

ORIGINAL

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BARNWELL COUNTY
Doyet A. Early, III, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

SAMMIE L. GERRICK,

APPELLANT

APPELLATE CASE NO. 2014-000385

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE:
COURT'S EXHIBIT NO. 2 (CD CONTAINING VIDEOTAPED INTERVIEW);
STATE'S EXHIBIT NOS. 29 – 30 (PHOTOGRAPHS);
STATE'S EXHIBIT NOS. 43 – 46 (PHOTOGRAPHS);
STATE'S EXHIBIT NOS. 71, 72 AND 73 (CELL PHONE RECORDS)

1 goes from delivered text to undelivered forevermore.

2 What was Sammie doing when he was off the grid for two
3 hours? He was killing Tyrone.

4 Opportunity. Motive. They're both here. And they
5 both point conclusively to that man over there, Sammie
6 Gerrick.

7 But that's not it. That's pretty strong as it is.
8 The motive is there. No one else had the motive that day
9 Tyrone disappeared. The opportunity is there. Nobody
10 else had that kind of opportunity. This kind of hard
11 evidence of being together. This time off the grid.
12 Nobody else had that except Sammie Gerrick. We have the
13 strong evidence of motive. We have the strong evidence of
14 opportunity.

15 But that's not enough because we also have the third
16 thing, and it is overwhelming. And this man has so many
17 guilty acts it just adds up. And we're going to go
18 through them all.

19 But you got the motive. You got the opportunity. And
20 now we've got the guilty acts. What are the guilty acts?
21 The acts to conceal, to lie, to cover up, to divert
22 attention, to lie.

23 And it comes back to what I said at the beginning,
24 common sense. Look at this with common sense. What does
25 your common sense tell you happened here?

1 The first -- before we go through all Sammie's guilty
2 acts, let's talk about Tyrone and what you all heard about
3 Tyrone. Tyrone was a family man. He took care of those
4 kids, two young kids and his teenage sister. He cooked
5 for them. He cleaned for them. He did their homework.
6 The family and the friends said Tyrone wasn't doing any
7 drugs. Tyrone was not into any drugs. The officer said,
8 we looked into it. Tyrone wasn't in any drugs. The
9 pathologist stated that she sent out his tissues to be
10 tested for drugs, for intoxicants, and came back with
11 none. That's scientific evidence that Tyrone wasn't into
12 any drugs.

13 His friends say that. His family says that. The
14 officers say that. And the pathologist says that. Tyrone
15 wasn't in any drugs. That's just another lie by Sammie
16 Gerrick to, not only, sully the name of the man he killed.

17 They said that he would not be one because he had
18 those family responsibilities, he would not be one to just
19 disappear and not call, to not let people know where he
20 was going.

21 He was not one to just loan out his debit card. This
22 is the kind of man we're talking about.

23 And Sammie's story doesn't fit with that. It does not
24 fit with that. You haven't heard one person say a bad
25 word about Tyrone except Sammie Gerrick trying to save his

1 own hide.

2 But let's talk. And let's go through all of Sammie's
3 guilty acts. And y'all bear with me. The first one I
4 want to talk about is Maurice. And the defense made a big
5 deal, made a big deal about this story makes no sense that
6 Maurice and Tyrone believed that he had a safe with a
7 \$190,000 in it.

8 But the defense is wrong. The defense has got the
9 evidence wrong because Maurice never said that. What he
10 said was, was that Sammie said he had our money and he was
11 going to pay me back when I got off work. And it wasn't
12 until eight o'clock when I found out Tyrone was missing
13 and I go talk to Sammie.

14 I go talk to Sammie and I say, Sammie, what's up. And
15 Sammie says, me and Tyrone went out in woods and dug up
16 this safe I had that had \$100,000 in it. And I gave the
17 \$100,000 and I took all of it and I put it in Tyrone's car
18 and Tyrone kissed me on the forehead (makes air kiss) and
19 then he drove off.

20 That was what Sammie told Maurice. Maurice hadn't
21 heard that until Sammie said it. The defense has it
22 entirely wrong when they're saying don't believe the
23 State's theory, the State's theory's wrong. But that's
24 not what the evidence was. All Maurice was told was that
25 he was going to get his money back at the end of day. And

1 then when he hadn't got his money and went and asked
2 Sammie Gerrick about it, Sammie Gerrick came up with that
3 story.

4 So I agree with the defense. That story is
5 unbelievable because it was come up with by Sammie
6 Gerrick. And what did Maurice tell you? He knew it
7 wasn't true. He got scared. That's what he sat right
8 there and told you. He heard that story from Sammie
9 Gerrick and Tyrone isn't calling anybody and everybody
10 knows that Tyrone doesn't go off the grid like this. And
11 he got scared and he called his friend Jamaal Berry. And
12 he was scared. He put his gun in his pocket because he
13 was the other guy. Tyrone's already off the grid. He's
14 the other guy. He's the other guy.

15 So the defense has it completely wrong. So when they
16 ask you to go back and say, this is the State's theory,
17 this was Sammie Gerrick's first lie, that makes no sense
18 whatsoever and it made no sense to Maurice and he got
19 scared because he knew something wasn't right right then
20 and there. And then he told you that from the stand. He
21 told you that from the stand.

22 And the interesting thing about Sammie's first story,
23 that he and Tyrone went out into the woods and dug up the
24 safe, is that it does fit with two shovels. And it does
25 fit with what happened to Tyrone.

1 Because you know what Sammie did? That's the story he
2 told Maurice initially. That's the story he told Tyrone,
3 too. That's the story he told Tyrone, is the money's out
4 in the woods. And you know what he did? He made Tyrone
5 go out there and help dig his own grave.

6 And Maurice asks him when he sees him that night, asks
7 him and he tells him that story. And Maurice gets scared
8 because he knows it's not right..

9 Sammie Gerrick's first lie.

10 And then Sammie Gerrick, while Maurice is standing
11 there, gets on the phone like he's a concerned friend and
12 says, where are you classmate.

13 That's who he is. That's what we're going to see from
14 start to finish with this. Constantly trying to
15 manufacture evidence to conceal, to divert, to cover up.
16 And who does that but a guilty man? Does an innocent man
17 do that? No. A guilty man does that.

18 Motive. Opportunity. And guilty acts.

19 Well, the next day Maurice talks to him and Sammie
20 says, oh hey man, you know, I'm working on getting your
21 money back. This is on 7-22. The third lie.

22 We're up to three lies. Let's move on.

23 So, 7-22, the next day. Nobody's heard from Tyrone.
24 They call the police. Chief Holston gets involved. He
25 talks to Sammie Gerrick. And Sammie Gerrick tells his

1 first story to the police which I mentioned before. Oh,
2 yeah, yeah, the victim gave me his ATM card and then I
3 haven't seen him since.

4 And, again, he has to say that. You can't use an --
5 Sammie Gerrick knows that. Think of all the things that
6 he's done in this case to try to throw people off the
7 track. He can't use that card anywhere unless he says he
8 had permission to. He can't do that.

9 And why -- let's go back to the story he told
10 Maurice. Why in the world do you think he told Maurice
11 that I had a safe with \$100,000 in it or \$190,000 in it
12 and I put it all in Tyrone's car and he kissed me on the
13 forehead and drove off? Do you think he took my money?
14 Why do you think he told him that story?

15 He told him that story because he was hoping people
16 would believe that. Tyrone said I got 190 grand, I'm going
17 to Mexico. And that his body would never be discovered
18 out in those lonely woods. That's why he told that
19 story. That was the first thing he thought was going to
20 work.

21 And then, oh well, Ty, you know, he gave me his ATM
22 card because he ran off with 190 grand. That's what he
23 thought was going to work. But as we're going to see, as
24 the police discover more and more evidence he has to
25 change his story. He has to move. He has to bob. He has

1 to weave.

2 But he says that -- he tells Chief Holston, yeah,
3 Tyrone gave me his ATM card because he was holding some
4 money for me and I haven't seen him since. Why in the
5 world -- if Tyrone was holding money for Sammie, why in
6 the world would it have taken him so long to get out of
7 jail? And why in the world would they need Maurice to
8 loan money? If Tyrone was holding money for Sammie, why
9 would they need Maurice?

10 It's just lies.

11 Lie number four.

12 Then we get to that evening when we get to the
13 mysterious texts that came in from the track phone. The
14 texts that came in to Kelsea, Tyrone's teenage sister, and
15 came in to Maurice, and it came in to Jamaal. All right.
16 And it came in. And as we'll see, it came in on a track
17 phone which is one of those pre-paid phones that doesn't
18 have any billing subscriber information and I'll show you
19 that in a second.

20 And really, first of all -- and of course the text
21 said something to the effect of, help this is Tyrone Kim's
22 ex got me need help. Something like that. Right? And of
23 course the whole thing of that is ridiculous, that
24 Tyrone's been kidnapped but the kidnapper's or I guess
25 Kim's ex, the kidnapper, gave Tyrone a cell phone which

1 hasn't been used, a track phone and then he set it up and
2 somehow allowed him to then send a message ratting out his
3 kidnapper but with no ransom demand or anything like
4 that. I mean, it was absurd. It was absolutely absurd.

5 But what we can do though in this case is we can show
6 it was Sammie Gerrick over there who did that. And we can
7 do it two ways -- three ways. Three ways.

8 The first way is what you heard from Maurice. You
9 heard Maurice say, I got that text and it occurred to me
10 that the person said am hurt, A-M hurt instead of I'm
11 hurt, I apostrophe M hurt. And normally that wouldn't be
12 a big deal but he got to thinking about it and he looked
13 through his texts and realized there was only one person
14 that he got texts from that did that. And that was Sammie
15 Gerrick. Okay. That was Sammie Gerrick.

16 And he showed you those texts. Here's the texts that
17 he got that he forwarded to Agent Albayalde. That's the
18 mysterious text from the track phone that purports to be
19 from Tyrone but nobody had ever seen Tyrone use this
20 telephone number before. Help me Tyrone am hurt Kim ex
21 got me help please.

22 And then he showed some other texts that he had gotten
23 from Sammie Gerrick. Man am worried. Not, I'm worried.

24 And then this one. Since they playing games with me
25 am meeting. Am again. Those are texts from Sammie

1 Gerrick.

2 But it's not just those texts from Maurice. And here
3 we go. Here's the text from Kim. This is -- from, excuse
4 me, from Kelsea. These are Kelsea's records. Here's the
5 one she got. This Tyrone Kim ex got me am hurt am in
6 Orangeburg help me sister in law.

7 And then we've got Sammie Gerrick's text. These are
8 his records right here. And I'm going to show you some of
9 his texts, okay, because not only do we have the couple
10 that Maurice sent where he used the word am, but I'm going
11 to show you some here because he uses it all the time.
12 That's a Sammie-ism. There's a few Sammie-isms. He uses
13 it all the time. All right. Right here; am out. Am out.
14 I told you my body was down am at Bamberg getting my leg
15 and stuff checked. Man am worried. There's the text that
16 we showed from Maurice. Am worried. Tyrone sister says
17 am to blame, not I'm to blame. Tyrone sister said am to
18 blame because he came and got me. Am good. Not, I'm
19 good; am good. Sammie, Sammie does that.

20 Here's his written statement. Right here. It said,
21 please help me man am down. Am down. Okay. Not even in
22 text. In writing. Okay. You heard the defense ask,
23 well, yeah, people do abbreviations. Yes, they do.
24 Absolutely, they do. He does it all the time. Am, not
25 I'm. Am, not I'm.

1 But, you know, you know who does spell I'm I
2 apostrophe M, the way it's supposed to be done? Here's
3 Tyrone's text. Here's the last text or some of the last
4 texts when he told Kim that he loved her and they talked.
5 This is her. She says am alone must have been no good
6 because I didn't get no good morning phone call. And he
7 responds to her, I'm, I'm sorry you know your loving good
8 at the Unemployment Office my love. I'm sorry. We got a
9 text from Tyrone right there. He doesn't use am. He uses
10 I'm, the way it's supposed to be. And she says, okay baby
11 love you.

12 And then Kim says, might go to the revival tonight at
13 the church do you want to go with me. Doesn't get a
14 response. And then, where you at. She wasn't going to
15 get to talk to him again.

16 All right. So, Sammie, Sammie doing I'm. Sammie.
17 Sammie. Sammie doing I'm -- or am, not I'm. Ty does
18 I'm. All right. So that's one way we know it's him.

19 But we got another way as well. These are the track
20 phone records. Okay. This is the mysterious number from
21 which the text came. Again, a track phone is a pre-paid
22 phone.

23 So, I mean, that's why they have them really. You
24 can't trace who owns them. You can see right here the
25 information's track phone. The billing party's track

1 phone. The user information's track phone. So you can't
2 tell whose records they are.

3 But what we can tell is we can look on this last page
4 here. All right. And these are really the only records
5 that we have on that track phone and we have all these
6 text messages. And let me move it over, and I'll show
7 you.

8 We have some texts to Jamaal starting right here and
9 then these last three are the texts to Jamaal, to Kelsea
10 and to Maurice. Jamaal, Maurice, Kelsea. I had it
11 backwards. Jamaal, Kelsea, Maurice. Those three texts
12 right there. All right. Those are the help-me-am-hurt
13 text that are purporting to be from Tyrone.

14 And what we see here is with these texts, and remember
15 what Agent Hines told you. He told you that these numbers
16 right here are longitude and latitude and then this number
17 right here is the way it's pointing. Because, remember,
18 you know, it's -- 90 degrees would be that way, like a
19 compass. And so all of these are the same up to this
20 point. And then you've got the last three right here.
21 All right. Those last three right there.

22 And what he told you, and he looked, and we saw the
23 map. We saw the map of the AT&T towers because, remember,
24 the phone records for Tyrone, for Kelsea, for Sammie are
25 all on Alltel which used different towers. But the track

1 phone was on AT&T. Remember what Agent Hines said. He's
2 said, I'm at these two towers based on this longitude and
3 latitude. And you can see right here, you can see where
4 he mapped it. Those digits, just like were on the record
5 itself.

6 And what we get -- and what he also told you is
7 there's not an AT&T tower in Blackville. He said, as a
8 matter of fact I was driving through on the way here to
9 testify and I have, my personal cell is AT&T and I lost
10 service. Okay. And then he also told you that because,
11 see, these are not going to connect to AT&T -- or to
12 Alltel towers. He also told you that in rural areas,
13 first of all these circles -- sorry. These circles are
14 not hard lines. He just has them as a radius to indicate
15 the sector, but that in the country where you're not going
16 to have the overlapping tower depending on the terrain and
17 the topography, you can actually stretch out long and long
18 and long before you finally lose the signal because
19 there's no competing towers.

20 And probably all of us have had experience with that
21 as we start to drive down a country road and we got five
22 bars, we got four bars, we got three bars, we got two
23 bars, we got one bar, and then, boom, we're off the grid
24 and then it just says searching. Okay. So that's how
25 that works.

1 So what we see -- and I wish I could -- I'll just hold
2 it up. What we can see right here is we've got the
3 Williston tower and the Denmark tower and Blackville in
4 the middle. All right. And all these texts right here
5 are for these coordinates down to right here, are pinging
6 off this sector, this little part of the pie chart, on
7 Denmark.

8 And then the last three texts are pinging off of this
9 part of the pie chart on Williston. And, again, because
10 there's no tower in Blackville, if you're closer this way
11 you can pick up Williston. If you're closer that way you
12 can pick up Denmark. All right.

13 Why am I doing all of this? What am I trying to
14 show? Well, I'll tell you. We look right here. And we
15 look at all these Williston texts -- or, excuse me, the
16 Denmark texts. 8:39 down to 8:49, 10 minutes. 8:39 to
17 8:49 and those are all pinging off the Denmark tower.

18 Well, let's take a look at Mr. Sammie Gerrick's
19 personal cell. Where is Sammie Gerrick when that track
20 phone is going off? So we had 8:39 to 8:49, pinging off
21 the Denmark tower for the track phone.

22 We look right here. We've got 8:12 and 8:55. 1709.
23 1709. 1709. He was, at that particular hour, the
24 eight o'clock hour, the same time the track phone was
25 pinging off of the Denmark tower, Sammie Gerrick's

1 personal phone was pinging off of 1709. And, ladies and
2 gentlemen -- let me get the right map.

3 Where is Sammie? Where is Sammie when that track
4 phone is pinging off of Denmark? 1709. He's in Denmark.
5 He's in Denmark.

6 So we got the am, not the I'm which Tyrone doesn't do.
7 And we've got him in Denmark at the same time that that
8 track phone is pinging off of Denmark.

9 And if you look at Sammie's records, he's not in
10 Denmark very much. Bunch of 1752s. And then we got 1709
11 right, right when that track phone is pinging there.

12 But the third thing about this. Okay, number one, we
13 got am; number two, we got him at the same place as the
14 track phone was pinging; but number three is what he said
15 when they called -- when Jamaal called -- when Maurice
16 called when they got that text and called Sammie Gerrick
17 over there and they said, man, we just got this text that
18 says, Kim ex got him and he's hurt and he needs help.

19 And what was his response? Was his response, oh my
20 God, we got to do something about that; or oh my God, I
21 can't believe it? No. His response was, see, I told you.
22 Wasn't me. Maybe this will take some of the heat off of
23 me. It was a setup, man. He's just making that up trying
24 to throw people off the track. That was the first thing
25 out of his mouth. His friend's supposedly missing and the

1 first thing out of his mouth is, see, I told you it wasn't
2 me. It'll take the heat off me. Why? He set it up. He
3 knew he just sent those texts. He knew he just sent them.
4 He was waiting for the call to come so he could say, see,
5 I told you it wasn't me. Somebody else. Who does that
6 but a guilty man? Does an innocent man do that? Common
7 sense. Who does that but a guilty man?

8 Motive. Opportunity. Guilty acts.

9 Lies five, six and seven. Each text.

10 Well, SLED gets involved. And now we have his first
11 statement to Lieutenant Harley, 7-23, two days after
12 Tyrone had disappeared. And you've heard the testimony.
13 You've got Sammie's written statement in evidence in which
14 he admits getting Johnell Rice to call Tyrone to get him
15 out of jail.

16 And now though he says something about Tyrone having
17 an \$18,000 check. And says that when Tyrone got him out
18 that he went home and got cleaned up and took a shower,
19 which is interesting. And it brings up another point that
20 the defense raised about Ms. Taylor White. Because Sammie
21 says as soon as he got out of jail about midday, the first
22 thing he did was go home and get cleaned up and take a
23 shower. Makes sense. If I'd get out of jail that's
24 probably the first thing I'd want to do is go take a
25 shower.

1 But, you remember, Taylor White states that later on
2 that evening when she sees Sammie, he comes in, he goes
3 back out, he comes back in with a barrel of clothes. He
4 goes in the area where the washing machine is. He comes
5 back out without the clothes. He goes in the bedroom
6 where the shower is and then he doesn't - and then he
7 changes clothes. He comes out in different clothes.
8 Okay. Now, sure, a man can take a shower. By itself that
9 means nothing. But when you put it together with
10 everything else, what does that tell you?

11 Okay. It's just a, one more circumstance, one more
12 fact that starts to draw that circle around Sammie
13 Gerrick.

14 All right. Why did he need another shower? He
15 already had one that morning or that afternoon, you know,
16 right when he got out of jail. Why did he need to change
17 for?

18 But anyway, he claims that Tyrone left and said
19 something about playing cards later and he never saw him.
20 Again, of course, that's a lie.

21 We have Joe Thomas who already mentioned about the
22 sand. That's what the shovels were for. No. Joe Thomas
23 says no. That's a lie. So now we're up to eight lies.

24 But one thing that they also do and I think this is
25 crucial, and I'm going to come back to this, that at that

1 interview on 7-23, two days after Tyrone disappeared, they
2 photographed those scratches on his arm and on his chest.
3 They photograph those scratches. Remember that? I'm
4 going to come back to that.

5 All right. So next we got the interview with Agent
6 Burnett. That's on July 26. Agent Burnett again was the
7 retired agent up there. And Sammie's story has to change
8 again because they've gathered some more evidence.

9 How much money he spent. So, you remember in the
10 first exhibit I showed you where he wrote down all the
11 bills that he had to pay and all the rest of it. Right
12 there. All of that money.

13 Motive. But the most interesting thing about that
14 statement aside from him providing the extra evidence of
15 motive, but not only did he need money to get out of jail
16 but he had to get his bills caught up and pay his
17 probation.

18 The other thing is is that the story changes because
19 more evidence is coming in. And like Sammie has to do,
20 like a classic liar does, they admit to what you know and
21 then create a story around it but then when you find out
22 new stuff you got to change the story to make the facts
23 fit.

24 So what's the change here? What's the change here?

25 He claims now that Tyrone was holding money for him.

1 And actually Tyrone had money in his account that he owed
2 Sammie, \$18,000 that he had received from a backhoe. That
3 is what Sammie's claiming now. And why? Again, he's got
4 to explain why he had the victim's ATM card because from
5 the beginning, from the very beginning he knew that to use
6 it he was going to have to have an explanation for that
7 but now his explanation is, well, he had \$18,000 and he
8 was holding the money for me.

9 And you saw him when he was being interviewed by Agent
10 Burnett. You saw him struggle to come up with answers.
11 You saw him put his head down. You saw him get agitated
12 and jump up. You saw the evidence of a liar.

13 I think it was Mark Twain who once said that it's easy
14 to tell the truth because you don't have to remember
15 anything. And his point was -- or words to that effect.
16 His point was was that when you start telling lies it's a
17 whole tangled web we weave when first we start to
18 deceive. That whole thing.

19 Because it gets bigger and it gets bigger and it gets
20 bigger. And that's what you see Sammie doing. Got this
21 because I know they know that. Okay, they know this so
22 now I got to go here. Now they know this so now I got to
23 go here. And now they know this and now I got to go
24 here. Who does that? Does an innocent man do that? Does
25 an innocent man worried about his friend do that?

1 And again, if he, if Tyrone had \$18,000 in the bank
2 that were Sammie's, why would they need to borrow money
3 from Maurice? I mean, we all know it's a lie because
4 Sammie, you know, goes to a different version by the end.

5 But the point is what he's doing here. It shows his
6 guilty consciousness. It's not about the last story. It
7 shows a desperate man doing anything to try to divert
8 attention away from himself, from faking texts to telling
9 this lie to telling that lie. That's what a guilty man
10 does. Motive. Opportunity. And a string, a string of
11 guilty acts.

12 But it doesn't stop there. All right. That was 7-26,
13 the interview with Agent Burnett. Now we got the \$18,000
14 backhoe story.

15 And then we get to 7-30, July 30th, and that's when he
16 makes that call to Chief Holston. And says, Chief, I just
17 got a call from this guy named Black. And Black's got
18 Tyrone. And he wants \$25,000. And I need some backup.
19 And the Chief's like, where is he. And he's like, uh,
20 they're supposed to call me back and I'll let you know.
21 Does the Chief ever hear anything? No. Of course not.

22 Some other concocted elaborate lie to try to throw
23 people off the trail because he knows the trail's getting
24 warm. He's been interviewed now three times. He knows
25 the trail's getting warm. He knows he's at the center of

1 this. He's tried the desperation text thing. He's tried
2 telling lies. Now he's going to try this other thing. I
3 got this call from people, this ransom. It doesn't even
4 fit with his last story. It was just to try to throw
5 things off.

6 And I think it's important right now to bring up, if
7 y'all remember Taylor. Taylor White also talked about
8 sometime after the crime she was home and a pink car came
9 down the road that she thought was Tyrone's sister's and
10 Sammie Gerrick saw it and says something like I got to
11 take care of this right now and went outside to make a
12 phone call.

13 Think he was calling Chief Holston to try to come up
14 with something else to throw people off the track? I
15 mean, it's silly. It's ridiculous. Chief Holston knew it
16 was ridiculous but Sammie's trying to do whatever he can
17 because the seat's getting warm. Actions of a guilty man.

18 All right. So that was July 30th. And now we get to
19 the big break in the case.

20 August 3rd. Sammie gets bond revoked so he's in jail.
21 He's not out right now. And his own wife, Charlene, even
22 though he's got a girlfriend, Claudette, but his own wife
23 Charlene says on the night Tyrone was killed, late that
24 night with our young child, we drove out to that scene out
25 in the lonely woods, and we got that Honda that was out

1 there. And I followed Sammie Gerrick to the old Chinese
2 restaurant in Orangeburg. And he parked that car there
3 behind there and then we left. And you heard it
4 yourself. She didn't want to be here. She said it. But
5 it's the truth.

6 Who does that? Who does that but a guilty man? Who
7 loads his wife and a young child up in the car at midnight
8 and drives out into the woods to move the car of a man who
9 just happened to be murdered some hours before? Who does
10 that but a guilty man? Conceal. Lie. Cover up.
11 Consistent with everything else. How do you get around
12 that? How do you get around that? You can't.

13 Motive. Opportunity. A string of guilty acts. The
14 most biggest one is moving that car the night he died.

15 And y'all know what happened next. They poked the
16 ground and they find Tyrone in that grave.

17 Motive. Opportunity. The last one seen with him,
18 last phone calls. Tyrone disappears in that two-hour
19 break where Sammie goes off the grid, the same time Tyrone
20 doesn't have any more calls. End of that Tyrone's phone
21 goes from delivered to undelivered.

22 He comes back and tells that silly lie to Maurice that
23 gets him so scared he goes and gets his gun. And then he
24 starts using his ATM card. How do you get around that?
25 You can't. You can't. It's lie, we're up to 11 now.

1 But anyway, let's talk about that car a little bit.
2 And of course we know earlier Lana Joyner had seen that
3 car and told the family and they told the police and they
4 went out and looked at it. And we also know that Sammie
5 Gerrick's fingerprints were on that car.

6 Fingerprint things are right over here. But, I mean,
7 it's not -- he ultimately -- once he knew the police knew
8 that he ultimately had to admit to it, you know, with his
9 stories about, well, yeah, they had my friend and they
10 were killing him but they asked me to move the car and I
11 did it and I took my wife and young child to the place --
12 whatever. Whatever, Sammie. But his fingerprints were in
13 there.

14 But, the defense keeps talking about that shotgun
15 case. They keep talking about fingerprints. But you
16 heard about the decomposition of Ty. And the fingerprints
17 there. And also the shotgun case, it has nothing to do
18 with anything. It has nothing to do with anything.
19 Sammie himself never once has said that the shotgun had to
20 do with anything.

21 And what did the pathologist tell you? The
22 pathologist told you, sat right up here, the doctor, said
23 yes, the decomposition hurts my ability to look at soft
24 tissue injuries so I can't see bruising and things like
25 that. But one thing that I can do is determine whether or

1 not there were any gunshots or any knife wounds. And
2 there weren't any. Particularly a shotgun, the damage
3 that that does. The shotgun has nothing to do with
4 anything. There's no evidence whatsoever it had to do
5 with anything and it doesn't even come out of Sammie's own
6 mouth. He never once mentions that shotgun in any of his
7 versions. What does it have to do with anything? That's
8 a red herring meant to throw you guys off the trail.

9 Then you had Maryann Boehm and she talked to you about
10 the DNA. And the defense mentioned the DNA, too. She
11 talked about touch DNA. Okay. And touch DNA is what she
12 described where you touch something and perhaps you leave
13 some skin cells behind that can be gathered and an
14 analysis that can be made.

15 But one thing that she said was important is that
16 while touch DNA can confirm that you were there, the
17 absence of it doesn't mean that you weren't there.
18 Because touch DNA is fragile and you don't necessarily
19 know that you're going to get it. And in fact this case
20 proves the point because Sammie himself and Charlene
21 admitted he drove the car but the touch DNA wasn't found.

22 So it's just another red herring. Some cases just
23 depend on common sense and good police work.

24 I asked Maryann Boehm about that, about this idea that
25 perhaps some people get from TV that every case has some

1 magic piece of evidence. And she said no, that's just not
2 the case. Just because we don't find touch DNA doesn't
3 mean that somebody wasn't there. And this proves it
4 because we know Sammie drove the car and his DNA wasn't
5 there. So it doesn't mean anything. It doesn't matter.

6 This case was made by piecing together the puzzle, old
7 school, with common sense.

8 Motive. Opportunity. Guilty acts.

9 Just like Crime Scene Investigator Skipper stated.
10 She stated that when investigators are out at the crime
11 scene they gather all kinds of stuff. They gather all
12 kinds of stuff without necessarily determining if it has
13 any evidentiary significance. And the agents make that
14 determination later whether or not there's any evidentiary
15 significance. And that's what happened here. It's
16 routine.

17 It's kind of like that green netting and the fishing
18 lure that Agent Skipper told you about. They noticed it
19 at the grave site but didn't think anything about it. But
20 later when they went and searched Claudette's house where
21 Sammie was living, that's where they found similar green
22 netting and similar lures. The fact that there's green
23 netting in two places by itself, does that mean anything?
24 We're starting to put that circle together all the way
25 around Sammie Gerrick.

1 Let's go back to the scene. What did Tyrone's body
2 tell us? Tyrone gets to tell us a little bit. He's dead,
3 but he gets to testify. His body does. He was buried
4 face down. His hands and feet were bound. Malice, ladies
5 and gentlemen. He had that defensive wound on his
6 forearm. Malice, ladies and gentlemen. Protecting
7 himself. That he was tied up. No evidence of any gunshot
8 or knife wounds. No skull fracture. No drugs in his
9 system. Just like you heard from the family.

10 And he died from suffocation. Choked out. Choked
11 out. And we'll talk about that in a minute. But that's
12 what Ty said the only way he could.

13 So after finding the body the police go and they
14 search Sammie's truck. You know -- one thing before we
15 get to the truck.

16 And I don't -- I don't like throwing these pictures
17 around. I use them very infrequently but you have to look
18 at them, ladies and gentlemen. I'm sorry for that, but
19 the defense is -- said something about some leaves and,
20 you know, I'm not sure where they're going, but if you
21 look at this, it's pretty clear. Just like the
22 pathologist said, that that body was consistent with a
23 person who had been buried in a grave for 10 to 14 days.
24 I mean, look at it. You can use your common sense and
25 look at that. He had been down there. He had been down

1 there.

2 But anyway, they searched the truck. And what do they
3 find? In this console they find what I'll call the little
4 capsule. Right here. And they find a bottle of Law Keep
5 Away. Law Keep Away found in the console of his truck
6 where people tend to keep their personal items in their
7 car where a lot of us spend our time.

8 And, you know, normally, again, by itself, it's not
9 really that significant. And there's the capsule itself.
10 But when you open it up and you know what else is going on
11 in Sammie Gerrick's life and you get this. This is what's
12 in there: Set me Sammie Gerrick free.

13 Let me back it out.

14 Set me Sammie Gerrick free from murder and revoke
15 bonds. Jack Early set me free now. Jack Early set me
16 free now. Jack Early set me free now. Sammie Gerrick,
17 Sr. Sammie Gerrick, Sr. So shall it be. So shall it
18 be. So shall it be.

19 Set me free from murder and revoke bonds. What was
20 going on in Sammie Gerrick's life at that time? He had
21 been questioned by the police multiple times. He knew he
22 was the target of this investigation. He was engaging in
23 all sorts of things to try to throw people off the track,
24 whether it was the story about the ATM, or whether it was
25 the track phone, or the lies, or the claim about the

1 \$25,000 to Chief Holston. He knows he's in the fire.

2 He's in the frying pan right now.

3 Now I don't know what he hoped to accomplish by this
4 but I can say this. It was in his car next to a bottle of
5 Law Keep Away, kept close and personal. And we also know
6 that, as I told you before, a few days prior to that he
7 had had his bond revoked. So I mean, it ties right to
8 this case.

9 He was hoping somehow this plea would keep him out of
10 trouble. Set me Sammie Gerrick free from murder and
11 revoke bonds. Well, guess what. He is facing a bond
12 revocation and he was a target in a murder investigation.
13 Who does that but a guilty man? Who does that?

14 And again by itself, the same thing with the Law Keep
15 Away, Law Stay Away. Excuse me. By itself it's just a
16 novelty item. By itself, it's just a novelty item. It's
17 an incense powder. It says Law Stay Away. And it's got
18 this picture, as you can see, a guy pushing away a police
19 officer who's dropping the billyclub. It's law Stay Away,
20 incense powder, and it's found right next to this plea and
21 wrapped up in that capsule. Right there together in his
22 console.

23 He's nervous. He's scared. He knows it's closing in
24 on him. For whatever reason he thought this was going to
25 help him, but who does that but a guilty man?

1 All right. And I've been up for a while and I'm not
2 going to be too much longer. And I appreciate your
3 attention.

4 But we've got to talk about his last statement. The
5 police have found Tyrone. They know Sammie's moved the
6 car. He's already in jail for the bond revocation. So on
7 August 17th they call him over to talk to him. And they
8 talk to him about Orangeburg, that they know he was in
9 Orangeburg.

10 And what does Sammie say? Well, first he's got this
11 story about going to meet Big Joe and getting \$200 Big Joe
12 at Edisto Gardens but of course he can't describe or give
13 them any information about Big Joe. You all heard that on
14 the tape. Got a number? Got a name? Got an address?
15 No, no, no. Of course not.

16 And then he went to Dodge's Convenience Store. Why?
17 Why? Because he knows what the police have now so the
18 story has to change. Just like a classic lawyer who
19 admits -- or, classic liar. That was Freudian; wasn't
20 it?

21 Liar. Classic liar who admits to what you can prove
22 and then creates a story based on that. And then
23 something new comes up and it has to change and then
24 something new comes up and it has to change. It's so
25 transparent, ladies and gentlemen.

1 But that's his story. He doesn't say anything about
2 what he finally says about there being some drug deal. He
3 doesn't even admit being to the scene then. He just says
4 that, yes, I went to Orangeburg but still says, I had
5 nothing do with anything else.

6 But then he gets served with a murder warrant. And
7 now he knows that they know about him moving the car. So
8 he's got to come up with a new lie. And so you heard
9 Agent Harley say at his request he said, can y'all come
10 talk to me. So they come talk to him again. Again, it's
11 transparent. He gets the warrant. He knows now what they
12 know. So he's got to come up with a new story. Okay.
13 Now I'm really going to level with you. And he's got this
14 story about Andre Hightower, O'Shane Dixon, and the
15 mysterious Big Joe except now it's a different Big Joe.
16 It's not the same Big Joe from Edisto Gardens. And he was
17 supposed to get \$7,000 from this deal and that's how he's
18 going to repay the victim. And he last saw the victim at
19 the convenience store and never saw him again.

20 So even then he doesn't admit to being at the scene.
21 After he finds out that they know he moved the car, his
22 only story is is that Andre Hightower called him and said
23 I'll pay you \$400 to move the car. He doesn't say about
24 being at the scene. And this was after he knew that he
25 had the murder warrant. So even -- when he got a little

1 bit more information and he came up with this story but
2 he's still not at the scene.

3 If he was so scared of bob now -- by now. I mean, by
4 now. You got to tell the truth if that's the case but
5 it's not. It's just a classic progression of a liar. Got
6 to take a step at a time and the web just gets bigger and
7 bigger and bigger.

8 And he said, I don't know what happened to Tyrone. I
9 did move the car but I don't know what happened to Tyrone.
10 And so the officers bluff him a little bit. And they say,
11 yeah, well, we know your truck was out there. We know
12 your truck was out there in those woods.

13 And you heard Lieutenant Harley say that Sammie
14 Gerrick kind of hung his head a little bit and said words
15 to the effect of, oh man, well you got me there. I
16 usually got some funk back at you but you got me there.
17 What a huge admission that is. What a huge admission that
18 is, that this is just all mind games and lies.

19 Yeah, you got me there. I usually got some good stuff
20 to throw back at you but this time you got me.

21 Well now, Sammie knows he's in a real bind because he
22 thinks that they know his truck was out there which
23 matters to him because he knows his truck was out there.
24 An innocent man wouldn't change his story but he knows his
25 truck was out there. So he thinks about it overnight.

1 And that's when he calls and he wants to speak to
2 Mr. Jeff, Jeff Croft.

3 And then we finally get this cockamany last version
4 where he had a chance to sleep on it overnight and analyze
5 all the evidence that they've got and come up with a new
6 version that can account for everything else. And this is
7 the one about the package that went bad and he's out there
8 with Tyrone and Andre Hightower and O'Shane Dixon and Big
9 Joe in his Denali and they want more money so they start
10 beating on Tyrone and they tell Sammie to leave and go get
11 the money. And then later Andre instructs him to go move
12 the car. And that's the story, which is just patently
13 ridiculous on its face.

14 And the defense was wrong, too. When he's telling
15 that story, he said you saw him emotional. I agree. He
16 was emotional. Why was he emotional? Because he had
17 gotten served with a murder warrant the day before. And
18 he knew his goose was cooked. And he had thought up a lie
19 all night long. This is his last shot.

20 Classic liar. Prove this, move the story. Prove
21 that, move the story. Prove that, move the story. And
22 it's just a cockamany thing.

23 You heard from Andre Hightower. You heard from
24 O'Shane Dixon. They didn't have anything to do with
25 this. You heard from the officers. They looked into it.

1 Those guys didn't have anything to do with this. You got
2 this mysterious Big Joe that Sammie identified but can't
3 provide any information on and the officers don't have any
4 information on that.

5 And none of this makes any sense. If that is what was
6 happening, if he was really -- say he was scared of the
7 cops, why wouldn't he have told Maurice, his friend, after
8 he left there, oh man, I went out there to get the money
9 and these guys, they got Tyrone.

10 Instead, he concocts this story about having \$190,000
11 and putting it in a safe in Tyrone's car and then Tyrone
12 kissed him on the forehead. Again, he concocted that
13 story because he wants people to believe that Tyrone ran
14 off. It doesn't fit. It doesn't fit with his last
15 version.

16 He would have told Maurice.

17 But then you saw him getting agitated with Agent
18 Burnett at that next interview, okay, when he was getting
19 asked about the money. And he's getting agitated. You
20 saw him jump up. I didn't kill Tyrone, I didn't -- you're
21 wrong. I didn't kill Tyrone. He's arguing with the
22 police. Again if he's scared, okay, it's one thing to be
23 scared initially but when you're in an interview in the
24 police station with an agent from SLED who's saying, we
25 think you committed a murder, an innocent man would be,

1 look, I'm scared to death, I got to tell you what
2 happened. That's not what he did. He came up with more
3 of these lies. He was arguing with them. He was arguing
4 with Agent Burnett.

5 Moves to the point that the police are accusing you of
6 murder, you're a target of a murder and not only that your
7 friend's supposedly missing. And you know the family out
8 here is worried sick about him. It's not what happened.

9 He just thought that that body was never going to be
10 discovered, and he could continue to tell the story and
11 the police would never be able to prove anything. Because
12 he did it.

13 And then, and then if his cockamany story is true he
14 not only goes from lying to his friends and lying to
15 Tyrone's family and then arguing with Agent Burnett even
16 though now he knows he's a target of a murder and then he
17 goes on to create all this elaborate ruse about the track
18 phone, the fake texts from the track phone and of the
19 \$25,000 story for Black, and then let me get this
20 straight.

21 His story is that they told him to go get some money.
22 They got Tyrone and they told him to go get some money and
23 he's got Tyrone's debit card. He spent a thousand dollars
24 on it the next day. He said he didn't have any money. He
25 had his debit card. He could've -- if he has his debit

1 card he could have gone, gotten the money. Why didn't he
2 take it back if that story was true?

3 Of course it's not. It's ridiculous. I'm just
4 showing you how ridiculous it is. He had the money. And
5 then he says he was instructed to go move the car and so
6 he gets his wife and a young child and goes out to the
7 scene in the middle of the night where supposedly his
8 friend had just been beaten with a gun and a pipe. It's
9 ridiculous.

10 Classic liar.

11 Well, he's arrested now. And he goes to Kirkland R&E.
12 And you heard from Mr. Early Glover right there. Even
13 months after the fact he's still trying to work an angle.
14 He's still trying to work an angle.

15 And you heard what Early Glover said. He promised him
16 a thousand dollars to write a statement saying he can
17 verify that Sammie didn't do it. And Sammie writes a
18 letter and gets to Lieutenant Harley and it says -- and so
19 Lieutenant Harley goes and interviews Sammie and he's
20 like, yeah, I got somebody that can verify my innocence.
21 Go see Early Glover.

22 And so they go see Early Glover in December and by
23 this time he's somewhere else in Ridgeland. And Early
24 tells them the truth. He said, I don't know anything
25 about that. Sammie said he was in a bind and he needed

1 two people to write statements. He promised me he'd pay
2 me a thousand dollars. He wrote it out and I just copied
3 what he wrote.

4 And you saw when it pointed to him, I held it up. You
5 saw. I mean, it was really tight writing. There wasn't,
6 like, a mistake on it. You know, it was, like, five pages
7 of handwritten stuff. Who writes five pages of
8 handwritten stuff, writes out a whole story and doesn't
9 scratch anything out? It was clearly copied, re-copied.
10 He said Sammie wrote it and he just copied it and Sammie
11 promised to pay him a thousand dollars and he doesn't know
12 anything about it.

13 And what's interesting is, what confirms what Early
14 says is that Sammie Gerrick when he told his final story
15 about being out in the woods with Andre and O'Shane and
16 Big Joe, who did he not mention? He never said anything
17 about Early Glover. Never said anything about anybody
18 else being there.

19 Common sense.

20 And the actions of a guilty man trying to manufacture
21 evidence. Just like the track phone. Just like the story
22 about Black. Does an innocent man do that? No. It's
23 what a guilty man does. A desperate man who does -- who
24 knows he's about to get busted. And he's trying anything
25 at this point. It's not an innocent man, it's a guilty.

1 man.

2 All right. This time I am almost done. It's about
3 time for you to decide this case.

4 But let's talk about one last thing. Let's let Tyrone
5 have the last word. And I told you before, Tyrone can
6 testify here today. He was found, as I stated before,
7 with -- his hands had been tied. His ankles had been
8 tied. His body face down, suffocated, choked out.

9 There's one more real interesting thing. The
10 scratches on Sammie. Right through here. Y'all will have
11 this back in the jury room. And you heard the pathologist
12 say that those scratches were consistent with fingernail
13 scratches, consistent with someone in an altercation
14 defending themselves.

15 And we also know that Sammie Gerrick told lies about
16 that, too. He said the scratches, the scratches were from
17 a light bulb that fell from the ceiling. But you heard
18 evidence from Johnell Rice that when he left he didn't
19 have any injuries on him. You heard evidence from Danny
20 Abraham, the officer who wrote up the report when he
21 claimed that the light bulb was broken and said he didn't
22 have any injuries, we didn't even send him for medical
23 help. So he told that lie about the scratches.

24 And he also told a lie to Maurice. He also told the
25 lie that the scratches happened when he was tazed. Why

1 would he lie about this, ladies and gentlemen? Why would
2 he lie about this? What does that tell you?

3 Is that Tyrone speaking to you right there? Is that
4 Tyrone speaking to you right there? The man who had the
5 motive. The man who had the opportunity. The man who
6 engaged in all these guilty acts and he's got these
7 scratches on him right after this crime happened.

8 I submit to you that Sammie told Maurice we're going
9 out -- or, excuse me. Sammie told Tyrone we're going out
10 to the woods to get that money. And they got the two
11 shovels because they were going to dig it up. And Sammie
12 went out there and made Tyrone unknowingly help dig his
13 own grave.

14 And then he struck defensive wounds on the arm. I
15 showed you before. And he overpowered him. He tied him
16 up. He made him give up his PIN number so he could later
17 claim he was entitled to use it. And then he choked him
18 out and Tyrone with his hands tied was doing the best he
19 could. And that's where he got the scratches right there
20 on the inside of the elbow and right there on the chest
21 area, because that's all Tyrone could do. But he couldn't
22 win and he died.

23 There's only one man that all these circumstances
24 fit. Only one man. And it's Sammie Gerrick.

25 He's got the motive. He's got the opportunity. He's

1 got the guilty acts. He's got 16 lies, a classic liar who
2 moves his story all the way down. He's got the track
3 phone, the texts, the capsule, the Law Keep Away, the
4 green netting, Bradley Smith saw him staring off into
5 space when the crime happened. He had never did that
6 before.

7 You've got, you got Early Glover faking evidence. You
8 got Charlene taking the car and moving it in the middle of
9 the night. You got using the ATM card, and you got Tyrone
10 speaking to you with these scratches. All of this points
11 to one man; Sammie Gerrick.

12 I got one last thing to say. Tyrone was fooled by
13 Sammie Gerrick's lies and he died for it. Don't y'all be
14 fooled by his lies, too.

15 On behalf of the State of South Carolina, on behalf of
16 all of Tyrone's family and friends out here, I ask you to
17 do your duty, do the right thing and find this man guilty
18 of murdering Tyrone.

19 Thank you.

20 THE COURT: Mr. Foreman, ladies and gentlemen. We've
21 been going now a couple hours. I'm going to take a quick
22 break before I charge you on the law. My charge is about
23 10 or 15 minutes. Let's go get a quick bathroom break.
24 We'll start back at 12 o'clock sharp, and then you'll be
25 in a position to deliberate shortly after that.

1 Thank you. Everybody else remain seated.

2 (Jury exits courtroom at 11:48 a.m. Break taken. At
3 12:04 the trial resumed:)

4 THE COURT: The State, anything for the record before
5 we bring the jury in to charge?

6 MR. WATERS: No, sir, Your Honor.

7 THE COURT: Mr. Williams?

8 MR. WILLIAMS: Nothing, Your Honor.

9 THE COURT: All right. Bring the jury in, please.

10 (Jury enters courtroom at 12:05 p.m.)

11 JUDGE'S CHARGE TO THE JURY

12 THE COURT: Mr. Foreman, ladies and gentlemen of the
13 jury. My instructions are, as they call it, the charge on
14 the law. It's sort of divided into two sections. The
15 first part I will deal with general propositions of law,
16 and then we will go into the specific offense in this
17 matter, the murder charge. And I'll tell you the elements
18 of murder and then some further, after that some further
19 general matters. Will take about 15 minutes maybe, maybe
20 a little bit less.

21 Now, let me remind you, once again, that the fact that
22 the Defendant was charged, arrested and indicted in this
23 case for the offense of murder is not evidence in the case
24 and cannot be considered as evidence by you of guilt in
25 this case, nor does it create any presumption or inference

1 of guilt.

2 The indictment is simply the written instrument which
3 contains the charges against the Defendant. It's the
4 formal document by way this case is brought into the
5 courtroom.

6 Now, to the indictment of guilty -- of murder. To the
7 indictment of murder the Defendant has pled not guilty and
8 that plea puts the burden on the State of South Carolina
9 to prove the Defendant guilty beyond a reasonable doubt.

10 A person charged with committing a criminal offense in
11 South Carolina is never required to prove himself
12 innocent. I charge and instruct you that it is an
13 important rule of constitutional law that a person in a
14 criminal trial, no matter what the seriousness of the
15 charges may be, will always be presumed to be innocent of
16 the crime for which the indictment was issued unless guilt
17 has been proven by evidence satisfying you of that guilt
18 beyond a reasonable doubt.

19 The presumption of innocence does not end when you
20 start your deliberations but it stays with the Defendant
21 throughout the trial until you reach a verdict of guilt
22 based on evidence satisfying you of that guilt beyond a
23 reasonable doubt.

24 The presumption of innocence is not a mere legal
25 theory. It's not just a legal phrase. It is a

1 substantial constitutional right to which every defendant
2 is entitled unless you the jury are satisfied from the
3 evidence of the Defendant's guilt beyond a reasonable
4 doubt.

5 What is a reasonable doubt? Sometimes our courts have
6 said this and held this, that reasonable doubt is the kind
7 of doubt that would cause a reasonable person to hesitate
8 to act. A reasonable doubt is the kind of doubt that
9 would cause a reasonable person to hesitate to act.

10 As I said, the State has the burden of proving the
11 Defendant guilty beyond a reasonable doubt. Proof beyond
12 a reasonable doubt is proof that leaves you firmly
13 convinced of the Defendant's guilt.

14 There are very few things in this world that we know
15 with absolute certainty and in criminal cases the law does
16 not require proof that overcomes every possible doubt.
17 If, based on your consideration of the evidence, you are
18 firmly convinced that the Defendant is guilty of the crime
19 charged, then you must find the Defendant guilty.

20 However, if on the other hand you think there is a
21 real possibility that the Defendant is not guilty, you
22 must give the Defendant the benefit of the doubt and find
23 him not guilty.

24 So that is how our courts define reasonable doubt.

25 Let me remind you, ladies and gentlemen, that you and

1 I have certain duties to perform. As the trial judge it
2 has been my responsibility to preside over the trial of
3 the case. I have ruled on the admissibility of the
4 evidence and have made sure that the lawyers asked their
5 questions pursuant to the rules of evidence. So my job is
6 to rule and conduct the trial and also to charge and
7 instruct you on the law.

8 So as I told you earlier, you must accept the law as I
9 give it to you. If you have a preconceived idea about
10 what the law is and it does not agree with what I say,
11 please set aside any preconceived ideas and accept the law
12 as I give it to you. My position makes me the judge of
13 the law.

14 You are the judges of the facts. It is your sole
15 responsibility to determine what the true facts are in the
16 case and apply those true facts to the law as I give it to
17 you and render a verdict.

18 Now, if at any time during the trial of the case
19 you've seen me smile or frown or roll my eyes or yawn or
20 stretch or do anything that you think that I have an
21 opinion about the facts, disregard that. I cannot and I
22 do not. I try cases all over the State, day in and day
23 out, week in and week out. And my position does not allow
24 me to have any opinion whatsoever about the facts. That
25 is your sole responsibility, your sole duty to determine

1 what the true facts are in the case.

2 Now, in the trial of cases, there are two types of
3 evidence which are generally presented during a trial.
4 It's called direct evidence and circumstantial evidence.

5 Direct evidence directly proves the existence of a
6 fact. It does not require any logical deduction.

7 Circumstantial evidence is proof of a chain of facts and
8 circumstances indicating the existence of a fact.

9 If I go outside and it's raining and I see it raining
10 and I get wet, I can come back in here and testify that
11 it's raining. That's direct evidence that it rained. If
12 I go outside and it's cloudy and mud puddles but I don't
13 see it rain, that's circumstantial evidence that it has
14 rained. So that's sort of the difference. That's a
15 pretty basic example, but that's what it is.

16 Circumstantial evidence is proof of a chain of facts
17 and circumstances indicating the existence of a fact.

18 Direct evidence proves the existence of a fact and
19 does not require any logical deduction.

20 Now, crimes may be proven by circumstantial evidence.
21 The law makes no distinction between the weight or value
22 to be given to either direct or circumstantial evidence.
23 However, to the extent the State relies on circumstantial
24 evidence, all of the circumstances must be consistent with
25 each other and when taken together point conclusively to

1 the guilt of the accused beyond a reasonable doubt.

2 If these circumstances merely portray the Defendant's
3 behavior as suspicious, proof has failed.

4 The State has the burden of proving the Defendant
5 guilty beyond a reasonable doubt. This burden rests with
6 the State regardless of whether the State relies on direct
7 evidence, circumstantial evidence or a combination of the
8 two.

9 So that's the difference between direct and
10 circumstantial evidence and the types of evidence.

11 As the finders of fact and the judges of the facts,
12 you must determine the credibility of the witnesses who
13 have testified in this case. Credibility simply means
14 believability. Who do you believe.

15 It becomes your duty as jurors to analyze and to
16 evaluate the evidence and determine which evidence
17 convinces you of its truth. In determining the
18 believability or the credibility of the witnesses who have
19 testified in this case, you may believe one witness over
20 several, several over one. You can disbelieve everything
21 a witness says. You can believe everything a witness
22 says. You can believe a portion and disregard a portion.
23 So it's up to you to use your common sense and determine
24 what the truth is.

25 As I told you earlier, you spend a lifetime dealing

1 with wives, husbands, children, friends, employees,
2 employers, and you know how to judge when someone is
3 telling the truth. Utilize that experience in fulfilling
4 your duty here today.

5 You also have the right to consider whether any
6 witness has exhibited to you any interest, bias, prejudice
7 or other motive in the case and also you may consider the
8 appearance and manner of a witness while on the stand.

9 We had a couple of witnesses or maybe more that I
10 qualified as experts in certain areas and fields.
11 Normally our rules of evidence do not permit a witness to
12 testify about an opinion or conclusions. An exception to
13 this rule exists for witnesses we call expert witnesses.
14 A witness who by education and experience has become an
15 expert in some art, science, profession or calling may
16 state an opinion as to relevant and material matters in
17 which the witness claims to be an expert and may also
18 state the reasons for the opinion.

19 You should consider any expert opinion received in
20 evidence in this case and like any other evidence give it
21 the weight you think it deserves. If you decide that an
22 opinion of an expert is not based upon sufficient
23 education and experience, or if you conclude that the
24 reasons given in support of the opinion are not sound, or
25 that the opinion is outweighed by other evidence, you can

1 disregard the opinion entirely. An expert witness's
2 opinion is to be given no greater weight than that of any
3 others witness simply because the witness was qualified as
4 an expert. Further you're not required to accepted an
5 expert's opinion even though it is not contradicted.

6 There is another very important constitutional rule of
7 law that exists in our state and nation. I instruct you
8 and emphasize that the fact that the Defendant did not
9 testify is not a factor to be considered by you in any way
10 whatsoever in your deliberation of guilt or innocence and
11 in your consideration of the question of guilt or
12 innocence. The fact that he did not testify must not be
13 considered by you in any manner whatsoever in deciding his
14 guilt or innocence.

15 A defendant has the constitutional right to remain
16 silent and the exercise of this right must not be
17 considered by you in your deliberations. I repeat. Under
18 your oath, you're to draw absolutely no conclusion
19 whatsoever from the fact that the Defendant in this case
20 did not testify. The fact that he did not testify should
21 not be discussed by you at all in the jury room.

22 The burden of proof, as I have stated to you, is on
23 the State. The Defendant is not required to prove his
24 innocence.. The burden of proof remains on the State to
25 prove guilt to you beyond a reasonable doubt.

1 At least one witness and perhaps more of the witnesses
2 to testify had a criminal record. A person who has a past
3 criminal record is competent to testify during a trial. A
4 past record does not affect the ability of that witness to
5 testify. The past record may only be considered by you,
6 if at all, in determining the believability or the
7 credibility of the witnesses. You are the sole judges of
8 the facts and the believability of any and all the
9 witnesses is within your domain and duty.

10 In this case a number of statements were alleged to
11 have been made by the Defendant. They've been admitted
12 into evidence. And while I determined that the statements
13 were admissible, I instruct you, you make the ultimate
14 decision of whether or not the Defendant actually made the
15 statements. And if he made the statements, you must
16 consider and determine whether the statement was made by
17 the Defendant voluntarily and of his own free will. This
18 means that the statements were not caused by pressure,
19 force, fear, threats, coercion or intimidation, or by hope
20 or a promise of leniency or a reward of any kind.

21 In determining whether the statements were voluntary
22 you should consider both the characteristics of the
23 Defendant and the details of the questions and whether or
24 not the Defendant has had his constitutional rights
25 advised to him including but not limited to: The right to

1 remain silent; that any statement could be used against
2 him in a court of law; the right to have a lawyer present;
3 that if he or she cannot afford a lawyer, a lawyer would
4 be appointed to represent him without any cost; and that
5 he could stop make a statement at any time.

6 You must carefully consider all of the surrounding
7 circumstances before you give any weight to an alleged
8 statement.

9 The State has the burden of proving beyond a
10 reasonable doubt that the alleged statement was voluntary.
11 If you determine it was then you may give the statement
12 any further consideration that you deem proper. You must
13 decide what weight, if any, should be given to the
14 statements. If you determine these statements were not
15 free and voluntarily, then you should not consider the
16 statement at all.

17 Now, Mr. Foreman, ladies and gentlemen of the jury,
18 that is the general propositions of law that I advise
19 jurors and instruct jurors on in all criminal cases.

20 Now let's turn to the indictment in this case. In
21 this case as I have told you on a number of occasions,
22 Mr. Sammie Lee Gerrick has been indicted by the Barnwell
23 County Grand Jury for the offense of murder.

24 The State must prove to you beyond a reasonable doubt
25 that the Defendant killed another person with malice

1 aforethought. Must prove beyond a reasonable doubt that
2 the Defendant killed another person with malice
3 aforethought.

4 Our courts have defined malice, that is, hatred,
5 ill will or hostility towards another person. It is the
6 intentional doing of a wrongful act without just cause or
7 excuse and with an intent to inflict an injury or under
8 circumstances that the law will infer an evil intent.

9 Malice aforethought does not require that malice exist
10 for any particular time before the act is committed, but
11 malice must exist in the mind of the Defendant just before
12 and at time of the act. Therefore, there must be a
13 combination of the previous evil intent and the act.

14 Malice aforethought may be expressed or inferred. The
15 terms expressed and inferred does not mean different kinds
16 of malice but merely the manner in which malice may be
17 shown to exist. That is, either by direct evidence or by
18 inference from the facts and circumstances which are
19 proved.

20 Express malice is shown when a person speaks words
21 which express hatred or ill will for another, or when the
22 person prepared beforehand to do the act which was later
23 accomplished. Malice may be inferred from conduct showing
24 a total disregard for human life.

25 So, murder is one of our, I guess, the definition of

1 murder and what's to be proved as far as the elements are,
2 even though it's a serious a crime as it is, the elements
3 are more -- are not that long. The State must prove
4 beyond a reasonable doubt that the Defendant killed
5 another person with malice aforethought.

6 Now, Mr. Foreman, ladies and gentlemen of the jury,
7 your verdict must be unanimous. All 12 of you must agree
8 as to the verdict.

9 And obviously we only have one charge so there will be
10 only one charge you'll have to consider and that is
11 whether or not the State has proven to you beyond a
12 reasonable doubt that the Defendant has committed the
13 offense of murder.

14 You will have a verdict form. Simply, we find the
15 Defendant not guilty, or we find the Defendant guilty.
16 Check whichever one you decide your decision is, your
17 verdict is. Sign the verdict form and then knock on the
18 door and tell us that you're ready to give us the verdict
19 and we will receive you back into the courtroom.

20 As I said, your verdict must be unanimous. All 12 of
21 you must agree.

22 Obviously you're not here to reward any friends or to
23 punish any enemies. You're here to give a careful
24 consideration and deliberation of the evidence that has
25 been presented to you, to decide what the true facts are,

1 and apply those facts to the law as I've given it to you.

2 If during your deliberation you have any questions
3 that you need to ask of me, you will have a notepad.
4 Please write out the inquiry, knock on the door, the
5 bailiff will present it to me. Sometimes I can answer it,
6 sometimes I can't. But I'll send you back the best I can
7 do. It just depends on what the question is, obviously.

8 As I said, your decision has to be unanimous.

9 I'm going to ask in just a few minutes that you return
10 to the jury room. Do not start deliberating quite yet. I
11 have to ask the lawyers if I've left anything out or I
12 need to amend anything. That won't take but a second.
13 Then we have to gather up the evidence. That may take
14 more than a second but certainly won't take more than five
15 minutes to make sure we have everything. And then once we
16 have all the exhibits, the bailiff will present to you the
17 exhibits and the verdict form.

18 And then you may start your deliberations. As I
19 understand, lunch is being ordered -- has been ordered.
20 When lunch comes, you can continue to deliberate while
21 eating lunch. You can take a break. You can't leave the
22 jury room though once you start deliberating. You're in
23 charge or y'all are in charge. Handle it however you feel
24 is the most efficient way to do it.

25 And, like I say, once you reach a verdict let us know.

1 I'm going to ask that you step back your jury room,
2 please. Once again, do not start deliberating until I
3 have delivered the verdict form and the evidence.

4 Do we have in evidence some of the CDs? Don't we?

5 MR. WATERS: Court's Exhibit.

6 THE COURT: That was a Court's Exhibit.

7 MR. WATERS: Yes, sir.

8 THE COURT: So you'll have whatever -- the evidence
9 will be sent back to you of what you'll be allowed to look
10 at. Okay. All right.

11 Step back and we'll send everything out to you in just
12 a few minutes. Be sure and separate the alternate.

13 THE BAILIFF: All right.

14 (Jury exits courtroom at 12:28 p.m.)

15 THE COURT: On behalf of the State, are there any
16 objections to the charge, any requested additions or
17 deletions?

18 MR. WATERS: No, sir, Your Honor.

19 THE COURT: Mr. Williams?

20 MR. WILLIAMS: None, Your Honor.

21 THE COURT: Mr. Williams, Mr. Waters, would you please
22 come forward and review the exhibits to make sure we have
23 everything? And then I will ask you on the record.

24 I thought we had at least one CD that was an exhibit.

25 MR. WATERS: That's correct. I was thinking of the

1 but if anyone feels like they cannot control their
2 emotions, I'm pleasantly asking you to leave now.

3 I will not tolerate any outburst of emotions, crying,
4 screaming, crying, whatever, shouting. If you do, I will
5 have you arrested for contempt of court. You have been a
6 wonderful audience all week under the most difficult
7 circumstance and I commend you. Let's let it continue on
8 through the announcement of the verdict.

9 So, fair warning. If anybody doesn't think they can
10 control them self, I'm going to ask that you step out.

11 Fair enough?

12 (Jury enters courtroom at 1:39 p.m.)

13 THE COURT: Mr. Foreman, have y'all reached a
14 verdict?

15 FOREPERSON OF THE JURY: Yes, sir.

16 THE COURT: You passed it up to her?

17 FOREPERSON OF THE JURY: I did; yes, sir..

18 THE COURT: All right. You may publish it. Stand,
19 please.

20 THE DEFENDANT: (Complying.):

21 THE CLERK: In the Court of General Sessions for the
22 Second Judicial Circuit, Indictment Number 2013-GS-
23 06-00465. The State of South Carolina, County of Barnwell
24 versus Sammie Lee Gerrick. As to the offense of murder,
25 we the jury find the Defendant guilty.

1 UNIDENTIFIED SPEAKER: Amen!

2 THE COURT: Ma'am!

3 UNIDENTIFIED SPEAKER: I'm sorry.

4 THE COURT: Any further -- last warning.

5 THE CLERK: We unanimously agree, November 21st, 2013,
6 signed by Foreperson Paul Thomas.

7 THE COURT: Anything further for the jury before I
8 dismiss them, by the State?

9 MR. WATERS: No, sir, Your Honor.

10 THE COURT: Mr. Williams?

11 MR. WILLIAMS: Nothing, Your Honor.

12 THE COURT: Thank you. You may be seated.

13 Mr. Foreman, ladies and gentlemen of the jury. That
14 concludes your service this week.

15 I commend you. You've paid excellent attention.
16 You've done your job well and I thank you on behalf of the
17 State and citizens of Barnwell. It's not an easy task to
18 come in and judge someone but our system is the greatest
19 in the world. When someone is accused of a crime, we take
20 12 citizens from the community to make the decision and I
21 commend you for your service and you exercised your duty
22 well.

23 What we have left is sentencing. You're welcome to
24 stay. That will take us about another 15 minutes, or you
25 are welcome to leave now. So, your choice. If you want

1 THE COURT: Because you'll need it. Anything else you
2 want to tell me?

3 THE DEFENDANT: No, sir.

4 THE COURT: Anything, any member of the family? I'll
5 listen to a couple family members if anybody wants to --

6 MR. WATERS: Yes, sir. And just briefly on behalf of
7 the State, the State feels very strongly that life without
8 parole is the only appropriate sentence given the --

9 THE COURT: I appreciate that, but sentencing is
10 obviously in my hands.

11 MR. WATERS: I have spoken with a number of the
12 members of the family and I've gotten the same sentiment
13 from them as well.

14 I do not know if anybody wants to briefly address the
15 Court, but they have been fairly, I'd say unanimous that
16 life without parole is the only appropriate sentence here.

17 THE COURT: AS TO INDICTMENT 13-GS-06-465, THE JURY
18 HAVING FOUND YOU GUILTY OF THE OFFENSE OF MURDER, THE
19 SENTENCE OF THIS COURT IS THAT YOU BE COMMITTED TO THE
20 STATE DEPARTMENT OF CORRECTIONS FOR THE BALANCE OF YOUR
21 NATURAL LIFE.

22 Good luck to you.

23 MR. WATERS: Thank you, Your Honor.

24 THE COURT: Everybody remain seated. All right. I'm
25 going to ask -- I'm going to ask that the members --

STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

The State of South Carolina,

VS.

SAMMIE LEE GERRICK.,

Defendant.

IN THE COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

MOTION TO SUPPRESS ROOT

RHONDA D. McELVEEN
CLERK OF COURT
BARRELL COURT S.C.

2013 NOV 13 AM 11:01

SECRET

TO: S. CREIGHTON WATERS, ESQUIRE and JASON ANDERS, ESQUIRE

PLEASE TAKE NOTICE that the defendant by and through his undersigned counsel, shall move the Court to issue an Order to exclude from evidence in this case the "witch doctor root" found in Defendant's truck after it was searched by law enforcement. In particular, the root contains a note which contains the phrase "Set me Sammie Gerrick free from murder and revoked bond." The note then state multiple times "Jack Early set me free". Upon information and belief, the identity of the person who wrote the note is unknown. Defendant Sammie Gerrick did not write the note. Further the meaning of the note is unclear. The note Constitutes hearsay for which no exception exists to allow it to be admitted in evidence. Further, it is not relevant. Any probative value the note has is far outweighed by its unfair prejudicial effect against Defendant.

BEDINGFIELD & WILLIAMS, L.L.C.

Daniel W. Williams, Esquire
Attorney for Defendant
Post Office Box 616
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(803) 259-2759

November 12, 2013
Barnwell, South Carolina



FILED FOR RECORD
 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
 2013 DEC 20 PM 2: 55 SECOND JUDICIAL CIRCUIT
 COUNTY OF BARNWELL)
 RHONDA D. McELVEEN, Indictment 2013-GS-06-274
 CLERK OF COURT
 BARNWELL COUNTY, S.C.

State of South Carolina)
)
 v.)
)
 Sammie Lee Gerrick,)
)
 Defendant.)

**RESPONSE TO MOTION TO EXCLUDE
 EVIDENCE OF ROOT LETTER, BOTTLE
 OF "LAW KEEP AWAY", AND TESTIMONY
 OF EARLY GLOVER**

The State of South Carolina hereby responds as follows to the motion by Sammie Lee Gerrick ("Defendant") to exclude from evidence: (1) a "root" found in the center console of Defendant's truck, (2) a bottle of "Law Keep Away" found in the center console of Defendant's truck, (3) the testimony of Early Glover, who Defendant enticed to write a false statement. As will be seen, all three are clearly relevant to show consciousness of guilt, and are admissible under South Carolina law.

I. THE ROOT AND ACCOMPANYING LETTER ARE CLEARLY ADMISSIBLE TO SHOW CONSCIOUSNESS OF GUILT UNDER LONGSTANDING SOUTH CAROLINA CASELAW.

As the text of the root letter found in Defendant's truck is clearly susceptible of the inference that it displays consciousness of guilt, it is patently admissible under longstanding South Carolina caselaw.

A. Facts

As the Court is aware, Defendant has been indicted for the murder of his friend, Tyrone Donaldson, who had loaned Defendant money so Defendant could bond out of the Barnwell County jail. The victim was last seen alive on July 21, 2011, and he was going

to meet Defendant to get his money back.

After the victim disappeared, Defendant was interviewed by police the next day, on July 22, 2011. He also gave a written statement the following day, on July 23, 2011. He was interviewed twice on July 25, 2011, during which he was not polygraphed because of his SLED history, and on July 30, 2011, Defendant called police with a story that the victim was being held for ransom. Although he promised to call police back with the specific ransom demand, but never did.

Defendant's wife, Charlene Gerrick, led officers out to a deserted road north of Blackville where Defendant earlier had taken her to assist him in moving Tyrone's car, and the body was discovered in the nearby woods on August 4th, 2011. On August 5th, 2011, officers executed a search warrant on Defendant's Dodge Ram truck. In the center console, they found the root – consisting of what appears to be soil, incense, twigs, and pennies, wrapped in a brown piece of paper. On one side of the paper is handwritten Psalm 130. On the other side of the paper is the following:

Set me Sammie Gerrick free from murder, and reduced bonds,
 Jack Early set me free now
 Jack Early set me free now
 Jack Early set me free now

Sammie Gerrick Sr.
 Sammie Gerrick Sr.
 Sammie Gerrick Sr.

So shalt it be it
 So shalt it be it
 So shalt it be it

Amen
 Amen
 Amen

It is this evidence that is the subject of the first motion to exclude.

B. Law

"As a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt." State v. McDowell, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976) (quoted in State v. Martin, 403 S.C. 19, 742 S.E.2d 42 (2013)). While this rule is most often analyzed in terms of evidence of flight, it can apply to other acts as well, ranging from destruction or concealment of evidence to witness intimidation. As the Court of Appeals noted in Martin, "[t]he rationale underlying the admissibility of flight evidence, that 'it is not to be supposed that one who is innocent and conscious of that fact would flee,' applies to other forms of evasive conduct as well". 403 S.C. at 29, 742 S.E.2d at 47 (addressing dishonesty to police questioning).¹

Further, in order for certain acts to be evidence of guilty consciousness, there must be some connection between the crime charged, the act, and the defendant. See Martin, 403 S.C. at 29, 742 S.E.2d at 47 (applying the test for flight evidence to other types of guilty consciousness evidence) See also Edwards, 383 S.C. 66, 678 S.E.2d 405 (evidence linked defendant to the witness intimidation).

¹ See State v. Edwards, 383 S.C. 66, 678 S.E.2d 405 (2009) (evidence of **witness intimidation** admissible to show consciousness of guilt); State v. Beckham, 334 S.C. 302, 314-15, 513 S.E.2d 606, 612-13 (1999) (evidence of extinguished fire behind home was relevant to consciousness of guilty by **destruction of evidence**); State v. Epes, 209 S.C. 246, 39 S.E.2d 769 (1946) (**concealing** wife's body was relevant circumstantial evidence of guilt, and relevant to disprove defendant's claim of a panicked and clouded mind); State v. Winter, 83 S.C. 251, 65 S.E. 243 (1909) (**concealment** of stolen property); State v. Orozco, 392 S.C. 212, 708 S.E.2d 227, 230 (Ct. App. 2011) (holding that evidence of an **attempted suicide** was admissible as evidence of guilty consciousness, and reasoning that it is "easily analogized to other types of circumstantial evidence of guilt based on the accused's behavior after the crime"); State v. Al-Amin, 353 S.C. 405, 411-413, 578 S.E.2d 32, 35-37 (Ct. App. 2003) (evidence of **concealing body** of wife so as to divert suspicion from himself was a relevant circumstance tending to show guilt).

C. Analysis

Here, the evidence of the root found in Defendant's truck meets the test for evidence of guilty consciousness. Of course, segments of this State's population believe in or practice root and voodoo spells to help with their problems – such as a legal problem like the one Defendant faced at the time the root was found. See generally State v. Mattison, 276 S.C. 235, 277 S.E.2d 598 (1981) (discussing admitted evidence of the effect of the "roots phenomenon" on defendant, who claimed his wife was working roots on him); Johnson v. Breslin, 2009 WL 3111787 (E.D.N.Y. 2009) (describing testimony where individuals were going to go to South Carolina to see a root doctor for help with their problems).

The letter accompanying Defendant's root undoubtedly provides the specific nexus to this case, as it expressly refers to four relevant things: (1) the murder, (2) the bond revocation, (3) the trial court, and (4) the request to be "set free". Of course, Defendant's inability to pay back the money Tyrone loaned him to get out on bond is the motive for this murder, and it was this Court which set that very bond on the escape charge. If Defendant were to get arrested for murder that could potentially result in a revocation of the bond on the escape charge. Further, defendant had been repeatedly questioned twice by the police about involvement in Tyrone's disappearance prior to the root being discovered. Defendant also had already denied involvement to mutual friends, noting that he hoped a supposed text from the victim would take "heat" off Defendant. Thus, Defendant was aware he was a target of the investigation into Tyrone's disappearance prior to the time the root letter was found in his truck.

Given these facts, the root letters is clearly susceptible of the inference that because

of his consciousness of guilt, Defendant procured the root for whatever help it might bring in warding off a murder charge and related legal problems – indeed, it expressly hoped that Defendant would be “set free”. Again, “any guilty act or conduct on the part of the accused is admissible as some evidence of consciousness of guilt”. Orozco, 392 S.C. at 218, 708 S.E.2d at 230 (emphasis added).

Defendant may argue that the letter is ambiguous or susceptible of some other different inference – however, the caselaw is clear such alternate explanations are a matter for weight, not admissibility. See Beckham, 334 S.C. at 314-15, 513 S.E.2d 612-13 (fact that no evidence was found in the extinguished fire went to weight on the issue of destruction of evidence, not admissibility, and similarly Beckham’s innocent explanation for leaving the state also went only to weight, not admissibility of evidence of flight); Orozco, 392 S.C. at 215-16, 708 S.E.2d 227 at 229 (noting trial court admitted evidence of suicide attempt as guilty consciousness despite defense argument that defendant attempted suicide not because he did it, but because of a lack of faith in the system).

The same goes for arguments that the root letter is not in Defendant’s handwriting. Again, it is not uncommon for individuals to go to a root practitioner who prepared the root on behalf of the “client”. Regardless, though, the root was found in Defendant’s constructive possession and, as noted before, it specifically refers to him and murder in a situation where he knows he is the target of a possible murder investigation. This is sufficient for the inference to be made, and the Defendant is free to make whatever arguments to the jury he wants as to weight.

Further, Defendant’s objections on the basis of hearsay miss the point. The root is not being offered for the truth of the matter asserted – that is, that Sammie Gerrick should

actually be saved from a murder charge or that this Court should set him free. Defendant's possession of the root with these writings itself is substantive evidence of consciousness of guilt. Regardless, the writings would be admissible under 801(d)(2)(A) or (B), SCRE (statement of party opponent, and statement in which the party opponent has manifested an adoption or belief in its truth), as well as 803(3), SCRE (then existing state of mind).

Accordingly, it is respectfully submitted that the root letter is clearly admissible as evidence of consciousness of guilt. Indeed, other courts have so held in similar circumstances with evidence of voodoo related to the case.²

II. THE BOTTLE OF "POLICE REPELLANT" IS ADMISSIBLE FOR SIMILAR REASONS, AND IN CONJUNCTION WITH THE ROOT LETTER IT IS SUFFICIENTLY LINKED TO THIS CASE.

For similar reasons, the bottle of "Law Stay Away" incense found in the truck console near the root is also admissible as evidence of consciousness of guilt. By itself, the link on the "Law Stay Away" may be more attenuated than the root letter, as the latter specifically refers to Defendant, the murder, bond revocation, the trial court, and being "set free". However, both were found together in the same place, and it is in conjunction with the root letter than the police repellant is clearly linked to this case. Like the root letter which set out Psalm 130, the "Law Stay Away" is meant to be burned while Psalms are read for the purpose of protecting one from the law. See

² See People v. Floyd, 2000 W.L. 33406917 (Mich. Ct. App. Sept. 26, 2000) (unpublished) (voodoo doll found in defendant's son's jail cell was admissible where it had "death to [the victim]" written on it and appearance of shotgun wounds, as it showed premeditation and disputed self-defense); People v. Hernandez, 2012 W.L. 1652551 (Cal Dist. Ct. App. 2012) (unpublished) (voodoo dolls discovered in defendant's possession with names of prosecutors, judges, and investigators in the case was "highly probative of his consciousness of guilt").

<https://www.wisdomproducts.com/product/6508>, and <http://luckyhoodoo.com/incense.html>.

It is a reasonable inference that both are in the same vein and were to hopefully serve the same purpose in warding off the investigation of Defendant into Tyrone's disappearance. Again, Defendant is always free to make arguments to the jury as to the weight of this evidence, but the caselaw is clear such arguments have no effect on admissibility.

III. EARLY GLOVER'S TESTIMONY IS ALSO ADMISSIBLE AS EVIDENCE OF CONSCIOUSNESS OF GUILT, AS IT SHOW DEFENDANT'S EFFORTS TO MANUFACTURE FALSE EXCULPATORY EVIDENCE.

Finally, the testimony of Early Glover as to Defendant's efforts to bribe him to falsely confess to Tyrone's murder is also admissible as evidence of consciousness of guilt.

A. Facts

On August 17, 2011, Defendant was arrested for the murder of Sammie Gerrick. Subsequently, Early Glover wrote a written letter in which he stated he was at the scene in the woods with Tyrone, Defendant, and another man named "Aundry". Glover's letter claimed Aundry and Tyrone were fighting in the woods when he and Defendant left the scene, and that Tyrone later called Defendant and asked him to move his car.

On December 5th, 2011, Early was interviewed by SLED in which he stated he first met Defendant at Kirkland R&E, in which they found out they knew some of the same people. Early stated Defendant told him he was in a bind and offered Early \$1000 to write a statement. Defendant then wrote what he wanted Early to write, and Early re-wrote it in his own handwriting.

B. Analysis

As noted before in the discussion of the root letter, “any guilty act or conduct on the part of the accused is admissible as some evidence of consciousness of guilt”. Orozco, 392 S.C. at 218, 708 S.E.2d at 230 (emphasis added). South Carolina cases have applied this rule to acts beyond mere flight, to include evidence of destruction of evidence, see Beckham, concealment of evidence, see Al-Amin and Epes, and witness intimidation, see Edwards.

In the present case, we have evidence of a calculated scheme by Defendant to bribe someone to write a false statement which exculpated Defendant. Conceptually, there is no difference between manufacturing false evidence, like Defendant did here, and destroying evidence or concealing evidence, which have been held in South Carolina to be admissible. Similarly, there is no conceptual difference between one who entices a witness with money to provide false evidence, like Defendant did here, and one who intimidates a witness with threats, which has been held in South Carolina to be admissible.

Accordingly, it is respectfully submitted that Early Glover's testimony is clearly admissible in the case in chief. Indeed, other courts have so held in similar situations.³

³ See People v. Parreno, 760 N.Y.S.2d 839 (N.Y. App. Div. 2003) (effort to manufacture false evidence of alibi is affirmative evidence of consciousness of guilt admissible in case in chief); Barr v. State, 98 S.W.2d 811 (Tex. Crim App. 1936) (noting: “It is elementary that efforts * * * to manufacture evidence, or to procure false testimony * * * may be shown as indicating a consciousness of guilt,” and many cases are cited supporting the proposition.”) Hall v. Commonwealth, 224 S.W. 492 (Ky. Ct. App. 1920) (quoting Corpus Juris: “Fraud on the part of accused in the preparation or presentation of his case, such as the suppression, the destruction, or the concealment of evidence, or an attempt to destroy or to suppress evidence or to fabricate, manufacture, or procure false evidence, may be shown against him as an incriminating circumstance, inconsistent with innocence, and as tending to show a consciousness of guilt, and that his cause lacks honesty and truth. Evidence is relevant to show that accused threatened or assaulted a

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the root, "Law Keep Away", and testimony of Early Glover are all admissible under South Carolina law as evidence of consciousness of guilt, and Defendant's motions should be denied.

Respectfully submitted,

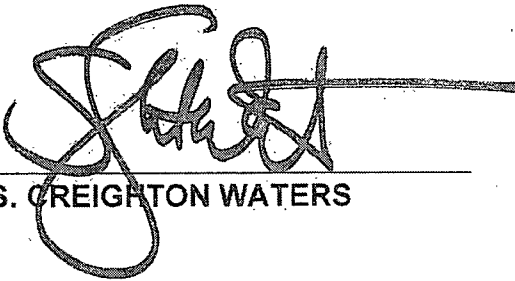
ALAN WILSON
Attorney General

S. CREIGHTON WATERS
Assistant Deputy Attorney General

JASON ANDERS
Assistant Attorney General

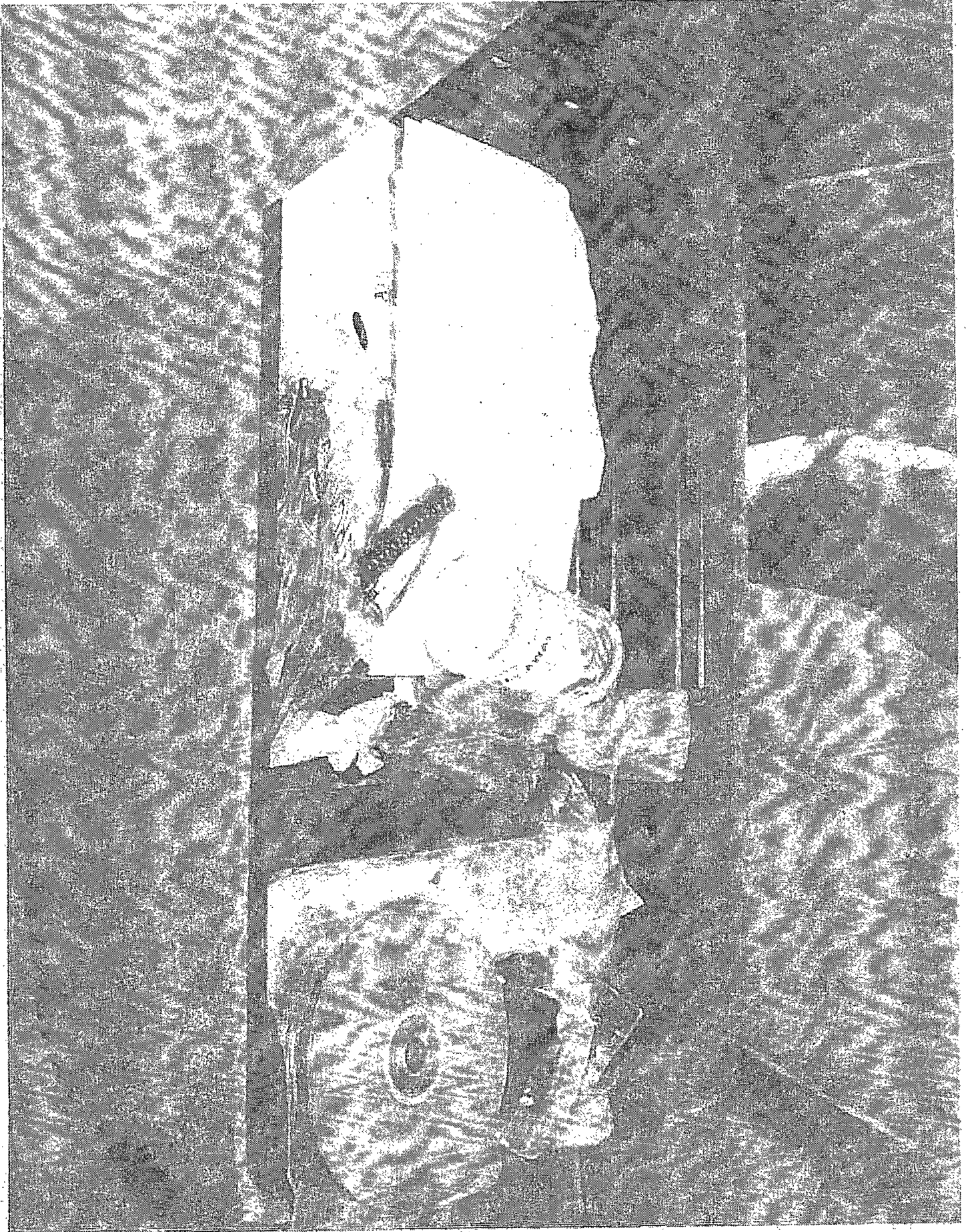
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3693

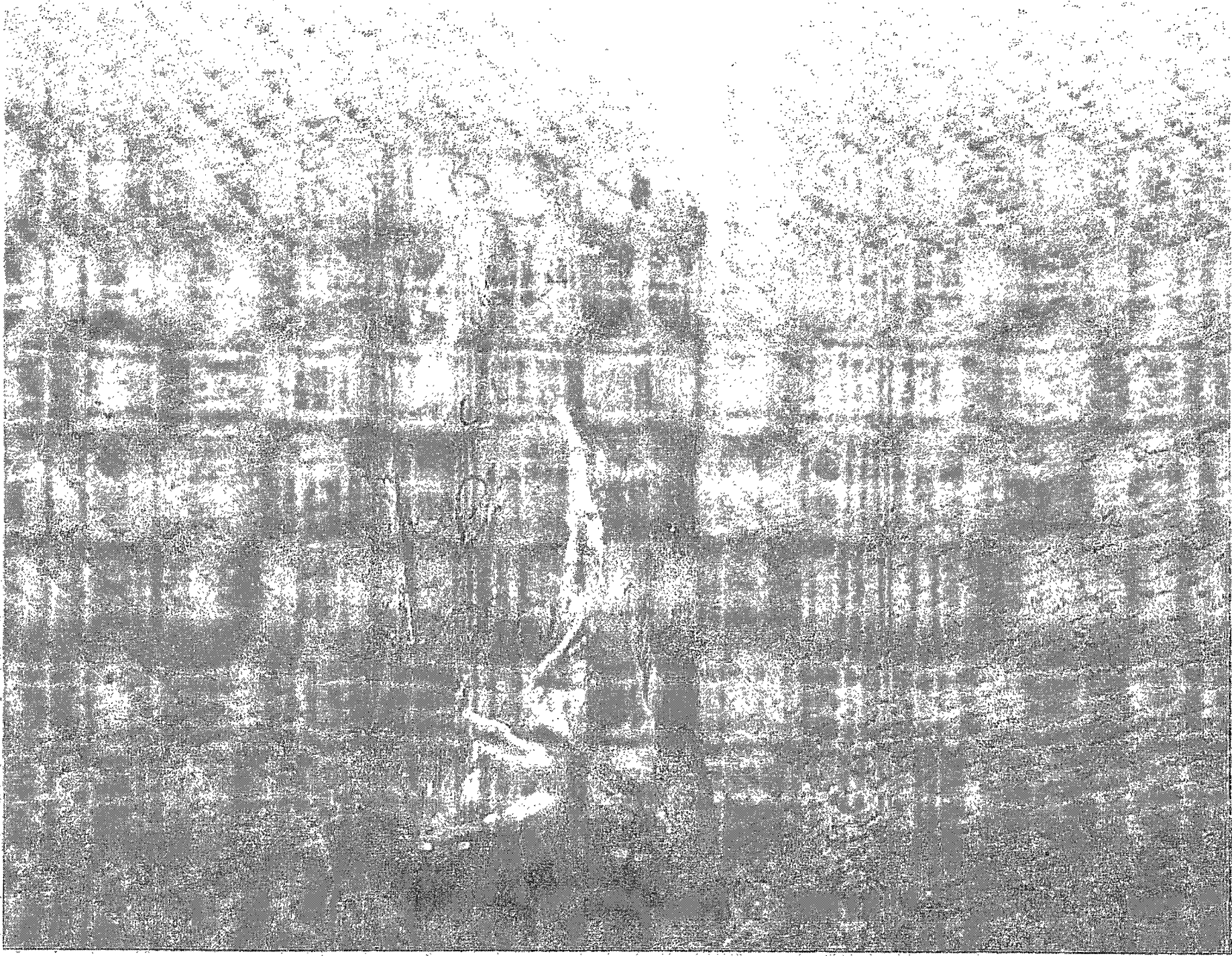
ATTORNEYS FOR THE STATE


S. CREIGHTON WATERS

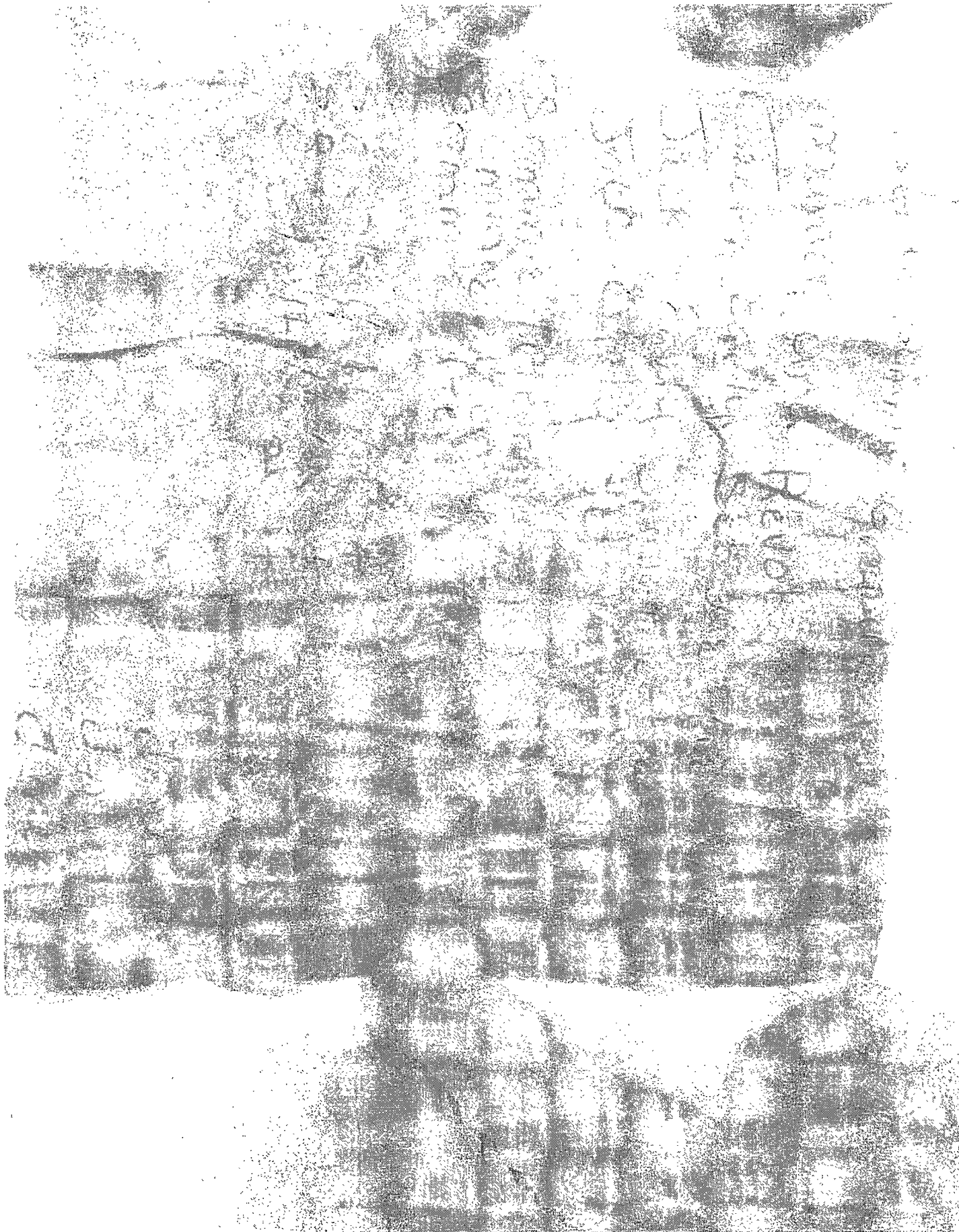
November 12, 2013.

witness or procured, or endeavored to procure, his absence, or endeavored to induce him to testify falsely.").













VOLUNTARY STATEMENT

CASE # 3110067

LEAD # _____

LAST NAME <u>Glover</u>	FIRST NAME <u>Early</u>	MIDDLE NAME <u>Jerome</u>	AGE <u>45</u>	D.O.B. <u>[REDACTED]</u>
NICKNAME/AKA	M ☒ F ☐ S ☐	STREET ADDRESS <u>Richland SC</u>		
CITY <u>Jasper</u>	STATE <u>SC</u>	ZIP	MAILING ADDRESS IF DIFFERENT	
HOME TELEPHONE	WORK TELEPHONE	CELL TELEPHONE	OCCUPATION	
EMPLOYER		EMPLOYER ADDRESS		
DRIVER'S LICENSE NUMBER/STATE		DATE AND TIME OF INTERVIEW <u>12/5/2011 3:55p.m</u>		
LOCATION OF INTERVIEW <u>SCDC Richland Corrections</u>				
INTERVIEWING AGENT <u>J. Harley</u>	DEPARTMENT <u>SLED</u>	INTERVIEWING AGENT	DEPARTMENT	

I, Early Jerome Glover understand I do not have to say anything, and I volunteer the following information of my own free will, for whatever purposes it may serve. (I can) cannot read and write and completed the 13 years grade in school.

ETG I Early J. Glover meet Samie Gerrick at Kirkland R&E around Oct 12, 2010 we started talking after finding out where we both were from and that was some people than as time went by he told me he was in bin and he need for people, and I was like for what to write a state, and he said I would look out. Anyway I agree to write a statement for him in my handwriting after he wrote it, and once I did I was to receive 1,000 dollars with in I didn't. But it was his deal about what to say and all I did was went a lot with it, knowing that it was my first meeting Samie and knowing nothing of him. Beside on July 21 I was at Morris Village treatment center in Columbia and I got out on that date, and I knew about the incident, beside Samie wrote everything and I just rewrite it and a letter of copy was presented to me by agent Harley with my signature that I wrote that Samie wrote ETG

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bears my initials, and I certify that the facts contained herein are true and correct.

Date: 12/5/2011 Time: 5:00p.m

Early J. Glover
Signature of person giving voluntary statement

WITNESS:

John Harley

WITNESS:

I certify that I have been given a copy of this statement consisting of 1 pages.

STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL)

COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

Indictment 2013-GS-06-274

State of South Carolina)

v.)

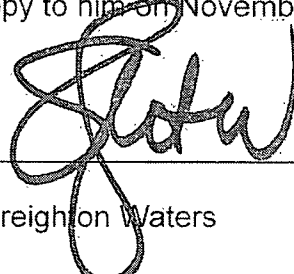
Sammie Lee Gerrick,)

Defendant.)

CERTIFICATE OF SERVICE

FILED FOR RECORD
2013 DEC 20 PM 2:57
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

I, S. Creighton Waters, certify that on November 12, 2013, I served the State's Response to Motion to Exclude Evidence of Root Letter, Bottle of "Law Keep Away", and Testimony of Early Glover on Defendant's counsel Dan Williams, Esquire, by delivery to danwilliams@bellsouth.net, and delivered a hard copy to him on November 13, 2013.


S. Creighton Waters

December 16, 2013.

STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

The State of South Carolina,

vs.

SAMMIE LEE GERRICK.,

Defendant.

) IN THE COURT OF GENERAL SESSIONS
) SECOND JUDICIAL CIRCUIT

CASE #: 2013-GS-06-00465

MOTION FOR NEW TRIAL

RHONDA O. McELVEER,
CLERK OF COURT
BARNWELL COUNTY, S.C.

2013 NOV 27 AM 11:04

FILED FOR RECORD

TO: S. CREIGHTON WATERS, ESQUIRE and JASON ANDERS, ESQUIRE,

PLEASE TAKE NOTICE that the defendant by and through his undersigned

counsel, shall move for a new trial on the following grounds:

- 1) The Trial Court improperly admitted a note which was part of the 'witch doctor root'. The note and root found in the defendant's truck was not written by him but was portrayed and construed as a confession even though the wording of the note did not confess to the crime of murder. Therefore, the note was not relevant. Further any probative value was substantially outweighed by the unfair prejudicial effect of introducing the note and root.
- 2) During trial, Defendant agreed to the introduction of a video tape of an interview with defendant conducted by a polygraph examiner so long as the polygraph machine was not shown to the jury. During presentation of the video, the machine was inadvertently shown by the prosecution publishing evidence to the jury that the defendant was given a polygraph; thereby, depriving defendant of a fair trial.
- 3) The Trial Court should not have admitted the August 17, 2011 interview of defendant since defendant requested to speak with his attorney contemporaneously with being read his Miranda Rights, but was not provided the opportunity to speak with his attorney.
- 4) All evidence in the trial was circumstantial and taken together did not prove beyond a reasonable doubt defendant committed the crime of murder to the exclusion of any other reasonable hypothesis.

(SIGNATURE BLOCK ON FOLLOWING PAGE)

BEDINGFIELD & WILLIAMS, L.L.C.



Daniel W. Williams, Esquire
Attorney for Defendant
Post Office Box 616
Barnwell, South Carolina 29812
(803) 259-2759

November 27, 2013
Barnwell, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

The State of South Carolina,

vs.

SAMMIE LEE GERRICK.,

Defendant.

) IN THE COURT OF GENERAL SESSIONS
) SECOND JUDICIAL CIRCUIT

) CASE #: 2013-GS-06-00465

) CERTIFICATE OF MAILING

I HEREBY CERTIFY that a copy of the Motion for New Trial and Motion for New Sentence was served upon all counsel of record as indicated below November 27, 2013, by mailing a copy of same by United States Mail, postage prepaid, to the following address:

S. Creighton Waters, Esquire
Jason S. Anders, Esquire
SC Attorney General's Office
P. O. Box 11549
Columbia, SC 29211

ANGELA S. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

2013 NOV 27 AM 11:04

FILED FOR RECORD

Angela Still

Angela S. Still
Paralegal to Daniel W. Williams

November 27, 2013
Barnwell, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

Indictment 2013-GS-06-274

State of South Carolina

v.

Sammie Lee Gerrick,

Defendant.

**RESPONSE TO MOTION FOR A NEW
TRIAL**

The State of South Carolina hereby responds as follows to the motion by Sammie Lee Gerrick for a new trial. For the following reasons, the motion should be denied.

I. THE ROOT AND ACCOMPANYING LETTER ARE CLEARLY ADMISSIBLE TO SHOW CONSCIOUSNESS OF GUILT UNDER LONGSTANDING SOUTH CAROLINA CASELAW.

Defendant first contends that the court improperly admitted the capsule containing the letter found in Defendant's console. He argues that the note was not written by him and was portrayed as a confession, and that the prejudicial effect outweighed any probative value.

Of course, this evidence was the subject of a pretrial motion and the State presented a detailed memorandum as to admissibility. This Court ruled the letter admissible. The State will not cut and paste its entire argument here, but will again point out that "[a]s a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt." State v. McDowell, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976) (quoted in State v. Martin,

403 S.C. 19, 742 S.E.2d 42 (2013)). Further, in order for certain acts to be evidence of guilty consciousness, there must be some connection between the crime charged, the act, and the defendant. See Martin, 403 S.C. at 29, 742 S.E.2d at 47.

Here, the letter undoubtedly provides the specific nexus to this case, as it expressly refers to four relevant things: (1) the murder, (2) the bond revocation, (3) the trial court, and (4) the request to be "set free". Of course, Defendant's inability to pay back the money Tyrone loaned him to get out on bond is the motive for this murder, and it was this Court which set that very bond on the escape charge. If Defendant were to get arrested for murder that could potentially result in a revocation of the bond on the escape charge. Further, defendant had been repeatedly questioned twice by the police about involvement in Tyrone's disappearance prior to the root being discovered. Defendant also had already denied involvement to mutual friends, noting that he hoped a supposed text from the victim would take "heat" off Defendant. Thus, Defendant was aware he was a target of the investigation into Tyrone's disappearance prior to the time the letter was found in his truck.

Given these facts, the letter is clearly susceptible of the inference that because of his consciousness of guilt, Defendant procured the letter for whatever help it might bring in warding off a murder charge and related legal problems – indeed, it expressly hoped that Defendant would be "set free". Again, "any guilty act or conduct on the part of the accused is admissible as some evidence of consciousness of guilt". Orozco, 392 S.C. at 218, 708 S.E.2d at 230 (emphasis added).

Defendant may argue that the letter is ambiguous or susceptible of some other different inference – however, the caselaw is clear such alternate explanations are a matter for weight, not admissibility. See Beckham, 334 S.C. at 314-15, 513 S.E.2d 612-13. See People v. Hernandez, 2012 W.L. 1652551 (Cal Dist. Ct. App. 2012) (unpublished) (voodoo dolls discovered in defendant's possession with names of prosecutors, judges, and investigators in the case was "highly probative of his consciousness of guilt").

In closing, the State expressly argued that the evidence was only that of guilty consciousness. The State did not claim that Defendant wrote the letter, only that it was clearly an important personal item he kept close to him in the console of his truck, at a time when he knew he was a target in this murder case and was out on bond, and which specifically hoped he would be protected from murder and bond revocation and would be "set free". The evidence was admissible and only argued by the State for the permitted purpose.

The State respectfully asserts this Court ruled correctly at trial and the evidence was properly admitted. Regardless, even if this Court were to change its mind, it cannot be said that given all the evidence in the case this one bit of evidence unduly influenced the jury such that a new trial is warranted.

II. THERE WAS NO PREJUDICIAL ERROR FROM THE BRIEF UNREDACTED DISPLAY OF THE POLYGRAPHER'S COMPUTER EQUIPMENT.

Defendant next moves for a new trial because the video on which the polygrapher's computer equipment was visible was inadvertently and briefly shown to the jury.

The decision to grant or deny a mistrial is within the sound discretion of the trial court." State v. Wiley, 387 S.C. 490, 495, 692 S.E.2d 560, 563 (Ct.App.2010). "The trial court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law." Id. "The power of the trial court to declare a mistrial should be used with the greatest caution under urgent circumstances and for very plain and obvious reasons stated on the record by the trial court." Id. "A mistrial should only be granted when absolutely necessary, and a defendant must show both error and resulting prejudice in order to be entitled to a mistrial." Id. "The granting of a motion for a mistrial is an extreme measure that should only be taken if an incident is so grievous that the prejudicial effect can be removed in no other way." Id. at 495-96, 692 S.E.2d at 563. See State v. Dial, 405 S.C. 247, 746 S.E.2d 495 (Ct. App. 2013).

At trial, the defense moved to exclude the video statement taken by the polygrapher because his computer equipment was visible on the table. The State argued that since the video quality was so poor, and the polygrapher used computer equipment, it was not apparent from the video that the items on the table were anything more than a computer and some note pads. As trial progressed, the State and the defense agreed that the State would take a Wordpad document sized appropriately and overlay it on the video so that the table in the bottom corner could not be seen. All the

videos were played on computer, through a projector, and on to a movie screen visible to the jury.

Unfortunately, in adjusting the sound as the video began to play, the State inadvertently caused the overlay not to be on top anymore. The trial court noticed this and sent the jury out. The defense moved for a mistrial. This Court found the error unintentional, and no prejudice; thus, it denied the mistrial motion. The jury was brought in and the video continued with the overlay in place.

It is respectfully submitted that this Court's decision was correct and no prejudice was suffered. As argued prior to trial, the video is of such poor quality that it cannot be made out that the things on the table are anything but a laptop and some notepads. Nothing was hooked up to the defendant or visibly obvious as polygraph equipment. The quality of the video was even worse and less discernable when it was magnified up on the movie screen, and the video without the overlay was only up for seconds at the very beginning before the error was realized, the video turned off, and the jury sent out. There was simply insufficient time for any juror to make out what was on the table beyond just normal office items like pads and a computer, and indeed it would be impossible given the quality to make out anything beyond normal office items regardless of the time. At no time during the video or the trial was the word polygraph mentioned before the jury.

Given these facts and circumstances, it is respectfully submitted that there was no prejudicial error from the inadvertent and brief showing of the video without the overlay. See State v. Dial, 405 S.C. 247, 746 S.E.2d 495 (Ct. App. 2013) (trial court

properly denied mistrial where, in part, trial court noted that it did not believe any juror could even tell that the small heart-shaped object the witness brought with her to the stand was an urn, and the jury was quickly excused and the problem corrected).

III. THIS COURT PROPERLY ADMITTED THE AUGUST 17, 2011 STATEMENT, AS THE DEFENDANT DID NOT UNAMBIGUOUSLY REQUEST COUNSEL AND THE WAIVER WAS CLEARLY KNOWING AND VOLUNTARY.

Defendant next contends this Court erred in allowing the Defendant's August 17, 2011 statement, which he claims violated his rights inasmuch as he asked to meet with his attorney.

This also was the subject of a pretrial hearing at which the State provided a detailed memorandum, and the State would rely on that memorandum and will not cut and paste it in its entirety here. Briefly, at the beginning of this particular interview, Defendant stated he was willing to talk to police, but his lawyer (on other charges) told him not to talk and he felt he should call his lawyer and let him know he was being interviewed. Police responded that unlike their prior interviews, when Defendant was not in custody and he came down voluntarily, since Petitioner was currently in custody on the Bamberg charges, they were required to read him his rights before they could talk with him. The officer then asked Petitioner if he could proceed reading him his rights and Defendant agreed. During the reading of rights, the officer went over the right of Defendant to have counsel present before and during questioning, and the right to stop the questioning at any time. Following this, Defendant again indicated he wished to proceed with questioning, just as he had done at the beginning of the interaction.

As argued before, an invocation of right to counsel must be unambiguous, as police are not "required to make difficult decisions about an accused's unclear intent and face the consequence of suppression 'if they guess wrong'". State v. Moses, 390

S.C. 502, 512, 702 S.E.2d 395, 400 (Ct. App. 2010) (citing Berghuis v. Thompkins, 560 U.S. 370 (2010)). Here, Defendant started out by clearly stating he wanted to talk to police. He then only added that his lawyer told him not to talk, and he felt like he should let his lawyer know he was there – *not* that he wanted his lawyer actually present before he continued with questioning. This is the definition of an ambiguous statement. In the face of this ambiguous statement, officers proceeded to do a full and fair waiver, after which Defendant agreed to talk. Thus, there was no violation. See Davis v. United States, 512 U.S. 452 (1994) (United States Supreme Court held that the statement “maybe I need a lawyer” was NOT an unambiguous request for counsel).

Moreover, the validity of the ultimate waiver precludes any suppression. After it has been determined that the waiver was valid, the analysis is over:

[o]nce it is determined that a suspect's decision not to rely on his rights was uncoerced, that he at all times knew he could stand mute and request a lawyer, and that he was aware of the state's intention to use his statements to secure a conviction, the analysis is complete and the waiver is valid as a matter of law.”

State v. Binney, 362 S.C. 353, 358-361, 608 S.E.2d 418, 421 - 422 (2005).

Here, a review of the video shows Defendant, an intelligent person with experience in the criminal justice system, was agreeable to talk from the start and was not badgered into waiving his rights by coercive police conduct. The decision was clearly knowing and voluntary after an explanation of the rights. Indeed, he did not even “confess” to anything. As such there is no call for suppression.

It is respectfully submitted that this Court correctly held the statement admissible, and the motion for a new trial on this basis should be denied.

IV. THERE CLEARLY WAS SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE SUFFICIENT TO SUBMIT THE CASE TO THE JURY.

Defendant next contends he should get a new trial because the evidence was circumstantial and did not prove him guilty beyond a reasonable doubt.

In reviewing a motion for a directed verdict, the trial court is concerned with the existence of the evidence, not with its weight. State v. Brannon, 388 S.C. 498, 501, 697 S.E.2d 593, 595 (2010). The Court must view the evidence in the light most favorable to the State. State v. Lollis, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001).

If there is any direct evidence, or if there is substantial circumstantial evidence, which reasonably tends to prove the defendant's guilt, the trial court properly submitted the case to the jury. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). The trial court should grant a directed verdict when the evidence merely raises a suspicion that the defendant is guilty. Odems, 395 S.C. at 586, 720 S.E.2d at 50.

Defendant contended at trial and contends in his motion that the evidence does not prove guilt to the exclusion of any reasonable hypothesis. This is incorrect. Not only is that not in the jury charge, as it "comes perilously close to shifting the burden of proof," see State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013), the caselaw is clear that "a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis". State v. Cherry, 361 S.C. at 594, 606 S.E.2d at 478 (2004). See also State v. Hepburn, --- S.E.2d ---, 2013 WL 6492390 (December 11, 2013) (same).

Given these principles, it is clear that the State did more than raise a mere suspicion and in fact presented, as this Court stated at trial, overwhelming

circumstantial evidence. This consists, in part, that Defendant was in jail and needed money to get out, as well as money to pay bills. Maurice and Johnelle Rice testified as to Defendant's promise that he would pay Maurice and the victim back as soon as he got out of jail. Maurice testified to meeting the victim at the bank where they withdrew the money, and that they agreed to do it because Defendant said he could pay them right back. Maurice testified to talking with Defendant and the victim that afternoon when the victim got Defendant out of jail, and then talked with them around 2pm. They said they were on the way to get the money for repayment. Bradley Smith stated the Defendant left around 2pm with shovels, and that the victim was following behind them. Shaneka saw them talking together in their vehicles in Blackville around this time. Joe Thomas saw Defendant go by with another car close behind at 3:04 pm, and called Defendant on his cell. This was confirmed by the phone records, and Thomas's house is near the crime scene.

Additionally, phone records show Defendant and the victim making calls to each other around this time. The victim's last phone calls were to Defendant, at 3:11p.m., in the area east of Blackville where the crime scene was, before the victim's phone goes off the grid permanently, as shown by the undelivered text messages. Meanwhile, Defendant has an approximately two hour break from 3:33p.m. to 5:34 p.m., before his phone makes any further calls.

Defendant then began a string of lies and attempts to cover up his crime. He tells Maurice that evening that they went into the woods, dug up a safe, and Defendant put \$100,000 in Tyrone's car and Tyrone kissed him on the forehead and drove off (and,

of course, as noted before the Defendant got two shovels, told Maurice in the presence of the victim they were going to get the money, and the victim was found in the woods in a shallow grave). Defendant feigns a call to victim, asking where he is. The next day, Defendant tells Maurice he is still working on getting the money.

The day after the victim disappears, he is caught on camera using the victim's ATM card. When confronted with this by police the next day, he admits the use but claims the victim let him use it because the victim was holding money for Defendant (which does not fit with the Defendant telling Johnelle and Maurice he needed to borrow money from Maurice and the victim and would pay them right back). Defendant tells Agent Burnett, and records reflect, that he spent sizeable sums with the victim's ATM card on Defendant's light bill, his probation, his mortgage, and personal items.

A mysterious text from a Trac Phone purporting to be from the victim, but not from a phone he had ever been known to use, is sent to some of the victim's friends. When Jamal Berry called Defendant about the text he received, Defendant said "maybe this will take the heat off of me". The message claimed that "Kim's ex got me", and used the word "am" for "I'm". Texts and other written materials from Defendant showed he routinely misused "am" for "I'm", whereas the victim's texts showed the victim correctly used "I'm". Additionally, cell phone records showed that about the same time the Trac Phone was sending texts in Denmark, SC, Defendant's cell phone was pinging off a Denmark tower as well.

Defendant then began a long series of lies to police over a few weeks, where he went from denying any knowledge of what happened to the victim, to, as he was

gradually confronted with more and more evidence, admitting he was at the scene when the victim was attacked, but claiming it was not him who committed the crime. In his first interview with Lt. Harley, two days after the disappearance, he stated that the victim took him home and he never heard from him again. Defendant said he got a shower (which is interesting given that Taylor White testified he came home later that night and took clothes to the washer and changed). Defendant claimed he went by Joe Thomas's place to get some sand, which Joe Thomas testified was not true. The police also photographed scratches on Defendant's arms and chest.

A few days later, in his interview with agent Burnett, Defendant was confronted again with his use of the ATM card. Defendant admitted all the bills he needed to pay with the victim's ATM card, but he claimed he actually did not need to borrow money from the victim because that the victim was keeping Defendant's \$18,000 in the victim's account. Multiple witnesses testified the victim would never have loaned his ATM card to anyone.

A few days after that, Defendant called Chief Holston stating he had received a call from "Black", who was holding the victim for \$25,000 ransom. Defendant also told the Chief he had talked to the victim. Chief Holston asked for contact information, and Defendant promised to call back. Of course, he never did – yet another lie and attempt to manufacture exculpatory evidence by Defendant.

Most importantly, the police talked with Defendant's wife, Charlene. She finally admitted that late at night on the day the victim disappeared, she followed Defendant out to a isolated wooded area off of Sunshine Road in Barnwell County, and there she

saw the victim's car parked in the woods. Defendant got in the victim's car and Charlene followed him to an old Chinese restaurant in Orangeburg County, where Defendant hid the car. Of course, Defendant's fingerprints were found on the car.

Charlene then led police to the isolated wooded area to where she had followed Defendant on the night the victim disappeared, and police set up a grid search. Nearby they found the shallow grave with the victim's body. He was face down with his ankles and wrists tied, and had defensive wounds on his forearm. The cause of death was probable suffocation. Green netting and lures and similar green netting was found at where the Defendant had been staying.

Police searched Defendant's truck. In the center console, they found a capsule and a bottle of "Law Keep Away" incense. On the paper in the capsule was written:

Set me Sammie Gerrick free from murder, and reduced bonds,
Jack Early set me free now
Jack Early set me free now
Jack Early set me free now

Sammie Gerrick Sr.
Sammie Gerrick Sr.
Sammie Gerrick Sr.

So shalt it be it
So shalt it be it
So shalt it be it

Amen
Amen
Amen

Having discovered the body, police brought Defendant in for another interview. They advise they have information he was in Orangeburg that night. Confronted with this, Defendant's story changed, and he stated he did go there to get \$200 from "Big

Joe". He still denied knowing anything about the victim after the victim dropped him off earlier that day.

Defendant was then served with the murder warrant which mentioned him moving the victim's car from the crime scene. Defendant now needed to come up with a new lie, and he asked for agents to come back and talk. He then claimed that he and Tyrone were supposed to meet Andre Hightower, Oshane Dixon and the mysterious "Big Joe" for a deal, from which Defendant said he was supposed to get \$7000 to pay back the victim. He still asserted he left the victim earlier in the day and did not know what happened, but Andre called him that night and offered him \$400 to move the car. The officers then bluffed Defendant, stating that they had evidence his truck was at the scene. Defendant then admitted "you got me there".

The next morning, Defendant, obviously believing they had evidence his truck was at the scene (and knowing that it was there), asked to speak to Jeff Croft, from which his final version appeared. Defendant now claimed he went with the victim to meet Big Joe, Andre Hightower, and Oshane Dixon for a drug deal (multiple witnesses testified the victim was not into drugs, and no drugs were found in his system). Defendant claimed they attacked victim and demanded Defendant go and get more money, so Defendant left (but did not return, and instead just spent the victim's money — never reporting any of this to friends or police). He claimed that later Andre called him and told him to go move the car (which he did out in the woods late at night with his wife and a young child). Andre and Oshane both testified they had nothing to do with the victim's disappearance.

The State also presented Early Glover, who testified that while in SCDC, months after the crime, Defendant promised him \$1000 if he would write a statement that he and Defendant were out there when the victim was attacked by Andre and the others, after which Defendant and Early left. Glover stated Defendant provided him with the statement which Glover then copied in his own hand. Glover stated that in reality he did not know any of these individuals and only met Defendant in prison. Defendant's versions, of course, never mentioned Early Glover being present at the scene.

Finally, Defendant as noted before had scratches on his arm and chest, which the pathologist testified were consistent with being scratched by someone defending himself in an altercation. Defendant told lies about how the scratches happened, telling Maurice it happened when he was tased and police it happened when a light bulb shattered in the jail. The State presented witnesses that Defendant had no such injuries around those times.

This evidence is substantial circumstantial evidence, and whether by motive, opportunity, or acts of guilt, they all point to Defendant. In short, Defendant owed the victim money and needed more money, Defendant and the victim said they were going off together for Defendant to get the money, Defendant was last seen with the victim around the time the victim disappeared as corroborated by witness testimony and the cell records, Defendant took the victim's car from the crime scene late a night and hid it, he used the victim's ATM card the next day, he ultimately placed himself at the scene in his own statements, and he had defensive wound scratches, on top of all the lies and attempts to manufacture evidence. Together, all of this evidence is very strong. See,

e.g. State v. Rogers, 405 S.C. 554, 748 S.E.2d 265 (Ct. App. 2013) ("circumstantial evidence, however, gains its strength from its combination with other evidence, and all the circumstantial evidence presented in a case must be considered together to determine whether it is sufficient to submit to the jury", and finding substantial circumstantial evidence reasonably proved the defendant's guilt).

The motion should be denied.

V. THE MOTION FOR A NEW TRIAL BASED ON THE SECOND WILLIAMSON LETTER RECEIVED AFTER TRIAL SHOULD BE DENIED AS THE EVIDENCE IS NOT "NEW" UNDER THE LAW, AND REGARDLESS IS PLAINLY WITHOUT ANY CREDIBILITY SUFFICIENT TO MEET THE STANDARD FOR AFTER-DISCOVERED EVIDENCE.

Gerrick finally contends that he should be granted a new trial based on the second letter given by Dustin Williamson after the guilty verdict, in which he again states he committed the crime and states that he does want to testify. For the following reasons, the motion should be denied.

A. Facts before trial

As this Court is aware, a few weeks prior to trial Defendant reported to correctional officers that he had found a letter on the floor of his cell. This letter (the "first letter") was signed by 18-year-old inmate Dustin Williamson. The text of the letter claimed generally that Defendant was innocent and was not present when the victim was killed. The letter further stated the victim was killed in Santee and brought to the burial site, and that Dustin and four other people were involved. At one point, the letter states that the writer does not know Defendant, but at another point claims that Williamson and his friends were supposed to kill Defendant too. The letter also contained idiosyncrasies seen in Defendant's own writing, such as "no" for "know", "rat" for "right", and "knot" for "not".

At a pre-trial hearing the Wednesday before trial, Williamson's counsel Jason Price, Esquire informed the Court that he just realized he had a conflict and would need to withdraw from representation. The State asked the Court to appoint counsel for

Williamson for purposes of the letter and the upcoming trial, and this Court that day appointed Adam Ness, Esquire, for that purpose.

At trial, Dustin Williamson was called to the stand outside of the presence of the jury. He indicated he would not testify and wished to claim his Fifth Amendment privilege against self-incrimination.

The State then offered evidence outside of the presence of the jury about the manner in which the letter was found. Lt. Shaune Harley from SLED testified. He noted he received statements from the jail guards, who stated they got the first letter from Defendant who claimed he found it on the floor of his locked cell.

Lt. Harley interviewed Williamson twice prior to trial. At the first interview, Williamson admitted writing the letter but could not provide any specific details about what allegedly happened, responding only "whatever is in the letter, that's what happened".

At the second interview, Williamson requested that he be taken out of Barnwell Detention Center, so he was taken to Bamberg. At that interview, Williamson again admitted writing the letter, but he again only would say "whatever is in the letter" when asked about specifics of the crime. When he was asked if he had been threatened or put up to writing the letter, Williamson stated that "someone was going to die in six days". When asked if his family had been threatened, Williamson asked the officers to make sure his mother was safe. Williamson also stated he needed to get out of the Barnwell Detention Center because he would be killed.

At one point in the interview, Williamson said that he never claimed that he personally killed the victim. When Lt. Harley and Attorney Ness explained to Williamson the concept of accomplice liability through the "hand of one is the hand of all", Williamson dropped his head and kept repeating "they played me, they played me".

The parties then discussed admissibility of the letter. The State argued, among other things, that the letter was inadmissible as a statement against penal interest pursuant to Rule 804(b)(3), SCRE, because the circumstances of the letter show that when the statement was made, Williamson did not believe he was actually admitting to guilt because he did not understand the concept of accomplice liability. The State noted that the whole rationale for the statement against interest rule is that the statement could be trusted because a person would not make an admission against interest without believing it to be true, and in this case, the circumstances show Williamson clearly did not believe he was admitting anything against his interest. This Court agreed with the State's arguments and (correctly, as seen in the footnote) excluded the letter.¹

¹ See State v. Kiser, 284 S.W.3d 227, 266 (Tenn. 2009) ("As commentators have noted, statements should not be admitted under Rule 804(b)(3) 'if the declarant actually believed that he or she was saying something that would be helpful.' Cohen, *supra* § 8.36(5). In that event, 'reliability is questionable and the statement should not be admitted under this hearsay exception.' *Id.*"). See also Weinstein's Federal Evidence § 804.06[1] ("Statements against interest are admissible because it is presumed that one will not make a statement damaging to one's self unless it is true."); § 804.06[4][c] (concluding that because liars may confess to acts they did not commit, such declarations should be "excluded if counsel opposing admission can persuade the court that the declarant is probably lying", and the trial court should make that determination outside of the presence of the jury); § 804.06[d][1] ("At the moment the statement is made the declarant must believe that the statement is against the declarant's interest. . . . **The court may exclude statements it finds inherently unreliable because the declarant was, for example, currying favor or was ignorant. The court must ascertain whether a particular declarant would know enough to perceive the statement's detrimental character.**") (emphasis added and citing various cases)).

The next morning, the parties again discussed the Williamson issue. The State withdrew its objection to the admissibility, and made the argument that the circumstances surrounding the making of the first letter, and Williamson's statements about the letter to law enforcement described above, should be admissible as impeachment pursuant to Rule 806, SCRE, which allows impeachment of a hearsay declarant if the hearsay statement is admitted, without the necessity of any opportunity to deny or explain. The State noted caselaw holding that introduction of impeachment evidence under Rule 806 does not violate Crawford v. Washington, 541 U.S. 36 (2004), because it is offered for impeachment and not the truth of the matter asserted.² Similarly, the State argued the statements about the first letter were admissible as evidence of Williamson's state of mind – again, not for the truth of the matter asserted in violation of the hearsay rule and Crawford.² The State argued that the circumstances of

² See Hernandez v. State, 273 S.W.2d 685 (Tex. Ct. App. 2008) (evidence admitted under Rule 806 to impeach hearsay declarant was offered for impeachment, not the truth of the matter asserted, and thus did not violate Crawford). See generally Michigan v. Bryant, 131 S.Ct. 1143, 1161 n. 11 (2011) (that the Confrontation Clause is not implicated when statements are offered “for purposes other than establishing the truth of the matter asserted.” Crawford, 541 U.S., at 60, n. 9).

² See State v. Edwards, 373 S.C. 230, 644 S.E.2d 66 (Ct. App. 2007) (victim's statement was not offered to show defendant hit her mother but to show her state of mind and why she behaved as she did); State v. Ruben T., 936 A.2d 270, 278-79 & n.5 (Conn. 2007) (statements of victim not hearsay as they were not admitted to show the truth of the matter asserted, but as circumstantial evidence of the victim's state of mind – that she was afraid of defendant; thus, Crawford was not implicated); State v. Williams, 1999 W.L. 783971 (Ohio Ct. App. 1999) (statements that declarant had been threatened in jail were not offered for truth but state of mind). See generally United States v. York, 572 F.3d 415, 427 (7th Cir. 2009) (statements offered for context of defendant's statements and not truth are not hearsay and Crawford is not implicated).

the statement needed to be admitted in the interests of justice, to preclude the jury from being misled about Williamson's true actions.

This Court agreed with the State's Rule 806 argument and ruled that Williamson's statement to law enforcement about the first letter would be admissible. At this point, the defense then withdrew its offer of the first letter, expressly noting the withdrawal was done for strategic reasons. For context, it is worth noting that another State's witness, Early Glover, already testified that when he and Defendant were in SCDC, Gerrick promised him money if Glover would write a statement that Defendant had nothing to do with the crime. Defendant provided Glover with a statement which Glover then copied in his own hand. Glover testified he did not know Defendant prior to meeting him at SCDC, and that he knew nothing about the crime.

B. Facts after the verdict

The day after Defendant was found guilty of murder, this Court received another letter from Williamson (the "second letter"). In this letter, Williamson again stated Defendant was innocent, and threatened to kill ten officers. Williamson stated he killed the victim, and wanted to speak to police within two hours. Williamson also stated he could tell about a man who was killed in Blackville in May. The letter threatened this Court and his lawyer, and then went on to state he buried the victim face down, that the victim was 250 pounds, that he was buried on a dirt road in Blackville, that the victim had a bald head, that the victim died on Thursday night at 9:30pm, and that "Aundrey Hightower" made Williamson do it.³ The letter states that Williamson no longer wants to take the Fifth, and demands that the murder charge be taken off of Defendant.

³ "Aundrey" is another idiosyncrasy also found in the Early Glover letter.

SLED Special Agent Jeff Croft interviewed Dustin after receipt of this letter, and his Memorandum of Interview ("MOI") is attached. Williamson admitted he wrote the letter. When asked if what was written was true, Williamson responded "it could be its in the letter aint it". Williamson threatened Croft, but would not acknowledge the letter was his idea.

Subsequently, Agent Croft interviewed Houston Bryant and Brandon Morrell, who were in the cell adjacent to Defendant on the night after he received his guilty verdict. MOIs, videos, and a statement from these interviews are attached. Morrell told Croft that after his verdict Defendant and Williamson began "fishing" – or communicating in writing with the assistance of Bryant and Morrell who were in the cell between them. Bryant and Morrell read the letters as they assisted in passing them back and forth. In the letters, Defendant again asked Williamson to take Defendant's murder charge, and Defendant promised to help Williamson get an insanity plea if Williamson took Defendant's charge. Morrell stated he knew that Williamson and Defendant also passed letters prior to trial.

Similarly, Houston Bryant also admitted helping Defendant and Williamson pass letters between cells after Defendant received his guilty verdict. Bryant stated Defendant would pass the letter underneath a crack between his and Defendant's cell. In the letters, Williamson apologized and stated he had tried to take the charge for Defendant, and asked if Defendant was "still going to do that for me". The two continued to pass letters, with Defendant promising that if Williamson took Defendant's murder charge Defendant could help Williamson get an insanity plea and not do much

time in prison. Williamson wrote the second letter confessing to the murder and threatening the judge and others, and Defendant would rewrite it correcting Williamson's errors as the letters were passed back and forth.

Special Agent Croft also retrieved surveillance video of the jail. In it, he has been able to document times where Defendant made actions corroborative of the statements of Bryant and Morrell that he passed letters back and forth during the evening.

C. The second letter is not "new" evidence and as such is not a basis for a motion for a new trial.

Although Dustin's second letter was created after the verdict was rendered, it does not qualify under the law as "new" evidence sufficient for a motion for a new trial.

In order to warrant the granting of a new trial on the ground of after-discovered evidence, the movant must show the evidence (1) is such as will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial by the exercise of due diligence; (4) is material to the issue; and (5) is not merely cumulative or impeaching. Johnson v. Catoe, 345 S.C. 389, 548 S.E.2d 587 (2001); State v. Spann, 334 S.C. 618, 619–20, 513 S.E.2d 98, 99 (1999)

The defense was of course aware of Williamson's "confession" prior to trial from the first letter – Williamson just decided to invoke the Fifth Amendment and the defense decided to withdraw the motion based on strategic reasons given this Court's evidentiary rulings. The majority of courts considering this issue have held that the mere fact a witness changes his mind after trial about claiming the Fifth is NOT "new" evidence for purposes of a motion for a new trial. See United States v. Jasin, 280 F.3d 355, 364 (3rd Cir. 2002) (deciding to follow the "the majority rule that testimony known to

the defendant at the time of trial is not 'newly discovered evidence,' even if it was unavailable at trial by reason of the witness's Fifth Amendment privilege against self-incrimination", and citing cases to the same effect from multiple jurisdictions).

As such, this basis for a new trial fails.

D. Even if the evidence is "new", it fails under the standard for after-discovered evidence as the Williamson evidence is not credible.

In the alternative, even if the second Williamson letter is considered "new" evidence, it also fails as a basis for relief under prong one of the applicable test set forth in the preceding subsection – as Williamson is not credible and his testimony or the letter would not probably change the result if a new trial was granted.

The caselaw is abundantly clear that under prong one this Court must assess the **credibility** of Williamson in determining whether a new trial should be granted. See State v. Porter, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977) (The credibility of newly-discovered evidence is for the trial court to determine.) (cited in State v. Harris, 391 S.C. 539, 706 S.E.2d 526 (Ct. App. 2011)). As our Supreme Court has stated, "[I]n this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment." State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009). Further, an appellate court will defer to the trial court's findings of fact with regard to the credibility of new evidence, and indeed the South Carolina Supreme Court has at least twice upheld death penalty cases on new trial motions where the trial court the supposed confessions of others to be not credible. See Mercer (upholding in a death penalty case the trial court's determination that new evidence regarding inmate's alleged confession to the crime was not credible and thus not sufficient for a new trial);

Johnson, *supra* (upholding in death penalty case denial of new trial where trial court rejected the credibility of a person who confessed to the crime after conviction). See also State v. Harris, 391 S.C. 539, 706 S.E.2d 526 (Ct. App. 2011) (upholding trial court's rejection of credibility of recantation by trial witness, and noting it must defer to the trial court's determination of the credibility of the evidence).

Here, the Williamson evidence is almost laughably not credible. Of course, the circumstances surrounding the first letter as testified to by Lt. Harley would alone support a finding by this Court of a lack of credibility – including Defendant supposedly “finding” the letter in his cell, Williamson’s lack of detail, Williamson’s inability to recount specifics, Williamson’s fear and request to be moved out of Barnwell, Williamson’s request that someone watch his mother’s house, the idiosyncrasies in both Defendant’s communications and the first letter, and most importantly Williamson’s statement “they played me” when advised of the “hand of all” doctrine. When combined with the fact that Defendant already did the exact same thing with Early Glover, tried to manufacture exculpatory evidence with the text messages from the trac phone, made the false “ransom” call to Chief Holston, and just generally lied to police and everyone else, it is clear that Williamson’s purported confession was manufactured by Defendant and would not probably change the result if a new trial is granted.

But the issue has just gotten worse – not better – for Defendant with the second letter received after verdict. There is now new direct evidence from other witnesses of Defendant’s efforts to manufacture the Williamson “confession”, and this evidence is corroborated by video showing the furtive activities of Defendant as he orchestrated the

contents of the second letter. If anything, the whole sordid tale of Defendant's manipulation of young Williamson is confirmation of his guilt, and thus more inculpatory and exculpatory.

The defense strategically and wisely withdrew the first letter during trial when it became clear that the circumstances under which it was obtained would only serve to help convict Defendant, not exculpate him. Now, the second letter and the circumstances under which it was obtained have only made the Williamson evidence *even stronger evidence of guilt* in favor of the prosecution. It simply is NOT exculpatory evidence in favor of the defense.

It is respectfully submitted that the Williamson evidence is as manifestly without credibility as it possibly could be, and as such the motion for a new trial on this ground should be denied.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that Defendant's motion for a new trial should be denied.

Respectfully submitted,

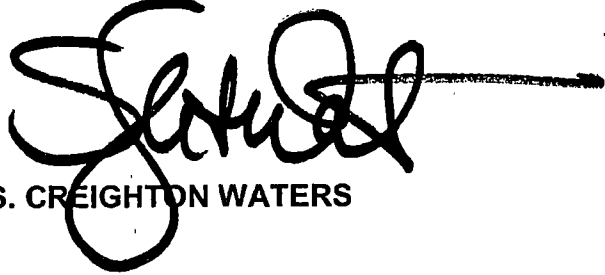
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ATTORNEYS FOR THE STATE

A large, stylized handwritten signature in black ink, appearing to read 'S. Creighton Waters', with a long horizontal line extending to the right.

S. CREIGHTON WATERS

December 13, 2013.

STATE OF SOUTH CAROLINA)

COUNTY OF BARNWELL)

COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

Indictment 2013-GS-06-274

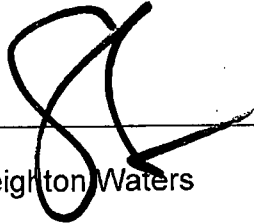
State of South Carolina)

v.)

Sammie Lee Gerrick,)

Defendant.)
_____)**CERTIFICATE OF SERVICE**

I, S. Creighton Waters, certify that on December 13, 2013, I served the State's Response to Motion to For a New Trial, on Defendant's counsel Dan Williams, Esquire, by delivery to danwilliams@bellsouth.net, and by delivery of a hard copy to him on December 16, 2013.



S. Creighton Waters

December 16, 2013

State of South Carolina

Court of General Sessions

County of Richland

2013-GS-06-00274

State of South Carolina

:

:

-VS-

:

TRANSCRIPT OF RECORD

:

Sammie Lee Gerrick

:

December 16, 2013

Columbia, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

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

Jason Anders, Esquire
Creighton Waters
Attorneys for the State

Dan Williams, Esquire
Attorney for the Defendant

Daphne D. Helms

Circuit Court Reporter

1 (Court reporter's note: The name Dustin Williamson
2 and Dustin Williams are used interchangeably throughout the
3 proceedings. State's Exhibits 1 through 8 were marked for
4 identification only.)

5 **The Court:** Thank you. Please be seated. All right.
6 This is the State versus Sammie Lee Gerrick, G-E-R-R-I-C-K.
7 It's a case out of Barnwell. Mr. Gerrick was convicted of
8 murder a couple of weeks ago. I allowed Mr. Williams, his
9 lawyer, 10 days to file post-trial motions. They were timely
10 filed, and it was set for a hearing today. Mr. Williams, are
11 you ready to proceed?

12 **Mr. Williams:** I am, Your Honor.

13 **The Court:** Let the record reflect Mr. Williams is
14 obviously present along with Mr. Sammie Lee Gerrick who's
15 been brought over from the department of corrections, along
16 with representatives who prosecuted the case from the
17 Attorney General's office, Mr. Waters and Mr. Anders.

18 **Mr. Williams:** Thank you, Your Honor. If it please the
19 Court, there are two motions before you, one for a motion for
20 a new trial and that motion was amended I think on December
21 the 2nd. I will tell you the first four grounds in the
22 amended motion are the exact same as in the previous motion.
23 The additional ground is motion number -- is number five
24 regarding additional evidence that had been retained at the
25 Barnwell County jail through the form of a letter from an

1 inmate named Dustin Williams who Your Honor is familiar with.

2 I think that what I will do is just go down my list, if
3 that's all right with you---

4 **The Court:** Yes, sir, be fine.

5 **Mr. Williams:** ---if I may proceed. The first -- quite
6 frankly, Your Honor, the first three motions are somewhat
7 repetitive in the sense that I believe we've already argued
8 and you've ruled on these motions, but out of an abundance of
9 caution and to make sure I'm protecting all of Mr. Gerrick's
10 rights, I want to go through them briefly to make sure that
11 they're clearly on the record.

12 **The Court:** Yes, sir.

13 **Mr. Williams:** The first deals with a note that was
14 found in Mr. Gerrick's pickup truck after he was taken into
15 custody on another matter. It was referred to in some police
16 records as a witch doctor root, and what it was---

17 **Court Reporter:** I'm sorry. Was a what?

18 **Mr. Williams:** Witch doctor root.

19 **The Court:** W-I-T-C-H doctor root.

20 **Court Reporter:** Yes, sir.

21 **Mr. Williams:** And what it was was basically a folded-
22 over letter that's in the Court's records and it says on --
23 on one side of the note that there's a Bible verse from Psalm
24 130. On the other side of the letter is language to the
25 effect, "Jack Early set me free," three times and then some

1 other language. All right? "Protect me, Sammie Gerrick,
2 from murder and from bond revocation."

3 We filed a motion in limine to have that excluded. We
4 also -- on two grounds. First off, it wasn't shown that he
5 wrote the note. Therefore, it was irrelevant. Second, any
6 probative value of the note would be far outweighed by the
7 prejudicial or, rather, the unfairly prejudicial effect.

8 Your Honor let the note come in, and the State wisely
9 during its presentation to the jury never referred to it as a
10 witch doctor note. But at the same time one of the officers
11 did refer to it as that. And what I'm concerned with is: It
12 comes in not as a witch doctor note but as a letter, and as
13 that letter -- you know it's not written by him, but the jury
14 would unfairly see that as some kind of confession that Mr.
15 Gerrick wrote and placed in his pickup truck.

16 Now, take that and combine that with the fact that the
17 officer said while on the stand that it's a witch doctor note
18 and considering that some people on the jury may not view
19 this without a motion, we believe it should have been
20 excluded and that we're entitled to a new trial on that
21 basis.

22 **The Court:** Mr. Waters?

23 **Mr. Waters:** Your Honor, I provided, of course, the
24 Court and the defense with a memorandum addressing his
25 motion. Obviously, as Mr. Williams points out, this was the

1 subject of a pretrial hearing.

2 **The Court:** Well, it was the subject of a pretrial
3 motion in limine which I did not rule on but I discussed with
4 y'all both on the record and off the record what I thought I
5 was going to do, but obviously I told you I could not rule on
6 it until I heard what was presented during the trial of the
7 case. And during the trial of the case I considered all
8 angles and mostly the 403 comparison of probative versus
9 prejudicial and I made my ruling and allowed it in. That,
10 plus I based my opinion or my ruling on the fact that the
11 consciousness of guilt -- and I cited the cases that I think
12 -- Orozco, O-R-O-Z-C-O-K, and some others and what I relied
13 on in making my ruling, and I did let it in.

14 I put my rulings on the record. I considered the 403
15 analysis, 403(b), and all the other issues involved including
16 the consciousness of guilt, and that was my ruling.

17 **Mr. Waters:** And that's -- yes, sir, Your Honor, and we
18 believe that was correct and, again, without being repetitive
19 and that was -- that that was what I was getting at is that
20 we have submitted written documents which Your Honor
21 considered and we would rely on those again today. We think
22 you were -- that it was a correct ruling then and it's a
23 correct ruling now.

24 The law is clear obviously, as Your Honor has pointed
25 out, that guilty consciousness -- any evidence, any act of

1 guilty consciousness, is admissible, and I think that was the
2 case here.

3 There was a brief reference to it being a witch doctor
4 root. At no time did Your Honor say that we couldn't use the
5 word "root," and I was very careful about that. One officer
6 did kind of state that, but I believe, Your Honor, we both
7 quickly shut it down and moved on, and so I don't think there
8 was any prejudice or anything from that particular point. So
9 we would submit that the evidence was properly allowed in and
10 that Your Honor's rulings were correct.

11 **The Court:** Anything in response, Mr. Williams?

12 **Mr. Williams:** No, Your Honor.

13 **The Court:** All right. The next portion of the motion
14 was the polygraph examiner or the videotape, and that, too,
15 was subject to a pretrial motion in limine, and we had, if I
16 recall correctly, had reached an agreement or -- that the --
17 something was going to be put on the screen to block the
18 computer and it inadvertently got shown. Very quickly -- we
19 shut the computer down very quickly. I'm not sure I gave a
20 curative instruction or at least I think I asked you whether
21 or not you wanted one. I quite frankly can't remember what
22 we did. I don't think you wanted one because it was probably
23 going to call more attention to it than not.

24 **Mr. Williams:** That's -- that's my problem with curative
25 instructions, Your Honor, is sometimes you don't want what

1 you ask for.

2 **The Court:** That's right. And you timely and properly
3 moved for a mistrial which I denied, so do not let me cut you
4 off with your argument. That's sort of where we are on that
5 issue, as I understand.

6 **Mr. Anders:** And I will renew what I said in that
7 hearing and, Your Honor, I think -- and my concern is with
8 all the equipment I saw what I thought was leads on the thing
9 that could have run to him. No one else saw that, but I
10 thought I saw it on there. So just to make it clear on the
11 record, we believe -- and I know the State -- it was
12 inadvertent what happened as far as the computer screen---

13 **The Court:** I know it was inadvertent, but it happened.

14 **Mr. Williams:** But it happened and this is a very, very
15 serious charge, and since it did happen, I think he's
16 entitled to a new trial on that ground.

17 **The Court:** Thank you. Anything by the State?

18 **Mr. Waters:** Yes, sir, Your Honor. Just to recall, that
19 particular video, the quality is very poor and---

20 **The Court:** That was a video of one of his alleged---

21 **Mr. Waters:** Statements.

22 **The Court:** ---statements to the police.

23 **Mr. Waters:** Correct. And if you recall, the State
24 argued prior to trial that there was no need to redact it at
25 all because the video is so grainy and because all that you

1 can make out on the table is just a computer and some
2 notepads. There's obviously nothing hooked up to the
3 defendant. He actually gets up and moves around during the
4 course of the video, so our point was is that there's no --
5 nothing about that video, given the grainy quality and the
6 equipment that was present, that would indicate that there
7 was a polygraph present in the room. And I think that was
8 even more so true when it was magnified through the projector
9 up on the screen which made it even more fuzzier and
10 grainier.

11 **The Court:** Let me stop you right there.

12 **Mr. Waters:** Yes, sir.

13 **The Court:** At no time during the trial of the case was
14 the word "polygraph" ever mentioned.

15 **Mr. Waters:** Absolutely not.

16 **The Court:** Never.

17 **Mr. Waters:** No, sir. And so I believe that it was up
18 for such a miniscule amount of time -- I don't think that
19 anybody could make it out to begin with even if it had been
20 up the whole time, but it was up such a small amount of time
21 and such a poor-quality video that's been magnified that
22 makes it even worse quality, there's no way that there could
23 have been any sort of prejudice, and of course Your Honor
24 caught it very quickly. It was only up for a few seconds
25 before the jury was sent out and the machine was turned off.

1 And I would point out the recent case of State v. Dial
2 which I cited in my motion. That's 746 Southeastern Second
3 495, and in that case the witness came up to the witness
4 stand, the mother of the victim, holding a small heart-shaped
5 urn, and the judge saw that and stopped it real quick and
6 sent the jury out, and the judge made a similar finding that
7 it happened so quickly, that it was not evident from the
8 object itself that the jury would necessarily figure out what
9 that was and make that determination. And I think that's
10 precisely what happened here and, of course, in the Dial case
11 they upheld the judge's denial for a mistrial.

12 **The Court:** And likewise I also have to show prejudice
13 that from the time it was up until the time that we realized
14 it was up and sent the jury out, immediately corrected it,
15 and the fact that I couldn't tell what it was showing
16 either... I certainly didn't see any leads, and I just don't
17 see where any prejudice has been shown, even if it were
18 wrong, but I think we corrected it quickly. We gave --
19 handled it properly, so I'll look at it again though in this
20 post-trial motion. Anything else you want to add to that?

21 **Mr. Waters:** No, sir, Your Honor. Thank you.

22 **The Court:** Mr. Williams?

23 **Mr. Williams:** Nothing else, Your Honor.

24 **The Court:** All right. The third area was that -- that
25 was the August 17, 2011, interview and this, too, was -- this

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BARNWELL)

COURT OF GENERAL SESSIONS
 SECOND JUDICIAL CIRCUIT

Indictment 2013-GS-06-274

State of South Carolina)

ORDER DENYING MOTION
 FOR A NEW TRIAL

v.)

Sammie Lee Gerrick,)

Defendant.)

FILED FOR RECORD
 2014 FEB 19 PM 3:20
 RHONDA D. McELYEEN
 CLERK OF COURT
 BARNWELL COUNTY, S.C.

Defendant, Sammie Lee Gerrick, was convicted on November 21, 2013 by a jury of murder, and this Court sentenced him to life in prison. He has filed a motion for a new trial based on the following grounds. A hearing was held on this motion on December 16, 2013. For the following reasons, the motion is denied.

I. THE CAPSULE AND ACCOMPANYING LETTER WERE ADMISSIBLE TO SHOW CONSCIOUSNESS OF GUILT UNDER LONGSTANDING SOUTH CAROLINA CASELAW.

Defendant first contends that the court improperly admitted the capsule containing the letter found in Defendant's console. He argues that the note was not written by him and was portrayed as a confession, and that the prejudicial effect outweighed any probative value.

This evidence was the subject of a pretrial motion and the State presented a memorandum as to admissibility. This Court considered the arguments by both sides, and during the course of the trial ruled the evidence admissible. Having further considered the arguments of the State and the Defendant before, during, and after the

trial, this Court affirms its previous ruling that the evidence was properly admitted.

STATE OF SOUTH CAROLINA
 I, Rhonda D. McElveen, Clerk of Court for Barnwell County,
 South Carolina do hereby certify that the foregoing
 constitutes a true and correct copy of the original
 documents which have been filed in my office.

By: Rhonda D. McElveen Date: 2-19-14
 Clerk of Court, Barnwell County, SC

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As a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt." State v. McDowell, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976) (quoted in State v. Martin, 403 S.C. 19, 742 S.E.2d 42 (2013)). Further, in order for certain acts to be evidence of guilty consciousness, there must be some connection between the crime charged, the act, and the defendant. See Martin, 403 S.C. at 29, 742 S.E.2d at 47.

Here, the letter provides the specific nexus to this case, as it expressly refers to four relevant things: (1) the murder, (2) the bond revocation, (3) the trial court, and (4) the request to be "set free". There was evidence at trial from which it could be reasonably inferred that Defendant's inability to pay back the money Tyrone Donaldson loaned him to get out on bond was the motive for this murder, and it was this Court which set that very bond on the escape charge. If Defendant were to get arrested for murder that could potentially result in a revocation of the bond on the escape charge. Further, the evidence showed Defendant had been repeatedly questioned at least twice by the police about involvement in Donaldson's disappearance prior to the capsule and accompanying letter being discovered. Defendant also had already denied involvement to mutual friends, noting that he hoped a supposed text from the victim would take "heat" off Defendant. Thus, Defendant was aware he was a target of the investigation into Donaldson's disappearance prior to the time the letter was found in his truck.

Given these facts, the letter is clearly susceptible of the inference that because of his consciousness of guilt, Defendant procured the letter for whatever help it might bring in warding off a murder charge and related legal problems – indeed, it expressly hoped

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that Defendant would be "set free". Again, "any guilty act or conduct on the part of the accused is admissible as some evidence of consciousness of guilt". Orozco, 392 S.C. at 218, 708 S.E.2d at 230 (emphasis added).

Moreover, the caselaw is clear that alternate explanations that could be offered are a matter for weight, not admissibility. See Beckham, 334 S.C. at 314-15, 513 S.E.2d 612-13. See People v. Hernandez, 2012 W.L. 1652551 (Cal Dist. Ct. App. 2012) (unpublished) (voodoo dolls discovered in defendant's possession with names of prosecutors, judges, and investigators in the case was "highly probative of his consciousness of guilt").

Additionally, this Court finds the probative value was not substantially outweighed by any prejudicial effect. The attorneys for the State did not play up or even use the words "voodoo" or "witchcraft", and typically referred to the item as a "capsule". Admittedly, one testifying agent in reviewing her report used the word "witchcraft root" before the jury, but was quickly stopped by both the State and the Court and there was no further discussion of voodoo or related subjects. This Court in considering the case as a whole, finds no prejudice was suffered. The State did not claim that Defendant wrote the letter, but only that it was clearly an important personal item he kept close to him in the console of his truck, at a time when he knew he was a target in this murder case and was out on bond, and which specifically hoped he would be protected from murder and bond revocation and would be "set free." Since the evidence was admissible and only argued by the State for the limited purposes; this Court finds any

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prejudicial effect was minimal and more than outweighed by the probative value as to guilty consciousness. Accordingly, this Court finds the evidence was properly admitted.

II. THERE WAS NO PREJUDICIAL ERROR FROM THE BRIEF UNREDACTED DISPLAY OF THE POLYGRAPHER'S COMPUTER EQUIPMENT.

Defendant next moves for a new trial because the video on which the polygrapher's computer equipment was visible was inadvertently and briefly shown to the jury.

The decision to grant or deny a mistrial is within the sound discretion of the trial court." State v. Wiley, 387 S.C. 490, 495, 692 S.E.2d 560, 563 (Ct. App. 2010). "The trial court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law." Id. "The power of the trial court to declare a mistrial should be used with the greatest caution under urgent circumstances and for very plain and obvious reasons stated on the record by the trial court." Id. "A mistrial should only be granted when absolutely necessary, and a defendant must show both error and resulting prejudice in order to be entitled to a mistrial." Id. "The granting of a motion for a mistrial is an extreme measure that should only be taken if an incident is so grievous that the prejudicial effect can be removed in no other way." Id. at 495-96, 692 S.E.2d at 563. See State v. Dial, 405 S.C. 247, 746 S.E.2d 495 (Ct. App. 2013).

At trial, the defense moved to exclude the video statement taken by the polygrapher because his computer equipment was visible on the table. The State argued that since the video quality was so poor, and the polygrapher used computer equipment, it was not apparent from the video that the items on the table were anything more than a computer and some note pads. As trial progressed, the State and the

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defense compromised and agreed that the State would take a Wordpad document sized appropriately and overlay it on the video so that the table in the bottom corner could not be seen. All the videos were played on a computer, through a projector, and on to a movie screen visible to the jury.

In adjusting the sound as the video began to play, the State inadvertently caused the overlay not to be on top anymore. This Court noticed this and sent the jury out. The defense moved for a mistrial. This Court found the error inadvertent and unintentional, and also found no prejudice; thus, it denied the mistrial motion. The jury was brought in and the video continued with the overlay in place.

Having considered the events at trial and the arguments in the post-trial motion, this Court's decision affirms its denial of a mistrial and its conclusion that no prejudice was suffered. This Court finds that even if the video had been shown in its entirety, it is of such poor quality that it cannot be made out that the things on the table are anything but a laptop and some notepads. Nothing was hooked up to the defendant or visibly obvious as polygraph equipment.

Further, this Court finds that the quality of the video was even worse and less discernable when it was magnified on the movie screen, and the video without the overlay was only up for seconds at the very beginning before the error was realized, the video turned off, and the jury sent out. Therefore, this Court finds there was simply insufficient time for any juror to make out what was on the table beyond just normal office items like pads and a computer. At no time during the video or the trial was the word polygraph mentioned before the jury.

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Given these facts and circumstances, this Court finds there was no prejudicial error from the inadvertent and brief showing of the video without the overlay. See State v. Dial, 405 S.C. 247, 746 S.E.2d 495 (Ct. App. 2013) (trial court properly denied mistrial where, in part, trial court noted that it did not believe any juror could even tell that the small heart-shaped object the witness brought with her to the stand was an urn, and the jury was quickly excused and the problem corrected).

As such, this Court concludes a mistrial was properly denied.

III. THE AUGUST 17, 2011 STATEMENT WAS PROPERLY ADMITTED, AS THE DEFENDANT DID NOT UNAMBIGUOUSLY REQUEST COUNSEL AND THE WAIVER WAS KNOWING AND VOLUNTARY.

Defendant next contends this Court erred in allowing the Defendant's August 17, 2011 statement, which he claims violated his rights inasmuch as he asked to meet with his attorney.

This also was the subject of a pretrial hearing at which the State provided a memorandum in support of admission. Briefly, at the beginning of this particular interview, Defendant stated he was willing to talk to police, but his lawyer (on other charges) told him not to talk and he felt he should call his lawyer and let him know he was being interviewed. Police responded that unlike their prior interviews, when Defendant was not in custody and he came down voluntarily, since Petitioner was currently in custody on the Bamberg charges, they were required to read him his rights before they could talk with him. The officer then asked Petitioner if he could proceed reading him his rights and Defendant agreed. During the reading of rights, the officer went over the right of Defendant to have counsel present before and during questioning,

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and the right to stop the questioning at any time. Following this, Defendant again indicated he wished to proceed with questioning, just as he had done at the beginning of the interaction.

An invocation of right to counsel must be unambiguous, as police are not "required to make difficult decisions about an accused's unclear intent and face the consequence of suppression 'if they guess wrong'". State v. Moses, 390 S.C. 502, 512, 702 S.E.2d 395, 400 (Ct. App. 2010) (citing Berghuis v. Thompson, 560 U.S. 370 (2010)). Here, Defendant started out by clearly stating he wanted to talk to police. He then only added that his lawyer told him not to talk, and he felt like he should let his lawyer know he was there – *not* that he wanted his lawyer actually present before he continued with questioning. This is the definition of an ambiguous statement. In the face of this ambiguous statement, officers proceeded to do a full and fair waiver, after which Defendant agreed to talk. Thus, there was no violation. See Davis v. United States, 512 U.S. 452 (1994) (United States Supreme Court held that the statement "maybe I need a lawyer" was NOT an unambiguous request for counsel).

Moreover, the validity of the ultimate waiver precludes any suppression. After it has been determined that the waiver was valid, the analysis is over:

[o]nce it is determined that a suspect's decision not to rely on his rights was uncoerced, that he at all times knew he could stand mute and request a lawyer, and that he was aware of the state's intention to use his statements to secure a conviction, the analysis is complete and the waiver is valid as a matter of law."

State v. Binney, 362 S.C. 353, 358-361, 608 S.E.2d 418, 421 - 422 (2005).

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Here, a review of the video shows Defendant, an intelligent person with experience in the criminal justice system, was agreeable to talk from the start and was not badgered into waiving his rights by coercive police conduct. The decision was clearly knowing and voluntary after an explanation of the rights. Indeed, he did not even "confess" to anything, but continued to deny any involvement in the victim's disappearance. As such there is no call for suppression.

Accordingly, this Court finds the statement was admissible, and the motion for a new trial on this basis is denied.

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IV. THERE CLEARLY WAS SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE SUFFICIENT TO SUBMIT THE CASE TO THE JURY.

Defendant next contends he should get a new trial because the evidence was circumstantial and did not prove him guilty beyond a reasonable doubt.

In reviewing a motion for a directed verdict, the trial court is concerned with the existence of the evidence, not with its weight. State v. Brannon, 388 S.C. 498, 501, 697 S.E.2d 593, 595 (2010). The Court must view the evidence in the light most favorable to the State. State v. Lollis, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001).

If there is any direct evidence, or if there is substantial circumstantial evidence, which reasonably tends to prove the defendant's guilt, the trial court properly submitted the case to the jury. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). The trial court should grant a directed verdict when the evidence merely raises a suspicion that the defendant is guilty. Odems, 395 S.C. at 586, 720 S.E.2d at 50.

Defendant contended at trial and contends in his motion that the evidence does not prove guilt to the exclusion of any reasonable hypothesis. This is incorrect. Not only is that not the law, as it "comes perilously close to shifting the burden of proof, see State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013), the caselaw is clear that "a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis." State v. Cherry, 361 S.C. at 594, 606 S.E.2d at 478 (2004). See also State v. Hepburn, --- S.E.2d ---, 2013 WL 6492390 (December 11, 2013).

Given these principles, it is clear that the State did more than raise a mere suspicion and in fact presented, as this Court stated at trial, overwhelming circumstantial evidence. The State set out all of this evidence in its responsive

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document to this motion which this Court adopts. The evidence in this case is substantial circumstantial evidence, and whether by motive, opportunity, or acts of guilt, they all point to Defendant. In short, Defendant owed the victim money and needed more money, Defendant and the victim said they were going off together for Defendant to get the money, Defendant was last seen with the victim around the time the victim disappeared as corroborated by witness testimony and the cell phone records, Defendant took the victim's car from the crime scene late at night and hid it, he used the victim's ATM card the next day, he ultimately placed himself at the scene in his own statements, and he had defensive wound scratches. Together, all of this evidence is very strong. See, e.g. State v. Rogers, 405 S.C. 554, 748 S.E.2d 265 (Ct. App. 2013) ("circumstantial evidence, however, gains its strength from its combination with other evidence, and all the circumstantial evidence presented in a case must be considered together to determine whether it is sufficient to submit to the jury," and finding substantial circumstantial evidence reasonably proved the defendant's guilt).

The motion for a new trial is denied.



V. THE MOTION FOR A NEW TRIAL BASED ON THE SECOND WILLIAMSON LETTER RECEIVED AFTER TRIAL SHOULD BE DENIED AS THE EVIDENCE IS NOT "NEW" UNDER THE LAW, AND REGARDLESS IS PLAINLY WITHOUT ANY CREDIBILITY SUFFICIENT TO MEET THE STANDARD FOR AFTER-DISCOVERED EVIDENCE.

Gerrick finally contended in his motion that he should be granted a new trial based on the second letter given by Dustin Williamson after the guilty verdict, in which Williamson again states he committed the crime and states that he does want to testify. However, at the hearing the defense indicated that given what the State had discovered about the circumstances in which the second letter was procured, it was withdrawing the motion. In lieu of testimony, the parties agreed to submit into evidence State's Exhibit 1 through 8, which included: (1) a DVD of the interview by SLED agent Jeff Croft of Dustin Williamson, (2) a DVD of the interview by Agent Croft of Brandon Morrell, (3) a DVD of the interview by Agent Croft of Houston Bryant, (4) and (5) DVDs of the security cameras in Defendant's cell for the time period after he was returned to the cell following the guilty verdict; (6) Memorandum of Interviews ("MOI") and other documents from Agent Croft and other officers regarding their investigation into the second letter, (7) a list of times when Gerrick is visible engaging in relevant activities on the security cameras, as prepared by Agent Croft, and (8) the letter from Early Glover which Glover refuted at trial and testified that Defendant promised him \$1000 to write it.

So that the record is clear, however, this Court sets out the following recitation that led to the defense's decision.

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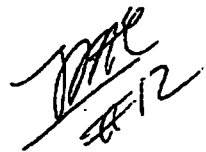
A. Facts before trial

A few weeks prior to trial, Defendant reported to correctional officers that he had found a letter on the floor of his cell. This letter (the "first letter") was signed by 18-year-old inmate Dustin Williamson. The text of the letter claimed generally that Defendant was innocent and was not present when the victim was killed. The letter further stated the victim was killed in Santee and brought to the burial site, and that Williamson and four other people were involved. At one point, the letter states that the writer does not know Defendant, but at another point claims that Williamson and his friends were supposed to kill Defendant too. The letter also contained idiosyncrasies seen in Defendant's own writing, such as "no" for "know", "rat" for "right", and "knot" for "not".

At a pre-trial hearing the Wednesday before trial, Williamson's counsel Jason Price, Esquire informed the Court that he just realized he had a conflict and would need to withdraw from representation. The State asked the Court to appoint counsel for Williamson for purposes of the letter and the upcoming trial, and this Court that day appointed Adam Ness, Esquire, for that purpose.

At trial, Dustin Williamson was called to the stand outside of the presence of the jury. He indicated he would not testify and wished to claim his Fifth Amendment privilege against self-incrimination.

The State then offered evidence outside of the presence of the jury about the manner in which the letter was found. Lt. Shaune Harley from SLED testified. He noted he received statements from the jail guards, who stated they got the first letter from Defendant who claimed he found it on the floor of his locked cell.

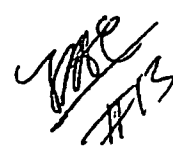


Lt. Harley interviewed Williamson twice prior to trial. At the first interview, Williamson admitted writing the letter but could not provide any specific details about what allegedly happened, responding only "whatever is in the letter, that's what happened".

At the second interview, Williamson requested that he be taken out of Barnwell Detention Center, so he was taken to Bamberg. At that interview, Williamson again admitted writing the letter, but he again only would say "whatever is in the letter" when asked about specifics of the crime. When he was asked if he had been threatened or put up to writing the letter, Williamson stated that "someone was going to die in six days." When asked if his family had been threatened, Williamson asked the officers to make sure his mother was safe. Williamson also stated he needed to get out of the Barnwell Detention Center because he would be killed.

At one point in the interview, Williamson said that he never claimed that he personally killed the victim. When Lt. Harley and Attorney Ness explained to Williamson the concept of accomplice liability through the "hand of one is the hand of all," Williamson dropped his head and kept repeating "they played me, they played me."

The parties then discussed admissibility of the letter. The State argued, among other things, that the letter was inadmissible as a statement against penal interest pursuant to Rule 804(b)(3), SCRE, because the circumstances of the letter show that when the statement was made, Williamson did not believe he was actually admitting to guilt because he did not understand the concept of accomplice liability. The State noted that the whole rationale for the statement against interest rule is that the statement

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could be trusted because a person would not make an admission against interest without believing it to be true, and in this case, the circumstances show Williamson clearly did not believe he was admitting anything against his interest. This Court agreed with the State's arguments and excluded the letter.¹

The next morning, the parties again discussed the Williamson issue. The State withdrew its objection to the admissibility, and made the argument that the circumstances surrounding the making of the first letter, and Williamson's statements about the letter to law enforcement described above, should be admissible as impeachment pursuant to Rule 806, SCRE, which allows impeachment of a hearsay declarant if the hearsay statement is admitted, without the necessity of any opportunity to deny or explain. The State noted caselaw holding that introduction of impeachment evidence under Rule 806 does not violate Crawford v. Washington, 541 U.S. 36 (2004),

¹ See State v. Kiser, 284 S.W.3d 227, 266 (Tenn. 2009) ("As commentators have noted, statements should not be admitted under Rule 804(b)(3) 'if the declarant actually believed that he or she was saying something that would be helpful.' Cohen, supra § 8.36(5). In that event, 'reliability is questionable and the statement should not be admitted under this hearsay exception.' Id."). See also Weinstein's Federal Evidence § 804.06[1] ("Statements against interest are admissible because it is presumed that one will not make a statement damaging to one's self unless it is true."); § 804.06[4][c] (concluding that because liars may confess to acts they did not commit, such declarations should be "excluded if counsel opposing admission can persuade the court that the declarant is probably lying," and the trial court should make that determination outside of the presence of the jury); § 804.06[d][1] ("At the moment the statement is made the declarant must believe that the statement is against the declarant's interest. . . . The court may exclude statements it finds inherently unreliable because the declarant was, for example, currying favor or was ignorant. The court must ascertain whether a particular declarant would know enough to perceive the statement's detrimental character.") (emphasis added and citing various cases)).

because it is offered for impeachment and not the truth of the matter asserted.² Similarly, the State argued the statements about the first letter were admissible as evidence of Williamson's state of mind – again, not for the truth of the matter asserted in violation of the hearsay rule and Crawford.² The State argued that the circumstances of the statement needed to be admitted in the interests of justice, to preclude the jury from being misled about Williamson's true actions.

This Court agreed with the State's Rule 806 argument and ruled that Williamson's statement to law enforcement about the first letter would be admissible. At this point, the defense then withdrew its offer of the first letter, expressly noting the withdrawal was done for strategic reasons. For context, another State's witness, Early Glover, already testified that when he and Defendant were in SCDC, Gerrick promised him money if Glover would write a statement that Defendant had nothing to do with the crime. Defendant provided Glover with a statement which Glover then copied in his

² See Hernandez v. State, 273 S.W.2d 685 (Tex. Ct. App. 2008) (evidence admitted under Rule 806 to impeach hearsay declarant was offered for impeachment, not the truth of the matter asserted, and thus did not violate Crawford). See generally Michigan v. Bryant, 131 S.Ct. 1143, 1161 n. 11 (2011) (that the Confrontation Clause is not implicated when statements are offered "for purposes other than establishing the truth of the matter asserted." Crawford, 541 U.S., at 60, n. 9).

² See State v. Edwards, 373 S.C. 230, 644 S.E.2d 66 (Ct. App. 2007) (victim's statement was not offered to show defendant hit her mother but to show her state of mind and why she behaved as she did); State v. Ruben T., 936 A.2d 270, 278-79 & n.5 (Conn. 2007) (statements of victim not hearsay as they were not admitted to show the truth of the matter asserted, but as circumstantial evidence of the victim's state of mind – that she was afraid of defendant; thus, Crawford was not implicated); State v. Williams, 1999 W.L. 783971 (Ohio Ct. App. 1999) (statements that declarant had been threatened in jail were not offered for truth but state of mind). See generally United States v. York, 572 F.3d 415, 427 (7th Cir. 2009) (statements offered for context of defendant's statements and not truth are not hearsay and Crawford is not implicated).

own hand. Glover testified he did not know Defendant prior to meeting him at SCDC, and that he knew nothing about the crime.

B. Facts after the verdict

The day after Defendant was found guilty of murder, this Court received another letter from Williamson (the "second letter"). In this letter, Williamson again stated Defendant was innocent, and threatened to kill ten officers. Williamson stated he killed the victim, and wanted to speak to police within two hours. Williamson also stated he could tell about a man who was killed in Blackville in May. The letter threatened this Court and his lawyer, and then went on to state he buried the victim face down, that the victim was 250 pounds, that he was buried on a dirt road in Blackville, that the victim had a bald head, that the victim died on Thursday night at 9:30pm, and that "Aundrey Hightower" made Williamson do it.³ The letter stated that Williamson no longer wanted to take the Fifth, and demanded that the murder charge be taken off of Defendant.

SLED Special Agent Jeff Croft interviewed Williamson after receipt of this letter, and his Memorandum of Interview ("MOI") is attached.¹ Williamson admitted he wrote the letter. When asked if what was written was true, Williamson responded "it could be its in the letter aint it." Williamson threatened Agent Croft, but would not acknowledge the letter was his idea.

Subsequently, Agent Croft interviewed Houston Bryant and Brandon Morrell, who were in the cell adjacent to Defendant on the night after he received his guilty verdict. MOIs, videos, and a statement from these interviews are attached. Morrell told Agent Croft that after his verdict, Defendant and Williamson began "fishing" – or

³ "Aundrey" is another idiosyncrasy also found in the Early Glover letter.



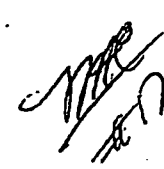
communicating in writing with the assistance of Bryant and Morrell who were in the cell between them. Bryant and Morrell read the letters as they assisted in passing them back and forth. In the letters, Defendant again asked Williamson to take Defendant's murder charge, and Defendant promised to help Williamson get an insanity plea if Williamson took Defendant's charge. Morrell stated he knew that Williamson and Defendant also passed letters prior to trial.

Similarly, Houston Bryant also admitted helping Defendant and Williamson pass letters between cells after Defendant received his guilty verdict. Bryant stated Defendant would pass the letter underneath a crack between his and Defendant's cell. In the letters, Williamson apologized and stated he had tried to take the charge for Defendant, and asked if Defendant was "still going to do that for me". The two continued to pass letters, with Defendant promising that if Williamson took Defendant's murder charge, Defendant could help Williamson get an insanity plea and not do much time in prison. Williamson wrote the second letter confessing to the murder and threatening the judge and others, and Defendant would rewrite it correcting Williamson's errors as the letters were passed back and forth.

Special Agent Croft also retrieved surveillance video of the jail. In it, he has been able to document times where Defendant made actions corroborative of the statements of Bryant and Morrell that Defendant passed letters back and forth during the evening.

C. Withdrawal

Given the information discovered by the State about the procurement by Defendant and the falsity of Williamson's second letter, the defense at the hearing



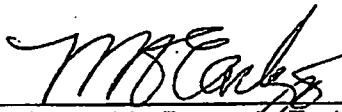
withdrew its motion on this ground for relief. Indeed, the defense strategically withdrew the first Williamson letter during trial when it became clear that the circumstances under which it was obtained would only serve to help convict Defendant, not exculpate him, particularly given the evidence from Early Glover. The second letter and the circumstances under which it was obtained have only made the Dustin Williamson evidence even stronger evidence of guilt in favor of the prosecution.

Accordingly, this basis for relief has been withdrawn.

CONCLUSION

Therefore, since the first four grounds for relief have been rejected by this Court, and the fifth ground has been withdrawn, the Defendant's motion for a new trial is denied.

IT IS SO ORDERED.



The Honorable Doyet A. Early, III
Presiding Judge, Second Judicial Circuit

Feb 4, 2014,
Aiken, South Carolina.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BARNWELL COUNTY
COURT OF GENERAL SESSIONS

Honorable Doyet A. Early, III, Circuit Court Judge

Case No. 2013-GS-06-00465

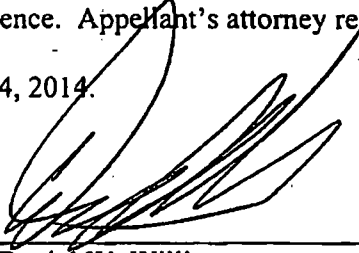
 The State.....Respondent,

v.

Sammie Lee Gerrick.....Appellant.

NOTICE OF APPEAL

Sammie Lee Gerrick appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Doyet A. Early, III, on November 21, 2013. This appeal is taken from the Orders of the Honorable Doyet A. Early, III, dated January 9, 2014, and filed February 19, 2014, which denied appellant's Motion for a New Trial and Motion for Reconsideration of Sentence. Appellant's attorney received written notice of entry of these Orders on February 24, 2014.


Daniel W. Williams
Attorney for Appellant
Post Office Box 616
Barnwell, South Carolina 29812
(803) 259-2759

February 24, 2014
Barnwell, South Carolina

RECEIVED

FEB 28 2014

SC Court of Appeals

Other Counsel of Record:
S. Creighton Waters, Esquire
Jason S. Anders, Esquire
SC Attorney General's Office
P. O. Box 11549
Columbia, SC 29211
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BARNWELL COUNTY
COURT OF GENERAL SESSIONS

Honorable Doyet A. Early, III, Circuit Court Judge

Case No. 2013-GS-06-00465

The State.....Respondent,

v.

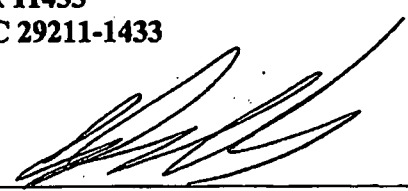
Sammie Lee Gerrick.....Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal by depositing a copy of it in the United States Mail, postage prepaid, on February 25, 2014, addressed to the following:

S. Creighton Waters, Esquire
SC Attorney General's Office
P. O. Box 11549
Columbia, SC 29211
Attorney for Respondent

Robert M. Dudek, Esquire
SC Office of Appellant Defense
PO Box 11433
Columbia, SC 29211-1433


Daniel W. Williams
Attorney for Appellant
Post Office Box 616
Barnwell, South Carolina 29812
(803) 259-2759

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FEB. 28 2014

February 25, 2014
Barnwell, South Carolina

SC Court of Appeals

WITNESSES

State Law Enforcement Division

Shaun E. Harley

Law Enforcement Case #: 311110067

AG

ARREST WARRANT NUMBER

13-DI06-0016

ACTION OF GRAND JURY

True Bill

Ryan A. J. J.
Foreperson of Grand Jury
Date: November 14, 2013

VERDICT

Guilty

Paul E. J. J.

Foreperson of Petit Jury
Date: 11-21-13

DOCKET NO. 2013GS0600465

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2013

THE STATE

vs.

Sammie Lee Gerrick

CDR #: 0116

Indictment for

MURDER

§ 16-03-0010

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

I, Rhonda D. McElveen, Clerk of Court for Barnwell County,
South Carolina do hereby certify that the foregoing
constitutes a true and correct copy of the original
documents which have been filed in my office.

Rhonda D. McElveen
Clerk of Court, Barnwell County, SC

By: *SR* Date: 3-19-14

XL2-PS13675 RED

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)
)

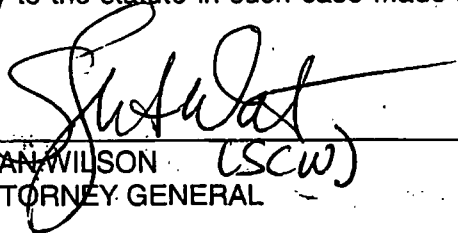
INDICTMENT FOR
MURDER

§ 16-03-0010

At a Court of General Sessions, convened on November 18, 2013, the Grand Jurors of Barnwell County present upon their oath:

That **SAMMIE LEE GERRICK** did in Barnwell County on or between July 21, 2011 and August 4, 2011, feloniously, willfully and with malice aforethought, kill Tyrone Donaldson. All in violation of §16-3-10, Code of Laws of South Carolina, (1976, as amended).

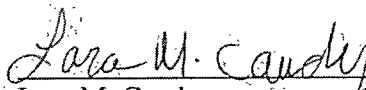
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ALAN WILSON (SCW)
ATTORNEY GENERAL

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

April 30, 2015



Lara M. Caudy
Appellate Defender

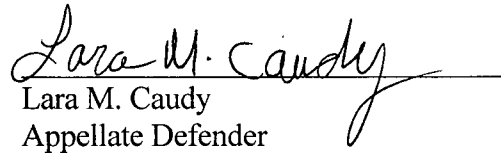
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

April 30, 2015


Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Barnwell County

Doyet A. Early, III, Circuit Court Judge

ORIGINAL

RECEIVED

APR 30 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

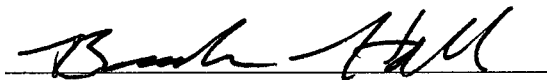
SAMMIE L. GERRICK,

APPELLANT

APPELLATE CASE NO. 2014-000385

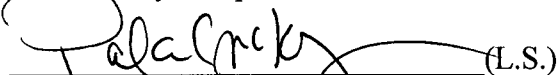
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Caroline M. Scrantom, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 30th day of April, 2015.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 30th day of April, 2015.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022