

VOLUME IV OF IV

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Chester County

R. Knox McMahon, Circuit Court Judge

RECEIVED

OCT 10 2016

S.C. SUPREME COURT

CASEY RAYMOND PERKINS ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000279

APPENDIX

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1 depravation in some cases, I guess. And sleep depravation
2 is significant, is it not?

3 A. Absolutely. If you have a sleep deprived suspect, that
4 would contribute significantly to the pressures to confess.

5 Q. Okay. Thank you, sir.

6 MR. BARFIELD: That's all.

7 THE COURT: Mr. Jordan.

8 MR. JORDAN: Just briefly.

9 REDIRECT EXAMINATION BY MR. JORDAN:

10 Q. The solicitor asked you about a situation up in
11 Massachusetts, a Mr. Cartwright. I believe you actually did
12 testify in a suppression hearing?

13 A. Correct.

14 Q. And the solicitor asked you about a 125 proven cases,
15 and I believe your testimony was actually 250, is that
16 correct?

17 A. Yeah, there was one initial study of a 125 and now the
18 number has been buttressed to roughly 250.

19 Q. And that's due in large part -- would you -- is it due
20 in large part to the fact that there is DNA testing that can
21 exonerate?

22 A. There is no question that DNA testing has been the
23 single most important development enabling the
24 identification of proven false confessions.

25 Q. And if DNA is handled correctly, it can identify a

1 suspect?

2 MR. BARFIELD: Your Honor, I'm going to object. I
3 think he's asking the witness questions that clearly are not
4 within the witness' area of expertise, the efficacy of DNA
5 testing procedures. He's told us that DNA gets people off,
6 but I don't think he could be asked question about handling
7 one way or the other any DNA evidence, or testing
8 procedures, or anything else.

9 MR. JORDAN: I'm not going there. I was just
10 going to the fact that DNA can, you know, exonerate someone
11 or prove their guilt. That's all I was -- I'm not going
12 into any specifics on DNA.

13 THE COURT: All right.

14 MR. BARFIELD: He started talking about the
15 handling of DNA. That was his question.

16 THE COURT: But that's okay. I'll overrule the
17 objection, based on assurances that we are heading down one
18 road and not another.

19 MR. JORDAN: Maybe I didn't ask that right.

20 BY MR. JORDAN:

21 Q. DNA has been the single most, what do you call it,
22 reason for being able to understand that there are 250
23 proven --

24 A. Yes.

25 Q. -- false confessions out there?

1 A. Yes.

2 Q. And that's because DNA can exonerate someone?

3 A. Yeah. And I think another way of putting it is a lot
4 of these DNA exonerations are what turns out the person who
5 had been -- who had confessed, who had been convicted could
6 not have donated the DNA that was found at the crime scene.

7 But also DNA exonerates people, as Mr. Jordan was
8 asking me about, when someone else is found to be the real
9 culprit, and sometimes that is through DNA testing.

10 So, yes, DNA testing both implicates and exonerates,
11 both of which can contribute to the identification of a
12 false confession.

13 Q. The Reid Method. When you have multiple interrogations
14 using the Reid Method, what's the significance of that?

15 MR. BARFIELD: Asked -- I believe that's not
16 proper redirect. I believe -- I don't think that's anything
17 that I brought up on cross.

18 THE COURT: Sustained..

19 MR. JORDAN: No further questions for this
20 witness.

21 MR. BARFIELD: Nothing else.

22 THE COURT: Thank you, sir. You may step down.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: Let me see the attorneys real quickly
25 at the side bar.

1 MR. BARFIELD: Yes, sir.

2 THE COURT: We'll be right back with you, ladies
3 and gentlemen.

4 (Whereupon, the lawyers approached the bench for
5 an off-the-record discussion)

6 THE COURT: 9:30 in the morning. I'm going to
7 make the lawyers come in earlier than that. We have got
8 some stuff that we have to do.

9 We do anticipate -- I'm getting myself in trouble
10 trying to tell you how long something is going to take, but
11 I do -- we are doing our best to try to let you know what we
12 think is going to happen and how much time is going to be
13 involved. We think that you will be able to begin
14 deliberating in the jury room before lunch tomorrow.

15 ~~Now, having said all that, don't forget, I ask you~~
16 to please not read any newspaper articles, magazines, watch
17 any television programs. If they come on, switch it over.
18 Don't listen to anybody who wants to talk to you about the
19 case. You don't talk to anybody about the case, and I'll
20 see you in the morning at 9:30.

21 (The following takes place outside the presence of
22 the jury panel)

23 THE COURT: I know at sometime I'll need to speak
24 to your client.

25 MR. DUNN: Yes, sir. I will ask that we do it the

1 first thing in the morning.

2 THE COURT: Sure.

3 MR. DUNN: It's just that I would like to have one
4 more opportunity to speak with him, just to make sure
5 nothing has changed. I think I know the answer, but I want
6 to make sure nothing has changed.

7 THE COURT: All right. No problem. No problem at
8 all.

9 Let's -- charges. Let's just suppose that the
10 jury has heard all the jury is going to hear, and I don't
11 know what the State might want to do. I don't know what the
12 defense might want to do, but just for the sake of this
13 argument, briefly from the defense perspective?

14 MR. DUNN: What charges I want?

15 THE COURT: Yeah, so I can be thinking about that.

16 MR. DUNN: I don't want murder, but I'm sure
17 that's coming in.

18 THE COURT: Right.

19 MR. DUNN: I think that there has been enough
20 evidence suggested by the statements that manslaughter
21 should certainly be charged.

22 I would argue, Your Honor, that based on the
23 statements given by Casey on September the 7th, that he was
24 engaging in consensual sex or sexual activity with the
25 victim, that an involuntary manslaughter charge is

1 appropriate. We will have to --

2 THE COURT: Wait a minute. I'm not sure I
3 understood you. He is saying voluntary manslaughter and
4 involuntary?

5 MR. DUNN: Yes, sir.

6 Voluntary manslaughter is that usually the idea
7 that the actions taken against the victim were against the
8 victim's will, caught up in the heat of the moment.

9 Involuntary manslaughter, I think -- I don't have
10 the charge right in front of me. I'm going off my memory
11 here.

12 THE COURT: Well, we can argue about it.

13 MR. DUNN: Well, involuntary manslaughter
14 basically is that there was just criminal negligence
15 involved, or that it caused great bodily harm, or you are
16 acting in such a disregard for the health and safety of the
17 person that it led to their death.

18 I would argue that if you take the pathologist's
19 report as truth, that it probably wasn't an accident that
20 happened what happened to her, but the argument could still
21 be that they were engaging in sexual activity, but not
22 knowing what he was doing, he did something he shouldn't
23 have done and as a result she died. You know, I'm certainly
24 going to submit an involuntary manslaughter charge for the
25 court's consideration.

1 I think we also have to get into a confession
2 charge.

3 THE COURT: Sure.

4 MR. BARFIELD: Circumstantial evidence.

5 MR. DUNN: Circumstantial evidence.

6 Nature of the -- you know, weight of the evidence.

7 Expert testimony.

8 THE COURT: All of the above.

9 MR. DUNN: All the usual -- I mean, the special
10 ones that I'm liking at this point, Your Honor, would be
11 manslaughter and involuntary manslaughter. I think
12 everything else is probably -- unless I came across
13 something when I'm preparing for this, it's probably just
14 the standard and usual --

15 THE COURT: Let me ask you this.

16 MR. BARFIELD: I have a brief comment about that.

17 THE COURT: I know you probably have more than a
18 brief comment, but what about the voluntary? Tell me again
19 about voluntary. Why? What are the facts in which a jury
20 could conclude voluntary? I'm really just looking at the
21 elements.

22 MR. DUNN: I understand, Your Honor.

23 THE COURT: Well, I guess I could ask the
24 solicitor whether he is inclined to agree with either one of
25 those?

1 MR. BARFIELD: Well, I'm not inclined to agree
2 with either one of them, but I think there is an inherent
3 inconsistency with charging both voluntary and involuntary,
4 because voluntary is by submission an intentional act, and
5 involuntary is an unintentional act.

6 First of all, I don't think there is any evidence
7 of an unintentional act. You don't accidentally do what
8 killed Ms. Hinson in this case. The insertion of the hand
9 that caused those injuries was not an accident.

10 There is certainly testimony that Perkins said
11 that at least some of what their initial activity was was
12 consensual. That's a matter of argument, but I just don't
13 see any accidental activity in this case at all, so I think
14 involuntary should be out.

15 ~~I don't think it's voluntary, because it has to be~~
16 under a sudden heat of passion with sufficient legal
17 provocation. Really the only provocation that has been
18 presented to the jury is through Perkins statement that "she
19 said no, and I wouldn't take no for an answer." That's the
20 only provocation that I'm aware of.

21 THE COURT: All right. So the solicitor
22 disagrees. I thought he would.

23 MR. DUNN: I'd be surprised if he didn't, Your
24 Honor.

25 THE COURT: But now talk to me about voluntary.

1 MR. DUNN: Like the solicitor said, there is the
2 statement made in there that at some point she told him no,
3 and he said, along the lines of "how I've been this far and
4 I'm not going to stop," or something along those lines. At
5 some point, if, in fact, that's what the jury believes, what
6 was consensual turns into be an in-consensual, but it's in
7 the heat of the moment of a sexual nature.

8 We are asking this jury to listen to a bunch of
9 confessions and make a determination as the trier of fact
10 and decide which ones they believe. I think that they
11 should be given an option more than just murder or nothing.

12 I disagree with the solicitor's --

13 THE COURT: I have got to have the facts on
14 which --

15 MR. DUNN: I understand, Your Honor.

16 THE COURT: -- to hang the charge. I just can't
17 say that ought to have more charges than one.

18 MR. DUNN: If you will --

19 THE COURT: All right. So in the morning --

20 MR. DUNN: I will be prepared in the morning, Your
21 Honor.

22 THE COURT: -- we will go through the
23 definition -- through the cases and decide.

24 MR. DUNN: All right. That would be good.

25 THE COURT: Anything else?

1 MR. DUNN: Nothing.

2 THE COURT: You need to come in about nine
3 o'clock.

4 MR. DUNN: Come in at nine o'clock.

5 THE COURT: Have we got something else we need to
6 do? Yeah, we do need to do something else. Didn't you all
7 say we needed to do something else we postponed to say we
8 would do tomorrow morning?

9 MR. BARFIELD: I don't believe we are going to do
10 anything else on Saturday morning.

11 THE COURT: I'm talking about in this case.

12 MR. BARFIELD: No.

13 MR. DUNN: The only thing that we have not had any
14 kind of rulings on in this case, as far as I can remember,
15 ~~Your Honor, is Mr. Perkins going to take the stand. If he~~
16 ~~does take the stand, then we will have to go through~~
17 ~~impeachment issues, but other than that, I don't --~~

18 THE COURT: Have we ruled on the other witness?

19 MR. DUNN: Oh, there is the proffer of a witness,
20 Your Honor. Yes, that's what it was.

21 THE COURT: All right.

22 MR. DUNN: Do you want to do that now or do you
23 want to do that in the morning?

24 MR. BARFIELD: I think that's quick.

25 THE COURT: Well, why don't we have Mr. Jordan

1 tell us what the witness -- what he believes the witness
2 would say.

3 MR. JORDAN: Your Honor, if I could find my notes.

4 (Off the record)

5 (Back on the record)

6 MR. JORDAN: May it please the court?

7 THE COURT: Yes, sir.

8 MR. JORDAN: Your Honor, there was a Cynthia
9 Fleming that called our office. As I understand her
10 testimony, it would be that she's a neighbor of Ms. Hinson.

11 THE COURT: Okay.

12 MR. JORDAN: And that approximately three weeks
13 before Ms. Hinson's death, a neighbor several houses down
14 that she identified as Mr. Wilson, had accused Ms. Hinson of
15 stealing his dog and showed up on her property with a
16 baseball bat and essentially threatened her life.

17 Furthermore, Mr. Wilson's brother-in-law, who she
18 identified as a John Bernat, lived directly beside Mrs.
19 Hinson and was causing Ms. Hinson problems watching her
20 coming on her property.

21 She would testify that Ms. Hinson was terrified of
22 both these men.

23 And she would testify further that the day after
24 the murder that she contacted someone with the sheriff's
25 department and informed them of this fact and that the

1 deputies refused to take a report from her. And that is
2 pretty much the proffer, Your Honor.

3 MR. BARFIELD: Mr. Jordan did not specifically say
4 this, but I presume the witness would say "Judy Hinson told
5 me all this stuff"?

6 MR. JORDAN: That is correct.

7 THE COURT: That's what I thought.

8 MR. BARFIELD: My first argument is that it's
9 clearly hearsay. Ms. Hinson is deceased. It falls within
10 none of the exceptions to the rule against hearsay. That's
11 argument one.

12 Argument two is that it's clearly intended to be
13 evidence of third-party guilt, which is not corroborated in
14 any fashion whatsoever. And I think there just has to be
15 ~~more before they could get into that, even if a live witness~~
16 who saw it could come to court to say it.

17 MR. JORDAN: Your Honor, it was my understanding
18 you had already ruled on this and we would just proffer it
19 for the record.

20 THE COURT: I don't know if I ruled on it or not.

21 MR. BARFIELD: Then let me argue it then, please.
22 I'm done.

23 THE COURT: The purpose then, if it's not
24 hearsay --

25 Well, first of all, the solicitor says it's

1 hearsay, not admissible.

2 Where is the exception or what's the deal? How do
3 you get around the hearsay? That's the question.

4 MR. JORDAN: Beg the court's indulgence.

5 (Off the record)

6 (Back on the record)

7 THE COURT: Don't you need to know the answer to
8 that today instead of in the morning?

9 MR. JORDAN: Your Honor, I'll provide it to you in
10 the morning.

11 THE COURT: The purpose of getting -- suppose
12 you --

13 MR. DUNN: We do need the answer --

14 THE COURT: Suppose you win the motion? Don't you
15 need to have the witness?

16 MR. DUNN: Because if you rule in our favor, then
17 I got to go get the lady tonight, so we do kind of need to
18 know the answer.

19 MR. JORDAN: Your Honor, I would argue first that
20 it would be an exception under excessive mental, emotional
21 or physical condition of Ms. Hinson at the time it was made.
22 It shows her emotional condition as it related to the two
23 men.

24 And, Your Honor, under I think it's 804 -- I have
25 to find it.

1 Your Honor, the argument basically would be under
2 803, one of the exceptions of the existing mental or
3 emotional state of Ms. Hinson at the time.

4 THE COURT: All right. Well, based upon what you
5 have told me in the proffer, I would not admit that. I
6 would find that that is not an exception under the facts of
7 the proffer and would disallow the testimony, if that's the
8 position of the defendant.

9 Anything else?

10 MR. BARFIELD: Nothing from the State.

11 MR. DUNN: Nothing, Your Honor.

12 THE COURT: All right. Nine o'clock in the
13 morning?

14 Court is adjourned until nine o'clock tomorrow
15 morning.

16 (WHEREUPON, proceedings were adjourned to December
17 20, 2008)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHESTER) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 CASEY RAY PERKINS,) 2005-GS-12-438
7 DEFENDANT.) DECEMBER 20, 2008
Chester, SOUTH CAROLINA

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9
10
11 B E F O R E:
12 THE HONORABLE BROOKS P. GOLDSMITH, JUDGE. ; And a Jury.

13
14
15 A P P E A R A N C E S:
16 DOUGLAS A. BARFIELD, JR., SOLICITOR
ATTORNEY FOR THE STATE
17 GEOFFREY M. DUNN, ESQUIRE
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20 MICHAEL R. WATTS
21 CIRCUIT COURT REPORTER
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25

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1 (PROCEEDINGS, December 20, 2008)

2 THE COURT: Defense is seeking two lesser included
3 charges; one voluntary and one involuntary, is that correct?

4 MR. DUNN: Apparently I don't have involuntary,
5 Your Honor. I thought I did. It's my number two.

6 THE COURT: All right. The State objects to both.

7 So, Mr. Dunn, Mr. Jordan, explain why you are
8 entitled -- why you believe that you are entitled to both
9 those charges.

10 MR. DUNN: Yes, sir.

11 May it please court, Your Honor.

12 Your Honor, voluntary manslaughter is the unlawful
13 killing of a human being, without malice, in sudden heat of
14 passion, with sufficient legal provocation.

15 ~~Your Honor, basically there has been testimony in~~
16 the form of a statement made by my client, the three-hour
17 statement on September 7th, in which he said, in part, that
18 they began in an essential sexual activity. At some point
19 he said -- he says that she said "no, no, you need to stop."
20 If that's true -- and, of course, the statement itself has
21 to be decided by the jury whether or not they take whole,
22 part, or any of it, but if that's true, they start off in a
23 legal -- something that was legal that moved into something
24 that was no longer legal. If not, it should establish that
25 sexual activity -- you are caught up in the moment in heat

1 of the passion when you are engaged in a sexual activity.
2 He said "no, I don't want to stop," and he didn't stop. She
3 ended up dying as a result. I think that there is
4 sufficient, at least, facts for a jury to look at and decide
5 whether or not voluntary manslaughter is something that's
6 appropriate in this matter.

7 We racked our brains. I can't think of any other
8 instances in this case where there was any evidence
9 presented that would suggest voluntary manslaughter, except
10 for statements that were made during that three-hour
11 interrogation.

12 But, Your Honor, I think that if there is
13 enough -- if the facts are there, there was evidence that's
14 been presented, then it's the obligation of the court to put
15 in a jury charge for the jury to consider. And if not, it's
16 my understanding, Your Honor, it's reversible error and we
17 would just end up back here all over again.

18 THE COURT: Now, on the involuntary -- and I'm
19 going to let the solicitor go back and talk about both of
20 them. Tell me about the involuntary.

21 MR. DUNN: All right.

22 Your Honor, I think our argument on involuntary
23 manslaughter is stronger than our argument for voluntary
24 manslaughter. There is two ways -- the Supreme Court has
25 defined involuntary manslaughter two ways. One is the

1 unintentional killing of another, without malice, but while
2 engaged in an unlawful activity not naturally tending to
3 cause death or great bodily harm. I don't think we are here
4 on -- that's not this case.

5 Or, it's the unintentional killing of another,
6 without malice, but while engaged in a lawful activity with
7 reckless disregard for the safety of others. I think that's
8 this case, Your Honor.

9 Again, there has been numerous statements made by
10 my client that what they were engaged in was consensual
11 sexual activity. There has been testimony from at least one
12 witness that explained or touched on the idea of what the
13 sexual practice of fisting is. I think it's the jury's
14 burden or the jury's duty to decide whether or not what they
15 ~~were doing was legal. I don't think there is any question~~
16 in it what they were doing was legal, but it was probably
17 done with a reckless disregard for life, because the nature
18 of her injuries would suggest that he got carried away and
19 she ended up dying. But if they are engaged in sexual
20 activity that is consensual, then it's legal. The manner in
21 which he did it could be reckless. And if you do it right,
22 no one is supposed to get hurt. She had a significant
23 amount of injuries, and there is numerous statements that he
24 gave to Sheriff Benson about that.

25 And I think that between the sheriff's -- between

1 Mr. Perkins' statements and the pathologist's description of
2 what happened, that it should be up to the jury to decide
3 whether or not what was done was reckless and legal. I
4 mean, if it was legal or reckless, then it's an involuntary
5 manslaughter. If they decide that it's not legal, then they
6 get into another charge, but that's a jury decision, Your
7 Honor.

8 Again, I think there is sufficient facts here for
9 that. On not charging the jury, Your Honor, I think could
10 result in this being overturned and being brought back for
11 proper jury instructions.

12 THE COURT: Before I get to the solicitor --
13 before I let the solicitor respond, let me speak to you on
14 this matter, Mr. Dunn.

15 I'm looking at your request to charge number one,
16 voluntary manslaughter.

17 MR. DUNN: Yes, sir, that's straight out of --

18 THE COURT: The second paragraph, second and third
19 lines. "Both heat of passion and sufficient legal
20 provocation must be present at the time to constitute
21 voluntary manslaughter. Sudden heat of passion upon
22 sufficient legal provocation, while it need not dethrone
23 reasoning entirely or shut down knowledge of maliciousness,
24 it must be naturally disturb the sway of reason and render
25 the mind of an ordinary person of cool reflection and

1 produce, according to human experience, an uncontrolled
2 impulse to do violence."

3 MR. DUNN: Your Honor, all I can say to that, Your
4 Honor, there was testimony -- or he said that he was angry
5 or he got mad, exasperated that she had told him no and was
6 trying to rebuff his advances.

7 Your Honor, I'm going to be honest, like I said
8 before, where is the legal provocation? That's the best I
9 can do, Your Honor.

10 THE COURT: Got you. Okay.

11 Solicitor?

12 MR. BARFIELD: There is no sufficient legal
13 provocation. A female -- obviously the State contends that
14 nothing about this case is consensual to start with.

15 ~~Assuming that the jury decided to find that she~~
16 did consent to having some sexual activity with him, any
17 female, or any male, has the right during such consensual
18 activity to say stop, no, it's done. And that is the only
19 provocation that the record contains any evidence of, and I
20 simply say that is not sufficient legal provocation to allow
21 him the benefit of a manslaughter -- of a voluntary
22 manslaughter charge.

23 THE COURT: The court agrees with that position of
24 the State.

25 MR. DUNN: Only relates to manslaughter?

1 THE COURT: The request for voluntary manslaughter
2 and denies the motion to charge voluntary.

3 Now, involuntary?

4 MR. BARFIELD: Now, as to involuntary
5 manslaughter, I think there is clearly a distinction --
6 there are two distinctions on the matter.

7 One is there is clearly a distinction between some
8 activity that is legal and some activity that is intended or
9 unintended. I don't think the fact that, again assuming
10 they were engaged in consensual sex which involved fisting
11 which she wanted to have done to her, the fact that that
12 would be legal I don't think has anything to do with whether
13 involuntary manslaughter applies.

14 The question is -- under the scenario I think that
15 Mr. Dunn is arguing for involuntary manslaughter, the
16 question is did he intend to fist her.

17 Now, the intentional act -- and the second
18 distinction I want to make is did he intend to commit the
19 act and did he intend the consequence of the act. I think
20 you have to distinguish between whether there was an
21 intended act with unintended consequences.

22 I don't have any doubt that Casey Perkins did not
23 intend to sever her aorta when he ran his fist a foot up
24 inside her vagina. That's not the point. The point is did
25 he intend to put his fist inside her vagina. And there

1 is -- all the evidence in the case indicates that he, in
2 fact, did.

3 I would give the court a classic example of an
4 appropriate case for involuntary manslaughter. Somebody is
5 handling a pistol. He never intends to pull the trigger and
6 fire the pistol, but he recklessly handles the pistol and it
7 goes off and it shoots the guy sitting across the table from
8 him. He certainly didn't intend to shoot anybody. He
9 didn't even intend to shoot, to fire the pistol. That's
10 what involuntary manslaughter is all about.

11 If you take that pistol and intend to shoot it and
12 intend to shoot the guy in the leg, but you happen to shoot
13 him in the heart and kill him, well, that's what Mr. Dunn
14 argues, that Perkins didn't intend to kill the lady. He
15 ~~intended to run his fist upside her. He just didn't intend~~
16 for her to die, and I don't think involuntary applies. He
17 intended the fisting. He simply didn't intend the
18 consequences. This was not an accident. It's just not an
19 accident.

20 THE COURT: Well, I understand your argument it's
21 not an accident, but aren't -- but isn't -- aren't there
22 facts from which a jury might conclude that it was an
23 accident? That's the test, is it are there sufficient facts
24 from which jury could conclude?

25 Aren't there some statements? Aren't some of the

1 statements of the defendant consistent with -- well, he said
2 he didn't mean to kill her.

3 MR. BARFIELD: Again, my whole argument is it's
4 not what he intended the consequence to be. The argument is
5 did he intend to engage in the activity that produced those
6 consequences, and the evidence in this case shows that he
7 intended to insert his fist into her vagina.

8 THE COURT: Which is a lawful activity, under his
9 scenario.

10 MR. BARFIELD: Perhaps. Well, no even under his
11 scenario. Under his scenarios she said no, and he
12 continued, and it's not lawful.

13 THE COURT: Under all of his scenario? Is that
14 true? Do you agree with that?

15 MR. DUNN: No, I don't, not with all the
16 scenarios.

17 He gave so many versions. One of the versions I
18 would agree, but one of the other versions I don't think
19 that I would.

20 MR. BARFIELD: He clearly said -- you know, the
21 timing -- he might have given different time frames for
22 this, but there is evidence from Casey Perkins' lips that
23 she said no and he wouldn't take no for an answer.

24 THE COURT: There is evidence of that.

25 MR. BARFIELD: And at that point anything sexual

1 he did to her after that point is illegal.

2 THE COURT: Under any scenario -- is there any --
3 under any of the scenarios, and I can't answer this question
4 myself, could a jury infer that they were involved in a
5 lawful activity, Mr. Dunn?

6 MR. DUNN: That they were involved --

7 THE COURT: Before -- excuse me -- for any of the
8 scenarios --

9 MR. DUNN: Well, one --

10 THE COURT: -- did the event occur without the
11 decedent saying no, under any scenario?

12 MR. DUNN: Well, in one of his scenarios, his
13 testimony on the tape was that she had said deeper and
14 deeper, which he went deeper and deeper. As a result she
15 ended up bleeding.

16 THE COURT: Do you agree with that, solicitor?

17 MR. BARFIELD: I agree that the tape contains some
18 conversation about Perkins saying that she said deeper and
19 deeper. And clearly at some point after the defendant did
20 it, she bled.

21 Let me tell you -- let me tell you my -- I agree
22 that Casey Perkins, in his long statement, he's into what
23 the State contends ultimately at the end of the whole
24 process was the real factual scenario. I agree that he
25 minimized the significance of the events in the early parts

1 of the statement and subsequently made them more serious and
2 more serious and more serious.

3 Mr. Dunn is basically saying let's take the first
4 part of the statement where Perkins was telling it it's not
5 such a bad deal, not such a big thing, and let's give him
6 involuntary manslaughter, because early on that's his
7 version of the way it was.

8 The State's position is when we get to, you know,
9 the fourth quarter and he's really -- he's telling what
10 really happened, it ain't involuntary manslaughter. It
11 might have been under his initial versions of the events,
12 but it ain't under his latter.

13 Now, your question is so is there evidence in the
14 record that the jury could say we believe that the first
15 part, the first version, but not the last version? Well,
16 yeah, you know, I'm going to lose that is that's where you
17 are going with it, because that is certainly the way it
18 developed.

19 THE COURT: Isn't that the test for the charge --

20 MR. BARFIELD: Well, there is evidence in the
21 record. I agree.

22 THE COURT: -- to go to the jury, because part of
23 the charge is going to be that the jury can believe all of
24 what a witness said, part of what a witness said, or nothing
25 of what a witness said?

1 MR. BARFIELD: Yes, sir, I do not argue with that.

2 THE COURT: So the jury, it seems to me, could
3 conceivably say we believe only the first part of his
4 story -- of his testimony, and don't believe the last part.
5 Could --

6 MR. BARFIELD: Certainly.

7 THE COURT: Isn't that --

8 MR. BARFIELD: I can't argue against that.

9 MR. DUNN: Your Honor, we have to charge the
10 confessions anyway that they can believe -- you know, there
11 is certain factors that they have to look at under
12 confessions; whether or not it was voluntarily given,
13 whether or not it was -- I can't remember all of it. I
14 don't have my charge here in front of me.

15 MR. BARFIELD: Basically you are charging them
16 what the Jackson v. Denno questions.

17 MR. DUNN: Yeah, the defendant made the alleged
18 statement; he made it --

19 THE COURT: Right.

20 MR. DUNN: -- voluntarily or of his own free will;
21 and what, if any, weight should be given to it. And then
22 you give a whole bunch of factors. The court gives a whole
23 bunch of factors that they can look at. Of course, they can
24 believe some, or none, or all. I mean, it's --

25 Mr. Perkins gave six or seven statements. It's up

1 to the jury to decide which one of the statements they are
2 going to believe.

3 THE COURT: Normally you may be more likely faced
4 with a charge of murder and voluntary manslaughter, but I
5 think that the facts of this case indicate voluntary is not
6 appropriate, but, nevertheless, involuntary is appropriate.

7 I think it's up to the jury. The court will
8 charge involuntary.

9 What other requests for charges, other than the --

10 MR. DUNN: I can't remember what I handed up to
11 you.

12 MR. BARFIELD: We had alibi on there, and I would
13 argue against that.

14 THE COURT: I'm sorry?

15 MR. BARFIELD: He's got alibi. There is a request
16 that you charge alibi. He served notice of alibi.

17 THE COURT: I don't think I have got an alibi.

18 MR. BARFIELD: It's on his list of requests to
19 charge.

20 MR. DUNN: I can't remember what I handed up.

21 THE COURT: I haven't gotten that.

22 MR. DUNN: Did I give you a --

23 THE COURT: Let me tell you what you gave me. You
24 gave me request number three, request number -- I can't tell
25 what it is. Payment of experts, and then voluntary, which

1 we need to mark as a court's exhibit.

2 MR. DUNN: Yes, sir.

3 THE COURT: Okay. There was a request for
4 criminal intent charge. Does the solicitor agree or
5 disagree?

6 MR. BARFIELD: Well, I hadn't read the charge, but
7 I presume that you will give your general charge on criminal
8 intent.

9 MR. DUNN: Your Honor, the reason why I didn't
10 put any kind of -- I'm assuming the court has got its own
11 charges for most of these. I just --

12 THE COURT: Right, I understand.

13 MR. BARFIELD: I presume that you would charge the
14 law of criminal intent.

15 ~~THE COURT: Okay.~~

16 MR. DUNN: And I assume you will.

17 THE COURT: In order to establish criminal
18 liability, criminal intent is required, blah, blah, blah,
19 blah, blah. It's a mental state, failure to act, or
20 reckless indifference and so on and so on. I have got a
21 charge on that.

22 Presumption of innocence, of course.

23 Defendant not testifying, I have got that. I must
24 charge those.

25 Direct and circumstantial.

1 Direct expert witness charge.

2 Fees of expert witnesses. What about that,
3 solicitor?

4 MR. BARFIELD: I did not do any looking on that.
5 I didn't know that he was going to ask you to charge that.
6 I didn't know what the law is on that.

7 MR. DUNN: Your Honor, I think we -- well, I'll
8 let you decide regarding that.

9 THE COURT: I'm sorry now, have you had a chance
10 to look at it, solicitor?

11 MR. BARFIELD: Yes, I have read it.

12 THE COURT: Your position on that? Do you agree
13 or disagree with that?

14 MR. BARFIELD: Well, he's --

15 ~~THE COURT: On the payments of experts.~~

16 MR. BARFIELD: Yes, sir, I understand.

17 If the law says that you can charge that. I don't
18 know whether it does or not.

19 THE COURT: Okay.

20 MR. BARFIELD: I don't have any big problem with
21 it.

22 THE COURT: All right.

23 I have my confession charge. Do you generally
24 agree that there has to be a charge on confession,
25 solicitor?

1 MR. BARFIELD: Yes, sir.

2 THE COURT: Is anybody requesting, and I just
3 don't know, a charge on prior inconsistent statements of
4 witnesses? Is any of that --

5 MR. BARFIELD: The State is not.

6 MR. DUNN: I didn't hear the question, Your Honor.

7 THE COURT: All right. Okay. I found my
8 statement of the defendant.

9 All right, alibi?

10 MR. BARFIELD: He served notice. I requested -- I
11 did reciprocal discovery. He sent me a notice of alibi and
12 listed I think three witnesses, two of whom were on my
13 witness list -- all three of whom were actually on my
14 witness list, two of whom actually testified.

15 ~~He presented nothing in his case in chief~~
16 concerning alibi. Concededly, he cross-examined the two
17 witnesses who testified, but I don't think he created any
18 issue about alibi.

19 I think at best the last witness who testified
20 having seen Mr. Perkins prior to the discovery of Judy
21 Hinson's body was John Bernat, who said Perkins left his
22 house at 1:27. Perkins said he left his house at 1:30. The
23 victim's body was discovered at a little bit after two. And
24 there is no accounting for Perkins' whereabouts. I think
25 probably the next time anybody talks about seeing Perkins

1 was SLED agents in his yard sometime Saturday morning after
2 daylight.

3 Don Wilson. Don Wilson picked him up at about
4 nine or ten o'clock in the morning, and I just submit that
5 doesn't create an alibi. He's got no witness who says
6 Perkins was someone other than the scene of the crime when
7 we allege the crime occurred.

8 THE COURT: Mr. Dunn?

9 MR. DUNN: Your Honor, part of the, well, what
10 would be in my closing argument, Your Honor, is the timeline
11 in this case. I would submit that the timeline presented by
12 the evidence and testimony we have heard this week makes it
13 very difficult, if not unlikely, for Mr. Perkins to be at
14 the scene.

15 I will concede that we never called anybody and
16 nobody testified that put him anywhere -- nobody testified
17 and nobody was called that could vouch for him between 1:30
18 a.m. and 9:00 or 9:30 a.m., whatever time Don Wilson said he
19 saw him. I don't remember the exact time. Sometime in the
20 morning.

21 THE COURT: Well, generally speaking isn't that a
22 requirement of alibi, though, that you have evidence that
23 the defendant was at some other place -- at some other
24 specified place and at a -- and generally speaking at a
25 time?

1 MR. DUNN: Your Honor, my understanding of alibi
2 is that it basically says defendant was not at the scene, he
3 was somewhere else.

4 My argument to the jury is going to be that the
5 timeline is not allowed. If there deficiencies in that, I
6 understand, and I don't have --

7 I'll concede I don't have any person who is going
8 to be able to say between 1:30 and 1:46, which is the next
9 time that somebody testified that they were at the house,
10 that they knew where Casey Perkins was at, except for
11 Casey's own testimony, who said at one -- he said he got
12 home between 1:35 and 1:40.

13 MR. BARFIELD: Let me say one other thing. This
14 might kind of -- I guess it's so obvious I didn't think
15 about it. Casey Perkins himself has told this jury through
16 his reported statement that he was present at the scene of
17 the crime when the crime occurred, and, in fact, committed
18 it. I understand that the issue of whether that's true or
19 not is for the jury.

20 THE COURT: I don't see alibi as being something
21 supported by the record.

22 MR. DUNN: Okay.

23 THE COURT: What's next?

24 MR. DUNN: I don't think I have any other jury
25 charges.

1 We still have two matters that we haven't taken
2 up. One is my client testifying, but before we do that, we
3 still haven't decided which, if any, convictions are
4 impeachable, which I think has to be established before my
5 client can say whether he will testify or not.

6 MR. BARFIELD: Before we go to that, may I hold
7 your involuntary manslaughter charge in a minute just -- or
8 you tell us what it says? I just want to make a couple
9 notes to make sure I don't misstate anything. We can take
10 care of that in a minute, but if you would pull that out.
11 And let me step into the back and get the rule book a
12 minute.

13 (Off the record)

14 (Back on the record)

15 THE COURT: Did you want to look at the charge
16 now, solicitor?

17 MR. BARFIELD: If I could.

18 THE COURT: All right. I'll let both of you look
19 at it.

20 (Off the record)

21 (Back on the record)

22 MR. BARFIELD: The impeachment issue I think was
23 the same question. I don't have the rap sheet in front of
24 me. I do have certified copies of documents.

25 Mr. Perkins has a conviction out York County for

1 committing a lewd act on a minor, which I think occurred in
2 '96.

3 I concede that he was last -- the period of
4 incarceration and any period of supervision, it's over ten
5 years old, under all scenarios that I could develop through
6 investigation.

7 Let me look at the rule real quick.

8 Your Honor, the rule says ten years is not an
9 absolute limit, if the probative value of the conviction is
10 supported by the specific facts or circumstances essentially
11 outweigh its prejudicial effect.

12 I would argue in this case that the convictions --
13 of course, we have an issue about whether -- if you are
14 going to allow the convictions to come in, whether you are
15 ~~going to allow the nature of the conviction, or just the~~
16 fact that he's been convicted of a crime that carries more
17 than a year.

18 But, in this case the credibility of the defendant
19 is pretty much the whole issue in the case, because we have
20 a very detailed what I'm calling a confession, which he, I'm
21 sure, is going to argue through his lawyer is a false
22 confession. And the whole issue is going to be does the
23 jury believe that he confessed, or does the jury believe he
24 made it up and didn't commit the crime. So I think his
25 credibility is very important. And, therefore, I believe

1 that the fact that he was convicted of this offense, which
2 even though it occurred and he was released from any
3 sentence on it more than ten years ago, those facts and
4 circumstances outweigh any prejudice to him for me being
5 allowed to tell the jury that he was convicted.

6 He also has an ABHAN from, I believe, 2002, which
7 is clearly within the ten year rule.

8 THE COURT: Mr. Dunn?

9 MR. DUNN: Your Honor, I would concede that the
10 ABHAN was within the ten year rule. I don't think I can
11 argue about that.

12 As far as the lewd act -- it seems to be a lewd
13 act, right?

14 MR. BARFIELD: Yes.

15 ~~MR. DUNN: It is in the court's discretion whether~~
16 or not the court can allow that after ten years.

17 Your Honor, I would argue, one, that just out of
18 the matter of justice, in a case like this the jury may very
19 will want to hear Mr. Perkins' testimony, if he's going to
20 take the stand. And listening about sex crimes that he had
21 in the past, obviously I can't put him on the stand. You
22 know, I think the probative value is dwarfed by the
23 prejudicial effect that's going to happen if the court
24 allows the statement in.

25 Also, Your Honor, I would address the bottom part

1 of 609(b), it says, "however, evidence of a conviction of
2 more than ten years old as calculated herein, is not
3 admissible unless the proponent gives to the adverse party
4 sufficient advance written notice of intent to use such
5 evidence."

6 I'm not saying he did. I just can't remember
7 whether the State has given me advanced written notice
8 intending to use that, if it ever came up. If there's
9 something that's shown to me that they did, I would concede
10 that it was given to me, but I cannot remember written
11 notice being given to me that they would seek the use of
12 that conviction. And as such, I think the rule is clear. I
13 have to be given written notice to even know about so that I
14 have a fair opportunity to test the use of it, and I haven't
15 had that fair opportunity.

16 MR. BARFIELD: Well, Your Honor, let me just
17 simply tell you this. I don't have a pleading that we
18 served on Mr. Dunn saying he's got this lewd act and we are
19 going to try to use it. He's got a complete copy of our
20 file through discovery, which included his rap sheet, and
21 Mr. Dunn and I have talked several times this week about Mr.
22 Perkins' record and what's on it and the fact that I was
23 trying to gather some documentation to support the dates and
24 the end of the sentence and things like that.

25 The purpose of the rule is for him to have

1 advanced notice so that he can compare and contest any
2 effort that I might make to use a conviction that's over ten
3 years old. And I would simply argue to you that based upon
4 complete discovery in the case, including the rap sheet and
5 his awareness of what's on the defendant's record and our
6 multiple discussions about it, he has had plenty of time to
7 contest the use of the evidence. And, of course, we are
8 here to contest it now. It's not a question of whether the
9 conviction exists, I don't think. He's not challenging
10 that. It's not a question of when it was, the date of the
11 completion of the sentence, or anything. It's just simply
12 whether you are going to let us use it. And I think under
13 the rule, even though I don't have a pleading that says the
14 State of South Carolina versus Casey Ray Perkins, we want to
15 ~~use this ten year old -- more than ten year old conviction,~~
16 he's had written notice and lots of oral notice and
17 discussion about it and time adequately to prepare to try to
18 keep it out.

19 MR. DUNN: Your Honor, the only other thing I
20 would add to his argument, Your Honor, is that we all know
21 that the court rule to instruct the jury is that they can't
22 take his silence against him, use it against him. I don't
23 know too many lawyers that will agree that that's really
24 what a jury does when they don't hear a defendant in cases
25 like this. They are going to want to hear the other side.

1 They are going to want to hear what Mr. Perkins has to say
2 beyond just what he said on that tape, especially if he's
3 not trying to say "what I did was -- "what I said I didn't
4 mean." I mean, they are going to want to hear him take the
5 stand and try to give a different account of it, you know,
6 if -- but if his record comes into play -- if the nature of
7 the charges come into play, it certainly will put a wet
8 blanket over that idea.

9 I would say even a wet blanket on the idea of him
10 being convicted of the felony, but there have been enough
11 other folks who have taken the stand convicted of felonies,
12 that -- you know, I'll concede I'm not sure if they really
13 care if the word felony is used or the word conviction is
14 used, but I think the nature of the charges would be very
15 disturbing to the jury.

16 MR. BARFIELD: Let me say one more quick
17 additional thing. I'm looking at the stuff Mr. Dunn is
18 flipping over there, and I believe -- I don't know this for
19 a fact, but I believe somebody in my office gave him a copy
20 of all the documentation that we gathered early in the week
21 about the prior convictions, so I would argue that is
22 additional written notice of our intention to do that. When
23 I got the documents this week, I think Jason Davis in our
24 office made --

25 MR. DUNN: Jason Davis handed them to me. I don't

1 dispute that.

2 THE COURT: Well, it is -- it is hard to believe
3 that the solicitor would have given evidence of prior
4 convictions to the defense without having an intent to use a
5 conviction.

6 MR. BARFIELD: Yes, sir.

7 THE COURT: I assume that you want to use evidence
8 of a conviction in virtually every case.

9 MR. BARFIELD: If I can.

10 THE COURT: If you can.

11 I think you could almost take judicial notice of
12 the fact that the State is always going to want to use
13 evidence of a prior conviction.

14 It's the opinion of the court that the lewd act
15 conviction is similar in nature to the facts of this case.

16 I find, though, that -- I also find that both of these
17 convictions are important to the credibility of the
18 defendant, as stated a moment ago by the solicitor, is of
19 the upmost importance in this case.

20 All right. I would permit evidence of the lewd --
21 of the 1996 conviction only, but not the nature of the
22 conviction.

23 MR. BARFIELD: I can ask him, if he testifies,
24 whether in 1996, he was convicted of a crime that carried
25 more than one year?

1 THE COURT: Right, nothing else.

2 MR. BARFIELD: I understand that. I anticipated
3 that.

4 Now, if the State were to be allowed to do -- to
5 refer to the 2002 conviction -- 2002 conviction?

6 MR. BARFIELD: I think it is. I'm not looking at
7 it, but --

8 THE COURT: The State would then wish to refer to
9 the crime by definition or by the term of assault and
10 battery of a high and aggravated nature?

11 MR. BARFIELD: I would ask him if he was convicted
12 of assault and battery of a high and aggravated nature.

13 And certainly I'm not allowed to go behind the
14 nature of the conviction, other than what I called, and I
15 ~~don't think that's prejudicial, because there is nothing~~
16 about the name of that offense that imports any sexual crime
17 or activity.

18 MR. DUNN: I would say, Your Honor, though in
19 response that it is a lesser included of murder, that the
20 elements are similar, and it's similar in nature type of
21 charge as murder. I mean, obviously it's not as severe or
22 serious as murder, but the idea of touching somebody against
23 their will is still involved in that and it's involved in a
24 murder case, and I think it will be prejudicial to Mr.
25 Perkins.

1 THE COURT: I see a distinction, though, that in
2 the indictment, but the term assault and battery of a high
3 and aggravated nature I think is not -- the prejudice of
4 that does not outweigh its probative effect. I think the --
5 it's not the same as a lewd act is. Lewd act I think is
6 prejudicial.

7 ABHAN, on the other hand, I think is sufficiently
8 different, so that its value outweighs the prejudicial
9 effect and I would allow it.

10 MR. DUNN: So he can refer to it as an ABHAN?

11 THE COURT: Yes.

12 MR. DUNN: Two more issues then, Your Honor, as it
13 relates to impeachment of Mr. Perkins. One I think has to
14 do with the testimony of former Officer Carr. It's my
15 understanding that if Casey took the stand, then we would be
16 back to our issue of Carr's testimony for impeachment
17 purposes about -- you allowed Carr to say some things, but
18 you didn't allow Carr to say some other things. My
19 understanding was that if Mr. Perkins took the stand, that
20 those some other things could then be put into play. I just
21 want -- I want to make sure I understood the ruling of the
22 court on that, and/or Mr. Barfield's intentions of how he
23 would deal with that.

24 MR. BARFIELD: Well, I can only anticipate that if
25 Perkins got on the witness stand and Mr. Dunn said "Mr.

1 Perkins, on August 29th of 2005, did you tell Michael Carr
2 with the Chester County Detention Center that you screwed
3 up," and he said "no", well, I'm not real sure that under
4 those circumstances I would bring Michael Carr back in here
5 to repeat it. I don't know that you would let me do that.

6 You made a ruling on the inadmissibility of the
7 conversation after that, and I'm certainly not going to
8 cross-examine Mr. Perkins about stuff that you have ruled
9 inadmissible, and I'm sure Mr. Dunn is not going to ask him
10 if he told Carr in the presence of Byrd that he killed that
11 woman. I don't think it's going to come -- I don't believe
12 it would come up under any circumstances, unless Perkins
13 just started talking, not following the directions of the
14 questions of his lawyer.

15 ~~MR. DUNN: I understand, Your Honor. I just want~~
16 to make sure that --

17 MR. BARFIELD: If he does, I'm going to jump all
18 over it, but I don't anticipate that's going to happen, if
19 he gets on the stand.

20 THE COURT: And the court would agree with the
21 solicitor's analysis of the situation, I suppose.

22 MR. DUNN: Which is fine, Your Honor.

23 THE COURT: Right.

24 MR. DUNN: The other issue, Your Honor, has to do
25 with impeachability as it related to the Jackson v. Denno

1 hearing. Some of us who were here -- do you remember, Mr.
2 Perkins did take the stand and some of the statements that
3 he gave specifically as to whether or not he had written
4 certain statements and whether or not he was handcuffed and
5 sort of other things that happened at the very beginning of
6 that interview with Sheriff Benson, his recollection of the
7 facts were in contradiction to what showed up on that video.

8 Your Honor, that video was not given to me until
9 after that Jackson v. Denno hearing, so I never had an
10 opportunity to review it with -- to review it myself or to
11 go over it with my client. And as such, I would ask that
12 those questions, if he does take the stand, not be fair game
13 for impeachment.

14 MR. BARFIELD: I completely disagree with that and
15 don't suggest about anything about what I'm about to say,
16 but, you know, in all honesty, the major investigators in
17 this case ain't ever seen or heard the tapes until we played
18 them for the jury.

19 Mr. Dunn is basically saying since he didn't get
20 to watch the tapes with Perkins before the Jackson v. Denno
21 hearing and Perkins didn't get to see them so that Perkins
22 could tailor his answers accordingly, that they ought not to
23 be able to impeach him with sworn testimony in this court
24 which is different from what those tapes show. I just don't
25 think that's the law. He has been under oath in a

1 proceeding in that chair and given answers which are
2 different from what the video says, and that's no different
3 from not allowing Mr. Dunn to impeach my witnesses on the
4 witness stand who had not seen the tape before they got up
5 there, and he did that at the Jackson v. Denno hearing. I
6 think that's fair game.

7 MR. DUNN: My response to that, Your Honor, is the
8 police are in custody of materials. They could go back and
9 look over it to refresh their memories if they have -- the
10 police are in custody, physical custody, of the materials.
11 They could go back and look at them to refresh their
12 memories before they testified.

13 It's been three years since this. Some of the
14 details may or may be fussy for anybody, let alone the
15 defendant. ~~We were never given any opportunity to refresh~~
16 his memory. It's nothing to do with trying to tailor his
17 testimony or not tailor his testimony. It's just we're
18 trying to make sure that he knew what was going on and had a
19 chance to refresh what happened.

20 If the police didn't view it or look at the
21 videos, that's not my fault. That goes to them whether or
22 not they want to look at the evidence that they have in
23 their possession. All I can do is review what's given to me
24 and give it to my client so he can review it to see if it
25 helps refresh his memory. I was never given that

1 opportunity prior to Jackson v. Denno and I think that it's
2 just patently unfair. That's all.

3 MR. BARFIELD: My brief response to that is this.
4 I don't know when Mr. Dunn got into this case, but he's had
5 a copy of this file forever, and the file clearly relates
6 to -- it refers to the existence of audio/video recordings
7 of this three-hour-marathon interview. He has known that.
8 We have not withheld it, just like our officers could have
9 gone to evidence and pulled the tape out and looked at it.
10 It was in their custody, certainly, and he didn't have the
11 right to walk in the room, but certainly -- just like they
12 could have gone and opened up the evidence locker and pulled
13 it out and played it and watched it, he could have said
14 "Barfield, you know, set up a time for me to go out to the
15 evidence and get this thing and get a copy of it and play
16 it." We didn't withhold it. He didn't get it until after
17 the Jackson v. Denno hearing, but it wasn't being withheld
18 and he knew of the existence of it. And certainly if he had
19 wanted to prep his client with it or himself with it prior
20 to that hearing, he could have.

21 There has been a lot of back and forth, you know,
22 him asking for stuff and --

23 MR. DUNN: Sure. I don't think the solicitor or
24 I, either or both aware there was a video and we went into
25 the evidence locker and started looking through boxes and we

1 came across stuff that neither one of us knew about.

2 MR. BARFIELD: That's correct.

3 MR. DUNN: I'm not accusing the solicitor of
4 anything. I'm just saying, you know, he's given me stuff
5 and -- I thought I had a complete file. I didn't have a
6 complete file.

7 MR. BARFIELD: He's right about the video. Nobody
8 knew about the video.

9 MR. DUNN: Shane Stuart is in Afghanistan, or
10 wherever he's at.

11 THE COURT: Presumably making a lot money.

12 MR. DUNN: More money than all of us.

13 THE COURT: All right. I'm not going to restrict
14 the State's right to impeach the defendant, if he takes the
15 stand, because of the arguments made by defense counsel on
16 this issue over the past ten minutes. I have been kind of
17 mixed up, but basically because of the -- I think the basic
18 argument was that the defendant didn't have the video before
19 the Jackson v. Denno hearing.

20 All right. What's next?

21 MR. DUNN: I have to go talk to my client, Your
22 Honor.

23 THE COURT: You need to talk to him?

24 MR. DUNN: I need to talk to him first, Your
25 Honor.

1 THE COURT: Okay. Well be at ease for a few
2 moments.

3 MR. DUNN: Thank you, Your Honor.

4 MR. BARFIELD: Your Honor --

5 THE COURT: Don't let me forget this. In the
6 event your client testifies, he's also entitled to a jury
7 trial. And if any records are brought up, he's entitled to
8 a jury charge on the lack of importance of his record.

9 MR. BARFIELD: And, Your Honor, when Mr. Dunn is
10 doing his closing, since he has the presentation screen, my
11 intention is to take me a chair over there in front of that
12 window.

13 MR. DUNN: I have no problem with it. That's the
14 only place I could find where it didn't completely interfere
15 with you.

16 THE COURT: Thank you.

17 (Whereupon, proceedings were recessed)

18 (Whereupon, proceedings were reconvened)

19 MR. DUNN: Your Honor, we are ready to proceed.

20 THE COURT: Mr. Dunn, is your client ready for me
21 to discuss with him his rights to testify or not testify?

22 MR. DUNN: He is, Your Honor.

23 THE COURT: Mr. Perkins, your name is Casey Ray.
24 Perkins, is that correct?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: At this time I need to explain to you
2 certain of your rights and ask you if you don't understand
3 anything that I say to you, please let me know.

4 If you want me to explain things in more detail,
5 let me know that also.

6 As you know, we have now reached the stage of the
7 trial where you may present your defense. You have the
8 right to claim the protections given to you by the Fifth
9 Amendment to the Constitution of the United States of
10 America, which the amendment states, in part, as follows:
11 No person shall be compelled in any criminal case to be a
12 witness against himself. This means that you could not be
13 required to testify in your case.

14 You have the right to testify on your own behalf,
15 ~~though. However, no one can make you testify. I tell you~~
16 that this is a personal right that you have and no one can
17 waive this right except you.

18 If you decide to testify, you will be subject to
19 the same rules that govern other witnesses and you may be
20 examined and cross-examined on any relevant issue in this
21 case.

22 In addition, if you have any convictions involving
23 dishonesty or false statement or crimes punishable by
24 imprisonment for more than one year and this court
25 determines that the probative value of admitting this

1 evidence outweighs its prejudicial effect to you, the
2 solicitor would be able to introduce your record to attack
3 your credibility.

4 If you decide to testify, this decision on your
5 part must be made freely and voluntarily, as well as
6 intelligently, with knowledge of the protections given to
7 you by the Fifth Amendment and the consequences of your
8 decision to testify.

9 If you decide not to testify, I will instruct the
10 jurors that they cannot give the fact that you did not
11 testify any consideration whatsoever, and that there is to
12 be absolutely no prejudice to you because you did not
13 testify.

14 It's left entirely up to you as to whether or not
15 you testify. You may talk with your attorney, family,
16 friends, or anyone else, but the final decision would be
17 left entirely up to you.

18 Do you understand what I have explained to you
19 thus far?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you have any questions about what I
22 have said?

23 THE DEFENDANT: No.

24 THE COURT: Have you discussed with your lawyer
25 and with family whether or not you should testify?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you need more time to discuss this
3 matter with your attorney?

4 THE DEFENDANT: No.

5 THE COURT: And have you decided now whether you
6 wish to testify or not?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you wish to testify?

9 THE DEFENDANT: No, I do not.

10 THE COURT: I'm sorry?

11 THE DEFENDANT: I do not wish to testify.

12 THE COURT: You do not wish to testify.

13 All right. Thank you so much.

14 MR. DUNN: Thank you, Your Honor.

15 THE COURT: Now, let me make sure I understand the
16 position of both sides in this case.

17 Mr. Dunn, your intent is not to call any more
18 witnesses?

19 MR. DUNN: That is my intent, Your Honor.

20 THE COURT: Okay. And solicitor?

21 MR. BARFIELD: Nothing in rebuttal.

22 THE COURT: Do you both wish to do that on the
23 record?

24 MR. DUNN: I think just to keep it clear.

25 THE COURT: Okay. I'm fine with that, and then we

1 will go straight to closing.

2 Do you want to waive on the --

3 MR. BARFIELD: I will.

4 Will he need to renew his motions and have it
5 preserved somehow before we get into argument?

6 MR. DUNN: My directed verdict motion.

7 THE COURT: Okay.

8 MR. DUNN: I think I can -- I think we can do that
9 in the presence of the jury. I think I can stand up and
10 say, Your Honor, I renew my same objections that were raised
11 at the conclusion of the State's case. And I think that
12 will get us to where we need to be. I don't think the word
13 directed verdict has to be used.

14 THE COURT: I don't care. Whatever you want to
15 do.

16 MR. BARFIELD: I don't want to send them in and
17 out.

18 MR. DUNN: I don't want to send them in and out
19 either, Your Honor, so I'm trying to avoid it.

20 MR. BARFIELD: They are already --

21 THE COURT: You are renewing your motions then?

22 MR. DUNN: I am renewing them, but I think it has
23 to be --

24 THE COURT: The same grounds previously?

25 MR. DUNN: Same grounds.

1 THE COURT: And the court recognizes those grounds
2 and would deny the motions.

3 MR. DUNN: Yes.

4 THE COURT: All right.

5 MR. BARFIELD: Between arguments can we stop long
6 enough for Mr. Dunn and his folks to move his equipment out
7 of the way, the screen at least?

8 THE COURT: We can do that.

9 All right, let's bring the jury in.

10 (The following takes place in the presence of the
11 jury panel)

12 THE COURT: Welcome back, ladies and gentlemen,
13 and once again I was wrong. I apologize. I could have just
14 as easily asked you to come in at 10:30 this morning instead
15 of 9:30.

16 I believe we are ready to continue in the trial of
17 the case, though.

18 Mr. Dunn?

19 MR. DUNN: Your Honor, the defense rests.

20 THE COURT: Defense rests.

21 Solicitor?

22 MR. BARFIELD: Nothing in reply.

23 THE COURT: Gentlemen?

24 MR. DUNN: Defendant renews all previous
25 objections, Your Honor.

1 THE COURT: The court notes all of those.

2 And Mr. Dunn, solicitor, y'all ready to do your
3 closing arguments?

4 MR. BARFIELD: The State is.

5 MR. DUNN: The defendant is, Your Honor.

6 MR. BARFIELD: Waive opening.

7 THE COURT: Defense waives opening.

8 Mr. Dunn.

9 MR. DUNN: May it please the court, Your Honor.

10 Good morning.

11 THE JURY: Good morning.

12 MR. DUNN: It has been a long week. I have never

13 been into a Saturday trial myself, so we are all in it

14 together, but I do thank you for being here and I do thank

15 for y'all's attention during this whole week and thank y'all

16 for being patient. Murder cases are never easy. There is

17 always a lot of evidence to present, but I will tell you

18 this, that today is the most important day of the entire

19 week. The arguments that are going on between me and Mr.

20 Barfield and the jury instructions that the judge will read

21 you and you ultimately going out and having to come back

22 with a verdict, or in this case two verdicts, is the most

23 important day.

24 Well, at the beginning of the week I told you that

25 it wasn't going to be an easy trial, but a lot of the facts

1 were and things that you were going to hear were very
2 disturbing and I don't think that the evidence has proven me
3 wrong on what I warned you on Monday.

4 But I also asked on Monday that while you listen
5 to those facts and you listen to the evidence, that you not
6 immediately rush out and try to punish the person who is
7 sitting here just because of what you are hearing happened
8 to Ms. Hinson, that we sit down and we look at all the
9 evidence and we weigh the evidence and we decide whether or
10 not the evidence that was presented between Monday and
11 Friday really shows that Casey Perkins is guilty of the
12 death of Mrs. Hinson.

13 I have prepared a slide show. It's nothing fancy.
14 This is just to keep me on track and keep going forward to
15 ~~make sure that we look at all the evidence and that it's all~~
16 done logically and quickly as possible so we are not here
17 all day listening to me talk.

18 At the beginning of the week I talked about all
19 suspects are innocent until proven guilty. The judge will
20 instruct you on that again when he reads the law. I submit
21 to you it's not just a catchy TV phrase, but it is something
22 that's very important so we, as Americans, we don't -- when
23 somebody gets accused by the State and arrested for
24 something, it's not incumbent upon that person who has been
25 arrested to try to say, well, I didn't really do it, I

1 didn't do it. That's what dictatorships are about. It's
2 incumbent upon the State who makes those accusations to
3 prove those accusations. And it's not just to -- it's not
4 just a proof. It's not an easy proof and it's not an easy
5 burden on the State. It's a very heavy burden.

6 The State with all its resources must show that
7 Casey Perkins is guilty of the death of Judy Hinson. We
8 have seen a lot of resources this week that the State had at
9 its disposal. We have the sheriff's office. We have got
10 the State Law Enforcement Division who sent down their
11 investigative folks - Agent Wilkes, Lieutenant Robertson,
12 Agent Greene. They have crime labs, and DNA folks, crime
13 scene investigators. We have seen a gasoline expert. We
14 have seen Mrs. Taylor who tested the DNA. We saw -- I don't
15 remember the other lady's name, forgive me, said that
16 actually took fibers and stuff off of the clothes and off of
17 the bed sheets. We have seen fingerprint people. They have
18 a lot of resources at their hands.

19 The next thing that the defense -- or the State,
20 excuse me, the State has to show is not only that he is
21 guilty, but that he's guilty beyond a reasonable doubt.
22 Well, what is a reasonable doubt? It's always the \$64,000
23 question. What is it? How do we define it?

24 A reasonable doubt causes a reasonable person to
25 hesitate. When you are going back into your jury room and

1 you are looking at all the evidence and you are talking
2 amongst yourselves about what you heard and what you saw and
3 you are touching these exhibits, which will be given to you
4 to be taken back to the jury room, does what you heard and
5 what you saw start causing you to say I don't know, cause
6 you to stop and hesitate, cause you to start thinking, you
7 know, I really don't know.

8 The judge will instruct you that when it comes
9 time and y'all have to make a decision, the decision has to
10 be twelve-zero. It's twelve people. The two alternates
11 would be let go, but the twelve of y'all who are on the jury
12 would have to make a decision and it will all have to be the
13 same decision. It would either have to be guilty or not
14 guilty.

15 ~~Now, what is a reasonable doubt? Fancy words,~~
16 causes a reasonable person to hesitate to act. What does
17 that really mean? Well, let's start going through the
18 evidence, all right?

19 Item number one of our reasonable doubt, DNA. We
20 know that Judy Hinson's DNA is not on this shirt. We know
21 that Judy Hinson's DNA are not on these pants. We know that
22 Judy Hinson's DNA are not on these shoes. They are not on
23 the sole of the shoes. They are not on a knife that was
24 found outside the house. We know Casey Perkins' DNA is not
25 on this phone box that came from Mrs. Hinson's house. We

1 know that his DNA is not on this lighter. We know that DNA
2 is not this knife. We also know that it wasn't even tested
3 for it, the DNA was never tested on any of these objects.
4 And we heard from SLED that just by merely grabbing
5 something and putting it down, I have left my DNA on that
6 can, if they tested it, if they swabbed it. If they go back
7 and they do all those little fancy scientific tests, that to
8 be honest with you I don't understand and I have had two
9 people try to explain it to me. They could find my DNA on
10 this can. A test was never done on the hard evidence that
11 was left behind, or what the State contends as evidence that
12 was left behind.

13 We also heard yesterday from Mr. Hirsch, who
14 admittedly I hired to come talk to y'all, he gets paid more
15 money than a lot of us will ever get paid for doing
16 something, but that's what he does. He came down and he
17 testified that DNA can and has been used before to exonerate
18 people who have been proven guilty -- or have been found
19 guilty, excuse me. We also heard from SLED that DNA is very
20 reliable and it's unique to each person.

21 What else causes us to a reasonable doubt in this
22 case? Fingerprints. There were a lot of fingerprints that
23 were lifted at the scene. In some places there wasn't any
24 fingerprints. Casey Perkins' fingerprints were not on this
25 box. Casey Perkins' fingerprints, if I could handle it, was

1 not on this knife. Casey Perkins' fingerprints were not on
2 this lighter, and this is the lighter that was found outside
3 the window. Casey Perkins' fingerprints were not found on
4 the exterior office indoor window, I'm just using -- you
5 will have the report. The report was put into evidence that
6 were taken, and I'm just using the words -- when you are
7 looking through it you will see exterior office indoor
8 window. I'm not sure which part of the house that's on.
9 I'm sure on the exterior part of the house somewhere.

10 Fingerprints were found there, were tested and did
11 not come back Mr. Perkins. Interior back door window, the
12 fingerprints came back not to Mr. Perkins. Interior office
13 indoor window came back not to be Mr. Perkins. Exterior
14 front door -- front storm door, interior front storm door,
15 ~~and three different places on the storm window all were~~
16 tested for fingerprints that were found, but none of them
17 came back to Mr. Perkins.

18 The last one is the one where Ms. Skipper
19 testified where she had taken the partial palm prints -- or
20 she had tested the partial palm prints and she came back
21 inconclusive. Well, inconclusive is reasonable doubt. We
22 don't know one way or the other. We can't say it is him and
23 we can't say it isn't him.

24 I will tell you this about the partial palm
25 prints. The palm prints were lifted three years ago at the

1 time of the accident. When were they tested? Two months
2 ago. The State, with all of its resources - SLED, county
3 sheriff's office, all the folks down in Columbia who do all
4 these scientific testings - nobody had tested it.

5 The other thing we heard the SLED DNA lady says, I
6 think this is a lieutenant, Lieutenant Taylor saying, is
7 that DNA can be extracted from fingerprints. We have all
8 those fingerprints that we just went through. I mean, they
9 surely came back not to be Mr. Perkins, but they were never
10 tested for DNA either. Whose fingerprints are they?
11 Technology was -- I probably spelled that wrong, but
12 technology was available, but the testing wasn't done. If
13 it was done, we may not be here today on a trial for Mr.
14 Perkins.

15 What else do we have that's reasonable doubt?

16 Well, we had -- I can't remember her name. I feel bad.
17 It's the lady who testified before Mrs. Taylor testified.
18 She said that she works in the evidence lab and her job was
19 to take the evidence -- takes things that were collected
20 from the crime scene and go over it and see if she could
21 find anything on it that could be used to be tested. What
22 did she testify to? Well, she found hair on two different
23 pairs of blue jeans. She found hair on a fitted shirt that
24 came out of Ms. Hinson's room. She found hair on green
25 pants. She found hair on two pairs of black pants and she

1 found hair on the shirt. And what do we know about that
2 hair? It was never tested. She said that she couldn't
3 extract DNA based on what SLED procedures do, or what
4 SLED -- you know, procedures placed on SLED. But she also
5 said that that hair could be sent away to a private lab and
6 based on some DNA and some mitochondrial, which again I'm not
7 a scientist, that it could be extracted. Granted, they
8 would have to send it away and spend a little bit of money
9 to do it, it is possible that DNA could have been found in
10 that hair. That DNA then could have been tested. Was it
11 ever done? No. If it was tested, we might not be here
12 today.

13 What else do we know about the evidence that was
14 at this crime scene, another evidence that was collected?
15 ~~We know that Ms. Hinson's blood was never found on those~~
16 blue jeans. We know that Hinson's blood was not found on the
17 Mercedes shirt. We know that there wasn't any blood found
18 on these. And one person said they got a little bit of a
19 faint test of a blood when she field tested it. When the
20 DNA lady went down to try to test it for blood, it came back
21 there wasn't any blood that she could test. There is no
22 blood on either one of these soles that was tested for DNA
23 or blood.

24 You heard testimony from there was gasoline on a
25 shirt and there is gasoline on the pants. Did you hear any

1 testimony that there was gasoline on the shoes?

2 What else do we know about the blood? It was a
3 bloody scene. Ms. Hinson bled out, bled to death. And
4 there are pictures that have been entered into evidence.
5 You will get to look at them once you get back to the jury
6 room and there is a picture in there that shows a big puddle
7 of blood. There are pictures in there that show blood spots
8 in a couple other places, places that we have already talked
9 about this week - in the bathroom, on the doorknob, on the
10 back exterior wall, underneath the window. On the dresser
11 there is some blood splatter.

12 But what else do we hear testified to this week?
13 There wasn't any blood on the carpet going away from Ms.
14 Hinson's body, outside those spots that we have already
15 talked about. There weren't any bloody footprints. There
16 wasn't any bloody hand prints. There was no blood on the
17 white curtain. And you will see the pictures, the curtain
18 going out the back window that they say the exit window is
19 white. There is no blood on it. None was discovered by any
20 of the officers who examined that scene and who testified.
21 No blood on the blinds. Again, the blinds are white. You
22 will see it in the pictures. They all said we don't see any
23 blood on these blinds.

24 Casey's semen was not found on Mrs. Hinson. We
25 listened to that three-hour tape over two days. Casey said

1 that they were fondling. He said they were engaging in oral
2 sex. No semen was found. No DNA was found in her -- in any
3 of her private areas. I don't think that DNA was ever
4 tested -- they ever extracted from her mouth. I can't
5 remember. If you look at all the paperwork that's in there,
6 you will be able to see whether or not swabs were taken out
7 of the mouth. I don't think that there were. I know that
8 swabs were taken from her vagina and from her rectum. No
9 DNA ever came back to Casey Perkins.

10 Casey said they were kissing. What happens when
11 you kiss? You pass saliva. Neither was saliva ever found
12 on her? Neither was DNA found in her mouth, around her
13 mouth. I don't think they tested for it. Again, I can't be
14 one hundred percent positive. You will see the DNA report
15 on what things were tested. You can go back and you can
16 check yourself. You don't have to believe everything. When
17 you go back and look at it, you will see that I'm not lying,
18 but I don't think that they ever tested for it.

19 We heard that there was gasoline on these pants
20 and we heard there was gasoline on the shirt. What else did
21 we hear? We heard that Casey was working on Bob Rush's
22 truck. We heard that Casey went over to John Bernat's house
23 and he was working on John Bernat's vehicle, at least looked
24 at it. Isn't it logical to conclude that he could have
25 gotten automotive fluids on him looking in somebody's

1 engine? I know when I change my oil, my hands are almost
2 always covered in gasoline or covered in oil. Oftentimes I
3 get it on my shirt too. That's why I wear the same shirt
4 every time I go change my oil.

5 What did we hear the SLED expert testify to, the
6 man who came and testified about the gasoline? He testified
7 that gasoline can be used as a cleaning agent. Did we hear
8 anybody disprove that there was automotive fluid, oil, or
9 grease, or anything else on Casey's clothes?

10 What else do we have that's reasonable doubt in
11 this case? How about the State's investigation, or lack of
12 investigation. What didn't they do? Well, we heard that
13 blood was taken by a Dr. Jenkins and given over to the
14 coroner -- over to SLED, excuse me, to test for toxicology.
15 Well, what's the importance of toxicology? It's to find out
16 what's in her blood. It's part of an autopsy, a complete
17 autopsy. You want to make sure that you cover all your
18 bases. Will you find something? Maybe, maybe not, but you
19 do it to make sure that there is nothing in that, in the
20 blood. It was never done.

21 Fingerprints, they were never tested for DNA.
22 Again, we heard it could be done, but it wasn't done.

23 We heard that the lighter and knife were never
24 tested for DNA.

25 We heard from the coroner that no core body

1 temperature was ever taken. And what is the core body
2 temperature? It's just taking the temperature of the body
3 to determine -- to help try to determine the cause of death.
4 Excuse me, not the cause of death, the time of death. When
5 did it happen? How long has she been dead? We don't know.
6 It was never done.

7 The other thing. We listened to this three-hour
8 tape and at some point it sounds like that Casey and Sheriff
9 Benson are talking about a sketch, about what's in the
10 house, were you here or there, or somewhere such as that.
11 Do we have the copy of that sketch? How do we know that it
12 was Casey's drawing on the sketch and not Sheriff Benson?

13 But maybe the more important piece, the piece of
14 evidence that y'all are thinking about the most, his
15 ~~statement. That's what we have been listening to for the~~
16 last few days. There is reasonable doubt in that statement
17 as well. What do we know? You heard me ask a lot of
18 officers on cross examination, is there a difference between
19 interrogation and interview? And all of them, except for
20 one, agreed that there was a difference between
21 interrogation and interview. And then one just didn't want
22 to -- didn't like the word interrogation. He didn't like
23 that word. It had negative connotations.

24 Mr. Hirsch, when he testified yesterday, or
25 Professor Hirsch when he testified yesterday was in

1 agreement with the cops. Generally cops are trained in two
2 different types of methods. You do an interview. Then you
3 do an interrogation.

4 The interview is generally non-confrontational.
5 You are not trying to accuse somebody of doing anything.
6 You are not trying to say that they did it. You are just
7 trying to find facts, maybe establish where somebody was at
8 or where somebody wasn't at, establish who talked to who,
9 when they were talking to them, what they were doing.

10 We know this from the testimony that was given,
11 that on the 27th of August, 2005, which was the day Ms.
12 Hinson died, that Casey was interviewed. He was interviewed
13 by Detective Mitchell. We know that because, one, Detective
14 Mitchell testified, and, two, we have a statement somewhere
15 in all this paperwork that you will get that Casey signed
16 and gave to the officer that day. In that statement Casey
17 denies any involvement in the murder.

18 We know that Casey was interviewed in the morning
19 of the 28th, the next day, on a Sunday at his house. He was
20 there. His dad was there. Lieutenant -- Agent Wilkes
21 showed up, Agent Greene showed up, Sheriff Benson showed up.
22 The testimony was "it was an interview. We weren't there to
23 confront him or accuse him." In fact, they were there to
24 see if they could get him to come back down to the station.
25 There wasn't any testimony, that I can remember, that Casey

1 said anything that day that said he did it.

2 We also know this from listening to Agent Wilkes
3 testimony that that afternoon Casey came down to the
4 station -- actually that -- late that morning. It was about
5 11:50. 11:54 he came down to the station and he didn't
6 leave until 6:15, except for a short time where he left with
7 his mom and some police officers and went somewhere else
8 before they came back.

9 We also know that from Agent Wilkes that what may
10 have started out as an interview did not remain an
11 interview. It turned into an interrogation. As far as I
12 can remember testimony that was given, and, again, five days
13 y'all's memories are probably better than mine on some of
14 this stuff, what was said and what wasn't said, but if I
15 ~~remember correctly, Casey told us --- excuse me, Wilkes told~~
16 us that he thought Casey was guilty at that time. Based on
17 the nature of the conversation and where -- and just having
18 that conversation, he thought Casey was guilty. And, as
19 such, that interview turned into an interrogation.

20 What we see in the pattern of these interrogation
21 interviews with Casey is that only when he's confronted and
22 the questioning becomes more interrogation than interview
23 that his answers starts to change a little bit. Only then
24 does he become unsure of his answers.

25 But what else do we hear from Mr. Hirsch yesterday

1 when he testified? Well, anything from the officers. We
2 know that the interrogations are much more confrontational.
3 We know that he was interrogated on the 28th; again on the
4 29th twice, once by Agent Wilkes and Agent Greene and then
5 later on by Lieutenant Robertson; and then again on
6 November -- excuse me, September the 7th, when he talked to
7 Sheriff Benson.

8 What do we know about those interrogations? Well,
9 we know that the Reid Method was employed, or something
10 similar to the Reid Method. It may not be called the Reid
11 Method, but it's something similar. And what do we know
12 about the Reid Method? You do three things there. You
13 confront the suspect and tell them they are guilty.
14 Oftentimes you employ what's called minimization. Not all
15 the time, but oftentimes. And you isolate.

16 We heard from the officers that while they have
17 heard of the Reid Method, they may or may not agree that
18 this was the Reid Method, but all of their interrogation
19 techniques sounded similar to me. And all of them sounded
20 similar to what Mr. Hirsch had to testify to yesterday.
21 Sure, it may not be called the Reid Method, but they are all
22 about the same. It's just different names, same thing.

23 But what else do we know from Mr. Hirsch? The
24 Reid Method works too well. Not only do you get the guilty
25 to confess -- can confess, but it also perhaps can net the

1 innocent. We know that Casey was in a small windowless
2 room. We know that Casey was confronted with his guilt
3 during those numerous interrogations, even though he had
4 denied it, and even though the evidence up to this point
5 hasn't shown that Casey was involved. We have a knife, no
6 DNA. We have a lighter, no DNA. No blood, no fingerprints
7 on either one of them.

8 We have a canine officer, and I'll touch on this
9 in a little while, that said sure, maybe somebody came from
10 John Bernat's house to Judy's house and then from Judy's
11 house out to the road, but that's all we know. That doesn't
12 prove Casey did it. It doesn't prove Casey didn't do it.
13 It just says, you know, somebody walked that way. Who was
14 it? We don't know. He can't tell you who it is. The dog
15 ~~can't tell you who it is. All he can testify to is the~~
16 trail that the dog was following going in was the same trail
17 going out. And we got to take the word of a dog that we
18 can't -- we are trusting the dog's nose.

19 We don't know what happened during the
20 interrogations, most of them. We know what happened during
21 one of them, because we have a tape. What happened during
22 the rest of them? On the 28th, when he spent four hours,
23 five hours, however many hours it was down with Agent
24 Wilkes, what's going on down there? I don't know. All we
25 can listen to is -- all we can -- the only thing we know is

1 what Agent Wilkes testified to.

2 We know on the 7th of September, when Casey wanted
3 to talk to the solicitor -- or talk to the sheriff, he
4 wanted to talk to Benson, but he didn't know what -- he
5 didn't know any of the facts. The information had to be
6 pulled out of Casey. But we do know that Casey wanted the
7 death penalty. He said that a lot of times, "I want to
8 die," or "I want the death penalty," or something, you know,
9 words along those lines. In fact, just right when he
10 started talking, he said "just promise me that you will get
11 that for me and I'll tell you anything that you want to
12 know." The sheriff leaves the room, comes back. What do
13 they start talking about? "Well, Casey, in order for you to
14 get the death penalty, it's got to be some aggravating
15 circumstances, right?" But what are aggravating
16 circumstances? Well, the ones that were covered are CSC,
17 burglary, weapons used. There is others. Benson testified
18 to some yesterday, but these are the ones that are mentioned
19 in the tape.

20 The State alleges Judy Hinson died of some kind of
21 sexual crime. She was in her house. Maybe or maybe not a
22 knife was used. A number of times Benson during that
23 interview told Casey "you got to give me a reason to put you
24 in jail. I can't just put in jail because that's what you
25 want."

1 We know that Benson suggested things. Going back
2 to listening to the tape, Benson suggested things to Casey.
3 "Casey, you got blood on your hands." Well, that hadn't
4 been talked about before up and to that point?

5 "Casey, Ms. Hinson hemorrhaged." It hadn't been
6 talked about up to that point.

7 "Casey, how did you grab Ms. Hinson?" It hadn't
8 been any talk about having been grabbed.

9 "Casey, how did you strangle her?" Never been
10 talked about up to that point.

11 We know that during this interrogation on the 7th
12 that minimization was used. These are words that McNeil
13 used, and you can go back and you can listen to the tape,
14 you know, the live officer testified. "We got to cross
15 ~~charge bridge together. You are a good man."~~

16 Casey said "you know, Casey, he knows I ain't no
17 bad person."

18 McNeil, "ain't no doubt about that. We care what
19 happens to you. You were enjoying it. She was enjoying it.
20 You were excited and she was excited."

21 All of the statements by Casey that day, all of
22 them, were consistent, in that the sexual encounter started
23 off as consensual. She was rubbing her breasts. She was
24 touching herself. They engaged in some oral sex. They were
25 doing some petting.

1 We will talk about this in a little while, but if
2 that's true, if you decide that Casey Perkins was there and
3 statement his wasn't coerced, it wasn't false, he is still
4 not guilty of murder. He's guilty of something else and we
5 will talk about that.

6 We know this. Casey was fatalistic. I probably
7 shouldn't have used the word that nobody knew what the
8 meaning of it was, but I think we established pretty --
9 eventually what the word means. He wanted the death
10 penalty. He said numerous times he had no reason to live.
11 He said he hated life. He's worried about his parents.
12 That's fatalism. You have got no reason to live. You want
13 to die. We know Casey was fatalistic, or it sure sounded
14 like he was fatalistic.

15 We also know this, that Casey that day was being
16 held -- that Casey was originally arrested on something
17 besides Mrs. Hinson's murder. Could it have helped or led
18 to or contributed to his fatalism? I don't know. Is it
19 possible? It's up to y'all to decide that.

20 The judge is going to read to you sometime today,
21 hopefully sooner rather than later, the law. And one of the
22 things that he's going to read to you is a charge. They are
23 called charges, and there is different charges for different
24 topics. One is for murder, one for reasonable doubt.

25 There is a charge for what's called confession.

1 It basically says you got three things that you got to
2 decide on a confession. Did the defendant make the
3 statement? You now, I don't think I can sit here with a
4 straight face and told you he didn't make a statement,
5 because it's on the tape. We all heard it.

6 Was it voluntarily and of his own free will? I
7 think there is a lot of -- there is a lot of things in the
8 record to suggest that Casey was pressured and pushed during
9 that interview to give answers that he didn't want to give.
10 Y'all go back and you listen to the tapes. It suggests
11 strangulation, it was suggested to him that she bled to
12 death. It was suggested that -- or that she was bleeding.
13 It was suggested to him that she was hemorrhaging. It was
14 suggested to him that she was grabbed at some point. I
15 ~~think it was suggested that she fell off the bed, but again,~~
16 I can't -- that's one of the things I can't remember. Y'all
17 listened to it. Between the twelve of y'all I'm sure that
18 y'all can remember exactly what happened. If not, that's
19 why we have the tapes. You can also listen to it again
20 during deliberations.

21 And the third thing that y'all have to do is you
22 have to consider what weight do we do give to this. Well,
23 we know this. The Reid Method was used. We know that with
24 the Reid Method you are confronting somebody with their
25 guilt, even if they are saying they are not guilty. And, in

1 fact, you heard that the more they say I'm not guilty, the
2 more you confront them and heavier you confront them, the
3 harder you confront them. We know that he was in a little
4 room. He was isolated from his friends, his family. He was
5 in there for a while on all these interrogations. What
6 weight should -- the third thing is what weight should we
7 give that? And I would contest to you, or submit to you,
8 not a lot of weight.

9 If you disagree with me and you want to give
10 weight to it, that's fine. Which statement do we use? He
11 give six of them -- five or six of them over three days.
12 The last time on the three hour tape I came up with nine,
13 maybe seven, six, it's a lot, a lot of different versions of
14 what happened that day. Which one is the truth?

15 ~~The judge is also going to read -- this is the~~
16 second part of the law, the charges. Well, all right, we
17 are looking at it, but what practically do we have to look
18 at them and I have gone over a lot of these already. His
19 mental ability. We have had testimony from several folks
20 that he's not a -- he's below average. He's not a bright
21 fellow.

22 His background and his environment. Where was he
23 living? What were the conditions like? You will see the
24 pictures?

25 How long has been being held? We know that before

1 he confessed on the 7th - and by confessed, I loosely put
2 that in quotation marks - he's been in jail ten days. We
3 know that he was arrested for something that was not the
4 murder of Judy Hinson.

5 Look at the nature of the questioning. We have
6 already gone over them. I'm not going to -- you know, I'm
7 not going to spend time doing it again, but we already went
8 over the nature of the questioning.

9 What else causes us reasonable doubt as it relates
10 to these confessions? Well, there were rumors. Mary Wilson
11 said there were rumors about what was going on. It was the
12 talk of the neighborhood. What was being said, I don't
13 know. Zach Wilson says there were rumors. Don Wilson said
14 he told Casey about the murder. Robbie -- Robbie Rush heard
15 rumors -- or heard the neighborhood talking about the
16 murder. How could they not be talking about the murder?
17 Somebody dies on your street, I think it's only natural we
18 are all going to be talking about it, but you know Casey was
19 part of some of those conversations. Could he have heard
20 some of the details?

21 We know that Casey was below average intelligence.
22 Some people admitted it to you and some people didn't want
23 to. Y'all listened to the tape. Y'all could make your own
24 conclusions. Y'all could talk about it in the jury room.

25 We also had one person testify that he was on

1 Social Security, as far as he knew, because of mental
2 reasons. Casey himself on his tape told one of the officers
3 "I'm on Social Security. I can only make "x" amount of
4 dollars a year to keep getting my benefits." I think he
5 said \$300 a year "to keep getting my benefits."

6 What else do we have as reasonable doubt? No
7 probable cause. Several officers testified there was not
8 enough probable cause until September the 7th for them to
9 have ever arrested Casey Perkins for murder. We know he got
10 arrested on another charge. Did the arrest contribute was
11 it a factor in his overall despair? Again, y'all have to
12 draw your own conclusions.

13 Let's talk about some of the other evidence. We
14 haven't talked about this too much. We heard from a canine
15 officer. He says that the trail came from John Bernat's
16 house, but he could only say the trail went and exited on
17 the road. But what do we know about Debruhl Road? It's a
18 cul-de-sac. There is only one way in. There is only one
19 way out.

20 What else did the officer testify to? Officer,
21 did you see any footprints on the ground when you were doing
22 your little -- I think he called it a cut-back or something
23 when he was cutting back to check the perimeter of the --
24 "did you find any footprints or bloody grass?"

25 "No." The only thing he saw was bent grass. He

1 can't testify to how long that's been there. He says it
2 looked like the dew. He said that he could tell there was
3 bent grass and footprints because of dew -- because there
4 was dew on the grass and dew had been disturbed by the
5 footprints. When did the dew come about? When do we get
6 our dew in the mornings?

7 We know this from Casey's statement that he
8 consistently said "I never went through the grass.

9 "Why not?

10 "I'm scared of snakes."

11 And last, and this is important, is the DNA. We
12 have a timeline. We have heard from witnesses this week who
13 gave us the timeline. Casey said -- or excuse me, John said
14 Casey left his house at 1:27. Casey told the sheriff he
15 left about 1:30. 1:27, 1:30, somewhere in that very small
16 time frame.

17 We know that Al and Danielle and Amanda got home
18 about 1:45 or 1:46. How do we know this? Because Al
19 testified he -- I can't remember if he said 1:45 or 1:46, or
20 if he said it was 1:45 or 1:45, but he said he saw on the
21 clock in the car as they were exiting the car. We know they
22 walked the dogs at some point. That took 15 minutes,
23 according to Al. And we know that they ate and that took
24 about 20 minutes. And we know that when you look at the
25 telephone records, you will see it on the telephone records,

1 they are in evidence, the 911 call was placed at 2:19.
2 Well, 35 minutes, 1:15 to 2:20. His times for him sounds
3 about right.

4 Amanda said it was about 1:30. She said she had
5 laid down for about ten minutes before her boyfriend called.
6 Her boyfriend called at 1:52. Again we know this for a fact
7 because it's in the telephone records that Verizon keeps.
8 Well, she had laid down for ten minutes, 1:30 may not be it,
9 but 1:42 sounds about right.

10 I asked several witnesses how long it took to walk
11 up and down driveways. It seems kind of like a silly
12 question. Danielle said it took about two to three minutes
13 to go up her driveway -- or from her house to her mailbox
14 and back.

15 It's a pretty detailed map. I don't know where
16 the solicitor got it, but if I had to guess, I would
17 probably say Google. It doesn't matter. It's a pretty
18 detailed map. You see long driveways. Ms. Hinson's house.
19 John Bernat's house. We have got driveways. We have
20 pictures of trailers. We have all seen -- we have all seen
21 trailers. We can estimate the distance of trailers. We can
22 estimate the distances based on just looking at the
23 trailers. Two to three minutes doesn't sound unreasonable
24 to go to her mailbox and back.

25 I asked John Bernat how long it take to get to

1 your mailbox. He couldn't give me a time, but I do believe
2 he said a couple minutes. Couple minutes and two to three
3 minutes gives us five, six minutes, right?

4 What else do we know about the timeline?
5 According to Dr. Jenkins, the pathologist who does this for
6 a living, lividity takes one to three hours. So what is
7 lividity? It's when a body is laying on the ground who is
8 deceased, the blood starts flowing to the lowest point. So
9 if you are lying on the ground on your back, your lividity
10 is on your back, that's the lowest point to the ground. All
11 your blood is going to drain to your back. If you are
12 laying on your stomach, it's all going to drain to your
13 front. According to Dr. Jenkins, it takes one to three
14 hours for it to start -- or for it to occur.

15 ~~What did the coroner say? He said he saw lividity~~
16 at 2:45 when he showed up. This goes back to the why do we
17 do a core body temperature? So we can establish a time of
18 death. You heard Danielle testify that her mom's eyes were
19 cloudy. She never responded to CPR. Nobody knows how long
20 she was there.

21 I think only about 19, 20 minute window, but to be
22 honest with you, it's probably less than that once you start
23 factoring in travel time, trying to get into the house,
24 trying to get out of the house, trying to do the things that
25 they said he did to Mrs. Hinson before she died, pretty soon

1 the window is this big. Is there enough time for Casey
2 Perkins to have left John Bernat's house, walked down the
3 driveway, up the driveway, get into the house, do all the
4 things he said he did to Ms. Hinson, get out of the house
5 before Al and Danielle and Amanda came home?

6 We heard Danielle said that she heard some banging
7 or some noise going on. The door was closed. We don't know
8 what it was. She said it could have been the wind blowing
9 the blinds against the house. Again, you will see the
10 pictures. The blinds are hanging outside the window. Very
11 easy for the window to come by and just gently rocked it,
12 tapped them up against the side of a vinyl house with vinyl
13 blinds. It's going to make noise.

14 DNA, fingerprints, saliva, blood, timeline, it
15 ~~simply does not -- there is just too much reasonable doubt~~
16 there for us to say Casey Perkins killed Mrs. Hinson.

17 The judge is going to give you two charges. The
18 first charge -- and they are in no particular order. He has
19 to put them down on a piece of paper. It doesn't mean
20 anything. You look at one, you look at the next one.

21 Did he kill Mrs. Hinson? Did he murder her? He
22 left John Bernat's house. He had been drinking all day and
23 he was going home. Where is the malice? Where is the --
24 you know, let me get my rule book so I don't misstate the
25 law here.

1 The judge will read all this law to you. I
2 just -- and in any type of crime, whether it be murder, or
3 burglary, or even speeding, there is certain things that the
4 State has to show. These are called elements. It's just a
5 fancy way to saying there is numbered things - one, two,
6 three, four. Every case has different elements.

7 Murder is defined as the willful felonious killing
8 of a human being by a human being with malice aforethought
9 and that malice is either expressed or implied.

10 I don't see it. There is too much reasonable
11 doubt for to us think Casey Perkins did this.

12 The judge will give you a second charge called
13 involuntary manslaughter. "We listened to the tape. We
14 think Casey was there. He says he was there. You know, we
15 ~~are going to listen to it. We are going to believe Casey~~
16 was there."

17 Again, let me get my rule so I'm not going to
18 misstate anything here.

19 Again, I'm not telling you anything that the judge
20 ain't going to tell you. Involuntary manslaughter. There
21 is two ways to get to it. I contend to you one of them
22 isn't even an issue.

23 The first one, unintentional killing of another
24 without malice, but while engaged in an unlawful activity,
25 but naturally tending to cause death or great bodily harm.

1 Key words, unintentional killing while engaged in an
2 unlawful activity. Not an issue. We are not even arguing
3 that, all right?

4 Second one: The unintentional killing of another.
5 Unintentional killing of another without malice, but while
6 engaged in a lawful activity with reckless disregard for the
7 safety of others. All right.

8 You don't mean to do something, but what you are
9 doing you are allowed to do and as a result somebody dies.

10 Casey Perkins says that they were engaging in some
11 really kinky sex. All right. He said he stuck his hand up
12 into her. We heard from the stand from Sheriff Benson there
13 is a sexual practice, he's heard of it before, called
14 fisting. One sticks one's hand in a woman's vagina. One
15 sticks one's hand up somebody's anus. Men do it on each
16 other in homosexual activity. Women do it on each other
17 in -- I guess that's homosexual activity too. Heterosexuals
18 can do it on each other. Kinky? Yes. Lawful? Yes.
19 Consensual sexual activity.

20 We heard consistently Casey saying "I ain't no
21 killer. I didn't mean to kill her. She wanted me to stick
22 my hand inside her. I did. When I pulled it out, there was
23 bleeding." I would submit to you that that -- if that's
24 what -- if that's the evidence that you want to believe, and
25 I think we have given lots of reasons why that testimony

1 isn't reliable to begin with, but if that statement is what
2 you want to believe, that this is the charge that you have
3 to come back with on a guilty plea -- or on a guilty
4 finding. He didn't mean to kill her. They were engaging in
5 some stuff that makes you want to go huh, but it's
6 consensual, it's legal, so I think that's the law for people
7 doing that. He just did it wrong and as a result she died.

8 But I would submit to you that after listening to
9 the evidence, that there is simply not enough forensic
10 evidence - DNA, blood, anything else - that links him to her
11 murder and that the statement that he gave, he did not give
12 freely and voluntarily; that there is too many problems with
13 it, for all reasons we heard from Mr. Hirsch yesterday about
14 other ones; for all the reasons that we heard about
15 ~~listening on the tape and the cross-examination about how~~
16 leading questions were asked and minimization was given and
17 it was being confronted and his intelligence plays into all
18 of this, he simply -- what he says is not true. He was
19 saying something to get -- to help out his parents, which is
20 what he says on that tape.

21 I thank y'all for y'all's attention this week. I
22 know it's been long and I know that some of the details that
23 you have had to listen to have been gory, but when you go
24 back to the jury room, I would ask that y'all sit down and
25 you go over all the evidence. And if the evidence starts

1 making you hesitate, that you come back with not guilty.

2 Thank you.

3 THE COURT: Thank you Mr. Dunn.

4 Solicitor Barfield.

5 MR. BARFIELD: It's not very high tech, but that's
6 what I'm going to use. This ain't very high tech either,
7 but that's what I'm going to use. A picture is worth a
8 million words.

9 It's been a long tedious week and much of what you
10 have heard has been pretty interesting. A good bit of what
11 you heard has been pretty boring. Every bit of what you
12 heard has been absolutely necessary for you to know what
13 this case is about. I told you at the front end that it has
14 to be that way so that you can know what you need to know.

15 I don't have a whole lot of faith in the words of
16 the lawyer, particularly me right now, doing anything to
17 make up your mind in this case, but it has been a long trial
18 and you heard a lot of evidence and what I want to do is
19 just remind you of some things, I guess. And, of course,
20 Mr. Dunn has reminded you of some things too, and I don't
21 suggest that you should ignore what he tells you. You have
22 got to hear everything and everybody and then figure it all
23 out, and it's not easy.

24 Mr. Hirsch is a nice guy. He's a smart guy. He's
25 a lawyer, and I'm certainly not going to criticize him,

1 because I'm a lawyer, but he's a lawyer. He is not a Ph.D..
2 He is not a medical doctor. He is not a psychiatrist. He
3 is not a psychologist. He is not a mental health worker or
4 professional. He is not a sociologist. He's a lawyer who
5 has read and studied stuff that -- mostly stuff that other
6 people have put together. He's a hired gun, and that sounds
7 negative and I guess I mean it in a negative way, but he's a
8 hired gun. He has a bias, and he used the words. He said
9 "I'm biased." He is. He makes his living and has devoted
10 the last five years of his life to being a proponent of the
11 theory that people make up confessions when they are, in
12 fact, not guilty, and he let's himself being hired out by
13 people who want to espouse that view. And he told you that
14 he's been hired out 24 times to represent folks on the
15 issue. And that 23 of those 24 times he was hired by a
16 defendant presumably who was claiming to have falsely
17 confessed to a crime. He gets paid for it, and everybody
18 should get paid. Everybody who does work should get paid,
19 but he gets paid for it and he makes a living at it. And if
20 you are not good at it and don't come across as being good
21 at it, then you are not going to make a decent living at it.
22 And he told you that he's looking for about \$6,000 for being
23 here yesterday for whatever he did on this case. You can
24 consider that. I'm not telling you that he's getting up
25 here lying. I'm not suggesting that at all. I'm not

1 suggesting that he is getting \$6,000 to come in here and
2 make up something. He probably truly believes what he told
3 you yesterday, but it's sort of smoke and mirrors. They
4 just hung something out there. They came in here and threw
5 something against the wall hoping that it would stick,
6 because that's all there is. You have got a confession,
7 which you heard ad nauseam. How do we get out of the
8 confession? How do we avoid the jury saying my God, he
9 confessed. Well, the only thing they can do is say the
10 confession is bogus, false, untrue, so that's what they do.
11 They get this guy to come in here and pay him money to
12 impart his knowledge to you and sling it up there against
13 the wall and hope it sticks. And I'll tell you, ladies and
14 gentlemen, it didn't stick. Let's talk about it briefly.

15 ~~Mr. Hirsch told you that in about ten years 250~~
16 confessions have been identified as false confessions. He
17 told you that it's hard to identify what a false confession
18 is. And he couldn't give you any kind of a number about how
19 many confessions have been taken by law enforcement officers
20 in the United States of America during that ten year period,
21 so we don't know whether 250 is a lot or not.

22 He purports to argue that it takes specialized
23 knowledge to deal with the issue that maybe people falsely
24 confess. Well, I submit to you that it's common knowledge
25 that people lie all the time about stuff, but, oh, it's hard

1 to tell who is falsely confessing, and he can't tell you how
2 many of the millions of other confessions -- he can't tell
3 you how many millions of other confessions there have been
4 during that same time period.

5 He told you that -- he explained to you how they
6 identify what a false confession is. And I found this very
7 interesting, and I hope that you found it very interesting.
8 One of the ways they identify that a confession is false is
9 by the apprehension, arrest, or whatever, of the real guy.
10 The real guy. Well, remember now, and he also told you how
11 they get the real guy. And this is where it gets to be
12 circular. They get the real guy because the real guy,
13 what's he do? He confesses. Oh. So the real guy
14 confesses. And that tells us that the unreal guy's
15 confession is false.

16 Well, I next asked him "how do you know that the
17 real guy's confession is a real truthful confession?" What
18 did he say? Well, one way is does it match the crime, the
19 details of the case, the evidence uncovered. We are right
20 back where we started from, with that man over there and his
21 confession, which matches the details of the crime. We will
22 talk more about that in a minute.

23 He talked to you about the embowed Reid Method of
24 interrogation. I am not going to stand up here for a minute
25 and tell you that the police don't use the techniques at

1 their disposal to try to get people to confess. But my
2 argument to you is what they want is to get the people who
3 committed crimes to admit committing those crimes and to
4 give them the information about the commission of the crime.

5 You might conclude today, and I hope that you
6 don't, but you might conclude that the police are bad, that
7 they are out just to get somebody to admit it and to close a
8 case, and they are all about convicting innocent people.
9 Don't conclude that, because it's not true. You have
10 seen -- Mr. Dunn talked about all the resources at the
11 disposal of the State of South Carolina on the case of the
12 State of South Carolina versus Casey Ray Perkins. Well,
13 he's absolutely right. The government has some resources.
14 Of course, these days if I read the newspaper, the resources
15 are being pulled back every day and budgets are being cut
16 every day. We have got resources. We have got multiple
17 police agencies who investigate, but these guys are
18 dedicated to what they do and they try to get to the truth
19 and solve crimes and bring offenders to justice. It's not
20 just about bringing in the Army and trying to round up
21 people and convict innocent people. They are dedicated to
22 what they do. You heard all the efforts that went into this
23 investigation. That's not -- that's a good thing. That's
24 not a bad thing. Don't conclude it's a bad thing. These
25 guys are dedicated. They work hard and they work around the

1 clock. They get called at 2:20 in the morning and they stay
2 out there all the rest of the morning and all the next day
3 and they try to figure out whether Casey Perkins did it or
4 not and they talked to everybody in the neighborhood. They
5 do everything they can to get the truth. You ought to be
6 offended that the suggestion is in this case that we are
7 just trying to set people up. It's not what happens.

8 The Reid -- the involved Reid Method. What did
9 Mr. Hirsch tell you about it? Well, you know, it's designed
10 to basically isolate people and coerce them into confessing.

11 Well, one thing -- this is probably -- this --
12 this is the most important thing I'm going to say in my
13 argument and it's got not a darn thing to do with this case.
14 Use your common sense. Remember that. If you don't
15 ~~remember another word I say, when you go back there and try~~
16 to reach a verdict, use your common sense.

17 You saw a little bit of video. You heard hours
18 and hours and hours of audio. There is nothing on the tapes
19 that you heard, there is no yelling -- I'm yelling and
20 screaming more now than when they were trying to get a
21 murderer to confess. There is no yelling and screaming.
22 There is no banging on the table. There is no snatching him
23 up and putting -- you watch too much TV. The interrogator
24 grab him up and snatch him into the corner. It doesn't
25 happen. It didn't happen.

1 And another thing. I'll forget. I'll wander all
2 over the place. Before I forget this, you heard testimony
3 that there was no pre-interrogation period that's not
4 videotaped. You saw it all. Now, there is no tape of the
5 other interviews that were done with Casey Perkins, which I
6 submit to you aren't technically confessions, but what you
7 saw and heard is the whole thing. We ain't hiding anything
8 from you. There wasn't any 30 minutes of banging him around
9 and, you know, kind of practicing before they go on tape.
10 There wasn't -- there wasn't a first take and a second take.
11 You heard the first take.

12 Robbie Benson. Just as calm and gentle and soft
13 spoken the whole time.

14 James McNeil. He's a big old boy. Not yelling or
15 screaming. Not trying to intimidate anybody.

16 Maybe they are trying to trick him a little bit
17 into just, you know, come on out with it, but nobody is
18 jacking Casey Perkins around.

19 Casey Perkins, I don't know how many -- you can't
20 tell because you can't see, but how many times are they
21 smoking cigarettes and drinking Mountain Dews and drinking
22 coffee? And you think about the first part that you saw of
23 the video. Now, he's in an orange jumpsuit, and who wants
24 to be in an orange jumpsuit, but they bring him in and it's
25 almost like the doggone President of the United States is

1 coming into the room. They get up. They seat him. He's
2 got the handcuffs on. They take them off. Somebody knocks
3 on the door, a cup of coffee is set on the table. Cream and
4 sugar, sir? They are doing everything in the world they can
5 not to make him feel coerced. Breaks. Multiple breaks.

6 What else is significant about that interrogation?
7 They have got a dead lady. Let's talk more about that
8 later. They have got a dead lady by the bed in her house.
9 It's a murder. There ain't no doubt about it, and they are
10 within gnats of you know what of nailing him down for it.
11 And he's not really said anything that's going to be
12 construed as a confession up to that point. And he calls
13 Ms. Dunifer over and says "take this to the sheriff." And
14 Robbie Benson gets a note handwritten by Casey Perkins
15 saying "I want to talk." Man, do you reckon they got
16 excited when they got that note? We are going to solve this
17 thing now because Casey is going to do the right thing and
18 it's going to be over.

19 What's he do during that interrogation? Casey is
20 not giving it up. He's just not telling him, and it's
21 obvious that he's not telling him. We are so close. Robbie
22 Benson is saying we are so close, but he is willing to say
23 Casey, if you ain't going to confess -- he doesn't say it in
24 those words. If you are not going to tell me what happened,
25 then we are wasting our time. Go on back to the other side.

1 He risked the prospect that Casey would have actually gotten
2 up and said take me to the back and there would never have
3 been another conversation with Casey Perkins. Is that an
4 interrogation that's designed to overbear his will and
5 extract a false confession out of him? No, he was willing
6 to -- Robbie Benson was willing to give the whole thing up,
7 but Casey hung in there and finally told him. You got to
8 ask yourself.

9 Mr. Hirsch talked a little bit about why innocent
10 people confess. I want to talk about why a guilty person
11 confessed - Casey Perkins. Two or three different reasons,
12 and I'm going to tell you this. I'm going to say this now
13 and I hope I remember to say it again in a little bit. It
14 is the State's contention, and I submit to you that the
15 ~~evidence shows and will convince you beyond a reasonable~~
16 doubt, that not one single thing that occurred in Judy
17 Hinson's house, other than perhaps if it happened this way,
18 her answering the door and opening it was consensual. I'm
19 going to tell you now we submit that none of it is
20 consensual, and I'm going to talk about it in a little bit
21 of detail in just a little bit.

22 Casey Perkins, and I'm using his words, not mine.
23 I'm paraphrasing, but I'm using his words. This man over
24 here with the sweater on with the flowery tie is sick and he
25 shouldn't be out here among us. He told you that. He's

1 sick. What did he do? He did sick stuff. This whole event
2 is a huge shame to him. All the various parts of it are a
3 huge shame to him. And you can see that in the whole tape
4 that you heard, because -- well, first of all, I submit to
5 you that he's got this burning desire inside of him to
6 confess. He's got -- he's sick and he's got to get it off
7 his chest, and so he sends -- it's kind of like jumping off
8 the diving board. I can't stand diving boards. But, you
9 know, he's standing there on the end of that diving board
10 and he wants to jump, because he wants to be in the water
11 but it's just hard as crap to just pitch yourself off. And
12 he takes that first step by sending a note to the sheriff.
13 And he gets in there and it just -- he just -- he's going to
14 talk, but he just can't bring himself to tell all this nasty
15 stuff. ~~In several respects it's nasty in his mind. And so~~
16 the whole tape is a progression from telling enough, to feel
17 a little bit of satisfaction that he's confessing, but
18 holding back the nasty stuff that he doesn't want anybody to
19 even no, to eventually coming around and telling it the way
20 it happened.

21 What was so bad about it with Casey Perkins? Mr.
22 Dunn and I, he did and I will, tell you things that we
23 submit are on the tape. You remember it from what you heard
24 and what you saw. And if I misquote anything, rely on what
25 your memory is. He can't have normal relationships with

1 women of his own age or peers. He said that. He said words
2 to the effect of I couldn't have relationships -- so far
3 stuff not working out with the rest of the women. He --
4 he --

5 I'll say another real quick thing. When I started
6 in this business, I never imagined that I would be standing
7 in front of jurors and saying things that my momma would
8 just cringe at me saying, but he wasn't getting any with
9 normal aged people.

10 How did he describe Ms. Hinson over and over and
11 over? First of all, the autopsy shows she was 57 years old
12 and she's 5'4" tall, and I'm fixing to really step on
13 somebody's toes somewhere in this courtroom, but she weighed
14 180 some pounds. She was kind of an older dumpy woman,
15 okay? Much older than he is. That's what the autopsy
16 showed. And his comments during the tape he continually
17 makes reference to her age. He's ashamed and embarrassed
18 that he's resorting to an older woman for his sexual desires
19 or his violent desires. "Old enough to be my grandma. Just
20 a sex thing. Didn't go there to rape the old woman." His
21 words. "Not bad looking for a woman to be 50 something.
22 For a 50 year old woman she could do pretty good. Looked
23 good for a woman her size and all that." Sexy body for a
24 woman his age. I ain't making this up. It's him. Why does
25 he keep saying that? Because he's -- he's using the embowed

1 Reid Method. He's trying to minimize what he's done. He's
2 admitting it, but he's trying to make it sound not so bad,
3 but it's killing him, because he's screwing this 57 year old
4 lady, or wants to.

5 He then starts telling you some other things that
6 tells you, in fact, that he's ashamed of it and that it's
7 disgusting even to him and would be disgusting to people who
8 find out about it. What does he say? "She was oral sexing
9 me." It sounds sick, referring to their age difference.
10 And, again, the State contends there was no consensual sex
11 and wasn't doing anything to him. This was how he was
12 justifying explaining being involved in sex with this lady.
13 He said he was kissing on her. "It was sick. I have got
14 mental problems. It's disgusting. I ain't no freak, man."
15 ~~Why is he saying that? Because he thinks people are going~~
16 ~~to think he's a freak for having sex with a 57 year old~~
17 ~~woman.~~

18 "I wanted to have sex with her. And then I said I
19 better not. And then I said whatever comes and I did." Why
20 does he say that? Because he thinks people would think
21 that's not normal, and it's not, maybe.

22 At one point he said "I concluded for myself. She
23 won't tell and I won't tell."

24 THE COURT: Yes, do you need to take a break?

25 UNKNOWN JUROR: Yes.

1 THE COURT: All right. Let's take about a five
2 minute break, ladies and gentlemen. I'll tell you one
3 thing, though. You can't discuss the case. Okay. We will
4 take a five minute break.

5 (The following takes place outside the presence of
6 the jury panel).

7 THE COURT: I have never had jurors ask for a
8 break.

9 MR. DUNN: I have one issue, Your Honor.

10 MR. BARFIELD: I hope you stopped the clock.

11 MR. DUNN: There was a large redaction out of that
12 tape and I'm not sure how close the solicitor came into that
13 redaction by talking about other women, but I would ask that
14 there is no more responses beyond what he said, because I
15 think that sort of went into -- I'm saying it's in the tape

16 he talked about other women. Then he started getting into
17 his wife, or his ex-wife, or somebody accusing him of stuff.

18 MR. BARFIELD: There were.

19 MR. DUNN: I don't remember how far -- you know,
20 how much of it was redacted, where he is at. I just ask the
21 line be drawn so we are not talking about the other women.

22 MR. BARFIELD: And I agree.

23 MR. DUNN: I can't remember what came in and what
24 we redacted. It's all --

25 MR. BARFIELD: This was not a reference to

1 problems with other women, but -- and I'll show you where I
2 think it was, if I can find it.

3 MR. DUNN: That's fine. We are -- I'm not going
4 to --

5 MR. BARFIELD: I moved on.

6 MR. DUNN: He did move on, which is why I didn't
7 jump up and start raise an objection. I just want to make
8 sure that -- we do have a break during closing, which I have
9 never done before.

10 (Whereupon, proceedings were recessed)

11 (Whereupon, proceedings were reconvened)

12 THE COURT: Bring the jury in.

13 (The following takes place in the presence of the
14 jury panel)

15 ~~THE COURT: Welcome back, ladies and gentlemen.~~

16 Before the solicitor resumes his closing with you, let me
17 tell what I think we are going to do. After he finishes,
18 I'm going to probably send y'all all to the jury room with a
19 menu and ask you to select something that you would like for
20 lunch, all fourteen of you. Once you do that, bring you
21 back in and at that time I will give you -- I'll charge you
22 about the law, so the food would be on the way.

23 Solicitor.

24 MR. BARFIELD: If the court, please.

25 Mr. Dunn.

1 The gist of where I was is he's ashamed of what
2 he's done.

3 The last thing I think I said is that he made some
4 comment at some point that she wouldn't tell and he wouldn't
5 tell. Something that he didn't want anybody else to know.

6 He even tried to justify why he was involved in
7 sexual acts with Judy Hinson. What did he say? "She wasn't
8 getting any." He said that. He felt sorry for her. He was
9 going to be her sexual satisfaction is what he was telling.
10 It's not true. I mean, that's not -- that's not the way it
11 happened, but he's justifying what he had done and giving
12 some explanation for it, since he's now telling about it.

13 What else was he ashamed and embarrassed about?
14 Again, momma, close your ears, he couldn't get it up. He
15 could not get an erection. That's his words, he couldn't
16 get it up. He goes there -- and I'm going to talk more
17 about why he went there in a little bit, but he goes there
18 to have sex with this lady and it ain't happening. He can't
19 get an erection, so he had to resort to something else to
20 satisfy whatever desires he carried there that night or that
21 morning, and that was fisting her. Pretty nasty. I don't
22 just think it's pretty nasty. It doesn't matter what I
23 think what it is, by the way, but he's describing it is
24 pretty nasty; that he's disgusted by the way he violated her
25 sexually. He said he shoved his hand in. "It was freaky.

1 It was wicked. It was disgusting." He told you when he
2 left and ended up back at his parents' house and was
3 thinking about it, he almost threw up. He did it and he
4 meant to do it, but he's so disgusted by it and he doesn't
5 want to tell about it. That's why we have this three hour
6 conversation with him.

7 How else do we know that he wanted to confess, but
8 it was just a long process? The whole thing about the
9 videotape. Lots of discussion about the videotape. He
10 didn't want the interview videotaped. This is some of the
11 stuff he said about that. And let me say this to you.
12 Robbie Benson acceded to his wishes. He didn't want the
13 tape on, so they cut the videotape off. Is that coercive
14 interrogation techniques? No. No. Casey Perkins got
15 everything he asked for during that interview. He said "do
16 I have to," referring to the videotape, "do I have to" to
17 Benson. "Can we just keep it between us? I'll tell you
18 about it, but I don't want anybody else to know." He's
19 getting it off his chest, but he doesn't want the world to
20 know. "I don't feel right on camera. I don't want it to
21 get out nowhere. Will it be used in court? Will it be used
22 in court if I plead guilty? My parents don't need to know.
23 Don't tell my parents."

24 Even when he got to the part about what he did
25 with his jeans and his shirt, he said -- and this is major,

1 he said "Benson, let me take you out there and show you
2 where it is and let you get it so my momma and daddy don't
3 have to know." He is so embarrassed and so ashamed of what
4 he had done, but he did confess. And as I said when I first
5 started talking about the confession, he confessed, and he
6 truthfully confessed. It was just so bad for him to tell
7 it, that it took that long for him to get around to
8 providing the details about what actually happened. It's
9 not -- it's not a false confession, okay?

10 This is the biggie from the State's perspective.
11 I said it a minute ago. Nothing about this event with Judy
12 Hinson was consensual. Now, she knew who Casey Perkins was,
13 presumably. He testified that he had been there. The
14 daughters knew who he was. He said he had been there once.
15 I believe that Danielle said that he came there once a year
16 or so ago to retrieve his doing. It was known that his
17 parents lived in the neighborhood. They knew each other,
18 but I submit to you that Judy Hinson is never going to bring
19 that man in her house and have sex with him voluntarily and
20 consensually. That ain't the way it happened.

21 Now, the only thing that perhaps was consensual
22 about the whole thing is, and he's probably telling the
23 truth when he says he walked up to the house and went to the
24 front door. He says, you know, the door just magically
25 opened. Well -- and we don't really know. I mean, he gave

1 different versions of that, but she probably saw him and
2 recognized him and perhaps opened the door. But I submit to
3 you from that point on -- and there might have been a little
4 chat chit. There might have been back and forth her to him
5 why you out here whatever hour this is in the morning? But
6 everything else is not consensual, ladies and gentlemen, I
7 submit.

8 How do we know that? He wants it to be
9 consensual. At least starting off consensual, because he,
10 again, is minimizing. If he says "well, it started off
11 consensual and it got out of hand," then it ain't quite as
12 bad as "I went there to take sex from that lady in a violent
13 act." So how does he explain that? He says that this 57
14 year old lady is walking around the neighborhood flashing
15 ~~people and rubbing herself and flirting with him and that~~
16 she wanted it. Well, he explains that by explaining why he
17 went to the house.

18 What did he say about going to the house? Well,
19 first of all, I submit to you that he knew her. He kept an
20 eye on her. He knew her goings and comings. He had seen
21 her out in the yard before, maybe, and he started developing
22 a plan that he was going to get him some of that, because he
23 wasn't getting it anywhere else. Okay. Saw the light on
24 that night. He went over there.

25 Now, it's interesting. Let's talk about the light

1 a minute. You know, I don't know where he said he saw the
2 light on from, but her house is up the driveway and up --
3 you know, down an L driveway, and I think the testimony was
4 that's front of the house and that's the back of the house,
5 but you don't see her house from Debruhl Road, I don't
6 believe. So he doesn't know there is a light on unless he
7 is walking through the woods. We will come back to that in
8 just a little bit, but he sees the house on and he goes over
9 there. And he's going over there because he's going to get
10 him some. I think he said something to the effect that he
11 went by there -- by her house hoping to have his chance.
12 Well, I would argue to you that he went by there hoping to
13 have his chance for sex with her. He said it went through
14 his head. He said he knew it would be an easy thing. And I
15 don't, again, argue to you -- I'm arguing to you that it's
16 not to convince her to do it, but just to get it, to take
17 it. Now, how he got in I don't know. I gave you a scenario
18 a minute ago; knocked on the door, she knew him, she opened
19 the door, from there on who knows, but it wasn't consensual.
20 He had a knife. There is no contention that Casey
21 Perkins ever cut Judy Hinson with this knife. None of that
22 terrible injury that Dr. Jenkins testified about was done
23 with this knife. What's the significance of the knife? He
24 arms himself with this knife to threaten Judy Hinson to get
25 what he's come there to take. He admitted to Michael Greene

1 that he got this knife out of the kitchen at the Hinson
2 house. Danielle said, "yeah, this is one of our knives that
3 we kept in our kitchen." This knife was found under the
4 window that Casey Perkins jumped out of when he left the
5 scene, so he's got a knife. He's armed himself. He sticks
6 it in his pocket. I don't know what he does with it, but
7 he's got a knife. She knows he's got a knife. He is going
8 to get what he came for because she's not going to let him
9 slice her up.

10 Again, not consensual. He couldn't get an
11 erection. He's going there to have vaginal intercourse with
12 her and it won't work. And, of course, she's not wanting to
13 do it. She struggled. She resisted. She said no. He
14 wouldn't take no for an answer, but he couldn't get an
15 erection. He got this far -- he said "I got this far," but
16 he couldn't do it because he couldn't get an erection and he
17 wasn't going to take no for an answer, so then he uses his
18 hand and his fist. He pursued a different course. He said
19 he grabbed her throat, he choked her out. He f-in choked
20 her out. He got this far but he couldn't and he wasn't
21 going to take no for an answer.

22 Now, look at the injuries and the scene to decide
23 if you think that any of this was consensual.

24 What did Dr. Jenkins tell you? Let's talk about
25 the not real bad stuff first. Abrasion below her eyes.

1 Abrasions and contusion below her eyes.

2 Petechia. She had been choked, which causes those
3 small blood vessels in the eyes to burst. Little dots, red
4 dots in your eyes, that don't happen consensually. This was
5 not rough sex.

6 Tooth marks on her lips. How did that happen?
7 He's not just biting her lips. He's got her hand over her
8 mouth. He's trying to keep her quiet or to keep her from
9 breathing, perhaps.

10 She vomits. Anybody volunteer to vomit? Well,
11 maybe you feel bad enough sometimes that you will, but that
12 wasn't consensual. This wasn't her idea.

13 Had abrasions on her forehead. Had fingernail
14 marks on her neck. Maybe his, maybe hers. Consistent
15 though with him saying he put his hands around her neck to
16 choke her and Dr. Jenkins saying she put her hands on his to
17 try to get his hand off her neck.

18 What about down below? It just doesn't get any
19 worse than that. You don't consent to that. You don't
20 agree to that. Stuck his hand in her two or three times.
21 Something twisted on his finger. He pulled his hand out.
22 Something tore. What tore? Her aorta.

23 Dr. Jenkins: "How far was the penetration?"

24 "About a foot."

25 Casey Perkins: "How far did you stick your fist

1 in her?

2 "About a foot. About to my elbow. To my elbow."

3 There you go. That ain't supposed to be inside a
4 woman. No woman says stick that in me that far. It don't
5 happen. Not consensual, ladies and gentlemen.

6 Then he confessed. He confessed with detail after
7 detail after detail that is born out by the facts of the
8 case and the crime scene and the evidence picked up by law
9 enforcement in the case.

10 I'm going to be brief, but I'm going to go through
11 a little bit of it with you. I identified 18 to 20
12 different things. Law enforcement officer after law
13 enforcement officer got on the witness stand. And if you
14 conclude they are lying, conclude they are lying, but they
15 ~~all said we ain't talking about this case. We are not~~
16 telling how Judy Hinson died. We are not telling what we
17 found at the scene. It's not public knowledge. Crime scene
18 is roped off. Neighbors aren't walking around the back of
19 the house when a cigarette lighter and the knife were found
20 there. They are not roaming around inside. Nobody knows
21 what this is all about except law enforcement officers who
22 are working the case. And every one of them said we ain't
23 told Casey Perkins nothing about it, but yet he knows
24 everything about it. And eventually, through the course of
25 that three hour interview, gives them the details, which

1 match. It all matches.

2 Times. Casey is at the Devatt's house. Devatt
3 says 1:27. Casey says he leaves at 1:30.

4 Phone records. 911 call. Ms. Hinson's body is
5 found at -- I'm referring to State's Exhibit No. 11. 911 is
6 called after the body is found and the first 911 call is
7 2:19:52.

8 Remember this. I'm not going to get into a whole
9 lot of chronology here, but there is plenty of time for
10 Casey to have done what he did and it didn't take that long.
11 I think somewhere on that audio he said "I was there maybe
12 20 minutes." 20 minutes is plenty of time for him to do it
13 and there is plenty of window there for that 20 minutes to
14 occur during that window.

15 ~~This is important. The dog. Mr. Thrower with~~
16 SLED and the dog. What did he say? He cuts the dog around
17 the front of the house first, because he's figuring if I get
18 a trail, it's going to be out the back window where we
19 really figure somebody came. So he cuts the dog around the
20 front of the house. I'm looking right down -- you know,
21 around the wood line. The dog picks up a trail and goes
22 right to John Bernat. I bet John Bernat about peed in his
23 pants when the dogs come after him and he knows there is a
24 dead lady down in that house.

25 Thrower: "I can see where somebody had walked.

1 Dew. Dew starts when the temperature reaches the dew point
2 and it don't mean morning dew is daylight morning dew. Dew
3 is nighttime. Walk out in your yard sometime, midnight, one
4 o'clock, and see if it's wet.

5 He can tell that the trail is not going toward
6 Bernat's house, but coming towards Hinson's house. Perkins
7 never went to the road and walked up the road and then up
8 Judy Hinson's driveway. He couldn't have seen the light
9 that way. He walked through the woods. I don't -- if he
10 ain't worried about going in and raping and killing a lady
11 with his fist, he ain't worried about snakes. Perkins
12 walked from Bernat's to Hinson's.

13 He goes around to the back of the house. The dog
14 again. Cuts -- I think he said the dog's name was Judy. I
15 can't recall. I'm not lying. He cuts the dog around the
16 back of the house. The dog strikes the trail through here
17 to the road where they lose it. What's important about
18 that? Casey Perkins said they asked him "how did you get
19 the blood off your hands?"

20 Where does Casey live, first of all? He lives
21 down here. Whose house is that? That's Devatt's house.
22 Casey Perkins said "I washed my hands off in the grass and
23 the mud puddle and the dirt behind Ed Devatt's house." Very
24 consistent with him hitting the road here and going on over
25 to the Devatt's house. Take it for what it's worth. I

1 submit it's important.

2 His clothes. He tells them what kind of clothes
3 he's got on. The Mercedes shirt. Real quick about the
4 Mercedes shirt. What do you reckon -- if I had done my
5 homework a little bit better, maybe I could tell you, but
6 what do you reckon C.P. stands for in this shirt? I bet
7 it's Casey Perkins, on the label for the individual work
8 uniform. I bet that's Casey Perkins. Do you reckon?
9 Everybody says he's wearing those clothes. I don't need to
10 talk about that any more.

11 Casey Perkins says -- "what time did you leave
12 Rush's, Mr. Bob Rush's?

13 "About 1:30.

14 "Why did you leave?

15 "Because he wanted to go to bed. It was late."

16 What did Bob Rush say? "I ran him off. I wanted
17 to go to bed."

18 Casey Perkins -- I forgot to say this a little bit
19 ago. If he had waited beyond September 7th of 2005, until
20 the entire file was complete and all the paperwork was in it
21 and all the SLED reports were together and he had gotten a
22 copy of the entire file, he couldn't have molded a more
23 consistent confession than he did.

24 The knife. Casey says "we went through the
25 kitchen" when he was at Judy Hinson's house. He told

1 Michael Greene "I got the knife in the kitchen."

2 Room lighting. Casey Perkins said "Judy Hinson's
3 room was dark."

4 Danielle Brodeur. "The room was dark."

5 He described Judy Hinson's clothes. How does he
6 know she's got nothing but a nightgown on that's pulled up
7 if he wasn't there? Nothing from the waist down. Exactly
8 how she was found.

9 Where was her body? Left side of the bed. Casey
10 Perkins said Judy Hinson was on the left side of the bed.
11 You will see the pictures. Where does the crime scene show
12 her body? Left side of the bed. How does he know that?

13 Her injuries. What he said he did to her is
14 consistent with what the autopsy found. The marks on her
15 feet, choked her out, marks on her neck.

16 What about this? Dr. Jenkins. "Vomitus in her
17 mouth." Casey Perkins, "she puked." How does he know she
18 puked? He made her puke. He was there.

19 Noises. He heard noises while he was in the
20 house. That's why the time frames are clearly plausible.

21 I'm telling you, these three folks back here pull
22 up in the yard and he's still there. He heard noises.
23 Danielle heard a noise.

24 The lighter. The DG copper lighter. Mary Wilson
25 gets one, same color, same kind from Perkins. Lo and

1 behold, here we go, one right just like it outside the
2 window.

3 The blood. Perkins said "I got blood on my
4 clothes. He initially said he didn't, but later on said "I
5 got blood on my clothes." Blood all over his clothes. SLED
6 told you blood all over the shirt, blood all over the pants.

7 Perkins, what did he do -- how did he clean up his
8 clothes? This is what he said about cleaning up his
9 clothes. Gas. "Gasoline at momma's house." Put gas on the
10 clothes. A mechanic is certainly going to have gas on his
11 clothes, but he told you "I put gas on my clothes."

12 What did Ms. Ruff say at SLED and what is Layton
13 say about the pants, in particular? Ruff said "shirt smells
14 like gas. Pants smell like gas." And Layton says "I tested
15 the pants and it's gas." It's a pretty strong smell of gas.

16 What did he do with the clothes? Why did he do
17 something with the clothes? He's hiding evidence. Why is
18 he hiding evidence? Because he committed a crime. What was
19 the crime? The murder of Judy Hinson. What did he do with
20 the clothes? Put them in the cut-up tire in the yard. He
21 told them that on September 30th. They took out a search
22 warrant and they found them. He knew that. He did it.

23 No semen. Why? Because he didn't get an
24 erection. He never ejaculated.

25 No DNA. Why? Because the blood they found was --

1 there was DNA. There was Judy Hinson's DNA all over the
2 place. Judy Hinson didn't get up out of that floor beside
3 her bed and back into the bathroom and try to clean herself
4 up. She did not move after that fist was up inside of her.
5 Perkins did that. He didn't tell you that, but he went --
6 on the statement, but he went to the bathroom and tried to
7 clean up. Her blood, her sink off his hands.

8 No semen. He didn't ejaculate.

9 No DNA.

10 He put gasoline all over the blood samples that
11 were on his items.

12 No prints. We are not going to talk about prints.

13 You heard the SLED agent testify about sometimes you get
14 prints, sometimes you don't. And why? No prints.

15 ~~What else? One more little thing that's real~~
16 consistent. Casey Perkins in his statement said something
17 to the effect of "that Saturday morning Bob Wilson comes
18 over to take me to work building fences and I just couldn't
19 concentrate, couldn't keep my mind on the job."

20 Don Wilson. What did Don Wilson say? "He was
21 staring off into space, distracted, couldn't concentrate."
22 Casey couldn't have made that up if it weren't true.

23 I got a couple other real quick things. I submit
24 to you there is evidence of two other confessions. Two
25 correctional officers. Michael Carr, the day Casey Perkins

1 was arrested, before any statement was made "I f'd up."
2 That's what Perkins told him. Well, you know, you can read
3 into it whatever you want to read into it, but I submit
4 there is an obvious conclusion about what Perkins was
5 talking about.

6 September 9th, two days after the confession to
7 Shawn Cheek, another correctional officer, "I killed the
8 lady and I need help." Confession.

9 One more thing and I'm going to sit down. Thank
10 you very much for your attention from Monday to now and
11 whenever it's over.

12 This ain't involuntary manslaughter. It's just
13 not. Involuntary manslaughter, by Mr. Dunn's own theory,
14 presupposes that this is consensual sex, that Judy Hinson
15 consented to have sex with Casey Perkins and basically just
16 got out of hand. That's not what it is. And, therefore, it
17 can't be involuntary manslaughter. It's murder.

18 The judge is going to tell you what murder is.
19 I'm not going to get into it now. He will tell you. It's
20 murder. Find him guilty. Thank you.

21 The real guy. The real guy sitting over yonder,
22 Mr. Hirsch's real guy, he is in the sweater and the necktie.
23 Thank you.

24 THE COURT: Thank you, Solicitor Barfield.

25 Ladies and gentlemen, I'll let you go in the jury

1 room for a moment and see if you can select what you would
2 like for lunch. As soon you have done that, let the
3 bailiffs know and we will take the order and place it and
4 bring you back out and I'll give you the law that applies to
5 the case. Thank you so much. It's too early to begin
6 discussing the case.

7 (The following takes place outside the presence of
8 the jury panel)

9 (Whereupon, proceedings were recessed)

10 (Whereupon, proceedings were reconvened)

11 (Court Exhibit No. 13 marked for identification)

12 THE COURT: We are ready for the jury.

13 (The following takes place in the presence of the
14 jury panel)

15 ~~THE COURT: Welcome back again, ladies and~~
16 gentlemen.

17 (Whereupon, at 12:25 p.m., the Court charged the
18 jury panel)

19 THE COURT: As I previously told you, the
20 indictment in this case charges the defendant, Casey Ray
21 Perkins, with the crime of murder.

22 I'll also remind you that the fact that this
23 defendant was arrested, the fact that the defendant was
24 charged, the fact that the defendant was indicted is not
25 evidence in this case and cannot be considered by you as

1 evidence of guilt, nor does it create any presumption or
2 inference of guilt. This document is simply the formal
3 written instrument which contains the charges made against
4 this defendant. It's the formal document by which the case
5 is brought into court.

6 Now, the defendant has pled not guilty to this
7 indictment. And that plea puts upon the State the burden of
8 proving that person guilty. A person charged with
9 committing a criminal offense in South Carolina in never
10 required to prove himself innocent.

11 I charge you that it is an important rule of law
12 that a defendant in a criminal trial, no matter what the
13 seriousness of the charge may be, will always be presumed to
14 be innocent of the crime for which the indictment was
15 issued, unless guilt has been proven by evidence that
16 satisfies you, the jury, of that guilt beyond a reasonable
17 doubt.

18 This presumption of innocence does not begin or
19 ends -- excuse me, does not end when you begin your
20 deliberations, but it accompanies the defendant throughout
21 the trial, until you reach a verdict of guilt, based on
22 evidence satisfying you of that guilt beyond a reasonable
23 doubt.

24 The presumption of innocence is like a robe of
25 righteousness placed about the shoulders of a defendant,

1 which remains with the defendant until it has been stripped
2 from the defendant by evidence satisfying you of the
3 defendant's guilt beyond a reasonable doubt.

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

9 What a reasonable doubt? A reasonable doubt is
10 the kind of doubt that would cause a reasonable person to
11 hesitate to act.

12 Some of you may have served as jurors in civil
13 cases, where you were told that it was only necessary to
14 prove that a fact is more likely true than not true, such as
15 ~~by the greater weight or by the preponderance of the~~
16 evidence. In criminal cases, though, the State's proof must
17 be more powerful than that. It must be beyond a reasonable
18 doubt.

19 Proof beyond a reasonable doubt is proof that
20 leaves you firmly convinced of a defendant's guilt.

21 Of course, there are very few things in this world
22 that we know of with absolute certainty, and in criminal
23 cases the law does not require proof that overcomes every
24 possible doubt.

25 If, based on your consideration of the evidence,

1 you are firmly convinced that the defendant is guilty of the
2 crime charged, you must find the defendant guilty.

3 If, on the other hand, you think there is a real
4 possibility that the defendant is not guilty, you must give
5 the defendant the benefit of the doubt and find the
6 defendant not guilty.

7 I'll remind you during this trial, ladies and
8 gentlemen, you and I have had certain duties to perform. As
9 the trial judge, it's been my responsibility to provide and
10 preside over the trial of this case. I also have the duty
11 to rule on the admissibility of evidence offered during the
12 trial. You are to consider only the competent evidence
13 before you. You are to consider only the testimony which
14 has been presented from the witness stand and the exhibits
15 that are made part of the record in this case and any
16 stipulations that the attorneys may have agreed to.

17 I also have the additional duty to charge you or
18 tell you about the law that applies in this case. As
19 presiding judge I'm the sole judge of the law of the case,
20 and it is your duty to accept the law and as I give it to
21 you. If you already have any ideas about what the law is,
22 or what the law should be, and it does not agree with what I
23 tell you it is, you must abandon that idea, because under
24 your oath you are obligated to accept the law and apply the
25 law exactly as I state it to you.

1 As I have already told you, also in every case
2 tried before a jury, the jury becomes the sole and exclusive
3 judge of the facts of the case. A trial judge, such as
4 myself, cannot intimate, state, comment on, or make any
5 statement to a trial jury about the facts of the case,
6 because you, the jury, are the sole judges of the facts of
7 the case. And, thus, you are not to infer from anything
8 that I have said during the progress of the trial, or ruling
9 on the admissibility of evidence, or otherwise, or anything
10 that I say during this instruction to you that I have any
11 opinion about the facts of the case. The law does not allow
12 me to have an opinion about the facts of this case. This is
13 a matter solely for you, the jury, to determine. As jurors,
14 it's your duty to determine the effect, the value, the
15 ~~weight, and the truth of the evidence presented during this~~
16 trial.

17 Generally speaking there are two types of evidence
18 presented during a trial: Direct evidence and
19 circumstantial evidence.

20 Direct evidence is the testimony of a person who
21 claims to have actual knowledge of a fact, such as an
22 eyewitness. It is evidence which immediately establishes
23 the main fact to be proved.

24 Circumstantial evidence is proof of a chain of
25 facts and circumstances indicating the existence of a fact.

1 It is evidence which immediately establishes collateral
2 facts from which a main fact may be inferred.
3 Circumstantial evidence is based on inference and not on
4 personal knowledge or observation.

5 The law makes no distinction between the weight or
6 the value to be given to either direct or circumstantial
7 evidence, nor is a greater degree of certainty required of
8 circumstantial evidence than of direct evidence.

9 You should weigh all the evidence in this case.
10 After weighing all of the evidence, if you are not convinced
11 of the guilt of the defendant beyond a reasonable doubt, you
12 must find the defendant not guilty.

13 Necessarily, you must determine the credibility of
14 the witnesses who have testified, which simply means the
15 believability of the witnesses. It becomes your duty as
16 jurors to analyze and to evaluate the evidence and to
17 determine which evidence convinces you of its truth.

18 And in determining the believability of witnesses
19 who have testified, you may believe one witness over several
20 witnesses, or several witnesses over one witness.

21 You may believe part of the testimony of a witness
22 and reject the remaining part of the testimony of the very
23 same witness.

24 You may believe the testimony of a witness in its
25 entirety or reject the testimony of a witness in its

1 entirety.

2 You may consider whether any witness has exhibited
3 to you any interests, any bias, or any prejudice, or any
4 motive in the case. And you may also consider the
5 appearance and manner of a witness while on the stand.

6 As I have told you before, the Rules of Evidence
7 ordinarily do not permit witnesses to testify as to opinions
8 or conclusions. An exception to this rule exists for
9 witnesses that are called expert witnesses. A witness, who
10 the by education and experience, has become an expert in
11 some art, science, profession or calling may state an
12 opinion as to relevant and material matter in which the
13 witness claims to be an expert and may also state the
14 reasons for their opinion. You should consider any expert
15 opinion received in evidence in this case, and, like any
16 other evidence, give it the weight that you think it
17 deserves.

18 If you decide that the opinion of an expert
19 witness is not based on sufficient education and experience,
20 or if you conclude that the reasons given in support of that
21 opinion are not sound, or that the opinion was outweighed by
22 other evidence, you may disregard the opinion in its
23 entirety.

24 An expert witness is to be given no greater weight
25 than that of any other witness simply because that witness

1 is an expert.

2 Further, you are not required to accept an
3 expert's opinion, even though that opinion might be
4 uncontradicted.

5 I tell you that when an expert witness is called
6 by either the State or the defense, he expects to be paid
7 and should be paid. You should not take into consideration
8 the fact that a witness is paid, unless there is some
9 evidence or circumstances appearing from the evidence which
10 would fully and reasonably convince you that the testimony
11 of a witness has been influenced because of the sum which he
12 has been paid as a witness.

13 I instruct you and emphasize that the fact that
14 the defendant in this case did not testify is not a factor
15 to be considered by you in any way in your deliberation and
16 in your consideration on the question of the guilt or
17 innocence of the defendant. It must not be considered by
18 you in any manner whatsoever. A defendant has the
19 Constitutional Right to remain silent and the assertion of
20 this right must not be considered by you in your
21 deliberations.

22 I'll repeat. Under your oath, you are to draw no
23 conclusion whatsoever from the fact that the defendant in
24 this case did not testify. The fact that the defendant did
25 not testify should not even be discussed in the jury room.

1 The burden of proof, as I have stated to you, is on the
2 State, and the defendant is not required to prove his
3 innocence. The burden of proof remains upon the State to
4 prove guilt beyond a reasonable doubt.

5 A statement alleged to have been made by the
6 defendant has been admitted into evidence in this case.
7 While the court has determined that the statement is
8 admissible, I instruct you that you make the ultimate
9 decision of whether or not the defendant made the statement.

10 If the defendant did make the statement, you must
11 determine whether the statement was made by the defendant
12 voluntarily and of his own free will. This means that the
13 statement was not caused by pressure, force, fear, threats,
14 coercion, or intimidation, or by hope of a promise of
15 leniency or a reward of any kind.

16 In determining whether the statement was
17 voluntary, you should consider both the characteristics of
18 the defendant and the details of the questioning.

19 Some of the factors that you must consider are the
20 age of the defendant, the defendant's education or lack of
21 education, the defendant's mental ability or capacity, the
22 defendant's I.Q. or intelligence, the defendant's background
23 and environment, the place and length of the detention, the
24 nature of the questions, the advice or lack thereof to the
25 defendant of his Constitutional Rights, including, but not

1 limited to the right to remain silent; that any statement
2 could be used against him in a court of law; the right to
3 have an attorney present; and that if he could not afford an
4 attorney, that an attorney would be appointed to represent
5 him at no cost; that he could stop making statements at any
6 time; and that he could not -- he could stop making
7 statement at any time.

8 You must carefully consider all the surrounding
9 circumstances before you give any weight to an alleged
10 statement.

11 The State has the burden of proving beyond a
12 reasonable doubt that the alleged statement was voluntary.
13 If you determine it was, you may give the statement any
14 further consideration that you deem proper. You must decide
15 what weight, if any, should be given to the alleged
16 statement.

17 If you determine the alleged statement was not the
18 free and voluntary statement of the defendant, you should
19 not consider the statement at all.

20 In order to establish criminal liability, criminal
21 intent is required. For example, the mental state required
22 to be proven by the State for a particular crime might be
23 purpose, intent, knowledge, recklessness, or criminal
24 negligence.

25 Criminal intent must be proven by the State beyond

1 a reasonable doubt.

2 Criminal intent is always a matter that must be
3 determined by the jury from the circumstances surrounding
4 the situation. There is no way to prove intent to a
5 mathematical certainty and there is no way medical science
6 can dissect a person's brain, so that the law says that
7 criminal intent may be inferred from the circumstances shown
8 to have existed. This is how you make a determination of
9 whether or not the element requiring intent was present.

10 It is not necessary to establish intent by direct
11 or positive evidence, but intent may be established by
12 inference, in the same way as any other fact, by taking into
13 consideration the acts of the parties and all of the facts
14 and circumstances of the case.

15 ~~Criminal intent is a mental state, a conscious~~
16 wrongdoing. It is up to you to determine what the defendant
17 intended to do based on the circumstances shown to have
18 existed.

19 Criminal intent can arise from actions or a
20 failure to act. It also may arise from negligence,
21 recklessness, or an indifference to duty, or to consequences
22 that is considered by the law to be the equivalent of
23 criminal intent.

24 The defendant is charged with murder. The State
25 must prove beyond a reasonable doubt that the defendant

1 killed another person with malice aforethought.

2 Malice is hatred, ill will, or hostility towards
3 another person. It is the intentional doing of a wrongful
4 act without just cause or excuse and with the intent to
5 inflict an injury or under circumstances that the law would
6 infer an evil intent.

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

13 Malice aforethought may be expressed or inferred.
14 And these terms expressed and inferred do not mean different
15 kinds of malice, but merely the manner in which malice may
16 be shown to exist; that is either by direct evidence or by
17 inference from the facts and circumstances which are proved.

18 Express malice is shown when a person speaks words
19 which express hatred or ill will for another, or when the
20 person prepared beforehand to do an act which was later
21 accomplished. For example, lying in wait for a person, or
22 other acts of preparation going to show that the deed was
23 within the defendant's mind would be express malice.

24 Malice may be inferred conduct showing a total
25 disregard for human life.

1 Inferred malice may also arise when the deed was
2 done with a deadly weapon.

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

7 A hand or a fist is not normally considered to be
8 a deadly weapon. However, under certain circumstances,
9 depending on the manner and means of its use, the wounds
10 inflicted and other relevant facts, a hand or a fist may be
11 considered a deadly weapon. It is for you to decide in this
12 case beyond a reasonable doubt whether or not a hand or a
13 fist could be a deadly weapon.

14 Ordinary objects may become deadly weapons when
15 ~~the facts show that they have been used to inflict serious~~
16 bodily harm or death.

17 If you find that the State has failed to prove
18 beyond a reasonable doubt that the defendant committed
19 murder, you may consider whether the State has proved beyond
20 a reasonable doubt that the defendant has committed
21 involuntary manslaughter.

22 To prove involuntary manslaughter, the State must
23 prove beyond a reasonable doubt that the defendant
24 unintentionally killed a victim, without malice, but while
25 engaged in an unlawful activity, not naturally tending to

1 cause death or great bodily harm; or, that the defendant
2 unintentionally killed the victim, without malice, while
3 engaged in a lawful activity with reckless disregard for the
4 safety of others.

5 Unintentional means that the defendant did not
6 intend for anyone to be killed or seriously injured.

7 Reckless disregard for the safety of others is
8 more than mere negligence or carelessness.

9 Mere negligence or carelessness is the failure to
10 use the care that an ordinary person would use under the
11 same circumstances.

12 Recklessness is a conscious failure to use
13 ordinary care.

14 Reckless disregard for the safety of others means
15 that you are not interested in the consequences of your acts
16 or the rights and safety of others. If a person knows, or
17 should know. That ordinary care requires certain
18 precautions to be taken for the safety of others when using
19 a dangerous instrument, but that person fails to use those
20 precautions without concern, the person's actions are
21 considered reckless.

22 When it is time for you to begin your
23 deliberations, ladies and gentlemen, I will send to the jury
24 room a verdict form, along with the exhibits in this case.
25 The verdict form will have two questions posed to you.

1 The first question is whether or not the jury
2 unanimously, meaning all twelve of the jurors, finds the
3 defendant guilty or not guilty of murder.

4 If you unanimously find the defendant guilty of
5 murder, that will end your deliberations and no need to
6 answer the next question.

7 If you find the defendant not guilty of murder,
8 then you may consider whether or not the defendant is guilty
9 or not guilty of involuntary manslaughter.

10 Both of those are on the form. And Mr. Shepherd,
11 as foreperson of the jury, I'm going to ask you once the
12 jury has reached a unanimous verdict, for you to circle
13 either guilty or not guilty on behalf of the jury, sign and
14 date the verdict form.

15 ~~I'll ask you not to begin deliberations until I~~
16 speak with you -- until I send word to you. It may be I
17 need to discuss a few things with the attorneys. I'm going
18 to ask you to go to the jury room. Don't yet begin your
19 deliberations. When I'm ready for you, as I said, I'll send
20 the form and the exhibits.

21 Now, that will also be the cue for Mr. Dallas and
22 Mr. Murray, as alternate jurors, to step back outside of the
23 jury room. Once that occurs, the jury will begin
24 deliberations.

25 And one more time, ladies and gentlemen, for there

1 to be any verdict, it must be a unanimous verdict, meaning
2 all twelve of you must agree.

3 So I now ask you to step in the jury room while I
4 discuss a few minutes with the attorneys and we will be back
5 in touch with you shortly.

6 (Whereupon, at 12:46 p.m., the jury panel retired
7 to the jury room, awaiting instructions to begin
8 deliberations)

9 THE COURT: Anything from the State concerning the
10 charge?

11 MR. BARFIELD: Nothing from the State, Your Honor.

12 THE COURT: From the defense?

13 MR. DUNN: No, sir.

14 THE COURT: All right. I believe then let's have
15 a bailiff -- or I guess the bailiff will get the exhibits
16 together to be taken to the jury room.

17 (Off the record)

18 (Back on the record)

19 MR. DUNN: Your Honor, I think just to take
20 exception to not charging manslaughter, I just want to make
21 sure it's noted on the record.

22 THE COURT: Right, the record is noted.

23 MR. DUNN: If you will note my objection.

24 THE COURT: Yes.

25 (Whereupon, at 1:03 p.m., the jury panel was

1 instructed to begin deliberations)

2 (Whereupon, the alternate jurors were brought into
3 the courtroom)

4 THE COURT: Y'all have a seat there, Mr. Dallas
5 and Mr. Murray. You don't even have to sit.

6 As you probably have figured out by now, it
7 doesn't look like your service is going to be needed after
8 all. I thank you for staying with us. I have actually had
9 to use an alternate when the jury was last heading to go to
10 begin deliberating and have had a juror fall out and get
11 sick and could not go to the jury room and I had to pick an
12 alternate, so I couldn't let you go until it actually
13 started, just because of some things could happen.

14 You have got a meal coming in a couple of minutes.

15 ~~Well, you can't go in the jury room to eat it, though. You~~
16 can stay here or you can leave. I have had some jurors say
17 "well, yeah, I'm waiting on my meal." I have had other
18 jurors say "I'm out of here, I don't want to wait." They
19 are scheduled to pick it up at ten minutes after. I guess
20 they will be back here in five or six or seven minutes after
21 that. So that's up to you, whatever you want to do.

22 You also have the right, if you want to, to stay
23 with us. You know, you have been with us for six days. A
24 lot of alternate jurors want to be here to see what the
25 jurors do, what's their verdict, are they going to have any

1 questions, those kind of things. You don't have to stay.
2 You can. If you want to stay, I'm going to ask you, though,
3 to step in the back of the room, not -- you can't stay
4 there. Well, you might want to sit in the back of the room
5 anyhow because your meal is going to be here in about ten
6 minutes, but I do want to thank you for your service.

7 Of course, it ends your obligation to jury duty
8 this weeks. And if you remember, as I told the jury panel,
9 you can't be compelled to serve for the next two years on
10 circuit court juries.

11 I know it's been an inconvenience, but as the
12 solicitor said, I think it was necessary for you to hear all
13 of the evidence in the case, hear all the arguments from the
14 attorneys, at least that for the whole jury. So, again, I
15 want to thank you. I'm going let you do whatever you --
16 hold them. Somebody has something for you.

17 THE CLERK: Certifications that they needed for
18 their employer.

19 THE COURT: If you need anything, what are they
20 going to do?

21 THE CLERK: Yes, sir, I have it already made out.

22 THE COURT: So I'm going to ask you to all either
23 step in the back of the room, if you want to wait on your
24 food or just wait on the verdict, or if you don't, you can
25 leave us. Thank you again for your service.

1 (Whereupon, the alternate jurors were discharged)

2 (Court Exhibit No. 14 marked for identification)

3 (Whereupon, at 1:10 p.m., proceedings were
4 recessed, pending the verdict of the jury panel)

5 (Whereupon, at 1:42 p.m., proceedings were
6 reconvened)

7 THE COURT: I believe that the jury has reached a
8 verdict.

9 Gentlemen, are you ready to receive the verdict
10 from the jury?

11 MR. BARFIELD: The State is ready.

12 MR. DUNN: Yes, sir.

13 THE COURT: Bring our jury in.

14 (Whereupon, at 1:46 p.m., the jury panel returned
15 to open court to report its verdict)

16 THE COURT: Welcome back once again, ladies and
17 gentlemen.

18 Mr. Shepherd, the bailiff indicates to the court
19 that he believes the jury has reached a verdict in this
20 case. Is that correct, Mr. Shepherd?

21 JURY FOREMAN: Yes, sir.

22 THE COURT: Let me ask you a few questions.

23 First of all, my first question was it a unanimous
24 verdict, meaning all twelve of you agreed on a verdict?

25 JURY FOREMAN: Yes, sir.

1 THE COURT: Secondly, did you sign the verdict
2 form?

3 JURY FOREMAN: Yes, sir.

4 THE COURT: Did you a circle the appropriate
5 response on the form?

6 JURY FOREMAN: Yes, sir.

7 THE COURT: Would you please hand the verdict form
8 forward?

9 Madam Clerk, would you publish the verdict.

10 THE CLERK: Your Honor, this is case number
11 2005-GS-12-438, the State versus Casey Ray Perkins, we, the
12 jury, as to indictment number 2005-GS-12-438 for murder,
13 unanimously find the defendant Casey Ray Perkins guilty.

14 It's signed William Shepherd as foreperson of the
15 jury on 12-20-2008.

16 If this is your verdict, please say so by the
17 raising of your right hand.

18 (Whereupon, all jurors raised their right hand)

19 THE CLERK: Thank you.

20 THE COURT: Thank you, Madam Clerk.

21 Is there anything before the jury is discharged,
22 from the State?

23 MR. BARFIELD: Nothing.

24 THE COURT: From the defense?

25 MR. DUNN: Poll the jury, Your Honor.

1 THE COURT: Madam Clerk.

2 THE CLERK: William Shepherd, is this your verdict
3 and do you still assent?

4 JURY FOREMAN: Yes, ma'am.

5 THE CLERK: Keo McCrorey, is this your verdict and
6 do you still assent?

7 THE JUROR: Yes, ma'am.

8 THE CLERK: Lahoma A. Coleman, is this your
9 verdict and do you still assent?

10 THE JUROR: Yes, ma'am.

11 THE CLERK: Jason K. Sawyer, is this your verdict
12 and do you still assent?

13 THE JUROR: Yes, ma'am.

14 THE CLERK: Donald H. Nolen, is this your verdict
15 and do you still assent?

16 THE JUROR: Yes, ma'am.

17 THE CLERK: Tammy H. Minter, is this your verdict
18 and do you still assent?

19 THE JUROR: Yes, ma'am.

20 THE CLERK: Billy Dixon, is this your verdict and
21 do you still assent?

22 THE JUROR: Yes, ma'am.

23 THE CLERK: Cheryl H. Bradley, is this your
24 verdict and do you still assent?

25 THE JUROR: Yes, ma'am.

1 THE CLERK: Dale F. Bowser, Jr., is this your
2 verdict and do you still assent?

3 THE JUROR: Yes, ma'am.

4 THE CLERK: Gwendolyn D. Hope, is this your
5 verdict and do you still assent?

6 THE JUROR: Yes, ma'am.

7 THE CLERK: Louis J. Colvin, is this your verdict
8 and do you still assent?

9 THE JUROR: Yes, ma'am.

10 THE CLERK: Phyllis O. Kay, is this your verdict
11 and do you still assent?

12 THE JUROR: Yes.

13 THE CLERK: I believe that's it, Your Honor.

14 THE COURT: Thank you, Madam Clerk.

15 Now, anything further before the jury is
16 discharged?

17 MR. BARFIELD: Nothing from the State.

18 MR. DUNN: No, sir.

19 THE COURT: All right. Ladies and gentlemen, I
20 want to thank you for your service. I guess you now know
21 that all trials are not like they are on TV, but they're
22 real serious matters, all of them.

23 Before I told you you could not discuss the case
24 with anybody at any time. You now free to discuss the case,
25 what happened in the courtroom, as well as what happened in

1 the jury room with anybody that you want to. It could
2 include -- anybody from the newspaper or TV, it doesn't make
3 any difference. You can do whatever you want to do.

4 But the same law that gives you the right to talk
5 about the case also gives you the right not to talk about
6 the case. And if anybody approaches you and wants you to
7 talk about the case, deliberations, or what all -- anything
8 about it, if you don't want to, just tell them that you are
9 not going to do it. It's totally up to you. If they
10 persist, tell them that the judge has told you you don't
11 have to do this. If they further persist, please report
12 them to your Clerk of Court. I don't have any reason to
13 think anybody is going to bother you about the verdict. I
14 tell every jury the same thing. I'm not -- it could be that
15 ~~you get bothered about it, but most of the time nobody ever~~
16 gets bothered about a verdict.

17 As you know, this satisfies your obligation for
18 this year. And if you wish for it to satisfy your
19 obligation for the next two years, you would have that
20 right.

21 Back about the verdict. There is no one in a
22 position to criticize you about the verdict that you have
23 rendered in this case for this reason. There is no one,
24 except the twelve of you, who saw and heard all of the
25 evidence presented in this case, heard the arguments of the

1 attorneys, received the law given to you by the court, and
2 then retired to the jury room and discussed what has
3 happened during the trial of the case with eleven other
4 people. Only the twelve of you had that opportunity. And
5 for that reason no one is in a position to criticize your
6 verdict.

7 I do want to thank you. We know that this was a
8 big imposition on you, on your personal lives, on your time,
9 your weekend just before Christmas, but I think you know it
10 had -- you had to hear everything that was available and you
11 heard it.

12 We have your meals that arrived. Now, they are
13 still yours, if you want them. In just a few moments,
14 though, we are going to impose sentence in the case, I
15 suspect. I'm getting ready to release you, but I will tell
16 you this. You can stay, if you wish, or you can leave.
17 It's totally up to you as to what you want to do.

18 If you want to stay, I'm going to ask you when you
19 leave the jury box to go to the back of the courtroom or
20 back in the courtroom back here.

21 If you don't want to stay, then you can go out
22 that same way, unless you need to go to the jury room, or
23 unless you want to wait on your food.

24 So having said all of that, I'm going to thank you
25 for your service and you are dismissed.

1 The clerk wishes to give you some documents.

2 (Whereupon, at 1:55 p.m., the jury panel was
3 discharged)

4 THE COURT: Mr. Barfield and Mr. Dunn, is there
5 any reason why the court should not impose sentence at this
6 time?

7 MR. DUNN: I have one issue.

8 Well, for the record, Your Honor, I would like to
9 renew my objections, my post-trial motions, and ask that the
10 verdict of the jury be set aside because there wasn't
11 sufficient -- there wasn't the evidence necessary for them
12 to come up with the conclusion that they came up with.

13 And also to renew all my previous motions that I
14 have made during the trial.

15 ~~THE COURT: The court notes all those motions and~~
16 would deny them all.

17 MR. DUNN: My one concern, Your Honor, before
18 sentence is imposed, the one issue that I had wrestled with
19 in this case and as far as how I'm going to handle it from a
20 trial perspective, when I had Mr. Perkins evaluated by my
21 expert, Dr. Follingstadt, which I believe most of us have
22 some familiarity with, she told me that once -- she couldn't
23 help me with as far as trial goes, but that she suspected
24 that there was brain damage, that I needed to speak to
25 somebody else. She gave me the name of Dr. Dazak, who is a

1 psychologist who said that certainly that could exist. The
2 problem from his perspective is it wouldn't have done him
3 any good to get involved from a jury perspective, because
4 what he would have testified to wasn't going to affect guilt
5 or innocence of Mr. Perkins. The only thing that he could
6 go to would be really the punishment part of it.

7 The next question was, "is this a death penalty
8 case," and I told him no. He's like "well, I'm more for
9 death penalty, because, you know, the big issue of death
10 penalty is mental capability of the defendant."

11 So I say that to also say that Mr. Perkins has
12 been on Social Security most of his life because of
13 suspected organic brain injury or defects. And if the court
14 is inclined to impose a life sentence, I would ask that the
15 court also entertain the idea of having him evaluated by
16 somebody along Dr. Dazak's lines to see if that would change
17 the court's opinion as to whether or not a life sentence
18 would be a proper sentence on this matter. I think -- Your
19 Honor, I have never been in this situation before. I don't
20 know if it's proper. I just bring that to the court's
21 attention, and we will certainly bring that back up if the
22 court decides to impose sentence today.

23 THE COURT: All right, solicitor?

24 MR. BARFIELD: Your Honor, I have a couple of
25 concerns. That is a procedure that has been suggested to

1 the court that I have never heard of. I presume as the
2 presiding judge, the sentencing authority, you have pretty
3 much discretion to do whatever you want to do to get the
4 information that you need for sentencing, but I would just
5 find it highly unusual after a person is convicted to have
6 him evaluated by a psychiatrist or a psychologist for the
7 purposes of sentencing.

8 My second concern is that -- of course, this is
9 the last day of court, probably my guess in the State of
10 South Carolina, between now and next year. We now have a
11 convicted murderer who needs, in my view, to be transported
12 to the Department of Corrections and let them determine what
13 the appropriate housing is. It's always for me a concern to
14 have sentenced defendants in the county jail. Obviously I
15 can't argue too much about the fact that he's been there for
16 three years, but his status has certainly changed now. He's
17 a convicted murderer now, not an accused murderer, and I
18 would request we go forward with the sentencing now.

19 THE COURT: Well, I'm not sure I really understood
20 what the defense wants here, but it sounds to me as though
21 that you are asking that if the court is inclined to impose
22 life, that the court not go forward. Otherwise --

23 MR. DUNN: I'll be honest with the court, I don't
24 know even if an indigent defendant is given any additional
25 money to have him evaluated. I just don't know. This was

1 one concern in this case that I was never able to come up
2 with a good strategy for trial purposes at this point, but
3 may or may not influence the court's decision. I'll leave
4 it up to the court's discretion. I just wanted to make the
5 court aware of it.

6 THE COURT: Of course, I understand. I understand
7 your motion, but I'm going to deny the motion.

8 MR. DUNN: Yes, sir.

9 THE COURT: Anything further?

10 MR. DUNN: No, Your Honor.

11 MR. BARFIELD: Your Honor, I do have two little
12 bits of information for the court, two more things to
13 present before sentencing.

14 THE COURT: All right.

15 MR. BARFIELD: First is Mr. Perkins record.

16 Mr. Perkins was convicted in York County on 5-9 of
17 '96, for the offense of committing a lewd act on a child and
18 he got an active six year sentence.

19 Your Honor, I don't know too much about the facts
20 of the case, but the allegations are that it involved a
21 female victim who was five years of age and basically
22 alleged fondling of various areas, including the child's
23 vaginal area.

24 In addition to that, Your Honor, Mr. Perkins was
25 convicted in Sumter County on 7-31 of 2002, for the offense

1 of assault and battery of a high and aggravated nature. He
2 received an eight year sentence, suspended to two years,
3 followed by three years probation.

4 The allegation in that case involved touching a
5 person identified by name in the warrant on the buttocks
6 while making sexual advances toward the victim without her
7 consent, and grabbed and restrained the victim as she
8 attempted to resist. I don't know anything other than that
9 about the facts of the case, including the age of that
10 victim, but by name only I presume that victim was a female.

11 So he has two offenses on his record, which both
12 are of a sexual nature.

13 Your Honor, Mr. Perkins, I submit, is, in fact,
14 someone who is appropriate for a life sentence for this
15 offense, which I would argue to you, based upon the jury's
16 verdict, now is a matter of fact is probably one of the
17 worst ways to kill somebody that could be done, short of
18 flat out torture. I think it's appropriate for life. I
19 think its nature, his prior offenses and the nature of his
20 prior offenses demand that he get a life sentence.

21 My understanding is that Ms. Brodeur, Ms. Hinson's
22 daughter, who has been with us throughout would like to
23 speak when you are ready to hear from her.

24 THE COURT: I'll be glad to hear from her.

25 DANIELLE BRODEUR: Your Honor, I would just like

1 to say that the murder of my mom has affected my family in
2 ways that I can't even describe or imagine. Just, you know,
3 the lack of having a mother there for me or my sister for
4 important occasions. You know, my mom was my mom and my
5 dad. I called her moo-dad. I called her my little mommy.
6 She was my best friend. And she worked so hard to buy that
7 land so that she would have a home for me and my sister, and
8 she bought three lots so that we could each have a place to
9 live, and she felt safe there. We all felt safe there. He
10 took away my sister's security. He took away the most
11 important thing that anybody could ever take from me was my
12 mom. And I thought that I couldn't breath or live a day
13 without her, but that's been proven to be not accurate. But
14 I miss her every day. And like I said, this has just
15 affected me and my family in ways that I can't describe.

16 She wasn't there for my graduation. She wasn't there for my
17 sister's graduation. She wasn't there for the birth of the
18 my sister's baby. You know, she's not there for Christmases
19 or -- and Christmas was her favorite holiday. Birthdays,
20 Mother's Day. You know, I just feel like we were robbed
21 of -- we were. We were robbed of our mother, and I would
22 like for you to take all this into consideration when you
23 sentence Perkins.

24 THE COURT: All right.

25 Anybody else?

1 MR. BARFIELD: That's all from the State, Your
2 Honor.

3 THE COURT: Thank you.

4 Mr. Dunn.

5 MR. DUNN: If it please the court, Your Honor, Mr.
6 Perkins is 37 year old. He has two kids. He's married, but
7 he's separated. At the time of this incident he was living
8 in a car with his mom and his dad, at his mom and dad's
9 house, Your Honor.

10 He had the history of having been abused. He
11 spent many of his formative years in foster care. And
12 during that time he was sexually and physically abused by
13 his foster parents and other kids that were in his foster
14 homes.

15 Your Honor, I previously told the court a couple
16 minutes ago he is on Social Security and he's been on Social
17 Security, as far as I can tell, his entire life. Based on
18 what I have seen in the file, and I have got the records, if
19 the court wants to look through them, it was a combination
20 of epilepsy and organic mental defects, something along
21 those lines, or suspected mental -- organic mental defect.

22 As I told Your Honor a little while ago, when Dr.
23 Follingstadt evaluated him, he told me to seek out a
24 psychologist to see whether or not there have been -- a
25 clinical psychologist to check to see if there had been any

1 kind of -- if there was the presence of any mental brain
2 damage. We haven't done that, but I'll bring it to the
3 court's attention.

4 Your Honor, I would ask for leniency as much as
5 the court can give.

6 THE COURT: Thank you, Mr. Dunn.

7 MR. DUNN: His mom is here and I believe she wants
8 to address the court as well.

9 THE COURT: I'll be glad to hear from her.

10 DEFENDANT'S MOTHER: I ask you to be lenient
11 because he has prior -- ever since he was a young child he
12 had brain damage. He's been in special education school.
13 He does -- he did draw Social Security. I had to take care
14 of his money, and he is -- he does have a mental problem and
15 he was abused.

16 THE COURT: Okay. Thank you, ma'am.

17 Mr. Perkins, is there anything that you want to
18 tell me?

19 THE DEFENDANT: Yeah, before you decide to make
20 any kind of sentence, this is my wish, to satisfy that
21 family, but this family here at rest too. My obligation is
22 to send me to the death penalty where I ain't got to suffer
23 none of this and nobody, you know what I'm saying, because I
24 done did three years for something I ain't already done. I
25 already got the blame for it, so I'm taking it all of the

1 obligations to go ahead and do what the court says. Go
2 ahead and put me down, like everybody wants. That way my
3 mom can go ahead and settle her misery too, because she
4 don't need this. My side don't need this. Okay. And I'm
5 sorry that the family thinks I done this, but I ain't done
6 it, but I will take the responsibility that y'all give me.
7 Don't give me no life sentence. Give me my death penalty.
8 I started it. Finish it.

9 THE COURT: All right, Mr. Perkins.

10 Mr. Perkins, as I understand the law --

11 THE DEFENDANT: There ain't no thinking about it.
12 Excuse me, Your Honor, the law says an eye for an eye and a
13 tooth for a tooth. Well, take it. You got the authority to
14 do that, then do it.

15 THE COURT: Mr. Perkins, I don't have the
16 authority to do that. I have the authority to sentence you
17 to as little as 30 years, and as much as life, is my
18 understanding. If you receive anything less than life,
19 under the law as it exists today, it is a no-parole offense.
20 Is that correct, Mr. Dunn?

21 MR. DUNN: That's my understanding, Your Honor,
22 day for day.

23 THE COURT: At any rate, Mr. Perkins, I am not
24 going to sentence you to life. I'll grant you that motion.
25 I'll grant you that request.

1 I am going to sentence you to 50 years, and that's
2 the sentence of the court.

3 Good luck to you, Mr. Perkins.

4 THE DEFENDANT: Appreciate it.

5 THE COURT: Court is adjourned.

6 (END OF REQUESTED TRANSCRIPT OF RECORD)
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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for CHESTER County, South Carolina, on the 19th and 20th days of December, 2008.

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

MAY 19, 2009



Michael R. Watts
Circuit Court Reporter

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County

Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CASEY RAY PERKINS,

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The court erred by refusing to charge voluntary manslaughter where there was evidence appellant began having consensual sexual relations with the decedent and that the decedent told him "to stop," and that when the decedent no longer wished to continue having sex that appellant "got into it" with the decedent, they struggled, appellant "flipped on her" and put his hand on her throat and choked her since appellant was entitled to a voluntary manslaughter instruction given this evidence.

STATEMENT OF THE CASE

Appellant was indicted by the Chester County grand jury for the offense of murder. His case was called to trial on December 18, 2008 before the Honorable Brooks P. Goldsmith, Jr., a jury. Geoffrey M. Dunn and Bradley Jordan represented appellant. Douglas A. Barfield, Jr. was the solicitor. R. 1.

On December 20, 2008 the jury found appellant guilty of murder. R. 972, ll. 9 – 15. Judge Goldsmith sentenced to appellant to fifty years imprisonment. R. 984, ll. 1 – 2.

This appeal follows.

ARGUMENT

The court erred by refusing to charge voluntary manslaughter where there was evidence appellant began having consensual sexual relations with the decedent and that the decedent told him "to stop," and that when the decedent no longer wished to continue having sex that appellant "got into it" with the decedent, they struggled, appellant "flipped on her" and put his hand on her throat and choked her since appellant was entitled to a voluntary manslaughter instruction given this evidence.

Relevant Facts

Phillip Jackson was an EMT for EMS in Chester County. On August 27, 2005 he was dispatched to Debruhl Road during the very early morning hours. R. 80, l. 13 – 81, l. 4. When Jackson arrived about 2:00 a.m. he found a white female inside the house: "She had on a night gown, it was pulled up a little above her genitalia." R. 82, l. 15 – 83, l. 5.

Don Wilson lived on Debruhl Road. R. 86, ll. 15 – 22. Wilson owned a fence company, and he stated appellant had worked for him twice. "He's a good mechanic," Wilson also said of appellant. R. 91, ll. 2 – 13. Wilson learned on Saturday morning August 27, 2005 that the decedent had been found dead inside her house. R. 91, l. 2 – 92, l. 2. Word apparently spread rapidly in the small community.

Appellant and Chris Baker were working with Wilson that day. Wilson always gave his employees a ride to the work site. Wilson testified he found appellant sleeping in his car that morning which Wilson said was unusual. R. 95, l. 25 – 96, l. 22. Wilson said appellant "was a great employee" but he maintained he was acting differently that morning. R. 97, l. 11 – 98, l. 18.

Wilson recalled that when the men were returning home from the work site that his wife flagged him down in the road. Wilson talked with his wife about what people were saying had happened to the decedent. Wilson claimed he then asked appellant: "Why did you kill that woman?" Wilson at first said he was serious when he asked the question. However, he later admitted he told Agent Green that he was just joking "the first couple of times" he asked appellant the question. R. 100, l. 20 – 113, l. 4.

Wilson claimed appellant got out of his truck and ran into the woods when he asked him why he killed the decedent. Wilson testified appellant and his mother came to his house a couple of hours later. Wilson said he again asked appellant: "Why did you kill that woman?" Wilson recalled: "His mom smiled." R. 103, l. 1 – 104, l. 7.

Thirty-one-year-old Danielle Brodeur lived with her fifty-seven-year-old mother, the decedent. She remembered that August 27, 2005 day when her mother was found dead inside their house. R. 147, l. 10 – 152, l. 21. Danielle recalled when she returned home late that night that their dog was "barking relentlessly" outside her mother's bedroom door. R. 164, l. 21 – 166, l. 7.

Danielle said she called out for her mother but she did not receive an answer. She opened the door and "saw my mom's feet beside her bed on the floor like she was lying on the floor inside her bed." Danielle said her mother's nightgown had been pulled up and she was lying in a large pool of blood. R. 166, l. 19 – 168, l. 10. Strangely, Danielle recalled: "The computer room window was open, the blinds were hanging out and the curtains were hanging out . . . I knew somebody had killed my mom." R. 173, l. 22 – 174, l. 13. Danielle called 911 and the police later arrived. R. 170, l. 7 – 172, l. 23.

Dr. Earl Jenkins was the pathologist in this case. R. 249, l. 7 – 250, l. 25. Jenkins testified the decedent was five foot four and she weighed one hundred eighty-one pounds. R. 251, l. 20 – 255, l. 9. Dr. Jenkins testified that there were “some minor injuries around her face [that] led me to suspect and conclude there was an element of smothering or asphyxiation involved in her death. Petechial hemorrhages I described are associated with the smothering or asphyxia death.” R. 255, ll. 11 – 15.

Dr. Jenkins also said there were “tooth marks on the decedent’s lower lip, some minor abrasions around her upper lip that were consistent with pressure being forced on her mouth. And along with that there was some vomit that had come into her mouth and into her nose, it was not expelled from her mouth. So these are elements that raise the likelihood of asphyxiation as being a part of what was going on around the time of her death.” R. 255, ll. 16 – 25.

The decedent also had bruises along her left forehead and a “little crescent shaped abrasion in her left neck and this is often associated with a fingernail.” R. 256, l. 1 – 257, l. 13. Dr. Jenkins recalled that the decedent was not wearing any undergarments under her nightgown. R. 257, ll. 16 – 25.

Dr. Jenkins said there were no defensive wounds on the decedent’s hands and that the object used to smother her appeared to be just a hand. R. 274, ll. 6 – 25.

Appellant also worked at a Mercedes dealership. Investigator Jamie Mitchell testified when the police executed a search warrant on appellant’s property that appellant’s blue Mercedes shirt, which witnesses said he had been wearing around the time of the decedent’s death, a pair of pants and a sole of a shoe were found “in a tire that had been cut out in the very bottom of the tree.” R. 402, l. 8 – 479, l. 20.

Michael Carr was employed with the Chester County Detention Center. Carr remembered appellant was arrested on August 29, 2005, two days after the decedent's body was found. Supp. R. 1, ll. 1 – 25. Carr claimed he did not know why appellant had been arrested, but Sheriff Robert Benson later admitted it was for failure to register as a sex offender and not for murder. Benson acknowledged appellant was "a strong suspect" in the case. Supp. R. 2, ll. 11 – 24; Supp. R. 4, ll. 5-14.

Carr said he received notice from Sheriff to bring appellant outside the jail and allow him to smoke. Fidel Byrd joined the men for a smoke. Carr claimed appellant said to Byrd as they were smoking: "Byrd, I fucked up." Supp. R. 2, ll. 11 – 24.

Carr remembered the Byrd told appellant: "It can't be that bad," and he asked him: "What happened? And appellant said 'I killed her.'" Carr said he told appellant to be quiet and Carr maintained appellant asked Byrd "if God would forgive him for what he had done." Supp. R. 3, ll. 4 – 24; R. 555, l. 4 – 563, l. 19.

Sheriff Benson testified that when appellant was interrogated he said he did not go over to the decedent's house with the intention of harming her. Appellant told Benson they were having sexual intercourse and that the decedent "was a willing participant" in that sexual activity R. 719, l. 9 – 720, l. 19. Benson admitted appellant repeated told him he was not a rapist or a murderer. R. 746, ll. 23 – 25.

The three-and-a-half-hour interrogation of appellant was played for the jury. Defense counsel Dunn disagreed with the solicitor "that the tape speaks for itself. I'm just

trying to make sure on my cross that I'm allowed to ask the questions that need to be asked."

This audio tape is on file with this Court.¹ R. 748, ll. 6 – 25.

Benson said he asked appellant "how he had grabbed her" during the interrogation. R. 753, ll. 12 – 14. Benson remembered at the beginning of the interrogation that appellant denied grabbing the decedent at all. R. 753, l. 24 – 907, l. 1. Appellant described to Benson the sexual practice of "fisting" he was engaged in with the decedent that night. Benson said they studied this practice in "homicide school" and he described it as a sexual act that most commonly "occurs among homosexuals." However, Benson said it was also a sexual practice among certain heterosexuals. Appellant would describe to Benson how he thrust his fist and arm into the decedent's vagina. R. 755, l. 11 – 756, l. 3.

Benson informed appellant that the police knew the decedent had been hit and "we know that she was strangled." Appellant continued to maintain that he was invited into the house that he had consensual sex with the decedent and that something happened to the decedent to cause her death. Tape tr. at R. 1018-1019; R. 762, l. 16 – 764, l. 6.

Appellant admitted that he "got into it" with the decedent and that it was possible something happened. Tape tr. at R. 1020. Later in the interview appellant was asked to admit the decedent told him to stop and that he didn't. Appellant admitted that was what

¹ Present appellate counsel requested that Court Administration put before the committee of Judge Markley Dennis a proposal that would require the party offering an audio statement to provide an unofficial transcript of the contents of the audio tape as a Court's exhibit for appellate review. The attorneys could argue regarding the accuracy of the transcript in camera. Whether the transcript was allowed to be viewed by the jury as the tape was played or whether it was introduced into evidence was a discretionary decision, as always, for the trial judge. Appellant was informed the committee voted not to forward this proposal as an amendment to the court reporter's manual. The audio cassette on file with this Court is of marginal to poor quality. Appellant has provided this

happened and he "just grabbed her by the throat" to get her to stop screaming." Appellant said the decedent was struggling "trying to get away from my stupid ass. Let's just go down like that, fuck it, you know what I am saying? Fuck it. I ain't got nothing else to lose . . . She was all teasing and shit and she was doing this that and the other and shit. . . I don't know how I done it, I just did . . . I got fuckin' carried away or something and she went up and (inaudible) And I just fucking choked her out." Tape tr. at R. 1026-1027.

Appellant later admitted that he "just flipped." Tape tr. at R. 1032. Appellant added that he did not go over to the decedent's house planning to intentionally kill her. Appellant said the decedent changed her mind about having sex during the sexual relationship and the "next thing I know I got my hand on her throat and inside her vagina. And she started bleeding and I just choked her out and I don't know how long I was in the house or nothing like that or how long we had been like that. I had no calculation of time. And I thought I heard [someone] coming to the house and I got scared and went out the window, ran over to the backside of the driveway into the darkness of the part of the driveway up the driveway back up the road and cut across to Ed's and stopped there and thought a minute and realized what I had done and just went into shock." Tape tr. at R. 1040.

Near the end of the interview appellant admitted he could not get an erection to have normal sex, and the decedent at some point told him to "just quit." Appellant described the "fisting" to Benson and he said that he put his arm "elbow length" into the decedent's vagina and that . . . then about that time she started to throw up and stuff and foaming at the

Court with an unofficial copy of the transcript of that audio tape. Appellant understands only the court reporter responsible for the trial can provide a certified transcript.

mouth or something . . . gushing blood coming out. I panicked.” Appellant said he thought heard someone coming into the house and that he opened the bedroom window and escaped. Tape tr. at 1041-1042.

Voluntary and involuntary manslaughter

Defense counsel requested jury instructions on voluntarily manslaughter and involuntary manslaughter based on appellant’s taped interrogation. R. 861, l. 19 – 863, l. 25. The solicitor claimed that the only provocation evidence there was that the decedent told appellant “no at one point and he would not take no for an answer.” R. 864, ll. 6 – 20.

The following day the parties again discussed jury instructions on voluntary and involuntary manslaughter. R. 880, l. 7 – 886, l. 9. Defense counsel argued appellant was entitled to a voluntary manslaughter instruction because he said in his statement the sex started out consensual and therefore legal and the decedent then told appellant to stop and “you are caught up in the moment in heat of the passion when you are engaged in sexual activity. He said ‘no, I don’t want to stop, he didn’t stop. She ended up dying as a result . . . “ R. 872, l. 12 – 873, l. 11. Counsel also said that appellant was angry and exasperated when the decedent no longer wanted to have sex, and that statements he made during his interrogation supported an instruction on voluntary manslaughter. Defense counsel stated since there was evidence of voluntary manslaughter the judge had an obligation to charge it and that the judge risked being reversed if he did not “and we end up back here all over again.” R. 872, l. 12 – 873, l. 17.

The solicitor said if the jury found the decedent consented, the decedent had “the right during the consensual activity to say stop, it’s done.” The solicitor claimed this was the only evidence of provocation and the solicitor maintained it was “not sufficient legal

provocation." The judge ruled: "The court agrees with the position of the State." R. 876, ll. 12-24.

The judge ultimately charged involuntary manslaughter, but not voluntary manslaughter, and defense counsel took exception to his refusal to charge voluntary manslaughter. R. 966, l. 7 – 968, l. 21; r. 970, ll. 19 – 24.

Discussion

Voluntary manslaughter is the unlawful killing of a human being in the sudden heat of passion upon a sufficiently legal provocation. State v. Kornahrens, 290 S.C. 281, 350 S.E.2d 180 (1986); State v. Tyson, 283 S.C. 375, 323 S.E.2d 770 (1984).

Words accompanied by hostile acts may according to the circumstances, reduce a charge for murder to voluntary manslaughter. State v. Mason, 115 S.C. 214, 105 S.E. 286 (1920).

When determining whether to instruct on voluntary manslaughter the trial court must view the evidence in the light most favorable to the defendant, and a voluntary manslaughter instruction need not be given only where it clearly appears there is no evidence whatsoever tending to reduce the crime from murder to manslaughter. See State v. Cottrell, 376 S.C. 260, 657 S.E.2d 451; State v. Knoten, 347 S.C. 296, 555 S.E.2d 391 (2001); State v. Lowry, 315 S.C. 396, 434 S.E.2d 272 (1983).

Here there was evidence in appellant's tape recorded interrogation that he began having consensual sexual relations with the decedent. Appellant told Sherriff Benson that he could not achieve an erection. He began engaging in the sexual practice called "fisting." Sheriff Benson said they were taught in homicide school that this was a practice often

engaged in by homosexuals but that heterosexuals also practiced this form of sexual gratification.

Appellant told the police that the decedent told him to stop while they were having sex, and appellant said he "got into it" with the decedent. The decedent began screaming at one point and he "just grabbed her throat." As seen above, appellant told Sheriff Benson that the decedent was struggling because she was "trying to get away from my stupid ass." Appellant said the decedent had been teasing him and "I just fucking choked her out" after she no longer wanted to have sex. Tape tr. at R. 1026-1027.

In State v. Gardner, 219 S.C. 97, 105, 64 S.E.2d 130, 134-135 (1951), there was evidence the defendant's "jumped on me" and "me and her got into it." The Supreme Court noted this evidence was capable of the construction "that there was some overt, threatening act or a physical encounter. As least there is sufficient doubt thereabout, we think, to warrant submission to the jury the question of [voluntary] manslaughter."

Here, as in Gardner, there was evidence appellant "got into it" with the decedent when she no longer wished to have sexual relations. The evidence was stronger here on voluntary manslaughter because the anger definitely turned violent.

As in State v. Knoten, appellant's statements were not totally consistent. However, appellant's one taped statement here was much more consistent than the defendant's multiple totally conflicting statements in Knoten, where the Supreme Court held Knoten was entitled to a jury instruction on voluntary manslaughter because one of them provided the "any evidence" necessary.

The judge here agreed with the solicitor that appellant was not entitled to a voluntary manslaughter instruction because saying "no" to continued consensual sexual relations was

not a sufficient legal provocation as a matter of law. The judge charged involuntary manslaughter because he apparently reasoned appellant may have killed the decedent because of criminal negligence.

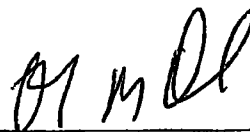
However, voluntary manslaughter and involuntary manslaughter are not mutually exclusive. See State v. Light, 378 S.C. 641, 664 S.E.2d 465 (2008); State v. Crosby, 355 S.C. 47, 584 S.E.2d 110 (2003)(self-defense and involuntary manslaughter are not mutually exclusive). There is no logical reason for voluntary and involuntary manslaughter to be mutually exclusive. Moreover, here there was evidence this sexual encounter turned violent, a struggle occurred, and appellant choked the victim to death in anger.

The trial court in this case could not have viewed the evidence in the light most favorable to appellant, and ruled there was no evidence whatsoever of voluntary manslaughter in this case. See State v. Cottrell, 376 S.C. 260, 657 S.E.2d 451(2008); State v. Pittman, 373 S.E.2d 527, 647 S.E.2d 144 (2007). In requesting a voluntary manslaughter instruction appellant was not seeking a jury verdict that his actions were in any way justified. Voluntary manslaughter is founded "on a thorough knowledge of the human heart," and an understanding of "frailties which belong to and are inseparable from our natures." State v. Ferguson, 20 S.C. Law (2 Hill) 619, 621-622 (1835). Those human frailties in this case were punishable by thirty years imprisonment if appellant was convicted of voluntary manslaughter.

CONCLUSION

Based on the foregoing argument, appellant's conviction should be reversed and this case remanded to the Chester County General Sessions Court for a new trial.

Respectfully submitted,

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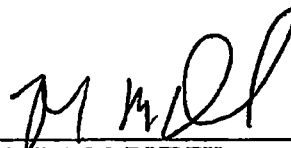
Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT.

This 29th day of November, 2011.

CERTIFICATE OF COUNSEL

The undersigned certifies that 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."

A handwritten signature in black ink, appearing to read 'R M Dudek', is written over a horizontal line.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County

Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

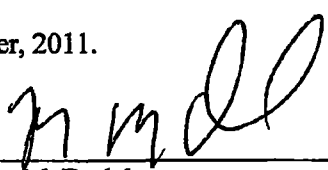
V.

CASEY RAY PERKINS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Brendan J. McDonald, Esquire, Assistant Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201 this 29th day of November, 2011.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 29th day of November, 2010.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: May 16, 2021

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County

Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CASEY RAY PERKINS,

APPELLANT

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APPELLANT'S QUESTION PRESENTED

The court erred by refusing to charge voluntary manslaughter where there was evidence appellant began having consensual sexual relations with the decedent and that the decedent told him "to stop," and that when the decedent no longer wished to continue having sex that appellant "got into it" with the decedent, they struggled, appellant "flipped on her" and put his hand on her throat and choked her since appellant was entitled to a voluntary manslaughter instruction given this evidence.

THE STATE'S COUNTER-QUESTION PRESENTED

Whether the argument Appellant now raises on appeal was presented to and ruled upon by the trial court so as to preserve the argument for appellate review where trial counsel, in arguing for an instruction on voluntary manslaughter, failed to inform the trial court that Appellant "got into it" with the decedent, they struggled and he "flipped on her[.]"

INTRODUCTION

In the early morning hours of August 27, 2005, Judith Hinson was found dead in her home at [REDACTED] in Chester County. (R. 147-148). The ensuing investigation led to the arrest, indictment and conviction of her neighbor, Casey Ray Perkins ("Appellant"). (R. 1-984).

STATEMENT OF THE CASE

Following his August 29, 2005, arrest, Appellant was indicted by the Chester County grand jury for Murder. (R. 1044). A Jackson v. Denno, 378 U.S. 368 (1964) hearing took place on October 21-22, 2008, and the trial court issued an order on the hearing November 21, 2008. Thereafter, a jury trial was held on December 18-20, 2008 before the Honorable Brooks P. Goldsmith, Jr. (R. 1-983). At the conclusion of the trial, Appellant was convicted of Murder receiving a sentence of fifty (50) years imprisonment. (R. 972, 984). Throughout these proceedings, Appellant was represented by Geoffrey M. Dunn and Bradley Jordan, Esq. (R. 1). The State was represented by Solicitor Douglas A. Barfield. (R. 1).

STATEMENT OF FACTS

At approximately 2:00AM on August 27, 2005, Danielle Brodeur ("Danielle"), and her younger sister, Amanda Hinson ("Amanda"), returned to the home they shared with their mother, fifty-seven (57) year-old, Judy Hinson ("Judy"). (R. 155-160). After fixing a snack and taking the family dogs out for a brief walk with her fiancé Albert Aman ("Albert"), who had also accompanied Danielle and her sister that night, Danielle entered her mother's room and found her mother unresponsive, laying in a pool of blood. (R. 162, 155-160, 167-68). Her nightgown was pulled up above her genitalia and the window in the adjacent room was open with both the blinds and curtains hanging out of the window. (R. 83, 173-74).

Attempting to call 9-1-1, Danielle picked up the closest phone, and realizing there was no dial tone, screamed for help. (R. 168-169). In an effort to help his fiancé, Albert attempted calling 9-1-1 on a different phone in the house, which also failed. (R. 169). At that time, Danielle took Amanda's cell phone and was eventually able to reach 9-1-1 operators. (R. 169-171). While Danielle was on the phone with 9-1-1 operators, Albert unsuccessfully attempted CPR on Judy. (R. 170-71). Shortly thereafter, authorities arrived and determined Judy was dead. (R. 83). At the scene, investigators found a cigarette lighter on the ground outside of the open window. (R. 431-32).

The ensuing investigation quickly focused on Appellant, who according to various neighbors, was in the area at approximately the same time the murder occurred. (R. 540). Specifically, Judy's neighbor, John Bernat told authorities that Appellant, who was dressed in a blue Mercedes-Benz mechanic shirt, blue jeans and white tennis shoes, left his house around 1:30AM. (R. 122, 129, 56, 132, 137). Based upon this information, authorities interviewed Appellant, who confirmed he was in the vicinity of the crime scene, but denied any involvement in the incident¹ adding, "there's no way I could kill somebody[,] I can't stand the sight of blood." (R. 548-49, 583).

In addition to answering questions concerning his whereabouts during the time of the murder, Appellant also answered questions about his clothing telling authorities he owned two Mercedes-Benz mechanic shirts, but had thrown them away weeks ago. (R. 583-85). When asked what he was wearing on the night in question, Appellant stated that he couldn't remember, but it may have been a pullover with dark green and white or red vertical stripes. (R. 585).

¹ Despite initially denying any involvement in the crime, when asked the same question later in the interview, Appellant told authorities "he didn't know whether he had done this or not" explaining "he did things that he later wouldn't remember and that people would tell him that had done things but he wouldn't remember doing them." (R. 588).

On August, 29, 2005, two days after Judy's murder, Appellant was arrested on an unrelated charge. (Supp. R. 2, 4; R. 666). En route to the Sheriff's Office, where authorities intended to question Appellant, Appellant began talking about the murder, prompting law enforcement officers to mirandize him. (R. 667). After receiving his Miranda warnings, Appellant indicated he understood his rights and continued talking. (R. 668).

Upon his arrival at the Sheriff's Office, Appellant was transported to an interview room. (R. 594). During the interview, Appellant again denied killing Judy, adding that if he had been at the house he would have blood all over his shoes. (R. 630). Despite his repeatedly denying killing Judy, Appellant told authorities "he had demons inside him that would take over his body and did things of which he would have no knowledge." (R. 597). Appellant further added "he deserved to die and he wanted the death penalty." (R. 598). The interview later concluded when Appellant asked to speak with a lawyer. (R. 632).

The following day, a search warrant was issued and executed on Appellant's parents' home where Appellant was reportedly staying. (R. 387-88, 391-92, 396). At that time, authorities recovered two white Adidas tennis shoes, both of which had the soles removed. (R. 392). In a separate location, authorities also discovered the right sole of an Adidas tennis shoe. (R. 397). Officer Chris Devinney, who helped execute the search warrant, later opined that the sole matched the shoes. (R. 398-99).

After his arrest, Appellant remained in custody at the Chester County Detention Center. (R. 555). While he was in custody, Michael Carr, a corrections officer at the Detention Center, was party to a conversation in which Appellant admitted to Carr, that he "fucked up[.]" (R. 556-57).

Approximately a week after this conversation, Appellant, on September 7, sent a note requesting to speak with Sherriff Robert Benson. (R. 643-44, 692). After signing a document stating he did not wish to have an attorney present during his interview, Appellant received his Miranda warnings, which he subsequently waived. (R. 698-99). During the interview, which lasted approximately three hours and fifteen minutes, Appellant admitted to killing Judy, but gave a variety of accounts as to how the event occurred. See State's Exhibit 42, Parts 1-12; (R. 985-1043).

First, Appellant simply claimed that something, "fuckin' flipped[.]" See State's Exhibit 42, Part 3 at 7:58, (R. 991). Explaining, Appellant told Sherriff Benson the door "just opened right up" like in "the horror movies." See State's Exhibit 42, Part 3 at 8:40, (R. 991). Once inside, Appellant said Judy flirted with him, but he "didn't want nothing to do with that" because he felt "she was like my grandma in a way[.]" See State's Exhibit 42, Part 3 at 9:43-10:18, (R. 991). Appellant claimed, "she kept coming on and I don't know what, I really don't . . . I fuckin' flipped." See State's Exhibit 42, Part 3 at 9:43-10:18, (R. 991).

Going into more detail, Appellant admitted he was in the bedroom with Judy and they were engaged in sexual activities. See State's Exhibit 42, Part 3 at 10:23; 11:45-12:30, (R. 992). When asked what caused Judy to bleed, Appellant responded that she bled from "between the legs" apparently as a result of his using a dildo on her. See State's Exhibit 42, Part 3 at 11:45-12:30, (R. 992). When Benson asked Appellant why he left, Appellant replied "she started bleeding, I said fuck what did I do?" See State's Exhibit 42, Part 3 at 13:40-47, (R. 992).

Following this response, Benson asked Appellant to start from the beginning. See State's Exhibit 42, Part 3 at 13:48-54, (R. 992). This time, Appellant provided more details explaining that he walked down the road in the direction of Judy's house, heard a scream, and ran up her

driveway. See State's Exhibit 42, Part 3, at 13:55-14:55, (R. 993). Appellant then told Benson that "it all went black" and it was like "a ghost opened the door." See State's Exhibit 42, Part 3 at 15:00-15:16, (R. 993). Appellant proceeded to explain that upon entering the front door, he found Judy sitting in the living room on the couch. See State's Exhibit 42, Part 3 at 16:05-13, (993). Appellant noted that Judy was talking to him, but he was "spaced out[.]" See State's Exhibit 42, Part 3 at 16:30-40, (R. 993). In this version of the story, Appellant maintained that he used a dildo on Judy giving details of its size, what it was made out of and its location. See State's Exhibit 42, Part 4 at 1:15-3:00, (R. 994). Appellant also began wavering as to how he exited the house saying he did not remember how he left before eventually telling Benson he left the house via the front door. See State's Exhibit 42, Part 4 at 6:30-36; 7:00-7:23, (R. 995). Elaborating on the events which transpired after he left the house, Appellant stated he "went back on down the road[.]" See State's Exhibit 42, Part 4 at 7:00-7:23, (R. 995).

During this exchange, Benson also inquired about the clothing Appellant was wearing during the incident. See State's Exhibit 42, Part 4 at 7:46-7:49, (R. 995). Appellant explained that he had already given authorities the clothing he was wearing that night, he was not wearing a Mercedes shirt at the time he committed the crime, and that he did not get any blood on his clothing. See State's Exhibit 42, Part 4 at 7:50-8:20, (R. 995). Benson then asked Appellant to rehash what caused Judy to bleed, to which Appellant replied he just "rode on her." See State's Exhibit 42, Part 4 at 8:55-9:00; 9:13, (R. 996). Appellant told Benson, [s]he started bleeding like crazy." See State's Exhibit 42, Part 4 at 9:16-18, (R. 996). Continuing, Appellant told Benson that Judy was "sticking that thing in her at the same time." See State's Exhibit 42, Part 4 at 9:20-27, (R. 996). Despite his prior admission, Appellant, when asked whether he was the one

controlling the dildo, denied using such a device on Judy. See State's Exhibit 42, Part 4 at 9:32-9:55, (R. 996)

Next, Benson began questioning Appellant regarding the extent to which he knew Judy. See State's Exhibit 42, Part 4 at 13:10-14:39, (R. 997). Responding to Benson's question, Appellant portrayed Judy as an acquaintance of his who made frequent passes at him and later described her as a "whore[.]" See State's Exhibit 42, Part 4 at 13:10-14:39; 16:53-17:00, (R. 997-98).

While Benson was questioning Appellant regarding his relationship with Judy, Appellant also provided an additional account of the incident. In this account, Appellant admitted that he walked over to Judy's house, she opened the door, invited him in and the two began having a conversation. See State's Exhibit 42, Part 4 at 29:15-23, (R. 1001) Continuing, Appellant told Benson the conversation gave way to sexual activities and he started "getting into it[.]" See State's Exhibit 42, Part 4 at 30:15-30, (R. 1001). Going into detail, Appellant claimed Judy performed oral sex on him before he began using the dildo on her, which he told Benson, led to her bleeding. See State's Exhibit 42, Part 4 at 30:39-31:48, (R. 1002). When Benson again asked Appellant what he did with the dildo, Appellant offered yet another story, this time stating he disposed of the object by throwing it into Judy's septic system. See State's Exhibit 42, Part 4 at 33:00-33:45, (R. 1002). Appellant also admitted leaving a cigarette lighter at the crime scene. See State's Exhibit 42, Part 4 at 34:10-14, (R. 1003).

After getting a drink, Benson and Appellant once again rehashed the evening in question. In particular, Appellant, after denying he put his hands on Judy, said "and I done something that I shouldn't have done." See State's Exhibit 42, Part 4 at 41:15-39, (R. 1004). When Benson asked Appellant what he had done, Appellant explained he "stuck it in a little too far[.]" See

State's Exhibit 42, Part 4 at 41:46, (R. 1004). Elaborating, Appellant said he put the dildo in Judy's vagina and she started bleeding. See State's Exhibit 42, Part 4 at 41:46-57, (R. 1004). Appellant continued to claim he disposed of the dildo by depositing it in Judy's septic system. See State's Exhibit 42, Part 4 at 42:01-04, (R. 1004).

Following this exchange, Benson confronted Appellant, informing him that he knew Appellant was still withholding information. See State's Exhibit 42, Part 5 at 0:00-0:30, (R. 1005). When confronted with this information, Appellant reluctantly began another version of the night's events. See State's Exhibit 42, Part 5 at 2:28-3:27, (R. 1005). In particular, Appellant stated he digitally penetrated Judy's vagina, but she "wanted me to put my whole hand inside of her." See State's Exhibit 42, Part 5 at 2:59-3:27, (R. 1005). Going into detail about the incident, Appellant claimed he started using his fist, when "something ripped" and he "freaked out." See State's Exhibit 42, Part 5 at 2:59-3:27, (R. 1005). Appellant maintained throughout the activity, Judy was "getting into this shit" and was an active participant telling him she wanted him to continue with the activity. See State's Exhibit 42, Part 5 at 2:59-3:27, (R. 1006).

Additionally, Appellant explained that he exited the house through a window rather than the front door as he had previously stated. See Exhibit 42, Part 5 at 5:19-24, (R. 1006).

Upon learning the new details of Appellant's statement, Benson began questioning certain aspects of the story beginning with the door. See State's Exhibit 42, Part 5 at 7:50, (R. 1007). Specifically, Benson questioned whether Appellant was invited into Judy's house. See State's Exhibit 42, Part 5 at 7:50, (R. 1007). Appellant replied, explaining that he had come to the door, when Judy recognized him, invited him in and asked if he wanted a drink. See State's Exhibit 42, Part 5 at 8:52-9:23, (R. 1007).

Benson continued questioning Appellant about the details of his story by informing him that they were aware he was being untruthful in regards to what he was wearing on the night in question. See State's Exhibit 42, Part 5 at 12:40-50, (R. 1009). In response, Appellant told Benson he burned the clothing he was wearing that night, before eventually admitting he washed off his clothes back at his house and used gasoline to attempt to get the bloodstains out of his clothing. See State's Exhibit 42, Part 5 at 13:00-13:06; 15:32; 15:46; 15:50-52, (R. 1009-1010).

Going back to the alleged sexual encounter, Benson asked Appellant whether he strangled Judy. See State's Exhibit 42, Part 6 at 1:35-41, (R.1012). Appellant denied choking Judy and thereafter, began explaining to Benson that he walked onto Judy's porch, she came outside, the two had a conversation, and they came inside to the couch when they began kissing and fondling one another. See State's Exhibit 42, Part 6 at 17:21-21:30, (R.1016-1017). Elaborating, Appellant said they moved into the kitchen before ending up in Judy's bedroom. See State's Exhibit 42, Part 6 at 21:55, (R.1017). Once Appellant and Judy were in the bedroom, he said "she took her top off and I couldn't really see what was going on and what she was doing. She started rubbing up and down her body and she . . . we started getting into it. It ain't something like she can keep talking about and talking about and like not do." See State's Exhibit 42, Part 6 at 22:42-23:07, (R.1018). Continuing, Appellant provided Benson with details of the encounter stating, "she was trying to get me up . . . then she wanted it harder and harder . . . then somehow or another she just shoved it up . . . [s]he stuck my whole hand down there [and] when I pulled it out, something got twisted around my finger." See State's Exhibit 42, Part 6 at 23:25-25:07, (R.1018). Benson then asked Appellant whether he and Judy scuffled to which Appellant responded stating, "[y]eah we played around, you know." See State's Exhibit 42, Part 6 at 27:32-36, (R.1019).

Subsequently, Appellant was asked whether he "got into" the sexual encounter with Judy, and after initially denying that he was "into" the sexual encounter, Appellant eventually admitted he was in fact, "into it." See State's Exhibit 42, Part 6 at 29:36-44, (R.1019-1020). Appellant continued, explaining the sexual activity was not coerced, but was an "agreeable situation." See State's Exhibit 42, Part 6 at 30:34-55, (R.1020).

Going back to the beginning of the encounter, Appellant admitted he visited Judy's house because he knew that she had been making passes at him and he was "hoping she'd give me sex." See State's Exhibit 42, Part 7 at 0:25-2:56, (R. 1024). Appellant then skipped back to the sexual activity, stating "[o]kay here, when she started bleeding, okay, I got spooked. I swear I did get spooked. I said, well, I got to make this look like something else. I had to." See State's Exhibit 42, Part 7 at 3:30-45, (R. 1024). Appellant then went into detail telling Benson, "[t]hen I choked her. She's already dead, I mean, it ain't like I killed her." See State's Exhibit 42, Part 7 at 3:50-57, (R. 1024). Going into detail, Appellant said he grabbed her throat and "[t]hen she foamed out the mouth. She was already dead and probably already had done that . . . I had to make it look like something else." See State's Exhibit 42, Part 7 at 4:09-25, (R. 1025).

Again Benson confronted Appellant and told him he knew Appellant was strangled before she died. See State's Exhibit 42, Part 7 at 5:26-6:03, (R. 1025). In response, Appellant admitted he grabbed Judy's throat with his right hand to keep her from screaming and she began to struggle in an attempt to get away from him. See State's Exhibit 42, Part 7 at 6:25-8:35, (R. 1026). Describing the incident in greater detail, Appellant told Benson, "[s]he opened up the door, I went in, then she did what I said. It started out just like that . . . then I don't know, I got fucking carried away . . . and I just fucking choked her out." See State's Exhibit 42, Part 7 at 9:00-9:30; 9:31-51, (R. 1027). Appellant further admitted the two were on the bed when she told

him to stop, he failed to stop and he choked her. See State's Exhibit 42, Part 7 at 10:49-12:46, (R. 1027).

Next, Appellant admitted that while he was choking Judy, he put his hand inside her, telling Benson he penetrated Judy with his forearm, up to his elbow. See State's Exhibit 42, Part 7 at 12:56-14:08, (R. 1028). He then admitted hearing noise, prompting him to jump out of the window in an adjacent room in order to flee the scene. See State's Exhibit 42, Part 7 at 14:40-15:34, (R. 1028). Appellant further admitted he left his lighter at the scene. See State's Exhibit 42, Part 7 at 16:40, (R. 1029). Describing his activities in the aftermath of the event, Appellant said he returned home and poured gasoline on his clothing, burning the shoes he was wearing. See State's Exhibit 42, Part 7 at 17:22-51, (R. 1029). Appellant also admitted he was wearing a Mercedes shirt, a pair of blue jeans and white shoes. See State's Exhibit 42, Part 7 at 17:57-18:13, (R. 1029).

Following this exchange, Appellant, after again receiving his Miranda rights, gave Benson a final statement. See State's Exhibit 42, Part 12 at 0:01-18:08, (R. 1038). Within his final statement, Appellant told Benson he came to Judy's door, when he was invited in and the two began talking, which then led to flirting, kissing and fondling one another. See State's Exhibit 42, Part 12 at 5:40-10:45, (R. 1039-1040). Continuing, Appellant said they ended up in Judy's bedroom where they began doing "sexual stuff" when Judy changed her mind and he "just wouldn't go for it." See State's Exhibit 42, Part 12 at 5:40-10:45, (R. 1040). Appellant next described sliding off the bed and moving onto the floor when Judy again told Appellant to stop. See State's Exhibit 42, Part 12 at 5:40-10:45, (R. 1040). Appellant admitted choking Judy while sticking his hand and eventually his entire forearm into Judy's vagina causing her to bleed. See State's Exhibit 42, Part 12 at 5:40-10:45, (R. 1040). Upon hearing noises, Appellant

explained that he jumped out of the window and fled the scene. See State's Exhibit 42, Part 12 at 5:40-10:45, (R. 1040). Describing the events which transpired in the aftermath of the incident, Appellant indicated he ran home before cleaning his clothing with gasoline and a water hose. See State's Exhibit 42, Part 12 at 5:40-10:45, (R. 1040).

Following the conclusion of his statement, Benson sought to clarify a few portions of Appellant's story. See State's Exhibit 42, Part 12 at 10:50, (R. 1040). In particular, Benson asked Appellant about the clothing he was wearing, to which Appellant responded stating he was wearing a Mercedes shirt, a pair of blue jeans and tennis shoes. See State's Exhibit 42, Part 12 at 11:50-12:28, (R. 1041).

Benson also asked for details regarding the sexual activities between Judy and Appellant. See State's Exhibit 42, Part 12 at 12:41-13:28, (R. 1041). In response, Appellant told Benson he never had intercourse with Judy because, despite both their efforts, he "never could get it up." See State's Exhibit 42, Part 12 at 12:41-13:28, (R. 1041). Describing the events in detail, Appellant stated "[s]he started stroking me and stuff, trying to get it up . . . it just wouldn't get up . . . after awhile I got irritated with it too and I . . . kept trying and kept trying . . . [and] she said 'just quit' and when she said 'quit' I just, I wouldn't take no for an answer." See State's Exhibit 42, Part 12 at 12:41-13:28, (R. 1041). During this exchange, Appellant further confirmed he choked the victim with one hand while sticking his forearm inside her vagina. See State's Exhibit 42, Part 12 at 13:30-14:10, (R. 1042).

Appellant also confirmed that he escaped by exiting through a window in an adjacent room, explaining that he heard someone coming, went to the other room, knelt down, opened the window and went through the window. See State's Exhibit 42, Part 12 at 14:20-30, (R. 1042). Finally, Appellant revealed that he stashed the clothing he was wearing during the crime in a tire

beside his parents' garage. See State's Exhibit 42, Part 12 at 16:07-17:00, (R. 1043). Thereafter, the interview concluded.

Following the interview, authorities executed a search warrant and found a blue Mercedes shirt and blue jeans in a tire beside Appellant's parents' garage, both items smelled of gasoline. (R. 434-35, 772-73). Forensic testing of these items later revealed that while both items tested positive for blood, neither sample provided a DNA profile. (R. 518-19, 521-22). SLED DNA Analyst Robin Taylor later attributed this to the gasoline found on the clothes concluding that, in her experience, gasoline can degrade a DNA sample.² (R. 519-20). Additionally, an autopsy, performed by forensic pathologist Dr. Earl Jenkins concluded Judy died as a result of "[b]lood loss due to penetrating trauma of the rectovaginal area" and agreed that such an injury was consistent with the use of the hand in the affected area. (R. 262). Jenkins further found there was a contributory cause of death in the form of asphyxiation. (R. 263-64).

PRESENTATION OF ISSUE AT TRIAL

During the charge conference, defense counsel asked the trial court to charge voluntary manslaughter. (R. 872-73). In support of the charge, defense counsel reasoned as follows:

Your Honor, voluntary manslaughter is the unlawful killing of a human being, without malice, in sudden heat of passion, with sufficient legal provocation.

Your Honor, basically there has been testimony in the form of a statement made by my client, the three-hour statement on September 7th, in which he said, in part, that they began in an essential (sic) sexual activity. At some point he said—he says that she said "no, no, you need to stop." If that's true—and, of course, the statement itself has to be decided by the jury whether or not they make whole, part, or any of it, but if that's true, they start off in a legal—something that was legal that moved into something that was no longer legal. If not, it should establish that sexual activity—you are caught up in the moment in heat of the passion when you are engaged in a sexual activity. He said "no, I don't want to stop," and he didn't stop. She ended up dying as a result. I think that there is

² SLED Agent Alex Layton confirmed the presence of gasoline on the jeans recovered from the tire. (R. 440-41).

sufficient, at least, facts for a jury to look at and decide whether or not voluntary manslaughter is something that is appropriate in this matter.

We racked our brains. I can't think of any other instances in this case where there was any evidence presented that would suggest voluntary manslaughter, except for statements that were made during that three-hour interrogation.

But, Your Honor, I think that if there is enough—if the facts are there, there was evidence that's been presented, then it's the obligation of the court to put in a jury charge for the jury to consider. And if not, it's my understanding, Your Honor, it's reversible error and we would just end up back here all over again.

(R. 872-73).

In response, the trial court pointed out that voluntary manslaughter requires “both heat of passion and sufficient legal provocation” essentially noting that counsel failed to present facts amounting to sufficient legal provocation. (R. 875-76). Replying to the trial court's comments, defense counsel said, “there was testimony—or he said that he was angry or he got mad, exasperated that she had told him no and was trying to rebuff his advances.” (R. 876). Defense counsel concluded, stating “I'm going to be honest, like I said before, where is the legal provocation? That's the best I can do, [y]our Honor.” (R. 876). Following this exchange, the trial court ruled there was no sufficient legal provocation and thus rejected Appellant's request to charge voluntary manslaughter. (R. 876-77).

STANDARD OF REVIEW

In criminal cases, appellate courts sit only to review errors of law and are bound by the factual findings of the trial court unless they are found to be clearly erroneous. State v. Hernandez, 386 S.C. 655, 659, 690 S.E.2d 582, 584 (Ct. App. 2010). Generally, the trial court is required only to charge the current and correct law of South Carolina. Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004). To warrant reversal, the trial court's refusal to give a

requested instruction must be both erroneous and prejudicial. Burroughs v. Worsham, 352 S.C. 382, 392, 574 S.E.2d 215, 220 (Ct. App. 2002).

ARGUMENT

I. The Argument Presented on Appeal is not Preserved for Appellate Review as Defense Counsel Failed to Present the Same Argument to the Trial Court as Required by State Preservation Rules

Appellant argues the trial court erred in refusing to charge voluntary manslaughter as there was evidence he was having consensual sexual relations with the victim, she told him to stop, the couple "got into it[,] and Appellant "flipped[,] choking the victim. In support of this argument, Appellant contends he is entitled to an instruction on voluntary manslaughter pursuant to State v. Gardner, 219 S.C. 97, 105, 64 S.E.2d 130, 134-35 (1951). The State notes this argument is not preserved for appellate review as this specific argument was never presented to the trial court. See I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (holding an appellant must present both his issues and arguments to the lower court and obtain a ruling before presenting the issues and arguments on appeal); State v. Williams, 303 S.C. 410, 411, 401 S.E.2d 168, 169 (1991) (concluding appellate courts will generally not address an issue unless the issue was raised to and ruled upon by the trial court):

In I'On, the Supreme Court of South Carolina explained the preservation requirement placed on an appellant stating, the "preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered *all relevant facts, law, and arguments.*" 338 S.C. at 422, 526 S.E.2d at 724 (emphasis added). Elaborating, the I'On Court found, "the requirement also serves as a keen incentive for a party to prepare a case thoroughly. It prevents a party from keeping an ace card up his sleeve - intentionally or by chance - in the hope that an

appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case." Id.

Here, defense counsel never argued Appellant was entitled to a charge on voluntary manslaughter because there was evidence the couple "got into it" and he "flipped." Likewise, Appellant never argued that such actions entitled him to a charge of voluntary manslaughter under Gardner. Rather, as highlighted above, the only argument presented to the trial court supporting a charge of voluntary manslaughter was that the two were engaged in consensual sexual activity when Judy asked Appellant to stop, he refused to do so, and Judy died as a result. (R. 872-73). In fact, defense counsel admitted he could not think of any other instances in the case which would give rise to a voluntary manslaughter instruction, stating, "[w]e racked our brains. I can't think of any other instances in this case where there was any evidence presented that would suggest voluntary manslaughter[.]" (R. 872-73). Accordingly, the State believes the line of argument advanced at trial failed to preserve the issue of whether Appellant's statement that the couple "got into it" and he "flipped" was enough to entitle him to a voluntary manslaughter instruction under Gardner. Quite simply, defense counsel's argument at trial failed to specifically alert the court to evidence the couple "got into it" and Appellant "flipped." Moreover, defense counsel failed to present the court with any authority stating that violent activity by the victim could entitle his client to an instruction on voluntary manslaughter as is now argued on appeal. Rather, the argument advanced to the trial court focused on Appellant's mental state and whether he was acting in the heat of passion. This is evidenced both by the trial court's comment, that voluntary manslaughter required "both heat of passion and sufficient legal provocation" as well as the trial court's ruling, that there was no evidence of sufficient legal provocation. In fact, defense counsel, when asked to address the question of sufficient legal

provocation specifically failed to point out any violent activity or descriptions of violent activity which could be viewed as evidence of provocation. Likewise, counsel failed to produce any authority that such activity could be construed as sufficient legal provocation. Accordingly, the State asks this Court to find this issue unpreserved.

II. The Trial Court did not Err in Failing to Instruct the Jury Regarding Voluntary Manslaughter as there was no Evidence Presented Showing Sufficient Legal Provocation

As noted above, Appellant maintains he is entitled to a charge on voluntary manslaughter pursuant to State v. Gardner, 219 S.C. 97, 105, 64 S.E.2d 130, 134-35 (1951). In support of his position, Appellant alleges there was evidence the couple was involved in consensual sexual activities when she told him to stop, causing the sexual encounter to turn violent. Appellant further argues that the ensuing struggle was evidence of voluntary manslaughter. The State disagrees and contends the trial court was correct in finding there was no evidence of sufficient legal provocation and as such, Appellant was not entitled to a charge on voluntary manslaughter. See State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000) (finding heat of passion and sufficient legal provocation must both be present at the time of killing to reduce murder to voluntary manslaughter); State v. Hernandez, 386 S.C. 655, 660, 690 S.E.2d 582, 585 (Ct. App. 2010) (holding a jury instruction should not be given unless justified by the evidence).

The evidence presented at trial determines the law upon which the jury will be charged. State v. Brown, 362 S.C. 258, 261-62, 607 S.E.2d 93, 95 (Ct. App. 2004). A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied. State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007). However, a trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence. State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993).

As to lesser-included offenses, the law requires that a jury must be charged on a lesser-included offense if, "there is evidence from which it could be inferred that a defendant committed the lesser offense rather than the greater." State v. Drafts, 288 S.C. 30, 32, 340 S.E.2d 784, 785 (1986). Conversely, a trial court may eliminate instructing the jury on a lesser-included offense where there is no evidence tending to reduce the crime from the greater offense to the lesser. State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 166 (2007). "In determining whether the evidence requires a charge of voluntary manslaughter, the Court views the facts in a light most favorable to the defendant." Pittman, 373 S.C. at 572-73, 647 S.E.2d at 168.

"Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." Cole, 338 S.C. at 101, 525 S.E.2d at 513. To mitigate murder to manslaughter, the sudden heat of passion upon sufficient legal provocation "must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence." State v. Byrd, 323 S.C. 319, 322, 474 S.E.2d 430, 432 (1996); State v. Locklair, 341 S.C. 352, 359, 535 S.E.2d 420, 424 (2000). Thus, to reduce murder to voluntary manslaughter, "[b]oth heat of passion and sufficient legal provocation must be present at the time of the killing". Id. Furthermore, "[p]rovocation necessary to support a voluntary manslaughter charge must come from some act of or related to the victim in order to constitute sufficient legal provocation." State v. Shuler, 344 S.C. 604, 632, 545 S.E.2d 805, 819 (2001).

In the present case, the trial court correctly found Appellant was not entitled to a charge on voluntary manslaughter because there was no evidence of sufficient legal provocation. (R. 877). As discussed above, heat of passion alone does not support an instruction on voluntary

manslaughter and in the absence of sufficient legal provocation, a killing, even if committed during the sudden heat of passion, is murder rather than manslaughter. State v. Kornahrens, 290 S.C. 281, 286, 350 S.E.2d 180, 184 (1986), cert. denied 480 U.S. 940 (1987). Here, there was no evidence of sufficient legal provocation as Judy was entitled to defend herself from Appellant's criminal conduct, namely assault and criminal sexual conduct. See State v. Holland, 385 S.C. 159, 167, 682 S.E.2d 898, 902 (Ct. App. 2009) quoting State v. Ivey, 325 S.C. 137, 142, 481 S.E.2d 125, 127 (1997) ("The exercise of a legal right, no matter how offensive to another, is never in law deemed a provocation sufficient to justify or mitigate an act of violence."). Furthermore, while Appellant cites to Gardner for the proposition that a voluntary manslaughter charge is warranted where there is evidence the victim produced "some overt, threatening act or physical encounter[.]" Appellant's assertion that the couple "got into it" is not enough to show sufficient legal provocation. Gardner, 219 S.C. at 105, 64 S.E.2d at 134-35.

A. Sufficient Legal Provocation and Exercising One's Legal Right of Self-Defense

~~In State v. Holland, the South Carolina Court of Appeals upheld the trial court's refusal~~ to charge voluntary manslaughter where there was no evidence supporting a finding of sufficient legal provocation. 385 S.C. at 167, 682 S.E.2d at 902. In so finding, the Court noted "[a] victim's attempts to resist or defend himself from a crime cannot satisfy the sufficient legal provocation element of voluntary manslaughter." Id. quoting State v. Shuler, 344 S.C. 604, 632, 545 S.E.2d 805, 819 (2001).

Here, as in Holland, there is no evidence, nor any reasonable inference from the evidence, that at the moment Appellant killed Judy, he was acting with sufficient legal provocation. Thus, while Appellant argues he was entitled to a voluntary manslaughter charge because he and Judy allegedly "got into it" after she rejected his sexual advances, such an argument lacks merit as any

physical struggle related to Judy's rejection of Appellant would amount to a crime—in this case assault or criminal sexual conduct. Accordingly, the State submits that even reviewing the facts in the light most favorable to the defendant, there would be no reasonable inference supporting a charge on voluntary manslaughter.

B. Sufficient Legal Provocation and *State v. Gardner*

Appellant also cites to *State v. Gardner*, 219 S.C. 97, 105, 64 S.E.2d 130, 134-35 (1951) to support his assertion that there was sufficient legal provocation entitling him to a voluntary manslaughter charge. In particular, Appellant maintains the similarities between his statement that he “got into it” and the statements in *Gardner* that the accused and the victim “got into it” amount to sufficient legal provocation.

In *Gardner*, the South Carolina Supreme Court found the trial court erred in failing to instruct on voluntary manslaughter where the accused told authorities he visited his estranged wife at his father-in law's house, he asked her to withdraw non-support charges, she refused, the couple argued, “she jumped on me” and “me and her got into it[.]” Id. In so finding, the *Gardner* court noted, “[i]n determining whether the act which caused death was impelled by heat of passion or by malice, all the surrounding circumstances and conditions are to be taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing.” Id. at 104, 64 S.E.2d at 134. The State believes this proposition is key in distinguishing *Gardner* from the present case, as the context in which these statements occurred were markedly different and thus the interpretation of such statements should be as well.

In *Gardner*, there was evidence of a strained relationship between the accused, his wife and her family. Id. at 101-02, 64 S.E.2d 132-33. Specifically, there was evidence the conduct of

the accused's wife at his previous places of employment resulted in his dismissal from several jobs in the area. Id. There was also evidence that because of this conduct, the accused was forced to seek employment outside of the area and upon his procuring a job and returning home, he was arrested on vagrancy charges at the instance of his mother-in-law. Id. Additional evidence showed that while Appellant was in jail on the vagrancy charges, his wife filed non-support charges against him. Id. Finally, the record contained evidence that the accused had suffered beatings by his father-in-law, his father-in-law had him jailed and had threatened his life. Id.

Here, the limited evidence in the record related to Appellant's previous relationship with Judy failed to indicate and sort of strained relationship which could give rise to an inference that Judy attacked Appellant for any reason other than self-defense. Indeed, Appellant's own statement suggests the opposite, as he told authorities, Judy made frequent passes at him and he visited her on the evening in question because he hoped "she'd give me sex." See State's Exhibit 42, Part 7 at 0:25-2:56 (R. 1024).

Moreover, Appellant's use of the statement that he and Judy "got into it" and he "flipped" simply does not lend itself to the construction utilized by the Gardner court. The State notes the context in which these words came about is instructive. Specifically, while Appellant admitted he "got into it" during his confession, this admission came about in response to questions about whether he enjoyed the so-called consensual sexual encounter with Judy. See State's Exhibit 42, Part 4 at 30:15-30; State's Exhibit 42, Part 6 at 29:00-44, (R. 1001, 1020). In the first instance, Appellant volunteered this information when he was pressed for details regarding the consensual sexual encounter. See State's Exhibit 42, Part 4 at 29:15-31:48, (R. 1001). Of note is the fact that at this point in the interview, Appellant had yet to admit that any sort of struggle occurred

between he and Judy. Recounting the event, Appellant told Benson he was having a conversation with Judy when the conversation gave way to sexual activities and he started "getting into it[.]" See State's Exhibit 42, Part 4 at 29:15-30:30, (R. 1001) Continuing, Appellant told Benson that Judy performed oral sex on him before he began using the dildo on her which led to her bleeding. See State's Exhibit 42, Part 4 at 30:39-31:48, (R. 1002).

Shortly thereafter, Appellant, who had still neglected to mention that a struggle occurred, began to describe the sexual encounter again, this time with more detail. See State's Exhibit 42, Part 5 at 2:59-3:27, (R. 1005). Here, Appellant told Benson, he digitally penetrated Judy's vagina, she wanted him to put his entire hand inside of her, he began using his fist, "something ripped[.]" and he "freaked out[.]" See State's Exhibit 42, Part 5 at 2:59-3:27, (R. 1005). Assuring Benson the sexual activity with Judy was consensual, Appellant stated Judy was "getting into this shit" and suggested he use his fist on her. See State's Exhibit 42, Part 5 at 2:59-3:27, (R. 1005).

Later in the interview, Appellant again admitted he "got into it[.]" As noted above, the context in which the admission occurred is instructive. Prior to his admission, Appellant was asked the following: (1) whether he liked sex; (2) whether he got "into it" (meaning sex); and (3) whether Judy got into the sex. See State's Exhibit 42, Part 6 at 29:19-20; 29:26; 29:36-37, (R. 1019-1020). Following this line of questioning, Appellant reluctantly admitted he "got into it" referencing the sexual activity, and that it was possible Judy may have hit her head in the process. See State's Exhibit 42, Part 6 at 29:40-44, (R. 1019). Thereafter, Appellant continued, explaining the sexual activity was not coerced, but was an "agreeable situation." See State's Exhibit 42, Part 6 at 30:34-55, (R. 1020).

Likewise, Appellant's statement that he flipped³ came about in a completely separate context from Appellant's statement that he "got into it." Specifically, Appellant noted he "flipped" not during the consensual sexual activity, or as a result of his being rejected, but rather after he approached Judy's door. See State's Exhibit 42, Part 3 at 7:58, (R. 991). First, Appellant simply claimed that something, "fucking flipped[.]" See State's Exhibit 42, Part 3 at 7:58, (R. 991). Explaining, Appellant told Sherriff Benson the door "just opened right up" like in "the horror movies." See State's Exhibit 42, Part 3 at 8:40, (R. 991). Once inside, Appellant said Judy flirted with him, but he "didn't want nothing to do with that" because he felt "she was like my grandma in a way[.]" See State's Exhibit 42, Part 3 at 9:43-10:18, (R. 991). Appellant claimed, "she kept coming on and I don't know what, I really don't . . . I fuckin' flipped." See State's Exhibit 42, Part 3 at 9:43-10:18, (R. 991). In any event, the State submits the context of this statement, both by itself and when taken out of context and combined with his statement that he "got into it" fails to show sufficient legal provocation under either Gardner or Holland. Accordingly, the State submits there is no evidence, nor are there any reasonable inferences from the evidence, which would support a finding of sufficient legal provocation and thus a charge on voluntary manslaughter.

CONCLUSION

³ The State also questions whether the narrow issue of whether Appellant was entitled to a voluntary manslaughter charge based upon his statement that he "flipped" is preserved for Appellate review. See I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000) (holding an appellant must present both his issues and arguments to the lower court and obtain a ruling before presenting the issues and arguments on appeal); State v. Williams, 303 S.C. 410, 401 S.E.2d 168 (1991) (concluding appellate courts will generally not address an issue unless the issue was raised to and ruled upon by the trial court). While the statement itself is contained within Appellant's question presented, this evidence, much like his statement "he got into it[.]" was never presented to the trial court as an argument for voluntary manslaughter. Moreover, Appellant fails to cite any authority supporting a voluntary manslaughter charge based upon a statement that the defendant "flipped." Therefore, the State suggests this issue is abandoned on appeal. See Rule 208(b)(1)(D), SCACR (requiring citations of authority within the argument section of an appellant's brief); State v. Black, 319 S.C. 515, 518, 462 S.E.2d 311, 313 (Ct. App. 1995).

For the aforementioned reasons, the State respectfully asks this court to affirm the ruling of the trial court as well as Appellant's underlying convictions.

Respectfully Submitted,

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Attorney General

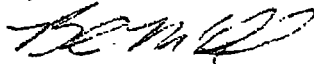
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November 30, 2011.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County

Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CASEY RAY PERKINS,

APPELLANT

CERTIFICATE OF COUNSEL

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

SCACR. The undersigned also certifies that the Final Brief is in compliance with the South Carolina Supreme Court's Order of August 13, 2007.

ALAN WILSON
Attorney General

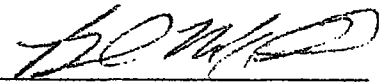
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November 30, 2011.
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County

Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

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V.

CASEY RAY PERKINS,

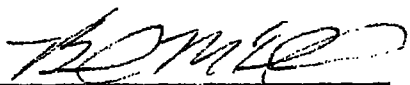
APPELLANT

PROOF OF SERVICE

I, Brendan J. McDonald, Counsel for Respondent, certify that I have this date served the *Final Brief of Respondent*, dated November 30, 2011, on Appellant by depositing two copies of the same in the United States mail, first class postage prepaid, addressed to his attorney of record:

Robert M. Dudek, Chief Appellate Defender
South Carolina Office of Indigent Defense
Post Office Box 11589
Columbia, South Carolina 29201

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


BRENDAN J. McDONALD
Assistant Attorney General
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Columbia, South Carolina 29211

ATTORNEY FOR RESPONDENT

**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.

Casey Ray Perkins, Appellant.

Appellate Case No. 2008-111746

Appeal From Chester County
Brooks P. Goldsmith, Circuit Court Judge

Unpublished Opinion No. 2012-UP-525
Submitted August 1, 2012 – Filed September 12, 2012

AFFIRMED

Chief Appellate Defender Robert M. Dudek, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Senior Assistant Deputy
Attorney General Salley W. Elliott, and Assistant
Attorney General Brendan J. McDonald, all of Columbia;
and Solicitor Douglas A. Barfield, Jr., of Lancaster, for
Respondent.

PER CURIAM: Casey Ray Perkins appeals his conviction of murder, arguing the trial court erred in refusing to charge voluntary manslaughter. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authority: *State v. Holland*, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009) ("The law to be charged must be determined from the evidence presented at trial." (quoting *State v. Cole*, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000))); *id.* at 165-66, 682 S.E.2d at 901 ("In determining whether the evidence requires a charge of voluntary manslaughter, [the appellate court] views the facts in a light most favorable to the defendant."); *id.* at 166, 682 S.E.2d at 901 (stating the appellate court will not reverse the trial court's decision regarding jury charges but for the trial court's abuse of discretion); *id.* ("Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. Heat of passion alone will not suffice to reduce murder to voluntary manslaughter." (citation and internal quotation marks omitted)); *id.* at 167, 682 S.E.2d at 902 ("A victim's attempts to resist or defend himself from a crime cannot satisfy the sufficient legal provocation element of voluntary manslaughter." (quoting *State v. Shuler*, 344 S.C. 604, 632, 545 S.E.2d 805, 819 (2001))).

AFFIRMED.

SHORT, KONDUROS, and LOCKEMY, JJ., concur.

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



CLOSING LETTER SENT
ON 9-14-12

Attorney Initials RMD

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The South Carolina Court of Appeals

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September 28, 2012

The Honorable Sue K. Carpenter
PO Drawer 580
Chester SC 29706-0580

REMITTITUR

Re: The State v. Perkins, Casey Ray
Lower Court Case No. 2005GS1200438
Appellate Case No. 2008-111746

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Brendan Jackson McDonald
Robert Michael Dudek

RECEIVED

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SC OFFICE OF
APPELLATE JUSTICE

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FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Chester)

Casey Raymond Perkins 286100)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

2013-CP-12-0278
IN THE COURT OF COMMON PLEAS

FILED
2013 JUN 20 AM 10:44
CLERK OF COURT
CHESTER COS.C.
APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

- M^c Cormick, Correctional Inst.,
1. Place of detention 384 Redemption Way, M^c Cormick, SC 29899
2. Name and location of Court which imposed sentence Circuit Court, Chester, SC 29706
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) N/A
(b) _____
(c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
(a) Dec. 80
(b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED Conviction
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. September 12, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: INEFFECTIVE ASSISTANCE OF COUNSEL

- (a) Failure To INVESTIGATE
- (b) "Prosecutorial MISconduct"
- (c) Due Process Violation

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) _____
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. _____
- ii. _____
- iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) INEFFECTIVE ASSISTANCE - Issue Not Preserve For Appellate Review

(b) _____

(c) _____

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

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

- (a) the name and address of each attorney who represented you:
- i. JEFF DUNN, Esq. Trial Attorney 546 E. Main St, Rock Hill, SC 29730
 - ii. Robert M. Dudek Appellate Defender
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial
 - ii. S.C. Court of Appeal
 - iii. _____

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

Vacate Conviction For New Trial

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

No

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

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

Cory Foster

SWORN to and subscribed before me this 18
day of June, 2013.

[Signature] (L.S.)
Notary Public

My Commission Expires: 12-16-2015

FILED

CLERK OF COURT
CHESTER CO S.C.
2013 JUN 21 A 10:44

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

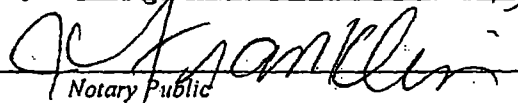
I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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


Applicant

SWORN or affirmed to and subscribed before me this

18 day of June, 2013


Notary Public

My Commission Expires: 12-16-2015

FILED

CLERK OF COURT
CHESTER CO S.C.
2013 JUN 21 A 10:44

6/18/13
Date:

Sue Carpenter
Clerk of Court
P.O. Box 580
Chester, SC 29706

FILED

CLERK OF COURT
CHESTER CO S.C.
2013 JUN 21 A 10:43

Re: Filing (PCR) Application with (2) Amendments;

Dear Clerk,

Please find enclosed with (PCR) Post conviction Relief Application
Amendments I wish to be filed with this case. Please send back to
me a stamp clock copy for my file.

Thanks for your time.

Sincerely,
Casey R. Perkins #280100

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

Casey Ray Perkins, #286100
Plaintiff,

Vs.

State of South Carolina,
Defendant.

IN THE COURT OF COMMON PLEAS

C/A No:

AMENDED (Supplemental)
PCR Application Brief

FILED

2013 JUN 21/1
A.D. 43

CLERK OF COURT
CHESTER CO S.C.

Pursuant to the South Carolina Rules of Civil Procedure, SCRPC Rule 15(c), Plaintiff hereby amends his application for Post Conviction Relief. Plaintiff amends his original brief by amending "REQUEST FOR THE DISCLOSURE OF EVIDENCE IN COMPLIANCE WITH RULE 5, SCRCrIMP" (SEE, ATTACHMENT-1)

The Plaintiff asserts that trial counsel did not put into his possession his "Brady Material" And without this evidence there is no way the Plaintiff would be able to aid his counsel in presenting cognizable claims in his first appearance for Post-Conviction Relief (PCR). Plaintiff, respectfully request that this court grant this motion.

WHEREFORE, Plaintiff requests that his previously submitted Post Conviction Relief application brief be amended as stated above.

ATTACHMENT
1

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

STATE OF SOUTH CAROLINA)

VS.)

MOTIONREQUEST FOR THE DISCLOSURE
OF EVIDENCE IN COMPLIANCE
WITH RULE 5, SCRCrP

FILED

2013 JUN 21 A 10:43

CLERK OF COURT
CHESTER CO S.C.Casey R. Perkins, #286160

In compliance with Rule 5, South Carolina Rules of Criminal Procedure and Brady v. Maryland, 373 U.S.83 (1963), the Defendant hereby requests discovery of the following items within thirty (30) days pursuant to the provision of Rule 5, SCRCrP, and subject to the provided for possible penalties contained in Section (d)(2) of such rule permitting the discovery or inspection, granting of a continuance, or prohibiting you from introducing evidence not disclosed, or other remedies deemed just under the circumstances:

1. copies of original police or sheriff's department or South Carolina Highway Patrol telephone and dispatch logs relative to this case; copies of telephone tapes relative to this case.
2. copy of and specific time of any complaint to police or sheriff's department or South Carolina Highway Patrol initiating the police or sheriff's department or South Carolina Highway Patrol's response to the Defendant's location and preservation for defense use at trial of original telephone tapes.
3. copy of evidence log with respect to the chain of evidence for any and all material taken into evidence by the police, sheriff's department, South Carolina Highway Patrol, or any investigating law enforcement agency.
4. all relevant written or recorded statements, signed or unsigned confessions, or written summaries of oral confessions made by Defendant within the possession, custody, or control of the affiant or State, the existence of which is known or by the exercise of due diligence may become known to the affiant or State; and the substance of any oral statement which the affiant or State intends to offer in evidence at the trial made by Defendant whether before or after arrest in response to interrogation by any person then known to Defendant to be a prosecution agent.
5. all books, papers, documents, photographs, sound or audio or video recordings, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody, or control of the affiant or State and are intended for use by the affiant or State as evidence at the trial or were obtained from or belong to the defendant.
6. a written list of the names and current addresses of all persons, including but not limited to police officers, sheriff's deputies, or employees of the South Carolina Highway Patrol the affiant or State expects to call as witnesses at the trial in support of the State's case.
7. all relevant written or recorded verbatim statements, both signed and unsigned, of any witnesses known to the affiant or State.

*8. any oral, written, or recorded statements made by any person to the prosecution, Grand Jury, or any law enforcement agency in connection with this case.

9. any photographs that have been exhibited to any person for the purpose of establishing the identity of the perpetrator of the crime charged and the names and current addresses of any and all persons to whom the photographs were shown; the results of and reports as to the circumstances surrounding and the method and guidelines which were followed during any line-up or show-up in this case, photographic or otherwise.

10. the results of and report as to the circumstances surrounding any polygraph test that may have been administered to the Defendant or to any witness in this case.

11. all reports or records of prior convictions of Defendant and/or any co-defendant, as is within the possession, custody, or control of the affiant or State, the existence of which is known or by the exercise of due diligence may become known to the affiant or State.

12. all reports or records of prior convictions of persons whom the affiant or State expects to call as witnesses, as is within the possession, custody, or control of the affiant or State, the existence of which is known or by the exercise of due diligence may become known to the affiant or State.

13. all warrants which have been executed in connection with the case and the papers accompanying them, including affidavits, transcripts of oral testimony, returns, and inventories, and including any bench warrants which were served in connection with the arrest of this Defendant or which were the basis for the arrest of this Defendant.

14. all material now known to the affiant or State or which may become known or which through diligence may be learned from the investigating officers or the witnesses in the case which is exculpatory material and all information favorable to the Defendant. This request includes the reports of any investigations of suspects other than the Defendant carried out by the affiant, the sheriff's department, the State, South Carolina Highway Patrol, or any other police or law enforcement agency.

15. copies of all reports made by the Oconee County Sheriff's Department, a municipal police department, the South Carolina Highway Patrol, or any other law enforcement agency which relate to the charges brought against the Defendant.

16. all documents, records, or other evidence which relate to the charges brought against Defendant.

17. copies of any writings executed, audiotapes, or videotapes recorded by the affiant, any police official, sheriff's deputy, employee of the South Carolina Highway Patrol, or other interested party dealing with the incident under which Defendant stands charged, including but not limited to:

- a. police, sheriff's department, or South Carolina Highway Patrol reports;
- b. witness statements;
- c. notes made by police officials, sheriff's deputies, or employee of the South Carolina Highway Patrol to be used at trial;
- d. handwritten notes made by police officials, sheriff's deputies, employees of the South Carolina Highway Patrol, or other investigating officers of their interview or conversation with Defendant or any other witness.

18. names and addresses of any and all witnesses interviewed by the prosecution or any other law enforcement agency who may have information regarding the guilt or innocence of Defendant arising out of the incident under which Defendant stands

charged or who may have information which would mitigate punishment or impeach, discredit, or contradict the testimony of any witness of the State whether or not the witnesses may testify at trial.

19. any and all photographs taken at the scene of the alleged crime and/or of the defendant or any portion of the defendant's body or any co-defendant and/or any witness or any portion of any co-defendants and/or any witness' body.
20. names of any police officers, sheriff's deputies, employees of the South Carolina Highway Patrol, or any other persons who informed Defendant of his *Miranda* rights, including the times and places where the rights were given.
21. the results of all chemical and field tests administered to Defendant or conducted upon any evidence, whether or not the results have been recorded, together with the names of the person who administered the tests and the time, location, and circumstances under which the tests were given or conducted.
22. the serial number, nomenclature, model number, record of calibration, repair or other matter and location of the breathalyzer or datamaster used in this case, along with a legible copy of the breathalyzer or datamaster test results.
23. any other evidence obtained by observation of police, sheriff's department, or South Carolina Highway Patrol witnesses intended to be used against Defendant at trial that is not part of a written police, sheriff's department, or South Carolina Highway Patrol report furnished to defense counsel.
24. any and all investigative reports, information, or material which tends to establish the Defendant's innocence, to mitigate punishment, or to impeach, discredit, or contradict the testimony of any witness whom the affiant or State will or may call at trial.
25. any available evidence known to the affiant, prosecutor, police, sheriff's department, or South Carolina Highway Patrol that would tend to negate the guilt of Defendant, mitigate the degree of the offense, or reduce the punishment, regardless of whether it will damage the State's case, including but not limited to any evidence that may show that the Defendant's actions fall outside any statutory definitions of fraudulent check.
26. whether the arresting officer(s) gave Defendant an opportunity to make a telephone call after his/her arrest, and, if so, when the call was allowed and to whom and for what purposes and whether or not the call was unintentionally or intentionally monitored.
27. if photographs, sound or audio recordings, or video recordings were taken of Defendant:
 - a. the name of the person who took the photographs or acted as the technician for sound, audio, or video recordings;
 - b. the time the photographs, sound, audio, or video recordings were taken;
 - c. the location at which they were taken;
 - d. the circumstances under which they were taken;
 - e. the present location of any photographs, sound, audio, or video recordings;
 - f. the technical experience of the person who took the photographs or who acted as the technician for sound, audio, or video recordings;
 - g. whether Defendant was read his/her *Miranda* rights or any other rights prior to the taking of the photographs, sound, audio, or video recordings;
 - h. whether Defendant was given an opportunity to refuse to have his/her

photograph taken or be subjected to sound, audio, or video recordings and, if so, what was said to Defendant concerning his/her right to refuse; any transcript made of any sound, audio, or video recordings.

i.

28. *Curriculum vita* of any expert intended to be called by the affiant or State.

29. ~~any scientific or medical report which tends to establish the Defendant's innocence, to mitigate punishment, or to impeach, discredit, or contradict the testimony of any witness whom the affiant or State will or may call at trial.~~

30. any reports by or to the State Law Enforcement Division (SLED) criminalistic laboratory, Federal Bureau of Investigation (FBI) laboratories, Oconee County Sheriff's Department laboratory, Anderson County Sheriff's Department laboratory, Anderson-Oconee Regional Forensics Laboratory, or any other law enforcement laboratory concerning an examination made by said laboratories and/or personnel thereof, of any physical, photographic, oral, or written evidence concerning the investigation of this case.

31. any result or report of chemical analysis of any evidence in the possession, custody, or control of the affiant, prosecution, State, or local law enforcement agency.

32. any certified or sworn statement for the purpose of establishing a chain of physical custody or control of evidence that the affiant or prosecution intends to offer in evidence at trial.

33. all reports from the State Law Enforcement Division (SLED), Federal Bureau of Investigation (FBI), Oconee County Sheriff's Department, Anderson-Oconee Regional Forensics Laboratory, South Carolina Highway Patrol, or any other law enforcement agency concerning fingerprint evidence checked in connection with this case.

34. any inconsistent statements made by a particular witness or between witnesses, whether written or oral, that is known to the affiant, prosecution, or any other law enforcement agency.

35. any statement or admission by a witness for or on behalf of the State with respect to the witness' memory or loss thereof.

36. whether or not any witness called before the Grand Jury or who has or will give testimony to any investigative agency or at trial has ever been psychiatrically hospitalized or undergone psychiatric treatment, examination, mental status examination or care, and, if so, a list of names and addresses of the psychiatrists and hospitals and copies of any and all relevant records and reports.

37. all notes or memoranda by psychiatrists or other medical or mental health examiners of their conversations with the Defendant or any co-defendant; copies of any and all medical records, social history, or other reports relied upon by psychiatrists or other medical or mental health examiners in any evaluation of the Defendant or any co-defendant; and all results or reports of physical or mental examinations, including any laboratory or scientific test conducted, which are in the possession, custody, or control of the affiant or State, the existence of which is known or by the exercise of due diligence may become known to the affiant or State.

38. ~~any and all plea bargains, promises, rewards, reductions, dismissals, agreements not to bring criminal charges, or any other inducement made to any witness herein, whether or not they have testified before the Grand Jury or other investigative agency and regardless of whether or not they will testify at trial.~~

39. any offers or grants of immunity to any witness from loss of property, fine, forfeiture, prosecution, or punishment in this case or any other case, related or otherwise.

40. copies of any and all memoranda, reports, and correspondence to and from the various law enforcement agencies of the United States and all state, county, municipal, and local law enforcement agencies regarding the investigation herein.

~~41. any and all physical or tangible items in the possession, custody, or control of, or which could reasonably be brought within the possession, custody, or control of the affiant, prosecution, State, federal, or local law enforcement agency.~~

Any request made herein does not constitute a waiver of the Defendant's right to insist upon establishment of any physical evidence or chain of custody by live expert testimony of all parties concerned pursuant to Rule 6 of the South Carolina Rules of Criminal Procedure.

All *Brady* material must be made available to Defendant as soon as it becomes evident to the affiant or State that the material information in his or its possession falls within the ambit of the rule and, in any case, within thirty (30) days from the service of this request and not less than ten (10) days prior to trial.

If the affiant or State finds himself or itself with *Brady* material but feels that the production can be delayed to trial or a point closer to trial, Defendant shall expect you to advise me immediately so that the time for disclosure can be resolved by a court of appropriate jurisdiction.

This request is a continuing request for all discoverable material and information as it becomes known to the affiant, State, the prosecution, or any law enforcement agency.

Upon the failure of the affiant, prosecution, and/or State to comply with this request, the Defendant will move before the Presiding Judge of this Court for an Order prohibiting the affiant or State from introducing at trial any and all evidence not disclosed.

Cssey R. Perkin #286100

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

Casey Ray Perkins, #286100
Plaintiff,

vs.

State of South Carolina,

Defendant.

2013-CP-12-0278
IN THE COURT OF COMMON PLEAS

C/A No.:

MOTION REQUESTING

APPOINTED COUNSEL TO FILE

MOTION TO ALTER OR AMEND

FILED

2013 JUN 21 A

CLERK OF COURT
CHESTER CO SC

Now Comes the applicant, Casey Ray Perkins #286100, who ask this Honorable Court to require the Court appointed attorney involved in this Post-Conviction Relief Action to be "Meticulous" in the preparation of any Orders prepared in this case. Specifically; the applicant ask that each and every issue raised in the post-conviction relief application and any Amendment thereof; at the hearing, to be addressed in the Order of the court to be issued at the conclusion of the Evidentiary hearing in this matter. The reason for this motion is that in Pruitt v. State, 423 S.E.2d. 127 (1992); the court stated that this is a legal requirement under the LAW of SOUTH CAROLINA; Pursuant to statute, Section 57-27-80. Also; see; Brayon v. State, 328 S.C. 236, 493 S.E.2d 500 (1997). Furthermore, in Land v. State, 262 S.E.2d. at 737; "Pursuant to 57-27-110, the Supreme Court of South Carolina, has adopted rules designed to aid in the Post conviction process, such as Rule 59(e), SCRPC, which places upon appointed counsel the duty to ascertain from the applicant whether he has included All grounds known to the Applicant

as a basis for attacking the judgment and sentence
and to amend the application to include any claims not
already included. Land; Supra

The Applicant, therefore, requests this Honorable
Court grant the motion for the above stated reasons.

Conclusion

For the reasons cited in the post-conviction relief
application, and the amended motion thereof, the Applicant's
Conviction and Sentence should be vacated, and Post-Conviction
Relief Granted.

Respectfully Submitted,

Stacy Burton

Date: 18 June 2013

Notary: J. A. [Signature]

Expires: 12-16-2019

FILED

2013 JUN 21 A 10:43

CLERK OF COURT
CHESTER CO S.C.

Proof of Service

I, Casey R. Perkins #286100, did mail to the Clerk of Court SUE Carpenter Copies of two (2) Supplements to be Amended to his PCR Application Brief; (1) Motion for Disclosure; (2) Motion Requesting of Appointed Counsel to file motion to Alter or Amend. These Amendments along with the PCR Application was placed in the mail by the Notary Public of McCormick, C.I. ON the 18 Day of JUNE 2013 and mailed to P.O. Box 580, Chester, SC 29706, with postage prepaid.

Sworn and Subscribed before me
ON 18 Day of JUNE, 2013

[Signature]
Notary Public of South Carolina

Expires: 12-16-2015

[Signature]
Casey R. Perkins #286100
McC.I. F.A. Rm #197
386 Redemption Way
McCormick, SC 29855

FILED

2013 JUN 21 A 10 43

CLERK OF COURT
CHESTER CO S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2013-CP-12-0278
COUNTY OF CHESTER	)	
	)	
Casey Ray Perkins,	)	
S.C.D.C. No. 286100,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed June 21, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Chester County Clerk of Court's orders of commitment. The Applicant was indicted at the October 2005 term of the Chester County Grand Jury for murder (2005-GS-12-0438). Jeff Dunn, Esquire represented him. Applicant proceeded to a jury trial, and on December 20, 2008, the Applicant was found guilty. The Honorable Brooks P. Goldsmith sentenced the Applicant to fifty (50) years in prison.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire, of the South Carolina Commission on Indigent Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Casey Ray Perkins, Op. No. 2012-UP-525 (S.C. Ct. App. filed September 12, 2012). The Remittitur was sent on September 28, 2012.

Attached herewith and incorporated herein by reference are the records of the Chester

County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failure to investigate.
 - b. Prosecutorial misconduct.
 - c. Due Process violation.

Applicant has failed to set forth with specificity the grounds upon which the application is based and facts in support thereof. S.C. Code §17-27-50. Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

For purposes of this Return, Respondent interprets all allegations as claims of ineffective assistance of counsel.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial

process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an

evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

Nov. 14, 2013

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

)
)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Casey Ray Perkins,

)
)

2013-CP-12-0278

Applicant,

)
)

v.

)
)

CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

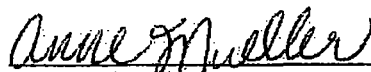
)
)

Respondent.

)
)

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

Nathan J. Sheldon, Esquire
Shaw Law Firm
P.O. Box 36250
Rock Hill, South Carolina 29732



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 14th day of November, 2013.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHESTER	)	CASE NO. 2013-CP-12-00278
	)	
Casey Raymond Perkins,	)	AMENDED PETITION FOR
	)	POST-CONVICTION RELIEF
Petitioner,	)	
	)	
vs.	)	
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

**TO THE HONORABLE JUDGES OF THE COURT OF COMMON PLEAS FOR THE
STATE OF SOUTH CAROLINA, COUNTY OF CHESTER:**

COMES NOW Petitioner, CASEY RAYMOND PERKINS, a person incarcerated in the State of South Carolina pursuant to a judgment of conviction and sentence thereon, by and through his attorney, James L. Goldsmith, Jr., Esq., alleging as follows:

1. This Amended Application, made pursuant to S.C. Code § 17-27-90, respectfully prays that this Court grant Petitioner the relief requested below.
2. Petitioner is currently incarcerated within the South Carolina Department of Corrections, serving a term of imprisonment of fifty years, pursuant to a judgment of conviction and an order of commitment entered in the South Carolina Court of General Sessions, Chester County, under Indictment 2005-GS-12-438. He is currently in custody at the McCormick Correctional Institution, located within the State of South Carolina.
3. There are no other petitions or appeals pending in any state or federal court relating to the judgment under attack herein.
4. Petitioner was represented by Geoffrey M. Dunn, Esq. and Bradley Jordan, Esq., of 546 East Main Street, Rock Hill, South Carolina 29731, at all pre-trial proceedings, at trial upon the aforementioned Indictment, and at the sentencing proceeding. Trial counsel was replaced by

Robert M. Dudek, Esq. of the Office of Appellate Defense, P.O. Box 11589, Columbia, South Carolina 29211-1589 on appeal.

5. Petitioner has no additional or other sentence to serve once he completes the sentence pursuant to the judgment under attack.

PROCEDURAL HISTORY

6. Petitioner was arrested on August 29, 2005 and indicted for one count of Murder pursuant to S.C. Code § 16-3-10.

7. A hearing pursuant to Jackson v. Denno, 378 U.S. 368 (1964) was held on October 21 and October 22, 2008, and the trial court issued an order on the hearing November 21, 2008.

8. After entering a plea of "not guilty," Petitioner was tried before this Court and a jury on December 18, 2008. The jury returned a verdict of guilty on December 20, 2008.

9. Petitioner was sentenced on December 20, 2008 to a term of imprisonment of fifty (50) years.

10. Petitioner filed a timely Notice of Appeal, and prosecuted an appeal to the South Carolina Court of Appeals. On September 12, 2012, the Court of Appeals affirmed the conviction in a written decision.

11. Petitioner then filed a motion for post-conviction relief pursuant to S.C. Code § 17-27-45 of the Uniform Post-Conviction Procedure Act of South Carolina, on or about June 24, 2013, and this Amended Application follows.

STATEMENT OF FACTS¹

12. On August 26, 2005, Judith Hinson was murdered in her home. In the early morning hours of August 27, 2005, her daughter and her daughter's boyfriend found her body in her bedroom. Police and emergency medical personnel responded to the scene, and police found blood throughout the house, along with possible fingerprints, and a Djeep brand cigarette lighter and a knife outside of a window that had been used as a point of egress. The cigarette lighter and knife found outside of the window were recovered by law enforcement agent Shane Stewart. Stewart did not testify at trial because he was in Afghanistan working as a civilian contractor for the military.

13. The coroner concluded Judith Hinson bled to death after she suffered internal injuries to her vagina, which resulted in a ruptured bladder and aorta, causing her to bleed to death in a matter of minutes. The coroner described her condition as having a 4-inch gaping wound in her vagina which tore through the flesh to her anus, which was the result of the insertion of a large object and blunt force trauma. The decedent also exhibited signs of asphyxiation, likely caused by squeezing her neck or throat, or possibly by smothering.

14. Petitioner, a person described by several witnesses as having below average intelligence, was identified as a possible suspect in the case, and was interviewed at his home by law enforcement personnel on August 27, 2005. He denied involvement in the murder that day.

15. The following day, Petitioner was again interviewed by law enforcement, this time at a police station, and again denied involvement in the murder. During this second interview, he allegedly told police that he did things when he blacked out that he could not later remember.

¹ Only the facts relevant to this application are included in this motion.

16. The following day, August 29, 2005, Petitioner was arrested on an unrelated misdemeanor charge. After his arrest, he was again interrogated, this time giving a recorded confession of the murder, and booked into the County jail.

17. While at the County jail, Petitioner told one jail official that he had "f__ked up." Several days after he was booked into the jail, he filled out a request form asking to speak with law enforcement and offering to "cop a plea."

18. At the trial, an important issue to the State's case was the clothing Petitioner was seen wearing immediately prior to the time of the murder: blue jeans, a blue Mercedes shirt, and white sneakers. Several witnesses were called to establish the clothing worn by Petitioner. A search warrant was executed at Petitioner's home, resulting in recovery of these clothing items, all of which were submitted for DNA analysis.² Additionally, the State called several witnesses to establish that the Djeep cigarette lighter found outside of the window at Hinson's home belonged to Petitioner.

19. Several witnesses were permitted to introduce numerous hearsay statements at trial without any objection by the defense. Most of the hearsay was introduced to establish the truth of the matter asserted. The following are examples from the testimony elicited at trial.

20. Robert Alan Rush testified that on August 26, 2005, at approximately 10:30 p.m., Petitioner accepted a phone call at Rush's house from John Bernat. (R-45). Rush testified, without objection, "[h]e wanted him to work on his truck or something and he was going to show him what he wanted done or something. And he said, 'Do you want me to come now?' I guess he said yes because he hung up the phone and went to John's." (R-45).

21. Mary Wilson testified Petitioner had given her and her husband two different colored Djeep lighters the week of Ms. Hinson's death. (R-75, 78). She testified, without objection, a

² No DNA was found on Petitioner's clothing, nor were any of his fingerprints found in the decedent's home.

SLED agent questioned her about the lighter, and her son said "Mom, Casey had the same color lighter as you." (R-77). On cross-examination, Petitioner's counsel questioned the testimony that the lighter was copper colored, and Wilson replied "When my son said, 'Mom, he had the same color lighter as you,' it dawned on me that we did have the same colored lighters." (R-78).

22. Don Wilson was questioned whether he recalled going to the Rush's house the night before Ms. Hinson's death, and his reply, without objection, was "[n]o, I don't. But I did get on my son for taking Casey across the field to my brother-in-law's house. He got his butt jumped for that because I didn't want that person around my son like that." (R-95). The morning Wilson learned of Ms. Hinson's death, he picked Petitioner up at his home to go to work that day. (R-96). After the day's work, Wilson and the Petitioner were stopped by Wilson's wife on the way home. (R-99). Instead of allowing Wilson to answer how his wife stopped him, the State testified on his behalf that he was flagged down. (R-99). Wilson then testified after the conversation with his wife "[s]omeone got really scared," and he asked Petitioner "Why did you kill that woman?" (R-100). Petitioner did not respond at that time or the dozen times after Wilson asked the same question. (R-100, 101).

23. John Bernat testified, without objection, the night he met Petitioner he was wearing a Mercedes uniform shirt with his name on it, and when they were talking about fixing Bernat's vehicles Petitioner said "[l]ook how small my hands are." (R-129). Bernat was asked if he knew why Petitioner told him his hands were small, and he answered the following without objection:

A: Well, we were talking about cars so I couldn't tell you exactly why he did it. It was awkward for him to have done it to me because I was sitting down and he was standing and he's a little bit bigger man than me so I felt a little uncomfortable when he stuck his hands in my face so I actually took them and pushed them away from me. I don't know if he was talking because he can get down or do work on cars or whatever, I don't know exactly why he did that to me.

(R-131, 132).

24. Steven Curtis, a latent fingerprint expert with SLED, was permitted to testify

without objection:

Q: Did you determine -- what was your understanding of what you were here to investigate in a nutshell, not any detail at this point?

A: Well, they had found I understand a family had found the body of a woman in her bedroom laying on the floor there, there was quite a bit of blood present at the crime scene and they weren't sure 'as to the cause of death or anything like that. So just -- that's what Sled's crime scene unit is there for, 'to assist local agencies in investigations and primarily violent crimes. So when they called us they just said they knew they had a death that seemed to be suspicious or some circumstances that were questionable and wanted us to come and process for them to help them with this investigation.

25. Keith Thrower, an Agent of the South Carolina State Law Enforcement

Division (SLED), qualified and testified as an expert in man tracking. (R: 361). This

was not over the following objection by Petitioner's counsel:

MR. DUNN: Judge, I object to him being qualified but I will leave in the Court's discretion. I don't have any ground, I Just --

THE COURT: I grant the motion to qualify the witness as an expert in man tracking.

(R: 294).

The tracking began at a back wood line, which led to Thrower meeting John

Bernat on the trail. (R: 298, 299). Thrower was questioned whether he had a

conversation with Bernat and the following transpired without objection:

Q: Okay, All right, sir. Now, got Judy to the trailer, had some conversation with Mr. Bernat at some point?

A: I asked him if he had been over to Ms. Hinson's house -- and I didn't know her name, I said, "Have you been to your neighbor's house?" And he said, "No."

(R: 302).

26. Jamie Mitchell, an investigator with the Chester County Sheriff's Office, testified that Deputy Shane Stewart gave him a pair of blue jeans that were recovered from Petitioner's

home. (R-410). Trial counsel then brought up the issue of Shane Stewart outside the presence of the jury:

MR. DUNN: Your Honor, before trial started the solicitor and I had talk about chain of evidence and all of evidence, and for the most part I don't have any problems and I don't really think -- with chain of evidence issues I don't think we should have to parade every single witness in front of the jury to establish a chain of evidence because we will be here for two weeks if we have to do that because there's just so much evidence, there's such a volume of evidence. My only concern is that the one witness who touched a lot of this stuff is not in court at all this week because he's not in the country this week, and that's Mr. Stewart, Shane Stewart. I didn't raise the issue of the shirt and I probably should have, I thought about it as the pants were being talked about who actually touched it, because like I said, Mr. Stewart touched a lot of this stuff. My concern like I said, my concern just is because he's not available for cross examination if there was the issue of a chain of evidence issue that's the -- there lies my concern, Your Honor. I don't really know what the proper remedy for this is. I guess I could object to the evidence since the chain could not be established. I feel like I would be going against my word to the solicitor at that point but I wanted the Court to be aware of that because I wanted the jury to walk out because they don't need to hear this but it should be on the record.

(R-410 - R-411).

After Mitchell returned to the witness stand, cross-examination elicited the following:

Q: Do you have point blank I'm going to ask you this, did you initially take possession of these blue jeans?

A: No

Q: All right. Do you know for a fact who found them, laid hands on them and took them into custody?

A: No.

Q: Are you satisfied that it was one of the three of y'all or one of the law enforcement agents who was there on the scene?

A: Yes.

(R-415).

Q: Okay. Did you see these blue jeans get retrieved from wherever they were found?

A: No.

Q: Do you remember who retrieved them?

A: I do not.

Q: Is it possible that Shane Stewart retrieved them?

A: Very possible

Q: And his name is on a lot of the chain of evidence stuff, correct?

A: Yes.

Q: Is Mr. Stewart here today?

A: No.

(R-517, 518).

Despite this testimony, trial counsel did not object to the introduction of the articles of clothing into evidence.

27. Michael Green, an Investigator of SLED, testified he participated in the search of Petitioner's premises and saw a pair of blue jeans and a Mercedes shirt removed from a spare tire. (R: 435, 439). He could not remember which participant removed them, but it could have been Shane Stewart. (R: 435, 439, 440).

ARGUMENT

PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHERE TRIAL COUNSEL FAILED TO OBJECT TO CLEARLY-INADMISSIBLE HEARSAY WHICH PREJUDICED PETITIONER, AND FAILED TO CONDUCT ADEQUATE INVESTIGATION AND PRE- TRIAL PREPARATION OF A DEFENSE

28. It is axiomatic that the United States Constitution guarantees each defendant in a criminal prosecution the right to the effective assistance of counsel. The fundamental right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a due process of law in an adversarial system of justice.

United States v. Cronin, 466 U.S. 648, 658 (1984).

29. The United States Supreme Court has held that "[t]he benchmark of judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial [court] cannot be relied on having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984). Under the Strickland standard,

ineffective assistance of counsel is made out when the defendant shows that (1) trial counsel's performance was deficient, i.e., that he or she made errors so egregious that they failed to function as the "counsel guaranteed the defendant by the Sixth Amendment," and (2) the deficient performance prejudiced the defendant enough to deprive him of due process of law. Id. at 687. South Carolina has adopted the same standard. Dawkins v. State, 346 S.C. 151, 155-156, 551 S.E.2d 260, 262 (2001).

A. Failure to Object to Clearly-Inadmissible Hearsay at Trial

30. The Sixth Amendment to the United States Constitution guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." This right is incorporated and made applicable to the State of South Carolina via the Fourteenth Amendment. Pointer v. Texas, 380 U.S. 400, 406 (1965).

31. In Crawford v. Washington, the Supreme Court unanimously found that the defendant's Confrontation Clause rights had been violated by the admission into evidence a tape recording of a nontestifying person's "testimonial" statement to police. 541 U.S. 36, 68-69 (2004). Crawford established a rule which prohibits the admission of testimonial, out-of-court statements unless the witness is unavailable at trial and the defendant had a prior had a prior opportunity to cross-examine the witness. Id. at 68.

32. Thereafter, two cases further changed the Confrontation Clause landscape: Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009) and Bullcoming v. New Mexico, ___ U.S. ___, 131 S.Ct. 2705 (2011). In Melendez-Diaz, the Supreme Court held that sworn certificates from a state chemist which were introduced at trial in lieu of live testimony to establish that the substance possessed by the defendant was cocaine violated the defendant's right to confront his accusers. In Bullcoming, the Supreme Court held that the admission of a laboratory report that

contained the results of the defendant's blood alcohol concentration violated the defendant's Confrontation rights, even where the State claimed that it was a business record exception. Both cases specifically turned on a finding that the reports at issue were evidentiary in nature. See Meledez-Diaz at 325, Bullcoming at 2719.

33. "The rule against hearsay prohibits the admission of evidence of an out-of-court statement to prove the truth of the matter asserted unless an exception to the rule applies." Watson v. State, 370 S.C. 68, 71, 634 S.E.2d 642, 644 (2006). South Carolina courts have repeatedly held that failure to object to inadmissible hearsay at a trial is Constitutionally-deficient performance where there is no valid, objectively reasonable strategical reason for such a failure. See Vail v. State, 402 S.C. 77, 438 S.E.2d 503 (2013) (holding that counsel's failure to object to hearsay rendered his performance deficient, necessitating a new trial); Dawkins v. State, 346 S.C. 151, 156–57, 551 S.E.2d 260, 263 (2001) (failure to object to hearsay evidence that corroborated victim's testimony ineffective); Smith v. State, 386 S.C. 562, 565, 689 S.E.2d 629, 631 (2010) (finding the presumption of adequate representation based on a valid trial strategy disappears when trial counsel acknowledges there was no trial strategy in mind when failing to object to the improper hearsay and bolstering testimony).

34. Here, trial counsel failed to object to multiple instances of clearly-inadmissible hearsay. First, trial counsel failed to object to the introduction of key pieces of evidence. Trial counsel failed to object to hearsay testimony concerning the Djeep cigarette lighter. This was a critical piece of evidence because a Djeep lighter was found at the crime scene. Testimony by witnesses established that Petitioner had Djeep lighters in his possession in the days leading up to the murder. Their hearsay testimony regarding the color and shape of the lighters corroborated the testimony by the recovering police officers.

35. Trial counsel also failed to object to hearsay evidence concerning the recovery of clothing and shoes by Shane Stewart – again, a critical fact in the case. As stated above, Petitioner’s clothing at the time of the murder was a key fact relied upon by the prosecution. There was testimony that Shane Stewart, a witness who was clearly unavailable at trial, was the person who recovered the evidence. This information was documented in official police reports. However, just as in Melendez-Diaz and Bullcoming, the original source of this critical information did not testify – depriving the Petitioner of the ability to effectively confront the witnesses against him.

36. Trial counsel was actually aware of this issue, and commented upon his inability to confront the police recovery of this critical evidence. However, trial counsel failed to take the next logical step required by zealous advocacy – to vigorously challenge the introduction of this evidence.

37. This was not harmless error. South Carolina courts have held that the failure to object to inadmissible hearsay constitutes ineffectiveness because “it is precisely this cumulative effect which enhances the devastating impact of improper corroboration.” Dawkins, 346 S.C. at 157, 551 S.E.2d at 263; quoting Jolly v. State, 314 S.C. 17, 21, 443 S.E.2d 566, 569 (1994).

38. This was not a case involving overwhelming evidence of Petitioner’s guilt. There was a lack of any forensic evidence that tied Petitioner to the scene of the crime or the crime itself. No DNA, no fingerprints, no other forensic evidence was recovered either from the scene or the Petitioner’s clothes. There were no eyewitnesses. Petitioner, a man with below-average intelligence, repeatedly denied guilt each time he was questioned by police until the fourth interview after he had been taken into custody and interrogated for three hours. The reliability of this confession was called into question by a defense expert at trial who opined that the last

statement was a false confession made by an innocent person. Based upon the foregoing, this Court should find counsel was ineffective, and grant this petition.

*B. Trial Counsel's Performance Was Deficient
Because Counsel Failed to Conduct Proper
Factual Investigation and Interview Witnesses*

39. A court deciding a claim of ineffective assistance of counsel must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct. "The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance. In making that determination, the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." Strickland, supra at 690.

40. Effective assistance of counsel requires that trial counsel conduct a reasonable investigation into the facts of the case. Coles v. Peyton, 389 F.2d 224, 226 (4th Cir. 1968) (holding "the defendant's right to representation does entitle him to have counsel 'conduct appropriate investigations, both factual and legal, to determine if matters of defense can be developed, and to allow himself enough time for reflection and preparation for trial'"); Scott v. Wainwright, 698 F.2d 427, 429-30 (11th Cir.1983) (defense counsel's failure to familiarize himself with the facts and relevant law made him so ineffective that the petitioner's guilty plea was involuntarily entered); Washington v. Strickland, 693 F.2d 1243, 1257 (5th Cir. 1982) (when counsel fails to conduct a substantial investigation into any of his client's plausible lines of defense, the attorney has failed to render effective assistance of counsel); Young v. Zant, 677 F.2d 792, 798 (11th Cir.1982) (where counsel is so ill prepared that he fails to understand his

client's factual claims or the legal significance of those claims, counsel fails to provide service within the expected range of competency).

41. The South Carolina Constitution likewise requires "criminal defense attorneys...to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case," Edwards v. State, 382 S.C. 449, 456, 710 S.E.2d 60, 64 (2011). As the Court of Appeals has explained:

The duty to represent the client belongs to the lawyer. While it may be reasonable to allow investigators and paralegals to do some or all of the investigatory work, trial counsel has a duty to supervise the investigation, make sure it is completed, and familiarize herself with the results.

Walker v. State, 397 S.C. 226, 236, 723 S.E.2d 610, 615 (2013).

42. Here, the lack of preparation by trial counsel was evident. First, trial counsel cross-examined the medical expert, Dr. Earl Jenkins, and attempted to establish that the cause of death (internal bleeding of the aorta) was caused by something other than blunt force trauma. (R-270-271). Trial counsel attempted to establish through cross-examination that arterial disease could have resulted in the ruptured aorta of the decedent. (R-269). Trial counsel also suggested in cross-examination that perhaps gastrointestinal surgery, or hypertension/high blood pressure was to blame for the ruptured aorta. (R-283 – R-284). The expert conceded that there may have been other possible causes of death than the injuries to the decedent's body. (R-270). However, trial counsel never followed through with calling any expert witnesses of his own, much less consulting with an expert who would have supplied trial counsel with the necessary information to conduct an appropriate cross-examination as to the possible causes of death.

43. This defense strategy was fatally flawed. Trial counsel attempted on several occasions to get the expert to opine that the decedent's eyes were cloudy, and the cloudiness of

the eyes was a determinative factor to time of death, something Dr. Jenkins repeatedly refused to acknowledge. (R-282). Further, as Dr. Jenkins testified, none of these other possible causes of a ruptured aorta would have resulted in the 4-inch gaping wound to the decedent's vagina and rectum. (R-284).

44. Defense counsel has the duty to fully understand the law prior and to not embark on a legally unsound and disastrous trial strategy. People v. Yagudayev, 937 N.Y.S.2d 279 (N.Y. 2012). In People v. Yagudayev, the defendant was convicted of grand larceny where the defendant and a co-defendant attempted to steal merchandise from a store, but were stopped and apprehended by loss prevention employees. At trial, counsel's theory of defense was that since the defendant never personally took the merchandise outside the store, he was guilty only of a lesser-included offense of attempted grand larceny. Operating under the mistaken belief that the law supported this theory when, in fact, clearly-established precedent defined a larceny as complete upon the taking of property with intent to steal regardless of whether the defendant leaves a store or not, trial counsel called the defendant to the witness stand and elicited from him testimony that he did take merchandise with the intent to steal it, conceal it, and attempt to leave the store, that but for his being apprehended, he would have exited the store without paying.

45. In reversing, the New York State Supreme Court, Appellate Division held that this was "an inexplicably prejudicial" and "legally indefensible" strategy which amounted to eliciting an admission of guilt on the stand. Yagudayev, 937 N.Y.S.2d at 279. The court further held that given the fact that this strategy permeated counsel's entire theory of the case, it could not be characterized as an isolated error, and even if it were, that error would be "sufficiently egregious and prejudicial as to compromise a defendant's right to a fair trial," and would suffice to establish ineffective assistance. Id. (internal citations omitted).

46. Here, trial counsel likewise failed to properly investigate and properly prepare a defense, which resulted in this ineffective defense strategy of suggesting that the decedent's cause of death was something other than blunt force trauma causing her catastrophic internal injuries. Because trial counsel failed to properly investigate the case, consult with witnesses, and adequately prepare a defense, this Court should grant Petitioner a new trial.

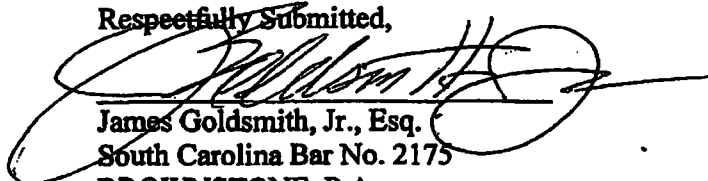
CONCLUSION AND RELIEF REQUESTED

For the reasons set forth herein, Petitioner respectfully prays that this Court:

- A. Vacate the judgment of conviction entered against Petitioner;
- B. Grant Petitioner a new trial in this Indictment; and
- C. Grant Petitioner such other and further relief as this Court deems just, proper and equitable.

March 6, 2014

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2014, I served a copy of the foregoing via United States Mail upon the attorney for the Respondent, State of South Carolina.

Mary S. Williams, Esq.
Assistant Attorney General
Post-Conviction Relief and Criminal Appeals
PO Box 11549
Columbia, South Carolina 29211-1549

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHESTER	)	CASE NO. 2013-CP-12-00278
	)	
Casey Raymond Perkins,	)	
	)	
Petitioner,	)	SUPPLEMENTAL PETITION FOR
	)	POST-CONVICTION RELIEF
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

COMES NOW Petitioner, CASEY RAYMOND PERKINS, a person incarcerated in the State of South Carolina pursuant to a judgment of conviction and sentence thereon, by and through his attorney, Adam Owensby, Esq., and supplements his previously filed Amended Petition for Post-Conviction Relief filed with this Court on March 10, 2014 ("Amended Petition").

In addition to the information contained in the Amended Petition and incorporating that Amended Petition in its entirety, Petitioner makes the following additional arguments in support of his petition.

SUPPLEMENTAL ARGUMENT

47. Trial counsel failed properly to argue and prepare for the admission of evidence of statements made by the deceased as to her fears of harm from persons other than Petitioner. Trial counsel clearly understood this evidence was important but was not prepared at all to argue for its admissibility. The defense counsel generally asserts Rules of Evidence 803 and 804, with little to no explanation how those rules apply, and admission is denied after providing insufficient argument. (Tr. 3b, pp. 1082-85.)

After stating that the proffered statements were objected to as inadmissible hearsay, the Court made the following inquiry: "Where is the exception or what's the deal? How do you get around hearsay? That's the question." (Tr. Vol. 3b, p. 1084). In response, the following discussion took place:

MR. JORDAN: Your Honor, I'll provide it to you in the morning.

THE COURT: The purpose of getting - suppose you -

MR. DUNN: We do need the answer -

THE COURT: Suppose you win the Motion? Don't you need to have the witness?

MR. DUNN: Because if you rule in our favor, then I got to go get the lady tonight, so we do kind of need an answer.

Trial counsel then provided the following argument:

MR. JORDAN: Your Honor, I would argue first that it would be an exception under excessive mental, emotional or physical condition of Ms. Hinson at the time it was made. It shows her emotional condition as it related to the two men.

And, Your Honor, under I think it's 804 - I have to find it.

Your Honor, the argument basically would be under 803, one of the exceptions of the existing mental or emotional state of Ms. Hinson at the time.

(Tr. 3b, pp. 1084-85.) No further argument was made by defense counsel. No specific evidentiary rules or cases were cited or provided in support of admission of this crucial evidence. Trial counsel failed to prepare for an argument that was clearly anticipated and necessary at trial. In response to the Court's inquiry as to why the statements should be allowed under a hearsay exception, one member of the defense counsel requests that they be allowed to answer in the morning while the other member of the defense counsel agrees with the Court's concern that they

need to know the answer that day in order to have the witness ready for Court the next day. (Tr. 3b, p. 1085.) This alone demonstrates the lack of preparation and coordination for such a key element to the defense. This failure by trial counsel to prepare to introduce these statements and consequently, excluding an entire witness, amounts to ineffective assistance of counsel.

Statements by a victim regarding her mental state, emotional state, sensations, or physical conditions are admissible under Rule 803(3) as evidence of the declarant's then-existing state of mind. State v. Griffin, 528 S.E.2d 668, 339 S.C. 74, 78 (2000). Application of the exception should not have been based on her emotional condition as it related to the two men as trial counsel proposed, rather it was her state resulting from the threat.

Additionally, the statements could have been ruled admissible under 804(b)(2), a statement under belief of impending death. Statements made even two weeks prior to the homicide have been found to be dying declarations, provided the victim believed her death was imminent. State v. McHoney, 544 S.E.2d 30, 344 S.C. 85, 92 (2001). The solicitor argued that such statements are clearly intended to be evidence of third party guilt, which would require corroboration under 804(b)(3). (Tr. 3b, p. 1083.) However, exception 804(b)(3) had not been specifically raised in this instance; trial counsel only argued that the statements were meant to represent the victim's state of mind at the time.

The statements involved an alleged death threat to the victim, yet trial counsel failed make the argument that the declarant's statements resulted from this threat and the declarant's state of fear that her life was in danger. The length of time

between a dying declaration and the homicide is merely a factor to be considered by the jury in determining credibility. See State v. Hall, 134 S.C. 361, 133 S.E. 24 (1926).

Last, no argument was made whether the statements were made immediately after an event or condition as would be required for admission under 803(1). Trial counsel did not investigate and argue these potential exceptions sufficiently or at all. The statements may have been allowed under 803(1), 803(3) or 804(b)(2), but the Court was not permitted to consider admissibility under these evidentiary rules due to the lack of preparation and argument of trial counsel.

Additionally, defense counsel failed to adequately prepare to introduce hearsay evidence from a witness with potentially exculpatory statements made during a Department of Health interview for competency. After the solicitor suggests just handing the record containing the statements to the Court, defense counsel responds

Under 403, there are exceptions that are given. I'm sorry, not 403. 803. Specifically that — Beg court's indulgence, Your Honor.
(Off the record) (Back on the record)

MR. DUNN: I think possibly under two exceptions, Your Honor, 803(3) and 803(4). That 803(3) basically is a statement, as far as then existing mental, emotional, or physical condition. Or, Your Honor, for — I'm not going to elaborate on 803(3). Or 804(4). (Tr. 3a, p. 982.)

The defense counsel stated that the statements were clearly admissible under 803(4) as statements for purposes of medical diagnosis (Tr. 3a, p. 985.) The statements were made for the purposes of medical diagnosis, but they were made after the commencement of litigation. The Court was forced to correct defense counsel and inform them that in this case, admission of these statements is in the discretion of the trial court. Insufficient preparation was demonstrated in making

this argument and demonstrating the need for such discretion. (Tr. 3a, p. 985.) Instead, defense counsel next raised Rule 804(a)(1) as an exception to the hearsay rule. (Tr. 3a, p. 989.) Unfortunately, Rule 804(a)(1) is not an exception to the hearsay rule; rather it is part of the definition of unavailability as it related to the hearsay rule. Rather than properly arguing the statement's admission under any Rule 803 hearsay exception in more depth, defense counsel responds to the Court's discussion of the solicitor's suggestion that 804(b)(3) be discussed.

Eventually, defense counsel just submits that "[t]o be honest. Your Honor, my brain is so mushy right now, I couldn't tell you. Friday afternoon, my brain is just mush. (Tr. 3a, p. 991.) Shortly thereafter, the Court rules against permitting the statements after nearly no argument over the Rule 803 exceptions. The lack of preparation and argument in support of the admission of these statements amounted to inefficient assistance of counsel.

48. As previously introduced in Paragraphs 34 and 35 of the Amended Petition, defense counsel failed to object to multiple instance of inadmissible hearsay. Under Ngo v. Holloway, No. 12-7954 (4th Cir. Jan. 17, 2014), to demonstrate ineffective assistance of counsel under Strickland, it must be shown first, that the petitioner's counsel's performance was "outside the range of professionally competent assistance"; and second, that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 690-94; Winston v. Pearson, 683 F.3d 489, 504-05 (4th Cir. 2012). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

Multiple statements concerning a critical piece of evidence, a lighter, were admitted without objection, connecting the defendant to the evidence without any DNA, fingerprint, or other physical evidence, only witnesses testimony regarding similarities in color and appearance of lighters among the same brand and model.

And Zachary said to Casey, "Don't forget to give my mom the gift you got her." And he said, "Oh yeah." And that's when the lighter was brought up. And he handed it to Zack's and he gave it to me. (Tr. 1b, p. 140.)

And Zachary said, "Mom, Casey had the same color lighter as you." (Tr. 1b, p. 142.)

My wife seen mine and said, "I've got to have one," (Tr. 1b, p. 177)

Additionally, hearsay statements were permitted to be introduced by the prosecution without objection during the testimony of a witness stopped during a canine investigation of the incident.

And they said, "Somebody killed her." (Tr. 1b, p. 192)

Defense counsel permitted the police tracking witness to use hearsay statements to discredit the possibility of potential other actors. The hearsay is only interrupted by the solicitor at a point saying "don't quote him any further" (Tr. 1d, p. 369), demonstrating the prosecutor's understanding that he was eliciting inadmissible hearsay despite the lack of objection from defense counsel.

I said, "Have you walked over here?" And he said, "No." (Tr. 1d, p. 365)
I said, "Have you been to your neighbor's house?" And he said, "No." (Tr. 1d, p. 369)

Hearsay statements were allowed to portray sequences of events in a light most favorable to the Solicitor's position and there was no objection.

Well, Danielle seen it also and she said "well, I'm going to go in there, you know, because he's going to wake mom up." (Tr. 3a, p. 961)

And the 911 operator called me back, she was like, "No, you're not supposed to hang-up with me, you're supposed to stay on the phone until they get here." (Tr. 1c, p. 237)

Danielle had said that the phone in there she couldn't — was like, "Call 911." (Tr. 1c, p. 271)

At one point, the solicitor even prefaced his question to a witness with a warning not to tell him what someone else said, yet the hearsay statements were still introduced immediately following the question. These statements assisted the prosecution in explaining what the boyfriend of the victim's daughter was doing in relation to the victim during the important time prior to police arriving on the scene.

And don't tell me what Danielle said. Just tell me what happened.
A. She screamed and I walked over there. She said, you know, "call 911." And then she said "I don't know CPR, " so I went over there (Tr. 3a, p. 965)

Outside the presence of the jury, the solicitor used hearsay statements from a detention center witness to support what amounts to an unofficial confession without objection by defense counsel, a proffer of evidence that led to admission of evidence against the defendant.

Officer Byrd said, "It can't be that bad. What happened, "without knowing anything about what was going on. And Casey turned. (Tr. 2b, p. 652)

In sum, defense counsel failed to introduce statements that would have potentially identified another suspect using hearsay exceptions. Defense counsel failed to introduce exculpatory statements from a medical examination. Defense counsel was unable to otherwise introduce this evidence. Additionally, defense counsel failed to object to numerous hearsay statements relating to key evidence critical to the prosecution's ability to connect the defendant to the incident, hearsay statements

during an unrecorded discussion of the events with the victim, and hearsay statements relating to the sequence of events immediately following the incident. When an objection was made, it was unclear and unsupported by sufficient research or preparation. Not making any objection whatsoever to important hearsay evidence is outside the range of professionally competent assistance. Had defense counsel been able to pose this additional defense of another suspect using a hearsay exception or had defense counsel been able to prevent hearsay statements from bolstering the prosecution, there is a reasonable probability that a different result would have occurred.

The defense counsel's lack of objections, improper objections, and misuse of hearsay exceptions amounted to ineffective assistance of counsel.

49. As previously introduced in Paragraph 26 of the Amended Petition, Defense counsel failed to properly object to what would become some of the only material evidence offered by the solicitor when the key witness handling this evidence in the chain of custody was unavailable at the time of the trial, but had been previously available for this litigation.

My only concern is that the one witness who touched a lot of this stuff is not in court at all this week because he's not in the country this week, and that's Mr. Stewart, Shane Stewart. I didn't raise the issue of the shirt and I probably should have, I thought about it as the pants were being talked about. (Tr. 1e, pp. 485-86)

In order to demonstrate ineffective assistance of counsel, the Defendant must show an issue with the chain of custody and prejudice from the trial counsel's failure to object. Taylor v. Warden, _____ (D. SC 2014). The Defendant should also show that

the objection would have been sustained, prosecution would not have established a complete chain of custody, and trial counsel failed to object. *Id.*

Trial counsel did not object to the first piece of evidence in a connected pair of items at all. (Tr. 1e, pp. 480-81.) Eventually, defense counsel decided that he should object, to the second, related item, but still does not make a clear, definitive objection, even mentioning a peculiar, unwritten agreement with the solicitor about the evidence first instead.

I don't really know what the proper remedy for this is. I guess I could object to the evidence since the chain could not be established. I feel like I would be going against my word to the solicitor at that point but I wanted the Court to be aware of that because I wanted the jury to walk out because they don't need to hear this but it should be on the record. So I guess I'm going to have to object to the pants. Your Honor, just on a chain of evidence issue because Shane Stewart isn't here to testify to it and there could be a problem with the contamination or with the chain evidence. (Tr. 1e, pp. 486-87.)

The Court rephrases the objection as "the question is again not what happened once they left the premises but what happened on the premises?" and defense counsel response "Yes, sir. I think that's accurate, Your Honor." Subsequently, the Court overruled the objection and permits the evidence to be introduced.

Had defense counsel properly objected, the objection could have been sustained and the prosecution would not have been able to establish a complete chain of custody. The defendant was prejudiced by the introduction of this evidence because it was used by the prosecution to suggest a false connection with the Petitioner and the murder of Ms. Hinson. The only other physical evidence, a knife, was provided primarily to suggest the proposed method of threat, and it has no connection to the Petitioner. Without evidence introduced with this incomplete chain of custody, the prosecution would have been forced to rely almost exclusively

on witness testimony to support the charges, and none of the witnesses were present when the murder occurred. Trial counsel's failure to object amounted to ineffective assistance of counsel and substantially prejudiced the defendant.

50. Defense counsel failed properly to address the substantial concerns that exist regarding the voluntariness of the Petitioner's confessions. An attempt was made to introduce statements relating to the voluntariness of the confessions but defense counsel had not adequately prepared for their introduction. (Tr. 3a, p. 994.) The confession is involuntary because the initial alleged confession was made outside of a correctional facility where the defendant had been placed for violation of a misdemeanor charge and the defendant had not been given a bond hearing within twenty-four hours as required by S.C. Code Ann. § 22-5-510. Defense counsel's failure to argue the matter in the presence of the jury so that the jury could weigh the evidence amounts to ineffective assistance of counsel. The statements should have been held to be involuntary as a result of lack of strict statutory compliance. As the solicitor noted prior the Court ruling against defense counsel on this issue:

MR. BARFIELD: Your Honor, couple of things. I don't think I disagree with Mr. Dunn's chronology of the events but I am fairly cursory looking at the documents he is referring to. The primary argument I make is that there is nothing that tells us in the statute that Mr. Dunn handed up, which is 22-5-510, doesn't say what to do if the statute is violated. (Tr. 2d, p. 833.)

Here, prior to getting a bond hearing, a hold was placed on the defendant for another warrant; and prior to the defendant's eventual statements to authorities, he may have been put on substantial medication without time to adequately adjust. The defendant may have been sent to a medical facility in Columbia prior to his

confession to law enforcement in this case, been extremely medicated on the day of the confessions, and even requested assistance with his mental health. (Tr. 2e, pp. 909-10.) It does not appear that the issue was appropriately raised by defense counsel at either the Jackson v. Denno hearing on the admissibility of the confession or otherwise at trial. Investigation of this issue, would require obtaining any medical records available surrounding that time period and the record lacks such evidence.

The initial confession was given after the defendant requested to speak with the Sheriff. (Tr. 2d, p. 825.) The defendant was not given his Miranda rights and allowed to speak with the Sheriff; instead, a phone call ensued between police and the guard's supervisor and then the defendant was taken outside by the guard to see if he would say anything. The officer tried to loosen him up by initiating small talk and providing cigarettes but as soon as the defendant began to speak, he interrupted the defendant, claiming that he needed to involve the police in order to treat inmates fairly. (Tr. 2b, p. 653.)

The recorded confession is inadmissible because it violates the defendant's due process rights. It was a result of the illegal initial confession. There are concerns about the defendant's mental health at this time, including demanding the death penalty one moment and probation another. Defense counsel had not even seen the video until after the Jackson v. Denno hearing. (Tr. 4a, p. 1117.) Questions about the tactics used during the conversation remain unanswerable, because the recording cut in and out with gaps in between scenes. Two copies of the confession exist, one video with only the initial portion and an audio recording that is significantly longer.

Rather than argue that the defendant's confession in this instance was involuntary for these reasons, defense counsel submitted to the solicitor's request for a stipulation that in review of the tapes, all would agree that some things were not admissible and they have been deleted from the tape. (Tr. 2d, p. 867.) It is unclear why there were two different copies, why the video was shorter than the audio recording, or what was in the missing scenes.

The confession is invalid because the officers interviewing the defendant suggested factual details about the incident repeatedly until the defendant parroted them back. The interviewing officers threatened to return the defendant to the detention center and told him that they already had evidence against him when no such evidence existed. The interviewing officers suggest the existence of blood on his hand and strangulation before the defendant offers any such information. (Tr. 2d, p. 900-11) Even on the existing recording, the defendant gives different versions of the story until the interviewing officers, who even call the solicitor at a point during the interrogation, are satisfied.

We can't see it on the tape because it is audio, it sounds like you left the room, somebody else is brought in to talk with him for awhile. You went to talk with the solicitor, didn't you?

A Yes, sir.

Q And when you came back, isn't it true that you basically said, well, I can't give you the death penalty — let me say it like this, when you came back you told him in order for him to get the death penalty it depended on certain circumstances, correct?

A Yes, sir.

And you went over all of those circumstances with Casey, didn't you?

A I didn't go over all of the circumstances but I was kind of giving him the idea of what it was. (Tr. 2d, p. 884.)

Permitting the state to impeach the defendant with this video, not seen by defense counsel prior to the Denno hearing, under these cumulative circumstances,

prevented the defendant from taking the stand and deprived him of his due process rights.

His recollection of the facts were in contradiction to what showed up on that video. Your Honor, that video was not given to me until after that Jackson v. Denno hearing, so I never had an opportunity to review it with — to review it myself or to go over it with my client. (Tr. 4a, p1117.)

The confession was involuntary and the factors that the jury should have considered in weighing the confession were not presented before the jury. Even the solicitor admitted in his closing, "Maybe they are trying to trick him a little bit into just, you know, come on out with it, but nobody is jacking Casey Perkins around." (Tr. 4a, p. 1163.)

51. The solicitor was unable to present any DNA evidence whatsoever connecting the Defendant with the crime, yet defense counsel did not conduct an independent test of available evidence as required. Defense counsel failed to conduct an independent DNA test of available evidence amounting to ineffective assistance of counsel under Bagwell v. SC, Opinion No. 5267 (Ct. App. 2014). Additionally, defense counsel failed to conduct any independent hair or blood analysis. Several samples were tested by the police that were indicated as likely to have blood and/or DNA but no DNA was recovered and the lack of finding DNA on other samples indicates a lack of evidence connecting the Defendant to any material evidence. (Tr. 2a, pp. 582-84.) A partial palm print was present that was not analyzed by defense counsel. (Tr. 1e, p. 445.) Independent analysis may have been able to demonstrate a connection to other possible suspects or been presented in an exculpatory manner. The lack thereof substantially prejudiced the defendant and substantially limited his ability to develop his case.

52. The lack of adequate preparation and argument on behalf of the defendant left the primary defense as consensual fisting. A description of the alleged incident at one point caused a juror to ask to be excused momentarily; however, the consensual nature of this act was the defendant's primary defense.

Rather than mounting a different, substantively plausible defense, counsel instead inquired about the intricacies of fisting with the officer who interviewed the defendant to the irrelevant and insensitive point of whether two women may fist one another. "Q: Or even with two females, I guess. A: Right." (Tr. 3a, p. 909.) Nevertheless, the poor defense of consensual fisting was not supported by sufficient evidence either. No witnesses were called to support the claim at all.

Similar to Elmore v. Ozmit, defense counsel's performance was such that their investigation of the defense was so minimal that no strategic reason could be given for the failure to investigate further. See Elmore v. Ozmint, 661 F. 3d 783, 866 (4th Cir. 2011). Like in Elmore, the defendant was mentally disadvantaged and defense counsel failed to object at critical periods to chain of custody evidence, failed to investigate the case and potential evidence thoroughly enough, and eventually failed to mount an adequate defense resulting in ineffective assistance of counsel.

In addition to the poor defense of consensual fisting, improper utilization of hearsay exceptions prevented defense counsel from introducing one, evidence about another suspect and two, an entire witness who intended to introduce evidence pertaining to the reliability of the defendant's confession. Both the initial confession and recorded confession were admitted into evidence despite significant

concerns surrounding their procurement and were not seen by defense counsel prior to the Denno hearing. The defense counsel failed to pursue available evidence and failed to object to a voluminous amount of hearsay statements pertaining to the introduction of material evidence and the timeline of events immediately following the incident. There was no independent investigation of DNA or other materials available for analysis.

The performance of defense counsel substantially prejudiced the defendant and amounted to ineffective assistance of counsel.

CONCLUSION AND RELIEF REQUESTED

For the reasons set forth herein, Petitioner respectfully prays that this Court:

- A. Vacate the judgment of conviction entered against Petitioner;
- B. Grant Petitioner a new trial in this Indictment; and
- C. Grant Petitioner such other and further relief as this Court deems just, proper, and/or equitable.

January 5, 2015

Respectfully Submitted,



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Attorneys for Petitioner

1 STATE OF SOUTH CAROLINA

2 -----x

3 CASEY R. PERKINS,

4 Petitioner,

5 Case No.

6 -against-

2013-CP-12-0278

7 STATE,

8 Respondent.

9 -----x

10 August 12, 2015

11 Lancaster, S.C.

12

13 B E F O R E:

14 HONORABLE R. KNOX MCMAHON, Judge.

15

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

17 GUY J. VITETTA, Esquire

18 ADAM OWENSBY, Esquire

19 Attorney for the Petitioner

20

21 J. CROOM HUNTER, Esquire

22 Attorney for the State

23

24 Aileen Butler

25 Official Court Reporter

1					
2		<u>I N D E X.</u>			
3	WITNESS	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
4	Casey Perkins				
5	Mr. Vitetta	5		20	
6	Mr. Hunter		15		
7					
8	Geoffry Dunn				
9	Mr. Owensby	20		71	
10	Mr. Hunter		59		
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NO.DESCRIPTIONI.D.EVD.

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NO EXHIBITS MARKED

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THE COURT: All right, Mr. Hunter.

1 MR. HUNTER: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. HUNTER: This is the case number
4 2013-CP-12-0278, Casey Ray Perkins versus the State of
5 South Carolina. Mr. Perkins is currently incarcerated
6 with SCDC pursuant to Chester County Clerk's Office. He
7 was indicted October 2005 term of Chester County grand
8 jury for murder. That was 2005-GS-12-0438. He was
9 represented by Jeff Dunn. Mr. Perkins had a jury trial
10 on December 20, 2008. He was found guilty. The
11 Honorable Brooks P. Goldsmith sentenced him to 50 years
12 in prison. A notice of appeal was filed with the South
13 Carolina Court of Appeals. The appeal was perfected by
14 Robert E. Dunn of the South Carolina Commission of
15 Indigent Defense. The Court of Appeals affirmed the
16 applicant's conviction and sentence, that was State v
17 Casey R. Perkins, opinion number 2012-UP-525, filed on
18 September 12, 2012. The remitter was sent on September
19 28, 2012.

20 Mr. Perkins filed this post conviction relief
21 application on June 21, 2013, he is here today
22 represented by Mr. Vitetta and Mr. Owensby. The State
23 is ready to proceed.

24 THE COURT: All right. I will be glad to hear
25 from you.

1 MR. VITETTA: Thank you, Your Honor we are ready
2 to proceed, we have two witnesses, our client and Mr.
3 Dunn, his trial counsel.

4 THE COURT: All right, and who is your co-counsel?

5 MR. VITETTA: Mr. Owensby.

6 THE COURT: Tell me again, I didn't quite catch
7 the name.

8 MR. VITETTA: Yes, sir, Adam Owensby.

9 THE COURT: Will you spell that last name for me?

10 MR. OWENSBY: O-w-e-n-s-b-y, Your Honor.

11 THE COURT: Thank you. Thank you very much. All
12 right, you may call your first witness.

13 MR. VITETTA: Thank you, Your Honor, we would call
14 Casey Perkins.

15 CASEY PERKINS, called as a witness, having been
16 duly sworn by the clerk, was examined and testified as
17 follows:

18 DIRECT EXAMINATION

19 BY MR. VITETTA:

20 Q Mr. Perkins, you are the petitioner in this case,
21 correct?

22 A Yes, sir.

23 Q And you are currently serving a 50 year sentence of
24 incarceration?

25 A Yes, sir.

1 Q And that was for a conviction of murder and criminal
2 sexual conduct?

3 A Yes, sir.

4 Q And you did not plead guilty?

5 A No, sir, I didn't.

6 Q And in fact you've always claimed you're not guilty?

7 A Yes, sir.

8 Q And did you tell that to your trial attorney?

9 A Yes.

10 Q And who was your trial attorney?

11 A Jeff Dunn.

12 Q He's in court with us today?

13 A Yes, sir.

14 Q When you were -- do you remember when were you arrested
15 2005, September 2005?

16 A Yes, sir.

17 Q And do you remember you gave a statement, a couple of
18 statements?

19 A Yes, sir.

20 Q And one of them was -- or two of them was ultimately
21 considered to be a confession, correct?

22 A Correct.

23 Q And did you explain to Mr. Dunn the circumstances
24 surrounding that confession, like what was going on with you?

25 A Yes, sir, several times.

1 Q What did you explain?

2 A I was explaining that they were trying to arrest my
3 parents if I didn't make a confession so I did make a confession
4 so my parents wouldn't get arrested.

5 Q And do you know if there were any audio tapes or
6 videotapes or, anything like that, of the confession viewed by
7 you or your trial counsel?

8 A I don't know nothing about that. They said they had a
9 confession on video and audio. That's all they told me.

10 Q Did you ever see it?

11 A I seen it when I was in court.

12 Q Was that the first time?

13 A Yes, sir.

14 Q And when you went to trial was the information raised
15 by your lawyer as to why you made the statement?

16 A He tried. He did try to raise the statement but the
17 solicitor kept knocking it down.

18 Q Well, did you ever get a chance to explain to the jury
19 why you made the statement?

20 A No, sir, I didn't.

21 Q Why was that?

22 A I don't know. I really don't know.

23 Q Did anybody at trial ask you where your parents were at
24 the time you were giving the statement.

25 A Not that I recall.

1 Q You were in jail for about three years --

2 A Yes, sir.

3 Q -- before you went to trial?

4 A Three years.

5 Q Who was your attorney during that time?

6 A I went through three attorneys at the time. Finally I
7 wound up with Mr. Dunn.

8 A Did you tell Mr. Dunn about any witnesses.

9 A Yes, I did.

10 Q Who were those witnesses^{4a}?

11 A It was Nikki and Nick. There wife and husband. Ed
12 Devatt (phonetics) and Bryan Adams and Kimberly. I don't
13 remember her last name. Her name was Kimberly. And they all
14 seen me that night and I had no blood on my clothes. I had
15 transmission fluid and gas, but I didn't have no blood. Didn't
16 have know scratch marks as they claimed I had. I didn't have no
17 kind of scratch marks whatsoever. I raised that to Jeff Dunn
18 too.

19 Q Okay. When you went to trial then -- how soon before
20 trial did you tell Mr. Dunn about these witnesses?

21 A I really don't recall. It was in the early process of
22 it. Real early process. Before we even got to Court.

23 Q How long had he been representing you?

24 A Several months.

25 Q Okay. Did any of those witnesses that whose names you

1 gave to your lawyer, did any of them testify on your behalf at
2 the trial?

3 A No, sir, none of them.

4 Q Did you have any witnesses testify on your behalf at
5 the trial?

6 A No, sir, except my mom. . She's the only witness I had.

7 Q Did your trial lawyer know where these witnesses were?
8 Did you give him information as to where these witnesses where?

9 A Yes, sir. Me and my mom had gave him the phone
10 numbers, addresses where everybody was and they were willing to
11 testify and come to Court.

12 Q Okay. Did you ever learn why those witnesses weren't
13 called? Was that ever explained to you? Were there any
14 subpoenas ever issued or anything like that?

15 A No, sir. Never explained why nobody came to Court.

16 Q Did you want those witnesses subpoenaed?

17 A Yes, sir.

18 Q And did you want them to testify for you?

19 A Yes, sir.

20 Q Okay. At the crime scene the police collected a bunch
21 of physical evidence, do you remember?

22 A Yes, sir.

23 Q Okay. Do you know if there was anything like DNA or
24 fingerprints or anything like that that linked you to that
25 specific crime scene?

1 A They had fingerprints and they had DNA but it was not
2 mine. It came back as negative. None of them mine.

3 Q And did ask your attorney to do anything else regarding
4 the forensic evidence that was collected at the crime scene?

5 A I did ask him but I don't remember exactly what I had
6 asked him to do, but it was something I asked him to do about
7 the DNA, but I don't recall exactly what it was.

8 Q Was there any independent expert retained by you to
9 analyze any of the crime scene evidence.

10 A No, sir.

11 Q Your attorney actually did call one witness, correct,
12 it was an expert on confessions?

13 A Yeah, he did call him. I forgot about him. He did
14 call one witness in on confessions.

15 Q Okay, and you remember that testimony, correct?

16 A Yes, sir.

17 Q Did the witness meet with you before the hearing?

18 A No, sir.

19 Q Had you ever talked to this confession expert?

20 A No, sir.

21 Q Do you think it would have -- would it have helped you
22 had you been able to talk to the expert about your confession
23 before his testimony?

24 A Yes, sir. The way they had it set up that Mr. Dunn and
25 the law firm paid him to come in. That's the way the solicitor

1 brought it up. They paid him to come in and to testify.

2 Q Right, did he ever review your statement?

3 A No.

4 Q And he was an expert on confessions?

5 A He was an expert. He never actually reviewed it that I
6 know of and he didn't go into detail to the jury about any of
7 it.

8 Q Did he testify at all about your confession at the
9 trial?

10 A He testified about something, but I don't remember what
11 it was.

12 Q The evidence that was collected, your clothes and
13 things like that, correct?

14 A Yes.

15 Q Where did they find some of those clothes?

16 A They found the the clothes in a tire that I put there
17 because Ed Devatt told me to hide my clothes or burn them or get
18 rid of them because the police was going to set me up to do time
19 for something I ain't done. And that's the reason I got rid of
20 clothes and I told Jeff Dunn to bring everybody, the witnesses
21 to testify to what I just said and nothing was done about it.

22 Q Did that happen?

23 A No.

24 Q Okay, so did anybody testify at your trial about why
25 these clothes were where they were?

1 A No, nobody never even considered testifying or could
2 find out why the clothes were put in to a tire.

3 Q How many times did you meet with your lawyer before
4 your trial with Mr. Dunn?

5 A Many times.

6 Q And he would come to you at the county jail.

7 A Yeah, if it wasn't county jail it would be the court
8 house.

9 Q About how long were those meetings?

10 A Sometimes 20, 30 minutes, sometimes an hour.

11 Q You gave him all this information about your case,
12 correct?

13 A Yes, sir.

14 Q The witnesses?

15 A The witnesses, the clothes, the why, the conversations
16 why. I gave him everything and none of it helped.

17 Q Did you give him information about your witnesses?

18 A Yes.

19 Q So you spent a lot of time with Mr. Dunn?

20 A Yes, sir.

21 Q Do you know why no witnesses were called on your
22 behalf?

23 A I have no clue. There was one woman named Vikki, she
24 was willing to come to court that week to testify when she was
25 off of work and she was going to tell exactly what had happened

1 with the murder. One woman was murdered and plus some people
2 was threatening her with baseball bats and everything else.
3 This is actually scene evidence.

4 Q There was a statement -- there was an an allegation
5 made at some point that the victim was being threaten by
6 somebody?

7 A Yes, sir.

8 Q Did you tell the attorney about this?

9 A He was notified about it as well. Not just by me, but
10 by other people too.

11 Q Okay. Was there any attempt to find this person to
12 investigate whether it was true or not?

13 A No.

14 Q Did you know if there was an investigator assigned by
15 Mr. Dunn on your case?

16 A He told me there were an investigator, but as far as
17 being assigned I don't know what he did. I didn't have no
18 paperwork on what he did or what he didn't do.

19 Q What did you understand an investigator to do?

20 A To go look at the crime scene. To take the jury to the
21 crime scene and look at it real carefully.

22 Q That's through investigation?

23 A Yes, sir.

24 Q Did you every talk to an investigator that was hired by
25 your lawyer?

1 A No, sir.

2 Q Would you have had anything to tell your lawyer's
3 investigator?

4 A What?

5 Q Would you have helped them identify witnesses on your
6 behalf?

7 A Yes, sir.

8 Q So, did you ever meet an investigator that was hired by
9 your attorney?

10 A No, sir.

11 Q Do you know if there was one hired?

12 A I really don't. I have no proof of it.

13 Q Was there an investigator who testified at the trial
14 for you?

15 A No, not that I recall. Not on my behalf. The only one
16 I heard was on the police.

17 MR. VITETTA: Thank you, Your Honor, I have
18 nothing further.

19 THE COURT: Thank you. Mr. Hunter.

20 CROSS EXAMINATION

21 BY MR. HUNTER:

22 Q Mr. Perkins, I believe you stated that you only gave
23 the confessions because you were protecting your parents?

24 A Yes, sir.

25 Q Okay. Now you're speaking of, I guess, the confession

1 you gave Sheriff Vincent?

2 A Uh-huh.

3 Q And then the confession you gave --

4 A It's all coerced. I told Mr. Dunn it's all coerced.

5 Every bit of it; the pictures were laid out, everything was laid
6 out to keep my mom and dad from being arrested.

7 Q Okay. Well, Mr. Perkins, what about the three guards
8 at the detention center that you had told you had killed the
9 victim?

10 A Yes, that's part of the whole thing. That way they can
11 testify in court that I did say it.

12 Q Okay.

13 A So they wouldn't arrest my parents.

14 Q Okay. So this was all -- all these confessions you
15 gave, this was all just a big plan to keep your parents from
16 being arrested?

17 A Yes, sir.

18 Q Okay. Did you --

19 A My dad could not stand no jailhouse the health he was
20 in. He's in bad health.

21 Q Okay, Mr. Perkins, so you're contending that the police
22 were going to arrest your parents for the murder of Miss Henson?

23 A Yes, sir. Buddy Wilkes said he was going to get me one
24 way or the other. He told mom and dad front of the yard right
25 there. I'm going to put you prison for the rest of your life. I

1 don't care what it's got to take, bit I'm going to get you.

2 Q Okay. Now isn't it true that you told Sheriff Vincent
3 that you wanted the death penalty?

4 A Yes, that's true.

5 Q You told the judge you wanted the death penalty?

6 A Yes, sir.

7 Q Okay. And you told the deputies that arrested you that
8 you had demons inside of you?

9 A Yes, sir.

10 Q And you did things often that you couldn't remember
11 doing?

12 A That's what I told them.

13 Q Okay. Well, how did -- if you just gave this
14 confession or these multiple confessions to protect your
15 parents, how did you know so much about the facts of the crime.

16 A Simple, because if you ask Ed Devatt you would know
17 how. But nobody ever questioned Ed Devatt. Ed Devatt is
18 telling me what is going on the whole time because he was with
19 the coroner, the one who did all medical research on the victim.

20 Q Okay. Well, how do you explain your cigarette lighter
21 being found at the scene?

22 A It wasn't my cigarette lighter, sir.

23 Q You told Sheriff --

24 A I you go back --

25 Q Mr. Perkins stop?

1 A If you go back and look at the paper.

2 THE COURT: Whoa.

3 A You'd find that.

4 THE COURT: Mr. Perkins, when I tell you be quiet
5 be quiet. The way this works, he asks the question, you
6 give the answer. Okay? Do you understand?

7 THE WITNESS: Yes, sir.

8 THE COURT: Thank you. Ask your question please
9 Mr. Hunter.

10 MR. HUNTER: Thank you Judge.

11 Q Mr. Perkins, you told the sheriff that that was your
12 cigarette lighter?

13 A No, I did not.

14 Q You didn't?

15 A No, sir, I did not tell the sheriff it was my lighter.

16 Q Okay, did you tell the sheriff where they would find
17 your gasoline covered clothes?

18 A Yes.

19 Q Okay. And you say know that you covered your clothes
20 with gasoline because --

21 A I was already covered in gasoline.

22 Q -- because Ed Devatt told you to?

23 A No. I was already covered in gasoline if you go back
24 and look at the paperwork. I was working on Bob and John's
25 automobiles and I was covered in gasoline and transmission.

1 fluid.

2 Q Okay, and wasn't there also trace amounts of blood
3 found on your shirt and pants?

4 A No, there was nothing on my shirt or pants. If you go
5 back to the record you'll find that and DNA as well. There's no
6 blood and no DNA of her or mine in the house or on me.

7 Q Well, isn't it true that SLED evidence technician who
8 testified at your trial testified that there were trace amounts
9 of blood on your clothes but they couldn't match that blood to
10 any DNA because the gasoline had destroyed the samples?

11 A That was a lie too. There was nothing on my clothes.

12 Q Okay.

13 MR. HUNTER: Beg the Court's indulgence, Your
14 Honor.

15 Q So it's your position you didn't have anything to do
16 with this?

17 A No, I didn't have nothing to do with this.

18 Q Okay.

19 A And that's the reason I asked for the death penalty
20 because I didn't want to go through the hell that I had to go
21 through with what I going through now being back in prison.
22 That's why I wanted the death penalty, but nobody ever
23 questioned about that.

24 Q Mr. Perkins, this wasn't the first time you have been
25 arrested for sexual offense, was it?

1 A I was never -- this had nothing to do with a sexual
2 offense. This had nothing to do with no type of crime of sexual
3 offense.

4 Q I am going to ask you the question and you can answer
5 yes or no, okay?

6 Were you convicted in 1996 --

7 MR. VITETTA: I'll object on the relevance.

8 MR. HUNTER: You Honor, I asked him and I think --

9 THE COURT: Does it qualify under 609?

10 MR. HUNTER: No, sir, I'm not trying to get it in
11 under that. He has claimed that he had nothing to do
12 with this crime. It's a crime of a sexual nature and
13 I'm trying to show that he is -- I'll withdraw the
14 question.

15 THE COURT: Thank you. Thank you, very much.

16 MR. HUNTER: I don't have any further questions.

17 Oh, one more actually.

18 Q Did you ever tell Mr. Dunn you wanted to testify?

19 A Yes, I did.

20 Q Why didn't you testify if you wanted to testify?

21 A I did testify, but they didn't ask me the questions I
22 wanted them to ask. I can only answer the questions they had to
23 ask me.

24 Q So you are saying you did testify at your trial?

25 A I testified on behalf of what they wanted to question

1 me on.

2 MR. HUNTER: I don't have any further questions.

3 THE COURT: Redirect Mr. Vitetta?

4 REDIRECT EXAMINATION

5 BY MR. VITETTA:

6 Q Did you prepare the questions for your testimony?

7 A The testimony I give was in front of the jury. It was
8 in front of the police department and the judge.

9 Q What I'm asking you, who prepared the questions?

10 A Nobody.

11 Q Thank you.

12 THE COURT: Recross?

13 MR. HUNTER: No, Your Honor.

14 THE COURT: Thank you. Thank you very much. You
15 may step down.

16 All right, you may call you next witness.

17 MR. VITETTA: I would call Geoffry Dunn.

18 GEOFFRY DUNN, called as a witness, having been
19 duly sworn by The Clerk, was examined and testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MR. OWENSBY:

23 Q Mr. Dunn, were you the attorney for Mr. Perkins?

24 A I was.

25 Q What charges did he face?

1 A I believe the only charge he had was murder. I don't
2 think there was any other accompanying charges.

3 Q Did you handle his defense?

4 A I did.

5 Q How long had he been in jail prior to his conviction?

6 A I'm not understanding. Conviction to?

7 Q Prior to him being convicted to this crime?

8 A You mean charged with it or convicted.

9 Q Convicted?

10 A He got convicted in 2008.

11 Q How long had he been in jail prior to the trial?

12 A Oh, he got arrested in 2005. I don't remember the
13 exact date. It was within a week or two of Miss Henson's
14 murder.

15 Q So he was convicted 40 months later?

16 A I believe so.

17 Q Okay. Do you remember what he was held on?

18 A Originally?

19 Q At the time of this interrogation?

20 A He was originally charged with -- they didn't have
21 anything under the murder. They picked him up if I'm not
22 mistaken on failure to register as a sex offender and at some
23 point they brought back some old charges that they had picked
24 him up on a year or to earlier but had dismissed and I don't
25 know the exact nature of the charges. It was either assault and

1 battery or ABHAD or CSC or something along those lines, but it
2 had to do with an ex-girlfriend.

3 Q Did he have any other lawyers to help you with this
4 defense?

5 A At trial my partner helped a little bit, but otherwise
6 it was just me..

7 Q And who was your partner?

8 A Brad Jordan.

9 Q Did you apply for a free state investigator?

10 A I had one.

11 Q What investigations was done by the investigator?

12 A The investigators name was Andrew Staphaleno
13 (phonetics). I had used him for most of my cases as a matter of
14 fact all of my cases over the years. He interviewed witnesses,
15 issued subpoenas that week of the trial, he went through the
16 evidence with me, or as well as I did. The normal things he
17 does for me on all criminal cases.

18 Q Did you apply to the court for funds to employ an
19 independent fingerprint examiner?

20 A I did not get a fingerprint examiner.

21 Q Did you apply for funds to do any type of independent
22 DNA analysis?

23 A I did. I had Doctor Ostrowski was my DNA person.

24 Q Did the jury hear about any of this independent DNA
25 analysis?

1 A There was no need. After I talked to Dr. Ostrowski
2 because there was no DNA recovered.

3 Q Okay, so the jury did not hear about that?

4 A No.

5 Q Okay. So you knew this entire time that he was facing
6 a long amount of time in prison, is that correct?

7 A Life.

8 Q What were the main pieces of evidence the State used to
9 connect him to scene potentially?

10 A During trial the signal most damning piece of evidence
11 against him was his confession.

12 Q What physical evidence?

13 A There wasn't a whole lot. The only other evidence that
14 they had was some clothes they recovered from his house. There
15 was a lighter that was found at the scene. There were
16 fingerprints that were recovered but they were not -- they were
17 not useable. I don't think there was any actual DNA that was
18 recovered that they could test for DNA.

19 Q So the only physical evidence presented by the State
20 were the clothes and the lighter, correct?

21 A I believe so.

22 Q Did you have the lighter subject to an independent
23 fingerprint examination?

24 Q As far as I remember there were no fingerprints on the
25 lighter.

1 Q Okay. Did you talk to Mr. Perkins's parents?

2 A I talked to Carol many times.

3 Q Did you learn that his father was being interrogated by
4 the police at the same time Casey was?

5 A That was what the family told me.

6 Q Did this affect your defense at all?

7 A No.

8 Q Did you research that fact further whether his father
9 was being investigated?

10 A Well, Mr. Staphaleno if I remember correctly, talked to
11 Mr. Perkins's, his father.

12 Q So did you verify whether that was the truth?

13 A Mr. Perkins's father was never in good health and his
14 mental capacity was never very good and so really anything he
15 told Andrew Stapholeno, my investigator, was never very reliable
16 and as such wasn't a whole lot I could use from him for defense
17 purposes.

18 Q Did Mr. Perkins discuss a potential alibi witness with
19 you?

20 A A couple times we talked about various individuals.
21 Because it's seven years later I can't remember names.

22 Q I completely understand.

23 A The name ED Devett is ringing a bell that Mr. Perkins,
24 Caroline Perkins both brought to my attention and I'm assuming
25 there were some others.

1 Q Did the investigator interview these alibi witness?

2 A As far as I remember he did.

3 Q Okay. Did you investigate these alibi witnesses?

4 A I had the investigator do that.

5 Q Did you talk to them ever?

6 A Me personally, no.

7 Q No. Did you know if the investigator did?

8 A I -- again, seven years later I want to say he did,

9 but---

10 Q And if he did you would take his word for it?

11 A I would take his word for it.

12 Q You do understand however that the investigation of
13 this matter it's your responsibility as his defense attorney,
14 correct?

15 A I do.

16 Q Okay. Could the investigator had spoken to the sheriff
17 deputies involved in the interrogation?

18 A I don't remember if Mr. Stephaleno talked to the
19 officers that were involved in the interrogation.

20 Q Okay. Did you?

21 A I know I talked to Mr. Vincent, for sure Vincent and
22 there may have been one or two others that I would have talked
23 to. The primary interrogator was Sheriff Vincent, but there
24 were one or two other folks that were continually coming in and
25 out of the room and I can't remember their names.

1 Q And did you discuss the interrogation with them?

2 A I know at some point I talked to Sheriff Vincent about
3 it.

4 Q Did you have any witnesses for trial?

5 A The primary witness that I had was Professor Hirsch and
6 that's who we called as a witness.

7 Q Did you have any other witnesses potentially ready for
8 trial?

9 A We had some lady under subpoena because she came at the
10 end of the week and I do not remember what her name was and why
11 we had her. I want to say she was a neighbor, but we ultimately
12 decided that she was not needed.

13 Q Was that Cynthia Briar?

14 A It could be.

15 Q Do you remember what she would have testified to?

16 A No, at this point I can't remember.

17 Q Okay. Do you remember the witness who had the
18 interview with the department of health?

19 A There were -- are you talking about at trial?

20 Q Yes.

21 A There were 55 witnesses. I can't remember.

22 Q Okay.

23 A Was that a State's witness?

24 Q Do you have a copy of the transcript?

25 A I do, except I left it over that way (indicating). May

1 I Your Honor?

2 THE COURT: Yes, certainly. What page.

3 MR. OWENSBY: Nine eight-two.

4 THE COURT: Nine eighty-two?

5 MR. OWENSBY: Yes.

6 A You said 982?

7 Q It starts at 980, I believe. What I'm getting at is
8 982.

9 A Did you intend to call this witness, Mr. Zamore.

10 A I don't think that was my witness. I think that was
11 Doug Barfield's witness. He brought a person up from Columbia
12 that week to testify.

13 My understanding he would have been a rebuttal witness. If
14 this is the same individual he would have been a rebuttal
15 witness to Doctor -- Professor Hirsch if Professor Hirsch would
16 have gotten into the particulars of the confession. But
17 Professor Hirsch never got into the particulars. His testimony
18 was all general.

19 I believe that's the individual you are referring to but he
20 never ended up testifying.

21 Q I would like to call your attention to page 980 when he
22 said my first witness is going to be Yale Zamore.

23 A Nine eighty or nine eighty-eight?

24 Q Nine eighty.

25 A All right.

1 Q What did you intend to have Mr. Zmore testify about?

2 A After reading the transcript I think it would have
3 something to do I think Mr. Zamore, who was public defender at
4 the time which was Casey's attorney had attended the mental
5 health evaluation and probably would have testified to what
6 happened at that.

7 Q And was there an objection calling him as a witness and
8 his testimony?

9 A I don't remember. The transcript will speak for it. I
10 don't remember.

11 Q Well, in response I would like to call your attention
12 to page 980. Do you raise an exception to allow this witness to
13 testify?

14 A It appeared that I did.

15 Q What exceptions did you raise?

16 A According to the transcript 803.3 and 803.4.

17 Q Okay. Did you raise any other exceptions or have any
18 other explanations as to why this witness should be allowed to
19 testify?

20 A I don't remember. I mean the transcript speaks it -- I
21 mean, if it's in the transcript. I don't have an independent
22 recollection of it.

23 Q Was this interview conducted before or after this case
24 was started by the State?

25 A Are you talking about the McNullen one with Mr. Zamore?

1 Q Zemoire.

2 A It would have been early in the process. It was before
3 I became involved.

4 Q Okay. But it was after the State had charged him and
5 began this case?

6 A I believe so.

7 Q And you attempted to allow this testimony in using
8 803.4, a statement for purposes of medical diagnosis, is this
9 correct?

10 A I believe so.

11 Q Okay. And you presented no other explanations as to
12 why this testimony should be allowed in?

13 A Again, I have no recollection as to any of this part of
14 the trial. I mean, I can tell you what's in the transcript.
15 You can read it.

16 Q Do you see any in the transcript?

17 A The only thing I see is 803.4. I don't remember. I
18 don't see anything saying any other reasons.

19 Q All right, moving on. Did you ever go to the crime
20 scene?

21 A I drove down the road once. I did not stop and go to
22 Mrs. Henson's house, but I did drive by. My investigator went
23 out there.

24 Q Okay. Did you ever go to Mr. Perkin's residence?

25 A Me personally, no.

1 Q Did your investigator?

2 A He did.

3 Q Okay. Did you prepare for cross examination of the
4 officers that the State called for trial?

5 A I did all the cross examination of the officers.

6 Q Okay, and you did prepare for this cross examination,
7 correct?

8 A Yes.

9 Q Okay. How did you prepare? Was this based on
10 communications with witnesses?

11 A It would have been based on communications of
12 witnesses, talking with Mr. Perkins, talking with Mrs. Perkins,
13 talking with my officer -- or, excuse me -- my investigator
14 Andrew Staphalino, talking with Dr. Ostrowski who gave me some
15 things to bring up with DNA and just generally sitting over in
16 the defense chair kind of coming up with cross examination
17 questions as the trial unfolded.

18 Q Did you consult and expert?

19 A For?

20 Q Your preparation.

21 A Well, I consulted mental health doctor, Dr. Ostrowski,
22 Dr. Hirsch.

23 Q Did either of these experts help or provide any
24 guidance in preparation of this cross examination?

25 A Dr. Hirsch and Dr. Ostrowski both provided insight into

1 questions to ask the investigators.

2 Q Okay. Did you ask these witnesses questions directed to
3 question the voluntariness of Mr. Perkin's confession?

4 A I believe I did.

5 Q Okay. How many confessions were there?

6 A There was the main confession which was a three-hour
7 recorded interview with Sheriff Vincent. There was a couple of
8 statements that were given to -- one or two -- three statements
9 given to detention officers. But the main one was a three-hour
10 confession and within in that there came in different modes. By
11 that I mean from what I had originally which was an audio
12 recording.

13 Before trial started, maybe two weeks before trial started --
14 three weeks before trial started, I was presented with a video,
15 but the video is not complete. It's only about 15 minutes long
16 and then it turns off and what you have is audio.

17 Q Did you consider those statements confessions also?

18 A At the time of trial I think I made an objection to try
19 to make it not be a confession, but I think the jury would
20 interpret it as a confession.

21 Q Do you remember how many interrogations had occurred
22 prior to either of the two main confessions as you refer to
23 them?

24 A No. There was some other ones where my understanding
25 is the police attempted to speak with Mr. Perkins. My

1 understanding though and what I had is there was nothing written
2 down. Nothing that I would call a confession that came from
3 those prior interrogations.

4 Q So of these two confessions, main confessions that you
5 evaluated, did you examine the first one?

6 A Which one would you call the first one?

7 Q The Vincent audio recording?

8 A Well, that was the only confession. It just came in
9 two different modes; video and audio. And yes, I listened to it
10 numerous times. I had my paralegal actually transcribe the whole
11 thing. I had it written down so I could go back and read it.

12 Q Did you find anything noteworthy?

13 A I did actually. The confession caused me to have a lot
14 of concerns. First and foremost was my client's mental health
15 because in the confession, you know, he made contact with the
16 sheriff. It wasn't the other way around.

17 He contacted them and in his negotiations with the sheriff
18 to begin with he asked for the death penalty and then in the
19 next breath asked for probation. So we have this bookend where
20 he's asking for really the two ends in which you can get in
21 criminal law for penalty purpose in order to confess, and that
22 caused me serious concerns about his mental health.

23 The other concerns is that once he started talking with the
24 sheriff he denied everything and then he slowly started
25 confessing or what could be interpreted as a confession. In

1 that confession it began with that being consensual sexual
2 activity to non-consensual sexual activity and as such, you
3 know, it raised some legal concerns of whether or not it was a
4 murder case or involuntary manslaughter case.

5 Q So, is it safe to assume that you based your trial
6 strategy on questioning his confession?

7 A Yes, the entire case came down to his confession.

8 Q So the second videotape, you examined this video tape
9 in addition to the audio, correct?

10 A I did.

11 Q Did you find anything noteworthy there?

12 A The only thing -- the noteworthiness to me was that
13 consistent with the audio that I had and the problem it created
14 is during my investigation if this case Mr. Perkins had told me
15 numerous times he was coerced into giving this and that they
16 would stop the video and tell him what to say and start the
17 audio back up and video was the opposite of that.

18 Q So in the video -- they kept the video on?

19 A Well, they kept the video on but there were -- you
20 know, all the things that you look for in a coerced confession
21 just weren't there. Things such as, you know, the police
22 threatening. They were very open to him. They were very
23 outgoing towards him. They gave him something to drink. They
24 took his handcuffs off. It was much more of a conversation.

25 About 15 minutes into the video Mr. Perkins had actually

1 asked the sheriff to turn the video part off and so there was no
2 move video at Mr. Perkins's request. All we had after that was
3 an audio.

4 Q During either of these alleged confessions do you
5 remember Mr. Perkins being read his Miranda rights?

6 A I believe he was.

7 Q Did you notice any discrepancies between a portion of
8 the video that had video versus the portion that did not?

9 A No. I did not notice any discrepancies.

10 Q It didn't elaborate on the nature of the crime or he
11 didn't --

12 A Well, what happened the video stopped after ten or
13 fifteen minutes, so the actual confession part of the
14 conversation was never videotaped.

15 The part that was videotape was all the beginning parts of of
16 the conversations of the interrogation between Mr. Perkins and
17 the police.

18 Q Did you apply to ID to get funds to retain an expert to
19 review this confession tape?

20 A I did.

21 Q Did that expert determine all the issues surrounding
22 his confession?

23 A Professor Hirsch's ultimate opinion was that it was not
24 a false confession, and I had gave him a copy of the -- I don't
25 think I gave him the video. I think I only gave him the audio.

1 I can't remember if I had the video at that point in the
2 process, because like I said I got that late in the ball game.
3 But his opinion was that it was not a falso confession and as
4 such that's why during the trial he does not testify the
5 specifics of Mr. Perkins's interrogation.

6 Q And he based his opinion without seeing all of the
7 alleged confession evidence that you had?

8 A He based it on the recording that I gave him and any
9 other notes that he would have asked for from the file. I don't
10 remember all the other stuff that I gave him.

11 Q Did you hire an additional expert to review the video
12 tape, the video confession?

13 A Well, again, the video is not really a confession per
14 se. It's part of the confession process, and no, I never had
15 anybody review them besides me and my investigator.

16 Q So no expert evaluated the videotaped confession, the
17 videotaped sequence?

18 A I can't remember if Professor Hirsch -- if anybody
19 would have done it it would have been Professor Hirsch. I can't
20 remember if he did or not.

21 Q Did you investigate whether Mr. Perkins was on
22 prescription medicine at the time of these alleged confessions?

23 A It would have been part of my conversations with him at
24 the beginning, his mental health and his health overall.

25 Q Did you raise this at trial?

1 A I raised a lot of issues during the Denno hearing and I
2 can't remember all of them. I think his mental health was one
3 of them, but as far as specifically the medications I don't
4 remember.

5 Q What else did you do to determine whether Mr. Perkins
6 was able to freely and voluntarily give this confession?

7 A Well, I reviewed the video. We had a Jackson/ Denno
8 hearing and Judge Goldsmith made his ruling.

9 A Again, all the rest of the details it's seven years ago. I
10 don't remember every single thing I did.

11 Q So, you don't remember whether or not you determined
12 whether he was under the influence of a prescription or
13 non-prescription drug?

14 A We would have talked about his mental health. I don't
15 remember him ever saying that he had issues with prescription
16 medication at the time.

17 A Reviewing the video and the audio that I did have he did not
18 appear to be under the influence. He had been in jail at that
19 point seven days -- five days. Something like that. Unless he
20 was obtaining drugs illegally through the jail system he would
21 not have access to them anyways.

22 Q Well, did you get his jail records?

23 A I have his jail records. I don't remember at what
24 point I got them.

25 Q Okay. Could there have been an adjustment time if he

1 had just entered jail and been medicated?

2 MR. HUNTER: Judge, I'm going to object to that
3 question. It's outside the scope of Mr. Dunn's
4 expertise.

5 THE COURT: Sustained.

6 Q Did you investigate whether an adjustment time might be
7 relevant to this situation and the confession?

8 A I did not investigate that issue.

9 Q Okay. All right. Before the jury did you argue the
10 issue of voluntariness to the jury?

11 A Again, I think I did. The transcript would be able to
12 tell you better what I argued and didn't argue.

13 Q Did you do independent examination relating to Mr.
14 Perkins's request for the death penalty?

15 A No.

16 Q All right. Did you do any independent investigation as
17 to why he asked to have the video turned off randomly 15 minutes
18 in?

19 A We had a conversation about it.

20 Q So you remember discussing with him why he wanted the
21 video turned off?

22 A I remember us having the conversation. I don't
23 remember the exact reasons.

24 Q Do you remember him discussing wanting the death
25 penalty?

1 A He told me a number of times through the process that
2 he was going to get the death penalty one way or the other.

3 Q Any idea why the State didn't seek the death penalty?

4 A You would have to ask Doug Barfield about that. Mostly
5 because there is no money in Chester for death penalty cases.

6 Q Fair enough. Did you investigate the issue of false
7 confession?

8 A I did.

9 Q Okay. Did you prepare the argument of false confession
10 at trial?

11 A I did.

12 Q Okay. Did you call on Mr. Hirsch as a witness for
13 false confessions?

14 A I did.

15 Q Did you have Mr. Hirsch qualified as an expert?

16 A I did.

17 Q He's pretty highly regarded, right?

18 A This is not his first testimony -- or excuse me, his
19 first court trial and he was a prodigy of the other professor
20 that came in and testified at the Coate trial where I had gotten
21 the idea. I can't remember his name now.

22 Q And he testified at length about the method the
23 interrogators used?

24 A We had discussion about what to look for in false
25 confessions interrogation methods and those sort of things, yes.

1 Q Okay. Did he testify about reliable and unreliable
2 confessions?

3 A He did, I believe.

4 Q Okay.

5 A Again, it was in a general form. It was not specific
6 to our trial.

7 Q Did he testify about how innocent people confess to
8 things that they didn't do?

9 A I believe he did.

10 Q Did he provide any evidence to the jury about this
11 specific confession?

12 A He could not.

13 Q He could not. So he did not?

14 A He did not.

15 Q Okay. So no details. Nothing about turning the video
16 off?

17 A He didn't provide any specific details in this trial.

18 Q Nothing about the defendant's intelligence or
19 medications?

20 A I don't think he did.

21 Q Okay. So in fact the witness didn't do any of these
22 things?

23 A Correct.

24 Q Okay. So the jury had no evidence even that Mr. Hirsch
25 knew the facts of this case?

1 A Well, the problem is I can't have him tell the jury he
2 reviewed it and then came back and said that, you know, it's not
3 a false confession. So I stayed away from those kinds of
4 questions.

5 Q So you did pursue the trial strategy of false
6 confession?

7 A I did.

8 Q You did. Okay, and he never testified whether the
9 confession is false or not, correct, specifically this one?

10 A Right.

11 Q Okay. And he didn't testify that the confession Mr.
12 Perkins gave was in court an unreliable confession?

13 A He did not -- you're asking whether he testified to
14 that, no, he did not.

15 Q So mainly just focused on what his experience is.
16 What's on his website about that kind of thing, what's reliable,
17 false?

18 A Right, his research.

19 Q Okay. So after three years in jail one of the best
20 experts in the country comes down here and gets on the stand and
21 says nothing about the facts of this case?

22 A Correct.

23 Q Okay, and you did argue the confession was false?

24 A I did.

25 Q Did you argue also that this interaction was

1 consensual?

2 A I did.

3 Q Okay. In arguing in closing that he did it then why
4 did you bring Mr. Hirsch there?

5 A I brought Mr. Hirsch because he was the only trial
6 strategy I could come up with in this case since we had a
7 three-hour confession that I had to explain to a jury. The only
8 way I felt like I could do that would be to have a false
9 confession expert.

10 Q But you just said that another trial strategy was that
11 it was consensual, correct?

12 A That was a fall back.

13 Q And you pursued this strategy at court, correct?

14 A I did in my closing.

15 Q Okay. Moving on, I want to go into some hearsay
16 statements. I would like to call you attention to the record,
17 page 75. "Mary Wilson said her son said, Mom, Casey had the
18 same color lighter as you."

19 Did you object to this?

20 A What page are you on?

21 Q I'm sorry, it's page 75, I believe. I will check.

22 A There's more than one 75. Hang tight.

23 Q It's page 136 on the original.

24 A What was the question.

25 THE COURT: What was the page again?

1 THE WITNESS: 136.

2 MR. OSWENSBY: 136.

3 THE COURT: 136.

4 Q That's Mary Wilson starts. Actually it's 142. I
5 apologize.

6 THE COURT: 142?

7 MR. OWENSBY: Yes, Your Honor.

8 THE COURT: All right, thank you.

9 Q "Mom, Casey has got the same color lighter as you."
10 Does that line refer to an out of court statement offered for
11 the truth of the matter asserted?

12 A It appears to.

13 Q Did you make an objection?

14 A No.

15 MR. OWENSBY: Let's see. I would like to call the
16 Court's attention to page 110.

17 THE COURT: Say it again.

18 MR. OWENSBY: Page 110, Your Honor.

19 Q This is Robert Rush's testimony. He wanted him to work
20 on his truck or something and he was going to show him what he
21 wanted done or something?

22 Q I would like for you to read line 22 and 23?

23 A "Him what he wanted done or something," and he said,
24 "Do you want me to come now come now?" And I guess he said Yes,
25 because he " --

1 Q Is "Do you want me to come now" and out of court
2 statement?

3 THE COURT: Isn't that a statement by the
4 defendant? Isn't that an individual that is
5 overhearing a conversation that the defendant is
6 having with a third party and isn't "Do you want me
7 to come now?", the defendant's statement? Or am I not
8 tracking you right?

9 MR. OWENSBY: You are, Your Honor. I was just
10 asking if it was an out of court statement.

11 THE COURT: Okay. All right. Go ahead.

12 Q Is that an out of court statement?

13 A I believe it is.

14 Q Did you attempt any objection?

15 A It does not appear that I did.

16 Q Okay.

17 THE COURT: Now what would the basis of that
18 objection be, "Do you want me to come now?"?

19 MR. OWENSBY: Um --

20 THE COURT: If it is the defendant's statement.

21 MR. OWENSBY: It is a statement but it doesn't go
22 to incriminate him, or anything like that so -- but we
23 would have thought hearsay, but it's not hearsay.

24 Q I would like to move on to the next question, page 192.

25 THE COURT: 198?

1 MR. OWENSBY: 192, Your Honor.

2 THE COURT: I'm not doing my math very well.

3 Thank you.

4 Q Would you read the first two lines of that page.

5 A "Told me that Miss Henson had passed and I asked them
6 how she died and they said somebody had killed her."

7 Q Is the line "somebody killed her" an out of court
8 statement?

9 A Yes.

10 Q Is it offered for the truth of the matter asserted?
11 What's the hearsay?

12 A I'm just trying to determine if it could have been an
13 excited utterance.

14 Q Okay. Did you make an objections?

15 A I did not.

16 Q Ok, so excited utterance or hearsay no objection.
17 Okay.

18 I would like to call you attention to page 369. I would like
19 for you to read line six please.

20 A "Don't quote me on any further, or let me ask a" --

21 Q And line seven.

22 A "Couple other questions. Did he provide you some" --

23 Q Okay, so what was this question in reference to? Was
24 the state halting hearsay statements?

25 A It's possible.

1 Q Did you object to the statements in the preceding lines
2 three through five?

3 A I did not have a chance to, no.

4 Q Okay. Do you remember Cynthia Fleming?

5 A No.

6 Q Okay. Do you remember any statement existing that
7 there was another possible assailant?

8 A No.

9 Q I would like to call your attention to page 1,082, line
10 eight and nine -- actually eight, nine and ten.

11 A You said page 1,082?

12 Q Yes.

13 A Which lines?

14 Q Eight, nine and ten.

15 A "Your Honor, there was a Cynthia Fleming that called
16 our office. As I understand her testimony would be that she's a
17 neighbor of Miss Henson."

18 Q Do you remember now whether she was going to testify at
19 all?

20 A I still don't remember what she was going to testify.
21 I believe this is a lady we had under subpoena on that Friday or
22 Saturday of the trial but I don't remember what her testimony
23 was gong to be.

24 Q I would like to call your attention to line 21 and 22
25 -- actually 17 to 22, just for recollection purposes.

1 A It appears she was going to testify to Miss Henson
2 being terrified of both these men.

3 Q Okay, so the victim being terrified of other potential
4 assailants? The victim being terrified of someone else?

5 A That's what it says.

6 Q Okay. Would that be a statement that would tend to
7 exculpate Mr. Perkins?

8 A I'm not sure I know what the word excupate (sic) means.

9 Q Exculpate, to make him more likely to be found
10 innocent.

11 A If she would have testified it's possible.

12 Q Yeah, is that why you had her ready to be called as a
13 witness?

14 A Again, I don't remember why I had her called. I mean,
15 there would have been trial strategy involved and there would
16 have been trial strategy involved on why we didn't use her and I
17 don't remember at this point in the proceedings I don't remember
18 why. I don't remember Miss Fleming beyond her being there.

19 Q Okay, but you knew about the statement because it was
20 provided in Discovery during the previous three years he was
21 held in jail?

22 A I don't know where that information came from.

23 Q Okay, did the State object to the introduction of this
24 witness?

25 A I believe the transcript says it does. I, again, don't

1 have an independent recollection of it.

2 Q Did you cite any exceptions or any case law or any
3 rules of evidence as to why this witness should be allowed in?

4 A I don't know if it was me or if it was my partner. It
5 appears that Mr. Jordan had the argument of a third-party guilt
6 based on page 1,083.

7 Q So what rules of evidence did you and your partner,
8 your firm, state for the record?

9 A Again, I don't remember. If you can point me to the
10 transcript I'll read it but I have no independent recollection.

11 Q Page 1,085 one, two, three.

12 A It appears it would have been based on rule 803,
13 existing mental or emotional state of the victim.

14 Q And then page 1,084, lines 24 and 25.

15 A Or 804.

16 Q Okay. Do you cite specific rules or case law other
17 than these?

18 A It appears that Mr. Jordan was making that argument.

19 Q Did you firm cite any evidentiary rules under 804?

20 A It does not appear so.

21 Q Okay, under 803?

22 A You asked for case law, is that what you said?

23 Q Evidentiary rules or case law.

24 A Again, it doesn't appear beyond citing any of those
25 rules.

1 Q Okay. Did you argue that these statement were -- you
2 did argue that this was under 803.3, correct, existing emotional
3 or mental state?

4 A It appears so.

5 Q But without specifically mentioning 803.3?

6 A Right.

7 Q Okay. Did you argue whether they could have been
8 admissible under 803.4 (b) (2), a statement under belief of
9 impending death?

10 A I don't believe we did.

11 Q Did you argue whether the statements were made
12 immediately, under 803.1; whether the statements were
13 immediately made after an event or condition?

14 A I don't believe we did.

15 Q Okay. Did you investigate these possible exceptions?

16 A What do you mean?

17 Q Did you investigate, prepare to argue these exceptions
18 to the court?

19 A I mean beyond having Miss Flemings be available for
20 court, again, I don't have an independent recollection of any of
21 that.

22 Q Had the jury heard the information from Miss Fleming
23 could that cast out on the allegations against Mr. Perkins?

24 A Could it have?

25 Q Yes.

1 A I guess.

2 Q Okay. Do you remember any other rules or lines you
3 cited in regards to Miss Fleming?

4 A I do not.

5 Q All right, so moving on to chain of custody. There
6 were two pieces of evidence, physical, that were introduced by
7 the State; the lighter and the clothes potentially. Okay, so
8 this lighter is one of the only physical pieces of evidence
9 linking this client to the alleged crime, correct?

10 A I'm not sure if I would use the word "linking" but I
11 mean it was evidence that was recovered at the scene.

12 Q Okay, and if admitted by Miss Wilson saying that her
13 son said "Mom, Casey had the same lighter" that's hearsay,
14 right?

15 A Yes.

16 Q And no objection, right?

17 A I don't think I did.

18 THE COURT: We already cover that. Mom, he had
19 the same colored lighter you did.

20 Q And there are no eye-witnesses, correct?

21 A To the murder?

22 Q To the lighter evidence. To the actual lighter. Mr.
23 Perkins having this lighter or a lighter like it?

24 A I'm having trouble following the question.

25 Q There's no eye-witness testimony about what kind of

1 lighter Mr. Perkins's actually had on him at any point?

2 A There was testimony about him using cheap lighters. I
3 don't remember more than that.

4 Q Okay, but there was no DNA linking him to this crime?

5 A There was no DNA at all in this case.

6 Q And no fingerprints at all?

7 A There was no fingerprints.

8 Q And there were no eye-witnesses to the crime otherwise
9 right?

10 A Correct.

11 Q So the only thing they had was this lighter basically,
12 correct?

13 A They had a confession.

14 Q Okay, but other than the confession basically they had
15 this lighter introduced through a hearsay statement, correct?

16 A Well, I don't think it was introduced through hearsay,
17 but they did have the lighter.

18 Q Okay. Who handled the collection of most of the
19 materials involved in this case?

20 A There were from my recollection there was a number of
21 detectives and investigators from the Chester County Sheriff's
22 office and SLED who were involved in this case.

23 Q Okay. Who was the primary custodian during the time
24 the State held the evidence?

25 A I don't remember.

1 Q Okay. I would like to call your attention to page 59,
2 if you wouldn't mind reading lines one through three, just for
3 your recollection.

4 A I have two 59's. There is a lot of transcript here.

5 Q The pretrial motions. I am just trying to remind you.

6 A The 59 I'm looking is not refreshing my memory.

7 Q Okay.

8 THE COURT: You looking at this one? (Indicating).

9 THE WITNESS: Yes. I don't know what I'm looking
10 at.

11 (WHEREUPON, counsel approached the witness stand
12 and indicated the transcript to the witness.)

13 A Can you point me to something else?

14 Q Page 455, line 20 to 22.

15 A What line?

16 Q Twenty to twenty-two. Do you remember there was an
17 issue with one of the witnesses in the chain of custody

18 A There was an issue with Shane Stewart. I don't remember
19 if he was the record custodian or even the custodian of the
20 evidence. I know he was involved in the collection of the
21 evidence.

22 Q Okay. Was he available for trial?

23 A He was not available for trial.

24 Q And he was involved in the chain of custody of this
25 evidence?

1 A He was involved in the investigation and I believe his
2 name was in the chain of custody.

3 Q Okay. Did you object to the shirt when it was
4 introduced?

5 A I don't think I did but I'm not -- I don't think I did.

6 Q Did you object to the pants?

7 A Again, I don't think I did.

8 Q Can you look at 486, lines 13 to 15.

9 A Apparently I did object to it.

10 Q Okay. Did the shirt have any identifying
11 characteristics to it? Did it have any names on it?

12 A I believe it had his name on it. It was a Mercedes
13 shirt and it had Gunter's Mercedes sales which is a dealership
14 up in Rock Hill because Mr. Gunter came and testified. I think
15 Casey's name was actually on the shirt.

16 Q And that was his employer, correct?

17 A Not at the time but had been his employer at some
18 point.

19 Q Exactly. So you did not object to the shirt -- yeah,
20 you did object to the shirt with his name on it but you did
21 object to the pants that had no identifying characteristics?

22 A Correct.

23 Q Okay. Could Shane had been brought to trial?

24 A Mr. Stewart at the time of the trial he was in either
25 Iraq or Afghanistan. I don't remember which one.

1 Q Did you attempt to reschedule the trial so that he
2 could be available?

3 A No.

4 Q Okay, so all of this evidence the shirt and pants all
5 came in?

6 A Yes.

7 Q And the custodian of this evidence, or at least the
8 partial custodian, was not present to swear that the evidence
9 presented was the evidence collected at the crime scene?

10 A I believe what ended up happening was there was enough
11 testimony, enough officers who could testified that what was
12 recovered at the scene that one person would not have mattered
13 and as such I took the strategy that it one of those I basically
14 glossed over it to try and keep the jury from being to fixated
15 with it.

16 Q So -- but there was no evidence that it was
17 uncontaminated?

18 A I did not raise an objection to the contamination of
19 the evidence.

20 Q And so without this witness how else could you have
21 brought up the issue of whether the evidence was co-mingled with
22 other evidence at that point?

23 A I don't know.

24 Q So by the time you objected to the second piece of
25 evidence it was just to late to object to the first piece?

1 A I don't know.

2 Q All right. Do you remember having an agreement with
3 the solicitor about evidence?

4 A Is it related to the chain of evidence?

5 Q Any evidence, I guess.

6 A I believe the agreement we had was not to -- I did not
7 raise an objections to beyond that objection that I raised to
8 the judge any further chain of evidence because we would have
9 had too many more witnesses to have to deal with.

10 Q Was Mr. Perkins aware of this agreement?

11 A I don't know.

12 Q Was this agreement also covering allowing Keith Grower
13 to testify?

14 A I don't remember.

15 Q I would like to refer you to page 361 and I'm about
16 done.

17 A Can you repeat the question?

18 Q Did you object to him being -- did your agreement also
19 cover Keith Grower?

20 A I had objected to his qualification as an expert.

21 Q What was your objection?

22 A I didn't have one.

23 Q Okay. All right. So you objected but you did not have
24 an objection?

25 A I've never had one an objection on a having a canine

1 person viewed as a canine expert in canine handling, but for
2 purposes of trying to protect the record I objected.

3 Q Okay, do you remember raising the defense of consensual
4 fisting?

5 A I believe I did.

6 Q Did you mention this in your opening?

7 A I don't remember if I mentioned it in my opening or
8 not.

9 Q Do you remember the false confession defense?

10 A I do.

11 Q Did you mention that in your opening?

12 A I don't remember my opening.

13 Q Okay. Do you think that a consensual fisting defense
14 and false confession defense are contradictory?

15 A They can be.

16 Q Okay. Do you remember admitting in closing that he
17 killed her?

18 A I don't remember that.

19 Q Page 1154. So was your trial strategy consistent
20 throughout the trial?

21 A I'm not sure how to answer that. That's an open ended
22 question. My trial strategy was to attack the confession and
23 create as much reasonable doubt as I could with the evidence
24 that was presented and I believe it was consistent in that
25 manner.

1 Q Okay. So basically your only two main defenses were
2 false confessions or consensual activity, consensual sex,
3 correct?

4 A The consensual activity was more of a -- I mean, it was
5 more to just raise doubts with the murder charge.

6 Q Okay. Did it occur to you that these two strategies
7 were so inconsistent that it may cause the jury to think that
8 you were not serious about either of them?

9 A No.

10 Q Okay. Do you think that maybe they were so
11 inconsistent as to actually be no trial strategy?

12 A No.

13 Q Okay. So after three years with this guy being in jail
14 the strategy was he didn't do it, but if he did it was
15 consensual?

16 A Yes.

17 Q Okay. Okay, so did you ever raise the issue of his
18 cognitive ability specifically?

19 A Yes. Well, do you mean at trial or during the process?

20 Q At trial.

21 A The issue was raised during the Jackson/Denno hearing.
22 I'm not sure if it was raised during the actual trial in front
23 of the jury.

24 Q So the jury heard nothing about his cognitive ability?

25 A I don't think they did.

1 Q Did you apply for money to hire a private psychologist?

2 A Yes.

3 Q Did you receive these funds?

4 A Yes.

5 Q Did you hire a private psychologist?

6 A Yes.

7 Q Did you hire someone other than Mr. Hirsch?

8 A Yes.

9 Q Did this person get his mental health record?

10 A This person -- I retained Diane Follingstad -- I think

11 that is how you say her name -- she is a psychiatrist or

12 psychologist. I don't remember which.

13 THE COURT: Psychologist.

14 A Psychologist. And she examined him.

15 Q Okay. And so did you get the mental health records

16 through her? Any mental health records?

17 A I would have gotten her whatever she asked. I don't

18 remember what all was gotten.

19 Q Did you get mental health records yourself?

20 A I got a social security file because at one point he

21 was on disability.

22 Q Okay. Did it occur to you to use his --

23 A I would have to look in my box to see what I've got.

24 It's in the other box.

25 Q Fair enough. Did it occur to you use the lack of

1 cognitive functioning to explain his behavior after the incident
2 with the victim, the alleged incident?

3 A With the jury?

4 Q Yes.

5 A I don't think a jury would have cared sitting down.

6 Q Did you investigate the consensual fisting defense?

7 A I did.

8 Q Medically?

9 A Do you mean did I retain a doctor to look at it?

10 Q Yes.

11 A No.

12 Q Did you do a Google search?

13 A When one Googles fisting one gets a lot of things that
14 one does not want to see, but yes, I did do that. I looked at
15 the pictures on the victim's hand. To me the hardest problem
16 with that defense would have been there was no blood on the
17 victim and I believe that if she would have been fisted in a
18 voluntary manner that she probably would have been awake during
19 that process and so that is a consensual sexual activity of
20 adults and I believe that if she would have started bleeding as
21 a result of that her hands would have been covered in blood
22 because she would have tried to stop the bleeding and her hands
23 were not covered in any blood.

24 Q Did you talk to any medical experts about this?

25 A No.

1 Q Did you apply for money to hire a private medical
2 doctor to review the injuries and determine whether they were
3 consistent with consensual fisting?

4 A I didn't believe I needed to so I did not.

5 Q Okay, but you still raised this argument at trial?

6 A I thought I had to since it was in the confession and
7 it gave me a shot of five years with the jury.

8 Q But even raising that you did not argue that it was
9 consensual and he acted impulsively after the consensual
10 encounter, as to his mental capacity?

11 A I'm confused as to the question at this point.

12 Q So, basically I'm saying, did you argue that his mental
13 capacity may have made him feel more guilty?

14 A I don't believe I argued that.

15 MR. OWENSBY: I have No further questions.

16 THE COURT: All right, Mr. Hunter.

17 MR. HUNTER: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MR. HUNTER:

20 Q Mr. Dunn --

21 THE WITNESS: I'm sorry, I just need a little
22 water. I'm a little dry. I'm shutting down here.

23 THE COURT: I don't know where my manners are
24 today.

25 (WHEREUPON, the witness was handed water.)

1 Q Are you ready?

2 A I'm ready.

3 Q Mr. Dunn, how did you become involved in this case?

4 A I was appointed.

5 Q Did you file Rule 5 and Brady motions?

6 A I did.

7 Q Did you have any trouble getting the Discovery?

8 A I never had trouble getting Discovery. I mean as I
9 testified there were some things that showed up a week or two
10 before trial and that's not unusual to be honest. Often times
11 cops don't give everything to the solicitors and therefore the
12 solicitors can't give them to me.

13 I never felt like I had any issues with things being hidden
14 from me.

15 Q Did you review all the materials you received?

16 A I did.

17 Q Did you review them with Mr. Perkins?

18 A Most of it. I did not review some of the pictures with
19 him.

20 Q Okay. Did your private investigator review the
21 evidence?

22 A I can't remember specifically. As a general rule he
23 goes over all my evidence so that he is a second set of eyes in
24 my cases.

25 Q Okay, and I believe it was testified earlier that you

1 met with Mr. Perkins numerous times?

2 A Lots. .

3 Q Did you ever get the sense that he had trouble
4 understanding?

5 A No.

6 Q Did you ever get the sense that he had trouble
7 understanding why he was locked up?

8 A No.

9 Q Okay. It's been kind of touched on, but can you just
10 kind of summarize the State's evidence against Mr. Perkins as
11 far as the crime scene and what was collected?

12 A Ultimately the single piece of primary evidence they
13 had against him was the confession. They had some other
14 evidence that they collected; pictures and autopsies, the cheap
15 lighter, some clothes that were recovered that were his clothes
16 that were recovered at his house that were stuffed into a tire
17 that had been cut to hide it and soaked in gasoline, or at least
18 that's their allegation, soaked in gasoline.

19 There was very little else. I mean, this case came down to a
20 confession.

21 Q Okay. And Mr. Perkins confessed to more than one
22 person, correct?

23 A At trial it came out. Up until trial the only person I
24 knew about was the sheriff and the investigators. At trial they
25 brought up the statements that were given to the detention

1 officers.

2 Q Okay. Let's talk about the lighter for a minute since
3 there has been some testimony about that.

4 Didn't during his confession didn't Mr. Perkins tell the
5 sheriff that that was his lighter that he had left at the scene?

6 A I don't remember what he said.

7 Q Okay.

8 A It's possible he said that.

9 Q Okay, and I don't have that cite in front of me, but
10 coming off memory I believe he said that. I will move on.

11 Do you recall the testimony of Don and Mary Williams?

12 A To be honest with you I really -- no, I don't remember.
13 I think they testified, but I don't remember their testimony.

14 Q If I told you that the transcript reflected that they
15 testified that they had seen Mr. Perkins with that type of
16 lighter would you agree with that testimony?

17 A It's very possible, yes.

18 Q Okay. Did Mr. Perkins ever indicate to you that he
19 wanted to plead guilty?

20 A I don't think he said he ever wanted to plead guilty.
21 He just told me he wanted the death penalty.

22 Q Okay.

23 A Or he wanted to die.

24 Q I believe this has been touched on numerous times, but
25 your overarching trial strategy was to attack the confession?

1 A That's the only thing I thought I could do, yes.

2 Q Okay, and there's been some question as to whether or
3 not the defense strategy of attacking the confession and the
4 consensual fisting defense whether or not those were mutually
5 exclusive. I mean, did you ever think that it was possible when
6 you were kind of coming up with your defense, did you ever think
7 that it was possible that Mr. Perkins could have killed the
8 victim as a result of consensual activity that went too far?

9 A It was certainly something that I discussed with him.

10 Q Okay.

11 A Yes. We had that conversation numerous times, whether,
12 you know, may be he did kill her and it was just a consensual
13 activity and he told me numerous times that there was no sexual
14 activity.

15 Q So is it fair to say that those two defenses are not
16 necessarily mutually exclusive?

17 A I guess not. I mean -- -

18 Q Could you kind of describe your preparation leading up
19 to the trial, how you approached it, as far as when you were
20 appointed? Kind of walk us through.

21 A Yeah. I got appointed some time in 2007. I don't
22 remember the exact date. I got my order in one of these boxes I
23 can look at it if you need it. And I don't remember how many
24 lawyers were in front of me. I know Yale Zamore was because he
25 was a public defender with Chester County and he conflicted out

1 at some point and I don't remember if anybody else got the case
2 or not.

3 I got the case. I always start by meeting with my client.
4 That's the first thing I do. If nothing else just to say hi and
5 let them know they've got a friend that they can call or send a
6 letter to if they have questions or problems. At that point I
7 think he had already been evaluated for McNaughton so I didn't
8 have to do that.

9 We had numerous conversations just about potential witnesses,
10 potential alibis, people who could testify for him, bring
11 evidence and that sort of thing. At some point I got an
12 evaluation done by Doctor Follingstad to see what kind of
13 cognitive abilities he had. Any deficiencies he had.

14 Q What was the result of that?

15 A She told me that cognitively he tested very low. But I
16 was also told that a lot of the questions that there was a lot
17 of malingering and as such she could not really give me a good
18 opinion as to whether or not insanity would be a good defense
19 because of all the malingering in the testing that was done.

20 He was transported to Doctor Martin's office in Columbia and
21 I actually attended that as well. I had to give part of that
22 test to him later on and read it to him and just circle his
23 answers and she gave an opinion after that.

24 I got Mr. Staphaleno involved so we could talk to witnesses.
25 I know he went out to the Perkins's house. I couldn't tell you

1 how many times he went out there. We had conversation about his
2 dad. His dad had some wild ideas as far as this conspiracy
3 theory. Things that we determined we would not be able to use.

4 I had numerous conversations with Caroline Perkins, which is
5 his mother about potential witnesses. At some point I got --

6 Q Let me stop you there. Did any of these potential
7 witnesses as far as alibi or anything else for that matter, did
8 any of them check?

9 A Nothing ever came to the point that I could use them
10 for trial.

11 Q Okay.

12 A Or I would have used them. At some point I got Doctor
13 Ostrowski who is a forensic -- a forensic -- a professor who
14 does forensic work on DNA. He came to my office and we sat down
15 for a couple of hours and we went through the fact that there
16 really wasn't any DNA and as such he didn't really need to come
17 testify because we weren't attacking DNA but he came up with a
18 list of questions for me to ask attacking the State's lack of
19 DNA. The fact that you can pull DNA out of blood which is the
20 questions I asked at trial and there wasn't any found.

21 Q Let me stop you there again. Is it fair to say that
22 his conclusions would have been essentially the same as the
23 State's DNA expert?

24 A There wasn't anything that they can use, right.
25 Fingerprints -- you can draw DNA from fingerprints. There were

1 fingerprints found but nothing that could be matched to anything
2 but even then there wasn't any DNA that useable from it. So
3 those sort of things he helped me with and gave me some ideas to
4 ask and as such I did. And then I got Professor Hirsch who
5 ultimately flew in and testified and we had conversations about
6 false confessions and that sort of thing. What to ask. What to
7 look for.

8 Q And again as far as Mr. Hirsh's testimony regarding the
9 false confession I believed you touched on it a little bit, but
10 could you just kind of explain why you didn't have Mr. Hirsch go
11 into the facts of this case?

12 A He ultimately told me that he didn't think it was a
13 false confession. It didn't meet the criteria that he could
14 testify to and as such we stayed away from it.

15 Q Okay, and I believe there was quite an extensive
16 Jackson v Denno hearing prior to the trial wasn't there?

17 A A couple of days.

18 Q Okay, and the result of that was that the statements
19 were found to be admissible?

20 A Right. There was a Jackson v Denno hearing. There was
21 a Schmerber hearing at some point to get major prints from Mr.
22 Perkins and there may have been some other hearings along the
23 way. I don't remember if I ever did a bond hearing for Mr.
24 Perkins or not. I don't remember. I know I would have done
25 prelim.

1 Q Now I know the record reflects that you may be didn't
2 object to the shirt coming in. Do you agree that you did object
3 to the pants coming in and the other gasoline sub-items?

4 A Yes.

5 Q Okay. So is it fair to say that Judge Goldsmith let
6 the pants in, let the shirt in if you had objected as well?

7 A Would he have let them in?

8 Q Right. Is it fair to say that because your argument
9 would have been the same for the shirt as the pants that the
10 result would have likely been the same?

11 MR. OWENSBY: Objection, calls for speculation.

12 THE COURT: Overruled. You may answer.

13 A I think Judge Goldsmith was going to let all that
14 evidence in because there was enough police officers, law
15 enforcement, county sheriffs and SLED investigators that they
16 were going to be able to establish what they needed to establish
17 to get that evidence in.

18 THE COURT: You are just talking about the pants
19 and the shirt?

20 MR. HUNTER: Yes.

21 THE COURT: None of which they have any evidence
22 on.

23 MR. HUNTER: They just have gasoline on them.

24 THE COURT: No DNA?

25 MR. HUNTER: No DNA.

1 Q Let's talk about the chain of custody for a minute.
2 Shane Stewart it's been testified was overseer during the trial.
3 Did you believe that there was any real issue with the chain of
4 custody other than Mr. Stewart's absence?

5 A No. The only time I really at trial attack the chain
6 of custody is if I think there is a legitimate legal issue there
7 because otherwise you are just parading a whole bunch of
8 witnesses in front of a jury. In my experience juries just get
9 bored with that sort of thing and in this case I didn't see
10 anything that would suggest there was some evidence that had
11 been tampered with.

12 Q So is it fair to say that the agreement you had with
13 Solicitor Barfield to sort of shorten the chain of custody being
14 paraded through was that sort of a trial strategy?

15 A It was.

16 Q I believe you made a directed verdict motion at the
17 close of the State's case, is that correct?

18 A I believe I did.

19 MR. HUNTER: Beg the Court's indulgence, Your
20 Honor.

21 THE COURT: Certainly.

22 Q Now, at the close -- at the close of the trial were you
23 successful in getting the Judge to charge the jury with
24 involuntary manslaughter?

25 A I was.

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

2 Q Mr. Perkins ever tell you he wanted to testify?

3 A We had that conversation a number of times. I know we
4 had that conversation the week of trial because it was me and
5 him, his momma got involved and Mr. Jordan was there and we had
6 we had the discussion of pros and cons of why should or should
7 not testify and ultimately I didn't think it was in his best
8 interest and that was my advice to him was for him not testify
9 and he ultimately took it.

10 Q So it was ultimately his decision?

11 A It was. It's one of those things the defendant has a
12 right to.

13 Q Was there any evidence presented of third-party guilt?

14 A I don't think there was.

15 Q Is it fair to say that's why Judge Goldsmith -- would
16 you agree the record reflects that's why Judge Goldsmith did not
17 allow, I believe, Cynthia -- and I don't remember her last name
18 to testify?

19 A Cynthia Fleming?

20 Q Yes.

21 A Again, that may have been the reason. The transcript
22 would -- I don't want to say it speaks for itself but it will
23 tell you. I just can't remember seven years later.

24 Q Okay. And in fact it was not you but your law partner
25 who argued?

1 A I think it was Brad.

2 Q Would you say that at the time you tried this case that
3 the trial strategy that you pursued was the best defense that
4 you could come up with based on your involvement in the case?

5 A At that time in my life yes.

6 Q Okay. Why did you not believe you needed to hire a
7 doctor?

8 A Looking at the pictures of the crime scene and the
9 victim and looking at the medical evidence it was very evident
10 how and why she died. She died because of blunt forced trauma
11 done to her vaginal area that went up into her abdominal cavity.
12 I didn't really think that I needed somebody to come tell me
13 that she died because somebody transected her aorta and that's
14 not a good thing to happen to somebody.

15 MR. HUNTER: Thank you Mr. Dunn. No further
16 questions, Your Honor.

17 THE COURT: Thank you. Redirect.

18 MR. HUNTER: Just one more question, Your Honor.

19 Q Mr. Dunn, do you always object to every single instance
20 of hearsay in a trial?

21 A No.

22 Q Can you kind of explain how you decide what to object
23 to and what not to?

24 A If I think it's important I will. If it's an important
25 piece of evidence that I want to keep out. Sometimes I'll be

1 honest with you I don't hear every single thing said by
2 witnesses. Sometimes you don't have a chance because things are
3 moving too quick. Sometimes I'll do it if I don't think it's
4 important I'll just to interrupt the ebb and flow of a trial --
5 of the other side. But if it's important obviously I'll object.
6 But I don't always.

7 MR. HUNTER: No further questions. Thank you.

8 THE COURT: Thank you Mr. Hunter. Mr. Owensby.

9 MR. OWENSBY: Very briefly.

10 REDIRECT EXAMINATION

11 BY MR. OWENSBY:

12 Q Did you investigate why the State's clothes evidence
13 had gas on them?

14 A It had gas on them because Casey said he put gas on it.

15 Q Okay. To believe the State's premise that it was to
16 hide DNA why wouldn't he light it on fire after?

17 A Same question I had.

18 Q Did you present this question to the jury?

19 A I don't remember if I did or not.

20 Q And did you have non-expert witnesses prepared to
21 testify?

22 A Non-expert witnesses. Again, I think I had Cynthia
23 Fleming under subpoena, and if it wasn't her there was another
24 lady that I know we had there Saturday morning. There was one
25 or two folks that we had.

1 Q And none of them testified?

2 A None of them testified.

3 MR. OWENSBY: No further questions.

4 THE COURT: Thank you. Thank you Mr. Dunn, you
5 may step down.

6 MR. DUNN: Thank you.

7 THE COURT: All right, thank you. Mr. Owensby,
8 Mr. Vitetta, you may call your next witness.

9 MR. OWENSBY: No further witness, Your Honor.

10 THE COURT: All right. Mr. Hunter.

11 MR. HUNTER: The State has no witnesses.

12 THE COURT: I'll be glad to hear from you, Mr.
13 Owensby, Mr. Vitetta,

14 MR. OWENSBY: Your Honor, this is a case where the
15 State has almost no physical evidence connecting the
16 defendant with this crime. Yet after four
17 interrogations a man with extremely diminished mental
18 capacity eventually allegedly confessed during a video
19 taped confession where the videotape itself cuts off
20 15 minutes in and only after the cutoff does he
21 allegedly know the specifics of what the State wants
22 to charge him with.

23 Here in this PCR where we are alleging ineffective
24 assistance because of failure to investigate the DNA
25 issues, the lack of DNA issues, the fingerprints, the

1 lack thereof, the witnesses, the alibi witness, the
2 lack thereof, the voluntariness of the confession.
3 Still didn't introduce an expert on this even though
4 defense counsel knew the expert disagreed with his
5 case strategy. Failure to object to hearsay. Failure
6 to object to chain of custody. Failure to object on
7 multiple occasions and inconsistent defenses. So
8 inconsistent as to not be plausible.

9 THE COURT: Thank you. Mr. Hunter.

10 MR. HUNTER: Very briefly, Your Honor.

11 The State would just argue that Mr. Perkins has
12 not met his burden of showing that either of the
13 prongs of the Strickland test. Has not shown that Mr.
14 Dunn was ineffective.

15 Furthermore there has been absolutely no prejudice
16 shown. There has been a lot to talk about
17 eyewitnesses and DNA experts. None of those people
18 are here today to testify. So all we have to go on
19 is speculation.

20 You know, Mr. Dunn, this was a six-day trial. If
21 you view the transcript, the record it's pretty
22 evident Mr. Dunn tried a very good case with a very
23 bad set of facts, and he did the best he could.

24 The jury was only out for I believe 37 minutes or
25 so and the State would just argue that they failed to

1 meet their burden.

2 THE COURT: Thank you. Thank you, very much.
3 Will you all please submit proposed orders to each
4 other simultaneously, to me, email, within 30 days. I
5 don't know how busy you are. Is that sufficient?

6 MR. VITETTA: Yes, Your Honor.

7 MR. HUNTER: Yes, Your Honor.

8 THE COURT: Thank you. Thank you, very much.

9 MR. OWENSBY: Thank you, Your Honor.

10 MR. HUNTER: Thank you, Judge.

11 THE COURT: Good luck to you Mr. Perkins.

12 * * *

13 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for Lanacaster County, South Carolina, on the 12th day of August, 2015.

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

May 1, 2015

Aileen Butler

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

Casey Raymond Perkins, #286100,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Case No. 2013-CP-12-0278

ORDER OF DISMISSAL

FILED

CLERK OF COURT
CHESTER CO S.C.
2013 DEC 18 A 11:51

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on June 21, 2013. Respondent made its return on November 14, 2013. An evidentiary hearing into the matter was convened on August 12, 2015, at the Lancaster County Courthouse. Applicant was present at the hearing and was represented by Guy Vitetta, Esquire, and Adam Owensby, Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Chester County Clerk of Court's orders of commitment. The Applicant was indicted at the October 2005 term of the Chester County Grand Jury for murder (2005-GS-12-0438). Jeff Dunn, Esquire represented him. Applicant proceeded to a jury trial, and on December 20, 2008, the Applicant was found guilty. The Honorable Brooks P. Goldsmith sentenced the Applicant to fifty (50) years in prison.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire, of the South Carolina Commission on Indigent Defense perfected the appeal. The Court

of Appeals affirmed the Applicant's conviction and sentence. State v. Casey Ray Perkins, Op. No. 2012-UP-525 (S.C. Ct. App. filed September 12, 2012). The Remittitur was sent on September 28, 2012.

ALLEGATIONS

At the post-conviction relief hearing, Applicant proceeded to argue his confinement is unlawful based upon the following grounds:

1. Ineffective assistance of counsel.
 - a. Trial counsel failed to properly investigate and prepare a defense for trial.
 - b. Counsel failed to interview witnesses and have them present at trial.
 - c. Counsel failed to object to hearsay.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Applicant also called trial counsel, Geoff Dunn, to testify. This Court also had before it a copy of the trial transcript, the Lancaster County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the appellate records, and the return.

At the PCR hearing, Applicant initially took the stand and testified he is serving a 50 year sentence after being convicted of murder. Applicant testified that he was represented at trial by Geoff Dunn. Throughout the PCR hearing, Applicant maintained his innocence, despite the fact that he gave multiple different confessions to the police. Applicant testified that he gave the confessions because the police threatened to arrest his parents for the murder if he did not confess. Applicant testified that trial counsel never showed him the tapes of the confessions, and the first time he saw them was at trial. Applicant complained that he never got a chance to explain his side of the case to the jury. Applicant also testified that he gave trial counsel a list of witnesses he wanted to testify at his trial, but trial counsel did not interview them, and they were not present to testify. In particular, Applicant attempted to persuade the court that someone

named "Ed Devatt" threatened Applicant, which resulted in him confessing to the crime. Applicant testified this person was the mastermind behind the victim's murder; however, these allegations appear to be entirely unfounded. Applicant claimed that his gasoline-soaked clothes were found because of "Ed Devatt." Applicant testified he also wanted a woman named Vicki to testify at his trial, but trial counsel never contacted her. Applicant testified he met with trial counsel many times prior to trial and told him these things; however, trial counsel did not thoroughly investigate Applicant's claims. Applicant maintained that there was no forensic evidence linking him to the crime. Applicant complained that trial counsel did not hire a forensic expert to testify at his trial. Applicant complained that he never personally spoke with the false confession expert that trial counsel retained, and that the expert never reviewed his statement. Applicant testified he never spoke with a private investigator regarding his case, and to his knowledge trial counsel did not hire one.

On cross-examination, Applicant admitted that he confessed to guards at the jail, as well as the sheriff and investigators. Applicant acknowledged that he told the investigators who arrested him that he had demons inside him, that he could not remember what he did, and that he wanted the death penalty; however, Applicant stressed that he only said these things to protect his parents from arrest. Applicant maintained that his clothes were covered in gasoline because of his work as a mechanic, and not because of an attempt to cleanse them of forensic evidence. Applicant maintained that despite the overwhelming evidence against him, he had been set up and was innocent.

Applicant next called trial counsel to take the stand. Counsel testified he was appointed to represent Applicant on his murder charge. Counsel testified that after the victim's murder, Applicant was initially arrested for failure to register as a sex offender. Counsel testified he



discussed with Applicant the fact that he was facing life in prison if he was convicted at trial. Counsel testified he hired an investigator who went through the evidence and conducted an investigation. Counsel testified he saw no need to retain an independent fingerprint examiner because the State's fingerprint examiner failed to find any prints on the cigarette lighter that was found at the scene of the crime. Counsel testified he did have an independent DNA analysis done, but the jury did not hear about that because its findings were not beneficial to Applicant. Counsel testified that the most damning evidence linking Applicant to the crime was his confession, which counsel challenged at an extremely thorough Jackson v. Denno hearing. Counsel testified he also spoke with Sheriff Benson about the confession and did not believe the confession was coerced. Counsel testified that the clothes and lighter which were linked to Applicant also hurt his case. Counsel testified that Applicant's family told him Applicant's father was being interrogated as well; however, the private investigator talked to Applicant's father and came to the conclusion that his mental health was deteriorated to the point that his statements were unreliable. Counsel testified that although he did not specifically remember who "Ed Devatt" was, he knew that the PI investigated Applicant's claims regarding his involvement and came to the conclusion they were meritless. Counsel testified he also had Applicant's mental status evaluated and conducted a Blair hearing. Counsel testified he attempted to present a witness named Yale Zamore, who would have testified as to what happened at Applicant's mental evaluation. Counsel testified he attempted to enter Mr. Zamore's testimony under the hearsay exceptions outlined in rule 803(3) and 803(4). However, after a discussion at the bench, the trial judge ruled his testimony was not admissible. Counsel testified the PI went to both the victim's house and Applicant's house during the course of his investigation. Counsel testified he prepared for his cross-examination of the police officers who testified for the State by speaking



with the witnesses prior to trial. Counsel testified that prior to trial he consulted with mental health experts, who provided insight into questions that counsel should ask.

Counsel testified that he asked questions to challenge the state's assertion that Applicant's statements were given voluntarily. Counsel testified that he did have some concerns with Applicant's confessions, namely his mental health because he asked for both probation and the death penalty. Counsel also testified that Applicant originally claimed in his confession that the sexual activity with the victim was voluntary. Counsel testified that Applicant told him his confession was coerced; however, counsel stated that the videotape of the confession did not support Applicant's claims. Counsel specifically discussed why he thought there was no evidence of coercion, addressing the fact that the interview was conversational in tone, as well as the fact that Applicant asked the sheriff to turn the video off. Counsel testified Applicant was read his Miranda rights, and counsel did not recall noticing any discrepancies between the audio and video. Despite this, counsel applied for and received funding to retain a highly regarded expert in false confessions, who reviewed the video as well as counsel's file and determined Applicant's confession was not falsely given. For this reason, the expert's testimony at trial centered on false confessions in general, rather than specifically addressing Applicant's confession.

Counsel testified that he could only conceive of two strategies to pursue at Applicant's trial, based upon the nature of the evidence against Applicant. First, counsel attempted to argue that Applicant gave a false confession, and 2nd, counsel attempted to argue that the sexual activity between Applicant and the victim was consensual. Counsel testified he did not believe these two theories were mutually exclusive. Counsel testified the only way he believed he could argue against Applicant's confession was to somehow convince the jury that it was falsely given.



Upon questioning by Applicant's attorney as to why he did not object to various instances of hearsay at trial, trial counsel testified that although he could not recall the specific reasoning, it was likely he did not think it would be beneficial to object at the time. Counsel testified that he does not normally object to every possible instance of hearsay. Counsel testified there was an issue with the chain of custody surrounding some items that were introduced as evidence at Applicant's trial, specifically that Shane Stewart, an investigator who worked on the case, was deployed to the Middle East at the time of trial. Counsel testified that he could have continually objected to Stewart's absence; however, he did not see any reason to do so because multiple other officers testified regarding the chain, and there was no evidence that it was not intact. Counsel did object to Applicant's shirt being admitted as an exhibit based upon Stewart's absence; however, his objection was overruled. Counsel testified he did not make a big deal out of the objection because he did not want the jury to fixate on the pieces of evidence that were admitted. Counsel testified he also objected to the canine handler being qualified as an expert, but in his experience their testimony is almost never excluded.

On cross-examination by Respondent, counsel reiterated that is not his practice to object to every instance of hearsay that may come up during trial. Counsel testified he filed all Rule 5 and Brady motions, and that he did not have any trouble getting discovery from the State. Counsel testified that he reviewed discovery with Applicant. Counsel testified that Applicant's cigarette lighter was found at the scene, and that although Applicant now denied that the lighter belonged to him, Applicant did tell the sheriff it was his lighter, and Don and Mary Wilson both identified the lighter as belonging to Applicant. Counsel testified that although he had an articulable strategy to pursue at trial, he knew it would be difficult to succeed based upon the evidence collected by the state. Counsel reiterated that leading up to trial he had Applicant

evaluated, and the report came back stating the Applicant was malingering. Counsel testified he checked out Applicant's alibi witnesses, but they did not provide anything beneficial to Applicant's case. Counsel reiterated that his strategy was to attack the confession, which after a 2 day Jackson v. Denno hearing, was found to be admissible. Counsel testified he raised objections throughout the trial when he thought it was necessary. Counsel reiterated the fact that the false confession expert he retained determined that Applicant's confession was not falsely given. Counsel testified that he and Applicant discussed whether Applicant would testify, and that Applicant ultimately made the decision not to take the stand. Counsel testified that there was no evidence to support a 3rd party guilt defense. Counsel testified that he made the decisions he thought proper at the time with regard to objections in trial strategy. Finally, counsel testified he did not believe it necessary to hire an independent physician to examine the victim because the penetrating wound to her pelvis was so graphic that her cause of death was obvious.

INEFFECTIVE ASSISTANCE OF COUNSEL

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption

in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

As an initial matter, this Court finds Applicant failed to demonstrate that Counsel's performance was deficient in any way. This Court further finds that Applicant presented no evidence to show any prejudice resulting from Counsel's representation. This Court finds that Counsel met with Applicant an adequate number of times prior to the guilty plea. This Court further finds Counsel obtained discovery from the solicitor and went over it with Applicant. Additionally, this Court does not find Applicant's testimony to be credible; conversely, this court does find trial counsel's testimony to be credible.

A. Failure to thoroughly investigate and prepare Applicant's case

This Court finds Applicant has failed to show Counsel's performance was deficient with regard to investigating Applicant's case and preparing for trial. Under Strickland, there is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. "[S]trategic choices made after thorough investigation of law and facts relevant to

plausible options are virtually unchallengeable[.]” Strickland, 466 U.S. at 690; see also Meyer v. Branker, 506 F.3d 358, 374 (4th Cir. 2007) (“[L]egal judgments based on thorough investigation are virtually unassailable on collateral review.”). The determination of what strategy to pursue was trial counsel’s to make, not Respondent’s. See Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 547. (Ct. App. 2014).

This Court finds trial counsel acted well within the range of professional norms in investigating Applicant’s claims and preparing the case for trial. Counsel testified that he obtained discovery from the State, and he went over those materials with Applicant. Counsel’s testimony indicated that he hired a private investigator to track down leads as well as witnesses, and he retained an expert in false confessions to attempt an attack upon the states most damning piece of evidence. Although counsel was unsuccessful in obtaining an acquittal for Applicant, such a result does not have any bearing on whether or not counsel’s performance was deficient. As such, this court finds Applicant has failed to meet his burden in showing that counsel was deficient in any manner. Accordingly this allegation is without merit.

B. Failure to call witnesses at trial

Applicant alleges Trial Counsel was ineffective for failing to interview and call further defense witnesses at trial. In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses’ testimony in a manner consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant’s mere speculation about what the witnesses’ testimony would have been cannot, by itself, satisfy the applicant’s burden of showing prejudice. Id.

This Court finds Applicant has failed to meet his burden with regard to his claim that

counsel was ineffective for not interviewing and calling further witnesses to testify. Because Applicant did not present these witnesses, regardless of who they are, at the PCR hearing, all this Court has to go on is Applicant's unsubstantiated allegations. Because this Court does not find Applicant's testimony credible, such unsubstantiated testimony does nothing to persuade this court that counsel acted in a deficient manner. As such this allegation is without merit.

C. Failure to raise all objections at trial

Applicant alleges trial counsel was ineffective for failing to raise all possible hearsay objections at trial. This Court finds Applicant's allegation is without merit. It is well founded that "any alleged impropriety must be examined on appeal in light of the entire record." State v. Brown, 333 S.C. 185, 191, 508 S.E.2d 38, 41 (Ct.App.1998). A criminal defendant is entitled to a fair trial, not a perfect one. State v. Mizell, 332 S.C. 273, 504 S.E.2d 338 (Ct.App.1998), *cert. denied* (Apr. 12, 1999). State v. Sweet, 342 S.C. 342, 348, 536 S.E.2d 91, 94 (Ct. App. 2000).

The trial transcript shows that trial counsel vigorously challenged the State's case. Furthermore, counsel challenged the admissibility of Applicant's statement through a Jackson v Denno hearing. Trial Counsel made multiple contemporaneous objections throughout the trial. Additionally counsel objected to the admission of Applicant's shirt based upon flaws in the chain of custody. He also moved for a directed verdict at the close of the State's case, and he renewed all of his objections. As such, this Court finds Applicant had a fair trial and finds the allegation to be without merit.

Accordingly, this Court finds Applicant did not demonstrate any deficiencies in Counsel's representation. This Court finds that because Counsel's representation was well within the range of competence required in criminal cases, Applicant has further failed to make any

showing that but for Counsel's alleged deficiencies, the result of Applicant's case would have been any different.

OVERWHELMING EVIDENCE OF GUILT

This Court notes that Applicant can show no prejudice in regards to any of the alleged allegations as there is clear overwhelming evidence of guilt. See Franklin v. Catoe, 346 S.C. 563, 570, 552 S.E.2d 718, 722 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Plea counsel rendered effective assistance in regard to the claims raised by Applicant. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d



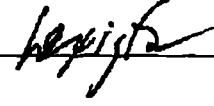
395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 10 day of DEC, 2015.


R. KNOX MCMAHON
Presiding Judge
Sixth Judicial Circuit

, South Carolina

CLERK OF COURT
CHESTER CO. S.C.
2015 DEC 18 A 11:51
FILED

WITNESSES

✓
Shane Stuart-CSD

ARREST WARRANT NUMBER/DOA

H902942 (DOA-9-2-05)

ACTION OF GRAND JURY

TRUEBILL

Donna W. Railey
Foreperson of Grand Jury

Date: *10/04/05*

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2005-GS-12-438

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

OCTOBER TERM 2005

THE STATE

vs.

Casey Ray Perkins

Indictment for

Murder

SC Code: §16-3-10,20

CDR Code: 0116

Class: Felony, EXM

True and correct copy of original paper
On file in this office.

Sue H. Carpenter

Clerk of Court
Chester County, SC

Date *6/21/2013*

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTER)

INDICTMENT

At a Court of General Sessions, convened on October 4, 2005, the Grand Jurors of
Chester County present upon their oath:

MURDER

That Casey Ray Perkins did in Chester County on or about August 27, 2005,
feloniously, willfully and with malice aforethought kill the victim, Judith Sharon Hinson by
means of physical assault that caused a lacerated aorta which caused internal bleeding
and that the said victim died as a proximate result thereof, in violation of the common
law of South Carolina and §16-3-10, *Code of Laws of South Carolina, (1976)*, as
amended.

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


John R. Justice, SOLICITOR

COUNTY OF Chester
STATE VS.
CASEY PERKINS

AKA:

Race: W Sex: M Age: 37DOB: [REDACTED] SS#: [REDACTED]Address: CHESTER, SC 29706DL#: [REDACTED] SID#: [REDACTED]INDICTMENT/CASE#: 2005-GS-12- 438A/W#: H902942Date of Offense: 9/2/2005S.C. Code § : 16-03-0010: 16-03-0020CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Murder / Murder

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☒ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 50 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.90§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00TOTAL \$ 133.90[Signature]
Clerk of Court/ Deputy ClerkCourt Reporter: [Signature]

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug Testing _____

Fine may be paid in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to _____ Defendant Fund

Other: Clerk of CourtChester County, SCDate 6/11/2013

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation

PRESIDING JUDGE

Judge Code: 319Sentence Date: December 20, 2008

SCCA/217 (07/2008)