

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GEORGE HOLMES,

APPELLANT

APPELLATE CASE NO 2016-002010

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT NOS. 1-12 (Photographs)

STATE'S EXHIBIT NOS. 13-14 (CDs)

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF BEAUFORT	)	DOCKET NO. 2014-GS-07-1297
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
GEORGE HOLMES	)	
	)	
Defendant	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

July 26, 2016, 2016
Beaufort, South Carolina

VOLUME 1 (OF 2)

B E F O R E :

THE HONORABLE MICHAEL G. NETTLES, JR., JUDGE

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Pretrial Motions-Remarks by Ms. Saxon
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1 MS. SAXON: Thank you, Your Honor. Your Honor, I
2 at this point have I guess what I would consider
3 something of a novel issue to bring before the court and
4 that is that the statute as charged I do not feel is one
5 -- well, I don't know how to phrase this -- essentially
6 that the statute that the defendant is charged under its
7 not a legal charge. There is the question of any sex
8 registry statute, Your Honor, which our Supreme Court and
9 the CJS and Black's Law dictionary all state that for any
10 sex registry charge to be held or to be brought it must
11 occur at a public place or in the -- somehow into public
12 view.

13 And what we're dealing with in this case is Mr.
14 Holmes in suicide watch, which means he is in a 4 by 7
15 cell with a large steel door and a window exactly the
16 same size as the window here on this holding cell and
17 he's behind that door and he's in there 23 hours a day.
18 He's not -- he's behind a very enclosed small private
19 space in a very enclosed highly secured government
20 building that the public does not have general access to
21 ---

22 THE COURT: --- read the indecent exposure statute
23 for me again.

24 MS. SAXON: Certainly.

25 MR. WHETSEL: I have it right in front of me.

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1 THE COURT: We'll let Mr. Whetsel recite that.

2 MR. WHETSEL: It's section 16-15-130 and it says it
3 is unlawful for a person to willfully, maliciously, and
4 indecently expose his person in a public place, on the
5 property of others, or in the view of any person on the
6 streets or highway. That's the plain reading of the
7 statute.

8 THE COURT: How is this a public place?

9 MR. WHETSEL: May I keep ---

10 THE COURT: --- yes. I want to ask you and then we
11 can go back to Ms. Saxon.

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1 MR. WHETSEL: Yes, sir. Okay that is ---

2 THE COURT: --- I think that's the essence of your
3 argument is it's a private place and it's not out in
4 public; he's in jail ---

5 MS. SAXON: --- correct, Your Honor ---

6 THE COURT: --- so like essentially it's a cage
7 that he is in.

8 MS. SAXON: Exactly.

9 MR. WHETSEL: I understand but I would disagree
10 with that interpretation. It says there are three ways
11 that you can indecently or three areas if you will you
12 can indecently expose yourself would be in a public
13 place, on property of others, or to the view of any
14 person on a street or highway. As far as to the view of
15 any person on a street or highway I would agree that's
16 out.

17 But I do think that leaves us with two that it could
18 fit under. One is in a public place, the other on the
19 property of others. We can take the public place first.
20 I will say there is no South Carolina law on point when
21 it comes to a public place but what I do have is there is
22 some cases in other jurisdictions and I would like to put
23 those on or at least argue those briefly. There are
24 four separate cases, Your Honor. And where I really
25 pulled these from was the Attorney General published a

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1 memo back in August of 2007 where they were responding to
2 a question of graffiti inside of a detention center and
3 if it would fit the statute because it required that it
4 be publically viewable. So the Attorney General put out
5 an opinion and they cited several cases and I want to
6 hand these up to Your Honor.

7 [Whereupon, Mr. Whetsel provides documents to the
8 court]

9 MR. WHETSEL: And the reason I think this could be
10 considered a public place at least where he is is for
11 this main point; he is held in a holding cell in the
12 booking area. Based on where he is held the officers
13 have to check on him at least every half hour and
14 sometimes every 15 minutes if he is considered a suicide
15 risk.

16 THE COURT: This offense for which he is charged
17 happened in a holding area?

18 MR. WHETSEL: It's IH-1 so it's a holding cell that
19 is in booking and they use that either for individuals
20 who have medical issues or somebody who claims or they
21 feel may be a suicide threat because there is a camera
22 there. And based on the traffic of booking there are lot
23 of people in and out and are checking ---

24 THE COURT: --- they keep a lot of the D-U-I's
25 there because they don't want to book them in and put

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1 | them in into -- it's really like a holding tank for the
2 | bond court the next morning.

3 | MS. SAXON: Your Honor, would it help you to see
4 | photos of the holding cell just for your own edification.

5 | THE COURT: I'll be happy to see them but I think I
6 | understand what he's talking about. I've been to the
7 | jail before.

8 | MR. WHETSEL: Yes, sir. I will say I don't think
9 | they hold -- it's not like a drunk tank per se and I did
10 | that in quotation marks. I will say they do try to use
11 | this particular cell for either medical -- inmates that
12 | have medical needs or inmates that could be a potential
13 | suicide risk. But why I think it could be a public area
14 | is because of the cases that I will argue in a moment but
15 | is the fact that ---

16 | THE COURT: --- but if someone were to be arrested
17 | they would come into this area ---

18 | MR. WHETSEL: --- everybody has to come through
19 | booking initially. They come in to this lobby area --
20 | and again I have photographs as well that I intend to
21 | introduce during trial but yes, sir they have to come
22 | through this area ---

23 | THE COURT: --- but somebody who was there maybe
24 | for instance for a D-U-I if they picked him up at 11:30
25 | on a Saturday night he would come through booking and he

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1 potentially could see through the window?

2 MR. WHETSEL: He potentially could. Now to be fair
3 he would have to get probably pretty close to it but that
4 being said the way the cell is set up if you came within
5 feet of it you could maybe see it. But in some of the
6 cases that I wanted to talk about though Your Honor is
7 that Mr. Holmes knew in the protocol the detention center
8 was that they had to check on him every 15 minutes if he
9 was on suicide watch or every 30 minutes if he was just
10 in the holding area there in booking.

11 So they were mandated by their protocols and
12 procedures to visually observe him and to also sign a
13 form indicating what he is doing at that moment. So even
14 if they knew he would be masturbating when they went to
15 go look at him they had to go look at him and he knew
16 that. But the cases again and I gave them to Your Honor
17 and I'll be brief but the first one is Brown v Genesee
18 County Board of Commissioners. It's a Supreme Court of
19 Michigan case. The site is 628 N.W.2d 471. That case
20 dealt with an inmate that slipped and fell in a jail and
21 then he sued the jail. But the Michigan Supreme Court
22 said that a jail is open for use by members of the
23 public, family, friends, and attorneys and they may
24 generally visit inmates. Members of the public may also
25 enter a jail for other reasons to include applying for a

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1 job or making a delivery. The fact that public access to
2 a jail is limited does not alter their conclusion that a
3 jail could be considered a public place. But I think
4 more on point would be these two other cases; one from
5 the Georgia Court of Appeals and the other from the
6 Florida Court of Appeals.

7 The Georgia Court of Appeals is Minor v State. And
8 that's 232 Georgia APP 246. In that case the Georgia
9 Court of Appeals held under their public indecency
10 statute that a correctional institution is a public place
11 within the meaning of their public indecency statute. In
12 that case a correctional officer observed the appellant
13 in that case masturbating in a common area, in a
14 television viewing room. And the court upheld the public
15 indecency ---

16 THE COURT: --- that's a whole lot different from
17 this.

18 MR. WHETSEL: Well, I don't know if it necessarily
19 is, Your Honor, because of the fact that he is still
20 viewable from there. They put him in booking because of
21 the amount of traffic that comes through there to include
22 the officers that have to check on him. And I think that
23 may go more to that point is this is an Illinois
24 appellate court decision, Your Honor. I know it's out of
25 jurisdiction but this is pretty much on point here. It's

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1 People ---

2 THE COURT: --- do we act like people in Illinois
3 and Michigan?

4 MR. WHETSEL: I'm sorry, sir?

5 THE COURT: Do we act like people in Illinois and
6 Michigan?

7 MR. WHETSEL: Maybe not but I think it may be
8 instructive because of the fact that we in South Carolina
9 just doesn't have a case on point when it comes to what a
10 public place is at the jail. People v Giacinti. It's
11 358 N.E. 2d 934.

12 THE COURT REPORTER: Would you spell the case name?

13 MR. WHETSEL: I'm sorry, yes, ma'am. It's G-I-A-C-
14 I-N-T-I; that's the People v that name. That appellate
15 was convicted among other offenses of public indecency.
16 The conviction had stemmed from another inmate performing
17 a sex act on him. In that case the Illinois appellate
18 court concluded that when in prison the prisoner is
19 deprived of his private life.

20 His entire existence becomes public open to the view
21 of other prisoners as well as prison officials. In that
22 case they upheld the public indecency charge or the
23 conviction. And in the last one -- I think I said two
24 but I've got three and I think this is probably the most
25 on point. The Florida Court of Appeals State v

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1 Cromartie, that's C-R-O-M-A-R-T-I-E. It's a Leslaw
2 [phonetic] site. It's 2006 W.L. 2771869. The appellee
3 in that case or appellee -- I'm mispronouncing that --
4 was charged with exposure of sexual organs. The trial
5 court dismissed the charge but the appellate court
6 reinstated the charge. The facts were that the appellate
7 was masturbating in a jail cell while looking at a deputy
8 there at the cell. She told him to stop and he continued
9 to do it anyway, which is basically what we have here.

10 In that case the court commented that there are
11 patently aspects of a jail cell that do not purport with
12 a public place in the sense they are not open to the
13 public at large. However, they can discern no basis to
14 ignore the fact that a cell in this case is public in the
15 aspect that an inmate has no control over persons being
16 present at any time which would be true here.

17 In this case he was in an infirmary cell, which this
18 could be considered an infirmary cell because these are
19 for medical as well. That particular cell was open to
20 view by any authorized employee, nursing staff, cleaning
21 personnel, or visitors; which is very similar to what we
22 have here. Again, I know we're out of jurisdiction but
23 it's the Florida Court of Appeals and I think it's
24 instructive at least when it comes to ---

25 THE COURT: --- the last one, the title of that

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1 last one was what?

2 MR. WHETSEL: It's State v Cromartie, 2006 W.L.
3 2771869 Florida Court of Appeals.

4 THE COURT: Based on that case and the reasoning of
5 the previous cases I do find that the jail is indeed a
6 public place for purposes of this statute.

7 MS. SAXON: Your Honor, if I may I do have a few
8 things in rebuttal to this that I would like to present
9 to the court ---

10 THE COURT: --- sure, yes.

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1 MS. SAXON: Specifically speaking to South Carolina
2 legislature, Your Honor and I'm going to hand a copy of
3 this to Mr. Whetsel is that our general assembly at the
4 beginning of 2015 attempted to amend our public --
5 indecent exposure statute to specifically include a jail
6 as a public facility for the purposes of the statute.

7 [Whereupon, Ms. Saxon provides documents to the
8 court]

9 MS. SAXON: Your Honor, this was an amendment that
10 was brought before the House and the Senate and was
11 killed by the House without being passed. It is now a
12 dead amendment. So I think you have to look at our laws
13 and our legislative intent is not to include the jail
14 house as a public place in the state of South Carolina.
15 And you also have to consider the area that you are
16 speaking of Your Honor. Again, I'm more than happy to
17 show you some of these photos.

18 [Whereupon, Ms. Saxon provides photographs to the
19 court]

20 MS. SAXON: So that you have an idea of some of the
21 cells that we're talking about this is one back up of the
22 general booking area and this is the cell that he would
23 have been housed in Your Honor. And so that is the --
24 people are not brought around the holdings cells. They
25 are brought to the booking desk and then they are taken

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1 to their cell. This is also a picture of the cell from a
2 few feet away so you can see understanding how -- the
3 visibility into that room is extremely low. And the
4 statute, Your Honor, was designed to protect the public
5 from instances of indecent exposure. To protect the
6 public, to protect people who this is -- as much as Ms.
7 DeSantis may not enjoyed having to see that and as much
8 as other C-O's probably don't like it either
9 unfortunately they are not considered the public under
10 the law. This is part of their job. They have to go --
11 he might be on the toilet one time playing with himself
12 while he's using the bathroom and they'd have to see
13 that.

14 The cases that Mr. Whetsel cited say that at times
15 certain portions of a jail can be considered public
16 places but the cell Mr. Holmes was in in the area that he
17 was is which is behind two remote control locked doors, a
18 guarded security desk and a metal detector is not a
19 public place at all. And our legislature attempted to
20 change that act and it failed. And that I think is
21 extremely damning to the State's argument that this is in
22 any way shape or form a public place for the purposes of
23 the statute.

24 THE COURT: All right.

25

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1 MR. WHETSEL: May I briefly rebut, Your Honor?

2 THE COURT: Yes.

3 MR. WHETSEL: Just to the point of it not being a
4 public place you still would have staff in there. You
5 still would have people that are being booked in on
6 whatever charge whether it is a misdemeanor or a felony
7 that are going to come up to the detention center. They
8 are coming through booking and if they are going through
9 booking they are going right past his cell.

10 So maybe just not just anybody off the street would
11 typically go in there but I think that's also what some
12 of the courts that I cited to earlier took into account
13 when they issued their rulings. But still you have
14 quite a few people in that area whether its employees or
15 just general people off the street who have been arrested
16 on offenses. They are going to come in that area and
17 that potentially could be this behavior.

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Pretrial Motions-Rebuttal by Ms. Saxon
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1 MS. SAXON: And Your Honor, I just wanted to point
2 out; I apologize. In one of the cases that Mr. Whetsel
3 cited which is the State of Florida v Cromartie case the
4 C-R-O-M-A-R-T-I-E case it specifically states a jail cell
5 was in the infirmary and open to view.

6 I would argue that our jail cell that is in question
7 is only open to view if the door is in fact open which is
8 what it seems to indicate in this case in the case that
9 he cited was the jail cell was in fact open or it was a
10 guard cell of some sort where they could see into it at
11 all times.

12 THE COURT: All right. You make a very persuasive
13 argument but however not convincing. I think that given
14 the fact that detention officers are required to go there
15 and look in the possibility of other people, other
16 inmates could come by and see I find it to be a public
17 place.

18 I think that it is very interesting that Senators
19 Hembree and Fair; I don't think Fair is there anymore,
20 introduced this statute doesn't necessary mean there ever
21 has been an interpretation of whether or not it's a
22 public place or not. It might be that the people in the
23 House and Senate thought that it was not worthy of
24 consideration; I don't know. It didn't really say why
25 they didn't. The bottom line is it didn't pass. But it

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1 doesn't mean, the laws right now doesn't mean that it is
2 indeed a public place. So your motion is noted and
3 denied. Anything further?

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1 MR. WHETSEL: Yes, sir. I think it's really just
2 to probably maybe protect the State if you will in the
3 event this case were to go up is that you can also
4 indecently expose yourself on the property of others.
5 And I think that would squarely ---

6 THE COURT: --- who are you saying it belongs to?

7 MR. WHETSEL: It belongs to the people. It doesn't
8 belong to George Holmes. Like for example George Holmes
9 couldn't be charged with public indecency inside his own
10 residence but it says on the property of others and again
11 there is no case law on point. And I've got cases here
12 but as far as just statutory interpretation essentially
13 I'm looking at Hodges v Rainey which is a Supreme Court
14 case, 341 S.C. 79, State v Sweat which is again a Court
15 of Appeals case, 379 S.C. 367.

16 But basically both cases say when it comes to that
17 when it comes to statutory interpretation it says the
18 cardinal rule on statutory construction is to ascertain
19 and effectuate the intent of the legislature under the
20 plain view rule. You're not supposed to try to as a
21 court you're not supposed to try to figure out what the
22 intent meant, what they mean. In the statute it is
23 plainly worded. And this case I think it's plainly
24 worded; it says on the property of others. What I'm
25 trying to say is I think it would also fit under that as

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1 well as well as public place but also on the property of
2 others.

3 THE COURT: All right. Once again, the motion is
4 denied. Any other motions?

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2 | BY MR. WHETSEL:

On April 6th, 2014 the defendant, George Holmes, was being held in a cell in the booking area of the detention center; it's called IH-1. That's a holding cell and while he was there the officers had to check on him every 15 minutes. That day when this happened Jessica DeSantis, an officer working at the detention center, was part of her duties was to check on George Holmes every 15 minutes. They had to make sure that George Holmes was physically safe; that he wasn't destroying any type of property, that he wasn't doing anything that he shouldn't be doing ensuring his well being because they are responsible for housing him.

21 And as she went to approach the cell and looked in
22 the door she began to visually observe him and he knew
23 this. He knew this for two reasons; one was that based
24 on the 15 minutes checks that he had previously seen that
25 day and knowing her voice and knowing who she was he knew

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1 that she would come by again every fifteen minutes, and
2 the second is because there was a camera and he knew he
3 was being video recorded. But the defendant though when
4 she would come by again knowing she had to check on him
5 as part of her job part of her duties he would stand back
6 in the blind spot of the cell where the camera couldn't
7 pick him up and he had his penis in his hand and he was
8 masturbating. And he was doing that at Jessica DeSantis
9 because he knew she had to visually observe him every 15
10 minutes. Again, that's the basis of the charge and
11 that's why we are here today.

12 Part of the evidence that you will see in here is
13 video from that day. There is going to be a video from
14 inside the defendant's cell. There is going to be a
15 video from outside in the booking area. Part of the
16 evidence too is you will see some photographs of the
17 booking area to kind of give you a sense of exactly what
18 we're talking about because we're talking about a jail;
19 we're talking about a detention center.

20 Unless you've been there it's kind of an abstract
21 concept. You might not fully understand or grasp what
22 we're talking about so we're going to put some
23 photographs in so that you can see it and you're also
24 going to watch the video from that day. What I will
25 point out to you through the witnesses and what I want

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1 you to pay close attention to is that there is part of
2 the video where as I mentioned earlier you can't see the
3 defendant. You may think to yourself what is he doing.
4 You'll hear testimony that there is a reason for that;
5 that part of the cell where the toilet is located is
6 obscured from the camera and that's to give the inmate
7 privacy. They actually put a little piece of tape on the
8 bottom of the lens in order to obstruct that view; again
9 to afford the inmate some measure of privacy.

10 The evidence you will see in here and what I want
11 you to see is that the defendant knew that and used that
12 to his advantage because on the video at least from what
13 you can see it's not clear what he is doing because part
14 of it you can't see him. And I believe what the evidence
15 will show you is that it's because he knew she was coming
16 and he hid from the camera in order to do this in order
17 to try to evade detection. But I believe that based on
18 all the evidence that you will see and the State will
19 present to you that you will be convinced that what he is
20 doing is masturbating towards Jessica DeSantis.

21 The defendant is charged with indecent exposure and
22 we'll talk more about the law later. But indecent
23 exposure in order for the State to prove the defendant
24 guilty of this we have to prove that he willfully,
25 maliciously and indecently exposed his person in either a

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1 public place, on the property of others, or to the view
2 of a person on a highway or street. That's what we have
3 to prove to you and I believe that's what the evidence
4 will show you after you have heard and seen everything.

5 When I come back up here after we put all the
6 evidence on and after you've seen and heard all the
7 testimony and watched the videos I'm going to come back
8 up here and I'll ask that you hold the defendant
9 accountable and you'll convict him of indecent exposure.
10 Thank you.

11 THE COURT: Ms. Saxon you're recognized.

12 MS. SAXON: Thank you. May it please the court?
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1 OPENING STATEMENT

2 BY MS. SAXON:

3 I've bet most of you have heard the saying it's
4 better that 10 guilty go free than one innocent man be
5 convicted. It's a fairly common saying and it has
6 different variations; sometimes the numbers are higher,
7 100 guilty men go free or 1000 guilty men go free and
8 sometimes the words are different that they escape and
9 they are not held in prison. But the underlying
10 principle is always the same and it's that when in a
11 court of law when we're judging a person that we have to
12 always bear on the side of innocence.

13 For a person that can be hard because you hear
14 things -- and especially when the topic is uncomfortable
15 but that's why that saying exists, that's why we're here.
16 That's why the judge spoke about presumption of innocence
17 because when you are in this room you always err on the
18 side of innocence. The principle of being presumed
19 innocent is one thing that is at the basis of our
20 foundation as our country. And it's why the State has
21 the burden of proving a defendant guilty beyond a
22 reasonable doubt. That burden is the highest in the
23 land. It is such an important principal and it's such a
24 high burden because it goes to one of our core values
25 which is a person's liberty. And liberty is second only

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1 to a person's life. So what we're talking about when we
2 talk about this case and when we talk about presumption
3 of innocence and we talk about the burden is we're
4 talking about George's innocence, George's liberty,
5 George's rights.

6 You hear briefly from the Solicitor about what he
7 says you will hear in the case and as I said it's an
8 uncomfortable topic. No one wants to talk about indecent
9 exposure and no one wants to talk about masturbation but
10 we have to because George has stood up and said I'm not
11 guilty of this; I didn't do this. And so the questions
12 that you are going to be faced with are first and
13 foremost is where this alleged allegation occurred even a
14 public place it's in a jail cell.

15 You heard them mention it was in a booking and you
16 will see photos of it but to give you a little bit of an
17 idea it's behind a door not too different from that one
18 over there [indicates]. The door to the jail is made out
19 of steel. It's maybe not quite that big and maybe the
20 window is not quite that high but that's what we're
21 working with here. That's what was in front of George
22 when all of this allegedly occurred.

23 The second question you're going to have to ask and
24 answer is was he masturbating. Like he said we're going
25 to see a video because George was in a special holding

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1 cell on suicide watch. He wasn't doing too well and so
2 there is a camera that they keep on to ensure the safety
3 of the inmate. And we have video so you will be able to
4 see. What is he doing? Is he masturbating? That's a
5 question you will have to answer.

6 And the third question you're going to have to
7 answer whether or not if you think he was masturbating
8 was it visible. Did anybody see it? Could anybody see
9 it based on where he is positioned, based on where the
10 camera is, based on the window? Was he exposing himself
11 in any way shape or form?

12 The testimony will make it all very clear and you'll
13 hear and see a number of different things. Things that
14 are going to contradict each other, things that are going
15 to make you wonder why are we here? What is the purpose?
16 Why is Jessica DeSantis saying this happened because her
17 stories don't always add up.

18 Like I said George pled not guilty. He stood up in
19 this courtroom and claimed his innocence and therefore he
20 is now presumed innocent and the burden rests on the
21 State otherwise. And you heard the judge mention a
22 little bit about reasonable doubt. And that can be kind
23 of a random concept to grasp. I know some of you have
24 already sat on a jury this week so you're a little bit
25 more familiar with it now after having sat through one

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1 case. But everyone approaches it differently. I like to
2 think about it as a brick wall; a brick wall that
3 protects any person accused of a crime from losing their
4 liberty. And in order for that person to be found guilty
5 the State has to take every brick out of that wall and
6 leave you firmly convinced. Ladies and gentlemen I
7 charge you that in this case in this instance the State
8 cannot do that. They cannot take down that brick wall.

9 It won't be very long before I'm in front of you
10 talking again. As you heard this is going to be a quick
11 case. We'll probably be done by lunch tomorrow in all
12 honesty. That doesn't mean that it's not important. It
13 doesn't mean that it's not serious. If you keep to the
14 oath that you took and if you keep true to the facts and
15 the evidence that are going to be presented to you then I
16 firmly believe that you will come back with the only just
17 verdict possible, which is one of not guilty. Thank you.

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1 MR. WHETSEL: The State would call Investigator
2 Josh Dowling.

3 [Whereupon, Mr. Dowling comes forward]

4 THE COURT: Mr. Dowling, please come forward. I'm
5 going to ask if you could have a seat in the witness
6 chair here, pull up real close to that microphone, speak
7 loudly, clearly and slowly in order that we can hear
8 everything that you have to say. Let's start with your
9 full name please sir.

10 THE WITNESS: Yes, Your Honor. Joshua Dowling,
11 Your Honor.

12 THE COURT: Very good. Have a seat.

13 [Whereupon, the witness is duly sworn by the Clerk
14 of Court]

15 MR. WHETSEL: May it please the court, Your Honor?

16 THE COURT: Yes.

17 - - - - -

18 JOSH DOWLING,

19 Having been first duly sworn,

20 Was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. WHETSEL:

23 Q. Investigator Dowling good morning.

24 A. Good morning.

25 Q. Where do you work?

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1 A. I work for the City of Beaufort Police Department
2 here locally I work as an investigator.

3 Q. And what are your duties as an investigator?

4 A. As an investigator I am assigned criminal cases. It
5 can be as simple as a misdemeanor shoplifting case or it
6 could be as serious as a felony murder case; wide
7 ranging.

8 Q. And how long have you worked as an investigator with
9 Beaufort police department?

10 A. I started off as a patrolman in May of 2007 working
11 as a police patrol officer for the City of Beaufort. In
12 September 2010 I was promoted to that of investigator and
13 I've been in that capacity since then.

14 Q. So were you working in your capacity as an
15 investigator for Beaufort Police back in April of 2014?

16 A. That's correct.

17 Q. And are you involved in this case in any way?

18 A. I am. I was assigned this case for investigation.

19 Q. So how does a case get to you?

20 A. I work under a director supervisor. Any time
21 throughout the day when a patrol officer responds they
22 document the incident of what happened.

23 And my supervisor takes a look at the reports and
24 assigns cases that need to be looked at by an
25 investigator. In this particular case involved a victim

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1 so this case was assigned to me.

2 Q. So once you were assigned this case what
3 investigative steps did you take in this particular case?

4 A. This particular case given that it was an allegation
5 of indecent exposure that took place at our local jail
6 the steps that I did was first I had an opportunity to
7 interview the corrections officer who was the victim to
8 the incident.

9 In addition I served a subpoena on the jail to
10 acquire security footage that is inside the jail in
11 addition to get a report that was internally filed by the
12 detention center who documented the incident. It is
13 attached within my report.

14 Q. And you said that you interviewed you said a victim
15 in this case who was that person, who did you interview?

16 A. At the time I interviewed Ms. Jessica DeSantis. She
17 worked as a correctional officer at the time at the
18 facility.

19 Q. And the facility what exactly is the facility we're
20 talking about?

21 A. The facility is the Beaufort Detention Center. It's
22 where local -- people arrested within this county and
23 they are transported. It is practically across the
24 street from here. It's located within the city limits of
25 Beaufort, South Carolina.

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1 Q. What county would that be in?

2 A. That's in Beaufort County.

3 Q. And you said you subpoenaed a copy of footage from
4 inside the jail. Who did you obtain that from?

5 A. The footage was an individual who dealt with matters
6 within the jail and his name is Jeff Vortisch; he worked
7 there at the time. He was the person to go to if we
8 needed to acquire security footage or jail calls so on
9 and so forth.

10 Q. Based on the evidence that you reviewed and based on
11 your report did you determine what was the date of this
12 incident when this occurred?

13 A. The incident date was April 6, 2014 is when this
14 incident occurred.

15 Q. And as part of your investigation did you actually
16 review the footage as well?

17 A. I did. I reviewed all evidence that was provided.

18 Q. And the two videos from the day in particular do you
19 recall what those two videos were?

20 A. Pertaining to the location?

21 Q. Correct.

22 A. The location of the videos that I retrieved, the
23 security footage, one of the cameras was located within
24 the cell that the defendant was being housed in. It had
25 an interior shot of his cell facing his bed and the door

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1 of that entrance into the cell. The other security
2 footage that I acquired was in the booking desk area that
3 is adjacent to the cell. And those are the two camera
4 angles I was provided with.

5 Q. And based on your investigation and both your
6 experience as a police officer at Beaufort P.D. are you
7 familiar with the jail cell?

8 A. I'm very familiar with that jail. I've been in
9 there multiple times in work capacity.

10 Q. Are you familiar with this cell that this incident
11 allegedly occurred?

12 A. I am familiar with that cell, yes.

13 Q. And that particular cell what is that cell called?

14 A. It's called IH-1; it's a holding cell.

15 Q. And where exactly is that cell located?

16 A. The cell is located -- when you enter -- any inmate
17 that enters the jail they go through two sets of doors,
18 security doors, and they enter a general booking area
19 where there are telephones on your left, there is a
20 seating area in the middle for inmates.

21 In addition to -- on the right is the holding cells.
22 There are a few holding cells. If you continue straight
23 into the booking area there is a booking desk where
24 correction officers book inmates as they come in and book
25 them as they go out as well as a nursing facility as well

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1 adjacent to the booking area. It's a rather small area.
2 It confined to that extended room more or less.

3 Q. And then prior to today at my request did you go
4 back and take some additional photographs and videos of
5 that particular area?

6 A. I did.

7 MR. WHETSEL: Your Honor, may I approach the
8 witness?

9 THE COURT: You may.

10 MR. WHETSEL: Your Honor, I am going to hand up to
11 Investigator Dowling what has been marked as State's
12 exhibits 1 through 12. Will you just take a moment to
13 look at those?

14 A. Yes.

15 [Whereupon, the witness views photographs]

16 Q. Investigator Dowling do you recognize what I handed
17 you?

18 A. I do. The State's exhibits you provided me with
19 were the photographs that I took.

20 Q. And are those photographs -- you said you took
21 those. Are those a fair and accurate depiction of the
22 booking area as well as the cell that we're talking
23 about?

24 A. It is.

25 MR. WHETSEL: Your Honor, the State would move to

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1 admit State's exhibits 1 through 12 into evidence.

2 THE COURT: Any objection from the defense?

3 MS. SAXON: No objection.

4 THE COURT: They are in evidence without objection
5 from the defense. And they are denominated State's
6 exhibits?

7 MR. WHETSEL: One through 12.

8 THE COURT: One through 12 are into evidence.

9 MR. WHETSEL: Thank you, Your Honor.

10 [Whereupon, State's exhibit numbers 1 through 12 are
11 entered into evidence by the court]

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

14 THE COURT: You may.

15 Q. [Mr. Whetsel] I'm going to retrieve back from you
16 State's exhibit 1 through 12. Investigator Dowling, you
17 said that based on your experience as a police officer as
18 well as this particular case you're familiar with the
19 booking area correct?

20 A. That's correct.

21 Q. I'm going to just show you a couple of these
22 photographs just to try to give a better visual depiction
23 of what we're talking about.

24 Q. And as you took these photographs I believe you
25 would be familiar with this first I'm going to put up on

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1 the board here it's going to be State's exhibit 7.

2 [Whereupon, photographs are shown]

3 Q. Investigator Dowling, this is as you testified
4 earlier is this one of the photographs that you took?

5 A. It is.

6 Q. Can you just explain what are we looking at in this
7 photo? What angle are we looking at?

8 A. The vantage point in this particular photograph what
9 we're looking at this is behind the booking desk. This
10 is where the corrections officers work booking inmates as
11 they come out or in or booking them as they go out.

12 That particular view is the holding cells as I
13 referenced earlier IH-1 is the one that door that goes
14 left to right that is ajar partially right now. That's
15 the holding cell the defendant was in the IH-1; it's a
16 little blurred.

17 And then as you go to the right those are the
18 additional holding cells that inmates can be kept in.
19 But the defendant was on one that is immediately to the
20 left in close proximity to that booking desk where you
21 can see the computer screen.

22 Q. I'm going to remove exhibit 7 from the big board.
23 I'm going to put State's exhibit 12 on the board now.

24 [Whereupon, the photograph is shown]

25 Q. Investigator Dowling, what are we looking at in this

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1 photograph?

2 A. That is the holding cell that the defendant was
3 being housed in, the IH-1. Once again that is the one
4 that was -- in the first photograph you looked at it was
5 the one furthest to the left. It's just a more closer up
6 look at that particular cell.

7 Q. I'll remove 12 from the board. Investigator
8 Dowling, I'm going to put State's exhibit 1 on the board.

9 [Whereupon, the photograph is shown]

10 Q. Do you recognize this photograph as well?

11 A. I do.

12 Q. And can you explain what we are looking at?

13 A. What we're looking at is a side photograph of the
14 holding cell that we've been referencing IH-1 where the
15 defendant was being housed. And the angle of this just
16 to give you some prospective that's the wall. You can
17 see the cinder block right there.

18 But that crevice and doorway if you were to
19 literally take a left that would take you into the cell.
20 It's a side view of the holding cell. It's a side view
21 of the door.

22 And what you can see is there is a several inches
23 crevice more or less, an open area because the door
24 essentially slides open. But there are several inches
25 that are visible in this photograph. And at the bottom

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1 you can see the cement flooring that takes you into that
2 cell.

3 Q. Investigator Dowling, I'm taking exhibit 1 off and
4 I'm going to put on exhibit 2.

5 [Whereupon, the photograph is shown]

6 Q. I know it's a bit blurry at least putting it on the
7 big board here but can you describe what we are looking
8 at in this photograph?

9 A. Yes. Just to give you some perspective on this
10 photograph at the far end on the right where that black
11 circle is that's what I explained earlier as the entryway
12 to the detention center. That's where the inmates are
13 brought in the security door.

14 And in the middle right there those are the benches
15 I had referenced. And you will see the inmates are
16 allowed to use them to watch the television that you can
17 see up there. But the furthest to the left that's just
18 another photograph I took along that cinder block wall
19 across from the booking desk. And that first door right
20 there is the IH-1 cell.

21 As you can see there is several inches of a gap that
22 you can see slightly in this picture you can see the
23 light in the photograph. That's the holding cell that
24 the defendant was in. It's just another perspective from
25 the side.

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1 Q. I'm going to remove State's exhibit 2 from the
2 board.

3 MR. WHETSEL: Your Honor, I'm going to leave
4 State's exhibit 1 through 12 up here with the court
5 reporter.

6 THE COURT: Very good.

7 Q. [Mr. Whetsel] Investigator Dowling, in addition to
8 taking those photographs did you take any video as well?

9 A. I did.

10 MR. WHETSEL: Your Honor, may I approach the
11 witness?

12 THE COURT: You may.

13 Q. [Mr. Whetsel] I'm going to hand you what has been
14 marked as State's exhibit 14.

15 [Whereupon, the witness is shown exhibit]

16 Q. Do you recognize that disk?

17 A. I do.

18 Q. How do you recognize that disk?

19 A. I recognize this disk because I fixed my initials on
20 it after I put the secured footage that is on this.

21 Q. Did you review that particular disk?

22 A. Correction, after I put my video not the security
23 footage; the video that I took.

24 Q. So did you review that video prior to fixing your
25 initials on there?

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1 A. I did.

2 Q. And what is contained on that particular DVD?

3 A. On this particular DVD what I did is I went back to
4 the incident location and took some video evidence to
5 show different perspectives of that holding cell and that
6 booking area by our camera.

7 Q. And in those particular videos are those fair and
8 accurate depictions of the booking area and holding cell
9 that we are talking about?

10 A. They are.

11 MR. WHETSEL: Your Honor, the State would move to
12 admit this particular disk with those videos into
13 evidence.

14 MS. SAXON: No objection, Your Honor.

15 THE COURT: And it denominated as State's exhibit?

16 MR. WHETSEL: Fourteen.

17 THE COURT: Fourteen is in evidence.

18 MR. WHETSEL: Yes, sir.

19 [Whereupon, State's exhibit number 14 is entered
20 into evidence by the court]

21 MR. WHETSEL: Your Honor, I would request to
22 publish but based on the fact that we are having an issue
23 with technology I'm going to wait and publish it at the
24 end if that would be okay with the court.

25 THE COURT: Yes.

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1 CROSS-EXAMINATION

2 BY MS. SAXON:

3 Q. How you doing Investigator Dowling?

4 A. I'm well, and yourself?

5 Q. Very good. Thank you. So I want to talk a little

6 bit more about the holding cell in the booking area.

7 That particular part of our detention center that's a

8 secure area correct?

9 A. Secure in what regard?

10 Q. Well in that you can't -- a general person can't

11 just walk back into the booking area. There are steps

12 they have to go through to get back there.

13 A. There is -- that is accessible by various people at

14 various intricate ---

15 Q. --- within the jail?

16 A. No because you have nursing staff that would be back

17 there, you would have Clerk of Courts have access to it

18 when they're doing booking matters and then potentially

19 civilian employees as well.

20 Q. Okay. And so to get back there we would walk up to

21 the front desk and you have to sign in correct?

22 A. Correct. At the detention center there is a sign in

23 process to access such.

24 Q. Okay. And then we go through a metal detector and

25 then you come to your first secured door is that correct?

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1 A. It would depend if you're accessing it from the main
2 entrance?

3 Q. Well from the main entrance; let's go that way.

4 A. Correct. That's how you would access the facility.

5 Q. Okay. And so into that door that is a secured
6 locked door that is controlled from a central location
7 correct?

8 A. Correct.

9 Q. Okay. So you go through that door and then you
10 have sort of an in-between area is that correct? There
11 is a space, there is maybe a visiting room off to the
12 side and then there is another door in front of you that
13 leads to the detention center?

14 A. Correct.

15 Q. Okay. So the visiting off to the side is where
16 most people stop that aren't employees or attorneys with
17 access back there is that correct?

18 A. Well, the visitor section is on the second floor but
19 I periodically will see attorneys on the first floor
20 meeting with their clients.

21 Q. In that area.

22 A. So it depends what visitors is coming to the jail.

23 Q. Okay. And so when you go through the second door
24 which is also a secured door that's when you're in the
25 first part of the detention center is that correct?

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1 A. That's when you have access to the general area
2 where the pods are where the inmates are housed.

3 Q. Right. And so the pods shoot off of that and the
4 booking is back this way [indicates] where they take
5 anyone to be booked is that correct?

6 So like if you're walking in in front of you is
7 going to be a door to a pod and this way [indicates] is
8 going to be a door to a pod and then back around the
9 corner is going to be where the booking is right?

10 A. Just to give you some perspective when you go
11 through the main entrance you go through a set of secured
12 doors and then there is the various pods where they house
13 the inmates.

14 And as you continue straight towards the back of the
15 detention center that's where the booking desk is, is the
16 best way I can visually describe it.

17 Q. Right. And so there are steps that have to be taken
18 to get back there. So Joe Blow off the street just can't
19 walk in and say what's up and go straight back to
20 booking.

21 A. Well, it's a jail so there is a security protocol in
22 place, yes.

23 Q. Right. In the booking area there are other cells
24 correct?

25 A. There are holding cells correct.

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1 Q. I think there is four or five of them is that
2 correct?

3 A. Off the top of my head I don't know. That's an
4 approximate number.

5 Q. Okay. And they are all roughly the same size would
6 you say?

7 A. One towards the entry way is like extended more; I
8 know that, but they are roughly the same size.

9 Q. And how big would you estimate them footage wise?
10 Like seven feet by four feet, bigger, smaller; somewhere
11 in there just a general estimate.

12 A. I would say at least 10 feet at least.

13 Q. Now in the general booking area there are a number
14 of corrections officers are in that area at any given
15 time is that correct?

16 A. That's correct.

17 Q. Okay. And those individuals, those correction
18 officers are there obviously to protect the inmates, to
19 book in any new inmates, and to perform their jobs as
20 needed is that correct?

21 A. That's just from my observation. I'm not a
22 detention center employee so I can't accurately say what
23 all their duties entail but based upon my observations
24 when I go in there it's a booking desk for a jail. I
25 truly don't know what all their responsibilities entail.

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1 Q. Okay. Now those cells that are right there you
2 refer to it as a holding cell. It's generally used to
3 hold new individuals that have just been arrested, is
4 that correct? Or you're not sure?

5 A. I can't say what the exact protocol at the jail and
6 why they would have inmates in that particular holding
7 cell. I've brought inmates in or arrested somebody off
8 the street and have placed them in that holding cell and
9 on some occasions they have walked them back to his pod.

10 I really can't attest to what the protocol is at the
11 jail; I don't work there. But I've had experience there
12 where I brought people in there and I know that they've
13 had people that I have arrested and put them in that
14 holding cell. There are various reasons I know that they
15 will do that.

16 Q. Okay. And on the day of this alleged incident Mr.
17 Holmes was in a cell because he was on suicide watch is
18 that correct?

19 A. That's my understanding based upon the
20 documentation, correct.

21 Q. And he had been moved to that cell based upon the
22 investigation that you did. Your incident report say
23 that he had been moved to that cell after saying that he
24 was hearing voices and about to kill himself is that
25 correct?

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1 MR. WHETSEL: Your Honor, I'd object to relevance
2 as well as speculation.

3 THE COURT: Overruled.

4 A. He was moved there because of a documented report at
5 the detention center of suicide threats.

6 Q. [Ms. Saxon] Now we're going to move on a little bit.
7 This happened in April and the warrant wasn't brought
8 until July correct?

9 A. That's correct. Well actually let me just double
10 check on that because I know some time had elapsed.

11 [Whereupon, the witness reviews document]

12 A. The warrant was sworn out by me before the Honorable
13 Judge Fitzgibbons on July 1st, 2014.

14 Q. Okay. So there was a little bit of gap in time
15 before the warrant was brought correct? You would agree
16 with that there was a gap between the incident date and
17 the time the warrant was issued?

18 A. Anytime an investigator gets involved in a case
19 there is certainly going to be a gap because we need to
20 have the opportunity to investigate it, look at all the
21 facts, review all the scenarios so, yes.

22 Q. And in this particular case there was some email
23 correspondence between you and members of the Solicitor's
24 office regarding bringing the warrant is that correct?

25 MR. WHETSEL: Your Honor, objection when it comes

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1 to prosecutorial decisions and discretion ---

2 THE COURT: --- is there -- what is the ground for
3 the objection?

4 MR. WHETSEL: Objection to relevance.

5 THE COURT: Overruled.

6 A. Correct. I had email contact with the prosecutor's
7 office.

8 Q. [Ms. Saxon] And at first you were told not to bring
9 the charge. They were waiting on a mental evaluation of
10 Mr. Holmes correct?

11 A. That's correct. It's quite common for
12 investigators to contact the prosecutor's office or have
13 contact with them, present the facts of the case and get
14 some suggestions or input and on this particular case
15 that was done.

16 Q. And while we were awaiting or while the State was
17 awaiting the mental evaluation I should say do you
18 remember an email chain where the State stated that they
19 did not feel even if Mr. Holmes was found competent that
20 they would have facts ---

21 MR. WHETSEL: --- again, objection Your Honor.
22 This is not relevant as far as internal communications
23 ---

24 THE COURT: --- counsel approach.

25 MR. WHETSEL: Yes, sir.

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

3 MS. SAXON: Your Honor, if I could just have a
4 court's indulgence I may be done. I just want to check
5 one thing.

6 [Whereupon, Ms. Saxon and Ms. Cappelmann confer]

7 Q. [Ms. Saxon] Officer Dowling, I just have a couple
8 more questions and again this may not be something you
9 are familiar with because you aren't a detention center
10 employee. But are you aware of what inmates on suicide
11 watch have to wear?

12 A. I know they wear some sort of matted clothing but as
13 far as it goes with the specific details of it I can't
14 answer that. It's more or less it's like a dress is the
15 best way I can describe it. It's like a matted uniform.
16 I think it has Velcro at some portions of it.

17 Q. That's all I have. Thank you.

18 THE COURT: Any redirect?

19 MR. WHETSEL: No redirect, Your Honor.

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

21 THE WITNESS: Thank you, Your Honor.

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

24

25

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Jeff Vortisch-Direct Examination by Mr. Whetsel
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1 MR. WHETSEL: Your Honor, the State would next call
2 Jeff Vortisch.

3 [Whereupon, Mr. Vortisch comes forward]

4 THE COURT: Please come forward. I'd ask that you
5 have a seat up here in the witness chair. Before you do
6 that raise your right hand, put your left hand on the
7 Bible and raise your right hand.

8 [Whereupon, the witness is duly sworn by the Clerk
9 of Court]

10 THE COURT: Have a seat in the witness chair and
11 pull up real close to that microphone and speak loudly,
12 clearly, and slowly in order that we can hear everything
13 that you have to say and let's start with your full name.

14 THE WITNESS: Jeff Vortisch.

15 THE COURT: How do you spell that last name?

16 THE WITNESS: V-O-R-T-I-S-C-H.

17 - - - - -

18 JEFF VORTISCH,

19 Having been first duly sworn,

20 Was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. WHETSEL:

23 Q. Good morning Mr. Vortisch.

24 A. Good morning sir.

25 Q. Where do you currently work?

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- 1 A. The Port Royal Police Department.
- 2 Q. How long have you worked for Port Royal?
- 3 A. About four months.
- 4 Q. Now is Port Royal your first law enforcement job?
- 5 A. No, sir.
- 6 Q. How long you been in law enforcement?
- 7 A. About 28 years.
- 8 Q. And can you just briefly tell us what different
- 9 departments and agencies that you worked for during those
- 10 28 years.
- 11 A. I did 20 years, 1988 to 2008 with Beaufort City
- 12 Police Department. I retired as an investigator from
- 13 them in 2008. Shortly thereafter I worked for Beaufort
- 14 County Detention Center as a corrections officer. I was
- 15 a Lieutenant there and a training officer.
- 16 I retired from there in 2008 -- I mean 2015 after
- 17 eight years and four months ago I started with the Port
- 18 Royal Police Department.
- 19 Q. So were you working at the detention center back in
- 20 April of 2014?
- 21 A. Yes, sir.
- 22 Q. And you said you were a training lieutenant is that
- 23 correct?
- 24 A. Correct.
- 25 Q. And could you just briefly describe your duties as a

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1 training lieutenant?

2 A. I was responsible for the complete training process
3 at the detention center from initial training, hiring,
4 applications, making sure all the officers stay certified
5 and met their training requirements for their
6 certification.

7 Q. Do you know George Holmes?

8 A. Yes sir, I do.

9 Q. How do you know George Holmes?

10 A. He was an inmate at the detention center.

11 Q. Do you see George Holmes in court today?

12 A. Yes sir, I do.

13 Q. Can you indicate where he is currently seated?

14 A. He's the gentleman in the blue shirt to my right.

15 MR. WHETSEL: Just let the record reflect, Your
16 Honor, that the witness has identified Mr. Holmes.

17 Q. [Mr. Whetsel] Back in April of 2014 were you aware
18 of a Beaufort Police Department investigation into an
19 incident that occurred there at the detention center?

20 A. I was.

21 Q. Did you receive a request to pull surveillance
22 footage?

23 A. I did.

24 Q. And in response to that request did you pull
25 surveillance footage?

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1 A. I did.

2 Q. And what did you do with that surveillance footage?

3 A. I recorded the C.D. and I provided it to police
4 department Investigator Dowling.

5 Q. And what particular footage did you actually put on
6 that disk?

7 A. He wanted the video from inside IH cell 1 and the
8 video from booking to correspond with the video to IH-1.

9 MR. WHETSEL: Your Honor, may I approach the
10 witness?

11 THE COURT: You may.

12 Q. [Mr. Whetsel] Officer Vortisch, I'm going to hand
13 you what has been marked as State's exhibit 13.

14 [Whereupon, the witness is shown exhibit]

15 Q. It's a C.D.; do you recognize that disk?

16 A. I do.

17 Q. How do you recognize that disk?

18 A. The disk has -- when I burn disks at the jail as
19 part of my responsibility I had to identify them in two
20 ways. First I place my initials on the disk in two
21 places, top and bottom and second I put the date that the
22 disk was burned on the disk and these are my initials and
23 the date that I burned it.

24 Q. And what exactly is contained on that disk?

25 A. It has Mr. Holmes name, George Holmes IH-1; that's

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1 the first video that is in inside the cell and the second
2 video says departing booking and that indicates Ms.
3 DeSantis from the time she was in booking up to the point
4 that she left booking.

5 Q. And so those two videos do you recall what date
6 those two videos were?

7 A. Yes, sir. The videos were on April the 6, 2014 and
8 I burned the disk on April the 9th, 2014.

9 MR. WHETSEL: Your Honor, the State at this time
10 would request to admit State's exhibit 13 into evidence.

11 MS. SAXON: No objection, Your Honor.

12 THE COURT: It's in evidence without objection from
13 the defense.

14 [Whereupon, State's exhibit number 13 is entered
15 into evidence by the court]

16 MR. WHETSEL: Thank you, Your Honor. Your Honor,
17 may I approach the witness?

18 THE COURT: You may.

19 MR. WHETSEL: I'm going to retrieve back State's
20 exhibit 13 back from the witness and I'm going to hand
21 that back to the court reporter

22 Q. [Mr. Whetsel] You pulled those videos correct?

23 A. Yes, sir.

24 Q. When you pulled them did you also watch those
25 videos?

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1 A. I did.

2 Q. And what person was in IH-1 during that video?

3 A. Mr. Holmes.

4 Q. And then in the booking area what employee was in
5 the booking area during that video?

6 A. Ms. DeSantis.

7 Q. The detention center; where is it located?

8 A. Directly to our right; that big large building to
9 our right.

10 Q. Do you know what county it's in?

11 A. Beaufort County; I'm sorry.

12 Q. No, that's perfectly fine; thank you. I'm going to
13 take a few minutes and talk more about booking as well as
14 IH-1.

15 A. Okay.

16 MR. WHETSEL: Your Honor, I'm going to retrieve
17 State's exhibit 1 through 12 which are the photographs
18 and I'm going to use those as we discussed for that
19 particular area.

20 THE COURT: Very good.

21 Q. [Mr. Whetsel] Based on your eight years working at
22 the detention center Officer Vortisch are you familiar
23 with booking?

24 A. Yes sir, I am.

25 Q. I'm going to put State's exhibit 7 on the big screen

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1 here. It's a little bit blurry here on the big screen.
2 The photos are a little better quality. Do you recognize
3 this image?

4 A. I do, sir.

5 Q. Can you just explain what that is?

6 A. That is a photograph showing the holding cells
7 inside booking. The first one on the left is IH-1; the
8 second one is IH-1, the third IH-3, and the fourth one
9 IH-4 as you look down the photograph to your right. And
10 that is a booking desk, the brown counter top for the
11 booking desk.

12 Q. IH-1 what is IH-1 used for? What is its purpose?

13 A. IH-1 and IH-2 the first two cells are used for
14 individuals who have to be monitored on a continual 24
15 hour basis.

16 IH-1 and IH-2 those two cells particularly have
17 cameras located inside the cells that are recorded and
18 the individuals inside the cell can be monitored.

19 Q. I'm going to take down State's exhibit 7 from the
20 big screen. Officer Vortisch, do you recognize that
21 image?

22 [Whereupon, a photograph is shown]

23 A. That's another photograph of IH-1, 2, 3, 4 and in
24 this photograph you see the door to IH-5 at the very
25 back. There are five cells in booking.

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1 Q. I'm going to take State's exhibit 8 down. I'm
2 putting State's exhibit 10 up. Do you recognize that?

3 [Whereupon, the witness is shown photograph]

4 A. Yes, sir. That's one of the cameras that are
5 located inside IH-1 and IH-2. The camera itself is
6 located behind the enclosure and there is a glass
7 protection -- the camera is located here [indicates] and
8 there is glass in front of it, but that's the camera
9 housing.

10 Q. So is it fair to say that any video shot in this
11 cell would come from this particular camera?

12 A. Repeat please?

13 Q. Is it fair to say that any surveillance footage
14 taken inside of a cell would be shot from that particular
15 camera?

16 A. Yes, sir.

17 Q. I'm going to take State's exhibit 10 down from the
18 screen. Officer Vortisch do you recognize this image
19 here?

20 [Whereupon, the photograph is shown]

21 A. That appears to be one of the booking doors, I don't
22 know which one, closed and the black line that is running
23 vertical on the left side of that picture there is a
24 crack between the door itself and the wall. The doors in
25 booking, if I could see the other picture, actually

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1 slide. They don't open as a normal door; they slide left
2 to right. So when you slide the doors closed there is
3 like a two inch or one and a half inch crack is what that
4 shows.

5 Q. And I'm going to take down 1 and I'm going to put up
6 12.

7 [Whereupon, the witness is shown photograph]

8 Q. Do you recognize that image?

9 A. Yes, sir. That's IH-1, the door to IH-1. Here you
10 can see it's almost half way closed. It slides to the
11 right to close and the previous picture will show in the
12 crack that is located on the left side of that door
13 looking toward the right of the picture.

14 Q. I'm going to take down 12 and put up 5.

15 [Whereupon, the witness is shown photograph]

16 Q. Do you recognize that image?

17 A. Yes, sir. That's the booking desk itself and you're
18 looking through the window of IH-1 at the desk. That's
19 the view you would see.

20 And the camera up above the booking desk, you see
21 the T.V. cameras and the monitors? Those are the
22 monitors that a lot of the officers who are stationed at
23 that post basically can glance up and see all the cameras
24 in those cells that are being monitored.

25 Q. Approximately how far is IH-1's door from the

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1 booking desk?

2 A. Twenty, twenty-five feet maybe.

3 Q. I'm going to take exhibit 5 down from the big
4 screen. I'm going to put 6 up.

5 [Whereupon, the photograph is shown]

6 Q. What are we looking at there in 6?

7 A. That's looking through the door again at -- looking
8 through the cell door at the door in the very back of the
9 photograph the black door that is leading into our pre-
10 class area. We have some housing units located behind
11 that door and that's looking towards that door what we
12 call pre-class.

13 Q. I'm going to take 6 down and I'm going to put 3 up.

14 [Whereupon, the witness is shown photograph]

15 Q. What are we looking at in this image?

16 A. This is inside IH-1 with the door open. You see the
17 bed on the lower right of the picture, that black
18 rectangular -- thing there [indicates].

19 And then looking straight through the door you see
20 the booking desk. And on the left, lower left, you see
21 the sink for that cell.

22 Q. I'm going to take 3 down. I'm going to put one more
23 image up for you. This is number 9.

24 [Whereupon, the witness is shown photograph]

25 Q. You recognize that image?

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1 A. Yes, sir. That's inside of IH-1 and that is the
2 sink and urinal for those cells. Those four cells that's
3 the standard sink and urinal we have in all our cells
4 basically.

5 And the corner in the upper left of the picture in
6 the video you see the sink but you do not see the urinal
7 well that corner that's blocked out of the camera. On
8 the camera lens itself we placed tape to block out that
9 area for privacy.

10 Q. So on that image there number 9 where on that image,
11 it's not visible in this image, but where in that image
12 in relation to what we're looking at is that video
13 camera? Where is it located?

14 A. The camera is located immediately basically if you
15 look at the -- it would be in the far left corner if you
16 go all the way to the left in that cell up in the apex
17 where the ceiling meets the wall that camera housing we
18 saw it's pointing straight at that sink and the urinal in
19 that corner is blocked out.

20 Q. So that particular corner to include the toilet area
21 in a video or any surveillance type footage would be
22 blacked out is that correct?

23 A. Yes, it would.

24 Q. Not visible? I'm going to remove 9 from the board
25 and I'm going to return 1 through 12 back to the court

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1 reporter. Officer Vortisch, what is the booking area
2 used for?

3 A. The booking area at the jail is a central location
4 where everyone that is arrested in Beaufort County is
5 brought into the detention center through the back of the
6 booking area and they go through an intake process where
7 they are searched, information obtained from them.

8 And IH-1 and IH-2 specifically are cells where we
9 need to house individuals who need to be monitored either
10 medically monitored or suicide watch monitored. And
11 those two types of observation has responsibilities for
12 different officers to do; to monitor them.

13 Q. As part of an officer monitoring somebody in an IH
14 cell what do they have to do in order to monitor them?

15 A. Well, on medical -- you remember the picture of the
16 door? There is a sheet attached to the door right beside
17 the window. And the medical observation the booking
18 officer or the intake officer has to physically go up to
19 that window, look in that window and we call it see skin;
20 see the individual and check on that person's welfare.

21 They then on that sheet they put the time and they
22 put their payroll number and they what the inmate is
23 actually doing in the cell; laying on the floor, standing
24 at the door, setting on the floor, laying on the bed be
25 it whatever it might be it goes on that sheet. And that

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1 sheet is replaced every 24 hours.

2 Q. How often does an inmate have to be checked on when
3 they are in one of the IH cells?

4 A. Well again medically it's 30 minutes. If someone is
5 on suicide watch however it's every 15 minutes the
6 officer has to go up there look in the window see skin
7 and write down what they are doing.

8 Q. If an officer is working in the booking area is part
9 of their duty to do that check?

10 A. Absolutely.

11 Q. Do they have to visually check?

12 A. Yes, sir.

13 Q. Is there any exception to visually checking?

14 A. No, none. They have to see skin.

15 Q. And what is the reason for that?

16 A. Again suicide the protocol we take every suicide
17 indication seriously and we make sure the person is safe
18 and medical individuals you have to check them at least
19 twice, supervisors have to check them twice to check
20 their welfare.

21 Q. What types of -- you talked earlier about people
22 being arrested and being brought into booking. What
23 types if individuals would come through the booking area?

24 A. Everybody. We get everybody arrested in Beaufort
25 County from worse case to the least case. Everyone goes

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1 through booking. There is no exception.

2 Q. What about employees? Who would be in booking at a
3 BCDC employee, a detention center employee; excuse me?

4 A. Well, we have a booking officer who sets directly on
5 the left of that desk. That person is required to do all
6 computer entries and it's an eight hour post. We have a
7 booking corporal who is to the right. She is the
8 supervisor of the booking area, which is booking and pre-
9 class.

10 And then you have an escort officer who is coming
11 and going and they're down there and you have a pre-class
12 officer who works behind that one door. Those are the
13 ones that are assigned to that area.

14 Now any BCDC personnel can come in the area and the
15 supervisors, myself we're throughout the jail all day
16 long. So we're in there it could be one time a day or
17 ten times a day.

18 Q. What would you consider the busiest area of a
19 detention center?

20 A. Booking.

21 Q. Any question in your mind?

22 A. No sir, no doubt in my mind. It can get very busy.

23 Q. If you are an inmate being housed in IH-1 and I know
24 we saw some of the photographs but what can you see from
25 your particular vantage point when you are in your cell?

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1 What do you see?

2 A. In IH-1 you can see the entire booking desk. You
3 look to the right and you see the medical screening area.
4 If you look to your left you can see those individuals
5 coming into booking from the point they enter the
6 interior sally door all the way until you walk up to the
7 booking desk. You can see pretty much everything.

8 MR. WHETSEL: Your Honor, may we just briefly
9 approach?

10 THE COURT: You may.

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

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State v George Holmes
Jeff Vortisch-Direct Examination by Mr. Whetsel (resumes)
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1 DIRECT EXAMINATION (resumes)

2 BY MR. WHETSEL:

3 Q. Officer Vortisch, I'm going to play two short videos
4 that Investigator Dowling spoke of the area that we're
5 talking about. I just want to play them and then I want
6 you to explain what we're looking at.

7 [Whereupon, State's exhibit 14 video plays]

8 A. This is a door to IH-1. As you see it from booking
9 the video is panning to right.

10 Q. That was length of the video; it was relatively
11 brief. So as far as the first video; I'm sorry ---

12 A. --- can we see that again? There's something...

13 Q. So we're going to play that first video again,
14 State's exhibit 14.

15 A. Could you please pause it before it stops?

16 [Whereupon, State's exhibit 14 video plays]

17 A. The reason I wanted it paused IH-2 there on that
18 door do you see the sheet that is taped to the left side
19 of the window that is the sheet that would be taped.
20 There is one in IH-2 under observation right now.

21 The sheet taped to the left side of the window is
22 the sheet that the officer signs and writes what the
23 individual is doing inside the cell. On the IH-1 door
24 the paper taped to the right side of the door is a list
25 of descriptions; laying on the floor, sitting on the bed,

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1 standing at the door. And you can see a sheet taped to
2 the right side by IH-2's door. But that's the sheet that
3 the officer has to sign there.

4 Q. And that's part of the officer's duties when ---

5 A. --- yes, it is mandatory. On the 12 o'clock
6 midnight every night that sheet is changed and a new one
7 is put up there. It's a 24 hour sheet.

8 Q. Thank you. I'm going to play the second video that
9 Investigator Dowling took. It's slightly longer but
10 again if we could just watch it and then just explain
11 what we're looking at please.

12 [Whereupon, State's exhibit 14 video plays]

13 A. This is IH-1 going towards the door, the cell window
14 looking out the cell window you see an inmate walking up
15 to your left. A corrections officer is standing there.
16 That's the booking desk and the booking officer sitting
17 behind the computer. Panning back to the left you see an
18 inmate on the phone. There is a booking officer directly
19 behind the computer screen.

20 Now you're inside the cell coming out of the cell
21 walking up to the desk. You see the booking officer, you
22 see the booking corporal there in white on the right
23 side. Going back to IH-1's front door.

24 Q. Thank you Officer Vortisch.

25 MR. WHETSEL: Your Honor, I'm going to return

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1 State's exhibit 14 back to the court reporter.
2 Q. Officer Vortisch, I don't have any more questions
3 for you. Thank you.

4 THE COURT: Ms. Saxon, cross-examination.
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State v George Holmes
Jeff Vortisch-Cross-Examination by Ms. Saxon
July 27, 2016

1 CROSS-EXAMINATION

2 BY MS. SAXON:

3 Q. Hello, Officer Vortisch. You spent some time
4 explaining the booking area and the cell and there are a
5 couple of things that I just wanted to go over with you
6 in regards to that.

7 It is -- to get to the booking area again you do
8 have to go through certain security protocols. An
9 average person can't walk straight in there is that
10 correct.

11 A. That's correct.

12 Q. Okay. And when -- the cells in the booking area
13 are all of them used for observation or some of them just
14 for holding?

15 A. IH-1 and 2 are cameraed. They are used them for
16 suicide observation. Those are the only two that can be
17 used because they have to be cameraed. IH-3 and 4 can
18 be used for medical observation because there is no
19 requirement for a video of that.

20 So IH-1, 2, 3, and 4 are holds that can used for any
21 type of individual. Those that don't want to cooperate
22 during the booking process they can be placed in this
23 cell. Someone who is extremely intoxicated can be put in
24 the cell and put on observation.

25 Q. Now when you are working the booking area as you

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1 said you have certain duties to check the individuals in
2 their cells at a time parameter correct?

3 A. Correct.

4 Q. And then you sign the work out or it's called a log
5 sheet or a watch sheet?

6 A. It's a suicide watch sheet is what it's called.

7 Q. And so you would go up and you would look in and say
8 person is on bed or person is on floor, correct? That's
9 what you were saying?

10 A. Yes, ma'am.

11 Q. So if they were doing something inappropriate would
12 you note that on the watch sheet?

13 A. You could.

14 Q. Okay. Now also speaking of the booking area --
15 well speaking specifically of the cell do you have a
16 rough average size of that cell, of IH-1?

17 A. Ten by ten is pretty close.

18 Q. Okay. And we saw photos and if you need them again
19 but just the bed is in there correct?

20 A. Yes.

21 Q. And then the toilet and sink setup correct?

22 A. Yes.

23 Q. And when someone is on suicide watch they're only
24 provided the gown that they wear and a blanket is that
25 correct?

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- 1 A. That's correct.
- 2 [Whereupon, the witness is shown photograph]
- 3 Q. So this is standing inside the cell and this item
- 4 here [indicates] is what would be the bunk, is that
- 5 correct?
- 6 A. Yes, ma'am.
- 7 Q. Okay. And this is the door. I know that seems
- 8 kind of -- but they are very close to each other is that
- 9 correct?
- 10 A. Yes, ma'am.
- 11 Q. And then when you're speaking of this gap in the
- 12 door here [indicates] that exists because of how the door
- 13 operates is that correct and the way it slides in front
- 14 of the bricks?
- 15 A. Repeat please?
- 16 Q. Sure. The gap exists because of how the door
- 17 operates?
- 18 A. Yes, ma'am.
- 19 Q. Okay. But it's not a gap that you can reach
- 20 through?
- 21 A. No, ma'am.
- 22 Q. It's a small gap?
- 23 A. Yes, ma'am.
- 24 Q. Outside of the officers who have a duty to check on
- 25 these inmates do other officers or other employees that

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1 don't have an actual duty to go up to the cells generally
2 go up to these holding cells?

3 A. Yes, ma'am.

4 Q. And do -- would you say that a person being booked
5 in can walk around booking freely?

6 A. No.

7 Q. Okay. And outside of inmates that are working, can
8 inmates walk around freely?

9 A. Just the inmate workers. The gentleman you saw on
10 the video in the tan suit those inmates can walk around
11 freely but those are the only ones that can walk around
12 freely.

13 Q. Okay. Now you worked in the detention center for a
14 number of years and you were a lieutenant there, is that
15 correct?

16 A. Yes, ma'am.

17 Q. So you're familiar with the restrictions that can be
18 placed on an individual who has disciplinary actions is
19 that correct?

20 A. I am.

21 Q. Okay. So when you are initially booked into the
22 detention center as long as there are no outstanding
23 circumstances are you generally placed in a general
24 population cell?

25 A. That's based upon classification. We have a

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1 classification protocol and they have a check sheet they
2 go through and based upon the score on that check sheet
3 that determines the housing area.

4 Q. Okay.

5 A. So that question I can't say they are automatically
6 placed here or automatically placed there.

7 Q. I understand.

8 A. They go through this protocol and that protocol
9 determines housing.

10 Q. And in general housing for example you have certain
11 -- do you get out of your cell for a certain period of
12 time?

13 A. Yes.

14 Q. Okay. And do you generally have a cell mate. Is
15 there usually someone in there with you?

16 A. Could be or you could be given a cell by yourself.

17 Q. Okay. Now say that an individual gets in a fight
18 and they are written up and disciplined. What is a
19 disciplinary action? Are they then moved to a more
20 secure cell?

21 A. Yes.

22 Q. And are their ability to come out say any recreation
23 time that is cut down, is that correct?

24 A. Yes.

25 Q. And if disciplinary actions continue does it ever

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1 get to a point where they can only leave their cell say
2 for a shower and they get no rec time or anything of that
3 nature?

4 A. It can be restricted down to -- the least time we
5 can restrict them down to is 30 minutes or 15 minutes per
6 day every day. In other words 30 minutes every 72 hours
7 or 15 minutes every 72 hours based upon disciplinary
8 actions.

9 Q. Okay. And that's what I was curious about. And if
10 I asked this already I apologize. The gown that the
11 individual wears when they are on suicide watch in IH-1
12 it is an almost a matted cloth gown.

13 A. It's a non tearable cloth.

14 Q. Okay. And it has Velcro all over it right?

15 A. Actually it has Velcro across the shoulders. It has
16 two straps and straps go across the back to front.
17 That's the only Velcro on it.

18 Q. So does it not Velcro in the front or back that you
19 are aware of?

20 A. I don't want to say. I haven't seen one in over a
21 year so I don't know.

22 Q. That's fine. And outside of the blanket that's the
23 only item in the cell?

24 A. Yes, they are nude. We remove all the clothing.

25 They have nothing in that cell except that gown and that

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1 blanket. There is nothing in that cell.

2 Q. Okay.

3 MS. SAXON: Beg the court's indulgence.

4 [Whereupon, Ms. Saxon and Ms. Cappelmann confer]

5 MS. SAXON: That's all I have. Thank you.

6 THE COURT: Redirect.

7 MR. WHETSEL: Briefly, Your Honor.

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Jeff Vortisch-Redirect Examination by Mr. Whetsel
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1 REDIRECT EXAMINATION

2 BY MR. WHETSEL:

3 Q. Officer Vortisch, Ms. Saxon asked you about the log
4 that the officer is supposed to note every 15 or 30
5 minutes depending on when they are checking. If there
6 was inappropriate conduct would they always note that on
7 there?

8 A. No. Instead of noting it on the log -- the purpose
9 of the log is a visual check on the individual's welfare.
10 Is that person okay inside that cell? Standing at the
11 corner of the cell, standing on the bed would be noted
12 and then if there was some type of disciplinary issue
13 inside the cell that would be indicated on a disciplinary
14 report, an incident report inside the jail.

15 Q. She had also asked you about the gap in the door. I
16 want to put up State's exhibit 1 once again. I'll put
17 that up on screen.

18 [Whereupon, the photograph is shown]

19 Q. I believe you testified earlier that that is one
20 half to two inches is that right?

21 A. To the best of my knowledge, yes.

22 Q. Is it fair to say an inmate if they are in the cell
23 they could see out of that gap?

24 A. Yes, if that is IH-1 and I'm assuming that is IH-1
25 if you go up and look through that crack to the right

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1 what you would see there is a bench immediately to the
2 right side of the booking desk and that's where we seat
3 the female inmates.

4 When male inmates come in they are seated to the
5 left in the larger booking area and the female inmates
6 are seated on a bench that is directly across from that
7 gap.

8 Q. I want to take down 1 and put up 2.

9 [Whereupon, the witness is shown photograph]

10 Q. Is that a better I guess viewpoint as far as telling
11 which cell that is?

12 A. Yes. That's IH-1's door gap right there. You can
13 see the benches on the right. That's where the male
14 inmates are placed. Again the females are placed
15 directly almost at the bench where they are at looking at
16 that crack there.

17 Q. Is it fair to say if you have that vantage point
18 that you could also see at least partially into the cell
19 if you're on the outside looking in through that gap?

20 A. If you looked I assume so; if you looked.

21 Q. I'm going to take down 2.

22 A. If I can add that someone in IH-1 on suicide watch
23 the light is never turned off in that cell either. Those
24 lights stay on all the time.

25 Q. So his lights are never turned off?

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1 A. No, not on suicide.

2 Q. You mentioned earlier about the gown that somebody
3 would wear what other articles of clothing would they
4 have besides the gown?

5 A. None.

6 Q. Any underwear or underpants?

7 A. No, sir.

8 Q. I have no further questions.

9 MR. WHETSEL: Thank you, Your Honor.

10 THE COURT: You may step down.

11 MR. WHETSEL: Your Honor, may he also be excused?

12 THE COURT: Any objection from the defense?

13 MS. SAXON: No, Your Honor.

14 THE COURT: You're free to leave. Thank you, sir.

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

17 THE COURT: You may call your next witness.

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July 27, 2016

1 MR. WHETSEL: The State would next call Officer
2 Jessica DeSantis.

3 [Whereupon, Ms. DeSantis comes forward]

4 THE COURT: If you could please come forward. I'm
5 going to ask you if you could come around and the Clerk
6 is going to provide the Bible and place your left hand on
7 the Bible and raise your right hand as the Clerk
8 administers the oath.

9 [Whereupon, the witness is duly sworn by the Clerk
10 of Court]

11 THE COURT: Pull up real close to that microphone
12 and speak loudly, clearly, and slowly in order that we
13 can hear everything that you have to say and let's start
14 with your full name.

15 THE WITNESS: Jessica DeSantis.

16 THE COURT: Spell that last one.

17 THE WITNESS: D-E- capital S-A-N-T-I-S.

18 MR. WHETSEL: Thank you, Your Honor.

19 - - - - -

20 JESSICA DESANTIS,

21 Having been first duly sworn,

22 Was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. WHETSEL:

25 Q. Good morning Officer DeSantis.

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- 1 A. Good morning.
- 2 Q. Where do you currently work?
- 3 Q. I work for the State of Florida.
- 4 Q. What do you do for them?
- 5 A. I'm a felony correctional probation officer; senior
- 6 officer actually.
- 7 Q. And what are some of your duties in that job?
- 8 A. I handle drug offenders, sex offenders, and high
- 9 risk offenders; your capital murder cases and things like
- 10 that, anybody who is being released into the community on
- 11 probation, conditional release or parole.
- 12 Q. Prior to having that job did you have another job?
- 13 A. I did.
- 14 Q. And what was that job?
- 15 A. I was a correctional officer.
- 16 Q. Where?
- 17 A. Beaufort County Detention Center.
- 18 Q. And where is that located?
- 19 A. Beaufort County right over that way [indicates].
- 20 Q. And what did you do as a Beaufort County Detention
- 21 Center correctional officer?
- 22 A. Care, custody, and control was the three main things
- 23 of our job. It makes it sound real easy; it's not. It
- 24 entails a whole lot more than that. In an eight hour
- 25 shift you don't stop moving. We can have moments of down

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1 time and then you can have absolute chaos.

2 Q. Can you just briefly describe what are typical
3 duties of a correctional officer at the detention center
4 here in Beaufort?

5 A. The shift that I worked on we did dinner meals and
6 that was between 4:30, 5:00. Depending on where you
7 worked in the facility you would be responsible for
8 generally running the pod keeping the chaos down to a
9 bare minimum.

10 You could be in central control and opening all the
11 doors to let people into the facility itself into the
12 sally ports from the outside. If you were the booking
13 officer you handled basically everything at the jail from
14 the count to the inmates on suicide watch to the inmates
15 in medical to the general running of the facility.

16 Q. And were you working at the detention center -- well
17 let me ask you this first how long did you work at the
18 detention center total?

19 A. It was just under two years.

20 Q. And were you working at the detention center back on
21 April the 6th, 2014?

22 A. I was.

23 Q. And particular shift on that day what were you
24 doing?

25 A. I was the booking officer.

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1 Q. And as the booking officer what are your duties
2 there when you are actually the booking officer?

3 A. When the shift starts the first thing that we have
4 to do is actually count the inmates in the facility so I
5 would have to count my inmates in the booking area. Then
6 I wait for all the other officers in the pods and various
7 other areas to call me with their counts and I had to
8 make sure that everybody was accounted for; nobody was
9 missing.

10 Then dinner was served so my responsibility would be
11 to serve the people in the IH cells in the holdings cells
12 and the medical cells and assist the pre-class if
13 necessary. From there it really just depended on the day
14 and time.

15 We could have nobody booked in for the night. We
16 could have during water festival we had half of Beaufort
17 County come in through the door because they just kept
18 coming. I think the most I booked in on any one shift
19 was 20, which is a lot. You never stop moving.

20 Not to mention that you have to do all your suicide
21 watches, you have to do your watch tours, you have to
22 assist pre-class with their watch tours and anytime
23 somebody comes down to medical or is booked in and goes
24 to medical we have to assist over there as well.

25 Q. Do you know George Holmes?

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1 A. I do.

2 Q. Do you see him here today?

3 A. I do.

4 Q. Can you point to him please?

5 A. He's at the defense table; the one inbetween the two

6 females.

7 Q. Let the record reflect she had identified the

8 defendant. On April 6th, 2014 did you come in contact

9 with George Holmes that day?

10 A. I did.

11 Q. Where was he?

12 A. He was in the IH cell again.

13 Q. Do you recall which one?

14 A. IH-1.

15 Q. And we've seen a bunch of photographs of the area

16 and everything is that that cell that we were depicting

17 earlier?

18 A. That's correct.

19 Q. If an inmate, in particular George Holmes, but if an

20 inmate was in an IH cell what were your responsibilities

21 for checking on him?

22 A. Randomly every 15 minutes. But while we weren't

23 watching -- while we only had to go up to the cell every

24 15 minutes we were behind the desk there were monitors

25 and I believe that one of the pictures in the video

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1 showed it and we would glance at the video as well just
2 to make sure that within those 15 minutes nothing is
3 happening. So the inmates at that point are constantly
4 monitored.

5 Q. As a booking officer is that one of your duties to
6 check on inmates?

7 A. It is.

8 Q. And what area are you checking as far as inmates
9 when you are a booking officer -- I'm sorry as far as the
10 holding cells there in booking how many cells are there?

11 A. There is five IH-1 through five; five being the
12 largest. It's generally where if a multitude of people
13 come in that's where they get put and it's generally men.
14 You don't ever have men and women mixed so the women
15 would either be in that cell or we would place them in
16 medical to keep them separate from the men.

17 Q. Are you responsible for all five of those IH cells?

18 A. All five of the IH cells plus the two in medical,
19 plus the three beds in medical as well.

20 Q. Did you as a booking officer and with your duty to
21 check on those inmates that are housed there did you have
22 any option not to visually check on them if you wanted
23 not to do that?

24 A. No. It would be a reason for dismissal.

25 Q. When you say dismissal what do you mean?

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1 A. Fired.

2 Q. Explain booking to me or explain booking to us as
3 far as who comes through booking?

4 A. Everybody.

5 Q. When you say everybody what do you mean?

6 A. You have the general public because they are not
7 actually in our custody until the police officer turns
8 them over to us. They will still be in police custody
9 but to us they are the general public.

10 We don't have them booked in yet until they are
11 actually in a uniform and they are on the board they are
12 not an inmate. They are not booked into the facility.

13 So we have the general public, we have attorneys
14 come in, we have police officers come in, we have
15 maintenance crews when the toilets would back or we would
16 have issues with water or whatever the case may be
17 anybody could be in there.

18 Q. This may sound like a silly question but you said
19 you are familiar with George Holmes, the defendant,
20 correct?

21 A. Correct.

22 A. Does he own any part of the detention center? Does
23 he personally own any part of that?

24 A. No.

25 MR. WHETSEL: Your Honor, I'm going to request

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1 permission to publish State's exhibit I believe its 13
2 but let me double check that. Its number 13 and I want
3 to publish that, Your Honor.

4 Q. [Mr. Whetsel] Ms. DeSantis, these are the videos
5 that Jeff Vortisch pulled earlier and were put into
6 evidence. I'm going to play them in their entirety and I
7 just everybody to watch it and I want you to watch. And
8 then afterwards I'll have some questions for you okay?

9 A. Okay.

10 MR. WHETSEL: I apologize, Your Honor, we're having
11 a little bit of an issue with technology but I think
12 we're okay.

13 [Whereupon, State's exhibit 13 plays]

14 [Whereupon, State's exhibit 13 stops]

15 Q. [Mr. Whetsel] Ms. DeSantis, are you familiar with
16 the booking area with IH-1?

17 A. I am.

18 Q. Before I play these videos do you recognize these
19 still images?

20 A. I do.

21 Q. And can you explain what they are?

22 A. You're basically looking from like you were standing
23 in toward the medical area facing the entire booking
24 area. You can see the IH cells on the left hand side
25 with the IH-5 being at the very end with the door open.

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1 The door with the black circle on it is the second door
2 of the sally port where when the officers bring somebody
3 in they actually have to go through those two doors.

4 Then you have the T.V.'s for the inmates to listen
5 to, there is the phones. There is that board I was
6 telling you about with all the names of all the inmates
7 on it right behind the booking desk. You have one of the
8 booking computers with the screen around it because it's
9 a secure computer.

10 You have the dress out bags hanging on the front of
11 the booking desk and then it goes all the way around, and
12 we have a camera -- you have the camera right there
13 [indicates] for two reasons; one to take pictures of the
14 people when they come in after they are booked in and
15 two, if there are any incidents down there as well that
16 gets videotaped.

17 Q. And are you talking about the video that we are
18 looking at on the right hand screen which appears to have
19 a desk in it?

20 A. That's correct. The video on the left is from the
21 inside camera of the IH cell so you're looking down into
22 the cell. You can actually see the bunk, well part of
23 the bunk, and the door and part of the sink.

24 That black area that you see like right in the front
25 of the video in the center that's where the toilet and

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1 part of the sink are and that's obscured by tape so
2 that's why you can't really see what it is.

3 Q. On the video on the right where it has a desk there
4 is a gentleman in a white shirt; there also is another
5 individual in the top left corner. Do you recognize that
6 individual in the top left corner of the video?

7 A. I do; that's me.

8 Q. That's you? What I'm going to do is I'm going to
9 try to sync these. As you can see on the bottom right
10 hand screen there is a time of 6:32:59 and then on the
11 left is 6:32:54.

12 I'm going to play the left until I catch up and I'm
13 going to play them side by side and I'm just going to let
14 them play until they finish and then I'll have more
15 questions for you okay?

16 A. Okay.

17 [Whereupon, State's exhibit 13 plays]

18 THE COURT: Would counsel approach the bench for
19 just one minute?

20 [Whereupon, an off the record bench conference is
21 held]

22 Q. [Mr. Whetsel} Officer DeSantis, you're still on
23 screen there on the right. What's going on right now as
24 you're sitting there behind the desk?

25 A. I know it looks sort of like I'm talking to myself

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1 but in fact off camera what you can't see is the booking
2 corporal who is in that picture would be to my left.
3 She's over by the end of the desk which is right in front
4 of medical.

5 And then more than likely the escorts are around the
6 booking area because they were always in and out. They
7 were over dealing with the other side of the area. But
8 we were deciding at that point because the camera was
9 blocked what action to take and then thankfully it fell
10 down so we didn't have to do anything at that point.

11 We didn't always have to -- when we gave orders we
12 could do it from behind the desk. We didn't necessarily
13 have to approach a cell unless it became necessary. So
14 there is the booking corporal right there [indicates].

15 And she had the same duties other than being a
16 corporal she had to do watch tours as well and she had to
17 check on medical so. It's a normal shift; normal every
18 day of eight to 16 hours of booking.

19 And it's getting towards the time when -- it was
20 probably within 20 minutes to 40 minutes of count so
21 we're getting everything on the board ready; we're just
22 getting ready.

23 Lockdown was at 7:30 and that's when the officers
24 would have to do official count and call it into booking.
25 And that right there [indicates] is the nurse. She is

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1 getting ready to do med pass. She will start with the
2 pods and then work her way down finishing in the IH cells
3 and pre-class if anybody required meds in those areas.

4 Q. We have about 10 minutes left Officer DeSantis and
5 we'll be done with the video. Officer DeSantis, you just
6 walked off screen there to your left. What's happening
7 then?

8 A. I could have -- it could be going to property, it
9 could be going to check on the inmate workers because
10 what you can't see around that time the inmate workers
11 come down twice to clean; once after dinner and then once
12 at the end of our shift.

13 Our shift ends at midnight which means they would be
14 down 11-ish to vacuum and clean. Since I've left the
15 facility they have replaced what used to be carpet in
16 that dark area and I guess now its laminate floor tiling.
17 But they used to vacuum and clean and everything.

18 And while they have free rein they are not permitted
19 to just go and do as they please so we would have to let
20 them into certain areas. So I could have been walking
21 off for any numerous reasons.

22 Q. Again, you walked off screen again came back on in
23 relation to where George Holmes is did you have any
24 interaction with him?

25 A. Yes.

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1 Q. Can you describe your interaction?

2 A. It would be about time where he was -- well through
3 the whole shift but specifically at this particular time
4 he was calling me by my first name which was not
5 permitted.

6 He was calling me such choice names as a cunt, a
7 coke head, a dope fiend, a slut, a whore; pretty much
8 anything that would come to mind I would suppose. And
9 that's me just basically ignoring his repeated name
10 calling.

11 Now his foot is up on the bunk which means he's also
12 facing that crack in that door which allowed a better
13 vantage point of me seeing that he has his penis in his
14 hand and as you can see he's moving it in an up and down
15 position.

16 Because he has one of the newer suicide gowns on --
17 there were actually two suicide gowns in the facility;
18 the older ones and the newer ones. The older ones were
19 starting to be replaced because when you wash something
20 that have Velcro on it the Velcro starts to deteriorate.

21 Obviously we want our inmates to be covered up and
22 still be protected at the same time so they started to be
23 replaced with ones that velcroed over the shoulders and
24 then there was a Velcro around. It was basically one
25 piece that went around like this [indicates], you put it

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1 over your head, it strapped onto the side to afford
2 privacy on that part and then the straps on the sides to
3 adjust it and make it comfortable; as comfortable as it
4 could be.

5 So I was watching the inmate masturbate as you can
6 see while we're ignoring him. He's trying to get my
7 attention. Through the shift it's banging on the door,
8 calling names; anything to draw attention to himself
9 basically.

10 Q. We've got about one minute left Officer DeSantis;
11 almost done. From where you're sitting right there in
12 the booking area are you able to see into IH-1 at all?

13 A. Absolutely.

14 Q. And from that vantage point what can you see?

15 A. Straight down into the cell.

16 Q. And what part of the cell can you see?

17 A. Well at this point I can only see Mr. Holmes's face
18 in the window because his head is blocking the rest of
19 the cell. But it's literally directly across from where
20 I'm standing so I can see what's going on.

21 Q. Earlier when there was something over the camera
22 what part of the cell could you see at that point?

23 A. Again, his head was covering in the window so my
24 vantage is the window would be obscured and because he
25 covered his camera I wouldn't be able to see into the

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1 cell, which was the point.

2 Q. From your vantage point there can you see the rear
3 wall underneath the camera?

4 A. It's blocked with tape so we could see the wall but
5 it would only be the part that you could actually see in
6 the video that white part we wouldn't be able to see
7 anything off the side. It's straight into the back of
8 the cell.

9 [Whereupon, the video stops]

10 MR. WHETSEL: Your Honor, I'm going to end playing
11 State's exhibit 14 -- well, 13 excuse me. I'm going to
12 return it back to the court reporter.

13 Q. [Mr. Whetsel] Officer DeSantis we just watched about
14 30 minutes or so; give or take. At any point in time
15 during that video did you observe the defendant doing
16 anything in particular?

17 A. Yes. He was masturbating while calling my name and
18 screaming obscenities at me.

19 Q. What exactly did you see though? Can you describe
20 that please?

21 A. He had his flaccid penis in his hand and he was
22 jerking it in an up and down motion simulating a sex act
23 basically.

24 Q. How did you actually see that though?

25 A. You can see it in the cell on the camera and in the

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1 cracks of the door as I was walking by. It was made to
2 be very, very obvious.

3 MR. WHETSEL: Your Honor, I'm going to display
4 State's exhibits 1 and 2 on the screen again.

5 [Whereupon, photographs are shown]

6 Q. [Mr. Whetsel} Officer DeSantis, do you recognize
7 that photo?

8 A. I do.

9 Q. And what are we looking at here?

10 A. That's the side of the wall where the IH-1 cell is
11 that's IH-1 cell, that's the crack in the door. There is
12 nobody in it now which is why it looks like it's just
13 empty; for lack of a better word it looks empty. But
14 when there is somebody in that cell and they are standing
15 there you can clearly see them.

16 Q. And when you said earlier as you walked by the crack
17 in the door what were you referring to?

18 A. That gap right there [indicates] the way that the IH
19 cells are that's the first one and right next to it which
20 you can't see is there is a hallway. And that hallway is
21 where everybody walks down.

22 Property is right there [indicates] the females sit
23 right like over there [indicates] so there is a multitude
24 of reasons why we are back and forth there. We're
25 constantly walking around and I know you only got a small

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1 sliver of our day but we're constantly moving. In and
2 out of property especially when you are booking people in
3 their property comes in. It has to go into the safe.
4 There is a multitude of reasons to go back and forth.

5 Q. That gap that we're looking at is that the same cell
6 that was depicted in the video we just watched?

7 A. Yes, it is.

8 Q. And as you said as you're walking back and forth is
9 that the same gap that you would have observed the
10 defendant masturbating?

11 A. Absolutely.

12 Q. And how were you actually able to see it though? I
13 know I keep -- I want to make sure we're clear but how do
14 you actually see that?

15 A. Because you're right there and the gap is right
16 there [indicates]. It looks like it's small but you can
17 actually get fingers through there.

18 Other officers have been assaulted through there so
19 it's a big enough gap where somebody can do something if
20 they want to. And unfortunately it's the design of the
21 cell. There is no way to change it.

22 Q. I'm going to take down 2 and put up 1.

23 [Whereupon, the photograph is shown]

24 Q. What are we looking at here?

25 A. That's -- it appears to be an up close and personal

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1 view of the crack and the floor. That square area that
2 looks dirty that's the entrance to the cell, the floor,
3 and that's a cinderblock in the wall and the gap into it.
4 So you can actually see from that point all the way back
5 into the wall on the far side of the cell.

6 MR. WHETSEL: I'm going to take down 1 and return 1
7 and 2 to the court reporter.

8 Q. [Mr. Whetsel} As you're walking back and forth in
9 that video Officer DeSantis you mentioned earlier but are
10 you hearing anything from the defendant?

11 A. Yes I am.

12 Q. What are you hearing?

13 A. All sorts of obscenities. He's calling me names,
14 anything to get my attention on his cell, calling me by
15 my first name; all sorts of things.

16 At one point he did tell me as I was walking by he
17 whispered not so quietly that he was going to come visit
18 me at home and he knew where I lived.

19 Q. Since you were working in booking that day were you
20 allowed to leave that area for any significant period of
21 time?

22 A. No. The only reason we leave booking is when we are
23 relieved to go to lunch. And while we are afforded 30
24 minutes you're not always given 30 minutes. So it could
25 be five minutes or it could be 30 minutes.

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1 Q. And on that day in that video did you clearly see
2 his penis?

3 A. Multiple times, yes.

4 Q. It would appear in the video that he is wearing a
5 gown of some sort; the defendant. Was he wearing any
6 other clothing?

7 A. No. He was on suicide watch so he was just wearing
8 a suicide gown. They are not allowed to keep their shoes
9 on the inside of the cell. Everything is kept on the
10 outside.

11 Q. I have no further questions, Officer DeSantis.
12 Thank you.

13 THE COURT: Cross-Examination?
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Jessica DeSantis-Cross-Examination by Ms. Saxon
July 27, 2016

1 CROSS-EXAMINATION

2 BY MS. SAXON:

3 Q. Good afternoon, Officer DeSantis. When you became a
4 corrections officer was that your first time working in a
5 corrections facility?

6 A. No.

7 Q. So had you been a corrections officer prior to
8 working at Beaufort County Detention Center?

9 A. For 12 years. I was at a super max prison back home
10 -- a men's facility.

11 Q. So do you remember your employee application or are
12 you familiar with it from what you filled out when you
13 applied for the job?

14 A. It was years ago. I have no idea.

15 Q. Okay. Do you, and you may not, but there was a
16 questionnaire involved that said do you understand and
17 are you willing to accept the fact that you may be called
18 dirty names, you may have to encounter inmates throwing
19 bodily fluids on you, you may have to encounter certain
20 things while in the commission of your job?

21 A. Of course. As any C-O will tell you it happens.

22 Q. And is it fair to say that it is something that not
23 just this on this one particular day in time but that you
24 have had other inmates and other disciplinary actions
25 come up in your time at BCDC?

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1 A. No. Actually Mr. Holmes is the only one that ever
2 made it obvious. Inmates, obvious men -- women do it too
3 -- they are locked up, some of them for an extended
4 period of time they masturbate; that is a given.

5 Generally though they don't want other people to see it.

6 They don't want officers to see it because they can
7 get disciplined for it and they most certainly don't want
8 other inmates to know they are doing it. So it's kept
9 private. It'd done very discretely. Unfortunately with
10 Mr. Holmes it's not as discreet. It's made to be obvious
11 by design.

12 Q. Do you recall while you were working at the
13 detention center having a couple of two, I will say two
14 employee warnings and write-ups?

15 A. Nothing to do with inmates. Actually it was my
16 appearance.

17 Q. Okay. And so the one -- if the write up says it
18 was insubordination and attitude or lack of application
19 and performance of duties would you say that would
20 correct, that the write up is correct?

21 A. I would have to see the write up. I don't know.

22 Q. Would you like to?

23 A. Sure.

24 [Whereupon, the witness reviews document]

25 Q. On the date in question and we've talked about this

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1 a lot we talked about the watch sheet and things of that
2 nature. You do recall going up to the cell at various
3 times to initial the watch sheet is that correct?

4 A. That's correct.

5 Q. And your initials are J-D. There wasn't any other
6 -- you didn't use a third initial or anything of that
7 nature right it was just J-D?

8 A. Just J-D.

9 MS. SAXON: Your Honor, may I approach the witness?

10 THE COURT: You may.

11 Q. [Ms. Saxon] And this is the watch sheet from that
12 day where you were on third watch. I've highlighted two
13 spots. Are those your initials?

14 [Whereupon, the witness is shown document]

15 A. They are.

16 Q. Okay. And are those the two times on the watch
17 sheet that you see that you checked in on Mr. Holmes in
18 his cell?

19 A. It is.

20 Q. And next to them it says that he was in his bunk is
21 that correct?

22 A. It appeared to be, yes.

23 Q. So if you had approached him at that time would you
24 have written if he was not in his bunk and he had been up
25 as you say masturbating would you have written that he

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1 was up there masturbating?

2 A. Not on the watch sheet no. That would be in my log
3 and then on the incident report that was done as well.

4 Q. Now you talked about the gown a little bit and I
5 want to talk about that a little bit more as well. You
6 said that it slipped over the head is that correct?

7 A. That's correct.

8 Q. And it had straps at the top of Velcro -- like
9 sleeves to adjust for the sleeves?

10 A. No sleeves. It's like a tank style. The Velcro was
11 just to -- not everybody is the same height so it has to
12 have Velcro to adjust -- to provide some length if you're
13 taller and make it a little bit shorter if you're short.

14 Q. Okay. And then you said it had ---

15 A. --- the new styles had one, it was one solid piece.
16 It was like a flap. It was one solid piece that slipped
17 over your head and then on the newer styles it had, and I
18 don't know if it was on the left or the right, one piece
19 of Velcro to provide privacy because you obviously don't
20 want it flapping about because they do come out of their
21 cell.

22 We do a cell search so they are among other inmates
23 for a very short period of time so they need to have some
24 privacy.

25 Q. Okay. Now in preparation for today did you review

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1 the incident report that you issued at the detention
2 center regarding this incident?

3 A. Yes, I've had it for the last two and half years.

4 Q. Okay. And so do you remember stating in that
5 incident report that George was actually standing on his
6 bunk when he is masturbating?

7 A. That's correct. And clearly in review it was his
8 foot was up on the bunk but part of that is I'm very
9 short, I'm 4-11 so when I'm looking into the window I can
10 see that he is up which lead me to believe he is standing
11 on his bunk as opposed to one foot up.

12 Q. And when we're talking about that window and we're
13 talking about that door, I'm short too; I'm only 5-4 so I
14 guess I'm not quite I'm 4-11.

15 But when you come up to that window is it something
16 that you can see height wise for you or is it something
17 you have to come up to see?

18 A. I stand on my tippy toes to see.

19 Q. Okay. And it's a window about the same size of
20 this window over here [indicates] on this holding cell
21 door is that correct?

22 A. Approximately, yes.

23 Q. Okay. And in the video we saw George his head was
24 for the most part in the window. Is that generally what
25 you were seeing when you were looking through the window?

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1 A. Yes.

2 Q. Okay. Now just a little bit about the booking area
3 in general that I wanted to ask you about. You had said
4 that when people are brought in they are not currently in
5 your custody yet correct?

6 A. They are not in our custody until the handcuffs are
7 back in the possession of the police officer.

8 Q. Okay. But are they free to walk around the booking
9 area? Do they wander about?

10 A. Sometimes. Sometimes you get a person that comes in
11 and they are intoxicated or they are otherwise under the
12 influence or just generally ornery and they don't want to
13 follow directions.

14 That gets to a point where we will put them in a
15 cell until they want to follow directions. But to say
16 that they never wander around no that would be
17 inaccurate.

18 Q. And I guess my question would be the rules don't
19 allow them. It's not proper for someone who is being
20 booked in to just kind of wander around the booking
21 center.

22 A. Well, no but I mean ---

23 Q. --- understanding it can happen.

24 A. They wouldn't be there if they were following the
25 rules so they're not always following the rules.

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1 Q. Okay. And you said that other individuals will
2 come such as attorneys and maintenance crews and things
3 of that nature. And when they come do they wander around
4 or do they have very specific areas where they go to do
5 their business?

6 A. It depends on who it is. If it is an attorney they
7 will generally go to that hallway has attorney rooms but
8 also on that hallway was our counselors, Ms. James office
9 was there, maintenance crews once they were escorted in
10 they could go to where they needed to be. There is
11 generally not the staff to follow them around. There is
12 enough staff to see where everybody is.

13 MS. SAXON: Beg the court's indulgence.

14 [Whereupon, Ms. Saxon and Ms. Cappelmann confer]

15 Q. [Ms. Saxon] That's all I have.

16 THE COURT: Redirect?

17 MR. WHETSEL: Brief redirect, Your Honor.

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REDIRECT EXAMINATION

BY MR. WHETSEL:

Q. Officer DeSantis, Ms. Saxon referenced a disciplinary write up that you received. What was that was the basis of that?

A. There were two actually. The first one involved an earring. I know it sounds silly but when I was 18 I had some earrings soldered in and my corporal took exception to that and she felt it should come out. Even though I had permission from the Lieutenant -- actually so that's what one of them was.

And the second one which I had completely forgotten until she showed me was I was working in the lobby one evening during visitation and we had a very, very pregnant lady come in and she was wearing leggings, which was not allowed ---

MS. SAXON: --- objection, Your Honor. May we approach?

THE COURT: Yes.

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

Q. [Mr. Whetsel} Officer DeSantis, I'm sorry. Just go ahead and finish what you were saying about the second write up.

A. As the lobby officer we had rules that we needed to

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1 follow to allow people in but we also had discretion. As
2 I was saying a very, very pregnant female came in. She
3 was ready to give birth at any moment and she was in
4 leggings. I let her in. Another officer saw that and
5 felt that I shouldn't have made that exception.

6 So it wasn't necessarily a write up it was a
7 counseling. It was I should have called my corporal and
8 I should have run it by her. I made a decision. It was
9 nothing about security, it was nothing about inmates. It
10 was a simple misunderstanding.

11 Q. So besides those have you have ever had any type of
12 write up or anything regarding inmates?

13 A. In 14 years as a correctional officer I have never
14 had an issue with any inmate, anything.

15 Q. Ms. Saxon also referenced the check in sheet that
16 you had to sign whenever you actually visually were
17 observing an inmate and you mentioned that if they were
18 doing something inappropriate for example such as
19 masturbation would you normally initial or write that in
20 there as a behavior you're observing?

21 A. No, because it could be -- I believe freedom of
22 information allowed anybody to pull any of our records so
23 we had to keep it as simple as possible. That's why we
24 kept an internal log. On our computer we had to document
25 everything and then there were disciplinary reports,

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1 incident reports. So if there was an incident like
2 somebody masturbating on purpose in front of an officer
3 that would be something to just get a discipline number
4 and write the report.

5 Q. In the video we watched you said there were times
6 you walked by and you were actually seeing masturbation
7 through the crack in the cell door?

8 A. That's correct.

9 Q. If you were to see that then is that something you
10 would have noted on that log sheet, the check in sheet?

11 A. Absolutely not. That's not the place for it.
12 That's simply to make sure the offender -- I'm sorry the
13 inmate is alive and breathing as far as suicide or
14 medical watch would be.

15 Q. Thank you. I have no further questions.

16 MS. SAXON: May I briefly, Your Honor? Thank you.
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1 RECROSS EXAMINATION

2 BY MS. SAXON:

3 Q. Officer DeSantis -- I'm going to approach again if
4 that's okay Your Honor -- and hand you up this is the
5 copy of the write up and it didn't have anything to do
6 about an earring so I wanted to clarify that with you.

7 Based on my reading of it was that it had to do with
8 a warrant served procedures and conduct while you were --
9 while you had been a C-O after about six months while you
10 were there. So please take your time to read that.

11 [Whereupon, the witness reviews document]

12 A. This is just counseling. It's not disciplinary at
13 all.

14	Q. Okay.
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15 A. It was a matter of procedure. One corporal had it
16 to do one way and another corporal had it to do another
17 way. I was covering on another shift. That corporal had
18 it done differently than my corporal.

19 MS. SAXON: That's all, Your Honor.

20 THE COURT: Okay. You may step down.

21 MR. WHETSEL: Your Honor, may Officer DeSantis be
22 excused?

23 THE COURT: Any objection from the defense?

24 MS. SAXON: No, Your Honor.

25 THE COURT: You're free to leave.

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1 [Whereupon, the witness is excused and exits the
2 witness stand]

3 THE COURT: You may call your next witness.

4 MR. WHETSEL: Your Honor, the State rests.
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1 THE COURT: I'll be happy to entertain motions at
2 this time.

3 MS. SAXON: Thank you, Your Honor. At this point I
4 would renew all my previous motions and any objections
5 that have been up to this point to preserve the record.
6 And I would also like to make a directed verdict motion
7 at this time.

8 Your Honor, we're talking about as we have talked
9 about ad nauseam the law of indecent exposure which
10 entails a couple of different points; the area where it
11 occurs, whether it is access to a public place, how the
12 exposure occurred and things of that nature. And I think
13 at this point in the trial the State has not met -- had
14 not supported evidence to make all those points.

15 Again, I stand by my earlier argument that the jail
16 for the purpose of the statute and the cell where all of
17 this occurred as we have now seen is not a public place.
18 It is not someplace that people freely have access to.
19 The alleged exposure occurs through maybe a one inch, two
20 inch at the most crack in a cell door.

21 As we see from the video you don't see anything.
22 You see Mr. Holmes back the entire time. And you never
23 see him expose himself openly to a camera. He does not
24 run out into the booking area and rip off his suicide
25 gown, which has now been testified to to be a solid

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1 piece. And the entire time based on the evidence you see
2 he is also up against a door, Your Honor. And so when
3 you are talking about exposure there has to be some
4 exposure. There has to be something that we can actually
5 see and show and say look jury, this is how this
6 happened, this is what happened. And there has been no
7 evidence of actual exposure in this case.

8 There also again as I stated there has been nothing
9 to support the idea that the jail is a public place or
10 somewhere that the people have general access to, which
11 is required in my opinion under the statute. I think for
12 those reasons Your Honor I would ask you to direct a
13 verdict in favor of Mr. Holmes.

14 THE COURT: What do you think about the fact that
15 this is like a one to two inch crack it seems to me like
16 you would almost have to go peek into it to see it.

17 MS. SAXON: That's my opinion too, Your Honor. And
18 when you are in the jail and if you look at the videos
19 and the photos that have been presented this is not a
20 wide gap. This is something that takes a deliberate
21 action upon the other person to go and look through. It
22 is not something where you can shove his ---

23 THE COURT: --- this is a lot different than -- you
24 can see and hear tell of a lot of public defenders who
25 find themselves going into pods and there are people out

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1 and about and there is full on masturbation and they will
2 drop their britches to the floor and masturbate. This
3 isn't what that is.

4 MS. SAXON: No it's not, Your Honor. And that's
5 one of the reasons that I have felt so strongly about
6 this particularly because of where it did occur which is
7 in this very confined cell where Mr. Holmes is allegedly
8 masturbating against a door with the exposure being this
9 two inch maybe, maybe two inch crack and the State still
10 has to prove that he had an intent to expose himself.

11 There is criminal intent in any criminal crime and
12 they've not offered any evidence to that because it
13 wasn't like he was trying to shove himself through the
14 crack. He wasn't jumping up on his bed to try to get
15 better view of the window; nothing of that nature. And I
16 think here particularly ---

17 THE COURT: --- I think perhaps it's clear that he
18 might have been masturbating based on what he was saying
19 and she might be right in that regard. But I don't think
20 -- she said she saw it. I'm not really sure how she did.

21 MS. SAXON: I agree with you, Your Honor. And I
22 would ask that you direct a verdict for Mr. Holmes.

23 THE COURT: There might be a scintilla of evidence
24 because of the fact that she said she saw him. I don't
25 know.

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1 MR. WHETSEL: Your Honor, that's a question of fact
2 and that is certainly within the jury's purview. I will
3 say though for a directed verdict it's in the light most
4 favorable to the government and she testified
5 unequivocally that she saw it. There are photographs of
6 the crack. And the mere fact that it may be a small gap
7 it's obvious from the video that Mr. Holmes has ---

8 THE COURT: --- do you think that if there was no
9 crack he had his head in the window the entire time and
10 she never saw his penis do you think that is indecent
11 exposure?

12 MR. WHETSEL: Well there is also times where he was
13 not visible on the camera in that blind spot as she
14 testified from the booking area where she was sitting she
15 could see into the back corner of that cell. But as far
16 as what the majority of the video shows is Mr. Holmes
17 with his leg on the bunk with his midsection pushed into
18 the crack and then her walking by.

19 I just have to prove it happened one time. Based on
20 pretrial obviously there is evidence that it happened
21 multiple times on previous occasions. But this is what
22 we have the strongest evidence of and it is what we went
23 forward with. But regardless of the one and half to two
24 inch crack it's still clearly visible from the
25 photographs that have been admitted into evidence that

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1 you can see ---

2 THE COURT: --- it's clear ---

3 MR. WHETSEL: --- into the cell ---

4 THE COURT: --- you can probably see through the
5 crack. I'm not real sure if you're looking into the
6 window or standing at the computer you can see it.

7 MR. WHETSEL: Well she testified as she walked by
8 she saw it and again I think that's a question of fact
9 for the jury, Your Honor. And as far as a directed
10 verdict motion we're talking about did we meet the
11 elements and we put on some evidence and the answer is
12 yes.

13 The statute reads it's unlawful for a person to
14 willfully, maliciously and indecently expose his person.
15 Well, the evidence we have of that is the names that he
16 was calling her as she was walking by and as she is
17 sitting there; calling her vulgar names and calling her
18 by her first name.

19 This is not something where he is trying to mask
20 what he is doing. He's very much open and notorious
21 about it. He's doing it to the best of his ability to
22 try to gain her attention. You can also see that he is
23 trying to mask his actions by putting toilet tissue or
24 putting something over the camera. So this is somebody
25 who knows what he is doing and knows he is being filmed

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1 and he's doing his best ---

2 THE COURT: --- he's not being charged with
3 masturbating or cussing. He's being charged with showing
4 his penis.

5 MR. WHETSEL: And as the witness testified to and
6 again a question of fact for the jury as the witness
7 testified to she said she saw it, Your Honor. And that's
8 evidence; that's competent evidence from the stand that
9 the jury has to weigh. And if that's all we had we could
10 still go forward but rarely do you actually have a video
11 of what alleges to be the actual crime and we do. We
12 played it and it's in evidence. It's up to the jury to
13 determine, Your Honor.

14 THE COURT: Well to the extent I don't think that
15 this video shows that she saw the penis. I think the
16 video -- what the video shows is there was no manner in
17 which she could see the penis.

18 MR. WHETSEL: Your Honor, the door that he is in
19 and as the photographs show there is a one and half to
20 two inch gap. The video shows his back to the door and
21 again this is a question of fact for the jury, Your
22 Honor, but his back is to the door, his foot is on the
23 bunk, and his midsection is pushed into that crack area.
24 As she walks by she could absolutely see that especially
25 if he is calling out to her trying to gain her attention.

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1 She testified to that and that's certainly enough to get
2 us to the jury, Your Honor.

3 THE COURT: That was a very, very long arduous
4 video but I don't believe I saw him stick his penis in
5 the crack.

6 MR. WHETSEL: And you couldn't see it in the video
7 but she saw it. She saw it. The video just corroborates
8 the fact that he is in that crack, that you can see his
9 leg on the bunk and that he appears to be masturbating by
10 watching the motion of his hand. It corroborates her
11 testimony, Your Honor. Her testimony is she saw it.
12 That's the evidence; the video corroborates that. Again,
13 a question of fact for the jury, Your Honor.

14 And as far as a public place or property of other
15 well property of others as Officer DeSantis testified to
16 Mr. Holmes doesn't own any part of the detention center.
17 As for ---

18 THE COURT: --- he might be a taxpayer here in
19 Beaufort.

20 MR. WHETSEL: Could be but it's not Mr. Holmes who
21 owns it. Not ---

22 THE COURT: --- well who does own it, the county?

23 MR. WHETSEL: It's not Mr. Holmes, Your Honor, it's
24 not myself. It could be the county but it's not his. It
25 says property of others. If he was in his house then he

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1 wouldn't be charged with this but he's somewhere else.
2 As far as a public place there was quite a bit of
3 evidence describing the booking area. It's where anybody
4 has been arrested ---

5 THE COURT: --- well lets -- you're standing in
6 your house in front of a picture window and exposing
7 yourself that's not indecent exposure?

8 MR. WHETSEL: That's not we're here for, Your
9 Honor.

10 THE COURT: I'm just asking ---

11 MR. WHETSEL: --- I don't know the answer to that.
12 Yes sir, I don't know the answer. But as far as it being
13 a public place there has been quite a bit of evidence
14 talking about the booking ---

15 THE COURT: --- Well, that's what you said was if
16 you're in your own house it's not indecent exposure. I
17 don't know whether that's so or not.

18 MR. WHETSEL: I don't know if there is a window
19 open either, Your Honor, to be honest with you in that
20 hypothetical. But as far as a public place again there
21 has been quite a bit of evidence about what booking is
22 used for. Anybody who has been arrested will come
23 through there, which means anybody that has been arrested
24 will come past that cell which means anybody that has
25 been arrested can see into that cell. And based on the

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1 case law we argued at pretrial this certainly, can
2 certainly absolutely be considered a public place. Again
3 I think it's a question of law and the court has ruled on
4 but I know during the sidebar it could be a question of
5 fact as well for the jury. But as far as the directed
6 verdict motion the State has certainly put on enough
7 evidence to get past that, Your Honor.

8 THE COURT: Ms. Saxon, what do you think about the
9 fact they have at least presented a scintilla of evidence
10 in that she said she saw his penis. What do you think
11 about that?

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1 MS. SAXON: Your Honor, and that is her testimony
2 but again the question of the statute and what the
3 statute specifically outlines is that the person in
4 charge must expose himself in a manner to the public or
5 to an individual or whoever this alleged victim is, Your
6 Honor, and there has been no exposure and there has been
7 no testimony that there was exposure. In fact ---

8 THE COURT: --- there is testimony there is
9 exposure. She said she saw ---

10 MS. SAXON: --- testimony that she saw his penis.
11 There is not testimony that as she came by he whipped it
12 out or was doing something with it. And I mean that's
13 the thing; that's what exposure is.

14 THE COURT: I think that's exactly what she's
15 saying. I think that's exactly what she's saying is that
16 when she walked by he stuck his penis through the crack.
17 I didn't see that on the video. But if that's her
18 testimony is that a scintilla of evidence?

19 MS. SAXON: Your Honor, I don't think it is a
20 scintilla of evidence to exposure and I also don't think
21 it's a scintilla of evidence of the intent to expose
22 because as ---

23 THE COURT: --- I don't think -- I think it's
24 clearly a question of fact as to whether that actually
25 took place. She said it did. The video in my mind does

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1 not indicate that he stuck his penis through the crack.
2 He had the gown on the entire time. I don't know. I
3 think it is a question of fact but if she saw it he
4 intended her to see it because he would have to stick it
5 through the crack.

6 MS. SAXON: Well and I think Your Honor to clarify
7 I don't think there was testimony that it ever was stuck
8 through the crack. I believe it was that she could see
9 through the crack what was occurring.

10 THE COURT: Right.

11 MR. WHETSEL: I would agree with that, Your Honor
12 it's the fact that she could see through that crack which
13 is the reason we went through the procedure of putting in
14 the additional photographs.

15 THE COURT: Well if that's the case she would have
16 to make an effort to stand and put her face up against
17 the wall wouldn't she?

18 MR. WHETSEL: I don't think so, Your Honor. I
19 mean the photographs ---

20 THE COURT: --- well if it's not sticking through
21 how did he do it?

22 MR. WHETSEL: Again, a question of fact for the
23 jury, Your Honor, but as you're walking by it is clear
24 from the photographs and clear from the testimony that
25 there is a gap large enough that you can see into the

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1 cell and you can see from the photographs you can see
2 into the cell.

3 THE COURT: You'd had to be looking though.

4 MR. WHETSEL: If somebody is calling your name and
5 calling you names as you're walking by you might glance
6 over, Your Honor.

7 MS. SAXON: And Your Honor, that goes back as an
8 officer of the court I have been into the detention
9 center, I have been at that cell. I have had many
10 inmates held in that cell as I have gone to interview
11 them and I have walked by and before it and there is a
12 small gap. I don't deny there is a small gap there but
13 is that a small gap through which an individual for which
14 Mr. Holmes exposed himself?

15 No, not under the law of the statute. Again, he
16 didn't push anything through the crack. He's alleged to
17 have been in as Ms. DeSantis testified a solid piece of
18 fabric gown with his body up against the door.

19 THE COURT: I kind of think that it's probably
20 overwhelming evidence that he might have been
21 masturbating during that point in time but that's not
22 what he has been charged with.

23 MS. SAXON: And that has been my point, Your Honor,
24 and that's why I keep saying it's not illegal for him to
25 masturbate. It's illegal for him to expose himself and

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1 there is no evidence of exposure; just that she came by
2 through the crack and saw that he was masturbating
3 allegedly.
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Motion for Directed Verdict-Remarks by Mr. Whetsel
July 27, 2016

1 MR. WHETSEL: Your Honor, we're talking about
2 directed verdict right now and it's the light most
3 favorable to the government. The bottom line is she
4 testified that as she walked by the cell she could see
5 his penis through the crack. He was calling out to her
6 calling her vulgar names. It's clear from the video his
7 foot is on the bunk.

8 The testimony also shows that he was wearing nothing
9 underneath because the suicide watch that he is on he
10 only has the gown. So as his foot is up on the bunk he
11 is exposed. As she is walking by and as she testified to
12 she could see it. That's what we're here about, Your
13 Honor. As far as directed verdict that is certainly
14 enough to get to the jury. If they find different that's
15 going to be on the jury. But this is a directed verdict
16 and certainly enough.

17 As far as exposure she testified that she saw it.
18 She testified that he is calling out to her calling her
19 vulgar names. This is not an accident. This is not him
20 trying to mask what he is doing. This is an intentional
21 act trying to gain her attention trying to make her look
22 at this and that's why he was charged, Your Honor.

23 THE COURT: All right. I find that there is
24 indeed a scintilla of evidence just by virtue of the fact
25 that she said she saw it. I think that is clearly a

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1 legitimate question of fact that needs to be resolved by
2 the jury. With regard to whether it is a public place or
3 not and with regard to whether or not she saw his penis
4 and whether or not he intentionally displayed his penis
5 to her. So we will proceed forward with the trial.

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State v George Holmes
Charge Conference
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1 MR. WHETSEL: Yes, sir.

2 THE COURT: And under these circumstances Mr.
3 Whetsel you will go first.

4 MS. SAXON: Your Honor, I guess for the record I
5 officially need to rest.

6 THE COURT: And we're going to do that but we can't
7 do it without the jury.

8 MS. SAXON: Okay. I just wanted to make sure.

9 [Whereupon, the jury enters at 2:25 p.m.]

10 THE COURT: Ladies and gentlemen of the jury the
11 State has rested and at this time the defendant has an
12 opportunity to present any evidence they might have. Ms.
13 Saxon, you are recognized.

14 MS. SAXON: Thank you, Your Honor. The defense
15 rests.

16 THE COURT: Very good. Madame Forelady and ladies
17 and gentlemen of the jury you've heard all the evidence
18 that is going to be presented in this case and now we're
19 going to have the opportunity to have what is known as
20 closing arguments. They are very similar in form to
21 opening statements however they are different in that at
22 this juncture of the trial all the evidence is in and
23 these very fine lawyers are going to have an opportunity
24 to point to the evidence that supports their relative
25 position. What they have to say is not evidence but will

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1 aid you immensely in your deliberation process. You and
2 I have been dealing with this case for a very short
3 period of time, a very short period of time but they've
4 been dealing with this case since probably 2014. So
5 their observation about the evidence is going to be very
6 helpful and will aid you in the deliberation process. So
7 pay very close attention. Mr. Whetsel, you are
8 recognized.

9 MS. SAXON: Your Honor, may we approach briefly?

10 THE COURT: Yes.

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

13 MR. WHETSEL: Your Honor, may it please the court?

14 THE COURT: Yes.

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State v George Holmes
Closing Arguments-Remarks by Mr. Whetsel
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1 CLOSING ARGUMENTS

2 BY MR. WHETSEL:

3 Ladies and gentlemen, good afternoon. As the Judge
4 said this was a relatively short trial but at the same
5 time it is an important trial. You've heard all the
6 evidence that you're going to hear and now it is up to
7 you to make a decision of guilty or not guilty. The
8 State firmly believes that based on the facts you have
9 and based on the law as it is written that the defendant
10 is guilty of indecent exposure.

11 April 6, 2014 you heard testimony from Officer
12 DeSantis, you got to watch the little bit of the video;
13 she was working as a corrections officer at the detention
14 center. The defendant was being housed there in a
15 holding cell. On her shift as she testified to and as
16 the video corroborates that's what I want to make very
17 clear; her testimony is evidence. The video is evidence
18 but it corroborates her testimony.

19 Her testimony was that as she was on the shift as
20 she would walk by she would hear the defendant calling
21 her vulgar names calling her a cunt, calling her a slut;
22 terrible vile names. And I say that because part of
23 proving this charge is the State has to prove that what
24 he did was willful and malicious. Based on her testimony
25 and based on the video it's clear that what he was doing

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1 was willful and malicious. He wasn't trying to hide his
2 actions. He wasn't underneath a blanket; he wasn't in
3 the corner trying to stay out of view. As it was clear
4 in the video he was up against the corner of the cell,
5 foot on the bunk hand moving back and forth in an up and
6 down motion.

7 And you can see on the video too Officer DeSantis
8 making her rounds, going to check on other inmates as
9 she's passing by you can see him look and you can see him
10 push his head out and you can see the arm moving up and
11 down. Unfortunately there is no sound; you can't hear it
12 but you can see it. Very rarely do you have actual video
13 of the alleged crime. Often times you have to rely on
14 eyewitness testimony alone. But in this particular case
15 you had the eyewitness testimony and we had the video
16 corroborating it.

17 As the defendant is in his cell, as Officer DeSantis
18 is going around making her rounds doing her duties as she
19 is required to that's what she has to deal with and
20 that's what she has to see and that's what she has to put
21 up with. And again this isn't an accident. He has to
22 willfully and maliciously and indecently expose his
23 person and that's exactly what she testified to. He
24 called her vulgar names and as you can see his penis in
25 his hand jerking it as she said in an up and down motion

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1 through the crack in that cell. And the crack is
2 important and I want to show this to you. Now all the
3 evidence that you have which are the photographs and the
4 DVDs they will go back with you and if you wish to review
5 them again you certainly can. But I say this is
6 important as I'm showing to you State's exhibit 1 and 2
7 this is what it comes down to, it really does, this cell.

8 [Whereupon, State's exhibits 1 and 2 are shown to
9 the jury]

10 MR. WHETSEL: As was testified to the gap in that
11 cell is one and half inches to two inches. And as you
12 can see in the photos it's clearly visible into that
13 cell. And as you saw on the video as an inmate if you
14 have your foot on the bunk and you have your middle
15 region pushed up against the corner of that cell it would
16 be clearly visible as you walked by.

17 And as you imagine as Officer DeSantis walks by and
18 she hears those vulgar names it's going to catch her
19 attention and she is going to see this. And that's what
20 the State has to prove; willful, malicious, indecent
21 exposure and that's exactly what happened.

22 Another element that the State has to prove is that
23 it happened either on public property or on the property
24 of another. Again, based on the evidence you've heard
25 the State believe that is clearly established. The

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1 property of others; that detention center does not belong
2 to George Holmes. It's not his house; it's the property
3 of others as you've heard testimony. It also is a public
4 place. You might initially think well a jail is not a
5 public place but where he was being housed would qualify.
6 If you have anybody who is being arrested going through
7 booking whether it's a misdemeanor charge or a public
8 disorderly conduct, littering, even up to a serious
9 felony you're going through booking.

10 If there is an issue there that you have to bring
11 maintenance in they are coming to booking. If you are an
12 employee in the detention center you are going to go
13 through booking. And as you heard Officer Vortisch
14 testify to that is the busiest part of the jail. Maybe
15 not as any Joe off the street can come in there but a lot
16 of people go through there. And as you can see this cell
17 right beside the booking desk is clearly visible.

18 If you are an inmate and you have your foot on the
19 bunk and you have your crotch pressed up against the
20 corner as you can see in the video you can see his back
21 to the camera and you can see the hand going in an up and
22 down motion that would be clearly visible. As you heard
23 Officer DeSantis testify to clearly visible hearing those
24 vulgar names. That's why we are here. That's why he is
25 charged with indecent exposure. There were also some

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1 questions asked regarding potential suicide competency
2 etcetera. I think it was clear on the video too twice
3 you could see the defendant go and try to obscure the
4 camera. He knows what he is doing. He is trying to
5 block it but unfortunately for him it falls off and the
6 video continues to roll. So as far as a guilty
7 conscience and guilty mind that goes to that.

8 So when it comes down to it as you go back there to
9 deliberate just remember the evidence that you've heard
10 from the stand. You heard Officer DeSantis testify to
11 what she saw. She saw the defendant masturbating, penis
12 in hand jerking in an up and down motion through the
13 corner of that door of that cell. You have the photos of
14 the cell that clearly show the act clearly visible and
15 you have the video. You have the video of the defendant
16 who is identified by both Officer Vortisch and Officer
17 DeSantis his back to the video foot on the bunk hand
18 going in an up and down motion.

19 And if you remember as you can see as a couple of
20 different times Officer DeSantis walks by that cell and
21 walks off screen as she is going to perform her duties
22 you can see the defendant you can see him move his body
23 and move his head and you remember that she testified to
24 the vulgar names he was calling her. So based on all the
25 evidence and based on the law as it will be charged to

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1 you I am confident that when you go back there you will
2 not hesitate to vote and find the defendant guilty of
3 indecent exposure. Thank you.

4 THE COURT: Ms. Saxon you are recognized.
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Closing Arguments-Remarks by Ms. Saxon
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1 CLOSING ARGUMENTS

2 BY MS. SAXON:

3 Yesterday I quoted a fairly well known saying to
4 you. It is better than 10 guilty men go free than one
5 innocent man lose his freedom. Think about that for a
6 minute. It's very simple and a very straight forward
7 saying but it's pretty profound because it shows that we
8 as a nation value our freedom and our liberty equal to
9 our own life. The value that we give our freedom and we
10 give our liberty it's one of the reasons why we have a
11 jury system.

12 It's one of the reasons that we bring 12 neutral
13 individuals together to determine the facts based on what
14 is presented. It's one of the reasons that an individual
15 charged with a crime is always presumed innocent and that
16 presumption of innocence carries with them into the
17 deliberation room. That's one of the reasons that the
18 State has the highest burden in the land of proof beyond
19 a reasonable doubt.

20 Reasonable doubt; that's a word you're going to hear
21 many more times from the Judge, you'll probably hear it
22 from me a few more times. Yesterday I said think of it
23 as a brick wall protecting George from these accusations.
24 A brick wall that the State has to take down brick by
25 brick before George's liberty can be taken from him;

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1 before he can be found guilty of anything. Another way
2 you can consider it is by asking yourself some questions.
3 Do you believe that perhaps George did as he was accused?
4 Do you believe possibly George did as accused? Do you
5 maybe suspect or think it likely that he did as accused?
6 Well, if you do ladies and gentlemen, if those are the
7 words in your head those are reasonable doubt words;
8 perhaps, maybe, suspect, likely. Those are words that
9 mean the State hasn't done enough to convince you firmly
10 of what occurred and it hasn't met its burden. It means
11 the State hasn't given you enough.

12 So what has the State given you? Let's review some
13 of it. Investigator Dowling testified and one of the
14 things he testified to was that the defendant had been
15 placed in this particular cell because he was now on
16 suicide watch after hearing voices. He was in the
17 holding cell, in the booking area and we've talked a lot
18 about this, this booking area.

19 Investigator Dowling didn't want to admit that it
20 was in any way a secured area. He said people come into
21 in and go but I did get him to admit that you have to go
22 through a manned checkpoint and then a metal detector and
23 then a locked bolt door and then another locked bolt door
24 before you can even get back there. So we're talking
25 about a secured facility. We're not talking about

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1 somewhere that is just open to anyone who wants to come
2 in. When Officer Vortisch got up and testified he said
3 yes, it is a secure area. General people -- people
4 aren't just going to walk on in and walk around and do
5 what they want in there; it's a jail.

6 And Vortisch also gave you a little more information
7 about the cell. You get a gown and a blanket. You've
8 got a camera on you 24/7. The lights they never go off.
9 Someone is coming by at least every 15 minutes to peek in
10 that window to see what you are doing.

11 And the crack, this infamous one to two inch crack
12 in the wall that's there. Part of it you can look
13 through. You've got to get up against the wall and kind
14 of look down and see through the crack. And you can tell
15 in the pictures that isn't a crack that you can sit over
16 here [indicates] and look through and it's not a crack
17 that you can somehow try to get through the wall. You
18 look at the evidence you've got to look in, you've got to
19 lean into it.

20 Then the State played for you a video. And there
21 wasn't a whole lot to see. It was kind of boring. It
22 was about 30 minutes of George standing against the door
23 his back to the camera, his gown completely down to the
24 ground. A gown that was testified to by Officer DeSantis
25 herself was solid. She said it slipped over your head

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1 and velcroed at the top. It had Velcro around the waist
2 to keep it on. His gown is down. He is standing against
3 the door and he's got a two inch maybe crack and that's
4 it. That's where he is when all this allegedly occurs.
5 He doesn't turn around and whip off his clothes and
6 expose himself to the camera.

7 He's not leaping around the room naked or bursting
8 out into the booking area masturbating or anything of
9 that nature. He's standing against the door looking
10 through a window about that size [indicates] to see
11 what's going on because he's in there 24 hours a day.
12 Maybe he gets 15 minutes out every other day, maybe he
13 gets 30 minutes every other day. He just wants to see
14 what's going on.

15 Let's talk about Officer DeSantis' testimony. She
16 said she had worked in corrections for a number of years
17 in an actual corrections facility. And I think and I
18 could be wrong but I think it was about 12 if memory
19 serves 12 years as a corrections officer. And I asked
20 her well surely in that time you've come across other
21 inmates who gave you problems who were inappropriate or
22 called you rude names or made you feel angry about how to
23 do your job and she said no. No. In 12 years the only
24 person who has ever offended her is George? Really?
25 Then I talked to her about her performance write up here

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1 at Beaufort County when she was actually a C-O here and
2 she said well, I got written up because I had an earring.
3 It was this silly thing; it was an earring. But it
4 wasn't and I confronted her with that. I said no, no, it
5 was because you were written up on carelessness, on your
6 attitude, on your insubordination.

7 And you saw her; you saw her sit up here and
8 testify. You witnessed her attitude and her disdain.
9 She is clearly someone who wants to be in charge or has a
10 problem with authority and is going to exercise that
11 authority on anyone that she can when she can. And this
12 time it was George because when you look at the evidence
13 it doesn't add up.

14 She said he called me names. Well, when you filled
15 out the job application it asked you in big letters are
16 you aware of the fact that you may be called vulgar
17 uncomfortable names? This is a possibility. It could
18 happen. She was aware it was part of the job.

19 On the day of the incident in her incident report
20 that she prepared at the detention center she said he was
21 standing on his bunk, standing on his bunk masturbating.
22 We saw the video. He's not standing on his bunk. At
23 most he puts his foot up and she said oh, that's what I
24 meant. Sitting up here that's what I meant. I meant
25 that he just put his foot up and that was the case. I

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1 know that's not what the report said but why wouldn't
2 that be what the report said if that's what happened?
3 That was on that day right after it happened. Why would
4 the report be wrong? Why would it differ? Because it
5 didn't happen; because she didn't see George expose
6 himself or masturbating.

7 Her testimony was that she had to repeatedly go
8 check on him as part of her job. But I brought up the
9 watch sheet and I had her look at it the watch sheet for
10 the whole day and she looked at it and it was twice;
11 twice that she walked up to his cell per her duty to
12 check on him. The rest of the time it was other
13 individuals who were also working that shift with her.
14 If she went up to his cell anytime after if she looked
15 through that crack at any time after she wasn't doing her
16 job. She doesn't have that as I had to go up there and
17 do it.

18 And then she told us about the gown which was a
19 single piece of fabric but George is masturbating in the
20 single piece of fabric and you can see it in the video
21 right. You can see that he is masturbating clearly in
22 the video he's turned to the crack. The gown is still
23 down and it's solid and you're looking through an inch to
24 a two inch crack. And I ask you how in a solid gown that
25 is not bunched up or pulled off against a door with maybe

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1 two inches of view how do you see someone's penis. How
2 do you determine someone is masturbating? You don't.
3 It's not possible. This is what you have been given.
4 This is the testimony and the evidence so I want to talk
5 to you again about those questions that I asked you in my
6 opening.

7 First, we were talking about question one. Is the
8 place where the conduct allegedly occurred considered a
9 public place? That's a question of fact that you have to
10 determine. The Judge is going to charge you on the
11 definition of a public place but it's a place, we can use
12 our common sense that the general public has a right to.

13 Ladies and gentlemen the general public does not
14 have the right to a secure booking facility in Beaufort
15 County Detention Center. Period. And they also don't
16 have the right to be inside that cell where George was
17 where the conduct allegedly took place. It's not a
18 public place. The State has given you nothing to show
19 otherwise.

20 The second question I said we have to determine is
21 is George masturbating? Possibly; I can't tell. Like I
22 said his gown isn't pushed up and I don't ever see his
23 penis in any of the evidence that has been presented
24 here. The State mentions some arm movements but that's
25 it. And ladies and gentlemen masturbation isn't a crime.

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1 Exposure is what we are here about; whether or not he
2 intentionally exposed himself in some manner with this
3 one and half inch crack in the wall to Officer DeSantis.
4 Lastly is it visible and the answer is no. You saw the
5 video. The entire time he is against a door. She is
6 four foot eleven and she can't look up and see down. And
7 if the gown is solid as she described it then what is she
8 seeing through this side crack allegedly. This is not
9 indecent exposure ladies and gentlemen.

10 The layout of the cell, the uncertain hand movement,
11 the contradiction between the video and the testimony,
12 the position that George had against the door, the
13 discrepancy in the DeSantis testimony, her attitude, the
14 very unpublic nature of the cell of the jail. All of
15 this and more is reasonable doubt. All of this adds up
16 to those bricks in the wall that protect George from
17 being convicted.

18 The Judge might frame it as the kind of doubt that
19 would cause a reasonable person to hesitate and there are
20 a lot of times in our life that we make decisions for
21 example you got up this morning and you decided to wear
22 and what to eat for breakfast. And those aren't big
23 decisions. We kind of make those easily. But we have
24 big decisions. Should I buy a house or get married or
25 maybe have kids? And when we don't do those things it's

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1 because we hesitate. It's because we looked at what was
2 in front of us and we said no, there are too many bricks
3 in that wall for me to go forward with that. Ladies and
4 gentlemen there are too many bricks in the wall for you
5 to find George guilty of anything.

6 Today is important. Today is about George's freedom
7 so hesitation means not guilty. Hesitation means the
8 State didn't do its job. It's looking at everything and
9 saying I can't. It's not enough. I'm not comfortable
10 with what you've given me. And they haven't given you
11 much.

12 Finally, sometimes in life people can't agree on
13 everything. It holds true in a courtroom as it does
14 outside of these doors. But in the deliberation room all
15 12 of you have to come to an agreement. And that isn't
16 to say that the 12 of you are one person and must speak
17 with one mind. You each have your own minds, your own
18 experiences to pull from. You must use those and you
19 must hold onto your individual voice and analyze this for
20 yourself and then take that moment to write down your
21 vote and hand it in.

22 I believe ladies and gentlemen that when you do
23 that, when you honor your oath that you took at the
24 beginning of this case that when you go to that moment to
25 vote you will take your piece of paper and you will write

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1 down hesitation. You will write down not enough. You
2 will write down that the burden hasn't been met and that
3 George is not guilty.
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Jury Charge
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JURY CHARGE

BY THE COURT:

Madame Forelady ladies and gentlemen of the jury you've heard all the evidence that has been presented in this case and I've watched you throughout the trial of this case. Y'all paid attention to the testimony. You had the wherewithal to make the findings of fact. But the second thing that you've taken an oath that you would do would be to take the facts, determine what the truth is and apply it to the law. Now it is my responsibility to charge you the law. Pay very close attention.

The indictment charges the defendant with indecent exposure. I will remind you that the fact that the defendant was arrested, charged and indicted is not evidence and cannot be considered by you as evidence of guilt nor does it create any presumption or inference of guilt. This document is simply the formal written

instrument which contains the charges made against the defendant. It is the formal document by which this case is brought into this court.

Madame Forelady and ladies and gentlemen of the jury I will remind you that during this trial you and I have certain duties to perform. As the trial judge it is my responsibility to preside over the trial. And I also have the duty to rule on the admissibility of the

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1 evidence. You are to consider only the competent
2 evidence before you. You are to consider only the
3 testimony which has been made a part of the record in
4 this case and presented from this witness stand, any
5 exhibits which have been made a part of the record, and
6 any stipulations of counsel.

7 I have the additional duty to charge you the law
8 applicable to this case. As the presiding judge I am the
9 sole judge of the law and it is your duty as jurors to
10 accept and apply the law as I now state it to you. If)
11 you already have an idea as to what the law is or what
12 the law ought to be and it does not agree with what I now
13 tell you the law is you must abandon this idea because
14 you are sworn to accept the law and apply the law exactly
15 as I state it to you.

16 In every case tried in this court before a jury the
17 jury becomes the sole and exclusive judge of the facts in
18 a case. A trial judge cannot intimate, state, comment on
19 or make any statement to a trial jury about the facts in
20 a case. Since you the jury are the sole judge of the
21 facts you are not to infer from what I have said during
22 the progress of this trial and ruling upon the
23 admissibility of the evidence or otherwise or anything
24 that I say now during the course of this instruction to
25 you that I have any opinion about the facts. The law

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1 does not allow me to have an opinion about the facts.
2 This is a matter solely for you, the jury, to determine
3 and as jurors it is your duty to determine the effect,
4 value, weight, and truth of the evidence presented during
5 this trial.

6 The defendant has pled not guilty to this
7 indictment. That plea puts the burden on the State to
8 prove the defendant guilty. A person charged with
9 committing a criminal offense in South Carolina is never
10 required to prove himself innocent. I charge you that it
11 is an important rule of law that the defendant in a
12 criminal trial no matter what the seriousness of the
13 charge may be will always be presumed to be innocent of
14 the crime for which the indictment was issued unless
15 guilt has been proven by evidence satisfying you of that
16 guilt beyond a reasonable doubt.

17 This presumption of innocence does not end when you
18 begin your deliberations but it accompanies the defendant
19 throughout the trial until you reach a verdict of guilt
20 based on the evidence satisfying you of that guilt beyond
21 a reasonable doubt. The presumption of innocence is like
22 a robe of righteousness placed about the shoulders of the
23 defendant which remains with the defendant until it has
24 been stripped from the defendant by evidence satisfying
25 you of the defendant's guilt beyond a reasonable doubt.

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Jury Charge
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1 The presumption of innocence is not a mere legal theory.
2 It's not just a legal phrase. It is a substantial right
3 to which every defendant is entitled unless you, the
4 jury, are satisfied from the evidence of the defendant's
5 guilt beyond a reasonable doubt.

6 Madame Forelady, ladies and gentlemen of the jury
7 what is reasonable doubt? A reasonable doubt is the kind
8 of doubt that would cause a reasonable person to hesitate
9 to act. The State has the burden of proving the
10 defendant guilty beyond a reasonable doubt. Some of you
11 may have served as jurors in civil cases where you were
12 told it is only necessary to prove that a fact is more
13 likely true than not true such as by a preponderance or
14 greater weight of the evidence.

15 In criminal cases the State's proof must be more
16 powerful than that. It must be beyond a reasonable
17 doubt. Proof beyond a reasonable doubt is proof that
18 leaves you firmly convinced of the defendant's guilt.
19 There are very few things in this world that we know with
20 absolute certainty and in criminal cases the law does not
21 require proof that overcomes every possible doubt. If
22 based on your consideration of the evidence you are
23 firmly convinced the defendant is guilty of the crime
24 charged you must find the defendant guilty. If on the
25 other hand you think there is a real possibility the

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1 defendant is not guilty you must give the defendant the
2 benefit of the doubt and find him not guilty. There are
3 two types of evidence which are generally presented
4 during a trial; direct evidence and circumstantial
5 evidence. Direct evidence directly proves the existence
6 of a fact and does not require deduction. Circumstantial
7 evidence is proof of a chain of facts and circumstances
8 indicating the existence of a fact.

9 Crimes may be proven by circumstantial evidence.
10 The law makes no distinction between the weight or value
11 to be given to either direct or circumstantial evidence.
12 However to the extent the State relies on circumstantial
13 evidence all of the circumstances must be consistent with
14 each other and when taken together point conclusively to
15 the guilt of the accused beyond a reasonable doubt.

16 If these circumstances merely portray the
17 defendant's behavior as suspicious the proof has failed.
18 The State has the burden of proving the defendant guilty
19 beyond a reasonable doubt. The burden rests with the
20 State regardless of whether the State relies on direct
21 evidence, circumstantial evidence or some combination of
22 the two. Madame Forelady, ladies and gentlemen of the
23 jury necessarily you must determine the creditability of
24 witnesses who have testified in this case. Creditability
25 simply means believability. It becomes your duty as

State v George Holmes
Jury Charge
July 27, 2016

1 jurors to analyze and to evaluate the evidence and
2 determine which evidence convinces you of its truth. In
3 determining the believability of the witnesses who have
4 testified in this case you may believe one witness over
5 several witnesses or several witnesses over one witness.

6 You may believe part of the testimony of a witness
7 and reject the remaining part of the testimony of that
8 same witness. You may believe the testimony of a witness
9 in its entirety or reject the testimony of a witness in
10 its entirety. You may consider whether any witness has
11 exhibited to you any interest, bias, prejudice or other
12 motive in this case. You may also consider the
13 appearance and manner of a witness while on the witness
14 stand, their demeanor.

15 I instruct you and emphasize the fact that the
16 defendant did not testify is not a factor to be
17 considered by you in any way in your deliberation and in
18 your consideration on the question of guilt or innocence
19 of the defendant. It must not be considered by you in any
20 manner whatsoever.

21 A defendant has the constitutional right to remain
22 silent and the assertion of this right must not be
23 considered by you in your deliberations. I repeat under
24 your oath you are to draw no conclusion whatsoever from
25 the fact that the defendant in this case did not testify.

State v George Holmes
Jury Charge
July 27, 2016

1 The fact that this defendant did not testify should not
2 even be discussed in the jury room. Madame Forelady I'm
3 going to ask that you enforce that rule. There will be
4 no discussion about the fact that the defendant in this
5 case did not testify. The burden of proof as I have
6 stated to you is on the State. The defendant is not
7 required to prove his innocence. The burden of proof
8 remains with the State and they must prove his guilt
9 beyond a reasonable doubt.

10 I am going to charge you the substantive law of
11 indecent exposure. The defendant is charged with
12 indecent exposure. The State must prove beyond a
13 reasonable doubt that the defendant willfully,
14 maliciously, and indecently exposed his private parts in
15 a public place on property of others or to the view of
16 any person on a street or highway.

17 Willfully means that the act is not done by accident
18 but it is done knowingly, consciously in a stubborn
19 purpose. Maliciously means the act was done with wicked
20 or mischievous intentions or motives, wrongfully and
21 intentionally without just cause or excuse. Indecent
22 means offensive, immodest, grossly vulgar, obscene,
23 unseemly, unbecoming, unfit to be seen or heard. Ladies
24 and gentlemen of the jury I am going to define what a
25 public place is according to the South Carolina law. A

State v George Holmes
Jury Charge
July 27, 2016

1 public place is a place to which the general public has a
2 right to resort not necessarily a place devoted solely to
3 the use of the public but a place which is in point of
4 fact public rather than private, the place visited by
5 many persons and usually accessible to the neighboring
6 public.

7 Any place so situated that what passes there can be
8 seen by any considerable number of persons if they happen
9 to look. Also, a place in which the public has an
10 interest as affecting the safety, health, morals, and
11 welfare of the community, a place exposed to the public
12 where the public gather or pass to and from.

13 Ladies and gentlemen you cannot consider the fact
14 that the defendant was in custody at the time of the
15 incident. The mere fact that the defendant was in
16 custody at the time of the alleged offense has absolutely
17 no bearing on the issue of guilt or innocence.

18 Madame Forelady and ladies and gentlemen of the jury
19 you may have noticed that the defendant has been present
20 for some parts of the trial and absent for other parts of
21 the trial. The fact that the defendant is not present is
22 not to be considered in any manner whatsoever. And
23 Madame Forelady once again I'm going to ask that you
24 enforce that rule. There is no discussion about the fact
25 that the defendant was here for a portion and not here

State v George Holmes
Jury Charge
July 27, 2016

1 for a portion. It has no bearing on the issue of
2 innocence or guilt. Madame Forelady I am going to come
3 forward and share with you the verdict form and ask if
4 you could stand and I'll go over this form with you.
5 It's a one page document it says the State of South
6 Carolina, County of Beaufort and it's got the State of
7 South Carolina versus George Holmes and it's got the
8 indictment number and here and its entitled verdict form.

9 There is only one count indecent exposure and this
10 is the code section. As to the offense of indecent
11 exposure we, the jury, by unanimous consent find the
12 defendant -- two verdicts that you can find either not
13 guilty or guilty. The verdict must be unanimous and
14 notify the bailiff upon reaching the verdict. I'll allow
15 you to hold on to the verdict form and you may be seated.

16 Madame Forelady you have just like everyone else
17 have one vote with regard to deliberation. But you are
18 also going to be charged with additional
19 responsibilities. If there are questions or concerns
20 that develop during the deliberation process I'm going to
21 ask that you reduce it to writing, give it to the bailiff
22 and if it is something I can answer I'll be happy to do
23 so. In addition to that you are to preside over the
24 deliberation process and make sure simply make sure that
25 everybody's voice is heard. Throughout the deliberation

State v George Holmes
Jury Charge
July 27, 2016

1 it might be that there is a question that comes up. I'll
2 tell you from the outset that if it is a question about
3 the facts of the case you've heard the law and I can't
4 help you out on that. You're the ones that have the
5 difficult question to find out what the truth is in this
6 case.

7 If it's a legal question that has to do with the law
8 I can answer that. But I don't anticipate that there is
9 going to be any questions because y'all have paid
10 attention to the evidence, you've paid attention as I've
11 charged you the law. You have all the equipment
12 necessary to resolve this case; all the information that
13 you need. I will tell you Madame Forelady if someone
14 gets up to use the restroom stop the deliberations
15 because everyone has to be present during all the
16 deliberation process.

17 I've told you when you leave the courtroom to not
18 begin deliberations and once again I'm going to do that
19 because I'm going to ask these very fine lawyers if they
20 have any objection to the manner of how I've charged the
21 law. If I've inadvertently left something out or said
22 something incorrectly I'll bring you in and we'll address
23 that issue and then send you back to begin deliberations.
24 But do not do that -- do not begin deliberations until
25 you receive instructions from the bailiff to do so.

State v George Holmes
Jury Charge
July 27, 2016

1 We're also going to have an opportunity to gather any
2 documentary evidence that we introduced. They will give
3 you the documentary evidence along with some paper and
4 pencils to aid you in your deliberation process. Once
5 again, do not begin your deliberations until you receive
6 instructions to do so. I'm going to ask the alternates
7 to remain seated. Everyone else I'll ask that you retire
8 to the jury room. Everyone remain seated while the jury
9 exits the courtroom.

10 [Whereupon, the jury exits at 3:02 p.m.]
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State v George Holmes
Proceedings
July 27, 2016

1 THE COURT: Any from the defense?

2 MS. SAXON: No, Your Honor.

3 THE COURT: I'm going to ask each of you if you can
4 come forward in front of the court reporter and review
5 the documentary evidence. I'm going to ask that all the
6 documents be put in one pile.

7 [Whereupon, counsel review exhibits with the court
8 reporter]

9 THE COURT: Mr. Whetsel, is everything in that pile
10 in evidence?

11 MR. WHETSEL: It is, yes sir.

12 THE COURT: Is there anything in that pile that is
13 not in evidence?

14 MR. WHETSEL: No, sir. It's 1 through 14; it's
15 everything. Its 12 photos and two disks.

16 THE COURT: Ms. Saxon, is everything in that pile
17 in evidence?

18 MS. SAXON: Yes, Your Honor.

19 THE COURT: Is there anything in that pile that is
20 not in evidence?

21 MS. SAXON: No, Your Honor.

22 THE COURT: All right. I'm going to allow you at
23 this time to put on the record Ms. Saxon as a favor to
24 the court requested that her objections be preserved.
25 She approached the bench in that intent and indicated

State v George Holmes
Proceedings
July 27, 2016

1 that it would be all right for her to place her motions
2 on the record afterwards. She made the motions and she
3 is protected in that regard. Anything else you would
4 like to put on the record?

5 MS. SAXON: No, Your Honor, I believe that covers
6 it.

7 THE COURT: She renewed all of her previous motions
8 and all objections.

9 MS. SAXON: Thank you.

10 THE COURT: All right. Anything else?

11 MR. WHETSEL: No, sir.

12 THE COURT: If the bailiff could take the
13 documentary evidence to the jury room and tell them to
14 begin deliberations. It is 3 o'clock.

15 [Whereupon, evidence out to the jury at 3:00 p.m.]

16 [Whereupon, a question from the jury at 3:31 p.m.]

17 [Whereupon, the jury enters at 3:33 p.m.]

18 THE COURT: The question has been posed can we have
19 the definition of a public place again and can we see the
20 video again and the answer to those questions is yes. Is
21 that what y'all would like?

22 MADAME FORELADY: Yes.

23 THE COURT: Okay. And there were two videos that
24 were introduced into evidence. One was a very short clip
25 and the other one was the 30 minute video. Which one

State v George Holmes
Proceedings
July 27, 2016

1 would you like?

2 MADAME FORELADY: The 30 minute video.

3 THE COURT: All right. Pay very close attention
4 as I provide to you the definition of a public place. A
5 place to which the general public has a right to resort.
6 Not necessarily a place devoted solely to the uses of the
7 public but a place which is in point of fact public
8 rather than private; a place visited by many persons and
9 usually accessible to the neighboring public.

10 Anyplace so situated that what passes there can be
11 seen by any considerable number of people if they happen
12 to look. Also a place in which the public has an
13 interest as affecting the safety, health, morals, and
14 welfare of the community. A place exposed to the public
15 and where the public gather together and or pass to and
16 from.

17 And we will play the 30 minute video as you
18 requested. I will make this note a part of the record.

19 [Whereupon, court's exhibit number 2 is marked by
20 the court reporter]

21 [Whereupon, the video plays]

22 [Whereupon, the video stops]

23 MR. WHETSEL: Your Honor that concludes the video.

24 THE COURT: Very good. You may return to the jury
25 room and resume deliberations.

State v George Holmes
Proceedings
July 27, 2016

1 [Whereupon, the jury exits at 4:04 p.m.]

2 THE COURT: We'll stand at ease. I'm going to ask
3 if y'all can stay real close in case there is another --
4 in case we need you.

5 MR. WHETSEL: Yes, Your Honor. Your Honor, I'm
6 going to return the prosecution exhibit 13 and 14 back to
7 the court reporter.

8 THE COURT: Very good.

9 [Whereupon, deliberations resume]

10 [Whereupon, court is in recess from 4:05 p.m. until
11 5:02 p.m.]

12 THE COURT: I understand the jury has reached a
13 verdict. Anything from the State before we bring the
14 jury out?

15 MR. WHETSEL: No, sir.

16 THE COURT: Anything from the defense?

17 MS. SAXON: No, sir.

18 THE COURT: We're ready for the jury.

19 [Whereupon, the jury enters at 5:03 p.m.]
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State v George Holmes
Verdict
July 27, 2016

1 VERDICT
2 THE COURT: Madame Forelady, have you reached a
3 verdict?
4 MADAME FORELADY: We have, sir.
5 THE COURT: Is it indeed unanimous?
6 MADAME FORELADY: It is, sir.
7 THE COURT: I'm going to ask if you could give the
8 verdict form to the bailiff.
9 [Whereupon, the Forelady provides verdict form to
10 the bailiff who provides it to the court]
11 THE COURT: The verdict seems to be in proper form.
12 I'm going to ask the Clerk to publish the verdict.
13 CLERK OF COURT: The State of South Carolina versus
14 George Holmes in the Court of General Sessions number
15 2014-GS-07-01297 indecent exposure. As to the offense of
16 indecent exposure we, the jury, by unanimous consent find
17 the defendant not guilty -- I'm sorry, guilty. Guilty.
18 THE COURT: Very good. Any requests for polling?
19 MR. WHETSEL: Not from the State, Your Honor.
20 MS. SAXON: Yes, Your Honor, please.
21 THE COURT: Madame Clerk if we could poll the jury.
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State v George Holmes
Sentencing
July 27, 2016

1 SENTENCING

2 THE COURT: The statutory penalty for indecent
3 exposure in addition to discretionary sex offender
4 registry would be what?

5 MR. WHETSEL: Zero to three years.

6 THE COURT: Okay.

7 MR. WHETSEL: And registry at the discretion of the
8 court, Your Honor.

9 THE COURT: Under these circumstances I think it
10 would be most appropriate to seal the verdict and send
11 out a bench warrant and require that it be -- whatever is
12 done to put it on the system where he will be picked up
13 in the event he is picked up anywhere else; wherever that
14 is.

15 MR. WHETSEL: Your Honor, do you want a bench
16 warrant order like a typical one that you would sign?

17 THE COURT: Yes. If we could have an envelope from
18 the Clerk I will seal the verdict -- I mean seal the
19 sentence.

20 [Whereupon, the Clerk provides an envelope to the
21 court]

22 THE COURT: The sentencing sheet has been signed.
23 We'll issue a bench warrant. Do whatever is necessary to
24 ensure that he is picked up from wherever he is supposed
25 to be picked up from. I don't know what the protocol is

State v George Holmes
Sentencing
July 27, 2016

1 with regard to someone that is in for mental evaluation.
2 I assume they would probably -- I don't know what they
3 will do but whatever it is as soon as he is able to get
4 back I need to have him back before me for sentencing.
5 We will stand adjourned -- are there any motions at this
6 time from the defense?

7 MS. SAXON: I guess Your Honor I would again at
8 this time just to protect myself on the record renew my
9 prior motions I made over the course of this trial and
10 also again request a new trial based on the fact that
11 George was not here, that his competency I believe has
12 been called into question but it is a fluent state and at
13 time he was not able to assist or choose whether or not
14 he wished to take the stand in his defense as well as the
15 fact of him not being able to be here to make those
16 decisions or to assist in the defense of his case. It
17 was a violation of his due process rights.

18 THE COURT: Mr. Whetsel, what do you have to say
19 about that?

20 MR. WHETSEL: Your Honor, I think earlier we made
21 the argument as far as trying a defendant in his absence.
22 I believe the two prongs were met; one he was given
23 notice, actual notice and we know that because he was
24 here. And second that he was given notice that if he
25 were to leave he could be tried in his absence and that

State v George Holmes
Sentencing
July 27, 2016

1 is proved by his bond paperwork. That on top of the fact
2 that he was here during the entire presentation of the
3 State's case it appeared that he was paying attention,
4 that he understood what was happening, and then based on
5 the court's observations as well, Your Honor, we would
6 respectfully request that you deny the motion.

7 THE COURT: I did not -- I don't think I allowed
8 this to come out in trial and rule it to be admissible
9 but Mr. Whetsel wasn't there evidence tendered that the
10 reason why he was always in suicide watch is they felt as
11 though he wanted to be there and that he would feign some
12 sort of suicide risk?

13 MR. WHETSEL: That was evidence that didn't come
14 out but during sidebar that was something that I did
15 discuss with the court because I wanted to get into that
16 area since ---

17 THE COURT: --- and that's not the first time he's
18 been put on suicide watch.

19 MR. WHETSEL: While he was at the detention center
20 based on my understanding but this was evidence that
21 didn't come out at trial and was not testimony that that
22 was frequent. He spent the majority of his time in that
23 holding cell that we discussed during trial. But because
24 he would make either claim that he was suicidal or he
25 would say something that would force the detention center

State v George Holmes
Sentencing
July 27, 2016

1 to put him in that cell for observation.

2 THE COURT: So you feel as though his submitting
3 himself to the Department of Mental Health was genuine or
4 not?

5 MR. WHETSEL: Based on my understanding of the
6 case, obviously I do not know Mr. Holmes, but based on my
7 understanding of the case it appears to be a common
8 tactic in order to avoid any type of negative treatment
9 that he might receive.

10 And for whatever relevance it may hold in a prior
11 case he was deemed competent to stand trial in that case
12 unrelated to this one but for whatever relevance that may
13 have.

14 THE COURT: Your motions are noted but they are
15 denied.

16 MR. WHETSEL: And Your Honor, if it would be okay
17 do you want to sign that bench warrant tonight or you
18 want to do it tomorrow when you're back on the bench.

19 THE COURT: Do it in the morning.

20 MR. WHETSEL: Yes, sir. We'll have it ready for
21 you. Thank you.

22 THE COURT: We'll stand adjourned until 9:30 in the
23 morning.

24 MS. SAXON: Thank you, Your Honor.

25 [Whereupon, the jury trial concludes at 5:20 p.m.]

State of South Carolina) In General Sessions Court
County of Beaufort) 14th Judicial Circuit

State of South Carolina) Transcript of Record
) 2014-GS-07-01297
Vs.)
George Holmes,)
 Defendant.)

September 12, 2016

Beaufort, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Presiding Judge

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

Dustin L. Whetsel, Assistant Solicitor
Attorney for the State

Jessica M. Saxon, Esquire
Attorney for the Defendant

SHARON L. VIZER

CIRCUIT COURT REPORTER

1 Monday, September 12, 2016

2 MR. WHETSEL: Your Honor, the State next calls
3 George Holmes. Your Honor, this is indictment number
4 2014-GS-07-1297 for indecent exposure. Mr. Holmes was
5 tried and convicted, I believe two terms ago, and this is
6 for the purpose of announcing his sentence, Your Honor.

7 THE COURT: Mr. Holmes, you were tried before a
8 jury and convicted on July 27, 2016 on indictment
9 2014-GS-07-01297 on the offense of indecent exposure.
10 The sentence of the Court is that you be committed to the
11 State Department of Corrections for a period of three
12 years provided upon the service of one year. The balance
13 is suspended with five years probation, mental health
14 counseling, continue medications. Good luck to you.

15 MS. SAXON: Your Honor, just for the record.
16 Mr. Holmes was incarcerated 144 days on this charge.
17 We'd request credit for that, and also request a finding
18 that the sex registry is not required as a result of this
19 charge.

20 THE COURT: I will give him credit for 144 days,
21 and given the nature of the offense, it's clearly not
22 like public urination, it was clearly intentional
23 masturbation and sex offender registry is indeed ordered.
24 Good luck to you.

25 (WHEREUPON, the hearing was concluded.)

STATE OF SOUTH CAROLINA)
 COUNTY OF BEAUFORT)

IN THE COURT OF GENERAL SESSIONS
 FOURTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)

Indictment No: 2014GS0701297

2014A0720100077

vs.)

ORDER TO REMOVE
 SEX OFFENDER REGISTRY

GEORGE HOLMES,)
Defendant.)

2016 SEP 29 PM 3:57
 CLERK OF COURT
 BEAUFORT COUNTY, SC

This matter came before the court on a motion to reconsider sentence by Jessica Saxon, attorney for the above-captioned defendant. **IT APPEARS THAT:**

1. Defendant was convicted of Indecent Exposure on July 27, 2016 and sentenced on September 12, 2016 by the Honorable Michael G. Nettles, Presiding Judge, Fourteenth Judicial Circuit.
2. Defendant received a sentence committing him to the South Carolina Department of Corrections (SCDC) for three (3) years, provided upon the service of one (1) year the balance to be suspended to five (5) years of monitoring with probation. Defendant was given credit for one hundred and forty-four days and ordered to attend mental health counselling, continue medications and register as a sex offender.
3. A miscalculation of the sentence by the Beaufort County Detention Center resulted in the Defendant being released when he should have been sent to SCDC.
4. On September 15, 2016 the Defendant was returned to custody and the following day he was transported to SCDC.
5. On September 20, 2016 a warrant for Failure to Register 1st offense was taken out by the

Beaufort County Sheriff's Office that covered the 3 day period during which Defendant was mistakenly released from the Beaufort County Detention Center.

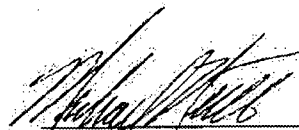
6. On September 23, 2016, at a hearing to reconsider the sex offender registry portion of the sentence the Court found that:

- a) The Defendant suffers from continued mental health concerns, including schizophrenia, that will hinder his ability to comply with the requirements of registration; and
- b) The location of the incident, which occurred in a holding cell in the Beaufort County Detention Center, and other facts and circumstances surrounding the incident, did not warrant the requirement of registration in this case.

NOW THEREFORE IT IS ORDERED that the defendant's original sentencing sheet be clarified to show that the Defendant *is not be required to register as a sex offender* and that all other conditions previously set forth on the original sentencing sheet dated July 27, 2016 shall remain in effect as fully as if repeated verbatim herein.

IT IS FURTHERMORE ORDERED that the Clerk of Court for Beaufort County shall enter this corrected sentence and transmit a copy of the corrected sentence and this order to the South Carolina Department of Corrections.

AND IT IS SO ORDERED



The Honorable Michael G. Nettles
Circuit Court Judge

Beaufort, South Carolina
September 29, 2016

WITNESSES

Dowling--

ARREST WARRANT NUMBER

2014A0720100077

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: APR 30 2015

Date: _____

APR 30 2015

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS0701297

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

April Term 2015

THE STATE

vs.

George Holmes

Indictment for

Sex / Indecent Exposure

SC Code: 16-15-0130
CDR Code: 0091

CDR Code:0091

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2014GS0701297

At a Court of General Sessions, convened on April 30, 2015, the Grand Jurors of Beaufort County present upon their oath:

Sex / Indecent Exposure

That in Beaufort County, South Carolina, on or about April 6, 2014, the Defendant, George Holmes, did wilfully, maliciously, and indecently expose his person in a public place, on property of others, or to the view of any person on a street or highway in violation of Section 16-15-0130 Code of Laws of South Carolina, (1976, as amended)

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

James M. Starnes

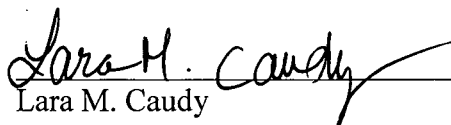
Solicitor



CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,


Lara M. Caudy
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 31st day of August, 2017.

RECEIVED

AUG 31 2017

SC Court of Appeals