

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Horry County

Steven H. John, Circuit Court Judge

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S.C. Supreme Court

TOMMY TOOMER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000649

APPENDIX

ROBERT M. DUDEK
Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

JOSHUA L. THOMAS
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

COURT OF GENERAL SESSIONS
05-GS-26-2531

State of South Carolina,)
)
Plaintiff,)
)
-VS-)
)
Tommy Toomer,)
)
Defendant.)
_____)

TRANSCRIPT OF RECORD

May 18-19, 2009
Conway, South Carolina

B E F O R E:

HONORABLE EDWARD B. COTTINGHAM, Circuit Judge.

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

Heather Von Herrmann, Esquire
Office of the Solicitor
P. O. Box 1276
Conway, South Carolina 29528
Attorney for the State

James Galmore, Esquire
Office of the Public Defender
114 Laurel Street
Conway, South Carolina 29526

DIXIE COX EUBANK
OFFICIAL REPORTER

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1 THE COURT: Ladies and gentlemen of the jury panel,
2 you have been selected as potential jurors in a case that
3 we are going to select twelve jurors and two alternates
4 at this time and start this case at 9:30 in the morning.

5 Let me join with whoever qual- -- who qualified the
6 jury this morning?

7 MS. VON HERRMANN: I believe that was Judge
8 Culbertson, Your Honor.

9 THE COURT: All right. Let me join with Judge
10 Culbertson in welcoming all of you here to a term of
11 General Sessions Court. We recognize that you are here
12 at considerable inconvenience to you, to your family, and
13 to your workplace, but in our system of jurisprudence we
14 say that an individual shall not be convicted of a crime
15 unless and until twelve jurors of his or her peers has
16 found him guilty beyond a reasonable doubt. That concept
17 protects your liberty and with equal importance, it
18 protects mine, and so it is we are scheduled here for a
19 trial that's going to be called in just a moment.

20 We will select twelve of you and two alternates, and
21 the rest of you will be asked to call in after six
22 o'clock tonight for further instructions. I do
23 appreciate your attendance here and recognize that you
24 are here at considerable inconvenience. Thank you for
25 that.

1 I am Judge Cottingham from Bennettsville, South
2 Carolina. I have been holding court here for some
3 twenty-five years under our system of rotation, and it is
4 my privilege and honor to be the Presiding Judge for this
5 term of Court.

6 Solicitor, call your case.

7 MS. VON HERRMANN: Thank you, Your Honor. This is
8 Indictment Number 2005-GS-26-2531, the State of South
9 Carolina versus Tommy Toomer. The defendant is here,
10 present, and charged with murder.

11 THE COURT: All right, and for the record, who
12 represents the defendant?

13 MR. GALMORE: James Galmore, Your Honor, from the
14 Public Defender's Office.

15 THE COURT: Mr. Galmore, is the defendant, Tommy
16 Toomer, ready for trial?

17 MR. GALMORE: Yes, sir.

18 THE COURT: All right, sir.

19 Ladies and gentlemen, this is a case where the
20 defendant, upon this indictment, is charged with murder,
21 to which charge he specifically pleads not guilty. Now,
22 this indictment and the allegations it contains is in no
23 sense any evidence. Evidence comes from this witness
24 stand under oath.

25 Now, in this case the State of South Carolina does

VOIR DIRE

5

1 not seek the capital punishment of murder. That's not
2 involved in this case, but the State is seeking a verdict
3 for murder upon the allegations in this complaint and I
4 charge you that this defendant specifically pleads not
5 guilty.

6 I charge you at the outset that under our
7 Constitution every defendant, no matter how serious may
8 be the charge, is always presumed innocent, and that
9 presumption of innocence remains with him throughout the
10 trial, from the moment of his arraignment, until the jury
11 unanimously has found him guilty beyond a reasonable
12 doubt.

13 A defendant, if he chooses to, does not have to say
14 a thing. That's not his burden. The burden of proof is
15 upon the State of South Carolina of proving him guilty if
16 they can to your satisfaction unanimously, all twelve,
17 beyond a reasonable doubt.

18 I now am going to enter into a situation known as
19 voir dire, and this is to ensure that the State of South
20 Carolina and the defendant receive twelve folks with no
21 friends to reward, no enemies to punish, twelve people
22 who can say under their oath, "Judge, I don't know
23 anything about the case. I've made no decisions about
24 it. I have no biases or prejudices, am not related by
25 blood or marriage to either the defendant or to the

1 alleged victim," a juror who can say upon his oath, "If I
2 am selected as one of the twelve jurors, my verdict of
3 not guilty or guilty will be based on the law and
4 evidence heard in this courtroom and from no other
5 place."

6 My first inquiry, I would ask that the defendant
7 please stand and face the jury. (Mr. Toomer stands.)
8 This is the defendant, Tommy Toomer, T-O-O-M-E-R. Are
9 any of you related by blood or connected by marriage with
10 this defendant? If so, please stand. (No response.)

11 Do any of you have any close personal relationship,
12 such as co-worker, church member, or anything? Are any
13 of you closely related to any members of his family? How
14 many of you know this defendant or his family in any
15 capacity whatsoever, please stand. (No response.) You
16 may be seated. (Mr. Toomer is seated.)

17 It is alleged in this indictment and alleged only
18 that he did with malice aforethought kill the victim,
19 Jerome Tucker. Are any of you related by blood or
20 connected by marriage with Jerome Tucker? Do any of you
21 even know Jerome Tucker? (No response.)

22 It is alleged that this occurred on May the 28th of
23 2005 in Horry County. Would you tell me what area of
24 Horry County, please?

25 MS. VON HERRMANN: Yes, sir, Your Honor. It would

VOIR DIRE

7

1 be in Conway on Street.

2 THE COURT: Okay. It may or may not have been on
3 television or may or may not have been in the press in
4 19-- 2005. Would any of you have heard anything about
5 it, have any recollection of it, maybe read it in the
6 paper or heard it on T.V.? (No response.)

7 Would any of you have had any reason to discuss any
8 issue in this case with anyone whatsoever or have made a
9 determination as to innocence or guilt? (No response.)

10 Let me ask you this: In our life experiences, we
11 develop certain biases or prejudices, and I need to know
12 that in a case where the defendant is charged with
13 murder, do any of you have such prejudices or reasons why
14 you feel that you could not be a fair juror. Let me give
15 you an example. It has nothing to do with this case.

16 I was trying a young man for felony DUI in another
17 county four or five years ago, being charged with having
18 killed a young woman while under the influence of liquor.
19 I asked a question with references to biases, and a lady
20 got up in the back and said, "Judge, I can't be fair to
21 him. My daughter was killed last year by a drunk driver.
22 I can't be fair to this gentleman." In the same county,
23 a gentleman got up and said, "Judge, I can't be fair to
24 the Solicitor's Office. They prosecuted my son for the
25 identical thing three times until the jury unanimously

1 found him not guilty, so I can't be fair to the State."

2 This is an example of how we develop biases and
3 prejudices. Now, this is an allegation of murder. Some
4 of you may have experienced some situations in your
5 family or personal family, or you personally with violent
6 crimes that might prevent you from being a fair juror.

7 I'm going to ask you now, knowing that this is an
8 allegation of murder, do any of you have such biases or
9 prejudices that you feel that you could not give both the
10 State of South Carolina and this defendant a fair trial?
11 All you have to do is stand and tell me that you can't be
12 fair and honest. (No response.)

13 All right, Solicitor, any other inquiries?

14 MS. VON HERRMANN: None from the State, Your Honor.

15 THE COURT: How about from the Defense?

16 MR. GALMORE: No, sir.

17 THE COURT: Do I need to go over the witness list?

18 MS. VON HERRMANN: Your Honor, I ---

19 THE COURT: If he's not going to question it, it's
20 not necessary.

21 MS. VON HERRMANN: I don't have any.

22 THE COURT: All right. Let's proceed then. The
23 strikes, of course, are five -- did you have any further
24 inquiry?

25 MR. GALMORE: No, sir, Your Honor.

JURY SELECTION

9

1 THE COURT: All right. Let's proceed with the
2 selection of the jury. The strikes, of course, are five
3 and ten. You may proceed. I want twelve jurors and two
4 alternates, and the strikes, of course, will be one and
5 two.

6 MR. GALMORE: Yes, sir.

7 THE COURT: All right, proceed.

8 THE CLERK: When I call your name, please bring
9 your personal belongings with you, and you will come and
10 stand right here and turn and face the back of the
11 courtroom.

12 206, Charles Hudson. What say the State?

13 MS. VON HERRMANN: Please excuse the juror from the
14 trial of this case.

15 THE CLERK: Please be seated. You're excused from
16 this particular case.

17 161, Eugene Geraldo. What say the State?

18 MS. VON HERRMANN: Please present the juror.

19 THE CLERK: Defense?

20 MR. GALMORE: Please seat the juror.

21 THE CLERK: Please be seated in the jury box.

22 97, William Cowell. What say the State?

23 MS. VON HERRMANN: Please present the juror.

24 THE CLERK: Defense?

25 MR. GALMORE: Please excuse the juror in the trial

JURY SELECTION

10

1 of this case.

2 THE CLERK: Please be seated. You're excused from
3 this particular case.

4 214, Diana Jarrell. What say the State?

5 MS. VON HERRMANN: Please present the juror for the
6 trial of this case.

7 THE CLERK: Defense?

8 MR. GALMORE: Please seat the juror.

9 THE CLERK: Please be seated in the jury box.

10 332, Patricia Roberts. What say the State?

11 MS. VON HERRMANN: Please excuse the juror from the
12 trial of this case.

13 THE CLERK: Please be seated. You're excused from
14 this particular case.

15 30, Ophelia Bennett. What say the State?

16 MS. VON HERRMANN: Please excuse the juror from the
17 trial of this case.

18 THE CLERK: Please be seated. You're excused from
19 this particular case.

20 122, Donald Donnelly. What say the State?

21 MS. VON HERRMANN: Please present the juror.

22 THE CLERK: Defense?

23 MR. GALMORE: Please seat the juror.

24 THE CLERK: Please be seated in the jury box.

25 31, Ruth Berkley. What say the State?

JURY SELECTION

11

1 MS. VON HERRMANN: Please present the juror.
2 THE CLERK: Defense?
3 MR. GALMORE: Please seat the juror.
4 THE CLERK: Please be seated in the jury box.
5 46, Bryan Branton. What say the State?
6 MS. VON HERRMANN: Please present the juror.
7 THE CLERK: Defense?
8 MR. GALMORE: Please seat the juror.
9 THE CLERK: Please be seated in the jury box.
10 38, Kimberly Blevins. What say the State?
11 MS. VON HERRMANN: Please present the juror.
12 THE CLERK: Defense?
13 MR. GALMORE: Please excuse the juror in the trial
14 of this case.
15 THE CLERK: Please be seated. You're excused from
16 this particular case.
17 278, Catherine Morris.
18 THE COURT: What's the name?
19 THE CLERK: 278, Katherine Morris.
20 THE COURT: It's not on this list -- yes, I see it.
21 I'm sorry. Go ahead.
22 THE CLERK: What say the State?
23 MS. VON HERRMANN: Please excuse the juror from the
24 trial of this case.
25 THE CLERK: Please be seated. You're excused from

JURY SELECTION

12

1 this particular case.

2 83, Michael Claridy. What say the State?

3 MS. VON HERRMANN: Please present the juror.

4 THE CLERK: Defense?

5 MR. GALMORE: Please seat the juror.

6 THE CLERK: Please be seated in the jury box.

7 246, John Lutes. What say the State?

8 MS. VON HERRMANN: Please present the juror.

9 THE CLERK: Defense?

10 MR. GALMORE: Please excuse the juror in the trial

11 of this case.

12 THE CLERK: Please be seated. You're excused from

13 this particular case.

14 288, William Nelson. What say the State?

15 MS. VON HERRMANN: Please present the juror.

16 THE CLERK: Defense?

17 MR. GALMORE: Please excuse the juror in the trial

18 of this case.

19 THE CLERK: Please be seated. You're excused from

20 this particular case.

21 385, Timothy Tilma. What say the State?

22 MS. VON HERRMANN: Please present the juror.

23 THE CLERK: Defense?

24 MR. GALMORE: Please seat the juror.

25 THE CLERK: Please be seated in the jury box.

JURY SELECTION

13

1 THE COURT: Mr. Tilma, I'm going to ask that you
2 take the foreperson's chair for me. Please put him in
3 the foreperson's chair for me.

4 THE CLERK: 43, Lisa Boynton. What say the State?

5 MS. VON HERRMANN: Please present the juror.

6 THE CLERK: Defense?

7 MR. GALMORE: Please seat the juror.

8 THE CLERK: Please be seated in the jury box.
9 271, Jennifer Mills. What say the State?

10 MS. VON HERRMANN: Please present the juror.

11 THE CLERK: Defense?

12 MR. GALMORE: Please seat the juror.

13 THE CLERK: Please be seated in the jury box.
14 375, Thomas Swartz. What say the State?

15 MS. VON HERRMANN: Please present the juror.

16 THE CLERK: Defense?

17 MR. GALMORE: Please excuse the juror in the trial
18 of this case.

19 THE CLERK: Please be seated. You're excused from
20 this particular case.

21 110, Christyne Decaro. What say the State?

22 MS. VON HERRMANN: Please present the juror.

23 THE CLERK: Defense?

24 MR. GALMORE: Please excuse the juror in the trial
25 of this case.

JURY SELECTION

14

1 THE CLERK: Please be seated. You're excused from
2 this particular case.
3 313, Mark Pokrant. What say the State?
4 MS. VON HERRMANN: Please present the juror.
5 THE CLERK: Defense?
6 MR. GALMORE: Please seat the juror.
7 THE CLERK: Please be seated in the jury box.
8 10, Justin Ammons. What say the State?
9 MS. VON HERRMANN: Please present the juror.
10 THE CLERK: Defense?
11 MR. GALMORE: Please seat the juror.
12 THE CLERK: Please be seated in the jury box.
13 14, Loraine Ashley. What say the State?
14 MS. VON HERRMANN: Please present the juror.
15 THE CLERK: Defense?
16 MR. GALMORE: Please excuse the juror in the trial
17 of this case.
18 THE CLERK: Please be seated. You're excused from
19 this particular case.
20 387, Melissa Todd. What say the State?
21 MS. VON HERRMANN: Please present the juror.
22 THE CLERK: Defense?
23 MR. GALMORE: Please seat the juror.
24 THE CLERK: Please be seated in the jury box.
25 THE COURT: That will constitute the jury. We will

JURY SELECTION

15

1 now select two alternates. One and two are the strikes.
2 THE CLERK: 366, Joseph Steven. What say the
3 State?
4 MS. VON HERRMANN: Please present the juror.
5 THE CLERK: Defense?
6 MR. GALMORE: Please excuse the juror in the trial
7 of this case.
8 THE CLERK: Please be seated. You're excused from
9 this particular case.
10 124, Wayne Drake. What say the State?
11 MS. VON HERRMANN: Please present the juror.
12 THE CLERK: Defense?
13 MR. GALMORE: Please seat the juror.
14 THE CLERK: Please be seated in the jury box.
15 286, Alan Nagy. What say the State?
16 MS. VON HERRMANN: Please present the juror.
17 THE CLERK: Defense?
18 MR. GALMORE: Please seat the juror.
19 THE CLERK: Please be seated in the jury box.
20 THE COURT: Mr. Foreman, take them to the jury room
21 just a moment for me.
22 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
23 THE JURY.)
24 THE COURT: Any motions?
25 MS. VON HERRMANN: Your Honor, may we approach for

1 one moment?

2 THE COURT: Yes.

3 (A Bench conference was held off-the-record.)

4 THE COURT: Let the record reflect that there are
5 no motions from the Defense or the State, including
6 Batson motions.

7 The remainder of the jury who were not selected are
8 -- do they need them back this afternoon or what's
9 the ---

10 MS. VON HERRMANN: If this jury panel could just be
11 back in the morning, and then I suppose they'll want
12 to ---

13 THE COURT: Call in at six o'clock?

14 MS. VON HERRMANN: Yes, sir.

15 THE COURT: All of you have a call-in procedure.
16 Please call in after six o'clock tonight. Thank you.

17 Any reason we can't leave the defendant out on bond?
18 He's reported regularly.

19 MS. VON HERRMANN: The only issue that I have about
20 that, Your Honor, is that I do have some witnesses who
21 are here who have not been in this area, and I would ask
22 that he not have any contact with those witnesses.

23 MR. GALMORE: I will let him know, Your Honor.

24 THE COURT: I don't want to incarcerate him because
25 I want to make him available for you to talk to him, but

PORTION OF STATE'S EXHIBIT 14 PLAYED FOR JURY

17

1 you instruct him carefully in that matter.

2 MR. GALMORE: Yes, sir. Thank you.

3 (Conclusion of Voir Dire and Jury Selection.)

4 (THE FOLLOWING IS A PORTION OF A TAPE OF THE INTERVIEW OF
5 WANDA GARRETT WITH THE POLICE, STATE'S EXHIBIT 14, WHICH
6 IS PLAYED DURING THE TRIAL FOR THE JURY, AND IS
7 REFERENCED IN THE TRIAL TRANSCRIPT ON PAGE 90, LINE 25,
8 BUT NOT TRANSCRIBED IN THE ORIGINAL TRIAL TRANSCRIPT.)

9 Q. "Okay, today's date is May the 21st, 2005,
10 currently 7:20 P.M. We're at the Conway Police
11 Department located at 200 Laurel Street in Conway, South
12 Carolina. Present is Sergeant Sean Addison, Lieutenant
13 Rodney Sarvis, and Wanda Garrett. Wanda Garrett is a
14 Hispanic female. Her date of birth is . Ms.
15 Garrett, is that correct?

16 A. Yes, sir.

17 Q. Okay. Ms. Garrett, where do you currently reside?

18 A.

19 Q. ?

20 A. Yes, sir.

21 Q. Okay, and that's here in the City of Conway?

22 A. Yes, sir.

23 Q. And how long have you resided there?

24 A. For about three or four months.

25 Q. Okay, and who do you reside there with?

1 A. Tommy Toomer.
2 Q. Tommy Toomer?
3 A. Yeah, and Gladys Rodriguez, which is my sister,
4 and Mose -- Mosell, and Earl.
5 Q. Earl?
6 A. Earl, yeah, but I call him a different name.
7 Q. Okay.
8 A. Edward Earl.
9 Q. Edward Earl, ---
10 A. Yes.
11 Q. --- is that correct?
12 A. Yes.
13 Q. Okay, and who else?
14 A. And Jackie Novaks.
15 Q. A middle name, okay, and all these people stay in
16 the house there at ?
17 A. Yes, sir.
18 Q. Okay. Today is Saturday, May 21st. We're going
19 to refer back to Tuesday evening, the previous Tuesday of
20 this week. Did something occur in the house that night
21 that you want to talk to us about?
22 A. Yes, sir.
23 Q. Okay. I understand that you've come forward today
24 and have spoken to one of our patrol officers around
25 town, ---

PORTION OF STATE'S EXHIBIT 14 PLAYED FOR JURY

19

1 **A.** Uh-huh (affirmative response).

2 **Q.** --- Officer King? Okay. Would you mind telling
3 us what you told her today when you came down here
4 and ---

5 **A.** I stopped on -- on the side of the road where
6 nobody could see me, and I tried -- I asked her did she
7 know if Officer Staples was working, and she said that
8 she didn't know, she thought she come in Monday,
9 something like that, and she says, you know, "Do you want
10 to talk about" -- and I been, you know, having that right
11 there, you know, ain't had nobody to talk to about it,
12 not knowing what to do. You don't want to get killed for
13 saying something or get my (inaudible) beat for not
14 saying something, but I told -- I told her, you know,
15 what really happened that day, and who was there, and
16 that I was scared to say anything because I know -- I
17 know, you know, the people in the house, and they're
18 ninety-nine per- -- they're ninety-nine percent all
19 black, and my sister and I are the only Spanish white
20 females in the house period, and knowing -- knowing
21 Tommy, the way he is, and the people that hang out in
22 there, I just -- I just couldn't hold it. I mean, I'm
23 scared, but, you know, I loved Jerome, you know. I've
24 known him for fifteen years. We'd been dating for the
25 last three years on and off. He's my best friend, and I

1 just could not let something like this, I mean, something
2 so stupid that shouldn't have happened.

3 Q. Okay. Do you want to talk about what happened on
4 Tuesday night? Do you want to tell us what happened?

5 A. Okay. Jerome got off of work about five. He was
6 there about five-thirty or six o'clock, and Tommy hadn't
7 gotten home yet, so we was setting on the porch, and
8 (inaudible) he bring a cold beer for me and a cold beer
9 for him, and we set on the porch and drink our beer and
10 just talking, you know, about any -- talk about everyday
11 talk, and finally it got to be close to seven, because
12 that's when the liquor store closes, Tommy come in the
13 house. He had half a gallon of liquor and he had some
14 crack. He gave me -- he gave me some, and I shared mine
15 with Jerome, and we weren't -- we went in my room, and
16 was Red, Tommy, Jerome, and me that went in that room.

17 Q. In ---

18 A. My room.

19 Q. Into your room?

20 A. In my room.

21 Q. Okay, and at that ?

22 A. Uh-huh (affirmative response).

23 Q. Which -- which room is yours?

24 A. If you're going in toward the dirt side, it was
25 across the bathroom on the right.

PORTION OF STATE'S EXHIBIT 14 PLAYED FOR JURY

21

1 Q. And that would be if you walked in the front door
2 at the front porch?

3 A. Yeah, with (inaudible) on? Is that the one you --
4 you're talking about?

5 Q. I'm referring to -- if I came in it from
6 to the house and there's some steps that walk up
7 to a porch, right?

8 A. Uh-huh (affirmative response).

9 Q. Is that what you consider the dirt side of the
10 house?

11 A. Yes.

12 Q. Okay, so you walk into the front -- that door what
13 you call the dirt side of the house?

14 A. Uh-huh (affirmative response).

15 Q. Describe which room is yours then.

16 A. Okay. You go in the kitchen, to the left, through
17 my sister's room. The bathroom is in the middle, and my
18 bedroom is right there.

19 Q. So the kitchen, I know, is from the rear side of
20 the house, that ---

21 A. Yeah.

22 Q. --- dirt side of the house which you're referring
23 to?

24 A. Yeah (inaudible).

25 Q. So when you walk in through the kitchen, your

1 sister's room is the first room on the left?

2 A. On the left.

3 Q. Okay. Then there's a bathroom?

4 A. And then my room on the right.

5 Q. Okay. Okay. Let's go back to what happened in

6 your room on Tuesday night.

7 A. We were all sitting in the bed, you know, drinking

8 liquor and, you know, doing a couple of hits. Everything

9 was fine. Everything was fine. That's what I couldn't

10 understand, how something just happened just like that.

11 You know, Cowboy and I was sitting there and we were

12 talking, and hanging out. He was always there.

13 Q. Okay. You were describing Cowboy?

14 A. That's Jerome.

15 Q. Okay. What was Cowboy's full name?

16 A. Jerome Tucker.

17 Q. Okay, and he's the one you referred to, and you've

18 known him for how long?

19 A. Fifteen years.

20 Q. Fifteen years, an on and off boyfriend?

21 A. Yes, for three years.

22 Q. Okay.

23 A. We're best friends. I mean, he's been there with

24 me thick and thin, no matter what.

25 Q. Okay. By their name, can -- who else was in the

PORTION OF STATE'S EXHIBIT 14 PLAYED FOR JURY

23

1 room? There was Cowboy, who you called Jerome Tucker?

2 A. Yes, sir.

3 Q. Yourself, who is Wanda Garrett?

4 A. Myself, and Tommy Toomer.

5 Q. Tommy Toomer, and someone else. What's that

6 person's name?

7 A. Gladys Rodriguez, my sister.

8 Q. She was in the room also?

9 A. She was in the other room?

10 Q. In the other room, okay. Let's talk about who was

11 in the room that you were in.

12 A. It was Wanda Garrett, myself, ---

13 Q. Uh-huh (affirmative response).

14 A. Tommy Toomer, Jerome Tucker, and that guy, Red,

15 that was sitting on the stool.

16 Q. Okay, that guy, Red. You don't know the guy,

17 Red's, real name?

18 A. Huh-uh (negative response). No, sir.

19 Q. Okay. Can you describe something about Red, what

20 he looks like?

21 A. He's Puerto Rican, but he's -- you know, a dark,

22 kinky hair Puerto Rican with a ponytail, ---

23 Q. All right.

24 A. --- and he drives a Ford -- a burgundy Ford 150

25 XL, New York plates.

1 Q. Okay, and he was also in the room that night
2 when ---

3 A. He -- he had just come to that house. For two or
4 three days, I'd been seeing him around the house, and we
5 were all setting there, you know. Everything was fine,
6 but Tommy left for maybe twenty or thirty minutes,
7 something like that. I -- I don't know where he went to,
8 but I -- I knowed what he was going to get, you know. He
9 was going to go buy some dope, so we just sat there, and
10 I had what I had --- (TAPE IS TURNED OFF BY MS. VON
11 HERRMANN.)

12 (Conclusion of Requested Portions of
13 Transcript of Record.)
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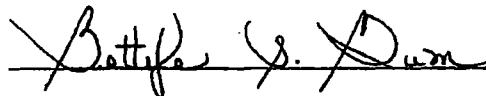
1 STATE OF SOUTH CAROLINA)

2 COUNTY OF HORRY.)

3
4 I, the undersigned Bettie S. Gum, Certified Court
5 Reporter and Notary Public in and for the State of South
6 Carolina, do hereby certify that the foregoing is a true,
7 accurate and complete Transcript of Record of all the
8 proceedings had and evidence introduced in the hearing of
9 the captioned case, as taken by Dixie Cox Eubank,
10 Official Reporter, and transcribed by me, relative to
11 appeal, in the Court of General Sessions for Horry
12 County, South Carolina.

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

15
16
17 August 23, 2010

18
19 

20 BETTIE S. GUM, CCR-CVR-CM

21 Certified Court Reporter and

22 Notary Public for South Carolina

23 My Commission Expires: 7/13/14
24
25

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF HORRY) 05-GS-26-2531

State of South Carolina,)
))
Plaintiff,)
))
-VS-) TRANSCRIPT OF RECORD
))
Tommy Toomer,)
))
Defendant.)
_____)

May 18-19, 2009
Conway, South Carolina

B E F O R E:

HONORABLE EDWARD B. COTTINGHAM, Circuit Judge.

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

Heather Von Herrmann, Esquire
Office of the Solicitor
P. O. Box 1276
Conway, South Carolina 29528
Attorney for the State

James Galmore, Esquire
Office of the Public Defender
114 Laurel Street
Conway, South Carolina 29526

DIXIE COX EUBANK
OFFICIAL REPORTER

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1 (THE FOLLOWING TAKES PLACE ON MAY 18, 2009, AFTER
2 QUALIFICATION OF THE JURY VENIRE, AFTER VOIR DIRE, AFTER
3 SELECTION OF A JURY PANEL FOR THE TRIAL OF THIS CASE, AND
4 WITHIN THE PRESENCE OF THE JURY CHOSEN FOR THE TRIAL OF THIS
5 CASE.)

6 (JURY SELECTION IS NOT TRANSCRIBED HEREIN. A JURY
7 SELECTION FORM WAS PREPARED AND IS ATTACHED HERETO.)

8 THE COURT: Under our rules, the foreperson will
9 always occupy that chair, and the two alternates will occupy
10 the chairs which you are seated in. The rest of you, of
11 course, may be seated as you please, but the foreman always
12 is in that chair.

13 We're going to start this case at 9:30 in the morning,
14 and when you return in the morning, we want you to return to
15 this floor to your jury room and we will be ready to start
16 promptly at 9:30.

17 Now, do not discuss this case with anyone. Permit no
18 one to discuss it with you. Make no independent inquiry
19 whatsoever. You must not even discuss the case among
20 yourselves until I have given you the case for your
21 deliberation, and that will be after all the witnesses have
22 testified and you've had the final instructions in the law,
23 so remember, do not discuss the case, make no independent
24 determinations, and don't discuss it among yourselves, and
25 the reasons are simply this: We want you to base your

1 verdict on the law and evidence heard in this courtroom and
2 from no other source, so I'll see you back in the jury room
3 promptly at 9:30 in the morning. You are now excused.

4 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
5 **JURY.)**

6 THE COURT: All right, we are in recess until 9:30 in
7 the morning.

8 MS. VON HERRMANN: Thank you, Your Honor.

9 THE COURT: Have you marked all the exhibits?

10 MS. VON HERRMANN: We have.

11 THE COURT: There's no motions as I understand it?

12 MR. GALMORE: No, sir.

13 MS. VON HERRMANN: Your Honor, I do have one motion
14 which I -- my motion is this, to exclude any kind of third
15 party -- any third party guilt evidence. I don't think
16 there's anything contained in this case report in the
17 file ---

18 THE COURT: Well, I will have to hear it and rule on
19 it at that time.

20 MS. VON HERRMANN: Thank you.

21 (End of Day)

22 (OFF THE RECORD)

23 **ON THE RECORD**

24 **TUESDAY, MAY 19, 2009**

25 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**

1 **JURY.)**

2 THE COURT: Prior to proceeding, there are two matters
3 that we need to get on the record. Yesterday after the jury
4 had been discharged, the Deputy Clerk of Court reported to
5 me that one juror -- what was her name, ---

6 THE CLERK: Her name was Diana Gerald.

7 THE COURT: --- had addressed some concerns about
8 serving on the jury in a murder case inasmuch as she was a
9 home care nurse and had to go into various neighborhoods as
10 part of her duties.

11 This morning, I had that juror come into my chambers,
12 along with the attorneys for the State and the attorneys for
13 the defendant, and at that time, I inquired as to her
14 position, and she stated in the presence of the three of us
15 that she had considered the matter overnight, wished to
16 serve, found that her service would not be difficult for her
17 to serve in any way, and was willing to serve.

18 I have concluded that under those circumstances it was
19 proper to leave her on the jury. I explained to her that
20 there is no adverse inference to be derived one way or the
21 other. I am clearly convinced that she can be a fair juror
22 for the Defense and a fair juror for the State, and I think
23 counsel for the Defense would ask that I excuse her?

24 MR. GALMORE: Yes, sir, Your Honor. Just for the
25 record, I feel that if this juror's mind is somewhere else,

1 with her own health and her own concerns, rather than on the
2 facts of this case, she would not be an appropriate juror.

3 THE COURT: She expressed to you and to me that her
4 mind was not somewhere else, that she had no concerns with
5 it and wished to serve.

6 MR. GALMORE: Yes, sir. I understand the Court's
7 ruling.

8 THE COURT: All right, sir, thank you. Now, another
9 issue discussed in chambers was whether or not certain prior
10 records of the State's main witness would be admissible on
11 cross examination. Those prior records were several
12 fraudulent checks which involved dishonesty and obviously he
13 may cross examine her on them if she testifies.

14 An additional issue was that she was convicted of
15 common law robbery and conspiracy in 1997 for a point of
16 more than ten years. I have waived the fact that it was
17 more than ten years as against the probative value. I find
18 that the witness that we're referring to is probably the
19 main eye witness for the Defense, and her testimony is
20 coming in -- for the State, and her testimony is crucial to
21 that proceeding. Obviously being a primary witness, her
22 credibility would be a main issue in the case, and having
23 weighed the situation, I have concluded that if she
24 testifies, I will permit cross examination on that issue
25 also.

1 MR. GALMORE: Thank you, Your Honor.

2 THE COURT: All right, sir. Are we ready to proceed?

3 MS. VON HERRMANN: Yes, sir, Your Honor.

4 THE COURT: Bring the jury in.

5 **(THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE**
6 **JURY.)**

7 THE COURT: Good morning, Mr. Foreman, and ladies and
8 gentlemen. I trust that the ham biscuits were satisfactory
9 for everybody this morning. I started that process in
10 Marlboro County many years ago, and the jurors have told me
11 that they appreciate that gesture. It's just another
12 indication that we appreciate your services in this
13 courtroom.

14 Swear the jury, please.

15 **THE JURY IS ADMINISTERED THEIR OATH BY THE CLERK OF**
16 **COURT.**

17 THE COURT: Let me first make a few observations here
18 about the way we will proceed prior to the beginning of
19 opening arguments.

20 Now, Mr. Foreman, I have designated you as the
21 foreperson in this case. You will preside in the jury room
22 during the jury deliberation, and you will be the jury
23 spokesman in the courtroom at the appropriate time. I, of
24 course, will keep you and your jury fully advised of your
25 duties.

1 Now, this case comes before us upon this indictment.
2 This indictment alleges, and I use the word "alleges" only,
3 that Tommy Toomer murdered one Jerome Tucker with malice
4 aforethought. To this indictment, this defendant
5 specifically pleads not guilty, which places the burden of
6 proof upon the State of South Carolina of proving him
7 guilty, if they can, to your satisfaction unanimously beyond
8 a reasonable doubt.

9 There are three standards of proof in our judicial
10 system. One in a civil case is by the greater weight or the
11 preponderance of the evidence. A higher standard of proof
12 is called clear, cogent, and convincing, used generally in
13 fraud cases. The highest element of proof, and that's the
14 burden of the State, is proof beyond a reasonable doubt, and
15 I will explain that process and that burden to you at a
16 specific time.

17 Recognizing that for many of you this is the first
18 opportunity you've had to sit in a civil or criminal case,
19 let me briefly tell you how we will proceed. The State of
20 South Carolina has the burden of proof and the distinguished
21 attorney here will give you an opening statement, kind of a
22 guideline, as to what she intends to prove. Mr. Galmore,
23 the Public Defender and an excellent attorney, will give you
24 the position of the Defense.

25 Now, what these lawyers tell you now and later is not

1 evidence. It's their position, but evidence comes from this
2 jury room -- or courtroom. Following their opening
3 statement, which will kind of give you a guideline as to
4 what their position is, the State of South Carolina will
5 offer its various witnesses, and the Defense, if it chooses,
6 may offer some witnesses, too. As I told you before, a
7 defendant doesn't have to prove a thing. The State of South
8 Carolina has to prove him guilty beyond a reasonable doubt.

9 After the summations, after the various witnesses have
10 testified, we will have final summation of lawyers, and I
11 will give you at that time the instructions with regards to
12 any issue that was presented in this courtroom, and that's
13 why yesterday I told you that you may not even discuss the
14 case among yourselves until you've heard all the testimony,
15 you've heard my instructions in the law, and you've heard
16 final summation. It is at that time and that time only that
17 you will discuss this case.

18 Now, Mr. Foreman, it is your duty to make sure that no
19 discussion of any issues in this case come to your jury
20 room. You can discuss anything else you want, including the
21 weather or whatever, but not any issues in this case.

22 You may have your statements.

23 MS. VON HERRMANN: Thank you, Your Honor. May it
24 please the Court.

25 Thank you, ladies and gentlemen of the jury, for being

1 here. My name is Heather Von Herrmann, and I am an
2 Assistant Solicitor here in Horry County. I work for your
3 elected official, who is Greg Hembree, and it is my pleasure
4 and privilege to represent the State of South Carolina in
5 criminal trials. This is what we do for a living, and we
6 enjoy it, and we try to do the best job that we can.

7 Many criminal cases unfold like a story, and this case
8 is no different. You're going to hear a lot of testimony
9 from the witness stand, and what the witnesses are going to
10 tell you is this: That on May the 17th of 2005, there was a
11 woman named Wanda Garrett. Wanda Garrett lived with the
12 defendant in this case, Tommy Toomer, and on this particular
13 day, she was on the porch of the house that they shared
14 together with another individual, the victim in this case,
15 Jerome Tucker.

16 Now, she and Jerome Tucker had been sitting on the
17 porch. They were having a few beers after he had gotten off
18 of work, and at some point, the defendant, Tommy Toomer,
19 comes home. She will tell you, Wanda, that is, that when he
20 arrived at the house, he had a half gallon of gin with him
21 and some crack cocaine. You're going to hear some things
22 about witnesses in this case, about the defendant in this
23 case, and about, frankly, the victim in this case, that are
24 not particularly pleasant.

25 We would hope that people wouldn't drink too much. We

1 would hope that people wouldn't smoke crack cocaine, but the
2 fact of the matter is that's what happened, and during the
3 course of the evening, this defendant, and Wanda, and
4 Jerome, were partying. They went into the house and they
5 were partying in a bedroom that the defendant and Wanda
6 Garrett shared.

7 Wanda is going to tell you that although she was with
8 the defendant and lived with the defendant, that she had had
9 discussions throughout the course of that day and previously
10 about moving out of the house with him and moving into
11 another apartment, or another area, or another house so that
12 she could be with the victim, Jerome Tucker.

13 Murder often has to do with love or money, and this
14 case is no exception. You've got two people, one woman.
15 You've got a defendant and a victim, Jerome Tucker, who had
16 been lifelong friends, had known each other for the majority
17 of their life. Their families knew one another, but
18 recently something had come between them, and that something
19 was Wanda Garrett.

20 Later on that evening, Wanda and Jerome were sitting on
21 the edge of the bed in the bedroom. The defendant, Tommy
22 Toomer, comes back into the house. He finds them sitting
23 there. He goes over. He takes a stick and he (indicating)
24 hits the victim over the head, on the left side of the head.

25 The evidence will show that the victim then slumped

1 over onto Wanda and then fell onto the ground. Wanda will
2 tell you that at first she thought he was joking, that maybe
3 he was just playing as if he were unconscious, but when he
4 did not regain consciousness after a period of time, she
5 became concerned. She went to a neighbor's house and used
6 the telephone. They did not have a phone there, and she
7 called 911. She told 911 that the victim had been struck
8 over the head with a pipe.

9 She goes back to the house and when she gets back to
10 the house, she finds the victim laying not in the bedroom
11 where he was when she left, but out in the yard, laying in
12 the dirt. The police arrived and they asked the defendant
13 what happened. The defendant, you will hear, told them,
14 "Oh, he's drunk. He fell off the porch."

15 The officer that will testify will tell you that they
16 did not see any blood. At that time, they felt that it was
17 a medical call as opposed to a criminal matter, and EMS took
18 him off to the hospital. He was subsequently transported
19 down to MUSC in Charleston where he died ten days later.

20 I think the evidence will show to you -- you will hear
21 from a forensic pathologist who will tell you that he died
22 from blunt force trauma to the head. This was blunt force
23 trauma that was not caused by a fall off of the porch.

24 I'm going to come back to you at the end of this case
25 after you've heard all the evidence and I'm going to ask you

1 to render a verdict of guilty. I'm going to ask you to find
2 this defendant, Tommy Toomer, guilty of the murder of Jerome
3 Tucker. Thank you.

4 THE COURT: Thank you.
5 Mr. Galmore.

6 MR. GALMORE: May it please the Court.

7 This morning, ladies and gentlemen, I would like to
8 talk to you about roles and responsibility, because everyone
9 in this courtroom has a responsibility in regards to this
10 case. Everyone in this courtroom has a role to play. Yours
11 is the most important responsibility of all because you, as
12 jurors, are going to have to decide whether or not you
13 believe the witnesses and whether or not you believe Mr.
14 Toomer is guilty of what they say he did.

15 I have a role to play. I'm Mr. Toomer's defense
16 attorney, and my job is to present evidence to you that is
17 favorable to Mr. Toomer and to ask you to render a verdict
18 of not guilty.

19 Now, the court reporter has a role to play. Her
20 responsibility is to take down all the testimony that we
21 have in this courtroom, and you will remember yesterday
22 there was a court reporter taking down your answers
23 downstairs. The court reporter was in here as you were
24 being selected one at a time. There will be a record of
25 everything that is said in this courtroom today.

1 Your Honor has an important responsibility. His job is
2 to give you the law, to tell you what the law -- what murder
3 is, to give you the legal definition of murder, and your job
4 as jurors is to weigh the facts and apply the facts to the
5 law.

6 Let me give you an example of what I'm talking about.
7 The law says that it is illegal to run a red light. The
8 Judge in a case would tell you the law says it's illegal to
9 run a red light. Witnesses will get on the stand and
10 testify and some witness may say, "Well, the light was
11 green," and another witness may say, "Well, the light was
12 yellow," and another witness may say, "Well, the light was
13 red." Your job is to determine who to believe, what color
14 was it. You weren't out there. You've got conflicting
15 testimony about it, but your job is to decide who to
16 believe, and depending on who you believe, you apply that to
17 the law, which says it's illegal to run a red light.

18 If you decide you believe the witness that said the
19 light was green, then you're going to find that person not
20 guilty of running a red light. If you decide you believe
21 the witness that said the light was red, then you find that
22 person guilty of running the red light. That's your job, to
23 apply the facts as presented from the witness stand to the
24 law as given to you by the Judge.

25 Now, to help you out with this, I will tell you that

1 criminal cases pretty much break down three different ways.
2 "It didn't happen. It wasn't me," or "It did happen. It
3 was me. Wait a minute and let me explain." "It didn't
4 happen" kind of goes like this. Let's say you're the
5 manager at the Kangaroo gas station and it's two days before
6 Christmas, and lo and behold, you're calling 911 at ten
7 o'clock at night, "Oh, my God. I just got robbed. Somebody
8 stole the money bag." Well, they're going to go out and
9 they're going to look for somebody, and they're going to
10 lock somebody up for stealing the money bag, and that person
11 is going to sit over at that table and go to trial, charged
12 with stealing the money bag.

13 That person may get up and say, "Oh, no, this did not
14 happen," and the investigation may very well turn out that
15 no one robbed the Scotchman or the Kangaroo; the fellow made
16 it up, hit himself in the head, stole the money bag himself
17 to buy Christmas for his kids. The crime never happened; it
18 didn't happen.

19 Number two, "It happened, but it wasn't me." Well,
20 maybe they got some video footage. Maybe it shows someone
21 coming in there with a gun, sticking up the place, taking
22 the money bag and leaving. "The crime occurred. It just
23 wasn't me who did it. You need to go find the person who
24 did."

25 Number three, "It happened. It was me, but give me a

1 minute to explain." It goes like this: Let's say you're
2 speeding, driving with no license, under suspension, get
3 pulled over, driving under suspension. "Yes, I did it. It
4 was me. I broke the law. I was driving without a license,
5 but please let me explain the reason why I was driving, is
6 because I was taking my wife to the hospital, pregnant,
7 about to have the baby." That's what we call in the law an
8 excuse. "I did it, but I was under duress or coercion," or
9 self-defense, for a change.

10 In this case, the case that you are here for today, it
11 might be a number one. You will hear testimony that the
12 witnesses -- and Wanda Garrett is not the only one, but you
13 will hear testimony that the witnesses informed the police
14 that Mr. Tucker fell off the porch and hit his head.

15 Murder, it didn't happen. Nobody hit him. He fell off
16 the porch. That's a number one. It did not happen. I
17 don't know because I wasn't there, but that's what the
18 testimony is going to be.

19 You'll also hear testimony about number two. "It
20 happened, but it wasn't me." If someone struck him over the
21 head, and I say that seriously, if, if you determine that he
22 was hit over the head as opposed to falling off the porch,
23 you're going to have to decide if it was Mr. Toomer who did
24 it or if it was someone else. In that regard, I submit to
25 you that they have not brought you the right defendant.

1 Now, this is not going to be a very long case. You
2 will have all the evidence and testimony by the end of the
3 day. You should be a little shocked by that. This is a
4 murder, and if we can complete a murder with four witnesses,
5 something is not right, but you will have this case by the
6 end of the day and it will be in your hands to make a
7 decision, and we're asking you to find Mr. Toomer not
8 guilty.

9 Right now we just ask you to listen to the evidence,
10 please pay close attention to the evidence, listen to the
11 Judge's instruction, and I'll be back to talk with you in
12 closing arguments to bring it all together for you. Thank
13 you for your time and attention.

14 THE COURT: You may now call your first witness.

15 MS. VON HERRMANN: Thank you, Your Honor. The State
16 calls Renee Hardwick.

17 RENEE HARDWICK, BEING FIRST DULY SWORN, IS EXAMINED AND
18 TESTIFIES AS FOLLOWS:

19 THE CLERK: Please state your name for the record.

20 MS. HARDWICK: Renee Hardwick.

21 THE REPORTER: Spell your first name for me.

22 MS. HARDWICK: R-E-N-E-E.

23 **DIRECT EXAMINATION**

24 **BY MS. VON HERRMANN:**

25 **Q.** Good morning, Renee.

1 **A.** Good morning.

2 **Q.** Can you tell the jury, please, how you are currently
3 employed?

4 **A.** I'm the Deputy Director of Horry County 911.

5 **Q.** And how long have you been employed in that capacity?

6 **A.** I've been with 911 since 1990 when it started, and
7 I've been with the County for twenty-five years.

8 **Q.** And if you will, explain to the jury what happens
9 when a call comes in to 911.

10 **A.** In Horry County when a citizen calls 911, it comes in
11 to our communications center. It's our responsibility to
12 determine if it's an emergency and if so, what the proper
13 discipline or agency that will respond to that emergency,
14 and then either hand the call off to another agency or send
15 proper response.

16 **Q.** And do you all keep copies or do you keep the
17 recordings of 911 calls for a period of time?

18 **A.** Yes. By State law, we're required to keep 911
19 recordings for sixty days and during the course of that,
20 we're often asked in criminal cases and different kind of
21 civil cases and things to produce copies of those records to
22 attorneys or other entities.

23 **Q.** And were you asked to do that in this case?

24 **A.** We were.

25 **Q.** And I'm going to show you what's been marked as

1 State's Exhibit 1 and ask you if you can identify that for
2 me?

3 A. It states it's a 911 call or a copy of a 911 call
4 that happened in 2005.

5 Q. And did you have an opportunity to review that
6 particular call?

7 A. I did.

8 Q. Thank you.

9 MS. VON HERRMANN: And I would, Your Honor, at this
10 point move to have this tape introduced.

11 THE COURT: Is that the tape that was supplied to you?

12 MR. GALMORE: Yes, sir.

13 THE COURT: And you had a chance to listen to it?

14 MR. GALMORE: Yes, sir.

15 MS. VON HERRMANN: I would like to publish this to the
16 jury if I may.

17 THE COURT: It is, and I admit it into evidence.

18 MS. VON HERRMANN: Thank you, Your Honor.

19 **CASSETTE TAPE OF 911 CALL MARKED IN EVIDENCE AS**

20 **STATE'S EXHIBIT 1.**

21 (State's Exhibit 1 is played in the presence of the jury.)

22 THE COURT: Mr. Foreman, during the course of this
23 trial I will be permitting certain things into evidence,
24 including this. Anything that I submit in evidence will be
25 with you in the jury room during your deliberations, and if

1 during your deliberations you want to replay this, I will
2 have it available.

3 MS. VON HERRMANN: Thank you, Ms. Hardwick. Please
4 answer any questions Mr. Galmore may have.

5 **CROSS EXAMINATION**

6 **BY MR. GALMORE:**

7 **Q.** Ma'am, that is not you receiving that 911 call, is
8 it?

9 **A.** No, sir. It was an employee at the time of my
10 department.

11 **Q.** Okay, and where is that employee today?

12 **A.** He works with another department at this time.

13 **Q.** Did Ms. Garrett seem to be coherent to you on that
14 tape?

15 MS. VON HERRMANN: Objection, Your Honor. She
16 can't ---

17 THE COURT: I sustain that. The jury will make that
18 determination.

19 **Q.** Did Ms. Garrett identify Mr. Toomer as the person who
20 hit someone?

21 MS. VON HERRMANN: Objection.

22 THE COURT: The tape speaks for itself. I sustain
23 that objection.

24 **Q.** Did Ms. Garrett indicate the type of item that was
25 used?

1 MS. VON HERRMANN: Objection.

2 THE COURT: I sustain that objection. She's not --
3 the jury has heard this. Each one of your questions can be
4 answered by the jury in their determination as finders of
5 the facts, not her.

6 Q. Did your employee make a decision whether to send a
7 medical unit or police unit to the scene?

8 MS. VON HERRMANN: I'm going to object to that as
9 well.

10 THE COURT: The record will reflect what transpired
11 and the jury will be the ones, as finders of the facts, not
12 her.

13 MR. GALMORE: Your Honor, she indicated that the job
14 of 911 is to determine whether to send a police unit or an
15 EMS unit.

16 THE COURT: She wasn't -- she didn't take the tape.

17 MR. GALMORE: Well, what did she testify for if she
18 didn't take the tape?

19 THE COURT: She was not there at the time. The tape
20 speaks for itself and the jury will determine what's on the
21 tape, what effect to give it, if any, not this witness.
22 It's not her decision; it's theirs.

23 Q. Did you personally respond to the scene?

24 A. No, sir.

25 MR. GALMORE: Thank you. No further questions.

1 THE COURT: You may answer that question. All right,
2 come down, please.

3 MS. HARDWICK: May I be released?

4 MS. VON HERRMANN: Your Honor, may she be released
5 from her subpoena?

6 THE COURT: She may. Thank you. We appreciate your
7 presence.

8 MS. HARDWICK: Thank you.

9 THE COURT: The tape will remain and is in evidence.

10 MS. VON HERRMANN: Your Honor, the State calls
11 Sergeant Reggie Hill of the Conway Police Department.

12 REGINALD HILL, BEING FIRST DULY SWORN, IS EXAMINED AND
13 TESTIFIES AS FOLLOWS:

14 THE CLERK: Please state your name for the record.

15 MR. HILL: Reginald Hill.

16 **DIRECT EXAMINATION**

17 **BY MS. VON HERRMANN:**

18 **Q.** Sergeant Hill, how are you currently employed?

19 **A.** I'm the shift supervisor for the City of Conway
20 Police Department.

21 **Q.** And how were you employed on May the 17th and May the
22 18th of 2005?

23 **A.** I was the shift supervisor for the City of Conway
24 Police Department.

25 **Q.** And did you have an opportunity to respond to 418

1 Street on that particular date?

2 A. Yes, ma'am.

3 Q. And what caused you to respond to that location?

4 A. The call came out from dispatch to the officer of
5 that sector that an assault had occurred. I believe the
6 dispatcher stated that "A subject has been hit in the head
7 with a pipe."

8 Q. And so what did you do in response to that?

9 A. In response to that, we have a officer assigned to
10 that sector that responded to the call. As a supervisor,
11 I'm not really the first responding officer, but I usually
12 show up on calls that is a pretty -- of a heinous crime to
13 -- the supervisor to make sure everything is going right
14 according to policy and procedure.

15 Q. And that location, , is that
16 located in Horry County?

17 A. Yes, ma'am.

18 Q. What time did you respond to that location
19 approximately?

20 A. Approximately, I -- I think it's like one o'clock in
21 the morning.

22 Q. And what type of call did that come in as initially?

23 A. It came in -- it came in as an assault call, and the
24 dispatcher did say the subject was struck with a -- with a
25 piece of pipe.

1 Q. And when you arrived at that scene, what did you
2 observe initially?

3 A. When I got there, my first responding officer was
4 already on scene. I pulled up behind his vehicle. EMS was
5 already en route, and I seen a white female across the
6 street from that residence. She was walking back toward the
7 residence, so I pulled my car around on the adjacent street,
8 which is Alston Street, and ---

9 Q. I'm sorry. I'm going to show you a few photographs
10 here.

11 THE COURT: Have these photographs been exchanged with
12 the defendant?

13 MS. VON HERRMANN: They have, Your Honor, and they've
14 been pre-marked.

15 THE COURT: Let me see those first, please.

16 (Ms. Von Herrmann hands photographs to the Court.)

17 MR. GALMORE: I've seen them, Your Honor.

18 THE COURT: Without objection.

19 **TWELVE PHOTOGRAPHS MARKED IN EVIDENCE AS**

20 **STATE'S EXHIBITS 2 THROUGH 13.**

21 Q. Let me show you what's been marked in evidence
22 now ---

23 MS. VON HERRMANN: I assume, Your Honor, without
24 objection, in evidence?

25 THE COURT: These are in evidence without objection.

1 Q. --- State's Exhibit Number 9 and ask you if you can
2 identify that photograph for me?

3 A. Yes, ma'am. That's the back side of the house that's
4 located on the corner of and Alston.

5 Q. And so when you arrived, where would you have -- let
6 me -- that's not the best photo. Let me show you State's
7 Exhibit 4, and what is that photograph?

8 A. This is the same area, but it includes the side
9 street.

10 MS. VON HERRMANN: I would ask if the witness could
11 come down so that he could point on the photograph.

12 THE COURT: He may do that.

13 Mr. Galmore, you may approach, too, so that you can
14 hear the testimony.

15 MR. GALMORE: Thank you.

16 A. This is the back side of the residence, and along
17 this side right adjacent to the residence is Alston Street,
18 and it runs from back over to -- I think it's Live
19 Oak, the street that it runs back toward, but it's running
20 from west to east.

21 Q. And when you arrived at this scene, what did you
22 notice initially?

23 A. When I came up, there was a subject actually laying
24 in the back yard, which this tree is kind of like a offset
25 from the back porch steps, and the subject was laying and

1 his feet was toward the tree and his head was toward the
2 steps.

3 Q. So he was in a stretched-out position?

4 A. He was laying straight out, right.

5 Q. Thank you, and I'm going to show you State's Exhibit

6 5. Is that just another view of that same area?

7 A. Right. That's another view of the back porch.

8 Q. And State's Exhibit 6, would that be the same?

9 A. The same back area.

10 Q. Let me show you this picture, State's Exhibit 7; what
11 would that be?

12 A. It would be more like the front, ---

13 Q. This would be the front of the house?

14 A. It faces .

15 Q. Facing , ---

16 A. Right.

17 Q. --- is that correct?

18 And how about this one, ---

19 A. The same.

20 Q. --- State's Exhibit 8, 7 and 8?

21 And State's Exhibit 2, what is that?

22 A. That would be the side. That would be a side view of
23 the same residence.

24 Q. Thank you.

25 MS. VON HERRMANN: Your Honor, I do not intend to

1 admit State's Exhibit 3, 10, 11, 12, or 13 at this time.

2 THE COURT: Withdrawn.

3 Q. Now, when you arrived, you said that you saw the
4 victim there laying in the yard?

5 A. Yes, ma'am.

6 Q. And what condition did he appear to be in?

7 A. When I walked up to him and looked at him, he didn't
8 have any lacerations, like he just -- probably was just
9 laying in the yard asleep, or just laying in the yard.

10 Q. Was he conscious or unconscious?

11 A. He was unconscious.

12 Q. Who else was there aside from the victim?

13 A. EMS had arrived. My first responding officer were
14 there. My Corporal was there, which is Corporal Ian Vaughn.
15 Mr. Toomer was there, and like I said, Ms. Wanda Garrett was
16 there in the yard also.

17 Q. Other than medical or law enforcement personnel, what
18 -- what civilians were there?

19 A. Mr. Toomer, Ms. Garrett; those are the two that I
20 remember being there.

21 Q. And the victim, of course?

22 A. And the victim was laying in the yard.

23 Q. All right. Did you have an opportunity to speak with
24 Wanda Garrett?

25 A. Briefly I spoke -- I spoke with her, but she was

1 really walking toward my responding officer, and what she
2 was saying was real slurred. I couldn't understand what she
3 was saying.

4 Q. Did it -- did she appear to be ill?

5 A. From my experience as a police officer, she was very
6 intoxicated.

7 Q. So she appeared to be under the influence ---

8 A. Very -- yes, ma'am.

9 Q. --- of something, and as a result of that, were you
10 able to have a coherent conversation with her?

11 A. No, I wasn't. What -- the things she was saying
12 wasn't making sense. I couldn't understand what she was
13 saying. She was -- she was babbling something, but I don't
14 -- I can't testify to anything that she was saying because I
15 couldn't understand her.

16 Q. All right, and did you speak with anyone else at that
17 time?

18 A. Yes, ma'am. After I -- the victim was laying in the
19 -- like I said, was laying in the yard. I walked up to the
20 back steps that goes into the back of the house, and Mr.
21 Toomer came -- walked out the door on the porch.

22 Q. And did you have a conversation with him?

23 A. Yes, I did.

24 Q. And what was the substance of that conversation?

25 A. I just asked him what -- what happened, can he tell

1 me what happened to the victim that's laying out in the
2 yard. He said that, "I came home earlier and I had a half a
3 gallon of gin, and we sat here and we drank, and we've been
4 drinking pretty much all evening," and it was like one
5 o'clock in the morning then, and he said he just stood up
6 and he fell off the porch, so -- and I -- he was the only
7 one that really -- really -- that was there that was sober
8 enough, I would say, to communicate anything of any
9 significance, so I went back over and I looked at the victim
10 again, and by -- EMS was there.

11 My Corporal was there, and we all were just looking
12 around, and I didn't see any -- any bumps or bruises. I
13 didn't -- I checked his head myself. Because of the nature
14 of the call, there was other things would have to happen,
15 but since that Mr. Toomer was -- which was the most sober
16 one there communicated to me that that's what they were
17 doing all evening and the victim was just drunk and fell off
18 the porch, so I didn't see anything to make me believe any
19 -- otherwise.

20 If there was anything at all, any bruises on his head,
21 or blood, or anything at all, I would have took different
22 actions, quite naturally, but I didn't have anything else to
23 make me believe that anything happened other than what Mr.
24 Toomer said happened.

25 Q. All right, and you're not a detective, and that's not

1 what you're really trained to do, is that correct?

2 A. Correct.

3 Q. And did you have to rely on the opinions of other
4 people, EMS at that time perhaps?

5 A. Yes, ma'am. Whenever you have a situation and you
6 get there and you try to talk to a person who is
7 unconscious, and if they don't respond to you, then the
8 normal thing to do is make sure EMS is there. EMS is on the
9 scene, EMS is looking at the victim and saying things to
10 him, and he's not responding, so quite naturally, they took
11 him to the hospital.

12 Q. Did you, through the course of the investigation that
13 was done, done by your office, learn later that information
14 became available that the defendant had struck the victim in
15 this case?

16 A. The way that I found out that there was anything
17 different that happened on the night that I responded was
18 one of my officers was on routine patrol and was working a
19 day shift. She contact me and said that, "Wanda Garrett
20 stopped me on the corner of" -- I think she was on the
21 corner of Fourth Avenue and maybe Beaty Street, or somewhere
22 in that area, and said that, "That's not really what
23 happened the night when you guys came over there to our
24 house about that incident," and she went on to tell my
25 officer that the victim ---

1 THE COURT: This is hearsay testimony. I don't hear
2 you object to it, so I'm going to let it in.

3 MR. GALMORE: Yes, sir.

4 THE COURT: All right, sir.

5 A. She told me that Ms. Garrett had contact her, had
6 stopped her, and she was -- so I told -- Ms. Garrett came to
7 the Police Department, and I seen -- I seen her when she
8 came to the Police Department. She walked into the front
9 door, and I -- whatever happened after that, I wasn't there
10 for it, but I did see her come to the Police Department.

11 Q. And when she arrived at the Police Department that
12 day, how did she appear to you?

13 A. She appeared to be a normal -- she wasn't -- a normal
14 person. She just walked into the Police Department, and at
15 that time our Detective Division was still at the main
16 station.

17 Q. Did she appear to be intoxicated?

18 A. No, ma'am.

19 Q. Was her demeanor much different than it had been ---

20 A. It was very different than the night that we went out
21 to the house.

22 Q. And different in what way?

23 A. She seemed to be articulate, and walking pretty
24 normal, and when she walked in, she asked to see -- I can't
25 remember exactly what she said, but she asked a question,

1 but it was normal enough for people to understand what she
2 was saying and got the person that she needed to talk to.

3 Q. Had you had the information that she was able to give
4 you a couple of days later on the evening that you responded
5 to that incident location, do you think that you would have
6 done anything differently?

7 MR. GALMORE: Objection. That calls for speculation.

8 THE COURT: No. I would let him -- I'm going to let
9 him answer that question.

10 A. In my line of work, if I go to a call and there's any
11 indication that a crime has been committed, misdemeanor
12 crimes, which are small crimes, is one thing, but any time
13 you have a crime where there is grave bodily injury that
14 happened to a person or maybe a situation where the person
15 might die, then there's a different way that you handle
16 those calls.

17 You notify your command staff. In turn, you will
18 notify the detective that will respond. You rope off the
19 area as a crime scene, and it is investigated as such. If -
20 - if -- looking back now, if I'd have had the
21 information that Ms. Garrett provided to us later, that
22 night, it would have been a different -- a different
23 investigation altogether.

24 Q. And what again was the reason that you feel that she
25 did not provide that information that night?

1 **A.** I think she was too ---

2 MR. GALMORE: Objection. It calls for speculation,
3 Your Honor.

4 THE COURT: That would be speculation. I sustain
5 that.

6 MS. VON HERRMANN: Yes, sir, Your Honor.

7 **Q.** Was she able to provide information to you that
8 evening?

9 **A.** Nothing that I could understand.

10 **Q.** To the best of your knowledge, was she able to
11 provide anyone with information?

12 **A.** Not on that -- not on that night, she wasn't.

13 **Q.** Thank you.

14 MS. VON HERRMANN: I don't have any further questions
15 at this time. Please answer any questions that Mr. Galmore
16 has.

17 **CROSS EXAMINATION**

18 **BY MR. GALMORE:**

19 **Q.** Sergeant Hill, how long have you been with the Conway
20 Police Department?

21 **A.** To date, thirteen years.

22 **Q.** And I can assume you've gone out on many calls in
23 those thirteen years, is that correct?

24 **A.** Yes, sir.

25 **Q.** How many officers responded to Street?

1 **A.** As far as I can remember, there was three of us
2 there.

3 **Q.** And they would be who, sir?

4 **A.** Right at that time, it was Corporal Ian Vaughn, and
5 the officer that responded -- responsible for that sector
6 was Eric Carney, and I -- I came up.

7 **Q.** And you went out for what reason?

8 **A.** Because I'm the supervisor.

9 **Q.** But why was the Conway Police Department dispatched
10 to the house?

11 **A.** Because it was a call that was dispatched that a
12 person that had been hit with a pipe.

13 **Q.** When you got to the house, what efforts did the
14 Conway Police Department make to locate a pipe?

15 **A.** The only thing that the Police Department would do in
16 a situation like that when you came up and you seen the
17 victim, if there was any signs at all of anyone being
18 injured, then -- then you would look around and try to find
19 a pipe or whatever weapon that had supposedly been used.

20 Corporal Vaughn, which was -- is my corporal, was
21 there. He looked in the immediate area, which is adjacent
22 to the back door, and right there at the side of the house,
23 the back porch. I didn't see any pipe and I don't -- and he
24 didn't show one to me that he seen.

25 **Q.** How long between the tele- -- the 911 call and your

1 arrival on scene?

2 A. I don't have that time with me. I don't know. It
3 was -- it wasn't that long, but I can't tell you exactly how
4 many minutes or seconds that it was before I got there.

5 Q. And suffice it to say you did not find a pipe, is
6 that correct?

7 A. That's correct.

8 Q. All right. Now, how many civilians were on scene?

9 A. I didn't count them. EMS showed up. The fire
10 department came. I didn't do a head count.

11 Q. How many people were in the house?

12 A. When I went in -- when I went in the house, I didn't
13 -- I stepped into the back door. I didn't see anybody but
14 Mr. Toomer that stepped out on the back porch, and Ms.
15 Garrett was already in the yard.

16 Q. Did you check the house?

17 A. I didn't have a reason to search the house.

18 Q. Not to look for a pipe?

19 A. Not to look for a pipe. Like I said, when I got
20 there, I seen the victim laying in the yard. There was no
21 sign of him being hit. There was no bump, no bruises, no
22 blood, no nothing. Why would I, you know, search a house
23 for a pipe supposedly that a victim got hit with that didn't
24 show any signs of being hit?

25 Q. Yes, sir, and you found Mr. Tucker outside on the

1 ground, is that correct?

2 A. He was laying out on the ground whenever I arrived
3 there.

4 Q. Okay. Did you see any indications that Mr. Tucker's
5 body had been moved?

6 A. I wouldn't have any way of determining whether he
7 fell off the porch or a helicopter brought him there. I
8 wouldn't -- I wouldn't know. He was just laying in the yard
9 when I got there.

10 Q. For example, did you see any scuff marks leading up
11 to his body?

12 A. No. It's one o'clock in the morning.

13 Q. But you had a flashlight, right?

14 A. I had a flashlight, yes.

15 Q. And you used it that night, right?

16 A. Oh, yeah.

17 Q. Because you looked over the body with it, right?

18 A. Because I looked around and I was looking for bumps
19 and bruises. I didn't look for drag marks, or scuff marks,
20 or whether a fight had occurred, no, I didn't.

21 Q. Did anything stand out to you that would have
22 suggested that a fight had occurred, or drag marks, or scuff
23 marks?

24 A. No.

25 Q. Nothing came to your attention?

1 **A.** No.

2 **Q.** Do you know if other people were at the scene,
3 civilians?

4 **A.** Only the ones that I testified that I seen; that's
5 it.

6 **Q.** And you only saw two, ---

7 **A.** Yes.

8 **Q.** --- Wanda Garrett and Tommy Toomer?

9 **A.** Right.

10 **Q.** Did you have any indication while you were there that
11 there were other people at the house?

12 **A.** No.

13 **Q.** When you spoke to Ms. Garrett at the scene, did she
14 tell you anything other than Mr. Tucker had been hit with a
15 pipe?

16 **A.** Like I said, when I got on the scene and spoke to Ms.
17 -- the conversation that I did hear Ms. Garrett trying to
18 communicate, I couldn't understand, so, no.

19 **Q.** Did she tell any of your other officers any other
20 information?

21 **A.** I don't know what she would have told them if she
22 told them anything. I'm just going on what the
23 communication -- I could not understand what she was saying.

24 **Q.** Did you call a detective out to the scene?

25 **A.** No, sir.

1 Q. Why didn't you call a detective out?

2 A. Because I didn't see any reason to call a detective
3 out to the scene. That's one of my duties as a supervisor
4 is to make a determination whether command staff is notified
5 about a call or a detective is called out. If you don't see
6 anything to warrant calling anyone, then you don't just pick
7 up the phone and say, "Okay, I'm going to call, and I need
8 to talk to, you know."

9 Q. Yes, sir. Well, when was the next occasion that you
10 saw Ms. Garrett?

11 A. When she came to the Police Department.

12 Q. How many days later would that have been?

13 A. I can't testify. I don't know how many days it was
14 after she came. It was -- how much time had elapsed between
15 that night and the day that she came up the steps at the
16 Police Department.

17 Q. Do you know what, if any, efforts Ms. Garrett made to
18 contact the police?

19 A. No, sir.

20 Q. Did you have an opportunity to return to
21 ?

22 A. I didn't -- I didn't go back to .

23 Q. Do you know if any Conway police officers went back
24 to after interviewing Ms. Garrett?

25 A. Whoever -- I -- someone took the pictures.

1 Q. Okay, but you didn't take those pictures?

2 A. No, sir. I was there at one o'clock in the morning,
3 so that's in the daytime.

4 Q. So we can assume at some point subsequent to your
5 arrival on , some other police officer went
6 out and took those pictures?

7 A. Yes, sir.

8 Q. Do you know what police officer that would have been?

9 A. No, sir.

10 Q. Do you know when those pictures were taken?

11 A. No, sir.

12 MR. GALMORE: The Court's indulgence, Your Honor.

13 THE COURT: All right.

14 MR. GALMORE: No further questions, Your Honor.

15 THE COURT: All right. Anything else?

16 MS. VON HERRMANN: Just briefly, Your Honor.

17 **REDIRECT EXAMINATION**

18 **BY MS. VON HERRMANN:**

19 Q. When you went out to that scene, did you look around
20 for a pipe?

21 A. Yes. I looked in the immediate area.

22 Q. And why were you looking for a pipe?

23 A. Because that was the nature of the call, that a
24 subject was hit with a pipe.

25 Q. And did you -- were you looking for a board when you

1 went out there?

2 **A.** No, ma'am. I was looking for a piece of steel pipe.

3 **Q.** Were you looking for a gun?

4 **A.** No, ma'am.

5 **Q.** Were you looking for a stick?

6 **A.** No, ma'am.

7 **Q.** Just a pipe?

8 **A.** Just a pipe.

9 **Q.** And you are the supervisor?

10 **A.** Yes, ma'am.

11 **Q.** And you consult with your officers that work for you,
12 is that correct?

13 **A.** Yes, ma'am.

14 **Q.** And to the best of your knowledge, were any of them
15 able to glean any information from Ms. Garrett that night?

16 **A.** Not to my knowledge.

17 **Q.** Thank you.

18 MS. VON HERRMANN: I have no further questions.

19 THE COURT: All right, you may come down. Thank you.

20 Can this officer be released?

21 MS. VON HERRMANN: Yes, sir.

22 THE COURT: You are released, and we thank you.

23 Call your next witness.

24 MS. VON HERRMANN: Your Honor, the State calls Wanda

25 Garrett. She is in a wheelchair and we are going to have to

1 make a couple of adjustments quickly.

2 Your Honor, may we approach for one moment?

3 THE COURT: Yes.

4 (A Bench conference was held in the presence, but out
5 of the hearing, of the jury.)

6 WANDA GARRETT, BEING FIRST DULY SWORN, IS EXAMINED AND
7 TESTIFIES AS FOLLOWS:

8 THE CLERK: Please state your name for the Court.

9 MS. GARRETT: Wanda Matos Garrett.

10 THE REPORTER: Spell your middle name, please.

11 MS. GARRETT: My middle?

12 THE REPORTER: Yes.

13 MS. GARRETT: Wanda Yvette Matos Garrett.

14 THE REPORTER: Spell Matos.

15 MS. GARRETT: M-A-T-O-S.

16 THE REPORTER: Thank you.

17 **DIRECT EXAMINATION**

18 **BY MS. VON HERRMANN:**

19 **Q.** Ms. Garrett, we see that you are in a wheelchair
20 today. How long have you been in that wheelchair?

21 **A.** Approximately almost three years now.

22 **Q.** And do you recall an incident that took place on May
23 the 17th of 2005 -- or May the 18th?

24 **A.** The 18th.

25 **Q.** You do?

1 A. Yes, ma'am.

2 Q. And what were you doing that day?

3 A. It was one day as usual, living at ,

4 , kind ---

5 Q. Who do you live with there?

6 A. A number of us, starting with my sister and myself,

7 Country, Jam- -- Little James, and Big Red. They used to

8 show up, or whoever just happened to ---

9 Q. Let me ask you this: Was that house something that's
10 commonly described as a crack house?

11 A. Yes, ma'am.

12 Q. Is that a fair assessment?

13 A. Yes, ma'am.

14 MR. GALMORE: Objection, Your Honor.

15 THE COURT: What's your objection?

16 MR. GALMORE: I object to her referring to my client's
17 home as a crack house.

18 THE COURT: That's her determination. You can cross
19 examine her on it and we'll let the jury make the
20 determination.

21 Go ahead.

22 Q. Ms. Garrett, you lived in that house as well, did you
23 not?

24 A. Yes, ma'am.

25 Q. And the main residents of that house were you, and

1 Mr. Toomer, and your sister, is that correct?

2 A. Yes, ma'am.

3 Q. But other people would come and go, ---

4 A. Yes, ma'am.

5 Q. --- is that fair?

6 How long had you lived in that house?

7 A. No more than four months, between three and four
8 months.

9 Q. And did you have a drug and alcohol problem at that
10 time?

11 A. Yes, ma'am.

12 Q. And had you had a problem for sometime previously?

13 A. Yes, ma'am.

14 Q. And, in fact, you had been in a little bit of trouble
15 with the law, is that ---

16 A. Yes, ma'am, I have.

17 Q. You have -- on your record, you have a conviction in,
18 I believe, 1997 for something that's called common law
19 robbery, is that correct?

20 A. Yes, ma'am.

21 Q. And did you receive a probationary sentence for that?

22 A. Yes, ma'am.

23 Q. And you also had on your record back around this same
24 time or prior to, 2003, I believe it was, some fraudulent
25 checks?

1 **A.** Yes, ma'am.

2 **Q.** And did you receive a sentence of a hundred and
3 twenty days for those checks?

4 **A.** Yes, ma'am.

5 **Q.** And how -- how is your health ---

6 THE COURT: Mr. Foreman, and ladies and gentlemen, I
7 have permitted this testimony with regards to her prior
8 record for one purpose and one purpose only. You may, if
9 you choose, consider that as to her credibility and
10 believability. That's for you to decide, weighing all the
11 considerations, including her testimony, but it is
12 admissible only as to her credibility and believability if
13 you decide to accept it in such a way. That decision is
14 yours as finders of the facts.

15 You may proceed.

16 MS. VON HERRMANN: Thank you, Judge. I appreciate it.

17 **MS. VON HERRMANN CONTINUES:**

18 **Q.** Wanda, have you been clean for some period of time
19 now?

20 **A.** Yes, I am.

21 **Q.** How long has that been?

22 **A.** Three years. This April is three years.

23 **Q.** And you've had some surgeries, is that correct?

24 **A.** Five.

25 **Q.** What were those for?

1 **A.** Hip surgery.

2 **Q.** And during the time that you were having these
3 medical problems, you were also able to get some help and
4 treatment for your drug and alcohol addiction, is that
5 correct?

6 **A.** Yes, ma'am.

7 **Q.** Let's go back to 2005, to May the 18th.

8 **A.** Right.

9 **Q.** What were you doing in the early evening hours of
10 that day?

11 **A.** I was basically cleaning the mess that was left there
12 from the night before from everybody partying, who left, who
13 stayed, and who woke up there.

14 **Q.** And did you see the victim in this case, Jerome
15 Tucker, on that day?

16 **A.** Yes, ma'am, every day.

17 **Q.** Okay. Tell me about your contact with him on that
18 particular day.

19 **A.** Well, it was just a particular day. He always showed
20 up with four cold beers, one for me, one for him, one for my
21 sister, and one for us to share.

22 **Q.** And what time of day would that typically be?

23 **A.** It would have been after work. Usually he went to
24 his house after he got out of work, maybe six or a little
25 after, something like that.

1 Q. Okay. Did you have a nickname for him, ---

2 A. Yeah.

3 Q. --- for Jerome Tucker?

4 A. Yeah.

5 Q. What was his nickname?

6 A. Cowboy.

7 Q. A lot of people called him that, didn't they?

8 A. Everybody did.

9 Q. All right. They called him that because he wore a
10 cowboy hat all the time, isn't that right?

11 A. Yeah; yeah.

12 Q. And most of the people in that neighborhood knew him
13 as Cowboy?

14 A. Everybody know him as Cowboy.

15 Q. All right, and did you -- were you sitting on the
16 porch that day with him?

17 A. When he came, yes. I was on the back porch. We sit,
18 me in one chair, him on the other side of the doors, you
19 know. We opened the beers, started talking, and ---

20 Q. How long had you known him?

21 A. Fifteen years.

22 Q. And what was the topic of conversation on that
23 particular day?

24 A. Well, that particular day, since we had a couple of
25 arguments, I didn't want to break a family home, and he just

1 wanted us to get back together and get out of that house.

2 Q. When you say that you didn't want to break up a
3 family home, what do you mean by that?

4 A. Well, I know that he had a wife, and I know he had
5 four kids, and two daughters, two sons, and one of the sons,
6 little Jerome. I knew Chris lived there, and his two
7 daughters, and I say -- I'm not sure if one of them was
8 pregnant or not, or had, you know, his grandkids. I didn't
9 want to -- I didn't want to be the one to break that family
10 home.

11 Q. Did you have a relationship with Mr. Tucker?

12 A. It grew. We were best friends, and the last three
13 years, we were lov- -- we were lovers. He stayed with me,
14 practically met two, three, four times that -- the whole
15 night, and got up and go, you know, got ready for Andy to
16 pick him up to go to work. Then he'd go home and change or
17 whatever, take a shower and come back, and this was the
18 daily routine, and that's when I had found out that he did
19 -- I never knew he smoked crack, never knew that, till the
20 last three years that I found out. I couldn't believe it.

21 Q. Did you have strong feelings for him, for Jerome?

22 A. I loved him. I'll love him till the day I die.

23 Q. But despite that fact, you were living with Mr.
24 Toomer, is that correct?

25 A. I can't see him. I can't see him.

1 Q. Is this Mr. Toomer ---

2 A. Yes.

3 Q. --- sitting here beside Mr. Galmore?

4 A. Yes, ma'am.

5 Q. And despite the fact that you had this relationship
6 with Mr. Tucker, you were still living with Mr. Toomer, is
7 that right?

8 A. Jerome took me there because I was homeless, took me
9 and my sister there.

10 Q. But the fact of the matter is you had a relationship
11 at some point with Mr. Toomer also?

12 A. I was his girl.

13 Q. Okay, and you all slept in the same bedroom?

14 A. All three of us.

15 Q. When you say all three of you, who do you mean by all
16 three?

17 A. He slept in the bed, Jerome slept in the bed, and I
18 slept in the bed.

19 Q. Okay, so there was a time when you were seeing both
20 of these men simultaneously?

21 A. Yes.

22 Q. Is that fair enough?

23 A. Yes, but as far as -- as far as Country and I, we
24 would go -- you know, we created a good friendship.

25 Q. Okay. When you say Country, who is Country?

1 A. Him.

2 Q. Who is him?

3 A. Tommy.

4 Q. All right. That was his nickname, Country?

5 A. Yeah, Country.

6 Q. How did -- how did Mr. Toomer and Mr. Tucker get
7 along?

8 A. They like two peas in a pod.

9 Q. Had they been friends for a long time?

10 A. They grew up together. They grew up together. Their
11 parents lived -- Tommy's parents lived a few houses down
12 from where Jerome's house is.

13 Q. But how -- in the recent weeks or months leading up
14 to this, had they had some -- some difficulties between
15 them?

16 A. Yeah, but it was -- they fought, and they made up.
17 Then he would go get him at his house, pick him up and bring
18 him back, and that's just the way we all were. With
19 Country, it was never -- it was more like a friendship. He
20 had some issues that he was in the military and he had
21 flashbacks, and I would, you know, like try to comfort and
22 help him, you know, and ---

23 MR. GALMORE: Objection, Your Honor, relevance.

24 MS. VON HERRMANN: And I don't disagree.

25 THE COURT: We don't need to go into that.

1 Q. We don't need to talk about his medical condition.

2 A. Okay.

3 Q. We just need to know what you know, okay, so let's
4 limit your answer to what you know.

5 A. Okay.

6 Q. Do you know if they had had some arguments about you?

7 A. Yes.

8 Q. And was that something that had become more frequent?

9 A. Yes.

10 Q. On the evening of the 18th, tell me what happened
11 while you and Jer- -- after you and -- or while you and
12 Jerome were sitting out on the porch. At some point did the
13 defendant arrive?

14 A. When Country came back home from wherever -- from
15 making his few dollars, he always brought me a -- brought us
16 a half a gallon of gin.

17 Q. All right, and did he do that on that day?

18 A. Every day, yes, ma'am.

19 Q. And did he bring any drugs with him?

20 A. He brought some crack.

21 Q. And what did you all -- what did you all do at that
22 point?

23 A. We were in the house ---

24 THE COURT: Let me explain to the jury that the drugs
25 are not an issue in this case as it pertains to his

1 indictment; you understand that.

2 Q. Go ahead and continue. I'm sorry.

3 A. Well, we all went to the room. We all had -- Tommy,
4 Cowboy, and me went to the room, and ---

5 Q. When you say the room, what room are you referring
6 to?

7 A. Our room -- my -- our room, the room that was to the
8 bedroom, my room, and we all set down onto the bed and
9 finished the beer we had, and then we started drinking some
10 liquor, the gin, ---

11 Q. Okay.

12 A. --- and Red showed up and wanted Country ---

13 Q. Who is -- who is Red?

14 A. They call him Red. He's Puerto Rican. He's like --
15 with kinky hair.

16 Q. Have you seen him -- have you seen Red since ---

17 A. Never seen him. I only see him there for like three
18 or four days there. That's about it.

19 Q. All right.

20 A. And we were -- we started drinking, did a couple of
21 hits, so he came and we all chipped in, and Country left.

22 Q. All right. When you say you chipped in, what do you
23 mean, you chipped in?

24 A. Well, we all -- for Ten Dollars, we get Ten Dollars.
25 Jerome had Ten, or whatever he had, or we have, we put it

1 together, and Red, what Red had, and what Country had, and
2 it made a bigger amount, and he can get more.

3 Q. So it's your testimony that the defendant left to get
4 some more cocaine?

5 A. Right. He went to get -- pick it up, and left us,
6 and we were in our room. It was only me, and Red, and
7 Jerome.

8 Q. And at some point did he return?

9 A. Yes.

10 Q. And what happened when he returned? Did y'all
11 continue to party for a while?

12 A. Yes. We continue to party and everything, country
13 music, and laughing, and everything was fine.

14 Q. So it was just a party type atmosphere?

15 A. Just the usual.

16 Q. And did you have again during the course of that
17 evening some other conversation with the victim, Mr. Tucker,
18 about your potentially moving out of the house with Mr.
19 Toomer?

20 A. At that point -- at that point when we're sitting in
21 the bed and he was sitting beside me, and Red was in the
22 corner, -- the door was closed because Red was still
23 smoking, ---

24 Q. Okay.

25 A. --- and Jerome and I was just drinking, and talking,

1 and we was just wanting -- he -- I don't know how long
2 Country was standing at the door ---

3 Q. Do you think -- do you think that the defendant was
4 standing at the door?

5 A. Yeah. I don't know what he heard, or if he heard, or
6 how much he heard, ---

7 Q. All right.

8 A. --- but the point came down was that yeah, he was
9 going to take the chan- -- we were going to take another
10 chance, and we were going to put my sister's check, my
11 check, and we were going to put it altogether, and the money
12 that Cowboy, you know, helped me with, we were going to get
13 our own place and get out of there, and, you know, move back
14 to another place.

15 Q. And after you had this conversation or while you were
16 having this conversation, did the defendant re-enter that
17 bedroom?

18 A. When he come back into the bedroom, well, everything
19 was fine, but I saw him walk back to where the window was,
20 and there was a piece of -- a oak limb about that fat, as
21 high as a bat or maybe a little higher, if that, ---

22 Q. Okay.

23 A. --- and he's took that stick out before.

24 Q. You had seen that stick before?

25 A. Yeah, because he has ---

1 MR. GALMORE: Objection.

2 A. --- took it out on me.

3 MR. GALMORE: Objection, Your Honor, Rule 404(b). May
4 we approach?

5 (A Bench conference was held in the presence, but out
6 of the hearing, of the jury.)

7 THE COURT: I have permitted the testimony on this
8 issue.

9 MS. VON HERRMANN CONTINUES:

10 Q. And you had seen this piece of wood previously?

11 A. Yes, ma'am.

12 Q. All right, on a number of occasions?

13 A. Yes, ma'am.

14 Q. All right, and tell me, please, then what happened?

15 A. When he -- then when he came back in the room, I saw
16 him walking around the side of the bed ---

17 Q. All right. When you say him, who do you mean?

18 A. Country.

19 Q. And who is that?

20 A. Tommy.

21 Q. All right.

22 A. He walked to the edge of the bed and that's when the
23 stick, the oak tree stick, was in the corner, and that's
24 when he picked it up. I thought he was going to hit me.
25 Jerome thought he was going to hit me, and Jerome went to

1 stand up to defend me, so he took that stick and he picked
2 it up, and he said, "I told you to get out of my" -- pow,
3 but I thought since he was on the other side he hit him on
4 the shoulder. He did not hit him on the head ---

5 Q. You thought?

6 A. No. I checked for blood. I saw no blood, nothing,
7 so I thought he was playing. I said, "Come on, Cowboy,
8 don't do this to me. Stop playing games." He wouldn't get
9 up, so I lean him down, and he wouldn't move or nothing, so
10 I ran across the street and I called -- I went to the
11 preaching (phonetic) house and I asked them, "Please,
12 please can I use your phone to call 911. My boy- -- my
13 boyfriend got hit with" -- I don't know; the 911 tape picked
14 it up. "He hit him with a stick, with a pipe." A pipe in
15 Spanish is a bota.

16 Q. Okay. Let's -- let me go back to that for a minute,
17 but let's talk first about the incident that took place.
18 Where -- where were you seated? What was the position of
19 the individual at that ---

20 A. As you go in the room, the bed is long-way like that
21 (indicating). I'm sitting in the edge closest to the door.
22 Cowboy is sitting on this side to me, and in the corner,
23 that's where Red was, and Country came around the bed to the
24 edge when he hit him with the stick -- when he had reached
25 for the stick, and he hit him.

1 Q. All right, so are you -- are you sort of -- it's your
2 testimony that the victim was seated directly beside you?

3 A. Yes, ma'am.

4 Q. And so were you seeing this out of your peripheral
5 vision?

6 A. This vision was right to the door. This was as close
7 as to Cowboy, but I couldn't see around him on the face or
8 nothing.

9 Q. Let me -- this is going to be a little bit difficult,
10 but if you were seated where you're seated, would the victim
11 have been on your left side?

12 A. Right. You should be right -- he was right here
13 sitting beside me, and he got hit on the other side over
14 there.

15 Q. So he would have been struck on the left side?

16 A. Exactly.

17 Q. And your line of vision, you were sort of seeing in
18 peripheral vision, is that correct?

19 A. Yes. I thought he hit him on the shoulder. I
20 thought that's where he hit him, ---

21 Q. All right.

22 A. --- because -- and then because I didn't see no
23 blood, I thought maybe he was faking it, or since we had
24 been drinking, he passed out.

25 Q. All right, and at some point you realized that he was

1 not responding?

2 A. No. I ran as fast as I could and got help.

3 Q. When you went and you -- your first language is
4 Spanish?

5 A. Yes, ma'am.

6 Q. And what is the word for a stick in Spanish?

7 A. Bota.

8 Q. And what's the word for a pipe in Spanish?

9 A. Bota.

10 Q. And what's the word for any long, cylindrical object
11 in Spanish?

12 A. Bota.

13 Q. And so if you are referring to a long, cylindrical
14 object, you might call it a stick or you might call it a
15 pipe?

16 A. It's a -- it would be the same thing in Spanish.

17 Q. To you, is it the same thing?

18 A. Yes, ma'am.

19 Q. All right. Is there any -- is there any question in
20 your mind but that he was hit with a stick and not a pipe?

21 A. No. I know it was a stick, but I didn't know how to
22 say what kind of stick it could have been, so the easiest
23 word, it was a -- you know, saying bota, that means a -- you
24 know, it's -- it's more seriouser than just pilito.

25 Q. Right, so when it came out, it came out as pipe?

1 A. Right.

2 Q. Even though you knew that it was a stick?

3 A. Exactly.

4 Q. No question in your mind that that was what it was?

5 A. No question in my mind.

6 Q. All right, and on the 911 tape, I believe that they
7 asked who was calling, and you said Linda?

8 A. That's my nickname.

9 Q. Okay. You go by Linda sometimes?

10 A. Yes, ma'am.

11 Q. All right. Do a lot of people call you that?

12 A. Just about everybody that knows me.

13 Q. Okay, even though your given name is Wanda?

14 A. Right.

15 Q. All right, and when -- after you made the 911 call,
16 what did you do next?

17 A. I ran back, and when I ran back, he was laying -- he
18 was laying -- he was laying in the -- in the bottom where
19 the steps -- on the side, of the side, just thrown there.

20 Q. Who -- who was laying there?

21 A. Cowboy. I don't even know how he got there from my
22 room. (One sentence stricken from the record by the Court.)

23 MR. GALMORE: Objection; speculation, Your Honor.

24 THE COURT: I sustain that and move that it be struck.
25 There is no basis for that.

1 Q. I'll give you just a minute here.

2 (Witness is crying.)

3 Q. I'm going to show you what's been marked as State's
4 Exhibit 6. Is that -- identify that for me. Tell me what
5 that is.

6 A. That's the back of the house, and this is ---

7 Q. All right, and tell me where he -- where the victim
8 would have been laying.

9 A. Right after you come down the steps, right there.

10 Q. Right there in that area?

11 A. Yeah, where the dirt is.

12 Q. And I'm going to show you State's Exhibit 5. What is
13 that?

14 A. That's the back of the house. That's where me and
15 Cowboy sat and drank beer.

16 Q. And I'm going to show you a picture of State's
17 Exhibit Number 2. Tell me what that is.

18 A. That's the back of the house and the side where the
19 living room, and my room, the bathroom, and my sister's room
20 is at, and that little window is where the stick went out.

21 Q. I'll get to that in just a moment. So when you
22 arrived back at the house, you found him in the dirt?

23 A. Yes.

24 Q. And how long do you think that you had been gone?

25 A. Just a couple of minutes, just as long as tell them

1 to hurry.

2 Q. And when you got back to the house, did the victim
3 appear to be responsive or ---

4 A. No. He wasn't -- I thought that -- I really thought
5 that he was just joking, and then I realized it wasn't no
6 joke.

7 Q. All right. Were you -- were you confused about how
8 he got outside? Did you know how he got outside?

9 A. I don't know how he got out there.

10 Q. All right. At some point, did the police arrive?

11 A. Yes.

12 Q. And it's my understanding that you were not really
13 able to tell them exactly what had happened at that time, is
14 that true?

15 A. I had no choice what to say that.

16 Q. Right. What do you mean, you had no choice but to
17 say that?

18 A. Because as soon as I came in, Tommy said, "The only
19 thing -- the only thing you know is" ---

20 MR. GALMORE: Objection, Your Honor; hearsay.

21 THE COURT: Wait a minute.

22 MR. GALMORE: Objection to hearsay.

23 MS. VON HERRMANN: It's admission ---

24 THE COURT: This is -- she's allegedly saying what the
25 defendant said. I don't know whether he did or not, but the

1 jury can determine whether or not he said it. A statement
2 made by the defendant, if made, is admissible.

3 MR. GALMORE: Yes, sir.

4 THE COURT: All right, sir.

5 That's again for the jury to determine, what, if
6 anything, was said, and who said it.

7 **MS. VON HERRMANN CONTINUES:**

8 Q. And what, if anything, did the defendant, Tommy
9 Toomer, say to you?

10 A. When I was walking up, he said, "The only thing you
11 know is that he was drunk and he fell down the stairs.
12 That's the only thing that happened here."

13 Q. Did -- were -- what -- how did you feel at that time?

14 A. Well, all of them against me.

15 Q. Were you afraid?

16 A. They would have killed me. They would have killed
17 me. This is a crack house. They don't play.

18 Q. And so because of that, did you not -- did you not
19 make any additional statements at that time?

20 A. I should; I should.

21 Q. All right, and I'm sure that you wish you -- you wish
22 that you had now, but you didn't at that time, is that fair
23 enough?

24 A. Yes, ma'am.

25 Q. All right. Now, at some point, though, you did go to

1 the police?

2 A. (Nods in the affirmative.)

3 Q. Tell the jury, please, if you will, how that
4 happened.

5 A. We were waiting for a couple of days, and I know that
6 Country was saying, "I didn't mean to do it. I didn't mean
7 to do it. I didn't mean to do it." "But you did it. You
8 did it. You know that if you don't go to the police, we're
9 all going to go to jail. We're all going to go to jail,
10 because conspiracy, accessory, they're going to throw the
11 book at us because they already know that they hit him with
12 a round object," is what I told -- well, nobody would listen
13 to me, so I got out and it was raining, and I just kept
14 walking, and walking, and walking, and walking. I must have
15 walked forever.

16 Q. And eventually did you see a Conway Police officer?

17 A. When I came back, Officer Cam, I think her name was,
18 I told her -- I told her what I knew and I didn't know what
19 to do.

20 Q. You described to her what you've described to me and
21 the jury today?

22 A. Yes, ma'am.

23 Q. And tell me what happened next.

24 A. What happened -- what happened, I confess everything
25 to the police, everything. I never left out -- yes, I was

1 there; I was drinking. We were all drinking. We were all
2 smoking crack, but it just got out of hand, and I know in my
3 heart, I know Country didn't mean to do it, to hit him like
4 that. I know he didn't, but it happened.

5 Q. And after you told the police about that, did they --
6 do you know if they went back over to the house?

7 A. Yeah. They went back and they arrested everybody
8 that was there.

9 Q. They arrested the defendant?

10 A. Yes, ma'am.

11 Q. Right, and they arrested somebody else, but that was
12 on an unrelated charge?

13 A. Exactly, yes.

14 Q. All right, so the only person that they arrested with
15 regard to this case was the defendant, Tommy Toomer?

16 A. Yes; yes, ma'am.

17 Q. And do you know what happened to that weapon that was
18 used?

19 A. Big Red had -- the stick?

20 Q. Yes.

21 A. Well, he threw it out the window. I thought it was
22 still there, so I told the detectives exactly where it was.
23 They couldn't find it, so they took me there. They looked
24 everywhere, but it was already gone.

25 Q. When you say he threw it out the window, who threw it

1 out the window?

2 A. Country threw it out the little hole. There was a
3 little hole in the window. He just threw it out, so I knew
4 it couldn't have been far; it had to be around there.

5 Q. All right.

6 A. So I thought I would be able to find it because
7 nobody would have thought I would have known, but when we
8 went and searched, it was already gone.

9 Q. All right, and you were not ever able to locate that,
10 is that correct?

11 A. Yes, ma'am.

12 MS. VON HERRMANN: I don't believe I have any further
13 questions for this witness. Please answer any questions
14 that Mr. Galmore may have.

15 THE COURT: Mr. Galmore.

16 **CROSS EXAMINATION**

17 **BY MR. GALMORE:**

18 Q. You said Mr. Tucker goes by the nickname of Country,
19 is that right?

20 A. Mr. Tucker goes by the nickname of Cowboy.

21 Q. Cowboy, okay, and Mr. Toomer goes by the nickname of
22 Country?

23 A. Yes, sir.

24 Q. And you go by the nickname of Linda?

25 A. Yes, sir.

1 Q. Are you also known as Wanda Matos?

2 A. Wanda Matos, Wanda Matos Garrett.

3 Q. Are you also known as Wanda Maco?

4 A. No, Matos.

5 Q. Are you also known as Linda Malavi?

6 A. No.

7 Q. How many Social Security numbers do you have?

8 A. One.

9 Q. 080 ---

10 MS. VON HERRMANN: Objection, Your Honor. I don't
11 think we need to put her Social Security number on the
12 record.

13 THE COURT: I do not either unless there's some
14 reason. Have you got some issue with identification?

15 MR. GALMORE: Well, Your Honor, it goes to her
16 credibility if -- this rap sheet has got two different
17 Social Security numbers on it.

18 MS. VON HERRMANN: Well, Your Honor, I'm going to
19 object to that comment, too.

20 THE COURT: No, sir. We are here about what's
21 admissible. Her Social Security number has nothing to do
22 with it. I have told you what's admissible here.

23 MR. GALMORE: Yes, sir.

24 Q. It's my understanding that you were convicted of
25 common law robbery back in 1997, is that correct?

1 A. Yes, sir.

2 Q. You were also convicted of criminal conspiracy at
3 that time?

4 A. Yes, sir.

5 Q. But you were charged with armed robbery, isn't that
6 right?

7 A. Yes, sir.

8 Q. Now, about these forgery charges that you have ---

9 MS. VON HERRMANN: I'm going to object to that.
10 That's a mischaracterization of the charge.

11 MR. GALMORE: What, forgery?

12 MS. VON HERRMANN: Fraudulent ---

13 MR. GALMORE: I'm sorry. I apologize.

14 Q. About these fraudulent check charges that you have,
15 how many fraudulent check charges were you convicted of?

16 A. They gave me a hundred and twenty days, and it's
17 thirty days per check, so how many would that be, four
18 checks, would it not?

19 Q. Four checks, so you write bad checks?

20 A. Uh-huh (affirmative response).

21 Q. And you steal people's money? Would that be a
22 fair ---

23 A. No. I wrote it -- it was on my own bank account.

24 Q. I said you write bad checks and ---

25 A. On my own bank account.

1 Q. And you steal people's money? Would that be a fair
2 assessment of your character?

3 A. No.

4 THE COURT: All you are permitted to do is show what
5 she pled guilty to and you're not entitled to go into the
6 details of it.

7 MR. GALMORE: Yes, sir.

8 Q. Explain to this jury how you came to live in this
9 house.

10 A. Cowboy took me there, took me and my sister there,
11 because we didn't have nowhere to stay.

12 Q. So you were homeless prior to this?

13 A. I was homeless, yes.

14 Q. And Mr. Toomer allowed you to stay there?

15 A. Yes, and Cowboy was paying him at the end of the week
16 for letting us stay there.

17 Q. Do you have a lease?

18 A. A what?

19 Q. Did you have a lease, a rental agreement?

20 A. There was no rental agreement.

21 Q. Okay, and you explained that you were in a
22 relationship with Mr. Tucker, is that correct?

23 A. Exactly.

24 Q. And you'd been in a relationship with him for how
25 long?

1 **A.** Three years. We'd known each other for fifteen
2 years.

3 **Q.** So you would consider him a friend?

4 **A.** My best friend.

5 **Q.** Mr. Tucker is your best friend?

6 **A.** Is and will always be my best friend.

7 **Q.** He is your best friend?

8 **A.** Yes.

9 **Q.** You're sure about that?

10 **A.** I'm positive.

11 **Q.** All right. May 18th, 2005, you explained that you
12 were at home and Mr. Tucker came home from work with some
13 beers, is that correct?

14 **A.** Uh-huh (affirmative response).

15 **Q.** So he was working?

16 **A.** Yeah.

17 **Q.** Where did Mr. Tucker work?

18 **A.** He worked with a man named Andy that work
19 landscaping.

20 **Q.** Mr. Toomer was working also?

21 **A.** Mr. Toomer always worked, making his dollar here and
22 there doing odd stuff, whatever he could do to make a
23 dollar.

24 **Q.** Were you working?

25 **A.** I'm disabled. I stayed and clean after everybody.

1 Q. How many people lived in the house?

2 A. Lived in the house? As many people as wanted to stay
3 there when they didn't have a place to stay. At that point
4 in time, there were -- my sister and I were not the only
5 ones staying there, but there were others that was staying
6 there as well, but we're talking about what happened between
7 us, not everybody else, because everybody else ran.

8 Q. How many people were in the house on May 18th?

9 A. I couldn't tell you how many were in there.

10 Q. Can you make a rough estimate?

11 A. I'm not going to make a rough estimate if I'm not
12 sure.

13 Q. It was more than just you, Tommy, and Jerome?

14 A. Yeah. James was there. Big Red was there. My
15 sister and her boyfriend was sleeping in the other room.
16 All the drug dealers were in -- on the steps, cooking crack
17 in the kitchen, and outside, and selling the dope in his
18 house.

19 Q. So you named four people. You said ---

20 A. Uh-huh (affirmative response).

21 Q. --- James, Big Red, ---

22 A. Uh-huh (affirmative response).

23 Q. --- your sister, ---

24 A. Uh-huh (affirmative response).

25 Q. --- your sister's boyfriend, ---

1 **A.** Uh-huh (affirmative response).

2 **Q.** --- and an unknown number of drug dealers and drug
3 users?

4 **A.** Uh-huh (affirmative response), yeah. They all --
5 they all right there in front of the house. It was a crack
6 house.

7 **Q.** Why, then, would Mr. Toomer have to leave to go pick
8 up crack?

9 **A.** Why? Because he let all the people that smoke crack
10 bring it to him. All he knew, the dealers they give him
11 more for bringing more customers to them. The more he
12 brought, the more they gave him, and the more that he got,
13 the more he shared with whoever, with me, Jerome, Red,
14 anybody that came in, and he would give anybody a hit.

15 **Q.** But I thought your testimony is that there were drug
16 dealers right there on the steps?

17 **A.** The steps and the front. That's a yard right there.
18 It's a yard. It's all like -- it's a yard. If you see the
19 pictures, you could see the yard.

20 **Q.** So why would he have to leave to go get crack?

21 **A.** Huh? Because the crack they were selling in front of
22 the house was not all crack. It was mixed with other --
23 with other stuff in it, and they sell it to the white people
24 that came by or whoever they could sell it so then they can
25 go get the good crack and gave Tommy the money to go get it

1 down wherever he got it from the main guy, and got the good
2 crack instead of the bad crack.

3 Q. You didn't tell the police that when you gave them a
4 written statement on May 21st, did you?

5 A. I told the police everything that happened.

6 MR. GALMORE: (Hands document to Ms. Von Herrmann.)

7 MS. VON HERRMANN: No objection, Your Honor.

8 **STATEMENT OF WANDA GARRETT MARKED FOR IDENTIFICATION**

9 **AS DEFENDANT'S EXHIBIT NUMBER 1.**

10 MR. GALMORE: May I approach, Your Honor?

11 THE COURT: Yes, sir.

12 Q. Ms. Garrett, let me hand you what's been marked for
13 identification purposes as Defendant's Exhibit Number 1 and
14 ask you if you recognize that?

15 A. Yeah. That's Red's part, uh-huh.

16 Q. What is that document, ma'am?

17 A. This is the document where on -- this is
18 when the privacy of like everybody's room. It was Tommy's
19 room and my room, and our company, which was Big Red that
20 had the red truck, and Country, and Cowboy, and myself. It
21 was in the bedroom. We were all drinking liquor and smoking
22 crack. He left for a while, and didn't know where
23 exactly ---

24 Q. Hold on; let me stop you right there.

25 A. Yeah.

- 1 Q. Is that your written statement to the police?
- 2 A. They wrote this. That's what I was -- that's what I
3 told them.
- 4 Q. Right. Is that your signature on the bottom of that
5 page?
- 6 A. Uh-huh (affirmative response), yeah.
- 7 Q. So you told them, and they wrote it down?
- 8 A. Yeah.
- 9 Q. But that's your statement?
- 10 A. Yeah.
- 11 Q. Now, where you stopped at ---
- 12 A. Excuse me?
- 13 Q. Hold on. Where you just stopped at, you said, "Tommy
14 left for a while," ---
- 15 A. Uh-huh (affirmative response).
- 16 Q. --- "and we didn't know where he went to"?
- 17 A. Uh-huh (affirmative response).
- 18 Q. Is that what you said in that statement?
- 19 A. Yeah.
- 20 Q. Okay, but today you're telling this jury he left to
21 go buy crack?
- 22 A. Evidently that's where he went. That's where he was
23 -- that's where he went.
- 24 Q. I'm not asking that. I'm not asking you to
25 speculate. I'm asking you what you know.

1 **A.** What I know is he -- what he went -- or what -- he
2 left.

3 **Q.** And you didn't ---

4 **A.** And when he leaves, either he's going -- he's going
5 to go get more beer, or get more liquor, or get my crack --
6 get more crack. Which one of the three, I don't know what
7 he got, but he came back with the crack.

8 **Q.** Did you say, "Get my crack?"

9 **A.** Get the crack.

10 **Q.** Suffice it to say you did not say in your written
11 statement that Mr. Toomer went to get crack, did you?

12 **A.** I didn't say -- I didn't say that at the time. It
13 was irrelevant because we were all in the house and anybody
14 that's in the house smokes crack, and at one time or
15 another, one of the other is going to go buy, so who it is
16 at all times, I'm not -- I'm the white one. I can't go buy
17 the crack from anybody else that's there that's black, so
18 he's the one that does all those transactions. He could
19 have gone outside and got -- and more liquor, but when he
20 came back, he got -- that's what he came back was -- was
21 with crack.

22 **Q.** All right, and who was in the room smoking crack,
23 ma'am?

24 **A.** Cowboy, Country, me, and Red.

25 **Q.** And that's when, according to you, Mr. Toomer hit Mr.

1 Tucker?

2 A. That was after that, after that. We had already
3 smoked and drinking, and all that, and after that, he went
4 -- when he walked to the back to the window, that's when he
5 got the stick, and then he picked up the stick, and he said,
6 "I told you to get out of my house," something like that, to
7 that effect.

8 Q. So Red was in the room when this happened?

9 A. Yes. He was sitting on the corner still smoking his
10 dope.

11 Q. So Red saw it just like you saw it?

12 A. Yes.

13 Q. Is Red here today?

14 A. I don't -- I seen that guy there four times.

15 Q. Do you see Red in this courtroom today?

16 A. Where is he at?

17 Q. Do you see him?

18 A. No, I don't see him.

19 Q. Do you know Red's name?

20 A. No. That's -- he introduced me as Red. I think he
21 was from New York or New Jersey.

22 Q. So you're telling this jury there's another eye
23 witness to this crime?

24 A. I'm telling you he -- he was there smoking crack.

25 Q. Okay.

1 **A.** What he did -- what happened after -- when Tommy hit
2 him, I was -- who's going to believe -- this is why I went
3 walking for three days trying to figure out how to put this
4 in my mind and say what I know because it comes to me.
5 Okay, that's what happened.

6 **Q.** Okay. Well, let's ---

7 **A.** What I said is what happened, and that's it.

8 **Q.** I understand. Let's back up. Did anybody stop you
9 from running across the street to call 911?

10 **A.** No. Everybody was out there. They couldn't believe
11 what was happening, and when they saw me running across the
12 street, they knew something was happening, but nobody told
13 me nothing.

14 **Q.** Well, how many people were out there?

15 **A.** I don't know how many people were out there.

16 **Q.** You were there.

17 **A.** I don't -- do you know how many people -- do you know
18 how many people might be hanging out at a ---

19 **Q.** I wasn't there, ma'am. You were there.

20 **A.** Well, hypothetically, do you -- would you -- could
21 you ---

22 MS. VON HERRMANN: I'm just going to object to the
23 question as asked and answered.

24 THE COURT: Please just answer his question.

25 **A.** Honestly, Judge, I couldn't tell you. I know there

1 were more than five people there because they hang out in
2 groups, you know, and that's all I can say, but I can't tell
3 you a number.

4 Q. Would it have been more than ten people?

5 A. I'm saying I know there were more than five people
6 there outside hanging out, drinking beer.

7 Q. That's not including the people you already named
8 that were in the house, your sister ---

9 A. The ones that were in the house were in the house.

10 Q. Okay, so there were at least five people outside?

11 A. There was, yeah, hanging out, smoking -- smoking
12 blunts, and the young, you know, they smoke their blunts and
13 they deal their dope.

14 Q. Did any of these people try to stop you from going to
15 call 911?

16 A. Nobody -- nobody stopped -- nobody even knew what I
17 was going to do.

18 Q. Did anybody inside the house stop you from going to
19 call 911?

20 A. Not then. Ain't nobody even had a chance to stop me
21 because I ran.

22 Q. Did Mr. Toomer stop you from going across the street
23 to ---

24 A. No, he did not. All I say, it was just a tragic
25 accident. It was a tragic accident that happened. It was.

1 Q. When you called 911, do you recall if you told them
2 it was a stick or a pipe?

3 A. Sweetheart, at that point I was drinking. A bota is
4 a stick or a pipe, the same thing in my Spanish language.
5 All I wanted them was to hurry up and come and help him. I
6 didn't see him bleeding anywhere.

7 Q. Do you know the difference between a stick and a
8 pipe?

9 A. Of course I know the difference between a stick and a
10 pipe.

11 Q. And today in court you're saying it was a stick?

12 A. It was an oak -- it was a oak -- piece of oak, pure
13 oak. I mean, I'm not familiar, the trees out here. They
14 got special names, but it was a heavy piece of oak tree
15 limb, about that fat, as long as a bat. It was as long as a
16 bat.

17 Q. Did you give that stick to the police officers when
18 they came to the house?

19 A. Give them what?

20 Q. Did you give that stick to the police officers when
21 they came to ---

22 A. We came looking for it and we couldn't found where he
23 threw it at.

24 Q. You looked for this stick with the police officers
25 that night?

1 **A.** Yes, with the detectives, yes. We went there and we
2 looked for it. Yes, we did.

3 **Q.** Do you mean with the officers or do you mean with the
4 detectives?

5 **A.** The officers or the detec- -- yeah, the detective.

6 **Q.** Okay, let me back up. The night that Mr. Tucker was
7 allegedly hit, did you look for this wooden stick?

8 **A.** Why would I look for it? I saw it when he threw it
9 out the window.

10 **Q.** So when the police got there, did you say, "That's
11 the stick he hit him with"?

12 **A.** The police never talked to me when it happened.
13 Nobody talked to me. The police did not talk to me. When
14 they picked Jerome up and took him in the ambulance, they
15 did not talk to me.

16 **Q.** Do you think it's possible that you didn't remember
17 if they had talked to you?

18 **A.** No. It could be a possibility, but the cops didn't
19 -- I talked to 911.

20 **Q.** So when the three policemen came out, none of them
21 said anything to you?

22 **A.** No, they didn't say nothing to me. They didn't talk
23 to me. If -- maybe if they were -- but I don't remember
24 talking to no police.

25 **Q.** Do you remember a lot of details?

1 **A.** I remember because we weren't even drunk yet.

2 **Q.** Okay.

3 **A.** I remember -- and I remember telling the detectives
4 to the point of how much I was drinking ---

5 **Q.** That was a couple of days later. I'm not talking
6 about ---

7 **A.** No, that was at night.

8 **Q.** So you talked to the police and the detectives that
9 night?

10 **A.** When I went and talked to them and told them
11 everything that happened, I told them when we were all
12 drinking what hap- -- when he was taking the statement, we
13 were taking the -- he was taking the statement of what
14 happened and he asked me how -- you know, about the
15 drinking, and we all were drinking. I told -- I tell what I
16 can remember. You're asking me questions beyond -- you
17 know, beyond -- you know, more was after that -- of what
18 happened.

19 **Q.** I'm asking you on the night that you say Mr. Toomer
20 hit Mr. Tucker with a stick, did you talk to any policemen
21 that night?

22 **A.** No.

23 **Q.** Did you talk to any detectives that night?

24 **A.** No.

25 **Q.** In fact, you didn't go talk to the police for four

1 days?

2 A. Three days after.

3 Q. Three days. Did you call 911 at any time between the
4 night when Mr. Tucker was hit ---

5 A. The night that it happened.

6 Q. --- and the three days?

7 A. No, the ---

8 Q. I know you called that night. Other than ---

9 A. The police drove by. A officer drove by and asked
10 for the bicycle, and asked me -- I don't know what his name
11 was, but he says, "The guy that they picked up here the
12 other night, the John Doe that they picked up, what was his
13 name?" And I had told him it was Jerome. They asked, "Was
14 it Jerome Tucker," and I said, "Yes."

15 Q. My question to you, did you any time after the 18th
16 make an effort to walk down or drive down to the Police
17 Department?

18 A. I was too scared to even move. I had -- if I would
19 even try to left from the house that day, I would have never
20 made it out of the house, or if I did make it out of the
21 house, I don't know in the condition I would have been ---

22 Q. Because Mr. Tucker would have -- Mr. Toomer would
23 have killed you?

24 A. You just -- you just don't know what goes on in
25 that ---

1 Q. You were scared because you thought ---

2 A. He got his people. He got his people.

3 Q. Okay. Was Mr. Toomer around you twenty-four hours a
4 day?

5 A. No. He used to go make his dollar, and come and go,
6 and come and go.

7 Q. So after Jerome was injured, was he still going to
8 work?

9 A. I guess he was doing his thing, I guess. Yeah, he
10 went -- he went and did work for his mama. He always went
11 and did work for his mama.

12 Q. Okay, so after Jerome was injured, he wasn't sitting
13 up under you the entire time?

14 A. No, he wasn't, no. No.

15 Q. At the time when Mr. Toomer was not around you, did
16 you attempt to contact the police?

17 A. I didn't attempt to do anything because I was too
18 scared to even ---

19 Q. But this is your best friend?

20 THE COURT: Wait a minute. You didn't let her finish
21 her answer.

22 MR. GALMORE: I'm sorry.

23 A. You don't let me even finish. I didn't know if I
24 would have made it once they saw me walking, if I would have
25 made it, if I would have even made it to the Police Station

1 alive, or what was going to happen, and I had a sister that
2 just got shot, and I didn't want nothing to happen to her.

3 MR. GALMORE: Move to strike, Your Honor.

4 A. I have to leave her in the house what I left.

5 MR. GALMORE: I have no idea about her sister being
6 shot, and I dare say it has nothing to do with this case.

7 THE COURT: Well, ask your next question.

8 MR. GALMORE: Well, I don't want the implication to be
9 that Mr. Tucker has -- Mr. Toomer ---

10 THE COURT: Well, you're eliciting these questions
11 from her and she's trying to answer. I'll leave it for the
12 jury to consider. Get on to another type of questions.

13 I'll continue to tell the jury that they, and they
14 alone, are the finders of the facts. They are the judges,
15 the sole judges, of the credibility of this witness. That
16 issue is for them to determine as to her credibility. They
17 may believe all of what she says, none, or some part of it,
18 but it is theirs to determine.

19 You may proceed.

20 MR. GALMORE: Yes, sir.

21 **MR. GALMORE CONTINUES:**

22 Q. When the police arrived on the night of the 18th,
23 isn't it true that you told them that Mr. Tucker fell off
24 the porch?

25 A. I did not tell -- Country told me when I was walking

1 in the door, "The only thing you know is that he fell down
2 the stairs, that he was drunk and he fell on the stairs."
3 That's all I was supposed to know.

4 Q. Is that what you told the police on the night of the
5 18th?

6 A. This is ---

7 MS. VON HERRMANN: I'm going to object; asked and
8 answered.

9 THE COURT: No. I'll let her answer. You may answer.

10 A. What he said, that's what went ---

11 Q. Is that what you told the police on the night of the
12 18th?

13 A. I don't remember talking to the police that night of
14 the 18th because they were too busy outside getting him out
15 of the hou- -- getting him into the ambulance and getting
16 that man help, and then they asked what -- they talked to
17 him and they talked to some of the neighbors, and I was just
18 sitting in the bed, just sitting there like my whole mind
19 just completely went, and I didn't know if I was coming or
20 going.

21 I was drinking. I was smoking, but I remember until
22 the effect -- before the effect of the alcohol had hit me, I
23 remember everything that happened to that point. I'm
24 telling you to the point that I remember.

25 Q. And for three days after that, you did not say

1 anything to the police, is that correct?

2 A. I was too scared to even do -- to even call the
3 police. I was too even scared. I didn't know what to do.
4 I didn't know.

5 Q. You continued to live in that house, is that correct?

6 A. Yeah, I stayed there with my sister so we could live.
7 We were homeless.

8 Q. How long after this incident did you continue to live
9 in that house?

10 A. Two, three days at the most.

11 Q. Okay, so that would mean by the 21st when you gave
12 your written statement, is that when you moved out of the
13 house?

14 A. After the cops came and arrested him and took him,
15 that's when I started packing my stuff and trying to find
16 somewhere to go, for us to live, and with all that, we just
17 left. Everything stayed in the house and my sister and I
18 just left. We just left because I didn't want him to come
19 out of jail. I didn't know what was going to happen when he
20 got out of jail, so I had to get out of there as soon as
21 possible.

22 Q. So how long after Mr. Toomer was arrested were you
23 still living in the house?

24 A. Two or three days. I tried to tell you that already.

25 Q. Two or three days after he was arrested?

1 **A.** After he was arrested, two days or three at the most.

2 **Q.** Now, you didn't get arrested, did you?

3 **A.** No, I did not.

4 **Q.** Okay, even though you failed to report a crime?

5 **A.** What?

6 MS. VON HERRMANN: Your Honor, I'm going to object to
7 that. That calls for a legal conclusion. She's not
8 equipped to make a legal ---

9 THE COURT: I sustain that.

10 **Q.** The fact is you were not arrested for anything
11 related to this case, were you?

12 **A.** No, I was not.

13 **Q.** You're familiar with conspiracy because you were
14 convicted of that, right?

15 MS. VON HERRMANN: Objection again, Your Honor.
16 That's a legal term.

17 THE COURT: I sustain that. Now, we're not going into
18 legal issues.

19 MR. GALMORE: Yes, sir, Your Honor. No further
20 questions of this witness.

21 MS. VON HERRMANN: Just a couple, Your Honor.

22 **REDIRECT EXAMINATION**

23 **BY MS. VON HERRMANN:**

24 **Q.** Ms. Garrett, ---

25 THE COURT: Would you like some water? Get her some.

1 MS. VON HERRMANN: Yes, sir.

2 THE COURT: Do you need to take a break or do you want
3 to continue, ma'am? Do you feel like you can continue?

4 A. (No response.)

5 MS. VON HERRMANN: You let me know when you think you
6 are ready.

7 A. All right.

8 THE COURT: All right, I want this to be short. She's
9 been on the stand long enough.

10 MS. VON HERRMANN: It will be, Your Honor. It will
11 be.

12 **MS. VON HERRMANN CONTINUES:**

13 Q. Ms. Garrett, Mr. Galmore showed you what's been
14 marked as Defense Exhibit Number 1, and he asked you about
15 you saying that "Tommy Toomer went to get some crack today,"
16 but intimated or even said that you did not make that
17 statement in your written statement, is that correct?

18 A. Yes, ma'am.

19 Q. But you gave the police another tape-recorded
20 statement, did you not?

21 A. Yes, ma'am.

22 Q. And is this that ---

23 MS. VON HERRMANN: I'm going to have this marked.

24 A. I don't know if that's it, but they recorded
25 everything. I don't ---

1 MS. VON HERRMANN: One moment, please.

2 THE COURT: What's the purpose of this? She's already
3 testified under oath. What's the purpose of this?

4 MS. VON HERRMANN: I think I've got the right to
5 rehabilitate her after he has provided that statement. She
6 has a statement here -- he has alleged recent fabrication
7 with regard to her testimony today and I have the right to
8 rehabilitate her with her prior statement.

9 THE COURT: You do.
10 Have you been provided a copy of this?

11 MR. GALMORE: Yes, sir.

12 THE COURT: All right. Then I'm going to admit it.
13 Let's identify this as Number 2.

14 MS. VON HERRMANN: This will actually be State's
15 Exhibit 14.

16 THE COURT: Okay.

17 **CASSETTE TAPE OF STATEMENT OF WANDA GARRETT**

18 **MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT 14.**

19 Q. And before you came into the courtroom today, did you
20 have an opportunity to review this tape-recorded statement?

21 A. Yes, ma'am.

22 Q. And is this a true and accurate statement ---

23 A. Yes.

24 Q. --- that you gave the police?

25 A. Yes, ma'am, completely.

1 Q. And this is the statement you gave the police several
2 days later when you went in, is that correct?

3 A. Yes, ma'am.

4 MS. VON HERRMANN: Your Honor, I would move to have
5 this admitted.

6 MR. GALMORE: Your Honor, I would object. Number one,
7 it's hearsay because it's an out-of-court statement.

8 THE COURT: It can't be hearsay; it's her testimony,
9 alleged.

10 MR. GALMORE: Furthermore, it's a prior consistent
11 statement. I know the rules allow for a prior inconsistent
12 statement, and that's what I cross examined her on with her
13 written statement, but I don't think the rules allow for a
14 prior consistent statement.

15 THE COURT: No, sir. This is an issue raised by you
16 as to what you did or did not do. They're entitled to show
17 whatever it is on this tape that repudiates what you said.
18 Whether it does or not, I don't make any comment. They're
19 the finders of the facts. Play it.

20 MS. VON HERRMANN: Thank you, Your Honor.

21 **CASSETTE TAPE OF STATEMENT OF WANDA GARRETT MARKED**

22 **IN EVIDENCE AS STATE'S EXHIBIT 14.**

23 THE COURT: And I'll permit you to recross.

24 MR. GALMORE: Yes, sir.

25 (A PORTION OF STATE'S EXHIBIT 14 IS PLAYED FOR THE JURY.)

1 MS. VON HERRMANN: Your Honor, I think Mr. Galtmore and
2 I may have a matter of law that we need to take up with
3 regard to this tape.

4 THE COURT: I'll let you go to the jury room just a
5 moment. I'll be calling you back.

6 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
7 **JURY.)**

8 MR. GALTMORE: Yes, Your Honor, we would just object to
9 the remaining portion of the tape. She proceeds to talk
10 about how Mr. Toomer has threatened her with this back
11 before, and beat her, and things like that in the past, and
12 I previously objected under Rule 404(b) to these other bad
13 acts.

14 THE COURT: Why do you need that?

15 MS. VON HERRMANN: Your Honor, I'm fine with limiting
16 it to the testimony that's been provided to this point.

17 THE COURT: The testimony, this is the issue with
18 which you are concerned on redirect?

19 MS. VON HERRMANN: It does, and, Your Honor, the only
20 thing that I would ask is that obviously that tape is going
21 to go -- or should, under the rules, go back there, and ---

22 THE COURT: If they want to hear the tape, I'll bring
23 it outside and we'll cut it off at that point.

24 MS. VON HERRMANN: Thank you.

25 MR. GALTMORE: Thank you.

1 THE COURT: Does that address your concern?

2 MR. GALMORE: Yes, sir.

3 THE COURT: All right. Let's take a short break and
4 then we'll start back. I think the court reporter would
5 like to have a break.

6 (OFF THE RECORD)

7 ON THE RECORD

8 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
9 JURY.)

10 THE COURT: This lady has been on the stand a
11 considerable time and it's time for both of you to get
12 through with her. It's not fair to her.

13 All right, are we ready to proceed?

14 MS. VON HERRMANN: Yes, sir, Your Honor.

15 THE COURT: The record will reflect that we have
16 stopped that tape at the Defense attorney's request, and if
17 during deliberation they want to hear it, we will bring them
18 out and play the same part and stop it at that time.

19 MR. GALMORE: Yes, sir.

20 THE COURT: Bring the jury in.

21 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE
22 JURY.)

23 THE COURT: All right, are you now ready to proceed?

24 MS. VON HERRMANN: I am, Your Honor. Actually, I do
25 not have any further questions.

1 Thank you, Ms. Garrett. Please answer any questions
2 that Mr. Galmore has.

3 THE COURT: Any redirect -- any recross, I mean, Mr.
4 Galmore?

5 MR. GALMORE: Just briefly, Your Honor.

6 **RECROSS EXAMINATION**

7 **BY MR. GALMORE:**

8 **Q.** You said that Mr. Toomer was gone for twenty or
9 thirty minutes on that tape?

10 **A.** Yes, sir.

11 **Q.** And it's also your testimony that there were drug
12 dealers right outside the house, is that correct?

13 **A.** Yes, sir.

14 MR. GALMORE: Nothing further, Your Honor.

15 THE COURT: All right. You may come down. Thank
16 you.

17 **A.** Thank you, sir.

18 THE COURT: All right, do you have any further
19 witnesses?

20 MS. VON HERRMANN: Your Honor, I do have one other
21 witness. She is the forensic pathologist. She is coming
22 from Charleston and will be here prepared to testify at two
23 o'clock. She had another case that she was working on and
24 could not be here before two, but she will be ready to go at
25 two.

1 THE COURT: Well, in case she gets here early, -- it's
2 twelve o'clock. It will give the jury an hour and a half,
3 and we will tell them to come back at one-thirty.

4 MS. VON HERRMANN: That's fine, Your Honor, and I will
5 see if I can catch her and maybe I can get her here a bit
6 earlier.

7 THE COURT: All right. Let's break for lunch at this
8 time. You will go to lunch on your own. Please do not
9 discuss the case with each other. Permit no one to discuss
10 it with you. Be back in your jury room at one-thirty. A
11 doctor is coming from Charleston. If she should get here
12 before two o'clock, we will start then. We are working
13 hopefully to conclude this case this afternoon, so if you
14 will come back at one-thirty. Thank you.

15 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
16 JURY.)

17 THE COURT: All right, anything further before we
18 recess for lunch?

19 MS. VON HERRMANN: Nothing from the State.

20 THE COURT: Let's be back at one-thirty, please.

21 MS. VON HERRMANN: Yes, sir.

22 THE COURT: Y'all come forward.

23 (A Bench conference was held off the record.)

24 (OFF THE RECORD - Lunch Break)

25 ON THE RECORD

1 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
2 **JURY.)**

3 THE COURT: All right, anything we need to discuss
4 before we get on the record?

5 MS. VON HERRMANN: Not from the State, Your Honor.

6 THE COURT: All right. Let's discuss the one
7 photograph that Defense counsel has an objection to. As I
8 understand it, the defendant -- the witness has told the
9 State that they need this picture in evidence to more
10 clearly demonstrate their testimony. Is that true?

11 MS. VON HERRMANN: That's correct, Your Honor.

12 MR. GALMORE: Just for the record, Your Honor, I feel
13 that the picture is highly prejudicial. If the picture is
14 admitted into evidence, the jury is going to have the
15 evidence in the jury room and basically there's going to be
16 a picture of a human brain in the middle of the table during
17 their deliberation.

18 THE COURT: Well, it's not particularly grotesque, but
19 beyond that, if this distinguished pathologist says that she
20 needs that for her testimony, it's coming in.

21 MR. GALMORE: Yes, sir. Thank you, Your Honor.

22 MS. VON HERRMANN: Thank you, Your Honor.

23 THE COURT: Bring the jury in.

24 **(THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE**
25 **JURY.)**

1 THE COURT: The jury is now present. You may call
2 your witness.

3 MS. VON HERRMANN: Thank you, Your Honor. The State
4 calls Dr. Kim Collins.

5 DR. KIM COLLINS, BEING FIRST DULY SWORN, IS EXAMINED
6 AND TESTIFIES AS FOLLOWS:

7 THE CLERK: Please state your name for the Court.

8 DR. COLLINS: Dr. Kim A. Collins, C-O-L-L-I-N-S.

9 **DIRECT EXAMINATION**

10 **BY MS. VON HERRMANN:**

11 **Q.** Dr. Collins, how are you currently employed?

12 **A.** I'm currently a medical examiner at Fulton County
13 Medical Examiner's Office in Atlanta, Georgia, and also on
14 staff at The Emory University School of Medicine.

15 **Q.** And how were you employed in May of 2005?

16 **A.** As a Professor of Pathology and Laboratory Medicine,
17 Forensic Pathologist, at The Medical University of South
18 Carolina in Charleston.

19 **Q.** If you will, please, give the jury the benefit of
20 your educational background.

21 **A.** I attended college at The University of Georgia, ---

22 **MR. GALMORE:** Your Honor, I would stipulate that Dr.
23 Collins is an expert in forensic pathology.

24 **MS. VON HERRMANN:** Your Honor, I would actually like
25 to go into her background.

1 THE COURT: I'm going to let you go on a limited
2 basis. I say for this record, though, Dr. Collins has
3 testified in my Court and many Courts of this State, and
4 Federal, and is an eminent expert in this field, but you
5 may, for the jurors' edification, I'll permit some limited
6 inquiry as to her education.

7 MS. VON HERRMANN: Thank you, Judge.

8 Q. Please continue.

9 A. I attended college at The University of Georgia where
10 I received my Bachelor's Degree in Microbiology. I then
11 went to medical school in Augusta, Georgia, at The Medical
12 College of Georgia, and I received my M.D. Following
13 medical school, I went to Wake Forest University School of
14 Medicine, which is also known as Bowman Gray School of
15 Medicine, and I completed a five year combined anatomic and
16 clinical pathology residency to specialize in pathology.

17 Following my residency, I went to Medical University of
18 South Carolina for a forensic pathology fellowship, and
19 after my fellowship, I was boarded in or qualified in
20 forensic pathology and I stayed on staff at The Medical
21 University.

22 Q. And have you been qualified previously as an expert
23 in forensic pathology?

24 A. Yes, I have.

25 Q. How many times?

1 **A.** It's been over two hundred.

2 **Q.** And have you been qualified both in the State and
3 Federal system?

4 **A.** Yes, I have.

5 **Q.** And have you testified on behalf of both the Defense
6 and the State?

7 **A.** Yes.

8 **Q.** And do you believe that this Court should qualify you
9 as an expert in forensic pathology?

10 **A.** Yes, I do.

11 MS. VON HERRMANN: Your Honor, I would ask that she be
12 qualified.

13 THE COURT: I have done so.

14 MS. VON HERRMANN: Thank you, Your Honor.

15 **Q.** If you will, please tell the jury what the purpose of
16 an autopsy is.

17 **A.** The purpose of an autopsy is really two-fold. One is
18 to determine the cause of death and how that death occurred,
19 what brought it about. The other reason that many people
20 perform an autopsy is to determine any other diseases that
21 an individual had because we now know that many diseases,
22 such as heart disease, lung disease, cancer, they're passed
23 down through the family, and so it's very advantageous to
24 have an autopsy for that purpose.

25 In forensic pathology, we do use the autopsy as our

1 main laboratory tool and we are primarily trying to
2 determine the cause of death as well as the manner of death.

3 Q. And what, Dr. Collins, is a cause of death?

4 A. The cause of death is that event or illness that
5 actually caused the person -- or resulted in the death.
6 Even though the person may have had other diseases, it would
7 be what event happened on the day of death that killed the
8 person.

9 Q. And what about the manner of death?

10 A. The manner of death is totally different. There are
11 five manners of death, and the manner of death deals with
12 the scenario of how it came about. For instance, you can
13 have a gunshot wound and there are different ways it could
14 happen. You can inflict it upon yourself, or another
15 person, or a defective gun could accidentally go off, so the
16 scenario is different.

17 The five manners of death that we have are natural,
18 such as cancer, heart disease; suicide, homicide, an
19 accident, and the fifth one is undetermined, and really
20 undetermined is used, for instance, if we're out in a wooded
21 area and maybe we find some bones that are hundreds of years
22 old. We do not know what killed that person, and so we
23 would say that the death is undetermined because there are
24 no organs, no heart, et cetera, so rarely do we use the
25 manner of undetermined.

1 Q. Were you the forensic pathologist who was charged
2 with conducting the autopsy in this case on a Mr. Jerome
3 Tucker?

4 A. Yes, I was.

5 Q. And where did the autopsy take place?

6 A. In the autopsy suite at The Medical University of
7 South Carolina in Charleston.

8 Q. And on what date did that take place?

9 A. We performed the autopsy on 5 or May 29th, 2005, and
10 we started the examination at nine o'clock in the morning.

11 Q. And what was the date of death?

12 A. The date of death was listed as May 28th, 2005, at
13 10:20 in the morning.

14 Q. And have you been informed about the facts and
15 circumstances surrounding Mr. Tucker's death?

16 A. We are provided in South Carolina historical
17 information about the scenario by the coroner, and so we
18 were provided a brief history by Dan Bellamy, who was the
19 Deputy Coroner at that time.

20 Q. And what was the incident date?

21 A. The incident date was reported to us as the evening
22 of May 18th, 2005.

23 Q. There would be a ten day lapse then between the
24 incident date and the date of death, is that correct?

25 A. Yes.

1 Q. And does that cause you any concern or give you any
2 problems in determining the cause and manner of death?

3 A. Not in this case, no.

4 Q. And as an expert in forensic pathology, have you had
5 a number of occasions to interpret and to look at various
6 types of head injuries?

7 A. Yes, I have.

8 Q. And have you had an opportunity in this case to
9 review your report, any other -- any photographs, or any
10 other things that you requested in order to make some sort
11 of determination?

12 A. Yes.

13 Q. And are you satisfied that you have all the
14 information that you need?

15 A. Yes, I am.

16 Q. All right. Is there anything that you've requested
17 that we've not provided?

18 A. No.

19 Q. All right. If you will, please explain, just
20 briefly, what sort of external injuries, if any, the victim
21 in this case, Mr. Jerome Tucker, had.

22 A. Externally, he had some abrasions or scratches that
23 were located on the left shoulder, and there was small,
24 round, like punctate dots, if you will, on the left
25 shoulder, and then there were two lines of scratches on the

1 right shoulder, and then there was one scratch on the right
2 upper belly/chest region, and then on the legs, there was
3 some bruises or contusions on the right upper thigh.

4 Q. And how about the internal injuries, just briefly, if
5 you can give the jury an overview of those injuries.

6 A. The major findings were internal, and they were of
7 the head region. There was an area on the left skull with
8 numerous fractures. There had been surgical intervention,
9 so there were some screws and hardware from the brain
10 surgeon. There was also a marked amount of bleeding beneath
11 the skull around the brain, as well as inside the brain.
12 This was predominantly on the left side of the man's head.

13 There was also some bruising to the brain on the left,
14 and a little bit on the right side of the head, all of this
15 located beneath the fracture.

16 Q. Doctor, I'm going to have this photograph marked ---

17 **PHOTOGRAPH MARKED FOR IDENTIFICATION AS**

18 **STATE'S EXHIBIT 15.**

19 Q. --- and I ask you if you can identify this
20 photograph?

21 A. Yes, I can. This is a section -- I mean a photograph
22 taken in my autopsy room. You will see there is a ruler
23 with a label that says, "F.A." for forensic autopsy, "05"
24 for 2005, and "296" because of the year, this was the two
25 hundred and ninety-sixth case, and the organ in the

1 photograph is Jerome Tucker's brain that we removed at the
2 time of autopsy.

3 MS. VON HERRMANN: I would move to have this admitted
4 into evidence, Your Honor.

5 MR. GALMORE: Your Honor, I would -- I would renew my
6 previous objection.

7 THE COURT: I would admit it into evidence.

8 **PHOTOGRAPH MARKED IN EVIDENCE AS STATE'S EXHIBIT 15.**

9 Q. Just one last preliminary question. Do you feel like
10 this would aid the jury in understanding your explanation of
11 the autopsy and the injuries to the brain to have this
12 photograph?

13 A. Yes.

14 Q. And if you will, and you can step down if you need to
15 -- would that be beneficial, or are you okay there? You, I
16 know, have had the opportunity to observe many cerebral type
17 injuries during your years, and what does this photograph
18 show in layman's terms?

19 A. I'll hold the photo like so. The way it is oriented
20 is that the ruler is at the back of the brain, and at the
21 top of the page is where the front of the brain is, so
22 you're looking -- as if you're looking at the top of his
23 brain, his nose is this direction; his back is down below
24 you.

25 Most of the injuries, the large majority of the brain

1 injuries, bleeding, bruising to the brain, is on the left
2 side. The brain has two halves, and it's on the left side,
3 and this location where you can see the bleeding and the
4 torn tissue is the area beneath that fracture site that was
5 identified both before death and at the time of autopsy.

6 Q. And is this injury consistent with being struck with
7 a stick?

8 A. Yes. It's consistent with being struck with a hard
9 object. What's very important about this photograph is
10 getting your left and right in order and correlating it with
11 the fracture because you can have brain injury from being
12 struck by an object where your head is still and the object
13 is moving.

14 You can also have brain injury with a fall from a
15 height where nothing is moving but the head is actually the
16 moving object, so you can see it's different, and what is so
17 very important is it results in two different types of brain
18 damage, and it's called coup-contrecoup, and if you can get
19 the right and left straight, it will all make sense.

20 Coup means strike, and it means that the injury would
21 be on the -- the brain injury would be on the side where the
22 fracture site is when you get struck with an object. The
23 brain is still; the object is moving. That's what we have
24 in this case, correct. We have fracture site, and the
25 bruising to the brain is on the same side as the fracture

1 site. That is equivalent to our equal sign, this person was
2 hit with an object.

3 You can have a little bit of injury to the right side
4 because the brain can move within the skull, but the vast
5 majority of your injury is directly beneath the fracture.
6 That's very important to understand.

7 The opposite scenario would be if this man had fallen
8 down from a height, way up high, like off of a balcony, and
9 fell down and hit his head, struck his head. He would have
10 fractures on the left side. However, the vast majority of
11 the brain injury would be on the opposite side, would be on
12 the right side, and that is not what we have in this case,
13 and that's called contrecoup, so you could have the same
14 fracture, the same bone injury, and have different sides of
15 the brain damaged and bruised depending on whether you're
16 struck with a bat, or an object, or a piece of wood, or you
17 fall from a great distance and hit your head.

18 Q. Did you have an opportunity to review some of the
19 photographs with me prior to your testimony today?

20 A. Yes.

21 Q. And let me show you what's been marked as State's
22 Exhibit 6 and also State's Exhibit 5. Would you tell the
23 jury, please, if the injury that you see there, that you saw
24 when you conducted his autopsy, would be consistent with an
25 individual, this individual, falling off of that porch?

1 **A.** No, it would not. This porch looks to be two, maybe
2 three feet high. If an individual had fallen, usually they
3 -- the most common type of fracture would be a single linear
4 or lined fracture and the skull would not be depressed
5 inward, such as in this case, and a fall from this porch
6 onto the ground would not produce these -- the bruising and
7 tearing up of the brain on the left side.

8 **Q.** What if that individual were to strike his head on
9 one of the concrete steps here, would that create this type
10 of injury?

11 **A.** If an individual fell and fell with a lot of force or
12 moving fast and fell on the corner of a concrete step, that
13 concrete could fracture the skull. It could cause the skull
14 to be depressed inward on the brain, but the main injury to
15 the brain itself would be on the opposite side, ---

16 **Q.** And that ---

17 **A.** --- so that would not -- that's not what we have
18 here.

19 **Q.** Now, do you find it -- does it concern you at all
20 that the evidence that we have is that there was no breaking
21 of the skin, no blood, or anything of that type when this
22 injury took place? Is that -- is that typical? Does that
23 concern you at all?

24 **A.** It doesn't concern me. It depends on the object. A
25 broader object, a wide board, a width such as a baseball bat

1 with the smooth surface may not tear the skin. The skin is
2 elastic; it gives. We all know that our skin can stretch to
3 a certain degree. A narrower object, such as a very small,
4 heavy bar, could cause the skin to tear, but it's not
5 uncommon at all to have fractures from even motor vehicle
6 accidents where you don't have any tearing of the skin at
7 all, but you have massive destruction beneath the scalp.

8 Q. And so would it surprise you to know that this
9 individual, although he was unconscious, did not appear to
10 have any abrasions on his head shortly after the incident
11 took place?

12 A. No.

13 Q. And what is a closed head injury?

14 A. A closed head -- there are different terms that
15 people will use. Some people use closed head injury to mean
16 that the outer covering, the dura, of the brain is not -- is
17 not torn, is not ripped. Other people will use closed head
18 injury to mean that the skull is not totally separated and
19 the brain coming through, and then some others will use
20 closed head injury to mean that the scalp is intact, the
21 scalp is not torn.

22 Q. And what is the definition of blunt force trauma?

23 A. There are two types of force trauma we talk about in
24 forensics. One is sharp force, ice pick, scissors, knife,
25 glass, and the other is blunt force, something that is a

1 heavy object, or you could have blunt force from falling
2 from a great height to the floor, so it's just the type of
3 force the body receives, whether it's a sharp force piercing
4 into the body or a blunt force that carries its energy to
5 the body covering a greater area on the body. It's a larger
6 hit to the body.

7 Q. And so is it fair to say -- or let me ask you this:
8 What did you determine or can you determine to a degree of
9 medical certainty the cause of death in this case?

10 A. Yes, I can.

11 Q. And what is that?

12 A. It was listed as cerebral contusions, and a contusion
13 is a bruising. Cerebral is the brain; cerebral contusions
14 and hematomas, which are large blood clots, collections of
15 blood, bleeding, due to severe closed head injury due to
16 blunt force trauma to the head.

17 Q. And what did you determine to be the manner of death?

18 A. The manner of death, we classified as homicide.

19 Q. Thank you, Doctor.

20 MS. VON HERRMANN: Please answer any questions Mr.
21 Galmore may have.

22 THE COURT: Mr. Galmore.

23 CROSS EXAMINATION

24 BY MR. GALMORE:

25 Q. Dr. Collins, I think you testified that prior to

1 performing an autopsy you received some historical
2 information on the person?

3 A. Yes.

4 Q. And you received that historical information in this
5 case?

6 A. Yes, from Mr. Bellamy.

7 Q. Yes, sir, and he's the County Coroner here for Horry
8 County?

9 A. Yes. At that time, he was listed as the Deputy
10 Coroner, yes.

11 Q. Yes, ma'am. What historical information did you
12 receive?

13 A. Do you want me to read it? It's Page 1 of the
14 Autopsy Report, and we list it as Case History.

15 Q. Yes, ma'am. Just give the jury an idea of what
16 information you received from Mr. Bellamy.

17 A. We were told from Mr. Bellamy that we had a fifty-two
18 year old black man, and the incident date was the 18th of
19 May. We were told that Jerome Tucker was sitting down when
20 he was struck with a board. EMS ambulance was notified, and
21 he was taken to Conway Hospital and later transferred to The
22 Medical University of South Carolina.

23 Q. All right, thank you. You received that information
24 prior to performing the autopsy?

25 A. Yes.

1 Q. Did you receive any other information prior to
2 performing the autopsy?

3 A. We received brief medical information from Con- --
4 from the Coroner, and the information came from Conway
5 Hospital, that there was a blood alcohol level of point
6 three, and they did a urine drug screen, and that was
7 positive for cocaine. We also had some radiographs or C.T.
8 scans that showed the bruising to the brain and swelling to
9 the brain, and we were told that he went downhill,
10 deteriorated, and so they took him to surgery on the 22nd of
11 May, and we saw that hardware at the time of autopsy.

12 Q. Okay. Now, you explained that the skull had numerous
13 fractures. What did you mean by that?

14 A. Breakages in the skull on the left side.

15 Q. Were you able to determine whether one blow or many
16 blows were struck?

17 A. No.

18 Q. No, you were not able to determine that?

19 A. That's correct.

20 Q. Now, you testified that it is your opinion that the
21 contrecoup was not present in this case, is that correct?

22 A. You will always have -- you have the coup or the
23 damage directly beneath the fracture, and you can have some
24 minor on the opposite side, directly opposite, but not to
25 the degree of conia to contrecoup.

1 Q. But what type of height would a body have to fall
2 from in order for the contrecoup to be present?

3 A. It depends on the landing surface. It depends on if
4 it's a flat surface they're falling from, the age, et
5 cetera. For instance, in children, you can fall five feet
6 and have no injury whatsoever. You could fall out of a
7 first or second story window and it just depends on what
8 you're falling on, and how old you are, if you're going to
9 have a skull fracture.

10 Q. So I guess the velocity of the fall would have
11 something to do with whether or not the contrecoup injury is
12 present?

13 A. Not necessarily. It's not really the velocity of the
14 fall. It's just that you could have no injury whatsoever,
15 or if you have a -- if you hit hard enough, you can have
16 bruising or skull fracture on one side and brain damage on
17 the other side, and that would be the contrecoup.

18 Q. Okay, but it's your testimony that it wasn't present
19 at all in this case?

20 A. No. We've got more injury on the left side.

21 Q. All right. Now, you also indicated that there were
22 some other abrasions and scratches on parts of -- were you
23 able to make a determination as to the source of those
24 abrasions?

25 A. No. They're non-specific. You're also unable to

1 determine the age.

2 Q. Okay, so you couldn't tell us if they occurred ten
3 days prior?

4 A. You mean prior to death? You mean on the incident
5 day?

6 Q. Yes.

7 A. It could have been on the 18th; it could have been on
8 the 17th. It could have happened en route to the hospital,
9 or transfer from Conway to MUSC, so there's no way to date
10 the scratches or tell you how they -- they're just non-
11 specific. There's not a pattern to them.

12 Q. So those scratches are not consistent with a body
13 being dragged or moved?

14 A. It could happen if they were being dragged or moved.
15 They're not the type of abrasions I see where I classify
16 them as drag marks.

17 Q. Okay.

18 MR. GALMORE: Thank you very much, Dr. Collins.

19 MS. VON HERRMANN: Your Honor, just one final
20 question.

21 **REDIRECT EXAMINATION**

22 **BY MS. VON HERRMANN:**

23 Q. You are able or you were able in this case when you
24 did the autopsy to -- you were able to differentiate between
25 the initial injury and those life-saving measures that were

1 taken prior to his death, were you not?

2 A. Yes.

3 Q. And again, it is your opinion after reviewing State's
4 Exhibit 5 and 6, that these injuries could not have been
5 caused from a fall off of that porch?

6 A. Yes, that's correct.

7 Q. Thank you.

8 MS. VON HERRMANN: I have nothing further, Your Honor,
9 and I would ask that she be allowed to be excused.

10 THE COURT: Yes, ma'am. Doctor, you are excused now.
11 You have come from a long way, and as always, I appreciate
12 your presence.

13 Does the State have any other witnesses?

14 MS. VON HERRMANN: Your Honor, that -- the State
15 rests.

16 THE COURT: All right. Mr. Foreman, I'll let you go
17 to the jury room just a moment, and I'll be calling you
18 right back very shortly.

19 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
20 **JURY.)**

21 THE COURT: All right, sir, any motions at this time?

22 MR. GALMORE: Yes, sir, Your Honor. I would move for
23 a directed verdict at this time. This evidence, viewed in
24 the light most favorable to the State, raises merely a
25 suspicion of Mr. Toomer's involvement in this case and

1 nothing more. I just submit that the evidence is
2 insufficient in this case.

3 THE COURT: Well, I note your motion and respectfully
4 deny it.

5 MR. GALMORE: Yes, sir.

6 THE COURT: The evidence, if believed by the jury, by
7 that one witness, clearly states that he struck that
8 unfortunate victim over the head with a piece of wood, and
9 the evidence by that last doctor, the forensic, clearly
10 indicated that the proximate cause of the death was a blow
11 by an object to the head, and that is consistent with the
12 first witness's testimony that the defendant did, in fact,
13 strike him in the head, all of which is for the jury to
14 conclude or to determine as finders of the facts.

15 MR. GALMORE: Thank you, Your Honor.

16 THE COURT: We are ready to go forward. Has the
17 defendant -- can you tell me is the defendant going to
18 testify or not testify?

19 MR. GALMORE: Yes, sir, he will testify.

20 THE COURT: All right. Mr. Defendant, we are at that
21 part in the trial where you have the absolute right to
22 testify and you have the absolute right to remain silent.
23 Obviously this is an important question and you would
24 discuss it with your attorney, but the ultimate decision to
25 testify or not testify rests solely with you. Do you

1 understand that?

2 MR. TOOMER: Yes.

3 THE COURT: All right. Now, if you elect not to
4 testify, I would charge the jury that the fact that you did
5 not testify could not be used against you. That fact could
6 not be even discussed in the jury room. However, it is your
7 decision, and you have said to me that it is your decision
8 that you desire to testify. I certainly accept it and we
9 will permit that.

10 All right, tell the jury I am ready when they are.

11 **(THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE**
12 **JURY.)**

13 TOMMY TOOMER, BEING FIRST DULY SWORN, IS EXAMINED AND
14 TESTIFIES AS FOLLOWS:

15 THE CLERK: Please state your name for the Court.

16 MR. TOOMER: Tommy Toomer.

17 **DIRECT EXAMINATION**

18 **BY MR. GALMORE:**

19 **Q.** Mr. Toomer, how old are you, sir?

20 **A.** I'm sixty.

21 **Q.** Okay, and where do you live?

22 **A.** .

23 **Q.** All right, and what kind of work do you do, Mr.
24 Toomer?

25 **A.** Well, none right at the moment, like cutting grass

1 and stuff like that.

2 Q. Have you ever been convicted of a crime?

3 A. No.

4 Q. Let me ask you about Mr. Tucker. How well did you
5 know, him, sir?

6 A. I know him for quite a while.

7 Q. How long would you say you've known him?

8 A. Maybe been about twenty-four years, ever since I've
9 been down here.

10 Q. Okay.

11 A. Twenty-four or twenty-five years, something like
12 that.

13 Q. Would you consider him to be a good friend of yours?

14 A. Yeah.

15 Q. All right, and what about Ms. Garrett, how long have
16 you known her?

17 A. A few months.

18 Q. How did she come to -- well, let me back up. Where
19 were you living back in May of 2005?

20 A. At .

21 Q. The house on .?

22 A. Uh-huh (affirmative response).

23 Q. And whose house is that?

24 A. Mine. I was renting it.

25 Q. You were renting the house out?

1 **A.** From Betty Taylor.

2 **Q.** How did Ms. Garrett come to be living at your house?

3 **A.** Well, Jerome had brought her over there and asked
4 them -- said they didn't have no place to live and, you
5 know, could I let them stay there for a while.

6 **Q.** How long were you supposed to let her stay with you?

7 **A.** Until they get their check, and they was supposed to
8 move out.

9 **Q.** Did she move out once she got her check?

10 **A.** No.

11 **Q.** How did her sister come to stay with you?

12 **A.** She came later.

13 **Q.** She just kind of showed up one day?

14 **A.** Yeah.

15 **Q.** Did you know if Mr. Tucker and Ms. Garrett were in
16 some kind of relationship?

17 **A.** Well, yeah.

18 **Q.** Were you in a relationship with Ms. Garrett?

19 **A.** No.

20 **Q.** She explained that she was sleeping in the bed with
21 you. What did she mean by that?

22 **A.** Well, we did sleep in the bed together, but we wasn't
23 going together, though.

24 **Q.** Okay. You weren't going with her?

25 **A.** No.

1 Q. All right. Let me ask you what happened on May 18th
2 of 2005. Tell us from the time you got off work what you
3 recall about what happened.

4 A. Well, what I recall, we -- I came home and I had a
5 half a gallon of gin and two packs of cigarettes, and, well,
6 we started drinking. They was already drinking when I got
7 there.

8 Q. Okay. Did you have any crack?

9 A. No. I didn't have no more money.

10 Q. Okay. What about this claim that drug dealers were
11 working out of your house?

12 A. No. Wasn't no drug dealers living there.

13 Q. So you're testifying that you did not have any crack
14 when you came home?

15 A. No, I did not.

16 Q. Well, you started drinking, and then what happened?

17 A. Well, everybody got all high and, you know, -- I was
18 drunk and I think I laid down across the bed or something.

19 Q. Okay. Did you have any problems with Mr. Tucker that
20 evening?

21 A. No.

22 Q. Did Ms. Garrett have any problems with Mr. Tucker?

23 A. I don't think so.

24 Q. Who else was in the house?

25 A. That's all that was in there, me, her, and him.

1 Q. What about her sister, was her sister there?

2 A. I don't know. I didn't see her.

3 Q. All right.

4 A. She might -- if she was there, she was in the other
5 room.

6 Q. Well, what about this person named Red?

7 A. I didn't never meet him till the next morning.

8 Q. Are you saying he wasn't there?

9 A. No. I didn't see him.

10 Q. Okay. He didn't smoke crack with y'all?

11 A. No.

12 Q. Do you know who Red is?

13 A. I didn't meet him till the next day. He's from New
14 York or somewhere.

15 Q. All right, so you testified that at some point you
16 laid down across the bed?

17 A. Uh-huh (affirmative response).

18 Q. Tell us what happened next.

19 A. That's when they come and told me he had fell off the
20 porch, and I came out there.

21 Q. Who come and told you that?

22 A. Wanda.

23 Q. Do you know about what time it was that she told you
24 that?

25 A. I don't really know, probably about ten, eleven,

1 something like that.

2 Q. But it was definitely dark out?

3 A. Yeah.

4 Q. Could it have been closer to one o'clock in the
5 morning?

6 A. It might have been that time. Drinking, I don't
7 know.

8 Q. All right. You say Wanda came and told you he fell
9 off the porch?

10 A. Yeah.

11 Q. And what did you do?

12 A. I got up and went out there, but I figured he was
13 just drunk, you know. I didn't figure he was hurt. I went
14 back and laid back down.

15 Q. Did you try to get him up?

16 A. No, I didn't bother him. I just figured he was going
17 to sleep it off and get up.

18 Q. So where was he when you saw him laying down?

19 A. Laying by the tree, that big ol' sycamore tree in my
20 yard.

21 Q. Did you hit Mr. Tucker in the head with a pipe?

22 A. No, I did not.

23 Q. Did you hit Mr. Tucker in the head with a stick?

24 A. No.

25 Q. Did you try to get down and talk to Mr. Tucker?

1 **A.** No. I didn't even come off the porch.

2 **Q.** So you came -- you came to the porch and saw him, and
3 then what happened?

4 **A.** Well, she was out there with him.

5 **Q.** She was out there on the ground with him?

6 **A.** Uh-huh (affirmative response).

7 **Q.** Okay.

8 **A.** She was talking to -- or trying to talk to him.

9 **Q.** Was he talking?

10 **A.** I don't know. I don't think so.

11 **Q.** All right, and what did you do after that?

12 **A.** Went back in the room because I figured he was drunk
13 or something, you know. I didn't know he was hurt or
14 nothing like that.

15 **Q.** Now, at some point the police came to the house?

16 **A.** Uh-huh (affirmative response). Then I came back out
17 there.

18 **Q.** And what happened when the police got there, sir?

19 **A.** Well, they took it on, you know, examined him, you
20 know, stuff, but they didn't think he was hurt or nothing
21 either.

22 **Q.** Did the police ask you any questions about what
23 happened?

24 **A.** They just asked me what happened and I told them he
25 had fell off the porch.

1 Q. And why did you tell them he fell off the porch?

2 A. Because they had told me he had fell off the porch.

3 I didn't know. I wasn't even out there when he fell.

4 Q. Did you tell Ms. Garrett that she'd better say he
5 fell off the porch?

6 A. No, I didn't.

7 Q. Did you threaten to harm her if she went to the
8 police?

9 A. No.

10 Q. How far away from the porch was Mr. Tucker laying?

11 A. Where that tree is, pretty close to the porch, you
12 know, but some of the roots kind of grewed up under the
13 steps, and stuff, you know.

14 Q. The house has some -- the tree has some roots that's
15 sticking out of the ground?

16 A. Uh-huh (affirmative response), yeah.

17 Q. Would you say it would be kind of tricky to walk
18 around out there?

19 A. Well, yeah, if you're about half drunk.

20 Q. Do you know anything about this claim that Ms.
21 Garrett was leaving you for her -- for Mr. Tucker?

22 A. I don't even know nothing about that. I didn't
23 discuss nothing. I didn't hear them discussing nothing like
24 that.

25 Q. Did you at any time leave your house to go buy more

1 drugs?

2 A. No. I didn't go nowhere that night.

3 Q. Did y'all chip in y'all's money together at some
4 point?

5 A. No. I didn't have no money.

6 Q. You didn't have any money?

7 A. Huh-uh (negative response).

8 Q. What about this pipe or stick, do you know anything
9 about that?

10 A. No.

11 Q. Do you keep a stick in your window?

12 A. No.

13 Q. Do you recall how many officers came out to your
14 house?

15 A. I don't really know. I think two came that night.

16 Q. Okay. Do you know if they went looking for a pipe or
17 a stick?

18 A. They might have.

19 Q. Did you try to stop them from coming in the house?

20 A. No.

21 Q. Did you drag Mr. Tucker's body from the bedroom to
22 the porch?

23 A. No. It was already outside.

24 Q. Did you touch his body at all once you saw him?

25 A. No.

1 Q. Were there other people standing around when you came
2 out to see Mr. Tucker's body?

3 A. No, I don't think nobody was there. Wasn't nobody
4 there.

5 Q. Now, after you were arrested, ---

6 A. Uh-huh.

7 Q. --- did Ms. Garrett continue to live in your house?

8 A. Well, I think they lived there for a couple of days
9 or maybe a day or so.

10 Q. And do you know when she left your house?

11 A. No, I don't.

12 Q. Do you know why she left your house?

13 A. Well, I think my mama and them had the power and
14 stuff cut off.

15 Q. So your mama had the power cut off?

16 A. Yeah, water and everything.

17 Q. And just to clarify, you say you did not strike Mr.
18 Tucker ---

19 A. No, I did not.

20 Q. --- on May 18th, 2005?

21 A. No.

22 MR. GALMORE: Please answer any questions the
23 Solicitor has for you.

24 A. All right.

25 MS. VON HERRMANN: Your Honor, I don't have any

1 questions for this witness.

2 THE COURT: You may come down. Thank you.

3 You may call your next witness.

4 MR. GALMORE: That would be the Defense case, Your
5 Honor.

6 THE COURT: All right. I'll let you go to the jury
7 room just a moment and I'll be calling you back for final
8 instructions and final summation.

9 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
10 JURY.)

11 THE COURT: Anything in reply from the State?

12 MS. VON HERRMANN: Your Honor, I need to check on one
13 witness. If you'll give me about two minutes so I can step
14 out here, then I'll give you an answer on that.

15 THE COURT: All right.

16 (PAUSE.)

17 MS. VON HERRMANN: Your Honor, we're not going to put
18 up any reply testimony.

19 THE COURT: All right. Any further motions at this
20 time? The case is concluded with regard to the testimony.

21 MR. GALMORE: Yes, Your Honor, I would renew my motion
22 for a directed verdict at this time. Again, I feel the
23 evidence is just -- raises a mere suspicion of guilt and
24 nothing more than that.

25 THE COURT: There is direct evidence, and if believed

1 by the jury that this defendant struck that unfortunate
2 victim over the head, and by which injuries he ultimately
3 died, as explained by the forensic -- there is sufficient
4 testimony for the jury.

5 MR. GALMORE: Thank you, Your Honor.

6 THE COURT: All right, sir.

7 Other than the charge of murder and the general charges
8 of presumption of innocence and credibility of the
9 witnesses, is there any other charge?

10 MR. GALMORE: No, sir, Your Honor.

11 THE COURT: I am going to charge proximate cause to
12 them.

13 MR. GALMORE: Yes, sir.

14 MS. VON HERRMANN: Yes, sir, Your Honor.

15 THE COURT: Do you have any requests to charge?

16 MS. VON HERRMANN: I do not, nothing other than what
17 you intend to charge.

18 THE COURT: Okay. Well, in fairness to the defendant,
19 I am going to charge proximate cause.

20 Bring the jury in, please.

21 As is my custom, I'm going to charge the jury prior to
22 final arguments, with your consent?

23 MS. VON HERRMANN: I'm sorry, Your Honor?

24 THE COURT: I'm going to charge the jury at this time.

25 MS. VON HERRMANN: Yes, sir.

1 MR. GALMORE: Yes, sir.

2 THE COURT: Let the record reflect that counsel for
3 the State and the Defendant has agreed that, as is my
4 custom, I will charge the jury prior to summations by
5 consent and I will have some concluding remarks at the end.

6 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE
7 JURY.)

8 THE COURT: Mr. Foreman, ladies and gentlemen, you
9 have now heard all of the testimony in the trial of the case
10 and we are at that portion where we generally have summation
11 of counsel, and then I charge you on the law. Jurors have
12 said on many occasions in the past for a number of years
13 that I've been on the bench, "I wish you'd have told me what
14 the law was even before they gave their final arguments. I
15 believe I could have followed their positions better," and
16 that makes sense to me, so with the consent of the State and
17 the Defendant, I'm going to charge you the law even prior to
18 summation, and I'll be back with some concluding remarks
19 with regards to the charge at the end of their summation, at
20 which time I'll give you the case for your deliberation.

21 Now, Mr. Foreman and members of the jury, as you are
22 well aware, the State of South Carolina charges this
23 defendant with the offense of murder. This indictment has
24 been read to you and explained to you, so I will not repeat
25 the allegations at this time. You will have that indictment

1 with you in the jury room during your deliberations.

2 Now, to this indictment, this defendant has pled not
3 guilty, which places upon the State of South Carolina the
4 burden of proving the defendant guilty if they can to your
5 satisfaction beyond a reasonable doubt.

6 A person charged with committing a criminal offense in
7 South Carolina is never, ever required to prove himself
8 innocent. I charge you that it is a vital, important rule
9 of the law of evidence that the defendant in a criminal
10 case, no matter how great or serious the offense with which
11 he is charged, must always be presumed innocent until his
12 guilt has been proven beyond a reasonable doubt.

13 Now, this presumption of innocence remains with this
14 defendant at all times, from the moment of his arraignment,
15 throughout the trial, and until you, the jury, have upon the
16 testimony and evidence presented reached a verdict of guilty
17 beyond a reasonable doubt.

18 Now, I have used the term "reasonable doubt." Let me
19 explain the definition which has been approved on that
20 subject by the appellate courts of this State. As I said,
21 the State has the burden of proving the defendant guilty
22 beyond a reasonable doubt. Some of you may have served as
23 jurors in civil cases where you were told that it was only
24 necessary to prove that a fact is more likely true than not
25 true. In criminal cases, the State's proof must be more

1 powerful than that. It must be beyond a reasonable doubt.

2 Now, ladies and gentlemen, proof beyond a reasonable
3 doubt is proof that leaves you firmly convinced of the
4 defendant's guilt. There are very few things in this wide
5 world that we know with absolute certainty, and in criminal
6 cases, the law does not require proof that overcomes every
7 possible doubt.

8 Based on your consideration of the evidence, if you are
9 firmly convinced that the defendant is guilty of the crime
10 charged, you must find him guilty. If, on the other hand,
11 you think there is a real possibility that he is not guilty,
12 you must give him the benefit of that doubt and find him not
13 guilty.

14 Now, ladies and gentlemen of the jury, I mentioned this
15 initially and I want to emphasize it to you again. Under
16 the Constitution and laws of South Carolina, you are the
17 sole and only finders of the facts in this case. I do not
18 have a right to pass upon the facts or even to express any
19 opinion which I may have to them, nor may I intimate to you
20 in any way what I may think about the guilt or innocence of
21 this defendant.

22 You are the judges, and the sole judges also, of the
23 credibility, meaning the believability, of any witnesses who
24 have testified in this case. In passing upon a witness's
25 credibility, you may take into consideration many things if

1 you choose to, such as the appearance and manner of the
2 witness, sometimes referred to as the demeanor of the
3 witness, was the witness forthright or hesitant; was the
4 witness's testimony consistent or did it contain
5 discrepancies.

6 You may choose, if you choose to consider, what was the
7 ability of a witness to know the facts about which he has
8 testified. You would always obviously consider whether or
9 not a particular witness had a cause or a reason to be
10 biased and prejudiced in favor of the testimony that he or
11 she gave.

12 You may consider, if you choose, was the testimony of a
13 witness corroborated or made stronger by other testimony and
14 evidence, or was it made weaker or impeached by such other
15 testimony and evidence.

16 As jurors, you have a right to believe a small portion
17 of a witness's testimony and to disregard the larger, or the
18 other way around. You may believe all of a witness's
19 testimony, or none. You may believe the testimony of a
20 single witness against that of many, or the other way
21 around. Most certainly you do not determine the matter of
22 credibility or believability by counting up the number of
23 witnesses who may have testified for one side or the other.

24 Mr. Foreman, and ladies and gentlemen, in judging
25 credibility and believability, you have but one single

1 objective and that is to seek and find the truth, to seek
2 and find the truth in judging credibility and believability.
3 All of these things you will consider, bearing in mind that
4 you must give the defendant the benefit of every reasonable
5 doubt.

6 Now, by the same Constitution and laws which makes you
7 the finders of the facts and the evidence as I have
8 discussed with you, I am the Judge, made the sole Judge and
9 only instructor in the law. Under your oath, ladies and
10 gentlemen, you must accept as correct the law which I now
11 charge you and apply it to the evidence as you find it, and
12 to reach your verdict.

13 If I should make an error in the law as I have
14 instructed to you, there is another time, and another place,
15 and another Court at which that error can be corrected, and
16 if necessary, repaired, but for the purposes of this case
17 today, you must accept the law as I now charge it to you,
18 remembering at all times that you take the facts as you find
19 them to be and apply those facts to the law as I now charge
20 it to you.

21 As you are well aware, the State of South Carolina has
22 charged in its indictment that this defendant is guilty of
23 the crime of murder, so it now becomes necessary for me to
24 instruct you as to the law of that crime in South Carolina.

25 What is murder by definition? Well, murder may be

1 defined as the wilful, felonious killing of a human being by
2 a human being with malice aforethought. Thus, in order to
3 convict of murder, the State of South Carolina must not only
4 prove the killing of the deceased by this defendant, but
5 must prove that it was done with malice aforethought, and
6 such proof must be beyond a reasonable doubt.

7 Let me define malice for you, please. Malice is a word
8 suggesting wickedness, hatred, a determination to do what
9 one knows to be wrong without just cause, excuse, or legal
10 provocation. Malice need not be in the mind of the one
11 doing the killing any particular length of time before the
12 act of killing to render the killing murder. If it is
13 present in the mind of the one doing the killing any length
14 of time before the acts -- the act, then its presence would
15 be sufficient to render the killing murder.

16 Malice is said to be expressed when there is manifested
17 a violent, deliberate intention unlawfully to take away the
18 life of another human being. Malice may be implied where
19 one intentionally and deliberately does an unlawful act
20 which he or she then knows to be wrong and in violation of
21 his duty to another. Malice may be implied when no excuse
22 or legal provocation for the killing appears and when the
23 circumstances attending a killing show an abandoned heart, a
24 malignant heart, fatally bent upon mischief.

25 Such implications or inferences are not conclusive, and

1 you, the jury, depending upon your view of the evidence may
2 accept or reject the same. The law says if one
3 intentionally kills another with a deadly weapon or a
4 dangerous instrumentality, the implications of malice may
5 arise. If facts are proven beyond a reasonable doubt
6 sufficient to raise an inference of malice to your
7 satisfaction, this inference would simply be an evidentiary
8 fact to be taken into consideration by you, the jury, along
9 with other evidence in the case, and you may give it such
10 weight as you determine it should receive.

11 Now, ladies and gentlemen, the State must prove, as I
12 have indicated to you, that this defendant killed the victim
13 with malice aforethought. In addition to that, the State
14 must prove beyond a reasonable doubt that the act of this
15 defendant, if any, was the proximate cause of the death of
16 the deceased. Let me define that for you.

17 Proximate cause is the direct cause. It is the
18 immediate cause. It is the efficient cause. It is that
19 cause without which the death of the victim would not have
20 resulted. There must be a chain of causation from the time
21 of the injury inflicted by the defendant until the time of
22 the victim's death. Proximate cause does not necessarily
23 mean that it occurred immediately prior to death, and so it
24 is that the State of South Carolina must prove that this
25 defendant killed the deceased and they must prove it beyond

1 a reasonable doubt.

2 They must prove, too, that any actions of this
3 defendant proximately caused the death of the deceased, and
4 they, too, must prove that as all the other issues to your
5 satisfaction beyond a reasonable doubt.

6 Now, ladies and gentlemen, whatever your verdict is, it
7 must be the unanimous verdict of all twelve of you. It
8 cannot be a verdict of the majority. Obviously it would not
9 be one of the minority. It must be the unanimous verdict of
10 all twelve.

11 Now, Mr. Foreman and ladies and gentlemen, you twelve
12 have been selected as fair and impartial jurors, sworn to
13 impartially try and to determine the facts of this case, and
14 when you comply with your oath to do so, then no one will
15 have a right to criticize your verdict and you would have
16 fully discharged your duty as jurors. You must not be
17 influenced by opinions or expressions of opinions, if any,
18 which you may have heard on the outside, but you are to
19 decide this case according to the testimony that you may
20 have heard from the lips of the sworn witnesses, along with
21 such other evidence as has been introduced.

22 All right, prior to summations, is there anything we
23 need to discuss?

24 MS. VON HERRMANN: Nothing from the State, Your Honor.

25 MR. GALMORE: No, sir, Your Honor.

1 THE COURT: All right, sir. You may have your opening
2 argument, and the State, according to the rules, will have
3 the final argument.

4 MR. GALMORE: Thank you, sir.

5 When we started this trial this morning, I talked to
6 you about roles and responsibilities, because everybody
7 involved in this case, including you, has a responsibility
8 here today.

9 First, let's go back to the Conway Police Department.
10 Let's look at what they were supposed to do. Let's look at
11 what they actually did. The police were called, went out on
12 the scene, examined Mr. Tucker, made a determination that
13 this was a medical call, and left. That was the end of the
14 case. The people who had the primary responsibility were
15 figuring this thing out. They made a decision that a crime
16 had not been committed.

17 They received this statement from Ms. Garrett four days
18 later, and based on that statement they go out and arrest
19 Mr. Toomer. Well, the case then moves to the Solicitor's
20 hands, and it becomes their job to bring you evidence
21 sufficient to convict Mr. Tucker -- excuse me, Mr. Toomer,
22 of murder because that's what they charged him with.

23 We heard testimony, Sergeant Hill was out there;
24 Corporal Vaughn was out there; Officer Carney was out there;
25 EMS was out there; the fire department was out there, but

1 none of them are in here. This is not a case of joyriding
2 or writing bad checks. This is a case of murder, and before
3 the Solicitor's Office asks you to convict him of murder,
4 they need to bring you some evidence. They need to bring
5 you some testimony.

6 We've got several witnesses that have not been brought
7 forth. You heard the tape that Ms. Garrett gave. That was
8 Sarvis and Patterson, Detective Patterson, Lieutenant
9 Sarvis. They're not brought here. That's five policemen
10 involved in this case. Officer King, that's the person that
11 Wanda Garrett was looking for. She's not here. Before they
12 ask you to convict someone on a most serious offense, in our
13 laws, we need a little more than the word of Wanda Garrett.

14 You'll have the 911 tape. Go back there and listen to
15 it if you like. It says on that tape, "The boy hit him with
16 a pipe." Well, if Mr. Tucker is her best friend, I think
17 she would have said Tommy Toomer hit him with a pipe, not
18 all this stuff about a pipe is Spanish for a stick. I don't
19 know, but it seemed to me that today she knew the difference
20 between a stick and a pipe, but her statement at that time
21 was, "The boy hit him with a pipe."

22 I could take a guess at what happened. Some boy did
23 hit him with a pipe, somebody that she doesn't want to say.
24 It's a lot easier to blame this man. You know how she said,
25 "I was fearing for my life. Drug dealers all over the

1 house. I was scared before they were going to kill me."
2 Maybe somebody has threatened her. I don't know, but it's a
3 lot easier to blame him than anybody else.

4 If it was Tommy Toomer, she would have said, "Tommy
5 Toomer hit me with a pipe -- hit him with a pipe." Now,
6 they made some hay about the fact that she was incoherent,
7 they couldn't understand what she had to say, but you've got
8 the 911 tape. That's the first time we've heard her voice
9 since this incident happened, and you can make a decision
10 for yourself, but it appeared to me that she was fairly
11 coherent.

12 When the police show up, all she had to say, "He hit
13 him. Here's the stick." Did any of that happen? No, for
14 four days. You heard the tape. It happened on Tuesday;
15 we're here doing the interview on Saturday. I dare say if
16 that police car hadn't driven by when it did, she wouldn't
17 have went to the police then either.

18 She goes on Saturday and gives this amazing story, a
19 story that puts her course at the center of attention.
20 "They're fighting over me, Tommy dating me; I'm leaving him
21 to go to this next person. It's all about me." Well, it's
22 not. Unfortunately for this case, it is. It is all about
23 her. Do you believe her? I submit to you that she cannot
24 be believed.

25 I asked her, "What name do you go by?" Matos, Malavi,

1 Linda Garrett. I should have asked her for her driver's
2 license. She cannot be believed. Then she was convicted of
3 common law robbery. We call that theft, and like I asked
4 her, "You were charged with armed robbery and criminal
5 conspiracy?" That does not sound like the type of person
6 that I want to hang my hat on in a case of this importance.
7 She's a thief. She even wrote bad checks on her own
8 account. Two Social Security numbers, four different names.

9 I don't want to believe her. I don't want you to
10 believe her. The reason why I don't want you to believe her
11 is because she had ample opportunity to tell whatever tale
12 she was going to tell. If this is the truth, she had plenty
13 of time to say it. The policemen were there that night.
14 She had three extra days to go down to the Police Department
15 and say something, but she didn't.

16 Instead, she lived with Mr. Toomer for free, drink up
17 his liquor. You heard the man. He doesn't have any crack.
18 He doesn't do any drugs, and she's just embellishing her
19 story. Even when he was arrested, she still tried to live
20 in the house. That's unfortunate, but that's the type of
21 person that they're asking you to believe.

22 Now, I told you that this case was either a one or a
23 two. Number one, it didn't happen. No murder occurred.
24 Number two, it did happen, but it wasn't Mr. Toomer, and in
25 spite of Dr. Collins' testimony, I'm not ready to let go of

1 Number One.

2 Mr. Toomer testified they told him Tucker fell off the
3 porch. He testified he was asleep in the bed. The police
4 officer said when they came, he seemed like the most
5 coherent one there. When they asked him what happened, "He
6 fell off the porch."

7 Now, Dr. Collins testified about this, coup,
8 contrecoup, brain injury concept, and I think at first she
9 said, "Well, if you fall off a balcony and you hit the
10 ground, there will be injury to the other side of the
11 brain." I guess the brain kind of does that inside, but
12 "Fall from three feet, a porch, it kind of depends. We
13 don't know. Maybe there will be some bruising. We just
14 don't know."

15 You're going to have the picture of Mr. Tucker's brain
16 in the jury room, and you will see the bruising. She was
17 good about pointing it out on the left side. There's just a
18 little bit on the right. Perhaps he fell off a porch like
19 Mr. Toomer was told he did. I don't know. I wasn't there.

20 Maybe someone struck him. I don't know. They want you
21 to believe that that someone was Tommy Toomer, and they want
22 you to believe Wanda Garrett, to believe it. Well, in
23 addition to the EMS, the fire department, and Conway Police
24 Department, the testimony was there was several people at
25 the house. Wanda's sister was there. Bring her up here and

1 see if she heard anything. She might not have been in the
2 room. She might have heard a thud. She might have saw,
3 according to them, a body being dragged out and thrown out
4 on the porch, on the ground.

5 Her boyfriend was there. He's not here. According to
6 her, Red was there. According to Mr. Toomer, Red showed up
7 the next day. You think Ms. Garrett was using alcohol? The
8 police officer said she was incoherent, they can't get
9 anything from her, using drugs admittedly. I think that's
10 not the kind of person that you want to depend on in a case
11 of this magnitude.

12 You have a serious responsibility because Mr. Toomer's
13 fate depends on your verdict. Now, in the beginning, Judge
14 Cottingham said you have no friends to reward and no enemies
15 to punish, and I want you to take that back there in the
16 jury room with you when you are reaching your deliberation,
17 because sometimes people have a feeling that when someone is
18 dead, someone has to go to jail, and the only someone here
19 for that is Mr. Toomer. That's not your job. Your job is
20 not to instantly send somebody to jail just because.

21 Your job is to work through this evidence and make a
22 determination. Your job is to look at, like the Judge said,
23 the demeanor of Mr. Toomer, sixty years old, never been in
24 trouble with the law, seems like an average sixty year old
25 man to me, a humble person.

1 Ms. Garrett, wheeled up in here, crying on cue, maybe a
2 little too staged. It is your job to look at their
3 demeanor. It is your job to determine if you want to
4 believe her.

5 Now, the Judge also mentioned the burden of proof, and
6 this is an important legal concept. He said you have to be
7 firmly convinced of Mr. Toomer's guilt. Otherwise if there
8 is a real possibility that he didn't do it, you have to let
9 him go, and any doubt that you have is resolved in his
10 favor.

11 Ms. Garrett is not the one to hang your hat on until
12 you're firmly convinced, but we don't have anything else.
13 We don't have any other witnesses. We don't have any
14 physical evidence. All we have is her, and I beg you, do
15 not rest your hopes on her. It just -- it just isn't right.

16 Your burden of proof is a high burden. Let me explain
17 it like -- like this. In the civil court, the jury is asked
18 to decide if a person is culpable or not culpable by a
19 verdict, and it's called by a greater weight or a
20 preponderance of the evidence. That means you weigh the
21 evidence on both sides and if the scale tips just ever so
22 slightly in favor of one side or the other, you can rule for
23 that side, but this is not a civil trial.

24 The reason why the burden is different in a civil trial
25 is because you're asking for money. That's it, just money.

1 This is a criminal case. This is a case where the State is
2 asking for jail, and, therefore, the burden is higher. The
3 burden is, as the Judge said, beyond a reasonable doubt.

4 Now, I'm not going to sit here and tell you beyond
5 every possible doubt. You know, you could have a doubt that
6 the sun will come up tomorrow, but it's come up every day so
7 far, so I submit it's probably going to come up tomorrow.
8 You could have a doubt that there are fish in the Waccamaw
9 River, but I think that would be an unreasonable doubt.

10 In this case here, there is reasonable doubt, because
11 the only thing they brought you is a questionable witness.
12 I ask you, beg you, do not do this. Please find Mr. Toomer
13 not guilty of this charge. Thank you.

14 THE COURT: Thank you, Mr. Galmore.

15 MS. VON HERRMANN: Love or money, that's why people
16 kill people. It's always one of those two, and this case is
17 no exception, no exception at all. That man was jealous.
18 He was jealous because he had himself a woman, Wanda
19 Garrett, and we may look at Wanda Garrett and we may say,
20 who in the world would want that crack-smoking Wanda
21 Garrett. Well, there was one person that wanted that crack-
22 smoking Wanda Garrett, and it was that crack-smoking
23 defendant.

24 There was only one thing he told you that was truthful
25 the entire time that he was on that stand, and you know what

1 it was, "She and I slept in the same bed." That's the only
2 truthful thing he told you. He said, "We sleep in the same
3 bed." Let me tell you something. I don't know about you
4 guys, but I don't go around sleeping in the same bed with
5 people that I'm not having a relationship with. I don't
6 just walk up to people on the street and say, "Hey, can I
7 come sleep in the bed with you?" and that isn't what
8 happened in this case either. That's not what happened.

9 He had a relationship with her, and so did Jerome
10 Tucker. He came home that night; he heard them having that
11 conversation. He became enraged about it. He went to the
12 corner of that room, he picked up a stick, and he
13 (indicating) -- he slammed that man on the left side of his
14 head.

15 What did Wanda Garrett say? She said, "I was sitting
16 here." She said, "Jerome was sitting here on my left." She
17 said, "I couldn't see it that well because it was in my
18 peripheral vision. I thought he may have been hit on the
19 left shoulder." He wasn't hit on the left shoulder. He was
20 hit on the left side of his head, and this is what happens
21 to your brain when you are hit with a blunt object on the
22 left side of your head.

23 He killed that man, and you know what, we can sit here
24 all day long and talk about how bad Wanda Garrett is. You
25 know what, if I could roll up in here with a bus load of

1 nuns and have them come up there and testify to you, I would
2 do it. I would do it all day long, but nuns don't hang out
3 in crack houses. It doesn't happen, and we're left with the
4 witnesses that we have. We're left with Wanda Garrett
5 because she was the only one that's available to tell us
6 what happened.

7 Now, Sergeant Hill, you know, Sergeant Hill is a great
8 guy. There's nothing wrong with Sergeant Hill, but here's
9 what happens to him. He comes -- he gets the 911 call
10 saying there's been an assault. He comes rolling up in his
11 car. He looks down there; he sees a guy laying on the
12 ground, no visible injuries. He talks to Tommy Toomer who
13 says, "We were sitting up here drinking." Remember that.
14 He said to Sergeant Hill, "We've been sitting up here
15 drinking, and he got up and he fell off the porch," not
16 "Somebody came and told me that he had fell off the porch."
17 "We were up here drinking. He stood up, and he fell off the
18 porch."

19 Well, we know that's a lie. We know that's a lie now
20 because Dr. Collins told us that it's impossible for it to
21 have happened like that, but Reggie Hill didn't know that.
22 He is a guy who is a shift supervisor. He goes out there
23 with his flashlight. The only person that he can talk to is
24 Mr. Toomer, and he looks at the guy's head and there are no
25 visible injuries.

1 I've got to tell you, there are a lot of people out
2 there who if they didn't see a visible injury wouldn't think
3 that the person had been struck with something. You expect
4 to see some sort of visible injury. You expect it, but that
5 ain't the way it always happens, and that's what Dr. Collins
6 told us.

7 She's one of the most renowned forensic pathologists in
8 the country and certainly on the east coast. That is a
9 woman who made no bones about it. She said the cause of
10 death in this case, blunt force trauma to the head.

11 The Judge asked you about -- told you about proximate
12 cause, that we have to prove the defendant's actions killed
13 that victim. She gave it to you right there. "What's the
14 cause of death? Was it alcohol?" "No." "Cocaine?" "No."
15 "Cirrhosis of the liver?" "No." Blunt force trauma to the
16 head, that's what killed him.

17 Now, basically what you have to look at here is -- and
18 I don't disagree with Mr. Galmore about this, but it's who
19 you believe. It's who you believe, and if you believe Mr.
20 Toomer, then you believe that this woman just made this
21 story up out of whole cloth, out of whole cloth. She's just
22 sitting there at one o'clock at night, twiddling her thumbs,
23 "Hey, I think I'll go run over across the street in a panic
24 and call 911 and claim that somebody got hit over the head
25 with a stick." Come on; she didn't do that. She didn't do

1 that. It happened just like she said it did.

2 Again, you know, she may have written some bad checks.
3 She may have done some things that we wouldn't have done,
4 but she was truthful about that. She told you what she saw,
5 what she heard, and what she did, and when she got back
6 there, she was looking at a man who had just struck another
7 individual with that stick. She was scared, and he said to
8 her, "You better keep your mouth closed, and you better say
9 that he fell," and she didn't say anything.

10 She didn't say anything for three days, and who can
11 blame her? I mean, here is a guy who is violent, who has
12 committed a violent act against another person. I think we
13 would all be afraid of somebody like that, so when she got
14 an opportunity and she came across an officer, she stopped
15 -- she could have let that car go by, but she flagged that
16 officer down.

17 She went into the Police Department, and she gave a
18 statement. You all have got that taped statement there.
19 You've also got -- you've heard from the witness stand about
20 the statement that she gave the police. Those statements
21 have been consistent, consistent, consistent the whole way
22 through. You know why they are consistent? Because they're
23 true. Whose statement is not consistent? Mr. Toomer's.
24 Why is his statement not consistent? Because it ain't true.
25 It's not true.

1 Now, the Judge has told you a little bit about the law,
2 and I want to talk to you a little bit about that, too.
3 Murder. What is murder? It is the killing of another with
4 malice aforethought, and what is malice? It is the
5 intentional doing of a wrongful act. Is striking someone
6 with a blunt force instrument the intentional doing of a
7 wrongful act? Absolutely, or it could be ill will, hatred,
8 or hostility. Is striking someone with a blunt force object
9 ill will, hatred, or hostility? Absolutely, or it can be a
10 reckless disregard for the lives and safety of others.
11 Absolutely.

12 This guy fits every single element for murder. He's
13 killed somebody and he's done it with malice aforethought.
14 Even if you didn't have anything, the law says that you can
15 infer malice by the use of a deadly weapon, and the Judge
16 told you, and I will tell you that the law says that
17 examples of things that are deadly weapons are guns, knives,
18 baseball bats, other blunt force objects, ice picks, things
19 like that, so that alone will allow you to infer that he
20 committed the act of murder.

21 The Judge also mentioned to you about proof beyond a
22 reasonable doubt. What is proof beyond a reasonable doubt?
23 Proof that leaves you firmly convinced. What is it not?
24 It's not absolute certainty. It's not beyond all doubt.
25 It's not a strong uncertainty even, and it's not beyond a

1 moral certainty. It is a doubt. It's something that you do
2 every day. It's common sense.

3 Think of it like this: If I told you a story -- well,
4 let's just say that Wanda Garrett told you a story, which
5 she did from up here. If you believe that, if you believe
6 what she's saying and telling you, then you are firmly
7 convinced. "I'm firmly convinced. Yes, she told me the
8 story and I believe it. I'm firmly convinced of that."

9 That's what it requires. It's not this amorphous,
10 crazy, you know, lights are going to come down kind of
11 certainty. It's just using your common sense. It's using
12 your common sense, and I think when you go back there and
13 you look at all the evidence and you listen to the 911 tape,
14 if you want to, and you look through these pictures, you
15 will find that the person who is most believable is Wanda
16 Garrett.

17 There's one last thing I want to talk to you about with
18 regard to this case. Look at this picture particularly when
19 you get back there, State's Exhibit Number 6, and you
20 remember that Reggie Hill said that his body was laying here
21 with feet towards the tree, head up here near the steps, and
22 then he's stretched out. If you fall off a porch, is that
23 the way your body would be? Think about it. That's not how
24 people fall. People don't fall stretched out straight.
25 People don't fall with their head next to the place that

1 they would fall and their feet stretched out in front of
2 them. It's implausible, and the reason it's implausible is
3 because that ain't what happened. That ain't what happened.

4 Go back there. Think about it. Look at the evidence,
5 but don't get caught up in what Mr. Galmore wants you to get
6 caught up in, little details, details about the fact that
7 maybe she had a conviction, those things. That's not what
8 this is about. What is important is the big picture and
9 whether you believe that he did this or not, and I submit to
10 you that he did, and I ask you to find him guilty of murder.
11 Thank you.

12 THE COURT: Ladies and gentlemen of the jury, you've
13 now heard all of the evidence in the case. You've heard the
14 summation from counsel for the State and for the Defense,
15 and it now is your turn to consider the evidence in your
16 deliberations and to write a verdict of either not guilty or
17 guilty. Whatever your verdict is, of course, it must be the
18 unanimous verdict of all twelve.

19 I have instructed you fully with the law of this case,
20 remembering, however, that you are the finders of the facts
21 and you take the facts as you find them to be and apply them
22 to the law of the case as I have instructed it to you.

23 I ask that you remember these elements that I have told
24 you about prior to final summation. I have discussed with
25 you the burden of proof that the State must have, and it is

1 beyond a reasonable doubt. I told you that you and you
2 alone are the sole and only finders of the facts in this
3 case. I have told you that this defendant comes into Court
4 under the presumption of innocence and that presumption
5 remains with him until you, the jury, have found him guilty
6 to your satisfaction beyond a reasonable doubt.

7 You will understand that as finders of the facts, you
8 are the judges, the sole judges of the credibility, meaning
9 the believability of every witness who has testified.

10 Now, there will be pencil and paper provided in the
11 jury room for you, Mr. Foreman. If you or any member of
12 your distinguished jury has any questions about what the law
13 is, please write that question down, let the bailiff know,
14 and I will answer, remembering now that nobody in this wide
15 world can tell you what the facts are.

16 I always use an example that occurred to me in
17 Darlington, South Carolina, some years ago when we were
18 trying a young woman for arson, it having been alleged that
19 she burned a mobile home. Jurors sent me a questionnaire,
20 "Judge, tell us if she smoked or not." Well, I knew she
21 smoked because I saw her outside in the hall smoking, but
22 that question was never asked. Consequently, it was never
23 answered and was not in the record, and I couldn't tell the
24 jury that.

25 I tell you that to say that you will base your verdict

1 on the law and evidence heard in this courtroom, and as I've
2 indicated, your verdict must be unanimous.

3 Now, these matters, including the picture that I've
4 introduced into evidence, will be with you in the jury room.
5 If you need to re-hear the two tapes or any portion of them,
6 let me know and we'll bring you out here, so I think with
7 the microphone you can hear it better out here.

8 No objection to that if they need to hear that?

9 MS. VON HERRMANN: No, sir.

10 MR. GALMORE: No, sir.

11 THE COURT: And, of course, you don't need to hear it
12 again unless you want to, but if you want to, it's available
13 to you, so I'm going to let you go to the jury room. Do not
14 begin your deliberations until I send these evidentiary
15 questions in to you, along with this indictment.

16 Now, with reference to the indictment, Mr. Foreman, the
17 indictment, as I've told you, is not evidence. It's just
18 the allegations. On the back of this indictment is the word
19 "Verdict." It's one of two verdicts, either not guilty or
20 guilty. You will sign your name as to what your verdict is,
21 and as I've said, it must be the unanimous verdict of all
22 twelve of you. It will be under the word "Verdict" under
23 here.

24 To my two alternates, I wish the rules permitted you to
25 go with them. It does not, but I have to keep you here at

1 this time. The twelve jurors will now go into the jury
2 room. When this indictment comes in, begin your
3 deliberation, but the alternates will stay outside for
4 further instruction. Thank you.

5 **(THE JURY RETIRES TO THE JURY ROOM AT 3:41 P.M., AND**
6 **THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)**

7 THE COURT: I want you to take this into the jury,
8 with the evidence. Tell them to begin deliberations, and
9 find them a safe place to stay. I want to keep the
10 alternates here, not in the courtroom, but you may take them
11 outside.

12 THE BAILIFF: Yes, sir.

13 **(THE INDICTMENT AND EXHIBITS ARE TAKEN TO THE JURY AT**
14 **3:43 P.M.)**

15 THE COURT: All right, we are in recess subject to the
16 call of the jury.

17 (OFF THE RECORD)

18 **ON THE RECORD**

19 **(AT 3:55 P.M., THE FOLLOWING TAKES PLACE IN THE**
20 **PRESENCE OF THE JURY.)**

21 THE COURT: Mr. Foreman, I have received your
22 communication, and that is exactly what I had asked you to
23 do if you had any inquiries. First, you want to listen to
24 the 911 tape, and I'm going to do that in just a second, and
25 then you say you want the testimony of the Conway Police,

1 his initial conversation that night with the defendant, Mr.
2 Toomer.

3 MS. VON HERRMANN: Do you want me to help her find
4 that?

5 THE COURT: No. Just go ahead and play the 911 tape.
6 (STATE'S EXHIBIT 1, THE 911 TAPE, IS PLAYED FOR THE JURY.)

7 THE COURT: Now, let's play the testimony back of the
8 investigating officer.

9 THE REPORTER: I'm almost there, Judge.

10 THE COURT: Okay. Are you going to try and get just
11 that particular part?

12 THE REPORTER: I don't know where it is.

13 THE COURT: Just play it all then.

14 (THE TESTIMONY OF REGINALD HILL IS PLAYED FOR THE JURY.)

15 THE COURT: All right, resume your deliberations.
16 Thank you, Mr. Foreman. Continue your deliberations and let
17 me know when you have reached a verdict. Thank you.

18 (AT 4:10 P.M., THE JURY RETURNS TO THE JURY ROOM, AND
19 THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

20 NOTE FROM JURY MARKED AS COURT'S EXHIBIT 1.

21 (OFF THE RECORD)

22 ON THE RECORD

23 THE COURT: All right, bring the jury in, please, and
24 the alternates.

25 I don't want any comment from anybody with reference to

1 the verdict, whatever it is. I have no concept of what it
2 is, but I will accept no outburst or any comment of any
3 kind. To do so would involve contempt of court.

4 (AT 5:03 P.M., THE JURY RETURNS TO THE COURTROOM WITH
5 ITS VERDICT, AND THE FOLLOWING TAKES PLACE IN THE PRESENCE
6 OF THE JURY.)

7 THE COURT: Mr. Foreman, has the jury reached a
8 unanimous verdict?

9 THE FOREMAN: Yes, we have.

10 THE COURT: If this be the unanimous verdict,
11 everybody please signify by raising your right hand. The
12 jury has so signified. Miss Christina, accept the verdict,
13 please.

14 THE REPORTER: One juror did not raise his hand.

15 THE COURT: One juror did not raise their hand. All
16 the jurors raise your hand if this is a unanimous verdict.

17 THE REPORTER: He is the alternate.

18 THE COURT: Okay. The jury has so signified. All
19 right, publish the verdict.

20 THE CLERK: The State of South Carolina versus Tommy
21 Toomer, Indictment 2005-GS-26-2531, on the charge of murder,
22 "We, the jury, by unanimous consent, find the defendant
23 guilty." Timothy Tilma, Foreperson.

24 THE COURT: Thank you. Anything further from this
25 jury?

1 MR. GALMORE: No, sir, Your Honor.

2 THE COURT: All right.

3 Mr. Foreman, ladies and gentlemen, you were the finders
4 of the facts in this case and you have reached a verdict. I
5 can tell you that upon the law and the evidence in this
6 case, such a verdict is certainly justified depending on
7 your findings of the facts.

8 None of you asked to come and sit this week, and
9 particularly none of you asked to sit on a murder trial, but
10 having been asked to do so, you've done your duty in
11 accordance with your oath. The State of South Carolina and
12 this Court is in your debt and you have my thanks. You are
13 now excused for the day, and I ask that you report back in
14 the morning downstairs to the jury room. There are several
15 other cases, civil and criminal, to be resolved this week.
16 You are now excused. Thank you. Nine-thirty downstairs,
17 including the alternates.

18 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
19 **JURY.)**

20 THE COURT: All right, have the defendant come
21 forward.

22 MS. VON HERRMANN: Your Honor, I do not have a
23 sentencing sheet prepared. Would you like for me to do that
24 right now, or would you like me to get one and submit it to
25 you after ---

1 THE COURT: I want to get it right now and be through
2 with it.

3 MS. VON HERRMANN: Can I have two minutes to go get
4 the sentencing sheet?

5 THE COURT: Let me impose sentence and then we can get
6 the sentence sheet worked out.

7 MS. VON HERRMANN: Yes, sir.

8 THE COURT: Have the defendant come forward. You
9 remain in the courtroom while we do that.

10 Is there anything further from the State?

11 MS. VON HERRMANN: Nothing, Your Honor.

12 THE COURT: Anything further from the Defense?

13 MR. GALMORE: Your Honor, we would just ask you to
14 take into consideration his -- his age, the fact that he
15 does not have a prior record. I know your hands are pretty
16 much tied in what you have to do, but we would ask you to
17 consider the minimum sentence in this case.

18 THE COURT: Well, the minimum sentence, of course, is
19 thirty years or life imprisonment.

20 MR. GALMORE: Yes, sir.

21 THE COURT: The jury, in my view, outside the presence
22 of the jury, given the totality of the circumstances would
23 be hard pressed not to find him guilty when there's a direct
24 testimony in the case. The blow, as testified by the
25 distinguished psychologist (sic), could only have been done

1 heavy blow to the head. No way in the world it could have
2 been done by falling off the porch. He was the only one
3 there available to do it, and in the excitement of a moment,
4 you know, we like to think everything is the truth. In the
5 excitement of that moment, she told the truth when she
6 called 911 and said he hit him in the head with a pipe, so
7 there was plenty of evidence.

8 I don't desire to put the defendant in jail for the
9 rest of his life, but I have one of two alternatives, life
10 imprisonment or thirty years.

11 MR. GALMORE: Yes, sir.

12 THE COURT: That's the only choice I have, and I'm
13 sure you told him that initially.

14 MR. GALMORE: Yes, sir.

15 THE COURT: In accordance with the statutory law made
16 and provided for one convicted of murder, it is the judgment
17 sentence of the Court that you be confined for a period of
18 thirty years. Thank you.

19 MR. GALMORE: Thank you, Your Honor.

20 THE COURT: All right, sir.

21 I will wait while you go ---

22 MS. VON HERRMANN: Your Honor, Mr. DeBusk has gone to
23 get that sentencing sheet for me.

24 THE COURT: Okay. You don't need him to execute it,
25 do you?

1 MS. VON HERRMANN: No, sir.

2 THE COURT: Well, get it and I will be in my chambers.

3 MS. VON HERRMANN: Yes, sir.

4 MR. GALMORE: Just for the record, Your Honor, I would
5 make a motion for a new trial. I would make a motion for an
6 order in arrest of judgment just based on the insufficiency
7 of the evidence and based on the insufficiency of the
8 indictment in this case.

9 THE COURT: Your motion is respectfully noted and also
10 respectfully denied. In this case, the evidence suggests
11 that -- there's a direct witness that said that this
12 defendant struck that unfortunate victim over the head, ---

13 MR. GALMORE: Yes, sir.

14 THE COURT: --- and the only testimony is that the
15 proximate cause was a strike to the brain, and the testimony
16 is further that it could not have occurred by falling from a
17 porch, and so the jury frankly had very little choice but to
18 find him guilty, and that's what they did unanimously.

19 All right, we will finish the sentence sheet, and we
20 are in recess until nine o'clock in the morning.

21 (Conclusion of Transcript of Record.)

22

23

24

25

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF HORRY)

3

4 I, the undersigned Bettye S. Gum, Certified Court
5 Reporter and Notary Public in and for the State of South
6 Carolina, do hereby certify that the foregoing is a true,
7 accurate and complete Transcript of Record of all the
8 proceedings had and evidence introduced in the hearing of
9 the captioned case, as taken by Dixie Cox Eubank, Official
10 Reporter, and transcribed by me, relative to appeal, in the
11 Court of General Sessions for Horry County, South Carolina.

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

14

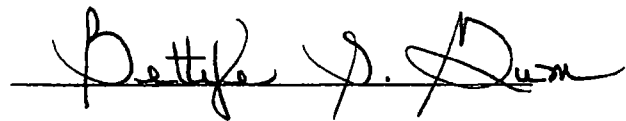
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August 5, 2009

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19

BETTYE S. GUM, CCR-CVR-CM

20

Certified Court Reporter and

21

Notary Public for South Carolina

22

My Commission Expires: 7/13/14

23

24

25

State vs. Tommy Foorner

185

(05-6526-2531)

Horry County Courthouse

RANDOM STRIKE SHEET

(James Calmore, Asst PI)

JUDGE NAME:

Sorted by: Random Nbr

TRIAL TYPE: Criminal

PANEL ID: COTTINGHAM 3E

DESCRIPTION: COTTINGHAM 3E

Trial

COURTROOM JAR

1	Hudson, Charles A	206	W	M	(X ^①)	()	()	✓ ^①
2	Geraldo, Eugene	161	W	M	()	()	()	✓ ^②
3	Cowell, William E	97	W	M	()	(X ^①)	()	✓ ^③
4	Jarrell, Diana L	214	W	F	()	()	()	✓ ^④
5	Roberts, Patricia C	332	W	F	(X ^②)	()	()	✓ ^⑤
6	Bennett, Ophelia S	30	B	F	(X ^③)	()	()	✓ ^⑥
7	Donnelly, Donald J JR	122	W	M	()	()	()	✓ ^⑦
8	Berkley, Ruth R	31	B	F	()	()	()	✓ ^⑧
9	Branton, Bryan L	46	W	M	()	()	()	✓ ^⑨
10	Blevins, Kimberly L	38	W	F	()	(X ^②)	()	✓ ^⑩
~~11~~	~~Denny, Christopher F~~	~~115~~	~~W~~	~~M~~	~~()~~	~~()~~	~~()~~	✓ ^⑪
12	Claridy, Michael D	83	B	M	()	()	()	✓ ^⑫
13	Lutes, John T	246	W	M	()	(X ^③)	()	✓ ^⑬
14	Nelson, William A	288	W	M	()	(X ^④)	()	✓ ^⑭
✓ 15	Tilma, Timothy P	385	W	M	()	()	()	✓ ^⑮ Foreman
16	Boynton, Lisa M	43	W	F	()	()	()	✓ ^⑯
17	Mills, Jennifer J	271	W	F	()	()	()	✓ ^⑰
18	Swartz, Thomas W JR	375	W	M	()	(X ^⑤)	()	✓ ^⑱
19	Decaro, Christyne S	110	W	F	()	(X ^⑥)	()	✓ ^⑲
20	Pokrant, Mark R	313	W	M	()	()	()	✓ ^⑳
21	Ammons, Justin E	10	W	M	()	()	()	✓ ^㉑
22	Ashley, Loraine H	14	W	F	()	(X ^⑦)	()	✓ ^㉒
23	Todd, Melissa C	387	W	F	()	()	()	✓ ^㉓

Horry County Courthouse RANDOM STRIKE SHEET

JUDGE NAME :

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PANEL ID : COTTINGHAM 3E

COURTROOM 1AR

DESCRIPTION : COTTINGHAM 3E

Sorted by: Random Nbr

Trial

24 Steven, Joseph M	366	W	M	()	(X ¹)	()
25 Drake, Wayne	124	W	M	()	()	()
26 Nagy, Alan L	286	W	M	()	()	()
27 Heidenberg, Marguerite L	190	W	F	()	()	()
28 Cox, Charlene Y	98	B	F	()	()	()
29 Pardue, Julie A	300	W	F	()	()	()
30 Ambrose, Melvin L	9	W	M	()	()	()
31 Domke, Damonte Darla J	121	W	F	()	()	()
32 Martin, William J	257	W	M	()	()	()
33 Jackson, Rose M	213	B	F	()	()	()
34 Mandarin, Geraldine A	252	W	F	()	()	()
35 Ammons, Sidney M JR	11	W	M	()	()	()
36 Davis, Susan A	108	W	F	()	()	()
37 Smith, Gerard P	353	W	M	()	()	()
38 Ward, John W	406	W	M	()	()	()
39 Hess, Mary E	194	W	F	()	()	()
40 Guffey, Robert W JR	174	W	M	()	()	()

✓¹ alternate
✓² alternate

Total Number of Jurors:

40

** END OF REPORT **

**Horry County Courthouse
RANDOM STRIKE SHEET****JUDGE NAME :****TRIAL TYPE :** Criminal**Sorted by:** Random Nbr**PANEL ID :** COTTINGHAM 3E 1**DESCRIPTION :** COTTINGHAM 3E 1

Trial

COURTROOM JAR

1 Morris, Katherine J

278

W

F

~~(X)~~ (4) () ()**Total Number of Jurors:**

1

**** END OF REPORT ****

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Horry)Tommie Toomer)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

12 6668
APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (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 reference 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 fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber C.I. P.O. Box 205 Ridgeville, SC 29472
2. Name and location of Court which imposed sentence Horry County, Common Pleas
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2005GS2602531 Murder
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) MAY 19, 09 30 years
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Heard June 6, 2012 - Filed July 18, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. AFFirmed
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) N/A
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) _____
- (b) _____
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Counsel was ineffective in that Counsel
- (b) failed to object to the trial judge admitting
- (c) statement regarding prior bad act.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. N/A
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. N/A
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. N/A
- iii. _____

iv. _____
 (d) the date of each such disposition:

i. _____
 ii. _____
 iii. N/A
 iv. _____

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

i. _____
 ii. _____
 iii. N/A
 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?

N/A

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

(a) which grounds have been presented:

i. _____
 ii. N/A
 iii. _____

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

i. _____
 ii. N/A
 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) Appeal was filed
 (b) _____
 (c) _____

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

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motion or applications with respect to this conviction, which you filed? Appeal

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

- (a) the name and address of each attorney who represented you:
- i. James Galtmore Horry County
- ii. P.O. Box 1666 Conway, SC 29528
- iii. Chief Robert M. Dudek P.O. Box 11589 Columbia SC 29211
- (b) the proceedings at which each such attorney represented you:
- i. Trial
- ii. Appeal
- iii. _____

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

Reversal, New Trial

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

STATE OF SOUTH CAROLINA)

County of)

12
6668
VERIFICATION

I, , 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.

Tommy Toomer #334825

SWORN to and subscribed before me this 22nd
day of August, 2012.

Ludeman Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

FILED
JULY COUNTY
2012 AUG 28 AM 11:08
MELANIE HUGGINS-WARD
CLERK OF COURT

12

6668

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

I, , 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.

Tammy Turner [#]334825
Applicant

SWORN or affirmed to and subscribed before me this
22nd day of August, 2012.

Ludeman Bryant
Notary Public

My Commission Expires: May 26, 2020

FILED
JERRY COUNTY
2012 AUG 28 AM 11:08
MELANIE HUGGINS-WARD
CLERK OF COURT

TATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	
	)	2012-CP-26-6668
	)	
Tommy Toomer. 334825	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent. making its Return to the Application for post conviction relief (PCR) filed August 28, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the July 2005 term of the Horry County Grand Jury for murder (2005-GS-26-2531). James Galmore, Esquire, represented Applicant.

On May 19, 2009, the Applicant was tried and convicted as indicted. The Honorable Edward B. Cottingham sentenced Applicant to thirty years imprisonment. Applicant filed timely notice of intent to appeal and his conviction was affirmed by order filed July 18, 2012.

Attached herewith and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and if available, 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. "Counsel was ineffective in that counsel failed to object to the trial judge admitting statement regarding prior bad act."

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: ME
ATTORNEYS FOR RESPONDENT

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

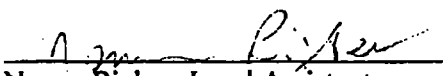
12/17, 2012.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	
	)	2012-CP-26-6668
	)	
TOMMY TOOMER, #334825	)	
	)	
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:

Jarrold Elliott Owenbey, Esquire
P.O. Box 585
North Myrtle Beach, SC 29597

DATED this 17th day of December, 2012.


 Norma Bigbee, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS NON-JURY
2 COUNTY OF HORRY) (2012-CP-26-06668)
3)
4 TOMMY TOOMER)
5 vs.) TRANSCRIPT OF RECORD
6)
7 STATE OF SOUTH CAROLINA) December 18, 2013
8) Conway, S. C.
9)

10 B E F O R E:

11 HONORABLE STEVEN H. JOHN, Judge

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

13 RANDALL K. MULLINS, ESQ.
14 JARROD E. OWNBEY, ESQ.
15 ATTORNEYS FOR APPLICANT

16 JOSHUA L. THOMAS, ESQ.
17 ASSISTANT ATTORNEY GENERAL
18 ATTORNEY FOR STATE
19
20
21

22 DIXIE COX EUBANK
23 CIRCUIT COURT REPORTER
24 FIFTEENTH JUDICIAL CIRCUIT
25

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I N D E X

RESPONDENT'S OPENING (THOMAS)	3			
APPLICANT'S OPENING (MULLINS)	4			
<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
JAMES GALMORE				
Mr. Mullins	5		47/57	
Mr. Thomas		38		
APPLICANT'S SUMMATION (OWNBEY)	59			
RESPONDENT'S SUMMATION (THOMAS)	62			

E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
Applicant's 1	Transcript of Record		4
Applicant's 2	Opinion		5
Applicant's 3	Ms. Matos' aliases		13
Applicant's 4	Public Index (Garrett) (Matos) etc.	(19)	
Applicant's 5	(Wanda Matos, Garrett, Vasquez)		20
Applicant's 6	Letter (Plea bargain) (From Galmore)		24
Applicant's 7	Log of Public Defender's Office		50
Applicant's 8	Cover sheet (from discovery packet)		53

1 (THE FOLLOWING TAKES PLACE ON DECEMBER 18, 2013.)

2 THE COURT: All right. This is (2012-CP-26-06668),
3 State of South Carolina, County of Horry, Tommy Toomer,
4 Applicant, versus the State of South Carolina, Respondent.

5 This is a Post-Conviction Relief Application hearing of the
6 Applicant, Tommy Toomer.

7 Is the State ready to proceed?

8 MR. THOMAS: We are, Your Honor.

9 THE COURT: And Defense?

10 MR. MULLINS: Ready to proceed, Your Honor. Randy
11 Mullins and Jarrod Ownbey of Mullins Law Firm in this
12 particular ---

13 THE COURT: All right. Very good.

14 You want to make an initial background statement?

15 MR. THOMAS: Just for the record, Your Honor.

16 Mr. Toomer was indicted in July of 2005 for murder. He
17 was represented on that charge by James Galmore.

18 He went to trial on May 18th through 19th, 2009, before
19 the Honorable Edward B. Cottingham, and a jury. The jury
20 found Mr. Toomer guilty of murder. Judge Cottingham sentenced
21 him to thirty years.

22 An appeal was perfected by Robert M. Dudek of the Office
23 of Appellate Defense. The Court of Appeals affirmed that
24 result, and affirmed the conviction in unpublished Opinion
25 2012-UP-439.

APPLICANT'S OPENING (MULLINS)

4

1 Mr. Toomer filed this PCR on August 28th, 2012, alleging
2 ineffective assistance of counsel. He is present and
3 represented by counsel, and I will turn it over to them.

4 **THE COURT:** All right, Mr. Mullins, be glad for you to
5 go forward.

6 **MR. MULLINS:** May it please the Court, Your Honor. By
7 way of housekeeping matter, Mr. Toomer and I have looked at
8 two exhibits we would like to mark for the record as
9 Petitioner's 1 and 2.

10 **THE COURT:** All right.

11 **MR. MULLINS:** That would be -- 1 is the trial
12 transcript. They are also the Appellate numbers from the
13 record on appeal on that transcript ---

14 **THE COURT:** All right, sir.

15 **MR. MULLINS:** The second is the unpublished Opinion of
16 the Court of Appeals on this matter.

17 **THE COURT:** All right. Very good.

18 **MR. THOMAS:** And those are already in you packet, Your
19 Honor, so ---

20 **THE COURT:** Is there any objection to that from ---

21 **MR. THOMAS:** No objection, Your Honor.

22 **THE COURT:** All right. Very good. They are in
23 evidence.

24 (TRANSCRIPT OF RECORD MARKED APPLICANT'S EXHIBIT NUMBER
25 1.)

RESPONDENT'S OPENING (MULLINS)
JAMES GALMORE - DIRECT BY MULLINS

5

1 (OPINION MARKED APPLICANT'S EXHIBIT NUMBER 2.)

2 MR. MULLINS: For the record, Your Honor, the
3 Transcript is 1, and the Opinion is 2.

4 THE COURT: All right. Very good.

5 MR. MULLINS: Petitioner calls James Galmore to the
6 stand.

7 THE COURT: All right. Please come around and be
8 sworn, sir.

9 JAMES GALMORE, being first duly
10 sworn, testifies as follows:

11 DIRECT-EXAMINATION BY MR. MULLINS:

12 MR. MULLINS: May it please the Court, Your Honor.

13 THE COURT: Go forward.

14 Q. Mr. Galmore, are you employed, sir?

15 A. Yes sir. I work at the Horry County Public Defender's
16 Office.

17 Q. And how long have you worked there?

18 A. Since 1998.

19 Q. And you are licensed to practice law in the State of
20 South Carolina?

21 A. Yes sir, since 1995.

22 Q. Have you ever been licensed anywhere else?

23 A. No sir.

24 Q. Hold any other State licenses or certifications?

25 A. No sir.

JAMES GALMORE - DIRECT BY MULLINS

6

1 Q. What's your work experience, Mr. Galmore?

2 A. I worked in private practice after passing the Bar in
3 1995 for three years, and then I started at the Public
4 Defender's Office.

5 Q. And you are duly licensed and in good standing at this
6 time?

7 A. Yes sir.

8 Q. All right. Do you recall representing Mr. Tommy
9 Toomer, who is the Petitioner and seated at my table?

10 A. Yes sir.

11 Q. All right. Do you recall the -- when that incident
12 arose back in 2005?

13 A. Yes sir.

14 Q. I'm sure you reviewed your file prior to coming here
15 today.

16 A. Actually I think you might have my file.

17 Q. All right. Did you allow me a full copy of your file?

18 A. Yes sir.

19 Q. All right. Was that May 18, 2005, when the incident
20 that eventually resulted in the death of Mr. Jerome Tucker?

21 A. Yes sir.

22 Q. Okay. And do you recall going to trial on that matter?

23 A. Yes sir.

24 Q. All right. Now, by way of background, Mr. Toomer was
25 your client. Do you recall his nickname being "Country"?

JAMES GALMORE - DIRECT BY MULLINS

7

1 A. Yes sir.

2 Q. Okay. And Mr. Tucker that died, do you recall his
3 nickname being "Cowboy"?

4 A. Yes sir. He was "Cowboy".

5 Q. And sometimes in doing these cases you have to figure
6 out who everyone is?

7 A. Yes sir.

8 Q. All right. And that can be difficult sometimes.

9 A. (NODS HEAD AFFIRMATIVE)

10 Q. And the other people that were involved in this matter,
11 there's a fellow by the name of "Red"; do you recall that?

12 A. Yes sir. That's correct.

13 Q. All right. How about Wanda Garrett? Do you recall
14 her?

15 A. Yes sir. She might have had a different last name.

16 Q. All right. We'll come back to that.

17 A. Okay.

18 Q. Okay. There was a Gladys Rodriguez who was involved as
19 well?

20 A. Yes sir.

21 Q. How about Willie Chandler; do you recall him?

22 A. I didn't recall Mr. Chandler.

23 Q. Now, was the investigative agency Conway Police
24 Department?

25 A. Yes sir.

JAMES GALMORE - DIRECT BY MULLINS

8

1 Q. And then there was -- since this was a murder case
2 there was an autopsy?

3 A. That's correct.

4 Q. And there was an expert who testified at trial?

5 A. Yes sir.

6 Q. There was never any issues regarding a confession by
7 Mr. Toomer during the case, was there?

8 A. No sir. He did not confess to the offense.

9 Q. All right. And just by way of background, so the
10 record is clear, this was something where the victim suffered
11 an injury and then died later on?

12 A. Right. This was blunt-force trauma to the head.

13 Q. Okay. And that was here in Conway?

14 A. Yes sir, downtown Conway.

15 Q. I believe that was what, ?

16 A. Yes sir. It's just about a mile or so from the
17 courthouse.

18 Q. Did you ever go visit the scene?

19 A. I believe the house was torn down.

20 Q. When did you get this case assigned to you?

21 A. It would have been back in 2005 when he was initially
22 arrested.

23 Q. Okay. Did you ever go visit the scene after you got
24 the file?

25 A. Yes, but like I said, by the time I visited the scene

1 the house was removed.

2 Q. Okay. You never actually got to see the physical
3 scene?

4 A. No.

5 Q. And by the time that you had gotten there the scene was
6 gone?

7 A. Yes sir.

8 Q. Now, does the Public Defender's Office, back at that
9 time when the file arose, have an investigator?

10 A. Yes sir.

11 Q. All right. Do you recall who that was?

12 A. Our investigator at that time was Jerome Randall.

13 Q. All right. And did Mr. Randall ever go out to the
14 scene and do an investigation in this matter?

15 A. No sir.

16 Q. All right. And you were kind enough to provide me with
17 your file. Did you give me the entire file?

18 A. Yes sir.

19 Q. Do you recall ever asking Mr. Randall to do any work on
20 this?

21 A. No sir.

22 Q. All right. Did you ever -- well, let rephrase that
23 question. You had gotten initial discovery from the State
24 around July of 2005?

25 A. Yes sir.

JAMES GALMORE - DIRECT BY MULLINS

10

1 Q. All right. And I notice there was some notation that
2 there were some documents missing from that file, from the
3 Disclosure. Did you ever file a Supplemental **Brady** requesting
4 additional documents?

5 A. No. I don't recall filing a supplemental brief.

6 Q. Do you normally and customarily do that?

7 A. Yes, I would.

8 Q. All right. When the documents come in from the
9 Solicitor's Office, and they give you a sheet to sign, do you
10 inventory that sheet to make sure all the documents are there?

11 A. Yes, I do.

12 Q. All right. And if there's anything missing what's your
13 normal customary practice to do?

14 A. If there's anything missing you file a supplemental
15 discovery request, and mention specifically what items are
16 missing, and either wait for it or have a hearing on the
17 matter.

18 Q. Okay. And does that happen just in the normal course
19 of business sometimes?

20 A. Yes sir.

21 Q. All right. Things get left off of copies?

22 A. Yes sir.

23 Q. Not a blinding anything affairs, but just it happens?

24 A. It happens.

25 Q. Do you recall, in this murder case, filing a

1 Supplemental Brady? I think I already asked you that.

2 A. Right. I do not recall filing one.

3 Q. Okay. Now, do you recall any particulars about Mr.
4 Toomer, since you had been with him for about four years, like
5 how far he went in school, his education, whether he could
6 write and write?

7 A. I would have to look back at my file for those notes.

8 Q. Isn't that normally on bond papers and things like
9 that, when the police interview someone, how far they went in
10 school and what their education is?

11 A. Sometimes the police officers will put that on -- on
12 their paperwork.

13 Q. To the best of your knowledge was Mr. Toomer an
14 educated man?

15 A. If I'm recalling correctly he was in his mid-sixties
16 when we went to trial, maybe sixty-two, somewhere around
17 there. He had worked most of his life, but he wasn't an
18 overly educated person, but he had worked most of his life and
19 he was, I guess, enjoying his later years.

20 Q. Okay. Did Mr. Toomer have any prior convictions when
21 he went to trial?

22 A. No sir.

23 Q. So -- now, let's go back to the case itself. Did you
24 ever trans -- you received things back then in cassette tapes,
25 as I recall. Did you ever have those transcribed?

JAMES GALMORE - DIRECT BY MULLINS

12

1 A. I did not transcribe any tapes in this case.

2 Q. Okay. Now, the incident itself involved a night,
3 obviously, of drinking and drug use? Do you recall that?

4 A. Yes sir.

5 Q. Do you recall that?

6 A. Yes sir.

7 Q. And it happened there at ?

8 A. Yes sir.

9 Q. All right. And at the time this occurred, one of the
10 main witnesses, again, she was Mr. Wanda Garrett, or Wanda
11 Matos?

12 A. Yes sir.

13 Q. All right. Did you ever look at her NCIC to see how
14 many aliases she had?

15 A. Well, I guess we had gotten to that a moment ago.
16 She -- to the best of my recollection she has many aliases ---

17 Q. Okay.

18 A. ---And a lot of times she was a defendant in other
19 cases in this -- in this County, so she's no stranger to the
20 court system.

21 Q. Let me show you a document and ask if you can identify
22 it, please.

23 A. Yes sir. This is an NCIC for Ms. Wanda Garrett.

24 Q. Okay. And did you get a copy of the State's disclosure
25 that they made to me prior to trial?

1 A. Yes sir.

2 Q. All right. Now I've bate-stamped that document, and I
3 apologize, but ---

4 Your Honor, that's documents I received bate-stamped
5 Mullins Law Firm, 280 through 293 for the record. We would
6 like to admit that as Petitioner's 3, please.

7 THE COURT: Any objection?

8 MR. THOMAS: Just where did you get a copy of that
9 from?

10 MR. MULLINS: From the Public Defender's Office.

11 MR. THOMAS: No objection.

12 THE COURT: It's in evidence.

13 (MS. MATOS' ALIASES (GARRETT), ADMITTED INTO EVIDENCE AS
14 PETITIONER'S EXHIBIT NUMBER 3.)

15 Q. Let me hand that back to you, Mr. Galmore. Is that the
16 same document you just ID'd?

17 A. Yes sir.

18 Q. All right. And I believe that there are almost -- it's
19 eleven or twelve aliases for Ms. Matos, Wanda Garrett Matos
20 however she was.

21 A. There are twelve different aliases for this lady.

22 Q. Okay. And did you also notice the number of Social
23 Security Numbers she had? Directing your attention back to
24 the front page that's marked as Defendant's 3, bate-stamped,
25 280. Do you see the Social Security Numbers up there?

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1 A. Yes sir. There are two different Social Security
2 Numbers for Ms. Garrett.

3 Q. And is there only one number difference between the
4 two?

5 A. Yes sir.

6 Q. Okay. All right. Now, no question, James, that Ms.
7 Garrett had an extensive criminal record as a frequent
8 customer of the Criminal Court system?

9 A. That's right. She was well known to our office.

10 Q. Okay. And which brings me back to something. Did you
11 ever disclose to Mr. Toomer that the Public Defender's Office
12 had represented Ms. Garrett in the past?

13 A. No, I did not.

14 Q. Were you aware of that?

15 A. Well, I've -- I don't -- I did not represent Ms.
16 Garrett ever, but I do recognize her as being a frequent
17 Public Defender client.

18 Q. And did you ever -- let me show you a print-out in the
19 record of the Horry County Public Index.

20 Let me show it to counsel first.

21 MR. MULLINS: Your Honor, let me come back to that line
22 of questions ---

23 THE COURT: All right, sir.

24 Q. As to the public index, did you ever check the public
25 index prior to going to trial for any charges for information

1 on Ms. Garrett?

2 A. No sir, I didn't.

3 Q. All right. Let me show you -- let me show counsel
4 first.

5 Let me show you a print-out I received from the Horry
6 County Fifteenth Judicial Circuit Public Index.

7 A. Yes sir.

8 Q. Do you ever look at that, Mr. Galmore?

9 A. No, I have not seen this document.

10 Q. Have you ever -- have you normally, in the ordinary
11 course of business, checked the public index to see what you
12 can find on any witnesses going to court?

13 A. Yes, I do. This case was back in 2009. I don't know
14 if we had access to the public index back then.

15 Q. Well, what is the arrest date that's on that particular
16 ---

17 **MR. THOMAS:** Your Honor, I'm just going to object to
18 any questions about the specifics of that document. He's
19 talking about ---

20 **THE COURT:** Well, I've got a -- I've got a question
21 first. I don't know -- I don't have the information, and I
22 would need to have it in front of me, regarding that document,
23 that public index was in existence at the point in time of May
24 18th to 19th, 2009, and if it was in existence that index was
25 accessible by the Public Defender's Office. I would need that

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1 to be shown to the Court first, because I do not believe -- I
2 don't have any information that it was available at that point
3 in time.

4 MR. THOMAS: And I would just also object -- if he
5 wants to get into her record the best evidence of that would
6 be an actual government print-out, not a ---

7 THE COURT: Well, I appreciate that, but as to that
8 document, I don't have any information that such index existed
9 at that point in time.

10 MR. MULLINS: And if Your Honor -- maybe I made --
11 maybe I could just ask that question.

12 THE COURT: All right.

13 Q. Mr. Galmore, do you know when the public index was
14 accessible at the time you went to trial on Mr. Toomer's case?

15 A. I don't recall.

16 Q. Was one of the issues, Mr. Galmore, that Ms. Garrett
17 was a resident of Mr. Toomer's home when this incident
18 occurred?

19 A. Yes sir. That was one of the issues.

20 Q. All right. And did you ever investigate whether there
21 were any other places where Ms. Garrett had represented to law
22 enforcement or the Courts that she lived?

23 A. I did not try to track down her residences.

24 Q. Okay.

25 A. I know one of the problems with Ms. Garrett was that

1 she was apparently missing for several years, and had just
2 resurfaced, and when she resurfaced they tried the case.

3 Q. And that's what I'm trying to get to. Okay. Did you
4 ever research to see where Ms. Garrett was living prior to
5 where Mr. Toomer went to trial?

6 A. No sir.

7 Q. Did you ever research where Ms. Garrett was living
8 prior to the incident that occurred at Mr. Toomer's home?

9 A. I did not. I think the information was that she was
10 staying with him, and I don't know if that was a residence, or
11 just visiting on a regular basis.

12 Q. And no question that address was ?

13 A. That's correct.

14 Q. ---Here in Conway, ?

15 A. Yes sir.

16 **MR. MULLINS:** And Your Honor, I'd like to proffer that
17 document as Petitioner's Number 4, and for the record that is
18 Horry County Fifteenth Judicial Circuit Public Index, case
19 number 22404CA.

20 **THE COURT:** You have no substantiating information to
21 show it is a public record in existence on May 18, 2009.
22 You've got to show that it existed. You just can't put it,
23 proffer and -- if it didn't exist at that point in time it has
24 no relevance to this matter.

25 **MR. MULLINS:** Well, in the alternative, Judge, I would

1 ask you to take judicial notice it was clearly in the public
2 record as of ---

3 **THE COURT:** Well, as of today that's fine, but what
4 existed at that time is your question. All right. It doesn't
5 prove anything.

6 **MR. MULLINS:** All right. I'm marking it a proffer,
7 Judge, because it has a different address than the
8 that occurred.

9 **THE COURT:** Let me hear from the State.

10 **MR. THOMAS:** Your Honor, I would object on the ground
11 you've already raised. We have no idea this was in existence
12 at the time, and also, if he wants to proffer criminal arrest
13 records those are readily available downstairs. He could have
14 brought a certified copy of that.

15 **THE COURT:** Sustained.

16 **MR. MULLINS:** Can I mark it for identification, Judge?

17 **THE COURT:** You can mark it for identification, but
18 it's not part of the record of this matter, and not for the
19 purposes of review of this Court's decision, because it is not
20 before me, cannot be before me until you prove that it existed
21 on May 18th or 19th of 2009, and you haven't done that.

22 **MR. MULLINS:** Understood, Your Honor.

23 **THE COURT:** But it is not part of the record. You can
24 mark it for identification and you can take it back, but it is
25 not part of this record.

1 MR. MULLINS: Yes sir.

2 THE COURT: No sir. Don't leave it. It is not part of
3 the record.

4 MR. MULLINS: I understand.

5 (RECORD OF MS. GARRETT, aka, MATOS, (22404CA) MARKED
6 APPLICANT'S EXHIBIT NUMBER 4, FOR IDENTIFICATION ONLY.)

7 Q. When you begin cases in the Public Defender's Office
8 did you ever check to see if any of the State's witnesses have
9 previously been represented by the Public Defender's Office?

10 A. Yes sir.

11 Q. All right. And did you do such a check in this
12 situation?

13 A. I did not. I notice she was not represented by me.

14 Q. Let me show you another document which I obtained from
15 your file, and see if you can identify this document.

16 And for the record, that has been bate-stamped as 295,
17 received from Public Defender's Office.

18 A. This appears to be some type of incident report, or a
19 summary from the Conway Police Department.

20 Q. Okay. And you reviewed those documents prior to going
21 to trial?

22 A. Yes sir.

23 Q. And you do that ordinarily, in the ordinary course of
24 business?

25 A. Yes sir.

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1 Q. All right. And that's part of the documents you had
2 turned over to my office in connection with our request?

3 A. Yes sir.

4 MR. MULLINS: Move to admit that, Your Honor, please.

5 THE COURT: Any objection?

6 MR. THOMAS: Can I just clarify that? Did it come from
7 his file? He has ID'd that as his?

8 A. Yes sir. Yes sir.

9 THE COURT: Okay. All right.
10 What number would that be?

11 COURT REPORTER: Five.

12 THE COURT: Five is in the record.

13 (WANDA MATOS, aka GARRETT, aka VASQUEZ, DOCUMENT
14 ADMITTED INTO EVIDENCE AS APPLICANT'S EXHIBIT NUMBER 5.)

15 Q. Let me show you what's been marked and is admitted now
16 as Exhibit Number 5, that you previously just discussed. Does
17 that identify the witness that eventually testified against
18 Mr. Toomer as Wanda Garrett?

19 A. Yes, it does.

20 Q. All right. Does it identify her with a new name?

21 A. This lists Ms. Garrett or Ms. Vasquez.

22 Q. All right. So she's now known as Ms. Vasquez?

23 A. Yes. Wanda Matos Vasquez.

24 Q. All right. Where does that indicate that the
25 investigating officer interviewed her from?

1 A. This document shows that Ms. Vasquez was living in
2 Puerto Rico when she was interviewed.

3 Q. Okay. In any of the NCIC you have previously
4 identified as Exhibit Number 3 indicate that she had ever had
5 the last name, last name Vasquez?

6 A. No, it doesn't.

7 Q. Do you know if there was any record in the NCIC, or any
8 other document, that showed you what happened to her from the
9 time of this incident until they located her in Puerto Rico?

10 A. No sir.

11 Q. Did you ever think that you might need to do some
12 background on what occurred here?

13 A. I was content the let her disappear.

14 Q. Okay. All right. But she did appear the day of trial,
15 and testified?

16 A. Yes sir.

17 Q. Okay. So that strategy didn't quite work out?

18 A. Didn't work out.

19 Q. All right. Let's talk about some other things here.
20 Prior to trial you were given a plea bargain of voluntary
21 manslaughter?

22 A. Yes sir.

23 Q. Okay. Let me show you a document and see if you can
24 identify it. Do you recognize that document?

25 A. Yes sir. This is a letter that I sent to Mr. Toomer

1 with his plea offer.

2 Q. Okay. And you normally and customarily do that?

3 A. Yes sir.

4 Q. Do you recall what that plea offer was?

5 A. No, I don't.

6 Q. Would it surprise you it was manslaughter?

7 A. No, it wouldn't.

8 Q. It would not?

9 A. No.

10 Q. Having been asked that question do you now recall that
11 it was?

12 A. I don't remember the exact terms of the plea offer.

13 Q. You don't?

14 A. No sir.

15 Q. Well, do you recall it being something -- one type
16 manslaughter and up ---

17 A. Yes sir.

18 Q. Okay.

19 MR. MULLINS: Your Honor, we would move to admit that
20 document as Petitioner's 6, Your Honor.

21 THE COURT: Any objection?

22 MR. THOMAS: Your Honor, just under the rule of
23 completeness. It says, "See Solicitor's insert" on here. I
24 would just ask that the insert also be made a part of the
25 record.

1 **MR. MULLINS:** I'm getting that, Judge. I'll put it in.

2 **THE COURT:** All right. While you are doing that ---

3 Mr. Galmore, do you have your Public Defender file?

4 A. Mr. Mullins has it.

5 **MR. MULLINS:** I've got it, Judge.

6 **THE COURT:** Okay. I appreciate that, but you have his
7 file.

8 **MR. MULLINS:** Yes sir. Well, I ---

9 **THE COURT:** You made a copy of it? He indicates you
10 have his file.

11 **MR. MULLINS:** I do, Your Honor.

12 **THE COURT:** Well, could you give it back to him then,
13 so he has it available.

14 You made a copy of it; correct?

15 **MR. MULLINS:** I did, but I think we returned that back
16 to their office. I normally, customarily do, Judge, is when
17 we get a file in like this now that's document intense, we
18 scan the whole file and give everything a bates stamp.

19 **THE COURT:** All right. So you -- Mr. Galmore, you
20 don't have your file, and Mr. Mullins, you say you sent it
21 back to the Public Defender's Office?

22 **MR. MULLINS:** Yes sir. I don't keep the original
23 file ---

24 **THE COURT:** All right.

25 **MR. MULLINS:** ---But I have them bates-stamped and ---

1 **THE COURT:** Well -- and I appreciate that, but, you
2 know -- and certainly he can go by his memory, but it would be
3 helpful if he had his file to know about these things.

4 Q. Mr. Galmore, let me ask you, that "See Solicitor's
5 insert", would you review that document and see if that
6 refreshes your recollection as to what that insert was?

7 A. Yes. This is the attachment to the previous exhibit.
8 It's a plea offer for voluntary manslaughter and twenty-five
9 years.

10 Q. Okay. Thank you so much.

11 **MR. MULLINS:** Your Honor, we would ask that that be
12 made a part of Exhibit Number 6 to cure this ---

13 **THE COURT:** Any objection?

14 **MR. THOMAS:** No objection, Your Honor.

15 **THE COURT:** All right. So if we can staple those two
16 together, please.

17 **(LETTER PERTAINING TO PLEA BARGAIN FROM MR. GALMORE TO**
18 **MR. TOOMER ADMITTED INTO EVIDENCE AS APPLICANT'S EXHIBIT**
19 **NUMBER 6.)**

20 Q. Now during the trial the issue arose regarding the
21 prior record and Social Security numbers of Ms. Garrett; do
22 you recall that?

23 A. Not really, sir.

24 Q. Okay. Let me -- let me show you another copy of what's
25 already in evidence as Petitioner's Number One ---

1 And I apologize, Mr. Galmore, some of these numbers on
2 this -- some are the Appellate numbers and some are the Court
3 Reporter's Transcript, but if you can, can we look over to
4 page sixty-seven of the Court Reporter's Transcript and let me
5 ask you some questions there, okay.

6 A. All right. I'm at page sixty-seven.

7 Q. Do you recall attempting to put into the record some
8 issues regarding Ms. Wanda Garrett's Social Security number?

9 A. I don't see that on page sixty-seven. Oh, wait a
10 minute, there are two different sets of page numbers here.

11 Q. Let me show you what's been marked ---

12 A. Oh, I've got it. I've got it.

13 Q. All right. Do you recall that?

14 A. Yes sir, I do.

15 Q. All right. And the Court overruled what you were
16 trying to do at that point?

17 A. Yes. The Court overruled the -- excuse me -- yes, you
18 are correct.

19 Q. All right. Now, did you ever proffer the evidence that
20 you had in your possession to show the Appellate Court why you
21 were raising that issue?

22 A. No sir, I did not.

23 Q. Okay. Do you think that that was relevant at some
24 point as to the credibility of this lady with twelve different
25 aliases?

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1 A. I did argue to the Court that credibility was an issue,
2 and that's why I was trying to explore her multiple Social
3 Security numbers.

4 Q. All right. Did you preserve that objection by later
5 proffering for the record what you would have shown had it
6 been admissible?

7 A. I did not.

8 Q. You did not. All right. Now -- and now, today, from
9 looking through the file, apparently there is another name by
10 the name of Vasquez that was not previously discussed?

11 A. That's correct.

12 Q. Did you ever proffer anything about the change in the
13 name, why she was in Puerto Rico?

14 A. No, I did not.

15 Q. This case kind of come down to a "he said/she said"
16 scenario?

17 A. Yes sir.

18 Q. Okay. In that Ms. Garrett said that Mr. Toomer hit
19 Jerome with a stick, or a bota, as the record reflects ---

20 That's B-O-T-A, Ms. Court Reporter ---

21 ---And Mr. Toomer said he didn't?

22 A. That's correct.

23 Q. All right. Also, the State explored -- while they
24 don't have to prove it, but the State explored a motive. Do
25 you recall what that motive was?

1 A. No, I don't.

2 Q. All right. Did Ms. Garrett ever testify that she was
3 romantically involved with both Mr. Toomer, the Petitioner,
4 and the victim?

5 A. I thought her testimony was that she had slept in the
6 bed with Mr. Toomer, but that they were not intimate. I think
7 maybe she testified that both her and her sister, on different
8 occasions, had slept in his bed.

9 Q. Okay. So you don't recall that the arguments of the
10 Solicitor, that this was a love triangle?

11 A. I'm sorry. I thought that her testimony was that she
12 did not sleep with Mr. Toomer.

13 Q. Okay. Did Ms. Garrett ever testify that her and Mr.
14 Tucker were moving out of Mr. Toomer's home?

15 A. Yes, she did.

16 Q. And if you recall that testimony - and of course the
17 record will reflect it accurately, but at that point,
18 according to Ms. Garrett's version of events, Mr. Toomer
19 became enraged and struck Mr. Tucker with a stick?

20 A. That was her testimony, yes.

21 Q. Okay. All right. Now, as I recall the trial
22 testimony, and I'm sure you will correct me if I'm wrong, but
23 there was not lead-up fight or violence other than this one
24 strike?

25 A. That's correct.

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1 Q. All right. And that came as a result of something Ms.
2 Garrett told Mr. Toomer there after her and Mr. Tucker and Mr.
3 Toomer had been drinking and using drugs?

4 A. Yes sir.

5 Q. All right. And do you recall anything in there
6 regarding how much drinking or drugs was involved?

7 A. No, I don't. I know that -- I think the testimony was
8 that they bought a case of beer and there was some crack
9 cocaine, but I don't remember how much.

10 Q. Do you recall the half-gallon bottle of gin?

11 A. I don't remember it.

12 Q. You don't remember that part?

13 A. No sir.

14 Q. Okay. All right. Now, at the incident that happened
15 there on the 18th, do you recall the delay before Ms. Garrett
16 made a second statement to the police?

17 A. Yes sir.

18 Q. Okay. And was that some days later?

19 A. Yes. Apparently Ms. Garrett, according to her
20 testimony, had some additional information, and just flagged
21 down a random police officer.

22 Q. Okay. And in reviewing the discovery provided by the
23 State, were some of the statements, the written statements by
24 the officers in the investigation, signed days after the
25 incident?

1 A. Yes sir.

2 Q. Okay. In fact, did everyone respond to the scene that
3 night, and the only arrest was for drug paraphernalia?

4 A. That's correct.

5 Q. Okay. So Mr. Toomer was arrested days later for
6 assault and battery with intent to kill?

7 A. Yes sir.

8 Q. And that charge was upgraded to murder after Mr. Tucker
9 died?

10 A. Yes sir.

11 Q. Okay. Now, do you also recall, at some point, the
12 Solicitor eliciting information regarding that Mr. Toomer had,
13 in fact, struck Ms. Garrett, Wanda Garrett, with the same
14 stick?

15 A. Yes sir.

16 Q. All right. And did you object under prior bad acts?

17 A. Yes, I objected.

18 Q. All right. Now let's talk about your preservation of
19 that particular objection. Do you recall having a bench
20 conference on that matter?

21 A. Yes sir.

22 THE COURT: For my assistance, Mr. Mullins, can you go
23 over the transcript of record, please?

24 MR. MULLINS: I'm flipping over there, Judge.

25 THE COURT: Very good.

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1 Q. Let me draw your attention, please, to pages -- Court
2 Reporter pages fifty-five and fifty-six of the trial
3 transcript, Mr. Galmore.

4 A. Yes sir.

5 Q. Okay. And having reviewed those -- did you had a
6 moment to review those?

7 A. Just a moment.

8 Q. Okay. Tell me when you are ready.

9 A. Yes sir, I'm ready.

10 Q. Okay. You objected to Ms. Garrett saying that she had
11 been hit with that stick before?

12 A. Yes sir.

13 Q. Okay. And the testimony was, "He's took that stick out
14 before"; correct?

15 A. That was her testimony, yes sir.

16 Q. And you objected?

17 A. Yes sir.

18 Q. And there was a bench conference held?

19 A. That's correct.

20 Q. All right. And after the bench conference was held did
21 the Court permit the testimony?

22 A. The Court did permit the testimony.

23 Q. All right. Did you ever take an opportunity to
24 proffer, off the record, why you felt that this might
25 shouldn't have been admitted?

1 A. No sir.

2 Q. Okay. Now, let's talk about that for a moment, okay.
3 Prior bad act. Was there any prior bad act of violence
4 against Wanda Garrett that Mr. Toomer had never been convicted
5 of?

6 A. No sir.

7 Q. All right. And often -- I'm sure you are familiar with
8 State versus Lyle and the five exceptions; is that correct?

9 A. Yes sir.

10 Q. All right. Was there any evidence that Mr. Toomer
11 struck anybody else that night other than Mr. Tucker?

12 A. No sir.

13 Q. All right. So it wasn't a part of a common scheme
14 under those circumstances, do you think?

15 A. No sir.

16 Q. Okay. All right. And here is a phrase that's troubled
17 for me twenty-eight years of doing this, is the term res
18 jecti, okay. You are familiar with that?

19 A. Yes sir.

20 Q. All right. Normally a res jecti requires some other
21 criminal conduct that occurred with the time of this act?

22 A. That's correct.

23 Q. All right. Other than the striking of Mr. Tucker, as
24 Mr. Toomer was alleged to have done, or was actually convicted
25 to have done, what other criminal activity was in progress

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1 that night that you were aware of?

2 A. Nothing.

3 Q. All right. So while you objected to Judge Cottingham -

4 --

5 And for the record, Your Honor, I've objected to Judge
6 Cottingham and been called down too.

7 But when you objected to Judge Cottingham did you take
8 an opportunity afterwards to say, Judge, this isn't
9 admissible, State versus Lyle, and all those other cases that
10 follow from that, there's nothing in the res jecti; did you
11 ever take an opportunity to explain that on the record?

12 A. No sir.

13 Q. Okay. And did you ever have a chance to read the
14 unpublished Opinion of what came back after the Court of
15 Appeals decided this?

16 A. No, I didn't.

17 Q. You did not. Let me hand you Applicant's Number 2 for
18 a moment. Could you take a moment to look at that?

19 Let me know when you are ready, Mr. Galmore.

20 A. Yes sir, I'm ready.

21 Q. All right. And having now reviewed that, do you recall
22 ever reading that Opinion that was issued as a result of this
23 appeal?

24 A. I did not read this Opinion.

25 Q. All right. But apparently from reading that now you

1 know the Court of Appeals was concerned that the objection was
2 not properly preserved?

3 A. Yes sir.

4 Q. Would you agree that you did not properly preserve the
5 objection?

6 A. Yes sir, I would.

7 Q. Now, ---

8 THE COURT: Can I ask a question?

9 MR. MULLINS: Sure, Your Honor. Always, Your Honor.

10 THE COURT: I appreciate that.

11 Are you saying you agree because that's what the Court
12 of Appeals said?

13 A. Well, I think the proper procedure, if I am overruled
14 by a Judge, is to try to proffer the evidence anyway ---

15 THE COURT: Okay.

16 A. ---And even if the Judge doesn't ---

17 THE COURT: Agree with you?

18 A. ---Agree with me.

19 THE COURT: Okay. You clearly told the Judge the
20 specific Rule that you were relying upon; correct?

21 A. Yes sir.

22 THE COURT: And in the Rules that you told the Judge
23 you were objecting under, 404(B) - and you said that in the
24 record, and that's on page fifty-six, correct ---

25 A. Yes sir.

1 **THE COURT:** ---It cites State versus Lyle, and all
2 those other cases, correct?

3 A. Yes sir.

4 **THE COURT:** So you told the Trial Judge specifically
5 what your objection was?

6 A. Yes sir.

7 **THE COURT:** Despite what the Court of Appeals may say,
8 the Trial Judge had it in front of him exactly what your
9 objection was?

10 A. Yes sir.

11 **THE COURT:** Very good.

12 Continue on, Mr. Mullins.

13 Q. Mr. Galtmore, did you ever ask Judge Cottingham to
14 explain on the record the basis of his ruling?

15 A. I did not. I think what I'm suppose to do is to
16 attempt to proffer the information anyway so that the record
17 is clear, but I did not do that in this case.

18 Q. Okay. And in retrospect -- and we never try a perfect
19 case - but in retrospect you think you should have done that?

20 A. I believe the proper procedure is to proffer the
21 information even though the objection is overruled.

22 Q. All right. Now let's talk about ---

23 **THE COURT:** If the Court will allow you to do so?

24 A. Yes sir.

25 **MR. MULLINS:** I understand, Your Honor.

1 **THE COURT:** All right.

2 Q. Now, do you recall how often that you actually met with
3 Mr. Toomer to prepare for this trial?

4 A. No sir, I don't. It was -- it wasn't that many times
5 though.

6 Q. And Mr. Toomer was out -- was he out on bond; do you
7 recall?

8 A. He was out on bond.

9 Q. Okay. And that's highly unusual for a murder suspect?

10 A. Yes sir.

11 Q. So you had full access to him?

12 A. Yes sir.

13 Q. Now, let's talk about the remainder of the trial. Did
14 you ever request a charge from the Court on the issue of
15 voluntary manslaughter?

16 A. No sir, I did not.

17 Q. All right. You've practiced law here for a long time,
18 Mr. Galmore. Are you familiar with *Ervin's Request to Charge*?

19 A. Yes sir.

20 Q. Does your office ever use those charges?

21 A. Yes sir.

22 Q. All right. Let me show you a document and ask if you
23 can recognize it. I show you *Ervin's Thirty-One Eleven South*
24 *Carolina Requests to Charge, Criminal*. Do you ever rely upon
25 those in your practice?

1 A. Yes sir, I do.

2 Q. All right. How long have you relied upon them?

3 A. Since day one.

4 Q. All right. Since Judge Ervin published it?

5 A. Yes sir.

6 Q. All right. Did you ever consider this particular
7 request to charge ---

8 And I'm sorry, Counsel ---

9 ---As something you should have asked Judge Cottingham
10 to charge the jury?

11 A. I did not ask for him to charge a manslaughter charge.
12 I thought that this was a credibility case, and either they
13 believed Mr. Toomer or they believed Ms. Vasquez.

14 Q. Okay. But if the jury believed that this was a crime
15 that occurred by Mr. Toomer becoming enraged, and committing
16 as an impulse, would that not fall within voluntary
17 manslaughter?

18 A. But that wasn't our defense. Our defense was that Mr.
19 Toomer did not hit Mr. Tucker.

20 Q. But don't you have to prepare for any alternative
21 scenarios when you start a trial, Mr. Galmore?

22 A. Yes sir.

23 Q. All right. And would the prudent charge have been to
24 ask the Judge to charge voluntary manslaughter?

25 A. Yes. I could have asked for a voluntary manslaughter,

1 and should have.

2 Q. And in fact, *Ervin's Thirty-One Eleven* allows you to,
3 if you ask the Court to charge it, to give the jury an
4 alternative to murder?

5 A. Yes sir.

6 Q. All right. Did you make that request to give the jury
7 an alternative in this matter?

8 A. No sir, I did not.

9 Q. Did you object to the Judge's charge as given at the
10 end?

11 A. No sir.

12 Q. All right. Did you have any objection to the charge?

13 A. No sir.

14 Q. And once again - I know I've asked this question
15 before, but in retrospect, do you think it would have been
16 proper to have done so?

17 A. Yes. I should have asked for a voluntary manslaughter
18 charge.

19 Q. All right. Now, ---

20 MR. MULLINS: If I may have just a moment, Judge.

21 THE COURT: Certainly.

22 Q. As to the witnesses that were also mentioned during
23 discovery, did you ever have an opportunity to go find "Red",
24 the gentleman from Puerto Rico?

25 A. I didn't have any information on "Red", except that

1 name, and that's obviously -- or it appears to be an alias.

2 We didn't have any information to try to pursue him.

3 Q. Okay. Did you ever try to send your investigators out
4 to find him?

5 A. No sir.

6 Q. All right. How about the other gentleman that was
7 there in the home that night? Do you recall his name?

8 A. I think you said it was Willie Chandler.

9 Q. Yes sir.

10 A. Okay.

11 Q. Did you ever try to find Mr. Chandler?

12 A. No sir.

13 Q. All right. Did Mr. Chandler have an arrest record?

14 A. I don't have any information about Mr. Chandler.

15 Q. Okay.

16 MR. MULLINS: Please answer any questions the Court or
17 opposing counsel has for you.

18 A. Yes sir.

19 THE COURT: Go ahead, Mr. Attorney General.

20 MR. THOMAS: May it please the Court.

21 CROSS-EXAMINATION BY MR. THOMAS:

22 Q. Mr. Galmore, just some brief background information.

23 How many times -- and you might have already answered this.

24 How many times did you meet with Mr. Toomer before trial?

25 A. I don't recall how many times I met with him. It was

1 not very many times though. I would say maybe five or less.

2 Q. And when you were appointed to the case you filed a
3 discovery mo -- the initial discovery motions, I believe you
4 said; is that correct?

5 A. Yes sir.

6 Q. When the first reply to discovery came back, did you go
7 over that information with Mr. Toomer?

8 A. I don't have my file in front of me, but I'm pretty
9 sure I did. That's the standard policy, to bring my client in
10 once the discovery comes in, and sit down and go over it with
11 the client.

12 Q. Okay. And I know there were some questions earlier
13 about there were some things missing from the initial
14 response. What -- do you recall what was missing from the
15 initial response?

16 A. I don't recall that.

17 Q. Did you ever get any of the things that were missing?
18 Did the Solicitor's Office eventually provide those to you?
19 Do you recall that?

20 A. I assume that they did.

21 Q. Do you have a copy of your file with you today?

22 A. No, I don't.

23 Q. Do you know if your standard initial discovery -- your
24 initial discovery motion, does it have a clause in there that
25 says that basically have an ongoing duty to disclose?

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1 A. Yes sir.

2 Q. Is there any reason to believe you didn't get something
3 from the Solicitor's Office?

4 A. We would not have gone to trial if we were missing any
5 potential evidence.

6 Q. And -- but you don't recall specifically going over all
7 the evidence with Mr. Toomer?

8 A. Generally speaking, I would go over the discovery with
9 the client prior to -- prior to trial. That's our policy.

10 Q. Any reason to believe you would have deviated from that
11 in this case?

12 A. No sir.

13 Q. Did you enter into any plea negotiation from the State?

14 A. The State made a plea offer, but we were not
15 entertaining plea offers.

16 Q. And why was that?

17 A. Well, Mr. Toomer had a good case. The only issue they
18 had was what the witness was going to say, and that was a
19 credibility issue. Other than that, Mr. Toomer was friends
20 with Mr. Tucker, and the case had sat out there since 2005.
21 We weren't in a rush to try to negotiate anything.

22 Q. I believe you said earlier you weren't interested in
23 having Ms. Garrett found. Why was that?

24 A. Well, she is the only source of evidence that the State
25 had.

1 Q. So it's safe to say, as long as she wasn't here the
2 State had no way of proving it's case?

3 A. That's correct.

4 Q. And so you don't go any -- you didn't send out any
5 investigator or anybody trying to track her down, find her and
6 bring her back to court?

7 A. No, I did not.

8 Q. But you did go over her NCIC, and you were familiar
9 with her aliases and her Social Security numbers and things
10 like that?

11 A. Yes sir.

12 Q. And you brought that out at trial?

13 A. Yes sir.

14 Q. As best you could, as best as the Judge would allow
15 you?

16 A. Yes sir.

17 Q. Regarding the -- the incident site, you did visit it at
18 least; correct? You said that.

19 A. Yes.

20 Q. Do you know how soon after this happened that the house
21 was torn down?

22 A. No, I do not. I didn't try to visit the house until it
23 became apparent that we were going forward at trial.

24 Q. Okay. Regarding Ms. Garrett, you said she was a
25 "frequent flyer" with the Public Defender's Office. You have

1 never represented her though, correct?

2 A. No sir, I have not represented her.

3 Q. At the time her name appeared on the Incident Reports
4 and everything came up, were you familiar with any other
5 attorneys in your office that had represented her, any
6 specific person?

7 A. No sir.

8 Q. And was she being represented by your office for any
9 charges at the time she was a witness in this case?

10 A. I don't think so. Ms. Garrett has one arm, so she is
11 easily rememberable.

12 Q. And during the trial she definitely was not being
13 represented by anyone in your office, at that moment on any
14 pending charges?

15 A. No sir.

16 Q. And there was some question about her residence, and
17 where she lived. I believe you said you didn't have an
18 opportunity to investigate her other residences; isn't that
19 right?

20 A. Yes. I wasn't trying to, you know, investigate her.

21 Q. At any point did -- did you ever have any reason to
22 believe from the Defendant that she was not living with him at
23 the time the incident happened?

24 A. Mr. Toomer's story to me is that she and her sister
25 stayed at the house on occasion. I don't know if it was every

1 night that they were staying at the house, or how often they
2 were staying at the house, but they had spent the night over
3 there.

4 Q. Okay. But especially regarding Ms. Garrett, was there
5 ever -- ever any question that the person that was on the
6 stand testifying was the same person that the police had
7 interviewed immediately after the incident, or I guess a
8 couple of days after?

9 A. Are you suggesting that they brought a different
10 person?

11 A. No. No. I'm just -- I'm just asking you -- I mean,
12 there's no reason to believe that -- that the person you
13 cross-examined on the stand was not the same person that had
14 given all this testimony, and that was living with Mr. Toomer.

15 A. Yes. I believed her to be the same lady.

16 Q. Right. Right.

17 A. She has one arm, so, there aren't too many people that
18 fit that description.

19 Q. Just backing up. I'm jumping around her, and I
20 apologize. Regarding the plea offer, did you communicate that
21 to Mr. Toomer?

22 A. Yes, I did.

23 Q. And ---

24 A. Mailed it to him.

25 Q. Whose ultimate decision was it to reject that and to go

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1 to trial?

2 A. It's the client's decision to accept or reject a plea
3 offer.

4 Q. And you did try to point out Ms. Garrett's
5 inconsistencies when she was on the stand; you cross-examined
6 her thoroughly on her history and her different aliases?

7 A. Yes sir, I did.

8 Q. And the inconsistencies in her story, the differences
9 between the day it happened and the time gap between when she
10 came to the police and said it happened, you brought all that
11 out in cross-examination?

12 A. Yes sir.

13 Q. I know you said you didn't proffer her Social Security
14 numbers or her other names after the Judge overruled your
15 objection, or sustained the State's objection - I apologize.
16 Do you know if that was ever an appeal issue, whether those
17 things should have been put into evidence? Was that raised on
18 appeal, but you don't know?

19 A. I don't know.

20 Q. Would it surprise you if I told you that those were not
21 issues that were raised on appeal?

22 A. Again, I don't know about the appeal procedure.

23 Q. Okay. Let's talk a little bit about the voluntary
24 manslaughter charge at trial. What was your trial strategy
25 regarding, sort of how to combat the State's case?

1 A. Well, Mr. Toomer had told me that he didn't do it. His
2 claim was that he was awakened in the house after the murder
3 had already occurred; somebody woke him up and told him that
4 "Cowboy" fell off the front porch and hit his head on a tree
5 stump in the yard, so given that I was not considering
6 voluntary manslaughter as an alternative.

7 Q. Did you ever discuss the nature -- I'm assuming you
8 didn't because he had a plea offer for voluntary
9 manslaughter -- you discussed with him the elements of
10 voluntary manslaughter, correct?

11 A. Yes.

12 Q. Did you discuss voluntary manslaughter as an
13 alternative charge while you were at trial?

14 A. No.

15 Q. So it's safe to say that you were -- you were going for
16 an all or nothing approach, either the jury was going to
17 convict of murder or they were going to convict of nothing?

18 A. That's correct.

19 Q. Do you believe if you had given them a voluntary
20 manslaughter charge they would have even considered it?

21 A. They probably would have considered it and convicted
22 him of it.

23 Q. Was there any evidence at trial that would
24 make a voluntary manslaughter charge applicable in this case?

25 A. Well, if you believe Ms. Garrett, you know, it was a

1 love triangle heat of passion.

2 Q. But wasn't your trial strategy to hope that the jury
3 didn't believe anything she said?

4 A. That's correct.

5 Q. Regarding the statement she made about him having hit
6 her previously with the stick, do you recall specifically what
7 you said to Judge Cottingham when y'all approached the bench?

8 A. No sir, I don't.

9 Q. But you do recall making an objection under 404(B),
10 right?

11 A. Yes sir.

12 Q. I guess it -- in overruling that objection do you think
13 part of the thought process might have been that it was
14 evidence of his intent to strike someone with a stick?

15 A. I don't know what Judge Cottingham's rationale was.

16 Q. Okay. Fair enough. I don't think I do either. But
17 it's fair to say that if the State was using that statement,
18 that he had previously hit her with a stick, to show that he
19 intended to hit her with a stick that night that would be
20 admissible under 404, wouldn't it?

21 A. I would object.

22 Q. Okay. And you did object?

23 A. Uh huh (**indicating positive**)

24 Q. All right. Let's -- would it also be -- I guess you
25 could also infer that that statement was evidence of absence

1 of a mistake, that he was intending to hit someone with that
2 stick, or was not?

3 I'll -- I think we've ---

4 Regarding this "Red" character, what information did you
5 have on him?

6 A. Just a name only -- not even the name, just an alias
7 only.

8 Q. So you didn't have anything to give your investigators
9 to go on if they wanted to go out and start looking for him?

10 A. No physical description, no car, address, phone number,
11 nothing. It's just that everybody said he was there.

12 Q. Was there ever any statements that said he might have
13 witnessed the incident?

14 A. No. The witnesses -- just when we asked the witnesses
15 who were present in the house, you know, "Red" was one of the
16 people who was present.

17 MR. THOMAS: I think that's all the questions I have.

18 Thank you Mr. Galmore.

19 THE COURT: Any questions, Mr. Mullins?

20 MR. MULLINS: Some follow-up, please, Your Honor.

21 REDIRECT-EXAMINATION BY MR. MULLINS:

22 Q. Mr. Galmore, let me ask you to flip back to the Court
23 Reporter's page fifty, please.

24 A. Page fifty?

25 Q. Yes sir. Did Mr. Garrett there relate, in her opinion,

1 that she was Mr. Toomer's girl? Drawing your attention to
2 lines eleven and twelve, Court Reporter page fifty.

3 A. Yes, she did indicate that she was Mr. Toomer's girl.

4 Q. All right. And the Solicitor elicit a response that
5 there was a time she was seeing both of these men
6 simultaneously? Down on lines nineteen and twenty.

7 A. Yes sir.

8 Q. And was there also testimony in this record that this
9 was the night that Jerome Tucker, the deceased, and Ms.
10 Garrett, had announced they were moving out of this house?

11 A. Yes sir.

12 Q. And that -- at that point, from the State's view of the
13 evidence, Mr. Toomer took the stick and hit Mr. Tucker?

14 A. From the State's perspective, yes sir.

15 Q. Now, admittedly, you were representing an elderly
16 client?

17 A. Correct.

18 Q. With no record?

19 A. Correct.

20 Q. And had you requested a charge on manslaughter; the
21 jury could have deliberated that?

22 A. Yes.

23 Q. Do you think Judge Cottingham would have given it if
24 you had requested it?

25 A. Well, there is testimony in the record to support it.

1 Q. But you didn't give the Court that opportunity?

2 A. That's correct.

3 Q. Now, I know, Mr. Galmore, that you are aware that
4 voluntary manslaughter carries from two to thirty?

5 A. Yes sir.

6 Q. But murder is ---

7 A. Thirty to life.

8 Q. Let me ask you a question about some documents, please,
9 Like to can show them to opposing counsel first.

10 Mr. Galmore, let me see if you can ID some records for
11 me, please. Do you recognize that three-page document?

12 A. Yes sir. These are the handwritten notes that I took
13 while working this case, also my staff.

14 Q. Okay. And is this the log of what occurs in the Public
15 Defender's Office on any given file?

16 A. Yes sir, it is.

17 Q. Is that kept in the ordinary course of business, the
18 Horry County Public Defender's -- well, now the Fifteenth
19 Circuit Public Defender's Office?

20 A. Yes sir.

21 Q. Do you recognize that document as part of the document
22 you helped create?

23 A. Yes sir.

24 MR. MULLINS: Your Honor, we would like to mark that,
25 please, as Petitioner's Number 7.

1 THE COURT: Any objection?

2 MR. THOMAS: Is that all one document?

3 MR. MULLINS: Yes. Three pages.

4 MR. THOMAS: No objection.

5 THE COURT: All right. So it's -- Okay. Can you
6 staple them together then, please. It's all one document.

7 (LOG OF THE PUBLIC DEFENDER'S OFFICE ADMITTED INTO
8 EVIDENCE AS APPLICANT'S EXHIBIT NUMBER 7.)

9 MR. MULLINS: Let me return that back to Mr. Galtmore.

10 Q. Do you normally log in your times and what you did on
11 this time?

12 A. Yes sir.

13 Q. All right. Could you go to the end of that document,
14 please, and tell me what the last entry is?

15 A. Was this page folded up?

16 Q. Yes sir.

17 A. Okay. I'm not sure which page is the last page.

18 Q. Okay. The last page of the exhibit you have -- what is
19 the last page you have?

20 A. Right. This is April 29th, 2009, is the last entry.

21 Q. All right. And are there two lines blank below that?

22 A. Yes sir.

23 Q. And on occasion do you omit writing in the log?

24 A. Yes, I do.

25 Q. Okay. All right. Is that -- that's due to the volume

1 of the cases you have to handle?

2 A. Well, once you get closer to trial, I kind of stop
3 making all the entries that I need to make.

4 Q. Okay. Could you tell me from that document, please,
5 what entries it shows, meetings with Mr. Toomer? There's an
6 entry here, it says 6/20, and I'm assuming that's 2005,
7 because of the subsequent entries have the 2005 in here.
8 There's an entry here from October 3rd, and it doesn't have
9 the year on it also, I mean, it doesn't have the year with
10 it. Those would be the only entries I have with Mr. Toomer.

11 Q. Very good. Thank you.

12 Let me ask you if you can identify this document for me.

13 A. This appears to be the cover sheet that goes with the
14 discovery documents that are sent from the Solicitor's Office
15 to the Public Defender's Office.

16 Q. Okay. And there's a handwritten notation on that --
17 well, let me rephrase the question. Is this a document you
18 signed for the receipt of discovery material?

19 A. Yes.

20 Q. All right. We previously talked about that?

21 A. Uh huh (**indicating positive**)

22 Q. I'm sorry. For the Court Reporter, is that a yes?

23 A. Yes, that's a yes.

24 Q. Uh huh (**indicating positive**) and Uh uh (**indicating**
25 **negative**) can't be transcribed.

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1 A. Yes sir.

2

3 Q. All right. Is there a notation on there regarding
4 missing documents?

5 A. Yes sir. There is a notice from Mary Horne - that is
6 Heather von Hermann's secretary. The notation says, "James, I
7 have requested the missing pages of statements, tapes and
8 photos of autopsy. I will forward copies to you when I
9 receive them."

10 Q. Okay. All right. Is there anything on there where you
11 noted that something was missing from the inventory?

12 A. No sir.

13 Q. All right. Do you ever mark one of these as missing
14 before you signed it?

15 A. Well, usually we will sign for it, take it back to the
16 office and then review it.

17 Q. Okay. So you actually sign for it before you review
18 it?

19 A. Yes sir.

20 Q. Are you a trusting -- so Mr. Galmore ---

21 A. Well, it's sort of how the system works. Some
22 secretary goes and picks up all of the documents and signs for
23 them, and then brings them back to the office and puts them in
24 the various files.

25 MR. MULLINS: Your Honor, we would like to mark that,

1 please, as Petitioner's Number 8.

2 THE COURT: Any objection?

3 MR. THOMAS: No objection, Your Honor.

4 THE COURT: All right. Applicant's 8 is in evidence.

5 (COVER SHEET, ONE PAGE, FOR DISCOVERY PACKET ADMITTED
6 INTO EVIDENCE AS APPLICANT'S EXHIBIT NUMBER 8.)

7 COURT REPORTER: That's a cover sheet, you say?

8 MR. MULLINS: Cover sheet, Acknowledgment of Receipt of
9 Discovery Documents in the underlying trial.

10 THE COURT: It's a one-page document?

11 MR. MULLINS: Yes sir.

12 If I may ---

13 THE COURT: That's fine.

14 Q. Now, as to "Red", do you recall anything in the
15 discovery documents that he drove an F Ford 150 pickup truck?

16 A. That was the extent of the information that we had
17 about "Red".

18 Q. Okay. One last thing. One of my client's relatives
19 just brought this to my attention.

20 Gladys Rodriguez that was also in the house, was that
21 Wanda Garrett's sister? Do you recall that?

22 A. The only information I have is that her sister was
23 named "Tiny", so ---

24 Q. That was her nickname?

25 A. Yes. So I don't know if that is Ms. Rodriguez or some

1 other person.

2 Q. All right. Do you ever do any sort of a case outline
3 to assign people's real names, street names, or nicknames, or
4 anything like that?

5 A. Yes, but I didn't do it in this case.

6 MR. MULLINS: Thank you. Answer any further questions
7 opposing counsel or the Court has for you.

8 THE COURT: Mr. Galmore, let me ask you a couple of
9 questions, please. You got the transcript of record there?

10 A. Yes sir.

11 THE COURT: All right. Can you turn to page fifty-one,
12 please?

13 A. Okay. I'm at fifty-one.

14 THE COURT: Fifty-one. That's -- I'm -- that's the
15 Court Reporter's number that I believe.

16 A. Yes sir.

17 THE COURT: All right. Go to line thirteen, the
18 question. "But how, in the recent weeks or months leading up
19 to this they had had some -- some difficulties between them?"
20 Correct?

21 A. Yes sir.

22 THE COURT: All right. And the answer was, "Yeah, but
23 it was -- they fought, and they made up, then he would go get
24 him at the house, pick him up and bring him back, and that's
25 just the way we all are." And this is Ms. Garrett testifying,

1 correct?

2 A. Yes sir.

3 Q. And she is talking about the two individuals, the
4 Defendant and the victim, correct?

5 A. Yes sir.

6 THE COURT: All right. Regarding prior difficulties?

7 A. Yes sir.

8 THE COURT: All right. Page fifty-four ---

9 A. Yes sir.

10 THE COURT: Let's see -- I'm sorry. That's not the
11 page I'm looking for. I'll have to look for it.

12 Ms. Garrett -- do you remember Ms. Garrett testifying
13 that the Defendant left to get more cocaine?

14 A. Yes sir.

15 THE COURT: All right. The unpublished Opinion, could
16 I have that, please?

17 MR. THOMAS: There should be one in your file, Your
18 Honor.

19 THE COURT: Well, let's just have the one that's --
20 it's right here. Mr. Galmore had that. Thank you.

21 Hold on a second. The -- regarding the issue of
22 voluntary manslaughter, just so that I understand it -- well,
23 first, the Applicant here, and the Defendant, testified in the
24 case, correct?

25 A. Yes sir.

1 **THE COURT:** All right. And it was his specific
2 testimony that he did not hurt, harm, strike the victim in any
3 way?

4 A. That's correct.

5 **THE COURT:** All right. And just as an aside - I think
6 it's in the transcript there at page one nineteen - your
7 client indicated "Red" wasn't even there, correct, if you look
8 at page one nineteen, the -- about halfway down?

9 A. Yes sir.

10 **THE COURT:** Okay. Your argument to the jury, as
11 reflected by the record, was to question the credibility of
12 Ms. Garrett, or whatever her name was, correct?

13 A. Yes sir.

14 **THE COURT:** And you pointed that out, as opposed to
15 your client's testimony that he didn't commit the crime for
16 which he is charged, he didn't do anything wrong, correct?

17 A. Yes sir.

18 **THE COURT:** All right. And making that argument to the
19 jury you believe you would have requested of the Trial Court a
20 voluntary manslaughter charge?

21 A. Well, it wasn't my intention to request a voluntary
22 manslaughter charge, but there is -- I guess there's evidence
23 in the record.

24 **THE COURT:** All right, now -- but your trial strategy
25 was not to try and get -- to present the issue of voluntary

1 manslaughter to the jury?

2 A. That's correct.

3 THE COURT: And whether or not voluntary manslaughter
4 should have been charged, that's not your duty and
5 responsibility, is it; that is the Trial Judge's. By Rule and
6 case law it is the duty of -- the responsibility of the Trial
7 Judge to charge the applicable law, despite what may or may
8 not be suggested by counsel, correct?

9 A. Yes sir.

10 THE COURT: It was Judge Cottingham's job to charge the
11 law, correct?

12 A. Yes sir.

13 THE COURT: Whatever he believes to be the applicable
14 law, correct?

15 A. Yes sir.

16 THE COURT: Further questions from the State?

17 MR. THOMAS: No, Your Honor.

18 THE COURT: Further questions from the Applicant's
19 counsel?

20 MR. MULLINS: One in follow-up, Judge.

21 RE-REDIRECT EXAMINATION BY MR. MULLINS:

22 Q. Is it your obligation as the advocate to your client to
23 request such charges as you think are applicable in the case,
24 even if the Court doesn't charge it?

25 A. Yes, it's my job to request the charge. Yes sir.

1 **MR. MULLINS:** No further questions.

2 **THE COURT:** In contravention of your trial strategy?

3 A. Well, I would have requested a charge that would be
4 consistent with the trial strategy.

5 **THE COURT:** Thank you.

6 All right. You may step down, sir.

7 Is there going to be further testimony from the
8 Applicant?

9 **MR. MULLINS:** The Applicant rests.

10 **THE COURT:** All right. Very good.

11 Presentation from the Defense?

12 **MR. THOMAS:** The State will rest, Your Honor ---

13 **THE COURT:** I'm sorry. The State -- I'm sorry, the
14 State.

15 **MR. THOMAS:** ---Defense.

16 **THE COURT:** I'm sorry. I should go by the proper
17 names, Applicant and Respondent. I'm sorry.

18 **MR. THOMAS:** We know what you are talking about, Judge.

19 **THE COURT:** Thank you.

20 All right then, why don't we take a very short break for
21 about five minutes, then I'll be glad to hear any arguments
22 that the Applicant's attorney or the Respondent's attorney
23 would like to make to the Court. All right.

24 Thank you very much.

25 **(THE FOLLOWING TAKES PLACE AFTER A BREAK.)**

1 **THE COURT:** Thank you very much.

2 All right, Mr. Mullins, be glad to hear any arguments
3 that you have, please sir.

4 **MR. MULLINS:** Your Honor, in all due deference to the
5 Court, unless the Court just particularly wants to hear from
6 me today I thought I would let Mr. Ownbey ---

7 **THE COURT:** I'll be glad to hear from you, Mr. Ownbey.

8 **MR. OWNBEY:** Your Honor, if it please the Court, I
9 don't want to belabor the point any more than we've already
10 gone over today. I just wanted to just kind of hit the high
11 points of what was discussed.

12 Clearly we have established that there was evidence in
13 the record that may have supported a voluntary manslaughter
14 charge, or a manslaughter charge but again, and clearly Mr.
15 Galmore has said that he probably should have requested a
16 charge, and no question that that was not charged as given,
17 not charged by Judge Cottingham that's at issue.

18 Your Honor, I think that what it comes back down to is
19 the standard from State versus Hernandez, which we are looking
20 at here, which basically says that the trial judge is required
21 to charge the jury on the lesser-included offense if there was
22 evidence from which it could be inferred that a Defendant
23 committed the lesser offense rather than the greater, and
24 that's cited in State v. Drafts.

25 In determining whether the requires a charge on

APPLICANT'S SUMMATION (OWNBEY)

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1 voluntary manslaughter the Trial Court views the facts in a
2 light most favorable to the defendant as cited in State v.
3 Byrd, however, the instruction should not be given unless
4 justified by the evidence, citing State v. Moultrie.

5 Here, Your Honor, we know that there was evidence in the
6 record. We know that it wasn't the trial strategy that Mr.
7 Galmore wanted to go forward with, however, the evidence was
8 there. I think prudent counsel would have requested a charge
9 even if it differed from the trial strategy, because as we all
10 know things -- and Your Honor ---

11 **THE COURT:** They may be, but as the law that you quoted
12 indicates, it's the Trial Judge's responsibility to charge the
13 facts and evidence and say he should, or she should charge
14 that pits the -- basically only evidence that the State has to
15 attack that person's credibility and believability. These
16 other factors indicate her truthfulness and veracity is in
17 question, and then have your client testify directly to the
18 opposite, and that's your trial strategy, and that's what you
19 project to the jury from your opening statement through your
20 closing statement. That's what you want the jury to believe
21 on behalf of your client.

22 **MR. OWNBEY:** Yes sir.

23 **THE COURT:** I recognize that counsel may suggest to the
24 Trial Court what the applicable law is, but if you have a
25 definite and specific trial strategy that you have pursued

1 throughout the entirety of the trial, and then, at the very
2 end you are going to suggest to the jury, well, but don't
3 believe anything I'm saying, convict him of voluntary
4 manslaughter, that doesn't make any sense. That flies in the
5 face of what appears to be, from the record, a proper,
6 effective trial strategy.

7 So, I disagree with you. I disagree -- maybe Mr.
8 Galmore should have brought it to the Court's attention to
9 consider it, but it's the Trial Judge's responsibility. It
10 doesn't matter what counsel say to him, doesn't matter what
11 the State says to him, it doesn't matter what defense says to
12 him; the Trial Judge must look at the facts and evidence and
13 charge to the jury the applicable law of the case. That's
14 whose responsibility it is in this matter.

15 All right. Go on. Continue on.

16 **MR. OWNBEY:** Yes, Your Honor. And I agree with you
17 from that perspective, that it is the Judge's responsibility.
18 I think also though, as a trial attorney, you have an
19 obligation and a duty to preserve the record. Again, I think
20 that I -- I know Mr. Galmore personally. I like him, and I
21 think he's a fine lawyer. I think sometimes in the heat of
22 battle things just happen. I think sometimes that -- and I
23 can't, honestly, imagine trying a murder case in front of
24 Judge Cottingham. I've not had to do that yet, Your Honor. I
25 hope I don't have to. But I can understand and imagine the

APPLICANT'S SUMMATION (OWNBEY)

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1 stress that Mr. Galmore was under.

2 Certainly, again, Your Honor, the secondary part of
3 the ---

4 **THE COURT:** You probably shouldn't say that, especially
5 when he starts waving that finger -- that finger at you. You
6 know that you've really ---

7 Anyway, proceed on.

8 **MR. OWNBEY:** But I believe that part of the duty of
9 trial counsel and privy is to preserve the record, and clearly
10 that was not done in this case. I believe that would also be
11 a supporting theory of granting Mr. Toomer a new trial, as it
12 appears from the record.

13 **THE COURT:** All right.

14 **MR. OWNBEY:** I believe that's all we have, Your Honor.

15 **THE COURT:** Thank you.

16 From the Attorney General.

17 **MR. THOMAS:** Your Honor, as I sort of gathered from the
18 testimony, looks like they basically -- Mr. Toomer has
19 basically two grounds for PCR, failure to preserve the record,
20 and failure to request the lesser-included. I think you've
21 hit the highlights on the manslaughter charge. He's clearly
22 articulated they had an all-or-nothing trial strategy. It
23 came down to credibility, hoped the jury believes him, and if
24 you look at his testimony, if they believed his testimony
25 there is no evidence in there for a voluntary charge, because

RESPONDENT'S SUMMATION (THOMAS)

63

1 he said he wasn't there and didn't do it, so I think that's
2 definitely trial strategy.

3 As far as preserving the record regarding the bad acts
4 evidence, Your Honor, he objected, he approached the bench.
5 They had an argument that that's -- I understand the Court of
6 Appeals said that wasn't preserved. Even if that is somehow
7 deficiency on his part for not preserving it there's ample
8 evidence in the record that that was introduced by the State
9 to show a common scheme or plan, or the absence of a mistake
10 or accident, motive, intent, any of those things that are
11 allowable under Rule 404(B) for prior bad acts evidence, so I
12 just ask you to take it under advisement. Rest on the record.

13 THE COURT: All right. All right. Thank you very
14 much. I appreciate it.

15 Thank y'all.

16 MR. MULLINS: Thank you, Your Honor.

17 MR. THOMAS: Thank you.

18 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
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CERTIFICATE OF COURT REPORTER

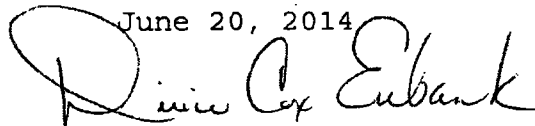
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C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the POST-CONVICTION RELIEF HEARING of the captioned case, relative to appeal, in the COURT OF COMMON PLEAS NON-JURY for HORRY COUNTY, SOUTH CAROLINA, on the 18th day of December, 2013.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

June 20, 2014



DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Tommy Toomer, #334825,)

Case No. 2012-CP-26-6668

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

CLERK OF COURT
JAN 10 PM 12:49
COUNTY

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed August 28, 2012. Respondent made its Return on or about December 17, 2012. The Court convened an evidentiary hearing into the matter on December 18, 2013, at the Horry County Government and Judicial Complex. Applicant was present at the hearing and represented by Randall K. Mullins, Esquire, and Jarrod E. Ownbey, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant's trial counsel, James C. Galtore, III, Esquire, testified at the hearing. The Court had before it a copy of the trial transcript, the records of the Horry County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the return, and the exhibits introduced at the hearing. 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 Horry County Clerk of Court. In July 2005, the Horry County

Page 1 of 9

[Signature]

RECEIVED

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Referred to

Thomas

Answered

Grand Jury indicted Applicant for murder (2005-GS-26-2531). Applicant was represented by James C. Galmore, III, Esquire ("trial counsel"). On May 18, 2009, Applicant proceeded to trial before the Honorable Edward B. Cottingham and a jury. The jury found Applicant guilty as indicted. Judge Cottingham sentenced Applicant to incarceration for a period of thirty (30) years.

Applicant filed a notice of appeal and Robert M. Dudek, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on July 18, 2012. State v. Toomer, 2012-UP-439 (S.C. Ct. App. filed July 18, 2012). The remittitur was returned to the circuit court on August 3, 2012.

II. ALLEGATIONS

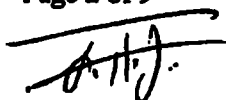
In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Counsel was ineffective in that counsel failed to object to the trial judge admitting statement regarding prior bad act."

At the PCR hearing, Applicant proceeded on the allegation in his application as well as an allegation trial counsel was ineffective for failing to request a voluntary manslaughter charge.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court reviewed the record in its entirety and heard the testimony and arguments presented at the PCR hearing. Further, the Court had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. The Court 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. Summary of Testimony

Trial counsel testified he became a public defender in 1998. He recalled the victim in Applicant's case died as a result of blunt force trauma to the head suffered at a house owned by Applicant. Applicant never confessed to the crime and always maintained he was asleep when the victim died. Trial counsel also recalled the only people allegedly in the house were Wanda Garrett ("Garrett") and a man named "Red." Trial Counsel recalled filing Rule 5/Brady motions in July 2005. He recalled receiving an incomplete response initially but did not remember exactly what was missing. Trial counsel testified he did not file a supplemental discovery request, but he did recall the State eventually turned over everything prior to trial. Trial counsel testified he would not have proceeded to trial if the discovery had not been complete. He did not have an investigator go to the scene of the crime, but trial counsel did visit the ^{site} ~~house~~ before trial. *site J.H.J.*

By the time trial counsel visited, the house was torn down.

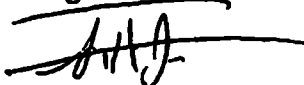
Trial counsel recalled the State's entire case was based on the testimony of Garrett. He testified Garrett had several aliases and had numerous prior arrests. However, trial counsel testified he never represented Garrett on any charges, and she was not being represented by anyone employed by the public defender's office at the time of trial. Trial counsel recalled Garrett's statement indicated she was in a relationship with Applicant and lived in his house. Trial counsel testified Applicant denied being in a relationship with her, but admitted she was at his house frequently. Trial counsel also testified Garrett disappeared for some time between Applicant's arrest and trial. Trial counsel testified he did no investigation to find her because Applicant's case benefitted from her absence. He also did not investigate "Red" or any other

potential witnesses because he had no information, other than names, that could be used to track them down.

Trial counsel testified his trial strategy was to discredit Garrett and attempt to get the jury to believe Applicant's story. Trial counsel recalled impeaching Garrett with her prior record and with her multiple aliases. He also recalled his attempt to delve into her other aliases was limited by the trial judge. He recalled her story involved Applicant becoming angry upon learning Garrett was leaving Applicant for the victim. He recalled advising Applicant this was a "credibility case." He also recalled advising Applicant to decline a plea offer, which Applicant ultimately did decline.

Trial counsel candidly admitted Garrett's story supported a charge of voluntary manslaughter. However, Applicant maintained he was asleep the whole night and awoke to someone telling him the victim fell off the porch and hit his head. Trial counsel had Applicant testify to attempt to convince the jury he never struck the victim. Trial counsel admitted Applicant's version of events did not support a manslaughter charge. He further admitted his trial strategy was to get the jury to believe Applicant's story and to find the Applicant did not kill the victim, regardless of the nature of the homicide charged. Therefore, trial counsel discussed with Applicant the possibility of only seeking a jury instruction on murder, and omitting the manslaughter instruction. He also recalled discussing with Applicant the elements of voluntary manslaughter. However, they ultimately decided the best strategy was to attempt to convince the jury Applicant he did not kill the victim.

Trial counsel also recalled objecting to Garrett's testimony about Applicant hitting her

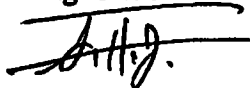
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with a stick on previous occasions. However, Trial counsel could not recall the specifics of the bench conference held on this objection. He did recall stating the specific rule under which he was objecting. He also recalled the trial judge overruling his objection at the bench conference. On cross-examination, he admitted the evidence could have been introduced to show intent, absence of mistake, or a common plan.

B. 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. (citing Strickland v. Washington, 466 U.S. 668 (1984)).

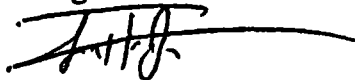
The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel 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.

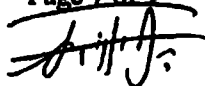
The Court finds Applicant failed to meet his burden of proving counsel ineffective. The Court finds trial counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation. The Court also finds the allegation that trial counsel was ineffective in failing to preserve an objection to prior bad acts evidence is without merit. Trial counsel clearly stated he was objecting to the introduction of Garret's testimony about the stick under Rule 404(b), SCRE. (Trial Tr. 56:3). The trial judge then heard arguments at the bench before allowing the testimony in over the objection. (Trial Tr. 56:5-8). The Court finds trial counsel was not deficient because he performed reasonably under the circumstances. Cherry, 300 S.C. at 117, 386 S.E.2d at 625.

Regardless, Applicant cannot show he was prejudiced by the form of trial counsel's objection because the testimony was clearly admissible. Evidence of prior bad acts "may be admissible 'to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.'" State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009) (citing Rule 404(b), SCRE). Garrett's testimony she had been previously hit with the stick



intimates Applicant intended to use the stick to hit her again. Her testimony also showed Applicant did not accidentally or mistakenly hit the victim. Finally, the testimony demonstrates Applicant commonly used the stick as a weapon. Because Garret's testimony was "logically relevant to establish a material element of the offense charged[.]" the trial judge properly admitted it over trial counsel's Rule 404(b) objection. Id. (citing State v. Green, 261 S.C. 366, 371, 200 S.E.2d 74, 77 (1973)).

Applicant's allegation regarding the voluntary manslaughter charge is likewise without merit. Trial counsel and Applicant were clearly attempting to convince the jury to believe Applicant's story and not Garrett's. Based on the facts and evidence in this case, the Court finds this to be a reasonable trial strategy. See 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))); see also State v. Walker, 605 S.E.2d 647, 654 (N.C. Ct. App. 2004), overruled on other grounds, 695 S.E.2d 750 (N.C. 2006) ("The record indicates defendants' counsel were employing an 'all or nothing' strategy, hoping the jury might find one element of the crime charged to be missing ... and thus, find their clients not guilty. ... The fact that it failed does not mean that defendants were deprived of effective assistance of counsel.")). If the jury were to believe Applicant's version, there were no facts from which it could convict him of voluntary manslaughter. A manslaughter conviction would have required the jury to believe Garrett's testimony that Applicant struck the victim when Applicant became enraged. However, the stated trial strategy was to have the jury believe none of Garrett's story. A request



for a manslaughter charge would have been inconsistent with Applicant's defense theory that he was not even awake when the victim was killed. Because Applicant wanted his story to be believed, a charge on manslaughter would have been contradictory to trial counsel's stated trial strategy.¹ Therefore, the Court finds trial counsel was not ineffective in this regard. See McCray v. State, 317 S.C. 557, 560, 455 S.E.2d 686, 688 (1995) (counsel not ineffective for not pursuing a certain defense where applicant denied any involvement in crime).

C. All Other Allegations

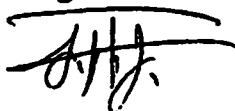
As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. 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.

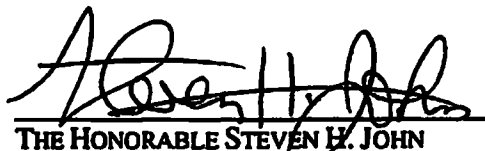
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate

¹ The Court notes it is the trial judge's responsibility, not trial counsel's, to ensure the applicable law is charged to the jury. Correspondingly, trial counsel is limited to asking the judge to include a certain charge or objecting when a charge is not included. Although there were facts from which to the trial judge could have decided a voluntary manslaughter charge was appropriate, trial counsel was not ineffective for failing to object to the trial judge's failure to include a manslaughter charge.



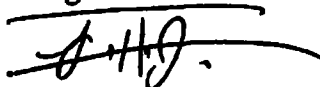
appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal. Therefore, it is

ORDERED that the Application for Post-Conviction Relief is denied and dismissed with prejudice and the Applicant is remanded to the custody of the Respondent.



THE HONORABLE STEVEN H. JOHN
Resident Judge
Fifteenth Judicial Circuit

January 10, 2014
Conway, South Carolina



STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Tommy Toomer, #334825,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Civil Action No.: 2012-CP-26-6668

APPLICANT'S MOTION FOR
RECONSIDERATION AND/ OR MOTION
TO ALTER OR AMEND JUDGMENT
PURSUANT TO RULE 59 (e), SCRPC

TO: THE HONORABLE STEVEN H. JOHN, PRESIDING JUDGE OF THE FIFTEENTH JUDICIAL CIRCUIT AND JOSHUA L. THOMAS, ESQUIRE, ASSISTANT ATTORNEY GENERAL

YOU WILL PLEASE TAKE NOTICE, that the Applicant, Tommy Toomer, by and thorough the undersigned, does hereby move for the Court to reconsider its prior Order dismissing the Applicant's Application for Post Conviction Relief (PCR). Notice of the entry of the Order was received by the Applicant's attorneys on January 27, 2014. The Applicant moves that this Court reconsider its ruling pursuant to Rule 59 (e), South Carolina Rules of Civil Procedure, and bases this motion on the following grounds:

1. The Order Incorrectly Finds that the Applicant's Prior Trial Counsel Properly Preserved the Issue of Improper Character Evidence for Appellate Review

The PCR Trial Court found that the Prior Trial counsel, James C. Galtmore, Esquire properly preserved an objection to the admission of evidence concerning alleged prior bad acts of the Applicant. The PCR Trial Court found that prior Trial Counsel stated his objection and cited to Rule 404(b), South Carolina Rules of Evidence. (Trial Tr. p.56, lines 3-4). Pursuant to the objection, a bench conference was held after which the Trial Judge ruled that the evidence was admissible and permitted the testimony of the witness over the objection of prior Trial Counsel.

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(Trial Tr. p.56, lines 5-8). No explanation or reasoning was put on the Record to indicate the basis for the Trial Judge's ruling to allow the testimony. The PCR Trial Court found that the actions of prior Trial counsel were reasonable under the circumstances.

Applicant was convicted of murder and sentenced to Thirty (30) years' incarceration. Applicant filed a direct appeal from the conviction. On direct appeal, the Applicant raised two issues. The first issue raised by the Applicant concerned the Trial Court admitting the evidence of the alleged prior bad acts of the Applicant. In Unpublished Opinion No. 2012-UP-439, the Court of Appeals unanimously affirmed the Applicant's conviction. In doing so, the Court of Appeals found that the issue concerning the erroneously admitted testimony was not preserved for Appellate review because the Record only shows that the Applicant objected under Rule 404(b), SCRE.

Specifically, the Court of Appeals referenced the lack of any explanation for why the Trial court permitted the testimony. The Court of Appeals opined that "without any information as to why the trial judge admitted Garrett's testimony about Toomer's alleged prior bad act, we cannot determine whether the ruling was in error." In support of this conclusion, the Court of Appeals cited to State v. Hutto, 279 S.C. 131, 132, 303 S.E.2d 90, 91 (1983) for the proposition that no error was found "because the appellant did not meet his burden of presenting a record that was sufficiently complete for appellate review of the trial judge's actions" and In re Richard D., 388 S.C.95, 100, 693 S.E.2d 447 450 (Ct. App. 2010) finding "that an issue on appeal may have been discussed during an off-the-record bench conference but holding this court cannot review issues not contained in the record." Essentially, because the prior Trial Counsel failed to request that the explanation or basis for the Trial Court's ruling be placed on the record, the issue was

determined by the Court of Appeals to have not been properly preserved for appellate review, thus depriving the Applicant of a meaningful opportunity for his conviction to be reviewed.

While the PCR Trial Court found that prior Trial Counsel properly preserved this issue by citing to Rule 404(b), the Court of Appeals specifically addressed this issue in its unpublished opinion, and held that this issue was not properly preserved, and thus was not available for appellate review.

The Order of Dismissal entered by the PCR Trial Court further indicates that regardless of whether this issue was preserved, the evidence adduced a trial was "clearly admissible" and thus the Applicant was not prejudiced by the actions of prior Trial Counsel. The PCR Trial Court reaches this conclusion based upon the premise that the evidence was "logically relevant to establish a material element of the offense" because it showed that the Applicant intended to hit the witness with the stick, that the Applicant did not strike the victim mistakenly or accidentally and that the Applicant "commonly used the stick as a weapon." However, the conclusion reached in the Order of Dismissal does not logically, nor necessarily, follow the premise in light of the State v. Lyle analysis that should have been conducted.

Essentially, the threshold question that should be asked is what exactly is the common plan or scheme evidence being offered to prove? If the evidence is being offered to prove identity or something similar, then the Court should employ a "similarity" analysis. If however, the evidence is being offered only to show that the acts are similar, the evidence is clearly inadmissible character evidence. It simply is not enough that the alleged bad acts are similar, but that the common plan or scheme is an "essential ingredient of the crime charged." In this instance, the evidence clearly was not being offered to prove identity, absence of mistake or accident, as the State attempted to argue. Here, the evidence was only being offered to show that

he had committed a similar act in the past and thus intended to do the same in the instant case. This theory is admitted by the State in the Order of Dismissal. As such, the evidence elicited was clearly improper character evidence and thus inadmissible.

In fact, the Order contradicts itself. First, the Order states that "Garrett's testimony she had been previously hit with the stick intimates Applicant intended to use the stick to hit her again." (Order of Dismissal, p. 7). However, the Order further states "her testimony also showed that Applicant did not accidentally or mistakenly hit the victim. Finally, the testimony demonstrates that the Applicant commonly used the stick as a weapon." (Order of Dismissal, p. 7). These premises are used to support the overall conclusion that the testimony was "logically relevant to establish a material element of the offense charged." However, the premises are false, and thus it logically follows that the conclusion is likewise incorrect.

If the testimony from Garrett was offered to show lack of mistake or accident, the proffer then fails. The alleged victim in this case was not in fact Garrett. Thus, if the evidence was being offered to show, as the State has suggested that it tended to prove that he intended to "hit her again", then the evidence does not show that. If, on the other hand, the evidence was offered to show an absence of mistake or accident in hitting the alleged victim, then the evidence also fails to support this. In order for the evidence to logically support the State's argument, then the Applicant would have to have intended to hit the alleged victim, not Garrett. Either way, the evidence does not support these theories offered by the State to show the relevance of the objectionable evidence.

As to the theory that the Applicant commonly used the stick as a weapon; this conclusion is not supported by the evidence. The evidence offered by the witness, Garrett, specifically is as follows:

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Answer: ---and he's took that stick out before.

Question: You had seen that stick before?

Answer: Yeah, because he has---

Mr. Galmore: Objection.

Answer: ---took it out on me.

...

Question: And you had seen this piece of wood previously?

Answer: Yes ma'am.

Question: All right, on a number of occasions?

Answer: Yes ma'am.

(Trial Tr. p. 55, line 23- p. 56, line 13). The witness never stated that she had been struck several times with the alleged weapon. The witness never stated that the Applicant had used the alleged weapon several times. The witness simply said that she had seen it on several occasions and that he had previously struck her with the alleged weapon on at least one occasion. To suggest that the evidence elicited suggested that the Applicant "commonly used the stick as a weapon" simply is not supported by the Record or the witness's testimony.

Additionally, in order to show that the evidence proves a common plan or scheme, it would have to be shown that at the time he allegedly struck the witness, the Applicant had formed a plan or scheme to also strike the alleged victim. Yet there is no evidence that such a plan was formed in the Record. Likewise, there is no testimony present in the Record to indicate the proximity of the alleged prior bad act to the alleged criminal act which was the subject of this action. There is no evidence to suggest that the two instances were committed contemporaneously to be considered a part of a common plan or scheme for *res gestae* purposes.

Likewise, there is nothing in the Record to suggest that the evidence adduced tended to prove or disprove a material element of the crime. An alleged prior bad act offered only for propensity reasons cannot become admissible by merely claiming that the evidence is "logically relevant to establish a material element of the crime", without something more. Whether the

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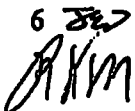
Applicant hit the witness with a stick on some prior date or not does not tend to make it more likely that he struck the alleged victim in the instant case. To follow that line of thinking violates the propensity rule and thus shows that the evidence was being offered for an improper purpose.

Accordingly, the Applicant respectfully requests the Court reconsider its ruling on this issue and enter a finding that the Applicant's prior Trial Counsel failed to properly preserve this issue for appellate review.

2. The Order Incorrectly Finds that the Applicant's Prior Trial Counsel Performed Reasonably Although Prior Trial Counsel Failed to Proffer Evidence Outside the Presence of the Jury

On direct examination, Applicant's prior Trial Counsel testified that he attempted to attack the witness's credibility. Specifically, Mr. Galtore attempted to question the witness regarding the possible use of multiple social security numbers and the bases for her criminal history. The Trial Court precluded Mr. Galtore from questioning the witness about her alleged fraudulent use of social security numbers. (Trial Tr. p. 67, lines 7-23). The Trial Court also prevented prior Trial Counsel from inquiring into the bases of the witness's criminal convictions, instructing: "all you are permitted to do is show what she pled guilty to and you're not entitled to go into the details of it." (Trial Tr. p. 69, lines 4-6). This line of questioning directly impacted upon the witness's credibility. As this witness was the only witness offered by the State concerning the events that allegedly transpired that night, it was imperative that the Applicant have a meaningful opportunity to inquire into this witness's credibility. These evidentiary rulings effectively deprived the Applicant of that opportunity.

Mr. Galtore testified during direct examination that the proper procedure would have been to proffer the testimony outside of the presence of the jury to preserve these issues for appellate review. Yet Mr. Galtore candidly admitted on direct examination that he did not proffer the

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2012-CP-26-6668

testimony in order to preserve these issues. Based upon this admission by prior Trial Counsel, these issues were not properly preserved and thus suggest that prior Trial Counsel did not perform reasonably under the circumstances. As such, Applicant respectfully requests that the Court reconsider its ruling and enter a finding that prior Trial counsel's failure to proffer or request an opportunity to proffer the testimony concerning the witness's credibility fell below the accepted professional standards.

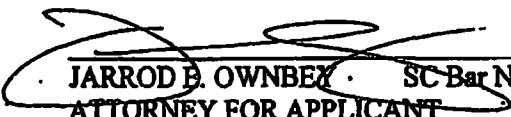
Pursuant to Rule 11, SCRCP, this motion is exempt from the requirements of contained therein; however, communication with opposing counsel would serve no useful purpose.

Respectfully submitted,

MULLINS LAW FIRM, P.A.



RANDALL K. MULLINS SC Bar No. 06466
ATTORNEY FOR APPLICANT
Post Office Box 585
North Myrtle Beach, SC 29597
Telephone: (843) 272-8902
Facsimile: (843) 272-3075
Email: mullinslawfirm@aol.com



JARROD B. OWNBEY SC Bar No. 75417

ATTORNEY FOR APPLICANT
Post Office Box 585
North Myrtle Beach, SC 29597
Telephone: (843) 272-8902
Facsimile: (843) 272-3075
Email: mullinslawfirm@aol.com

Dated: 1-30-2014
North Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Tommy Toomer, #334825

Plaintiff,

vs.

State of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-26-6668

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: Jarrod E. Ownbey/ Randall K. Mullins, Bar No. 75417/ 06466 Address: P.O. Box 585 N. Myrtle Beach, SC 29597 Phone: 843.272.8902 Fax 843.272.3075 E-mail: mullinslawfirm@aol.com Other:		Defendant's Attorney: Joshua L Thomas, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and II) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Reconsider Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES ☐ NO			
SECTION II: Motion/Order Type			
☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☐ Defendant		Date submitted	
SECTION III: Motion Fee			
☐ PAID - AMOUNT: \$ ☒ EXEMPT: (check reason)			
☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION		JUDGE CODE _____	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____			
☐ MOTION FEE COLLECTED: \$ _____			
☐ CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Tommy Toomer, #334825,)

Case No. 2012-CP-26-6668

Applicant,)

v.)

State of South Carolina,)

Respondent.)

**ORDER DENYING APPLICANT'S
MOTION FOR RECONSIDERATION**

HORRY COUNTY
14 MAR -5 PM 3:30
JELANE HUGHES-WARD
CLERK OF COURT

This matter comes before the Court by way of Applicant's "Motion for Reconsideration and/or Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRCP." The Court has considered the Applicant's Motion, the record, and all other matters in the Clerk of Court's file. The Court finds that oral arguments would not assist it in this matter and that any additional arguments would be redundant and unnecessary. The Court further finds as follows:

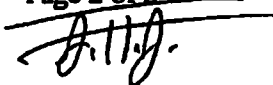
I. Trial counsel provided effective assistance of counsel where he based his objection on a specific rule and the evidence was admissible.

The Court properly found that Applicant's allegation trial counsel was ineffective in failing to preserve an objection to prior bad acts evidence was without merit. Trial counsel clearly stated he was objecting to the introduction of Garret's testimony about the stick under Rule 404(b), SCRE. (Trial Tr. 56:3). The trial judge then heard arguments at the bench before allowing the testimony in over the objection. (Trial Tr. 56:5-8). The Court is aware the South Carolina Court of Appeal found this objection was not properly preserved. However, based on the testimony at the PCR hearing, the Court finds trial counsel's representation was not deficient. Counsel made a specific objection, argued the objection to the trial judge, and the trial judge

made a ruling on the objection. In this case, further action by trial counsel would not have changed the ruling on the admissibility of the testimony. The fact that the substance of the trial judge's ruling was not placed on the record and the Court of Appeal found the objection unpreserved does not equate to a *per se* deficiency. Therefore, the Court finds no error in its order regarding trial counsel's performance.

Even assuming, *arguendo*, that trial counsel's representation was deficient, said deficiency did not prejudice the Applicant. In this case, Applicant must show that the Court of Appeals, had it found the objection properly persevered, would have found the testimony to be inadmissible. However, this Court can discern no grounds under Rule 404(b), SCRE, that would justify such a finding.

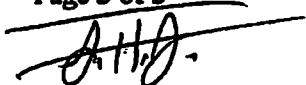
"Evidence of other crimes, wrongs, or acts is generally not admissible to prove the character of a person in order to show action in conformity therewith; however, such evidence may be admissible 'to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.'" State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009) (citing Rule 404(b), SCRE). Furthermore, "evidence which is 'logically relevant to establish a material element of the offense charged is not to be excluded merely because it incidentally reveals the accused's guilt of another crime.'" Id. (quoting State v. Green, 261 S.C. 366, 200 S.E.2d 74 (1973); State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996)). Here, the evidence could have been presented under a number of the exceptions in Rule 404(b). The witness's testimony she had been previously hit with the stick shows a motive or intent on Applicant's part to attempt to use the stick to hit her again. The testimony also establishes



Applicant had a scheme or plan to hit the witness with the stick as a form of punishment. Furthermore, the fact Applicant previously used the stick to punish the witness indicated an absence of mistake in swinging the stick at her. Finally, the testimony was ultimately admissible as part of the *res gestae* of the crime because it is "inextricably intertwined" with Applicant's motive for striking the victim during his attempt to strike the witness. See State v. Adams, 322 S.C. 114, 122, 470 S.E.2d 366, 371 (1996) overruled on other grounds by State v. Giles, Op. No. 27353 (S. C. Sup. Ct. filed Jan. 15, 2014) (Shearouse Adv. Sh. No. 2 at 98). Thus, a full examination of the record shows the trial judge's decision was correct for any of the reasons argued by Respondent. Therefore, the Court finds no error in its order regarding the prejudice prong of the ineffective assistance of counsel analysis. See Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989) (Applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.").

II. Trial counsel provided effective assistance of counsel during his cross examination of the State's witness.

Although not raised as an allegation in the pleadings, the Court finds the testimony at the PCR hearing indicates trial counsel was not ineffective in his cross-examination of the State's witness. Applicant argues trial counsel was deficient in failing to proffer evidence regarding the witness' multiple social security numbers and the bases of her criminal convictions. Trial counsel explained at the PCR hearing that he believed further exploration of these matters may have further impeached the witness. However, as stated above, the failure to make a proffer for appellate review does not equate to a *per se* deficiency. Under the facts of this case, the Court finds trial counsel acted reasonably in attempting to introduce this evidence, and in complying



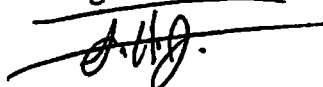
with the trial judge's instructions regarding the limits of cross-examination.

Furthermore, trial counsel acted well within the bounds of professional norms in light of the thorough cross-examination he otherwise presented. Trial counsel elicited testimony about the witness' prior convictions. (Trial Tr. 67-68). He impeached her with her prior written statement. (Trial Tr. 73-81). He also highlighted for the jury the delay between the crime and her report. (Trial Tr. 82-83). In light of this thorough cross-examination, Applicant has not shown he was prejudiced by the lack of testimony regarding other social security numbers and the underlying facts of the witness' convictions. See Edwards v. State, 392 S.C. 449, 459, 710 S.E.2d 60, 66 (2011) ("[W]here evidence produced during PCR proceedings is cumulative to or does not otherwise aid evidence introduced at trial, no prejudice results from counsel's failure to bring it forward." (citations omitted)). Therefore, the Court finds Applicant has not met his burden of proving he is entitled to relief on these grounds.

III. CONCLUSION

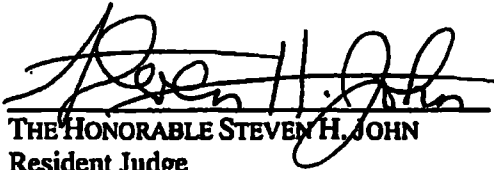
Based on the foregoing, the Court finds and concludes Applicant has not established any errors or deficiencies in the prior Order of Dismissal. Therefore, Applicant's "Motion for Reconsideration and/or Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRCF" must be denied and his application for post-conviction relief denied.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from counsel's receipt 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), Applicant has a right to appellate counsel's assistance in seeking review of the denial of

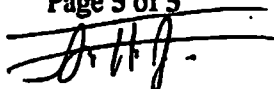


post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal. It is therefore

ORDERED that Applicant's Motion for Reconsideration and/or Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRCP is denied.


THE HONORABLE STEVEN H. JOHN
Resident Judge
Fifteenth Judicial Circuit

March 5, 2014
Conway, South Carolina



WITNESSES

ADDISON/CPD

ARREST WARRANT NO. H790787

CDR: 0116 16-03-0010,0020

DOA: 05-23-05

ACTION OF GRAND JURY

TRUE BILL

R J Warner JUL 28 2005
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury Date:

DOCKET NO. 2005-GS-26-2531
FILED
Horry County
THE STATE OF SOUTH CAROLINA
2009 MAY 22 AM 9:28
COUNTY OF HORRY
MELANIE HUGGINS
CLERK OF COURT
HST
COURT OF GENERAL SESSIONS
JULY TERM 2005

THE STATE

VS.

TOMMY TOOMER B/M

CONWAY, SC

SSN: JOB:

JAMES GALMORE
Attorney

INDICTMENT FOR:
MURDER

ORIGINAL

J. GREGORY HEMBREE, SOLICITOR

CERTIFIED COPY

2009 MAY 22 AM 9:37

Melanie Huggins
CLERK OF COURT
HORRY COUNTY

05-06-1496

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT FOR

MURDER

At a Court of General Sessions, convened on JULY 28, 2005, the Grand Jurors of Horry County present upon their oath:

MURDER

(CDR: 0116 16-03-0010,0020)

That TOMMY TOOMER did in Horry County on or about MAY 18, 2005, willfully, feloniously and intentionally kill the victim, JEROME TUCKER, with malice aforethought either express or implied, by means of striking the victim, and the victim did die as a proximate result thereof on or about MAY 28, 2005 in Horry County, in violation of Section 16-3-10, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

FILED
HORRY COUNTY
2009 MAY 22 AM 9:28
MELANIE HUGGINS
CLERK OF COURT

CERTIFIED COPY
2009 MAY 22 AM 9:37
Melanie Huggins
CLERK OF COURT
HORRY COUNTY

288

COUNTY OF Horry
 STATE VS.
Tommy Toomer
 AKA: _____
 Race: B Sex: M Age: 60
 DOB: _____ SS#: _____
 Address: _____
 DL#: _____ SID#: _____

INDICTMENT/CA: 2005GS2602531
 A/W#: H790787
 Date of Offense: 5/28/2005
 S.C. Code §: 16-03-0010, 0020
 CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: MURDER

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury: _____ (Defendant initial)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
 ATTEST:

von Herrmann, Heather

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____
☐ set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$106.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$25.00
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$3.90
§ 90.11 TP (SCCJA Surcharge)	\$5	\$5.00
TOTAL		\$133.90

Melanie Huggins
 Clerk of Court/ Deputy Clerk
Dixie Eubank

Obtain GED _____
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol testing _____
 Fine may be paid in equal, consecutive weekly/monthly pmts. of \$ 25.00 beginning 6/19/2009
 \$ _____ paid to Public Defender Fund
 Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
 Requires \$500 be paid to Clerk during probation

PRESIDING JUDGE

Judge Code: 2101411Sentence Date: 5/19/09