

VOLUME TWO OF TWO
STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Roger L. Couch, Circuit Court Judge

RECEIVED

SEP 25 2015

S.C. Supreme Court

JOSHUA RAY GREER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000377

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT	1
INDICTMENTS AND SENTENCING SHEETS	827
APPLICATION FOR POST-CONVICTION RELIEF (2009-CP-42-4438)	834
RETURN	859
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MAY 26, 2009	864
ORDER OF DISMISSAL	885
APPLICATION FOR POST-CONVICTION RELIEF (2012-CP-42-1605)	892
RETURN AND MOTION TO DISMISS	901
CONDITIONAL ORDER OF DISMISSAL	907
LETTER DATED NOVEMBER 4, 2013 WITH CLOCKED COPY OF NOTICE OF APPEAL	913
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED SEPTEMBER 16, 2014	918
ORDER OF DISMISSAL GRANTING APPELLATE REVIEW PURSUANT TO <u>AUSTIN V. STATE</u>	937

1 Anything from the State?

2 MR. WILLINGHAM: No, sir, Your Honor.

3 THE COURT: From the defense?

4 MR. CHEHOSKI: No, sir.

5 THE COURT: Ask the jury in, please.

6 (The jury returned to the courtroom).

7 THE COURT: All the jurors are present, with
8 the forelady and the alternates properly seated.

9 The matter lies with the State. Call your
10 next witness, please, Solicitor.

11 MS. MILLICAN: Thank you, Your Honor. The
12 state calls Agent Cecil Bradstreet.

13

14

15

16

17

18

19

20

21

22

23

24

25

CECIL BRADSTREET - DIRECT

1 CECIL BRADSTREET,
2 after being first duly sworn testified as follows:

3 THE COURT: You may examine.

4 MS. MILLICAN: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 QUESTIONS BY MS. MILLICAN:

7 Q Please state your name for the record.

8 A Cecil K. Bradstreet.

9 Q What's your occupation?

10 A Forensic technician in the evidence
11 processing department.

12 Q How long have you been a forensic technician?

13 A For approximately five years.

14 Q What department do you work in?

15 A The evidence processing department at SLED.

16 Q How long have you been with SLED?

17 A Going on twelve years.

18 Q Briefly describe the nature of your work
19 there.

20 A The evidence processing department examines
21 various types of evidence for the presence of hair,
22 fibers, blood, semen and any other type of bodily
23 fluid. We perform chemical testing for the
24 presence of semen and blood. The chemical test for
25 blood is kown as phenolphthalein.

CECIL BRADSTREET - DIRECT

1 Q What education or training did you complete
2 to qualify you as a specialist in your work?

3 A I have my Bachelor's from the University of
4 South Carolina in criminology and criminal justice.
5 I have also been trained, I have on the job
6 training by court qualified experts and I annually
7 undergo proficiency testing in my discipline of
8 hair, fiber, blood and semen.

9 Q How much of your time is dedicated to these
10 duties you described?

11 A You know, we process cases virtually every
12 day.

13 Q Have you previously testified in courts of
14 law as an expert in this field?

15 A Once before.

16 Q I'm going to show you what has been marked as
17 State's Exhibit Number 15. If you would, please,
18 take a look at that item and tell me if you
19 recognize it.

20 A This is a piece of evidence from the case
21 that I examined. This is the lab number that it
22 has been assigned, the item number that it's been
23 assigned, my initials and the date that it was
24 processed.

25 Q What is that item?

CECIL BRADSTREET - DIRECT

1 A Item number 15 is a knife with a brown wooden
2 handle.

3 Q How did this item first come into your
4 possession?

5 A When I first take custody of this case I
6 enter a secure walk-in refrigerator that is located
7 within our department. I retrieve the box of the
8 case I'm going to work and take it into my custody.

9 Q Was that item sealed when you retrieved it?

10 A Yes, ma'am, it was.

11 Q What did you do with the item after you
12 retrieved it?

13 A When I opened up the case I take out the
14 item, I do a physical exam, if there are any areas
15 that I believe to be blood I take a cotton swab,
16 use saline, swab the known area. In this case I
17 would set the swab aside, go back with another swab
18 behind it to check it. The chemical test
19 phenolphthalein reacts with hemoglobin which is
20 found in blood. You take phenolphthalein, drop the
21 chemical on it and you use hydrogen peroxide, which
22 will produce a chemical reaction. If the swab
23 turns pink or any color of pink I have to assume
24 that it is blood and I forward that to DNA for
25 analysis.

CECIL BRADSTREET - DIRECT

1 Q Did you find blood on this particular item?

2 A On item 15, no, ma'am, I did not.

3 Q What is the process of handling evidence
4 after you process the blood?

5 A I will mark on my item that it was negative
6 for phenol, along with my initials, place the
7 evidence back in the container it was originally
8 sent in and route that back for return to the
9 submitting agency.

10 Q And is it sealed when you leave it?

11 A Yes, it is.

12 Q Please look at what has been marked State's
13 Exhibit Number 30.

14 A This bag contains item three which is a pair
15 of blue jeans, this is the lab number, the item
16 number, my initials and the date that it was
17 examined.

18 Q What is that item?

19 A This item is a pair of blue jeans, Levi
20 Straus & Company, size 36 by 36, that I tested
21 numerous stains for blood that were all negative.

22 Q When this item first came into your
23 possession was it sealed?

24 A Yes, ma'am, it was.

25 Q After you tested it what did you do with the

CECIL BRADSTREET - DIRECT

1 item?

2 A I placed the jeans back in this bag, back in
3 the bio-hazard bag and placed it in the original
4 container and routed it back to the submitting
5 agency.

6 Q Was it sealed when you left it?

7 A Yes, it was.

8 MS. MILLICAN: The State would move at this
9 time to admit State's Exhibit Numbers 15 and 30
10 into evidence.

11 THE COURT: How says the defense?

12 MR. CHEHOSKI: Without objection.

13 THE COURT: 15 and 30 are part of the
14 evidence in the case, ladies and gentlemen.

15 (Knife was marked and received in
16 evidence as State's Exhibit Number 15).

17 (Blue jeans were marked and received in
18 evidence as State's Exhibit Number 30).

19 BY MS. MILLICAN:

20 Q Please look at the item marked as State's
21 Exhibit 31. Do you recognize that item?

22 A This is lab number item number four which is
23 a blue fitted sheet with a design on it. These are
24 my initials and the date they were examined. There
25 were approximately four stains that I tested for

CECIL BRADSTREET - DIRECT

1 blood, that were also negative.

2 Q How did that item first come into your
3 possession?

4 A Once again it was in a container that I
5 retrieved from our walk-in refrigerator which I
6 have a key for, placed it in my custody, processed
7 it, sealed everything back up and routed it to
8 return back to the submitting agency.

9 Q Was it sealed when you took it out of the
10 evidence refrigerator?

11 A Yes, ma'am, it was.

12 MS. MILLICAN: The State would move to admit
13 State's Exhibit Number 31 into evidence at this
14 time, Your Honor.

15 THE COURT: Without objection.

16 THE COURT: Thank you. Number 31 becomes
17 part of the evidence in the case.

18 (Bed sheet marked and received in evidence
19 as State's Exhibit Number 31).

20 BY MS. MILLICAN:

21 Q Agent Bradstreet, please look at Exhibit
22 Number 32. Do you recognize that item?

23 A This again is the lab number, item number
24 which is seventeen, a pair of white tennis shoes
25 with blue trim, Addis, size 10, the item number, my

CECIL BRADSTREET - DIRECT

1 initials and the date it was examined.

2 Q How did this item first come into your
3 possession?

4 A This item again was retrieved from the secure
5 walk-in refrigerator that is housed in evidence
6 processing. I did a physical exam, there was one
7 stain that there was a discoloration on the back.
8 I sat that swab aside and routed that to DNA for
9 further analysis.

10 Q When you first got this item from evidence
11 was it sealed?

12 A Yes, it was.

13 Q And then you found blood on it and took a
14 swab of that?

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

16 Q Do you know conclusively whether that was
17 blood when you take the swab?

18 A Phenolphthalein is only a presumptive test, it
19 is not a confirmatory test, that is why we forward
20 it to DNA for further analysis.

21 Q I first ask you whether it is blood at all?

22 A Based on my visual exam it appeared to be
23 blood, that is why we swab it, do the chemical test
24 and forward it to DNA if there is a reaction.

25 Q After you took the swab what did you do with

CECIL BRADSTREET - DIRECT

1 that item?

2 A This item was placed back in the paper bag,
3 into the bio-hazard bag, placed in the original
4 container and routed to return back to the
5 submitting agency.

6 Q Look at what has been marked State's Exhibit
7 34.

8 MS. MILLICAN: Your Honor, the State would
9 move State's Exhibit 32 into evidence at this time.

10 MR. CHEHOSKI: No objection.

11 THE COURT: Number 32 is in evidence).

12 (Tennis shoes were marked and received in
13 evidence as State's Exhibit Number 32).

14 BY MS. MILLICAN:

15 Q Do you recognize State's 34?

16 A Yes. This is a swab that I took from the
17 tennis shoes which was item 17, this is the item
18 17.1, the exam for blood off the shoes, these are
19 my initials with the date.

20 Q Did you seal that sample after you took it?

21 A Yes, I did.

22 Q In what kind of packaging?

23 A It was placed in a heat sealed envelope which
24 I signed, heat sealed the top, signed across that
25 and then signed as the sealing official on that

CECIL BRADSTREET - DIRECT

1 pouch and routed it to the DNA box, which is a
2 secure refrigerator in the evidence department, to
3 DNA for analysis.

4 MS. MILLICAN: I have no further questions of
5 this witness at this time. Thank you.

6 THE COURT: Cross-examination.
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CECIL BRADSTREET - CROSS

CROSS EXAMINATION

QUESTIONS BY MR. CHEHOSKI:

Q Mr. Bradstreet, if I understand you, you examined the objects that were sent to you?

A Yes, sir, that's correct.

Q You do a test, was it phenolphthalein?

A Yes, that's correct.

Q That phenolphthalein is on the swab?

A I swab the area, then drop phenolphthalein on it, then hydrogen peroxide to produce a potential chemical reaction.

Q So, are you dropping the phenolphthalein on the swab?

A Yes, sir.

Q If there is a reaction, then it goes, then you drop the hydrogen peroxide on it?

A I drop the hydrogen peroxide on it in order to produce the reaction.

Q Understood. And the hydrogen peroxide will react with hemoglobin?

A The phenolphthalein produces, to produce the chemical reaction you swab the area, you drop the phenolphthalein on it, then drop hydrogen peroxide. The phenolphthalein is what will react with the hemoglobin which is in blood but the hydrogen

CECIL BRADSTREET - CROSS

1 peroxide is what produces the chemical reaction.

2 Q All right, I think I understand now. And you
3 have got that, that reaction from, on item 17.1?

4 A Yes, sir.

5 Q That was a swab from item 17?

6 A Yes, sir, that's correct.

7 Q That's the Addis tennis shoes. As you stated
8 before, this was just a presumptive test?

9 A Yes, sir, that's correct.

10 Q It's not conclusive?

11 A That's correct.

12 Q And at that point, after you have that
13 presumptive test, that swab is sent to DNA?

14 A Yes. I have a separate swab that I would
15 send to DNA. I have two swabs. I swab one of the
16 area first, go back over the item again, that's
17 when I use my chemical.

18 Q Okay. But the two swabs are of the same
19 area?

20 A Yes, that's correct.

21 Q And you test the second swab?

22 A Yes.

23 Q And all test items were in a secured
24 refrigerator?

25 A Yes, sir, that's correct.

CECIL BRADSTREET - CROSS

1 Q And you said you had a key to it?

2 A Yes, sir, that's correct.

3 Q And only someone in your department would
4 have access to that refrigerator?

5 A The personnel within evidence processing have
6 a key and also the personnel in evidence control
7 because they have to have access to deliver.

8 MR. CHEHOSKI: Nothing further.

9 THE COURT: Redirect?

10 MS. MILLICAN: There is nothing further from
11 the State, Your Honor, thank you.

12 THE COURT: Thank you, sir. Watch your step.
13 (Witness excused).

14 THE COURT: Any objection to this witness
15 being excused?

16 MR. WILLINGHAM: We ask that he be, Your
17 Honor.

18 MR. CHEHOSKI: None from the defense, Your
19 Honor.

20 THE COURT: Thank you. Mr. Witness, you may
21 stay with us or you may leave the building.

22 MR. WILLINGHAM: If it please the Court, Your
23 Honor, we call John Ortuno.

24

25

EMANUEL ORTUNO - DIRECT

1 EMANUEL ORTUNO,
2 after being first duly sworn testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. WILLINGHAM:

5 Q Tell the jury who you are.

6 A My name is Emanuel John Ortuno, O-r-t-u-n-o.

7 Q Mr. Ortuno, where do you work?

8 A I'm employed at the South Carolina Law
9 Enforcement Division, commonly referred to as SLED.

10 Q How long have you been with SLED?

11 A Just over fifteen years.

12 Q And what do you do at SLED?

13 A Currently I'm a forensic DNA analyst.

14 Q What type of training, education and
15 experience do you have that allows you to be a DNA
16 analyst?

17 A I graduated with Honors from the American
18 University in Washington, D.C. with a Bachelor of
19 Science Degree, majoring in chemistry. I have a
20 Master's Degree also majoring in chemistry, from
21 the University of South Carolina in Columbia. I
22 was hired as a researcher in the laboratory at the
23 University, performing experiments on DNA for
24 approximately three and a half years. This led to
25 three publications in peer review journals. I also

EMANUEL ORTUNO - DIRECT

1 completed the training at SLED in DNA analysis,
2 have attended the FBI Academy's advanced DNA
3 training, numerous courses and seminars and other
4 courses pertaining to my field of expertise on a
5 regular basis.

6 Q Tell this jury what DNA is.

7 A DNA stands for deoxyribonucleic acid. It's a
8 very complex compound found in the human body.
9 It's found packaged within the nucleus in what is
10 called chromozones. We have twenty-three pairs of
11 chromozones, each pair being an equal contribution
12 from our mother and our father. Now, most of our
13 DNA is the same, that is because we all need arms
14 and legs and kidney cells and liver cells and all
15 the thousands of protiens and enzymes that make us
16 human. But all you need do is look around this
17 courtroom and just as you see differences in the
18 color of our hair, the colors of our eyes, shapes
19 of our noses or our ears, it's apparent that all
20 our DNA can't be the same, in fact it isn't.

21 In forensics we focus on particular regions
22 within the DNA molecule called SCR sites. SCR
23 stands for short count and repeat. If I go to an
24 SCR site along with a DNA molecule, what you
25 discover is different people have different size

EMANUEL ORTUNO - DIRECT

1 fragments at that location. Now, an analogy of
2 this would be shoe sizes. I might wear a men's
3 size eleven shoe. Other men in this courtroom
4 might have a size ten or nine and a half or so on.
5 You women would have corresponding differing sizes
6 as well. We could separate or distinguish people
7 based on their shoe sizes. If we're looking for
8 someone wearing a size ten shoe we would eliminate
9 everybody else.

10 With DNA, because it's a contribution from
11 your mother and your father, each SCR site, you
12 might have the same size fragment because both mom
13 and dad contributed the same size fragment or you
14 could have different sizes. And you don't look at
15 just one location, we look at nine locations. So,
16 if nine locations, each one having a different
17 contribution or possibly the same contribution from
18 the mother and the father, we arrive at what is
19 called the DNA profile, which is a combination of
20 all these different size fragments that we look at.
21 And we distinguish people based on this DNA
22 profile. We develop a DNA profile from the
23 evidence, you develop a DNA profile from the
24 individuals you feel might have been involved in a
25 case, and you simply compare them. If they match,

EMANUEL ORTUNO - DIRECT

1 then the source of that evidence is the individual,
2 and if it doesn't match it isn't.

3 Q I may be making it more simple than it is,
4 I'm sure I am, but is it fair to say that each
5 person's DNA is unique except for identical twins?

6 A Each person's DNA -- actually if we look at
7 the entire DNA molecule, even identical twins would
8 have point mutation. What we would be looking at,
9 they would be identical.

10 Q And because DNA has unique characteristics
11 among each individual, that makes it a good way to
12 identify or compare substances or be able to match
13 a known standard such as the victim's blood with a
14 blood sample found at a crime scene?

15 A Absolutely.

16 Q Okay. How many times have you analyzed DNA?

17 A Hundreds if not thousands.

18 Q Okay. And how many times have you had to
19 come to court and testify and qualify as an expert
20 in the area of DNA analysis?

21 A I have been qualified here in this court as
22 well at other courts throughout the state 26 times
23 for DNA specifically.

24 MR. WILLINGHAM: Thank you. Your Honor, at
25 this time I offer Agent Ortuno as an expert in the

EMANUEL ORTUNO - DIRECT

1 area of DNA analysis.

2 THE COURT: The witness is offered as an
3 expert in the area of DNA analysis. Will there be
4 questions on his voir dire?

5 MR. CHEHOSKI: No questions on his voir dire,
6 Your Honor, on this witness, and no objection to
7 the offer.

8 THE COURT: Thank you. Ladies and gentlemen,
9 this witness is an expert in the field of DNA
10 analysis.

11 BY MR. WILLINGHAM:

12 Q Agent, if you would, when you receive a
13 sample or suspected sample, what's the first thing
14 you do?

15 A The first thing that we do is determine
16 whether it's of human origin. Typically we are
17 looking for human body fluids, either human body
18 fluids or tissues. Sometimes we look at hair roots
19 and thing of that sort.

20 Q Okay. And after you determine it's human
21 origin, do you go further to determine if it is
22 blood, semen or some other type of bodily fluid?

23 A That would be the serology component of it,
24 determine whether in fact it's blood, typically
25 blood, saliva, semen.

EMANUEL ORTUNO - DIRECT

1 Q I believe in this case, to jump ahead a
2 little bit, it involves only blood, there is no
3 semen samples or any other type of saliva or any
4 other samples present, is that fair?

5 A Yes, sir.

6 Q Okay. So, whenever you receive a blood
7 sample, again I know I'm making it simple, but your
8 next process would be to extract the DNA?

9 A Once I determine that it's human blood the
10 next step is to see if I have enough there to
11 develop a profile.

12 Q And when you develop that profile you then
13 compare that to a known sample?

14 A That's correct. Typically we will receive
15 either blood from individuals, or saliva samples.

16 Q Okay. Let's talk about that known sample,
17 State's Exhibit Number 17, which is, which has been
18 testified to is a blood sample taken from the
19 victim Paul Reagan. Did you receive that item?

20 A Yes, sir, State's Exhibit 17 is in fact blood
21 samples that I placed on cloth and it's labeled
22 Paul Reagan.

23 Q Okay. And when you received that sample was
24 it sealed?

25 A Yes, it was.

EMANUEL ORTUNO - DIRECT

1 Q And you broke that seal?

2 A That's correct.

3 Q Did you begin to process that to extract DNA?

4 A That's correct.

5 Q And did you develop a profile as a result of
6 your analysis?

7 A Yes, I did.

8 Q When you were done with that did you seal it
9 back and send it to local law enforcement here in
10 Spartanburg?

11 A Yes, I returned it to the original envelope
12 containing, this one right here, containing the
13 blood sample. I then sealed the, I sealed the heat
14 seal pouch and I initialed across the seal itself
15 and returned it to, actually it goes to a holding
16 bin, I think it's collected when the agency comes
17 to collect the evidence.

18 Q Thank you.

19 MR. WILLINGHAM: Your Honor, at this time I
20 move State's Exhibit Number 17 into evidence.

21 THE COURT: How says the defense?

22 MR. CHEHOSKI: No objection.

23 THE COURT: Number 17 is admitted into
24 evidence, ladies and gentlemen.

25 (Blood samples marked and received in

EMANUEL ORTUNO - DIRECT

1 evidence as State's Exhibit Number 17).

2 BY MR. WILLINGHAM:

3 Q Once you had the victim's profile, at that
4 point you could begin to analyze other items to see
5 if they matched, is that fair?

6 A That's correct.

7 Q Okay. The first thing I want to show you is
8 State's Exhibit 34, which is the swab that Mr.
9 Bradstreet just testified to came off the shoes.
10 Exhibit 34, did you receive that?

11 A State's Exhibit 34 does contain my initials
12 across the envelope, yes, I did.

13 Q And I think that corresponds to your number
14 17.1?

15 A That's correct, that's SLED's, on the report
16 it's listed as 17.1.

17 Q Okay. Were you able to determine whether or
18 not that was in fact blood?

19 A I tested it for the presence of blood and no
20 human blood was identified.

21 Q No blood was identified? Let me ask you
22 about that because Mr. Bradstreet said he did a
23 presumptive test that indicated a presumption of
24 blood but you say there is not blood. How do you
25 reconcile the two?

EMANUEL ORTUNO - DIRECT

1 A He performs what is called a presumptive
2 test, phenolphthalein test that was mentioned
3 earlier, and it's more sensitive than the test I do
4 in the sense that it's more likely to give a false
5 positive. It's going to give a positive for blood
6 but it also might give a positive for something
7 that is not blood, number one, or simply put, it
8 may not have enough for my test which is more
9 specific to human blood to be positive than his
10 test. I don't know if that was -- that might have
11 been a little confusing.

12 Q Your tests are conclusive?

13 A Yes. My tests, mine tests for the presence
14 of the proteins that are specific to human blood
15 and it requires a certain amount of that protein to
16 be there to be positive, whereas his test is a
17 chemical test that reacts with iron which is
18 present within the hemoglobin component of blood,
19 and other things also react, so it might not have
20 been blood to begin with or it might have been such
21 a small, small amount that his test, which is more
22 sensitive, comes out positive but mine doesn't have
23 enough of the proteins to react.

24 Q Okay.

25 MR. WILLINGHAM: Your Honor, at this time I

EMANUEL ORTUNO - DIRECT

1 move State's Exhibit Number 34 into evidence.

2 MR. CHEHOSKI: No objection from the defense.

3 THE COURT: Without objection Number 34 is
4 admitted into evidence.

5 (Swab taken from tennis shoes marked and
6 received in evidence as State's Exhibit
7 Number 34).

8 BY MR. WILLINGHAM:

9 Q Without this being blood there was no profile
10 to be compared?

11 A That's correct. That is a negative,
12 therefore there is nothing else for me to do with
13 that item.

14 Q Okay.

15 A It would not give me a DNA profile.

16 Q Okay. I want to show you what's been
17 previously marked State's Exhibit Number 5 and ask
18 if you recognize that?

19 A Yes. That also has my initials on it. It is
20 listed as a swab that was taken from the white
21 portion of a jack handle. There is a small
22 diagram.

23 Q Okay. And did you determine whether or not
24 that was blood?

25 A Item 6.1 was tested for the presence of human

EMANUEL ORTUNO - DIRECT

1 blood and human blood was identified on this item.

2 Q Okay. Once it was identified did you then
3 take it to the next step to extract the DNA and
4 develop a profile?

5 A That's correct, that's what I did.

6 Q Were you successful in developing a profile
7 on that item?

8 A Yes, sir, I did.

9 Q After you developed that profile on that
10 item, which I believe it's off the jack handle, did
11 you compare that profile to the profile of the
12 victim?

13 A Yes, sir, I did.

14 Q And did they match?

15 A Yes, they did.

16 MR. WILLINGHAM: Your Honor, at this time I
17 move State's Exhibit Number 5 into evidence.

18 MR. CHEHOSKI: No objection from the defense.

19 THE COURT: Number 5 is admitted into
20 evidence, ladies and gentlemen.

21 (Swab from jack handle marked and received
22 in evidence as State's Exhibit Number 5).

23 BY MR. WILLINGHAM:

24 Q I will show you Exhibit Number 6 and ask if
25 you recognize that?

EMANUEL ORTUNO - DIRECT

1 A Yes. That also has my initials on the
2 envelope and this is a swab of suspected blood
3 taken from a piece of rubber.

4 Q And that was sent to you by Agent Black?

5 A There are initials up here, the last one is a
6 B, so it could be Black. I receive evidence from
7 the evidence processing, which is where Mr.
8 Bradstreet works, and I also receive evidence from
9 the crime scene team that goes to the location, and
10 this appears to have been from that source.

11 Q All right. And did you determine whether
12 blood existed in that swab?

13 A Human blood was identified on that item as
14 well.

15 Q And likewise you took it to the next step of
16 extracting DNA and developing a profile?

17 A Yes, I did.

18 Q And after developing the profile did you
19 compare it to the victim's?

20 A I did.

21 Q To what conclusion?

22 A It matched.

23 MR. WILLINGHAM: Your Honor, at this time I
24 move State's Exhibit Number 6 into evidence.

25 MR. CHEHOSKI: No objection.

EMANUEL ORTUNO - DIRECT

1 THE COURT: Number 6 is admitted into
2 evidence.

3 (Swab from rubber was marked and received
4 in evidence as State's Exhibit Number 6).

5 BY MR. WILLINGHAM:

6 Q Finally I want to show you State's Exhibit
7 Number 4 and ask you if you recognize that?

8 A This also contains my initials on the
9 envelope and this is a swab that was taken from the
10 head of the hammer.

11 Q Okay. So, that's a blood swab from the head
12 of the hammer? Did you determine it was in fact
13 blood?

14 A Yes, I did.

15 Q And did you extract DNA and develop a
16 profile?

17 A I did.

18 Q And did you compare that profile to the
19 victim's?

20 A Yes.

21 Q To what conclusion?

22 A It also matched.

23 Q Okay.

24 MR. WILLINGHAM: Your Honor, at this time I
25 move State's Exhibit Number 4 into evidence.

EMANUEL ORTUNO - DIRECT

1 MR. CHEHOSKI: Without objection.

2 THE COURT: Number 4 is into evidence, ladies
3 and gentlemen.

4 (Swab from hammer marked and received in
5 evidence as State's Exhibit Number 4).

6 BY MR. WILLINGHAM:

7 Q In summary, on the DNA, the swab of blood
8 from the hammer, the swab of blood from the jack
9 handle and the swab of blood from the rubber hose
10 all matched the victim's blood?

11 A They matched the profile generated from the
12 victim's blood, yes.

13 Q Okay. What's the likelihood of randomly
14 selecting another person besides the victim's blood
15 being on those items?

16 A The frequency of occurrence, the likelihood
17 that anyone would have the profile that Paul Reagan
18 has is one in 96 trillion.

19 Q I want to ask you about a few other things.
20 I show you State's Exhibit Number 29, which are
21 numerous other swabs which were submitted to Law
22 Enforcement Division. I ask if you recognize that?

23 A This is a heat seal pouch containing SLED's
24 items seven through thirteen, State's Exhibit 29.
25 They have my initials on the outside of the heat

EMANUEL ORTUNO - DIRECT

1 sealed pouch.

2 Q And did you attempt to determine whether or
3 not blood existed on those swabs?

4 A Items seven through thirteen, let's see, I
5 did attempt to determine whether there was blood on
6 each of those items.

7 Q Some had blood, some did not, is that fair?

8 A That's correct.

9 Q Now, those did not go to the next step for
10 extraction of DNA and profile comparison?

11 A That's correct.

12 Q Do you know why?

13 A I had a conversation with Investigator Yown
14 on October 11, 2002. We try and select the items
15 that are most probative. There is no need to do
16 blood on every single item in a house. We look at
17 those items that might explain what happened in a
18 particular incident, and through my conversation
19 with the investigator, he felt comfortable with
20 only items, SLED items 1.1, 5.1, 6.1, that were
21 mentioned a moment ago, as being the most
22 probative.

23 Q And I made it really simple, but the actual
24 process of extracting DNA, developing a profile and
25 comparing is not a simple process, is it?

EMANUEL ORTUNO - DIRECT

1 A It takes a few steps.

2 Q It takes a lot of time?

3 A Yes.

4 Q And is it fair to say the State Law
5 Enforcement Division is the central DNA analysis
6 site for the State of South Carolina?

7 A There is a small local lab in Richland that
8 just started about perhaps six months ago and they
9 just do Richland County cases.

10 Q But in August of 2002 you were it?

11 A That's correct.

12 Q Okay. So, you have to pick and choose
13 basically, again simplifying, but you have to pick
14 and choose what to analyze, you can't analyze
15 everything submitted to you?

16 A Well, it make no sense to do that. There
17 would be nothing gained by adding to something that
18 places someone or perhaps a particular item that
19 was used in the act of a crime, once that's
20 defined, two is not going to make it more positive,
21 one is sufficient.

22 Q And in this case we have three?

23 A That's correct. For whatever reason in this
24 particular case the investigator felt those three
25 would be sufficient.

EMANUEL ORTUNO - DIRECT

1 MR. WILLINGHAM: Beg the Court's indulgence.

2 THE COURT: Take your time.

3 MR. WILLINGHAM: Thank you for being here.

4 If you would, answer any questions the defense has.

5 THE COURT: Cross-examination, Mr. Chehoski.

6 MR. CHEHOSKI: Thank you, Your Honor.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

EMANUEL ORTUNO - CROSS

CROSS EXAMINATION

QUESTIONS BY MR. CHEHOSKI:

Q You weren't at the crime scene?

A No, I was not.

Q Now, you stated that items, you did do the initial test for items seven through thirteen, correct?

A We like to, if possible, do the serology analysis to determine whether it is blood on all the items submitted, and I did, I attempted that.

Q For the sake of completion and for these jurors, now, item number seven was a control swab?

A That's correct.

Q There is no analysis performed on that?

A There was no need to, no.

Q Item number eight, you did perform the serology tests?

A That's correct.

Q And human blood was identified?

A Yes, sir.

MR. WILLINGHAM: Your Honor, may we approach?

THE COURT: You may.

(Unrecorded bench conference).

BY MR. CHEHOSKI:

Q Item eight, you performed the serology

EMANUEL ORTUNO - CROSS

1 analysis?

2 A Yes, sir, I did.

3 Q That revealed human blood?

4 A Human blood was identified on SLED's item
5 eight.

6 Q And item nine, you did the serology?

7 A That's correct.

8 Q On that one no human blood was found?

9 A No human blood was identified on item nine.

10 Q Item ten, you did the serology?

11 A Yes, sir.

12 Q And human blood was identified?

13 A Yes, sir.

14 Q Item eleven you did a serology?

15 A Yes, sir.

16 Q And human blood was identified?

17 A That's correct.

18 Q And item twelve, you did the serology?

19 A Yes, sir.

20 Q No human blood was identified?

21 A That's correct.

22 Q Item thirteen, you did the serology?

23 A Yes, sir.

24 Q And no human blood was identified?

25 A Item thirteen?

EMANUEL ORTUNO - CROSS

1 Q Well, I'm sorry, item thirteen, human blood
2 was identified?

3 A That's correct, human blood was identified on
4 item thirteen.

5 Q And you testified that you didn't do the
6 extra step of developing a profile per Investigator
7 Yown's instructions?

8 A Based on our conversation, yes.

9 Q You felt that he, you felt that he would know
10 more about this case than you?

11 A The investigator always knows more about the
12 case than the analyst in the forensic building.

13 Q You are just looking at swabs?

14 A That's correct.

15 Q Again referring to item number seventeen,
16 which is State's 34, I believe. State's 34?

17 A Yes, sir.

18 Q That's identified as a swab from the shoe?

19 A That's correct.

20 Q And you performed the serology analysis?

21 A That's correct.

22 Q And no human blood was identified?

23 A Yes, sir.

24 Q And on direct you testified there could be
25 one of many, there could be one of a couple of

EMANUEL ORTUNO - CROSS

1 reasons?

2 A Yes.

3 Q Either it's not human blood or the sample is
4 just too small?

5 A Those are two of the possibilities, yes.

6 Q And you don't know which one it is?

7 A No. I just know it was negative.

8 Q You just know it was negative? You only have
9 one standard to compare it to?

10 A That's correct.

11 Q The standard from Paul Reagan?

12 A Yes.

13 Q You didn't have -- and that was the only one
14 that was sent to you?

15 A That's correct.

16 MR. CHEHOSKI: Nothing further, Your Honor.

17 THE COURT: Redirect?

18 MR. WILLINGHAM: No, sir, Your Honor, thank
19 you.

20 THE COURT: Thank you, sir. You may come
21 down. Watch your step.

22 THE WITNESS: Thank you, Your Honor.

23 (Witness excused).

24 THE COURT: Any objection to this witness'
25 being excused?

EMANUEL ORTUNO - CROSS

1 MR. CHEHOSKI: No, sir.

2 MR. WILLINGHAM: We ask that he be, please,
3 sir.

4 THE COURT: Thank you. Mr. Witness, you may
5 stay with us if you wish or leave the building if
6 you wish.

7 Call your next witness, please.

8 MR. WILLINGHAM: We call Dr. David Wren.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

DR. JOHN DAVID WREN - DIRECT

1 DR. JOHN DAVID WREN,
2 after being first duly sworn testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. WILLINGHAM:

5 Q Tell the jury who you are.

6 A John David Wren.

7 Q Mr. Wren, what do you do for a living?

8 A I'm a pathologist.

9 Q At Spartanburg Regional?

10 A That's where I'm currently stationed, yes,
11 sir.

12 Q And is it fair to say you are a forensic
13 pathologist?

14 A Yes, I practice forensic pathology.

15 Q If you would, tell the jury what that area of
16 medicine is.

17 A Well, pathology is divided into two general
18 categories. One is anatomic pathology, which is
19 that part of pathology that is concerned with
20 tissue pathology basically. The other portion is
21 clinical pathology, which is more concerned with
22 laboratory tests on blood and other portions of the
23 medical field.

24 Anatomic pathology is divided into several
25 categories, one being surgical pathology, which is

DR. JOHN DAVID WREN - DIRECT

1 examination of the issues removed at surgery to
2 determine whether they are benign or malignant, and
3 to try to identify any disease processes that may
4 be present. It has several sub-categories and
5 specialties.

6 Another portion is autopsy pathology, which
7 is concerned with autopsies.

8 And then there is a special field of autopsy
9 pathology which is forensic pathology, which are
10 basically medical-legal cases, either autopsies or
11 other types of medical-legal things where
12 pathologists would be an expert in that area. And
13 as such, a forensic pathologist does autopsies for
14 the medical examiner or the coroner.

15 Q And you do that here in Spartanburg for our
16 coroner's office, is that correct?

17 A Yes.

18 Q What type of education do you have to allow
19 you to perform your job?

20 A Well, I basically have a medical degree, MD
21 degree at the Medical University of South Carolina.
22 I did a combined anatomic and clinical pathology
23 residency, which was a five year residency, but I
24 finished in three years and ten months, three years
25 and nine months because I had some special things

DR. JOHN DAVID WREN - DIRECT

1 that I had done while I was in medical school and
2 even previous to medical school to qualify me for
3 the combined degree.

4 I stood my Boards in anatomical pathology in
5 1983, passed those on the first try. Then I took
6 the clinical pathology Boards in November of 1987
7 and passed those, so I was awarded a combined
8 anatomic and clinical pathology degree.

9 While I was at the Medical University I also
10 served for some length of time as Assistant Medical
11 Examiner for Charleston County, which has a medical
12 examiner system, and as such I investigated
13 anywhere from probably ten to forty deaths per
14 month and worked those up, and in some cases I did
15 autopsies. I did autopsies, I did a three month
16 rotation in forensic pathology while I was a
17 resident and I also did forensic autopsies one
18 weekend a month for the Medical Examiner's office
19 on all autopsies that were sent to the Medical
20 University from all over the State under the
21 direction of a Board certified forensic
22 pathologist, and reported those and also went to
23 court in any cases that were necessary for court.

24 I never took my Boards in forensic pathology
25 because I simply didn't have time at the time. I

DR. JOHN DAVID WREN - DIRECT

1 have been qualified in multiple counties in the
2 state, which I can name the majority of them
3 probably, but I have been qualified numerous times
4 as an expert in forensic pathology.

5 MR. WILLINGHAM: Your Honor, at this time I
6 would move to have Dr. Wren qualified as an expert
7 in the area of forensic pathology.

8 MR. CHEHOSKI: No objection from the defense.

9 THE COURT: Thank you. Ladies and gentlemen,
10 this witness is an expert in the field of forensic
11 pathology.

12 MR. WILLINGHAM: Thank you, Your Honor.

13 BY MR. WILLINGHAM:

14 Q Doctor, were you the doctor that performed
15 the autopsy on the victim in this case, Paul
16 Reagan?

17 A Yes, I performed an autopsy on an individual
18 identified as Paul J. Reagan on August 31st, 2002,
19 in SRNC's autopsy room beginning at approximately
20 12:15 p.m.

21 Q And whenever you perform an autopsy, what you
22 are looking for is to determine cause of death, is
23 that fair?

24 A The manner of death.

25 Q The manner of death, okay. And that was what

DR. JOHN DAVID WREN - DIRECT

1 you were attempting to do in this case?

2 A Yes, and document any injuries in this case.

3 Q Were you able to determine whether or not Mr.
4 Reagan suffered from any injuries?

5 A Yes.

6 Q What injuries did you find on Mr. Reagan?

7 A Basically he had been in the hospital for a
8 short length of time. I don't have the exact time
9 but he died in the hospital itself after having
10 undergone surgery, but he had a sutured laceration
11 in his scalp and underneath that laceration he had
12 a depressed skull fracture that was circular,
13 measured 1.75 inches in diameter, and more interior
14 to that, along with some hemorrhage from surgery
15 and a scar from surgery that had been sutured
16 together, he had a depressed skull fracture in the
17 parietal bone of the head. Associated with that,
18 he had some necrosis of the tissues underneath that
19 area on the brain itself, some hemorrhage also, and
20 he had a shift of the, a shift of the brain to the
21 right side from the swelling of the brain in that
22 area.

23 Q Okay. I'm going to show you what has already
24 been entered in evidence as State's Exhibit Number
25 16. Do you recognize that picture?

DR. JOHN DAVID WREN - DIRECT

1 A Yes. This is an external picture of the
2 individual identified by the autopsy number
3 FAO2-203. It shows a sutured laceration just above
4 the ear, I mean the sutured incised area from
5 surgery above the ear and then above that the
6 slightly arch shaped or angulated sutured
7 laceration that was repaired, sutured at surgery.

8 Q Okay. In order for you to perform your
9 autopsy did you have to go into the side of his
10 head and remove that skin?

11 A We don't remove the skin. We actually, to
12 examine the brain and the tissues under the scalp,
13 what one does is make an incision that goes over
14 the top of the head, slightly behind the vertex or
15 the top of the head, and then the skin is folded
16 forward and backwards to visualize the skull
17 itself, and then using a bone saw, the calvarium or
18 the bone on the top of the head is removed.

19 Q Okay. Doctor, I'm going to hand you a skull
20 and ask you if you would show the jury where you
21 found injuries to the skull itself?

22 A This is basically a human skull and there
23 are, you can see the little lines here which are
24 suture lines that eventually close in, but anyway,
25 those are different bones that make up the head.

DR. JOHN DAVID WREN - DIRECT

1 This one has been opened to remove the brain tissue
2 and put back together, so one can look inside. The
3 depressed skull fracture was on the left side in
4 approximately this area, the round depressed skull
5 fracture, and then the eggshell type fracture with
6 multiple lines extending from that, which is a
7 crush type fracture, was just beneath that area.

8 MR. WILLINGHAM: Your Honor, may we approach?

9 I apologize.

10 (Unrecorded bench conference).

11 BY MR. WILLINGHAM:

12 Q Doctor, I'm showing you what has now been
13 marked State's Exhibit Number 34. I ask if you
14 recognize that?

15 A Yes.

16 Q What is it?

17 A This is the partially reflected scalp that
18 shows the circular depressed skull fracture on the
19 skull.

20 Q That you were just referring to?

21 A Yes.

22 Q That was taken at the time of autopsy?

23 A Yes.

24 MR. WILLINGHAM: Your Honor, at this time I
25 move State's Exhibit Number 34 into evidence.

DR. JOHN DAVID WREN - DIRECT

1 MR. CHEHOSKI: Your Honor, I do object to
2 this per our bench conference. I don't know if I
3 should state it here or outside the presence of the
4 jury.

5 THE COURT: State it now.

6 MR. CHEHOSKI: Your Honor, I do object to
7 this. I think that the, I object to the color
8 photo. I think that it's dramatic, I'm sorry,
9 rather graphic and prejudicial. It will, it will
10 conjure emotions and I request that a black and
11 white photo be used and would be more than
12 sufficient to demonstrate what the doctor is
13 testifying to.

14 THE COURT: You may proffer and mark with
15 identification your black and white photo and the
16 Court overrules your objection and will admit the
17 photo actually taken for its value in showing the
18 exact condition of what the witness is describing.

19 MR. WILLINGHAM: Thank you, Your Honor.

20 THE COURT: Let it be marked. What exhibit
21 number is this?

22 MR. WILLINGHAM: This is State's Exhibit
23 Number 35, Your Honor.

24 THE COURT: Mr. Chehoski's black and white
25 photo will be 35-A for identification only.

DR. JOHN DAVID WREN - DIRECT

1 MR. WILLINGHAM: Thank you, Your Honor.

2 (Color photograph of skull marked and
3 received in evidence as State's Exhibit
4 Number 35).

5 (Black and white photograph of skull marked
6 Exhibit Number 35 for identification).

7 BY MR. WILLINGHAM:

8 Q Doctor, that shows the depression you were
9 referencing?

10 A Yes.

11 Q What is the diameter of that depression?

12 A I measured it as 1.75 inches, one and
13 three-quarters inches.

14 Q I want to show you what is already in
15 evidence as State's Exhibit Number 3 and ask you,
16 based on your experience as a forensic pathologist,
17 could that wound reflected in State's 35 have been
18 inflicted by State's Exhibit Number 3, and I have a
19 measuring tape?

20 A A ruler?

21 Q I have a tape and a ruler. If you need to
22 take it out of that bag we can.

23 A That's okay. This, the best I can tell,
24 this, the flat part of this hammer measures about
25 one and five-eighths inches in diameter. The other

DR. JOHN DAVID WREN - DIRECT

1 part measures up to one and a quarter inch. So,
2 it's consistent with that, yes.

3 Q Okay. So, that could have caused the injury?

4 A Yes.

5 Q All right. Did you find any other type skull
6 fractures during your examination of Mr. Reagan?

7 A Yes. Interior and more lateral, more near
8 the ear, and this is the external ear canal here,
9 right here, more in this area the bone had been
10 fractured in multiple pieces and those that, there
11 were lines, fracture lines radiating away from
12 there but not actually connecting with the one
13 above, and then the fracture also extended into the
14 base of the skull, down in this area just above the
15 ear canal and structures in here, right in those
16 areas. And the fracture lines extended both into
17 the, I think it was the middle, the anterior fossa
18 of the area above the eye, and the middle fossa is
19 the depression one can see here, and the posteria
20 fossa is back here, they are divided into left and
21 right. So, the fracture extended to both fossa, so
22 it was, the fracture line was right along, the
23 fracture was right along in here.

24 Q And likewise, Doctor, based on your
25 experience as a forensic pathologist, could that

DR. JOHN DAVID WREN - DIRECT

1 fracture have been caused by State's Exhibit Number
2 3, the ballpeen hammer?

3 A Yes, it could have been but that is somewhat
4 less distinct. It will be a flat, heavy flat
5 object probably of indeterminate size.

6 Q And I'm not asking you to say, but consistent
7 with possibly the side of the hammer?

8 A Yes.

9 Q In addition to the skull fractures, you
10 testified earlier or began to testify that there
11 was resulting hemorrhage and damage to the brain
12 under that skull?

13 A Yes.

14 Q What type injuries were present there?

15 A I stated in my gross dictation there was a 30
16 cc's, which is about an ounce, of subdural
17 hemorrhage. There is a covering over the brain
18 that actually covers the brain, it's a thick
19 fibrous, white fibrous capsule, above that area
20 is called epidural, below that area is called
21 subdural. He had about 30 cc's or an ounce of
22 blood beneath that area and he also had a ten by
23 seven centimeter, which is about four by three inch
24 area of necrosis of the brain tissue in that area,
25 that had surrounding dark discoloration, extended

DR. JOHN DAVID WREN - DIRECT

1 to the midline circularly and it was a majority of
2 the parietal lobe, which is the part of the brain
3 between the anterior and occipital lobes, in that
4 area, moreover, the swelling of the brain and that
5 necrosis and hemorrhage had pushed the brain to the
6 right side, which is called a midline shift.

7 Q Okay. And I'm going to maybe simplify it a
8 little bit for my benefit. A subdural hematoma is
9 basically bleeding inside the brain?

10 A Yes, between the brain itself and the dura
11 that covers it.

12 Q And when the blood -- there is only so much
13 space in a skull, is that fair?

14 A The brain is like gelatin. It's mainly, has
15 a lot of water in it and as such, it can't be
16 compressed very much, but when blood starts
17 bleeding into a space near the brain it will
18 actually push the brain through any other
19 structures that are around, particularly the base
20 of the skull, and it can push it underneath the
21 dura that extends between the two cerebral
22 hemispheres of the brain.

23 Q And, Doctor, when you talk about necrosis of
24 brain tissue, that's actually tissue dying?

25 A Dead tissue.

DR. JOHN DAVID WREN - DIRECT

1 Q Okay. He was treated at the hospital?

2 A Yes.

3 Q I think he lived for eleven days in the neuro
4 ICC unit?

5 A Yes.

6 Q Did they attempt to try to relieve some of
7 that pressure of the blood from the subdural
8 hematoma?

9 A They attempted to remove blood and evidently
10 some had re-accumulated but the brain continued to
11 swell.

12 Q Okay.

13 A And there is a treatment for that but
14 sometimes it doesn't work.

15 Q This left side of the brain controls what
16 side of the body?

17 A The right.

18 Q Okay.

19 A Mainly.

20 Q If a person is struck with an object such as
21 State's Exhibit Number 3, either one or multiple
22 times on this side of the head, what happens to the
23 person, to the victim?

24 A Well, usually that person will lose
25 consciousness just from the trauma. Some people

DR. JOHN DAVID WREN - DIRECT

1 actually retain consciousness or semiconsciousness
2 but it's like being struck, hitting your head, it
3 can daze you, all the way to rendering a person
4 unconscious, which more than likely this person
5 became unconscious rather quickly because of the
6 extreme injuries.

7 Q Before his loss of consciousness would he
8 have had much use of the right side of his body,
9 based on the injuries you saw?

10 A Well, that's a little hard to say but most
11 likely he probably -- it depends. The body is
12 controlled in various areas. Now, the lateral side
13 of the brain is more the head and then it goes on
14 up and as it goes over the top of the head into the
15 midline, the feet, in that area, is covered. Now,
16 he didn't have as much injuries in the lower part
17 or the part that would control the lower part of
18 the body, but he probably lost some control of his
19 right arm. You have to add six days, eleven days
20 of swelling here, so I can't really say what
21 happened then but there is a lot of injuries, and a
22 basilar skull fracture usually renders a person
23 unconscious.

24 Q Doctor, you looked over the body for any
25 other disease or injury, is that fair?

DR. JOHN DAVID WREN - DIRECT

1 A Yes.

2 Q And were there any other type of disease
3 processes or injuries noted that could attribute or
4 cause Mr. Reagan's death?

5 A He had a healing bruise of his left anterior
6 bicep, his left arm. Of course it was healing and
7 it could have been, I couldn't tell exactly how
8 many days but it looked like it was healing and
9 consistent with the injuries, the other injuries.
10 He had emphysema of the lungs and some early
11 bronchial pneumonia which happens a lot of times
12 with people that die after having been in the
13 hospital. His heart was slightly enlarged and he
14 had some hardening of the arteries of his heart.
15 And he had gallstones. They were early, probably
16 associated with a hemorrhage.

17 He also had diverticulitis of his colon which
18 would lead to colonic bleeding but was non life
19 threatening probably. He had some adhesions with
20 some diverticulitis, which is inflammation of the
21 colon and appendix, and he had some polyps in his
22 colon.

23 Q Doctor, based upon your education and
24 experience as a forensic pathologist do you have an
25 opinion within a reasonable degree of medical

DR. JOHN DAVID WREN - DIRECT

1 certainty as to the cause or the result, why this
2 individual died?

3 A Yes. I assigned a cause of death, and there
4 are various mechanisms that lead to a person dying,
5 but what one is interested in is the most remote
6 cause, for instance, if a person has a heart
7 attack, then the heart attack just didn't happen,
8 the heart attack was caused by something else, and
9 most often that's hardening of the arteries, so the
10 cause of death is coronary artery disease. In this
11 case I assigned the cause of death as a closed head
12 injury secondary to blunt force trauma.

13 Q So, that closed head injury is a result of
14 the blunt force trauma that he received?

15 A Yes.

16 Q And he died as a result of that?

17 A Various things happened after that but that
18 was the most distant or remote cause of him dying.
19 I did not render an opinion as to manner of death
20 because it is requested I don't do that.

21 Q Well, do you have an opinion as to the manner
22 of death?

23 A Yes. If I were a medical examiner or coroner
24 it would be homicide.

25 MR. WILLINGHAM: Thank you, Doctor. If you

DR. JOHN DAVID WREN - DIRECT

1 would, answer any questions that the defense lawyer
2 has for you.

3 THE COURT: Cross-examination.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DR. JOHN DAVID WREN - CROSS

1 CROSS EXAMINATION

2 QUESTIONS BY MR. CHEHOSKI:

3 Q Doctor, I'm Jason Chehoski. I don't believe
4 we have met before.

5 A No.

6 Q In performing this autopsy you noticed two
7 skull fractures?

8 A Yes.

9 Q One was the depressed skull fracture?

10 A Yes.

11 Q The one that measured, I believe, 1.75 inches
12 in diameter?

13 A Yes.

14 Q And then there was another one that was
15 inferior and laterally?

16 A Yes.

17 Q Inferior would be closer to the neck?

18 A It would be closer to the bottom of it, yes.

19 Q Lateral, close to the ear?

20 A Yes.

21 Q That was the second?

22 A Yes.

23 Q And upon Mr. Willingham's questions you
24 testified that both of them could be consistent
25 with State's Exhibit Number 3?

DR. JOHN DAVID WREN - CROSS

- 1 A Yes.
- 2 Q Indicating two blows?
- 3 A Not necessarily but most probably.
- 4 Q Most probably?
- 5 A Yes.
- 6 Q Consistent with two blows?
- 7 A Yes, closely proximated together. The
- 8 reason, there is a reason you can't tell for sure
- 9 because if someone fractures a skull in one place
- 10 and then another separate blow at a different time
- 11 occurs and the fracture lines extend far enough,
- 12 when they reach the fracture line of the initial
- 13 blow they stop because they do not cross a dead
- 14 space. Now, there was no evidence it had crossed
- 15 that line.
- 16 Q No evidence it crossed a dead line?
- 17 A No.
- 18 Q While you couldn't know for sure, you stated
- 19 most probably?
- 20 A They were far enough apart that the fracture
- 21 line did not extend that far.
- 22 Q You say they radiated toward but did not
- 23 reach?
- 24 A Right.
- 25 Q Your job in this case was to determine the

DR. JOHN DAVID WREN - CROSS

1 manner of death as a forensic pathologist?

2 A No.

3 Q Your job was to perform the autopsy?

4 A My job was to perform the autopsy and give
5 the cause of death. The coroner reserves the right
6 to assign the manner of death in this county.

7 Q Again I thought you had, upon Mr.
8 Willingham's questions, he asked you if you were to
9 determine the cause of death, and you said manner
10 of death?

11 A He asked me why we did autopsies, yes,
12 generally. We were talking generally then.

13 Q Generally?

14 A Uh-huh (Affirmative).

15 Q Doctor, you also stated that upon receiving
16 the injuries such as you examined, that it was most
17 likely that the person receiving that injury would
18 lose consciousness?

19 A Rather quickly, yes. It's possible they
20 could remain conscious.

21 Q All right.

22 A If the circular blow were rendered first he
23 could probably stay conscious for awhile. The
24 second one would have been more severe and probably
25 would have knocked him unconscious.

DR. JOHN DAVID WREN - CROSS

1 Q So, it's possible he could remain conscious
2 for awhile, as you just stated?

3 A Yes.

4 Q You stated that he would lose, he would
5 probably lose some control of his right arm?

6 A Yes.

7 Q and if he had remained conscious, given that,
8 you stated that the left side of the brain controls
9 the right side of the body?

10 A As far as motor movement, yes.

11 Q Motor movement, and the right side of the
12 brain controls the left side of the body as far as
13 motor movements?

14 A Yes.

15 Q Since there is no injury to the right side of
16 the brain, assuming he's conscious, he would still
17 have control of the right side?

18 A Left side.

19 Q The left side, I apologize.

20 MR. CHEHOSKI: Your Honor, one moment,
21 please.

22 THE COURT: Take your time.

23 MR. CHEHOSKI: Thank you doctor. I have no
24 further questions at this time.

25 THE COURT: Redirect examination?

DR. JOHN DAVID WREN - CROSS

1 MR. WILLINGHAM: No, sir, Your Honor, thank
2 you.

3 MR. CHEHOSKI: No objection to him being
4 excused.

5 THE COURT: Watch your step, sir, thank you
6 very much. The witness may be excused. You may
7 stay with us, of course, but you may leave the
8 building if you wish.

9 (Witness excused).

10 MR. WILLINGHAM: Your Honor, may we approach?

11 THE COURT: Yes.

12 (Unrecorded bench conference).

13 THE COURT: Madam Forelady and ladies and
14 gentlemen, we're going to recess for today. Do not
15 discuss the case by, between and among yourselves,
16 do not discuss the case with anyone at all
17 whatsoever. If anyone does attempt to discuss the
18 case with you, of course as you know, you have
19 almost memorized these remarks, tell them
20 immediately that you are a juror and you may not
21 discuss the case. If after you alert and make
22 aware any person or persons that you are a juror
23 they continue to ask questions or probe about the
24 case, that would be highly irregular and should be
25 suspicious and it's wrong and its highly illegal.

1 You should use every means at your disposal to
2 identify that person or persons and report that to
3 one of the bailiffs who is at the door when you
4 come in in the morning.

5 Do not pay attention at all to any media
6 coverage that may come to your eyes or ears. It is
7 not evidence and you know that you are to decide
8 the case based on the evidence that's presented
9 here in front of you.

10 Now, it's known that things may come before
11 your ears just by happenstance but as soon as you
12 realize that it concerns this case it's your
13 responsibility to disregard it, put it aside, turn
14 it over, turn it off, do whatever is necessary to
15 continue your oath to well and truly try this case
16 upon the law and evidence that's developed in this
17 courtroom. Please do that. We have had some
18 instances where inadvertently and by happenstance
19 something has come to the attention of two of you.
20 That may happen but as soon as you know it involves
21 this case disregard it, disabuse your mind of it
22 and pay attention only to the evidence as that's
23 developed here in this courtroom. That's extremely
24 important. Both parties are entitled to your
25 unbiased interpretation of the evidence presented

1 here in the courtroom. You haven't heard all the
2 case.

3 We have some persons who will be here
4 tomorrow and we will hopefully give the case to you
5 maybe tomorrow afternoon. The Court does not know
6 what will be presented, so hopefully we will give
7 the case to you tomorrow afternoon. And if not, we
8 will certainly let you know that's not possible in
9 time for you to make preparations. We will try to
10 let you know by lunch time if we are not going
11 finish tomorrow afternoon, or at least give you the
12 case, Madam Forelady and ladies and gentlemen, by
13 tomorrow afternoon.

14 So, having said that, please have a pleasant
15 evening and be back in court, in the jury room at
16 10:00 a.m., 10:00 a.m.

17 Everyone else remain seated.

18 (The jury was excused from the courtroom).

19 THE COURT: Anything from the State?

20 MR. WILLINGHAM: No, sir, Your Honor, thank
21 you.

22 THE COURT: From the defense?

23 MR. CHEHOSKI: No, sir.

24 THE COURT: Thank you. Let's see, there was
25 an objection to the photo and I believe that you

1 placed that objection on the record completely?

2 MR. CHEHOSKI: Yes, sir, I believe so, and
3 there is nothing more to add to that particular
4 objection.

5 THE COURT: All right. We are in recess
6 until 10:00 a.m.

7 (Recessed at 3:50 p.m.).

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

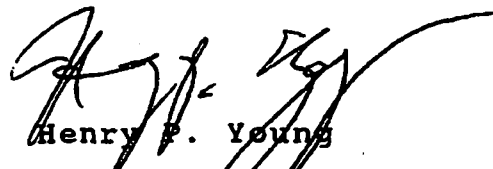
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Spartanburg County, South Carolina, on the 22nd day of September, 2005.

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

November 19, 2005



Henry P. Young
Court Reporter

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS
2002-GS-42-5209
2003-GS-42-2201

COUNTY OF SPARTANBURG

STATE OF SOUTH CAROLINA,)

-vs-)

JOSHUA GREER,)

Defendant.)

B E F O R E:

HONORABLE WYATT T. SAUNDERS

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

JAMES DONALD WILLINGHAM, II, Esquire
MELISSA MILLICAN, Esquire
Attorney for the State

JASON SCOTT CHEHOSKI, Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

VOLUME III of IV

September 22, 2005

1 (Reconvened at 9:50 a.m.).

2 THE COURT: The record is open, State of
3 South Carolina versus Joshua Greer, indictment
4 2002-5209 and 2003-2201.

5 On yesterday we had completed Mr. Coggins and
6 the matter still lies with the State. Is there
7 anything for the record from the State before we
8 proceed?

9 MR. WILLINGHAM: No, sir.

10 THE COURT: From the defense?

11 MR. CHEHOSKI: No, Your Honor.

12 THE COURT: Thank you both. Show the jury
13 in, please.

14 (The jury returned to the courtroom).

15 THE COURT: All the jurors are present, with
16 the forelady and the alternate properly seated.

17 The matter lies with the State. Call your
18 next witness.

19 MS. MILLICAN: The State calls Jim Kennedy.
20
21
22
23
24
25

JAMES KENNEDY - DIRECT

1 JAMES KENNEDY,
2 after being first duly sworn testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MS. MILLICAN:

5 Q Please state your name for the record.

6 A James Kennedy.

7 Q What's your occupation, Mr. Kennedy?

8 A I'm a forensic investigator with the
9 Spartanburg County Sheriff's office.

10 Q How long have you been with the Sheriff's
11 Department?

12 A Approximately fourteen years.

13 Q How long have you been in law enforcement?

14 A Approximately fourteen years?

15 Q What are your duties there?

16 A I investigate crime scenes.

17 Q Were you on duty on August 20th of 2002?

18 A Yes, I was.

19 Q Did you become involved in an investigation
20 at 1980 Drayton Road in Spartanburg?

21 A Not at the scene. I was involved later on at
22 the hospital.

23 Q Did you go to the hospital in reference to
24 the victim in that investigation?

25 A Yes, I did.

JAMES KENNEDY - DIRECT

1 Q Why did you go to the hospital specifically?

2 A To pick up what is called a suspect kit that
3 has blood and stuff that is collected by the
4 medical staff at the hospital as evidence, picked
5 it up and brought it back to the sheriff's office
6 and put it in our secured refrigerator for
7 evidence.

8 Q Were you present when that blood was taken
9 from the patient?

10 A No, I was not.

11 Q After, after the sample was completed did you
12 take custody of the sample?

13 A Yes, I did.

14 Q Please look at what has been marked for
15 purposes of identification as State's Exhibit
16 Number 17. Do you recognize it?

17 A Yes.

18 Q What is it?

19 A It's the kit that I picked up from the
20 hospital.

21 Q Who placed that kit into your custody?

22 A The nurse but I can't remember her name right
23 off. I don't have my copy of my evidence sheet.
24 It's on my evidence sheet.

25 Q Would looking at your notes refresh your

JAMES KENNEDY - DIRECT

1 recollection, Mr. Kennedy?

2 A Yes. G. Wilson, RN. I picked it up at 1740.

3 Q What did you do with that sample once it was
4 placed in your custody by Miss Wilson?

5 A Brought it back to the sheriff's office and
6 put it in our evidence area. We have a lockable
7 refrigerator that it goes in because the samples
8 have to be refrigerated.

9 MS. MILLICAN: Just one moment.

10 The State has no further questions at this
11 time. Thank you.

12 THE COURT: Cross-examination.
13
14
15
16
17
18
19
20
21
22
23
24
25

JAMES KENNEDY - CROSS

CROSS EXAMINATION

QUESTIONS BY MR. CHEHOSKI:

Q Mr. Kennedy, Officer Kennedy?

A Yes.

Q Officer Kennedy, have you touched that blood sample since you put it in the refrigerator, before today?

A No, sir.

MR. CHEHOSKI: Thank you. Nothing further.

THE COURT: Anything on redirect?

MS. MILLICAN: Nothing else, Your Honor, thank you.

THE COURT: Thank you, sir.

(Witness excused).

MS. MILLICAN: The State calls Joey Blackwell.

JOSEPH BLACKWELL - DIRECT

1 JOSEPH BLACKWELL,
2 after being first duly sworn testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MS. MILLICAN:

5 Q Please state your full name for the record.

6 A Joseph Blackwell.

7 Q How old are you, Mr. Blackwell?

8 A 37.

9 Q What do you do for a living?

10 A I'm unemployed right now.

11 Q In August of 2002 were you acquainted with a
12 man named Paul Reagan, also known as Doc?

13 A I knew him as Doc, yes.

14 Q How did you know Doc?

15 A Just from the neighborhood.

16 Q About how long did you know him?

17 A I really didn't know him, I just met him
18 three or four times over a year, I guess.

19 Q Did you ever visit him in his house at 1980
20 Drayton Road?

21 A Yes.

22 Q Did you see Doc at that address on August
23 19th, 2002?

24 A I did.

25 Q Who else was at the house when you were

JOSEPH BLACKWELL - DIRECT

1 there?

2 A It was him, Mark Greer, Josh Greer and I
3 think the guy that lived with him, I think they
4 call him Butch.

5 Q How do you know Mark Greer and Joshua Greer?

6 A They're my first cousins.

7 Q Have you known Joshua Greer your whole life?

8 A Yes.

9 Q Is he present in the courtroom today?

10 A He is.

11 Q Could you please point him out for the jury?

12 THE COURT: The record will indicate he
13 identifies the defendant.

14 MS. MILLICAN: Thank you, Your Honor.

15 Q On the night of August 19th, 2002, where did
16 you go when you left Doc's house and who was with
17 you?

18 A Me and Mark and Josh went to MamaSun's.

19 Q Who was driving?

20 A I was.

21 Q Were you driving your car?

22 A Yes, ma'am.

23 Q Did you leave MamaSun's before you were ready
24 to go home?

25 A Yes.

JOSEPH BLACKWELL - DIRECT

1 Q Why?

2 A The first time we left because Josh wanted to
3 go home, so I give him a ride home.

4 Q Where did you take Josh?

5 A 118 River Street.

6 Q That's his home?

7 A That's where his father lived, yes.

8 Q Did you see the defendant go into the house
9 at 118 River Street?

10 A No. It's a long driveway, I would have had
11 to sit there and actually watch him go in. I just
12 let him out and backed out.

13 Q About what time was it at this point, do you
14 recall?

15 A No, I don't.

16 Q Was it daylight or dark?

17 A It was dark.

18 Q Had it been dark for awhile, do you believe?

19 A A couple hours, anyway.

20 Q Where did you and Mark go after dropping the
21 defendant out?

22 A We went back to the bar.

23 Q Which bar?

24 A MamaSun's.

25 Q How long did you stay at the bar this time?

JOSEPH BLACKWELL - DIRECT

1 A We stayed a couple hours.

2 Q Do you recall someone receiving a phone call
3 at MamaSun's?

4 A Yes, Mark received a phone call.

5 Q What did you do as a result of that phone
6 call?

7 A We went and picked Josh up.

8 Q Did you leave immediately after that phone
9 call was placed, to go pick up Josh?

10 A Yes.

11 Q Where did you pick up the defendant?

12 A At the bottom of River Street.

13 Q Now, by the bottom of River Street --

14 A Drayton Road and River Street.

15 MS. MILLICAN: May I approach, Your Honor?

16 THE COURT: You may.

17 A Right there.

18 Q Was the defendant wearing the same clothing
19 when you picked him up that he had on when you
20 dropped him out?

21 A I really couldn't say because I didn't pay
22 any attention to what clothes he had on.

23 Q Okay. Did you notice anything out of the
24 ordinary about the defendant's clothes when you
25 picked him up, or would you have noticed?

JOSEPH BLACKWELL - DIRECT

1 A I didn't notice anything.

2 Q Did the defendant appear to have any
3 injuries?

4 A No, ma'am.

5 Q Did he act unusual?

6 A No, ma'am.

7 Q Did he mention anything about Doc at this
8 point?

9 A No, ma'am.

10 Q Where did you drive after you picked up the
11 defendant?

12 A We went to a motel where we purchased crack
13 cocaine.

14 Q What motel did you go to?

15 A I think it's Motel 8 on Highway 9.

16 Q Who drove the vehicle to the motel?

17 A I did.

18 Q Who went in the motel to purchase the crack?

19 A Josh.

20 Q Did you go in?

21 A No, ma'am.

22 Q Did Mark go in?

23 A No, ma'am.

24 Q Were you aware whether Josh had any money?

25 A No, ma'am.

JOSEPH BLACKWELL - DIRECT

1 Q When Josh returned to the car did he say how
2 he got the crack?

3 A He said it was fronted to him.

4 Q Fronted to him, what do you mean by that.

5 A It was given to him and he would pay later.

6 Q How much crack did the defendant bring back
7 to the car?

8 A \$50 worth.

9 Q \$50 worth of crack?

10 A Uh-huh (Affirmative).

11 Q Where did you go next?

12 A We went to Mark's house.

13 Q Who was with you smoking at Mark's house?

14 A Just me and Mark and Josh.

15 Q Where did you go after that?

16 A To try to get some more.

17 Q And then what did you do?

18 A We couldn't get any more, so I took them home
19 to 120 River Street.

20 Q Did you drop both Mark and the defendant off
21 at Mark's house at 120 River Street?

22 A Yes.

23 Q And where did you go after you dropped them
24 out?

25 A I went home.

JOSEPH BLACKWELL - DIRECT

1 Q During the course of the events you described
2 did the defendant ever mention anything about Doc?

3 A No, ma'am.

4 MS. MILLICAN: Just one moment, please.

5 THE COURT: Take your time.

6 MS. MILLICAN: I have no further questions of
7 this witness at this time. Thank you.

8 THE COURT: Cross examine.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JOSEPH BLACKWELL - CROSS

CROSS EXAMINATION

QUESTIONS BY MR. CHEHOSKI:

1
2
3 Q Mr. Blackwell, had you gone out with Josh and
4 Mark to get crack cocaine earlier that evening?

5 A Yes, sir.

6 Q And who went and got that crack?

7 A You mean who -- all of us went.

8 Q Who was the one obtained the crack?

9 A Josh.

10 Q That would be Josh? Josh told you how he got
11 the crack?

12 A He did.

13 Q He told you that he ripped the guy off?

14 A Yes, sir.

15 Q Now, ripping the guy off, that would indicate
16 he got crack without paying?

17 A Yes, sir.

18 Q Now, there was a time during the night of
19 August 19th or the early morning hours of August
20 20th when you and Josh Greer had, had parted
21 company?

22 A Yes, sir.

23 Q You had taken him home at his request?

24 A Yes, sir.

25 Q And sometime later picked him up?

JOSEPH BLACKWELL - CROSS

1 A Correct.

2 Q And as you told the jury, you picked him up
3 at the corner of River Street and Drayton Road?

4 A Yes, sir.

5 Q Now, you said you don't remember what he was
6 wearing?

7 A Yes, sir.

8 Q And do you think you would have remembered if
9 he was wearing substantially different clothes?

10 A Maybe.

11 Q If you had dropped him off wearing shorts and
12 a tee-shirt and you picked him up wearing a suit
13 and tie would you have noticed that?

14 A Yes, sir.

15 Q Would you have noticed if there was blood on
16 his shirt?

17 A I think I would have noticed something like
18 that, yes, sir.

19 Q Now, do you remember what time it was you
20 picked him up?

21 A I can't really say a certain time, sir.

22 Q Was it into the early morning hours?

23 A It was.

24 Q And you were with him for the remainder of
25 the evening?

JOSEPH BLACKWELL - CROSS

1 A Yes, sir.

2 Q The remainder of the evening took, was that a
3 few hours?

4 A A couple hours.

5 Q A couple hours? You were in his company and
6 you were in the car together?

7 A Yes, sir.

8 Q You said that you didn't see any blood on his
9 clothes?

10 A No, sir.

11 Q And he wasn't acting any different?

12 A No, sir.

13 Q He wasn't nervous or anything?

14 A No, sir.

15 Q Acting the same way he had earlier in the
16 evening?

17 A Yes, sir.

18 Q Do you think you would have noticed if he had
19 been acting different?

20 A I think I would have.

21 Q You gave a statement to the police in this
22 case?

23 A Yes, sir.

24 Q Do you remember who you spoke with that day
25 when you talked to the police?

JOSEPH BLACKWELL - CROSS

1 A It's been so long, I really don't remember.

2 I think it was this detective right here.

3 Q Mr. Gary?

4 A I think so but I'm not sure.

5 Q Okay. Who is sitting behind the prosecution
6 table?

7 A Yes, sir.

8 Q And you remember giving that statement?

9 A Yes, sir.

10 Q And you remember -- all right. Do you
11 remember seeing Josh with any money that night?

12 A No, sir.

13 Q Did you give him any money that night?

14 A No, sir.

15 Q You said that Mark was with you?

16 A Yes, sir.

17 Q Did Mark give him any, did you see Mark give
18 him any money?

19 A No, sir.

20 MR. CHEHOSKI: Your Honor, I have nothing
21 further at this time.

22 THE COURT: Redirect?

23 MS. MILLICAN: The State has nothing on
24 redirect, Your Honor. Thank you.

25 THE COURT: Thank you, sir. Come down.

JOSEPH BLACKWELL - CROSS

1 (Witness excused).

2 THE COURT: Call your next witness.

3 MR. WILLINGHAM: Your Honor, we call Mark

4 Greer.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MARK GREER - DIRECT

1 MARK GREER,
2 after being first duly sworn testified as follows:

3 MR. WILLINGHAM: If it please the Court.

4 THE COURT: You may examine.

5 DIRECT EXAMINATION

6 QUESTIONS BY MR. WILLINGHAM:

7 Q Tell the jury who you are.

8 A Mark Greer.

9 Q Mark, I'm going to need you to speak up so
10 that I can hear you all the way over here, okay?

11 A Mark Greer.

12 Q Mr. Greer, do you know the defendant Joshua
13 Greer?

14 A Yes, sir.

15 Q How do you know him?

16 A He's my cousin.

17 Q How long have you known him?

18 A My whole life.

19 Q Back in August of 2002 where were you living?

20 A 120 River Street, Drayton.

21 Q Okay. I have this diagram has been drawn
22 before.

23 A Drayton Road is here, River Street is here,
24 120 is at the end.

25 Q At the end of it?

MARK GREER - DIRECT

1 A Yes, sir.

2 Q Who did you live there with?

3 A My father.

4 Q At the time do you know where Joshua Greer
5 was living?

6 A He was staying with me, back and forth
7 between 118 River Street and my house.

8 Q Who lives at 118?

9 A His father.

10 Q Okay. So, his father and your father live
11 nextdoor to each other?

12 A Yes, sir.

13 Q Do you know Paul Reagan?

14 A Yes, sir.

15 Q And you knew him as Doc, or did you know him
16 as Paul Reagan?

17 A Doc.

18 Q You knew him as Doc? On August the 19th of
19 2002 were you ever at Doc's house that night?

20 A Yes, sir.

21 Q Do you remember what time you were down
22 there?

23 A No, sir.

24 Q Was it daylight or dark, or do you remember?

25 A Daylight and dark.

MARK GREER - DIRECT

1 Q You were there after it turned dark?

2 A Yes, sir.

3 Q Do you remember who else was down there?

4 A Josh was down there, John Paul, I think was
5 his name, he lived there, the guy they call Butch.
6 It was quite a few people in and out.

7 Q But Josh was down there? Do you remember
8 Josh's girlfriend Donna --

9 A Yes, sir.

10 Q -- being down there?

11 A Uh-huh (Affirmative).

12 Q You need to answer outloud.

13 A Yes, sir.

14 Q How long did you all stay down at Doc's?

15 A Two or three hours, I guess. I'm not sure.

16 Q What were you all doing down there?

17 A I was just hanging out. I did, you know,
18 hung out quite a few times.

19 Q Okay. Did Joey Blackwell get there?

20 A Yes, sir.

21 Q How did he get there, do you remember?

22 A He drove.

23 Q And at some point did you all go out?

24 A Yes, sir.

25 Q Before you went out did you ever borrow any

MARK GREER - DIRECT

1 money from anybody?

2 A Yes, sir.

3 Q Who did you borrow money from?

4 A Doc.

5 Q Do you know how much?

6 A \$20.

7 Q Okay. And when were you supposed to pay him
8 back?

9 A It was like I was going to pay him on that
10 Friday that was coming up.

11 Q Okay. And he let you borrow the money?

12 A Yes, sir.

13 Q This was on a Monday night, wasn't it, or do
14 you remember?

15 A I don't remember, it's been so long.

16 Q All right. But you were supposed to pay him
17 toward the end of the week, pay him back?

18 A Yes, sir.

19 Q Was anybody else there when you borrowed the
20 money from him?

21 A Yes, sir.

22 Q Who else was there?

23 A I know John was there and I think Josh was
24 there also.

25 Q Okay. Do you know if Doc had any more money

MARK GREER - DIRECT

1 after he let you borrow \$20?

2 A Yes.

3 Q How do you know he had more money?

4 A He told me that he had just got paid for a
5 tree job that he had done.

6 MR. CHEHOSKI: Objection, hearsay.

7 THE WITNESS: Excuse me.

8 THE COURT: How says the State?

9 MR. WILLINGHAM: I think it is, Your Honor, I
10 think it is hearsay, I think it's improper.

11 THE COURT: Very well.

12 BY MR. WILLINGHAM:

13 Q Without going into what Mr. Reagan said,
14 okay, because he's not here, you can't say what he
15 said.

16 A I saw he had more money in his wallet.

17 Q Okay. Did you see how much more he had in
18 his wallet?

19 A No, sir.

20 Q Okay. And you say you all went out. Who all
21 went out?

22 A Me, Joey and Josh.

23 Q Where did you all go?

24 A Cocktails and Dreams.

25 Q Any idea how long you were there?

MARK GREER - DIRECT

1 A No, sir.

2 Q Cocktails and Dreams, is that the same as
3 MamaSun's?

4 A Yes, sir.

5 Q Is that the -- where is that bar located?

6 A 221 Whitney, I think.

7 Q And you tell me if I'm wrong but I think 221
8 and Number 9 split right there past the hospital?

9 A Yes, sir. 221 goes to Whitney, Number 9 goes
10 to Boiling Springs or Inman.

11 Q And that bar is right there in that corner,
12 is that right?

13 A Yes, sir.

14 Q How long did you all stay there?

15 A A few hours, I guess.

16 Q Were you watching your watch?

17 A No, sir.

18 Q You all were having a good time?

19 A I was watching other things.

20 Q I understand. At some point did the
21 defendant Josh want to go home?

22 A Yes, sir.

23 Q And did you take him home?

24 A Yes, sir.

25 Q Did he say why he wanted to go home?

MARK GREER - DIRECT

- 1 A He said he was tired, he was going to go lay
2 down.
- 3 Q Okay. And who took him home?
- 4 A Me and Joey.
- 5 Q Who drove?
- 6 A Joey.
- 7 Q Where did you take him back to?
- 8 A To 118 River Street.
- 9 Q And again on the diagram that is down here,
10 one of these houses here?
- 11 A Nextdoor to 120.
- 12 Q Okay. And where did you all go after you
13 dropped him off?
- 14 A Joey and I went back to the bar.
- 15 Q Back to MamaSun's or Cocktails and Dreams?
- 16 A Yes, sir.
- 17 Q And how long were you there then?
- 18 A An hour or two.
- 19 Q Okay.
- 20 A I'm not sure.
- 21 Q Did you ever receive a phone call?
- 22 A Yes, sir.
- 23 Q Who did you receive a phone call from?
- 24 A Josh.
- 25 Q Did he call you on your cell phone or at the

MARK GREER - DIRECT

1 bar or how did he get hold of you?

2 A On the bar phone.

3 Q Do you remember what time that was?

4 A No, sir.

5 Q I don't know, you weren't in court yesterday?

6 A No, sir.

7 Q Yesterday we had a lady from BellSouth here,
8 she said there was a phone call placed from Doc's
9 house to MamaSun's at about 2:51 or 2:54, almost
10 3:00 o'clock in the morning. Is that about, could
11 that be right, is that about the time he called?

12 A Yes, sir, it could be.

13 Q Okay. When he called you what did he say?

14 A As far as I recall, it's been so long ago,
15 that he couldn't sleep, to come back and get him.
16 I don't remember what all was said.

17 Q Okay. But he wanted to go back out?

18 A Yes, sir.

19 Q Did he tell you where he was calling you
20 from?

21 A I don't remember.

22 Q Okay. But basically he couldn't sleep, he
23 wanted to go back out?

24 A Yes.

25 Q And party some more?

MARK GREER - DIRECT

1 A Yes, sir.

2 Q Did you agree to go pick him up?

3 A Yes, sir.

4 Q And did you in fact go pick him up?

5 A Yes, sir.

6 Q Who went to pick him up?

7 A Joey and I.

8 Q And where did you all go pick him up?

9 A It was at the, at River Street and Drayton
10 Road.

11 Q Was it back at the house where you dropped
12 him off?

13 A No, sir. He was walking back toward River
14 Street from Doc's.

15 Q I'll let you use this pointer we've got back
16 here. Show the jury where you all, where you saw
17 him whenever you were picking him up.

18 A Right about there.

19 Q And he was walking which way?

20 A Toward River Street.

21 Q Okay. Do you remember what he was wearing?

22 A As far as I remember, shorts and a tee-shirt.

23 Q Was that the same thing he had been wearing
24 earlier, or do you know?

25 A As for as I recall. I don't remember what he

MARK GREER - DIRECT

1 was wearing.

2 Q Okay. At this point are you aware of whether
3 or not he has any money, Joey?

4 A Josh?

5 Q Josh, I'm sorry.

6 A Not that I recall.

7 Q Okay. Do you remember him ever saying
8 anything about borrowing money from Doc?

9 A He may have but I don't remember.

10 Q Okay. After you picked him back up where did
11 you go?

12 A We went and got some drugs.

13 Q What kind of drugs?

14 A Crack.

15 Q What did you all do with these drugs?

16 A Back at my house.

17 Q And --

18 A 120 River Street.

19 Q You went back to your house and what did you
20 do there?

21 A Smoked them.

22 Q Crack?

23 A Yes, sir.

24 Q Who all smoked it?

25 A Joey, Josh and me.

MARK GREER - DIRECT

1 Q Who had gotten the crack?

2 A Josh.

3 Q Did he say how he got it?

4 A He borrowed it, got it on front.

5 Q Okay. What happened after that?

6 A As far as I know, we went back out to try to
7 get some more, failed, and returned home.

8 Q Who was driving you around?

9 A Joey.

10 Q Joey was driving you around? You couldn't
11 get any more so you went back home?

12 A Yes, sir.

13 Q Who went home with you?

14 A Josh.

15 Q Okay. Did Josh ever say anything about being
16 down at Doc's, that you remember?

17 A Not that I recall. It wasn't spoke of.

18 Q Did he ever say anything about Doc trying to
19 hurt him?

20 A No, sir.

21 Q When did you find out about Doc, what
22 happened to him?

23 A The following evening, I can't remember
24 everything that went on but it was the next day.

25 Q And at some point during that next day did

MARK GREER - DIRECT

1 you have a chance to talk to Josh?

2 A Yes, sir.

3 Q Do you remember what time of day that took
4 place?

5 A No, sir, I don't remember.

6 Q Did you talk to him in person or did you talk
7 to him on the phone?

8 A On the phone.

9 Q And can you tell this jury the gist of that
10 conversation?

11 A Well, he -- I don't remember what all was
12 said exactly, he just wanted to make sure that I
13 told the law the same thing that he said as for as
14 as I can remember, just wanted our stories to match
15 up and I told him, you know, "I don't have any
16 reason to tell any lies about anything," because,
17 you know, I wasn't going to incriminate myself for
18 something I wasn't involved in.

19 Q Did he try to get you to say that you all
20 were together all night?

21 A Yes, sir.

22 Q He wanted to leave out the part about
23 dropping him off on River Street?

24 A Yes, sir.

25 Q But you told him you weren't going to do

MARK GREER - DIRECT

1 that?

2 A No, sir.

3 MR. WILLINGHAM: Mark, thank you for being
4 here.

5 THE WITNESS: No problem.

6 MR. WILLINGHAM: Answer any questions the
7 defense has for you.

8 THE COURT: Cross-examination.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MARK GREER - CROSS

CROSS EXAMINATION

QUESTIONS BY MR. CHEHOSKI:

Q Do you remember giving the police a statement, Mark?

A Yes, sir.

Q Was that statement written or was it recorded on audio tape?

A I couldn't say.

Q But you remember talking to the police?

A Yes, sir.

Q You remember signing something for the police?

A Yes.

Q And when you talked to the police you were promising them to tell them the truth?

A Yes, sir.

Q And tell them the whole truth?

A Yes, sir.

Q And nothing but the truth, and you remember going to the house?

A Yes.

Q And I want to kind of focus on the phone call that you received at Cocktails and Dreams or MamaSun's. Now, you testified earlier that you

MARK GREER - CROSS

1 don't remember where Josh was calling you from?

2 A I don't know that I remember, it's been so
3 long ago.

4 Q I understand it's been so long ago. Let's
5 talk about possible places he could have called
6 from. At the time did you have a phone?

7 A At my home?

8 Q At your home.

9 A No.

10 Q All right. Was there a phone at Josh's home?

11 A Josh was staying with me and back and forth.

12 Q He was staying with you? If he couldn't make
13 a call from your place where would be the next
14 place he would go?

15 A Well, there is his father had a cell phone, I
16 don't know where his father was, you know.
17 Otherwise down at Doc's.

18 Q Down at Doc's? Now, we've established the
19 relative time frame as 3:00 in the morning. At
20 3:00 in the morning do you think his father would
21 have been up at that time?

22 A I couldn't say.

23 Q You couldn't say, but if he couldn't use his
24 father's cell phone, the next place would be Doc's?

25 A Yes.

MARK GREER - CROSS

1 Q All right. Now, again, you don't remember if
2 Josh told you where he was calling from?

3 A I don't recall.

4 Q If you look at your statement would that
5 help, could that refresh your memory?

6 A I can look at it and read what I said then.

7 MR. CHEHOSKI: May I approach the witness,
8 Your Honor?

9 THE COURT: You may.

10 A It says, "I got a phone call and it was Josh,
11 he was at Doc's house, that's where he called me
12 from."

13 Q All right, thank you.

14 A Okay.

15 Q Does that refresh your memory some?

16 A Sure.

17 Q Now, did you see, when you originally left
18 Doc's house earlier that evening did Josh, do you
19 know if Josh had any money on him?

20 A I don't know.

21 Q Did you give him any money?

22 A No, sir.

23 Q Did you see Joey give him any money?

24 A No, sir.

25 Q After you picked him up later in the evening

MARK GREER - CROSS

1 do you know if he had money on him?

2 A I don't recall.

3 Q You don't recall? Again, would seeing your
4 statement refresh your memory?

5 A I believe, as I remember, Josh said something
6 about borrowing \$20 from Doc.

7 Q Josh said he borrowed \$20 from Doc?

8 A I think. Looking at my statement would
9 refresh -- I don't want to say anything without
10 reading what I said then, it's been three years
11 ago, nearly.

12 MR. CHEHOSKI: May I approach the witness?

13 THE COURT: You may.

14 Q Okay.

15 A It says, "It seems like he had about \$20."
16 It says, "Did he explain how he got the money?" He
17 just pretty much acted like he borrowed it from
18 Doc."

19 Q Did the investigator ask you if he said he
20 borrowed it from Doc?

21 A Yes.

22 Q Thank you. And he said that?

23 A Yes.

24 Q Thank you. Now, in talking about the crack
25 cocaine, you testified that Josh said -- first of

MARK GREER - CROSS

1 all you did not see how Josh got the crack?

2 A No. I didn't go in with him.

3 Q You didn't go in with him, you waited in the
4 car?

5 A Yes.

6 Q And when he came back he had crack cocaine?

7 A Yes.

8 Q And you had testified on direct that he said
9 he got it on the front?

10 A Yes, sir.

11 Q Okay. And when -- what is your memory of how
12 he got it? Was it your memory of how he got it
13 better when you gave your statement to the police
14 or better today three years later?

15 A It was better when I gave it to the police.

16 Q And you are telling -- the police asked you,
17 do you remember the police asked you if he had been
18 fronted that crack?

19 A No, sir, I don't remember.

20 Q Would seeing your statement help refresh your
21 memory on that?

22 A Sure.

23 MR. CHEHOSKI: May I approach the witness,
24 Your Honor?

25 THE COURT: You may.

MARK GREER - CROSS

1 Q The police asked you about halfway down this
2 page if you know if anyone had fronted him crack,
3 and --

4 A "No, we found out, like, you know, he ripped
5 him off for it but I don't know, I didn't go in or
6 anything, so I'm not really sure."

7 Q So, to the best of your knowledge at that
8 time Josh had ripped off the crack?

9 A Yes. Yes, I heard of a couple people Josh
10 had done that to, so --

11 A All right. Just a few more questions, Mark.
12 When you picked him up, picked Josh up that night,
13 again this was after he called you, after he called
14 you from Doc's, do you remember, you testified that
15 he could have been wearing the same clothes?

16 A Yes, I believe so.

17 Q Understanding that with three years passing,
18 that your memory is not as good today as it was?

19 A No.

20 Q To the best of your recollection do you
21 remember if there was any blood on Josh?

22 A No.

23 Q Do you remember if Josh was acting any
24 differently?

25 A No.

MARK GREER - CROSS

1 Q Do you think you would notice if he had?

2 A Yes sir.

3 Q Thank you.

4 MR. CHEHOSKI: Your Honor, one moment,
5 please.

6 Your Honor, I have no further questions at
7 this time.

8 THE COURT: Redirect?

9 MR. WILLINGHAM: Very briefly, Your Honor.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MARK GREER - REDIRECT

REDIRECT EXAMINATION

QUESTIONS BY MR. WILLINGHAM:

1
2
3 Q When you talked to the police where did you
4 talk to them at, Mark, do you remember?

5 A The sheriff's office.

6 Q In one of the interview rooms?

7 A Yes, sir.

8 Q Did they go over those rights with you, the
9 right to remain silent, a lawyer?

10 A Yes.

11 Q Those type things, and during that
12 conversation did they ever tell you what to say?

13 A No, sir.

14 Q Did he ever promise you anything in exchange
15 for a statement?

16 A No, sir.

17 Q Did he ever pressure you or coerce you in any
18 way to give a statement?

19 A No, sir.

20 Q In that statement, I want to be sure the jury
21 understands completely, on page fourteen, when you
22 all were talking about that, going to get that
23 crack, you do put in there, "No, we found out like,
24 you know, he ripped him off for it but I don't
25 know, I didn't go in or anything, so I'm really not

MARK GREER - REDIRECT

1 sure." That is where you stopped reading before,
2 right?

3 A Yes.

4 Q But it goes on to say, "I don't know if he
5 had enough money to buy, I really don't know"?

6 A Yes, sir.

7 Q So, you really don't know how he got that
8 crack?

9 A No, sir.

10 Q You don't know if he paid for it, do you?

11 A No, sir.

12 Q You don't know if he was given it?

13 A I don't have a clue.

14 Q You don't know if he stole it?

15 A I don't have a clue.

16 Q You don't know how he got it?

17 A No.

18 MR. WILLINGHAM: Thank you.

19

20

21

22

23

24

25

MARK GREER - RECROSS

RECROSS EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUESTIONS BY MR. CHEHOSKI:

Q Would he have had enough money to steal it?

A What kind of question is that?

Q Do you need any money to steal it?

A I never have.

MR. CHEHOSKI: Thank you.

THE COURT: Thank you sir. Come down. Watch
your step.

(Witness excused).

MS. MILLICAN: Robert Rosenberg.

ROBERT ROSENBERG - DIRECT

- 1 ROBERT ROSENBERG,
2 after being first duly sworn testified as follows:
3 DIRECT EXAMINATION
4 QUESTIONS BY MS. MILLICAN:
5 Q Please state your name for the record.
6 A Robert Rosenberg.
7 Q And, Mr. Rosenberg, what do you do?
8 A I'm an employee of Spartanburg County
9 Sheriff's office, I'm currently assigned to the
10 evidence division.
11 Q How long have you been in the Sheriff's
12 Department?
13 A Approximately 23 years.
14 Q How long have you been with the evidence
15 department?
16 A I believe since the year 2000.
17 Q I'm going to show you what has been marked
18 for purposes of identification as State's Exhibit
19 Number 1.
20 A Okay.
21 Q Do you recognize it?
22 A I remember seeing it when it came back there.
23 It was wrapped in another envelope when it was sent
24 to SLED or when I received it.
25 Q How are you able to recognize it?

ROBERT ROSENBERG - DIRECT

1 A I had to inventory all the evidence when it's
2 returned from SLED.

3 Q All right. When did you receive it?

4 A Initially, or when I received it from SLED?

5 Q When did you receive it initially?

6 A August 21st, '02, 0830 in the morning.

7 Q Was it ever sent off for testing?

8 A Yes, ma'am.

9 Q When was that?

10 A That was, that was August 30th, '02.

11 Q Okay. Before you sent it to SLED and you
12 received it on August 21st, '02, who did you get it
13 from?

14 A I recovered it from, I believe it came from
15 Craig Coggins on August 21st, that is who signed
16 it. Some of this evidence was placed in the
17 evidence custody locker in the ID office.

18 Q When you dropped it off at SLED was it sealed
19 when you left?

20 A Yes, ma'am.

21 Q And when did you pick it up from SLED?

22 A That item was returned, different things came
23 back at a different time, it was returned from SLED
24 October 7th, '02, 10:30 in the morning.

25 Q When you picked it up from SLED was it

ROBERT ROSENBERG - DIRECT

1 sealed?

2 A Yes, ma'am.

3 Q And what did you do with the item after you
4 picked it up from SLED?

5 A I stored it in a secured area, brought it
6 back to Spartanburg County and stored it, marked it
7 up as being returned, on my paperwork.

8 Q Has it left your custody since that point?

9 A No, ma'am.

10 Q Until you brought it to the courtroom for us
11 today?

12 A No, ma'am.

13 MS. MILLICAN: The State moves at this time
14 to admit State's Exhibit Number 1 into evidence.

15 MR. CHEHOSKI: Your Honor, I believe the
16 chain of custody has not been established. While
17 it was at SLED it passed through several hands,
18 some of whom will be coming here to testify.

19 MR. WILLINGHAM: May we approach on this
20 matter?

21 THE COURT: You may.

22 (Recorded Bench conference out of the hearing
23 of the jury).

24 THE COURT: All right.

25 MR. WILLINGHAM: Judge, there are three items

ROBERT ROSENBERG - DIRECT

1 we are going to move in this morning, the jack
2 handle, State's Exhibit Number 1, and Exhibits 2
3 and 3, one is a rubber grip and one is the ballpeen
4 hammer. There is a sufficient chain of custody
5 established. The Court may not be aware of it, Mr.
6 Rosenberg said he took it to SLED and it was sealed
7 at SLED. John Black, who we have the video
8 testimony of, broke that seal, tested the items,
9 took some swabs, sent the swabs to DNA. I'm not
10 asking to move the swabs in yet because that
11 wouldn't be proper, I need my DNA guy here, but the
12 item itself, after he processed it, was secured for
13 evidence, returned evidence and was picked up by
14 Robert Rosenberg, brought back to court. There are
15 three items I would like to move in through this
16 witness. I realize the Court does not have the
17 benefit of having watched Mr. Black's testimony,
18 however in that testimony he completes the chain.

19 THE COURT: Have you seen the testimony?

20 MR. CHEHOSKI: Yes, Your Honor, I was present
21 for that, and if I may, I believe I was mistaken, I
22 thought that the, the actual items were sent to
23 SLED, not the swabs, and given that this does
24 complete the chain of custody --

25 MR. WILLINGHAM: The items were sent to SLED

ROBERT ROSENBERG - DIRECT

1 but the swabs were sent to DNA.

2 MR. CHEHOSKI: Right, and I thought --

3 THE COURT: That is what you were concerned
4 about?

5 MR. CHEHOSKI: The actual items, not the
6 swabs, were passed to DNA? I think that it would
7 probably, I'm probably withdrawing my objections,
8 first of all. Secondly, I'm probably just going to
9 have it admitted officially after Black's
10 testimony.

11 THE COURT: The swabs will come in through
12 Mr. Black?

13 MR. WILLINGHAM: The swabs will come in
14 through John Ortuno, the DNA guy.

15 THE COURT: All right. These items have
16 nothing to do with that?

17 MR. WILLINGHAM: These items, the chain of
18 custody I believe is established.

19 MR. CHEHOSKI: I withdraw my objection.

20 THE COURT: Thank you.

21 (Bench conference concluded).

22 MR. CHEHOSKI: For the benefit of the jurors
23 I'm withdrawing my objection.

24 THE COURT: Thank you.

25 MS. MILLICAN: Thank you. The State would

ROBERT ROSENBERG - DIRECT

1 just for purposes of making sure that that motion
2 was heard by the Court, would move to admit State's
3 Exhibit Number 1 into evidence.

4 MR. CHEHOSKI: Without objection.

5 THE COURT: Without objection Number 1 is
6 part of the evidence in the case, ladies and
7 gentlemen.

8 (Jack handle was marked and received in
9 evidence as State's Exhibit Number 1).

10 MS. MILLICAN: Thank you, Your Honor.

11 BY MS. MILLICAN:

12 Q Now, Officer Rosenberg, I would like you to
13 look at what has been marked for purposes of
14 identification as State's Exhibit Number 2. Do you
15 recognize that?

16 A Yes, ma'am.

17 Q What is that?

18 A That's a black rubber chainsaw grip, I think
19 goes around the handle of the chainsaw, I believe.

20 Q Who did you receive this item from?

21 A It came in, I believe, it came in from Craig
22 Coggins, in the evidence he turned in.

23 Q When did you receive it?

24 A August 21st, 2002, at 8:30 in the morning.

25 Q What did you do with this item after you

ROBERT ROSENBERG - DIRECT

1 received it?

2 A It was entered into evidence and secured.

3 Q Was it ever sent off for testing?

4 A Number six, yes, ma'am.

5 Q Who took it to be tested and where was it
6 taken?

7 A I took it to SLED on August 30th, '02.

8 Q And was it sealed when you took it to SLED?

9 A It was in the envelope, yes, ma'am.

10 Q When did you pick it up from SLED?

11 A October 7th, '02, at 10:30 in the morning.

12 Q Was it sealed when you picked it up?

13 A Yes, ma'am.

14 Q What did you do with it then?

15 A Brought it back to the sheriff's office and
16 secured it in our evidence room.

17 Q Has it been in your custody up until today?

18 A Yes, ma'am.

19 Q Until you brought it to this courtroom?

20 A Yes, ma'am.

21 MS. MILLICAN: The State would move at this
22 time to move State's Exhibit Number 2 into
23 evidence.

24 MR. CHEHOSKI: Without objection.

25 THE COURT: Without objection, ladies and

ROBERT ROSENBERG - DIRECT

1 gentlemen, Number 2, the motion is granted and it
2 becomes part of the evidence in the case.

3 (Chainsaw grip was marked and received in
4 evidence as State's Exhibit Number 2).

5 BY MS. MILLICAN:

6 Q Please look at what has been parked for
7 purposes of identification as State's Exhibit
8 Number 3. Do you recognize it?

9 A Yes, ma'am.

10 Q What is it?

11 A It's a ballpean hammer.

12 Q Who did you receive that item from?

13 A From Craig Coggins.

14 Q When did you receive it?

15 A Also August 21st of '02.

16 Q Okay. What did you do with it after you
17 received it from Craig Coggins?

18 A Secured it in the evidence room until I
19 transported it to SLED.

20 Q Was it sealed when you transported the item
21 to SLED?

22 A Yes, ma'am.

23 Q Did you pick up the item?

24 A Yes, ma'am.

25 Q Was it sealed when you picked it up?

ROBERT ROSENBERG - DIRECT

1 A Yes, ma'am.

2 Q When did you pick it up?

3 A October 7th, '02, 10:30 in the morning.

4 Q What did you do with it then?

5 A Brought it back to the sheriff's office and
6 secured it in our evidence room.

7 Q And has that item been in your custody since
8 that point in time until today in court?

9 A Yes, ma'am.

10 MS. MILLICAN: The State would move at this
11 time to admit State's Exhibit Number 3 into
12 evidence.

13 MR. CHEHOSKI: Without objection.

14 THE COURT: Thank you. Ladies and gentlemen,
15 the motion is granted, Number 3, is it?

16 MS. MILLICAN: Yes, Your Honor.

17 THE COURT: Exhibit Number 3 is part of the
18 evidence in the case.

19 (Ballpeen hammer marked and received in
20 evidence as State's Exhibit Number 3).

21 BY MS. MILLICAN:

22 Q Okay. Would you please look at items marked
23 for purposes of identification, State's Exhibit
24 Number 26, Exhibit Number 27 and Exhibit Number 28.
25 Do you recognize those items?

ROBERT ROSENBERG - DIRECT

1 A Yes, ma'am.

2 Q What are they?

3 A They are two Old Milwaukee's Best beer
4 bottles and one Colt 45 beer bottle.

5 Q Who did you get those items from?

6 A I got those from Craig Coggins. They were in
7 a brown bag at the time I received them.

8 Q When did you receive those items?

9 A 8/21/02, 8:30 in the morning.

10 Q What did you do with the items once you
11 received them?

12 A I took them into our evidence room and
13 secured them.

14 Q Okay. And were those items sent off for
15 testing?

16 A I do not believe they were.

17 Q They weren't sent to SLED? Have they been in
18 your custody and control from the point that you
19 got those from Craig Coggins, until today in this
20 this courtroom?

21 A Yes, they were.

22 MS. MILLICAN: The State would move at this
23 time to move State's Exhibit Numbers 27, 28 and 29
24 into evidence.

25 MR. CHEHOSKI: Your Honor, one moment.

ROBERT ROSENBERG - DIRECT

1 Without objection.

2 THE COURT: Thank you. Ladies and gentlemen,
3 Number 27, 28 and 29 of the State are evidence in
4 the case.

5 MR. CHEHOSKI: Your Honor, I apologize, I
6 believe that's 26, 27 and 28.

7 (Colt 45 beer bottle marked and received
8 in evidence as State's Exhibit Number 26).

9 (Milwaukee's Best beer bottle marked and
10 received in Evidence as State's Exhibit 27).

11 (Milwaukee's Best beer bottle marked and
12 received in evidence as State's Exhibit 28).

13 THE COURT: Thank you. The Court stands
14 corrected, whatever numbers are attached by the
15 court reporter, these items, these three bottles
16 are admitted into evidence.

17 Thank you.

18 MS. MILLICAN: Thank you, Your Honor.

19 BY MS. MILLICAN:

20 Q Now would you please look at what has been
21 marked as State's Exhibit Number 21. Do you
22 recognize that item?

23 A Yes, ma'am. It came in also in a brown bag
24 when I received it.

25 Q Who did you receive that item from?

ROBERT ROSENBERG - DIRECT

1 A Craig Coggins.

2 Q When did you receive that item?

3 A On 8/21/02 at 8:30 in the morning.

4 Q Has that item been in your custody and
5 control from that point in time until today in this
6 courtroom?

7 A Yes, ma'am.

8 MS. MILLICAN: The State would move at this
9 time to admit State's Exhibit Number 21 into
10 evidence.

11 MR. CHEHOSKI: No objection.

12 THE COURT: Ladies and gentlemen, number 21,
13 the motion is granted and it is, 21 of the State is
14 part of the evidence in the case.

15 (Wallet was marked and received in
16 evidence as State's Exhibit Number 21).

17 BY MS. MILLICAN:

18 Q Please look at what has been marked State's
19 Exhibit 17. Do you recognize that item?

20 A This item, yes, I do.

21 Q What is it?

22 A It's a suspect kit.

23 Q When did you receive that item?

24 A I received that on August 26th of '02.

25 Q Who did you receive it from?

ROBERT ROSENBERG - DIRECT

1 A Jim Kennedy. I retrieved it from a locked
2 refrigerator that's in a secured area.

3 Q Was it sealed when you retrieved it from that
4 area?

5 A Yes, ma'am.

6 Q Did you send this item off for testing?

7 A Yes, ma'am.

8 Q When did you send it?

9 A I took it to SLED on 8/30 of '02, at 9:00 in
10 the morning.

11 Q Was it sealed when you left it with SLED?

12 A Yes, ma'am.

13 Q Did you pick this item up from SLED?

14 A Yes, ma'am, I did.

15 Q When did you pick it up?

16 A On November 14th, '02, at 2:00 o'clock.

17 Q Was it sealed at that time?

18 A Yes, ma'am, sealed in a plastic pouch.

19 Q What did you do with it after you picked it
20 up from SLED?

21 A I brought it back to the sheriff's office and
22 secured it in our evidence room.

23 Q Has it been in your custody from that point
24 until today in this courtroom?

25 A Yes, ma'am.

ROBERT ROSENBERG - DIRECT

1 Q Thank you. Please look at this item that's
2 been marked as State's Exhibit Number 15. Tell me
3 if you recognize what that item is?

4 A Yes, ma'am.

5 Q What is it?

6 A It's a knife with a wooden handle.

7 Q Who did you receive it from?

8 A Number seven, received it from Craig Coggins
9 on August 21st of '02.

10 Q What did you do with that item after you
11 received it from Craig Coggins?

12 A That item on August 30, '02, was transported
13 to SLED and tested.

14 Q Was it sealed when you left it at SLED?

15 A Yes, ma'am, it was.

16 Q When did you pick it up?

17 A That item was returned on October 18th, '02,
18 at 2:00 o'clock.

19 Q Was it sealed when you picked it up?

20 A Yes, ma'am.

21 Q What did you do with it after you picked it
22 up?

23 A I brought it back to the sheriff's office and
24 stored it in our evidence room.

25 Q And has it been in your custody from that

ROBERT ROSENBERG - DIRECT

1 point in time until today in this courtroom?

2 A Yes, ma'am.

3 Q Please look at this item that's been marked
4 State's Exhibit 32 for purposes of identification.
5 Do you recognize that item?

6 A Yes, ma'am.

7 Q What is it?

8 A It's a pair of Addis tennis shoes.

9 Q Who did you receive those tennis shoes from?

10 A I received those tennis shoes from William
11 Gary.

12 Q When?

13 A On August 22nd, '02 -- well, I did not
14 receive them. Officer Millwood received these
15 tennis shoes.

16 Q Okay. Did you receive the tennis shoes from
17 Officer Millwood at any point?

18 A She's an evidence officer at that point and
19 she placed them into the evidence with the other
20 evidence.

21 Q Okay. What date were those items received in
22 evidence?

23 A August 22nd, '02.

24 Q And who brought them to evidence?

25 A William Gary.

ROBERT ROSENBERG - DIRECT

1 Q Were those items sent off for testing?

2 A Yes, ma'am. I transported them to SLED
3 September 13th of '02.

4 Q Were they sealed in packaging when you
5 dropped them off at SLED?

6 A Yes, ma'am.

7 Q When did you pick the tennis shoes up?

8 A The tennis shoes were returned on October
9 18th, '02, at 2:00 o'clock.

10 Q When you picked the tennis shoes up were they
11 still in the packaging?

12 A They were in the bag.

13 Q Were they sealed, though?

14 A Yes, ma'am.

15 Q What did you did with them after you picked
16 them up from SLED?

17 A Brought them back and put them in the
18 evidence room for storage.

19 Q And have they been in the custody and control
20 of you or Officer Millwood up until today in court?

21 A Yes, ma'am.

22 Q Please look at what has been marked as
23 State's Exhibit 29 for purposes of identification.
24 What is that item? What is it?

25 A They are blood swabs from the crime scene.

ROBERT ROSENBERG - DIRECT

1 Q Who did you receive those blood swabs from?

2 A Craig Coggins.

3 Q When?

4 A On August 21st, '02.

5 Q What did you do with those blood swabs after
6 you received those from Craig Coggins?

7 A I stored them in the evidence room until we
8 transported them to SLED on August 30th of '02.

9 Q When you transported those blood swabs to
10 SLED were they in a sealed container?

11 A Yes, ma'am.

12 Q When did you pick them up from SLED?

13 A Let's see. Returned from SLED November 14th,
14 '02.

15 Q What did you do with the swabs after you got
16 them back?

17 A I stored them in the evidence room.

18 Q Have they been in your custody and control
19 since the point in time you received them from
20 SLED, until today?

21 A Yes, ma'am.

22 Q Do you know how many swabs are in the
23 packaging?

24 A Well, I received the package, the brown
25 envelope with little boxes in it and there should

ROBERT ROSENBERG - DIRECT

1 be approximately six standard and one sample.

2 Q Okay, thank you. Please look at the item
3 marked for purposes of identification State's
4 Exhibit 31. Do you recognize it?

5 A Yes, ma'am.

6 Q What is it?

7 A It's a blue bed sheet.

8 Q Who did you receive that item from?

9 A Craig Coggins on August 21st, '02.

10 Q Was it sent for testing?

11 A The bed sheet, yes, ma'am, it was sent on
12 August 30th of '02 at 9:00 in the morning.

13 Q Was it in a sealed package when you sent it
14 to SLED?

15 A Yes, ma'am.

16 Q When did you pick it up from SLED?

17 A Returned from SLED October 18th, '02, at 2:00
18 o'clock.

19 Q Was it in sealed packaging when you picked it
20 up?

21 A Yes, ma'am.

22 Q What did you do with the item once you took
23 it back into custody?

24 A Brought it to the sheriff's office and stored
25 it in evidence.

ROBERT ROSENBERG - DIRECT

1 Q Has it been in your custody and control from
2 that point in time until today in court?

3 A Yes, ma'am.

4 Q Please look at the item marked as State's
5 Exhibit 30 for purposes of identification. Do you
6 recognize it?

7 A Yes, ma'am.

8 Q What is it?

9 A It's a pair of blue jeans?

10 Q When did you receive those blue jeans?

11 A I received those on August 21st, '02, at 8:30
12 in the morning.

13 Q Who did you receive them from?

14 A Craig Coggins.

15 Q Were those blue jeans sent off for testing at
16 SLED?

17 A Blue jeans, yes, they were, on August 30th,
18 '02, at 9:00 in the morning.

19 Q Were they in a sealed package or container
20 when they were sent to SLED?

21 A Yes, ma'am.

22 Q When did you pick them up or receive them
23 from SLED?

24 A Those were returned October 18th, '02, at
25 2:00 o'clock in the afternoon.

ROBERT ROSENBERG - DIRECT

1 Q Okay. And did you, were they in a sealed
2 container when you received them from SLED?

3 A Yes, ma'am.

4 Q What did you do with them after you got them
5 from SLED?

6 A I brought them back and stored them in
7 evidence.

8 Q Have they been in your custody and control
9 from that point in time until today?

10 A Yes, ma'am.

11 MS. MILLICAN: Just one moment, please.

12 The State has nothing further of this witness
13 at this time. Thank you.

14 THE COURT: Mr. Chehoski.

15 MR. CHEHOSKI: Thank you, Your Honor.

16

17

18

19

20

21

22

23

24

25

ROBERT ROSENBERG - CROSS

CROSS EXAMINATION

QUESTIONS BY MR. CHEHOSKI:

- 1
2
3 Q Just a few questions. In reference to
4 State's Exhibits 1, 2, and 3, actually really just
5 in reference to State's Exhibit Number 3, which is
6 the hammer?
7 A Yes, sir.
8 Q When you received that, that was in a manila
9 envelope?
10 A Initially when I received it, yes.
11 Q When you received it from Officer Coggins?
12 A Yes.
13 Q It was in a manila envelope?
14 A Yes sir.
15 Q And State's Exhibit Number 2, which I believe
16 is the handle?
17 A Yes, sir.
18 Q The grip. When you received that from
19 Officer Coggins that was in a manila envelope?
20 A Yes, sir.
21 Q When you received State's Exhibit Number 21
22 it was in the plastic bag?
23 A I believe that was in a brown bag.
24 Q It was in a brown bag?
25 A One of the brown bags I think that was

ROBERT ROSENBERG - CROSS

1 entered.

2 Q Also a manila envelope?

3 A One of the brown bags.

4 Q A brown bag such as --

5 A Yes, sir.

6 Q And Number 21 remained in your custody since
7 officer Coggins gave it to you?

8 A Yes, sir.

9 Q Until today when you brought it to court?

10 A Which one are we talking about?

11 Q Number 21.

12 A I can't remember if they entered it in
13 yesterday. Let me see, I have to look.

14 Q Before, let me see if I can make this easier,
15 if we're talking about between yesterday and today,
16 before this trial started that remained in your
17 custody?

18 A Yes, sir.

19 Q Again, I thought I maybe heard you wrong, in
20 State's Exhibit 29 marked for identification
21 purposes only, those were the blood swabs?

22 A Yes, sir.

23 Q You received those on August 21st?

24 A Blood swabs, yes, sir.

25 Q And they were sent out on, was it August

ROBERT ROSENBERG - CROSS

1 30th?

2 A Yes, sir.

3 Q I thought I may have heard you say August
4 3rd, I wanted to make sure we had that clear.

5 And State's Exhibit Numbers 26, 27 and 28,
6 those three items were all sealed in plastic, were
7 they all sealed in plastic when you got them?

8 A When I got them they were in a brown bag.

9 Q Also in a brown bag?

10 A Yes.

11 MR. CHEHOSKI: Nothing further, Your Honor.

12 THE COURT: Redirect?

13 MS. MILLICAN: Nothing further from the
14 State, thank you.

15 (Witness excused).

16 THE COURT: Madam Forelady and ladies and
17 gentlemen, we will take a brief recess at this
18 time. We have been in session an hour and ten
19 minutes. Do not discuss the case by, between and
20 among yourself and take a short recess.

21 (The jury was excused from the courtroom).

22 THE COURT: Anything from the State we need
23 to take up?

24 MR. WILLINGHAM: Not on the record, Your
25 Honor. I would like to have a conference at the

1 bench once we recess, as far as scheduling of the
2 remaining witnesses.

3 THE COURT: All right. Anything for the
4 record?

5 MR. CHEHOSKI: Your Honor, I would request, I
6 believe there has been some media coverage of this
7 case, just out of an abundance of precaution, some
8 voir dire between the judge and the jurors to make
9 sure no one, there has been no exposure to the jury
10 from the media.

11 THE COURT: Are you asking that the Court
12 inquire as to whether any of these people know
13 anything about any media coverage?

14 MR. CHEHOSKI: I ask that the Court inquire
15 if any of the jurors has seen or read anything. I
16 have been told and I believe I saw in the paper
17 some articles covering this trial and purely out of
18 an abundance of precaution, not suggesting they are
19 not following your instructions, to inquire of the
20 jurors if they have, again to make sure they are
21 following the oath.

22 THE COURT: We will do that before the end of
23 the day.

24 MR. CHEHOSKI: Thank you, sir.

25 THE COURT: Anything further?

1 MR. WILLINGHAM: No, sir.

2 MR. CHEHOSKI: Nothing further.

3 THE COURT: We'll take a short recess. Thank
4 you.

5 (Recessed at 11:03 a.m.).

6 (Reconvned at 11:22 a.m.).

7 THE COURT: We'll open the record, State of
8 South Carolina versus Joshua Greer, indictments
9 2002-5209 and 2003-2201.

10 Anything from the State before we bring the
11 jury in?

12 MR. WILLINGHAM: Yes, Your Honor. I think
13 the Court has been made aware during pretrial
14 conferences or outside the record conferences that
15 John Black was a witness in this case. Mr. Black
16 was a fingerprint expert at State Law Enforcement
17 Divisin. Your Honor, this case was originally
18 scheduled to go to trial last weak in front of
19 Judge Couch. We basically ran out of time in order
20 to try this case last week, so that's why we asked
21 the Court to entertain this trial this week. Mr.
22 Black had commitments previously for this week to
23 be in Boston for the entire week, he left Sunday
24 and will not be returning until Saturday. Because
25 of that, the State and defense agreed for Mr. Black

1 to come to court last week, Judge Couch was
2 presiding, we went ahead and videotaped his
3 testimony last week and we both, with the defendant
4 present, the judge presiding, the court reporter
5 and the videographer. Your Honor, there has been a
6 transcript, Pam Green was the court reporter, she
7 has prepared a transcript of that testimony, I have
8 that here, I would like to make that part of the
9 record either as a State's exhibit or as a Court
10 exhibit.

11 THE COURT: Make it a Court's exhibit.

12 MR. WILLINGHAM: That will be the original,
13 Your Honor, which stays in evidence. I have made
14 copies for the Court and for defense counsel. Your
15 Honor, I have also made fourteen copies of the
16 transcript for the jurors so they would have the
17 opportunity to, if it pleases the Court, to follow
18 along while the video is going.

19 THE COURT: Any objection to their following
20 along?

21 MR. CHEHOSKI: No, Your Honor. The only
22 request I make is that I think there is a
23 stipulation, there be a stipulation from the State
24 that there is no W in my last name.

25 MR. WILLINGHAM: Yes, sir, Your Honor, the

1 court reporter misspells that.

2 MR. CHEHOSKI: Otherwise I don't have any
3 problems, sir.

4 THE COURT: Well, we'll tell them that that
5 was an error by Miss Green, the court reporter.

6 MR. WILLINGHAM: Your Honor, also on your
7 copy and on the original that's the Court's
8 exhibit, pages four and five basically deal with
9 Mr. Greer being arraigned on the murder indictment.
10 I have removed pages four and five from the jurors'
11 copy of the transcript. Their transcript starts on
12 page six, which is the direct examination and
13 calling of the witness John Black.

14 THE COURT: Will the video begin at the
15 direct examination as well?

16 MR. WILLINGHAM: Yes, sir, Your Honor.

17 THE COURT: Because this other should not
18 be --

19 MR. WILLINGHAM: Correct, that's why I
20 removed it from those, Mr. Chehoski has had an
21 opportunity to review those fourteen transcripts
22 and is sure I've removed those two pages.

23 THE COURT: It's the Court's experience some
24 of the jurors would appreciate the ability to
25 follow along and some will just listen and watch

1 the video. This is certainly a courtesy to them
2 and the Court appreciates it and appreciates Mr.
3 Chehoski's agreement. It may be of benefit to
4 some, it may not, but we'll at least show them that
5 courtesy.

6 MR. WILLINGHAM: Thank you, Your Honor. And
7 finally, Your Honor, this is the actual videotape
8 that was prepared by David D. Jolly, he prepared
9 this last week.

10 THE COURT: Mark it in evidence.

11 MR. WILLINGHAM: Either a State's exhibit or
12 Court's exhibit. Probably a State's exhibit.

13 THE COURT: Let it be a State's exhibit.

14 (Videotape of John Black testimony marked
15 and received in evidence as State's Exhibit
16 Number 33).

17 MR. WILLINGHAM: Thank you, Your Honor. I
18 have the machine set up, Judge, we have one witness
19 before we get to that videotape and then he would
20 be our final witness before lunch, if that pleases
21 the Court.

22 THE COURT: Thank you. Any remarks or
23 comments or things for the record?

24 MR. CHEHOSKI: No, sir.

25 THE COURT: All right. Ask the jury in,

1 please, Mr. Nesbitt.

2 (The jury returned to the courtroom).

3 THE COURT: All the jurors are present, with
4 the forelady and alternates properly seated. The
5 matter lies with the State. Call your next witness
6 sir.

7 MR. WILLINGHAM: Thank you, Your Honor. We
8 call Hugh Murphy.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

HUGH MURPHY - DIRECT

1 HUGH MURPHY,
2 after being first duly sworn testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. WILLINGHAM:

5 Q Tell the jury who you are.

6 A I'm Master Deputy Hugh Murphy with the
7 Spartanburg County Sheriff's office.

8 Q You need to speak up just a little bit, okay?

9 A I'm Master Deputy Hugh Murphy with the
10 Spartanburg County Sheriff's office.

11 Q That's great. How long have you been with
12 the sheriff?

13 A Slightly over eighteen years.

14 Q What do you do for the sheriff?

15 A I am the AFIS operator and help with ID.

16 Q Okay. Tell this jury what AFIS is?

17 A It's automated fingerprint identification
18 system, where you mark points on a fingerprint and
19 the computer in Columbia compares it to the, all
20 the fingerprints that's in the SLED files, only
21 those in South Carolina, and gives me a certain
22 number to look at to compare to the original print
23 to see if it's a match.

24 Q Okay. What type of training, education and
25 experience do you have to allow you to do this type

HUGH MURPHY - DIRECT

1 work?

2 A Well, I got, I have been through all the
3 fingerprint classes that AFIS, I mean that SLED
4 offers. I have been through advanced fingerprint
5 with the FBI, I have testified in the Circuit Court
6 and Federal Court, I am qualified, have took the
7 test and passed in 1997 the AFIS operators' test.

8 Q Tell the jury -- well, before we do that, you
9 say you have testified as an expert in the area of
10 latent print identification?

11 A I have.

12 MR. WILLINGHAM: Your Honor, at this time I
13 would offer this witness as an expert in the area
14 of latent print identification.

15 THE COURT: Questions on his voir dire?

16 MR. CHEHOSKI: Briefly, Your Honor.

17 QUESTIONS BY MR. CHEHOSKI:

18 Q Have many times have you testified,
19 approximately?

20 A As an expert probably five or six.

21 Q Five or six times?

22 A Uh-huh (Affirmative).

23 Q And in each of those five or six times you
24 were qualified as an expert?

25 A Yes.

HUGH MURPHY - DIRECT

1 MR. CHEHOSKI: No further voir dire.

2 THE COURT: Thank you. Based upon his
3 experience, education and knowledge of the area of
4 fingerprint and fingerprint identification the
5 Court would qualify this witness as an expert in
6 fingerprint and fingerprint identification.

7 MR. WILLINGHAM: Thank you, Your Honor.

8 BY MR. WILLINGHAM:

9 Q Tell the jury what a fingerprint is.

10 A A fingerprint is when someone touches
11 something and they leave residues, perspiration,
12 oils, amino acids and other things, and you can
13 bring the fingerprint up using powder and chemicals
14 and then lift it and then compare it to other
15 fingerprints.

16 Q Okay. Is it fair to say that each
17 individual's fingerprints are unique to that
18 individual?

19 A They are.

20 Q No two people have the same fingerprints?

21 A It has never been proved otherwise.

22 Q Okay. So, it's a useful way of identifying
23 if someone touches something?

24 A It is.

25 Q And you touched on it a little bit but how do

HUGH MURPHY - DIRECT

1 you go about finding, I mean, what does the word
2 latent mean?

3 A Latent means a fingerprint that's been laid.

4 Q Okay. Can you see it with a naked eye?

5 A Sometimes you can but most of the times you
6 can't.

7 Q So, what do you do in order to bring out that
8 fingerprint?

9 A Most of the time they either use a chemical
10 to process it or they use a black powder that looks
11 like graphite.

12 Q Okay. And then those prints are then used to
13 compare them to any known prints?

14 A Right. Once they put the powder on it they
15 put a piece of tape on it and push it down and lift
16 the tape up, the fingerprint comes off on the tape,
17 you put it on a card and then you have it sealed
18 for good.

19 Q In this case did you receive any latent or
20 partial fingerprints for examination?

21 A I did.

22 Q Who did you receive those from?

23 A Deputy Craig Coggins.

24 Q Okay. And he indicated that he, in his
25 earlier testimony, submitted those to AFIS for

HUGH MURPHY - DIRECT

1 testing. What does that mean?

2 A That means I will take the fingerprints and
3 if they have anywhere from seven to eight points,
4 which a point is an ending line or bifurcation, a
5 bifurcation is where a line separates, and we mark
6 those, and if you have an eight, seven or eight you
7 can enter it in the computer. If you don't have
8 that many it's not AFIS quality.

9 Q Okay. So, basically your fingerprints have
10 ridges and valleys?

11 A That's right.

12 Q And they have splits, or bifurcations you
13 called them?

14 A Yes.

15 Q End lines. Those are all points you look
16 for?

17 A Right.

18 Q And those points, you take those points from
19 an unknown and compare it to the same points on a
20 known?

21 A Right.

22 Q If they are there?

23 A Right.

24 Q In this case, on these prints that he
25 forwarded to you were you able to place them in

HUGH MURPHY - DIRECT

1 AFIS?

2 A They lacked sufficient ridge detail for
3 comparison.

4 Q Tell me what that means.

5 A In other words, they were no good.

6 Q Okay. So, there were not enough ridges and
7 not enough points?

8 A Right.

9 Q In order for you to compare them to anything?

10 A To even identify them to anybody.

11 Q Okay. So you couldn't match them up?

12 A No, I could not.

13 Q Even if you had wanted to?

14 A No.

15 Q And you couldn't enter them into the AFIS
16 machine?

17 A No, I could not. If I had known whose prints
18 they were I couldn't identify them to them.

19 Q All right.

20 MR. WILLINGHAM: Thank you. Answer any
21 questions the defense has.

22 THE COURT: Cross-examination, if any?

23 MR. CHEHOSKI: Briefly.

24

25

HUGH MURPHY - CROSS

1 CROSS EXAMINATION

2 QUESTIONS BY MR. CHEHOSKI:

3 Q How many prints were you given?

4 A Two.

5 Q Two prints?

6 A Yes, sir.

7 Q And neither one of them were of sufficient
8 ridge detail?

9 A That's right.

10 Q Any good?

11 A Neither one of them were any good.

12 Q Okay. Now you said that it would take a
13 minimum of seven to eight points or end lines to at
14 least be sufficient for comparison?

15 A That's right.

16 Q There are more than a possible seven or eight
17 points, correct?

18 A Oh, yes. That's the minimum.

19 Q That's the absolute minimum. It can go much
20 higher than that?

21 A Yes. The more, the better.

22 MR. CHEHOSKI: Nothing further, Your Honor.

23 THE COURT: Thank you, sir. Come down.

24 MR. WILLINGHAM: Your Honor, we ask he be
25 excused.

HUGH MURPHY - CROSS

1 MR. CHEHOSKI: No objection.

2 THE COURT: You may stay with us or leave the
3 building.

4 THE WITNESS: Sir?

5 THE COURT: You may stay with us if you like
6 or leave the building.

7 THE WITNESS: Yes, sir.

8 (Witness excused).

9 THE COURT: Now, ladies and gentlemen, the
10 attorneys have discussed with the Court the next
11 witness, and the next witness is unavailable this
12 week, and having that knowledge, his testimony was
13 taken by videotape last week and you are about to
14 see a videotape of a witness, and this is evidence,
15 you may consider this to be a live witness sitting
16 right here in the witness stand testifying before
17 you.

18 Now, have the transcripts been distributed?

19 MR. WILLINGHAM: Your Honor, the bailiff has
20 those.

21 THE COURT: All right. You will be given a
22 transcript and if you wish you can read along with
23 what the questions and answer are, or you can just
24 listen and watch as if the person were speaking
25 right here, but this is a witness who is being

1 called.

2 Call the witness.

3 MR. WILLINGHAM: Your Honor, this witness
4 being John Black of the State Law Enforcement
5 Division.

6 THE COURT: All right. The witness is being
7 called by the State, John Black, and understand
8 clearly that this is evidence, this is considered
9 live testimony but it's being done because of this
10 person's unavailability this day.

11 (State's Exhibit 33 was played to the jury).

12 (Transcript of State's Exhibit 33 was marked
13 as Court Exhibit Number 5).

14 MR. WILLINGHAM: Your Honor, if we could for
15 the record, that testimony is contained in
16 videotape that's been marked State's Exhibit Number
17 33.

18 THE COURT: Number 33?

19 MR. WILLINGHAM: Yes.

20 THE COURT: Thank you. Ladies and gentlemen,
21 the parties have discussed with the Court that the
22 next witnesses are coming from some distance and
23 they are not expected here until after 2:00
24 o'clock, so we will take a little longer lunch
25 break than we want to but we sort of have to. Do

1 not discuss the case by, between and among
2 yourselves, nor with any other person. Do not
3 permit anyone to discuss the case with you. If
4 anyone attempts to do so immediately tell that
5 person or persons that you are a juror and you are
6 not permitted to talk about this case. If any
7 person persists in attempting to talk with you
8 after you identify yourself as a juror that would
9 be highly irregular, wrong and illegal and you
10 should use every measure at your disposal, as we
11 discussed, to identify that person or persons and
12 report it to one of the bailiffs immediately upon
13 your return to the courtroom. That will be
14 investigated and dealt with expediently.

15 If there were to be any media coverage such
16 as newspaper, television or radio you should
17 disregard anything that you may see, hear or read
18 absolutely and completely and disabuse your mind of
19 anything because it is not evidence, and you are to
20 decide this case upon the evidence that has been
21 revealed to you and will be revealed to you in this
22 very courtroom right here in your presence.

23 Now, have any of you seen or heard or read
24 anything about this case from any source
25 whatsoever?

1 What was it and what did you do when you
2 realized what it was?

3 JUROR: Last night on the news there was a
4 little report on there about the trial but I just
5 disregarded it.

6 THE COURT: And your name?

7 JUROR: As we have been instructed to.

8 THE COURT: Yes, sir. Your juror number?

9 JUROR: Jimmy Ozment, 92.

10 THE COURT: Did that have any effect upon you
11 whatsoever?

12 JUROR: No, sir.

13 THE COURT: You understood that was not
14 evidence?

15 JUROR: Exactly.

16 THE COURT: Very well, thank you.

17 Any one else?

18 Yes, ma'am?

19 JUROR: I also heard that brief, very brief
20 note that the trial had started.

21 THE COURT: And your number?

22 JUROR: 78.

23 THE COURT: What did you make of that?

24 JUROR: Just that it was there. I picked up
25 the remote and it was gone, it was so brief.

1 THE COURT: Did you pay any attention to it,
2 give any weight to it?

3 JUROR: No. It was just I heard it and I was
4 going to change the channel and it was gone by that
5 time.

6 THE COURT: And do you realize and understand
7 that is not evidence and it may not be considered
8 as evidence?

9 JUROR: Yes, sir.

10 THE COURT: Anyone else?

11 Thank you all. We'll have luncheon, it will
12 be a little longer luncheon than usual, be back in
13 the courtroom at 2:20. 2:20.

14 (The jury was excused from the courtroom).

15 THE COURT: All right, anything for the
16 record before it's closed?

17 MR. WILLINGHAM: Nothing from the State, Your
18 Honor.

19 MR. CHEHOSKI: Not from the defense.

20 THE COURT: Thank you. The record is closed.

21 (Recessed at 12:05 p.m.).

22 (Reconvened at 2:31 p.m.).

23 THE COURT: On the record in State of South
24 Carolina versus Joshua Greer, indictment 2002-5209
25 and 2003-2201.

1 Anything from the State?
2 MR. WILLINGHAM: No, sir, Your Honor.
3 THE COURT: From the defense?
4 MR. CHEHOSKI: No, sir.
5 THE COURT: Ask the jury in, please.
6 (The jury returned to the courtroom).
7 THE COURT: All the jurors are present, with
8 the forelady and the alternates properly seated.
9 The matter lies with the State. Call your
10 next witness, please, Solicitor.
11 MS. MILLICAN: Thank you, Your Honor. The
12 state calls Agent Cecil Bradstreet.
13
14
15
16
17
18
19
20
21
22
23
24
25

CECIL BRADSTREET - DIRECT

1 CECIL BRADSTREET,
2 after being first duly sworn testified as follows:

3 THE COURT: You may examine.

4 MS. MILLICAN: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 QUESTIONS BY MS. MILLICAN:

7 Q Please state your name for the record.

8 A Cecil K. Bradstreet.

9 Q What's your occupation?

10 A Forensic technician in the evidence
11 processing department.

12 Q How long have you been a forensic technician?

13 A For approximately five years.

14 Q What department do you work in?

15 A The evidence processing department at SLED.

16 Q How long have you been with SLED?

17 A Going on twelve years.

18 Q Briefly describe the nature of your work
19 there.

20 A The evidence processing department examines
21 various types of evidence for the presence of hair,
22 fibers, blood, semen and any other type of bodily
23 fluid. We perform chemical testing for the
24 presence of semen and blood. The chemical test for
25 blood is known as phenolphthalein.

CECIL BRADSTREET - DIRECT

1 Q What education or training did you complete
2 to qualify you as a specialist in your work?

3 A I have my Bachelor's from the University of
4 South Carolina in criminology and criminal justice.
5 I have also been trained, I have on the job
6 training by court qualified experts and I annually
7 undergo proficiency testing in my discipline of
8 hair, fiber, blood and semen.

9 Q How much of your time is dedicated to these
10 duties you described?

11 A You know, we process cases virtually every
12 day.

13 Q Have you previously testified in courts of
14 law as an expert in this field?

15 A Once before.

16 Q I'm going to show you what has been marked as
17 State's Exhibit Number 15. If you would, please,
18 take a look at that item and tell me if you
19 recognize it.

20 A This is a piece of evidence from the case
21 that I examined. This is the lab number that it
22 has been assigned, the item number that it's been
23 assigned, my initials and the date that it was
24 processed.

25 Q What is that item?

CECIL BRADSTREET - DIRECT

1 A Item number 15 is a knife with a brown wooden
2 handle.

3 Q How did this item first come into your
4 possession?

5 A When I first take custody of this case I
6 enter a secure walk-in refrigerator that is located
7 within our department. I retrieve the box of the
8 case I'm going to work and take it into my custody.

9 Q Was that item sealed when you retrieved it?

10 A Yes, ma'am, it was.

11 Q What did you do with the item after you
12 retrieved it?

13 A When I opened up the case I take out the
14 item, I do a physical exam, if there are any areas
15 that I believe to be blood I take a cotton swab,
16 use saline, swab the known area. In this case I
17 would set the swab aside, go back with another swab
18 behind it to check it. The chemical test
19 phenolphthalein reacts with hemoglobin which is
20 found in blood. You take phenolphthalein, drop the
21 chemical on it and you use hydrogen peroxide, which
22 will produce a chemical reaction. If the swab
23 turns pink or any color of pink I have to assume
24 that it is blood and I forward that to DNA for
25 analysis.

CECIL BRADSTREET - DIRECT

1 Q Did you find blood on this particular item?

2 A On item 15, no, ma'am, I did not.

3 Q What is the process of handling evidence
4 after you process the blood?

5 A I will mark on my item that it was negative
6 for phenol, along with my initials, place the
7 evidence back in the container it was originally
8 sent in and route that back for return to the
9 submitting agency.

10 Q And is it sealed when you leave it?

11 A Yes, it is.

12 Q Please look at what has been marked State's
13 Exhibit Number 30.

14 A This bag contains item three which is a pair
15 of blue jeans, this is the lab number, the item
16 number, my initials and the date that it was
17 examined.

18 Q What is that item?

19 A This item is a pair of blue jeans, Levi
20 Straus & Company, size 36 by 36, that I tested
21 numerous stains for blood that were all negative.

22 Q When this item first came into your
23 possession was it sealed?

24 A Yes, ma'am, it was.

25 Q After you tested it what did you do with the

CECIL BRADSTREET - DIRECT

1 item?

2 A I placed the jeans back in this bag, back in
3 the bio-hazard bag and placed it in the original
4 container and routed it back to the submitting
5 agency.

6 Q Was it sealed when you left it?

7 A Yes, it was.

8 MS. MILLICAN: The State would move at this
9 time to admit State's Exhibit Numbers 15 and 30
10 into evidence.

11 THE COURT: How says the defense?

12 MR. CHEHOSKI: Without objection.

13 THE COURT: 15 and 30 are part of the
14 evidence in the case, ladies and gentlemen.

15 (Knife was marked and received in
16 evidence as State's Exhibit Number 15).

17 (Blue jeans were marked and received in
18 evidence as State's Exhibit Number 30).

19 BY MS. MILLICAN:

20 Q Please look at the item marked as State's
21 Exhibit 31. Do you recognize that item?

22 A This is lab number item number four which is
23 a blue fitted sheet with a design on it. These are
24 my initials and the date they were examined. There
25 were approximately four stains that I tested for

CECIL BRADSTREET - DIRECT

1 blood, that were also negative.

2 Q How did that item first come into your
3 possession?

4 A Once again it was in a container that I
5 retrieved from our walk-in refrigerator which I
6 have a key for, placed it in my custody, processed
7 it, sealed everything back up and routed it to
8 return back to the submitting agency.

9 Q Was it sealed when you took it out of the
10 evidence refrigerator?

11 A Yes, ma'am, it was.

12 MS. MILLICAN: The State would move to admit
13 State's Exhibit Number 31 into evidence at this
14 time, Your Honor.

15 THE COURT: Without objection.

16 THE COURT: Thank you. Number 31 becomes
17 part of the evidence in the case.

18 (Bed sheet marked and received in evidence
19 as State's Exhibit Number 31).

20 BY MS. MILLICAN:

21 Q Agent Bradstreet, please look at Exhibit
22 Number 32. Do you recognize that item?

23 A This again is the lab number, item number
24 which is seventeen, a pair of white tennis shoes
25 with blue trim, Addis, size 10, the item number, my

CECIL BRADSTREET - DIRECT

1 initials and the date it was examined.

2 Q How did this item first come into your
3 possession?

4 A This item again was retrieved from the secure
5 walk-in refrigerator that is housed in evidence
6 processing. I did a physical exam, there was one
7 stain that there was a discoloration on the back.
8 I sat that swab aside and routed that to DNA for
9 further analysis.

10 Q When you first got this item from evidence
11 was it sealed?

12 A Yes, it was.

13 Q And then you found blood on it and took a
14 swab of that?

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

16 Q Do you know conclusively whether that was
17 blood when you take the swab?

18 A Phenolphthalein is only a presumptive test, it
19 is not a confirmatory test, that is why we forward
20 it to DNA for further analysis.

21 Q I first ask you whether it is blood at all?

22 A Based on my visual exam it appeared to be
23 blood, that is why we swab it, do the chemical test
24 and forward it to DNA if there is a reaction.

25 Q After you took the swab what did you do with

CECIL BRADSTREET - DIRECT

1 that item?

2 A This item was placed back in the paper bag,
3 into the bio-hazard bag, placed in the original
4 container and routed to return back to the
5 submitting agency.

6 Q Look at what has been marked State's Exhibit
7 34.

8 MS. MILLICAN: Your Honor, the State would
9 move State's Exhibit 32 into evidence at this time.

10 MR. CHEHOSKI: No objection.

11 THE COURT: Number 32 is in evidence).

12 (Tennis shoes were marked and received in
13 evidence as State's Exhibit Number 32).

14 BY MS. MILLICAN:

15 Q Do you recognize State's 34?

16 A Yes. This is a swab that I took from the
17 tennis shoes which was item 17, this is the item
18 17.1, the exam for blood off the shoes, these are
19 my initials with the date.

20 Q Did you seal that sample after you took it?

21 A Yes, I did.

22 Q In what kind of packaging?

23 A It was placed in a heat sealed envelope which
24 I signed, heat sealed the top, signed across that
25 and then signed as the sealing official on that

CECIL BRADSTREET - DIRECT

1 pouch and routed it to the DNA box, which is a
2 secure refrigerator in the evidence department, to
3 DNA for analysis.

4 MS. MILLICAN: I have no further questions of
5 this witness at this time. Thank you.

6 THE COURT: Cross-examination.
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CECIL BRADSTREET - CROSS

CROSS EXAMINATION

QUESTIONS BY MR. CHEHOSKI:

Q Mr. Bradstreet, if I understand you, you examined the objects that were sent to you?

A Yes, sir, that's correct.

Q You do a test, was it phenolphthalein?

A Yes, that's correct.

Q That phenolphthalein is on the swab?

A I swab the area, then drop phenolphthalein on it, then hydrogen peroxide to produce a potential chemical reaction.

Q So, are you dropping the phenolphthalein on the swab?

A Yes, sir.

Q If there is a reaction, then it goes, then you drop the hydrogen peroxide on it?

A I drop the hydrogen peroxide on it in order to produce the reaction.

Q Understood. And the hydrogen peroxide will react with hemoglobin?

A The phenolphthalein produces, to produce the chemical reaction you swab the area, you drop the phenolphthalein on it, then drop hydrogen peroxide. The phenolphthalein is what will react with the hemoglobin which is in blood but the hydrogen

CECIL BRADSTREET - CROSS

1 peroxide is what produces the chemical reaction.

2 Q All right, I think I understand now. And you
3 have got that, that reaction from, on item 17.1?

4 A Yes, sir.

5 Q That was a swab from item 17?

6 A Yes, sir, that's correct.

7 Q That's the Addis tennis shoes. As you stated
8 before, this was just a presumptive test?

9 A Yes, sir, that's correct.

10 Q It's not conclusive?

11 A That's correct.

12 Q And at that point, after you have that
13 presumptive test, that swab is sent to DNA?

14 A Yes. I have a separate swab that I would
15 send to DNA. I have two swabs. I swab one of the
16 area first, go back over the item again, that's
17 when I use my chemical.

18 Q Okay. But the two swabs are of the same
19 area?

20 A Yes, that's correct.

21 Q And you test the second swab?

22 A Yes.

23 Q And all test items were in a secured
24 refrigerator?

25 A Yes, sir, that's correct.

CECIL BRADSTREET - CROSS

1 Q And you said you had a key to it?

2 A Yes, sir, that's correct.

3 Q And only someone in your department would
4 have access to that refrigerator?

5 A The personnel within evidence processing have
6 a key and also the personnel in evidence control
7 because they have to have access to deliver.

8 MR. CHEHOSKI: Nothing further.

9 THE COURT: Redirect?

10 MS. MILLICAN: There is nothing further from
11 the State, Your Honor, thank you.

12 THE COURT: Thank you, sir. Watch your step.
13 (Witness excused).

14 THE COURT: Any objection to this witness
15 being excused?

16 MR. WILLINGHAM: We ask that he be, Your
17 Honor.

18 MR. CHEHOSKI: None from the defense, Your
19 Honor.

20 THE COURT: Thank you. Mr. Witness, you may
21 stay with us or you may leave the building.

22 MR. WILLINGHAM: If it please the Court, Your
23 Honor, we call John Ortuno.

24

25

EMANUEL ORTUNO - DIRECT

1 EMANUEL ORTUNO,
2 after being first duly sworn testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. WILLINGHAM:

5 Q Tell the jury who you are.

6 A My name is Emanuel John Ortuno, O-r-t-u-n-o.

7 Q Mr. Ortuno, where do you work?

8 A I'm employed at the South Carolina Law
9 Enforcement Division, commonly referred to as SLED.

10 Q How long have you been with SLED?

11 A Just over fifteen years.

12 Q And what do you do at SLED?

13 A Currently I'm a forensic DNA analyst.

14 Q What type of training, education and
15 experience do you have that allows you to be a DNA
16 analyst?

17 A I graduated with Honors from the American
18 University in Washington, D.C. with a Bachelor of
19 Science Degree, majoring in chemistry. I have a
20 Master's Degree also majoring in chemistry, from
21 the University of South Carolina in Columbia. I
22 was hired as a researcher in the laboratory at the
23 University, performing experiments on DNA for
24 approximately three and a half years. This led to
25 three publications in peer review journals. I also

EMANUEL ORTUNO - DIRECT

1 completed the training at SLED in DNA analysis,
2 have attended the FBI Academy's advanced DNA
3 training, numerous courses and seminars and other
4 courses pertaining to my field of expertise on a
5 regular basis.

6 Q Tell this jury what DNA is.

7 A DNA stands for deoxyribonucleic acid. It's a
8 very complex compound found in the human body.
9 It's found packaged within the nucleus in what is
10 called chromozones. We have twenty-three pairs of
11 chromozones, each pair being an equal contribution
12 from our mother and our father. Now, most of our
13 DNA is the same, that is because we all need arms
14 and legs and kidney cells and liver cells and all
15 the thousands of protiens and enzymes that make us
16 human. But all you need do is look around this
17 courtroom and just as you see differences in the
18 color of our hair, the colors of our eyes, shapes
19 of our noses or our ears, it's apparent that all
20 our DNA can't be the same, in fact it isn't.

21 In forensics we focus on particular regions
22 within the DNA molecule called SCR sites. SCR
23 stands for short count and repeat. If I go to an
24 SCR site along with a DNA molecule, what you
25 discover is different people have different size

EMANUEL ORTUNO - DIRECT

1 fragments at that location. Now, an analogy of
2 this would be shoe sizes. I might wear a men's
3 size eleven shoe. Other men in this courtroom
4 might have a size ten or nine and a half or so on.
5 You women would have corresponding differing sizes
6 as well. We could separate or distinguish people
7 based on their shoe sizes. If we're looking for
8 someone wearing a size ten shoe we would eliminate
9 everybody else.

10 With DNA, because it's a contribution from
11 your mother and your father, each SCR site, you
12 might have the same size fragment because both mom
13 and dad contributed the same size fragment or you
14 could have different sizes. And you don't look at
15 just one location, we look at nine locations. So,
16 if nine locations, each one having a different
17 contribution or possibly the same contribution from
18 the mother and the father, we arrive at what is
19 called the DNA profile, which is a combination of
20 all these different size fragments that we look at.
21 And we distinguish people based on this DNA
22 profile. We develop a DNA profile from the
23 evidence, you develop a DNA profile from the
24 individuals you feel might have been involved in a
25 case, and you simply compare them. If they match,

EMANUEL ORTUNO - DIRECT

1 then the source of that evidence is the individual,
2 and if it doesn't match it isn't.

3 Q I may be making it more simple than it is,
4 I'm sure I am, but is it fair to say that each
5 person's DNA is unique except for identical twins?

6 A Each person's DNA -- actually if we look at
7 the entire DNA molecule, even identical twins would
8 have point mutation. What we would be looking at,
9 they would be identical.

10 Q And because DNA has unique characteristics
11 among each individual, that makes it a good way to
12 identify or compare substances or be able to match
13 a known standard such as the victim's blood with a
14 blood sample found at a crime scene?

15 A Absolutely.

16 Q Okay. How many times have you analyzed DNA?

17 A Hundreds if not thousands.

18 Q Okay. And how many times have you had to
19 come to court and testify and qualify as an expert
20 in the area of DNA analysis?

21 A I have been qualified here in this court as
22 well at other courts throughout the state 26 times
23 for DNA specifically.

24 MR. WILLINGHAM: Thank you. Your Honor, at
25 this time I offer Agent Ortuno as an expert in the

EMANUEL ORTUNO - DIRECT

1 area of DNA analysis.

2 THE COURT: The witness is offered as an
3 expert in the area of DNA analysis. Will there be
4 questions on his voir dire?

5 MR. CHEHOSKI: No questions on his voir dire,
6 Your Honor, on this witness, and no objection to
7 the offer.

8 THE COURT: Thank you. Ladies and gentlemen,
9 this witness is an expert in the field of DNA
10 analysis.

11 BY MR. WILLINGHAM:

12 Q Agent, if you would, when you receive a
13 sample or suspected sample, what's the first thing
14 you do?

15 A The first thing that we do is determine
16 whether it's of human origin. Typically we are
17 looking for human body fluids, either human body
18 fluids or tissues. Sometimes we look at hair roots
19 and thing of that sort.

20 Q Okay. And after you determine it's human
21 origin, do you go further to determine if it is
22 blood, semen or some other type of bodily fluid?

23 A That would be the serology component of it,
24 determine whether in fact it's blood, typically
25 blood, saliva, semen.

EMANUEL ORTUNO - DIRECT

1 Q I believe in this case, to jump ahead a
2 little bit, it involves only blood, there is no
3 semen samples or any other type of saliva or any
4 other samples present, is that fair?

5 A Yes, sir.

6 Q Okay. So, whenever you receive a blood
7 sample, again I know I'm making it simple, but your
8 next process would be to extract the DNA?

9 A Once I determine that it's human blood the
10 next step is to see if I have enough there to
11 develop a profile.

12 Q And when you develop that profile you then
13 compare that to a known sample?

14 A That's correct. Typically we will receive
15 either blood from individuals, or saliva samples.

16 Q Okay. Let's talk about that known sample,
17 State's Exhibit Number 17, which is, which has been
18 testified to is a blood sample taken from the
19 victim Paul Reagan. Did you receive that item?

20 A Yes, sir, State's Exhibit 17 is in fact blood
21 samples that I placed on cloth and it's labeled
22 Paul Reagan.

23 Q Okay. And when you received that sample was
24 it sealed?

25 A Yes, it was.

EMANUEL ORTUNO - DIRECT

1 Q And you broke that seal?

2 A That's correct.

3 Q Did you begin to process that to extract DNA?

4 A That's correct.

5 Q And did you develop a profile as a result of
6 your analysis?

7 A Yes, I did.

8 Q When you were done with that did you seal it
9 back and send it to local law enforcement here in
10 Spartanburg?

11 A Yes, I returned it to the original envelope
12 containing, this one right here, containing the
13 blood sample. I then sealed the, I sealed the heat
14 seal pouch and I initialed across the seal itself
15 and returned it to, actually it goes to a holding
16 bin, I think it's collected when the agency comes
17 to collect the evidence.

18 Q Thank you.

19 MR. WILLINGHAM: Your Honor, at this time I
20 move State's Exhibit Number 17 into evidence.

21 THE COURT: How says the defense?

22 MR. CHEHOSKI: No objection.

23 THE COURT: Number 17 is admitted into
24 evidence, ladies and gentlemen.

25 (Blood samples marked and received in

EMANUEL ORTUNO - DIRECT

1 evidence as State's Exhibit Number 17).

2 BY MR. WILLINGHAM:

3 Q Once you had the victim's profile, at that
4 point you could begin to analyze other items to see
5 if they matched, is that fair?

6 A That's correct.

7 Q Okay. The first thing I want to show you is
8 State's Exhibit 34, which is the swab that Mr.
9 Bradstreet just testified to came off the shoes.
10 Exhibit 34, did you receive that?

11 A State's Exhibit 34 does contain my initials
12 across the envelope, yes, I did.

13 Q And I think that corresponds to your number
14 17.1?

15 A That's correct, that's SLED's, on the report
16 it's listed as 17.1.

17 Q Okay. Were you able to determine whether or
18 not that was in fact blood?

19 A I tested it for the presence of blood and no
20 human blood was identified.

21 Q No blood was identified? Let me ask you
22 about that because Mr. Bradstreet said he did a
23 presumptive test that indicated a presumption of
24 blood but you say there is not blood. How do you
25 reconcile the two?

EMANUEL ORTUNO - DIRECT

1 A He performs what is called a presumptive
2 test, phenolphthalein test that was mentioned
3 earlier, and it's more sensitive than the test I do
4 in the sense that it's more likely to give a false
5 positive. It's going to give a positive for blood
6 but it also might give a positive for something
7 that is not blood, number one, or simply put, it
8 may not have enough for my test which is more
9 specific to human blood to be positive than his
10 test. I don't know if that was -- that might have
11 been a little confusing.

12 Q Your tests are conclusive?

13 A Yes. My tests, mine tests for the presence
14 of the proteins that are specific to human blood
15 and it requires a certain amount of that protein to
16 be there to be positive, whereas his test is a
17 chemical test that reacts with iron which is
18 present within the hemoglobin component of blood,
19 and other things also react, so it might not have
20 been blood to begin with or it might have been such
21 a small, small amount that his test, which is more
22 sensitive, comes out positive but mine doesn't have
23 enough of the proteins to react.

24 Q Okay.

25 MR. WILLINGHAM: Your Honor, at this time I

EMANUEL ORTUNO - DIRECT

1 move State's Exhibit Number 34 into evidence.

2 MR. CHEHOSKI: No objection from the defense.

3 THE COURT: Without objection Number 34 is
4 admitted into evidence.

5 (Swab taken from tennis shoes marked and
6 received in evidence as State's Exhibit
7 Number 34).

8 BY MR. WILLINGHAM:

9 Q Without this being blood there was no profile
10 to be compared?

11 A That's correct. That is a negative,
12 therefore there is nothing else for me to do with
13 that item.

14 Q Okay.

15 A It would not give me a DNA profile.

16 Q Okay. I want to show you what's been
17 previously marked State's Exhibit Number 5 and ask
18 if you recognize that?

19 A Yes. That also has my initials on it. It is
20 listed as a swab that was taken from the white
21 portion of a jack handle. There is a small
22 diagram.

23 Q Okay. And did you determine whether or not
24 that was blood?

25 A Item 6.1 was tested for the presence of human

EMANUEL ORTUNO - DIRECT

1 blood and human blood was identified on this item.

2 Q Okay. Once it was identified did you then
3 take it to the next step to extract the DNA and
4 develop a profile?

5 A That's correct, that's what I did.

6 Q Were you successful in developing a profile
7 on that item?

8 A Yes, sir, I did.

9 Q After you developed that profile on that
10 item, which I believe it's off the jack handle, did
11 you compare that profile to the profile of the
12 victim?

13 A Yes, sir, I did.

14 Q And did they match?

15 A Yes, they did.

16 MR. WILLINGHAM: Your Honor, at this time I
17 move State's Exhibit Number 5 into evidence.

18 MR. CHEHOSKI: No objection from the defense.

19 THE COURT: Number 5 is admitted into
20 evidence, ladies and gentlemen.

21 (Swab from jack handle marked and received
22 in evidence as State's Exhibit Number 5).

23 BY MR. WILLINGHAM:

24 Q I will show you Exhibit Number 6 and ask if
25 you recognize that?

EMANUEL ORTUNO - DIRECT

1 A Yes. That also has my initials on the
2 envelope and this is a swab of suspected blood
3 taken from a piece of rubber.

4 Q And that was sent to you by Agent Black?

5 A There are initials up here, the last one is a
6 B, so it could be Black. I receive evidence from
7 the evidence processing, which is where Mr.
8 Bradstreet works, and I also receive evidence from
9 the crime scene team that goes to the location, and
10 this appears to have been from that source.

11 Q All right. And did you determine whether
12 blood existed in that swab?

13 A Human blood was identified on that item as
14 well.

15 Q And likewise you took it to the next step of
16 extracting DNA and developing a profile?

17 A Yes, I did.

18 Q And after developing the profile did you
19 compare it to the victim's?

20 A I did.

21 Q To what conclusion?

22 A It matched.

23 MR. WILLINGHAM: Your Honor, at this time I
24 move State's Exhibit Number 6 into evidence.

25 MR. CHEHOSKI: No objection.

EMANUEL ORTUNO - DIRECT

1 THE COURT: Number 6 is admitted into
2 evidence.

3 (Swab from rubber was marked and received
4 in evidence as State's Exhibit Number 6).

5 BY MR. WILLINGHAM:

6 Q Finally I want to show you State's Exhibit
7 Number 4 and ask you if you recognize that?

8 A This also contains my initials on the
9 envelope and this is a swab that was taken from the
10 head of the hammer.

11 Q Okay. So, that's a blood swab from the head
12 of the hammer? Did you determine it was in fact
13 blood?

14 A Yes, I did.

15 Q And did you extract DNA and develop a
16 profile?

17 A I did.

18 Q And did you compare that profile to the
19 victim's?

20 A Yes.

21 Q To what conclusion?

22 A It also matched.

23 Q Okay.

24 MR. WILLINGHAM: Your Honor, at this time I
25 move State's Exhibit Number 4 into evidence.

EMANUEL ORTUNO - DIRECT

1 MR. CHEHOSKI: Without objection.

2 THE COURT: Number 4 is into evidence, ladies
3 and gentlemen.

4 (Swab from hammer marked and received in
5 evidence as State's Exhibit Number 4).

6 BY MR. WILLINGHAM:

7 Q In summary, on the DNA, the swab of blood
8 from the hammer, the swab of blood from the jack
9 handle and the swab of blood from the rubber hose
10 all matched the victim's blood?

11 A They matched the profile generated from the
12 victim's blood, yes.

13 Q Okay. What's the likelihood of randomly
14 selecting another person besides the victim's blood
15 being on those items?

16 A The frequency of occurrence, the likelihood
17 that anyone would have the profile that Paul Reagan
18 has is one in 96 trillion.

19 Q I want to ask you about a few other things.
20 I show you State's Exhibit Number 29, which are
21 numerous other swabs which were submitted to Law
22 Enforcement Division. I ask if you recognize that?

23 A This is a heat seal pouch containing SLED's
24 items seven through thirteen, State's Exhibit 29.
25 They have my initials on the outside of the heat

EMANUEL ORTUNO - DIRECT

1 sealed pouch.

2 Q And did you attempt to determine whether or
3 not blood existed on those swabs?

4 A Items seven through thirteen, let's see, I
5 did attempt to determine whether there was blood on
6 each of those items.

7 Q Some had blood, some did not, is that fair?

8 A That's correct.

9 Q Now, those did not go to the next step for
10 extraction of DNA and profile comparison?

11 A That's correct.

12 Q Do you know why?

13 A I had a conversation with Investigator Yown
14 on October 11, 2002. We try and select the items
15 that are most probative. There is no need to do
16 blood on every single item in a house. We look at
17 those items that might explain what happened in a
18 particular incident, and through my conversation
19 with the investigator, he felt comfortable with
20 only items, SLED items 1.1, 5.1, 6.1, that were
21 mentioned a moment ago, as being the most
22 probative.

23 Q And I made it really simple, but the actual
24 process of extracting DNA, developing a profile and
25 comparing is not a simple process, is it?

EMANUEL ORTUNO - DIRECT

1 A It takes a few steps.

2 Q It takes a lot of time?

3 A Yes.

4 Q And is it fair to say the State Law
5 Enforcement Division is the central DNA analysis
6 site for the State of South Carolina?

7 A There is a small local lab in Richland that
8 just started about perhaps six months ago and they
9 just do Richland County cases.

10 Q But in August of 2002 you were it?

11 A That's correct.

12 Q Okay. So, you have to pick and choose
13 basically, again simplifying, but you have to pick
14 and choose what to analyze, you can't analyze
15 everything submitted to you?

16 A Well, it make no sense to do that. There
17 would be nothing gained by adding to something that
18 places someone or perhaps a particular item that
19 was used in the act of a crime, once that's
20 defined, two is not going to make it more positive,
21 one is sufficient.

22 Q And in this case we have three?

23 A That's correct. For whatever reason in this
24 particular case the investigator felt those three
25 would be sufficient.

EMANUEL ORTUNO - DIRECT

1 MR. WILLINGHAM: Beg the Court's indulgence.

2 THE COURT: Take your time.

3 MR. WILLINGHAM: Thank you for being here.

4 If you would, answer any questions the defense has.

5 THE COURT: Cross-examination, Mr. Chehoski.

6 MR. CHEHOSKI: Thank you, Your Honor.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

EMANUEL ORTUNO - CROSS

CROSS EXAMINATION

QUESTIONS BY MR. CHEHOSKI:

Q You weren't at the crime scene?

A No, I was not.

Q Now, you stated that items, you did do the initial test for items seven through thirteen, correct?

A We like to, if possible, do the serology analysis to determine whether it is blood on all the items submitted, and I did, I attempted that.

Q For the sake of completion and for these jurors, now, item number seven was a control swab?

A That's correct.

Q There is no analysis performed on that?

A There was no need to, no.

Q Item number eight, you did perform the serology tests?

A That's correct.

Q And human blood was identified?

A Yes, sir.

MR. WILLINGHAM: Your Honor, may we approach?

THE COURT: You may.

(Unrecorded bench conference).

BY MR. CHEHOSKI:

Q Item eight, you performed the serology

EMANUEL ORTUNO - CROSS

1 analysis?

2 A Yes, sir, I did.

3 Q That revealed human blood?

4 A Human blood was identified on SLED's item
5 eight.

6 Q And item nine, you did the serology?

7 A That's correct.

8 Q On that one no human blood was found?

9 A No human blood was identified on item nine.

10 Q Item ten, you did the serology?

11 A Yes, sir.

12 Q And human blood was identified?

13 A Yes, sir.

14 Q Item eleven you did a serology?

15 A Yes, sir.

16 Q And human blood was identified?

17 A That's correct.

18 Q And item twelve, you did the serology?

19 A Yes, sir.

20 Q No human blood was identified?

21 A That's correct.

22 Q Item thirteen, you did the serology?

23 A Yes, sir.

24 Q And no human blood was identified?

25 A Item thirteen?

EMANUEL ORTUNO - CROSS

1 Q Well, I'm sorry, item thirteen, human blood
2 was identified?

3 A That's correct, human blood was identified on
4 item thirteen.

5 Q And you testified that you didn't do the
6 extra step of developing a profile per Investigator
7 Yown's instructions?

8 A Based on our conversation, yes.

9 Q You felt that he, you felt that he would know
10 more about this case than you?

11 A The investigator always knows more about the
12 case than the analyst in the forensic building.

13 Q You are just looking at swabs?

14 A That's correct.

15 Q Again referring to item number seventeen,
16 which is State's 34, I believe. State's 34?

17 A Yes, sir.

18 Q That's identified as a swab from the shoe?

19 A That's correct.

20 Q And you performed the serology analysis?

21 A That's correct.

22 Q And no human blood was identified?

23 A Yes, sir.

24 Q And on direct you testified there could be
25 one of many, there could be one of a couple of

EMANUEL ORTUNO - CROSS

1 reasons?

2 A Yes.

3 Q Either it's not human blood or the sample is
4 just too small?

5 A Those are two of the possibilities, yes.

6 Q And you don't know which one it is?

7 A No. I just know it was negative.

8 Q You just know it was negative? You only have
9 one standard to compare it to?

10 A That's correct.

11 Q The standard from Paul Reagan?

12 A Yes.

13 Q You didn't have -- and that was the only one
14 that was sent to you?

15 A That's correct.

16 MR. CHEHOSKI: Nothing further, Your Honor.

17 THE COURT: Redirect?

18 MR. WILLINGHAM: No, sir, Your Honor, thank
19 you.

20 THE COURT: Thank you, sir. You may come
21 down. Watch your step.

22 THE WITNESS: Thank you, Your Honor.

23 (Witness excused).

24 THE COURT: Any objection to this witness'
25 being excused?

EMANUEL ORTUNO - CROSS

1 MR. CHEHOSKI: No, sir.

2 MR. WILLINGHAM: We ask that he be, please,
3 sir.

4 THE COURT: Thank you. Mr. Witness, you may
5 stay with us if you wish or leave the building if
6 you wish.

7 Call your next witness, please.

8 MR. WILLINGHAM: We call Dr. David Wren.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

DR. JOHN DAVID WREN - DIRECT

1 DR. JOHN DAVID WREN,
2 after being first duly sworn testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. WILLINGHAM:

5 Q Tell the jury who you are.

6 A John David Wren.

7 Q Mr. Wren, what do you do for a living?

8 A I'm a pathologist.

9 Q At Spartanburg Regional?

10 A That's where I'm currently stationed, yes,
11 sir.

12 Q And is it fair to say you are a forensic
13 pathologist?

14 A Yes, I practice forensic pathology.

15 Q If you would, tell the jury what that area of
16 medicine is.

17 A Well, pathology is divided into two general
18 categories. One is anatomic pathology, which is
19 that part of pathology that is concerned with
20 tissue pathology basically. The other portion is
21 clinical pathology, which is more concerned with
22 laboratory tests on blood and other portions of the
23 medical field.

24 Anatomic pathology is divided into several
25 categories, one being surgical pathology, which is

DR. JOHN DAVID WREN - DIRECT

1 examination of the issues removed at surgery to
2 determine whether they are benign or malignant, and
3 to try to identify any disease processes that may
4 be present. It has several sub-categories and
5 specialties.

6 Another portion is autopsy pathology, which
7 is concerned with autopsies.

8 And then there is a special field of autopsy
9 pathology which is forensic pathology, which are
10 basically medical-legal cases, either autopsies or
11 other types of medical-legal things where
12 pathologists would be an expert in that area. And
13 as such, a forensic pathologist does autopsies for
14 the medical examiner or the coroner.

15 Q And you do that here in Spartanburg for our
16 coroner's office, is that correct?

17 A Yes.

18 Q What type of education do you have to allow
19 you to perform your job?

20 A Well, I basically have a medical degree, MD
21 degree at the Medical University of South Carolina.
22 I did a combined anatomic and clinical pathology
23 residency, which was a five year residency, but I
24 finished in three years and ten months, three years
25 and nine months because I had some special things

DR. JOHN DAVID WREN - DIRECT

1 that I had done while I was in medical school and
2 even previous to medical school to qualify me for
3 the combined degree.

4 I stood my Boards in anatomical pathology in
5 1983, passed those on the first try. Then I took
6 the clinical pathology Boards in November of 1987
7 and passed those, so I was awarded a combined
8 anatomic and clinical pathology degree.

9 While I was at the Medical University I also
10 served for some length of time as Assistant Medical
11 Examiner for Charleston County, which has a medical
12 examiner system, and as such I investigated
13 anywhere from probably ten to forty deaths per
14 month and worked those up, and in some cases I did
15 autopsies. I did autopsies, I did a three month
16 rotation in forensic pathology while I was a
17 resident and I also did forensic autopsies one
18 weekend a month for the Medical Examiner's office
19 on all autopsies that were sent to the Medical
20 University from all over the State under the
21 direction of a Board certified forensic
22 pathologist, and reported those and also went to
23 court in any cases that were necessary for court.

24 I never took my Boards in forensic pathology
25 because I simply didn't have time at the time. I

DR. JOHN DAVID WREN - DIRECT

1 have been qualified in multiple counties in the
2 state, which I can name the majority of them
3 probably, but I have been qualified numerous times
4 as an expert in forensic pathology.

5 MR. WILLINGHAM: Your Honor, at this time I
6 would move to have Dr. Wren qualified as an expert
7 in the area of forensic pathology.

8 MR. CHEHOSKI: No objection from the defense.

9 THE COURT: Thank you. Ladies and gentlemen,
10 this witness is an expert in the field of forensic
11 pathology.

12 MR. WILLINGHAM: Thank you, Your Honor.

13 BY MR. WILLINGHAM:

14 Q Doctor, were you the doctor that performed
15 the autopsy on the victim in this case, Paul
16 Reagan?

17 A Yes, I performed an autopsy on an individual
18 identified as Paul J. Reagan on August 31st, 2002,
19 in SRNC's autopsy room beginning at approximately
20 12:15 p.m.

21 Q And whenever you perform an autopsy, what you
22 are looking for is to determine cause of death, is
23 that fair?

24 A The manner of death.

25 Q The manner of death, okay. And that was what

DR. JOHN DAVID WREN - DIRECT

1 you were attempting to do in this case?

2 A Yes, and document any injuries in this case.

3 Q Were you able to determine whether or not Mr.
4 Reagan suffered from any injuries?

5 A Yes.

6 Q What injuries did you find on Mr. Reagan?

7 A Basically he had been in the hospital for a
8 short length of time. I don't have the exact time
9 but he died in the hospital itself after having
10 undergone surgery, but he had a sutured laceration
11 in his scalp and underneath that laceration he had
12 a depressed skull fracture that was circular,
13 measured 1.75 inches in diameter, and more interior
14 to that, along with some hemorrhage from surgery
15 and a scar from surgery that had been sutured
16 together, he had a depressed skull fracture in the
17 parietal bone of the head. Associated with that,
18 he had some necrosis of the tissues underneath that
19 area on the brain itself, some hemorrhage also, and
20 he had a shift of the, a shift of the brain to the
21 right side from the swelling of the brain in that
22 area.

23 Q Okay. I'm going to show you what has already
24 been entered in evidence as State's Exhibit Number
25 16. Do you recognize that picture?

DR. JOHN DAVID WREN - DIRECT

1 A Yes. This is an external picture of the
2 individual identified by the autopsy number
3 FAO2-203. It shows a sutured laceration just above
4 the ear, I mean the sutured incised area from
5 surgery above the ear and then above that the
6 slightly arch shaped or angulated sutured
7 laceration that was repaired, sutured at surgery.

8 Q Okay. In order for you to perform your
9 autopsy did you have to go into the side of his
10 head and remove that skin?

11 A We don't remove the skin. We actually, to
12 examine the brain and the tissues under the scalp,
13 what one does is make an incision that goes over
14 the top of the head, slightly behind the vertex or
15 the top of the head, and then the skin is folded
16 forward and backwards to visualize the skull
17 itself, and then using a bone saw, the calvarium or
18 the bone on the top of the head is removed.

19 Q Okay. Doctor, I'm going to hand you a skull
20 and ask you if you would show the jury where you
21 found injuries to the skull itself?

22 A This is basically a human skull and there
23 are, you can see the little lines here which are
24 suture lines that eventually close in, but anyway,
25 those are different bones that make up the head.

DR. JOHN DAVID WREN - DIRECT

1 This one has been opened to remove the brain tissue
2 and put back together, so one can look inside. The
3 depressed skull fracture was on the left side in
4 approximately this area, the round depressed skull
5 fracture, and then the eggshell type fracture with
6 multiple lines extending from that, which is a
7 crush type fracture, was just beneath that area.

8 MR. WILLINGHAM: Your Honor, may we approach?
9 I apologize.

10 (Unrecorded bench conference).

11 BY MR. WILLINGHAM:

12 Q Doctor, I'm showing you what has now been
13 marked State's Exhibit Number 34. I ask if you
14 recognize that?

15 A Yes.

16 Q What is it?

17 A This is the partially reflected scalp that
18 shows the circular depressed skull fracture on the
19 skull.

20 Q That you were just referring to?

21 A Yes.

22 Q That was taken at the time of autopsy?

23 A Yes.

24 MR. WILLINGHAM: Your Honor, at this time I
25 move State's Exhibit Number 34 into evidence.

DR. JOHN DAVID WREN - DIRECT

1 MR. CHEHOSKI: Your Honor, I do object to
2 this per our bench conference. I don't know if I
3 should state it here or outside the presence of the
4 jury.

5 THE COURT: State it now.

6 MR. CHEHOSKI: Your Honor, I do object to
7 this. I think that the, I object to the color
8 photo. I think that it's dramatic, I'm sorry,
9 rather graphic and prejudicial. It will, it will
10 conjure emotions and I request that a black and
11 white photo be used and would be more than
12 sufficient to demonstrate what the doctor is
13 testifying to.

14 THE COURT: You may proffer and mark with
15 identification your black and white photo and the
16 Court overrules your objection and will admit the
17 photo actually taken for its value in showing the
18 exact condition of what the witness is describing.

19 MR. WILLINGHAM: Thank you, Your Honor.

20 THE COURT: Let it be marked. What exhibit
21 number is this?

22 MR. WILLINGHAM: This is State's Exhibit
23 Number 35, Your Honor.

24 THE COURT: Mr. Chehoski's black and white
25 photo will be 35-A for identification only.

DR. JOHN DAVID WREN - DIRECT

1 MR. WILLINGHAM: Thank you, Your Honor.

2 (Color photograph of skull marked and
3 received in evidence as State's Exhibit
4 Number 35).

5 (Black and white photograph of skull marked
6 Exhibit Number 35 for identification).

7 BY MR. WILLINGHAM:

8 Q Doctor, that shows the depression you were
9 referencing?

10 A Yes.

11 Q What is the diameter of that depression?

12 A I measured it as 1.75 inches, one and
13 three-quarters inches.

14 Q I want to show you what is already in
15 evidence as State's Exhibit Number 3 and ask you,
16 based on your experience as a forensic pathologist,
17 could that wound reflected in State's 35 have been
18 inflicted by State's Exhibit Number 3, and I have a
19 measuring tape?

20 A A ruler?

21 Q I have a tape and a ruler. If you need to
22 take it out of that bag we can.

23 A That's okay. This, the best I can tell,
24 this, the flat part of this hammer measures about
25 one and five-eighths inches in diameter. The other

DR. JOHN DAVID WREN - DIRECT

1 part measures up to one and a quarter inch. So,
2 it's consistent with that, yes.

3 Q Okay. So, that could have caused the injury?

4 A Yes.

5 Q All right. Did you find any other type skull
6 fractures during your examination of Mr. Reagan?

7 A Yes. Interior and more lateral, more near
8 the ear, and this is the external ear canal here,
9 right here, more in this area the bone had been
10 fractured in multiple pieces and those that, there
11 were lines, fracture lines radiating away from
12 there but not actually connecting with the one
13 above, and then the fracture also extended into the
14 base of the skull, down in this area just above the
15 ear canal and structures in here, right in those
16 areas. And the fracture lines extended both into
17 the, I think it was the middle, the anterior fossa
18 of the area above the eye, and the middle fossa is
19 the depression one can see here, and the posterior
20 fossa is back here, they are divided into left and
21 right. So, the fracture extended to both fossa, so
22 it was, the fracture line was right along, the
23 fracture was right along in here.

24 Q And likewise, Doctor, based on your
25 experience as a forensic pathologist, could that

DR. JOHN DAVID WREN - DIRECT

1 fracture have been caused by State's Exhibit Number
2 3, the ballpeen hammer?

3 A Yes, it could have been but that is somewhat
4 less distinct. It will be a flat, heavy flat
5 object probably of indeterminate size.

6 Q And I'm not asking you to say, but consistent
7 with possibly the side of the hammer?

8 A Yes.

9 Q In addition to the skull fractures, you
10 testified earlier or began to testify that there
11 was resulting hemorrhage and damage to the brain
12 under that skull?

13 A Yes.

14 Q What type injuries were present there?

15 A I stated in my gross dictation there was a 30
16 cc's, which is about an ounce, of subdural
17 hemorrhage. There is a covering over the brain
18 that actually covers the brain, it's a thick
19 fibrous, white fibrous capsule, above that area
20 is called epidural, below that area is called
21 subdural. He had about 30 cc's or an ounce of
22 blood beneath that area and he also had a ten by
23 seven centimeter, which is about four by three inch
24 area of necrosis of the brain tissue in that area,
25 that had surrounding dark discoloration, extended

DR. JOHN DAVID WREN - DIRECT

1 to the midline circularly and it was a majority of
2 the parietal lobe, which is the part of the brain
3 between the anterior and occipital lobes, in that
4 area, moreover, the swelling of the brain and that
5 necrosis and hemorrhage had pushed the brain to the
6 right side, which is called a midline shift.

7 Q Okay. And I'm going to maybe simplify it a
8 little bit for my benefit. A subdural hematoma is
9 basically bleeding inside the brain?

10 A Yes, between the brain itself and the dura
11 that covers it.

12 Q And when the blood -- there is only so much
13 space in a skull, is that fair?

14 A The brain is like gellatin. It's mainly, has
15 a lot of water in it and as such, it can't be
16 compressed very much, but when blood starts
17 bleeding into a space near the brain it will
18 actually push the brain through any other
19 structures that are around, particularly the base
20 of the skull, and it can push it underneath the
21 dura that extends between the two cerebral
22 hemispheres of the brain.

23 Q And, Doctor, when you talk about necrosis of
24 brain tissue, that's actually tissue dying?

25 A Dead tissue.

DR. JOHN DAVID WREN - DIRECT

1 Q Okay. He was treated at the hospital?

2 A Yes.

3 Q I think he lived for eleven days in the neuro
4 ICC unit?

5 A Yes.

6 Q Did they attempt to try to relieve some of
7 that pressure of the blood from the subdural
8 hematoma?

9 A They attempted to remove blood and evidently
10 some had re-accumulated but the brain continued to
11 swell.

12 Q Okay.

13 A And there is a treatment for that but
14 sometimes it doesn't work.

15 Q This left side of the brain controls what
16 side of the body?

17 A The right.

18 Q Okay.

19 A Mainly.

20 Q If a person is struck with an object such as
21 State's Exhibit Number 3, either one or multiple
22 times on this side of the head, what happens to the
23 person, to the victim?

24 A Well, usually that person will lose
25 consciousness just from the trauma. Some people

DR. JOHN DAVID WREN - DIRECT

1 actually retain consciousness or semiconsciousness
2 but it's like being struck, hitting your head, it
3 can daze you, all the way to rendering a person
4 unconscious, which more than likely this person
5 became unconscious rather quickly because of the
6 extreme injuries.

7 Q Before his loss of consciousness would he
8 have had much use of the right side of his body,
9 based on the injuries you saw?

10 A Well, that's a little hard to say but most
11 likely he probably -- it depends. The body is
12 controlled in various areas. Now, the lateral side
13 of the brain is more the head and then it goes on
14 up and as it goes over the top of the head into the
15 midline, the feet, in that area, is covered. Now,
16 he didn't have as much injuries in the lower part
17 or the part that would control the lower part of
18 the body, but he probably lost some control of his
19 right arm. You have to add six days, eleven days
20 of swelling here, so I can't really say what
21 happened then but there is a lot of injuries, and a
22 basilar skull fracture usually renders a person
23 unconscious.

24 Q Doctor, you looked over the body for any
25 other disease or injury, is that fair?

DR. JOHN DAVID WREN - DIRECT

1 A Yes.

2 Q And were there any other type of disease
3 processes or injuries noted that could attribute or
4 cause Mr. Reagan's death?

5 A He had a healing bruise of his left anterior
6 bicep, his left arm. Of course it was healing and
7 it could have been, I couldn't tell exactly how
8 many days but it looked like it was healing and
9 consistent with the injuries, the other injuries.
10 He had emphysema of the lungs and some early
11 bronchial pneumonia which happens a lot of times
12 with people that die after having been in the
13 hospital. His heart was slightly enlarged and he
14 had some hardening of the arteries of his heart.
15 And he had gallstones. They were early, probably
16 associated with a hemorrhage.

17 He also had diverticulitis of his colon which
18 would lead to colonic bleeding but was non life
19 threatening probably. He had some adhesions with
20 some diverticulitis, which is inflammation of the
21 colon and appendix, and he had some polyps in his
22 colon.

23 Q Doctor, based upon your education and
24 experience as a forensic pathologist do you have an
25 opinion within a reasonable degree of medical

DR. JOHN DAVID WREN - DIRECT

1 certainty as to the cause or the result, why this
2 individual died?

3 A Yes. I assigned a cause of death, and there
4 are various mechanisms that lead to a person dying,
5 but what one is interested in is the most remote
6 cause, for instance, if a person has a heart
7 attack, then the heart attack just didn't happen,
8 the heart attack was caused by something else, and
9 most often that's hardening of the arteries, so the
10 cause of death is coronary artery disease. In this
11 case I assigned the cause of death as a closed head
12 injury secondary to blunt force trauma.

13 Q So, that closed head injury is a result of
14 the blunt force trauma that he received?

15 A Yes.

16 Q And he died as a result of that?

17 A Various things happened after that but that
18 was the most distant or remote cause of him dying.
19 I did not render an opinion as to manner of death
20 because it is requested I don't do that.

21 Q Well, do you have an opinion as to the manner
22 of death?

23 A Yes. If I were a medical examiner or coroner
24 it would be homicide.

25 MR. WILLINGHAM: Thank you, Doctor. If you

DR. JOHN DAVID WREN - DIRECT

1 would, answer any questions that the defense lawyer
2 has for you.

3 THE COURT: Cross-examination.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

DR. JOHN DAVID WREN - CROSS

1 CROSS EXAMINATION

2 QUESTIONS BY MR. CHEHOSKI:

3 Q Doctor, I'm Jason Chehoski. I don't believe
4 we have met before.

5 A No.

6 Q In performing this autopsy you noticed two
7 skull fractures?

8 A Yes.

9 Q One was the depressed skull fracture?

10 A Yes.

11 Q The one that measured, I believe, 1.75 inches
12 in diameter?

13 A Yes.

14 Q And then there was another one that was
15 inferior and laterally?

16 A Yes.

17 Q Inferior would be closer to the neck?

18 A It would be closer to the bottom of it, yes.

19 Q Lateral, close to the ear?

20 A Yes.

21 Q That was the second?

22 A Yes.

23 Q And upon Mr. Willingham's questions you
24 testified that both of them could be consistent
25 with State's Exhibit Number 3?

DR. JOHN DAVID WREN - CROSS

1 A Yes.

2 Q Indicating two blows?

3 A Not necessarily but most probably.

4 Q Most probably?

5 A Yes.

6 Q Consistent with two blows?

7 A Yes, closely proximated together. The
8 reason, there is a reason you can't tell for sure
9 because if someone fractures a skull in one place
10 and then another separate blow at a different time
11 occurs and the fracture lines extend far enough,
12 when they reach the fracture line of the initial
13 blow they stop because they do not cross a dead
14 space. Now, there was no evidence it had crossed
15 that line.

16 Q No evidence it crossed a dead line?

17 A No.

18 Q While you couldn't know for sure, you stated
19 most probably?

20 A They were far enough apart that the fracture
21 line did not extend that far.

22 Q You say they radiated toward but did not
23 reach?

24 A Right.

25 Q Your job in this case was to determine the

DR. JOHN DAVID WREN - CROSS

1 manner of death as a forensic pathologist?

2 A No.

3 Q Your job was to perform the autopsy?

4 A My job was to perform the autopsy and give
5 the cause of death. The coroner reserves the right
6 to assign the manner of death in this county.

7 Q Again I thought you had, upon Mr.
8 Willingham's questions, he asked you if you were to
9 determine the cause of death, and you said manner
10 of death?

11 A He asked me why we did autopsies, yes,
12 generally. We were talking generally then.

13 Q Generally?

14 A Uh-huh (Affirmative).

15 Q Doctor, you also stated that upon receiving
16 the injuries such as you examined, that it was most
17 likely that the person receiving that injury would
18 lose consciousness?

19 A Rather quickly, yes. It's possible they
20 could remain conscious.

21 Q All right.

22 A If the circular blow were rendered first he
23 could probably stay conscious for awhile. The
24 second one would have been more severe and probably
25 would have knocked him unconscious.

DR. JOHN DAVID WREN - CROSS

1 Q So, it's possible he could remain conscious
2 for awhile, as you just stated?

3 A Yes.

4 Q You stated that he would lose, he would
5 probably lose some control of his right arm?

6 A Yes.

7 Q and if he had remained conscious, given that,
8 you stated that the left side of the brain controls
9 the right side of the body?

10 A As far as motor movement, yes.

11 Q Motor movement, and the right side of the
12 brain controls the left side of the body as far as
13 motor movements?

14 A Yes.

15 Q Since there is no injury to the right side of
16 the brain, assuming he's conscious, he would still
17 have control of the right side?

18 A Left side.

19 Q The left side, I apologize.

20 MR. CHEHOSKI: Your Honor, one moment,
21 please.

22 THE COURT: Take your time.

23 MR. CHEHOSKI: Thank you doctor. I have no
24 further questions at this time.

25 THE COURT: Redirect examination?

DR. JOHN DAVID WREN - CROSS

1 MR. WILLINGHAM: No, sir, Your Honor, thank
2 you.

3 MR. CHEHOSKI: No objection to him being
4 excused.

5 THE COURT: Watch your step, sir, thank you
6 very much. The witness may be excused. You may
7 stay with us, of course, but you may leave the
8 building if you wish.

9 (Witness excused).

10 MR. WILLINGHAM: Your Honor, may we approach?

11 THE COURT: Yes.

12 (Unrecorded bench conference).

13 THE COURT: Madam Forelady and ladies and
14 gentlemen, we're going to recess for today. Do not
15 discuss the case by, between and among yourselves,
16 do not discuss the case with anyone at all
17 whatsoever. If anyone does attempt to discuss the
18 case with you, of course as you know, you have
19 almost memorized these remarks, tell them
20 immediately that you are a juror and you may not
21 discuss the case. If after you alert and make
22 aware any person or persons that you are a juror
23 they continue to ask questions or probe about the
24 case, that would be highly irregular and should be
25 suspicious and it's wrong and its highly illegal.

1 You should use every means at your disposal to
2 identify that person or persons and report that to
3 one of the bailiffs who is at the door when you
4 come in in the morning.

5 Do not pay attention at all to any media
6 coverage that may come to your eyes or ears. It is
7 not evidence and you know that you are to decide
8 the case based on the evidence that's presented
9 here in front of you.

10 Now, it's known that things may come before
11 your ears just by happenstance but as soon as you
12 realize that it concerns this case it's your
13 responsibility to disregard it, put it aside, turn
14 it over, turn it off, do whatever is necessary to
15 continue your oath to well and truly try this case
16 upon the law and evidence that's developed in this
17 courtroom. Please do that. We have had some
18 instances where inadvertently and by happenstance
19 something has come to the attention of two of you.
20 That may happen but as soon as you know it involves
21 this case disregard it, disabuse your mind of it
22 and pay attention only to the evidence as that's
23 developed here in this courtroom. That's extremely
24 important. Both parties are entitled to your
25 unbiased interpretation of the evidence presented

1 here in the courtroom. You haven't heard all the
2 case.

3 We have some persons who will be here
4 tomorrow and we will hopefully give the case to you
5 maybe tomorrow afternoon. The Court does not know
6 what will be presented, so hopefully we will give
7 the case to you tomorrow afternoon. And if not, we
8 will certainly let you know that's not possible in
9 time for you to make preparations. We will try to
10 let you know by lunch time if we are not going
11 finish tomorrow afternoon, or at least give you the
12 case, Madam Forelady and ladies and gentlemen, by
13 tomorrow afternoon.

14 So, having said that, please have a pleasant
15 evening and be back in court, in the jury room at
16 10:00 a.m., 10:00 a.m.

17 Everyone else remain seated.

18 (The jury was excused from the courtroom).

19 THE COURT: Anything from the State?

20 MR. WILLINGHAM: No, sir, Your Honor, thank
21 you.

22 THE COURT: From the defense?

23 MR. CHEHOSKI: No, sir.

24 THE COURT: Thank you. Let's see, there was
25 an objection to the photo and I believe that you

1 placed that objection on the record completely?

2 MR. CHEHOSKI: Yes, sir, I believe so, and
3 there is nothing more to add to that particular
4 objection.

5 THE COURT: All right. We are in recess
6 until 10:00 a.m.

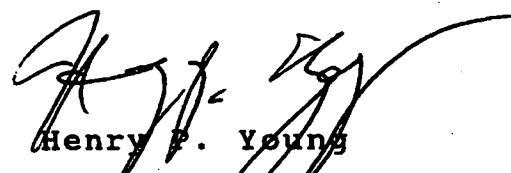
7 (Recessed at 3:50 p.m.).
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Spartanburg County, South Carolina, on the 22nd day of September, 2005.

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

November 19, 2005



Henry P. Young
Court Reporter

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

2002-GS-42-5209

2003-GS-42-2201

COUNTY OF SPARTANBURG

STATE OF SOUTH CAROLINA,

-vs-

JOSHUA GREER,

Defendant.

B E F O R E:

HONORABLE WYATT T. SAUNDERS

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

JAMES DONALD WILLINGHAM, II, Esquire
MELISSA MILLICAN, Esquire
Attorney for the State

JASON SCOTT CHEHOSKI, Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

VOLUME IV of IV

September 23, 2005

1 (Convened at 10:12 a.m.).

2 THE COURT: Good morning.

3 MR. WILLINGHAM: Good morning, Judge.

4 MR. CHEHOSKI: Good morning.

5 THE COURT: We will open the record in State
6 of South Carolina versus Joshua Greer, indictment
7 2002-5209, 2003-2201.

8 Anything from the State before the jurors
9 come out, please?

10 MR. WILLINGHAM: The State's ready, Your
11 Honor.

12 THE COURT: From the defense?

13 MR. CHEHOSKI: Your Honor, there is one
14 matter that came to mind last night after we broke.
15 The path this trial has taken and the importance
16 that the State has placed in bringing to your
17 attention the possibility of third-party guilt, I
18 don't know what Mr. Green is going to testify to
19 but I feel that if the State, the State might be
20 asking some questions that could possibly elicit
21 incriminating response. Because of that, Your
22 Honor, I feel that before he takes the stand and
23 before he gets in front of the jury he should be
24 advised of his Fifth and Sixth Amendment rights,
25 the right to self incrimination, the right to an

1 attorney, and he be afforded that right should he
2 choose to exercise it. Again, Your Honor, just out
3 of an abundance of precaution.

4 THE COURT: Thank you. Solicitor Willingham?

5 MR. WILLINGHAM: Judge, I don't anticipate
6 Mr. Green confessing to any crimes while he's on
7 the stand. In fact, he's in custody now, and in
8 order to get him back here the State had to grant
9 him immunity for any process that may be served on
10 him between Colorado and here. If the Court wants
11 to advise him of his Fifth Amendment rights I
12 invite the Court to do so. I just don't know that
13 it's necessary.

14 THE COURT: It doesn't appear to be necessary
15 but as Mr. Chehoski has said, out of an abundance
16 of precaution we will take up that matter. Is Mr.
17 Green here?

18 MR. WILLINGHAM: Yes, Your Honor, he is.

19 THE COURT: Mr. Green, if you will stand
20 where you are, sir, raise your right hand.

21 WILLIAM GREEN,
22 after being first duly sworn stated as follows:

23 THE COURT: Thank you, sir. Mr. Green, it's
24 anticipated that you may be called as a witness to
25 testify in this case. Do you understand that?

1 WILLIAM GREEN: Yes, sir.

2 THE COURT: Now, you do not have to testify
3 to anything that may tend to incriminate you in any
4 way of having violated the law. Do you understand
5 that?

6 WILLIAM GREEN: Yes, sir.

7 THE COURT: You may invoke your right not to
8 testify in the event you feel you do not wish to
9 testify on the basis that it may tend to
10 incriminate you. Do you understand that?

11 WILLIAM GREEN: Yes, sir.

12 THE COURT: You also are entitled to an
13 attorney. If you want an attorney the Court will
14 appoint an attorney for you to talk with before you
15 go on the stand to testify. Do you understand you
16 have the right to an attorney?

17 WILLIAM GREEN: Yes, sir.

18 THE COURT: Do you want an attorney?

19 WILLIAM GREEN: No, sir.

20 THE COURT: Do you wish to testify?

21 WILLIAM GREEN: Yes, sir.

22 THE COURT: Do you wish to ask him any
23 questions, Counsel?

24 MR. CHEHOSKI: I think that's satisfactory.

25 THE COURT: Any questions, counsel?

1 MR. WILLINGHAM: No, sir.

2 THE COURT: Mr. Green, thank you very much.
3 Anything further?

4 MR. CHEHOSKI: Nothing from the defense.

5 MR. WILLINGHAM: Nothing from the State.

6 THE COURT: Show the jury in, please.

7 (The jury returned to the courtroom).

8 THE COURT: All the jurors are present, with
9 the forelady and the alternates properly seated.

10 Ladies and gentlemen, through your foreperson
11 you have asked of the Court, "We don't know your
12 name, please introduce yourself. Thank you."

13 And this judge was not the qualifying judge
14 and please allow me to apologize for not having
15 introduced myself. I generally do that during
16 qualification, but since that was not left to me,
17 but to Judge Macaulay, this is appreciated and thank
18 you very much for it.

19 My name is Wyatt Saunders, I'm a Circuit
20 Court Judge and my home circuit is the Eighth
21 Circuit and that's made up of Laurens, Greenwood,
22 Abbeville and Newberry Counties. Judges in South
23 Carolina travel all over the State. Circuit Judges
24 may serve in their home circuit, of which I'm the
25 resident judge and the chief judge of that circuit,

1 but we also are assigned from time to time to
2 counties all over the State, as far away as
3 Charleston or Oconee or Beaufort or wherever, so
4 that's our rotation system that you don't have the
5 same judge all the time sitting in the same
6 courthouse or the same place. We think it's a good
7 system and we're one of the few states that do that
8 but we still maintain that. When you hear the term
9 circuit judge, it means the old circuit rider, we
10 go from place to place, so it's my pleasure and
11 privilege to be with you during this term of
12 General Sessions Court.

13 And thank you for the question.

14 JUROR: Thank you.

15 THE COURT: We will ask, sir, this be marked
16 as a Court's exhibit.

17 (Juror note marked as Court Exhibit
18 Number 6).

19 THE COURT: The matter lies with the State.
20 Call your next witness, please.

21 MR. WILLINGHAM: Thank you, Your Honor. We
22 call Butch Green.

23

24

25

WILLIAM GREEN - DIRECT

1 WILLIAM GREEN,
2 after being first duly sworn testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. WILLINGHAM:

5 Q Tell us who you are.

6 A May name is William Green.

7 Q Mr. Green, I need you to speak up so I can
8 hear you.

9 A William Frank Green.

10 Q Do you have a nickname?

11 A Yes, sir. I went by the nickname of Butch
12 for a long time. That was a nickname given to me
13 by my mom.

14 Q Okay. A lot of folks here in South Carolina
15 know you as Butch Green.

16 A That is probably the only way they know me,
17 sir, for the short time I was in South Carolina.

18 Q Did you know Paul Reagan, a lot of people
19 knew him as Doc?

20 A Yes, sir, I did, I met Paul.

21 Q How long did you know Paul?

22 A Probably, approximately four and a half or
23 five months.

24 Q Okay. And you lived near Doc?

25 A I had a trailer right behind the house that

WILLIAM GREEN - DIRECT

1 Doc was staying in over off Drayton Road.

2 Q This is a diagram that has been used a good
3 bit this week. This is Drayton Road, that is where
4 Deno lived, it has been testified to Doc lived
5 there.

6 A Uh-huh (Affirmative).

7 Q They put you in that camper behind there.

8 A Yes, sir.

9 Q Is that right?

10 A Yes, sir.

11 Q That's where you stayed?

12 A Right, yes, sir.

13 Q I show you what has been marked as State's
14 Exhibit Number 36. Do you recognize that?

15 A Yes, sir, that's the trailer.

16 Q That's where you lived?

17 A Yes, sir.

18 Q Is that how it looked back in August of 2002?

19 A Yes, sir.

20 MR. WILLINGHAM: Your Honor, at this time I
21 move State's Exhibit 36 into evidence.

22 MR. CHEHOSKI: Without objection.

23 THE COURT: Number 36 is admitted into
24 evidence, ladies and gentlemen.

25 MR. WILLINGHAM: Thank you, Your Honor.

WILLIAM GREEN - DIRECT

1 (Photograph of camper marked and received
2 in evidence as State's Exhibit Number 36).

3 BY MR. WILLINGHAM:

4 Q Who lived with you?

5 A In the trailer, sir?

6 Q Yes, sir.

7 A No one.

8 Q Okay. Now, on August 19th, 2002, were you
9 over at Doc's house?

10 A Yes, that evening, yes, I was.

11 Q Okay. And who was over there when you were
12 there?

13 A When I first got there?

14 Q Uh-huh.

15 A There was a gentleman I didn't know, Doc
16 himself, and me.

17 Q Okay. Later on in the evening did more
18 people come there?

19 A Yes, sir.

20 Q Who came there?

21 A The gentleman sitting right over there at
22 defense table and his girlfriend.

23 Q Okay. Did you know these people?

24 A I had met them on one or two occasions
25 before. I knew them, I didn't really know that

WILLIAM GREEN - DIRECT

1 much about them but I had met them, yes.

2 Q Did you know his name?

3 A Paul, I believe.

4 Q Do you see the person here in the courtroom
5 you saw?

6 A Yes, sir, sitting right over there with
7 glasses.

8 Q What shirt is he wearing?

9 A Blue.

10 THE COURT: The record will indicate that
11 he's identifying the defendant.

12 Q Thank you. Did you leave Doc's that evening?

13 A Yes, sir.

14 Q About what time?

15 A It was approximately 9:30.

16 Q And where did you go?

17 A I went to the trailer.

18 Q I'm sorry?

19 A I just went to the trailer, locked the door,
20 turned on the air-conditioner and TV.

21 Q Back at your house?

22 A Yes, sir.

23 Q And who was still at Doc's when you left?

24 A The gentleman I hadn't met before, the
25 gentleman over there with his girlfriend, and Doc.

WILLIAM GREEN - DIRECT

1 Q You say it was about 9:30?

2 A Yes, sir.

3 Q Once you got back to your camper what did you
4 do? You said you watched TV?

5 A I was watching the ballgame for a little
6 while, then Doc and I had just fixed the overhead
7 air conditioner in the trailer and I was
8 incorporating that as it is quite humid down here
9 in South Carolina, you all know, and I watched a
10 little bit of the game and fell asleep.

11 Q During that night did you ever hear anything
12 out of the ordinary?

13 A No, sir, I did not.

14 Q The next morning did anything unusual happen?

15 A Doc was one of those early risers and he had
16 a habit of coming out and knocking on the side of
17 the trailer quite early to get me up, in fact he
18 had a little saying, you know, the statement to me,
19 get your yankee, lazy yankee rear end up.

20 MR. CHEHOSKI: Object to hearsay, Your Honor.

21 MR. WILLINGHAM: It's not offered for the
22 truth of the matter asserted.

23 THE COURT: It's overruled.

24 THE WITNESS: He told me to get my little
25 yankee rear end up out of bed, but he never showed

WILLIAM GREEN - DIRECT

1 up that morning. I kind of got curious and I
2 looked out the window and I noticed the house was
3 still unlocked, the doors were open. That is
4 pretty unusual, I thought, for Doc. Usually, no
5 matter what, he usually closed the doors at least,
6 you know. And at that point I kind of eased in the
7 back, through the kitchen and, through the back
8 kitchen door, and I know he always slept on the
9 couch.

10 BY MR. WILLINGHAM:

11 Q We will use this diagram as well of Doc's
12 house.

13 A I came in through the back door to the
14 kitchen, right through here, my trailer was right
15 here, I came through this door.

16 Q Right.

17 A And I was calling his name kind of gently,
18 you know, and just going hey Doc, Doc. I came up
19 like this and I sneaked around the corner, and the
20 couch that he usually slept on was right here, you
21 know, the doors were open but the curtains were all
22 drawn, it was kind of dark and I couldn't see real
23 well but I could see him laying there and he looked
24 fine, you know, he was actually even snoring and,
25 you know, I just assumed that everything was kind

WILLIAM GREEN - DIRECT

1 of okay. I called his name again, hey Doc, and he
2 didn't stir at all. I did notice at that time that
3 there appeared to be what I thought in the dark
4 there to be jelly, you know, on the floor and I
5 just, I saw a jelly jar laying there, it wasn't
6 unusual for Doc to buy a big containers like from
7 Walmart or, you know, department stores of peanut
8 butter or jelly, I saw one laying on the floor and
9 I kind of chuckled to myself a little bit, he got a
10 little sloppy when he was making that sandwich last
11 night before he went to bed. I just kind of eased
12 back out and went back to my trailer.

13 Q So, you didn't wake him?

14 A No, sir.

15 Q How far did you come in?

16 A I didn't really go any farther than this
17 kitchen.

18 Q Okay.

19 A You know, I just kind of looked around the
20 corner, I wasn't really comfortable, although Doc
21 had mentioned to me many times I was welcome to
22 come in the house at anytime, I just wasn't real
23 comfortable doing that, that was just not the way I
24 was raised. I felt kind of, like I was violating
25 anyway by even kind of sneaking in the way I did,

WILLIAM GREEN - DIRECT

1 so I just exited very quietly and let him sleep.

2 Q Did you learn later that that wasn't jelly?

3 A It was about fifteen minutes later that Deno
4 came and knocked on the door to the trailer, and
5 Deno owned everything there.

6 Q I was going to ask you who Deno is.

7 A He's the owner of all the property that we
8 were staying at.

9 Q Okay.

10 A He owned the trailer I was staying at, he
11 owned the house Doc was living in, he owned the
12 front house, he owned everything, it was all his,
13 and Deno didn't, you know, he would knock as a
14 courtesy but he would always come right in, and I
15 said come on in, he walked right into the trailer,
16 came back to my little area back there by the couch
17 which is a bed, where I was sitting there watching
18 TV, and told me that something was wrong with Doc.

19 MR. CHEHOSKI: Objection, hearsay, Your
20 Honor.

21 THE COURT: Overruled.

22 A He told me something was wrong with Doc, that
23 somebody had beat him up. I went, "What? What are
24 you talking about, I just saw him?" Then he said,
25 "There is blood everywhere." I said, "No, that's

WILLIAM GREEN - DIRECT

1 jelly." He goes, "You better come look again."

2 Q Did you go anywhere with Deno?

3 A Yes, sir. We walked back into the house and
4 we came back in the back door, but this time we
5 came, Deno came all the way up into the living area
6 and I came around the corner this time to take a
7 better look, and by this time Deno had opened the
8 drapes and there was a lot more light coming in and
9 I got a different view of the situation and was
10 pretty shocked at what I saw.

11 Q What did you see?

12 A There was an excessive amount of blood
13 everywhere, what I had thought earlier to be jelly
14 was blood, there were ants everywhere, I have never
15 gotten over that, I couldn't believe the amount of
16 ants that were all over the floor, all over the
17 furniture. At that time Deno kind of touched Doc
18 on the shoulder and he rolled from the position he
19 was in and that is when we noticed the head wound
20 that someone inflicted upon him and that's when I
21 said, I remember distinctly going, "Oh, my God,
22 call 911," and so he --

23 Q Did Doc ever say anything to you?

24 A No. The only, when the paramedics were
25 there, before the police got there the paramedics

WILLIAM GREEN - DIRECT

1 were attending to him and when they went to put him
2 on the gurney he awoke for just a minute, looked
3 startled and tried to, like he was fighting with
4 them a little bit and she tried to calm him, he
5 opened his eyes but he never said anything.

6 Q And did the police arrive?

7 A The police arrived shortly after that, yes,
8 sir. In fact, Deno was outside to meet the police
9 officers, I was still inside with the paramedics,
10 and at that point the paramedic was trying to, you
11 know, tell me that let's go outside, let's go
12 outside. I guess at that point I was actually
13 going into a little bit of shock with the situation
14 and what was happening.

15 Q At some point did you ever go back into your
16 camper?

17 A Yes, sir, I did. Right after we called 911 I
18 went back in to get my wallet, I knew I was going
19 to need that with the police coming.

20 Q Well, let me ask about that. Where are you
21 from?

22 A Colorado Springs, Colorado.

23 Q And you still live in Colorado?

24 A Yes, sir.

25 Q As a matter of fact you were there yesterday?

WILLIAM GREEN - DIRECT

1 A Yes, sir, I was.

2 Q You had a warrant outstanding for you in
3 Colorado at the time this happened?

4 A Yes, sir, I did, I was a fugitive from
5 justice.

6 Q For what charge?

7 A Manufacturing of methamphetamines, I was, I
8 had violated my probation and was trying to run
9 away from my problems and trying to run away from
10 my addiction.

11 Q And that was, coming to South Carolina was a
12 violation of your probation?

13 A Of course, yes, sir. I had violated my
14 probation before I ever left Colorado.

15 Q When the police got there you told them that?

16 A Yes, sir, I did.

17 Q Did you also tell them what had happened,
18 what you had found?

19 A Yes, sir, I did.

20 Q I want to ask you about that. Did you give a
21 statement to law enforcement?

22 A Yes, sir, I did.

23 Q That statement was given on August 20th,
24 2002. Is that correct?

25 A Yes, sir.

WILLIAM GREEN - DIRECT

- 1 Q That's your signature at the bottom of it?
- 2 A Yes, sir, it is.
- 3 Q It looks like you gave that statement at
- 4 11:30 in the morning?
- 5 A Yes, sir.
- 6 Q The morning that you found Doc?
- 7 A Yes, sir.
- 8 Q A concern I've got, Mr. Green, nowhere in
- 9 that statement does it talk about you going in that
- 10 house the first time.
- 11 A I realize that.
- 12 Q Why not?
- 13 A I told, I told Deno when he first came in and
- 14 I told the investigating officer at the time, and
- 15 if you look, it's not really an excuse, sir, at all
- 16 but I had already spoken about it so I just wrote
- 17 the short condensed version, but I had mentioned it
- 18 to the investigating officer.
- 19 Q Well, Mr. Green, they looked at you pretty
- 20 hard, didn't they?
- 21 A I didn't realize it at the time, sir, but I
- 22 guess I was one of the, I was the prime suspect at
- 23 that time because of my history and because of my
- 24 record, I was the prime suspect.
- 25 Q I hand you State's Exhibit Number 30. They

WILLIAM GREEN - DIRECT

1 took your jeans, didn't they?

2 A Yes, sir, they did.

3 Q State's 31, they took your bed sheet?

4 A I wasn't aware of that but I'm sure I'm
5 thinking they probably did.

6 Q They talked to you for a long time, didn't
7 they?

8 A I was interviewed quite extensively by the
9 Spartanburg Police Department over a very extended
10 period of time.

11 Q And ultimately they let you go?

12 A Yes, sir. It was their belief that I was not
13 involved in any way, shape or form with this.

14 Q Were you involved?

15 A No, sir, I was not. I came to Spartanburg
16 for one reason, sir, I wasn't forced to come back
17 here, I wasn't extradicted back here, I freely came
18 back on my own free will to tell the people of
19 Spartanburg I did not hurt that man. He was a
20 friend of mine and a time in my life when I needed
21 a friend he was a friend to me and I wouldn't, I
22 just, I wouldn't have done anything to him.

23 Q You're in custody now?

24 A Yes, sir.

25 Q For a traffic offense?

WILLIAM GREEN - DIRECT

1 A Yes, sir, habitual traffic offender.

2 Q And when we asked you to come back the judge
3 told you out there you didn't have to?

4 A Yes, sir, he did.

5 Q But you came back on your own?

6 A Yes, sir, I did.

7 MR. WILLINGHAM: Answer any questions the
8 defense attorney has.

9 THE COURT: Cross-examination.

10 MR. CHEHOSKI: Thank you, Your Honor.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

WILLIAM GREEN - CROSS

CROSS EXAMINATION

QUESTIONS BY MR. CHEHOSKI:

Q The first time you went into that house you came through this door here?

A Yes, sir.

Q Your trailer was right here?

A Yes, sir.

Q And you said you came as far as this kitchen?

A Yes, sir.

Q When you left that first time you went out that same door?

A Yes, sir.

Q The second time when Deno got you, you went through the same door?

A I'm sorry, now?

Q The second time you went in the house when Deno got you, you came in through the same door?

A Yes.

Q That second time you also came all the way into the living room?

A Yes, sir.

Q Did you ever touch Doc?

A No, sir.

Q You never touched Doc?

A No, sir.

WILLIAM GREEN - CROSS

- 1 Q Deno touched Doc?
- 2 A I believe so, yes, sir.
- 3 Q You learned that the police did take your
- 4 jeans?
- 5 A Yes, sir.
- 6 Q They never took your shoes?
- 7 A No, sir.
- 8 Q And you testified on direct that EMS arrived
- 9 on the scene before the police?
- 10 A Yes, sir.
- 11 Q And they attended to Doc?
- 12 A Yes.
- 13 Q The police came soon thereafter?
- 14 A Yes.
- 15 Q You were in the house while EMS was attending
- 16 to Doc?
- 17 A Yes.
- 18 Q At some point you left the house again,
- 19 right?
- 20 A When the police arrived.
- 21 Q Did you go through this door again?
- 22 A No, I went out the front door.
- 23 Q You went out the front door?
- 24 A Yes.
- 25 Q You didn't hear anything unusual that night?

WILLIAM GREEN - CROSS

1 A No, sir.

2 Q You didn't see anything unusual that night?

3 A No, sir.

4 MR. CHEHOSKI: May I have one moment, please,
5 Your Honor?

6 THE COURT: Take your time.

7 Q When you gave that written statement to the
8 police that Mr. Willingham showed you, that
9 statement was, you were telling the police the
10 truth?

11 A Yes.

12 Q And the whole truth?

13 A Yes.

14 Q And nothing but the truth?

15 A Yes, sir.

16 Q That wasn't the whole truth, though, was it?

17 A Yes, it was.

18 Q Mr. Willingham just asked you, it wasn't in
19 the statement that you went in the house that first
20 time?

21 A I told the police officer that, the
22 investigating officer that I had, before I wrote
23 the report, before I wrote the statement I told him
24 that I had been in the house.

25 Q But that fact that you went in the house the

WILLIAM GREEN - CROSS

1 first time was not, is not in that statement?

2 A No, because I told the police officer.

3 MR. CHEHOSKI: Thank you. Nothing further,
4 Your Honor.

5 THE COURT: Redirect?

6 MR. WILLINGHAM: Very briefly.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

WILLIAM GREEN - REDIRECT

REDIRECT EXAMINATION

QUESTIONS BY MR. WILLINGHAM:

Q You indicated on cross-examination you didn't hear anything unusual. If anything was going on at Doc's house would you have been able to hear it from inside your camper?

A I really wish I hadn't had the air-conditioner on that night. I wish a lot of different things that night because probably if I wouldn't have that air-conditioner on I may have heard something, maybe my presence would have deterred a horrible situation that touched so many lives. I have to live with that every day, I have to live every day of my life with what I saw that night, or that morning. It's not easy and it's changed my life. That's part of, it has been part of the influence in my life to get over my own personal struggles, that's what sent me to the rehab for two years after I got back to Colorado.

MR. CHEHOSKI: Objection, Your Honor, this is not relevant.

THE COURT: Overruled.

A It's been the motivating factor in my life that sent me to rehab for two years. It's been the motivating factor in my recovery to this point. At

WILLIAM GREEN - REDIRECT

1 this point in my life I have over three and a half
2 years of clean time, which I'm extremely proud of,
3 and I have the, the person I'm talking about today
4 basically in his demise I have to thank for that in
5 a roundabout way. It's a horrible thing to say but
6 something good did come out of it, and that's my
7 commitment to my sobriety.

8 MR. WILLINGHAM: Mr. Green, thank you for
9 being here.

10 THE COURT: Recross?

11 MR. CHEHOSKI: No, sir, nothing further.

12 THE COURT: Thank you. Come down, please.

13 (Witness excused).

14 MR. WILLINGHAM: Your Honor, at this time the
15 State rests.

16 THE COURT: That is the State's case, ladies
17 and gentlemen, the case in chief, as we discussed.
18 We will have to take up a matter of law. Do not
19 discuss the case by, between and among yourselves
20 and retire to the jury room, please.

21 (The jury was excused from the courtroom).

22 THE COURT: Motions?

23 MR. CHEHOSKI: Yes. At this time, at the end
24 of the State's case the defense moves for a
25 directed verdict of not guilty based on, based on

1 all the evidence introduced by the State. In a
2 light most favorable to the State I believe that no
3 reasonable juror would be able to find Mr. Greer
4 guilty. Your Honor, this is, looking at again all
5 the evidence and in a light most favorable to the
6 State, no reasonable juror could find the defendant
7 guilty and we move for a directed verdict of not
8 guilty.

9 THE COURT: How says the State?

10 MR. WILLINGHAM: Your Honor, I believe there
11 is ample evidence on every element of both
12 indictments, there is murder, unlawful killing of
13 another person with malice aforethought, blunt
14 force trauma to the head, Paul Reagan is deceased,
15 it was inflicted by the defendant by his own
16 statement, which is evidence of malice, simple use
17 of a deadly weapon in itself would be sufficient
18 evidence of maliciousness in this case, Your Honor.

19 As for as armed robbery, it's unlawful taking
20 of the personal property of a person by another.
21 You can't get any more forceful than a ballpeen
22 hammer beside the head. That again is a deadly
23 weapon. We've satisfied the armed robbery. I
24 believe there is sufficient evidence for this jury
25 to find the defendant guilty of both charges and we

1 respectfully ask the Court to deny the defense's
2 motion for directed verdict.

3 THE COURT: Thank you. The Court is not
4 concerned with the weight of the evidence at this
5 juncture but is concerned with the existence of
6 evidence, and the Court finds that there is the
7 existence of evidence such as would support the
8 charges against the accused Mr. Greer. The motion
9 is denied, respectfully.

10 We'll take a few minutes.. While we break --
11 Solicitor, are you on your feet?

12 MR. WILLINGHAM: Just as a housekeeping
13 matter, Judge, I just want to ensure that the
14 record is clear the State during its presentation
15 of the case introduced Exhibits 1 through 28,
16 followed by 30 through 36, I believe was that last
17 photograph was entered, I just want to make sure,
18 yes, sir, 36, I want to make sure the record was
19 clear that those we have introduced into evidence.

20 MR. CHEHOSKI: And 29 was not introduced, is
21 that correct?

22 MR. WILLINGHAM: No, 30 through 36.

23 MR. CHEHOSKI: That's correct, okay. That's
24 my understanding as well, Your Honor. The defense
25 did not introduce any evidence to this point.

1 THE COURT: If you wish you may marshal the
2 evidence and see to it in corroboration with Mr.
3 Young, the court reporter, and assure yourself that
4 all things have been properly marked.

5 MR. WILLINGHAM: Your Honor, we took that
6 step this morning, I believe we're correct, I just
7 want to be sure it's on the record.

8 Thank you, Your Honor.

9 THE COURT: We will be at ease for just a few
10 minutes. Once the jurors go out it's a little bit
11 rude to ask them to step right back in, but the
12 Court will inquire will there be a defense?

13 MR. CHEHOSKI: Your Honor, at this time the
14 defense, we're not putting up, we anticipate we're
15 not putting up a case. I would like the Court to
16 inquire of Mr. Greer of his intent on whether or
17 not he chooses to testify.

18 THE COURT: We'll do that now. Mr. Greer,
19 sir, will you please stand and raise your right
20 hand. Do you swear or affirm that the testimony
21 you're about to give before the Court will be the
22 truth, the whole truth and nothing but the truth,
23 so help you God?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Thank you. Remain standing,

1 please.

2 Mr. Greer, you have a right to testify in
3 your own defense if you wish to do that. Were you
4 to testify in your own defense you would answer
5 questions asked by your attorney and you would be
6 cross-examined by the attorney for the State. You
7 have a right to testify if you wish. On the
8 contrary, you have your absolute constitutional
9 right to remain silent. Nobody has any authority
10 to force you to say anything unless you wish to
11 testify, and if you wish to testify you have an
12 absolute right, as you have the absolute right to
13 remain silent.

14 Do you understand your rights?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: What is your preference? Now,
17 you can talk with your attorney before, you don't
18 have to immediately say it now unless you have
19 already discussed this inquiry.

20 THE DEFENDANT: I choose to remain silent.

21 THE COURT: Very well, sir. Thank you.

22 Then it appears that we will go into closing
23 statements?

24 MR. CHEHOSKI: Yes, sir.

25 MR. WILLINGHAM: Yes, Your Honor.

1 THE COURT: We'll take a little longer break
2 than we anticipated in order that you gather your
3 thoughts, and the State will go first and counsel
4 for defense will close.

5 MR. CHEHOSKI: Yes, sir.

6 THE COURT: Any questions?

7 MR. WILLINGHAM: No, sir.

8 THE COURT: There will be two arguments, one
9 by the State, one by the defense.

10 MR. CHEHOSKI: Yes, sir. Actually there is
11 one question. During my presentation I do
12 anticipate needing a little bit of setup time. I
13 am planning on using this device here which I'm not
14 familiar with and what I was concerned about, if it
15 does take some time for me to get ready, I might be
16 requesting that the jury be sent back to the jury
17 room in order for me to get set up.

18 THE COURT: How much time do you believe that
19 will take?

20 MR. CHEHOSKI: No more than five minutes.

21 THE COURT: Can you familiarize yourself with
22 the equipment now sufficiently so that we can give
23 them both arguments without interruption?

24 MR. CHEHOSKI: I will do that, Your Honor.

25 THE COURT: Please try and accomplish that

1 and, Mr. Willingham, if you would assist him --

2 MR. WILLINGHAM: I will.

3 THE COURT: -- in learning how to use the
4 device, that would be appreciated.

5 We stand in recess.

6 (Recessed at 10:48 a.m.).

7 (Reconvened at 11:40 a.m.).

8 THE COURT: The record is open, State of
9 South Carolina versus Joshua Greer, indictment
10 2002-5209 and 2003-2201.

11 Is there anything from the State before the
12 jurors come out?

13 MR. WILLINGHAM: No, sir, Your Honor, thank
14 you.

15 THE COURT: From the defense?

16 MR. CHEHOSKI: Nothing, Your Honor.

17 THE COURT: Thank you. Show the jury in
18 please. Are you ready to go forward, Solicitor?

19 MR. WILLINGHAM: Yes, sir.

20 THE COURT: Very well. Show the jury in,
21 please.

22 (The jury returned to the courtroom).

23 THE COURT: All the jurors are present, with
24 the forelady and the alternates properly seated.

25 The jurors are with you, Solicitor, on final

1 summation.

2 MR. CHEHOSKI: Your Honor, I think at this
3 time we would like the Court to know the defense
4 rests.

5 THE COURT: Thank you very much. Ladies and
6 gentlemen, the defense has no burden and the
7 defense has rested. All of the evidence has
8 concluded and we are now prepared for final
9 summations, sometimes called final argument, and
10 this is the absolute right of a defendant, as you
11 will be told momentarily in the charge, to remain
12 silent.. He has no burden, as you were told at the
13 opening of instructions that the Court gave you,
14 there is no burden upon the defendant, the burden
15 is upon the State to prove his guilt beyond a
16 reasonable doubt.

17 Solicitor.

18 MR. WILLINGHAM: Thank you, Your Honor, if it
19 please the Court.

20 He was a good man. Paul Reagan died. Doc,
21 he was a good man. If you remember back to
22 Tuesday, the first witness that the State called to
23 this witness stand, Deno, when asked about how he
24 found him, what he saw, he shook his head, "He's a
25 good man, he didn't deserve this." He was a simple

1 man. He was a man that earned a living cutting
2 wood. He was a man that didn't have a whole lot of
3 luxuries in life. But he was a kind man. He was a
4 man that didn't have a whole lot of money, didn't
5 have a whole lot of things but he would give you
6 \$20 if you needed it. If you were down on your
7 luck, if you were out of a job, if you were having
8 hard times, if you needed a little bit he would let
9 you borrow it. He did that with Mark Greer. He
10 was a good man. A good man who was sitting in his
11 own house minding his own business and his life was
12 taken from him by a bad man.

13 What I like to do in statements to the jury
14 is talk about the facts and take those facts and
15 talk about the law the judge is going to give you.
16 I'm not going to go back through four days of
17 testimony. You all have all been here, you have
18 all heard it, you have all been attentive, and on
19 behalf of the State of South Carolina and on behalf
20 of the family and Paul Reagan, I thank you for
21 that. You have had to see some things you hadn't
22 wanted to see, you have seen some things that have
23 been hard to look at, there are probably a million
24 other places you would rather be today than right
25 here, but I appreciate it because your job is

1 important.

2 What I want to do is go through the law, go
3 through the elements and show you how the State of
4 South Carolina has met those elements, each and
5 every element beyond a reasonable doubt.

6 Murder. The judge will tell you in a little
7 bit when he charges you the law that murder is the
8 unlawful killing of another person with malice
9 aforethought. Those are the elements.

10 Malice aforethought. What evidence do we
11 have of killing? Dr. Wren testified yesterday Paul
12 Reagan's head was fractured and that fracture was
13 caused by blunt force trauma, one, possibly two
14 blows to the side of the head that caused his skull
15 to break, which caused his brain to bleed, which
16 caused his brain to swell and ultimately his brain
17 to die. Paul Reagan everybody knew as Doc, with
18 malice aforethought.

19 What is malice aforethought? Malice, the
20 judge will tell you, is an ill will, a depraved
21 heart, a heart bent upon mischief, a term of art, a
22 legal term that the judge will tell you. The judge
23 will tell you there are two forms of malice. There
24 is what we call expressed malice and there is what
25 we call implied malice. Those, ladies and

1 gentlemen, are probably best defined by an example
2 of expressed malice. If I come to you and I have a
3 gun or I have a hammer and I point that gun at you
4 or I rear back to hit you and I say I'm going to
5 kill you, I have expressed my malice, I have told
6 you what I'm going to do, and if I do it I've
7 expressed it. Did that happen here? We don't
8 know. Can I sit here and say beyond a reasonable
9 doubt that there was expressed malice in this case?
10 I can't tell you that.

11 But that doesn't mean the murder charge is
12 out the window, because there is, the law
13 recognizes there may not be eyewitnesses to the
14 crime, the law recognizes there may not be somebody
15 left to come and tell you what was said, so the law
16 provides for implied malice, malice that you can
17 see, an ill will, a hatred, a heart bent upon
18 mischief, that you can see based upon the action,
19 based upon the circumstances of the crime itself,
20 based upon actions of the defendant. What evidence
21 do we have of malice in this case?

22 State's Exhibit Number 3, ballpeen hammer, a
23 deadly weapon. The State of South Carolina says
24 that if someone uses a deadly weapon, an instrument
25 that can cause death, that the jury can use that to

1 say malice exists, and the reason behind that is if
2 you use a deadly weapon for its intended purpose,
3 to cause death, there is malice. We could stop
4 there but there is more. There is additional
5 evidence of malice.

6 When he left, he left Paul Reagan to die. He
7 calls his buddies and says, "Hey, I'm ready to go
8 out partying some more." That's malice. When he
9 left him there with his skull crushed in, dying in
10 a pool of blood, of his own blood, he went out to
11 party, he went out to smoke crack, he didn't care
12 about Doc, he didn't care about Paul Reagan, all he
13 cared about was having a good time. When he saw
14 those buddies, he said, "Hey, let's go to Super 8
15 Motel and get me some crack cocaine." He didn't
16 say, "Hey, you all, something tragic has happened,
17 we better call EMS, Doc's in there, something is
18 wrong with him, Doc's in there dying." He didn't
19 do that. He left him there, he left him there to
20 die. That's malice.

21 The next day after partying, having a great
22 time, he goes home that night, he goes to bed. He
23 doesn't give Doc a second thought. That's
24 malicious. When the police come to his house and
25 talk to him what does he tell them? Ray Gist takes

1 his statement, "Where were you, what were you
2 doing?" What does he say? "I was out partying
3 with my friends that night." Never, not once
4 mentions going back to Doc's house, never once does
5 he tell them that he was there. Because he knew
6 what that would mean for him. In fact, he was so
7 concerned about it, he was so concerned about it
8 that he called his cousin Mark and said, "Hey, Cuz,
9 I was out with you all night, remember? You all
10 didn't take me back over to River Street, I didn't
11 call you from Doc's phone. Help me with this, man,
12 help me with this, let's make sure our stories are
13 the same. Let's make sure our stories line up
14 because they're looking at us, help me out, man."
15 His cousin said, "No, I can't help you. That ain't
16 right, I ain't going to lie for you, I'm not going
17 to come in that courtroom and perjure myself or
18 tell those police officers something other than the
19 truth, I'm not going to do that. That would be
20 wrong."

21 But he tries, he tries to manufacture an
22 alibi, he tries to say he's somewhere else or gets
23 his cousin to say it for him. So, the police,
24 after talking to these other witnesses, decide they
25 need to talk to Joshua again, they need to talk to

1 the defendant again because things aren't adding
2 up, you know. He told them he wasn't at Doc's, he
3 told them he didn't have any money, nothing about
4 crack cocaine, so they brought him back in and
5 talked to him again, they brought him in and talked
6 to him again, they advised him of his rights again
7 and they talked to him, they even went so far as to
8 bend over backwards to secure his rights, they had
9 his daddy, had his father in there with him. And
10 they started talking to him, asked him again what
11 happened, again he lied, he doesn't tell them about
12 going to Doc's.

13 Then when they say, "Look, I know you went
14 down to Doc's, I know you called Mark Greer to come
15 get you," he saw that was the end of the road for
16 that lie, that lie was a dead-end, he said, "Oh,
17 yes, I did go down to Doc's, I went down to Doc's
18 because I was ready to go out, I wanted a ride,
19 yep, I wanted a ride and he wouldn't give me a ride
20 and so I used the phone, I used the phone to call
21 Mark but when I left he was fine, Doc was fine,
22 everything was good."

23 Nothing about any money, nothing about any
24 crack. Lie after lie after lie, ladies and
25 gentlemen. It's malice on top of malice on top of

1 malice.

2 When he did get to use that phone, when he
3 got to use that phone who did he call? He calls
4 411. Wish he had called 911. At 2:51 he called
5 MamaSun's. Wish he would have called the police.
6 At 2:54 he called MamaSun's again. Wouldn't it be
7 great if he had called EMS? Maybe, just maybe Doc
8 would still be with us today. That is malice, that
9 is malicious, he was more concerned about getting a
10 \$50 rock, crack cocaine, than about the life of
11 another human being. Tht's just sad. That's
12 malicious and that is wrong.

13 The police talked to him some more, asked him
14 about having money, asked about having money, "No,
15 I didn't have any money." A lie. He had money.
16 They asked him about crack cocaine. "I don't know
17 anything about crack cocaine." "We have witnesses
18 say you went and bought crack cocaine." "Oh, yes,
19 I did, but I didn't have any money, I didn't have
20 any money, because I stole it, I stole that crack
21 cocaine, or if I didn't steal it, it was given to
22 me, it was fronted to me." And then finally,
23 finally in his statement, "I told them I got it on
24 front but I paid for it with the money I got out of
25 Doc's wallet." Lie on top of lie on top of lie.

1 It's malice. He's guilty of murder. What he did
2 is wrong.

3 The other charge is armed robbery. Armed
4 robbery is the unlawful taking of personal property
5 of another by force, pressure or intimidation while
6 armed with a deadly weapon. Basically it's
7 stealing, stealing by force, pressure,
8 intimidation. He took, he took the money out of
9 Doc's wallet. How much did he have? We don't
10 know. There is evidence he had gotten paid from a
11 tree job. How much of that money he had left, we
12 don't know. We know he had some money, we know he
13 had some money because Mark Greer borrowed \$20 and
14 testified that he had some money, he had some money
15 still left in his wallet.

16 Remember what else Mark said? Joshua Greer
17 knew Doc had some money, too. Joshua Greer was
18 there when Mark borrowed that money and saw that
19 there was money still left. He went back and he
20 took that money by force, pressure or intimidation.
21 You can't get much more forceful than having a
22 ballpeen hammer slammed into the side of your
23 skull. You can't get any more pressure than your
24 skull fracturing and causing your brain to die.
25 You can't get much more intimidating than by having

1 this coming at you and leaving you lifeless on the
2 ground. And again, the Judge will instruct a
3 deadly weapon is an instrument that can be used to
4 cause death. This, ladies and gentlemen, is a
5 deadly weapon. It served its purpose. He's guilty
6 of both murder and of armed robbery.

7 Ladies and gentlemen, this is the last, this
8 is the last time that I get to come up here and
9 talk to you. There are certain rules that we have
10 to operate under and when I sit down the defense
11 lawyer, if he wants to, gets to come up here and
12 make a closing statement to you. And as much as I
13 may want to, and I'm sure I will want to get back
14 up afterward and say ladies and gentlemen, that's
15 not how it went, ladies and gentlemen, that's not
16 what the testimony was, that's not what the witness
17 said, that's not a reasonable inference, that's a
18 red herring, that's a distraction, he is trying to
19 get you to look at something else, as much as I am
20 going to want to so badly get back up here and talk
21 to you again, I can't. I can't. The rules say
22 that somebody has got to go first, somebody has got
23 to go last. I've got to go first. If he wants to,
24 he gets to go last.

25 As much as you all, I'm sure, are ready for

1 me to sit down right now, I can't. I can't yet,
2 because I have to look at things that he may raise,
3 I have to anticipate what he may bring up so I can
4 address it now. And that's a tough job to do
5 because I have no idea what he's going to say. So
6 you start trying to think like a defense lawyer,
7 you try to think well, what could he say? What he
8 could say, he said in his opening. He said in his
9 opening this is a who done it. How do we know
10 Joshua Greer committed this crime? Is it a who
11 done it? Do we know who committed this crime?
12 Ladies and gentlemen, we do. How do we know? How
13 do we know? Because he said so.

14 One of your most important tools that you
15 bring to this jury system and this justice system
16 is your common sense. All fifteen of you, fourteen
17 of you, all fourteen of you have different life
18 experiences, different things, different
19 background, that's what makes you the heart of the
20 justice system. You are the finders of the facts.
21 You determine what the facts are, not what the
22 sentence is, not what the law is, what the facts
23 are. And as the trier of fact you bring those life
24 experiences to this courtroom. Those life
25 experiences let you know the difference between

1 right and wrong, the difference between what makes
2 sense and what doesn't make sense, when somebody is
3 telling the truth and somebody is lying. It's your
4 common sense, it's the most important tool that you
5 bring. Ask yourself does it make sense for someone
6 to confess to a crime, to a murder they had nothing
7 to do with? It doesn't.

8 There were some remarks about tunnel vision,
9 the police had tunnel vision and he had no other
10 choice but to confess. It's not reasonable, the
11 police didn't have tunnel vision, the police
12 started working the crime scene and worked their
13 way out. When they got there they found Deno and
14 Butch. You start in and work your way out. They
15 looked at Deno, they looked at Butch, they took
16 evidence, evidence that came back negative, they
17 took statements. And when they were cleared as
18 suspects they moved out, they moved out to the next
19 ring, okay, these people on scene didn't do it, who
20 could have done it, who was the last one to see him
21 alive, who was the last one to be around? They
22 moved out, they came to Joshua Greer and they
23 talked to him, and what did he do? He lied to
24 them.

25 They continued, they let him go, "All right,

1 thank you for your statement, you can go." They
2 didn't know at the time it was a lie. They
3 continued to investigate, they didn't have tunnel
4 vision, they continued to investigate and every
5 lead, every road led back to him. They got him
6 back in again. "What did you do?" And again lie
7 after lie after lie, until finally a detective
8 brought this in and said, "We know you're lying, we
9 know more about this case than you think we do,
10 we're not as stupid as we may look, why don't you
11 really tell us what happened?"

12 And at that point he said, "Well, I did go
13 there, I did hit him, I did take the money, but I
14 was justified. There was a reason I did it." When
15 all the other avenues and all the other lies came
16 to a dead-end he came up with another story, "Okay,
17 you've got me, I did it, but he needed killing, he
18 deserved what he got, he was coming on to me, I was
19 just wanting to borrow a couple dollars, he wanted
20 me to perform a sex act." He put the victim on
21 trial, take the attention off me, take the evidence
22 away from me, take the guilt off my shoulders, put
23 it on the victim, the victim who can't come to
24 court, the victim who can't come in here and say
25 that ain't what happened. The victim who is six

1 foot under ground now, let's blame it on him.

2 But the police didn't have tunnel vision.

3 Again they went back, even after being lied to so
4 many times, they went back to see in fact if there
5 was any evidence to corroborate this story, looking
6 for a butcher knife, looking for some shears, and
7 there were none. They found, they did find that
8 hawkbill knife, they found that hawkbill knife.
9 Where did they find it? You remember. It was
10 across the room from where the victim was. The
11 victim was on the couch, it was in a love seat. It
12 had no blood on it. It was between the cushions.
13 It didn't match the description. But remember what
14 Dr. Wren said, I asked Dr. Wren, I said, "After you
15 get hit by something like this what happens?" What
16 happens is you drop, you drop to the ground, you
17 become unconscious, you lose basically the function
18 of the right side of your body. You may sustain
19 consciousness for awhile but he's not moving
20 around. There is no blood going to the other side
21 of the room. So, while that was found, that does
22 not create for him a not guilty verdict, that does
23 not create for him a reasonable doubt, that does
24 not create for him a lesser charge of manslaughter.

25 You know, at first it's I didn't do it, I

1 wasn't there, I don't know anything about it. But
2 if I was there and I do know something about it,
3 then it was justified. Ladies and gentlemen, you
4 can't have it both ways. And if it was justified,
5 if it really had been a non malicious killing, why
6 didn't he tell somebody instead of calling
7 MamaSun's, instead of calling 411, why didn't he
8 call somebody for help? When his buddies picked
9 him up on the street why didn't he say, "Hey, look,
10 you all, Doc came after me and I had to defend
11 myself, I was provoked." He didn't, because it
12 didn't happen.

13 When he talked to the police and was given an
14 opportunity to tell what happened he didn't say,
15 "Doc tried to get me to perform oral sex." He
16 hadn't come up with that yet. He was just going
17 with I wasn't there, it wasn't me. Never said he
18 was assaulted, never said that it was a lesser
19 crime, and when questioned by his friends and
20 talked to by his friends he tried to get them to
21 lie, never he said anything was wrong. He wanted
22 them to lie.

23 The defense may argue this is still a who
24 done it, there are certain things the police didn't
25 do or didn't find, such as fingerprints. No, there

1 were no fingerprints to be found on this. I would
2 love to have had them, I would love to tell you
3 about them, but they are not here. But that's why
4 when Hugh Murphy testified and John Black testified
5 from the screen, that's why I asked them those
6 questions, is it unusual not to find fingerprints?
7 No. Why not? Fingerprints are fragile,
8 fingerprints are hidden, fingerprints can come off,
9 fingerprints may not be left.

10 I used the example of carrying my ink pen
11 around with me, I carry it around the whole time,
12 he saw it in my hand, he knew I touched the witness
13 stand, I said, "Can you guarantee to find my
14 fingerprints on this Magic Marker or that ink pen
15 or this witness stand?" "No, I can't guarantee
16 you." But I would love to have them, sure, but I
17 don't. Does that mean he didn't do it? No, that's
18 not what it means. The fact there was a bloody
19 footprint in the kitchen or in the living room of
20 that house, does that mean somebody else did it?
21 No.

22 Deno told you when he came in he walked right
23 through there, went out the back to Butch's camper,
24 they came back in, and Butch told you today he went
25 back out again. It's unusual, or unexpected to

1 find a footprint. Can I say that footprint is his?
2 No. But does that mean he didn't do it? No. They
3 took his shoes, they did take the defendant's
4 shoes, Cecil Bradstreet from SLED initially thought
5 there might be blood on it, John Ortuno, the DNA
6 fellow, who said the victim's blood was all over
7 the hammer, all over the jack handle and other
8 items, said no, didn't find any blood on the shoes.
9 Does that mean he didn't do it? No. Because why?
10 What did he tell the police? Not only had he
11 changed clothes from that night, he had washed
12 them. He had washed his clothes from that night.

13 This is not a question of who done it. This
14 is not a question of it being a justifiable
15 homicide. This, as Solicitor Millican said in her
16 opening, has a lot to do with greed. Joshua Greer
17 wanted to party, he didn't have any money. He
18 wanted crack cocaine, so he went back to the place
19 under the pretense of going home and going to
20 sleep, he told his buddies he wanted to go home and
21 go to sleep, he went back down to Doc's and he took
22 that money and he took it by cracking in, crashing
23 in the side of Doc's head, so he could go out and
24 party. And then he lied and lied and lied.

25 Every element of both charges have been

1 proven to you ladies and gentlemen beyond a
2 reasonable doubt. And in a second I've got to sit
3 down, as much as I don't want to, and I told you
4 why. I've got to sit down but I'm afraid that when
5 I sit down the voice of Paul Reagan will go silent
6 forever and I hadn't done a good enough job.

7 So, ladies and gentlemen, I'll leave him with
8 you, I'll leave him with you. I ask you to
9 remember the testimony, I ask that you remember the
10 evidence, I ask you not be distracted, I ask that
11 you not chase after red herrings, I ask that you
12 remember the evidence, I ask in the name of Paul
13 Reagan, in the name of justice I ask you for a
14 verdict of guilty.

15 Thank you.

16 THE COURT: Mr. Chehoski, the jurors are with
17 you.

18 MR. CHEHOSKI: Thank you, Your Honor. If it
19 please the Court.

20 THE COURT: Mr. Chehoski.

21 MR. CHEHOSKI: There are so many places I'm
22 sure you would rather be. As Judge Saunders told
23 you at the very beginning, the mere chain of events
24 that land you in these chairs is so far reaching,
25 so far like chance, that it was well beyond your

1 control. I'm sure, again, you have no choice but
2 to be sitting here, but truthfully, and I'm sure
3 the State believes this as well as the Judge,
4 without you this system doesn't work, and so on
5 behalf of Joshua Greer we appreciate the hard work,
6 the attention, the time that you have given us.

7 We all have had an experience of being
8 accused of something we didn't do. We all share
9 the frustration of when our truthful response is
10 given it's either not believed or not listened to.
11 We all know the emotional toll it takes as we
12 figuratively bang our heads against the wall.

13 I would like to share with you an experience
14 from my life back when I was in school. It was
15 right before the end of the semester and I had just
16 broken up with a girlfriend. Exams were ongoing,
17 students were getting ready to go home for the
18 holiday break. The night before my girlfriend was
19 supposed to go home her car was vandalized and when
20 the first fingers of accusation started to point,
21 quite naturally they pointed at me, all the
22 circumstances seemed to fit perfectly. I lived off
23 campus. Oh, by the way, the evidence against me, a
24 lot stronger than it is in this case.

25 MR. WILLINGHAM: Objection, Your Honor.

1 THE COURT; Sustained.

2 MR. WILLINGHAM: I object to this entire line
3 of closing.

4 THE COURT: stick to the facts of the case,
5 Counsel.

6 MR. CHEHOSKI: Your Honor, I believe a
7 narrative is appropriate.

8 THE COURT: The objection is sustained.

9 MR. CHEHOSKI: Yes, sir. We know the
10 emotional freefall, the emotional toll it takes, we
11 know the experience when, when our pleas of
12 innocence fall on deaf ears. Joshua Greer was in
13 that exact same position, the exact same position.
14 Once the police locked in on him, until they were
15 so convinced that he was guilty, it didn't matter
16 how long he protested. And in that position, after
17 being interrogated at length, the emotional toll it
18 took, the feelings of desperation when someone who
19 was probably considered a friend was in the
20 hospital and the police with all their strength,
21 all their power, were pointing the finger at you,
22 he decided on a course of action. Wisely or not,
23 he decided to tell them the story that's in this
24 statement, that he had, that he hit Paul Reagan
25 after making sexual advances, after he made sexual

1 advances toward him, and they bought it. They
2 bought it, even though he told them the story that
3 was so fantastic, so unbelievable, so remarkable,
4 "I really didn't think the police were that
5 gullible."

6 What I want to do, ladies and gentlemen,
7 first of all it's your job to search for the truth,
8 a search that I believe begins with a careful
9 examination of that statement and that search which
10 I believe reveals several problems that I believe
11 are striking, especially when compared to the
12 evidence in this case. And what I want to do is
13 take the statement and take out what I think is
14 either obviously untrue, was fed to him by the
15 police or which just doesn't match.

16 Let's start with obviously untrue. I do not
17 think there is a person in this courtroom who
18 believes that Paul Reagan made sexual advances
19 toward Joshua Greer. Let's take that out. Right
20 here.

21 Next, I don't think anyone really believes
22 that Doc was armed. The State says based on the
23 evidence here he didn't have any butcher knives,
24 shears. Let's take that out.

25 All right. During their interrogation of Mr.

1 Greer the police fed Josh information, information
2 that's critical, crucial to their investigation.
3 They did it all in the name of saying we know
4 something you don't, we know more. Well, actually
5 you are exactly right, they knew something, he did
6 it, and they fed it to him. They fed him that the
7 murder weapon was a hammer, they fed him where they
8 found the weapon, and they fed him some information
9 about money. Again, the police absolutely gave it
10 to him, they testified on the stand that they told
11 him that, they showed him the hammer, they told him
12 where it was found, they told him there was blood
13 on it, they told him they believed it was the
14 victim's. We need to take that out.

15 That's about the blade, take that out.

16 The statement is starting to look pretty
17 different now, isn't it?

18 We also need to look at the scene when the
19 police arrived that morning, we need to look at the
20 evidence. Joshua Greer says, "I hit him on the
21 right side of the head or probably the right side
22 of the head." State's 16, the left. That's wrong,
23 that's not right, that's inaccurate. We need to
24 take out that.

25 He also says here he fell on the couch. Is

1 that compatible, is that consistent with Jason
2 Yown's testimony, is that consistent with all the
3 blood that's on the floor, is that consistent, is
4 that compatible with the blood spatter evidence
5 that his head hit the floor, is that consistent, is
6 that compatible with the evidence that showed that
7 Paul Reagan died, he moved, he either moved
8 probably from the floor where he landed after he
9 got hit, to the couch where he was found? Is that
10 compatible, is that consistent? Quite seriously,
11 no, it's not.

12 I'll get to this last part in a little bit.
13 One more part I will be crossing out.

14 Now, before we take a look at some of the
15 things that I think should be in this statement,
16 that aren't, I take this minute to remind you while
17 this statement is signed by Joshua Greer, it's
18 written by Jason Yown. This bothers me a little
19 bit and I hope it bothers you. The reason why it
20 bothers me is that earlier in the day, just a few
21 hours before, he takes a statement, he has in his
22 office Mark Greer, taking a similar statement and
23 how does he do it? He records it. This is, again,
24 a starke deviation from the technique, from the
25 same investigator, and just a few hours difference.

1 In that statement, as you heard from both
2 Investigator Yown and Mark Greer, it's in the
3 typical Q and A format, his words are in it, Yown's
4 words are in it, Mark Greer's words are in it. You
5 have this statement taken just a few hours later,
6 we know they had the equipment, we know they had
7 the ability. It seems that it was just too much
8 trouble for the police, and I don't think we should
9 reward them for that. I think it casts too much of
10 a shadow on their work to just give it blanket
11 approval.

12 Now, there are a few things that should be in
13 this statement that is starting to look more and
14 more questionable, information that should be there
15 that is absent, information that would be known
16 only to the attacker, but it's not there.

17 For example, only the attacker would have
18 known how many times he hit Paul Reagan, how many
19 times he was struck. At the time they take this
20 statement the police don't even know, it wasn't
21 until their autopsy when Dr. Wren testified that he
22 was likely hit two times. It's not in that
23 statement and I think the clear implication in that
24 statement is it is only once, and that is an
25 inconsistency, that is a question that should be

1 answered and it's not.

2 Another fact that I thought that only the
3 attacker would have known is the fate of the
4 wallet. We know from the uncontradicted testimony
5 it was found under the couch. We don't really have
6 an explanation of how it got there. Josh Greer's
7 statement says he got it out of his shorts, which I
8 think, given what he was telling the police
9 earlier, just doesn't make sense, it was on the
10 coffee table, but how does it get from the shorts,
11 how does it get from the coffee table, how does it
12 get from there to under the table, under the couch,
13 rather? We just don't know, and the police don't
14 answer that question and I wonder, is this a
15 question they should answer? I think it is but
16 it's not, it's not answered.

17 Both the State and I agree that this
18 statement right here isn't all that credible. The
19 State wants you to believe that enough of it is
20 true that you can convict Joshua Greer. I think I
21 have shown you that so much of it isn't true that
22 you can't.

23 I'm going to shift tracks now to some
24 evidence that was either attained and unexplored or
25 evidence that is just missing, that would be

1 helpful. As I said from the beginning, there was
2 so much evidence being circumstantial, with no
3 eyewitness, you would think, you would expect that
4 the State would bring in, tie up every loose end to
5 make every inference in their favor, and I think in
6 in this case the State has just failed.

7 Fingerprints. Fingerprints not on the murder
8 weapon as you heard from John Black on the screen
9 and Hugh Murphy, sometimes it's hard. Fine.

10 How about the wallet? Certainly when the
11 motive is robbery, certainly they would check the
12 wallet, they would think to check the wallet, maybe
13 there is some fingerprints on there, maybe the
14 person who committed this horrible crime left some
15 fingerprints on there. They don't even bother to
16 check. Do we give them a pass on that? No.

17 How about DNA? Yes, we know, based on Mr.
18 Ortuno, that Paul Reagan's DNA is all over this
19 hammer and all over some other items. We also know
20 the trail of blood. Why wasn't that checked? Or
21 better yet, why weren't other samples taken to be
22 compared with? Again, a full and thorough
23 investigation?

24 Ladies and gentlemen, they had three years to
25 get this together, this happened in August, 2002,

1 here we are September, 2005, that's plenty of time,
2 but they don't check. And I'm curious about the
3 footprint. I am curious, I would like to know who
4 it belonged to. I think we can safely eliminate
5 Josh Greer from consideration of who that footprint
6 belongs to without, in the complete absence of any
7 blood on his shoes, but they didn't check Bill
8 Green, they didn't check EMS, they didn't check
9 Deno Kirby. I name these three people because we
10 know from the testimony they were on the scene
11 prior to the police arriving to secure it. If that
12 footprint belongs to them we can safely eliminate
13 it. If it doesn't, then it belongs to the culprit.

14 These are questions that should have been
15 answered by the State, questions that are either
16 eliminating questions, who do these belong to? The
17 State failed to do that. We have a response for
18 it, we have a phrase for what that means, called
19 reasonable doubt.

20 Besides the scientific evidence, there is
21 also other circumstantial evidence that I think
22 would be present in this case. According to the
23 State's theory, you have to remember the sequence
24 of that night, Josh, along with Mark and Joey were
25 over at Paul's house, then they go out. Josh then

1 parts their company, comes back to River Street,
2 only to rejoin them later by calling them from
3 Doc's house.

4 You know, this is the thing, crucial to the
5 State, this is when they say it happened, and
6 judging by the scene with blood everywhere and
7 judging by the violence of this, this is a
8 traumatic and messy scene and certainly you would
9 think that Mark or Joey would have noticed
10 something different. Certainly his demeanor would
11 be different, he would be, adrenalin, you know,
12 that's big, or his clothes would be different
13 because there would be blood on it or he would have
14 changed his clothes. Yet, remarkably, remarkably
15 they don't notice anything different and the State
16 wants you to believe that shortly after doing this
17 that Joshua Greer is calm, cool and collected.
18 Remember, this is the same person who less than 24
19 hours later is a total emotional basket case in the
20 police station.

21 And speaking of that moment when he becomes a
22 totally emotional basket case, let's talk about
23 that. The State, I believe, has put some effort
24 and put a lot of weight on this swing of emotions
25 that Josh Greer went through while he was in police

1 custody and they are going to say, I think they say
2 that shows evidence of guilty conscience. I wonder
3 if there is another reasonable explanation? I just
4 wonder.

5 Now, again remember our perspective. This is
6 the second time in about six or seven hours that he
7 has been in the police station giving a statement
8 which alone, I believe, causes plenty of stress.
9 He has just finished answering questions from the
10 police, questions that his responses have answered,
11 some inconsistencies that the police were concerned
12 about due to their own investigation. Remember
13 these inconsistencies, these three? That he went
14 back to the house and went back to the house of
15 Paul Reagan and called. Yes, he admitted this and
16 it was confirmed by both Mark Greer and by the
17 phone records. Taken care of.

18 The issue of money. First he didn't have
19 any, now he does. Well, he told the police, "I
20 borrowed some, I borrowed \$20," and again this is
21 corroborated by Mark Greer. He says he had \$20 on
22 him and he said, and he says that Josh told him he
23 borrowed it from Doc. Okay.

24 Now, about this crack cocaine. Well, he does
25 tell them that he would snatch it from drug

1 dealers. I guess it's too much to ask for them to
2 have the drug dealers come up here and confirm
3 that, but you do hear corroboration from the
4 police's independent investigation and from Mark
5 Greer and from Joey Blackwell that Josh Greer has
6 done this in the past.

7 He has now just answered every one of the
8 inconsistencies and then the police show him the
9 hammer and now they are starting to say, "Are your
10 fingerprints on it?" If you take a step back and
11 look at the whole picture it doesn't take much to
12 see what goes on, and Josh Greer gets it, they are
13 not believing a single word he says and he in his
14 mind, he is not walking out of that conference
15 room. Would that make someone upset, would that
16 make someone nervous? Would it make him cry? I
17 think it's reasonable.

18 Now let's talk about clothes. Clothes.
19 Investigator Yown determined that Josh Greer had
20 washed his clothes prior to this incident and that
21 is somehow, that somehow excuses the police from
22 going to either Mark Greer's house or Josh Greer's
23 father's house and looking for it. We know the
24 police know how to get a search warrant, they got
25 three of them in this case. Yet they don't look,

1 they have no clothes. I think by implication they
2 are so bold to tell you that, "Going and searching
3 for them wouldn't have mattered because we already
4 determined he washed them." Here is the point you
5 can use your common sense. Because anyone who has
6 done laundry, whether your own, your children's or
7 what have you, anyone knows that blood is one of
8 the toughest stains to get out. It often takes
9 several washings just to get a small little blood
10 stain out. Yet the State with their burden has
11 brought you no clothes. Another valid question,
12 another eliminate question that goes unanswered. I
13 have already told you what the phrase is for that.

14 Now, the State puts a lot of faith into this
15 phone call, you know, the one that Josh called Mark
16 Greer and he said. "Yes, we need our statements to
17 match." When I first heard that statement and that
18 testimony the thought that went into my head was a
19 line from a song, "Just because you're paranoid
20 doesn't mean they're not after you." It's
21 suspicious but I caution you not to put too much
22 weight on it, when the only evidence is this
23 statement, this piece of fiction, the State is
24 going to try and get anything and attach as much
25 importance to it as they can. I said it was

1 suspicious. Mere suspicion isn't proof, ladies and
2 gentlemen, and proof is what's required in this
3 courtroom.

4 One last couple thoughts more before I close.
5 We really don't know what time this happened. We
6 have a window, a window from about 2:54 when Josh
7 Greer calls Cocktails and Dreams or MamaSun's,
8 until, until about 10:00 or 10:30 the next morning
9 when Deno Kriby finds him. We have a window.
10 Again, that is about nearly seven hours for any
11 assailant with an open door to come on in. A
12 window, that's all we have.

13 I want to say one more thing because I did
14 say I was going to come back to this. With that
15 inconsistency of the crack being mentioned and the
16 \$20, "Doc gave me the \$20," I think now you can
17 probably take out this last part, and that's what
18 we have now, and that statement as it is right
19 there looks remarkably, remarkably like what he
20 told the police before they broke him.

21 At the beginning of this case I told you that
22 there were two people who knew what happened that
23 night and neither one of them are in this
24 courtroom. When I said that I didn't suggest, I
25 wasn't suggesting that I was going to point the

1 finger at someone, merely maintaining Joshua
2 Greer's innocence, maintaining his innocence, that
3 he was not the one that swung that hammer.

4 I have tried to resist going into too much
5 detail on burdens of proof and presumptions of
6 innocence. Judge Saunders will give you his
7 instruction on that and that is the law of this
8 case. I do want to take this moment, though, to
9 give you a little bit, little glimpse of history as
10 to why we have the law as it is.

11 At the beginning of this country it was
12 decided that freedom that we had just fought a war
13 to get was going to be our most cherished value and
14 our forefathers, the framers of the Constitution
15 wanted to make sure that they protected freedom in
16 every way for every person, and that is why the
17 burden is so high. They wanted to make it very
18 difficult for the government with all their power
19 and all their resources to convict an innocent man.

20 I want you to find Joshua Greer guilty --
21 not guilty, I want you to find him not guilty, not
22 just because the evidence doesn't raise, doesn't go
23 beyond a reasonable doubt, although that's
24 certainly true, I want you to find Joshua Greer not
25 guilty because the State's evidence and that

1 statement don't match. I want you to find Joshua
2 Greer not guilty because there are too many
3 questions that have gone unanswered that you should
4 have expected them to answer. I want you to find
5 Joshua Greer not guilty because that is the only
6 verdict that speaks the truth in this case. Find
7 Joshua Greer not guilty.

8 Thank you.

9 THE COURT: Madam Forelady, ladies and
10 gentlemen, the next step in the process is the
11 Court's charge to you. It will not be terribly
12 lengthy but it's necessary that you have a little
13 relaxation at this time. We will take a little
14 refreshment, take a break so that you will be ready
15 for the charge. Do not discuss the case as you
16 retire to the jury room.

17 (The jury was excused from the courtroom).

18 THE COURT: We stand in recess for just a few
19 moments, please.

20 (Recessed at 12:50 p.m.).

21 (Reconvened at 1:09 p.m.).

22 THE COURT: Show the jury in.

23 (The jury returned to the courtroom).

24 THE COURT: Madam Forelady and ladies and
25 gentlemen of the jury, the State of South Carolina

1 charges the defendant Joshua Greer with murder and
2 armed robbery. Now, the Court has made you
3 familiar with the terms of the indictment and the
4 Court will not re-read the allegations of the
5 indictment to you. You should distinctly remember
6 and recall that the allegations of the indictment
7 are not evidence and should not be considered to be
8 evidence.

9 The only evidence in the case is the
10 testimony you have heard from this witness stand,
11 the exhibits that have been introduced during the
12 course of the trial and one stipulation that was
13 made by the parties, if you will recall.

14 Now, comes the defendant to this indictment
15 and pleads not guilty and that places upon the
16 State the burden of proving his guilt beyond a
17 reasonable doubt. A person charged with committing
18 a criminal offense in this state is never required
19 to prove himself innocent. It is a vital,
20 important and fundamental rule of law that a
21 defendant in a criminal trial, no matter how great
22 or serious the offense with which he is accused,
23 must always be considered innocent until his guilt
24 has been proven beyond a reasonable doubt. This
25 presumption of innocence remains with the defendant

1 at all times throughout the trial and is only
2 removed when the State and if the State has proved
3 his guilt beyond a reasonable doubt. For it is
4 your solemn duty, Madam Forelady and ladies and
5 gentlemen, if not clearly convinced of the
6 defendant's guilt here on trial beyond a reasonable
7 doubt to the contrary, to find him not guilty.

8 It has been the intention of the Court to be
9 absolutely fair and impartial both to the defendant
10 Joshua Greer and to the State of South Carolina
11 throughout this trial. If you have drawn any
12 inference from any act, word, deed, motion or
13 movement of the Court or even a ruling of the Court
14 as to any objection that a party has made, it did
15 not, there was no intention for you to take any
16 hint from that as to how the Court feels about this
17 case. The Court has no interest in the outcome of
18 this case.

19 So, the burden of proof is upon the State to
20 establish by evidence to your satisfaction, ladies
21 and gentlemen, the guilt of the defendant beyond a
22 reasonable doubt. The Court will not attempt to
23 define for you what is meant by the term beyond a
24 reasonable doubt. The Court will not attempt to
25 define for you what is a reasonable doubt, for this

1 is up to you, Madam Forelady and ladies and
2 gentlemen.

3 A reasonable doubt is simply a doubt that you
4 find to be reasonable under all the circumstances
5 that have been presented here. A reasonable doubt
6 can arise from the evidence presented or it can
7 arise from the lack of evidence presented. If the
8 evidence presented by the State has removed all
9 reasonable doubt from your mind as to the
10 defendant's guilt it is your duty to find the
11 defendant to be guilty. However, if you are left
12 with a reasonable doubt in your mind as to the
13 defendant's guilt it's your duty to find the
14 defendant to be not guilty.

15 Madam Forelady and ladies and gentlemen,
16 under the Constitution of our state you and you
17 alone are the finders of the facts. The Court has
18 no right to pass upon or express any opinion as to
19 what the Court may think about the facts. The
20 Court may not suggest in any way what the Court may
21 think about the guilt or the innocence of the
22 defendant here on trial. You should form, as
23 aforesaid, no opinion in that regard from anything
24 the Court has said or any ruling the Court has
25 made.

1 You are also the judges and the sole and only
2 judges of the credibility or the believability of
3 the witnesses who testified here on this witness
4 stand in front of you. Now, Madam Forelady and
5 ladies and gentlemen, the Court can suggest some
6 tools for you to use in passing upon the
7 believability or the credibility of the witnesses.
8 You may or may not use these but by way of
9 suggestion here are some things you may consider.

10 You may consider the demeanor or the manner
11 that a witness had when he or she testified, was
12 the witness forthright or was the witness hesitant.
13 You may consider whether the witness had a reason
14 to be biased or prejudiced, you may consider
15 whether a witness' testimony was contradicted on
16 the one hand by some testimony of that same witness
17 or contradicted on the other hand by testimony of
18 another witness, or you may consider whether the
19 testimony of the witness was supported by other
20 testimony of the witness or testimony of another
21 witness.

22 Another suggestion is your consideration of
23 the witness' ability to observe and to come to have
24 knowledge about the things he or she may have
25 testified. Of course you don't judge the

1 credibility or the believability of the witnesses
2 by counting the number of witnesses that have been
3 called by the State in this case. It's up to you
4 to decide the credibility of the witnesses, or
5 stated another way, the believability of the
6 witnesses and the statements that they have made
7 here before you in this courtroom.

8 You may believe a small portion of a witness'
9 testimony and disregard the rest of a witness'
10 testimony. You may believe a lot of a witness'
11 testimony and disregard a small portion of it. You
12 may believe all of a witness' testimony or none of
13 a witness' testimony. You may believe some of one
14 witness' testimony and some of another. You may
15 disbelieve some of one witness' testimony and
16 disbelieve some of another.

17 So, it's any way you can find the truth,
18 which is your mission, to find the truth. These
19 are mere suggestions that you may go about in
20 assessing the credibility or the believability of
21 the witnesses who testified here before you.

22 You have heard testimony during the course of
23 this trial, testimony of witness who have been
24 found to be expert in certain fields of learning
25 and knowledge. In considering the opinion of

1 expert witnesses that have been admitted into this
2 case you should consider always the factual
3 evidence first. An expert is different from
4 another witness because an expert may base his or
5 her opinion upon factual evidence presented at
6 trial. They may have an opinion, where another
7 witness may not have an opinion, they are
8 foreclosed from having opinions, but experts,
9 because of their special knowledge, learning,
10 experience and training can form an opinion and
11 relate that opinion to you.

12 And you must consider the expert testimony,
13 however, in the same manner that you do the
14 testimony of any other witness and give it such
15 weight as you feel to which it may be entitled.
16 Such testimony is given for the purpose of helping
17 you to understand the evidence and not for the
18 purpose of controlling your judgment. The value of
19 expert testimony does not depend upon the skill and
20 knowledge said by the person to be possessed by
21 them, but it depends upon the skill and knowledge
22 which they actually do possess in your opinion were
23 you to so find.

24 In this regard you may consider the training,
25 experience and ability to communicate ideas, the

1 logic of the person's opinion, the factual support
2 for the person's opinion, and other factors just as
3 you would judge the credibility and weigh the
4 testimony of other witnesses who have testified.

5 The value and effect of expert testimony is a
6 matter solely to be established by you the jury.
7 No mere opinion of an expert can be accepted as in
8 and of itself truthful or reliable, but must be
9 weighed by you and convince your judgments beyond a
10 reasonable doubt with the same force and effect as
11 any other fact required to be proved in this case
12 before you can rely upon it as a basis for a
13 conviction.

14 You have heard the testimony of expert
15 witnesses who have knowledge and special knowledge,
16 training, skill, experience and education in
17 particular fields and who have given their opinions
18 as experts. In determining the weight to be given
19 to these opinions you should consider the
20 qualifications and the credibility or the
21 believability of the experts and the reasons given
22 for their opinions. You are not bound by these
23 opinions and you should give them the weight, if
24 any, to which you deem those opinions are entitled.

25 In every case, Madam Forelady and ladies and

1 gentlemen, there are two kinds of evidence that are
2 presented, direct evidence and circumstantial
3 evidence. Direct evidence is evidence, for
4 instance, of an eyewitness. That is direct
5 evidence, a person who asserts or claims to have
6 actual knowledge of a fact. Circumstantial
7 evidence is the proof of a chain of facts and
8 circumstances from which you can naturally deduce
9 the existence of a resulting fact and that
10 resulting fact could be determined beyond a
11 reasonable doubt by circumstantial evidence.

12 The law doesn't make any distinction between
13 the weight or value to be given to either direct
14 evidence or circumstantial evidence, nor is a
15 greater degree of certainty required of
16 circumstantial evidence than is required of direct
17 evidence. You may have some direct evidence and
18 some circumstantial evidence. That is, you may
19 have a combination of the two kinds of evidence in
20 this or any case or upon any disputed fact.

21 You should weigh all of the evidence in the
22 case and after having done so, if you are not
23 convinced of the guilt of the defendant beyond a
24 reasonable doubt you must find him to be not
25 guilty.

1 There is another kind of evidence which you
2 have heard during the trial and that's known as
3 corroborating evidence. Corroborating evidence is
4 supporting evidence. It lends weight to or value
5 to or adds to or strengthens the believability of
6 any other evidence that may have been introduced
7 during the course of the trial, and the jury, you
8 the jury may give such corroborating evidence such
9 weight as you feel it deserves.

10 Concerning the chain of possession of an item
11 of evidence, whether evidence was or remained
12 within the possession and control of the witness or
13 witnesses during the period asserted by that
14 witness or witnesses is a question for
15 determination of the jury based upon the
16 credibility of the witness or witnesses and the
17 weight given to their testimony by you the jury.
18 The jury must conclude beyond a reasonable doubt
19 that the evidence in this case as seized and
20 described during the testimony remained within the
21 custody or the care of the witnesses who testified
22 until it actually arrived here in the courtroom.
23 Give that such weight as you deem it deserves.

24 The evidence from which you are to decide the
25 facts of this case have already been related to

1 you, testimony of the witnesses who testified
2 before you, the evidence that's been introduced
3 during the course of the trial and any
4 stipulations, and there was one stipulation.

5 Certain things are not evidence. Arguments
6 and statements by attorneys are not evidence. The
7 attorneys are not witnesses. What they have said
8 in their opening statements, their questioning of
9 witnesses, their closing statements is intended to
10 help you interpret the evidence but it is not
11 evidence. If the facts as you remember them differ
12 from what the attorneys have related to you at
13 anytime your recollection of the facts controls.

14 Also not evidence of course is the questions
15 and objections that lawyers may have made. Lawyers
16 have a duty to their clients to object when they
17 believe that a certain question or procedure is not
18 proper and you should give that no weight because
19 it's not evidence. You should disregard that
20 completely. You should not be influenced by the
21 objection or motion or by the Court's ruling upon
22 any of the same.

23 Testimony that may have been excluded or
24 stricken is not evidence and you are to disregard
25 it absolutely and completely, and anything that you

1 may have seen, heard or read outside this courtroom
2 that may have concerned this case is not evidence
3 and you should completely and absolutely disregard
4 and disabuse your mind of anything you may have
5 learned from any source outside the walls of this
6 courtroom concerning this trial. You are to decide
7 this case and you must decide this case solely and
8 only upon the evidence that has been received
9 during the course of this trial.

10 The same Constitution and laws that makes you
11 and only you to be the finders of the facts makes
12 the Court the sole and only instructor of the law.
13 You must accept as correct the law that is being
14 charged to you and apply it to the evidence as you
15 find it to be. You must put aside any conceptions
16 that you may have had before you were sworn as
17 jurors to well and truly try this case and a true
18 verdict render and you must accept the law as it is
19 being instructed to you. For your purposes as
20 jurors in this case you should not be concerned
21 with what you think the law is, ought to be, could
22 be or might be, but what the law is as it is being
23 told to you.

24 As has been indicated to you and as you are
25 well aware, Madam Forelady, ladies and gentlemen,

1 the State has charged in its indictment that the
2 defendant is guilty of the crime of murder, so it
3 becomes necessary for the Court to instruct you as
4 to the law of that crime in our state. Now, under
5 the principle recognized in our state a greater
6 crime includes a lesser crime, this indictment may
7 include, if you should so find, a charge of
8 voluntary manslaughter, so you will be instructed
9 on voluntary manslaughter as well. Momentarily you
10 will see the difference between the two and
11 understand that.

12 Now, what is murder by definition? Murder
13 may be defined as the willful and felonious killing
14 of a human being by a human being with malice
15 aforethought. That malice may be either expressed
16 malice or implied malice.

17 Manslaughter, by definition, may be defined
18 as the felonious killing of a human being without
19 malice, in sudden heat and passion, upon sudden
20 legal provocation, so that you will see the
21 difference between murder and manslaughter is the
22 presence or the absence of malice, malice being
23 present in murder but not present in manslaughter.

24 What is malice? Malice is defined in the law
25 of homicide as a term of art. It is a technical

1 term. It means it imports wickedness and excluding
2 any just cause or any legal excuse. It is
3 something which springs from wickedness, from
4 depravity, from a depraved spirit, from a heart
5 devoid of duty and fatally bent on mischief. The
6 words expressed or inferred malice do not mean two
7 different kinds of malice, but merely the manner in
8 which the malice may be found by the law to be
9 shown to exist. Expressed malice and inferred
10 malice are the same, if you should so find. That
11 is to say either by direct evidence or by
12 circumstantial or indirect evidence or by inference
13 you may find malice. Malice may be expressed where
14 there may be previous threats of vengeance or lying
15 in wait or other circumstances shown directly that
16 an intent to kill was entertained.

17 The jury may also conclude by deductive
18 reasoning that under certain circumstances malice
19 may arise even though there is no expressed or
20 direct evidence of an intent to kill. Malice may
21 be inferred where no expressed intent to kill is
22 proved by direct evidence, it may be inferred from
23 the facts and circumstances which are proved.
24 Malice may be inferred by the willful, deliberate
25 and intentional doing of an unlawful act without

1 just cause or legal excuse. In other words, in its
2 general signification, malice means the doing of a
3 wrongful act intentionally without justification or
4 legal cause, but even if facts proved are
5 sufficient to raise an inference of malice this
6 inference would simply be an evidentiary fact to be
7 taken into consideration by you the jury along with
8 all of the other evidence in the case and you may
9 give such weight as you deem they should receive as
10 to whether or not malice has been proved beyond a
11 reasonable doubt.

12 Even where there is an absence of a specific
13 fixed and deliberate intent to take the life of a
14 particular person or that of any person, the law
15 says that if it is proved beyond a reasonable doubt
16 that one intentionally killed another with a deadly
17 weapon or a dangerous instrumentality, which has
18 been defined as many things, a dirk, dagger, knife,
19 slingshot, razor, gasoline, firebomb and any
20 ordinary or common work or shop tools, or it could
21 be either any common household item that may become
22 a dangerous instrumentality, when such dangerous
23 instrumentality is used to cause death an
24 implication of malice may arise. The use of a
25 dangerous instrumentality permits you to infer

1 malice but it does not require you to infer malice.
2 If facts are proved beyond a reasonable doubt
3 sufficient to raise an inference of malice to your
4 satisfaction, Madam Forelady and ladies and
5 gentlemen, this would simply be an evidentiary fact
6 to be taken into consideration by you the jury
7 along with all the evidence in the case and you may
8 give it such weight as you feel it should receive.
9 You as jurors are free to accept or reject this
10 permissive inference, depending upon your view of
11 the facts. In other words, if such conduct results
12 directly in the death of another human being and if
13 such conduct was so culpable and inexcusable, so
14 aggravated, grossly negligent as to show an active
15 intentional disregard of the consequences of human
16 life, thus denoting a malignant spirit, a heart
17 devoid of duty and fatally bent on mischief, an
18 implication of malice may arise.

19 Furthermore, it is not just carelessness, not
20 mere recklessness or passive indifference to the
21 safety of others. Malice is the wrongful intent to
22 injure and indicates a wicked or depraved spirit
23 intent on doing wrong. This conduct when it shows
24 a deliberate and intentional design to so use or
25 employ or handle a dangerous instrumentality so as

1 to endanger the life of another or others without
2 just cause or excuse may be sufficient to raise the
3 implication of malice.

4 However, it's for you the jury to decide
5 whether this has been raised beyond a reasonable
6 doubt and whether under all the facts and
7 circumstances of this case the defendant's alleged
8 use of a dangerous instrumentality demonstrated
9 such an intentional disregard for human life that
10 malice may be implied or inferred from the use of
11 said dangerous instrumentality.

12 And it is for you also, ladies and gentlemen,
13 of the jury, to decide what weight, if any, should
14 be given to this fact, and it will be observed that
15 there must be malice aforethought, and while the
16 law does not require that malice shall exist with
17 any particular length of time before the commission
18 of the act, it must be a forethought, there must be
19 a combination of the previous evil intent and the
20 act which produces the fatal result.

21 Malice is a word suggesting wickedness,
22 hatred and a determination to do what one knows to
23 be wrong, without just cause or excuse or legal
24 provocation. Malice need not be in the mind of the
25 one doing the killing for any particular length of

1 time before the act of killing in order to render
2 the killing to be murder. If it is present in the
3 mind of the one doing the killing for any length of
4 time before the act, then it's presence would be
5 sufficient to render the killing murder.

6 Malice is said to be expressed where there is
7 manifested a violent deliberate intention
8 unlawfully to take away the life of another human
9 being. Malice is implied where one intentionally
10 and deliberately does an unlawful act which he or
11 she then knows to be wrong and in violation of his
12 duty to another and where no excuse or legal
13 provocation appears and when the circumstances
14 attending a killing show an abandoned heart, a
15 malignant heart fatally bent upon mischief.

16 Malice is an essential ingredient of murder
17 and it does not necessarily import ill will toward
18 the individual killed but signifies a rather
19 malignant recklessness of the lives and safety of
20 others or a condition of the mind which shows a
21 conscious disregard for social duty or a state of
22 mind which is fatally bent upon mischief. If the
23 evidence should show under what circumstances the
24 dangerous instrumentality was used which took the
25 life of another, then you the jury would have to

1 determine whether under such circumstances the act
2 was malicious.

3 Now, manslaughter is the unlawful or
4 felonious killing of another human being without
5 malice and in the sudden heat and passion upon
6 sufficient legal provocation. A legal provocation
7 is some act which either alone or in conjunction
8 with words or circumstances in existence is
9 calculated to throw one into a passion. Now, the
10 sudden heat and passion upon sufficient legal
11 provocation which mitigates or reduces down a
12 felonious killing from murder to manslaughter,
13 while it need not be the reason or eliminate reason
14 entirely, it must be such as would naturally
15 disturb or sway the reason of an ordinary person
16 and render his mind incapable of cool reflection
17 and produce what, according to human experience,
18 may be called an uncontrolled impulse to do
19 violence.

20 Now, in connection with what you have just
21 been instructed about manslaughter, that is, as to
22 whether or not reasonable time for cool reflection
23 has happened, you should take into consideration
24 the whole circumstances concerning the difficulty
25 and events involved. You should consider the

1 nature of the provocation, the defendant's physical
2 and mental constitution, his condition in life and
3 peculiar situation at the time of the event, his
4 education and habits, his conduct, manner and
5 conversation throughout the transaction. In a
6 word, all pertinent circumstances may and must be
7 considered at the time in which an ordinary person
8 in like circumstances would have been capable of a
9 cool reflection. That is a, that is a reasonable
10 time.

11 Ladies and gentlemen of the jury, the law
12 recognizes the right of each person to defend
13 himself from death or serious bodily harm, and to
14 do this he must and may, he may use such force as
15 is necessary even to the point of taking a human
16 life. In other words, self defense is a complete
17 defense and entitles one charged with unlawful
18 homicide to an acquittal if the legal elements of
19 the plea of self defense are shown to your
20 satisfaction by the evidence. The burden is upon
21 the State to disprove self defense beyond a
22 reasonable doubt. Now, the right of self defense
23 rests upon necessity, either actual or reasonably
24 apparent. In order to establish the plea of self
25 defense in a homicide case the jury must be

1 satisfied of four things. First, that the
2 defendant was not at fault in bringing on the
3 difficulty or bringing on the necessity for his
4 taking of the human life. Obviously one cannot
5 through his own fault bring on the difficulty and
6 then claim self defense.

7 Secondly, that at the time the defendant
8 delivered the fatal blow that were done, that he
9 believed in good faith that he was in imminent
10 danger of losing his life or sustaining serious
11 bodily harm. Imminent means immediate, not past or
12 future, but present.

13 Third, that such belief was reasonable and
14 that a reasonably, careful and prudent person, a
15 man of ordinary firmness and courage situated in
16 like circumstances would have reacted in a similar
17 conclusion and way.

18 And fourth, where both the deceased and the
19 defendant are on common ground, that is, where both
20 have a right to be, it must be shown that the
21 defendant had no other reasonable, safe, adequate
22 or obvious means of escape or way of avoiding the
23 danger of losing his life or sustaining bodily
24 injury except to act as he did.

25 Now, if the person assaulted being himself

1 without fault, and that is meant to be legal fault,
2 reasonably apprehends death or serious bodily harm
3 unless he kills his assailant, the killing is
4 excusable and the accused is entitled to be
5 acquitted. The party attacked is the judge of his
6 own peril and can act safely upon the appearance,
7 facts and circumstances surrounding him at the time
8 and the situation should be determined from the
9 standpoint of the defendant, it being for you the
10 jury to say whether or not his apprehension of
11 immediate danger or death or of serious bodily harm
12 was in fact reasonable and would have been felt by
13 a man of ordinary courage, reason and firmness.

14 Now, whether there was such reasonable
15 appearance of danger as would justify the killing
16 is a question of fact for you the jury to
17 determine, and in making your determination you
18 should consider the conditions of both of the
19 parties. If the appearance to the defendant at the
20 time the blow was struck, if any you should find,
21 was such that he should not reasonably and safely
22 avoid the taking of the life, could not reasonably
23 and safely avoid the taking of the life of the
24 deceased and a man of ordinary reason, firmness and
25 courage would have arrived at such a condition,

1 then it is not necessary for him to go any further
2 and he should be acquitted if he is free from fault
3 in bringing on the difficulty.

4 Now, one has a right to use force in
5 repelling force or protecting himself and he cannot
6 be required to make a nice calculation as to the
7 degree or quantity or amount of force which may be
8 necessary for his complete protection from the loss
9 of his life or serious bodily harm to himself.
10 Now, where the defendant sets up, as here, the plea
11 of self defense and undertakes to present a case of
12 apparent danger which is honestly believed as a
13 defense, the jury should, in justice to the
14 accused, consider all the facts and circumstances
15 and take them into your consideration in
16 calculating any motive in self defense. If you
17 have a reasonable doubt as to the defendant's guilt
18 after considering all the evidence, including the
19 evidence of self defense, then you must find him
20 not guilty.

21 If on the other hand you have no reasonable
22 doubt of the defendant's guilt after considering
23 all the evidence, including the evidence of self
24 defense, you must find him to be guilty.

25 Now, if you should find the defendant guilty

1 and there is reasonable doubt as to whether he is
2 guilty of murder or guilty of manslaughter, you
3 should give him the benefit of that doubt and find
4 him guilty of the lesser offense of manslaughter.
5 But of course, Madam Forelady and ladies and
6 gentlemen, you should not convict him of either
7 manslaughter or murder unless his guilt has been
8 established beyond a reasonable doubt.

9 What is armed robbery? The crime of armed
10 robbery includes all of the elements of larceny and
11 all the elements of robbery. First the Court will
12 explain to you what is meant by larceny and what is
13 meant by robbery.

14 Larceny. There are four elements of larceny
15 which must be present and established beyond a
16 reasonable doubt to make out the crime of larceny,
17 and these elements are that there was a taking,
18 that the taking was of personal property of
19 another, that after being taken the property was
20 escorted or carried away, and that the taking and
21 carrying away of the property was done with the
22 intent to steal it and permanently deprive the
23 owner of the possession of it.

24 Robbery includes each of the four elements
25 that you just heard, a taking of personal property,

1 a taking away of personal property and carrying it
2 away with the intent to permanently deprive the
3 owner thereof. And in addition to these four
4 elements there are two other elements necessary to
5 make out the crime of robbery. These elements are
6 that the property must be taken from the person of
7 another or in his presence and that the taking and
8 carrying away of the property must have been
9 accomplished by placing the other person in fear by
10 violence or threat of violence so as to make that
11 person surrender the property without their consent
12 and against their will.

13 Therefore, the crime of armed robbery
14 includes all the elements of larceny and all the
15 elements of robbery. However, an additional
16 element must be proved beyond a reasonable doubt to
17 establish the crime of armed robbery. The robbery
18 must have been committed while armed with a deadly
19 instrumentality. The person committing the robbery
20 must have had and used a deadly instrumentality
21 with which he obtained possession of the property
22 or placed the one possessing the property in fear
23 in order to obtain the property. Armed robbery is
24 a felony.

25 South Carolina makes no distinction between

1 murder and felony murder. If one intentionally
2 kills another during the commission of a felony the
3 implication of malice may arise. If facts are
4 proved beyond a reasonable doubt sufficient to
5 raise an inference of malice to your satisfaction,
6 Madam Forelady and ladies and gentlemen, this
7 inference would simply be an evidentiary fact to be
8 taken into consideration by you together with all
9 the other evidence in the case and you should give
10 it such weight as you determine it should receive.

11 In this case the defendant did not testify.
12 You are instructed now and it is emphasized to you
13 that the fact that a defendant does not testify in
14 his own behalf in a criminal trial is not a fact to
15 be considered by you in any way in your
16 deliberations. You must not consider the fact that
17 the defendant has chosen not to testify when you go
18 about the business of determining the guilt or the
19 innocence of the defendant. It must not be
20 considered by you in any manner whatsoever, either
21 against or for the defendant. A defendant has the
22 absolute constitutional right to remain silent.
23 The assertion of that constitutional right cannot
24 and must not be considered by you in your
25 deliberations. Under your oath, then, you are to

1 reach no inference nor draw no conclusion whatever
2 from the fact that this defendant did not choose to
3 testify. The fact that the defendant did not
4 testify should not even be discussed in the jury
5 room.

6 The burden of prove as has been stated to you
7 is upon the State. It is not the burden of the
8 accused to prove his innocence. The burden of
9 proof remains upon the State to prove the guilt of
10 the defendant beyond a reasonable doubt. Again,
11 it's emphasized that the fact that a defendant does
12 not testify is not a factor to be considered by you
13 in determining the guilt or innocence of the
14 defendant here on trial or in any other aspect of
15 your deliberations.

16 While the Court generally determines the
17 admissibility of evidence, it is for you to
18 determine whether an alleged statement made by this
19 defendant should be considered, it's you the
20 members of the jury that may make an ultimate
21 decision of whether or not the defendant made the
22 statement and if he did make the statement, whether
23 the statement was made by the defendant voluntarily
24 and of his own free will and accord. And finally,
25 just what weight, if any, should be given to any

1 alleged statement.

2 I charge you that it must, you must determine
3 if the alleged statement was a product of an
4 essentially free and unconstrained choice made by
5 its maker. If you determine that it was, and the
6 burden is upon the State to prove this fact and all
7 other facts beyond a reasonable doubt, then you may
8 give the statement such further consideration as
9 you deem proper. If you determine that the alleged
10 statement was not the free and voluntary willed
11 expression of the defendant, then you should not
12 consider the statement at all.

13 In determining whether the defendant's will
14 was overcome in obtaining a statement you should
15 consider both the characteristics of the accused
16 and the details of the interrogation which is
17 referred to in the law as the totality of the
18 circumstances. Some of the factors you may
19 consider are the age of the accused, his education,
20 his lack thereof, his mental ability or capacity,
21 his intelligence quotient or intelligence, his
22 background and environment, the advice or lack
23 thereof to the accused of his constitutional
24 rights, including but not limited to the procedural
25 safeguards known as the Miranda warnings concerning

1 the right to remain silent, that a statement could
2 and will be use used against him in a court of law,
3 his right to have a lawyer present, his lawyer
4 present, and if not capable of hiring a lawyer,
5 then a lawyer will be appointed to represent him
6 without any cost, that he can stop making his
7 statement at anytime.

8 Other factors to be considered are the place
9 and length of the detention and the nature of the
10 questioning. You the jury must carefully
11 scrutinize all of the surrounding circumstances
12 before you give any weight to an alleged statement.
13 You must be satisfied beyond a reasonable doubt
14 that the statement was made by the accused after he
15 waived or gave up his Miranda rights knowingly,
16 voluntarily, willingly and intelligently and made
17 an uninfluenced statement, such statement
18 uninfluenced by promise of reward, threat, injury
19 or diminution of his rights.

20 Criminal intent is a necessary element of
21 each crime that must be proved by the State beyond
22 a reasonable doubt. Criminal intent is a matter
23 that must be determined by the jury from the
24 totality of the circumstances and all the
25 circumstances existing and surrounding the

1 situation. There is no way to prove intent to a
2 mathematical certainty. There is no way that
3 medical science can dissect a person's brain and
4 decide what he then had in his mind, so the law
5 says criminal intent may be inferred from the
6 circumstances shown to have been in existence at
7 the time in question. This is how the jury makes a
8 determination of whether or not the element of
9 criminal intent was present.

10 Criminal intent is a state of mind which
11 operates jointly with an act in the commission of a
12 crime. Criminal intent is a mental state, a
13 conscious knowing, wrongdoing, so it's up to you
14 the jury to determine what the defendant intended
15 to do based upon the circumstances shown to have
16 been in existence.

17 I charge you the State must prove criminal
18 intent beyond a reasonable doubt just as the State
19 must prove every element beyond a reasonable doubt,
20 as has been previously explained to you. It is not
21 necessary to prove intent by direct and positive
22 evidence, but intent may be established by
23 inference in the same way as any other fact, by
24 taking into consideration the acts of the parties
25 and all the facts and circumstances of the case

1 from the beginning to the end.

2 Ladies and gentlemen, as you were told
3 initially, you have no enemies to punish and no
4 friends to reward and therefore you have been
5 selected as fair and impartial jurors sworn to
6 impartially try and determine the facts of this
7 case and when you comply with your oath to do so,
8 then no one will have any right to criticize your
9 verdict and you will have fully discharged your
10 obligation and duty as jurors.

11 If any of you have made any notes during the
12 course of the trial that is fine, that is welcomed
13 and it is okay. However, immediately upon going
14 into the jury room to commence deliberations do not
15 share with any other juror that you have made
16 notes, completely and absolutely destroy such notes
17 that you have made. Why is that? Your having
18 taken notes has made you a better juror, some of
19 you have, some of you have not, but it's made you a
20 better juror if you have, but your taking notes may
21 permit your recollection of a fact to be given
22 greater weight than that of another individual who
23 made no notes, who recalls the facts just as well.
24 So, the making of notes is very acceptable and a
25 good way to carry out service as a juror, but to

1 take it into the jury room and to insist that your
2 notes are correct where another individual may
3 recollect the event and the testimony differently
4 would cause a problem, so therefore in great
5 respect to you who have taken notes, please do not
6 share that fact with any of your fellow jurors and
7 completely and absolutely destroy them and you may
8 give them to the bailiff and he will see to it that
9 they are shredded and they will be done away with
10 completely without having been looked at by anyone.
11 You may have complete confidence in that.

12 Sometimes verdict forms are extremely
13 complicated, Madam Forelady and ladies and
14 gentlemen, and on some occasions in civil cases
15 there are several pages of questions that jurors
16 must go through and answer and they are very
17 complicated questions at times in civil cases. In
18 criminal cases often they are also complicated but
19 in this case this verdict form is very short. You
20 cannot read it from that distance, you might be
21 able to see something about it, but all of you will
22 have a chance to look at this verdict form and it
23 is somewhat simple. The top part simply says the
24 name of the case and it gives the name of the
25 indictment, the numbers, excuse me, of the

1 indictments and says verdict form. And there are
2 two things. Number A, we the jury find the
3 defendant Joshua Greer, and there are three
4 brackets or three choices under that finding,
5 guilty of murder, guilty of voluntary manslaughter,
6 not guilty, and that would mean of either of the
7 above.

8 Now, there is no subliminal effort made in
9 the order in which your choices occur. It very
10 well could be not guilty, guilty of voluntary
11 manslaughter, or guilty of murder, the Court is not
12 transmitting subliminally any of the Court's
13 feelings in simply putting them in order. One
14 simply must appear before the other, so make no,
15 take no inference as to how the possibilities
16 appear.

17 There is a second possibility, and that is
18 number B. As to armed robbery we find, we the jury
19 find the defendant Joshua Greer guilty or not
20 guilty, and there are brackets and you put an X or
21 check in the appropriate one after the jury has
22 made a conclusion.

23 Now, again there is no intent to convey
24 anything the Court thinks by the way that your
25 choices appear, one must appear before the other.

1 It could be not guilty and guilty, so draw no
2 inference from that at all.

3 And then when your jury has reached a verdict
4 on all issues, Madam Forelady, you will sign your
5 name here and date it September, and the date is
6 the 23rd.

7 Madam Forelady and ladies and gentlemen, your
8 verdict must be a unanimous one. All and every one
9 of you must agree to the verdict. Madam Forelady,
10 when the jury agrees upon a verdict you will fill
11 in the form appropriately and move to the next
12 issue and when completed, fill in that one and then
13 sign your name as foreperson and date it.

14 When you reach a verdict you will please
15 knock on the door and we will assemble, and that
16 may take a few minutes, and after having done so
17 you may relax a few minutes. Often the work of
18 reaching a verdict causes you to want to take a few
19 minutes before you come into the courtroom. You
20 may feel free to do that but knock on the door so
21 that we can assemble everyone who may not be
22 immediately in this area but we will assemble
23 everybody as quickly as possible and get everybody
24 here and receive your verdict as soon as you let us
25 know that you have reached a verdict.

1 Now, with some trepidation the Court has to
2 ask you to leave and instructs you not to discuss
3 the case because the Court has to do two things.
4 Two things have to happen. The Court has to
5 discuss with the attorneys whether all the
6 necessary law has been said to you, and if anything
7 has been left out, then we will have to ask you
8 back out here and accomplish that.

9 Also the attorneys have to marshal the
10 evidence. They have to get with the court reporter
11 and satisfy themselves and agree that all the
12 evidence is in fact here, and once that happens, if
13 you aren't called back out, and you must not
14 discuss the case until you receive the signal, that
15 is what this judge calls it, the signal. The
16 signal is when the bailiff brings all the evidence
17 in there to you, and the verdict form. When you
18 receive the verdict form and all the evidence
19 that's your signal that you can start to talk about
20 this case and you can talk about it as long as you
21 wish, giving each and every one of you an
22 opportunity to express your views of the evidence
23 as you have recollected it in this case.

24 Thank you very much. The Court will take up
25 these matters with the attorneys and if necessary

1 you will return, if not, you will receive the
2 signal. Do not commence to discuss the case until
3 you receive the signal.

4 Thank you very much.

5 (The jury was excused from the courtroom
6 at 1:59 p.m.).

7 THE COURT: Exceptions to the charge or
8 requests for additional charges from the State?

9 MR. WILLINGHAM: Your Honor, I have
10 absolutely no exception to the Court's charge on
11 the law. I did notice that, Your Honor, both
12 alternates went back into the jury room. I would
13 ask the Court to remove them from the jury room.
14 The Court gave us two.

15 THE COURT: Sometimes to save embarrassing
16 them I just let them go back at this time. Mr.
17 Burrell and Mr. Reid.

18 MR. WILLINGHAM: Yes, sir. The other thing,
19 and I don't know if this jury does or not, a lot of
20 times we have jurors who like to smoke, Your Honor,
21 I don't know if the bailiffs have informed the
22 Court if this jury has any smokers. I would ask
23 the Court as additional instructions, if we do have
24 smokers on the jury and they want to smoke that's
25 fine, but deliberations of the jury must stop until

1 all twelve members of the jury are present.

2 THE COURT: For your information, if there
3 are persons who wish to smoke the Court will
4 instruct the bailiff who escorts them, when he goes
5 in and escorts them out, that he will tell all that
6 who remain not to discuss the case and tell those
7 who leave that they must not discuss the case
8 unless all twelve are present.

9 MR. WILLINGHAM: I think that would be great,
10 Your Honor.

11 THE COURT: If you have no objection to the
12 bailiffs carrying out that duty?

13 MR. WILLINGHAM: No, sir.

14 THE COURT: Thank you very much, Solicitor.
15 The Court now turns to Mr. Chehoski. Exceptions to
16 the charge or request for additional charges?

17 MR. CHEHOSKI: Your Honor, the defense has no
18 exceptions to the charge and we are in agreement, I
19 am in agreement with Mr. Willingham's additional
20 request regarding the alternates and those jurors
21 who may wish to smoke.

22 THE COURT: If they do wish to smoke we will
23 have stern caution given to them by the bailiff.

24 MR. CHEHOSKI: The bailiffs can definitely be
25 stern.

1 THE COURT: Will you please, gentlemen,
2 marshal the evidence.

3 (Alternate jurors now present).

4 THE COURT: Mr. Jesse Burrell, thank you, and
5 Mr. Carl Reid?

6 JUROR: Yes, sir.

7 THE COURT: The last three cases that this
8 judge tried we had to put both alternates into the
9 fire, and I know you would like to be in the final
10 deliberations and conclude this matter by
11 expressing your thoughts about the facts of this
12 case. The Court extends its deepest gratitude
13 possible to you for your service because each of
14 you have paid attention, you have stayed alert, and
15 the Court appreciates that very much and hopes you
16 understand were there to have been any untoward
17 event, and this happened the last two times we
18 tried cases, we had to ask both alternates to serve
19 as regular jurors, you can see what a tremendous
20 burden it would be if something did happen and we
21 didn't have you, because we would have to do it all
22 over again from the beginning. Hopefully, you
23 understand that.

24 We will have to excuse you now. You will,
25 Madam Clerk, see to it, she's standing in the back,

1 she has your lunch and you are free to stay in here
2 and have your lunch if you would like, or go to
3 your car or take it with you, whatever you will,
4 and you will also receive a large check in the mail
5 that I hope that you don't spend all in one place.

6 So, with that having been said and with the
7 thanks of all concerned the Court excuses you. And
8 you are welcome to stay with us if you wish.

9 Is there an agreement that all the evidence
10 is marshaled and present?

11 MR. WILLINGHAM: The State agrees.

12 MR. CHEHOSKI: The defense agrees.

13 THE COURT: Very well. It will be sent in
14 with the verdict form.

15 (The evidence and verdict form were delivered
16 to the jury at 2:04 p.m.).

17 THE COURT: The Court wishes to extend to all
18 the attorneys its congratulations for a fine
19 presentations on all accounts. The Court feels the
20 State has been well represented, and feels Mr.
21 Greer has been well represented and the matter is
22 with the jury.

23 MR. WILLINGHAM: Thank you.

24 MR. CHEHOSKI: Thank you, Your Honor, and
25 thank you for presiding over this case.

1 THE COURT: Thank you, sir.

2 (Recessed at 2:05 p.m.).

3 (Reonvened at 3:44 p.m.).

4 THE COURT: The record is open, State of
5 South Carolina versus Joshua Greer, indictment
6 2002-5209, 2003-2201.

7 The jurors have sent out a request. It says,
8 "May we have the text or an explanation of the
9 differences between murder and manslaughter?" And
10 the Court has consulted both Mr. Willingham and Mr.
11 Chehoski and determined that we will ask them out
12 and recharge them on those points.

13 Is that your preference, Solicitor?

14 MR. WILLINGHAM: Yes, sir, Your Honor.

15 THE COURT: Mr. Chehoski?

16 MR. CHEHOSKI: Yes, sir.

17 THE COURT: Thank you. Ask the jury out,
18 please.

19 (The jury returned to the courtroom
20 at 3:45 p.m.).

21 THE COURT: Madam Forelady and ladies and
22 gentlemen, you have sent out a request and some of
23 you may have not had the opportunity to actually
24 see it although you probably know what it is, but
25 this is it and it says, "May we have the text or an

1 explanation of the difference between murder and
2 manslaughter." That's what it says. We'll hand
3 this to the court reporter and have it marked as a
4 Court's exhibit).

5 (Juror note marked as Court Exhibit
6 Number 7).

7 THE COURT: It would take some time to
8 provide you with the actual text of the words that
9 were charged to you earlier so with the agreement
10 of counsel for both sides it was determined that we
11 would just recharge you on that limited part of the
12 charge that we gave you before.

13 As you have been instructed and as you are
14 aware, the State has charged in its indictment that
15 the defendant is guilty of the crime of murder, so
16 it becomes necessary for the Court to instruct you
17 as to the law of that crime in South Carolina.
18 Under the principle recognized in South Carolina
19 that a greater crime includes the lesser crime,
20 this indictment includes not only the charge of
21 murder but also the charge of voluntary
22 manslaughter, therefore you must be charged as to
23 both of the crimes.

24 What is murder by definition? Murder may be
25 defined as the willful felonious killing of a human

1 being by another human being with malice
2 aforethought, that malice being either expressed
3 malice or implied malice.

4 What is manslaughter by definition?

5 Manslaughter may be defined as the felonious
6 killing of a human being without malice, in sudden
7 heat and passion, upon sufficient legal
8 provocation, so that as you see, the difference
9 between murder on the one hand and manslaughter on
10 the other is the presence or the absence of malice,
11 malice being present in murder but not present in
12 manslaughter.

13 What is malice? Malice is defined in the law
14 of homicide as a term of art and it is a technical
15 term importing wickedness and excluding just cause
16 or legal excuse. It's something which springs from
17 wickedness, from depravity, from a depraved spirit,
18 from a heart devoid of duty and fatally bent on
19 mischief. The words expressed or inferred malice do
20 not mean different kinds of malice but merely the
21 manner in which the only kind of malice known to
22 the law may be shown to exist, and that is to say
23 either by direct evidence or by inference. Malice
24 may be expressed where the previous threats, where
25 there may be previous threats of vengeance or lying

1 in wait or other circumstances shown that show a
2 direct intent to kill. The jury may also consider
3 by deductive reasoning or by inference that under
4 certain circumstances malice may arise even though
5 there is no expressed intent, no direct evidence of
6 an intent to kill. Malice may be inferred where,
7 though no expressed intent to kill is proved by
8 direct evidence, it may be inferred from the facts
9 and circumstances which are proved. Malice may be
10 inferred from the willful, deliberate and
11 intentional doing of an unlawful act without just
12 cause, without just or legal cause or legal excuse.
13 In other words, in its general signification and
14 meaning malice means the doing of a wrongful act
15 intentionally without justification or legal
16 excuse, but even if the facts proved are sufficient
17 to raise an inference of malice, this inference
18 would simply be an evidentiary fact to be taken
19 into consideration by you the jury. That fact may
20 be taken into consideration along with all the
21 other evidence in the case and you may give such
22 facts such weight as you determine they should
23 receive as to whether or not malice has been proved
24 beyond a reasonable doubt.

25 Furthermore, even where there is an absence

1 of a specific fixed and deliberate intent to take
2 the life of a particular person or of any person,
3 the law says that if it is proved beyond a
4 reasonable doubt that one intentionally kills
5 another person with a deadly instrumentality such
6 as a dirk, dagger, knife, slingshot, metal
7 knuckles, razor, gasoline, firebomb, molatiff
8 cocktail, lighter fluid or even ordinary and common
9 work and shop tools or common household tools, that
10 they may become dangerous instrumentalities,
11 depending upon the circumstances, and if so, then
12 an implication of malice may arise. The use of a
13 deadly instrumentality permits you to infer malice
14 but it does not require you to infer malice. If
15 facts are proved beyond a reasonable doubt
16 sufficient to raise an inference of malice to your
17 satisfaction, Madam Forelady and ladies and
18 gentlemen, this would be an evidentiary fact to be
19 taken into consideration by the jury along with all
20 the other evidence in the case and you may give it
21 such weight as you deem it deserves. You are free
22 to accept or reject this permissvie inference,
23 depending upon your view of the facts. In other
24 words, if such conduct results directly in the
25 death of another human being and if such conduct

1 was so culpable and inexcusable, so aggravated and
2 grossly reckless, grossly reckless as to show an
3 active intentional disregard of the consequences of
4 human life, thus denoting a malignant spirit, a
5 heart devoid of duty and fatally bent on mischief,
6 an implication of malice may arise.

7 Furthermore, it is not just carelessness,
8 it's not just recklessness or mere passive
9 indifference to the safety of others. Malice is
10 the wrongful intent to injure another and indicates
11 a wicked or depraved spirit in doing wrong. This
12 conduct when it shows a deliberate and intentional
13 design to so use or employ or handle a dangerous
14 instrumentality so as to endanger the life of
15 another without just cause or excuse, it may be
16 sufficient to raise this implication of malice.
17 However, it's for you the jury to decide beyond a
18 reasonable doubt whether upon all the facts and
19 circumstances presented in this case the
20 defendant's alleged use of a dangerous
21 instrumentality demonstrated such an intentional
22 disregard for human life that malice may be
23 inferred or implied from the use of a dangerous
24 instrumentality, and it's for you the jury to
25 decide what weight, if any, should be given to this

1 fact. And it will be also observed, Madam Forelady
2 and ladies and gentlemen, there must be malice
3 aforethought, and while the law does not require
4 that malice shall exist for any particular length
5 of time before the commission of an act, it must be
6 a forethought, there must be a combination of the
7 previous evil intent and the act producing the
8 fatal result.

9 Malice is a word suggesting wickedness,
10 hatred and a determination to do what one knows to
11 be wrong without just cause or excuse or legal
12 provocation. Malice need not be in the mind of the
13 one doing the killing for any particular length of
14 time before the act of killing in order to render
15 the killing to be murder. If it is present in the
16 mind of the one doing the killing for any length of
17 time before the act, then it's presence would be
18 sufficient to render the killing to be murder.
19 Malice is said to be expressed where there is a
20 manifested and violent and deliberate intention
21 unlawfully to take away the life of another human
22 being. Malice is implied where one intentionally
23 and deliberately does an unlawful act which he or
24 she then knows to be wrong and in violation of his
25 duty to another human being and where no legal

1 excuse or legal provocation appears and where the
2 circumstances attending the killing show an
3 abandoned heart, malignant heart which is fatally
4 bent upon mischief.

5 If the evidence should show under what
6 circumstances a dangerous instrumentality was used
7 which took the life of another human being, then
8 you the jury would have to determine whether under
9 such circumstances the act of the killing was
10 malicious.

11 Now, manslaughter, as has already been
12 indicated, is the unlawful or felonious killing of
13 a human being without malice, in sudden heat and
14 passion upon a sufficient legal provocation. A
15 legal provocation is some act which either alone or
16 in connection with words or circumstances is
17 calculated to throw one into a passion. Now, the
18 sudden heated passion upon sufficient legal
19 provocation which mitigates or reduces down a
20 felonious killing from murder to manslaughter,
21 while it need not be the lone or eliminate reason
22 entirely, it must be such as would naturally
23 disturb or sway the reason of an ordinary person
24 and render his mind incapable of cool reflection
25 and produce what according to human experience we

1 call an uncontrolled impulse to do violence.

2 In connection with what you have been
3 instructed about manslaughter, that is, as to
4 whether or not a reasonable time for cool
5 reflection has happened, you should take into
6 consideration the whole circumstances surrounding
7 the incident involved. You should consider the
8 nature of the provocation, if any, the defendant's
9 physical and mental constitution, his condition in
10 life and peculiar situation at the time of the
11 affair, his education and habits, his conduct, his
12 manner and conversation throughout the transaction
13 both before and after and during the event. In a
14 word, all pertinent circumstances may be considered
15 at the time in which an ordinary man in like
16 circumstances would have been capable of cool
17 reflection. That is, that is a reasonable time.

18 That concludes the differentiation between
19 murder and voluntary manslaughter. Thank you.

20 (The jury left the courtroom at
21 3:57 p.m.).

22 THE COURT: Are there any exceptions to the
23 additional charge, from the State?

24 MR. WILLINGHAM: No, sir, Your Honor.

25 THE COURT: From the defense?

1 MR. CHEHOSKI: No, sir.

2 THE COURT: Thank you. We stand in recess.

3 (Recessed at 3:58 p.m.).

4 (Reconvened at 4:45 p.m.).

5 THE COURT: The record is open. State of
6 South Carolina versus Joshua Greer, indictment
7 2003-5209, 2003-2201.

8 We understand we have a verdict. Show the
9 jury in, please.

10 Are you prepared, Madam Clerk?

11 (The jury returned to the courtroom
12 at 4:46 p.m.).

13 THE COURT: We'll have this marked as a
14 Court's exhibit.

15 (Juror note marked as Court Exhibit
16 Number 8).

17 THE COURT: Madam Clerk, will you inquire,
18 please?

19 THE CLERK: Madam Forelady, have you and your
20 fellow jurors reached a unanimous decision?

21 JUROR: We have.

22 THE COURT; Would you pass it to the bailiff,
23 please.

24 THE COURT: The jury verdict is in order. It
25 may be published.

1 THE CLERK: State of South Carolina, County
2 of Spartanburg, indictment 02-GS-42-5209 and
3 03-GS-42-2201, the State of South Carolina versus
4 Joshua Greer. We the jury find the defendant
5 Joshua Greer guilty of murder. As to the armed
6 robbery, we the jury find the defendant Joshua
7 Greer guilty. It is signed by the foreperson and
8 dated today's date.

9 Ladies and gentlemen of the jury, if this is
10 your verdict and is still your verdict please raise
11 your right hand.

12 So say you all.

13 THE COURT: The record will show that all
14 jurors have consented and assented to the verdict
15 by raising their right hands.

16 Any motions from the defendant?

17 MR. CHEHOSKI: Poll the jury, please.

18 THE COURT: Poll the jury, Madam Clerk.

19 THE CLERK: Ladies and gentlemen of the jury,
20 I will pose the question to you, after which I will
21 ask you to stand individually and answer. My
22 question being is this your verdict and still your
23 verdict.

24 Juror number 78, Mary McDowell, is this your
25 verdict and still your verdict?

1 JUROR: Yes.

2 THE CLERK: Juror number 164, Christopher
3 Black.

4 JUROR: Yes, yes.

5 THE CLERK: Juror number 40, Tonya Brown?

6 JUROR: Yes.

7 THE CLERK: Juror number 169, Patricia Hall?

8 JUROR: Yes.

9 THE CLERK: Juror number 92, Jimmy Osment?

10 JUROR: Yes.

11 THE CLERK: Juror number 156, Hobson
12 Hornbuckle, Jr.?

13 JUROR: Yes.

14 THE CLERK: Juror number 83, Patricia
15 Mackabee?

16 JUROR: Yes.

17 THE CLERK: Juror number 47, Charles Gossett?

18 JUROR: Yes.

19 THE CLERK: Juror number 52, Paul
20 Habisreutinger?

21 JUROR: Yes.

22 THE CLERK: Juror number 27, C. T. Crowe?

23 JUROR: Yes.

24 THE CLERK: Juror number 165, Karen Rhodes?

25 JUROR: Yes.

1 THE CLERK: Juror number 44, Charles Garrett?

2 JUROR: Yes.

3 THE CLERK: Your Honor, the jury has been
4 polled.

5 THE COURT: Thank you, Madam Clerk.

6 Anything further from the defense?

7 MR. CHEHOSKI: Your Honor, at this time the
8 defendant moves for a new trial, incorporating all
9 prior motions and objections as previously stated
10 in my motion for directed verdict and all previous
11 motions and objections made throughout and during
12 the course of this trial.

13 THE COURT: The motions are denied.

14 Ladies and gentlemen, this concludes your
15 business as jurors. You may remain where you are
16 for additional proceedings in the matter or you may
17 leave the courthouse if you please and have things
18 that you must do right away. If you want to go you
19 may leave or you may stay, because we will proceed
20 immediately to sentencing.

21 So, if you wish to go, Mr. Nesbitt will show
22 you out. If you wish to stay, you may.

23 The defendant will approach.

24 MR. CHEHOSKI: One moment, please, Your
25 Honor, he's signing the paperwork.

1 THE COURT: Take your time. If you need
2 time, you may.

3 This is in the matter of the State of South
4 Carolina versus Joshua Greer, indictment 2002-5209,
5 convicted of murder by a jury verdict, in 2003-2201
6 convicted of armed robbery by a jury verdict. He
7 stands before the Court represented by Mr.
8 Chehoski.

9 Does the State have anything it wishes to
10 say?

11 MR. WILLINGHAM: Your Honor, there is really
12 nothing that I can add to the facts of the case. I
13 think it's important for the Court to note this
14 victim is survived by two children, a son and a
15 daughter who reside in Pennsylvania, they were not
16 able to be here for the trial of this matter.
17 Additionally, Your Honor, this defendant has a
18 prior criminal history dating back to 1998, two
19 counts of grand larceny in 2001, obtaining goods by
20 false pretenses.

21 THE COURT: Thank you, Solicitor.
22 Counsel?

23 MR. CHEHOSKI: May it please the Court, Your
24 Honor, Mr. Greer stands before you, he's 26 years
25 old, he does have his GED, he is a life long

1 resident of Spartanburg County, South Carolina. As
2 the Court knows, he has been in jail since his
3 arrest on August 21st, 2002, that's a little bit
4 more than three years. He is the father of one
5 child, the mother of the child, Donna is here in
6 the courtroom along with other family who I'm sure
7 the Court has been aware has been with him
8 throughout the course of the trial. He has done
9 work in construction prior to his incarceration.

10 Your Honor, quite frankly, I think this case
11 shows a good example of why it's a good idea to
12 exercise your right to remain silent. Outside of
13 Mr. Greer's statement, I think the case, the
14 State's case would have been very weak, and I feel
15 that this is again a good example of why we have
16 those rights.

17 Your Honor, Mr. Greer's record, I think is
18 fairly minimal. We do understand that there is a
19 mandatory minimum for the charge of murder, that is
20 thirty years. There is, with a maximum, any
21 sentence you give him he will have to serve every
22 day. Your Honor, I think that a concurrent
23 sentence is appropriate in this matter, as these
24 crimes that the jury has found Mr. Greer guilty of
25 did occur at the same time, and therefore I believe

1 that a concurrent sentence is appropriate.

2 I further request of the Court that Mr. Greer
3 not be punished for exercising his constitutional
4 right for a trial. We do understand the severe
5 nature of this charge and the severe penalty. I
6 request the Court to sentence him to the minimum
7 thirty years. The minimum of thirty years, Your
8 Honor, I feel that, you know, having, even though
9 he has already served three of those years, that
10 that is a heavy sentence. At 26 years old right
11 now, with the three years he has been in jail, he
12 will be 53 by the time he gets out, at the
13 earliest.

14 Your Honor, we also request mercy from the
15 Court.

16 THE COURT: Thank you, counsel. Anything
17 further from the State?

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

19 THE COURT: Mr. Greer having been convicted
20 of murder in 2002-5209, for which he is committed
21 to the State Department of Corrections for a term
22 of thirty years. He has been convicted of armed
23 robbery in 2003-2201, for which he's committed to
24 the State Department of Corrections for a term of
25 twenty years consecutive to 2002-5209.

1 Are there any questions?

2 MR. CHEHOSKI: No, sir.

3 THE COURT: These proceedings are ended.

4 (Concluded at 4:57).

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

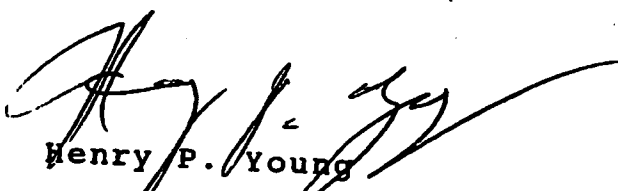
24

25

I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Spartanburg County, South Carolina, on the 23rd day of September, 2005.

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

November 19, 2005



Henry P. Young
Court Reporter

WITNESSES

827

J. Yown

Spartanburg Co. Sherff Dept.

1. SENTENCE MADE

2. **Computer**

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE
ARREST WARRANT NUMBER

7. ASSESSMENT AND
FINE CARD

8. TRAFFIC VIOLATIONS COPY
H252252

ACTION OF GRAND JURY

True Bill

Barry J. Luccombe

Foreperson of Grand Jury
Date: 6/5/03

VERDICT

Guilty

Tessa T. Hall

Foreperson of Petit Jury

Date: 9/23/05

03-GS-42- 2201

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUN 09 2003

TERM

THE STATE
vs.

Joshua Greer

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class FEL/A

MARC KITCHENS

2003 SEP 23 PM 4:02

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JUN 05 2003, the Grand
Jurors of Spartanburg County present upon their oath:

ARMED ROBBERY

The Defendant, Joshua Greer, did in Spartanburg County, on or about August 19, 2002, while armed with a deadly weapon feloniously take from the person or presence of Paul Regan by means of force or intimidation goods or monies, described as follows: U.S. Currency, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330, 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.


ASSISTANT SOLICITOR

Computer

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATESpartanburg

AKA:

Race:

W

Sex:

M

Age:

26

DOB:

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#:

03

-GS-

422201

A/W#:

H252252

Date of Offense:

8/19/02

S.C. Code §:

16-11-330

CDR Code #:

0 1 1 1 3 1 9☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO:

Armed Robberyin violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code #0 1 1 1 3 1 9☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2002 GS 42-5209☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100 \$
\$14-1-211(A)(2) (DUI Surcharge)	\$100 \$
\$56-5-2995 (DUI Assessment)	\$12 \$
\$ 35.13 (Public Def/Prob)	\$500 \$
\$73.3, 1B TP (Law Enforce. Funding)	\$25 \$
\$33.7, 1B TP (Drug Court Surcharge)	\$100 \$
\$50-21-114(BUI Breath Test Fee)	\$50 \$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
3% to County (if paid in installments)	\$
TOTAL	\$

[Signature]
Clerk of Court/ Deputy Clerk

Court Reporter:

[Signature]

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

2 1 1 1 1 5

Sentence Date:

23 Sept 2005

Computer

WARRANT

8/23/02

H-252252

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

SPARTANBURG COUNTY

THE STATE

against

GREER, JOSHUA

Address:

DRAYTON, SC 29333

Phone: SSN:

Sex: Race: Height: Weight:

DL State: DL#:

DOB: Agency ORI#:

Prosecuting Agency:

Prosecuting Officer: YOUN, J

Offense: Robbery/Armed Robbery

Offense Code: 0139

Code/Ordinance Sec. 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant

GREER, JOSHUA

on 8/21/02

#647

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

EBER GOWAN
COUNTY JAIL

SPARTANBURG, SC 29306

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

SPARTANBURG COUNTY

Personally appeared before me the affiant YOUN, J who being duly sworn deposes and says that defendant GREER, JOSHUA did within this county and state on 8/21/02 violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of SPARTANBURG)

in the following particulars:

DESCRIPTION OF OFFENSE: Robbery/Armed Robbery

16-11-0330(A)

further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

DEFENDANT DID TAKE A SUM OF CASH FROM THE PERSON OF PAUL REGAN BY MEANS OF FORCE AND VIOLENCE AND WHILE ARMED WITH A DEADLY WEAPON BEING

THE AFFIANT'S BELIEF IS BASED UPON POLICE INVESTIGATION

Sworn to and subscribed before me

on 8/23/02, 2002

Signature of Issuing Judge

(L.S.)

Signature of Affiant

Affiant's Address PO BOX 771

SPARTANBURG, SC 29304

Affiant's Telephone 000 0000

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

SPARTANBURG

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 8/21/02 defendant GREER, JOSHUA did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of SPARTANBURG) as set forth below:

DESCRIPTION OF OFFENSE: Robbery/Armed Robbery

16-11-0330(A)

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge

Judge Code: 674

Judge's Address COUNTY JAIL

SPARTANBURG, SC 29306

Judge's Telephone 664 596-3424

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

EBER GOWAN ORIGINAL

Form Approved by
S.C. Attorney General
July 26, 1990
SCCA 518

AFFIDAVIT CASE # H252252

2002 AUG 23 AM 10:38
MARK HAMMOND
CLERK OF COURT
SPARTANBURG, SC

830

WITNESSES

J. Yown

Spartanburg Co. Sheriff Dept.

ARREST WARRANT NUMBER

H252385

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 11-07-02

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 02-GS-42-5209

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

NOV 11 2002 TERM

THE STATE
vs.

Joshua Greer

Indictment for

MURDER

SC Code 16-03-0010, 0020
CDR Code 116
Class FEL-EXM

2008 SEP 23 PM 4: 07
MARC KITCHENS

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

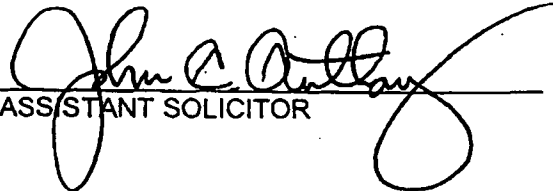
INDICTMENT

At a Court of General Sessions, convened on NOV 07 2002, the
Grand Jurors of Spartanburg County present upon their oath:

MURDER

The Defendant, Joshua Greer, did in Spartanburg County, on or about August 19, 2002, with malice aforethought, kill and murder Paul Joseph Reagan by hitting him multiple times in the head with a hammer and the victim died as a proximate result thereof, all in violation of Section 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.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Spartanburg)Joshua Ray Greer #311472)

Full name and prison number, if any, of applicant)

v.)

State of South Carolina)

Name of Respondent)

2008-CP-42-4438

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional Institution - F-4A, 164
386 Redemption Way, McCormick, S.C. 29899
2. Name and location of Court which imposed sentence Spartanburg County
General Sessions - Spartanburg, South Carolina 29306
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 02-GS-42-5209 — MURDER
 - (b) 03-GS-42-2201 — ARMED ROBBERY
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) SEPTEMBER 23, 2005
 - (b) 30 YEARS FOR MURDER
 - (c) 20 YEARS CONSECUTIVE FOR ARMED ROBBERY

JRC

ATTORNEY GENERAL'S OFFICE

RECEIVED AUG 25 2008

ADMINISTRATIVE INSTRUCTIONS

FILE OPEN ENDHAVE COPIES MADEROUTE TOORDER: TRANSCRIPTPEN RECORDS CLERK RECORDSOTHER:

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
- (b) after a plea of not guilty After a plea of NOT GUILTY
- (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? _____
- YES
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. THE SOUTH CAROLINA COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. CONVICTION AFFIRMED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Nov. 7, 2007
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) _____
- (b) N/A
- (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
- (b) NEWLY/AFTER DISCOVERED EVIDENCE
- (c) Denial of fundamental fairness and Equal Protection when court failed to instruct jury on a charge of a lesser included offense or a defense
- (D) Actual Innocence 2 (see Memorandum of law in Support for all grounds listed.)

FILED
CLERK OF COURT
2008 AUG 21 AM 9:46
HARRISBURG

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) _____

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

No

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) No

(d) any other petitions, motions or applications in this or any other Court?

No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

FILED
CLERK OF COURT
200 AUG 21 AM 9:44
LAND KITCHENS

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) Ineffective Assistance of Trial Counsel — FIRST CHALLENGE
- (b) NEWLY/AFTER DISCOVERED EVIDENCE — FIRST CHALLENGE
- (c) (See memorandum of law in support attached for all grounds stated in (a))

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

- (a) your arraignment and plea? N/A
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
YES
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? No

17. If you answered "yes" to one or more parts of (16), list:

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

- i. Jason Cheheski - Public Defender's Office
- ii. 258 N. Church St. Spartanburg, S.C. 29306
- iii. Joseph Savitz - Appellate Defense, 1330 Lady St. Suite 401
Columbia, S.C. 29201

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

- i. Trial and Sentencing
- ii. Direct Appeal
- iii. _____

18. State clearly the relief you seek in filing this application.

Vacation of conviction and Sentence
or reversed and remanded for a new trial

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

No

FILED
CLERK OF COURT
2018 AUG 21 AM 9:44
JASON MITCHELL

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

VERIFICATION

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

Joshua Greer

Sworn to and subscribed before me

This 18 day of Aug, 2008

Joyce L Young S.

Notary Public for South Carolina

My Commission Expires 8-28-2011

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

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

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

Joshua Greer
Applicant

Sworn to and subscribed before me

This 18 day of Aug, 2008

Joyce L Young S.

Notary Public for South Carolina

My Commission Expires: 8-28-2011

2008 AUG 21 AM 9:44
CLERK OF COURT
CLERK OF COURT
CLERK OF COURT

STATE OF SOUTH CAROLINA, COUNTY OF SPARTANBURG

Joshua Greer, # 311472

PETITIONER

Vs.

STATE OF SOUTH CAROLINA

RESPONDENT

IN THE COURT OF COMMON PLEAS

MEMORANDUM OF LAW IN SUPPORT
 OF MOTION FOR RELIEF PURSUANT TO
 THE UNIFORM POST CONVICTION
 PROCEDURE ACT, S.C. CODE ANN.
 17-27-10, ET SEQ.

As a matter of introduction, the Petitioner/APPLICANT, respectfully submits that the events which transpired in the instant case constitute a denial of the applicants rights to due process of law as guaranteed by the Fifth Amendment to the United States Constitution and to the effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution. These errors were not merely procedural, but substantially infringed upon the applicants right to due process of Law.

FILED
 2009 AUG 11 AM 9:44
 MARC WITCHEMS

STATEMENT OF ISSUES

- 1) The applicant recieved ineffective assistance of counsel when trial counsel failed to conduct

STATEMENT OF ISSUES CONT'D

- a proper pre-trial investigation.
- 2) The applicant recieved ineffective assistance of counsel when trial counsel failed to provide expert witnesses in preparation of the defense.
 - 3) NEWLY / AFTER DISCOVERED EVIDENCE
 - 4) THE applicant was denied fundamental fairness and equal protection when the court erred in failing to instruct the jury on a charge of a lesser included offense, or a defense
 - 5) ACTUAL INNOCENCE

FILED
CLERK OF COURT
MAR 21 AM 9:44
MACISTCHENS

STATEMENT OF JURISDICTION

South Carolina law provides an avenue for those whose convictions have been obtained in violation of the Constitution of the United States. The uniform Post-Conviction Procedure Act, S.C. CODE ANN. 17-27-10, et seq., provides an avenue for redress of Federal Constitution violations by a South Carolina Court.

A prisoner in custody under sentence of a South Carolina court may challenge his conviction and sentence if such were obtained "In violation of The Constitution of The United States or the Constitution or laws of South Carolina." S.C. CODE ANN. 17-27-20(a)(1).

The petitioner feels that his best opportunity to obtain fair and substantial Justice regarding his

STATEMENT OF JURISDICTION CONT'D

conviction is through this petition, as the procedural remedy utilized herein has historically served as a safety net for those who have had their Constitutional rights violated.

ARGUMENT

In order to proceed in a post-conviction proceeding, the applicant must show that the adjudication of a claim by a South Carolina Court resulted in a conviction or sentence that was imposed in violation of the Constitution or laws of the United States. S.C. CODE ANN. 17-27-20(a)(1). The Constitution, as the framework from which all South Carolina law springs, must not be violated as applied to the applicant.

- 1) The applicant recieved ineffective assistance of Counsel when trial counsel failed to conduct a proper pre-trial investigation.

The petitioner submits that he recieved ineffective assistance of counsel prior to and during his trial. The sixth Amendment to the United States Constitution guarantees that every criminal defendant is entitled to the effective assistance of counsel in presenting their defense. See also, S.C. Const. Art. 1, Sec. 14.

The Supreme Court has stated, "the right to counsel is a fundamental Right of Criminal defendants; It assures the fairness, and thus the Legitimacy, of our adversary process."

Kimmelman V. Morrison, 477 U.S. 365, 374 (1986).

Furthermore, the Supreme Court has recognized that "The right to counsel is the Right to the effective assistance of counsel." McMann V. Richardson, 397 U.S. 759, 771 (1970). To see whether counsel has fallen below the minimum standard needed for effective assistance of counsel under the Sixth Amendment to the Constitution, a two prong test must be met.

In Strickland V. Washington, 466 U.S. 668, 694 (1984);

The Supreme Court held that a determination of ineffective assistance of counsel would be conditioned on two factors: 1. Counsel's performance must have fallen below an objective standard of reasonableness; 2. There must be a reasonable probability that, but for counsel's errors, the results of the proceedings would probably have been different.

South Carolina has adopted the Strickland Standard, see e.g., Cherry V. State, 386 S.E. 2d 624 (1989).

The right to effective assistance of counsel may be violated by even an isolated error of counsel if the error is sufficiently egregious and prejudicial.

Murray v. Carrier, 477 U.S. 478 (1986). "It is the clients right to expect that his lawyer will use every skill, expend every energy, and tap every legitimate resource in the exercise of independent professional judgement on behalf of the client in undertaking representation of the clients interests."

Frazer v. United States, 18 F.3d 778, 785 (9th Cir. 1994).

"Defense Counsel must do his utmost to bring his legal acumen to bear on behalf of the defendant; keep the defendant fully informed of developments in the case and consult with the defendant on all major decisions to be made; conduct a reasonable pre-trial investigation, which should include contacting potential witnesses, prepare adequately and professionally for trial; conduct the trial to the best of his ability; and at the bottom, serve as a vigorous and devoted advocate of the defendant cause." United States Ex. Rel. Partee v. Lane, 926 F.2d 694 702 (7th Cir. 1991).

(A) Counsel was ineffective for failing to conduct an Adequate Pre-trial Investigation

As the Supreme Court recognized in Strickland, "Counsel bears a duty to make a reasonable investigation of the law and facts in his clients case."

Strickland, 466 U.S. at 691. Additionally, The ABA

Standards relating to the Administration of Criminal Justice Provide :

It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statements to the lawyer of facts constituting guilt or the accused's stated desire to plead guilty.

A defendant's Right to effective assistance of counsel confers a duty on counsel to conduct an adequate pre-trial investigation. When a lawyer fails to conduct a substantial investigation into any of his clients plausible lines of defense, the lawyer has failed to render effective assistance of counsel.

Cobbs v. State, 408 S.E.2d 223 (1991). Pre-trial preparation, principally because it provides a basis upon which most of the ~~evidence~~ defense case must rest, is, perhaps, the most critical stage of a lawyer's preparation. Id. Failure to investigate evidence that would be helpful to the defense is also an indication

of ineffective assistance of counsel. Id.

In the instant case, defense counsel failed to investigate evidence that would be helpful to the defense by failing to conduct a proper pre-trial investigation, and failing to provide experts to prepare the defense in the following:

- 1) D.N.A. Analysis Expert
- 2) Psychiatrist Expert
- 3) Crime Scene and Fingerprint Expert
- 4) Private Investigator

Trial Counsel was ineffective for failing to provide defense with essential tools of trial defense; In order for the defense to be provided with effective assistance of counsel these experts would have had to be provided. S.C. CODE ANN. 17-3-50 (B). 18 Sec. 3006 A (Rights of Indigent Defendants); It is the Government's duty to provide an indigent criminal defendant with essential tools of trial defense, and is both a constitutional and statutory dimension.

United States V. Sims, 617 F.2d 1371. See, Criminal Law Key 641 (3); also see, 18 U.S.C.A. 3006 A (e)(1); U.S.C.A. CONST. Amends. 5, 6, 8, 14.

The error prejudiced the defendant and rendered the trial fundamentally unfair. Counsel's performance did fall below an objective standard

FILED
CLERK OF COURT
2006 AUG 21 AM 9:44
MARCO KITCHENS

of reasonableness, and if not for counsel's error, there is a reasonable probability the results of the proceedings would probably have been different.

In the instant case, had trial counsel properly conducted an adequate pre-trial investigation into all the circumstances involved in the applicants case and had he properly researched and utilized laws and facts regarding the applicants charges, Counsel would have made the proper objections to the courts refusal of allowing the defense to argue that William "Butch" Green ..., not Joshua Greer, was the actual killer.

See South Carolina Rules of Evidence Rule 201

Holmes v. State, 126 S.Ct. 1727 (2006)

STATE v. Holmes, 605 S.E. 2d 19 (2004)

"The general rule of Issue preservation states that if an issue was not raised and ruled upon below, it will not be considered for the first time on appeal."

State v. Passmore, 611 S.E. 2d 273, 281 (S.C.App. 2005)

(citing State v. Dunbar, 587 S.E. 2d 691 (2003);

State v. Lee, 564 S.E. 2d 372 (S.C. App. 2002) "Our courts have consistently refused to apply the plain error RULE."

Jackson v. Speed, 486 S.E. 2d 750, 759 (1997) (citations omitted).

Instead we have held: "It is the responsibility of Counsel

to preserve issues for appellate review." *Id.*

Our Supreme Court, in *Ion, L.L.C. v. Town of Mt. Pleasant*, 526 S.E. 2d 716 (2000), explained the rationale behind this longstanding rule:

Imposing this preservation requirement on the appellant is meant to enable the lower court to rule proper after it has considered all relevant facts, law, and arguments. The requirements also serves as a keen incentive for a party to prepare a case thoroughly. It prevents a party from keeping an ace card up his sleeve - intentionally or by chance - in hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.

Id. at 422, 526 S.E. 2d at 724 (citations omitted); see, *Ellie, Inc. v. Micchichi*, 594 S.E. 2d 485, 498 (S.C. App. 2004) ("without an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error.")

Trial Counsel was ineffective for failing to conduct a proper pre-trial investigation into the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case; had counsel did so, he would have objected to the

courts error in failing to instruct the jury to involuntary manslaughter; The failure to charge a lesser-included offense or a defense as to evidence of the record, and evidence of the applicant being innocent of murder because there was evidence that was insufficient for murder.

In the instant case, the applicant was convicted of murder; In this motion for post-conviction Relief his conviction should be set aside on the ground that there was insufficient evidence for conviction on murder; Applying the "no evidence" criterion of *Thompson v. Louisville*, 362 U.S. 99, found the record devoid of evidence of premeditation and granted the writ. Applying the same criterion the court of Appeals reversed, holding that there was some evidence that petitioner had intended to kill the victim.

A Post-conviction Court must consider not whether there was any evidence to support the state court conviction, but whether there was sufficient evidence to justify a rational trier of fact to find guilt beyond a reasonable doubt. In Re Winship, 397 U.S. 358. pp. 313-324.

In Re Winship presupposes, as an essential of

the due process guaranteed by the Fourteenth Amendment, that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof --- defined as evidence ~~not~~ necessary to convince a Trier of fact beyond a reasonable doubt of the existence of every element of the offense. Pp. 316-316. Jackson V. Virginia, 443 U.S. 307.

The Constitution prohibits the criminal conviction of any person except upon proof of guilt beyond a reasonable doubt. In Re Winship, 397 U.S. 358

In Jackson V. Virginia, 443 U.S. 307, The petitioner was convicted after a bench trial in the circuit court of Chesterfield County, Va., of First-Degree murder of a woman named Mary Houston Cole. Under Virginia Law, Murder is defined as "The unlawful killing of another with malice aforethought." Stapleton V. Commonwealth, 123 Va. 825, 96 S.E. 801. Premeditation, or specific intent to kill, distinguishes murder in the First from Murder in the second degree; Proof of this element is essential to conviction of the former offense, and the burden of proving it clearly rest with the prosecution.

Shiflett V. Commonwealth, 143 Va., 609, 130 S.E. 777;
Jefferson V. Commonwealth, 214 Va. 432, 201 S.E. 2d 749

That the petitioner had shot and killed Mrs. Cole was not in dispute at the trial. The states evidence

established that [443 U.S. 310] she had been a member of the staff at the local County Jail, that she had befriended him while he was imprisoned there on a disorderly conduct charge, and that, when he was released she had arranged for him to live in the home of her son and daughter-in-law. Testimony by her relatives indicated that, on the day of the killing, the petitioner had been drinking and had spent a great deal of time shooting at targets with his revolver. Late in the afternoon, according to their testimony, he had unsuccessfully attempted to talk the victim into driving him to North Carolina. She did drive the petitioner to a local diner. There, the two were observed by a deputy sheriff as they were preparing to leave the diner in her car. The petitioner was then in possession of his revolver, and the sheriff also observed a kitchen knife in the car.

After shooting Mrs. Coie, the petitioner drove her car to North Carolina, where, after a short trip to Florida, he was arrested several days later. In a post-arrest statement, introduced in evidence by the State, the petitioner admitted that he had shot the victim. He contended, however, that the shooting had been accidental. When asked to describe his condition at the time of the shooting, he indicated that he had not been drunk, but had be "pretty high".

His story was that the victim had attacked him with a knife when he resisted her sexual advances. He said that he had defended himself by firing a number of warning shots into the ground, and had then reloaded the gun. The victim, he said, then attempted to take the gun from him, and the gun "went off" in the ensuing struggle. At the trial his position was that he had acted in self-defense.

Alternatively, he claimed that, in any event, the states own evidence showed that he had been too intoxicated to form the specific intent necessary to sustain a conviction of murder in the first degree.

Whereas, in the case at bar, there is probative evidence that the court should have instructed the jury on the lesser charge of involuntary manslaughter, based on the evidence of self defense and the fact that the victim made sexual advances to him and threatened him with what appeared to be a "butcher knife" or a pair of shears. Also, there is the evidence of the bloody shoeprint in which the police failed to investigate and determine to who it belonged to. They do know that it does not match the applicant's shoe, and no amount of blood was found on the applicants shoes. It was improper for the police not to investigate

William "Butch" Green, and had defense counsel conducted a proper pre-trial investigation, counsel would have discovered that William Green had been in the victims house during the time frame of the murder, which gave him opportunity and motive.

In William "Butch" Greens' voluntary statement, taken the day after the murder, but three years prior to his testimony during trial, he had stated, "At 10:30 the next morning Dino knocked on my door saying there was something wrong with "Doc". We went inside and at first I thought it was jelly. But Dino inspected a little closer and pointed out a large head wound."

Also, the head investigator's official report states that William "Butch" Green told him that he did not come out of the RV Trailer he lived in, until Dino woke him up the next morning at 10:30.

But during his testimony at trial, William Green states, "I got curious and I looked out the window and I noticed the house was still unlocked, the doors were open... At that point I kind of eased in the back, through the kitchen and through the back kitchen door, and I know he always slept on the couch. And I was calling his name kind of gently, you know, and just going, hey Doc. I came up like this and I sneaked around the corner, and the couch that he usually ~~slept~~ slept on was right here, you know, the

doors were open but the curtains were all drawn , it was kind of dark and I couldn't see real well but I could see him laying there and he looked fine , you know , he was actually even snoring and I just assumed that everything was okay... I wasn't really comfortable although Doc had mentioned many times I was welcome to come in the house at anytime , I just wasn't real comfortable doing that... I felt kind of , like I was violating anyway by even kind of sneaking in the way I did , so I just exited very quietly and let him sleep . It was about fifteen minutes later that Dino came and knocked on the door to the trailer... he told me that something was wrong with Doc... We walked back into the house..." (Tr. pp. 572-575)

This critical evidence could have been investigated, but was withheld for over three years. William "Butch" Green's shoes were never tested for blood or compared to the shoeprint that was found in blood on the victims floor. Not only does the facts support that the applicant is entitled to a new trial , the newly discovered evidence of William Green's testimony, supports that, had defense counsel discovered this new evidence before the trial , defense counsel would have been allowed to argue third party guilt . Granted a new trial , with this

newly discovered evidence, would probably change the outcome. It is material to the issue of Guilt or innocence, Hayden V. State, 299 S.E. 2d 854 (1983). One example of After-discovered evidence is a discovery violation by the prosecution. In Gibson V. State, 514 S.E. 2d 320 (1999), a violation of Brady V. Maryland, 373 U.S. 83 (1963) for failure to disclose impeachment evidence, was held to render Gibson's Guilty plea involuntary.

In the instant case, the prosecution withholding discovery is not merely cumulative or impeaching, but it also denied the applicant due process and fundamental fairness, thus, The constitutional violation resulted in the conviction of one who is actually innocent of murder.

ACTUAL INNOCENCE

There is no statutory limitations for an actual innocence claim as applied to a Brady violation; This court has jurisdiction to entertain this motion as to the findings of guilt regarding this applicant is a matter of "Actual Innocence," As such, there is no statutory bar in raising this claim at this time as the conviction of an actually innocent person is unconstitutional and may be challenged at any time. The South Carolina post-conviction Rules cannot be applied to an actual innocence proceeding. There is no statutory Time Bar to an

FILED
CLERK OF COURT
JAN 10 2008
MORGAN KITCHENS
AM 9:45

actual Innocence Claim. The standard of Murray V. Carrier, 106 S.Ct. 2639 (1986); "Requires a post-conviction petitioner to show that a constitutional violation has probably resulted in the conviction of one who is actually innocent." Rather than the more stringent, Sawyer Standard, Governs the miscarriage of Justice inquiry when a petitioner raises a claim of actual innocence to avoid a procedural bar to the consideration of the merits of his constitutional claims. The societal Interests in Finality, Comity, and conservation of scarce Judicial Resources dictate that a post-conviction court may not ordinarily reach the merits of successive claims, absent a showing of cause and prejudice. However, a collateral court must adjudicate even successive claims when required to do so by the ends of Justice. Thus, in a trio of cases, The United States Supreme Court firmly established an exception for fundamental miscarriages of Justice. Carrier, 477 U.S. at 495;

Kuhlmann V. Wilson, 477 U.S. 436; Smith V. Murray, 477 U.S. 527.

To ensure that the Fundamental miscarriage of Justice exception would remain "Rare" and be applied only in the "extraordinary" cases, while at the same time ensuring that relief would be extended to those who are truly deserving. Carrier and Kuhlmann, also expressed the standard of proof that should Govern consideration of

such claims: The Carrier Standard of proof reflects the relative importance attached to the ultimate decision. To satisfy Carrier's "actual Innocence" standard; The focus on actual innocence means that a court is not bound by the admissibility rules that would govern at Trial, but may consider the probative force of relevant evidence that was either wrongly excluded or unavailable at trial. Murray V. Carrier, 106 S.C.T. 2639 (1986).

Conclusion

For the reasons cited in the Post-Conviction Relief application, the applicants conviction and sentence should be vacated, set aside; or reversed and remanded for a new trial.

FILED
2008 AUG 1 AM 9:45
MARICOPA COUNTY
KITCHENS

Respectfully Submitted by:

Joshua Greer

Joshua Greer # 311472

McCormick Correctional Institution
386 Redemption Way F-4A, 164
McCormick, S.C. 29899

Aug. 18, 2008

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2008-CP-42-4438

Joshua Ray Greer, 311472,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed August 21, 2008, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the November 2002 term of the Spartanburg County Grand Jury for Murder (02-GS-42-5209). He was later indicted at the June 2003 term of the Spartanburg County Grand Jury for Armed Robbery (03-GS-42-2201). Jason Chehoski, Esquire, represented the Applicant. On September 20, 2005, the Applicant proceeded to trial and the jury found him guilty of both charges. The Honorable Wyatt T. Saunders sentenced him to a confinement for a period of thirty (30) years for Murder and twenty (20) years consecutive for Armed Robbery.

A timely notice of appeal was filed and Joseph L. Savitz, III, Esquire, submitted a brief on the Applicant's behalf. The Court of Appeals affirmed the conviction on November 7, 2007 (State v. Greer, 07-UP-512). The remittitur was issued on November 27, 2007.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the Applicant's appellate records, and the trial transcript. Any further records will be forwarded upon receipt.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

- a) Ineffective Assistance of Counsel;
- b) Failure to conduct pre-trial investigation;
- c) Failure to provide expert witnesses in preparation of defense;
 - a. DNA Analysis Expert
 - b. Psychiatric Expert
 - c. Crime Scene and Fingerprint Expert
 - d. Private Investigator
- d) Newly/After Discovered Evidence; and
- e) Denial of fundamental fairness and equal protection due to the court's failure to instruct the jury on a lesser included offense or a defense of actual innocence.

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

IV.

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

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MICHELLE J. PARSONS
Assistant Attorney General

By: Michelle Parsons
ATTORNEYS FOR RESPONDENT

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

February 20, 2009.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

JOSHUA R. GREER,) TRANSCRIPT OF RECORD
APPLICANT,) 2008-CP-42-4438

V.)

STATE OF SOUTH CAROLINA,)
RESPONDENT.)

MAY 26, 2009

SPARTANBURG, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. MARK HAYES, II, JUDGE

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

FRANKLIN M. MANN, JR., ESQUIRE

ATTORNEY FOR THE APPLICANT

KAREN C. RATIGAN, ASSISTANT ATTORNEY GENERAL

ATTORNEY FOR THE STATE

SHARON L. VIZER

CIRCUIT COURT REPORTER

I N D E X

PAGE

Post-Conviction Relief Hearing.....3

WITNESSESJason S. Chehoski:

Direct Examination by Mr. Mann.....3

Cross-Examination by Ms. Ratigan.....10

Redirect Examination by Mr. Mann.....13

Joshua R. Greer:

Direct Examination by Mr. Mann.....15

Certificate of Reporter.....21

****NO EXHIBITS WERE INTRODUCED****

1 Tuesday, May 26, 2009

2 MS. RATIGAN: May it please the Court, Your Honor.
3 This is the case of Joshua Ray Greer vs. The State. The
4 docket is 2008-CP-42-4438. Mr. Greer was indicted for
5 murder and armed robbery. He was represented on these
6 charges by Mr. Chehoski.

7 On September 20th, 2005, after a jury trial, he was
8 convicted of the charges as indicted. Judge Saunders
9 levied consecutive sentences of 30 years for murder and
10 20 years for armed robbery. Mr. Greer did file an appeal
11 that was affirmed. His convictions and sentences were
12 affirmed by the Court of Appeals in July of 2007. And
13 the State is ready to proceed.

14 MR. MANN: Your Honor, Milton Mann here on behalf
15 of Mr. Joshua Greer. We're ready to proceed as well.

16 THE COURT: You want to call your first witness?

17 MR. MANN: I would, Your Honor. I'd like to call
18 Mr. Chehoski at this time, please.

19 JASON S. CHEHOSKI, after having been duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. MANN:

23 Q. Good morning.

24 A. Morning.

25 Q. Mr. Chehoski, do you remember representing

1 Mr. Greer?

2 A. Yes, sir.

3 Q. And I believe that went all the way to trial to a
4 verdict?

5 A. Yes, sir.

6 Q. And he was found guilty of two charges?

7 A. Yes, sir.

8 Q. You were representing him respecting the murder
9 charge, correct?

10 A. Murder and armed robbery.

11 Q. And armed robbery. Tell me a little bit about the
12 case. There was a suppression hearing, was there not?

13 A. I don't remember.

14 Q. Okay. Do you recall that Mr. Greer felt that one
15 of his statements --

16 A. Oh, yeah.

17 Q. He gave two statements.

18 A. Okay. We did move to suppress the statements.

19 Q. Okay.

20 A. Our argument was that they were coerced. Mr. Greer
21 had been awake for at least 24 hours, probably closer to
22 36 hours at the time he was taken into custody. On top
23 of that, I believe, he was also possibly under the
24 influence of some substance. I cannot recall
25 specifically. His statement -- obviously, we wanted the

1 statement suppressed because it was inculpatory. He had
2 admitted committing the act that ultimately led to the
3 victim's demise and we wanted -- we did not want the jury
4 to hear that.

5 Q. I think the two substances were totem polls or
6 illegal drug. Does that refresh your memory?

7 A. Right. I know it was an illegal substance. It was
8 not alcohol.

9 Q. And also 96 ounces of malt liquor?

10 A. Okay. Well, maybe I'm wrong there. If I'm wrong,
11 yeah.

12 Q. But I'm just trying to refresh your memory as best
13 we can.

14 A. That sounds right.

15 Q. But in the statement -- do you remember in the
16 statement, did he say that there was a fight or a
17 disagreement?

18 A. In the statement that he admitted striking the
19 victim he said that the victim had made homosexual
20 advances towards him and they were not welcome.

21 Q. And that was ultimately let in?

22 A. It was let in, and I think also in the statement
23 that he said that the victim was armed with either a
24 knife or a sharp object, and I think because of the
25 nature of what he was armed with the Judge on his own

1 motion gave a self defense charge.

2 Q. Okay. When that was offered during the trial --
3 I've reviewed the record, and it appeared you did object
4 to the continued introduction of this statement we're
5 talking about.

6 A. Right.

7 Q. So you knew that you needed to preserve that on
8 appeal if that would be addressed on appeal, correct?

9 A. That's correct.

10 Q. Was that the bulk of the State's case against
11 Mr. Greer?

12 A. Without that statement I don't think they could
13 have even charged Mr. Greer, much less convict him.

14 Q. Now, there was another, if you will, defense
15 strategy or issue --

16 A. Yeah.

17 Q. -- that was addressed to the Court, correct?

18 A. Correct. I think you're referring to third party
19 guilt.

20 Q. I am.

21 A. Okay. In my opening statement I had said to the
22 jury that there are two people who know what happened to
23 the victim -- well, who know what happened that night and
24 neither one of them are in this courtroom. My point --
25 well, what I was trying to establish in that is that the

1 two people were obviously the person who committed the
2 act and the victim. Neither one -- and the victim was
3 dead and Mr. Greer, who was being charged, was not one of
4 those people.

5 Q. Correct.

6 A. The State interpreted that to mean that I knew who
7 it was and had raised a motion of third party guilt,
8 which I believe was discussed in chambers then ultimately
9 ruled that I could not introduce evidence of third party
10 guilt. It was a preemptive -- it was a preemptive
11 objection.

12 Q. Okay. So they filed a motion in limine?

13 A. Yeah.

14 Q. Did you proffer any testimony of third party guilt?

15 A. No.

16 Q. You were aware of a Mr. Green, Butch Green?

17 A. Yes.

18 Q. And he testified in the case, didn't he?

19 A. He testified the last day of the case, if it's the
20 same person I believe you're mentioning. There was a
21 Mr. Green who lived in a trailer behind the victim's
22 trailer or the victim's home and was also in custody in
23 the Colorado Department of Corrections at the time. If I
24 remember the evidence correctly there was a trail of
25 blood that led to his trailer.

1 Q. But that was the potential person that you had
2 discussed with Mr. Greer respecting a third party guilt
3 defense?

4 A. Again, I don't believe I discussed a third party
5 guilt defense with Mr. Greer but if we were to point a
6 finger at someone that would be the person, yes.

7 Q. Okay. And during his testimony on the stand he
8 made an inconsistent statement from his statement that he
9 had given to the police and signed in here.

10 A. Again, I --

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

12 THE COURT: Yes, sir.

13 MR. MANN: Your Honor, I'm on page 583 of the trial
14 transcript.

15 BY MR. MANN:

16 Q. And if you'll take a look at your questioning of
17 him. See if that will help refresh your memory so we can
18 discuss it, please.

19 (PAUSE.)

20 A. That looks right, yeah.

21 Q. So the first time Mr. Green admitted that he had
22 been in the trailer earlier that morning was on his live
23 testimony, correct?

24 A. Right.

25 Q. And you caught upon that?

1 A. That's what the record shows, yes.

2 Q. And at that time did you object or renew or
3 re-address it with the Court, your inability to argue
4 third party defense?

5 A. No, I did not.

6 Q. So you realize that this was a potential defense,
7 correct?

8 A. I realize that it was an inconsistency and it
9 struck upon his credibility. That's the only thing I
10 realize. I don't think I seized upon the fact that this
11 could have been introduced as third party evidence at
12 that point. It was the last day of the trial and it was
13 right before closing arguments. My mind may have been
14 elsewhere.

15 Q. Okay. And that was not preserved for appellate
16 review --

17 A. No. I never objected on the record to my inability
18 to introduce third party guilt --

19 Q. And would you agree that that was an error on your
20 part?

21 A. Yes.

22 Q. I appreciate that.

23 MR. MANN: I have nothing further from this
24 witness.

25

CROSS-EXAMINATION

1 BY RATIGAN:

2 Q. So you received full discovery from the State?

3 A. Yes.

4 Q. That included the two statements from your client
5 as well as statements from other individuals?

6 A. Yes. Again, it was a fairly substantial file but I
7 do remember that Mr. Willingham invited me up to his
8 office and we compared files to make sure I had
9 everything he had.

10 Q. And was there any forensic evidence linking your
11 client to the scene?

12 A. No.

13 Q. So basically the sole evidence was his confession?

14 A. Correct.

15 Q. And the fact that his first statement was so
16 inconsistent with the other witnesses's statements?

17 A. Yes. I will say there was some other evidence
18 linking, other than Mr. Greer's statement. I don't think
19 it's substantial evidence but they had testimony that he
20 had made a couple of phone calls from the victim's
21 residence to somebody else. And again -- the reason why
22 I say I don't think it was substantial is because there
23 was no evidence to say that the victim was not alive at
24 the time he made those phone calls.

25 Q. But they placed him at the victim's house at the

1 time?

2 A. Essentially, Mr. Greer was the last known person to
3 see the victim alive, and that's the reason why he was a
4 suspect.

5 Q. And the lack of forensic evidence, the fact that
6 the only evidence against your client was his confession,
7 you brought all this out to the jury during closing?

8 A. I believe I did, yes.

9 Q. Did you -- well, let's back up a little bit first.
10 Could you explain again, did the Judge make a chambers
11 ruling on third party guilt or could you explain that a
12 little more for us?

13 A. After opening statements either -- again, I believe
14 it was immediately after opening statements,
15 Mr. Willingham requested a hearing in chambers or a
16 discussion in chambers, I should say, regarding the
17 statement I made during my opening statement regarding
18 there were two people who know what happened in this case
19 and neither one of them are in this courtroom.

20 Mr. Willingham wanted an initial ruling and again a
21 motion in limine to preclude any evidence of third party
22 guilt. My memory of that hearing, again, was what I
23 testified on direct. My purpose in saying that was not
24 to suggest third party guilt, was rather to point to
25 Mr. Greer's innocence, if he did know what happened he's

1 not one of the people who does.

2 Q. Now, Mr. Greer seems to be arguing you should have
3 made some kind of a proffer testimony to argue the third
4 party guilt. What in your opinion would you have been
5 able to proffer?

6 A. I think the best evidence would be the trail of
7 blood leading out the back door from the victim's trailer
8 which was the opposite direction where the hammer was
9 found or the murder weapon.

10 Q. None of that came in at trial?

11 A. I don't remember. It may very well have. Again, I
12 think it was on the second day I had the lead
13 investigator on the stand for a very long time, so it may
14 have come up during that time.

15 Q. Now, obviously this is Monday morning
16 quarterbacking, as all PCR's are, but in your opinion if
17 you had been able to offer such a proffer for third party
18 guilt would that have changed the outcome of the trial,
19 do you think?

20 A. I'm not sure. Again, there is a lot of things I
21 could have done differently and that, you know, any one
22 of them could have come up with a different outcome but I
23 I'm not the jury.

24 MS. RATIGAN: The State has the nothing further,
25 Your Honor.

1 MR. MANN: I have one question, Your Honor, on
2 redirect, if I may.

3 THE COURT: Limited to what she went into, yes,
4 sir.

5 MR. MANN: Correct.

6 REDIRECT EXAMINATION

7 BY MR. MANN:

8 Q. And touching back on the motion in limine. Okay:
9 Did you perceive the Judge ruling as a final ruling or a
10 temporary ruling based upon the information before the
11 Court?
12 A. I perceived it, again, not, I would say, as a final
13 ruling but my strategy at that time was not to touch
14 third party guilt because that wasn't my -- that wasn't
15 the theme of my case. That wasn't my -- that had nothing
16 to do with the theory that I was presenting which was
17 that none of this evidence, taken outside of Mr. Greer's,
18 in my opinion, very incredible confession, that I don't
19 think is -- the statement that he gave, I did not believe
20 that it held -- it passed the laugh test. That, you
21 know, that none of this evidence pointed to Mr. Greer
22 being guilty of this crime. In fact, it was -- there was
23 just nothing that pointed to him. If the blanket of the
24 presumption of innocence meant anything it meant that
25 this was not enough.

1 Q. But, now, again, you are telling me that there was
2 a blood trail to another person that lived within walking
3 distance to the victim, that the murder weapon was found
4 near there and you were not going to pursue a third party
5 defense in this case?

6 A. No. That's exactly what I'll telling you. I was
7 not pursuing a third party defense -- a third party guilt
8 defense, I should say.

9 Q. And yet the State had to actually make a motion in
10 limine. Now, you argued that motion in chambers, didn't
11 you?

12 A. Again, I was explaining that that motion was
13 brought up because of my comment in my opening statement.
14 That comment was not meant to point a finger at somebody
15 else for third party guilt but rather to point a finger
16 of innocence to say this man is not guilty.

17 Q. And that couldn't be handled with a sidebar saying,
18 Judge, I stipulate? I'm not trying to, you know -- but
19 there actually had to be a hearing on this. So that's
20 why I'm just wondering if your recollection is maybe off
21 a little bit.

22 A. If it is, again, what I remember and may have even
23 been -- I believe we started this case Tuesday late
24 afternoon, and then Wednesday morning was when that
25 hearing was before we even began. That's the best of my

1 memory.

2 Q. Okay. I appreciate that. Thank you.

3 THE COURT: Thank you, sir. You may step down.

4 MR. MANN: I'd call Mr. Greer at this time, Your
5 Honor.

6 JOSHUA R. GREER, after having been duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. MANN:

10 Q. Mr. Greer, state your name for the record for us,
11 please.

12 A. Joshua Greer.

13 Q. And where are you currently residing?

14 A. McCormick Detention Center.

15 Q. Yes, sir. And you're sentenced there for how long,
16 sir?

17 A. Fifty years.

18 Q. Okay. And you and I have talked and we've
19 discussed some of the issues in your case and you've now
20 heard me have a chance to have a discussion and elicit
21 testimony from your prior defense counsel; is that
22 correct?

23 A. Yes, sir.

24 Q. Would it be fair for me to say that out of any
25 person in this room you probably have the best

1 recollections of your individual trial?

2 A. Probably so.

3 Q. I wasn't there. I don't think any other person in
4 this room was there other than your defense counsel,
5 correct?

6 A. Yeah.

7 Q. And you have criticized some of his representation
8 of you during the trial, correct?

9 A. Yes, sir.

10 Q. In particular we spent a good bit of time talking
11 about the theory of a third party defense regarding
12 Mr. Butch Green, correct?

13 A. Yes, sir.

14 Q. Either before trial or during trial did you have
15 discussions with your attorney respecting the possibility
16 of presenting that defense to the jury?

17 A. Yeah. I'm pretty sure I said something about, you
18 know, trying to focus it on him, you know, because of the
19 bloody shoe print that was found that wasn't mine, and
20 the trail of blood leading to his house.

21 Q. And just to make sure we're not wasting our time,
22 you didn't do it, did you?

23 A. No, sir.

24 Q. Okay. So you would have liked to have seen who did
25 do it, correct?

1 A. Yeah.

2 Q. Because you knew the victim?

3 A. Yes, sir.

4 Q. Did you know Mr. Green?

5 A. Yes, I did.

6 Q. Did you view this of something he would be capable
7 of?

8 A. Maybe so. On drugs, yeah. He was an all right guy
9 but he was on drugs, too.

10 Q. And you understand that on appeal that the Court
11 said we can't judge on this, it wasn't preserved at
12 trial; correct?

13 A. Yes.

14 Q. Do you think it would have made a difference in
15 your trial if it would have been adequately presented to
16 the jury --

17 MS. RATIGAN: I'm going to object. That calls for
18 a legal conclusion, Your Honor. He's not qualified to
19 make that kind of a statement.

20 THE COURT: You want to rephrase the question?

21 MR. MANN: Let me see if I can massage it, Judge,
22 anyway.

23 BY MR. MANN:

24 Q. Would you have wanted your attorney to make a third
25 party defense argument to the jury in an effort to

1 establish your innocence?

2 A. Absolutely.

3 Q. And do you think he made a mistake in doing that --
4 not doing that? Excuse me.

5 A. Yes, I do.

6 Q. In your application you raised quite a few issues,
7 correct?

8 A. Yeah.

9 Q. You and I have discussed that I feel this is the
10 most meritorious of those?

11 A. Yes, sir.

12 Q. Is that correct?

13 A. Yeah.

14 Q. And are you comfortable with that decision?

15 A. Yes, sir.

16 MR. MANN: Okay. I believe I have no further
17 questions at this time, Your Honor.

18 MS. RATIGAN: I have no questions, Your Honor.

19 THE COURT: Thank you, sir. You may step down.

20 MR. MANN: Your Honor, a brief closing statement?

21 MS. RATIGAN: Your Honor, the State has no
22 witnesses to call. We'd rest on Mr. Chehoski's
23 testimony, the trial record and the appellate record
24 before the Court.

25 THE COURT: Anything in reply based on what the

1 State has --

2 MS. RATIGAN: I'm sorry. No, Your Honor.

3 THE COURT: Anything in reply based on what the
4 State has said?

5 MR. MANN: Your Honor, we too would incorporate the
6 trial transcript, the appellate record, as well as the
7 testimony given here.

8 THE COURT: All right. Did you want to make some
9 closing statements?

10 MR. MANN: Very brief, Your Honor.

11 THE COURT: Certainly.

12 MR. MANN: Very, very brief. Your Honor, we would
13 at this time renew Mr. Greer's request for a new trial in
14 this matter. We feel that given the case law respecting
15 the ability of the defendants to provide a third party
16 defense indicates that number one, this was an
17 appropriate thing to do; number two, that this did meet
18 the two-prong test regarding this actually being an
19 error, which was admitted by counsel, as well as one that
20 would have made a difference in this man's trial.

21 No further statement, Your Honor.

22 MS. RATIGAN: Just very briefly, Your Honor. We'd
23 argue he has not met his burden of proving both error and
24 prejudice. I would note that the Court of Appeals after
25 discussing that a formal third party guilt argument had

1 not been preserved for review stated, and I quote,
2 Prejudice from the exclusion of third party guilt
3 evidence is not apparent from this record on appeal. It
4 then says that as there was no proffer -- without that
5 proffer they can't determine prejudice.

6 I asked counsel what he would have proffered and he
7 said he would have been able to proffer that trail of
8 blood. We would argue that the absence of that
9 information did not prejudice Mr. Greer at trial. He
10 hasn't met his burden of proof today and we'd ask for his
11 application to be dismissed.

12 MR. MANN: Brief rebuttal, Your Honor. The
13 paragraph that she's talking to in the appellate decision
14 is respecting whether or not the error was so fundamental
15 that it on its own accord could look at the trial judge's
16 actions and rectify the situation.

17 The error was not preserved. If it would have been
18 preserved that would have been a lower standard of review
19 on the appellate review and then the Court could have
20 taken action, Your Honor.

21 THE COURT: All right. I will take a look at it.

22 Mr. Greer, just stay in touch with your attorney
23 and he will advise you once I've been able to make a
24 decision, but thank you for coming today.

25 (WHEREUPON, the hearing was concluded.)

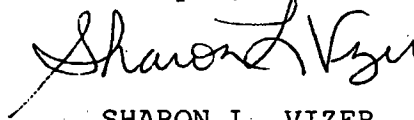
C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, Sharon L. Vizer, Official Court Reporter for the
Seventh Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate
and complete transcript of record of all the proceedings
had and the evidence introduced in the hearing of the
captioned case in Circuit Court on the 26th day of May
2009.

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

July 2, 2014



SHARON L. VIZER

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

2008-CP-42-4438

Joshua Ray Greer,
S.C.D.C. No. 311472,)

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

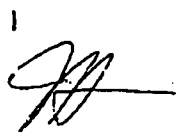
FILED
CLERK OF COURT
SPARTANBURG COUNTY
2009 JUL 27 PM 2:38
MARC KITCHENS

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 21, 2008. The Respondent made its return on February 20, 2009. An evidentiary hearing into the matter was convened on May 26, 2009 at the Spartanburg County Courthouse. The Applicant was present at the hearing and represented by Franklin M. Mann, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Jason S. Chehoski, Esquire. The Court had before it a copy of the trial transcript, the records of the Spartanburg County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the Respondent's return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. The Applicant was indicted at the November 2002 term of the Spartanburg County Grand Jury for murder

1


(2002-GS-42-5209) and at the June 2003 term for armed robbery (2003-GS-42-2201). He was represented by Jason S. Chehoski, Esquire.

After the State called the case to trial, the Applicant was found guilty. On September 20, 2005, the Applicant was sentenced by the Honorable Wyatt T. Saunders to consecutive terms of thirty (30) years for murder and twenty (20) years for armed robbery.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Greer, Op. No. 07-UP-512 (S.C. Ct. App. filed November 7, 2007).

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Failure to conduct pre-trial investigation.
 - b. Failure to provide expert witnesses in preparation of defense:
 - i. DNA expert.
 - ii. Psychiatric expert.
 - iii. Crime scene and fingerprint expert.
 - iv. Private investigator.
2. Newly- or after-discovered evidence.
3. Denial of fundamental fairness and equal protection due to the court's failure to instruct the jury on a lesser included offense or a defense of actual innocence.

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2009 JUL 27 PM 2:38
 MARC KITCHENS

At the evidentiary hearing, the Applicant testified about whether trial counsel should have argued third-party guilt at trial. The Applicant stated he wanted to dismiss all other issues.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the

opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCPP).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he discussed with trial counsel that he believed Butch Green may have committed the murder. The Applicant stated he told trial counsel the bloody shoeprint at the scene was not his. The Applicant stated he found out after the appeal that trial counsel did not argue third-party guilt and that he now believes trial counsel should have made this



FILED
CLERK OF COURT
Spartanburg County
2009 JUL 27 PM 2:38
MARC KITCHENS

argument.

Trial counsel testified he filed appropriate discovery motions in this case and reviewed those materials. Trial counsel testified there was no physical evidence linking the Applicant to the crime scene, but that the Applicant had given a confession to police. Trial counsel testified the Applicant's confession was the prime evidence against his client. Trial counsel stated there was a pre-trial motion to suppress the confession but that the trial judge ruled it was admissible. Trial counsel stated he mentioned in his opening argument that only two people knew what happened that day and that neither were in the courtroom. Trial counsel stated the solicitor made a motion in limine to preclude third-party guilty evidence. Trial counsel testified the trial judge ruled he could not introduce evidence of third-party guilt. Trial counsel testified, however, that he was not attempting to argue third-party guilt but to argue the Applicant was innocent and his confession was not credible. Trial counsel admitted that, when he caught Butch Green in an inconsistency, he did not argue third-party guilt because he was instead arguing the inconsistent testimony went to Green's credibility.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have argued third-party guilt at trial. This Court finds trial counsel made a strategic decision not to argue third-party guilt and instead argue the Applicant was innocent of the crimes. This Court finds this was a legitimate trial strategy because, as the Applicant gave a confession to police, it would have been extremely difficult for trial counsel to also present a third-party guilt analysis to

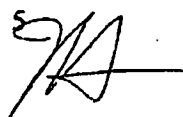
4 

FILED
CLERK OF COURT
STANTANBURG COUNTY
2009 JUL 27 PM 2:38
ARC KITHEN

the jury. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (holding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel). This Court notes trial counsel faced an uphill battle at the Applicant's trial because of the confession; however, this Court finds trial counsel did an excellent job of pursuing his trial strategy by attempting to have the confession suppressed in a pre-trial hearing. (Trial transcript, pp.9-105). This Court also notes trial counsel attempted to attack Green's credibility. (Trial transcript, pp.583-84). This Court further notes trial counsel's closing argument in which he attacked the State's witnesses, stated there was no physical evidence linking the Applicant to the crime scene, and challenged the veracity of the Applicant's confession. (Trial transcript, pp.612-23). This Court concludes that, based on the Applicant's confession and counsel's trial strategy, trial counsel was not ineffective in choosing not to argue third-party guilt. See, e.g., State v. Mansfield, 343 S.C. 66, 538 S.E.2d 257 (Cl. App. 2000) (holding evidence of third-party guilt is limited to facts that are inconsistent with the defendant's guilt).

This Court notes the Applicant abandoned the issue from his PCR application regarding trial counsel's failure to hire defense experts. Regardless, this Court finds the Applicant could not have prevailed upon this issue because he did not have any expert witnesses testify at the PCR hearing. See Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, "any finding of prejudice is merely speculative").

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence



FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2008 JUL 7 PM 2:08
 MARC KITCHEN

that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and

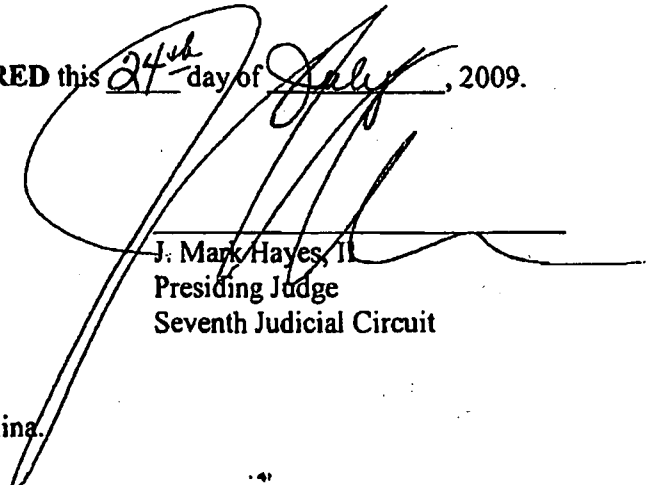


FILED
CLERK OF COURT
SPARTANBURG COUNTY
2009 JUL 27 PM 2:38
MARC KITCHENS

dismissed with prejudice; and

2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 24th day of July, 2009.


J. Mark Hayes, II
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina.

A CERTIFIED COPY

Marc Kitchens

CLERK OF COURT
SPARTANBURG COUNTY
BY: Maugh Winstead D.C.
DATED 7-29-09

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2009 JUL 27 PM 2:38
MARC KITCHENS

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Joshua Ray Greer, #311472)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2012-CP-42-1605

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McLennan Correctional Institution
2. Name and location of Court which imposed sentence SPARTANBURG COUNTY
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 02-GS-42-5209-murder/03-GS-42-2201-armed Robbery
 - (a) 02-GS-42-5209-murder
 - (b) 03-GS-42-2201-ARMED Robbery
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) September 23, 2005
 - (b) 30 YEARS FOR murder

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 APR 13 AM 10:20
M. HOPKINS & CECILEY

- (c) 20 Years For Armed Robbery
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction Affirmed.
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. November 7, 2007.
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2012 APR 13 AM 10:23
 M. HOPE BLACKLEY

- (a) Denial of Right To Appeal
- (b) Denial of effective assistance of Post-conviction Counsel
- (c) Denial of Procedural Due Process

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Denial of Right To Appeal From Denial of Post-Conviction Relief
- (b) Failed To File and PERFECT P.C.R. Appeal Failed To File Rule 59(e).
- (c) Denial To alter or amend Judgment / Denial of Right To Appeal

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Post-Conviction Relief 2008-CP-42-4438
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? No.

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii.

iii.

iv.

(b) the name and location of the Court in which each was filed:

i. N/A

ii.

iii.

iv.

(c) the disposition thereof:

i. N/A

ii.

iii.

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2012 APR 13 AM 10:23
 M. HOPE BLACKLEY

iv. _____

(d) the date of each such disposition:

i. _____ N/A.

ii. _____

iii. _____

iv. _____

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

i. _____ N/A.

ii. _____

iii. _____

iv. _____

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

_____ No.

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

(a) which grounds have been presented:

i. _____ N/A

ii. _____

iii. _____

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

i. _____ N/A

ii. _____

iii. _____

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

(a) _____ No.

(b) _____

(c) _____

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

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 APR 13 AM 10:23
M. HOPE BLACKLEY

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____ yes
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____ yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____ yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. _____ Jason Chehaski - TRIAL
- ii. _____ Joseph Savitz - APPEAL (DIRECT)
- iii. _____ Franklin M. Mann, JR. - P.C.R.
- (b) the proceedings at which each such attorney represented you:
- i. _____ TRIAL
- ii. _____ APPEAL
- iii. _____ POST-CONVICTION RELIEF
19. State clearly the relief you seek in filing this application:
 _____ To ALTER OR Amend The Judgment From denial of P.C.R. / Austin APPEAL
20. Are you now under sentence from any other court that you have not challenged?
 _____ No

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2012 APR 13 AM 10:23
 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)

VERIFICATION)

County of)

Joshua Greer

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

Joshua Greer

SWORN to and subscribed before me this 10
day of April, 2012

JCF Rankin (L.S.)
Notary Public

My Commission Expires: 12-16-2019

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 APR 13 AM 10:23
M. HOPE BLACKLEY

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

Joshua Greer

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

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

Joshua Greer
Applicant

SWORN or affirmed to and subscribed before me this

10 day of April, 2012.

[Signature]
Notary Public

My Commission Expires: 12.16.2019

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 APR 13 AM 10:23
M. HOPE BLACKLEY

AUG. 10, 2008 \$99

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS
HONORABLE JUDGE MARK HAYES, II PRESIDING JUDGE

CASE NO. 2008-CP-42-4438

JOSHUA R. GREER #311472 PETITIONER

V.

STATE OF SOUTH CAROLINA

NOTICE OF APPEAL

I, JOSHUA GREER, AM HEREBY SERVING THIS
NOTICE TO APPEAL THE HONORABLE J. MARK HAYES
ORDER DENYING ME RELIEF IN MY POST CONVICTION RELIEF
HEARING. I RECEIVED NOTICE OF ENTRY OF THE ORDER
ON JULY 31, 2009.

RESPECTFULLY SUBMITTED,

JOSHUA GREER #311472
MC CI F-4B, 144
386 REDEMPTION WAY
McCORMICK, S.C. 29899

MARC KILGUS

2009 AUG 17 AM 11:05

CLERK OF COURT
SPARTANBURG COUNTY
M. HOPKINS

2012 APR 3 AM 10:23

FILED
CLERK OF COURT
SPARTANBURG COUNTY

TO. MARK KITCHENS

AUG. 10, 2009

CLERK OF COURT

P.O. Box 3483

SPARTANBURG, S.C. 29304

PLEASE CLOCK AND DATE STAMP THE ENCLOSED
NOTICE TO APPEAL AND RETURN A COPY. THIS IS TO
ENSURE THAT IT IS ON RECORD THAT I HAVE SERVED
A NOTICE TO APPEAL WITHIN THE 30 DAY TIME
LIMIT. THANK YOU FOR YOUR TIME.

SINCERELY,

RETURN

ADDRESS:

JOSHUA R. GREER

MCCI F-4B, 144

384 REDEMPTION WAY

MCCORMICK, S.C. 29899

MARK KITCHENS

2009 AUG 17 AM 11:05

FILED
CLERK OF COURT
SPARTANBURG, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Joshua Ray Greer, #311472,	)	2012-CP-42-1605
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

In response to the post-conviction relief application filed April 13, 2012, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the November 2002 term of the Spartanburg County Grand Jury for Murder (02-GS-42-5209). He was later indicted at the June 2003 term of the Spartanburg County Grand Jury for Armed Robbery (03-GS-42-2201). Jason Chehoski, Esquire, represented the Applicant. On September 20, 2005, the Applicant proceeded to trial and the jury found him guilty of both charges. The Honorable Wyatt T. Saunders sentenced him to a confinement for a period of thirty (30) years for Murder and twenty (20) years consecutive for Armed Robbery.

A timely notice of appeal was filed and Joseph L. Savitz, III, Esquire, submitted a brief on the Applicant's behalf. The Court of Appeals affirmed the conviction on November 7, 2007. State v. Greer, No. 2007-UP-512 (S.C. Ct. App. November 7, 2007). The remittitur was issued on November 27, 2007.

2008-CP-42-4438

The Applicant subsequently filed an application for post-conviction relief (PCR) on August 21, 2008. The State filed its Return on February 20, 2009. An evidentiary hearing was convened on May 26, 2009, at the Spartanburg County Courthouse, at which the Applicant was present and represented by Franklin M. Mann, Jr., Esquire. The Applicant raised the following issues in his first PCR:

1. Ineffective Assistance of Counsel;
 2. Failure to conduct pre-trial investigation;
 3. Failure to provide expert witnesses in preparation of defense;
 - a. DNA Analysis Expert
 - b. Psychiatric Expert
 - c. Crime Scene and Fingerprint Expert
 - d. Private Investigator
 4. Newly/After Discovered Evidence; and
 5. Denial of fundamental fairness and equal protection due to the court's failure to instruct the jury on a lesser included offense or a defense of actual innocence.
-

The Honorable J. Mark Hayes, II denied and dismissed Applicant's application by written Order on July 24, 2009. The Applicant did not appeal the denial of his PCR application.

II.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel; and
 - a. "Denial of Right to Appeal"
 - b. "Denial of effective assistance of Post-conviction Counsel"
2. Denial of Procedural Due Process.

For the purpose of this Return, the Respondent incorporates the Clerk of Court records and the South Carolina Department of Corrections' records and the prior PCR records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, Id.

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

IV.

The Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq.

S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996).

The Applicant was convicted of the offenses he challenges in this Application on February 13, 1997. The Honorable J. Mark Hayes, II denied and dismissed the Applicant's previous application for PCR on July 24, 2009. The Applicant was therefore required to file his application before July 24, 2010. This Application was filed on April 13, 2012 which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the

pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired.

Respectfully submitted,

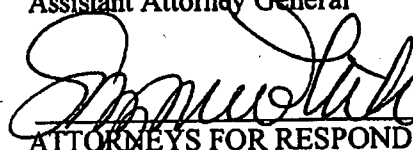
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
P.O. Box 11549
Columbia, S.C. 29211

August 23, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Joshua Ray Greer,

) 2012-CP-42-1605

) Applicant,

) v.

) CERTIFICATE OF SERVICE

) State of South Carolina,

) Respondent.
)

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

Joshua Ray Greer, SCDC No. 311472
McCormick Correctional Institution
386 Redemption Way
McCormick, South Carolina 29899


Anne A. Mueller
Legal Assistant for the Respondent

DATED this 23rd day of August, 2013.

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Joshua Ray Greer, #311472,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2012-CP-42-1605

CONDITIONAL ORDER OF DISMISSALFILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 OCT -4 AM 8:54
M. HOPE BLACKLEY

This matter comes before this Court by way of an application for post-conviction relief filed

April 13, 2012. Respondent made its Return and Motion to Dismiss.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the November 2002 term of the Spartanburg County Grand Jury for Murder (02-GS-42-5209). He was later indicted at the June 2003 term of the Spartanburg County Grand Jury for Armed Robbery (03-GS-42-2201). Jason Chehoski, Esquire, represented the Applicant. On September 20, 2005, the Applicant proceeded to trial and the jury found him guilty of both charges. The Honorable Wyatt T. Saunders sentenced him to a confinement for a period of thirty (30) years for Murder and twenty (20) years consecutive for Armed Robbery.

A timely notice of appeal was filed and Joseph L. Savitz, III, Esquire, submitted a brief on the Applicant's behalf. The Court of Appeals affirmed the conviction on November 7, 2007. State v. Greer, No. 2007-UP-512 (S.C. Ct. App. November 7, 2007). The Remittitur was issued on November 27, 2007.

2008-CP-42-4438

The Applicant subsequently filed an application for post-conviction relief (PCR) on August 21, 2008. The State filed its Return on February 20, 2009. An evidentiary hearing was convened on May 26, 2009, at the Spartanburg County Courthouse, at which the Applicant was present and represented by Franklin M. Mann, Jr., Esquire. The Applicant raised the following issues in his first PCR:

1. Ineffective Assistance of Counsel;
2. Failure to conduct pre-trial investigation;
3. Failure to provide expert witnesses in preparation of defense;
 - a. DNA Analysis Expert
 - b. Psychiatric Expert
 - c. Crime Scene and Fingerprint Expert
 - d. Private Investigator
4. Newly/After Discovered Evidence; and
5. Denial of fundamental fairness and equal protection due to the court's failure to instruct the jury on a lesser included offense or a defense of actual innocence.

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2013 OCT -4 AM 8:54
 M. HOPE BLACKLEY

The Honorable J. Mark Hayes, II denied and dismissed Applicant's application by written Order on July 24, 2009. The Applicant did not appeal the denial of his PCR application.

Applicant's Current PCR Application

In his current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel; and
 - a. "Denial of Right to Appeal"
 - b. "Denial of effective assistance of Post-conviction Counsel"
2. Denial of Procedural Due Process.

PSL
12

Before this Court are the records of the Spartanburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, Applicant's previous PCR records, Applicant's PCR application and Respondent's Return and Motion to Dismiss.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 OCT -4 AM 8:54
M. HOPE BLACKLEY

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations could have been raised in the proceedings based on Applicant's prior application for post-conviction relief, thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief;

therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

Res Judicata

This Court further finds that the doctrine of *res judicata* bars the Petitioner's claims. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.

The Applicant had a full opportunity to litigate all allegations regarding ineffective assistance of counsel, subject matter jurisdiction, and trial court error in both the state and federal courts. public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRCF, this Court finds that these claims are barred by *res judicata*.

Statute of Limitations

This Court further finds that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 (2003). S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the Remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all

*Doc
04*

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 OCT -4 PM 8:54
MHOPE BLANKLEY

applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this Application on February 13, 1997. The Honorable J. Mark Hayes, II denied and dismissed the Applicant's previous application for PCR on July 24, 2009. The Applicant was therefore required to file his application before July 24, 2010. This Application was filed on April 13, 2012 which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute, barred by the doctrine of *res judicata*, and because it is successive to his previous applications.

Summary

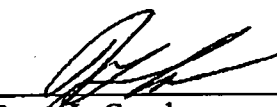
Pursuant to S.C. Code Ann. §17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

PKL
25

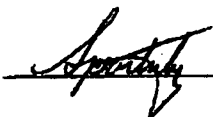
FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 OCT -4 AM 8:54
M. HOPE BLANCHLEY

Suzanne H. White, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 7th day of October, 2013.



Roger L. Couch
Administrative Judge – Common Pleas
Seventh Judicial Circuit

 _____, South Carolina

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 OCT -4 AM 8:54
M. HOPE BLACKLEY

NOVEMBER 4, 2013
913 MCE

JOSHUA R. GREER # 311472
386 REDEMPTION WAY
McCORMICK, S.C. 29899

TO. SUZANNE H. WHITE, ESQUIRE
ATTORNEY GENERALS OFFICE
P.O. Box 11549
COLUMBIA, S.C. 29211

IN RESPONSE TO THE CONDITIONAL ORDER
OF DISMISSAL. AT THE HEARING FOR POST-CONVICTION
RELIEF I WAS REPRESENTED BY FRANKLIN M. MANN, JR.
I DID INFORM HIM THAT I WANTED TO APPEAL
THE DENIAL OF MY P.C.R. IN CASE HE FAILED TO
FILE THE APPEAL, WHICH HE DID, I SENT A NOTICE
TO THE CLERK OF COURT REQUESTING TO APPEAL
WITHIN THE TIME LIMIT. I WAS NOT AWARE
THAT I SENT IT TO THE WRONG PLACE, NOR DID
THE CLERK OF COURT OFFER TO INFORM ME OF
THIS, OR FORWARD A COPY TO THE ATTORNEY
GENERALS OFFICE. THIS NOTICE I SENT TO THE
CLERK OF COURT PROVES THAT I REQUESTED TO
APPEAL THE DENIAL AND DISMISSAL OF MY P.C.R.
AT THIS TIME I AM REQUESTING TO GRANTED
REPRESENTATION BY THE COURT OF APPEALS TO
PROCEED IN FILING AN APPEAL AGAINST

THE DENIAL AND DISMISSAL BY JUDGE
MARK HAYES, II ON JULY 24, 2009

I AM ALSO REQUESTING A COPY OF THE
TRANSCRIPT OF THE P.C.R. HEARING. PLEASE
LET ME KNOW HOW TO OBTAIN THIS.

THANK YOU FOR YOUR TIME.

SINCERELY,

Joshua Greer[#] 311472

* ENCLOSED IS A COPY OF THE NOTICE
TO APPEAL I FILED TO THE CLERK OF COURT.

Aug. 10, 2009⁹¹⁵

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY

COURT OF COMMON PLEAS

HONORABLE JUDGE MARK HAYES, II PRESIDING JUDGE

CASE NO. 2008-CP-42-4438

JOSHUA R. GREER #311472 PETITIONER

V.

STATE OF SOUTH CAROLINA

NOTICE OF APPEAL

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 APR 13 AM 10:23
MARC KITCHENS
2009 AUG 17 AM 9:05
MARC KITCHENS

I, JOSHUA GREER, AM HEREBY SERVING THIS NOTICE TO APPEAL THE HONORABLE J. MARK HAYES ORDER DENYING ME RELIEF IN MY POST CONVICTION RELIEF HEARING. I RECIEVED NOTICE OF ENTRY OF THE ORDER ON JULY 31, 2009.

RESPECTFULLY SUBMITTED,

JOSHUA GREER #311472

MCI F-4B, 144

386 REDEMPTION WAY

MCCORMICK, S.C. 29899

TO: MARK KITCHENS

Aug. 10, 2009

CLERK OF COURT

P.O. Box 3483

SPARTANBURG, S.C. 29304

PLEASE CLOCK AND DATE STAMP THE ENCLOSED
NOTICE TO APPEAL AND RETURN A COPY. THIS IS TO
ENSURE THAT IT IS ON RECORD THAT I HAVE SERVED
A NOTICE TO APPEAL WITHIN THE 30 DAY TIME
LIMIT. THANK YOU FOR YOUR TIME.

SINCERELY,

RETURN

ADDRESS:

JOSHUA R. GREER

MCCI F-4B, 144

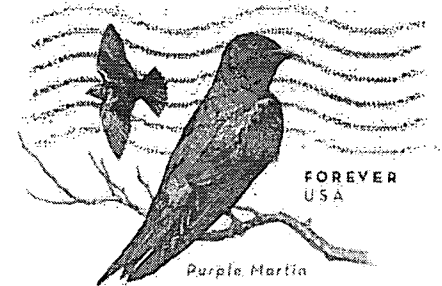
384 REDEMPTION WAY

McCormick, S.C. 29899

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2009 AUG 17 AM 11:05
MARK KITCHENS

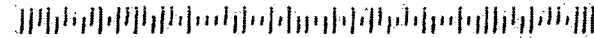
JOSHUA GREER # 311472
MCCI F-4A, 193
386 REDEMPTION WAY
McCORMICK, S.C. 29849

AUGUSTA, GA 309
04 NOV 2013 PM 2:7



SUZANNE H. WHITE
ATTORNEY GENERALS OFFICE
P.O. BOX 11549
COLUMBIA, S.C. 29211

292111549



© USPS 2011

THIS ENVELOPE IS RECYCLABLE AND MADE WITH 30% POST CONSUMER CONTENT

SUSTAINABLE
FORESTRY
INITIATIVE
Certified Fiber Sourcing
www.fiber.org



RECEIVED

NOV 4 2013

MCCI
MAIL ROOM

NO OTHER PARTY OR CARRIER HAS BEEN
SECURED THIS ITEM. THEREFORE THE
DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.
WARDEN
McCORMICK CORRECTIONAL INSTITUTE
McCORMICK CORRECTIONAL INSTITUTE

917

1 STATE OF SOUTH CAROLINA

2 COUNTY OF SPARTANBURG

COURT OF COMMON PLEAS NONJURY

4 JOSHUA RAY GREER,

5 APPLICANT,

6 VS.

7 STATE OF SOUTH CAROLINA,

8 RESPONDENT.

TRANSCRIPT

OF

RECORD

2012-CP-42-1605

September 16th, 2014
Spartanburg, South Carolina

13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge.

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

16 J. BRANDT RUCKER
17 ESQ.
18 Attorney for the Applicant

19 J. CLAYTON MITCHELL
20 ASSISTANT ATTORNEY GENERAL
21 Attorney for the Respondent

23 PAMELA E. GREEN
24 Circuit Court Reporter
25 Seventh Judicial Circuit

I N D E X O F W I T N E S S E SWITNESSESPAGE

JOSHUA GREER

Direct examination by Mr. Rucker 5

Cross-examination by Mr. Mitchell 8

F. MILTON MANN, JR.

Direct examination by Mr. Mitchell 10

Cross-examination by Mr. Rucker 12

Closing argument by Mr. Rucker 16

Closing argument by Mr. Mitchell 17

certificate 19

P R O C E E D I N G S

THE COURT: All right, sir. You may proceed.

MR. MITCHELL: May it please the Court.

This is the case---

THE COURT: Yes, sir.

MR. MITCHELL: ---of Joshua Greer versus The State of South Carolina. Docket Number 2012-CP-42-1605. The Applicant was indicted at the November, 2002 term of the Spartanburg County Grand Jury for murder. He was later indicted at the June, 2003 term of the Spartanburg County Grand Jury for armed robbery. That's Indictment Number 2003-GS-42-2201.

One second, Your Honor.

THE COURT: Yes, sir.

(Pause.)

MR. MITCHELL: All right. Pardon me.

So on September 20th, 2005, Applicant proceeded to trial and was found guilty of both charges. The Honorable Wyatt T. Saunders sentenced him to confinement for a period of 30 years for murder and 20 years consecutive for armed robbery. A timely notice of appeal was filed by Joey L. Savitz, Esquire. The Court of Appeals affirmed that conviction on November 7th, 2007, in an unpublished opinion. The remittitur was issued on November 27th of

1 2007.

2 The Applicant then filed an application for
3 post-conviction relief on August 21st, 2008. The hearing
4 was held May 26th, 2009, where Applicant was represented
5 by Milton M. Mann or Milton Mann, excuse me. The Honorable
6 J. Mark Hayes denied and dismissed the application by order
7 filed July 24th, 2009.

8 The Applicant is now filed a second post-conviction
9 relief application on April 13th, 2012. He raised
10 different issues of ineffective assistance of counsel and
11 denial of due process rights. We filed a return motion to
12 dismiss in the case because it was successive and untimely
13 filed. The Court -- this Court issued an additional order
14 of dismissal filed on October 4th, 2013. Applicant then
15 filed a response in opposition to that COD on
16 November 7th, 2013, where he alleged that he asked counsel
17 to file an appeal from the PCR action and that was not done
18 on his behalf.

19 So we are going forward today on the limited issue of
20 whether Applicant is entitled to an Austin review, whether
21 he knowingly and voluntarily waived his right to appeal his
22 first PCR.

23 THE COURT: All right. Applicant ready to proceed?

24 MR. RUCKER: Yes, sir.

25 THE COURT: All right. You may do so.

Joshua Greer - Direct examination
by Mr. Rucker

1 MR. RUCKER: I call my client to the stand.

2 THE COURT: Sir, if you'll come forward to my left
3 please. Right over here.

4 (Witness complies.)

5 THE COURT: Sir, if you would, place your left-hand on
6 the Bible, to the best of your ability, raise your right.

7 JOSHUA GREER, being first duly
8 sworn, testified as follows:

9 THE COURT: Have a seat please.

10 (Witness complies.)

11 THE COURT: State your name please.

12 THE WITNESS: Joshua Greer.

13 THE COURT: Thank you very much.

14 You may proceed, counsel.

15 MR. RUCKER: May it please the Court.

16 THE COURT: Yes, sir.

17 DIRECT EXAMINATION

18 BY MR. RUCKER:

19 Q Mr. Greer, what's your educational background?

20 A I have a GED.

21 Q Okay. Did you -- you didn't attend Law School or
22 anything like that, did you?

23 A No.

24 Q All right. Were you formerly represented by Milton
25 Mann at a PCR hearing?

Joshua Greer - Direct examination
by Mr. Rucker

1 A Yes, sir.

2 Q Okay. And had -- were you appointed a separate
3 attorney before me between Milton Mann and now?

4 A No.

5 Q Okay. What happened with your original PCR action?

6 A They denied me. They denied me relief.

7 Q Okay. When you say they denied, who denied you relief?

8 A I'm thinking it was Hayes.

9 Was it?

10 Q Okay. Was it a Circuit Court Judge though?

11 A No.

12 Are you talking about the PCR relief here, right?

13 Q Right.

14 It was a judge, one judge though, correct?

15 A Yeah.

16 Q Okay. And did you intend to appeal that?

17 A Of course.

18 Q All right. Did you try to talk to your attorney,

19 Milton Mann, about that issue?

20 A Yes, sir.

21 Q All right. Did you ever get a response back from him
22 whether he was going to file the appeal or not?

23 A No.

24 Q Did you believe that he had filed the notice of appeal?

25 A The, the one and only time that I talked to him before

Joshua Greer - Direct examination
by Mr. Rucker

1 the day I got in here, the day of my hearing was that, was
2 that day, you know what I mean, and I told him then I wanted
3 to appeal it.

4 Q And, to your knowledge, he never filed a notice of
5 appeal on your behalf?

6 A No.

7 Q All right. What are you asking the Court to do at this
8 point?

9 A To grant me my appeal to go through the Supreme Court.

10 Q Okay. You aren't familiar with the, the limitations on
11 time to file appellate briefs or, or any of the appellate
12 process---

13 A No.

14 Q ---are you?

15 A No, I'm not.

16 Q Okay. And you also were not appointed a PCR, a second
17 PCR attorney to try to correct this, is that right?

18 A No.

19 Q Until I was---

20 A Until you.

21 Q ---appointed, after you filed this and it was
22 conditionally dismissed?

23 A Yeah.

24 Q Okay. So you're simply asking to have -- to be able to
25 file a notice of appeal out of time so that you can go

Joshua Greer - Cross-examination
by Mr. Mitchell

1 forward for a petition for certiorari?

2 A Yes.

3 MR. RUCKER: Okay. No further questions.

4 THE COURT: Your witness. Cross-examine please.

5 CROSS-EXAMINATION

6 BY MR. MITCHELL:

7 Q Now, that order denying your PCR application, that was
8 issued in July of 2009?

9 A Yeah, I believe so.

10 Q Did you read that order?

11 A Yes, sir.

12 Q well, at the end of that order it says your -- it tells
13 you, procedurally, how to proceed with an appeal, isn't that
14 right?

15 A I'm not sure. I don't really remember.

16 Q Okay. But you had discussions with your attorney about
17 appealing the case?

18 A Yeah, and I, and I sent a letter to the Clerk of
19 Court's Office asking for an appeal.

20 Q Did you ever send any letters to your attorney
21 afterwards asking for an appeal?

22 A No.

23 Q So you waited about three years, from the order of
24 dismissal in that case, to file this PCR to try to get an
25 appeal from the first one, right?

Joshua Greer - Cross-examination
by Mr. Mitchell

1 A Yeah, the reason I done that is because I know how slow
2 the system is. I know how long it took for my direct appeal
3 to go through from the time that I was found guilty. I knew
4 it took a couple years, you know. I knew that. So I knew
5 it was gonna take a while.

6 Q Well, you didn't write your attorney asking for an
7 appeal right afterwards?

8 A No, I talked to him here---

9 Q Well, you didn't write---

10 A ---right when I---

11 Q But you didn't write him after the hearing to say I
12 wanted an appeal?

13 A Why would I write him and tell him when we had done
14 spoke about it?

15 MR. MITCHELL: Okay. No further questions.

16 THE COURT: Yes, sir.

17 MR. RUCKER: No further questions.

18 THE COURT: Well, just let me, while he's still on the
19 stand, I'm gonna ask counsel though, it appears that the
20 hearing was May the 26th of '09 ---

21 MR. RUCKER: Yes, sir.

22 THE COURT: -- in front of Judge Hayes?

23 The order was not signed until July the 24th of '09?

24 MR. RUCKER: Yes, sir.

25 THE COURT: Is that correct?

Milton Mann - Direct examination
by Mr. Mitchell

1 MR. RUCKER: Yes, sir.

2 MR. MITCHELL: Yes sir.

3 THE COURT: And I believe -- okay. I think I
4 understand you.

5 You may step down.

6 Applicant may call its next witness.

7 MR. RUCKER: That's our case, Your Honor.

8 THE COURT: All right. I'll hear from the State.

9 MR. RUCKER: State calls Milton Mann.

10 THE COURT: Come forward, sir, and be sworn please.

11 THE WITNESS: Yes, sir.

12 MILTON MANN, being first duly sworn,
13 testified as follows:

14 THE COURT: Thank you. Have a seat please.

15 THE WITNESS: Thank you, Judge.

16 THE COURT: State your name please.

17 THE WITNESS: My name is F. Milton Mann, Junior.

18 THE COURT: Thank you very much.

19 Your witness, counsel.

20 DIRECT EXAMINATION

21 BY MR. MITCHELL:

22 Q Good morning, Mr. Mann.

23 A Good morning.

24 Q Do you recall your representation of Mr. Greer in this
25 first PCR case?

Milton Mann - Direct examination
by Mr. Mitchell

1 A I have reviewed the trial transcript from the PCR
2 hearing. I did not recall Mr. Greer's appearance until he
3 walked into the room today. My recollections are basically
4 based upon reading the trial transcript.

5 Q How many PCR cases have you handled?

6 A Somewhere between five and ten.

7 Q Now, when you received Judge Hayes's order denying
8 relief, would you -- did you send that to Mr. Greer?

9 A Either I did or I think the Department of Corrections
10 or the State Attorney's Office does, but yes.

11 Q Do you have -- do you recall any discussions with
12 Mr. Greer about filing an appeal if his case were to be
13 denied?

14 A The, the only thing that I can tell you is what I
15 customarily do, and if I can elaborate just a little bit.

16 Out of eight to ten hearings, I think I've had two that
17 were meritorious, and Mr. Greer was one of the ones that was
18 meritorious. I would of met with him before the hearing. I
19 would of met with him after the hearing, which is my
20 customary practice, and I would have told him that that
21 concludes my representation.

22 Q Now, in those discussions, would you advise him about
23 filing an appeal?

24 A There was no reason to have a discussion about appeal
25 because an order had not been granted. I told him I wished

Milton Mann - Direct examination
by Mr. Mitchell

1 him the best and that I hoped Judge Hayes saw things the way
2 we saw it.

3 Q Did you receive any correspondents from him after the
4 hearing?

5 A To my -- reviewing my file, no. I thought I had heard
6 somewhere that he had said he had sent me a letter, but, in
7 reviewing my file, I do not have the letter from him.

8 Q So if he would of written you a letter asking you to
9 file a notice of appeal on his behalf, would you have done
10 so?

11 A I would not have. I would of sent him a letter saying
12 that representation had been concluded.

13 MR. MITCHELL: Okay. No further questions.

14 MR. RUCKER: May it please the Court?

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. RUCKER:

18 Q So it's your testimony that you would not file a notice
19 of appeal unless he expressly asked you to file the notice
20 of appeal?

21 A No, sir.

22 Q Okay.

23 A My, my, my testimony is that I would not have filed a
24 notice of appeal on his behalf.

25 Q Okay. Is it your belief then you do not have a duty to

Milton Mann - Cross-examination
by Mr. Rucker

1 file a notice of appeal if he asked you to?

2 A That is my understanding.

3 Q All right.

4 A I would have told him that that exceeds my
5 representation.

6 Q So were you appointed or were you retained in this
7 case?

8 A I was appointed.

9 Q Okay. You didn't have a contract with him that told,
10 that told him you would not appeal?

11 A No.

12 Q Is that right?

13 A That's definitely correct, no.

14 Q And you believe he had a meritorious issue, at least
15 one issue in this case?

16 A I do. I still do.

17 Q Do you understand that Appellate Defense doesn't file
18 notice of appeals for PCR clients?

19 A I didn't file his PCR request, and so, therefore, I
20 assumed he had the capability of filing an appeal if he so
21 desired.

22 Q Okay. But it takes -- it's actually practicing law
23 without a license if somebody does that for a client that's
24 not an attorney, is that right?

25 A Not if it's on your own behalf.

Milton Mann - Cross-examination
by Mr. Rucker

1 Q But if it's not on your own behalf -- that's, that's an
2 actual legal skill that you need to do it properly.

3 Is that fair to say?

4 A Absolutely.

5 Q And there are strict timelines that you have to get in
6 it, into the Court of Appeals, the Supreme Court for them to
7 have jurisdiction over the case.

8 Is that right?

9 A I would assume so, yes.

10 Q Okay.

11 A I'm sure.

12 Q Did you ever send him a letter that you have a copy of
13 that says I am not filing an appeal in this case?

14 A There is not one.

15 Q And you don't independently recollect if you actually
16 sent him a copy of the order when you got it?

17 A That is correct.

18 Q All right. It could of been a staff member or the
19 staff?

20 It might not of been sent?

21 A That is correct.

22 Q So he would have no way to know he had even the right
23 to appeal or what his duties at that time were and the time
24 limits he had to do that?

25 Is that right?

Milton Mann - Cross-examination
by Mr. Rucker

1 A Based upon representations from me, I would agree with
2 that.

3 Q Okay. Do you recall conversation after the hearing
4 with my client in which he said if I lose I want to appeal
5 the case?

6 A I do not recall those conversations. The only thing I
7 can say is what I customarily do.

8 Q Okay. Is that normal though that a client would want
9 to appeal, especially one with such a serious sentence?

10 A Of course.

11 Q He went to the trouble of applying for a -- an attorney
12 and getting a PCR because he didn't think he was -- his
13 rights were protected in the first.

14 Do you think he would just abandon it at that point?

15 A Again, I think he had a meritorious claim and---

16 Q You---

17 A ---and, and I wished him the best, and -- but my
18 representation ended at the conclusion of that hearing.

19 Q Okay. Is it -- it's not your testimony that he would
20 abandon his appeal after an adverse ruling by the court?

21 A I don't believe so, no. I think he, I think he would
22 zealously pursue him and I expected him to do so.

23 Q Okay.

24 A Okay.

25 MR. RUCKER: No further questions.

1 THE COURT: Redirect.

2 MR. MITCHELL: No further questions.

3 THE COURT: All right. You may step down.

4 THE WITNESS: Thank you, Judge.

5 THE COURT: State wish to call additional witnesses?

6 MR. MITCHELL: No, Your Honor.

7 THE COURT: You wish to argue the case?

8 MR. RUCKER: Yes, sir.

9 Our argument is that Mr. Mann abandoned his client.

10 He, he clearly, under our Ethical Cannons and legal rules,
11 has a duty to file the notice of appeal if his client tells
12 him that he wants to file it, and we think it's clear, under
13 Austin versus State, that my client has a right and needs to
14 be able to appeal such a serious sentence.

15 THE COURT: Just a couple of questions.

16 I note that the order in the case from Judge Hayes, the
17 last paragraph has some fairly specific instructions on what
18 to do to file an appeal.

19 MR. RUCKER: Yes, sir.

20 THE COURT: I didn't hear any testimony from your
21 client that would indicate that he did not receive a copy of
22 this order in a timely fashion.

23 MR. RUCKER: I, I don't think it's clear when he
24 actually received it because of the prison mail.

25 THE COURT: I understand.

1 But he would have ten days from the date of receipt I
2 believe---

3 MR. RUCKER: Yes, sir.

4 THE COURT: ---at least to file, to file an appeal.

5 MR. RUCKER: Yes, sir, but I, but I believe he
6 instructs -- since he instructed his attorney to do it---

7 THE COURT: He would have thirty days to file.

8 MR. RUCKER: Yes, sir, I believe he instructed his
9 attorney at the time that if he lost he wanted to appeal,
10 and since his attorney was his agent, he assumed the
11 attorney would do it and not him.

12 THE COURT: All right. Interesting.

13 Yes.

14 MR. MITCHELL: Your Honor, we would just note that
15 counsel does not recall whether the Applicant actually asked
16 for an appeal directly afterwards. I note that he waited
17 three years to file this PCR or take any action on that
18 appeal.

19 THE COURT: Well, I didn't hear any testimony that they
20 had any communication at -- after the order was issued. I
21 was listening for that, and I didn't hear that they---

22 MR. MITCHELL: Right.

23 THE COURT: ---communicated at all. He indicated,
24 through his testimony, that they talked the day of the
25 hearing. So I don't -- anyway. But a ruling hadn't been

1 made at that point in time.

2 MR. MITCHELL: Right. Not that -- well, I think Judge
3 Hayes took it under advisement.

4 THE COURT: Okay. I wanted to be sure I got it right
5 in my mind.

6 Excuse me. I interrupted you.

7 MR. MITCHELL: No, that's fine. That's, that's all I
8 have. One last thing, one last thing, that all other
9 allegations would be waived at this point and barred by
10 the -- successive and untimely.

11 THE COURT: Okay. Your client wish to have you argue
12 something else?

13 MR. RUCKER: No, sir.

14 THE COURT: All right. Okay.

15 All right. I'll, I'll take the matter under
16 advisement.

17 Thank you very much.

18

19

20 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

21

22

23

24

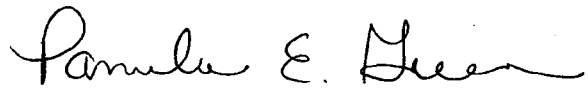
25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 16th day of September, 2014.

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

April 17th, 2015.



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Joshua Ray Greer, #311472,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2012-CP-42-1605

ORDER OF DISMISSAL GRANTING
APPELLATE REVIEW PURSUANT TO
AUSTIN V. STATE

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed March 12, 2012¹. Respondent made its Return and Motion to Dismiss on October 10, 2012, and on June 13, 2013, requesting that the application be summarily dismissed. Pursuant to this request and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed July 8, 2013, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated October 4, 2013, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned, "Applicant's Sufficient Legal Cause Shown to PCR Case Matter, etc.," dated August 9, 2013, but filed on October 8, 2013, Applicant requests that the Court grant him an evidentiary hearing on his claims. Applicant alleges that his application is not successive, as he could not have raised claims of ineffective assistance of post-conviction relief counsel in his prior application. Applicant alleged that he informed PCR Counsel Franklin

¹ Applicant also filed a document on March 4, 2013, captioned, "Emergency Release." As the claims included in this document are virtually identical to the application, this Court considers that document to be an amendment to the current application.

Milton Mann, Esquire, that he wished to appeal the denial of relief. The matter was scheduled for an evidentiary hearing on September 16, 2014, at the Spartanburg County Courthouse. Applicant was present and testified on his own behalf. He was represented by J. Brandt Rucker, Esq. Respondent was represented by J. Clayton Mitchell, Esq. Applicant's prior PCR Counsel, Mann, also testified at the hearing.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Correction pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the November 2002 term of the Spartanburg County Grand Jury for Murder (2002-GS-42-2200). He was later indicted at the June 2003 term of the Spartanburg County Grand Jury for General Robbery (2003-GS-42-2201). Jason Chehoski, Esquire, represented Applicant. On September 15, 2005, Applicant proceeded to trial and the jury found him guilty of both charges. The Honorable Wyatt T. Saunders sentenced him to a confinement for a period of thirty (30) years for Murder and twenty (20) years consecutive for Armed Robbery.

A timely notice of appeal was filed. Joseph L. Savitz, III, Esquire, submitted a brief on Applicant's behalf. The Court of Appeals affirmed the conviction on November 7, 2007. State v. Greer, No. 2007-UP-512 (S.C. Ct. App. November 7, 2007). The remittitur was issued on November 27, 2007.

2008-CP-42-4438

Applicant subsequently filed an application for post-conviction relief (PCR) on August 21, 2008. The State filed its Return on February 20, 2009. An evidentiary hearing was convened on May 26, 2009, at the Spartanburg County Courthouse, at which Applicant was present and

JS
02

represented by Franklin Milton Mann, Jr., Esquire. Applicant raised the following issues in his first PCR:

1. Ineffective assistance of counsel;
2. Failure to conduct pre-trial investigation;
3. Failure to provide expert witnesses in preparation of defense;
 - a. DNA analysis expert
 - b. Psychiatric expert
 - c. Crime scene and fingerprint expert
 - d. Private investigator
4. Newly/After Discovered Evidence; and
5. Denial of fundamental fairness and equal protection due to the court's failure to instruct the jury on a lesser included offense or a defense of actual innocence.

The Honorable J. Mark Hayes, II denied and dismissed Applicant's application for post-conviction relief by Order on July 24, 2009. Applicant did not appeal the denial of his PCR application. Applicant did file a *pro se* notice of appeal with the Spartanburg County Clerk of Court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

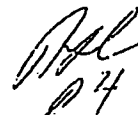
In Applicant's current application for post-conviction relief, he alleges that PCR counsel was deficient by not filing a notice of appeal on his behalf. This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed and considered the Clerk of Court's records regarding the subject convictions, Applicant's prior PCR action, Applicant's appellate records, Applicant's records from the South Carolina Department of Corrections, the new application for post-conviction relief, Applicant's response to the Conditional Order of Dismissal, the transcripts and exhibits from the prior proceedings, and the legal arguments of counsel. Pursuant to S.C. Code § 17-27-80 (2009), this Court makes the following findings of fact based upon all of the probative evidence presented.

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

Applicant alleges that he was denied the right to appeal the dismissal of his prior post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 1115 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application.

This Court finds that PCR counsel was ineffective in failing to file a notice of appeal from the PCR judge's order of dismissal. Applicant testified that he wished to have a denial of his PCR action appealed. He testified that he filed a *pro se* notice of appeal on August 20, 2009, after the Order of Dismissal was filed on July 28, 2009. Applicant testified that he had no legal background and has no legal knowledge. Applicant's PCR counsel Mann also testified at this hearing. Counsel Mann testified that he would not have filed a notice of appeal if Applicant had requested one be filed. He stated that his representation was over after the PCR hearing concluded and that since Applicant can file a PCR application, he could also file a notice of appeal. Counsel Mann testified further that he did not recall discussions with Applicant regarding an appeal.

This Court finds that any allegation other than the belated PCR appeal allegation is successive and therefore denied. Successive applications for post-conviction relief are clearly disfavored. See S.C. Code Ann. § 17-27-90 (2003); Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991); Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980).



FILED
CLERK OF COURT
JUL 28 2009
MIDDLEBURY

This Court also finds that Applicant is entitled to a belated appeal due to the public defender's failure to perfect an appeal on his behalf. Where a post-conviction relief judge determines the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of post-conviction relief pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).²

This Court finds that Applicant did not voluntarily waive his right to appeal the trial court's denial and dismissal of his application. See Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002). Applicant's denial of an appeal can be remedied by a petition for belated review. Therefore, this Court denied and dismisses the Applicant pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Applicant has proven by a preponderance of the evidence that he did not knowingly and voluntarily waive the direct appeal of the denial of his first PCR application. Any grounds for relief that are not specifically addressed in this Order are denied for failure to meet the requisite burden of proof.



FILED
CLERK OF COURT
SPARTANBURG COUNTY
JAN 12 2012 PM 3:31
MARCO BLANCHARD

² Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. The applicant must petition the supreme court for a belated review. Davis v. State, 288 S.C. 290, 342 S.E.2d 661 (1985).

IT IS THEREFORE ORDERED

1. With the exception of permitting a belated appeal from the denial of the first application for PCR as stated below, this second application for post-conviction relief is hereby denied and dismissed with prejudice;
2. Within thirty (30) days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate appellate review of the Applicant's first post-conviction relief action. Counsel and the Applicant are directed to Kelly State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243, SCACR for the appropriate procedure for a belated appeal; and
3. That the Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 9th day of December, 2014.



 ROGER L. COUCH
 Presiding Judge
 Seventh Judicial Circuit


 _____, South Carolina.

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2014 DEC 12 PM 2:32