

VOLUME TWO OF TWO

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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County

William H. Seals, Jr., Circuit Court Judge

KEVIN WALTON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000018

APPENDIX

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1 like that. She didn't own any property except for the
2 car.

3 Q Now, did you see your mom regularly or was it -- how
4 was -- how often did you see her?

5 A I would say I went over there on average about once a
6 week. I was at the time I was working full time and I was
7 also in school at Francis Marion University. So I didn't
8 have a lot of free time, but I would try to make it a
9 point to go over there about once a week on average. And
10 sometimes I would go pick up B.B. my little sister,
11 to come stay with me. But I would go and visit pretty
12 regularly and I would just go over and hang out with mom
13 and just spend time with her.

14 Q All right. Where were you working at that time?

15 A At the time, I was working at Best Western hotel in
16 Florence.

17 Q And what point in time was this that you were working
18 a Best Western? What year?

19 A I had work there for a while. I work there five
20 years total. I believe that this was my second or third
21 year there. I had work with that manager before at
22 another hotel. So I been with him probably seven years by
23 then, but I was only there five years at Best Western.

24 Q So about what year was it?

25 A I want to say it was right at about two and a half to

1 three years when this happened that I had been there.

2 Q So you were working there in 2003?

3 A Yes.

4 Q Okay. And you continued to work after the occurrence
5 after your mother ---

6 A Yes, I did. They gave me sometime off, of course.
7 My manager was very understanding and very helpful. And I
8 actually had an outpouring of support from all my
9 co-workers and managers. And they actually doubled up
10 shifts to cover me for a while. And I think I stayed out
11 of work for about two weeks before I went back.

12 Q And what was your job?

13 A I worked the front desk. I dealt with customers
14 checking them in and checking them out, dealing with
15 customer service issues, complaints, taking reservations
16 and I would assist the manager doing assistant manager
17 type things.

18 Q Was your mom working at the time?

19 A She was working at One Hour Martinizing on 76. The
20 location is no longer open now, but she was working there.
21 She would open the store every day and she work there
22 first shift.

23 Q All right. You say it's not open any more. Is that
24 was the One Hour Martinizing on 76 going towards Francis
25 Marion ---

1 A Yes.

2 Q --- or on the other side?

3 A Towards Francis Marion. It's kind of right around in
4 the same area as the hospital. It's in that section.

5 Q Okay. Basically where it use to be a Save-Way?

6 A I believe there use to be a Save-Way there also.

7 Q Okay. Now, do you know whether or not your mother
8 had been to the doctor the week that this -- that she was
9 killed?

10 A Yes, I actually had been to the doctor two or three
11 days before she was killed and she had a check up and
12 blood work done kind of thing. I actually got the results
13 of her blood work about week after she was dead saying
14 that everything was okay.

15 Q So the mail came to you after?

16 A Yes, I went to the post office and had all her mail
17 forwarded to my house, so I could keep up with everything
18 and pay whatever bills she had left and make sure I had
19 all her business straight.

20 Q And so did you actually see her after she went to the
21 doctor and was before she was skilled?

22 A Actually, the last time I saw my mom was the
23 Wednesday before she was killed. The reason why I went
24 over there that day is because I had a couple days before
25 that I had a makeover. I had my hair cut and a facial and

1 a manicure and a pedicure. I got a new outfit and
2 everything and I was all excited and I wanted to go over
3 there and see her and show her my new look, that was the
4 reason why I had went over there today. So other than
5 looking better, I'm really glad I got that makeover or I
6 wouldn't have been there that day. So I went over there
7 to show her, you know, how I looked and I hung out with
8 her a little while spent time with her. We sat and talked
9 and played with the ferret and goofed around. And she
10 actually interviewed me for some kind of paper she had to
11 write for school asking me -- it was a paper about jobs
12 and careers and stuff. So she was asking me questions
13 about my job, how I liked it, and how much money I made
14 and stuff like that. We were just kind of hanging out
15 until Kevin told her that they needed to go somewhere
16 because I think she had to be in class and she told him,
17 you know, just wait a few more minutes I have plenty of
18 time. You know, I'm spending time with Jennifer right
19 now. So he went and sat on the porch and was kind of just
20 sitting there waiting for her. And I believe I had
21 actually asked her, she had a band-aid with a cotton ball
22 on her arm and I said you got blood work done and she
23 said, yeah. We went outside and locked up the house and
24 kind of stood on the porch for few minutes and just
25 talked. I was standing there we were -- there was a stray

1 cat and we were talking about the stray cat. And I was
2 jocking about how I was going to feed him all momma's food
3 in the refrigerator when they left and stuff. And I was
4 talking to Kevin and me and Kevin were discussing
5 psychology because that's what I was in school for. And
6 then he said, you know, we got to go or you're going to be
7 late, so they left to go to school. And then I left and
8 went home.

9 Q Your mom was in school also?

10 A Yes, she was going to Florence Darlington Tech. I
11 don't actually remember what her major was. She was in
12 school for a little while. She was doing pretty good at
13 the time from what I understand.

14 Q When the blood work came back, you said -- did it
15 show that your mom was okay?

16 A Yeah.

17 Q Did it also indicate that she was anemic?

18 A Yes, mom had been anemic for as long as I can
19 remember. I use to have to give her her B12 shoots.
20 Sometimes, she get me to give them to her. When I didn't
21 live there, I guess she would give them to herself or have
22 somebody around give them to her. She had to have one
23 once a month.

24 Q That's B12?

25 A Yes.

1 Q Would she also take iron tablets as well?

2 A She didn't have to take any iron tablets. You know,
3 unless that's a new thing that she had just started doing
4 that I didn't know about, but she only did the shoot as
5 far as I knew. And when I was living there, she only did
6 the shots.

7 MR. LAWSON: Thank you. Answer any questions
8 Mr. McLaughlin may have.

9 MR. MCLAUGHLIN: May it please the Court.

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. MCLAUGHLIN:

13 Q Jennifer, my name is Patrick McLaughlin. I represent
14 Mr. Walton. I'm real sorry that you have to be here
15 today.

16 A Thank you.

17 Q It sounds like you really take a hand in taking care
18 of your little sister and that's something to be very
19 proud of. And I'm going to have to ask you some questions
20 about what happened. It's not my goal to make you
21 uncomfortable at all, but I just have to try to get all
22 the facts out so you give them to the jury.

23 A Okay.

24 Q I want couple questions about -- well, first of the
25 day that all this happened, did you give any type of

1 interviews or anything with the -- with any law
2 enforcement people or anybody else other than there at the
3 house?

4 A No. I know when we went to the sheriff's office they
5 interviewed B.B. but they didn't take a statement
6 from me there. And I know they spoke with me at the
7 Durant's Children Center, but I don't think it was a
8 formal interview or anything. But the only statements I
9 gave I believe were on the property at the scene.

10 Q Okay. You mention the Durant Children Center, did
11 y'all take your sister?

12 A Yeah, they told us we needed to take her there since
13 she was so young when it happened.

14 Q Okay. Who all went over to the Durant Center.

15 A It was myself, my Aunt Patricia and her husband Bruce
16 and B.B.

17 Q Okay. Did anybody from the sheriff's office go with
18 you over there or did anybody meet you over there from the
19 sheriff's office?

20 A No, we just had an appointment and we just went
21 there.

22 Q Okay. Do you remember who it was -- how many people
23 you met with at the Durant Center was it just like one
24 person?

25 A I believe it was just one lady.

1 Q Okay. I'm going to represent to you that typically
2 when you take a child over for these type interviews and
3 stuff, they want to build a family history find out as
4 much as they can about the child and the family before
5 they question them. Do you remember them doing anything
6 like that?

7 A I know they spoke to us. I don't remember exactly
8 what was said. It's kind of all fuzzy, but they spoke to
9 us for a few minutes and then took B.B. back and
10 interviewed her. I don't remember a lot of details from
11 that.

12 Q And I know it's going to be hard to remember giving
13 it was a long time ago and what you had been through. But
14 do you recall kind of, I guess, participating in giving a
15 little bit of information to the person who was going to
16 interview B.B.

17 A Yeah, a little bit yeah.

18 Q Okay. Do you recall whether or not they asked you
19 anything about your mother's history, medical history
20 things like that?

21 A I know that they asked us some questions about her
22 and some of that Patricia and I had to kind of collaborate
23 on and give her answer, yeah.

24 Q Do you remember whether or not they asked you about
25 prior relationships other than her relationship with

1 Mr. Walton at all?

2 A I don't remember if they asked anything about that.

3 Q Okay. And on your direct examination just now you
4 talked about being over the day that Wednesday and hanging
5 out for a while with your mother and that Kevin was also
6 there. How long were you over there?

7 A I would say I was there about an hour or two. I
8 don't remember exactly, but it was at least an hour. But
9 I don't think it was more than two hours.

10 Q Okay. Well, what did you think about your mother's
11 relationship with Mr. Walton?

12 A Well, I had only met him once or twice before that.
13 I really didn't know a lot about their relationship except
14 for just little bits and pieces that I've heard. I knew
15 that mom had told me, you know, some stuff about him when
16 she met him. She told me she had met him and he seemed
17 like a nice guy and that I remember asking why he was
18 there. And she told me that whenever she met him he had
19 told her that he was new to the area and didn't really
20 have anywhere to stay. And I guess in her naivety she
21 allowed him to stay at her house and I was kind of upset
22 about that at the time because I was kind of nervous
23 about, you know, a stranger being there with mom that we
24 didn't know anything about. I express my worry to her and
25 she told me, you know, don't worry. You know, you just

1 got to give people a chance sometimes. You know, just
2 because he's a stranger doesn't mean he's bad. She just
3 really wanted to give him a chance. So I didn't want to
4 fight with her about it or anything. I said okay. I'm
5 just kind of nervous about it the fact that he's a
6 complete stranger and, you know, he's there with my little
7 sister that makes me uneasy, and I said, but I'm not going
8 to say anything. She had talk to me at first on the phone
9 and some online because sometimes I would get online and
10 talk to her also. And that was when she had taken a
11 picture of him with her web cam and sent me the pictures,
12 so I could see what he look like and that's how I knew the
13 picture of him would be on the computer. She had told me
14 that -- and I had also seen on Wednesday he was kind of
15 starting to get on her nerves because he was a little
16 controlling. And he would -- he was always right on top
17 of her and right with her. He went to work with her. He
18 went school with her. He was with her every moment. When
19 he was there, he was kind of pushing her let's go. We got
20 to go and I remember saying, what is he your daddy. And
21 she kind of rolled her eyes. She said it's getting on my
22 nerves. And she said he had been acting like that for a
23 little while.

24 Q Let me ask you this, you say you express some initial
25 concern which is understandable about this stranger coming

1 into the home. After you first met him, did those
2 concerns go away?

3 A Well, not really because I didn't know him. You
4 know, he seemed -- the first time I think I met him in
5 person was mom had come to my job to visit me and he came
6 with her. And they stood in the lobby and kind of talk
7 with me for a few minutes. And I remember he seemed kind
8 of cool at the time. We were just, you know -- we had
9 barely talked any really. I was talking mostly to mom,
10 but I had made a joke at the time there was somebody in
11 the paper that kind of look like him that was a murderer
12 in California or something. I kind of made a joke about
13 that, you know, look that's your friend right there. I
14 knew that wasn't him. It was just playing and he kind of
15 laughed about it. And then after that the next time I
16 think I had spent any time around him to actually have a
17 conversation was that Wednesday. And I just remember
18 thinking that he seems to know a little bit about
19 psychology and he had kind of threw out a couple terms.
20 And I just thought he might be all right, but I still
21 didn't feel like I knew him enough to really know whether
22 he was all right or not. I just knew that mom said, you
23 know, you just got to give people a chance sometimes.
24 And, you know, he didn't have anywhere to stay. Knowing
25 he didn't have anywhere to stay, I didn't want to tell him

1 -- I didn't want him to be out there sleeping anywhere.
2 You know, I just wanted him to, you know, he could come
3 stay with me. And he's been nice in helping me out and he
4 gives me money when he gets ahold of it. He was doing
5 some odd jobs here and there and he would give her some
6 money. And she commented that he would clean her house
7 in the mornings for her and he would draw her little
8 pictures. And he seem sweet most of the time. The only
9 thing that really got on her nerves was that he was
10 controlling and that he would try to, you know -- he was
11 always right there and she couldn't never get away from
12 him, that was the only thing that really bothered her
13 about it. But she just basically just give him a chance,
14 but I think if she had known about his record of violence
15 against women she wouldn't allowed him to stay there.

16 MR. MCLAUGHLIN: Objection, Your Honor.

17 THE COURT: All right. Sustained.

18 MR. LAWSON: May it please the Court, may we
19 approach?

20 THE COURT: Yes, sir.

21 (WHEREUPON, a bench conference was held in the
22 presence of the jury, but out of the hearing of the
23 jury.)

24 THE COURT: Ladies and gentlemen, I'm going to ask
25 you to step to your jury room for just a moment. Let me

1 take up this matter of law. Please have no discussion
2 about the case. And I'll get you back out here quickly.

3 (WHEREUPON, the jury retired to the jury room.)

4 THE COURT: All right. Mr. Lawson, be happy to hear
5 from you.

6 MR. LAWSON: May it please the Court, Your Honor, my
7 understanding through this line of questioning the defense
8 has open the issue as to character on -- as to the
9 defendant. And as this witness was testifying when she --
10 as long as she was saying things that the defense would
11 want said it was fine, but when she testified as to
12 something that the defense did not like in relation to his
13 character, told her to stop. I don't believe that they
14 can have it both ways. Either they have open the door on
15 the issue of character and she can testify totally about
16 it good and bad or they haven't.

17 THE COURT: Well, let me say this ---

18 MR. MCLAUGHLIN: Your Honor, I would simply say to
19 that she said things about his character that were
20 detrimental that the mother -- she still didn't know him
21 very well. She was somewhat uneasy about him, that was
22 controlling.

23 THE COURT: All right. Let me say this, Mr. Lawson,
24 I don't disagree with what you've said, but what I heard
25 was -- and I'm paraphrasing, but something along the lines

1 of, well, I'm sure if she had known about his record for
2 whatever, that's improper. I don't disagree with you. If
3 she has firsthand knowledge of his reputation and standing
4 in community or about these things, then I think she could
5 possibly testify to those things, but certainly not about
6 his record. You know, if she for example -- and I have no
7 idea. I don't even know if Mr. Walton has a prior record.
8 I don't know it, but my point is if he does, I think it be
9 improper for her to say, well, I know he's got a record
10 for such and such. I think, she's -- and I'll be happy to
11 hear from you if you disagree with the Court because as we
12 all know I'm not always right. However, it does appear
13 that if we're getting into character testimony and I think
14 maybe the door has been open to that, but the testimony
15 has to be restricted to what she knows about his character
16 not about what she may know from a criminal history.

17 MR. LAWSON: I understand what, Your Honor -- and I
18 understand, Your Honor's, ruling that the problem is that
19 you have a witness that's testifying on cross-examination
20 and she's testifying as in response to a question as best
21 she knows. How do you cut her off?

22 THE COURT: And I don't fault the witness at all, but
23 when any witness through no fault of their own enters into
24 objectionable areas, that's what objections are for and
25 that's how you cut them off. Again, my understanding of

1 the testimony she began to go down the road about his
2 prior record that at least at this point is improper. And
3 now, if Mr. Walton takes the stand and puts his character
4 in evidence, obviously you can go into all that. But not
5 with this witness. But however, I think she is entitled
6 to testify if she knows firsthand of evidence of poor
7 character as well as good character.

8 MR. MCLAUGHLIN: And, Your Honor, if I may and I
9 believe my question was her opinion of Mr. Walton at that
10 time anything and I don't ---

11 THE COURT: I've ruled in your favor. I ruled in
12 your favor.

13 MR. MCLAUGHLIN: Yes, sir, I don't think she was
14 trying to slip anything, but I would ask for a curative
15 instruction to the jury and disregard that comment.

16 THE COURT: Well, I can do that and shine a light on
17 it or we can leave it alone. I'll give you what you want.

18 MR. MCLAUGHLIN: No, Your Honor, we would not like
19 the charge.

20 THE COURT: Mr. Lawson, and I don't want to cut you
21 off and I want to welcome you to disagree with the Court.
22 And maybe show me if I'm wrong about that where I'm wrong,
23 but again, we're talking about a defendant's prior record.
24 At that point, I think we're entering into areas that are
25 improper, but I would not preclude her from speaking of

1 evidence of bad character that she personally is aware of.
2 And certainly, you'll have a right on redirect to go over
3 that ground because I do think the door's been open if she
4 herself is aware of that.

5 MR. LAWSON: I understand then. If I find something,
6 I'll provide it to you. We gone take a break after this
7 witness anyway, Your Honor.

8 THE COURT: Okay. All right. So I will bring the
9 jury back out and I'll just allow you to proceed with your
10 questioning.

11 MR. MCLAUGHLIN: Thank you, Your Honor.

12 THE COURT: Ms. Joe, if you ask them to join us.

13 (WHEREUPON, the jury returned to the courtroom.)

14 THE COURT: All right. Ladies and gentlemen, thank
15 you for your corporation in allowing me to discuss these
16 matters with the lawyers.

17 Mr. McLaughlin, you certainly may continue with your
18 questioning.

19 MR. MCLAUGHLIN: Thank you, Your Honor.

20 BY MR. MCLAUGHLIN:

21 Q Ms. Ketchum, in your testimony just now, you were
22 talking about sounded like Mr. Walton pulled his weight at
23 least when he was in your mother's house could that be
24 correct?

25 A Yes.

1 Q Okay. He certainly wasn't a freeloader; would that
2 be accurate?

3 A Yes, that's accurate.

4 Q I believe you testified he gave your mom money when
5 he got it, help clean the house for her thing like that;
6 is that right?

7 A Yeah, I also believe that he showed concern about her
8 car and she had commented that he said that her car had
9 needed some work. I think he had helped her get spark
10 plugs and wires. I want to say he help get her tires.
11 I'm not sure about the tires though, but I know the spark
12 plugs and wires, so he seemed helpful.

13 Q You testified on direct a little bit about the house
14 being broken into?

15 A Yes.

16 Q And I believe that testimony was that the house was
17 broken into after this incident happened; is that right?

18 A Yes.

19 Q How much longer after the accident was it broken
20 into?

21 A I believe that it was the next day. It was either
22 that night or the next day.

23 Q Okay. Well, I understand that it was a long time
24 ago. Did you tell -- did you report the break in to the
25 police?

1 A Sherrie's house was also broken into and she's the
2 one that called the police and told them about the two
3 properties being broken. And she's the one that contact
4 me and told me what happened.

5 Q Did anyone from the police department ever contact
6 you about the break in?

7 A No, Sherrie pretty much took care of everything that
8 they needed with that and they never found the person.
9 They don't know who it was probably just some random
10 person from the neighborhood.

11 Q Okay. But so you basically didn't really have
12 anything do with that that was all Ms. Bennett; is that
13 correct?

14 A Yes.

15 Q What was it that was taken in that break in?

16 A They took things like -- they took B.B.
17 computer. They took mom's monitor cause her monitor was
18 left, any keyboards and, you know, hard wear soft wear
19 stuff. Money that was left. Momma had a big glass penny
20 bank they took all the change out of it. I really don't
21 know how they ran off with all that change. But they took
22 games systems, few DVD's. All the good electronic and
23 valuable things they pretty much took all of it.

24 Q You talked a little bit on direct about a diary that
25 your mother kept. Were you aware that she kept a diary or

1 did you figure that out after finding these disks?

2 A I knew that over the years mom had always had
3 diaries. As I was growing up, she had always kept one. I
4 didn't know specifically of the diary except for I thought
5 she may have had one in a notebook also, but that was in
6 her book bag which was in the car, so I guess it went with
7 him to Florida. The diskettes I found and I was
8 interested, but I didn't know that they existed previous
9 to finding them.

10 Q And where were they located the disks when you found
11 them?

12 A Mom had a long plastic case that held diskettes. I
13 mean, it held about 50 of them I think and they were in
14 there with them all.

15 Q Okay. That was in -- I think earlier we heard some
16 testimony about the house and there was a room that they
17 referred to as the computer room?

18 A Yeah.

19 Q Is that where that was?

20 A It was in there in the top drawer of her desk I
21 believe.

22 Q When did you find those, did you recall?

23 A When we went back to the house, I'm not sure exactly
24 how much time had passed before we went back to the house
25 and actually took everything out and cleaned it out. It

1 was probably two or three days later or something like
2 that. We went back and basically moved her out because
3 Housing Authority gave us a deadline to get all the stuff
4 out of there and get it cleaned up and turn the key in and
5 whatnot. We went back and boxed everything up. And we
6 kind of saved most of the going through things for later,
7 but I happen to glance at a few things. And I believe
8 that the first time that I noticed it and I put them in my
9 pocket and I was planning on looking at them when I got
10 home. The rest of the stuff we put in storage temporarily
11 until B.B. and I could go there together and go
12 through it. A few random things that I had picked up and
13 took home with me, but most of it went in storage.

14 Q How long after you got the disk did you try to take a
15 look at them?

16 A I actually tried it the first time at my Aunt
17 Patricia's house because most of the time around this time
18 I was spending a lot of time over there. We all kind of
19 stayed together as a family a lot. And I was over there
20 and I tried to put it in my cousin's computer to see if it
21 would read and it didn't. So I tried my other cousin's
22 computer to see if it would read and it didn't. And then
23 when I got home, I tried it in mine and tried to work on
24 it some tried to see if I could get it to work by putting
25 tape on it and stuff like that, but I never could.

1 Q Where did you hear about the tape?

2 A I had just thought about trying it because of the
3 fact that I thought maybe that would make a smooth surface
4 or something. I was just wanting to try anything.

5 Q I thought it was trick?

6 A I didn't know if it would work and apparently it
7 didn't, but I gave it a shot.

8 Q And then after you couldn't get anything off of these
9 disks, you told Investigator Yarborough about them; is
10 that right?

11 A Yeah, I had mentioned it to them that I found some
12 diskettes and he said, well, just hold on to them for now.
13 And I don't think I mentioned it any more for a while
14 until -- it was kind of recently that Jack and I were
15 talking about it. And I told him I still have these
16 diskettes that nobody every got from me and he acted like
17 that was the first he had heard about them. So I gave
18 them to him.

19 Q How long after you found them do you think you told
20 Investigator Yarborough about them?

21 A I think it was just the next time I talk to him. I
22 called him quite regular at the beginning of everything.
23 I probably called him every other day I think especially
24 when I didn't know where Kevin was. And I was very
25 nervous about his whereabouts and I would call him

1 constantly and ask him if they found him. Sometimes, I
2 call the sheriff's office and ask if he had been arrested
3 because I was nervous. And I knew that he knew where my
4 aunt lived and B.B. was there sometimes. And
5 sometimes she was with me in the beginning. So I was
6 really nervous about where he was. And so I know I had
7 called him pretty often. I don't know exactly how much
8 time went from between the time I found them when I told
9 him, but I kind of just mentioned it. And we were talking
10 about other things too. And he was like just hold on to
11 it for right now and, you know, we'll get them from you.
12 So I kept them in an envelope with all of my momma's stuff
13 about her funeral and her paperwork and stuff like that.
14 I saved everything just in case, you know, I could ever
15 use it.

16 Q And I understand if you don't remember the day, but
17 is it fair to say that it was the first two or three weeks
18 after this had happened?

19 A Yes.

20 Q And when did you tell Mr. Lawson about them?

21 A It was this month or either the end of last month. I
22 know that as soon as I told him about it -- actually, it
23 was a couple weeks ago because as soon as I told him about
24 it, he wanted to get them as soon as possible and they
25 sent Keith.

1 Q Lieutenant Lutcken?

2 A Yes. They sent him to my house to pick them up from
3 me. I told him, you know, I have them at my house. You
4 can have them just come pick them up and meet me there.
5 It was after hours so he came to my house and picked them
6 up from me.

7 Q And then you talk some too about once you got your
8 mother's tower. It was a tower unit right to the
9 computer?

10 A Right.

11 Q Once you got that back, but you went in -- did you
12 go in and look for any diary stuff on that?

13 A I did actually go in and look because of the
14 diskettes and I wanted to see if there was anything else
15 in there. And I didn't really find anything. Me, and
16 B.B. and Patricia were talking about it. I said it
17 either was on here or the police took it off for evidence.
18 I don't know, but I don't see any of that, but the
19 pictures are still on here. So if they were going to take
20 anything off, I would think they would have took that off
21 too. So I assume there was nothing.

22 Q Did you testify earlier that the picture that you say
23 wanted poster was the picture that had come off -- the
24 picture you told them was on the computer?

25 A Yes.

1 Q Okay.

2 A They had a picture from -- I guess, I'm not suppose
3 to say that. They had a picture from some other ---

4 Q A picture on a wanted poster was the one you were
5 referring to when you told them there was a picture is
6 that what you testified to?

7 A Yes, and they use that picture to make a composite
8 drawing because in the picture there was like some light
9 on the side. And he was kind of having a profile, so they
10 used the picture and another picture from previous to make
11 a composite.

12 Q I think I've seen the picture. I know what you're
13 talking about with the lights okay. Was your mother --
14 did your mother have a cell phone?

15 A No.

16 Q She had a home phone?

17 A Yes.

18 Q Do you know what that number was or do you remember?

19 A No. Actually, at the time, I had a cell phone. So I
20 just push down an M and push call, so I don't remember the
21 number. But I know she had her phone service with Verizon
22 that was local. I don't remember the number. I'm sure
23 B.B. does, but I don't.

24 Q Does a [REDACTED] does that sound familiar?

25 A That sounds exactly right.

1 Q Do you know who a Randy Odom is?

2 A No, that doesn't sound familiar to me.

3 Q Did your mom have a trailer that she rented from
4 anyone?

5 A Yes. Well, she didn't actually rent it. The thing
6 was she had bought the trailer and was renting the lot
7 that it was on. And I had lived there with her for a
8 little while.

9 MR. HILL: Your Honor, at this point, I need to ask
10 if we can approach.

11 THE COURT: All right.

12 (WHEREUPON, a bench conference was held in the
13 presence of the jury, but out of the hearing of the
14 jury.)

15 THE COURT: Sustain the objection.

16 BY MR. MCLAUGHLIN:

17 Q Give me one second to find my place. You testified
18 on direct that Wednesday that you were visiting with your
19 mother you noticed I think the -- where they had taken
20 blood from her?

21 A Yes.

22 Q So your mom -- you knew your mom had gone to the
23 doctor then. Did you ask her why she had went to doctor?

24 A No.

25 Q Okay. Were you aware of whether or not she was

1 filing ill or anything like that?

2 A I don't think so. I think it was just a checkup,
3 but, you know, I didn't go into it with her. We were
4 talking about other things at the time.

5 Q Okay.

6 MR. MCLAUGHLIN: Give me one second please.

7 (WHEREUPON, a pause in the proceedings.)

8 Q Ms. Ketchum, are you aware of whether or not your
9 mother and Mr. Walton and your sister ever went on any
10 trips anywhere together?

11 A I had heard that they had gone to the beach together
12 at some point because there was supposedly a picture of
13 him and her together at the beach. And that I believe
14 they went to Virginia for some reason, but I'm not really
15 sure.

16 Q Okay. All right. Do you know who went with them on
17 these trips at all?

18 A I don't know if it was just him or her or -- I mean,
19 that was probably one of those times when I was going to
20 work and going to school. And, you know, I probably
21 missed a chunk of time there a little bit. I don't know
22 who all went.

23 Q I can understand that.

24 MR. MCLAUGHLIN: No further questions. Thank you,
25 Ms. Ketchum.

1 THE COURT: Anything on redirect?

2 MR. LAWSON: May it please the Court.

3 REDIRECT EXAMINATION

4 BY MR. LAWSON:

5 Q Jennifer, I believe on cross-examination you
6 testified that Mr. Walton was controlling?

7 A Yes.

8 Q And that your mom did not care for that?

9 A She had complained about it that it was getting on
10 her nerves. And when I had made the comment what is he
11 your daddy and she's like apparently. It's getting on my
12 nerves. She's like he's been doing that. And then she
13 was like she just went back to the interview question.
14 She was asking me for her project.

15 Q All right. And approximately when was this
16 conversation?

17 A That was on Wednesday when we were sitting in her
18 room together. It was that evening. I don't remember the
19 time or anything.

20 Q And you talking about the same week that she was
21 killed?

22 A Right. Wednesday before she was killed, yes.

23 Q And so we talking about March the 26th?

24 A Yes.

25 Q It would have been. And had she complained to you

1 previously about this situation?

2 A The only thing I remember ever talking to her about
3 specifically about it was that I had called her at work
4 one day to ask her a question I don't remember what it
5 was. And I heard somebody talking in the background and I
6 said who was that. And she said that's Kevin. And I was
7 like he's at your job with you too. She was like, yes.
8 And I said he's always on your tail and she said all the
9 time. And that was we -- you know, we didn't really go in
10 depth and discuss it at length or anything.

11 Q But based on your conversations, he was around her
12 all the time?

13 A He went to her job with her. He went to school with
14 her. I've seen him go to school with her and heard about
15 him going to school with her every time just about. It
16 was my understanding that he was basically glued to her
17 hip every minute of every day. And, you know, that it was
18 rare that she not have him right there. I guess he just,
19 you know, left her side to go do whatever odd job he did
20 or maybe every now and then, but mostly through my
21 experience and knowledge he was always right there.

22 MR. LAWSON: No further questions, Your Honor.

23 MR. MCLAUGHLIN: No further questions, Your Honor.

24 THE COURT: Thank you, ma'am. You may step down.

25 (WHEREUPON, the witness leaves the witness stand.)

1 MR. LAWSON: We ask that she be excused from the
2 sequestration order, Your Honor.

3 THE COURT: Sure. All right. Ladies and gentlemen,
4 ask you if would step back to your jury room. I want to
5 send madam clerk in there to take lunch orders. And
6 please have no discussion about the case. And after we
7 complete that, I'll bring you back out and we'll resume
8 testimony.

9 (WHEREUPON, the jury returned to the jury room.)

10 THE COURT: With regards to your request to charge,
11 Mr. Hill, I'm going to have to deny that. Let me share
12 with you, I was looking at your request and so I started
13 looking up these cases and essentially what the case law
14 is in South Carolina, and I've made copies for both you
15 and Mr. McLaughlin, is evidence of flight is admissible
16 if the facts support that. I think in that case it did,
17 but a charge on flight is error. The law is clear and I'm
18 going to give you the cases that say it.

19 MR. HILL: And that's what's in the case?

20 THE COURT: That the admissibility of the evidence is
21 appropriate. That counsel is appropriate to argue it in
22 closing argument, that you can infer that if someone is
23 shown to be in flight you can infer guilty knowledge and
24 all that's great for argument, but the case law says that
25 a charge on flight is reversible error.

1 MR. HILL: Understandable, Your Honor.

2 THE COURT: So I'm going to deny the request to
3 charge flight, but I certainly don't prevent anyone from
4 arguing it in your closings. Okay. And it might be
5 helpful especially this most resent case that I've copied
6 which is State vs. Walker. It's a 2005 case and it might
7 give you some guidance to prepare your closings the kind
8 of leeway you have in closing, but as far as an actual charge
9 on that issue, that would be improper. We'll be at ease
10 while she's doing that.

11 (WHEREUPON, a break was taken.)

12 Ready to proceed, Mr. Lawson?

13 MR. LAWSON: Yes, sir.

14 THE COURT: Mr. McLaughlin.

15 MR. MCLAUGHLIN: Yes, sir.

16 (WHEREUPON, the jury returned to the courtroom.)

17 THE COURT: Mr. Lawson, recognize the State for your
18 next witness, sir.

19 MR. LAWSON: Thank you, Your Honor. May it please
20 the Court, the State would call B.B.

21 THE COURT: All right, Ms. B.B. , if you will
22 please come around, ma'am.

23 THE CLERK: If you'll go ahead and place your left
24 hand on the Bible and raise your right hand. Do you swear
25 or affirm the testimony you give in this case to be the

1 truth, the whole truth, and nothing but the truth so help
2 you God?

3 MS. B.B. : I do.

4 THE CLERK: Please be seated and state your full name
5 for the record.

6 MS. B.B. : B.B.

7 WHEREUPON,

8 B.B.

9 after first having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. LAWSON:

12 Q B.B. how old are you?

13 A Fifteen.

14 Q And what's your date of birthday?

15 A [REDACTED].

16 Q Okay. Can you keep your voice up for me?

17 A Yes, sir.

18 Q If you talk where I can hear you, chances are the
19 jury will be able to hear you as well, okay.

20 A Okay.

21 Q All right. And also remember that you need to answer
22 the questions with verbal responses. The court reporter
23 needs to take everything down, so if you shake your head
24 she can't take that down. So you need to say yes or no,
25 okay?

- 1 A Okay.
- 2 Q Now, where do you presently live?
- 3 A In Florence with my Aunt Patricia.
- 4 Q Do you know the address where you live?
- 5 A [REDACTED].
- 6 Q And how long have you live there?
- 7 A Four years.
- 8 Q And that is your Aunt Patricia?
- 9 A Yes, sir.
- 10 Q And what how -- is she your aunt?
- 11 A She's my mom's sister.
- 12 Q All right. And who else lives there besides your
- 13 Aunt Patricia?
- 14 A My Uncle Bruce and my cousin Trevor.
- 15 Q That would be their child?
- 16 A Yes, sir.
- 17 Q And where did you live before you lived with your
- 18 Aunt Patricia?
- 19 A With my mom in Pamplico.
- 20 Q All right. And how long did you live in Pamplico?
- 21 A I think it was about a year.
- 22 Q Do you remember when you move to Pamplico?
- 23 A It was the end of my fourth grade year.
- 24 Q You were?
- 25 A I was in fourth grade. It was the end of fourth

1 grade.

2 Q All right. In March of 2003, how old were you in
3 March of 2003?

4 A Eleven.

5 Q And your now how old?

6 A Fifteen.

7 Q And you know Theresa Bennett?

8 A Yes, sir.

9 Q And how do you know Theresa?

10 A Me and her use to be real good friends.

11 Q All right. Would you consider her one of your best
12 friends?

13 A Yes, sir.

14 Q And y'all lived basically next door neighbors back in
15 2003?

16 A Yes, sir.

17 Q I think there was really one house between you?

18 A Yes, sir.

19 Q Now, do you remember the night of March the-27th the
20 early morning hours of March the 28th of 2003?

21 A Yes, sir.

22 Q Would you explain to the jury what you recall about
23 that particular evening?

24 A Yes, sir, on March 27th ---

25 (WHEREUPON, a pause in the proceedings.)

1 A On March 27th, Sherrie and my mom and Kevin went out
2 and Theresa while they were out stayed at my house and
3 help me study for a test. And when they came home, it was
4 about one o'clock in the morning. And Theresa said she
5 was going to go to her house and she left. And he was
6 getting something to eat. And he took shower so I sat in
7 my mom's room and talk to her.

8 Q Who was get something to eat?

9 A Kevin.

10 Q All right. Do you know what he was getting to eat?

11 A A sandwich.

12 Q You heard him in the kitchen?

13 A Yes, sir.

14 Q All right. And this was how long after they got
15 home?

16 A About five minutes is when he came in and went in the
17 kitchen.

18 Q All right. And Theresa had been there the whole
19 evening with you; correct?

20 A Yes, sir.

21 Q And Theresa didn't leave immediately when they got
22 home, did she?

23 A It was almost immediately. She didn't stay long.

24 Q But she stayed just a few minutes?

25 A Yes, sir.

- 1 Q And did Theresa's mother come in?
- 2 A Yes, sir.
- 3 Q What?
- 4 A Yes, sir.
- 5 Q She did?
- 6 A Uh-huh.
- 7 Q How long did she come in for?
- 8 A She just came in and told us good night and went back
- 9 out.
- 10 Q And then she left and went home?
- 11 A Yes, sir.
- 12 Q The next person to leave was Theresa?
- 13 A Yes, sir.
- 14 Q Did you walk Theresa to the door?
- 15 A Yes, sir.
- 16 Q And would that be in or through the kitchen area?
- 17 A Yes, sir.
- 18 Q All right. Did you see Kevin Walton in the kitchen
- 19 as you were walking Theresa out?
- 20 A Yes, sir.
- 21 Q Yes. When you came back through, was he still in the
- 22 kitchen?
- 23 A Yes, sir.
- 24 Q Did you see what he was making?
- 25 A All I know it was a sandwich.

1 Q You don't remember what kind?

2 A No, sir.

3 Q Now, after Theresa had left, you went back to your
4 room. What did you do then?

5 A I went to my mom's room.

6 Q All right. And ---

7 A Sat down and talk to her for a few minutes while he
8 got in the shower and ate.

9 Q Okay. And how long were you in your mom's room?

10 A Maybe about five minutes.

11 Q And what do you remember what y'all were talking
12 about?

13 A No, sir.

14 Q You just remember that y'all had a conversation?

15 A Yes, sir.

16 Q What did you do at that point?

17 A When Kevin got out the shower and he was coming into
18 mom's, I went to my room.

19 Q All right. And where was your room in relation to
20 your mom's room?

21 A Cross the hallway.

22 Q And what did you do at that point?

23 A When he came in her room, I left and went to my room.
24 I came back to tell her goodnight and the door was closed.
25 So I told her goodnight through the door and went back to

1 my room. Then I went to sleep. And next thing I know I
2 was waking up because her alarm clock was going off. And
3 I looked out the window in my room and her car was gone.
4 So I went in her room to turn the alarm clock off and she
5 was laying in the bed. And I started shaking her and she
6 didn't move, so I picked up the phone and tried to call
7 Sherrie's house but the line was busy. So I ran to her
8 house and knocked on the door and Theresa answered and I
9 told her that Kevin killed my momma. And told her to wake
10 up Sherrie and we went to my house and Sherrie called the
11 police. She tried to do CPR. I sat outside with Theresa.

12 Q All right. When y'all went back to the house, you
13 didn't go back into your mother's room again, did you?

14 A No, sir.

15 Q All right. And so you don't -- I guess Sherrie
16 performed CPR?

17 A Yes, sir.

18 Q Or you heard that around?

19 A Yes, sir.

20 Q You didn't actually observe that?

21 A No, sir.

22 Q Okay. Now, let's go back a little bit. When you
23 went back to your room, you were I assume were you already
24 ready for bed? Did you have your pajamas on?

25 A Yes, sir.

1 Q Had you -- did you have -- were you dress for bed
2 when they got -- when your mom got home?

3 A Yes, sir.

4 Q So you were already dressed for bed?

5 A Yes, sir.

6 Q All right. And when you went into your mom's room,
7 did you stand up, sit down, lay on the floor how?

8 A I sat down on the end of her bed at first until Kevin
9 got out of the shower and then I stood up.

10 Q All right. And how long did you stand up for?

11 A Just like from the time he came out the bathroom and
12 came in her room and I got up walked out.

13 Q All right. You went straight into your room at that
14 time?

15 A Yes, sir.

16 Q All right. How long did you stay there before you
17 went back over to say good night?

18 A I just walked in and turned right back around. I
19 didn't even do anything.

20 Q Okay. Why did you even walk in there?

21 A Because I forgot to tell her goodnight that's why.

22 Q You forgot to tell your mom goodnight. And so you
23 turned around went back in to do that?

24 A Yes, sir.

25 Q And so you find the door closed at that point?

- 1 A Yes, sir.
- 2 Q And you say goodnight through the door?
- 3 A Yes, sir.
- 4 Q Did you try the door to see if it was unlocked?
- 5 A No, sir.
- 6 Q Did your mom respond back to you?
- 7 A Yes, sir, she said goodnight.
- 8 Q She said goodnight?
- 9 A Yes, sir.
- 10 Q All right. You went back to your room and then you
- 11 laid down to go to sleep; correct?
- 12 A Yes, sir.
- 13 Q Did you leave anything on in your room?
- 14 A The TV was on.
- 15 Q What's that?
- 16 A My TV was on.
- 17 Q You left your TV on?
- 18 A Yes, sir.
- 19 Q Did you normally sleep with your TV on?
- 20 A Sometimes I do.
- 21 Q Why was that?
- 22 A Just to fall asleep.
- 23 Q All right. And just like to have some noise going on
- 24 when you go to sleep?
- 25 A Yes, sir.

1 Q My wife does the same thing. And so you leave your
2 TV on and you go to sleep. You remember having any
3 problem falling to sleep that night?

4 A No, sir.

5 Q All right. And then the next thing that you recall
6 is hearing your mom's alarm clock?

7 A Yes, sir.

8 Q Was it unusual for you to hear your mom's alarm
9 clock?

10 A No, sir.

11 Q All right. You normally heard it every morning?

12 A Yes, sir.

13 Q Was it unusual for her alarm clock to continue to go
14 off?

15 A Yes, sir.

16 Q Well, why is that?

17 A Because she usually turns it off as soon as she --
18 when she slept in, she would have already turned it off.

19 Q How long did you stay in your bed before you got up
20 on this March the 28th?

21 A As soon as I heard it, I got up.

22 Q All right. How long was it before you went across to
23 her room?

24 A I went as soon as I got out the bed.

25 Q All right. When did you look out and see that the

1 car was gone?

2 A Yeah, I did that before. As soon as I woke up, I
3 looked out the window and her car was gone. And then I
4 got up and went to her room.

5 Q All right. So approximately what time are we talking
6 about?

7 A I say may be.

8 Q What time did your mom normally set her alarm clock?

9 A Six.

10 Q Six?

11 A Yes, sir.

12 Q So it would go off at six o'clock. And then when it
13 went off, you remember getting up and looking out the
14 window the car was gone. What did you think at that time?

15 A That she might have already went to work and left the
16 alarm clock so I could have gotten up.

17 Q Okay. Now, when you walked out of your room, did you
18 notice anything unusual as you walked out of your room?

19 A The light to the -- in the computer room was turned
20 on.

21 Q The light in the computer room was on?

22 A Yes, sir.

23 Q And that wasn't normally the case?

24 A No, sir.

25 Q Anything else?

1 A No, sir.

2 Q Were there any other lights on?

3 A The kitchen light was on, but I didn't know that
4 until I went to go down to Theresa and Sherrie's house.

5 Q Okay. So as you initially walked out of your room,
6 you looked down and you notice that the computer room
7 light is on?

8 A Yes, sir.

9 Q And that's unusual?

10 A Yes, sir.

11 Q The car is gone and that's unusual?

12 A Yes, sir.

13 Q Your mom's alarm clock was going off and you walk in
14 her room. And what happened now when you get into her
15 room?

16 A She was laying in bed, so I turn the alarm clock off
17 and started shaking her. And she didn't move and I pulled
18 the covers back. When I seen that she was dead, I ran to
19 Theresa's house.

20 Q Did you notice whether or not she was breathing?

21 A No, sir.

22 Q Did you check that or did you think about any of
23 those things?

24 A I didn't even think about that.

25 Q What you were trying to do is just wake your mommy

1 up; right?

2 A Yes, sir.

3 Q And that wouldn't happen?

4 A No, sir.

5 Q Now, at that point, did you decide to go to Theresa's
6 house?

7 A Yes, sir.

8 Q Or did you try to call her on the phone?

9 A Yeah, I called her first, but the line was busy.

10 Q All right. You called her?

11 A Yes, sir.

12 Q The line was busy?

13 A Yes, sir.

14 Q Immediately upon getting a busy signal, what did you
15 do?

16 A Ran to her house.

17 Q You just hung up the phone and took off ran?

18 A I think I had the phone in my hands. I just kept it.

19 Q Okay. It was a cordless phone?

20 A Yes, sir.

21 Q A rechargeable. It wasn't a cell phone?

22 A No, sir.

23 Q Okay. So you had the phone in your hand. And when
24 you got a busy signal, you just took off running?

25 A Yes, sir.

1 Q All right. What as best you can explain to the jury
2 what you felt like as you ran to Theresa's house?

3 A I felt like Kevin killed my mom.

4 Q Did you -- well, what did you do upon arriving at
5 Theresa's house? When you got there, what did you do?

6 A Knocked on her door and when Theresa answered, I told
7 her that Kevin killed momma.

8 Q All right. When did you just knock one time or were
9 you pounding on the door?

10 A I was pounding on the door.

11 Q All right. And Theresa -- do you remember if Theresa
12 or her mother came to the door?

13 A Theresa.

14 Q Theresa did?

15 A Yes, sir.

16 Q All right. When you told them, did both come out
17 with you?

18 A Yes, sir.

19 Q And did y'all walk or run back to your house?

20 A Ran.

21 Q All right. And when you got back to your house, did
22 you go back inside the house?

23 A No, sir.

24 Q Where did you stay?

25 A Theresa sat with me outside on my sidewalk because I

1 was crying.

2 Q And who stays with you?

3 A Theresa.

4 Q And Theresa's mom went inside?

5 A Yes, sir.

6 Q And did you keep -- did you still at that point have
7 your telephone with you?

8 A I gave it to Sherrie.

9 Q You gave it to Sherrie?

10 A Yes, sir.

11 Q All right. When you were sitting -- how long did you
12 sit out there before anybody came up to speak to you or to
13 Theresa?

14 A I don't remember how long it was, but I was crying.
15 Sherrie came back outside and while she was calling the
16 police, but I don't remember how long it was before they
17 got there.

18 Q All right. And you wasn't paying very close
19 attention to time at that point?

20 A No, sir.

21 Q Now, do you remember seeing any police officers?

22 A Not really.

23 Q Who's the first person you remember seeing after
24 getting back home and being there with Theresa and
25 Sherrie?

1 A I don't remember.

2 Q You don't remember?

3 A No, sir.

4 Q That's fine. Do you remember leaving that location?

5 A Yes, sir.

6 Q Do you remember what time that was?

7 A No, sir.

8 Q You remember who you left with?

9 A My aunt and uncle. I think he was with us too.

10 Q You left with?

11 A My aunt.

12 Q Patricia?

13 A Yes, sir.

14 Q And Uncle Bruce?

15 A Yes, sir.

16 Q And you went to their house?

17 A Yes, sir.

18 Q And you don't remember what time that was?

19 A No, sir.

20 Q Were you making any telephone calls during that

21 period of time?

22 A I called my sister. I called her when we were

23 sitting outside -- when I was sitting outside with

24 Theresa, that Sherrie called my aunt and Bruce and she

25 called Jennifer back I think.

1 Q Okay. You called your sister and did you call
2 somebody else?

3 A No, sir.

4 Q Just Jennifer?

5 A Yes, sir.

6 Q And did you talk at all about going home with or
7 going to Jennifer's house as oppose to Patricia's house?

8 A No, sir.

9 Q No. Everybody was pretty much going to stay at
10 Patricia's house?

11 A Yes, sir.

12 Q Did you go back in the house on this particular day
13 to get anything or clothes or anything?

14 A No, sir.

15 Q When was it that you came back for that?

16 A I don't remember when we came back.

17 Q Would it have been a of couple days, couple weeks?

18 A Just a couple days.

19 Q All right. And what was the first thing you came
20 back for?

21 A I guess to get all our stuff and clean up a little
22 bit.

23 Q All right. Clean up a little bit and your clothes --
24 to get you some clothes I guess?

25 A Yes, sir.

1 Q All right. Did you look around to see if anything
2 was missing or was out of place?

3 A No, sir.

4 Q All right. At what point, did you look or did you
5 come in and look around to see if thing were out of place
6 or things were missing?

7 A I didn't. I don't remember looking to see if
8 anything was missing.

9 Q All right. Do you remember a drawer in your mom's
10 room being open and being emptied?

11 A I didn't go in her room.

12 Q Okay. You didn't go in her room at all?

13 A No, sir.

14 Q Now, I'm not talking about that day. I'm talking at
15 any point?

16 A I didn't go in there.

17 Q Okay. State's Exhibit 39 is that your mom's car, a
18 picture of your mom's car?

19 A Yes, sir.

20 Q And you could see it from your bedroom through the
21 window?

22 A Yes, sir.

23 Q When it was parked out front?

24 A Yes, sir.

25 Q Okay. State's Exhibit 9 that's the front door ---

1 A Yes, sir.

2 Q --- of your duplex?

3 A Yes, sir.

4 Q Okay. Is that your bedroom window there or?

5 A No, that was my mom's bedroom window.

6 Q Okay.

7 MR. LAWSON: I need just one moment, Your Honor.

8 (WHEREUPON, a pause in the proceedings.)

9 MR. LAWSON: May it please the Court, that would be
10 all the questions I have for B.B. Answer any
11 questions Mr. McLaughlin may have for you.

12 MR. MCLAUGHLIN: Your Honor, we have no questions of
13 this witness.

14 THE COURT: All right. Ma'am, you may step down.

15 (WHEREUPON, the witness leaves the witness stand.)

16 MR. LAWSON: Your Honor, we ask that the
17 sequestration order be lifted as to this witness.

18 THE COURT: Sure.

19 MR. LAWSON: May it please the Court, could we have
20 about a five minute recess just to make sure.

21 THE COURT: All right. Ladies and gentlemen, if
22 you'd return to your jury room. Please have no
23 discussions about the case. We'll bring you back out
24 shortly.

25 (WHEREUPON, the jury retired to the jury room.)

1 THE COURT: All right. Mr. Lawson, before we bring
2 the jury back out, does the State have any further
3 witnesses, any further evidence to present?

4 MR. LAWSON: No, Your Honor, the State would rest.

5 THE COURT: All right. While we have the members of
6 the panel out, I'm going to hear -- I'm going to go ahead
7 and take up and hear any motions at the close of the
8 State's case. Mr. McLaughlin.

9 MR. MCLAUGHLIN: Your Honor, at this point, the
10 defense move for a motion for a directed verdict against
11 the murder charge.

12 THE COURT: All right, sir.

13 MR. MCLAUGHLIN: Your Honor, I believe the testimony
14 today that the Court has been presented to the jury and
15 the evidence been presented to the jury proven the willful
16 and malice aforethought. The testimony Miss B.B. just
17 now certainly testified that appear to be no problem
18 between her mother and the defendant and right before she
19 went to bed there appear to be no problem before them.
20 Before -- only time she knew a problem when she woke up
21 that morning.

22 THE COURT: All right.

23 MR. MCLAUGHLIN: And then as to the grand larceny, we
24 move for the same motion, Your Honor, for the grand
25 larceny there being the amounts particularly would number

1 one both -- all items that have allege to have been taken
2 were under the dominion and control of the victim in this
3 case. There's no proof that she did not allow permission
4 for these things to leave. The value, Your Honor, I
5 understand at least there been testimony from Ms. Bennett
6 about the value of money in each of these cash boxes. You
7 know, the value of money that's in there she needed to
8 have possession of the cash box. It was possession of the
9 victim at the time, so there's no hard evidence how much
10 value was in there.

11 As to the automobile, I understand Ms. Ketchum's
12 testimony would go towards that and the Kelly Blue Book
13 value. I believe the standard is a fair market value I
14 believe of something in that case. I would argue that
15 there was no testimony given that mileage was factored in
16 or coming up with that amount on 1,500. It taken into
17 account the good and the fair. There was no testimony
18 about mileage put into that. There certainly would drop
19 the price very well drop it below the thousand, so I don't
20 believe there's enough evidence there of the values to get
21 the grand larceny.

22 THE COURT: All right. I'm going to respectfully
23 deny your motion. Mr. McLaughlin, at this point in the
24 trial of the case, obviously the jury is trier of facts
25 and the Court is not to weigh evidence. It's simply to

1 determine the existence of evidence. And if there is
2 evidence in existence whereby a jury could find,
3 everything that you have argued may very well be what you
4 argue to convince the jury that the evidence does fall
5 short, but there is at least evidence in the case whereby
6 a jury could find and not weigh in the evidence. I think
7 it is appropriate at this point to respectfully deny your
8 motion for a directed verdict as to both two counts.

9 MR. MCLAUGHLIN: The only other motion I would have,
10 Your Honor, would be just a renewal of both motions
11 including the pretrial motions specifically the speedy
12 trial motion.

13 THE COURT: Sure. And that is certainly noted for
14 the record and those are all preserved.

15 MR. MCLAUGHLIN: Thank you.

16 THE COURT: Now, have -- Mr. McLaughlin, while we're
17 on the record have you and Mr. Walton discussed your
18 position with regards to defenses and whether or not
19 you're going to put up any evidence or any testimony?

20 MR. MCLAUGHLIN: We have, Your Honor.

21 THE COURT: And what is that?

22 MR. MCLAUGHLIN: Our position is that the defense
23 will rest, Your Honor.

24 THE COURT: All right. Mr. Walton, sir, if you would
25 stand please. I just want to make sure -- obviously, when

1 cases are in trial things such as trial strategy and
2 things of that nature are decisions for the attorney to
3 make, but whether or not you testify or whether or not you
4 put up a case is a matter for you. Have you discussed
5 with Mr. McLaughlin whether or not you would take the
6 stand to testify, sir?

7 THE DEFENDANT: Yes, sir, and my answer was no.

8 THE COURT: All right. Okay. And you understand
9 that that you have that right and you understand that,
10 sir?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. And so also you understand
13 that -- and I've given Mr. McLaughlin a charge that I
14 would give to the jury explaining to them that is your
15 constitutional right and they could not hold that against
16 you. You understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right, sir. Thank you. What I
19 propose then gentlemen is I will bring the members of the
20 jury back out, would recognize the State for your next
21 witness. Mr. Lawson, you can then make your announcement
22 with regards to the State's position. We'll note that for
23 the record now that we have heard the defense's motions at
24 the conclusion of the State's case outside the juries
25 presence. And so then I'll recognize Mr. McLaughlin for

1 defense and he can make his announcement with regards to
2 that.

3 At that point, what we'll do is I'll excuse the
4 members of the panel. Now, what I'm going to do gentlemen
5 my understanding is that their lunch is going to be here
6 somewhere close to one o'clock. So it may be that all of
7 this was done and we're not going to save any time by the
8 time the dust settles on that. I was hoping they could
9 have it here earlier, but it's a busy restaurant and we're
10 calling them at lunchtime, so it's no one's fault. It's
11 just the way it worked out. But anyway, if there's no
12 objection, I'm going to allow if any of the jurors would
13 like to step outside I'm going to allow them to do that as
14 long as their accompanied by our bailiffs. If any jurors
15 wish to step outside, they'll be under the bailiff's care
16 and no one will be allowed to address them or speak to
17 them. And they must all remain together and allow them to
18 stretch their legs and then bring them back up when their
19 lunch gets here. During that time, we'll discuss the
20 charge and get that -- those issues in final form. And
21 then we'll do arguments and charge at the close of them
22 having their lunch.

23 If you ask the members of the jury to join us then.

24 (WHEREUPON, the jury returned to the courtroom.)

25 THE COURT: Thank you, ladies and gentlemen,

1 appreciate your courtesy and cooperation with us. I know
2 you beginning to feel like a yo-yo, but it's necessary at
3 times.

4 Mr. Lawson, I recognize you for your next witness,
5 sir.

6 MR. LAWSON: May it please the Court, the State rest,
7 Your Honor.

8 THE COURT: All right. Thank you, sir. All right.
9 Ladies and gentlemen, the State is rested their case.
10 While you were out, I was able to go ahead and hear the
11 appropriate motions at the close of the State's case. And
12 at this time would recognize, Mr. McLaughlin, for defense.

13 MR. MCLAUGHLIN: The defense rest, Your Honor.

14 THE COURT: All right. Thank you, sir. Now, ladies
15 and gentlemen, you have heard all the evidence that you're
16 going to hear in this case. So where that leaves us now
17 is for you to hear from the attorneys with regards to
18 their closing arguments and then for me to give you the
19 law. And then at that point, you'll be in a position once
20 all that's done to deliberate finally get to talk about
21 the case amongst yourselves in the jury room.

22 Now, we've ordered your lunches you're aware and it's
23 going to be here we hope very shortly. There are matters
24 that I need to take up with the attorneys regarding the
25 law and so here's what I'm going to tell you. I don't

1 know if any of you smoke or not. I don't know if any of
2 you would like to be able to go out and step outside the
3 building and stretch your legs and breath a little fresh
4 air because I realize it's cramped back there. What I'm
5 going to do is if there's any member of the jury panel
6 that would -- we're going to break for lunch even though
7 your lunch isn't here yet we're going to break for lunch.
8 Give me an opportunity to talk with the lawyers about the
9 law.

10 If any of members jury of the panel want to go
11 downstairs and step outside and stretch your legs. And if
12 you smoke, they'll have opportunity for you to do that.
13 If not, good for you little editorial thing on my part.
14 But my point is this if you wish to do that, that's fine.
15 And the only restrictions that you'll have is this, that
16 you must all go down together those who go. You must
17 remain -- the bailiff will go with you. You can't have
18 any communication or contact with anyone outside the
19 building or anyone. You're allowed to go down and talk
20 amongst yourselves.

21 Now, let me remind you it's still inappropriate for
22 you to have any discussion about the case. You've heard
23 all the evidence and all the evidence is in, but you
24 haven't heard from the attorneys. And you don't have the
25 law, so it's still inappropriate to have any discussions

1 about the case. So no talking about the case talk about
2 anything else you like. But if you want to go downstairs,
3 one of the bailiffs will go with you. As I said, no
4 communication with anybody. And y'all need to stay
5 together. And we have an area for you. If there are
6 those that would like to smoke, we'll have a place where
7 you can do that. And those that don't wish to be around
8 that can be away from it, but still, you know, in the
9 same area. If you do not wish to go downstairs and go
10 outside, that's fine. You welcome to stay back there and
11 relax. There are restrictions with regards to whether or
12 not -- in other words, we're not going to be allowed to do
13 any phone calls or anything of that nature. This is
14 simply a break, but instead of you sitting back there in
15 that room, I would give you the opportunity if you want to
16 go outside and stretch your legs and do that. So what I'm
17 going to do right now is I'm going to excuse you to go
18 back to your jury room for just a moment and then those of
19 you that would like to go outside, I'll send the bailiff
20 in to get you and let you do that. Okay. So please
21 retire back to your jury room.

22 (WHEREUPON, the jury returned to the jury room.)

23 THE COURT: Let me do this, gentlemen, with regards
24 to everyone here on the case, I'm going to go ahead and
25 those that want to go I'm going to let them, so that we

1 can get them cleared out. And then I've given you the
2 charge and then we can talk about that. So go ahead and
3 take those that would like to go down to go.

4 (WHEREUPON, some of the jurors went outside.)

5 (WHEREUPON, a lunch break was taken.)

6 THE COURT: Have y'all had an opportunity, Mr. Hill,
7 Mr. McLaughlin, to look at the charge?

8 MR. HILL: We have, Your Honor.

9 THE COURT: All right. With regards to the jury
10 charge that I presented to both the State and the defense
11 with regards to the State, are there any additions,
12 subtractions, objections, exceptions by the State to the
13 charge that I prepared?

14 MR. HILL: None, Your Honor.

15 THE COURT: Anything from the defense?

16 MR. MCLAUGHLIN: No, Your Honor. I would however
17 like to put something on the record as far as the lessor-
18 included charges just that I've reviewed the possibility
19 of making an argument or lessor-included charges on the
20 defendant's behalf with the defendant. And he's
21 instructed me not to seek any lessor-included charges.

22 THE COURT: Is that correct, Mr. Walton?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Essentially, the State has allege two
25 offenses against you and your position is that they either

1 proved those or they haven't?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: All right, sir. And so you're not
4 requiring any lessor charges to be charged?

5 THE DEFENDANT: That's correct.

6 THE COURT: All right. Thank you, sir. If you
7 would, Grayson, show those to Patrick and to Jack and
8 Stephen and let them just review those and then collect
9 them back because I'm going to need those up here. And,
10 of course, as a matter of fact, it's not just for your
11 information it's not in the charge I don't think written,
12 but as a matter of course, I always instruct the jury that
13 they are to give no credence to the order in which the
14 verdict form is drafted. At any time you draft a form
15 that involve more than one option, you have to place them
16 in some order. As a matter of fact, I may actually
17 include that. I charge it even though you don't see it in
18 the written charge. Now, with regard to the verdict form,
19 is there any objection or exception from the State?

20 MR. HILL: No, Your Honor.

21 THE COURT: From the defense?

22 MR. MCLAUGHLIN: There's none, Your Honor.

23 THE COURT: All right. Are we prepared to bring the
24 jury in for closing arguments the State prepared?

25 MR. LAWSON: The State is prepared, Your Honor.

1 THE COURT: Defense?

2 MR. MCLAUGHLIN: Yes, Your Honor.

3 THE COURT: All right, gentlemen -- go ahead.

4 MR. LAWSON: Order of arguments as I understand, the
5 State would waive opening on the law and choose to close,
6 Your Honor.

7 MR. MCLAUGHLIN: We would ask that the State be
8 required to open on the law, Your Honor?

9 THE COURT: They're asking that the State be required
10 to open on the law.

11 MR. LAWSON: Whatever, Your Honor.

12 THE COURT: I realize you can make it as brief as you
13 like, but I'll -- okay, we'll do that. Mr. Lawson, if you
14 would I'll recognize you and I'll explain to the jury that
15 you're going to open on the law. And then they'll hear
16 from Mr. McLaughlin. Then you'll have an opportunity to
17 readdress them.

18 MR. LAWSON: Thank you, Your Honor.

19 THE COURT: Now, gentlemen, I don't -- I've never
20 been one to set time limits on lawyers. I'm not going
21 start now. I just encourage you to present your arguments
22 as fully as you feel is necessary. Keep in mind that what
23 is that old saying that a person cannot hear any more than
24 their rear end will allow them. I don't know. Keep in
25 mind, that their attention span is only so long, but

1 having said that, I'm also not going to limit you, so take
2 whatever time you need. Ms. Joe, if you would ask the
3 members of the jury to join us.

4 (WHEREUPON, the jury returned to the courtroom.)

5 THE COURT: All right. Mr. Foreman, ladies and
6 gentlemen, I hope everyone enjoyed your lunch and your
7 time out. We have reached the portion of the trial as I
8 indicated to you prior to the lunch break where you've
9 heard all the evidence in the case. All of the evidence
10 that you are to use to decide what the facts are enable
11 you to reach your verdict is in.

12 We now are at the point where the attorneys will have
13 an opportunity to present to you what is called closing
14 argument. Let me remind you as I did at the beginning of
15 the trial just as I told you with opening statements, the
16 closing arguments of the lawyers are not evidence. It is
17 just their contention as to what the evidence showed. The
18 evidence is testimony from the witness stand and exhibits
19 that have come in during the course of the trial. The
20 attorneys are not under oath. Their argument to you is
21 not evidence. However, it is important that you give both
22 the attorneys your undivided attention because this is
23 their opportunity to try to assist you in determining what
24 the facts of the case are. Now, the procedure will follow
25 is the State will first address you with regards to the

1 law in this case. Then Mr. McLaughlin will have the
2 opportunity to address you on behalf of Mr. Walton. At
3 the close of that, the State will have an opportunity then
4 to address you with their final argument. So having said
5 that, I would recognize Mr. Lawson on behalf of the State.

6 MR. LAWSON: May it please the Court.

7 THE COURT: Yes, sir.

8 MR. LAWSON: Mr. McLaughlin. Mr. Foreman, ladies and
9 gentlemen of the jury, I want to take this opportunity
10 first of all to thank you for your attention, your time
11 and your efforts in this case. You have done as we
12 requested. You have paid attention. You've listen to the
13 evidence that has been presented and I think you're now in
14 a position after you have the charge of the law by the
15 judge to go into the jury room, deliberate and render a
16 verdict in this case.

17 Now, in this situation the only thing I'm here right
18 now to do is talk to you about the law. I will get to
19 close on the facts of the case, but that will only be
20 after the defense has closed in full. So all I'm up here
21 to talk about right now is the law and I will try to keep
22 that as brief as I can because I really don't know a whole
23 lot about the law. I try to keep it as beneficial as it
24 needs to be, and but on the other hand, it's awfully tough
25 to keep up with sometimes.

1 In this case, there has been presented to you to
2 determine an indictment which charges the defendant with
3 separate and distinct offenses. One being murder, the
4 other being grand larceny. Murder involves killing of
5 another human being with malice aforethought. The grand
6 larceny is a theft or a stealing, taking away from a
7 person goods belonging to that person. And in South
8 Carolina, what we have is the distinction in relation to
9 the amount or the cost of the items which relates to what
10 level of grand larceny a case may fall under. This
11 particular case it is alleged that the value of the goods
12 is between one -- it's over \$1,000 but less than \$5,000.
13 So what the State is basically alleging to you is that was
14 stolen two cash boxes as you heard testimony one of which
15 contains approximately \$1,900. And an automobile the value
16 of which again was approximately 18, \$1,900 of which still
17 added together totals less than \$5,000. So in the grand
18 larceny charge, we're talking about combining the items
19 which are allegedly or were allegedly stolen being the
20 fire boxes and the automobile.

21 Now, in the other charge, we deal with much more
22 serious circumstances and that is murder. The taking of
23 someone's life. And that act occurred as you have heard
24 on March the 28th of 2003, right here in Florence County
25 over in Pamplico approximately between four and five

1 o'clock in the morning where Shannon Carter, Shannon
2 Burelson Carter was strangled to death. And the State
3 alleges was done so by the defendant in this case Kevin
4 Walton.

5 Now, in this as in any criminal case, it is the
6 State's responsibility to prove to you beyond a reasonable
7 doubt every reasonable doubt that the defendant is guilty
8 as charged. And we believe as I will argue later that
9 that has been done in this case. It is our burden to
10 prove the defense has no burden in criminal court becomes
11 cloaked with a cloak of innocence and you, the jury, are
12 the only ones that can remove that cloak of innocence for
13 you under our law are the judges of the facts.

14 Your Honor, is the judge of the law. He will tell
15 you what the law is and what the law is that applies to
16 this case and he will charge you that. You on the other
17 hand, are the judge and sole judges of the facts. You
18 determine who you believe, what you believe, how much you
19 believe. You can believe one witness against many. You
20 can believe part of what somebody says and disbelieve the
21 rest. It's all up to you as jurors in good faith and as
22 you were asked in opening statements with your good common
23 sense, your every day common sense. Please don't ever
24 leave that out of your determination of facts and events
25 as they take place in a case especially a case in this

1 court. So you will be asked legally and under the law to
2 determine whether or not the State has proven it's burden
3 beyond a reasonable doubt as to whether or not Kevin
4 Walton did in fact commit the act of grand larceny just
5 stealing, taking and carrying away the property of another
6 valued over a \$1,000 but less than \$5,000. And whether or
7 not Kevin Walton did take the life of Shannon Carter on
8 March the 28th of 2003. We believe that we have carried
9 the burden of proof and that the verdict at your hands
10 will be appropriate and will be true and that's all I ask.
11 And now, I will retire to sit down and to join you one
12 more time. I don't want to bore you, but I do get back up
13 and talk on the facts of the case. So I will see you
14 again and thank you.

15 THE COURT: Mr. McLaughlin.

16 MR. MCLAUGHLIN: Thank you. May it please the Court.

17 THE COURT: Yes, sir.

18 MR. MCLAUGHLIN: Mr. Lawson, Mr. Hill. Mr. Lawson,
19 just got finished thanking you all for your service and
20 I'm going to congratulate you you made it through a pretty
21 tough week of jury service so far especially today. I
22 know it's tough on everyone here in the courtroom. The
23 good part is that we're about to get to the important part
24 of the phase, okay. That's where guys get to go back and
25 deliberate and decide a man's fate. It's pretty

1 important, pretty overwhelming. I'm nervous knowing you
2 got to go do it. I can only imagine that you guys are
3 nervous about having to go back and sit in the room and do
4 it. So I wish you the best of luck and I'm sure whatever
5 you decide it will be the right verdict.

6 At the beginning of the trial, I made a few remarks
7 and Mr. Lawson who just charged you on the law he
8 discussed it as well and that is about the presumption of
9 innocence and the burden of proof. He's already discussed
10 the cloak of innocence and Mr. Walton walked into this
11 courtroom with. I would argue to you that he's still
12 strouDED in that cloak right now as he sits here in front
13 of you. After you heard all of that evidence, he should
14 still be strouDED in that cloak. Now, you have a chance
15 to form opinions of your own on the evidence you've heard,
16 but this has been a pretty long week of trial. And it's
17 hard to keep up with everything that's thrown at you. I'm
18 scribbling notes as fast as I can and I know I miss
19 stuff. I even have to ask Mr. Walton to help me keep up
20 with everything. So I ask that if you're looking over
21 there now and you don't see that cloak of innocence, that
22 you reaccess that. You go back to the fact that he is
23 innocent because when you walk in that room the beauty of
24 a jury verdict is it's not just your individual verdict.
25 It is 12 of y'all sitting together. And there may be

1 things that someone heard or somebody else didn't catch up
2 on. You've all been allowed to take notes which I think
3 is good especially in a case like this. But there may be
4 things or opinions or certain things people picked up on
5 witnesses that you didn't notice until I ask that you make
6 sure when you get up and walk back in that room, you're
7 walking back there with a blank slate. And you're walking
8 back there with that cloak of innocence still covering
9 Mr. Walton.

10 Now, older lawyers and more experienced lawyers and I
11 have tried to explain the burden of proof as almost as if
12 the State has a burden of showing you a window into the
13 events that happen into the case. And that that window to
14 meet burden the State should make that window crystal
15 clear and you should be able to look through that window
16 and see all the facts and all the circumstances. And then
17 the State has met their burden and then whatever verdict
18 you come will be a true and accurate verdict.

19 Now, I elaborate a little bit on that and say that
20 they have to make sure that you can see through the whole
21 window. They can't just pick what they want you to see
22 and tell you to look straight through part of the pane and
23 not a certain thing. They have to give you the whole
24 picture and allow you to look through it. And only then
25 will you know all the facts and circumstances surrounding

1 the case and be able to make a true and accurate verdict.
2 And if you find that the State has failed to do that, then
3 there's only going to be one verdict that you can give.

4 Now, the fun part of this for me is that I get to
5 give you a perspective on this, okay. There's a lot of
6 stuff that we spent most of the week the State putting in
7 all this stuff that's overwhelming. There's a whole bunch
8 of it, okay, but I'm going to propose to you what does it
9 prove. All this fingerprint and all this DNA evidence
10 what was entered does it prove that Mr. Walton is guilty
11 of the crimes he's charged with. DNA on a bedspread
12 coming from a bed that someone slept in for two months.
13 Is that proof that they killed someone? That's your
14 decision. Fingerprints on a card on the outside of a car.
15 Does that prove that someone stole the car? But we know
16 what Florida has said in the report that you have into
17 evidence. Florida said that's not enough to prove someone
18 stole the car. Now, there was -- I believe Detective
19 Giumenta, I believe, took exception with that report, but
20 the report says what it says. I would think that seem
21 like if a police officer could clear a case and have it
22 rest not having enough evidence, but on some other reason,
23 it would find it's way into a report.

24 The fingerprints I've already talked about what
25 exactly does it prove. What about some of the other

1 fingerprints that are in there? Who was -- you remember
2 the officer from Virginia who got up and talked about
3 that, that fingerprint was on the car. Does that mean
4 that Mr. Lampkey should be in here answering for these
5 crimes? Something, else we need to consider. Eleven
6 fingerprints total I believe is what the fingerprint
7 expert from Virginia got up here and talked about, sat
8 right here and said that there were 11 -- I believe the
9 term was identifiable or good enough quality that they
10 should be able to get an identity off of it. And seven of
11 those came back to Mr. Walton, seven, that's four of them
12 still out there. Do any of them prove that he committed
13 murder or that he committed grand larceny.

14 The real reason Mr. Walton is in here is this is
15 tough for everyone. And we just went through some pretty
16 emotional testimony is what B.B. said that morning.
17 Kevin killed momma, reasonable for her to believe that.
18 What else could she believe given the circumstances? She
19 went to bed Kevin was with momma. She woke up Kevin's
20 gone. The car is gone, that is why Mr. Walton is in here.
21 Every morning she had woke up for the past two months
22 Kevin had been there. The car had been there. They were
23 both now gone. What else was different the fact that her
24 mother was dead. Who would expect a child to believe
25 anything else? You can't, that's the logical conclusion

1 from those facts you would think, but is it proof that it
2 actually happened?

3 Now, the time lines I believe we had some testimony
4 maybe from Sherrie Bennett that was like 1:30. Some
5 testimony from her daughter that it was one. I think
6 B.B. testimony was kind of in line with Theresa's.
7 You know differences in those times does it mean that
8 much, no. These folks it's obvious that all three of them
9 love Ms. Carter and so what happened to them easily can
10 make them forget little small details like that. And
11 that's not what we're here to do. We're not here to hen
12 peck little small things that don't mean anything. But so
13 let's go with a time frame from about that one o'clock or
14 so until 6:05, 6:15 when the alarm went off, that's five
15 hours. Five hours is a lot of time. Watch a football
16 game in five hours, baseball game, that's a big window of
17 time for someone to come, someone to leave for anything to
18 happen.

19 Now, bless her heart B.B. doesn't know that.
20 She's asleep. You heard the testimony she told her mother
21 goodnight, told her mother she loved her. She went to
22 bed. So as there's no other conclusion for her come to
23 from all this stuff other than what she believed. When
24 the officers arrived on the scene, what do you think they
25 were told. The same thing B.B. testified to. You

1 know Kevin killed my mom. They had a suspect and they
2 should have a suspect. He should have been the number one
3 suspect on their list, shot right to the top of it, okay.
4 There's no denying that. But as you look -- if you
5 remember the testimony throughout this case was he as much
6 of a suspect as he was a target. They decided that this
7 was the guy who did it and we're going to look into him.
8 You heard testimony from Lieutenant Lutcken and we know
9 that he supervises Florence County all the forensics
10 work. He testified I asked him if he felt like every
11 avenue had been pursued in this case as far as suspects
12 forensically and he answered yes.

13 Officer Brown who's now with the DEA with the long
14 goatee. He testified that everything had been removed
15 from the bed for examination. Now, I was sitting at home
16 this week and, you know, you read this stuff and you go
17 over and over specially when you're defending a case like
18 this, you live with it for quite a while. So I wanted to
19 take a break, so I sat down to do some reading and Kurt
20 Vonnegut happen to be one of my favorite writers. And if
21 any of you know, he passed away recently, so I been
22 rereading some of his books. And there was a phrase that
23 struck me that I saw I believe maybe Wednesday night or
24 probably Tuesday night. And we gone through some of the
25 testimony in the case and the phrase struck me as

1 something I was concerned about. And it's Latin which I
2 don't speak Latin, but I'm going to try to do the phrase
3 and it's de mortuis nil nisi bonum. And Mr. Vonnegut
4 anyway says it means say nothing but good of the dead, so
5 I started thinking about that.

6 I said, well, some of the things that have come up in
7 this case aren't very pretty or they could be looked at in
8 a not flattering light. And I hope you understand that
9 it's not our -- certainly not my goal and it certainly
10 wasn't the goal or Mr. Walton's to try to look at anybody
11 in an unflattering light. But there certain things that
12 we have -- we have to acknowledge and I think we all know
13 what I'm talking about when I talk about some of the items
14 that were on the scene. And it's not the items, the
15 relationship with the victim, but it's simply the location
16 and the nature of the items. And let me explain the
17 location is these are all items that were right there at
18 the body. I mean right there on the bed, on the table
19 right beside it. State's Exhibit 21 you can see on the
20 bed right in the corner. These items are in close
21 proximity to a dead person's body someone that the police
22 believe foul play, what cause the person to be deceased.
23 What happened with those items? We know from Officer
24 Brown's testimony -- in fact, I believe the exact quote
25 was they knew they find body fluids on some of these

1 things, that's why they didn't do the test. They knew
2 they find body fluids. There was a listing. Defendant's
3 Exhibit Number 2 and this came from Officer Brown and you
4 remember he took a look at it. It was a forensic service
5 request. There's all these items listed on it. And there
6 was a column over here on the right exam requested none,
7 none, none, none. Look at all the things that weren't
8 latents of. I'll go ahead and tell you we know what the
9 answer to is what they wanted latents of because
10 Lieutenant Lutcken gave it to us. You recall in his
11 testimony they wanted things they knew he had touched.

12 If that's the avenue you're pursuing, who's the
13 suspect going to be. The peanut butter jelly jar, I
14 believe there's testimony didn't go far to have to find
15 it. They were still out there. So when you see all this
16 evidence, of course, it's all going to be pointing towards
17 him. Think about the emotions that -- when we hear

18 B.B. testify, you not human if you don't sit there and
19 get upset. You have to feel sympathy with B.B.

20 Sherrie, Theresa. You have to feel even a little bit of
21 vengeance, but we're not allowed to feel that, that's not
22 what we're here for. We're here for justice. I believe
23 it was Officer Brown who testified about the comforter
24 that they had and they sent off to SLED and believe there
25 was testified about the wet spot he saw on it. And that

1 he believe the wet spots were from that bottle of lube.
2 You have this wet substance on a comforter. You have the
3 bottle it came from why no testing.

4 We have what we know is a bad neighborhood and we
5 know that from the fact that we had break ins right after
6 this. There's no evidence about canvassing the
7 neighborhood at all looking for any other suspects, that's
8 because they had a suspect and that was the only one that
9 any of the other evidence or any of the evidence about the
10 investigation seems to show that they went after.

11 Now, Officer Poston who is the first person on the
12 scene who is on the Pamplico police department you
13 remember from his testimony how he went back realize that
14 he had saw the defendant's car. Well, he didn't think to
15 tell anybody until two days later. Is that unreasonable,
16 no. He sat there and explain it was my first murder
17 investigation. I can only imagine how much stuff he was
18 worried about at the time that something like that doesn't
19 click. I believe his testimony was that he told somebody
20 soon after, but there's not a report on it until well
21 after that. Is that a possible lead? I don't know. We
22 know it was well lit. We know his -- I believe it was his
23 detective or his lieutenant was walking the dog right
24 there, but that's all we know. We know there was a
25 business card that was found in this Lexus in Virginia.

1 Anybody there that could identify Mr. Walton? We have no
2 evidence of that. In fact, the only testimony I think we
3 heard from Virginia about a suspect was a long red hair
4 dreadlock guy. And the fingerprint from Mr. Lampkey
5 whoever he is. Do we know anything else? No.

6 Miss Ketchum testified today and she talked about
7 these computer disks. What's the title on those disks,
8 diary notes. Forensics went through the house. They got
9 all the forensic evidence. They got what Lieutenant
10 Lutcken testified was enough of them to pursue all
11 possible avenues. Someone keeps a diary could there be
12 information in there about someone they're having a
13 problem with. We don't know. We know that these disks
14 Investigator Yarborough was told about them. What two to
15 three weeks I believe is the timeframe Miss Ketchum put on
16 it, which, you know, we want hold her to that. We
17 understand what's she's going through. It's reasonable to
18 say that it was sometime right around the time of the
19 incident. Well, the disk can't get anything from them.
20 They been destroyed, but what about the computer.
21 Miss Ketchum testified that she tried to go in and look
22 for stuff. And I believe her testimony was she found some
23 stuff like diary entries, but it was all like 2000 or
24 something like that. Could this computer have been
25 examined by a forensic technician maybe some things that

1 were deleted pulled up. We don't know. We know from the
2 sheet where they request the exams, no exams were
3 requested of the computer at least on that sheet or they
4 could have gone back later and requested them, maybe. Do
5 we know if they did that? We don't know. I believe I
6 asked Lieutenant Lutcken about the computer for some
7 discussion about they couldn't turn it on because it could
8 delete programs. And then we found out that well policy
9 didn't come in until after this incident. But we also
10 know that they turned it on because they got the picture
11 according to Miss Ketchum that they used for the wanted
12 poster. Could they have gone in and found -- resurrected
13 some type of diary entry, we don't know.

14 We got these boots which were beautiful impressions
15 on the date right here 4-12-07 when these boot prints were
16 made. And I was somewhat confused with Lieutenant
17 Lutcken's testimony and maybe I'm not remembering it
18 correctly. But it seem to say that he testified that
19 those boot prints in Florida came from those boots, that's
20 certainly not what the report of the same date says. When
21 I asked him about it, it wasn't well that's a scribner's
22 error. I messed up writing out on the report. It's no I
23 stand by my -- for a lack of a better way to explain it,
24 he stood by his testimony on the stand. Feloniously
25 willfully with malice aforethought has there been proof of

1 malice aforethought by anyone in this crime. That, of
2 course, is your decision.

3 The grand larceny feloniously taking and carrying away
4 the personal goods of Shannon Burelson Carter. Well, is
5 the lock box hers or is it Sherrie Bennett. And if it's
6 Sherrie Bennet's, who's going to testify it's \$1,980. How
7 does she know that? She's not even in control and
8 dominion of it. She's given it to Ms. Shannon. I get a
9 little nervous when I'm doing this, so I have to jump back
10 and go back to when we're talking about the items around
11 the bed. And I said it was important because of the
12 location and because of the nature. I think I just got
13 into the location, but I didn't get into the nature of
14 them. And listen, it's uncomfortable to have to get up in
15 front of folks and talk about sex items, but that's
16 exactly what they were. And you heard Dr. Ross' testimony
17 this victim died of strangulation. You heard her explain
18 AEA, which I'm saying because I'm worried I'm going to
19 mess up autoerotic, that's asphyxiation.

20 In fact, Mr. Lawson asked her whether or not there
21 was -- and wrote this down so basically any evidence of
22 suicide or accident. And how did Dr. Ross respond. No
23 evidence of suicide, willful, malice aforethought or
24 whoever committed this crime.

25 Please keep in mind when you get up and walk back

1 here to the jury room, remember Mr. Walton stands in that
2 cloak until you go back there. He stands in that cloak
3 until you folks sit down and decide what did you think
4 about this, what did you think about this and you talk
5 together. And he stands in that cloak until you decide
6 that he is guilty beyond a reasonable doubt for each and
7 every element of the crimes he is charged with, each and
8 every one. If you find that the State proven that, so be
9 it. I wish you good luck and I can't wait to find out
10 what your decision is.

11 THE COURT: Thank you, Mr. McLaughlin.

12 Mr. Lawson.

13 MR. LAWSON: May we approach?

14 THE COURT: Sure.

15 (WHEREUPON, a bench conference was held in the
16 presence of the jury, but out of the hearing of the
17 jury.)

18 THE COURT: Ladies and gentlemen, I will ask the
19 members of the jury, when Mr. Lawson returns he will give
20 his final summation. Does anyone use the restroom before
21 he return? Well, let me do this -- go ahead those that
22 have to go. There's a couple restrooms back there y'all
23 can go. But if you don't have to use the restroom, we'll
24 just remain where we're at and allow you to do that.

25 (WHEREUPON, a short break was taken.)

1 THE COURT: All right. Mr. Lawson, you may proceed,
2 sir.

3 MR. LAWSON: May it please the Court.

4 THE COURT: Yes, sir.

5 MR. LAWSON: Mr. McLaughlin. Ladies and gentlemen,
6 Mr. Foreman, now I argue the facts of this case. We know
7 what. We know that at six o'clock in the morning on
8 January the 28th an alarm clock goes off. We know that
9 the person laying in the bed beside the alarm clock does
10 not turn it off. Her 11-year-old daughter from cross the
11 hall comes and turns it off because no one else is in the
12 house, which is strange by the way because since early
13 February of that year every morning, every evening, every
14 waking hour, there has been someone else at the house
15 besides B.B. and Shannon and that has been this
16 defendant, Kevin Walton, has been there every day.
17 Morning, noon and night, but not on this day.

18 This one day this particular day, this day when
19 something very very wrong occurred. Why then was it on
20 this day that Kevin Walton choose not to appear? Why was
21 it on this day at five o'clock between five and 5:30 that
22 Officer Poston in Pamplico saw Shannon Carter's car
23 leaving Pamplico on Highway 51 heading out of town. That
24 is within an hour of the calculated time of death by
25 Lieutenant Lutcken in relation to Shannon Carter. Her

1 time of death estimated based on rigor mortis and other
2 things that were used to determine time of death. Her
3 time of death was between four and five a.m. Then between
4 five and 5:30 a.m. the car is seen leaving Pamplico. The
5 car then disappears from us here in Florence. For the
6 rest of March, for April, May, and June, it is found in
7 Florida almost to Miami in a parking lot left-rear door
8 unlocked. All other doors and trunk lock. Keys however
9 found in the yard of a house where a car is stolen, said
10 car then appearing in Virginia in the same county and town
11 in which this defendant turns himself in. And of the 11
12 fingerprints found on the vehicle seven belong
13 identifiably, AFIS identifiably which our fingerprint
14 expert from the State of Virginia said is an extremely
15 good fingerprint to get AFIS quality fingerprints. Seven
16 of the 11 hit back to Kevin Walton.

17 Now, I'm not here to prove to you nor do I have to
18 prove to you that Kevin Walton stole a Lexus in Florida
19 and drove it to Virginia. But I can show that to you as
20 evidence of flight that means running, leaving, getting
21 out of dodge because flight you see is also evidence.
22 Flight in and of itself is evidence the guilty fleeth
23 where none pursuant.

24 Ladies and gentlemen, I ask you through Stephen Hill
25 to use your common sense because this case demands common

1 sense. Why did Shannon Carter's car go to Florida to Boca
2 Raton and end up with the keys in the -- in the yard of a
3 house where another car is taken, that car ending up in
4 Virginia in close proximity to our defendant. And yet,
5 there is as the defense will contend absolutely no reason
6 to believe that the State has connected any dot or made
7 any showing or carried any burden of proof as it relates
8 to the evidence in this case.

9 Malice aforethought -- let me tell you something when
10 when you take and you hold your arm or your hands or
11 whatever you choose around somebody's neck for four to
12 five minutes and watch their life be drained out of them,
13 that my friends is malice aforethought. Malice
14 aforethought can be inferred by the use of a deadly weapon
15 is one of the ways that you can infer simply by use of a
16 gun you can infer malice aforethought. Malice is being an
17 evil intent, evil -- something to do with hatred or just
18 an evil seeking to do something which is evil or wrong and
19 to take somebody's life by putting your hands around their
20 throat or your arm around their neck and draining their
21 life from them is malice aforethought. There's never been
22 any worse malice aforethought.

23 Now, we know that Kevin Walton, the defendant, was
24 there that evening. We know at one to 1:30 he was there.
25 Now, there are no witnesses that can say anything about

1 what happened between that point and five o'clock in the
2 morning, but there is evidence that tells us what happened
3 between then and five o'clock. There is the body of
4 Shannon Carter that lays lifeless in her bed. She tells
5 us what happened between one, 1:30 and five to six
6 o'clock the next morning. She was strangled. She was
7 killed. She was murdered.

8 We know that because at six o'clock when her alarm
9 off she didn't move. Her daughter came and turned off the
10 clock. What was on when the daughter came and turned off
11 the alarm clock? The light in the computer room, which
12 normally was not left on at night. Why was the light in
13 the computer room -- why would that be important? Because
14 that's where the fire boxes were kept and in which Sherrie
15 and Shannon had kept their valuables both in the computer
16 room in the fire box and in that box and this defendant
17 knew that. He knew it. So there's from the testimony 18
18 -- I think \$1,980 was actually her testimony that she had
19 \$2,000 tax refund and that she had got \$20 out of it. And
20 that there was \$1,980 remaining which is in access of
21 1,000 but less than 5,000 without even counting the car.
22 Right there is your grand larceny over 1,000, but less
23 than 5,000.

24 Now, circumstantial evidence the judge will tell you
25 is evidence that is -- it's chain of evidence that leads

1 to a conclusion. In other words, if you go out in the
2 morning and the ground is wet and there's little puddles
3 of water sitting around all over your yard and in the road
4 and you look and your neighbor's yard is the same way,
5 that is circumstantial evidence that it may have rained
6 the night before. And now you go out in the morning and
7 there is water standing in one puddle in your yard with a
8 hose pipe sitting right to it and your child's sitting
9 there with mud all over themselves and whatever else a
10 child may get into and the yard just is not looking like
11 it did the day before, but you look at your child and they
12 have made themselves of late right there, that is not
13 circumstantial evidence that it rained in the
14 neighborhood. May well be circumstantial evidence that
15 your child played with the hose pipe and made a mess in
16 your yard. But circumstantial evidence is evidence that
17 dictates to you that a circumstance or a fact exist as a
18 result of the circumstances and it is just as good as
19 direct evidence. It's called sometimes indirect evidence.
20 Direct evidence being something you see, smell, touch,
21 feel. Circumstantial evidence being evidence that leads
22 to that through a combination of factors where we again
23 use our common sense. When a car that is from South
24 Carolina ends up in Florida and the keys to that car are
25 in the yard of a car that is taken in Florida and moved to

1 Virginia and in Virginia that car is found and
2 fingerprints are obtained that happen to match the
3 fingerprints of the person that had access to the car in
4 South Carolina way back in South Carolina, that's
5 circumstantial evidence and that's very strong
6 circumstantial evidence.

7 Ladies and gentlemen, the State had to bring
8 witnesses from Florida, from Virginia, from the South
9 Carolina Law Enforcement Division, from Florence County
10 sheriff's office in order to try and prove this case to
11 you, that was a burden that we welcomed because this an
12 important case. It's important to all of us.

13 Now, in these situations, yes, we asked for testing
14 and the problem is that sometimes it's awfully easy to
15 confuse things on a request form. We have a tendency to
16 want to look at it and say, oh, you didn't do this and you
17 didn't do that, but that's not exactly the way it worked
18 in this case. In some of your situations, there were as
19 you look at the evidence you will see exams requested, but
20 the problem is that at this point you see that this sheet
21 no request was made on this sheet at that point. However,
22 you have to look further to determine whether or not in
23 the course of the entire investigation were these requests
24 made. Now, sometimes it's easy and sometime's it's not.
25 In one situation, there were request made and you have to

1 be careful on a SLED request because at the top, it will
2 say test requested and it may say DNA and beside DNA will
3 be blood. The next line will be blood also, but under it,
4 it will be toxicology. So what you're doing is you're
5 sending two different samples, but you're asking for two
6 different tests. And you have to look at these things and
7 it's not simple as saying you didn't request that test on
8 that or you didn't do that test on that. Well, the truth
9 of the matter is, it may not have been requested because
10 it was testing another situation. We were looking for
11 something else at the time. So to fully understand these
12 cases, you have to look at the entire case and you have to
13 look at what conclusion can be drawn from what was done in
14 this case.

15 We have -- and it's interesting in Florida the
16 cigarette butts that were found in the ashtray of the car
17 all had brown paper wrapped in them. The State's Exhibit
18 21 are cigarette butts by the bed at Shannon Carter's
19 house they're all white filters, not one brown filter is
20 in there. Now, Shannon Carter -- but as I said in
21 Florida, that car had no white filter cigarettes. They
22 were all brown. There's photographs in evidence that you
23 can look at and see they were all brown. The first
24 cigarette tested had DNA from this defendant. Some
25 quadrillion whatever the number 15 zeros or whatever. But

1 ladies and gentlemen, those are the kinds of evidence we
2 look at to determine whether or not this is the person.
3 This is the man that had the opportunity. He had the
4 ability. He had the location. He had everything
5 necessary to commit this crime. He was where it happened,
6 when it happened, and nobody else. Nobody else was in
7 anyway, anywhere on in or around the scene of this crime,
8 nobody. No evidence of any break ins, no evidence of any
9 attempted break ins, none of the windows, none of the
10 doors, nothing pried with, nothing out of place, nobody
11 tried to break into this house because they didn't need
12 to. They were already in the house. The deed was being
13 done. There was no need to break in. They were trusted.
14 They were trusted and given free access to commit this
15 crime and it was committed, perfect escape.

16 Flight from Florida from South Carolina to Florida to
17 Virginia was no question in my mind that the State of
18 South Carolina has proved to you by the evidence beyond a
19 reasonable doubt that this man is guilty of murdering
20 Shannon Carter, stealing her car to get away. And the
21 money of her and her friend Sherrie to give him the
22 opportunity to move on alone. So he had money. He had
23 wheels and he had the escape route to commit this crime.
24 We cannot allow Florence County to become an enclave for
25 such activity. We live with the interstate, but we don't

1 have to live with our people being killed. I ask you to
2 go to your jury room to consider this evidence. And based
3 on this evidence, do the only thing logically and beyond
4 any and all reasonable doubt that you can and that is to
5 find this man guilty of what he did. Thank you.

6 THE COURT: Thank you, Mr. Lawson. All right, ladies
7 and gentlemen, I'm coming off the bench and coming down
8 here for a couple of reasons. As I told you when we began
9 this trial, you are the sole and only judges of the facts
10 in this case and that I'm not to have any influence with
11 regards to your deliberations regarding those facts. So
12 it's been appropriate for me to be out of the way so to
13 speak. In other words, in the arena here where the
14 lawyers are working and they're presenting evidence,
15 that's the facts of the case and that's for you to decide.
16 So it's appropriate for me not to be involved in that.

17 However, we're at the part of the trial now where you
18 and are in this together because now I'm going to give you
19 to the law that you are apply to the facts as you find
20 them to be, so I think it's appropriate that I come down
21 and be with you for that. The other thing -- the other
22 reason is not nearly as legal. It's simply more friendly
23 and it's nicer just to be able to talk to people face to
24 face instead from up there. And so I come down here now
25 to charge you on the law. I will at the conclusion and

1 when it's time for you to deliberate when the exhibits are
2 passed back for you to consider, I will also pass back
3 this copy of charge on the law that I'm about to give you
4 right now.

5 So, Mr. Foreman and members of the jury, the State of
6 South Carolina charges the defendant in this case, Kevin
7 Walton, with the offenses of murder and grand larceny in
8 an amount over \$1,000, but less than 5,000. The
9 indictment just contains allegations by the State and
10 confesses jurisdiction in this matter to this court. I
11 remind you that the fact that defendant was arrested,
12 charged, and indicted in this case is not evidence in this
13 case and cannot be considered by you as evidence of guilt
14 in this case. Nor does it create any presumption or
15 inference of guilt. This document, the indictment, simply
16 is the formal written instrument which contains the
17 charges against the defendant. It is the formal document
18 by which this case brought into court.

19 Now, the indictment in this case alleges two
20 different offenses against the defendant. The charges are
21 under count one murder and under count two grand larceny
22 in an amount over \$1,000 and under 5,000. Each count
23 charges a separate and a distinct offense. You must
24 decide each offense separately on the evidence and the law
25 applicable to it uninfluenced by your decision as to any

1 other offense. The defendant may be convicted or
2 acquitted on any or of all of the offenses charged. You
3 will be asked to write a separate verdict of guilty or not
4 guilty for each count in the indictment.

5 Now, ladies and gentlemen, the defendant has pled not
6 guilty to this indictment and that plea puts the burden on
7 the State to prove the defendant guilty. A person charged
8 with committing a criminal offense in this country and in
9 this State is never required to prove him or herself
10 innocent. I charge you that it is an important rule of
11 law that the defendant in a criminal trial no matter what
12 the seriousness of the crime may be will always be
13 presumed to be innocent of the crime for which the
14 indictment was issued, unless guilt has been proven by
15 evidence satisfying you of that guilt beyond a reasonable
16 doubt.

17 This presumption of innocence does not end when you
18 begin your deliberations, but it accompanies the defendant
19 through the trial unless or until you reach a verdict of
20 guilt based on evidence satisfying you of that guilt
21 beyond a reasonable doubt. The presumption of innocence
22 is like a robe of righteousness placed about the shoulders
23 of the defendant, which remains with the defendant until
24 it has been stripped from the defendant by evidence
25 satisfying you of the defendant's guilt beyond a

1 reasonable doubt. The presumption of innocence is not a
2 mere legal theory. It is not just a legal phrase. It is
3 a substantial right to which every defendant is entitled
4 unless you, the jury, are satisfied from the evidence of
5 the defendant's guilt beyond a reasonable doubt.

6 So what is a reasonable doubt in the law. A
7 reasonable doubt is the kind of doubt that would cause a
8 reasonable person to hesitate to act. The State has the
9 burden of proving the defendant guilty beyond a reasonable
10 doubt.

11 Some of you may have served as jurors in civil cases
12 where you were told that it is only necessary to prove
13 that a fact is more likely true than not true such as by
14 the greater weight or the preponderance of the evidence.
15 In criminal cases, the State's proof must be more powerful
16 than that. It must be beyond a reasonable doubt. Proof
17 beyond a reasonable doubt is proof that leaves you firmly
18 convinced of the defendant's guilt. There are very few
19 things in this world that we know with absolute certainty.
20 And in criminal cases, the law does not require proof that
21 overcomes every possible doubt. If based on your
22 consideration of the evidence, you think there is real a
23 possibility that the defendant is not guilty, you must
24 give the defendant the benefit of the doubt and find him
25 not guilty. If on the other hand, you are firmly

1 convinced that the defendant is guilty of the crimes
2 charged, you must then find the defendant guilty.

3 There are two types of evidence which are generally
4 presented in trial. There's direct evidence and there's
5 circumstantial evidence. Direct evidence is the testimony
6 of a person who claims to have actual knowledge of a fact
7 such as an eye witness. It is evidence which immediately
8 establishes the main fact to be proved. Circumstantial
9 evidence is proof of a chain of facts and circumstances
10 that indicate the existence of a fact. It is evidence
11 which immediately establishes collateral facts from which
12 the main fact may be inferred. Circumstantial evidence is
13 based on inference and not on personal knowledge or
14 observation.

15 Now, the law makes absolutely no distinction between
16 the weight or the value to be given to either direct or
17 circumstantial evidence. Nor is a greater degree of
18 certainty required of circumstantial evidence than of
19 direct evidence. You should weigh all of the evidence in
20 this case. And after weighing all of the evidence, if you
21 are convinced of the guilt of the defendant beyond a
22 reasonable doubt, you must find the defendant guilty. If
23 you are not convinced of the defendant's guilty beyond a
24 reasonable doubt, then you must find the defendant not
25 guilty.

1 Mr. Foreman, members of the jury, under the
2 constitution of South Carolina, you are the finders of
3 facts in this case. I do not have the right to comment
4 on the facts or even to express any opinion that I might
5 have as to the facts. Nor may I suggest in anyway what I
6 may think about the guilt or the innocence of the
7 defendant. You should form no opinion in that regard from
8 anything I may have said or from any ruling that I may
9 have made.

10 You are also the judges and the sole judges of the
11 credibility and the believability of the witnesses who
12 have testified in this case. In passing upon their
13 credibility, you may consider many things such as number
14 one the demeanor or the manner of testifying, was the
15 witness forthright or hesitant. Two, whether the witness
16 had reason to be biased or prejudiced. Three, whether a
17 witnesses testimony was contradicted on the one hand or
18 corroborated and supported on the other or what was the
19 witnesses opportunity for observation and knowledge of the
20 matters about which they testified. You do not decide
21 this credibility or believability by counting the number
22 of witnesses. You may believe a small portion of
23 witnesses testimony and disregard the larger or vice
24 versa. You may believe one witness against many or many
25 witnesses against one. All of these things you will

1 consider bearing in mind that you should give the
2 defendant the benefit of any reasonable doubt if such
3 doubt exist after you have considered all of the evidence
4 in the case.

5 Now, the testimony of a police officer is not
6 entitled to more weight than that of any other witness.
7 You are not excuse me -- you are the sole judges of the
8 credibility of witnesses and you are not to give more
9 credence to a police officers' testimony solely because he
10 or she is a police officer. Rather, you should judge an
11 officer's testimony by the same standards that you apply
12 to other witnesses.

13 Now, the rules of evidence ordinarily do not permit
14 witnesses to testify to opinions or conclusions. An
15 exception to this rule exist for witnesses that we call
16 expert witnesses. A witness who by education and
17 experience has become an expert in some art, science,
18 profession or calling may state an opinion as to relevant
19 and material matter in which the witness claims to be an
20 expert and may also state the reason for that opinion.
21 You should consider any expert opinion received in
22 evidence in this case and like any other evidence give it
23 the weight that you think it deserves. If you decide that
24 the opinion of an expert witness is not based on
25 sufficient education and experience or if you conclude

1 that the reasons given in support of the opinion are not
2 sound or that the opinion is outweighed by other evidence,
3 you may disregard the opinion in its entirety. An expert
4 witnesses testimony is to be given no greater weight then
5 that of another witness simply because that witness is an
6 expert. Further, you are not required to accept an
7 expert's opinion even though it is not contradicted. It
8 is solely up to you, the jury, to decide what evidence you
9 believe or disbelieve.

10 Now, I instruct you and I emphasize that the fact
11 that the defendant did not testify is not a factor to be
12 considered by you in anyway in your deliberation and in
13 your consideration on the question of the guilt or the
14 innocence of the defendant. It must not be considered by
15 you in any manner whatsoever. A defendant has the
16 constitutional right to remain silent and the assertion of
17 this right must not be considered by you in your
18 deliberations. I repeat under your oath you are to draw
19 no conclusion whatsoever from the fact that the defendant
20 in this case did not testify. The fact that this
21 defendant did not testify should not even be discussed in
22 the jury room. The burden of proof as I stated to you is
23 on the State. The defendant is not required to prove his
24 innocence and the burden of proof remains on the State to
25 prove guilt beyond a reasonable doubt.

1 Now, by the same constitution that makes you the
2 finders of the facts, I am the sole and the only in
3 instructor in the law. You must accept as correct the law
4 that I charge and apply that law to the evidence as you
5 find and reach your verdict. Please put a side any
6 conceptions you may have had as to the law before coming
7 here today and accept the law as I instruct it to be. You
8 for your purposes and your duty as jurors today should not
9 be concerned about the what the law ought to be or what
10 you think the law ought to be, but what I charge you the
11 law is now in this state.

12 As I instructed you at the beginning of the trial,
13 the evidence from which you are to decide the facts of
14 this case consistent of sworn testimony of witnesses both
15 on direct and cross-examination regardless of who call the
16 witness. The exhibits that have been received into
17 evidence and any stipulations, in other words facts which
18 all of the parties have agreed are true and correct.

19 During this trial, items were receive into evidence
20 as exhibits. These exhibits will be sent into the jury
21 room to help you deliberate. Examine these exhibits if
22 you think that they will help you in your deliberations.

23 Now, the defendant is charged with murder. The State
24 must prove beyond a reasonable doubt that the defendant
25 killed another person with malice aforethought. Malice is

1 hatred, ill will or hostility toward another person. It
2 is the intentional doing of a wrongful act without just
3 cause or excuse and with the intent to inflict an injury
4 or under circumstances that the law will infer an evil
5 intent. Malice aforethought does not require that malice
6 exist for any particular time before the act is
7 committed, but malice must exist in the mind of the
8 defendant just before and at the time of the act that the
9 act is committed.

10 Therefore, there must be a combination of the
11 previous evil intent and the act. Malice aforethought may
12 be expressed or inferred. These terms express and
13 inferred do not mean different kinds of malice but merely
14 the manner in which malice may be shown to exist, that is
15 either by direct evidence or by inference from the facts
16 and circumstances which are proved. Express malice is
17 shown when a person speaks words which express hatred or
18 ill will for another or when the person prepared
19 beforehand to do the act which was later accomplished.
20 For example, lying in wait for a person or other acts of
21 preparation going to show that the deed was within the
22 defendant's mind would be express malice. Malice may be
23 inferred from the conduct showing a total disregard for
24 human life. Inferred malice may also arise when the deed
25 is done with a deadly weapon. A deadly weapon is any

1 article, instrument or substance which is likely to cause
2 death or great bodily harm. Whether an instrument has
3 been used as a deadly weapon, depends on the facts and
4 circumstances of each case.

5 Now, the defendant is also charge with grand larceny
6 in an amount over \$1,000 and less than \$5,000. The State
7 must prove beyond a reasonable doubt that the defendant
8 took and carried away the property of another against the
9 will or without the consent of the other person. The
10 slightest removable excuse me -- the slightest removal of
11 the property or the complete possession of the property
12 even for an instant by the defendant is enough to show a
13 taking and carrying away of the property. The State must
14 also proved beyond a reasonable doubt that the defendant
15 intended to permanently deprive the owner of that
16 property. Finally, the State must prove that the value of
17 the thing taken was in an amount of over \$1,000.

18 Now, you've been selected as fair and impartial
19 jurors sworn to impartially try and determine the facts of
20 this case. And when you comply with your oath to do so,
21 then no one will have the right to criticise your verdict.
22 It is your duty to determine the truth in this case by
23 your joint deliberations. To the facts that you determine
24 to be the truth, you then take and apply the law as the
25 Court has now given you and thus arrive at a verdict that

1 does speak the truth in this case. For the word verdict
2 which has a Latin derivation, means a true saying. When
3 you accomplish these responsibilities, you will have
4 satisfied your oath as jurors and you will have discharged
5 your duty to this court.

6 I will now instruct you in the forms of the verdict
7 in these cases. There is no significance whatsoever in
8 the order in which I state the possible forms of the
9 verdict. It is simply that they must be stated in some
10 order. They have absolutely no significance in the order
11 which I have stated then or in the order in which they are
12 listed on the verdict form.

13 Now, Mr. Cowles, the verdict form will be in this
14 notebook when it's passed back. And when it is time and
15 the jury has reached an unanimous verdict, then you will
16 fill that in. It is a simple form. It simply has the
17 case caption at the top verdict form count one is first
18 is -- well, is the first count on the indictment, but you
19 can take either one of these counts up in whatever order
20 you choose, but count one murder. It says we, the jury,
21 find the defendant, Kevin Walton, either guilty or not
22 guilty of murder. And you would reflect jury's decision
23 by checking the appropriate verdict. And to count two on
24 the grand larceny again it is, we, the jury, find the
25 defendant, Kevin Walton, either guilty or not guilty of

1 that charge. And you would then reflect that and then you
2 would sign it as foreman of the jury.

3 Now, ladies and gentlemen, your verdict as I
4 indicated must be an unanimous one. Everyone must agree.
5 And, Mr. Foreman, when the jury agrees on the verdict, you
6 will fill out the verdict form, sign your name as foreman
7 and then write -- well, the date is already on there. If
8 you have any questions regarding the law as I've charged
9 it, then you would write the question on a piece of paper,
10 knock on the door, and hand that question to the bailiff
11 who will bring to it me. I may or may not bring all of
12 you out or I may just send word back, but I'll do my best
13 to answer any questions if there are any.

14 Now, what I'm going to do at this time is I'm going
15 to ask you to retire to your jury room and I'm going to
16 ask you one more time not to begin your deliberations.
17 What I'm going to do is I send you back, is I'm going to
18 discuss with the lawyers to make sure that I have included
19 the law that is appropriate in this case, look to them to
20 see if there's additions or exceptions that we may have.
21 If there are, I may find it necessary to bring you out and
22 charge you on some additional law. If not, then we will
23 gather the exhibits and we will send those back to you in
24 your jury room. Now, please do not begin any discussions
25 or deliberations. When you receive the exhibits and the

1 notebook, that would be your cue then to begin your
2 deliberations, okay. So if you would please retire to
3 your jury room and please wait for that.

4 (WHEREUPON, the jury retired to the jury room at 3:42
5 p.m.)

6 THE COURT: Any exceptions or additions or objections
7 from the State?

8 MR. HILL: None from the State, Your Honor.

9 THE COURT: Anything from the defense?

10 MR. MCLAUGHLIN: None from the defense, Your Honor.

11 THE COURT: All right. Gentlemen, if y'all would how
12 about come up and I know there's a lot, but let's go
13 through these exhibits, make sure all the exhibits that
14 are suppose to be here are. Anything that's not suppose
15 to be here, we'll make sure it's not involved. And then
16 we'll pass those back for their consideration.

17 (WHEREUPON, the jury began deliberations at 3:53
18 p.m.)

19 THE COURT: Ladies and gentlemen, I'm informed that
20 the jury has reached a verdict. Now, I sit here as you
21 do. I have no idea what that verdict is. But let me say
22 this, whatever the verdict is, the jury has been here all
23 week long. They have listen to testimony. They have
24 arrived at what they believe is proper based on the
25 evidence that they have heard. And they deserve at least

1 the respect of us receiving that verdict in an appropriate
2 manner, so having said that I'm going to ask you to show
3 the jury the respect that they deserve whether or not you
4 respect their decision is my point. I'm not going to say
5 allow because I can't prevent an outburst. But I'm not
6 going to tolerate any outburst. And if there are whether
7 it be joy or sadness, then that person is going to be
8 removed from courtroom and more than likely be looking at
9 spending the evening in jail themselves. Please, I don't
10 mean to be harsh about it, but the jury deserves to have
11 their verdict received in a professional manner and in an
12 appropriate manner, so please if at this time if there's
13 anybody who doesn't feel that they can accept whatever the
14 verdict, verdicts may be and you need to leave the
15 courtroom, that would be a wise thing to do. Otherwise,
16 I'm going to assume that everybody can handle themselves
17 in a proper and a professional that manner, okay. So
18 having said that let's ask the members of the jury to join
19 us please.

20 (WHEREUPON, the jury returned to the courtroom with a
21 verdict at 4:54 p.m.)

22 THE COURT: All right. Mr. Foreman, has the jury
23 reached an unanimous verdict, sir?

24 MR. FOREMAN: It has, Your Honor.

25 THE COURT: All right. You would please if you would

1 pass that to madam clerk. All right. Madam clerk, please
2 publish the jury verdict.

3 THE CLERK: The State of South Carolina County of
4 Florence in the court general sessions Twelfth Judicial
5 Circuit The State of South Carolina vs. Kevin Walton,
6 indictment 2004-GS-21-1168, Count one murder, we, the
7 jury, find the defendant, Kevin Walton, guilty of murder.
8 Count two grand larceny in an amount over a thousand
9 dollars, but less than \$5,000. We, the jury, find the
10 defendant, Kevin Walton, guilty of grand larceny in an
11 amount over a thousand dollars, but less than \$5,000.
12 Signed David L. Cowles, foreman, dated April 26, 2007.
13 Members of the jury, if this is your verdict please raise
14 right hand?

15 (WHEREUPON, all jurors hands were raised.)

16 THE COURT: All right. Ladies and gentlemen, I want
17 to thank you for your service on jury this week. And
18 without question, I mean, obviously of your cohorts on the
19 panel, you are the ones that had to work this week while
20 rest of them had an easy week. I want to again thank you
21 for your patience throughout the course of the trial, your
22 attention to the matters that were before you. I realize
23 that jury service is not easy, nor is it always pleasant.
24 Nor is it convenient, but you have honored the count,y,
25 Florence County with your service this week and I want to

1 thank you. Now, what I'm going to do at this time and
2 you've heard me somewhat jokingly talked about the money
3 you are going to receive. You are going to be paid for
4 your service this week, but it's not anything even
5 remotely resembling the worth that your service is to the
6 county. We certainly could never pay you what your value
7 of your worth to the county and to this system of justice
8 that we have.

9 You have completed your service. You have earned
10 your exemption for the balance of this year and for the
11 next two years. However, I would encourage you if you do
12 get called for jury service again in the future, you've
13 earned that exemption. And if you wish to exercise it,
14 you certainly may, but I hope you'll consider serving
15 again. I hope your experience this week has been a
16 positive experience with regards to our criminal justice
17 system. I'm always happy to answer questions of members
18 of the jury. I want do that right at this moment because
19 it wouldn't be appropriate right now. But if any of you
20 would ever have questions and you like to talk with me,
21 I'm certainly -- my office is open and available for that.
22 I am going to excuse you.

23 Now, let me say this and I always tell members of the
24 jury this. I'm going to excuse you and those of you if
25 you need a work excuse, they'll give you one as you leave.

1 Once you're excused, I'm going to ask you to go ahead and
2 file out. But if you want to come back into the courtroom
3 to be present for sentencing, you're more than welcome to
4 do that. I don't like to tell the jury you're excused and
5 make you leave the courthouse because you're the ones who
6 have worked all week. If you want to stay for sentencing,
7 you welcome to do so. If you wish to leave and go home or
8 go wherever you need to go, you're certainly welcome to do
9 that as well. So having said that thank you again on
10 behalf of the State of South Carolina, the County of
11 Florence and the citizens of this community for giving of
12 your time. If you have anything in the jury room or
13 phones or whatever you need to get, please feel free to do
14 that other than that you're free to go. Thank you.

15 (WHEREUPON, the was jury dismissed.)

16 THE COURT: All right. All right. Is the State
17 prepared to proceed to sentencing?

18 MR. LAWSON: We almost, Your Honor. We're working on
19 it.

20 THE COURT: All right.

21 (WHEREUPON, a pause in the proceedings.)

22 MR. MCLAUGHLIN: Mr. McLaughlin, please come around.

23 THE COURT: All right. Mr. Lawson, I will be happy
24 to hear from the State with regarding sentencing, sir.

25 MR. LAWSON: May it please the Court, on February

1 the 14th 2005, the State filed a notice of intention to
2 seek the sentence of life without parole under the two
3 strike three strikes law in South Carolina under section
4 17-25-45 1995 as amended. It appears to the State that
5 the defendant, Kevin Walton, has a prior conviction for
6 assault with intent to rob while armed in the State of
7 Michigan of which would be armed robbery in our State,
8 therefore a prior violent most serious offense. Murder
9 obviously is a violent most serious offense and in and of
10 itself carries possibility of life without parole.

11 THE COURT: All right. And you did serve both
12 Mr. Walton and his counsel with that notice?

13 MR. LAWSON: Yes. Your Honor, at that time,
14 Mr. Walton was represented by Ms. Parrot with the public
15 defender's office both Mr. Walton and Ms. Parrott were
16 served. Upon Ms. Parrott's release as counsel and out of
17 an abundance of precaution of when Mr. McLaughlin was
18 appointed, we also served him with the notice.

19 THE COURT: All right, sir. Is that correct,
20 Mr. McLaughlin?

21 MR. MCLAUGHLIN: That's correct, Your Honor. In
22 fact, I received the original notice when I got all the
23 discovery from Ms. Parrott in the case, so the State
24 actually served me, I guess, basically twice.

25 THE COURT: All right, sir. Well, the sentence of

1 the Court on 2004-GS-21-1168 the charge of grand larceny
2 over a thousand dollars, the sentence of the court is that
3 you be confined with the department of corrections for a
4 period of five years. With regards to Count 1 the charge
5 of murder, the jury has found Mr. Walton you're guilty of
6 that charge which is classified as a most serious and
7 violent offense under the laws of South Carolina, that
8 coupled with your prior conviction for what is essentially
9 an armed robbery charge which is also most serious offense
10 classified under South Carolina law and pursuant to a
11 notice of by the State, the Court has no discretion and
12 most sentence you under that indictment under Count 1
13 murder that you be hereby are committed to the state
14 department of corrections for the remainder of your
15 natural life without the possibility of parole, that is
16 the sentence of the Court.

17 MR. MCLAUGHLIN: Thank you, Your Honor.

18 THE COURT: Good luck to you, sir. And
19 Mr. McLaughlin will talk with you about notices of appeal
20 or anything of that nature.

21 MR. MCLAUGHLIN: We've already discussed that.

22 THE COURT: All right, okay.

23 MR. LAWSON: Thank you, Your Honor.

24 END OF REQUESTED TRANSCRIPT

25

1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

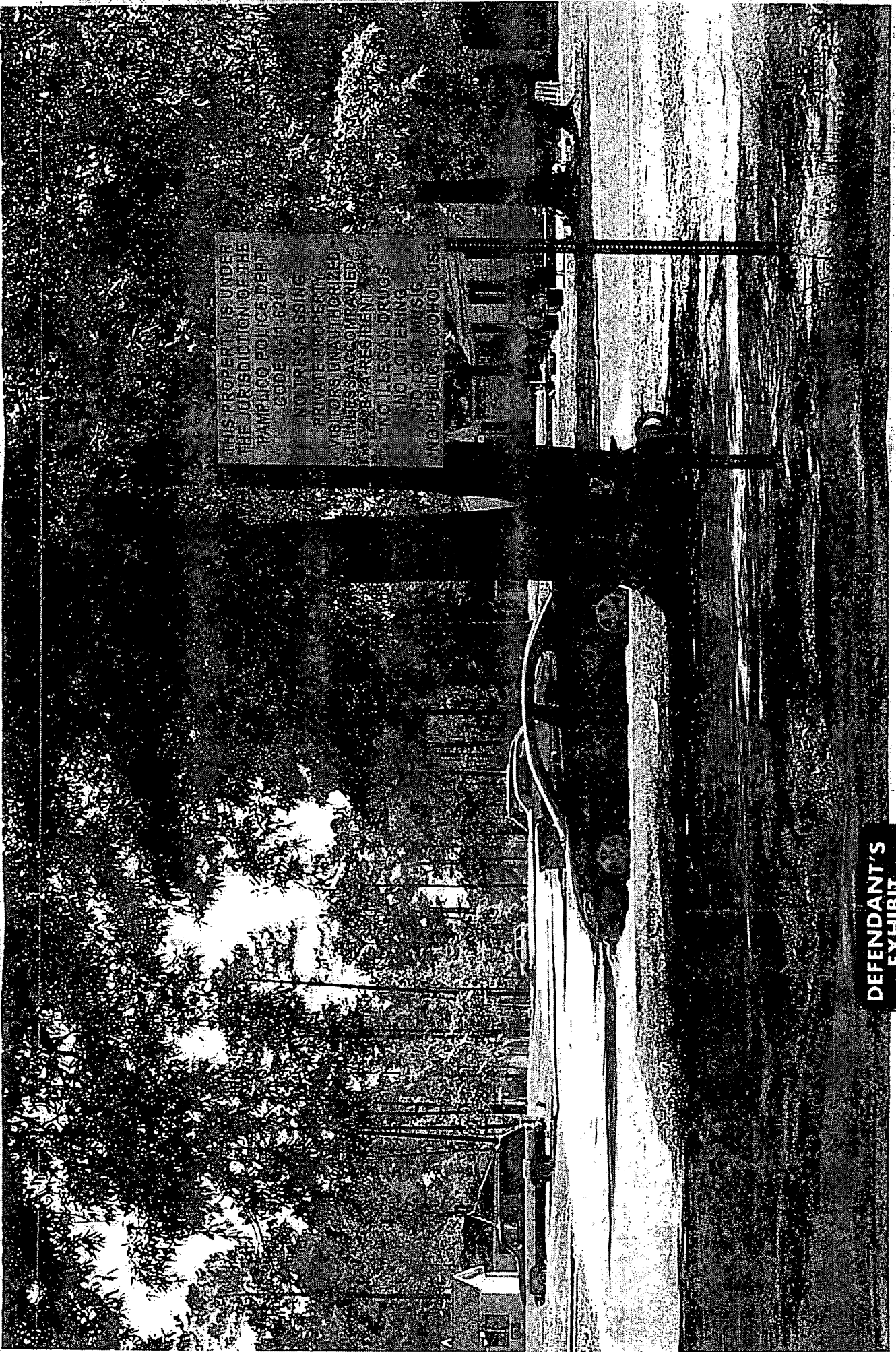
3 COUNTY OF FLORENCE

4
5 I, Keshia Reed, Court Reporter and Notary Public
6 in and for the State of South Carolina At Large, do hereby
7 certify that the above-entitled cause was heard as
8 hereinafter set out; that I was authorized to and did
9 transcribe the said proceedings; and that the foregoing
10 and annexed pages, numbered 1 through 578, inclusive,
11 constitute a true and accurate transcription of my
12 stenographic report of the said cause taken during the
13 said hearing.

14 In witness whereof, I have hereunto affixed my
15 signature this 2nd day of August, 2008.

16
17 
18 Keshia Reed, Court Reporter
My Commission Expires: 6-5-2010

19
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DEFENDANT'S
EXHIBIT

V.12

4-2-22

DEFENDANT'S EXHIBIT

FLORENCE COUNTY SHERIFF'S OFFICE

FORENSIC SERVICE REQUEST

609

3352

HR 2-24-07

Hannon Dale Carter

Victim Name

Incident Date: 3-28-03

New Case: Add Evid:

Follow-up Only: ☒ (fill in directions)

Address

Phone #

Pamplico

SC

City

State

Zip

Directions for FOLLOW-UP: Darrin: I have latent and DNA evidence that may be linked to the suspect Kevin Walton. Please notify me when he is back in our jurisdiction so that I can obtain DNA and the subject's latent card.

TYPE OF SUSPECTED CASE (Check more than one if applicable)

- (1) *DUI _____ *Felony DUI _____ Was a Breathalyzer Test given? Yes _____ No _____
- (2) Possession or Distribution of Illegal Drugs or Controlled Substances _____
- (3) Criminal Sexual Conduct
 - (A) Adult victim _____ (B) Child victim _____
- (4) Homicide
 - (A) Gunshot _____ (B) Stabbing _____ (C) Beating _____ (D) Strangulation ☒ (E) *Drug/Poison _____
 - (A) Gunshot _____ (B) Alcohol _____ (C) *Drug/Poison _____ (D) Carbon Monoxide _____ (E) Hanging _____
- (5) Accidental Death
 - (A) Gunshot _____ (B) Alcohol _____ (C) *Drug/Poison _____ (D) Fire _____ (E) Electrocution _____
- (6) Natural Death
 - (A) Heart Related _____ (B) Disease (specify) _____ (C) Infant Related _____
- (7) Traffic Accident Fatality Victim - Meets criteria of Section 17-7-80 Yes _____ No _____
 - (A) Driver _____ (B) Pedestrian _____ (C) Motorcyclist _____ (D) Bicyclist _____ (E) Passenger _____
- (8) Swimming Accident Fatality Victim _____ (10) Boating Accident Fatality Victim _____
- (11) Kidnapping _____ (12) Armed or Strong Armed Robbery _____ (13) Arson _____ (14) Assault (Simple Assault, ABHAN, or ABIK) _____
- (15) Burglary/B and E _____ (16) Forgery _____ (17) Fraud _____ (18) Embezzlement _____ (19) Harassment _____
- (20) Weapons Offense _____ (21) Larceny (Petit or Grand) _____ (22) Hit and Run _____ (23) Polygraph Subject _____
- (24) Other (specify) _____

ITEM #	DESCRIPTION OF EVIDENCE: I.E. SUBJECT OR VICTIM'S (EVIDENCE TO INCLUDE SPECIFIC ARTICLES AS TO COLOR, ETC., IF DRUGS THEY ARE TO BE COUNTED, ETC.)	EXAM REQUESTED
1	Purple fitted sheet	None
2	Striped comforter	None
3	White terrycloth towel	None
4	Blue Pillow Case	None
5	Green Pillow	None
6	Body Tissue & Fluid	Toxicology
7	Plastic bottle marked "Climax" & bottle cap	None

David Brown

Print Name - Officer

David Brown

Signature of Officer

7-29-03

[illegible]

FORENSIC SERVICE OFFICER:

DATE OF REPORT:

MANHOURS SPENT:

DISPOSITION OF EVIDENCE:

HOLD

DESTROY

OTHER LAB:

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

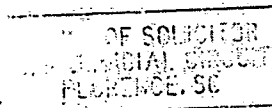
FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



RECEIVED 12 ROBERT M. STEWART
Chief

2007 APR 16 A 10: 23



Lt. Keith Lutcken
Florence County Sheriff's Office
6719 Friendfield Road
Effingham, SC 29541

DNA ANALYSIS
April 12, 2007
SLED LAB: L03-03515
Your Case No: 200303824
Incident Date: 3/28/2003
[S] Kevin Walton
[V] Shannon Carter

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

SUPPLEMENTAL REPORT

SEROLOGY ANALYSIS

Items Submitted:

Results of Examinations:

23 Green in color Pillow
23.1 Cutting from pillow
23.2 Cutting from pillow
23.3 Cutting from pillow
23.4 Cutting from pillow

23.1 Saliva indicated.
23.2 No saliva indicated.
23.3 No saliva indicated.
23.4 No saliva indicated.

**DEFENDANT'S
EXHIBIT**

YR 3 4-24-07



612

SLED LAB No. L03-03515

Page 2 of 2

April 12, 2007

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



Kenneth L. Bogan
Forensic Scientist

cc: Florence County Solicitor's Office



CASE SUPPLEMENTAL REPORT

Printed: 04/03/2007 10:51 **613**

Boca Raton Police Department

OCA: 2003006173

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Case Status: *EXCEPTIONALLY CLEARED*

Case Mng Status: *EXCEPTIONALLY CLEARED*

Occured: 04/16/2003

Offense: *BURGLARY TO RESIDENCE*

Investigator: *GIUMENTA, J. (529)*

Supervisor: *MCCUTCHEON, M. A. (140)*

Date / Time: 08/29/2003 15:43:16, Friday

Contact:

Supervisor Review Date / Time: 09/12/2003 00:00:00, Friday

Reference: *Follow Up*

On 8-29-03 I received a letter from Assistant State Attorney Darren D. Shull. The letter advised a "No File" in the request for a warrant, due to the facts as presented did not "rise to the amount of evidence needed to prosecute the defendant". I request the case exceptionally cleared. The letter was placed into the records case file.

DEFENDANT'S
EXHIBIT

V.R. 4 4-25-07

**FLORENCE COUNTY SHERIFF'S OFFICE****WILLIAM K. "KENNEY" BOONE, SHERIFF**

Investigator Darrin Yarborough
Florence County Sheriff's Office
6719 Friendfield Road
Effingham, S.C. 29541

Forensics Division
April 12, 2007
Case No. 200303824
Incident Date: 3/28/2003
(V) Shannon Carter
(S) Kevin Walton

This is an official report of the Florence County Sheriff's Office Forensics Division and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Items Submitted:

One(1) pair of Brahma work boots from Kevin Walton's personal effects.

Three(3) black and white photos of a footwear impression from Boca Raton Police Department.

Results of Examinations:

It was determined that the questioned impression corresponds in physical shape and size, design, and specific wear characteristics with the right boot of Kevin Walton's. Due to the lack of identifying characteristics it could not be determined that the right boot of Kevin Walton's made the questioned impression.

Lt. Keith Lutcken
Forensics Division

**DEFENDANT'S
EXHIBIT**

ViR 5 4-23-07

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF FLORENCE) INDICTMENT NO.: 04-GS-21-1168

The State of South Carolina,)

Plaintiff,)

vs.)

Kevin Walton,)

Defendant.)

**MOTION FOR NEW TRIAL BASED
ON INSUFFICIENCY OF EVIDENCE**FILED
2007 MAY -2 PM 4:30
JENNIE REEL-SHEARIN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

The Defendant, Kevin Walton, by and through counsel, Patrick J. McLaughlin, moves for a New Trial in this matter based upon (a) a review of the evidence presented at trial which creates a reasonable doubt in favor of defendant; (b) conflicting testimony by the State's witnesses.

Analysis

The verdict of guilty as to the above indictment was reached on April 26, 2007. Pursuant to the well-established "Thirteenth Juror Doctrine" in this state, the trial judge sits as the thirteenth juror "when he finds the evidence does not justify the verdict" and has the power to grant a new trial. Norton v. Norfolk Southern Railway Co., 350 S.C. 473, 477, 567 S.E.2d 851, 854 (S.C. 2002) citing South Carolina State Highway Dep't v. Townsend, 265 S.C. 253, 217 S.E.2d 778 (1975). "The effect is the same as if the jury failed to reach a verdict When a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the result of the 'thirteenth juror' vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial judge to make factual findings." Id.

The trial judge sitting as "Thirteenth Juror" in this matter should grant a new trial

CERTIFIED: A TRUE COPY

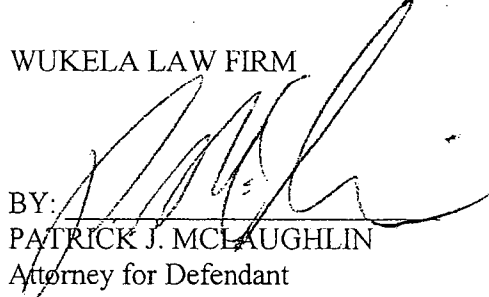
Jennie Reel-Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

based upon a review of the evidence presented which creates a reasonable doubt in favor of defendant. Based on the evidence presented, the verdict given by the jury could only have been the result of passion and prejudice. Moreover, there was conflicting testimony by the State's witnesses creating reasonable doubt about the credibility of the State's witnesses.

Conclusion

Based on the foregoing, the Defendant, Kevin Walton, respectfully requests this Court grant a New Trial in this matter.

WUKELA LAW FIRM

BY: 
PATRICK J. MCLAUGHLIN
Attorney for Defendant
P.O.Box 13057
Florence SC 29504-3057
Telephone: 843-669-5634
Fax: 843-669-5150

May 2, 2007


STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA:

STATE

VS. : TRANSCRIPT OF RECORD

KEVIN WALTON

DEFENDANT :

04-GS-21-1168
December 12, 2007
Florence, South Carolina

B E F O R E:

THE HONORABLE THOMAS A. RUSSO, JUDGE.

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

JACK W. LAWSON, JR., ESQ.
Attorney for the State

PATRICK MCLAUGHLIN, JR., ESQ..
Attorney for the Defendant

FRANCES BAKIS-RAY, RPR
Official Court Reporter

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INDEX

Motion for new trial

Page 3

1 THE COURT: All right, Mr. McLaughlin, I'd be
2 happy to hear from you, sir.

3 MR. MCLAUGHLIN: May it please the Court ---

4 THE COURT: Yes, sir.

5 MR. MCLAUGHLIN: ---Mr. Lawson. Your Honor,
6 this is a motion for a new trial based on the
7 insufficiency of evidence in the State versus Kevin Walton
8 trial. Your Honor, this was filed within the ten days
9 after the verdict. And Judge, in all honesty, the grounds
10 for our motion are pretty much what our grounds were for
11 directed verdict of not guilty after the State presented
12 their evidence strictly that it was all circumstantial
13 evidence. None of the actual, I guess, forensic evidence
14 that was offered tied my client, the defendant, into the
15 actual act of committing murder; and given the emotional,
16 I guess, nature of the charges, stuff that we believe that
17 the jury convicted him based on passion, a passion
18 verdict. And that's really, Your Honor, we're simply
19 trying to preserve Mr. Walton's rights moving forward.

20 THE COURT: All right.

21 Mr. Lawson.

22 MR. LAWSON: May it please the Court, the State
23 would stand on the evidence presented at trial and remind
24 the Court there were four days of testimony in the case
25 and the jury was out less than an hour so I think the

1 State -- it was circumstantial evidence; there was direct
2 evidence of flight, but it was -- it was and still is a
3 case of circumstantial evidence where the circumstantial
4 evidence was proof beyond a reasonable doubt in this case.

5 THE COURT: All right.

6 MR. MCLAUGHLIN: I just note for the record I
7 think I kept them out for an hour fifteen minutes, Judge.

8 THE COURT: I don't recall, but I think you're
9 right. Mr. McLaughlin, and of course, I'm not going to
10 recall every bit of evidence that occurred in that trial
11 although I recall a fair amount of it. But again, you
12 know, the Court doesn't concern itself with the weight of
13 the evidence, just the existence of evidence and it's the
14 jury's prerogative to weigh the evidence and to give it
15 what weight they choose to give it, what credibility they
16 choose to give it, and I'm going to respectfully deny your
17 motion. I believe that the jury's verdict was not
18 inconsistent with the evidence, and they -- they
19 certainly, although I agree, circumstantial as it may be,
20 as you well know from case law and the number of jury
21 instructions you've heard that there's no difference
22 between circumstantial and direct evidence, that the jury
23 is to give it whatever weight that they feel is
24 appropriate. And I believe if they -- in doing that they
25 were able to reach a unanimous verdict, and therefore, I'm

1 going to respectfully deny your motion.

2 MR. MCLAUGHLIN: Thank you, Your Honor.

3 THE COURT: Thank you, sir.

4

5 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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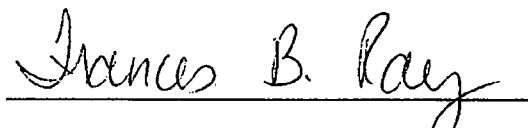
1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)
4 COUNTY OF FLORENCE)
5

6 I, FRANCES BAKIS-RAY, Registered Professional
7 Reporter (RPR), court reporter for the State of South
8 Carolina, Twelfth Judicial Circuit, do hereby certify that
9 the foregoing proceeding is a stenographic report and was
10 transcribed through computer-aided transcription; that the
11 foregoing transcript contains a true record of the
12 proceedings.

13 I further certify that I am neither counsel for,
14 nor related to nor employed by any of the parties
15 connected to the action, nor am I financially interested
16 in the action.

17 Witness my hand at Florence, South Carolina,
18 this 3rd day of July, 2008.

19
20 
21

22 FRANCES BAKIS-RAY, RPR
23 My Commission Expires: 9-13-2014
24
25

Kevin Walton – 321491
Lee C. I. – RID 137
990 Wisacky Highway
Bishopville, SC 29010-1775

FILED
2011 NOV 14 PM 4:00
CLERK OF COURT
FLORENCE COUNTY, SC

CONTENT

1. Application for Post-Conviction Relief
2. Application to Proceed Without Payment of Cost and Affidavit in Support Thereof.
3. The State of South Carolina In The Court of Appeals – APPEAL DISMISSED.
4. The Supreme Court of South Carolina – ORDER
5. Notes and Attachments

FILED FORM 5

STATE OF SOUTH CAROLINA

County of FLORENCE IN THE COURT OF COMMON PLEAS

Full name and prison number (if any) of Applicant KEVIN WALTON #321491

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LEE CORRECTIONAL INSTITUTION, 990 WISACKEY HWY.
BISHOPVILLE S.C. 29010-1235
2. Name and location of Court which imposed sentence FLORENCE COUNTY
COURT
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2004-FS-21-1168 MURDER - GRAND-LARCENY
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 26, 2007 Life With-out Parole
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty No
- (b) after a plea of not guilty Yes
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS
- ii. S.C. SUPREME COURT
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied (SEE ATTACHMENT X)
- ii. Denied (SEE ATTACHMENT 3)
- iii. _____
- (c) the date of each such result:
- i. 08-26-11 (SEE ATTACHMENT X)
- ii. 09-13-11 (SEE ATTACHMENT 3)
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Appeal Dismissed (SEE ATTACHMENT X)
- ii. Dismissed (SEE ATTACHMENT 4)
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ATTORNEYS WERE INEFFECTIVE (SEE WRITINGS)
- (b) ATTORNEY SHOULD NOT HAVE FILED AN HODGERS BRIEF
- (c) (PLEASE SEE WRITING AND ATTACHMENTS)
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE WRITINGS ENCLOSED
- (b) TWO ISSUES WERE "RIPE" FOR APPEAL (SEE WRITINGS)
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. NO
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. NO
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. no
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. no
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. no
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. no
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. no
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) NO

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? YES

(b) your trial, if any? YES

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. KAREN E. PARROT. PATRICK J. McLAUGHLIN
PUBLIC DEFENDERS OFFICE - FLORENCE - S.C.

ii. PATRICK J. McLAUGHLIN, P.O. BOX 13057
FLORENCE, S.C. 29504

iii. _____

(b) the proceedings at which each such attorney represented you:

i. PRE-TRIAL, TRIAL

ii. APPEALS

iii. _____

19. State clearly the relief you seek in filing this application:

- New Trial - (OR) Dismiss Case

20. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA)

County of LEE)

VERIFICATION

I, KEVIN WATSON #321491, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this 8 day of Nov., 2011.

Debra Sims (L.S.)
Notary Public

My Commission Expires: 11-4-2015

FILED
2011 NOV 14 PM 4:00
CLERK OF COURT
FLORENCE COUNTY, SC

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Kevin Wagon 321491, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

K. A. ...
Applicant

SWORN or affirmed to and subscribed before me this
8 day of Nov. 2011.

day of Nov., 2011.

Dolma Sires
Notary Public

My Commission Expires: 11-4-2015

FILED
2011 MAY 14 PM 4:00
CLERK OF COURT
SOUTH CAROLINA
FLORENCE COUNTY, SC

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Kevin Walton,

Appellant.

Appeal From Florence County
Thomas A. Russo, Circuit Court Judge

Unpublished Opinion No. 2011-UP-255
Submitted May 1, 2011 – Filed June 1, 2011

APPEAL DISMISSED

Patrick James McLaughlin, of Florence, and Kevin Walton, pro se, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, and Assistant Deputy Attorney General Donald J.

The Supreme Court of South Carolina

State of South Carolina,

Respondent,

v.

Kevin Walton, #321491,

Petitioner.

The Honorable Thomas A. Russo

Florence County

Trial Court Case No. 2004-GS-21-01168

ORDER

The South Carolina Court of Appeals dismissed the appeal in this matter after conducting a review pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Walton, Op. No. 2011-UP-255 (S.C. Ct. App. filed June 1, 2011). Petitioner now seeks review of that decision.

In State v. Lyles, 381 S.C. 442, 673 S.E.2d 811 (2009), this Court held that it "will no longer entertain petitions for writs of certiorari where the Court of Appeals has dismissed an appeal after conducting an Anders

review.” Accordingly, this matter is dismissed.

IT IS SO ORDERED.



C. J.
FOR THE COURT

Columbia, South Carolina

September 13, 2011

cc: Mr. Kevin Walton, #321491
Patrick James McLaughlin, Esquire
Assistant Attorney General Donald J. Zelenka
The Honorable Tanya Gee

1. Assistant Public Defender, Karen E. Parrott was my attorney from September 2003 until February 2007. She visited me in the county jail for our initial meeting. Our communication was extremely limited. I lodged a motion to dismiss her because our communication was almost none and because there was no investigation and that she doesn't do speedy trials. In February 2007, she was removed. She violated Rule 1.4 of Rules of Professional Conduct, and Rule 3.2 Expediting Litigation. "It is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the lawyer." I believe she was dishonest when she didn't tell me, she didn't do speedy trials, when we talked about it years prior. (A violation of Rule 8.4 (d) Misconduct, Professional Misconduct.)
2. The Defendant Kevin Walton, claims Karen E. Parrott, and Patrick J. McLaughlin as Attorney's for South Carolina, did act unlawfully – unethically, which actions deprived him of a fair trial.
3. Karen E. Parrott of the Florence County Public Defenders Office falsely acted as Mr. Kevin Walton's attorney for over four (4) years. She was never "Judicially Appointed" as such, in the General Sessions Court. Hence, because of her actions Mr. Walton was denied an opportunity to have an adequate investigation (or) Speedy Trial. This did not become apparent until after Walton was placed in prison. Karen E. Parrott left Mr. Walton's case so undeveloped it was beyond repair. "It was destroyed." See the eight-person subject list and the witnesses name found in the five pages (**Attachment E**).
4. Mr. Patrick J. McLaughlin was my appointed attorney from February 2007 until trial in April 2007. He was appointed to be my Appellate Counsel, as well. He was ineffective at trial "and as" my Appellate Counsel. His misconduct at trial denied me my entire defense. He violated Rule 8.4 (d) of the Professional Misconduct when he engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. We had a written transaction that Patrick guaranteed at trial, which "he violated" and the result was I lost my witnesses' and entire defenses. He was not truthful and was not competent, prompt and diligent under Rule (4) of A Lawyers Code of Responsibilities, Rules of Professional Conduct. Patrick encouraged me to pursue the terms. He asked me to sign my initials on his copy. (See: **Transaction Attachment A**.)
5. I totally expected Patrick as my attorney to represent me in the transaction itself. After the State rested, we were told he had entered evidence and would not receive last closing argument to the jury. He told me he had dropped the ball! (See **Attachment B**)
6. At Appeal, Patrick filed an "Anders Brief" which in doing so meant the case had no preserved "ripe" issues. I appealed and filed a complaint saying, "we in fact did." We had a "Motion for New Trial." The motion for new trial took almost eight (8) months, so I am surprised Patrick forgot about it. In any event, both were ripe for appeal. I complained in both courts, The Court of Appeals and The Supreme Court both denied it. See (**Attachment F – three (3) pages**)

7. At trial we had eight (8) pages of written problems we could have attached as well as a two-page subpoena list we could have called.
8. See (Attachment C & D) - The pages of Subpoena List we could have called. We had a good case we did not need the transaction Patrick had suggested.
9. During trial defendant's attorney met with the judge and had the judge sign papers that excused him from a Civil Trial for the following week. If the judge had not excused him he would have lost money from his clients. This sort of bargaining should have not have taken place during the trial. Counsel benefited from the judges decision.
10. Trial counsel failed to retain or even consult with an expert witness or any other witness for the defense.
11. Before trial and at the trial, no investigation was conducted despite the defendant's many pages of leads and names of people and places to be investigated.
12. The defendant was ill prepared for the trial. The defendant was never administered a polygraph examination while the result of any polygraph examination would obviously only be speculative, the fact that one was not performed is problematic. Further more, if an expert witness had been retained by counsel; such a polygraph could have been a factor in the expert's opinions. Had the defendant passed the polygraph examination, it would have been obviously proved helpful information to be presented with the expert testimony. If the defendant had failed the polygraph examination, such information while confidential, should have been helpful to trial counsel in preparing for the trial. The defendant was to have been in the State of Florida during a certain time. A polygraph examination would have shown otherwise.
13. Trial counsel's choice to do no investigation or exploring any of the witnesses and leads upon the defendant's countless requests which is an error that very well effected the outcome of the trial.
14. A clear understanding of those witnesses and a full investigation would have revealed relevant and important information, and should have been explored.
15. All these shortcomings are problematic. While no individual failure alone maybe a ground for granting a P.C.R., the cumulative neglect is severe. Furthermore, a full development of all of the above matters would have served as preparation for the inevitable trial.
16. Trial counsel's performance was deficient. Trial counsel was young and inexperienced. Doing a complete investigation and at least consulted with an expert witness would have assisted with trial preparation.
17. In the Motion For Speedy Trial the prejudice of course should have been assessed in the light of the interests of defendant, which the Speedy Trial Right was denied to "Protect" (i) To prevent oppressive pretrial incarceration (ii) To minimize anxiety and concern of the accused (iii) To limit the possibility that the defense will be impaired.
18. Of these the most serious is the last, because the inability of a defendant to adequately to prepare his case skews the fairness of the system. There is prejudice if defense witnesses are unable to recall accurately events of the distant past.

19. The Constitutional guarantee of a Speedy Trial affords protection only against unnecessary (or) unreasonable delay.
20. Trial Attorney did not vigorously cross-examine and the accuracy of the States evidence was not attacked.
21. The defendant was not entitled to present evidence in his defense, including that another person may be responsible for the crime. U. S. Const. Amend VI. Evidence offered to show commission of the crime by another person, is restricted to facts that are inconsistent with the defendant's guilt and facts that raise a reasonable inference (or) presumption as to his innocence. (State v. Cooper 334 S.C. 540, 514, S.E. 2d 584 (1999).
22. On August 21, 2003 the defendant gave a list of names and facts to Attorney Karen Parrott to investigate of which she did not. And four and a half (4 ½) years later to Patrick J. McLaughlin after his appointment to my case, which he also did nothing. (See Attachment E)
23. Karen E. Parrott Attorney for the Florence County Public Defender's Office during the period of time between August 7, 2003 and February 9, 2007 acted as the defendant Kevin Walton's attorney without being "Judicially Appointed" by the General Session Court. During which time she refused to file for Speedy Trial or oversee or conduct an adequate investigation, in the defendant's behalf, in which the defendant was prejudice thereby. She was not appointed by the court nor hired by the defendant but wantonly did cause the court to believe she was the defendant's attorney.
24. Because the defendant did not legally have appointment of counsel the defendant certified request on February 22, 2006 for a Speedy Trial should have been accepted.
25. The request was denied because everyone including Ms. Parrott said the defendant had counsel and could not because of this file his own motion for Speedy Trial.
26. On August 24, 2006 the defendant himself filed a Pro Se Motion to dismiss Karen E. Parrott.
27. Shortly thereafter, the Defendant also filed an "Addendum" to his August 24, 2006 motion to dismiss on or about November 7, 2006;
28. The defendant requested in his request for relief from the court, a "Findings of Facts" and "Conclusion of Law", as to whether, Karen Parrott's actions denied the defendant a Speedy Trial, and whether his Defense on Murder Charges have been irreparably harmed, by her dysfunctional representation of four (4) years. (See: **Defendant's Motion to Dismiss Counsel Pages 5 and 6**) also **Defendant's Addendum to his Motion to Dismiss Counsel**.
29. In the transcripts dated February 9, 2007 I had my hearing on the Motion to Dismiss Counsel, Judge Russo heard the motion and granted it.
30. I believe Judge Russo showed his bias. I tried to get the judge to give an offer of a "Finding of Facts" and "Conclusion of Law" regarding my assertion she had caused "irreparable harm" to my case (defense), and that the Speedy Trial claim was still undecided, she robbed me of my Right to Request it. So she should have herself.

31. In the February 9, 2007 Transcripts of the Hearing on Page 18, lines #21 through #25 he issued his own bias on me by his expressed unsupported accusations against me.
32. Also on page 19, lines #2 through #10 he wouldn't allow me to finish a record on the facts I wanted to say.
33. Also on pages, #15 and #16, lines #21 through #25 and lines #1 through #17 where I called the judge a liar.
34. In short, Judge Russo should have emphasis added, removed himself from being the judge at my trial.
35. He accepted Ms. Parrott's excuse and all about **four (4) years** not being enough time to prepare for trial, but the new attorney he appointed only had **sixty (60) days** to be ready and he was only out of Law School for a year and was a civil attorney.
36. I questioned whether the judge even read my motion. He wouldn't admit that he had. **See Page 18, Lines #9 through # 18.**

The defendant prays for this P.C.R. to be granted in his favor.

Respectfully Submitted,

Kevin Walton – 321491
Lee C. I. – RID 137
990 Wisacky Highway
Bishopville, SC 29010-1775

To: State v. Kevin Walton File
From: Patrick
Date: April 21, 2007
Re: Pre-trial case preparations with client

For file preservation purposes, this memo is meant to document pre-trial preparations. The following is a list of issues addressed with Mr. Walton. I have asked Mr. Walton to verify this memo by initialing the paragraphs and signing below.

- 1) Theory and strategy of the case: I have discussed the theory of our defense of this case with Mr. Walton and what I believe the most effective strategy will be to advance that theory.
- 2) Competency: I have addressed whether or not to seek a competency hearing or seek any evaluations re: competency. I have explained that nothing in our dealings has led me to believe that Mr. Walton is anything other than competent to stand trial. I have also questioned Mr. Walton regarding any history of mental illness in his family. Both of us have agreed nothing in that history warrants further pursuit of such matters.
- 3) Witnesses at trial: I have discussed our calling witnesses at trial. I have obtained a witness list from the State and reviewed this list with Mr. Walton. As to witnesses in general, given the theory of the case and strategies we have discussed to advance that theory, I have discussed with Mr. Walton the desire to preserve our right of Last Argument. I have explained to him that this in effect would require us to not offer testimony or evidence. We have discussed what the State's potential witnesses would most likely offer and how we could advance our theory of the case through cross-examination. I have advised Mr. Walton that as we have no witnesses to offer any alibi, I believe this to be the best way to precede, b/c it would preserve the last argument right.
 - a. Expert witnesses: As to procuring our own experts, Mr. Walton and I are in agreement that the scientific evidence to be offered by the State (DNA and fingerprints) does not require a "battle of the experts." Specifically, given Mr. Walton's history with the victim, one would expect his fingerprints and DNA to be found. There is an issue involving a boot print, but the State's own report shows that it cannot id Mr. Walton's boot to the exclusion of others.
- 4) Review and preparation for trial: As of the date of this memo, Mr. Walton understands where we currently are in our trial preparations. At this time, he believes that we are prepared to defend his case on Monday and has no outstanding questions.

Attachment H

WUKELA LAW FIRM

Steve Wukela, Jr.
Benjamin D. Moore
Christi B. McDaniel
Stephen J. Wukela
Patrick J. McLaughlin
Pheobe A. Clark

403 Second Loop Road
P.O. Box 13057
Florence, SC 29504-3057

(843) 669-5634
FAX (843) 669-5150

August 17, 2007

Kevin Walton, 321491
Lee Correction Institution - R.I.D. -134
990 Wisacky Highway
Bishopville, SC 29010

Re: State v. Kevin Walton, 04-GS-21-1168

Dear Mr. Walton:

I am in receipt of your July 23, 2007 and July 29, 2007 correspondence. First let me address your concerns regarding my failure to preserve last argument and not bringing that up in my post-trial motion. Quite simply, I believe it is a matter that cannot be addressed by the court in post-trial motion.

Quite frankly we are limited to the grounds we can argue at the post-trial stage. The Defendant is allowed to argue for a new trial based on "after discovered evidence" or on a more general ground that the evidence was not sufficient for a conviction. As I explained to you at trial, my failure to preserve the right to last argument may be an issue that could be argued on appeal and is one that could certainly be argued at the Post Conviction Relief stage, in support of an argument for ineffective assistance of counsel.

As to your July 29, 2007 correspondence and those letters you have obtained, I believe they present the same problem. In other words they may provide an issue to be argued on appeal and most certainly could be used at the Post Conviction Relief stage. However, in a motion for a new trial based on "after discovered evidence", we would have to show that the "after discovered evidence" was such that it would probably change the result if a new trial was granted. As you are aware, when we argued our Motion for a Speedy Trial, we had no specific prejudice we could outline to the court, other than your lengthy pretrial incarceration and the general effect it would have on your participation in the preparation of your defense.

In short, none of the issues you raise in your correspondence deal with attacking the jury verdict based on the evidence. Rather they deal with issues concerning your own due process or constitutional rights. As such, I will not be amending the Motion to address these issues as they are outside the grounds for a Motion For a New Trial.

Attachment B

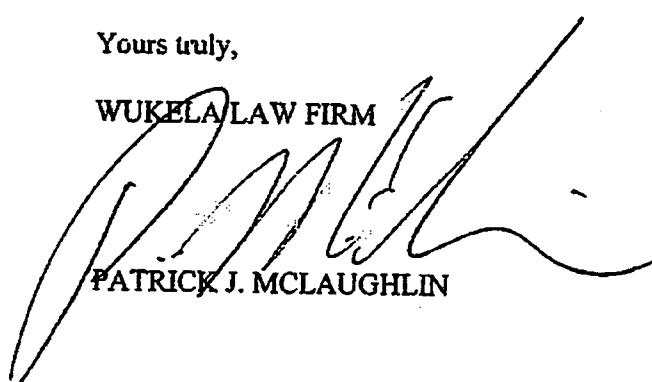
Kevin Walton, 321491
Page 2
August 17, 2007

Additionally, I have taken your hand written letters and notes and had copies made and darkening the print as you requested. Those copies are enclosed. I will be in contact with you as soon as we hear something regarding our pending Motion.

With kind regards, I am,

Yours truly,

WUKELA/LAW FIRM



PATRICK J. MCLAUGHLIN

S.C. Subpoena List

DR. JOEL S. SEKIGAWA, Pathologist	Randy W. Adams	Phone Answer
DR. FINICE E. ROSS, Pathologist	RONALD WOODBERRY	Witness
KENNETH L. BOGGS, SLEP	Physicist Brown	Witness
B.B. ?	MARY BROWN	Next door Neighbor
BURRUSON, Older Daughter	MELISSA ?	Witness
Sherrie Bennett, Friend of Victim	Reggie ?	Boyfriend 4 years
JOHN BENNETT, Friend of Victim	Donald Furr	E.M.S. Forensic
MERESSE BENNETT, Friend of Victim	JEAN T. DARE	E.M.S. Forensic
ROBERT BENNETT, Friend of Victim	ROBERT ?	Owner Lion Chemisor
WARRREN LOSTER, Officer Responding	RAYMOND TURNER	Pathologist Chief
RON LEVIN, E.M.S.	DARRIN YARBROUGH	Investigator
Stevie DRAGGERS, E.M.S.	CHUCK HAINES	E.M.S.
LEWIS H. WALTON, Paramedics Rescue	BUCKSTAR ?	Mauling for keep
DAVID BROWN, Forensic F.C.S.D.	BUBBA MATTHEWS	Owner.
KEITH LUTHER, Forensic F.C.S.D.	REGGIE MATHER ?	Co-worker at Cemetery
Don Reynolds, Coroner	CHUCK ?	X Husband (Virginia)
Donnie King, F.C.S.D. Supervisor	?	Brittany's Real Father
M. BRAMBLES, Officer Responding	?	Younger Brother of Victim
SEAN C. REIGHTLEY JR. Toxicologist	RANDY W. ADAMS "Wife"	Victims Paramedics Doctor.
BRUCE McLEOD, Brother in Law		
TRICIA McLEOD, Sister of Victim		
DAVID T. HENRY		

VA Subpoena List

Det Higgins Did I. D. Work
 David R. Samuels First on Scene
 Sandra S. Simmons Assisting Officer
 Paul M. Spraker " "
 Donald L. Switzer Detective
 Michael D. Marrion Supervisor
 Matthew D. McCartney Officer
 Gary L. Brinelli Evidence Examiner
 Parrish ... Forensic Tech
 Lisa Duck Witness
 Beth Roberts ... Witness
 Tow Truck Driver.

FL Subpoena List

K.R. Brower Reporting Officer.
 D.E. McDonald Crime Scene Technician
 Mr. Capranzano Witness
 Mr. Yuri Rybak Witness
 J. Guimenta Investigator
 J.J. Demot Supervisor
 Mary Pasquarello Victim
 James Pasquarello Victim
 Tow Truck Driver
 Tara Sessa P.B.S.O. Serology Lab
 Farrah Pearson Evidence Technician
 J. Coats Finger Print Examiner
 C.M. Daugherty Investigator

**Requests and Questions and information given by the
Defendant to Patrick McLaughlin in February 2007**

1. Constitutionality of Murder Warrant use?
2. A. No witness vs. admission of one that placed suspect at the home minutes "before the body was found. See. Warrant."
3. B. Warrant dated 3/31/03 vs. Pathologist's Classification of death as a homicide dated 5/7/03. Murder warrant was requested and issued 37 days "prior to" cause of death by Pathologist.
4. Victim's medical records from Medical office in Pamplico. Also, data from victim's computer RE: daily diary, contained sexual partners and bar-escapades. Meets Brady ruling in Youngblood.
5. Admissibility of Florida car and prints as evidence. Defendants right to examine evidence, vs. the car being returned to the party who was leasing it as a rental.
6. Go over subpoena list from SC, Fla and VA.
7. Talk about investigation who, what, where and when.
8. (a) Discuss the names and leads given to be investigated such as, the victim and Sherrie Bennett's involvement in illegal check cashing scheme, with "Robert" part owner of Lions Chemical. (b) Such as, victims neighbor and B.B. and Theresa Bennett's friends. Ronald Woodberry, Phyllis Brown and Melissa. Attorneys name David Keller at [REDACTED]. Ronald believed the guy across the street from the victim with the Gray car killed her. Melissa and Phyllis were close friends of B.B. and Theresa who has info that could be of value. Melissa's phone is [REDACTED]. (c) Such as, Robert from Lions Chemical employed Robert Bennett that believes Bennett stole \$2,000.00 from him. (d) "Robert" from Lions Chemical also employed me. My clothes and boots found in the victims car were there because while working they would become soiled with diesel fuel, so before leaving work I would shower and change clothes. (e) Such as, Reggie and his Mother. Reggie was victim's boyfriend for 4 years and his Mother worked with the victim. (f) Such as, victims teenage boyfriend Chris, who was also the oldest Bennett's daughters boyfriend whom she lost her virginity to. Right after, the victim got him drunk and took him to bed. As a result of this Sherrie Bennett warned the victim that if she seduced any of her boys she would kill her.

7 2
ATTACHMENT II 9 PAGES

9. (a) Chris and the victim had a confrontation two days before he death where she kicked him out of her yard. He and Robert Bennett were smoking pot over at the Bennett's yard. (b) That same night, the victim and her first husband who lived in Virginia had words over the phone when she refused to move to Virginia and live with him. She had lead him to believe that she would earlier that week.
10. The victim's phone was in Randy W. Odom's name, have we investigated who he is and what's his relationship to the victim?
11. The victims friends husband discovered she had slept with the victim's brother the same man used to do work on the victims car. He drove a truck for a logging company. Sherrie Bennett could provide more information on who he is. He lived in a trailer with his wife (the victim's friend). He "may-be" the same man who had his phone in her house (Randy W. Odom's).
12. Also that week before the victim died ^{B.B.} and Theresa Bennett had a confrontation with a young black man in the victim's yard. The young man broke beer bottles on the house and had a gun according to the girls. I was in the house when they both came screaming in and dead bolted the door while glass broke outside. They kept yelling he has a gun! That was Monday while I babysat.
13. Have we investigated the fact the victim had a trailer she rented while she lived in the projects? [REDACTED] or [REDACTED]
14. In February 2003 early in the morning while I was living with the victim, Robert Bennett called me at 4 AM in the morning, wanting me to come over because a black man had somehow entered their house and attempted to get into the Bennett girls bedroom. This was around February 20th.
15. The week the victim died, the victim had confronted her sister Patricia McLeod about cheating on her husband Bruce McLeod. There was bad blood between the victim and her sister Patricia because when their mom Nancy Burrleson Chavis died in 2002 Patricia got the house and about \$100,000.00 while the victim got very little. The victim got her Mom's beat up 1996 Chevrolet Cavalier. The one that was stolen and found in Florida. The victim was resentful about being left out of the will or a large part of what her mom left.
16. The week the victim died, ^{B.B.} 's real father Chuck came in and saw the victim at her work place.
17. The week the victim died, Sherrie Bennett advised the victim that she met a nice guy she liked on the computer who lived in Atlanta, GA

- who she gave the victims address to if he missed them on the off ramp where she was supposed to meet him the day Friday, the victim died. We all had plans to go dancing on Friday, and Sherrie was going to meet him when he got off the highway and lead him to the bar. The victim was upset Sherrie didn't give her new friend her own address.
18. The day before her death, the victim began to have hallucinations and would see things in the road that weren't there. She went to the Pamplico doctors office behind the Pamplico Post Office due to "she thought" was a low blood oxygen level and having a period twice in the same month (which had never happened to her before). She spent over an hour with the doctor once she was called in her office. I was waiting for her.
19. The victim and Sherrie Bennett had a mutual enemy they hated. The guy had stolen Sherrie's home computer one year. She had sex with him and that night when he left he allegedly took her computer. The victim a couple weeks before she died tried several time at the bar to hit him with a beer bottle. I kept having to take the beer bottle away from her.
20. B.B. stepfather was paying the victim child support. However he was a few months behind and the week she died she told him over the phone she was going to turn him in for being 3 months behind. This man though he wasn't B.B. 's real father the victim was hiding the fact a guy named Chuck was B.B. 's real father because this one guy was pretty good at paying and had a job so she let him believe she was his.
21. The victim was deathly afraid of her old boyfriend Reggie. B.B. , Theresa, Sherrie and Reggie were coming from a campground and returning home early because Reggie had become jealously enraged. The argument became so heated, the girls had to kick Reggie out of the car 20 miles from home. He threatened to kill her and kept calling her a dead fuck. The victim worked with his mother and the week before she died the victim told his Mom she thought she love me (to get back at Reggie). They both worked at the cleaners on the East side.
22. Were any of the Sex toys taken as evidence dusted for prints?
23. They said, the drawers in the bedroom were open as if someone was looking for something. Were they dusted for prints?
24. The house had 2 bathrooms; one was not drawn into the schematic of house. Neither was the walk-in room next to the back door directly

across from the washer where food supplies were kept. (See our drawn schematic).

Virginia

25. On July 8, 2003 it was confirmed that six latent prints of mine were found on the stolen car. I was in their custody at that time they failed to charge me and relinquished their jurisdiction by allowing me to leave it.
26. Out of the 7 prints found outside the car, they say 3 of those 7 were A.F.I.S. quality, however my prints (10 card) were in the A.F.I.S.; why didn't they match??? That's what A.F.I.S. quality means if the prints are in the A.F.I.S. they should match.

South Carolina

27. Why did they indite me after my preliminary? What was the reason? Was it necessary? What about inditement unnecessary delay? Rule 3 C & D. Ask about the 3, 90 days extensions.
28. As referred to in paragraph 8A, the victim had become too big of liability to Robert in the check-cashing scheme. Sherrie Bennett has knowledge of this as well as being a participant. The three were collaborators in felonious activity.
29. B.B. said we got home at 1 AM, and she said after we talked to her she went to her bedroom and watched Seinfeld and fell asleep (On non-cable, Seinfeld comes on from 11:30 to 12:00).
30. Sherrie Bennett said her moneybox was over at the victim's house. Since she was at the bar with us and never entered the victim's home afterwards, how does she know her box was there when we returned?
31. When we were at the bar who did B.B. & Theresa have in the house? (Fact) they always had boys over when we left them alone which was at least 3 nights a week. The victim had school on Monday and Wednesday nights and we partied at least one night each week.
32. Our investigation should have included; running the 10 prints that was found through our A.F.I.S. machine to see what would match to them.
33. (Fact) Virginia had the 10 prints and couldn't match them for 60 days. Question, the "first day" they matched one print on the drivers door to someone else what was the difference between that print and mine

- being as I was in the A.F.I.S. memory at the time; (other than the fact it was someone else's). Was there a noticeable clarity with on impurities (or) blemishes to it as compared to what turned out to be my prints? At what point if ever, did they do to exclude the owner prints?
34. Had I (SC) wanted the money I could have taken it during those times I was home alone or those times that I babysat her daughter. The money was there a month prior to it being gone that I was aware of.
 35. It is important to know what date? David Brown submitted the Forensic Services Request for toxicology testing vs. murder warrant being issued. One request he wrote cause of death "pending" and/or stamped April 3, 2003 the cause of death was stated to be "strangulation".
 36. Autopsy revealed "the neck is carefully examined and no fingernail scratches or other abrasions are noted; reported by J.S. Sexton, M.D. However forensic Lt. Keith Lutckin reported "a large degree of redness was present on her neck".
 37. If I was "last seen" making a peanut butter sandwich in the kitchen...how does B.B. know who closed the bedroom door on her? Or did I make a sandwich after I showered...then that would mean she didn't go to her bedroom to get to bed if she saw me.
 38. While the victim and Sherrie and I were at the bar the night before she died a guy at the bar kept telling the girls there is quarters on the jute-box if they want to play music then 20 minutes before we left the man became enraged that someone was playing nigger music when the girls had played a kid rock song. He said, who's playing the nigger music on the box with my quarters? He verbally fought with the girls over what he felt was nigger music.
 39. I was never a "prime-suspect" but a "convenient one".
 40. Was there any stomach content search (or) analysis on the victim?
 41. Was there any meds prescribed to victim the day prior to her passing? See paragraph # 18 on page 5 herein. Reasoning, some meds cannot be taken with drinks. (99% found in urine .092% found in blood).

Virginia

42. Out of the 7 prints of which 3 were A.F.I.S. quality (vs) the one found on the drivers door belonging to Dean Philip Lanke was his print a part of the 7 prints entered in to evidence? If not they must have dusted for prints on the exterior of the car twice because Tech. Parrish

only claims to have dusted once whereas #7 were "seven possible latent lifts were developed and "turned into evidence for examination". Does chain of evidence show how long Tech. Parrish had the prints before entering them in as evidence because obviously he determined the prints were or were not before entering them in as evidence? How else could he explain not entering Dean's one print as evidence prior to the #7 prints being entered?

Florida

43. The victims 1996 Chevy Cavalier is "assumed" to have been in Boca Raton, Florida on or prior to April 16, 2003.
44. Boca Raton claims the keys to the victims Cavalier were found as evidence in another crime scene on April 16, 2003. However "keys" were not photographed (or) was any description given of them when evidence was received on April 17, 2003.

South Carolina

45. Victim had an "inhaler" she carried with her. Can we find a prescription for it in her medical records?

Florida

46. Cst. D. McDonald advised J. Giumenta that the pair of boots found in the victim's Chevy Cavalier matched the tread found in a break-in and the same tread "matched" that of the tread outside the residence. The boots were sent for DNA processing to P.B.S.O. Serology lab per Tara Sessa. Evidence technician Farral Pearson was ordered to package and send. To date we have received no DNA Footwear Analysts from P.B.S.O. Serology lab confirming a tread match.
47. We also have not received any statements or affidavits from Cst. D. McDonald as to sole tread print match. However J. Giumenta, said McDonald said there was a match. Forensic DNA footwear analysis have not been confirmed. We have a mere he said she said of the scene investigator who are not qualified to make such a determination. Even if, there was a positive match who's to say who was wearing the boots at the time the print was made??

South Carolina

48. Warrants have sequel numbers 275695 and 275696. However the date they were so ordered are 3/28/03 and 3/31/03 (three days apart).

Florida

49. To what "degree of certainty" was the boot print match?

South Carolina

50. How do the untruthfulness of murder warrant reflect on lawfulness of Gov. Warrants? Etc. A See Franks V. Delaware 438 U.S. 154 (1978) U.S. V. Stanert 762 F. 2nd 775, 781 9th Cir. 1985) U.S. V. Chesher, 678 F. 2nd at 1367 – Second test U.S. V. Dicesare 765 F. 2nd 890, 894, 895 (9th Cir. 1985).

51. We need to bring all of Sherrie Bennett's children to court. She has two boys and two girls; both her boys at some point were employed by Robert at Lions Chemical and can give testimony as to showering at work and a need to change clothes also to the check cashing scheme.

South Carolina

52. We need to look closely at Sherrie Bennett's "employment" at Florence County Nursing homes. She was fired from one for mistreating the older people.
53. We need B.B. school attendance records for 2003.

South Carolina, Florida, Virginia

54. They say this case involves three (3) jurisdictions... That is based on the "assumption I stole the victims car, and that I stole a Florida car and that I drove those cars to and from Florida. There is no substantial circumstantial evidence that raises more than suspicion which the assumption is based on the evidence they're relying upon merely raises suspicion there is no reasonable doubt here. Our Constitution ensures the State be required to convict someone "beyond" a reasonable doubt.

Constitution ensures the State be required to convict someone
"beyond" a reasonable doubt.

- 55. * I need to see Order of Court giving (assigning) the Public
Defender's Office to my case.
- 56. Rule #3 C & D has mandatory language. I need to see Order granting
the 90 day successive terms. (See Page 7, Paragraph 27 herein).
- 57. In July of 2003, at Chesterfield, Virginia I signed waving extradition.
I need a copy of the waiver I signed.

South Carolina

The F.C.S.O.

Evidence room chain of custody report shows the computer tower was returned.

How can that be? That was evidence! We really need to raise a stink about that.

A document I found expressed that Lawson's request for a psychological profile of me was denied.

Virginia

Paragraph #13 by Lt. King. He expressed Florida believed I killed Shannon. He also believes Florida obtained warrant(s) for my arrest.

Florida

Newly printed report vs. older report. I noticed no changes.

However

I found a document generated from the Office of Darren D. Shull, Assistant State Attorney Florida Bar, dated 8/22-03 which states there is not enough evidence to get a warrant and prosecute me in Florida for vehicle theft and burglary.

Discussion

Since Virginia chose not to bring charges against me and Florida believes that there is a lack of evidence to get a conviction --- what gives them the right under "Resgestae" to come to South Carolina and say my actions there were linked together to point of time and circumstances with my South Carolina charges.

325 SC at 92

480 S E 2nd at 79

12 Criminal Law Key 365 (3)

8/21/03- If pages given by C'nt

~~A.J.~~ Monday Night 3-25-03, Had gun that
GIRLS SAW. HE THREW GLASS BEER BOTTLE
AT HOUSE SEVERAL TIME. TRESSA AND
SHANON'S ^{B.B.} WITNESSED IT. I
WAS IN THE HOUSE AND HEARD ALL THE
GLASS BOTTLES HITTING AND BUSTING UP
AGAINST THE HOUSE ~~WALLS~~

MAN IN BAR. SHERE + SHANON had FIGHT WITH
MAN IN BAR 3-27-03 ABOUT
THE SONGS THE GIRLS PLAYED ON
THE MANS MACHINERY FROM THE JUKE
BOX. HE COMPLAINED THEY
WERE NIGGER LOVERS.

SHERE + OLDEST DAUGHTER BETWEEN SHANON AND
ROBERT OLDEST SON SHERE'S OLDEST DAUGHTER
AND CHRIS THERE IS A CONFLICT -
BETWEEN THEM BOTH
AND A GUY NAME CHRIS. AND BETWEEN SHANON
AND SHERE BETWEEN SHANON HAVING SEX WITH
ROBERT HER OLDEST SON, WHO IS 17.

(Attachment E)

12.

SHERE HE WARNED SHANON ABOUT HAVING SEX WITH SHERE'S OLDEST SON IF SHE TOLD SHANON SHE WOULD KILL HER IF SHE HAD SEX WITH HER SON.

SHERE'S OLDEST 16 YEAR OLD DAUGHTER HAD HER VIRGINITY TAKEN BY CHRIS AT 20 YEAR OLD. WHILE THEY WERE DRINKING, SHANON GOT CHRIS DRUNK AND HAD SEX WITH HIM. WHEN SHERE'S OLDEST DAUGHTER FOUND OUT BOTH HER AND SHERE WERE EXTREMELY UP-SET. AFTER SHERE'S OLDEST DAUGHTER BROKE UP WITH CHRIS BECAUSE OF IT. SHANON HAD CHRIS LIVE WITH HER FOR ABOUT A MONTH. CHRIS WAS STAYING WITH SHERE BEFORE HE WAS IN JAIL FOR SOMETHING.

ON 3-26-03 CHRIS CAME OVER AND SHANON HAD TO KICK HIM OFF HER PORCH. HE LATER TOLD ROBERT HE WOULD GET EVEN WITH HER.

REGGIE HE WAS SHANON'S X AFTER 4 YRS. SHE WAS "FRIGHTFUL" OF HIM. THERE WAS A BIG CONFLICT COMING BACK FROM CAMPING AT THE BEACH THAT EVERYONE HEARD. HE TERRORIZED HER SEVERAL TIMES.

ROBERT, He does all SHAWON'S WORK ON HER CAR. He is a TRUCKER FOR A LOG LUMBER CO. His wife is close friends with her. She had sex with SHAWON'S BROTHER over SHAWON'S house one night. Robert may have found out about it. Robert was EXTREMELY UPSET when he found out SHAWON was ILLEGALLY USING THEIR PHONE AND INTERNET SERVICE. SHAWON'S PHONE WAS IN HIS NAME OR HIS WIFE'S NAME.

ROBERT (LION'S CHEMICAL) Robert used SHAWON + THERE TO CASH SPZABLE CHECKS FOR him TO AVOID TAXES ON THE MONEY. CHECKS OVER A THOUSAND DOLLARS.

CHUCK He is SHAWON YOUNGEST DAUGHTER'S REAL FATHER. SHAWON AND he had a fight over "Coke" A COUPLE WEEKS prior to her DISMAY. SHAWON has had a - OTHER Guy Paying Child support for her YOUNGEST DAUGHTER. He may have found out He wasn't the REAL FATHER.

X HUSBAND - VA. OVER THE PAST MONTH OR
SO THEY HAVE BEEN HAVING
CONFLICT OVER EACH OTHERS FALSEHOODS.

Pat sleeping around on Bruce. The victim was disturbed about this. She had hard feelings about their mother not leaving her anything but her old car.

Note: Ronald Sawberry has info so does his Joe friend Malista and his sister Piquis Brown. So does Mary Brown who was victim's neighbor.

Ronald believed for a while the Guy who lived across the street from victim with the Gray Car was the Guy who raped her. Melissa [REDACTED] Piquis. His sister got out of info from Sled members. Ross Attorney is David-Kauer [REDACTED]. They also said victim's daughter said she was raped by the killer.

Mary Brown Neighbor was questioned by Sled members.

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

**APPEAL FROM FLORENCE COUNTY
COURT OF GENERAL SESSIONS**

**HONORABLE THOMAS ANTHONY RUSSO
CASE No. 2004-gs-01168**

State of South Carolina ----- Respondent

Kevin Walton ----- Petitioner

PETITION FOR WRIT OF CERTIORARI

Flitachmen F.

September 6, 2011

Kevin Walton – 321491
Lee C. I. – RID 137
990 Wisacky Highway
Bishopville, South Carolina 29010-1775

The Court of Appeals failed to see a “critical error” made by the Petitioners Court appointed attorney. In that, the Attorney, Patrick J. McLaughlin should have “never filed an Anders Brief”.

In order to be approved to file an Anders Brief there must be “no appealable issues.” However, the Petitioner has two in which were made “Ripe” by the Trial Judge. On lines 13 and 14 on page 553, the trial Judge said, “Sure, and that is certainly noted for the record and those are all preserved.” The trial had a “Motion For Direct Verdict,” and after trial, a “Motion For New Trial based on insufficiency of evidence”, but were denied.

The Petitioner’s Appeal should have never been “raised” on an Anders Brief because it has more than one issue, which has been made Ripe at trial, and preserved for this court.

See: Petitioner’s Complaint and Petitioners Petition for Rehearing. Each one denied by the Court of Appeals.

The other issues raised herein are found in the “Petitioners Petition For Rehearing, of which the Petitioner would like to raise herein, and have this Honorable Court consider. There is no need to reiterate it, if it pleases the Court.

I Kevin Walton pray that court hear and grant the petition for Writ of Certiorari under S.C. Judicial Department Rule 242.

Respectfully submitted,

Kevin Walton – 321491
Lee C. I. – RID 137
990 Wisacky Highway
Bishopville, South Carolina 29010-1775

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

PETITION FOR WRIT OF CERTIORARI

Kevin Walton,
Petitioner

Case Number:
2004-GS-21-01168

The State,
Respondent

PROOF OF SERVICE

I Kevin Walter do certify I have provided a copy of Petition For Writ of Certiorari dated September 6, 2011 to the court, by putting it in the U.S. Postal Service (Priority Mail Service) the 6th day of September 2011.

Copies were also sent to the following:

Assistant Attorney General Douglas Zelenka
1000 Assembly Street, Room 519
Columbia, South Carolina 29201

South Carolina Court of Appeals
Tanya A. Gee
PO Box 11629
Columbia, South Carolina 29211

Wukela Law Firm
Patrick J. McLaughlin, Attorney at Law
403 Second Loop Road
PO Box 13057
Florence, South Carolina 29504

Clerk of Supreme S.C. Court
The Honorable Daniel E. Shearouse
Clerk of Court
PO Box 11330
Columbia SC 29211-1330

Kevin Walton - 321491
Lee C. I. - RID 137
990 Wisacky Highway
Bishopville, South Carolina 29010-1775

File Copy

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
	)	
	)	2011-CP-21-3062
	)	
Kevin Walton, 321491	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for post conviction relief (PCR) filed November 14, 2011, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the 2004 term of the Florence County Grand Jury for murder and grand larceny (2004-GS-21-1168). Karen Parrott, Esquire and Patrick McLaughlin, Esquire, represented Applicant.

On April 26, 2007, Applicant was found guilty and was sentenced by the Honorable Edward B. Cottingham to five years imprisonment on the grand larceny charge and to life imprisonment on the murder charge. Applicant filed a timely notice of intent to appeal. The South Carolina Court of Appeals dismissed the appeal by order filed June 1, 2011. Applicant filed a Petition for Writ of Certiorari seeking a review of that decision. The South Carolina Supreme Court dismissed the Petition September 13, 2011.

Attached herewith and incorporated herein are the records of the Florence County Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and the transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Attorneys were ineffective (see writings)"
2. "Attorney should not have filed an Anders Brief"

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under

professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

ALAN WILSON

Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

9/27, 2012.

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

2011-CP-21-3062

KEVIN WALTON, #321491)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

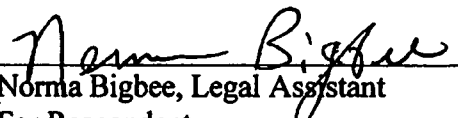
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

J. Rene Josey, Esquire
P.O. Box 5478
Florence, SC 29502

DATED this 27TH day of September, 2012.


 Norma Bigbee, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

COURT OF COMMON PLEAS

KEVIN WALTON)
321491

PETITIONER,)

v.)

TRANSCRIPT OF RECORD
11-CP-21-3062

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

October 10, 2013
Marion, South Carolina

B E F O R E :

THE HONORABLE WILLIAM H. SEALS, JR., JUDGE

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

J. RENE JOSEY, ESQ.
Attorney for the Petitioner

JOSH THOMAS, ESQ.
Attorney for Respondent

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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EXHIBITS**PETITIONER'S:**

No.	Description	I.D./EVD.
1	Notes of Petitioner	19/20

1 WHEREUPON,

2 **KEVIN WALTON,**

3 having been duly sworn by the Clerk of Court,
4 testified as follows:

5 THE CLERK OF COURT: Have a seat please.

6 MR. THOMAS: The next case is Kevin Walton
7 versus the State of South Carolina, case number
8 2011-CP-21-3062. Mr. Walton was indicted in
9 September of 2004 for murder and grand larceny. He
10 was represented at trial on these charges by Patrick
11 McLaughlin. The trial was April 23rd through 26th,
12 2007. The jury found him guilty as indicted. He
13 was sentenced by the Honorable Thomas Russo to life
14 without possibility of parole on the murder charge
15 and five years concurrent on the grand larceny
16 charge. Mr. McLaughlin also filed a appeal, filed
17 an Anders brief on Mr. Walton's behalf. That appeal
18 was dismissed by the Court of Appeals and
19 unpublished opinion 2012-UP-255. The Supreme Court
20 denied cert on that case, returned October 2011.
21 This PCR was filed in November of 2011. He is
22 represented by Rene Josey, and the State is ready to
23 proceed.

24 THE COURT: If you will call your first
25 witness.

PW - K. WALTON - DIRECT

1 MR. JOSEY: I call Mr. Walton.

2 **DIRECT EXAMINATION**

3 BY MR. JOSEY:

4 Q Mr. Walton, would you state your name for the
5 record please.

6 A Kevin Walton.

7 Q All right. You heard the State describe your
8 trial back in 2007. Who were your lawyers going
9 into that trial?

10 A Well, I had Karen Parrott at first. I had her
11 for four years. And when she didn't do anything at
12 all I had the Court dismiss her, and they gave me
13 Patrick McLaughlin 60 days before trial.

14 Q All right. And were they both appointed?

15 A Yes. No, no, no, no, no, I later found out that
16 Karen was not appointed. The Public Defender Office
17 was not appointed. There was nothing, there was no
18 paperwork saying that the Court appointed Karen
19 Parrott.

20 Q All right. But neither one was retained by you,
21 were they?

22 A No.

23 Q Do you know why you had to wait four years for a
24 trial?

25 A No.

PW - K. WALTON - DIRECT

1 Q Did your lawyer seek an earlier trial for you, a
2 speedy trial?

3 A No, she didn't do anything.

4 Q All right. Did your lawyers engage the experts
5 that you needed at trial? Did they hire the experts

6 —

7 A No, I mean, I didn't have any experts. I didn't
8 have anyone.

9 Q Did you express to them the need for experts?

10 A Yes.

11 Q All right. What kind of experts did you suggest
12 were needed?

13 A Fingerprint experts. It really, he asked me if I
14 needed any experts — I believe he did. And I told
15 him that he was the attorney, you know, he should
16 figure out what experts I needed.

17 Q All right. Were fingerprints an issue in your
18 trial?

19 A Yes, yes, yes.

20 Q All right. And would it have aided your defense
21 to have a fingerprint expert?

22 A Yes.

23 Q How?

24 A Well, they had two fingerprint experts that gave
25 testimony. One of them said that fingerprints were

PW - K. WALTON - DIRECT

1 excellent fingerprints; and then the other one said
2 that they were not, that he needed more time to work
3 on them. Now there's a discrepancy, or there's a
4 reason why he said that and that's because it took
5 him 60 days to come up with my prints on that card.
6 And the 60 days is when he incurred information from
7 Florida, and everybody else, that I was the person
8 wanted for the crime.

9 Q Now you were linked to this crime in Florence
10 through a stolen car in Virginia; is that right?

11 A Yes.

12 Q Did you suggest to your attorneys that they
13 needed to pursue the possibility that other persons
14 were responsible for the crime in Florence?

15 A I contested that the whole time from day one to
16 Karen Parrott. I explained to her that I was
17 innocent, I didn't do it.

18 Q Would fingerprint experts have helped in
19 presenting that to the jury, the possibility of
20 other persons —

21 A Yes.

22 Q —having contact with that car?

23 A Yes.

24 Q All right, did you suggest the need for a DNA
25 expert?

PW - K. WALTON - DIRECT

1 A Well, the DNA that they had was simply all of
2 mine. I stayed at the house with her. I rode in
3 her car. They found my DNA in the house. They
4 found my DNA in the car, and they claimed that was a
5 big deal or something anyway, but they had other DNA
6 they picked up. They picked up three hairs from the
7 bed sheet. One hair was mine, one of the hairs was
8 hers, and there was a blond hair that they didn't
9 even DNA test which should have been the first one
10 that they tested.

11 Q Did you suggest to your attorneys that that be
12 pursued, the identity of that blond haired person?

13 A Yeah, yeah. Well, we knew it going into trial.

14 Q And did they pursue that?

15 A They did and they didn't. The only person that
16 can give testimony to a document is that person who
17 in which created the document and that person was
18 not there at trial.

19 Q All right. Did your attorney take steps to get
20 that person at trial?

21 A No.

22 Q Is that something that you wanted them to do?

23 A Well, yeah, obviously.

24 Q Okay. And were there other sources of DNA like
25 razors in the car and bottles in the car?

PW - K. WALTON - DIRECT

1 A Yes. Yes, there was razors, bottles, coat,
2 camera, there was other stuff.

3 Q And did your attorneys pursue the link about
4 between those items and some other person?

5 A No, no.

6 Q Did you think you needed a computer expert?

7 A Absolutely, absolutely.

8 Q Explain to the judge why you needed a computer
9 expert.

10 A Sharon was -- this is the victim. She was all
11 the time writing her diary in her computer, all the
12 time taking notes, all the time. Every day she
13 would write at least hour-and-a-half. And when I
14 found out that she was gone I had told Karen Parrott
15 to make sure we got a copy of the transcript of, on
16 the computer, that she kept a diary, and that diary
17 would show our affection for one another and
18 everything, our close bond. And I found out later
19 that the -- that they gave the computer back two
20 days after having possession of it; and the daughter
21 of the victim called the detective and said I found
22 two floppy disks, both of them are marked diary,
23 what do you want me to do with it. He said hold on
24 to it. And four years later they go to match, see
25 what's on the disks, and they're unavailable to

PW - K. WALTON - DIRECT

1 read, there are scratches or something like that.

2 But information on the computer would have shown

3 that there was someone else that —

4 Q So do you feel your attorneys adequately pursued
5 that evidence?

6 A No.

7 Q All right. Did you feel you needed some kind of
8 footprint expert?

9 A I can't figure out what that still in the dark.
10 For years, for like three or four years they claim
11 that they had my footprint down in Florida. They
12 had the key down to Florida. They had my DNA in the
13 car down in Florida and then when it come time for
14 trial —

15 Q Let me stop you just a second for Your Honor's
16 benefit. You were linked to this crime through some
17 path in Florida and then to Virginia, right?

18 A They said —

19 Q That was their theory?

20 A Yes. They said I had committed the crime here,
21 took the victim's car, drove to Florida, and then
22 stole the car down in Florida and then drove to
23 Virginia and turned myself in. That was their
24 theory.

25 Q So why would a footprint expert had been

PW - K. WALTON - DIRECT

1 important to you?

2 A It would have shown I wasn't there.

3 Q In Florida?

4 A Yes.

5 Q And breaking that chain of events?

6 A I don't know of how broken into or not.

7 Q Did your attorney purchase a footprint expert for
8 you?

9 A No, no.

10 Q Okay.

11 A He had some -- he had some -- he came to me about
12 two weeks before trial. They had moved me about two
13 weeks before trial. They had moved me from where I
14 had stayed for the last four years. They had took
15 me and thrown me in the hole. And they take all my
16 belongings and my food, my clothing, my long johns
17 and everything, and they -- what was the question
18 again?

19 Q Did your attorneys pursue the footprint expert
20 and these other experts that you say you needed and
21 you told them you needed?

22 A No, no.

23 Q All right. During the trial did you have
24 concerns about your attorney's experience or
25 inexperience?

PW - K. WALTON - DIRECT

1 A Yeah, he was fresh out of school. He was a civil
2 attorney, and he had 60 days to get prepared for a
3 murder trial.

4 Q Do you feel he was honest with you in
5 representing his experience?

6 A No.

7 Q All right. Tell the judge —

8 A Well, he was honest in the fact that he was an
9 attorney and I don't think that he had the
10 experience. And I don't think that he was
11 forthright in saying to the judge, look, I know
12 you're appointing me but I just got out of school
13 and —

14 Q Had you known he was as inexperienced as you
15 believed him to have been, would you have sought
16 other counsel?

17 A Well, I think I had a choice to do that and I
18 chose to stay with him. I don't remember — I
19 remember when I was talking about whether I was in
20 the county —

21 Q And when you made that choice do you feel
22 Mr. McLaughlin had honestly represented his
23 experience to you?

24 A No, no.

25 Q At trial was there a point where a witness

PW - K. WALTON - DIRECT

1 blurted out something about your history in other
2 states or other incidences with women, an objection
3 was made, you recall that?

4 A About me being a woman hater or something?

5 Q Something like that.

6 A Yeah, yeah, yeah.

7 Q And did your attorney seek a curative instruction
8 to the jury at that point?

9 A I don't — I don't think so.

10 Q All right. Is that something you thought should
11 have been done?

12 A Yes, yes.

13 Q All right. Did your lawyer give up the right to
14 give the final jury argument?

15 A That's what I was — that's what I had forgotten.
16 Anyway, two weeks before trial he came to me, he
17 said look, I have a deal, they don't have any
18 evidence, they just came to me, and I have a letter
19 here saying that you're — that they don't have
20 enough evidence to charge you in Florida and they're
21 not sure about the boot print. They had someone
22 else come up with a, I guess SLED come up with a
23 thing saying that wasn't the boot. And he said if
24 we don't call any witnesses, I don't take the stand,
25 and he doesn't put forth any evidence, that we will

PW - K. WALTON - DIRECT

1 get last closing argument to the jury. Now I
2 thought that that was crucial to have that last
3 closing argument especially when there wasn't any
4 evidence.

5 Q All right. So you accepted that recommendation?

6 A Yes.

7 Q And you did not testify for that reason?

8 A Yes.

9 Q And did you or Mr. McLaughlin get the final jury
10 argument?

11 A No.

12 Q Why not?

13 A He had entered evidence.

14 Q All right. Was that the understanding that you
15 had with him going into the trial?

16 A No, no, no, no. Yeah, he was supposed to just
17 abide by the rules and we were supposed to get last
18 closing argument and obviously he dropped the ball.

19 Q All right. Did at some point he tell you that he
20 dropped the ball on that?

21 A Yeah, yeah. Well, I had heard conversation he
22 had with the judge and he said he had last closing
23 argument. And the State says, no, you do not, you
24 filed evidence. And he at that point he realized
25 what he had done wrong, and he had -- he was honest

PW - K. WALTON - DIRECT

1 with me. He said he had dropped the ball. And I at
2 my point I'm thinking we got this trial to finish
3 and hopefully win it; and what do I do, do I get mad
4 at him or do I accept it as him being, you know,
5 young and inexperienced.

6 Q Had you provided names and sheet of investigative
7 leads to your lawyers prior to the trial?

8 A Many times, many times.

9 Q Were they —

10 A I have copies of them.

11 Q Okay.

12 A If you.

13 Q If you have them handy let's offer them. Why
14 don't I ask you questions while you're looking so we
15 won't waste time.

16 A Yes, sir.

17 Q Did you offer to take a polygraph?

18 A Yes, yes.

19 Q You told your lawyers you were willing to take
20 polygraph?

21 A Yeah, but we — he decided it wasn't really
22 necessary because they're inadmissible.

23 Q Do you feel now that that could have affected the
24 progression of the case in the investigation?

25 A Yes.

PW - K. WALTON - DIRECT

1 Q All right. Do you feel that it was an error for
2 your lawyer not to pursue a polygraph on your
3 behalf?

4 A Well, although the admissibility wasn't really
5 there, it would have certainly give him confidence
6 in me being innocent.

7 Q All right.

8 A He would perhaps worked for me better.

9 Q They may be — those lists of investigative
10 leads, are they attached to your original petition
11 that's filing with the Court?

12 A No.

13 Q No, okay. While you're looking, do you feel
14 Mr. McLaughlin adequately challenged the State's
15 experts?

16 A No.

17 Q All right. Why not?

18 A Well, on the warrant it was said that I was seen
19 leaving the scene of the accident or the murder
20 moments after the body was found, and to me that was
21 damning. That was saying that I was the person who
22 did it, emphatically, and I believe that's why the
23 warrant was issued. I can't say for sure why it was
24 issued but I believe that to be one issue because
25 the jury relied on the sheriff's statement. At

FW - K. WALTON - DIRECT

- 1 trial my attorney questioned the individual, and he
2 never wrote a report on it until months after the
3 incident. And he feels that his reason for that was
4 because this was his first murder case and that's
5 why he didn't do it. But I feel that that could
6 have been challenged a little bit more because I
7 feel that he openly lied to the jury and he did it
8 for a reason; but that reason is still held, I mean,
9 it never came out.
- 10 Q You feel the officer who did the warrant lied —
11 A Yes.
- 12 Q ---to the jury and Mr. McLaughlin didn't
13 cross-examine him ---
- 14 A I know he lied.
- 15 Q ---adequately on his delay doing the report?
- 16 A No, he took it pretty far but he didn't finish
17 out. He didn't finish out.
- 18 Q Did you find what your list of?
- 19 A I have little notes here. This is kind of hard
20 to ---
- 21 Q I'll come get them. Who was your appellate
22 lawyers?
- 23 A These are all the -- there's a diary there.
- 24 Q Who was your appellate lawyer?
- 25 A They gave me -- first of all they gave me

PW - K. WALTON - DIRECT

1 attorney from appellate defense; and in the process
2 of getting my transcripts I had found out that they
3 had lied to me when getting my transcripts. They
4 had told me they were ordered when, in fact, I went
5 to the court transcriber and she said, no, they were
6 not ordered. So I had questioned about her lying
7 to me, and so I asked for the attorney to be
8 dismissed because I had filed a grievance with the
9 South Carolina Bar — not bar, but disciplinary
10 counsel. That's the secretary who told me they had
11 been ordered. And he filed a motion to relieve
12 himself and the Court said no. Well, I didn't feel
13 that he had represented me properly in a motion to
14 dismiss himself. He didn't state the true reason
15 why, and I had wrote the Court and told them and
16 they had said that under rule 122 that what I sent
17 to the court wasn't of any value because they will
18 only make a decision on the case itself and there's
19 no decision that can be made. Anyway, the clerk of
20 court somehow got mixed up in her mind and she said
21 that I was representing myself so it took me about
22 six months in writing the supreme court to get that
23 straightened out. So —

24 Q Who eventually represented you?

25 A Patrick McLaughlin, the Court appointed him

PW - K. WALTON - DIRECT

1 again.

2 Q Did you feel that you should have had a fresh
3 lawyer on the appeal?

4 A Yes. Yes, I do.

5 Q What kind of brief did Mr. McLaughlin file on
6 your behalf?

7 A He filed an Anders brief which was —

8 Q Do you feel there were some trial rulings that
9 could have been directly appealed without relying on
10 Anders brief?

11 A We -- well, he had -- in the appellate court he
12 can only appeal the things that had been exhausted
13 and that general sessions court. And there was a
14 one direct verdict that he fully exhausted and the
15 court acknowledged that and that was not brought
16 out.

17 Q The directed verdict motion was not addressed in
18 the Anders brief?

19 A No.

20 Q How about the motion for new trial?

21 A Never.

22 Q Was it addressed in the Anders brief?

23 A He tested like he did at trial. He didn't -- he,
24 didn't, he didn't fully.

25 Q Let me -- these are pleadings. I'm gonna let you

PW - K. WALTON - DIRECT

1 keep those. Are these notes that you would have
2 given to your trial lawyers?

3 A Well, these are all the notes that I gave to my
4 trial lawyers.

5 Q Well, some of those are pleadings after your
6 convictions.

7 A Oh, okay.

8 Q So no, these?

9 A Yeah.

10 Q Yes, these are notes that you gave your trial
11 lawyers before the trial.

12 A Yes, and I have other — this whole book here.

13 (WHEREUPON, Petitioner's Exhibit No. 1 was
14 marked for identification only.)

15 BY MR. JOSEY:

16 Q Let me show you what I've marked now as
17 Plaintiff's Exhibit 1. Is that a package of
18 petitioner's notes that you gave to your lawyers or
19 a summary of things that you told your lawyers
20 before trial —

21 A Absolutely.

22 Q —seeking them to follow up on?

23 A Yeah.

24 Q And was that done?

25 A No.

PW - K. WALTON - DIRECT

1 Q All right. That's what Plaintiff's Exhibit 1 is.
2 I move Plaintiff's Exhibit 1 into evidence.

3 THE COURT: Any objection?

4 MR. THOMAS: My only objection would be
5 some of those appear to be originals. If he sent
6 these to his attorney I don't know if he still has
7 the originals.

8 THE WITNESS: I have -- I Florence County
9 --

10 BY MR. JOSEY:

11 Q Public Defender's office.

12 A Public Defender's Office. Each one is marked
13 received by their office and sent them copies.

14 That's --

15 THE COURT: Any objection?

16 MR. THOMAS: Just the same objection, Your
17 Honor.

18 THE COURT: Plaintiff's number 1 in
19 evidence.

20 (WHEREUPON, Petitioner's Exhibit
21 No. 1 was admitted into evidence.)

22 BY MR. JOSEY:

23 Q There are some notes in there that are original
24 that you told me were some summaries of things you
25 had --

FW - K. WALTON - CROSS

1 A Yes, sir.

2 Q —told your lawyer or sent your lawyers?

3 A Yes.

4 Q Okay. All right, Mr. Walton. Is there anything
5 else about your trial lawyer's performance that you
6 think the judge needs to know today?

7 A No, I guess, I don't understand that I guess.

8 Q Do you feel they met the minimum standards of a
9 quasi competency to represent you in this case?

10 A No.

11 Q So your answer is no?

12 A No.

13 Q All right. Answer any questions the State has,
14 okay?

15 A Can I say one thing?

16 Q Sure.

17 A He had promised me a diary about — he had
18 promised me a, he had promised me that he would not
19 make any evidence.

20 Q So that he could get closing argument?

21 A Yeah, and —

22 Q Okay, we covered that.

23 THE COURT: Mr. Thomas.

24 **CROSS-EXAMINATION**

25 BY MR. THOMAS:

PW - K. WALTON - CROSS

1 Q Good morning, Mr. Walton.

2 A Good morning.

3 Q How many times did you get to meet with your
4 attorney before? How many times did you get a
5 chance to meet with Mr. Walton before your trial --
6 I'm sorry, Mr. McLaughlin?

7 A Well, he came once about five times. Four of
8 those I was in handcuffs.

9 Q And you went over discovery with him during those
10 meetings?

11 A Some of it, yes.

12 Q And at those meetings you told him you wanted him
13 to hire fingerprint experts?

14 A Yes.

15 Q And boot print experts?

16 A Boot print, yes, yes.

17 Q And DNA experts?

18 A Well, no, not really DNA. My DNA was already
19 there. I didn't really think that was a big deal,
20 it saying that my DNA was at the house. I stayed.
21 You know, I was there; that's a no brainer.

22 Q The off-- State did the State ever offer you a
23 plea in this case?

24 A They offered me 30 years which would have --

25 Q And was it your decision to turn that plea down?

PW - K. WALTON - CROSS

1 A Yes.

2 Q What kind of defenses did you go over with
3 Mr. McLaughlin?

4 A What kind of defenses?

5 Q What was —

6 A Names.

7 Q What was your defense to this charge?

8 A Murder, and my own defense was I didn't do it.

9 Q And you went over that with Mr. McLaughlin?

10 A Yes, he was the attorney first.

11 Q I guess you said you asked Ms. Parrott to file a
12 speedy trial motion?

13 A Yes.

14 Q And she told you she wasn't going to file one of
15 those?

16 A She told me I could not and she would not. I
17 have that in writing.

18 Q Didn't you also file some habeas actions while
19 you were waiting for trial?

20 A Yes.

21 Q Isn't that a trial date was pushed back a little
22 bit?

23 A No, no.

24 Q When you finally got Mr. McLaughlin he filed a
25 speedy trial motion?

FW - K. WALTON - CROSS

1 A Yes.

2 Q He filed a motion to quash the indictment based
3 upon speedy trial?

4 A Yes.

5 Q And Judge Russo denied that motion; didn't he?

6 A Right. He exhausted the procedures so that we
7 could peak.

8 Q As far as the challenge to the fingerprint
9 experts go that the State presented, Mr. McLaughlin
10 cross-examined both of those people; didn't he?

11 A Yes.

12 Q And both of those people despite the
13 cross-examination, still stuck firm in their opinion
14 that all the fingerprints they analyzed matched to
15 you?

16 A But they contradicted each other.

17 Q But at no point did any of them say that's not
18 adequate or that's not Mr. Walton's fingerprint?

19 A No, she didn't come right out and say that her
20 —

21 Q You said you were worried with Mr. McLaughlin's
22 experience. You had an experienced attorney Karen
23 Parrott; didn't you?

24 A I did.

25 Q She was an experienced attorney; wasn't she?

FW - K. WALTON - CROSS

1 A All she did was come see me ten minutes and that
2 was it out of four years. I don't believe you're
3 defending her.

4 Q As far as the boots that were on, they never
5 testified that the boots you had on when you were
6 arrested were the boots that were found matched the
7 print that was found in Florida, did they?

8 A Yes. Yes, I believe that that was what the trial
9 was all about was my boots.

10 Q But wasn't the testimony at trial from the
11 Florence County person that did the review of the
12 boot print, didn't she testify that the boots you
13 were wearing when you arrested were not the same
14 boots that made the print in Florida?

15 A Run that by me again.

16 Q The Florence County forensic investigator that
17 testified — and her name escapes me right now. She
18 testified that she reviewed the boot print in
19 Florida; isn't —

20 A Right.

21 Q And she testified she also reviewed boots you
22 were wearing when you were arrested?

23 A At trial, yes.

24 Q And she said that the boots you were wearing did
25 not match the boot print in Florida?

PW - K. WALTON - CROSS

1 A Yes.

2 Q But that the boot print in Florida did match a
3 set of boots that was found in the back seat in the
4 trunk of the victim's car?

5 A Well, that evidence was never brought forth
6 before trial. They brought that up at trial. That
7 was a last ditch effort. For four years they said
8 my boots matched a set. For four years they said
9 it.

10 Q But at trial they presented evidence that the
11 boots exactly in the trunk in the car matched the
12 boot print?

13 A Yes, I didn't -- I can't refute that.

14 Q And they also presented evidence that the
15 victim's car was found near where a Lexus was
16 stolen?

17 A Did they say my boots matched mine? Is that what
18 they said?

19 Q I'm asking the questions here.

20 A Oh.

21 Q Did they say that the victim's car was found near
22 a car, a Lexus that was also stolen?

23 A I'm confused. Can you say that one more time.

24 Q The victim's car was found in Florida.

25 A Right.

PW - K. WALTON - CROSS

1 Q And near where the victim's car they also
2 investigated a robbery of burglary of a house and
3 theft of the Lexus?

4 A Uh-huh.

5 Q And they found at the scene of the theft of that
6 Lexus the victim's car keys?

7 A That's what they said.

8 Q Along with a boot print that matched the boots
9 that were found in the victim's car?

10 A The boots were found in the victim's car? I
11 don't understand.

12 Q Your fingerprints were found on the Lexus when it
13 was recovered from Virginia; weren't they?

14 A Yes.

15 Q And it was stolen from an area in Boca Raton near
16 where you had relatives living; is that correct?

17 A I have a sister that lives in Daytona. No, it's
18 not near Boca Raton.

19 Q You said that Mr. McLaughlin dropped the ball by
20 presenting evidence and losing closing argument;
21 isn't that correct?

22 A Those were his words, yes.

23 Q But the evidence he presented was the report from
24 Florida that said they weren't gonna prosecute you
25 for burglary for the theft of the Lexus; isn't that

PW - K. WALTON - CROSS

- 1 correct?
- 2 A That they weren't going to prosecute me for theft
- 3 of Lexus and for the —
- 4 Q Mr. McLaughlin entered into evidence a report —
- 5 A Right, right, right.
- 6 Q —from the district attorney in Florida?
- 7 A Right.
- 8 Q Saying they weren't going to prosecute you?
- 9 A He said they had written that because I was being
- 10 tried up here for murder; but they, again, say that
- 11 in the letter that's not the reason why they sent
- 12 the letter, and he argued that.
- 13 Q And you said you wanted him to hire fingerprint
- 14 and boot print experts?
- 15 A Yes, we needed experts but —
- 16 Q And you wanted them to testify at trial?
- 17 A But since we had to deal where he was supposed to
- 18 not — where he was supposed to have last closing
- 19 argument we didn't get it, you see what I'm saying.
- 20 Q So you decided, you ultimately decided you didn't
- 21 want those experts there?
- 22 A Well, yeah, yeah, yeah.
- 23 Q But Mr. McLaughlin cross-examined all of the
- 24 State's experts; didn't he?
- 25 A Yes, yes.

PW - K. WALTON - CROSS

1 Q You said you had a list of witnesses and
2 investigations that you wanted him to do, people you
3 wanted him to talk to?

4 A I had a whole list here somewhere.

5 Q And the judge gave you — after the State rested
6 the judge gave you the opportunity he talked with
7 you about your right to testify or not to testify,
8 correct?

9 A This was after I had done that. I didn't find —
10 he didn't find out that he had dropped the ball
11 until after I had given up my rights.

12 Q But the judge gave you an opportunity to present
13 defense; didn't he?

14 A Yes.

15 Q Judge Russo specifically said the decision
16 whether or not to testify or whether or not to put
17 up a case is a matter for you to decide.

18 A Right.

19 Q And you decided you weren't going to put up a
20 case?

21 A I wasn't going to do what?

22 Q You decided you weren't — you didn't want to put
23 up a defense, —

24 A We had a defense.

25 Q —correct?

PW - K. WALTON - REDIRECT

1 A We had a defense.

2 Q What was your defense?

3 A That he wouldn't submit any evidence and he
4 wouldn't call any witnesses and I wouldn't testify.

5 Q But that's not a defense, Mr. Walton, is it?

6 A It's only defense I know of this lawyer talking
7 about. That's the only thing he talked to me about.

8 Q But that's not a I-didn't-do-it defense. That's
9 a, I'm gonna argue to the last argument to the jury.
10 That's not a defense, is it? Strike that question.
11 You had an opportunity to reply to Anders appeal;
12 didn't you?

13 A Yes.

14 Q And you submitted something in court on that
15 issue?

16 A Yes.

17 Q That's all the questions I have.

18 THE COURT: Anything further?

19 MR. JOSEY: Just one clarification if I
20 can.

21 **REDIRECT EXAMINATION**

22 BY MR. JOSEY:

23 Q The reason you didn't present a defense is
24 because Mr. McLaughlin and you had an understanding
25 to preserve your last argument; is that right?

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1 A Yeah, yeah, exactly.

2 Q And his failure to preserve that last argument
3 wasn't revealed to you until after you made the
4 decision not to testify; is that right?

5 A Yes.

6 Q Okay.

7 THE COURT: All right. Call your next
8 witness.

9 MR. JOSEY: I call Mr. McLaughlin.

10 WHEREUPON,

11 **PATRICK MCLAUGHLIN,**

12 having been duly sworn by the Clerk of Court,
13 testified as follows:

14 BY MR. JOSEY:

15 Q Mr. McLaughlin, you represented Mr. Walton at
16 trial?

17 A I did, and he's also correct I was eventually
18 appointed on his appeal.

19 Q And did you engage a fingerprint expert to use at
20 the trial?

21 A I did not.

22 Q Wasn't there a dispute about the AFIS, which is
23 the Automated Fingerprint Identification System?
24 Wasn't there a dispute about the AFIS adequacy or
25 eligibility of some of the prints they got in

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1 Virginia?

2 A There was something about that; that's correct.

3 Q All right. I think they — the testimony from
4 somebody named Kernelly (ph) said it was not really
5 adequate to run through AFIS?

6 A That sounds correct.

7 Q Why didn't you engage a fingerprint expert to
8 exploit that issue?

9 A You know, I was pretty I thought, forthright and
10 candid with Mr. Walton, leading up to trial about
11 what we were going to do, what we weren't going to
12 do. He's actually right about a big deal was we
13 wanted to preserve last argument, and I didn't — I
14 entered some evidence. And I told Kevin that I
15 dropped the ball on that; he's right about it. I
16 didn't, I didn't think it was going to make a
17 difference. I think those guys testified eventually
18 they compared fingerprints and they came back right.
19 If memory serves me correctly, I don't think any
20 fingerprints were found in the inside of that
21 vehicle, the Lexus that was found in Virginia, I
22 don't believe. And so that, you know, the argument
23 was he was — he certainly was in Virginia. He
24 turned himself in not far from where that vehicle
25 was found. I think there were some other

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1 fingerprints that were found on the outside of that
2 vehicle and so.

3 Q Wasn't there fingerprint of somebody named
4 Mr. Lamky (ph)?

5 A That sounds right.

6 Q And could your engagement of a expert help pursue
7 Mr. Lamky as an alternative perpetrator of these
8 crimes?

9 A I don't know how well engagement of an expert
10 would have helped pursue him. I mean, they had
11 identified Lamky from a fingerprint so I don't know
12 how getting a fingerprint expert would help me track
13 down Lamkey. And you know, kind of one of those
14 things where you got unanswered question and maybe
15 sometimes it's best to leave that question
16 unanswered to argue the unanswered question to the
17 jury. In other words, you might not want to go
18 looking for and you may get one that doesn't help
19 you. The unanswered question may be enough to raise
20 some reasonable doubt in a juror's mind so I guess
21 that was kind of the strategy behind not engaging a
22 fingerprint expert.

23 Q And did you argue that Mr. Lamky as an
24 alternative for reasonable doubt to the jury?

25 A To the defendant, no. I don't know whether or

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1 not I did or not. I think that certainly the
2 closing, I thought — I think the whole big theory
3 behind the case was that basically Mr. Walton — of
4 course, he was the prime suspect. He was the only
5 person they had in the entire investigation had been
6 geared towards him. They had never really, you
7 know, fingerprinted other things. There was a lot
8 of cross-examination on fingerprints to about things
9 that were found at the site of the murder that
10 certainly could have been tested and were not. And
11 I recall bringing up, throwing out these unanswered
12 questions during closing. I would have thought you
13 would have mentioned this person who was found, his
14 fingerprint that was found, that they never tracked
15 down; but it's possible I didn't, I don't know.

16 Q All right. In the same vein did you engage a DNA
17 expert to identify this third blond hair that was
18 found at the scene of the crime?

19 A No, sir, I did not. I think Kevin hit on really,
20 once again, it's one of those kind of maybe the
21 unanswered questions better than getting an answer
22 for it. And I think Mr. Walton talked about, you
23 know, that the DNA, that there was no arguing his
24 DNA was began to be found at the house or in the
25 victim's car. And so essentially, you know, having

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1 lived with her, with the victim, I think for a
2 month-and-a-half or so riding with her in the car,
3 certainly we were conceding his DNA was going to be
4 all over those items.

5 Q What about the DNA that possibly could have been
6 examined on the car found in Virginia? That was not
7 the victim's car. I think there were bottles and
8 razors and things like that in that car?

9 A No, I did not hire DNA expert to look at those
10 things, no. And once again, under the theory that
11 this strategy of case was showing they had of
12 course, they believed Mr. Walton did it. He was the
13 only guy they ever looked into doing it. And so I
14 felt like the strategy we had was pointing out
15 reason why all this evidence pointed to Mr. Walton
16 is because you guys, all you ever looked at was Mr.
17 Walton.

18 Q All right. If you had identified another suspect
19 through fingerprints or DNA, would that not have
20 affected your decision and strategy to for the final
21 argument and maybe made you lead to affirmatively
22 put in evidence had on Mr. Walton's behalf?

23 A I assume so, yes. You know, we did have the
24 Lamky guy that was out. But, yeah, sure, I assume
25 it was.

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1 Q Did you request any jury instructions on lesser
2 included charges?

3 A I don't recall if I did or did not.

4 Q Is there any reason you would not have?

5 A Other than the fact that our whole defense was
6 that Mr. Walton didn't do it, he wasn't there. And
7 sometimes, you know, when your defense, hey, it
8 ain't me, you want to make it, you know, murder is a
9 serious charge and being able to argue to a jury how
10 serious that one charge is maybe don't want to give
11 them opportunity for a compromised verdict coming
12 down with a lower one.

13 Q Is that something you discussed with him, gave
14 him a chance to make an informed decision about?

15 A I can't sit here and tell you that I did.
16 Certainly that would have been something that I had
17 thought about.

18 Q Do you feel Mr. Walton got a speedy trial?

19 A No, I do not.

20 Q Wasn't he prejudiced as a result of not getting a
21 speedy trial?

22 MR. THOMAS: Objection, calls for opinion.

23 THE COURT: Sustained.

24 BY MR. JOSEY:

25 Q How long have you been practicing law,

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1 Mr. McLaughlin?

2 A '05 I believe.

3 Q And have you had an opportunity to work in the
4 criminal arena enough to see whether or not timing
5 makes a difference in investigations?

6 A Yes, and I think it does.

7 Q All right.

8 A And I believe in the motion that we argued we
9 cited some case law that said that there's -- I'm
10 pretty sure there's some case law that says a
11 certain amount of time is in kind of inherently
12 prejudicial and then the burden maybe slips with the
13 State. Or you have to do the, and I forget the case
14 law, certain analysis that automatically kind of
15 kicks in then, and I think that's what Judge Russo
16 ultimately wound up doing. He did that analysis and
17 he found there was a prejudice.

18 Q All right. And why -- was speedy trial included
19 as part of your appellate briefing?

20 A When I got appointed on the, on the appellate
21 case, I went and met with Kevin. I believe, I want
22 to say he was to plead, I'm not sure about that.
23 When I met with him when I found out I was going to
24 be representing him on appeal; and we talked and I
25 explained to Kevin -- he told me what he felt like

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1 the issues were on appeal, and I explained to him
2 why I didn't think that was going to matter. I
3 explained that I thought — I'd look at it and I
4 would probably wound up doing Anders brief which I
5 did, I would send him a courtesy copy of it. I felt
6 like Judge Russo's ruling on that issue if memory
7 serves me correctly, was that basically our argument
8 couldn't really point to something where he had been
9 specifically prejudiced.

10 Q What about the — he mentioned in his direct
11 testimony these computer disks on computers that
12 were returned to the victim's family, possibly lost
13 evidence. This — couldn't that not have been a
14 source of prejudice to argue?

15 A That was, and I believe we brought it up. The
16 computers I think were returned to the family
17 relatively early on. I mean, I think they got them
18 back kind of quickly; I'm not sure about that. But
19 the disks that Mr. Walton had talked about, the
20 floppy disks, they had been physically damaged.
21 And, you know, I didn't hire a computer expert but
22 we have a IT guy in our office, and I remember
23 talking to him at the time and he expressed to me
24 the opinion of the disk had been physically damaged.
25 He didn't think you'd be able to retrieve any data

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1 from it. But beyond that, we certainly raised that
2 issue with Judge Russo; but even raising that issue
3 was kind of like a generalized argument about
4 prejudice that, you know, we think that there could
5 be something on there that could help the Defense.
6 And at the end of the day I think Judge Russo's
7 ruling on it was pretty clear. He didn't think that
8 was enough. He thought you had to have more of a
9 specific prejudice to point to.

10 Q Did you present any evidence at trial that other
11 persons had access to the victims' housing unit that
12 she lived, I think, in a project in Pamplico?

13 A I don't know necessarily if we presented it
14 through our questioning, but I know the neighbors
15 had been called to testify by the State. There was
16 a very close friend that I think lived next door,
17 and she may or may not have talked about the fact
18 that she had access to the victim's house.

19 Certainly I know there's testimony by her daughter,
20 that her daughter would go over there, and I think
21 stayed with the victim's daughter a good bit.

22 Q Did you discuss the possible presentation of that
23 evidence before you made the decision or before
24 Mr. Walton made the decision to go for the last
25 argument?

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1 A I can't recall; I don't know.

2 Q Let me show you Plaintiff's Exhibit 1. Any of
3 those notes or communications familiar to you?

4 A I'm not gonna say they are or not. I will say
5 this, Kevin was very much engaged in his defense.
6 He -- I think he's right about how many times we met
7 before trial, four or five sound about right. And
8 he also was moved in max seg about a week out from
9 the trial which he was very upset about. He sent a
10 lot of stuff to me back and forth; and usually after
11 we would have a meeting Kevin would write me and
12 address things that we had discussed at the
13 meetings. So if Kevin says he sent these things,
14 you know, I certainly would not dispute that.

15 Q Did he suggest investigative leads or people that
16 could be subpoenaed in these communications with
17 you?

18 A Possibly, yeah.

19 Q What was pursued about that and what decision
20 making was made about that?

21 A Well, you know, there had been maybe some
22 discussion about a former boyfriend or something of
23 the victim that Kevin talked about, you know, but we
24 did not investigate that. We had talked about, you
25 know, what the strategy was. And once again, it was

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1 one of those things where kind of think that the
2 unanswered question being able to argue a little bit
3 better. I'll say this, in the discussions about it
4 it was more like hope that maybe we could find some
5 of these people, things like that. And it wasn't
6 enough to where we felt comfortable thinking maybe
7 we could track these people down certainly. And we
8 did have, you know, I'd gotten this case and it was
9 going to trial in 60 days once I got...

10 Q The decision to put in some evidence on
11 Mr. Walton's behalf, what was the evidence that was
12 put in?

13 A I think —

14 Q Was it just declination down in Florida?

15 A Well, there was, I want to say that there was a
16 picture, you know, the victim lived in housing
17 projects; and there was, you know, they post those
18 signs at the housing projects, you know, that
19 basically kind of make it look like it's not very,
20 you know, talk about how police are gonna, you know,
21 it's under police jurisdiction and all that stuff.
22 And I think we put that in and I think the argument
23 was kind of that, you know, this neighborhood there
24 was some break-ins I think not long after this
25 happened. And I think in closing argument we

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1 brought up the fact that you got break-ins happening
2 after this happened, you know, kind of say that, you
3 know, Mr. Walton wasn't there, somebody else could
4 have broke in. You got all you did was look at
5 Walton; you didn't look to see if there was anybody
6 else kind of thing. There was the stuff about the
7 boot prints. There was -- there was testimony given
8 I think by Keith Von Lutcken who was at the time the
9 forensics guy for the Sheriff's Department, and I
10 want to say that during his testimony Keith had been
11 a little bit firmer on his opinion about whether or
12 not these boot prints match boots than the actual
13 report that he had done was I believe. And I think
14 that report was entered into as I think on that
15 report it was the opinion was not a strong, that it
16 linked up and so we offered that report in as kind
17 of, I put that in to contradict what Keith said on
18 the stand. And then there was the letter from the
19 AG's office because the letter did not -- if memory
20 serves me correctly the guy from Florida got up and
21 gave his testimony. It was that, oh yeah, now we
22 didn't go after him because South Carolina had this.
23 He was going to get -- South Carolina was going to
24 charge him; he was going to get convicted there; we
25 won't need to follow it, that type testimony. And

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1 the letter from the AG that was with this report,
2 maybe it was a report where he quoted the letter, he
3 did supplemental reports. It was that there wasn't
4 enough evidence to charge him with stealing the car.
5 And so, you know, in the heat of battle when a
6 inconsistency like that pops out, you kind of want
7 to highlight it, kind of bring it to the jury's
8 attention; and I did that and of course that did
9 mess up —

10 Q So these things you brought in through
11 cross-examination?

12 A Yeah, I believe so. No, we didn't put up, we
13 didn't put up a case at all.

14 Q Is it accurate to say that when you brought in
15 this evidence through cross-examination you didn't
16 realize that that was going to mess up the strategy
17 of having last argument?

18 A It — no, it slipped my mind to think about that.
19 And like I said, when I got up here Kevin was right,
20 we had talked about that, and he's right.

21 Q Is it true that Mr. Walton made the decision not
22 to testify believing that he, that you were still
23 gonna get the last argument?

24 A That may very well be correct. I still would
25 have — having noticed my advice to Kevin still

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1 would have been not to take the stand given his — I
2 think he would have opened himself up to being
3 cross-examined about his history. The talk that
4 there was some talk on his direct about the witness
5 talking some about his criminal history and that I
6 objected to stop it. We went up and had a
7 conference at the Bench and I returned to Kevin,
8 explained to him what our options were, whether or
9 not to get a curative instruction or not. And the
10 problem with getting a curative instruction there is
11 it almost kind of like highlights what was just said
12 and that was, that that was specifically discussed
13 and Kevin understood. In fact, if memory serves me
14 correctly, you know, he may have used the line you
15 can't un-ring the bell, you know, and we didn't want
16 to highlight what that testimony had been so we
17 moved on. And certainly had we — my advice to him
18 about taking the stand, no matter what in this trial
19 would have been, would have not best interest to do.
20 Now whether or not he would have taken that, I don't
21 know.

22 Q But when he made what he thought was an informed
23 decision about taking the stand, he was misinformed
24 about whether you would have the last argument?

25 A Yeah, that's probably correct.

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1 MR. JOSEY: If I can check with him?

2 THE COURT: Sure.

3 MR. JOSEY: That's all we have.

4 THE COURT: All right, cross.

5 MR. THOMAS: Beg the Court's indulgence.

6 **CROSS-EXAMINATION**

7 BY MR. THOMAS:

8 Q Mr. McLaughlin, how many opportunities did you
9 have to meet with Mr. Walton prior to trial?

10 A I think Mr. Walton's testimony was probably about
11 right, four or five times. I know that I met with
12 him probably about, in the early February is when
13 they had that hearing when Ms. Parrott was relieved
14 and I was appointed. And it was probably about two
15 weeks shy after that we met the first time, and we
16 probably met three or four times after that before
17 the case went to trial in April and I — two of
18 those meetings were probably in the last week,
19 week-and-a-half before trial.

20 Q And you had the opportunity to review the State's
21 evidence against him?

22 A Yes, sir, I did.

23 Q Did you have a chance to go over that with him?

24 A I did.

25 Q What was his version of events? What was as far

PW - P. MCLAUGHLIN - CROSS

1 as y'all's defense theory going into trial?
2 A Kevin was adamant that he had not been there at
3 the time this was committed and that was the
4 position that he took from the day I met him till
5 today. I felt that that was going to be a very hard
6 sale based on the testimony that they were gonna,
7 the jury was gonna hear from the victim's daughter,
8 who at the time that this happened probably was
9 about 10 or 11. By the time we tried the case she
10 was maybe 14 or so. And I expressed to Kevin the
11 fact that it was gonna be very damning when the
12 little girl got up and testified and put Kevin in
13 the bedroom with his mother maybe like 11:30
14 midnight or something. The night before her body
15 was found about 6 a.m. in the morning. And we
16 discussed some possible defenses. I personally felt
17 that it was going to be hard to convince a jury he
18 wasn't there. During cross-examination, the way the
19 victim was found, she was found nude in her bed.
20 There were some sex toys and stuff around her. I
21 knew when I questioned the pathologist and we talked
22 a little bit, got into on the examination about
23 autoerotic asphyxiation type stuff. You know, I
24 felt that that may be a defense that could explain
25 maybe what happened. If memory serves me correctly

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1 from Walton was maybe he was supposed to have been
2 in Michigan or something. I think he eventually
3 turned himself in Virginia saying that he thought
4 there were authorities were looking for him maybe
5 for parole violation; but that a theory that, you
6 know, things had gotten out of hand in the bedroom.
7 He was out on parole, knew he shouldn't have been in
8 South Carolina, this happened, he panicked and fled,
9 that, maybe that defense may work a little better.
10 But to his credit though, Kevin was also very
11 adamant with me that he had not been there. And so
12 given that somewhat limited, I felt like what our
13 defense could be.

14 Q And he did give you that list of leads, people he
15 wanted you to investigate?

16 A Yeah, I mean, they — as Kevin said he wrote me a
17 lot, and he had a lot of ideas about stuff. Of
18 course, you come into a case four years down the
19 road from when he was arrested and, you know, some
20 of these things, some of these people are hard to
21 track down. That was a part of the argument we made
22 to Judge Russo about the long time between the case
23 actually being called for trial. But once again,
24 it's all kind of these general allegations of what
25 could potentially have been prejudicial, and the law

PW - P. MCLAUGHLIN - CROSS

1 is kind of tough in that regard. You got to prove
2 having specific prejudice so.

3 Q And you raised that in your Anders brief as well,
4 right?

5 A I did.

6 Q As far as the experts go did he ever specifically
7 ask you for fingerprint experts, boot print experts?

8 A I don't remember Kevin ever specifically asked
9 for him. I'm sure we probably did discuss what was
10 all the evidence in the case; but once again, I kind
11 of felt like there were enough problems with that
12 evidence that we could challenge it through the
13 cross-examination of those guys when they brought it
14 up and basically point out that it didn't really
15 point the finger to Kevin actually having done the
16 crime so I'm sure we discussed it. You know, I --
17 certainly if Kevin had expressed to me, listen, I
18 want these experts, this is what it is, I would
19 have, I would have done my hardest to get funding
20 for it and have the court let us, give us a
21 continuance so we could have such an expert look at
22 the case.

23 Q But at the end of the day the fingerprint
24 testimony wasn't -- the fingerprints weren't the
25 only thing linking him to the crime. They also got

PW - P. McLAUGHLIN - CROSS

1 the eyewitness testimony of the daughter?

2 A It was — you know, it was a lot of
3 circumstantial evidence; it was a lot of it. I
4 mean, that the State's basic theory of the case was
5 you got a guy who lived in this house with these
6 folks for a year-and-a-half. The daughter wakes up
7 in the morning and finds mom is dead. The guy who'd
8 been living there for a year-and-a-half all of a
9 sudden isn't there, and neither is mom's car. Mom's
10 car winds up down in Florida. Not far from where
11 mom's car winds up is another, is a burglary where
12 another car is stolen and it just so happens the
13 keys to mom's car are found where that burglary
14 takes place. That car winds up in Virginia not far
15 from where Mr. Walton walks in and turns himself in
16 to the police so it was a circumstantial case; but,
17 it was pretty strong. And as I expressed to Mr.
18 Walton, once that daughter testified, you know, it
19 was, it was gonna be very hard to convince the jury
20 otherwise. And I certainly relayed my opinion about
21 that to Mr. Walton and I certainly hoped Mr. Walton
22 understood it at the time; I thought he did.

23 Q Were you aware about the blond hair he talked
24 about?

25 A Yeah, there was blond hair. There was some

PW - P. MCLAUGHLIN - CROSS

1 questioning that we brought up or — it was on a
2 report of some type, and I certainly recall trying
3 to question about it. I don't know how much of that
4 was in front of the jury or how much of that was
5 arguing, you know, outside the presence of the jury
6 about possibly getting that in. But there were
7 reports that listed evidence, and I went pretty — I
8 went through it with pretty detailed in
9 cross-examination with the cops about what they did
10 test and what they had not tested and kind of along
11 the lines of those unanswered questions that I
12 talked about with, Mr. Josey.

13 Q Safe to say part of your defense strategy was
14 police never really did any other investigation
15 other than Mr. Walton?

16 A I mean, it was clear from their testimony at
17 trial and the stuff that they asked to be tested
18 that from day one what they were doing was building
19 a case against Mr. Walton. They never looked at
20 anybody else. From the moment that little girl told
21 them that Kevin killed her mom, that what they were
22 looking at and that was the argument we were trying
23 to point out to the jury.

24 Q And you also pointed out that I guess the expert
25 evidence, the DNA and fingerprints, you argued to

PW - P. MCLAUGHLIN - CROSS

1 the jury that that didn't directly indicate that he
2 had murdered her?

3 A Yeah, I believe so. I know we questioned the DNA
4 expert they brought. I'm pretty sure I
5 cross-examined and asked him, you know, you
6 certainly can't tell how long the biological
7 material has been on, like, the bedspread, can you.
8 And I want to say that he said, well, how long
9 biological matter would stay on stuff like that
10 would depend on how long you did your laundry, those
11 type things, so certainly that was our argument.

12 Q And you had an opportunity to give full and fair
13 cross-examination of every witness, i.e., every
14 witness that the State put up except for Blackmon,
15 the last witness, right?

16 A I believe so. And the last one would have been
17 the little girl that testified. And to Mr. Walton's
18 credit, I believe when she was tendered to us we
19 discussed whether or not he wanted me to
20 cross-examine her; and to his credit Kevin said, no,
21 let her off the stand. It was pretty emotional
22 testimony.

23 Q As far as lesser included go, whose decision was
24 — let me rephrase that. Did you discuss lesser
25 included offenses with him at any point?

PW - P. MCLAUGHLIN - CROSS

1 A You know, I'm not gonna sit here and say I did or
2 I didn't. I don't remember having that discussion.

3 Q But you agree at trial you thought it was a
4 strategic decision not to ask for lesser included,
5 say maybe involuntary?

6 A I certainly think so. I think if we were gonna
7 go for an involuntary like charge, that that idea of
8 arguing on the, basically for lack of a better
9 phrase, rough sex went the wrong way, if we argue
10 that then absolutely we would have asked for lesser
11 included charge. But once — Mr. Kevin was still
12 adamant, listen, I wasn't there, I didn't do this,
13 and we weren't going to pursue presenting a defense
14 in that regard, I didn't think that it was
15 appropriate to ask for a lesser included charge
16 because we didn't want to give them a compromised
17 verdict.

18 Q As far as the exhibits you did enter into
19 evidence, the first one, the picture, that helped,
20 that went to your strategy of it could have been
21 someone else in a rough neighborhood?

22 A Yes.

23 Q And the next two, the forensic report and the lab
24 report, that went to the theory that police didn't
25 really do a good job investigating anyone else other

PW - P. MCLAUGHLIN - CROSS

1 than Mr. Walton?

2 A Yeah, and I would say more to the point that I
3 certainly felt like at least in those regards the
4 testimony was different than what had been, what we
5 had thought the testimony would be based on the
6 evidence the State had provided us in Rule 5 and
7 Brady, and I wanted to highlight what I felt was the
8 inconsistency.

9 Q And the memo you entered from the Florida
10 district attorney, that went to your theory that
11 they couldn't link him to the victim's car being
12 found in Florida?

13 A Yeah. And once again, I felt like during the
14 direct examination that that guy was trying — the
15 person from Florida was basically trying to make it
16 seem like they had chosen not to prosecute Kevin for
17 a different reason than what the official reason was
18 in the report. And I thought that went towards the
19 argument that, of course, all the evidence you see
20 as pointing to Mr. Walton is pretty clear. They'd
21 been gearing their whole case towards him since day
22 one.

23 Q And in terms of linking him to the car, the
24 officer that testified he saw the car on the highway
25 that night, he never actually testified at trial he

PW - P. MCCLAUGHLIN - CROSS

1 specifically saw Mr. Walton was in the car, did he?
2 A I don't think so. There had been something -- I
3 want to say that that officer maybe testified about
4 pulling that car, writing, writing the victim a
5 ticket a little bit before trial. And then he said
6 he didn't realize, if my memory serves me correct,
7 he said that he didn't realize it was the same car
8 kind of until he had a chance to think about it. I
9 think he said that he had pulled the victim right
10 there at her house and then kind of put two and two
11 together later on. I -- he explained his delay in
12 doing that to, I want to say that, you know, this
13 was my first murder case I'd ever worked, I had a
14 lot of things going through my head, that type of
15 thing, and I'm pretty sure that I touched on that in
16 my closing. But you know, how hard I pushed that,
17 you know, I don't know, I think you balance enough
18 situations. You don't want to anger a jury or run
19 the risk of angering a jury by flat out coming out
20 and accusing somebody who may have made the honest
21 mistake or have reason for what they did of outright
22 lying. I think you maybe bring it up and plant the
23 seed of doubt in their head and let them maybe that
24 leap instead of holding it against the defense for
25 you calling somebody a liar if they didn't feel like

PW - P. MCLAUGHLIN - CROSS

1 the guy said, listen, he gave good reason so.

2 Q Okay. And Defense Exhibit 5 was the report on
3 the boots. That's the report that stated that the
4 boots he was arrested in didn't match the boot print
5 in Florida; isn't that correct?

6 A I believe so. And I felt like, I felt like Keith
7 had kind of shaded his testimony to being a little
8 bit stronger whether or not those boots had matched;
9 and once again, I wanted to highlight that's not
10 what the report said, is it.

11 Q But there was testimony presented that the boot
12 he was arrested with were the same brand as the
13 boots that were in the trunk of the car in Florida?

14 A I think so, and I felt that it was important
15 enough to try to highlight the fact that it wasn't
16 enough to put it in your report.

17 Q Is there anything at trial that you didn't object
18 to in terms of evidence that the State brought in
19 that you could have raised on appeal?

20 A I don't know. I mean, nothing kind of jumps out
21 at me.

22 Q That's probably not a fair question.

23 A I mean, if I had to take a guess I'd say, yeah,
24 I'm sure there's objections I could have made that I
25 didn't. But of course, during trial you're not

PW - P. MCLAUGHLIN - CROSS

1 gonna object to everything you could object to
2 sometimes because, you know, it's strategy. You
3 don't want the jury to think you're trying to hide
4 things. And if our case, the strategy of our case
5 was the fact that they didn't look at enough stuff.
6 I kind of think it goes a long way with a jury for
7 the defense to appear as if, hey, we're not trying
8 to hide anything, we want you to look at everything
9 and these guys don't, so...

10 Q But as far as the speedy trial motion and the
11 sufficiency of evidence you preserve those for
12 courts to review in Anders brief?

13 A I certainly think, thought I did.

14 Q Did he ever ask you for a polygraph examination?

15 A I don't recall polygraphs ever being discussed.
16 My dealings with Kevin, I'm sure that Kevin, he was
17 adamant about not being there and I certainly am not
18 gonna sit here and say that he didn't say,
19 McLaughlin, I'll take a polygraph, I didn't do it.
20 Had he said it I'm sure that my response would have
21 been it ain't gonna help, they don't care that — I
22 mean, the State was pretty adamant that Kevin had
23 done this. The offer I believe Kevin told you that
24 was on the table that was all they are going to do.
25 Knowing that the prosecutor who was assigned to this

PW - P. MCLAUGHLIN - CROSS

1 case and his feelings on it, Jack Lawson, I think
2 Kevin could have taken the polygraph and passed with
3 flying colors and Jack was still gonna pursue this
4 case against him.

5 Q Last question, if you had known you were gonna
6 give up last argument by entering those exhibits
7 into evidence would you have still advised him not
8 to testify?

9 A Yes. I do not think it would have been a wise
10 decision for Kevin to take the stand under any,
11 under any regard. I believe we probably discussed
12 that leading up to trial regardless of whether or
13 not to keep last argument. Now I don't want to say
14 that — once again, that was certainly something we
15 wanted to preserve; but I feel, I feel pretty
16 confident that we discussed him taking the stand
17 anyway and Kevin even acknowledging to me that
18 probably would not be a good idea given his record.

19 Q Oh, and in regards to last argument did you make
20 a motion to have the State open the law and close on
21 the facts?

22 A I believe I did.

23 Q And they did that even though they're not
24 required to?

25 A I believe that's correct.

1 Q Okay. Thank you.

2 THE COURT: Briefly.

3 MR. JOSEY: That's all judge, thank you.

4 THE COURT: Any other witnesses?

5 MR. JOSEY: No, sir.

6 MR. THOMAS: Nothing from the State.

7 THE COURT: I'll take the matter under
8 advisement and let you know something soon.

9

10

11 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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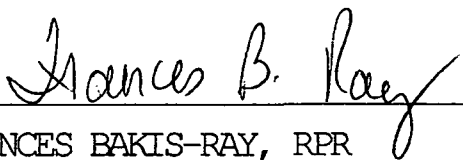
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA }
COUNTY OF FLORENCE }

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 17th day of March, 2014.


FRANCES BAKIS-RAY, RPR

RECEIPT FOR EXHIBITS

CASE NUMBER

11-CP-21-3062

JUDGE

William Seals

PLAINTIFF:

State

ATTORNEY:

K. Case Jose

DEFENDANT:

Kevin Walter

ATTORNEY:

Josh Thomas

DATE(S):

10-10-13

STATE PLAINTIFF EXHIBITS

Petitioner

DEFENSE EXHIBITS

1 Notes of petitioner

2 _____

3 _____

4 _____

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COURT EXHIBITS

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5 _____

6 _____

Court Reporter

James Ray

Clerk of Court

Garrison

(C-1 Through C-45)
Communication "Note" to
Attorneys about Case. Nothing
was done

I made this Complaint to LAREN
PARROTT, EARLY on. Before I had told
the Lt. I told Ms. PARROTT they were
holding Exculpatory Evidence.

REALM of Normalcy

EXPLAIN TO THE JURY ABOUT
^{SOME} OF THE FACTS OF THIS CASE BEING
SOMEWHAT OUT OF THE REALM OF
NORMALCY. EVEN THOUGH IT'S NOT
COMMON TO MEET A STRANGER ONE
NIGHT AND HAVE SEX WITH HIM AND
INVITE HIM INTO YOUR HOME HOURS
LATER, SOME PEOPLE DO THIS. IT DOESN'T
MAKE THEM EVIL; IT'S JUST THEY CHOOSE
TO ACT DIFFERENTLY THAN NORMAL PEOPLE
GENERALLY WOULD. THE VICTIM MET MR.
WATSON IN A HOLIDAY INN BAR, WHERE
SHE OFFERED TO LET HIM LIVE WITH HER
AND HER DAUGHTER. SHE OFFERED TO PAY
HIS WAY FOOD AND HOUSING IN EXCHANGE
FOR SEX AND HIS PROTECTION.

JURY STATEMENT SUGGESTIONS

Raising the Issues that the Victim did do though the same as general (normal) people would, is truthful and also it shows them they should not apply the same views or logic to the victim's actions, as they would general apply to most people's actions. Her 10 year old daughter was use to seeing different men in her mother's bedroom. It was her mother's life style. In order for you to make a correct and intelligent decision in this case you must hear all the facts regardless whether you consider them normal or not. I want to comfort you from the truth in this case no matter how improper it may appear or sound. No one should die regardless how their life style is, but some are certainly safer than others.

THE VICTIM'S LIFE-STYLE MAY
HAVE LEAD TO HER DEMISE; SHE
WAS INVOLVED IN CRIMINAL ACTIVITIES
AS WELL. MR. WATSON WAS JUST
THE LAST TO BE SEEN WITH HER, 4
OR 5 HOURS PRIOR TO HER DEATH. THE
✓ MURDER WARRANT PLACES HIM AT THE
SCENE MINUTES BEFORE HER LIFELESS
BODY WAS DISCOVERED, BUT SUCH AS A FEW
THINGS IN THIS CASE WE WILL PROVE THIS
✓ TO BE UNRELIABLE. MR. WATSON WAS
LAST SEEN WITH HER IN HER BED ROOM
WHERE SHE WAS LATER FOUND DEAD;
THIS SOUNDS COMING OUT OF ITSELF
BUT MR. WATSON LEFT THE HOUSE SHORTLY
THEREAFTER. AGAIN, THE VICTIM'S LIFE-
STYLE DOESN'T STOP TRAFFIC AT A CERTAIN
TIME LIKE NORMAL FAMILIES. SEVERAL
PEOPLE HAD KEYS TO HER FRONT DOOR, AND
COULD EASILY SLIP IN & OUT WITH-OUT
NOTICE. YOU'LL HEAR WITNESSES STATEMENTS -
TO THIS EFFECT. MR. WATSON WASN'T
REALLY A PRIME SUSPECT BUT MORE SO
A CONVENIENT ONE. ~

-PATRICK-

LAWSON TOLD YOU "IT WAS BE-
CAUSE I KEEP FILING HABEAS -
CORPUS IS THE REASON HE HASN'T
TAKEN ME TO TRIAL YET."

I FILED A PETITION FOR WRIT OF
HABEAS CORPUS IN #2004... LAWSON
HASN'T HAD TO DEAL WITH ANY
DISRUPTION FROM ME FILING ANY-
WRITS SINCE THEN.

I ONLY FILED TWO, THE ONE I
LODGED IN #2006 WASN'T EVEN
SERVED, IT WAS DISMISSED WITH-OUT
REQUIRING THE RESPONDENTS TO
FILE A RETURN RESPONSE.

THE SAME LINE OF SHIT HE TOLD
JUDGE RUSSO, HE TOLD YOU. I
HAVE THE FEDERAL COURT'S #15 PAGE
RULING ON MY WRIT, AND JUDGE
RUSSO HAS THE RULING. FEB 16 HE

-OVER-

ACKNOWLEDGE Receipt of my
Feb 12 letter; I wrote him
showing him the Jillgemar papers
which showed Lawson was less
than truthful

When the daughter states
 we were in the bedroom
 it gives an impression the we
 were going to bed for the
 night. The daughter was going to
 bed, we were simply talking in
 the bed-room. My things had
 been packed for a couple days.

Shannon was preparing to
 move to Virginia. Her husband
 had secured a place for them
 to live. He lives in Virginia.

Sherree Bennett is going to
 try to give the impression
 her & Shannon didn't part with-
 out each other knowing it. But
 the truth is Shannon was planning
 to move with-out telling her.
 Her & Shannon were lovers

OVER

AND SHE DIDN'T WANT TO TELL HER
IN FEAR OF HER REACTION.

✓ WE NEED TO GET HER VIRGINIA
X-HUSBAND DOWN HERE TO TESTIFY.

SHAWAN THE VICTIM WAS SO TERRIFIED
SHE WAS GOING TO LIVE IN VIRGINIA
AND SHE COULDN'T EVEN TELL HER
BEST FRIEND. HER BEST FRIEND WAS
TWO CONNECTED WITH ROBERT FROM
THE CHECK CASHING SCHEME. WE

✓ TRULY NEED HER DIARY OF HER
✓ COMPUTER TOWER. SHE HAD COPIES
✓ OF IT IN HER DESK TOO.

COMPUTER
DIARY

THERE WAS LUBRICANT IN BED, ALONG WITH
 CILDS. SOMEONE WAS THOUGHTFUL ENOUGH TO USE LUBRICANT?

THE EXTERNAL EXAMINATION SHOWS AFTER THE
 NECK WAS CAREFULLY EXAMINED THERE WERE NO SCRATCHES OR
 OTHER FIBRATIONS NOTICED, BY J. S. SEXTON, M.D.

IF BOTH LUNGS SHOW AN ABNORMAL ACCUMULATION
 OF FLUID (EDEMA) WHY COULDN'T SHE HAVE CHOKED TO DEATH,
 ON HER OWN. (THIS IS FOUND UNDER DESCRIPTION OF INTERNAL
 ORGANS (LUNGS). PAGE 3 OF 5.

WHY NO DISCOVERY ON COMPUTER OF VICTIM? WHY WASN'T
 ENTIRE BEDROOM LUSTED FOR PRINTS? DRAWING OF HOUSE LEFT OUT
 BATHROOM AND CLOSET. CONCERNING COMPUTER, THEY'RE HOLDING EXCULPATORY-
EVIDENCE.

Exhibit 8-7

* #7 Big Robert owner of Lion Chemical
Check Cashing Susan To avoid taxes on
the money used Sherris + Victim.

* NOTE Victims Harb-Drive, I took Lt.
Kirth L. Litten about her diary
diary and written record she kept
on 2-9-04.

* They have tried to build a case
based on the law of probability and
Coincidence.

* NOTE:
Need Sherris's work record at
Nursing Home for being mean to
the old people. She was fired as
a result.

NOTE: Big Robert at Lion Chemical
 Thought Sherene Saw Robert had
 Stolen \$2,000.- from him. He told
 me about it, to warn me about
 him.

NOTE: Need Local Phone Records, to
 Victims Phone. Daughter had problem
 with a guy coming on the line.

NOTE: Need Request for Payment of
 Expert Witness (Dent Print?)

→ David T. Hanna has info with
 regard to what Amber McDaniel
 shared with him about the work on
 this case. Needs to be added to
 the Subpoena List. At [REDACTED]
 [REDACTED] his
 Attorney is Cheryl T. Hopkins
 at Box 4026 Florence S.C.
 [REDACTED]

NO EVIDENCE FROM FLORIDA PLACES ME IN FLORIDA. INFORMATION MIGHT SUGGEST I WAS THERE, BUT NOTHING IN WAY OF EVIDENCE DOES. EVEN IF THEY COULD PROVE THOSE BOATS DID IN FACT BEYOND OR WITH ANY DEGREE OF SCIENTIFIC CERTAINTY MADE THOSE IMPRESSIONS, THEY COULDN'T PROVE MY FEET WERE IN THEM.

MY SO CALLED PRINTS ON THE OUT-SIDE OF THE CAR PLACES ME IN CHESTERFIELD AT BEST IF TRUE. HOWEVER, MANY UNANSWERED QUESTIONS STILL EXIST, WITH REGARD TO THEIR VIRGINIA INVESTIGATION. MANY LEADS THAT WOULD HAVE EXONERATED ME LONG BEFORE VIRGINIA LEARNED FROM FLORIDA WHAT PRINTS TO FIND, WERE NOT FOLLOWED THROUGH. WHY? IS WHERE THE HEART OF THE CASE WILL BEGIN. SEE: PAGES 1-4.

NOTE: WAS COWAR AND LEATHER WHIP
RECOVERED... SPIKE COWAR. IT WAS
THE WOMAN'S WHIS REAR. HER DRIVER.
AT 2825 W. BLACK CREEK RD. LOT 4
7th FLORENCE, S.C. 29501-0749

NOTE: SHE WOULD NEVER LET A MAN
HOLD-CUFF HER, BUT SHE WOULD A
WOMAN. THE CUFFS WERE TAG SEX
CUFFS, THEY WEREN'T REAL.

WHAT DID S.C. USE TO SUPPORT
THEIR REQUEST FOR A GOVERNOR'S
WARRANT??

NOTE: IN FEBRUARY SOMETIME 2003,
SHERRIE'S HOME WAS ENTERED AT 4 AM
BY A BIG BLACK MAN. HE WALKED IN
AND ATTEMPTED TO GET INTO THE GIRL'S
BEDROOM NO ONE KNEW WHO HE
WAS.

- 1.) THEY HAVE FORENSICS AND WITNESSES WHO SAY I LIVED WITH THE VICTIM AND WAS SEEN WITH HER 6 HOURS PRIOR TO HER BEING FOUND DEAD.
- 2.) MY FINGER PRINTS AND SOME OF MY CLOTHES WERE FOUND IN THE VICTIM'S CAR WHEN IT WAS FOUND IN FLORIDA.

WITH REGARD TO THE ABOVE #1; YES, I LIVED AT THE VICTIM'S HOME. YES, I WAS WITH HER 6 HOURS PRIOR TO HER BEING FOUND DEAD.

WITH REGARD TO THE ABOVE #2; YES, PRIOR TO HER DEMISE I WAS IN HER CAR EVERY DAY FOR OVER 6 WEEKS. I KEPT EXTRA CLOTHES IN HER CAR BECAUSE I WORKED OFTEN WITH CHEMICALS AND CLEANING SOLUTIONS AND HAD TO SHOWER & CHANGE CLOTHES BEFORE I LEFT WORK AT LEON CHEMICAL. ROBERT BENNETT AND BIG ROBERT PART OWNER CAN VOUCH FOR ME.

3.) FLORIDA CLAIMS BEFORE VICTIM'S CAR WAS DISCOVERED, A BREAK-IN AT A HOME OCCURRED AND A WALLET, KEYS AND A CAR WAS REMOVED FROM THE HOME. AND A BOOT PRINT AND KEYS WERE LEFT BEHIND BY THE PERPETRATOR.

4.) FLORIDA CLAIMS THE KEYS FOUND ON THE VICTIM'S CAR FROM SOUTH CAROLINA. ALSO, THAT THE BOOT PRINT MATCHES BOOTS FOUND IN VICTIM'S CAR FROM SOUTH CAROLINA.

INTERESTING CONCEPT: THEY SAY, THE BOOTS USED BY THE PERPETRATOR OF THE HOME BREAK-IN WERE FOUND LOCKED IN VICTIM'S CAR TRUNK FROM SOUTH CAROLINA, BUT AT THE SAME TIME KEYS TO THE TRUNK WERE STILL AT THE HOME BREAK-IN? THE PERPETRATOR MUST HAVE COME BACK TO THE BREAK-IN AFTER TOSsing THE BOOTS IN THE TRUNK, AND LEFT THE KEYS.

5.) FLORIDA CLAIMS THE STOLEN CAR FROM THE BREAK-IN WAS FOUND IN VIRGINIA WITH MY PRINTS ON THE OUT-SIDE OF IT NEAR WHERE I TURNED MY SELF IN, THE DAY AFTER I TURNED MY-SELF IN.

Chain of Evidence Needed

- Florida -

Emerald Towing's impound yard. It is stated on 6-23-03 J. Giumetta (529) went to the impound yard and tried the car keys to the Cavalier. However we have no Paper-work showing him getting the GM Key from Evidence or replacing the key back into Evidence; Or, Paper-work showing he gained Access to the Chevy Cavalier at the impound yard. or him leaving the impound yard.

It is said Evidence Technician Farrah Pearson packaged and sent items found in the Chevy Cavalier for D.N.A. - Processing. We do not have Paperwork from Farrah Pearson who packaged and sent nor do we have Paperwork from P.B.S.O. Serology Lab who received and processed.

We have no statement or D.N.A. Analysis of the Footwear from P.B.S.O. Serology Lab.

No Photograph of keys taken at scene.

Chain of Evidence Broken on Lexus. Car was given back to owner.

3-28-03 SC-CAR TAKEN
 3-28-03 WARRANT ISSUED
 6-21-03 SC-CAR FOUND IN FL. SC. Spoke to
 FL. ABOUT SC-CAR.

4-16-03 FL-CAR TAKEN
 4-22-03 FL-CAR FOUND IN VA.

Prior to (6-24-03) FL-CAR RETURNED TO OWNER.

6-25-03 FL. Spoke with VA... stating Objective

Page 6 of 8 of
 VA's Report.

Review a Report made by FL. J. Grumetta.

MR. GRUMETTA had Info of S.C. and VA before he marched
 up the keys to SC-CAR. Page 1 Date Printed 8-21-03 16:35.
 FL. KNEW ABOUT VA AS EARLY AS (6-21-03) SEE B-PAGE 1
 ALSO FL KNEW ABOUT S.C. AND ME.

* KEYS THERE WAS NO PHOTO TAKEN OF THEM
 OR DESCRIPTION OF THEM (CHAIN OF EVIDENCE)? NO SIGN IN
 OR OUT OF KEYS OR IN AND OUT OF TOW YARD. HE SAID
 HE WENT TO TOW YARD ON 6-23-03... BUT WE HAVE NO
 LOG IN + OUT EVIDENCE FROM YARD, IN FLA.

Before the Boots were found in the TRUNK had a Forensic Specialist written (a) CLASS CHARACTERISTICS ANALYSIS, SOLE-DESIGN-SIZE TYPE? How about individual CHARACTERISTICS ANALYSIS? WEAR ON SOLE AS A PATTERN, NICKS, ROCKS IN CRACKS ETC, AL. Did LATENT FOOTPRINT MATCH THOSE CLASS + INDIVIDUAL CHARACTERISTICS?

WAS A SOIL SAMPLE TAKEN FROM THE BOOT PRINT. AND WERE THE BOOTS BOTTOMS SCRAPPED FOR SOIL SEDIMENT TO BE MATCHED. THROUGH A CHROMATOGRAPH.

AGAIN WAS THE LEATHER FLOR MAT SCRAPPED OR BRUSHED FOR SEDIMENT TO BE MATCHED TO THE BOOTS I WAS WEARING WHEN I THREW MYSELF IN?

NO CASTING Compound of BOOT PRINT.

- 3-28-03 Victim Found dead.
- 3-31-03 Murder Warrant Issued
- 3-31-03 Forensic Report Manner of death is best left pending further Police investigation
- 5-7-03 Forensic Amended, Classified as Homicide.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Kevin Walton, #321491,)

Case No. 2011-CP-21-3062

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

FILED
2013 DEC 11 PM 4:38
CONNIE REE-SHEPHERD
C.C.P. & G.S.
FLORENCE COUNTY, S.C.

This matter comes before the Court by way of an Application for Post-Conviction Relief ("PCR") filed November 14, 2011. Respondent made its Return on or about September 27, 2012. The Court convened an evidentiary hearing into the matter on October 10, 2013, in Marion County. Applicant was present at the hearing and represented by J. Rene Josey, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant's trial counsel, Patrick J. McLaughlin, Esquire, also testified. The Court had before it a copy of the record on appeal (which included transcripts from Applicant's trial and hearings), the records of the Florence County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application, the return, and the exhibits introduced by Applicant. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Florence County Clerk of Court. In September 2004, the

CERTIFIED: A TRUE COPY
Connie Ree-Shepherd
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Florence County Grand Jury indicted Applicant for murder and grand larceny (2004-GS-21-1168). He was originally represented by Karen E. Parrott, Esquire. On February 14, 2005, the State served Applicant and Ms. Parrott with its notice of intent to seek a sentence of life without parole ("LWOP") pursuant to S.C. Code Ann. § 17-25-45 ("the recidivist statute"). The State relied on Applicant's 1985 assault with intent to rob while armed conviction from the state of Michigan as the predicate offense to enhance Applicant's sentence. Applicant had Ms. Parrott relieved in February 2007 and was represented thereafter by Patrick J. McLaughlin, Esquire ("trial counsel"). The State again served its notice of intent to seek LWOP on trial counsel.

On April 23, 2007, Applicant proceeded to trial before the Honorable Thomas A. Russo and a jury. The jury found Applicant guilty as indicted on April 26, 2007. Judge Russo found Applicant's prior conviction was equivalent to an armed robbery conviction in South Carolina, and sentenced Applicant under the recidivist statute to life imprisonment for the murder conviction. Judge Russo sentenced Applicant to five (5) years for the grand larceny conviction.

Trial counsel filed a motion for a new trial, which Judge Russo denied by written order on December 27, 2007. Trial counsel filed a timely notice of appeal, and Robert Dudek, Esquire, of the South Carolina Office of Appellate Defense, was appointed to represent Applicant on appeal. Applicant subsequently filed grievances against Mr. Dudek and members of his staff, and the South Carolina Court of Appeals appointed trial counsel to represent Applicant on appeal. Trial counsel perfected the appeal with the filing of an Anders¹ brief. After a reviewing the record, the Court of Appeals dismissed Applicant's appeal on June 1, 2011. State v. Walton, Op. No. 2011-UP-255 (S.C. Ct. App. filed June 1, 2011). On August 26, 2011, the Court of

¹ Anders v. California, 386 U.S. 738 (1967).

Appeals denied Applicant's petition for rehearing. The South Carolina Supreme Court denied Applicant's petition for writ of certiorari on September 13, 2011, and the remittitur was returned to the circuit court on October 13, 2011.

II. ALLEGATIONS

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Attorneys were ineffective"
2. "Attorney should not have filed an Anders Brief"

Applicant included with his application an attachment listing thirty-six (36) paragraphs of allegations against his various attorneys. The allegations in this attachment are summarized as follows:

1. Ms. Parrott did not file a speedy trial motion.
2. Trial counsel entered evidence and waived the right to final closing.
3. Trial counsel should not have filed an Anders brief.
4. Trial counsel failed to retain expert witnesses.
5. Trial counsel failed to investigate the case.
6. Trial counsel was inexperienced.
7. Trial counsel did not cross-examine witnesses.
8. Judge Russo should have recused himself.

At the PCR hearing, Applicant proceeded on the above allegations relating to ineffective assistance of counsel. He did not raise any allegations of trial court error. Applicant also alleged trial counsel should have moved for a curative instruction when one witness referenced his "record of violence against women."

III. SUMMARY OF TESTIMONY

Applicant testified Ms. Parrott was relieved only sixty (60) days before the case went to trial. He testified he requested she file a motion for speedy trial, but she refused. However, on

cross-examination, Applicant admitted his case was delayed partially because he filed two federal *habeas corpus* actions while detained on these charges. He also admitted trial counsel filed a motion to quash the indictments for lack of a speedy trial.

Applicant testified he wanted a fingerprint expert to review the State's evidence linking him to a Lexus stolen from the area where police recovered the victim's car. He also testified he wanted trial counsel to retain an expert to review an alleged blonde hair recovered from the crime scene to show another person may have committed the murder. Applicant also alleged he requested trial counsel have a computer expert review the victim's computer to recover the victim's diary, which Applicant claims would have shown he had no motive to murder the victim. Applicant further claims he asked trial counsel to have a footprint expert review the State's evidence linking him to the stolen Lexus.

Applicant also testified he had concerns with trial counsel's experience as an attorney. He believed trial counsel was not forthright with Judge Russo about his experience, but Applicant chose to stay with trial counsel instead of represent himself. Applicant also testified he had discussions with trial counsel about not entering evidence in an effort to present the last closing argument. He alleged he chose not to testify because he believed it was important to have the last argument. He also testified trial counsel should have sought a curative instruction when a witness made reference to Applicant's "record of violence against women." Applicant further testified he believed trial counsel did not adequately cross-examine the State's witnesses.

Applicant testified he met with trial counsel five (5) times before trial. During these meetings, they discussed the State's evidence and theory of the case. Applicant also recalled

telling trial counsel his defense to the charges was he was not in the house at the time of the murder. He also recalled rejecting the State's offer to plea to a thirty (30) year sentence.

Applicant alleged he provided trial counsel with the names of several witnesses who could testify on Applicant's behalf. He testified he also asked trial counsel to administer a polygraph to prove he was telling the truth about his involvement in the murder. Applicant also testified trial counsel should have briefed Applicant's directed verdict motion and motion for a new trial on appeal. However, on cross-examination, Applicant admitted he filed a *pro se* response to the Anders brief.

Trial counsel testified he filed a motion to quash Applicant's indictments for violation of his right to a speedy trial. He recalled Judge Russo denying the motion, and he recalled raising this issue in his Anders brief. He also recalled discussing the appeal with Applicant, who wanted to raise several issues in the brief. However, trial counsel testified he filed an Anders brief addressing two issues because he could not find any specific prejudice from the trial court's rulings.

Trial counsel recalled meeting with Applicant four (4) or five (5) times before trial and discussing the State's evidence. He recalled the State's evidence was entirely circumstantial, but was a very strong case nonetheless. Trial counsel testified Applicant always maintained he was innocent and his defense was he was not in the house when the victim was murdered. He testified he did not remember Applicant asking for a polygraph examination, but his advice would have been that a polygraph is inadmissible in court and would not have helped the case. Trial counsel recalled feeling it would be difficult to convince a jury Applicant was not in the home based on the evidence against him, particularly the statements from the victim's daughter.

Trial counsel testified he discussed other possible causes of the victim's death with Applicant, but Applicant maintained he was not in the house at that time. He also recalled Applicant provided a list of witnesses Applicant "hoped he could find." However, they decided not to pursue these leads because the trial strategy would be in part to attempt to convince the jury the police should have investigated other possible suspects.

Trial counsel recalled discussing the possibility of retaining experts with Applicant. Specifically, he recalled there was a question of whether Applicant's fingerprints were inside the Lexus stolen from the area where the police recovered the victim's car. However, trial counsel testified he did not believe an expert would have helped prove Applicant did not steal the Lexus. Rather, trial counsel relied on a memo from the Florida prosecutor stating Florida did not possess enough evidence to prosecute Applicant for the stolen Lexus. Trial counsel also did not hire a DNA expert to review the forensic evidence at the crime scene because Applicant lived in the house, and there was no question Applicant's DNA was found there. Trial counsel further testified he would not have retained these experts because it was helpful to his trial strategy to leave these questions unanswered. He also recalled discussing with Applicant the possibility of raising reasonable doubt by attacking the police for not pursuing other possible theories of the case.

Trial counsel did not hire a computer expert because he discussed the problems with the computer with his office's information technology staff. He recalled the disks were physically damaged and there was no way to recover the information in them. He also testified a boot print expert was unnecessary because there was no question the boots Applicant was wearing at the time of arrest did not match the boot print recovered near where the police found the victim's

car. Trial counsel testified Applicant agreed to not pursue these experts, but trial counsel would have attempted to get funding for them if Applicant had asked.

Trial counsel candidly testified he is more experienced now than he was at the time of Applicant's trial. However, he testified he had a good working relationship with Applicant and Applicant was very involved in his defense. Trial counsel conceded he discussed with Applicant the importance of having last argument, and admitted he inadvertently lost the right to last argument when he entered evidence. However, he testified he had a specific purpose for each item of evidence he entered. He entered a photograph to show the victim lived in a dangerous neighborhood. He entered some forensic reports to show the police did a sloppy investigation. He entered a memo from the Florida prosecutor to show the state of Florida had insufficient evidence to link Applicant to the stolen Lexus. Trial counsel testified he would have advised Applicant to not testify even if they had realized they waived last argument and could present a defense case. Trial counsel recalled discussing Applicant's prior record, and the two agreed the record would be harmful if brought out at trial.

Trial counsel recalled objecting to the witness statement about Applicant's "record of violence against women." He also recalled discussing with Applicant the possibility of requesting a curative instruction. Trial counsel testified he advised Applicant a curative instruction may focus the jury's attention on the statement, and Applicant agreed it was best left unaddressed. He further testified he made a point of cross-examining each expert witness to attempt to discredit their testimony. Trial counsel stated the only witness he did not cross-examine, the victims' daughter, was at the request of Applicant.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. The Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Ineffective Assistance of Trial Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

1. Motion for a Speedy Trial

The Court finds Applicant's allegation Ms. Parrott was ineffective for failing to secure a speedy trial is without merit. Ms. Parrott did not file a motion for a speedy trial because she felt the case was complicated and it would not be advantageous for Applicant to have a speedy trial. (Feb. 9, 2007 Hearing Tr. 5:8-13, R. on Appeal at 5). The Court finds she articulated a valid strategic reason for not filing a motion for a speedy trial. Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))). Furthermore, any failure to secure a speedy trial was cured when trial counsel filed a motion to quash the indictment based on a denial of a speedy trial, which was thoroughly briefed and argued before trial. Judge Russo found trial was not unnecessarily delayed because the case was complicated in part by the actions of Applicant. (Trial Tr. 41:18-42:6, R. on App. at 71-72). Thus, Applicant may not have been entitled to a speedy trial even if a motion had been filed. Therefore, Applicant has failed to meet his burden of proving counsel was ineffective for failing to secure a speedy trial.

2. Waiver of Right to Final Closing Argument

The Court finds Applicant has failed to demonstrate trial counsel was ineffective by inadvertently waiving the right to give the final closing argument. Regarding this issue, the Court finds trial counsel's testimony to be credible, and Applicant's to be not credible. Trial counsel introduced four (4) pieces of evidence during the State's case: a photograph of the victim's neighborhood, two (2) forensic reports, and a memo from the Florida prosecutor. Trial counsel used each of these items to bolster his arguments that Applicant may not be the murderer or that the police did not do a sufficient investigation. Because trial counsel articulated a valid strategic reason for introducing these items, he was not deficient in introducing them in spite of his prior arrangement with Applicant to preserve closing argument. Stokes, 308 S.C. at 548, 419 S.E.2d at 779. Likewise, Applicant's allegation he relied on retaining last argument in making his decision to not testify is not borne out by the record. Judge Russo gave Applicant the opportunity to take the stand in his own defense, which Applicant declined. (Trial Tr. 523:24-524:17, R. on App. at 553-554). Applicant also made the decision not to testify to avoid having his prior record presented to the jury.

Furthermore, Applicant was not prejudiced by the introduction of these items. See Franklin v. Catoe, 346 S.C. 563, 570, 552 S.E.2d 718, 722 (2001) (Applicant must show prejudice from counsel's failure to secure last argument in death penalty trial); see also State v. Mouzon, 326 S.C. 199, 204, 485 S.E.2d 918, 921 (1997) ("[D]enial to the defendant of the right to argue last [] falls in the trial error, rather than the structural defect, category."). Applicant's defense theory was that he was factually innocent and that the police failed to investigate the case thoroughly. Trial counsel's closing argument thoroughly addresses these issues by

attacking the forensic evidence presented and attempting to create reasonable doubt. (Trial Tr. 536:18-549:10, R. on App. at 566-579). The State's closing argument is largely a summary of the evidence in the case and not devoted in any significant way to attempting to counter any points raised by trial counsel. (Trial Tr. 550:5-558:5, R. on App. at 580-588). The Court finds trial counsel could not have more adequately addressed the issues in this case had he been allowed to argue last. Mouzon, 326 S.C. at 205, 485 S.E.2d at 921. At the PCR hearing, Applicant "voice[d] no complaint whatsoever about the argument [trial counsel] made for him and even now offers no suggestion of things that [trial counsel] should have argued to the jury on his behalf." State v. Chaping, 313 S.C. 147, 157, 437 S.E.2d 88, 94 (1993) (Goolsby, AAJ, dissenting), overruled by Franklin, 346 S.C. 563, 552 S.E.2d 718. Therefore, the Court finds, beyond a reasonable doubt, Applicant was not prejudiced by the order of closing arguments.

3. Trial Counsel's Anders Brief

The Court finds trial counsel was not ineffective for filing an Anders brief on appeal. The Court finds credible trial counsel's testimony he did not believe any non-frivolous issues existed on appeal. The Court finds not credible, or legally accurate, Applicant's assertion trial counsel should have briefed the issue of the denial of his directed verdict and new trial motions. Based upon this Court's review of the record, trial counsel was not deficient because he did not "unreasonably fail[] to discover nonfrivolous issues." Smith v. Robbins, 528 U.S. 259, 285 (2000).

Regardless, Applicant has not shown he would have prevailed on appeal had these issue been raised. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003) (prejudice prong of Strickland analysis requires showing the applicant would have been successful on appeal).

The Court of Appeal conducted a thorough review of the record before dismissing the appeal, and would have ordered full briefing if trial counsel failed to brief a meritorious issue. State v. McKennedy, 348 S.C. 270, 279, 559 S.E.2d 850, 855 (2002). Trial counsel's Anders brief addressed the issues he believed were strongest, and this Court agrees Applicant would likely have been unsuccessful in arguing the Judge Russo erred in denying the directed verdict and new trial motions. See State v. Frazier, 386 S.C. 526, 531, 689 S.E.2d 610, 613 (2010) ("If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." (citing State v. Weston, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006))). Therefore, the Court finds trial counsel's Anders brief afforded Applicant his full constitutional and statutory rights. Poston v. State, 303 S.C. 167, 168, 399 S.E.2d 592 (1989).

4. Failure to Retain Expert Witnesses

The Court finds Applicant has failed to meet his burden of proving trial counsel was ineffective for not retaining independent expert witnesses. Regarding this allegation, the Court finds trial counsel's testimony to be very credible, and Applicant's to be not credible or believable. Trial counsel discussed with Applicant the benefit of not retaining experts was to bolster the argument the police failed to perform a thorough investigation. The Court agrees trial counsel's articulated strategy of leaving unanswered questions is legitimate. Stokes, 308 S.C. at 548, 419 S.E.2d at 779. Furthermore, trial counsel planned to thoroughly cross-examine the State's experts to attempt to discredit their testimony. The Court also finds this is a legitimate trial strategy. Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) ("[D]ecision not

to call an expert witness to rebut the state's expert witness was a legitimate trial strategy." (citing McLaughlin v. State, 352 S.C. 476, 483-484, 575 S.E.2d 841, 844-845 (2003))).

Furthermore, Applicant has not shown he was prejudiced by the decision not to retain independent experts. The testimony presented at the PCR hearing was merely speculative as to what Applicant's desired experts would have found. Id. Furthermore, the record reflects trial counsel thoroughly cross-examined the State's experts to attempt to discredit their testimony. See Lorenzen v. State, 376 S.C. 521, 531, 657 S.E.2d 771, 777 (2008) ("[C]ounsel's failure to procure expert witnesses did not render her representation deficient given she vigorously cross-examined the State's witnesses and attacked the accuracy of the evidence." (citing Frasier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991))). In sum, Applicant had not proven any testimony by independent experts would have bolstered his defense at trial. Therefore, trial counsel was not ineffective in this regard.

5. Failure to Investigate

Applicant has failed to meet his burden of proving trial counsel was ineffective for failing to further investigate. Failure to conduct an independent investigation is not *per se* ineffective assistance of counsel when the allegation is supported only by mere speculation. Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 227 S.E.2d 199 (1976)). Here, Applicant presented no testimony regarding what further evidence trial counsel could have uncovered that would have bolstered his defense. On this point, the Court finds very credible trial counsel's testimony Applicant merely provided him speculative leads which they decided did not need to be investigated. The Court finds not credible Applicant's unsubstantiated and vague testimony that other leads could be investigated.

Furthermore, the Court notes Applicant's prior counsel, Ms. Parrott, did investigate Applicant's leads, to no avail. (R. on App. at 631). Because Applicant has not shown what information remained to be uncovered, the Court finds trial counsel was not ineffective in his pre-trial investigation.

6. Trial Counsel's Experience

The Court finds the allegation trial counsel was ineffective because he was inexperienced to be wholly without merit. Although trial counsel admitted he is a better lawyer now than at the time of trial, lack of experience is not *per se* ineffective assistance of counsel. United States v. Cronin, 466 U.S. 648, 665 (1984) ("Every experienced criminal defense attorney once tried his first criminal case."). The record indicates trial counsel made timely and articulate objections, competently introduced evidence, and thoroughly performed cross-examination and argument. The Court finds no deficiency on trial counsel's part that is attributable to his relative inexperience in the courtroom.

7. Failure to Cross-examine Witnesses

The Court likewise finds the allegation trial counsel did not cross examine the State's witnesses to be unsubstantiated by the record. The record reflects and this Court finds trial counsel subjected the State's case to a thorough and "meaningful adversarial testing." Nance v. Ozmint, 367 S.C. 547, 553, 626 S.E.2d 878, 881 (2006). Trial counsel made timely and articulate objections, thoroughly cross-examined the State's witnesses, and made well-reasoned arguments to the jury. At the PCR hearing, Applicant did not articulate how he believed trial counsel was deficient in this regard. Furthermore, the Court finds credible trial counsel's

testimony he did not cross-examine the victim's daughter at the request of Applicant. In sum, trial counsel was not ineffective in his cross-examining of any of the State's witnesses.

8. Failure to Request Curative Instruction

The Court finds this allegation to be without merit as well. Trial counsel objected to the victim's daughter's reference to Applicant's "record of violence against women." (Trial Tr. 483:13-16; R. on App. at 513). Trial counsel also requested a curative instruction on the statement. (Trial Tr. 486:13-15, R. on App. at 516). The record also reflects trial counsel withdrew this request after Judge Russo warned it may "shine a light on it[.]" (Trial Tr. 483:16-19, R. on App. at 516). The Court finds credible trial counsel's testimony at the PCR hearing that he and Applicant made a tactical decision not to request the curative instruction. The Court also finds this is a valid trial strategy. Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000) (valid trial strategy to "not request curative instructions because they tend to bring into focus precisely the item the objector has kept out"). Therefore, trial counsel was not ineffective for not requesting the curative instruction.

9. Overwhelming Evidence of Guilt

The Court further finds Applicant cannot satisfy the prejudice prong of the Strickland analysis as to any of his allegations because the record contains overwhelming evidence of his guilt. Hutto v. State, 387 S.C. 244, 249, 692 S.E.2d 196, 198 (2010) ("No prejudice occurs, despite deficient performance, when there is overwhelming evidence of guilt." (citing Rosemond v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009))). Although built on circumstantial evidence, the State's case against Applicant was overwhelming. The victim's daughter and a neighbor testified they saw the victim and Applicant together at the victim's house after 1:00 AM. A

forensic investigator determined the victim's time of death to be around 4:30 AM. A forensic pathologist opined the victim died from strangulation by another person. The daughter testified her mother was deceased at 6:00 AM. There was no evidence the house was broken into or that any person besides the victim, the daughter, and Applicant were in the house between 1:00 AM and 6:00 AM.

A local police officer spotted the victim's car leaving the area around 5:30 AM. The car was later recovered in Florida, where Applicant has family. The car was abandoned, but police found cigarette butts in the car containing Applicant's DNA. They also found boots in the trunk of the car that were the same brand as the boots Applicant was wearing when arrested. Near where the car was abandoned, police responded to a theft of a Lexus. At that scene of the theft, they found a boot print matching the boots in the victim's abandoned car. They also found the keys to the victim's car at the scene. The stolen Lexus was later found in a parking lot in Virginia with Applicant's fingerprints on it. Applicant was arrested near the location where the Lexus was located.

The natural conclusion to be drawn from this evidence is that Applicant was the only person present at the scene of the murder, from which he then fled. The Court can discern nothing trial counsel could have done differently to counter this evidence. In sum, trial counsel cannot be found ineffective because the evidence overwhelmingly points to Applicant's guilt in this murder.

B. All Other Allegations.

As to any and all allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present sufficient

evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes that Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on the applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

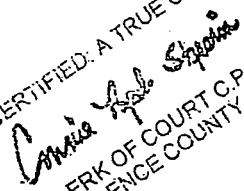
IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 25 day of Nov., 2013.


THE HONORABLE WILLIAM H. SEAL, JR.
Presiding Judge

Maria, South Carolina

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

2013 DEC 11 PM 4:38
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

FILED

WITNESSES

FCSO

LT. JULIUS LEE

Varborough

DOCKET NO. 2004 - GS - 21 - 01168

The State of South Carolina,

County of FLORENCE

JWL

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2004

PROS: JWL

D/O: 03-28-2003

THE STATE

vs.

KEVIN WALTON

ARREST WARRANT NO.

H275696 (1); H275695 (2).

ACTION OF GRAND JURY

TRUE BILL

Foreman of Grand Jury

VERDICT

762

Foreman of Petit Jury

Date:

Indictment for

MURDER
AND
GRAND LARCENY

CERTIFIED: A TRUE COPY
Clerk of Court
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

2004 SEP -9 P 12:53

INDICTMENT FOR

STATE OF SOUTH CAROLINA)

MURDER AND GRAND LARCENY

COUNTY OF FLORENCE)

At a Court of General Sessions, convened on SEPTEMBER 9, 2004, the Grand Jurors of FLORENCE

County present upon their oath:

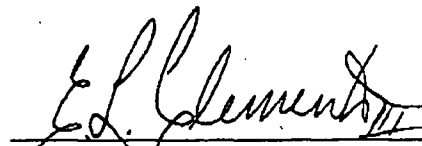
COUNT ONE - MURDER

That KEVIN WALTON did in FLORENCE County on or about March 28, 2003, violate Sections 16-03-0010, 0020 of the Code of Laws of South Carolina (1976), as amended, in that he did feloniously, wilfully and with malice aforethought kill one Shannon Burleson Carter, by means of strangulation, and that the said Shannon Burleson Carter did die as a proximate result thereof.

COUNT TWO - GRAND LARCENY

That KEVIN WALTON did in FLORENCE County on or about March 28, 2003, violate Section 16-13-0030(B)(1) of the Code of Laws of South Carolina (1976), as amended, in that he did feloniously take and carry away the personal goods of Shannon Burleson Carter of the value of more than one thousand dollars but less than five thousand dollars, described as follows: a 1996 Chevrolet Cavalier automobile and approximately two thousand dollars (\$2,000.00) in cash monies, with the intent to deprive the owner thereof permanently of such goods.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR