

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Edgefield County
R. Knox McMahon, Circuit Court Judge

Opinion No. 2010-UP-427 (S.C. Ct. App. filed 10/11/2010)
07-GS-19-011.

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

STEVEN LOUIS BARNES,

PETITIONER

APPENDIX

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.
Steven Louis Barnes, Appellant.

Appeal From Edgefield County
R. Knox McMahon, Circuit Court Judge

Unpublished Opinion No. 2010-UP-427
Submitted September 1, 2010 – Filed October 11, 2010

AFFIRMED

Appellate Defender Kathrine H. Hudgins, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
and Assistant Attorney General Julie M. Thames, of

Columbia; and Solicitor Donald V. Myers, of
Lexington, for Respondent.

PER CURIAM: Steven Louis Barnes was convicted of throwing bodily fluids and was sentenced to fifteen years' imprisonment. On appeal, Barnes argues the trial court abused its discretion in failing to declare a mistrial when the jury returned deadlocked twice. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: S.C. Code Ann. § 14-7-1330 (1976) (defining the procedure for when a jury fails to agree); Buff v. S.C. Dep't of Transp., 342 S.C. 416, 422, 537 S.E.2d 279, 282 (2000) ("The jury's consent to resume or to discontinue deliberations is determined, either expressly or impliedly, by its response to the trial judge's comments."); Id. ("Accordingly, when a jury has twice indicated it is deadlocked, the trial judge should diplomatically discuss with the jury whether further deliberations could be beneficial."); State v. Crim, 327 S.C. 254, 257, 489 S.E.2d 478, 479 (1997) ("It is well-settled that the decision to grant or deny a mistrial is within the sound discretion of the trial judge.").

AFFIRMED.

SHORT, THOMAS, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

STEVEN LOUIS BARNES,

APPELLANT

Appeal from Edgefield County

R. Knox McMahon, Circuit Court Judge

Opinion No. 2010-UP-427

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel for Steven Louis Barnes petitions the Court for rehearing. Counsel respectfully submits that the Court overlooked the fact that when the jury returned deadlocked for the second time, the trial judge asked the jury:

About quarter to five my court reporter tells me. Of course, it's now perhaps past some of y'all's suppertime, I'm not sure. But you have been out for some three hours, and it's obvious that you have worked very diligently and very focused on the task at hand in fulfilling your duties and responsibilities under the oath y'all have taken.

Obviously court is going to be operating tomorrow. I would have no problem whatsoever to releasing y'all from your service tonight and asking you to return in the morning after having slept on it and having kept your counsel.

You certainly could not discuss it with any person during this break, just like a lunch break or regular evening break or anything of that nature and just come back fresh in the morning and go from there.

That is the absolute option that I would choose to take. Sometimes I forget I'm a judge, so I know I can order it, but at the same time y'all are the judge's of the facts in the case. I don't want to necessarily dictate that.

But would y'all be amenable to that? I know I have one juror who is protected for Friday. Of course, I see no way we would go into Friday, but that would give y'all the opportunity to sleep on it tonight and come back and start fresh in the morning. Would you discuss that with your fellow jurors? Do you think that would be an option, Mr. Foreman?

(Tr. p. 66, lines 4 – p. 67, lines 1-6).

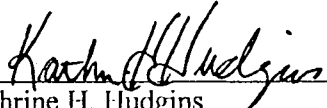
In response to the judge's question, the foreman stated, "Based on the discussions in the office back there, you have the numbers, and I don't think the other person will be able to change his mind." (Tr. p. 67, lines 7-9). Rather than accepting the foreman's comment as a clear indication of the jury's desire to discontinue deliberations as they would be futile, the judge stated, "All right. Well I appreciate that very much; however, I am going to decline to declare a mistrial at this time. I am going to ask you - - I will release y'all from your jury service for the remainder of the evening. The judge's failure to declare a mistrial violates S.C. Code §14-7-1330.

In Buff v. S.C. Dep't of Transp., 342 S.C. 416, 422, 537 S.E.2d 279, 282 (2000), the South Carolina Supreme Court wrote, "The jury's consent to resume or discontinue deliberations is determined, either expressly or impliedly, by its response to the trial judge's comments." In Buff the Court found that the jury impliedly consented to resume deliberations when none of the jurors expressed unwillingness to comply with the judge's request to continue deliberating. In the present case, however, in response to the judge's comments, the foreman expressed unwillingness to

continue. The jury's consent to discontinue deliberations in the present case can be determined expressly by its response to the trial judge's comments. Unlike the Buff case, there is nothing in the record to support that the jury consented, expressly or impliedly, to further deliberations.

"Accordingly, when a jury has twice indicated it is deadlocked, the trial judge should diplomatically discuss with the jury whether further deliberations could be beneficial." Buff v. S.C. Dep't of Transp., 342 S.C. 416, 422, 537 S.E.2d 279, 282 (2000). The trial judge's discussion with the jury was coercive rather than diplomatic. The trial judge told the jury that he would order further deliberations and that was the absolute option he would choose. It is inconceivable that any of the other jury members would express an unwillingness to continue to deliberate after the judge told the jury that he would order further deliberations, and in fact ordered further deliberations despite the foreman's comment that further deliberations would not be beneficial. The judge's failure to declare a mistrial constitutes an abuse of discretion requiring reversal.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

This 26th day of October, 2010.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Edgefield County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,


V.

STEVEN LOUIS BARNES,

APPELLANT

CERTIFICATE OF SERVICE

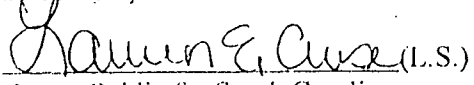
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon David Spencer, Esquire, this 26th day of October, 2010.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 26th day
of October, 2010.



Notary Public for South Carolina
My Commission Expires: August 23, 2014.

The South Carolina Court of Appeals

The State,

Respondent,

v.

Steven Louis Barnes,

Appellant.

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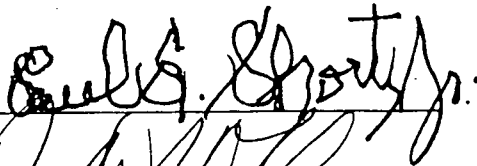
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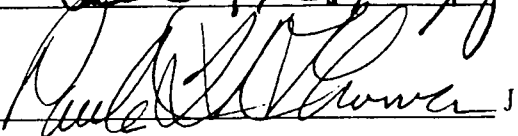
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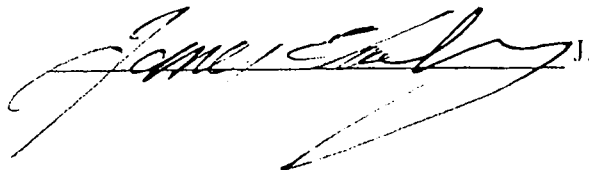
The Honorable R. Knox McMahon
Edgefield County
Trial Court Case No. 2007-GS-19-00011

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.







Columbia, South Carolina

cc: Appellate Defender Kathrine H. Hudgins
Attorney General Henry Dargan McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Salley W. Elliott
Assistant Attorney General Julie M. Thames
Donald V. Myers, Esquire

FILED

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM EDGEFIELD COUNTY

R. Knox McMahon, Circuit Court Judge

THE STATE,

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V.

STEVEN LOUIS BARNES,

APPELLANT

RECORD ON APPEAL

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1 CLERK: State your full name and spell your
2 last name.

3 THE WITNESS: Marcus Smith, S-M-I-T-H.

4 THE COURT: All right, Solicitor.

5 MR. YOUNG: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. YOUNG:

8 Q Officer Smith, where do you work?

9 A At the Edgefield County Sheriff's Office. I'm a
10 jailer.

11 Q How long have you been doing that job?

12 A Approximately three years.

13 Q Were you a jailer back on the 3rd of November,
14 2007?

15 A Yes, sir.

16 Q What time did you come on shift that day?

17 A I got there about 6:45.

18 Q Upon that day did you come in contact with one
19 Steven Louis Barnes?

20 A Yes, sir.

21 Q Was he an inmate at that facility?

22 A Yes, sir, he is.

23 Q Specifically where was he located?

24 A In cell C.2.

25 Q In cell C.2?

1 A Yes, sir.

2 Q And in that cell is he by himself or with someone
3 else?

4 A He is by himself.

5 Q Would you point out Mr. Steven Louis Barnes if he
6 is present in the courtroom?

7 A He is right there, sir (indicating).

8 Q Who are you pointing to specifically?

9 A The gentleman in the blue shirt.

10 Q The person who is conferring with counsel there?

11 A Yes, sir.

12 Q Thank you. On that day about what time did you
13 come in contact with him?

14 A Approximately 10:30 that morning.

15 Q What was the purpose of coming into contact with
16 him?

17 A I was giving him his meds.

18 Q His meds being what, just normal routine
19 medications?

20 A Yes, sir.

21 Q What are you supposed to do when you give a person
22 medications?

23 A We have them sign the book saying that they
24 received them. We give them their medication,
25 watch them take it, and go on about our day.

1 Q Can you describe the area that comprises the cell
2 itself in C.2.

3 A On his particular door, there's two flaps. There
4 is one at the top and then there is one at the
5 bottom. We always go through the bottom flap to
6 give him whatever he needs.

7 Q Would you be able to recognize a picture of that
8 particular cell if you saw it again?

9 A Yes, sir.

10 Q Let me show you what has been marked previously
11 State's Exhibit Number 1 for identification. Can
12 you identify this?

13 A Yes, sir.

14 Q What is that? What is this a picture of?

15 A This is a picture of the C. block hallway where we
16 house our maximum security inmates.

17 Q Let me ask this question. Simply put, is C.2
18 visible in that picture?

19 A Yes, sir.

20 Q And does that picture of C.2 and the hallway fairly
21 and accurately describe the hallway area as it
22 would have been on that day?

23 A Yes, sir.

24 Q Including the door flaps and the cell block area?

25 A Yes, sir.

1 MR. YOUNG: We offer State's Exhibit Number 1
2 for identification into evidence as State's Exhibit
3 Number 1, Your Honor.

4 THE COURT: Mr. Seigler?

5 MR. SEIGLER: No objection, Your Honor.

6 THE COURT: State's 1 is in evidence without
7 objection.

8 (State's Exhibit Number 1 is received into
9 evidence).

10 MR. YOUNG: May I publish it to the jury, Your
11 Honor?

12 THE COURT: Yes, sir.

13 MR. YOUNG: Specifically can I ask the officer
14 to come down and point out unit C.2?

15 THE COURT: Yes, sir. You may step down,
16 Officer. If you are asked any questions when you are
17 away from the stand, just keep your voice up for us.

18 THE WITNESS: Yes, sir.

19 BY MR. YOUNG:

20 Q If you will stand up here, sir. I would like to
21 make this a little bit easier for the jury to see.
22 Use my pen and please point out that unit you are
23 referring to as C.2.

24 A (Witness complies).

25 Q You have your pen marked on the first door there in

1 relation to left to right?

2 A Yes, sir.

3 Q Okay. Thank you.

4 THE COURT: You may want to show it to the
5 other end of the jury.

6 MR. YOUNG: I will ask the jury to pass it
7 around, Your Honor.

8 THE COURT: Yes, sir.

9 BY MR. YOUNG:

10 Q Thank you.

11 A (Witness resumes the witness stand).

12 Q I would like to give the jury just a moment so they
13 will all be referenced to the picture.

14 (Pause).

15 MR. YOUNG: I believe the last juror now has
16 the picture in her hand. I will proceed to the next
17 question.

18 BY MR. YOUNG:

19 Q With regard to that door, was the door closed or
20 open?

21 A It was closed.

22 Q Were the flaps opened or closed?

23 A Closed.

24 Q How did you open the flaps?

25 A The locks on there, you have a little latch you can

1 lift up. Then you just drop it down, and that's
2 how we give him the med s.
3 Q Which of the two flaps did you open?
4 A The bottom flap, sir.
5 Q What did you pass through that flap, if anything?
6 A Medication.
7 Q Did you pass the form through?
8 A Yes, sir.
9 Q Did you receive a form back?
10 A Yes, sir.
11 Q After you received the form back, what happened?
12 A As I was about to get up, the Defendant,
13 Mr. Barnes, threw a cup of urine out on me. As I
14 was standing up, I was told by the deputies to pop
15 the door and they entered.
16 Q Where did it strike you, sir.
17 A Between my legs in the crotch area on my lower
18 body.
19 Q Did it come into contact through the surface of the
20 pants to your skin?
21 A Yes, sir.
22 Q At that point what did you do?
23 A I immediately -- well, after I opened the door and
24 they subdued him, I went to the laundry area of the
25 jail. I took off all my uniform and I put on a

1 jumpsuit.

2 Q Without being too graphic, sir, was the smell
3 consistent with urine?

4 A At the time I was, you know, just trying to get it
5 off of me. So once I put it in the washing man, I
6 didn't really like pick it up and smell it.

7 Q Could you smell urine?

8 A Yes, sir.

9 Q Could you smell urine from where you had been
10 splashed?

11 A Yes, sir.

12 Q Now, during this time were you present in the
13 hallway when the other officers were trying to, I
14 think you said, subdue Mr. Barnes?

15 A Yes, sir.

16 Q Did you hear Mr. Barnes make any statements either
17 while he was in -- while he was in your presence?

18 A Yes, sir.

19 Q What kind of statements did he make and where did
20 he make them?

21 A After he was removed from the cell and placed in
22 hallway, the cuffs were placed on him, he stated,
23 "Man, you got me out here in my own piss or urine,"
24 and he kind of like reiterated that a couple of
25 times.

1 Q Okay. How would you describe his behavior at that
2 time? Was he irate, happy, sad?

3 A He wasn't happy. He was irate, sir.

4 Q And at that time or subsequent to that time, did
5 you hear him make anymore statements, either
6 directed to you or anyone else?

7 A After they had cleared the cell and they picked him
8 up and he was at a vertical base, he then looked
9 down the hall at me and said, "Yeah, M.F., I dashed
10 you," and after that they led him down the hallway.

11 Q Now, in connection with, "I dashed you," can you
12 describe where he was in relation to you at the
13 time you heard that statement?

14 A No more than six or seven feet from me.

15 Q Who was with him, if anyone?

16 A Officers Dedmond and Williams.

17 Q Was he facing you or away from you?

18 A Facing me.

19 Q Did he look at you?

20 A Yes, sir.

21 Q At this time did you leave the area before him or
22 after him is what I'm really asking you?

23 A I went into the control room and stayed there until
24 they moved him to the day room, and then I exited
25 the building to go change my clothes.

- 1 Q Is the control room visible in State's Exhibit 1?
- 2 A Partially.
- 3 Q What part of it, sir?
- 4 A This window right here (indicating).
- 5 Q Would you stand up from where you are and point on
- 6 the picture so the jury can see what you are
- 7 describing.
- 8 A This right here (indicating) is a section of the
- 9 control room right there.
- 10 Q So it goes further down the hallway?
- 11 A Yes, sir.
- 12 Q Thank you. And after this happened, sir, what did
- 13 you say you did?
- 14 A Sir?
- 15 Q What did you say you did after you left the control
- 16 room?
- 17 A I exited the building, I went home and showered and
- 18 came back a little later.
- 19 Q Is there any doubt in your mind as to what you were
- 20 struck with, that liquid?
- 21 A In my mind it's urine.
- 22 Q Any doubt in your mind?
- 23 A No, sir.
- 24 Q Answer any questions Mr. Seigler may have of you.
- 25 THE COURT: Thank you, Solicitor.

1 Mr. Seigler.

2 MR. SEIGLER: May it please the Court, Your
3 Honor.

4 THE COURT: Yes, sir.

5 CROSS EXAMINATION

6 BY MR. SEIGLER:

7 Q How are you doing, Mr. Smith?

8 A I'm all right.

9 Q Was there any liquid left out there in the hall?

10 A Yes, sir.

11 Q What did y'all do with that?

12 A It was cleaned up.

13 Q It was cleaned up?

14 A Yes, sir.

15 Q Did you have an opportunity to take a sample of it?

16 A No, sir, no sample was taken.

17 Q No sample was taken. Did you have an opportunity
18 to take a sample of it?

19 A Yes, sir.

20 Q You said when Mr. Young asked you about the events
21 that transpired on the day in question that if I
22 could quote you, you said, "The Defendant threw a
23 cup of urine out on me"?

24 A Yes, sir.

25 Q I believe you said soon thereafter that you

1 couldn't smell anything immediately after it was
2 thrown. So how did you know it was urine when he
3 threw it out?

4 A Well, it was out in the hallway. It looks like
5 urine. I assume it to be urine. I mean, there is
6 a pungent odor also.

7 Q But you didn't say that you smelled anything until
8 when?

9 A Until after I came back from taking it off of me,
10 taking the clothes off of me.

11 Q So you didn't smell anything until after you took
12 your clothes off?

13 A Yes, sir.

14 Q Then how did you know or how can you assume it was
15 urine when it came out of the flap because you
16 didn't smell it then, did you?

17 A No, sir.

18 Q But you did smell it later?

19 A Yes, sir.

20 Q Now, I believe you said you went and took your
21 clothes off. Did you take a sample of the clothes
22 at all?

23 A No, sir.

24 Q Did you send this liquid off at all to determine
25 what it was?

- 1 A No, sir.
- 2 Q I believe you also said that Steven Barnes said,
3 "Yeah, I dashed you"?
- 4 A Yes, sir.
- 5 Q He said that?
- 6 A Yes, sir.
- 7 Q When he said dashed, that doesn't necessarily mean
8 urine; does it?
- 9 A Not necessarily, no, sir.
- 10 Q It could mean water?
- 11 A Yes, sir.
- 12 Q It could mean apple juice?
- 13 A Yes, sir.
- 14 Q It could mean any liquid, correct?
- 15 A Yes, sir.
- 16 Q He didn't say, "Yeah, I dashed you with my pee."
17 He didn't say that, did he?
- 18 A No, sir.
- 19 Q He said, "Yeah, I dashed you."
- 20 A Yes, sir.
- 21 Q He didn't say with what, did he?
- 22 A No, sir.
- 23 Q And you don't have a test to determine what it was,
24 do you?
- 25 A No, sir.

- 1 Q Does Mr. Barnes have the opportunity to consume
2 liquids in his cell?
- 3 A Yes, sir.
- 4 Q What would he typically drink with his meals?
- 5 A Tea.
- 6 Q Tea?
- 7 A Yes, sir.
- 8 Q So he would have access to that then, right?
- 9 A Yes, sir.
- 10 Q What about water?
- 11 A Yes, sir, he has.
- 12 Q Access to water as well, doesn't he?
- 13 A Yes, sir.
- 14 Q So what your testimony is, and let me understand
15 this correctly, you didn't smell anything when he
16 threw it out the door?
- 17 A Yes, sir.
- 18 Q You don't have any tests to determine what it was?
- 19 A Yes, sir.
- 20 Q You don't have a test though, right?
- 21 A No, sir.
- 22 Q And he had access to many other liquids; correct?
- 23 A Yes, sir.
- 24 Q So why do you think that you could smell it later,
25 and you didn't smell it when it come out the door?

1 A Well, sir, as soon as it hit me, I mean, I
2 immediately did what I was asked, and then I took
3 my clothing off. I'm not a fan of having any
4 liquid on me at all. So I didn't sniff it or
5 anything like that. But as soon as I got it off of
6 me and was back in the general area, I did smell
7 it.

8 Q The general area where the incident occurred?

9 A Yes, sir.

10 Q Now, not particularly on this situation or even in
11 the days prior to this, typically what does the
12 jail smell like?

13 A A nursing home, yes, sir.

14 Q A home for elderly assisted living, something like
15 that?

16 A Yes, sir.

17 Q And that has a distinct smell as well, doesn't it?

18 A Yes, sir.

19 Q A few more questions, Mr. Smith. You said that
20 this was splashed on your legs and crotch area; is
21 that a fair statement?

22 A Yes, sir.

23 Q And immediately after that you went to the laundry
24 room, took your clothes off, and washed them?

25 A Yes, sir.

1 Q Didn't smell them?

2 A No, sir.

3 Q Didn't do anything, didn't take a sample, didn't
4 get a test?

5 A No, sir.

6 MR. SEIGLER: I don't have any further
7 questions, Judge.

8 THE COURT: Thank you, Mr. Seigler. Anything
9 on redirect, Solicitor?

10 MR. YOUNG: Absolutely, Your Honor. Thank
11 you.

12 **REDIRECT EXAMINATION**

13 BY MR. YOUNG:

14 Q When you heard Mr. Barnes make the statement on the
15 floor lying on his stomach, "Man, you got me lying
16 in my own -- what did you say it was?

17 A Piss.

18 Q Did you believe him?

19 A Yes, sir.

20 Q When you were taking your clothes off and you had
21 liquid in contact with your skin, what did you
22 think you smelled then?

23 A Urine.

24 Q You weren't in a nursing home or a cell or block
25 when that happened, were you?

1 A No, sir.

2 Q Did you look in that cell afterwards?

3 A No, sir.

4 Q Are you familiar with the smell of water?

5 A Yes, sir.

6 Q Does it have a smell?

7 A No, sir.

8 Q Are you familiar with the smell of tea?

9 A Yes, sir.

10 Q Did this stuff on you smell like tea?

11 A No, sir.

12 MR. YOUNG: No further questions.

13 THE COURT: Thank you, Solicitor. Redirect?

14 MR. SEIGLER: Briefly, Judge.

15 THE COURT: Excuse me, recross.

16 MR. SEIGLER: Yes, sir.

17 **RECROSS EXAMINATION**

18 BY MR. SEIGLER:

19 Q Mr. Smith, what does tea smell like? I would like
20 to know?

21 A It doesn't smell like urine.

22 Q It doesn't smell like urine?

23 A No, sir.

24 Q But you didn't smell your clothes you testified to
25 earlier?

1 A No, sir.

2 Q Okay.

3 MR. SEIGLER: No further questions.

4 THE COURT: Thank you. Thank you, Officer
5 Smith. You may step down.

6 THE WITNESS: Thank you, sir.

7 THE COURT: Perhaps now would be a good time
8 for us to take our luncheon recess.

9 Mr. Foreman, ladies and gentlemen of the jury,
10 I remind you during this recess, you are not to discuss
11 this case with anyone. This includes your fellow
12 jurors, your lunch mates, your friends, family, people
13 involved in the trial or anyone else.

14 If anyone tries to talk with you about the
15 case, please let me know immediately. Please remember
16 to keep an open mind about the case until I instruct you
17 to begin your deliberations.

18 I would ask you to please be back in your jury
19 room at 2:30, 14:30 hours. At 2:30 if you would please
20 be back in your jury room. With that you are now
21 excused for your luncheon recess. I hope you have a
22 pleasant lunch. Thank you very much.

23 (The jury is excused for lunch at 12:54 p.m.)

24 THE COURT: Anything before we break for
25 lunch?

1 note for you that when you are taking down a note, you
2 may not notice a particular witness' body language or
3 demeanor which could be used by you in deciding a
4 witness' credibility.

5 So if you are taking notes, if you choose to
6 do so, again that is fine. There is absolutely nothing
7 wrong with it. Just keep those principles in mind.
8 With that we are now continuing with the trial of the
9 case by the presentation of testimony by the State.

10 Solicitor, you may call your next witness.

11 MR. YOUNG: Thank you, Your Honor. May it
12 please the Court. The State now calls Deputy George
13 Dedmond.

14 THE COURT: Deputy Dedmond.

15 GEORGE DEDMONDT, being
16 first duly sworn, testified as follows:

17 CLERK: State your full name and spell your
18 last, please.

19 THE WITNESS: First name is George. My last
20 name is Dedmond, D-E-D-M-O-N-D-T.

21 THE COURT: Solicitor.

22 MR. YOUNG: Thank you, Your Honor.

23 **DIRECT EXAMINATION**

24 BY MR. YOUNG:

25 Q Deputy Dedmond, where do you work and how long,

1 sir?

2 A I have been employed at the Edgefield County
3 Sheriff's Office for five years.

4 Q And were you an employee of the Sheriff's Office on
5 November 3, 2007?

6 A Yes, sir.

7 Q On that day did you come into contact with an
8 inmate in the detention center by the name of
9 Steven Louis Barnes?

10 A Yes, I did.

11 Q Can you tell us where Steven Louis Barnes was
12 specifically.

13 A Located in C. hall, cell number 2.

14 Q Was he an inmate at that time?

15 A Yes, he was.

16 Q And just to make sure we cover the specific point,
17 is that location within the County of Edgefield?

18 A It is within the County of Edgefield.

19 Q Thank you, sir. On that day, sir, when you were
20 present, were any other officers present? Were you
21 present, I should say? Let me rephrase the
22 question. It was very inartful. On the day that
23 you were in that area and came into contact with
24 Mr. Barnes, exactly where were you and what other
25 officers were present?

1 A I was located approximately five feet to the
2 immediate right of the door to cell C.2, and
3 immediately behind me was Sergeant Brian Williams.

4 Q Would you be able to recognize a picture of that
5 location if you saw it again?

6 A I believe I would.

7 Q And I show you what has previously been admitted as
8 State's Exhibit Number 1. Do you know what that
9 is?

10 A Yes, sir, I do.

11 Q Does that have any connection with your testimony
12 about where you were located on that day?

13 A Yes, it does have connection.

14 Q How is that?

15 A To the left portion of the photograph, it shows a
16 portion of the control room, and the door in the
17 center is door C.2.

18 Q Where were you in connection with that portion of
19 the control room?

20 A Standing in front of this portion (indicating) of
21 the control room.

22 Q You are pointing to that glass portion?

23 A In front of that glass portion.

24 Q I hand that to the jury. Sir, in connection with
25 that, did you thereafter observe any officer go to

1 the door of cell C.2?

2 A I did. I observed Officer Smith approach the
3 door --

4 MR. SEIGLER: Judge, I apologize. Could the
5 prosecutor and I approach?

6 THE COURT: Yes, sir.

7 (Whereupon there was a bench conference off
8 the record in the presence of the jury but out of the
9 hearing of the jury).

10 THE COURT: Solicitor, thank you. You may
11 proceed.

12 MR. YOUNG: Thank you.

13 BY MR. YOUNG:

14 Q Deputy Dedmond, is that Sergeant Williams who was
15 just departing the courtroom?

16 A Yes, sir, it was.

17 Q That was the Sergeant Williams with you on that
18 day?

19 A Yes, sir.

20 Q If I could go back to that point in time. You said
21 you observed an officer approach the cell C.2?

22 A I observed Officer Marcus Smith observe the door to
23 cell C.2.

24 Q What did you see him do, if anything?

25 A He spoke to the inmate briefly, unlocked the bottom

1 flap to the door, provided the inmate with a few
2 pills and then asked him to sign a medication sheet
3 and handed him a pen at which point the inmate
4 signed the medication sheet.

5 Q And after that did you observe anything happen?

6 A I did. I observed the hand withdraw into the flap
7 and then in rapid succession throw two cups of
8 liquid onto Officer Smith, one after the other,
9 both with the right hand of the inmate, throw two
10 cups of urine on Officer Smith.

11 Q Two cups of urine?

12 A Yes, sir.

13 Q What was Officer Smith's reaction?

14 A Initially shock.

15 Q Okay. And then what?

16 A He jumped up.

17 Q What reaction and action did you have to that?

18 Better stated -- let me withdraw the question and
19 restate it this way. What action, if any, did you
20 take at this point?

21 A I asked Officer Smith to unlock the cell door.

22 Q And then what happened?

23 A The cell door was unlocked. I deployed a taser
24 stun device on the inmate, and myself and Sergeant
25 Williams entered the cell and placed the inmate in

1 handcuffs and then removed him from the cell.

2 Q When you removed him from the cell, where did you
3 go?

4 A Into the hallway floor immediately in front of the
5 cell.

6 Q And when he was removed from the cell, was he in
7 handcuffs or any other form of restraint?

8 A He was placed -- he had been handcuffed face down.
9 He appeared that he couldn't walk and couldn't get
10 up at that point. Sergeant Williams, I watched
11 Sergeant Williams grab him by the pants of his
12 jumpsuit to try to keep from potentially being
13 kicked.

14 He grabbed him by the end of his pant leg of
15 his jumpsuit to slide him out of the cell.
16 Sergeant Williams' hand just lost grip because he
17 had also received some of the electric shock from
18 the taser device while he had been attempting to
19 handcuff the inmate.

20 He had lost his grip on the pant leg as he was
21 attempting to remove him from the cell. So I
22 grabbed the pant leg of the inmate's jumpsuit and
23 slid him out into the hallway to remove him from
24 the cell with the intent of clearing the cell of
25 any other possible threats or weapons or anything

1 of that nature.

2 Q Let me ask you to go back out in the hallway before
3 you entered the cell if we can in time. At the
4 point you were outside the cell and before you saw
5 the right hand come out and throw these cups of
6 urine out, what was the condition of the floor
7 before those cups were thrown? What was the
8 condition of the floor?

9 A Normal condition of the floor. There was no liquid
10 or substance on the floor. It was normal, dry
11 condition.

12 Q Any others items on the floor noticeable in nature
13 that you saw?

14 A No, sir.

15 Q At that point in time -- excuse me -- after you had
16 slid him into the hallway, did you notice any
17 liquid or any other substance on the floor?

18 A Yes. On the floor in a wide puddle on the floor
19 immediate in front of his cell was covered with
20 urine, dark yellow in color urine.

21 Q Subsequently was a photograph exposed of that
22 location?

23 A Approximately maybe three to five minutes later, a
24 photograph was taken by the camera of that location
25 in the hallway.

1 Q Were you present when the photograph was taken?

2 A Yes, sir.

3 Q Who took the photograph?

4 A I took the photograph.

5 Q Would you be able to recognize a copy of that
6 photograph again if you saw it?

7 A I believe I would.

8 Q And if I show you this photograph --

9 MR. SEIGLER: Your Honor, I will object to any
10 reference or admission of that photograph at all.

11 THE COURT: You do not object?

12 MR. SEIGLER: I do object.

13 THE COURT: All right. Well, he still hasn't
14 authenticated it, but what is the basis of your
15 objection by rule number.

16 MR. SEIGLER: Number one, it's not dated. We
17 don't know when the picture was taken or anything of
18 that nature. There is no date on it.

19 THE COURT: If it can be authenticated,
20 Solicitor, you may proceed.

21 MR. YOUNG: Thank you, Your Honor.

22 BY MR. YOUNG:

23 Q Sir, I hand you what now has been marked as State's
24 Exhibit Number 3 for identification. I hand it to
25 you and ask you to take a look at the photograph.

1 After you have looked at it, answer this question.
2 Having looked at the photograph, do you recognize
3 it?

4 A I do recognize it.

5 Q What is that photograph?

6 A A photograph of the hallway floor in front of cell
7 C.2 on the day in question.

8 Q Do you recognize that photo as being one you took
9 or one someone else took?

10 A One I took.

11 Q When did you take it?

12 A Approximately five minutes after the initial taser
13 device deployment.

14 Q What was your purpose in taking the photograph?

15 A To record the scene, to record the incident.

16 Q What is in display on the photograph that you took?
17 What do you see in the photograph and describe it
18 for the Court.

19 THE COURT: Let me stop you for a minute. Do
20 you have an objection to the authentication of State's 3
21 at this point?

22 MR. SEIGLER: Your Honor, Mr. Dedmondtd has not
23 indicated previously that he took this picture, but I
24 don't see how he can authenticate it. It's not dated.
25 There is no stamp on there that it was taken from his

1 camera.

2 THE COURT: You can certainly ask him those
3 questions on cross examination, Mr. Seigler. My
4 question to you is do you have any objections in
5 addition --

6 MR. SEIGLER: No, sir.

7 THE COURT: -- to authentication?

8 MR. SEIGLER: No, sir.

9 THE COURT: All right. I will allow State's 3
10 in evidence subject to Mr. Seigler's objection pursuant
11 to Rule 901 (a) and (b)(1).

12 MR. YOUNG: Thank you, Your Honor.

13 THE COURT: State's 3 is in evidence subject
14 to objection.

15 (State's Exhibit Number 3 is received into
16 evidence)..

17 BY MR. YOUNG:

18 Q Holding the picture in your hand now, sir, what do
19 you see in the photograph that you took a picture
20 of?

21 A I see a large puddle of dark yellow-colored urine.
22 I see the package container for an alcohol swipe
23 pad. I see small droplets of blood in the floor
24 next to the puddle of urine, and I see the silver
25 in color taser device probe attached to a section

1 of copper wire.

2 Q Were any of those items or the liquid substance you
3 described as urine on that floor, were they present
4 on that floor way before you saw the hand come out
5 of the door slot?

6 A No, sir. This is one and only time that the taser
7 device has ever been employed in that jail.

8 Q And the swab was used for what?

9 A As standard procedure when a taser device is
10 deployed, there are very small barbs that may stick
11 in the skin or the clothing worn by the person
12 receiving the taser device. The barb has to be
13 pulled out and then immediately treated with an
14 alcohol wipe, and that's what was done on this day.

15 Q Okay. Now, do you have in your possession today a
16 taser device that is similar or the same to the one
17 you used on that day?

18 A Yes, sir, I do.

19 Q Does this taser device have any ability to record
20 visual images?

21 A It does. On the front portion of the device is an
22 illumination flashlight combined with a laser
23 pointer device. On the bottom portion of the
24 handle is a digital camera device that records a
25 visual image and also records audio whenever the

1 device is turned on.

2 Q In connection with that, let me ask you, after you
3 had removed Mr. Barnes from the cell, did you go
4 back into that cell with the taser device?

5 A I did.

6 Q Did you make any recordings with the taser device
7 of anything inside the cell?

8 A I did. I went back into the cell during the
9 initial sweep to clear it from any hazards or any
10 potential hazards, anything of that nature in the
11 cell. I also cut on the taser device and made a
12 quick sweep of the floor and inmate Barnes who had
13 been detained in the hallway.

14 Q What did you see with your own eyes?

15 A Next to the toilet and approximately five or six
16 inches from the front door to the cell, I saw three
17 cups of urine with bits of what appeared to be
18 feces in the cup also.

19 Q The same in color as the substance out on the
20 floor way in the hallway?

21 A The same dark yellow in color appearance with brown
22 bits of what I believed to be feces in the cup.

23 Q Did you make any recording of what you saw in the
24 doorway of Mr. Barnes in the hallway?

25 A I turned on the taser device and made a quick sweep

1 of the floor of the cell, those three cups of urine
2 by the door, and raised up the device to capture an
3 image of inmate Barnes in the hallway where he had
4 been detained. It was a short clip.

5 Q Have you seen that clip so to speak as you just
6 described before?

7 A I have seen it.

8 Q Would you be able to recognize a copy of that clip
9 if you saw it again?

10 A Yes, sir.

11 Q How would you be able to recognize it?

12 A My own voice can be heard on the audio portion, and
13 it's a very distinctive image. I remember
14 recording it.

15 Q Let me hand you what has been marked as State's
16 2-A. and ask if you can take a look at State's 2-A.
17 and tell me what that is.

18 A This is a digital image disk with my initials on
19 the front where I wrote my initials and dated it.

20 Q Have you seen what is on that disk?

21 A I have.

22 Q Did you place your initials on that before or after
23 you saw what was on it?

24 A After I saw what was on it.

25 Q Is what is on that disk a fair and accurate

1 representation of what you recorded on your taser
2 camera on the day of November 3, 2007, in
3 Mr. Barnes' cell?

4 A It is.

5 MR. YOUNG: We would offer State's 2-A, Your
6 Honor.

7 THE COURT: Subject to previous objections
8 Mr. Seigler?

9 MR. SEIGLER: Same objection, Judge.

10 THE COURT: State's 2-A is in evidence subject
11 to previous objection.

12 (State's Exhibit Number 2-A is received into
13 evidence).

14 MR. YOUNG: Your Honor, we would offer to hand
15 this up to the jury at this time subject to his cross
16 examination, I assume. I was going to play it, but if
17 there is an objection, he has a right to cross
18 examination on it. We will hold that to such time as
19 the Court is satisfied.

20 THE COURT: You are going to show it to the
21 jury?

22 MR. YOUNG: I will not until he has completed
23 his cross examination. It has been offered into
24 evidence, but it's subject to his examination as I
25 understood; is that correct?

1 THE COURT: It's in evidence if you want to
2 publish it.

3 MR. YOUNG: Oh, I will publish it to the jury.

4 THE COURT: It is subject to his objections,
5 but he is protected on the record.

6 MR. YOUNG: Your Honor, with the Court's
7 permission, can I ask him to come over and point out the
8 items in State's Exhibit 3?

9 MR. SEIGLER: Your Honor, I thought he was
10 referencing the video being shown, not a picture of it.
11 I haven't questioned him about the authenticity of it.

12 THE COURT: Yes, sir, and I allowed State's 3
13 into evidence subject to your objections on
14 authenticity. You can certainly cross examine him at
15 the appropriate time about that, Mr. Seigler. You may
16 step down, Deputy.

17 (Witness leaves the witness stand).

18 MR. YOUNG: I would like him to approach them
19 and tell him to describe what he has visualized in this
20 picture.

21 THE COURT: Just keep your voice up for us,
22 please.

23 BY MR. YOUNG:

24 Q Sir, you have to understand this lady here has to
25 hear you, the judge has to hear you, the Defendant

1 has to hear you. I will hold the picture and hand
2 you a pen. Would you please point out the areas on
3 this photograph that you used and described in your
4 testimony, I believe, as several items. One was a
5 packet, another was a puddle of urine, another was
6 a robe, another was a copper wire, and then there
7 was some blood. Can you point those items out.

8 A On the immediate left portion of the photograph is
9 the lower flap in the door of cell C-2. In the
10 center of the photograph located in the center of
11 the hallway is a wide puddle of yellow-colored
12 urine.

13 The blue and white object in the center of the
14 object is the disposable packet for an alcohol wipe
15 used in the treatment of taser device probe. On
16 the far right side of the photograph is a small red
17 in color puddle.

18 It is a small amount of blood from when the
19 taser probe device was removed from inmate Barnes.
20 In the upper right corner is the silver in color
21 probe of the taser device with a section of copper
22 colored wire stretching out going towards the top
23 of the picture.

24 Q Return to your seat, sir. Thank you.

25 A (Witness resumes the witness stand).

1 Q In is photograph, sir, the bottom flap is in a
2 closed position. Do you recall observing that flap
3 being closed at some point?

4 A Yes, sir.

5 Q When did that happen?

6 A When we closed and secured the cell.

7 MR. YOUNG: Your Honor, I will need a second.
8 I would like to publish the video clip.

9 THE COURT: All right.

10 MR. SEIGLER: Of course, Your Honor, we have
11 the same objection previously as to the prejudicial
12 effect of this particular video.

13 THE COURT: Yes, sir. State's 2-A is in
14 evidence subject to all your previous objections,
15 Mr. Seigler.

16 MR. SEIGLER: Thank you, sir.

17 THE COURT: And to the redaction.

18 MR. SEIGLER: Thank you, sir.

19 BY MR. YOUNG:

20 Q Sir, having reviewed this video clip, how long will
21 the clip last?

22 A Seven to eight seconds.

23 Q Possibly less?

24 A Possibly less. I believe it to be about seven
25 seconds.

1 MR. YOUNG: Ladies and gentlemen, I'm sorry
2 this is as big as I can make it. I can play this
3 several times.

4 THE COURT: Mr. Solicitor, you cannot address
5 the jury.

6 MR. YOUNG: I apologize. Can I ask the Court
7 to ask the jurors to tell me when this screen can be
8 visible for them.

9 THE COURT: Yes, sir, if you would do that in
10 two or three places. You can show it two or three
11 times, Solicitor, as you move down.

12 MR. YOUNG: Yes, sir, I will try to be very
13 careful.

14 THE COURT: Remember, y'all will have the clip
15 in the jury room with you.

16 (State's Exhibit Number 2-A is played for the
17 jury).

18 THE COURT: You can move it down a couple of
19 spaces. As I say, you can show it three or four times,
20 five if you need to.

21 MR. YOUNG: Will you let me know when you can
22 see the screen.

23 THE COURT: You have to keep your voice up for
24 our court reporter.

25 MR. YOUNG: Yes, sir. If you cannot see the

1 screen, please raise your hand.

2 JUROR: Tip the screen forward to cut some of
3 the glare.

4 (State's Exhibit Number 2-A is played for the
5 jury).

6 MR. YOUNG: That's it on the video, Your
7 Honor.

8 THE COURT: Thank you, Solicitor.

9 (Witness resumes the witness stand).

10 BY MR. YOUNG:

11 Q Deputy Dedmond, during the course of your time in
12 the area around Mr. Barnes' cell, did you hear
13 Mr. Barnes make any statements? And did you make
14 any statements with regard to Mr. Barnes coming and
15 going out of the cell?

16 A I did observe Mr. Barnes make a statement as he was
17 laying in the hallway.

18 Q Before he made that statement, did you make any
19 statement?

20 A Well, verbally the first statement I made to
21 Mr. Barnes was I told him twice, "Stop resisting.
22 Stop resisting," as the taser device was being
23 deployed.

24 Q As you removed him from the cell, did you say
25 anything to him?

1 A I said, "I'm sorry I have to drag you through your
2 own piss." Those were my exact words.

3 Q Subsequently did Mr. Barnes make any comment while
4 he was in the hallway face down?

5 A He, in a loud and irate manner, stated, "Y'all got
6 me out here laying in my own piss."

7 Q Was that statement directed to you or anyone in
8 particular?

9 A I don't believe it was directed at me personally,
10 but it was just in a loud and irate manner.

11 Q Did you hear him make any statement at all directed
12 towards any officer while you were there?

13 A Yes, I heard him directed -- up the hall once he
14 was on his feet and we were in the process of
15 getting him on his feet and providing him with a
16 fresh jumpsuit and headed back toward the shower in
17 the day room, he made a comment directed up the
18 hall toward Officer Smith, "Yeah, I dashed you,
19 mother fucker."

20 Q Did he say anything else?

21 A He was loud and irate, yelling. It's difficult to
22 recall a word for word account of a stressful event
23 such as that.

24 Q Did he make any comment about the urine at that
25 time?

1 A He said, "Yeah, I threw piss on you. Yeah, I
2 dashed you, mother fucker," were his words. He
3 said that several times.

4 Q That's while he was being escorted away?

5 A As he was being escorted away toward the day room
6 to be given a shower.

7 Q How many persons are in that cell that Mr. Barnes
8 occupied on that day?

9 A He is the only occupant of that cell and has been
10 for some time.

11 Q Please answer any questions Mr. Seigler has for
12 you.

13 THE COURT: Thank you, Solicitor.

14 Mr. Seigler.

15 MR. SEIGLER: May it please the Court, Your
16 Honor.

17 THE COURT: Yes, sir.

18 **CROSS EXAMINATION**

19 BY MR. SEIGLER:

20 Q How are you doing today, Mr. Dedmond?

21 A Good, sir.

22 Q How far were you from Mr. Smith when this occurred?

23 A I was approximately five feet to Mr. Smith's
24 immediate left.

25 Q Five feet?

1 A (Witness nods). (Indicating affirmative response).

2 Q And you said that there were two cups of liquid
3 that you later changed, of course, to urine that
4 was thrown out of the flap; is that right?

5 A Yes.

6 Q You said liquid to begin with, right?

7 A Yes, urine is liquid.

8 Q But when did you determine it was urine?

9 A When I smelled it.

10 Q You didn't know what it was when it came out of the
11 flap?

12 A I don't have the sensory perception to smell
13 something and chemically analyze it when it's five
14 feet away from me.

15 Q But your testimony was that you witnessed him throw
16 urine, two cups of urine out of the flap. That's
17 what you said, right?

18 A Yes.

19 Q So you could tell it when it was flying through the
20 air?

21 A No, I could tell it was urine when I had to walk
22 through it and smell it.

23 Q So you didn't know until you got up to it that it
24 was what you think was urine, right?

25 A Yes.

1 Q Now, you said that you cleared the cell after this
2 alleged incident occurred; is that right?

3 A That's correct.

4 Q On that video that Mr. Young played for the jury, I
5 believe that's your voice that says three cups of
6 urine, right?

7 A It is my voice.

8 Q How tall are you?

9 A Five foot five.

10 Q So you are standing foot five eight inches above
11 and looking down, and you could tell that was urine
12 just by looking at it?

13 A Simply by looking? I don't think you could verify
14 it was anything simply by looking.

15 Q How did you verify it further?

16 A It smelled like urine.

17 Q When did you smell it?

18 A When I had to walk through it into the cell.

19 Q I am referring to the three cups, the three cups
20 that you said was urine in his cell.

21 A Yes.

22 Q When did you smell those cups?

23 A I never got down and smelled those cups.

24 Q Then how did you determine it was urine by looking
25 down at them?

1 A How did I determine it was urine by looking down at
2 it?

3 Q On the video you say three cups of urine; is that
4 correct?

5 A I could not definitively determine those three cups
6 were urine.

7 Q Then why did you say that?

8 A I believed they were urine. They had a dark yellow
9 in color appearance, the same as the liquid that
10 was in the hallway.

11 Q Okay. But you said that you didn't think just by
12 looking at that you could determine it was urine.
13 Did you not just say that?

14 A I believe I did say that.

15 Q I'm asking you if you can't determine by looking at
16 it what it was, what further steps did you take to
17 determine it was urine? Because you never smelled
18 those cups, did you?

19 A I never took any further steps to determine if
20 those three cups were urine.

21 Q So you don't know it was urine then, do you?
22 Because if you made a statement that says that you
23 can't determine it's urine just by looking at, if
24 you didn't take any further steps, then you don't
25 know what it was; do you?

1 A I know it was urine.

2 Q Tell me how. Because you said just by looking at,
3 you can't tell.

4 A What are you asking me, sir?

5 Q Mr. Dedmondt, you made a statement on the video
6 that the jury has witnessed that says when you
7 shine your taser down from five foot five inches
8 tall, you said, "Three cups of urine," right?

9 A Yes, sir, that was on the video.

10 Q After that you said that you couldn't determine it
11 was urine just by looking at it, right?

12 A Yes.

13 Q And you didn't take any further steps to determine
14 if it was urine, right?

15 A I did not take any further steps to determine if
16 those three cups were urine.

17 Q So you don't know what it was? You just said it
18 was urine just by looking at it?

19 A I know it was urine. Maybe no one else does, but I
20 know it was urine.

21 Q How did you know it was urine? You are not
22 answering the question.

23 THE COURT: He has answered the question. He
24 said he didn't take any further steps. He looked at it.
25 His opinion is it's urine

1 MR. SEIGLER: What I'm trying to get at, Your
2 Honor, is he made a statement that it was urine right
3 off the bat. Then he said he couldn't tell it was urine
4 just by looking at it.

5 THE COURT: Yes, sir, you have made that
6 point.

7 MR. SEIGLER: I am asking him how he knows it
8 was urine if he didn't take any further steps.

9 THE COURT: You have asked him several times.
10 He said he didn't --

11 THE WITNESS: I didn't --

12 THE COURT: Please, Officer, don't interrupt
13 me. He has answered that question. He said he took no
14 further steps. He knew it was urine. The jury will
15 determine the facts on it. Ask your next question.

16 MR. SEIGLER: Yes, sir.

17 BY MR. SEIGLER:

18 Q Mr. Dedmond, you also stated that you instructed
19 my client to stop resisting; is that right?

20 A Yes, sir.

21 Q What was he doing when you walked in the cell?

22 A When I immediately -- when the door came unlocked,
23 I positioned myself about four feet, the width of
24 the hallway. Maybe the hallway is four or so feet
25 wide. I positioned myself in the hallway outside

1 of the unlocked door. He backed into the back
2 right corner of the cell and raised his arms up in
3 the area.

4 Q So he was standing there like this (indicating)?

5 A He backed in the right corner of the cell and
6 raised both arms into the air.

7 Q All right. Now, in the picture here, I believe you
8 said on your statement earlier, the three cups that
9 you referred to had urine and, of course, what you
10 believed was feces in it; right?

11 A Yes, sir.

12 Q Are these the same size cups that you saw come out
13 the flap?

14 A Yes.

15 Q Was there any feces out here on the little area
16 that you claim you took a picture of?

17 A Are you asking me --

18 Q In your picture?

19 A -- what is the chemical composition of this
20 substance in the hallway?

21 Q I'm asking you, you referred on your statement
22 earlier, you referred to the three cups that you
23 saw that had urine or what you believe to be urine,
24 and what you believed to be feces in it; right?

25 A Yes.

1 Q They are the same size as the cups that you saw
2 come out the door flap?

3 A Two standard size clear, plastic, disposable cups.

4 Q But there is no feces out here or what you believe
5 to be feces out here, right?

6 A I don't know if I'm qualified to find specks of
7 feces on the floor of a jail hallway.

8 Q But you are qualified to determine that it's in a
9 cup, but you not qualified to determine it's in the
10 hall?

11 A When I made an initial sweep of that cell, my
12 primary concern is for the safety of other officers
13 and myself. We sweep the cell for weapons, traps,
14 any other immediate dangers. We don't enter a cell
15 with a note pad to prepare a delicate court
16 statement. It's a tense, stressful --

17 THE COURT: Let me stop you right there. Let
18 me stop you a minute, Officer. I'm not sure what that
19 is responsive to.

20 Mr. Seigler, ask your next question, please.

21 MR. SEIGLER: Ask my next question, Judge?

22 THE COURT: Yes, sir.

23 BY MR. SEIGLER:

24 Q Your testimony earlier was that you saw what you
25 believed to be feces in the cup, right?

1 A Yes.

2 Q What I'm asking you if you see anything out here
3 that you believe to be feces on the floor?

4 A What I saw, what I believed to be feces, was small
5 brown clumps in the three cups located inside the
6 cell.

7 THE COURT: Here's the only question though,
8 Officer. In the hallway on the floor did you see
9 anything in your opinion that you believed to be feces?
10 That's all I believe I'm hearing Mr. Seigler is asking.

11 MR. SEIGLER: Exactly, Judge.

12 THE COURT: If you did, answer him. If you
13 didn't, answer him, if you can answer the question.

14 THE WITNESS: Yes, sir.

15 A No, I do not recall seeing anything in the hall
16 immediately in the hall from the two cups that had
17 been thrown that I believe to be feces.

18 Q So would it be a fair statement to say that the
19 composition of the three cups that you saw are not
20 the same that were tossed out there in the hall?

21 A I don't know. Every cup -- there's five cups that
22 are filled, and I can't say what was exactly placed
23 into one as opposed to the other. I just know that
24 what was thrown in the hallway had a strong smell
25 of urine, and I saw brown clumps in one of the cups

1 located inside the cell right next to the doorway.

2 Q Oh, it was just in one of the cups that the alleged
3 feces was in? You are saying now it was just in
4 one cup?

5 A I saw a large brown clump approximately one inch in
6 diameter in the cup that was closest to the door.
7 There were three cups lined up, and I did not
8 immediately stop to peruse the exact contents of
9 all three cups.

10 Q Okay. What you are referring to here, what you are
11 saying right here in this puddle that the jury will
12 see or has seen, you are saying that this is where
13 the urine was thrown?

14 A I'm saying that's a puddle of urine in the floor,
15 yes,, sir.

16 Q Now, as y'all drug him out, did you not drag him
17 through this?

18 A Yes, I had to drag him directly out of his cell.
19 There is only one doorway into the cell, and I drug
20 him out of the cell.

21 Q So when you drug him through this, it didn't clean
22 it up. It didn't get on him at all, it just
23 magically stayed right there in puddles?

24 A No, it got all over the front of his jumpsuit.

25 Q What size cups were these, small cups?

1 A Larger than the white cups, larger than the white
2 cups on the table in front of you. They were
3 standard plastic, disposable cups.

4 Q You stated earlier that you and Mr. Smith were
5 about five feet apart, right?

6 A Yes, sir.

7 Q And you can hear me pretty good back here about ten
8 or twelve feet; is that a fair statement?

9 A That's a fair statement.

10 Q Was Mr. Smith in the hallway the whole time this
11 incident occurred?

12 A He walked to the back of the hallway behind me. I
13 could not visually -- I couldn't observe what was
14 occurring in the hallway after I entered the cell
15 to subdue the inmate.

16 Q Okay.

17 A But I think when I came back out, Officer Smith was
18 at the end of the hallway, about maybe ten feet
19 away from me.

20 Q So he was in there until y'all escorted Mr. Barnes
21 out of there?

22 A He was.

23 Q Now, you testified earlier that Mr. Barnes said,
24 "Yeah, I threw piss on you," directly towards
25 Mr. Smith; right?

- 1 A I'm not sure who he directed it to. I assume he
2 directed it at Officer Smith.
- 3 Q That's what you said earlier --
- 4 A Yes.
- 5 Q -- that it was directed towards Mr. Smith.
- 6 A Yes. He was facing up the hallway. Officer Smith
7 was approximately maybe 10 to 15 feet away from
8 inmate Barnes at that time. Officer Smith was
9 facing him, and inmate Barnes was facing Officer
10 Smith when he said that, when he yelled that.
- 11 Q You said he was yelling that, right, in a loud,
12 irate fashion?
- 13 A In a very loud, irate manner.
- 14 Q If Mr. Smith was still in the hallway and he was
15 yelling in a irate matter, he would have heard it;
16 right?
- 17 A You could have heard it a hundred feet away.
- 18 Q But you are saying Mr. Smith would have been able
19 to hear that?
- 20 A Yes, sir.
- 21 Q I'm sure you can't speak for Mr. Smith, but could
22 you try to explain why Mr. Smith didn't recall
23 hearing that?
- 24 A Sure. When I came back out of the cell with inmate
25 Barnes and laid him in the hall, went back into the

1 cell to do a sweep, the next time I recall seeing
2 Officer Smith, he was covered. He was wet on the
3 front part of his pants. Then he went into the
4 laundry room to change into a jumpsuit. He may
5 have been out of -- he may have been through one
6 door into the next hallway in the laundry room
7 getting a clean set of clothes.

8 Q I'm sorry, Mr. Dedmond, maybe I'm confused.
9 Because you said he was in there, Mr. Smith was in
10 there, the whole time?

11 A In the cell.

12 Q In the hallway. Until y'all escorted Mr. Barnes
13 out, Mr. Smith was in the hallway. I thought
14 that's what you testified to just now.

15 A I went into the cell after deploying the taser to
16 subdue inmate Barnes, and I couldn't see what was
17 going on behind me. We drug him out into the
18 hallway and away from the door with no possible
19 access to anything else that may have been in the
20 cell.

21 My focus was on the inmate in a potentially
22 very dangerous situation, not to keep tabs on
23 where others jail officers may be walking to or
24 what they are doing. I had my hands full at that
25 moment.

1 Q I understand what your job was, Mr. Dedmond, and I
2 respect you for that. That's not what I'm asking
3 you. You testified earlier that he was still in
4 there --

5 A In the hallway?

6 Q Yes.

7 A He was in the hallway during the entire incident,
8 but at some point during the incident, he changed
9 into a jumpsuit. He went into the laundry room and
10 changed into a jumpsuit.

11 Q Okay. But I believe your testimony was earlier
12 that you could have heard it within a hundred feet.

13 A As you can hear on the audio, there was several,
14 probably 15, other inmates yelling on that video.
15 I can't attest to what Officer Smith may or may not
16 have heard. I just know what I heard.

17 Q I understand that. I'm not asking you to do that.
18 I just wanted to make sure that he was still in
19 there. That's all I asked. Now, did you get any
20 test results back on Mr. Barnes' clothing? Did you
21 test it to determine what the liquid was?

22 A I did not test Mr. Barnes' clothing.

23 Q How about Mr. Smith's?

24 A I did not test Officer Smith's clothing.

25 Q How about the liquid in the hall?

1 A I walked through it and smelled but did not conduct
2 a test --

3 Q Just answer my question.

4 THE COURT: He has answered it.

5 BY MR. SEIGLER:

6 Q What tests did you determine?

7 THE COURT: Finish your answer, Officer. Were
8 you finished?

9 A I smelled it. That's the extent. My testing of
10 the substance was being in close contact with it,
11 walking through it. I had to wash it off my boots
12 later, and I had to smell it. I stood in it.

13 Q Did you smell it like you did the other three cups
14 in the floor or were you just looking down at it
15 and determining that is what it was?

16 A No, I never had to walk through what was in the
17 other three cups.

18 Q What did you do with the other three cups? Did you
19 pick those up to check to see what they were?

20 A No, I didn't touch them. I swept the taser device
21 camera across the bottom of the cell with the cups
22 and then captured the image of inmate Barnes in the
23 hallway, cut the taser off. A jail officer who was
24 assisting with the situation came in and poured
25 those three cups in the toilet and threw the cups

1 away.

2 Q So to answer my question, there were no tests done?

3 A To my knowledge there was no chemical analysis of
4 the substance in the cups.

5 Q Thank you, sir.

6 THE COURT: Redirect, Solicitor?

7 MR. YOUNG: Thank you, Your Honor.

8 **REDIRECT EXAMINATION**

9 BY MR. YOUNG:

10 Q When you went inside the cell after Mr. Barnes had
11 been placed in the hallway, did you observe any
12 empty cups?

13 A I didn't observe any empty cups.

14 Q Did you see on the cell floor these three cups in
15 proximity to anything else in the room and where
16 was it?

17 A The three cups were lined up four to five inches
18 from the main door into the cell. They were lined
19 up right next to each other by the door to the
20 cell.

21 Q How far away are those cups in relation to that
22 flap that was the bottom flap that was opened by
23 Officer Smith? How far away?

24 A Ten inches.

25 Q Would it be within hand's reach of the person in

1 front of that flap?

2 A It would be within immediate reach of anyone at the
3 flap.

4 Q Was the color appearance of that liquid consistent
5 with what you saw on the floor in the hallway?

6 A The color was consistent with what I saw in the
7 hallway.

8 Q Is there any doubt in your mind about what you
9 stepped in in that hallway?

10 A There's no doubt in my mind that was urine.

11 Q Any doubt in your mind what you cleaned off your
12 boots?

13 A There's no doubt in my mind as to what I cleaned
14 off my boots.

15 Q And is there any doubt in your mind about what you
16 smelled?

17 A There is no doubt in my mind that what I smelled
18 was urine. It had a strong urine smell.

19 Q How long were you outside that door before you
20 observed this urine come flying out? How long were
21 you out there before you saw it happen?

22 A Ten minutes maybe. We arrived -- I do not normally
23 work in the jail area. Myself and Sergeant
24 Williams were called to that location.

25 Q Thank you.

1 A I had been there ten minutes.

2 MR. YOUNG: No further questions.

3 THE COURT: Thank you, Solicitor. Anything on
4 recross, Mr. Seigler?

5 MR. SEIGLER: Briefly judge.

6 RECROSS EXAMINATION

7 BY MR. SEIGLER:

8 Q You said you didn't find any empty cups in the
9 cell?

10 A I didn't find any empty cups in the cell.

11 Q No empty cups anywhere?

12 A Not that I recall, no, sir.

13 Q Okay.

14 MR. SEIGLER: No further questions, Your
15 Honor.

16 THE COURT: Thank you, Deputy Dedmond. You
17 may step down.

18 MR. YOUNG: Your Honor?

19 THE COURT: Excuse me.

20 MR. YOUNG: I was going to ask if he was
21 looking for empty cups.

22 THE COURT: No, sir, there is direct, cross,
23 redirect; and recross. You may step down.

24 MR. YOUNG: I'm finished. Thank you.

25 THE COURT: Solicitor, you can call your next

1 further.

2 THE COURT: Thank you very much. I assume
3 y'all have checked the exhibits 1, 2, and 3, and they
4 are ready to go. Here is the verdict form.

5 (The jury commences its deliberation at
6 4:42 p.m.)

7 (The following occurred at 4:45 p.m.)

8 THE COURT: The jury sent a note, "We need a
9 laptop." They want a laptop. Solicitor, what is your
10 objection?

11 MR. YOUNG: My laptop has a bunch of
12 photographs showing other cases that they should not
13 have access to.

14 THE COURT: I don't care whose laptop it is.

15 MR. YOUNG: My suggestion is Lieutenant Grant
16 has a laptop. He can set it up and show them how to
17 punch the buttons.

18 MR. SEIGLER: No problem with that, Your
19 Honor.

20 THE COURT: You have no objection,
21 Mr. Seigler?

22 MR. SEIGLER: No, sir.

23 THE COURT: Lieutenant, if you would provide
24 them a laptop and show them how to work it. That's it.
25 Thank you very much. Court will be on standby awaiting

1 the jury.

2 (Whereupon there was a recess).

3 (The following occurred at 5:38 p.m.).

4 THE COURT: If you would bring us our jury,
5 please:

6 (The jury returns to the courtroom).

7 THE COURT: It appears our jury is back
8 present in the courtroom, along with our alternate at
9 this time. I received your note, Mr. Foreman, "We are
10 unable to reach a verdict in this case."

11 I would like to say a few things, Mr. Foreman,
12 and ladies and gentlemen: You have stated by this note
13 you have been unable to agree on a verdict in the case.
14 As I instructed you earlier as you recall, the verdict
15 of the jury must be unanimous.

16 When a matter is in dispute, it isn't always
17 easy for even two people sometime to agree. So when 12
18 people must agree, it becomes even more difficult. In
19 most cases absolute certainty cannot be reached or
20 expected.

21 However, you have a duty to make every
22 reasonable effort to reach a unanimous verdict. In
23 doing this you should consult with one another, express
24 your own views, and listen to the opinions of your
25 fellow jurors. Tell each other how you feel and why you

1 feel the way you do and discuss your differences with
2 open minds.

3 Although the verdict of the jury must be
4 unanimous, every one of you has the right to your own
5 opinion. The verdict you agree to must be your own
6 verdict, the result of your own convictions. You should
7 not give up your firmly held beliefs merely to be in
8 agreement with your fellow jurors.

9 The majority should consider the minority's
10 position, and the minority should consider the
11 majority's position. You should carefully consider and
12 respect the opinions of each other and reevaluate your
13 position for reasonableness, correctness, and
14 impartiality.

15 You must lay aside all outside matters and
16 reexamine the question before you based on the law and
17 evidence in this case. If you do not reach a verdict in
18 this case, I must declare a mistrial. In that case it
19 does not mean anybody wins.

20 It just means that at some future time, I will
21 try this case or some other judge with some other jury
22 sitting where you now sit. The same participants will
23 come together, the same lawyers will ask basically the
24 same questions and get basically the same answers, and
25 we will go through the process, the entire process,

1 again.

2 You were selected in the same manner and from
3 the same source as any future jury will be. Quite
4 frankly, there is no reason for me to suppose that the
5 case will ever be submitted to 12 more intelligent,
6 impartial, conscientious, and competent jurors than
7 yourselves or that more or clearer evidence will be
8 produced on one side or the other.

9 I would therefore respectfully ask you to
10 return to your deliberations, Mr. Foreman, ladies and
11 gentlemen of the jury, with the hope that you can arrive
12 at a unanimous verdict within a reasonable time.

13 With that being said, Mr. Foreman, ladies and
14 gentlemen, if you would please retire back to your jury
15 room to continue your deliberations.

16 If you would please, Mr. Bailiff, separate our
17 alternate for me and place her in a separate location.
18 Thank you very much.

19 (The jury retires to continue its deliberation
20 at 5:45 p.m.)

21 THE COURT: I will note the note that I
22 received, I will have it marked as Court's Exhibit
23 Number 2. I will have the first one marked, "We need a
24 laptop," as Court's Exhibit Number 1.

25 This note states, "We are unable to reach a

1 verdict on this case. It does have the breakdown of
2 nine, guilty, three, not guilty. It is signed by our
3 foreman. It's dated today's date. If you care to make
4 any motion on the record, Solicitor, or Mr. Seigler.

5 MR. YOUNG: I have no motion to make. I
6 believe the instruction was given correctly by the
7 Court.

8 MR. SEIGLER: I don't have anything, Judge.

9 THE COURT: Thank you very much. You may
10 resecure Mr. Barnes, Sheriff, and we will be awaiting
11 our jury.

12 (Court's Exhibit Number 1-2 are marked for
13 purposes of the record).

14 (Whereupon there was a recess).

15 (The following occurred at 6:14 p.m.)

16 THE COURT: I have received a note from the
17 jury -- it will now be Court's Exhibit Number 3 -- it
18 says, "Can you give us the rules of evidence again,"
19 signed our foreperson. I will have it marked.

20 (Court's Exhibit Number 3 is marked for
21 purposes of the record).

22 THE COURT: If you would bring our jury,
23 please. I will inquire of them what specifically they
24 may want to be recharged on.

25 (The jury returns to the courtroom).

1 THE COURT: Our jury is back present in the
2 courtroom. I have received your note, Mr. Foreman. It
3 asks if I could give you the rules of evidence again. I
4 assume you are referring to my charge?

5 FOREMAN: Yes, sir.

6 THE COURT: Can I ask you, are there
7 particular areas of the charge that you want to hear or
8 do you want to hear all of the charge again? For
9 example, if you recall I captioned, for example, the
10 part about indictment and presumption of innocence.

11 FOREMAN: I think the portion they wanted to
12 hear again was....

13 JUROR: Rules of evidence. The difference
14 between circumstantial evidence, the weight of
15 circumstantial evidence against physical evidence.

16 THE COURT: That will be good. I will cover
17 that. Of course, you take the charge as a whole,
18 everything I charged before and what I charge now.
19 After I complete this charge, if you want more, you can
20 tell me as you sit right there or you can go back to
21 your jury room and send me another note. I'm not going
22 to leave you.

23 Direct and circumstantial evidence. There are
24 two types of evidence which are generally presented
25 during a trial, direct evidence and circumstantial

1 evidence.

2 Direct evidence is the testimony of a person
3 who claims to have actual knowledge of a fact, such as
4 an eyewitness or an ear witness. Direct evidence is
5 evidence that is based on one of our human senses. It
6 is evidence which immediately establishes the main fact
7 to be proved.

8 Circumstantial evidence is proof of a chain of
9 facts and circumstances indicating the existence of a
10 fact. It is evidence which immediately establishes
11 collateral facts from which the main fact may be
12 inferred. Circumstantial evidence is based on inference
13 and not on personal knowledge or observation.

14 The law makes absolutely no distinction
15 between the weight or value to be given to either direct
16 or circumstantial evidence, nor is a greater degree of
17 certainty required of circumstantial evidence than of
18 direct evidence.

19 You should weigh all of the evidence in the
20 case. After weighing all of the evidence, direct and
21 circumstantial evidence, if you are not convinced of the
22 guilt of the Defendant beyond a reasonable doubt, you
23 must find the Defendant not guilty.

24 Again, if, on the other hand, after weighing
25 all of the evidence in the case if you are convinced of

1 the guilt of the Defendant beyond a reasonable doubt,
2 you must find the Defendant guilty.

3 That is the specific charge as to the two
4 types of evidence that may be presented during any
5 trial. You may have direct and circumstantial or both
6 direct and circumstantial. Again, is there any further
7 area y'all would want me to cover now on my charge?

8 (There is no response).

9 THE COURT: I will ask you to please return to
10 your jury room, continue your deliberations. If there
11 are parts or other parts of my charge you would like for
12 me to revisit with you, I will be glad to do so,
13 Mr. Foreman, ladies and gentlemen of the jury. Thank
14 you very much.

15 (The jury retires to continue its deliberation
16 at 6:29 p.m.)

17 THE COURT: Any exception from the State?

18 MR. YOUNG: No, Your Honor, I agree with the
19 instruction as given.

20 THE COURT: Mr. Seigler?

21 MR. SEIGLER: No objections, Your Honor.

22 THE COURT: We will be awaiting our jury.
23 Make sure they separate out the alternate again. I
24 assume they know to do that.

25 (The following occurred at 6:44 p.m.)

1 THE COURT: Solicitor, you have read the note?

2 MR. YOUNG: I have, Your Honor. Thank you.

3 THE COURT: You have read the note;

4 Mr. Seigler?

5 MR. SEIGLER: Yes, sir, I believe it said,

6 "Eleven to one, they are not going to change their

7 mind."

8 THE COURT: "One not guilty, lock, will not

9 change their vote." Do y'all have a position,

10 Solicitor?

11 MR. YOUNG: Well, we moved two people

12 apparently, Your Honor, from the point of non-decision

13 from your last instruction. I don't know if the foreman

14 would believe in a further attempt or not. It might be

15 worthy of discussion.

16 MR. SEIGLER: I don't think so, Judge.

17 THE COURT: Excuse me?

18 MR. SEIGLER: I don't agree with that at all.

19 THE COURT: What is your position?

20 MR. SEIGLER: My position is they have been in

21 there plenty of time. They have been back. They are

22 not requesting any further instruction at this point.

23 They have already stated that this particular individual

24 is not going to change his mind. It would be extremely

25 unfair to my client to send them back again.

1 THE COURT: I will inquire a little further of
2 them.

3 Mr. Bailiff, if you would please bring our
4 jury and our alternate.

5 (The jury returns to the courtroom).

6 THE COURT: Mr. Foreman, I have received your
7 note, I think it's Court's Exhibit Number 5, but I have
8 lost count. That's no problem whatsoever. I have
9 several options that I can take, but I wanted to discuss
10 it with you in open court and tell you what my options
11 are.

12 If you want to discuss it with the other
13 members of the jury privately, you may certainly do so.
14 I would not want you to discuss it so much among
15 yourselves out here in the jury box.

16 My dad had a sixth grade education. He was a
17 very, very intelligent man, I always thought. I would
18 say he was probably the smartest man I ever knew. He
19 used to tell me, he said, if I had to make a decision,
20 he would always say if I couldn't quite reach a
21 decision, he wouldn't make it for me. I didn't
22 necessarily always make the right decision, but he
23 didn't make it for me.

24 He would always say, "Maybe you need to sleep
25 on it." That's one option. Y'all have been out

1 since -- I'm not sure what time you went out the first
2 time. Do you know?

3 COURT REPORTER: It was about quarter to five.

4 THE COURT: About quarter to five my court
5 reporter tells me. Of course, it's now perhaps past
6 some of y'all's suppertime, I'm not sure. But you have
7 been out for some three hours, and it's obvious that you
8 have worked very diligently and very focused on the task
9 at hand in fulfilling your duties and responsibilities
10 under the oath that y'all have taken.

11 Obviously court is going to be operating
12 tomorrow. I would have no problem whatsoever to
13 releasing y'all from your service tonight and asking you
14 to return in the morning after having slept on it and
15 having kept your own counsel.

16 You certainly could not discuss it with any
17 other person during this break, just like a lunch break
18 or regular evening break or anything of that nature and
19 just come back fresh in the morning and go from there.

20 That is the absolute option that I would
21 choose to take. Sometimes I forget I'm a judge, so I
22 know I can order it, but at the same time y'all are the
23 judges of the facts in the case. I don't want to
24 necessarily dictate that.

25 But would y'all be amenable to that? I know I

1 have one juror who is protected for Friday. Of course,
2 I see no way we would go into Friday, but that would
3 give y'all the opportunity to sleep on it tonight and
4 come back and start fresh in the morning. Would you
5 discuss that with your fellow jurors? Do you think that
6 would be an option, Mr. Foreman?

7 FOREMAN: Based on the discussions in the
8 office back there, you have the numbers, and I don't
9 think the other person will be able to change his mind.

10 THE COURT: All right. Well, I appreciate
11 that very much; however, I am going to decline to
12 declare a mistrial at this time. I am going to ask
13 you -- I will release y'all from your jury service for
14 the remainder of the evening.

15 I will ask you, during this recess, do not
16 discuss this case with anyone. That includes your
17 fellow jurors, your family, your friends or anyone else
18 involved in the case. If anyone tries to talk with you
19 about this case, please let me know.

20 I would ask you to return to your jury room at
21 9:30 in the morning after having slept on it and resume
22 your deliberations at that point. With that being said,
23 you are excused for the evening. I would ask you to
24 please be back promptly at 9:30.

25 (The jury is excused for the day at 6:53 p.m.)

1 THE COURT: Let me give you this last note,
2 Madame Court Reporter.

3 (Court's Exhibit Number 4 is marked for
4 purposes of the record).

5 THE COURT: Solicitor, anything you care to
6 put on the record?

7 MR. YOUNG: The State is in agreement with the
8 position that was taken. I think further deliberation
9 would be in order. I think the judge has made a good
10 decision in this case.

11 THE COURT: Mr. Seigler?

12 MR. SEIGLER: Your Honor, with all due
13 respect, my client doesn't agree with the Court's
14 decision. The foreman indicated he didn't think it
15 would be fruitful to deliberate any further. He wanted
16 me to put on the record that he didn't agree.

17 THE COURT: I understand and I certainly
18 respect his and your position.

19 MR. SEIGLER: Thank you, Judge.

20 THE COURT: We will see what happens in the
21 morning. Thank you very much.

22 Sheriff, you can take Mr. Barnes into custody.

23 (Whereupon the proceedings were concluded for
24 March 12, 2008).

25 (The following proceedings were reported on

1 March 13, 2008).

2 THE COURT: I understand the jury in the
3 Barnes case has a verdict; is that correct, Mr. Bailiff?

4 BAILIFF: Yes, sir.

5 THE COURT: Perhaps if y'all can stand aside
6 for a moment. Ask Mr. Young and Mr. Seigler and if you
7 would ask the sheriff to get Mr. Barnes back in the
8 courtroom for me, please. Thank you.

9 (Pause).

10 (The following occurred at 10:05 a.m.)

11 THE COURT: I understand the jury has a
12 verdict in this case. Anything from the State before we
13 bring in our jury?

14 MR. YOUNG: No, sir.

15 THE COURT: From the defense?

16 MR. SEIGLER: No, sir.

17 THE COURT: Mr. Bailiff, would you bring our
18 jury, please.

19 (The jury returns to open court to report its
20 verdict).

21 THE COURT: Can we get our alternate, please.

22 (Pause).

23 THE COURT: Madame Clerk.

24 CLERK: Mr. Foreman, have you reached your
25 verdict?

1 FOREMAN: Yes.

2 CLERK: If you would hand it to the bailiff.

3 (Hands to Court).

4 THE COURT: All right. It appears our verdict
5 is in the proper form. As far as indicating it's
6 unanimous, it's signed and dated by our foreman.

7 Madame Clerk, would you publish our verdict,
8 please.

9 (Whereupon the verdict of the jury is
10 published as follows).

11 CLERK: Your Honor, this is Indictment
12 Number 2008-GS-19-011, the State versus Steven Louis
13 Barnes, charged with throwing bodily fluids, we the jury
14 unanimously find the Defendant guilty. It is signed by
15 the foreman, Calvin Jackson. If this is your verdict,
16 so say you all.

17 (All so indicate).

18 THE COURT: Anything further for the jury from
19 the State?

20 MR. YOUNG: No, Your Honor.

21 THE COURT: From the defense?

22 MR. SEIGLER: No, sir.

23 THE COURT: Mr. Foreman, ladies and gentlemen
24 of the jury, I would like to thank you for your service
25 on jury duty and on this particular panel this week. I

1 appreciate your citizenship and your dedication, your
2 focus, your attention to all the parties throughout the
3 trial of this case.

4 As perhaps both the solicitor and Mr. Seigler
5 indicated, jury service is the last form of mandatory
6 public service there is since the draft is no more, and
7 it is very important. We could not be about the very
8 important business of administering your criminal and
9 civil justice system without your input.

10 You are the judges of the facts. You make
11 those decisions for your community, and it reflects on
12 the type of community and the wonderful type of
13 community that y'all have here in Edgefield County.
14 Again, it has been my pleasure and my privilege to serve
15 in Edgefield County this week with you.

16 I look forward to serving with you at some
17 time in the future. I'm not sure y'all are looking
18 forward to serving with me necessarily at some time in
19 the future as far as jury service.

20 But if you ever find yourself a part of the
21 system, by way of a witness or otherwise -- and I hope
22 you never do -- I hope the jury selected in the trial of
23 that case is as focused and attentive.

24 You can tell that -- I'm not sure I would say
25 I enjoy getting notes from juries, but it does show that

1 they are hard working and dedicated and fulfilling their
2 oath and doing their civic duty.

3 It's very, very important. I salute you for
4 it. If we paid you what you are worth for your service,
5 the county could not afford it. With that you are
6 excused and you are excused for the week. You do not
7 have to call back. Your jury duty have been fulfilled
8 for this calendar year for a State circuit court of
9 record.

10 (The jury is excused).

11 THE COURT: Mr. Seigler, do you have any
12 motions?

13 MR. SEIGLER: Your Honor, just renew all the
14 grounds we had, all the objections of course, and
15 preserving the right that we now have to appeal.

16 THE COURT: I would respectfully deny your
17 motions and reaffirm all my trial rulings. I would
18 further put on the record that I reviewed 14-7-1330,
19 "Procedure when jury fails to agree," and I also
20 reviewed State versus Pauling, 470 S.E.2d 106. I have
21 also reviewed Court's Exhibits 1 through 4.

22 Immediately upon the jury going out yesterday,
23 which was around quarter to five in the afternoon, they
24 sent out a note, "We need a laptop," which, of course,
25 refers to State's Exhibit Number 2-A. They were

1 provided a laptop so they could review that item of
2 evidence which was redacted by the Court.

3 At a later point in time, Court's Exhibit
4 Number 2 was sent out, "We are unable to reach a verdict
5 on this case," and it was indicated nine, guilty, three
6 not guilty, signed by the foreman. At that time I
7 brought them out and gave them a standard Allen charge
8 of which there were no objections. The time is noted in
9 the court reporter's record.

10 They were out again for a period of time, and
11 I got Court's Exhibit Number 3, "Can you give us the
12 rules of evidence again." I brought them out and
13 recharged them on direct and circumstantial evidence.

14 Then around 6:45 -- so they had actually been
15 out less than two hours, given the fact they had
16 returned to the courtroom for both Allen charge and a
17 charge or a recharge on the direct and circumstantial
18 evidence -- they sent out a note, Court's Exhibit 4, "We
19 are unable to reach a verdict on this case, eleven,
20 guilty, one, not guilty, locked, will not change," and
21 it's scratched out, "their vote," signed by the
22 foreperson.

23 I did not Allen charge them at that time. I
24 did have a brief colloquy with the foreperson. He
25 indicated uncertainty of whether or not the particular

1 juror would or would not change "their," as he indicated
2 on his note, vote.

3 As I say, I did not Allen charge them at that
4 time. I did not feel that they were withholding consent
5 to continue deliberations. However, I felt in my
6 discretion it was best to send them home for the evening
7 and allow them to return this morning.

8 They returned at about 9:30 this morning, and
9 by about 10:00 o'clock they had a verdict. So the total
10 time was less than two and a half hours, given the times
11 that they were back into the courtroom.

12 I did not get an indication they were
13 unwilling to continue deliberations. Obviously they
14 were not. I think there has been compliance with both
15 14-7-1330 and State versus Pauling.

16 Anything further from the State prior to
17 sentencing?

18 MR. YOUNG: No, Your Honor.

19 THE COURT: Let me ask you this, Solicitor.
20 What is Mr. Baxter's prior criminal history?

21 MR. YOUNG: Your Honor, I think for purposes
22 of sentencing considerations here, I will make it
23 relatively simple. Yesterday when we were going over
24 the prior convictions for Rule 609 purposes, I included
25 in that a conviction for armed robbery, among other

1. charges, that were given to him in Georgia on the 15th
2. of December, 2003.

3. There were other charges he pled or was found
4. guilty of during that period of time: Burglary
5. kidnapping, terroristic threats, and I believe
6. pandering.

7. Your Honor, he received on the charge of the
8. armed robbery life imprisonment in Georgia. He was
9. transferred to this State following that conviction to
10. face charges in this county on murder, for which he has
11. now been notified for a death penalty.

12. Your Honor, as I understand it, the sentence
13. for the armed robbery included life. All other charges
14. would be subsumed by that. Under my understanding of
15. the statute, which he has been convicted by the jury
16. today, any sentence that the Court administers now must
17. be consecutive to any sentence he is currently
18. receiving.

19. THE COURT: Thank you. I would take his prior
20. record into consideration in my sentencing; however, I
21. will not take into consideration his pending charge or
22. charges at this time since he is presumed innocent of
23. those charges.

24. Mr. Seigler, anything you would like to say or
25. anything Mr. Barnes would like to say prior to

1 sentencing?

2 MR. SEIGLER: Respectfully, Judge, he has
3 instructed me not to make any comments in regards to
4 your consideration as far as sentencing, but he did want
5 me to express that he is extremely disgruntled and
6 dissatisfied with the fact a mistrial was not declared
7 last night, as he felt like it should have been.
8 However, in regards to sentence, Your Honor, I have
9 nothing to add.

10 THE COURT: Thank you. Thank you very much,
11 Mr. Seigler.

12 MR. SEIGLER: Thank you, Judge. Your Honor,
13 again, I apologize if I could. He is here on an
14 interstate detainer in regards to the Georgia charges.
15 I just wanted to inform the Court of that.

16 THE COURT: Does that have anything to do with
17 anything that would affect my sentencing when you inform
18 me of that, Mr. Seigler? Is there anything specific you
19 want me to look at in that regard?

20 MR. SEIGLER: Your Honor, other than I believe
21 as the solicitor said, it would run consecutive to the
22 current sentence that he has.

23 THE COURT: I don't know the answer of how it
24 would run as far as to his Georgia sentence. I don't
25 know the answer to that. I'm assuming he is not serving

1 a South Carolina sentence at this time.

2 MR. YOUNG: No, sir, he is serving -- I would
3 believe he would receive a credit right now for what he
4 is serving in Georgia.

5 THE COURT: I do not know. I would have to do
6 a great deal of research myself to make that decision or
7 to try to determine how it would affect it. The statute
8 clearly says whatever he receives would run consecutive
9 to whatever sentence he has been serving. I do not know
10 how it affects his Georgia sentence.

11 Anything further Mr. Seigler?

12 MR. SEIGLER: No, sir.

13 (Pause).

14 THE COURT: Indictment 2008-GS-19-011, Steven
15 Louis Barnes, throwing bodily fluids, the jury having
16 returned a verdict of guilty, the Defendant is committed
17 to the State Department of Corrections for a determinate
18 term of 15 years.

19 That is consecutive to any current active
20 sentence which by law it can be consecutive to. He is
21 to be given credit for all time served in regards to
22 this charge under 24-13-40. Thank you very much.

23 Good luck to you, Mr. Barnes.

24 Sheriff, you can take Mr. Barnes into custody.

25 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

WITNESSES
 Pressley
 ECSSO

ARREST WARRANT NUMBER
 J 605081

ACTION OF GRAND JURY

TRUE BILL
Marshall W. Seigler
 Foreperson of Grand Jury
 Date: MAR 03 2008

VERDICT

Foreperson of Petit Jury
 Date:

DOCKET NO. 2008-GS-19- 011

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

MARCH TERM 2008

THE STATE

vs.

STEVEN LOUIS BARNES

CDR# 2526

Indictment for

THROWING BODILY FLUIDS

DONALD V. MYERS, SOLICITOR

1803 6974117

03/28/2008 12:06 854-852-9554 W. GREG SEIGLER

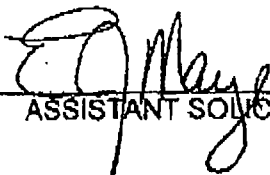
STATE OF SOUTH CAROLINA)
)
COUNTY OF EDGEFIELD)

INDICTMENT FOR
THROWING BODILY FLUIDS

At a Court of General Sessions, convened on March 3, 2008 the Grand Jurors of Edgefield County present upon their oath:

That STEVEN LOUIS BARNES did in Edgefield County on or about November 3, 2007, unlawfully throw bodily fluids on Officer Marcus Smith, who is an employee of the Edgefield County Detention Center, in violation of Section 24-13-470 of the South Carolina Code of Laws, 1976, as amended.

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



ASSISTANT SOLICITOR

WE NEED A LAPTOP

Palvin Jackson 3-12-08

PENGAD 800-631-6989

COURT'S ✓

EXHIBIT NO. _____

IDENTIFICATION/EVIDENCE

DKT.# _____

DATE: _____

WE ARE UNABLE TO REACH A
VERDICT ON THIS CASE.

9 - Guilty
3 NOT Guilty

Lalain Jackson
3-12/08

PENGAD 800-631-6899

COURT'S
EXHIBIT NO. 2
IDENTIFICATION/EVIDENCE
DKT.# _____
DATE: _____

CAN YOU GIVE US THE
RULES OF EVERDENT AGAIN

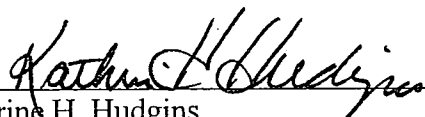
Robin Jackson
2-12-08

COURT'S
EXHIBIT NO. 3
IDENTIFICATION/EVIDENCE
DKT.#
DATE:
PENGAD 800-631-6989

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

June 15th, 2009


Kathrine H. Hudgins
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ATTORNEY FOR APPELLANT

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AUG 17 2009

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Edgefield County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEVEN LOUIS BARNES,

APPELLANT

FINAL BRIEF OF APPELLANT

KATHRINE H. HUDGINS
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ATTORNEY FOR APPELLANT.

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S.C. Code §14-7- 13305, 6, 7

STATEMENT OF ISSUES ON APPEAL

Did the judge err in refusing to declare a mistrial, in violation of S.C. Code §14-7-1330, when the jury returned deadlocked twice and did not ask for further instruction from the judge?

STATEMENT OF THE CASE

In March of 2008, the Edgefield County Grand Jury indicted Barnes for throwing bodily fluids, indictment #2008-GS-19-011. On March 12, 2008, Barnes proceeded to jury trial before the Honorable R. Knox McMahan. The jury returned a verdict of guilty and Judge McMahan sentenced Barnes to 15 years consecutive to any active sentence being served. A timely notice of intent to appeal was filed on March 19, 2008. This appeal follows.

ARGUMENT

The judge erred in refusing to declare a mistrial, in violation of S.C. Code §14-7-1330, when the jury returned deadlocked twice and did not ask for further instruction from the judge.

The jury began deliberating at 4:45 PM. (R. p. 56, lines 5-6). At 5:38 PM the jury returned to the courtroom. The judge stated, "It appears our jury is back present in the courtroom, along with our alternate at this time. I received your note Mr. Foreman, 'We are unable to reach a verdict in this case.'" (R. p. 57, lines 7-10). The judge then gave an Allen¹ charge. (R. p. 57, lines 11 – p. 58, 59, lines 1-18). The judge advised that the note sent by the jury included the break down, nine for guilty and three for not guilty. (R. p. 60, lines 1-2). The note was made a part of the record and marked as Court's exhibit # 2. (Tr. p. 59, lines 21-23; R. p. 81). Barnes did not object to the charge.

At 6:14 PM the judge received another note from the jury asking for further instruction. (R. p. 60, lines 15-19). This note was also made a part of the record and marked as Court's exhibit #3. (R. p. 60, lines 20-21; R. p. 82). The jury returned to the courtroom and the judge re-charged the law on direct and circumstantial evidence. (R. pp. 61, line 1 – p. 62, lines 1 – p. 63, lines 1 – 16). Barnes did not object to the re-charge.

At 6:44 PM the judge received another note indicating that the jury was unable to reach a verdict. (R. p. 63, line 25 – p. 64, lines 1-10). The note was made a part of the record and marked as Court's Exhibit #4. (R. p. 68, lines 3-4; Supp. R. p. 1). The judge commented that the note said, "'One not guilty, lock, will not change their vote.'" (R. p. 64, lines 8-10). Barnes objected to sending the jury back for further deliberations. (R. p. 64, lines 16-25). Barnes noted that the jury was not requesting further instruction. (R. p. 64,

¹ Allen v. United States, 164 U.S. 492, 17 S.Ct. 154, 41 L.Ed. 528 (1896).

lines 21-22). The jury returned to the courtroom and the judge asked the jury if they wanted to return in the morning. (R. p. 65, lines 1- p. 66, 67, lines 1-6). The foreman replied, "Based on the discussions in the office back there, you have the numbers, and I don't think the other person will be able to change his mind." (R. p. 67, lines 7-9). The judge then stated, "All right. Well, I appreciate that very much; however, I am going to decline to declare a mistrial at this time. I am going to ask you – I will release y'all from your jury service for the remainder of the evening." (R. p. 67, lines 10 – 14). Barnes objected. (R. p. 68, lines 12-16). The judge did not question whether the jury's deliberations of almost two hours for a one day trial with only two witnesses constituted due and thorough deliberation.

The next morning the jury returned and reached a verdict of guilty. (R. p. 70, lines 11-16). Barnes renewed his objections and motions. The judge again denied the motions noting that he had reviewed S.C. Code §14-7-1330 and the case of State v. Pauling, 322 S.C. 95, 470 S.E.2d 106 (1996). (Tr. p. 176, lines 16-21). The judge stated that after receiving the second note indicating that the jury was unable to reach a verdict, "I did not Allen charge them at that time. I did have a brief colloquy with the foreperson. He indicated uncertainty of whether or not the particular juror would or would not change 'their,' as he indicated on his note, his vote. As I say, I did not Allen charge them at that time. I did not feel that they were withholding consent to continue deliberations. However, I felt in my discretion it was best to send them home for the evening and allow them to return in the morning." (R. p. 73, lines 23 – p. 74, lines 1-7). The judge went on to state, "I did not get an indication they were unwilling to continue deliberations. Obviously they were not. I think there has been compliance with both 14-7-1330 and State versus Pauling." (R. p. 74, lines 12-15). The

judge erred in refusing to grant a mistrial when the jury returned with a second note indicating that they were unable to reach a verdict.

S.C. Code §14-7-1330 provides:

When a jury, after due and thorough deliberation upon any cause, returns into court without having agreed upon a verdict, the court may state anew the evidence or any part of it and explain to it anew the law applicable to the case and may send it out for further deliberation. But if it returns a second time without having agreed upon a verdict, it shall not be sent out again without its own consent unless it shall ask from the court some further explanation of the law.

The jury in Barnes' case returned a second time without having agreed upon a verdict. The jury did not request further instruction on the law. Contrary to the judge's recollection of the foreperson's "uncertainty," the record reflects that the foreperson did not believe the jury would be able to agree on a verdict. When asked if they wished to continue deliberations in the morning, the foreman stated, "Based on the discussions in the office back there, you have the numbers, and I don't think the other person will be able to change his mind." (R. p. 67, lines 7-9). The note reflects that one juror will not change their vote. (Supp. R. p. 1). The foreman's statement indicates a lack of consent to continue to deliberate. The record fails to reflect that the jury consented to further deliberations.

In State v. Pauling, 322 S.C. 95, 470 S.E.2d 106 (1996), the Court found that the trial judge did not abuse his discretion in determining that the jury consented to further deliberations after returning twice without reaching a verdict. In Pauling, unlike in the present case, jurors stated that a verdict could be reached and, importantly, one juror asked to be able to submit questions to the trial judge before renewing deliberations on the next day. In Barnes' case the foreman indicated that he did not believe the jury could agree to a verdict and none of the jurors asked to submit questions or receive further instruction.

Once the jury returned a second time without reaching a verdict and not requesting further instruction, the judge was without authority to allow the jury to adjourn for the evening and continue deliberations in the morning. Prior to the foreman telling the judge that he did not believe the jury could reach a verdict, the judge said to the jury, "That is the absolute option that I would choose to take [adjourning for the evening and returning for continued deliberation in the morning]. Sometimes I forget I'm a judge, so I know I can order it, but at the same time ya'll are the judges of the facts in the case. I don't want to necessarily dictate that." (R. p. 66, lines 20-24). The judge, however, "dictated" that the jury would return in the morning for further deliberations. The judge erred. The judge was statutorily prohibited from ordering further deliberation. There is nothing in the record to support that the jury consented, expressly or impliedly, to further deliberations.

The judge's erroneous instruction that he could order further deliberations and that was the absolute option he would choose prevents a finding that the jury impliedly consented to further deliberations as the Court found in Buff v. South Carolina Dept. of Transp., 342 S.C. 416, 537 S.E.2d 279 (2000). As Justice Pleicones notes in his dissent in Buff, "Jurors are told from the beginning of a trial that the trial judge's pronouncements on the law are binding upon them and that their role is to be the sole and exclusive judges of the facts." Id. 342 S.C. at 426, 537 S.E.2d at 284. In Barnes' case the judge erroneously told the jury he could order further deliberations and then did just that, ordered further deliberations. The jury's response was not impliedly consenting to further deliberations but rather was simply obeying the order of the judge. Juries are presumed and bound to follow the instructions of the trial judge. Foye v. State, 335 S.C. 586, 518 S.E.2d 265 (1999); State v. Grovenstein, 335 S.C. 347, 517 S.E.2d 216 (1999).

At the conclusion of the majority opinion in Buff the Court writes, “In the future, we suggest the trial judge carefully ensure the existence of a sufficient record from which the appellate court can determine the jury’s consent to further deliberation.” Buff, 342 S.C. at 423, 537 S.E.2d at 283. The record in the present case fails to establish that the jury consented to further deliberation. The foreperson’s response when asked if the jury wished to continue deliberations in the morning indicates a lack of consent. The purported exercise of discretion by the judge in refusing to grant a mistrial and requiring further deliberation constitutes an abuse. An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support. State v. Arrowood, 375 S.C. 359, 652 S.E.2d 438 (Ct.App. 2007). The judge’s ruling in Barnes’ case is based on both an error of law, the judge did not have the discretion to order further deliberation as he instructed the jury, and a factual conclusion that is without evidentiary support, the judge concluding that the jury was not withholding consent to continue deliberations when the foreperson’s response indicates a lack of consent to continue.

CONCLUSION

Based on the above argument, Barnes' conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT.

This 17th day of August, 2009.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 17, 2009



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Edgefield County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

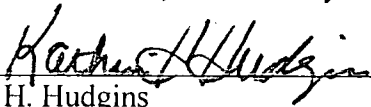
V.

STEVEN LOUIS BARNES,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief in the above referenced case has been served upon Julie M. Thames, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 17th day of August, 2009.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 17th day of August, 2009.

(L.S.)

Notary Public for South Carolina

My Commission Expires: August 23, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Edgefield County
R. Knox McMahon, Circuit Court Judge

THE STATE,

Respondent,

vs.

STEVEN LOUIS BARNES,

Appellant.

FINAL BRIEF OF RESPONDENT

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Other Authorities:

South Carolina Code Ann. § 14-7-1330	4, 6, 10
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STATEMENT OF ISSUE ON APPEAL

Did the trial judge properly instruct the jury to continue deliberations when the circumstances indicated that the jury was not unwilling to continue deliberations?

STATEMENT OF THE CASE

For purposes of this Brief, the Respondent concurs with the Statement of the Case provided by Appellant.

ARGUMENT

The trial judge did not abuse his discretion when the circumstances indicated that the jury was not unwilling to continue deliberations.

The Respondent submits that the trial judge did not err in sending the jury back to continue deliberations when they had been deliberating for only one hour and forty minutes before the second time they were asked to continue deliberations. The jury deliberated for fifty-six minutes before they first informed the judge that they were “unable to reach a verdict.” They deliberated another twenty-nine minutes and then requested an instruction on the law of circumstantial evidence. After receiving the re-charge, they then deliberated for only fifteen minutes before they again informed the judge that they were locked. The trial judge did not abuse his discretion when he let the jury go for the evening and instructed them return the next morning. The trial judge questioned the jury and did not receive any indication that they were unwilling to continue deliberations in the morning. The Respondent submits the trial judge did not err in finding that the circumstances demonstrated that the jury was willing to continue deliberations the next day.

The decision to grant or deny a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. State v. Crim, 327 S.C. 254, 257, 489 S.E.2d 478, 479 (1997). Our courts favor the exercise of wide discretion of the trial judge in determining the merits of such motion in each individual case. State v. Howard, 296 S.C. 481, 483, 374 S.E.2d 284, 285 (1988). “It is only in cases of abuse of discretion which result in prejudice that this court will intervene and grant a new trial.” Id. A mistrial should only be granted in cases of manifest

necessity and with the greatest caution for very plain and obvious reasons. State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (1999).

South Carolina Code Ann. § 14-7-1330 provides:

When a jury, after due and thorough deliberation upon any cause, returns into court without having agreed upon a verdict, the court may state anew the evidence or any part of it and explain to it anew the law applicable to the case and may send it out for further deliberation. But if it returns a second time without having agreed upon a verdict, it shall not be sent out again without its own consent unless it shall ask from the court some further explanation of the law.

The Respondent submits that a review of the cases that have addressed this issue reveals that the primary concern for the courts is whether or not the jury is coerced or forced into reaching a verdict. “[T]he object of the statute was to prevent forced verdicts, and to prevent undue severity of jury service.” State v. Freely, 105 S.C. 243, 89 S.E. 643 (1916). In Freely, the trial court sent the jury back for further deliberations after they had been deliberating for over twenty hours. The South Carolina Supreme Court found no abuse of discretion in sending the jury back to deliberate a third time. The Court found that even though the jury was not advised that they could not be sent back without their consent, this did not violate the statute. The Court further found discretion must be left to the judge and that the judge wisely exercised that discretion in sending the jury back to continue deliberations.

In State v. Drakeford, 120 S.C. 400, 113 S.E. 307 (1922), the Supreme Court found no violation of the statute and no coercion exercised by the trial court in sending the jury back for further deliberations. The Court noted that whether there has been “due and thorough deliberation upon any cause” must be determined by the trial court in the exercise

of sound discretion. Id., at 113 S.E.309. The Court also found no abuse of discretion when the trial judge gave a full and clear statement to the jury to the effect that no juror was expected to surrender his conscientious convictions. Id., at 113 S.E. 310.

The Supreme Court found in State v. Simon, 126 S.C. 437, 120 S.E. 230 (1923):

[I]t was the clear intendment of the statute to give the jury the right to indicate to the court its own view of when time for due and thorough deliberation had elapsed by returning a second time without having agreed upon a verdict, and to make that action decisive of the question if accompanied by any expression of unwillingness to return for a third time.

The Supreme Court reversed Simon's conviction and remanded for a new trial based upon the judge's threat that the jury would be required to spend the night in the jury room unless an agreement was sooner reached. The Court found that the combination of informing the jury that it intended to keep them together for a specified time, along with the provisions of the statute regarding sending the jury back for further deliberations, resulted in a reasonable ground to believe that the verdict was the result of the judge's ultimatum rather than the product of the concurrence of the deliberate and conscientious judgment of twelve jurors. Id., 120 S.E. at 233.

In two other cases, the Supreme Court reversed convictions based on violation of the statute at issue. In Rowland v. Harris, 218 S.C. 42, 61 S.E.2d 397 (1950), the jury, after deliberating for some time on a Friday evening, informed the trial court that they were unable to reach a verdict. The trial judge further charged the jury on the desirability of reaching a verdict if possible and instructed them to return a sealed verdict in the event he should not be present himself and to return to the courtroom the following Monday morning in order to publish the verdict. The Court found that the jury could not have known about the judge's

secret instruction to the clerk that if the jury did not reach a verdict by 11:00p.m. to release the jury, and that the jury could reasonably have assumed that they were to be confined over the weekend unless they reached a verdict. Id., 61 S.E.2d at 398. In State v. Kelley, 45 S.C. 659, 24 S.E. 45 (1896), the Court found that the trial judge abused his discretion in sending the jury back for a third time after they had already been deliberating for over twenty-four hours, had been denied food for a time, and had informed the trial judge that they could not reach an agreement.

In Edwards v. Edwards, 239 S.C. 85, 121 S.E.2d 432 (1961), the Supreme Court again found no abuse of discretion by the trial judge who sent the jury back a third time for further deliberations. The jury had been deliberating for approximately twelve hours when they came out the second time and informed the judge that they could not reach a decision. The judge sent them back for a third time and a verdict was reached shortly thereafter. The Court found that the pertinent words of the statute for the case were “they shall not be sent out again without their own consent.” S.C. Code Ann. § 14-7-1330. Upon the second return of the jury, the trial court asked the jury to make one more attempt at the case and that if they could not, he would not send them back again. The Supreme Court found the jury’s consent was implied by the lack of response to the judge’s comments and that because the jury gave no indication of unwillingness to continue, consent was implied. “[U]nder the circumstances, if the Judge was satisfied in the exercise of his discretion that the jury consented to return for further deliberation, he should not have dismissed them but permitted further deliberation as was done in instant case.” Edwards, 121 S.E.2d at 436.

In two more recent cases, the Supreme Court has found implied consent by the jury

to continue deliberations and that the verdicts were not products of coercion. In State v. Pauling, 322 S.C. 95, 470 S.E.2d 106 (1996), the jury informed the judge a second time that they could not reach a decision on two of the eight charges. The trial judge gave the jury an Allen¹ charge on both occasions. The foreman indicated doubt that the positions of the jurors would change, but other jurors stated a verdict could be reached and requested to be allowed to submit questions to the judge the following day. The following morning, the jury submitted a question asking the judge “whether the guilty verdicts would stand on the other six charges should a unanimous decision not be reached on the two counts of murder or would the whole case be retried.” The judge then informed the jury that if they could not reach a verdict on the two counts, the entire case would have to be tried over.

The Supreme Court found the giving of a second Allen charge was not *per se* coercive and did not coerce the verdict. Pauling, 322 S.C. at 99, 470 S.E.2d at 109. The Court found no abuse of discretion on the part of the trial judge when, although the jury foreman expressed doubt that opinions would change, other jurors indicated that a verdict was possible and the jury submitted a written question, indicating consent to continue deliberations.

In Buff v. South Carolina Dep't Of Transp., 342 S.C. 416, 537 S.E.2d 279 (2000), the Supreme Court again found the jury consented to continue deliberations and found no abuse of discretion on the part of the trial judge in determining that the jury consented to continue deliberations. The jury, after deliberating for a little over three hours, informed the trial court that it was deadlocked. The trial judge gave an Allen charge and deliberations

¹Allen v. United States, 164 U.S. 492, 17 S.Ct. 154, 41 L.Ed. 528 (1896).

resumed the next morning. At some point the next morning, the jury again informed the court, "we are deadlocked 11-1 with no chance of reaching an agreement." The trial judge gave a second Allen charge and asked the jury to make one last effort to reach a unanimous decision. On appeal, the South Carolina Court of Appeals reversed and found that the jury's silence after the second Allen charge could not be construed as consent. Buff v. South Carolina Dep't of Transp., 332 S.C. 472, 505 S.E.2d 360 (1998).

The Supreme Court disagreed and relied on the finding in State v. Freely, supra, that the purpose of the statute is "to prevent forced verdicts and to prevent undue severity of jury service." Buff, 342 S.C. at 420, 537 S.E.2d at 281. The Court found that the question was whether, under all the circumstances, it appeared to the trial judge the jury consented to deliberate a third time. "The exercise of such a discretion at so delicate stage of a trial ought not to be disturbed unless it was obviously wrongly exercised." Id. (citing State v. Freely, supra). The Court noted that nothing in the language of Section 14-7-1330 or in the case law required the trial judge to inform the jury its consent is necessary before deliberating a third time and declined to impose such a requirement. Buff, at 422, 537 S.E.2d at 282. Lastly, the Court found, "under all circumstances of this case," that the trial judge did not abuse his discretion by determining that the jury consented to return for further deliberation. Id., at 423, 537 S.E.2d at 283.

The Respondent submits that the case at bar is factually similar to Buff in that the jury did not verbalize its consent to further deliberations. Neither did they express reluctance to continue deliberations. The State presented the testimony of two officers who testified that Appellant threw cups of urine on one of the officers. (R.pp.1-17; pp.18-55). They were the

only witnesses presented by the State. No witnesses were tendered on behalf of Appellant.

After receiving the charge from the judge, the jury began deliberations at 4:42p.m. At 4:45p.m., the jury requested a laptop to view a video clip that had been introduced during the trial. At 5:38p.m., the jury sent a note to the trial judge stating, "We are unable to reach a verdict in this case." The jury had been deliberating for approximately fifty-six minutes at that point. The trial judge gave a detailed Allen charge and emphasized that while a jury verdict must be unanimous, every juror has the right to his own opinion and that the verdict must be the result of each juror's own conviction. He instructed the jury that they "should not give up your firmly held beliefs merely to be in agreement with your fellow jurors." The jury returned to the jury room to continue deliberations at 5:45p.m. (R.pp.56-59). At 6:14p.m., the jury requested a re-charge on the "difference between circumstantial evidence, the weight of circumstantial evidence against physical evidence." (R.pp.60-61). The judge gave the requested charge and the jury retired to continue deliberations at 6:29p.m. At 6:44p.m. the jury sent another note stating, "One not guilty, lock, will not change their vote." (R.pp. 61-64).

Defense counsel argued that the jury had been deliberating for plenty of time and that it would be unfair to Appellant to send them back again. The jury returned to the courtroom and the judge indicated that an overnight recess might be needed. He asked the jury whether they would be amenable to recessing for the night and returning in the morning. The Foreman's response was, "Based on the discussions in the office back there, you have the numbers, and I don't think the other person will be able to change his mind." (R.pp. 64-67).

The judge declined to declare a mistrial and asked the jury to return in the morning. They were excused at 6:53p.m. (R.pp.67). Appellant disagreed with the court's decision. (R.pp.68). The following morning at 10:05a.m. a verdict was reached. (R.pp.69-70).

After excusing the jury, the judge noted that he reviewed Section 14-7-1330 and State v. Pauling, supra. He recited the events related to the jury's deliberations and noted that the second time the jury returned saying they could not reach a unanimous decision, they had been deliberating less than two hours. The judge stated that he did not feel that the jury was withholding their consent to continue deliberations and that he felt, in his discretion, that the best thing to do was send them home for the evening and allow them to return in the morning. He noted that the total time for deliberations was less than two and a half hours. He did not get any indication that the jury was unwilling to continue deliberations. (R.pp.72-74).

The Respondent submits the trial judge did not err. He properly reviewed the circumstances of the entire case and found that the jury was not unwilling to continue deliberating. While Appellant argues the Foreman's comment, "I don't think the other person will be able to change his mind," indicates a lack of consent, the Respondent submits the trial judge was in the best position to determine the willingness of the jury to reconvene in the morning. Edwards v. Edwards, supra (jury's consent to continue deliberations may be implied from lack of verbal response to request or failure to indicate unwillingness to resume deliberations); State v. Drakeford, supra (consent implied where jury did not insist verdict could not be rendered and jury did not complain about further deliberations); State v. Rowell, 75 S.C. 494, 56 S.E.23 (1906)(consent implied where jury did not indicate it was

unwilling to deliberate a third time). While the Foreman indicated he did not think the one holdout would change his mind, he did not say it was impossible, nor did he indicate any dissatisfaction with the judge's instruction to return in the morning.

The Respondent submits that the trial judge properly considered the circumstances of the case as a whole. Buff v. South Carolina Dep't of Transp., supra. The jury was obviously not afraid to communicate with the court as they sent four notes to the judge. The judge was in the best position to determine their willingness to continue. He determined that they were not unwilling and refused to declare a mistrial. The Respondent submits that a review of the events surrounding the jury deliberation process in this case does not indicate that the verdict was forced or that the jury's duty was unduly severe. State v. Freely, supra. They deliberated for a total of only two hours and fifteen minutes. The Respondent submits the trial judge properly exercised his discretion and did not err.

CONCLUSION

Based on the foregoing, Respondent respectfully submits that Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

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July 6, 2009.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Edgefield County
R. Knox McMahon, Circuit Court Judge

THE STATE,

Respondent,

vs.

STEVEN LOUIS BARNES,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, Julie M. Thames, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.

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