VOLUME IV OF IV

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

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SC Court of Appeals

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Appeal from Richland County

Alison Renee Lee, Circuit Court Judge
R. Markley Dennis, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

CHANNEN F. RICKS,

APPELLANT

APPELLATE CASE NO 2016-002158

---

RECORD ON APPEAL

---

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:**

**State's Exhibit #3 (photo); State's Exhibit #5 (photo); State's Exhibits #14 - #16 (photos); State's Exhibits #21 - #22 (photos); State's Exhibits #27 - #29 (photos); State's Exhibit #37 (photo); State's Exhibits #47 - #48 (photos); State's Exhibits #105 - #106 (photos); State's Exhibit #109 (911 call); State's Exhibit #110 (911 call); State's Exhibit #111 (911 call)**

**REASONABLE DOUBT**

THE STATE HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. SOME OF YOU MAY HAVE SERVED AS JURORS IN CIVIL CASES, WHERE YOU WERE TOLD THAT IT IS ONLY NECESSARY TO PROVE THAT A FACT IS MORE LIKELY TRUE THAN NOT TRUE, SUCH AS BY THE GREATER WEIGHT OR PREPONDERANCE OF THE EVIDENCE. IN CRIMINAL CASES, THE STATE'S PROOF MUST BE MORE POWERFUL THAN THAT. IT MUST BE BEYOND A REASONABLE DOUBT.

PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU MUST FIND THE DEFENDANT GUILTY. IF ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT THE DEFENDANT IS NOT GUILTY, YOU MUST GIVE THE DEFENDANT THE BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

**DUTIES OF JURY AND TRIAL JUDGE**

I 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 OF THIS CASE, AND I ALSO HAVE THE DUTY TO RULE ON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THIS TRIAL. YOU ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE BEFORE YOU. IF THERE WAS ANY TESTIMONY ORDERED STRICKEN FROM THE RECORD IN THIS CASE DURING THIS TRIAL, YOU MUST DISREGARD THAT TESTIMONY. YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND, ANY EXHIBITS WHICH HAVE BEEN MADE A PART OF THE RECORD IN THIS CASE, AND ANY STIPULATIONS OF COUNSEL.

I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW APPLICABLE TO THIS CASE. AS THE PRESIDING JUDGE, I AM THE SOLE JUDGE OF THE LAW OF THIS CASE, AND IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO YOU. IF YOU ALREADY HAVE ANY IDEA AS TO WHAT THE LAW IS OR WHAT THE LAW OUGHT TO BE AND IT DOES NOT AGREE WITH WHAT I NOW TELL YOU THE LAW IS, YOU MUST ABANDON THIS IDEA BECAUSE YOU ARE SWORN TO ACCEPT THE LAW AND APPLY THE LAW

EXACTLY AS I STATE IT TO YOU.

IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY, THE JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS IN A CASE. A TRIAL JUDGE CANNOT INTIMATE, STATE, COMMENT ON, OR MAKE ANY STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN A CASE. SINCE YOU, THE JURY, ARE THE SOLE JUDGE OF THE FACTS IN THIS CASE, YOU ARE NOT TO INFER FROM WHAT I HAVE SAID DURING THE PROGRESS OF THIS TRIAL IN RULING UPON THE ADMISSIBILITY OF EVIDENCE, OR OTHERWISE, OR ANYTHING THAT I SAY NOW DURING THE COURSE OF THIS INSTRUCTION TO YOU, THAT I HAVE ANY OPINION ABOUT THE FACTS IN THIS CASE. THE LAW DOES NOT ALLOW ME TO HAVE AN OPINION ABOUT THE FACTS IN THIS CASE. THIS IS A MATTER SOLELY FOR YOU, THE JURY, TO DETERMINE. AS JURORS, IT IS YOUR DUTY TO DETERMINE THE EFFECT, VALUE, WEIGHT, AND TRUTH OF THE EVIDENCE PRESENTED DURING THIS TRIAL.

**DIRECT AND CIRCUMSTANTIAL EVIDENCE**

On August 14, 2013, in State v. Logan, S.C. Supreme Court Opinion Number 27296, our Supreme Court adopted the following circumstantial evidence jury instruction:

THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL—DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE DIRECTLY PROVES

THE EXISTENCE OF A FACT AND DOES NOT REQUIRE DEDUCTION. CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT.

CRIMES MAY BE PROVEN BY CIRCUMSTANTIAL EVIDENCE. THE LAW MAKES NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE, HOWEVER, TO THE EXTENT THE STATE RELIES ON CIRCUMSTANTIAL EVIDENCE, ALL OF THE CIRCUMSTANCES MUST BE CONSISTENT WITH EACH OTHER, AND WHEN TAKEN TOGETHER, POINT CONCLUSIVELY TO THE GUILT OF THE ACCUSED BEYOND A REASONABLE DOUBT. IF THESE CIRCUMSTANCES MERELY PORTRAY THE DEFENDANT'S BEHAVIOR AS SUSPICIOUS, THE PROOF HAS FAILED.

THE STATE HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. THIS BURDEN RESTS WITH THE STATE REGARDLESS OF WHETHER THE STATE RELIES ON DIRECT EVIDENCE, CIRCUMSTANTIAL EVIDENCE, OR SOME COMBINATION OF THE TWO.

**CREDIBILITY OF WITNESSES**

NECESSARILY, YOU MUST DETERMINE THE CREDIBILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY SIMPLY MEANS BELIEVABILITY. IT BECOMES YOUR DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE EVIDENCE AND DETERMINE WHICH EVIDENCE CONVINCES YOU OF ITS TRUTH.

IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE, YOU MAY BELIEVE ONE WITNESS OVER SEVERAL WITNESSES OR SEVERAL WITNESSES OVER ONE WITNESS. YOU MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS AND

REJECT THE REMAINING PART OF THE TESTIMONY OF THAT SAME WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY OR REJECT THE TESTIMONY OF A WITNESS IN ITS ENTIRETY. YOU MAY CONSIDER WHETHER ANY WITNESS HAS EXHIBITED TO YOU ANY INTEREST, BIAS, PREJUDICE, OR OTHER MOTIVE IN THIS CASE. YOU MAY ALSO CONSIDER THE APPEARANCE AND MANNER OF A WITNESS WHILE ON THE WITNESS STAND.

**EXPERT WITNESSES**

NORMALLY, A PERSON CANNOT GIVE OPINION TESTIMONY. NORMALLY, WHEN A PERSON TESTIFIES THEY MUST TESTIFY AS TO WHAT THEY EITHER SAW, HEARD, OR SENSED BY SMELL, OR SOMETHING OF THAT NATURE. HOWEVER, THERE IS AN EXCEPTION WHEN SOMEONE IS QUALIFIED BECAUSE OF EDUCATION OR EXPERIENCE. THEY ARE PERMITTED TO GIVE THEIR OPINION IN CERTAIN AREAS IF THE COURT QUALIFIES THEM THAT WAY. THE EXPERT WITNESSES WERE QUALIFIED TO GIVE OPINION TESTIMONY; HOWEVER THAT DOES NOT MEAN THAT YOU MUST ACCEPT THE OPINION, BUT IT IS EVIDENCE FOR YOU TO USE IN ANY WAY YOU SEE FIT AND GIVE THE WEIGHT AND CREDIBILITY YOU BELIEVE IS APPROPRIATE.

## INTENT

IN ORDER TO ESTABLISH CRIMINAL LIABILITY, CRIMINAL INTENT IS REQUIRED. FOR EXAMPLE, THE MENTAL STATE REQUIRED TO BE PROVEN BY THE STATE FOR A PARTICULAR CRIME MIGHT BE PURPOSE, INTENT, KNOWLEDGE, RECKLESSNESS, OR CRIMINAL NEGLIGENCE. CRIMINAL INTENT MUST BE PROVEN BY THE STATE BEYOND A REASONABLE DOUBT. CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE DETERMINED BY THE JURY FROM THE CIRCUMSTANCES SURROUNDING THE SITUATION. THERE IS NO WAY TO PROVE INTENT TO A MATHEMATICAL CERTAINTY. THERE IS NO WAY MEDICAL SCIENCE CAN DISSECT A PERSON'S BRAIN AND DETERMINE WHAT THE PERSON HAD IN MIND, SO THE LAW SAYS THAT CRIMINAL INTENT MAY BE INFERRED FROM THE CIRCUMSTANCES SHOWN TO HAVE EXISTED. THIS IS HOW YOU MAKE A DETERMINATION OF WHETHER OR NOT THE ELEMENT REQUIRING INTENT WAS PRESENT. IT IS NOT NECESSARY TO ESTABLISH INTENT BY DIRECT AND POSITIVE EVIDENCE, BUT INTENT MAY BE ESTABLISHED BY INFERENCE IN THE SAME WAY AS ANY OTHER FACT BY TAKING INTO CONSIDERATION THE ACTS OF THE PARTIES AND ALL THE FACTS AND CIRCUMSTANCES OF THE CASE.

CRIMINAL INTENT IS A MENTAL STATE, A CONSCIOUS WRONGDOING. IT IS UP TO YOU TO DETERMINE WHAT THE DEFENDANT INTENDED TO DO BASED ON THE CIRCUMSTANCES SHOWN TO HAVE EXISTED.

THE OFFENSE OF MURDER IS A SPECIFIC INTENT CRIME.

**MURDER**

THE DEFENDANT IS CHARGED WITH MURDER. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT KILLED ANOTHER PERSON WITH MALICE AFORETHOUGHT.

MALICE IS HATRED, ILL-WILL, OR HOSTILITY TOWARDS ANOTHER PERSON. IT IS THE INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE OR EXCUSE AND WITH AN INTENT TO INFLICT AN INJURY OR UNDER CIRCUMSTANCES THAT THE LAW WILL INFER AN EVIL INTENT.

MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE EXISTS FOR ANY PARTICULAR TIME BEFORE THE ACT IS COMMITTED, BUT MALICE MUST EXIST IN THE MIND OF THE DEFENDANT JUST BEFORE AND AT THE TIME OF THE ACT IS COMMITTED. THEREFORE, THERE MUST BE A COMBINATION OF THE PREVIOUS EVIL INTENT AND THE ACT.

MALICE AFORETHOUGHT MAY BE EXPRESS OR INFERRED. THESE TERMS, "EXPRESS" AND "INFERRED" DO NOT MEAN DIFFERENT KINDS OF MALICE BUT MERELY THE MANNER IN WHICH MALICE MAY BE SHOWN TO EXIST. THAT IS EITHER BY DIRECT EVIDENCE OR BY INFERENCE FROM THE FACTS AND CIRCUMSTANCES WHICH ARE PROVED. EXPRESS MALICE IS SHOWN WHEN A PERSON SPEAKS WORDS WHICH EXPRESS HATRED OR ILL WILL FOR ANOTHER OR WHEN THE PERSON PREPARED BEFOREHAND TO DO THE ACT WHICH WAS LATER ACCOMPLISHED; FOR EXAMPLE, LYING IN WAIT FOR A PERSON OR ANY OTHER ACTS OF PREPARATION GOING TO SHOW THAT THE DEED WAS WITHIN THE DEFENDANT'S MIND WOULD BE EXPRESS MALICE.

**SPOLIATION OF EVIDENCE**

IN THIS CASE, THERE ARE ALLEGATIONS OF SPOLIATION OR DESTRUCTION OF EVIDENCE. THE STATE NOT ONLY HAS THE BURDEN OF PROOF OF GUILT BUT ALSO IT HAS THE BURDEN OF PRODUCING EVIDENCE WHICH COULD ESTABLISH THE INNOCENCE OF THE DEFENDANT. WHEN EVIDENCE IS LOST OR DESTROYED BY A PARTY, YOU MAY INFER THAT THE EVIDENCE WHICH WAS LOST OR DESTROYED BY THAT PARTY WOULD HAVE BEEN ADVERSE TO THAT

PARTY. IF YOU FIND FIRST THAT EVIDENCE WAS SPOILED OR DESTROYED, AND IF YOU FURTHER FIND THAT THE EVIDENCE COULD HELP ESTABLISH THE INNOCENCE OF THE DEFENDANT, YOU MAY THEN CONSIDER THOSE FACTS IN DECIDING WHETHER OR NOT THE STATE HAS MET ITS BURDEN OF PROOF.

**SELF DEFENSE**

See separate emails

**JURY VERDICT**

THERE ARE EIGHT POSSIBLE VERDICTS WHICH YOU MAY FIND IN THIS CASE. THERE IS NO SIGNIFICANCE WHATSOEVER IN THE ORDER IN WHICH I STATE THESE POSSIBLE VERDICTS; IT IS SIMPLY THAT ONE MUST BE STATED FIRST.

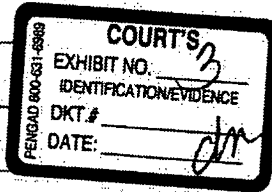
LADIES AND GENTLEMEN, YOUR VERDICT MUST BE A UNANIMOUS ONE AS TO EACH CHARGE. MR./MADAM FOREPERSON, WHEN THE JURY AGREES ON THE VERDICT, YOU WILL WRITE THE VERDICT ON THE VERDICT FORM AND SIGN YOUR NAME AS FOREPERSON. THEN KNOCK ON THE JURY ROOM DOOR AND INFORM THE BAILIFF THAT YOU HAVE REACHED A VERDICT. AT THAT TIME, WE WILL RECEIVE YOU BACK INTO THE COURTROOM.

I ASK THAT YOU NOW RETURN TO YOUR JURY ROOM BUT DO NOT BEGIN DELIBERATIONS UNTIL YOU ARE TOLD BY THE CLERK OR THE BAILIFF TO DO SO. THERE ARE SOME MATTERS WHICH MUST BE DISCUSSED WITH THE ATTORNEYS BEFORE YOU BEGIN YOUR DELIBERATIONS.

4 elements of self defense ?

10/13/16

[signature]




Mr Presiding Juror

I have attached the portion of my charge that you have requested. If further portions are needed please let me know.

R Markey [signature]
Presiding Judge
10/13/16

**Courts Exhibit 3- State of SC v. Channen Ricks.**

**Self-defense**

The defendant has raised the defense of self-defense. Self-defense is a complete defense and, if it is established, you must find the defendant not guilty. The state has the burden of disproving self-defense by proof beyond a reasonable doubt. If you have a reasonable doubt of the defendant's guilt after considering all the evidence, including the evidence of self-defense, then you must find the defendant not guilty. On the other hand, if you have no reasonable doubt of the defendant's guilt after considering all the evidence, including the evidence of self-defense, then you must find the defendant guilty.

The following elements are required to establish self-defense:

First, the defendant must be without fault in bringing on the difficulty. If the defendant's conduct was the type which was reasonably calculated to, and did, provoke a assault, the defendant would be at fault in bringing on the difficulty and would not be entitled to an acquittal based on self-defense.

The second element of self-defense is that the defendant was actually in imminent danger of death or serious bodily injury or that the defendant actually believed he was in imminent danger of death or serious bodily injury. If the defendant was actually in imminent danger, it must be shown that the circumstances would have warranted a person of ordinary firmness and courage

to strike the fatal blow to prevent death or serious bodily injury. If the defendant believed he (she) was in imminent danger of death or serious bodily injury, it must be shown that a reasonably prudent person of ordinary firmness and courage would have had the same belief. In deciding whether the defendant actually was, or believed he (she) was, in imminent danger of death or serious bodily injury, you should consider all the facts and circumstances surrounding the crime, including the physical condition and characteristics of the defendant and the victim. The defendant does not have to show that he (he) was actually in danger. It is enough if the defendant believed he (she) was in imminent danger and a reasonably prudent person of ordinary firmness and courage would have had the same belief. The defendant has the right to act on appearances even though the defendant's beliefs may have been mistaken. It is for you to decide whether the defendant's fear of immediate danger of death or serious bodily injury was reasonable and would have been felt by an ordinary person in the same situation.

The final element of self-defense is that the defendant had no other probable way to avoid the danger of death or serious bodily injury than to act as the defendant did in this particular instance.

A person cannot be required to make an exact calculation as to the degree or amount of force which may be needed to avoid death or serious bodily harm.

Therefore, in self-defense, the defendant has the right to use the force needed to avoid death or serious bodily harm. The force used in self-defense does not have to be limited to the degree or amount of force used by the victim. The defendant has the right to use so much force as appeared to be necessary for complete self-protection, and which a person of ordinary reason and firmness would have believed to be needed to prevent death or serious bodily harm. The relative sizes, ages, and weights of the defendant and the victim may be considered in deciding the apparent or actual need for force in self-defense and the amount of force needed.

If the defendant is justified in defending himself and in firing the first shot, then the defendant is also justified in continuing to shoot until it is apparent that the danger of death or serious bodily injury has completely ended.

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF GENERAL SESSIONS |
| | ) | FIFTH JUDICIAL CIRCUIT |
| COUNTY OF RICHLAND | ) | INDICTMENT No.: 2016-GS-40-2836 |
| The State of South Carolina | ) | |
| | ) | |
| -vs.- | ) | Motion to Dismiss or give the |
| | ) | appropriate Jury Instruction Regarding |
| Channen Frank Ricks, | ) | Spoliation of Evidence (included with this motion) |
| Defendant. | ) | |
| | ) | |

2016 OCT 10 PM 2:49
RICHLAND COUNTY
FILED

COMES NOW Channen Frank Ricks in the above-styled and numbered cause, by and through his undersigned counsel, and files this his Motion to Dismiss or Give Appropriate Jury Instruction regarding spoliation of evidence.

The Defendant is indicted for Murder. The evidence of the 911 call which is the first contact with any law enforcement and which is delayed sometime after the alleged crimes unfortunately was not preserved. Fortunately, the public defender originally assigned requested copies of the tapes and we have some calls, but not the Defendant's first call which was 4 minutes long. Moreover, the Defendant requested the call of the solicitor and investigator numerous times and it was not requested by the lead investigator until April 17, 2015, eleven months after this alleged incident.[1]

Counsel was provided the call detail report, however, the information on the report however, the Defendant is without the ability to hear the exact words and present sense impression of the caller the first time he called. Defendant has, and intends to introduce, the return call from 911 as well as the call detail records, but the impact of the words that are spoken immediately after this incident are lost.

SCANNED

[1] See attached documentation.

Additionally, Defendant was provided some video, but not the entire video of the incident location. The officer's indicate that they kept what they believed to be relevant and destroyed the remaining video.

Under the Federal Constitution a trial on this evidence, or on an unsworn list of this evidence would be fundamentally unfair and would irrevocably deny Mr. Ricks his right to due process and to confront his accusers. Bad faith and fundamental unfairness exist where the destroyed evidence possessed "exculpatory value that was apparent before the evidence was destroyed, and [is] of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." California v. Trombetta, 467 U.S. 479, 489 (1984).

Exculpatory value may be apparent, as here, when a defendant demands forensic testing which he claims will exonerate him. For example, in United States v. Cooper, affirming the grant below of a motion to dismiss, the Court held that the government's failure to preserve laboratory equipment seized from defendants violated due process, the Court found bad faith in that case precisely because the defendants requested testing which, it was claimed, would exonerate them, and because once the evidence was destroyed these defendants were unable to run the exonerative testing they initially requested:

> Cooper and Gammill might be lying; weighty, exculpatory evidence might never have existed. . . . We will not adopt the government's belief that they are lying. The defendants' version of the facts, which was repeatedly relayed to government agents, had at least a ring of credibility. They should not be made to suffer because government agents discounted their version and, in bad faith, allowed its proof, or its disproof, to be buried in a toxic waste dump.

Cooper, 983 F.2d 928, 933 (9th Cir. 1991). Whether the evidence in Cooper is characterized as "exculpatory" or merely "potentially exculpatory," the proper remedy for the destruction was

dismissal given the bad faith on the part of and the fundamental unfairness caused by the government. Id.

Here, dismissal is the appropriate remedy under the Federal doctrine. Like Mr. Cooper, Mr. Ricks "should not be made to suffer" because the State could not be bothered to collect the 911 call, which would reflect the exact words and present sense impression of the caller(s) especially in light of the delay and the inconsistent information provided in other accounts. In addition, the video tapes were specifically timely requested and could provide an accurate depiction of all the parties and witnesses.

When conducting its inquiry into whether dismissal is appropriate, this Court must consider the following factors, keeping in mind the central objective of protecting the defendant's right to a fundamentally fair trial including:

(1) the degree of negligence involved,
(2) the significance of the destroyed evidence considered in light of the probative value and reliability of secondary evidence that remains available, and
(3) the sufficiency of the other evidence.

In turn, the first question, that of negligence, is determined using the following factors:
(1) whether the evidence would have been subject to discovery or disclosure, and
(2) whether the state had a duty to preserve the evidence.

Therefore, the Due Process and Due Course of Law provisions requires either a dismissal of the charge, or at least a jury instruction that allows for a negative inference against this non-existent evidence and any documents pertaining to it.

Wherefore, Mr. Ricks respectfully requests dismissal, or, in the alternative, an instruction that the jury shall disregard this evidence if they find that the State had notice that Mr. Ricks had

claimed that the now-destroyed evidence could have been exculpatory and/or provided impeachment against the alleged victim and other State witnesses.

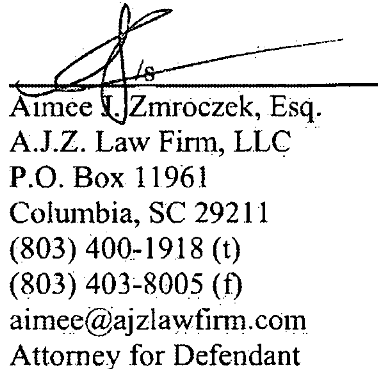
In the alternative, Mr. Ricks requests the following jury charge at the close of the case:

SPOLIATION OF EVIDENCE[2]

IN THIS CASE, THERE ARE ALLEGATIONS OF SPOLIATION OR DESTRUCTION OF EVIDENCE. THE STATE NOT ONLY HAS THE BURDEN OF PROOF OF GUILT BUT ALSO IT HAS THE BURDEN OF PRODUCING EVIDENCE WHICH COULD ESTABLISH THE INNOCENCE OF THE DEFENDANT. WHEN EVIDENCE IS LOST OR DESTROYED BY A PARTY, YOU MAY INFER THAT THE EVIDENCE WHICH WAS LOST OR DESTROYED BY THAT PARTY WOULD HAVE BEEN ADVERSE TO THAT PARTY. IF YOU FIND FIRST THAT EVIDENCE WAS SPOILED OR DESTROYED, AND IF YOU FURTHER FIND THAT THE EVIDENCE COULD HELP ESTABLISH THE INNOCENCE OF THE DEFENDANT, YOU MAY THEN CONSIDER THOSE FACTS IN DECIDING WHETHER OR NOT THE STATE HAS MET ITS BURDEN OF PROOF.

IT IS SO MOVED

Respectfully Submitted,



/s

Aimee J. Zmroczek, Esq.
A.J.Z. Law Firm, LLC
P.O. Box 11961
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(803) 400-1918 (t)
(803) 403-8005 (f)
aimee@ajzlawfirm.com
Attorney for Defendant

This the 10th day of October, 2016
Columbia, South Carolina

[2] In civil cases, there is a presumption that the evidence is adverse to the party who lost or destroyed the evidence. There have been no criminal cases reported where the loss or destruction of evidence does not constitute a due process violation which would warrant suppression of the evidence, but would warrant a presumption that the evidence is adverse to the State. <u>See State v. Cheeseboro</u>, 346 S.C. 526, 552 S.E.2d 300 (2001).

1519

**WITNESSES**

(S) Inv. Kerry Johnson
– Richland County Sheriff

**ARREST WARRANT NUMBER**

2014A4010201916

**ACTION OF GRAND JURY**

# TRUE BILL

Kathy Whaley
*Foreperson of Grand Jury*
*Date:* MAY 12 2016

**VERDICT**

*Foreperson of Petit Jury*
*Date:*

**DOCKET NO. 2016GS4002836**

## The State of South Carolina

**County of**

**Richland**

**COURT OF GENERAL SESSIONS**

**MAY TERM 2016**

91

**THE STATE**
**vs.**

**Channen F Ricks**

**Indictment for**
**MURDER / MURDER**

SC Code: 16-03-0010
CDR Code: 0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I ______________________
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA )
)
COUNTY OF RICHLAND )

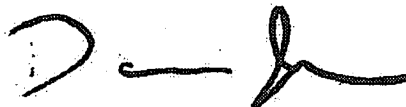
INDICTMENT

At a Court of General Sessions, convened on May 11, 2016, the Grand Jurors of Richland County present upon their oath:

**MURDER**

That Channen F Ricks did in Richland County, on or about May 25, 2014, kill the victim, Thomas Pauling, with malice aforethought, either express or implied, by means of shooting, and the victim did die as a proximate result thereof. All in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland )
STATE VS. ) INDICTMENT/CASE#: 2016GS4002836
Channen F Ricks ) A/W#: 2014A4010201916
AKA: ) Date of Offense: 5/25/2014
Race: BLACK Sex: [redacted] Age: 28 ) S.C. Code § : 16-03-0010
DOB: [redacted] SS#: [redacted] ) CDR Code #: 0116
Address: [redacted] )
City,State,Zip: Columbia, SC 29201 ) SENTENCE SHEET
DL#: [redacted] SID#: )

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*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Murder / Murder

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. ______ (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [signature] SAMPSON, APRIL — 15964 SC Bar# — C. Ricks Defendant — [signature] Attorney for Defendant — 77193 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 40 ~~days/months~~/years or ☐ under the **Youthful Offender Act** not to exceed ______ years and/or to pay a fine of $ ______; provided that upon the service of ______ days/months/years and/or payment of $ ______; plus costs and assessments as applicable*; the balance is suspended with **probation** for ______ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: ______

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. since May 26, 2014

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

**Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence ) to ship, transport, possess, or receive a firearm or ammunition.**

**SPECIAL CONDITIONS:**

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: $ ______ plus 20% fee: ______ $ ______

Payment Terms: ______

☐ Set by SCDPPPS ______

Recipient: ______

| | | |
|---|---|---|
| *Fine: | | $ |
| § 14-1-206 (Assessments 107.5 %) | | $ |
| § 14-1-211(A)(1) (Conv. Surcharge) | $100 | $ |
| § 14-1-211(A)(2) (DUI Surcharge) | $100 | $ |
| § 56-5-2995 (DUI Assessment) | $12 | $ |
| § 56-1-286 (DUI Breath Test) | $25 | $ |
| Proviso 61.6 (Public Def/Probation) | $500 | $ |
| § 14-1-212 (Law Enforce. Funding) | $25 | $ |
| § 14-1-213 (Drug Court Surcharge) | $150 | $ |
| § 50-21-114(BUI Breath Test Fee) | $50 | $ |
| § 56-5-2942(J) (Vehicle Assessment) | $40/ea | $ |
| 3% to County (if paid in installments) | | $ |
| TOTAL | | $ |

PTUP ______

______ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. ______

May serve W/E begining ______

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ ______ beginning ______

$ ______ paid to Public Defender Fund

Other: ______

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk: Jeanette McBride [signature]
Court Reporter: McCurdy [signature]

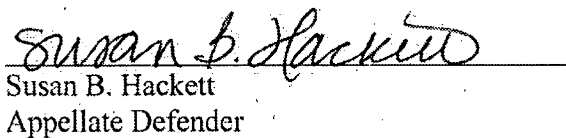
Presiding Judge: [signature]
Judge Code: 2060
Sentence Date: 10/13/16

SCCA/217 (07/2016)

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,



Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 13th day of December, 2017.

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,

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Division of Appellate Defense
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Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 13th day of December, 2017.

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