They never photographed any other inmate in this case. We had 151 inmates, and no one else was photographed. There's nobody else's DNA that was collected. And the standard, Your Honor.

So the first part is, is whether there was bad faith. And, Your Honor, I did argue to Judge Bonds that I believe that there was bad faith in the destruction of evidence, and the reason being is because the guard was still working at SCDC at the time this evidence was being collected.

The guard himself, Tyrese Griffin, was providing information to Mr. Garvin, who was directing his investigation and also providing that information to SLED to direct their investigation. And I do believe that because the guard was fired for misconduct and

obstruction of justice, there's been testimony to that this week. Said he was very hesitant to speak with the Bloods in this case, but I do believe that the guard was directly involved in, or at least -- if he wasn't directly involved, he was at least not providing information, which could have helped the investigation, or if not involved in the destruction of evidence himself.

They did not find out until much later that the guard had lied in the books, and -- I believe it was two months later, Your Honor. So I do believe that there is bad faith destruction of evidence in this case.

The second part, which is our state test, talks about when evidence is destroyed, that whether it presents an exculpatory value that was immediately apparent prior to it being destroyed, and whether the defense can obtain evidence.

There's been testimony in the record that Holmes' clothing, the victim's clothing, in this death match, this was a combat between two people, Your Honor, with a huge blood bath. There's no doubt that Holmes' clothing would have possessed an exculpatory value.

This is not the accepted standard, this is just whether the evidence possessed an exculpatory value,

and whether it was destroyed, which it was, and whether the defense can obtain comparable value by comparable evidence by other means. It was destroyed, it was exculpatory, which means the first part of the test. It cannot obtain comparable evidence by other means, because the clothing is gone.

No one did anything to preserve that clothing, so it's just gone, Your Honor. So I believe just that evidence along, without even getting to the other evidence, just his clothing alone, satisfies the test.

Also, if we look at Highland's DNA, it had blood on the shoes of Highland's, and he was believed to be involved in this, Your Honor. He was outside of his cell. They believed he was involved in the planning of the case. They found shoes in his cell that contains suspected blood. The shoes were supposed to be sent to SLED for analysis, they were not, and they were destroyed.

So, again, I believe that we've met the standard for if they believed that the shoes contained an exculpatory value, they would have been photographed, etc. They wouldn't have said they suspected blood, if they didn't, and then the evidence was destroyed, it was thrown out, and he could not obtain evidence by

comparable means because Mr. Highland's dead.

I can't even cross-examine the man about the blood on the shoes in his cell. That's the issue, Your Honor, and, additionally, the -- I want to reassert all of his pretrial objections to the DNA, to the autopsy photographs, to the chain of custody. And I believe we also raised a confrontation clause 403, Your Honor, in regard to the evidence from the DNA. His autopsy picture, if I haven't already said that.

The statement that he gave that Garvin testified, even though the statement he gave was not even a statement, Your Honor, it was a summary. Logan's summary of his statement that Garvin testified about. Nothing was in quotations, I don't believe it was the statement of the Defendant, Your Honor.

Also, I don't believe that that statement was voluntary, because of the -- him being sexually assaulted and needed medical attention, he was also bleeding. I submitted evidence at that hearing that I don't believe he even signed the Miranda form. I believe that's it, Your Honor. I can elaborate on any of those things, if you need me to, but I don't want to -- if you need me to elaborate, I can. And I believe we have a copy of Judge Bonds' orders.

THE COURT: I've got it.

MS. CARMODY: You have it? Okay. Thank you, Your Honor.

THE COURT: Do you want to respond?

MR. EVANS: Thank you, Your Honor. Regarding her reassertion of the prior motions, those were ruled upon by Judge Bonds in lengthy written orders. We've argued those matters I believe it was three weeks ago today, or perhaps Thursday or Friday, but those were litigated for several hours with witness testimony before Judge Bonds.

He asked for supplemental argument in the form of memoranda, which both Ms. Carmody and I submitted to him. He issued a ruling, which the Clerk I see has provided you a copy of. I don't think this is the appropriate time for her to re-raise them, however, I appreciate that Ms. Carmody has an important job, a stressful job, and that she wants to make sure with absolute certainty that all her arguments are preserved, so I'm not gonna quibble with the fact that she is re-raising them.

I just wish she would have done it before the jury was sworn. The only one of her arguments on those matters I'm going to address is, I don't believe she raised it in front of Judge Bonds, was the issue of turning over the Starmix DNA report, and Mr.

Auman's statement, as she did not have -- I don't believe, and I'll check it on the transcript, but I don't believe she raised those concerns in front of Judge Bonds.

The DNA report, Judge, I can't say -- obviously, SLED, as well as the Solicitor's Officer were all quote, unquote, informed, but I can't say -- I don't believe that the Solicitor's Office had the Starmix report. As Your Honor knows, they don't send them to us automatically.

We have to go to -- we have access to them, but we have to go and get them, so I downloaded that and sent it to her, when we were preparing for the first trial date. As I said earlier in another hearing, Judge, today I would have appreciated her argument a little bit more, if we were still at that first trial date, but this has been ten months, approximately, since she received the report.

That's all I have to say about both the speedy trial and due process motions, since they were already ruled upon, unless you need some further argument. As to her actual directed verdict argument, I only heard two points about it. She said that the eyewitness testimony from Mr. Chappell was -- and also from Mr. White was mere presence evidence.

In fact, it's, Your Honor, it's actually Mr. Chappell, in particular, it's a rather good example of circumstantial evidence. It's very similar, in my mind, to the snow on the ground analogy. Mr. Chappell sees Mr. DuBois, who he knew him from being in prison with, sees him enter his own cell, where his cellmate, the victim, Mr. Jerry Holmes, was. He leaves the cell, the cell door closes, he hears the screaming a short while after. He sees Mr. DuBois exit the cell and sees that Mr. Holmes is deceased within the cell and testified that nobody else was in the cell when it happened.

Okay, if that's not a crystal-clear example, Judge, of circumstantial evidence of the murder, I don't know what is. And, candidly, Your Honor, I think, you know, Mr. Chappell alone could have potentially testified to the evidence, and we'd still be going to a jury today.

So there is abundant circumstantial evidence in the form of witnesses, and in the form of the DNA, which we have heard today to show that Mr. DuBois did kill Mr. Holmes with malice aforethought. She did raise the issue of the date of the indictment. As Your Honor is well aware, the indictment says on or about. There's no way with the testimony that the

witnesses that we have, and the fact that he was discovered in the early morning hours of June the 22nd, but there was no -- unfortunately, and I share, obviously, Ms. Carmody's concerns with the quality of the guards at RCI, that should be fairly obvious, but there was no way to know with scientific precision exactly the time, and, therefore, exactly the date when he passed away.

There was conflicting testimony even from the witnesses who were present, as to exactly what time it was. This was a prison, they're not wearing watches, or entering timestamps into a system, like a 911 operator would. So, again, Your Honor, an indictment is a notice document. They've been on notice about how to prepare for this trial for quite some time, as she, herself, pointed out. They know the night that it happened, it was the night of June 21st and 22nd. I think there's plenty of evidence here that can be sent to the jury. Thank you.

THE COURT: All right. Well, taking her motions in the order that Ms. Carmody raised them, first, as to the directed verdict motion, I do think there is ample circumstantial evidence, all of which taken together, so the jury could find Mr. DuBois guilty of murdering Mr. Holmes.

I found credible Mr. Chappell's testimony, as well as Mr. Auman's testimony, and that coupled with everything else, I think it's a case that needs to go to the jury. As far as the speedy trial delay, obviously, the length of the delay was reasoned.

The Defendant asserted his rights, and as to prejudice, again, I don't think in this case the delay was, you know, arbitrary or unreasonable. I think when investigators choose to seek certain evidence, or not seek evidence, that is what they do in their investigation.

And choosing not to take Mr. Highland's blood, and now it's not accessible, because he's deceased, and we would like to have every road examined.

So as far as a speedy trial, a violation, you know, we all know the lockdown occurred during the middle of this, which is unfortunate, and they really did lockdown for a good amount of time.

I will make a comment on the turnover, and I would say both the Solicitor's Office and the Public Defender's Office, it's always difficult in these cases, because what I am seeing just from sitting on the bench is, that someone gets a case, they work it up to a certain degree, and then when they leave an office then it gets turned over and someone starts

from scratch.

And while that's unfortunate, I think that's the nature of working at a Prosecutor's Office or Public Defender's Office. I mean do I wish that when someone's handed a file, they could go through from start to finish and make sure everything's wrapped up immediately, I don't think we could possibly do that.

Also, the Starmix is a perfect example of the better, you know, DNA technology and science later on, and I think that's certainly why this was sent back to Starmix. I also will say that it was turned over to the defense in the fall. It sounds like you said October of 2022 you got the Starmix report, and then today is August 3rd, 2023.

I think the State has had -- I'm sorry, I think the defense has had a sufficient amount of time to examine it, decide what they need from the witness. It certainly wasn't any reason you raised to continue this case.

I can tell you I think the continuances in this case were all necessary. The first one with Ms. Carmody having, you know, COVID and the flu, she could never be expected to try a case under those circumstances. And then the second one, the State as far as looking at any cell phones, I think those sides

have a duty to want to know what was on the phones if anything.

Of course, in this case it turned out there was nothing of any evidentiary value, but they had to be done, they had to be looked at. And I know that that was important, and the case had to be continued for that reason.

And then lastly the third continuance concerning medication of the Defendant. That is, to me, of primary importance that you understand what's going on, that you are cognizant, that you are feeling well, and you can assist in the trial, and so to me that is -- well, all that's the most important thing. And you've presented here today, obviously, you've been interacting with your lawyers and Ms. Price, and assisting her defense, and that's what we need people to do, and that's what we need the defendants to do.

So with that said I do not think, again, that the time of trial is contrary or unreasonable in this case, given just all those things, which might even be called.

Lastly, your motion to dismiss, so we'll say it looks like Judge Bonds early addressed it in his order, August 1st of 2023. Just some of the highlights that you raised, as far as the destruction

of evidence, Ms. Carmody, I would have to agree with you.

I would rather that they just hadn't put clothes outside to specifically dry and get rained on, I would agree with you on that. As far as Mr. Holmes' clothing, you know, being cut off, you know, I think I addressed that.

As far as Mr. Highland's shoes are concerned, again, I think it's hard in an investigation to know to determine what has evidentiary value or it doesn't. You know, you've got a unit at SCDC that has 151 people, there's a lot of things, but that's knowing what's important what's not, things can be missed, but I also think that often times things can be missed, and then there's the benefits of the defense.

And I don't think there's been any prejudice to the Defendant in this case, as far as no other DNA being collected.

I'm going to presume that you want a third-party guilt charge in this case, Ms. Carmody?

MS. CARMODY: Yes, Your Honor.

THE COURT: As well as in your presence charge in this case --

MS. CARMODY: Yes.

THE COURT: -- is that correct? All right.

Well, you know, we always say in cases we would confer. There'd be more DNA off other potential people, and in this case, you know, there's 151 people on the unit. Apparently, Mr. Holmes was one of them, so there's 150 other people that DNA could have been taken from.

I just don't think as far as -- did I not see it? Oh, it was -- it's August 1st. Anyway, so given I think the totality of the circumstances, I think given everything in this case, I would concur with Judge Bonds, where he found that there was no bad faith shown either by the State or by the investigating officers through the State.

So I think it did put the Defendant on notice, the State charged with who was being charged with, and for that reason I'm going to deny your motion, based on all of evidence I have already put on the record. And I will reiterate what Judge Bonds had in his order for the most part. I haven't read 100 percent through it, so I can't say that for sure, but I can tell you that, in general, it certainly is a conclusion I agree with, okay?

So I'm gonna let you have a lunch break, and I know -- do you still intend on putting up a case?

MS. CARMODY: Yes, Your Honor, we have our

witness. And --

COURT REPORTER: I'm sorry, what? Adverse inference?

THE COURT: Actually, it would be a spoilation of evidence.

MS. CARMODY: That's what I mean, yes.

THE COURT: So --

MS. CARMDOY: Yes.

THE COURT: -- I know, I'm asking about that we should let them go for the night. We're obviously not gonna, you know, argue and charge today, so I would consider that.

I'm not sure if this works or rises to that level. I don't see that anyone intentionally destroyed evidence. I think your argument could be that potentially it was sloppy, but, again, I think in the circumstances of this case, this is a tough crime scene.

And I can tell you from my experience, you've heard Mr., you know, Garvin say, you know, he hadn't seen anything -- not only was it a tough and bloody and pretty gruesome crime scene, but on top of it, we're talking about a large area as well. Because we're finding shanks and things in the bathroom, and clothing had been put in places.

We're talking about 151 people in a very small unit. And I just think there's a lot of -- I think it's a very difficult, difficult crime scene in my mind, where there could be so many things that had potential evidentiary, you know, benefit in this case.

So I would think -- but let's go ahead and let's break for lunch. I told the jury to come back at 2:15.

When we come back, also I need you to tell me, Ms. Carmody, at what point do you want me to ask Mr. DuBois whether or not he wants to testify in this case.

Would you prefer me to wait, or do it immediately after we send the jury out, or would you prefer me to wait until all his witnesses have first been put up?

MS. CARMODY: Well, we'd have to have a ruling about his prior convictions.

MR. EVANS: If you would like for me to put those on the record?

THE COURT: I think you can go ahead and put those on the record, so he knows what will be coming in.

MR. EVANS: Judge, do you want to hear all of them, or just the ones that I believe are supported by the rule?

THE COURT: Just the ones that you believe you can use.

MR. EVANS: Very good. In 2003 giving false information, 2004 forgery, more than a thousand, but less than 5,000, 2010 giving false information, 2011 forgery less than 5,000, as well -- these are all the same incident, financial identity fraud, receiving stolen goods of 5,000 or more, and grand larceny 5,000 or more.

THE COURT: What year are these?

MR. EVANS: Well, I've got a custody status received on 9/3/13.

THE COURT: Okay.

MR. EVANS: So it appears that his probation was violated. It appears to be an original sentence of probation at sentencing in 2011. He was on probation, and then he was violated in 2013. I think that get us through the ten years.

2016 this would be -- no, I do have a North Carolina 2004 credit card fraud, that's -- and this is I'm sure going to be the most contentious, 2016 in Berkeley County, assault and battery second degree, and voluntary manslaughter.

THE COURT: He was convicted of both?

MR. EVANS: It appears that -- yes, ma'am. They

have different warrant numbers, but the same court date, yes, ma'am.

THE COURT: Let's do this, you mull over this over lunch, go eat, and let's come back, you know, in about, I don't know, ten minutes after or so, okay? Let's everyone just take a rest, and take a bit, and I want to make these Court's exhibits, because we didn't need these anyway, and when we get to the point --

MR. EVANS: Yes.

THE COURT: and so these are Court's exhibits, and make sure they are marked as such, okay?

COURT REPORTER: 16.

THE COURT: All right, you'all grab a bite to eat, okay? Everyone refresh themselves.

Ms. Carmody, I don't need you to tell me how many witnesses there were, but do you think you will go past today with witnesses? Okay.

MS. CARMODY: So today?

THE COURT: -- and I don't want to -- but I appreciate it anyway, I just think it would be best.

I mean, unless you tell me you're gonna come back out here and rest, and we're not doing anything.

MS. CARMODY: Oh, no, Your Honor.

THE COURT: Okay.

MS. CARMODY: One witness, two, but what I don't

want to do is, if the State's gonna have last closing in evidence, I don't want the State to go, and then me go, and then we rest overnight, and then the State go back in the morning.

THE COURT: Oh, I won't let that happen, I would make you all finish, no, I wouldn't do that.

MS. CARMODY: Okay.

THE COURT: Okay.

MS. CARMODY: So we'll do our closings in the morning, Your Honor.

THE COURT: If the jury comes back at 2:15, are your witnesses gonna be short?

MS. CARMODY: I don't think anything's been short, Your Honor.

THE COURT: Exactly.

MS. CARMODY: But --

THE COURT: Well, let me ask you this, Ms. Carmody, let me ask you both this, Mr. Evans, how long do you think you are going to argue in closing?

MR. EVANS: I would -- obviously, my rebuttal's gonna depend on what she raises in hers.

THE COURT: I'm asking you to give me an estimate.

MR. EVANS: Yes, ma'am, I'm gonna try to keep it under a half an hour.

THE COURT: Okay, Ms. Carmody, what do you think?

MR. EVANS: About half an hour, 45 minutes, I think.

THE COURT: Okay. Let's just play it by ear. I'm really inclined to probably have you argue and charge tomorrow, just because you'all are tired, and I think it might be better if you're fresh, but let's kind of -- let's sit tight.

I'm not gonna push you, if you don't want to today, I'll just tell you that right now, okay?

MR. EVANS: Yes.

MS. CARMODY: Yes.

THE COURT: So --

MS. CARMODY: Thank you.

THE COURT: -- let's go ahead and just relax.

Anything else? Just think about it, go to lunch, we'll talk about it. After we break we'll have some time. You can think about it, if you want.

And we pretty much got our charge put together, and I'll review everything with you'all so you'll know. And I've got to tell you I've been giving the jurors jury charges in civil -- mostly in civil cases, but also in criminal cases now too. I think lawyers should be entitled to know exactly what's in the charge, so I intend on reading the charge, it won't be

a problem, you'll have it overnight, so you know what I'm gonna charge. And I give it to the jury, because I think they need to understand the law to be able to make, you know, an appropriate decision.

MR. EVANS: If they ask to hear it again.

THE COURT: so -- okay.

MR. EVANS: Thank you, Judge.

THE COURT: Grab some food.

MS. CARMODY: Thank you.

THE COURT: Sure.

(LUNCH BREAK)

**

PROCEEDINGS CONTINUED

THE COURT: All right, Ms. Carmody, are you ready to go?

MS. CARMODY: Beg the Court's indulgence, Your Honor.

THE COURT: Ms. Carmody, I'm now gonna go through Mr. DuBois' amendment rights with him right now, so I just wanted you to know that that's what I'm gonna do, okay?

MS. CARMODY: Oh, yes, Your Honor.

THE COURT: Okay.

BY THE COURT:

Q. So, Mr. Dubois, I need you to stand and raise

your right hand, sir. Do you swear and affirm the testimony you give will be the truth, so help you God?

A. Yes, ma'am.

Q. Thank you. Mr. DuBois, we have come to the point in the trial where you are allowed to put on your defense, or you're permitted to put on your defense. The Fifth Amendment to the Constitution of the United States says, in part, that no defendant is required to be a witness against themselves. That means you cannot be forced to testify against yourself, however, sir, you also do have the right to testify, if you choose to.

However, if you do choose to testify, please understand that the State will be allowed to ask questions of you that I deem relevant to this case, as well being able to go through various convictions you have that are appropriate. It'd be crimes of moral turpitude and that type of thing. You can be asked about those as well.

Sir, have you had an opportunity to discuss with your attorney whether or not you want to testify in this case?

A. Yes.

Q. You have talked to her? Okay. Sir, do you want to testify in this case?

A. Yes, ma'am.

Q. And is that your choice?

A. Yes, ma'am.

Q. All right, and you've made that of your own free will; is that correct?

A. Correct.

Q. All right, thank you, sir, you may be seated. I think you have knowingly and intelligently decided, so I appreciate that, sir.

THE COURT: All right, so at this point we're gonna go ahead and bring the jury in, and we're gonna go ahead with whatever witnesses.

Ms. Carmody, you just need to tell me if you have more than one witness, you need to kind of jump up and say, you know, my next witness is versus me saying what's next, right?

MS. CARMODY: Right, we have two.

THE COURT: Two: Okay.

MS. CARMODY: Thank you.

THE COURT: Okay.

MR. EVANS: While we're doing that, Judge, there was a witness --

THE COURT: Is he here?

MR. EVANS: No, ma'am. He is in custody on his probation part, but I --

THE COURT: Okay.

MR. EVANS: We had an opportunity to bring him here, we decided that it's just not worth the benefit, so that's --

THE COURT: Okay.

Let's bring them in.

(Jury enters the courtroom.)

THE COURT: All right, Ms. Carmody.

MS. CARMODY: Thank you, Your Honor. Your Honor, the defense will call Agent Garvin.

THE COURT: Okay, Agent Garvin, come back up, please.

***

WILLIAM GARVIN

BEING DULY SWORN TESTIFIED AS FOLLOWS:

***

DIRECT EXAMINATION

BY MS. CARMODY:

Q. Good afternoon, sir.

A. Good afternoon.

Q. Agent Garvin, I have a couple of follow-up questions for you from your testimony earlier in this case. Could you please identify what has been pre-marked as Defense 30A?

A. Yeah, it's like an inmate's clothing, uniform

of like socks, a towel, and it's fashioned to look like some type of folding device on the wall, in place of a locker of -- some place to store his clothes, their clothes.

Q. Agent Garvin, would this be a fair and accurate representation of the clothing in cell five? Where's cell five?

A. I don't know if that's cell five, but it's --

Q. Or an inmate's clothing?

A. An inmate's clothing.

Q. Sure. Thank you.

MS. CARMODY: Your Honor, defense moves for admission of 30A.

THE COURT: Without objection?

MR. EVANS: Without objection.

(Defense Exhibit Number 30A - 30E were admitted into evidence.)

MS. CARMODY: May I publish?

THE COURT: You may.

BY MS. CARMODY:

Q. Agent Garvin, what are we looking at here?

A. What you're looking at is the interior part of an inmate's cell, which has a homemade -- I'd say a homemade kind of hanging closet or shelving, and it has their -- an inmate's uniform, towel, like socks,

tee-shirt.

Q. And, Agent Garvin, I'd also like to show you what's been pre-marked as defense 30B. Is that a fair and accurate representation of inmate clothing in the Savannah unit?

A. This -- it is an inmate's clothing, but I'm not sure what -- where it is.

Q. You're not sure which cell it is, right?

A. No.

Q. Okay.

A. It just doesn't say what cell.

Q. It doesn't say which cell, that's fine. Thank you.

MS. CARMODY: Your Honor, defense would move for the admission of 30B.

THE COURT: Without objection?

MR. EVANS: Without objection.

THE COURT: Without objection.

(Defense Exhibit Number 30B was admitted into evidence.)

MS. CARMODY: May I publish?

THE OCURT: You may.

BY MS. CARMODY:

Q. All right, Agent Garvin, I had asked you earlier in the State's case of how inmates hold their

clothing within their cells; do you remember that?

A. Yes.

Q. Okay. Do you remember I asked you if they had their clothing and dressers, or how they, you know, kept their clothing?

A. Right.

Q. Okay. And you had indicated that there in, you know, essentially, the bags, the laundry bags. Are these the bags?

A. That's a laundry -- yes, a mesh, a laundry bag, which they would keep, like I said, the loose articles that don't have an identification mark on them, like socks and undershirts, towels, when they get ready to send it to the laundry.

Q. Okay, and so the inmates clothing is not secured in their cell, right? Would you agree with that?

A. There's not --

Q. They're not secured by a locker?

A. No.

Q. Okay. And also on this one, I'll show you again, Defense 30A, would this be consistent with how inmates put their clean laundry?

A. Like I said in my testimony before, some of the cells do not have lockers, which they lock their

stuff in, but that would be an ingenious way to keep your clothes, your clean clothes.

Q. Okay, so these would be clean clothes, dirty clothes, I would imagine, or in the bag, or these could actually, Defense 30B?

A. Yeah, it could be. Yeah, they could have just got the laundry bag back from the laundry.

Q. Thank you, sir. And, sir, I also wanted to follow-up with regards to the guard on that unit, on the Savannah unit that night, Tyrese Griffin.

During the course of your investigation, did you learn that Mr. Griffin had been off the Savannah B unit for -- well, a majority of his shift?

A. Yes, he's been -- he was off the part of the unit for an extended period time, much longer than he should have been. I can't say exactly how many hours it was, give or take four or five hours maybe, but, yeah, because he fudged his logbook.

Q. Okay, and --

COURT REPORTER: I'm sorry?

BY WITNESS:

A. Fudged.

COURT REPORTER: Oh.

BY WITNESS:

A. -- his logbook.

Q. And when we're talking about a logbook, Agent Garvin, I'd like to show you what's been pre-marked as Defense Exhibit 31. Do you recognize those?

A. Yes, they are, which stands for Savannah B. this would be the typical set of logbook.

Q. Okay.

MS. CARMODY: Your Honor, defense moves for admission of Defense 31.

MR. EVANS: No objection.

THE COURT: Without objection.

(Defense Exhibit Number 31 was admitted into evidence.)

BY MS. CARMODY:

Q. And, Agent Garvin, these aren't -- so we're not talking about a sheet of paper like a notebook, we're actually talking about a formal logbook; is that correct?

A. That's correct.

Q. Okay, and when you say Agent Griffin had fudged his book, what do you mean by that?

A. He -- the entries that were entered in would have misrepresented what he has actually done -- was doing.

Q. Okay. Had he indicated in his logbook that he had been on the unit all night?

A. That's correct.

Q. And did you determine at some point that the information he provided in the logbook was not only misleading, but it was falsely created to deceive you?

A. Yes, I believe that.

Q. Okay, so it was created to deceive you, correct? Okay.

A. Well, it was -- one, it was created to deceive someone, other than myself, if it had been a supervisor, and just misrepresented where he was, so if you were looking for him, or his supervisor wanted to see his logbook, they'd look at it and say he was supposed to have been on his -- he was on the wing at the time, but he wasn't.

Q. Sir, and what happened to the video of Agent Griffin -- I'm sorry CO Griffin leaving the unit?

A. I'm not sure what the -- like I said before, the equipment that they had was kind of faulty. It wouldn't record, it wouldn't save some of the recordings or whatever, so I would -- I was able to view it, but to get a copy of that information to get that into my evidence of what -- I didn't have the opportunity to do that.

Q. All right, and there was no timestamps on that video?

A. The best of my recollection, yes, there was some timestamps on it.

Q. You don't remember what that was?

A. No, I don't.

Q. All right. Agent Garvin, so in your report that you created for this case, where you're learning that your Corrections Officer had left the unit, did you include the timestamps of when you saw him on the video in your report?

A. No, I did not. No, I did not. I was relying on the fact that I would get the information, because I was kind of busy running around, and I knew, if I'm not mistaken, Contraband had -- one of the Contraband, I believe it was Lieutenant Mole had informed me that this was available, and I just remember going into the room and looking at it, and requesting a copy of it, but I wasn't able to get it.

So I didn't get a chance to really memorialize it in writing at that time.

Q. Okay, and my question to you is, what did you do yourself, to follow-up and investigate whether the CO could potentially be involved with the murder of Mr. Holmes?

A. What did I do to follow-up on that? I questioned him again, and had him give me give another

statement.

Q. And?

A. And he did.

Q. He did what?

A. He told me what he had actually did that evening, that he was not on the unit.

Q. Well, sir, my question to you is if the CO has lied to you, how many times did he lie to you?

A. That would -- the first statement that he gave me.

Q. Yes.

A. And then I realized that he wasn't, found out that he wasn't, so I got another statement from him, that's -- so it was twice.

Q. Okay, and so -- all right, just so I'm clear, the guard who is assigned to the unit and leaves, you see him on video leaving the Institution, there's a murder, he forged his logs -- well, doctored his log to make you believe he was someplace he wasn't, and you ask him what?

A. Well, give him another opportunity to tell me the truth, and that's what he did. At that point, I really, really focused in on the log sheet to see exactly where, and the times would he have placed in -- on the logs, that's what caught -- that's what gave

me -- that's why I decided to charge him with the obstruction, because he tried to mislead me into believing that he was on the unit, and he was not.

Q. Did you ask him what he did out at his car? Was he going to his car --

A. He --

Q. -- presumably?

A. He claimed he was going to get lunch.

Q. He claimed he's going to get lunch?

A. Right.

Q. But he had been on the horseshoe already having lunch earlier, right?

A. Well, he was in the break room with Officer Smith.

Q. How many lunch breaks do the officers have per shift?

A. I think it's one lunch break, or maybe breaks as they're saying they want to take, I'm not sure.

Q. Now, if he was getting lunch, he would have come right back?

A. I believe so.

Q. All right, you didn't follow-up on that?

A. Well, I know that in the town of Ridgeland there's not a lot of places to eat lunch at that time, so he should have gone to his -- if he was going to

get lunch, it should have been something already prepared, or maybe if he lived close enough that he would have gone home, picked up something, and came back, or met someone out there in the parking lot to give him his lunch, anyone of those things would have been possible.

Q. So wouldn't you think if he's off the unit, is five hours a good reasonable estimate?

A. I mean yeah, give or take something like that, four or five hours.

Q. Nobody -- no -- the prison's running itself for five hours, correct? Would you agree with that?

A. I wouldn't say running itself, but --

Q. Right.

A. -- he wasn't in the unit.

Q. The gangs are running the unit for five hours, would you agree with that?

A. I wouldn't say the gangs are running the unit, but I will say, yeah, they're out there having a good time, yeah.

Q. A good time, all right. Thank you, Agent Garvin, I have no further questions.

MS. CARMODY: Your Honor?

CROSS-EXAMINATION

BY MR. EVANS:

Q. All right, it was a bad situation when Griffin stopped doing his job, wasn't it?

A. Yes, it was.

Q. And what's why you charged him?

A. That's correct.

Q. And you charged him, because his failing to fulfill his responsibilities created a dangerous situation for the inmates inside, correct?

A. That's correct.

Q. And as a result one inmate killed another inmate, correct?

A. Correct.

Q. But Tyrese Griffin didn't kill anybody did he?

A. Not -- no, I didn't find any reason to believe that he did.

Q. All right. You investigated him, correct?

A. Yes.

Q. Charged him?

A. Yes.

Q. He was terminated?

A. Yes.

Q. Did Tyrese Griffin kill Jerry Holmes?

A. No.

Q. Who killed Jerry Holmes?

A. The Defendant here, Mr. DuBois.

Q. Thank you.

THE COURT: Anything further?

MS. CARMODY: No, ma'am.

THE COURT: You may step down, sir.

MS. CARMODY: Thank you, Your Honor.

Defense calls Trenton Smith.

THE COURT: Okay.

***

TRENTON SMITH,

BEING DULY SWORN TESTIFIED AS FOLLOWS:

***

DIRECT EXAMINATION

BY MS. CARMODY:

Q. Sir?

A. Good afternoon.

Q. Please state your name for the record.

A. Trenton Smith.

Q. And, Mr. Smith, what is your occupation?

A. I'm an RN at Ridgeland Correctional Institution, a Registered Nurse.

Q. And what type of education do you have to be an RN?

A. You have to have -- to be a Registered Nurse, at least an Associate's Degree in nursing.

Q. And is that what you have, sir?

A. Yes, ma'am.

Q. And how long have you been a Registered Nurse?

A. Since 2012, so 13 years.

Q. All right. And I believe you already indicated that you are employed with Ridgeland Correctional?

A. Yes, ma'am.

Q. How long have you been there?

A. Eleven years, since August of 2012.

Q. And what is your job title at Ridgeland Correctional?

A. Currently I'm the healthcare authority, which is an SCDC term. It would have been better stated as healthcare administrator.

I basically do what a hospital administrator does and preside over the medical building.

Q. Okay, and are you in charge of the medical unit; is that what you mean?

A. That's correct, yes, ma'am.

Q. Okay, and is that a promotion that you received?

A. Yes, ma'am.

Q. And when did you get that promotion?

A. At the end of 2018 I believe. I believe it was December of 2018 when I got the promotion.

Q. All right. And so how many years in total for SCDC? You believe it's 11?

A. Yes, ma'am, this August made 11 years.

Q. All right. And, sir, do you see inmates within the whole prison?

A. Yes, that's correct.

Q. All right. And do you treat a lot of inmates for medical issues?

A. Yes.

Q. Have you seen -- you probably see all kinds of injuries then, right?

A. Yes.

Q. All right. Do you ever see like sprains?

A. Yes.

Q. Black eyes?

A. Yes.

Q. Broken bones?

A. Yes.
Q. Fractured skulls?
A. Yes.
Q. What about stabbings?
A. Yes.
Q. And you see minor and serious injuries?
A. Yes.
Q. All right, do you recall the night of June 21st, 2017?
A. Yes, ma'am, yes.
Q. Into the 22nd, so the 21st and 22nd?
A. Right, yes, ma'am.
Q. Okay. Do you recall that night?
A. Yes, ma'am.
Q. And what time of night were you on the Savannah unit?
A. It would have been right around -- a little after 10:00, sometime between 10:00 and 10:30 I went to that unit. I take that back, sometime after 9 o'clock, between 9:00 and 9:30 I went to that unit to complete an intake screening on an inmate in that -- who was housed in that unit.
Q. And which -- was that the Savannah B unit?

A. Yes, ma'am.

Q. And I believe you said you were doing an intake assessment? What's that?

A. That was part of my duties at the time as a nightshift nurse. Any time an inmate is transferred into the institution, I have to do a medical screening within 24 hours to make sure they're stable and gonna be okay to go to a dorm.

Somehow, he slipped past me, so I went to the dorm to do this assessment.

Q. Okay, and do you believe that -- did you write a report in this case, or a statement in this case?

A. Yes, I did.

Q. Okay, and if you need to refer to your statement to refresh your recollection, that's fine as well.

A. Yes, ma'am.

Q. So do you remember what time you were on the dorm that night? What time would you say, sir?

A. Well, can I look in my --

Q. Absolutely, yes.

A. So, yeah, I trust my written words

here, approximately 9:40 p.m.

Q. All right. And who had escorted you on the dorm that night?

A. It would have been Officer Griffin.

Q. Okay.

A. It was Officer Griffin, I should say.

Q. I understand. And this is the -- this would be the 21st then, not the 22nd, right?

A. Yes, ma'am, that's correct.

Q. All right. And what is the rock?

A. The rock is what everyone calls the actual floor of the dorm, as opposed to the entrance that they call the horseshoe. You enter the horseshoe, then you enter into the dormitory with the rooms, that is called the rock.

Q. The rock?

A. Yes, ma'am.

Q. All right. And at 9:40 p.m. you were on the rock of the Savannah B unit you said?

A. Yes, ma'am.

Q. Okay. And at 9:40 p.m. were there inmates out of their cells?

A. Yes, ma'am.

Q. And approximately how many inmates

would you say were out of their cells on the rock on the Savannah B unit?

A. I would say at least 85.

Q. 85 inmates?

A. At least, yes, ma'am.

Q. Was that normal?

A. It -- no, ma'am.

Q. No? Did -- was that protocol?

A. No, ma'am.

Q. All right. I'd like to show you what's been pre-marked as Defense 30D. Do you recognize those photographs?

A. Yes, ma'am, and I would come in --

Q. Sir, hold on one second.

A. Oh.

Q. Is that a fair and accurate representation of cell five when you went into the cell that night?

A. Yes, ma'am, that is correct.

Q. Okay, thank you.

A. Yes, ma'am.

MS. CARMODY: Your Honor, the defense moves for the admission of 30D.

MR. EVANS: No objection.

THE COURT: Admitted without objection).

(Defense Exhibit Number 30D was admitted into

evidence.)

BY MS. CARMODY:

Q. Okay, is this the cell five that you went into?

A. Yes, ma'am.

A. He was -- like he's there, and you can't get a good look at him from there from where I was looking in. I would have come in the door right here. He was slumped over with his hand like that.

Q. Okay. Do you remember what this item is right here? Is he laying on top of anything?

A. I can't tell from --

Q. This picture?

A. -- that, it looks like something white and curved, but I don't -- I'm not sure what that is.

Q. Nurse Smith, did you remove anything from the room?

A. No, ma'am.

Q. This area right here, this white area was -- to your recollection, is that the same as when you walked in the room?

A. Yes, ma'am, that -- yes, ma'am.

Q. Sir, in looking at that photograph that I just showed you, did it appear to you that Mr. Holmes' body was laying on top of some type of object?

A. Yeah, I can't remember exactly what it was, but I believe he was laying on an object.

Q. And did you enter the room?

A. Yes, ma'am.

Q. What was the -- why did you go into the room?

A. To confirm that he truly was deceased.

Q. Did you feel for a pulse?

A. Yes, ma'am.

Q. Was there a pulse?

A. No, ma'am.

Q. Did you feel anything at all?

A. Rigor had already set in.

Q. What is rigor?

A. After you die rigor mortis -- he was already -- when I went to palpate, he was stiff.

Q. He was already stiff?

A. Yes, ma'am.

Q. In your estimation as a nurse, have you ever seen dead bodies before?

A. Yes, ma'am.

Q. In your estimation, was this a recent death?

A. Yes, ma'am, within the last few hours, yes, ma'am.

Q. Within the last few hours?

A. Yes, ma'am.

Q. What did it appear to you had happened to him?

A. He was -- when I first saw it, just looking straight at the body I thought he had been beaten to death.

Q. Did you see anybody else in the dorm?

A. I remember some inmates being out of the dorms. There was a few on -- there was like at least two or three on the bench, but I was so focused I don't remember who those were, but as I left the dorm, I did see inmate DuBois.

Q. Okay. And where did you see Mr. DuBois?

A. As I was walking back out of the door, he was down in the corner hunched like this and shaking.

Q. What was your impression when you saw him?

A. I'm gonna be honest with you, I thought that he needed to be seen as a medical emergency. He had been seen many, many times, and I thought this was him just wanting to be seen again as a medical emergency, nothing to do with the murder itself.

Q. Okay, so you're thinking it's because of the testicle issue, or --

A. Yes, something along those lines yes, ma'am.

Q. Did Mr. DuBois -- well, you have seen inmates who have been in knife fights?

A. Yes, ma'am.

Q. Death matches?

A. Yes, ma'am.

Q. Did Mr. DuBois appear to you to have injuries consistent with this -- what you saw in cell five?

A. When I saw him, nothing stuck out as him just having been, like you said, been in a fight for his life. Certainly not someone who had just come out of a room where, like I told you, I thought the man had been beaten to death, and I certainly, in my mind, when I looked at inmate DuBois it didn't stick out in my mind that I saw injuries on him that would indicate that he had just beaten somebody to death.

Q. Okay. Would you agree that Ben's injuries were inconsistent with what you saw in that room?

A. That's a good way to put it, yes, ma'am.

Q. Now, Mr. DuBois also had a chronic shoulder injury while he was in SCDC?

A. Yes, ma'am.

Q. Did it appear to you that night that his shoulder had been dislocated?

A. No, ma'am, there was no indication that he had a dislocated shoulder at that time.

Q. I'd like to show you what has been pre-marked as Defense 30E for identification. Do you recognize

that photograph?

A. Yes, ma'am.

Q. And is this a fair and accurate representation? What is the picture of?

A. It looks like scratches on his forearm.

Q. Okay, is that a fair and accurate representation of the injuries to Mr. DuBois on the morning of June 22nd?

A. Yes, ma'am, from what I visually saw, yes, ma'am.

Q. Okay.

MS. CARMODY: And, Your Honor, may I publish and admit --

MR. EVANS: No objection.

MS. CARMODY: -- Defense 30E.

THE COURT: Without objection.

(Defense Exhibit Number 30E was admitted into evidence.

BY MS. CARMODY:

Q. Nurse Smith, this is just one photograph, but do you notice anything about the marks on Mr. DuBois' arm, as a medical professional?

What do you say what these marks? Are those recent?

A. You can see some -- the fact that it already

started to scab over, they don't look -- they look like they're about a day old to me.

Q. Okay. I'd like to also show you Defense 30C. What about those marks on his arms?

A. I would say the same thing here. If you look at these scratches up here and here, they look like they're at least a day old.

Q. And why is that, sir?

A. They're already starting to scab over a good bit.

Q. Okay. And I'm gonna show you what's -- State's Exhibit 42. And this is Mr. DuBois' face?

A. Yes, ma'am.

Q. All right. And also -- is this his other arm, sir?

A. Yes, ma'am.

Q. And Defense Exhibit 32 -- sorry, 23.1, is the other arm?

A. Yes, ma'am.

Q. And Defense Exhibit 26, a frontal of his face?

A. Yes, ma'am.

Q. Is this how you saw Mr. DuBois on the morning of June 22nd, 2017?

A. Yes, ma'am.

Q. Now, being in charge of the Medical Department at SCDC, how would you handle a person who's deceased?

A. If it's -- if foul play is suspected, the body stays in place where we found it -- let me take that back, when we find a deceased body in the room, or on the rock, or anywhere, and we know that that person is deceased, we leave it in place, and SLED will come there and then they will give us directions what to do at some point with the body.

I can tell you, if it's murder scene, or foul play is suspected, the body will be transported to a pathologist as is. In other words, we won't wash the body, we won't remove the clothing unless SLED tells us to, and we will ship the body as is to a pathologist.

Q. All right. Now, you've seen a lot of stabbings at Ridgeland Correctional?

A. Yes, ma'am.

Q. And in 2017 was that a pretty common occurrence?

A. Yes, ma'am.

Q. Has it gotten any better?

A. It has. It has improved.

Q. Okay, all right. And so SCDC medical staff

would be aware of how to handle stabbings at Ridgeland Correctional?

A. Yes, ma'am.

Q. All right. Did anybody ask you to write a statement in this case?

A. Yes, ma'am.

Q. All right, and who was that?

A. I met with Agent Garvin.

Q. Okay, and in your statement that you wrote to Agent Garvin, did you indicate to him that Holmes had called you over and reported that he had been assaulted?

A. Yes, ma'am.

Q. And in that written and signed statement you also reported that Holmes reported the assault to Contraband?

A. Yes, ma'am.

Q. And did anyone ever ask you any follow-up questions regarding that?

A. No, ma'am.

Q. And are you aware that an SCDC person who possibly, and SCDC personnel, who possibly would have been the last person to see Holmes alive, and no one asked you any questions?

A. Other than to write my statement about what I

was asked any other questions, no, ma'am.

Q. What about the lead investigator, Agent Garvin?

A. Other than writing my statement I wasn't asked any questions by Agent Garvin.

Q. How about SLED? Did they ever ask you any questions?

A. I do not remember being asked any questions by SLED, no, ma'am.

Q. All right, thank you, sir.

MS. CARMODY; No further questions, Your Honor.

MR. EVANS: Thank you, Your Honor.

**

CROSS-EXAMINATION

BY MR. EVANS:

Q. Good afternoon, Mr. Smith.

A. Hey.

Q. You doing okay today?

A. Yes, sir.

Q. You saw Mr. Holmes around 9:40 p.m. on June the 21st; is that right?

A. Yes, sir, that's what I wrote in my statement, and I feel that's pretty accurate.

Q. And you put approximately in the statement, but --

A. Yes, sir.

Q. Okay. So you saw him twice within a span of, what, around a little over five hours, five and a half hours?

A. Yes, that's correct.

Q. 9:40 to 3:10?

A. Yes, sir, that's correct.

Q. All right. Now, when you saw him at 9:40 p.m., I think you just testified that you were standing in front of cell number five; do I have that correct?

A. Right. Yeah, I just wanted to clarify was I didn't go into cell five.

Q. That's okay.

A. Yes, sir.

Q. But that was Mr. Holmes' cell?

A. As far -- yes, that's correct.

Q. It's the same cell you saw him in later?

A. Yes, sir, that's correct.

Q. All right. You're standing directly in front of his cell when you were speaking to him?

A. Pretty close to it I'm pretty sure.

Q. And you were standing there with Mr. Griffin, you testified to that?

A. Yes, sir.

Q. And Mr. Holmes did not, at least according to your testimony in your statement, he did not identify the inmate who struck him?

A. No, sir.

Q. Okay. And he did not identify the officer who he informed about it earlier in the day?

A. That's correct, he did not.

Q. And Mr. Griffin was standing right there?

A. Yes, sir, that's correct.

Q. Okay, and this was his testimony?

A. Yes, sir, that's right.

Q. And he didn't say where this happened, or did -- correct me if I'm wrong, did he say where it happened?

A. No, he gave me no details at all.

Q. All right. And he did not -- you didn't have a chance to treat him at that point?

A. No, sir, I did not.

Q. All right. Did he have a wound inside his neck?

A. I do not recall.

Q. Did he have any wounds all around the rest of his face?

A. I do not recall.

Q. And so was he bleeding from the top of his

head?

A. He was definitely not bleeding.

Q. He's not bleeding at all?

A. No, sir.

Q. Okay.

MR. EVANS: May I approach the witness, Your Honor?

THE COURT: Yes, sir.

BY MR. EVANS:

Q. I'm passing you State's Exhibit 51.

Did Mr. Holmes look like that?

A. Yes, sir.

Q. He was not in a condition where you had to treat him immediately, and get him to Medical right away to save him, or anything like that?

A. That's correct.

Q. This was something that you in your training and experience as an RN were able to put off for a little bit?

A. That's correct.

Q. Okay, and is that what you did?

A. Yes, sir.

Q. You're familiar with Mr. DuBois, and you identified him in your direct examination; is that correct?

A. Yes, sir.

Q. You'd seen him for treatment a number of times over his stay at RCI; isn't that right?

A. That's correct.

Q. He came to you often.

A. That's correct.

Q. He knew how to get access to you when he had a situation?

A. That is correct.

Q. When you saw -- well, no, backing up, I apologize. You were familiar -- you did not obviously operate on him, right?

A. No, sir.

Q. But you were roughly familiar with the nature of his procedure?

A. Yes, sir.

Q. You had to be, in order to be familiar with all the inmates under your care?

A. That's correct, yes, sir.

Q. Okay, and so his testicle had ascended into his body, his torso?

A. That's correct.

Q. Where it's not supposed to be?

A. That's correct.

Q. So it needed to come back down?

A. That's right.

Q. And would that require the use of any kind of medical device after the surgery?

A. Usually when there's any kind of surgery involving the testicles, yes, they will give a sling, so to speak, to give support during the healing process. That's pretty standard, but once again I wasn't involved with the --

Q. Sure.

A. -- surgery.

Q. Sure, but in your training and experience --

A. Yes, sir, yeah.

Q. -- a scrotal support garment?

A. Correct, yes, sir.

Q. All right. Is that something that a lot of inmates need at any given time?

A. Not that I'm aware of, no, sir.

Q. Were you aware on June the 21st, 2017 of any other inmates at RCI, specifically, Savannah wing B that needed a scrotal support garment?

A. No, sir, not that I'm aware of.

Q. And you were the RN in charge?

Am I understanding your role correct, you were in charge of the health of every inmate at RCI on that particular nightshift?

A. That's correct, yeah.

Q. All right. Was anybody else in Savannah wing B injured that night, besides Mr. Holmes and Mr. DuBois?

A. Not that I'm aware of, no, sir.

Q. Did Mr. DuBois ask for any emergency treatment on the night of June 21st, 2017?

A. No, sir.

Q. Do you recall in your direct examination looking at a number of pictures that Ms. Carmody showed you of Mr. DuBois on that night?

A. Yes.

Q. Okay.

MR. EVANS: I beg the Court's indulgence.

BY MR. EVANS:

Q. Do you recall her showing you State's Exhibit 43?

A. Yes, sir.

Q. She asked you to give your impression of those marks on his wrists?

A. Yes, sir.

Q. Did she ask you to give your impression of the marks on his fingers?

A. Not during cross -- not during her examination, no, sir.

Q. What is your impression of the marks on his fingers as opposed to his wrists?

A. It looks like there was some kind of trauma at least to this hand, those knuckles right there.

THE COURT: Can you identify which hand that is just for the record?

WITNES: Sure.

BY MR. EVANS:

Q. I'll point to this --

A. Sure, so it looks like a right --

Q. Yes.

A. Yeah, the -- it looks like all of his -- with the exception of the thumb, all of his fingers on his right hand it looked like there was some kind of trauma to all those knuckles. The left hand -- it's tougher to see that, but I at least see something on the ring finger of the left hand.

Q. Okay.

MR. EVANS: Beg the Court's indulgence.

BY MR. EVANS:

Q. All right, I'm gonna show you State's Exhibit 47. Are you aware of what that is?

A. No, sir.

Q. All right. Did you ever treat Mr. DuBois on the night of June 21st and 22nd, 2017?

A. No.

Q. Does that injury appear fresh?

A. That appears fresh.

Q. And, again, did Mr. DuBois request any emergency medical assistance on this particular night from you?

A. No, sir.

Q. And, again, was anybody else in Savannah wing B injured, other than Mr. DuBois and Mr. Holmes?

A. If there were, they were not brought to my attention.

Q. As far as you are aware?

A. That is correct.

MR. EVANS: Thank you, Your Honor.

THE COURT: All right.

MS. CARMODY: Thank you, Your Honor.

**

REDIRECT EXAMINATION

BY MS. CARMODY:

Q. Nurse Smith, how do inmates alert you on the unit -- how would you be alerted that an inmate is requesting medical care?

A. An officer will call me.

Q. That would require an officer to be on the unit, correct?

A. Yes, ma'am, that's correct.

Q. All right. And did you go around the Savannah B unit and evaluate the 151 inmates on the unit on June 22nd, 2017?

A. No, ma'am.

Q. Okay. At any time after that were you asked to go around and evaluate any of the inmates?

A. No, ma'am.

Q. Are inmates often times in situations that are not reported to Medical right away?

A. Yes, ma'am.

Q. And why is that?

A. Several different reasons, but the main reason, if an inmate is assaulted, they don't want anyone knowing about it, because that could incur charges against them, or the dorm being locked down, or dorms being shaken down; so a lot of times they go -- they don't want to report for those reasons.

Q. Okay. So after 3:00 a.m. when Sergeant Griffin comes back on the unit, if another inmate on that unit needed medical attention, they may not necessarily call you; isn't that true?

A. That -- yes, ma'am, that is correct.

Q. Okay. Thank you.

MS. CARMODY: No other questions.

THE COURT: Anything further?

MR. EVANS: No, no questions.

THE COURT: You may step down, sir.

MS. CARMODY: Your Honor, the defense rests.

**

DEFENSE RESTS

THE COURT: All right, ladies and gentlemen, at this time the defense also rests their case.

All right, Mr. Foreperson, members of the jury, both the State and defense have rested their case. What is left to do in the trial of this case is for you to hear the closing arguments from the lawyers, and then I will charge you on the law that's applicable to this case.

Ladies and gentlemen, based on the late hour we typically have a rule of thumb that we don't send a case to the jury after about 3 o'clock, because what we have to do in your closing arguments will probably take, you know, close to, you know, an hour and half, two hours.

So what I'm gonna do is this, I'm gonna go ahead and send you home, and I'm gonna ask you return tomorrow morning at 9:30, when you are going to hear the closing arguments.

Again, I'm gonna charge you on the law, I'm gonna

send it to you for your deliberations, all right? Ladies and gentlemen, I need to tell you again, do not discuss this case, it wouldn't be appropriate to do so. Don't do any independent research.

Ladies and gentlemen, go home, get a good night's sleep, we'll see you back tomorrow morning in the jury room at 9:30, where you're gonna hear the closings, I'm gonna give the law, and we're gonna give it to you for you to deliberate, all right? I appreciate it, ladies and gentlemen, you're excused, thank you.

(Jury exits the courtroom.)

THE COURT: All right, we're gonna go ahead and take a five-minute break, and when we come back, we will hear motions.

(RECESS)

**

PROCEEDINGS CONTINUED

THE COURT: Let's go ahead and renew motions.

MS. CARMODY: Yes, Your Honor. The defense is moving to renew its motion for a directed verdict.

Your Honor, without going through all of the arguments again, Nurse Smith testified that Mr. DuBois did not have injuries that were obvious.

That he saw Mr. Holmes earlier that night, he had requested medical attention. And that is when he saw

what was shown in the photograph of Mr. Dubois.

So I do not believe that the State has shown, again, sufficient evidence that Mr. DuBois committed murder with malice, killing of another person with malice aforethought, for the same reasons I mentioned earlier. And I'm also renewing all of my previous objections at this time.

MR. EVANS: While I appreciate Mr. Smith, I appreciate his testimony, but I don't think it changes the State's case in a meaningful way.

He was not qualified as an expert by the defense. I think I probably would agree, but he wasn't familiar with the injury on Mr. DuBois' leg, when I showed him the photograph.

He also didn't know -- he testified it was his initial belief that Mr. Holmes had been beaten to death, as opposed to stabbing.

So I'm not sure that his testimony that Mr. DuBois' injuries did not appear to him at that time to be consistent with, as Mr. Carmody says, a death match. I don't think that is -- it's certainly something for her to argue, and, of course, she will do so very passionately, but it's not appropriate to keep it from the jury.

THE COURT: Okay, thank you. All right, well,

based on your previous motion of a directed verdict, as well, taking all those arguments, and also my reasons as to those arguments, and my decision, I'm gonna deny your motion again.

I do think there's evidence from which this jury could conclude the Defendant committed this offense. It's a jury issue.

Also, as far as Mr. Smith, the Nurse's testimony is concerned, it certainly didn't prove to the level of directed verdict in any way and that I should grant a directed verdict motion, and I guess it's just the contrary evidence.

And so to that extent, I'm gonna deny your motion. I'm gonna go through right now what I'm gonna charge, okay?

So what I expect you to do is, in part here, I want you'all to first make sure all the evidence is organized, and that's all taken care of. It sounds like you've already done it, yes?

COURT REPORTER: It is, we are just putting pictures in order.

THE COURT: Okay. Afterwards I want you all to read the entire proposed charge just so you know exactly what's going back, okay?

MR. EVANS: Okay.

THE COURT: So to start with I, you know, he's charged with murder, and that the charge arrest indictments are now evidence.

I charge the presumption of innocence.

I charge reasonable doubt.

I charge that the jury is the judge of the facts, and that I'm the judge of the law.

I talk about direct and circumstantial evidence, which is what is meant by circumstantial evidence, however, if the State relies on the circumstantial evidence, all circumstances must be consistent with each other, when taken together both conclusively to the guilt of the accused.

It's the language we are -- if the circumstances merely portray the behavior as suspicious.

I charge on the credibility of witnesses. I am charging expert witnesses.

I am charging the Defendant did not testify, cannot be considered by the jury in their deliberations.

I am charging that the statements allegedly made by the Defendant is admitted into evidence in this case, but it's up to the defense, I'm sorry, it's up to the jury whether to determine that the Defendant voluntarily made that statement.

So the typical statement would have been the charge. And then I'm gonna charge the offense of murder.

I am going to charge criminal intent is required. I am going to charge the identification of the Defendant may be an issue in this case.

I am charging mere presence at the scene of a crime is not sufficient to prove someone guilty of a crime. Again, merely being at the scene is not sufficient.

I'm also charging third party guilt, but in this case there may or may not be evidence of what is called third party guilt. Then strictly we all attempted to be fair and impartial.

Their job, as the jury, is to go back there, and return a verdict. I have pulled the spoilation of evidence charge in another case. I've given just to remind myself of it, and I can tell you what I'm gonna do is, I'm gonna mark it as a Court's exhibit, that I've read it, and I've considered it, and I don't think it's appropriate in this case.

I don't think it arises to that level in this case. I can tell you that I think the last time I charged spoilation of evidence in a case was in a medical malpractice case, where it was actually

showing that medical records had been changed, I can't remember if it was by a doctor, or by a hospital, or something along those lines, where it was absolutely provable, so I allowed it.

The other thing you were talking about, you know, when you send a letter to obtain evidence in a case, I think I charged before again, where Matthew said, "You know, take this evidence, it may be useful," typically it's in a civil case, and then they later go on and destroy it, then I think I could use the spoilation charge maybe a couple times.

I mean, honestly, it's a pretty significant charge, and I'm going to mark it as a Court's exhibit, because I've read through it and considered it, and I just don't think it's appropriate in this case.

So with that said, can you think of anything, Mr. Evans, that is not included in this charge list?

MR. EVANS: I have a thought in the back of my mind, but I don't think it's necessary to do so.

THE COURT: Okay, okay.

MR. EVANS: Not from the State.

THE COURT: All right.

Ms. Carmody, anything? What I'm gonna ask you'all to do before you answer that, I'm sorry, I was gonna say, I'm gonna ask you, once you've reach the

whole charge through, I want you to email responses back to my Law Clerk and say either I don't want this, or I just thought about this, and want you to consider it, okay?

MS. CARMODY: All right.

THE COURT: So now I'll ask you is there anything other than what I gave you, that off the top of your head you think that you want me to look at right now to consider?

MS. CARMODY: No, Your Honor, I actually have a list on my desk, and I think you've covered it all, I just have a list.

THE COURT: Absolutely. When you get home, look at it, and if there's anything you want me to consider, just like I said, send it to me now, so we can look up the charge, and, you know, I can see by the facts if they're warranted or not, and we'll just go from there, okay?

MS. CARMODY: Yes.

MR. EVANS: Thank you.

THE COURT: So you've both told me that you would roughly -- you said, Mr. Evans, you're trying to keep it under the half hour --

MR. EVANS: Yes.

THE COURT: -- right? Ms. Carmody, you said

between a half-hour and 45 minutes? I never limit lawyers, I just don't, but I will do this, and, you know, we all tend to be long-winded, but I will give you a signal that -- it's the kind of the signal that you're going on way too long. And I think it was probably more of just you're getting in the weeds, but, you know, I'm not worried about either one of you, I think you'll be fine.

Obviously, you'll get the rebuttal, because she put in evidence, but other than that you have the charge, and I think we just need a good night's sleep, okay?

MR. EVANS: Yes, ma'am.

THE COURT: So we told the jury to be back at 9:30 tomorrow morning. I want you'all here by 9:15, and please make sure if there's anything in the charge -- or the verdict form will be attached as well.

And this is just a straight up or down, you know, guilty or not guilty of murder, that's it. There's no other question in this case, so nothing fancy.

So other than that anything from the State for this evening?

MR. EVANS: Not from the State?

THE COURT: From the defense?

MS. CARMODY: No, Your Honor.

THE COURT: Okay. Okay, well, good, maybe I just need to see the attorneys for a quick minute before we're done.

COURT REPORTER: What did you want me to mark as a Court exhibit?

THE COURT: This. Thank you, Kymberlee.

COURT REPORTER: Court's 19.

(Court's Exhibits 17 - 19 were admitted into evidence.)

(At 5:16 p.m. the proceedings were continued to the following day without interruption.)

**

END OF VOLUME IV

CERTIFICATE OF REPORTER

***

I, Kymberlee M. Williams, Certified Shorthand Reporter/Registered Professional Reporter for the 14th Circuit of the State of South Carolina do hereby certify that the foregoing is a true, accurate and complete transcript of the proceedings held in this case, relative to appeal, in the General Sessions Court for Beaufort County, South Carolina on the 3rd Day of August 2023.

I do further certify that I am not related, counsel, or interest to any party hereto.

This, the 23rd day of January 2024.



_____

Kymberlee M. Williams, CSR/RPR

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN GENERAL SESSIONS COURT
FOR THE 14TH JUDICIAL CIRCUIT
2017-GS-27-00582

State of South Carolina,

Plaintiff,

vs.

BENJAMIN DUBOIS, III,

Defendant.

TRANSCRIPT OF JURY TRIAL
VOLUME V
(PAGES 990 - 1,100)

August 4, 2023
Ridgeland, South Carolina

B E F O R E:

The Honorable **Carmen T. Mullen**, Judge Presiding

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PROCEEDINGS

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FRIDAY, AUGUST 4, 2023

RIDGELAND, SOUTH CAROLINA

(The following proceedings were held in open court. All parties were present.)

THE COURT: All right, are we ready to bring the jury out?

Mr. Evans, is the State ready for the jury for closing arguments?

MR. EVANS: The State is ready.

THE COURT: Ms. Carmody, is the defense ready?

MS. CARMODY: Yes, Your Honor.

THE COURT: And you have whatever you need for closing?

MR. EVANS: Yes, ma'am, I'm good.

THE COURT: Oh, you're good.

MS. CARMODY: Your Honor, I would just ask that after the State is done, that I'd have a few minutes to break, just so I can grab the exhibits.

THE COURT: Okay, I don't know if I'm gonna send them back, it just depends.

Do you need that much time?

CLERK: They're in order.

THE COURT: They're in order.

MS. CARMODY: They are in order?

THE COURT: Yes.

MS. CARMODY: Okay, I just didn't want them going back without checking them.

MR. EVANS: They're in order, other than the ones I've already --

THE COURT: Pulled.

MR. EVANS: -- pulled, which are all State's Exhibits.

MS. CARMODY: Oh, that's fine.

THE COURT: We'll see.

MS. CARMODY: I was gonna use their exhibits, and so I can't just pick them up now and take them --

THE COURT: I know.

MS. CARMODY: -- because they're gonna need them, and that creates just a -- just like five minutes, Your Honor, just --

THE COURT: Okay.

MS. CARMODY: I'm gonna need some of their exhibits.

THE COURT: I understand.

MS. CARMODY: I understand.

THE COURT: Okay, bring them out, please.

(Jury enters the courtroom.)

THE COURT: Good morning.

JURORS: Good morning.

THE COURT: Thank you all for being here so promptly. So what we have left to do in the trial of this case is, you are gonna hear the closing arguments from the attorneys, and then I am going to charge you on the law that's applicable to this case.

I will tell you when I charge you on the law, I actually read it to you verbatim, and you will have a copy of it, Mr. Foreperson, back in the jury room with you, all right, while you're deliberating, so that's just to let you know, okay?

So with that said, Mr. Evans, whenever you're ready, sir.

**

CLOSING ARGUMENT BY MR. EVANS

MR. EVANS: Thank you, Your Honor, may it please the Court.

THE COURT: Yes, sir.

MR. EVANS: Ms. Carmody, ladies and gentlemen of the jury, two men entered, one man

left, that's why we're here today, that's why we've been here all week. I know it's been a long week; I know you've been tired, you had to listen to some testimony that could have been tedious, other testimony that probably had you in rapt attention, but it all led to where we are today, this morning, two men entered, one man left.

This wasn't a Mad Max movie; this is real life. Now, as the Judge indicated after both Ms. Carmody and I have had a chance to speak with you, she's gonna charge you on the law.

And I've had a chance to look at her charge, just like you'll have it in the jury room. Everything she's gonna tell you is top notch, so I'm not gonna go over everything, where the law is required, but there's a few things that I want to preview.

One is, of course, what is Mr. DuBois charged with? Well, he's charged with murder. He's charged with the most serious criminal offense we have on the books, the laws of this State; but even though it's the most serious offense, it's got the simplest elements. See every crime has elements like a Lego set to put

together, that's gonna be your job, to determine if the State has met its burden of beyond a reasonable doubt on each of the elements.

The elements of murder are quite simple, murder is the killing of another person with malice aforethought. So what's malice? Well, the Judge is gonna talk to you about what that is too, but I think some of the words you're gonna hear are wickedness, ill-will, the doing of a wrong thing without just cause or excuse. She's gonna tell you, I believe, that you don't have to plan for months or years for there to be malice, malice can arise in a moment.

If you find Mr. DuBois guilty of murder, you're gonna have to find that he killed Mr. Holmes with malice aforethought. And as I go through the evidence with you here this morning, I think we'll find that there's abundant evidence.

Not only did he kill him, but he did so with malice aforethought. There's some other things that the Judge is going to talk to you about. One of the important thing is, what kind of evidence we have here today, or in every trial really?

Well, there are two kinds, there's direct evidence and circumstantial evidence, and this is something that's really important for all jurors to understand. Because sometimes in conversation or on TV, you might hear somebody say something, "Well, it's all circumstantial."

And so there's this implication that circumstantial evidence is meaningless. That's not true, the law makes no distinction between the strength and power of direct versus circumstantial evidence, they're just words, it's descriptors.

Direct evidence means seeing something directly with your own eyes, that somebody's testifying about that on the witness stand. We have direct evidence in this case. Circumstantial evidence is really anything other than direct evidence. It's evidence which leads to a set of circumstances that can later, if true, prove a fact.

So here's an example, this isn't happening in Jasper County anytime soon, this heat wave we've been going through, but let's just say that on a cold January night, look out your bedroom window right before you go to sleep, and

there's not a single flake of snow on the ground.

Let's say the next morning you wake up, take another look outside, and there's a foot of snow on the ground. Well, you didn't see the snow fall, but there's snow on the ground. That's pretty strong circumstantial evidence that it snowed that night, that's what circumstantial evidence means. It doesn't mean weak evidence; it doesn't mean evidence you can ignore.

In this case one witness, in particular, who you heard from Tuesday afternoon and Wednesday morning, maybe some of the most powerful circumstantial evidence imaginable, and we'll get to him. One of the things that I want to preview in the Judge's charge before we get into going over some of the evidence, she's gonna tell you that you're entitled to evaluate the credibility of the witnesses.

Credibility just means believability. Indeed you should inquire or ask does this person have a biased interest in the outcome of this case? Does this person appear to not be telling me the truth? And you can take into

account just about anything when you're coming up with that. I'm going to argue to you right now, every single witness in this case, including Mr. Smith, who Ms. Carmody called, was highly credible.

The number of professionals, officers of the State through various agencies, who aren't interested in the outcome, they do their jobs, try to deliver the truth to you, and they move onto the next case either way. And yet three other gentlemen who came here on their, shall we say unusual circumstances, but none of them have anything to gain in your verdict here today.

So let's jump in and talk about these witnesses. Let's talk about the evidence that's before you here today against Mr. DuBois. Let's start with George Smith.

Mr. Smith is a super nice man, gentle. He said he wasn't nervous, but he sure seemed like it. Honestly, he doesn't know who's responsible for this. He's here to tell you'all about what the right thing to do is, as opposed to what his counterpart, Mr. Griffin, did. And you heard he was in charge of Savannah A, and Mr. Griffin was in charge of Savannah B.

Mr. Smith was unable to supervise or check on Mr. Griffin, because he was doing his job, but you heard about how that regular overnight shift all of a sudden in the middle of the night, as it's starting to get close to the time when the very first inmates who have to be woken up, they get attention, Mr. Smith that is, and Mr. Griffin, who was with him, they start noticing that something is afoot, and that's important.

Why is that important? Because it shows that even with Mr. Griffin's misconduct, his failure, his utter failure to do his job, eventually, the inmates were able to get the attention of Mr. Smith, it was possible, because it did happen, and that's how they went in and found out what we all know.

You heard from James Williams, another gentleman doing his job at RCI that night. Not a trained investigator like Mr. Garvin, Agent Garvin, okay? He's a contraband officer, has an important role. He's doing the best he can to keep drugs, weapons, other things out of the prison system, but you can tell just from listening to him it's a never-ending battle.

These things keep coming in over and over and over again.

It's a difficult task. He testified that they could use more help. The prison system is not operating the way it should be. I think that's safe to say after all we've learned this week.

Mr. Williams talked about some shoes, that's really the principal reason why we had him testify. He talked about some shoes that he thought, in his layman's sense, might be important, and that SLED had not collected, so he wanted them out.

He picked them up after they had gone, and they're not with us today. Mr. Williams is not a trained crime scene agent, unlike the next witness we heard from, Jacklynn McKay, no longer with SLED.

She worked there for several years quite honorably, came down here today to fulfill the last part of her job as to this case. Came down here from North Carolina to speak with you. Trained as a serologist before she started crime scene work. She talked to you'all about how SLED crime scene comes -- they go all over the

State. Why do they go all over the State? Because they're the best. They're the best. They have the best policies, practices, procedures of any law enforcement agency in this State, when it comes to collecting evidence from a crime scene, that's why they come down.

Now, one thing I think should be self-explanatory is that Ms. McKay and Ms. Johnson are associated, her partner on this particular scene, they can't control what happens to the scene before they get there.

You've heard a lot this week, and you're gonna hear a lot from Ms. Carmody about the condition of the crime scene, the scene specifically. This part of the scene, right? State's Exhibit 19, the famous plastic bag next to the toilet.

The items found immediately next to that. Of course, these were not found together, of course they were close together, but not by SLED, not by Ms. McKay, they're put together by the inmates responsible for this action.

Ms. McKay, the former serologist, knew what was in the corner. You know what that is. You don't need a serologist to testify and an expert

opinion about what that liquid is, it's blood.

Yeah, all of those pieces of clothing that she pulled out, and you heard about all the rest of the week, they were put together, they were mixed up. They were getting DNA from one item onto the other item, all in one messy, disgusting plastic bag, but you saw -- and she -- and I know it's slow, I know it took a long time, but you saw as she withdrew, pulled out every one of those exhibits put into evidence, and the ones Ms. Carmody put into evidence.

You saw the hair packaging with butcher paper, sterile butcher paper, right? That floor was not sterile, it's obvious. It's not a lab. That's not where they're gonna analyze the DNA, it's a prison. It's filthy, it's disgusting, it's a common bathroom, a place none of us ever want to be. That's not where they do their work. They collect it there, they lay it out on the butcher paper, so it's sterile, and they package it.

Some of the items were packaged together, because they were found together. That it had been done, that they'd been dried out, they're bound up with all that tape, all the security

measures, the chain of custody. You saw all of that with your own eyes that she was pointing out each and every one of those items that day. Could they have picked up more, found more? Sure. There's 150 people living in this -- this is only half of the cells that's on the first floor. They could have searched for weeks, maybe months. They have to make decisions.

Mr. Garvin had to make decisions. Mr. Garvin was investigating eventually six defendants in this case. You're only here for one, the one with the most serious charge, and the one with the greatest penalty. Well, he was dealing with two co-defendants, and three dirty dogs. They've got this place locked down, and everybody's trying to get some breakfast, so this day has already become extremely unusual, even for the people who were locked in their cells properly all night, didn't know anything.

They had to work, and they had to work professionally, but efficiently. They couldn't search every single cell in that prison. What else did she tell you about some of the items that she examined?

What did she and Mr. Garvin tell you? They

detected with their own senses when they got in that room? That they could smell bleach, that distinctive odor, you know, the cleaning products stinking heavy with it. What did Alysha Breland tell you they used in the lab, to make sure that everything is sterile when examining different objects? Bleach.

So they photographed it, and you'll have this in the jury room. Now, he was upfront with you, he doesn't know who killed Jerry Holmes. He didn't know Jerry Holmes' name; he didn't look at cell five. He knew something was wrong.

He was staying in his cell, 22, which he shared with Benjamin DuBois, Animal, he used that nickname. He was staying in there all night until what happened?

Mr. DuBois came in, looked like he'd been in a scuffle, and I think that was actually just after some gentleman came in and got -- a gentleman that Mr. Morris White didn't know, they got a fresh set of clothes. Mr. DuBois came in, as he said, it looked like he'd been in scuffle.

Mr. White wanted no part being in that cell the rest of the night. He may not have known

who killed Mr. Holmes, but he knew something was up and got out of there. He also didn't see -- it looks like he didn't see Mr. Holmes, SO he couldn't tell you that. He didn't see Mr. DuBois get attacked. There was no fight in cell 22. It was Mr. DuBois, Mr. White and one other cellmate.

All right. Just like Mr. White and just like Mr. Highland, Mr. Chappell was honest with you about his criminal record. All three of these gentlemen have done things that they should not have.

Mr. White and Mr. Auman, in particular, they deserve their prison sentences. Mr. Chappell, he'd never been convicted of hurting anybody, or stealing. He was in possession of a sawed-off shotgun, but it's not marijuana.

What that means is possession with the intent to distribute. He was one month away from finishing probation. He got another simple possession of marijuana, and he wound up serving years on probation violations.

That sounds like it's terrible. I think it's safe to say that the prison system did not do Mr. Chappell any good, and he did not want to

be here with you this week, reliving this horror, that's his word. He said when Mr. DuBois stepped out of cell number five it looked like a horror movie. And, again, he was honest with you, he was honest about his criminal record, he was honest about the fact that he had gotten in a fight with Mr. Holmes.

Mr. Holmes threw a cup of water in his face, and they fought each other. I think Ms. Carmody's gonna try to argue that that was the day of this incident, is what we learned from Mr. Smith, but skipping ahead a little bit, Mr. Smith doesn't know who the inmate was that Mr. Holmes is talking about. There's no testimony about that.

But, yeah, Mr. Chappell was honest, that he got in a fight. These are two grown men living in a cell, I can't remember what this -- Mr. Chappell or Mr. Auman, but they -- one of them described it as about the size of that jury box, not jury box, witness stand, and it's a slight exaggeration, obviously, but these are certainly close quarters.

People are not gonna get along every minute of every day, but he also said that they bonded.

They bonded over being from the Upstate. They bonded over the fact that their convictions were drug charges.

So getting back, again, to the question of circumstantial versus direct evidence, did Mr. Chappell, or any witness testify before you, see Mr. Holmes stab Mr. DuBois? No. Does Ms. Chappell have credible, confident, circumstantial evidence he gave you? Where he left cell five, stood on the rock, and the door was closed. Only one man came out covered in blood, covered him. Just like the man he left inside. That's circumstantial evidence. He didn't see, but he could hear.

He heard those sounds, horrible sounds that he'll never forget, sounds of stabbing. When he saw Mr. DuBois leave the cell, he walked on the rock, leaving a trail of blood to the shower. He told you Joshua Highland, he's the man, we later learned from Mr. Garvin, whose nickname matches, he saw Junetown, Joshua Highland cleaning up after Mr. DuBois.

They did an okay job cleaning the floor, what more could they do. Now, the clothes don't look -- the clothes that were collected from

that trash bag in the bathroom, obviously, they don't look the same as Mr. Holmes'.

They were washed out, faded. Why is that? Well, Mr. DuBois went to the shower and tried to dispose of the evidence that he was covered in or tried to shower. That's why he needed fresh clothes. That's why the fresh clothes that Ms. Carmody put in, that you later heard DNA evidence about them, they only have DuBois' testimony. It's to be expected, based on the testimony you've heard. He got a fresh set. He bled all over the left leg of the green pants, because he had been injured.

Ms. Carmody describes this as a death match. What did we hear from several witnesses? Was anybody else injured that night? Only Mr. Holmes and Mr. DuBois.

Mr. Auman is the next witness you heard; he was not from here. He's not even a South Carolina native. And, again, Mr. Chappell, he was honest with you about the things he did that put him in SCDC, a terrible offense. He robbed a drugstore up around the Charlotte area. Came over the border from his home state, committed a terrible crime.

He deservedly got prison time, but, again, this is another man that corroborated the story. I've rarely seen more emotional testimony. He told you all of that, about how horrible the conditions were.

I know Ms. Carmody will say that we were not taking care of these people the way they should have. Mr. Auman was a different person when he went inside, than first you saw him before he was -- excuse me. He told you about how his mindset, he was involved in selling drugs, trying to survive. Not what you should do, but what else did he tell you?

He told you about how he bonded with his cellmate. Not originally, had never been to Jasper County before. They were together, and just like Country, Mr. Chappell and Mr. Auman bonded, got along, they were close. You can tell that from how sad he was in telling the truth what happened to his cellmate.

What did he tell you? He told you that Mr. DuBois told him in detail, that was more than a year earlier. And Mr. Auman didn't know anything about it, other than what he learned from Mr. DuBois. And then when he gave the

information, for every detail, statement Mr. DuBois game him, DuBois said, "I did it."

There's a footprint I hadn't seen, but I'm gonna say he tried to rape him. Mr. DuBois knew that only one man was barefoot in that cell, when this death match occurred.

Now, did Mr. Auman come forward out of the goodness of his own heart, out of anger about what had happened to Country? No, I can't argue that to you. He wanted something, he wanted to save his own life. You heard all about it, and we got into a different case for a while, right? It was important to hear those details.

Why was Mr. Auman in so much trouble? What had he done? And he expressed some of the most compelling concerns. And Agent Mixon testified just after that. He testified that it was genuine remorse back when he gave the information. He told you Agent Mixon did that.

He couldn't have charged Mr. Auman without what Mr. Auman told him about his own. And he told you, Agent Mixon did, that Mr. Auman was in genuine danger, because when you stop dealing drugs or even using drugs in prison, powerful, dangerous people. He had a legitimate reason to

ask for state-wide protective custody. And remember that's not a get out of jail card, that's just another form, a safer form of serving your just and valid sentence, and that's what Mr. Auman did until -- and it hasn't even been a year I think since -- last year. He's doing better. Maybe he's sorry. He was sorry. He apologized today in this Court. He apologized. He had to honor his commitment to that. Agent Mixon also told the inmates or wards of the State that.

The next witness you saw was Dr. Ross. Virtually, every case that she testified in, she's easily the most credible witness that takes the stand. You heard that she has performed 15,000 autopsies over the course of her career, testified more than 300 times as an expert, and there's no question about any of her qualifications. She knows exactly what she's doing. And she doesn't know, obviously, who was responsible for what happened to Mr. Holmes, but she knows who she autopsied.

She knows that it was Jerry Holmes, with the Holmes tattoo on his stomach, and the Country tattoo on his back from her diagram.

What else did she put in her diagram? More than 80 stab wounds. Now, only one killed, but more than 80 times was he cut by his attacker, that's malice. Two of those wounds were only stopped by the hardness of his skull, that's malice.

She told you how he died from exsanguination, it's a medical term, the loss of blood, but you already knew that, you knew that starting Monday afternoon, when you got your first look at the scene.

The scene that Mr. Garvin, the very next witness, decades of experience in law enforcement, told you that's the second worst thing he's ever seen. Now, to be honest, I didn't know Mr. Garvin was at Ground Zero before he took the stand, but that is something.

You already knew the exsanguination, blood loss, as you'd seen it all over the room. On the walls, on the floor, on the bed, the wall next to the bed. This fight is going all over the room as Mr. Holmes is in the process of dying, and we have blood loss, and we have it shooting out of his neck. The evidence is that one man won, it wasn't Mr. Holmes.

Mr. Garvin was also forthright in giving

you the expresses sincere regret, I think, about what happened to Mr. Holmes' clothing. I think Ms. Carmody is going to argue that that clothing could have had the real killer's DNA. We have all that blood all over the room. It's from the dead mate, searching, even if Ms. Breland and Ms. Goodman could extrapolate a mixture like that, no telling whether they could, and they weren't given a chance to do so.

But looking for the sample, the spot in that room, practically everything was a bloody mess. It has, ah-ha, this is the spot where both people's DNA are gonna show up.

Remember he's running all over this massive prison, trying to stay as quiet as he can.

Mr. was eventually charged with murder, like Mr. DuBois, that's because he was involved, Mr. Garvin said, on the front-end.

SLED, in their report to you, there is no such -- there never has, and there never will be such a thing as a perfect investigation. You've got all those cells. They searched the first floor, every cell. If they searched the entire Savanna B, come back and told you they should have searched Savannah A, even though nobody can

pass between. They searched all Savannah A, they said they should have searched Beaufort. You can only search where the evidence points them, and that's what they did.

Ms. Breland testified about DNA under DuBois' fingernails, and Mr. DuBois' DNA under Mr. Holmes. DNA on the clothing that Mr. DuBois was wearing when it was collected directly from him. They tested his right Croc. If you look at photos of the left Croc, in fact, both of the Crocs and the left Croc is covered with Mr. DuBois' own blood, still actively bleeding as we know. It's fairly obvious that that's going to be his blood. Yet hours later had fresh clothes, been in the shower, but we wanted you to know all of the DNA results.

And Ms. Breland. There were several items which came up with her testimony. Her results were without a number. So her work was stored, safe and secured. She went onto the same type of job, obviously, in her home area in Maryland, closer to family, but her work is saved.

And then in 2020 Sara Goodman was asked, "Take another look at this, we hear there's this new technology, it's better at mixing." That's

what it's called, Starmix. I do imagine you'all probably thought, when you saw a second DNA Analyst, what? We've heard all of it, but technology never stops. And Ms. Goodman rather, more information she could get.

Jerry Holmes did terrible things, it's a terrible organization, and a terrible way to die. He didn't deserve this. I'm gonna ask you to deliberate with as much respect and attention as you've given me, and I will ask you to find Mr. Dubois guilty.

THE COURT: Ladies and gentlemen, we're gonna take just about five-minute break. I'm gonna send you back to your jury room.

Do not discuss the case, it wouldn't be appropriate to do so, and we'll be right back with you, okay? Thank you.

(Jury exits the courtroom.)

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PROCEEDINGS CONTINUED

BAILIFF: All rise.

THE COURT: Okay. Are we ready?

MR. EVANS: State is ready.

MS. CARMODY: We are ready, Your Honor. Thank you.

(Jury enters the courtroom.)

THE COURT: Thank you, Ladies and Gentlemen. If you would please turn your attention to Ms. Carmody for her closing argument.

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CLOSING ARGUMENT BY MS. CARMODY

MS. CARMODY: Good morning, everybody.

JURORS: Good morning.

MS. CARMODY: Thank you very much for your attention, and to the evidence in this case all week, it has been a long week, and I understand we've had long days, and I understand everybody has gotten tired on occasion, and I just want to say on behalf of my client and myself, we thank you for your services as jurors, and for paying attention to the evidence in this case.

Especially, we thank you in advance for your deliberations in this case, considering all of the evidence in this case, and giving the State and the defense a fair trial. Thank you.

So first I wanted to -- what is murder? So the State already talked to you about this a little bit in their opening statement, and murder is the unlawful killing of another person

with malice aforethought.

That is, like Mr. Evans said, the absolute highest crime you can be charged with here. Make no mistake about it, it's a murder case. It's a very, very serious case. What is beyond a reasonable doubt?

The Judge will instruct you on the law when you go into your deliberations, that beyond a reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act, and the most important of their personal decisions.

What does that mean? If upon any issue of fact essential to a conviction you have a reasonable doubt as to how that issue should be resolved, you must, the law requires, you must resolve that reasonable doubt in favor of Defendant. Circumstantial evidence, the State relies on circumstantial evidence in this case. All of the circumstances must be consistent with each other, and when taken together point conclusively to the guilt of the accused beyond a reasonable doubt.

If the circumstances merely portray the Defendant as suspicious, the proof has failed.

What is mere presence? Mere presence at the scene of a crime is not sufficient for a conviction. I will say that again, mere presence at the scene of a crime is not sufficient for a conviction. What does that mean?

You believe that Mr. DuBois was present, that is insufficient for a conviction. So we all heard through -- all week this case occurred at Ridgeland Correctional here in Jasper County. It's a prison in the South Carolina Department of Corrections. What's in Ridgeland? We've heard numerous witnesses tell you about the gangs.

We heard numerous witnesses tell you about how the Ridgeland Correctional is a warzone. That they have the Bloods, the Crips, the Latin Kings, the Area Nation, the Area Brotherhood, there was more. A Contraband officer told you about as well.

These are rival gangs. I mean this -- so it's not a good place. All the witnesses, every single one of them is actually very, very fortunate to have made it out of there alive. This is an extremely, extremely, extremely

dangerous prison.

Why? Why is that? Is it lack of funding? Is it people who don't have a work ethic, and don't want to their job? Is there something more nefarious than that? Why did the guard leave the unit that night for five hours unattended, and let the prison run itself? Why did that happen? You know, was it work ethics? You know, am I getting paid enough to do this job; or was he involved with the Bloods. And we've heard Casey Chappell tell you about the guard being chummy with the gangs on the unit.

I don't know, I'm not sure, but what do we know? We do know that this was a gang hit. We already know that. Strike three is put on the top of the cell door. Agent McKay testified that strike three was etched into the top of cell door number five. Well, what else do we know about cell door number five? In evidence the picture that you see right there on the screen is the picture that's in evidence, strike three is etched into the top of the door.

We also know that Mr. Holmes is a member of the Folk Nation, the Aryan Brotherhood. This says he's a white supremacist, he's involved in

white supremacy. This is the gang he belongs to.

We know he's been in a gang. We know that the Bloods wanted to put a hit out on Mr. Holmes, we understand that too. So now we're in Ridgeland Correctional, we have the gangs all over the place, and we have a white supremist, and the Bloods wanting to hit on the white supremist, and the guard leaves the unit for at least five hours, leaves cell doors unlocked. What did they expect would happen?

What did they think was going to happen really, that they came back in the morning, and someone's dead. I'm surprised there's not more people that are dead. There's a lot that happened on that evening. You heard the nurse testify that -- I believe there were 80, 85, remember your recollection of the witnesses.

I believe he said 85 people were out on the rock, that is insane. These people are supposed to be secured in their cells. You heard testimony from numerous witnesses about all the weapons on the unit. That, to me, in and of itself is an extremely, extremely dangerous situation.

And the guard that was supposed to be watching the unit and lock everybody in their cells -- I mean it could be the case that cells doors wouldn't lock, and he didn't want to stay. I don't know. I don't know if anybody would want to be locked in a unit with all these weapons, and not have a way out, and have cell doors that don't work. Did he want to say, or did -- was it something more nefarious?

Did he say, well, you know, I don't want to do my job tonight, I just want to go out and hang out in my car, or is he involved in the Bloods for a hit on Jerry Holmes? I don't know that, because of the way this case was investigated. And it's very, very unfortunate that the guard was only charged with obstruction of justice with his conduct in office, and no one has asked the man if he's involved in the Bloods? No one's investigated it.

No one has actually look at this guard, why isn't the guard charged with accessory to murder? Why not? You've heard about people charged in this case, why not? Why don't they investigate the man? They didn't investigate him. You heard that they've rehired two of

these guards. History's just gonna repeat itself. They rehired two guards.

I mean I was pretty shocked by that testimony, that they would rehire two people. So I mean for them to rehire these people, I don't know, I don't know what to think about that. Maybe it's that they don't pay enough money to their employees. I don't know, or maybe they can't find good people to work there, I'm not sure, but -- all right.

And so we do know at Ridgeland Correctional that the prison was being run by itself for at least five hours. Several rival gangs are on the unit, it's a war zone. We also know that a number of cells were unsecured. 9:40 p.m. Nurse Smith sees at least 85 inmates on the rock. Not surprising that a death match was going to occur.

So the State's alleging these are all contenders in the death match. So first let's look at what death match is. And I believe that Mr. Evans actually agreed that this was a death match that occurred in this cell, no doubt about it. We have blood on all four walls in the cell. We have blood on the ceiling, on the

floor, on the bed. Everything in this room, all four walls, the ceiling and floor are all soaked in blood.

No doubt, no doubt, two people entered this cell, one person's coming out alive, no doubt, I completely agree with that, absolutely. Blood smears on the walls, another blood smear on the wall, another one, all these pictures are in evidence, no doubt whatsoever, I believe the State and I both agree this was an absolute death match. Like I said, one person was coming out of that cell alive, and that was a fight to the death.

I cannot stress that enough. There is no way that Jerry Holmes is in that cell when that man is not fighting for his life. He is being attacked and the man's fighting for his life. So what do we know? We have a death match. I don't know if anybody on the jury has ever watched boxing, so who's our contenders? And so the State is asking you to believe beyond a reasonable doubt that Mr. Benjamin DuBois is 130 pounds, he has cancer, he has one kidney, he's got a chronic shoulder injury, he's had seizures.

He just had recent testicle surgery in June of 2017. He's always in Medical, and he's complaining of pain. Who is our next contender in the death match? Jerry Holmes, 198 pounds, stalky, a big guy, a prior federal inmate, gang member of the Aryan Brotherhood, involved in several altercations within Ridgeland Correctional already, and then they said he didn't need or require immediate medical attention.

It is a reasonable deduction that the man knows how to defend himself in a death match between Mr. Bejamin DuBois and Mr. Jerry Holmes, Mr. Jerry Holmes would have beat Mr. DuBois to a pulp. Think about it, you're not required to leave your common sense at the door when you come in here.

In a fight between Mr. Benjamin DuBois and Mr. Jerry Holmes, Mr. Benjamin DuBois would have been beaten. Mr. Jerry Holmes could have probably picked the man up by the back of his shirt and threw him out of his room. The man only weighs 130 pounds, 130 pounds. He's got cancer. He just had surgery. He had testicle surgery just weeks prior, he's still in pain

from his surgery, how can these two men enter a death match, when we've got Jerry Holmes over 100 pounds more, stalky, a prior federal inmate, this man's a gang member.

There's been no evidence in this case that Mr. DuBois is involved in a gang at all. How can -- is it possible that these two men entered this death match, right? And the State just brought up Mr. Holmes is wearing boots, boots, okay? And they're alleging to you that this occurred with Mr. DuBois in bare feet. So we've got 130-pound barefoot man now in a cell with an almost 200-pound man in boots? In boots? These are our two contenders? This doesn't make sense.

The State has to prove to you beyond a reasonable doubt, beyond a reasonable doubt that Mr. Dubois is guilty of murder.

The State has to show you beyond a reasonable doubt that it's not only possible, it's not only probable, but the very highest standard that we have in a criminal case that it happened beyond a reasonable doubt. There is no question that it happened, that's what they're asking you to believe.

These two men entered into a death match, and somehow Mr. DuBois comes out of the death match. You saw the blood and smears on all the walls. This man he doesn't have broken eye sockets. He doesn't have, you know, busted up lips. He doesn't have, you know, huge -- his eye sockets, or his eyes coming out as Mr. Williams said, like -- not Mr. Williams, the nurse said, "Oh, you know, he didn't see Mr. Holmes earlier in the day with an eye coming out, or anything like that." Those are significant injuries.

Look at the man, this is not a death match, he's not a contender in a death match in that cell. Then as I just showed you, also you heard from Nurse Smith who saw him. He did not have injuries consistent with what Nurse Smith saw in cell five.

Nurse Smith saw in cell five it looked like Mr. Holmes had been beaten to death. Also from the death match that occurred in cell five, what do we have? We have Mr. DuBois; they took his DNA. He gave voluntary consent to search.

He gave a voluntary consent to search for his DNA, which is here, okay? DNA was collected

in evidence. They also, as he said, collected fingernail scrapings from Mr. DuBois. This is the blood standard. This is Mr. Holmes' fingernail scrapings as well. Now, with all that blood that we just saw in that cell, not only does Mr. DuBois not have injuries consistent with that death match, how did anybody walk out of that cell without Mr. Holmes' DNA under his nails? How is that possible?

How do you leave a blood bath and not have a shred of the victim's DNA under your nails? Like I said, this was a fight to the death. How is that possible? The DNA on Mr. DuBois' clothing, SLED collected his clothing. They have his Crocs. I have to admit his clothing, and when you look at the evidence in this case, play close attention to what clothing came from where.

This was the clothing that was collected directly from him, and these were his Crocs that were collected directly from him. Was Jerry Holmes' DNA anywhere at all on Mr. DuBois? No. Again, the State has the burden of proving its case beyond a reasonable doubt. The DNA in cell

22, so you saw blood droplets on the bottom of cell 22, which is Mr. DuBois' cell. Those were tested for DNA, it's his own blood.

He told the -- Agent Garvin what happened to him. He told Agent Garvin that he had been sexually assaulted, or attempted sexual assault, and got into an altercation, and he was -- that's how he incurred the injury in his leg, and he bled on his own cell floor.

Those blood drops on his cell floor - sorry -- from this injury he sustained to his leg. That's his own DNA. There's not Jerry Holmes' DNA in Mr. DuBois' cell, nor is Mr. DuBois' DNA in Jerry Holmes' cell, if you look at the DNA from either of their fingernails. So like I said, Mr. Jerry Holmes is in a fight for his life. It's reasonable that he scratched the person he's in a fight with, right? Absolutely.

Where's Mr. DuBois' DNA under Jerry Holmes' nails? It's not there. How do we get past that? We can't. It does not make sense, like I told you, I don't believe that the -- this is even possible, and the State has the highest burden of proving to you beyond a reasonable doubt this happened.

Additionally, we have no DNA under Jerry Holmes' nails either. We don't have Jerry Holmes' clothing. That would have been great to have his clothing, because this was a death match. There's no doubt that these two men had contact with one another. They also didn't collect any DNA from cell five. We have no idea whose blood is in cell five.

So look at the pictures, there's been a blood bath in cell five. These will all be in evidence for you. Look at the photographs of the scratches on Mr. DuBois. If he was in a fight for his life with Mr. Holmes, and he was scratched as a result of that fight, his DNA, Jerry Holmes' DNA would be under Mr. DuBois' nails. A lot of men don't clean their nails, they don't like that, but his nails are not clean, they're dirty.

When SLED comes and does fingernail scrapings under his nails, his nails aren't clean, his nails are dirty. Mr. DuBois does not have Jerry Holmes' DNA under his nails. How is that possible after coming out of that blood bath? These are his arms. No evidence at all, broken arms, broken legs, anything. With those

boots Mr. Holmes could have leaned back on the bed and kicked them man, picked him up and threw him out the door.

Look at his arms, he's a strong man. He has one kidney. He's not a big guy. Can the State prove to you beyond a reasonable doubt that Benjamin DuBois and Jerry Holmes were in a death match. I don't even think it's possible. It doesn't make sense. Now, what about the physical evidence from the prison? So we have weapons in the drain in the common area bathroom.

We have no murder weapon, right? What about a murder weapon? Now, Mr. Evans got up here and he showed you a weapon that was collected in the trash. And this weapon was collected right near cell five.

All right. Well, it's in evidence. Those are the common area trashcans. These are two of those weapons right there, they collected them, and they said the reason they collected them is because they thought they would be preserving evidence.

Okay, there's no evidence that they tried to test them and couldn't get a result. They

didn't bother. They never bothered to test these weapons right here, but I will tell you one thing, they did test the towel. This is right outside cell five, if we look at the photograph. I'll show you exactly where it is.

Okay, so all photographs, like I said, this photograph right here is in evidence. These are the weapons that were located, okay, and the towel. This is where the weapons are located in the trashcan, right? So what do we have here in the photograph? We have cell ten.

Where's cell ten?

So if we look at the photograph, I just showed you, right here we have cell ten. Cell ten is here. This is Mr. Holmes' cell. Cell ten is right here, so the trashcan, if you look, is right near a pole right here. The closest trashcan to the victim's cell.

Well, we know they collected the weapons, never tested them, never bothered to check whose DNA was on them, but they did test the towel, the towel that's in the trash with the weapons in -- outside of cell four, close to cell five? Whose DNA is on the towel? Four people. There's four people's DNA on the towel.

Mr. DuBois was excluded as a contributor to the DNA on the towel with the weapons located almost right outside the victim's cell. Excluded, that means his DNA is not on that towel. The weapons were not tested.

Now, what about the cell phone? There's also a cell phone, which I thought was interesting.

Agent Williams testified that he had received information that this could have been recorded, right? I asked about that, wow, okay. The cell phone's there, that cell phone -- what about the cell phone right there on the screen in this picture? Is that -- so is this the murder weapon and the cell phone that reported the incident?

And we don't bother to test these weapons to see for DNA? They tested other things and said well, they couldn't come up with a conclusive result, they never bothered. This never even went for a testing at the lab. Don't they want to know who killed the man? Right? They've got four people's DNA on the towel. This is SCDC.

You heard testimony that their DNA is

already. It's already there. Nobody bothered to look. Nobody bothered to run the DNA in this case against the inmate database.

These inmates, once you've been convicted of a felony, your DNA goes into CODIS, and they can do a match. Nobody bothered.

We have four people's DNA; we don't know who they are in a prison with weapons outside of a victim's cell who's just been brutally murdered? It doesn't make sense.

It really, really does not make sense, and, honestly, it's sad. Now, this is a picture that I just showed you of this diagram right here, of where that trashcan was recovered. The trashcan -- the stuff in the trashcan was almost right outside of cell five.

All right, now, one thing Mr. Evans did not talk about, what is on -- what exactly is on the side of that toilet? Okay, so -- and I ask each and every one of you, and I mentioned this earlier, this is a murder case, and I'm asking you to actually pick up the clothes and look at it.

The clothes will be provided to you, but you really need to look at the evidence in this

case, and look at exactly what's being alleged, and what they're saying happened. The clothing in the bathroom.

Now, Mr. Evans only showed you a picture of -- let's see, he showed you a picture of these boxers right here, okay? And he read out the numbers to you, and he's like, "Oh, look, look, this is Mr. DuBois' number," right? That's what he said. Well -- right? I don't know. Do men wear two pairs of boxers? There's two pairs of boxers on the side of the toilet.

This one has number 167, so are they saying Mr. DuBois was wearing two pairs of boxers that day? A jock strap? A pair of socks? We saw a shirt, a shirt. Are they saying that this shirt was worn by Mr. DuBois? That's apparently what's being alleged, concerning a death match with Jerry Holmes.

There's not a tatter on this shirt at all. It's not ripped. The sleeves aren't ripped. The collar's not stretched out, as if Jerry Holmes was trying to grab somebody's collar, nothing. The clothing also doesn't have blood spatter that you would see in the cell. Now, if you could just remove blood from clothing by

swishing it around in a toilet, I would not buy a cleaner, or Shout, or anything to remove blood. You don't have to leave your common sense at the door. You don't have a blood stain on your clothes, and you wish it around in the sink and the blood's gone, it stains.

This is pink. The pants -- they're saying these pants were worn by Mr. DuBois when he butchered Mr. Holmes in the cell barefoot, or in socks or something. And if that happened, if Mr. DuBois was injured during that fight with Mr. Holmes, where is the cut in the leg in the pants? How did he get his leg cut if he's wearing his pants at the time when Mr. Holmes was murdered?

He's -- the State's alleging that he sustained this injury to his leg -- where is it? Hold on a minute. Here we go. This injury to his leg, so they're saying this injury to his leg was sustained during the fight with Mr. Holmes, and Mr. DuBois apparently, he alleged he'd been wearing these pants. Well, there is no cut in the leg.

Additionally, if you look at the clothing, these clothing were not worn by a person who

committed a murder. These clothing -- and I will tell you exactly what I believe happened to this clothing, same for the shirt. Remember two pairs of boxers, a towel, what is this? A tee-shirt, oh, we have the tee-shirt too, so a tee-shirt under the shirt, two pairs of boxers, a pair of pants, a towel, two socks and a jock strap.

So the person -- they're saying that the person who killed Mr. Holmes was wearing all of these clothes. Again, ladies and gentlemen, it does not make sense. Let me show you why.

You have testimony that someone was cleaning up blood on the floor, footprints on the floor, right? You also heard testimony that someone went -- actually two people, went to Mr. DuBois' cell to look for clothing. This is how inmates keep their clothing.

There's no locker in their cell. Remember, 85 inmates are out walking around, and a lot of the cells were unlocked. People are walking in and out of people's cells and exchanging clothes, I guess. They have all day to think about it, right? They've got all day to think about what they are going to do.

I wouldn't have thought that, but, yeah, it works. Also clothing in the cell. It's left out and accessible to anybody, right?

Now, you heard testimony from Mr. Casey Chappell, who said -- testified that the Bloods wanted Mr. DuBois to take responsibility for Holmes' death, remember that? Also you heard testimony from Mr. Casey Chappell that he had created a diversion on the yard when Holmes hit him upside the head with what was a glass, and then it changed from a glass to a cup, then it was water.

Anyway, the point in that whole dispute was a diversion, right? Now, if SCDC has the Bloods in SCDC, and SCDC Bloods are watching Contraband, they know what's going on. They have five hours to put evidence exactly where they want it to be found. They have five hours to throw items in the trash, to put things exactly where they want, to clean the scene, to stage the scene.

How do we know that? Well, look, in cell five, Mr. Holmes' cell, we know someone's in his cell after he died, the man didn't bleed all over the place and leave that white spot there,

so we know someone's in his cell, okay?

So not only are they in Mr. Holmes' cell, people are running around the unit and putting evidence where they want it to be found. There is no possible way Mr. DuBois got into this big assault with Mr. Holmes, had bloody clothes, had weapons at his disposal, knives.

Why not cut the clothes up and throw it down the toilet? He had five hours. He had four hours to flush the clothes. It wasn't, because it's not meant to be flushed down the toilet. The clothes were meant to be found. They were meant to be found on the side of the toilet, out in the open.

The only evidence in this case is out in the open. They have clothing, what better way, write the name Animal on the clothing, just so there's no confusion. They don't want SCDC Contraband coming in and looking in anyone's cell, no.

The Blood said DuBois was supposed to take responsibility for Mr. Holmes' death, and they meant it, they do. And if you believe that this is Mr. DuBois' jock strap, it doesn't have his name inside the jock strap. Not everybody

writes their names in clothes, right?

Also, if we look at the shirt, whose name's across there on the shirt? And then they're not gonna write in just his number, they're gonna make sure it says Animal. We want Contraband to come in in the morning, when they find Mr. DuBois -- I mean Mr. Holmes dead, to look no other than this cell. This is the person whom you're gonna look at. Why? Because Bowlegs, who you heard -- I don't even know his first name, isn't that crazy?

We have the highest-ranking members of the Bloods on Ridgeland yard in cell one with Mr. Holmes and no one knows the man's first name. Why is that? How is that, if they can investigate this case, and you don't even know Mr. Bowleg's name?

We're not looking there. There's no reason to look in that cell. Now you've heard testimony from Mr. Chappell that he found it odd Mr. Nania is cleaning up blood, if he didn't -- if he wasn't involved in anything, like why would he do that, right?

Junetown is supposed to be in a locked cell, that's the whole plan. Why is the man in

a locked cell in the morning, and no one photographed him?

Mr. Holmes was charged with murder. What did he look like that morning? How big is the man? We have no idea. How about Julius Highland?

What did he look like that morning? We have no idea. Bowlegs, I'd really like to know what that man looked like in the morning. How about pulling DNA from under these people's nails? How about checking for Mr. Holmes' DNA? Like this is just crazy.

It just -- it's unimaginable that this could actually happen. So I ask you to look at the clothing, pay attention on the bag to where the clothing came from. This is the stuff from the side of the toilet, and that's the stuff from Mr. DuBois.

We just showed you how ingenious they are with the clothes. Clothing in every cell is accessible to 151 inmates. If you look at that clothing, there's no way possible these clothing were worn by a person who committed a murder.

Actually what I think happened with the clothes that were used to commit the murder,

they probably went down the drain. They probably cut them up and threw them down the drain. Nobody wants them recovered.

Now, we have -- we've already talked about the void on Mr. Holmes' bed, the white spot on his bed; that people were in his cell.

Also I want to mention when you head from DNA, I gave the example of what happens, when you have DNA.

So if they used clothing to clean up Mr. DuBois' blood, I mean, sorry, Mr. Holmes' blood on the floor, and they take that and they throw it on the side of the toilet, they don't need much. If my daughter came over my home and took a shower and threw her wet towel in my bathroom, it would mix with my DNA on my clothes.

We know that too, because on the bottom of Mr. DuBois' shoes, he's got two people's DNA, and neither one is Mr. Holmes, but it's him and someone else. So where did he get somebody else's DNA? Probably on the floor in SCDC. Now -- so I also asked you who wears two pairs of boxers?

The State never talked about whose number 167. Two pairs of men's boxers here, and

there's at least -- I believe he said four people's DNA on some of these items as well, and four people's DNA on these towels outside the cell.

Now, how about credibility of witnesses? What can impact a witness' credibility?

Now, the Judge will instruct you that when it comes to witnesses you can believe some of what they say, none of what they say, or all of what they say. Now, remember I told you in opening statements the people that you saw on the witness stand, this is now 2023. This case happened in 2017.

In 2017 you have to look at what was the witness -- what was going on with this witness in 2017? So they're not the same person, these were all SCDC inmates, they were all in prison, right? What can affect their credibility? What about the age of the case that I just talked about, okay? What about -- oh, here we go, drug use and addiction. You heard from Casey and Mr. Auman, you know, these -- Casey, in particular, actually, he was using IV heroine, he was using methamphetamines.

Mr. Holmes -- oh actually I forgot to

mention Mr. Holmes was also on meth that night too. So you've got a man in boots, almost 200 pounds, on methamphetamines too, but -- so we have drug use with the witnesses.

Now, I ask you to use your common sense again, okay? Using -- under the influence of substances affects your ability to perceive what's going on around you, your perception of distance. It also affects your ability to recall events correctly. It has an impact on your sight, your senses, your hearing, all things like that are all impacted by drug use.

Casey told you he was a very, very bad drug addict. He's clean now, I'm very happy for the man, but at the time he was a very, very bad addict. Also fear of the gangs, right? Casey told you that he gave the first statement saying he was watching television, and he gave that statement, because was afraid, he was scared. Well, that doesn't make sense. Why doesn't it make sense?

I asked him, I tried to pin him down where he went. Why didn't he answer the question? I asked him where he went? He went to go talk to the gangs. Well, he knows the gangs just set up

a hit on his cellmate. He's claiming, claiming that he was so close that he heard the man gurgling. Really? Some people don't mind being embellished, right? That's also true too.

You can say somebody's not necessarily lying, they're embellishing. In his second statement he said ten to 15 minutes had passed before he heard Holmes screaming, so he had left the cell, walked away for ten to 15 minutes, and then heard Holmes screaming.

What he testified to on the stand, he had walked ten steps. That's why I mean by embellishing a change in your information. So he went from watching TV, to ten to 15 minutes had passed, and now all of a sudden, he's ten steps away, that he can hear gurling, that's what I mean by embellishing.

You can believe some of their statement, all of their statement, or none of their statement, and there are reasons that people say things, and it's not necessarily to be deceitful.

Also fear of the gangs. We have gang affiliation manipulation. We have Mr. Auman who told you straight up, "I'm a manipulator, I'm a

manipulator."

Now, some of you may believe what Mr. Auman said, you may find that information to be credible. Some of you may believe none of what he said. I want to leave you with his, would it be unreasonable for a man who had been sexually assaulted in prison to be in prison, still in prison, and in a cell with another man and they're going over their case, would it be unreasonable for him to say, "I know it says I was sexually assaulted, but that really didn't happen, I just fought my way out," because he didn't want to tell his cellmate he was raped in prison, is that what he wants to do?

Does he want people in prison to know that? Does he want -- he's only 130 pounds, the man's 130 pounds with a bunch of medical issues, does he want people in prison thinking that he can be victimized, or is he willing to try to pump himself up and say, "Look, you know, the man tried to do this to me, but I fought him off." You know, that way he's not victimized again. So you've heard from Mr. Auman, and he wants to go on a state-wide protective custody.

State-wide protective custody is a very,

very coveted placed in SCDC. They can't let everybody in, otherwise it defeats its purpose. So they only allow certain people in. He was also scared; he was also terrified as well.

So we have Mr. Auman state-wide custody, and Mr. DuBois is only 130 pounds in SCDC with a ton of medical issues, and he's scared too, and he is scared. All these men are all scared, and you know what? They have every reason to be, because if the prison's run like this and the guard's leaving the unit and leaving cell doors unlocked.

Mr. Auman told you he thought he was gonna die too. And anybody who testified on this witness stand from SCDC is very, very fortunate to be alive, because the prisons in the State are not safe. And Mr. DuBois, who's also afraid for his life too, and he doesn't want to be victimized again in prison. He doesn't want to tell people in prison, "Yeah, I was raped in prison, and I, you know, it's okay, like nothing happened, you know, it was fine."

No, that's not -- the man's going through the evidence in his case, saying, "Hey, you were raped in prison? What's that about?" Does he

want to say that? Is that reasonable for somebody to do at 130 pounds, who's scared? Then we have, like I mentioned earlier, people's perception of what they see.

These are active drug addicts at the time. Casey told you there's more drugs in prison than on the streets. It's a chaotic scene for self-interest for giving the statement. What are their physical disabilities? And remember Casey also talked to you about something. Casey had a traumatic brain injury, remember that? Well, today in 2023 Casey seems like he's recovering quite well, but this case didn't happen in 2023, this is a 2017 case.

What was the status of Mr. Chappell's traumatic brain injury back in 2017? I don't know. I don't know. He says he saw Mr. DuBois come out of his cell covered in blood. I have another question for you. That's what he says, so if you believe what he's telling you, if you believe he's being truthful, is it possible he's mistaken? This is the only picture that we have on Mr. Nania, the only one.

We don't have a photograph of him. His cell door was locked, and he was under hiding

that morning. Nobody's looking in his cell, because everybody's -- look over here at Animal, look over here at Animal. Even the clothing in the bathroom, look, it says Animal, look over here. This is him, and I have a question, just a thought.

If Casey Chappell is telling the truth, is it possible -- he said the man's face is covered in blood from head-to-toe, head-to-toe, he also said this man was outside cell five, okay? If you covered the face in blood, could he have been mistaken? Head-to-toe, ladies and gentlemen, look at the pictures, could he have been mistaken? That would explain why there's no DNA under Mr. DuBois' nails. That would explain why the -- there's none of Mr. DuBois' DNA under Casey Chappell's -- I mean Mr. Nania's, Mr. Holmes' nails. That would explain why Mr. DuBois does not have any of the victim's DNA on his clothing.

It would also explain how a death match, a death match did not occur between a 130-pound man and somebody who's 200 pounds in almost bare feet is what they're saying. That would explain -- is it possible that he was mistaken?

Like I told you, at the time the man is under the influence of drugs, he's a drug addict. He had a traumatic brain injury years ago, not today, but years ago. He says he saw a man go into the cell. Who did he see come out of that cell covered in blood? Is it possible -- look at the photographs, they're in evidence, and you'd say it's possible that it's this man, and if it is, that is not proof to you beyond a reasonable doubt.

The State has not met their burden. We just talked about Mr. Nania and Mr. Bowlegs, and what they looked like on the morning of June 22nd, no one knows. We don't even know the man's name. This is where they lived on -- they lived in cell one, which is three, four cells down from Mr. Holmes.

We talked about Mr. DuBois' cell, that the only DNA in his cell is his own DNA.

We talked about his Crocs, his shoes that he's wearing has only Mr. DuBois' DNA. His shorts, his pants and his shirt that was taken from his person, in addition to the DNA under his nails.

Those are his nails. Look at those nails

and tell me if those nails are clean? He didn't scrub his nails. The State said, "Oh, Mr. DuBois took a shower." There's been no testimony in this case from a single person who said they saw Mr. DuBois take a shower. That is completely 100 percent speculation. There's been no evidence at all of anybody saying, "I saw Ben taking a shower," no, not one person has said that.

Just like not one person has said that they saw what occurred in cell five, not one person. We also have DNA on -- if he got into this death match with Mr. Holmes, why isn't Mr. DuBois' DNA under Mr. Holmes' nails?

Now, I told you earlier that I've given you more than enough reason that this is not possible, it's not possible, but I want to make one thing crystal clear. We have no burden in this case, none. The defense did not have to put up a case. The defense did not have to put in any statements, nothing. The defense did not have to put in Mr. DuBois' clothing.

I'm not sure why the State wouldn't want you to have it, but we had to put the clothing in ourselves. The State has the burden, so I'm

telling you it's not possible. If you think it's possible or probable, that's not beyond a reasonable doubt.

Beyond a reasonable doubt is the very high standard we have, a very high standard, and this is a murder case. Make no mistake about it, he's charged with murder, the absolute most serious crime to be charged with in the State. I believe that's it, and I thank you very, very much for your time and for listening to all the evidence in this case.

And I'm asking for you to return a verdict of not guilty for Mr. DuBois, thank you.

MR. EVANS: Thank you, Your Honor, may it please the Court?

THE COURT: Yes, sir.

FINAL BY MR. EVANS

MR. EVANS: Ms. Carmody.

I've been waiting very patiently, I'm not gonna try and take up too much more of your time, but there are some things that she said that I do want to go over.

First remember what she said, Ms. Carmody

did in her opening statement on Monday. She reminded you that the arguments that she or I make are not evidence.

The questions that she asked the witnesses, or I asked, are not evidence. These items, those photos, they are testimony, it's evidence. So when Ms. Carmody says, "We know things," a lot of that is based on her questions to the witnesses, not the testimony that they gave.

She told you about mere presence, that's something that the Judge is gonna instruct you on. Now, if you believe that Mr. DuBois was merely present in the cell, cell number five, with Mr. Holmes when he died, he was merely present, and that Mr. Holmes somehow stuck a knife into his own throat -- his neck, I shouldn't say throat, causing him to bleed to death all over the room, and slashed himself up to 80 more times, including two in his own skull, if you believe Mr. DuBois was merely present for all of that, and that this is a suicide, not a murder, then sure, acquit him, but that's not what happened.

She told you over and over and over again all week about how it's Tyrese Griffin's fault

and had speculated that Mr. Griffin may be involved with the Bloods. There's no evidence of that.

Mr. Griffin did a terrible thing, and he made the prison more dangerous than it had to be. He put Mr. Holmes at risk. He did all of that, putting him at risk of an attack from DuBois.

There's not a shred of evidence that he knew what was going to happen, or had any involvement, none. We heard over and over and over again, the prisons are corrupt; that doors are left open. Doors are failed to be repaired. The inmates can craft keys out of light fixtures, the same way that they make knives, and open their own cells.

Mr. Griffin did something awful, by failing to act. He was not responsible for this. She talked about etchings on the inside of the cell five door, and said, "Ah-ha, this is proof it was a gang hit." There's no evidence of when those were made. This is an old prison. You've heard over and over again that repairs aren't made quickly.

If they're leaving locks unfixed, do you

think they're applying fresh coats of paint to cell doors when they've been damaged? We don't know when those were made. We don't know who made them. We don't know what they did.

She's throwing spaghetti at the wall to see if it sticks. She wants Mr. -- she asked why isn't Mr. Griffin charged as an accessory to murder? And that's the same as saying he's -- this is a fine point of law, but in a crime committed by more than one person, you generally have an accessory to help her, and a principle to the person who did it.

She wants Griffin to be an accessory, there has to be a principle. Fine, we have one. We have accessories in this case. They're not before you this week, they're Joshua Nania, and the late Julius Highland, they were accessories, he's the principal. He stabbed him.

We can hold them as being culpable, them being responsible for the overall events of the night doesn't mean he's not.

Only one man was in the cell with Mr. Holmes. Only one man stabbed him in the neck, in the head. You know, speaking of Mr. Holmes, she's been painting him as sort of a Goliath.

Remember what his measurements were? 5'9 1/2", 198. Folks, I've never had my ego puffed up indirectly so much in my life, because I'm 5'10 1/2", and this morning I was 207.

And, of course, Mr. DuBois is smaller than that, but you know what makes a man big? You know what gives him power, the ability to take another's life? A weapon and element of surprise. You heard Mr. Chappell say that they were close with Animal. That County, Mr. Holmes, considered him a friend, and so did Chappell.

Mr. Holmes is sitting in his cell and minding his own business, who comes in, shows what was described as an ice pick. The door's closed, no one was in there. Let's imagine Mr. DuBois gets the element of surprise. One mortal wound, right?

That's what Dr. Ross said. He stabs him in the neck. The blood starts coming out like the fountains. It's flying all over the room. He's already dead, but he doesn't know it, so sure he tries to fight back.

There's no DNA under DuBois' fingernails because he's got his fist clenched like a knife,

and he's trying to stay away. There's no DuBois DNA under Holmes' fingernails, he's got a minute to live. She went on and on with Mr. Smith about, "Hey, those scratches, they're not fresh," but she wants to have it both ways.

She wants the scratches to not be from this fight, but she also wants to say, ah-ha, there's no DNA under the fingernails, those arguments don't work together. She made a big point about the weapons in the shower, State's Exhibit 17, we didn't want to hide this from you, that's why it's a State's exhibit.

You heard the testimony of Mr. Garvin, that they know a shakedown's coming, right? That somebody's dead in a cell, they're coming. They don't search every day, but when something like this happens, you'd better be sure it's gonna come.

So they dispose of all of the weapons, they'll make more later. She made a point about how the towel found on the floor near the trash does not have her client's DNA. Well, again, that doesn't have anything to do with his guilt, because he had accomplices who cleaned up. He wasn't cleaning up the floor, he was cleaning

himself.

She made a point about how Mr. Chappell said the Bloods wanted Defendant to take responsibility, and she thinks this means, ah-ha, the Bloods wanted to pin it on him. Taking responsibility means admitting what you did. She wanted to make a big point about how they had five hours to clean up, that is absurd. Five hours possibly, the timeline is pretty fuzzy, because, again, this is a prison, there's not a nice big clock on every wall, not a watch on everyone's wrist, right?

So we don't know exactly what time this started. And we have a better idea of what time the guards came in, but one thing we -- none of us can say is, that inmates knew when the guards would show up. That is patently ridiculous. They could have come back at any moment. They knew they had a corrupt guard, Mr. Griffin, that's for sure, but they didn't know when he would come back, so they had to act fast. They grabbed a towel, wiped the blood. She wants you to believe that the clothes that the murderer was wearing, that had the time to slice them up into such small pieces that they could be

flushed down the toilet forever. Now, I've never flushed a piece of clothing down the toilet.

I don't think it's gonna make it far. Further, you take a look at the toilet in question, there is a giant puddle of blood next to it, but don't worry, those aren't -- no, those aren't murder clothes, those are just random because somebody else was trying to frame Mr. DuBois.

She wants it both ways. She wants to point out that clothing can change hands, we already know that. We can see on the Animal shirt that there's -- no doubt it was somebody else's before, and he marked it as his own, but she wants everybody to be changing clothes all the time, but then say, "Well, there's a mixture, so it's not my client's fault."

Again, those don't work together. She also tried to assert that the people responsible for framing her client in planting all this evidence she believes they must have written Animal on the shirt, and then dumped it in a giant wet bag with blood and water everywhere.

That's not a really efficient way to write

a name with a Sharpie on a shirt. She talked a lot towards the end of her closing argument about Mr. Chappell's memories of the event. She had to do that because his testimony was so compelling.

Now, memory is an interesting thing, because you might not remember what you had for breakfast last Tuesday, but there are certain things, certain incredible images and sounds that you will never forget for the rest of your life. It's a little bit older than this case, but about a year before this was the date of my wedding.

I remember the sight of my wife as they opened the doors and beyond. I remember playing golf with my friends earlier in the day. I can remember sitting down for lunch with them in between, but I don't remember what I had for lunch.

Ladies and gentlemen, if you see a man coming out of your cell covered in blood, like a horror show, that is not something you will ever forget. That is a powerful image. She talked about Mr. Auman's statement. Again, she wants it both ways.

She wants to say that her client was attacked in this violent way, but that, you know, he would admit to it later, he had already told people. He told Garvin, and he told -- without even being asked a question, he told McKay and Johnson his story about Country trying to rape him that night.

Boy that's quite a coincidence, this man tried to rape you, and he just so happens to end up dead within a few hours, but you had nothing to do with it? Meanwhile, you're bleeding all over your floor, because he tried to stab you, I guess, in the shin?

Take a look at that picture, that's not a stab, that's a scrape. The kind of scrape you might get if you're up on a prison bed stabbing somebody, but, sure, okay, he's been stabbed in the shin, bleeding all over his room, and somehow somebody gets ahold of his boxers, his shirt, his jock strap, the only one in the whole prison, and they manage to get all of those covered in the victim's DNA. That's a tough day.

Now, she made a point about how there's two pairs of boxers. We don't know where the first

one came from, the 167s, but let's talk about what we do know. We know who has 259690 as their SCDC number, we know whose nickname is Animal, and we know who's the only person in prison wearing a jock strap, the one who had an operation on his testicles. She wants you to believe he couldn't have done this; he was physically incapable.

Again, what makes a little man big, what makes a weak man strong? A weapon. A lot of cases it's a gun, but no guns in prison. He had the ability, he had the power, he had the choice, and he did it. Ms. Carmody has been trying to put SCDC on trial all week to distract you from what her client did, what he chose to do.

She wants you to think that Jerry Holmes is a monster, maybe he was, we are failing. We are asking them to atone for their crimes, to be punished, and we are putting them in danger. You can't put more money in SCDC. You can't stop them or make it impossible for guys like Griffin to neglect their duties, but you can do something.

You can show, you can say that Jerry

Holmes, whatever his crimes, whatever his beliefs, his life had meaning, his life had value.

It was wrong, it was fundamentally, powerfully wrong for Benjamin DuBois to take his life. You can send that message with your verdict, find him guilty. Thank you, Your Honor.

THE COURT: Ladies and gentlemen, stand up, just take a stretch before I charge you on the law. My charge will take, roughly, ten, 15 minutes or so, okay?

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JURY CHARGE

THE COURT: Mr. Foreperson, members of the jury, you've followed very patiently and listened very attentively to the presentation of the evidence in this case, and I want to thank you for that. It is my duty as the Trial Judge under the Constitution of this State to charge and instruct you on the law that's applicable to this case, and it's your duty, as jurors, to accept and apply the law as I will now state it to you.

As jurors, it is your exclusive duty to

decide all the issues of fact in this case. You must determine the effects, the value, the weight, and the truth of the evidence. Both the State and the Defendant have the right to accept that you will carefully consider and evaluate the evidence and apply the law of the case to the evidence. And by doing that, both the State and the Defendant, Mr. DuBois, will receive a fair and impartial trial in this case.

Now, the State of South Carolina by this Bill of Indictment in this case charges the Defendant, Benjamin Walter DuBois, III, with the offense of murder.

Now, I'll remind you that the fact the Defendant was arrested, charged and indicted in this case is not evidence in this case, and cannot be considered by you as evidence of guilt in this case. An indictment is simply the formal written instrument, which contains a charge that's made against a Defendant. It's the formal document by which a case is brought into this Court.

Now, the Defendant in this case has pled not guilty to this indictment, and that plea puts the burden on the State to prove the

Defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove themselves innocent. I charge you that it's an important rule of law that the Defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed innocent of the crime for which an indictment was issue, unless guilt has been proven by evidence satisfying you, the jury, of that guilt beyond a reasonable doubt.

Now, this presumption of innocence does not end when you begin your deliberations, but it accompanies the Defendant throughout the trial, until you reach a verdict of guilt, based on evidence satisfying you of that guilt beyond a reasonable doubt. The presumption of innocence is like a robe of righteousness that's placed about the shoulders of the Defendant, and it remains with the Defendant until it has been stripped from the Defendant, by evidence satisfying you of the Defendant's guilt beyond a reasonable doubt.

A presumption of innocence is not a mere legal theory, it's not just a legal phrase that

we use, it's a substantial right to which every defendant is entitled, unless you, the jury, are satisfied from the evidence of the Defendant's guilt beyond a reasonable doubt.

So what is a reasonable doubt under the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act in their most important decisions. The State has the burden of proving the Defendant beyond a reasonable doubt. And the term reasonable doubt must be given its plain and ordinary meaning, however, to the extent I may define it for you, a reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act in the most important of their personal decisions.

The Defendant is entitled to every reasonable doubt arising in this case, that upon any issue of fact essential to a conviction, you, the jury, have a reasonable doubt as to how that issue should be resolved, you must resolve that reasonable doubt in favor of the Defendant. Now some of you may have served as jurors in civil cases, where you were told it was only necessary to prove that a fact is more likely

true than not true, such as what we call the greater weight, or the preponderance of the evidence.

In criminal cases, the State's proof must be more powerful than that, it must be beyond a reasonable doubt. Suspicion, no matter how strong is insufficient to convict a person charged with a crime. That the facts and circumstances presented may seem suspicious, and the defendant's guilt may seem probable, this is not sufficient in the law to convict. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Now, there are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt.

If, based on your consideration of the evidence, you are firmly convinced the Defendant is guilty of the crime charged, you must find the Defendant guilty. If, on the other hand, you think there's a real possibility the Defendant is not guilty, you must give the Defendant the benefit of the doubt and find him not guilty.

Now, I'll remind you that during this trial you and I have certain duties to perform. As the Trial Judge, it's my responsibility to preside over the trial of this case, and I also have the duty to rule on the admissibility of the evidence offered during the trial. You are to consider only the competent evidence before you. You are to consider only the testimony which has been presented from the witness stand, and any exhibits which is made a part of the record in this case. I have the additional duty to charge you on the law that's applicable to this case.

As the Presiding Judge I am the sole judge of the law in this case, and it's your duty, as jurors, to accept and apply the law as I now state it to you. If you already have any idea, as to what the law is, or what the law ought to be and it does not agree with what I now tell you the law is, you must abandon this idea, because you are sworn to accept the law, and apply the law exactly as I state it to you.

In every case tried in this courtroom before a jury, the jury is the exclusive and sole judge of the facts in this case. A trial

Judge cannot intimate, state, comment on, or make any statement to a trial jury about the facts in a case. And since you, the jury, are the sole judges of facts in this case, you are not to infer from what I said during the progress of this trial, in ruling upon the admissibility of evidence or otherwise, or anything that I say now during the course of this instruction to you, that I have any opinion about the facts in this case.

The law does not allow me to have an opinion about the facts in this case. This is a matter solely for you, the jury, to determine.

Now, there are two types of evidence which are generally presented during a trial, direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. Crimes may be proven by circumstantial evidence, the law makes no distinction between the weight or value to be given to either direct or circumstantial evidence; however, to the extent the State relies on circumstantial

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

If these circumstances merely portray the Defendant's behavior as suspicious, the proof has failed. The State has the burden of proving the Defendant guilty beyond a reasonable doubt, and this burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

Now, necessarily, you, the jury, must determine the credibility of witnesses who have testified in this case. And credibility simply means believability. It becomes your duty, as jurors, to analyze and to evaluate the evidence, and determine which evidence convinced you of its truth.

In determining the believability of witness who have testified in this case, you may believe one witness over several witnesses, or several witnesses over one witness. You may believe a part of a testimony of a witness and reject the remaining part of the testimony of that same

witness.

You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety. And you may consider whether any witness has exhibited to you any interest, bias, prejudice, or other motive in this case.

And you may also consider the appearance and manner of the witness while on the witness stand.

Now, the rules of evidence do not permit witnesses to testify to opinions or conclusion. An exception to this rule is for witnesses we call expert witnesses. A witness who my education and experience has become an expert in some art, science, profession, or calling. They state an opinion as to relevant material matter in which the witness claims to be an expert. And they may also state the reasons for their opinion.

You should consider any expert opinion received in evidence in this case, and like any other evidence, give it the weight you think it deserves.

If you decide that the opinion of an expert

witness is not based on sufficient education and experience, or if you conclude that the reasons given in support of the opinion are not sound, or that the opinion is overruled by other evidence, you may disregard the opinion entirely. An expert witness' testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert. Further, you are not required to accept an expert's opinion, even though it is not contradicted.

Now, I instruct you and emphasize that the fact the Defendant did not testify is not a fact to be considered by you, in any way, in your deliberation and in your consideration on the question of the guilt or the innocence of the Defendant. It must not be considered by you in any manner whatsoever.

A defendant has the constitutional right to remain silent. Any assertion of this right must not be considered by you in your deliberations. I repeat, under your oath, you are to draw no conclusion whatsoever from the fact that the Defendant in this case did not testify. The fact that the Defendant did not testify should

not even be discussed in the jury room.

The burden of proof is on the State. The Defendant is not required to prove his innocence, and the burden of proof remains on the State to prove guilt beyond a reasonable doubt. Now, a statement alleged to have been made by the Defendant has been admitted into evidence in this case. The Court has determined this statement is admissible, but I instruct you that the decision as to whether or not the Defendant made the statement is for the jury to determine.

If the Defendant did make the statement, you must determine whether the statement was made by the Defendant voluntarily, and of his own free will. This means that the statement was not caused by pressure, force, fear, threats, coercion, or intimidation by any person, or promise of leniency or reward of any kind.

In determining whether the statement was voluntary, you should consider both the characteristics of the Defendant, and the details of the question. Some of the factors you must consider are, the age of the Defendant,

the Defendant's education or lack of education, the Defendant's mental ability or capacity, the Defendant's IQ or intelligence, the Defendant's background in violence, place and length of detention, the nature of the questioning, the advisement or lack thereof to the Defendant of his constitutional rights, but not limited to the right to remain silent, that any statement can be used against him in a court of law, the right to have a lawyer present, if he cannot afford a lawyer, a lawyer will be appointed to represent him without any cost, and that he could stop making his statement at any time.

You must consider all the surrounding circumstances before you give weight to any alleged statement. If you determine any alleged statement was given voluntarily, you must decide the weight, if any, that should be given to the alleged statement.

If you determine the alleged statement was not given freely and voluntarily by the Defendant, you should not consider the statement at all.

Now, the Defendant is charged with the murder of Jerry Douglas Holmes. To prove the

defense of murder, the State must prove beyond a reasonable doubt that the Defendant killed another person with malice aforethought.

Malice is hatred, ill-will, or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse, and with an intent to injure or under circumstances of the law will infer an evil intent. Malice aforethought does not require that malice exists for any particular time before the act is committed, but malice must exist in the mind of the Defendant just before and at the time the act is committed. Therefore, there must be a combination of the previous evil intent and the act.

Malice aforethought may be expressed or inferred. These terms, expressed and inferred, do not mean different kinds of malice, but merely the manner in which malice may be shown to exist. That is either by direct evidence or by inference from the facts and circumstances, which are proofs. Criminal intent is a state of mind which operates jointly with an act or omission in the commission of a crime.

Criminal intent is a mental state of

conscious wrongdoing. Criminal intents includes those consequences, which represent it very purposeful for which an act is done, or are known to be substantially certain to result, regardless of consequence. Intent may be shown by acts and conduct of the defendant and other circumstances, from which he may show and reasonably infer intent. Criminal intent must be proven by the State beyond a reasonable doubt.

Now, at issue in this case is the identification of the Defendant as the perpetrator of the crime charged. The State of South Carolina has the burden of proving identity beyond a reasonable doubt. Identification testimony is an expression of belief or impression by a witness.

You may consider the opportunity a witness had to observe the alleged offender at the time of the offense, and to thereafter make an identification. It is for the jury to determine the accuracy of the identification of the Defendant. You must consider the credibility of each identification witness in the same way as any other witness.

You can, excuse me, you can consider the truthfulness, as well as the capacity, opportunity and circumstances of the observation of the matters about which they testify. Mere presence at the scene of a crime is not sufficient to prove someone guilty of a crime.

A person's presence where a crime is being committed, the mere association with the person who commits a crime, does not make a person an accomplice or an aider and embedder of the person committing the crime. The burden is on the State to prove every element of the crime charged. If you find, after reviewing all the evidence, that the State has proved that the Defendant was only present at the scene of a crime, and that they have not proved beyond a reasonable doubt any other participation in a crime, then you must find the Defendant not guilty.

The law is that proof of merely being at the scene of a crime is not sufficient to find someone guilty. Now, in this case there may or may not be evidence of what is termed third-party guilt. Third-party guilt means that, based on the testimony you have heard, there may

or may not be evidence that somebody else might be guilty of this crime.

That determination is solely and exclusively within your province as the jury. However, if you find this evidence is inconsistent with the guilt of the Defendant, or established a reasonable doubt, as to the identity of a perpetrator, then you must give the benefit of that doubt to the Defendant, and you must find him not guilty.

Mr. Foreperson and members of the jury, as you retired to begin your deliberation, I wish to express the hope that each of you are mindful of the importance of your responsibility here today. You're not called upon very often to serve as jurors. And the proper performance of that duty requires each of you to reach the heights of freeing of your mind of all improper influences.

So please don't get the idea that I'm trying to intimate you; however, you should decide this case.

As I've already told you, under the laws of the State of South Carolina, you, the jury, are the sole judge of all questions of fact, so it

would be highly improper for me to influence you in your performance of that duty; but, ladies and gentlemen, as the Presiding Officer of this Court, I am vitally concerned that whatever verdict you reach will be the results of you going back into your jury room, and confining your consideration to the evidence and the law that you heard here in this courtroom, weighing it fairly and impartially, as I have every confidence you will.

Mr. Foreperson, I'll remind you, your verdict must be unanimous. It must be the verdict of all 12 jurors, and to that extent, my Law Clerk has prepared a verdict form. It simply has the case caption, it says, "The State of South Carolina v. Benjamin Walter DuBois, III, Defendant," and it says verdict, and it has one question that you must answer, Mr. Foreperson.

It says, "As to Indictment Number 2017-GS-27-00582, the charge of murder of Jerry Douglas Holmes, we, the jury, unanimously find the Defendant, Benjamin Walter DuBois, III, either not guilty or guilty." Ladies and gentlemen, please don't infer in the order we put not

guilty or guilty, every trial we just reverse that.

After that it says, "I certify that this is the unanimous decision of the jury," and there's a place for our Foreperson to sign his name and also to date the verdict form.

Ladies and gentlemen, just for a couple housekeeping matters, although you have seen the entire time during this trial my Court Reporter taking down everything, there is no printed copy or transcript of the court proceedings. If you want a certain witness' testimony played back, what I can do is, bring you back into the courtroom, and I can play that witness' entire testimony; but I want you to understand, I am required to play the direct, the cross, any redirect, any recross. I'm required to do the witness' entire testimony.

Also, ladies and gentlemen, you're gonna have back in your jury room with the verdict form for you to fill out, the charge that I just charged you in written form, as well as the evidence that's been introduced in this case.

Ladies and gentlemen, there have been some demonstrative exhibits used, blowups and those

types of things, ladies and gentlemen, those were not entered into evidence, and so you are not entitled to have them back in your jury room. I will tell you that if you do not have something back in your jury room that you're looking for, you are not entitled to it.

So you can't send me a note and say, "We want to see this," or, "we want to see that," because, again, you have everything back there that you need to decide this case, all right? All right, ladies and gentlemen for the very last time, I'm going to send you back to your jury room, and I'm gonna tell you not to begin your deliberations.

If there's something further on the law the lawyers want me to charge you, I will bring you back out, and I will charge you further. If not, ladies and gentlemen, your signal to begin your deliberations is going to be when you get the verdict form, and the charge and all the evidence that's taken back there.

Additionally, you'll be given some clean gloves as well, for the handling of any evidence.

And, Mr. Foreperson, if there's anything

you need, you simply need to knock on the door and ask. All right?

THE FOREPERSON: Yes, Your Honor.

THE COURT: Ladies and gentlemen, I'm going to send you back to your jury room. Don't begin discussing this case. Just refresh yourselves. Just wait until you get all the evidence, and then you can begin your deliberations.

(Jury exits courtroom.)

THE COURT: Any objections or corrections from the State?

MR. EVANS: Not from the State.

THE COURT: From the defense?

MS. CARMONDY: No, Your Honor.

THE COURT: Let's go through the evidence and make sure you have got everything and get it back there, and then we will pull the alternates out as well.

(Alternate jurors excused.)

THE COURT: We have everything that's going to go back there. Let's send it back and let them start their deliberations.

(Court stood in recess while the jury deliberated upon its verdict.)

**

READING OF THE VERDICT

THE COURT: Everybody ready? Is the State ready for me to bring the jury in?

MR. EVANS: Yes. The State is ready, Your Honor.

THE COURT: Is the defense ready to bring the jury in?

MS. CARMODY: Yes, Your Honor. The defense is ready.

THE COURT: And you told him when they give me the verdict, I am going to ask you to rise to read the verdict, and then after that you can sit down.

Let's bring them in.

(Jury enters courtroom.)

THE COURT: Mr. Foreperson, I understand the jury has reached a verdict?

THE FOREPERSON: Yes, Your Honor.

THE COURT: Please hand it to Ms. Bostick.

Mr. Dubois, would you please rise with your attorneys. In the State of South Carolina v. Benjamin Walter DeBois, III, as to Indictment Number 2017-GS-27-00582, the charge of murder of Jerry Douglas Holmes, we, the jury, unanimously find the Defendant, Benjamin Walter DuBois, III,

guilty. And it says, "I certify this is the unanimous decision of the jury."

Thank you, and you'all may be seated. You may be seated, sir. Okay.

All right, I'm gonna go ahead and have the jury polled. Ms. Bostick, do you want to poll them, or do I need to? Go ahead if you want to.

CLERK: John Ellis, raise your right hand. Was this your verdict?

JUROR: Yes, ma'am.

CLERK: Is it still your verdict?

JUROR: Yes, ma'am.

CLERK: Thank you.

Kasmine Montrus, was this your verdict?

JUROR: Yes.

CLERK: Is it still your verdict?

JUROR: Yes.

CLERK: Thank you.

Jason Reesen, was this your verdict?

JUROR: Yes, ma'am.

CLERK: Thank you. Alexander Dulel, was this your verdict?

JUROR: Yes, ma'am.

CLERK: Is it still your verdict?

JUROR: Yes, ma'am.

CLERK: Thank you. Jordan Nelson?

JUROR: Yes, ma'am.

CLERK: Was this your verdict?

JUROR: Yes, ma'am.

CLERK: is it still your verdict?

JUROR: Yes, ma'am.

CLERK: Thank you.

Linda Woods? Was this your verdict?

JUROR: Yes, ma'am.

CLERK: Is it still your verdict?

JUROR: Yes.

CLERK: Thank you. Jackie Robinson, was this your verdict, is it still your verdict?

JUROR: Yes, ma'am.

CLERK: Thank you.

John Clemer, was this your verdict, is it still your verdict?

JUROR: Yes.

CLERK: Thank you.

Joseph Messey, was this your verdict?

JUROR: Yes, ma'am.

CLERK: Is it still your verdict?

JUROR: Yes.

CLERK: Thank you.

Al Teres, was this your verdict?

JUROR: Yes.

CLERK: Is it still your verdict?

JUROR: Yes.

CLERK: Thank you.

Malaya Chisholm, was this your verdict?

JUROR: Yes, ma'am.

CLERK: Is it still your verdict?

JUROR: Yes, ma'am.

CLERK: Thank you.

John Gray, was this your verdict?

JUROR: Yes, ma'am.

CLERK: Is it still your verdict?

JUROR: Yes, ma'am.

CLERK: thank you.

THE COURT: Thank you, Ms. Bostick. Is anything further required from this jury from the State?

MR. EVANS: Not from the State.

THE COURT: From the defense?

MS. CARMODY: No, Your Honor.

THE COURT: Ladies and gentlemen, at this time you have resolved this matter for us, and we want to thank you. When I began my week, I had many other cases on the roster too. Simply having people here willing to try cases helps us

resolve matters in other ways.

Ladies and gentlemen, I will tell you at this time I'm gonna go ahead and I am going to sentence Mr. DuBois. Typically, I would allow you to stay or not stay, it's completely up to you, but I will tell you in this specific case, South Carolina has something called a two-strike law, which states that a Defendant can be subject to a mandatory sentence of life in prison, if they have a previous most serious conviction, and in this case Mr. DuBois does. He has a prior conviction for a voluntary manslaughter, so as a result, there's no question here about what is gonna happen.

So what I'm gonna go ahead and do is, I'm just gonna allow you all to leave. I just wanted you to know that that's why I'm not having you stay while I do it, because there is no discretion for me. It's -- I have to give the sentence that is required, all right? So I just want to make sure that you understand that, okay?

So at this time I will tell you, you are permitted when you go home to discuss this case, there's nothing wrong with that. Sometimes I'll

also tell you the attorneys or the investigators are interested to hear what you have to say. They are permitted to talk to you, if they want to, but you are never required to talk to anyone.

If someone tries to speak to you about your verdict, and you have no interest in talking about it, I just simply want you to say, "No thank you," and just move on. They will not persist. If for any reason they did though, I need you to call up to the Clerk of Courts Office, Ms. Bostick, and she will call me immediately, and I will take care of them, all right?

So, ladies and gentlemen, we appreciate it. You've done your job here; your job is to decide the facts.

Obviously, sentencing is my job, and I'm gonna go ahead and I'm gonna do what I have to do, so, again, thank you.

I know you all worked hard. We appreciate it, and you certainly have more than your three-year exemption. So at this time we're gonna go ahead and have you escorted out, so you can go home. Thank you.

(Jurors leave the courtroom.)

THE COURT: All right, Mr. Evans, I need the sentencing sheet, and I think --

MR. EVANS: May I approach?

THE COURT: You may.

(Bench conference.)

**

SENTENCING HEARING

THE COURT: All right, before we start, Mr. Evans, you may want to go ahead and recite that it is a Court's exhibit, your notice of life without parole in this case.

MR. EVANS: Yes, ma'am.

THE COURT: And would you, just for the record, do the underlying most serious offense?

MR. EVANS: Yes, ma'am. I believe it was yesterday that I handed up to you a certified copy of his Berkely County conviction.

I'm not sure the sentence for voluntary manslaughter. I do know it was an offer or plea that has no bearing to these proceedings.

THE COURT: Uh-huh.

MR. EVANS: I've also handed up a copy of the indictment in that case, and there's been no question about the fact that they were notified

well within the ten days before the start of this trial. Both notices are in the file.

THE COURT: Does the State have anything further?

MR. EVANS: No, Your Honor. I know you paid attention to the facts in this case.

THE COURT: And as far as victim impact statements are concerned, were there any surviving family members of Mr. Holmes?

MR. EVANS: I have to ask Ms. Winston, Your Honor.

I'm gonna defer to her if I may.

THE COURT: Okay.

MR. EVANS: Because she's been in touch with them.

MS. WINSTON: I have been in touch with the family representative. I've been attempting to contact them since May.

I spoke with the family representative last Friday, and she said she did not wish to be present.

THE COURT: Okay, thank you.

All right, Ms. Carmody.

MS. CARMODY: Your Honor, motions after sentencing, or do you want to do it now?

THE COURT: We can do it after sentencing, that's fine.

MS. CARMODY: Your Honor, I mean I understand that the Court, you know, has to enter the sentence because of the statute.

I just want to say that Mr. DuBois I've had him for a client now for four years. He has always been very, very respectful from the very beginning.

After what happened in SCDC, I don't even know what to say.

Your Honor, I know we cannot offer any mitigation because of the statute.

THE COURT: Right, I understand that.

Ms. Price, I don't know, did you get in touch with anyone from his family?

from him, or --

MS. PRICE: No. We have not been able to reach anyone.

THE COURT: I mean, does he have family, children?

MS. CARMODY: Yes. Well, Your Honor, he has his mom, you know, and his brother. His brother has a disability.

As I said he is just a very nice person. I

can't imagine he would have ever been involved in this. I mean, you know, it may have been a product of the environment that was going on at the time, which is, to me, is just -- I don't even understand this.

The cell door is open, everybody's running around with evidence, and I think that it was a product of the environment.

It's just that, you know, without a guard on the unit, and all the cells are unlocked and everybody's got evidence, I mean they are all locked in, can't leave.

So I don't believe that under the circumstances he had any choice, and I don't believe that it's his fault. I think he has been, as I've said, a very kind and good client. I've known Benjamin for four years.

Your Honor, thank you.

THE COURT: Anything else? Anything you want to say, Mr. DuBois?

MR. DUBOIS: I mean probably what you've heard many times, I really didn't do it, but I just -- I want to try to get this resolved again, do whatever I have to do, because it's not safe going back.

The same people that tried to kill me, set me up for this. They said they were gonna kill me.

THE COURT: Well, I can certainly talk to the Department of Corrections, and see what exactly the -- they can do. I can tell you that I have put on this sentencing form the medicine that you're currently on, because I'm always concerned that for some reason you are not provided your necessary medication.

You told me you were on Geodon and Zoloft. I want to make sure you continue to get it. Other than that, as you know, I mean there's no leeway about what I can do here as far as that, but I will tell you this, I have been doing this a long time, and the conditions at RCI at the time I know they were deplorable.

I can tell you it's also prompted me as a Circuit Court Judge in my judicial circuit, I am permitted to inspect our jails in our circuit every year, which I typically do, but I can tell you that I think I'm overdue, and so I will be doing that. At least go and look at all our County jails.

Now, I don't have the right to do that in a

State-run facility, but I will certainly -- based on the transcript of this case and the photographs of what RCI looked like at the time, I'm hoping it's better now, but I wouldn't know if it is or is not, but certainly someone needs to go and look at it.

You know, we always hear how bad the Columbia Jail has been, the County Jail in Richland County, and, you know, I know the Chief Justice -- the former Chief Justice went out there and looked at it sometime ago, and I hope there's been some cleaning up, or some work, because it needs to be done clearly.

All right, Mr. DuBois, if you will stand? Sir, on Indictment 2017-GS-27-00582, it is for the charge of murder that you've been convicted of. The sentence requires you to be committed to the Department of Corrections for a period of life without parole.

Mr. DuBois, good luck to you, sir. Actually, you know, we need to do your post-trial motion.

MS. CARMODY: Yes, Your Honor.

THE COURT: Yeah.

MS. CARMODY: Do you want it in writing?

THE COURT: I think you're better off making it for the record right now.

CLERK: Do you want to bring him back out?

THE COURT: I think we need to bring him back out here. He needs to know that you made those trial motions, so -- I'm sorry.

MS. CARMODY: Thank you, Your Honor.

THE COURT: You just need to have him come back for just a few minutes.

BAILIFF: Do you need him?

CLERK: Yeah.

THE COURT: We need him, yeah, we need him. Come on back, Mr. DuBois.

I want you to be here when your attorney makes your post-trial motions, so you know that she is protecting the record, and she is protecting all of your appellate rights because that would be the next step in this process, all right, sir?

MR. DUBOIS: Yes, ma'am.

THE COURT: Okay, all right, Ms. Carmody?

MS. CARMODY: Thank you, Your Honor, on behalf of Mr. DuBois, Your Honor, I am making a motion for a new trial.

I believe that the verdict in the case is

against the weight of the evidence because there was evidence in the record to support that the -- his clothing was left in the bathroom by other inmates.

There was a chain of custody issues with the evidence in the case. We had a guard that left the Institution for approximately five hours. There were issues with the collection of DNA in this case.

Items were put on the floor without being tested. The State's not calling the serologist for DNA. Also the two DNA reports, Your Honor.

I also had made a motion for a speedy trial violation in this case, and I also made a motion for the due process violations for the destruction of evidence. The destruction of evidence, the destruction of the victim's clothing, which I think were significant and helpful and exculpatory in this case. The not collecting the DNA standards from anyone else, especially Mr. Highland or Mr. Nania.

And also destroying the weapons that were located in the bathroom. And we've already said the Crocs, and the blood on cell 18, Your Honor, as well.

I also want to renew all of my trial motions and my trial objections, pretrial motions as well.

THE COURT: All right, thank you. All right, do you want to respond?

MR. EVANS: Nothing further, Your Honor.

THE COURT: And based on my previous rulings, I'm gonna deny your motion for a new trial, and I am going to uphold my previous rulings throughout the trial of this case.

And I think you have fully preserved the record, Ms. Carmody, for appellate purposes, so --

MS. CARMODY: Thank you.

THE COURT: Thank you.

Again, Mr. DuBois, good luck. Margaret, you had your Foreperson sign the indictment, right?

CLERK: Yes.

THE COURT: Good. Thank you.

All right, anything further from anyone, from the State?

MR. EVANS: No, thank you, Your Honor.

THE COURT: From the defense?

MS. CARMODY: No, Your Honor.

THE COURT: All right, you'all have a nice weekend.

MR. EVANS: Thank you, Your Honor.

THE COURT: Thank you. Thank you. Good luck to you.

(At 4:11 p.m. the proceedings were concluded.)

CERTIFICATE OF REPORTER

***

I, Kymberlee M. Williams, Certified Shorthand Reporter/Registered Professional Reporter for the 14th Circuit of the State of South Carolina do hereby certify that the foregoing is a true, accurate and complete transcript of the proceedings held in this case, relative to appeal, in the General Sessions Court for Beaufort County, South Carolina on the 4TH Day of August 2023.

I do further certify that I am not related, counsel, or interest to any party hereto.

This, the 23rd day of January 2024.

[redacted]

_____

Kymberlee M. Williams, CSR/RPR

WITNESSES

R. Jenkins--SCDC

ARREST WARRANT NUMBER

2017A2720200149

ACTION OF GRAND JURY

TRUE BILL ✓
NO BILL
FOREMAN Jeannie Bunder
DATE 5-31-18

Foreperson of Grand Jury
Date:

VERDICT

Guilty

Nolan Nelson
Foreperson of Petit Jury
Date: 08/4/2023
INDICT

DOCKET NO. 2017GS2700582

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

May Term 2018

THE STATE

vs.

Benjamin Walter Dubois, III

Indictment For

Murder

SC Code: 16-3-10

CDR Code: 0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I

hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY:
DATE: 9/12/23

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

INDICTMENT

2017GS2700582

At a Court of General Sessions, convened on May 31, 2018, the Grand Jurors of Jasper County present upon their oath:

Murder

That in Jasper County, South Carolina, on or about June 22, 2017, the Defendant, Benjamin Walter Dubois, III, did, with malice aforethought, kill Jerry Douglas Holmes and Jerry Douglas Holmes did die as a proximate result of Benjamin Walter Dubois, III's actions, all in violation of Section 16-3-10, et al. of the Codes of Law of South Carolina.

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

Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

IN THE COURT OF GENERAL SESSIONS

STATE)
VS.)

INDICTMENT/CASE#: 2017GS2700582

Benjamin Walter Dubois, III)
AKA:)
Race: White Sex: Male Age: 39)
DOB: [redacted] SS#: [redacted])
Address: [redacted] Drive)
City, State, Zip: [redacted])
DL#* [redacted] SID#)

A/W#: 2017A2720200149
Date of Offense: 06/22/2017
S.C. Code §: 16-3-10
CDR Code #: 0116

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Murder

In violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. ____ (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Reed A Evans 79925
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Correction** ☐ **County Detention Center,**

for a determinate term of life without parole days/months/years/Time Served ☐ **Youthful Offender Act** not to exceed ___ years

and/or to pay a fine of $___; provided that upon the service of ___ days/months/years/Time Served and or payment

of $___; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.
_____ days/months
☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

CLERK OF COURT
TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: _____
DATE: 9/12/23

STATE VS. BENJAMIN WALTER DUBOIS, III INDICTMENT/CASE#: 2017GS2700582

SPECIAL CONDITIONS:

☐ **PTUP** after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing

☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

☐ Other: Medications currently taking: Geodon and Zoloft

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

Total $_____ plus 20% fee: _____ $_____

Payment Terms: ☐ Set by SCDPPPS

Recipient: _____

*Fine:		$
Fine may be pd. in equal consecutive weekly/monthly pmts. of $ _____ Beginning _____		
§14-1-206 (Assessments 107.5%)		$
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$ 100
§14-1-211 (A)(2)(DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25
§14-1-213 (Drug Court Surcharge)	$150	$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	$41	$
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)	TBD	$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees	$500	$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	$
	TOTAL	$ 128.75

Clerk of Court/Deputy Clerk: Mayah Boshat

Court Reporter: Kyla Williams

Presiding Judge: C

Judge Code: 2142

Sentence Date: 8/4/23

17-53

Public Defender,

I am a S.C.D.C. Inmate and Cannot Afford The $40.00 Fee For Indigency Screening. I have Been charged with Murder and have Mailed In The Preliminary Hearing Paper. My Case Number is; 2017A2720200149 Murder/Murder. My Bond Hearing Date was August 14, 2017. I am Requesting That you Send me My Rule 5 and Brady Material A.S.A.P. I want To File For a Fast and Speedy Trial. Because of This Pending charge I Now Have To Remain in Security Detention (Isolation) until This IS Resolved. Please Put In a Transportation order So I Can Stay at yor County Jail While we Discuss My Case. Thank you for your Time.

Respectfully Yours,

FILED
2017 SEP 13 AM 8:21
CLERK OF COURT
JASPER COUNTY

Jasper County Clerk of Court

Post Office Box 248 • Ridgeland, South Carolina 29936

Phone: (843) 726-7710 • Fax: (843) 726-7782

Margaret Bostick
Clerk

September 18, 2017

Benjamin Dubois #295690
Perry Correctional Institution
430 Oaklawn Rd.
Pelzer, SC 29669

RE: 2017A2720200149

Please be advised that we have received your request for the above mentioned warrant. I have given a copy of your letter to the Public Defender's office and the Solicitors office. If there is anything else that I can assist you with please feel free to contact me.

MAILED
9-18-2017

Jasper County General Session, Clerk of Court

CLERK & COURT,

I AM WRITING YOU IN REGARDS TO CASE #: 2017A272020014 9
I FILED FOR A FAST AND SPEEDY TRIAL 2 YEARS AGO AND HAVENT RECIEVED A WORD ABOUT IT! IVE NEVER MET MY PUBLIC DEFENDER OR RECIEVED ANY CORRESPONDENCE BACK FROM HIM. I WOULD LIKE YOU TO FILE A MOTION TO DISMISS FOR ME PLEASE. I SENT HIM A LETTER TO DO IT BUT GOT NO RESPONSE. I WOULD ASLO LIKE ALL RULES AND BRADY MATERIAL SENT TO ME. I AM WAY PAST SICK AND TIRED OF BEING ON LOCK-UP FOR A CRIME I DIDNT COMMIT AND BEING DENIED PROPER LEGAL COUNSEL. THERE IS REALLY NO EXCUSE FOR NEVER MEETING MY PUBLIC DEFENDER IN THE WHOLE 2 YEARS HES BEEN ~~ASSIGNED~~ ASSIGNED TO MY CASE. I HAVE SERIOUS DISABILITIES AND FEEL LIKE IM BEING DISCRIMINATED AGAINST BECAUSE I HAVE THESE DISABILITIES AND your WAITING FOR MY CANCER/SEIZURES TO KILL ME BEFORE I HAVE A CHANCE AT COURT. PLEASE GET THIS DISMISSED FOR ME. AS FAR AS I KNOW THERE IS NOTHING FAST AND SPEEDY ABOUT WAITING OVER 2 YEARS FOR TRIAL AFTER PROPERLY FILING FOR A FAST AND SPEEDY TRIAL. IT'S SUPPOSED TO BE WITHIN 6 MONTHS OR IT GETS DISMISSED. THANK you FOR your HELP AND TIME.

RESPECTFULLY yours,

FILED
JASPER COUNTY
CLERK OF COURT
2019 SEP 13 AM 9:23

POSTED
BY CD DATE 9-25-19

501
PD

STATE OF SOUTH CAROLINA COUNTY OF JASPER	**IN THE COURT OF GENERAL SESSIONS FOR THE 14th JUDICIAL CIRCUIT**
STATE OF SOUTH CAROLINA v. BENJAMIN WALTER DUBOIS, III, Defendant.	**Case Number:** 2017GS2700582 **Charge:** Murder **NOTICE OF MOTION TO DISMISS – SPEEDY TRIAL**

FILED
JASPER COUNTY
CLERK OF COURT
2023 JUL 21 P 4

TO: Reed Evans, Assistant Solicitor, 14th Judicial Circuit

YOU WILL PLEASE TAKE NOTICE that the Defendant, Benjamin Walter Dubois, III, and his undersigned attorney will appear before the Honorable Judge of the Court of General Sessions of the 14th Judicial Circuit, in Jasper County on **May 29, 2023 at 9:00 am** or as soon thereafter as counsel can be heard and, will move the Court for an Order dismissing the above-referenced indictment.

This motion is based on the following grounds:

1. Defendant, Benjamin Walter Dubois, III, has been denied his fundamental right to Speedy Trial under the Sixth Amendment to the United States Constitution and South Carolina Constitution Article I Section 14. *Barker v. Wingo*, 407 U.S. 514, 521 (1972); *State v. Langford*, 400 S.C. 421, 4142 (2012) (citing *United Stated v. MacDonald*, 456 U.S. 1, 6 (1982); *Doggett v. U.S.*, 505 U.S. 647, 651-52 (1992); *State v. Reaves*, 414 S.C. 118, 131 (2015).
2. Specifically, Dubois was arrested on August 15, 2017 and charged with Murder in violation of South Carolina Code of Laws Section 16-03.-0020. The arrest warrant alleges that Mr. Dubois did, with malice aforethought, cause the death of victim, Jerry Holmes with some type of a homemade edged weapon. Mr. Dubois was indicted on May 31, 2018. The length of delay is substantial – as of the date of this Motion, Mr. Dubois remains incarcerated, and his case remains pending for almost six years.
3. Specifically, the reason for the delay is unknown as Dubois' case being transferred to atleast 4 different solicitors within the 14th circuit. Counsel for defendant had contacted

the solicitor's office numerous times during the pendency of the case – many of those attempts prior went unanswered until Mr. Evans assumed the case in 2022.

4. Mr. Dubois asserted his right to a Speedy Trial on September 13, 2017, again at a hearing before the Honorable Judge Cothran on October 31, 2019 and, at subsequent bond hearings.
5. The prejudice to Mr. Dubois is the most substantial factor. Law enforcement did not collect or destroyed evidence which possessed an exculpatory value that was apparent prior to the evidence being destroyed (i.e. crocs of Julius Hiland, homemade weapons located in common area bathroom, DNA sample of Julius Hiland, blood on cylinder of cell door). The defendant cannot obtain other evidence of comparable value by other means as Hiland is now deceased. Hiland cannot be subject to cross examination on numerous items of evidence, including a new DNA report, that was provided to the defense in late 2022 – five years after the alleged offense.

WHEREFORE, the Defendant requests a hearing where the Defendant will present oral argument and evidence in support of his Motion to Dismiss the above-referenced indictment as the defendant has been denied his fundamental right to a Speedy Trial under the Sixth Amendment to the United States Constitution and South Carolina Constitution Article I Section 14.

Defendant reserves the right to present oral argument and evidence in support of this motion at the time of the hearing.

Respectfully submitted,

Carolyn S. Carmody

Carolyn Carmody, Esq.
Jasper County Public Defender's Office
Email: carolyn.carmody@bcgov.net
Cell: (843) 592-7256
ATTORNEY FOR DEFENDANT: Benjamin Dubois, III

May 12, 2023
Jasper County, South Carolina

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF GENERAL SESSIONS FOR THE 14th JUDICIAL CIRCUIT**
COUNTY OF JASPER	)	
	)	**Case Number:** 2017GS2700582
STATE OF SOUTH CAROLINA	)	
v.	)	**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS – SPEEDY TRIAL VIOLATION**
BENJAMIN WALTER DUBOIS, III	)	
Defendant.	)	

FILED
JASPER COUNTY
CLERK OF COURT
2022 JUL 21 P 2:41

Defendant, Benjamin Dubois, respectfully submits this Memorandum in Law in Support of his Motion to Dismiss – Speedy Trial Violation.

PROCEDURAL HISTORY

On August 15, 2017 Mr. Benjamin Walter Dubois, III (Dubois) was arrested and charged with Murder in violation of South Carolina Code of Laws Section 16-03.-0020. The arrest warrant alleges that on June 22, 2017 Dubois did, with malice aforethought, cause the death of Jerry Holmes with some type of a homemade edged weapon. Dubois was indicted on May 31, 2018.

On September 13, 2017, Dubois asserted his right to a speedy trial. Despite numerous letters from the Defendant to the Court, a hearing was not held on this Motion until October 31, 2019. On October 31, 2019, the Honorable Ferrell Cothran, Jr. ordered the State to produce evidence within 30 days and set the case for trial within the first six months of 2020. Since the October 31, 2019 hearing, undersigned counsel sent numerous emails to the 14th Circuit Solicitor's Office indicating Dubois was ready for trial.[1] Most of defense counsel emails through April of 2022 went unanswered.

[1] Between October 31, 2019 to the present, Dubois case has been reassigned to a different solicitor within the 14th Circuit Solicitor's Office a minimum of five times.

An SCDC disciplinary report obtained by the defense provides that on the night of Holmes' death, Julius Frank Hiland, an inmate in the Savannah B wing had his cell door left unlocked. Police services located a pair of crocs within Hilland's cell that contained suspected blood. The report further indicates that the crocs were sent to SLED however, the defense has since learned that the crocs were destroyed prior to testing. DNA was not collected from Hilland nor were any swabs taken from the crocs within his cell. Hilland passed away on November 6, 2021 and thus, cannot be subject to cross examination.

On or about October 11, 2022, the State produced to the defense a new DNA report using Strmix that had been prepared for the State on September 1, 2020. Over two years lapsed before the State furnished a copy of the report to the defense. The new September 1, 2020 DNA report compares DNA samples taken from only Dubois and Holmes as the lab did not have a DNA sample from Hiland to compare.

On October 3, 2022, the State served upon Dubois a notice of its intent to seek life in prison without parole. As of the date of this Motion, Dubois case has remained pending 5 years, 10 months and 28 days, all of which Dubois has been in custody.

ARGUMENT

The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. Const. amend VI; S.C. Const. Art I §14. The right to a speedy trial is imposed on the States by the Due Process Clause of the Fourteenth Amendment. *Klopfer v. North Carolina*, 386 U.S. 213 (1967); *Wheeler v. State*, '247 S.C. 393, 147 S.E.2d 627 (1966). The United States Supreme Court outlined the controlling factors in determining whether a Defendant's right to a speedy trial has been violated: 1) the length of delay; 2) the reason for the delay; 3) the defendant's assertion of the right; and 4) prejudice to the Defendant. *Barker v. Wingo*, 407 U.S. 514, 530 (1972). The determination of

whether a defendant has been deprived of a Speedy Trial is analyzed in terms of the circumstances of each case, balancing the conduct of the prosecution and the defense. *State v. Pittman*, 373 S.C. 527, 549, (2008) (citing *Barker*, 407 U.S. at 530).

The sole remedy for a speedy trial violation is dismissal of the charges. *Langford*, 400 S.C. at 442, 735 S.E.2d at 482 (internal citation omitted). *State v. Hunsberger*, 418 S.C. 335, 342 (2016).

I. LENGTH OF DELAY

The length of delay is the triggering mechanism for the remaining factors. *Barker*, 407 U.S. at 530. The length of delay is measured from the time that the Defendant is arrested, indicted, or otherwise accused. *State v. Langford*, 400 S.C. 421, 442 (2012) (citing *United Stated v. MacDonald*, 456 U.S. 1, 6 (1982). Until there is a delay that is presumptively prejudicial to the defendant, there is no necessity to examine the other factors. *Barker*, 407 U.S. at 530. Presumptive prejudice exists when an accused is not prosecuted with ordinary promptness. *Doggett v. U.S.*, 505 U.S. 647, 651-52 (1992). Our State Supreme Court has found 39 months to be presumptively prejudicial. *State v. Reaves*, 414 S.C. 118, 131 (2015); *see also Pittman, 373 S.C. at 551* (finding delay of 3 years and two months was sufficient to trigger analysis of Barker factors.); *State v. Waites*, 270 S.C. 104, 108 (1978) (holding 2 years and four month delay triggered review of other factors.)

In this case, Dubois was arrested on August 15, 2017. Almost 6 years (5 years, 10 months and 28 days), have passed since Dubois was charged. This case is nearly double the time the court found to be presumptively prejudicial in *Reaves*, *Pittman* and *Waites* triggering the remaining *Barker* factors in the Speedy Trial analysis.

II. REASON FOR THE DELAY

Closely related to the length of the delay is the reason the State provides to justify the delay. *Barker*, 407 U.S. at 531. *Langford* explained that State's deliberate effort to delay the trial to injure the defense should be weighted heavily against the State whereas neutral reasons, such as an overcrowded docket or negligence, should be weighted less heavily; however, the State is still ultimately responsible for bringing a criminal defendant to trial. *Langford*, 400 S.C. at 443 (citing *Pittman*, 373 S.C. at 549). Likewise, delays caused by the defendant should weigh against him. *Langford*, 400 S.C. at 443. In *Reaves,* the State asserted the length of delay was due to a heavy backlog of cases and complexities involved in the investigation however, the Supreme Court did not find either of these reasons compelling and weighed this factor against the State. *Reaves*, 414 S.C. at 131; *see also State v. Brazell*, 325 S.C. 65, 76 (1997) (finding the State could not justify three year and five-month delay where it claimed complexities in the case and upheaval in the solicitor's office caused the delay). *Reaves* also found it significant that during the delay, little had been done to further investigate the case. *Id.*

In this case, the 14th Circuit Solicitor's Office has not provided a reason for the delay. On October 31, 2019, the State asserted to Judge Cothran that the Defendant would be brought to trial during the first 6 months of 2020. Since 2019, defense counsel has emailed the solicitor's office on numerous occasions indicating Dubois' was ready for trial – *most of the emails were ignored.* (emphasis added). Furthermore, since 2019, Dubois case has been reassigned to atleast five different solicitors within the 14th Circuit Solicitor's Office (Sean Thornton, Patrick Hall, Dustin Whetsel, Mary Jones and Reed Evans). Like *Reaves* and *Brazell*, the backlog in the docket is not a compelling reason for a delay of nearly six years nor is the ease being reassigned to five solicitors due to an upheaval in the solicitor's office. Further, like *Reaves*, the delay was not the result of a further investigation as no one from the solicitor's office had gone to review the physical evidence

in the case until November of 2022. Therefore, this factor should be weighed heavily against the State.

III. DEFENDANT'S ASSERTION OF HIS RIGHT

The third factor is the assertion of the right. This factor recognizes that while a criminal defendant has no responsibility to bring himself to trial, the extent to which he exercises his right to a speedy trial is significant. *Barker*, 407 U.S. at 527-28. Dubois immediately asserted his right to Speedy Trial on September 13, 2017 (a month after his arrest). On October 31, 2019, Judge Cothran ruled that the state had to produce discovery within 30 days and try Dubois within the first six months of 2020. Further, Dubois has, at each bond hearing, reasserted that he has requested a Speedy Trial. Dubois has been ready for trial since 2017 and has not acquiesced to a delay. To the contrary, Dubois, through counsel, has sent numerous emails to the Solicitor's Office requesting the case be tried. This factor also weighs heavily against the State.

IV. PREJUDICE TO THE DEFENDANT

The final factor to be weighed is prejudice to the defendant. Prejudice requires an analysis of three different types of prejudice the right to a speedy trial right is meant to prevent: (1) oppressive pretrial incarceration; (2) anxiety and concern of the accused; and (3) the possibility the defense will be impaired. *Barker*, 407 U.S. at 532. Our State Supreme Court held the last factor is the "*most serious* of these interests" because, the "inability of the defense to prepare its case – due to the death or disappearance of a witness, for example - cuts to the heart of the fairness inherent in the system." *Reaves*, 414 S.C. at 131. (emphasis added).

1. The first type of prejudice is oppressive pretrial incarceration. The speedy trial guarantee is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal

charges. *State v. Chapman*, 289 S.C. 42, 44, 344 S.E.2d 611, 612-13 (1986). "The time spent in jail awaiting trial has a detrimental impact on the individual" *Langford*, 400 S.C. at 445 (*citing Barker*, 407 U.S. at 532). In this case, as a result of this pending charge, Dubois lost his good time credit and had to serve additional time in SCDC (a full 10 years) on security detention because this case was still pending. Upon being released from SCDC, Dubois was transferred to the Jasper County Detention Center on December 1, 2022 where he has remained for 224 days.

2. The second type of prejudice is anxiety and concern of the accused. Dubois has suffered a tremendous amount of anxiety with his case pending since 2017. Dubois anxiety is rooted in some of the following examples: Dubois recently learned that key evidence in his case was destroyed, Dubois learned that a key witness in this case, Julius Hiland, is now deceased, Dubois has learned that Julius Hiland's DNA was not collected or compared and the state has subsequently served him with a notice of their intent to seek life in prison without parole. All of the aforementioned examples have caused Dubois prejudice.

3. The third type of prejudice is the possibility the defense will be impaired. Reaves was a "extremely close case" in part because he could not show particularized prejudice as there was no indication the lost evidence would have helped him. In this case, there is a substantial likelihood that lost/destroyed evidence would be beneficial to Dubois case.

a. While Dubois case has remained pending and transferred amongst the solicitor's office, Mr. Julius Hiland died and is no longer available for cross examination.

b. A DNA sample was not obtained from Hiland to be matched to the clothing located in the common area bathroom or to evidence located outside Holmes' cell. The defense is informed and believes that Hiland's DNA would be exculpatory as Dubois was excluded as a contributor to many of the DNA samples which contained numerous profiles and "unknown contributors."

c. Hiland's cell was unlocked on the night of the Holmes' death and a pair of crocs in his cell contained suspected blood. The bloody crocs from Hilland cell were initially collected and then destroyed without being sent to SLED for analysis. As these crocs were not preserved, it further necessitates the need for Hiland's DNA and the ability to cross examine Hilland about the crocs in his cell. As such, the delay in this case resulted in the death of a material witness and has denied Dubois the right to a fair trial.

The prejudice to Dubois is the most substantial factor and weighs heavily against the State.

CONCLUSION

In consideration of the relevant factors and the peculiar circumstances of this case, Mr. Dubois requests this court order a dismissal, the remedy for a violation of his right to a speedy trial.

Respectfully submitted,

Carolyn S. Carmody

Carolyn Carmody, Esq.
Jasper County Public Defender's Office
Email: carolyn.carmody@bcgov.net
Cell: (843) 592-7256
ATTORNEY FOR DEFENDANT: Benjamin Dubois

July 14, 2023
Jasper County, South Carolina

STATE OF SOUTH CAROLINA) COUNTY OF JASPER)) State of South Carolina)) vs.)) BENJAMIN DUBOIS, III,)) Defendant.) _____)	INDICTMENT # 2017GS2700582 WARRANT # 2017A2720200149 ORDER DENYING DEFENDANT'S MOTION TO DISMISS FOR ALLEGED SPEEDY TRIAL VIOLATION

FILED
JASPER COUNTY
CLERK OF COURT
2023 JUL 31 A 8:51

The Defendant, Benjamin Walter Dubois, III, is charged with Murder. On May 12, 2023, the Defendant moved for his case to be dismissed for a violation of his right to a Speedy Trial. On July 14, 2023, a hearing was held before me on this issue. The Defendant was represented by Assistant Public Defender Carolyn Carmody, and the State was represented by Assistant Solicitor Reed Evans.

After hearing argument from both parties, I find, for the reasons set forth below, that the State has not violated the Defendant's right to a Speedy Trial. Therefore, the Defendant's motion is DENIED.

FACTUAL BACKGROUND

The Defendant, Benjamin Walter Dubois, III, is charged with Murder for an incident alleged to have occurred on August 15, 2017, in the Ridgeland Correctional Institution, a prison administered by the South Carolina Department of Corrections. The Defendant and the Victim, Jerry Holmes, were each incarcerated there on the date of Mr. Holmes' murder

The Defendant, though of course already in custody, was arrested and charged with the Murder of Jerry Holmes on June 22, 2017. He appeared before a Jasper County Magistrate, who denied his bond. The case was indicted on May 31, 2018.

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY:
DATE: 8/10/23

The Defendant, though already represented by the Fourteenth Circuit Public Defender's Office, wrote a letter to the court on September 13, 2017, indicating his request for a speedy trial. A review of the clerk's file in this case indicates that between the Defendant's initial bond hearing and July 14, 2022, neither he nor any Assistant Public Defender representing him filed a motion for reconsideration of bond.

Since July 14, 2022, bond has been reviewed twice, and denied on each occasion. At the most recent bond hearing, held May 27, 2023, the Honorable Carmen Mullen denied bond, but granted the Defendant leave to re-raise the issue of bond immediately if the case is not tried during the upcoming July 31, 2023 term of court.

The case has been set for trial on multiple occasions. It was set as the first case for trial for the October 24, 2022 term. The State made travel arrangements for multiple witnesses to travel from out of state and was prepared to go forward. However, on Sunday, October 23, 2022, Counsel for the Defendant moved for a continuance, on the grounds that she had become too ill to adequately represent her client. The following day the Defendant's motion was granted by this Court, and the case was continued to the next term, which was November 28, 2022.

Prior to the November term, the State invited Counsel for the Defense to join a meeting with SLED and SCDC personnel to view the various pieces of physical evidence, in person in Columbia. During this visit, SCDC pulled out a bag containing cell phones which had been seized from prisoners in the aftermath of Holmes' death. While the phones were packaged together, making identification of which phone came from which inmate impossible, the bag had written on it "possible video of incident" or words to that effect. The State had been aware of the existence of the phones, but not the note or potential video evidence. Concerned for the possibility of exculpatory evidence going undetected, the State moved before Judge Mullen to

continue the case just prior to the Thanksgiving holiday, in a hearing held over Webex. The Defendant did not oppose the State's motion.

The case was again placed first up on the trial roster for the next available term, which was January 30, 2023. On December 1, 2022, the Defendant was released from the Department of Corrections, having maxed out his sentence. The Defendant was turned over to the custody of the Jasper County Detention Center.

On January 18, 2023, Counsel for the Defense informed the State that she had "serious concerns about Mr. Dubois' competency to stand trial" based on certain prescriptions having not been refilled while he was still at the Department of Corrections. The case was again continued by this Court, to ensure that the Defendant was placed on the proper medication.

The State had, by this point, planned other murder trials for all the terms of court which had been announced at that time: March 6, April 24, and May 30. The State informed Counsel for the Defendant of its plan to call the case for the first available term of the second half of the year. When those dates were released by Court Administration in March of 2023, the State informed Counsel for the Defendant that the case would be called during the July 31 term.

On April 27, 2023, the Defendant appeared before Judge Mullen for a motion to set bond. Judge Mullen denied the motion but granted the Defendant leave to re-raise the issue if his case is not tried during the July 31 term of court.

Finally, on May 16, 2023, the Defendant filed this motion.

SPEEDY TRIAL

The right to a speedy trial is guaranteed by the Sixth Amendment to the US Constitution. Prior to the Supreme Court of the United States' opinion in *Barker v. Wingo*, 407 U.S. 514

(1972), "the criteria by which the speedy trial right is to be judged" (*Barker,* at 516) had not been clearly established.

In *Barker,* the Supreme Court established "a balancing test, in which the conduct of both the prosecution and the defendant are weighed." *Barker,* at 530. Justice Powell, writing for the court, noted that "[w]e can do little more than identify *some* of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. Though some might express them in different ways, we identify four such factors: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." *Id* (emphasis added).

1. Length of Delay

Both parties agree that *Barker* imposes a test in which the delay must be sufficiently lengthy in order to trigger analysis of the other four factors. Further, both parties agree that in this case, nearly six years having passed since the incident and arrest, the delay is significant enough.

2. Reason(s) for the Delay

The State argued that the significant General Sessions backlog in Jasper County, while regrettable, was a legitimate contributing factor to the delay in bringing this case to trial. The State further noted that it had previously informed Judge Cothran of its hope to try the case in the first six months of 2020, but was deterred by the onset of the COVID-19 pandemic. Finally, the State noted that the last three delays were caused by the legitimate continuances set forth above. The Court is persuaded that the State's delays were valid.

3. Defendant's Assertion of His Right

The Defendant made reference to an order made by Judge Cothran on October 31, 2019, and handed up a copy of the transcript of that hearing as a Court's exhibit. The Defense argued that Judge Cothran had ordered the State to try the case within the first half of 2020. The State read a portion of the transcript into the record. It appears that Judge Cothran did not *order* anything; Rather, the State advised the Judge of its plan, and the Judge invited the Defendant to file a motion for a speedy trial if that goal were not met. Of course, neither the State nor Judge Cothran were aware that we would enter a global pandemic in that time frame.

The Court notes that since that time, even following the resumption of jury trials as the pandemic began to wane, the Defense has never filed a written motion for a speedy trial. The Defendant has made reference to his desire for one during several bond hearings, but the present motion to *dismiss* the case is the first filing on this subject.

I find that the Defendant has asserted his right, but that the State has never been subject to an order to try the case by a particular date. I also find that the Defendant and his counsel were satisfied with the previous trial dates in November of 2022, December of 2022, and January of 2023, prior to the continuances which were granted on each occasion.

4. Prejudice to the Defendant

The Defendant's argument that he has suffered prejudice from the delay of his trial is without merit. While the Defendant did raise issues concerning the preservation of evidence in this case which may have hampered his defense, those issues were present as soon as SLED declined to collect the items, just hours after the incident. It may well be that the Defense only learned of these issues recently, but that does not mean they were caused by a delay.

The Defendant has been awaiting trial for more than five and a half years on this case. However, this pre-trial incarceration can hardly be said to be oppressive, given that he had been

serving a ten year active sentence at the time of the incident and arrest, and was only released from said sentence on December 1, 2022. All prior incarceration in this case was concurrent with his previous sentence. For the same reason, having already pled *nolo contendere* to a "Most Serious" offense (Voluntary Manslaughter), the Defendant cannot credibly claim that he has suffered anxiety from the current charge.

CONCLUSION

The Defendant has not shown that the State has violated his right to a speedy trial. Indeed, the State is presently preparing to try this case this month. Therefore, the Defendant's motion is DENIED.

_____, S.C.

July 21, 2023

Hon. Robert J. Bonds
Chief Judge
14th Judicial Circuit

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

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SC Court of Appeals

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ATTORNEY FOR APPELLANT

This 13th day of February, 2025.

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Feb 13 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Jasper County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BENJAMIN WALTER DUBOIS III,

APPELLANT

APPELLATE CASE NO. 2023-001307

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Kaylee Christene Kemp, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 13th day of February, 2025.



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