

VOLUME II OF II

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge:

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S.C. SUPREME COURT

LEONARD B. GOODWIN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001173

APPENDIX

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1 by the court reporter]

2 THE COURT: Please swear the witness.

3 THE CLERK OF COURT: Place your left hand here
4 and raise your right hand.

5 [Whereupon, Mr. Glover is duly sworn by the
6 clerk of court as follows: do you swear or affirm that
7 the testimony you give the Court and the jury in the
8 trial of this case shall be the truth, the whole truth,
9 and nothing but the truth, so help you God]

10 THE WITNESS: I do.

11 THE CLERK OF COURT: Please take your seat.

12 [Whereupon, Mr. Glover takes the witness stand]

13 THE CLERK OF COURT: State your first and last
14 name, spelling your last for the record.

15 THE WITNESS: Andrew Glover. G-L-O-V-E-R.

16 MR. YOUNG: Good morning, Officer Glover.

17 THE WITNESS: Good morning, sir.

18 MR. YOUNG: Thank you for being here.

19 - - - - -

20 ANDREW GLOVER,

21 Having Been First Duly Sworn,

22 was Examined and Testified as Follows:

23 DIRECT EXAMINATION

24 BY MR. YOUNG:

25 Q. Can you tell the jury where you work?

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1 A. North Charleston Police Department.

2 Q. How long have you worked there?

3 A. Since October of 2006.

4 Q. And what are your duties with the North
5 Charleston Police Department?

6 A. Currently I'm on the auto-theft detective
7 division.

8 Q. I want to take you to the date September 6th of
9 2009. Were you employed with North Charleston then?

10 A. Yes, sir.

11 Q. Same duties?

12 A. No, sir. I was on patrol.

13 Q. Patrol? What do you do as a patrol officer?

14 A. Answer all calls dispatched, proactively patrol
15 neighborhoods.

16 Q. And did you receive a dispatch call on the date
17 of September the 6th, 2009?

18 A. Yes, sir, I did.

19 Q. What was this in reference to?

20 A. In reference to somebody believing they saw
21 Leonard Goodwin in the area of Sumner and Attaway in the
22 Charleston Farms neighborhood.

23 Q. What did you do when you got that call?

24 A. I was close on North Rhett so I went right to
25 Sumner Avenue and started looking and located the

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1 individual described.

2 Q. What was he described as wearing?

3 A. Black male, with a khaki tan shirt, riding a
4 bicycle towards Attaway on Sumner.

5 Q. And you located a man that matched that
6 description?

7 A. Yes, sir.

8 Q. What happened next once you located him?

9 A. Once I located him, I was within sight of him.
10 Once he looked at me, he turned in Toregeson Street and
11 went into the apartment complex that was right there. As
12 I turned down Toregeson, he went up on the sidewalk with
13 his bike and around the side of the apartment complex in a
14 hurried manner. He stepped up his pace on the bike once
15 he saw me.

16 Q. What happened next?

17 A. I couldn't get through where he went with my car
18 and had I got out of the car to try to pursue him that
19 way, he would have got away. So I went around the block,
20 which was a short two turns, and by the time I got there
21 he was completely out of sight. I asked two Hispanic
22 males if they saw a black gentleman on the bike go through
23 here, to which they didn't.

24 I went to the next street, which was about
25 twenty yards down, and I saw the gentleman on the bike, on

1 Larry Street, quite a ways down. And he was still
2 peddling pretty fast so I had to really get on the gas to
3 get up to him, and when I got up to him he was partially
4 out of breath.

5 Q. Was he attempting to flea from you?

6 A. Absolutely.

7 Q. And you finally caught up with him?

8 A. Yes, sir.

9 Q. Did you recognize who it was when you pulled up
10 to him?

11 A. When I got out with him, I -- with the call that
12 was given to me, I was pretty sure it was him.

13 At our department we have a top-ten most-wanted
14 list in our patrol bay and I saw Mr. Goodwin's picture
15 every single day for three years.

16 Q. So the man on the bike matched the poster that
17 you saw on the --

18 A. Absolutely.

19 Q. I'm going to show you what's been premarked
20 State's Exhibit 69.

21 Before that, once you talked to him -- did you
22 get a chance to speak with him?

23 A. I did.

24 Q. Did you -- what was the procedure? To get an
25 ID? Is that --

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1 A. Absolutely.

2 That's the first thing we do, you know,
3 introduce --

4 Q. Did you ask for as ID?

5 A. Yes, sir.

6 Q. Did he give you an ID?

7 A. Yes, sir.

8 Q. Again, I show you what's been premarked State's
9 Exhibit Number 69. Do you remember that?

10 A. Yes, sir.

11 Q. What is that?

12 A. That is the ID that he provided me when I asked
13 for it.

14 Q. Is it the same condition as when you got it that
15 day?

16 A. Yes, sir.

17 MR. YOUNG: Judge, at this point I would ask to
18 move State's Exhibit 69 into evidence.

19 MR. BUTLER: No objection.

20 THE COURT: State's 69 into evidence without
21 objection.

22 [Whereupon, State's Exhibit Number 69 is
23 admitted into evidence by the Court]

24 MR. YOUNG: May I publish it to the jury, Judge?

25 THE COURT: You may.

1 Q. [Mr. Young] Officer, while we're waiting for
2 this to heat up: did you run that ID that he gave you?

3 A. Yes, sir, I did.

4 Q. Did it come back -- how did it come back?

5 A. It came back clear.

6 Q. Okay. Did you get a social security number from
7 him?

8 A. I asked for one and he gave one, but he was very
9 unsure of that social security number.

10 Q. Ask you to look at that overhead, if you can,
11 and tell me what we're looking at right here.

12 MR. YOUNG: I'm going to attempt to zoom in on
13 this thing a little bit. That's not clear so -- bear
14 with me one moment.

15 Q. [Mr. Young] Is that the ID that he gave you?

16 A. Yes, sir.

17 Q. Whose name is that up there?

18 A. Elbert Ralph Taylor.

19 Q. So that name ran -- you ran it and that came
20 back clear?

21 A. Yes, sir.

22 Q. Did you have any suspicions at this point that
23 this was Albert Taylor or --

24 A. I knew that wasn't Albert Taylor.

25 Q. You knew that wasn't Albert Taylor?

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1 A. [Indicates affirmatively]

2 Q. So at this point you said you had suspicions
3 about what was going on. What did you do next?

4 A. I requested a supervisor.

5 Q. Because you still thought this was Leonard
6 Goodwin?

7 A. Yes, sir, I did.

8 Q. Did the suspect appear to be in a hurry to leave
9 at all? Was he trying to leave?

10 A. Once I requested a supervisor, his nervousness
11 and his mannerisms kept causing me alarm. You could tell
12 he wanted to get out of there pretty quick.

13 Q. Did you, in fact, call a supervisor?

14 A. Yes, sir, I did.

15 Q. Did your supervisor respond to the scene with
16 you?

17 A. Yes, sir.

18 Q. At this point were you able to talk to the
19 defendant? Or tell us at that point, once the supervisor
20 got there, what happened next?

21 A. Once the supervisor got there I explained to her
22 that I was quite sure that this was Mr. Goodwin, and then
23 the ID, and then the social security number he was unsure
24 about. I asked if I could place him into investigative
25 detention. While -- in that entire conversation, he asked

1 me -- he said he had to -- he had to go because he had to
2 urinate. At that point she cleared my -- for me to put
3 him in detention.

4 Q. So at this point you took him into investigative
5 detention?

6 A. Yes, sir.

7 Q. But he wasn't under arrest?

8 A. Correct.

9 Q. Did you have a chance to speak to the defendant?

10 A. Yes, sir.

11 Q. What did he say -- what did he say next when you
12 talked to him?

13 A. In consensually talking to him, at one point he
14 stated that he had been in New Jersey for a year, which
15 also raised my suspicion again. Based on what I knew of
16 the case, it appeared that that was a good chance that he
17 was fleeing the area --

18 Q. Right.

19 A. -- to be in New Jersey.

20 Q. Tell us about the next part of the conversation.

21 A. In talking to him and knowing that I believed it
22 was him and the ID was not him, I asked if I could talk to
23 him man-to-man. And I told him, you know, while you're in
24 investigative detention, due to my suspicions that you are
25 not who you say you are, I'm going to have you

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1 fingerprinted and rather than me get you fingerprinted and
2 it come up that you are Leonard Goodwin I said, that would
3 look extremely bad on you; I would prefer that you tell me
4 you're Leonard Goodwin, if, in fact, you are, and show
5 that you are coming clean instead of me having to find out
6 by my means. When I gave -- talked to him about that, he
7 put his head down and started crying and said he was, in
8 fact, Leonard Goodwin, wanted for murder.

9 Q. That he was -- what was the last part you said?

10 A. That he was wanted for murder.

11 Q. Wanted for murder.

12 So you knew he -- so he knew he was wanted for
13 murder?

14 A. Yes, sir.

15 Q. Is that suspect in the courtroom today?

16 A. Yes, sir.

17 Q. Can you point him out for the jury?

18 A. It's the black gentleman in the white shirt, red
19 tie, with the glasses.

20 MR. YOUNG: Judge, I ask the record reflect that
21 the officer has identified the defendant, Leonard
22 Goodwin.

23 THE COURT: It will.

24 Q. [Mr. Young] At this point did you, in fact,
25 then arrest the defendant?

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1 A. Yes, sir.

2 I read his Miranda rights from the card.

3 Q. Okay. You arrested him then --

4 A. Yes. Once the warrant --

5 Q. -- once you --

6 A. -- was confirmed with Leonard Goodwin and the
7 date of birth. It was confirmed.

8 Q. Did you ever find out where he got the ID from?

9 A. Yes.

10 In speaking with him while we were transporting
11 him and all that, he got --

12 MR. BUTLER: Sorry. I've got to object. May we
13 approach?

14 THE COURT: You may.

15 [Whereupon, an off-the-record bench conference
16 is held]

17 THE COURT: Ladies and gentlemen, the last
18 question has been withdrawn by Mr. Young. Do not
19 consider or anticipate any of the proposed answers by
20 the witness.

21 Mr. Young, please move on.

22 Q. [Mr. Young] Was this the end of your
23 involvement with this case, Officer Glover?

24 A. Yes, sir.

25 MR. YOUNG: The Court's indulgence, Your Honor.

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1 [Whereupon, Mr. Young and Mr. Kidd confer]
2 MR. YOUNG: No further questions.
3 MR. BUTLER: Please the Court. Good morning.
4 THE WITNESS: Good morning, sir. How are you?
5 MR. BUTLER: Doing well. How are you?
6 THE WITNESS: Good. I'm just great.
7 MR. BUTLER: I just have a few questions for
8 you.

9 CROSS-EXAMINATION

10 BY MR. BUTLER:

11 Q. When you saw Mr. Goodwin, this was in 2010?

12 A. Nine.

13 Q. Nine. 2009.

14 You're -- how long have you been in law
15 enforcement?

16 A. Since 2004.

17 Q. Okay. And you trained at the academy like
18 everybody else?

19 A. Yes.

20 Q. Okay. And you are trained and know how to take
21 note of suspicious behavior?

22 A. Yes, sir.

23 Q. He was behaving suspiciously?

24 A. Yes, sir.

25 Q. All right. You're trained to observe and make

1 note of the behavior on the part of a person that has
2 something to hide; right?

3 A. Yes, sir.

4 Q. Their mannerisms, their method of speech; right?

5 A. [Indicates affirmatively]

6 Q. Their body language; right?

7 A. [Indicates affirmatively]

8 Q. Can all tell you whether or not somebody's got
9 something to hide?

10 A. [Indicates affirmatively]

11 Q. And on this day Mr. Goodwin, he didn't have such
12 a good poker face, did he?

13 A. No, sir.

14 Q. Okay. And do you know Detective Armstead?

15 A. Yes, sir.

16 Q. You work with him?

17 A. Same department. I've never worked on a shift
18 with him.

19 Q. Testified here yesterday?

20 A. I wasn't here.

21 Q. You didn't know? Okay.

22 He would have gone through the same kind of
23 training that you've gone through; right?

24 A. Yes, sir.

25 Q. Okay. And knows how to observe, look for --

1 MR. YOUNG: Objection, Judge. It's speculation
2 at this point.

3 THE COURT: I'm going to give him a little
4 latitude. Thank you.

5 Q. [Mr. Butler] Would know how to observe, take
6 note? The same kind of clues in human behavior, speech,
7 mannerisms, right, if they're suspicious?

8 A. [Indicates affirmatively]

9 Q. And when you talked to him he told you, okay,
10 I'm the guy you're looking for and he knew he was wanted
11 for murder?

12 A. Yes, sir.

13 Q. Right?

14 But he didn't break down and tell you, I
15 confess, I did it, did he?

16 A. No, sir.

17 MR. BUTLER: Beg the Court's indulgence.

18 [Whereupon, Mr. Butler and Ms. Winslow confer]

19 MR. BUTLER: That's all I have. Thank you.

20 MR. YOUNG: Nothing further, Your Honor.

21 THE COURT: You may step down. Thank you.

22 [Whereupon, the witness is excused and exits the
23 witness stand]

24 MR. KIDD: The State calls John Reynolds.

25 [Whereupon, Mr. Reynolds comes forward]

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1 THE CLERK OF COURT: Place your left hand here
2 and raise your right hand.

3 [Whereupon, Mr. Reynolds is duly sworn by the
4 clerk of court as follows: do you swear or affirm that
5 the testimony you give the Court and the jury in the
6 trial of this case shall be the truth, the whole truth,
7 and nothing but the truth, so help you God]

8 THE WITNESS: I do.

9 THE CLERK OF COURT: Sir, if you would take your
10 seat.

11 [Whereupon, Mr. Reynolds takes the witness
12 stand]

13 THE CLERK OF COURT: If you would state your
14 first and last name, spelling your last for the record.

15 THE WITNESS: John Reynolds. R-E-Y-N-O-L-D-S.

16 MR. KIDD: Good morning, Sargent. It's Sargent
17 Reynolds; is that right?

18 THE WITNESS: That's correct.

19

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1 JOHN REYNOLDS,

2 Having Been First Duly Sworn,

3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. KIDD:

6 Q. Can you tell the jury where you're employed,
7 Sargent Reynolds?

8 A. I'm currently employed with the City of North
9 Charleston Police Department.

10 Q. And how long have you been with North
11 Charleston?

12 A. Approximately sixteen and a half years.

13 Q. And do you remember getting involved in the case
14 with Leonard Goodwin?

15 A. Yes, I do.

16 Q. And can you tell the jury what the extent of
17 your involvement was? Or the first thing you did.

18 A. I think it was September 6th of 2009, I was
19 contacted by my supervisor. I was the duty-detective
20 supervisor that weekend and I was asked to come in and
21 interview Mr. Goodwin.

22 MR. BUTLER: I'm sorry. May we approach?

23 THE COURT: You may.

24 [Whereupon, an off-the-record bench conference
25 is held]

MIA PERRON, CVR-CM

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1 THE COURT: You may proceed, Mr. Kidd. Thank
2 you.

3 MR. KIDD: Thank you, Your Honor.
4 Court's indulgence. I'm trying to track down an
5 item,

6 THE COURT: Take your time.

7 MR. KIDD: I know it's up here somewhere.

8 [Whereupon, Mr. Kidd reviews documents]

9 MR. KIDD: Here it is.

10 Q. [Mr. Kidd] Sargent Reynolds, did you execute a
11 search warrant in reference to this case?

12 A. Yes, I did.

13 Q. And what was the subject of that search warrant?

14 A. It was for a mouth swab from a Leonard Goodwin.

15 Q. All right. I'm going to show you what's been
16 marked as State's Exhibit Number 67 and see if you
17 recognize that item.

18 A. Yes, I do.

19 Q. And what is that?

20 A. This is a -- is the swab used to take a mouth
21 sample from Mr. Goodwin.

22 Q. And did you personally do that?

23 A. Yes, I did.

24 Q. And how does that process take place?

25 A. After obtaining the search warrant, I went over

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1 to the Charleston County Detention Center. I met with
2 Mr. Goodwin. I explained the procedure to him and I had
3 him swab the inside of his cheeks and return the swab back
4 to me. I brought it back to the North Charleston Police
5 Department where I packaged it and put it back into the
6 evidence room.

7 Q. And did you put it in some sort of packaging?

8 A. Yes, I did.

9 Q. And is that the same packaging that you have
10 there in front of you?

11 A. This is.

12 Q. And you said you submitted it to the North
13 Charleston evidence room?

14 A. Correct.

15 Q. Do you remember who received it from you?

16 A. No, I do not.

17 Q. If I show you your evidence intake sheet, will
18 that help?

19 A. Yes.

20 Q. I believe it's item number one on there.

21 A. This is -- the swab was released by me to Alex
22 Teachey of the North Charleston evidence room.

23 Q. And when did that take place?

24 A. October 22nd of 2009.

25 Q. And it was sealed at that point?

1 A. It was sealed by me October 21st.

2 Q. Okay. And it would have remained sealed when it
3 was turned in?

4 A. That is correct.

5 Q. And was there any signs that it had been opened
6 in any way?

7 A. No.

8 MR. KIDD: I have no further questions.

9 MR. BUTLER: No questions.

10 THE COURT: Sargent, you may step down. Thank
11 you.

12 THE WITNESS: Thank you, Your Honor.

13 MR. KIDD: Thank you, sir.

14 [Whereupon, the witness is excused and exits the
15 witness stand]

16 THE COURT: Call your next witness.

17 MR. KIDD: The State calls Lisa Kubicsko.

18 [Whereupon, Ms. Kubicsko comes forward]

19 THE CLERK OF COURT: Place your left hand here
20 and raise your right hand.

21 [Whereupon, Ms. Kubicsko is duly sworn by the
22 clerk of court as follows: do you swear or affirm that
23 the testimony you are going to give the Court and the
24 jury in the trial of this case shall be the truth, the
25 whole truth, and nothing but the truth, so help you

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1 God]

2 THE WITNESS: I do.

3 THE CLERK OF COURT: Please take your seat.

4 [Whereupon, Ms. Kubicsko takes the witness
5 stand]

6 THE CLERK OF COURT: Ma'am, if you would state
7 your first and last name, spelling your last for the
8 record.

9 THE WITNESS: Lisa Kubicsko. K-U-B-I-C-S-K-O.

10 MR. KIDD: Good morning, Ms. Kubicsko.

11 THE WITNESS: Good morning.

12 - - - - -

13 LISA KUBICKSKO,

14 Having Been First Duly Sworn,

15 was Examined and Testified as Follows:

16 DIRECT EXAMINATION

17 BY MR. KIDD:

18 Q. Can you tell the jury where you are employed?

19 A. North Charleston Police Department as a crime
20 scene technician.

21 Q. And how long have you been employed there?

22 A. It has been almost six months. It'll be six
23 months June 13th.

24 Q. So you're relatively new.

25 A. Yes.

MIA PERRON, CVR-CM

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1 Q. Did you have the opportunity to execute a search
2 warrant in a case against Leonard Goodwin?

3 A. Yes, I did.

4 Q. And can you tell the jury where that search
5 warrant was executed?

6 A. That search warrant was executed at Target
7 Street.

8 Q. And when was that search warrant executed?

9 A. On May 4th.

10 Q. Of what year?

11 A. 2011.

12 Q. Of this year?

13 A. Yes.

14 Q. There was a search warrant executed at
15 Target Street?

16 A. Yes.

17 [Whereupon, State's Exhibit Number 70 is marked
18 by the court reporter]

19 Q. [Mr. Kidd] I'm going to show you what's been
20 marked as State's Exhibit Number 70 and see if you can
21 recognize that.

22 A. Yes.

23 This is the Gordons gin bottle that I collected
24 from the crawl space underneath the house.

25 Q. And did you actually physically go into the

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1 crawl space underneath that house?

2 A. Yes, I did.

3 Q. And show you a couple of photographs real quick.
4 Please direct your attention behind you. Is this the
5 house where the search warrant was executed?

6 A. Yes, it is.

7 Q. And is that how you gain entrance to that crawl
8 space?

9 A. Yes, it is.

10 Q. So you physically went through that --

11 A. Yes.

12 Q. -- through that opening?

13 A. Uh-huh.

14 Q. And were you alone or were you with someone
15 else?

16 A. I was with fellow crime scene technician
17 J.T. Thomas.

18 Q. J.T. Thomas?

19 A. Yes.

20 Q. So both of you went underneath that house?

21 A. Yes, I did.

22 Q. Was -- what was the lighting like under there?
23 Was it light? dark?

24 A. Dark.

25 Q. Did you have some sort of flashlights with you

1 or --

2 A. We did. We did.

3 Q. -- how did you see?

4 A. And we had the sunlight coming through that
5 opening and several other openings underneath the house.

6 Q. So there were -- when you say openings, are they
7 like openings you could fit through?

8 A. No. Just holes in the bricks.

9 Q. Like venting?

10 A. Yeah.

11 Q. Okay. And you had flashlights?

12 A. Yes.

13 Q. And you recovered -- and if you could open that
14 package for me. Just tear through those staples.

15 A. [Witness complies]

16 Q. Is that the bottle that you recovered?

17 A. Yes, sir.

18 Q. And you recognize it?

19 A. Yes, I do.

20 MR. KIDD: Your Honor, at this time the State
21 would move Exhibit Number 70 into evidence. Oh. I'm
22 sorry.

23 [Whereupon, Mr. Kidd and Ms. Winslow confer]

24 MS. WINSLOW: Without objection, Your Honor.

25 THE COURT: State's 70 into evidence without

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1 objection.

2 [Whereupon, State's Exhibit Number 70 is
3 admitted into evidence by the Court]

4 Q. [Mr. Kidd] Now, was the bottle found right
5 inside the entrance of the crawl space access?

6 A. It was not.

7 When you enter the crawl space, there was
8 bottles all underneath the house. But that was not found
9 directly upon entering the crawl space. It was back a
10 little bit in the crawl space.

11 Q. When you say bottles, like how many?

12 A. I recovered eight.

13 We found multiple bottles laying around the
14 crawl space. A lot of them appeared to be very old so we
15 collected all eight just to have them.

16 Q. I'm going to show you what's been entered into
17 evidence as State's Exhibit Number 43. Does that look
18 familiar to you?

19 A. Are you referring to the chain?

20 Q. No, no. I'm just referring to the overall
21 picture of the crawl space. Is that --

22 A. Yes.

23 Q. -- similar to how it looked when you went under
24 there?

25 A. Similar in, yes, the structure and everything.

1 But that's -- I believe that's a picture from back in
2 2006.

3 Q. Correct.

4 A. So, yeah, the structure and everything is the
5 same.

6 Q. And I'm going to show you what's been marked as
7 State's Exhibit Number 44. I'd like to draw your
8 attention to that bottle right there. Does that appear to
9 be the same bottle you collected?

10 A. Yes, it does.

11 MR. KIDD: Judge, may I have the opportunity to
12 publish to the jury?

13 THE COURT: The bottle?

14 MR. KIDD: Uh-huh.

15 THE COURT: Yes, sir.

16 Q. [Mr. Kidd] And that's this Gordons gin bottle?

17 A. Yes.

18 Q. And this was collected in 2011?

19 A. Yes, sir.

20 Q. And what did you do with this bottle after you
21 collected it?

22 A. I took it back to the lab. At that point, using
23 latex gloves I opened the bottle. I did smell an odor of
24 alcohol coming from the bottle.

25 There was also a piece of paper stuck in the

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1 neck of the bottle, which I removed using tweezers. I
2 laid out the piece of paper. I photographed the piece of
3 paper and the bottle.

4 I then obtained a DNA swab, from the inner rim
5 and outer rim of the bottle, to be sent for analysis.

6 Q. And I'm going to show you what's been marked as
7 State's Exhibit Number 68. See if you recognize that.

8 A. Yes.

9 This is the DNA swab from the Gordons gin bottle
10 that I collected.

11 Q. And what did you do with that?

12 A. I packaged it in this envelope and then I filled
13 out a permission request for analysis to be sent to SLED
14 in Columbia, and submitted it to our evidence to then be
15 transported to SLED.

16 Q. Do you know if it was transported to SLED?

17 A. Yes, sir.

18 Q. Did you transport it to SLED?

19 A. No, sir. Or, yes, sir. I'm sorry.

20 Q. Do you remember when?

21 A. No, sir, I don't remember the particular date.

22 On here I did sign the seal as May 6th.

23 Q. And do you remember when you would have signed
24 that seal?

25 A. When I brought it to SLED.

1 Q. Would you have signed it at North Charleston, or
2 up at SLED?

3 A. At SLED.

4 Q. At SLED.

5 A. They placed it in this SLED package and I signed
6 the seal.

7 Q. And you did that in front of the person up at
8 SLED --

9 A. Yes, sir.

10 Q. -- when he takes it?

11 A. Yes.

12 Q. Show you a SLED chain of custody sheet. Is that
13 your signature on the bottom of that sheet?

14 A. Yes, sir.

15 Q. And can you tell who received it from you, at
16 SLED, from that?

17 A. Amy Stephens.

18 Q. When you packaged the swabs, you packaged them
19 in this inner envelope here?

20 A. Yes.

21 Q. And that's sealed?

22 A. Yes, sir.

23 Q. And then you actually drove it to SLED?

24 A. Yes.

25 Q. And then you sealed it in this outer envelope?

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1 A. The person I submitted it to did seal it in that
2 bag and then I signed the seal.

3 Q. And they did that in front of you?

4 A. Yes, sir.

5 Q. And have you tampered with anything or --

6 A. No, sir.

7 Q. Or at any time?

8 A. No, sir.

9 MR. KIDD: Court's indulgence.

10 THE COURT: Yes, sir.

11 [Whereupon, Mr. Kidd and Mr. Young confer]

12 Q. [Mr. Kidd] Do you remember the address of the
13 house that you executed that search warrant at?

14 A. Target Street.

15 MR. KIDD: No further questions, Your Honor.

16 THE COURT: Mr. Butler?

17 MR. BUTLER: Good morning.

18 THE WITNESS: Good morning.

19 MR. BUTLER: I just have a few questions for
20 you.

21 CROSS-EXAMINATION

22 BY MR. BUTLER:

23 Q. Besides the bottle that you took -- that you
24 swabbed, you collected eight other bottles?

25 A. Yes, sir.

1 Q. And there were other bottles there that you
2 didn't collect?

3 A. [No response]

4 Q. Or did I -- did I misunderstand you? You
5 collected all of them?

6 A. I believe so, yes.

7 Q. Okay.

8 A. We focused our search on the right side of the
9 crawl space.

10 Q. Okay. But there were eight bottles in addition
11 to the one that you collected?

12 A. Yes, sir.

13 Q. You saw in the photograph there were magazines;
14 right?

15 A. [No response]

16 Q. And you collected -- there were papers. There
17 was a receipt; right?

18 A. There was one piece of paper in the neck of the
19 Gordons gin bottle, yes.

20 Q. There was garbage in the crawl space; right?

21 A. Not that I can remember. We didn't focus on the
22 debris and trash underneath the house.

23 Q. The bottles were discarded, the magazine had
24 been discarded; right?

25 A. I don't know the nature of why they were

1 underneath the house.

2 Q. Well, you were there five years after the --

3 A. Right. Yes.

4 Q. Okay. There was a VHS tape under there --

5 A. Yes.

6 Q. -- as well?

7 A. Uh-huh.

8 Q. And the only bottle that you swabbed was the one
9 that you talked about today?

10 A. Yes, sir.

11 Q. Do you recall that there were -- in the exterior
12 of the crawl space, the foundation of the house, there
13 were slats for ventilation? Do you recall that?

14 A. Yes, sir.

15 MR. BUTLER: Beg the Court's indulgence.

16 THE COURT: Yes, sir.

17 [Whereupon, Mr. Butler and Ms. Winslow confer]

18 MR. BUTLER: Thank you.

19 REDIRECT EXAMINATION

20 BY MR. KIDD:

21 Q. Is there a particular reason you were focusing
22 on that particular bottle?

23 A. To my knowledge, that was a bottle of interest
24 pertaining to the case.

25 MR. KIDD: No further questions, Judge.

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1 THE COURT: Recross, Mr. Butler?

2 MR. BUTLER: No. No, ma'am.

3 THE COURT: You may step down. Thank you.

4 THE WITNESS: Thank you.

5 [Whereupon, the witness is excused and exits the
6 witness stand]

7 THE COURT: Ladies and gentlemen of the jury,
8 this is an appropriate time for us to take our break,
9 or we may continue. Would you like to take a break at
10 this time?

11 THE FOREPERSON: Yes.

12 THE COURT: Please do not begin your
13 deliberations. Do not discuss this case amongst
14 yourselves.

15 Please rise for the jury.

16 [Whereupon, the jury exits the courtroom at
17 10:44 a.m.]

18 THE COURT: Thank you. Please be seated.

19 At this time I'm going to allow you to place
20 your objection --

21 MR. BUTLER: Thank you.

22 THE COURT: -- upon the record to Officer
23 Glover's testimony.

24 You did approach prior to his testimony so I
25 want the record to be clear that you did object. The

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1 conferences, bench conferences, are not on the record
2 but you did make your objection to his testimony prior
3 to his testimony, just so the record is clear, but we
4 had already called him and did not wish to have the
5 jury be excused and come back. So, Mr. Butler, please
6 place your objection to the --

7 MR. BUTLER: Yes, ma'am. I just want to make
8 sure the record is clear.

9 Just prior to Officer Glover's testimony, I
10 approached the bench and restated our objection as
11 spelled out after the Jackson v. Denno hearing. We use
12 the term Jackson v. Denno hearing, but it's just a
13 hearing for the admission of the defendant's statement.

14 Our specific objection was that the statements
15 were taken in violation of Miranda vs. Arizona, fifth
16 amendment right to counsel, under both the state and
17 federal constitution and that I asked the Court -- and
18 I don't want to misspeak, but the Court indicated that,
19 yes, that was still your ruling, that was a final
20 ruling, I did not need to renew my objection to all the
21 statements that Officer Glover testified to made by Mr.
22 Goodwin. And the State acquiesced that that procedure
23 would be sufficient to protect the record.

24 THE COURT: All right. Thank you.

25 Anything further regarding that matter on behalf

1 of the State?

2 MR. KIDD: No, Your Honor.

3 THE COURT: All right. Thank you.

4 And just for scheduling purposes, Mr. Kidd,
5 we're moving right along. How many more witnesses do
6 you have?

7 MR. KIDD: Judge, I have a DNA analyst and the
8 firearms analyst left this morning. I think that will
9 probably take us to about noon-ish, maybe a few minutes
10 before noon. And then this afternoon I have another
11 DNA analyst and a forensic technician. So I'm talking
12 very short testimony this afternoon and then have that
13 one --

14 THE COURT: Mr. Kidd, any way that we could just
15 work through lunch, per se, and end earlier? Can you
16 get those two witnesses here early and then that way we
17 don't have to break and come back?

18 MR. KIDD: The only problem would be that they
19 are SLED witnesses and they're coming from Columbia.

20 [Off the record momentarily]

21 MR. KIDD: We can try.

22 THE COURT: We're going to take ten minutes for
23 our mid-morning break. See if you can accomplish that.
24 That just makes more sense to do that.

25 How long do you think the two afternoon

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1 witnesses will take?

2 MR. KIDD: Forty-five minutes in its entirety.

3 THE COURT: So that would put us about --

4 MR. KIDD: And they're supposed to be here at
5 one o'clock --

6 THE COURT: All right. Let's see if we can
7 accomplish getting them here early. Perhaps they were
8 going to be wise with their time and just get here
9 early anyway. All right?

10 MR. BUTLER: I don't want to ask the State to
11 divulge anything they don't want to, but if they can
12 tell us who the DNA -- there are several. If they can
13 tell us who it is this afternoon, that might help us
14 with planning purposes.

15 THE COURT: All right.

16 MR. KIDD: Katie Urka is the afternoon analyst.

17 MR. BUTLER: That's the only one?

18 MR. KIDD: That's the only afternoon DNA
19 analyst.

20 THE COURT: All right. We'll be at ease. Thank
21 you.

22 [Whereupon, a recess is taken from 10:49 a.m. to
23 11:04 a.m.]

24 MR. KIDD: Just for scheduling: we've contacted
25 them. They're in their car and on their way but they

1 still don't think they can be here much before 1:00.

2 THE COURT: All right. Well, we'll make a
3 determination.

4 All right. You have two witnesses ready to go;
5 is that correct?

6 MR. KIDD: That's correct, Your Honor.

7 THE COURT: All right. Anything before we bring
8 in the jury?

9 MR. KIDD: No, ma'am.

10 MS. WINSLOW: No, Your Honor.

11 THE COURT: All right. Let's bring in the jury.

12 [Off the record momentarily]

13 [Whereupon, the jury enters the courtroom at
14 11:06 a.m.]

15 THE COURT: Thank you. Please be seated.

16 Call your next witness.

17 MR. KIDD: The State calls Kenneth Whitler.

18 [Whereupon, Mr. Whitler comes forward]

19 THE CLERK OF COURT: Place your left hand here
20 and raise your right hand.

21 [Whereupon, Mr. Whitler is duly sworn by the
22 clerk of court as follows: do you swear or affirm that
23 the testimony you are going to give the Court and the
24 jury in the trial of this case shall be the truth, the
25 whole truth, and nothing but the truth, so help you

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1 God]

2 THE WITNESS: I do.

3 THE CLERK OF COURT: Sir, if you would take your
4 seat.

5 [Whereupon, Mr. Whitler takes the witness stand]

6 THE CLERK OF COURT: If you would state your
7 first and last name, spelling your last for the record.

8 THE WITNESS: My name is Kenneth H. Whitler.
9 The last name is spelled W-H-I-T-L-E-R.

10 MR. KIDD: Good morning -- good afternoon, Mr.
11 Whitler. Thank you for being here.

12 - - - - -

13 KENNETH H. WHITLER,

14 Having Been First Duly Sworn,

15 was Examined and Testified as Follows:

16 DIRECT EXAMINATION

17 BY MR. KIDD:

18 Q. Can you tell the jury where you're employed?

19 A. I'm employed by the South Carolina Law
20 Enforcement Division in the forensic services division,
21 which is the laboratory, and I'm in the firearms, tool
22 mark department.

23 Q. And in the firearms, tool-mark department, what
24 -- what are typically your duties in regards to that
25 department?

MIA PERRON, CVR-CM

-68-

1 A. Well, I'm a firearms examiner so I examine
2 mostly firearms components such as bullets, cartridge
3 cases, and try to determine if they were fired by a
4 particular gun.

5 If a gun is not submitted with that -- with
6 those components, then I try to determine if they were
7 fired by the same gun or maybe multiple guns.

8 We also do tool marks, see if say a screwdriver
9 made a mark on a doorplate or something like that.

10 Q. Can you tell the jury a little bit about your
11 educational background?

12 A. I have graduate and undergraduate degrees from
13 the University of South Carolina.

14 Q. Have you had any specialized training in
15 ballistics?

16 A. Well, it's not called ballistics. It's firearms
17 identification. But there's no school you go to to get a
18 degree in firearms identification. You have to learn it
19 from other qualified examiners.

20 I learned when I was in the FBI laboratory. And
21 their training program is approximately two years long,
22 where you shoot a lot of firearms, you examine a lot of
23 bullets -- fired bullets and cartridge cases. You work on
24 real cases, as well as cases they make up for you. And
25 you work -- and you have to work with every examiner in

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1 the -- in that unit. And when all of them -- when you've
2 work with all of them and all of them collectively decided
3 that you have learned enough to be competent, then they
4 give you a series of three tests, sort of like a final
5 exam. And if you pass those three tests, then you're
6 certified to be a firearms examiner for the FBI. I
7 successfully completed that training program and I
8 certified as a firearms examiner in 1991.

9 In 1997 I retired from the FBI and came to SLED
10 to do basically the same job.

11 Q. Have you testified in court before?

12 A. Yes, I have.

13 Q. Do you know approximately how many times?

14 A. The last time I counted it was a little over 235
15 times in various state, federal, and territorial courts.

16 Q. In those times you've testified, have you been
17 qualified as an expert?

18 A. Yes, I have.

19 Q. In what area?

20 A. Firearms identification.

21 Q. Firearms identification.

22 MR. KIDD: Your Honor, at this time the State
23 would move Mr. Whitler as an expert in firearms
24 identification.

25 THE COURT: Any objection?

1 MR. BUTLER: No, ma'am.

2 THE COURT: He will be so qualified. Thank you.

3 Q. [Mr. Kidd] Now, in reference to this case,
4 which I believe bears the lab number L06-06507, did you
5 have the opportunity to analyze any items of evidence?

6 A. Yes, I did.

7 MR. KIDD: If I may approach?

8 Q. [Mr. Kidd] I'm going to show you what's been
9 marked as SLED number nine and our State's Exhibit Number
10 63. And the package is open, so you can look into it.
11 Can you tell the jury what that is?

12 A. Yes. I've seen this before. It is an item I
13 examined. I determined it's a metal fragment. It's
14 possibly a bullet, but there are no identifying marks on
15 it as a bullet so that's why we have to call it a metal
16 fragment.

17 Q. Can you tell the jury when you first came into
18 possession of that item?

19 A. I don't have the chain of exactly when I took
20 custody of it, but I worked the -- I examined it during
21 June of 2010. Excuse me. September of 2006.

22 Q. Would it help refresh your recollection, if I
23 showed you your chain of custody sheet, as to where you
24 got it from and --

25 A. Yes. That's why we have a certified chain so

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1 that -- it's the master sheet.

2 Q. I believe that should show you item number nine
3 there, which is that projectile; is that correct? And I
4 think you might have to turn the page and see at what
5 point you came in possession of it.

6 A. Yes. According to this, I received it in May of
7 -- May 30th of 2006 and I returned it to the log-in
8 department on September 27th of 2006.

9 Q. Can you tell who you received it from?

10 A. It was from the evidence room. They don't have
11 a particular name on it at that point.

12 Q. Are you able to tell who put it in the evidence
13 room?

14 A. I'm assuming Carol Brooks did.

15 Q. Thank you.

16 And when you received it, was it packaged?

17 A. Yes, sir.

18 All the evidence, when it's received at SLED,
19 has to be sealed or they won't take it in the evidence
20 log-in department. If you bring it in unsealed, they'll
21 make you put a seal on it. And even if it is sealed, then
22 they'll put another piece of SLED evidence tape on it and
23 you'll sign again so that they see that it is a sealed
24 package.

25 When we get it, it is still in a sealed-

1 container condition. The evidence log-in people do not
2 open any packages. They merely are sort of like the
3 postal department: you put your package in and they'll
4 let us know that the evidence is down there; you come down
5 and get it; it's still under a sealed condition when you
6 take custody of it from the log-in department.

7 You take it up -- back to your office, or
8 wherever you're working it. You work your case and then
9 you have to return it to them also in a sealed condition.
10 So no matter how many departments it goes through, it
11 always -- when it comes back to the log-in department, it
12 is always in a sealed condition.

13 Q. And when you came into possession for the first
14 time of this fragment, was it in a sealed condition at
15 that point?

16 A. Yes. That's what I just said.

17 Q. And so when you open it and then you take it
18 somewhere else, you have to reseal it?

19 A. That's correct.

20 Q. And what do you do when you reseal it?

21 A. You put it in the bag and either heat-seal it or
22 use evidence tape on it. In this case I heat-sealed it
23 and put my initials on it.

24 Q. And so you initialed that seal?

25 A. Yes.

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1 Q. Okay. And this is State's Exhibit Number 63.

2 MR. KIDD: Your Honor, at this time the State
3 would offer State's Exhibit Number 63 into evidence.

4 MR. BUTLER: No objection.

5 THE COURT: State's 63 into evidence without
6 objection.

7 [Whereupon, State's Exhibit Number 63 is
8 admitted into evidence by the Court]

9 MR. KIDD: Thank you, Your Honor.

10 Q. [Mr. Kidd] And did you have -- and you had the
11 opportunity to analyze this item?

12 A. Yes, I did.

13 Q. And what was the results of that first analysis?

14 A. The results were that it's a metal fragment that
15 either could be a piece of lead or it could be a
16 projectile. Based on the remaining weight of it, it could
17 be anything from a .22 rim-fired bullet to a piece of a
18 bullet from a larger caliber.

19 Q. So when you're analyzing it, do you weigh it?
20 Or how does that process work?

21 A. Well, you examine it to look for -- if you're
22 trying to determine if it's a bullet, you look at it to
23 see if there's any rifling impressions on it or any
24 characteristics of a bullet, you know, the shape or the
25 design of it. If it's two mashed up, then you're left

1 with, like we are in this case, it's -- it could be a
2 bullet or -- and based on the weight, a .22 rim-fired
3 bullet runs anywhere from around twenty-nine grains up to
4 about forty. If it's in that weight range you could say,
5 well, this -- if this was the entire bullet, entire .22
6 rim-fired bullet, based on the weight it could be a .22.

7 However, if it's a piece or a fragment of a
8 larger bullet, it could be a forty-five caliber bullet and
9 this is just a small piece of it. So that's why it's
10 called a metal fragment.

11 Q. But even though you call it a metal fragment, it
12 could be the entire projectile?

13 A. It's possible.

14 But, you know, you never -- you don't know. The
15 fact that it came in a medical container would leave me to
16 believe it's most consistent with being a projectile and
17 not just a piece of lead that somebody found on the street
18 or somewhere.

19 Q. And were there any markings on the -- on that
20 projectile?

21 A. There were some striated marks on the metal
22 fragment that I couldn't be sure whether they were put
23 there by a firearm barrel or some other object. That's
24 why in my report I put that while we couldn't say it's a
25 bullet and we can't tell you exactly what it is, there are

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1 marks on it and if it's -- if this mark was made by a
2 barrel and this is a bullet, there may be a possibility
3 that it could be identified based -- those marks may be
4 coming from the barrel of the firearm. It's a very high
5 -- unlikely possibility that it did but we have to be --
6 we can't shut the door on it entirely. The marks were
7 there. They are -- they're similar to the marks that
8 sometimes you see on the -- that barrels we put on bullets
9 or bullet fragments. So in order to be safe, we always
10 leave an opportunity to examine something.

11 Q. Mr. Whitler, can you tell the jury what IBIS is?

12 A. IBIS is a computerized database that holds
13 pictures of cartridge cases and bullets.

14 Q. And what purpose does IBIS serve?

15 A. It's a screening device that's used to -- you
16 enter the -- your item, your bullet, or your cartridge
17 case, and it's compared against other bullets or cartridge
18 cases. And you're trying to link up different crimes to
19 see if a firearm has been used in the same -- in different
20 crimes or different places.

21 Q. And did this projectile meet the guidelines to
22 enter into IBIS?

23 A. No.

24 Q. What are those guidelines?

25 A. Well, first of all, they don't enter .22 rim-

1 fired bullets at all. The next thing is they don't enter
2 lead bullets. And in this case, when you can't be sure if
3 it's a bullet or the caliber, it would be worthless to put
4 it in because you wouldn't know what to compare it
5 against.

6 Q. So I just want to get to one other point. You
7 said they don't enter lead bullets?

8 A. That's correct.

9 Q. So what material of bullets do they normally
10 enter?

11 A. Jacketed bullets.

12 Q. Jacketed bullets? And is that copper jacketing?
13 Or what's generally the jacketing material made of?

14 A. Generally it's made out of copper.

15 Q. Was there any jacketing present in this case?

16 A. No, sir.

17 Q. And you're familiar with different cartridges;
18 is that correct?

19 A. Yes.

20 Q. Are common -- is it common for a .22 caliber
21 bullet to be jacketed?

22 A. In some cases they are.

23 Q. Is that -- is it common for them not to be
24 jacketed?

25 A. They make them in both varieties. I mean, in

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1 .22 rim-fires, they're probably -- there are a good many
2 made that are all lead, and then there are some that are
3 copper-plated lead, and then there are very few that are
4 copper jacketed, have heavier jackets on them.

5 Q. And larger caliber bullets, are they more often
6 jacketed?

7 A. Usually they're -- particularly with pistols,
8 the ammunition for those are generally made with jacketed
9 ammunition in them.

10 Q. And what purpose does a jacket serve?

11 A. Well, in a pistol it makes it function more
12 reliably because jackets are harder than lead. And if you
13 have a bullet coming in in a feed ramp and it happens to
14 deform a little bit, it could cause a jam. However, there
15 are many pistols that shoot lead bullets quite well. So
16 it's just whatever they want to make the bullet do.

17 Q. And just to kind of summarize real quick. So
18 you received this projectile, determined that it is either
19 a fragment or a projectile, or could be the entire
20 projectile. It's weight is consistent with a twenty-two
21 caliber or a fragment of a larger caliber. Is that --

22 A. Well, it could also be just a metal fragment,
23 too; a piece of lead. I mean, like I said, there's
24 nothing on there that says this is a bullet.

25 Q. And it did not possess the characteristics to

1 submit to IBIS?

2 A. No, sir.

3 MR. KIDD: No further questions.

4 MR. BUTLER: Good morning, Mr. Whitler. How are
5 you?

6 THE WITNESS: Pretty good. Pretty good.

7 MR. BUTLER: I just have a few real easy
8 questions.

9 CROSS-EXAMINATION

10 BY MR. BUTLER:

11 Q. The fragment could Berkeley a bullet; right?

12 A. That's correct.

13 Q. And if it's a bullet, it could be a twenty-two?

14 A. Yes.

15 Q. Or a larger caliber weapon?

16 A. Or part of a --

17 Q. Or part of --

18 A. -- part of a bullet from a larger caliber.

19 Q. It can't be anything smaller because they don't
20 make anything smaller; right?

21 A. Well, actually they do. But it would be too big
22 for that.

23 Q. Okay. Yes. Excuse me. I know nothing about
24 guns so I'm going to ask you one other what should be an
25 easy question.

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1 A twenty-two caliber round is called that
2 because its diameter is .22 inches; is that right?

3 A. Pretty close, yes.

4 Q. Okay. Which is just a little bit more than
5 one-fifth of an inch?

6 A. That's correct.

7 Q. Okay. And in forensics -- and you're a
8 forensics person; right?

9 A. Yes, sir.

10 Q. Forensics is a combination of legal and science?

11 A. Yes.

12 Q. Tool-mark evidence is scientifically based?

13 A. Yes.

14 Q. All right. And we use the term consistent with.
15 You use that some in your testimony a lot in forensic
16 science, consistent with; right?

17 A. Yes, sir.

18 Q. And that's just a little bit more of a fancier
19 way of saying could be?

20 A. Yes, it is.

21 Q. And a more awkward way of saying consistent with
22 is I can't say it's not a twenty-two?

23 A. Yeah. But what we're saying is it could be a
24 twenty-two, it could be something else. And --

25 MR. BUTLER: Beg the Court's indulgence.

1 THE COURT: Yes, sir.

2 MR. BUTLER: That's all I have. Thank you, sir.

3 THE COURT: Redirect?

4 MR. KIDD: No, ma'am.

5 THE COURT: You may step down. Thank you.

6 [Whereupon, the witness is excused and exits the
7 witness stand]

8 THE COURT: Call your next witness.

9 MR. KIDD: The State calls Jasper Humbert.

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

11 THE COURT: You may.

12 [Whereupon, an off-the-record bench conference
13 is held]

14 THE COURT: Please come forward.

15 [Whereupon, Mr. Humbert comes forward]

16 THE CLERK OF COURT: Place your left hand here
17 and raise your right hand.

18 [Whereupon, Mr. Humbert is duly sworn by the
19 clerk of court as follows: do you swear or affirm that
20 the testimony you are going to give the Court and the
21 jury in the trial of this case shall be the truth, the
22 whole truth, and nothing but the truth, so help you
23 God]

24 THE WITNESS: I do.

25 THE CLERK OF COURT: Thank you. Please take

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1 your seat.

2 [Whereupon, Mr. Humbert takes the witness stand]

3 THE CLERK OF COURT: Sir, if you would state
4 your first and last name, spelling your last for the
5 record.

6 THE WITNESS: My name is Jasper Humbert.
7 H-U-M-B-E-R-T.

8 MR. KIDD: Good afternoon, Mr. Humbert.

9 - - - - -

10 JASPER HUMBERT,

11 Having Been First Duly Sworn,
12 was Examined and Testified as Follows:

13 DIRECT EXAMINATION

14 BY MR. KIDD:

15 Q. Are you currently employed?

16 A. I am currently self-employed.

17 Q. Currently self-employed. What do you do for a
18 living?

19 A. I manage rental properties that I own.

20 Q. Where were you employed before that?

21 A. I was employed at the South Carolina Law
22 Enforcement Division before that.

23 Q. And how long were you there?

24 A. I was there approximately four-and-a-half years.

25 Q. And what did you do for SLED?

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1 A. I was a DNA analyst in the DNA department at
2 SLED.

3 Q. What sort of educational background do you have,
4 Mr. Humbert?

5 A. I have a bachelor's degree in biology from
6 Armstrong State University in Savannah, Georgia; I have a
7 master's degree in biological sciences from the University
8 of Iowa; and I have a further three years of graduate
9 education in a genetics PhD program from the Penn State
10 Medical College.

11 Q. Were you certified by SLED to perform DNA
12 analysis?

13 A. Yes, I was.

14 I trained under a court-qualified analyst in the
15 DNA department where, under her supervision, I tested
16 hundreds of samples. And I -- once I went on-line, after
17 I had gone through training, I had done hundreds of cases.

18 Q. So while at SLED you did hundreds of cases
19 involving DNA testing?

20 A. Yes, I did.

21 Q. Have you ever testified in court before?

22 A. Yes, I have.

23 Q. In those testimonies, were you ever qualified as
24 a DNA expert?

25 A. Yes, I was.

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1 Q. Do you know about how many times?

2 A. Approximately fifteen times before today.

3 MR. KIDD: Your Honor, at this time the State
4 would offer Jasper Humbert as an expert in DNA
5 analysis.

6 MS. WINSLOW: No objection.

7 THE COURT: The witness will be so qualified.

8 MR. KIDD: Thank you, Judge.

9 Q. [Mr. Kidd] I want your help a little bit
10 explaining a little bit about DNA for the jury, if you
11 could. What -- in general terms, what does a forensic DNA
12 analysis entail?

13 A. Basically, forensic DNA analysis involves
14 testing someone's DNA to get what's called a DNA profile.
15 And everyone basically has their own unique DNA profile,
16 except for identical twins. Identical twins have the same
17 DNA because they split from the same fertilized egg.

18 As a forensic DNA analyst, I would basically
19 examine samples, whether they be standards, which are from
20 known people, and evidence, and then I would compare the
21 two to each other.

22 Q. And how can a DNA profile be forensically
23 significant?

24 A. It's significant because you test large numbers
25 of unique positions on the DNA. And each of the numbers

1 that you get back from those positions has a known,
2 basically, frequency in the population. So because of
3 that, when you get a DNA profile and you match it to
4 someone else, you can get a statistic on how likely it is
5 that a person would have this randomly.

6 It would be like -- when you think of the
7 statistics, think of it as -- let's say you have a dice
8 and you roll it and you roll it three times and you want
9 to get a one each time. It would be one in six times, one
10 in six times, one in six. It's the same idea as that.

11 In a DNA profile, there's a probability you will
12 have a number in your DNA profile and when it's basically
13 analyzed, you can get a statistic on how rare your DNA
14 profile is or how a rare a profile is from an item, et
15 cetera.

16 Q. All right. I'm going to show you what's been
17 marked as SLED number -- item number twelve, State's
18 Exhibit Number 67. Let's see if you can recognize that
19 item.

20 A. This is an item that I analyzed. I can tell. I
21 have my initials on it. It also has the SLED item number
22 that I have on my report, which is item number twelve,
23 which is a buccal swab from Leonard Goodwin.

24 Q. And can you tell the jury when you first
25 received that item?

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1 A. [No response]

2 Q. Would it help if you saw the chain of custody?

3 A. Yes. Without a chain, I can't remember the
4 exact date that I would have received that item.

5 [Whereupon, the witness reviews documents]

6 Q. [Mr. Kidd] See if that helps you.

7 A. According to the chain of custody, I received
8 the item on 8/16/10.

9 Q. Can you tell who you received the item from?

10 A. I received it from a storage bin in the DNA
11 department, which is where as a DNA analyst I would
12 retrieve my evidence for testing.

13 Q. And does it say who would have put the item in
14 that storage bin?

15 A. Sheree Brown had custody of it before. And she
16 is a technician in the DNA department, and she would drop
17 evidence off in these storage bins where I would pick them
18 up.

19 Q. And when you received that item, was it
20 packaged?

21 A. Yes, it was.

22 Q. How was it packaged?

23 A. It would have been in this evidence pouch that I
24 have currently.

25 Q. And would that -- would that have been sealed?

1 A. Yes.

2 Q. And was it -- the seal broken in any way?

3 A. It was not tampered with. If it had been
4 tampered with, I would have noted it.

5 Q. And were there any such notations?

6 A. No.

7 Q. Did you perform a DNA analysis on that item?

8 A. Yes, I did.

9 Q. And did you develop a DNA profile on that item?

10 A. Yes, I did.

11 MR. KIDD: Your Honor, at this time the State
12 would like to enter into evidence State's Exhibit
13 Number 67.

14 THE COURT: Any objection?

15 MR. BUTLER: No, ma'am.

16 THE COURT: State's 67 into evidence without
17 objection.

18 [Whereupon, State's Exhibit Number 67 is
19 admitted into evidence by the Court]

20 MR. KIDD: The Court's indulgence.

21 [Whereupon, Mr. Kidd reviews documents]

22 Q. [Mr. Kidd] Now, when you're at SLED and you
23 develop a DNA profile on an item, and then say if an item
24 comes up later to be compared to that profile that you've
25 developed, would the analyst then re-analyze the same

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1 items you've already developed a profile on?

2 A. Not normally. There would be no need.

3 Q. Because a profile had already been developed?

4 A. Yes. That's correct.

5 Q. How are those profiles stored? When you develop
6 a profile, what do you do with it?

7 A. Basically, whenever an analyst develops a DNA
8 profile they write up a report and they put that DNA
9 profile in the report and it's signed and dated and
10 there's a permanent record in our -- basically, in the
11 system at SLED.

12 If analyst -- later on, another analyst comes
13 along and basically gets another item of evidence, they
14 can look at the original report from the other analyst and
15 compare the DNA profiles between each other.

16 Q. And as I think you just said, you developed a
17 DNA profile on the buccal swab from Leonard Goodwin?

18 A. Yes, I did.

19 Q. And can you talk a little bit about -- what is
20 an Identifiler?

21 A. Identifiler is basically the name of the kit
22 that we use to test DNA -- or currently when I was there,
23 that was the kit -- and basically it contains all the
24 components that I would have needed as a DNA analyst to
25 test DNA and get a DNA profile from it.

1 Q. And kind of like we spoke before, did you also
2 come into contact with SLED item number two?

3 A. I would have never -- I never received that
4 item.

5 Q. But did you mention it in your report?

6 A. Yes, I did.

7 Q. And the reason you never received it was because
8 why?

9 A. Because it had been previously analyzed by
10 another DNA analyst in the DNA department.

11 Q. So the profile had already been obtained?

12 A. Yes, it had.

13 MR. KIDD: Court's indulgence.

14 [Whereupon, Mr. Kidd and Mr. Young confer]

15 THE COURT: Yes, sir.

16 MR. KIDD: I have no further questions, Your
17 Honor.

18 MR. BUTLER: No questions.

19 THE COURT: You may step down. Thank you.

20 [Whereupon, the witness is excused and exits the
21 witness stand]

22 THE COURT: Mr. Kidd, additional witness?

23 MR. KIDD: I believe that's all we have for the
24 morning, Judge.

25 THE COURT: All right. Counsel approach just

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1 for scheduling.

2 [Whereupon, an off-the-record bench conference
3 is held]

4 THE COURT: Ladies and gentlemen, this is an
5 appropriate time for us to take our lunch break.
6 Please be back in your jury room at one o'clock. We
7 will begin promptly at that time. Please have a
8 wonderful lunch.

9 Please remember all of my admonitions. Do not
10 discuss this case, do not begin your deliberations, and
11 do not do any independent investigations.

12 Thank you, and have a nice lunch. Thank you.

13 [Whereupon, the jury exits the courtroom at
14 11:36 a.m.]

15 THE COURT: Thank you. Please be seated.

16 Anything before we break for lunch?

17 MS. WINSLOW: No, Your Honor.

18 MR. KIDD: No, Your Honor.

19 THE COURT: All right. Thank you. We're at
20 ease.

21 [Whereupon, a recess is taken from 11:38 a.m. to
22 1:11 p.m.]

23 THE COURT: Both of your witnesses are here and
24 ready to testify, Mr. Kidd?

25 MR. KIDD: I see one walking up but she -- we'll

1 be fine.

2 THE COURT: All right. Thank you.

3 Let's bring in the jury.

4 [Whereupon, the jury enters the courtroom at
5 1:13 p.m.]

6 THE BAILIFF: Your Honor, all seated.

7 THE COURT: Thank you. Please be seated.

8 Call your next witness.

9 MR. KIDD: The State calls Katie Urka.

10 [Whereupon, Ms. Urka comes forward]

11 THE CLERK OF COURT: Thank you. Raise your
12 right hand.

13 [Whereupon, Ms. Urka is duly sworn by the clerk
14 of court as follows: do you swear or affirm that the
15 testimony you'll give the Court and the jury in the
16 trial of this case shall be the truth, the whole truth,
17 and nothing but the truth, so help you God]

18 THE WITNESS: I do.

19 THE CLERK OF COURT: Take your seat.

20 [Whereupon, Ms. Urka takes the witness stand]

21 THE CLERK OF COURT: State your first and last
22 name, spelling your last for the record.

23 THE WITNESS: Katie Urka. U-R-K-A.

24 MR. KIDD: May it please the Court.

25 THE COURT: Yes, sir.

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1 MR. KIDD: Good afternoon, Ms. Urka.

2 - - - - -

3 KATIE URKA,

4 Having Been First Duly Sworn,

5 was Examined and Testified as Follows:

6 DIRECT EXAMINATION

7 BY MR. KIDD:

8 Q. Can you tell the jury where you are employed?

9 A. I am a forensic DNA analyst at the South
10 Carolina Law Enforcement Division.

11 Q. And how long have you worked for SLED?

12 A. Five and a half years.

13 Q. During that time, have you always been a
14 forensic DNA analyst?

15 A. Yes.

16 Q. Can you tell the jury a little bit about your
17 educational background?

18 A. I have a Bachelor of Science degree in forensic
19 biology and a Master of Science degree also in forensic
20 biology.

21 MR. BUTLER: If it helps, I'll stipulate that
22 she is qualified.

23 MR. KIDD: Thank you. And we move her as an
24 expert in the area of DNA analysis.

25 THE COURT: Any objection?

1 MR. BUTLER: No, ma'am.

2 THE COURT: She will be so qualified.

3 MR. KIDD: Thank you, Your Honor.

4 THE COURT: Thank you.

5 Q. [Mr. Kidd] During your duties at SLED, have you
6 had an opportunity to analyze any evidence under lab
7 number L06-06507?

8 A. Yes.

9 MR. KIDD: May I approach the witness, Your
10 Honor?

11 THE COURT: You may.

12 Q. [Mr. Kidd] I'm going to show you what is marked
13 as SLED item number fourteen and State's Exhibit Number
14 68. See if you recognize that item.

15 A. This is labeled as SLED item number fourteen,
16 and my initials are across the seal.

17 Q. Can you tell the jury when you came into contact
18 with that item?

19 A. I received that item on May 9th of this year.

20 Q. And can you tell who you received it from?

21 A. Selena Kinard.

22 Q. And who is Selena Kinard?

23 A. She is an evidence technician in our log-in
24 department.

25 Q. And when you received it, how was it packaged?

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1 A. All of our evidence comes packaged in a heat-
2 sealed pouch and it's signed and sealed by the
3 investigating officer.

4 Q. And did that take place in this instance?

5 A. Yes.

6 Q. And was the pouch tampered with or opened in any
7 way when you received it?

8 A. It didn't appear to be.

9 Q. And if it had appeared to be, what would you
10 have done?

11 A. I would have contacted the submitting agency.

12 Q. And would you have performed an analysis on it
13 if it had been tampered with?

14 A. No.

15 Q. Did you have the opportunity -- and can you tell
16 the jury what that item is?

17 A. SLED item fourteen was a swab from Gordons gin
18 bottle.

19 Q. And did you come in contact with SLED item
20 twelve?

21 A. No.

22 Q. And can you tell the jury what SLED item twelve
23 is?

24 A. SLED item twelve was a buccal swab from a
25 Leonard Goodwin.

1 Q. And why did you not -- why did you not perform
2 an analysis on that?

3 A. That item was previously analyzed by another
4 analyst.

5 Q. And do you know which analyst that was?

6 A. Jasper Humbert.

7 Q. And so you -- were you -- did you have an
8 opportunity to review his report?

9 A. I created the supplemental report for item
10 fourteen using his standard.

11 Q. So the standard that he developed in item number
12 twelve you used in comparison to item -- to the analysis
13 you did on item fourteen?

14 A. Right.

15 MR. KIDD: Okay. Your Honor, at this time the
16 State would like to move item number -- what was it --
17 68 into evidence.

18 THE COURT: Any objection?

19 MR. BUTLER: What's 68?

20 MR. KIDD: The swabs from the gin bottle.

21 MR. BUTLER: No, no objection.

22 THE COURT: State's 68 into evidence without
23 objection.

24 [Whereupon, State's Exhibit Number 68 is
25 admitted into evidence by the Court]

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1 Q. And so -- and just so we're clear on your
2 testimony: so you performed the DNA analysis on those
3 swabs?

4 A. I performed analysis on item fourteen only.

5 Q. Which is the swab of the gin bottle?

6 A. Correct.

7 Q. Okay. And you compared that to the DNA analysis
8 that had already been performed on item number twelve,
9 which was the buccal swabs from Leonard Goodwin?

10 A. Yes.

11 Q. And can you tell the jury what the results of
12 that analysis were?

13 A. The DNA profile developed from item fourteen
14 matches the DNA profile of Leonard Goodwin.

15 Q. Did you develop a statistical probability of
16 selecting a -- randomly selecting someone that could have
17 that same profile?

18 A. Yes.

19 Q. And could you tell the jury a little bit about
20 that?

21 A. The probability of randomly selecting an
22 unrelated individual having a DNA profile matching this
23 item is approximately one in nine hundred and ninety
24 million.

25 Q. Nine hundred and ninety million, that's a big

1 number. Do you know how many people are in the United
2 States, roughly?

3 A. I believe it's around three hundred million, but
4 I haven't checked that number recently.

5 Q. Okay. So it's -- the probability of randomly
6 selecting someone with that same DNA profile is greater
7 than randomly selecting someone in the entire United
8 States? Is that safe to say?

9 A. I believe so.

10 MR. KIDD: May I approach the court reporter?

11 THE COURT: You may.

12 MR. KIDD: Thank you.

13 [State's Exhibit Number 72 is marked by the
14 court reporter]

15 Q. [Mr. Kidd] I'm going to show you what's been
16 marked -- I'm going to show you what's been marked as
17 State's Exhibit Number 72. Do you recognize that? Or
18 those three pages.

19 A. It looks to be like a copy of my report.

20 Q. And is that the report you created when
21 analyzing these items we've been discussing?

22 A. Yes.

23 Q. And did you sign that report?

24 A. Yes.

25 MR. KIDD: Your Honor, at this time the State

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1 would offer Exhibit Number 72 into evidence.

2 MR. BUTLER: May we approach?

3 THE COURT: You may.

4 [Whereupon, an off-the-record bench conference
5 is held]

6 THE COURT: State's 72 under -- I'm going to
7 take that matter under advisement.

8 MR. KIDD: I have no further questions, Your
9 Honor.

10 THE COURT: Mr. Butler.

11 MR. BUTLER: Good afternoon, ma'am.

12 THE WITNESS: Good afternoon.

13 CROSS-EXAMINATION

14 BY MR. BUTLER:

15 Q. DNA, as you've testified to, can be very
16 powerful evidence when linking a particular piece of
17 evidence to another person; right?

18 A. Correct.

19 Q. It's also called identification evidence? It
20 identifies somebody?

21 A. Correct.

22 Q. It tells you that a person has come into contact
23 with another piece of physical evidence, sometimes to
24 astronomical possibilities; right?

25 A. Right.

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1 Q. Okay. That's really all it tells you; right?

2 A. Right.

3 We develop profiles from evidence and compare
4 that to profiles from known samples.

5 Q. It doesn't tell you how the object got where it
6 got; right?

7 A. Huh-uh

8 Q. It doesn't tell you, most importantly sometimes,
9 how long it's been there; right?

10 A. Right.

11 Q. DNA can endure for very, very, very long periods
12 of time?

13 A. Correct.

14 Q. And you work with lots of different police
15 agencies around the state?

16 A. Correct.

17 Q. SLED is a centralized office in Columbia, but
18 you work with agencies all across South Carolina?

19 A. Right.

20 Q. Have you ever been told -- or are you familiar
21 with the principle of identification, science, technology,
22 investigation -- that you do not process items in a
23 particular individual's house because you would expect
24 that person's fingerprints, DNA, or other evidence to be
25 on the object?

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1 A. We sometimes still process those kind of items.
2 We look at the whole case and decide which items are most
3 probative to that case.

4 Q. Like you did in this case; right?

5 A. I was asked to run the swabs on the gin bottle.
6 I don't know where it came from.

7 MR. BUTLER: All right. Thank you. I have
8 nothing further.

9 MR. KIDD: No further questions.

10 THE COURT: You may step down. Thank you.

11 [Whereupon, the witness is excused and exits the
12 witness stand]

13 THE COURT: Call your next witness.

14 MR. KIDD: The State calls Patti Ruff.

15 [Whereupon, Ms. Ruff comes forward]

16 THE CLERK OF COURT: Put your left hand here and
17 raise your right hand.

18 [Whereupon, Ms. Ruff is duly sworn by the clerk
19 of court as follows: do you swear or affirm that the
20 testimony that you will give the Court and the jury in
21 the trial of this case shall be the truth, the whole
22 truth, and nothing but the truth, so help you God]

23 THE WITNESS: Yes, I do.

24 THE CLERK OF COURT: Please take your seat.

25 [Whereupon, Ms. Ruff takes the witness stand]

1 THE CLERK OF COURT: Ma'am, if you will state
2 your first and last name, spelling your last for the
3 record.

4 THE WITNESS: My name is Patti Ruff. R-U-F-F.

5 MR. KIDD: Good afternoon, Ms. Ruff.

6 THE WITNESS: Good afternoon.

7 MR. KIDD: Thank you for coming here for me
8 today.

9 - - - - -

10 PATTI RUFF,

11 Having Been First Duly Sworn,
12 was Examined and Testified as Follows:

13 DIRECT EXAMINATION

14 BY MR. KIDD:

15 Q. Can you tell the jury where you're employed?

16 A. I am employed with the South Carolina Law
17 Enforcement Division and we're commonly known as SLED.

18 Q. And how long have you been employed there?

19 A. Approximately twenty-four years.

20 Q. Twenty-four years.

21 And can you tell the jury a little bit about
22 what your duties are at SLED?

23 A. Okay. At the time of this case, I was an
24 evidence technician in the evidence processing department.
25 I processed evidence for sixteen years. And currently I

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1 am in the Intelligence Department as the South Carolina
2 Amber alert coordinator and missing persons clearinghouse.

3 Q. And I understand you had an Amber alert today.

4 A. It was a possible Amber alert. The child is
5 safe. The child has been found.

6 Q. That's good.

7 A. About five minutes after the phone call.

8 Q. Under the lab number with this case, L06-06507,
9 did you have the opportunity to come in contact with a
10 piece of evidence regarding this case?

11 A. Yes, sir, I did. Do you want me --

12 Q. I will --

13 MR. KIDD: If I may approach the witness, Your
14 Honor?

15 THE COURT: You may.

16 Q. [Mr. Kidd] I'm going to show you what I believe
17 is item number three on the SLED item, and State's Exhibit
18 Number 60. See if you can recognize those items. And you
19 might have to open the inner bags, actually, because I
20 think -- three bags on the inside. I'm sorry.

21 A. I recognize my initials on this PBR on the
22 evidence.

23 Q. And can you tell the jury what that item is?

24 A. It's a pair of socks.

25 Q. And did you come in possession of those items at

1 some point?

2 A. Yes, sir, I did.

3 Q. Could you tell the jury: when did you first
4 receive those items?

5 A. I received the items July the -- excuse me --
6 June 29th, 2006. I received them from the intake storage.

7 Q. And do you know -- can you tell from your
8 paperwork who would have been the intake person at that
9 point in time?

10 A. Laura Reynolds.

11 Q. Did --

12 A. I'm sorry. It's Brandy Paulson. North
13 Charleston P.D. brought the evidence in.

14 Q. And then who with SLED would have received it
15 from Ms. Paulson?

16 A. It's got Laura -- it would have been Carol
17 Brooks.

18 Q. Carol Brooks. Okay.

19 A. I'm sorry.

20 Q. Thank you. And that's who would have put that
21 on the shelf for you to receive?

22 A. That is correct.

23 Q. And what did -- the packaging that the socks
24 came to you in, do you remember did they appear to be
25 tampered with in any way?

1 A. No, sir.

2 It's against our policy to actually process the
3 evidence if it has been tampered with. And if it has,
4 then we make a note of it.

5 Q. And what did you do with those socks when they
6 came into your possession?

7 A. I processed them for blood.

8 And what I do is if there is a rust-colored
9 stain, we do what we call a presumptive test. It's called
10 phenylethylene -- and it reacts to the enzymes in blood.
11 And it's a color-reaction test.

12 For example, if there is a rust-colored stain on
13 the socks, I would get a sterile cotton swab, drop saline
14 on that, rub the sample, a small sample, and then put a
15 drop of phenylethylene on it. If it turns a bright
16 fuchsia color, that means it's positive for the
17 presumptive test. And when I say presumptive, that means
18 that it's not one hundred percent that it is blood, it's a
19 possibility that it is blood.

20 So I would make a cutting of that and send a
21 sample of that to the DNA department where it would be
22 analyzed for comparison.

23 Q. And you did that in this case?

24 A. Yes, sir, I did. I made three cuttings.

25 Q. You made three cuttings from those socks which

1 you have in front of you?

2 A. That's correct.

3 MR. KIDD: Your Honor, at this time the State
4 would move Exhibit Number 60 into evidence.

5 THE COURT: 60?

6 MR. KIDD: Correct.

7 THE COURT: Any objection?

8 MR. BUTLER: 60 is what?

9 MR. KIDD: The actual socks --

10 MR. BUTLER: No objection.

11 THE COURT: State's 60 into evidence without
12 objection.

13 [Whereupon, State's Exhibit Number 60 is
14 admitted into evidence by the Court]

15 [Whereupon, State's Exhibit Number 71 is marked
16 by the court reporter]

17 MR. KIDD: Court's indulgence for one moment.

18 THE COURT: Yes, sir.

19 MR. KIDD: There we go.

20 Q. [Mr. Kidd] All right. I'm now going to show
21 you what's been marked for identification purposes as
22 State's Exhibit Number 71. I believe it is -- see if you
23 recognize that item.

24 A. I recognize these gold envelopes. It's in my
25 handwriting. I can't -- unless you want me to open it?

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1 Q. You can open it. Do you have any scissors?

2 A. I don't have any.

3 This is not the original container that I --

4 Q. Correct.

5 A. -- put it to.

6 And inside this heat-sealed pouch is another
7 heat-sealed pouch, and this is the one that originated
8 with me. And I do recognize this pouch, and there are my
9 initials and date on this pouch.

10 Q. And what is that date and initials?

11 A. That's the date that I actually created this
12 pouch. When I say it's a sterile pouch, I made these
13 cuttings. And the chain of custody basically starts with
14 me, since I created these cuttings. And I sealed it and
15 it's a date that I sealed it, which is 7/7/09.

16 Q. And how did you decide where to make the
17 cuttings from the socks from?

18 A. Usually, I try to do like a variety of samples.
19 For example, I have a diagram that I did. And the 3.1
20 cutting was a stain that was near the ankle area. Of
21 course, you can't tell left and right. But it was near
22 the ankle area of one sock. The 3.2 was a cutting near
23 the toe area. And 3.3 was a cutting from the toe area of
24 the other foot. I made a note that both socks were very
25 soiled with dirt stains and debris.

1 Q. Where were the socks mostly soiled with dirt?

2 A. On the bottom.

3 Q. On like the sole? Would that --

4 A. Yes. Uh-huh.

5 Q. -- be accurate?

6 A. Yes.

7 Q. And you said there was a rough -- like a --

8 where on the sock did you take cutting 3.1?

9 A. 3.1 was taken from the ankle area.

10 Q. And just for the jury's clarification, why do
11 you label the cutting as 3.1?

12 A. Well, the item that was submitted was given the
13 item number of three. So if we do collect any evidence
14 off of that, we do it as a sub-item. So the first cutting
15 would be 3.1, second cutting or swab, or whatever the
16 situation might be, would be 3.2. And that's just routine
17 for us to do that.

18 Q. And so in this case you took three cuttings and
19 so it would be 3.1, 3.2 and 3.3?

20 A. That's correct.

21 Q. And can you tell the jury once again where each
22 of those cuttings came from?

23 A. 3.1 was from the ankle area of a sock. And of
24 the same sock, 3.2 was from the toe area. And 3.3 was
25 from the toe area of the other sock.

1 Q. And did you do the phenylethylene test on the
2 areas of those cuttings?

3 A. I did. Yes.

4 I don't actually do it on the sample that I send
5 but I did it around the area that I tested, yes.

6 Q. So wherever you had a positive phenylethylene
7 test, that's kind of where you kind of decided to make
8 your cuttings?

9 A. That's correct.

10 Q. And once you made your cuttings, what did you do
11 with them?

12 A. I gave them to David McClure, let's see, on
13 7/12/2006.

14 Q. Did you put them -- seal them in an envelope or
15 anything first or --

16 A. Yes.

17 I would create a gold envelope. And I did --
18 this is a representative sample. I made a note that --
19 and when we put a note that it's a representative sample
20 it means that we didn't collect all of the stains, we just
21 got a sample of each area, possibly where we saw -- there
22 was more stains possibly on the sock, but we just got a
23 representative sample.

24 Q. So you just took a representative sample --

25 A. Three different areas.

1 Q. -- from three different stains --

2 A. Right.

3 Q. -- that were on the socks?

4 A. Right.

5 Q. And then so -- and then you placed them in those
6 envelopes, sealed it up --

7 A. Right. Yes, sir.

8 Q. -- and transferred it to David McClure?

9 A. That is correct.

10 Q. And then what did you do with the socks
11 themselves?

12 A. The socks were put -- given to Karenda Williams
13 on 7/7/2006.

14 Q. Okay. And when did you give the cuttings to
15 Mr. McClure?

16 A. On 7/12/2006.

17 Q. And did they -- any of them appear to be
18 tampered with, or anything like that, at that point?

19 A. No, sir, they did not.

20 MR. KIDD: Court's indulgence.

21 THE COURT: Yes, sir.

22 [Whereupon, Mr. Kidd and Mr. Young confer]

23 MR. KIDD: No further questions, Judge.

24 THE COURT: Mr. Butler?

25 MR. BUTLER: Good afternoon, Ms. Ruff.

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1 THE WITNESS: Good afternoon.

2 CROSS-EXAMINATION

3 BY MR. BUTLER:

4 Q. All of your involvement in this case was in
5 2006?

6 A. Yes, sir.

7 Q. Okay. And I think I only have one question.

8 If I understood you correctly, you only cut --
9 take cuttings from the socks in an area that's tested
10 presumptively positive for blood?

11 A. Yes.

12 Like if there's one big stain, I may test part
13 of that stain for the presumptive test and then I'll take
14 a sample out of that large stain. Or there's situations
15 where we may take the whole stain.

16 Q. In this case the whole -- in this case you
17 didn't take the whole stain but you only took portions of
18 the sock that were stained?

19 A. Yes, they were stained, but I didn't take all of
20 the stain.

21 Q. Right. I've got it. And I don't --

22 A. Yeah. I know.

23 Q. -- I'm not trying to confuse you.

24 A. I know.

25 Q. I'm not trying to confuse you.

1 You did not take samples where there were --
2 where it was just either white or not stained or not
3 tested presumptively for blood? You did not send that?

4 A. That is correct.

5 MR. BUTLER: That's all I have. Thank you.

6 THE COURT: Redirect?

7 MR. KIDD: No further questions, Your Honor.

8 THE COURT: Ms. Ruff, you may step down. Thank
9 you.

10 THE WITNESS: Thank you.

11 [Whereupon, the witness is excused and exits the
12 witness stand]

13 THE COURT: All right. Counsel approach for
14 scheduling.

15 [Whereupon, an off-the-record bench conference
16 is held]

17 THE COURT: All right. Ladies and gentlemen,
18 there are some matters that I need to take up outside
19 of your presence. As such, we are done for the day.

20 Ladies and gentlemen, please remember my
21 admonition. Please do not read, watch, listen to, any
22 news accounts regarding this case should there be any.
23 Do not do any independent research. Do not discuss
24 this case with your fellow jurors or anyone, and that
25 includes all methods of blogging or anything of that

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1 nature.

2 Ladies and gentlemen, please be back in your
3 jury room at 9:30. I understand -- and at this time
4 the State has one additional witness, and we will
5 proceed accordingly. So at that time -- I just want
6 you to understand. There was some question that we may
7 go into Monday, and at this time it does not seem that
8 we will need to continue on to Monday.

9 Ladies and gentlemen, please have a wonderful
10 afternoon. Enjoy your afternoon off, and I will see
11 you back at 9:30. Thank you.

12 Please rise for the jury.

13 [Whereupon, the jury exits the courtroom at
14 1:37 p.m.]

15 THE COURT: Thank you. Be seated.

16 As to State's 72, the citation again? I'm
17 sorry. It was State v. Saltz?

18 MR. BUTLER: Saltz. S-A-L-T-Z. And I wrote it
19 down quickly and then I've moved on. But 551 S.E.2d
20 240, I think --

21 MR. KIDD: I'll withdraw it, Your Honor. I
22 don't think it's that pertinent. I'll withdraw my -- I
23 won't try to put it in.

24 THE COURT: All right. I was going to allow you
25 time, Mr. Kidd, to review that case and we'll address

1 that first thing in the morning.

2 MR. KIDD: I'm not worried about it.

3 THE COURT: All right. Thank you.

4 MR. KIDD: Thank you.

5 THE COURT: So you are not requesting State's
6 72; is that correct?

7 MR. KIDD: I'm not going to enter it. Correct.

8 THE COURT: All right. Thank you.

9 - - - - -

10 DEFENDANT'S RIGHTS

11 THE COURT: Mr. Goodwin, I am now going to
12 advise you of certain of your rights.

13 Please swear Mr. Goodwin.

14 THE CLERK OF COURT: Please raise your right
15 hand.

16 [Whereupon, Mr. Goodwin is duly sworn by the
17 clerk of court as follows: do you swear or affirm that
18 your testimony will be the truth, the whole truth, and
19 nothing but the truth, so help you God]

20 THE WITNESS: Yes, sir.

21 THE COURT: All right. Mr. Goodwin, what we're
22 going to do right now is this is an appropriate time --
23 I'm going to advise you of certain of your rights. My
24 final question to you will be do you wish to testify
25 but I'm not going to ask you that until after the State

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1 has rested, but because we are breaking a little early
2 today, this will give you an opportunity to meet with
3 your attorneys to go over what I advise you.

4 Do you understand, Mr. Goodwin?

5 MR. GOODWIN: Yes, ma'am.

6 THE COURT: If at any time you do not understand
7 what I am saying to you, if you will please let the
8 Court know and I will rephrase my question so that you
9 understand exactly what I'm stating to you.

10 MR. GOODWIN: Yes, ma'am.

11 THE COURT: All right. At this time I'm going
12 to explain to you certain of your rights. We've
13 reached the stage of the trial -- and we will have
14 reached the stage of the trial, when I ask you that
15 final question -- where you may present your defense.
16 You have the right to claim the protections given to
17 you by the fifth amendment to the constitution of the
18 United States. This amendment states in part that no
19 person shall be compelled in any criminal case to be a
20 witness against himself. This means that you cannot be
21 required to testify in this case. You have the right
22 to testify on your own behalf; however, no one can make
23 you testify. This is a personal right and no one can
24 waive this right except for you.

25 If you decide to testify, you will be subject to

1 the same rules that govern other witnesses and you may
2 be examined and cross-examined on any relevant issue in
3 this case. In addition, if you have any convictions
4 involving dishonesty or false statement or for crimes
5 punishable by imprisonment for more than one year and
6 the Court determines that the probative value of
7 admitting this evidence outweighs its prejudicial
8 effect to you, the solicitor will be able to introduce
9 your record to attack your credibility.

10 Mr. Kidd, we're not going to take that matter up
11 until Mr. Goodwin -- should he decide to testify. But
12 are there criminal convictions?

13 MR. KIDD: There is an ABWIK conviction in 1987.

14 THE COURT: All right. Thank you.

15 If you decide to testify, this decision on your
16 part must be freely, voluntarily, and intelligently
17 made with knowledge of the protections given to you by
18 the fifth amendment and the consequences of your
19 decision to testify.

20 If you decide not to testify, I will instruct
21 the jurors that they cannot give the fact that you did
22 not testify any consideration whatsoever and that there
23 is to be absolutely no prejudice to you because you did
24 not testify. It is left entirely up to you whether or
25 not you testify. You may have the opportunity to speak

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1 with your attorneys, your friends, your family members,
2 or anyone else, but the decision is left entirely up to
3 you.

4 Do you understand what I have explained to you?

5 MR. GOODWIN: Yes, ma'am.

6 THE COURT: Do you have any questions about what
7 I have explained to you?

8 MR. GOODWIN: No, ma'am.

9 THE COURT: Mr. Goodwin, you will have an
10 opportunity over the evening hour -- and we're going to
11 resume tomorrow at 9:30 a.m. so you'll have this
12 opportunity to meet with your attorneys, and anyone
13 else that you have the ability to meet with, to discuss
14 your decision.

15 Do you understand, sir?

16 MR. GOODWIN: Yes, ma'am.

17 THE COURT: All right. Thank you, Mr. Goodwin.
18 Y'all may be seated.

19 Anything before we break for the afternoon?

20 MR. KIDD: Nothing from the State, Your Honor.

21 MS. WINSLOW: Nothing from the defense.

22 THE COURT: And are there -- are you requesting
23 any special charges, Mr. Kidd?

24 MR. KIDD: Not unless you're inclined to give me
25 an apply -- a flight as evidence of guilt charge.

1 THE COURT: And --

2 MR. BUTLER: I would need to look into flight as
3 evidence of guilt because I think we oppose that.

4 But we would be asking for a mere suspicion
5 charge. And I think we've all gotten where we are
6 earlier than we expected so I apologize that I don't
7 have that for you. But a mere suspicion charge, I'm
8 paraphrasing: evidence that does not rise to a level
9 beyond a mere suspicion is not suspicion to convict or
10 does not satisfy the standard of beyond a reasonable
11 doubt, something to that effect. I'll find one
12 overnight. That's the only one I can think of.

13 THE COURT: All right. And no lesser included?

14 MS. WINSLOW: No, Your Honor.

15 THE COURT: All right. Just want to clarify for
16 the record. Thank you.

17 All right. We're at ease.

18 THE COURT: Mr. Butler, any involuntary
19 intoxication? Mr. Kidd, voluntary intoxication?

20 MR. BUTLER: No, ma'am.

21 THE COURT: Okay. Thank you. We're at ease.

22 9:30.

23 [JURY TRIAL ADJOURNS AT 1:47 P.M.]

24

25

THE STATE OF SOUTH CAROLINA)
)
VS.)
)
LEONARD GOODWIN,)
)
)
DEFENDANT.)
)

VOLUME 4 OF 4

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Friday, June 3rd, 2011, Commencing at 9:45 a.m.

SUSAN "MIA" PERRON, CVR-CM
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PROCEEDINGS

1
2 THE COURT: All right. I had an in-chambers
3 conference with all four attorneys. It was brought to
4 my attention yesterday that juror 179 had made a police
5 report to North Charleston Police Department indicating
6 that she believed that she was being followed by a
7 white truck, after she left court, on the interstate.
8 No report was made and the officer, according to
9 information given to the Court, believed that it was
10 road rage.

11 I am going to bring juror 179 in and inquire as
12 to whether or not that's going to affect her ability to
13 be fair and impartial.

14 We were attempting to get a copy of the report
15 so that I would have more information. There is no
16 report made.

17 And juror 179 was told not to discuss this
18 matter with any of the other jurors.

19 Let's bring juror 179 in.

20 [Off the record momentarily]

21 [Whereupon, Juror Number 179 enters the
22 courtroom]

23 THE COURT: I'm going to need to place you under
24 oath. I just have a few questions for you. Do you
25 understand?

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1 THE JUROR: Yes, ma'am.

2 THE COURT: Thank you.

3 THE CLERK OF COURT: Place your left hand here
4 and raise your right hand.

5 [Whereupon, Juror Number 179 is duly sworn by
6 the clerk of court as follows: do you swear or affirm
7 that your testimony shall be the truth, the whole
8 truth, and nothing but the truth, so help you God]

9 JUROR NUMBER 179: I do.

10 THE COURT: And, ma'am, I'm just going to refer
11 to you by your juror number.

12 You had indicated and told one of the bailiffs
13 yesterday, and the bailiff told the Court and a deputy,
14 that you had been followed home the prior evening; is
15 that correct?

16 JUROR NUMBER 179: That's right.

17 THE COURT: And you made a report to North
18 Charleston Police Department; is that correct?

19 JUROR NUMBER 179: That's correct.

20 THE COURT: And based upon that, do you feel
21 that it was related to this case in any way?

22 JUROR NUMBER 179: No, ma'am.

23 THE COURT: Is there anything about that that
24 would affect your ability to be fair and impartial in
25 this case?

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1 JUROR NUMBER 179: No, ma'am.

2 THE COURT: Have you discussed this incident
3 with any member -- other members of the jury?

4 JUROR NUMBER 179: No, ma'am.

5 THE COURT: All right. Thank you.

6 Any additional questions, Mr. Kidd?

7 MR. KIDD: No, ma'am.

8 THE COURT: Ms. Winslow?

9 MS. WINSLOW: No, Your Honor.

10 THE COURT: All right. Thank you.

11 Thank you. If you will return to your jury room
12 and we'll have you all back in the courtroom in just a
13 few moments. Thank you.

14 MR. KIDD: Your Honor, before she is excused --

15 THE COURT: Hold on one second.

16 MR. KIDD: -- are you going to instruct her not
17 to discuss it with the rest of the jurors?

18 THE COURT: She has been instructed not to
19 discuss it.

20 And, again, just to remind you on the record,
21 you may not discuss this incident with any of the other
22 jurors until this case is over.

23 JUROR NUMBER 179: Yes, ma'am.

24 THE COURT: Thank you.

25 MR. KIDD: Thank you, Your Honor.

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1 [Whereupon, juror number 179 is excused and
2 exits the courtroom]

3 THE COURT: Based upon the Court's questioning
4 of juror 179, anything additional, Mr. Kidd?

5 MR. KIDD: No, Your Honor.

6 THE COURT: Ms. Winslow?

7 MS. WINSLOW: No, Your Honor.

8 THE COURT: Any objection to her remaining on
9 the jury?

10 MR. KIDD: No, ma'am.

11 MS. WINSLOW: No, Your Honor.

12 THE COURT: All right. Thank you.

13 Anything before we begin? You have one
14 remaining witness; is that correct?

15 MR. KIDD: That's correct, Your Honor.

16 Nothing further from the State.

17 THE COURT: All right.

18 MS. WINSLOW: Nothing from the defense.

19 THE COURT: All right. And we're ready to
20 proceed?

21 MR. KIDD: Yes, ma'am.

22 THE COURT: All right. Let's bring in the jury.

23 It will be just a few moments. I'm sure that
24 that last juror is going to have to get settled, so
25 they'll stop at the door, so if y'all want to have a

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1 seat.

2 Please take this opportunity to check and make
3 sure your cell phones are in the off position.

4 [Off the record momentarily]

5 THE COURT: Please rise.

6 [Whereupon, the jury enters the courtroom at
7 9:50 a.m.]

8 THE BAILIFF: Your Honor, the jurors are all
9 seated.

10 THE COURT: Thank you. Please be seated.

11 Mr. Kidd, please call your next witness.

12 MR. KIDD: The State calls David McClure.

13 [Whereupon, Mr. McClure comes forward]

14 THE CLERK OF COURT: Put your left hand here and
15 raise your right hand.

16 [Whereupon, Mr. McClure is duly sworn by the
17 clerk of court as follows: do you swear or affirm that
18 the testimony you are going to give the Court and the
19 jury in the trial of this case shall be the truth, the
20 whole truth, and nothing but the truth, so help you
21 God]

22 THE WITNESS: Yes, sir.

23 THE CLERK OF COURT: Please take your seat.

24 [Whereupon, Mr. McClure takes the witness stand]

25 THE CLERK OF COURT: Sir, if you would state

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1 your first and last name, spelling your last for the
2 record.

3 THE WITNESS: David McClure. M-C-C-L-U-R-E.

4 THE COURT: Mr. Kidd.

5 MR. KIDD: Thank you, Your Honor.

6 Good morning, Mr. McClure.

7 - - - - -

8 DAVID MCCLURE,

9 Having Been First Duly Sworn,

10 was Examined and Testified as Follows:

11 DIRECT EXAMINATION

12 BY MR. KIDD:

13 Q. Could you tell the jury where you are employed?

14 A. With the South Carolina Law Enforcement
15 Division.

16 Q. And how long have you been employed with SLED?

17 A. Twenty-one years in March.

18 Q. Tell the jury what your duties are with SLED.

19 A. I'm currently the supervisor of the DNA database
20 unit.

21 Q. Could you tell them a little bit about your
22 educational background?

23 A. Sure.

24 I have a Bachelor of Science degree in
25 microbiology from Clemson University. I've also attended

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1 graduate-level classes, at the University of South
2 Carolina, in genetics. I attended the FBI's DNA Analysis
3 Methods school, which is accredited through the University
4 of Virginia. I also spent fifteen weeks at the FBI's
5 research facility conducting research in the field of
6 forensic DNA analysis.

7 Q. Have you testified in court before?

8 A. Yes, I have.

9 Q. About how many times?

10 A. Over fifty.

11 Q. And those times have you been certified as an
12 expert?

13 A. Yes, sir, I have.

14 Q. In what field?

15 A. In DNA analysis.

16 Q. The DNA -- at SLED, your DNA department, does it
17 have any further certification?

18 A. The DNA department at SLED is ASLAD accredited.

19 Q. And what does that mean?

20 A. We have to go through audits every year. We
21 have to comply with certain requirements, certain
22 guidelines, in order to be ASLAD accredited.

23 Q. During your tenure at SLED, about how many DNA
24 cases have you had?

25 A. Over 1,000.

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1 MR. KIDD: Your Honor, at this time we would
2 offer David McClure as an expert in DNA analysis.

3 MR. BUTLER: No objection.

4 THE COURT: This witness will be qualified as
5 such.

6 Q. [Mr. Kidd] In general terms can you tell the
7 jury a little bit about what forensic DNA analysis
8 entails?

9 A. Sure. DNA stands for deoxyribonucleic acid.
10 It's the genetic material found with the nuclear cells of
11 organisms. It's basically what makes us what we are. It
12 codes for our development from the time we're conceived,
13 throughout our entire life.

14 Your DNA is inherited from your parents; that
15 is, you get half your DNA from your mother and half your
16 DNA from your father.

17 Everyone's DNA is unique except for identical
18 twins, who have the same DNA. And this is apparent just
19 by looking around the courtroom. You can see that
20 everybody here is a unique individual.

21 Now, about ninety-eight percent of your DNA is
22 the same, and that's what makes us humans. But that two
23 percent that's different, we take a look at that in the
24 forensic community to determine whether or not somebody
25 may have left something at a crime scene.

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1 What we do in forensic DNA analysis is we will
2 take biological material left at a crime scene, or maybe
3 taken away from that crime scene, that may be of probative
4 value and develop a DNA profile from that. We will then
5 develop a DNA profile of anybody who may be involved in
6 that crime to see whether or not they are the source of
7 that evidentiary material.

8 Q. And with regard to this case under your lab
9 number L06-06507, did you receive any items submitted by
10 North Charleston for analysis?

11 A. Yes, sir, I did.

12 MR. KIDD: If I may approach the witness, Your
13 Honor?

14 THE COURT: You may.

15 Q. [Mr. Kidd] I'm going to first show you what's
16 been marked as SLED item number one. It's State's Exhibit
17 Number 58 for identification purposes. Do you recognize
18 that item?

19 A. Yes, sir.

20 SLED item number one is a swab from an exterior
21 back door.

22 Q. Can you tell the jury when you first came in
23 contact with that item?

24 A. I received that item on July 12th, 2006.

25 Q. And can you tell where you gained possession of

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1 that item from?

2 A. I picked that item up out of our DNA
3 refrigerator, which was on the fourth floor.

4 Q. And can you tell who placed that item there?

5 A. The records indicate that Sheree Brown placed
6 that item in that refrigerator.

7 Q. When it came to you, was it packaged?

8 A. Yes, sir. It was packaged and sealed.

9 Q. And was the seal broken or tampered with in any
10 way?

11 A. No, sir, it was not.

12 Q. And if it had been, what would you have done?

13 A. If it had been, then we would have investigated
14 why the package was not in a sealed condition.

15 Q. And did you do that in this case?

16 A. Since it was sealed, we did not need to do that.

17 MR. KIDD: Your Honor, at this time the State
18 would move State's Exhibit Number 1 into evidence.

19 MR. BUTLER: No objection.

20 THE COURT: State's --

21 MR. KIDD: I mean, excuse me. That's SLED
22 exhibit number one. I apologize, Your Honor. It's
23 State's Exhibit Number 58.

24 THE COURT: State's 58 -- it's already been
25 moved into evidence.

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1 MR. KIDD: I apologize, Your Honor.

2 Q. [Mr. Kidd] Next I'm going to show you what's
3 been marked as SLED exhibit number two, State's Exhibit
4 Number 64. It's kind of -- you might not want to handle
5 it too much. Do you recognize that item?

6 A. Yes, sir, I do.

7 This is a bone marrow from Eric Robinson.

8 Q. And could you tell the jury when you came in
9 contact with that item?

10 A. I received that item from our DNA refrigerator
11 on the fourth floor, as well, on June 21st of 2006.

12 Q. And can you tell who put that item in the
13 refrigerator?

14 A. Our records indicate that Sheree Brown placed
15 that item in the refrigerator.

16 Q. And did it come in a sealed condition?

17 A. Yes, sir, it did.

18 Q. And did it appear to have been tampered with in
19 any way?

20 A. No, sir, it did not.

21 Q. Do you have any notes in your file that indicate
22 that it would have been tampered with?

23 A. No, sir, I do not.

24 Q. And I believe that was State's Exhibit Number
25 64; is that correct?

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1 A. [No response]

2 MR. KIDD: Your Honor, at this time the State
3 would introduce State's Exhibit Number 64 into
4 evidence.

5 MR. BUTLER: No objection.

6 THE COURT: State's 64 into evidence without
7 objection.

8 [Whereupon, State's Exhibit Number 64 is
9 admitted into evidence by the Court]

10 Q. [Mr. Kidd] And now I'm going to show you what's
11 been marked as State's Exhibit Number 71. Take a look at
12 that item, please. Or those items. Excuse me.

13 Do you recognize those items?

14 A. Yes, sir. These are cuttings from a sock,
15 SLED's item 3.1, 3.2 and 3.3.

16 Q. And did you come into possession of those items?

17 A. Yes, sir, on July 12th, 2006, from the DNA
18 refrigerator on the fourth floor.

19 Q. Can you tell who put those items in the DNA
20 refrigerator?

21 A. Our records indicate that Patti Ruff put those
22 items in the refrigerator.

23 Q. And were they -- how were they packaged?

24 A. They were packaged, again, in a sealed
25 condition.

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1 Q. Any signs of tampering?

2 A. No, sir, there was not.

3 MR. KIDD: At this time, Your Honor, the State
4 would offer State's Exhibit Number 71 into evidence.

5 MR. BUTLER: No objection.

6 THE COURT: State's 71 into evidence without
7 objection.

8 [Whereupon, State's Exhibit Number 71 is
9 admitted into evidence by the Court]

10 Q. [Mr. Kidd] And finally I'm going to show you
11 what's been marked -- which is SLED item number ten,
12 State's Exhibit Number 66. Do you recognize that item?

13 A. Yes, sir.

14 SLED item number ten were fingernail clippings
15 from Eric Robinson.

16 Q. And did you come into possession of that item?

17 A. Yes, sir, on July 12th, 2006, from the DNA
18 refrigerator on the fourth floor. And they were placed
19 there by Sheree Brown.

20 Q. And were they in a sealed condition?

21 A. Yes, sir, they were.

22 Q. Any signs of tampering with them?

23 A. No, sir, there was not.

24 Q. All right. Now, with those four different
25 items, can you tell the jury what you did?

1 A. The first item I received was the bone marrow
2 from Eric Robinson. I extracted the DNA from that bone
3 marrow and developed a DNA profile.

4 The other items, items one, 3.1, 3.2, 3.3 and
5 item ten, I extracted the DNA from those items and certain
6 ones of those items did give me a DNA profile and certain
7 items did not.

8 Q. I'm sorry. I have to stop you one second.

9 MR. KIDD: I don't think I moved State's Exhibit
10 Number 66 into evidence. I would like to do so at this
11 time.

12 MR. BUTLER: No objection.

13 THE COURT: State's 66 into evidence without
14 objection.

15 [Whereupon, State's Exhibit Number 66 is
16 admitted into evidence by the Court]

17 Q. [Mr. Kidd] I apologize. You can continue
18 with --

19 A. From the DNA profile that was developed from
20 item number two, which was the bone marrow from Eric
21 Robinson, the DNA profile from that item did match the DNA
22 profile that was developed from item one, which was the
23 swabs marked exterior back door, and also item 3.1, which
24 was one of the cuttings from the socks.

25 Q. So the bone marrow would have been the standard

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1 you were referring to earlier in your explanation of
2 forensic DNA?

3 A. That would be correct, the standard from Eric
4 Robinson.

5 Q. And you compared that standard to the cuttings
6 from the socks or a cutting, 3.1?

7 A. That is correct.

8 Q. And also from the swab which indicates the swab
9 from the back door?

10 A. That is correct.

11 Q. And what were the results of that comparison?

12 A. The DNA profile from item two, which was Eric
13 Robinson, matched the DNA profile developed from that pair
14 of socks, the cutting from that pair of socks, and item
15 one, which was the swab marked exterior back door.

16 Q. Did you develop a statistical probability in
17 this case?

18 A. Yes, sir, I did.

19 The probability of selecting an unrelated
20 individual at random from the population having a profile
21 that would have matched these evidence items is
22 approximately one in 2.6 quadrillion.

23 Q. Quadrillion is a big number?

24 A. Yes, sir, it is.

25 Q. Bigger than a million?

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1 A. Yes, sir.

2 Q. Bigger than a billion?

3 A. Yes, sir.

4 MR. KIDD: The Court's indulgence.

5 THE COURT: Yes, sir.

6 [Whereupon, Mr. Kidd and Mr. Young confer]

7 MR. KIDD: No further questions, Your Honor.

8 THE COURT: Mr. Butler?

9 MR. BUTLER: Good morning, Mr. McClure. How are
10 you?

11 THE WITNESS: Good morning. Fine.

12 CROSS-EXAMINATION

13 BY MR. BUTLER:

14 Q. Are you familiar with the Baze [phonetic]
15 theorem?

16 A. Yes, sir.

17 Q. And I want to talk to you a little bit about the
18 algorithm SLED uses in its genetic data base and it's
19 compliance of the Baze [phonetic] theorem for the next
20 couple of hours. Are you comfortable with that? I have
21 no idea what that means.

22 DNA can tell you a lot about who the donor was
23 of the sample; right?

24 A. Yes, sir, that is correct.

25 Q. Okay. In this case you would have to find life

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1 on another plant to find somebody with that same profile?

2 A. The probability of somebody having that same
3 profile is quite rare.

4 Q. But it doesn't tell you when or for how long,
5 under what circumstances, the sample made it to the
6 substance -- the sample made it to the surface from which
7 it was taken?

8 A. No, sir, it does not.

9 Q. It doesn't tell us anything about time?

10 A. No, sir, it does not.

11 Q. It can't tell you when the blood on the back of
12 the door got there?

13 A. That is correct. It does not.

14 Q. Or how long it's been there?

15 A. No, sir.

16 Q. And DNA endures through time?

17 A. Yes, sir, it does.

18 Q. And the method of collection and analysis is
19 very sensitive and sophisticated?

20 A. Yes, sir, it is.

21 Q. Very small, subtle, microscopic particles can
22 yield a lot of information?

23 A. That is correct.

24 Q. One interpretation, the one I want to talk to
25 you mostly about, 3.1. You had -- let's do it this way.

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1 One interpretation of your results, 3.1, the cutting from
2 the sock: one interpretation is that Eric Robinson's
3 blood came into contact with a sock owned by someone other
4 than Eric Robinson? That's one interpretation; correct?

5 A. An interpretation of the results?

6 Q. The results.

7 A. No. The stain that was on that sock did belong
8 to Eric Robinson.

9 Q. Right. The stain. Okay. But that doesn't mean
10 that the -- the sock could have belonged to somebody else?

11 A. That is a possibility.

12 Q. Okay. Another interpretation is that the sock
13 was Eric Robinson's sock?

14 A. That is a possibility. I have no idea whose
15 sock -- who the sock belonged to.

16 Q. And you can -- I'm going to ask you this and
17 maybe you'll disagree with me. One interpretation is that
18 it's someone else's sock and that Eric Robinson's DNA is
19 on the sock but did not necessarily come from the blood.
20 Do you agree with me or disagree with me on that?

21 A. That could be a possibility but that stain --
22 blood was indicated on that stain and then the profile
23 developed from that stain did match Eric Robinson.

24 Q. Let's try and see if we can break this down
25 some. When you get a genetic profile, DNA, from a sample,

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1 the results themselves don't tell you whether it came from
2 blood; right?

3 A. That is correct.

4 Q. Or semen; right?

5 A. It depends on the stain.

6 Q. Or epithelial skin cells?

7 A. That would be correct.

8 Q. DNA is found in bodily fluids for, one, semen
9 and blood; right?

10 A. DNA is found in any nucleated cells: semen,
11 blood, skin.

12 Q. And it can be found in saliva and sweat because
13 those liquid substances can contain epithelial or skin
14 cells?

15 A. That is correct.

16 Q. Okay. And the testing that you do in the
17 laboratory, when you get the results they don't
18 distinguish DNA from blood or DNA from skin. DNA is just
19 DNA?

20 A. That would be correct.

21 Q. Okay. So you could have a sock that has no
22 blood on it, no semen on it, but could have DNA on it from
23 the person who wore the sock?

24 A. That would be correct. And you would usually
25 find that DNA on the inside of the sock.

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1 Q. Because you had two other samples that were
2 cuttings from the socks that had tested presumptively
3 positive for blood and you got no DNA from those?

4 A. One of those items we did detect DNA but not
5 enough to give us a profile, and the other we detected no
6 DNA at all.

7 Q. Okay. So either the presumptive test was what
8 we call a false positive and there was no blood -- that's
9 one interpretation; is that right?

10 A. That could be a possibility.

11 There are several things in the environment that
12 would give you a false positive for a presumptive test for
13 blood.

14 Q. And the other interpretation is that either by
15 virtue of the testing, or for some other reason, you
16 weren't able to get DNA from that sample?

17 A. There was not DNA there, it may be degraded, or
18 it may have just been absent.

19 Q. And you found nobody else's DNA, identified or
20 unidentified, in the cuttings from the socks that you
21 analyzed, specifically 3.1? That's only Eric Robinson's
22 DNA?

23 A. That is correct.

24 Q. Okay. And it wouldn't be uncommon for you to
25 get a mixture in some circumstances; correct?

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1 A. In some circumstances you do get mixtures, such
2 as a vaginal swab that may have epithelial cells from a
3 victim and also the semen from a potential suspect.

4 Q. Well, in the same way that a sock with no blood
5 can contain the person who wore the socks DNA --

6 Right? You agree with that?

7 A. That's a possibility, yes.

8 Q. -- a sample from a cutting from a sock could
9 contain DNA from the person who wore the sock and if
10 that's someone different, a different person's DNA who
11 left the sample or the stain; correct?

12 A. That is a possibility.

13 Q. But that is not what you had here. You had only
14 Eric Robinson's DNA on the sample?

15 A. That is correct.

16 Q. And you weren't given any cuttings from the
17 socks that did not have stains; right?

18 A. No, I was not.

19 Q. So you don't have anything to compare it to.
20 You don't have the stained sample to compare to an
21 unstained cutting from the sock?

22 A. That is correct.

23 Q. All right. And because of that, it's possible
24 that the DNA that you got from 3.1 would have been on the
25 sock whether there was a stain on it or not?

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1 A. That is a possibility.

2 Q. And the bottom line is the only person's DNA
3 that you took from the sock was Eric Robinson's and nobody
4 else's?

5 A. That is correct.

6 Q. Which is consistent with that sock being Eric
7 Robinson's sock?

8 A. Again, I have no clue where the sock came from
9 or who the sock belonged to.

10 MR. BUTLER: Beg the Court's indulgence.

11 THE COURT: Yes, sir.

12 [Whereupon, Mr. Butler and Ms. Winslow confer]

13 MR. BUTLER: That's all I have. Thank you.

14 MR. KIDD: Just very briefly.

15 REDIRECT EXAMINATION

16 BY MR. KIDD:

17 Q. When you received -- when you receive like a
18 sock cutting, okay, when you received item 3.1, what do
19 you use to extract a DNA sample from that cutting?

20 A. We use liquid to extract that DNA sample from
21 that cutting. A buffer.

22 Q. How do you -- do you soak it in a liquid, do you
23 use a swab to remove it?

24 A. No. We take a cutting from that sock and we put
25 it in a tube of the buffer to dilute off the cells that

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1 are there.

2 Q. So does it come off of both sides of the cutting
3 or just one side or --

4 A. It would come from both sides.

5 Q. Both sides.

6 And this is only from the blood-stained section
7 of the sock which the cutting came from?

8 A. That would be correct.

9 Q. And that section tested presumptive for blood;
10 is that correct?

11 A. That is correct.

12 MR. KIDD: No further questions.

13 THE COURT: You may step down. Thank you.

14 THE WITNESS: Thank you.

15 [Whereupon, the witness is excused and exits the
16 witness stand]

17 THE COURT: Call your next witness.

18 MR. KIDD: The State rests, Your Honor.

19 THE COURT: Ladies and gentlemen, that signifies
20 to the Court there's a matter of law that I must take
21 up outside of your presence. You have heard all of the
22 testimony that will be presented by the State and
23 received into evidence all of the exhibits that are a
24 part of the record. Ladies and gentlemen, the exhibits
25 that are a part of the record in this case will go back

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1 with you in your jury deliberation room at that time.

2 Ladies and gentlemen, I ask that you not begin
3 your deliberations or discuss this case amongst
4 yourselves. There's some issues that I need to take up
5 outside of your presence. We'll receive you back in
6 the courtroom momentarily.

7 Please rise for the jury.

8 [Whereupon, the jury enters the courtroom at
9 10:10 a.m.]

10 THE COURT: Thank you. Please be seated.

11 All right. Mr. Kidd, I'll give you an
12 opportunity just to make sure that all of the exhibits
13 that you think have been admitted are actually
14 admitted, but we'll go ahead.

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1 MOTION FOR A DIRECTED VERDICT

2 THE COURT: Any motions or matters --

3 MR. BUTLER: Yes.

4 THE COURT: -- Mr. Butler?

5 MR. BUTLER: Yes, Your Honor.

6 At this time the defense would move for a
7 directed verdict. I believe it's criminal rule 19, if
8 I'm not mistaken. I think it's criminal rule 19.

9 But I would also rely on a case from our Supreme
10 Court, The State v. Bostick, which was from April of
11 this year, opinion number 26961, and the line of cases
12 dealing with the prosecution relying largely on
13 circumstantial evidence that are detailed in that
14 opinion, starting with State vs. Schrock --

15 Beg the Court's indulgence.

16 [Whereupon, Mr. Butler reviews documents]

17 THE COURT: Yes, sir.

18 MR. BUTLER: -- 322 S.E.2d 450, and State vs.
19 Arnold, 605 S.E.2d 529.

20 THE COURT: Mr. Kidd?

21 MR. KIDD: Your Honor, I just think when
22 reviewing the evidence in the light most favorable to
23 the State is the appropriate standard for a directed
24 verdict motion.

25 There's evidence obviously of a killing. You

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1 can infer the malice and the use of a firearm, how the
2 body was disposed of, evidence that can be -- when
3 viewed in the light most favorable to the State could
4 lead the jury to conclude that Leonard Goodwin is the
5 murderer. And I think that's sufficient to submit the
6 case to the jury.

7 THE COURT: All right. Mr. Kidd, what the Court
8 needs to be concerned about in the course -- I will
9 look at the existence or non existence of the evidence
10 and not to the weight, of course. But I need for you
11 to articulate the elements that were testified to, to
12 show that there was more than only a suspicion of guilt
13 and that there is not complete failure of competent
14 evidence to show that at this stage that this case
15 should be submitted to the jury.

16 There has been discussions that there is
17 circumstantial evidence. If you could please
18 articulate to the Court what you believe there is
19 direct evidence of indicating the guilt of Mr. Goodwin
20 and any other circumstantial evidence that you believe
21 that the Court needs to consider.

22 MR. KIDD: Yes, Your Honor.

23 Well, I think there's direct evidence of his
24 guilt in the testimony of Latarshia Washington, who
25 says she overhears an argument, she overhears a loud

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1 noise, she's obviously distraught. She goes over to
2 the house, she sees blood on the defendant's shirt,
3 blood spatter which matches the spatter of the back
4 door, waist-high specks of blood.

5 You have testimony from Mary Ann Robinson, the
6 defendant's wife, who says, you know, she asked him
7 what the smell is, he says it's a dead cat. Evidence
8 of circumstantial evidence of him covering up the
9 crime.

10 You have crime scene go to his house, find lime
11 in his -- under a tarp with his tools, lime which is
12 compared through SLED from a sample taken from the
13 body, which matches identically to the lime found under
14 his tarp.

15 You have his flight, the fact that he doesn't
16 contact his wife for seventeen years -- for three
17 years, from the day the body is found. You have --
18 when Officer Glover attempts to arrest him, you have
19 him fleeing, using a false ID card. Living under
20 another person's name.

21 You have other circumstantial evidence around
22 the house, including chemicals used to mask the odor,
23 Odor Ban, Febreeze, other cleaning agents commonly used
24 to mask the odor which would have been caused from the
25 decomposition of the body.

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1 And you have a liquor bottle that's found
2 underneath the house, a matter of feet from where the
3 body was located, with the defendant's DNA on it. You
4 have a pair of socks with the victim's blood on it,
5 found in a house trash can twenty-four hour -- twenty-
6 four days after the crime, with the victim's blood on
7 it.

8 Your Honor, there's a multitude of
9 circumstantial evidence, all of which points towards
10 Mr. Goodwin's guilt.

11 In addition, you have the direct evidence from
12 Latarshia Washington.

13 And I think when you look at all of that
14 evidence in the light most favorable to the State, it
15 proves the element of the offense. It proves the
16 malice, it proves the covering up of the crime, the
17 malice of which can also be inferred.

18 Unlawful killing, malice aforethought, and
19 there's a ton of small pieces of evidence, all of which
20 point towards Leonard Goodwin as the -- the defendant
21 as the murdered.

22 THE COURT: Mr. Butler?

23 MR. BUTLER: I don't have any further argument
24 but I don't want the record to reflect that I agree
25 with the recitation of the facts. But I don't have

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1 anything to add.

2 THE COURT: All right. The Court has reviewed
3 the case of The State v. Bostick. The Court's concern
4 at this stage of the trial and Rule 19 motion for a
5 directed verdict is: if there's a failure of competent
6 evidence that tends to prove the charge in the
7 indictment, I am to consider only the existence or non
8 existence of the evidence and not the weight of the
9 evidence.

10 There was testimony by Ms. Washington that she
11 overhears the argument between the defendant and victim
12 and a loud noise. The defendant indicated that the
13 smell was from a dead cat. There was testimony that on
14 more than one occasion, over a period of approximately
15 six months, that there was a purchase of lime. There
16 was lime under the tarp that -- in a bag next to the
17 defendant's yard items. There was lime on the body of
18 the victim. There was testimony of the evidence of
19 flight when he left for New York and when he was
20 approached. There was testimony concerning that there
21 were chemicals used to mask the odor. There was
22 bleach, a bleach smell, immediately after the argument
23 between -- that Ms. Washington testified to, as well as
24 testimony of Febreeze. There is testimony of a liquor
25 bottle under the house, with the defendant's DNA, in

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1 proximity to the body. That there was more than one
2 witness that testified as to the overwhelming odor
3 under the house.

4 Based upon the testimony in the light most
5 favorable to the State, I am denying your motion for a
6 directed verdict at this time.

7 And anything further regarding the motion for a
8 directed verdict?

9 MR. BUTLER: No, ma'am.

10 THE COURT: Mr. Goodwin, please rise.

11 [Whereupon, Mr. Goodwin complies]

12 THE COURT: Mr. Goodwin, I remind you that you
13 are still under oath. Do you recall that I placed you
14 under oath yesterday afternoon?

15 MR. GOODWIN: Yes, ma'am.

16 THE COURT: And, Mr. Goodwin, I advised you of
17 your right to testify and the consequences of
18 exercising that right to testify.

19 Do you recall me doing that yesterday afternoon?

20 MR. GOODWIN: Yes, ma'am.

21 THE COURT: And do you have any additional
22 questions for the Court regarding what I advised you
23 of?

24 MR. GOODWIN: No, ma'am.

25 THE COURT: Did you have an opportunity to meet

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1 with Ms. Winslow and Mr. Butler to go over those
2 rights?

3 MR. GOODWIN: Yes, ma'am.

4 THE COURT: And have you made a decision? Well,
5 first of all, do you need any additional time, based
6 upon today's testimony, to meet with either Ms. Winslow
7 or Mr. Butler or both, or anyone else, to make your
8 decision on whether or not to testify?

9 MR. GOODWIN: No, ma'am.

10 THE COURT: Have you made a decision?

11 MR. GOODWIN: Yes, ma'am.

12 THE COURT: And what is that decision, sir?

13 MR. GOODWIN: I'm not going to testify.

14 THE COURT: You will not testify?

15 MR. GOODWIN: No, ma'am.

16 THE COURT: And that was your understanding, Ms.
17 Winslow --

18 MS. WINSLOW: Yes, Your Honor.

19 THE COURT: -- that he was not going to testify?

20 All right. And with that, do you have any
21 additional witnesses?

22 MS. WINSLOW: No, Your Honor.

23 THE COURT: All right. Thank you. Mr. Goodwin,
24 you may be seated.

25 All right. Counsel, we had had -- during our

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1 discussion during the juror, we had gone over a few
2 items that you wished to -- for the Court to consider
3 in the charge. I'll be happy to hear from you. You
4 indicated that you had some proposed charges and needed
5 to type those up. Do you need any additional time?

6 MR. BUTLER: No. I have those.

7 THE COURT: All right.

8 MR. BUTLER: Are you ready to hear from me?

9 THE COURT: I am.

10 MR. BUTLER: Just what we mentioned: I would be
11 requesting what we typically refer to as a mere
12 suspicion charge that is found in Judge Anderson's
13 book. And I've got the citation: do not find the
14 defendant guilty based upon suspicion, conjecture, or
15 speculation, no matter how strong; conviction can only
16 be based upon guilt beyond a reasonable doubt; proof
17 does not meet that standard, you must find the
18 defendant not guilty.

19 May I pass this up?

20 THE COURT: Yo may.

21 [Whereupon, Mr. Butler proffers documents to the
22 Court]

23 THE COURT: Mr. Butler, just so I understand.
24 In essence, the mere suspicion charge should be
25 included as part of the burden charge?

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1 MR. BUTLER: Yes, ma'am.

2 THE COURT: All right.

3 MR. BUTLER: The other matters --

4 THE COURT: Mr. Kidd, you have an opportunity --
5 do you wish to address that at this time?

6 MR. KIDD: Judge, I just think your standard is
7 circumstantial evidence charge.

8 THE COURT: It's going to encompass -- what I
9 think Mr. Butler is requesting is more that this will
10 go to the beyond a reasonable doubt charge; that you
11 can't convict -- it must be beyond a reasonable doubt,
12 it may not be on mere suspicion.

13 MR. BUTLER: We're not -- well, we talked about
14 that in chambers. This is what I spoke about
15 yesterday.

16 MR. KIDD: Judge, can you please give me one
17 moment to read the charge --

18 THE COURT: You may.

19 MR. KIDD: Is this going to be in addition to
20 your reasonable doubt charge?

21 THE COURT: What he wants the jury charge to
22 include: you cannot find the defendant guilty based
23 upon suspicion, conjecture, or speculation.

24 My standard charge contains --

25 MR. KIDD: I apologize. I was reading the wrong

1 one.

2 THE COURT: That's all right. We had skipped
3 around. We had talked about the circumstantial
4 evidence. So if you need just a moment.

5 [Whereupon, Mr. Butler reviews documents]

6 MR. KIDD: Has that not been published in your
7 charge already?

8 THE COURT: It is, Mr. Kidd. It is. So I may
9 include -- just reword a few. But it is very similar
10 to the typical charge. All right?

11 I'm going to mark this as Court's 3.

12 MR. BUTLER: Thank you.

13 THE COURT: And your next proposed charge?

14 MR. BUTLER: The other proposed charge -- may I
15 approach?

16 THE COURT: You may.

17 [Whereupon, Mr. Butler proffers documents to the
18 Court]

19 MR. BUTLER: And just to be safe, I think I have
20 to ask the Court's permission to argue against
21 precedent. I want to make sure that I've covered that
22 base should that come up later.

23 I think the precedent not only allows, but
24 requires, we -- to submit this argument. What I've
25 asked for is what we used to call an Edwards charge,

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1 circumstantial evidence charge, which contains the key
2 language, is: the State must exclude all other
3 reasonable hypotheses when it relies upon
4 circumstantial evidence.

5 The version that I have passed up came directly
6 from Chief Justice Toal's dissent in Grippon, where
7 Grippon said an Edwards charge, which is what I've
8 requested, is not necessarily required.

9 The standard Grippon charge, which has now
10 become standard, contains language that I think is no
11 longer valid in light of some more recent decisions
12 from our Supreme Court. The Grippon charge contains
13 this language: the law makes absolutely no distinction
14 between the weight or value to be given either direct
15 or circumstantial evidence, nor is a greater degree of
16 certainly required of circumstantial evidence than of
17 direct evidence.

18 Well, I just think that that's legally incorrect
19 now and that the case we've already referred to,
20 Bostick, and those line of cases, and Schrock and
21 Arnold, stand for a proposition of the contrary,
22 that -- for example, in Bostick, the Supreme Court
23 appealed to four different circumstantial facts,
24 evidence relied upon the State, and said that was not
25 sufficient to convict. So I think that we can take

1 from Bostick, Arnold and Schrock that the proposition
2 in Grippon that circumstantial evidence and direct
3 evidence are of equal weight is no longer valid.

4 And so for that reason, I guess my request is
5 twofold: I would object to the standard Grippon charge
6 and I would request an Edwards charge as contained in
7 Justice Toal's dissent in Grippon. And the formulation
8 that I have passed up, I, you know, believe is verbatim
9 from her dissent. And the key language is: it is not
10 sufficient that they create a probability, that means
11 being the circumstances create a probability, though a
12 strong one, and in assuming them to be true they may be
13 accounted upon any reasonable hypothesis which does not
14 include the guilt of the accused, the proof has failed.

15 Let me say that again. It is not sufficient
16 that they create a probability -- a strong one and if
17 assuming them to be true they may be accounted for upon
18 any reasonable hypothesis, which does not include the
19 guilty of the accused, the proof has failed.

20 It's the reasonable hypothesis language and the
21 exclusion language that I think is key, and that's what
22 we would request.

23 THE COURT: Mr. Kidd, and I know you have not
24 had -- indicated you did not have time to research
25 Bostick. Do you need additional time before you make

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1 your argument?

2 MR. KIDD: I don't think so, Judge.

3 I think in Bostick -- and I think, you know,
4 Mr. Butler might one day come upon a case where his
5 argument might be -- hold some weight. But I think in
6 this case here it's different than Bostick. Bostick,
7 they only raised only a suspicion of guilt. There's
8 only three or four small pieces of circumstantial
9 evidence that only raised to a suspicion.

10 I think this case is much different. I think we
11 have direct evidence through Ms. Washington's
12 testimony. I don't think there's any argument that
13 circumstantial evidence can be sufficient. I think we
14 much passed the mere suspicion of guilt at this point
15 and I think the -- this is not the case to come back on
16 and overrule precedent with.

17 I think the standard charge is sufficient. And
18 the hypothesis charge just -- I don't think it
19 accurately states how to view circumstantial evidence.

20 THE COURT: All right. Mr. Butler?

21 MR. BUTLER: If this case were Bostick, I would
22 have gotten a directed verdict. I mean, my appeal to
23 Bostick isn't that this -- that this is not a Bostick
24 case. My appeal to Bostick is to show that the Court's
25 views on the difference or similarities between direct

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1 and circumstantial evidence have changed and for that
2 reason the Grippon charge which equates them is no
3 longer valid.

4 And I would make this -- I would make this
5 motion in every case, no matter how much direct
6 evidence versus circumstantial evidence there was
7 because I don't believe that the charge from Grippon is
8 any longer a correct statement of the law.

9 So the factual differences are not the point.
10 The point is I believe that the law is changing or has
11 changed. It has not made it to the point of a jury
12 charge, but it won't unless somebody like me raises it.

13 THE COURT: All right. Counsel, how long do you
14 need to get ready for your closing?

15 MR. KIDD: I'm ready, Your Honor.

16 MS. WINSLOW: Your Honor, just a five-minute
17 break to run to --

18 THE COURT: What I would like for you to do --
19 we'll take fifteen minutes. What I would like for you
20 to do is gather your evidence so that at the close of
21 your closing and the charge on the law, they're boxed
22 up and ready to go.

23 Will you be using any of the evidence as
24 demonstrative during your closing?

25 MR. KIDD: I will, Your Honor.

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1 THE COURT: And if so, if you'll just put those
2 to the side so that there is no lag time.

3 You've indicated that you needed approximately
4 forty-five minutes; is that correct?

5 MR. KIDD: That's correct.

6 THE COURT: And you indicated the same?

7 MS. WINSLOW: Yes.

8 THE COURT: All right. Ms. Winslow, what I will
9 tell Mr. Kidd -- if he has forty-five minutes I will
10 not stop you at forty-five minutes but if he goes over
11 forty-five minutes, then however long he goes over, you
12 will have the same consideration. All right?

13 MS. WINSLOW: Thank you, Your Honor.

14 THE COURT: I will stop you at an hour, Mr.
15 Kidd. I will stop you at an hour.

16 All right. So we'll take fifteen minutes.
17 Thank you.

18 MR. BUTLER: I'm sorry. Can I put one more
19 thing --

20 THE COURT: You may.

21 MR. BUTLER: -- on the record?

22 THE COURT: And that will be Court's 4.

23 [Court's Exhibit Number 3 is marked by the court
24 reporter]

25 [Court's Exhibit Number 4 is marked by the court

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1 reporter]

2 MR. BUTLER: I also want to object to the
3 permissive inference language, the standard charge:
4 malice may be referred to as use of deadly weapon.

5 And I was only reminded because of Mr. Kidd's
6 argument in response to our DV motion. I want to
7 object to that, as well, as being burden-shifting,
8 under the state constitution.

9 Your Honor may recall this came up in another
10 case we had a while ago. That charge has been held to
11 be improper in a manslaughter self-defense scenario. I
12 recognize we don't have that. But I want to make that
13 same argument that it is impermissible burden shifting
14 under our state constitution, even in any context where
15 permissive inference language is used. Or -- yeah.
16 Malice may be inferred from use of deadly weapon.

17 THE COURT: Do you wish to address that issue,
18 Mr. Kidd? You do not have to.

19 MR. KIDD: No, ma'am.

20 THE COURT: All right. Thank you.

21 Anything else? Anything else we need to place
22 on the record, Mr. Butler?

23 MR. BUTLER: No, ma'am.

24 THE COURT: I'm going to take a look at your
25 proposed, which is now Court's 4, circumstantial

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1 evidence and compare it to the Court's and I'll -- I
2 will read the Court's circumstantial evidence if it is
3 different than the standard charge. All right?

4 Thank you. We're at ease fifteen minutes.

5 [Whereupon a recess is taken from 10:30 a.m. to
6 10:56 a.m.]

7 THE COURT: We're going to go ahead and make
8 arrangements -- since you've indicated an hour and a
9 half for closing, we're going to go ahead and make
10 arrangements to order lunch for the jury and so they
11 are taking their orders now.

12 I have considered and read the cases that you
13 presented and in light of the charges that you have
14 submitted, Court's 3 and 4, specifically Court's 4, the
15 Court's direct and circumstantial evidence charge: I
16 distinguish this case from the facts in Bostick. There
17 was an incomplete failure of competent evidence --
18 total failure of competent evidence and there was only
19 a suspicion of guilt in that case based upon
20 circumstantial evidence.

21 Again, as the Court noted in my ruling on the --
22 at the directed verdict stage, there was enough -- I
23 believe enough direct evidence to deny your motion for
24 directed verdict and not include the word-for-word
25 instruction as to Court's 4.

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1 And so this is the Court's direct and
2 circumstantial evidence charge: there are two types of
3 evidence which are generally presented during a trial,
4 direct evidence and circumstantial evidence. Direct
5 evidence is the testimony of a person who claims to
6 have actual knowledge of a fact, such as an eyewitness.
7 It is evidence which immediately establishes the main
8 fact to be proved. Circumstantial evidence is proof of
9 a chain of facts and circumstances indicating the
10 existence of a fact. It is evidence which immediately
11 establishes collateral facts from which the main fact
12 may be inferred. Circumstantial evidence is based on
13 inference and not on personal knowledge or observation.
14 You should weigh all of the evidence in this case.
15 After weighing all of the evidence if you are not
16 convinced that the State has proven each element of the
17 charge beyond a reasonable doubt, you must find the
18 defendant not guilty.

19 Note your exception, Mr. Butler, to not
20 including, word-for-word, your inclusion. And I
21 believe that it's thoroughly preserved for the record.

22 Anything further as to that charge?

23 MR. BUTLER: Not as to that.

24 I had one clarification on my objection, if Your
25 Honor would --

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1 THE COURT: I'll be glad to hear it.

2 MR. BUTLER: I'm just stating something.

3 My objection to the malice may be inferred from
4 the use of deadly weapon, I do want to include the
5 grounds of burden-shifting. But the case I was
6 thinking of was State vs. Belcher, and actually the
7 issue that was raised -- 685 S.E.2d 802 from 2009 was
8 that -- applies Section 21 of our South Carolina
9 Constitution precludes judicial comments on the facts.

10 And I would want to raise and preserve that, as
11 well, that the malice may be inferred from a deadly
12 weapon charge constitutes an impermissible judicial
13 comment on the facts. The facts are distinguishable in
14 Belcher, but I want to preserve that issue --

15 THE COURT: And I did consider -- Mr. Kidd, do
16 you have any comment?

17 MR. KIDD: No, ma'am.

18 THE COURT: All right. I did consider and went
19 back during our recess and looked at the Court's charge
20 and reviewed Belcher. The issue in Belcher was, of
21 course, self-defense, which we have not -- do not have
22 in this case. And so I had a -- Court standard charge
23 that malice may be inferred and it's merely a factor
24 that may be considered.

25 Again, your objection is noted for the record.

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1 Anything before we bring in the jury?

2 MR. KIDD: Nothing from the State.

3 MS. WINSLOW: No, Your Honor.

4 THE COURT: Would you like to see if they're
5 ready? I think they were ordering lunch.

6 MR. KIDD: Your Honor?

7 THE COURT: Yes?

8 MR. KIDD: While we're waiting: I believe we
9 had a -- when we were reviewing the evidence that had
10 been admitted, the court reporter -- I think she
11 indicated in her notes that State's Exhibit Number 69
12 wasn't entered into evidence. Under our notes it was.
13 It was definitely published to the jury.

14 THE COURT: My notes reflect that it was. That
15 was the ID that was given by the defendant when he was
16 stopped by Officer Armstead; is that correct?

17 MR. KIDD: Correct. Officer Glover.

18 THE COURT: I'm sorry. Why do I get those two
19 so confused? I'm sorry.

20 MR. KIDD: Glover.

21 THE COURT: Okay. And so, yes, I do know that
22 that was without objection.

23 All right. So all of the evidence, we agree
24 that everything has been --

25 MR. KIDD: I went through it with the court

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1 reporter and I agree. I'm not sure about defense
2 counsel.

3 MS. WINSLOW: We agree to the evidence that's up
4 there.

5 THE COURT: All right. Thank you.

6 MR. KIDD: Thank you.

7 THE COURT: All right. To members of the
8 audience, please, out of respect, it is very disruptive
9 to the State and to the defendant if you get up during
10 their closing. And, as well, it is very disruptive if
11 you get up and leave during the Court's charge on the
12 law.

13 After Mr. Kidd gives his closing argument, we
14 will take a few seconds. If you need to leave, that's
15 an appropriate time for you to leave. After Ms.
16 Winslow gives her closing statement, I will also give a
17 short pause so that that's the appropriate time for you
18 to leave.

19 If you feel you cannot make it through forty-
20 five minutes, now is the time for you to leave. If
21 anyone is disruptive, my bailiffs and deputies have
22 been instructed. They will get up and ask you to
23 leave.

24 So, please, out of courtesy to all of the
25 parties and to the Court, please make sure that you can

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1 stay for the entire time. If not, now is the time for
2 you to leave. Also, please make sure that your cell
3 phones do not go off. Please make sure they are in the
4 off position.

5 Whenever they are ready.

6 MS. WINSLOW: Your Honor, I believe I still have
7 to rest on the record.

8 THE COURT: Thank you. Thank you for reminding
9 me.

10 Y'all may be seated. It will take them a longer
11 time to get down the hall than I anticipated.

12 [Off the record momentarily]

13 THE COURT: They are still ordering lunch so if
14 you need to take a comfort break or do anything, now is
15 the time to do it.

16 We're at ease.

17 [Whereupon, a recess is taken from 11:03 a.m. to
18 11:05 a.m.]

19 [Whereupon, the jury enters the courtroom at
20 11:05 a.m.]

21 THE BAILIFF: All present, Your Honor.

22 THE COURT: Thank you. Please be seated.

23 Ms. Winslow?

24 MS. WINSLOW: The defense rests, Your Honor.

25 THE COURT: Ladies and gentlemen, you have now

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1 heard all of the testimony that will be presented in
2 this case, as well as received into evidence all of the
3 exhibits that are a part of the record in this case.
4 As I indicated to you previously, the exhibits will go
5 back with you in your jury deliberation room.

6 Ladies and gentlemen, we have now reached the
7 stage of the trial where you will hear closing
8 arguments on behalf of the State and the defendant.
9 Just as I indicated to you that what is contained in
10 opening statements is not to be considered evidence,
11 neither is what is contained in their closing
12 arguments.

13 Ladies and gentlemen, after you have heard
14 closing arguments on behalf of the State and the
15 defendant, I will instruct you on the law applicable to
16 this case.

17 Ladies and gentlemen, please give your strict
18 attention.

19 Mr. Kidd?

20 MR. KIDD: Thank you. May it please the Court,
21 Ms. Winslow, Mr. Butler.

22 - - -

23 - - -

24 - - -

CLOSING ARGUMENT

1
2 MR. KIDD: Ladies and gentlemen of the jury, I'm
3 going to start out by thanking you for your time and
4 attention this week. I know jury service is a burden
5 on all of you. You all have places you had rather be,
6 other obligations in your lives. This is not an easy
7 thing to take this much time out of your schedule, and
8 I'm appreciative. I know everyone in this courtroom is
9 grateful for the sacrifices that you've made.

10 And I don't want you to think we take your time
11 for granted, because we don't. I know a lot of
12 witnesses I had to call to the stand might have seemed
13 like they didn't offer much to you. But they're just
14 stepping stones to get all of the evidence in. There's
15 a lot of legal hoops I have to jump through and those
16 witnesses, while they don't seem important, they are.
17 They are necessary to get all that evidence in front of
18 you.

19 Now, in our opening statements, Mr. Young told
20 you that the evidence you're going to hear this week is
21 going to prove beyond a reasonable doubt that that man
22 right there, Leonard Goodwin, murdered his stepson,
23 Eric Robinson. With those hands folded in his lap, he
24 grabbed a twenty-two caliber pistol, put it to his
25 head, and pulled the trigger. And the evidence proves

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1 that to be true. But keep in mind there's a twenty-
2 four day period between the murder of Eric Robinson,
3 and the discovery of his body, for Leonard Goodwin to
4 cover his tracks.

5 So as Mr. Young told you, there's no smoking
6 gun. It's not on video tape, there is no confession.
7 We don't have an eyewitness who saw it happen. There's
8 things we don't know. But in criminal law, cases
9 aren't about what you don't have, it's about what you
10 do have. And we have a lot of evidence. When you have
11 about twenty or so pieces of evidence and each one
12 points at Leonard Goodwin, and when you step back from
13 it a little bit and when you look at everything as a
14 whole, as I'm going to try to explain the evidence to
15 you here in a minute -- when you step back and you look
16 at it all as a whole, it's going to prove to you beyond
17 a reasonable doubt that Leonard Goodwin killed Eric
18 Robinson.

19 Now, some men are the victims of circumstance.
20 Most men, however, are the architects of their
21 circumstances. Eric Robinson is a victim of
22 circumstance. Leonard Goodwin is the architect of his
23 circumstances. He made his choices. He put himself in
24 that position by murdering Eric Robinson, by trying to
25 cover up the body, and then fleeing from justice. He

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1 put himself in this situation.

2 Now, I want to talk to you about the evidence
3 you've heard over the past few days. The first thing I
4 want to talk about is Latarshia Washington. She was
5 the very first witness. And I know it's Tuesday
6 afternoon and it seems like a long time ago, but I want
7 you to recall her testimony. I want you to think about
8 what she told you.

9 What did she tell you? She went in the house,
10 Target Street, about 5:00 p.m. on April 3rd, 2006.
11 Who was there? Leonard Goodwin, Eric Robinson, the
12 only two people in the house. What did she say? She
13 goes to bring him food, goes into the room. What's he
14 wearing? Black shorts, gold chain with a dollar-sign
15 pendant, bracelet, the exact same clothes that were on
16 his body twenty-four days later. She leaves, goes
17 home. What's the next thing she tells you? She talks
18 about this phone call. It's extremely important that
19 she talks about the phone call. What does she hear?
20 She says she's talking to him on the phone and they
21 have a good conversation going. That's what she says.
22 And then someone picks up the other line. Leonard
23 Goodwin picks up the other line and says, get the F off
24 the phone, and then an argument starts. What does Eric
25 say? He says, you need to pack your bags and get out

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1 of this house; you don't do anything; you don't pay
2 bills around here, you don't pay rent; you don't do
3 anything for my mother; you need to leave. They start
4 arguing. What's the last thing she says she hears from
5 Leonard Goodwin's mouth? A threat that he'll carry
6 out. He says, I'm going to put you on ice. What does
7 she hear next? She hears a loud crash and the phone
8 goes dead.

9 Now, this is no mild argument. This is not spat
10 amongst roommates. This is not a quiet crash. You
11 know that by how upset Latarshia Washington is over
12 what she's heard. She's distraught, she's worried.
13 She knows something bad has happened. And you know
14 that by what she does. What does she do next? She
15 calls back. Multiple times, calls, calls, no answer,
16 until finally Leonard Goodwin answered the phone. She
17 asked him, you know, what happened, where is Eric. He
18 said, Eric left. There was the first lie, the first
19 step in his coverup. Eric left. What does she tell
20 you about him? He's out of breath. She doesn't
21 believe him. She says, no way Eric left that quickly.
22 He starts sputtering and just hangs up on her.

23 What does she do next? She calls Jessie and
24 Mikey, cousins, friends of Eric. Something terrible
25 has happened. She's panicked. What she has heard has

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1 upset her and she wants to get to the bottom of it.
2 She calls Jessie and Mike: something bad's happened to
3 Eric; we need to figure it out. She's so upset, Jessie
4 comes and picks her up and takes her over to Target
5 Street.

6 When they're rolling up there, what do they see?
7 They see Leonard Goodwin on his bike leaving the
8 residence about a block away. They stop him and talk
9 to him. That's extremely important. What does she
10 see? She sees a blood stain on his shirt. But it's
11 not just a blood stain that she sees. Remember how she
12 described it. Specks. She said it's not like
13 saturated blood; it's specks of blood about waist high
14 on the front of his shirt.

15 Why is that so important? Remember the crime
16 scene photos of that back door? Do you remember what
17 that blood spatter looked like on that back door? Do
18 you remember where it was on that back door? What did
19 it look like? Specks of blood about waist high? It
20 matches up perfectly, doesn't it.

21 What happens next? She's still upset. They go
22 over to the house. Leonard Goodwin doubles back, goes
23 home, goes inside. They're waiting outside across the
24 street, still worried, still panicked, still trying to
25 find out what happened to Eric. So worried about what

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1 she's seen and what she's heard, she flags down a
2 police officer. And nothing against Officer Armstead,
3 who walks in the house with -- you know, he missed some
4 signs.

5 Who do you hear from next? Jessie and Mikey.
6 They confirm everything. The best friends of Eric, his
7 girlfriend, his mother, never hear from him again from
8 April 3rd, 2006.

9 The next person you hear from, Mary Ann. Mary
10 Ann is in a tough situation on April 3rd, 2006. It's
11 tough for her to accept, to comprehend -- to comprehend
12 the fact that her son is dead, that her husband of
13 seventeen years is a murderer and not just a murderer,
14 murdered her son. That's a tough thing for her to
15 grasp, to wrap her head around. And she probably
16 missed some signs that she should have otherwise picked
17 up on.

18 But what happens later as time passes, as she
19 connects the dots when she begins to smell that
20 decomposing body when she connects two and two. And
21 she confronts Leonard. She says, what's that smell;
22 there's something going on here. What does he say?
23 He's still covering things up. There's a dead cat in
24 the back yard, is what he says. She says, no,
25 something's not right; I haven't heard from my son in

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1 over three weeks and I've got this smell in the house,
2 don't know what it is, calling the cops.

3 What happens? Leonard Goodwin never to be heard
4 from again. A wife of seventeen years, the day her son
5 is found, her husband of seventeen years doesn't call
6 her again, doesn't write her, doesn't show up for the
7 funeral, not a text message, nothing. What does that
8 tell you?

9 And then, granted, it's after the fact, but
10 after she's put everything together and you talk to her
11 and you say, you know, what else happened; was there
12 anything else that night that was a little out of the
13 ordinary, she says, well, you know, now that you
14 mention it, now that I know what's happened, what's
15 going on, when I came home that night there was a
16 smell; there was a smell of bleach and cleaning
17 supplies in that house that I found a little out of the
18 ordinary; didn't know what it meant back then on April
19 3rd, 2006; but now that I know Leonard Goodwin killed
20 my son I know what it means. That's what she tells
21 you.

22 Then the body is found. North Charleston comes
23 out to the crime scene. And it's easy to stand back
24 here five years removed and look at everything that
25 they did and say, you should have done this, you should

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1 have done that. Hindsight is twenty-twenty. And
2 nobody is perfect and they made mistakes. Sure, there
3 are things that I wish they would have done. But they
4 documented what they did. And they were thorough. And
5 you're going to be able to see it all in these
6 photographs. You're going to have all this evidence
7 back there in your deliberation room with you. You can
8 look it over, and I encourage you to do so.

9 But what did they find when North Charleston
10 went out there? The first thing they find -- excuse me
11 -- the first thing they find, a bag of lime underneath
12 that tarp in the back yard with Leonard Goodwin's
13 tools. And you've got the photographs of it. And what
14 do they do? They take a sample of that lime and seal
15 it up in a container from the bags. And then the
16 officer goes under the house, takes a sample of the
17 lime off the body, seals the open container, sent it up
18 to SLED. You heard from Ila Simmons, the SLED analyst,
19 they're identical. You can't tell them apart. Their
20 chemical makeup is identical. I mean, you can't
21 officially say that they came from the same bag. But
22 you can't tell them apart.

23 What's the next thing crime scene finds? They
24 find those socks. They find the defendant's socks with
25 that blood stain on the ankle -- and you'll have the

1 photos back there -- in the trash can. I was a little
2 confused about which trash can it came from. It
3 doesn't really matter. But if it's in the front trash
4 can and it's there twenty-four days later, it's
5 obviously thrown away after the fact. And if it's in
6 the other trash can, then it's with the defendant's
7 tools.

8 What do they do? They take those and send them
9 up to SLED. They take cuttings presumptive for blood,
10 compare it to the victim's DNA standard, it's the
11 victim's blood on those socks. Look at the socks. Do
12 you wonder why the bottom of those socks are so soiled
13 with blood and dirt? It's going to make sense.

14 Then what do they do? They look at the blood
15 spatter on the back door, swab it, send it up to SLED.
16 It comes back to the victim.

17 I'm going to try to give you a good explanation
18 of how it all went down in a little bit but let me --
19 let me get to the rest of this evidence.

20 What else did they find out there? Other
21 chemicals in the defendant's belongings: Odor Ban for
22 grease, things that you use to cover up a bad smell.
23 Coincidence? No. The headlamp, the flashlight hanging
24 on the back porch.

25 Ladies and gentlemen, this body wasn't just

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1 dumped in this crawl space and just forgotten. It took
2 preparation. It took time. That's a long trip
3 underneath that crawl space. It wasn't just a random
4 killing where a body was dumped and forgotten. He
5 spent time in that crawl space with that victim, with
6 Eric Robinson, applying lime, spraying different
7 chemicals, trying to cover it up. It was no won-and-
8 done and forget about it. This took time, took energy.

9 And finally what's the last thing North
10 Charleston gets for you? Five years after the fact
11 they go back under that house and find that liquor
12 bottle -- that's in those photos that you'll see --
13 just to find one more thing for you, swabbed the rim,
14 sent it up to SLED. Matches Leonard Goodwin's DNA, a
15 bottle that is a matter of feet from Eric Robinson.
16 And this isn't right near the crawl space opening where
17 someone could have just tossed it in. This is thirty,
18 forty feet deep in the crawl space.

19 Think about it. Use your common sense. Let
20 your commons sense guide you through all this evidence.
21 As you sort through it and review it, just turn to your
22 common sense. What does it tell you?

23 What's the next thing you hear about? Officer
24 Glover gets a call, sees someone riding a bike,
25 matching Leonard Goodwin's description. He goes out

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1 there. What's he see? Someone matching Leonard
2 Goodwin's description. Pulls up on him. He's still
3 fleeing. A thousand days and a thousand nights later,
4 he's still on the run.

5 He finally tracks him down, catches up to him.
6 What's your name and ID. Albert Taylor. This is no
7 fake ID that's made at a college student's dorm. This
8 is from the DMV. It's Leonard Goodwin's picture on it.
9 He's living a lie. Leonard Goodwin no longer exists
10 for a thousand days and a thousand nights.

11 And what does he tell Officer Glover when he
12 finally comes clean, when he finally says -- when
13 Officer Glover says, I'm going to take you downtown to
14 fingerprint you, I don't believe you, you might as well
15 come clean, what does he do? Drops his head and cries,
16 says, yeah, I'm Leonard Goodwin, I'm wanted for murder.

17 Now, I want to talk to you about how everything
18 really played out that night. I just told you what the
19 evidence is. Let's talk about what story the evidence
20 tells you. You know about the phone call. You know
21 about the argument. Well, how does it make sense?
22 You've got motive. Eric and Leonard obviously don't
23 get along. You heard that from Mary Ann. Leonard is
24 mad that Eric has moved into the house, he's not
25 showing him any respect that he thinks he deserves.

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1 And Eric doesn't like Leonard, either. He thinks he's
2 a bum. He doesn't have a job, doesn't contribute,
3 mooching off of him and his mother. There's bad blood.
4 And you heard Mary Ann talk about it. It was boiling
5 up and the anger inside of Leonard is building,
6 building through a culmination that occurred during
7 that phone call.

8 And when they went and had that back-and-forth,
9 he had had enough and he pulled a gun on Eric. Eric
10 took off and ran to that back door, drops the phone.
11 Gets to the back door, opens it up. That back door
12 opens up inside. Leonard fires that first shot. It
13 misses. It goes through that screen door. You saw the
14 bullet hole. You heard the testimony about it. Eric
15 freezes. Leonard puts him on his knees and puts the
16 gun to his head and he executes him. That's why he has
17 the blood spatter on his shirt. That's why the blood
18 spatter is waist high on that door.

19 But the phone is ringing now in the background.
20 He's just committed murder. The phone is ringing so he
21 knows he's got to act quick. So what does he do? He's
22 got to hide the body. Look at the blood spatter. Look
23 at the blood drops on the back porch. There's a
24 difference between spatter and drops. You've got
25 vertical drops on the back porch from where he carried

1 the body out of the house.

2 And I'm not saying he put it in the crawl space
3 that night. Don't think he had time. Dragged it out
4 there in that back yard, covered it with his tarp. Hid
5 the body where it wasn't going to be found that night.
6 Find his time until he could be alone again.

7 Everyone shows up, Latarshia, Mikey, Jessie,
8 Mary Ann, police officer. He's lying. He's cleaned
9 up. He's cleaned up inside the house. He's had bleach
10 and he's tried to scrub those stains out of his shirt.
11 He's buying time until when he's going to be alone
12 again.

13 The next day Latarshia is gone, Mikey and Jessie
14 are no longer there, and Mary Ann goes to work. Now
15 he's got his opportunity. He's got his opportunity to
16 dispose of this body. But he's also got a problem. He
17 has no car. This is a man on a bicycle. How does a
18 man on a bicycle dispose of a body? He can't take it
19 and dump it in a river anywhere. He can't throw it in
20 the marsh. He's got a body.

21 What kind of area is Leonard Goodwin familiar
22 with? He's familiar with that crawl space under the
23 house. He knows about that little alcove in the back
24 corner of that crawl space tucked away. And now he's
25 got time. He's got time to draw that -- wrap that body

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1 up and drag it through that crawl space. No easy feat.
2 He's got time to stick it in the corner, cover it with
3 that screen, put chemicals and lime over it.

4 And you heard from William Palmer. And, ladies
5 and gentlemen, William Palmer, I mean, his time frame
6 is a little messed up. It is. This is five years
7 removed. He's trying to remember how often and what
8 time frame someone came in and purchased something from
9 his store. It's not an easy thing to do. So his time
10 frame is a little off. But what he does tell you is, I
11 remember this guy coming into the store multiple times,
12 on a bike, to buy lime. He can't carry a forty-pound
13 bag of lime on his shoulder riding a bicycle.

14 He's buying those little bags of lime, just like
15 you'll see in the picture, and he's putting it on the
16 body. And every time he's going under there -- it's
17 not just once, it's not just twice, it's repeated --
18 he's going under there because the body is still not
19 going away. That's his problem. So he's going back
20 under there, and back under there, putting more lime on
21 that body, trying to do whatever he can to make his
22 problem disappear. And it's weighing on him. It's
23 weighing on his conscience, it's weighing on his mind.
24 He's drinking a lot. He's spending some time under
25 there. He's putting in the hours.

1 And then when his wife comes to her senses and
2 realizes what's going on, he knows the gig is up. He
3 knows he's caught, so he runs. Three years he's on the
4 run. Wife of seventeen years, he doesn't contact her
5 once.

6 I repeatedly tell you it's common sense. You've
7 got to use your common sense. There's no one else.
8 There's no one else that has the motive or the
9 opportunity to spend the amount of time and the energy
10 to dispose of that body the way it was.

11 Now, Voltaire once said: we owe respect to the
12 living; to the dead we owe only the truth. I think
13 that rings true here. Think about that. We owe
14 respect to the living; to the dead we owe only the
15 truth.

16 Ladies and gentlemen, deliver the truth to Eric
17 Robinson. Supply closure for his family and deliver
18 justice to Leonard Goodwin for the heinous crime that
19 he's done. Disposing of a body feet from where the
20 mother of Eric Robinson slept? There is no more
21 despicable crime imaginable. And I want you too all
22 these things and accomplish all of these goals by
23 returning a verdict against Leonard Goodwin that finds
24 him guilty of murder. Thank you for your time.

25 THE COURT: Ms. Winslow?

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CLOSING ARGUMENT

1
2 MS. WINSLOW: Good morning, ladies and
3 gentlemen. The State wants you to believe the
4 impossible: that an old man, that Leonard Goodwin,
5 completed the impossible in less than an hour.

6 In order to understand the impossible, we first
7 need to understand the time frame that we're dealing
8 with. We know from Latarshia Washington that between
9 8:30 and nine o'clock that evening that she called Eric
10 Robinson, they had a phone-call conversation. Thirty
11 minutes later, which now puts us at around 9:30 or ten
12 o'clock in the evening, she called back Eric because
13 she couldn't sleep. She testified to this. It was
14 this time that she overheard this argument ensue
15 between who she thinks is Leonard Goodwin, and Eric
16 Robinson. She said she was on the phone then for about
17 thirty minutes, which would bring us to around 10:30.

18 Next you hear from Jessie, who says that he sees
19 Leonard Goodwin, with Latarshia, that evening around
20 10:30 that evening. We also know from Detective
21 Armstead that evening he went into the house around
22 eleven o'clock. So the time frame that we're dealing
23 with, ladies and gentlemen of the jury, to do the
24 impossible, is virtually about a half an hour, max one
25 hour, that we are dealing with.

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1 This is just my handwritten notes to look at.
2 At 8:30, 9:00, she calls Eric. About a half an hour
3 later, between 9:30 and 10:00, she calls back Eric.
4 They [phonetic] hear the conversation. And Jessie puts
5 them seeing Leonard Goodwin around 10:30 that evening.
6 So people start arriving at the home between 10:30 and
7 11:00 that night. We know Leonard Goodwin is not there
8 at first. He was riding his bike away from his home.

9 So with that time frame in mind, the State wants
10 you to believe the impossible, that Leonard Goodwin
11 could have taken a gun to his stepson's head and shot
12 him in the head. Now, in the twenty years that Mary
13 Ann has known Leonard Goodwin, she has never known Mr.
14 Goodwin to have a gun in the home. She has never known
15 Mr. Goodwin to put a gun between the mattress, have a
16 gun on the night stand. She's never seen any bullets,
17 any cartridges, any shell casings, in her home.

18 She also testified that in the twenty years that
19 she's known Leonard Goodwin, that he never raised a
20 hand, not a single hand, to Eric Robinson. Eric
21 Robinson also never raised a hand to Leonard Goodwin.
22 She testified that they didn't have a good relationship
23 but it never rose to the level of a physical argument,
24 ever, in the twenty years that she's known him. So the
25 State wants you to believe the impossible, that he gets

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1 a gun, which she has never known him to have in her
2 home in those past twenty years, takes the gun, puts it
3 to Eric Robinson's head and shoots him in the head.
4 The impossible. Escalating from never putting a hand
5 on a man to shooting him in the head.

6 Next in this thirty minutes, the State wants you
7 to believe that Mr. Goodwin took the body, dragged him
8 from his home, dragged him outside the steps, dragged
9 him down the yard. Today they're saying that it's
10 under a tarp, but I'll get to that in a minute.

11 Leonard Goodwin went and then dragged the body to the
12 crawl space and put him inside the crawl space, the
13 crawl space that's a foot and a half above the ground,
14 the crawl space that is so small that you have to crawl
15 into the crawl space on your hands and knees. This
16 [indicates] is the crawl space that we are talking
17 about, ladies and gentlemen of the jury.

18 You heard from Officer Hallman that when
19 removing the body, it was extremely hard, it was a very
20 tedious job, it took a very long time. And he had the
21 help with the coroner. They are professionals at
22 removing and moving bodies. Mr. Goodwin, an old man,
23 an old man who suffers from back problems, as Mary Ann
24 stated, it would have taken him so much longer, it
25 would have been so much more tedious, and he can't do

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1 that in a thirty-minute time period. We all know how
2 hard it is to move someone who has been passed out,
3 trying just to move someone from the couch into their
4 bed. It's hard. It's tedious. And this was supposed
5 to have occurred during this thirty-minute time frame.

6 Additionally, Mr. Goodwin was supposed to have
7 cleaned himself up enough, cleaned any blood splatter
8 in the home, cleaned up any sign of struggle in the
9 home, and cleaned it spotless so no one would recognize
10 anything had been done. His own wife of seventeen
11 years did not recognize one thing out of place on April
12 3rd, 2006.

13 He would have also had to clean himself up. He
14 had to remove any dirt on him, any blood that's on him,
15 and compose himself, compose himself enough to decide
16 to get on his bicycle and ride to the store.

17 After Mr. Goodwin was riding to the store, he
18 met with Latarshia and Jessie and spoke with them for a
19 brief moment, and he came back to the house. The
20 impossible. The State wants you to believe the
21 impossible, that a thirty-minute time frame, shot him
22 in the head, then drag his body outside, cleaned
23 everything up to a tee so no one could recognize
24 anything was wrong, and then just rode his bike off to
25 the store and came back to the home.

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1 Now, ladies and gentlemen, let me just talk with
2 you for a moment about the things that should be here
3 that are not. The State has made it apparent that this
4 phone call is very, very, very important, it's the
5 reason why to suspect Leonard Goodwin in the first
6 place. We haven't heard anyone from Verizon or
7 T-Mobile. There are no phone records in this case. Ll
8 Latarshia testified that she called back six times --
9 during direct examination -- but then when she calls in
10 her report, she only called back three times. Phone
11 records would be very helpful in this case to get the
12 time line down, to see if these phone calls even took
13 place. Jessie said he called the house, Michael said
14 he called the house, and we have no records of these
15 phone calls.

16 Now, let's specifically talk about the phone
17 call. Latarshia says she overhears the entire
18 argument. She never testifies that she heard Eric say,
19 yo, put down that gun, or there's a weapon, or I'm
20 going away. No mention of a weapon on the entire phone
21 call. No mention whatsoever. There's not a single
22 witness to the shooting. There's not a single witness
23 to the body being dragged through the yard. There's
24 not a single witness who calls the police and says, I
25 just heard a firearm being fired. Not a single

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1 witness.

2 Officer Hallman also testified that he didn't
3 see any drag marks in the yard, he didn't see any drag
4 marks on the grass, he didn't see any drag marks
5 throughout the crawl space. As the State said, twenty,
6 thirty feet into the crawl space, not a single drag
7 mark, with one man dragging dead weight through the
8 crawl space.

9 What we also don't have here is no smell of
10 gunpowder. Doug Armstead went to the home on April
11 3rd, 2006, about an hour after this alleged incident
12 occurred, an hour or less. He testified on the stand
13 that he's trained, that he's gone to the academy, that
14 he knows what gunpowder smells like. He said he's
15 fired guns inside homes, he's fired guns outside of
16 residences. He said that the smell would linger.

17 If you're -- if there are any nonsmokers on the
18 jury, you know that when you go into a smoker's home,
19 you can smell that smoke. The smell lingers. No one
20 has to be lighting up a cigarette at the time. The
21 smell lingers. Gunpowder smell lingers. Doug Armstead
22 testified he didn't smell any of that. He testified he
23 didn't see anything out of the ordinary. Mary Ann
24 didn't see anything out of the ordinary in her home
25 that evening. They didn't see any signs of struggle.

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1 They didn't see any blood splatter.

2 Now, the State said during their closing
3 statement that they're now claiming that he hid the
4 body under the tarp that evening and he did the rest,
5 dragging it into the crawl space, later on. Well, if
6 he hid the body under the tarp that evening, there's no
7 evidence of any blood on that tarp. There's no
8 evidence of a body being laid there in the grass matted
9 down. There is no evidence. It's nice to think about
10 in hindsight, but that's not what happened. No crime
11 occurred on April 3rd, 2006.

12 The State also did not present any fingerprints
13 on the light, no fingerprints on any crawl-space door,
14 no fingerprints to say who did it. The officer
15 testified that normally they don't take fingerprints if
16 it's in your own home because your fingerprints would
17 be on the items automatically. Well, that wasn't the
18 case for the gin bottle that was found under the home.
19 You would assume that his fingerprints would be on it.
20 But because the State wanted them to fingerprint that
21 item, they did -- excuse me -- the DNA from that item,
22 they did.

23 Ladies and gentlemen, the State does not only
24 want you to believe the impossible, the impossible took
25 place in thirty minutes, but they also want you to

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1 embrace all the contradictions in their case. They
2 have made a huge issue about the flight. Well, Mr.
3 Goodwin, once he knew he was wanted for murder, he did
4 run. He did not want to go to jail for a crime he did
5 not commit. When Mr. Glover stopped him in 2009, Mr.
6 Glover stated -- excuse me -- Officer Glover stated
7 that he didn't have such a good poker face, he knew
8 that something was wrong. Officer Glover could tell
9 that this man knew something was wrong, that he had
10 been caught for something. Now, Officer Glover also
11 testified that Leonard told him that he knew he was
12 wanted for murder and that's why he ran. He never told
13 him he was guilty of murder. He was just trying -- he
14 was trying to get away, that -- that he was trying to
15 evade him.

16 Now, Mr. Goodwin is not being charged with
17 running. He is being charged with murder. And if he
18 was guilty of that murder, he would have ran on April
19 3rd, he would have ran on April 4th, on April 10th,
20 when the missing persons report was written. But he
21 did not run. He stayed at home. He stayed in the
22 house with his wife of seventeen years, remained living
23 there, remained working the entire time, and living his
24 life normal.

25 On April 3rd, 2006, when Doug Armstead went into

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1 the home, he said that Leonard's demeanor was normal,
2 that he was calm, that he helped him search the areas
3 of the home. But we know from Officer Glover that when
4 he thinks he's done something wrong or when he knows
5 he's done something wrong, he doesn't have a good poker
6 face, it shows.

7 Ladies and gentlemen, the State also wants you
8 to believe that Mr. Goodwin is some type of mastermind
9 and he's hiding the body under the house and covering
10 him with a tarp and covering him with lime. But he has
11 the sense to get rid of the murder weapon? No murder
12 weapon was ever found in this case.

13 The lime that was out in the back yard, if he
14 had the mastermind that the State is claiming he does,
15 he would have gotten rid of that lime. That lime
16 wasn't being hidden. It was by his lawn-maintenance
17 tools. William Palmer testified it's used in lawn
18 maintenance, they sell it regularly. Ila Simmons, the
19 chemist, said, yes, it's used in yard supplies, it
20 helps the balance of the pH in the soil.

21 William Palmer testified on the stand that
22 Mr. Goodwin had been buying lime for about six months.
23 The State doesn't like that testimony so now they're
24 telling you to ignore what he said and only -- because
25 he messed up the dates.

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1 Mr. Palmer testified that he was a customer
2 there, he did buy the lime. Ila Simmons testified that
3 the material that was on the body was lime, the
4 material that was in the bags was lime, and it had the
5 same four common ingredients. However, she could not
6 say where this lime came from, there's many of
7 manufacturers of lime, that she could not definitively
8 tell whether it was the same lime, unlike what the
9 State wants you to believe. I think they said it was a
10 hundred-percent identical. That's incorrect. She did
11 not say that. If he was a mastermind, why would not it
12 [phonetic] still be at his house three weeks later? He
13 would have gotten rid of it, just like he got rid of
14 the murder weapon.

15 Another contradiction that the State wants you
16 to embrace is that they want you to believe that he
17 cleaned -- Leonard Goodwin cleaned up so well, that he
18 cleaned up himself so well. However, the officers
19 testified that even though they can find the presence
20 of blood even after someone has tried to clean it up,
21 they didn't find any of that in the home.

22 Additionally, Mary Ann testified that there was
23 smells of bleach in the home. However, she never told
24 the officers -- back in April 27th, 2006, she never
25 told them she smelled anything. Doug Armstead said he

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1 did not smell anything. So they want you to believe
2 the contradictions in their case.

3 When Leonard Goodwin met with Latarshia and
4 Jessie on the side of the road she says that there's
5 small blood-splatter spots. If you had just been under
6 a crawl space or dragging a body, you would be filthy.
7 You wouldn't just have a couple of dots on you. You
8 would have some mud on you, you would have stains on
9 you. It wouldn't just be a couple of dots. You would
10 be filthy. And your composure just after shooting
11 someone in the head would not be calm and normal.

12 Ladies and gentlemen, the State said that Mr.
13 Goodwin spent some time under his home. They have
14 nothing to show this. They say that the gin bottle
15 under the house has Leonard Goodwin's DNA in it. Well,
16 in that very same photograph of the gin bottle under
17 the house -- and you'll have the photograph in the back
18 with you -- there's the gin bottle, there is Mary Ann's
19 debit card, and there's a magazine that has the
20 victim's name on it. So are we supposed to say that
21 the victim was under the home all the time? Mary Ann's
22 debit card was under there, but no questions are asked
23 of that. That's a question left unanswered.

24 If Mary Ann knew she gave that debit card to her
25 son or Mr. Goodwin, she would have testified to that.

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1 So what's the explanation of her card being under the
2 home that evening -- or, excuse me -- when they
3 searched that home, underneath the home, April 27th --
4 April 27th, 2006?

5 This case is a tragic case. Eric Goodman --
6 excuse me -- Eric Robinson was shot in the head. And
7 we're not here to say that Eric was not shot in the
8 head. But it wasn't Leonard Goodwin. The impossible
9 story that the State wants you to believe, it couldn't
10 have happened.

11 The State is now assuming that Leonard Goodwin
12 [sic], after a gun was pointed at him, is running out
13 of the house. If you're running away from a gun, the
14 bullet hole would be to the back of the head. He was
15 shot in the front of the head, ladies and gentlemen of
16 the jury.

17 The firearm expert also testified that he
18 couldn't tell what kind of bullet it was in his head.
19 It could have been a twenty-two, it could have been a
20 twenty-four, it could have been a projectile. He
21 couldn't even say for sure if it was a bullet or not.
22 So where the State is getting up this magic twenty-two
23 number I'm not sure. It's all speculation. Mere
24 speculation is not enough to convict a man. Mere
25 speculation of hiding a body under a tarp, where

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1 there's no evidence, is not enough to convict a man.

2 Cynthia Schandl, who did the autopsy on Eric
3 Robinson, also cannot put a time of death. She says
4 his body was older than four days, had been deceased
5 for over four days, but she can't say if it was fifteen
6 days, she can't say if it was twenty days, she can't
7 say if it was twenty-five days or thirty days. She
8 can't tell. All she knows, it's over four days old.

9 There is blood on the back side of the exterior
10 of the home door. We're not denying that. Eric was
11 shot at some point by someone, and we don't know who,
12 and his blood is outside there.

13 This isn't a perfect world. We're not on TV.
14 This isn't a novel. We're not at a movie. And we will
15 never know what really happened in real life. And
16 there's always going to be questions left unanswered in
17 this case because the State's story just doesn't make
18 sense. This did not happen the way that the State
19 claims that it happened, and that's why there's
20 questions left unanswered. That's why Mr. Kidd is
21 speculating about how this had happened, how his body
22 was found under a tarp and then moved under the home.

23 There are no witnesses at all to this incident.
24 And in a moment the judge is going to instruct you on
25 the law, but I wanted to remind you of two important

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1 laws. The State has to prove their case beyond a
2 reasonable doubt. And what that means, if you hesitate
3 to act ever so slightly in your decision of guilt or
4 innocence, you must find Mr. Goodwin not guilty. If
5 you have any questions in your mind, you have to look
6 at the State for the answer, not to the defense. The
7 State has to prove their case beyond a reasonable
8 doubt.

9 One question that may be going through your
10 minds right now is why did Mr. Goodwin not testify.
11 It's a constitutional right that he doesn't have to
12 testify. And it's for a good reason: because he's
13 more nervous, just like I'm nervous here today. If
14 your life and your freedom was on the line, you would
15 be nervous. You would pause, you would stumble over
16 certain words, and you would be nervous, and we didn't
17 want you to take that away from Mr. Goodwin.

18 Mr. Goodwin -- or, excuse me -- Officer Glover
19 told you what Mr. Goodwin told him. He said he was
20 running because he knew he was wanted for murder. Mr.
21 Goodwin has always maintained that he is innocent. And
22 before you, he stood over there, took the oath, raised
23 his right hand, and said he was not guilty of murder.

24 The State wants you to believe the impossible.
25 They want you to embrace their contradictions and

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1 ignore the fact that no one could testify to how long
2 Eric Robinson's body was under the home. They want you
3 to ignore the fact that this whole impossible story is
4 supposed to take place in about thirty minutes. Use
5 your common sense. An old man with back problems could
6 not have completed this act in thirty minutes the way
7 the State is claiming.

8 At the end of this trial, you will find Mr.
9 Goodwin not guilty of murder.

10 THE COURT: Thank you, Ms. Winslow.
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CHARGE OF THE COURT

THE COURT: Ladies and gentlemen, I will now instruct you on the law applicable to this case. I remind you that during this trial you and I have had certain duties to perform. As the trial judge it is my responsibility to preside over the trial of this case and I have the duty to rule on the admissibility of the evidence offered during this trial.

You are to consider only the competent evidence before you. If there was any testimony that was ordered stricken from the record in this case, you must disregard that testimony. You are to consider only the testimony that has been presented from the witness stand, any exhibits which have been made a part of the record of this case, as well as the stipulations of counsel.

I have the additional duty to charge you the law applicable to this case. As the presiding judge, I am the sole judge of the law in this case. It is your duty as jurors to accept it and apply the law as I state it to you now. If you already have any idea as to what the law is or what the law ought to be and it does not agree with what I now tell you, you must abandon your own ideas because you are sworn to accept the law and apply the law exactly as I state it to you

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1 now.

2 In every case tried in this Court before a jury,
3 the jury becomes the sole and exclusive judges of the
4 facts in the case. A trial judge cannot make any
5 comment on or make any statement to a trial jury about
6 the facts in this case. You are the sole judge of the
7 facts in this case. You are not to infer from anything
8 that I have said during the progress of this trial in
9 ruling upon the admissibility of the evidence, or
10 anything else, or anything that I say now to you during
11 the charge on the law, that I have any opinion about
12 the facts in this case. The law does not allow me to
13 have an opinion about the facts in this case. This is
14 a matter solely for you, the jury, to determine. As
15 jurors, it your duty to determine the effect, value,
16 weight, and truth of the evidence presented during this
17 trial.

18 The indictment charges the defendant with
19 murder. I remind you that the fact that the defendant
20 was arrested, charged, and indicted in this case is not
21 evidence in this case and it cannot be considered by
22 you as evidence of guilt in this case, nor does it
23 create any presumption or inference of guilt. This
24 document is simply the formal written instrument which
25 contains the charges made against the defendant. It is

1 the formal document by which this case is brought into
2 court.

3 The defendant has pled not guilty to this
4 indictment and that plea puts the burden on the State
5 to prove the defendant guilty. A person charged with
6 committing a criminal offense in South Carolina is
7 never required to prove himself innocent.

8 I charge you it is an important rule of the law
9 that the defendant in a criminal charge, no matter what
10 the seriousness of the charge may be, will always be
11 presumed innocent of the crime for which the indictment
12 was issued unless guilt has been proven by evidence
13 satisfying you of that guilt beyond a reasonable doubt.
14 This presumption of innocence does not end when you
15 begin your deliberations but it accompanies the
16 defendant throughout the trial until you have reached a
17 verdict of guilt based upon the evidence satisfying you
18 of that guilt beyond a reasonable doubt. The
19 presumption of innocence is not a mere legal theory, it
20 is not just a legal phrase, it is a substantial right
21 to which every defendant is entitled unless you, the
22 jury, are satisfied from the evidence of the
23 defendant's guilt beyond a reasonable doubt.

24 The State has the burden of proving the
25 defendant guilty beyond a reasonable doubt. Some of

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1 you may have served as jurors in criminal -- excuse me
2 -- in civil cases before where you were told that it
3 was only necessary to prove that a fact is more likely
4 true than not true, such as by greater weight or
5 preponderance of the evidence. In criminal cases, the
6 State's proof must be more powerful than that. It must
7 be beyond a reasonable doubt. It must be more than
8 mere suspicion.

9 Proof beyond a reasonable doubt is proof that
10 leaves you firmly convinced of the defendant's guilt.
11 There are very few things in this world that we know
12 with absolute certainty and in criminal cases the law
13 does not require proof that overcomes every possible
14 doubt. If based upon your consideration of the
15 evidence you are firmly convinced that the defendant is
16 guilty of the crime charged, you must find the
17 defendant guilty. If on the other hand you think there
18 is a real possibility that the defendant is not guilty,
19 you must give the defendant the benefit of the doubt
20 and find him not guilty.

21 There are two types of evidence generally
22 presented during a trial: direct evidence and
23 circumstantial evidence. Direct evidence is the
24 testimony of a person who claims to have actual
25 knowledge of a fact, such as an eyewitness. It is

1 evidence which immediately establishes the main fact to
2 be proved. Circumstantial evidence is proof of a chain
3 of facts and circumstances indicating the existence of
4 a fact. It is evidence which immediately establishes
5 collateral facts from which the main fact may be
6 inferred. Circumstantial evidence is based on
7 inference and not on personal knowledge or observation.
8 You should weigh all of the evidence in this case.
9 After weighing all of the evidence, if you are not
10 convinced that the State has proven each element of the
11 charge beyond a reasonable doubt, you must find the
12 defendant not guilty.

13 Necessarily, you must determine the credibility
14 of the witnesses who have testified in this case.
15 Credibility simply means believability. It becomes
16 your duty as jurors to analyze and to evaluate the
17 evidence and determine which evidence convinces you of
18 this truth. In determining the believability of
19 witnesses who have testified in this case, you may
20 believe one witness over several witnesses or several
21 witnesses over one witness. You may believe a part of
22 the testimony of a witness and reject the remaining
23 part of the testimony of that same witness. You may
24 believe the testimony of a witness in its entirety or
25 reject the testimony of a witness in its entirety. You

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1 may consider whether the witness has exhibited to you
2 any interest, bias, prejudice, or other motive in this
3 case and you may also consider the appearance and the
4 manner of a witness while on the witness stand.

5 The rules of evidence ordinarily do not permit
6 witnesses to testify to opinions or to conclusions. An
7 exception to this rule exists for witnesses we call
8 expert witnesses, a witness who by education and
9 experience has become expert in some art, science,
10 profession or calling may state an opinion as to
11 relevant and material matter in which the witness
12 claims to be an expert and may also state the reasons
13 for the opinion. You should consider any expert
14 opinion received into evidence in this case and like
15 any other evidence give it the weight you think it
16 deserves. If you decide that the opinion of an expert
17 witness is not based on sufficient education and
18 experience, or if you conclude that the reasons given
19 in support of the opinion are not sound, or that the
20 opinion is outweighed by other evidence, you may
21 disregard the opinion entirely. An expert witness'
22 testimony is to be given no greater weight than that of
23 other witnesses simply because the witness is an
24 expert. Further, you are not required to accept an
25 expert's opinion, even though it's not contradicted.

1 Ladies and gentlemen, I instruct you, and
2 emphasize the fact, that the defendant did not testify
3 is not a factor to be considered by you in any way in
4 your deliberation and in your consideration of the
5 question of the guilt or the innocence of the
6 defendant. It must not be considered by you in any
7 manner whatsoever. A defendant has a constitutional
8 right to remain silent and the assertion of this right
9 must not be considered by you in your deliberations. I
10 repeat, under your oath you are to draw no conclusion
11 whatsoever from the fact that the defendant in this
12 case did not testify. The fact that the defendant in
13 this case did not testify must not even be discussed in
14 the jury room. The burden of proof, as I have stated
15 to you, is on the State. The defendant is not required
16 to prove his innocence. The burden of proof remains on
17 the State to prove guilt beyond a reasonable doubt.

18 An issue in this case is the identification of
19 the defendant as the person who committed the crime
20 charged. The State has the burden of proving identity
21 beyond a reasonable doubt. You must be satisfied
22 beyond a reasonable doubt of the accuracy of the
23 identification of the defendant before you may convict
24 the defendant. Identification testimony is an
25 expression or belief or impression by a witness. You

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1 must determine the accuracy of the identification of
2 the defendant. You must consider the believability of
3 each identification witness in the same way as any
4 other witness. You may consider whether the witness
5 had an adequate opportunity to observe the offender at
6 the time of the offense. This will be affected by
7 things like how long or short a time was available, how
8 far or close the witness was, the lighting conditions,
9 and whether the witness had a chance to see or know the
10 person in the past. The burden of proof on the State
11 extends to every element of the crime charged and this
12 specifically includes the burden of proving beyond a
13 reasonable doubt the identity of the defendant as the
14 person who committed the crime. If after examining the
15 testimony you have a reasonable doubt as to the
16 accuracy of that identification, you must find the
17 defendant not guilty.

18 In order to establish criminal liability,
19 criminal intent is required. For example, the mental
20 state required to be proven by the State for a
21 particular crime might be purpose, intent, knowledge,
22 recklessness, or criminal negligence. Criminal intent
23 must be proven by the State beyond a reasonable doubt.
24 Criminal intent is always a matter that must be
25 determined by the jury from the circumstances

1 surrounding the situation. There is no way to prove
2 intent to a mathematical certainty. There is no way
3 medical science can dissect a person's brain and
4 determine what the person had in mind so the law says
5 that criminal intent may be inferred from the
6 circumstances shown to have existed. This is how you
7 make a determination of whether or not the element
8 requiring the intent was present. It is not necessary
9 to establish intent by direct and positive evidence but
10 intent may be established by inference in the same way
11 as any other fact: by taking into consideration the
12 acts of the parties and all the facts and circumstances
13 of the case. Criminal intent is a mental state, a
14 conscience wrongdoing. It is up to you to determine
15 what the defendant intended to do, based upon the
16 circumstances shown to have existed. Criminal intent
17 can arise from action or a failure to act. It may
18 arise from negligence, recklessness, or an indifference
19 to duty, or to consequences that is considered by the
20 law to be equivalent of criminal intent.

21 A statement alleged to have been made by the
22 defendant has been admitted into evidence in this case.
23 While the Court has determined that the statement is
24 admissible, I instruct you that you make the ultimate
25 decision of whether or not the defendant made the

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1 statement. If the defendant did make the statement,
2 you must determine whether the statement was made by
3 the defendant voluntarily and of his own free will.
4 This means that the statement was not caused by
5 pressure, force, fear, threats, coercion or
6 intimidation or by hope or a promise of leniency or a
7 reward of any kind. In determining whether the
8 statement was voluntary, you should consider both the
9 characteristics of the defendant and the details of the
10 questioning. Some of the factors that you must
11 consider are the age of the defendant, the defendant's
12 education or lack of education, the defendant's mental
13 ability or capacity, the defendant's IQ or
14 intelligence, the defendant's background and
15 environment, the place and length of detention, the
16 nature of the questioning, and the advice or lack
17 thereof to the defendant of his constitutional rights,
18 including but not limited to the right to remain
19 silent, that the statement could be used against him in
20 a court of law, the right to have a lawyer present,
21 that he -- if he could not afford a lawyer, one would
22 be appointed to him without any cost, and that he could
23 stop making a statement at any time. You must
24 carefully consider all the surrounding circumstances
25 before you give any weight to an alleged statement.

1 The State has the burden of proving beyond a reasonable
2 doubt that the alleged statement was voluntary. If you
3 determine it was, you may give the statement any
4 further consideration that you deem proper. You must
5 decide what weight, if any, should be given to the
6 alleged statement. If you determine the alleged
7 statement was not a free and voluntary statement of the
8 defendant, you should not consider the statement at
9 all.

10 The defendant is charged with murder. The State
11 must prove beyond a reasonable doubt that the defendant
12 killed another person with malice aforethought. Malice
13 is hatred, ill will, or hostility towards another
14 person. It is the intentional doing of a wrongful act
15 without just cause or excuse and with an intent to
16 inflict an injury or under circumstances that the --
17 will infer an evil intent. Malice aforethought does
18 not require that malice exists for any particular time
19 before the act is committed but malice must exist in
20 the mind of the defendant just before and at the time
21 the act is committed. Therefore, there must be a
22 combination of the previous evil intent and the act.
23 Malice aforethought may be express or inferred. These
24 terms express and inferred do not mean different types
25 of malice but merely the manner in which malice may be

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1 shown to exist; that is, either by direct evidence or
2 by inference of the facts and circumstances which are
3 proved. Express malice is shown when a person speaks
4 words which express hatred or ill will for another
5 person or when the person prepared beforehand to do the
6 act which was later accomplished. For example, lying
7 in wait for a person, or any other acts of preparation
8 going to show that the deed was with the defendant's
9 mind, would be express malice. Malice may be inferred
10 from conduct showing a total disregard for human life.
11 Inferred malice may also arise when the deed is done
12 with a deadly weapon. A deadly weapon is any article,
13 instrument, or substance which is likely to cause death
14 or great bodily harm. Whether an instrument has been
15 used as a deadly weapon depends on the facts and
16 circumstances of each case.

17 Ladies and gentlemen, I will now go over the
18 verdict form. Mr. Foreman, it is your responsibility
19 to complete the verdict form but I will go over the
20 verdict form with you now at this time.

21 Ladies and gentlemen, there is no significance
22 at all in the way that I read the verdict form. It's
23 simply one must go first on the paper.

24 Ladies and gentlemen, in the Court of General
25 Sessions, indictment number 2010-GS-10-738, the State

1 of South Carolina versus Leonard Goodwin. Number one,
2 we, the jury, find the defendant not guilty, or, we,
3 the jury, find the defendant guilty, of murder.

4 Ladies and gentlemen, this must be a unanimous
5 decision, meaning all twelve of you must agree. After
6 you have come to a unanimous decision, you will sign
7 the verdict form and date it. You will then indicate
8 to the bailiff, by knocking on the door, that you have
9 reached a verdict.

10 Ladies and gentlemen, this is the last time that
11 I will say this to you. Do not begin your
12 deliberations. Do not discuss this case amongst
13 yourselves. We'll be gathering the verdict form, as
14 well as gathering the exhibits to go back to you. At
15 that time the bailiff will bring those into the jury
16 room and indicate that you may begin your
17 deliberations.

18 To my two alternates, you have at this time
19 completed your service to this case. I ask that you
20 not begin your deliberations or discuss this case
21 amongst yourselves. We will keep you in a separate
22 room until the evidence has been given and the twelve
23 jurors have been instructed that they may begin their
24 deliberations. So please do not talk to each other
25 about this case or begin your deliberations until I

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1 have instructed you further.

2 Ladies and gentlemen, please rise for the jury.

3 Thank you.

4 [Whereupon, the jury exits the courtroom at
5 12:07 p.m.]

6 THE COURT: Thank you. Please be seated.

7 Any objection, correction, or addition to the
8 charge from the State?

9 MR. KIDD: No, ma'am.

10 THE COURT: From the defendant?

11 MR. BUTLER: None other than those previously
12 stated and those two requests to charge that were made
13 Court's exhibits.

14 THE COURT: Yes, sir.

15 MR. BUTLER: Nothing further.

16 THE COURT: Just please review -- I've read it.
17 Just please review the verdict form, to make sure there
18 are no errors, before it goes back.

19 Ms. Winslow?

20 [Whereupon, counsel review documents]

21 THE COURT: And all of the exhibits have been
22 returned?

23 [Off the record momentarily]

24 MR. BUTLER: Your Honor, are we at ease?

25 THE COURT: I'm just waiting, just to make sure

1 there are no objections to what's going back.

2 MR. KIDD: No, ma'am.

3 MS. WINSLOW: No objection, Your Honor.

4 THE COURT: Counsel, I just wanted to thank you,
5 Mr. Kidd, Mr. Young, Ms. Winslow and Mr. Butler for
6 your courteousness and professionalism in this case.

7 And to the members of the audience, friends and
8 family of those -- the victim and the defendant, again,
9 thank you for your courteousness and your
10 respectfulness to the Court and to the courtroom.
11 Thank you.

12 We are at ease.

13 MR. YOUNG: Thank you, Judge.

14 MR. KIDD: Thank you, Your Honor.

15 [Whereupon, the evidence goes to the jury at
16 12:11 p.m.]

17 [Whereupon, a recess is taken from 12:11 p.m. to
18 2:14 p.m.]

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VERDICT

THE COURT: All right. Anything before we bring in the jury? From the State?

MR. KIDD: No, ma'am.

THE COURT: From the defendant?

MS. WINSLOW: No, Your Honor.

THE COURT: All right. Thank you.

Let's bring in the jury.

[Whereupon, the jury enters the courtroom at 2:19 p.m.]

THE COURT: Thank you. Please be seated.

Mr. Foreman, I understand you have reached a verdict. If you'll hand it to the clerk. Thank you.

[Whereupon, the foreperson proffers documents to the clerk of court. The clerk of court proffers documents to the Court]

[Whereupon, the Court reviews documents]

THE COURT: Mr. Goodwin, if you will please stand.

[Whereupon, the Court proffers documents to the clerk of court]

THE CLERK OF COURT: The State of South Carolina, County of Charleston, in the Court of General Sessions, indictment number 2010-GS-10-738, the State of South Carolina versus Leonard Goodwin. We, the

1 jury, find the defendant guilty of murder.

2 Mr. Foreperson, ladies and gentlemen of the
3 jury, if this is your verdict please raise your right
4 hand.

5 [Whereupon, the jurors comply]

6 THE CLERK OF COURT: Your Honor, the verdict
7 stands.

8 THE COURT: May the record reflect all twelve
9 jurors have raised their hand.

10 Anything further from --

11 MS. WINSLOW: Your Honor, we would ask to poll
12 the jury.

13 THE COURT: All right.

14 - - - - -

15 POLLING OF THE JURY

16 THE COURT: Mr. Clerk, if you would poll the
17 jury, please.

18 THE CLERK OF COURT: Ladies and gentlemen, I'm
19 going to ask you each two questions: is this your
20 verdict, and is this still your verdict. Please answer
21 each question appropriately. And also stand whenever I
22 call your name.

23 John Koprowski, juror number 112, is this your
24 verdict and is this still your verdict?

25 MR. KOPROWSKI: Yes, this is my verdict. It is

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1 still my verdict.

2 THE CLERK OF COURT: Juror number 44, Mark
3 Clair, is this your verdict?

4 MR. CLAIR: Yes.

5 THE CLERK OF COURT: Is this still your verdict?

6 MR. CLAIR: Yes.

7 THE CLERK OF COURT: Thank you.

8 Juror number 73, Erin Gallman. Is this your
9 verdict?

10 MS. GALLMAN: It is.

11 THE CLERK OF COURT: Is this still your verdict?

12 MS. GALLMAN: Yes.

13 THE CLERK OF COURT: Thank you.

14 Juror number 128, Teresa Maddox-Kirkland, is
15 this your verdict?

16 MS. MADDOX-KIRKLAND: Yes.

17 THE CLERK OF COURT: Is this still your verdict?

18 MS. MADDOX-KIRKLAND: Yes.

19 THE CLERK OF COURT: Juror number 148, Angela
20 Myers, is this your verdict?

21 MS. MYERS: Yes.

22 THE CLERK OF COURT: Is this still your verdict?

23 MS. MYERS: Yes.

24 THE CLERK OF COURT: Thank you.

25 Juror 151, Brandon Nelson, is this your verdict?

1 MR. NELSON: Yes.

2 THE CLERK OF COURT: Is it still your verdict?

3 MR. NELSON: Yes.

4 THE CLERK OF COURT: Thank you.

5 Juror 156, Paul Nocida, is this your verdict?

6 MR. NOCIDA: Yes, sir.

7 THE CLERK OF COURT: Is this still your verdict?

8 MR. NOCIDA: Yes, sir.

9 THE CLERK OF COURT: Juror number 157, Jackie
10 Nolen, is this your verdict?

11 MR. NOLEN: Yes.

12 THE CLERK OF COURT: Is this still your verdict?

13 MR. NOLEN: Yes.

14 THE CLERK OF COURT: Thank you.

15 Juror 175, Marilyn Sagel, is this your verdict?

16 MS. SAGEL: Yes.

17 THE CLERK OF COURT: Is it still your verdict?

18 MS. SAGEL: Yes.

19 THE CLERK OF COURT: Thank you.

20 Juror 179, Destine Sanders, is this your
21 verdict?

22 MS. SANDERS: Yes, it is.

23 THE CLERK OF COURT: Is it still your verdict?

24 MS. SANDERS: Yes.

25 THE CLERK OF COURT: Thank you.

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1 Juror 182, Phyllis Scott, is this your verdict?

2 MS. SCOTT: Yes.

3 THE CLERK OF COURT: Is this still your verdict?

4 MS. SCOTT: Yes.

5 THE CLERK OF COURT: Thank you.

6 Juror 219, Joseph Tucker, is this your verdict?

7 MR. TUCKER: Yes.

8 THE CLERK OF COURT: Is this still your verdict?

9 MR. TUCKER: Yes.

10 THE CLERK OF COURT: Your Honor, the jury has
11 been polled and the verdict stands.

12 THE COURT: Thank you.

13 Anything further?

14 MS. WINSLOW: No, Your Honor.

15 THE COURT: Thank you. Please be seated.

16 Anything further, from the State, of the jury?

17 MR. KIDD: Nothing from the jury, Your Honor.

18 THE COURT: All right. Ladies and gentlemen,
19 this concludes your service to this case. It also
20 concludes your service for the week. If you would
21 please remain in your jury deliberation room, I would
22 like to come and personally thank you for your service
23 to Charleston County.

24 Please rise for the jury.

25 [Whereupon, the jury exits the courtroom at

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1 2:23 p.m.]

2 THE COURT: Thank you. Please be seated.

3 Mr. Kidd, if you will prepare the sentencing
4 sheet. I'm going to go release the jury if there's
5 nothing further required of the jury from the State.

6 MR. KIDD: Nothing further.

7 MS. WINSLOW: Nothing further, Your Honor.

8 THE COURT: Thank you. We'll be at ease.

9 [Whereupon, a recess is taken from 2:24 p.m. to
10 2:35 p.m.]

11 THE COURT: All of the jurors have indicated
12 that they wish to be present for sentencing so they
13 will be coming back.

14 Please bring in the jury.

15 THE COURT: Anything before we proceed with
16 sentencing, Mr. Kidd?

17 MR. KIDD: Not before we proceed with it. I
18 mean, I would like to talk about sentencing.

19 THE COURT: I just want to make sure --

20 MR. KIDD: Okay.

21 THE COURT: Anything before we begin with
22 sentencing?

23 MS. WINSLOW: No, Your Honor.

24 THE COURT: All right. Thank you, Ms. Winslow.

25 [Off the record momentarily]

SENTENCING

THE COURT: Ms. Winslow, did you advise your client this is a violent and a most serious offense?

MS. WINSLOW: I have not today, Your Honor. I can go over it with him again.

[Off the record momentarily]

THE COURT: All right. Mr. Kidd, I have the sentencing sheet. Is the Court correct the possible sentence is a minimum of thirty up to life? Is that correct?

MR. KIDD: That's correct, Your Honor.

THE COURT: And this is a violent and a most serious offense?

MR. KIDD: It is, Your Honor.

THE COURT: Ms. Winslow, you have indicated to your client what that terminology means, as far as violent and most serious?

MS. WINSLOW: Yes, Your Honor.

THE COURT: All right. Thank you.

Mr. Kidd, I will be happy to hear from you.

MR. KIDD: Thank you, Your Honor.

I just kind of want to stress a couple of points with regard to sentencing.

Obviously, we put a lot of work in this case over a period of time. And with regard to the victim,

MIA PERRON, CVR-CM

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1 Eric Robinson, I have to say that it is rare for me in
2 the cases that I do that I haven't heard a single
3 negative word spoken about him. He was a twenty-four-
4 year-old man who's never been in trouble in his life,
5 not a single arrest.

6 Everyone says he's a hard-working kid, he was
7 always non-confrontational, always trying to resolve
8 people's inferences. And it tends to work out like
9 that, that those are the people who end up the victims
10 and those are the people who end up being killed and
11 having their life taken from them for something so
12 stupid as this.

13 It's important to note the defendant's prior
14 record. He has an assault and battery with intent to
15 kill conviction in which he got a twelve-year sentence.
16 He shot someone in that case, as well. With that in
17 consideration and with the gruesome nature of this
18 crime, I think a life sentence is an appropriate one.

19 And with those things in mind, Your Honor, we do
20 have three family members of the victim who would like
21 to address you at the appropriate time.

22 THE COURT: Mr. Kidd, was that the extent of the
23 defendant's prior record was the ABWIK?

24 MR. KIDD: It is, Your Honor.

25 THE COURT: All right. Thank you.

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1 Ms. Purcell, I'll be happy to hear from the
2 victims.

3 MS. CUMMINGS: Good afternoon, Your Honor. Good
4 afternoon, Your Honor. My name is Ms. Barbara
5 Cummings. The last name is spelled C-U-M-M-I-N-G-S.

6 And I just want to say -- on behalf of my
7 family, we just want to thank everybody that have
8 partaken in this today. And our family have closure
9 now and everyone can move forward, and justice has been
10 made. And thanks again.

11 THE COURT: Thank you, Ms. Cummings.

12 MS. WASHINGTON: My name is Latarshia
13 Washington. And I just want to say this has been a
14 very long road, long, hard, with my two children. I've
15 been struggling. I've been going through the holidays.
16 Everything has been passing me by. It's hard. And
17 justice has been served. I just want to know why?
18 Why?

19 Thank you, guys, for everything.

20 MR. REID: My first name is Ronald. My last
21 name is Reid and it's R-E-I-D.

22 Eric was my son, my firstborn. And when you got
23 kids, you know, just all your children are special.
24 And you've got -- that first one is the most important
25 because -- I guess women know what I'm talking about,

1 to deal with that pain and that's the first kid you
2 bring in this world.

3 I guess anybody I guess would think, you know,
4 you bring your kids here in the world and one day that
5 you're going to have to leave, that you leave your kids
6 behind to -- but, you know, people die every day,
7 different things. But to have someone actually take
8 your kid's life away is kind of hard; that you are
9 here, and they are gone for no reason at all.

10 And in those twenty-four years I guess kids are
11 going to be bad, they're going to be good, but as I'm
12 standing here I can tell you he never give me a trouble
13 in the world. As a father, I argue with him, I fuss
14 with him. He never talked back, never disrespect me.

15 But I prayed for three years that I'm going to
16 look for him night and day. My job on the line. I
17 hunt him down in the shelters, in the crack house. I
18 put my life on the line. I looked for him. Until
19 today, Your Honor I haven't slept a wink. To today, I
20 haven't slept for three years.

21 And I don't know. I guess it's God's doing.
22 Just three years came around and went to church with my
23 girlfriend and still with my -- I guess what I do --
24 I'm in the military so I'm just watching, as I drive,
25 for a bicycle. I came out of church around twelve

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1 o'clock that day and I looked toward my right. Who did
2 I see? Mr. Goodwin. I said some things. I figured
3 the Lord was playing tricks on me. I figured the devil
4 was messing with my head. I figured in three years I
5 haven't saw a sight of him no way. People know, but
6 they tell me they didn't know where he was. But that
7 day he was riding his bicycle, not a worry in the
8 world.

9 God knows I wanted to get out of my car. I
10 wanted to actually touch him. But with the help of the
11 Good Lord, my girlfriend tell me, said, no, let the law
12 handle it. I drove past him three times. Each times I
13 drove past him, I wanted to get out. On my third
14 passing, I guess he noticed me. I look over my
15 shoulder and he look over his and I guess he caught my
16 eyes. During that time I know -- I had to get out of
17 my car the next time because I know he was going to get
18 away. By the time I turned around, he was gone. And
19 that time, when my girlfriend be dialing 911, I drove
20 around for just a couple of while. But then I guess he
21 duck somewhere.

22 I went home still upset with myself. And in
23 turning to come back to see whether he came out where
24 he was at, North Charleston called me and told me I
25 didn't need to come back again because they had

1 someone. And at that time, that ID he had was a false
2 name. And I told them whatever they do, don't let Mr.
3 Goodwin go, because that's who he is, that I would come
4 back where they were at and point him out. And in my
5 travel back to where they had him detained, the officer
6 called me back again, said, no need to come back again
7 because he finally admitted who he was.

8 Like I said, for three years I hunt him down. I
9 promised Eric that I would do it. And I know that if
10 he was alive today, I would think this is the way he
11 would have wanted it. I don't think he would have
12 wanted me to be on the other side of this table with
13 Mr. Goodwin -- let the law handle it. But I can see
14 today I guess that's what's come through.

15 I've got two grands. For three years I haven't
16 had the strength to go see them because he looks like
17 Eric so much that it tears me apart. They ask about
18 him every day, where is their father. And to today, I
19 don't know what to tell them. I can't say daddy took
20 sick and passed away.

21 But what I can do is thank the jury for all your
22 help and here in the courtroom. I know it took up all
23 of your time. And like I said, I'm glad I didn't do
24 what I wanted to do. I'm letting justice handle it.
25 I'm hoping, with your help, that justice prevail. And

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1 I'm hoping that the sentence coming back is life.
2 Because Eric had a life. He's not going to come back
3 ten years from now, he's not going to come back thirty
4 years from now, he's gone for good. So I think he
5 should have the same kind of sentence of life, he
6 doesn't see the outside. And he ran for three years.
7 That's his freedom right there --

8 I thank you for this time.

9 THE COURT: Thank you, Mr. Reid. And my
10 condolences on your loss.

11 Anything further, Mr. Kidd?

12 MR. KIDD: Nothing further from the State, Your
13 Honor.

14 THE COURT: Ms. Winslow, I'll be happy to hear
15 from you or anyone else regarding sentencing.

16 MS. WINSLOW: Thank you, Your Honor. May it
17 please the Court.

18 Leonard Goodwin, he has always maintained his
19 innocence and he still does.

20 He is fifty-eight years old. He was married for
21 seventeen years. Leonard Goodwin does have family.
22 His children were in the courtroom. They couldn't be
23 here. They're in North Charleston. But he is still
24 close to them. He was working during this time period,
25 as well.

1 Your Honor, the conviction that the State
2 mentioned was from 1987. I would like for you to take
3 that into consideration. He also does suffer from
4 multiple health problems. We would ask the Court for a
5 thirty-year sentence.

6 While in custody at the Charleston County jail,
7 he was beaten up pretty badly by the victim's brother.
8 All his front teeth were knocked out and he suffers
9 from that. He's been placed in protective custody at
10 the Charleston County jail since then. He fears for
11 his own safety, whether he's in jail or out of jail.
12 We would ask you to write on the sentencing sheet while
13 in prison put him in protective custody because he's
14 not safe without being in protective custody. He has
15 had threats before.

16 But we would ask for a thirty-year sentence. It
17 is a life sentence for him. He's fifty-eight years old
18 and with his health condition as it is, that will be a
19 life sentence for him.

20 I've asked -- I have also asked my client not to
21 speak, in light of an appeal, so that's why he's not
22 going to be speaking, Your Honor.

23 THE COURT: Is there anyone else that wishes to
24 speak to his behalf, Ms. Winslow?

25 MS. WINSLOW: No, Your Honor. I think -- his

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1 family is not here.

2 THE COURT: Ms. Winslow, you have advised Mr.
3 Goodwin of his appellate rights, that he must appeal
4 within ten days of the date of sentencing; is that
5 correct?

6 MS. WINSLOW: Yes, Your Honor.

7 THE COURT: And, Mr. Goodwin, you understand
8 that; is that correct?

9 MR. GOODWIN: Yes, ma'am.

10 THE COURT: And you also understand that the
11 minimum that I may impose upon you here today is thirty
12 years. You understand that, sir?

13 MR. GOODWIN: Yes, ma'am.

14 THE COURT: And is there anything -- Ms. Winslow
15 has indicated that she has advised you not to speak.
16 Is there anything further that you wish to address to
17 the Court?

18 MR. GOODWIN: No, ma'am.

19 THE COURT: All right. Thank you, Mr. Goodwin.
20 Anything further, Ms. Winslow?

21 MS. WINSLOW: No, Your Honor.

22 THE COURT: Anything further from the State?

23 MR. KIDD: No, ma'am.

24 THE COURT: Thank you.

25 Mr. Goodwin, I have sat here now for four days

1 and I listened to the testimony that was presented by
2 the State and based upon the testimony, your prior
3 record, and the fact that you knew that you had a
4 warrant out for your arrest and you were using a fake
5 ID, fake identity, and had left the jurisdiction, it is
6 the order of the Court on indictment 2010-GS-10-738,
7 that you be committed to the State Department of
8 Corrections for a term of life.

9 Good luck to you, sir. Thank you.

10 MS. WINSLOW: Thank you, Your Honor.

11 MR. KIDD: Thank you, Your Honor.

12 THE COURT: Thank you. We're in recess. Thank
13 you. Thank you Ms. Winslow, Mr. Butler, Mr. Kidd and
14 Mr. Young. Thank you.

15 [JURY TRIAL CONCLUDES AT 2:50 P.M.]
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June 3, 2011

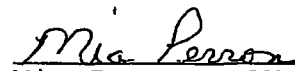
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held the Honorable Kristi L. Harrington, on June 3, 2011.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 15th day of November, 2011.


Mia Perron, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM

-113-

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

MAY 23 2013

Appeal from Charleston County

SC Court of Appeals

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LEONARD GOODWIN,

APPELLANT

APPELLATE CASE NO. 2011-193507

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial court reversibly erred by failing to include language in the jury instruction regarding circumstantial evidence indicating that “the State must exclude all other reasonable hypotheses when it relies upon circumstantial evidence,” thereby leaving the jury confused regarding the legal relation of circumstantial evidence to the determination of guilt?

- II. Whether the trial court reversibly erred by failing to grant a directed verdict where the evidence of the alleged offense against Appellant was circumstantial, and only rose to the level of “mere speculation” rather than “substantial circumstantial evidence.”

- III. Whether the trial court reversibly erred by failing to suppress two autopsy photographs graphically depicting maggot infested remains that had decomposed more than four days?

STATEMENT OF THE CASE

Appellant Leonard Goodwin was indicted by the Charleston County Grand Jury on January 13, 2010, for murder. R. 11, lines 4-13; R. 540 (indictment). His case proceeded to trial before the Honorable Kristi L. Harrington and a jury from May 31 through June 3, 2011. Cassandra Winslow and Beattie Butler (collectively, "Counsel") represented Appellant, while Edward Kidd and Adam D. Young represented the State. R. 1-2; R. 144 – R. 145; R. 358 – R. 359; R. 436 – R. 437. The jury found Appellant guilty as charged, and the trial court imposed a sentence of life. R. 522, line 22–R. 523 line 9; R. 537, lines 5-8.

STATEMENT OF THE FACTS

Appellant Leonard Goodwin was fifty-six years old in April 2006, and lived in a rented home in North Charleston, South Carolina, with his wife, Mary Ann Robinson (Wife),¹ and stepson Eric Robinson (Stepson). R. 58, line 14–R. 59, line 10; R. 116, line 8–R. 117, line 11; R. 119, lines 18 – 21. Appellant and Stepson had a relationship that was at times rocky; however, although arguments may have occasionally occurred, there were never any physical altercations between the two over approximately twenty years. R. 58, lines 8-10; R. 120, line 10—R. 121, line 4; R. 130, lines 3—R. 131, line 12.

At approximately 8:30 to 9:00 pm on April 3, 2006, Stepson was speaking on the house telephone with his girlfriend, Latarshia Washington (Washington). R. 62, line 21–R. 63, line 18. She called Stepson again at approximately 9:30 pm. R. 81, line 17–R. 82, line 3. During the second conversation, Washington stated that she overheard an argument between Appellant and Stepson, and the call ended after about thirty minutes when she heard a loud “crash, like glass breaking.” R. 64, line 1–R. 65, line 9; R. 82, lines 18-22. Washington indicated that she never heard any mention of a gun or any weapon over the telephone, and that she never heard a gunshot; just something like glass breaking. R. 83, lines 14-22. Washington called back three to six times to the house phone, and Appellant answered. When asked where Stepson was, Appellant purportedly said that Stepson left to Russellville looking for weed. R. 65, line 22—R. 66, line 10; R. 90, lines 1-6.

Washington later contacted Stepson’s cousins, Michael Phillips (Phillips) and Jessie Owens (Owens). She was picked up by Owens at approximately 11:00 pm, and the two

¹ By April 2006, Appellant and Wife had been married for approximately seventeen years. R. 116, lines 16-23.

drove to Appellant's home. R. 67, line 11–R. 68, line 17; R. 84, lines 9-16; R. 93, lines 9-11; R. 95, line 9–R. 96, line 17. About one block from arriving at the house, the two saw Appellant riding his bicycle. They all stopped and spoke for a few moments. Although stained specks were noticed on the lower portion of Appellant's shirt that Washington would later claim was blood, Owens "didn't think nothing of it." R. 69, lines 1-21; R. 85, lines 3-15; R. 96, line 18—R. 97, line 19.

Owens and Washington arrived in front of Appellant's home where they eventually met with Phillips, and all three waited outside in the road. Appellant returned between five to thirty minutes after previously meeting Owens and Washington that night, and he went inside. R. 70, lines 18–22; R. 98, lines 7-8.

Wife also arrived home between 11:00 and 11:15 pm while Owens, Washington, and Phillips waited outside, and she saw Appellant calmly sitting on the couch watching television when she walked inside. R. 71; R. 72, lines 12-11; R. 98, lines 2-13; R. 122, line 8–R. 124, line 1; R. 125, lines 14-16; R. 132, lines 6-18. Soon after, Washington flagged down a passing police car, which was driven by Officer Arthur D. Armstead (Armstead) R. 71, lines 17-25; R. 110, lines 4-10; R. 156, lines 4-24.

Armstead entered the house with Phillips walking behind. R. 72, lines 12-24; R. 88, line 4—R. 89, line 11; R. 99, lines 1-5; R. 110, lines 12-24. Upon entry, Armstead made contact with the occupants. Appellant allegedly stated that he had a verbal argument with Stepson, and Stepson left with a female. R. 159, lines 9-15. Armstead had Appellant stand in the middle of the house while he inspected the rooms. He walked in and out of the bedrooms, and checked the common areas. R. 159, line 5–R. 160, line 25. Armstead neither saw anything out of the ordinary, nor smelled anything out of the ordinary—

including either the smell of a gunshot lingering inside the home, or the smell of cleaning chemicals. R. 160, lines 2-25; R. 163, line 2–R. 164, line 18; R. 166, lines 3-21. In fact, the only person who claims to have smelled anything was Wife, who indicated at trial that she smelled bleach and cleaning products in the bathroom.² R. 124, line 17–R. 125, line 7; R. 136, line 7–R. 137, line 2. Although she was the person in the household who most often cleaned the home, Wife indicated that Appellant did some cleaning as well. R. 133, lines 2-4. She further testified that nothing was out of the ordinary, and everything seemed normal—which was the same observation echoed by both Phillips and Armstead. R. 113, line 14–R. 114, line 3; R. 132, line 6–R. 134, line 3; R. 159, line 21–R. 160, line 25; R. 164, lines 2-18. Armstead left the home, and did not file a report because there was “nothing to report.” R. 165, line 14.

Over three weeks later, Wife smelled a foul odor, and informed Appellant of this while he was cutting the grass in a neighbor’s yard. Appellant pointed to the back of the yard, and indicated it was a dead cat. R. 126, lines 6-12. Wife called her sister, and then law enforcement about the odor, but was not sure whether she told Appellant that she called the police. R. 126, lines 13-25. When officers arrived on April 27, 2006, Appellant was still cutting the neighbor’s grass. Appellant was not seen thereafter until his arrest on September 6, 2009.³ R. 364, lines 8-22; R. 371, line 24—R. 372, line 7.

² Wife never mentioned smelling bleach or cleaning products in her statements to law enforcement on either April 6, 2006, or April 27, 2006. R. 134, line 4–R. 137, line 3.

³ When arrested, Appellant stated to law enforcement that he was in New Jersey over the previous year, and indicated he was aware that he was wanted for murder. R. 370, line 13—R. 371, line 14.

Stepson's body was found in the crawlspace beneath the home. The remains were found decomposed, covered in lime, and among a small amount of trash.⁴ R. 169, lines 2-23; R. 171, lines 7-25; R. 173, lines 5-20; R. 180, lines 1-25; R. 276, lines 4-21; A pair of socks were located in the front exterior garbage can with spatters later identified as Stepson's blood. R. 184, line 25—R. 185, line 3; R. 203, line 1—R. 204, line 11. Two bags of lime—one opened, one unopened—in packaging from True Value were also found in the back yard of the house beneath a tarp with other lawn equipment, such as a mower and gas cans.⁵ R. 197, line 4—R. 198, line 22. Other items were found in the back yard too, including "Fabreeze," "Odor Ban," and a cleaner. R. 250, line 22—R. 252, line 23. Using amido black, the back door and cement on the back porch revealed spots which tested positive for blood. R. 189, lines 5-16; R. 227, line 4—R. 229, line 13. However, no blood was found anywhere inside the house even though amido black can reveal attempts to clean blood. R. 238, line 6—R. 239, line 16; R. 247, lines 1-10; R. 306, lines 11-24. Also, damage was found on the wood of the rear screen door of the house postulated to be from a gunshot. However, no gun of any caliber was ever found in the case. R. 237, lines 2-8.

Doctor Cynthia Anna Schandl (Schandl) testified at Appellant's trial as the forensic pathologist who performed the autopsy. She determined the cause of death was a gunshot

⁴ On May 4, 2011, the State sent an investigator back to the crawlspace of the house, and recovered eight empty alcohol bottles from this approximate location, one of which was an empty gin bottle with Appellant's DNA. R. 377, line 8—R. 380, line 15; R. 385, line 1—R. 386, line 14; R. 521, lines 1-24.

⁵ The State produced William Palmer (Palmer), an employee from True Value in North Charleston, to testify at trial. Palmer indicated Appellant regularly purchased one to two bags of lime per week over approximately six months prior to April 2006 when police first spoke with him. R. 210, line 1—R. 212, line 13; R. 216, line 20—R. 217, line 25; R. 220, lines 2-23.

wound to the head, and the hole measured .6 inches by .35 inches. R. 335, line 17–R. 338, R. 342, line 12; R. 342, lines 13-14. Additionally, Schandl explained that, although there was some discoloration on the surface of the skull, this was completely inconclusive of any soot from a gun being fired and the range that the gun was fired from the head could not be determined. R. 338, line 13–R. 339, line 20. In fact, the remains had decomposed to the point that the brain had liquefied, and Schandl could not even determine the path of the wound. R. 341, lines 2-24.

Schandl also testified regarding the estimated time of death. First, she described changes to the body due to decomposition. Over Counsel's objection, the trial court admitted two autopsy photographs depicting Stepson's bloated, maggot infested remains. R. 322, lines 8-19; R. 355, line 13–R. 356, line 20; R. iv (State's Exhibit # 52); R. iv (State's Exhibit # 54). The State then elicited further testimony regarding each photograph; yet, despite the State's efforts to have Schandl give a time of death based on the presence of maggots, the best the forensic pathologist could state was that death occurred more than four days prior, "but it's certainly not specific for a length of time between death and where we are now." R. 322, line 21—R. 325, line 23. Schandl also testified that rigor mortis had already passed, sloughing and gloving of the skin was occurring, and that fluid in the eyes had already dissipated, indicating that the time of death was more than four days. R. 326, lines 3-20; R. 330, lines 1-25.

Moreover, the State's firearms identification expert, Kenneth H. Whitler (Whitler), also testified. Specifically, Whitler stated that the metal fragment—which was taken from Stepson's head—was either a piece of lead, or a projectile. In fact, the item was so "mashed up" that his testing consisted primarily on the remaining weight of the lead. R. 396, line 14–

R. 397, line 18. As a result, Whitler could not even say it was a bullet; and even if it was a bullet, it could be anything from a .22 caliber rim-fired bullet, or a piece of a much larger caliber bullet. R. 396, lines 14-18; R. 400, lines 22-24.

At the close of evidence, Counsel moved for a directed verdict of acquittal. R. 458, lines 6-19. The trial court denied the motion, and cited to Washington's testimony as direct evidence of guilt, and to the following as substantial circumstantial evidence of the same: testimony from wife that Appellant explained the odor was a dead cat; testimony regarding Appellant's prior purchases of lime from True Value hardware; lime found from True Value under the a tarp in the back yard of the home; lime found on Stepson's remains; testimony regarding flight; testimony regarding odor-masking chemicals; testimony regarding the smell of bleach after Washington heard the argument; testimony regarding a liquor bottle with Appellant's DNA near the area where Stepson's remains were found; and the overwhelming odor under the house. R. 462, line 2—R. 463, line 6.

Further, during the jury charge conference, Counsel asserted that the circumstantial evidence jury instruction should include an Edwards charge containing the following key language:

The State must exclude all other reasonable hypotheses when
it relies upon circumstantial evidence.

R. 467, line 19—R. 468, line 4. In light of recent South Carolina case law, Counsel also challenged the validity of the language of State v. Grippon⁶ that states the "law makes

⁶ 327 S.C. 79, 489 S.E.2d 462 (1997).

absolutely no distinction between direct and circumstantial evidence.”⁷ R. 468, line 9–R. 469, line 22; R. 470, line 21–R. 471, line 12. The State opposed, and the trial court noted Counsel’s exception. After instructing the jury on reasonable doubt, the trial court charged the following language relating to circumstantial evidence:

There are two types of evidence generally presented during a trial: direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It is evidence which immediately establishes the main fact to be proved. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation. You should weigh all of the evidence in this case. After weighing all of the evidence, if you are not convinced that the State has proven each element of the charge beyond a reasonable doubt, you must find the defendant not guilty.

R. 510, line 21—R. 511, line 12. Counsel’s objections were renewed out of the presence of the jury. R. 520, lines 4-13.

After deliberating for over two hours, the jury returned a verdict of guilty as charged.

R. 521, line 15—R. 522, line 10; R. 522, line 22—R. 523, line 7. The trial court sentenced Appellant to life imprisonment. R. 537, lines 5-8.

This appeal follows.

⁷ In an abundance of caution, Counsel also requested the trial court’s permission to argue against precedent. R. 467, lines 19-22.

ARGUMENT

- I. The trial court reversibly erred by failing to include language in the jury instruction regarding circumstantial evidence indicating that “the State must exclude all other reasonable hypotheses when it relies upon circumstantial evidence,” thereby leaving the jury confused regarding the legal relation of circumstantial evidence to the determination of guilt.**

The purpose of jury instructions is to enlighten the jury as to applicable law so that a just, fair and proper verdict can be reached. State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987); see also State v. Blurton, 352 S.C. 203, 207, 573 S.E.2d 802, 804 (2002) (“The purpose of a jury instruction is to enlighten the jury and to aid it in arriving at a correct verdict.”). It is error to give instructions which are calculated to confuse or mislead a jury. Blurton, 352 S.C. at 208, 573 S.E.2d at 804 (quoting Leonard, 292 S.C. at 137, 355 S.E.2d at 273). The law to be charged must be determined from the evidence presented at trial. Id.; see also State v. Lindler, 276 S.C. 304, 307, 278 S.E.2d 335, 337 (1981). In a criminal case, the judge must charge on all material issues raised by the indictment and evidence. State v. Fair, 209 S.C. 439, 445, 40 S.E.2d 634, 637 (1946). It is reversible error to decline a criminal defendant's requested jury instruction where it (1) is a correct statement of the law, (2) was not substantially covered by other instructions, and (3) was important enough to the case that its omission impaired the defendant's ability to defend himself. United States v. Frazier-El, 204 F.3d 553, 562 (4th Cir. 2000) (quoting United States v. Queen, 132 F.3d 991, 1000 (4th Cir. 1997)). See also United States v. Dornhofer, 859 F.2d 1195, 1199 (4th Cir. 1988), cert. denied, 490 U.S. 1005 (holding that a trial court may not refuse a defense theory instruction if it has evidentiary support and is an accurate statement of the law).

In the present case, Counsel requested inclusion of the traditional language regarding the relation of circumstantial evidence to the determination of guilt, as embodied in State v. Edwards, as well as the concurring opinion in State v. Grippon, 327 S.C. 79, 85, 489 S.E.2d 462, 465 (1997) (Toal, C.J., concurring), wherein the Supreme Court held a jury could not convict unless:

Every circumstance relied upon by the State be proven beyond a reasonable doubt; and . . . all of the circumstances so proven be consistent with each other and taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis. If it is not sufficient that they create a probability, though a strong one and if, assuming them to be true they may be accounted for upon any reasonable hypothesis which does not include the guilt of the accused, for the proof has failed.

State v Edwards, 298 S.C. 272, 275, 379 S.E.2d 888, 889 (1989) abrogated by State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004) (holding the “language in Grippon is the sole and exclusive charge to be given in circumstantial evidence cases in this state.”) Specifically, Counsel indicated “the reasonable hypothesis language and the exclusion language” was key to his requested jury instruction. R. 469, lines 20-22.

Counsel also acknowledged that the traditional circumstantial evidence language he requested was abrogated beginning with Grippon, which allowed juries to be charged as follows:

There are two types of evidence which are generally presented during a trial-direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of

circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find [the defendant] not guilty.

Grippon, 327 S.C. at 83-84, 489 S.E.2d at 464 (quoting 1 E. Devitt & C. Blackmar, Federal Jury Practice and Instructions § 12.04 (4th ed.1992)). However, Counsel asserted that the Grippon charge itself was legally incorrect, and that recent South Carolina case law, such as State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), indicated it was no longer the proper standard regarding circumstantial evidence. R. 467, line 23–R. 469, line 22.

In Bostick, the Supreme Court examined the law regarding directed verdicts in circumstantial evidence cases. Relying on three seminal cases regarding the proof necessary in cases with circumstantial evidence—State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984), State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004), and State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000)—the Court applied the following standard where no direct evidence is present: “A case should be submitted to the jury when evidence is circumstantial if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced.” Bostick, 392 S.C. at 139-42, 708 S.E.2d at 776-78 (emphasis added). Thus, as Counsel asserted, the Bostick line of cases illustrates that the Supreme Court’s view regarding differences or similarities between direct and circumstantial evidence has changed. R. 470, line 22—R. 471, line 3.

Indeed, evidence is growing that the underpinnings of Grippon and Cherry are being eroded *sub silentio* by the Supreme Court are growing. Grippon and Cherry essentially rely upon an adequate reasonable doubt instruction to provide the necessary guidance to jurors when circumstantial evidence is produced in the case. Further, Cherry in particular

suggested that any additional language explaining the relationship between circumstantial evidence to the determination of guilt was confusing to juries:

[T]he reasonable hypothesis charge merely serves to confuse juries by leading them to believe that the standard for measuring circumstantial evidence is different than that for measuring direct evidence when, in fact, it is not.

Cherry, 361 S.C. at 601, 606 S.E.2d at 482.

However, in State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011), the Supreme Court acknowledged its prior abandonment of the traditional circumstantial evidence language used in the Edwards charge, but went on to state that “the definition illustrates the lack of evidence against petitioner.” Id. 395 S.C. at 590, 720 S.E.2d at 52. Additionally, the Court expounded on that matter in footnote four as follows:

However, the evaluation of circumstantial evidence requires the connection of collateral facts in order to reach a conclusion, and this process is not required when evaluating direct evidence. Thus, the traditional circumstantial evidence definition provides more detailed information about the relation of circumstantial evidence to the determination of guilt. The definition does not, however, change the standard evaluating evidence: every circumstance must be proved beyond a reasonable doubt.

Odems, 395 S.C. at 591 n.4, 720 S.E.2d at 53 n.4. Therefore, the Supreme Court has acknowledged, post-Cherry, (1) that proper evaluation of circumstantial evidence requires connection of collateral facts to reach a conclusion, (2) that the traditional circumstantial evidence language is informative regarding the relation between circumstantial evidence and guilt, and (3) that this process is not necessary for evaluating direct evidence. Moreover, the Odems Court clearly stated that such an understanding of the law regarding circumstantial evidence does not change the reasonable doubt standard. As a result, the critical

rationalization underpinning Cherry has been abrogated. Simply stated, an instruction on the traditional circumstantial evidence would not confuse a jury; rather, such a jury instruction would serve to enlighten the jury and aid it in arriving at a correct verdict. See, e.g., Blurton, 352 S.C. at 207, 573 S.E.2d at 804; Léonard, 292 S.C. at 137, 355 S.E.2d at 273; see also Hampton v. State of Indiana, 961 N.E.2d 480, 486-87 (Ind. 2012) (“[P]roviding the jury with an additional cautionary instruction in evaluating circumstantial evidence not only supports but further enhances the concept of requiring proof beyond a reasonable doubt. It admonishes the jury to tread lightly where the evidentiary gap between logical certainty and guilt is more tenuous.”). Therefore, the trial court erred by failing to instruct the jury regarding the traditional circumstantial evidence charge.

Appellant was also prejudiced by the trial court’s failure to instruct the jury regarding the traditional circumstantial evidence charge. As indicated in Section II below, the evidence against Appellant in the present case was circumstantial in nature. Under such conditions, the need to enlighten the jury regarding the relation between circumstantial evidence and the determination of guilt was acute, as it would aid the jury in reaching at a just, fair and proper verdict. Here, the jury was without any such instruction or guidance. Instead, the trial court provided the following instruction relating to circumstantial evidence:

There are two types of evidence generally presented during a trial: direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It is evidence which immediately establishes the main fact to be proved. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation. You should weigh all of the evidence in this case. After weighing all of the evidence, if you are not

convinced that the State has proven each element of the charge beyond a reasonable doubt, you must find the defendant not guilty.

R. 510, line 21—R. 511, line 12. In short, the trial court's instruction left the jury without any guidance or enlightenment regarding the traditional circumstantial evidence charge (particularly the "reasonable hypothesis" language); thus the jury was without guidance or enlightenment on the relationship between circumstantial evidence and the determination of guilt. As a result, it is entirely likely that the jury—which deliberated for over two hours without such an instruction—would have arrived at a different result had it been properly charged with the traditional circumstantial evidence instruction. Accordingly, Appellant was prejudiced by the trial court's error.

II. The trial court reversibly erred by failing to grant a directed verdict where the evidence of the alleged offense against Appellant was circumstantial, and only rose to the level of “mere speculation” rather than “substantial circumstantial evidence.”

The trial court erroneously denied Appellant’s directed verdict motion where the evidence produced by the State was circumstantial, and amounted to mere speculation. At the close of evidence, Counsel moved for a directed verdict of acquittal pursuant to Rule 19 of the South Carolina Rules of Criminal Procedure, State v. Bostick,⁸ State v. Schrock,⁹ and State v. Arnold.¹⁰ R. 458, lines 6-19. The State responded by asserting direct evidence of the offense existed based on Washington’s testimony that she overheard a loud noise. The State also pointed to the circumstantial evidence in the case, and claimed it all pointed toward Appellant’s guilt. R. 459, line 23–R. 461, line 12. After reciting several points of evidence in the record, the trial court denied Appellant’s motion. This was error, as the facts relied upon by the trial court amounted to mere speculation of whether Appellant committed the charged offense rather than substantial circumstantial evidence of the same.

A trial court must direct a verdict of acquittal when the record does not contain evidence to support every element of the charged offense. See, e.g., State v. Brown, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004); State v. Evans, 376 S.C. 421, 424, 656 S.E.2d 782, 783 (Ct. App. 2008) (“A defendant is entitled to a directed verdict when the state fails to produce evidence on a material element of the offense charged.”); see also In re Winship,

⁸ 392 S.C. 134, 708 S.E.2d 774 (2011).

⁹ 83 S.C. 129, 322 S.E.2d 450 (1984).

¹⁰ 361 S.C. 386, 605 S.E.2d 529 (2004).

397 U.S. 358, 364, 90 S.Ct. 1068, 1073 (1970) (“Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.”); Rule 19(a), SCRCrimP (West, Westlaw current through Dec. 1, 2011) (“[O]n motion of the defendant or on its own motion, the court shall direct a verdict in the defendant’s favor on any offense charged . . . if there is a failure of competent evidence tending to prove the charge in the indictment.”). When considering a motion for directed verdict of acquittal, “the trial court is concerned the existence or non-existence of evidence, not its weight.” Brown, 360 S.C. at 586, 602 S.E.2d at 395.

A case based solely upon circumstantial evidence should be submitted to the jury only “if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.” State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011) (citing State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). The trial court “should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty.” State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (citing State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-52 (1984)); State v. Martin, 340 S.C. 597, 602, 533 S.E.2d 572, 574 (2000) (citing State v. Irvin, 270 S.C. 539, 243 S.E.2d 195 (1978)); see also State v. Arnold, 361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004) (“The trial judge should grant a directed verdict, however, when the evidence merely raises a suspicion that the accused is guilty.”). “‘Suspicion’ implies a belief or opinion as to guilt based upon facts or circumstances which do not

amount to proof.” State v. Buckmon, 347 S.C. 316, 322, 555 S.E.2d 402, 404-05 (2001) (citing State v. Lollis, 343 S.C. 580, 541 S.C.2d 254 (2001)).

In the present case, the evidence that Appellant committed the offense alleged against him was entirely circumstantial. Contrary to the State’s contention, Washington’s testimony regarding what she overheard during her telephone conversation with Stepson constituted circumstantial evidence. First, although Washington indicated she heard Appellant and Stepson argue, including a purported statement by Appellant to “put you on ice,” there was no mention at all of a gun or a weapon. Second, the sound Washington repeatedly said she heard was a loud crash, like glass breaking, not a gunshot. Thus, Washington’s testimony of what she purportedly overheard on the house telephone was not a murder. In fact, the State’s own theory was that Appellant allegedly shot Stepson after the telephone conversation ended:

With those hands folded in [Appellant’s] lap, he grabbed a twenty-two caliber pistol, put it to [Stepson’s] head, and pulled the trigger.

.....

It was boiling up and the anger inside of [Appellant] is building, building through a culmination that occurred during that phone call.

And when they went and had that back and forth, he had had enough and he pulled a gun on [Stepson]. [Stepson] took off and ran to that back door, drops the phone. Gets to the back door opens up inside. [Appellant] fires that first shot. It misses. It goes through that screen door. You saw that bullet hole. . . . [Stepson] freezes. [Appellant] puts him on his knees and puts the gun to his head and executes him. That’s why he has the blood spatter on his shirt. That’s why the blood spatter is waist high on that door.

But the phone is ringing now in the background. He's just committed murder.

R. 477, lines 23-25; R. 488, lines 4-19 (emphasis added). Thus, even under the State's own theory of the offense, Washington heard the telephone crash to the floor, not the crime of murder.

The vast majority of the remaining information supplied by the State's argument was to fill glaring gaps in the circumstantial evidence actually produced. For example, the State's postulation that Appellant pulled out a .22 caliber pistol was purely speculative, as was its notion that Appellant put Stepson on his knees and shot him through the head at point blank range. First and most obviously, no firearm of any caliber was ever found in this case. Second, it is unknown what caliber bullet actually struck Stepson. According to the only expert in firearms to testify at trial, if the lead fragment from Stepson was indeed a projectile, it could have been anything from a .22 caliber bullet to a fragment from a much larger caliber bullet. R. 396, lines 14-18; R. 400, lines 22-24. Thus, it was never proven exactly what the fragment was that struck Stepson in the head, or what instrument caused it to get there.

Third, according to the only forensic pathologist to testify at trial, there was no soot from a gunshot on the skin or skull of Stepson: although there was some discoloration on the surface of the skull, it was completely inconclusive of any soot from a gun being fired, and the range that the gun was fired from the head could not be determined.¹¹ R. 338, line 13-R.

¹¹ Although officer Al Hallman of the North Charleston Police Department testified as a nonexpert witness and postulated that he thought the discoloration he saw on Stepson's skull could have been gunshot stippling, he readily conceded that he could not definitely say it was gunpowder stippling. R. 281, lines 2-18.

339, line 20. Thus, assuming the lead fragment was a bullet or bullet fragment, the State did not prove from what range it was shot.

Fourth, the State failed to prove when the time of death occurred. Dr. Schandl repeatedly indicated that determining the time of death was "a very inexact science." Based on her observations that rigor mortis had already passed, sloughing of the skin was occurring, and that fluid in the eyes had already dissipated, the best she could estimate the time of death was at more than four days. R. 326, lines 3-20. Yet, Stepson's remains were found approximately three weeks after the alleged argument. As a result, the State's theory of the offense itself amounted to gross speculation as to exactly what the lead fragment was that entered the .6 inch by .35 inch hole in Stepson's skull, much less when it even got there or by what instrument.

Further, the remaining evidence in the case relied upon by the trial court was undeniably circumstantial in nature. Moreover, it amounted to mere speculation of guilt rather than substantial circumstantial evidence of the same. For example, although lime was found on Stepson's remains, and Appellant possessed lime, his possession and use of lime was a longstanding part of his lawn maintenance work. Indeed, as the True Value employee testified, Appellant regularly purchased one to two bags of lime per week over a six month period before April 2006. R. 210, line 1-R. 212, line 13; R. 216, line 20-R. 217, line 25; R. 220, lines 2-23. Additionally, there was no proof it was Appellant that applied lime to the remains. As such, evidence regarding Appellant's purchase of lime, and its presence among Appellant's lawn care equipment amounts to mere speculation.

Additionally, the gin bottle with Appellant's DNA was found among the trash in the crawlspace was of no moment. The presence of an item with a person's DNA or

fingerprints on that person's property is unsurprising. In the present case, household garbage was also present in the crawlspace, including eight other bottles, and the ATM card of Stepsons mother. Therefore, the gin bottle with Appellant's DNA was likewise merely speculative evidence.

Reliance on Wife's testimony regarding both the smell of bleach on the night of April 3, 2006, also does not amount to substantial circumstantial evidence. First, although Wife stated she did most of the cleaning in the home, she also indicated that Appellant did clean sometimes as well. R. 133, lines 2-4. Further, Officer Armstead neither saw anything out of the ordinary, nor smelled anything out of the ordinary—including either the smell of a gunshot lingering inside the home, or the smell of cleaning chemicals. R. 160, lines 2-25; R. 163, line 2–R. 164, line 18; R. 166, lines 3-21.

Also, although the presence of other household air fresheners may be suspicious, it does not rise to anything more where nothing links the defendant to the use of in connection with the offense. In the case at bar, the State made no such showing.

The same failing in the State's evidence is present with the socks with Stepson's speckled blood found in the front outside trashcan. There was no indication of how or when the socks were put into the front trashcan, who put them there, or how or when the blood got on them. Thus, there was nothing linking the socks to the present offense, or more pointedly to Appellant, and their presence in evidence amounts to mere speculation of guilt.

Finally, although flight may be inferred as evidence of guilt, and Appellant was missing from April 27, 2006, to September 9, 2009, such circumstantial evidence in the present case was readily explained by Counsel. As Counsel stated in closing argument, Appellant ran because he did not want to go to jail for a crime he did not commit. R. 499,

lines 1-5. Further, it is also notable that Appellant was cooperative with law enforcement on April 3, 2006, when Armstead inspected the house, and that Appellant stayed at the house for approximately three weeks after the alleged incident itself. Therefore, Appellant's flight likewise amounts to mere speculation of guilt rather than substantial circumstantial evidence of the same.

In sum, the State failed to produce any direct or substantial circumstantial evidence that Appellant committed the offense of murder. The circumstances relied upon by the State was not substantial evidence reasonably tending to prove Appellant's guilt, or from which his guilt may be fairly and logically deduced. Rather, the evidence merely raised a suspicion that Appellant was guilty. Odems, 395 S.C. at 586, 720 S.E.2d at 50 (citing Schrock, 283 S.C. at 132, 322 S.E.2d at 451-52); Bostick, 392 S.C. at 139, 708 S.E.2d at 776; Martin, 340 S.C. at 602, 533 S.E.2d at 574; see also Arnold, 361 S.C. at 390, 605 S.E.2d at 531. Although the facts produced and entered into evidence may appear suspicious, mere suspicion is insufficient to support a guilty verdict. Id. 395 S.C. at 590, 720 S.E.2d at 52 (citing Arnold, 361 S.C. at 389-90; 605 S.E.2d at 531). Accordingly, the trial court reversibly erred by failing to grant a directed verdict of acquittal.

III. The trial court reversibly erred by failing to suppress two autopsy photographs graphically depicting maggot infested remains that had decomposed more than four days.

The trial court erroneously admitted two “disturbing and unsettling” photographs into evidence depicting a medium range, and close-up of Stepson’s decomposed remains that were infested with parasitic maggots. R. iv (State’s Exhibit # 52); R. iv (State’s Exhibit # 54). Counsel timely objected, and later placed on the record that the photographs did not make any material fact more or less likely, and that any probative value of the photographs was far outweighed by their prejudicial effect R. 322, line 21—R. 325, line 23; R. 355, line 13—R. 356, line 20. The trial court ruled overruled Appellant’s objection, stating that the pictures were not more prejudicial, and that there was “extensive testimony that she used the larva and the stages of the larva to identify the time—or the stage of death, four days or more.” R. 356, line 21—R. 357, line 2. This was error as the photographs were not necessary to substantiate material facts or conditions, and their probative value was substantially outweighed by the danger of unfair prejudice by creating a tendency to suggest a decision on an improper basis.

“Although photographs may be used to corroborate other evidence, it is well established that photographs calculated to arouse the sympathies and prejudices of the jury are to be excluded if they are irrelevant or unnecessary to the issues at trial.” State v. Middleton, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986) (internal citations omitted) (reversing and remanding where the information contained in the photographs was not really at issue, and other testimony negated any arguable evidentiary value of the photographs); see State v. Brazell, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997) (agreeing with the same evidentiary principles, but factually different); State v. Waitus, 224 S.C.

12, 77 S.E.2d 256, 263 (1953); State v. Elders, 386 S.C. 474, 483, 688 S.E.2d 857, 862 (Ct. App. 2010) (agreeing with the same evidentiary principles, but factually different); see also Rule 401, SCRE (defining relevant evidence); Rule 402, SCRE (prohibiting admission of irrelevant evidence). Stated differently, “[p]hotographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are . . . not *necessary* to substantiate *material* facts or conditions.” State v. Collins, 398 S.C. 197, 202, 727 S.E.2d 751, 754 (Ct. App. 2012) (emphasis in original) (internal quotations omitted) (quoting State v. Torres, 390 S.C. 618, 623, 703 S.E.2d 226, 228 (2010)).

Additionally, Rule 403 of the South Carolina Rules of Evidence allows for even relevant evidence to be excluded “if its probative value is substantially outweighed by the danger of unfair prejudice.” Rule 403, SCRE; see also State v. Kelley, 319 S.C. 173, 177, 460 S.E.2d 370 (1995) (“It is well settled that evidence should be excluded when its probative value is outweighed by its prejudicial effect.”). In order to constitute unfair prejudice, “the photographs must create a tendency to suggest a decision on an improper basis, commonly, although not necessarily, an emotional one.” Kelley, 319 S.C. at 178, 460 S.E.2d at 370-71 (quoting Alexander, 303 S.C. at 382, 401 S.E.2d at 149).

In the present case, the State was allowed to admit two autopsy pictures of Stepson’s grotesque maggot infested remains. The State specifically elicited testimony from Dr. Schandyl, who reluctantly testified as to the contents of the photos. The State further focused on the presence of maggots, ostensibly to determine the time of death. However, although Dr. Schandyl indicated the presence of the sizes of maggots present and multiple cycles of egg laying “is suggestive of a longer time period where flies had laid eggs in succession over time,” she qualified her statement by saying “it’s certainly

not specific for a length of time between death and where we are now.” R. 325, lines 19-23. Thus, the presence of maggots and fly eggs was not particularly helpful as to the time of Stepson’s death.

In fact, Dr. Schandyl’s ultimate finding that the time of death was more than four days was based upon the lack of fluid in the eyes of Stepson’s remains, not the presence of maggots. When asked by the State about determining time of death by examining eyes, Dr. Schandyl first reiterated that “determining the time of death is very—a very inexact science.” R. 326, lines 3-4. Based on dissipation of vitriolic fluid in the eyes in the present case, Dr. Schandyl testified as follows regarding the time of death:

That gives us very general idea that it was probably more than four days. Which, again, doesn’t tell us how much more than four days it was, but sometime after that.

So, again, our estimate of when the individual died is very inexact but we have a couple of guidelines to know that it’s more than four days, certainly.

R. 326, lines 12-18. Dr. Schandyl further confirmed on cross-examination that the four-day time period she gave was based on the lack of vitriolic fluid in the eyes. R. 345, lines 1-13. As a result, no time of death was or could be given.¹²

Therefore, based on the testimony of the State’s own forensic pathologist, the time frame for Stepson’s death was roughly established by the lack of fluid in the eyes of Stepson’s remains, not on the presence of maggots on and in the bloated, decomposing

¹² Schandyl agreed on cross-examination that, based on her examination of the remains, she could not rule out a time frame for Stepson’s death from six days to some point beyond twenty-four days; indeed, the expert conceded that she could not give a definitive time frame. R. 346, lines 10-22.

flesh. Accordingly, the two grotesque photographs depicting Stepson's maggot infested corpse were not necessary to substantiate material facts or conditions in the case

Additionally, the photographs were not needed to prove the elements of murder.¹³ The cause of death by a gunshot wound to the head was established by Dr. Schandyl through the use of her autopsy report. Therefore, the photographs of Stepson's remains were not necessary to substantiate material facts: "the photos in this case are hardly 'necessary,'" and are of little significance to the State's case. Collins, 398 S.C. at 202, 727 S.E.2d at 754 (citing Torres, 390 S.C. at 623, 703 S.E.2d at 228). Accordingly, the probative value of the photographs in question was, at best, minimal.

Additionally, the photographs of Stepson served to create an unfair prejudice against Appellant. The photographs displayed to the jury close-up imagery of Stepson's decomposed body with severe maggot infestation. As in Waitus, the information contained in these photos was not disputed, and was established by testimony. 224 S.C. 12, 77 S.E.2d at 263 (reversing where four pictures of the victim at the crime scene that showed marks, bruises and abrasions, and the condition of the victim's clothes, were admitted into evidence even though that those facts were not disputed and were already established by testimony); see also Collins, 398 S.C. at 203-04, 727 S.E.2d at 755. Therefore, the only remaining value of the two photographs of Stepson's maggot infested remains was to arouse the sympathies and the prejudices of the jury. Middleton, 288 S.C. at 24, 339 S.E.2d at 693.

¹³ Murder is defined as "the killing of any person with malice aforethought, either express or implied." S.C. Code Ann. § 16-3-10 (West, Westlaw current through end of 2011 Sess; see also State v Dickerson, 395 S.C. 101, 119 n.5, 716 S.E.2d 895, 905 n.5 (2011).

Accordingly, the trial court erred in admitting the two autopsy photographs in Appellant's trial, and Appellant was prejudiced by the erroneous admission as "[t]he prejudice created by the photographs clearly outweighed *any* evidentiary value." Id. (emphasis in original) (citing Waitus, 224 S.C. 12, 77 S.E.2d 256, and State v. Edwards, 194 S.C. 410, 10 S.E.2d 587 (1940)). Appellant therefore seeks reversal of his conviction, and remand of his case.

CONCLUSION

For the foregoing reasons, Appellant Leonard Goodwin respectfully requests that this Court reverse his conviction, and remand his case for a new trial pursuant to Issues I and III, and entry of a directed verdict of acquittal pursuant to Issue II.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Breen R. Stevens", with a long horizontal flourish extending to the right.

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of May 2013.

CERTIFICATE OF COUNSEL

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

May 23, 2013



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STATE OF SOUTH CAROLINA
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Appeal from Charleston County
Kristi Lea Harrington, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

LEONARD GOODWIN,

APPELLANT

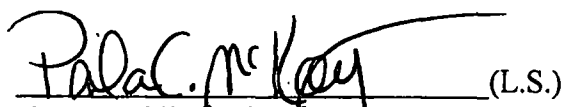
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Melody J. Brown, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 23rd day of May, 2013.

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of May, 2013.


(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
Kristi Lea Harrington, Circuit Court Judge

The State, Respondent,
v.

Leonard Goodwin, Appellant.

Appellate Case No. 2011-193507

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I.

The trial court did not err in declining Applicant's request to charge the outdated reasonable hypothesis language in the circumstantial evidence charge where the Supreme Court of South Carolina has found such language to be confusing. The trial court properly charged the correct and current circumstantial evidence charge approved of in *State v. Grippon*, 327 S.C. 79, 489 S.E.2d 462 (1997), which the Supreme Court of South Carolina found to be the sole appropriate charge in *State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004). There is no error.....13

II.

The trial court did not err in denying the motion for a directed verdict where the State presented direct evidence that demonstrated Appellant was the last individual known to be with victim just before victim disappeared; that Appellant and victim had prior difficulties and that Appellant did not want victim in his home; that Appellant was in a heated argument with victim just before victim disappeared; that Appellant fled the jurisdiction when victim's body was going to be discovered due to the odor in the home, failed to contact his wife of seventeen years, and when he returned to the state and was stopped by officers, Appellant attempted to evade the officer, and gave incorrect identification information before he eventually acknowledged that he was the man the officer was looking for, and that he knew he was wanted for murder; and, presented additional evidence from which the jury could reasonably infer that Appellant killed victim in the kitchen area of the home by means of shooting him in the head; that he secreted victim's body in the crawlspace beneath the home Appellant shared with victim's mother; covered the body with lime and/or odor reducing agents to mask the smell of decay; and left the body to decompose. Appellant was not entitled to a directed verdict as this evidence, if believed by the jury, would support a finding that Appellant unlawfully killed his stepson with malice aforethought. 20

III.

The trial court did not abuse its discretion in admitting two autopsy photographs that depicted both the decomposition of the remains and the multiple sizes of maggots indicating several egg laying cycles had occurred when the photographs were supported of the testimony indicating more than four days had passed since death. 30

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial court reversibly erred by failing to include language in the jury instruction regarding circumstantial evidence indicating that "the State must exclude all other reasonable hypotheses when it relies upon circumstantial evidence," thereby leaving the jury confused regarding the legal relation of circumstantial evidence to the determination of guilt?
- II. Whether the trial court reversibly erred by failing to grant a directed verdict where the evidence of the alleged offense against Appellant was circumstantial, and only rose to the level of "mere speculation" rather than "substantial circumstantial evidence."
- III. Whether the trial court reversibly erred by failing to suppress two autopsy photographs graphically depicting maggot infested remains that had decomposed more than four days?

(FBOA, p. 1).

RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

I.

Whether the trial court erred by denying Applicant's request to charge the *Edwards* "reasonable hypothesis" language in the circumstantial evidence charge where the Supreme Court of South Carolina has found the *Edwards* language to be confusing and directed that it should not be charged.

II.

Whether the trial court erred in denying Appellant's motion for a directed verdict where the State presented direct evidence that demonstrated Appellant was the last individual known to be with victim just before victim disappeared; that Appellant and victim had prior difficulties and that Appellant did not want victim in his home; that Appellant was in a heated argument with victim just before victim disappeared; that Appellant fled the jurisdiction when victim's body was going to be discovered due to the odor in the home, failed to contact his wife of seventeen years, and when he returned to the state and was stopped by officers, Appellant attempted to evade the officer, and gave incorrect identification information before he eventually acknowledged that he was the man the officer was looking for, and that he knew he was wanted for murder; and, presented additional evidence from which the jury could reasonably infer that Appellant killed victim in the kitchen area of the home by means of shooting him in the head; that he secreted victim's body in the crawlspace beneath the home Appellant shared with victim's mother; covered the body with lime and/or odor reducing agents to mask the smell of decay; and left the body to decompose. Appellant was not entitled to a directed verdict as this evidence, if believed by the jury, would support a finding that Appellant unlawfully killed his stepson with malice aforethought.

III.

Whether the trial court abused its discretion in admitting two autopsy photographs when those photographs were clinical in nature and demonstrated both the differing cycles of insects which informed her opinion on the variables present regarding time of death, and the marring of other characteristics from advanced decomposition.

STATEMENT OF THE CASE

A Charleston County Grand Jury indicted Appellant, Leonard Goodwin, in January 2010 for murder. (R. p. 540). A jury trial was held May 31, 2011 through June 3, 2011, before the Honorable Kristi L. Harrington. Public Defenders Cassandra Winslow and Beattie Butler represented Appellant. The jury convicted as charged. (R. p. 522, line 22 - p. 523, line 1). Judge Harrington imposed a life sentence. (R. p. 536, line 25 – p. 537, line 8). This appeal follows.

RESPONDENT'S STATEMENT OF FACTS

The jury convicted Appellant of the murder of his stepson. The victim in this case was last seen alive on April 3, 2006. He disappeared from the home he shared with his mother and stepfather, after an argument with his stepfather. His body was found twenty-four days later, on April 27, 2006, when officers responded to a call from victim's mother reporting a strong odor in the home. (R. p. 168, line 9 – p.174, line 5). Victim's body had been placed in a remote area in the home's crawlspace and covered with lime. (R. p. 170, line 1– p. 173, line 20; R. p. 268, lines 1-20; R. p. 351, line 1 – p. 352, line 7). Appellant fled the jurisdiction immediately before the body was recovered, and after the victim's mother called the police about the odor. (R. 126, line 15 – p. 127, line 23). When he returned and was stopped by an officer, he initially tried to evade the officer, and gave false identification information, before admitting his name, and the fact that he was wanted for murder. (R. p. 365, line 5 – p. 371, line 14). The forensic pathologist, though noting extensive decomposition of the remains, was able to determine that death was caused by a gunshot wound to the head. (R. p. 342, lines 13-14). The pathologist did not express an opinion on time of death; however, she found no inconsistencies with a twenty-four day period after death to time of discovery and autopsy. (R. p. 342, line 24 – p. 343, line 1). The following evidence in support of Appellant's guilt was presented at trial:

Latarshia Washington, the mother of victim's children, last saw victim on April 3, 2006. (R. p. 57, lines 2-24). She saw him at approximately 6:00 pm at the home he shared with his mother, and his mother's husband, Appellant. Appellant was in the home with victim. Ms. Washington visited with victim, and victim walked her to her car. He

took time to play with one of his children. Ms. Washington "hugged him... kissed him" then left. (R. p. 60, line 5 – p. 61, line 23). At that time, victim was wearing "[a] white tee-shirt, a reversible black-and-white" shorts, and jewelry including "two necklaces," a cross and a "dollar sign and chain on it." (R. p. 62, lines 1-9). Ms. Washington testified that she last spoke to victim later that same day, at approximately 8:30 or 9:00 pm. Victim said he heard Appellant threaten to "whip someone's a**" earlier that day, and she encouraged victim to let it go. She then heard someone pickup on an extension. Victim also heard the intrusion, asked Ms. Washington to hold on, and demanded the person get off the phone. Ms. Washington "heard the word no." Victim stated he was "talking to his family," and an argument ensued with Appellant responding to victim, "bullsh**, bullsh**." (R. p. 62, line 21 – p. 64, line 23). Ms. Washington testified "the last thing [she] heard was, I will put you on ice." (R. p. 64, lines 23-25). Victim then came back to the phone, Ms. Washington "heard a crash, like glass breaking... [a]nd the phone went dead." (R. p. 64, line 25 – p. 65, line 9). She feared "something [had] happened," and immediately tried to phone victim again. She called "at least six times before someone picked up," and that someone was Appellant. Appellant told Ms. Washington victim "jumped in the car going to Russellville looking for weed." (R. p. 65, line 10-p. 66, line 9). She noted that Appellant was "breathing hard" when he answered. (R. p. 69, line 22 – p. 70, line 2). She asked what the loud noise was that she heard, "and he said it was he bumped the coffee table." Appellant then said "he had a pot on the stove," and ended the call. (R. p. 66, lines 18-22). Ms. Washington was alarmed and called victim's cousins, Jessie Owens and Michael Phillips. Ms. Washington and Mr. Owens went to victim's home a little over an hour after the phone incident. (R. p. 68,

lines 4-13). They met Appellant on a bicycle outside the home. He again stated victim went to Russellville. Ms. Washington notes that she observed “specs of blood at the bottom of [Appellant’s] tee-shirt” around “[t]he bottom stomach area.” (R. p. 67, line 11 – p. 69, line 21). Ms. Washington and Mr. Owens, later joined by Mr. Phillips, then began to wait outside the home. Ms. Washington saw Appellant go back into the home. (R. p. 70, line 9 – p. 71, line 11). She then flagged an officer and asked for help. (R. p. 71, lines 15-22). Approximately “twenty-five or thirty minutes” later, somewhere around 11:15 pm that night, the officer came back to investigate the area. She recalled victim’s mother had returned at that time. Appellant was inside the home and said “what’s going on, there’s nothing going on” and went to victim’s bedroom with the officer. The officer found nothing to raise suspicion at that time. (R. p. 72, line 2 – p. 73, line 10). Ms. Washington filed a missing person’s report on April 10, 2006. (R. p. 73, lines 11-15). She testified that, to her knowledge, victim did not have any known enemies, or knew of anyone who held a grudge against him; that he was not a drug dealer or a violent person, nor was he “associated with those sort of people.” (R. p. 80, line 21 – p. 81, line 7).

Mr. Owens testified similarly as to Ms. Washington contacting him, and the two looking for victim. He confirmed that he, too, saw stains on Appellant’s shirt. He further testified that he had attempted to call victim’s house after Ms. Washington contacted him, but received no answer. He waited with Ms. Washington outside the home for hours, but never saw victim again. Mr. Owens testified that he was never in contact with victim that evening, even though he and victim had planned to go to a party that night. (R. p. 95, line 9 – p. 99, line 25).

In addition to Ms. Washington's testimony, and Mr. Owens' testimony, Mr. Phillips testified not only that he never saw victim again, but also that he had worked with victim. The victim worked on April 3, 2006, but failed to show up for work on April 4, 2006 -- the day after the argument with Appellant. In fact, victim never showed up for work thereafter, though he was known as responsible, and had not had a history of failing to go to work. (R. p. 106, line 3 – p. 112, line 11). He confirmed that he, Ms. Washington, and Mr. Owens stayed outside the home for hours on the night of April 3, 2006, waiting for victim, and never saw him. (R. p. 109, line 14 – p. 111, line 6).

Victim's mother, Mary Ann Robinson, testified that she, her husband (Appellant), and victim shared a home at the time of her son's disappearance. She testified that her son had moved in with her and Appellant in 2005. Appellant did not like victim, did not like victim having people over at the house, and did not want victim in the house. Ms. Robinson testified that the two argued, but had never had a physical altercation. (R. p. 115, line 19 – p. 121, line 4). Ms. Robinson testified after speaking with Ms. Washington and Mr. Owens outside the home when she returned from work on April 3, 2006, Ms. Robinson went into the home. Appellant was in the home watching TV. No one else was in the home. Because she had expected to find her son in his room, she decided to call the police. She noted a smell of bleach from a bathroom; however, she was the one who normally did the cleaning in the home. (R. p. 122, line 1 – p. 125, line 7).

Officer Arthur D. Armstead of the North Charleston Police Department testified that he was the officer Ms. Washington flagged down while he was on patrol that evening. He recalled Ms. Washington was “shaken up.” He investigated having been advised “someone was involved in an argument and there was possibly a killing.” He spoke with Appellant. Appellant admitted an argument with victim, then stated victim “had left with a female.” He inspected the house but found “nothing out of the ordinary” at that time and left the residence. (R. p. 155, line 21-p. 160, line 23).

Ms. Robinson, similarly to Ms. Washington, testified that she never heard from her son after that night though the two shared a close relationship. (R. p. 125, lines 8-13; p. 125, line 21 – p. 126, line 5). Then, on April 27, 2006, she began to notice an odor. She spoke to Appellant about the odor, and “he pointed at the back of the yard and said it was a dead cat.” (R. p. 126, lines 15-18). Ms. Robinson resolved to call the police. When asked if she told Appellant she was calling the police, she testified, “I think I did. I’m not sure. But when I – when the policeman came, he wasn’t there,” though he had been cutting grass at the next door residence. (R. 126, line 15 – p. 127, line 6). She did not see her husband again until trial. (R. p. 127, lines 7-9; p. 127, lines 20-23). In fact, she never heard from Appellant, her husband of seventeen years, during that time – no letters, no phone calls, and he failed to attend victim’s funeral. (R. p. 127, lines 7-19).

Officer Rayford Davis, also of the North Charleston Police Department, testified that he was dispatched to the home on April 27, 2006, upon Ms. Robinson’s call reporting her “concern[] that her son was missing and that there was a bad odor in her house.” (R. p. 167, line 16 – p.168, line 19). He was instantly struck with “a very strong odor of something decomposing” as he entered the home. Officer Davis recognized the

odor was from a body. He found nothing in the home, but "could tell that it was underneath the house toward the back." (R. p. 169, lines 2- 23). He entered the crawlspace from the back. At first, Officer Davis saw nothing. Upon entering the crawlspace and looking behind a concrete wall, he found the victim's remains. (R. p. 170, line 1 – p. 173, line 14). The body was located at the farthest possible distance from the entrance. (R. p. 268, lines 1-20). The body was clearly decomposing. "[A] roll of screen... had been placed over the body, covering up most of it and there was a lot of white powder that had been sprinkled. It was on the body, it was on the screen, and around in that area." There was also a small amount of what appeared to be household debris next to the body. (R. p. 173, lines 5-20).

Other officers from the North Charleston Police Department arrived to conduct a thorough investigation of the home. Officer Angela Bunker conducted initial forensic testing. Socks found inside a garbage dumpster tested presumptively positive for blood. (R. p. 185, line 2 – p. 186, line 13). Using a chemical agent to raise blood stains not otherwise visible, Officer Bunker found indications of blood spatter on the kitchen door, on the side that opens into the home, and on the back outside steps from the kitchen. The spatter on the door was located approximately half way down the door. (R. p. 189, line 5 – p. 194, line 1). (See also State's Exhibits 19 and 21). In the yard, Officer Bunker also noted there were bags of lime under a tarp with lawn mowers and gas cans. (R. p. 198, lines 5 – 24). (See also State's Exhibit 41).

Officer Scott Wyatt testified that the doorknob on the back door also tested positive for blood. (R. p. 228, line 22 – p. 232, line 13).

Officer Robert Coker testified there were tubs also located in the back yard, near the lawn equipment that belonged to Appellant and where Appellant kept his tools. Those tubs contained both Febreeze and Odor Ban -- items used to suppress or mask odors. (R. p. 250, line 22 – p. 253, line 11; R. p. 129, lines 6-13; State's Exhibits 38, 39, and 40).

Officer Al Hallman testified that along with other debris near the body, a liquor bottle was located near the body. (R. p. 269, lines 7-16). Officer Hallman testified that he located a part of the back door where a bullet had passed through. (R. p. 286, line 4- p. 289, line 15). (See also State's Exhibits 46 and 47). The damage to the door indicated the bullet was likely either from a .22 or a .25 caliber weapon. (R. p. 293, line 18 – p. 297, line 5). Officer Hallman also assisted in the removal of the remains. He testified that removal was difficult because "the level of decomp that the body was in." (R. p. 304, line 15- p. 305, lines 9-16). Officer Hallman testified that, after the body was cleaned for autopsy, his view of the skull wound indicated "possible" gun powder stippling, but he was not sure. (R. p. 281, lines 2-18). Officer Hall tried to retrieve the black shorts on the remains, but, "due to the level of decomp and the level of biohazardous infectious possibilities," he was unable to preserve the shorts and boxers. (R. p. 278, lines 2-5; p. 308, lines 13-22). Officer Hall retrieved, however, "a gold-rope necklace that was found on the victim; a gold-link bracelet that was found on the victim; [and] projectile fragments from autopsy." (R. p. 278, lines 5-7). Ms. Washington testified that the clothes and jewelry items, which had been photographed for presentation in the State's case, were the items victim was wearing on April 3, 2006 – the last time Ms. Washington saw the victim and shortly before the argument with Appellant. (R. p.

78, line 21 – p. 80, line 20). The bullet fragment was analyzed by Kenneth Whitler, a firearms expert from SLED. Mr. Whitler testified “it’s a metal fragment that either could be a piece of lead or it could be a projectile.” (R. p. 396, lines 14-16). He opined, “[b]ased on the remaining weight of it, it could be anything from a .22 rim-fired bullet to a piece of a bullet from a larger caliber.” (R. p. 396, line 16 – p. 397, line 10).

William Palmer, an employee of the local True Value hardware store, testified that Appellant bought lime “once or twice a week” for “probably like six months.” Mr. Palmer noted that lime can be used to “hold down odor,” and it is a common lawn care product. (R. p. 217, lines 14-25; p. 220, lines 2-23). A sample of the “white powder” covering the body was tested and found consistent with commercial lime. (R. p. 351, line 1 – p. 352, line 7).

One of the bottles recovered from the crawlspace next to the body was a “Gordon’s” gin bottle. (R. p. 377, lines 19-24). Ms. Robinson testified that Appellant drank both gin and vodka. (R. p. 121, lines 5-19). Katie Urka, a forensic DNA analyst from SLED, testified that DNA sample from the bottle matched the sample from Appellant, and “[t]he probability of randomly selecting an unrelated individual having a DNA profile matching this item is approximately one in nine hundred and ninety million.” (R. p. 416, lines 4-24).

A sample of bone marrow was retrieved from autopsy to develop a profile for victim. (R. p. 278, lines 7-9). David McClure, also of the DNA department in SLED, testified that he compared the DNA profile from victim’s sample to samples from the socks recovered, and swabs from the back door. He testified the profiles matched, and “[t]he probability of selecting an unrelated individual at random from the population

having a profile that would have matched these evidence items is approximately one in 2.6 quadrillion.” (R. p. 448, line 1 – p. 452, line 22).

Forensic pathologist Dr. Cynthia A. Schandl performed the autopsy on April 27, 2006. (R. p. 317, lines 21-24). Dr. Schandl testified that victim suffered a gunshot wound to the right side of the head. (R. p. 335, line 17- p. 336, line 5). The doctor was able to recover the bullet fragment from the wound. (R. p. 337, lines 21-22). Dr. Schandl did not express an opinion on time of death; however, she found no inconsistencies with a twenty-four day time of death. (R. p. 342, line 24 – p. 343, line 1).

Officer Andrew Glover testified that on September 6, 2009, he received a tip that Appellant was back in the jurisdiction. Officer Glover went to the location reported and found a man matching Appellant’s description. The man, upon seeing Officer Glover, initially tried to evade the officer, and the officer gave chase. Officer Glover eventually overtook the suspect, stopped him, and asked for information. Appellant stated he had been in New Jersey for a year, and initially gave false identification information before admitting his name, and the fact that he was wanted for murder. (R. p. 364, line 16 - p. 371, line 14).

The defendant exercised his right not to testify or present a defense. After each side presented closing arguments and the judge gave a full charge on the law -- and after almost two hours of deliberations, (R. p. 521, line 15 – p. 522, line 10) -- the jury convicted on the above evidence. (R. p. 522, line 22 – p. 523, line 5).

ARGUMENT

I.

The trial court did not err in declining Applicant's request to charge the outdated reasonable hypothesis language in the circumstantial evidence charge where the Supreme Court of South Carolina has found such language to be confusing. The trial court properly charged the correct and current circumstantial evidence charge approved of in *State v. Grippon*, 327 S.C. 79, 489 S.E.2d 462 (1997), which the Supreme Court of South Carolina found to be the sole appropriate charge in *State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004). There is no error.

Relevant Facts:

Applicant submitted the following request to charge:

Every circumstance relied upon by the State [must] be proven beyond a reasonable doubt; and ... all of the circumstances so proven [must] be consistent with each other and taken together, point conclusively [*** 10] to the guilt accused to the exclusion of every other reasonable hypothesis. It is not sufficient that they create a probability, though a strong one and if, assuming them to be true they may be accounted for upon any reasonable hypothesis which does not include the guilty of the accused, the proof has failed.

(R. p. 539 [Court's Exhibit 4]) (errors in original).

Applicant cited to "State v. Edwards, 298 S.C. 272 at 275, 379 S.E.2d at 889 (ci[ting] State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924 (1955))" in support of his request. (R. p. 539, n. 1 [Court Exhibit 4]).

At the charge conference, Applicant requested permission to argue against precedent in arguing that the requested charge was appropriate. (R. p. 467, lines 19 - 18). Applicant argued that a charge that excluded the "reasonable hypothesis" language in favor of language indicating that "the law makes absolutely no distinction between the weight or value to be given either direct or circumstantial evidence, [or requires] a greater degree of certainty required of circumstantial evidence than of direct evidence," would be incorrect in light of subsequent cases where the "reasonable hypothesis" language was

referenced in evaluation of directed verdict issues. (R. p. 468, line 9 – p. 469, p. 22). The State argued the standard charge was sufficient, and the requested “hypothesis” language does not “accurately state[] how to view circumstantial evidence.” (R. p. 470, lines 17-19). The trial judge distinguished evaluation by a trial judge of “substantial circumstantial evidence” in evaluating the defense’s motion for a directed verdict from requested charge language for the jury, and resolved to charge the jury with the approved of language in *State v. Grippon*. (R. p. 474, line 12 – p. 475, line 18). The trial judge thereafter instructed the jury using the *Grippon* charge:

There are two types of evidence generally presented during trial: direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It is evidence which immediately establishes the main fact to be proved. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation. You should weigh all of the evidence in this case. After weighing all of the evidence, if you are not convinced that the State has proven each element of the charge beyond a reasonable doubt, you must find the defendant not guilty

(R. p. 510, line 21 – p. 511, line 12).¹ Appellant renewed his objection after the charge.

(R. p. 520, lines 7-13).

¹ See *State v. Grippon*, 327 S.C. 79, 489 S.E.2d 462 (1997). The language almost precisely follows the approved instruction in *Grippon*:

There are two types of evidence which are generally presented during a trial-direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you

On appeal, Appellant complains that “the trial court’s instruction left the jury without any guidance or enlightenment regarding the traditional circumstantial evidence charge (particularly the ‘reasonable hypothesis’ language); thus the jury was without guidance or enlightenment on the relationship between circumstantial evidence and the determination of guilt.” (FBOA, p. 16). He posits that the Supreme Court of South Carolina’s reference to the “reasonable hypothesis” language in recent directed verdict cases signals an “eros[sion]” of conclusion that the reasonable doubt standard gives adequate instruction in circumstantial evidence cases. (FBOA, p. 13).²

Discussion:

“[T]he trial court is required to charge only the current and correct law of South Carolina.” *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011), *quoting Sheppard v. State*, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004). In *State v. Cherry*, 361 S.C. 588, 601-602, 606 S.E.2d 475, 482 (2004), the Supreme Court of South Carolina held “that the recommended language in *Grippon* is the sole and exclusive charge to be given in circumstantial evidence cases in this state, along with a proper reasonable doubt instruction.” The jury here was so charged.³ (R. p. 509, line 24 – p. 511, line 12). There is no error.

are not convinced of the guilt of the defendant beyond a reasonable doubt,
you must find [the defendant] not guilty.

327 S.C. at 83-84, 489 S.E.2d at 464.

² A similar challenge to the State’s present circumstantial evidence charge is pending (as of the initial briefing in this case) in the Supreme Court of South Carolina in *State v. Clarence Logan, Jr.*, Appellate Case No. 2011-194406.

³ Appellant does not contest the reasonable doubt charge. Respondent notes the charge tracks the reasonable doubt charge approved in *State v. Darby*, 324 S.C. 114, 115-116 477 S.E.2d 710, 710-711 (1996).

Appellant's argument that the "underpinnings of Grippon and Cherry are being eroded *sub silentio* by the Supreme Court" is not supported by the cases upon which he relies. Appellant's conclusion is based upon comments in post-*Cherry* Supreme Court addressing directed verdict issues – most specifically *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011), and *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2012). (See FBOA, pp. 13-14). Two distinguishing features demonstrate the fatal flaws in his logic.

First, Petitioner is comparing apples and oranges. The evaluation of evidence for a directed verdict motion is not the same as the jury's evaluation of evidence in determining whether the State had met its burden of proof beyond a reasonable doubt. Our Supreme Court has, in fact, specifically stated that these are two separate, distinct inquiries:

When the state relies exclusively on circumstantial evidence and a motion for directed verdict is made, the circuit court is concerned with the existence or nonexistence of evidence, not with its weight. *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000). The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. *Id.* at 409, 535 S.E.2d at 127. "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001). However, **a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.** *State v. Ballenger*, 322 S.C. 196, 470 S.E.2d 851 (1996); *State v. Edwards*, *supra*.

In *Edwards*, *supra*, we rejected the contention that in ruling on a directed verdict motion, the trial judge must grant a directed verdict unless the circumstantial evidence pointed conclusively to the defendant's guilt, to the exclusion of every other reasonable hypothesis. Instead, we held it is the trial judge's "duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced." 298 S.C. at 275, 379 S.E.2d at 889, citing *State v. Littlejohn*, 228 S.C. 324, 89 S.E.2d 924 (1955) (emphasis in original).

State v. Cherry, 361 S.C. at 594, 606 S.E.2d at 478 (emphasis in original). See also *State v. Schrock*, 283 S.C. 129, 134, 322 S.E.2d 450, 453 (1984) (“The jury weighs the evidence but when there is an absence of evidence, it becomes the duty of the trial judge to direct a verdict and a corresponding duty is imposed on this Court.”).

Thus, Appellant’s attempt to show the beginnings of momentum to revisit *Cherry* actually demonstrates more momentum toward defining “substantial circumstantial evidence,” which, to date, remains less than clearly defined in our state cases.

In short, the questions in *Bostick* and *Odems* were questions regarding the presence or absence of sufficient evidence to send the case to the jury, not the sufficiency or clarity of a jury charge to guide a determination of proof beyond a reasonable doubt. Indeed, in *Odems*, though the Court makes reference to the helpfulness of the “traditional circumstantial evidence charge” in *linking* the chain of circumstantial evidence, the Court goes no further. See *Odems*, 395 S.C. at 590, 720 S.E.2d at 52 (“Despite the Court’s abandonment of the use of this particular definition as a jury charge in *State v. Cherry*, the definition illustrates the lack of evidence against Petitioner.”). See also *State v. Hernandez*, 382 S.C. 620, 677 S.E.2d 603 (2009) (“Although in *State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004) the Court abandoned this charge and held that it may confuse the jury by leading it to believe that the standard for measuring circumstantial evidence is different from that for measuring direct evidence, it nonetheless illustrates the lack of evidence against Petitioners.”). There is not even that reference in *Bostick*. *Bostick* squarely considered the sufficiency of the evidence from review of “cases from our jurisprudence *analyzing the proof necessary in cases with circumstantial evidence*.” 392 S.C. at 139, 708 S.E.2d at 774. The cases reviewed were cases involving sufficiency of

the evidence, not a charge to the jury. *Bostick*, 392 S.C. at 139-141, 708 S.E.2d at 777-778. There is no mention whatsoever of *Edward*, *Grippon*, or *Cherry* – and for plain and obvious reasons – *Bostick* was not a jury charge case.

Second, the Court in *Cherry* specifically considered and found that the language in the *Edwards* charge would be confusing to a jury. Prior to that time, the Court had not specifically disapproved the language as an alternate to the *Grippon* charge. *Grippon*, 327 S.C. at 82, 489 S.E.2d at 463 (“we never rejected the ‘reasonable hypothesis’ phrase or found this phrase shifted the burden of proof. ... Therefore, the trial judge was not required to delete the ‘reasonable hypothesis’ phrase from the requested charge.”). But upon detailed reconsideration, the Supreme Court found, as had the United States Supreme Court before them, that “the reasonable hypothesis charge merely serves to confuse juries by leading them to believe that the standard for measuring circumstantial evidence is different than that for measuring direct evidence when, in fact, it is not. *State v. Cherry*, 361 S.C. at 601-602, 606 S.E.2d at 482. *See also Holland v. United States*, 348 U.S. 121, 139-140 (1954) (when considering complaint that the trial judge failed to charge “that were the Government’s evidence is circumstantial it must be such as to exclude every reasonable hypothesis other than that of guilt,” the Court concluded that “the better rule is that where the jury is properly instructed on the standards for reasonable doubt, such an additional instruction on circumstantial evidence is confusing and incorrect”).⁴ Thus, after *Cherry*, the *Edwards* charge was deemed not just disfavored, but improper.

⁴ Applicant’s citation to *Hampton v. State of Indiana*, 961 N.E.2d 480 (Ind. 2012) merely proves the point made by the Supreme Court in *Holland* that some jurisdictions allow differing charges, but it does not address the Supreme Court’s conclusion that the

But our courts are not without ability to instruct on direct evidence and circumstantial evidence. Our Court still allows the *Grippon* charge in explanation of circumstantial evidence, and a charge on reasonable doubt is also given to fully present the relevant legal structure to a jury. *Cherry, supra*. See also *Odems*, 395 S.C. at 590, 720 S.E.2d at 52 n. 4 (“the traditional circumstantial evidence definition provides more detailed information about the relation of circumstantial evidence to the determination of guilt. ... The definition does not, however, change the standard for evaluating evidence: every circumstance must be proved beyond a reasonable doubt.”). However, to specifically instruct separately on differing treatment for circumstantial evidence compared to direct evidence – indeed indicating a separate test for circumstantial evidence and requiring the jury to parse the evidence into legal categories and attempting to apply a differing test which may seem to them something different than reasonable doubt – remains “confusing and incorrect.” *Holland, supra, Cherry, supra*.

In sum, the trial judge gave the jury the current and correct charge on circumstantial evidence as determined by our Supreme Court. There is no error.

“better rule” is not to include such language. Further, in *Hampton*, the Supreme Court of Indiana found no error by appellate counsel in failing to raise the absence of such a charge in the direct appeal due to uncertainty in state precedent as to the availability of the charge in certain circumstances. 961 N.E.2d at 495. Further still, *Hampton* essentially requires, unlike our state, a recognition that the evidence be treated different: “... there is a qualitative difference between direct and circumstantial evidence with respect to the degree of reliability and certainty they provide as proof of guilt.” 961 N.E.2d at 486. The state court also noted the difficulties in correctly expressing the additional guidance and reformulated the state preferred language, including declining to include language referencing proof of guilt. *Id* at 491. In short, the proposed charge in *Indiana* does not mirror the *Edwards* charge at issue here. There is little persuasive value in Applicant’s reference to *Hampton*.

II.

The trial court did not err in denying the motion for a directed verdict where the State presented direct evidence that demonstrated Appellant was the last individual known to be with victim just before victim disappeared; that Appellant and victim had prior difficulties and that Appellant did not want victim in his home; that Appellant was in a heated argument with victim just before victim disappeared; that Appellant fled the jurisdiction when victim's body was going to be discovered due to the odor in the home, failed to contact his wife of seventeen years, and when he returned to the state and was stopped by officers, Appellant attempted to evade the officer, and gave incorrect identification information before he eventually acknowledged that he was the man the officer was looking for, and that he knew he was wanted for murder; and, presented additional evidence from which the jury could reasonably infer that Appellant killed victim in the kitchen area of the home by means of shooting him in the head; that he secreted victim's body in the crawlspace beneath the home Appellant shared with victim's mother; covered the body with lime and/or odor reducing agents to mask the smell of decay; and left the body to decompose. Appellant was not entitled to a directed verdict as this evidence, if believed by the jury, would support a finding that Appellant unlawfully killed his stepson with malice aforethought.

Relevant Facts:

Applicant moved for a directed verdict of acquittal at the close of the State's case, and argued, while the evidence was sufficient to show a killing had occurred, the evidence was insufficient to allow "the jury to conclude that Leonard Goodwin is the murder." (R. p. 458, line 25 – p. 459, line 6). The State pointed out specific evidence, both direct and circumstantial, in support of Appellant's guilt:

... there's direct evidence of his guilt in the testimony of Latarshia Washington, who says she overhears an argument, she overhears a loud noise, she's obviously distraught. She goes over to the house, she sees blood on the defendant's shirt, blood spatter which matches the spatter on the back door, waist-high specks of blood.

You have testimony from Mary Ann Robinson, the defendant's wife, who says, you know, she asked him what the smell is, he says it's a dead cat. Evidence of circumstantial evidence of him covering up the crime.

You have crime scene go to his house, find lime in his - - under a tarp with his tools, lime which is compared through SLED from a sample

taken from the body, which matches identically to the lime found under his tarp.

You have his flight, the fact that he doesn't contact his wife for seventeen years- - for three years, from the day the body is found. You have - - when Officer Glover attempts to arrest him, you have him fleeing, using a false ID card. Living under another person's name.

You have other circumstantial evidence around the house, including chemicals used to mask the odor, Odor Ban, Febreeze, other cleaning agents commonly used to mask the odor which would have been caused from the decomposition of the body.

And you have the liquor bottle that's found underneath the house, a matter of feet from where the body was located, with the defendant's DNA on it. You have a pair of socks with the victim's blood on it, found in a house trash can ... twenty-four days after the crime, with the victim's blood on it.

Your Honor, there's a multitude of circumstantial evidence, all of which points toward Mr. Goodwin's guilt.

(R. p. 459, line 23 - p. 461, line 12).

The trial judge, noting she was to be concerned only with the existence of evidence and not its weight, found there was not a failure to present competent evidence that, if believed, would support all the elements of murder. (R. p. 462, lines 2-9). The trial judge specifically relied upon the following evidence, viewed in the light most favorable to the State, in denying the motion:

There was testimony by Ms. Washington that she overhears the argument between the defendant and victim and a loud noise. The defendant indicated that the smell was from a dead cat. There was testimony that on more than one occasion, over a period of approximately six months, that there was a purchase of lime. There was lime under the tar that - - in a bag next to the defendant's yard items. There was lime on the body of the victim. There was testimony of the evidence of flight when he left for New York [sic] and when he was approached. There was testimony concerning that there were chemicals used to mask the odor. There was bleach, a bleach smell, immediately after the argument between - - that Ms. Washington testified to, as well as testimony of Febreeze. There is testimony of a liquor bottle under the house, with the defendant's

DNA, in proximity to the body. That there was more than one witness that testified as to the overwhelming odor under the house.

(R. p. 462, line 10 – p. 463, line 6).

Appellant complains on appeal that Washington's testimony was not direct evidence of the actual murder, and the only evidence of the actual murder was circumstantial. (FBOA, p. 19). Further, he argues that the circumstantial evidence was not "substantial" and the case should not have been submitted to the jury. (FBOA, p. 23).

Discussion:

A defendant is only entitled to a directed verdict of acquittal if the State fails to offer proof of the offense charged, or its proof merely raises a suspicion of guilt. *State v. Buckmon*, 347 S.C. 316, 321, 555 S.E.2d 402, 404 (2001).

When reviewing the trial judge's denial of a motion for a directed verdict, the appellate court will view the evidence in the light most favorable to the State. *Id.* See also *State v. Frazier*, 386 S.C. 526, 531, 689 S.E.2d 610, 613 (2010). "If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." *State v. Freiburger*, 366 S.C. 125, 136, 620 S.E.2d 737, 743 (2005). See also *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); *State v. Zeigler*, 364 S.C. 94, 102, 610 S.E.2d 859, 863 (Ct. App. 2005), *cert. denied* (Jan. 31, 2007). Conversely, "[t]he trial judge should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty." *Frazier*, 386 S.C. at 531, 689 S.E.2d at 613. "The appellate court may reverse the trial judge's denial of a motion for a directed verdict only if there is no evidence to support the judge's ruling." *State v. Stanley*, 365 S.C. 24, 42, 615 S.E.2d 455, 464 (Ct. App. 2005).

In this case, the trial judge carefully evaluated both the direct and substantial circumstantial evidence presented against Appellant. This was not a case lacking in solid evidence pointing to guilt. Indeed, in this appeal, it takes Appellant five (5) pages of argument on the multiple points of evidence to attempt to show an insubstantial case. (See FBOA, pp. 19-23). Appellant's arguments as to the circumstantial evidence, however, lack persuasion as he essentially utilizes an incorrect view of the evidence – he treats the circumstantial evidence as separate, isolating the various pieces of circumstantial evidence to evaluate its worth; however, circumstantial evidence gains its strength from its combination. *See State v. Frazier*, 386 S.C. at 531-532, 689 S.E.2d 613 (reviewing circumstantial evidence of guilt: “This evidence, *when viewed collectively*, presented a jury question as to Frazier’s guilt.”) (emphasis added); *State v. Cherry*, 361 S.C. 588, 595, 606 S.E.2d 475, 478 (2004) (relying on “combination of factors” to find evidence “sufficient for the jury to infer an intent to distribute”); *State v. Grippon*, 327 S.C. 79, 83-84, 489 S.E.2d 462, 464 (1997)(recommended charge includes the following explanation: “Circumstantial evidence is proof of a *chain of facts and circumstances* indicating the existence of a fact.”) (emphasis added). At any rate, the trial judge was not concerned with weight, but the presence of evidence. *Frazier, supra*. There is no absence of evidence here.

Latarshia Washington, the mother of victim’s children, last saw victim on April 3, 2006. (R. p. 57, lines 2-24). The victim was still in the same clothes, and had the same jewelry on, when his remains were discovered twenty-four days later. (R. p. 78, line 21 – p. 80, line 20).

Ms. Washington, while on the phone with victim, heard the argument between Appellant and victim and heard a loud noise. Ms. Washington testified she could hear Appellant's voice, and "the last thing [she] heard was, I will put you on ice." (R. p. 64, lines 23-25). This threat alone was direct evidence of intent sufficient to show malice aforethought as clear statements of intent by the defendant will support a finding of malice aforethought. For example, in *State v. Fields*, 264 S.C. 260, 267-268, 214 S.E.2d 320, 322 (1975), the state supreme court reviewed whether there was evidence of malice in the record to support the conviction and summarily found evidence of malice in the appellant's statement to "the deceased, 'I'm going to kill you, god damn it.'" *Id.* See also 40 C.J.S. *Homicide* § 45 (2012 Update) ("Malice is express when admitted or asserted, or shown by positive and direct evidence"). But the record here has even more evidence.

After the threat, victim then came back to the phone, then Ms. Washington "heard a crash, like glass breaking... [a]nd the phone went dead." (R. p. 64, line 25 – p. 65, line 9). She immediately tried to phone victim again, called "at least six times before someone picked up," and that someone was Appellant. Appellant told Ms. Washington victim "jumped in the car going to Russellville looking for weed." (R. p. 65, line 10-p. 66, line 9). She noted that Appellant was "breathing hard" when he answered. (R. p. 69, line 22 – p. 70, line 2). She asked what the loud noise was that she heard, "and he said it was he bumped the coffee table." Appellant then ended the call. (R. 66, lines 18-22).

Ms. Washington then went to victim's home a little over an hour after the phone incident. (R. p. 68, lines 4-13). She saw Appellant outside the home, and Ms. Washington observed "specs of blood at the bottom of [Appellant's] tee-shirt" around

"[t]he bottom stomach area." (R. p. 67, line 11 – p. 69, line 21). She also testified that, to her knowledge, victim did not have any known enemies, or knew of anyone who held a grudge against him; that he was not a drug dealer or a violent person, nor was he "associated with those sort of people." (R. p. 80, line 21 – p. 81, line 7).

Mr. Owens also confirmed that he, too saw, stains on Appellant's shirt. He further testified that he had attempted to call victim's house after Ms. Washington contacted him, but received no answer. He waited with Ms. Washington outside the home for hours, but never saw victim again. Mr. Owens testified that he was never in contact with victim that evening, even though he and victim had planned to go to a party that night. (R. p. 95, line 9 – p. 99, line 25).

In addition to Ms. Washington's testimony, and Mr. Owens' testimony, Mr. Phillips testified not only that he never saw victim again, but also that he had worked with victim. The victim worked on April 3, 2006, but failed to show up for work on April 4, 2006 -- the day after the argument with Appellant. In fact, victim never showed up for work thereafter, though he was known as responsible, and had not had a history of failing to go to work. (R. p. 106, line 3 – p. 112, line 11). He confirmed that he, Ms. Washington, and Mr. Owens stayed outside the home for hours on the night of April 3, 2006, waiting for victim, and never saw him. (R. p. 109, line 14 – p. 111, line 6).

Victim's mother, Mary Ann Robinson, testified that she, her husband (Appellant), and victim shared a home at the time of her son's disappearance. She testified Appellant did not like victim, did not like victim having people over at the house, and did not want victim in the house. Ms. Robinson testified that the two argued. (R. p. 115, line 19 – p.

121, line 4). Ms. Robinson testified after speaking with Ms. Washington and Mr. Owens outside the home when she returned from work on April 3, 2006, Appellant was the only person in the home. She noted a smell of bleach. (R. p. 122, line 1 – p. 125, line 7). Ms. Robinson, similarly to Ms. Washington, testified that she never heard from her son after that night though the two shared a close relationship. (R. p. 125, lines 8-13; p. 125, line 21 – p. 126, line 5). Then, on April 27, 2006, she began to notice an odor. She spoke to Appellant about the odor, and “he pointed at the back of the yard and said it was a dead cat.” (R. p. 126, lines 15-18). Ms. Robinson resolved to call the police. When asked if she told Appellant she was calling the police, she testified, “I think I did. I’m not sure. But when I – when the policeman came, he wasn’t there,” though he had been cutting grass at the next door residence. (R. 126, line 15 – p. 127, line 6). She did not see or hear from her husband again until trial. (R. p. 127, lines 7-23).

Investigating officers found the body in the crawlspace behind a concrete wall where the body could not be seen from simply looking into the crawlspace. (R. p. 170, line 1 – p. 173, line 14; p. 268, lines 1-20). The body had been covered with lime. (R. p. 173, lines 5-20). A gin bottle was located near the body. (R. p. 269, lines 7-16; R. p. 377, lines 19-24). Ms. Robinson testified that Appellant drank both gin and vodka. (R. p. 121, lines 5-19). Katie Urka, a forensic DNA analyst from SLED, testified that the DNA sample from the bottle matched the sample from Appellant, and “[t]he probability of randomly selecting an unrelated individual having a DNA profile matching this item is approximately one in nine hundred and ninety million.” (R. p. 416, lines 4-24).

Officers found indications of blood spatter on the kitchen door, on the side that opens into the home, and on the back outside steps from the kitchen. The spatter on the door was located approximately half way down the door, or at waist height, which matched the stain area on Appellant's shirt. (R. p. 189, line 5 – p. 194, line 1; R. p. 69, lines 15-21). (See also State's Exhibits 19 and 21).

Further, officers found a part of the back door where a bullet had passed through. (R. p. 286, line 4- p. 289, line 15). (See also State's Exhibits 46 and 47). The damage to the door indicated the bullet was likely either from a .22 or a .25 caliber weapon. (R. p.293, line 18 – p. 297, line 5). The bullet fragment was analyzed by Kenneth Whitler, a firearms expert from SLED. Mr. Whitler testified "it's a metal fragment that either could be a piece of lead or it could be a projectile." (R. p. 396, lines 14-16). He opined, "[b]ased on the remaining weight of it, it could be anything from a .22 rim-fired bullet to a piece of a bullet from a larger caliber." (R. p. 396, line 16 – p. 397, line 10).

Officers also found bags of lime under a tarp with lawn mowers and gas cans. (R. p. 198, lines 5 – 24). Officers also found tubs near the lawn equipment that belonged to Appellant and where Appellant kept his tools. Those tubs contained both Febreeze and Odor Ban -- items used to suppress or mask odors. (R. p. 250, line 22 – p. 253, line 11; R. p. 129, lines 6-13; State's Exhibits 38, 39, and 40). William Palmer, an employee of the local True Value hardware store, testified that Appellant bought lime "once or twice a week" for "probably like six months," again, indicating, in the light most favorable to the state, a long planned murder. Mr. Palmer noted that lime can be used to "hold down odor," and it is a common lawn care product. (R. p. 217, lines 14-25; p. 220, lines 2-23).

A sample of the “white powder” covering the body was tested and found consistent with commercial lime. (R. p. 351, line 1 – p. 352, line 7).

David McClure, also of the DNA department in SLED, testified that he compared the DNA profile from victim’s sample to samples from the socks recovered from the residential dumpster, and swabs from the back door. He testified the profiles matched, and “[t]he probability of selecting an unrelated individual at random from the population having a profile that would have matched these evidence items is approximately one in 2.6 quadrillion.” (R. p. 448, line 1 – p. 449, line 22).

Forensic pathologist Dr. Cynthia A. Schandl testified that the cause of death was a gunshot wound to the right side of the head. (Vol. 2, R. p. 335, line 17- p. 336, line 5; p. 342, lines 13-14). Though Dr. Schandl did not express an exact opinion on time of death; however, she found no inconsistencies with a twenty-four day time of death. (R. p. 342, line 24 – p. 343, line 1).

Further still, when Appellant returned to the jurisdiction, he attempted to evade capture and gave false information to the officer before admitted he was wanted for murder. (R. p. 364, line 16 - p. 371, line 14).

In sum, the evidence well supports that Appellant, with malice which was expressed and clear, killed victim. This is especially so when the evidence, both direct and circumstantial, is viewed in the light most favorable to the State, as it must be viewed in evaluating a defendant’s motion for a directed verdict. *Frazier, supra*. Thus, the record demonstrates that the State presented ample evidence to submit the case to the

jury. The trial judge properly denied the defense motion, and her ruling should be affirmed.

III.

The trial court did not abuse its discretion in admitting two autopsy photographs that depicted both the decomposition of the remains and the multiple sizes of maggots indicating several egg laying cycles had occurred when the photographs were supported of the testimony indicating more than four days had passed since death.

Relevant Facts:

The victim's body was not found until April 27, 2006, when officers responded to a call from victim's mother reporting a strong odor in the home after the victim's disappearance. (R. p. 168, line 9 – p.174, line 5). As noted above, evidence support that Appellant was last seen alive on April 3, 2006 – twenty-four (24) days earlier. (, R. p. 57, lines 2-24; p. 95, line 9 – p. 99, line 25; p. 106, line 3 – p. 112, line 11; p. 125, lines 8-13; p. 125, line 21 – p. 126, line 5).

Forensic pathologist Dr. Cynthia A. Schandl performed the autopsy on April 27, 2006. (R. p. 317, lines 21-24). Dr. Schandl described remains as reflecting "obvious changes consistent with some decomposition." (R. p. 319, lines 17-19). (R. 320, lines 2-3, describing "moderate decomposition"). In her report, Dr. Schandl recorded "indeterminate age and race" due to the decomposition. (R. p. 320, lines 6-19).

During her testimony, Dr. Schandl identified two photographs from autopsy that the State offered as State's Exhibits 52 and 54. The trial court admitted the photographs over an objection that was later put on the record in full. (R. p. 322, lines 2-19). The doctor described State's Exhibit 54 as showing a somewhat distant shot of the body covered with white powder. She could not describe the facial detail at all from the photograph, but referred to her report for changes consistent with decomposition,

including skin discoloration, softening of tissue, and loosening of teeth. (R. p. 323, line 10 – p. 324, line 2). The doctor next explained State's Exhibit 52 as follows:

So we're closer up to the body now. The head is here. This is the left should and the chest. And you're starting to see how it's very difficult to discern any facial features. It's difficult to tell, again, race, those sorts of things, as decomposition is progressing.

(R. p. 324, lines 8-12).

The doctor also noted the insect activity demonstrated, and testified:

...one of the things that we need to attempt to address is when we have somebody who's in a state of some decomposition or breakdown of the tissues is how long has it been since they died. And it's a very difficult question to answer and there are many, many variables.

One of the things that we can look at is the insect activity on the body. If there is just one size of maggot, that suggests that there's just been on - - basically one session of fly egg-laying. So one generation. And if there are maggots of multiple sizes, then that suggests that there's been some turnover and maggots - - that flies have laid eggs at more than one occasion.

In this case there were multiple sizes of maggots, suggestive of a longer time period where flies had laid eggs in succession over time. But it's certainly not specific for a length of time between death and where we are now.

(R. p. 325, lines 6-23).

The doctor further testified that the lack of fluid in the eyes can be used in determining time of death. A basic standard is the fluid dissipates in four days, but cannot give an idea of how much longer. Doctor Schandl explained:

...as a person decomposes, the fluid in their eye actually begins to dissipate until there isn't any vitreous fluid left. And that was the case here. That gives us a very general idea that it was probably more than four days. Which, again, doesn't tell us how much more than four days it was, but sometime after that.

So, again, our estimate of when the individual died is very inexact but we have a couple of guidelines to know that its more than four days, certainly.

(R. p. 326, lines 10-18).

Dr. Schandl also testified that rigor mortis and livor mortis could be used to determine the length of time after death, but not in this case. The rigor mortis "had long passed," and the liver mortis, determined by discoloration, could not be seen on the instant body because of advanced decomposition. (R. p. 332, line 13 – p. 333, line 23). The doctor also noted that the brain had become liquid that also "takes time" after death, though environment may play a part in the process. (R. p. 341, lines 18-24).

As to injury, Dr. Schandl testified that victim suffered a gunshot wound to the right side of the head. (Vol. 2, R. p. 335, line 17- p. 336, line 5). The doctor was able to recover the bullet fragment from the wound. (R. p. 337, lines 21-22). But, again, the decomposition made determination of possible stippling from some discoloration impossible. (R. p. 338, line 16 – p. 339, line 15). Dr. Schandl opined the gunshot wound was the cause of death. (R. p. 342, lines 13-14). The doctor did not express an opinion on time of death; however, she found no inconsistencies with a twenty-four day time of death. (R. p. 342, line 24 – p. 343, line 1).

After the evening break in the trial, Appellant placed his full objection on the record:

...Those photographs depict the body of the victim not at the crime scene but either at autopsy or just prior to autopsy. They don't make any material issue of fact any more or less likely true.

I was - - actually thought that the testimony from the doctor supported my position because she almost refused to use the pictures in any part of her testimony. When the questions were put to her what does

this photograph depict, she would say, well, I can't really tell you; I can look at my report and describe it to you.

So she didn't even use the photographs. So they didn't assist her testimony. To the extent that they did, they're far more prejudicial than probative. I don't think that I've ever had photographs come into a murder trial where they were parasitic maggots on the body. And it's disturbing and unsettling and it shouldn't come into evidence and I would at this time not only renew my objection but in light of her testimony that she didn't rely on or use them, move that they be taken out of evidence.

(R. p. 355, line 25 – p. 356, line 20).

The trial judge found:

All right. I believe that fully articulates your argument.

I disagree. I did not find that they were more prejudicial. There was extensive testimony that she used larva and the stages of the larva to identify the time - - or the stages of death, four days or more. So note your exception.

(R. p. 356, line 21 – p. 357, line 2).

On appeal, Appellant complains the ruling on relevance is incorrect as “Dr. Schandl’s ultimate finding that the time of death was more than four days was based upon the lack of fluid in the eyes of [victim’s] remains, not the presence of maggots.” (FBOA, p. 26). Further, he complains “the photographs were not needed to prove the elements of murder” as the “gunshot wound to the head was established by Dr. Schandyl through the use of her autopsy report.” (FBOA, p. 27). Lastly, he complains the photographs “served to create an unfair prejudice against” him due to “close-up imagery” of the “severe maggot infestation.” (FBOA, p. 27).

Discussion:

“The admission of evidence is within the sound discretion of the trial judge, and absent a clear abuse of discretion amounting to an error of law, the trial court’s ruling

will not be disturbed on appeal.” *Peterson v. National R.R. Passenger Corp.*, 365 S.C. 391, 399, 618 S.E.2d 903, 907 (2005); *Gambell v. Int’l. Paper Realty Corp.*, 323 S.C. 367, 373, 474 S.E.2d 438, 441 (1996).¹ To warrant reversal, an appellant “must show both the error of the ruling and resulting prejudice.” *Recco Paper & Label Co. v. Barfield*, 312 S.C. 214, 216, 439 S.E.2d 838, 840 (1994); *State v. Hamilton*, 344 S.C. 344, 353, 543 S.E.2d 586, 591 (Ct. App. 2001), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). Relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE.

“The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court.” *State v. Nance*, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996). *See also State v. Todd*, 290 S.C. 212, 214, 349 S.E.2d 339, 340 (1986). “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” Rule 403, SCRE; *State v. Shuler*, 353 S.C. 176, 184, 577 S.E.2d 438, 442 (2003); *State v. Alexander*, 303 S.C. 377, 401 S.E.2d 146 (1991). “To constitute unfair prejudice, the photographs must create a ‘tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.’” *State v. Kelley*, 319 S.C. 173, 178, 460 S.E.2d 368, 370-71 (1995), *quoting Alexander*, 303 S.C. at 377, 401 S.E.2d at 149. However, “[i]f the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it.” *State v. Torres*, 390 S.C. 618, 623, 703 S.E.2d 226, 229 (2010), *quoting Nance*, 320 S.C.

¹ All relevant evidence is admissible. Rule 402, SCRE.

at 508, 466 S.E.2d at 353. *See also State v. Salley*, 398 S.C. 160, 169, 727 S.E.2d 740, 744 (2012) (photograph of child “substantiated [forensic pathologist] Dr. [Joel] Sexton’s testimony that the child’s sickle cell trait was not outwardly apparent” thus “had a purpose independent of arousing sympathy, and was properly admitted”).

At issue here are two photographs from the autopsy. The body is shown in a clinical setting, on an autopsy table, and appears to be face down.⁵ (State’s Exhibits 52 and 54). The autopsy photographs depict the advanced decomposition of the victim’s body which, in turn, supports the pathologist’s observations and demonstrates the difficulties in relying on visual observations, giving understanding to the doctor’s hesitancy in describing features. Further, State’s Exhibit 52 depicts the multiple sizes of maggots which indicates several egg laying cycles had occurred which, in turn, supports her testimony that the presence of such indicated more than four days had passed since death. There were discrete and necessary reasons to submit the two photographs. In sum, because “the offered photograph[s] serve[d] to corroborate [the pathologist’s] testimony, it [was] not an abuse of discretion to admit it.” *Torres*, 390 S.C. at 623, 703 S.E.2d at 229; *Nance*, 320 S.C. at 508, 466 S.E.2d at 353. *See also Todd*, 290 S.C. at 214, 349 S.E.2d at 340 (black and white photograph of the victim’s right upper chest with the breast exposed showing the location of the bullet wound was admissible to corroborate pathologist’s testimony regarding location of wound, and did not prejudice defendant,

⁵ In fact, Appellant did not object to a photograph of the body shown in the crawlspace. (Tr. p. 61, line 1 – p. 63, line 1; State’s Exhibit 29). Further, the record shows that the State did not offer all photographs available in this case, and appeared to be open to discussion with defense counsel. The record demonstrates that the State withdrew at least one contested photograph (though the record is not clear what kind of photograph it was) upon defense counsel’s objection. (R. p. 152, lines 1-6). However, State’s Exhibit 5 was marked and not admitted. That photograph was of the victim’s forearm and showed a tattoo. (State’s Exhibit 5).

since there was explicit testimony that victim's blouse and brassiere had been removed by medical personnel when they arrived at scene in order to administer medical assistance); *State v. Kelsey*, 331 S.C. 50, 76, 502 S.E.2d 63, 76 (1998) (photographs of various bone and bomb fragments and clothing found at crime scene were admissible in murder prosecution, despite claim that, because victim's body was found in woods 46 days after crime was committed, weather or local fauna could have altered crime scene during that period; photographs corroborated other testimony concerning condition of victim's body as first discovered by police at crime scene, and location of bone and bomb fragments supported testimony that bomb had been detonated in victim's mouth); *State v. Martucci*, 380 S.C. 232, 249-51, 669 S.E.2d 598, 607-08 (Ct.App. 2008) (autopsy photographs of child's internal organs and other injuries admissible in prosecution for homicide by child abuse, where they were introduced to corroborate testimony of doctor who performed autopsy regarding various injuries inflicted on child, various stages of healing or freshness, and the internal trauma which caused child's death; photographs were relevant to prove that child was abused and abuse caused his death, that abuse manifested an extreme indifference to human life, and that severity of bruises and resulting trauma were inconsistent with accidental injury or play; and photographs were not introduced with the intent to inflame, elicit sympathy of, or prejudice the jury); *State v. Edwards*, 10 S.E.2d 587, 588 (1940) ("In our opinion the trial Judge did not abuse his discretion in admitting the photograph [depicting head, torso, neck wound, decomposition and maggots] as being relevant, nor can we attach any importance, in view of the facts of this case, to the contention that the photograph prejudiced the jury against the defendant. Everything

depicted by the photograph was, subsequent to its introduction, testified to in detail by the witnesses.”).

Further, Appellant’s argument that the doctor did not rely on the insect infestation in considering time of death “as more than four days” is not accurate. (See FBOA, p. 26). The doctor clearly testified there were multiple factors to consider in evaluating the length of time that had passed. These included the insect infestation, among other physical manifestations. (R. p. 325, lines 6-23; p. 326, lines 10-18; p. 332, line 13 – p. 333, line 23; p. 341, lines 18-24). Moreover, the doctor did not specifically opine on a number of days, but opined that the indications did not exclude a lapse of twenty-four days. (R. p. 342, line 24 – p. 343, line 1).

There is no merit to the argument that “the photographs were not needed to prove the elements of murder” or that one of the matters proved were not contested *by him*. (See FBOA, p. 27). This is not the appropriate inquiry. Rather, the proper question for determining relevance was whether this photograph had “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. “[A] defendant cannot dictate the manner in which the prosecution tries its case by stipulating to certain facts or by not challenging an element of the offense” and “the prosecution’s burden to prove every element of the crime is not relieved by a defendant’s tactical decision not to contest an essential element of the offense.” See *Estelle v. McGuire*, 502 U.S. 62, 69 (1991); *Mathews v. United States*, 485 U.S. 58, 64-65 (1988).⁶

⁶ As the Court noted in *Old Chief v. United States*, 519 U.S. 172, 189-190 (1997), “the accepted rule that the prosecution is entitled to prove its case free from any defendant’s option to stipulate the evidence away rests on good sense. A syllogism is not

Further, unlike the photographs in *State v. Collins*, 398 S.C. 197, 201-14, 727 S.E.2d 751, 754-60 (Ct.App. 2012), the photographs at issue here were not “calculated to arouse the sympathy or prejudice of the jury.” Though perhaps unsettling to one not familiar with death and decay, the photographs are not gruesome by virtue of blood, gore, or gapping wounds. In fact, due to extensive decomposition, the customary features one would expect to see on a body are not clearly visible; rather, the photographs actually show little human detail – the very point the forensic pathologist made in testimony. (R. p. 324, lines 8-12). At any rate, the photographs well demonstrate and corroborate the forensic pathologist’s testimony which is especially probative since time of death established through forensic means was important in connecting the evidence. Thus, the trial court did not err in finding the photographs relevant and admissible.

Further still, only two photographs were introduced to corroborate her testimony, as opposed to the numerous photographs admitted in *Collins* and other cases where this Court or the Supreme Court have held that there was an abuse of discretion in the admission of photographs. *See, for example, Collins*, 398 S.C. at 208, 727 S.E.2d at 757 (referencing seven photographs of a partially eaten ten year old victim: “It is difficult to look at each photo, and the combined effect of all seven is disturbing.”); *State v. Middleton*, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986) (at least four photographs introduced of graphic, but autopsy-related, damage to remains, *i.e.* “victim’s scalp pulled

a story, and a naked proposition in a courtroom may be no match for the robust evidence that would be used to prove it. People who hear a story interrupted by gaps of abstraction may be puzzled at the missing chapters, and jurors asked to rest a momentous decision on the story's truth can feel put upon at being asked to take responsibility knowing that more could be said than they have heard. A convincing tale can be told with economy, but when economy becomes a break in the natural sequence of narrative evidence, an assurance that the missing link is really there is never more than second best.”

away from her skull” and “surgically opened vaginal cavity exposing a large amount of seminal fluid”); *State v. Waitus*, 224 S.C. 12, 27, 77 S.E.2d 256, 263 (1953) (“four pictures of deceased taken in the boiler room of the parish house before the body was removed” should have been excluded because injuries, “the condition of the clothes,” and the fact “her rings had been removed and placed on the index finger,” were “fully established both by uncontradicted medical and lay testimony” thus “were calculated to inflame and arouse the passions of the jury and their introduction was wholly unnecessary to establish the facts claimed”).⁷ Further, due, in part, to the advance decay, the photographs “did not have ‘the overwhelming capacity to lure the jury into declaring guilt on the emotional basis of sympathy for the [victim] and horror at the sight of the [victim’s] body,’ as did the numerous photographs of the child victim, including a photograph of his partial eaten face, that this Court found unduly prejudicial in *Collins*. 398 S.C. at 210, 727 S.E.2d at 758.

Finally, any error in the introduction of these photographs must be viewed as non-prejudicial and harmless beyond a reasonable doubt, since it could not reasonably have affected the result of the trial. See *State v. Sherard*, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991) (“Error in a criminal prosecution is harmless when it could not reasonably have affected the result of the trial”); *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (“When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result”). At worst, the photographs were

⁷ Respondent again notes that even though Appellant relies on this case in making his argument, (see FBOA, p. 27), he did not object to the photograph of the remains in the crawlspace under the house. Footnote 5, *supra*. (R. p. 174, line 1 – p. 176, line 1; State’s Exhibit 29).

cumulative to the other evidence concerning the crime scene (especially State's Exhibit 29, the body in the crawlspace) and the condition of the victim's body (especially the extensive use of lime, the clothing consistent with the clothing worn the last day Ms. Washington saw victim alive, and the advanced decay suggesting more than four days had passed since death). *State v. Robinson*, 201 S.C. 230, 22 S.E.2d 587, 588 -589 (1942) ("The photographs, it is true, were only corroborative of the spoken word, and proved to be unnecessary in this particular case, but they were no more than harmless surplusage. They showed material conditions which existed, and were not inflammable fuel to be consumed by the minds of the jurors, nor do we think that they were calculated to arouse the prejudices of the jury."). *See also State v. Haselden*, 353 S.C. 190, 577 S.E.2d 445 (2003) (improper evidence harmless where merely cumulative to other evidence); *State v. Evans*, 378 S.C. 296, 299, 662 S.E.2d 489, 491 (Ct. App. 2008) (evidence "merely cumulative, insubstantial" did not affect the result of trial and considered harmless). Moreover, there was overwhelming evidence of Watson's guilt – especially the concise timeframe between violent argument with Appellant and disappearance; the victim's body recovered with the same clothes and jewelry victim was seen wearing the day of the disappearance, and immediately before the altercation with Appellant; victim's body hidden under Appellant's residence with a bottle with Appellant's DNA next to the body in a remote area away from the crawlspace entrance; lime on the victim's body consistent with lime purchase by Appellant; Appellant's odor agents also with bags of lime in his work materials for lawn care; Appellant's deflection suggestion that the odor in the house was from a dead cat in the yard; and, Appellant's flight from the jurisdiction when the body was about to be discovered due to the strong smell of decay. This detailed,

competent evidence well supports the jury's verdict such that the admission of photographs, if considered error, could only be harmless on this record. *Bailey, supra*.

However, the record supports the basis for the trial judge's ruling admitting the photographs over Applicant's objection. Her ruling should not be disturbed on appeal.

CONCLUSION

For all the foregoing reasons, Respondent, the State, submits that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

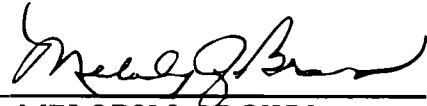
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

MELODY J. BROWN
Senior Assistant Attorney General

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

BY: 
MELODY J. BROWN
S.C. Bar No. 14244

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Columbia, SC 29211-1549
(803) 734-6305

ATTORNEYS FOR RESPONDENT

May 23, 2013.
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
Kristi Lea Harrington, Circuit Court Judge

The State, Respondent,
v.
Leonard Goodwin, Appellant.

Appellate Case No. 2011-193507

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court entitled "Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

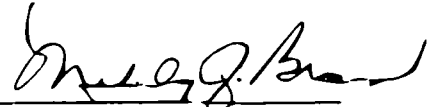
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

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SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

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May 23, 2013.
Columbia, South Carolina.

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
Kristi Lea Harrington, Circuit Court Judge

The State,

Respondent,

v.

Leonard Goodwin,

Appellant.

PROOF OF SERVICE

I, Melody J. Brown, certify that I have served the *Final Brief of Respondent* and *Certificate of Compliance* on Appellant by depositing two copies of same in the United States mail, postage prepaid, addressed to his attorney of record:

Breen Richard Stevens, Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, South Carolina 29211-1589

This 23rd day of May, 2013.



MELODY J. BROWN
Senior Assistant Attorney General
S.C. Bar No. 14244

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-6305

RECEIVED
MAY 23 2013
SC COURT OF APPEALS



ALAN WILSON
ATTORNEY GENERAL

May 23, 2013

Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: The State v. Leonard Goodwin
Appellate Case No. 2011-193507

Dear Ms. Kitchings,

Enclosed please find the original and nine (9) copies of the *Final Brief of Respondent*, dated May 23, 2013, along with proof of service, in the above-referenced case.

By copy of this letter, I am serving opposing counsel with same. Thank you for your consideration in this matter.

Sincerely,

Melody J. Brown
Senior Assistant Attorney General

MJB/mv
Enclosure

cc: Breen Richard Stevens, Esq., Appellate Defender
The Honorable Scarlett A. Wilson, Solicitor, 9th Circuit
Sandi Wofford, Victim Services

RECEIVED

MAY 23 2013

SC COURT of Appeals

**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.

Leonard Goodwin, Appellant.

Appellate Case No. 2011-193507

Appeal From Charleston County
Kristi Lea Harrington, Circuit Court Judge

Unpublished Opinion No. 2013-UP-448
Heard September 10, 2013 – Filed December 11, 2013

AFFIRMED

Chief Appellate Defender Robert Michael Dudek,
Appellate Defender Benjamin John Tripp, and Appellate
Defender Breen Richard Stevens, all of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Salley W. Elliot, and Senior
Assistant Attorney General Melody J. Brown, all of
Columbia; and Solicitor Scarlett Anne Wilson, of
Charleston, for Respondent.

PER CURIAM: Leonard Goodwin appeals his conviction for murder, arguing the circuit court erred in failing to: (1) properly charge the jury on the relationship of circumstantial evidence to the determination of guilt; (2) grant a directed verdict based on a lack of substantial circumstantial evidence of Goodwin's guilt; and (3) suppress certain prejudicial photographs under Rule 403, SCRE. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to Goodwin's argument regarding the jury charge: *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (holding the circuit court "'is required to charge only the current and correct law of South Carolina'"(quoting *Sheppard v. State*, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004))); *State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009) ("Errors, including erroneous jury instructions, are subject to harmless error analysis."); *State v. Wharton*, 381 S.C. 209, 213, 672 S.E.2d 786, 788 (2009) ("A [circuit] 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. Logan*, 405 S.C. 83, 94 n.8, 747 S.E.2d 444, 449 n.8 (2013) (finding a jury charge containing identical language as presented in the instant case "as a whole, properly conveyed the applicable law" and "[t]hus, any conceivable error was harmless beyond a reasonable doubt").

2. As to Goodwin's argument regarding the denial of his directed verdict motion: *State v. Lollis*, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001) ("On appeal from the denial of a directed verdict, this [c]ourt must view the evidence in the light most favorable to the State."); *State v. McHoney*, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001) ("A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged."); *State v. Brown*, 402 S.C. 119, 124, 740 S.E.2d 493, 495 (2013) ("However, if there is any direct or *substantial circumstantial evidence* reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." (emphasis added)); *see also State v. Robinson*, 360 S.C. 187, 194, 600 S.E.2d 100, 104 (Ct. App. 2004) ("Flight from prosecution is admissible as evidence of guilt." (quoting *State v. Pagan*, 357 S.C. 132, 140, 591 S.E.2d 646, 650 (Ct. App. 2004))); *State v. Crawford*, 362 S.C. 627, 636, 608 S.E.2d 886, 891 (Ct. App. 2005) ("The critical factor to the admissibility of evidence of flight is whether the totality of the evidence creates an inference that the defendant had knowledge that he was being sought by the authorities."); *State v. Al-Amin*, 353 S.C. 405, 413, 578 S.E.2d 32, 36-37 (Ct. App. 2003) (considering, among other factors, the accused party's flight

from the scene in determining whether substantial circumstantial evidence was presented to warrant submission of the case to the jury).

3. As to Goodwin's argument regarding the failure to suppress certain photographs under Rule 403, SCRE: *State v. Dickerson*, 395 S.C. 101, 116, 716 S.E.2d 895, 903 (2011) ("The admission of evidence is within the circuit court's discretion and will not be reversed on appeal absent an abuse of that discretion."); *State v. Myers*, 359 S.C. 40, 48, 596 S.E.2d 488, 492 (2004) (declining to reverse for error under Rule 403 because the error was harmless); *State v. Edwards*, 194 S.C. 410, 412, 10 S.E.2d 587, 588 (1940) (holding the circuit court did not abuse its discretion when it admitted graphic photographs of a victim's decomposed corpse when the photographs were already testified to in detail by witnesses at trial.).

AFFIRMED.

SHORT, WILLIAMS, and THOMAS, JJ., concur.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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December 30, 2013

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: The State, v. Leonard Goodwin
Lower Court Case No. 2010GS1000738
Appellate Case No. 2011-193507

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

Enclosure

cc: Breen Richard Stevens, Esquire
Melody Jane Brown, Esquire
Alan McCrory Wilson, Esquire

Salley W. Elliott, Esquire
John W. McIntosh, Esquire
Scarlett Anne Wilson, Esquire
Robert Michael Dudek, Esquire
Benjamin John Tripp, Esquire

AW
9

FORM 5

STATE OF SOUTH CAROLINA)

County of Charleston)Leonard B. Goodwin #143201)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

Respondent.)

2014-CP-10-4276

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2014 JUL -8 PM 3:30
JUL 10 2 11 PM 2014
CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution, 990 Wilsack Highway,
Bishopville, South Carolina, 29010
2. Name and location of Court which imposed sentence Charleston County Court of
General Sessions, Charleston, South Carolina
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) SEE: APPLICANT'S APPENDIX, Exhibit A, Page 29
(b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) SEE: APPLICANT'S APPENDIX, Exhibit B, Page 31.
 (b) _____
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty _____
 (b) after a plea of not guilty YES
 (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. South Carolina Court of Appeals
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. Affirmed
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. December 13, 2013
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. SEE: APPLICANT'S APPENDIX, Exhibit C, Page 32.
 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:

(a) SEE: APPLICANT'S APPENDIX, "Grounds for Relief," Page 1.

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) SEE: APPLICANT'S APPENDIX, "Arguments in Support," Page 1.

(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. _____
- iv. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

Revised 3/2003

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) The issues raised in this application, are by State Law, only
appropriate for initial collateral review proceedings.

(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?
Other than initial appellate review — No

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. Cassandra L. Woosely, Charleston County public Defender
Beatti I. Butler, Charleston County Public Defender
- ii. Breen R. Stevens and Benjamin J. Tripp
South Carolina Commission on Indigent Defense, Appellate Division.

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Criminal Trial and Sentencing

ii. Initial Appellate Review

iii. _____

Revised 3/2003

19. State clearly the relief you seek in filing this application:

To vacate his conviction and sentence and remand for new trial.

20. Are you now under sentence from any other court that you have not challenged?

Applicant is not under sentence from any other Court

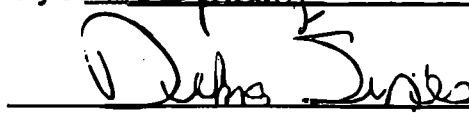
STATE OF SOUTH CAROLINA)
County of Charleston)

VERIFICATION

I, Leonard B. Goodwin, SCDC No: 143201, 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 at this time for vacating, setting aside or correcting the convictions and sentence attacked in this application; and that the matters and allegations therein set forth are true and correct.


Leonard B. Goodwin

SWORN to and subscribed before me this 2
day of July 2014

 (L.S.)
Notary Public

My Commission Expires: 11-4-2015

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Leonard B. Goodwin, SCDC No: 143201, hereby apply for leave to proceed in this action without prepayment of fees or costs or security thereof. In support of my application I declare under penalty of perjury that the following facts are true:

- (a) I am the applicant in this action and I believe I am entitled to redress.
- (b) 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

2 day of July 2014


Notary Public

Lee Corr., Inst.,
990 Wisacky Highway
Bishopville, SC 29010-1775

My Commission Expires: 11-4-2015

2014-CP-10-4276

STATE OF SOUTH CAROLINA
In The Court of Common Pleas
Charleston County

FILED
 2014 JUN -3 PM 3:30
 CLERK OF COURT

C/A: _____

LEONARD BERNARD GOODWIN,

Applicant,

- - - VS - - -

STATE OF SOUTH CAROLINA,

Respondent.

 APPLICANT'S APPNDIX

Prepared By:

LEONARD BERNARD GOODWIN, 143201
 Lee Correctional Institution

990 Wisacky Highway
 Bishopville, South Carolina

29010

APPLICANT, PRO SE.

I N D E X

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APPLICANT'S STATEMENT

I do not have Post-Conviction Counsel at this time. Further I do not yet have a copy of my trial counsel's file, access to discovery, access to funds for experts and investigative services; nor the ability to conduct an investigation while incarcerated. Given those limitations, I can not provide further information regarding additional evidence or claims for post-Conviction Relief, until counsel is appointed.

Although, in good faith, I believe there are other viable post-conviction claims available to me; with the exception of the specific issues included in this application.

I do not waive the attorney-client privilege to any extent, and I request that my trial attorneys not provide any portion of my files to any representative of the Attorney General's Office outside the scope of these specific claims.

Applicant has not previously filed any prior application under state law in state court; nor has applicant filed any prior petition for writ of habeas corpus in state or federal court.

DATE: July 2, 2014

First Cause of Action

10(a).

Applicant's right to DUE PROCESS OF LAW and EFFECTIVE ASSISTANCE OF COUNSEL as guaranteed by the United States Constitution and the Laws of the State of South Carolina were violated when trial counsel failed to "OBJECT" to Indictment (2010-GS-10-00738) - as presented by the prosecution - prior to the jury being sworn - for said document "DOES NOT" support a finding that twelve (12) members of the full grand jury actually "reviewed" and "voted" to True Bill the document against the applicant was prejudicial to the defense - - constituted INEFFECTIVE ASSISTANCE OF COUNSEL. U.S.C.A. 5th, 6th and 14th Amend.

PROCEDURAL HISTORY

11(a).

During the January term of 2010, the grand jury for the Court of General Sessions, in Charleston County met, and the arresting officer was examined, by the county solicitor, supposingly before the full grand jury.

On the 11th day of January 2010, those grand jurors convened and supposingly decided to "Indict" the applicant, based upon this examination. The document was stamped TRUE BILL and signed by the grand jury's foreperson, on the 13th day of January, 2010.

ARGUMENT IN SUPPORT

The United States Supreme Court has shown that it takes seriously

and rigorously enforces the constitutional command that a defendant to a charge of an "infamous crime" be tried only on an Indictment of a Grand Jury. REVIEW: S.C. Const. I, § 11.

Here the applicant was held before the bar to answer by-way-of a - "form" - drafted by the prosecution - supposingly upon the grand jury's instructions that the applicant be indicted for the presented offense... Thus, the document was founded "NOT BY THE GRAND JURY" but by the county solicitor whom drafted it,... and then only signed by the grand jury's foreperson.

It is argued that the foreperson of the grand jury should have been present during the grand jury's deliberations, and that his/her signature upon said document "MAY" (emphasis added) reflect the foreperson's best recollection of the grand jury's intent...

Certainly the jurors' uncollaborated decision may have been that the applicant could have been indicted for the offense presented, does not (emphasis added), entail that twelve (12) members of the grand jury, actually review the facts during deliberations, and compared them to the charging instrument, then voted to indict the applicant, as charged.

THEREFORE, applicant argues "without" the grand jury's deliberations before the court for review, the state "CAN NOT" support a finding that the full grand jury actually reviewed the

facts and voted, with a results that twelve members of this grand jury actually voted to TRUE BILL the applicant.

The sole signature of a grand jury foreperson does not support and can not in itself convert a "form" - drafted by a county solicitor - into an INDICTMENT, that fails to support a finding that twelve (12) members of the full grand jury actually reviewed the facts, compared these facts to the charging instrument and voted to TRUE BILL the document against the applicant, as demanded by both Constitutions (Federal & State).

For a conviction under such prohibitions shall not stand.

U.S.C.A. 5th, 6th and 14th; S.C. Const. ART. I, § 11.

REVIEW: APPLICANT'S APPENDIX, Exhibit [A], page 29

Second Cause of Action

10(b).

Applicant's rights to DUE PROCESS OF LAW and EFFECTIVE ASSISTANCE OF COUNSEL as guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and South Carolina Law; ... were violated when counsel failed to "object" to and the trial court allowed "hearsay" and "character" evidence, concerning Applicant's conduct of bad acts and his relationship with the victim and applicant's family.

ARGUMENT IN SUPPORT

11(b).

Several of the State's witnesses testified, ... before the jury, ... without objection from defense counsel, ... to "hearsay" and "character" evidence, concerning applicant's relationship between himself and his family; as well as, between Applicant and the victim.

State's first witness, ... Latarshia Washington, ... girlfriend of victim, ... testified without objection from defense counsel, to "hearsay" and "character" evidence associated with Applicant's relationship with the victim and his wife; ... and to prior bad character conduct.

Tr. Trans., Volume I, page 108, lines 8-13, (character evidence):

Q...WHAT KIND OF RELATIONSHIP DID MR. GOODWIN AND ERIC
HAVE?

A...A VERY ROCKY RELATIONSHIP

Q...WHAT WAS THE SOURCE OF THEIR TROUBLES?

A...ERIC WAS ALWAYS UPSET BECAUSE LEONARD WAS MOOCHING
OFF HIS MOM.

Tr. Trans., Volume I, page 113, lines 8-10, (hearsay & bad
character evidence).

Q...NOW, I WANT YOU TO GO SLOW. I WANT YOU TO TELL THE
JURY EVERYTHING YOU CAN REMEMBER ABOUT THAT PHONE
CONVERSATION

A...I WAS TALKING TO ERIC. AND WE TALKED FOR A WHILE.
WE HAD A CONVERSATION GOING. AND ERIC TOLD ME HE
OVERHEARD MR. GOODWIN SAYING EARLIER THAT DAY HE
WAS GOING TO WHIP SOMEONE'S ASS.

Tr. Trans., Volume I, page 114, lines 16-20, (hearsay evidence).

Q...DO YOU -- WHAT ELSE DO YOU HEAR?

A...I HEARD ERIC SAY, YOU NEED TO PACK YOUR BAGS, YOU
NEED TO LEAVE, BECAUSE YOU'RE NOT PAYING ANY BILLS
UP IN HERE AND IF MY BROTHER WAS OUT OF JAIL I
WOULD HAVE HURT -- HE WOULD HAVE HURT YOU A LONG
TIME AGO

Tr. Trans., Volume I, page 116, lines 16-20, (hearsay evidence).

Q...SO WHAT DID YOU -- WHAT DID YOU SAY TO LEONARD WHEN
HE SAID THAT TO YOU?

A...I ASK HIM WHERE IS ERIC AND HE SAID THAT ERIC
JUMPED IN THE CAR GOING TO RUSSELLVILLE LOOKING FOR
WEED.

Tr. Trans., Volume I, page 119, lines 12-14, (hearsay evidence).

Q...DOES HE -- WHAT DOES HE SAY?

A...HE SAID ERIC JUMPED IN THE CAR GOING OVER TO
RUSSELLVILLE.

Tr. Trans., Volume I, page 119, line 22 through page 120, line 2
(character evidence).

Q...AND EXCUSE ME. I'M GOING TO GET OFF TRACK HERE JUST
ONE SECOND. I WANT TO BACK UP TO WHEN YOU CALLED
BACK AND YOU HAD -- AND MR. GOODWIN ANSWERED THE
PHONE. DID YOU NOTICE ANYTHING ABOUT HIS DEMEANOR
WHEN YOU WERE TALKING WITH HIM ON THE PHONE?

A...HE WAS BREATHING HARD.

State's next witness, ... Jessie Owens, ... cousin of victim, ...
testified before the jury, without "objection" from defense

counsel, ... to "hearsay" evidence.

Tr. Trans., Volume I, page 147, lines 14-16, (hearsay evidence).

Q...AND WHAT WAS SAID?

A...WE ASKED HIM WHERE ERIC WAS AT. HE SAID ERIC HAD
LEFT THE HOUSE.

Tr. Trans., Volume I, page 150, lines 9-14 (hearsay evidence).

Q...WHAT WAS LATARSHIA'S KIND OF Demeanor LIKE?

A...SHE WAS ACTUALLY QUITE SCARED WHEN SHE CALLED ME.
SHE SAID SOMETHING ABOUT SOME KIND OF BANG OR
SOMETHING, AND SHE WAS PRETTY MUCH TERRIFIED. SHE
JUST KEPT SAYING, SOMETHING HAPPENED TO HIM,
SOMETHING HAPPENED TO HIM.

State's next witness, ... Mary Ann Robinson, ... wife of
applicant and mother of victim, ... testified before the jury,
without "Objection" from defense counsel, to "hearsay" and
"character" evidence, concerning the relationship between herself
and the applicant; as well as, to the character of applicant and
his relationship with victim.

Tr. Trans., Volume I, page 169, lines 12 through page 170, line
8, (hearsay and character evidence).

Q...WHAT WAS ERIC AND LEONARD'S RELATIONSHIP LIKE?

A...IT WASN'T VERY GOOD AT ALL.

Q...WHAT WAS THE SOURCE OF THEIR DISAGREEMENTS OR THEIR PROBLEMS?

A...WELL, HE DIDN'T LIKE THE THINGS THAT ERIC, YOU KNOW, DID. AND FRIENDS AND COUSINS COME OVER AND HE ALWAYS GET LIKE A BAD ATTITUDE.

Q...SO HE DIDN'T LIKE PEOPLE COMING OVER TO THE HOUSE?

A...RIGHT.

Q...DID ERIC HAVE PROBLEMS WITH LEONARD?

A...NO

Q...DID LEONARD HAVE A JOB BACK IN APRIL OF 2006?

A...NO. HE WAS JUST CUTTING GRASS AND MAINTENANCE.

Q...GO AHEAD.

A...FIXED TVs AND STUFF LIKE THAT

Q...FIXED TVs AS IN WORKING IN A SHOP OR --

A...NO.

JUST, YOU KNOW, FIXING PEOPLE AROUND, THE NEIGHBOR.
WENT AROUND NEIGHBOR FIXING TVs.

Q...DID HE HAVE A CAR?

A...NO.

Tr. Trans., Volume I, page 171, lines 11-12, (character evidence).

Q...OKAY. DID LEONARD HELP PAY ANY BILLS AROUND THE
HOUSE

A...NO

Tr. Trans., Volume I, page 172, lines 10-25, (character evidence).

Q...OKAY, HOW DID LEONARD FEEL ABOUT ERIC MOVING INTO THE HOUSE?

A...HE DIDN'T FEEL SATISFIED.

LIKE I SAY, HE ALWAYS HAD A ATTITUDE WHEN, YOU KNOW, HE -- ALL HE WAS -- EVERY LITTLE THING THAT HE DID, YOU KNOW, HE GET LIKE AN ATTITUDE AND HE -- HE DIDN'T LIKE IT AT ALL. LIKE HE SAID, LIKE HE DIDN'T WANTED ERIC THERE.

Q...DID THEY ARGUE A LOT?

A...YES, ON OCCASION.

Q...HAD YOU EVER SEEN THEM GET PHYSICAL BEFORE.? DID THEY EVER GET INTO A FISTFIGHT OR ANYTHING LIKE THAT?

A...I HAVE HERAD -- NO. I HAVE HEARD ARGUING --

Q...YOU HEARD --

A...FUSSING

Tr. Trans., Volume I, page 177, lines 11-20, (character evidence).

Q...DID YOU AND ERIC HAVE A PRETTY GOOD RELATIONSHIP?

A...YES, A REAL GOOD ONE.

Q...HOW WAS LEONARD ACTING THAT NIGHT?

A...WELL, HE JUST SAT THERE IN FRONT OF THE COUCH AND,
YOU KNOW, JUST AS CALM LIKE NOTHING HAPPENED.

Q...HOW WERE YOUR AND LEONARD'S RELATIONSHIP?

A...IT WASN'T TOO GOOD.

Q...IT WASN'T TOO GOOD?

A...HUH-UH

Tr. Trans, Volume I, page 179, lines 7-19, (character evidence).

Q...AND FROM THE TIME YOU CALLED THE POLICE, DID YOU
EVER SEE LEONARD GOODWIN AGAIN UNTIL TODAY?

A...UNTIL TODAY, I HAVEN'T SEEN HIM SINCE.

Q...DID YOU EVER GET A PHONE CALL FROM LEONARD GOODWIN
FROM APRIL 27th, 2006, UNTIL TODAY?

A...NO.

Q...DID YOU EVER GET A LETTER?

A...NO

Q...DID HE GO TO ERIC'S FUNERAL?

A...NO

Q...AND YOU WERE HIS WIFE OF SEVENTEEN YEARS AT THAT
POINT?

A...YES.

Counsel was ineffective for not objecting to this prejudicial
testimony before the jury, and if necessary, to preserve these

issues for appellate review. This form of testimony, before the jury, having no foundation was extremely prejudicial to applicant over any probative measures. Trial counsel just stood by and allowed this form of testimony to continue, until the prosecution finally said to a witness, "DON'T SAY WHAT THEY SAID, JUST TELL ME WHAT YOU DID, BASED ON WHAT YOU KNEW."

This form of testimony has a reasonable probability of an "influential effect" upon the jury's verdict, giving the fact that the prosecution's case was nothing more than circumstantial, with NO direct evidence to connect the applicant to actually committing the crime. STATE -vs- CHEESEBORO, 346 S.C. 526, 546, 552 S.E.2d 300, 311 (2001); STATE -vs- PIERCE, 326 S.C. 176, 178, 485 S.E.2d 913, 914 (1997); STATE -vs- SMITH, 322 S.C. 107, 470 S.E.2d 364 (1996); STATE -vs- PARKER, 315 S.C. 230, 234, 433 S.E.2d 831 (1993); STATE -vs- (Terry) SMITH, 322 S.C. 107, 470 S.E.2d 364 (1996); STATE -vs- (Grover Lee) SMITH, 300 S.C. 216, 218-19, 387 S.E.2d 245, 247 (1989); STATE -vs- LYLE, 125 S.C. 406, 118 S.E. 803 (1923); STATE -vs- HUMPHRIES, 346 S.C. 435, 451, 551 S.E.2d 286, 295 (Ct.App. 2001), rev'd on other grounds, 354 S.C. 87, 579 S.E.2d 613 (2003); STATE -vs- KENNEDY, 389 S.C. 243, 247, 528 S.E.2d 700, 702 (Ct.App. 2000), aff'd 348 S.C. 32, 558 S.E.2d 527 (2002); STATE -vs- HENRY, 313 S.C. 106, 432 S.E.d 489 (Ct.App. 1993).

South Carolina Law is clear, ... evidence of prior bad acts,

which places the applicant's character at issue, are inadmissible
. REVIEW RULE 802, SCRE; RULE 404(b), SCRE. Counsel's deficient
performance prejudiced applicant to a fair trial - constituted
ineffective assistance of counsel. STRICKLAND -vs- WASHINGTON,
466 U.S. 668, 104 S.Ct. 2052 (1984).

Trial counsel's stewardship was deficient because prevailing
professional norms at the time required counsel to object to
obvious evidentiary errors, such as these. STRICKLAND, supra.

U.S.C.A. 5th, 6th and 14th.

REVIEW: TRIAL TRANSCRIPTS, Page 108 through 179.

Third Cause of Action

10(c).

Applicant's right to DUE PROCESS OF LAW and EFFECTIVE ASSISTANCE OF COUNSEL as guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution,... and the Laws of South Carolina - - were violated when defense counsel failed to OBJECT TO and then; if necessary, preserve the matter for appellate review ("the testimony of a state witness testifying in the form of an "opinion," relevant to scientific evidence, without being qualified as an expert"); ... Nor did the Court administer its "Gatekeeping Function" under RULE 702 SCRE - CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL, U.S.C.A. 6th and 14th Amend; and Court Error - RULE 702, SCRE, U.S.C.A. 5th and 14th.

ARGUMENT IN SUPPORT

11(c).

Before a witness may testify in the form of an "Opinion" the trial Court in the discharge of its "GATEKEEPING ROLE" must assess the threshold foundational requirements of qualifications and reliability by establishing: (1)... the proffered opinions will assist the trier of facts, (2)... the witness possesses the requisite knowledge, skill, experience, training and education; and, (3)... the proffered opinions are reliable (RULE 702, SCRE). STATE -vs- WHITE, 382 S.C. 265, 676 S.E.2d 684 (2009).

Testimony concerning non-scientific, technical or other

specialized knowledge that may assist the triers of fact to understand or to determine a fact; ... must satisfy the criteria of the "RULE OF EVIDENCE" governing the Court's "GATEKEEPING FUNCTIONS" both in terms of qualifications and reliability of the subject matter, to ensure the proffered opinions (evidence) meets the reliability threshold for the jury's ultimate consideration. STATE -vs- WHITE, supra.

The following opinions were proffered by the prosecution, from an unqualified state witness (under the terms of RULE 702 SCRE) -- and -- without objection from the defense; ... Nor did the Court administer its "GATEKEEPING FUNCTIONS" to ensure these opinions (evidence) met the threshold of reliable, for the jury's consideration; ... Nor did the Court give a curative instruction to this witness's opinions.

Tr. Tr., Page 169, line 4-16, proffered testimony, by the prosecution, from a state witness, in the form of an "opinion,"relevant to - Firearms Analysis:

Evidence to the location of a gunshot wound and to gunshot power burns - stippling on the victim, visible with the naked eye

NOTE: according to state's witness, Dr. Cynthia A. Schandl, M.D. Ph.D (I-4382), testimony and Autopsy Report, this evidence,

gunshot power burns (stippling), was not detectable by the naked eye (emphasis added), due to the decomposition of the body. SEE Exhibit D, "FORENSIC AUTOPSY REPORT" EVIDENCE OF INJURY.

NO OBJECTION BY THE DEFENSE.

Tr. Tr., Page 169, line 22 through Page 170, line 3.

Bench Conference - "Court Ruling"

Tr. Tr., Page 170 thru 171: proffered testimony from a state witness, relevant to this witness's training.

Applicant shall argue the witness's training failed to satisfy the criteria of RULE 702, SCRE, to testify in the form of an opinion in Forensic Trace Evidence or to non-scientific, technical or other specialized knowledge, for the jury's consideration;... Nor has this witness, pursuant to the record, ever been qualified by a Court (civil or criminal) as an "Expert" in Forensic Trace Evidence;... Nor did the Court administer, its "GATEKEEPING SAFEGUARDS" both in terms of qualifications and reliability of the subject matter to ensure the witness's opinions met the criteria's threshold for the jury's ultimate consideration.

NOTE: this witness was never qualified by the Court, pursuant to RULE 702' criteria.

Tr. Tr., Page 172, thru Page 173, line 13: proffered testimony, by the prosecution, from a state witness, in the form of an "opinion," relevant to - Firearms Analysis:

"Evidence in the form of an opinion to firearms and caliber size"

NO OBJECTION BY THE DEFENSE.

Tr. Tr., Page 174, lines 11-13: proffered testimony, by the prosecution, from state witness, in the form of an "opinion," relevant to - Firearms Analysis:

"Evidence in the form of an opinion to a projectile passing through an object"

NO OBJECTION BY THE DEFENSE.

Tr. Tr., Page 176, lines 13-15: proffered testimony, by the prosecution, from a state witness, in the form of an "opinion," relevant to - Firearms Analysis:

"Evidence in the form of an opinion to an Entrance and Exit holes, after a projectile passed through an object"

NO OBJECTION BY THE DEFENSE.

Tr. Tr., Page 176, lines 23-25: proffered testimony, by the prosecution, from a state witness, in the form of an "opinion," relevant to - Firearms Analysis:

"Evidence in the form of an opinion to identify an Entrance hole when a projectile has passed through an object, in comparison to the Exit hole"

NO OBJECTION BY THE DEFENSE.

Tr. Tr., Page 177, lines 16 thru Page 178, Line 19, proffered testimony, by the prosecution, from a state witness, in the form of an "opinion," relevant to - Firearms Analysis:

"Evidence in the form of an opinion to determine the direction in which a projectile travels with respects to the Entrance and Exit holes. Also, as to what a projectile would look like after passing through an object"

NO OBJECTION BY THE DEFENSE.

Tr. Tr., Page 178, lines 20-24: proffered testimony, by the prosecution, from a state witness, in the form of an "opinion," relevant to - Blood Splatter Analysis:

"Evidence in the form of an opinion to the direction of

blood droplets"

NO OBJECTION BY THE DEFENSE.

Tr. Tr. Page 180, line 22 thur Page 182, line 5, proffered testimony, by the prosecution, from state witness, in the form of an "opinion," relevant to Firearms Analysis:

"Evidence in the form of an opinion to the size of a projectile would make after passing through an object."

OBJECTED TO BY THE DEFENSE, ... However was overruled by the Court, ... whereby the Court relaxed its Gatekeeping Functions and allowed the witness to provide an answer in the form of an "opinion," ... then allowed the prosecution to continue to proffer testimony in the form of an opinion from this witness, which had no foundation.

Applicant shall argue that defense counsel was ineffective by failing to "OBJECT TO" these unqualified opinions coming before the jury, ... which in theory, ... allowed prosecution to utilize an officer of the North Charleston Department, no longer in the same position, to mislead the that -- because he was an officer of the law, his testimony be reliable. When the truth of the matter, was this same was unqualified pursuant to the RULE OF EVIDENCE, to provide

this evidence in the form of an opinion. Thereby, creating the scenario what is akin to an "Oxymoron" (something which appears to be something it's not); nor did counsel request a curative instruction from the court, in regards to this witness's testimony - CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL. U.S.C.A. 6th and 14th Amend.

Nor did the Court properly administer its GATEKEEPING FUNCTIONS, both in terms of qualifications and reliability of the subject matter, to ensure this witness's opinions (evidence), met the Court's threshold for the jury's ultimate consideration KUMHO TIRE CO. LTD. -vs- CARMICHAEL, 526 U.S. 137, 147 119 S.Ct. 1167 (1999); STATE -vs- JONES, 541 S.E.2d 813 (2001); STATE -vs- COUNCIL, 515 S.E.2d 508 (1999) ... OTHERWISE ... The Court and defense counsel left the jury to speculate which state witness (Office Al Hallman or Dr. Cynthia A. Schandl, M.D. Ph.D, Medical University of South Carolina "Forensic pathologist") testimony was reliable ... was COURT ERROR (abuse of discretion) and PREJUDICIAL TO THE DEFENSE. U.S.C.A. 5th and 14th, and RULE 702 South Carolina Rules of Evidence.

Nor did the Court (sua sponte) provide any form of curative instructions with regards to the differences in the two witnesses opinions being reliable for the jury's consideration.

Fourth Cause of Action

10(d).

Applicant received INEFFECTIVE ASSISTANCE OF COUNSEL on Direct Appeal (Applicant's first right of review), -- as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution -- when trial counsel "OBJECTED TO" the Court's charge on Malice a burden-shifting instruction, which Appellate Counsel "FAILED" to raise the issue on appeal. U.S.C.A. 6th and 14th Amend.

ARGUMENT IN SUPPORT

11(d).

South Carolina Constitution, ARTICLE V, § 21 clearly reads:

"Judges shall not charges juries in respect to matters of fact, but shall declare the Law." (1972 (57) 3176; 1973 (58) 161; 1985 Act No: 9.

Tr. Trans., Volume 4, page 44, lines 2 - 4; Trial counsel's objection to the malice charge:

MR. BULTER: ... "I also want to object to the permissive inference language, the standard charge: malice may be referred to as use of a deadly weapon."

Tr. Trans., Volume 4, page 44, lines 12 - 20:

MR. BULTER: ... "I also want to object to the permissive inference language, the standard charge: malice may be referred to as use of a deadly weapon."

Tr. Trans., Volume 4, page 44, lines 12 - 20:

MR. BUTLER: ... "But I want to make that same argument that it's impermissible burden shifting under our state constitution, even in any context where permissive inference language is used. Oh -- yeah. Malice may be inferred from the use of deadly weapon."

THE COURT: ... Do you wish to address that issue Mr. Kidd? .. You do not have to.

MR. KIDD: No, ma'am.

THE COURT: ... All right. Thank you.

Tr. Trans., Volume 4, page 46, line 24 through page 47, line 25;
Trial Counsel's further clarification to his objection:

MR. BUTLER: .. I had one clarification on my objection, if your Honor would --

THE COURT: ... I'll be glad to hear it.

MR. BUTLER: .. "I'm just stating something. My objection to the malice may be inferred from the use of deadly weapon, I do want to include the grounds of burden-shifting. But the case I was thinking of was STATE -vs- BELCHER, and actually the issue that was raised -- 685 S.E.2d 802 from 2009 was that -- applies section 21 of our South Carolina Constitution precludes judicial comments on the facts."

"And I would want to raise and preserve that, as well, that malice may be inferred from a deadly weapon charge constitutes an impermissible judicial comment on the facts. The facts are distinguishable in BELCHER, but I want to preserve that issue."

THE COURT: ... And I did consider -- Mr. Kidd, do you have any comment?

MR. KIDD: No, ma'am.

COURT'S RULING

Tr. Trans, Volume 4, page 47, lines 18-25:

THE COURT: ... All right, I did consider and went back during our

recess and looked at the Court's charge and reviewed BELCHER. The issue in BELCHER was, of course, self-defense, which we have not -- do not have in this case. And so I had a -- court standard charged that malice may be inferred and it's merely a factor that may be considered."

"Again, your objection is noted for the record."

Despite Counsel's "objection" to the Court's standard charge - the Court charged the jury on malice as follows"

COURT'S CHARGE TO THE JURY

Tr. Trans., Volume 4, page 92, line 10 through page 93, line 16:

THE COURT: ... "The defendant is charged with murder. The State must prove beyond a reasonable doubt that the defendant killed another person with malice and aforethought. Malice is hatred, ill will, or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances that the -- will infer an evil intent. Malice aforethought does not require that malice exists for any particular time before the act is committed but malice must exist

in the mind of the defendant just before and at the time the act is committed. Therefore, there must be a combination of the previous evil intent and the act. Malice aforethought may be express or inferred. These terms express and inferred do not mean different types of malice but merely the manner in which malice may be shown to exist; that is, either by direct evidence or by inference of the facts and circumstances which are proved. Express malice is shown when a person speaks words which express hatred or ill will for another person or when the person prepared beforehand to do the act which was later accomplished. For example, lying in wait for a person, or any other acts of preparation going to show that the deed was with the defendant's mind, would be express malice. Malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon. A deadly weapon is any article, instrument, or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case."

Counsel for the defense "OBJECTED TO" and preserved for appellate review, the Court's charge to malice (malice may arise from the

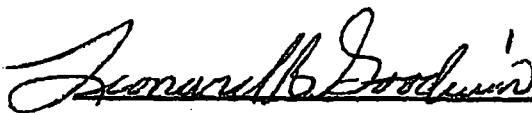
use of a deadly weapon), which constitutes an impermissible judicial comment on the facts; whereby, ... the Court shall only charge the law. (ARTICLE V, § 21 of the South Carolina Constitution). Thus the charge was prejudicial to the defense.

On Direct Appeal (applicant's first right of review), appellate counsel "FAILED" to raise this issue in the Appellate court - CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL on appeal. U.S.C.A. 6th and 14th Amend.

REVIEW: ARTICLE V, § 21 ("Charge to Jury") of the South Carolina Constitution and STATE -vs- BELCHER, 685 S.E.2d. 802 (SC.2009).

C O N C L U S I O N

For reasons set forth above, Applicant Leonard Goodwin, respectfully request this Honorable Court grant him Post-Conviction Relief, in vacating his conviction and sentence, and grant him a new trial.



Leonard Goodwin
SCDC No: 143201
Lee Correctional Inst.
990 Wisacky Highway
Bishopville, SC 29010

APPLICANT

DATE: 7/2/2014

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Leonard B. Goodwin, #143201,

2014-CP-10-4276

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on July 8, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. The Applicant was indicted by the January 2010 term of the Charleston County Grand Jury for Murder (2010-GS-10-0738). Cassandra Winslow, Esquire and Beattie Butler, Esquire, represented him. On May 31-June 3, 2011, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable Kristi Lea Harrington sentenced the Applicant to confinement for Life.

A notice of appeal was filed on Applicant's behalf and an appeal perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Goodwin, Op. No. 2013-UP-448 (filed on December 11, 2013). The Remittitur was issued on December 30, 2013.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Trial counsel failed to "object" to indictment"
2. "Trial counsel failed to "object" to and the trial court allowed "hearsay" and "character" evidence concerning Applicant's conduct of bad acts and his relationship with the victim and applicant's family"
3. "defense counsel failed to OBJECT TO and then; if necessary, preserve the matter for appellate review ("the testimony of a state witness testifying in the form of an "opinion" relevant to the scientific evidence, without being qualified as an expert")
4. "trial counsel "OBJECTED TO" the Court's charge on Malice a burden-shifting instruction, which Appellate counsel "FAILED" to raise the issue on appeal"

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, the transcript and the South Carolina Court of Appeals opinion. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent construes Applicant's allegation as alleging ineffective assistance of counsel. The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). 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 v. Washington. The

Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that 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. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The allegation that appellate counsel was ineffective is without merit. The Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to

make appellate proceedings fair. *Id.* Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. *Id.* Appellate counsel has a professional duty to choose among potential issues according to their merit. *Jones v. Barnes*, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. *Griffin v. Aiken*, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. *Id.*

The Respondent submits that the Applicant cannot satisfy either requirement of the *Strickland v. Washington* test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate 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. *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

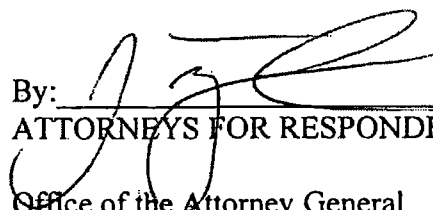
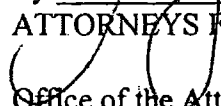
Respectfully submitted,

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By: 
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May 22, 2015.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2014-CP-10-4276
	)	
LEONARD B. GOODWIN, #143201,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Leonard B. Goodwin, #143201
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

DATED this 22nd day of May, 2015.


 Elizabeth McLellan, Legal Assistant
 For Respondent

State of South Carolina) In the Court of Common Pleas
County of Charleston) Ninth Judicial Circuit

Leonard B. Goodwin,) Transcript of Record
) 2014-CP-10-4276
) Applicant,
) v.
State of South Carolina,) Respondent.

)

December 16, 2015

Charleston, South Carolina

b e f o r e:

The Honorable Deadra L. Jefferson, Presiding Judge

A p p e a r a n c e s:

Christopher L. Murphy, Esquire

Attorney for the Applicant

J. Rutledge Johnson, Assistant Attorney General

Attorney for the State

SHARON L. VIZER

CIRCUIT COURT REPORTER

I N D E X

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WITNESSESLeonard B. Green:

Direct examination by Mr. Murphy	---5
Cross-examination by Mr. Johnson	--15
Redirect examination by Mr. Murphy	--18

Cassandra Woosley:

Direct examination by Mr. Johnson	--19
Cross-examination by Mr. Murphy	--22

Certificate of Reporter	--39

No exhibits were introduced

1 Wednesday, December 16, 2015

2 THE COURT: Is the applicant ready to proceed?

3 MR. MURPHY: We are. Yes, Your Honor.

4 THE COURT: Is the State ready to proceed?

5 MR. JOHNSON: Yes, ma'am.

6 THE COURT: All right. Please bring out

7 Mr. Goodwin.

8 (WHEREUPON, the Applicant is brought into the
9 courtroom.)

10 THE COURT: This is Leonard Brown Goodwin,
11 2014-CP-10-4276, vs. The State of South Carolina, an
12 application for post-conviction relief. Mr. Goodwin is
13 represented by Mr. Murphy. The State is represented by
14 Mr. Johnson.

15 This was a murder trial before Judge Harrington
16 which occurred on May 31st through June 3rd of 2011. It
17 was from indictment 2010-GS-10-738. He was given a
18 sentence of life, and at that time Judge Harrington
19 notated that he should be put in protective custody due
20 to threats, and that was on 6-3-2011.

21 The case was appealed to the Court of Appeals by
22 opinion 2013-UP-448. It was filed on December 11th of
23 2013 and the conviction was affirmed. The remittitur was
24 issued on December 30th of 2013.

25 He alleges ineffective assistance of counsel and

1 that trial counsel failed to object to the indictment,
2 failed to object to the trial court allowing hearsay and
3 character evidence concerning applicant's conduct of bad
4 acts and his relationship with the victim and applicant's
5 family, defense counsel failed to object to opinion or
6 scientific evidence, trial counsel objected to the
7 Court's charge on malice, which appellate counsel failed
8 to raise. Okay. He is not pursuing any appellate
9 claims, correct, and those are being withdrawn?

10 MR. MURPHY: That's correct, Your Honor. And, Your
11 Honor --

12 THE COURT: I'm listening.

13 MR. MURPHY: For the record, we are going to be --
14 the two issue that we are going to be raising in this PCR
15 application is failure of counsel to advise Mr. Goodwin
16 to take the stand and the failure to call alibi
17 witnesses.

18 MR. JOHNSON: And, Your Honor, I had been advised
19 of that through e-mail a couple weeks ago. Although it's
20 not a formal amendment I have no objection to that.

21 THE COURT: Those are the only two grounds?

22 MR. MURPHY: Yes, Your Honor. Thank you.

23 THE COURT: Thank you. All right. Is the
24 applicant ready to proceed?

25 MR. MURPHY: We are, Your Honor.

1 THE COURT: You can call your first witness.

2 MR. MURPHY: We'd call Mr. Goodwin, please.

3 THE COURT: Sir, if you would stand and raise your
4 right hand to be sworn.

5 LEONARD B. GOODWIN, after having been duly
6 sworn, testified as follows:

7 THE COURT: Sir, state your full name for the
8 record.

9 THE APPLICANT: Leonard Bernard Goodwin.

10 THE COURT: Leonard Bernard or Leonard Brown?

11 THE APPLICANT: Leonard Bernard.

12 THE COURT: Bernard. That is a typo on my
13 documents and, sir, I apologize for calling you by the
14 wrong name. You can take your seat.

15 And you may proceed when you are ready, Mr. Murphy.

16 MR. MURPHY: Thank you, Your Honor. May it please
17 the Court?

18 THE COURT: Yes, sir.

19 DIRECT EXAMINATION

20 BY MR. MURPHY:

21 Q. Mr. Goodwin, you were charged with murder in
22 Charleston County; do you recall that?

23 A. Yes, sir.

24 Q. And you were represented by Ms. Cassandra Woosley?

25 A. Yes, sir.

1 Q. And throughout your representation you maintained
2 your innocence to these charges?

3 A. Yes, sir.

4 Q. And did you discuss your innocence with your
5 attorney, Ms. Woosley?

6 A. Yes, sir.

7 Q. And how many times did you meet face-to-face with
8 Ms. Woosley?

9 A. Face-to-face approximately seven times.

10 Q. And do you recall how long those meetings lasted?

11 A. The longest we ever had was 20 minutes.

12 Q. And do you recall what you discussed at those
13 meetings?

14 A. Basically, we discussed she wanted to know what
15 took place, what happened, and I kept telling her -- I
16 told her, explained to her what happened.

17 Q. And what did you tell her what happened?

18 A. She asked me where was I that day, that particular
19 day. I told her I came home from work about 7:00, around
20 7:00, a littler after 7:00, and that a car was parked in
21 front of my door.

22 Q. And there was a car parked in front of your house?

23 A. Yes, sir.

24 Q. And was there a person in that car?

25 A. Yes, sir.

- 1 Q. And did you know who that person was?
- 2 A. Not at that time I didn't, no.
- 3 Q. And did you find out later who that was?
- 4 A. Yes, sir.
- 5 Q. Who was that?
- 6 A. A young lady named Jessica.
- 7 Q. Okay. And who is Jessica?
- 8 A. What I found out was she was a friend of Natasha.
- 9 Q. Natasha. All right. Now, did you talk to
- 10 Ms. Woosley about defenses you had to this murder charge?
- 11 A. No, sir.
- 12 Q. Okay. Do you understand what I mean when I say
- 13 defenses to a murder charge?
- 14 A. No, sir.
- 15 Q. Okay. You told your attorney that you did not
- 16 commit this crime, correct?
- 17 A. That's what I told her.
- 18 Q. And did you tell her you were at the scene when the
- 19 crime occurred?
- 20 A. I told her I wasn't because I don't know when it
- 21 happened.
- 22 Q. All right. Did you ever discuss the date or time
- 23 of when this crime had occurred?
- 24 A. No, sir, never discussed that.
- 25 Q. Did you ever give her any witnesses called alibi

1 witnesses?

2 A. I gave her names of people that knew certain
3 information about my whereabouts.

4 Q. And do you know what an alibi witness is?

5 A. Someone that could confirm what I'm saying. Like,
6 if I say I'm someplace I was I did somebody can confirm
7 that I did what I said I did.

8 Q. And what names did you give your attorney?

9 A. Natasha Washington.

10 THE COURT: Could you please repeat that, sir, and
11 I need you to speak into the microphone.

12 A. Natasha Washington, Jessie Owens, Michael Phillips,
13 and detective -- that's it. Oh, the bus driver. There
14 was a bus driver that I didn't have his name. I didn't
15 know his name. The bus driver that drove the bus that my
16 wife came on that night.

17 Q. And you were with those witnesses on the day of
18 April 3rd, 2006?

19 A. I saw them, yes, sir.

20 Q. And do you know if your attorney attempted to
21 contact those witnesses at all?

22 A. No, sir.

23 Q. You don't know or --

24 A. She never said anything.

25 Q. Okay. Did you ever discuss any further, have any

1 further discussions with your attorney about those
2 witnesses?

3 A. I kept asking her and she said it would be me
4 testifying and everything would be done at the trial.

5 Q. Now, after this crime occurred back in 2006 you
6 left town, correct?

7 A. No, sir.

8 Q. Did you go --

9 A. I was here until 2008.

10 Q. All right. In 2008, and then at some point did you
11 leave town?

12 A. For a week.

13 Q. Okay. All right. Now, how far did you go in
14 school? What was your education?

15 A. Seventh grade. Seventh grade.

16 Q. All right. Now, in terms of trial preparation how
17 many times did you meet with Ms. Woosley to discuss your
18 trial strategy?

19 A. None. Never discussed it.

20 Q. Do you know what your trial strategy was?

21 A. No, sir.

22 Q. Did you understand the evidence against you?

23 A. I was never told about it.

24 Q. Do you know the difference between direct and
25 circumstantial evidence?

1 A. No, sir.

2 Q. Okay. Did you discuss direct versus circumstantial
3 evidence with Ms. Woosley?

4 A. No, sir.

5 Q. When you went to trial did you understand what was
6 going on?

7 A. No, sir.

8 MR. JOHNSON: Objection, Your Honor. This is
9 irrelevant. This has nothing to do with whether there's
10 an alibi or whether or not he was informed of the right
11 to testify.

12 THE COURT: Mr. Murphy?

13 MR. MURPHY: I'll move on.

14 BY MR. MURPHY:

15 Q. At some point in trial the Judge addressed you and
16 asked you if you planned on testifying on your behalf; is
17 that correct?

18 A. Yes, sir.

19 Q. And did you talk to your attorneys about testifying
20 on your own behalf?

21 A. Yes, sir.

22 Q. And prior to trial did you talk to your attorneys
23 about testifying on your own behalf?

24 A. No, sir.

25 Q. Did you ever discuss the pros and cons of

1 testifying on your own behalf?

2 A. No, sir.

3 Q. When the Judge asked you if you needed time to talk
4 to your attorney about testifying on your own behalf do
5 you recall what you said?

6 A. I told her yes.

7 Q. And did you talk to your attorney at that time?

8 A. Yes, sir.

9 Q. And how long did you talk to her about whether or
10 not you wanted to take the stand?

11 A. It wasn't very long. About five minutes or so.

12 Q. And tell the Court what happened and how this
13 conversation occurred, who said what.

14 A. When I went to this private room we went into they
15 were already out in the area, this glass, glass window,
16 and she said to me that it would best that you did not
17 testify.

18 And I said, Why? I said, I want to testify. I
19 want to testify so I can be in front of the jury.

20 Mr. Butler said, That young lady that was in the
21 courthouse, is that your daughter?

22 I said, Yeah.

23 Is that the same one that went to court with your
24 brother -- with your son?

25 I said, Yes, sir.

1 She said, Well, she told me to tell you --

2 MR. JOHNSON: Objection to hearsay, Your Honor.

3 THE COURT: Sustained. Hearsay, and I'm trying to
4 figure out how that answer is responsive to the question
5 you asked. I'm a little confused.

6 MR. MURPHY: I'll try and clean it up, Your Honor.

7 THE COURT: Yes.

8 BY MR. MURPHY:

9 Q. You mentioned Mr. Butler was in the room with you
10 when you were discussing whether or not to testify on
11 your behalf?

12 A. Yes, sir.

13 Q. And who is Mr. Butler?

14 A. He was an attorney that was representing me.

15 Q. And before trial had you ever met him before?

16 A. No, sir.

17 Q. And you indicated that Ms. Woosley said that it was
18 not a good idea for you to take the stand?

19 A. She told me not to testify.

20 Q. Okay. Did she tell you why not to testify?

21 A. She didn't explain why.

22 Q. Did you discuss the evidence against you at that
23 time?

24 A. No, sir.

25 Q. Did you discuss the pros, the benefits of

1 testifying on your behalf?

2 A. No, sir.

3 Q. And you mentioned that you said you wanted to
4 testify, correct?

5 A. Yes, sir.

6 Q. And did you inform Ms. Woosley of that?

7 A. The first time we met, the whole 18 months I kept
8 telling Ms. Woosley I wanted to testify.

9 Q. And in terms of when you were having these
10 discussions did you talk about any trial strategy of why
11 you would not testify?

12 A. No, sir, none of that.

13 Q. Was there any reason given why you should not
14 testify?

15 A. No, sir.

16 Q. Did you feel like you had a choice as to whether or
17 not to testify?

18 A. I wanted to testify.

19 Q. Okay. If you wanted to testify can you tell the
20 Court why you did not testify on your behalf.

21 A. I didn't testify on my behalf because my lawyer
22 told me not to testify.

23 Q. All right. Now, you talked to the Judge in court
24 about testifying on your behalf, correct?

25 A. Yes, sir.

1 Q. And the Judge asked you if you wanted to testify,
2 right?

3 A. Yes, sir.

4 Q. And you informed the Judge that you did not want to
5 testify?

6 A. Afterwards, after I talked to my lawyer.

7 Q. That was after you talked with your lawyer. Now,
8 why did tell the Judge you did not want to testify?

9 A. Because my lawyer had already told me not to
10 testify.

11 Q. And in terms of testifying did you have any
12 discussions with your lawyer of how to explain the
13 evidence that was brought against you during the trial?

14 A. No, sir.

15 Q. Was there any strategy in not explaining the
16 evidence against you?

17 A. No, sir.

18 Q. As we sit here today do you know what your trial
19 strategy was?

20 A. No, sir. I don't even know what that mean.

21 Q. All right. Do you know how you planned to prevail,
22 how you planned to win this case, between you and your
23 lawyer?

24 A. We never discussed none of that.

25 Q. And at trial did you discuss the alibi witnesses

1 being called?

2 A. At trial?

3 Q. Yes.

4 A. No, sir.

5 Q. Did you have any discussion at all about your
6 defense in this case?

7 A. I gave her a list of questions that I wanted her to
8 ask these individuals. She never -- she never -- it was
9 never done.

10 MR. MURPHY: Thank you, Your Honor. That's all we
11 have.

12 If you could answer any questions Mr. Johnson has.

13 THE COURT: Mr. Johnson?

14 MR. JOHNSON: Briefly, Your Honor. May it please
15 the Court?

16 THE COURT: Yes, sir. You may proceed.

17 CROSS-EXAMINATION

18 BY MR. JOHNSON:

19 Q. Mr. Goodwin, good morning.

20 A. Good morning.

21 Q. You stated that your attorney never explained to
22 you your right to testify; is that correct?

23 A. She never did.

24 Q. The Judge certainly explained it to you, did he
25 not -- or she did not?

1 A. She asked me some questions.

2 Q. And then you answered that you did not want to
3 testify after those questions, correct?

4 A. She asked me if I wanted to speak with my attorney
5 about that, and I told her, Yes, ma'am. And after
6 speaking with my attorney I came back into court and she
7 asked me what my decision was. Then I told her, No, I
8 didn't want to testify.

9 Q. Correct.

10 MR. JOHNSON: And, Your Honor, I want to point you
11 to page --

12 THE COURT: I already have the pages of both
13 colloquies.

14 MR. JOHNSON: All right.

15 THE COURT: If you want to note them for the record
16 you are certainly welcome to do that but I've already
17 read the transcript.

18 MR. JOHNSON: All right, Your Honor. For the
19 record it would be the third volume of this trial. Page
20 113 is where Mr. Goodwin was advised of his right to
21 remain silent or to testify; and on page 34 and 35,
22 volume four he is asked by Judge Harrington, by the
23 Court, that he had the advice -- you know, the
24 consequences of exercising his right to testify or remain
25 silent; and on page 35 he states that he made -- the

1 Court states that he made --

2 THE COURT: That's argument that you are making. I
3 need you to --

4 MR. JOHNSON: Okay. Then --

5 THE COURT: If you want to direct me to those pages
6 but as I've already indicated I've already read it. I
7 know where the colloquies are in the transcript.

8 MR. JOHNSON: All right.

9 THE COURT: But if you want to ask him about it and
10 direct him to those pages you are welcome to do that.

11 BY MR. JOHNSON:

12 Q. So, Mr. Goodwin, you will admit that you told the
13 Judge you didn't want to testify in this case, correct?

14 A. After I was told not to, yes, sir.

15 Q. Okay. You also stated you have alibi witnesses
16 that you were not at the crime scene at that time,
17 correct?

18 A. I took -- yes, sir, because I don't even know when
19 this crime happened.

20 Q. Okay. But you told your attorney about those
21 witnesses, correct?

22 A. I told her that they could verify that I met my
23 wife that night. They would be a witness to that fact
24 that I did met my wife that night.

25 Q. But isn't the testimony during the trial that the

1 victim's girlfriend called the house and you answered
2 soon after the incident had occurred?

3 A. It wasn't me.

4 Q. Sir, is that not the evidence that was presented at
5 trial?

6 A. That's what he said.

7 Q. Okay. And that's what the jury had to decide,
8 correct?

9 A. From my understanding, yes.

10 Q. Okay. And are any of those alibi witnesses here to
11 testify on your behalf today?

12 A. No, sir.

13 MR. JOHNSON: No further questions, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. MURPHY:

16 Q. This call that Mr. Johnson mentioned, did you talk
17 with your attorney about how to explain to the jury that
18 that was not you?

19 A. She never went over that. We never had no
20 discussion about none of that.

21 MR. MURPHY: That's all I have, Your Honor. Your
22 Honor, we would rest at this time.

23 THE COURT: The State may proceed.

24 MR. JOHNSON: We call Ms. Woosley to the stand,
25 Your Honor.

1 CASSANDRA WOOSLEY, after having been duly
2 sworn, testified as follows:

3 THE CLERK: And if you could state your first and
4 last name and spell out your last name, please.

5 THE WITNESS: Cassandra Woosley, W-o-o-s-l-e-y.

6 During the trial though I was under my maiden name
7 Winslow, W-i-n-s-l-o-w.

8 THE COURT: You may proceed.

9 MR. JOHNSON: May it please the Court, Your Honor?

10 THE COURT: Yes, sir.

11 DIRECT EXAMINATION

12 BY MR. JOHNSON:

13 Q. Good morning, Ms. Woosley.

14 A. Hello.

15 Q. Do you remember becoming involved in this case?

16 A. I do.

17 Q. And were you appointed to this case?

18 A. I was.

19 Q. And roughly how many times did you meet with
20 Mr. Goodwin?

21 A. About 20 times.

22 Q. Was he very active in his defense?

23 A. He was. He always maintained that he was innocent
24 in this case.

25 Q. Did he ever provide you with a list of alibi

1 witnesses?

2 A. He didn't -- there were no alibi witnesses in this
3 case. The list that he just mentioned in court, the
4 Natasha, Jessie, they were included on the State's
5 witness. I did try to contact them but they did not want
6 to speak to me. I did question them at trial though.
7 But as to an alibi witness, there was no alibi witness
8 that I was aware of.

9 Q. And based on the information Mr. Goodwin gave you
10 did you form a defense in this case or a defense theory,
11 if you will?

12 A. We did. The defense theory was that it was
13 impossible what the State was alleging. They were
14 alleging that the whole incident took place in about a
15 30-minute time frame and our defense said it did not
16 occur that way.

17 Q. And you argued that throughout closing?

18 A. Throughout closing and throughout the case.

19 Q. And concerning his right to testify or remain
20 silent, did you ever give him advice on that subject?

21 A. We did. In fact --

22 Q. And what would that advice be?

23 A. Well, it was my understanding that Mr. Goodwin was
24 going to testify at trial. We met to the jail prior to
25 his trial and went over his testimony. We went over his

1 testimony of direct examination. We went over what
2 possible cross-examination would be. We even went over
3 some photographs that we were going to introduce during
4 his testimony, if he decided to testify at trial.

5 Then when we got to the trial we met -- Beattie
6 Butler and I met with Mr. Goodwin, like he said, in a
7 small room and we went over if he wanted to testify or
8 not and I told him it was his decision, and he said at
9 that point that he did not want to testify.

10 Q. Did you ever force or threaten him to not testify?

11 A. No.

12 Q. And you said it was his decision not to testify?

13 A. We said it was his decision not to testify. This
14 was years ago. I think I would have told him if he did
15 not testify we would have last closing argument. There
16 was advantages of that, and if he did testify we would
17 lose that.

18 Q. And do you remember the Judge advising -- Judge
19 Harrington advising him on his right to testify or remain
20 silent?

21 A. Yes.

22 MR. JOHNSON: No further questions at this time,
23 Your Honor. Thank you.

24 THE COURT: Any questions for the witness?

25 MR. MURPHY: Yes, Your Honor. May it please the

1 Court?

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. MURPHY:

5 Q. Ms. Woosley, prior to Mr. Goodwin's trial how many
6 murder trials had you first chaired before?

7 A. First chaired, two, I believe.

8 Q. Two?

9 A. Yes.

10 Q. And this case, Mr. Goodwin's case, you would agree
11 involved all circumstantial evidence against him,
12 correct?

13 A. Correct.

14 Q. And there was no direct evidence linking him to
15 this murder?

16 A. Correct.

17 Q. And that made it a tough case, you would agree,
18 from not only the State's perspective but from your
19 perspective as well, correct?

20 A. Yes. That made it a tough case, plus we didn't
21 have an opportunity to go over this case until three
22 years after the alleged incident occurred.

23 Q. And that was -- the reason for the three-year delay
24 is because Mr. Goodwin was missing, correct?

25 A. Correct.

1 Q. And where was he?

2 A. He remained in Charleston. He told me that he did
3 go up to New Jersey as well but returned.

4 Q. And did you have conversations with him as to why
5 he took off running for these three years?

6 A. He said that he knew that he was wanted for murder
7 and he was innocent so...

8 Q. And that was one of the issues that was brought up
9 in trial, correct, his fleeing from the scene?

10 A. Correct.

11 Q. Now, throughout this case you testified that
12 Mr. Goodwin maintained his innocence, correct?

13 A. That's correct.

14 Q. And did you have any witnesses that supported his
15 claim that he was innocent?

16 A. No, we did not.

17 Q. And did he provide you with any witnesses?

18 A. To support that he was innocent?

19 Q. That's correct.

20 A. No, he did not.

21 Q. At the trial did I hear you that you advised him
22 not to testify?

23 A. No, I did not. I said it was his decision.

24 Q. All right. Do you recall specifically the
25 conversation you had with Mr. Goodwin about that issue?

1 A. Specifically, no, I do not. I know that prior to
2 the trial itself he was going to testify and that's when
3 we had met at the jail about it.

4 Q. Did you discuss with him the circumstantial
5 evidence against him prior to trial?

6 A. Yes, we did, and he gave me a list of questions to
7 ask each witness as well.

8 Q. And did you have any discussions with him as to how
9 he was going to or how you were going to explain away the
10 circumstantial evidence?

11 A. We discussed trial strategy when I met with him.
12 I'm not exactly sure exactly what I said but I know we
13 discussed the trial.

14 Q. And in this case you said that you questioned
15 witnesses during trial, I think the witnesses that he
16 said. You mentioned that you questioned some witnesses
17 during trial, I think that were on the witness list?

18 A. Yes. They were also on the State's witness list
19 and they were also on our witness list.

20 Q. But you didn't call any witnesses for his defense
21 at trial?

22 A. No, we did not.

23 Q. And what you were relying on was the -- as I -- and
24 tell me if I'm wrong, was the State -- trying to make the
25 State prove its burden of proof, correct?

1 A. Correct.

2 Q. And was there any consideration as to whether or
3 not -- well, let me ask you this. What would have been
4 the pros, the benefits of Mr. Goodwin testifying? Did
5 you talk to him about this?

6 A. He could tell his side of the story and that was
7 his main concern. I think meeting with him every time he
8 did want to say his side of the story.

9 Q. And as defense counsel did you have any issues or
10 any reservations about not presenting him, Mr. Goodwin,
11 to explain his side of the story in this type of case?

12 A. No. If he wanted to testify in the case, he was
13 more than willing to testify, then he could have
14 testified. The only benefit of him not testifying is we
15 reserve closing argument. But, no, if he wanted to
16 testify I was ready and prepared to go forward with that.
17 I had prepped him on testifying.

18 MR. MURPHY: One moment, Your Honor.

19 THE COURT: Uh-huh.

20 (WHEREUPON, Mr. Murphy has a private discussion
21 with the Applicant.)

22 BY MR. MURPHY:

23 Q. And do you recall telling the Judge that -- at
24 court that you had advised Mr. Goodwin not to testify?

25 A. No, I don't.

1 Q. Would that be -- I'll strike that. You mentioned
2 that the benefit of not presenting a defense would be
3 that the defense would have last argument, correct?

4 A. Correct.

5 Q. And the benefit -- did you waive that benefit with
6 Mr. Goodwin's being able to explain his side of the
7 story? Would that be his benefit of testifying?

8 A. You are confusing me. When we met -- and, again,
9 this is years ago. He could have testified if he wanted
10 to. I did tell him he could tell his side of the story
11 if he testified. He was subject to cross-examination if
12 he did testify.

13 A benefit of him not testifying -- he was also very
14 nervous at that point, but a benefit of him not
15 testifying would be that we would reserve the right for
16 last closing argument, which I think was important in
17 this case. But ultimately, it was his decision to decide
18 whether to testify or not testify.

19 Q. And did you know at the time when you were
20 representing him that he had a seventh grade education?

21 A. I did. It's one of the first questions I ask when
22 I meet with a client.

23 Q. And did he have -- based on that seventh grade
24 education did he have difficulty, in your opinion,
25 understanding the nature of the case against him at all?

1 A. No.

2 (WHEREUPON, Mr. Murphy has a private discussion
3 with the Applicant.)

4 MR. MURPHY: That's all I have, Your Honor.

5 THE COURT: Any redirect?

6 MR. JOHNSON: No, Your Honor.

7 THE COURT: Any objections to Ms. Woosley being
8 excused?

9 MR. JOHNSON: None from the State.

10 MR. MURPHY: None, Your Honor.

11 THE COURT: Ma'am, you are excused.

12 MS. WOOSLEY: Thank you, Your Honor.

13 THE COURT: You're welcome.

14 Anything further from the State?

15 MR. JOHNSON: No, Your Honor. The State rests.

16 THE COURT: All right. I'll be glad to hear any
17 argument. I assume there's no rebuttal testimony?

18 MR. MURPHY: No rebuttal testimony.

19 THE COURT: Is there any argument?

20 MR. MURPHY: Very briefly, Your Honor. This is a
21 case, as the testimony indicated, of purely
22 circumstantial evidence. There was no direct evidence
23 against Mr. Goodwin.

24 He did go on the run for three years which made
25 this an even more difficult case, and as the record can

1 see, the appellate court kind of hung their hat on that
2 evidence in upholding his directed verdict. That being
3 the case, it was a difficult, I think, case for both
4 sides, the State and the defense.

5 I would submit that it was error, prejudicial error
6 by not having him come to the stand. The testimony was
7 that the only benefit of not putting on a defense was
8 that they would get last argument but there wasn't
9 anything to argue because Mr. Goodwin didn't explain away
10 any of the numerous bits of circumstantial evidence
11 against him. I think that by not doing that or not
12 giving him that opportunity, that constituted error.

13 There was also some testimony about the alibi
14 witnesses from Mr. Goodwin that goes into this whole --
15 the whole notion that there wasn't any real defense other
16 than having the State trying to meet its burden. Those
17 folks were questioned but never called on his behalf and
18 Mr. Goodwin testified he didn't really understand what
19 his defense was. So we would ask that PCR application be
20 granted, Your Honor.

21 THE COURT: Would you like to respond?

22 MR. JOHNSON: Yes, ma'am. May it please the Court?

23 THE COURT: Yes, ma'am.

24 MR. JOHNSON: The State's position is that there is
25 no ineffective assistance claim and no result of

1 prejudice.

2 As to the right to testify or not testify,
3 Ms. Woosley stated that she explained to him the pros and
4 cons of testifying versus not testifying and it was his
5 decision. There were no threats or coercion to get him
6 to not testify. It was ultimately his decision.

7 Furthermore, Judge Harrington fully explained the
8 right to testify and not testify, and then upon
9 questioning of the applicant he decided, it was his
10 decision that he would not testify. So there's no
11 ineffective assistance because it was the applicant's
12 decision in this case.

13 As to the alibi witnesses, Banister vs. State,
14 which is 333 S. C. 298, 1998, The applicant must produce
15 the testimony of a favorable witness or otherwise produce
16 the testimony in accordance with the rules of evidence at
17 the PCR hearing in order to establish prejudice from the
18 witness's failure to testify at trial.

19 The applicant while he claims gave the alibi
20 witnesses to counsel failed to produce any of those
21 witnesses here today. He cannot produce any prejudice.

22 Furthermore, Ms. Woosley stated that while he
23 provided this list of names they were State's witnesses
24 and did not want to talk to her. So she fully
25 investigated this case, went above and beyond her

1 responsibilities as counsel and applicant can prove no
2 resulting prejudice; therefore, the State would ask that
3 you deny this application, Your Honor. Thank you.

4 THE COURT: I find the applicant has failed to meet
5 his burden of proof. I do not find his testimony
6 credible or persuasive.

7 I do find, however, the testimony of Ms. Woosley
8 credible on the issues. She appears to be forthright in
9 what she has articulated to the Court. And in addition
10 to that, it's corroborated by the objective record which
11 was contemporaneous with the proceedings. And I'll deal
12 in opposite order -- well, actually, maybe opposite order
13 of how it was presented.

14 As regard to alibi witnesses, the State is correct.
15 When you rely in your application and your ineffective
16 assistance claim is based on a failure to present
17 witnesses it is your responsibility to provide those
18 witnesses. You can't make the bald assertion that
19 counsel failed to call them without presenting their
20 testimony to establish that they would, in fact, have
21 testified to what you now claim they would have testified
22 to. So it fails in that regard.

23 In addition to that, I find Ms. Woosley's testimony
24 credible that the witnesses that Mr. Goodwin provided to
25 her that they were on the State's witness list and that

1 she made every attempt to contact them. And she is
2 accurate. The State's witnesses have no obligation or
3 any other witness has no obligation to speak with her.
4 She can't force them to talk with her, and she indicated
5 they did not speak with her.

6 But, however, they did appear at trial and she had
7 an ample opportunity to cross-examine them, and that's
8 all that can be asked of her. If witnesses are given to
9 her to make a diligent effort to investigate and to
10 locate them and to make an attempt to speak with them --
11 and they don't, again, have absolutely no obligation to
12 speak with her. They don't have to cooperate. They
13 don't have to return her calls.

14 But even in light of that, these witnesses were
15 present and she had the ability to effectively
16 cross-examine them, and so I cannot discern any prejudice
17 from that as they clearly were not able to establish what
18 he claims they could have established, which is an alibi.
19 And I'm certain that she would have questioned them in
20 regard to that, and if it were, in fact, to bear out it
21 would have come out in the testimony at trial.

22 Now, the other question -- issue he raises is the
23 failure to testify. He claims, in a nutshell, that
24 Ms. Woosley basically twisted his arm, gave him bad
25 advice and coerced him to not testify. I don't find that

1 credible. The record simply doesn't bear it out, and I
2 find Ms. Woosley's testimony credible that she discussed
3 it with him, that she met with him prior to the trial,
4 that she prepped him both on cross and direct and
5 provided pictures that she went over with him, that she
6 was fully prepared for him to go forward with testifying.
7 And I do find credible the fact that -- because it's
8 borne out by the record, that when given the additional
9 opportunity to discuss testifying with him that he made
10 the decision not to testify.

11 I have done trials for a long time and I've never
12 known a person to be slight of tongue when they speak
13 with the Court about their desires, whether it be being
14 dissatisfied with their lawyer, whether it being whether
15 they want to testify or not, whether they have questions
16 or not they recognize that this is their one shot and
17 they are always, at least it's been my experience, very
18 outspoken and articulate about that. And having a
19 seventh grade education is not dispositive about a person
20 being outspoken.

21 There's no indication in this record he had any
22 mental disabilities, any cognitive delays and that he was
23 unable to understand the proceedings. Even when we
24 qualify the jury we ask if you have a sixth grade
25 education or its equivalent. A person having a sixth

1 grade education doesn't mean they don't understand the
2 proceedings.

3 If you talk to children that watch television most
4 first graders can cite the Miranda warnings and know what
5 they mean. So I think most children are -- and certainly
6 Mr. Goodwin would have understood his rights and was
7 capable of understanding his rights, and that's based on
8 my observation of him today as well as his understanding
9 of the proceedings today and I don't have any concern
10 about him having understood what Ms. Winslow explained
11 to him.

12 I find credible that she did, in fact, give him the
13 pros and cons of testifying. And as it is mostly
14 persuasive to most defense counsel and as a valid
15 strategy, and persuasive to most defendants, especially
16 in a criminal trial where circumstantial evidence is the
17 crux of the State's case, that being to not present
18 evidence or testimony, to put the State to its burden and
19 to take advantage of them calling the witnesses with you
20 having the ability of full cross-examination of the
21 witnesses, thereby not putting any evidence in the record
22 and maintaining your right of last argument because then
23 that leaves you with the last say even though the State
24 has the burden of proof. And based on what has been
25 presented to the Court it appears that that was

1 persuasive to Mr. Goodwin, among other factors.

2 I don't know. I wasn't at the trial but I would
3 imagine how things were going may well have persuaded
4 him. And him telling his side of the story, I don't
5 really particularly find that persuasive either. He has
6 no burden of proof. He doesn't have to say anything, and
7 when you instruct a jury you tell the jury that. The
8 defendant doesn't have any burden of proof. He doesn't
9 have to say one word. He doesn't have any duty to prove
10 his innocence. It's the State's burden to prove his
11 guilt beyond a reasonable doubt.

12 And frankly, if I had to do an empirical study of
13 most cases that come before this Court, whether it be
14 murder or any other offense, I would probably guesstimate
15 that 89 percent of the State's cases are proven on
16 substantial circumstantial evidence.

17 It is rare that people commit crimes in the
18 presence of other people, especially murders, and usually
19 any eyewitness would not be left alive to talk about it.
20 So it's rare unless it's like a drive-by or somebody
21 literally just shoots somebody in a crowd of people that
22 you are going to have a witness to a murder.

23 So most cases, most burglaries, I mean, I can think
24 of a plethora of offenses where it's rare you are going
25 to have an eyewitness, and in most instances the State

1 presents what it believes to be substantial
2 circumstantial evidence that it believes creates a chain
3 of events that proves their case beyond a reasonable
4 doubt. So that would not be dispositive either, but I do
5 think this was a rare case.

6 As we know in South Carolina there are no statute
7 of limitations on any offense. I've had cases that I've
8 tried that happened 30 years before and the people now as
9 adults are testifying to things that happen to them as
10 children, so there are no statute of limitations.

11 I don't know how much flight really played into it.
12 I know that that's evidence that a jury can consider and
13 the State certainly is free to argue but there was a
14 chain of circumstances in this record that reasonably
15 tended to prove his guilt for which the State advocated.
16 And frankly, Ms. Woosley did her best to zealously
17 advocate and argue against, then ultimately it was for
18 the jury to decide.

19 But I'm referring to volume three of four of the
20 transcript beginning on page 113 Judge Harrington very
21 clearly articulates and explains to the defendant his
22 Fifth Amendment Right to not be compelled to be a witness
23 against himself, his right to remain silent. She even
24 goes over his criminal record and lets him know what
25 could be used against him, what record exists. Not

1 necessarily what could be used to impeach him, but she
2 asks about that so that he can have a full discussion
3 with his lawyer.

4 And it's clear although she does not place on the
5 record how long he's had to speak with his lawyers it's
6 clear that this first conversation takes place on June
7 2nd of 2011, and then when you go over to volume four the
8 conversation is not resumed until well into the next day,
9 which is June 4th -- June 3rd. So he had more than ample
10 opportunity to talk with his lawyers about whether he
11 wanted to testify or not, and his testimony isn't
12 credible that he only had a few minutes to talk about it
13 because he had a whole afternoon, it looks like, then
14 part of another day to discuss it before he made a
15 reasonable decision about whether he wanted to testify.

16 And, again, what I find most compelling is the
17 words that were taken contemporaneously at the time of
18 this event, which is at the trial, and he was asked by
19 the Judge, and that's at page 34 of volume four of the
20 trial transcript, she asked him to rise and reminds him
21 that he's still under oath and asked if he remembers
22 yesterday what she went over with him. He advises, Yes,
23 he does. And she's advised him of his right to testify
24 and his consequences and did he recall that conversation.
25 And he responded, Yes, that he did.

1 She asked if he had any additional questions for
2 her, if he had any additional questions for his lawyers,
3 if he had ample opportunity to meet with them, and he
4 indicated that he had.

5 Then she asked him what his decision was and he
6 said that he did not want to testify. And she went over
7 it several times with him to make sure that that was, in
8 fact, his decision not to testify.

9 And I just want to make this distinction for the
10 record. The question was asked of Ms. Woosley did she
11 tell the Judge that she told him not to testify, and
12 that's not what this record reflects. What it simply
13 reflects at line 16, And that was your understanding,
14 Ms. Winslow?

15 Ms. Winslow: Yes, Your Honor.

16 That he is not going to testify. All right. And
17 with that, do you have any additional witnesses?

18 No, Your Honor.

19 So she does not tell the Court that she told him
20 not to testify. It simply says that she understands her
21 client's decision and that she recognizes that that was
22 his decision.

23 So the application for post-conviction relief is
24 denied. The State is directed to provide the Court with
25 a proposed order within 20 days of today making any

1 findings of fact and conclusions of law consistent with
2 the record, and please provide a copy of that to
3 Mr. Murphy at the same time and manner in which you
4 provide it to the Court and the Court will issue an order
5 expeditiously.

6 MR. JOHNSON: Thank you, Your Honor.

7 THE COURT: Thank you very much.

8 (WHEREUPON, the hearing was concluded.)

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1 C E R T I F I C A T E

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3 I, Sharon L. Vizer, Official Court Reporter for the
4 Ninth Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate and
6 complete transcript of record of all the proceedings had
7 and the evidence introduced in the hearing of the
8 captioned case in Circuit Court on the 16th day of
9 December 2015.

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

12

13 July 31, 2016

14 s/Sharon L. Vizer

15 SHARON L. VIZER

16 CIRCUIT COURT REPORTER

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Leonard B. Goodwin, #143201,

2014-CP-10-04276

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

FILED
2016 MAY 16 PM 12:20
JULIE M. HARRIS
CLERK OF COURT

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
Christopher L. Murphy Esquire
J. Rutledge Johnson, Esquire
Cassandra L. Woosley, Esquire
December 16, 2015
Sharon Vizer

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed July 8, 2014. The Respondent made its Return on May 22, 2015 and filed on May 26, 2015. An evidentiary hearing into the matter was convened on December 16, 2015, at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Christopher L. Murphy, Esquire. J. Rutledge Johnson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

At the hearing, Applicant testified on his own behalf. Cassandra Woosley, Esquire, also testified. This Court had before it a copy of the records of the Charleston County Clerk of Court, records from the South Carolina Department of Corrections, the Applicant's PCR application, the State's Return, the trial transcript and the appellate records.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. The Applicant was indicted by the January 2010 term of the Charleston County Grand Jury for Murder¹ (2010-GS-10-0738). Cassandra Woosley, Esquire, sitting first chair and Beattie Butler, Esquire, sitting second chair represented him. On May 31-June 3, 2011, the Applicant proceeded to a jury trial and was found guilty as indicted. The Honorable Kristi Lea Harrington sentenced the Applicant to confinement for Life.

A Notice of Appeal was filed on Applicant's behalf and an Appeal perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Goodwin, Op. No. 2013-UP-448 (filed on December 11, 2013). The Remittitur was issued on December 30, 2013.

ALLEGATIONS

In his application for post-conviction relief, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Trial counsel failed to "object" to indictment"
2. "Trial counsel failed to "object" to and the trial court allowed "hearsay" and "character" evidence concerning Applicant's conduct of bad acts and his relationship with the victim and Applicant's family"
3. "Defense counsel failed to OBJECT TO and then; if necessary, preserve the matter for appellate review ("the testimony of a state witness testifying in the form of an "opinion" relevant to the scientific evidence, without being qualified as an expert")
4. "Trial counsel "OBJECTED TO" the Court's charge on Malice a burden-shifting instruction, which Appellate counsel "FAILED" to raise the issue on appeal"

¹ Murder is a violent, most serious felony punishable by death, imprisonment for life, or by a mandatory minimum term of imprisonment for thirty (30) years. See S.C. CODE ANN. §§ 16-3-10, -20 (2003), 16-1-60 (2003), 17-25-45 (2003). Life imprisonment means until death of the offender without the possibility of parole. See S.C. CODE ANN. § 16-3-20 (2003).

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[Signature]

At the commencement of the hearing Applicant through counsel advised the Court that he was abandoning all issues raised in his application with the exception to his failure to testify and failure to call an Alibi witness.

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified he discussed his innocence with Counsel. He also stated he met face-to-face with Counsel seven (7) times, for about twenty (20) minutes each time. Counsel wanted to know what happened. Applicant said he came home from work and a car was parked in front of his house; the car belonged to a friend of the Victim's girlfriend. Applicant claimed he did not commit the crime and was not at the scene when the crime occurred. Applicant gave Counsel the names of alibi witnesses who he claimed could testify as to his whereabouts. He further testified these alibi witnesses included: Natasha Washington, Jessie Owens, Michael Phillips, and a bus driver whose name he did not know. Applicant claims Counsel made no attempts to contact these witnesses. Applicant also testified he remained in the Charleston area until 2008 when he left town for a week. Applicant further testified he did not meet with Counsel to discuss trial strategy, did not know the evidence against him, and did not discuss direct versus circumstantial evidence.

Applicant testified that the judge questioned him on his right to testify at trial. He testified he did discuss the pros and cons about testifying but for five (5) minutes, when the trial judge asked Counsel to discuss it with him. Applicant claimed Counsel told him not to testify but did not explain why. Applicant further claimed Counsel did not discuss the evidence and did not discuss the pros and cons of testifying, but he wanted to testify. He further maintains that from the first time he met counsel eighteen (18) months before trial that it was always his position that he wished to testify.

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Once again, Applicant claimed he did not testify because of Counsel's advice, but informed the trial judge he was not testifying. Applicant also stated Counsel did not explain the strategy and evidence against him, did not discuss alibi witnesses, and did not use the questions he gave Counsel.

On cross-examination, Applicant admitted that the trial judge thoroughly advised him concerning his right to testify and that he chose not to. He also admitted that none of his alibi witnesses were present at the PCR hearing to testify on his behalf.

Counsel testified she met with Applicant over twenty (20) times and that Applicant was very active in his own defense. She testified that Applicant always maintained his innocence. Counsel stated Applicant gave her no alibi witnesses and that the only witnesses testifying at trial were the State's witnesses. She further testified that all of the names Applicant provided her with as potential alibi witnesses were already listed on the State's witness list. She further testified that she made every attempt to speak with them prior to trial but could not gain their cooperation in her efforts. Counsel also testified she cross-examined all the witnesses at trial and that her theory of the case was that it was impossible to commit the crime within the thirty (30) minute time frame alluded to by the State. She argued this throughout the entire case and again in her closing argument. Counsel then stated she advised Applicant concerning his right to testify and believed that Applicant would testify. She also prepared Applicant for trial if he decided to testify. She further testified that she went over his testimony with him again during the trial. She testified that after this preparation and at the trial Applicant decided he did not wish to testify and changed his mind. Counsel articulated that it was Applicant's decision not to testify and that she did not force or threaten him concerning this decision. She testified that it was "his decision" at all times. She also stated that if he did not testify, she would

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have last closing. She lastly stated that the trial judge also advised Applicant concerning his right to testify.

On cross-examination, Counsel testified this was her second murder case in which she was lead counsel. Counsel stated this was a circumstantial case and that there was no direct evidence linking Applicant to the crime and that this was a tough case. Counsel then testified the case was made more difficult due to the three-year delay because Applicant fled the jurisdiction, when he went to New Jersey. Counsel articulated that she had no witnesses to support Applicant's claim of innocence because Applicant did not provide her with any. She further testified that she went over all evidence with the Applicant before the trial. She admits that he gave her a list of questions and she reviewed those as well. Counsel testified it was Applicant's decision not to testify at trial and thought, prior to trial, that Applicant was going to testify.

Counsel stated she discussed circumstantial evidence with Applicant, as well as her trial strategy. Counsel admitted she did not call any witnesses at trial, but her strategy was to make the State meet its burden of proof. Counsel articulated that a benefit to Applicant testifying was to allow the jury to hear his version of events. She had no reservations concerning Applicant's testimony; however, one benefit of Applicant not testifying was that she was able to preserve last closing argument. Even so, Counsel prepared as if Applicant would testify. Counsel then stated she did not recall telling the trial judge that she advised Applicant not to testify. Counsel again articulated that she advised Applicant on the pros and cons of testifying versus not testifying. She further testified that the Applicant was nervous however, if he wanted to testify she would not have stopped him because ultimately it was his decision. She further testified that she was aware he had a seventh (7th)

A handwritten signature in black ink, appearing to be 'J. H. A.' or similar, with a horizontal line through the middle.

grade education and that she had no difficulty or concerns regarding his ability to understand her or participate in his defense.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court had the opportunity to observe the witnesses on the witness stand and hear their testimony. The Court also has read the trial transcript and the appellate records, all of which assists the Court in judging their credibility.

Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 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. See Strickland at 690, 104 S. Ct. at 2066. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong,

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attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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.

This Court had the opportunity to observe the witnesses on the witness stand and hear their testimony. This Court also has read the trial transcript and appellate records, all of which assists the Court in judging the witnesses' credibility. This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible, while also finding Counsel's testimony is persuasive and credible.

This Court finds Counsel's representation of Applicant in this case well above the professional norms. Counsel fully investigated this case and assisted Applicant in his defense. Counsel fully advised Applicant concerning his right to testify or remain silent. This Court also finds the trial court fully explained Applicant's rights concerning his testimony to him (Tr. Vol. 3, 113: 11-25; 114-117). Counsel did not threaten or coerce Applicant into not testifying. It was Applicant's decision, and his alone, not to testify in this case (Tr. Vol. 4, 34: 12-25; 35: 1-18).

Further, Applicant failed to give Counsel the names of any witnesses to investigate or call on his behalf. See Strickland v. Washington, 466 U.S. 668, 691, 104 S. Ct. 2052, 2066 (1984) ("The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant."). Moreover,

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Applicant failed to produce any witnesses at the PCR hearing to show Counsel's failure to call witnesses on Applicant's behalf prejudiced his trial. See Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998) (An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial). Thus, this Court finds the Applicant has failed to meet his burden of proving Counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

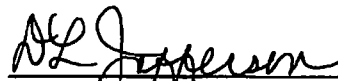
1. That the Application for Post-Conviction Relief must be denied and

A handwritten signature in black ink, appearing to be "S. H. 9" with a stylized flourish below it.

dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!



Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

5/11, 2016
Charleston, South Carolina



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PMC20090905238

WITNESSES

ROBERT JOYNER

North Charleston Police Department

AGENCY CASE NUMBER

2006015029

ARREST WARRANT NUMBER

K121773

DATE OF ARREST

September 6, 2009

ACTION OF GRAND JURY

Barbara
Foreperson of Grand Jury
Date:

VERDICT **GUILTY**

John R. Kymani 3 June 2011
Foreperson of Petit Jury Date:

INDICT

DOCKET NO. 2010GS1000738

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

January Term 2010

THE STATE

vs.

LEONARD BERNARD GOODWIN

DOB: [REDACTED]
B/M

Indictment for

Murder

09-5403-1

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK C.P. & F.C.
By *[Signature]*
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

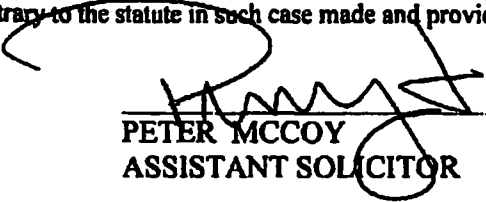
INDICTMENT

At a Court of General Sessions, convened on January 11, 2010 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about April 3, 2006, with malice aforethought, LEONARD BERNARD GOODWIN did kill and murder Eric Robinson by means of shooting the victim, and that Eric R. [REDACTED] did die in Charleston County as a proximate result thereof on April 3, 2006; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

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


PETER MCCOY
ASSISTANT SOLICITOR