

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Marlboro County

Honorable G. Thomas Cooper, Circuit Court Judge

JOHN L. HOGAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002452

APPENDIX

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C. MCCALL - DIRECT EXAMINATION BY MR. BLAKE

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1 have been no conviction at all. So, do you know anything
2 about those shoplifting charges?

3 A. Shoplifting charges are a thirty-day charge. What you
4 asking?

5 Q. Well, you said you had charges that were ---

6 A. I told you I had one charge dismissed.

7 Q. And the rest of them that went away?

8 A. The rest of them what? What, what, what other ones
9 are there then?

10 THE COURT: No, sir. Just listen. Ask specific
11 questions, please, Mr. Blake.

12 MR. BLAKE: Certainly.

13 THE COURT: Yeah. Yeah. Like I'm ---

14 THE COURT: Be quiet. Ask specific questions, and you
15 answer the questions. All right, specific questions.

16 BY MR. BLAKE:

17 Q. On February 10, 2005, you had a court date for
18 shoplifting.

19 THE COURT: No, sir. You are reading from something.
20 Ask him a question.

21 MR. BLAKE: Okay.

22 THE COURT: But you don't quote the documents you're
23 reading from.

24 BY MR. BLAKE:

25 Q. Did you February 10, 2009, have a court date where a

1 shoplifting third or more was dismissed?

2 A. No. Myesha Brown represented me, and I got ninety
3 days.

4 Q. And at the same time, a -- on February 10, 2009, did
5 you have a petit larceny that was dismissed?

6 A. Petit larceny? I don't even remember having no petit
7 larceny. I don't know where you got that paperwork there
8 from.

9 Q. So, you, you have been in and out of jail. You
10 remember back at the end of September of 2010 talking to a
11 Hispanic gentleman named Zane Arp?

12 A. Yes.

13 Q. In the jail?

14 A. Yes.

15 Q. Okay, and what did you talk about?

16 A. Nothing important that I know. You know, we just
17 locked up together.

18 Q. Okay. You didn't talk about this incident with
19 Monesha Brown on June 5, 2010?

20 A. I'm saying he probably asked me it. We probably
21 discussed it, but I don't, like, remember, you know? I
22 talk to a lot of people about it, you know? Not just me.
23 You know, they asked, people had asked me about it, you
24 know, you know, and...

25 Q. Did you tell him you were planning to rob Mr. Hogan?

C. MCCALL - DIRECT EXAMINATION BY MR. BLAKE

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1 MR. DANIEL: Objection, Your Honor.

2 A. Rob him?

3 MR. DANIEL: Leading.

4 THE COURT: Sir?

5 A. Rob him for what?

6 THE COURT: Wait a minute. Wait a minute.

7 A. No.

8 THE COURT: He objects. You just hush.

9 What's your objection?

10 MR. DANIEL: He's asking a leading question.

11 THE COURT: Overruled.

12 Ask the question again, and then you answer the
13 question. Ask the question, Mr. Blake.

14 MR. BLAKE: Yes, Your Honor.

15 BY MR. BLAKE:

16 Q. When you spoke with Zane Arp there in the jail back at
17 the end of September, early October 2010, did you tell him
18 that you were planning to rob Mr. Hogan and -- with Monesha
19 Brown, rob him with Monesha Brown and take his pickup
20 truck?

21 A. No. That's not true.

22 Q. So, he made that up.

23 THE COURT: No, sir. You can't comment on it. All
24 you can do is -- he answered it. You got to accept his
25 answer. There's a method if you want to impeach him.

1 A. If I was planning on robbing somebody ---

2 THE COURT: Hold.

3 A. --- I'd have got locked up.

4 THE COURT: Hey. Nobody asked you a question. Just
5 hush. Wait till the next question. You answered that
6 question.

7 BY MR. BLAKE:

8 Q. A couple of weeks ago, do you remember talking to
9 Charles McPherson? Do you know who that is?

10 A. No.

11 Q. Okay. He was buying some marijuana from you. You
12 sell marijuana?

13 A. No. That ain't true.

14 Q. It's not true?

15 A. No.

16 Q. Okay. You didn't tell him about planning to rob Mr.
17 Hogan with Monesha, take his truck?

18 A. That's not true. No, I didn't.

19 MR. BLAKE: If I could have one minute, Your Honor?

20 THE COURT: Yes, sir.

21 WITNESS: Excuse me. Can I say something?

22 THE COURT: No, sir.

23 (A PAUSE.)

24 MR. BLAKE: Judge, I have no further questions at this
25 time.

C. MCCALL - CROSS-EXAMINATION BY MR. DANIEL

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1 THE COURT: All right. Cross-examination, Mr. Daniel.

2 MR. DANIEL: Thank you. May it please the court?

3 CROSS-EXAMINATION BY MR. DANIEL:

4 Q. Mr. McCall, you've been in a lot of trouble, hadn't
5 you?

6 A. Yes. I've been convicted a couple times.

7 Q. I'm sorry?

8 A. Yes. You know, I ain't going to say a lot but, you
9 know.

10 Q. You've been convicted of several things?

11 A. Yes, yes.

12 Q. Minor, major, whatever. Okay. Does the fact that you
13 have been in trouble before have anything to do with Mr.
14 Hogan committing murder?

15 A. No, sir.

16 Q. All right. In fact, isn't it true that your only
17 involvement in this case is to describe to law enforcement
18 what Mr. Hogan looked like?

19 A. Yes.

20 Q. And you didn't know him when you did that. You didn't
21 know who he -- I mean, you didn't hang out with him, and
22 you didn't know who ---

23 A. No, sir.

24 Q. You'd seen him before?

25 A. Yes.

1 Q. Okay, and have, have you ever seen this before?

2 A. Yes.

3 Q. This is the sketch that was ---

4 A. Yes, sir.

5 Q. --- drawn by a SLED artist based on your description?

6 A. Yes.

7 Q. Which is, incidentally, remarkably similar ---

8 A. Yes.

9 Q. --- to what it looks like.

10 A. Uh-huh.

11 Q. Did you go to Mr. Hogan's house?

12 A. No.

13 Q. Have you ever, you ever been there?

14 A. I ain't know where he staying at, nothing.

15 Q. Okay.

16 A. No, sir.

17 Q. And you didn't have anything to do with Monesha
18 Brown's death, did you?

19 A. No, sir, because they ---

20 Q. She was your friend.

21 A. They polygraphed me three times in one day; I took a
22 polygraph and everything in Florence. They asked me about
23 robbing ---

24 THE COURT: All right.

25 A. --- him and all that, but ---

C. MCCALL - REDIRECT EXAMINATION BY MR. BLAKE

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1 THE COURT: All right, all right, don't. You don't
2 need to elaborate.

3 WITNESS: Okay.

4 MR. DANIEL: I don't have any further questions,
5 Judge.

6 THE COURT: Redirect?

7 REDIRECT EXAMINATION BY MR. BLAKE:

8 Q. It was right after the test you referred to that you
9 gave this drawing, was it not?

10 A. Yes.

11 Q. You certainly knew Monesha was missing.

12 A. I ain't know she was missing because I was work at the
13 house at Rayfield at the point in time until, like, about a
14 couple of days I ain't seen her. You know, I got kind of
15 worried. I thought maybe they was at a motel or something.
16 Just, you know, but I ain't -- just...

17 Q. Okay. So, at some point, Lieutenant Turner spoke to
18 you about this situation?

19 A. Yes.

20 Q. Do you remember about when that was?

21 A. Not a exact date, no, I don't.

22 Q. Well, let's just try. You did this on July 16th. You
23 had spoken to him before that?

24 A. Yes, I spoke to him before then.

25 Q. Okay, and what did you tell him?

1 A. We rode and he took, he the one took me to Florence,
2 you know. I took the polygraph to ---

3 MR. BLAKE: No further questions.

4 A. --- prove my innocence. Okay, then.

5 THE COURT: All right, anything further, Mr. Daniel?

6 All right, thank you, Mr. McCall. You may step down.

7 (THE WITNESS EXITS THE STAND.)

8 MR. BLAKE: Judge, my next witness is in the back, and
9 also I think we have to clear up the NCIC.

10 MR. DANIEL: Who is it?

11 MR. BLAKE: McPherson.

12 THE COURT: Go ahead and call the next witness.

13 MR. BLAKE: Can I go get him?

14 THE COURT: Yeah, or somebody can.

15 MR. BLAKE: Well, that's -- I'm sorry, this is where
16 we have the NCIC.

17 (COUNSELORS CONFER.)

18 MR. BLAKE: Charles McPherson.

19 (A PAUSE.)

20 MR. BLAKE: We'll call Zane Arp, Judge. I think
21 there's a problem finding McPherson at this point.

22 THE COURT: All right.

23 MR. BLAKE: And he's in the back.

24 THE COURT: All right. Call your witness.

25 (A PAUSE.)

C. MCPHERSON - DIRECT EXAMINATION BY MR. BLAKE

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1 THE COURT: Come around, please.

2 CHARLES S. MCPHERSON, BEING DULY

3 SWORN, TESTIFIES AS FOLLOWS:

4 CLERK OF COURT: Please be seated and state your full
5 name.

6 WITNESS: My name is Charles Shawn McPherson.

7 THE COURT: All right, what's your name?

8 WITNESS: Charles McPherson.

9 THE COURT: All right, Mr. Blake, you may proceed.

10 MR. BLAKE: Thank you, Your Honor.

11 DIRECT EXAMINATION BY MR. BLAKE:

12 Q. Mr. McPherson.

13 MR. BLAKE: I'm not sure you -- can you see Charles
14 McPherson?

15 Q. Do you know Casey McCall?

16 A. Yes, sir.

17 Q. Do you see him in the courtroom?

18 A. Yes, sir.

19 Q. Back here?

20 A. Yes, sir, behind the prosecutor.

21 Q. Where is he back there?

22 A. In the back with a black hoodie, second row.

23 Q. Third row?

24 A. Third row.

25 Q. The gentleman that just spoke?

1 A. Yes, sir.

2 Q. Okay. Have you had occasion to talk to him?

3 A. Yes, sir.

4 Q. Okay. Did you have occasion to buy some marijuana
5 from him?

6 A. Yes, sir.

7 Q. Did you have a conversation with him at that time?

8 A. Yes, sir.

9 Q. About how long ago was that?

10 A. Approximately last week around the 25th. 24th, 25th.

11 Q. Okay. This is the 7th, so around ---

12 A. Week and a half back.

13 Q. 24th or 25th of what month?

14 A. December -- or, I'm sorry, January.

15 Q. January, all right, and could you tell us the
16 substance of that conversation?

17 A. I had asked him how he was tied into -- we were just
18 talking, regular conversation. I asked him how he was tied
19 into -- at the time, I didn't know the man's name. I
20 described him as the white boy. How he was tied into his
21 case, and that I knew he was coming up on trial. And I
22 thought Casey was a part of that trial.

23 Q. Okay, and what did he say to you?

24 A. That, in fact, he wasn't tied into the case. That it
25 was a friend of his, girlfriend, a former partner in crime

C. MCPHERSON - DIRECT EXAMINATION BY MR. BLAKE

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1 of his that was tied into the case they was in.

2 Q. You just said -- what did you say, former partner in
3 crime?

4 A. Yes, sir.

5 Q. Are those your words or his?

6 A. His.

7 Q. Okay. So, he said that to you, that Monesha Brown
8 was ---

9 MR. DANIEL: Your Honor, I, I'm -- not that we're
10 trying to hide anything, but this is surely hearsay.

11 THE COURT: Well, no. It's impeachment testimony, and
12 so under 613, he asked the witness about it, but I'm not
13 going to let him lead this witness. It is his witness, but
14 this is impeachment testimony under 613(b). He asked the
15 witness on the stand. He has got the right to introduce
16 extrinsic evidence regarding any statements made.

17 Proceed.

18 THE COURT: Thank you, Judge.

19 BY MR. BLAKE:

20 Q. So, you did ---

21 THE COURT: No. Don't lead him.

22 MR. BLAKE: Excuse me, Judge.

23 BY MR. BLAKE:

24 Q. Again, please tell us the substance of that
25 conversation you had, if you could, back on September --

1 I'm sorry, January 24th or 25th.

2 A. I was probing Casey to see the extent of his
3 involvement in the case that we're sitting here in front of
4 today.

5 Q. All right. Can you give us some details of that
6 conversation?

7 A. In the conversation, he assured me that he wasn't
8 involved in the case. That his partner was actually the
9 victim involved in the case, and it was a robbery gone bad.

10 Q. What does the mean, a robbery gone bad?

11 A. He stated that the goal, in fact, was for her to
12 escort Hogan to, to his house, accommodate him. They
13 was ---

14 Q. What does that mean, accommodate him?

15 A. They were both smoking crack together, John and the
16 female.

17 Q. Well, let's -- those are slang terms. You just speak
18 in plain English.

19 A. They were getting high off of a controlled substance.

20 Q. Okay. Was there anything else involved besides the
21 crack cocaine?

22 A. Far as drug use?

23 Q. No. You said John. What does that mean?

24 A. Well, she went with John.

25 Q. Okay.

C. MCPHERSON - DIRECT EXAMINATION BY MR. BLAKE

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1 A. In order to continue to get high. The plan was to get
2 him high enough that she could steal from him and bring his
3 truck back to Casey.

4 Q. You understand, did you understand that to mean that
5 there was a plan between Casey and Monesha to rob John
6 Hogan?

7 A. Yes, sir.

8 Q. Okay, and you said something about take his truck?

9 A. Yes, sir.

10 Q. Did he speak to you anything else about his
11 relationship with Monesha, either personal or business?

12 A. That she was a good business asset, and he regret her
13 passing in that regard.

14 Q. What does that mean?

15 A. She made money for him.

16 Q. How did she make money for him?

17 A. She provide sexual favors for crack or money.

18 Q. So, he loaned her out? I'm just kind of trying to
19 understand what you're talking about.

20 A. Yes, in a sense, I guess. I mean, they both were on
21 crack, but you could consider him, I guess, the pimp and
22 her the means to make the money.

23 Q. You have a conversation with him about this?

24 A. Yes, sir.

25 Q. In what sort of context did this come up?

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1 A. Through my probing, I just was asking him questions to
2 find out how, how involved in this case he was. I didn't
3 know if he was being charged with the botched robbery or
4 the set up. And I just really wanted to know before me and
5 him got to becoming friends or associates.

6 Q. And this occurred back around January 25th, something
7 like that?

8 A. Yeah, that last week in January.

9 Q. Here in Bennettsville?

10 A. Yes, sir.

11 MR. BLAKE: One moment, please, Your Honor.

12 (A PAUSE.)

13 MR. BLAKE: No further questions at this time.

14 THE COURT: Cross-examination, Mr. Daniel?

15 MR. DANIEL: Thank you, Your Honor.

16 CROSS-EXAMINATION BY MR. DANIEL:

17 Q. Briefly, Mr. McPherson, you ever been charged with any
18 crimes? Have you ever been charged ---

19 MR. BLAKE: Objection. Objection. He can ask about
20 convictions. He can't ask about being charged.

21 THE COURT: You can't ask about charges.

22 BY MR. DANIEL:

23 Q. Have you ever been convicted?

24 MR. DANIEL: I'm sorry. You're right.

25 Q. Ever been convicted of any crimes?

C. MCPHERSON - CROSS-EXAMINATION BY MR. DANIEL

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1 A. Yes, sir.

2 Q. What, what, what crimes would those be?

3 A. I was a drug dealer around 1993, '94. I was involved
4 in the drug trade in Harrisburg, Pennsylvania. Crack
5 cocaine was ---

6 MR. BLAKE: Judge, I'm going to object on the basis
7 that I was just handed this prior to his testimony. I have
8 not been able to look at it. Do not know if what he is
9 saying complies with the rules or not. I'm being
10 prejudiced by the speed with which this is happening.

11 THE COURT: Well, now, you, you could have asked your
12 client -- I mean, you could have asked the witness that.
13 You brought, you called the witness. It wouldn't have --
14 objection is overruled.

15 MR. BLAKE: I can't ask ---

16 THE COURT: Witnesses of the -- objection is
17 overruled.

18 You may proceed with cross-examination.

19 MR. BLAKE: Objection on the basis that it's over ten
20 years.

21 MR. DANIEL: Your Honor.

22 THE COURT: Wait, counsel. Wait a minute.

23 (A PAUSE.)

24 THE COURT: All right, come around, counsel.

25 (OFF-THE-RECORD BENCH CONFERENCE.)

1 THE COURT: All right, ladies and gentlemen, this is a
2 legal issue that I am going to have to take up, and I need
3 to take it up on the record and outside of your presence.
4 If you will, go to your jury room for just a minute while I
5 take care of this matter, please. Thank you.

6 (THE JURY EXITS AT 3:28 P.M.)

7 THE COURT: All right, Mr. Daniel, tell me what you
8 propose to ask him. One, one thing you were asking him
9 about was a conviction for, what, drug -- what was the
10 charge?

11 MR. DANIEL: There is a theft charge from two thousand
12 -- well, arrest date from 2002.

13 THE COURT: Well, wait a minute. What was this 1993?
14 That's the one we -- we'll back into the rest of them.
15 We'll come forward with the rest of them, but the first one
16 you asked him about was ---

17 MR. DANIEL: It was a ---

18 THE COURT: --- it came up he was convicted in 1993.

19 MR. DANIEL: Some sort of violation of drug...

20 THE COURT: Drug offense in 1993.

21 MR. DANIEL: It's something out of state.

22 THE COURT: All right, and what else you want to ask
23 him about?

24 MR. DANIEL: The theft conviction that occurred,
25 the arrest date for -- which was July 2002. The offense

1 was 2002.

2 THE COURT: Conviction for ---

3 MR. BLAKE: Where?

4 THE COURT: What was the offense?

5 MR. DANIEL: Theft by unlawful taking.

6 THE COURT: Theft, and that was 2002?

7 MR. DANIEL: That's the arrest date was 2002.

8 MR. BLAKE: Do you have a conviction date?

9 THE COURT: All right, wait a minute. I'll take care
10 this, Mr. Blake.

11 MR. BLAKE: Excuse me, Judge.

12 THE COURT: You do your job, I'll do mine, okay?
13 Go ahead.

14 MR. BLAKE: Excuse me, Judge.

15 MR. DANIEL: He's got a current, pending charge of
16 attempted murder, but ---

17 THE COURT: What happened to that theft?

18 MR. DANIEL: It, it says conviction.

19 THE COURT: It says conviction?

20 MR. DANIEL: But it does not give a date. Doesn't
21 give a conviction date.

22 THE COURT: All right. All right, what else ---

23 MR. DANIEL: That's it ---

24 THE COURT: --- you want to ask him about?

25 MR. DANIEL: That's it.

1 THE COURT: Okay. All right, what, what's your
2 position on first the conviction for the drugs in 1993, Mr.
3 Blake?

4 MR. BLAKE: Judge, it's obviously beyond the ten year
5 rule, and I'm surprised that Solicitor Daniel would even
6 attempt to bring that out. I have yet to find that charge
7 on the NCIC, which I really did not have a chance to even
8 look at.

9 But could you tell me where it is?

10 MR. DANIEL: I'm sorry?

11 MR. BLAKE: Where's the theft on here?

12 (COUNSELORS CONFER.)

13 MR. BLAKE: Well, I don't have a page 3 and 4, and
14 it's on page 4 of 7. So, I would have a hard time even
15 finding it.

16 MR. DANIEL: All right, let me make this easy. I
17 won't ask him anything else about any other convictions,
18 but I want to put this on the record.

19 I'm not about easily offended, but it offends me when
20 Mr. Blake, who I respect, comes in this room and in front
21 of the jury says that he was just given this rap sheet
22 today.

23 This guy has been on his witness list, whenever he
24 made it. It's his witness. He knows, Dan knows, that
25 in order to get a rap sheet, we've got to have Social

1 Security ---

2 THE COURT: I understand. I understand, and it's on,
3 his witness list and he was going to call the witness. And
4 he should have known that this is one of the things you are
5 entitled to have is the Social Security number and birth
6 date of the witness so that a NCIC can be run on them in
7 plenty of time. And this should not be coming up at the
8 last minute; it's something that should have been done a
9 long time ago.

10 MR. DANIEL: And be blamed for it in front of the
11 jury.

12 MR. BLAKE: Judge, I was simply trying to stop the
13 avalanche, and I apologize for that. I had gotten the
14 information on Sunday, and I was going through my papers.
15 That particular paper was turned upside down, and I could
16 not see it. He asked me for it today at noon when you gave
17 us the short break for lunch.

18 THE COURT: Well, I'll be very frank with you. The
19 thing that bothers me about all of this testimony is that
20 the whole thing didn't arise as far as testimony until
21 about a week or ten days ago, and this case has been
22 pending all this time, the whole thing, very frankly. But
23 that's a matter for the jury to determine as to whether it
24 meets the smell test.

25 But be that as it may, the point is I'm not going to

1 have you two fencing with each other and pointing fingers
2 at each other and saying why you hadn't done what you were
3 supposed to do. I don't care about that.

4 It's supposed to have been done. This case has been
5 on the docket now for three months. I've been dealing with
6 it and hearing matters since back in December when I first
7 heard things. I heard another motion in January. There
8 have been several times when I've heard it. Everybody
9 knows what the witnesses were going to be or should know
10 what the witnesses were going to be.

11 And this matter shouldn't be coming up on the
12 afternoon of trial. And it's a failure of parties to do
13 what are required of them under the rules, and the court is
14 losing patience with it.

15 All right, with the stipulation by Mr. Daniel that he
16 is not going to go into this any further, we'll bring the
17 jury back in, Mr. Blake. But I don't want any more saying,
18 well, I just got this information, or I should know it. I
19 don't know anything about it. You've had ample opportunity
20 to know about it.

21 Bring the jury in.

22 (THE JURY ENTERS AT 3:36 P.M.)

23 THE COURT: All right, thank you, ladies and
24 gentlemen. Thank you for your patience. We are ready to
25 proceed.

C. MCPHERSON - CROSS-EXAMINATION BY MR. DANIEL

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1 Mr. Daniel, you may proceed with your
2 cross-examination.

3 MR. DANIEL: Thank you, Your Honor. May it please the
4 court?

5 THE COURT: Yes, sir.

6 BY MR. DANIEL:

7 Q. Mr. McPherson, you weren't there when John Hogan slit
8 Monesha's throat, were you?

9 A. No, sir.

10 Q. Ever been to John Hogan's house? You ever been to
11 John Hogan's house?

12 A. No, sir.

13 Q. Do you know him?

14 A. No, sir.

15 Q. Okay. You didn't confess to duct taping her hands
16 behind her back, did you?

17 A. No, sir.

18 Q. You didn't confess to putting her in the bathtub?

19 A. No, sir.

20 Q. You didn't confess to slitting her throat?

21 A. No, sir.

22 Q. But you did get some information about those events
23 that's pretty important, right? You got some information
24 you said last week, I think it was, or a week ---

25 A. Yeah.

1 Q. --- and a half? It's pretty important information
2 because it was about a murder, right?

3 A. I guess. Yeah.

4 Q. Yeah, and so with that information, on what day did
5 you go tell law enforcement about that important
6 information?

7 A. Approximately two or three days after it happened.

8 Q. You went and spoke to law enforcement?

9 A. I spoke to Officer Williams on a personal -- just to
10 ask him what I should do with the situation and how I
11 should go about it.

12 Q. You went to Officer Williams? What's his first name?

13 A. I don't know how many Officer Williams it is. Black
14 guy, gold tooth.

15 Q. And you said, you said what I found out is that
16 so-and-so, Casey McCall, was involved in this murder, and I
17 got this real good information I need to tell somebody is
18 what you told him?

19 A. No. I went to him. I asked him. I said if I fell
20 upon some information that might be able to help somebody
21 or convict somebody, what should I do with it? He said go
22 to the person's attorney, or go to the prosecutor.

23 Q. And you didn't come to us, did you?

24 A. No.

25 Q. You didn't go to the investigators?

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1 A. No.

2 Q. You went to Mr. Blake?

3 A. Yes, sir.

4 MR. DANIEL: No further questions.

5 THE COURT: Mr. Blake?

6 MR. BLAKE: No further questions.

7 THE COURT: All right, thank you. You may step down.

8 (THE WITNESS EXITS THE STAND.)

9 THE COURT: All right, you may call your next witness.

10 MR. BLAKE: Ask that that witness be excused, Judge.

11 THE COURT: Any objection?

12 MR. DANIEL: No objection.

13 THE COURT: All right, witness will be excused. Thank
14 you for coming.

15 MR. BLAKE: Zane Arp.

16 ZANE ARP, BEING DULY SWORN,

17 TESTIFIES AS FOLLOWS:

18 CLERK OF COURT: I need you to sit right there and
19 state your full name for me.

20 WITNESS: Zane Boist Arp.

21 DIRECT EXAMINATION BY MR. BLAKE:

22 Q. How old are you, Mr. Arp?

23 A. Twenty-six.

24 Q. And why are you currently in jail?

25 A. Child support.

Z. ARP - DIRECT EXAMINATION BY MR. BLAKE

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1 Q. Okay. Were you in jail back in September of 2010?

2 A. Yes, sir.

3 Q. Did you have occasion to speak to Casey McCall at that
4 time?

5 A. Yes, sir.

6 Q. Is Mr. McCall in the courtroom today? I mean, it's
7 kind of hard to ---

8 THE COURT: No, sir.

9 MR. BLAKE: Oh. Okay.

10 BY MR. BLAKE:

11 A. I do believe so. There in the back.

12 Q. Okay, and where did that conversation occur?

13 A. In J pod, county detention center.

14 Q. Our Marlboro jail?

15 A. Yes, sir.

16 Q. Why were you in there?

17 A. Child support.

18 Q. Okay. What do you do for work?

19 A. I'm electrician.

20 Q. Do you remember that conversation?

21 A. Yes, sir.

22 Q. And you remember approximately when that was?

23 A. It was around the 29th, the 30th of September 2010.

24 Q. So, you were in jail and Casey was in jail. Is that
25 correct?

Z. ARP - DIRECT EXAMINATION BY MR. BLAKE

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1 A. Yes, sir.

2 Q. Why don't you just tell us the substance of that
3 conversation.

4 A. The substance, basically he told me that his, his
5 partner in crime was killed, and he told me the story of
6 how it all, how it all happened.

7 The guy that they went to go get some crack for, the
8 man, he said that him and his partner were going to go get
9 some more. And he was going to go get a gun and rob the
10 man for his truck, him and her. Said left with the man.
11 That was pretty much it, but he talked about it off and on
12 for two or three days until he was released.

13 Q. Are you telling me that they had some sort of plan?

14 A. It seems so. Just the plan was to rob the man of his
15 truck.

16 Q. This involved Casey and whom else?

17 A. Casey and another man and the woman that is -- he's
18 now on trial for.

19 Q. The woman that's now deceased?

20 A. Yes, sir.

21 Q. Did Casey say anything else about his relationship
22 with Monesha Brown?

23 A. Just basically a sex partner and partner in crime.
24 He'd sneak in the room and stuff like that of that nature.

25 Q. Sneak in a room?

1 A. Yeah. Sneak in a room through a window and stuff.
2 Told me about him shooting up some people at Sav-Way and
3 other stuff like that.

4 Q. And what else did he tell you about his relationship
5 with Monesha Brown, either personal or financial?

6 A. It was basically financial. You know, they, they were
7 partners in crime. She would do one thing, and he would
8 set it up, and she would close it off, and it -- just hand
9 over hand, fist over fist.

10 Q. I'm not sure I understand what you're saying.

11 A. It's basically one hand washes the other. You scratch
12 my back, I'll scratch yours.

13 Q. Do you know anything about him pimping her out?

14 A. It was an occasion when we talked about it. You know,
15 it wasn't much about it, but that was pretty much the fact.
16 He would go get the dope, and she would either sell it to
17 him or, you know, she'd sell the intercourse for the crack.
18 And Casey and her would split off at the end of the night,
19 and just basically that's it.

20 Q. Did you ever talk about her and him doing previous
21 robberies together?

22 A. Just hustles here and there.

23 Q. What do you mean by hustle?

24 A. You know, hustling. Just getting some poor schmuck to
25 fall into the trap. And, you know, one would go get the

Z. ARP - DIRECT EXAMINATION / CROSS-EXAMINATION

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1 dope, and the other one would close the deal.

2 Q. What does that mean, close the deal?

3 A. Close the deal to get what they want, money or dope.

4 You know, whatever their ---

5 Q. That means ---

6 A. --- plan was for the night.

7 Q. That means steal from them?

8 A. Hustling, yeah.

9 Q. Hustling.

10 MR. BLAKE: No further questions.

11 THE COURT: Cross-examination, Mr. Daniel?

12 CROSS-EXAMINATION BY MR. DANIEL:

13 Q. Mr. Arp.

14 A. Yes, sir.

15 Q. When you heard this information from Mr. McCall, what
16 law enforcement agent, agent did you go tell?

17 A. He was just talking about it. I didn't think much of
18 it, you know? He was just telling me about -- he was just
19 talking to me. I didn't feel like I need to go turn the
20 name in.

21 Q. So, he tells you about ---

22 A. Hustling.

23 Q. --- a murder. He tells you about his ---

24 A. That some guy murdered his friend.

25 Q. You mind if I finish asking ---

1 A. Go ahead.

2 Q. --- my question? He tells you about a conspiracy to
3 rob someone which resulted, as you know, in a murder, and
4 you don't feel like it's important enough to go tell law
5 enforcement?

6 A. Be a snitch and probably get myself put back in the
7 same situation she's in?

8 Q. Aren't you ---

9 A. No, I don't, I don't think so.

10 Q. Aren't you being a snitch right now?

11 A. I'm just stating the facts here. You know, I'm not
12 bearing no false witness on my neighbor. I'm just telling
13 the truth and that's it. That's all.

14 Q. Okay. Do you know Mr. Hogan?

15 A. No, sir.

16 Q. Were you at his house the night Monesha Brown was
17 murdered?

18 A. No, sir.

19 Q. Did you confess to murdering ---

20 A. No, sir.

21 Q. --- Monesha Brown? Did you confess to tying her hands
22 behind her back with duct tape?

23 A. No, sir.

24 Q. Did you confess to slitting her throat?

25 A. No, sir.

Z. ARP - REDIRECT EXAMINATION BY MR. BLAKE

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1 Q. Okay.

2 MR. DANIEL: No further questions.

3 THE COURT: Redirect, Mr. Blake?

4 MR. BLAKE: Thank you, Your Honor.

5 REDIRECT EXAMINATION BY MR. BLAKE:

6 Q. Mr. Arp, you said you spoke to Casey McCall in jail
7 around the end of September 2010?

8 A. Yes, sir.

9 Q. Mr. Hogan was arrested on July 23rd.

10 THE COURT: Now, don't testify, Mr. Blake.

11 MR. BLAKE: He could testify.

12 THE COURT: Don't testify. Ask questions.

13 BY MR. BLAKE:

14 Q. So, when this, when Casey McCall told you this, did
15 you know Mr. Hogan?

16 A. No, sir.

17 Q. Was he even mentioning any names to you?

18 A. No, sir.

19 Q. That you recall?

20 A. Just her name.

21 MR. BLAKE: Thank you.

22 THE COURT: Recross, Mr. Daniel?

23 MR. DANIEL: None.

24 THE COURT: All right. Thank you, sir. You may step
25 down.

S. FELDNER - DIRECT EXAMINATION BY MR. BLAKE

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1 WITNESS: Thank you, sir.

2 (THE WITNESS EXITS THE STAND.)

3 THE COURT: All right, Mr. Blake.

4 MR. BLAKE: Ask that this witness be excused, Judge.

5 THE COURT: Any objection?

6 MR. DANIEL: None.

7 THE COURT: All right, you are excused.

8 MR. BLAKE: Shawn Feldner.

9 THE COURT: You are still under oath, Mr. Felder.

10 SHAWN FELDNER, HAVING PREVIOUSLY
11 BEEN SWORN THE SAME DAY, TESTIFIES AS FOLLOWS:

12 WITNESS: Shawn Feldner.

13 DIRECT EXAMINATION BY MR. BLAKE:

14 Q. Shawn, you were up here before, and were you involved
15 in -- I think you testified to being involved in a BOLO
16 being put out.

17 A. No, I was not.

18 Q. Not at all?

19 A. No, sir.

20 MR. BLAKE: Okay, no further questions.

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

22 (THE WITNESS EXITS THE STAND.)

23 MR. BLAKE: Lieutenant Larry Turner.

24 THE COURT: Mr. Turner, you're still under oath.

25 LARRY TURNER, HAVING PREVIOUSLY

L. TURNER - DIRECT EXAMINATION BY MR. BLAKE

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1 BEEN SWORN ON 2/6/12, TESTIFIES AS FOLLOWS:

2 DIRECT EXAMINATION BY MR. BLAKE:

3 Q. Did you have anything to do with the initiation of a
4 SCIEX [verbatim] bulletin?

5 A. Yes, sir.

6 Q. Handing up your Defendant's Exhibit 5. Does that look
7 familiar to you?

8 A. Yes, sir.

9 Q. Who wrote the language in that?

10 A. Lieutenant Jamie Seales.

11 Q. But you gave him information?

12 A. Yes, sir.

13 Q. You're aware of that bulletin?

14 A. Yes, sir.

15 Q. It was part of your investigation in the case?

16 A. That was my attempt to locate her, yes, sir.

17 MR. BLAKE: Your Honor, we would move to enter this
18 into evidence at this time.

19 THE COURT: Mr. Daniel?

20 MR. DANIEL: We'd object on the same grounds that were
21 mentioned earlier.

22 THE COURT: Let me see it.

23 (A PAUSE.)

24 THE COURT: All right, I'm going to admit it over
25 objection. I don't think the thing that you objected to as

1 being prejudicial is at this prejudicial, in view of the
2 testimony that's already gone forth in this case. The
3 exhibit will be admitted over the objection of the state.
4 Defendant's Number 5 will be admitted.

5 MR. DANIEL: Thank you.

6 (SCIX BULLETIN MARKED INTO EVIDENCE AS DEFENDANT'S
7 EXHIBIT NUMBER 5.)

8 MR. BLAKE: No further questions, Judge.

9 THE COURT: All right. Thank you. You may step down.

10 (THE WITNESS EXITS THE STAND.)

11 MR. BLAKE: Judge, may we approach?

12 THE COURT: Yes, sir.

13 MR. BLAKE: A scheduling issue.

14 (OFF-THE-RECORD BENCH CONFERENCE.)

15 THE COURT: All right, ladies and gentlemen of the
16 jury, I know you think sometimes that things don't move
17 very efficiently as they should, and I agree with you. I
18 would like for them to move a little more efficiently, but
19 there are all kinds of matters, and getting the right
20 people at the right place at the right time in the trial of
21 a case.

22 And because it is almost 4:00, and I'm advised by the
23 state that -- I mean, by the defense the next witness is
24 going to be lengthy, and that there is a witness who will
25 be coming in tonight, that it would be best if we go ahead

1 and break this afternoon for the afternoon and bring you
2 back tomorrow morning, and we will finish the testimony in
3 this case tomorrow.

4 So, I am going to excuse you now, allow you to go to
5 your homes and families, and ask you to be back in your
6 jury room tomorrow morning, please, at 9:30.

7 Over the evening recess, do not discuss the case with
8 anyone. Do not allow anyone to discuss it with you. Do
9 not read any news stories, or listen to any broadcast media
10 reports about this case. Simply forget about the case over
11 the evening recess, and plan to be back tomorrow morning at
12 9:30, and we'll see you at that time. Thank you. Have a
13 pleasant evening.

14 (THE JURY EXITS AT 3:52 P.M.)

15 THE COURT: All right, counsel, I want to be ready to
16 start in the morning at 9:30. So, I want all court
17 personnel here at 9:15. I don't want to run into this
18 situation where we're not everybody the courtroom ready to
19 go when all the jurors get back. I don't want -- we've
20 kept them waiting every time I've asked them to be back,
21 and I don't like that. I want to start on time when they
22 are supposed to be here. And so let's be here at 9:15.

23 If anybody's got any things that they need to take up
24 with me, I'll be here by that time, and we can go on the
25 record and take them up.

1 And having said that, I would ask now if there's
2 anything that we need to go on the record about right now,
3 Mr. Daniel on behalf of the state, that you know of.
4 Anything?

5 MR. DANIEL: Only thing I would ask is if Mr. Blake
6 has another witness other than his client, we need their
7 Social Security number, their date of birth, their full
8 name, and their race and sex for NCIC.

9 THE COURT: What about that, Mr. Blake?

10 MR. BLAKE: Your Honor, I will look and see what I do
11 have. She's in flight right now. She's supposed to touch
12 down.

13 THE COURT: Well, you talking about Mr. Hogan's wife?

14 MR. BLAKE: Yes, Judge.

15 THE COURT: Well, he probably knows her birth date and
16 Social Security number. That's all he needs.

17 MR. BLAKE: Here I have -- they actually have as part
18 of their records, it's part of the interview. I can give
19 that to you.

20 THE COURT: All right. All right, that's all that
21 you've got at this time, Mr. Daniel?

22 MR. DANIEL: That's it.

23 THE COURT: Anything that you've got at this time, Mr.
24 Blake, that we need to bring up and put on the record?

25 MR. BLAKE: No, Your Honor.

1 THE COURT: I am assuming, and I'm just trying to
2 anticipate perhaps in preparation of a verdict form in this
3 case. Mr. Blake, I'm assuming you're going to request
4 instructions in a jury -- alternative of voluntary
5 manslaughter. Is that correct?

6 MR. BLAKE: If I could clarify that with my client?

7 THE COURT: Okay.

8 (COUNSEL CONFERS WITH DEFENDANT.)

9 MR. BLAKE: Yes, Your Honor.

10 THE COURT: All right. So, your position would be
11 that the possible verdicts would be murder, voluntary
12 manslaughter, or not guilty? Guilty of murder, guilty of
13 voluntary manslaughter, or not guilty?

14 MR. BLAKE: That's correct, Judge.

15 THE COURT: All right, what's your position, Mr.
16 Daniel?

17 MR. DANIEL: Judge, I think.

18 THE COURT: Of course, I know you hadn't heard the
19 testimony, his testimony yet. But I think you can probably
20 anticipate what it's going to be because he's made three
21 statements in this case.

22 MR. DANIEL: Right. Obviously, it's our position that
23 this is a murder and not a manslaughter. However, I worry
24 about appeal, and I worry about what could happen if he
25 wasn't charged. I don't know yet if there is evidence in

1 the record to support a manslaughter charge, but...

2 THE COURT: There may not be yet, but ---

3 MR. DANIEL: And there may well be.

4 THE COURT: --- I would anticipate it after he ---

5 MR. DANIEL: Right.

6 THE COURT: --- testifies. I don't know, but I'll
7 prepare a possible verdict form on that. If it works out
8 if that that is not an alternative, it's easier to delete
9 that from the verdict form and not charge it.

10 All right. Also, y'all, counsel, if you'll let me
11 know if there's anything special that you would want
12 charged, be prepared to hand up the written requests to
13 charge in the morning so that I'll have a chance to review
14 those. But the rule does require that any special requests
15 for charge be in writing.

16 I will tell you my general felony charge includes
17 reasonable doubt, credibility of witnesses, presumption of
18 innocence, and of course I'll charge the principle offenses
19 that are involved. And you've indicated that Mr. Hogan is
20 going to testify, so the not appearing -- I mean, not
21 testifying charge would not be appropriate. I will also
22 testify -- direct and circumstantial evidence and expert
23 testimony.

24 If anybody thinks of anything that -- in the way of
25 additional requests that you would make, please be prepared

1 to hand them to the court in the morning when we reconvene.

2 All right, we'll be in recess then until 9:15 tomorrow
3 morning.

4 MR. DANIEL: Thank you.

5 (WHEREUPON, THE CASE IS AT EASE.)

6 WEDNESDAY, FEBRUARY 8, 2012

7 (COURT RESUMES AT 9:16 A.M.)

8 THE COURT: All right, let's go on the record for a
9 moment with regard to the matter of *The State vs. Hogan*.
10 Mr. Hogan is present with his counsel.

11 We, of course, are in the middle of the defense
12 case, but I wanted to convene a little bit earlier to make
13 sure that we had everything taken care of so that when all
14 the jurors get here, we'll be ready to start promptly at
15 9:30.

16 Mr. Blake is in, ready to go. You got all your
17 witnesses? Anything we need to take up before the jury is
18 brought in?

19 MR. BLAKE: No, Your Honor. They were just unwrapping
20 one of the exhibits.

21 THE COURT: All right, and you anticipate two
22 witnesses. Is that correct?

23 MR. BLAKE: Yes.

24 THE COURT: Okay. All right. How about the state?
25 Anything from the state before we bring the jury in? All

1 right.

2 MR. DANIEL: No, sir.

3 THE COURT: All right. Well then we can relax for a
4 few minutes until they all get here and we'll be ready to
5 go forward.

6 (OFF THE RECORD.)

7 THE COURT: All right. How do we stand on jurors?

8 MR. BLAKE: Judge, we were still doing -- unwrapping
9 that case.

10 THE COURT: Yes, sir. Y'all go ahead and take care of
11 that.

12 (A PAUSE.)

13 THE COURT: Okay. All right. Let's get those things
14 straightened out as quickly as we can. All the jurors are
15 here.

16 (A PAUSE.)

17 THE COURT: All right. I've been advised that all the
18 jurors are here and we can proceed. Anything before we
19 bring the jury in, Mr. Daniel?

20 MR. DANIEL: Nothing from the state.

21 THE COURT: Anything before we, before we bring the
22 jury in, Mr. Blake?

23 MR. BLAKE: I'm sorry.

24 THE COURT: Anything before we bring the jury in?

25 MR. BLAKE: No, Your Honor.

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

2 (THE JURY ENTERS AT 9:30 A.M.)

3 THE COURT: All right. Good morning, ladies and
4 gentlemen, and thank you for your promptness in being back
5 here and we are now ready to proceed. I will ask you now,
6 as I have every time that you've been away from the
7 courthouse, if anyone has tried to talk with you, approach
8 you, or made any contact with you about this case in any
9 manner whatsoever over the evening recess I would need to
10 know about it now.

11 (No response.)

12 THE COURT: Negative response, and that's good. Also,
13 if anyone is read any news stories or heard any television
14 or radio broadcast, media stories, or reports about this
15 case and has heard those or read those over the evening
16 recess, I would also, I would also need to know about that
17 now. (No response.)

18 THE COURT: Again, negative response, and that's good.
19 All right. We are ready to proceed. Yesterday, when we
20 adjourned, the defense was presenting their case to you and
21 they will have the right to continue to present anything
22 that the defense then wishes to present. Mr. Blake.

23 MR. BLAKE: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25 MR. BLAKE: Call Summer Hogan to the stand.

J.S. HOGAN - DIRECT EXAMINATION BY MR. BLAKE

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1 THE COURT: All right. Ms. Hogan, come around please.

2 JESSICA SUMMER HOGAN, BEING DULY

3 SWORN, TESTIFIES AS FOLLOWS:

4 THE COURT: Have a seat right up here, please, Ms.
5 Hogan.

6 CLERK OF COURT: State your name for me.

7 THE COURT: State your name for the record.

8 WITNESS: Oh, I'm sorry. Jessica Summer Hogan.

9 DIRECT EXAMINATION BY MR. BLAKE:

10 Q. Thank you, Ms. Hogan.

11 MR. BLAKE: And I'll thank the judge for letting the
12 scheduling work like this.

13 Q. You just flew in from Texas last night. Is that
14 correct?

15 A. Yes, sir.

16 Q. Okay, and you're married to Mr. John Hogan?

17 A. Yes, sir.

18 Q. And where do you work?

19 A. I work for the Texas law office of Martin A. Harry.

20 Q. And what do you do there?

21 A. I'm a case manager.

22 Q. And what sort of work do you do as a case manager?

23 A. I help get over 400 clientele get Social Security
24 benefits.

25 Q. Okay. How long have you and Mr. Hogan been married?

J.S. HOGAN - DIRECT EXAMINATION BY MR. BLAKE

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1 A. Three years in November.

2 Q. Going back to June of 2010, where -- you, you came --
3 you went on vacation or you went somewhere. You were not
4 at home. Where were you?

5 A. I was at a family reunion for ten days on the coast of
6 California.

7 Q. Okay, and when did you come back?

8 A. I don't remember the exact date. I think it was the
9 6th of June. Maybe I left on the 6th of June. I can't
10 remember the exact date that I had come back or left, but I
11 was gone for ten days.

12 Q. Okay, and when you came back, where did you fly into?

13 A. I flew into Florence.

14 Q. Florence Airport?

15 A. Uh-huh, yes.

16 Q. Okay, and who picked you up?

17 A. John picked me up.

18 Q. Okay, and you had a luggage bag with you?

19 A. Yes.

20 Q. Okay, and where did you put that?

21 A. I put that in the back cab of the truck.

22 Q. And what did you notice?

23 A. There were two trash bags full of beer bottles.

24 Q. And what was your reaction?

25 A. I was very upset. It's ---

1 Q. Why?

2 A. It's -- we -- I wasn't approve of drinking and John
3 didn't have -- I'd asked him not to drink, but he had -- I
4 don't know. I was just upset that he had drank while I was
5 on vacation, and that was not what I had expected him to
6 do.

7 Q. All right, and you drove from the airport to your home
8 here near Bennettsville?

9 A. Yes.

10 Q. Okay, and where, where was that trailer located?

11 A. I believe it's [REDACTED] Mark Circle in Bennettsville.

12 Q. Okay. Do you know the main road that it was on?

13 A. I think 52.

14 Q. Okay.

15 A. I, I'm not completely for sure, but it's not actually
16 in Bennettsville. Like, it's not in the City of
17 Bennettsville. It's kind of on the way back from Florence.
18 So, I think that highway is 52.

19 Q. And where had you -- you came and moved here. Where
20 did you move from with Mr. Hogan?

21 A. Prior to living in Bennettsville, we were living in
22 Kilgore, Texas.

23 Q. And why did you and Mr. Hogan come here?

24 A. He got a job as a boilermaker.

25 Q. Okay. Where was that job?

J.S. HOGAN - DIRECT EXAMINATION BY MR. BLAKE

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1 A. Just on the south border of North Carolina.

2 Q. Okay, and were you also working at the time?

3 A. No, stay-at-home mom.

4 Q. Stay-at-home mom, and how old was your child?

5 A. In June, Ellie would have been six months.

6 Q. Is there anything else you noticed when you got home?

7 A. There were a few things out of place when I got back
8 to our residence. For the most part, things didn't seem
9 too out of place. More like things were not finished,
10 but ---

11 Q. What do you ---

12 A. --- there were ---

13 Q. What do you mean not finished?

14 A. The dishes were still in the sink. The laundry was
15 still in the floor. You know, the bed was poorly made.
16 But there was a hole in the wall close to our door to our
17 bedroom. There was a punch stain on the carpet in our
18 living room, but for the most part, I couldn't really tell
19 any difference.

20 That also kind of made me upset, but -- to come home
21 and the house wasn't cleaned. It wasn't changed from when
22 I had left it, but I, I later, like the next day, I found
23 that there had been a fairly large blood stain on our
24 comforter, on the inside of our comforter, and so that was
25 a little alarming. And then a few of John's white work

1 shirts had been stained with blood as well. So, that was
2 also really out of place when I started to clean the house
3 up the following day.

4 Q. Okay. At some point, did you notice any wound?

5 A. Yes. Well, I confronted John about the stains and
6 asked him what had happened. He had told me that he was
7 robbed and was stabbed, and when I looked at the wound, it
8 was on his side maybe an inch, inch and a half long wise, I
9 guess, and it didn't seem too bad. And then I went up to
10 look at it, and I, I couldn't see where it actually ended.
11 Like, it wasn't, like, a slice kind of cut like a cat
12 scratch. It was definitely deep. So, it wasn't very,
13 like, wide, like, I said, but really deep, and so I had
14 suggested to John that we go to the hospital.

15 I definitely think that he needed stitches at that
16 point. John had refused, telling me that he didn't want to
17 explain to the hospital getting robbed. So, that ended
18 that argument.

19 Q. Was he talking about a robbery that happened inside
20 the home or outside of the home?

21 A. He told me that he was going into a fairly bad
22 neighborhood in Bennettsville, and he had intentions of
23 getting drugs, and in that intention he was robbed before
24 he'd got it. But he said he was jumped. But that -- I
25 don't think ---

J.S. HOGAN - DIRECT EXAMINATION BY MR. BLAKE

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1 Q. So, at that point he was not telling you what
2 happened?

3 A. No.

4 Q. Did you find any evidence of drug use?

5 A. Yes. I later then found some crack in John's pickup
6 truck. I also confronted him about that.

7 Q. What did he say about that?

8 A. He said that he had actually gotten crack. He had
9 returned to the bad neighborhood and ended up getting some
10 crack and, and then smoking it. So, our, our bank account
11 was pretty much drained with that endower, endower,
12 whatever, so -- endeavor.

13 Q. When did you become aware of that as well?

14 A. I was aware of that within two days of coming back to
15 Bennettsville that our bank account had been drained.

16 Q. How much had been in there?

17 A. I honestly don't know. In the ten days that I was
18 gone, he did receive a pay check. When I left, there was
19 \$400. But then he got paid in that time period as well.
20 So ---

21 Q. Do you know how much his check was approximately?

22 A. Typically \$2,500.

23 Q. Anything else you can tell us relative to his wound?

24 A. Well, after I found out what had happened with his
25 wound, and, of course, suggesting that he get medical

1 attention and he refused, he did have to bandage it
2 himself. So, he was, like, supergluing the wound shut,
3 duct taping it together. He continued to work every day
4 after that, and so in that, he did work pretty laborious
5 jobs. So, he had to keep himself hunched over. You know,
6 he couldn't make a full posture, straight posture. He
7 couldn't lift Ellie up. He couldn't reach to the higher
8 cabinets. You know, anything that was going to include him
9 straightening up his stomach area where things had been
10 glued shut, it would bust open and start bleeding again and
11 was extremely painful.

12 Q. Did it bust open?

13 A. It did. It broke open about three times the following
14 week, which also caused the stain in t-shirts, and, you
15 know, with the job he worked, he couldn't not do reaching.
16 And so there were definitely times that it busted open, and
17 there was definitely times where he was in extreme pain
18 from the wound.

19 Q. You noticed that?

20 A. Oh, yes. I mean, definitely with things like picking
21 Ellie or lifting Ellie up or throwing her up or anything.
22 You know, I always asked him to do the hanging up stuff or
23 getting things off the top shelf or whatever, and he just
24 was not -- it wasn't a comfortable thing for him to do any
25 of those.

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1 Q. But, again, he did not go to the hospital?

2 A. No.

3 Q. And the reason for that?

4 A. He did not want to attract attention to himself with
5 the injury. He didn't want to explain to the doctors or to
6 the hospital how the stab wound had occurred. According to
7 the story, you know, he was in the bad part of town trying
8 to get crack. So, he didn't really want to attract police
9 attention to his injury.

10 Q. Did that worry you about his not going to the
11 hospital?

12 A. It worried me because I wanted him to get better, but
13 he told me that he knew how to repair himself and he
14 superglued it, duct taped it. Like I said, never missed a
15 day of work. So, there really wasn't much I could do at
16 that point.

17 Q. Did he need to go to work for just paying the bills?

18 A. Yes.

19 Q. All right. So, that's around the beginning of June,
20 and you and he are there in the house, your daughter,
21 Elsie [sic]. And then I think sometime around July, third
22 week in July, July 21st, 22nd, you spoke to at least Shawn
23 Phillips. Is that correct?

24 A. Yes, sir.

25 Q. The second gentleman sitting there?

1 A. Yes.

2 Q. Okay. Had an interview with him?

3 A. Yes.

4 Q. And then the following day you drove your husband to
5 Sumter Sheriff's Office?

6 A. Yeah, in Bennettsville. Was that in Bennettsville?

7 Q. Well, the interview was in Bennettsville, I believe.

8 A. Okay. Yeah.

9 Q. And then did you end up driving your husband to
10 Sumter?

11 A. Yes.

12 Q. Okay, and at some point you left that interview. Is
13 that correct?

14 A. Yes, come back.

15 Q. Did you go home?

16 A. I did try to come home after I had dropped him off.
17 However, there are about eight to ten vehicles in our home
18 when I got back, and they told me I would not be able to
19 return home for three days.

20 Q. Did you try to return at any point earlier than those
21 three days?

22 A. Well, I had, I had tried to see if there were people
23 there. We knew the people that lived across the street,
24 but they had a lot of people in our home, and I, I wasn't
25 able to return until I got the phone call saying it was

1 okay for me to come home.

2 Q. Okay. Had you driven by or were you just calling
3 friends to see what was going on?

4 A. I drove by a few times.

5 Q. Were there still cars around?

6 A. Oh, yes.

7 Q. So, three days later, you finally did come home?

8 A. Yes, sir.

9 Q. Okay, and what did you notice when you came home?

10 A. Well, the evidence that had been left behind. Blue
11 residue I guess is what they used to determine where the
12 blood had been on previously or whatever. So, I did see
13 the blue residue where blood splatter had been.

14 Immediately upon walking into our trailer from the
15 back door, we have a little wall, a doorway into our
16 bedroom, another little wall, and then it goes into our
17 kitchen. And so these little partial walls were definitely
18 -- had splattered blood residue pretty thickly, about 4 and
19 a half, maybe 5 feet high. I just -- across the wall like
20 this, really heavily, and that's just right when you walk
21 in. So, there was that. There was definitely blood on the
22 door, and so ---

23 Q. Which door is that?

24 A. There was blood on the front door. There was blood on
25 our bedroom door. The bedroom door had it pretty thickly

1 right there, and like I said, that, that wall that is --
2 here's the doorway. Here's this little partial wall and
3 the fridge and then the kitchen. This wall had the most
4 thickest.

5 Q. In the kitchen area?

6 A. Yes, leading into the kitchen going into this. So --
7 but in that little doorway, there's definitely a lot of
8 blood splatter. There was a few blood splatter along the
9 bottom of the cabinets in the kitchen like under the sink
10 area kind of thing. But then kind of just kind of went
11 higher up on this other wall and ---

12 Q. Where, where was the, where was the -- you had some
13 thin sheetrock in there. Where was the sheetrock busted?

14 A. The sheetrock was busted also to the left of the
15 doorway, to the left of the bedroom doorway. Maybe just,
16 like, shoulder high. Maybe a little less. I can't
17 remember the exact placement, but just, just right to the
18 left of the doorway.

19 Q. Okay. Where else did you notice the blue coloring?

20 A. The blue coloring was also the most relevant in the
21 bathroom. So, you go into the bedroom. Here's the
22 doorway. We come into the bedroom, and in the far corner
23 of the house in the bedroom is -- we had a very large pool,
24 bathtub. So, we have a circular bathtub.

25 Q. Is that like with a jacuzzi in it?

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1 A. Yeah, it was, you know, one of the fairly large, round
2 ones. Not oval, but round and ---

3 Q. Hold on one second. Let me just ---

4 A. Okay.

5 Q. Handing up State's Exhibit 5. Is this what you're
6 talking about?

7 A. Yes, sir.

8 Q. Okay, and looking at State's Exhibit 4, is this the
9 trailer?

10 A. Yes, sir, and so then we have the tub, and in the
11 corner -- so, our tub's in this corner. There's two
12 windows on the corner, and inside the bathtub there was
13 definitely the dark blue residue where I could see it
14 thickly. There was a few ---

15 Q. Did you say inside? Was that ---

16 A. Inside the bathtub.

17 Q. Near the drain or ---

18 A. Yes.

19 Q. --- or the whole bathtub or what?

20 A. Near the drain. More, to be precise, towards the
21 left, to the left of the drain ---

22 Q. Okay.

23 A. --- on the ground, and then there was some blood
24 splatter up around the lip of the bathtub again in the
25 corner, and then Ellie's toys were also here. So, her bath

1 toys had some residue on there, and then I had some lace
2 curtains that had some residue on there. But the gist of
3 it was mainly in the bathtub.

4 Q. Okay. Handing up State's Exhibit 25. Is this the
5 lace that you're talking about?

6 A. Yes, sir.

7 Q. And what is that underneath it?

8 A. That's the blue residue.

9 Q. Okay, and the -- what kind of blind is that?

10 A. I don't know what -- I don't -- this one?

11 Q. Yeah, the ---

12 A. I, I don't know.

13 Q. Was that with the -- it looks like white vinyl. So,
14 was that in the trailer and then you purchased ---

15 A. Yes.

16 Q. --- the lace?

17 A. Yes.

18 Q. Okay. Handing up State's Exhibit 7. What does that
19 show you?

20 A. The bathtub, the mirrors by the bathtub, and the, the
21 windows, Ellie's toys on the outside of the bathtub. There
22 was a few blood splatters on this mirror, but not very
23 much.

24 Q. Okay. Thank you, and this is a picture of what?

25 A. That is our knives.

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1 Q. Okay. That's where they were located in the kitchen?

2 A. Yes.

3 Q. Okay, and I'm sorry. That is State's Exhibit 6 you
4 were looking at and State's Exhibit 10.

5 A. Well, that wasn't -- I guess that was a secondary
6 hole. There was also another one over on -- behind this
7 wall, I'm pretty sure. If it wasn't in that wall, it was
8 on the door behind there, but ---

9 Q. Okay, and State's Exhibit 14.

10 A. Yes, that's our truck.

11 Q. The truck. All right.

12 MR. BLAKE: I'll move to publish those to the jury,
13 Judge.

14 THE COURT: Go ahead.

15 You'll recall, ladies and gentlemen, I told you that
16 the lawyers may ask for permission to publish exhibits.
17 That means pass them down and look at them while you're
18 sitting there in the jury box. Do not be concerned if you
19 do not have as long to look at them as you might like to.
20 You will be able to take all the exhibits to the jury room
21 when you retire to deliberate for the verdict.

22 BY MR. BLAKE:

23 Q. And you described the bathtub and some blood spatter,
24 I think, along the rim and on the blind. Did you see --
25 what did you see in terms of around the front, the carpet

1 bottom there on part of the tub?

2 A. There -- I didn't really see much in that region.

3 Q. I'm talking about the color blue now.

4 A. Yes, there might -- there definitely was some trickle.

5 You could tell that there was -- someone had been brought

6 in that was bleeding into the bathtub because there was,

7 like, a little trail. It wasn't real thick like in the

8 bathtub, but there ---

9 Q. There on the carpet down there, did you see a bunch of
10 blue?

11 A. No.

12 MR. BLAKE: No further questions at this time.

13 THE COURT: Cross-examination, Ms. Johnson-Lee.

14 MS. JOHNSON-LEE: Mr. Daniel.

15 THE COURT: Mr. Daniel, okay.

16 CROSS-EXAMINATION BY MR. DANIEL:

17 Q. Ms. Hogan, good morning.

18 A. Good morning.

19 Q. Can you tell the jury about how long it is, how far it
20 is from the bathtub to the kitchen? If, if this is the
21 corner of the bath, and I know you might have to walk maybe
22 through or around the wall or something like that, you
23 know. But if this is the corner of the bathtub, if you
24 were to walk in a straight-line, about how far -- tell me
25 when to stop.

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1 A. To the, to the door, to my doorway?

2 Q. To the kitchen from, from the bathtub, which is right
3 here ---

4 A. Uh-huh.

5 Q. --- to the kitchen all the way into the -- right by
6 the stove. Tell me when to stop.

7 A. That's about our doorway. That, that would be into
8 the kitchen.

9 Q. Okay, and then the stove was a little further?

10 A. Maybe like a hand reach. I mean, it's a single-wide
11 trailer; it's pretty small.

12 Q. So, this would be fair to say, then, this is about the
13 length that you have to walk to get to the bathroom to
14 this, this stove area here?

15 A. Around about.

16 MR. DANIEL: I have no further questions. Thank you.

17 THE COURT: Redirect?

18 MR. BLAKE: Thank you, Your Honor.

19 REDIRECT EXAMINATION BY MR. BLAKE:

20 Q. You said around about. Did you ever measure that
21 distance?

22 A. I definitely haven't measured that distance. Our, our
23 trailer was very small. Our bathtub was in our bedroom.
24 There wasn't a doorway or anything like that. It wasn't
25 like, you know, separated. So, we have our bathtub. We

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1 have that small little wall that you'll see right next to
2 the bathtub. We have a -- my daughter's playpen, our bed,
3 and then the wall. Our bed was about a double size. So,
4 we have a large bathtub I would say 3, 4 feet, our double
5 size bed. And from the double size bed, if you were going
6 to sit on the end, you could touch the wall. I don't know
7 if that helps with exact measurements or not.

8 But then, of course, that wall is the doorway that
9 goes almost directly into the kitchen. So, from our
10 doorway, it's about maybe three paces to the end, the
11 middle of the kitchen.

12 Q. And when's the last time you actually were living in
13 that trailer?

14 A. In July. Towards, towards the end of July.

15 THE COURT: Anything further, Mr. Daniel?

16 MR. DANIEL: Nothing from the state.

17 THE COURT: All right. Thank you, ma'am.

18 WITNESS: Thank you.

19 THE COURT: You may step down. All right.

20 (THE WITNESS EXITS THE STAND.)

21 THE COURT: Mr. Blake, call your next witness.

22 MR. DANIEL: We call John Hogan to the stand.

23 THE COURT: All right. Mr. Hogan.

24 JOHN LEE HOGAN, JR., BEING DULY SWORN,

25 TESTIFIES AS FOLLOWS:

JOHN LEE HOGAN - DIRECT EXAMINATION BY MR. BLAKE

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1 CLERK OF COURT: Be seated and state your full name.

2 WITNESS: John Lee Hogan, Jr.

3 DIRECT EXAMINATION BY MR. BLAKE:

4 Q. Just to make it clear, you've been in jail ever since
5 you gave a confession on July 23rd, correct?

6 A. Yes. It's going on nineteen months.

7 Q. Has that been an easy time for you?

8 A. No, sir. This is probably one of the roughest jails
9 in South Carolina. It's -- they kind of run it like a
10 super max prison. You're in lockdown all day.

11 Q. How's, how's it just been for you in terms of the
12 aftermath of this incident?

13 MR. DANIEL: Your Honor, I'm going to object.
14 Relevance.

15 THE COURT: All right. What is the relevance of that,
16 Mr. Blake?

17 MR. BLAKE: I'm just trying to give him a chance ---

18 THE COURT: That's not my question. What's the,
19 what's the relevance to the issues here? Objection
20 sustained.

21 MR. DANIEL: Thank you.

22 BY MR. BLAKE:

23 Q. You gave your confession on July 23rd?

24 A. Yes, sir.

25 Q. This incident occurred on June 5th?

1 A. Yes, sir.

2 Q. What took place during that time frame?

3 A. Between when it happened and when I confessed?

4 Q. That's correct.

5 A. Well, it was -- the only way I can think to describe
6 it, I mean, it was, it was -- I mean, it was pure hell on
7 me. From, from the night that everything happened and the
8 next morning, you know, when I, when I was sobering up and
9 I was cleaning up, everything, I mean, I immediately knew
10 right then that what I did was wrong, very, very wrong.
11 And immediately, in my heart, I wanted to tell someone
12 right then.

13 I mean, I knew, I immediately in my head, I knew that
14 Monesha had a family. I didn't know her family at the
15 time, but I knew that she had a family, and I knew that
16 they were going to be looking for her. Like I said, I
17 wanted -- I knew I needed to tell something right -- I knew
18 I needed to tell it right away, but what kept me from that
19 was just -- there were a lot of things that kept me from
20 doing that.

21 I was, I was scared. I had just been married; I'd
22 only been married six months. I had -- we had a daughter,
23 you know? I'm not her biological father, but we were
24 married when Summer had her, and I cut her cord, you know?
25 I used to bathe her all the time and feed her. I used to

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1 rock her, rock her to sleep every night after her mother
2 fed her, got done feeding her.

3 Q. All right. So, you lost your family then?

4 A. Yes. Also, I'm not afraid to sit here and say that
5 I'm a God-fearing man, a Christian man. I had been clean
6 off of crack for right at two years at that point. That
7 was the longest time that I'd ever been clean in my life.
8 Part of that I owe to getting saved. Summer and I were in
9 the church; we never missed a Sunday or Wednesday. Our
10 second date was me picking her up and taking her to church.

11 Q. All right. Let's, let's stick back with -- so, this
12 incident happened on June 5th, and then you finally
13 confessed on July 23rd?

14 A. Yes.

15 Q. And did you go to the police any time in between?

16 A. No, sir.

17 Q. Did you leave and go back to Texas?

18 A. No, sir. Like I said, Mr. Blake, I knew that what I
19 did was wrong, and in my heart I knew that it needed to
20 come out. I knew that it needed to come out, but I just
21 couldn't bring myself to do it because of, of my family.

22 And I, what I was about to say a while ago was we also
23 had a church family, and I was worried about what -- how it
24 would affect the church that I was going to as well. I was
25 a greeter at that church. I had a son. I've got a three-

1 and-a-half year old son. That, that's part of what kept me
2 clean that's -- for that two years. I was just -- there
3 was so many things going through my head as, as far as when
4 this comes out, you know, what's, what's going to happen to
5 my wife and my daughter.

6 I knew, I knew the night that it happened, the morning
7 that it happened, I knew that it was going to come out. I
8 knew in my heart that it was going to come out, and that
9 was, that was something that kept me, something just kept
10 me here, you know, for six weeks. I, I could have, I could
11 have went back to Texas. I could have ran. My mother even
12 made the comment, you know. If, son, if you would have
13 went back to Texas it might, might just be a cold case, you
14 know, and you might have got away with it.

15 Q. This was sometime later?

16 A. Yeah, that was, that was after I was arrested. My
17 mother came to visit me, but ---

18 Q. But you did clean up? You cleaned up?

19 A. Yes. Well ---

20 Q. You cleaned up the mess?

21 A. Yes, sir.

22 Q. You put her in a barrel?

23 A. Yes, sir.

24 Q. You dropped the barrel off in the woods?

25 A. Yes, sir.

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1 Q. Tell us about the clean up.

2 A. The, the -- like, the majority of the blood was in the
3 kitchen. That's where, that's where the major struggle
4 took place was in the kitchen. It was like Summer said.
5 It was almost all in the floor. There might -- I may have
6 tracked just a little bit of blood onto the carpet in the
7 living room the night before when there was still blood in
8 the floor and I was ---

9 Q. What did you use to clean up?

10 A. I used bleach and towels and towels, just towels and
11 rags, and I had gotten some stuff from the Dollar Store,
12 some carpet stain cleaner. There were just a few little
13 dots on the carpet in the living room.

14 Q. Y'all had a roommate at that trailer?

15 A. Yes, sir.

16 Q. What was his name?

17 A. Jimmy Daniels.

18 Q. Was he away during this time?

19 A. Yes, he had taken some vacation days, and he's from,
20 he's from up around Asheville, North Carolina. He had gone
21 home.

22 Q. Okay. When did he return?

23 A. He was coming back home that Sunday night. Everything
24 happened on a Saturday night. He was coming back home the
25 very next night.

1 Q. Okay. So, you had less than twenty-four hours to
2 clean up?

3 A. Yes.

4 Q. And also dispose of the body, which is what you did,
5 right?

6 A. Yes.

7 Q. Okay. Why did you dispose of the body? Why did you
8 put her in a barrel and drop her in the woods?

9 A. Just -- I mean, after it happened I just, I -- like I
10 said, I was afraid of what, what was going to become of my,
11 my whole life and I just knew that I -- I just decided, you
12 know, I've got to go ahead, and this has already happened.
13 I've got to go ahead and, and try to cover it up.

14 I wasn't thinking really rationally at the time. I
15 mean, there was so much going through my mind. I just, I
16 thought, you know, I've got to cover it up. I've got to
17 try to make it go away. I ---

18 Q. You were trying to make it go away?

19 A. Trying to make it go away, you know. Just ---

20 Q. How do you feel?

21 A. I ---

22 Q. How do you feel about all that now?

23 A. I'm devastated; I've been devastated for eighteen
24 months. I've cried myself to sleep almost every night and
25 woke up every morning crying. I pray for Monesha's family.

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1 Every day, every single day I've prayed for her. I've
2 prayed for her family before I even pray for my mother and
3 my wife and children. I pray for God to heal her family,
4 bring them some comfort and peace.

5 I just, I cry a lot. I've been, I've been extremely
6 suicidal many times. I've been -- and I'm not just saying
7 that. I've truly, truly been on the verge of taking my own
8 life at least five times to where I was just curled up in a
9 ball in the fetal position, you know, in my cell just
10 crying, just...

11 Q. Did you start to see a psychiatrist?

12 A. Yes.

13 Q. Who's that?

14 A. His name is Dr. James Gibbs, Tri-County.

15 Q. Is he here in the courtroom?

16 A. Yes, sir.

17 Q. Is that the gentleman sitting over there?

18 A. It is.

19 Q. All right. I know this is tough for you, but we got
20 some things to cover. This happened back on June 5th. The
21 confession's on July 23rd, and was the event something you
22 just put out of your mind?

23 A. No, sir. I relived it every single day for six weeks.
24 I tried to rationalize something that was totally
25 irrational every single day. I mean, I had to, I had to

1 wake up and look at, like I said, look at my wife and my
2 daughter, and I had every day in my head was what I had
3 done. And I had to try to act normal around my wife and my
4 daughter and the people that I worked with.

5 Q. But she discovered the wound?

6 A. Yes. Yeah.

7 Q. And you tried to hide it from her in the beginning?

8 A. No, not really. Not, not really I wasn't. We had
9 gotten in an argument on the way home from Florence from
10 the airport and ---

11 Q. Because of the beer bottles?

12 A. Yes, and our daughter was crying and Summer was
13 driving, and I actually turned around and stopped, tried to
14 get our daughter to stop crying, and I, I guess Summer
15 doesn't remember it or whatever, but she hit me right in
16 the side. She hit me real hard in the side.

17 Q. You just pointed to your right side above the belt
18 line. Is that where the wound was?

19 A. Yes, sir.

20 Q. Why did you not go to the hospital?

21 A. It was part of trying to hide everything, you know?
22 Just part of trying to hide everything. I didn't want to
23 draw attention.

24 Q. You tried to hide it from your wife, too, didn't you?

25 A. Yes, sir, I lied, told her a whole bunch of lies.

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1 I've never been a good liar either. You know, my lies were
2 just crumbling around me. She was slowly, she was -- the
3 lies were falling apart, you know? I've never ever been a
4 good liar my whole life.

5 Q. In fact, your initial interview with Larry Turner at
6 the Bennettsville Police Department on July 21st, you lied
7 to him?

8 A. Yes, and that was just, just purely out of fear. I, I
9 -- it was on the tip of my tongue that night. I -- when
10 they came and knocked on, on my door that night, that was
11 something that I had envisioned happening that whole six
12 weeks. Like I said, I was living in fear and worry and
13 stress every single day. I -- it happened just like I had
14 pictured it in my head. I knew that there was going to be
15 a knock on my door. I knew it in my heart that one day
16 there was going to be a knock on my door, and I was going
17 to look out there and there were going to be some
18 detectives, and that's exactly how it happened.

19 And probably if you ask Mr. Turner or whoever was with
20 him, I, I bet -- I'm sure I looked like a deer caught in
21 the headlights, you know? I knew as soon as I saw, saw
22 those detectives, I was, like, this is it. You know, it's
23 done. It's out. It's coming out.

24 Q. But you did not confess on July 21st?

25 A. No, sir.

1 Q. Okay. You said that you thought about this day and
2 night during this six weeks. Did you think about the event
3 itself? Did you begin to remember things?

4 A. Yes, I did. I did. The night that everything
5 happened it was, it was all, it was all sort of a blur.
6 But as, as the time progressed, you know, seven or eight
7 days later, I, you know, I started remembering a little
8 better detail. That's when I remembered that, about
9 Monesha saying if you'll just let me go, I won't tell
10 anybody. I didn't, didn't really remember her saying that
11 the night that it happened. But, you know, like I said,
12 after seven or eight days of just dwelling on it and
13 thinking about it every single day, you know, like I said,
14 things started coming back to me a little bit, and that's,
15 that's when I remembered her saying that.

16 Q. All right. So, on July 23rd, you participated in two
17 interviews?

18 A. Yes.

19 Q. The first interview there with -- at the Sumter
20 Sheriff's Office there, was Lieutenant Turner and
21 Investigator Feldner there?

22 A. Yes, sir.

23 Q. And I think we've already had testimony that started
24 out denying on it the 23rd?

25 A. Yes, I did.

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1 Q. How long did that go on for?

2 A. Not very long at all. It, it partly happened just
3 like, kind of like Mr. Feldner said. He -- they got me in
4 there, and they asked me a couple questions, and I denied
5 them. And then after a couple questions, Mr. Feldner did
6 say something to the effect of John, you and I both know
7 what happened. I can't remember his exact words, but it
8 was something to that effect, you and I both know what
9 happened. You need to go ahead and just tell us the truth
10 so that Monesha's family, you know, will have, have some
11 closure.

12 And as soon as he said that, I mean, that was all it
13 took. Man, it just -- I had been holding it back for so
14 long, man, it was just like a dam burst inside of me, you
15 know, and it was just -- and he was right. I said -- I
16 remember telling him I need -- this is what I said. I said
17 I need to tell y'all that she's not alive and then I just
18 began to cry, you know? I just begin to cry a lot. I was,
19 I was -- I would call it semi-hysterical almost, you know,
20 just sobbing and crying.

21 Q. So, we were able to watch the second interview on July
22 23rd, which was video recorded, but the first one was not?

23 A. Right.

24 Q. So, in contrast to the one that we did see, you
25 describing your being upset, how does that compare to the

1 second interview that was video recorded?

2 A. I mean, like I said, I was, I was -- I can only think,
3 the only words I can think of is semi-hysterical. I, I --
4 Lieutenant or Detective Turner, I -- it was to the point
5 where he, he did reach out and hold my hand. He took ahold
6 of my hand, and he actually held my hand for about two good
7 minutes or so, a minute and a half or two minutes, and he
8 was telling me, he was telling me -- he told me, like, two
9 or three times. He said John, it's going to be okay. He
10 said something like you got a long road ahead of you, you
11 know, but you're doing the right thing, and he held my hand
12 for a good two minutes.

13 Also, Lieutenant or Detective Feldner, Shawn Feldner,
14 he's -- we had a pretrial motion, a hearing here back in
15 October about the third week of October, and anybody who
16 can read those transcripts will see that, that he said,
17 sitting right here in this chair ---

18 MR. DANIEL: Objection, Your Honor.

19 THE COURT: Sustained.

20 BY MR. BLAKE:

21 Q. So, again, two different detectives ---

22 A. Excuse me.

23 Q. --- on July 23rd.

24 A. Yes.

25 Q. The first one not videotaped and, of course, we have

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1 Investigator Feldner's testimony about what happened there.

2 A. Yes.

3 Q. Okay, and then we have the video recording which was
4 the second one?

5 A. Yes.

6 Q. What happened in between those two interviews?

7 A. I was -- excuse me. I was -- excuse me. I was
8 handcuffed and put into the back of Mr. Feldner's truck.
9 We rode from Sumter to, to -- back to Bennettsville. That
10 was just -- I mean, it was, it was like I was just -- and I
11 took them to, to where I had put Monesha. I took them to
12 the spot where I had taken her. It was, it was a lot of
13 time for me to sit back there and reflect and then just,
14 you know, between the first interview and the second
15 interview, so, so many things were going through my head.

16 I mean, my life was over at that point. In my head my
17 life was over. My wife and daughter, you know, my wife was
18 going to be devastated. I was thinking -- so much was
19 going through my head. Again, my church family, you know,
20 the people that I cared about, I thought about what they --
21 you know, just so many things were going through my head.

22 Q. So, do you have any idea of the time frame between the
23 interview in Sumter and the second videotaped interview
24 here in Marlboro County?

25 A. I mean, you know, two and a half hours, maybe two

1 hours and fifteen minutes, two hours and thirty minutes
2 maybe.

3 Q. Going back to that first interview on July 23rd, you
4 said you were very upset. I think the word was
5 semi-hysterical or something?

6 A. I would, I would say so.

7 Q. Okay.

8 A. I would have said so.

9 Q. Was the content of what you said in the first
10 interview, did it change in the second interview?

11 A. No, it's never changed.

12 Q. Can we rely on what you said in the second interview?

13 A. Yeah.

14 Q. On July 23rd?

15 A. Yes, sir. I mean, we ---

16 Q. You acknowledge you lied on July 21st?

17 A. Yes.

18 Q. Still covering up?

19 A. Yes.

20 Q. In fact, you were still covering up at the beginning
21 of the first interview on July 23rd, correct?

22 A. Yes, sir.

23 Q. On July 21st, the videotape with the police, you did
24 not tell them the truth?

25 A. No, sir.

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1 Q. At the beginning of the initial interview on July
2 23rd, you did not tell them the truth until Investigator
3 Feldner confronted you?

4 A. Yes, sir.

5 Q. At which point, I think you said that the dam broke or
6 something. Okay, but the content of what you said in the
7 first interview on July 23rd and the second interview is
8 pretty much the same?

9 A. Probably, probably almost, you know, almost exactly.
10 I'm sure I -- you know, a little bit of the first
11 interview, I was crying so much and things were just coming
12 out, you know? I can't remember exactly what I, exactly,
13 exactly what I said the first interview. But it -- I -- it
14 was definitely very similar to, to, to what I said in the
15 second interview.

16 Q. So, the second interview is accurate?

17 A. Yes.

18 Q. Now, what was your state or mood when you did the
19 second interview, the one that was recorded?

20 A. It's just, it was, like I said, it was all over. I
21 mean it, it was out -- the moment that I, the moment that
22 it came out there was a, there was the -- there was a
23 feeling of relief at, at ---

24 Q. You talking about that first interview now?

25 A. Yeah, when it first came out, and -- but immediately,

1 immediately after that feeling of relief, I took on a whole
2 new burden, you know, immediately, and it even felt like
3 an, you know, an even heavier -- at least as heavy. You
4 know, it was ---

5 Q. I'm really asking questions about the second
6 interview.

7 A. Yeah.

8 Q. What was your mood like in the second interview?

9 A. I was ---

10 Q. How were you doing at that point?

11 A. I was not doing well at all. I was, I was -- it was
12 all I could do just to go through that interview. I, I did
13 it because I wanted to cooperate. I was doing what the
14 detectives asked me to do. It was very hard for me. It
15 was almost like I had to, I had to force myself to go
16 through it. It was like I was, almost like I was, I was
17 just withdrawing inside of myself, and it was just like I
18 wasn't really even there. I was sitting there and I was
19 telling them what happened, but ---

20 Q. Had that day been exhausting for you?

21 A. Very much so. Very much so.

22 Q. Why is that?

23 A. Man, six, six weeks. I mean, the -- what happened
24 was, was the most, the terrible most, the terrible thing,
25 you know, a person could ever experience that night, and

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1 then from covering it up and living that six weeks thinking
2 about it every day, and then for it to come out, finally
3 come out like I knew it was going to come out. I knew -- I
4 had no doubt in my mind that it was going to eventually
5 come out, you know, and I just, I was in shock sort of.
6 It's just -- it was, it was, it was hard. It was hard to
7 sit there and, and go over it another time, you know, with
8 them ---

9 Q. Okay.

10 A. --- after.

11 Q. So, basically, as I understand it, three interviews
12 with the police. Again, July 21st recorded. You're
13 covering up. Beginning of July 23rd, the first interview,
14 you're covering up. And how long did it take for you
15 actually to tell the truth there in that first interview on
16 July 23rd?

17 A. Oh, man, it was, it was real quick, Dan. Shoot, I
18 would say less than five minutes, you know? Three or four
19 minutes. Maybe they asked me a couple of questions, two or
20 three questions and I, I lied. And immediately, I mean,
21 everybody just got quiet, and that's when Mr. Feldner said
22 what he said, and when he said what he said, that just ---

23 Q. All right. Well, in that -- both of those interviews
24 on July 23rd, you were describing what happened that night.

25 A. Yes, sir.

1 Q. And I think it was, you just told us you spent those
2 six weeks thinking about it?

3 A. Yes, every single day. Night and day.

4 Q. And I believe you said you began to remember more
5 after about seven or eight days?

6 A. Yeah. Yes.

7 Q. Okay, but let's now go back to -- I think I'd like to
8 start and not take a lot of time, but your wife left and
9 went to California?

10 A. Yes.

11 Q. Okay, and during that time frame, were you working?

12 A. Yes.

13 Q. Okay, and what happened -- what were you doing at
14 night?

15 A. Drinking and ---

16 Q. She said two bags of beer bottles?

17 A. Yeah.

18 Q. A lot of ---

19 A. A lot of beer.

20 Q. --- beer?

21 A. Yes, sir. Yeah, and I, I -- the night she left, you
22 know, Sunday night or Sunday -- she left Sunday morning and
23 that night I, I got drunk and I went looking for some crack
24 that very same night, you know?

25 Q. Let me, let me jump in here just to clarify some.

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1 Your wife didn't remember exactly those dates. So, this
2 happened on June the 5th?

3 A. Yes.

4 Q. When did she return?

5 A. Tuesday. It was a Tuesday, June the 8th, three days.

6 Q. Okay. That was June the 8th that you picked her up at
7 the airport?

8 A. Yes, sir.

9 Q. And what time?

10 A. I'd say 9:30.

11 Q. In the evening?

12 A. In the evening, yes, p.m.

13 Q. And -- okay, and this happened. Now, these things are
14 always complicated to talk about the date because they're
15 often happening around the midnight hour. So, was it June
16 4th to 5th, or June 5th to 6th?

17 A. Let's see. Tuesday was an 8th. Tuesday, 7th.
18 Monday, 6th. Sunday. It was the night that, that -- when
19 everything happened was the Saturday night of June the 4th.

20 Q. So, June the 4th to ---

21 A. To the morning hours of the 5th.

22 Q. --- the morning hours of the 5th?

23 A. Yes, sir.

24 Q. Okay. So, it was essentially you're saying Saturday
25 night?

1 A. Yes, sir.

2 Q. And your roommate, he -- just describe that situation.
3 Where did he stay in the trailer?

4 A. To the very opposite end of the trailer. There was
5 another bedroom and a small bathroom that he -- well, that
6 was his end, his end of the trailer, and we had our end of
7 the trailer, you know, and we shared the kitchen and the
8 living room.

9 Q. Okay.

10 A. They were at opposite ends of the trailer.

11 Q. And he came back on Sunday night?

12 A. Yes, sir.

13 Q. All right. So, again, you had essentially Sunday day
14 to clean up and dispose of the body itself?

15 A. Yes, sir.

16 Q. And your wife came home, you said, Tuesday night the
17 8th?

18 A. Yes, sir.

19 Q. So, you had one day in between that?

20 A. Yes.

21 Q. Okay. All right. I'm sorry. I just wanted to kind
22 of try and clarify that a little bit. So, your wife came
23 back on the 8th, and you said she left when?

24 A. Ten days prior to that. It was in the end of July.

25 It was whatever that holiday is. Is it ---

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- 1 Q. Not in July. This is ---
- 2 A. I mean, I mean, not July. I mean, May, June, whatever
- 3 the holiday is the end of June. Is it Labor Day or is it
- 4 Memorial Day? It was that ---
- 5 Q. Memorial Day at the end of May.
- 6 A. Yeah, I believe it was that weekend that she, that she
- 7 -- it was that weekend that she left on a Sunday because I
- 8 was off that next Monday. It was, I think, you know, we
- 9 were off on Memorial Day.
- 10 Q. Okay. Just move along here. So, you're off the
- 11 Monday and then you went to work on Tuesday?
- 12 A. Yes, sir.
- 13 Q. Okay. You dropped her off what time Sunday night?
- 14 A. At -- it was Sunday morning early.
- 15 Q. Sunday morning early?
- 16 A. Yeah, like 4:30 a.m.
- 17 Q. Okay. So, you had essentially Sunday and Monday
- 18 before you went back to work?
- 19 A. Yes.
- 20 Q. What did you do with that time?
- 21 A. I dropped her off and I drove home, and I went to
- 22 church and immediately after leaving church, I'd already
- 23 made up my mind that I was going to go get a case of beer.
- 24 I was by myself and I, you know, I just, I just thought,
- 25 you know, hey, she's gone. I'm going to have a little

1 relief or whatever. I've been working hard.

2 I -- the, the -- I left church and I drove to, to
3 Rockingham and got a case of beer because you can't buy
4 beer here on Sunday, and I drove home and started drinking
5 that same day.

6 Q. I'm not familiar with it, but is -- I'm older and when
7 I think of beer, I think of a six pack. But what's the
8 number that you're talking about when you say a case or
9 whatever?

10 A. Twenty-four.

11 Q. Twenty-four?

12 A. Yes.

13 Q. And I understand, from what your wife said, they were
14 bottles?

15 A. Yeah. I used to prefer to it out of the bottle.

16 Q. Okay. So, you had twenty-four. How many did you have
17 that, that day?

18 A. Twelve, fourteen maybe. Good half a case. Fourteen,
19 twelve, thirteen, fourteen beers.

20 Q. And you said something about trying to get some crack?

21 A. Yeah. I had driven -- yeah, I had driven -- I drove
22 into the, to that same neighborhood, you know, where I met
23 Casey and Monesha, and I didn't see Casey and Monesha that
24 night. There were a bunch of people, and nobody would
25 really -- nobody really trusted me. They were, they were

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1 all on, on the porch of this orange house over across from
2 the trailer. And I sat there and I was trying to, you
3 know, get them to trust me, and they -- seemed like
4 everywhere I've ever been people, people think I'm a cop.
5 You know, every time I've ever been to score crack, people
6 think I'm a cop. But -- so, nobody would trust me.

7 So, I sit there on this lady's porch for a little
8 while. I just, I told them who I was. That's how
9 everybody knew who I was. I told them who I was. I told
10 them, you know, I am a construction worker from Texas. You
11 know, I just want to get high. You know, come on, somebody
12 get me some dope, you know, and finally this ---

13 Q. You ---

14 A. Sir?

15 Q. At that point, you had how many beers?

16 A. About twelve, fourteen. Twelve to fourteen, yeah.

17 Q. Shouldn't have been driving, should you?

18 A. No, not at all. I was very, very -- I was drunk.

19 Q. Okay. So, you're on the porch. Go ahead.

20 A. And finally, after sitting there about six or seven
21 minutes just trying to get somebody to trust me, this young
22 man came up on a bicycle and he was, like ---

23 Q. Was this Casey McCall?

24 A. No. No, I didn't see Casey or Monesha that night. I
25 never saw Casey and Monesha until the night that everything

1 happened.

2 Q. Did you talk to Casey know before the night that all
3 this occurred?

4 A. Never. Never saw her. Never.

5 Q. But you were down in that neighborhood how many times
6 during that, I guess, this was a week?

7 A. Dan, I'm trying to say Sunday, Tuesday, Wednesday. I
8 -- four or five times.

9 Q. Okay. Well, you had Sunday and Monday off, and Sunday
10 night you were down there. Did you get any crack?

11 A. No. The young man on the bicycle came up and he, he
12 said I, I can get it for you. He said but I got to have
13 your money and, of course I, I, you know, I've had problems
14 with crack off and on my whole life. I was, like, no, man.
15 I'm not going to give you my money. You know, I'm, you
16 know ---

17 Q. Been down that road before?

18 A. Yeah, and we, we tussled back and forth, you know?

19 Q. In ---

20 A. In conversation.

21 Q. Verbally?

22 A. Verbally. Yes, it was, like, no, man. I'm not going
23 to give you my money. He was, like, man, I got to have the
24 money if you want the dope and I was, like, no, man. He
25 was, like, I've got -- and finally my, my want to get high

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1 overrode my want to hang on to my money, and I gave the
2 young man my money, and he rode off on his bicycle. It was
3 \$200. He rode off on his bicycle and didn't come back, you
4 know?

5 I sat there for about ten minutes and after about,
6 about five minutes I knew what had happened, and I told
7 everybody on his porch. I was, like, he ain't coming back,
8 is he, and they were all just kind of, you know, hung their
9 head and just, you know -- and I sit there about another
10 five minutes waiting on him and just hoping beyond hope
11 that he would come back, and he didn't.

12 Q. Didn't, didn't that tell you something right there?

13 A. Yeah, that should have told me something, Dan, yeah.
14 I, I know that was God reaching out to me telling me man,
15 what are you doing, you know? What are you doing?

16 Q. So, that was Sunday?

17 A. Right. Yeah. Yes.

18 Q. And then you had Monday off also?

19 A. Yes.

20 Q. What did you do on Monday?

21 A. Stayed at home and licked my wounds. I don't -- I
22 didn't even ---

23 Q. That's Monday after your wife left?

24 A. Yes. Yes.

25 Q. You tried to get some crack on Sunday night?

1 A. Yes.

2 Q. Drank the beer ---

3 A. Yes.

4 Q. --- Sunday?

5 A. Yes, got ripped off.

6 Q. So, you didn't, didn't do much that Monday?

7 A. No.

8 Q. Did you go back in that neighborhood Monday?

9 A. No.

10 Q. If you don't remember, just tell us.

11 A. No, I, I -- no, I don't believe I did. I'm, I'm
12 fairly certain that I stayed home all day. I was ashamed
13 of what I had done. I was sort of hung over. I hadn't
14 drank that much beer in a while. I just kind of laid on my
15 couch, like I said, just kind of ashamed of myself.

16 Q. Okay. So, Tuesday comes and you got work?

17 A. Yes.

18 Q. Okay, and where is that exactly? Where was that?

19 A. It's outside of Hamlet up in North Carolina. Progress
20 Energy.

21 Q. Were you doing a shut down?

22 A. No, sir, it was a new construction job. We were
23 building two Hersee boilers.

24 Q. Two what?

25 A. They're heat recovery steam generator boilers. They

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1 call them Hersee.

2 Q. How big are those things?

3 A. They're, they're pretty big. They're, from the ground
4 up, they're probably about a 110 feet, you know, and ---

5 Q. Were you doing it on site?

6 A. Yes.

7 Q. Okay. You come back. What time did you get back from
8 work?

9 A. I can't remember if we were getting off at 5:00 or
10 5:30 then. 5:00 or 5:30 I got off of work that afternoon.

11 Q. What did you do when you got off of work?

12 A. Went straight to the store and got a six pack of beer.

13 Q. Did you drink it?

14 A. Of course.

15 Q. So, what had happened on the 24th?

16 A. They were at home. They were at home in the
17 refrigerator. There was about ten left, ten or eleven of
18 them left.

19 Q. Okay. So, what did you do that night?

20 A. I drank that six pack, went home, drank me a couple
21 more and got a buzz, and I went back into Bennettsville to
22 purchase some crack.

23 Q. You were able to purchase crack that night?

24 A. Yes.

25 Q. Same neighborhood?

1 A. Yes.

2 Q. That's a drug hot spot?

3 A. Yes.

4 Q. Okay. So, how much crack did you get that night?

5 A. I can't remember the exact amount, Dan. It was, it
6 was probably -- I -- sometimes I would try -- I would tell
7 myself that I'm just going to buy a little bit, you know,
8 and that's all I'm going to do. So, I think I started out
9 that night. Like, I purchased, like, maybe \$40 worth and
10 then went home and smoked that real fast and then went back
11 into, back into town.

12 Q. Back in the same -- on Tuesday night went back in
13 again?

14 A. Yeah.

15 Q. And how far is that from where you were staying out
16 towards Polk River there down into the Jennings Street
17 area? Any idea how long it takes?

18 A. Oh, I mean, it's just a few minutes.

19 Q. More than a few minutes?

20 A. I mean, it's -- excuse me.

21 Q. Do you have any idea how many miles it was?

22 A. Dan, I'm not even going to try to guesstimate. Five
23 miles, eight miles, I don't know.

24 Q. You didn't really care?

25 A. No.

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1 Q. Is that correct?

2 A. Yes.

3 Q. So, you went there two times on Tuesday night. Is
4 that correct?

5 A. Yes.

6 Q. At any time, did you -- do you remember seeing Casey
7 or Monesha?

8 A. Never.

9 Q. Did you talk to either of them?

10 A. Never.

11 Q. All right. The next day you're back at work?

12 A. Yes.

13 Q. Okay, and that Wednesday night, what did you do?

14 A. I went to church. I didn't want to go to church. I
15 called Summer and told her I wasn't feeling good. She
16 called me. I told her I wasn't feeling good. I told her I
17 thought I was just going to skip out of church. She got on
18 me. She was, like, you know, you better go to church, you
19 know?

20 Q. So ---

21 A. Sorry.

22 Q. So, you went to church Wednesday night. Was that it?

23 A. I, I drank some beer after I got out of church. I
24 drank some beer.

25 Q. You didn't go back down to Jennings Street that night?

1 A. I don't think so, Dan.

2 Q. Thursday night or Thursday day you worked?

3 A. Yes.

4 Q. Thursday night, any idea, idea around when you got
5 off?

6 A. I got off -- that was pay day.

7 Q. Okay.

8 A. I got off of work and I drove into Rockingham. Again,
9 Summer called me and told me, you know, to get the rent
10 money at -- you know, the rent was due. She told me I
11 needed to pay the rent and the cell phone bill. So, I got
12 off of work and I drove into Rockingham, and I withdrew
13 \$900.

14 Q. So, this was around the first of June?

15 A. I suppose ---

16 Q. Around some ---

17 A. Thursday. It was that Thursday.

18 Q. You withdrew \$900?

19 A. Yeah.

20 Q. Is that from the ATM?

21 A. No, drive-through at the bank.

22 Q. Okay. Did you pay those bills?

23 A. I -- later on that week I, I got a -- this Saturday
24 that everything happened, I had drove into Bennettsville
25 and got a money order for the rent. I had spent the money

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1 for the cell phone bill, but I, I made sure that I got the
2 receipt -- I mean, the money order for the rent.

3 Q. So, you got the rent paid?

4 A. That ---

5 Q. Got a money order?

6 A. Well, I got the money order. That was, that was
7 Saturday, though. That wasn't Thursday.

8 Q. Right, and you didn't have any idea how much the cell
9 phone bill was?

10 A. A hundred, a \$140 or something.

11 Q. But you did not pay that?

12 A. No.

13 Q. Okay. So, we're on Thursday. This is Thursday night
14 when you cashed your pay check and you said you got \$900?

15 A. Yeah.

16 Q. Okay. What did you do with the rest of Thursday
17 night?

18 A. Well, right after I got the \$900, I was -- I, you
19 know, I -- after going to church Wednesday night I, I had
20 told myself that I wasn't going to get anymore crack, that
21 I was done smoking crack, you know, and -- but I, I don't
22 know. I was just, I was feeling kind of -- I was feeling
23 better that afternoon. I was feeling kind of happy and
24 happier than I had the whole week, and I stopped -- I mean,
25 immediately after I got the \$900, again I stopped at the

1 store and got a six pack of beer. Started drinking again.

2 Q. Did you go into Bennettsville that day, that night?

3 A. Well, I know I keep talking about the church, but the
4 church was having a barbecue. They were cooking barbecue
5 and having a sale. My intention was to go to the church
6 and help them that night and I -- but I started drinking,
7 and I stopped at this station, this gas station. I don't
8 remember if I -- it wasn't on, wasn't on Highway 1. It
9 was, it was -- it's right outside of Bennettsville and I
10 guess kind of outside of Wallace. It's just a gas station
11 out there in between Rockingham and Bennettsville, and I
12 was already drinking.

13 And when I pulled up at that station, it was a crazy
14 coincidence, but one of the men that I had bought crack
15 with -- from was actually at that station getting gas, and
16 I had already drank, like, four beers. Already had a
17 little buzz, and as soon as I saw him, he was, like, oh,
18 man. I got some good stuff, you know? Got -- man, I got
19 the good stuff. Like I said, I already had me a little
20 buzz, man. So, I was like, yo, man, give me a \$100, you
21 know?

22 Q. You keep describing drinking beer and then going and
23 getting crack.

24 A. Yeah.

25 Q. Is that sort of how it works?

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- 1 A. That's how it's worked my whole life, Dan. It always
2 -- you know, I've had substance, substance abuse problems
3 since I was twelve years old, you know?
- 4 Q. All right.
- 5 A. Off and on.
- 6 Q. Got you. Talking about Friday night now or Friday day
7 you went to work. Is that right or not?
- 8 A. Friday day, yes, I went to work.
- 9 Q. Okay. Friday night.
- 10 A. Drinking. Drinking. I smoked a little bit of crack
11 Friday. Oh, no, no, that -- no, I didn't. That ---
- 12 Q. It's hard to tell?
- 13 A. No, I know what I did. It just, I mean, it just
14 sounds so crazy, you know, me sitting here talking about
15 smoking crack.
- 16 Q. Well, you're telling the truth.
- 17 A. Friday ---
- 18 Q. So, tell me what happened ---
- 19 A. Friday ---
- 20 Q. --- on Friday night.
- 21 A. I was, I was scheduled to go inside Kershaw prison.
- 22 Q. Did you go?
- 23 A. Yeah, I was, I was -- I was asked to start doing a
24 prison ministry with a man named John Gordon from our
25 church, and ---

1 Q. All right. So, Friday night you go to Kershaw prison
2 and ---

3 A. Share my testimony with the men.

4 Q. --- you gave that testimony and that testimony was
5 about what?

6 A. My, my getting ---

7 Q. Your recovery?

8 A. Yeah, yeah, my, my, my -- I mean, just when I gave my
9 life to the Lord in April of 2007 it, it was just -- it
10 was, it was, like, an amazing event. I mean, it was a
11 powerful. I just have a powerful testimony.

12 Q. I don't want to go into all that.

13 A. No.

14 Q. I just want to know ---

15 A. Yeah.

16 Q. --- about Friday night at Kershaw prison.

17 A. That's it.

18 Q. Did you speak to the men there?

19 A. Yes, I did.

20 Q. Okay. Did you tell them it was all better?

21 A. Yes.

22 Q. Okay, but that was actually in the middle of a crack
23 rave, correct?

24 A. Yes, sir.

25 Q. Okay. Did you go and get any crack that Friday night?

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1 A. No, I went home.

2 Q. All right. Saturday, were you working?

3 A. No.

4 Q. Didn't work?

5 A. No.

6 Q. Okay. What time you get up Saturday?

7 A. Summer called me about, about 10:30. I was laying --
8 I was asleep on the couch.

9 Q. Okay.

10 A. Sir?

11 Q. So, she called you at 10:30 and ---

12 A. Yes.

13 Q. And briefly just tell us about the day.

14 A. She asked me if I had gotten the money order for the
15 rent, and I said no and ---

16 Q. Did you hear about it?

17 A. Of course, yeah. You need to go do that, and I told
18 her okay, you know, okay, I'll go get it.

19 Q. Did you?

20 A. Yeah.

21 Q. Okay. All right. So, that, that took you to downtown
22 Bennettsville. Where did you get the money order?

23 A. I think it's an Exxon station over across from Bi-Lo
24 where all Walgreen's and the Huddle House and all that is.

25 Q. Okay. So, what happened the rest of the day there

1 from that point on?

2 A. I got the money order receipt, and I really wasn't
3 planning on drinking that day, and I went to Bi-Lo to get
4 something for dinner, and I was walking by the beer cooler
5 and I just happened to look over and, you know, it was an
6 eighteen pack of Bud Lite that was on sale for \$11. And,
7 so ---

8 Q. So, you bought the beer?

9 A. I bought the beer, yes.

10 Q. Bought the beer and you said that was an eighteen
11 pack?

12 A. Yes.

13 Q. All right. You took it home?

14 A. Yes.

15 Q. What did you do with it?

16 A. Started drinking it.

17 Q. How many did you drink?

18 A. Eight, or nine, ten.

19 Q. What kind of time frame? When did you start? When
20 did you stop?

21 A. 12:30 that afternoon. 6:30 or 7:00 that evening.
22 6:30, 7:00.

23 Q. Okay. Where did you go after that?

24 A. In Bennettsville to get some crack.

25 Q. Okay. Did you get some?

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1 A. Yes. That was when I met Casey and Monesha.

2 Q. Okay. That was the Jennings Street area, Amelia
3 Street, and you had drove in to Bennettsville. You just
4 had one vehicle, right?

5 A. Yes.

6 Q. So, you drove in there with your truck?

7 A. Yes, sir.

8 Q. Okay, but you'd already been in that neighborhood with
9 your truck before?

10 A. Yes, several times.

11 Q. Okay, and I think you actually said that first night.
12 Was that Sunday night was the first night that you went to
13 Jennings Street?

14 A. Yes, sir.

15 Q. Is that when you sat on the porch?

16 A. Yes.

17 Q. How long were you on the porch?

18 A. Like I said, about ten or twelve minutes, fifteen
19 minutes tops.

20 Q. And then five minutes or whatever time you dealt with
21 the guy that got your money?

22 A. Yes.

23 Q. Okay. So, I'm sorry. What time did you drive down
24 there again on Saturday night more or less?

25 A. It was that evening. It was getting on close to dark,

1 you know, 7:45, 8:00.

2 Q. Okay, and you had had eight or nine beers I think you
3 just said?

4 A. Yes.

5 Q. At one time?

6 A. Yeah.

7 Q. All right. So, you pull up in neighborhood, and,
8 again, just to make sure. We talked about this several
9 times, but had you met Casey before?

10 A. Never.

11 Q. Had you spoken to Casey before?

12 A. Never saw him in my life, Dan.

13 Q. Why hadn't you -- did you notice him in that
14 neighborhood or ---

15 A. No.

16 Q. Hadn't noticed him?

17 A. No.

18 Q. Don't know if you -- did you know if he was there or
19 not?

20 A. No. I've never, never seen him. Never noticed him.
21 Never saw his face before. Never talked to him.

22 Q. Had not talked to him?

23 A. No, nothing.

24 Q. How about Monesha?

25 A. No, I'd never seen her ever.

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1 Q. Why were you down in that neighborhood on that
2 evening, that Saturday night?

3 A. Get some more crack.

4 Q. Give some more money away. So, you're there and
5 you're saying it's around close to dark I think you said?

6 A. It's getting on, yeah.

7 Q. Okay. So, tell us what happened from there.

8 A. Well, I mean, it's kind of odd looking back on it.
9 After hearing what I heard yesterday, it was pretty much as
10 soon as -- I mean, as soon as my truck stopped, it was a
11 group of guys come around the truck. Casey was one of
12 them, and immediately he just jumped into my passenger
13 side. He said yo, man, what you need.

14 Q. Did you have a conversation before?

15 A. No, not at all.

16 Q. Did you -- so, you stopped?

17 A. Yes.

18 Q. And he's in your front seat?

19 A. Yes. Well, almost immediately.

20 Q. Okay. Then he said what do you need?

21 A. Yes.

22 Q. What happened next?

23 A. I was talking to him and, I mean, six or eight seconds
24 after he jumped in, I mean, it was almost right after he
25 jumped in Monesha came and jumped in the back seat behind

1 me. And as soon as she jumped in, immediately I turned
2 around and I told her, I said hey. I said I don't need any
3 company; I said I don't want any company. I said you need
4 to get out, and Casey said no, no, man, she's with me.
5 Man, she's with me. She's cool. And when he said that, I
6 just went back to dealing with him and left her alone in
7 the back seat.

8 Q. You're telling this in more detail than you did on the
9 confession of July 23rd of the videotape.

10 A. Oh, yeah.

11 Q. How's that?

12 A. I mean, I've had eighteen months to sit. I'm not as
13 upset. I mean, I'm still upset over it, but I'm not in the
14 same state, frame of mind I was that day that all that
15 happened, that everything came out. I'm not in the same
16 frame of mind at all.

17 Q. Well ---

18 A. That day, that day that everything came out was just a
19 devastating day. I wasn't, I wasn't, wasn't myself at all,
20 you know?

21 Q. Were you trying to hide anything on July 23rd?

22 A. Nothing. Nothing. If there was anything, I was very
23 honest. I was very, very, very honest, very open, very
24 candid. I wanted to tell somebody. I had wanted to tell
25 somebody for six weeks every day.

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1 Q. So, you kind of, you told them, but didn't have every
2 -- all the details of it?

3 A. No. There was, there was one, one detail that I had
4 heard actually in a confession that, that wasn't, wasn't
5 right. It was the only thing I heard that wasn't exactly
6 right.

7 Q. What was that?

8 A. It's toward the end of the confession when Mr. Feldner
9 asked me, or I don't remember if it was Larry or Mr.
10 Feldner asked me how much crack I had got that night, and I
11 said something about the first 40. I had forgotten about
12 the first \$40, and I said that I got it before I started
13 dealing with Casey. But actually, Casey got, actually got
14 me that \$40 that night. Casey got me ---

15 Q. Did you do a deal with him so he could get some money?

16 A. No, I didn't tell him that.

17 Q. You say -- I don't know how long you've had a crack
18 addiction, but you've had a lot of history with interacting
19 with people selling it?

20 A. Yes.

21 Q. And I guess sometimes they kind of, you give them the
22 money, they go get it, or something like that?

23 A. Yeah.

24 Q. Okay. So, were you in the habit of doing what you did
25 that first Sunday night, giving him money and ---

1 A. Like, yeah. I've been ripped off quite a few times.
2 I mean, like I said, I, I've never really been, been
3 trusted, you know? I'm -- when I come into the
4 neighborhood, I have, I have to -- it ends up being me
5 having to, you know, ending up trusting somebody, you know?
6 Just anybody who will go finally decide to trust me enough
7 to go get the dope for me.

8 Q. So, when you had that initial conversation with Casey,
9 how did that -- what was how -- did that go? I mean, sort
10 of ---

11 A. It was just really quick. He said, he said what do
12 you need, you know, and I said man, I'm looking for some
13 hard -- that's what they call crack. They call it hard.
14 Powder, they call it soft. And he said how much. And I
15 said man, 40. I said man, can you get me 40. He said
16 yeah, man, give me your money, man, and I handed him the
17 money and ---

18 Q. How much did you hand him?

19 A. \$40.

20 Q. Not 70?

21 A. 70? No, no, 40. And the men, I guess the men that,
22 that were with him were the crack dealers. Like I said,
23 there was three, three more of them that came up with Casey
24 on this side of my truck, and then there was a couple, two
25 more on the front of my truck. But when I gave Casey the

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1 \$40, a couple of those men came around and he just opened
2 the door and he leaned out and, you know, got the crack.

3 Q. Okay.

4 A. Gave it to me.

5 Q. So, at this point it's you, Monesha, and Casey?

6 A. Yes, sir.

7 Q. All three in the truck?

8 A. Yes, sir.

9 Q. What do you do? Where do you go?

10 A. I mean, immediately I want to hit a crack. You know,
11 as soon as I get it, I'm already fiending for it and I just
12 started driving, you know? I started driving with my knee
13 at first and I opened one of the bags, baggies, and put a
14 piece of crack on my pipe and I, I hit my pipe, you know,
15 just going down the road, you know, and ---

16 Q. Were you the only one smoking?

17 A. No, all three of us were. I shared, I shared with
18 all, shared with both of them.

19 Q. All three of you were smoking crack?

20 A. Yeah. We were all using my pipe.

21 Q. Is that how that works, you use a pipe?

22 A. Yes.

23 Q. So, what, what does it look -- is it like to smoke
24 tobacco in or what?

25 A. No. It's straight, long, glass. Just one straight

1 piece of glass and you put, put brillo in it, set the crack
2 on the brillo. They call it a stem.

3 Q. A stem?

4 A. Uh-huh.

5 Q. And you used what, a lighter or something?

6 A. Yes, sir.

7 Q. Okay. So, you get the 40 there on Jennings Street
8 with the crack. You're driving. Do you have any idea
9 where?

10 A. No, I don't have any idea. I just went up to the end
11 of the block and took a right and ---

12 Q. How long did it take you to dispose of the first, that
13 \$40 of crack?

14 A. It didn't take very long at all, Dan. I mean, time
15 was kind of it -- it was, it was really beginning to get,
16 to get dark. By that time it was getting, starting to
17 really -- the sun was starting to really go down.

18 Q. So, Casey's in the front seat, Monesha's in the back
19 seat?

20 A. Yeah.

21 Q. Where do you go next?

22 A. I asked Casey if he could get some more and he said
23 yeah. He directed me out to Lake Paul Wallace, and we went
24 out there. I gave him \$80. Monesha and I sat in the
25 truck, waited, and he went -- there were a bunch of cars

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1 out there, people fishing and stuff, and it took him five
2 or six minutes, you know? It took him, it seemed like it
3 took him forever, but ---

4 Q. You thought maybe he'd run off with your money?

5 A. No, I knew he hadn't. I'm, I'm pretty certain he
6 hadn't run off, but I was, I was ready to do another hit,
7 you know, and he, he finally came back. He, he kind of
8 ripped me off a little bit. He -- I gave him \$80 and he
9 really only brought me back, like, about \$40 worth in a
10 cellophane, but I didn't say anything at all. You know, I
11 was high. I was just wanting to do another hit. So, I
12 mean...

13 Q. You hadn't made a deal with him for him to get your 40
14 and then he keep 40?

15 A. No.

16 Q. He was supposed to go get \$80 worth of drugs?

17 A. Yeah.

18 Q. I think you said he came back with about 40?

19 A. Yes.

20 Q. And you just sort of know that through experience?

21 A. Yes.

22 Q. Okay, and did you all three smoke the crack then?

23 A. Yes. Again, like I said, I was wanting a hit real
24 bad, and Casey, that was one thing that Casey said that was
25 true. I was wanting to hit it going down the road, and,

1 you know, I was a little paranoid. He was real paranoid,
2 and he directed me back to the neighborhood not too far ---

3 Q. Casey's, Casey's smoking at this time?

4 A. No, he, he. He was, he was pretty adamant about man,
5 man, put it down, you know, the cops will see, you know?
6 And so I, I listened to him. I mean, he was right. He was
7 right, you know, and I ended up listening to him, and I
8 just held on to the pipe and the crack, and he directed me
9 back to the neighborhood not too far from, from the
10 trailers.

11 Probably three or four blocks from the trailers,
12 there's a, there's a little bitty white abandoned house.
13 Like the trees in the yard is all grown up real high around
14 it. It's got a little drive, driveway that goes right
15 beside the house, and he directed me in there and I went --
16 I drove up all the way kind of like into the little -- the
17 woods were kind of around us, the yard and all, and we
18 parked right there and started smoking again.

19 Q. That's we?

20 A. Yes.

21 Q. All three of you?

22 A. Yes.

23 Q. Okay. Any idea how long you were in that yard smoking
24 crack?

25 A. I have no idea, man.

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1 Q. Well ---

2 A. I guess it's like \$40 worth of dope. We took maybe
3 twenty, twenty minutes, twenty-five minutes, thirty minutes
4 tops to, to smoke all that, you know, pretty much all that.
5 You know, we just sitting there smoking and talking. Yeah,
6 and at that time Monesha did, you know, make some sexual
7 over, overtures, you know, to me and Casey both. She at
8 one point, you know, she kind of put her leg up on the
9 seat, told Casey, you know, she said Casey, I want y'all
10 both to, you know, sleep with me, and I was just kind of
11 shocked a little bit.

12 I, I just kind of looked over at Casey, like, kind of
13 chuckled or whatever. I just kind of looked at him, kind
14 of smiled and chuckled, and he didn't say anything, and I
15 didn't say anything. She didn't say anything else, you
16 know? She put her leg back down and, and I did a couple
17 more hits, you know? There was probably a couple -- you
18 know, I probably took another hit, and maybe Casey took
19 another hit, and that was about it with the dope.

20 And I asked him then -- we were out again. I asked
21 him if he could get me a \$100 worth, and he said no, man.
22 He said no. He said man, I got some stuff I got to go take
23 care of, and he got out of the pickup right there.

24 And Monesha got, she, Monesha said well, I know a
25 couple places we might could get some. She crawled in the

1 front. She got around and got in the front, and ---

2 Q. I think you might need to speak up a little bit for
3 the court reporter.

4 A. Okay. Sorry. So, she said, she said she knew a
5 couple of places to go, and we went to those couple of
6 places and they wouldn't sell it to her. Again because of
7 me. And so, I decided to drive right back to that, that
8 spot, that trailer. That seemed to be where everything
9 went on. There was a lot of people always around that
10 trailer, and I had seen, I had seen this other addict.
11 When we pulled up, I saw this other addict that had, had
12 gotten me some dope earlier in that week, and I asked him
13 -- well, he, he didn't get it for me, but he went, he went
14 and brought another guy out and that guy had the dope, and
15 I asked him. I said, yo, man, where's that dude, dude you
16 were with the other day? And I said man, if you go find
17 him, I said, man, if you can get me a \$100 worth, I said
18 I'll give, I'll give you a \$20 bill, you know, if you can
19 go find this guy or get me some dope.

20 And so immediately -- he was an addict, too.
21 Immediately he went, went and found this same guy, and they
22 both got in the back of the truck, back seat of the truck,
23 and we drove up to the end of the block. We take a left
24 and go, go right up to whatever that is y'all call the
25 bypass or whatever, 15, 401 or whatever. There's a little

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1 apartment, a little apartment ---

2 Q. Okay. That's fine. Just keep moving.

3 A. --- complex there and we -- he got out and went in
4 and got the dope, and he came out and got back in the
5 truck. And the other guy was like hey, where's my \$20, and
6 I gave him his \$20, and I drove him back down the block and
7 a half or so to where I had picked him up, and they got
8 out, and I -- Monesha, I said, hey -- it was getting late.
9 It was dark by then, and I told Monesha. I said, man, I'm
10 freaking out. You know, I'm paranoid. I said I'm going,
11 I'm going home. I'm getting out of town, and she said
12 well, you mind if I hang out with you? And I was high, I
13 was high, and I just said, said I don't, I don't care.
14 Just said I don't care, and ---

15 Q. This is still, still downtown Bennettsville area more
16 or less?

17 A. Yeah, it was right ---

18 Q. Jennings Street?

19 A. Yeah, the trailer.

20 Q. Somewhere around in there?

21 A. Yes.

22 Q. Okay. So, you were, you were going -- and then you
23 were going back to your trailer. Is that right, or that's
24 where you went going directly? Where was she sitting?

25 A. In the front seat.

1 Q. Okay. At what point did she get from the back seat to
2 the front seat?

3 A. Back when we were at that white house I was telling
4 you about when Casey got out.

5 Q. All right. So, you go to your trailer. Tell us what
6 happened next.

7 A. We went in and started smoking some crack. We did a
8 couple hits of crack and ---

9 Q. Because you had just gotten the \$80?

10 A. A 100.

11 Q. Oh, you got a 100 and you gave him 20. So, you just
12 spent \$120. A \$100 was on crack?

13 A. Yes.

14 Q. Okay.

15 A. And, like I said, we did a couple of hits of crack
16 and, you know, crack is a, crack's a sexual drug. That's
17 what most people do when they smoke crack is, is, you know,
18 they smoke it and have sex or whatever, you know. And I
19 guess we both thought that that's where the evening was
20 going to go. And she, she asked me if she could take a
21 bath, and I went in there and I drew her a bath, and she
22 got into the bath. She asked me, she said you want to get
23 in, and I didn't, I didn't say no. I got into the tub with
24 her.

25 Q. Were you all naked at that point?

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1 A. Yes, and ---

2 Q. You two having sex in that tub?

3 A. No, we never did have sex, Dan. It was, it was really
4 awkward. It was just very awkward. When we got into the
5 tub together, it was just really awkward. We were both
6 real high and I, I mean, it's somewhere in my mind I guess
7 I knew I shouldn't be doing it. I wasn't supposed to be
8 doing it. It was just awkward and...

9 Q. You talked about being paranoid before. A little
10 earlier, you said you were paranoid. Were you paranoid in
11 the tub or what?

12 A. Yeah.

13 Q. I'm just asking. I ---

14 A. Yeah. I mean, I mean, yeah. I mean, yeah, probably a
15 little bit. You know, that probably had something to do
16 with it how, making it awkward.

17 Q. Okay. So, what happened next?

18 A. Now, I mean, not even, not even two minutes after we
19 got into the tub, we both decided to get out and got out,
20 dried off, put on some shorts, and ---

21 Q. Where did you go?

22 A. I went in the kitchen to get a beer.

23 Q. Okay.

24 A. And she ---

25 Q. When you, when you two first got in the trailer, and

1 you said you had a couple of hits of crack?

2 A. Yes.

3 Q. Where were you in the trailer?

4 A. In the living room.

5 Q. Okay, and you get from the entrance, which is, I
6 guess, kind of like the back door. Is that right?

7 A. Talking about the door that we come in and out of?

8 Q. In and out of.

9 A. Yes.

10 Q. That's where you parked?

11 A. Yes.

12 Q. Okay, and don't use the front door?

13 A. No, it's ---

14 Q. To get from that door where you come in and out, the
15 back door, to the living room, what do you have to go
16 through?

17 A. Got to walk up the hall like Summer said. Just walk
18 up the hall. As soon as you come in the door, you can see
19 the refrigerator, and you just walk up and there's -- it's
20 just a -- it's just a dividing wall. There's not a door.
21 You just come straight in the back door and you just walk,
22 you know, 4 and a half feet. You turn, you turn to the
23 left and you're in the kitchen and you take, you know,
24 three steps through the kitchen, and you're in the living
25 room. There's those couch and love seat and chair in

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1 there.

2 Q. Okay, let's get oriented here. State's Exhibit 4, is
3 that the front or the back of the trailer?

4 A. That's the front.

5 Q. That's the front. That shows a door there.

6 A. Yes. We, we hardly ever went in and out that door.

7 Q. Okay. Where was -- what's his name, Jimmy?

8 A. Yes.

9 Q. Where's he stay relative to that door?

10 A. On this end of the trailer.

11 Q. To the right of the, the front door, which wasn't
12 used?

13 A. Yeah, where there are no windows. It was the smallest
14 bedroom.

15 Q. Okay, and so y'all stayed at the other end of the
16 trailer?

17 A. Yes.

18 MR. BLAKE: Judge, move to publish these as, as we're
19 testifying here. Is that, is that okay?

20 THE COURT: Sir?

21 MR. BLAKE: Move to publish these.

22 THE COURT: Yes, sir.

23 BY MR. BLAKE:

24 Q. And then you describe the -- you said you could see
25 the refrigerator. This is State's Exhibit 10.

1 A. Yes.

2 Q. So, does that mean the back door is sort of back
3 behind this wall here?

4 A. Yeah. It's just about 5 feet back there, and there's
5 a washer and a dryer as you come in the front door -- I
6 mean, the back door there.

7 Q. It's pretty narrow through there?

8 A. Yeah, it's -- yeah, it's just -- I mean, it's ---

9 Q. That's where you and Monesha would have come in?

10 A. Yes.

11 Q. You said you could see the refrigerator?

12 A. Yes.

13 Q. Okay, and there's a counter right next to that
14 refrigerator. Is that right?

15 A. Yes, and, and the sink is all right there.

16 COURT REPORTER: Use the microphone, please.

17 A. Yes, and the sink, and the sink is right there.

18 Q. Okay, and it shows the stove, and could I see that
19 picture just a second? Where's the stove relative to the
20 refrigerator and the, and the -- just orient here on
21 State's Exhibit 6.

22 A. That's -- I mean, it's, it's -- like I said, it's a
23 refrigerator, and then there's just a little piece of, of
24 cabinet about a couple of feet, and then there's a double
25 sink, and then there's another probably two and a half feet

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1 of cabinet, and then it's the stove right here. You see
2 the stove, and then it -- there's another maybe two and a
3 half or three feet of cabinet and there's a bar that goes,
4 runs diagonal to it, a little short bar.

5 Q. Okay, and so there's this block of knives there next
6 to the stove?

7 A. Yes, sir. Yes, sir.

8 Q. Okay, and how, how big is that area there from you
9 walk in, you see the refrigerator, see a little bit of
10 cabinet? So, how, how wide is that -- how far is it from
11 the refrigerator just right to where the kitchen block is?

12 A. It's -- I can, I can -- I could stand there and put
13 one arm on the refrigerator, on the side of the
14 refrigerator and reach and, and touch the stove. I mean,
15 it's a small area.

16 Q. Okay.

17 A. It's real small.

18 Q. So, again looking at State's Exhibit 10, you come in
19 -- this door is -- you're looking at the photo is to the
20 right behind that. Is this sort of glass in here?

21 A. Yes, it's, it's, it's -- the whole wall there is
22 mirrors, mirror.

23 Q. Oh, it's mirror. It's not ---

24 A. It's not see through. It's a mirror.

25 Q. Okay, and so the, the, the door's right there. You

1 can see the refrigerator. How far is it from the door to
2 the refrigerator?

3 A. 7 feet, 6 and a half feet.

4 Q. Okay, and there's -- the bedroom then is back behind
5 this. Is that correct?

6 A. Yes, sir.

7 Q. And there's a door to the bedroom?

8 A. Yes.

9 Q. Okay. All right, and looking at State's Exhibit 7,
10 this appears to be a picture of the bedroom, and just tell
11 us what, what that is.

12 A. Yes. Yes, it's a -- that's a, almost a picture of the
13 whole bedroom just standing right there at the foot of the
14 bed. Probably one pace inside the door, pace and a half
15 inside the door to the bedroom just staring back at the
16 tub.

17 Q. How far is it from the -- is that the bed here in the
18 left-hand corner?

19 A. Yes.

20 Q. How far is it from the bed to the tub?

21 A. Like Mr. LaRosa said, about 5 feet.

22 Q. Okay, and there's this little partial wall. Is the
23 tub kind of right behind that in some of it?

24 A. Yes, yes. Half the tub is behind that wall there.

25 Yeah, you can't see the, you can't see the whole tub from

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1 that ---

2 Q. Okay.

3 A. --- picture.

4 Q. That was State's Exhibit 7. Here is State's Exhibit

5 5. That's -- is that what we're talking about?

6 A. Yes, sir.

7 Q. That's the tub you were in with Monesha?

8 A. Yes.

9 Q. And you're saying that -- oh, so this is the half wall
10 over here?

11 A. Yes.

12 Q. And how far is it -- you said it was 5 feet from this
13 tub to the bed?

14 A. Yes, sir.

15 Q. It's a small little area there. Looking at State's
16 Exhibit 7, is there anything -- we don't see much of the
17 bed at all.

18 A. No.

19 Q. There's a wall over to the left of this picture?

20 A. Yes.

21 Q. Does the bed go all the way to the wall?

22 A. No. Like Summer said, it's a couple feet. You can
23 sit on the edge of the bed and reach out and touch, touch
24 the wall.

25 Q. Okay. Is there any furniture around the bed?

1 A. There's a, there's a bed. There's a dresser right --
2 as soon as you walk in the bedroom door, the dresser's
3 right here on the left, and there was, like a, a little
4 tote, a little blue tote sitting there by -- there's
5 another window there on my side of the bed.

6 Q. A tote?

7 A. A tote.

8 Q. Tote?

9 A. Yeah, like -- yeah, like a tote of people store things
10 in. You buy them at Wal-Mart.

11 Q. Oh, like a plastic bin?

12 A. Plastic bin, yes.

13 Q. Okay.

14 A. And that's where I have, had the alarm clock. My
15 alarm clock was sitting right there on that tote.

16 Q. How many steps is it from the bathtub area there --
17 well, let's see. I'll get to that in a second. Okay. I
18 interrupted you. I wanted to get a little bit oriented
19 there with inside the trailer. So, I think you said that
20 you two had been in that tub for approximately two minutes?

21 A. Yes. It wasn't very long at all.

22 Q. Okay. You said you got out, dried off, put on your
23 shorts, went to the living room?

24 A. Yeah. Yeah, Monesha got out right behind me. So, I
25 started drying off, and I went in the kitchen to get a

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1 beer. I went in there and got the beer out of the
2 refrigerator and I opened it. I went and threw my cap in
3 the trash and took a long drink of my beer, and I walked
4 back toward the bedroom and that's ---

5 Q. All right. So, you were -- where were you drinking
6 the beer?

7 A. In the kitchen.

8 Q. Okay. You went to the bedroom?

9 A. Yes. Thank you.

10 MR. BLAKE: May we approach, judge?

11 THE COURT: Yes, sir.

12 (OFF-THE-RECORD BENCH CONFERENCE.)

13 THE COURT: All right, counsel, you -- I mean, after
14 conferring with counsel, and, ladies and gentlemen of the
15 jury, you've been in the courtroom now about an hour and
16 forty minutes. It's probably appropriate that we take our
17 morning break at this time. I am going to ask that you go
18 to your jury room.

19 Please do not discuss the case among yourselves. It's
20 premature for you to begin any discussions about this
21 matter in any manner whatsoever. We'll take a very short
22 break, and we'll be ready to resume shortly. Please go to
23 the jury room. Thank you.

24 (THE JURY EXITS AT 11:10 A.M.)

25 THE COURT: All right, Mr. Hogan, you may step down.

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1 I would tell you that while you're on the stand, it would
2 be improper for you to discuss this matter with your
3 attorney in any matter whatsoever during the recess or to
4 talk with anybody else about this matter whatsoever during
5 the -- during this ten minute recess. Thank you.

6 WITNESS: Yes, sir.

7 THE COURT: All right, we'll take ten minutes,
8 counsel. Be ready to start back at twenty after, please.

9 MR. BLAKE: Thank you.

10 (OFF THE RECORD.)

11 THE COURT: All right, Mr. Hogan, come back around,
12 please.

13 (A PAUSE.)

14 THE COURT: All right, if the jury's ready, bring the
15 jury in, please.

16 (THE JURY ENTERS AT 11:25 A.M.)

17 THE COURT: All right. Thank you, ladies and
18 gentlemen, and we are ready to resume, and we'll continue
19 with the direct examination of Mr. Hogan.

20 Mr. Blake.

21 MR. BLAKE: Thank you, judge.

22 BY MR. BLAKE:

23 Q. See if I can remember where you were. You were
24 talking about being in the tub. Got out of the tub. You
25 dried off. Put your shorts on. You were drinking a beer.

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1 A. Yes. I went in the kitchen and got a beer. Yes, I
2 went in the kitchen and got a beer.

3 Q. And where was Monesha at this point?

4 A. She was still in the bedroom.

5 Q. And when you say bedroom, that's the bedroom and bath
6 altogether?

7 A. Yes.

8 Q. Okay.

9 A. When, when I left her, she was drying off.

10 Q. Okay. All that really separates that room out is the
11 little -- not even a wall. That half sort of partition
12 right near the bathtub?

13 A. Yes. Yes.

14 Q. For the, for the bedroom itself?

15 A. Yes.

16 Q. Just to reorient, does that -- is the bedroom at the
17 other end of the house?

18 A. Yes, there's, there's a ---

19 Q. State's Exhibit 4.

20 A. Our bedroom is at the, is at the far end where you see
21 all the windows. Those -- that little window is the
22 kitchen window, and that first window, the one by our bed,
23 and then the other two are right there beside the bathtub.

24 MR. BLAKE: It's okay to publish this?

25 THE COURT: Yes, sir.

1 BY MR. BLAKE:

2 Q. Okay. So, you're in the kitchen drinking a beer.

3 A. Yes. Yes.

4 Q. What happens next?

5 A. I took a couple of drinks out of my beer, and I walked
6 back to the bedroom, and I come around the corner. Monesha
7 was standing there in front of the dresser. She had my
8 wallet in her hand, and she actually had my wallet opened,
9 and that's when I -- that's when the whole altercation
10 started.

11 I, I slapped her. I said in the interview, I said in
12 the interview a hit, but it was a, it was a open hand slap.
13 I told her, I said, get your, get your ass out of my wallet
14 and I slapped her.

15 Q. How are you feeling at this time?

16 A. Like, I was angry when I saw her in my wallet. Kind
17 of the way the whole week had gone. I mean, I was already,
18 you know, ashamed of just the pressure of the whole week,
19 everything I had done, and it kind of came boiling up at
20 that moment when I saw her in my wallet. I just lost my
21 temper and I, like I said, I slapped her.

22 Q. What happened next?

23 A. When I slapped her, she ---

24 Q. Let me, let me stop you a minute here.

25 MR. BLAKE: Judge, some of this language is going to

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1 be kind of very graphic, and whatever is the truth is the
2 truth.

3 THE COURT: Don't worry about it.

4 MR. BLAKE: Okay, and he was concerned about that, but
5 I tried to tell him just speak the words as they happened.

6 BY MR. BLAKE:

7 A. After I slapped her and told her to get out of my
8 wallet, she immediately threw my wallet at me and went to
9 pass me, and that's when I slapped, slapped at her again.
10 I, I just hit her on the shoulder. She was passing by me.

11 Q. She was passing by you. You were in the bedroom at
12 this point?

13 A. Yeah.

14 Q. Okay.

15 A. Yes.

16 Q. And where were you standing?

17 A. Right beside the dresser. I mean, right inside the
18 door. Like, one step inside the door.

19 Q. The door that goes into the hallway?

20 A. Yeah, and I was in the bedroom.

21 Q. Okay, and again that's this hallway we've talked about
22 in State's Exhibit 10?

23 A. Yes.

24 Q. Okay. So, that's the hallway that leads to the door
25 you're coming in and out?

1 A. Yes.

2 Q. You turned left to go out ---

3 A. Yes.

4 Q. --- the building?

5 A. Yes.

6 Q. And what direction was she turning?

7 A. She turned right and instead went to the kitchen,
8 you know? She, she could have ran out the front door, but
9 she ---

10 Q. The front door?

11 A. I mean, the back door.

12 Q. The door you went in and out?

13 A. Yes, the door we went in and out.

14 Q. Okay.

15 A. She could have even turned to the left and went out
16 that door.

17 Q. But she went into the kitchen?

18 A. She went into the kitchen.

19 Q. Now, I just want to go back because I think it is very
20 important. When you first came into the trailer in that
21 back door, where did y'all go? Did you go past the
22 kitchen?

23 A. Yes.

24 Q. Okay. You went and smoked some crack. Where did you
25 smoke the crack?

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1 A. In the living room.

2 Q. To get to the living room from the back door, where do
3 you have to go?

4 A. Through the kitchen.

5 Q. Okay. Is that where the knives are?

6 A. Yes.

7 Q. So, she threw the wallet at you. She's brushing past
8 you at the door going in the kitchen?

9 A. Yes.

10 Q. Okay. Tell us what you're saying, what she's saying.

11 A. Like I said, I told her. As I slapped her that first
12 time, I told her to get your ass out of my wallet, and she
13 threw my wallet at me and she said oh, hell no. When she
14 was shoving past me she said oh, hell, no, and ---

15 Q. Is that all she said?

16 A. Yeah ---

17 Q. Okay.

18 A. --- when she shoved past me.

19 Q. Let's tell it like it happened.

20 A. And ---

21 THE COURT: Go ahead. Just ask the questions, please.
22 Go ahead.

23 A. And she, like I said, she went toward the kitchen. I,
24 I bent down and picked up my wallet. I set my wallet and
25 the beer on the dresser, and I followed her into the

1 kitchen. When I came around the corner, she already had a
2 knife in her hand, and she was kind of crouched down on me.
3 She was, you know, she was expecting something.

4 And when I saw the knife in her hand, I told her. I
5 said calm down. I said just calm down, and she said hu-uh.
6 She said, she said oh, hell, no mother fucker. You want to
7 slap me, you want to slap me, and she swung the knife and
8 she stabbed me in my side. And when she swung the knife
9 and stabbed me in my side, you know, I saw her swinging the
10 knife and I went to block it, but I didn't block it in
11 time, and it actually went in, you know, inch and a half or
12 2 inches into my side.

13 And as soon as that happened, I immediately -- well,
14 you know, I was, I was thinking oh, man, I could die, you
15 know? I was, I was just -- that fear for my life, you
16 know? It's -- I mean, she stabbed me, and immediately when
17 I felt the knife go in it was like oh, my God. I could
18 die, you know? And I, I grabbed her hand, and I squeezed
19 her hand. She dropped the knife.

20 Q. You're telling this very slowly. Did it happen at
21 this rate of speed?

22 A. It was, it was everything -- it was lightning. It was
23 lightning fast from there all the way up till I did what I
24 did in the tub. It was just, it was just a flash. It was
25 like a flash. It was a chain reaction. From the moment

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1 she stabbed me, everything just went crazy.

2 As soon as she dropped the knife, I bent down to pick
3 up the knife. She kind of went forward, too, and she was
4 going forward, too. But I got it and immediately she was,
5 she was wrestling with me, trying to get toward the knife.
6 And as soon as I picked it up, I just swung it, you know,
7 just, just chest level just, I just swung it. I swung it
8 pretty hard. I wasn't aiming at any particular part of her
9 body or anything. But it, it just so happened that it hit
10 her in the neck. She was kind of bend down, and it hit her
11 in the side of the neck, and ---

12 Q. You had just showed us the right side of her neck.
13 Where did it ---

14 A. It was, it was her left side. I swung with my right
15 hand. It was her left side. I swung with my right hand.

16 Q. Okay.

17 A. She was facing me and I swung with my right, so it had
18 to be her left side. She was facing me and, like I said, I
19 swung the knife real hard, and it went in. It went in
20 pretty deep into her neck, you know, and I pulled it out,
21 and as soon as I pulled it out, the blood just started
22 pouring out of her neck, and that freaked me out.

23 When I saw all the blood, I mean, it was a lot of
24 blood immediately. It was just a lot of blood, you know,
25 just flowing out of her neck, and I dropped the knife. And

1 when I dropped the knife, she started to go for it again,
2 and that's -- and I got ahold of her and I swung her
3 around, and that's when she hit the wall. That's what made
4 the hole in the wall.

5 Q. This is all happening in the kitchen area?

6 A. Yes. Yes. I was trying to keep her from getting the
7 knife, and I swung her around and she hit the wall. That's
8 what made the hole, and I swung her around with so much
9 force that my feet actually came out from under me, and
10 I ---

11 Q. Was the floor slippery at this point?

12 A. I, I mean, I believe there was -- yeah, there was
13 already some blood on the floor. It was a lot of blood,
14 Dan. And I swung, like I say, I swung her around so hard,
15 her feet came out from under me, and I, and I fell on, on
16 my back on the kitchen floor, and she dove over across.

17 The knife was over here kind of in front of the stove,
18 and she dove across on top of me going for the knife is
19 what I, I figured. I'm, you know, that's -- that was what
20 went through my head, she's going for the knife again, and
21 we both just started wrestling around the kitchen.

22 I was just, in my mind, I was trying to keep her from
23 getting to the knife, and I, I thought, I thought that's
24 what she was trying to do, get the knife, you know, and
25 stab me again. And we wrestled around there in the kitchen

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1 for, I, I don't know how long, how long, maybe a minute and
2 a half. And she was just bleeding real, real, real bad. I
3 mean, real bad. It didn't take very long at all for whole
4 kitchen floor to be covered in blood.

5 And after about a minute and a half I guess we were
6 both, you know, exhausted from wrestling and she just kind
7 of, you know, she just kind of stopped wrestling. And as
8 she, as she stopped wrestling, I stopped wrestling, too,
9 you know? We both kind of just stopped wrestling about the
10 same time. You know, we were both breathing hard and
11 exhausted, and that's -- immediately I got up from there,
12 and there was a roll of duct tape on the top, top of the
13 refrigerator, the corner of the refrigerator. And my, my,
14 my first thought was grab the duct tape, you know, and,
15 and, and duct tape her hands so that she couldn't, you
16 know, get to the knife again.

17 So, I said in the confession that -- so she wouldn't
18 fight or whatever. But it was, in my mind, it was to keep
19 her from, from hurting me, from getting back to the knife.
20 When I said fight, I meant her getting back to the knife
21 and hurting me, and that's when I duct taped her hands.

22 And, like I said, this was all just a chain reaction.
23 I mean, it really -- there really wasn't a whole -- there
24 really wasn't just a serious thought went into it, and when
25 I duct taped her hands I, I, I stood her up, and that's

1 when I walked her in the bedroom. That's when I walked her
2 in the bedroom.

3 Q. You were in the kitchen. That's where the struggle
4 went ---

5 A. Yes, that's where the whole, whole struggle went.

6 Q. And, and you walked her into the bedroom where the tub
7 was?

8 A. Yes, that's where almost all the blood was, was in the
9 kitchen floor.

10 Q. Did you drag her into the bedroom, or what happened
11 then?

12 A. I mean, I, when I lifted her up off the floor, I
13 grabbed one of her arms and she just stood up, and she, she
14 stood up, and I just started walking toward the bedroom and
15 she just walked with me. I mean, she didn't do anything,
16 anything, you know? She got -- maybe she was too
17 exhausted. I don't know. I don't know what was going
18 through her head, but she just, she just walked where I
19 walked and we walked together. You know, I led her back
20 into the bedroom.

21 Q. What did you do next?

22 A. And I sat her in the tub and there was a table, there
23 was a table that was -- you could touch the tub and reach
24 out and touch the table. It was sitting beside our
25 bedroom. You can't see it. I don't know. There might be

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1 a picture where you can see this table. But I had set the
2 crack pipe there real quick.

3 Q. Right next to the bed?

4 A. Yeah. The bed's right here, and then the table's
5 across from the bed, and then the tub's right here. It's
6 kind of like a triangle, and I, I saw the crack pipe and
7 took the crack pipe, and I lit it, put me a little piece of
8 crack on there, and I smoked it. I, I hit it and that's,
9 that's where the whole thing -- I want to clarify that
10 statement, that comment that I made in my confession about
11 the Devil.

12 That, that comment came from -- we talked about that
13 six weeks in between when it happened and I confessed.
14 And, like I said, I was thinking about it every single day
15 that whole time. You know, I was, I was trying to figure
16 out in my head how I could have even done that, you know?
17 I was fighting myself in my head thinking how -- I was
18 trying to figure out why, why that happened, why I let that
19 happen, how it could have happened, you know, and I was
20 thinking it was -- just that whole six weeks. And, like I
21 said in that interview, I was trying to be as honest and
22 candid with the detectives as I could, and there was just
23 -- I was -- as I was sitting there confessing, I, I thought
24 well, I mean, I, I've got to say a reason why. And, you
25 know, saying a confession, you know, and I said I guess the

1 Devil just told me I couldn't let her live.

2 That wasn't like I heard a voice from the Devil or
3 anything. What, what that came from was my Christian
4 belief, you know, and, and in Ephesians, Chapter 6, Paul
5 talks about putting ahold on to ---

6 Q. Don't need to get into that.

7 A. Yeah. Well, that's where the Devil came.

8 Q. Okay.

9 A. That's where the thought for the Devil came from.

10 Q. All right. So, you get her -- she's in the bathtub,
11 you take a hit of crack, what happens next?

12 A. Immediately, immediately after I did that, hit the
13 crack, I just went straight in the kitchen and got, got
14 another knife out of the block, and I went back in the
15 bedroom. I sat in the tub, and she, she wasn't moving or
16 resisting or she didn't say anything at all, and I just --
17 that's when I, that's when I sliced her. That's when I
18 sliced her throat, and there was no struggle in the
19 bathtub. There was no stab, stab, stab or beat, beat,
20 beat. It was just me slicing her throat.

21 And I got out of the tub and, I mean, I really, I
22 really can't say exactly what I did there for a few
23 minutes. I, I was covered in blood. I remember I went in,
24 and we have a shower in that room as well. There's a
25 little shower and a toilet in there. You know, I took off

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1 my clothes and got in the shower, washed the blood off
2 myself, saw the stab wound to my side and, you know, just
3 went -- and that's just -- I mean, that was basically it at
4 the time. That was it.

5 I got out and there was a little more crack left, and
6 I did smoke it, and I was just thinking oh, my God, oh, my
7 God, oh, my God, you know. What just happened? What just
8 happened? You know, what do I do, you know? What do I do,
9 and I started sobering up a little bit, and that's when I
10 thought about that -- I'll call it a barrel, a barrel out
11 there, and I was just trying to think of some way to take
12 her from, from inside the house, you know, to wherever I
13 was going to take her.

14 I really didn't even have any idea what it was, where
15 I was taking her or anything, and about 5:30 that morning I
16 went and got the barrel. I brought it in, brought it in,
17 and I put Monesha in there. I put Monesha in there and I
18 just carried her, got in my truck, put her in the back of
19 the truck, and left the trailer part, and just started
20 driving.

21 You know, I took a right at -- I'd never been that way
22 before, and I took a right on that road. I just started
23 driving and driving, and just looking at the side of the
24 road.

25 Q. Was it like -- was it already daylight or ---

1 A. Yeah, it was.

2 Q. --- getting on?

3 A. It's dawn. The sun's coming up. This is around 6:00,
4 6:30 or something. It's, it's getting light, and I just
5 drove and drove and -- till I saw a spot that looked
6 halfway like it was out of the way or whatever. And I just
7 drove her up in the woods, and I took her out and put her
8 where I put her, got back in the truck and went home.
9 Started cleaning everything up.

10 Q. That was Sunday morning?

11 A. Yes.

12 Q. You've described the clean up to us.

13 A. Yes.

14 Q. You've described coming in the trailer, getting in the
15 tub together, getting out. You went and you had a beer.
16 She was still in the bedroom, saw the wallet, and then, of
17 course, you slapped her, and she went and got a knife. How
18 long was this whole time process? Do you have any idea
19 between the -- seeing her with the wallet, slapping her,
20 and then everything that proceeded from that?

21 A. I mean, it's, it's hard on me to put an actual time
22 on, Dan. But like I said, everything was just an
23 instantaneous reaction from the moment she stabbed me.
24 There was, there was no stopping it. It was like she
25 stabbed me, and everything that I said just happened just

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1 immediately. It wasn't like I thought, I just thought
2 about getting up and getting the duct tape. I just got up
3 and did it. All the way, all the way to the end to doing
4 what I did in the bathtub was, was quick and a few minutes.

5 Q. All right. The, the bathtub then, I think you said,
6 as you said, was 5 feet. I think Paul Larosa said that.
7 So, you're sitting on the bed where you took the hit or two
8 of crack there?

9 A. That was -- I was standing up the first time --

10 Q. Okay. She was in the bathtub?

11 A. --- when she -- yes, and then afterwards I sat on the
12 bed.

13 Q. I mean, were you sitting there contemplating? How
14 long did that go on for? How long was it that you were --
15 it took -- you put her in the bathtub. You had some crack.
16 You slit her throat. What's that sort of time frame?

17 A. Super fast. I mean, it's just -- like I just keep
18 saying, it was just quick. It was -- the reaction didn't
19 stop. It didn't stop. It was an ongoing thing from when
20 she stabbed me until I did what I did in the bathtub was --
21 everything was just quick. It was just real quick.

22 Q. What was your initial reaction when you saw her in
23 your wallet?

24 A. Like I said, I got angry, you know? I don't know if
25 you can say rage or anger. Kind of out of control. Just

1 got out of control.

2 Q. Did that ever stop up until the actual slicing of her
3 neck?

4 A. No. No, I was out of control the whole, whole time.
5 I should have backed up except from when I slapped her.
6 That's where it really went, you know, went out of control.
7 But from the moment I slapped her until what happened,
8 until -- it was very fast. It was out of control. It was
9 just quick.

10 Q. It sounds like for a part of that time you were,
11 actually both of you were struggling, you were fighting for
12 your life.

13 A. Yes. Yes, in the kitchen that's definitely what was
14 going on.

15 Q. So, how long between the struggle in the kitchen to
16 getting her in the bathtub and slicing her throat? Any
17 idea? I mean, I know you're not looking at a clock or a
18 watch. I'm just trying to the get ---

19 A. It had to be a matter of, you know, seconds, a minute,
20 minute and a half and a minute ---

21 Q. The distance isn't very far?

22 A. No, it had to be a matter of seconds. I mean, forty-
23 five seconds. I don't know, Dan.

24 Q. Handing you State's Exhibit 18. Do you recognize this
25 garment?

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1 A. Yes.

2 Q. What is it?

3 A. It's Monesha's shirt.

4 Q. Is that what she had on that night?

5 A. Yes. Yes.

6 Q. Okay. There was some talk about a defect in the
7 camisole. I think they said it was -- the doctor said it
8 was on the back. You guys, you said you struggled on the
9 floor?

10 A. Yes.

11 Q. Okay. At what point were you beating her severely?

12 A. Never ever. The two hits, just like I said in the
13 confession, two, two hits and they were actually slaps.
14 That's it. That's the only time I ever hit her.

15 Q. You said when she was in the bathtub you sliced her
16 neck two directions?

17 A. Yes.

18 Q. And that was a different knife than the original
19 stabbings? She stabbed you, you stabbed her, correct?

20 A. Yes.

21 Q. And what happened to that steak knife?

22 A. The one that we was stabbing each other with?

23 Q. Yes.

24 A. I don't know how it happened, but it broke in half,
25 and when I was going to pick Summer up from the airport, I

1 threw it off the PeeDee River bridge.

2 Q. Okay. So, obviously to do the slicing, you had to
3 pick up another knife?

4 A. Yes.

5 Q. Correct?

6 A. Yes.

7 Q. Okay. What happened to that knife?

8 A. I put it back in the sink, in the kitchen sink. I
9 just put it back in the kitchen sink. It wasn't, it
10 wasn't, like, any blood on it or anything, you know? Maybe
11 just a little spot of blood or something. But I really
12 didn't see any blood on it. I don't know why I did it.
13 Don't know why I threw one away and kept the other one, but
14 that's just what happened. I put it in the kitchen sink,
15 and it got washed and put back into the block.

16 Q. I'm taking out State's Exhibit 37, which is -- is this
17 the block you're referring to?

18 A. Yes.

19 Q. Okay. Looks like it has three rows of knives.

20 MR. DANIEL: Judge, I would just caution the court.
21 We didn't pack those knives away. We got several knives in
22 the block there.

23 THE COURT: Oh. Just ask the questions. Go ahead.
24 You don't need -- just ask him the questions.

25 MR. BLAKE: Okay. Well, am I permitted to take the

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1 knives out themself?

2 THE COURT: Yes, sir.

3 BY MR. BLAKE:

4 Q. Okay. So, there's three rows here of knives?

5 A. Yes.

6 Q. What row, if you recall, what row did you take that
7 knife out?

8 A. The second row.

9 Q. That would be the middle row?

10 A. Yes.

11 Q. Okay, and there are, it appears, three knives in that
12 row?

13 A. I think it was one right there by the scissors.

14 Q. The one on ---

15 A. On that end, yeah.

16 Q. On the right here?

17 A. I believe so.

18 Q. Are you sure?

19 A. No, I'm not sure, Dan. I gave away one of those long
20 ones. It was not a long one. That, that, that might --
21 that looks like it. It wasn't a big one.

22 Q. Well, you had ---

23 A. No, it wasn't that small one. It was that last one.

24 Q. This one over here?

25 A. Yes.

1 Q. On the left?

2 A. Yeah.

3 Q. Okay. So, you picked that up?

4 A. Yes.

5 Q. Okay, and that's what you went back in and actually --
6 sorry -- that's what you sliced her throat with?

7 A. Yes.

8 Q. Okay. Were you actually, there in the bathtub -- so,
9 that's the last knife. Were you, were you stabbing her?

10 A. No. I just did the two slices, like I told you. Like
11 I told the detectives, just the two slices and that was it.
12 That's all that happened in the tub. There was no
13 struggle. There was nothing there. No struggle in the
14 bathtub at all.

15 Q. Well, you didn't go crazy like a wild man stabbing in
16 her the neck?

17 A. No, sir.

18 Q. Okay. You sure of that?

19 A. I'm positive.

20 Q. Has everything you've told us been the truth today?

21 A. All the truth. Yes, all of it. Everything I said
22 absolutely. I'm sorry. Yes.

23 MR. BLAKE: No further questions.

24 THE COURT: Cross-examination.

25 CROSS-EXAMINATION BY MR. DANIEL:

JOHN LEE HOGAN - CROSS-EXAMINATION BY MR. DANIEL

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1 Q. Mr. Hogan.

2 A. Yes, sir.

3 Q. Would you agree, sir, that after the original
4 altercation when you and Monesha, as you say, lay exhausted
5 on the kitchen floor, would you agree that you took duct
6 tape and ---

7 A. I ---

8 Q. --- you put her hands behind her back, and you tied
9 her hands?

10 A. Yes, I said that.

11 Q. Would you agree also, Mr. Hogan, that after you walked
12 Monesha with her hands bound behind her back to the
13 bathtub, put her in the tub, and then you walked away? Do
14 you agree with that?

15 A. No, I didn't walk away. I took, I took like a step
16 and a half, and that's when I picked up the crack pipe. It
17 was right there beside the tub. I didn't walk away.

18 Q. So, you'd agree then that Monesha is in the tub, she
19 can't move her hands, and you smoked crack?

20 A. Yeah. I mean, she, she probably could -- she could
21 have moved her hands. I don't know if she could have got
22 them out of the duct tape. I mean, yes, she was in the tub
23 with her hands duct taped behind her back, and I stood
24 there and took that hit of crack like I said, yes.

25 MR. DANIEL: No further questions.

1 THE COURT: Redirect?

2 MR. BLAKE: No, Your Honor.

3 THE COURT: All right. Thank you, sir. You may step
4 down.

5 WITNESS: Thank you.

6 (THE WITNESS EXITS THE STAND.)

7 THE COURT: All right, Mr. Blake, next witness.

8 MR. BLAKE: Defense rests, Your Honor.

9 THE COURT: All right, defense rested. Anything in
10 reply?

11 MR. DANIEL: No, Your Honor.

12 THE COURT: All right. All right, ladies and
13 gentlemen, you have now heard all of the testimony in this
14 case, and there are only two things that remain to be done.
15 Those are the arguments of counsel and the instructions on
16 the law, after which I will allow you to go to your jury
17 room to deliberate your verdict. There are some matters of
18 law which I now need to take up with the attorneys that are
19 involved in this matter before we go into arguments,
20 closing arguments. And so I think the best thing to do, it
21 is 12:00, and I think the best thing to do is to go ahead
22 and break for lunch at this time and have you come -- break
23 a little bit early and have you come back, and we'll go
24 immediately into closing arguments.

25 I would like to say 1:00 if this suits everybody. It

1 gives everybody an hour for lunch, if that suits everyone.
2 I'm going to excuse you now and ask you to be, ask you to
3 be back in the jury room at least at 1:00. We will have
4 completed the matters of law that we need, that we need to
5 attend to, and we'll be ready to go forward at that time.

6 Again, while you're away from the courthouse, do not
7 discuss the case with anyone. Do not allow anyone to
8 discuss it with you, and do not discuss the case among
9 yourselves when you're reassembling in the jury room. It's
10 still premature for you to begin any deliberations just
11 yet. But have a pleasant lunch and please be back at 1:00,
12 and I'll see you at that time. Thank you.

13 (THE JURY EXITS AT 12:00 P.M.)

14 (OFF THE RECORD.)

15 (BLINDS MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
16 40.)

17 (CARPET CUTTINGS MARKED INTO EVIDENCE AS STATE'S
18 EXHIBIT NUMBER 41.)

19 THE COURT: Yes, sir.

20 MR. DANIEL: Your Honor, we just need to note that Mr.
21 Blake and I have stipulated to introducing two other pieces
22 of evidence, that being the blinds and the carpet. I mean,
23 I've already let the court reporter know we've stipulated
24 to that.

25 THE COURT: All right. Do you agree with that

1 statement, Mr. Blake?

2 MR. BLAKE: Yes, Your Honor, I do. I have, I have
3 those exhibit numbers. I have them right here, if the
4 court reporter knows what they are?

5 COURT REPORTER: 40 and 41.

6 THE COURT: All right. 40 and 41 are?

7 COURT REPORTER: For the state.

8 MR. BLAKE: Your Honor, I was thinking how SLED
9 numbered them.

10 THE COURT: State's Number 40 and 41 are in evidence
11 by agreement. Okay.

12 MR. DANIEL: Thank you.

13 THE COURT: All right, motions on behalf of the
14 defendant, Mr. Blake?

15 MR. BLAKE: Renew my motion for directed verdict.

16 THE COURT: All right. Again, under Rule 19, the
17 conclusion of the testimony, the court shall direct a
18 verdict for the defendant on any offense charged in the
19 indictment after the evidence is closed if there's a
20 failure of the evidence tending to prove the charge in the
21 indictment.

22 In ruling on the motion, the trial judge, of course,
23 is charged with considering only the existence or
24 nonexistence of the evidence and not the weight of the
25 evidence. That is a matter for the jury's determination.

1 In my view there is evidence in the record of the
2 crime charged, and I would respectfully deny the motion for
3 directed verdict.

4 All right, counsel, let's talk just a minute about
5 charges. My general felony charge will include the
6 presumption of innocence, burden of proof, reasonable
7 doubt, credibility of witnesses. The substantial --
8 substantive charge will be murder.

9 And I think at this point, Mr. Daniel, there is
10 evidence of a struggle. Well, tell me what, what -- before
11 I tell you what I think I'm going to do, you tell me what
12 you think as far as lesser included and voluntary
13 manslaughter.

14 MR. DANIEL: I think there's evidence in the record to
15 support that charge.

16 THE COURT: All right. I agree. I think there is,
17 and so I'll charge the lesser included, voluntary
18 manslaughter, and the other substantive charge will be that
19 voluntary intoxication is not a defense.

20 MR. DANIEL: That's the other we were going to ask
21 for.

22 THE COURT: Okay. Special matters, particular matters
23 would be direct and circumstantial evidence and expert
24 witnesses. That's all I -- that's what I plan to do,
25 direct and circumstantial and expert witnesses. Anything

1 further from the state?

2 MR. DANIEL: No, sir.

3 MR. BLAKE: And nothing in issue.

4 THE COURT: All right. All right. Counsel, Mr.
5 Daniel, you going to waive opening?

6 MR. DANIEL: Yes, sir.

7 THE COURT: All right. How much time you going to
8 need, Mr. Blake?

9 MR. BLAKE: Maybe forty-five minutes. It's hard to
10 say. Thirty to forty-five minutes. I don't want to have
11 feel like I'm looking at the clock.

12 THE COURT: Well, I understand that, but I failed to
13 ask a lawyer this one time early on fifteen years ago when
14 I got this job in a simple little run-of-the-mill
15 automobile accident case that was a fender bender. And I
16 didn't think asking about how much time he needed was
17 necessary, and an hour and fifteen minutes later he was
18 still going strong. And so I do have to have some kind of
19 limitation.

20 I don't like to argue against the clock, but I will, I
21 will give both sides forty-five minutes. But I'll tell
22 y'all like I tell my minister: anything over twenty minutes
23 is lost anyhow. So, you can -- but we'll, we'll plan on
24 forty-five minutes each, and we'll start back at 1:00, and
25 then we'll go into charge and go forward.

1 All right, we'll be in recess then until 1:00.

2 MR. BLAKE: Thank you.

3 THE COURT: Incidentally, counsel, you want to come up
4 and take a look at the verdict form?

5 (OFF THE RECORD.)

6 THE COURT: Come to order. All right, we're back with
7 *State vs. John Lee Hogan, Jr.*, indictment number
8 2010-GS-23-0696. Mr. Hogan is present with his counsel.
9 The state is present, represented by the Fourth Circuit
10 Solicitor's Office. I've been advised that all jurors are
11 back.

12 Counsel, as we noted before lunch, the only things
13 that remain to be done are the arguments of counsel, or
14 closing statements. Mr. Blake will go first, and then the
15 state will have the right to close, and then I will
16 instruct the jury on the law.

17 Anything before we bring the jury in, Mr. Blake?

18 MR. BLAKE: No, Your Honor.

19 THE COURT: Mr. -- all right. Thank you. Bring the
20 jury in, please.

21 (THE JURY ENTERS AT 1:03 P.M.)

22 THE COURT: All right, good afternoon. Thank you for
23 your promptness in getting back here, and again as I have
24 every time that you've been away from the courthouse, if
25 anyone has tried to talk with you about this case, or

1 discuss this matter with you in any manner whatsoever over
2 the lunch recess, I would need to know about it now.

3 Negative response, and that's good.

4 As I told you before lunch, you have now heard all of
5 the testimony and evidence in this case, and there are only
6 two things that remain to be done. Those are the arguments
7 of counsel and the instructions on the law by the court.

8 I will tell you now, as I did at the first of this
9 case, that the arguments of counsel, or their closing
10 summations, are not evidence in this case. You will decide
11 this case based upon the evidence that you have heard from
12 this witness stand and from any exhibits that have been
13 introduced into evidence.

14 But the lawyers have the right -- not only the right,
15 but the duty -- on behalf of their clients to address you
16 now and to give you their closing arguments or summations.
17 When they have completed that, I will then instruct you on
18 the law of South Carolina as it pertains to the facts of
19 this case, as you may find those facts to be. And then you
20 will be allowed to go to your jury room to deliberate your
21 verdict.

22 You will hear first from Mr. Blake on behalf of the
23 defendant, and then from Mr. Daniel, Ms. -- one of the
24 solicitors. I'm not sure whether it's going to be Mr.
25 Daniel or Ms. Johnson-Lee on behalf of the state.

1 Mr. Blake.

2 MR. DANIEL: Your Honor, something's just come to my
3 attention. May we approach briefly?

4 THE COURT: Yes.

5 (OFF-THE-RECORD BENCH CONFERENCE.)

6 THE COURT: All right, Mr. Blake.

7 MR. BLAKE: Thank you, Judge.

8 I appreciate your attention. You haven't had to have
9 a lot of patience except maybe some of the -- that last
10 witness not answering some questions, but it's been pretty
11 short, quick, and pretty soon it's going to be in your
12 hands, okay?

13 As was stated by the prosecutor at the very beginning,
14 this is a case of whether it was murder or voluntary
15 manslaughter. To speak, to speak in non-legal terms, that
16 essentially means -- it's like murder is, a classic example
17 would be lying in wait, okay? Voluntary manslaughter is an
18 unlawful killing that happens as a result of a fight.
19 Those are common terms. The judge will give you the legal
20 jargon. Essentially that's what we're talking about.

21 We're here in this case not because my client is
22 saying I didn't do it. We admitted that way back on July
23 23rd. He's simply saying it was a fight that got out of
24 control, okay?

25 The judge will explain the law to you. I would say

1 that the critical factor in that law is whether or not my
2 client had sufficient time to cool off, okay, to cool off
3 from his rage or heat of passion. So, again, murder and
4 the lying in wait, voluntary manslaughter and fight.

5 Now, excuse me because if I step backward -- because
6 we kind of got some landmines back here with the wires. I
7 hope I don't trip, but I came close.

8 You've heard from a number of different witnesses.
9 The prosecutor in his opening statement called it a brutal
10 murder, and I think every one of the law enforcement
11 officers who got up and testified, when they had the
12 opportunity, said those exact words.

13 The judge will not read to you an instruction on
14 self-defense because at some point, self-defense was no
15 longer applicable. That's when her wrists were behind her
16 back. But up until that point, had the camera stopped
17 right before that, you wouldn't be here deciding whether or
18 not my client had acted in self-defense. And I contend to
19 you that up until that point, he was acting in
20 self-defense.

21 Now, yesterday afternoon a few things came to light
22 that really weren't brought to light before. I'd like you
23 now to remember the testimony of Casey McCall. He's the
24 gentleman with one eye. He sat up there and lied about
25 absolutely everything.

1 Now, I'm not here saying Casey McCall did this
2 killing. Don't misunderstand me. But there's more to this
3 situation then was apparent in the beginning.

4 You know, if you listened to Larry Turner's testimony,
5 that Casey McCall worked for the Bennettsville Police
6 Department. He worked off charges; he got paid money to do
7 drug buys. Larry Turner was very clear about that.

8 Now, I don't know if you noticed it, but one of the
9 things that goes on in trials like this is that we
10 sequester the witnesses so that they just can't hear what
11 everybody else is saying. Casey didn't know what Larry
12 Turner had said. Casey Turner -- Casey McCall knew what
13 the truth was. He knows what the truth is. But he says he
14 didn't do any buys, didn't work off any charges. All those
15 charges that went away, well, just kind of disappeared.

16 This case is not about Casey McCall, but that led to
17 some other information which I think is important in
18 considering this case. My client is, of course, the
19 defendant in this case, and he was stupid, stupid on crack.
20 And in the end, he killed Monesha Brown.

21 I don't think there's any doubt that he's sorry about
22 what happened. Not sorry because of where he is, but truly
23 sorry about having taken a life. And up until a certain
24 point, he was fighting for that life, and he had every
25 right to do that.

1 So, while you might think of him, and law enforcement
2 has certainly painted him as the predator, he was, when
3 this began, the prey. He wasn't out hunting. The only
4 thing he was hunting was a piece of crack cocaine. But he
5 went into an area where people were hunting those who
6 needed crack cocaine and who would do anything they could
7 to take advantage of them.

8 Now, you can say that's just all made up. That's not
9 true.

10 Why did Casey McCall lie about it? Well, he lied
11 about everything else, but he's telling the truth about he
12 didn't talk with those two people. He admitted to talking
13 to Zane Ard, did he not? He just wouldn't admit that it
14 was a planned robbery, and they planned to take his truck.

15 Well, obviously things went wrong. My client's
16 sitting here today because they did go wrong. But up until
17 that point there, it truly was self-defense.

18 You heard from both Zane Ard and Charles McPherson.
19 They both told you the kind of life that Ms. Brown was
20 leading and how Casey McCall was using her. Sometimes
21 things are not exactly as they seem. Does that excuse what
22 he did? No, it doesn't.

23 I think their case is pretty clear to you. You sat
24 here and patiently listened to testimony. You know that
25 all this happened back on June 4th, June 5th. Certainly

1 heard probably too much about the drug use. Just trying to
2 give background. You heard about the actual incident.
3 That's why we have a jury. That's for you to judge what
4 the truth is.

5 Now, we can never know anything for certain. I mean,
6 that's why the judge will read you an instruction on
7 reasonable doubt. He's already told you about that. The
8 burden of proof in a criminal case where you're taking
9 someone's liberty away is whether it would cause a
10 reasonable person to hesitate to do that. It's up to the
11 state to prove every element. It's up to you to decide
12 whether or not they've actually done that.

13 Yes, he covered it up. Yes, he put her in a barrel
14 and put that barrel in the woods.

15 You remember what Dr. Presnell said? She said that
16 decomposition cases were not all that uncommon in South
17 Carolina. She said she also had previously decomposition
18 cases. These are not pretty facts. They're pretty
19 disgusting.

20 But he told you why he did what he did. He told you
21 about the cover up and the reasons behind it. One of the
22 reasons that I called Charles McPherson and Zane Ard was to
23 show you or to corroborate or to help you understand that
24 perhaps my client was actually telling the truth when he
25 said that he saw her in his wallet.

1 I had Ms. Hogan come all the way from Texas so that
2 you could hear from someone about the wound in my client's
3 side. From that point on, it was a free for all. You
4 didn't get to hear about it or see it in real time. This
5 isn't TV. There was no video camera there. I wasn't
6 there. It went very quickly.

7 Yes, my client at some point taped her hands behind
8 her back. That was after they had struggled for a minute,
9 minute and a half, two minutes, who knows how long for that
10 knife. Now, I know she's not here, so you can't hear from
11 her what happened, and you've got to judge for yourself.

12 At the end of that struggle, the floor, the
13 floorboard, he reaches up, gets the duct tape, and puts her
14 hands behind her back, as he told you, so she would not
15 keep reaching for that knife. And then the next thing
16 happens, which putting -- in the tub.

17 Yeah, he smoked some crack. I don't know. That's --
18 he also told you about doing anything sometimes for that
19 crack. And he did admit on that confession, and he talked
20 about it here, that he did slice her throat.

21 Now, let's take a minute and talk about Paul LaRosa.
22 He talked about being a profiler or for a behaviorist. In
23 this case, he was a crime scene analyst. Now, I don't --
24 you probably don't think this way and it's up to you to
25 decide the facts. But sometimes what we do at our jobs can

1 skew how we see and understand things, and I need
2 something. It's been taped back up.

3 (A PAUSE.)

4 MR. BLAKE: This is the cutting from in front of the
5 tub. It's evidence. You'll be able to take it back into
6 the room with you. You can look at it, see what you see on
7 it. Paul LaRosa said there was a pool of blood there. He
8 literally said a bucket of blood.

9 Now, I wasn't there at the crime scene. It's my
10 understanding that that's where this came from. I don't
11 believe it. I don't believe it.

12 You heard from Ms. Hogan that she could not get back
13 in that house for three days because they had cars
14 surrounding it. We assume people were inside the house.
15 They gathered or had the opportunity to gather a whole
16 bunch of evidence.

17 Now, we don't have anything else out here, but you saw
18 these boxes before. They brought in a whole lot of
19 evidence. You'll have some of these exhibits to take back.

20 We stipulated that Ms. Brown was in that barrel and
21 that Ms. Brown's blood was left at the scene. You heard
22 from Ms. Hogan where most of that blood spatter was: in the
23 kitchen.

24 Now, I won't take it out again, but you saw the knife
25 that was used to slice her neck. The way Paul LaRosa

1 talked about it, he stabbed her, and stabbed her, and
2 stabbed her, and stabbed her. That was a pretty big knife.
3 That was a big knife.

4 My client has some strength there. What do you
5 imagine would be the condition of her neck had he taken
6 that kind of force to it with that sort of an instrument?

7 He never should have done it. He did slice her throat
8 once, twice. That was at the end of a very long fight, and
9 he talked about that blood pouring out of her, and blood
10 being on the floor.

11 We have no idea how long she would have lasted after
12 that, but I can tell you. I mean, he said that he took
13 statements and looked at all the evidence, and then he
14 repeatedly talked about my client's stabbing. You'll have
15 this back in the evidence room with you, the jury room. I
16 don't know. He'd about 'take her head off with that ,
17 stabbing her, stabbing her, stabbing her.

18 He was not there. He's paid by the state; he
19 testified for the state. We all have our biases. We all
20 have our opinions. He had ---

21 I know this is been very difficult on Monesha's
22 family, and the first witness the state called was her
23 mother, and you learned some things from that. That
24 grandma is taking care of the four kids. That Monesha
25 lived separately. That a couple days before this all

1 happened, she saw her daughter out on the bypass. Her
2 daughter had on flip flops, some kind of t-shirt or shirt,
3 shorts or something like that. Mom asked, offered her a
4 ride. It was pouring down rain. She declined to get in.

5 This started out as a missing person's case, and Larry
6 Turner did everything he could to find her. He finally
7 developed the composite photograph July 16th given to them
8 by Casey McCall, who'd been talked to before, but finally
9 had a polygraph. He said that. They did the drawing.
10 They did know about the Texas plates. They began to put
11 things together. Shortly after that, it was within a week,
12 then they had Mr. Hogan confessing and in custody.

13 An unfortunate set of circumstances, and perhaps you
14 got a glimpse of what life is like for a whole bunch of
15 people scratching and clawing, trying to get that crack
16 cocaine, and do whatever they need to to get it. It is up
17 to you to judge and try to determine what the truth is.

18 I was very upset that the first interview on July 23rd
19 was not videotaped, and then you heard or saw the second
20 videotape after, two and a half hours later, my client had
21 spilled his guts.

22 Now, you decide for yourself. The officers tried to
23 make out like he was the same exactly in both interviews.
24 One officer didn't recall saying to my client that he'd
25 never seen anybody so emotional. You saw my client. If

1 you thought he was putting on an act, that's, that's up to
2 you. You make that decision. He's been remorseful about
3 this since the day it happened.

4 Dr. Presnell testified and she talked about these
5 defects. I thought she was a very honest, forthcoming
6 witness. She said that the defects in the neck, she didn't
7 know if they were coming from decomposition. There might
8 have been a knife wound.

9 My client admits to striking Monesha in the neck, to
10 stabbing her there, and he talks about how right at that
11 point, that blood started flowing, and he dropped the knife
12 and struggled with her.

13 Dr. Presnell talked about slices. You have the
14 pictures. You'll have them in your, in your room. You
15 look at those pictures and see if it's a big old knife
16 coming down like that. See if that makes sense to you.

17 This should have never happened, but it did, and we're
18 here -- you're here to decide whether or not this was cold
19 blooded murder, or whether it was a killing in the heat of
20 passion. You need to weigh what you've seen and heard and
21 make your decision beyond a reasonable doubt.

22 I don't envy you being in that position, but that's
23 why we have the jury system. Nothing's perfect. But it
24 sure helps to have twelve people listening, thinking, and
25 discussing what they've just observed, and then making that

1 decision.

2 Now, I'm going to sit down here in just a second. I
3 go first because that's how the rules have it. The
4 solicitor gets the first go at the opening. They get the
5 last go in the closing. I ask you to consider in your mind
6 what might I say after the solicitor has finished. Thank
7 you.

8 THE COURT: Ms. Johnson-Lee.

9 MS. JOHNSON-LEE: Thank you, Your Honor. May it
10 please the court?

11 THE COURT: Yes.

12 MS. JOHNSON-LEE: Good afternoon. Thank you so much
13 for listening the last three days to all of the, the
14 evidence and testimony that's been given in this trial. I
15 do appreciate that and I know Monesha's family, whose been
16 here throughout the week, certainly appreciates that as
17 well.

18 We are here for one reason and one reason only, and
19 that's for you to decide if John Lee Hogan is guilty of the
20 brutal murder of Monesha Brown. Now, he is indicted for
21 murder. The evidence in this case shows that there was a
22 brutal, violent murder, and his confession that he gave on
23 July 23, 2010, both the one in Sumter and the one at the
24 sheriff's office here, both show this is clearly a murder
25 case.

1 Now, murder is defined under South Carolina law,
2 Section 16-3-10, as the killing of any person with malice
3 aforethought, either expressed or implied. That's murder.
4 You have malice in your jury heart, it's murder.

5 Voluntary manslaughter is defined under South Carolina
6 law, 16-3-50, as the unlawful killing of another without
7 malice, expressed or implied. Malice is murder. Without
8 malice is manslaughter. That's the law in this state.

9 Judge King is going to charge you on the law. That is
10 his job. He is the judge of the law. You're the judge of
11 the facts in case, and you decide if the facts in this case
12 fit which statute.

13 Now, malice is defined as follows:

14 It imports wickedness. It excludes any just
15 cause or legal excuse. It springs from
16 depravity, from a deprived spirit, from a heart
17 devoid of social duty and fatally bent on
18 mischief. It does not necessarily import ill
19 will towards the specific person who is injured,
20 but rather it signifies a general malignancy
21 towards and recklessness for the life and safety
22 of another, or a condition of the mind that shows
23 a heart devoid of social duty and fatally bent on
24 mischief.

25 The malice aforethought, it only takes seconds to

1 develop that. The entire time this struggle was going on
2 in the kitchen, Mr. Blake possibly has an argument that
3 during that struggle itself, whether you believe the story
4 that Hogan gave today or whether you believe the story he
5 gave, you know, eighteen months ago, whichever story you
6 believe, possibly there could have been a voluntary
7 manslaughter case if he had stabbed her in that kitchen and
8 killed her, but he didn't.

9 He had a sufficient cooling off period, and that
10 cooling off period is key to this case. Because once he
11 had cooled down, just like any reasonable person, when he
12 then killed her, he had malice in his heart.

13 Think about it. Monesha was in that bathtub. He was
14 sitting on that bed 5 feet away from that tub. Now, today
15 he changed his story and said that he didn't sit back down
16 on the bed. But remember back to his confession on July
17 23, 2010. He sat on the bed, and on that day he said he
18 took two hits of crack. Today he said it was one hit.

19 Monesha's hands were duct taped behind her back. She
20 couldn't move. She couldn't fight back; she was helpless.
21 She's laying in that tube that's still got water in it. He
22 listened to her beg for his life.

23 Now, note that today he didn't say a word about her
24 begging for her life. He totally left that out. But
25 remember back to what both, to what Officer Feldner told

1 you during the Sumter interview and what you witnessed him
2 saying during the interview that was videoed here. He said
3 she was begging please let me go. I won't tell anybody.
4 Please just let me go. She had time to just lay in that
5 tub, hands duct taped behind her back, a gaping wound
6 pouring forth blood, begging for her life, and he's sitting
7 on the bed 5 feet away puffing on crack, lighting it up,
8 taking hits as he described it.

9 He then says -- now today he changes his story. Oh,
10 the Devil didn't tell him to do it. That was just
11 something he thought about. He's had eighteen months to
12 think about what his story was going to be today. But
13 eighteen months ago, he said the Devil told him to go ahead
14 and kill her.

15 So, what did he do? He got up and he walked all the
16 way to the kitchen, got another knife because remember the
17 first one's already busted. It broke because he had rammed
18 it in there so hard, it broke. He gets another knife, and
19 he comes back to the tub where he slices her throat. He
20 admits twice slicing it. There are possibly more.

21 This was a brutal attack. It was overkill. If those
22 facts don't establish malice, I don't know what else does,
23 to be honest. The sheer brutality of this attack, attack
24 shows that John Hogan over there had malice in his heart.

25 Let's look at the autopsy. Now, Dr. Presnell said

1 there was a gaping defect on the side of the neck. That
2 confirmed his story of that knife breaking off when he
3 rammed it in there with such force.

4 Now, marked as State's Exhibit 39, which you're going
5 to have to take back there with you, is Dr. Presnell's
6 diagram. On page 2, she gives the sizes of the defects.
7 The hole in the neck was 2 and a half inches by 1 inch in
8 the right side of the neck. That's a pretty big hole in
9 that neck. 2 and a half inches by 1 inch in the neck, and
10 she's drawn how the whole front of the neck is just sliced
11 open, and you have a picture where the trach is cut. Not
12 one but twice. Once completely severed through, and
13 another cut directly below it, and the size of that gaping
14 defect, and that she doesn't just call it a defect. She
15 calls is a gaping defect 5 inches by 3 inches. Her neck is
16 sliced open pretty good.

17 And if you remember that there were other defects, and
18 you have a picture of it that you're going to take back
19 there that, yes, Dr. Presnell said it could have been a
20 naturally occurring decomposition, but it was also
21 consistent with other knife wounds. There was several
22 areas around the clavicle close to the trachea, and she
23 gave us a picture of that.

24 When you combined that testimony of Dr. Presnell with
25 what Paul LaRosa said about the large amount of castoff

1 going onto those blinds, we can use our common sense and
2 say those possibly could have been knife wounds because
3 there was an unusually loud, large amount of castoff blood
4 on the blinds behind the tub.

5 And remember the tub. It was a large garden tub about
6 4 feet across. There is blood pooling on the front of it,
7 and then there's castoff blood all the way back on the
8 window blinds back behind it. So, you've got blood
9 spurting out this and pooling down this way. This was a
10 brutal, a very brutal attack and Dr. Presnell, I believe,
11 said a very brutal attack.

12 And remember Dr. Presnell also removed the duct tape
13 from Monesha's hands. When he put her in that barrel, she
14 was still duct taped. He never took that duct tape off of
15 her.

16 Let's look at the evidence that corroborates his
17 confessions that he gave on July 23rd of 2010. Monesha's
18 blood was found on the wall in the hallway near the
19 bedroom, and you're going to have a SLED report that goes
20 back there. Both parties stipulated to the DNA. Her blood
21 was on the hallway wall near the bedroom. Her blood was
22 pooling on the floor outside the front of the tub on the
23 carpet. Paul LaRosa described it as free-flowing blood.

24 I want to address one thing. The SLED agent's not
25 going to cut every last piece of carpet with blood on it.

1 He is going to cut a representative sample to take back to
2 SLED because what's the purpose of getting the sample? So
3 you can check to see if it's her DNA. You don't need all
4 that carpet to check. You just need enough to check to see
5 if it's her DNA. And guess what? The SLED report shows
6 that the carpet cutting that you're going to take back
7 there with you, sure enough is Monesha Brown's blood. Paul
8 LaRosa did his job.

9 Furthermore, that castoff blood that was on the blinds
10 behind the tub, the SLED report shows that the DNA in that
11 blood sure enough belonged to Monesha Brown. So, you've
12 got Monesha's blood on the window blinds. You've got
13 Monesha's blood on the carpet in front of the tub, and
14 you've got Monesha's blood in the hallway outside the
15 bedroom. And Paul LaRosa, who's an expert, said that the
16 volume of the castoff is in the moderate to high range
17 indicating a brutal violent attack, which he said took
18 place in the bathtub.

19 Now, there was also a hole in the wall. That
20 corroborated his testimony -- or excuse me, his confession
21 from July 23rd when he said during that first fight in the
22 kitchen that he did shove her into the wall. And Paul
23 LaRosa said that the size of that hole and the shape of it
24 looked like maybe a head or an elbow or something on the
25 side of the body went into that hole.

1 And you'll have a picture of that to take back and
2 look. It's sheetrock. It looks like somebody took a
3 sledge hammer and beat it, but it's not. That's her body
4 being used as a battering ram to break a huge hole into the
5 sheetrock wall.

6 Another thing that shows that, that corroborates his
7 confession from July 23rd is there is a knife missing from
8 the knife block. Remember he said initially that the knife
9 broke in half, the one he rammed into her neck? He later
10 took that and threw it off the PeeDee River bridge into the
11 river, and sure enough there is a knife missing from that
12 knife block. He admitted duct taping her hands behind her
13 back in the kitchen. He admitted walking her from the
14 kitchen, through the hallway, to the bedroom, to the tub,
15 and sure enough duct tape was on her hands at autopsy, and
16 this is the duct tape.

17 And notice how it's wrapped. Dr. Presnell said when
18 she took it off, she tried to lay it out to show how it had
19 been around her wrist. Notice on the right wrist -- she's
20 got them, like, right and left. The right wrist is wrapped
21 around once and then multiple times around the left wrist.
22 She is bound; she can't go anywhere.

23 Now let's look at the, the defense. Now, they brought
24 up Monesha's character. They talked about her possibly
25 being a crack head or a prostitute. Well, I think it's

1 obvious. Even her mother said she may have smoked crack.
2 That's not an excuse for her being killed. And did she
3 prostitute herself? We don't know. If she had, that's,
4 again, no excuse for her death. There is no blame-the
5 victim mentally here.

6 Remorse. When he came in today, John Hogan sat on
7 that stand up there. He cried. He claimed he'd been
8 suicidal. Claims he cries daily. He cried on the stand
9 also. But remember he cried on the stand, if you think
10 back, only when he was talking about his wife, his child,
11 or the church. He didn't cry when he was talking about
12 what happened to Monesha. He wasn't remorseful for that.
13 He's remorseful for having got caught. I would cry, too,
14 if I was about to be arrested.

15 Remember he cried on July 23rd? He cried -- they said
16 he cried some in Sumter, and he cried on the videotape.
17 Well, he cried because he was caught and he was being
18 arrested. I think any of us would cry if we were being
19 arrested for murder.

20 Preparation. Now it's been almost two years. It's
21 been over eighteen months since this murder. He's had
22 multiple opportunities to meet with his lawyer. He's had
23 multiple opportunities to think about what he was going to
24 say today, and sure enough he did change up several of his
25 statements. He used words like ongoing thing. Words like

1 didn't stop. Words like out of control the whole time.
2 Words like it was very fast and quick. Just think of all
3 the phrases he used. Those are all things that would try
4 to fit a voluntary manslaughter conviction as opposed to a
5 murder conviction.

6 He has had time to sit around and think about it and
7 tailor his testimony, even though his testimony today is
8 different from his confession. He's had time to think
9 about it and tailor it to try to convince you that it's
10 voluntary manslaughter and not murder.

11 Now, Dan Blake even asked him. Are you telling more
12 details now than you admitted before? And he admitted
13 yeah, I have been sitting in jail for eighteen months
14 thinking about this.

15 One other thing: voluntary intoxication. Much has
16 been said about John Hogan's use of crack that week. Much
17 has been said about his drinking all the alcohol this week.
18 So what? In South Carolina, and the judge is going to
19 charge you this. In South Carolina, our State Supreme
20 Court has said voluntary intoxication is never a defense to
21 murder. It will never reduce murder to manslaughter.
22 That's the law in this state. He cannot use it at as an
23 excuse; he cannot use that as a defense. The fact that he
24 was high on crack, the fact that he might have been
25 drinking does not take this case to manslaughter. That's

1 the law in this state, and Judge King is going to tell you
2 that when he gives you your charges.

3 Let's look at Paul LaRosa. Now, he's basically been
4 attacked today and almost called a liar. This is a senior
5 special agent with the South Carolina State Law Enforcement
6 Division. He has nothing to win or lose. He was here
7 under subpoena to testify about what he did on July 22nd
8 and 23rd of 2010 in relation to this case. He is an expert
9 in crime scene; he is an expert in blood spatter.

10 He said, and I quote: The more the blood, the more
11 violent the crime. His expert opinion that he rendered
12 from stand is this was a very brutal attack. Occurred in
13 the bathtub area.

14 I want to address another thing. Mr. Blake told you
15 or indicated to you that Paul LaRosa may have been
16 testifying that she was stabbed repeatedly. I don't
17 believe that was his testimony. He was trying to tell you
18 about castoff. The more times there's a cut with a knife,
19 the more the castoff, whether it's a slice or a cut or a
20 stab. He was testifying about castoff and about the amount
21 of blood there was.

22 And if you remember Summer Hogan, Mr. Hogan's own wife
23 this morning when she testified, described how when she
24 went back to the house after they had sprayed the LCV
25 everywhere looking for blood, and she sat right here and

1 described all the places there was blue in that house
2 because LCV turns blue wherever blood was. And I think at
3 one point she described it as being 3 to 4 feet up one
4 wall. She described it being all over the tub, in the tub.
5 I mean, from the tub. It was everywhere. Even the
6 defense's witness told you there was a lot of blood in that
7 house.

8 Lieutenant Turner, could you assist me with the
9 blinds? And just to show you what Paul LaRosa was talking
10 about, we're going to open the blinds. They are an exhibit
11 in the case. You can take it back there and look at it if
12 you want. I'd recommend using gloves.

13 Remember this window was behind the tub. So, the
14 blinds come down. The blinds come down to the tub area.
15 Can you please stand over here? You notice there's blue
16 along the string here. Notice the castoff. This is
17 splatter. Can everybody see it? Let it go. This is all
18 splatter here. Every time there was a slice with the knife
19 -- remember he testified as the knife went up, blood is
20 splattering up? Look, there's spatter, spatter, spatter,
21 spatter. This is Monesha's blood. Thank you.

22 If this brutal violent killing isn't murder, then I
23 don't know what it. But let's go back and address some
24 other matters now. Thank you. You can just leave that
25 there.

1 So, what if John Hogan does come to court today and
2 he's the most remorseful person ever? That doesn't change
3 the fact that he killed Monesha Brown. It doesn't excuse
4 the fact, and he shouldn't get a free walk because of that.

5 He made multiple efforts to conceal his crime and lie
6 about it. After he brutally murdered her in that tub, he
7 let her lay there while he smoked more crack, and it wasn't
8 till 5:30 the next morning that he decided to do something
9 with her, with her body that had been laying there bleeding
10 out all night.

11 He remembered he had a barrel he brought with him from
12 Texas. So, he gets that barrel. He stuffs her body in it,
13 and remember Dr. Presnell talked about how the legs had to
14 be bent up and put in, the body, into the barrel.

15 So, he stuffs her in there real good, seals it up,
16 loads it in the back of his pickup truck, and goes driving
17 out around the countryside trying to figure out where he
18 can dump it like trash. And he finds an area off a road
19 off of 38 that turns up, going into a wooded area, and
20 there's a little ravine up there, and what does he do? He
21 rolls her down the hill.

22 He was judge, jury, executioner, and mortician. He
23 decided that was going to be her final resting place, and
24 he threw her away like garbage and drove way as if nothing
25 happened.

1 Went back home. Made every effort to wipe all the
2 blood up. Threw away the clothes that were left at the
3 house because remember: all she had on her that barrel was
4 her tank top. No panties. No pants or skirt. No flip
5 flops. Threw everything of hers away, wiped all the blood
6 up, lied to his wife when she got home about what happened.

7 He claimed that for six weeks -- because that's how
8 long she was a missing person. Six weeks is how long
9 Monesha's family was out in the community searching for
10 her. She was on the TV. It was in the newspaper. Putting
11 up posters. For six weeks this family was wondering where
12 their loved one was at. Was she alive? Was she dead? Was
13 she okay? For six weeks, he said he had time to think
14 about all this, and he said he wanted to tell somebody.
15 And yet, the first opportunity he had to tell somebody on
16 July 21st when Larry Turner goes to get him, what does he
17 do? He spends an hour and a half lying at the police
18 station.

19 Now, we didn't show it, but it's in evidence. The
20 July 21st interview at the Bennettsville Police Department
21 is an exhibit, and he lied throughout this entire thing.
22 He puts her in the car smoking crack and says he let's her
23 out up near KFC. Never sees her again. And if you want to
24 see just how believable he is when he lies, and compare it
25 to how believable he may have been to you today, then you

1 can watch this back there. You'll just have to let us
2 know, and they'll send it back there to let you watch it.

3 And then when he came again two days later to his
4 first interview on July 23rd, he started that interview off
5 by lying. It wasn't until Shawn Feldner told him, look, we
6 both know what you did, and now he's thinking, oh God, they
7 must have some evidence. It wasn't till Shawn Feldner told
8 him to man up, help this family, that he finally says she's
9 not alive. She's not living. He finally tells what's
10 happened, but it takes him six weeks.

11 And let's go back to how this entire incident started
12 at the house. Now, today he tried to minimize all his
13 actions. Today everything he said totally flew in the face
14 of his two confessions on July 23, 2010. Back then he said
15 that he became, and it was his word, enraged by finding her
16 going through his wallet, and that he hit her. Totally day
17 he tries to change his story. Oh, I didn't hit her. I
18 slapped her and said something nasty to her, and he claims
19 that she went running into the kitchen, immediately grabbed
20 a knife. Well, he didn't say any of that on July 23rd,
21 neither the first interview or the second interview.
22 Again, he's had eighteen months to sit out there at the
23 county jail and think about what his story was going to be
24 today.

25 He admitted in the interview that after he had rammed

1 her into the wall and then stabbed her in the neck and --
2 because remember she got that knife to try to protect
3 herself. This man has used her body as a battering ram and
4 rammed her into a wall with such force, it busted open
5 sheetrock.

6 And the only place she could stab him was the side.
7 She couldn't get the chest. She couldn't get the face.
8 All she could get was the side by the belt. And all he had
9 to do to get that knife away, he even admits, he just had
10 to squeeze her hand or something and got that knife away
11 from her and then rams it into her neck. And in his
12 interviews back in July 23, 2010, he said she, quote,
13 struggled a little after that violent stabbing.

14 She wanted to get away from him. That's why she was
15 struggling. There was no way he was going to let her leave
16 that house alive that night. It wasn't going to happen.

17 And another point I want to bring out. Today he
18 claims that her getting pushed into that wall was done
19 after he had already stabbed her in the neck, and they're
20 fighting over the knife. But the DNA analysis, which
21 you're going to have which shows that her blood is on the
22 window blinds, her blood is on the carpet cuttings, and her
23 blood was near a hole -- excuse me -- and her blood was
24 near the master bedroom, guess what was on the swab from
25 the, near the hole in the kitchen, the hole in the wall,

1 the stab taken near that hole? Ain't no blood there.
2 Well, if she's bleeding profusely because she's got this
3 huge gaping hole in her neck, if he then took her and
4 shoved her into the wall, surely it would have left some
5 blood somewhere. But it didn't because he is lying today.
6 He put her body through that wall before he stabbed her in
7 that neck.

8 And then this thing about Casey McCall. The defense
9 calls Casey as a witness and makes -- they bring up this
10 story about how Monesha and Casey were going to rob Mr.
11 Hogan. Well, the other two individuals never went to see
12 an investigator with the sheriff's office. Never went to
13 see an investigator with the police department. Never went
14 to the solicitor's office. And the first time that story's
15 brought out is here in court yesterday.

16 And remember what they said. One of them claimed that
17 he got the story, I believe it was in September 29th or
18 30th of 2010. Months -- no, over a year ago. The other
19 one claims he got his story January 25th of this year. But
20 yet their stories matched up almost word for word.

21 And you guys heard Casey on the stand. You -- we can
22 use our common sense and say those, that language he -- she
23 was my partner in crime does not sound like Casey McCall
24 talking. Casey, he admits where he lives. He lives on --
25 he works the streets. He does what he can to get by. He's

1 in and out of jail. He doesn't speak like that.

2 And, furthermore, even if you believe for a second
3 that Casey and Monesha were going to try to rob Mr. Hogan,
4 once her hands were duct taped behind her back and she was
5 in that tub, she was no threat to him whatsoever. He had
6 time to sit on the bed, time to smoke crack, time to get a
7 knife, time to come back and slice her. That's still
8 murder. He had a more than sufficient cooling off period.

9 And I want to bring out one other thing. Do you
10 remember when Summer Hogan was on the stand, and Mr. Daniel
11 asked her about how far it was from the tub to the area of
12 the kitchen? And we're going to walk that distance, and
13 let's just go through it one more time because it's so
14 important.

15 The fight in the kitchen is over; it's over and done
16 with. She's stabbed in the neck. She's bleeding
17 profusely. Monesha's hands are duct taped behind her back.
18 That duct tape is key; that duct tape alone is evidence of
19 malice.

20 He walks her to the tub. He's not dragging her. He's
21 not still furious and pulling her along. She walked to the
22 tub because he walked her there, puts her in the tub, sits
23 on the bed, takes two hits of crack. And remember the
24 testimony about how long it took the three of them to smoke
25 that crack? It took a good while. So, he's had time to

1 sit there and take two hits of crack while she's duct
2 taped.

3 He's 5 feet away. He then gets up, after the Devil
4 tells him you got to finish her off, and he walks from the
5 kitchen to retrieve a knife and come back, and by his own
6 wife's testimony this is how far it would be. And then
7 when he gets back in with the knife, he slices her neck not
8 once, at least twice, possibly more. Enough for her to
9 bleed almost a bucket of blood on to the floor, pooling in
10 front of the tub. Enough to put all that castoff on the
11 blinds that you saw.

12 This is clearly a murder case. I don't believe that
13 you will have any reasonable doubt about this being a
14 murder when you go back in there and deliberate and
15 consider everything that's been said, and consider all the
16 evidence that goes back with you. And I'm, I'm just going
17 to ask you to please, please find Mr. Hogan guilty of
18 murder because that is exactly what he's guilty of. Thank
19 you.

20 THE COURT: All right, ladies and gentlemen of the
21 jury, you've been in the courtroom for about an hour now,
22 and it's time for me to go into my instructions. But
23 before I do that, we're going to take about a ten minute
24 break. And then we'll be ready to go forward, and I would
25 instruct you on the law of this case.

1 Please go to your jury room at this time and take a
2 break, but do not begin discussing the case yet. It's
3 still premature for you to begin any deliberation because
4 you have not heard the instructions on the law by the
5 judge. Thank you. You may go to the jury room.

6 (THE JURY EXITS AT 2:01 P.M.)

7 THE COURT: All right, we'll take, we'll take ten
8 minutes, counsel. Be ready to start back at ten after.

9 (OFF THE RECORD.)

10 THE COURT: All right, back on the record with regard
11 to the matter of *State vs. Hogan*. Mr. Hogan is present
12 with his counsel, Mr. Blake, and the state's present,
13 represented by the Solicitor's office.

14 Bring the jury in, please.

15 (THE JURY ENTERS AT 2:12 P.M.)

16 JURY CHARGE

17 THE COURT: All right. Thank you, ladies and
18 gentlemen, and we are now ready to proceed. You have now
19 heard all of the testimony in this case and the arguments
20 of counsel. If you would give me your attention, it now
21 becomes my duty to instruct you on the law of South
22 Carolina as it pertains to the issues in this case.

23 You have followed very patiently and listened very
24 attentively to the presentation of the evidence in this
25 case, and also to the able arguments made by the solicitor,

1 Ms. Johnson-Lee on behalf of the state, and Mr. Blake on
2 behalf of the defendant, and I thank you for that. It now
3 becomes the duty of the trial judge, under the constitution
4 of this state, to charge, to charge and instruct you on the
5 law applicable to this case, and it is your duty, as
6 jurors, to accept and apply the law as the court will now
7 state it to you.

8 And let me ask, if you would please, before we go any
9 further, Mr. Daniel, put these exhibits down and move that
10 podium a little bit. They're blocking my view of the jury.

11 (A PAUSE.)

12 THE COURT: Thank you.

13 As I say, it becomes my duty to charge you with the
14 law in this case, and it is your duty, as jurors, to accept
15 and apply the law as the court will now state it to you.

16 And as jurors, it is your exclusive duty to decide all
17 of the issues of fact in this case, and for that purpose to
18 determine the effect, the value, the weight, and the truth
19 of the evidence presented. Both the state and the
20 defendant have the right to expect that you will
21 conscientiously consider and evaluate the evidence and
22 apply the law of the case thereto to the end that both the
23 State of South Carolina and the defendant will receive and
24 obtain a fair and impartial trial.

25 When I use the word defendant, I refer, of course, to

1 Mr. John Lee Hogan, Jr. The State of South Carolina, by
2 the bill of indictment in this case which I hold in my
3 hand, charges the defendant with the offense known in the
4 law as murder. The indictment reads in part as follows.
5 That John Lee Hogan, Jr., did in Marlboro County on or
6 about June the 5th, 2010, willfully, feloniously,
7 intentionally -- and intentionally kill the victim, Monesha
8 S. Brown with malice aforethought, either expressed or
9 implied, by means of beating the victim several times,
10 cutting her throat with a kitchen knife, and the victim did
11 die as a proximate result thereof on June the 5th, 2010, in
12 Marlboro County.

13 To this charge and to this indictment, the defendant
14 has entered a plea of not guilty. This plea of not guilty
15 by the defendant places the burden of proof on the state to
16 prove by evidence the guilt of the defendant beyond a
17 reasonable doubt before you, the jury, can find the
18 defendant guilty.

19 The defendant, Mr. Hogan, is presumed in the law
20 innocent of the charge contained in the indictment. It is
21 a cardinal and fundamental rule of law that a defendant,
22 irrespective of the enormity of the charge against him,
23 will always be presumed innocent of the crime for which he
24 is indicted unless and until the guilt of the defendant has
25 been proven by evidence which satisfies you, the jury, of

1 his guilt beyond a reasonable doubt.

2 The presumption of innocence is not a mere legal
3 theory; it is not just a legal phrase. The presumption of
4 innocence is a substantial right to which every accused is
5 entitled. Our Supreme Court has declared that the
6 presumption of innocence is like a robe of righteousness
7 placed about the shoulders of this defendant. And it
8 remains with him and assigns to him that class, the
9 innocent, until that presumptive robe of righteousness has
10 been stripped from his person by evidence satisfying you,
11 the jury, of the guilt of the defendant beyond a reasonable
12 doubt.

13 The presumption of innocence accompanies the defendant
14 from the time of his arraignment and appearance in this
15 court and continues with the defendant after you retire to
16 your jury room to deliberate your verdict. The presumption
17 of innocence remains with the defendant and continues in
18 existence to his benefit until you, the jury, reach the
19 conclusion that he -- that the state has proven the guilt
20 of the defendant beyond a reasonable doubt.

21 Now, the state is not required to prove the guilt of a
22 defendant beyond all doubt or beyond every doubt, but
23 beyond a reasonable doubt. What is a reasonable doubt? It
24 is not an imaginary or a fanciful doubt or a weak doubt.
25 It is a substantial doubt. It is a doubt which the words

1 imply a doubt for which you can give or assign a reason
2 based on the testimony and the evidence in the case.

3 A reasonable doubt is not any sort of doubt. You and
4 I know from everyday life experiences that you may have a
5 sort of a doubt about any matter that arises, no matter how
6 trivial it may be or how serious it may be. A reasonable
7 doubt is a doubt which makes an honest, sincere,
8 conscientious juror in search of the truth hesitate to act.

9 Proof beyond a reasonable doubt is proof which leaves
10 you firmly convinced of the defendant's guilt. If you have
11 a doubt for which you can give or assign a reason as to the
12 guilt of the defendant, then he is entitled to a verdict of
13 not guilty. Reasonable doubt may arise from the evidence
14 which is in the case or the lack of evidence in the case.
15 You, the jury, must make the determination of whether
16 reasonable doubt exists in this case or whether it exists
17 in any case. You must make the determination of whether or
18 not reasonable doubt exists as to the guilt of this
19 defendant.

20 The very fact, however, that the jury engages in a
21 full and free discussion of the issue of guilt or non-guilt
22 with the normal conversational ebb and flow does not mean
23 that reasonable doubt automatically exists in this case or
24 in any other case.

25 I charge you that the defendant is entitled to every

1 reasonable doubt arising in the whole case or arising in
2 any defense, in any defenses asserted by the defendant.
3 If, upon any issue of fact essential to a conviction and a
4 verdict of guilty, you have a reasonable doubt as to how
5 that duty -- how that issue should be resolved, it would be
6 your duty to resolve that doubt in favor of the defendant.

7 A defendant, ladies and gentlemen, is not required to
8 prove his innocence. But the state is required by law to
9 prove every essential element of the offense charged
10 against the defendant by evidence which satisfies you, the
11 jury, of the guilt beyond a reasonable doubt before you,
12 the jury, can convict the defendant and find him guilty.
13 If then, upon the whole case, you have a reasonable doubt
14 as to the guilt or innocence of the defendant, he is
15 entitled to that reasonable doubt and would be entitled to
16 a verdict that reflects that reasonable doubt.

17 But, on the other hand, if, upon the whole case, you
18 find that the state has proven by evidence which satisfies
19 you, the jury, of the guilt of the defendant beyond a
20 reasonable doubt, then in such circumstances it would
21 equally be your duty to convict the defendant and find him
22 guilty.

23 If you find the defendant guilty but have a reasonable
24 doubt as to whether the defendant be guilty of the greater
25 crime charged or the lesser crime charged, then you would

1 resolve that reasonable doubt in favor of the defendant,
2 and write a verdict of guilty only as to the lesser charge.
3 But, of course, you could not write a verdict of guilty as
4 to any charge unless you find that all elements of the
5 charge have been proven by the state beyond a reasonable
6 doubt.

7 Now, I charge you that the indictment in this case,
8 which I previously had in my hand and which I have now, is
9 not evidence in this case. As I told you at the first of
10 this case, the indictment is simply the formal written
11 instrument which contains the charge against the defendant,
12 and it serves as the formal document by which this case is
13 brought to court.

14 Now, during this trial, each of us, you and I, have
15 certain duties to perform. As the trial judge, it is my
16 responsibility to preside over the trial of this case. And
17 I also have the duty to, to rule upon or pass upon the
18 admissibility of evidence offered during the progress of
19 the trial. You are to consider only the competent evidence
20 before you. That is the evidence admitted into the trial
21 of this the case, and you are to disregard and disabuse
22 from your mind any testimony ordered stricken from the
23 record of this case during the progress of the trial, if
24 there be any. And you are to consider only the testimony
25 which has been presented from this witness stand, together

1 with any exhibits that have been admitted into the record
2 and any stipulations of counsel made into the record.

3 I have the additional duty to charge you on the
4 applicable law in this case. As the presiding judge, I am
5 the sole judge of the law in this case. It is your duty to
6 accept and apply the law as I now state it to you. If you
7 have a preconceived idea as to what the law is or what the
8 law ought to be, and it does not agree with what I tell you
9 the law is, you are to disregard that preconception on your
10 part, and abandon that preconception on your part because
11 you are sworn to accept the law precisely as I state it to
12 you.

13 In every case tried in this court before a jury, the
14 jury becomes the sole and exclusive judge of the facts of
15 the case. You, the jury, are the judge of the facts in
16 this case; the court is the judge of the law. The
17 constitution of this state has declared that the trial
18 judge shall not intimate, state, comment upon, or make any
19 statement to a trial jury about the facts of the case.
20 Since you are the sole judge of the facts, you're not to
21 infer from anything that I have said during the progress of
22 this trial in ruling upon the admissibility of evidence or
23 otherwise or anything that I say to you now during the
24 course of these instructions to you that I have any opinion
25 about the facts of this case. I do not. The law does not

1 permit me to have an opinion about the facts. That is a
2 matter solely for you, the jury, to determine.

3 As jurors, then, it is your duty to determine, as I
4 have stated, the effect, the value, the weight, and the
5 truth of the evidence presented during the course of this
6 trial. Necessarily, then, you must assess the credibility
7 of the witnesses who have testified in this case.

8 Credibility is simply a legalistic term meaning
9 believable. It becomes your duty to analyze and evaluate
10 the evidence and to, and to determine that evidence which
11 convinces you of its truth.

12 I charge you that in determining the question of
13 credibility or believability of the witnesses, you -- of
14 the witnesses, you may believe one witness as against
15 several witnesses, or several witnesses as against one
16 witness. You may believe a part of the testimony of a
17 witness and reject the remaining part of the testimony of
18 that same witness. You may believe the testimony of a
19 witness in its entirety or reject the testimony of a
20 witness in its entirety. You may consider whether any
21 witness has exhibited any interest, any bias, or any
22 prejudice in the case. You may consider the demeanor of a
23 witness. That is the appearance of a witness on the
24 witness stand, and you may consider the opportunity for
25 knowledge concerning those things about which a witness

1 testified.

2 These considerations you do not exercise arbitrarily.
3 But if, in your good judgment, there is sound reason in the
4 record for so doing -- because your objective, ladies and
5 gentlemen, is to find the truth, whether it comes from a
6 witness or witnesses for the State of South Carolina or a
7 witness or witnesses for the defendant. And in doing so,
8 in exercising your mental processes and in determining what
9 you consider to be true, the law simply requires that you
10 exercise your good judgment, your common sense, your sense
11 of logic and reason, and your experiences in life.

12 You then apply these attributes of ability to the
13 evidence and determine what you consider to be the truthful
14 evidence. And to these true statements of facts, as
15 determined by you, the jury, you take and apply the law as
16 the court will now state it to you, and thus arrive at a
17 true verdict in this case.

18 Now, the defendant in this case is charged with the
19 offense of murder. What is murder? Murder is defined as
20 the willful, felonious killing of a human being by a human
21 being with malice aforethought, that malice being either
22 expressed or implied malice. Section 16-3-10 of the Code
23 of Laws of South Carolina provides murder is, quote: The
24 killing of any person with malice aforethought, either
25 expressed or implied, end quote. The state must prove

1 beyond a reasonable doubt that the defendant killed another
2 person with malice aforethought.

3 The presence of malice is a required element of
4 murder. Malice is defined as being hatred or ill will.
5 Malice, in its legal sense, does not necessarily import ill
6 will toward the individual injured, but signifies rather a
7 general malignant recklessness of the lives and safety of
8 others. Or a condition of the mind which shows a heart
9 regardless of social duty and fatally bent on mischief.

10 Malice is the wrongful intent to injure another
11 person. It indicates a wicked or depraved spirit intent on
12 doing wrong. Malice is a legal term implying wickedness
13 and excluding a just cause or excuse. It is the doing of a
14 wrongful act intentionally and without just cause or
15 excuse. The term malice indicates, indicates a formed
16 purpose and design to do a wrongful act under the
17 circumstances that exclude any legal right to do it.
18 Excuse me.

19 Malice may be either expressed or implied. The words
20 expressed or implied add nothing to the meaning of the word
21 malice. They do not imply different kinds of malice, but
22 merely the manner in which the only kind known in the law
23 may be shown to exist. That is, either by positive
24 evidence or inference.

25 Expressed malice is when there is a deliberate

1 intention to unlawfully take the life of another. Implied
2 malice is when circumstances demonstrate a wanton or
3 reckless disregard for human life. Or a reasonably prudent
4 man would have known that, according to common experience,
5 there was a plain and strong likelihood that death would
6 follow the contemplated act.

7 The law says if one intentionally kills another with a
8 deadly weapon, the implication of malice may arise. If
9 facts are proven beyond a reasonable doubt sufficient to
10 raise an inference of malice to your jury satisfaction,
11 this inference would be simply an evidentiary fact to be
12 taken into consideration by you, the jury, along with other
13 evidence in this case. And you may give it such weight as
14 you determine it should receive.

15 A deadly weapon is any article, instrument, or
16 substance which is likely to cause death or great bodily
17 harm. Whether an instrument or object has been used as a
18 deadly weapon depends upon the facts and circumstances of
19 each case.

20 Although malice must be aforethought, there is no
21 requirement that it must exist for any appreciable length
22 of time before the commission of the act. It may be
23 conceived at the very moment the act occurs. There must be
24 a combination of the evil intent and the act producing the
25 result.

1 Now, under the theory of our law that the greater
2 offense includes the lesser offense, and we refer to this
3 as the lesser-included offense, a lesser-included offense
4 of murder is voluntary manslaughter.

5 What is voluntary manslaughter? Section 16-3-50 of
6 the Code of Laws defines voluntary manslaughter as, quote:
7 The unlawful killing of another without malice, expressed
8 or implied. Voluntary manslaughter is the unlawful killing
9 of a human being without malice in sudden heat of passion
10 upon sufficient legal provocation.

11 To prove voluntary manslaughter, the state must
12 demonstrate beyond a reasonable doubt that the defendant
13 unlawfully killed another without malice in sufficient heat
14 of passion based upon sufficient legal provocation. Heat
15 of passion alone will not suffice. Both heat of passion
16 and sufficient legal provocation must be present at the
17 time of the killing to constitute voluntary manslaughter.

18 The sudden heat of passion upon sufficient legal
19 provocation, while it need not dethrone reason entirely or
20 shut out knowledge and volition, must be such as would
21 naturally disturb the sway of reason and render the mind of
22 an ordinary person incapable of cool reflection and produce
23 what, according to human experience, may be called an
24 uncontrollable impulse to do violence. The passion need
25 not be so overpowering as to -- as for the time to shut out

1 knowledge and destroy volition.

2 To constitute sufficient legal provocation, the
3 provocation must come from some act of or related to the
4 victim. The provocation of the deceased must be such as
5 naturally and instantly produces in the mind of a person
6 ordinarily constituted the highest degree of exasperation,
7 rage, anger, sudden resentment, or terror, rendering the
8 mind incapable of cool reflection. If sufficient legal
9 provocation does not exist, the killing, even if committed
10 during the, the heat of passion, is not voluntary
11 manslaughter. The provocation must deprive one of the
12 power of self-control, but it need not entirely dethrone
13 reason.

14 Now, the exercise of a legal right, no matter how
15 offensive of another, is never sufficient legal provocation
16 for voluntary manslaughter. In determining whether the act
17 which caused death was impelled by heat of passion, all of
18 the surrounding circumstances and conditions are to be
19 taken into consideration, including previous relations and
20 conditions connected with the tragedy, as well as all of
21 those existing at the time of the killing.

22 In order for an intentional and unlawful killing to
23 constitute voluntary manslaughter, the killing must occur
24 during the heat of passion aroused by adequate provocation,
25 and before the passion has cooled or has had time to cool.

1 Even if sufficient legal provocation has aroused a
2 defendant's passion, if, at the time of the killing, those
3 passions had cooled or a sufficiently reasonable time had
4 elapsed so that the passions of the ordinary reasonable
5 person would have cooled, the killing is not voluntary
6 manslaughter. If sufficient time has elapsed under all the
7 circumstances of the case for the defendant to cool -- that
8 is to say time within which an ordinary man under like
9 circumstances would have cooled before the fatal blow is
10 struck -- then the killing is not voluntary manslaughter.

11 In determining whether a reasonable time for cooling
12 off has elapsed, you should consider all of the
13 circumstances surrounding the event, the nature of the
14 provocation, the defendant's physical and mental condition,
15 the defendant's condition in life, the defendant's
16 education, habits, conduct, manner, and conversation
17 throughout the entire incident, and the circumstances and
18 relationships between the parties.

19 Now, ladies and gentlemen, I would also charge you
20 that voluntary intoxication is not an excuse for or a
21 defense to a crime, regardless of whether the crime is one
22 involving general or specific intent. This rule also
23 extends to the voluntary ingestion of drugs.

24 A person who voluntarily ingests alcohol or drugs and
25 thereby becomes intoxicated is no less responsible for his

1 acts while in such condition. If one voluntary drinks
2 intoxicating liquors, wine, or beer, or ingests drugs and
3 becomes intoxicated to whatever degree, and if, while in
4 that condition, commits an act which would be a crime if it
5 had been committed by a sober person, the fact of
6 intoxication would not relieve the intoxicated person from
7 responsibility.

8 Now, ladies and gentlemen, there are generally two
9 types of evidence that are presented in any case: direct
10 and circumstantial evidence. Direct evidence is the
11 testimony of a person who asserts or claims to have actual
12 knowledge of a fact, such as an eye witness.
13 Circumstantial evidence is proof of a chain of facts, chain
14 of facts and circumstances indicating the existence of a
15 fact. The law makes absolutely no distinction between the
16 weight or value to be given to either direct or
17 circumstantial evidence, nor is there a greater degree of
18 certainty required of circumstantial evidence than of
19 direct evidence.

20 You should weigh all of the evidence in this case.
21 And after weighing all of the evidence, if you are not
22 convinced of the guilt of the defendant beyond a reasonable
23 doubt, it would be your duty to find him not guilty on that
24 charge. On the other hand, after weighing all of the
25 evidence, if you are convinced of the guilt of the

1 defendant beyond a reasonable doubt, you would find him
2 guilty.

3 Now, there has also been testimony in this case from
4 witnesses who have been qualified as expert witnesses.
5 Although lay witnesses are limited to testifying about
6 facts within their knowledge and are not allowed to give
7 their opinion, certain witnesses, who by their training,
8 education, or experience are considered experts in a
9 particular field, may give their opinions in that field
10 based upon the facts of the matter and their conclusions.
11 These opinions constitute evidence to be considered by you
12 in connection with all of the other evidence in this case.

13 You may consider an expert's opinion just as you do
14 all of the other evidence in this case. It is for you, the
15 jury, to give it such weight as you, in your experience and
16 discretion, may determine. You must weigh such evidence
17 and accept or reject it in the same manner that you do all
18 other evidence in this case.

19 Now, as I said, ladies and gentlemen, you do have the
20 right to take all of the exhibits back to the jury room
21 with you and, and will, will -- everything that's been
22 introduced into evidence. What we will do, if you want to,
23 we will send the DVDs or the CD-ROMs back there, but you
24 will not have the equipment to play them. But if you
25 should decide, Mr. Foreman and ladies and gentlemen of the

1 jury, that y'all want to see any, all, or part of any of
2 those, you let us know, and we'll make arrangements to have
3 them played for you because you -- they are part of the
4 evidence in this case, and you do have the right to view
5 those further if you should want to.

6 Now, ladies and gentlemen, I've about finished my
7 instructions to you, but I will tell you that you are not
8 partisans or advocates for the State of South Carolina or
9 for this defendant. You do not serve on the jury to reward
10 your friends or punish your enemies. Obviously such a
11 perverted system of justice would be intolerable. You have
12 been selected by both the state and this defendant as fair
13 and impartial jurors.

14 It is your duty, then, by your joint deliberations to
15 determine the truth in this case, giving to the defendant
16 the benefit of each and every reasonable doubt on each and
17 every issue. And then to the facts which you determine to
18 be true, you take and apply the law which has been given to
19 you by this court and arrive at a verdict which does speak
20 the truth. Because the word verdict, ladies and gentlemen,
21 has a Latin derivative. It comes from the Latin word
22 *veridicto*, meaning true saying or to speak the truth. And
23 when you have, when you have accomplished these
24 responsibilities, you will have satisfied your oath as
25 jurors, and you will discharge your duty to this court.

1 I now want to instruct you on your forms of verdict in
2 this case, and there are three possible verdicts in this
3 case, and I have put them on a piece of paper.

4 If the state has failed to prove the guilt of the
5 defendant on the greater charge, your verdict as to that
6 charge -- that's prove his guilt beyond a reasonable doubt,
7 the charge -- your verdict as to that charge would be not
8 guilty, or as to either of the two charges, your verdict
9 would be not guilty. If the state has proven the guilt of
10 the defendant beyond a reasonable doubt on either of the
11 other charges, then your verdict would be -- one, one of
12 the other two would be guilty.

13 So, I have prepared here: State of South Carolina,
14 County of Marlboro. All this up here at the top is just
15 your -- the formalities and name of the case and the
16 number.

17 And I will tell you, first of all, that the order in
18 which I have put your possible verdicts on this verdict
19 form has absolutely no significance whatsoever. You should
20 not infer from the order in which I have put the possible
21 verdicts on this verdict form as I -- as my having any
22 opinion as to what your verdict should be. I do not. The
23 law does not allow me to have an opinion. But obviously,
24 in putting something down on paper, I had to put something
25 first, something second, and something third.

1 But across the top we have put: We, the jury, by
2 unanimous consent. And the verdict of -- must be the
3 verdict of all twelve of you. It must be by unanimous
4 consent: We, the jury, by unanimous agreement, find the
5 defendant, John Lee Hogan, Jr., guilty of murder or guilty
6 of voluntary manslaughter or not guilty. And you would
7 select one of the three and sign your name, Mr. Foreman,
8 and date it, and notify us, and we will return you to the
9 courtroom as soon as possible.

10 Now I'm going to send you to your jury room. I'm
11 going to ask that you not begin your deliberations just
12 yet. The law does require that I take up certain matters
13 of law with the attorneys in this case. If it is not
14 necessary for me to bring you back for additional
15 instructions, the bailiffs will bring you the exhibits,
16 they will bring you the verdict form, and tell you to begin
17 your deliberations. And when you have finished your
18 deliberations, if you would knock on the door, we will
19 return you to the courtroom as soon as possible. The
20 bailiff will be stationed outside the jury room door for
21 your security during the course of your deliberations.

22 And so with the exception of the alternate who I'm
23 going to ask to stay with me, I would ask the twelve of you
24 to go your jury room, but do not begin your deliberations
25 just yet. Thank you.

1 (THE JURY EXITS AT 2:41 P.M.)

2 THE COURT: Additions or exceptions on behalf of the
3 state, Ms. Johnson-Lee?

4 MS. JOHNSON-LEE: None, Your Honor.

5 THE COURT: Please, alternate, bring the alternate
6 back.

7 All right, nothing on behalf of the state?

8 MS. JOHNSON-LEE: No, Your Honor.

9 THE COURT: Anything on behalf of the defense?

10 MR. BLAKE: None by us.

11 THE COURT: All right, counsel, if y'all would check
12 the exhibits, make sure, and then we'll get them.

13 And bring them, bring them back in, Mr. Funderburk.
14 I'm going to discharge the alternate, counsel. The statute
15 actually provides the alternate is supposed to be
16 discharged when the matter goes to the jury.

17 (WHEREUPON, THE ALTERNATE JUROR IS DISMISSED.)

18 THE COURT: All right. Counsel, here's the -- I mean,
19 Mr. Funderburk, here's the verdict form, and if y'all got
20 all the exhibits, check them, check them out, and tell the
21 jury to go ahead and begin their deliberations.

22 MR. DANIEL: Judge, I was going to add, I just ---

23 THE COURT: All right. All right. Let's put it on
24 the record. Go ahead.

25 MR. DANIEL: I just wanted to make sure. Mr. Blake

1 brought up -- and again I thank him for this -- the mention
2 of State's Exhibit 7 had a mention of the polygraph. And
3 that has been whited out on both the front and the back so
4 they can't see through it, thanks to the clerks.

5 THE COURT: Okay.

6 MR. DANIEL: So, that has been taken care of, and I
7 see -- so, I have reviewed those, Ms. Johnson-Lee, and
8 there's nothing in this that now that's going back that
9 mentions the word polygraph.

10 THE COURT: All right. All right, Mr. Blake?

11 MR. BLAKE: Yes, sir.

12 THE COURT: All right. Okay. As soon as we get all
13 the exhibits, let's take them back to the jury and, and the
14 verdict form, and tell them to begin their deliberations.
15 We'll be at ease until we hear from the jury.

16 (COUNSELORS REVIEW EXHIBITS WITH THE COURT REPORTER.)

17 MR. DANIEL: We've reviewed everything that's in
18 evidence, and the state is in agreement with all of the
19 exhibits -- what's in, what's out -- and these are items
20 that we've agreed to go back.

21 MR. BLAKE: And the defense concurs.

22 (JURY DELIBERATIONS BEGIN AT 2:51 P.M.)

23 (OFF THE RECORD.)

24 THE COURT: Okay, we're back on the record with regard
25 to the matter of the *State vs. Hogan*, 2010-GS-34-0696. I

1 understand that the jury has reached a verdict.

2 Before I bring the jury in and have the verdict
3 published, I want to announce to everyone here that I know
4 that this is an important matter to everyone. It's
5 important the state. It's important to the victim's
6 family. It's important to the defendant and the
7 defendant's family. But I am going to have to require that
8 order and decorum be maintained in the courtroom when the
9 verdict is published.

10 If there's anyone in the courtroom who thinks that
11 they cannot sit quietly and accept the verdict when it is
12 published by the clerk, I would ask that you leave now.
13 But the court cannot tolerate any kind of shows of emotions
14 or exclamations or clapping or anything one way or the
15 other. And if there's anyone who thinks they cannot sit
16 quietly when the verdict is published, please leave now.

17 All right, that indicates -- anything before the jury
18 is brought in, Mr. Daniel?

19 MR. DANIEL: Nothing from the state.

20 THE COURT: Mr. Blake?

21 MR. BLAKE: No, Your Honor.

22 THE COURT: All right. Bring the jury in.

23 (THE JURY ENTERS AT 3:25 P.M.)

24 CLERK OF COURT: Mr. Foreman, have you reached a
25 verdict?

1 FOREPERSON: We have.

2 (A PAUSE.)

3 THE COURT: All right, the standard form. The verdict
4 appears to be correct. Mr. Blake, if you and Mr. Hogan
5 stand, please, while the verdict is published.

6 All right, Mr. Clerk, you may publish the verdict.

7 VERDICT

8 CLERK OF COURT: Indictment number 2010-GS-34-0696,
9 *State of South Carolina vs. John Lee Hogan, Jr.* We, the
10 jury, by unanimous agreement find the defendant, John Lee
11 Hogan, Jr., guilty of murder. James Aubry Crosland,
12 foreman. February, February the 8th, 2012, Bennettsville,
13 South Carolina.

14 Is this your verdict? Please say it by raising your
15 right hand.

16 (ALL JURORS COMPLY.)

17 CLERK OF COURT: We thank you.

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

19 Anything further from Mr. Blake before the jury is
20 excused?

21 MR. BLAKE: No, Your Honor.

22 THE COURT: All right. All right, ladies and
23 gentlemen of the jury, this does complete your services in
24 connection with this case. I will tell you that in my
25 view, the jury role in the fact-finding process is so

1 important that the court or the judge should not comment on
2 the verdict of the jury even after a jury has reached a
3 verdict, and I make a practice never to comment on the
4 verdict of a jury. But I will tell you that there was
5 evidence in the record by which you could have reached the
6 decision that you did.

7 This will terminate your services on this case, and
8 I'm going to excuse you from any further service on this
9 case. I will tell you that once you have been excused,
10 there's nothing illegal about your talking with anyone
11 about your service on this case. There's nothing illegal
12 about anyone talking to you about your service. It is a
13 practice of which I strongly disapprove and I strongly
14 discourage, but it's not illegal.

15 You have the right to talk with anyone, but you also
16 have the right not to talk with anyone. And if anyone
17 wants to talk to you about it and you don't want to talk
18 about it, and they continue to harass and bother you,
19 you let the court personnel know and we will deal with
20 them.

21 Now, there's one other thing that remains to be done
22 in this case, and that is to go into the sentencing phase,
23 and we're going to do that. I know that -- in just a few
24 minutes, and I know that jurors lots of times like to know
25 what the ultimate outcome is. And if you would like to

1 stay after I excuse you for the sentencing phase, which
2 we'll go into right now, you can go out and come back
3 around, and come in and have a seat in the back of the
4 courtroom.

5 If you would like to do that, I will make sure that
6 you are excused before anyone else is excused. If you want
7 to come in and stay through the sentencing phase, I will
8 make sure that you are excused before anyone else, but you
9 don't have to. You are free to go about your business if
10 you want to. But you're also free to come back in and stay
11 if you would like.

12 I will also tell you that by serving on the jury this
13 week, you have met your citizenship responsibilities for
14 jury service for the circuit court -- that is, up here in
15 this courtroom -- either the Court of Common Pleas or the
16 Court of General Sessions for the next three years. If you
17 were to get a summons from the clerk in the next year, we
18 couldn't take you even if you wanted to serve because
19 you're actually disqualified. In the second and third
20 years, you have an exemption, which means you could serve
21 if you wanted to, but you can't be compelled to serve more
22 than once every three years.

23 If any of you need a certificate or an excuse to take
24 to your boss to show that you were on the jury this week,
25 why you can have that.

1 Not only am I going to excuse you from any service on
2 this case, this is going to be the last case we're going to
3 need the jury for this week. So, you're not going to have
4 to come back any more this week. This will excuse you for
5 the rest of the week as well.

6 And if any of you do need a certificate or anything to
7 take to your boss to show that you were serving on the
8 jury, you can get that from the clerk's office. Also, next
9 week you will get a small check from the clerk's office.
10 It will in no way compensate you for the time you've spent
11 up here this week, but it is a small token of appreciation
12 on behalf of the court for your services.

13 I hope that as a result of serving this week, you have
14 a better appreciation of our criminal justice system, and I
15 do appreciate your service.

16 I know that it is never convenient to serve on the
17 jury, but it is important that we have good citizens who
18 are willing to come forward when they are summoned to do
19 so. Even though you didn't have a lot of choice about
20 being here, it's still important that we have good citizens
21 who are willing to come forward and serve on the jury when
22 they are summoned to do so. And it is the citizen
23 participation in the judicial process which makes our
24 system the best in the world. It's not without its flaws,
25 but it's still the best in the world.

1 And again I thank you for your service this week, and
2 you are free to go about your business. Or if you would
3 like to stay for the sentencing phase, you can come back in
4 the back of the courtroom. Thank you. Have a pleasant
5 afternoon and pleasant rest of the week.

6 (THE JURY EXITS.)

7 THE COURT: All right, Mr. Blake, post-trial motions?

8 MR. BLAKE: None at this time.

9 THE COURT: No motions? Okay.

10 All right, Ms. Johnson-Lee and Mr. Daniel, y'all have
11 the sentencing sheet and then I'll hear from the state and
12 also hear from the victim's family. Come around, Ms.
13 Johnson-Lee and Mr., Mr. Daniel, and if there's a member of
14 the victim's family that would like to address the court,
15 they can come around. Y'all can be seated for a few
16 minutes till we take -- I'll hear from the state, and I'll
17 get y'all to come around.

18 MS. JOHNSON-LEE: Mr. Daniel is going to talk for me.

19 THE COURT: Yes, Mr. Daniel.

20 MR. DANIEL: Yes, Your Honor. May it please the
21 court? I, I just want to make a couple comments, if I can,
22 and then Ms. Johnson-Lee will go through the prior record
23 and that sort of thing.

24 Judge, you've, you've heard the facts. You've heard
25 how, how the jury's just agreed that Mr. Hogan

1 deliberately, viciously, violently, and brutally attacked
2 and killed Monesha Brown. Those points don't need to be
3 belabored.

4 But I will tell you, Your Honor, in my time in dealing
5 with this case -- and, first of all, I want to thank my
6 boss, Will Rogers, who I don't -- who is here and who
7 obviously allows me to prosecute cases in Dillon. But he
8 also allowed me to come over and assist, assist Mary Thomas
9 in this case, and that's what I've done. She's certainly
10 been the lead here, and Mary Thomas has done a fabulous job
11 with the presentation of this case.

12 Your Honor, the family of the victim of Ms., Ms.
13 Monesha Brown I've gotten to know throughout the course of
14 this trial, and they have handled this case, Judge, with
15 more dignity and grace and class than, than most families
16 similarly situated would have. They have, they have
17 conducted themselves appropriately at every phase where,
18 where it would have been understandable if they had not.

19 Also, finally, law enforcement, I'm thankful for law
20 enforcement that I work with in Dillon, and this is --
21 certainly doesn't say anything to that. But the law
22 enforcement here, particularly in this case, has been
23 phenomenal. Sheriff Knight, Sheriff Knight's staff, Shawn
24 Feldner, particularly, Chief McNeal's staff, and Larry
25 Turner, and, of course, SLED with the many people who

1 worked on that case, specifically Paul LaRosa, this was a
2 phenomenal job by law enforcement and, and that certainly
3 makes our job a lot easier.

4 And, finally, our office staff with Tyra White, and
5 the others in our office who, who worked so hard for this.
6 These cases don't just come together over a weekend and,
7 and certainly all of these people contributed to us being
8 able, being able to today, through the jury's verdict,
9 bringing justice to this family. And I again want to
10 recognize the family for their, their sincerity and their
11 dignity.

12 THE COURT: All right. Thank you, Mr. Daniel. Let me
13 -- Ms. Johnson-Lee, anything you want to say before I call
14 on the victim's mother?

15 MS. JOHNSON-LEE: Just have his prior record, Your
16 Honor.

17 THE COURT: Yes.

18 MS. JOHNSON-LEE: We actually obtained the judgments
19 from the Clerk of Court in Risorio County, Texas, for the
20 aggravated assault with a deadly weapon, and the weapon in
21 that case was also a knife. His final judgment of that
22 case was in 2003, and also a judgment from Risorio County,
23 Texas, on a burglary of a building. Final judgment
24 September 2003, which I'd like to hand up to the court.

1 And also he was convicted at the same time in September of
2 2003 of driving while intoxicated, third or more.

3 Your Honor, the victim's mother, Ms. Queen Brown, is
4 up here with us.

5 THE COURT: All right. Just one minute. Let me look
6 at this.

7 (A PAUSE.)

8 THE COURT: All right, Ms. Brown, I will tell you
9 that, as the mother of the victim in this case, you have
10 the right to be kept advised of everything that's been
11 going on. And I'm sure that law enforcement and the
12 solicitor's office, since this tragedy happened to your
13 daughter, kept you advised as best they could have of
14 anything.

15 You also have the right to be present in court, and
16 you have the right to address the court. The legislature a
17 number of years ago -- but, first of all, the citizens of
18 the state a number of years ago passed the Victim Rights
19 Amendment to the constitution. That gives the victims or
20 their families certain rights, and one of those rights is
21 for that individual to, or somebody on behalf of the
22 victim, to appear in court and speak if they would like to
23 address the court. So, if there is anything that you would
24 like to tell me, I'll be glad to hear from you.

25 MS. BROWN: I can't do it.

1 THE COURT: I understand if you feel like you can't,
2 can't say anything. I can certainly understand that as
3 well.

4 MS. BROWN: I can't.

5 THE COURT: Thank you.

6 MS. JOHNSON-LEE: Judge, another relative, Ms.
7 Tiffany Covington-Smith, who is Monesha's cousin ---

8 THE COURT: All right.

9 MS. JOHNSON-LEE: --- is coming up, Your Honor.

10 THE COURT: Just give the court reporter your name,
11 and I'll allow you to speak on behalf of the family.

12 MS. COVINGTON: Tiffany Covington.

13 THE COURT: Okay.

14 MS. COVINGTON: I just want to thank the law
15 enforcements, Mary Lee, Daniels, for keeping us advised of
16 everything.

17 And to Mr. Hogan, I -- every day he sits in that jail
18 cell, I want him to think about it because he really
19 destroyed our family. He can turn around and talk to his
20 mom, pick up the phone and call her. We can't hear
21 Monesha's voice. Davaris, Travion, DJ, and Allen, he took
22 their mom away. His mom can go visit him during the
23 holidays. We have to go to the cemetery and visit Monesha.
24 I mean, something just was so senseless. I want him to

1 know that I done forgave him, but he got to deal with the
2 day-to-day basis of what he did.

3 And I just want the -- like again to say I just want
4 the court to know that we are thankful and thankful for the
5 verdict that the jury gave, and we just ask you to
6 continue, continue to keep praying for our family because
7 we still going to need it, and that's all that I have to
8 say.

9 THE COURT: All right. Thank you for being here.

10 All right, anything else, Ms. Johnson-Lee?

11 MS. JOHNSON-LEE: Just a recommendation, Judge.

12 THE COURT: All right.

13 MS. JOHNSON-LEE: The state recommends life
14 imprisonment, and I believe law enforcement and the family
15 is in full agreement with that recommendation.

16 THE COURT: Okay. All right. All right. Thank you.

17 All right, Mr. Blake, if you and Mr. Hogan would come
18 around, please.

19 (A PAUSE.)

20 THE COURT: Mr. Blake, I'm be glad to hear from you or
21 from anybody, any members of the family or anybody else
22 that you would like to speak.

23 And you might also tell -- I'll be glad to hear from
24 Mr. Hogan as well, keeping in mind, of course, this is a
25 little bit of an unusual case.

1 I usually tell counsel to carefully advise their
2 clients about what they say because of the implications on
3 appeal, but I don't know that that is involved in this
4 case. But I'll be glad to hear from you. Go ahead, Mr.
5 Blake.

6 MR. BLAKE: Your Honor, John is thirty-eight years
7 old. He has a son three-and-a-half years old. Two years
8 of college. Obviously it came out during the trial a life-
9 long addiction problem.

10 That was certainly not part of the guilt phase of this
11 case, but I think it's appropriate in mitigation. I will
12 say that in my opinion, but for the crack cocaine use, we
13 would not be standing here today. I know that was not part
14 of the guilt phase. I do wish the judge to take that into
15 consideration.

16 John is a good man; I've really enjoyed getting to
17 know him. I find him to be sincere and devout, and he is,
18 in fact, very sorry for what has happened.

19 You can speak with Dr. Gibbs who saw John there. John
20 was, was suicidal and he saw Dr. Gibbs. He prayed with Dr.
21 October 1, 2012 Gibbs, and the thing that he prayed for was
22 Monesha's family.

23 So, I don't care what anybody else says. I've been
24 with the man. I know him; I know his heart. He's sorry
25 for what happened. Yes, he's sorry he lost his family.

1 He's been remorseful for Monesha's family since the day
2 this happened. Dr. Gibbs can certainly speak to that.

3 But he is thirty-eight years old. Your Honor, I know
4 you can do the math. That's why we're here today because
5 any sentence is basically a life sentence.

6 THE COURT: All right, Dr. Gibbs, give the reporter
7 your name. I'll be glad to hear from you.

8 DR. GIBBS: I'm James Gibbs, M.D. I work at the
9 clinic, mental-health clinic here in town. I first saw
10 John sometime last summer, and at our first meeting he
11 asked me to pray with him. And that became a habit,
12 something he and I would do. And the first prayer he said
13 and the only prayer that day was for Monesha and her
14 family.

15 THE COURT: Okay. Thank you, sir.

16 Yes, Ms. Hogan.

17 MS. HOGAN: Judge, I'm Summer Hogan, and I just wanted
18 to also confirm that. In every letter that I've received
19 from John, which has been countless, they've all mentioned
20 the family over myself, my daughter, his son, and his own
21 life.

22 And I know that murder can never be reversed. I know
23 that life can never come back until after. But he is
24 remorseful, and I do hope that all parties involved would
25 find forgiveness.

1 And I just want to say that he was an amazing husband,
2 and he was an amazing father. He never was abusive; he
3 never was violent. He never cursed towards me. I'd like
4 that to be known for the record.

5 THE COURT: Thank you. Thank you for being here.

6 Anyone else, Mr. Blake?

7 MR. BLAKE: Nothing else.

8 THE COURT: All right, nothing, Mr. Hogan? Keeping in
9 mind, of course, I don't know that -- as I say, it's a
10 little bit unusual, Mr. Blake, but I'll let you advise him.
11 I won't hold it against him if he doesn't have anything to
12 say to me. I'll tell you that.

13 MR. HOGAN: The only thing that I have to say, Judge
14 King, is that I'm sorry, that I'm sorry to Monesha's
15 family. That's all I have to say. I've been praying for
16 them from the day that it happened, and I pray they can
17 find forgiveness in their hearts for me.

18 And I just want them to know that I will live with it
19 every day for the rest of my life, whether or not I would
20 have gotten a long sentence or not. And that Monesha will
21 always be alive in my testimony, and I'll carry her memory
22 with me.

23 MR. BLAKE: Judge, I will say that many months ago,
24 that Mr. Hogan on his own wrote a letter to the family
25 apologizing to them.

1 MR. HOGAN: I just, I just, I just want them to know
2 how sorry I am, Judge, and I'll be sorry till the day I
3 die. I'm sorry.

4 THE COURT: All right.

5 MR. HOGAN: I am truly am, I'm sorry. I'm sorry,
6 ma'am.

7 It'll be all right, Momma.

8 (A PAUSE.)

9 *SENTENCE OF THE COURT*

10 THE COURT: This case is, I think, is an indication of
11 what I have felt for the sixteen years that I have been on
12 the bench. Mr. Blake alluded to it, and I think it is
13 true: if it were not for the crack cocaine, this probably
14 never would have happened.

15 I've made the statement, and many of the lawyers have
16 heard me make the statement that if we could eliminate
17 drugs from our society -- and I include alcohol in that --
18 if we can eliminate drugs from our society, that we would
19 probably eliminate eighty-five or ninety percent of the
20 crime. People are either committing crimes to steal money,
21 or to get money to buy drugs, or they're high on drugs and
22 judgment is impaired. But if we could somehow find the
23 solution to the drug problem in this country, alcohol
24 included, we would eliminate a lot of crime, and I firmly
25 believe that.

1 I've also made the statement on many occasions in the
2 past that the most difficult thing that we circuit court
3 judges have to do is impose criminal sentence. I was told
4 that by some of my colleagues when I got this job over
5 sixteen years ago, and nothing has changed in those sixteen
6 years that changes that opinion. It is the most difficult
7 thing that we have to do.

8 We do not have a crystal ball; we cannot see the
9 future. All we can do is impose -- or impose sentences
10 based upon our experience and our training and the facts
11 and circumstances surrounding the crime. Many times our
12 sentences do not satisfy everyone. Sometimes they satisfy
13 no one. But we do make a decision based upon what we've
14 heard from the facts of the case and the individuals
15 involved, both the victims and the defendants. But it is
16 the most difficult thing that we have to do. There are no
17 winners here, only victims and survivors.

18 I will say to Ms. Brown and your family that there's
19 nothing that I can say or do today that could ease your
20 pain. And I certainly empathize with you, and I hope that
21 the judgement of the court today and the conclusion of
22 these proceedings will bring some closure to you and your
23 family. But I do empathize with you.

24 I do believe that the defendant in this case is
25 remorseful. I'm sure that he would like to live that

1 period of time all over again in his life, and that he will
2 remember it every day for the rest of his life.

3 I have to weigh that remorsefulness, however, against
4 the six week period of time from the time the incident
5 actually occurred, and I think that was a result of drug-
6 induced behavior. But the problem that I really have with
7 this is the fact that he did not come forward. That there
8 was a six week period of time in there when no one knew
9 where the victim was.

10 Her family was looking for her and wondering where she
11 was, and what had happened to her, and that was -- had to
12 be excruciating as well. That does not mitigate well for
13 you, Mr. Hogan, that there was that six week period of time
14 that from the time that this happened that night, if you
15 had come forward that night and owned up to it, things
16 might have been somewhat different.

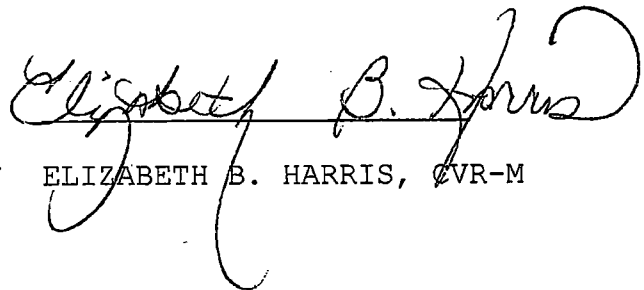
17 Based upon the facts of this case, and my evaluation
18 of the testimony, and what has happened both on the night
19 of the incident and after that, I think that the
20 appropriate sentence is that that the law authorizes me to
21 impose. And so the sentence of the court is defendant is
22 committed to the South Carolina Department of Corrections
23 for a term of life in prison.

24 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR MARLBORO COUNTY, SOUTH CAROLINA, ON
THE 6TH, 7TH, 8TH DAYS OF FEBRUARY, 2012.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

A handwritten signature in cursive script, reading "Elizabeth B. Harris", written over a horizontal line.

ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

SEPTEMBER 22ND, 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marlboro County
Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN L. HOGAN,

APPELLANT

APPELLATE CASE NO. 2012-208526

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to allow the psychopharmacological testimony of Dr. William Morton about how appellant's drug use affected his perception of events, since this was relevant to the jury's consideration of voluntary manslaughter -- provocations causing a heat of passion and a cooling off period -- and it was not offered as a defense or to prove diminished capacity?

STATEMENT OF THE CASE

Appellant was indicted by the Marlboro County grand jury for the offense of murder. His case was called to trial on February 6, 2012 before the Honorable Howard P. King, and a jury. Daniel L. Blake represented appellant. Mary Thomas Johnson-Lee and W. Shipp Daniel III were the assistant solicitors. R. 1

On February 8, 2012, jury found appellant guilty of murder. R. 422, ll. 8 -13. Judge King sentenced appellant to life imprisonment. R. 423, ll. 17 – 23.

..... This appeal follows.

ARGUMENT

The court erred by refusing to allow the psychopharmacological testimony of Dr. William Morton about how appellant's drug use affected his perception of events, since this was relevant to the jury's consideration of voluntary manslaughter -- provocations causing a heat of passion and a cooling off period -- and it was not offered as a defense or to prove diminished capacity

Relevant facts

A pre-trial hearing held on December 9, 2011. Appellant proffered the testimony of psychopharmacologist, Dr. William Alexander Morton. R. 3, l. 10 – 4, l. 6. Dr. Morton had practiced psychopharmacology for thirty-five years. He was retired, but still consulting with the University of South Carolina Medical School as a professor emeritus of “pharmacy and associate clinical professor of psychiatry and behavioral sciences.” R. 4, ll. 3 – 18.

Dr. Morton had been involved in routinely collecting data and rendering opinions -- both on an inpatient and outpatient basis – on drug abuse matters for about twenty-eight years. R. 6, ll. 9 – 8, l. 4. Dr. Morton explained and gave several examples of how he dealt with his staff as the “team leader” on such issues as withdrawal symptoms, and detoxifying patients. R. 6, l. 9 – 8, l. 5. Dr. Morton had previously testified numerous times as an expert in matters related to cocaine use and its effect on a person's cognitive ability. R. 14, ll. 8 – 11. The state stipulated to Dr. Morton's qualifications as an expert in the fields of addiction and psychopharmacology. R. 19, ll. 13 – 24.

Dr. Morton testified that crack cocaine was more likely to cause violence than powdered cocaine. In working with emergency room physicians, he attempted to teach

them that they risk coming under attack under by a person on crack cocaine because they “are suddenly explosively violent.” R. 37, ll. 6 – 24. Dr. Morton explained: “[O]ne of the things it does is it releases tremendous amounts of chemicals that are used if you were in a violent situation to help you either fight or run away. And that term is ‘flight or fight.’” A person’s heart would be racing as they attempted to handle the stress of an encounter. R. 38, ll. 4 – 25.

Dr. Morton specifically addressed appellant’s relapse into using crack cocaine: “Absolutely....it would have had effect on his behavior during the week of his use, which was rather a recent onset.” R. 41, ll. 23 – 42, l. 11. Dr. Morton said from his years of treating people on these drugs he learned their thinking was not clear and that it was impaired. R. 42, ll. 4 – 23. It affected the frontal part of the brain where decisions were made, and it caused suspiciousness, agitation, and restlessness.

Dr. Morton noted evidence that the decedent also had cocaine and hydroxyzine in her blood, as well, as alcohol in her system R. 43, ll. 9 – 16. Given the evidence in this case, Dr. Morton opined there was a “pretty high likelihood,” based on the amount of crack cocaine appellant had used, that would have caused him to be aggressive, irritable and uncomfortable on the night of the fatal incident. R. 47, ll. 20 – 49, l. 13. As will be seen infra, the fatal encounter occurred when appellant spotted the decedent going through his wallet. When caught, the decedent also reacted violently in her drug induced state of mind.

The trial judge then questioned Dr. Morton about the effects of such drug use. Dr. Morton said that the paranoia associated with cocaine use could last for days, months, and could affect the ability of the user to make rational decisions for as long as eighteen

months. Dr. Morton testified that appellant was still criminally responsible for his behavior because voluntary intoxication was not a defense from a legal standpoint. R. 53, ll. 7 – 54, l. 9; R. 56, ll. 4 – 11. Dr. Morton further offered that appellant knew right from wrong despite his drug use, but that the drug causes “incredible changes in a person’s perception.” R. 56, l. 4 – 58, l. 12.

Assistant solicitor Daniel argued that voluntary intoxication in South Carolina was not a defense, and he claimed the defense was putting forth Dr. Morton’s testimony to argue to the jury that appellant was guilty of voluntary manslaughter and not murder. The state also argued that, even if Dr. Morton’s testimony was relevant, it should be excluded under Rule 403, SCRE, because of its unduly prejudicial nature to the state’s case. R. 66, l. 18 – 71, l. 16.

Defense counsel argued that evidence of the crack cocaine would come in during the case before the jury anyway because it was part of the *res gestae*. He noted that in Judge Anderson’s Requests to Charge book, Judge Anderson had instructions that the jury had to consider all surrounding circumstances when determining whether heat of passion existed and the mental state involved in a defendant cooling off. R. 71, l. 20 – 78, l. 23.

Further argument was heard on the matter on January 10, 2012. R. 81, ll. 13 – 82, l. 3. Defense counsel Blake argued under State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999) and Rule 702, SCRE, that the court had to consider whether scientific evidence would assist a trier of fact. Counsel Blake argued that Dr. Morton’s testimony would assist the jury in understanding how appellant and the decedent were acting since they were both on drugs that evening. Counsel noted that the jury needed to understand how

crack cocaine affected behavior. Again, Dr. Morton's testimony could be helpful to the jury as to the issues of heat of passion and the cooling off period. R. 82, ll. 4 – 86, l. 8.

Assistant solicitor Daniel argued the defense was only attempting to disguise voluntary intoxication as a defense -- a "backdoor attempt." R. 86, ll. 11 – 14, l. 22. The judge, after hearing extensive arguments, ruled that Dr. Morton's testimony was not the proper subject of expert testimony in this case, and he denied the motion to reconsider that ruling. Dr. Morton's testimony was thus excluded entirely from the jury's consideration. R. 95. l. 18 – 96, l. 3.

Trial facts

Appellant met the decedent after he began using crack cocaine again after having gone through drug rehabilitation. Queen Brown was the mother of the decedent, Monesha Brown. R. 105, l. 8 – 106, l. 8.

Ms. Brown usually cooked dinner for the family and some people at her church on Wednesday evenings. When the decedent did not arrive one Wednesday Ms. Brown reported her missing and the police began searching for her. R. 106, ll. 2 – 110, l. 9. Ms. Brown admitted her daughter was addicted to crack cocaine, and that she was consequently very worried about her safety. R. 110, ll. 16 – 18.

Bennettsville investigator Larry Turner remembered the decedent was reported missing on June 2, 2010. R. 111, ll. 4 – 112, l. 11. Appellant became a suspect because he was the last person seen with the decedent. There was evidence a confidential government informant was involved in crack cocaine purchases with the decedent and appellant on the night she was killed. R. 114, ll. 1 – 115, l. 23.

Turner interviewed appellant July 21, 2010 at the Bennettsville police station. R. 116, ll. 7 – 9. Turner testified appellant confessed that he had killed the decedent during a confrontation. R. 124, ll. 17 – 25.

Investigator Sean Feldner was also involved in interrogating appellant. Feldner testified appellant initially denied responsibility for the decedent's death. Feldner remembered that he told appellant: "You owe it to the family to bring closure for her and to the kids, and you need to man up, and you need to tell us the truth and what really happened to Monesha Brown." R. 148, ll. 13 – 18.

Appellant then confessed that he was doing crack cocaine with Brown and they went to his trailer intending to have sex. They took a bath together, but appellant got out of the bathtub and went into the kitchen to get a beer. When he reentered his bedroom, he saw Brown going through his wallet. Appellant became enraged and he began fighting with the decedent who was violently angry at being confronted while apparently stealing appellant's money. Brown was thrown into a wall, and there was a "big hole" in that wall where she hit the wall. R. 148, ll. 25 – 154, l. 7. Decedent Brown grabbed a knife and stabbed appellant in his side. Appellant then grabbed a knife and stabbed Brown in the neck. He duct taped her hands behind her back, and placed her in the bathtub. Appellant then smoked some more crack cocaine. Appellant told Feldner that "the devil told him" that he needed "to finish her off." R. 148, ll. 25 – 154, l. 7.

Appellant then got a knife from the kitchen and sliced the victim's neck on both sides. Appellant told investigators that he placed the decedent's body in a barrel, and disposed of the barrel. R. 148, ll. 25 – 154, l. 7. Appellant then led the police to the victim's body which was found in "the barrel located off of 38 South." R. 154, ll. 8 -17.

Jury instructions

The judge instructed the jury on the law of murder and voluntary manslaughter. R. 410, ll. 18 – 416, l.18. He also instructed the jury that voluntary intoxication was not an excuse or a defense to a crime “regardless of whether the crime is one involving general or specific intent.” This rule also extended to voluntary ingestion of drugs. The judge went on to explain in detail that anyone ingesting alcohol or drugs was “no less responsible for his acts while in such condition.” R. 415, ll. 19 – 416, l. 7.

Discussion

In State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009), the Supreme Court noted the gatekeeping function of the trial judge in insuring the reliability of expert testimony. Here, there was not any contention that Dr. Morton was not qualified to give an expert opinion on the effects of crack cocaine on appellant’s perceptions. Rather, the single objection was that Dr. Morton’s testimony was a “backdoor” attempt to offer a “diminished capacity” defense or mislead the jury on how to analyze the “cooling off period” of voluntary manslaughter.

There can be little doubt that Dr. Morton’s testimony would have aided the jury in understanding the effects of crack cocaine on the human body. It affected appellant’s perception of the provocation where he and the decedent were both using crack cocaine. The evidence showed the decedent also reacted violently even though her behavior was not natural given that she was caught in the wrongful act of going through appellant’s wallet. Yet the situation irrationally escalated out of hand. People who kill in a heat of passion are acting irrationally by the nature of the situation. The jury needed guidance on

how chemicals here affected perception since a “rational person standard” is by fact of life not applicable to “heat of passion.”

Before scientific evidence such as Dr. Morton’s is admitted, the judge must determine the evidence is relevant, reliable and helpful to the jury. See State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999). Even if relevant scientific evidence can be considered “shaky” it must be remembered that “vigorous cross examination, presentation of contrary evidence and careful instructions on the burden of proof are the traditional appropriate means of attacking shaky but admissible evidence. See State v. Dinkins, 319 S.C. 415, 418, 462 S.E.2d 59, 60 (1995).

Under Rule 702, SCRE if scientific, technical, or other specialized knowledge will assist the trier a fact to understand the evidence or determine a fact at issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify there to in a form of an opinion or otherwise. Here Dr. Morton’s testimony was within the broad definition of relevance under Rule 401, SCRE. See, also, State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986).

The judge’s instructions here made it very clear, in great detail, that voluntary intoxication was not a defense or excuse, and it did not in any other way mitigate an unlawful killing. The purpose of Dr. Morton’s testimony in this case was merely to have the jury understand that appellant, and the decedent, both reacted, in some part, given the crack cocaine ingestion. If this was “shaky” scientific evidence, the remedy was the well crafted jury instructions that the trial judge in fact gave in this case.

The exclusion of Dr. Morton’s relevant scientific evidence in its entirety was prejudicial because the lay people on the jury needed the guidance of this relevant evident

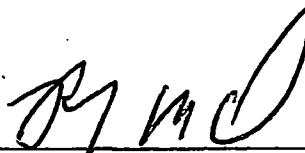
because it assisted it in understanding this unusual encounter -- where the effects of drugs were inextricably combined -- with actions involving the heat of passion and a possible cooling off period.

Finally, the evidence should not have been excluded under Rule 403, SCRE. The danger of unfair prejudice usually arises in the context of unfair prejudice to the defendant. Given the judge's thorough jury instruction in this case on drug use not being a defense or a mitigating factor in any way, the state was more than adequately protected against any undue prejudice to the state. Appellant should be granted a new trial due to the wrongful exclusion of Dr. Morton's testimony.

CONCLUSION

By reason of the forgoing argument, appellant's conviction should be reversed and this case remanded to the Marlboro County Court of General Sessions for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

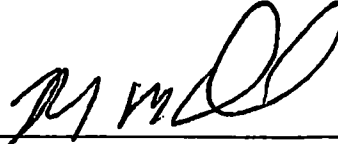
ATTORNEY FOR APPELLANT

This 8th day of January, 2014.

CERTIFICATE OF COUNSEL FOR APPELLANT

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

January 8, 2014



Robert M. Dudek
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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marlboro County

Howard P. King, Circuit Court Judge

THE STATE,

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V.

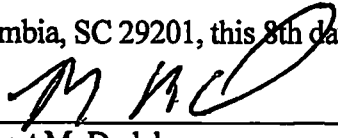
JOHN L. HOGAN,

APPELLANT

APPELLATE CASE NO. 2012-208526

CERTIFICATE OF SERVICE

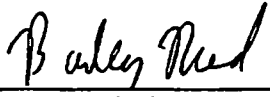
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 8th day of January, 2014.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 8th day of January, 2014.



(L.S.)
Notary Public for South Carolina
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marlboro County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN LEE HOGAN, JR.,

APPELLANT,

Appellate Case No. 2012-208526.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to allow the psychopharmacologist testimony of Dr. William Morton about how appellant's drug use affected his perception of events, since this was relevant to the jury's consideration of voluntary manslaughter—provocations causing a heat of passion and a cooling off period—and it was not offered as a defense to prove diminished capacity?

RESPONDENT'S COUNTER STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to admit the testimony of an expert in psychopharmacology concerning how Appellant's drug-induced state affected his perception of events where the expert's testimony was directed to two elements of voluntary manslaughter—provocation causing a heat of passion and cooling off—both of which are subject to a reasonable person standard.

RESPONDENT'S STATEMENT OF THE CASE

A Marlboro County Grand Jury indicted Appellant, John Lee Hogan, Jr., in September 2010 for murder. Indictment (R. pp. 424–425). On February 6, 2012, Appellant's case was called to trial before the Honorable Howard P. King. (R. p. 1). Appellant was represented by Daniel L. Blake during the three-day trial. (R. p. 1). Assistant Solicitors Mary Thomas Johnson-Lee and W. Shipp Daniel, III represented the State. (R. p. 1). On February 8, 2012, the jury returned a verdict of guilty. (R. p. 422, lines 7–18). Judge King sentenced Appellant to life imprisonment for murder. (R. p. 423, lines 21–23).

Thereafter, on February 18, 2012, Appellant served a timely Notice of Appeal, which he filed with the South Carolina Court of Appeals on February 22, 2012 and then subsequently amended on March 27, 2012 to correct a mistake.

RESPONDENT'S STATEMENT OF THE FACTS

At trial Appellant testified that he met Casey McCall and Monesha Brown (Victim) on Saturday, June 5, 2010 when he was in Bennettsville trying to buy crack cocaine. (R. p. 325, line 23–p. 329, line 7). According to Appellant, McCall jumped into the passenger seat of Appellant's truck and asked what Appellant was looking for. (R. p. 328, lines 7–13). A few seconds later, Victim got into the back seat of Appellant's truck. (R. p. 328, line 22–p. 329, line 1). Appellant informed Victim that he did not need any company but then left her alone after McCall vouched for her. (R. p. 329, lines 1–7). Appellant told McCall that he was looking for forty dollars worth of crack. (R. p. 331, lines 8–19). McCall informed Appellant that he could get that amount, and Appellant gave McCall forty dollars. (R. p. 331, lines 15–19). McCall then leaned out of Appellant's truck and got some crack from a man nearby. (R. p. 331, line 21–p. 332, line 2). McCall gave the crack to Appellant, and Appellant drove off with McCall and Victim in his truck. (R. p. 332, lines 2–15).

Appellant immediately started smoking the crack. (R. p. 332, line 9–p. 333, line 17). According to Appellant's testimony at trial, McCall and Victim smoked the crack, too, but soon the forty dollars worth of crack ran out, and Appellant asked McCall to get some more. (R. p. 332, line 16–p. 333, line 23). McCall directed Appellant to Lake Paul Wallace, and while McCall went to get more crack, Appellant and Victim waited in the car. (R. p. 333, line 23–p. 334, line 3). McCall returned with crack, and the three went to an abandoned house to smoke that crack. (R. p. 334, line 2–p. 335, line 22). After they had smoked it all, Appellant asked McCall to get him more crack, but McCall refused and got out of Appellant's truck. (R. p. 336, lines 20–23).

Victim then climbed into the passenger seat and offered to help Appellant find more crack. (R. p. 336, line 24–p. 337, line 6). Eventually, the pair found someone who would sell to

them, and they bought more crack. (R. p. 337, line 6–p. 338, line 8). Appellant informed Victim that he was paranoid and that he wanted to go home, and she asked to join him. (R. p. 338, lines 8–14).

When Appellant and Victim got to his home, they smoked crack together. (R. p. 339, lines 5–16). They then got into the bathtub, intending to have sex, but it was “awkward” according to Appellant. (R. p. 339, line 16–p. 340, line 16). Both Appellant and Victim got out of the tub, and Appellant went to the kitchen to get a beer. (R. p. 340, lines 17–22). When Appellant returned to the bathroom/bedroom,¹ he found Victim looking in his wallet. (R. p. 349, line 23–p. 351, line 10).

According to Appellant, he slapped Victim twice, and she threw the wallet at Appellant and then ran into the kitchen. (R. p. 351, line 11–p. 353, line 18). Appellant followed Victim into the kitchen. (R. p. 354, line 25–p. 355, line 1). By the time he got there, Victim had grabbed a knife. (R. p. 355, lines 1–3). Appellant testified that Victim said, “[‘O]h, hell, no mother fucker. You want to slap me, you want to slap me,[’] and she swung the knife[,] and she stabbed [Appellant] in [his] side.” (R. p. 355, lines 6–8). Appellant then grabbed Victim and squeezed her hand until she dropped the knife. (R. p. 355, lines 13–19). Appellant picked up the knife and swung it at Victim and hit her in the neck. (R. p. 356, lines 2–19). According to Appellant, “[i]t went in pretty deep into her neck, . . . and I pulled it out, and as soon as I pulled it out, the blood just started pouring out of her neck. . . .” (R. p. 356, lines 19–22). Appellant then dropped the knife, but when Victim reached for it, Appellant slammed her into a wall. (R. p. 356, line 23–p. 357, line 4). According to Appellant, everything happened “lightning fast.” (R. p. 355, lines 20–25).

¹ Appellant lived in a trailer home where the bathtub was only separated from the bedroom by a half-partition. (R. p. 350, lines 5–23).

Victim and Appellant wrestled around the kitchen for about a minute and a half. (R. p. 357, line 11–p. 358, line 7). Both got tired. (R. p. 358, lines 5–11). Appellant grabbed a roll of duct tape from the top of his refrigerator and duct taped Victim's hands behind her back. (R. p. 358, lines 11–21). Appellant then led Victim into the bedroom and sat her in the bathtub. (R. p. 358, line 25–p. 359, line 22). Appellant smoked some crack. (R. p. 359, line 20–p. 360, line 11). He then walked back into the kitchen and grabbed another knife. (R. p. 361, lines 10–15). He got in the bathtub and slit Victim's throat. (R. p. 361, lines 10–17). Appellant testified,

[S]he wasn't moving or resisting or she didn't say anything at all, and I just—that's when I, that's when I sliced her. That's when I sliced her throat, and there was no struggle in the bathtub. There was no stab, stab, stab or beat, beat, beat. It was just me slicing her throat.

(R. p. 361, lines 17–20).

Afterwards, Appellant took a shower, smoked some more crack, and then began cleaning up. (R. p. 361, line 21–p. 362, line 13). He put Victim's body in a barrel and left the barrel on the side of the road. (R. p. 362, lines 7–24). It was dawn on Sunday morning by then. (R. p. 362, line 25–p. 363, line 9).

Victim's mother, Queen Brown, reported Victim missing after she went by Victim's house to bring Victim some dinner, and Victim was not there. (R. p. 107, lines 14–24). Approximately six weeks after Victim disappeared, law enforcement identified Appellant as the last person to be seen with Victim. (R. p. 113, line 2–p. 116, line 12). On July 23, 2010, Appellant confessed to law enforcement that he had killed Victim, and he took them to her body. (R. p. 124, line 12–p. 128, line 18; 147, line 14–p. 154, line 24).

ARGUMENT

The trial court did not err by refusing to admit the testimony of an expert in psychopharmacology concerning how Appellant's drug-induced state affected his perception of events where the expert's testimony was directed to two elements of voluntary manslaughter—provocation causing a heat of passion and cooling off—both of which are subject to a reasonable person standard.

Introduction

The psychopharmacology testimony that Appellant sought to introduce at trial was not relevant to the jury's consideration of voluntary manslaughter. Such testimony would have only served to confuse the jury. As such, the trial court properly found the evidence inadmissible.

Standard of Review

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

How the Issue Was Raised at Trial

At a pre-trial hearing on December 9, 2011, defense counsel presented the testimony of Dr. William Alexander Morton, Jr. (R. p. 1; 3). The State stipulated to Dr. Morton's qualifications in the field of addictions and pharmacology, but counsel for the State informed the court that they had "an objection to the relevance of [Dr. Morton's testimony] and the admissibility of [Dr. Morton's testimony] at trial." (R. p. 8, line 10–p. 11, line 16).

Judge King allowed defense counsel to proffer Dr. Morton's testimony so that the court could determine its admissibility. (R. p. 11, line 17–p. 13, line 12). Dr. Morton explained that psychopharmacology is "the study and utilization of medicines that affect the brain so that they

would affect a person's thinking, behavior, and mood." (R. p. 9, lines 12–15). Defense counsel then had Dr. Morton discuss his curriculum vitae and various slides that he had prepared explaining the effects of cocaine on humans. (R. p. 14–28; R. pp. 427–468). But after the court encouraged defense counsel to move on to Dr. Morton's testimony pertaining to Appellant's case, defense counsel questioned Dr. Morton more specifically about his research on cocaine and psychiatric symptoms. (R. p. 28, line 18–p. 39, line 22). Dr. Morton explained the effect that cocaine has on the brain—in particular, that cocaine causes a release of dopamine, a chemical in the brain that causes pleasure; norepinephrine or noradrenaline, a chemical that affects "tension energy and anxiety and thinking;" and serotonin, a chemical related to mood stability. (R. p. 33, line 4–p. 34, line 14). Dr. Morton testified that side effects of cocaine use include agitation, restlessness, and paranoia. (R. p. 34, line 15–p. 37, line 5). He also testified that more violent behavior is seen with crack cocaine use than with powder cocaine use. (R. p. 37, line 6–p. 38, line 25).

Dr. Morton told the court that he had testified in seventy-two trials as an expert. (R. p. 39, line 23–p. 41, line 2). In about two thirds of those trials, he testified during the mitigation phase, and in about one-third he testified during the guilt phase. (R. p. 58, line 23–p. 60, line 8).

Dr. Morton testified that to prepare for his testimony in this case he met with Appellant for about two and a half hours, and he also reviewed the videotape of Appellant's confession, but he had not spoken with Appellant's family or any other witnesses. (R. p. 41, lines 3–22). Dr. Morton opined that crack cocaine had an effect on Appellant's behavior and conduct at the time he killed Victim. (R. p. 41, line 23–p. 42, line 3). According to Dr. Morton, in general, "[c]ocaine definitely affects people's ability to reason and use logic." (R. p. 42, lines 7–8). Dr.

Morton also testified that he was “aware that the victim, Ms. Brown, had a laboratory test that showed that she had cocaine metabolite in her blood. . . .” (R. p. 43, lines 9–24).

Dr. Morton explained that cocaine use can result in a loss of impulse control. (R. p. 43, line 25–p. 45, line 25). He also testified that in this case “their behavior is illogical. It does not make sense to me; it does not make sense to people. And to try to make sense of it is futile.” (R. p. 46, lines 1–9). Dr. Morton stated, “What’s the likelihood that he was acting paranoid and he was aggressive and irritable and uncomfortable on that night? Pretty high. Pretty high likelihood, based on the amount that—of—of cocaine that—that he and Mrs. Brown used over that day, sharing it.” (R. p. 47, lines 21–25). Later in his testimony Dr. Morton opined,

[I]f you were a little paranoid ten years ago and you quit, you’re going—soon as you start using now, you’re going to be equally paranoid if not more, because it’s developed that pathway. It sensitized that pathway in the brain, that thought, that feeling, maybe that behavior, that it’s easier to occur and set off.

(R. p. 48, lines 9–14).

The State declined to ask Dr. Morton any questions about his testimony and informed the court that it had no objections to the content of Dr. Morton’s testimony except that it was not admissible. (R. p. 49, lines 4–10). The State reserved its arguments on admissibility for the proper time. (R. p. 49, lines 8–10).

The trial court then inquired about Dr. Morton’s methods as well as his opinions relating to this case. (R. p. 49, line 11–p. 58, line 16). Dr. Morton admitted that he did not think that Appellant’s cocaine use absolved him of criminal responsibility because he had used crack voluntarily. (R. p. 53, line 10–p. 56, line 11). The court and Dr. Morton then had the following exchange:

COURT: Well, what is, I guess, the purpose of your testimony, then? If you don’t think it relieves him of criminal responsibility, then what is

the fact that you think that the jury should consider, based on your testimony?

MORTON: That this—here's a drug that causes incredible changes in a person's perceptions, behavior, and how they—how they feel. And it—it's well known that this should—this would help someone understand how this murder came about.

It doesn't relieve him of the responsibility of doing it, because he took the cocaine and these changes occurred. But—but he didn't plan it, per se.

(R. p. 56, lines 12–23). Dr. Morton later opined,

[I]f [Appellant] was addressed, "Did you do the wrong thing?" a day after, he would've said, "Yes, I did do the wrong thing. I knew I was doing the wrong thing, but it just got out of hand and—and it occurred."

But I don't think—I don't think he was planning this and wanting to hurt her specifically. He was just using cocaine—and in his own little world, which doesn't necessarily make sense—and his behavior was an overreaction to one of Ms. Brown's behavior[s] [sic].

(R. p. 61, lines 15–23).

The State argued that the trial court did not need to consider whether Dr. Morton's testimony was admissible under the analysis set forth in *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999), because of well-settled South Carolina law that voluntary intoxication is not a defense to a criminal act. (R. p. 66, lines 19–25). Counsel for the State cited *State v. Davis*, 278 S.C. 544, 298 S.E.2d 778 (1983), and *State v. Vaughn*, 268 S.C. 199, 232 S.E.2d 328 (1977), in support of that argument. (R. p. 67, line 1–p. 68, line 2). The State also noted that it did not believe Dr. Morton was qualified to testify as to whether Appellant used crack voluntarily, whether the use of crack relieved Appellant of criminal responsibility, or whether Appellant knew the difference between right and wrong. (R. p. 68, lines 20–25). Counsel for the State agreed with Judge King's summary of their argument as "the testimony of Mr. Morton is not relevant and will not assist the trier of fact to determine any relevant issue, because the issue of

voluntary intoxication, whether or not it is drugs or alcohol, is not a defense.” (R. p. 69, lines 19–23). Though the State expressed that it had no issue if defense counsel wanted to present Dr. Morton’s testimony in mitigation, the State also pointed out that the South Carolina trials in which Dr. Morton had testified were all capital trials except one. (R. p. 70, lines 2–16). In addition, the State presented the alternative argument that Dr. Morton’s testimony should be excluded under Rule 403. (R. p. 70, lines 21–24).

Defense counsel argued that cocaine use was “inextricably intertwined with what happened” in this case. (R. p. 71, line 20–p. 72, line 23). Defense counsel also made the following arguments:

DEFENSE: . . . we’re talking about voluntary manslaughter, which obviously, an important part here is heat of passion. There are facts in the case, my client being stabbed in the side, which would certainly lead to that heat of passion. And then, or course, there is the aspect—

COURT: Well, that may be. But that—that doesn’t have anything to do with Dr. Morton’s testimony.

DEFENSE: Well, I was going to say that we’re also talking about whether or not the heat of passion remain.

. . .

If it’s an issue of whether or not he had actually cooled off, that may—is where the effects of the cocaine come in. Has to do with his cooling off period. Not—not what caused him to do it in the first place there, just whether or not he had actually cooled off.

. . .

COURT: But I—I fail to see what Dr. Morton’s testimony has to do with that.

DEFENSE: With the cooling-off period?

COURT: Yeah.

DEFENSE: Well, cooling off has—well either two things: whether or not he had actually cooled off, which Dr. Morton’s testify—testimony would deal with; or whether sufficient time had relapsed—had happened so that he should’ve cooled off. So whether he actually cooled off or whether he should have cooled off.

(R. p. 72, line 24–p. 74, line 14). The trial court expressed some doubts about defense counsel’s position, but ultimately the court decided to take the matter under advisement and do some research of its own. (R. p. 75, line 19–p. 78, line 23).

On December 22, 2011, Judge King issued an order outlining his rulings on the matters taken up at the December 9, 2011 hearing. (R. p. 469). Judge King found that Dr. Morton’s testimony did not meet the first factor in *Council*, the requirement that the testimony assist the trier of fact to determine a fact in issue. (R. p. 474). Thus, the court excluded the testimony. (R. p. 474). The court also specifically noted in the order that “most of the time [Dr. Morton’s] testimony has been in mitigation of the sentence rather than responsibility for the criminal act.” (R. p. 471).

On January 3, 2012, defense counsel filed a motion for reconsideration with the court. (R. p. 475). Defense counsel asked the court to reconsider its ruling and specifically noted that it was not asserting a voluntary intoxication defense. (R. p. 478). “Rather, the Defendant states that the effects of cocaine on human behavior (both the defendant and the victim’s behavior) are appropriate facts for the jury to consider when it determines whether or not the Defendant’s heat of passion had cooled or should have cooled.” (R. p. 478).

The court held another pre-trial hearing on January 10, 2012. (R. p. 80). At that hearing, the court heard argument from both sides on the motion for reconsideration. (R. pp. 81–93).

Defense counsel argued that under Rule 702 expert testimony may be admitted to assist the trier of fact either to understand the evidence or to determine a fact in issue. (R. p. 82, lines

4–18). Defense counsel told the court that Dr. Morton would testify as to how cocaine use affected Appellant’s and Victim’s behavior. (R. p. 83, lines 7–14). According to defense counsel, Dr. Morton’s testimony would help the jury decide whether the heat of passion was continuing at the time of the actual killing. (R. p. 83, line 25–p. 84, line 19). When asked by the court to sum up Dr. Morton’s testimony regarding Appellant’s behavior, defense counsel stated, “[H]e did talk about the crack cocaine use increasing impulsivity, and particularly impulse increasing aggressiveness, increasing paranoia.” (R. p. 85, lines 15–21). Defense counsel argued that he was not asserting a voluntary intoxication defense—rather, he was asserting that Dr. Morton’s testimony would go to the issue of whether Appellant’s heat of passion had cooled or should have cooled. (R. p. 86, lines 3–8).

The State reiterated its earlier argument that defense counsel was trying to get around South Carolina law that voluntary intoxication is not a defense. (R. p. 86, line 20–p. 87, line 6). The State further argued, “Everybody knows that once—judgment is affected when you use crack. We don’t need a, we don’t need some expert to tell us that” (R. p. 89, lines 9–11).

In response, defense counsel argued that

while the general public, some people—especially those perhaps that have children who have been involved with crack cocaine—may have some idea of some of the characteristics, Dr. Morton is providing information to the jury that would not be available otherwise in terms of specific characteristics that occur as a result of cocaine use, and I’m talking about immediate characteristics. I’m not talking about long-term use.

(R. p. 90, lines 16–23).

The trial court then denied Appellant’s motion for reconsideration. (R. p. 95, line 19–p. 96, line 3). The court explained,

I don’t think that that is a proper subject for expert testimony, and I’m going to deny the motion for reconsideration. I thought the purpose of Dr. Morton’s testimony and the proffer, doing it in advance, was to take care of that issue

before trial. And I'm, based upon what he testified at the time, and based upon the facts that are before the court, while I don't disagree with the logic of the majority rule, I just don't think that it's the law of this state. And so I'm going to deny the motion for reconsideration.

(R. p. 95, line 19–p. 96, line 3).

Analysis

Argument Regarding Provocation Causing Heat of Passion Not Preserved for Appeal

As an initial matter, Respondent submits that Appellant has not preserved the argument that Dr. Morton's testimony was relevant to the jury's consideration of provocation causing heat of passion. Defense counsel did not make that argument to the trial court either during a pre-trial hearing or in his motion for reconsideration. It is a well-settled rule in this state that an issue is not preserved for appellate review unless it is both presented to and passed upon by the trial judge. *See, e.g., State v. McKnight*, 352 S.C. 635, 646, 576 S.E.2d 168, 174 (2003) (noting that an argument must be raised and ruled upon by a trial court to be preserved for appellate review); *State v. Watts*, 321 S.C. 158, 167, 467 S.E.2d 272, 278 (Ct. App. 1996) ("To be preserved for appellate review, an issue must be both presented to and passed upon by the trial court."). Though defense counsel asserted that Dr. Morton's testimony was relevant to the jury's consideration of "whether [Appellant's] heat of passion had cooled or had time to cool prior to the killing of the victim[.]" (R. p. 476), he did not argue that the testimony was relevant to provocation. In fact, at the pre-trial hearing on December 9, 2011, defense counsel argued that the issue of cooling off was "where the effects of the cocaine come in. Has to do with his cooling off period. Not—not what caused him to do it in the first place there, just whether or not he had actually cooled off." (R. p. 73, line 23–p. 74, line 1). Thus, Respondent submits that Appellant renounced any argument that Dr. Morton's testimony was relevant to provocation or

heat of passion—Respondent construes those elements part of “what caused him to do it in the first place.”

Dr. Morton's Testimony Regarding Appellant's Intoxicated State

Under S.C. R. Evid. 702,

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

The Supreme Court of South Carolina has provided the following instruction for trial courts dealing with expert testimony:

When admitting scientific evidence under Rule 702, SCRE, the trial judge must find the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable. The trial judge should apply the *Jones* factors to determine reliability. Further, if the evidence is admissible under Rule 702, SCRE, the trial judge should determine if its probative value is outweighed by its prejudicial effect. Rule 403, SCRE. Once the evidence is admitted under these standards, the jury may give it such weight as it deems appropriate.

State v. Council, 335 S.C. 1, 20–21, 515 S.E.2d 508, 518 (1999). The Court has also noted that scientific evidence is subject to attack for relevancy. *Id.* (citing *State v. Ford*, 301 S.C. 485, 392 S.E.2d 781 (1990)). “Evidence which is not relevant is not admissible.” Rule 402, SCRE. “‘Relevant evidence’ means 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.

Appellant contends that Dr. Morton’s testimony was relevant to the jury’s consideration of voluntary manslaughter—in particular, the elements of provocation causing a heat of passion and of cooling off. (Final Br. of Appellant at 5). Even if this Court finds that Appellant has

preserved his argument as to provocation causing heat of passion and to cooling off, Respondent disagrees that the testimony was relevant.

During Appellant's trial, the court instructed the jury on the elements of murder and the elements of voluntary manslaughter.² (R. p. 410, line 18–p. 415, line 18). Under South Carolina law, “[m]urder” is the killing of any person with malice aforethought, either express or implied.” S.C. Code Ann. § 16-3-10. On the other hand,

[v]oluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. Heat of passion alone will not suffice to reduce murder to voluntary manslaughter. Both heat of passion and sufficient legal provocation must be present at the time of the killing. The sudden heat of passion, upon sufficient legal provocation, which mitigates a felonious killing to manslaughter, while it need not dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection and produce what, according to human experience, may be called an uncontrollable impulse to do violence.

State v. Cole, 338 S.C. 97, 101–02, 525 S.E.2d 511, 513 (2000) (internal quotations and citations omitted).

[E]ven when a person's passion is “sufficiently aroused by a legally adequate provocation, if at the time of the killing those passions had cooled or a sufficiently reasonable time had elapsed so that the passions of the ordinary reasonable person would have cooled, the killing would be murder and not manslaughter.”

State v. Hernandez, 386 S.C. 655, 661, 690 S.E.2d 582, 585 (2010) (quoting *State v. Knoten*, 347 S.C. 296, 303, 555 S.E.2d 391, 395 (2001)).

Respondent submits that the relevant inquiry when considering heat of passion is what would inflame the ordinary person,³ and the relevant inquiry when considering cooling off is

² The court did not instruct the jury on either involuntary manslaughter or accident. (R. pp. 401–420).

³ Appellant contends that “[t]he jury needed guidance on how chemicals here affected perception since a ‘rational person standard’ is by fact of life not applicable to ‘heat of passion.’” (FBOA at

what amount of time would be sufficient for an ordinary person to cool down.⁴ The effect of the crack that Appellant had smoked prior to killing Victim is irrelevant to these inquiries—the jury is not charged with determining how an *intoxicated*, reasonable person would act.⁵ In fact, in accordance with South Carolina law, voluntary intoxication is not a defense. *See State v. Davis*, 278 S.C. 544, 545, 298 S.E.2d 778, 779 (1983) (citing *State v. Crocker*, 272 S.C. 344, 251 S.E.2d 764 (1979)) (“Voluntary intoxication does not impair a person’s ability to act with malice aforethought so as to reduce murder to voluntary manslaughter.”); *State v. Vaughn*, 268 S.C. 119, 125–26, 232 S.E.2d 328, 330–31 (1977) (“We adopt the rule that voluntary intoxication, where it has not produced permanent insanity, is never an excuse for or a defense to crime, regardless of whether the intent involved be general or specific. . . . The effect of drunkenness on the mind and on men’s actions . . . is a fact known to everyone, and it is as much the duty of men to abstain from placing themselves in a condition from which such danger to others is to be apprehended as it is to abstain from firing into a crowd or doing any other act likely to be attended with dangerous or fatal consequences.”) (internal quotations and citations omitted).

11). Respondent must disagree with the premise of Appellant’s assertion based the South Carolina Supreme Court’s explanation of “heat of passion.” *See State v. Cole, supra*.

⁴ Alternatively, a jury considers whether a defendant’s passions had actually cooled. Respondent addresses the relevance of Dr. Morton’s testimony with regards to that inquiry later in this brief.

⁵ **The Reasonable Man.** Some cases have considered whether the law should take into account, in measuring the adequacy of the provocation, the fact that the defendant possesses some peculiar mental or physical characteristic, not possessed by the ordinary person, which caused him, in the particular case, to lose his self-control. It is quite uniformly held that the defendant’s special mental qualities—as where, because of a sunstroke or head injury, he is particularly excitable—are not to be considered. Even more clearly, he does not qualify for the voluntary manslaughter treatment where, because of intoxication, he easily loses his self-control; that is to say, he is to be judged by the standard of the reasonable sober man.

2 Wayne R. LaFave, *Subst. Crim. Law* § 15.2 (2d ed.) (citations omitted).

Indeed, the jury in Appellant's trial was charged with such law. (R. p. 415, line 19–p. 416, line 7).

South Carolina has long recognized that evidence of voluntary intoxication is of no matter in voluntary manslaughter considerations. In 1843, the South Carolina Court of Appeals explained

[I]t would be jeopardizing the peace and safety of society, to say that he who, by half a dozen glasses, is habitually rendered irritable and fierce, shall be looked upon with more indulgence when he has barbarously resented a trivial affront, because he had taken the quantity of liquor requisite to make him a savage: or that he who has never been known to grow cool after a transport of wrath excited when he was in a state of intoxication, until sleep had sobered him, shall, in the application of the circumstances to determine what time for cooling is reasonable, be allowed a longer time because, on the occasion in question, he had voluntarily encountered the hazard which drinking was known to bring upon himself and all around him.

State v. McCants, 28 S.C.L. 384, 395. In other words, one who is voluntarily intoxicated is not treated more favorably by the law than the sober, reasonable man. Consequently, Dr. Morton's testimony regarding the effect of crack cocaine on Appellant's actions was not relevant to the jury's consideration of voluntary manslaughter.

Arguably, Dr. Morton's testimony could have been tangentially relevant to whether Appellant had *actually* cooled down prior to slitting Victim's throat. Of course, Dr. Morton was not present when Appellant killed Victim—thus, he had no lay testimony to contribute as to whether Appellant's passions had cooled. However, based on his interview with Appellant, his viewing of Appellant's confession, and his general knowledge of how crack affects the brain, Dr. Morton surmised that there was a "high likelihood" that on the night Appellant killed Victim, Appellant was acting paranoid, aggressive, irritable and uncomfortable. (R. p. 47, lines 20–25).

Dr. Morton did not testify specifically that Appellant's use of crack would have affected his ability to cool down.⁶

Respondent contends that Dr. Morton's testimony has only slight, if any, evidentiary value on the issue of whether Appellant actually cooled down after the initial altercation. Again, it is clear that in South Carolina "voluntary intoxication is not an excuse for, or a defense to a crime." *State v. Crocker*, 272 S.C. 344, 346, 251 S.E.2d 764, 766. Of course, the jury heard about Appellant's drug use on the day of the crime, but Respondent submits that allowing the jury to consider Dr. Morton's testimony on the effect of crack on Appellant's behavior would have essentially allowed Appellant to benefit, in terms of the jury's considerations of his actions, because he was intoxicated at the time he killed Victim. Respondent submits that such a benefit would be abhorrent to South Carolina law. Furthermore, Dr. Morton's testimony would have been confusing the jury as it would be wholly irrelevant to part of their inquiry (ordinary, reasonable person's cooling down) and perhaps only marginally relevant to another consideration (Appellant's cooling down). Moreover, at trial Appellant testified that on the night of the murder that he felt "paranoid[,]" (R. p. 338, lines 9–11), and "out of control[,]" (R. p. 364, line 22–p. 365, line 9). Thus, Dr. Morton's testimony was not needed to establish how Appellant felt the night he killed Victim. Under S.C. R. Evid. 403, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the

⁶ In his colloquy with the court, Dr. Morton stressed the spontaneity of Appellant's actions while on crack, and Dr. Morton repeatedly mentioned that Appellant "didn't plan it." (R. p. 49, line 16–p. 63, line 5). However, Respondent notes that no element of "planning" is required to find a defendant guilty of murder. Murder requires "malice aforethought," which is an evil intent existing just before and at the commission of the act. *See State v. Kinard*, 373 S.C. 500, 504–06, 646 S.E.2d 168, 169–70 (2007) (finding a jury charge on malice aforethought to be proper where the trial court instructed the jury that "Malice imports wickedness There has to be a combination between this evil intent existing aforethought, just before and at the commission of the battery, and the act producing the battery . . .").

issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” The trial court was correct in excluding the evidence and avoiding confusion.

Dr. Morton’s Testimony Regarding Victim’s Intoxicated State

Appellant also asserts that Dr. Morton’s testimony was relevant to explain Victim’s violent reaction, which Appellant characterizes as “not natural given that she was caught in the wrongful act of going through appellant’s wallet.” (FBOA at 10–11). However, again, the chemical mechanism triggered by crack that may have caused Victim’s actions is not relevant to the jury’s considerations. There was no need to consider *why* Victim acted the way she did—the jury only needed to consider what Victim did that provoked Appellant. Appellant’s own testimony established that when caught rifling through Appellant’s wallet, Victim ran into the kitchen, grabbed a knife, and stabbed Appellant.⁷ Any testimony that Dr. Morton could have offered regarding Victim’s behavior was unnecessary and may have confused the jury.

⁷ Appellant’s wife’s trial testimony corroborated that defendant had been stabbed though he did not go to the hospital for treatment. (R. p. 277, lines 4–18).

CONCLUSION

For all the foregoing reasons, Respondent respectfully asserts that the trial court's exclusion of Dr. Morton's testimony was not an abuse of discretion. Thus, it is respectfully submitted that the judgment, conviction, and sentence of the trial court should be affirmed.

Respectfully Submitted,

ALAN WILSON
Attorney General

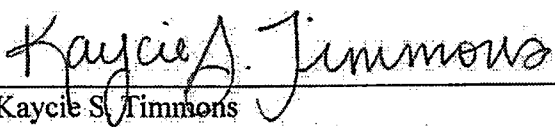
JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

KAYCIE S. TIMMONS
Assistant Attorney General
SC Bar No. 100237

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P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-0265

WILLIAM B. ROGERS, JR.
Solicitor



Kaycie S. Timmons
ATTORNEY(S) FOR RESPONDENT

January 9, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marlboro County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

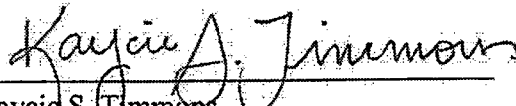
JOHN LEE HOGAN, JR.,

APPELLANT,

Appellate Case No. 2012-208526.

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, "Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."


Kaycie S. Timmons
Assistant Attorney General
S.C. Bar No. 100237

Office of the Attorney General
Post Office Box 11549
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(803) 734-0265

ATTORNEY FOR RESPONDENT

January 9, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marlboro County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V,

JOHN LEE HOGAN, JR.,

APPELLANT,

Appellate Case No. 2012-208526.

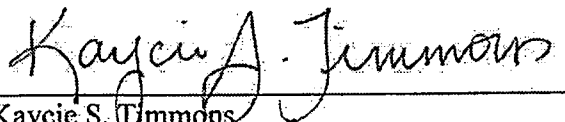
PROOF OF SERVICE

I, Kaycie S. Timmons, counsel for Respondent, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two (2) copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney of record Robert M. Dudek, Chief Appellate Defender, at:

SCCID/Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589

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

This ninth day of January, 2014.



Kaycie S. Timmons
Assistant Attorney General
SC Bar No. 100237

**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.

John Lee Hogan, Appellant.

Appellate Case No. 2012-208526

Appeal From Marlboro County
Howard P. King, Circuit Court Judge

Unpublished Opinion No. 2014-UP-369
Submitted August 1, 2014 – Filed November 5, 2014

AFFIRMED

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant Deputy
Attorney General Donald J. Zelenka, and Assistant
Attorney General Kaycie S. Timmons, all of Columbia;
and Solicitor William B. Rogers, Jr., of Bennettsville, for
Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. McMillan*, 400 S.C. 298, 302, 734 S.E.2d 171, 174 (Ct. App. 2012) ("In criminal cases, the appellate court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous."); *State v. White*, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009) ("A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion."); Rule 702, SCRE ("If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."); *State v. Crocker*, 272 S.C. 344, 346, 251 S.E.2d 764, 766 (1979) ("[V]oluntary intoxication is not an excuse for, or a defense to a crime. This rule also extends to the voluntary ingestion of drugs."); *State v. Cole*, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000) ("Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. . . . The sudden heat of passion . . . must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection[.]" (citations and internal quotation marks omitted)); *State v. Knoten*, 347 S.C. 296, 303, 555 S.E.2d 391, 395 (2001) ("Even when a person's passion has been sufficiently aroused by a legally adequate provocation, if at the time of the killing those passions had cooled *or* a sufficiently reasonable time had elapsed so that the passions of the *ordinary reasonable person would have cooled*, the killing would be murder and not manslaughter." (emphasis added)).

AFFIRMED.¹

FEW, C.J., and THOMAS and LOCKEMY, JJ., concur.

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



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 21, 2014

The Honorable William B. Funderburk
PO Drawer 996
Bennettsville SC 29512-0996

REMITTITUR

Re: The State v. John L. Hogan
Lower Court Case No. 2010GS3400696
Appellate Case No. 2012-208526

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Robert Michael Dudek, Esquire
Donald J. Zelenka, Esquire
Alan McCrory Wilson, Esquire
John W. McIntosh, Esquire

Kaycie Smith Timmons, Esquire
William Benjamin Rogers, Jr., Esquire

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF MarlboroJohn Lee Hogan 349628
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

15-CP-34-00084

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 Facility, 990 Wsack Hwy, Bishopville, SC
2. Name and location of Court which imposed sentence General Sessions, Marlboro County 29010
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-34-0696 / Murder
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) February 8, 2012, Life without Parole
 - (b) _____

CLERK OF COURT
MARLBORO COUNTY

Revised 5/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of appeals _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. conviction affirmed _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. filed November 5, 2014 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/a _____
- ii. N/a _____
- iii. N/a _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/a _____
- (b) N/a _____
- (c) N/a _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

TRUE COPY
William B. Sundbark
CLERK OF COURT
MARLBORO COUNTY

Revised 3/2003

- (a) IAC-attorney abandoned his role as def. counsel
 (b) IAC-attny failed to object to solicitor's closing argument
 (c) IAC-attny fail to perfect testimony to meet court's requiremen
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) attny abandoned his role as defense counsel
 (b) attny failed to object to solicitor's closing argument
 (c) attny failed to perfect testimony to meet court's requiremen
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? Yes
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. Petition for Rehearing of direct appeal
 ii. _____
 iii. _____
 iv. _____
- (b) the name and location of the Court in which each was filed:
- i. South Carolina Court of Appeals
 ii. P.O. Box 11629
 iii. Columbia, South Carolina 29211
 iv. _____
- (c) the disposition thereof:
- i. Petition was not filed by Court
 ii. A CERTIFIED
 iii. TRUE COPY

William B. Zundorff

Revised 3/2003

- 10(continued). (d) Iac-attny failed to investigate 763
(e) Iac-attny failed to prepare for trial
(f) Iac-attny failed to inform of a defense
(g) Iac-attny failed to object to sentence
(h) Iac-attny failed to properly preserve
direct appeal issue
(i) Iac-conflict of interest
(j) Iaac-attny failed to properly inform
me of the next step in the
judicial process after a conviction
is affirmed through direct appeal
(k) Iaac-attny failed to give me a
timely notice of the affirmation
of my conviction leading to an
extreme breakdown in the
judicial process

11(continued). (l) Iaac-attny failed to present significant and obvious
issues on appeal

- (d) attny failed to investigate
(e) attny failed to prepare for trial
(f) attny failed to inform of a defense
(g) attny failed to object to sentence
(h) attny failed to properly preserve direct
appeal issue
(i) conflict of interest
(j) attny failed to properly inform me of
the next step in the judicial process
after a conviction is affirmed through
direct appeal

- 11(26A continued). (k) attny failed to give me a timely notice of the affirmation of my conviction leading to an extreme breakdown in the judicial process
- (l) attny failed to present significant and obvious issues on appeal

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2015 MAR 11 PM 2 42
WILLIAM B. SUNDENBURK
CLERK OF COURT
MARLBORO COUNTY, SO

A CERTIFIED
TRUE COPY

William B. Sundenburg
CLERK OF COURT
MARLBORO COUNTY

iv. _____
 (d) the date of each such disposition:

i. N/A
 ii. N/A
 iii. N/A
 iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A
 ii. N/A
 iii. N/A
 iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A
 ii. N/A
 iii. N/A

(b) the proceedings in which each ground was raised:

i. N/A
 ii. N/A
 iii. N/A

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) This is my first P.C.R. application since conviction

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

*A CERTIFIED
TRUE COPY
William B. Sundin*

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- (a) your arraignment and plea? N/A
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? 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. Dan Blake, P.O. Box 883, Bennettsville, S.C. 29512
- ii. Robert M. Dudek, P.O. Box 11589, Columbia, S.C. 29211-1589
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. jury trial and related hearing
- ii. direct appeal
- iii. _____

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2015 MAR 11 PM 2 42
WILLIAM B. ZUNDERBUSH
CLERK OF COURT
MARLBORO COUNTY, SC

19. State clearly the relief you seek in filing this application:

conviction reversed and remanded for a new trial

20. Are you now under sentence from any other court that you have not challenged?

NO

A CERTIFIED
TRUE COPY

William B. Zunderbush

CLERK OF COURT
MARLBORO COUNTY

Revised 3/2003

15-CP-34-00084

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

John Hagen

SWORN to and subscribed before me this 24
day of Feb, 2015.

Debra Sines (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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2015 MAR 11 PM 2 42
WILLIAM B. ZUNDENBURK
CLERK OF COURT
MARLBORO COUNTY, SC

A CERTIFIED
TRUE COPY

William B. Zundenbuck

CLERK OF COURT
MARLBORO COUNTY

Revised 3/2003

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

John Hogan
Applicant

SWORN or affirmed to and subscribed before me this
24 day of Feb, 2015.

Debra Series
Notary Public

My Commission Expires: 11-4-2015

FILED
2015 MAR 11 PM 2 42
WILLIAM B. ZUNDERBURN
CLERK OF COURT
MARLBORO COUNTY, SC

A CERTIFIED
TRUE COPY

William B. Zunderburn
Revised 3/2003

7
CLERK OF COURT
MARLBORO COUNTY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	FOR THE FOURTH JUDICIAL CIRCUIT
	)	
John L. Hogan, #349628,	)	Case No. 2015-CP-34-0084
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for Post-Conviction Relief filed March 11, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court. In September 2010, the Marlboro County Grand Jury indicted Applicant for murder (2010-GS-34-696). Daniel L. Blake, Esquire, represented Applicant. On February 6, 2012, Applicant proceeded to trial before the Honorable Howard P. King and a jury. On February 8, 2012, the jury found Applicant guilty as indicted. Judge King sentenced Applicant to life imprisonment.

Applicant filed a timely notice of appeal, and Robert M. Dudek, Esquire, of the Office of Appellate Defense, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on November 5, 2014. State v. Hogan, Op. No. 2014-UP-369 (S.C. Ct. App. filed November 5, 2014). The remittitur was returned to the circuit court on November 21, 2014.

II.

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "IAC – attorney abandoned his role as def. counsel"
2. "IAC – attny failed to object to solicitor's closing argument"
3. "IAC – attny fail to perfect testimony to meet court's requirement"
4. "IAC – attny failed to investigate"
5. "IAC – attny failed to prepare for trial"
6. "IAC – attny failed to inform of a defense"
7. "IAC – attny failed to object to sentence"
8. "IAC – attny failed to properly preserve direct appeal issue"
9. "IAC – conflict of interest"
10. "IAAC – attny failed to properly inform me of the next step in the judicial process after a conviction is affirmed through direct appeal"
11. "IAAC – attny failed to give me a timely notice of the affirmation of my conviction leading to an extreme breakdown in the judicial process"
12. "IAAC – attny failed to present significant and obvious issues on appeal"

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the Application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this Return and incorporated herein are the records of the Marlboro County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of trial counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, the applicant must prove trial 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.” Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Id. (citing Strickland, 466 U.S. at 688). Second, trial 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. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent further submits Applicant’s allegation of ineffective appellate counsel is without merit. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v.

Lucey, 469 U.S. 387, 396 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing Jones v. Barnes, 463 U.S. 745 (1983)). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones, 463 U.S. at 753. 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, 1235 (4th Cir. 1985).

The applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, 302 S.C. at 537, 397 S.E.2d at 526; Strickland, 466 U.S. at 687. When a claim of ineffective assistance of 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.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper, 279 S.C. 264, 305 S.E.2d 247.

V.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

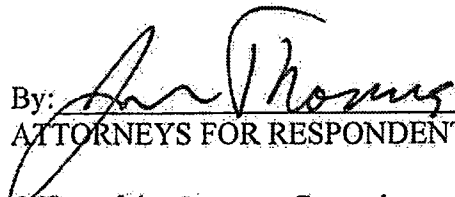
Respectfully submitted,

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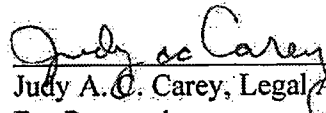
Sept. 10, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	
	)	
	)	2015-CP-34-0084
	)	
JOHN L. HOGAN, 349628	)	
	)	
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** of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia SC 29201

DATED this 10th day of September, 2015.


 Judy A.C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
<u>COUNTY OF MARLBORO</u>	)	2015-CP-34-00084

JOHN L. HOGAN	)	
APPLICANT	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA	)	
RESPONDENT	)	

July 19, 2016
Chesterfield, South Carolina

B E F O R E:

THE HONORABLE G. THOMAS COOPER, JUDGE.

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

JUSTIN J. HUNTER, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

LANCE S. BOOZER, ESQUIRE
Attorney for the Applicant

DANIEL L. BLAKE, Esquire

HATTIE O. GORDON
Circuit Court Reporter

I N D E X

Colloquy 4

JOHN HOGAN

Direct By Mr. Boozer 5

Cross By Mr. Hunter 21

DANIEL BLAKE

Direct By Mr. Hunter 25

Cross By Mr. Boozer 36

Certificate of Reporter 49

EXHIBITS

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

COLLOQUY

MR. HUNTER: May it please the Court, Your Honor.

THE COURT: Yes, sir.

MR. HUNTER: First case is John Hogan v. State of South Carolina, 2015-CP-34-0084. Your Honor, he was indicted at the September 2010 term of the Marlboro County Grand Jury for murder. That's 2010-GS-34-66. He was represented on this charge by Mr. Daniel Blake.

February 6, 2012 he proceeded to a jury trial with the Honorable Howard King. He was found guilty and sentenced to life imprisonment. He did file a timely notice of appeal which was perfected and briefs were filed.

The South Carolina Court of Appeals affirmed his conviction on November 5th 2014 by unpublished opinion. However, it was remitted for its return November 21st 2014. Filed this current action March 11th 2015. He is present in court today and represented by Mr. Lance Boozer.

THE COURT: Mr. Boozer.

MR. BOOZER: Thank you, Your Honor. May it please the Court. We would first call Mr. Hogan to the stand.

THE COURT: All right. Well, let me ask you to start with. He filed an application looks like the -- can't quite read it, but in 2015. Has an amended application

1 been filed?

2 MR. BOOZER: It has not, Your Honor. We are going
3 solely to the original application.

4 THE COURT: All right.

5 MR. BOOZER: And we can certainly go through each
6 allegation.

7 THE COURT: That's fine. Call your first witness.

8 MR. BOOZER: Thank you, Your Honor. I call Mr. Hogan
9 to the stand.

10 THE COURT: Put your left hand on bible and raise
11 your right hand if you can.

12 JOHN HOGAN, after being duly sworn, testified as
13 follows:

14 THE COURT: All right. Have a seat. State your
15 name.

16 THE WITNESS: John Hogan.

17 DIRECT EXAMINATION

18 BY MR. BOOZER:

19 Q. Mr. Hogan, just to make sure. I know it's a little
20 difficult, but we're trying to get you as close as we can
21 so that everyone can hear you on the microphone. Mr.
22 Hogan, how you doing today?

23 A. Terrible, man.

24 Q. Okay. Well, do you know why you're here today?

25 A. Yes.

1 Q. And why is that?

2 A. Seeking post conviction relief.

3 Q. And what is it you're asking this Court for today?

4 A. I guess a new trial, man.

5 Q. Right. And you understand that today what you're
6 asking for in a post conviction relief action is to have a
7 new trial, right?

8 A. Yep.

9 Q. Okay. Who was -- obviously, you had a trial?

10 A. Yeah.

11 Q. And you were convicted? You're going to have to say
12 yes or no so Madam Court Reporter can take it down.

13 A. Well, I wasn't actually convicted, but strong man
14 that government created and my birth was convicted.

15 Q. Okay. What was the sentence that you received as a
16 result of the trial?

17 A. This fictitious entity received life without parole.

18 Q. All right. Let me ask you this. Who was the lawyer
19 that represented you?

20 A. Dan Blake.

21 Q. All right. Was Mr. Blake appointed or retained to
22 represent you?

23 A. Retained.

24 Q. He was retained. When did you retain him?

25 A. I could -- I can't -- I don't remember exactly, man.

1 Q. Okay. Well, let me ask you this. Do you know how
2 many times you probably met with Mr. Blake when you
3 retained him and then to your -- on to your trial?

4 A. Not very many. Four, three or four, maybe.

5 Q. Three or four?

6 A. Four, maybe, yeah.

7 Q. What, would he come see you at the County Jail?

8 A. Yeah.

9 Q. What would you two discuss when he came to visit you?

10 A. All kinds of stuff, you know. What led up to the
11 event that happened, basically, you know. Things that led
12 up to what happened.

13 Q. Would he discuss any defenses that you might have to
14 your charges?

15 A. He basically told me that I confessed, police had a
16 recorded confession, and that I really didn't have any
17 defense. That I was, basically -- should just plea out
18 because I was guilty. I confessed my guilt. Really
19 didn't have any defense.

20 Q. Well, what was your response to him telling you there
21 really wasn't any defense?

22 A. I told him that that's not true; that he doesn't --
23 he didn't -- he wasn't there when this thing happened. He
24 doesn't understand how it went down, and I'm not guilty of
25 murder. I did not set out to intentionally hurt

1 Miss Brown at all. You know, that I have -- that's my
2 defense, you know. I have a defense. I'm not guilty of
3 murder. That's what I told him.

4 Q. Okay. Did he review any evidence or what would be
5 responses to any Rule Five requests that were filed?

6 A. I don't know.

7 Q. Okay. Did he talk about any sort of case strategy or
8 trial strategy with you or the purpose of the trial?

9 A. Not really.

10 Q. Now, you have obviously -- you filed a P.C.R.
11 application initially yourself?

12 A. Yes.

13 Q. All right. Let's go through your allegations for the
14 Court. You allege in your application that your lawyer
15 abandoned his role as defense counsel? Is that one of
16 your allegations?

17 A. Yeah.

18 Q. Okay. What do you mean by that?

19 A. Well, in his closing statement he called me a stupid,
20 stupid man.

21 Q. In your -- his own closing statements?

22 A. Yes.

23 Q. Okay. How do you think that that prejudiced your
24 trial?

25 A. Well, I think it opened the door for everyone to

1 believe that I was guilty, man, for what I was charged
2 for, man. I was stupid. I was an idiot. Didn't have
3 sense to, you know, yeah.

4 Q. Did you know that that sort of statement would be
5 made?

6 A. No, I had no idea.

7 Q. All right. You've also got that your attorney failed
8 to object to the Solicitor's closing argument?

9 A. Yes.

10 Q. All right. Why do you think he should have objected
11 to that closing argument?

12 A. Because there is a bunch of case law that backs up
13 the fact that he should have objected to it. The
14 prosecution doesn't have the right to say a man has no
15 remorse for what he did. It inflames the jury. Things of
16 that nature.

17 Q. And no objection was made during those portions of
18 the closing argument?

19 A. No.

20 Q. Do you feel that that prejudiced your trial?

21 A. Very much.

22 Q. And the outcome of it?

23 A. Yes.

24 Q. All right. You've also got an allegation that your
25 attorney failed to perfect testimony to meet the Court's

1 requirements.

2 A. Yes.

3 Q. Explain that allegation to the Court?

4 A. Well, I was turned down on the direct appeal process
5 because the judge said he -- that Mr. Blake didn't
6 properly preserve it, certain issues. Mr. King, Judge
7 King, said that and he specifically -- Judge King told him
8 specifically what he was supposed to do, and he -- in
9 order to preserve the issue, and he just didn't do it. He
10 didn't do what the judge told him he was supposed to do.
11 So, therefore, the issue wasn't preserved.

12 Q. And are you referring back to there was some
13 testimony about I guess some -- what was, I guess, sort of
14 the -- was it a violent act. Is that what you're talking
15 about? Do you recall? Let me ask you this. Let me ask
16 you another way. Do you recall the testimony of a law
17 enforcement officer named Paul Larosa?

18 A. Yeah.

19 Q. Is that what you're referring back to?

20 A. No. What I'm referring to is not properly preserving
21 the issue is dealing with Dr. Alex Morton being able to
22 testify as an expert witness.

23 Q. And are you referring to you own expert witness?

24 A. Yeah, Dr. Alex Morton, the one that wasn't able to
25 testify because Mr. Blake didn't properly preserve the

1 issues, whatever.

2 Q. And that was one of the issues that went up on
3 appeal?

4 A. Yes.

5 Q. Okay. Now, you've also got and this is sort of under
6 the prong of your first allegation; that your lawyer
7 didn't investigate your case?

8 A. Right.

9 Q. Well, what do you think your lawyer -- well, let me
10 ask you this. To your knowledge what did your lawyer do
11 to investigate your case?

12 A. Not at whole bunch, man. He didn't know how big the
13 trailer was. He kept talking about how many feet it was
14 from here to there, and he didn't have any idea, you know,
15 of -- he made the trailer seem bigger than it was. Just,
16 you know, I really don't know what he did to investigate.
17 Honestly, man, I didn't see too much.

18 Q. Did he have any sort of assistance? Did he have a
19 private investigator or assistant from his office?

20 A. Not that I know of. I don't know.

21 Q. Did he share any investigation that he made into your
22 case with you? Did he discuss any investigation when he
23 did it?

24 A. Not really.

25 Q. All right. You've also got another allegation that

1 your lawyer failed to prepare for trial. Tell the Court,
2 and you may have already done so, but explain what you
3 mean by he failed to prepare for your trial?

4 A. Hey, my mind is kind of going blank. He just really
5 didn't put forth the effort that I thought he was going to
6 put forth.

7 Q. Okay, and take your time. This is your day for this
8 testimony. Is there anything else that he did or didn't
9 do as far as preparing for trial that you wished he would
10 have done?

11 A. I can't think of anything.

12 Q. Okay. You've also got that your lawyer failed to
13 object to the sentence?

14 A. Yeah.

15 Q. All right. What do you think your lawyer should have
16 done?

17 A. Well, he -- I just found some case law when I was
18 studying up that said they, the lawyer, is supposed to
19 object to a lengthy sentence. And so, you know, I
20 never -- that's ail. I just found some case law that said
21 that they were supposed to object. I didn't really go
22 into it too much, man.

23 Q. That's fine. Let me ask you this. Did your lawyer
24 make an objection to the sentence after it was handed
25 down?

1 A. No.

2 Q. Did your lawyer file for any sort of Notice to
3 Reconsider the Sentence?

4 A. I don't know.

5 Q. Did you have any discussion with your attorney about
6 the sentence?

7 A. I think he said he was sorry or something, you know.
8 He said he was going to file a direct appeal, you know, in
9 a timely manner.

10 Q. But to your knowledge was a motion for
11 reconsideration ever filed?

12 A. Not to my knowledge. I don't know. I don't think
13 so.

14 Q. Your next allegation is your lawyer failed to
15 properly preserve direct appeal issues. You already
16 touched on that and explained that?

17 A. Yes.

18 Q. Okay. You've also got that your attorney failed to
19 properly inform you of the next step in the judicial
20 process after conviction is affirmed through direct
21 appeal?

22 A. Yes. That is an allegation against my appellate
23 counsel, Mr. Duddy.

24 Q. Who was your appellate counsel?

25 A. Robert Duddy.

1 Q. All right. And he filed the appeal for you? Or
2 excuse me. He handled your appeal after it was filed?

3 A. Yes.

4 Q. Did you ever have any conversations with Mr. Duddy?

5 A. One.

6 Q. Okay?

7 A. Maybe two.

8 Q. What was the nature of those conversations?

9 A. Really, there wasn't nothing to them. It was always
10 just him saying, man, I'm working on your brief. I'll
11 send you a copy of the brief when I get it done and when I
12 file my brief the State is going to file a brief. And
13 then they will make a decision on it. I mean that's
14 basically all we ever talked about.

15 Q. Well, did you discuss what you issues would be on
16 appeal?

17 A. Never discussed anything, really, with him, man,
18 other than he was taking care of it.

19 Q. What was the issue that was presented on appeal?

20 A. It was talking about the fact that Mr. Morton, the
21 expert witness, shouldn't have been able to testify ---

22 Q. And what was ---

23 A. --- at my trial?

24 Q. --- the ruling after the appeal on that issue?

25 A. At my trial? You mean did they affirm my conviction?

1 Q. Correct.

2 A. Yes. Yes. They upheld. They affirmed my
3 conviction.

4 Q. All right. You have another allegation against your
5 appellate counsel, and you've got it listed as attorney
6 failed to give me timely notice of the affirmation of my
7 conviction leading to an extreme breakdown in the judicial
8 process. Could you explain that to us, please?

9 A. Yes. After the affirmation of your conviction you
10 have ten days, I believe it is, to file a motion for
11 reconsideration. I didn't never receive any notification
12 that my conviction was affirmed until 30 days, 20, 25 or
13 30 days after it was affirmed. So that nullified me being
14 able to put in a motion for reconsideration.

15 Q. And would you have wanted to do that?

16 A. Yeah. I actually did file one myself, but I was told
17 that it was too late. I filed one as soon as I got the
18 notice of affirmation.

19 Q. Did you have any discussions with you appellate
20 counsel about that?

21 A. No. Immediately I tried to go to the phone and call
22 him, but he had already been taken off of the call list.
23 So I wasn't able to reach him.

24 Q. All right. This is another issue that you may have
25 already touched on, but your attorney -- you've alleged

1 that your appellate counsel failed to present significant
2 and obvious issues on appeal. Explain that.

3 A. Yeah. I also found out -- found some case law and
4 things that when I talked with Mr. Duddy the only thing he
5 was was I can on for try to fight against was what was
6 objected to. And that's just simply not true. I found
7 out that he can raise other issues as well if he finds
8 them. There is case law, I think, that will back that up.

9 Q. Were there any specific issues that you feel like
10 your appellate lawyer should have raised on appeal?

11 A. Sure, there are. I mean I can't -- I can't just
12 bring them to mind right now, man, but there are several.
13 Several.

14 Q. Okay. Take a moment and just think about it if you
15 can. Can you think of any of those issues that you wanted
16 him to raise on appeal?

17 A. Probably the fact things like where Mr. Blake didn't
18 object to the prosecution saying that I had no remorse.
19 He didn't object to that. You know, the fact that Mr.
20 Blake called me stupid, stupid man, you know. That's a
21 couple of them.

22 Q. That's something ---

23 A. That's something that I would have raised.

24 Q. Okay. Those are issues that you would have raised on
25 appeal?

1 A. Yeah.

2 Q. Did Mr. Duddy ever ask you if there were any issues
3 that you thought should have raised?

4 A. No.

5 Q. Mr. Hogan, are there any other allegations or issues
6 that you have not brought to this Court's attention that
7 you want to make the Court aware of today?

8 A. Didn't I say something about a conflict of interest?
9 Wasn't that one of my allegations, conflict of interest?

10 THE COURT: You want to look at it?

11 THE WITNESS: Sir?

12 THE COURT: You want to look at your application?

13 THE WITNESS: No. I just needed to know if that was
14 one of my allegations, wasn't it, conflict of interest?

15 MR. BOOZER: You are correct.

16 THE COURT: Yes, sir, it is. You put it in there?

17 THE WITNESS: Okay.

18 BY MR. BOOZER:

19 Q. If you would touch on that and explain why you feel
20 that there was a conflict of interest and who that
21 conflict was involving?

22 A. Okay. Let's see. I raised that issue because I was
23 not informed of the fact that Mr. Blake is a member of the
24 American Bar Association which is subset of the British
25 Bar Association. That he's actually unregistered agent of

1 a foreign for profit corporation that was prosecuting me
2 under British maritime private law.

3 That I was being prosecuted; that me, the real live
4 being that sits before you now, John Lee Hogan, Jr. which
5 my name is spelled with an upper case J, lower case O,
6 lower case H, lower case N, upper case L, lower case E,
7 lower case E, upper case H, lower case O, lower case G,
8 lower case A, lower case N, upper case J, lower case U,
9 lower case N, lower case I, lower case O, lower case R.

10 The real live being was not the one being prosecuted
11 or the one being prosecuted was this strong man, this
12 fictitious entity that is created by the United States of
13 America, Incorporated government. The United States of
14 America Corporate being a -- just an extension of the
15 British crown. I had no idea of these things. I had no
16 idea that he was -- that he -- let's see. That he was
17 involved -- that he is an agent; that he was actually an
18 agent of my adversary, the State of South Carolina.

19 I wasn't properly apprised of my -- of the full steps
20 of my right of allocution, you know, what I could have
21 been able to say, the fatal flaws that -- the vulnerable
22 areas in this private commercial law. Basically, what I'm
23 saying is, Mr. Blake, there is no way that he could have
24 represented me properly giving me effective assistance of
25 counsel because of this conflict of interest.

1 Q. Did you discuss those thoughts with Mr. Blake?

2 A. No. I had no idea about them. This is everyone in
3 the United States of America Incorporated has no idea
4 we're all federalized from birth, you know. We turn into
5 a fictitious entity through the Social Security
6 Administration. A bankrupt corporation is what we're at.
7 This fictitious entity that man represents. It's a
8 bankrupt corporation. And it should ---

9 Q. I'm sorry?

10 A. Yeah.

11 Q. Go ahead.

12 A. Yeah. Yeah.

13 Q. Were there any conflicts or relationships between Mr.
14 Blake and either the Court or the victims or anyone?

15 A. Say that again.

16 Q. Sure. Was there any relationship that you're aware
17 of between Mr. Blake and the Court ---

18 A. Sure.

19 Q. Or -- hang on one second. On the solicitors
20 prosecuting the case or the victims in this case?

21 A. Sure. He told me several times that he was very good
22 friends with the prosecutor, Will Rogers. He told he that
23 he actually worked for the -- he was a prosecutor for the
24 State -- for the County of Marlboro for I don't know how
25 many years before he began his private practice.

1 Q. Any other relationship with Mr. Blake in either the
2 victim's family or the victim or the Court that you are
3 aware of or made aware of?

4 A. No, not the victim's family. No. No, sir.

5 Q. Okay.

6 A. No.

7 MR. BOOZER: Court's indulgence, Your Honor.

8 BY MR. BOOZER:

9 Q. Mr. Hogan, are there any other issues that we have
10 not covered as part of your allegations of your post
11 conviction relief application?

12 A. I guess this what I just stated might fall under.
13 Not being informed of a defense also, you know. Because
14 that was an avenue of defense that I could have pursued.

15 Q. Let me ask you another question. Was there ever a
16 plea offer in this case?

17 A. I believe Mr. Blake said that they were offering a
18 plea from open -- plea for 30 to life up. I asked
19 Mr. Blake several times to go speak with the prosecution.
20 I told him to let them know that I would sign for 30 years
21 under voluntary manslaughter; that I wasn't trying to get
22 away with what I did.

23 I would be more than willing to go do 27 and a half
24 years in order to pay for what I did. But I don't
25 believe, I don't believe Mr. Blake ever asked them this.

1 Yeah.

2 Q. Do you know if he ever had any conversations with the
3 Solicitor?

4 A. All I know is what Mr. Blake told me, and there was a
5 time in Marlboro County Courthouse where Mr. Daniels was
6 walking by and I was about to ask him myself, and Mr.
7 Blake kind of got into it. Kind of got flustered, and was
8 like, "No. No. No. Don't. Just don't ask him. Don't
9 say nothing," you know. And to me right there that made
10 me think he possibly never even mentioned it to him.

11 Q. Did he ever tell you that he had any sort of
12 discussions with the Solicitor's Office about a plea?

13 A. Sure he did. He told me that he asked them and they
14 said, "No way." Man, there was no way they would do that.

15 Q. Okay. Have we left anything out from your
16 application or your allegations?

17 A. No.

18 Q. Okay. Please answer any questions the Attorney
19 General may have of you.

20 MR. HUNTER: May it please the Court, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. HUNTER:

23 Q. Mr. Hogan, I want to make sure. You retained Mr.
24 Blake? He wasn't appointed?

25 A. Yeah.

1 Q. Okay. And you never, I guess prior to trial, you
2 never thought about firing him?

3 A. Prior to trial, sir, I really wasn't thinking
4 properly. I really just been through a very
5 traumatic event. My mind -- six years later my mind still
6 doesn't work the way that it used to.

7 Q. So prior to trial you guys talked about I guess your
8 version of the facts; is that correct?

9 A. My, what, version of the facts?

10 Q. Your version of the facts? That's what ---

11 A. If that's what you want to call it, yeah.

12 Q. Okay. And did y'all go over the confessions?

13 A. We went over a lot of stuff.

14 Q. Okay. And you claim that he said you had no
15 defenses?

16 A. Yeah.

17 Q. Okay. But wasn't the whole point of the defense
18 strategy centered at least on getting the conviction for
19 voluntary manslaughter as opposed to murder?

20 A. That's what I told Mr. Blake I was trying to do.

21 Q. Right. And that ---

22 A. Yes.

23 Q. You agree that's what he did throughout the whole
24 trial? No? Yes?

25 A. I'm through answering questions. I don't want to

1 answer any more questions for you, sir.

2 Q. Don't want to answer any more questions?

3 A. No.

4 Q. So your first allegation you claim that he called you
5 stupid in closing?

6 A. Did you not just hear what I said?

7 MR. HUNTER: Your Honor, if he is not going to answer
8 my questions the State moves for failure to prosecute.

9 THE COURT: Overruled.

10 MR. HUNTER: Okay.

11 BY MR. HUNTER:

12 Q. So your second allegation you claim that he should
13 have objected to the Solicitor's closing?

14 A. I'll indulge you. Yes.

15 Q. Okay. When he said, "This man has no remorse." I
16 believe that was at the sentencing. As far as your
17 appellate issues did you ever discuss with him what should
18 be appealed? What you wanted to be appealed?

19 A. My appellate lawyer?

20 Q. No. I'm sorry. Mr. Blake. Did you ever discuss
21 with him what you thought should be appealed?

22 A. No.

23 Q. Okay. And neither with your appellate lawyer? Okay.

24 A. I tried to discuss but they -- yeah, appellate lawyer
25 didn't have time to talk. He was busy.

1 Q. Okay. Did you read the briefs that he filed?

2 A. Yeah.

3 Q. Okay. Now, as far as your sentence is concerned are
4 you saying that your sentence was illegal; that life in
5 prison for murder is an illegal sentence?

6 A. I'm saying that I was convicted under private
7 commercial law, British maritime law that what was
8 prosecuted was not me. The real live being that you see
9 sitting before you here now what was prosecuted and
10 convicted was a fictitious entity that was created by the
11 United States of America Incorporated Government at birth
12 for every citizen of this country.

13 I'm saying that I'm not a citizen of the United
14 States of America Incorporated. That's what I'm saying.

15 Q. Did you ever raise this issue to the judge?

16 A. I didn't know about it then, sir. I had no idea. If
17 I were to be informed about this by Mr. Blake then, of
18 course, I would have raised it then. That is one of the
19 conflict of interest comes in.

20 Q. I understand.

21 A. I most definitely would have raised the issue if I
22 would have known about it, sir. That's why I'm raising it
23 now.

24 Q. Yes, sir?

25 MR. HUNTER: I don't have any more questions, Your

1 Honor.

2 THE COURT: Anything further?

3 MR. BOOZER: No redirect, Your Honor.

4 THE COURT: All right. You can come down. Thank
5 you.

6 THE WITNESS: Thank you.

7 THE COURT: Next witness.

8 MR. BOOZER: No further witnesses on behalf of the
9 Applicant, Your Honor.

10 THE COURT: All right. Any witnesses on behalf of
11 the State?

12 MR. HUNTER: Your Honor, the State would call Mr.
13 Daniel Blake.

14 DANIEL BLAKE, after being duly sworn, testified
15 as follows:

16 THE COURT: Have a seat in the witness box. State
17 your full name for the record.

18 THE WITNESS: Daniel L. Blake.

19 MR. HUNTER: May it please the Court, Your Honor?

20 THE COURT: Yes.

21 DIRECT EXAMINATION

22 BY MR. HUNTER:

23 Q. Morning, Mr. Blake?

24 A. Good morning.

25 Q. Please state your employment -- place of employment?

1 A. Yeah, I'm self-employed at the Blake Law Firm in
2 Bennettsville, South Carolina.

3 Q. Is that where you were employed when you represented
4 the Applicant here?

5 A. Yes, it was.

6 Q. Okay. Do you recall when you were first retained by
7 the Applicant?

8 A. Yes. It was in January of 2001. Well, let me see if
9 I get that. Two -- it's been so long. I have to look at
10 my records. I've got a. Yeah, I apologize. Yeah,
11 contract dated January 5th 2011.

12 Q. Okay. And do you recall your initial meeting with
13 Mr. Hogan?

14 A. Yes, I do.

15 Q. Did you -- I assume you met the first time at the
16 jail?

17 A. Yes. He was both in the Dillon Jail and in the
18 Marlboro County Jail.

19 Q. And just as an overview, how many times prior to the
20 commencement of trial would you say you met with him?

21 A. I have personal records and records from the jail
22 that show I met with him at most 15 times.

23 Q. Can you go over what you guys discussed during these
24 meetings?

25 A. Well, we certainly discussed the facts of the case.

1 I explained the law to him. We talked a lot about, of
2 course, murder and voluntary manslaughter. He had already
3 confessed to the crime. That was on videotape. We
4 discussed potential witnesses. This all happened when his
5 wife was out of town and they found out how to contact
6 her. She was living in Texas at the time. We had, you
7 know, conversations with her, and we flew her out for the
8 trial itself.

9 One of the defenses we talked about was -- obviously,
10 this was all during a crack cocaine episode. So I tracked
11 down an expert witness, Dr. Alexander Morton, a
12 psychopharmacologist who had testified at a large number
13 of trials. I don't know exactly. That was not presented
14 at trial due to a pretrial hearing we had with Judge King,
15 and he ruled that inadmissible.

16 Q. Okay. And as far as Mr. Hogan is concerned did you
17 keep him well informed of your defense strategy involving
18 voluntary manslaughter and Dr. Morton?

19 A. John is a very intelligent person. We had lengthy
20 discussions about both his -- what had happened, how it
21 affected him, and the case itself, possible defense
22 strategies. That was discussed numerous times. He was
23 given an offer of murder and 30 years. When I started
24 representing him after a few months the prosecutor said
25 that the offer was murder and life.

1 We devised a strategy where he wrote a letter to the
2 victims that was sent to the victims. We -- I got in
3 touch with -- I forget what you call it, but it's for the
4 Victim Reconciliation Group. And I had contacted the
5 Prosecutor, the Solicitor, Will Rogers. That's the
6 elected Solicitor. And discussed the possibility of
7 meeting with the victims because John was very remorseful
8 about what had happened.

9 THE COURT: Just hold on a minute. Who are you
10 referring to as the victim?

11 THE WITNESS: I'm sorry. Did I say, 'victim'? I
12 misspoke, Judge. Victim, Monesha Brown.

13 THE COURT: I thought she died. I thought it was a
14 murder.

15 THE WITNESS: Victim's family.

16 THE COURT: Go ahead.

17 BY MR. HUNTER:

18 Q. So as far as this is letter and his remorse and
19 reconciliation goes did he ever object to the strategy?

20 A. He wanted to do it.

21 Q. Okay. Was there ever anything pretrial that he
22 disagreed with you with?

23 A. Not that I'm aware of.

24 Q. And just how would you characterize the defense
25 strategy at trial?

1 A. Well, part of the reason of getting the expert
2 witness in was to show how the crack cocaine use had
3 actually altered his mood as well as his judgment. As I
4 said we did have had an offer of murder and 30 years.
5 John did not want to plead to murder, and as he said he
6 was willing to plead to voluntary manslaughter and 30
7 years. That was not accepted by the State. So, of
8 course, we were doing what we could to deal with the
9 voluntary manslaughter issue.

10 Q. So just so I'm clear the strategy was never that he
11 wasn't there; that he didn't commit the crime? It was
12 just if I'm guilty of anything it's voluntary?

13 A. As I said he had given a videotaped confession that
14 was actually played at trial. So there was certainly no
15 defense of he wasn't there.

16 Q. And you made suppressions motions for pretrial,
17 correct?

18 A. Yes, I did, and I challenged the search warrants. We
19 had a Jackson v. Denno Hearing. All those were pretrial
20 hearings.

21 Q. Those were all favorable?

22 A. That is correct.

23 Q. Okay. Let's just go through some of these
24 allegations against you. As far as your closing argument
25 I believe the sentence he refers to where you say -- it's

1 Page 397, Lines 18 and 19. You said; "My client, of
2 course, is the defendant in this case. He was stupid,
3 stupid on crack." Could you explain that sentence?

4 A. Why I said that?

5 Q. Yes.

6 A. The whole time we were trying to get across to the
7 jury that this was an unusual situation. Both the victim
8 and the defendant had been using crack. Part of what had
9 came out at trial was how the defendant had actually been
10 attacked by the victim. And we were simply -- I was
11 trying to show that he wasn't, basically, using good
12 judgment.

13 Q. So it's fair to say you were talking about his state
14 of mind?

15 A. Yes.

16 Q. Okay. Now, during the Solicitor's closing did you
17 see any reason to object during for Solicitor closing
18 argument?

19 A. It's been brought up about me not objecting to their
20 talking about him not having remorse. That was an issue
21 throughout the trial. That was something that I strongly
22 presented in the opening. It's something that Mr. Hogan
23 talked about a great deal when he testified.

24 And I really thought that was for the jury. I didn't
25 want to draw attention to the issue by objecting.

1 Q. So you believe that wasn't -- it's fair to say that
2 that wasn't necessarily an incorrect statement by the
3 Solicitor? That was just her interpretation of the facts?

4 A. That was her summation or her interpretation of the
5 facts, and we had held about an entirely different
6 position throughout the trial.

7 Q. Right. Okay. And I believe -- did you refer to that
8 during your closing concerning Mr. Morris?

9 A. I would have to look back at the closing, but I
10 believe that that was something that I did talk about.

11 Q. Okay. Now, as far as the issue with Dr. Morton, the
12 expert, like you stated earlier, you did have a pretty
13 lengthy pretrial hearing on that issue?

14 A. Yes, we did.

15 Q. And I believe you also filed a motion to reconsider?

16 A. Yes, I did.

17 Q. And that was still denied?

18 A. Yes, it was.

19 Q. Okay. And do you think that there is anything else
20 you could have done to convince Judge King on that issue?

21 A. I did everything I could. Put my heart and soul into
22 the defense as well as this pretrial hearing. Judge King
23 saw it a different way. Obviously, the Court of Appeals
24 did also.

25 Q. Okay. As far as investigation can you go through

1 pretrial what you did to investigate his case?

2 A. Well, of course, there was a discovery that was
3 presented. I did talk to law enforcement. I had an
4 interview with Dr. Erin Presnell who performed the
5 autopsy. We did present two witnesses. I also called a
6 witness that really could have been called by the State,
7 Casey McColl, cause I wanted to put him on the stand and
8 basically have him deny a bunch of statements so I could
9 bring in two other witnesses.

10 What had not been talked about at all was the fact
11 that, and this was corroborated by witnesses, from what
12 Casey McColl had said in jail that this was actually a
13 planned robbery on the part of the victim and her
14 companion, Casey McColl. That was a defense that was
15 presented.

16 Q. Right. And you did successfully get that testimony
17 out, correct?

18 A. I did get it in, and of course, met with those
19 witnesses prior to that. And as I just said earlier had
20 found a way to contact his wife who was living in Texas.
21 And arranged for her to fly out to testify.

22 Q. Were there any other witnesses that Mr. Hogan wanted
23 you to contact that you failed to?

24 A. No. I really ran down every lead I could.

25 Q. Okay. Did you see any reason to object to his

1 sentence?

2 A. I've never been successful with a motion for
3 reconsideration on sentence. We did have three different
4 people who testified there or gave information at the
5 sentencing hearing in front of Judge King. I thought
6 Judge King was helpful to us when he talked about how had
7 Mr. Hogan not been on crack cocaine this never would have
8 happened.

9 But he was also adamant about the sentence because of
10 the six week period when the victim's family knew nothing
11 about presence of Miss Monesha Brown. And, of course,
12 facts that haven't come out yet, something I was working
13 on the whole time, was that after the actual killing he
14 put the victim in a barrel and hid it out in the woods.

15 Q. He took the officers to that spot, correct?

16 A. He did after he confessed. After that six weeks he
17 led them to where the barrel was.

18 Q. And just as far as the sentencing portion goes did
19 you present some mitigation?

20 A. Yes. As I said I presented mitigation myself, and
21 there were three other persons who testified in
22 mitigation. And that was his wife, Dr. Gibbs who was a
23 psychiatrist he had seen while in jail, and third person I
24 don't remember.

25 Q. Okay. Just briefly on this issue. Are you aware of

1 any conflict of interest that would make it so you would
2 be inappropriate to represent Mr. Hogan?

3 A. I was a prosecutor for Marlboro County. After that I
4 was a public defender for Marlboro County for about five
5 years and then went into private practice. I don't think
6 it's a deficit that I knew the elected solicitor. As I
7 said I attempted to deal with him as a way of having some
8 kind of victim, victim/family, reconciliation. But, no, I
9 don't see that as a conflict.

10 Q. Okay. Did you ever, I guess, discuss the fact that
11 you knew the Solicitor with him?

12 A. Yeah.

13 Q. Did he have any problem with that at that time?

14 A. No. He thought that was to our advantage.

15 Q. Okay. And just to make sure as far as informing him
16 of his defenses was there ever any breakdown in
17 communications in the defense strategy and what you
18 intended to pursue?

19 A. No. John and I had a great relationship. We
20 discussed everything. I worked as hard as I could in his
21 defense.

22 Q. And you did talk, just to make sure, you did talk to
23 the Solicitor about -- during plea negotiations about a
24 possible voluntary plea?

25 A. Absolutely. I met in the prosecutor's office. The

1 main prosecutor was Mary Thomas Johnson Lee. She was in
2 Marlboro at the time, and then they brought in Shipp
3 Daniel from Dillon County. I had a number of Email
4 correspondences. A number of face to face interactions
5 with them. We had, I'm not sure. It might have been
6 three or four pretrial hearings. Of course, there was
7 lots of interaction there. But, yes, that's part of my
8 job, and I was always trying to negotiate to what John was
9 willing to plead to and that was the voluntary
10 manslaughter and 30 years. That was never offered.

11 Q. You said it was never offered?

12 A. Never offered.

13 Q. Now, is there anything else that you feel like you
14 should have done during the representation?

15 A. I can't think of anything in hindsight. Very
16 difficult trial to win. But John was very forceful in
17 wanting to get the facts out. It really bothered him that
18 they wanted to convict him of murder.

19 And he was aware of the situation and how it had
20 happened. We had a very valid self-defense strategy up
21 until the last part of the crime where the victim's hand
22 were bound. And that's when the fatal blow was struck.

23 Q. Beg the Court's indulgence just one second. No
24 further questions?

25 THE COURT: Mr. Boozer.

CROSS-EXAMINATION

BY MR. BOOZER:

Q. Mr. Blake, how are you today?

A. Good.

Q. Good. Going to maybe a reverse order here, but as far as mitigation and sentencing I think you indicated that you presented a couple of witnesses?

A. Yes, sir.

Q. Okay. Did you have any discussion with Mr. Hogan or did Mr. Hogan provide to you any additional witnesses he thought may help in mitigation?

A. No. We had talked about possible character witnesses during the trial. Those were people from the church he had gone to locally. And we had a problem in that he had prior convictions and I had effectively kept those prior convictions out of trial.

But I didn't want to open the door by focussing on his good character during the trial. There was no people he suggested as -- in mitigation during sentencing that I did not use. I can look back at the trial transcript if you want me to.

Q. Did you have any discussions with him about what you just stated as far as why you didn't want to present certain witnesses?

A. Yes. Yeah, we really did talk about everything.

1 Whenever I do a trial I always give a notepad like this to
2 my client so he can write things down. And when we have
3 an opportunity we can talk about it.

4 Q. Do you recall any lists that he may have given you
5 with something numbered in the twenties as far as
6 witnesses he may have want presented in any sort of
7 mitigation or what may have been character witnesses?

8 A. Yes.

9 Q. Was it around that number?

10 A. Again, I could look at it. A lot of those were
11 character witnesses, and that was going to be a problem if
12 I was trying to keep his prior convictions out.

13 Q. Could that have assisted in mitigation as far as
14 character witnesses or what they would have said?

15 A. I'm honestly not aware of any other witnesses that he
16 wanted in mitigation.

17 Q. Do you know if you investigated all 25 or so
18 witnesses that he claims to have?

19 A. Well, why don't you let me find that list so I can
20 take a look at it.

21 Q. Absolutely. Take your time.

22 A. All right. I'm looking at that list, and I will tell
23 you that the prosecution had produced a potential witness
24 list of 37 witnesses. And John and I discussed this as a
25 defense strategy. To be quite honest with you a lot of

1 times defense strategy is about hiding the ball so that
2 they don't know about things before they happen.

3 The fact did that with our surprises witnesses about
4 the planned robbery. So some of those names were just
5 added there, but I certainly talked to most of those
6 people. I have a separate list where the church witnesses.
7 I did talk to them. I didn't have anybody who actually
8 wanted to testify from the church.

9 Q. Did you -- would you have discussed that with
10 Mr. Hogan?

11 A. Well, again, this was four and a half years ago, but
12 I wasn't holding things back from him.

13 Q. Okay. Going into the investigation you made into the
14 case. Did you ever visit the trailer or the scene where
15 this occurred?

16 A. Yes. Yes, I did.

17 Q. Okay. Did you have discussions with Mr. Hogan about
18 the results of your visit to the scene or give any sort of
19 opinion to him about the scene?

20 A. Well, of course, there were numerous photographs and
21 I'm pretty sure we looked at them together. I'm not sure
22 about that, though. But in terms of going on the scene
23 itself that was a big part of the case. Big part of the
24 case was, you know, it was a narrow trailer.

25 The big bathtub in which the killing occurred was

1 actually in the bedroom. The altercation took place in
2 the kitchen and then in that bedroom and the tub there.
3 And so the spacial arrangements there were very important.
4 That's something that we talked about a great deal, and
5 that's something that came out at trial.

6 Q. Why was that, the spacial arrangement, at the time?

7 A. Well, voluntary manslaughter, the issue was his
8 cooling off period. And there was an initial altercation
9 where Mr. Hogan was stabbed. In retaliation he stabbed
10 the victim back. That was his testimony.

11 They rolled on the floor fighting for a weapon. He
12 then found some -- I think it was duct tape and had taped
13 her wrist together and then moved her back out in the
14 kitchen from this big bathtub. And during that time he
15 took a hit or two of crack cocaine. And then got a large
16 knife from the kitchen and cut her throat.

17 So timing, distance had a lot to do with whether or
18 not this was in the heat of passion or not.

19 Q. Let me ask you about the duct tape that you
20 mentioned. If you recall at trial do you remember the
21 duct coming up or a photo of the duct tape coming up?

22 A. Yes. I should say having looked at my notes I know
23 that that happened. Yes.

24 Q. Do you recall objecting to the admission of those as
25 evidence, the photos of the duct tape?

1 A. I can look back at the transcript, but we did handle
2 a lot of this stuff in pretrial motion.

3 Q. Well, let me ask you this. If it's in the transcript
4 that an objection was made, you got to oppose to the
5 introduction of that evidence, would you agree with that
6 statement?

7 A. With what statement?

8 Q. Would you agree with that question? If I told you
9 that the record reflects that there was an introduction of
10 this photo of the duct tape in evidence and was admitted
11 over your objection?

12 A. If that's in the transcript I certainly would agree
13 with it.

14 Q. Do you believe that would have been an appellate
15 issue, the admission of the photo of the duct tape?

16 A. No. Judge King was very careful in reviewing the
17 photographs. He relied a lot on State v. Nance, and I
18 don't think it would have been an appellate issue. No.

19 Q. Did you file the appeal for Mr. Hogan, the Notice of
20 Appeal?

21 A. It's the obligation of the trial attorney to file the
22 Notice of Appeal which I did.

23 Q. Did y'all have any sort of discussion about what
24 might be some valid grounds on appeal or what to expect on
25 appeal?

1 A. Well, the Notice of Appeal that I file is not about
2 issues. It's merely giving the Court notice that in fact
3 this is being appealed.

4 Q. And I understand that, but I guess my question is
5 once you filed the notice did you say or have any
6 discussions with Mr. Hogan saying, "Hey, I think this may
7 be an appellate issue on down the road or you may want to
8 the have this sort of discussion with your appellate
9 attorney about certain issues that you felt may have been
10 incorrectly ruled on at trial?"

11 A. Well, we did always talk about Dr. Morton's
12 testimony, but no, I don't know that I really had that
13 conversation. I did visit Mr. Hogan in prison once,
14 perhaps twice, after the conviction. He had to sign some
15 papers. There was correspondence between us. So I mean I
16 knew I needed, you know, perfect the appeal, file the
17 notice and that it was really up to Appellate Defense to
18 handle it from there.

19 Q. Do you recall the testimony of an agent or officer
20 named Paul Larosa?

21 A. Yes, I did.

22 Q. Do you recall --

23 MR. BOOZER: And, Your Honor, I'm referring to the
24 transcript at page -- really, relevant portions of Pages
25 235 and 234.

1 BY MR. BOOZER:

2 Q. Are you on that page, Mr. Blake?

3 A. Yes, I am.

4 Q. Okay. Do you have a recollection of sort of the
5 substance of Mr. Larosa's testimony?

6 A. Yes. He handled the crime scene. He testified a lot
7 about the blood splatter evidence and if we can call it a
8 similar type thing, a pooling of blood near the front of
9 that large bathtub tub.

10 Q. And what was the issue that you raised with the Court
11 about Larosa's testimony or what eventually became I'll
12 call it a report on his opinion on I guess how he
13 categorized the scene?

14 A. Well, this was a little bit later. I did want to
15 make it a part of the record. That was really on John's
16 behalf. I had received their, S.L.E.D.'S, evidentiary
17 papers so there was a listing of items and things.

18 I had talked to Mr. Larosa beforehand. He had never
19 discussed this issue about the blood spatter, and from the
20 blood spatter he then characterized it as I think a very
21 brutal killing. A good part of my closing was attempt to
22 state other facts that refuted what his -- what I
23 considered his opinion testimony was.

24 The Fourth Circuit does have an open kind of policy
25 in terms of Rule Five. I know that Rule Five limits

1 things to actual written reports. Paul Larosa never did a
2 written report. I never received it.

3 Q. And what was the basis I guess of your opposition to
4 Mr. Larosa's testimony? Did you couch it as a Rule Five
5 violation?

6 A. That's what I talked about it. I didn't -- I made it
7 clear that, you know, there was apparently no report and
8 that's exactly what Rule Five refers to. But Rule Five
9 also doesn't require incident reports, for instance, but
10 that is something our Solicitor's Office has always done.
11 But, yes, I did bring that up.

12 Q. And the Court on 235, was the Court's ruling, A, that
13 he made the objection was too late and, B, that there was
14 no violation?

15 A. That's correct.

16 Q. All right. Would that have been an appellate issue
17 with the Judge's ruling?

18 A. That's kind of beyond my expertise there. You know,
19 Bob Dudick is the head of Appellate Defense, and I guess
20 he decided it wasn't.

21 Q. Okay. Going back to the negotiations you were
22 engaging in with the Solicitor it's my understanding,
23 correct me, Mr. Hogan was wanting a voluntary manslaughter
24 offer for 30 years?

25 A. Yes.

1 Q. Okay. Did he ask you to take that to the Solicitor
2 or how did that come about?

3 A. He did, and I did and we talked about it in jail.
4 And then he wrote me a letter which basically said that,
5 you know -- cause it stated a murder and 30, and that was
6 something he could not accept.

7 Q. Did you have a specific discussion with the
8 Solicitor's Office about him pleading to voluntary
9 manslaughter at 30 years?

10 A. I had several discussions with the head Solicitor,
11 with the Assistant Solicitor. Both face to face and
12 through e-mail.

13 Q. What about the voluntary manslaughter and 30 years?

14 A. Yes, sir.

15 Q. Okay. Have you been in the courtroom today for Mr.
16 Hogan's testimony?

17 A. Yes, I have.

18 Q. Okay. So do you recall Mr. Hogan has a claim that he
19 feels that you have a -- that you were working under a
20 conflict of interest?

21 A. I heard him talk, yeah.

22 Q. Okay. The issues and beliefs that he's raised today
23 about why there exists a conflict did you have any
24 discussions with Mr. Hogan about that during the time of
25 your representation with him?

1 A. Not at all.

2 Q. Have you ever had any sort of discussions with him
3 about some of those issues that he has?

4 A. You mean the sovereignty issues?

5 Q. Correct. Yes?

6 A. No.

7 Q. Okay. Do you feel that those issues that he's raised
8 that you are under or were operating under a sort of
9 conflict by representing him?

10 A. No. I was not an agent for some other entity. He
11 hired me, and I was his defense attorney.

12 MR. BOOZER: Court's indulgence, Your Honor. Your
13 Honor, I've been provided a list of some questions that
14 Mr. Hogan would like to ask of Mr. Blake. They're in the
15 form of written questions. I don't know if Your Honor
16 would entertain the idea of Mr. Hogan asking those
17 questions of Mr. Blake directly.

18 THE COURT: No.

19 MR. BOOZER: Or I be allowed to read the questions.
20 We certainly -- his questions and ask them of Mr. Blake.
21 He can provide the responses.

22 THE COURT: What's the State's position?

23 MR. HUNTER: State would object to outside
24 representation.

25 THE COURT: I will allow you to ask the questions

1 that he's posed these questions to you. I think you're
2 entitled to ask them of Mr. Blake.

3 THE WITNESS: Judge, can I have some water?

4 THE COURT: Can you reach this?

5 THE WITNESS: Thank you.

6 BY MR. BOOZER:

7 Q. Mr. Blake, I've provided a copy of the questions that
8 my client would like to ask you. Now, I will be asking
9 those questions on his behalf, and if you would provide
10 answers to these questions I would appreciate it. Mr.
11 Blake, are you currently a member of the A.B.A. or
12 American Bar Association?

13 A. No, I am not.

14 Q. Do you hold the title of Esquire?

15 A. I don't use that term. That is commonly used to
16 describe an attorney.

17 Q. And his next question would be what does that signify
18 as pertaining to your job, the title, Esquire?

19 A. I'm not really sure what it signifies. I don't use
20 it.

21 Q. Do you know what -- if you're not a member of the
22 A.B.A. that would be incorrect?

23 A. That is correct.

24 Q. Okay.

25 MR. BOOZER: Court's indulgence, Your Honor.

1 BY MR. BOOZER:

2 Q. Mr. Blake, there are a few questions that my client
3 indicates that he would like to admit from asking you, but
4 he does have another question. And his question is
5 whether you ever informed him that the jurisdiction
6 related to his case is special private maritime involving
7 an inter-maritime contract -- international maritime
8 contract in dispute? Did you ever have any conversation
9 with him about that?

10 A. No, I did not.

11 Q. All right. That's all the questions that my client
12 has informed me that he would like to ask of you regarding
13 that subject.

14 MR. BOOZER: The Court's indulgence, Your Honor.

15 BY MR. BOOZER:

16 Q. Mr. Blake, I maybe covering something that you've
17 already covered on direct, but there was no motion for
18 reconsideration in this case?

19 A. In terms of the sentence itself?

20 Q. Correct.

21 A. No, there was not.

22 Q. Okay. Did you have any discussion with Mr. Hogan
23 about filing for motion to reconsideration or explaining
24 what that meant to him?

25 A. No, I did not. Certainly, after the sentencing

1 occurred, of course, he was transported to prison. But,
2 no, I don't believe I did.

3 Q. Thank you, Mr. Blake.

4 MR. BOOZER: That's all the questions I have.

5 THE COURT: Redirect?

6 MR. HUNTER: Nothing else from the State. And no
7 further witnesses from the State.

8 THE COURT: All right. You may come down and thank
9 you.

10 THE WITNESS: Thank you very much.

11 THE COURT: Anything further in this case?

12 MR. BOOZER: Nothing further from the Applicant, Your
13 Honor.

14 THE COURT: From the State?

15 MR. HUNTER: Nothing further, Your Honor.

16 THE COURT: Okay. Propose orders in 30 days. Let's
17 take a ten minute break.

18 END OF TRANSCRIPT OF RECORD

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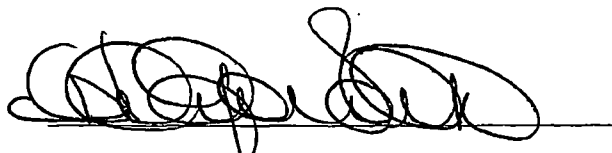
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARLBORO)

I, HATTIE O. GORDON, Official Court Reporter for the
4th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Marlboro County, South Carolina, on the 19th day of July,
2016.

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

May 18, 2017

A handwritten signature in black ink, appearing to read 'Hattie O. Gordon', written over a horizontal line.

HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF MARLBORO)

John L. Hogan,)

S.C.D.C. No. 349628,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
OF THE FOURTH JUDICIAL CIRCUIT

2015-CP-34-0084

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed March 11, 2015. Respondent made its Return on or about September 10, 2015. An evidentiary hearing into the matter was convened on July 19, 2016, at the Chesterfield County Courthouse in Chesterfield, South Carolina. Applicant was present at the hearing and represented by Lance Boozer, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Daniel Blake, Esquire, also testified. This Court had before it a copy of Applicant's records from the Marlboro County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's PCR Application, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court. In September 2010, the Marlboro County Grand Jury indicted Applicant for murder (2010-GS-34-696). Daniel L. Blake, Esquire, represented Applicant. On February 6, 2012, Applicant proceeded to trial before the

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J. L. HOGAN



Honorable Howard P. King and a jury. On February 8, 2012, the jury found Applicant guilty as indicted. Judge King sentenced Applicant to life imprisonment.

Applicant filed a timely notice of appeal, and Robert M. Dudek, Esquire, of the Office of Appellate Defense, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on November 5, 2014. State v. Hogan, Op. No. 2014-UP-369 (S.C. Ct. App. filed November 5, 2014). The Remittitur was returned to the circuit court on November 21, 2014.

PCR Application

In his PCR application, Applicant alleged the following grounds for relief:

1. "IAC - attorney abandoned his role as def. counsel"
2. "IAC - attny failed to object to solicitor's closing argument"
3. "IAC - attny fail to perfect testimony to meet court's requirement"
4. "IAC - attny failed to investigate"
5. "IAC - attny failed to prepare for trial"
6. "IAC - attny failed to inform of a defense"
7. "IAC - attny failed to object to sentence"
8. "IAC - attny failed to properly preserve direct appeal issue"
9. "IAC - conflict of interest"
10. "IAAC - attny failed to properly inform me of the next step in the judicial process after a conviction is affirmed through direct appeal"
11. "IAAC - attny failed to give me a timely notice of the affirmation of my conviction leading to an extreme breakdown in the judicial process"
12. "IAAC - attny failed to present significant and obvious issues on appeal"

II. SUMMARY OF THE TESTIMONY

Applicant's Testimony

Applicant testified that he retained Counsel Dan Blake (hereinafter "Counsel") and met with him three to four times. He testified that during these meetings they discussed his version of facts and what led up to the crime in question. He testified that Counsel told him that he made a confession and had no defenses. Applicant testified that he did not talk about the defense strategy

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and did not know the evidence against him. Applicant also testified that Counsel did not inform him of a defense. He testified that he wanted a plea offer but the Solicitor told Counsel that they would not offer one.

Applicant testified that Counsel did not properly investigate Applicant's case and should have hired a private investigator. He further testified that Counsel should have investigated how big the trailer was and shared the results of his investigation. Applicant also testified that Counsel was not prepared for trial and did not put forth the appropriate amount of effort.

Applicant testified that he believed Counsel made him look bad by calling him "stupid" during his closing argument. He also testified that Counsel should have objected during the Solicitor's closing argument because the prosecution is not allowed to say that a man has no remorse. He further testified that Counsel did not preserve an issue concerning Dr. Morton's potential testimony for direct appeal. Applicant also testified that Counsel should have objected to Officer Paul LaRosa's expert testimony about the crime being a brutal attack, and should have timely objected to a Brady violation because Counsel did not have a copy of Agent LaRosa's report.

Applicant testified that Counsel should have objected to his sentence because he believed Counsel was supposed to object to a lengthy sentence.

Applicant testified that Counsel had a conflict of interest in representing Applicant, because Counsel is a member of the American Bar Association, which means that he is an agent of the British Bar Association and an agent of Applicant's adversary. He testified that he did not bring this conflict of interest to the trial court's attention because he did not know the truth at the time. Applicant further testified that Counsel had a conflict of interest because he was friends with the prosecutor and was a former prosecutor himself.

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Applicant testified that his appellate counsel, Robert Dudek, failed to give Applicant notice that his sentence had been affirmed. He testified that he was unable to file a timely notice to reconsider because Mr. Dudek did not make him aware of the appellate court's decision on time. Applicant also testified that Mr. Dudek did not present significant issues on appeal.

Counsel Daniel Blake's Testimony

Counsel testified that his records indicate that he met with Applicant at least fifteen times prior to trial. He testified that he discussed with Applicant the facts in his case, the difference between murder and voluntary manslaughter, Applicant's video-recorded confession, and any witnesses. He testified that he discussed with Applicant the defense strategy that Applicant did not commit murder but committed a lesser included crime during a crack episode. Counsel testified that he hired an expert who was going to testify as to Applicant's mental state at the time of the crime, but a pre-trial ruling prevented this testimony.

Counsel testified that he investigated Applicant's case thoroughly. He testified that he went over discovery with Applicant. He testified that he met with law enforcement, the autopsy doctor, and looked up two witnesses. Counsel also testified that he visited the scene of the crime. He testified that Applicant gave him the names of many witnesses but most of these were character witnesses.

Counsel testified that Applicant was initially presented with a thirty year offer to plead to murder. Counsel testified that when he assumed representation the plea offer was for Applicant to plead to a life sentence for murder. He testified that Applicant rejected the offer because he did not want to plead to murder. Counsel testified that the State never offered a plea to voluntary manslaughter, although he negotiated for one several times.

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He testified that his defense strategy was to argue that the crack had altered his mood and that they would try to convince the jury that if anything, Applicant was guilty of voluntary manslaughter and not murder. Counsel testified that he believed he did everything he could regarding the testimony of his expert, Dr. Morton, but the trial judge would not allow the testimony after a lengthy pre-trial hearing. He testified that there was no defense that Applicant did not commit the crime given the video confession. He testified that Applicant was well informed of the defense strategy and Applicant never disagreed with him prior to trial.

Counsel testified that Officer Paul LaRosa, who processed the crime scene, testified during trial as an expert in crime scene investigation and blood spatter evidence. Counsel did not make a timely objection to Agent LaRosa's opinion that the attack was brutal. Counsel also testified that he opposed Agent LaRosa's testimony and took issue with the fact that the State did not provide the defense with a copy of any report prepared by Agent LaRosa, which Counsel argued violated Brady. Counsel testified that he argued against this testimony in his closing argument. He testified that he did not know whether his failure to timely object would be an appellate issue.

Counsel testified that he said Applicant was "stupid on crack" during his closing because this was an unusual situation and he was talking about Applicant's state of mind at the time of the crime. He testified that his strategy was to show that smoking crack had altered Applicant's mood and state of mind during the crime.

Counsel also testified that he did not object during the Solicitor's closing. He testified that Applicant's lack of remorse was an issue throughout trial. Counsel testified that he did not object at this instance during the State's closing because he did not want to draw attention to the issue by making an objection.

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Counsel testified that he did not object to Applicant's sentence. He testified that he has never been successful in a motion to reconsider the sentence before and did not see a reason why it would be successful. He believed that the lengthy sentence was due to the fact that Applicant put the victim's dead body in a barrel and hid it in the woods.

Counsel testified that he filed the notice of appeal but Appellate Defense took over after the filing.

Counsel testified that he was not aware of any conflict of interest. He testified that he is not a member of the American Bar Association.

III. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its reasonableness

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under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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. at 117-18, 386 S.E.2d at 625.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Counsel's testimony to be credible and persuasive on all matters. This Court also finds that Applicant's testimony was not credible. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

This Court finds that Counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813.

Applicant argued that Counsel was ineffective for stating the following in closing argument: "My client is, of course, the defendant in this case, and he was stupid, stupid on crack."

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And in the end, he killed Monesha Brown." See Trial Transcript 397, ll. 18-20. Applicant has failed to meet his burden of proving that Counsel's performance was deficient in this regard. This Court finds Counsel's testimony to be credible that his comment about Applicant being "stupid" was referring to his intoxicated mental state. Additionally, Applicant has failed to show that the outcome of his trial would have been different had Counsel not stated that Applicant was "stupid on crack" during his closing argument. Accordingly, this allegation must be dismissed.

Applicant argued that that Counsel should have objected during the State's closing argument because the prosecution is not allowed to say that a man has no remorse. The specific portion at issue reads: "But remember he cried on the stand, if you think back, only when he was talking about his wife, his child, or the church. He didn't cry when he was talking about what happened to Monesha. He wasn't remorseful for that." See Trial Transcript 419, ll. 9-12. This Court finds that Applicant has failed to meet his burden of proving that Counsel was ineffective for failing to object during the State's closing argument. This Court finds that the statement at issue is not objectionable. A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury. Smith v. State, 375 S.C. 507, 522, 654 S.E.2d 523, 531 (2007) (citing State v. Coneland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996)). The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id. (internal citations omitted). This Court finds that the solicitor's statement was not severe as to appeal to the personal biases of the jury or infect the trial with unfairness. Additionally, Applicant has failed to show that the outcome of his trial would have been different had Counsel objected during the State's closing argument. Accordingly, this allegation must be dismissed.

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Applicant argued that Counsel was ineffective for failing to meet the Court's requirement regarding Dr. Morton's testimony and for failing to preserve an issue for direct appeal. This Court finds that Applicant has not met his burden of showing that Counsel was ineffective in this regard. This Court finds that Counsel extensively argued that Dr. Morton's testimony should have been allowed but was denied by the trial court after a lengthy pre-trial hearing. This Court further finds that in affirming Applicant's conviction in an unpublished opinion, the Court of Appeals did not state that any issue raised was unpreserved for appellate review. Applicant has further failed to show that the outcome of his trial would have been different had Counsel handled Dr. Morton's testimony differently. Accordingly, this allegation must be dismissed.

Applicant argued that Counsel was ineffective for failing to timely object to the testimony of Officer Paul LaRosa. Agent LaRosa provided expert testimony that the crime was a brutal attack. Counsel did not object at the time and made an objection later that a Brady violation occurred because Counsel was not provided with a report prepared by Agent LaRosa. The trial court overruled Counsel's objection as untimely. Applicant argued that Counsel's failure to object caused this issue to be unpreserved for appellate review. This Court finds that Counsel was not ineffective for failing to object to Agent LaRosa's testimony because the decision to qualify a witness as an expert is within the trial judge's discretion and Agent LaRosa testified accordingly. This Court finds that Applicant did not suffer prejudice. The trial court ruled that because Agent LaRosa did not make a report, no Brady violation occurred for failure to turn over a report. Thus, this Court finds that since no violation occurred, this issue would not have been successful on appellate review. As Applicant has failed to show that Counsel was deficient and that he was prejudiced by Counsel's actions, this allegation must be dismissed.

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MARLBOROUGH COUNTY, S.C.

Applicant argued that Counsel was ineffective for failing to investigate. This Court finds that Applicant has failed to meet his burden or show what any additional investigation would have been. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (relief denied where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Applicant's only concern about Counsel's investigation dealt with the size of the trailer. This Court finds that Applicant has failed to show what any additional investigation would have shown and how this would have changed the outcome of Applicant's trial. Accordingly, this allegation must be dismissed.

Applicant argued that Counsel was not prepared for Applicant's trial. This Court finds that Counsel provided credible testimony regarding his preparation for trial and that such preparation was sufficient. This Court finds that Applicant has failed to show how Counsel could have been more prepared and how any additional preparation would have changed the outcome of his trial. Accordingly, this allegation must be dismissed.

Applicant argued that Counsel was ineffective for failing to inform him of a defense. This Court finds that Counsel presented credible testimony that he thoroughly discussed Applicant's case with him and discussed the defense strategy. This Court also finds that Counsel explained to Applicant the difference between murder and voluntary manslaughter. Applicant has not met his



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burden of showing that Counsel was ineffective for failing to discuss a defense strategy, and this allegation must be dismissed.

Applicant argued that Counsel was ineffective for failing to object to Applicant's sentence or make a motion to reconsider the sentence. This Court finds that Applicant has failed to meet his burden of proving that Counsel was ineffective. This Court finds that Applicant's sentence was legal and that the trial judge gave a lengthy explanation as to why he was sentencing Applicant to life imprisonment. This Court further finds that Applicant has failed to show any reason why a motion to reconsider would have been meritorious. Accordingly, this allegation must be dismissed.

Applicant argued that Counsel was ineffective for having a conflict of interest. "[U]ntil a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance." Cuyler v. Sullivan, 446 U.S. 335, 350, 100 S. Ct. 1708, 1719, 64 L. Ed. 2d 333 (1980). The mere possibility of a conflict of interest is insufficient to challenge a criminal conviction. Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993). This Court finds that Applicant's allegation is wholly without merit, as Applicant has failed to show that any actual conflict existed. This Court finds Applicant's testimony to be not credible that Counsel had a conflict simply by knowing the prosecutor and being a former prosecutor. This Court further finds that Counsel was not an "agent" for Applicant's adversary. This Court finds that Applicant has failed to demonstrate that Counsel actively represented conflicting interests. Accordingly, this Court finds Applicant has failed to satisfy his burden of proving either deficiency or prejudice as to this claim. Therefore, this allegation is denied and dismissed.

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Applicant argued that Appellate Counsel was ineffective for failing to present issues on appeal and for failing to notify him of the affirmation of his sentence. This Court finds that these allegations are without merit. Applicant has failed to show what issues Appellate Counsel should have raised on appeal that were not raised. Applicant has also failed to show when exactly he was notified of the Court of Appeals' decision and how this prejudiced him. Applicant argued that he could have filed a timely petition for rehearing if he had been properly informed of the date of the affirmation of his sentence. This Court finds that Applicant has failed to show that his appellate counsel was ineffective in this regard and has failed to show that such a petition for rehearing would have been meritorious. Accordingly, this allegation must be dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate

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appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 1st day of November, 2016.


 G. THOMAS COOPER
 Presiding Judge
 Fourth Judicial Circuit

Camden, South Carolina

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 WILLIAM J. JOHNSON
 CLERK OF COURT
 CARLISLE SECURITY, S.C.

WITNESSES

Jamie Seales

Marlboro County Sheriff

Law Enforcement Case #: 2010-005292



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WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
K119953

ARRESTED ON: 2010-07-23

ACTION OF GRAND JURY

True Bill

William A. Tatu

Grand Jury Foreperson

9-30-2010

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2010-GS-34-0696

The State of South Carolina

County of Marlboro

COURT OF GENERAL SESSIONS

Term:
September 2010

THE STATE

vs.

John Lee Hogan Jr.

INDICTMENT FOR

Murder

§16-03-0010; 16-03-0020

CDR Code: 0116

A CERTIFIED
TRUE COPY

William B. Rogers, Jr., Solicitor

CLERK OF COURT
MARLBORO COUNTY

FILED
9-30-2010
MARLBORO COUNTY

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF MARLBORO)

Murder

§16-03-0010; 16-03-0020

At a Court of General Sessions, convened on September 30, 2010, the Grand Jurors of Marlboro County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That John Lee Hogan Jr. did in Marlboro County, on or about June 5, 2010, willfully, feloniously, and intentionally kill the victim, Monesha S. Brown, with malice aforethought, either express or implied, by means of beating the victim several times, cutting her throat with a kitchen knife, and the victim did die as a proximate result thereof on or about June 5, 2010 in Marlboro County, in violation of Section 16-03-0010, S. C. 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.

A CERTIFIED

TRUE WILLIAM B. ROGERS, JR.

SOLICITOR

William B. Sundin

CLERK OF COURT

MARLBORO COUNTY