

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County

Honorable J. Cordell Maddox, Circuit Court Judge

TIMMY ROGERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002100

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHNNY ELLIS JAMES, JR.
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED OCTOBER 11, 2010	1
TRIAL TRANSCRIPT DATED OCTOBER 12, 2010	72
TRIAL TRANSCRIPT DATED OCTOBER 13, 2010	322
TRIAL TRANSCRIPT DATED OCTOBER 14, 2010	596
APPLICATION FOR POST-CONVICTION RELIEF FILED OCTOBER 8, 2014	729
RETURN AND MOTION TO DISMISS FILED MARCH 27, 2015	736
CONDITIONAL ORDER OF DISMISSAL FILED APRIL 9, 2015	742
APPLICANT'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS FILED MAY 15, 2015	747
NOTICE OF MOTION AND MOTION TO DISMISS FILED AUGUST 3, 2015	752
APPLICANT'S RESPONSE TO PETITIONER'S SECOND MOTION TO DISMISS FILED AUGUST 11, 2015	759
EMAIL STATING THAT COURT DECLINES TO SIGN THE FINAL ORDER OF DISMISSAL	765
MOTION HEARING DATED AUGUST 11, 2015	766
FINAL ORDER OF DISMISSAL FILED SEPTEMBER 23, 2015	793
MOTION TO RECONSIDER, ALTER, OR AMEND FILED DECEMBER 18, 2015	800
RETURN TO APPLICANT'S 59(E) MOTION FILED JANUARY 7, 2016	802
ORDER GRANTING APPLICANT'S MOTION TO RECONSIDER FILED FEBRUARY 4, 2016	806
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED AUGUST 9, 2016	807
ORDER OF DISMISSAL FILED SEPTEMBER 11, 2017	892

INDICTMENT AND SENTENCING SHEET	907
OPINION NO. 5172 FILED SEPTEMBER 4, 2013	911

1 of the abrasion, and incised wounds, like cutting it with
2 a knife.

3 This was a laceration occurring as
4 a result of blunt trauma.

5 It could been elbow, fist,
6 pavement, -- uh -- street sign -- you know.

7 Anything blunt that you either
8 fall against or get hit with can cause that.

9 Q. Okay. But that -- that laceration doesn't tell you
10 if -- if a man or woman inflicted that injury?

11 A. No sir, it does not; no.

12 Q. Likewise, with the ligature around Mr. Engle's neck;
13 did that indicate to you whether or not a man or woman
14 inflicted that injury?

15 A. The -- The only thing that I can tell you regarding
16 who inflicted that upon Mr. Engle with that ligature was:

17 It was someone with a significant
18 amount of strength.

19 Whether that be a man or woman, I
20 do not know.

21 Q. Okay. Can you tell us whether Mr. Engle was
22 standing, or kneeling, or laying down, or what position
23 he was in when -- when he was strangled?

24 A. No sir.

25 Q. And you couldn't tell us if he was perhaps on the

1 ground with someone on top of him?

2 A. Uh -- I -- I -- A certain scenario you could make
3 was:

4 Strangled from behind. Pushed
5 down, Face hits the ground; and significant trauma,
6 compressing those muscles, and causing bleed into the
7 brain stem.

8 That's certainly a scenario.

9 But can I state that that was how
10 it was?

11 No sir. I do not know.

12 Q. Your report indicates that you saw a edema of the
13 left periorbital area.

14 A. Yes sir.

15 Q. Is that correct?

16 A. Uh-huh.

17 Q. What does that mean?

18 A. Uh -- Well, the left periorbital area had the
19 abrasion, contusion, and the little laceration.

20 So edema means swelling.

21 So it's -- uh -- When it occurred,
22 it started swelling.

23 Q. So the swelling is a result of the blunt force
24 trauma?

25 A. That's correct.

1 Q. As a result of the --

2 A. That's correct.

3 Q. -- strangulation? Okay.

4 A. That's correct.

5 Q. Now you testified that -- uh -- you checked his
6 hyoid?

7 A. Hyoid; yes sir.

8 Q. Hyoid bone?

9 A. That's correct.

10 Q. And it was intact?

11 A. Uh-huh.

12 Q. What kind of --

13 A. That's correct.

14 Q. -- circumstances would the hyoid bone -- uh --
15 broken?

16 A. The most common cause of a fractured hyoid bone is
17 manual strangulation from the front with significant
18 force pressed anterior to posterior at the top of the
19 trachea.

20 So the hyoid bone substantially in
21 the same just above the trachea. You can feel you Adam's
22 Apple up here.

23 It's a little bone sort of like a
24 pulley bone. It's basically the human pulley bone
25 sitting right up here.

1 And lots of blunt force pressure
2 can break it.

3 Q. And that --

4 A. Usually does not happen in cases of ligature
5 strangulation or hanging. But manual strangulation is
6 the most common time you see that happen.

7 Q. Okay. And it did not occur in this case?

8 A. No sir.

9 Q. All right. So you can conclude that:

10 He was not strangled from the
11 front with hands?

12 A. Uh -- No. It's -- It is a finding that's
13 contributory to saying:

14 It's more likely than not that it
15 was.

16 But if is not broken, it doesn't
17 mean that it did not occur.

18 But it's a finding that you always
19 look for to sort of say:

20 Yes, there significant force from
21 the front.

22 But there still could have been
23 force without breaking it.

24 But in most cases, that force is
25 usually from a ligature, or -- or -- or a noose, rather

1 than hand.

2 Q. I think you also testified that there was -- uh --
3 uh -- a wound to his right thumb.

4 Is that correct?

5 A. Yes, sir; that's correct.

6 Q. And what was the nature of that injury?

7 A. That injury was -- uh -- a contusion in the mid-
8 joint area, here (indicating).

9 It was there; and it was fresh.

10 Q. Okay. Did you see any other injuries on the hands
11 or arms?

12 A. There was some evidence of insect bite activity,
13 most likely ants; maybe a small linear abrasion there.

14 But whether that occurred as a
15 consequence of what happened to the man, or moving the
16 body, or -- or whatever; I don't know.

17 Q. Was there a linear abrasion on his arm?

18 A. There was a slight abrasion on one of his arms that
19 I could see.

20 But -- uh -- it -- Other than just
21 being there, can I say it occurred as a consequence of
22 this; or did it occur when he was thrown in the bushes;
23 or did he have that; I don't know.

24 Q. Okay. So you don't know if that --

25 A. No.

1 Q. -- abrasion to his arm suggests that he was dragged
2 off in the woods?

3 A. It -- It -- It's possible that it does. But I -- I
4 can't -- I can't say that with absolute certainty.

5 I don't know.

6 Q. Did you collect -- uh -- Mr. Engles's clothing?

7 A. Uh -- The clothing that he would have had on at the
8 time would have been transferred to Horry County Crime
9 Scene.

10 They were there; and usually take
11 disposition on clothes, valuables, evidence such as we
12 have; and take all the photographs.

13 Q. Why specifically would you collect his clothing and
14 turn it over to Horry County Crime Lab?

15 A. Uh -- The -- The Crime Scene people -- uh -- would
16 have used the clothes to look for hair fibers or any
17 other evidence that might be of use to try to determine
18 who did this to Mr. Engle.

19 Q. Now, when you collect these clothes -- his clothing
20 -- do you and shake them out or anything like that?

21 A. When I -- When I collect the clothing, we try to lay
22 it in a bag that is provided by the County for evidence;
23 so that they can put it in a bag.

24 And I'm sure they have specific
25 techniques for examining that once it leaves -- uh -- my

1 facility.

2 But we -- uh -- we try to be very
3 careful -- as careful as we can be -- to fold it up and
4 put it in the bag --

5 Q. Okay. You --

6 A. -- for them.

7 Q. You didn't attempt to remove any evidence --

8 A. No sir.

9 Q. -- that could have been on any clothes?

10 A. No sir; I did not.

11 Q. And you collected the clothing; bagged it; and
12 turned it over to them?

13 A. I -- I collected it. They were holding the bags.
14 And either I handed it to the Crime Scene Officer, who
15 placed it in the bag, themselves; or they held the bag
16 and we placed it.

17 I -- uh -- At this time, I -- you
18 know -- I don't recollect exactly how it was done.

19 But no.

20 But to answer your question: No.

21 I do not do any kind of evidence
22 examination of the clothing itself, other than to see
23 what valuables might be there; so that they can be placed
24 in a separate bag for the law enforcement people.

25 Q. Yes sir. You just basically check them for

1 identification, or money, or anything like --

2 A. That's correct. Yes sir.

3 Q. Okay. Suffice it to say:

4 You did not tamper with Mr.
5 Engle's clothing?

6 A. No sir, absolutely not.

7 Q. Did you collect any nail scrapings -- fingernail
8 scrapings in this case?

9 A. I -- In this case, I did not. No sir.

10 Q. Were you asked to collect any fingernail scrapings?

11 A. Uh -- To my recollection; no.

12 Q. If you were asked to collect fingernail scrapings by
13 the Horry County Police, would you have done it?

14 A. Yes sir.

15 Q. And what would you have done with those scrapings?

16 A. Uh -- There -- There is a specific kit provided by
17 the South Carolina Law Enforcement Division that -- uh --
18 we would use.

19 It's a field kit. We use it.

20 Seal it back up. Sign it into a chain of custody. And
21 forward it on.

22 Q. So it can be tested?

23 A. Yes sir.

24 Q. But that wasn't done in this particular case?

25 A. I did not; no sir.

1 Q. Were you able to identify anything on Mr. Engle's
2 body of -- uh -- forensic value -- DNA value?

3 A. Uh -- I did not see anything on his body. I do
4 know that -- uh -- we collect tubes of blood that are
5 retained for DNA analysis.

6 And I also know that Crime Scene
7 from Horry County takes swabs of blood for DNA evidence,
8 it needed; yes sir.

9 But I -- Other than collect --
10 collect blood and have it available for them, I do not do
11 any DNA testing.

12 Q. So to -- to -- The exact manner of death -- I don't
13 know if I'm using the right --

14 A. Okay.

15 Q. -- phrases. It's my understanding that Mr. Engle
16 did not die as a result of not being able to take in
17 oxygen; but rather, the blood that was in his body was
18 unable to flow back out of the head, and above that, had
19 flowed -- uh -- wasn't able to flow into the head,
20 because the neck was cut off?

21 A. Uh -- That -- That the mechanism --

22 Q. Okay.

23 A. -- is lack of oxygen.

24 The manner is:

25 Occlusion of the means of getting

1 the blood to and from the head.

2 So the actual mechanism was:

3 He died from asphyxia or anoxia,
4 lack of oxygen to the tissues of his brain.

5 And due to the lack of oxygen, it
6 just shut down everything in the brain. And the brain
7 dies.

8 Q. I guess what I'm saying, is:

9 Uh -- Did he die because he wasn't
10 able to breathe in air? Or was it more -- uh --
11 breathing air wasn't a problem, it was the flow of the
12 blood that contained Oxygen in it?

13 A. Uh -- Both.

14 Q. Okay.

15 A. Both. That ligature closed off his airway to get
16 blood; get air into his lungs, which then, if he had
17 airflow to his lungs that transferred to his blood, it
18 also blocked the blood vessels that leave from the heart
19 go the brain; and return un-oxygenated back.

20 So basically, he -- he had
21 everything cut off; air and blood-flow.

22 Q. Air and blood-flow?

23 A. Yes sir.

24 Q. Was his windpipe crushed?

25 A. No.

TESTIMONY OF DR. EDWARD L. PROCTOR

261

1 Q. Okay. What --

2 A. You could see the grooving of the ligature where it
3 had compressed it.

4 Q. Okay. It was compressed but not crushed?

5 A. Yes sir.

6 Q. Was his larynx crushed?

7 A. Well, the larynx was actually the top of the
8 windpipe, where you have the Adams apple, the hard --

9 Q. Yes sir.

10 A. -- bone from the hard cartilage up here is -- uh --
11 and the wind -- and the larynx and all is behind that
12 cartilage.

13 The grooving was of the air canal
14 just below that, which is easy to compress.

15 Q. The -- The shoe string in this case -- uh -- that
16 was used to wrap Mr. -- wrap around Mr. Engle's neck; was
17 there any evidence to suggest whether the person that
18 applied the shoe string was a man or a woman?

19 A. No sir.

20 Q. Was there any evidence to suggest whether the person
21 was left-handed or right-handed?

22 A. No sir.

23 Q. Was there any evidence to suggest the height of the
24 person?

25 A. No sir.

1 Q. What about the weight?

2 A. No sir.

3 Q. So you can't tell us if it was black, white, male,
4 female?

5 A. I cannot tell you race, sex; no sir. All I can
6 tell you is that:

7 Whoever did this had to have
8 significant strength to pull the ligature tight enough to
9 compress those muscles, blood vessels, and airway.

10 Be that male or female, I don't
11 know.

12 Q. And you weren't on the crime scene on April 21st,
13 were you?

14 A. No sir; I was not.

15 Q. You're not an eyewitness to the crime; are you?

16 A. No sir.

17 Q. You didn't see who strangled Fred Engle, did you?

18 A. No sir; I did not.

19 MR. GALMORE:

20 Thank you. I have no further
21 questions.

22 WITNESS:

23 Yes sir.

24 THE COURT:

25 Mr. Richardson?

TESTIMONY OF DR. EDWARD L. PROCTOR

263

1 MR. RICHARDSON:

2 Just one.

3 REDIRECT EXAMINATION BY MR. RICHARDSON:

4 Q. Dr. Proctor -- uh -- you measured -- or you
5 measuring Frederick Engle's body?

6 A. Uh -- Yes sir.

7 Q. How tall was he?

8 A. Mr. Engle was 73 inches tall; 6 feet, one inch.

9 MS. WILSON:

10 Thank Your Honor.

11 Your Honor, we would ask that he
12 be excused.

13 THE COURT:

14 Any objection?

15 MR. GALMORE:

16 No objection.

17 THE COURT:

18 Dr. Proctor, thank you for coming.
19 You're released from your subpoena.

20 WITNESS:

21 Thank Your Honor.

22 THE COURT:

23 Mr. Richardson?

24 MR. RICHARDSON:

25 The State would call Ryan Graham.

1 CLERK:

2 Thank you. Please be seated.

3 Okay. If you would speak into
4 the microphone. State your full name; and spell your
5 last name.

6 WITNESS:

7 Okay. My full name is Michael
8 Ryan Graham. And my last name spelled is: G-r-a-h-a-m.

9 DIRECT EXAMINATION BY MR. RICHARDSON:

10 Q. Mr. Graham, where do you work?

11 A. I work at Horry Telephone Cooperative.

12 Q. And what is your position there?

13 A. I'm a Design Supervisor in our Engineering Group.

14 Q. How long have you been with -- uh -- Horry
15 Telephone?

16 A. I've been with HTC since June of -- uh -- 2000, for
17 10 years, a little over 10 years.

18 Q. Now, are you familiar with the -- uh -- records kept
19 at Horry Telephone with regard to cell towers?

20 A. Yes, I am, very familiar.

21 Q. And that's actually what you do?

22 A. Correct; I'm a wireless engineer.

23 Q. Did you bring a map with you today -- uh -- per your
24 subpoena?

25 A. I did. Yes sir I did.

TESTIMONY OF MICHAEL RYAN GRAHAM

265

1 Q. Please tell the jury what this map -- uh -- would
2 reflect.

3 A. This map is a location. It's a -- It's a map
4 showing our tower sites -- uh -- specific to a -- an area
5 in Myrtle Beach -- uh -- west Myrtle Beach area.

6 It provides information regarding
7 what we call cell IDs, which is an identifier for each
8 cell site in our -- in our network.

9 MR. RICHARDSON:

10 I'd like to have that marked.

11 THE COURT:

12 Have you seen it, Mr. Galmore; Ms.
13 Wilson?

14 MS. WILSON:

15 I haven't seen the one he's
16 handing him.

17 MR. RICHARDSON:

18 I gave them a small copy.

19 (WHEREUPON: Defense Counsels
20 examined the subject map to compare it with the copies
21 already given them.)

22 THE COURT:

23 Any objection?

24 MS. WILSON:

25 No objection, Your Honor.

1 THE COURT:

2 All right.

3 Are you going to offer it?

4 MR. RICHARDSON:

5 Yes sir.

6 THE COURT:

7 All right. Well, let's go ahead

8 and do that then.

9 MR. RICHARDSON:

10 I want to place this one into
11 evidence. And then I want to offer it over the -- uh --
12 projector.

13 THE COURT:

14 Okay. Very well.

15 That'll be State's --

16 COURT REPORTER:

17 43, Your Honor.

18 THE COURT:

19 43.

20 WHEREUPON: THE CELL TOWER MAP WAS
21 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 43
22 AND WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION.

23 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

24 Q. Mr. Graham, I want to hand to you what has been
25 marked as State's Exhibit Number 41.

TESTIMONY OF MICHAEL RYAN GRAHAM

267

1 And tell me if you recognize those
2 documents already in evidence?

3 A. Yeah. These appear to be -- uh -- call records for
4 a particular -- uh -- cell phone.

5 Q. Okay. And which -- Can you tell which cell phone
6 number that is -- those records are to?

7 A. Uh -- It appears that this -- yes. It appears it's
8 [REDACTED]-4731.

9 Q. Do you know who owns that telephone?

10 A. I do not.

11 Q. Okay. You ever heard of Timmy Rogers before?

12 A. Uh -- I have not.

13 Q. Okay. Do you know Sherry Engle?

14 A. No sir.

15 Q. And tell the jury please, the starting date for
16 these records?

17 A. The starting date is April 1st, 2008. And I guess
18 the time is -- uh -- 1:32 PM.

19 Q. All right. Now -- And you find that off of the
20 first column?

21 A. That is correct.

22 Q. Let's go over to the eighth column. And tell me
23 what LACCID means.

24 A. The LACCID is a term we refer to as our LAC or Cell
25 ID information.

1 It commonly refers to -- A LAC is
2 a location area code -- uh -- that is -- uh -- for a
3 particular -- an area or group of cell sites.

4 It helps us classify what -- what
5 groups are together.

6 The Cell ID is -- uh -- is
7 specific to each site; and not only to a site, but to a
8 particular sector of the site.

9 Q. Okay. Now with regards -- If you will, turn over
10 to April 21st. Let's see.

11 A. (Witness does as instructed.)

12 Q. Okay. Do you recognize the LACCID Numbers on that
13 page?

14 A. Yes, I do. I'm very familiar with these.

15 Q. Okay. Now, who owns those towers?

16 A. The towers in reference here on -- on Sheet 6 are
17 owned by HTC.

18 Q. Okay. And that's where you work and what you do?

19 A. That's correct.

20 Q. All right. Now, do you think it would help the
21 jury to -- uh -- to explain it by being able to point out
22 those towers -- uh -- on the map, or resemblance of the
23 map that you created?

24 A. Yes; correct. Yeah, it would be much easier to see
25 and explain.

1 MR. RICHARDSON:

2 All right.

3 I would ask if you'll let that
4 screen down.

5 WHEREUPON: The Bailiff does as
6 requested and displays the courtroom screen.

7 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

8 Q. Ryan, if you would, go back to Page 5 of your
9 document.

10 A. (Witness leafs through some documents.)

11 Q. Let's start off on April 21st, 2008. And what is
12 the first phone call that is registered on April 21st,
13 2008?

14 A. I'm sorry. I don't have a Page 5 in this stack.
15 Unless I'm missing --

16 MR. RICHARDSON:

17 Your Honor, Page 5 has been
18 inadvertently left out. I would ask to substitute the
19 Page 5 of AT&T's records.

20 It's got -- uh -- 1 through 4, and
21 then 6.

22 THE COURT:

23 What are you saying?

24 MS. WILSON:

25 Your Honor, if I could please have

1 a quick look at these records.

2 THE COURT:

3 Yes.

4 MS. WILSON:

5 Thank you.

6 WHEREUPON: Defense Counsel

7 examines the documents brought by the witness.

8 MS. WILSON:

9 Your Honor, I think we may have a
10 matter to take up outside the presence of the jury.

11 THE COURT:

12 All right. Let's -- uh -- send
13 the jury out.

14 Mr. Roth, would you take them to
15 the juryroom, please.

16 (WHEREUPON: The jury empanelled
17 in the case withdrew from the courtroom at 2:58 PM,
18 October 13, 2010; and was no longer present during the
19 following proceedings.)

20 THE COURT:

21 All right, Ms. Wilson?

22 MS. WILSON:

23 Thank Your Honor.

24 Your Honor -- uh -- obviously, I'm
25 going to put forth to The Court that:

TESTIMONY OF MICHAEL RYAN GRAHAM

271

1 This argument is not a document
2 that I brought in, or the State brought in.

3 This is the actual document from
4 AT&T that was vouched for by someone from that company.

5 And --

6 THE COURT:

7 Well, my problem is here:

8 That was the exhibit that was
9 introduced.

10 That was identified by the
11 representative of AT&T.

12 That's what he says the records
13 were.

14 Now, Mr. Richardson, how do we
15 supplement that when the ATT representative is gone.

16 And I've got another problem:

17 Mr. Richardson, you told me this
18 was your last witness.

19 I assume it is.

20 MR. RICHARDSON:

21 Yes sir.

22 THE COURT:

23 Who is going to identify those
24 phone records as belonging to anybody?

25 I have not heard any testimony as

1 to who that number belongs to.

2 And this witness just said he
3 doesn't know.

4 MR. RICHARDSON:

5 No sir.

6 Uh -- Your Honor, Kelly Green --
7 uh -- entered a photograph.

8 She works at Value Place.

9 She entered a photograph of the
10 Defendant Timmy Rogers with his phone number on the
11 paperwork at Value Place.

12 THE COURT:

13 Okay. Good. If --

14 MR. RICHARDSON:

15 And those are already in evidence.

16 THE COURT:

17 If it's in, fine. Okay.

18 MR. RICHARDSON:

19 And Your Honor, I -- We can start
20 with Page 6. That was --

21 THE COURT:

22 All right.

23 Will -- Will that fit -- I just
24 got a problem going to a page that was not in the package
25 that was presented by the witness and the witnesses -- uh

TESTIMONY OF MICHAEL RYAN GRAHAM

273

1 -- is gone now.

2 I mean, I don't know how we could
3 supplement that with something else.

4 I -- I think Ms. Wilson's position
5 is well taken.

6 Now, if you can go with Number 6,
7 that's fine.

8 MR. RICHARDSON:

9 Yes sir.

10 THE COURT:

11 But apparently, the one that the
12 witness identified as being the records didn't include
13 that.

14 MS. WILSON:

15 Thank Your Honor.

16 THE COURT:

17 Okay. Are we ready?

18 MS. WILSON:

19 Yes sir.

20 THE COURT:

21 All right. Bring them in.

22 (WHEREUPON: The jury empanelled
23 in the case was escorted back into the courtroom at 3:00
24 PM, October 13, 2010; and was in fact present during the
25 following proceedings.)

1 THE COURT:

2 All right.

3 Proceed Mr. -- uh -- Richardson.

4 MR. RICHARDSON:

5 Thank Your Honor.

6 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

7 Q. Mr. Graham, if you would go to Page 6.

8 A. (Witness does as instructed.)

9 Q. And of course you've already said this is for phone
10 number [REDACTED]-4731.

11 A. Correct.

12 Q. What -- Give us the date and time of the -- uh --
13 first call.

14 A. The date was 4/21/2008 at 9:06 PM.

15 Q. Okay. And what number was doing the calling
16 please?

17 A. The mobile originating of number was [REDACTED]-6563.

18 Q. And the 6563 number called what number?

19 A. It called [REDACTED]-4731.

20 Q. Okay. And the duration of that call?

21 A. 119 minutes. Excuse me. Sorry. That's correct. I
22 apologize. That is correct; 119 seconds.

23 Q. All right. And the LACCID, what LACCID do you have
24 for that?

25 A. The LACCID is show as 41-08115-50083.

TESTIMONY OF MICHAEL RYAN GRAHAM

275

1 Q. All right. And which -- uh -- Is that one of your
2 towers?

3 A. That's correct.

4 Q. Which tower is that. If you would point it out to
5 the jury with the -- uh -- laser pointer?

6 A. Okay. Uh -- Utilizing this -- uh -- Cell ID, which
7 is last five digits shown on this call record, I can tell
8 that the -- the call was placed from this site, Site 008.

9 Uh -- And it was -- it was made
10 off of this left-most sector, here, in the top left
11 corner (indicating).

12 Q. Are you familiar with that area?

13 A. Yes, sir, I am.

14 Q. Does that map include Value Place?

15 A. The Value Place Inn would be just off the map here
16 where my pointer is on the left (indicating).

17 Q. Okay. And what are you -- uh -- Is there some road
18 that you're qualifying that by?

19 A. Correct. This Highway 501 (indicating). This is
20 Carolina Forest Boulevard (indicating).

21 And just across Carolina Forest
22 Boulevard is West Perry Road (indicating).

23 Q. Okay. And that's the Value Place?

24 A. Correct.

25 Q. Please -- uh -- go to the next call that you have on

1 4/21.

2 A. Okay. The call was at 9:27 PM.

3 Q. 9:27 PM. Okay. And how long was that call?

4 A. 278 seconds.

5 Q. And if you would, tell us which cell tower that call
6 was routed through?

7 A. Looking at the Cell ID on that call, it appears the
8 call was placed on this particular tower as shown
9 (indicating).

10 And the sector it was utilizing is
11 shown here: 50041 (indicating).

12 Q. Okay. Now are you familiar with the -- uh --
13 Berkshire Forest or -- uh -- housing development in -- uh
14 -- Carolina Forest?

15 A. Yes.

16 Q. And where is that?

17 A. This development here (indicating).

18 Q. Okay. Now, go to the next reading please.

19 A. Okay. The call was placed at 9:41 PM.

20 Q. Okay. On the 21st?

21 A. Correct.

22 Q. And the call was from whom -- uh -- from which
23 number to which number?

24 A. The call was from [REDACTED]-6563. That was the
25 originating number. And the terminating number was [REDACTED]-

TESTIMONY OF MICHAEL RYAN GRAHAM

277

1 [REDACTED]-4731.

2 Q. Duration?

3 A. Duration was zero seconds. But --

4 Q. And which tower was that?

5 A. That tower was shown here at the top of the screen
6 (indicating) 51473.

7 And the three would be the sector
8 on the bottom left (indicating).

9 Q. Okay. Go to the next, please.

10 A. Okay. Okay. This -- This call was placed at 9:42
11 PM.

12 It was originated by [REDACTED]-4731.

13 The number called was [REDACTED]-6563.

14 Q. All right. And which tower -- uh -- did that come
15 in on?

16 A. That tower is located -- there we go -- 51441
17 (indicating) which is the sector pointing north here.

18 So this is the tower site.

19 And it's a sector -- sector
20 pointing north.

21 Q. Now -- Before we move on, these last two that you
22 called out seem to be approximately 30 to 40 seconds
23 difference in calls placed?

24 Is that what you're getting?

25 A. Correct.

1 Q. Now how would -- How would it go from one tower up
2 there -- uh -- at the top of the screen to that bottom in
3 that amount of time?

4 How would somebody ping from one
5 to the other?

6 Uh -- Excuse me.

7 Uh -- Read through one or the
8 other.

9 A. It could be any number of situations. Uh -- A
10 mobile could be traveling from one location to another.

11 Uh -- When they placed the call 30
12 seconds earlier, this sight could have been the strongest
13 serving cell.

14 30 seconds later, this sector
15 could have been the strongest serving cell.

16 Q. Okay. So there wasn't a lot of time. Uh -- And it
17 would have appeared to be between those two towers --
18 somewhere between those two towers in 30 seconds?

19 A. Somewhere in this general area; correct. Somewhere
20 in this general area; yes.

21 Q. Okay. Now let's go to the next column, Mr. Graham.

22 A. Okay.

23 Q. And how long after the last call was -- was this
24 next call that come through?

25 A. Well, it appears the next record is an SMS or a

TESTIMONY OF MICHAEL RYAN GRAHAM

279

1 short message -- text message -- uh --

2 Q. Okay.

3 A. 9:42 --

4 Q. We'll skip that one. That one --

5 A. Skip that one? Okay.

6 Q. Or, can you tell anything -- Would that still be
7 routed through a particular area?

8 A. Yeah. We can tell that -- uh -- the SMS was sent
9 to [REDACTED]-4731.

10 Uh -- And it was sent -- that
11 particular mobile was, again, on this Site 144, which is
12 a water tank site -- again, off of this same sector,
13 pointing north.

14 Q. Out of those -- uh -- four that you've been showing
15 us, which is the -- uh -- the tallest tower?

16 A. The tallest of the 4, where our antennas are placed,
17 is located here off of International Drive.

18 This is an International Drive
19 (indicating).

20 Q. And approximately, can you give us some sort of an
21 idea of how tall that would be?

22 A. I seem to recall this site is 270 feet high. The
23 antenna's are placed on it 270 feet high.

24 The tower's actually taller, but
25 our antennas are 270.

1 Q. All right. How about the -- uh -- 51441. What
2 size tower is that?

3 A. 51441 is a water tank. Uh -- It's roughly a hundred
4 and -- between a hundred and a hundred and twenty feet.

5 It's located on a handrail of a
6 water tank there (indicating).

7 Q. So that's significantly smaller than the -- uh --
8 51472?

9 A. Correct; yes. This would -- This site would
10 typically produce a much smaller -- uh -- calling radius
11 than the -- uh -- the site at 270 feet.

12 We're talking about 150 foot
13 difference in antennae.

14 Q. 150 foot difference? How about the -- uh -- that
15 tower down there, 50041 --

16 A. This site (indicating)?

17 Q. How tall is that tower?

18 A. This site is a 200 foot tower.

19 Q. Okay. So that's taller than the --

20 A. Yes. Yes. This would be the shortest of the
21 ones we looked at (indicating).

22 Q. Okay.

23 A. And this would kind of be in between (indicating).
24 This would be the tallest (indicating).

25 Q. Okay. And go to the -- uh -- next call, where that

TESTIMONY OF MICHAEL RYAN GRAHAM

281

1 -- uh -- which tower than read through?

2 A. This call was at 9:42 PM. Uh -- It originated on
3 [REDACTED]-4731.

4 The number called was [REDACTED]-6563
5 for 36 seconds.

6 And this call was placed on,
7 again, the water tank site here shown (indicating).

8 And it's on the -- uh -- the
9 northernmost -- again, the northernmost most sector.

10 Q. Okay. Still within the general area of -- uh --
11 Carolina -- I mean -- uh -- Berkshire Forest?

12 A. The general area of this Carolina Forest Community;
13 correct.

14 Q. Okay. Go down to -- uh -- Go down to your next
15 reading please.

16 A. Okay. This one's shown at 9:43 PM, again, on 21st
17 of April.

18 Uh -- The calling number was [REDACTED]-
19 [REDACTED]-4731.

20 The number was calling [REDACTED]-
21 6563.

22 This particular call was placed
23 off of 00450041.

24 Q. Okay.

25 A. Northernmost.

1 Q. Now, when you say northernmost -- uh -- does that
2 tell you anything with regard to location?

3 Is 50041 more likely to make -- uh
4 -- to receive the call if it were made around that
5 Carolina Forest area; or 50042?

6 A. Correct. If a call is placed within this Carolina
7 Forest Community area, it's more likely that the call
8 would be placed on 50041.

9 Obviously, the antennas are
10 pointing in this general direction (indicating).

11 002 points back toward the
12 coastline.

13 Q. Okay.

14 A. Almost 180 degrees apart.

15 Q. All right. And then -- uh -- it looks like within
16 that same second -- uh -- not even a -- no time passed,
17 and there is another call -- uh -- at 9:43?

18 A. Correct.

19 Q. All right. And which tower was that on?

20 A. It was the exact same tower, 50041.

21 Q. Okay. And at 9:43 again, there's a call from the
22 502 number -- uh -- to the -- uh -- 283 number.

23 And what tower did that place off
24 of?

25 A. The tower was again off of 50041.

TESTIMONY OF MICHAEL RYAN GRAHAM

283

1 Q. Okay. Now, all of those calls were within -- all
2 of them registered 9:43?

3 A. That is correct. It appears there will 4 calls
4 within that one minute of 9:43.

5 Q. Okay. Now, how about the 9:44 call?

6 A. Then= 9:44 was a, again, a text message, or SMS
7 message, that was sent to [REDACTED]-4731.

8 And again, was sent to the 50041
9 sector.

10 Q. Okay. Now, are all of these -- uh -- specific to
11 the [REDACTED]-4731 phone?

12 A. Correct. The call records that are in front of me
13 are for the [REDACTED]-4731.

14 So the -- So all the text messages
15 -- the calls that are either terminating or originating,
16 the -- the tower information that's provided on this
17 record is for that mobile number only.

18 Q. Okay. So it doesn't matter if the other person was
19 in California or right up the block, the message would
20 read -- or the call tower that his phone came through is
21 listed --

22 A. Correct.

23 Q. Okay.

24 A. What's shown here is the location -- the cell ID of
25 [REDACTED]-4731.

1 Q. All right. And how about go to the -- uh -- 10 --
2 It looks like there was a -- no more calls for about --
3 from 9:44 two 10:35?
4 A. That's correct.
5 Q. All right. Go to 1035, and tell us which number
6 called which number?
7 A. Okay. [REDACTED]-6563 was the originating number.
8 The call was terminated on [REDACTED]-4731, for 26 seconds.
9 Q. And what tower was that?
10 A. That tower was 51473, which is shown here
11 (indicating).
12 Q. All right. And does that tower generally cover the
13 same area?
14 A. Correct. It would --
15 Q. That prong of it?
16 A. It would generally cover this area through here
17 (indicating).
18 Again, this is a 270 foot site.
19 So its footprint's going to be a little larger than these
20 two (indicating).
21 Q. Okay. And how about the call at 11:05 on the night
22 of the 21st?
23 A. Okay. We got a call at 11:05. The calling number
24 was [REDACTED]-6563.
25 The mobile terminating number was

TESTIMONY OF MICHAEL RYAN GRAHAM

285

1 [REDACTED]-4731 for what appears to be 11 seconds.

2 And it was also placed off this
3 same sector here, 51473 (indicating).

4 Q. Okay. Same general area?

5 A. Correct.

6 Q. All right. Now we go about 40 minutes later,
7 11:42.

8 Tell us -- uh -- which phone
9 called which phone and the tower?

10 A. Okay. Uh -- At 11:42 PM, the calling party was
11 [REDACTED]-4731.

12 The terminating number was a [REDACTED]-
13 [REDACTED]-6563, for 195 seconds.

14 And at this time, the site that
15 was -- uh -- calling from was 50083, which is right here
16 (indicating).

17 Q. And where is the Value Place again?

18 A. The Value Place is right in this area just off the
19 map.

20 Q. Okay. Now, at 11:49, would you tell us which
21 number called what number; and what where it read from?

22 A. Okay. 11:49, the [REDACTED]-4731 number dialed a
23 [REDACTED]-3002 number for 11 seconds; and was placed off
24 this 50083.

25 Q. Okay. And then a minute later?

1 Q. One minute -- One minute later was an SMS message
2 that was sent to [REDACTED]-4731.

3 Again, it was sent to this same
4 sector -- through this same sector here.

5 Q. And at 12:03 on the 22nd, just past midnight --

6 A. Correct. 12:03 AM on the 22nd of April -- uh --
7 the calling number was a [REDACTED]-6563.

8 That number dialed [REDACTED]-4731,
9 it's for 441 seconds; and was placed on site 50083, which
10 is this site here, again (indicating).

11 Q. Okay. Now throughout the remainder of the 22nd,
12 how many other calls do you see there?

13 A. We had the one called placed just after midnight.
14 And we have two more calls on the 22nd, one at 5:12 PM
15 and one at 11:08 PM.

16 Q. 10:08.

17 A. Excuse me. Correct; thank you. 10:08:22 -- 10:08;
18 correct.

19 Q. All right. And the -- uh -- 10:08, who -- what
20 number called what number?

21 A. 10:08 PM -- uh -- [REDACTED]-6563 called [REDACTED]-4731.

22 Q. And where was the [REDACTED] phone registered at that
23 point?

24 A. Again, at 50083 in this sector (indicating).

25 Q. All right. The 24 -- And how many phone listings do

TESTIMONY OF MICHAEL RYAN GRAHAM

287

1 you have for that phone for the 24th?

2 A. We had just one call on the 24th, which is a mobile
3 originating call.

4 Q. All right.. And which tower was that on?

5 A. Same tower here, 50083.

6 Q. And how about on the 25th?

7 A. 25th? We have two calls. Just after midnight or
8 early morning hours of the 25th at 12:02 AM.

9 And again, another one at 12:06
10 AM.

11 Q. Those were the same -- uh -- originating number?

12 A. Correct. The originating number for both of those
13 was [REDACTED]-6563.

14 Q. And, of course, arrested [REDACTED] number?

15 A. Correct; to the [REDACTED]-4731.

16 Q. And what tower was that [REDACTED] number reading off of on
17 those two calls?

18 A. Again, reading off of 50800 -- 50083, excuse me.

19 MR. RICHARDSON:

20 Okay.

21 I believe that that is all the
22 questions that I would have for you.

23 Please answer any questions
24 Defense might have.

25 THE COURT:

1 Ms. Wilson?

2 MS. WILSON:

3 Thank you, Your Honor.

4 And if -- if we could, could we
5 take this up and have some lights, please?

6 THE COURT:

7 Yes.

8 WHEREUPON: The courtroom screen
9 was rolled back up and the full lights were switched back
10 on.

11 THE COURT:

12 Ladies and gentlemen, we're having
13 some trouble with these fluorescent bulbs that are in
14 these can lights and they're flickering.

15 Now they're not.

16 Uh -- We've had the technical
17 people look at them. And we'll try to have that straight
18 by the end of the week.

19 MS. WILSON:

20 Thank Your Honor.

21 CROSS-EXAMINATION BY MS. WILSON:

22 Q. Now -- Now you can't actually -- uh -- pinpoint a
23 person's precise location; can you?

24 A. No ma'am; not with -- not with this information.

25 The only time we can pinpoint a

TESTIMONY OF MICHAEL RYAN GRAHAM

289

1 precise location is in a -- on an emergency 911 call.

2 Q. And so all you can do is really say that a person's
3 phone is in an area; correct -- uh -- or at least that
4 the tower is in a certain area?

5 A. Correct. We can pinpoint the tower at which an SMS
6 or call was originated or terminated; correct.

7 Q. So if my purse dials up someone, which can happen;
8 correct?

9 A. I'm sure it can; yes.

10 Q. Uh -- If my purse were to dial up someone, it would
11 still register as a call to a specific tower; correct?

12 A. Correct; yes. Yes. If you -- If there was a
13 phone in your purse that dialed, we could tell which
14 tower that particular call was made on.

15 Q. And if I receive a call, and my purse answered that
16 call, for example, that call would still be, again,
17 registering through a certain tower; correct?

18 A. Correct. We could tell what tower; correct.

19 Q. Now can towers become overloaded with calls?

20 A. Uh -- Towers can become overloaded with calls; yes.

21 Q. And if -- And let's say:

22 If a tower overloaded with calls
23 -- uh -- what would happen to that call?

24 A. Uh -- In particular, there's a number of scenarios
25 that could happen.

1 But -- uh -- we'll take your
2 example.

3 If you were -- uh -- dialing up a
4 number -- your purse dialed a number, for instance --

5 Q. Uh-huh.

6 A. -- and the particular tower you were trying to reach
7 or utilize during that call -- uh -- If you try to make a
8 call, often times you'll hear what's often referred to as
9 three beeps -- uh -- beep, beep, beep.

10 You hear it.

11 And -- uh -- what happens is:

12 The call never makes it beyond
13 that particular site. It never goes into our --
14 (trailed off but sounded like "coronary") -- works; so --

15 Q. So, then, is it possible, then, that possibly a call
16 might actually be routed to another tower?

17 Could that happen?

18 A. Uh -- Yeah. It could happen.

19 COURT REPORTER:

20 You said to your coordinator or
21 something? The last sentence you said when you were
22 answering where that call went?

23 You trailed off on me. And I
24 didn't get it.

25 WITNESS:

TESTIMONY OF MICHAEL RYAN GRAHAM

291

1 I'm sorry. I can't recall
2 exactly.

3 COURT REPORTER:

4 And then she had already asked
5 another question. But you said something about it went
6 to our something -- coordinator or something.

7 You had a word that I wasn't sure
8 I got.

9 WITNESS:

10 We're talking like a path -- I'm
11 sorry.

12 MS. WILSON:

13 I'm sorry. I don't remember
14 where we were.

15 CROSS-EXAMINATION BY MS. WILSON CONTINUED:

16 Q. I believe I had asked you -- uh -- and I apologize --
17 -- uh -- if the scenario was that -- uh -- a tower became
18 overloaded, could it -- would it be possible that the
19 call might be routed to another tower?

20 A. Typically not. No, it would not be routed to
21 another tower.

22 You would, basically, as a caller,
23 see -- you know -- no service, or three beeps first.

24 Sometimes you can get a message
25 saying:

1 The towers are at capacity at this
2 time.

3 Q. Right. So it would never actually transmit to that
4 tower, is what you're saying?

5 A. Correct.

6 MS. WILSON:

7 Okay. The Court's indulgence?

8 CROSS-EXAMINATION BY MS. WILSON CONTINUED

9 Q. Now let me ask you -- let me ask you this:

10 Uh -- These towers -- The strength
11 of the towers:

12 Is -- Is that consistent among all
13 the towers?

14 A. The strength coming out of the equipment is
15 consistent for the most part on every tower we have.

16 Where you get variations is -- uh
17 -- the antenna types you have up on the tower; how far --
18 uh -- the antennas are above ground level; the feeder
19 length, obviously you have losses.

20 So -- uh -- it's inconsistent out
21 of the antenna due to -- uh -- tower heights, antenna
22 models; other things; but consistent at the equipment --
23 right out of the equipment.

24 Q. Yes sir. And now -- uh -- And -- And you -- you
25 can't vouch for the accuracy of these AT&T records that

TESTIMONY OF MICHAEL RYAN GRAHAM

293

1 you were looking at; can you?

2 A. No. These -- These records are not ours. I'm
3 utilizing their --

4 Q. And --

5 A. -- AT&T records.

6 Q. I'm sorry?

7 A. I was just utilizing the AT&T records.

8 Q. Yes sir. I'm sorry.

9 A. All right.

10 Q. I didn't want -- I didn't want to cut you off.

11 And my final question for you
12 would be:

13 You did not witness, nor can you
14 testify today, that Timmy Rogers killed Fred Engle; can
15 you?

16 A. No ma'am.

17 MS. WILSON:

18 All right. Thank you. No
19 further questions.

20 MR. RICHARDSON:

21 No further questions.

22 THE COURT:

23 You may step down.

24 Any need for this -- uh -- witness
25 in this trial?

1 MR. RICHARDSON:

2 No sir.

3 THE COURT:

4 Ms. Wilson?

5 MS. WILSON:

6 No, Your Honor.

7 THE COURT:

8 All right, sir. Thank you for
9 coming.

10 WITNESS:

11 Thank you.

12 THE COURT:

13 You are excused from your
14 subpoena.

15 MR. RICHARDSON:

16 May we approach?

17 THE COURT:

18 Yes sir.

19 (WHEREUPON: Counsel for each party
20 conferred off the record with The Court at the bench at
21 3:28 PM, October 13, 2010.)

22 THE COURT:

23 All right.

24 Let's take about a five minute
25 break; okay -- ten minutes.

MISCELLANEOUS MATTERS AND MOTIONS OUTSIDE JURY 295

1 (WHEREUPON: The jury empanelled
2 in the case withdrew from the courtroom at 3:28 PM,
3 October 13, 2010; and was no longer present during the
4 following proceedings.)

5 MR. RICHARDSON:

6 I just want to make sure we have
7 everything in we mean to have in. See, I've found one
8 thing.

9 I want to move this map into
10 evidence.

11 MR. GALMORE:

12 Give it to Gene.

13 THE COURT:

14 Well, move it in. You've had it
15 marked. And I -- I thought you moved it into evidence;
16 but I'm sorry.

17 I know there was no objection to
18 it.

19 MR. RICHARDSON:

20 Okay. That's good.

21 MR. GALMORE:

22 Are these maps coming in or not?

23 MS. WILSON:

24 He moved it in.

25 MR. GALMORE:

1 But I thought Jimmy thought he
2 didn't move it into evidence.

3 MR. RICHARDSON:

4 I -- I was trying to. Gene told
5 me I hadn't.

6 MR. GALMORE:

7 Oh, okay.

8 THE COURT:

9 All right. Is it in evidence, or
10 not? Any objection to --

11 MR. RICHARDSON:

12 I would like for it to go into
13 evidence.

14 MS. WILSON:

15 Was it actually entered into
16 evidence?

17 THE COURT:

18 It doesn't make any difference.
19 He can enter it now. He's had it marked for
20 identification.

21 MR. GALMORE:

22 So how can he enter it now? The
23 witness is gone.

24 MR. RICHARDSON:

25 He's already verified it. I'd

1 offer it as State's Exhibit 43.

2 (REPORTER'S NOTE: The discussed
3 exhibit was in fact entered earlier as reflected on Page
4 266 of this record.)

5 THE COURT:

6 The witness identified it. It was
7 marked for identification. Now, he's offering it after
8 the witness has testified.

9 MR. GALMORE:

10 Yes sir.

11 MR. RICHARDSON:

12 Any objection to 43 coming in?

13 MS. WILSON:

14 No objection.

15 THE COURT:

16 All right. It's in. It's in.

17 MR. RICHARDSON:

18 The proffer should go in as a
19 Court's Exhibit.

20 THE COURT:

21 No, that's not going to be --

22 MS. WILSON:

23 Right.

24 THE COURT:

25 Yeah; just a Court's Exhibit.

1 MS. WILSON:

2 Right.

3 MR. RICHARDSON:

4 Okay. Well let's make sure that
5 we get these right.

6 THE COURT:

7 And -- And for the record, the
8 reason that I am not going to allow the proffer agreement
9 is:

10 That proffer agreement contains
11 reference to requiring the witness to take a polygraph
12 test. And I don't think that has any prob -- uh --
13 probative value. And it's highly prejudicial to the
14 Defendant.

15 So I'm not going to allow it. I
16 will let you redact it, if that's what you choose to do.

17 MR. RICHARDSON:

18 And we're fine with -- uh --

19 THE COURT:

20 Okay.

21 MR. RICHARDSON:

22 -- it not coming in.

23 THE COURT:

24 All right, sir.

25 MR. RICHARDSON:

MISCELLANEOUS MATTERS AND MOTIONS OUTSIDE JURY 299

1 WHEREUPON: All counsel, off the
2 record, discussed the many exhibits and lined them up in
3 order in preparation for submission to the jury.

4 MR. RICHARDSON:

5 I think they're correct, Your
6 Honor.

7 THE COURT:

8 All right. So you got
9 everything. Are you ready to rest?

10 MR. RICHARDSON:

11 Yes sir.

12 THE COURT:

13 Okay.

14 MR. RICHARDSON:

15 Do you want to inquire as to the
16 Defendant now; or --

17 THE COURT:

18 Why don't we do it while I --

19 Well, I want you to rest. I want her to make her
20 motions. And I'm going to --

21 MR. RICHARDSON:

22 Okay.

23 THE COURT:

24 I'll let you -- uh -- uh -- rest
25 again when your -- when the jury comes out.

1 But let's put it on the record
2 that you rest.

3 MR. RICHARDSON:

4 The State rests, Your Honor.

5 THE COURT:

6 All right.

7 Ms. Wilson, Mr. Galmore; do you
8 have any motions at this time?

9 MS. WILSON:

10 Yes sir.

11 THE COURT:

12 Very well.

13 Ms. Wilson

14 At this we -- uh -- we have a
15 directed verdict motion, Your Honor -- uh -- on the
16 grounds that:

17 Number one:

18 And there are 3 basic grounds here
19 -- maybe 4.

20 And one:

21 The State has presented no direct
22 evidence of Timmy Rogers guilt in this case.

23 Every single evidence; every
24 single witness; every iota of evidence the State has put
25 up; no one's been able to say that Timmy Rogers committed

MISCELLANEOUS MATTERS AND MOTIONS OUTSIDE JURY 301

1 this crime; that they witnessed him committing a crime.

2 As to the --

3 THE COURT:

4 Except the Co-Defendant.

5 MS. WILSON:

6 Well, the Co-Defendant, Your
7 Honor, said that she cannot say that he committed the
8 crime.

9 That was her testimony on the
10 stand.

11 She said:

12 I cannot -- I was not there. I
13 didn't see him do it.

14 In addition, Your Honor, there is
15 no competent evidence to -- to prove that Timmy Rogers
16 actually murdered Fred Engle in this case.

17 There's no competent evidence.

18 The witness that they put up --
19 the one witness who testified that -- that she had a
20 conversation, was, I think, impeached on the stand with
21 prior inconsistent statements.

22 And therefore -- And I understand
23 that that would go to weight, Your Honor.

24 But in addition to that issue --
25 uh -- it seems to me that the circumstantial evidence

1 here is so insubstantial that basically it -- it only
2 raises a mere suspicion of his guilt.

3 There is nothing -- nothing that
4 -- of a substantial nature, even in the circumstantial
5 evidence case, that shows -- or even really strongly
6 suggests that -- this man killed Fred Engle.

7 Your Honor, and -- In addition to
8 that, there's like 3 or 4 things.

9 Mr. Richardson has taken great
10 pains to try to show some connection via phone.

11 He has never established to This
12 Court that Timmy Rogers was in fact calling Sherry.

13 There is nothing to say that.

14 He's entered in a phone log.

15 But he never asked Sherry whether
16 or not that phone number belonged to her. And there is
17 no further witness to speak about it.

18 And on that basis, Your Honor, we
19 are asking This Court to direct a verdict in favor of Mr.
20 Rogers.

21 THE COURT:

22 All right.

23 MS. WILSON:

24 Thank you.

25 THE COURT:

MISCELLANEOUS MATTERS AND MOTIONS OUTSIDE JURY 303

1 In -- In -- uh -- a case of a
2 directed verdict, Ms. Wilson, the question is whether
3 there is any evidence for the -- a verdict of guilty.

4 Uh -- It's not -- It's not a
5 question of the weight of the evidence, it's whether
6 there's any evidence.

7 Also, we can look at the
8 reasonable inferences that might be drawn from the
9 evidence presented.

10 I think the State has certainly
11 crossed the threshold in this matter. And it's a matter
12 that should be submitted to the jury.

13 And that's how I'm going to rule;
14 okay.

15 MS. WILSON:

16 Thank Your Honor.

17 MR. RICHARDSON:

18 Thank Your Honor.

19 THE COURT:

20 All right.

21 Now -- uh -- Ms. Wilson, have you
22 discussed the matter of your client's testifying?

23 MS. WILSON:

24 Your Honor -- uh -- I have spoken
25 to my client. Uh -- We have debated the issue in depth.

1 And at this time, it is my
2 understanding that my client is willing to waive his
3 right to testify.

4 THE COURT:

5 All right.

6 Uh -- Madame Clerk, would you
7 place the Defendant under oath.

8 THE COURT:

9 Mr. Rogers, at this time, I'm
10 going to explain the you certain of your rights.

11 And if you don't understand
12 anything that I am going to say, I want you to let me
13 know. And I'll explain in -- uh -- perhaps a better
14 fashion.

15 Because it's important to me that
16 you understand what we're talking about.

17 Fair enough?

18 DEFENDANT ROGERS:

19 Yes sir.

20 THE COURT:

21 All right.

22 Now, we've reached the point in
23 this trial where you may present your defense.

24 And you have the right to claim
25 the protections granted to you by the Fifth Amendment of

VOIR DIRE OF DEFENDANT REGARDING HIS RIGHTS

305

1 the United States Constitution.

2 And this amendment, in part,
3 states that:

4 No person shall be compelled in
5 any criminal case to be a witness against himself.

6 This means that you cannot be
7 required to testify in this case.

8 You have the right to testify on
9 your own behalf. However, no one could make you testify.

10 And this is a personal right -- uh
11 -- one that only you can waive.

12 Your attorney cannot waive it for
13 you. Only you can waive that right.

14 If you decide to testify, you will
15 be subjected to the same rules that govern other
16 witnesses. And you may be examined and cross-examined
17 on any relevant issue in the case.

18 In addition, you have the -- if
19 you have any convictions involving dishonesty or false
20 statements or crimes -- or for crimes punishable by
21 imprisonment for more than one year and This Court
22 determines that the probative value of admitting this
23 evidence outweighs its prejudicial effect on you, the
24 Solicitor will be able to introduce your record to attack
25 your credibility -- for that purpose alone -- attack your

1 credibility.

2 If you decide -- and again, this
3 decision is your decision. And it must be freely and
4 intelligently -- uh -- and voluntarily made.

5 If you decide to testify with
6 knowledge of the protections given you by the Fifth
7 Amendment and the consequences of your decision, I want
8 you to understand that that is entirely up to you and not
9 your attorney.

10 It is your decision.

11 Although, I would advise you to
12 follow the advice of your attorney.

13 DEFENDANT ROGERS:

14 Yes sir.

15 THE COURT:

16 If you decide not to testify, I
17 will tell the jury that they cannot use your failure to
18 testify against you.

19 I will couch that admonition to
20 the jury in terms of your exercising your Fifth Amendment
21 constitutional rights.

22 I will not address it to them in a
23 -- uh -- as a failure to testify on your -- your part.

24 But I will tell the jury that they
25 cannot use -- uh -- your prevailing yourself of the

VOIR DIRE OF DEFENDANT REGARDING HIS RIGHTS

307

1 protections of the Fifth Amendment against you in any way
2 whatsoever.

3 It's left entirely up to you
4 whether you want to testify or not.

5 Now, have you talked with your
6 turn about this?

7 DEFENDANT ROGERS:

8 Yes sir.

9 THE COURT:

10 Okay.

11 And has she explained your rights
12 under the Fifth Amendment -- uh -- as well?

13 DEFENDANT ROGERS:

14 Not as well as you have; but yes
15 sir.

16 THE COURT:

17 All right.

18 Do you feel that you fully
19 understand your rights under the Fifth Amendment?

20 DEFENDANT ROGERS:

21 Yes sir.

22 THE COURT:

23 Okay.

24 Is there anything else that you
25 want to ask me?

1 Do you have any questions about
2 your rights under the Fifth Amendment?

3 DEFENDANT ROGERS:

4 Not that I can think of.

5 THE COURT:

6 All right.

7 Uh -- Do you wish to talk with
8 your attorney any further?

9 DEFENDANT ROGERS:

10 Yes, Your Honor.

11 THE COURT:

12 You want to speak to her?

13 Okay, go ahead.

14 MS. WILSON:

15 Thank Your Honor.

16 WHEREUPON: Ms. Wilson conferred
17 with her client at Defense table at 3:39 PM, on October
18 13, 2010.

19 THE COURT:

20 Are you satisfied with the advice
21 you have from your attorney?

22 DEFENDANT ROGERS:

23 Yes sir.

24 THE COURT:

25 All right.

VOIR DIRE OF DEFENDANT REGARDING HIS RIGHTS

309

1 Have you made a decision as to
2 whether or not you wish to testify in this case?

3 DEFENDANT ROGERS:

4 Yes, I have.

5 THE COURT:

6 And what is that decision?

7 DEFENDANT ROGERS:

8 I won't testify.

9 THE COURT:

10 You will not testify?

11 DEFENDANT ROGERS:

12 Correct.

13 THE COURT:

14 I want to tell you that I asked
15 you this as a primary matter. I just wanted to make --
16 uh -- sure that you understood your rights.

17 If you should change your mind
18 before the conclusion of this trial, I want you to have
19 your attorney advise me of that.

20 DEFENDANT ROGERS:

21 All right.

22 THE COURT:

23 Because I will let you testify, if
24 you decide you want to; okay?

25 DEFENDANT ROGERS:

1 Yes sir.

2 THE COURT:

3 All right.

4 Uh -- Thank you.

5 Let's bring the jury back in.

6 MS. WILSON:

7 Actually, Your Honor, if we could
8 just briefly?

9 I have one other issue. And I
10 would actually -- uh -- to some degree, seek The Court's
11 guidance on it.

12 THE COURT:

13 Okay.

14 MS. WILSON:

15 Your Honor, my position is at this
16 point that:

17 Because there's not been any
18 foundation laid for one of the States exhibits --

19 THE COURT:

20 Which one?

21 MS. WILSON:

22 Uh -- It would be the one that is
23 listing -- uh -- the phone records; supposedly the phone
24 that my client had been calling.

25 Uh -- But there was no foundation

VOIR DIRE OF DEFENDANT REGARDING HIS RIGHTS

311

1 laid as to who that number belongs to or -- or what --
2 what the significance of it is.

3 THE COURT:

4 Normally I would -- uh -- grant
5 the motion.

6 However -- uh -- the -- Ms. Engle
7 has testified -- not that that was her number -- but she
8 has testified that she received phone calls throughout
9 that evening; and has given certain specific -- or very
10 near -- times.

11 And I think from that, the jury
12 could look at the phone record. They could review her
13 testimony. And it would be a reasonable inference that
14 that's was the phone call that was being made; okay.

15 MS. WILSON:

16 Okay. Thank Your Honor.

17 THE COURT:

18 Thank you.

19 All right, let's bring the jury
20 in.

21 (WHEREUPON: The jury empanelled
22 in the case was escorted back into the courtroom at 3:42
23 PM, October 13, 2010; and was in fact present during the
24 following proceedings.)

25 THE COURT:

1 Mr. Richardson?

2 MR. RICHARDSON:

3 Yes sir.

4 Uh -- Your Honor, that would be
5 the completion of the State's case.

6 THE COURT:

7 The State rests?

8 MR. RICHARDSON:

9 And the State rests.

10 THE COURT:

11 All right. Very well.

12 Ms. Wilson, Mr. Galmore; call your
13 witness.

14 MS. WILSON:

15 Thank Your Honor.

16 At this time, Your Honor, I'd like
17 to call Ms. Debbie Paris.

18 Your Honor, if I could have The
19 Court's indulgence for one second

20 THE COURT:

21 All right.

22 Come around, Ms. Paris.

23 CLERK:

24 You want to put your purse right
25 here?

TESTIMONY OF DEBBIE JEAN PARIS

313

1 WITNESS:

2 Sure.

3 WHEREUPON: DEBBIE JEAN PARIS WAS
4 DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

5 CLERK:

6 Thank you. Please be seated.

7 Scoot up and speak into the
8 microphone. Please state your full name and spell your
9 last name.

10 WITNESS:

11 My name is Debbie Jean Paris; P-a-
12 r-i-s.

13 DIRECT EXAMINATION BY MS. WILSON:

14 Q. Hello, Ms. Paris.

15 A. Hello.

16 Q. Uh -- Ms. Paris, do you know Timmy Rogers?

17 A. Yes.

18 Q. And how do you know him?

19 A. He is my brother.

20 Q. And do you know Sherry Engle?

21 A. Yes.

22 Q. And how did you know her?

23 A. Through my brother.

24 Q. And -- And how do you first meet Sherry Engle?

25 A. She came to my house and introduced herself as my

1 sister.

2 Q. And -- uh -- what did Sherry tell you about herself?

3 A. She told me that she worked as a professional woman
4 and that she was out of town on business a lot; and that
5 she had family that lived in Breckenridge County; and so
6 she was down working with them a lot, because there were
7 some illness in the family.

8 Q. Okay. And did you see Sherry spend a lot of time
9 with Timmy Rogers?

10 A. Yes, I did.

11 Q. And did you -- Was it an inordinate amount of time?

12 A. Yes it was.

13 Q. Was there anything specific that you observed?

14 A. Uh -- She would come and visit with me; would stay a
15 few minutes after she first arrived.

16 And then shortly after, most of
17 the times, she would go in the backyard with Timmy and
18 have private time; and sat on the porch; and sit on the
19 porch swing.

20 Q. And how did you know that she would go outside and
21 do those things?

22 A. I watched her go outside of my house.

23 Q. And why were you watching her?

24 A. I -- She seemed very overly friendly and a little
25 ungentle.

TESTIMONY OF DEBBIE JEAN PARIS

315

1 Q. So did you and Sherry ever have any discussions
2 about anything of any import?

3 A. She told me:

4 Well, I guess you understand that
5 we are expecting twins.

6 Q. So she -- she talked to you about being pregnant?

7 A. Yes.

8 Q. And -- uh -- at that time did you find her story
9 believable?

10 A. No.

11 Q. And -- And what -- what about her story didn't ring
12 true to you?

13 A. She didn't react or act in a way that a pregnant
14 woman would act, or a woman expecting a child.

15 She was in the hot tub for hours.

16 And I had warned her it was quite
17 warm, because I kept it a little on the warm side for my
18 aches and pains.

19 Uh -- She was -- She was taking
20 quite a bit of medication that I witnessed in my house,
21 even need a glass of water for this and that.

22 And --

23 Q. And --

24 A. -- she talked a lot about being tired; and that she
25 was with her sister-in-law and tried to move her in and

1 out of the bed.

2 And I wondered if that might not
3 be a good idea early in her pregnancy. .

4 Q. And -- And the reason that -- I mean, you knew --
5 Exactly how is it that you came to know -- uh -- all of
6 these things?

7 Because what was it -- I'm sorry.
8 Let me rephrase.

9 Where was your brother living at
10 the time?

11 A. My brother was living with me.

12 Q. And so, because he was living with you, Sherry was
13 coming over to visit?

14 A. And he had been with me for a couple of months
15 before I had seen Sherry.

16 And then, he said that he had met
17 someone; and would it be all right if he brought her over
18 to meet me.

19 Q. Uh -- Now, did you ever hear anything else about
20 this supposed pregnancy?

21 A. I heard that, at one point, that they loss the
22 babies.

23 Q. And so, you under the impression it was twins;
24 correct?

25 A. She told me, herself, it was twins, which that was

TESTIMONY OF DEBBIE JEAN PARIS

317

1 another thing.

2 It was too early to even know if
3 you would be having twins.

4 Q. All right. Now, did you anything about Tim keeping
5 journals?

6 A. Yes. He was keeping a journal. First, he was
7 just writing on a scratch pad. And then he started
8 keeping a journal.

9 Q. Okay.

10 A. And so --

11 Q. Okay. I'm sorry. Go right ahead.

12 A. I'm sorry. And so I was just questioning him about
13 that.

14 Q. Okay. Uh -- And -- And what kind of questions did
15 you ask him?

16 A. I asked him what was he doing? And he said that he
17 was keeping a journal. So that's how I knew it was a --
18 a journal.

19 Q. Okay. Uh --

20 A. And I asked him: Why? And he said that Sherry has
21 suggested to him, it would be good idea to keep a journal
22 to work through his emotions or whatever is going on; and
23 that she would be better able to help him with that if --
24 you know -- he would write this and let this be for her
25 to read.

1 Q. Okay. Now, in effect -- in essence, would you
2 classify or characterize Sherry as a person in control in
3 that relationship?

4 A. Yes, I would.

5 Q. And would you say that -- uh -- I guess the question
6 is:

7 Did Timmy -- Did Timmy change a
8 little bit?

9 A. (No response.)

10 Q. Did his commitment to his family change after he met
11 Sherry?

12 A. Yes it did.

13 Q. And how -- how did it change?

14 A. He stayed with me for a few months after that -- I
15 think, maybe four months.

16 And then after he left, we -- I
17 didn't have any contact. There wasn't any contact.

18 And when I did attempt to call, if
19 by chance I got through, which was rarely, it was talk
20 his usual.

21 The only thing he didn't ever --
22 hadn't seen any of my phone calls that I had been making
23 to him.

24 He said that he didn't know I was
25 trying to contact him.

TESTIMONY OF DEBBIE JEAN PARIS

319

1 Q. Okay. And did Sherry encourage that split from --
2 from the family?

3 A. I felt like she did.

4 Q. Do you believe that Timmy was afraid of Sherry?

5 A. Yes I do.

6 Q. And -- And what kind of person would you say your
7 brother is?

8 A. He's a kind, gentle, compassionate, person. He has
9 the utmost respect for God and life.

10 And he is the most honest person
11 I've ever known in my life.

12 Q. Do you -- Do you believe that your brother killed
13 Fred Engle?

14 A. I know in my soul and heart that he did not do this.
15 He's not capable of this type of violence.

16 My brother Timmy did not kill Mr.
17 Engle.

18 MS. WILSON:

19 Thank you. No further questions.
20 Please answer any questions that Mr. Richardson may have.

21 THE COURT:

22 Mr. Richardson?

23 MR. RICHARDSON:

24 Just a few, Ms. Paris.

25 CROSS-EXAMINATION BY MR. RICHARDSON:

1 Q. Did you talk with -- uh -- Timmy after Fred had been
2 murdered?

3 A. No.

4 Q. No? So you haven't spoken to him since April 21st
5 of 2008?

6 A. No, I did not understand the question to be directed
7 in that manner.

8 I spoke with him after he was
9 arrested.

10 Q. You did?

11 A. Yes.

12 Q. And how did you speak to him?

13 A. I think he made a phone call to me from the jail, or
14 it was a letter -- a letter or a phone call.

15 Q. All right. So he initiated contact with you?

16 A. Yes, he did.

17 Q. Did you ever initiate any sort of contact with him?

18 A. Yes, I did.

19 Q. Uh -- And how was that?

20 A. In the form of a letter.

21 Q. Okay. You wrote to him first? Or he wrote to you
22 first?

23 A. He wrote me first.

24 Q. Okay. Approximately how long ago has that been?

25 A. Approximately in May of 2008, I believe.

TESTIMONY OF DEBBIE JEAN PARIS

321

1 Q. So after a few weeks of jail, he contacted you?

2 A. No, it was right away.

3 Q. Okay.

4 A. Uh-huh.

5 Q. And then, how long after that did you contact him?

6 A. Right away.

7 Q. All right. Did you know he had been arrested in
8 Breckenridge County?

9 A. Yes.

10 Q. Okay. And you didn't -- you didn't want to go by
11 and see him before he left Breckenridge?

12 A. I didn't know that was possible.

13 Q. Okay. So the first contact was from him to you.
14 And that was Horry County.

15 A. No, Breckenridge County.

16 Q. He contacted you when he was in Breckenridge County?

17 A. Yes.

18 Q. All right. So when you wrote him back, you wrote
19 him back in Breckenridge County?

20 A. No, at that time, then I wrote him back in, I
21 believe, Horry County.

22 Q. Do you happen to --

23 A. He contacted me on the phone. And we had a
24 conversation.

25 So the conversation; and then, my

1 mother was having a conversation later.

2 So we contacted each other often
3 through my mother.

4 Q. Okay. So he -- he called you. And you wrote him?

5 A. Yes.

6 Q. When he got back to Horry County?

7 A. Yes.

8 Q. Have you been up to visit him at the jail?

9 A. Yes.

10 Q. You have? When was that?

11 A. Uh -- I have been on 3 or 4 occasions.

12 Q. When was the first time?

13 A. Well, I'm not sure I can recall, exactly.

14 It was not much after he was
15 there.

16 Q. Okay. Now, you had said that Timmy was afraid of
17 Sherry?

18 Did he ever tell you he was afraid
19 of Sherry?

20 A. He told me that he was afraid because she had a
21 terrible temper.

22 But I witnessed her berating and
23 scolding him in my backyard on many occasions.

24 Q. So are you -- are you saying that she talked him
25 into doing this?

TESTIMONY OF DEBBIE JEAN PARIS

323

1 A. No.

2 Q. No? Well, why -- why would it matter that -- uh --
3 Timmy was scared of Sherry?

4 A. I don't know. You asked the question.

5 MS. WILSON:

6 Your Honor, that calls for
7 speculation.

8 THE COURT:

9 Well, she -- she raised it.

10 Let's hear it; okay.

11 WITNESS:

12 And you asked a question I don't
13 understand.

14 CROSS-EXAMINATION BY MR. RICHARDSON CONTINUED:

15 Q. Well, I'm -- I'm trying to follow up on what Ms.
16 Wilson asked you.

17 And you said that:

18 Timmy was afraid of Sherry.

19 A. Yes.

20 Q. Tell the jury how that's relevant?

21 I mean, why -- why would make a
22 difference being scared of her?

23 A. I don't know how it will be relevant. I just know
24 that I saw her being quite angry at him on multiple
25 occasions.

1 Q. All right.

2 A. And when I would attempt to approach, she would say:

3 We're just having a conversation.

4 Q. So she was never angry or forceful with you?

5 A. At one point she was, at the very end, before he
6 left my house.

7 Q. Okay. And tell us about that. What did she do?

8 A. She was upset because I wouldn't hug her. I had a
9 cold. And she kind of was upset about that and jerked
10 away and just kind of -- just stormed out.

11 Q. What did -- uh -- What did Timmy drive?

12 A. He drove a traffic truck.

13 Q. What color was the truck?

14 A. I am not sure. I think -- I really don't know,
15 exactly.

16 Q. Now, is this the same Timmy that lived with you?

17 A. Yes.

18 Q. Did he have the truck when he lived with you?

19 A. Yes. It was an older truck.

20 Q. How long did he live with you?

21 A. I want to say about four months.

22 Q. Could you say if it black, burgundy --

23 A. No, it was dark.

24 Q. -- or blue --

25 A. Maybe burgundy

TESTIMONY OF DEBBIE JEAN PARIS

325

1 Q. Maybe blue?

2 A. No, I would say burgundy.

3 Q. Okay. So he lived with you for a few months and
4 you think that the truck he drove may have been burgundy?

5 A. I know that the truck he drove was burgundy.

6 Q. Okay. All right, good. Did you know he had
7 painted the truck the week after the --

8 A. No sir; I did not.

9 Q. You didn't know that?

10 A. (Nods in the negative.)

11 Q. Uh -- Had he ever talked about painting that before?

12 A. I can't recall that.

13 Q. No?

14 A. I wouldn't say no.

15 Q. Okay.

16 A. He did talk about getting work done to it.

17 Q. Okay. Never said anything about painting it primer
18 color or anything like that?

19 A. I can't recall that.

20 Q. I pass you up what's been marked as State's Exhibit
21 Number 7.

22 Do you recognize that?

23 A. Yes.

24 Q. Whose truck is that?

25 A. I can't really say I recognize it. It looks like

1 the same truck. But I can't say that I do, exactly a
2 hundred percent recognize that.

3 Q. How about State's Number 18? That shows the
4 interior and the former color of the truck.

5 Does that help any?

6 A. The former of the truck; that is the former color;
7 yes.

8 Q. You think that might be the same one; or you don't
9 know?

10 A. I did not spend any time inside this vehicle at all.

11 Q. Did he park that truck at your house?

12 A. Yes, he did.

13 Q. For a few months?

14 A. Yes he did.

15 Q. Okay. Now, did you know about all the times that
16 Timmy was coming down to Myrtle Beach?

17 A. No.

18 Q. No? Did you know where Sherry lived?

19 A. Yes.

20 Q. Had he ever said anything to you about going to
21 Myrtle Beach?

22 A. Yes.

23 Q. He did? He didn't say anything about going to
24 Myrtle Beach to spend time with Sherry?

25 A. He said that Sherry was suggesting that could

TESTIMONY OF DEBBIE JEAN PARIS

327

1 happen.

2 Q. Okay. So you do know that he went to Myrtle Beach.

3 A. I don't know that he went.

4 Q. Okay. Tim ever talk to you about marrying Sherry?

5 A. Sherry talked to me about that.

6 Q. Tim never seemed interested in marrying Sherry?

7 A. Tim didn't talk to me about that.

8 Q. Tim seem fond of Sherry; or he really didn't like
9 her that much?

10 A. I think that they were having a relationship.

11 Q. Okay. But Sherry talked with you about marriage?

12 A. Yes.

13 Q. You going to be in the wedding, or anything like
14 that?

15 A. No.

16 Q. Okay. She didn't never -- She called you sister;
17 right?

18 A. Yes.

19 Q. But y'all didn't go into that much detail about
20 marriages and that sort of stuff?

21 A. It -- She wasn't -- She didn't sit and talk to me
22 really long at a time. It wasn't like that.

23 She just talked about when the
24 babies come and they would get married.

25 Q. Did you ever know Sherry's age?

1 A. She said her age was 40-something.

2 Q. Uh -- Do you know if she was -- How old was Tim at
3 the time?

4 A. He was 40.

5 Q. 40? And you think she was older, or younger, than
6 Tim?

7 A. Older.

8 Q. Approximately how much? A couple of years?

9 A. 10 years.

10 Q. So 50?

11 A. That's what I thought.

12 Q. Okay. But she was telling you, not only was she
13 having babies, but she was going to have twins?

14 A. Yes.

15 Q. And did you ever -- uh -- get in touch with anybody
16 in Breckenridge, or Louisville, or Horry County and say:

17 You know, I need to give you this
18 information:

19 Sherry -- uh -- has been
20 manipulating Tim.

21 A. No I did not.

22 Q. Okay. So today is the first time that you've told
23 anybody outside of your family about that?

24 A. No. We -- I had spoke to his attorney from the
25 beginning that --

TESTIMONY OF DEBBIE JEAN PARIS

329

1 Q. Okay.

2 A. -- when she was secured.

3 Q. Okay. And you told -- uh -- his attorney that
4 Timmy was really scared of Sherry?

5 A. Yes.

6 Q. How tall is Timmy?

7 A. I think he's six-one.

8 Q. Six-one?

9 A. I believe he's six-one.

10 Q. Would it surprise you that he lists his height as
11 six-three on his driver's license?

12 A. No, that wouldn't surprise me.

13 Q. Okay. So he's talker than six-one. Or it would
14 appear so --

15 A. Yes sir.

16 Q. -- correct?

17 A. Yes sir.

18 Q. And is Timmy bigger now or smaller than he was two
19 years ago?

20 And I'm saying in weight?

21 A. Could he stand, please.

22 MR. RICHARDSON:

23 Please.

24 (The Defendant did as requested
25 and stood up at the Defense table.)

1 WITNESS:

2 He appears the same. He may be a
3 little thinner.

4 MR. RICHARDSON:

5 Okay.

6 CROSS-EXAMINATION BY MR. RICHARDSON CONTINUED:

7 Q. Did you know Timmy's -- uh -- phone number?

8 A. I have it in my cell phone.

9 Q. You think if I gave it to you, you would recognize
10 it?

11 A. Well, you know, he's been incarcerated for over two
12 and half years. So I haven't seen that number for a
13 long time.

14 Q. You think if I gave you the number you could
15 recognize it; or no?

16 A. I couldn't definitely recognize it. I couldn't be
17 definite with you.

18 Q. Could you give us the -- uh -- area code?

19 A. 502? No wait; eight-one -- I'm sorry. It's a
20 Breckenridge County area code.

21 Q. Okay.

22 A. I have it on my phone.

23 Q. I'm not going to ask your age.

24 A. 53.

25 Q. 53? So you're older than Timmy?

TESTIMONY OF DEBBIE JEAN PARIS

331

1 A. Yes, sir, I am.

2 Q. Okay. Uh -- You know his writing?

3 A. Yes sir, I do.

4 Q. I want to show you a part of it. Does that look
5 like Timmy's writing?

6 A. I have to get my glasses.

7 Q. Yes ma'am. Sorry.

8 A. That's okay.

9 Q. And I'm handing you what has been marked as State's
10 Exhibit Number 8. See if you recognize that?

11 A. Yes; this is his writing.

12 Q. Okay. And I know that's not his signature; but does
13 that look like where he printed his name?

14 A. Yes.

15 Q. Okay. Thank you. Did you ever know of Sherry to
16 buy any clothes, jewelry, anything like that for Timmy?

17 A. She bought him clothes, sailboats.

18 Q. Sail -- What --

19 A. Toy sailboats.

20 Q. Oh. Oh, okay. Uh -- Any jewelry, watches, or
21 anything like that?

22 A. Not that I know of.

23 Q. Did -- uh -- Did you see a pair of work boots that
24 she bought for him?

25 A. I remember that she did buy him work boots.

1 Q. Okay. Do you ever remember like any -- uh -- I
2 wouldn't call it ski bibs, but like overalls -- uh --
3 camouflaged coveralls?

4 A. No I don't.

5 Q. You don't remember that?

6 A. (Nods in the negative.)

7 Q. Did you ever call Sherry?

8 A. Yes I did.

9 Q. Do you remember her number?

10 A. It's on my phone.

11 Q. Do you have your phone?

12 A. Yes I do.

13 Q. Could you pull that number up for us, please?

14 A. I can turn my phone on, please.

15 Q. Just -- Yes ma'am, for the purposes of this.

16 A. (Witness does as instructed.) Eight -- Well, sir, I
17 need my glasses. I'm sorry.

18 Q. Okay. I think they're on your head.

19 A. Thank you.

20 (Laughter erupts in the
21 courtroom.)

22 CROSS-EXAMINATION BY MR. RICHARDSON CONTINUED:

23 Q. Okay.

24 A. It's -- I'm sorry. Okay. It's [REDACTED]-6563.

25 Q. Okay.

TESTIMONY OF DEBBIE JEAN PARIS

333

1 A. Y'all I turn the phone off now?

2 Q. Yes ma'am.

3 A. Or would you like Timmy's number?

4 Q. Yeah. Go ahead and give me Timmy's, if you don't
5 mind.

6 A. Okay.

7 Q. I'm sorry. I should have asked for that earlier.

8 A. [REDACTED]-4731.

9 MR. RICHARDSON:

10 Okay.

11 And Ms. Parris, I appreciate your
12 answering my questions.

13 It wasn't too bad was it?

14 WITNESS:

15 No sir.

16 MR. RICHARDSON:

17 All right.

18 Uh -- That's all questions I have,
19 Your Honor.

20 THE COURT:

21 Ms. Wilson?

22 MS. WILSON:

23 Just a couple quick questions,
24 Your Honor.

25 REDIRECT EXAMINATION BY MS. WILSON:

1 Q. Ms. Parris, you -- I think you -- The way -- uh --
2 Mr. Richardson questioned you, you were saying that
3 Sherry never bought Timmy any jewelry.

4 But did she give him some things
5 that you know of?

6 A. She was always bringing him things. I just didn't
7 see what they were.

8 Q. Do you remember her giving him a ring?

9 A. No.

10 Q. Okay. And -- Let me see.

11 Now, I think you were also asked
12 by the State if you ever contacted the police -- uh --
13 correct?

14 A. (Nods in the affirmative.)

15 Q. But they never actually contacted you; did they?

16 A. No one contacted me.

17 Q. Nobody ever called you; right?

18 A. No one ever contacted me.

19 Q. Okay. Now, I want to -- uh -- And I'm actually
20 trying to remember.

21 Did you -- uh -- actually ever
22 have any contact with Sherry -- and I know you were
23 telling the Solicitor that -- that you did -- where --
24 where she was actually physically rough with you?

25 A. She was abrupt. Because right before she entered,

TESTIMONY OF DEBBIE JEAN PARIS

335

1 I had made a -- she said:

2 Well, tell me about the crazy
3 things going on in your life.

4 And I said:

5 Well, maybe you should tell me
6 about the crazy things going on in yours.

7 And then, she went:

8 Well, what does that mean?

9 And I said:

10 Well, I don't know.

11 Because it was starting to seem
12 all the things she had told us before were coming
13 unraveled -- you know -- at that point.

14 Then, it was getting very obvious
15 that she was married, when she had led me to believe she
16 wasn't.

17 It was becoming obvious she was
18 not employed, when she had made me believe she was.

19 Q. So --

20 A. And she just was very ungentle. And I didn't
21 really want to have much more contact; so -- especially
22 not a hug.

23 Q. All right. And -- And -- So did her age or
24 behavior -- uh -- I mean, were her age and behavior the
25 reasons that you just didn't really trust her?

1 A. I'm sorry. I didn't understand.

2 Q. Well, I guess you said that the fact that she lied
3 about her age to you --

4 A. Yes.

5 Q. -- when you're talking to Ms. Richardson; right?

6 A. (Nods in the affirmative.)

7 Q. Her -- The fact that you believed that she was older
8 than she said, and the other behaviors that she had that
9 you had an issue with, those are the reasons you didn't
10 trust her; correct?

11 A. Yes.

12 Q. That you found her untrustworthy?

13 A. Yes.

14 MS. WILSON:

15 All right.

16 No further questions, Your Honor.

17 Thank you.

18 THE COURT:

19 All right.

20 Ms. Paris, you may step down.

21 WITNESS:

22 Thank you.

23 THE COURT:

24 Any further need for Ms. Parris --

25 MR. RICHARDSON:

TESTIMONY OF DEBBIE JEAN PARIS

337

1 No sir.

2 THE COURT:

3 -- in this trial? Ms. Wilson, do
4 you need her further?

5 MS. WILSON:

6 Uh -- Nothing else, Your Honor.

7 Thank you.

8 THE COURT:

9 All right.

10 Ms. Paris, You are released from
11 your subpoena. Thank you for coming.

12 WITNESS:

13 I can join the room?

14 THE COURT:

15 Yes ma'am.

16 WITNESS:

17 Thank you.

18 THE COURT:

19 Ms. Wilson, next witness?

20 MS. WILSON:

21 All right.

22 Your Honor, if I could have The
23 Court's indulgence for one quick second.

24 THE COURT:

25 Sure.

1 MS. WILSON:

2 Your Honor, at this time the
3 Defense would rest.

4 THE COURT:

5 Very well.

6 Ladies and gentlemen of the jury,
7 the testimony in this case has now been concluded.

8 It's -- uh -- uh -- a little after
9 four o'clock.

10 Uh -- My options would be to hold
11 you here -- uh -- have final arguments and charge on the
12 law, and let you begin your deliberations.

13 And I certainly don't want to do
14 that.

15 Uh -- What I'm going to do is let
16 you go home early -- uh -- ask you to come back in the
17 morning -- uh -- at same time, about 9:30.

18 At that time, I will have these
19 attorneys prepared to give you a closing argument. And
20 then, I will charge on the law. And I will submit the
21 case to you for your deliberation.

22 I would ask you again, as I have
23 this week -- uh -- not to -- uh -- read any newspaper
24 accounts, media reports -- uh -- anything of that nature
25 about this case.

STATE V TIMOTHY ROGERS

339

1 You are to decide this case solely
2 from the evidence that's been presented in this
3 courtroom. And I trust that that is what you will do.

4 I hope you have a pleasant
5 evening. I look forward to seeing you in the morning.

6 Thank you.

7 Mr. Roth, if you would.

8 BAILIFF:

9 Yes sir.

10 THE COURT:

11 Mr. Roth, are you going to have
12 donuts, or -- or biscuits for them in the morning?

13 (Laughter erupts in the
14 courtroom.)

15 DEPUTY:

16 What would you like, Your Honor.

17 THE COURT:

18 Let -- Let's ask the -- the -- uh

19 --

20 DEPUTY:

21 Both?

22 THE COURT:

23 -- Foreperson what her jury wants?

24 FOREPERSON:

25 Those donuts again? They're

1 shaking their head.

2 THE COURT:

3 I think they like the Bojangle's
4 biscuits; okay.

5 BAILIFF:

6 Yes sir.

7 BAILIFF:

8 Mr. Roth will take care of that
9 for you.

10 FOREPERSON:

11 Thank you.

12 (WHEREUPON: The jury empanelled
13 in the case withdrew from the courtroom at 4:12 PM,
14 October 13, 2010; and was no longer present during the
15 following proceedings.)

16 THE COURT:

17 All right, ladies and gentlemen --
18 uh -- Claire tells me that she has already given you --
19 uh -- a copy of a -- a charge that I proposed.

20 This case is probably going to
21 involve a very simple charge.

22 I have asked her -- uh -- I had a
23 chance to review it. I've asked her to remove the --
24 the charge on -- uh -- a Defendant's statement.

25 Because, although I anticipated

1 there being testimony concerning a -- a the Defendant's
2 statement, there was none.

3 " So that did not come in.

4 Uh -- I am going to give the
5 typical charges that are in there:

6 Circumstantial.

7 Direct evidence.

8 Expert witnesses.

9 My murder charge includes a -- uh
10 -- a -- uh -- an explanation of -- uh -- malice.

11 Uh -- I'm going to give a charge
12 on the presumption of innocence.

13 A charge on the -- uh -- burden of
14 proof.

15 Uh -- And then a -- just a general
16 charge -- uh -- or introductory charge.

17 Is there anything specific that
18 you want added to those charges?

19 I ask you that because you know
20 it's my practice to provide the jury with a written
21 transcript of my charge.

22 And I would like to have that
23 prepared -- uh -- before -- uh -- we get started in the
24 morning.

25 MR. RICHARDSON:

1 Your Honor -- and I am fine with
2 it.

3 But Mr. Galmore and Ms. Wilson
4 just pointed out:

5 In their copy, and in mine, on
6 Page 3, it says:

7 The indictments charge the
8 Defendant with murder and three counts of assault and
9 battery with intent with intent --

10 THE COURT:

11 That was probably carried over
12 from another trial.

13 MR. RICHARDSON:

14 Yeah.

15 THE COURT:

16 We're going to take that right
17 out.

18 MR. RICHARDSON:

19 That's the only --

20 THE COURT:

21 No problem with that.

22 All right, Ms. Wilson, anything
23 else you want to add to it?

24 It's a very simple charge. I
25 think the jury can follow it.

1 MS. WILSON:

2 Yes sir.

3 THE COURT:

4 But I believe we've covered what
5 we need here.

6 MS. WILSON:

7 We're in agreement with the
8 charge, Your Honor.

9 THE COURT:

10 All right.

11 I don't think there is any
12 evidence of a lesser included offense; nothing that would
13 justify my charging voluntary manslaughter.

14 Uh -- This is a:

15 He did it or he didn't -- uh --
16 case.

17 That -- That's it.

18 Uh -- So I'm not going to charge
19 lesser included.

20 Anything further, Mr. Richardson?

21 MR. RICHARDSON:

22 No sir.

23 THE COURT:

24 You'll be prepared to charge -- uh
25 -- to argue tomorrow; okay?

1 MR. RICHARDSON:

2 Yes sir.

3 THE COURT:

4 Are you going to do the first
5 argument; or you going to waive?

6 MR. RICHARDSON:

7 I'll -- I'll do both at the same
8 time, if it's all right.

9 THE COURT:

10 All right.

11 Uh -- So you'll take the last
12 argument?

13 MR. RICHARDSON:

14 Yes sir.

15 THE COURT:

16 Okay.

17 Ms. Wilson?

18 MS. WILSON:

19 Your Honor, very briefly:

20 I would just like to renew my --
21 uh -- motion for a directed verdict at this time.

22 THE COURT:

23 All right.

24 MS. WILSON:

25 And -- uh -- I believe that, other

STATE V TIMOTHY ROGERS

345

1 than that, Your Honor, I'll be ready to go tomorrow.

2 THE COURT:

3 Okay.

4 And -- uh -- for the reasons
5 previously stated, I would -- uh -- respectfully deny
6 your motion for a directed fighting.

7 Look forward to seeing you in the
8 morning; 9:30.

9 MS. WILSON:

10 Thank Your Honor.

11 MR. RICHARDSON:

12 Thank Your Honor.

13 THE COURT:

14 Okay.

15 Mr. Richardson.

16 MR. RICHARDSON:

17 Yes sir.

18 THE COURT:

19 This is a murder case.

20 Uh -- Inform your office that:

21 While this jury deliberates, I
22 will not begin another trial until we get --

23 MR. RICHARDSON:

24 Yes sir.

25 THE COURT:

1 I don't want to have to start
2 interrupting trials with juries coming out and asking
3 questions; okay.

4 MR. RICHARDSON:

5 Yes sir. Thank you.

6 THE COURT:

7 All right. Thank you.

8 (WHEREUPON: The court was
9 declared in recess at 4:13 PM, October 13, 2010.)

10 (WHEREUPON: The court was called
11 to order by the Bailiff at 9:41 AM, October 14, 2010; and
12 all pertinent parties, along with their counsel, were
13 back and present in the courtroom.)

14 DEPUTY:

15 Order in the court. All Rise.

16 THE COURT:

17 Good morning everyone. Thank you.

18 Please be seated.

19 It's good to see you all.

20 All right.

21 Mr. Richardson, Mr. Galmore, Ms.

22 Wilson:

23 Anything we need to take up before

24 I bring the jury in and let --

25 WHEREUPON: A cell phone disturbed

1 the courtroom.

2 MR. RICHARDSON:

3 Something's messed up.

4 (Laughter erupts in the
5 courtroom.)

6 THE COURT:

7 It sure is.

8 (Laughter again erupts in the
9 courtroom.)

10 THE COURT:

11 There you go. All right.

12 It's a good thing you're not in Judge John's courtroom.

13 (Laughter again erupts in the
14 courtroom.)

15 THE COURT:

16 Okay.

17 Uh -- I have copies of the -- uh
18 -- charge for you.

19 Uh -- I don't think we've changed
20 anything, other than I wanted to make sure that -- uh --
21 if you look at Page 13, that I complied with The Court's
22 rules -- uh -- and the case law on the failure of the
23 Defendant to testify.

24 The Court does not look favorably
25 on the judge using that phrase "failure to testify."

1 So I changed that topic to:

2 Defendant exercises his
3 constitutional right to remain silent.

4 The theory is that it gives -- It
5 may cause some burden-shifting in the minds of the -- uh
6 -- jurors.

7 I want to make sure that they
8 understand that he is exercising a constitutional right
9 by not testifying.

10 Other than that, I think it's just
11 what I gave you yesterday.

12 Uh -- Again, anything -- uh -- you
13 thing you want me to add to this charge, or delete from
14 this charge -- I think yesterday you told me that you
15 were satisfied with the charge.

16 But I want to make sure -- uh --
17 before we get started. Because I do want to give this
18 jury a copy -- or transcript of the charge.

19 THE COURT:

20 You okay, Mr. Richardson?

21 MR. RICHARDSON:

22 Yes, sir, Your Honor.

23 THE COURT:

24 Ms. -- uh -- Wilson and Mr.
25 Galmore?

1 MS. WILSON:

2 Yes sir. We're fine.

3 THE COURT:

4 All right.

5 Are we ready to argue, Mr.

6 Richardson, Ms. Wilson --

7 MS. WILSON:

8 Yes sir.

9 THE COURT:

10 -- Mr. Galmore?

11 THE COURT:

12 Okay.

13 MR. RICHARDSON:

14 Yes sir.

15 THE COURT:

16 All right.

17 And who will argue for the

18 Defense?

19 MS. WILSON:

20 I will, Your Honor.

21 THE COURT:

22 All right. You will begin.

23 MS. WILSON:

24 Yes sir.

25 THE COURT:

1 Okay.

2 If you would -- uh -- bring in the
3 jury.

4 (WHEREUPON: The jury empanelled
5 in the case was escorted back into the courtroom at 9:44
6 AM, October 14, 2010; and was in fact present during the
7 following proceedings.)

8 THE COURT:

9 Good morning Madam Forelady and --
10 uh -- members of the jury panel.

11 FOREPERSON:

12 Good morning.

13 THE COURT:

14 It's good to see you all back
15 here. Hope you had a nice restful evening.

16 As I advised you yesterday, the
17 evidence in this case is now closed.

18 And this morning we're going to
19 hear closing arguments from the attorneys. And that will
20 be followed by my instruction to you -- uh -- on -- uh --
21 the law.

22 Uh -- Let me tell you that I do
23 something that -- uh -- is a little different from most
24 judges.

25 I provide you with a transcript --

CLOSING ARGUMENTS OF COUNSEL

351

1 a written transcript of the charge that I have prepared
2 on the law.

3 Uh -- I give you that so that you
4 can refer to it during your deliberations. Because
5 sometimes the law is very complex. And we cannot expect
6 you -- or I cannot expect you, as laypersons, to remember
7 everything that I tell you -- uh -- about the law in this
8 case.

9 But please remember that you must
10 be guided by the law as I give it to you -- uh -- in my
11 charge.

12 And I will further advise you that
13 as you look at the transcript of the -- uh -- the charge,
14 that you not focus solely on any particular part; but
15 that you take the law as a whole. And you look at the
16 entire charge in -- uh -- your deliberations.

17 All right.

18 Ms. Wilson, you will argue, I
19 believe.

20 MS. WILSON:

21 Thank Your Honor.

22 THE COURT:

23 You may.

24 MS. WILSON:

25 Good morning, ladies and gentlemen

1 of the jury.

2 JURORS:

3 Good morning.

4 MS. WILSON:

5 I asked you at the very beginning
6 of this case to keep three things foremost in your mind.

7 I asked you to remember that Timmy
8 Rogers is innocent unless and until the State could prove
9 that he was guilty beyond a reasonable doubt.

10 Now ladies and gentlemen, a burden
11 is defined as a heavy load. And the load for the State
12 is heavy for a reason.

13 Timmy Rogers, by his very presence
14 in this courtroom, is telling you that he is innocent of
15 this crime.

16 By his presence here, he's saying:

17 I am innocent of this crime.

18 Now the State has to prove to you
19 beyond a hesitation; beyond -- beyond a concern; that he
20 committed a crime in this case.

21 And I submit to you that they have
22 not done that.

23 They have not done that.

24 Now, it's not enough for the State
25 to offer you conjecture; to offer you supposition about

CLOSING ARGUMENTS OF COUNSEL

353

1 what may have happened here.

2 It is not enough for the State to
3 -- to -- to tell you that they've done their job the best
4 that they can.

5 If their best is not good enough,
6 then you have to find that Timmy Rogers is innocent.

7 And I'm telling you that their
8 best has not been good enough.

9 Now they have not met the burden
10 of proving that he committed this crime.

11 Let's review just what it is that
12 they have told you.

13 Now, the State has told you that:

14 They've got an AT&T Billing
15 Manager who has a record of the calls. And who says
16 that:

17 Yes; Timmy Rogers used his phone
18 in the month of April.

19 Used the phone in April.

20 He didn't tell you that someone
21 was -- committed this crime. He couldn't tell you who
22 it was that committed this crime.

23 He just told you that:

24 Tim Rogers used his phone in
25 April.

1 Then, he put up phone records;
2 phone records that show that calls were made.

3 It doesn't tell you who committed
4 this crime.

5 Then, the State offered up a cell
6 phone tower expert from a phone company.

7 He told you how cell phone tower's
8 work.

9 He told you that he couldn't place
10 anyone at a specific location based on those records.

11 And he couldn't tell you who
12 committed the crime in this case; couldn't tell you.

13 Now, the State also showed you
14 pictures. Showed you pictures of -- of Timmy Rodgers and
15 Sherry Engle, in this case. Lots and lots of pictures of
16 them apparently eating pie.

17 They showed you pictures of Timmy
18 Rogers eating pie.

19 None of these pictures show you
20 who committed this crime.

21 None of these pictures show you
22 the murder of Fred Engle.

23 None of these pictures can say who
24 committed the crime of murdering Fred Engle. And it
25 certainly doesn't say that Timmy Rogers did it.

CLOSING ARGUMENTS OF COUNSEL

355

1 They even brought in Heather
2 Brummett; the nice lady from -- from the Crime Scene
3 Investigation Lab, who came in; spoke about her job and
4 what she does.

5 She collects evidence.

6 And what did Heather tell us?

7 Heather sat there and told us that
8 she was very thorough in doing the job that she did.

9 She was extremely thorough.

10 She collected the evidence.

11 She bagged evidence.

12 She tagged all the evidence.

13 And she sent all that -- She
14 stored it.

15 I don't even want to test that
16 stuff.

17 She stored it.

18 She kept that evidence safe.

19 Every single thing that she could
20 possibly collect in this case, she collected.

21 Every single thing that she could
22 possibly collect, she stored it and kept it safe until
23 she drove to the South Carolina Law Enforcement Division.

24 She drove it to SLED.

25 And ladies and gentlemen, that is

1 significant.

2 Because land is the place in this
3 case for testing evidence.

4 It is the police to test DNA.

5 It is the place for every single
6 county in the state.

7 It is the place for every single
8 officer in the state to send evidence for testing.

9 Every single county in the state.

10 Every single officer in the state
11 sends their evidence there.

12 That is huge.

13 Because it means that she did what
14 all other counties in all other officer do. She sent the
15 evidence there.

16 And every single piece of that
17 evidence came back not matching Timmy Rogers.

18 Not one shred.

19 Not one piece.

20 Not one iota.

21 Not one iota.

22 And DNA evidence is important.

23 And it's important because DNA is
24 everywhere. It is transferred as easily as me shaking
25 someone's hand. There is a transfer of DNA.

CLOSING ARGUMENTS OF COUNSEL

357

1 I dare say we could bring Heather
2 Brummett back in here right now and have her go back to
3 the juryroom and test every single chair in that
4 juryroom; and tell each and every one of you where you
5 sat.

6 DNA is real.

7 DNA is the impartial third party
8 that will tell you what or who was there.

9 And none of it matches him.

10 Not one piece.

11 But you didn't get to hear any of
12 that information. And we're going to come back to that.

13 We're going to come back to that
14 in a second.

15 Now, Heather told us also that:

16 None of that evidence was tampered
17 with.

18 None of it was altered.

19 None of it was stolen.

20 None of it was taken away.

21 She says it. She watched over it.

22 And it came back not Timmy.

23 Now certainly, you would expect to
24 hear something about that.

25 You would expect that:

1 If the State had something solid
2 to show that Timmy Rogers was there, they would've
3 presented it.

4 And I'm submitting to you right
5 now that:

6 The very fact that you didn't hear
7 it; the very fact that it was not presented;; suggests to
8 you that it didn't help them.

9 And the reason it doesn't help
10 them is because it was not what we know.

11 That's why you didn't hear it.

12 And -- And it's -- Frankly, it's a
13 direct contradiction of what Sherry Engle got on the
14 stand and told you.

15 She told you that Tim claimed he
16 was covered in blood. Just covered in it. That -- That
17 it was in his car. And it was on him.

18 Not one bit matches Tim Rogers.

19 Not one piece. Nothing.

20 Now, this blood that Sherry Engle
21 claimed that Tim told her he was covered in, was not
22 found in the truck.

23 There was no match there.

24 It -- It wasn't a match to Fred
25 Engle either, which is significant.

CLOSING ARGUMENTS OF COUNSEL

359

1 Because certainly, this was
2 supposed to have been a crime of violence. Someone was
3 strangled with a string. With a ligature, as -- as Dr.
4 Proctor called it.

5 Not shot from a distance.

6 Not -- you know -- drugged.

7 This -- This -- This was an up
8 close crime.

9 And when you're that close to
10 somebody, there should be something being transferred
11 between two people. Something that is going to rub off,
12 or -- or rub on.

13 But in this case, there's no DNA
14 there. There's no DNA between the two of them.

15 I'm telling you that:

16 There's no DNA because it didn't
17 happen the way that Sherry is saying it. And it didn't
18 happen that Timmy was the one who committed this crime.

19 That's what that means, ladies and
20 gentleman.

21 That is what it means.

22 Now lots of evidence.

23 And I -- And I told you it would
24 be.

25 Lots of information, rather.

1 Pictures that Dr. Proctor showed.

2 Pictures that don't tell you who
3 killed Fred Engle. They don't tell you that.

4 Pictures that Heather showed you
5 from the crime scene. Blood evidence. DNA.

6 That's DNA right there, ladies and
7 gentlemen (indicating).

8 Doesn't tell who killed Fred
9 Engle.

10 But what it does tell you is that:
11 It wasn't him. (Pointing to the
12 Defendant.)

13 You got a phone records.

14 I have phone records.

15 Didn't kill anybody, but I got
16 phone records.

17 But what these phone records don't
18 tell you is that he committed a crime.

19 It doesn't tell who committed the
20 crime.

21 And it doesn't even tell you the
22 substance of conversation. It just tells you that people
23 talk.

24 No crime here.

25 And again, the infamous ligature.

CLOSING ARGUMENTS OF COUNSEL

361

1 The infamous shoestring that, I
2 told you at the outset of the trial, wouldn't tell you
3 anything more than what you see right here.
4 And it still hasn't told you
5 anything else.
6 It still has not told you who used
7 it. Who wielded it; or why.
8 It has not told you another piece
9 of information.
10 Not one piece.
11 Contents of Sherry Engle's purse.
12 Doesn't tell you who committed
13 this crime.
14 Doesn't tell you anything
15 actually.
16 It's -- The contents of my purse
17 wouldn't tell you anything either. Because it's not
18 significant.
19 It means nothing.
20 It tells you nothing.
21 And it certainly doesn't certainly
22 doesn't indicate -- implicate Timmy Rogers.
23 Timmy's journal.
24 It's not going to tell you
25 anything either.

1 They were in a relationship.
2 He thought he was in love with
3 this lady.
4 He thought this lady was in love
5 with him.
6 Not going to tell you that he
7 killed Fred Engle.
8 Not going to tell you who
9 committed the crime.
10 Not going to tell you who even
11 knew anything about it.
12 It's not going to tell you those
13 things.
14 Then you've got this -- this map
15 from the cell -- of the cell phone towers.
16 Again, this map, or location of
17 the towers, doesn't tell you a single thing about who
18 committed this crime.
19 What it tells you is that:
20 There are cell phone towers all
21 over the county.
22 What it tells you is that:
23 Cell phone towers are there to
24 receive transmissions from phones.
25 And that's all it can tell you.

CLOSING ARGUMENTS OF COUNSEL

363

1 The experts who came in from the
2 company, he was an expert on cell phone tower
3 engineering; told you very specifically:
4 Can't place someone in a
5 particular location using this information.
6 Cannot do it.
7 What does that do for you?
8 Tells you nothing about whether or
9 not he did this crime.
10 And in fact, he didn't.
11 And the reason that none of this
12 information -- none this information -- and I want to
13 make a little pile here so you can just see it.
14 None of this information points to
15 him.
16 None of it.
17 Not one piece of that says:
18 He's the person who did this.
19 Now, the second thing that I asked
20 you to keep in mind was quality versus quantity; okay.
21 Witnesses on the stand.
22 Pictures.
23 Contents of a purse.
24 A phone record.
25 All of these things presented for

1 your perusal; for your reading; for your viewing.

2 And what do they say?

3 They can't tell you anything.

4 They haven't told you anything
5 since this case started. And it's still not telling you
6 anything now that this case is almost over.

7 There's nothing there.

8 And there's nothing there because
9 that man over there, Timmy Rogers, is innocent.

10 He's innocent of this crime.

11 Lots of information does not mean
12 quality information.

13 Lots of something, doesn't mean
14 good quality of something.

15 And I want you to focus on that,
16 and remember that. Because the information you've got
17 here may seem to be of some quantity.

18 But I am telling you, it's not of
19 good quality. And that is important in this case.

20 Quality is important.

21 Because the State has a burden to
22 prove. And, if they've not met that burden, you have got
23 to cut this man loose.

24 You've got to let him go. You've
25 got to let him go.

CLOSING ARGUMENTS OF COUNSEL

365

1 Now, the bottom line is that:
2 Not even one person they put up
3 testified that they knew who committed this crime.
4 Not Ms. Maluda.
5 Not Heather Brummett.
6 Not Dr. Proctor.
7 Not -- uh -- the AT&T rep. I
8 believe his name was Mr. Freeman.
9 Uh -- Not the girl from the hotel
10 -- uh -- who kept the records -- uh -- Ms. Green.
11 Not one person.
12 Sherry got up here and couldn't
13 tell you that Timmy Rogers actually killed anyone.
14 She couldn't tell you who
15 committed the crime.
16 And I submit to you:
17 She didn't want to tell you who
18 committed the crime.
19 Now, the third thing I asked you
20 to do was to:
21 Listen to all of this evidence
22 with a critical ear. A critical ear, and an active mind.
23 And the reason I asked you to do
24 that is because I knew what Sherry Engle was going to do
25 in this courtroom.

1 Because she's done it consistently
2 from the very first time that she even met Fred Engle.

3 She did what she always does.

4 And she did what she does best.

5 And she lied.

6 She lied when she met him.

7 She lied to Timmy Rogers when she
8 met him.

9 She lied to the police.

10 She left her neighbors.

11 I don't know if you remember Mr.

12 Richardson getting on the stand, talking about how she
13 ran to his door, beating and knocking on it in the middle
14 of the night.

15 That's a show.

16 That's a put on.

17 That behavior was a lie.

18 Sherry Engle sat here and told you
19 lies.

20 She lied about every single thing
21 that happened in this case.

22 She's lied on someone, a young
23 neighborhood boy, because it suited her purposes to do
24 so.

25 Did it protect her?

CLOSING ARGUMENTS OF COUNSEL

367

1 Absolutely.

2 Is she about protecting herself?

3 Absolutely.

4 This woman had an agenda when she
5 came into this courtroom.

6 Her -- Her agenda was about what
7 it always was about; lying and manipulation.

8 And instead of, this time, trying
9 to manipulate the police, or trying to manipulate Mr.
10 Engle, or trying to manipulate Timmy Rogers, or his
11 family, or trying to manipulate her neighbors, or even
12 her own family; she was trying to manipulate this court
13 by coming in here, telling a story, and -- and glancing
14 balefully over at Timmy Rogers.

15 A put on.

16 It was all a show.

17 A show designed to do one thing;
18 and that was:

19 Influence and manipulate this
20 court.

21 That's all it was for.

22 She lied sitting in this chair,
23 even in your own hearing.

24 You heard her.

25 You heard her tell one story to

1 the State. And then tell me something completely
2 different.

3 You heard her contradict herself
4 30 seconds -- from a statement she made 30 seconds
5 earlier.

6 You heard these things with your
7 own ears.

8 You know, as I said here, that
9 this woman is not credible.

10 Not credible means not
11 unbelievable.

12 Not believable means that this man
13 is not guilty.

14 That's what it means.

15 Now, she lied to everyone in the
16 case.

17 And -- And -- Well, we've covered
18 this.

19 But I -- I think it bears covering
20 some more.

21 Because she told so many stories
22 in this case to so many different people that she
23 couldn't even keep them all straight.

24 She tried to tried to claim that I
25 was causing her to be confused. But in truth -- and I

CLOSING ARGUMENTS OF COUNSEL

369

1 think everyone here understands it -- this woman can't
2 keep her lies straight.

3 And that's the nature of a lie.

4 You make up so many, you can't
5 follow through on which one you last told.

6 You can't remember.

7 You don't know what you -- you
8 last said.

9 That's why she doesn't know what
10 happened in this case.

11 That's why you can't believe a
12 word she's saying.

13 You can't believe her.

14 Her testimony is virtually null --
15 it is null and void, ladies and gentlemen.

16 There is nothing she said that he
17 be counted on or trusted.

18 If it's not trustworthy, it's not
19 credible.

20 Not credible, not guilty.

21 Now certainly I think it has
22 become clear that Sherry will change her stories to fit
23 her needs; all right.

24 She changes her stories because it
25 suits her to do so.

1 This is not a complex situation.

2 I mean, certainly, you -- uh --
3 probably see that kind of thing a lot with -- with small
4 children

5 It's a basic response.

6 You're in -- in trouble. You're
7 in danger. Cover yourself. Protect yourself.

8 And I'm telling you that:

9 That's what she's still doing in
10 here today.

11 Because, regardless of what she
12 tells you, and what she has said up here, which we have
13 already determined is not credible, or believable, or
14 truthful -- Regardless of what she says up there, you
15 know that she's got a proffer agreement.

16 The -- The Solicitor asked her
17 about it.

18 You know that she has an agreement
19 with the State.

20 And while she may not have an
21 actual sentence waiting on her, she is expecting to
22 benefit.

23 This woman is expecting a deal.

24 She is expecting to gain something
25 by doing what she did in this courtroom.

CLOSING ARGUMENTS OF COUNSEL

371

1 And I promise you that I -- and I
2 firmly believe it -- that:

3 If she wasn't being offered
4 something; if there was no possibility of gain for her at
5 the end of the day, she would not have been her telling
6 the stories and the lies that she's telling.

7 She wouldn't have been here.

8 Now, I think most telling is that:

9 The State -- the Solicitor even
10 told you what was going to happen.

11 The Solicitor told you that she
12 was going to minimize it.

13 And -- And I think that it's clear
14 in this point -- at this point -- that minimizing
15 basically means lying; okay.

16 It's clear that he knew she was
17 going to get up there, and she was going to try to make
18 herself look better.

19 She's going to try to earn that
20 deal that she is trying to get for herself.

21 It's clear that that's what he
22 expected her to do.

23 And I think that after her
24 testimony, it's clear that that's what she did.

25 They told you she was going to do

1 it. And she did do it.

2 But I'm going to submit to you
3 that:

4 The State, not -- that Sherry
5 Engle is not the only one that's minimizing.

6 I'm going to tell you that the
7 State minimized as well.

8 The State could have put up a lot
9 of information. But they didn't do it.

10 They didn't put him up.

11 Sitting at the very table with the
12 Solicitor is the lead investigator in this case.

13 But you didn't hear from any
14 police officer connected to this case.

15 Not one.

16 And I'm telling you that:

17 There's a reason that you didn't
18 hear from this investigator.

19 Because his testimony would not
20 have furthered the State's case.

21 You didn't hear from him because
22 he couldn't say that Timmy Rogers committed a crime.

23 Matter of fact, he can't tell you
24 who committed the crime.

25 He can't tell you.

1 The only person who can you who
2 committed the crime is Sherry Engle; and that's because
3 Sherry has said she committed the crime.

4 So she's made an admission.

5 That's the only thing that the
6 police in this case can tell you.

7 But they never put him on the
8 stand. Never put him on the stand.

9 And I believe there's another
10 investigator who assisted him.

11 Never on the stand.

12 Now, Heather Brummett, which we've
13 talked about briefly just a second ago, Heather is the
14 only person who can even claim a connection with a police
15 officer in this case who actually took the stand.

16 And she is not a police officer, I
17 don't believe.

18 I believe that her title is Crime
19 Scene Investigator.

20 She is the only person who can
21 claim a connection with the police department who spoke
22 to you -- to this court -- from that witness box.

23 And her testimony, very clearly,
24 is that:

25 Lots of evidence was sent to the

1 South Carolina Law Enforcement Division for analysis.

2 Lots of evidence.

3 Specifically, I remember asking
4 her about swabs.

5 Swabs from the crime scene.

6 Swabs of blood from the pavement.

7 She even swabbed the -- the pot --
8 the potted plants that were out there.

9 That's a testament to just how
10 thorough and how well Heather Brummett does her job.

11 It's a testament.

12 She's good at what she does.

13 She's good at it.

14 And she told you that:

15 None of it came back matching

16 Timmy Rogers.

17 Nothing could connect him to this
18 crime.

19 Now, she also told us she couldn't
20 say who did this crime.

21 She doesn't know.

22 She wasn't there.

23 She wasn't a witness.

24 She's got no information about it.

25 But what she does know:

CLOSING ARGUMENTS OF COUNSEL

375

1 Couldn't have been him.

2 Now, she sent boxes of evidence --
3 boxes of evidence -- to the Horry -- to the South
4 Carolina Law enforcement Division, or, again, SLED.

5 Boxes.

6 Yet this is what you're seeing.

7 This pile is what you're seeing.

8 And I'm telling you that:

9 The reason you're not seeing it;
10 the reason you're not seeing all the -- the boxes of
11 things that were collected in this case -- and again, I
12 will remind you of just how thorough Heather said that
13 they were in collecting information and items from the
14 crime scene and -- and in this case in general.

15 As thorough as she was, this is
16 all you're seeing.

17 Why would that be?

18 And again, this is where the
19 critical and active thinking part comes in.

20 Because what it means, ladies and
21 gentlemen, is that:

22 That information from those boxes
23 don't implicate Timmy Rogers.

24 If they implicated him;

25 If they could say he was there;

1 If they could point him out on
2 scene;
3 They would do it in a heartbeat.
4 But they can't do it.
5 They cannot do it.
6 There is nothing there.
7 That's -- That's virtually the
8 theme of this case:
9 There's nothing there.
10 Nothing there for you to see.
11 Nothing there for you to consider.
12 Because:
13 There's nothing there.
14 There is nothing there.
15 Nothing in this.
16 Nothing in that information there.
17 Nothing that connects him to this
18 crime.
19 Now, I -- I have to bring up this
20 point, because I think it's a logical one. And
21 certainly, it needs discussing.
22 Sherry Engle wants this court to
23 believe that Timmy Rogers would come down here, check
24 into a hotel, give his identifying information; a
25 driver's license picture.

CLOSING ARGUMENTS OF COUNSEL

377

1 Say:
2 It's me.
3 I'm here.
4 I'm in the state.
5 I'm in the county.
6 And then, go kill someone; go
7 commit a crime.
8 Then -- So the police can follow
9 the paper trail, and pick him up just like that.
10 It defies logic.
11 It defies comprehension.
12 And then -- then after -- after
13 the crime is done and committed, you don't try to get
14 away?
15 You stick around for some days?
16 Because this folio from Value
17 Place tells you that he checked out. But not for days.
18 I believe it might have even been
19 like four or five days later.
20 Not logical.
21 Doesn't make sense.
22 And the reason it doesn't make
23 sense is because it's not true.
24 It -- Sherry is not believable.
25 It doesn't make sense.

1 And if it doesn't make sense, it's
2 not making sense because what they're telling you isn't
3 right.

4 What they want you to believe
5 isn't right.

6 Timmy Rogers is innocent of the
7 crime.

8 That's what it means.

9 Now, ladies and gentlemen, the
10 bottom line here is that:

11 You know, it's -- it's not a crime
12 to speak on your phone; okay.

13 It's not a crime to talk to
14 people.

15 It's not.

16 It's not even a crime to talk to
17 people a lot.

18 It's not a crime to own a Chevy.

19 Oh, you're going to have to put
20 him to the Chevy S-10.

21 That is not a crime.

22 It's not a crime to eat pie.

23 Those are not crimes,
24 individually.

25 And even if you take them as a

CLOSING ARGUMENTS OF COUNSEL

379

1 whole, they are not crimes.

2 And they certainly, as a whole,
3 don't have it up to a murder.

4 It's the State's job here to prove
5 to you beyond a reasonable doubt;

6 Beyond that heavy burden;
7 Beyond that load that they carry;
8 That Timmy Rogers is guilty of
9 something.

10 But I'm telling you that they
11 haven't done it.

12 And I believe that when you review
13 the evidence; when you're deliberating, you will
14 recognize that they haven't done it.

15 You heard the testimony.

16 You've heard from the State's
17 witnesses.

18 You have seen all that they wanted
19 you to see.

20 And by understanding that there
21 things that you didn't see, and there are people, like
22 Detective, here, that you didn't hear from, you'll
23 understand that nothing in this case leads you to Timmy
24 Rogers.

25 There's nothing that leads you

1 there.

2 Nothing.

3 There's nothing there.

4 They have a burden. And they
5 haven't made it.

6 Now, it's not your job to fix, or
7 hold up the weak and broken down side of the State's
8 case.

9 That's not your job.

10 It's not your job to fix a
11 situation for the State that they create for themselves.

12 It's not your job to figure out a
13 way to try to help the State.

14 This case is about what has been
15 submitted to you.

16 This case is about what you saw
17 and what you heard.

18 And it -- You haven't heard much.
19 You haven't seen much that's of
20 any consequence.

21 If you don't find that the State's
22 evidence is credible, you have to find that Timmy Rogers
23 is innocent.

24 If you don't find that the
25 witnesses were of any substantial nature, that you --

CLOSING ARGUMENTS OF COUNSEL

381

1 that you -- you think that it -- it -- it proves
2 something to you beyond a reasonable doubt -- beyond a
3 hesitation -- you have to find that Timmy Rogers is
4 innocent.

5 Your job is to remember what you
6 saw;; what you heard; and to deliberate on the
7 information that was presented to you, keeping in mind
8 that:

9 There was lots of information you
10 never saw because it didn't help the case.

11 And I believe that:

12 If you do so, you'll find that
13 Timmy Rogers is innocent of the crime that he's been
14 accused of.

15 An innocent man accused of a
16 terrible crime.

17 And the State has not provided you
18 with the proof to support their burden.

19 They haven't done it.

20 And I thank you for your time.

21 THE COURT:

22 Mr. Richardson.

23 MR. RICHARDSON:

24 Your Honor, the Court's indulgence
25 for just one --

1 THE COURT:

2 Certainly.

3 MR. RICHARDSON:

4 WHEREUPON: At 10:20 AM, October
5 14, 2011, the Solicitor sets up an easel in front of the
6 jury rail, which takes a couple of minutes.

7 MR. RICHARDSON:

8 Ladies and gentlemen -- uh -- I
9 think the first thing that comes to my mind again is
10 minimizing.

11 And this time it's not Sherry.

12 Ms. Wilson minimized a bunch of
13 that stuff for you too.

14 And I don't blame her for it;
15 because that's her job. And that's what she's supposed
16 to do.

17 But what I would like to do, just
18 for a few minutes -- and I promise this won't take long
19 -- is:

20 To bring you back to what really
21 happened on the night of April 21st, 2008.

22 And if you will just think with me
23 about what it felt like -- what it looked like -- during
24 that time.

25 It's about ten o'clock -- 9:45 --

CLOSING ARGUMENTS OF COUNSEL

383

1 10:15 -- somewhere about that.

2 Springtime, Myrtle Beach.

3 In the wood-line lurks a man in
4 camouflage and boots patiently waiting.

5 Slipknot in hand, waiting.

6 Waiting for his telephone call.

7 A predetermined message:

8 He's on his way.

9 And he waits. And he waits. And
10 he waits.

11 And he's nervous; but this is the
12 perfect place.

13 So this mailbox; none of the
14 lights were working.

15 Remember Heather had to bring in
16 the -- that was planned out.

17 The mailbox where someone goes to
18 deliver mail.

19 Someone can easily fall for this
20 line:

21 Take care of it. We need to take
22 this mail. We're going out of town tomorrow. Drop the
23 mail off.

24 Make's sense.

25 No lights.

1 Would-line, right up to the back
2 of the mailbox.

3 But you don't think about going to
4 your mailbox being a dangerous place.

5 But someone's lurking by these
6 mailboxes.

7 Hiding and waiting.

8 And it may be a little cool.

9 But finally that phone rings. And
10 he's on his way.

11 And the heart rate picks up a
12 little bit.

13 And you hunker down a little bit
14 lower.

15 And you hear those flip-flops
16 coming out the street. And in a matter of minutes, maybe
17 even seconds, your victim arrives.

18 And the first step is on that
19 concrete slab headed toward the back of the mailboxes
20 where he is once again shielded from the street.

21 No lights.

22 Here he comes.

23 Sounds like a horror movie, or the
24 beginning of one; doesn't it.

25 Well, for Fred Engle, it was.

CLOSING ARGUMENTS OF COUNSEL

385

1 And for the last minute or two
2 minutes of his life, he struggled mightily against that
3 ligature.

4 And Dr. Procter told you that.

5 Dr. Procter told you:

6 He wouldn't be fighting against
7 that Defendant, or whoever had wrapped that cord around
8 his neck.

9 He told you:

10 It was a natural occurrence.

11 And I submit to you, he didn't
12 even have to tell you that.

13 You choke on a piece of steak; you
14 get something caught in your throat; or someone's choking
15 you; you know that you are going to fight against this;
16 and not back here (indicating).

17 So you really wouldn't expect to
18 see a lot of DNA from Engle on the Defendant; or on --
19 from the Defendant on Engle.

20 All of this was going on right up
21 here (indicating).

22 Now, how did we get the time?

23 Well, we were really fortunate on
24 a bunch of things there.

25 I told you that Sherry Engle is

1 just as responsible as Timmy Rogers.

2 I told you that from the
3 beginning.

4 I told you that:

5 You may very well not like her.

6 I don't think you should like her.

7 She played a huge part in the
8 death of her husband. And she is charged for that.

9 She's looking at the same time;
10 the same sentence that her codefendant is.

11 But she tells you:

12 I am a hundred percent at fault.

13 Because, what we were telling you
14 earlier is:

15 There's plenty of blame to go
16 around.

17 Fred Engle was a great guy.

18 Sherry's own family, that you
19 would think would come in and support her, said:

20 No. Fred was a great guy. Great
21 family guy.

22 And what -- This life is valuable
23 enough for a hundred percent responsibility on both
24 parties; both Timmy Rogers and Sherry Engle.

25 And at the end of the day, Fred

CLOSING ARGUMENTS OF COUNSEL

387

1 Engle would be alive today if it wasn't for her part and
2 his part.

3 So I don't want you to believe
4 that the State somehow is warm and fuzzy with Sherry
5 Engle.

6 I'll be the same prosecutor that
7 handles -- has -- has to handle her case.

8 And that, quite frankly, will be
9 the same judge.

10 And if she goes to trial, it'll be
11 a jury just like you; 12 -- 14 people sitting in the same
12 spot.

13 And her attorney is going to be
14 pointing:

15 Not us. Not us. Timmy Rogers.
16 Timmy Rogers.

17 So, it's natural.

18 But how do we know it was about
19 10:45 when he first arrived there?

20 This young girl, Kimberly Maluda,
21 said:

22 I was coming home from work.

23 I remember that truck.

24 I don't generally remember trucks
25 that well.

1 However this one was at a snail's
2 pace.

3 I submit to you:

4 The reason he couldn't drive fast
5 is he was tearing that phone up. I mean, over and over
6 and over.

7 In that timeframe around 10:40, to
8 -- would you believe from 10:41 to 10:43, six calls from
9 either Timmy to Sherry or Sherry to Timmy.

10 That doesn't include checking
11 phone messages.

12 And that doesn't include -- uh --
13 text messages.

14 That's six goals in two minutes.

15 That may be the reason he was
16 driving so slow.

17 But whatever it was, Kimberly
18 Maluda said:

19 I had had enough. And I had to
20 pass him.

21 And I passed him.

22 And I was so frustrated that I cut
23 him off.

24 And when I pulled up and parked
25 and started getting my bag out, I saw that same truck;

CLOSING ARGUMENTS OF COUNSEL

389

1 this time, with the lights off.

2 Now, is that not planning -- pre-
3 planning.

4 Cutting those lights off.

5 Backing in where?

6 Across from the mailboxes. That
7 same truck.

8 The truck matching the description
9 of Timmy Roger's truck.

10 And Ms. Wilson says:

11 Well, you brought pictures of
12 trucks.

13 You bought pictures of cell
14 phones.

15 You -- Look, you can't minimize it
16 so much.

17 When you kill somebody, the first
18 thing you going to do is wipe the truck down with bleach
19 or some other sort of solution.

20 And that's what he did.

21 He wasn't arrested for a week, or
22 over a week.

23 She told you that's what he did.

24 In addition to that, he had more
25 than enough time to paint the doggone truck.

CLOSING ARGUMENTS OF COUNSEL

390

1 And what other excuse do you --
2 Commit a murder. Wash out the interior. Paint the
3 truck.

4 The truck made it since 1993
5 without being painted.

6 But something occurred between
7 April 21st and April 25th that caused him to say:

8 (Snaps fingers.)

9 I need to paint that truck.
10 Need to clean out the interior of
11 it a little bit.

12 Old 1993 ain't looking just right.

13 And Chris told you:

14 As soon as I -- Sherry's nephew --
15 as soon as I saw that, I knew Timmy Rogers had something
16 to do with that murder.

17 So, it's not just pictures of
18 trucks.

19 It is the deception involved with
20 trying to cover up the truck.

21 Now, you -- you'll remember Cherry
22 saying:

23 We talked over and over and over.

24 | We conversed over and over.

25 | And her phone records are in

CLOSING ARGUMENTS OF COUNSEL

391

1 there. And his phone records are in there.

2 And they -- And she told you that.

3 But I also told you:

4 You may not like her.

5 So I backed that up with a very
6 disinterested party, Kimberly Maluda, who said:

7 I saw that truck. And the truck
8 was gone the next day.

9 Backed it up again by the cell
10 phone records.

11 Because:

12 No crime to talk on the phone.

13 I agree with that. I agree with
14 that.

15 But you remember what Ryan Graham
16 told you.

17 He said:

18 All those phone calls throughout
19 the day was right there.

20 And he said that:

21 Right here is the Value Motel;
22 correct?

23 Bam, Bam, Bam, phones; twenty or
24 so calls from there to Sherry; Sherry to them, everyone
25 of them here, until around 9:40 -- 9:41 when Kimberly

1 Maluda told you she saw him in there.

2 And then, guess what happens?

3 Those cell towers start to change.

4 Remember that.

5 Starts coming down 501, bang.

6 Hits on this one. That edge right there.

7 Now this is River Oak's Drive.

8 You see it? It's labeled.

9 That's the road she told you she
10 come in on, River Oaks Drive.

11 Look at that (indicating).

12 That's the cell tower, pointing
13 toward Berkshire Forest.

14 9:41; coincidence?

15 Well, it could be. Could be.

16 Maybe it's just all a big
17 misunderstanding that he drove from Kentucky that week to
18 stay a month, having an affair with this woman and her
19 husband ends up dead.

20 Maybe it's just coincidence.

21 Maybe it's just coincidence that
22 it happened to hit on that tower at the time that
23 Kimberly Maluda said that she saw him in there.

24 But then it hits on this tower.

25 And Ryan Graham told you that:

CLOSING ARGUMENTS OF COUNSEL

393

1 This area, Carolina Forest, is
2 serviced by that one (indicating), and -- and more
3 specifically, that prong of that one (indicating), which
4 it hit on several times during when we say the murder
5 happened.

6 And it hit all those (indicating).

7 And then, guess what happened at

8 12:03?

9 Remember that hit -- uh -- that
10 call.

11 She said:

12 I'm getting ready.

13 It's right after midnight.

14 I'm getting ready to go over and
15 tell Tom.

16 I'm fixing to sound the alarm.

17 Are you out of the community?

18 Everything cool?

19 Cause I'm fixing to people that

20 Fred's missing.

21 The dogs are coming out.

22 Everything is going to happen.

23 Are you all right?

24 Yes. I'm washing off. I'm good.

25 Now where does that call come in?

1 Where would you guess it came in?

2 How about right there

3 (indicating)?

4 How about off that tower.

5 THE COURT:

6 Mr. Richardson, I think you're

7 blocking your last juror over there.

8 MR. RICHARDSON:

9 Oh, I'm sorry. Excuse me.

10 That tower right there, servicing

11 the motel (indicating).

12 At 12:03.

13 Are you out?

14 Yeah, I'm out.

15 Now I'm going to tell you:

16 If that it's all a line of

17 coincidence, then, boy, this has got to be the most

18 unlucky fellow in the world.

19 And Judge Hyman is going to tell

20 you:

21 And he -- I love what he does

22 here.

23 He will give you a copy of these

24 charges.

25 And you know what he'll tell you

1 in these charges?

2 He'll tell you there's two types
3 of evidence:

4 Direct evidence:

5 I saw. I heard. I felt.

6 And he'll tell you there's
7 circumstantial evidence.

8 All that's circumstantial
9 evidence.

10 But it shouldn't be minimized to
11 the point to say:

12 We got a picture of the truck.
13 And somebody makes telephones calls.

14 Uh -- No. No, no, no, no.

15 It's not that easy people.

16 It is that:

17 At 9:40, when she says he was
18 there; when Kimberly Maluda said he was there, the cell
19 tower, another disinterested party, says:

20 He's right there (indicating).

21 He's in this area.

22 And he's hitting off this one
23 (indicating).

24 And then he hits off this one
25 (indicating).

1 And then, he comes in and hits off
2 this one (indicating).

3 All of them servicing right there
4 (indicating).

5 And look how it triangulates.

6 Now, he's told you:

7 I can't give you -- It all
8 depends.

9 He said:

10 That one is way bigger than the
11 other ones. And that's the big coverage area.

12 These are smaller.

13 This one's about 200 foot, I
14 believe he said. And that ones real small; about a
15 hundred or a hundred and fifty.

16 But that one's much higher.

17 This is a big one (indicating).

18 Look what's right between those
19 three.

20 From that, to that, to that.

21 Look right in there.

22 Guess who lives there; or who
23 lived there?

24 Fred Engle.

25 So it's not just a bunch of phone

CLOSING ARGUMENTS OF COUNSEL

397

1 records.

2 It's not just a -- a photograph of
3 a truck.

4 It's not just a few knick -- uh --
5 college ring, or a high school ring, and a purse.

6 It's all circumstantial evidence.

7 And Judge Hyman I'm going to also
8 tell you, guess what?

9 That is just as good.

10 Just as good as direct evidence.

11 There ain't a bit of difference
12 between the two.

13 Now, it's easier to make hay out
14 of from the Defense standpoint.

15 'Cause they say:

16 You didn't see rain. You didn't
17 see it rain.

18 Uh-uh. You're right. I didn't
19 see it rain. I didn't walk outside. Didn't cut on the
20 lights.

21 Last night, when I went to bed,
22 the ground was dry. I heard something tapping on the
23 rooftop. Maybe a little peal of thunder and lightning
24 over there.

25 Get up the next morning and

1 there's mud puddles.

2 Some fire truck could have come by
3 and washed the -- you know -- put a bunch of water out
4 there.

5 I don't know that it was raining.

6 But isn't that the logical leap.

7 Isn't it the logical leap that if
8 you're having an affair with someone, you show up, rent a
9 place for a month.

10 You show up the very night in that
11 subdivision.

12 Not just by eye-witness testimony;
13 people saying I heard this was the plan.

14 But then, disinterested parties
15 and cell phone records; you hear all of that:

16 Man that -- that is a -- that
17 ain't much of a leap to make.

18 That ain't much of a leap to make
19 it all, especially when she follows it up with little
20 stuff like:

21 Are you out of here?

22 Hey, without the cell phone
23 records, which apparently it's not illegal to make a
24 call, he's out of there.

25 He's right back there

CLOSING ARGUMENTS OF COUNSEL

399

1 (indicating).

2

3 So it's more than just saying:

4 I don't know. That -- That sort
5 of stuff, that -- that don't cut it. That don't cut it.

6 I'll tell you something else about
7 those cell phone records.

8 You'll find at least 20 calls on
9 April 21st, 2008.

10 You know how many calls -- Well,
11 now I'm counting in that, the midnight call -- the 12:03
12 call.

13 So technically that would be on
14 the -- the 22nd.

15 You out of the area?

16 How many more calls you reckon
17 they made to each other on the 22nd?

18 Besides the midnight call, one.

19 You go from talking to your loved
20 one 21 times -- 25 times one day to nothing the next day.

21 They are now bound together with a
22 horrible secret.

23 Now it's cover up.

24 Now it's:

25 Wash out the truck.

1 Now it's:
2 Get rid of the clothes.
3 She said:
4 I bought him the clothes.
5 I'm telling you:
6 She was in on this from the get.
7 From the get.
8 She did it for her reasons.
9 She wanted to be in Kentucky.
10 That's obvious.
11 She wanted to get back to Kentucky
12 with Timmy.
13 At some point, she changed and
14 said:
15 Yeah, this is how it needs to go
16 down.
17 And they say -- uh -- or she said
18 that:
19 That conversation took place the
20 month before.
21 And we showed you records of the
22 Value Place where he'd stayed the month before.
23 And we showed you in the contents
24 of her purse, the room key for the Value Place.
25 They were clearly having an

CLOSING ARGUMENTS OF COUNSEL

401

1 affair.

2 We all know that.

3 And we all realize at this point
4 that Fred was the odd man out. And he had to go.

5 I realize that that is -- uh --
6 circumstantial evidence. But that is what it is.

7 Now, at some point, the Defense
8 trotted out this idea that:

9 Dr. Proctor, wonder what -- You
10 reckon -- uh -- Fred maybe hung his self?

11 Could have been a suicide,
12 couldn't it?

13 And Dr. Proctor kind of chuckled.

14 Uh -- And I don't -- I don't know
15 that -- that he went to it very much.

16 But if you'll look at the
17 photograph of Fred Engle's arm -- his right arm, you will
18 see drag marks..

19 You will see on his clothes, drag
20 marks.

21 You will see that his left hand is
22 what was used to pull him into those woods.

23 His watch is gone. It broke off
24 -- uh -- at some point during this thing.

25 I don't realize -- and I'm not a

1 medical professional -- but maybe you can -- how you can
2 choke yourself to death; pull the string tight enough to
3 cut and break the skin; and then, drag yourself through
4 your own blood and out into the woods.

5 If it can be done -- you know --
6 so be it.

7 But it certainly appears that
8 somebody, that somebody (pointing to Defendant) did it.

9 Because see, when that -- when the
10 suicide thing didn't catch on:

11 Well, how about Sherry. You
12 reckon Sherry might have done it?

13 Could it have been a woman?
14 Could have been a woman?

15 Dr. Proctor said:

16 Yeah, it could have been a woman.
17 Could have been a man. I can't say if he was black, he
18 was white, man or woman.

19 I can tell you whoever did it was
20 strong; very strong. He used brute force.

21 And then he said:

22 Blunt force trauma.

23 He said it would take quite a lick
24 to bust that.

25 Now, he don't know if he was hit

CLOSING ARGUMENTS OF COUNSEL

403

1 into something -- into the ground, or hit with something.

2 But he said:

3 That would have took a lick.

4 And then, to cut off these muscles
5 to where you could not even get any air in, or blood
6 through those, that would've took a lot.

7 So the theory of Sherry doing all
8 this on our own, that kind of goes out of the window;
9 doesn't it.

10 And maybe -- maybe -- They want
11 you to believe Sherry's involved; but she got some other
12 dude.

13 This is stooge, over here, is what
14 they want you to believe.

15 And then, she got somebody else.

16 Well, look through her phone
17 records.

18 Where's the chatter? Where's the
19 chatter?

20 Who would you be talking to if you
21 had somebody laying in wait in the woods?

22 Who would you call and say:

23 He's on the way?

24 Somebody else?

25 Or, are you still on the phone

1 with Timmy, and say:

2 Hey -- uh -- I can't talk but 24
3 more times 'cause I got to call this other guy and say:

4 He's on the way.

5 She was talking to Timmy.

6 Timmy was in the woods.

7 Timmy's the one in the camouflage,
8 crouched down, waiting with that shoestring.

9 Already prepared.

10 Dr. Proctor told you it looked to
11 him like a slipknot.

12 Sitting, waiting, wondering:

13 When's that call going to come
14 through. When can we get this over with? Over and done
15 with?

16 Y'all, I'm telling you:

17 There's a lot there.

18 And it shouldn't be minimized.

19 There's a ton there.

20 That's just not a phone record.

21 These -- These are phone records.

22 And on these, I don't blame you a
23 bit if you want to go through -- the guy from AT&T and --
24 well, it's just AT&T -- but he can tell you:

25 Start right here. They kept them

CLOSING ARGUMENTS OF COUNSEL

405

1 through the 22nd.

2 You can see -- These are Sherry's
3 phone records.

4 You can see every person she
5 called. How long it took. You can see all that.

6 And hers actually goes back to
7 April 1st, 2008. Those are Sherry's. They're in
8 evidence.

9 Now, this is Timmy's.

10 And this first column is:

11 Who made the call.

12 I'm sorry.

13 Who made the call; whether it was
14 Timmy or Sherry.

15 So this is a different kind.

16 That is who was called

17 (indicating).

18 It's all there.

19 That's the LACCID. That
20 identifies those towers.

21 And that -- Nobody made that up.

22 You know why Ryan Graham couldn't
23 tell you who killed him?

24 He's not interested in who killed
25 him.

1 That's what we call a disinterest,
2 third party.

3 He's saying:

4 I can tell you this:

5 That cell phone was in that
6 location (indicating).

7 And during the time of the murder,
8 it was in that location (indicating).

9 And at 12:03, it was in that
10 location (indicating), when he was supposed to be home.

11 You know, I've got a thick skin
12 about it. And it -- it's easy to do after doing it this
13 long.

14 But you get criticized because you
15 put in too much evidence. Then, you get criticized
16 'cause they're boxes of other evidence. And you put up
17 all these witnesses. But you didn't put up those.

18 You don't need to worry about that
19 at all. It's all red herrings.

20 Every bit of it's trying to throw
21 you off of what really happened.

22 If you can look at all this
23 evidence, and all of the independent witnesses that came
24 in, and said:

25 Yeah, he was staying right here at

CLOSING ARGUMENTS OF COUNSEL

407

1 the motel.

2 Yeah, I thought Timmy had finally

3 got a girlfriend. She was with him. She paid it.

4 I remember all that.

5 What was Timmy driving?

6 Red truck, '93. I knew exactly

7 who he was.

8 He's staying down there.

9 And a guy without a job, guess

10 what he does?

11 He's paid -- They said:

12 Well, he stayed two or three extra

13 days.

14 You remember when he could have

15 stayed to?

16 He or she had paid to stay through

17 May -- yes, I believe it was. Let me find it.

18 Well, it was 27 days. Uh -- I

19 can't find it right now.

20 Let's see if it's right here?

21 May 6th. May 6th.

22 Where was he at, May 6th?

23 Well, already been buried.

24 Fred was buried on the 28th of

25 April.

1 This is the guy -- don't have any
2 money. Got a good place to stay. Paid through May 6th.

3 He's back up in Kentucky on about
4 4 -- 3 or 4 days before April 28th.

5 He was there before the wedding;
6 remember.

7 Chris said:

8 I talked with him. He was
9 interested in what kind of suspect that they have?

10 Who they think did it?

11 What do they know about it?

12 Maybe the better question would've
13 been from Chris:

14 Why'd you paint your truck?

15 What's going on here, you know?

16 But, that never came out.

17 But Chris knew something bad had
18 taken place.

19 And a guy -- you've got him in the
20 area.

21 You've got him right, just a few
22 miles, right up here (indicating).

23 And that's where the murder
24 occurred.

25 You've got him in here

CLOSING ARGUMENTS OF COUNSEL

409

1 (indicating) the night of the murder.

2 You've got him with 20-some calls
3 to his codefendant, who is supposedly, either done it
4 herself, or went out and hired somebody else to die -- do
5 it; but still wanted to talk with him through the course
6 of it; and still called him, the first one after Fred
7 died.

8 No other time to do it.

9 Because Tom Richardson said:

10 Shortly after midnight, she shows
11 up at the house.

12 She called him at 12:03.

13 That's exactly what she said it
14 was.

15 Are you out of here?

16 Everything good?

17 I'm fixing to call. The Police
18 are going to be here in a minute.

19 Don't be lurking out there in your
20 -- uh -- coveralls.

21 You gone?

22 Washing up.

23 So, please don't let that get
24 minimized.

25 I'm going to show you something

1 else that I don't want you to minimize.

2 And it's in evidence.

3 Uh -- Love letters to Sherry.

4 Love letters to Sherry.

5 Uh -- The State just put in a few

6 love letters to Sherry. They don't mean nothing to

7 y'all.

8 Another piece of trash evidence.

9 You've got all day long.

10 You can take however long you

11 want.

12 You can read this. And it doesn't

13 take long to read.

14 So, when I read a few passages to

15 you, you feel free to go ahead and read the rest of it.

16 It's pure hell not be able to say

17 the right thing when someone needs you; not be able to

18 talk about something else to get you mind off things;

19 when you need to be worried about -- uh -- worried every

20 day that Fred will come and get you and I'll never see

21 you again.

22 And I won't be able to find you.

23 That's why I want to get rid of

24 him.

25 But you're right.

CLOSING ARGUMENTS OF COUNSEL

411

1 Who's this letter written to?
2 Sherry.
3 But you're right.
4 I don't think I could live with
5 myself if I did.
6 Just a notebook.
7 Or is that preplanning?
8 Does that show that there's been
9 some sort of discussion?
10 Does that show who wanted to get
11 rid of him?
12 And who said:
13 You're right. I probably
14 wouldn't be able to live with myself, if I did.
15 Is that worthless to you?
16 Read it. Don't take my word for
17 it; read it.
18 What -- And this is picking up
19 mid-sentence, it appears. I'm starting at the top of
20 the page/
21 . . . what you want day after day.
22 My heart hurts for you so much.
23 I want to spend every minute I can
24 with you.
25 I know your family will never

1 accept the fact that you are leaving him for me.

2 I even think that -- uh -- if you
3 got -- if it got bad enough with your seizures or spells
4 or whatever -- uh -- you call them, that one of your
5 brothers will keep you at his house, and I'd never get to
6 see you at all.

7 Uh -- I know I won't be able to
8 stay here at Deb's very long.

9 And I have no home to go to; a
10 vehicle that's probably not going to last much longer.

11 Uh -- What money I've got's
12 getting lower by the day.

13 I'm scared to death that one day
14 I'll be standing on the Interstate with a sign that says:

15 Will work for food.

16 Maybe that's why you had to get
17 rid of Fred.

18 That's why won't get rid of him.

19 But you're right.

20 I don't think I could live with
21 myself if I did.

22 So again, I'll wait; not knowing
23 what to do all the time.

24 He's working on you, tearing you
25 down. I don't want to be alone.

CLOSING ARGUMENTS OF COUNSEL

413

1 It scares the hell out of me to
2 think that when I get older, I'll be sitting in some
3 place with no friends; no family; no more -- nothing but
4 memories of you and what could have -- what we could have
5 had if I had only been smarter or knew how to show my
6 love more.

7 Again, just a passage.

8 So, feel free to read all of it.
9 I don't want you to think I'm tricking you in anything.

10 But, from that passage, its:

11 I want to get rid of him. You
12 talk me out of it.

13 That still does not minimize what
14 Sherry Engle did.

15 Sherry Engle called -- and you
16 will see in those records sometime around where he was
17 strangled to death and said:

18 He's on the way.

19 I believe it was 11 seconds.

20 He's on the way.

21 The garage door just went up.

22 Tom Richardson -- she's making it
23 up -- Tom walked around and said:

24 The garage door was up.

25 The garage door was up.

1 She come in, Sherry did, and she
2 told you:

3 I am guilty. I am guilty of my
4 husband's death.

5 But Timmy, you are too.

6 That plotting; that planning; that
7 conspiracy; that was us together.

8 We did that.

9 We are the reason that Fred is
10 dead.

11 Not just me.

12 Minimizing would be -- Full
13 minimizing would be?

14 Not me, but him. Not me, him.

15 She says:

16 No. It was us.

17 Now, did she lie to the police?

18 Did she lie to Joseph Hawes?

19 Sure she did. Sure she did.

20 He went to her that night.

21 It would have all been over with
22 that night if she had said when he showed up:

23 Hey, guess what?

24 Man, I mean, it was me and Timmy.

25 It wasn't him.

CLOSING ARGUMENTS OF COUNSEL

415

1 But that night, she's all into it.
2 She knows he's just been murdered.
3 It takes them going up there and
4 saying:
5 Look at what we got.
6 Would you believe -- Telling her
7 the same thing I'm telling you.
8 Look at this, Sherry. . Look at
9 these phone records.
10 You were talking to the killer the
11 entire time.
12 Sherry thought:
13 You delete it; that's it.
14 They said:
15 Look at all these, Sherry. Look
16 at all these. Look at all this evidence.
17 Look what we took from your shed.
18 Well, she came to the right
19 decision.
20 She said:
21 You got me. And here's the rest
22 of the story.
23 And she came in and she testified
24 to that; with her children out here' with her husband's
25 family out here.

1 She came in and she told her part
2 in it.

3 And she told his part in it.

4 Keep in mind too:

5 Sherry, I submit to you, hadn't
6 choked him out.

7 And as he -- If she had choked him
8 out, how in the world is she going to pull 200 pounds,
9 six-foot-one, through the woods?

10 Ain't no way.

11 The man didn't drag himself in the
12 woods.

13 Sherry didn't pull him in the
14 woods.

15 You don't have to look any further
16 than right across that room.

17 And I'm not talking about James.
18 I'm talking about Timmy Rogers.

19 That's your killer.

20 That's the guy that was laying in
21 the woods. That's him.

22 Don't get baffled by all this
23 mess, about:

24 Why in the world didn't he -- Why
25 didn't -- uh -- the victim have -- uh -- the -- his skin

CLOSING ARGUMENTS OF COUNSEL

417

1 under his fingernails?

2 Dr. Proctor told you:

3 He's going to grab right there.

4 He said that that mark on his
5 right finger that you'll see is probably from pulling
6 against that ligature.

7 That's a terrible way to die,
8 folks; having to fight against a string tied -- drawn
9 tight around your neck, enough to break the skin.

10 That's pretty bad.

11 Please:

12 Do not go back there -- And what
13 they're hoping for is some sort of jury nullification:

14 I don't like Sherry. And I am
15 going -- I ain't even going to even listen to her.

16 She's as much at fault as he is.

17 Well, again, I'll -- There is
18 another group, just like y'all, that will have to come in
19 and worry about Sherry.

20 And when Sherry gets here, she's
21 going to be hollering:

22 Be worried about Timmy.

23 Worry about anybody but me.

24 Worry about somebody else.

25 To me -- you know -- there's more

1 than enough blame to go around.

2 That's an instrument of death
3 (indicating the shoestring).

4 But that phone call was just as
5 deadly.

6 That telling:
7 You need to put something in the
8 mailbox.

9 That's just as deadly.
10 One is just as bad as the other.
11 And you cannot allow Timmy Rogers
12 to walk.

13 He is a murderer.

14 It has been proven.

15 There's a desk full of
16 circumstantial evidence that shows you that.

17 There's the truck.

18 When's the last time y'all painted
19 your truck?

20 It just don't happen.

21 You don't do that -- Come back
22 from Myrtle Beach and go to painting a truck.

23 Then, go checking on -- on him.

24 Look at how deep that crease is.

25 That ain't a five-foot-four or

CLOSING ARGUMENTS OF COUNSEL

419

1 five-foot-five woman pulling that stuff.

2 It's a big guy.

3 It is Timmy Rogers

4 Here's his glasses.

5 Here's the blood.

6 There's the smear.

7 He didn't pull himself through

8 that.

9 I just beg you to think through

10 this.

11 There's a lot of evidence here.

12 That's the minimization:

13 Man, there ain't nothing here.

14 Don't worry about all that.

15 Hey, who would put their -- uh --

16 information in a -- in a -- in a motel.

17 Well, who wouldn't?

18 They ain't going to check you out

19 at no hotel without driver's license.

20 They ain't going to check you out

21 without paying.

22 And the woman had him on video.

23 And you've got a duty. And that

24 duty is to seek justice.

25 It's not to seek reasonable doubt.

1 If there's reasonable doubt,
2 you'll have it.

3 Judge Hyman's going to tell you:
4 You must be firmly convinced.

5 I submit to you, in your heart,
6 you already know who the killer is here.

7 You are already firmly convinced.

8 But you need to go through; sift
9 this evidence; see what's there; and come back and speak
10 the only verdict that is true and just.

11 The only verdict that's available
12 here today is:

13 Murder: Guilty.

14 Thank you.

15 THE COURT:

16 Thank you Mr. Richardson and Ms.
17 Wilson.

18 MR. RICHARDSON:

19 Judge, I'll get -- When you're
20 finished, I'll get this thing.

21 THE COURT:

22 Ladies and gentlemen of the jury,
23 I remind you that during this trial, you and I have
24 certain duties to perform.

25 As trial judge, it's my

JUDGE'S CHARGE TO THE JURY

421

1 responsibility to preside over the trial of the case.

2 I also have the duty to rule on
3 the admissibility of the evidence offered during this
4 trial.

5 You are to consider only the
6 competent evidence before you.

7 If there was any evidence or
8 testimony ordered stricken from the record in this case
9 -- uh -- during this trial, you must disregard that
10 testimony.

11 You are to consider only the
12 testimony which has been presented from this witness
13 stand and any exhibits which have been made a part of the
14 record in this case, and any stipulations or agreements
15 of counsel.

16 I have the additional duty to
17 charge the law applicable to this case.

18 As the presiding judge, I am the
19 sole judge of the law in this case. And it's your duty
20 as jurors to except and apply the law as I now state it
21 to you.

22 If you already have some idea as
23 to what the law is, or what ought to be, and it does not
24 agree with what I now tell you the law is, you must
25 abandon this idea. Because you are sworn to accept the

1 law and apply the law exactly as I state it to you.

2 In every case tried in this court
3 before a jury, the jury becomes the sole and exclusive
4 judge of the facts in the case.

5 A trial judge cannot intimate,
6 state, comment on, or make any statement to a trial jury
7 about the facts in a case.

8 Since you, the jury, are the sole
9 judges of the facts of the case, you are not infer from
10 what I said during the progress of this trial in ruling
11 on the invisibility of evidence, or otherwise; or
12 anything that I say now during the course of this
13 instruction to you, that I have any opinion about the
14 facts in this case.

15 The law does not allow me to have
16 an opinion about the facts in this case.

17 This is a matter solely for you,
18 the jury, to determine.

19 As jurors, it is your duty to
20 determine the effect, the value, weight, and truth of the
21 evidence presented during the trial.

22 The indictment -- and I spoke to
23 you earlier about the indictment -- The indictment
24 charges the Defendant with murder.

25 I remind you that the fact that

JUDGE'S CHARGE TO THE JURY

423

1 the Defendant was arrested, charged, and indicted in this
2 case, is not evidence in this case, and cannot be
3 considered by you -- uh -- as evidence of guilt in this
4 case; nor does it create any presumption or inference of
5 guilt.

6 The indictment is simply the
7 formal, written, instrument which contains the charges
8 made against the Defendant.

9 It is the formal document by which
10 the case is brought to this court.

11 The Defendant has pled not guilty
12 to the indictment. And that plea puts the burden on the
13 State to prove the Defendant guilty.

14 A person charged with committing a
15 crime -- uh -- in South Carolina is never required to
16 prove himself innocent.

17 I charge you that it is an
18 important rule of law that the Defendant in a criminal
19 trial, no matter what the seriousness of the charge may
20 be, will always be presumed to be innocent of the crime
21 for which the Defendant -- uh -- has -- uh -- been
22 charged, unless, and until, guilt has been proved by
23 evidence satisfying you of that guilt beyond a reasonable
24 doubt.

25 This presumption of innocence does

1 not end when you begin your deliberations. But it
2 accompanies the Defendant throughout the trial until you
3 reach a verdict of guilt based on evidence satisfying you
4 of that guilt beyond a reasonable doubt.

5 The presumption of innocence is
6 like a robe of righteousness placed about the shoulders
7 of the Defendant which remains with the Defendant until
8 it has been stripped from the Defendant by evidence
9 satisfying you of the Defendant's guilt beyond a
10 reasonable doubt.

11 The presumption of innocence is
12 not a mere legal theory. It is not just a legal phrase.

13 It is a substantial right to which
14 every Defendant is entitled, unless you, the jury, are
15 satisfied from the evidence of the Defendant's guilt
16 beyond a reasonable doubt.

17 The State has the burden of
18 proving the Defendant guilty beyond a reasonable doubt.

19 Some of you may have served as
20 jurors in a civil case where you were told that it is
21 only necessary to prove that a fact is more likely true
22 and not true, such as by the greater weight or
23 preponderance of the evidence.

24 In criminal cases, the State's
25 proof must be more powerful than that. It must be beyond

1 a reasonable doubt.

2 Proof beyond a reasonable doubt is
3 proof that leaves you firmly convinced of the Defendant's
4 guilt.

5 There are very few things in this
6 world that we know with absolute certainty. And in
7 criminal cases the law does not require proof that
8 overcomes every possible doubt.

9 If based on your consideration of
10 the evidence, you are firmly convinced that the Defendant
11 is guilty of the crime charged, you must find the
12 Defendant guilty.

13 If on the other hand you think
14 there is a real possibility that the Defendant is not
15 guilty, you must give the Defendant the benefit of the
16 doubt and find him not guilty.

17 What is a reasonable doubt in the
18 law?

19 A reasonable doubt is the kind of
20 doubt that would cause a reasonable person to hesitate to
21 act.

22 There are two types of evidence
23 which are generally presented in a trial:

24 Direct evidence and circumstantial
25 evidence.

1 Direct evidence is the testimony
2 of a person who claims to have actual knowledge of a
3 fact, such as an eyewitness. It is evidence which
4 immediately establishes the main fact to be proved.

5 Circumstantial evidence is proof
6 of a chain of facts and circumstances indicating the
7 existence of a fact. It is evidence which immediately
8 establishes collateral facts from which the main fact may
9 be inferred.

10 Circumstantial evidence is based
11 on inference, and on personal knowledge or observation.

12 The law makes absolutely no
13 distinction between the weight or value to be given to
14 either direct or circumstantial evidence; nor is a
15 greater degree of certainty required of circumstantial
16 evidence than of direct evidence.

17 You should weigh all the evidence
18 in the case.

19 After weighing all the evidence,
20 if you are not convinced of the guilt of the Defendant
21 beyond a reasonable doubt, you must find the Defendant
22 not guilty.

23 Necessarily, you must determine
24 the credibility of witnesses who have testified in this
25 case.

JUDGE'S CHARGE TO THE JURY

427

1 Credibility simply means
2 believability.

3 It becomes your duty as jurors to
4 analyze and to evaluate the evidence and determine which
5 evidence convinces you of it's truth.

6 In determining the believability
7 of witnesses who have testified in this case:

8 You may believe one witness over
9 several witnesses; or several witnesses over one witness.

10 You may believe a part of the
11 testimony of a witness and reject -- uh -- the remaining
12 part of the testimony of that same witness.

13 You may believe the testimony of a
14 witness in its entirety or reject the testimony of a
15 witness in its entirety.

16 You may consider whether any
17 witness has exhibited to you any interest, bias,
18 prejudice or other motive in this case.

19 You may also consider the
20 appearance and manner of a witness while on the witness
21 stand.

22 The rules of evidence ordinarily
23 do not permit witnesses to testify to opinions or
24 conclusions.

25 An exception to this rule is this:

1 For witnesses we call expert
2 witnesses:

3 A witness, who by education and
4 experience has become expert in some art, science,
5 profession, or calling, may state an opinion as a -- uh
6 -- as to relevant and material matters in which the
7 witness claims to be an expert; and may also state the
8 reasons for the opinion.

9 You should consider any expert
10 opinion received in evidence in this case; and like any
11 other evidence, give it the weight you think it deserves.

12 If you decide that an opinion of
13 an expert is not based on sufficient education and
14 experience, or if you conclude that the reasons given in
15 support of the opinion are not sound, or that the opinion
16 is outweighed by other evidence, you may disregard the
17 opinion entirely.

18 An expert witness's testimony is
19 to be given no greater weight than that of other
20 witnesses simply because the witnesses is an expert.

21 Further, you are not required to
22 accept an expert's opinion, even though it's not
23 contradicted.

24 I instruct you and emphasize:

25 The fact that the Defendant did

JUDGE'S CHARGE TO THE JURY

429

1 not testify is not a factor to be considered by you in
2 any way in your deliberations and in your consideration
3 on the question of guilt or innocence of the Defendant.

4 It must not be considered by you
5 in any manner whatsoever.

6 A Defendant has a constitutional
7 right to remain silent. And the assertion of this right
8 must not be considered by you in your deliberation.

9 I repeat:

10 Under your oath, you are not to
11 draw any conclusions whatsoever from the fact that the
12 Defendant in this case did not testify.

13 The fact that this Defendant did
14 not testify would -- should not even be discussed in the
15 juryroom.

16 The burden of proof, as I have
17 stated to you, is on the State.

18 The Defendant is not required to
19 prove his innocence.

20 The burden of proof remains on the
21 State to prove guilt beyond a reasonable doubt.

22 The Defendant is charged with
23 murder.

24 The State must prove beyond a
25 reasonable doubt that the defendant killed another person

1 with malice of forethought.

2 Malice is hatred, ill-will, or
3 hostility towards another person.

4 It is the intentional doing of a
5 wrongful act, without just cause or excuse, with an
6 intent to inflict an injury or under circumstances that
7 the law will infer an evil intent.

8 Malice aforethought does not
9 require that malice exists for any particular time before
10 the act is committed.

11 But malice must exist in the mind
12 of the defendant just before and at the time of the act.

13 Therefore, there must be a
14 combination of the previous evil intent and the act.

15 Malice aforethought may be
16 expressed or inferred.

17 These terms "expressed" and
18 "inferred" do not mean different kinds of malice, but
19 merely the manner in which malice may be shown to exist.

20 That is:

21 Either by direct evidence or by
22 inference from the facts and circumstances which are
23 proved.

24 Expressed malice is shown when a
25 person speaks words which express hatred or ill-will for

JUDGE'S CHARGE TO THE JURY

431

1 another, or when the person prepared beforehand to do the
2 act which was later accomplished.

3 For example:

4 Lying in wait for a person, or any
5 other act of preparation going to show that the deed was
6 in the Defendant's -- uh -- that the deed was in the --
7 within the Defendant's would be expressed malice.

8 Malice may be inferred from
9 conduct showing a total disregard for human life.

10 The are two possible verdicts that
11 you may find on the indictment in this case.

12 That is:

13 Either guilty or not guilty.

14 And I have prepared a verdict form
15 for you.

16 Uh -- And on that verdict form, I
17 have asked you to circle your verdict.

18 And, again, I put:

19 Guilty or not guilty.

20 There is absolutely no
21 significance as to which one -- whether guilty is written
22 first, or not guilty is written first.

23 We have to put them in some order,
24 and that's -- uh -- the format that we have followed.

25 Ladies and gentlemen, your verdict

1 must be a unanimous one.

2 Now, Madam Forelady, when the jury
3 agrees on a verdict, I want you to circle that verdict on
4 the verdict form and sign your name as Foreperson.

5 Then, if you will knock on the
6 juryroom door and inform the Bailiff that you have a
7 verdict, at that time, we will receive you back into the
8 courtroom.

9 Now, I'm going to send you into
10 your juryroom at this time.

11 I'm going to ask you not to begin
12 your deliberations. And I'm going to exclude the two --
13 uh -- alternates.

14 Uh -- Mr. Roth, if you would place
15 them in a -- a separate room.

16 Uh -- I may have further
17 instructions for you.

18 If I bring you back into the
19 courtroom, it will be for further instructions.

20 However, if I send in -- Madam
21 Forelady, if I send in the exhibits in this matter -- in
22 this case -- as well as the verdict form and a transcript
23 of my charge, which I am having marked as Court's Exhibit
24 -- uh -- What number will it be.

25 COURT REPORTER:

JUDGE'S CHARGE TO THE JURY

433

1 Either 6 or 7, Your Honor. Hold
2 on a minute.

3 THE COURT:

4 I'll have it marked as a Court's
5 Exhibit.

6 Once -- If you receive the
7 exhibits, my charge, and the verdict form, that is the
8 signal for you to proceed with your -- uh --
9 deliberations; all right.

10 Uh -- If I need to bring you back,
11 I will; okay.

12 Mr. Roth, if you would take the
13 jury into the juryroom; segregate the -- uh -- the
14 alginates; all right.

15 BAILIFF:

16 All right.

17 (WHEREUPON: The jury empanelled
18 in the case withdrew from the courtroom at 11:16 AM,
19 October 14, 2010; and was no longer present during the
20 following proceedings.)

21 WHEREUPON: THE JUDGE'S CHARGE WAS
22 MARKED BY THE COURT REPORTER AS COURT'S EXHIBIT NUMBER 7.

23 COURT REPORTER:

24 And Your Honor, that Court's
25 Exhibit 7.

1 THE COURT:

2 Seven; all right.

3 Mr. -- uh -- Buckner, do you have
4 any large -- uh --

5 COURT REPORTER:

6 Clip?

7 THE COURT:

8 -- clip?

9 COURT REPORTER:

10 I do.

11 THE COURT:

12 All right.

13 Mr. Richardson, Ms. Wilson, I --
14 I'm not going to send the indictment in. Normally I do
15 not.

16 Uh -- Would you like to review the
17 verdict form before I send it in?

18 MS. WILSON:

19 Yes, I would, Your Honor.

20 It looks good.

21 THE COURT:

22 Any objections to the verdict
23 form.

24 MS. WILSON:

25 No objection.

1 THE COURT:

2 All right.

3 MR. RICHARDSON:

4 No sir.

5 THE COURT:

6 Uh -- How about additions or
7 deletions to the charge?

8 MR. RICHARDSON:

9 None, Your Honor.

10 MS. WILSON:

11 None, Your Honor.

12 THE COURT:

13 None for the Defense.

14 All right. Very well.

15 If you would, get together your
16 exhibits. Let's -- uh -- have them transmitted back to
17 the jury.

18 Does anybody, while you're here,
19 have any objection -- It's -- uh -- 11:30.

20 What I'd like to do is have -- uh
21 -- staff from the Clerk's office make an inquiry of the
22 Foreperson -- uh -- about lunch for this jury.

23 Uh -- I would like to keep them
24 deliberating, rather than transport them to some place.

25 And if they're agreeable to us

1 bringing in some lunch, that's what I want to do.

2 Anybody have any objection to

3 that?

4 Or:

5 Do you want me to bring him back

6 out and ask them what they want for lunch?

7 MR. RICHARDSON:

8 I'm fine with just go ahead and

9 doing it.

10 MS. WILSON:

11 Whatever The Court wants to do

12 will be fine, Your Honor.

13 THE COURT:

14 Okay. Very well.

15 If you will have someone from the
16 Clerk's office, then -- uh -- make an inquiry and provide
17 them with -- uh -- lunch.

18 All right.

19 The Court will be at ease, then,
20 until we have a verdict.

21 MR. RICHARDSON:

22 Thank Your Honor.

23 MS. WILSON:

24 Thank Your Honor.

25 (WHEREUPON: The court was

STATE V TIMOTHY ROGERS

437

1 declared at ease and the jury was told to begin
2 deliberations at 11:17 AM, October 14, 2010.)

3 (WHEREUPON: The court was called
4 to order again by the Bailiff at 11:43 AM, October 14,
5 2010, for the purpose of releasing the alternates.)

6 DEPUTY:

7 What you need, sir?

8 THE COURT:

9 I'm just going to let the
10 alternates go.

11 DEPUTY:

12 You're going to let the alternates
13 go?

14 THE COURT:

15 Yeah. I think Bobby's getting
16 them, or was going to get them.

17 DEPUTY:

18 Okay.

19 THE COURT:

20 Get them. Get me the alternates.

21 DEPUTY:

22 Okay. All right.

23 MR. RICHARDSON:

24 Pray that nothing does, but if it
25 was, would we be able to finish with 11?

1 THE COURT:

2 Well, that'll be up to you.

3 I just -- uh -- have made my
4 practice, once the deliberations begin, I think that's
5 pretty much standard what judges are doing now.

6 We don't bring alternates back in,
7 mid-deliberation.

8 I think Judge Cottingham might
9 still do it. But most -- uh -- most judges -- uh -- kind
10 of the opinion that once deliberations begun, if things
11 said and decisions made that these need to a part of; so
12 we just turn them loose.

13 WHEREUPON: The alternates were
14 escorted back into the courtroom from their isolated
15 juryroom at 11:43 AM, October 14, 2010.

16 THE COURT:

17 Yes sir.

18 Gentlemen, it's good to see you
19 back out of the juryroom.

20 I want to thank you for your
21 service.

22 Uh -- As indicated earlier, you
23 were the alternates. And once the deliberations begin,
24 it's my practice, and I think most judges now, not to
25 throw you into the mix after they've been deliberating

1 several hours.

2 I don't think that would be
3 appropriate or fair.

4 So -- uh -- your duties are
5 complete.

6 Uh -- I was going to keep you
7 around so you could have pizza with us.

8 But -- uh -- it's my understanding
9 that you want to go home.

10 Is that right?

11 ALTERNATE:

12 Yes sir.

13 THE COURT:

14 You can still stay and eat pizza
15 with us if you want to. I'll make sure you get some.

16 But -- uh -- if you wish -- uh --
17 you're discharge. You're free to go.

18 You won't be required for the rest
19 of the week.

20 Thank you very much for your
21 service.

22 I noticed that you were both very
23 attentive, as was the rest of the jury.

24 This is an important case and I
25 hope you -- uh -- have learned something by this -- in

1 the process.

2 I don't know if you've ever been
3 on a jury before. Have you? Either of you?

4 ALTERNATE:

5 Uh -- First time.

6 THE COURT:

7 Well, good for you.

8 Maybe -- uh -- Maybe it was -- uh
9 -- an educational experience, if nothing else.

10 ALTERNATE:

11 Absolutely.

12 THE COURT:

13 Thank you very much for being
14 here. I hope to see you again -- uh -- in and about the
15 county.

16 I know -- uh -- Mr. Martin, I
17 believe it was. Uh -- I ran into him at the -- uh --
18 Kentucky Fried Chicken, and had to be a little stand --
19 uh -- stand off -- uh -- standoffish with him yesterday.

20 Uh -- That's because I'm required
21 to. I can't have any -- uh -- exchanges with the jury.
22 It just doesn't look proper.

23 Uh -- I hope you didn't take
24 offense to that.

25 JUROR:

STATE V TIMOTHY ROGERS

441

1 No sir.

2 THE COURT:

3 But if you run into me again out
4 in the county -- uh -- and you remember me, please tell
5 me -- uh -- uh -- that you were on my jury. I'd love to
6 talk with you.

7 Thank you very much.

8 ALTERNATE:

9 Thank you.

10 ALTERNATE:

11 Thank you, sir.

12 THE COURT:

13 Any questions you have about your
14 jury service; about this process?

15 ALTERNATE:

16 No sir.

17 ALTERNATE:

18 Uh -- Not really.

19 Uh -- It's been fascinating and --
20 and interesting, and a great pleasure to be here.

21 And everybody -- Mr. Roth and
22 everybody has been -- uh -- been fantastic. I just
23 wanted to say that.

24 THE COURT:

25 Well, we try to make sure that

1 you're taken care of.

2 ALTERNATE:

3 Well, thank you.

4 THE COURT:

5 And we try to minimize the
6 inconvenience of jury service.

7 Although, it's a duty and it's
8 important, we still try to make it as pleasant as
9 possible.

10 ALTERNATE:

11 It certainly has been pleasant.

12 THE COURT:

13 Thank you for being here.

14 Mr. Roth, if you would, make sure
15 these gentlemen are out of the courtroom --

16 BAILIFF:

17 Yes sir.

18 THE COURT:

19 -- and make it to their vehicles;
20 all right.

21 BAILIFF:

22 All right.

23 ALTERNATE:

24 Thank you.

25 THE COURT:

QUESTION BY THE JURY AND DISCUSSION

443

1 Okay.

2 MR. RICHARDSON:

3 Thank you, Judge.

4 THE COURT:

5 We'll wait on a verdict.

6 MS. WILSON:

7 Thank Your Honor.

8 (WHEREUPON: The court was again
9 declared in recess to await the verdict of the jury at
10 11:45 AM, October 14, 2011.)

11 (WHEREUPON: The court was called
12 to order by the Bailiff at 12:04 PM, October 14, 2010;
13 and all pertinent counsel were back and present in the
14 courtroom.)

15 THE COURT:

16 All right.

17 Let's bring the defendant out.

18 They've got a question.

19 (WHEREUPON: The Defendant was
20 escorted back into the courtroom at 12:06 PM, October 14,
21 2010.)

22 THE COURT:

23 Okay.

24 Uh -- The -- I have a note from
25 the -- uh -- the Forelady -- uh -- that says:

1 What size shoe is Tim -- question
2 mark -- Angela Saiani.

3 What size was the boot impression
4 -- question mark.

5 Need photo please.

6 Now, wasn't there a photo of a
7 boot impression or something?

8 Was that ever put in?

9 MR. RICHARDSON:

10 It is in -- uh -- from afar on
11 Heather Brummett's --

12 THE COURT:

13 Okay.

14 MR. RICHARDSON:

15 -- disk.

16 THE COURT:

17 Well --

18 MR. RICHARDSON:

19 But it's nothing that they can
20 see. They can just see a white marking.

21 THE COURT:

22 I think that the appropriate
23 response to this is simply that:

24 You must consider only the
25 evidence which has previously been introduced in this

QUESTION BY THE JURY AND DISCUSSION

445

1 case.

2 Do you have any objection, Mr.
3 Richardson, or -- uh -- Mr. Galmore, or Ms. Wilson, to my
4 writing that on the note; and send it back; okay?

5 MS. WILSON:

6 No objection.

7 MR. RICHARDSON:

8 That will be fine.

9 THE COURT:

10 All right, sir.

11 MS. WILSON:

12 Thank you.

13 THE COURT:

14 Okay.

15 BAILIFF:

16 Your Honor, they don't need it.

17 They said -- They knocked on the door again and said:

18 It's okay. They don't need it.

19 THE COURT:

20 Well, I'm going to respond anyway.

21 BAILIFF:

22 All right.

23 THE COURT:

24 You may only consider the evidence
25 or testimony that has been previously introduced in the

VERDICT AND SENTENCING

446

1 case.

2 COURT REPORTER:

3 Did you want to make that Court's
4 Exhibit 8?

5 THE COURT:

6 Yeah. And we will send this
7 right back in to them; okay.

8 COURT REPORTER:

9 And be sure and tell them not to
10 destroy that note. We had one jury that did after we
11 had it marked as a Court's Exhibit.

12 THE COURT:

13 Okay. We're at ease.

14 MS. WILSON:

15 Thank Your Honor.

16 MR. RICHARDSON:

17 Thank you.

18 (WHEREUPON: The court was
19 declared in recess to again await the verdict of the jury
20 at 12:09 PM, October 14, 2010.)

21 (WHEREUPON: The Bailiff informed
22 The Court that the jury had reached a verdict at 1:10 PM,
23 October 14, 2010.

24 (WHEREUPON: The court was called
25 to order by the Bailiff at 1:21 PM, October 14, 2011; and

VERDICT AND SENTENCING

447

1 all pertinent counsel were back and present in the
2 courtroom.)

3 DEPUTY:

4 Order in the court. All Rise.

5 THE COURT:

6 All right. Please be seated. I
7 understand that we have a verdict. Let's bring the
8 Defendant out.

9 THE COURT:

10 Ms. Fine, you got your victim's
11 here?

12 VICTIM'S ADVOCATE FINE:

13 (No response.)

14 THE COURT:

15 Ms. Fine, the victims are here?
16 Victims --

17 VICTIM'S ADVOCATE FINE:

18 I'm sorry. Yes sir.

19 THE COURT:

20 Victim's are here? All right.

21 VICTIM'S ADVOCATE FINE:

22 Yes sir.

23 THE COURT:

24 We're just waiting for the
25 Defendant; all right.

1 WHEREUPON: The Defendant was
2 escorted back into the courtroom at 12:11 PM, October 14,
3 2011.

4 All right.

5 Let the record reflect that the
6 victim (sic) is present.

7 Bring in the jury.

8 COURT REPORTER:

9 Did you mean to say the Defendant?
10 You said the victim was present.

11 THE COURT:

12 That the Defendant is present is
13 what I mean to say.

14 (WHEREUPON: The jury empanelled
15 in the case was escorted back into the courtroom at 1:28
16 PM, October 14, 1010, and was in fact present during the
17 following proceedings.)

18 THE COURT:

19 All right.

20 Let the record reflect that I have
21 all my jurors.

22 Madam Forelady, have you reached a
23 verdict?

24 Yes, we have, Your Honor.

25 Was it a unanimous verdict?

VERDICT AND SENTENCING

449

1 FOREPERSON:

2 Yes, it was, sir.

3 THE COURT:

4 All right.

5 Madame Clerk, would you please
6 receive the verdict?

7 CLERK:

8 Yes, Your Honor.

9 (WHEREUPON: The Clerk receives
10 the verdict and passes it up to The Court, who, after
11 reviewing the verdict, passes it back to the Clerk.)

12 THE COURT:

13 All right.

14 You may publish the verdict.

15 CLERK:

16 Indictment Number 2008-GS-26-2450,
17 South Carolina versus Timmy Rogers:

18 As to the charge of murder, we the
19 jury unanimously find the Defendant guilty.

20 Signed by Foreperson Angela
21 Saiani.

22 Ladies and gentlemen of the jury,
23 if this is your verdict, so signify by raising your right
24 hand.

25 (WHEREUPON: All jurors raised

1 their right hand as instructed by the Clerk to signify
2 that this was indeed their verdict.)

3 CLERK:

4 Thank you.

5 THE COURT:

6 All right.

7 Would the Defense request
8 individual polling?

9 MS. WILSON:

10 Yes sir, we would.

11 THE COURT:

12 All right.

13 Poll the jury individually.

14 CLERK:

15 When I call your name, if you will
16 please stand.

17 325, Angela Saiani?

18 WHEREUPON: This juror stood as
19 requested by the Clerk.

20 CLERK:

21 Is this your verdict?

22 JUROR SAIANI:

23 Yes ma'am.

24 CLERK:

25 Is it still your verdict?

VERDICT AND SENTENCING

451

1 JUROR SAIANI:

2 Yes ma'am.

3 CLERK:

4 Thank you.

5 298, Janet Reames?

6 WHEREUPON: This juror stood as
7 requested by the Clerk.

8 CLERK:

9 Is this your verdict?

10 JUROR REAMES:

11 Yes, it is.

12 CLERK:

13 Is it still your verdict?

14 JUROR REAMES:

15 Yes, it is.

16 CLERK:

17 Thank you.

18 CLERK:

19 95, Susan Eddy?

20 WHEREUPON: This juror stood as
21 requested by the Clerk.

22 CLERK:

23 Is this your verdict?

24 JUROR EDDY:

25 Yes.

1 CLERK:
2 Is this still your verdict?
3 JUROR EDDY:
4 Yes.
5 CLERK:
6 Thank you.
7 74, Brandon Crick?
8 WHEREUPON: This juror stood as
9 requested by the Clerk.
10 CLERK:
11 Is this your verdict?
12 JUROR CRICK:
13 Yes.
14 CLERK:
15 Is it still your verdict?
16 JUROR CRICK:
17 Yes.
18 CLERK:
19 Thank you.
20 7, Myriam Alonso?
21 WHEREUPON: This juror stood as
22 requested by the Clerk.
23 CLERK:
24 Is this your verdict?
25 JUROR ALONSO:

VERDICT AND SENTENCING

453

1 Yes ma'am.

2 CLERK:

3 Is it still your verdict?

4 JUROR ALONSO:

5 Yes ma'am.

6 CLERK:

7 Thank you.

8 247, Wanda Miller?

9 WHEREUPON: This juror stood as

10 requested by the Clerk.

11 CLERK:

12 Is this your verdict?

13 JUROR MILLER:

14 Yes.

15 CLERK:

16 Is it still your verdict?

17 JUROR MILLER:

18 Yes ma'am.

19 CLERK:

20 Thank you.

21 388, David Wayt?

22 WHEREUPON: This juror stood as

23 requested by the Clerk.

24 CLERK:

25 Is this your verdict?

1 JUROR WAYT:
2 Yes ma'am.
3 CLERK:
4 Is this still your verdict?
5 JUROR WAYT:
6 Yes ma'am.
7 CLERK:
8 Thank you.
9 99, Katherine Eichholz?
10 WHEREUPON: This juror stood as
11 requested by the Clerk.
12 CLERK:
13 Is this your verdict?
14 JUROR EICHHOLZ:
15 Yes ma'am.
16 CLERK:
17 Is it still your verdict?
18 JUROR EICHHOLZ:
19 Yes ma'am.
20 CLERK:
21 Thank you.
22 41, Louise Brown?
23 WHEREUPON: This juror stood as
24 requested by the Clerk.
25 CLERK:

VERDICT AND SENTENCING

455

1 Is this your verdict?
2 JUROR BROWN:
3 Yes ma'am.
4 CLERK:
5 Is this still your verdict?
6 JUROR BROWN:
7 Yes ma'am.
8 CLERK:
9 Thank you.
10 130, Paul Giordano?
11 WHEREUPON: This juror stood as
12 requested by the Clerk.
13 CLERK:
14 Is this your verdict?
15 JUROR GIORDANO:
16 Yes ma'am.
17 CLERK:
18 Is it still your verdict?
19 JUROR GIORDANO:
20 Yes ma'am.
21 CLERK:
22 Thank you.
23 230, Jerry McArthur?
24 WHEREUPON: This juror stood as
25 requested by the Clerk.

1 CLERK:

2 Is this your verdict?

3 JUROR MCARTHUR:

4 Yes ma'am.

5 CLERK:

6 Is this still your verdict?

7 JUROR MCARTHUR:

8 Yes ma'am.

9 CLERK:

10 Thank you.

11 30, Nina Kemp?

12 WHEREUPON: This juror stood as

13 requested by the Clerk.

14 CLERK:

15 Is this your verdict?

16 JUROR KEMP:

17 Yes.

18 CLERK:

19 Is this still your verdict?

20 JUROR KEMP:

21 Yes.

22 CLERK:

23 Thank you.

24 THE COURT:

25 All right.

VERDICT AND SENTENCING

457

1 Anything further?

2 MS. WILSON:

3 Nothing at this time, Your Honor.

4 THE COURT:

5 All right.

6 Will there be any post-trial

7 motions?

8 MS. WILSON:

9 Yes sir; there will.

10 THE COURT:

11 All right.

12 I'll hear you.

13 MS. WILSON:

14 Thank Your Honor.

15 Uh -- At this time, Your Honor --

16 uh -- the Defense would requests -- uh -- or move for a

17 new trial, or for an order in arrest of judgment.

18 Uh -- The basis, of course, Your

19 Honor, as they very often are, are on the grounds that:

20 There's a lack of sufficient

21 evidence in this case directly implicating my client in

22 this crime.

23 That the circumstantial evidence

24 that was presented is of such a insubstantial nature as

25 to -- to not actually implicate my client in anything.

1 In addition, Your Honor, we would
2 claim -- uh -- insufficiency of the indictment.
3 courtroom

4 All right.

5 MS. WILSON:

6 Thank you.

7 THE COURT:

8 I would -- uh -- have to
9 respectfully deny your motion.

10 Would you like to be heard on
11 that, Mr. Richardson?

12 MR. RICHARDSON:

13 No sir.

14 THE COURT:

15 All right.

16 Is there any reason why sentence
17 should not be imposed at this time?

18 MS. WILSON:

19 No sir. We are prepared. And we
20 have mitigation ready.

21 THE COURT:

22 All right.

23 Mr. Richardson, I'll hear from the
24 State first.

25 MR. RICHARDSON:

VERDICT AND SENTENCING

459

1 Your Honor, again, this is
2 Indictment Number 2008-GS-260-2450, indictment for
3 murder.

4 And Your Honor, the mandatory
5 minimum, 30 years -- uh -- maximum is life imprisonment.

6 Uh -- I'm not going to go into the
7 facts of the case.

8 I believe that this -- uh -- we've
9 been dealing with this since Monday morning.

10 Uh -- I would ask, Your Honor, if
11 the -- uh -- -- if you would hear from the victim's
12 family?

13 THE COURT:

14 Very well.

15 Yes sir.

16 MR. ROB INGLE:

17 Okay.

18 My name's -- uh -- Rob Engle. And
19 I'm -- uh -- Fred's brother.

20 THE COURT:

21 All right.

22 MR. ROB INGLE:

23 First of all, I'd like to
24 apologize because this is not my first language.

25 I hope that I can -- (begins to

1 get choked up) --

2 THE COURT:

3 Just take your time.

4 MR. ROB ENGLE:

5 Okay.

6 I lost my brother.

7 And I don't have to tell This

8 Court that -- that he was a good man because everybody's
9 saying he was a good man.

10 Uh -- But I didn't -- didn't just
11 lose a brother.

12 Uh -- I -- We grew up in a single-
13 parent family. And he was the eldest one. And in those
14 days, it was very rare to have single parent family.

15 He took over responsibility
16 (trails off to inaudible) --

17 COURT REPORTER:

18 I'm sorry, sir. Excuse me a
19 minute. Could you speak more into that mic?

20 MR. ROB ENGLE:

21 Yes.

22 COURT REPORTER:

23 I'm kind of having a little
24 difficulty --

25 MR. ROB ENGLE:

VERDICT AND SENTENCING

461

1 Okay.

2 THE COURT:

3 Just take your time.

4 We -- We've got all the time you
5 need; okay.

6 MR. ROB ENGLE:

7 Okay.

8 And even though very young, he
9 full responsibility.

10 Then you had (trails off to
11 inaudible and begins to weep profusely) --

12 He -- He had a rough time, because
13 he had to grow up, being the father to stay and help.

14 And I can tell you we were in
15 (inaudible).

16 Later on, he got married, and we
17 didn't decide -- but you don't get as much together as --
18 as you would want to.

19
20 And then, one day, I'll never
21 forget the knock on my door.

22 The police are knocking on my door
23 telling me he was dead; that he was killed.

24 Uh -- It -- It wrecked my life.

25 It's -- uh -- You wouldn't tell by

1 the way I'm standing here, but actually I'm a prison
2 warden.

3 And I heartedly believe in a
4 humane system. And it's my responsibility to uphold
5 prisons that have humane process going on.

6 That has been so hard the last two
7 and a half years. Because every time I saw someone
8 convicted of murder, quite frankly, I saw him.

9 And I blame him, of course, for
10 what he did (trails off to inaudible).

11 But I blame him for the -- he had
12 guts to come into my brother's funeral; to come out to us
13 with condolences.

14 What kind of man can you be to do
15 that?

16 I didn't just lose a brother.

17 In fact, I -- I can say I almost
18 lost my mother, as well.

19 She came up. She's -- She's 82
20 now. And she so messed up now.

21 When we were in the drive back,
22 she asked:

23 Where's Fred?

24 We had just came from the funeral.

25 And she never -- she never -- she never came back.

VERDICT AND SENTENCING

463

1 She isn't like this.

2 And in a way, she does understand

3 what's happening now.

4 But I lost her.

5 I have two more brothers.

6 They couldn't even stand coming

7 over here because of all the emotions.

8 I'm lost in this. I've just been

9 busy with -- without everything around this case.

10 In his last will, he asked me to

11 take care of his sons.

12 I love them boys.

13 But they -- they should be with

14 their father; not me.

15 It's so hard, Your Honor.

16 He didn't deserve to die.

17 If Sherry would have wanted to be

18 with him, she could have gotten a divorce.

19 But that wasn't enough.

20 And these days, when this

21 happened, that -- that I don't wish anybody -- anybody to

22 be hearing that your brother was murdered and that

23 somebody actually wrote:

24 We have to get rid of him.

25 And I feel sorry for his mom and

1 sis; because they're going through the same hell.

2 And I feel sorry for Sherry's
3 children and brother.

4 They're all -- They're all are in
5 the same hell.

6 And nothing's going to bring him
7 back.

8 Thank you.

9 THE COURT:

10 Thank you, Mr. Engle.

11 MR. RICHARDSON:

12 Your Honor, that'll be the State's
13 showing.

14 I don't believe he a prior record.

15 THE COURT:

16 His has no prior record?

17 MR. RICHARDSON:

18 No sir.

19 THE COURT:

20 What's the Defendant's age, Mr.
21 Richardson, do you know?

22 MR. RICHARDSON:

23 He's 43.

24 THE COURT:

25 At this time?

VERDICT AND SENTENCING

465

1 MR. RICHARDSON:

2 Yes sir.

3 THE COURT:

4 Okay.

5 All right.

6 Then, let me hear from the Defense
7 in mitigation.

8 MS. WILSON:

9 Thank Your Honor.

10 Your Honor, as you just heard,
11 Mr. Rogers 43 years old.

12 Uh -- He is divorced.

13 He has one child, Tyler, who is
14 19, a son.

15 Uh -- He does have a high school
16 education, and has a high school diploma.

17 He tells me that:

18 For many years, early on in life,
19 he worked as a manager at KFC.

20 And that:

21 For approximately the last 11 or
22 so years, he's worked primarily in carpentry work.

23 Uh -- Your Honor, the Solicitor is
24 correct. Mr. Rogers has no prior criminal record.
25 Never been in trouble a day in his life.

1 Matter of fact, he has an
2 exemplary record at J. Rubin Long, were he's been housed
3 for the last two and a half years -- uh -- awaiting trial
4 in this case.

5 Never been disciplined.

6 Never been in trouble for anything
7 out there.

8 Uh -- Your Honor, the jury has
9 spoken in this case.

10 We acknowledge that.

11 We accept that.

12 My client has, however, maintained
13 his innocence from the very outset.

14 Uh -- At no point in time, has he
15 ever maintained otherwise than that he was innocent.

16 Uh -- We've worked on this case.

17 I have spent time with Mr. Rogers.
18 And he has been a very quiet, to himself, easy going;
19 just a calm influence and spirit.

20 A lot of clients spend a lot of
21 time calling you up -- you know -- and -- and there's
22 nothing wrong with calling your attorney.

23 But they -- they -- Sometimes,
24 they can be abusive or harangue you.

25 Never the case with him.

VERDICT AND SENTENCING

467

1 Sometimes they might grieve.
2 Never the case with Mr. Rogers.
3 Just patient and waiting for his
4 day in court.
5 That being said, I know we've done
6 -- uh -- everything that we could have done to help him
7 in this case.
8 And, as I said before, the jury
9 has spoken.
10 I have explained to him what this
11 charge carries. He knows what the potential sentence is.
12 Uh -- At this time, we would ask
13 The Court for any mercy possible.
14 And if The Court sees fit, to
15 allow my client the absolute minimum in this case of 30
16 years.
17 And my understanding, Your Honor,
18 is:
19 That 30 years is day to day.
20 Thank you.
21 THE COURT:
22 It's my --
23 MS. WILSON:
24 Your Honor --
25 THE COURT:

1 -- under --

2 MS. WILSON:

3 I'm sorry.

4 THE COURT:

5 -- understanding as well that it's
6 a day for day sentence.

7 MS. WILSON:

8 Yes sir.

9 And Your Honor, my client -- If I
10 can have The Court's indulgence for one second.

11 Uh -- Your Honor, I believe that
12 my client would like to address The Court, as well as his
13 sister, Ms. Debbie Paris.

14 THE COURT:

15 All right. I'm going to allow
16 it.

17 MS. WILSON:

18 Yes sir.

19 THE COURT:

20 I'll from you, Mr. -- uh -- Yes
21 sir?

22 DEFENDANT ROGERS:

23 I just wanted to say that I am not
24 guilty of this.

25 But I am very, very, very, sorry

VERDICT AND SENTENCING

469

1 for ever starting a relationship with Sherry.

2 Uh -- I'm very, very, sorry for
3 everyone's loss.

4 Uh -- I love you all. And I have
5 -- I even forgive Sherry and -- uh -- for what she's
6 done.

7 And I appreciate everything that
8 -- that Ms. Wilson has done for me.

9 Uh -- I'm not this person.

10 But I have -- I mean, that's what
11 you see.

12 I've never been able to speak very
13 much.

14 Uh -- Uh -- But I've never been
15 able to really stand up for myself.

16 Uh -- Hopefully, there's something
17 some day will -- the Lord will work out for me.

18 But -- uh -- I just -- I'm sorry
19 for ever meeting Sherry.

20 THE COURT:

21 All right, sir.

22 And her sister -- His sister
23 wanted to speak; Ms. Paris, I believe.

24 MS. WILSON:

25 Yes sir.

1 THE COURT:

2 All right.

3 MS. DEBBIE JEAN PARIS:

4 My name is Debbie Jean Paris.

5 And first, I'd like to say I'm
6 sorry for the family -- for your loss.

7 I'm sorry -- sorry for Sherry's
8 family's loss also.

9 But my brother lived with me for
10 quite some time before Sherry really involved much in his
11 life.

12 And as she became involved, I
13 watched her manipulate and set situations in play that
14 just made it look as if he was guilty for things; just
15 little things.

16 And I was very questionable.

17 But I don't want -- I'm sorry.

18 I'm sorry. Let me collect my
19 thoughts for a second.

20 And I'm not trying to ramble in
21 that direction.

22 But I -- I know much more than
23 what was presented here today.

24 And I know my brother was
25 innocent.

1 would be nothing else from the Defense.

2 Thank you.

3 THE COURT:

4 All right.

5 Mr. Rogers, please stand.

6 WHEREUPON: The Defendant stood as
7 directed by The Court.

8 THE COURT:

9 Mr. Rogers, you are not the -- the
10 typical Defendant that I see. And neither was Mr. Engle
11 the typical victim.

12 Uh -- You stand before me, 43 --
13 45 years of age -- with no prior criminal record.

14 Uh -- That in and of itself is
15 very unusual.

16 Mr. Engle, on the other hand -- uh
17 -- is a murder victim, who by all accounts was -- uh --
18 good to everyone; everyone he encountered.

19 He was a good husband.

20 He was the father.

21 He was a good friend.

22 Uh -- And it's unusual that we see
23 him as a victim.

24 I thought about the circumstances
25 that may have brought you two into contact with each

VERDICT AND SENTENCING

473

1 other; he from a European country, you from Kentucky.

2 Uh -- I -- I -- I just think of
3 all the coincidences that must've occurred to bring you
4 together.

5 And then, I think of the tragedy
6 that results from your coming together.

7 And I know what the catalyst is.

8 I know where that tragedy
9 originated.

10 I have heard the evidence in this
11 -- this trial.

12 The jury has said that they find
13 you guilty beyond a reasonable doubt of Mr. Engle's
14 death.

15 They have heard the same evidence
16 that I have, as to what brought you together -- what made
17 your paths cross in such a tragic way.

18 Uh -- This has resulted in the
19 utter destruction of three families:

20 Uh -- Ms. Engle's family.

21 Mr. Engle's family.

22 Your family.

23 There's so many other people
24 involved.

25 I don't know what precipitated

1 this final act.

2 I still don't know why Ms. Engle
3 would have wanted to leave her husband.

4 I still don't understand why you
5 wanted to involve yourself with her.

6 But it's been done.

7 And a life has been taken in a
8 cold and brutal fashion; and there is a price to pay.

9 And you must pay your price, as
10 well as Ms. Engle at a later date.

11 I'm taking into consideration the
12 fact that you have no prior record.

13 I'm taking into consideration that
14 this conduct is an aberration; and is so far field from
15 what would normally be a -- be expected from you.

16 I'm taking that into
17 consideration.

18 I'm taking into consideration the
19 influence that Ms. Engle probably exerted on you and Mr.
20 Engle.

21 And in doing so, I'm going to
22 impose a sentence less than the maximum that I could give
23 you.

24 I could give you for life.

25 I am aware of the fact that any

VERDICT AND SENTENCING

475

1 sentence I give you is a day for day sentence with no
2 parole eligibility.

3 I'm considering your age.

4 And I'm imposing a sentence of 35
5 years.

6 Thank you.

7 MS. WILSON:

8 Thank Your Honor.

9 MR. RICHARDSON:

10 to help you

11 THE COURT:

12 Ladies and gentlemen of the jury,
13 let me thank you for your service.

14 I -- uh -- have -- uh -- We have
15 kept you here -- uh -- all week.

16 Uh -- I note -- uh -- that during
17 this trial, you have all been very attentive.

18 Uh -- And you've been very
19 cooperative with us when we've had to leave you in your
20 juryroom without bringing you back out.

21 Uh -- I believe that you have
22 taken this case very seriously; and that you have
23 seriously undertaken your duties as jurors.

24 I hope that this experience has --
25 has taught you something about our legal system.

1 I hope it's something that you'll
2 take with you when you leave here.

3 Uh -- It's not often that we're
4 called upon -- uh -- to be jurors.

5 But let me just say that:

6 It was a pleasure to have you
7 here.

8 I appreciate the -- the work that
9 you have done.

10 I can tell you right now:

11 If -- Were it not for you, this
12 case would still be lingering.

13 You are for what ended it. And I
14 think you ended it and served in an honorable fashion.

15 And I thank you for your service.

16 Now Mr. Roth, I think you still
17 have their lunch back there. And I hope that they'll --
18 uh -- go back and enjoy their lunch -- uh -- before they
19 leave.

20 It was a pleasure to have you
21 here.

22 Uh -- The Clerk tells me you're
23 not going to be required the rest of the week.

24 Thank you very much.

25 (WHEREUPON: The jury empanelled

VERDICT AND SENTENCING

477

1 in the case withdrew from the courtroom for the final
2 time at 1:50 PM, October 14, 2010.

3 THE COURT:

4 Anything further, Mr. Richardson?

5 MR. RICHARDSON:

6 (Nods in the negative.)

7 THE COURT:

8 Anything further, Mr. Galmore?

9 MR. GALMORE:

10 No sir, Your Honor.

11 THE COURT:

12 Very well.

13 It's a pleasure, gentlemen.

14 Both of you -- uh -- represented

15 your positions zealously. I appreciate your -- your

16 efforts this week.

17 Thank you very much.

18 MR. RICHARDSON:

19 Thank Your Honor.

20 WHEREUPON: There being nothing

21 further, this matter was concluded at 1:51 PM, October

22 14, 2010.

23

24

25

CERTIFICATE

I, the undersigned, H. Eugene Buckner, CVR, Official Court Reporter at Large in and for the State of South Carolina, do hereby certify that the foregoing proceedings were taken on the 11th, 13th, and 14th day of October, 2010;

That the within judicial proceedings are, to the best of my ability, an accurate and verbatim transcription of the hearing;

I further certify that I am neither Counsel nor Solicitor to any of the parties in said suit, nor interested in the event of the cause.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 7th day of February, 2011.

H. Eugene Buckner

H. EUGENE BUCKNER, CVR
OFFICIAL COURT REPORTER AT LARGE
15TH JUDICIAL DISTRICT
STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

TIMMY ROGERS

Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

20 14 CP-26 CP26 6589

Submitted By: Donna K. Taylor

Address: 39 Broad Street, Suite 101, Charleston, SC 29401

SC Bar #: 5484

Telephone #: 843.723.4020

Fax #: 843.723.4021

Other:

E-mail: donna@tbbesq.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

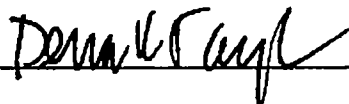
*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -CP- - ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☒ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Acc. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature:



Date: 10/3/14

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
APPLICATION FOR POST-CONVICTION RELIEF

TIMMY ROGERS
SCDC 343260,
Applicant

v.

State of South Carolina

INSTRUCTIONS READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page.

Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention :Kirkland Correctional Institute, 4344 Broad River Road, Columbia, SC 29210
2. Name and location of Court which imposed sentence: Horry County Court of General Sessions, 1301 Second Avenue, Conway, South Carolina 29526
3. Name(s) of co-defendant(s) (if any) Sherry Engle
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: Murder: 2008-GS-26-2450
5. The date upon which sentence was imposed and the terms of the sentence: October 14,2010 a sentence of 30 years was imposed
6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty X
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? Yes
8. If you answered yes to (7), list:
 - (a) the name of each Court to which you appealed: South Carolina Court of Appeals
 - (b) the result in each such Court to which you appealed: Affirmed
 - (c) the date of each such result: filed September 4,2013
 - (d) if known, citations of any written opinion or orders entered pursuant to such results: Opinion number 5172
9. If you answered no to (7), state your reasons for not so appealing:

11 OCT -8 PM 1:23

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) ineffective assistance of counsel

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

1.) There was a footprint found at the scene that was never tested or reviewed by counsel, and was not introduced at the trial, there was some minor testimony regarding the collection of that evidence that came out before the Jury which resulted in a Jury question during deliberation; however because it was not introduced by either party it could not be considered.

2.) Additionally despite substance issues and mental health history no evaluation or assessment was conducted.

3.) inappropriate statement made by the Solicitor in closing argument were not objected to by counsel

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? no

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)?no

(d) any other petitions, motions or applications in this or any other Court? no

13. If you answered yes@ to any part of (12), list with respect to each petition, motion or application: N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) state PCR is first appropriate forum for factual arguments

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____

(b) your trial, if any? Kia Wilson with Horry County Public
Defender _____

(c) your sentencing? _____

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? David Alexander with Appellate Defense

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No other

18. If you answered ~~Yes~~@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Kia Wilson PO Box 1666, Conway, SC 29528

ii. David Alexander SC Commission of Indigent Defense, PO Box 11589, Columbia, SC 29211

(b) the proceedings at which each such attorney represented you:

i. from arrest through trial and sentencing

ii. through Appeal to the SC Court of Appeals

19. State clearly the relief you seek in filing this application: new trial

20. Are you now under sentence from any other court that you have not challenged? No

STATE OF SOUTH CAROLINA)

) VERIFICATION

County of Richland)

I, Timmy Rogers, being duly sworn

upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Timmy Rogers

SWORN to and subscribed before me this 3rd

day of October, 2014.

Dennis K. Taylor (L.S.)

Notary Public

My Commission Expires: 10-11-2017

Revised 3/200

14 OCT -8 PM 1:23

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

20 14 CP26 6589

I, Timmy Rogers, hereby apply for leave to proceed in this action without repayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Timmy Rogers
Applicant

SWORN or affirmed to and subscribed before me this

3rd day of October, 2014

Dennis K. Taylor
Notary Public

My Commission Expires:

6-11-2017

14 OCT -8 PM 1:23

724

CLERK OF COURT



MELANIE HUGGINS-WARD

CLERK OF COURT
1301 2ND AVENUE
CONWAY, SC 29526
(843) 915-5080 • Fax: (843) 915-6081

OCTOBER 22, 2014

TIMMY ROGERS # 343260
KIRKLAND CORRECTIONAL INSTITUTION
4344 BROAD RIVER ROAD
COLUMBIA, SC 29210

RE: POST-CONVICTION RELIEF
CIVIL ACTION #2014-CP-26-06589

DEAR MR. ROGERS,

THE POST-CONVICTION RELIEF APPLICATION HAS BEEN FILED AND
ASSIGNED THE ABOVE CIVIL ACTION NUMBER FOR THE DOCKET.
YOUR COPY IS ENCLOSED WITH THE ABOVE INFORMATION SHOWN.
COPIES HAVE BEEN FORWARDED TO THE OFFICE OF THE ATTORNEY
GENERAL. THAT OFFICE WILL BE PROCESSING YOUR CASE FOR
COURT PROCEEDINGS.

SINCERELY,

Melanie Huggins-Ward

MELANIE HUGGINS-WARD
CLERK OF COURT

MHW/fhn
ENCLOSURES

2014 OCT 22 AM 10:23

CLERK OF COURT



MELANIE HUGGINS-WARD

CLERK OF COURT
1301 2ND AVENUE
CONWAY, SC 29526
(843) 915-5080 • Fax: (843) 915-6081

OCTOBER 22, 2014

**ATTORNEY JOSHUA L. THOMAS
OFFICE OF ATTORNEY GENERAL
POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211**

**RE: TIMMY ROGERS # 343260
CASE #: 2014-CP-26-06589**

2014 OCT 22 AM 10:23

**PLEASE BE ADVISED THAT THE ABOVE REFERENCED INDIVIDUAL HAS
MADE APPLICATION FOR POST-CONVICTION RELIEF IN OUR COUNTY.**

**ENCLOSED YOU WILL FIND A COPY OF THE POST-CONVICTION RELIEF
APPLICATION, ALONG WITH TRUE COPIES OF THE WARRANT, VERDICT
FORM (IF TRIAL BY JURY), SENTENCE SHEET, AND THE INDICTMENT
ON THE ABOVE REFERENCED INDIVIDUAL.**

IF WE MAY BE OF FURTHER ASSISTANCE, PLEASE ADVISE.

SINCERELY,

Melanie Huggins-Ward

**MELANIE HUGGINS-WARD
CLERK OF COURT**

**MHW/fhn
ENCLOSURES**



ALAN WILSON
ATTORNEY GENERAL

March 25, 2015

RECEIVED
MAR 27 PM 1:21
CLERK OF COURT
HARRIS WARD

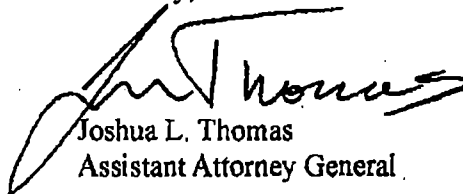
The Honorable Melanie Huggins-Ward
Horry County Clerk of Court
P.O. Box 677
Conway, SC 29528-0677

Re: Timmy J. Rogers #343260 v. State of South Carolina
2014-CP-26-6589

Dear Ms. Huggins-Ward:

Enclosed please find the original **Return and Motion to Dismiss** of the Respondent in the above-captioned case for filing in your office. By copy of this letter, I am serving Donna K. Taylor, Esquire with the return.

Sincerely,


Joshua L. Thomas
Assistant Attorney General

JLT/nb

Enclosures

Horry County Clerk of Court Records
PCR Application
SCDC Records
Appellate Records (opinion and remittitur)

cc: Donna K. Taylor, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
Timmy J. Rogers, #343260,	)	Case No. 2014-CP-26-6589
Applicant,	)	
v.	)	RETURN AND
State of South Carolina,	)	MOTION TO DISMISS
Respondent.	)	

FILED
CLERK OF COURT
HORRY COUNTY
OCT 27 PM 1:21

In response to the Application for Post-Conviction Relief filed October 8, 2014, Respondent would show this Court:

L.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Horry County Clerk of court. In July 2008, the Horry County Grand Jury indicted Applicant for murder (2008-GS-26-2450). Kia T. Wilson, Esquire, and James C. Galmore, Esquire, represented Applicant. On October 11, 2010, Applicant proceeded to trial before the Honorable Larry B. Hyman Jr. and a jury. On October 14, 2010, the jury found Applicant guilty as indicted. Judge Hyman sentenced Applicant to thirty-five years imprisonment.

Applicant filed a timely notice of appeal. David Alexander, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on September 4, 2013. State v. Rogers, 405 S.C. 554, 748 S.E.2d 265 (Ct. App. 2013). The remittitur was returned to the circuit court on September 20, 2013.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "ineffective assistance of counsel"

- a. "There was a footprint found at the scene that was never tested or reviewed by counsel, and was not introduced at the trial, there was some minor testimony regarding the collection of that evidence that came out before the Jury which resulted in a Jury question during deliberation; however because it was not introduced by either party it could not be considered."
- b. "Additionally despite substance issues and mental health history no evaluation or assessment was conducted."
- c. "inappropriate statement made by the Solicitor in closing argument were not objected to by counsel"

Attached to and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the Department of Corrections, Applicant's appellate records. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits this application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-45(a) reads as follows:

"An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or **within one year after the sending of the remittitur** to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later."

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996).

The Court of Appeals returned the remittitur in Applicant's direct appeal to the circuit court on September 20, 2013. Applicant was therefore required to file his application before September 20, 2014. This application was filed on October 8, 2014, after the expiration of the statute of limitations.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, Respondent requests this Court summarily dismiss the application for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

IV.

Respondent denies each allegation that is not expressly admitted, qualified, or explained herein, and demands strict proof thereof.

V.

WHEREFORE, Respondent moves to summarily dismiss the application as untimely.

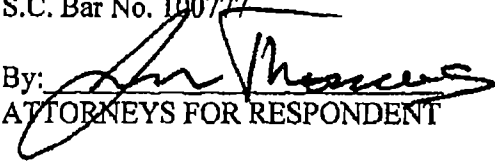
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

3/25, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

TIMMY J. ROGERS, #343260)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2014-CP-26-6589

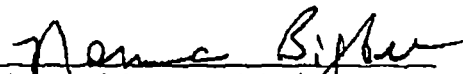
AFFIDAVIT OF SERVICE BY MAIL

FILED
MAR 27 PM 1:21
CLERK OF COURT

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Donna K. Taylor, Esquire
39 Broad St., Suite 101
Charleston, SC 29401

DATED this 25TH day of March, 2015


Norma Bigbee, Legal Assistant

**COPIES
MAILED**

ALAN WILSON
ATTORNEY GENERAL

April 7, 2015

The Honorable Melanie Huggins-Ward
Horry County Clerk of Court
Common Pleas Division (PCR)
Post Office Box 677
Conway, South Carolina 29528

2015 APR -9 PM 12:48

Re: Timmy J. Rogers, #343260 v. State of South Carolina
2014-CP-26-6589

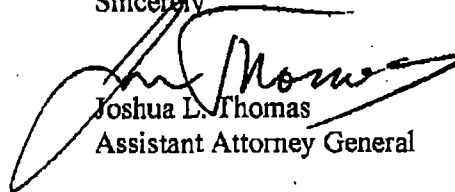
Dear Ms. Huggins-Ward:

Enclosed please find, for filing in your office, the original Conditional Order of Dismissal signed by the Honorable Steven H. John in the above referenced PCR matter.

Please clock-stamp the enclosed copies and mail them back to me in the enclosed envelope.

Thank you for your assistance in this matter, and please do not hesitate to contact me should you have any questions.

Sincerely,



Joshua L. Thomas
Assistant Attorney General

JLT/nb
Enclosures:

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Timmy J. Rogers, #343260,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2014-CP-26-6589

**CONDITIONAL ORDER
OF DISMISSAL**

**COPIES
MAILED**

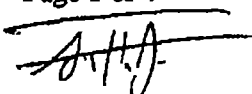
2015 FEB -9 PM 12:48
Horry County

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 8, 2014. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Horry County Clerk of Court. In July 2008, the Horry County Grand Jury indicted Applicant for murder (2008-GS-26-2450). Kia T. Wilson, Esquire, and James C. Galmore, Esquire, represented Applicant. On October 11, 2010, Applicant proceeded to trial before the Honorable Larry B. Hyman Jr. and a jury. On October 14, 2010, the jury found Applicant guilty as indicted. Judge Hyman sentenced Applicant to thirty-five years imprisonment.

Applicant filed a timely notice of appeal, and David Alexander, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on September 4, 2013. State v. Rogers, 405 S.C. 554, 748 S.E.2d 265 (Ct. App. 2013). The remittitur was returned to the circuit court on September 20, 2013.



II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "ineffective assistance of counsel"
 - a. "There was a footprint found at the scene that was never tested or reviewed by counsel, and was not introduced at the trial, there was some minor testimony regarding the collection of that evidence that came out before the Jury which resulted in a Jury question during deliberation; however because it was not introduced by either party it could not be considered."
 - b. "Additionally despite substance issues and mental health history no evaluation or assessment was conducted."
 - c. "inappropriate statement made by the Solicitor in closing argument were not objected to by counsel"

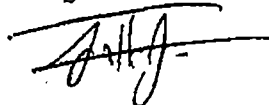
Respondent made a timely Return and Motion to Dismiss on or about March 25, 2015, asking this Court to dismiss the application as untimely.

III. FINDINGS OF FACT AND CONCLUSION OF LAW

S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." See also Rule 56(c), SCRPC. The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law in ruling on Respondent's motion to dismiss:

A. Failure to Timely File

The Court finds this application should be dismissed based on Applicant's failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-45(a) requires that:



"An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later."

This statute of limitations applies to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996).

The Court of Appeals issued the remittitur in Applicant's direct appeal on September 20, 2013. Applicant was therefore required to file his application before September 20, 2014. This application was filed on October 8, 2014, after the expiration of the statute of limitations. Because Applicant failed to timely file his application, the Court finds summary dismissal is appropriate.

IV. CONCLUSION

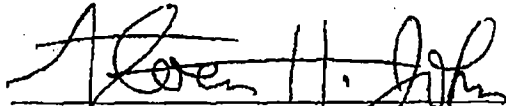
The Court finds the record before it creates no genuine issue of material fact and Respondent is therefore entitled to judgment as a matter of law.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted thirty (30) days from the date of service of this order upon him or his counsel to show why this ruling should not become final. Applicant or his counsel shall file any reasons he may have with the Horry County Clerk of Court and shall serve Respondent at the following address:

Office of the Attorney General
Attn: Joshua L. Thomas, Esquire
Post Office Box 11549
Columbia, South Carolina 29211

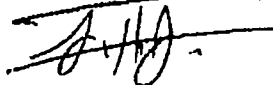
Applicant and his counsel are cautioned that his response to this order must be actually received by the Horry County Clerk of Court within thirty (30) days, and his failure to timely file and serve this response will result in the Court not considering any issues raised therein.

IT IS SO ORDERED THIS 2nd DAY OF April, 2014.



THE HONORABLE STEVEN H. JOHN
Chief Judge for Administrative Purposes
Fifteenth Judicial Circuit

Cerny, South Carolina



THE STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT

Timmy J. Rogers #343260)
Applicant,) CASE NUMBER: 2014-CP-26-6589
V.)
State of South Carolina)
Respondent.)
Applicant's Response
To Respondent's Motion To Dismiss

2015 MAY 15 PM 1:52
Horry County
Clerk of Court

In response to the Petitioner's Motion to Dismiss the application

Mr. Rogers would show this Court:

CASE CHRONOLOGY

On April 22, 2008 a homicide occurred in Horry County, ultimately the victim's wife and her then boyfriend, Timmy Rogers were developed as suspects and arrested. Mrs. Engle, after numerous inconsistent statements eventually made a confession and agreed to testify against Mr. Rogers. She entered a plea to accessory before the fact of Murder and testified at Mr. Roger's trial in October of 2010. After conviction, an appeal was filed on his behalf, that matter was briefed and oral argument was held June 5, 2013. A decision was rendered and filed September 4, 2013. The Clerk of the South Carolina Court of Appeals sent a letter of

remittitur to the Horry County Clerk of Court on September 20, 2013 and returned eight items of evidence. Mr. Rogers application for Post Conviction Relief was filed in Horry County on October 8, 2014. At some point, presumably in October, the Attorney General's office received the application and assigned Joshua L. Thomas the matter. By letter of March 25, 2015 Mr. Thomas copied Applicant's counsel on a Return and Motion to Dismiss the application. This correspondence also included a proposed Conditional Order of Dismissal.

PETITIONER'S MOTION TO DISMISS

Petitioner asks the Court to "summarily dismiss" Petitioner's application for relief for failure to comply with SC Code section 17-27-45(a). The South Carolina Post Conviction Act is a civil remedy for a criminal conviction and as such, is an usual and unique hybrid. There is a question of law as to when the Court of Appeals decision becomes final for purposes of starting the one year statute. Under Federal law the statute begins 90 days after the court of appeals final decision, that 90 day period giving the Applicant sufficient time to consider any other relief that may be sought to challenge the Court of Appeals decision.

Additionally, Petitioner argues that "...there is no genuine issue of

material fact" that the Court need be concerned with resolving.

Traditionally, Habeas Corpus relief has been the last opportunity for those deprived of their liberty through Judicial proceedings to a final review of factual or legal claims. In this case there are several fact questions raised by Mr Rogers application including the lack of admission (and possibly even review of by defense counsel) of 2 footprint molds taken from the wooded scene of the crime.

There is an issue of Mr. Rogers mental and physical manipulation by the chief State's witness, Sherry Engles. Mr. Rogers had a long history of mental health problems as well as substance abuse. During Ms. Engles sentencing after Mr. Roger's conviction, she revealed information which included having apparently unfettered access to " xanax, rozerem and hydrocodone." Interestingly, Mr. Engle's own brother spoke at this sentencing held before Judge Hyman on December 8, 2010 see transcript of Engle's plea and sentencing starting at page 48 line 17 through page 50 line 19, about the extraordinary extremes of manipulation and deceit regularly practiced by Sherry Engles. At the conclusion of her sentencing (at which she received the possible maximum) Judge Hyman who had tried Mr. Rogers, told Mrs. Engle's , " In fact I am not so sure, I have the

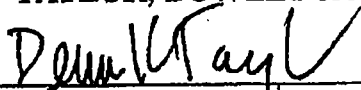
feeling that Timmy Rogers may have also been one of your victims... " on page 56 starting at line 9 through 15.

These are but two areas of potentially material facts at issue-the development of Mr. Rogers legal accountability as well as whether there may actually be exculpatory physical evidence if the print molds taken from the scene are still available for review. The State, asks that Timmy Rogers lose his chance to have these and whatever other issues that might be discovered heard before a Circuit Court Judge before his 35 year sentence becomes irrevocable. The applicant argues first that the application is timely, but even if it were not there is no prejudice to the State in allowing the matter to proceed. The State waited nearly 6 months after the filing of the application to reply in any form to his claims, they were obviously not overly concerned with time issues. Finally, even if the Court should determine that through a mistake or error of his counsel that the application was filed late, which even by the calculations of the Assistant Attorney General would have been either 13 or 18 days, equitable tolling should apply. South Carolina Code 17-27-70 clearly states that "Disposition on the pleadings and record is not proper if there exists a material issue of fact." The rights and protections provided

to criminal defendants must have a higher level of security and preservation that mere monetary claims more frequently subject to civil remedies like a statute of limitation violation, should one exists. There is no prejudice to the State of South Carolina or anyone else to permit Mr. Rogers to fully explore the legitimacy of his conviction. He respectfully asks this Court that he be allowed to do so.

Respectfully submitted:

TAYLOR, BOWLEY & BYRD, LLC



DONNA K. TAYLOR 5484

39 Broad Street

Charleston, SC 29401

(843) 723-4020

Fax (843) 723-4021

May 15, 2015
Charleston, South Carolina



ALAN WILSON
ATTORNEY GENERAL

HORRY COUNTY
2015 AUG -3 PM 3:51
MELANIE HUGGINS-WARD
CLERK OF COURT

July 30, 2015

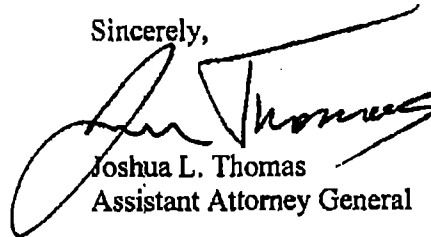
Donna K. Taylor, Esquire
Taylor Bowley & Byrd, LLC
39 Broad St., Ste. 101
Charleston, SC 29401

RE: Timmy Rogers v. State of South Carolina
PCR Case No. 2014-CP-26-6589

Dear Ms. Taylor,

Please find enclosed a copy of a **Notice of Motion and Motion to Dismiss** in the above captioned case. By copy of this letter, I am filing the original with the Horry County Clerk of Court.

Sincerely,



Joshua L. Thomas
Assistant Attorney General

cc: The Honorable Melanie Huggins-Ward

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Timmy J. Rogers, #343260,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2014-CP-26-6589

NOTICE OF MOTION
and
MOTION TO DISMISS

HORRY COUNTY
2015 AUG -3 PM 3:51
MICHAEL HOBBS, JR.
CLERK OF COURT

COMES NOW RESPONDENT, by and through undersigned counsel, who will move before the Presiding Judge of the Court of Common Pleas for the Fifth Judicial Circuit, on Tuesday, August 11, 2015, at 09:30 AM, for an order dismissing this post-conviction relief action with prejudice. In support of said motion, Respondent would show unto the Court as follows:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Horry County Clerk of court. In July 2008, the Horry County Grand Jury indicted Applicant for murder (2008-GS-26-2450). Kia T. Wilson, Esquire, and James C. Galmore, Esquire, represented Applicant. On October 11, 2010, Applicant proceeded to trial before the Honorable Larry B. Hyman Jr. and a jury. On October 14, 2010, the jury found Applicant guilty as indicted. Judge Hyman sentenced Applicant to thirty-five years imprisonment.

Applicant filed a timely notice of appeal. David Alexander, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on September 4, 2013. State v. Rogers, 405 S.C. 554, 748 S.E.2d 265 (Ct. App. 2013). The remittitur was returned to the circuit court on September 20, 2013.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "ineffective assistance of counsel"
 - a. "There was a footprint found at the scene that was never tested or reviewed by counsel, and was not introduced at the trial, there was some minor testimony regarding the collection of that evidence that came out before the Jury which resulted in a Jury question during deliberation; however because it was not introduced by either party it could not be considered."
 - b. "Additionally despite substance issues and mental health history no evaluation or assessment was conducted."
 - c. "inappropriate statement made by the Solicitor in closing argument were not objected to by counsel"

Respondent made its Return and Motion to Dismiss on or about March 25, 2015, requesting the application be summarily dismissed as untimely. The Honorable Steven H. John issued a Conditional Order of Dismissal, filed on April 9, 2015, provisionally denying and dismissing this action, while giving Applicant thirty (30) days from the date of service of said order to show why the dismissal should not become final. Applicant filed a response to the conditional order on May 15, 2015. By email dated May 27, 2015, Judge John informed the parties he declined to endorse a Final Order of Dismissal

III.

Respondent submits this application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-45(a) reads as follows:

"An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later."

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996).

The Court of Appeals returned the remittitur in Applicant's direct appeal to the circuit court on September 20, 2013. Applicant was therefore required to file his application before September 21, 2014. This application was filed on October 8, 2014, after the expiration of the statute of limitations.

In his response to the conditional order, Applicant argues there is a question of law as to when the Court of Appeals decision becomes final for purposes of the one year statute of limitations. Applicant cites to federal law for the proposition that the statute of limitations begins to run ninety days after the final decision of the court of appeals. See Jiminez v. Quarterman, 555 U.S. 113, 120 (2009) (holding that a conviction does not become final for purposes of seeking a writ of habeas corpus until "time for seeking certiorari review in this Court expired.") However, the statute of limitations in federal habeas corpus actions is not applicable to this state court action. This action is governed by the rules of Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-45(a) specifically provides that an application must be filed within one year *after the sending of the remittitur to the lower court from an appeal*. By the plain language of the statute, the one year statute of limitations for filing an application for post-conviction relief begins to run upon the issuance of the remittitur, not ninety days thereafter. Furthermore, this statute of limitations is subject only to the exceptions in S.C. Code Ann. § 17-27-45(b) and (c), neither of which has been pled by Applicant, and neither of which appears applicable in this case.

Applicant also argues he should be entitled to equitable tolling of the statute of limitations because there is no prejudice to Respondent in allowing the matter to proceed. However, South Carolina does not recognize equitable tolling simply because an application was filed shortly after the statute of limitation expired. See Pelzer v. State, 378 S.C. 516, 523, 662 S.E.2d 618, 621 (Ct. App. 2008) (“To apply equity generously would loose the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation.” (quoting Harris v. Hutchinson, 209 F.3d 325, 330 (4th Cir. 2000))). The notion that lack of prejudice to a defending party in a civil suit should excuse non-compliance with a statute of limitations is antithetical to the rule of law.

To the extent Applicant argues summary dismissal is inappropriate because there are questions of fact regarding his allegations of ineffective assistance of counsel, summary dismissal is appropriate based on a failure to comply with the statute of limitations regardless of the substantive claims raised in the application. To avoid summary dismissal, Applicant must “alleges facts that would establish an exception to [...] the statute of limitations[.]” McCoy v. State, 401 S.C. 363, 369, 737 S.E.2d 623, 626 (2013). He has not done so here. Applicant is not entitled to a hearing into the merits of his allegations when he has not complied with the filing procedures of the Uniform Post-Conviction Procedure Act.

IV.

WHEREFORE, Respondent requests the Court affirm Judge John’s conditional order of dismissal and dismiss the application as untimely.

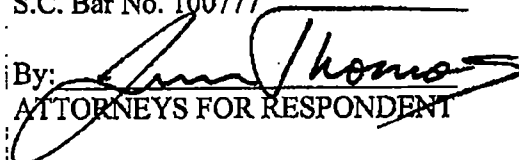
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

July 30, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Timmy J. Rogers, #343260,)

Case No. 2014-CP-26-6589

Applicant,)

v.)

State of South Carolina,)

Respondent.)

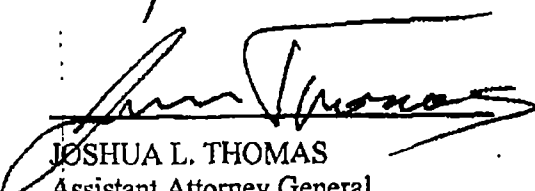
CERTIFICATE OF SERVICE

HORRY COUNTY
2015 AUG -3 PM 3:52
MELANIE THOMAS
CLERK OF COURT

Pursuant to Rules 5(a) and (b)(1), SCRCF, the undersigned certifies I have served the within **Notice of Motion and Motion to Dismiss** on Applicant by depositing a copy of the same in the United States mail, postage prepaid, addressed to his counsel of record at:

Donna K. Taylor, Esquire
Taylor Bowley & Byrd, LLC
39 Broad St., Ste. 101
Charleston, SC 29401

CERTIFIED THIS 30th DAY OF July, 2015.


JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

STATE OF SOUTH CAROLINA
COMMON PLEAS
COUNTY OF HORRY
POST-CONVICTION RELIEF

TIMMY ROGERS
SCDC 343260 ,
Applicant

v.
State of South Carolina

IN THE COURT OF
APPLICATION FOR

Case #: 2014-CP-26-6589

HORRY COUNTY
2015 AUG 11 AM 11:22
CLERK OF COURT

Applicant's response to Petitioner's
Second Motion to Dismiss

In response to the Petitioner's Second Motion to Dismiss the application,
Mr. Rogers would show this Court:

CASE CHRONOLOGY

On April 22, 2008 a homicide occurred in Horry County, ultimately the victim's wife and her then boyfriend, Timmy Rogers were developed as suspects and arrested. Mrs. Engle, after numerous inconsistent statements eventually made a confession and agreed to testify against Mr. Rogers. She entered a plea to accessory before the fact of Murder and testified at Mr. Roger's trial in October of 2010. After conviction, an appeal was filed on his behalf, that matter was briefed and oral argument was held June 5, 2013. A decision was rendered and filed September 4, 2013. The Clerk of the South Carolina Court of Appeals sent a letter of remittitur to the Horry County Clerk of Court on September 20, 2013 and returned eight items of evidence.

Mr. Rogers application for Post Conviction Relief was filed in Horry County on October 8, 2014. At some point, presumably in October, the Attorney General's office received the application and assigned Joshua L. Thomas the matter. By letter of March 25, 2015 Mr. Thomas copied Applicant's counsel on a Return and Motion to Dismiss the application. This correspondence also included a proposed Conditional Order of Dismissal, which was signed by Judge John on April 2nd, 2015; filed on April 9 and mailed to applicant's counsel on April 17th. Applicant then filed his response on May 15, 2015. After consideration of both the Motion to Dismiss and the Applicant's response to that request, Judge John declined to sign the submitted Final Order of Dismissal and advised the Attorney General to put the case on the next PCR calendar. The case was placed on the next PCR docket as a Motion to Dismiss and the Attorney General filed the subsequent motion to dismiss on July 30th, which is scheduled to be heard the week of August 10th.

PETITIONER'S MOTION TO DISMISS

Petitioner asks the Court to "summarily dismiss" Petitioner's application for relief for failure to comply with SC Code section 17-27-45(a).

The South Carolina Post Conviction Act is a civil remedy for a criminal conviction and as such, is an usual and unique hybrid. There is a question of law as to when the Court of Appeals decision becomes final for purposes of starting the one year statute. Under Federal law the statute begins 90 days after the court of appeals final decision, that 90 day period giving the Applicant sufficient time to consider any other relief that may be sought to challenge the Court of Appeals decision.

Additionally, Petitioner argues that "...there is no genuine issue of material fact" that the Court need be concerned with resolving.

Traditionally, Habeas Corpus relief has been the last opportunity for those deprived of their liberty through Judicial proceedings to a final review of factual or legal claims. In this case there are several fact questions raised by Mr Rogers application including the lack of admission (and possibly even review of by defense counsel) of 2 footprint molds taken from the wooded scene of the crime.

There is an issue of Mr. Rogers mental and physical manipulation by the chief State's witness, Sherry Engles. Mr. Rogers had a long history of mental health problems as well as substance abuse. During Ms. Engles sentencing after Mr. Roger's conviction, she revealed information which

included having apparently unfettered access to "xanax, rozerem and hydrocodone." Interestingly, Mr. Engle's own brother spoke at this sentencing held before Judge Hyman on December 8, 2010 see transcript of Engle's plea and sentencing starting at page 48 line 17 through page 50 line 19, about the extraordinary extremes of manipulation and deceit regularly practiced by Sherry Engles. At the conclusion of her sentencing (at which she received the possible maximum) Judge Hyman who had tried Mr. Rogers, told Mrs. Engle's , " In fact I am not so sure, I have the feeling that Timmy Rogers may have also been one of your victims... " on page 56 starting at line 9 through 15.

These are but two areas of potentially material facts at issue-the development of Mr. Rogers legal accountability as well as whether there may actually be exculpatory physical evidence if the print molds taken from the scene are still available for review. The State, asks that Timmy Rogers lose his chance to have these and whatever other issues that might be discovered heard before a Circuit Court Judge before his 35 year sentence becomes irrevocable. The applicant argues first that the application is timely, but even if it were not there is no prejudice to the State in allowing the matter to proceed. South Carolina Code section 17-27-70 requires

"within thirty days after the docketing of the application, or within any further time the court may fix, the State shall respond by answer or by motion which may be supported by affidavits." The State waited nearly 6 months after the filing of the application to reply in any form to his claims, they were obviously not overly concerned with time issues. Finally, even if the Court should determine that through a mistake or error of his counsel that the application was filed late, which even by the calculations of the Assistant Attorney General would have been either 13 or 18 days, equitable tolling should apply. Under the South Carolina Rules of Civil Procedure, Rule 71.1 (b) application for PCR cannot be made "while an appeal... is pending or during the time in which an appeal may be perfected." In this case, the decision of the Court of Appeals was filed September 4th and he Remittitur filed September the 20th of 2014, had Appellate Counsel filed a petition for rehearing he would have had 15 days to do so, the Court would have considered that petition and either granted it or denied it (time would be tolled during that time) if it were denied, Mr. Rogers would then have had 30 days to seek certiorari at the Supreme Court from the denial of the rehearing. The determination under section 17-27-45 (a) offers 3 different contingencies that would trigger the running of the one year within which

the application "must be filed". In considering Judicial economy and fundamental fairness , it is most reasonable to resolve any question of application of the limitation of time in allowing his currently filed action to proceed in his favor. South Carolina Code 17-27-70 clearly states that "Disposition on the pleadings and record is not proper if there exists a material issue of fact." The rights and protections provided to criminal defendants must have a higher level of security and preservation than mere monetary claims, more frequently subject to civil remedies like a statue of limitation violation, should one exists. There is no prejudice to the State of South Carolina or anyone else to permit Mr. Rogers to fully explore the legitimacy of his conviction. He respectfully asks this Court that he be allowed to do so.

Respectfully submitted:

TAYLOR, BOWLEY & BYRD, LLC



DONNA K. TAYLOR 5484

39 Broad Street

Charleston, SC 29401

(843) 723-4020

Fax (843) 723-4021

May 15, 2015
Charleston, South Carolina

Foxworth, Rhonda

From: Mallory Morris <MMorris@scag.gov>
Sent: Thursday, April 05, 2018 12:13 PM
To: Foxworth, Rhonda
Subject: FW: Timmy Rogers v. State of South Carolina (2014-CP-26-6589)

From: John, Steven H. Law Clerk (John Simkovich) [mailto:SJohnLC@sccourts.org]
Sent: Wednesday, May 27, 2015 11:07 AM
To: Josh Thomas; donna@tbbesq.com
Subject: Timmy Rogers v. State of South Carolina (2014-CP-26-6589)

Josh,

The Court has reviewed Mr. Roger's response to the State's Motion to Dismiss his application for PCR and declines to sign the Final Order of Dismissal. Please place this case on the next PCR calendar.

Thank you,

John Paul Simkovich
Law Clerk to Judge Steven H. John
Circuit Judge – Horry & Georgetown Counties
Phone: 843-915-6697
Fax: 843-915-5859

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.



STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY ) 2014-CP-26-06589

TIMMY J. ROGERS, )

Petitioner, )

vs. )

STATE OF SOUTH CAROLINA, )

Respondent. )

**Transcript of Record**  
(Motion Hearing - PCR)

August 11, 2015

**B E F O R E:**

Honorable G. Thomas Cooper  
Horry County Courthouse  
Conway, South Carolina

**A P P E A R A N C E S:**

Donna K. Taylor, Esquire  
**Attorney for Petitioner**

Josh Thomas, Esquire  
**Attorney for Respondent**

Kay H. Richardson  
**Circuit Court Reporter**

Rogers v. State - 2014-CP-26-06589  
INDEX

2

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E XAUGUST 11, 2015Pg.

Motion ..... 2  
Certificate of Court Reporter ..... 24

E X H I B I T SNo.IDEV

(No Exhibits were marked or admitted.)

Rogers v. State - 2014-CP-26-06589  
MOTION HEARING

3

1 (AUGUST 11, 2015 - 11:34 A.M.)

2 THE COURT: Mr. Thomas?

3 MR. THOMAS: Thank you, Your Honor. This is Timmy Rogers  
4 versus the State of South Carolina, case number 2014-CP-26-  
5 6589. This was a July 2008 indictment for murder. He went to  
6 trial on that on October 11th, 2010, in front of Judge Hyman,  
7 and a jury -- the jury found him guilty as indicted on October  
8 14th. Judge Hyman gave him a 35-year sentence. Did file a  
9 timely notice of appeal. David Alexander at the Office of  
10 Appellate Defense represented him on that appeal. The Court  
11 of Appeals confirmed his conviction on September 3rd, that was  
12 in *State vs. Rogers*, that's 405 S.C. 544. The remittitur was  
13 returned to Circuit Court dated September 20th, 2013. He did  
14 file this application for PCR in -- on exactly -- it's filed,  
15 clocked October 8th, 2014. The State filed initially a return  
16 motion to dismiss on March 25th, 2015, basically arguing the  
17 statute of limitations had expired when his application was  
18 filed. Judge John, who was the chief admin at that time,  
19 issued a conditional order of dismissal on April 9th, 2015  
20 provisionally denying and dismissing the action as untimely  
21 barred by the statute of limitations. Applicant, he is  
22 represented by Donna Taylor, who is here in the courtroom  
23 today. He did file a response to the conditional order, Ms.  
24 Taylor did. She filed that -- it was timely filed in May of  
25 2015. We -- the State then, as is the standard practice, we

Rogers v. State - 2014-CP-26-06589  
MOTION HEARING

4

1 sent a proposed final order of dismissal to Judge John, sort  
2 of addressing the issues raised in the response to the COD.  
3 In response -- I need to get the date for that -- we sent that  
4 proposed final order on May 20th, 2015. In response to that,  
5 Judge John's law clerk on May 27th sent an email, and I  
6 believe Ms. Taylor has provided you a copy of that, basically  
7 saying that Judge John had reviewed the motion to dismiss,  
8 declined to sign the final order of dismissal, and please  
9 place the case on the next PCR calendar. Obviously, we put it  
10 on this docket here on July 30th of 2015. I did file a --  
11 just to cover our bases and make sure we were actually filing  
12 a motion to dismiss, I filed a motion to dismiss. So, I guess  
13 we are here on my motion.

14 Your Honor, the State's position is that the statute of  
15 limitations in 17-27-45 provides that an application must be  
16 filed within one year after the sending of the remittitur. In  
17 this case, Your Honor, the remittitur was sent on September  
18 20th, 2013.

19 THE COURT: Give me that -- slow down. Give me these  
20 dates again.

21 MR. THOMAS: Okay. The remittitur, which I believe a  
22 copy is in the packet you've been given -- the remittitur was  
23 -- the Court of Appeals returned the remittitur. I guess the  
24 remittitur itself is the letter that the Court of Appeals  
25 sends ---

Rogers v. State - 2014-CP-26-06589  
MOTION HEARING

5

1           THE COURT: All right. Let me ask you, Ms. Taylor has  
2 handed up to the Court something called Rogers Chronology.  
3 Have you seen this?

4           MR. THOMAS: I do have a copy of that, Your Honor.

5           THE COURT: Are those dates correct? I mean, is this an  
6 accurate listing of the proceedings in this case?

7           MR. THOMAS: It appears to be correct, Your Honor, yes.

8           THE COURT: Okay.

9           MR. THOMAS: And so anyway, filed on September 30th of  
10 2013, the application, the one-year statute would then have  
11 expired on September 21st, 2014. This application is actually  
12 filed on October 8th, 2014, and the State's position is that  
13 it is untimely. We've outlined in the motion and I've tried  
14 to cover some of -- just sort of predict some of the arguments  
15 that may be made based on what the response to the COD was.  
16 As far as when the statute actually begins to run, the statute  
17 is pretty clear, it begins to run at the sending of the  
18 remittitur, not at some point thereafter. So, by the plain  
19 language of the statute, it's one year after the date of the  
20 remittitur, and since this was filed past September 21st,  
21 2014, it's untimely is the State's position. Also, I've --  
22 I'm not really sure there's a question of fact as to when --  
23 why the thing was filed untimely, Your Honor. There's really  
24 been nothing pled that would be one of the two excuses to the  
25 State of Limitations. I haven't seen anything that maybe

Rogers v. State - 2014-CP-26-06589  
MOTION HEARING

6

1 would indicate that there is some reason to apply equitable  
2 tolling in this case. I don't see that there is a question of  
3 fact as to when the application was filed versus when the  
4 remittitur was filed. And for those reasons, Your Honor, we  
5 think that this case should be dismissed without the necessity  
6 of an evidentiary hearing to address the actual merits of the  
7 claims.

8 THE COURT: All right. Ms. Taylor?

9 MS. TAYLOR: Thank you, Judge.

10 THE COURT: Is there a little more to it?

11 MS. TAYLOR: A little bit; at least I hope so, Judge.

12 The chronology I think is accurate. The only correction that  
13 I would say is, I think, on the record it was stated that the  
14 appeal was filed by the Court of Appeals September 3rd, it was  
15 in fact September 4th, there's one day difference there.

16 As far as argument, Judge, I think there are two  
17 questions here. This is basically -- we're looking at the  
18 statute which I don't think I've provided you a copy of it,  
19 17-27-40, of the post-conviction, and I think that we're  
20 looking at two things. First, we're looking at the State of  
21 South Carolina and how it interprets that. And as we all  
22 know, if you've been practicing law more than five years, it  
23 can seem to be pretty clear and black-and-white, but once you  
24 start looking into it, there's an awful lot of possible  
25 interpretations. Under the statute of limitations provision,

## MOTION HEARING

1 which is section (a), it lists three different occasions which  
2 could determine the final state of the case, which would then  
3 start that one year running.

4 In State Court, we have that. In Federal Court, which I  
5 think that there's a pretty comfortably well-held law that  
6 give the Federal Court -- the federal constitution grants  
7 certain rights -- and this is a little bit different than the  
8 usual statute of limitations. As you know, in criminal court  
9 in South Carolina, we don't have statute of limitations when  
10 it comes to the defendant being prosecuted. This is a civil  
11 action but it is quasi criminal. It's a hybrid because, yes,  
12 it is in common pleas but it preserves and presents criminal  
13 rights, which under the constitution, Mr. Rogers has that one  
14 clear bite at a factual determination of the competency of his  
15 counsel, ineffective assistance of counsel, and any other  
16 post-conviction claim that he might raise. And he has done so  
17 in his application not only through ineffective assistance of  
18 counsel on two different grounds, but also a question about  
19 the comments made by the government, the prosecutor in his  
20 closing argument. There are some factual pieces of evidence  
21 and the most important was or is a set of footprints. And  
22 they were listed in the evidence of the case, they were not  
23 submitted at trial. But, during testimony at trial, something  
24 about the came up briefly and the jury actually posed a  
25 question about could they see them and where were they. And

Rogers v. State - 2014-CP-26-06589  
MOTION HEARING

8

1 part of the investigation of this case, it was a little bit  
2 difficult to locate those prints but we were recently able to  
3 find them and happily all of the evidence remains intact in  
4 Mr. Rogers' case.

5 Back to the statute, the constitution in the Federal  
6 Courts also apply here because if his rights are exhausted in  
7 the State of South Carolina, he obviously has a right to seek  
8 redress from the Federal Court to the renew our consideration  
9 of his habeas rights. And the Federal Court, and this is  
10 argued in -- I think in my response as well, and I think the  
11 Attorney General responded back to my response and you'll have  
12 both sides of that. And in the federal law, the final date is  
13 extended by 90 days, giving the right to seek federal post-  
14 conviction. Now, obviously, we're not there but the argument  
15 that I would submit to the Court is that the State of South  
16 Carolina, if there is any ambiguity whatsoever in the statute  
17 of limitations, which would prohibit him getting a post-  
18 conviction review, then that federal statute which extends it  
19 by an additional 90 days would kick in and allow for equitable  
20 tolling of the time that the statute would start. Not of the  
21 statute, but just when it would start.

22 Now, pragmatically -- and again I know you've got a bunch  
23 of paperwork up there that, I think, does contain most of our  
24 arguments, and I don't know whether the Court will want to  
25 take that under advisement and review it, but just as a



Rogers v. State - 2014-CP-26-06589  
MOTION HEARING

9

1 practical matter, while we're on the record, I would also like  
2 to point out a couple of other reasons. I have argued that,  
3 first, that we were not untimely, that we were within the  
4 statute because of the finality of the Court of Appeals  
5 finding. In this case, David Alexander filed the appeal. The  
6 appeal was before the Court for a little over a year and a  
7 half before they had arguments, but it was -- this is not an  
8 Anders type situation. It was not a sort of a slip in  
9 something for an appeal; it was an aggressively argued -- we  
10 were both there -- well, Timmy was not but by my co-counsel  
11 and I were at that and to watch it. It was fairly heated and  
12 a lot of questions about the almost completely circumstantial  
13 nature about the case. They considered it from June until  
14 September and then issued their final order. Mr. Alexander  
15 did not file a motion for -- a petition for rehearing, nor did  
16 he file for certiorari. Had he done either of those things,  
17 that would have moved that September 4th date along as well,  
18 at a minimum 30 days by the way that I've calculated.

19 Now, interestingly, in a case that Mr. Thomas presented  
20 in his argument, *Jimenez*, which is a federal case dealing with  
21 federal habeas, but there's also a State -- a South Carolina  
22 case that was -- made it to Federal Court, I think it's  
23 *Johnson v. Nolan*, which had a similar sort of circumstance.  
24 In *Jimenez*, it was a Texas burglary state conviction. He was  
25 convicted -- there was a long drawn out lapse in time, years

Rogers v. State - 2014-CP-26-06589  
MOTION HEARING

10

1 before he ultimately filed for post-conviction. But  
2 interestingly, it was a similar set of circumstances. He did  
3 not have appellate counsel to preserve his appeal. And I  
4 think it was the whole appeal; it may've been for the  
5 rehearing -- he filed late on the post-conviction. The Court  
6 says, well, you know, we're not gonna give you your post-  
7 conviction being late but we're gonna preserve your right to  
8 an appeal, so we're gonna allow you to go back and reopen,  
9 have that motion for a petition or the motion to appeal, and  
10 then you can deal with your post-conviction after that. And,  
11 of course, once the State accepts that, that unfinalizes the  
12 former finding or the decision that the Court would've made in  
13 this case, in Timmy's case, on September 4th. So, it appears  
14 from the law that I was reading, that even if the Court were  
15 to find here today that we were not timely, and that there's  
16 no equitable reason to toll or to allow the proceeding to  
17 continue anyway, whether because of the statute or also  
18 because of the prong in the PCR statute which says you should  
19 not grant a summary judgment unless there -- he has a -- the  
20 State has a matter of, by right of law, which would arguably  
21 in this case be if we were untimely and there is no genuine  
22 issue of fact yet to be determined in the merits hearing. It  
23 is a combination sentence that is also in the post-conviction  
24 statute. This is a summarily dismissal, if it is granted.  
25 So, for all of those reasons and the reason that

Rogers v. State - 2014-CP-26-06589  
MOTION HEARING

11

1 apparently under federal law, if the Court finds that and  
2 dismisses the case today, then Mr. Rogers could potentially go  
3 back, file the action for his lack of appellate effective  
4 assistance, I guess, that is something that apparently cannot  
5 be waived. So, that would then reopen the whole thing and  
6 then we'd just do all this all over again. So, for practical  
7 ---

8 THE COURT: What would be the ineffective assistance of  
9 appellate counsel?

10 MS. TAYLOR: Failure to file for the petition to rehear.

11 THE COURT: Oh, okay. I thought it had something to do  
12 with -- with the post-conviction.

13 MS. TAYLOR: No, sir. That's just -- apparently it's  
14 sort of collateral situation. I think everything else that  
15 you would need would be in the information that we have  
16 provided.

17 As a final note, if after review of all the law and  
18 determination of the interpretation being as clear or unclear  
19 as the government presents today and you find that Mr. Rogers'  
20 petition which was filed on October 8th, which again would've  
21 been de minimis, even it were late, we're talking less than 20  
22 days late, it would be solely because of his counsel's, which  
23 would be me, fault. Mr. Rogers did not prepare his own post-  
24 conviction application.

25 THE COURT: The first one?

Rogers v. State - 2014-CP-26-06589  
MOTION HEARING

12

1 MS. TAYLOR: I'm sorry?

2 THE COURT: The first one?

3 MS. TAYLOR: His only one.

4 THE COURT: Okay. He did not file ---

5 MS. TAYLOR: I mean, he didn't do it himself. This was  
6 not a case where he was a pro se individual in a penitentiary  
7 filing ---

8 THE COURT: As are most cases.

9 MS. TAYLOR: A lot of them are, apparently.

10 THE COURT: Yes.

11 MS. TAYLOR: He was assisted by me at the time. So, if  
12 there is an error, it is not his, it's not through any fault  
13 of his at all. It would be entirely his counsel's error and,  
14 if that were to be the case, then I would certainly argue that  
15 the Court would have the judicial ability and authority -- and  
16 equitable tolling is an interesting concept. In South  
17 Carolina, it's not particularly well-litigated in this  
18 particular area. I know there are some federal cases and some  
19 cases that can argue that you can't do it. But, everything  
20 that I have read essentially says that that is a judicially  
21 created right that judges can look at case by case, look at  
22 the circumstances, look at whether there's a prejudice to  
23 either party. And, if there is the right case and event,  
24 time, say yeah, nope, I'm just gonna say this needs to go  
25 forward. And I would ask that if that were the case and we

Rogers v. State - 2014-CP-26-06589  
MOTION HEARING

13

1 get to that point in this sort of long standard scheme of  
2 hearing out what happened and what to do that you would not  
3 remove the final South Carolina right granted to Mr. Rogers to  
4 have a factual determination of the competency of his  
5 conviction in our state court, because his lawyer was 18 to 20  
6 days late in filing a piece of paper that was otherwise ---

7 THE COURT: All right. Where do -- is that the date from  
8 which the remittitur was mailed?

9 MS. TAYLOR: The remittitur -- no -- well, the remittitur  
10 was sent to Conway court, yes, on the 20th of September.

11 THE COURT: Okay. So, that's ---

12 MS. TAYLOR: That's the date that this clerk got it.  
13 Then, I think it's October ---

14 THE COURT: Was it filed -- is there a difference between  
15 the mailing date and the filing date?

16 MR. TAYLOR: Let me see. It's in here. I don't know  
17 when it was filed, Judge. It was mailed out ---

18 THE COURT: The State says that the trigger is the  
19 mailing date, which is September 20th.

20 MS. TAYLOR: That's the date that the letter is drafted.  
21 Again, I only have -- I was not copied on that letter because  
22 I was not at that point counsel. It went to -- I'm not sure  
23 how ---

24 THE COURT: Wait a minute. You say you were not counsel  
25 September 20th?

Rogers v. State - 2014-CP-26-06589  
MOTION HEARING

14

1 MS. TAYLOR: No, sir, that was when the appeal was just  
2 finishing. David Alexander -- I was not his appellate  
3 counsel.

4 THE COURT: I understand that. But between September  
5 20th and October 8th, you were retained?

6 MS. TAYLOR: This was 2014 when the remittitur was sent  
7 out.

8 THE COURT: Oh, I'm sorry.

9 MS. TAYLOR: Yeah, it's confusing, the dates are so  
10 close.

11 THE COURT: You're absolutely right; it's a year.

12 MS. TAYLOR: And the case -- you know, that's another  
13 issue as far as prejudice. This case has not been on a speedy  
14 track any step of the way, which is not a bad thing as long as  
15 it's done correctly. But, yes, sir; I don't know when the  
16 remittitur -- I don't even know if they filed a remittitur but  
17 the letter was sent to this Court on the 20th and then at some  
18 point ---

19 THE COURT: I'm with you.

20 MS. TAYLOR: And I'm not sure how the Attorney General  
21 was notified if any of these people on the copy is an Attorney  
22 General person. But, it did go to his appellate counsel and  
23 then, at some point thereafter, Timmy would have received  
24 notice from Mr. Alexander. And then at some point after that,  
25 it would've been when I began the post-conviction issue.

Rogers v. State - 2014-CP-26-06589  
MOTION HEARING

15

1 THE COURT: So, we don't know when your client got it  
2 either? Is that what you're telling me?

3 MS. ROGERS: That is correct, Judge. It would've been at  
4 the earliest, because if it was mailed to Horry County and  
5 copied to his appellate counsel on September 20th. And this  
6 again is 2013, so I have no idea what day of the week that is.  
7 I have a cell phone, which we're not allowed to have in here -  
8 - I can't figure that out. I can ask my client if would like  
9 me to see if he recalls how long it took him to know that this  
10 had happened.

11 THE COURT: Well, wouldn't that be of some significance?

12 MS. TAYLOR: Judge, I would think that it would be of  
13 some significance. Certainly, in the practical state of being  
14 -- now, I can tell you that when Mr. Alexander let me know  
15 sometime significantly after that date. But again, I was not  
16 involved in the appeal.

17 THE COURT: Where is he -- where is he housed?

18 MS. TAYLOR: He's at Kirkland in Columbia.

19 THE COURT: Been there the whole time?

20 MS. TAYLOR: I think he was there the whole time for the  
21 appeal. (Confers with client.) He was also at Lee County, so  
22 that's a little further away.

23 I have asked him, Judge. He says he knows that Mr.  
24 Alexander did not come personally to the prison. He can't  
25 remember if he was at Lee or had already come to Kirkland at

Rogers v. State - 2014-CP-26-06589  
MOTION HEARING

16

1 the time of the appeal, but he would've gotten something in  
2 the mail but he doesn't remember when he got it from Mr.  
3 Alexander.

4 THE COURT: Okay.

5 Mr. Thomas?

6 MR. THOMAS: Your Honor, I just -- to clarify that a  
7 little bit, the statute is very specific. It says that the  
8 statute of limitations begins to run within one year after the  
9 sending of the remittitur. It doesn't say within one year of  
10 the receipt the remittitur. So, the State's position,  
11 obviously, is that the remittitur is sent on the day it is  
12 mailed from the Court, which by our best evidence is the date  
13 that they put on the letter. The 90 days additional time to  
14 challenge the federal habeas -- to raise federal habeas,  
15 that's based upon the federal statute of limitations for  
16 habeas corpus. That's the statute that's -- 28 U.S. 2244.  
17 That has no application to the State Court. The statute has  
18 no application for when the appeal is final in State Court.  
19 Our case law and our rules are very clear. An appeal in State  
20 Court is final when the remittitur is issued. So, I don't  
21 think the 90 days has any application here. Obviously, the  
22 statute of limitations is a rigid thing that has to be  
23 applied. This is a civil action, it can't be ignored simply  
24 because it's a de minimis failure or simply there's some maybe  
25 important underlying issues that we need to address. It's a



Rogers v. State - 2014-CP-26-06589  
MOTION HEARING

17

1 hardline rule that the Court has to follow. And I would just  
2 submit, too, looking back through the case law on summary  
3 dismissals, and McCoy being the most recent one. Even McCoy  
4 itself says that summary dismissal is inappropriate where  
5 there is a question of fact regarding the statute of  
6 limitation. It's not a question of fact regarding the  
7 underlying substantive claims. So, our position is obviously  
8 that the record here is clear and this was filed after the  
9 statute expired and we would just ask that you dismiss it.

10 THE COURT: All right. Anything further?

11 MS. TAYLOR: Court's indulgence just one second.

12 THE COURT: Take your time. Take your time.

13 MS. TAYLOR: And if I could, Judge, just very quickly ---

14 THE COURT: There's no rush, ma'am.

15 MS. TAYLOR: Just in response to the last comments,  
16 obviously the statute of limitations have their purposes in  
17 our litigation process. And while they are somewhat rigid,  
18 they are not always definitive. There are cases in Common  
19 Pleas and civil practice where you can show for a good cause  
20 that the statute should be altered. There are events along  
21 the way in the process of litigation that can toll the time  
22 for which the statute applies. There is -- now I can't think  
23 of the name -- but you can have the equitable tolling but you  
24 can also have the repose that it can sort of be cut and  
25 stopped for some other reason. So, there are clearly facts

Rogers v. State - 2014-CP-26-06589  
MOTION HEARING

18

1 which exist that can alter this rigid road that the statute of  
2 limitations can be. And I have quoted in the most recent  
3 response that I filed also quoting our South Carolina Rules of  
4 Civil Procedure which talk about -- and the interesting thing  
5 again, this isn't your typical civil action. This doesn't  
6 stem from private people or businesses looking for financial  
7 recompense for something or a boundary dispute or any kind of  
8 action like this. It stems from a conviction in this case of  
9 a murder conviction resulting in a 35-year prison sentence for  
10 a gentleman who now should have the right to look at whether  
11 his conviction should withstand scrutiny. Factual scrutiny,  
12 yes, he had an appeal and it was fought aggressively and it  
13 was deliberated for a period of time, and three of our  
14 appellate judges apparently struggled and thought hard about  
15 it and wrote a lengthy conclusion about the case which  
16 expresses some concerns about circumstantial evidence used to  
17 convict. Nevertheless, that was their determination and  
18 barring of appeal of a legal question to the Supreme Court or  
19 to a Federal Court, he had his bite and that's that. You  
20 don't get to look at the factual issues or effective  
21 assistance of counsel or whether there was prosecutorial  
22 misconduct -- not that there was any, but even to look to see  
23 if there was or any other substantial ---

24 THE COURT: Is there a claim of that in your application?

25 MS. TAYLOR: There is not of misconduct except for --

Rogers v. State - 2014-CP-26-06589  
MOTION HEARING

19

1 not any withholding evidence or anything. There is a  
2 challenge that there were comments made by the Solicitor in  
3 closing argument to the jury that there ---

4 THE COURT: That were not objected to?

5 MS. TAYLOR: Yes, sir. And that were also potentially  
6 problematic. But there's not a claim of withholding  
7 exculpatory evidence or anything like that. And there is  
8 enough language in -- and they may be collateral things, they  
9 may be post-conviction rules, there might be civil rules,  
10 there might be some criminal sort of other things in there  
11 that might be state, they might be federal, but there are  
12 clear concerns within everything that I've read for the last  
13 five days, which while not always clear, was a lot that the  
14 Court has concerns that people's rights, when they are not --  
15 and this is not a case of successive claims or repetitive  
16 claims or another place he can make a claim. This is his one  
17 -time step to have these issues looked at. And I think that  
18 that all demands that the Court can, has the authority to do  
19 so, and should allow this application to proceed as it is now.  
20 If it does, my understanding is that it goes on the November  
21 docket and we'd have this opportunity to have it heard and  
22 whatever that Judge who hears it decides that that would be  
23 end of that but he could not complain any further at that  
24 point did he didn't have a full and complete opportunity to  
25 have all of his rights protected. And I do think that the

Rogers v. State - 2014-CP-26-06589  
MOTION HEARING

20

1 federal law, again, I think -- I'm not sure if I said this or  
2 not or was articulate with it, but I think if the federal law  
3 gives a criminal defendant a right, whatever state he happens  
4 to be a citizen in, then that state cannot diminish that right  
5 by reducing it in any way including preventing access to it by  
6 a reduced statute of limitation.

7 THE COURT: All right. Anything further from the State?

8 MR. THOMAS: No, Your Honor.

9 THE COURT: All right. As my customary practice, I'll  
10 accept proposed orders within 30 days.

11 Anything further?

12 MS. TAYLOR: No, sir.

13 THE COURT: All right. Thank you very much.

14 MR. THOMAS: Thank you, Your Honor.

15 (ADJOURNED - 12:04 P.M.)

16 \*\*\*\*\*OFF THE RECORD\*\*\*\*\*

17 (On the Record - 12:07 P.M.)

18 MS. TAYLOR: Your Honor, may I put -- I waive my client's  
19 presence.

20 THE COURT: We are still on the record.

21 MS. TAYLOR: One final thing that I forgot to mention,  
22 Judge. It's mentioned in the chronology and a little bit in  
23 what we talked about, the final issue that I would propose as  
24 a further reason for this Court to deny the State's request is  
25 what may be res judicata. As you heard early on, a motion to

Rogers v. State - 2014-CP-26-06589  
MOTION HEARING

21

1 dismiss was originally mailed out March 25th. Our petition  
2 was filed October 8th, 2014. And there are two things about  
3 this that I would like the Court to consider. The first is  
4 that if the government comes in now, almost five months after  
5 the filing of the application and ask that it be dismissed  
6 with his return, he himself has violated the post-conviction  
7 statute which has the language that the State shall file a  
8 return within 30 days of receipt of the application.

9 THE COURT: When was the ---

10 MS. TAYLOR: He received a letter ---

11 THE COURT: --- conditional discharge filed?

12 MS. TAYLOR: May 15th was when the conditional discharge  
13 was -- no, I'm sorry -- 4 -- the discharge was signed by the  
14 Judge April 7th. The Judge filed the paper on the 9th and  
15 then it was mailed to me by Mr. Thomas on April 17th. That's  
16 in my chronology list for you. But my point is that we filed  
17 in October of 2014 ---

18 THE COURT: Right.

19 MS. TAYLOR: And within, let's say the middle of  
20 November, the government should have filed its motion and its  
21 return according to the statute, which requires it and uses  
22 the language shall be filed within 30 days of receipt.

23 THE COURT: And when did they file?

24 MS. TAYLOR: March 25th of 2015, about four months --  
25 between four and five months after he would have received ---

Rogers v. State - 2014-CP-26-06589  
MOTION HEARING

22

1 THE COURT: Okay.

2 MS. TAYLOR: The Horry Clerk mailed the application to  
3 Mr. Thomas directly on October 22nd of 2014. So, he had it in  
4 his possession at least by then. So, that's one issue.

5 The second issue around the motion to dismiss is that it  
6 was sent originally by motion to Judge John, who executed the  
7 conditional discharge, allowed us 30 days to file a response,  
8 which I did prior to my -- I think prior to my filing it, but  
9 I'm not sure. No. It was right after -- five days after I  
10 filed it, the government sent the final order to Judge John  
11 and requested that he execute that final order. And then  
12 seven days later, his law clerk responded with a message that  
13 I have in my packet which basically says Judge John declines  
14 to grant your order or sign your order. You have the email,  
15 whatever it says, but basically he said he declines to do that  
16 and his language is set this case for the next PCR docket. My  
17 argument and my belief at the time but I've not been able to  
18 get confirmation one way or the other from Judge John's law  
19 clerk yet is that what he did was he considered everything and  
20 he denied it. So, that should be res judicata in that even  
21 being here today is out of -- he saw it, he had it, he read  
22 the response, and he declined to order it. He didn't say I'm  
23 not gonna grant it without a hearing, put this motion on the  
24 next PCR docket. He said, I decline to sign it, put this case  
25 on the next PCR docket. And that's it. Sorry.

1           Thank you very much, Judge.

2           MR. THOMAS: And, Your Honor, just in response to that,  
3 first, the first allegation, I agree with her dates as far as  
4 when we received the application versus when the return motion  
5 to dismiss was filed. But again, there's no default in PCR.  
6 The 30-day filing deadline is not mandatory and that's the  
7 case law that -- I was trying to pull it up, but it's -- the  
8 Supreme Court has made that pretty clear that it's -- you've  
9 got to show some other exceptional circumstance to hold the  
10 State in default in those situations. And then in regards to  
11 Judge John's clerk's email, I would just submit that there's a  
12 difference between saying Judge declines to sign an order  
13 versus Judge denies a motion. So, we would just submit that  
14 that is properly before this Court.

15           THE COURT: All right. Thank you very much.

16           MS. TAYLOR: Thank you, Judge.

17           MR. THOMAS: Thank you, Your Honor.

18 (ADJOURNED - 12:12 P.M.)

19

20

21

22

23

24

25

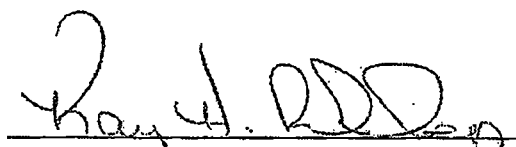
Rogers v. State - 2014-CP-26-06589  
CERTIFICATE OF COURT REPORTER

24

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the motion hearing held in the case of *Timmy J. Rogers versus State of South Carolina*, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on August 11, 2015.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson

Official Court Reporter

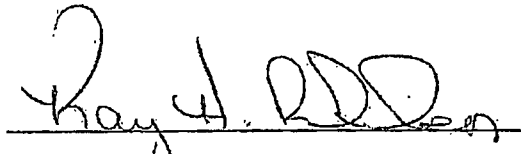
January 14, 2018.



C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the motion hearing held in the case of *Timmy J. Rogers versus State of South Carolina*, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on August 11, 2015.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson

Official Court Reporter

January 14, 2018.

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2014CP2606589

Timmy Rogers

South Carolina State of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant  
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);  
☐ Rule 43(k), SCRCP (Settled); ☐ Other: \_\_\_\_\_
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: \_\_\_\_\_
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

PCR HEARING UNDER ADVISEMENT

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

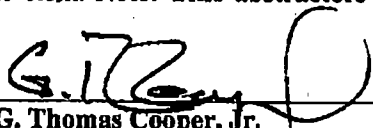
FILED  
HORRY COUNTY  
15 AUG 11 PM 1:35  
CLERK OF COURT

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below)                                                              | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|-----------------------------------------------------------------------------------------------------------|------------------------------------------|----------------------------------------------------------|
| N/A                                                                                                       | N/A                                      | N/A                                                      |
|                                                                                                           |                                          |                                                          |
|                                                                                                           |                                          |                                                          |
|                                                                                                           |                                          |                                                          |
| If applicable, describe the property, including tax map information and address, referenced in the order: |                                          |                                                          |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

  
Circuit Court Judge G. Thomas Cooper, Jr.

2126  
Judge Code

8/11/2015  
Date

### For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on, to attorneys of record or to parties (when appearing pro se) as follows:

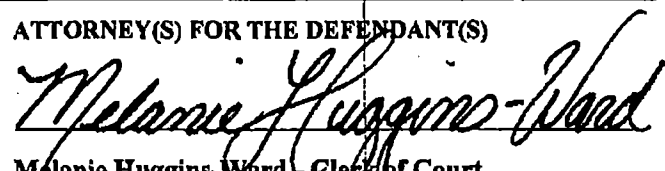
Donna K. Taylor Taylor, Bowley & Byrd, LLC 39 Broad St.,  
Ste. 101 Charleston, SC 29401

Alan McCrory Wilson PO Box 11549 Columbia, SC 29211-  
1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter: Kaye Richardson

  
Melanie Huggins-Ward Clerk of Court

### ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

copies mailed

|                           |   |                                    |
|---------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA   | ) | IN THE COURT OF COMMON PLEAS       |
| COUNTY OF HORRY           | ) | FOR THE FIFTEENTH JUDICIAL CIRCUIT |
| Timmy J. Rogers, #343260, | ) | Case No. 2014-CP-26-6589           |
| Applicant,                | ) |                                    |
| v.                        | ) | <b>FINAL ORDER OF DISMISSAL</b>    |
| State of South Carolina,  | ) |                                    |
| Respondent.               | ) |                                    |

2015 SEP 23 PM 1:13  
HORRY COUNTY  
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 8, 2014. The Court convened a hearing into the matter on August 11, 2015, at the Horry County Courthouse. Applicant was present at the hearing and represented by Donna K. Taylor, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent. The Court had before it a copy of the records of the Horry County Clerk of Court regarding Applicant's convictions, Applicant's records from the South Carolina Department of Corrections, the records from Applicant's direct appeal, and the pleadings and submissions in this matter. After hearing arguments of counsel, and viewing the record in the light most favorable to Applicant, the Court finds as follows:

#### **I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Horry County Clerk of Court. In July 2008, the Horry County Grand Jury indicted Applicant for murder (2008-GS-26-2450). Kia T. Wilson, Esquire, and James C. Galtmore, Esquire, represented Applicant. On October 11, 2010, Applicant proceeded to trial before

the Honorable Larry B. Hyman Jr. and a jury. On October 14, 2010, the jury found Applicant guilty as indicted. Judge Hyman sentenced Applicant to thirty-five years imprisonment.

Applicant filed a timely notice of appeal, and David Alexander, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on September 4, 2013. State v. Rogers, 405 S.C. 554, 748 S.E.2d 265 (Ct. App. 2013). The remittitur was returned to the circuit court on September 20, 2013.

## **II. CURRENT APPLICATION**

In his application for post-conviction relief, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "ineffective assistance of counsel"
  - a. "There was a footprint found at the scene that was never tested or reviewed by counsel, and was not introduced at the trial, there was some minor testimony regarding the collection of that evidence that came out before the Jury which resulted in a Jury question during deliberation; however because it was not introduced by either party it could not be considered."
  - b. "Additionally despite substance issues and mental health history no evaluation or assessment was conducted."
  - c. "inappropriate statement made by the Solicitor in closing argument were not objected to by counsel"

Respondent made a timely<sup>1</sup> Return and Motion to Dismiss on or about March 25, 2015, asking this Court to dismiss the application as untimely. The Honorable Steven H. John issued a Conditional Order of Dismissal, filed on April 9, 2015, provisionally denying and dismissing this action, while giving Applicant thirty (30) days from the date of service of said order to show why the dismissal should not become final. Applicant filed a timely response to the conditional order on May

---

<sup>1</sup> To the extent Applicant argues Respondent did not timely file a return to his application, the Court notes compliance with the compliance with the filing deadlines in Rule 12(a), SCRCP, and S.C. Code Ann. § 17-27-70(a) are not mandatory. Guinyard v. State, 260 S.C. 220, 225, 195 S.E.2d 392, 394 (1973).

GIZ 2

15, 2015. By email dated May 27, 2015, Judge John, through his law clerk, informed the parties he declined to endorse a Final Order of Dismissal.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Viewing the record before it in the light most favorable to Applicant, the Court makes the following findings of fact and conclusions of law pursuant to S.C. Code Ann. § 17-27-70(c):

#### **A. Untimely Application**

The Court finds Applicant's application is barred by the statute of limitations. S.C. Code Ann. §17-27-45(a) provides that:

**"An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later."**

This statute of limitations applies to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996).

The Court of Appeals returned the remittitur in Applicant's direct appeal to the circuit court on September 20, 2013. Applicant was therefore required to file his application before September 22, 2014.<sup>2</sup> This application was filed on October 8, 2014, after the expiration of the statute of limitations.

Applicant argues there is a question of law as to when the Court of Appeals decision becomes final for purposes of the one year statute of limitations. Applicant cites to federal law for the proposition that the statute of limitations begins to run ninety days after the final decision of the court of appeals. See Jiminez v. Quarterman, 555 U.S. 113, 120 (2009) (holding that a conviction

<sup>2</sup> September 21, 2014 was a Sunday. Therefore, the application must have been filed the following Monday, September 22, 2015. See Rule 6(a), SCRCP.

*GT*

does not become final for purposes of seeking a writ of habeas corpus until "time for seeking certiorari review in this Court expired."). However, the statute of limitations in federal habeas corpus actions is not applicable to this state court action. This action is governed by the rules of Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-45(a) specifically provides that an application must be filed within one year *after the sending of the remittitur to the lower court from an appeal*. By the plain language of the statute, the one year statute of limitations for filing an application for post-conviction relief begins to run upon the issuance of the remittitur, not ninety days thereafter. Furthermore, this statute of limitations is subject only to the exceptions in S.C. Code Ann. § 17-27-45(b) and (c), neither of which has been pled by Applicant, and neither of which appears applicable in this case.

Applicant also argues he should be entitled to equitable tolling of the statute of limitations because the application was only sixteen days late and there is a question of fact as to when Applicant received notice that his direct appeal had been remitted. However, South Carolina does not recognize equitable tolling simply because an application was filed shortly after the statute of limitation expired. See Pelzer v. State, 378 S.C. 516, 523, 662 S.E.2d 618, 621 (Ct. App. 2008) ("To apply equity generously would loose the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation." (quoting Harris v. Hutchinson, 209 F.3d 325, 330 (4th Cir. 2000))). Furthermore, as noted supra, the statute of limitations begins to run when the remittitur is issued by the Court of Appeals, not when it is received by Applicant. To the extent Applicant argues there is no prejudice to Respondent in allowing the matter to proceed, the Court notes prejudice to a defending party is not a valid

consideration in determining whether a statute of limitations should be tolled. See Pelzer, 378 S.C. at 521, 662 S.E.2d at 62151 (discussing elements of equitable tolling (citations omitted)).

Applicant also argues Judge John's email declining to endorse Respondent's proposed final order is the functional equivalent to Judge John denying Respondent's motion to dismiss. However, "[t]he doctrine of the law of the case is not applicable to a statement by the court which does not constitute a binding adjudication." Weil v. Weil, 299 S.C. 84, 89, 382 S.E.2d 471, 473 (Ct. App. 1989) (citing 21 C.J.S. Courts § 195 (1940)). Nothing in the email from Judge John's law clerk indicates Judge John made a ruling on the merits of Respondent's motion. Therefore, this Court is not bound by Judge John's decision to not sign the proposed final order. Cf. Id. ("[A] judge deciding a case on the merits is not bound by a prior order of another judge denying summary judgment.).

Applicant also argues summary dismissal is inappropriate because there are questions of fact regarding his underlying claims for relief. However, summary dismissal is appropriate based on a failure to comply with the statute of limitations regardless of the substantive claims raised in the application. To avoid summary dismissal, Applicant must instead "alleges facts that would establish an exception to [...] the statute of limitations[.]" McCoy v. State, 401 S.C. 363, 369, 737 S.E.2d 623, 626 (2013). Because Applicant admits the application was not filed within one year of the issuance of the remittitur,<sup>3</sup> he must present some reason why an exception to the statute of limitations entitles him to proceed with his application. As noted supra, Applicant has not established any such exception. The Court finds there is no question of law or fact regarding the timeliness of Applicant's filing, and Respondent is entitled to judgment as a matter of law.

<sup>3</sup> To the extent Applicant argues the merits of his action should be addressed even though counsel admits she filed the application after September 22, 2014, the Court notes counsel's failure to timely file the application may not bar litigation of these issues in federal court. See Martinez v. Ryan, 132 S.Ct. 1309 (2012).



#### **IV. CONCLUSION**

Based on the foregoing, the Court finds Applicant has not shown a sufficient reason why the application was not untimely. Applicant has not presented sufficient reasons why Judge John's conditional order should not become final. Therefore, for the reasons set forth above and in the Conditional Order of Dismissal, the Court finds this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

#### **IT IS THEREFORE ORDERED THAT:**

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 18 day of September, 2015.

Cowman, South Carolina

  
THE HONORABLE G. THOMAS COOPER JR.  
Presiding Judge

STATE OF SOUTH CAROLINA

COUNTY OF HorryTimothy Rogers, Applicant # 343260  
☐ PlaintiffIN THE Court of Criminal Pleas

CASE NO.

2014 - CP - 26 - 6589MOTION AND ORDER INFORMATION  
FORM AND COVER SHEETState of South Carolina☐ Defendant.

Plaintiff's Attorney:

Donna L. Taylor, Bar No. 5494Address: 3A Brook StreetCharleston, SC 29401phone: 843-723-4020 fax: 843-723-4021e-mail: donna610@bellsouth.com her:

Defendant's Attorney:

, Bar No. \_\_\_\_\_

Address: \_\_\_\_\_

phone: \_\_\_\_\_

fax: \_\_\_\_\_

e-mail: \_\_\_\_\_

her: \_\_\_\_\_

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

## SECTION I: Hearing Information

Nature of Motion: Motion to Amend Order 59(e)

Estimated Time Needed: \_\_\_\_\_

Court Reporter Needed: ☐ YES / ☐ NO

## SECTION II: Motion/Order Type

☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Donna L. TaylorSignature of Attorney for ☒ Plaintiff / ☐ Defendant12/18/15

Date submitted

## SECTION III: Motion Fee

☒ PAID - AMOUNT: \_\_\_\_\_☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)☐ Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: \_\_\_\_\_

☐ Other: \_\_\_\_\_

## JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other: \_\_\_\_\_

JUDGE \_\_\_\_\_

CODE: \_\_\_\_\_

Date: \_\_\_\_\_

## CLERK'S VERIFICATION

Collected by: JTBDate Filed: 12/18/15☐ MOTION FEE COLLECTED: 25☐ CONTESTED - AMOUNT DUE: \_\_\_\_\_

THE STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF HORRY ) FIFTEENTH JUDICIAL CIRCUIT

Timmy J. Rogers #343260 )

Applicant, )

V. )

State of South Carolina )  
Respondent. )

CASE NUMBER: 2014-CP-26-669

MOTION  
TO RECONSIDER, ALTER OR AMEND  
PURSUANT TO RULE 59(e)

HORRY COUNTY  
2015 DEC 18 PM 3:00  
CLERK OF COURT

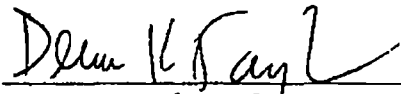
Mr. Rogers through counsel respectfully ask that this Court reconsider and amend its Order executed September 18, 2015 and received by Applicant's counsel on December 8, 2015 in the following regard to avoid a future fundamental miscarriage of Justice.

The Court reviewed and ruled on issues presented during the hearing for Mr. Rogers and among his findings concluded that equitable tolling of the statute of limitations is not recognized by South Carolina "simply because an application was filed shortly after the statute of limitation expired." The applicant asks the court to reconsider its refusal to allow this case to proceed to a merits hearing which would allow for the completion of his "one bite at the apple" and that The Court can in its discretion consider that Counsel for the applicant was solely responsible for correctly filing his PCR action. Unlike in *Pelzer v. South Carolina*, 662 SE 2d 618 ( CT. App.2008) Mr. ROgers was represented by counsel and had relied on her to file his PCR action on his

behalf. ENTirely through her error, the action was filed late. This failure, for whatever reason, was through no fault of Mr. Rogers who had diligently sought assistance in a timely manner. We ask that the Court take into consideration that it can within its discretion allow Mr. Rogers to proceed with this action and that he was in no way responsible for the late filing. To allow his lawyer's failing to preclude him from having a full final review of his conviction at trial "would be unconscionable...and gross injustice would result." South Carolina v. Pelzer, 662 SE2d 618.

The right of the Judge hearing the Motion to Dismiss remains inviolate: that based on his consideration of the facts he may determine that the matter should procedure to a hearing. Mr. Rogers asks this Court to reconsider its decision not to permit the Statute of Limitations to be equitably tolled, to deny the State's Motion to Dismiss and to allow Mr. Rogers to have a hearing in the State that convicted him in the county where he was tried which will allow for a full and final review of that conviction.

Respectfully submitted:



Donna K. Taylor 5484  
Taylor, Bowley & Byrd, LLC  
39 Broad Street  
Charleston, South Carolina 29401  
843-723-4020  
donna@tbbesq.com

Charleston, South Carolina  
December 17, 2015



ALAN WILSON  
ATTORNEY GENERAL

FILED  
CLERK OF COURT  
2016 JAN -7 PM 2:32

January 4, 2016

The Honorable Melanie Huggins-Ward  
Horry County Clerk of Court  
P.O. Box 677  
Conway, SC 29528-0677

**Re: Timmy J. Rogers, #343260 v. State of South Carolina**  
**2014-CP-26-6589**

Dear Ms. Huggins-Ward:

Enclosed please find the original Return To Applicant's 59(e) Motion of the Respondent, in the above-captioned case, for filing in your office. By copy of this letter, I am serving Donna K. Taylor, Esquire with the return.

Sincerely,

Jessica E. Kinard  
Assistant Attorney General

JEK/nb

**Enclosure**

cc: Donna K. Taylor, Esquire  
The Honorable G. Thomas Cooper, Jr.

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

2014-CP-26-6589

TIMMY J. ROGERS, #343260

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

FILED  
COUNTY  
2016 JAN -7 PM 2:32  
CLERK OF COURT  
JAMES WARD

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return To Applicant's 59(e) Motion in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Donna K. Taylor, Esquire  
39 Broad St., Suite 101  
Charleston, SC 29401

DATED this 4<sup>th</sup> day of January, 2016.

  
Norma Bigbee, Legal Assistant  
For Respondent

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

Timmy J. Rogers, #343260,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2014-CP-26-6589

**RETURN TO APPLICANT'S  
59(e) MOTION**

FILED  
2016 JAN -7 PM 2:32  
CLERK OF COURT

In response to Applicant, Timmy Rogers's, motion to reconsider, alter or amend pursuant to Rule 59(e), Respondent would respectfully present unto this Court the following:

Applicant's primary argument in his motion is that his current counsel, Ms. Taylor, filed his original application for post-conviction relief ("PCR") approximately two (2) weeks after the statute of limitations had expired pursuant to S.C. Code Ann. §17-27-45(a). Though Respondent admires the forthrightness of Applicant's counsel in admitting the mistake, we must argue against any relief for Mr. Rogers by way of this motion. The statute is quite clear regarding the timeframe allowed for filing PCR applications: they "must be filed...within one year after the sending of the remittitur."

Applicant argues that his case should be differentiated from Pelzer v. State, 378 S.C. 516, 662 S.E.2d 618 (Ct. App. 2008), which held that "[t]o apply equity generously would loose the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation" (quoting Harris v. Hutchinson, 209 F.3d 325, 330 (4th Cir. 2000)), and his matter should receive equitable tolling because he was represented at the time of the filing of his PCR application. This logic is unprecedented in the case law regarding PCR matters, and antithetical to the function of the rule of law. Should this Court

allow equitable tolling to be applied in this matter, it would open the door to a plethora of excuses and reasons from any number of current and former applicants whose applications have been summarily dismissed for untimely filing.

Though it is entirely in this Court's discretion to grant Applicant's motion, Respondent respectfully urges the Court not to do so because of the extreme and far-reaching consequences it may have. Applicant's failure to comply with the statute of limitations, regardless of the existence of represented counsel on his behalf, is a bar to any further relief by this Court. The only possible circumvention of this requirement is if he had alleged "facts that would establish an exception to [...] the statute of limitations[.]" McCoy v. State, 401 S.C. 363, 369, 737 S.E.2d 623, 626 (2013). This has simply not been done.

For these reasons, the Respondent respectfully requests that Applicant's motion to reconsider, alter or amend be denied.

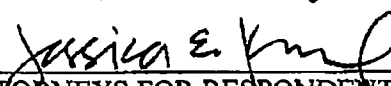
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

JESSICA E. KINARD  
Assistant Attorney General  
S.C. Bar No. 77889

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
Telephone: (803) 734-3737

Jan. 4, 2016



STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

Timmy J. Rogers, 3343260 )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

IN THE COURT OF GENERAL SESSIONS

FIFTEENTH JUDICIAL CIRCUIT

No.: 2014-CP-26-6589

**ORDER GRANTING APPLICANT'S  
MOTION TO RECONSIDER**

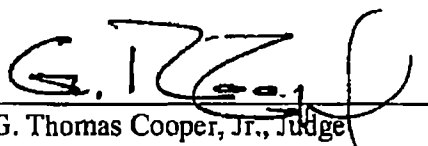
FILED  
HORRY COUNTY  
16 FEB -4 AM 10:57  
MELANIE H. SASS-WARD  
CLERK OF COURT

This matter comes before the Court by way to Applicant's Motion to Reconsider pursuant to Rule 59(e), SCRCPP. Specifically, Applicant asks this Court to reconsider its Order Dismissing Applicant's Post Conviction Relief filed September 18, 2015 and received by Applicant's counsel on December 8, 2015.

In his Motion, Applicant asks the Court to reconsider its refusal to allow his case to proceed to a merits hearing based upon the tolling of the statute of limitations. This Court recognizes that Applicant was represented by counsel and relied upon his counsel to timely file his PRC action on his behalf. The failure to timely file Applicant's PCR action was through no fault of Applicant. Thus, after careful consideration of the record in this case and the submissions of the parties, Applicant's Motion to Reconsider is **GRANTED** and Applicant is entitled to a Post Conviction Relief Hearing.

**IT IS SO ORDERED.**

Columbia, South Carolina  
February 1<sup>st</sup>, 2016

  
G. Thomas Cooper, Jr., Judge  
Fifth Judicial Circuit

Copy of Order/\_\_\_\_\_  
filed 2-4-16 mailed to all  
parties not in default on 2-4-16  
initials BW

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY ) 2014-CP-26-6589

|                          |   |                             |
|--------------------------|---|-----------------------------|
| TIMMY J. ROGERS,         | ) |                             |
|                          | ) |                             |
| Applicant,               | ) | <b>Transcript of Record</b> |
|                          | ) | Post-Conviction Relief      |
| vs.                      | ) |                             |
|                          | ) | August 9, 2016              |
| STATE OF SOUTH CAROLINA, | ) |                             |
|                          | ) |                             |
| Respondent.              | ) |                             |

**B E F O R E:**

Honorable J. Cordell Maddox, Jr.  
Horry County Courthouse  
Conway, South Carolina

**A P P E A R A N C E S:**

Donna K. Taylor, Esquire  
D. Lynn Bowley, Esquire  
**Attorney for Applicant**

Patrick L. Schmeckpeper, Esquire  
Caitlin B. Hastings, Esquire  
**Attorney for Respondent**

**TAKEN BY:**

Dixie C. Eubank  
**Circuit Court Reporter**

**PREPARED BY:**

Kay H. Richardson  
**Circuit Court Reporter**

|    |                                     |            |
|----|-------------------------------------|------------|
| 1  | <u>I N D E X</u>                    |            |
| 2  | <u>AUGUST 9, 2016</u>               | <u>Pg.</u> |
| 3  |                                     |            |
| 4  | Motions .....                       | 3          |
| 5  | Timothy J. Rogers                   |            |
| 6  | Direct by Taylor .....              | 13         |
| 7  | Cross by Schmeckpeper .....         | 34         |
| 8  | Redirect by Taylor .....            | 40         |
| 9  | Recross by Schmeckpeper .....       | 41         |
| 10 | Debbie Jean Parris                  |            |
| 11 | Direct by Taylor .....              | 42         |
| 12 | Kia Wilson                          |            |
| 13 | Direct by Schmeckpeper .....        | 50         |
| 14 | Cross by Taylor .....               | 58         |
| 15 | Closing by Taylor .....             | 75         |
| 16 | Closing by Schmeckpeper .....       | 79         |
| 17 | By the Court .....                  | 82         |
| 18 | Certificate of Court Reporter ..... | 85         |

|    |                        |                     |
|----|------------------------|---------------------|
| 20 | <u>E X H I B I T S</u> |                     |
| 21 | <u>No.</u>             | <u>ID</u> <u>EV</u> |

22

23                    (No Exhibits were marked or admitted.)

24

25

Rogers v. State - 2014-CP-26-06589  
MOTIONS

3

1 (AUGUST 9, 2016)

2 MOTIONS:

3 THE COURT: All right. This is the matter of Timmy J.  
4 Rogers versus The State of South Carolina. It's a post-  
5 conviction relief hearing on August 9th, 2016 in Horry County.  
6 I'll be happy to -- well, you can go ahead and officially call  
7 the case and then I'll let them go.

8 MR. SCHMECKPEPER: Thank you, Your Honor, may it please  
9 the Court? My name is Patrick Schmeckpeper. This is Timmy  
10 Rogers versus The State of South Carolina 2014-CP-26-6589.  
11 The Applicant was indicted in July of 2008 in Horry County for  
12 murder. He was represented by Kia Wilson and James Galmore.  
13 He received a trial on October 11th, 2010 before The Honorable  
14 Larry Hyman, Jr. where he was convicted as indicted. He was  
15 sentenced to 35 years in prison.

16 The Applicant filed a timely notice of appeal, which was  
17 ultimately dismissed and his conviction was affirmed by the  
18 Court of Appeals. The remittitur was issued September 20th,  
19 2013. Thereafter, he filed this application for post-  
20 conviction relief on October 8th, 2014.

21 Your Honor, at this time, just to get into the procedural  
22 history a little bit, following the filing of his application,  
23 the State filed a return and motion to dismiss for failure to  
24 apply within the time period mandated by the Statute of  
25 Limitations. My understanding is that the State also

Rogers v. State - 2014-CP-26-06589  
MOTIONS

4

1 submitted a conditional order of dismissal, which was signed,  
2 and then a final order of dismissal, which was not signed.  
3 Thereafter, I believe -- I just want to make sure I have  
4 everything correct.

5 THE COURT: Now, wait a minute, say that again.

6 MR. SCHMECKPEPER: Yes, Your Honor. On -- after this  
7 application was filed, the State moved to dismiss it for  
8 failing to file within the time period mandated by the Statute  
9 of Limitations. I think the application was filed October  
10 8th, 2014. The remittitur from his appeal was issued  
11 September 20th of 2013, so he would've had to file by  
12 September 21st, 2014 to be timely. Ultimately, after the  
13 State submitted its motion to dismiss and I'm sure opposing  
14 counsel can fill in anything I'm missing. A final order  
15 dismissing the application was signed by -- I just want to  
16 make sure I have that correct ---

17 THE COURT: A final order, this was the final order, not  
18 the initial?

19 MR. SCHMECKPEPER: Correct. The final order was signed  
20 by Judge Cooper. Thereafter, the Applicant filed a motion to  
21 alter or amend the ruling pursuant to Rule 59 where -- and the  
22 Judge actually granted that motion and ordered that an  
23 evidentiary hearing be held on the merits. At this point --  
24 and I understand that a Judge has ruled that this hearing  
25 should go forward on the merits, but just to preserve the

Rogers v. State - 2014-CP-26-06589  
MOTIONS

5

1 State's issue for appeal, I would like to renew that motion to  
2 dismiss based on failure to file within the Statute of  
3 Limitations.

4 THE COURT: Okay. And, and for the record and you're  
5 protected, but I'll deny that motion.

6 MR. SCHMECKPEPER: Thank you, Your Honor.

7 THE COURT: All right. Yes, ma'am? You have anything  
8 you want to tell me before you start?

9 MS. TAYLOR: I do just briefly, Judge.

10 THE COURT: Okay.

11 MS. TAYLOR: First of all, there were three things that  
12 we filed in the original post-conviction. There was a issue,  
13 number 1 -- I don't know if you have that in front of you, but  
14 number 1 referred to a footprint set of casts that had been  
15 discovered at the time of the initial offense that were not  
16 introduced by the State and the Defense Counsel didn't really  
17 have a clear reflection of whether she had seen them or not.  
18 We are withdrawing that issue now. I was able, after about a  
19 year and a half, to find them hidden in a warehouse and  
20 understood why they were not used by the State and would not  
21 be used by the Defense. They were basically poorly filled in.

22 THE COURT: So the footprint cast issue is out?

23 MS. TAYLOR: Is withdrawn, yes, sir. And the second one  
24 goes to substance issues and mental health history that were  
25 clear and known to Defense Counsel. Evaluations were not

1 done. And we're not really introducing -- the limited amount  
2 that we'll introduce on that as far as claiming ineffective  
3 assistance for failure to raise them as a defense, but we are  
4 gonna rely on part of that as to what is our chief complaint  
5 against counsel, which is advice for Mr. Rogers not to testify  
6 at his trial and he did not testify. And the final one, which  
7 is inappropriate statements made by the Solicitor -- if I  
8 could approach, I've already given this to the Attorney  
9 General and what I've done to make it a little clearer for  
10 you, Judge, on the first page is the specific statement and  
11 the --

12 THE COURT: Okay. Thank you.

13 MS. TAYLOR: Just to give the Court a little bit of  
14 background before we call -- we have two witnesses, Mr. Rogers  
15 and his sister. Mr. Rogers is originally from Kentucky. His  
16 brothers, mother and sister are here from Kentucky.

17 This involved an incident that occurred April 21st, 2008.  
18 Sherry Engel was married to a gentleman named Fred Engel. Mr.  
19 Engel was killed the night of April 21st. The evidence  
20 indicated -- he did file an appeal. It was argued before the  
21 Court of Appeals. They did affirm the conviction. It was an  
22 entirely circumstantial case. Simply put, chief evidence was  
23 that he had been involved in a relationship with Sherry Engel.  
24 He come down here, he was staying at hotel. She was staying  
25 with her husband. They would visit from time to time. On the

Rogers v. State - 2014-CP-26-06589  
MOTIONS

7

1 particular night of April 21st, Ms. Engel contacted her  
2 neighbor around midnight saying I can't find my husband. The  
3 police came. After a search his body was found about 30 feet  
4 away from -- they lived in a subdivision that had like those  
5 communal mailboxes where you go and they're boxes under a  
6 little roof.

7 THE COURT: Right.

8 MS. TAYLOR: And it was adjacent to a wooded area. After  
9 they discovered the body, they began an investigation. There  
10 was about from April 21st until May 5th when Mr. Rogers and  
11 Ms. Engel were arrested in Kentucky. Ms. Engel was originally  
12 from Kentucky. They interviewed her. She gave a variety of  
13 different statements and tried to pin it on a kid in the  
14 neighborhood. Ultimately, they got cell phone records pinging  
15 off the towers suggesting that someone had Timmy Rogers' cell  
16 phone from the hotel. There was a witness close to the scene  
17 of the murder that saw a truck similar to the type he drove  
18 going around -- an officer that had pulled someone over to the  
19 side so there were blue lights flashing, cars are going around  
20 him. This truck was going very, very slow. The lady behind  
21 was getting irritated. She follows him till he turns into the  
22 same neighborhood. She passes him, parks at her house, which  
23 is across from the post office and sees this truck coming in  
24 without headlights, backs into by the post -- mailbox place.  
25 And she's a little freaked out and just hurries in her house



Rogers v. State - 2014-CP-26-06589  
MOTIONS

8

1 thinking he might be after her, but then forgets about it  
2 until the next morning when the police are out saying, did you  
3 see anything last night, and so she was also a witness at  
4 trial. Her testimony at trial was that she never saw the  
5 driver of the truck, never identified the driver.  
6 Specifically, when asked by Defense Counsel, Ms. Wilson, did  
7 you see Timmy Rogers that night at any point in the truck at  
8 the scene.

9 THE COURT: And that's Ms. Maluda?

10 MS. TAYLOR: Yes.

11 THE COURT: Okay.

12 MS. TAYLOR: And that relates to the one reference that  
13 was made in the sheet that I just handed up to Your Honor as  
14 well, that the statement that was made by the Solicitor was  
15 that Kimberly Maluda said he was there. Then again that is on  
16 Page 395 of the transcript on Line 18. So, essentially up  
17 until that point, it was circumstantial evidence. No one  
18 identified Timmy as having been seen in route or there. They  
19 did not have at that point the ability to get the substance of  
20 the cell phone conversation, so what they had were the times  
21 and dates. So there was no independent proof that it was  
22 Timmy in the truck that night. Then his Codefendant flipped  
23 and she testified at trial and filled in some gaps as to what  
24 was said on the phone at those times and identified the person  
25 she was speaking to as Timmy Rogers. I think -- and if the

Rogers v. State - 2014-CP-26-06589  
MOTIONS

9

1 Court is so inclined and has the opportunity to read the  
2 entire transcript or at least his sentencing, you'll see that  
3 Judge Hyman comments about that he and -- and Mr. Richardson,  
4 the Prosecutor, even says in opening and closing, you're not  
5 gonna like Sherry Engel. Sherry Engel is a mess; she's not  
6 truthful, she lied to the cops, she lied to us, she lied --  
7 she's a liar, but -- and then you know, went forward and --  
8 and as the Court of Appeals said that any of this information  
9 by itself, we would have to agree with Mr. Alexander, who was  
10 the Appellant Defense, that this would be insufficient  
11 evidence, but when you put it together and you have this  
12 Codefendant testifying, even if she was not the most reliable,  
13 that's up to the jury and so they upheld it. So that's what  
14 brings us here today.

15 Just to touch on and I really think these -- the document  
16 that I just handed to you, Judge, and Patrick and I have  
17 talked about these, I think they're straightforward, but just  
18 again for the record, there was comment made and all of these  
19 comments obviously were made by Mr. Richardson, who was the  
20 prosecutor at the time of the trial. That in his opening  
21 argument, he made a statement, Page 89, Timmy Rogers'  
22 testimony will tell you that he strangled Fred Engel at that  
23 mailbox at Carolina Forest. Ms. Wilson did not object to that  
24 statement. Mr. Rogers did not testify. Mr. Rogers had no  
25 statements given to the police. He made statements to the

1 police, all of which were, I didn't do it; I had nothing to do  
2 with it. Not ever is there testimony anywhere that he  
3 admitted at all.

4       The second one is on Page 92, Line 2 and 3, and this is a  
5 seemingly small thing in a sense, but when you look at the  
6 fact that this is a circumstantial case and what they were  
7 trying to build was that this was a relationship where these  
8 people talked all the time, all the time, all the time. And,  
9 the Prosecutor said, at least over a hundred calls over a four  
10 or five-day period. No evidence was presented indicating it  
11 was anywhere near that. There were -- there was one page  
12 basically of the day -- the day before the day of and the day  
13 after, but there was not anywhere near a hundred calls between  
14 those two phones.

15       Line 95 is just another comment on what I consider an  
16 impermissible comment by the State on his Fifth Amendment  
17 rights not to testify, should he choose to and not to presume  
18 or to state anything -- any statements that were made without  
19 authority of the Court, which he never had. And he's talking  
20 here about giving the benefit of every doubt, but he uses the  
21 words again, listen to him.

22       And then in closing argument on Page 386, Lines 9 through  
23 10, there's a comment about Sherry Engel where he, the  
24 Prosecutor says she's looking at the same time, the same  
25 sentence that her Codefendant is. Now, there was no evidence

Rogers v. State - 2014-CP-26-06589  
MOTIONS

11

1 about that. In addition, shortly after the trial, she was  
2 given a deal, pled guilty. I don't know when she got the  
3 deal, but she pled guilty to accessory before the fact of  
4 voluntary manslaughter. So, she was not in fact looking at  
5 the same time and there was clearly a benefit to her for her  
6 testifying.

7 The second to the last one, again this one we already  
8 talked about, which was Ms. Maluda, who the Prosecutor quoted  
9 as saying, she said he was there and she never said that he  
10 was there.

11 And the final one is on Page 419, Lines 23 through 25,  
12 where he's talking about you've got a duty and that duty is to  
13 seek justice and he said it's not to seek reasonable doubt and  
14 I think that is also an improper and incorrect comment to the  
15 jury and especially prejudicial in a circumstantial case.

16 Unless the Court has any questions about that or if you  
17 want to comment on that part, then we'll move into testimony.

18 MR. SCHMECKPEPER: Just briefly, Your Honor and this is  
19 just administratively. There is an issue with the transcript.  
20 The trial occurred from I think October 11 through the 14th.  
21 So you have two transcripts in there. One is the 11th, the  
22 13th and the 14th and that's the larger one.

23 THE COURT: Right.

24 MR. SCHMECKPEPER: The second transcript is just the 12th  
25 and apparently the Court Reporter that was sent the second day

Rogers v. State - 2014-CP-26-06589  
MOTIONS

12

1 and there was a second Court Reporter who took the 12th made  
2 an entirely new transcript.

3 THE COURT: Oh, okay. Well, that -- I wondered why I had  
4 just -- I just knew there was a binder. Okay.

5 MR. SCHMECKPEPER: Yes, Your Honor and also I don't know  
6 if we included that in the Judge's packet, but Ms. Taylor  
7 references the appeal. Actually, I do have the Appellant  
8 opinion if you'd like to make that part of the packet.

9 THE COURT: Yeah, that ---

10 MS. TAYLOR: Yes, no objection. I appreciate that.  
11 Thank you. An interesting case to read as well.

12 MR. SCHMECKPEPER: And in ---

13 COURT REPORTER: Ms. Taylor, would you move that  
14 microphone over in front of you, please?

15 MS. TAYLOR: I'm sorry.

16 COURT REPORTER: Move it over in front of you. Thank  
17 you. Thank you.

18 THE COURT: Yeah, don't breathe too loud or it'll pick  
19 you up. I'll tell you that much. These mics are something.

20 Okay. All right. I understand the issues I think and  
21 I've got the file. Obviously, I'll have to take it back and I  
22 will read the transcript. So I'll hear any testimony you  
23 wanted to put up and then start working on it.

24 MS. TAYLOR: Okay. Thank you. And we at this time would  
25 call Mr. Rogers to the stand, Judge.

Rogers v. State - 2014-CP-26-06589  
TIMOTHY J. ROGERS - DIRECT BY TAYLOR

13

1 THE COURT: Okay.

2 TIMMY J. ROGERS, HAVING BEEN SWORN

3 TESTIFIED AS FOLLOWS:

4 THE COURT: I know this is probably not the most  
5 comfortable thing in the world, if you need water or something  
6 let me know and we'll get it for you.

7 MR. ROGERS: All right. Thank you. Thank you.

8 THE COURT: Okay. Yes, ma'am?

9 MS. TAYLOR: Thank you, Judge.

10 DIRECT EXAMINATION OF TIMMY J. ROGERS BY MS. TAYLOR:

11 Q: Timmy, can you tell us how old you are?

12 A: I'm 48.

13 Q: Okay. And back in April of 2008 when this event took  
14 place, how old would you have been?

15 A: Forty.

16 Q: Okay. And where are you currently living or housed?

17 A: I'm at Broad River Institution in the Greenwood Dorm  
18 working for the CSU Crisis Stabilization Unit.

19 Q: Okay. What do you do; what's your job there?

20 A: We are inmate watchers, observers. We watch crisis  
21 patients that come in, inmates who try to take their lives or  
22 whatever or for whatever reason they're under crisis, they  
23 come to this unit and they are placed in a cell downstairs.  
24 We stay upstairs. And they have to be under 24-hour  
25 surveillance, 24-hour watch, and I'm part of the group that

Rogers v. State - 2014-CP-26-06589  
TIMOTHY J. ROGERS - DIRECT BY TAYLOR

14

1 helps watch those people.

2 Q: So, that's sort of a new program that the Department of  
3 Corrections has and you're like peer watchers instead of the  
4 State paying people to sit and watch people under suicide  
5 watch; you guys are trained and you do it?

6 A: Yes, ma'am.

7 Q: Okay. And so you've been in custody since May of 2008?

8 A: Yes, ma'am.

9 Q: And the first two years would have been here in the Horry  
10 County Jail?

11 A: Yes, ma'am.

12 Q: And then shortly after your conviction in 2010, you went  
13 into the Department of Corrections?

14 A: Yes, ma'am.

15 Q: And have you done anything else as far as while you were  
16 in Department of Corrections, educationally or in any other  
17 way to benefit yourself?

18 A: Yes, ma'am. After I went to Lee County, I stayed there a  
19 couple of years working in the infirmary, I signed up for  
20 Columbia International University, CIU, prison initiative, and  
21 they accepted me, which I went through two years of college  
22 and graduated in 2014.

23 Q: And that college was the Pastoral Bible College?

24 A: Yes, ma'am.

25 Q: And have you, in the time of your stay at Department of

Rogers v. State - 2014-CP-26-06589  
TIMOTHY J. ROGERS - DIRECT BY TAYLOR

15

1 Corrections, have you had any disciplinary issues?

2 A: No, ma'am.

3 Q: Got it in any fights with anybody?

4 A: No, ma'am.

5 Q: No markups of any sort?

6 A: No.

7 Q: All right. I want to go just briefly over some of your  
8 family history. We know you're from Kentucky and some of your  
9 family is here. Were you -- well, let me back up and let me  
10 ask you, today, Timmy, are you taking any medications of any  
11 sort?

12 A: No, ma'am.

13 Q: Okay. Are you on any medications when you're back at the  
14 Department of Corrections?

15 A: Mobic, it's a anti-inflammatory.

16 Q: Okay.

17 A: I have a back problem.

18 Q: So, nothing that is confusing you; you know what's going  
19 on here today?

20 A: Right.

21 Q: Okay. And I understand they transported you down from  
22 Columbia yesterday?

23 A: Yes, ma'am.

24 Q: How did you sleep last night?

25 A: Well, it was a little after -- it was around 1 o'clock in



Rogers v. State - 2014-CP-26-06589  
TIMOTHY J. ROGERS - DIRECT BY TAYLOR

16

1 the morning when we got to the place where I could actually  
2 lay down and go to sleep. So, I'm kind of sleepy, but I'm  
3 okay, I think.

4 Q: Okay. All right. Okay. Now back to your particular  
5 history. You grew up in Kentucky?

6 A: Yes, ma'am.

7 Q: How far did you go in school?

8 A: Twelfth grade.

9 Q: Graduated?

10 A: Yes, ma'am.

11 Q: Any college after that?

12 A: No, other than here.

13 Q: At the Department of Corrections?

14 A: Yes, ma'am.

15 Q: And were you ever in the military?

16 A: Well, right after graduation, I -- well, before I  
17 graduated, I signed up for the Air Force and right after  
18 graduation I went into the Air Force Basic Training, but I was  
19 only there a few weeks. We didn't agree and they let me out.  
20 I was ---

21 Q: And when you say we didn't exactly agree, what do you  
22 mean as far as why you left basic training?

23 A: To be honest, I think I signed up for the Air Force just  
24 to get out of class one day in school and when I got in there,  
25 it wasn't what I thought it might've been.

Rogers v. State - 2014-CP-26-06589  
TIMOTHY J. ROGERS - DIRECT BY TAYLOR

17

1 Q: So, it just wasn't your cup of tea?

2 A: Right.

3 Q: Okay. And prior to May of 2008 when you were arrested in  
4 Kentucky and charged with murder, had you ever been arrested  
5 before?

6 A: No, ma'am.

7 Q: Any criminal record other than this conviction?

8 A: No, ma'am.

9 Q: And were you married?

10 A: Yes, ma'am.

11 Q: When did you get married?

12 A: Oh, Lord. '88; I was married for almost 20 years.

13 Q: And any children from that marriage?

14 A: Yes, ma'am; one son, Tyler. He's 25 now.

15 Q: Okay. And pulling you up to what we're here to talk  
16 about today, when about did you meet Sherry Engel?

17 A: Oh boy. I'm trying to remember. Let's see, we were  
18 going through a divorce. It would've been -- it was hot, it  
19 was summer. Seems like we were roofing, I can't remember the  
20 exact month.

21 Q: That's okay. When you say we were going through a  
22 divorce, you're referring to you and your wife?

23 A: Yes, ma'am.

24 Q: Okay. So, were you -- and your wife's name is Tammy?

25 A: Yes, ma'am.

Rogers v. State - 2014-CP-26-06589  
TIMOTHY J. ROGERS - DIRECT BY TAYLOR

18

1 Q: You and Tammy were already in that state of separating  
2 and moving towards the divorce?

3 A: Yes, ma'am.

4 Q: And then you met Ms. Engel in Kentucky?

5 A: Yes, ma'am.

6 Q: And briefly, how did you meet her?

7 A: I was at work one day and we were roofing a house. I  
8 told the guys I was gonna go up to the store to get a ---

9 Q: Let me ---

10 A: Okay.

11 Q: --- briefly tell us how you literally met Sherry?

12 A: Oh, I met her at a storage unit.

13 Q: And did you just happen upon her? Were you introduced to  
14 her?

15 A: No, I just happened upon her.

16 Q: Okay. You're driving down the road, you see this lady  
17 and you talk and you meet her?

18 A: Yes, ma'am.

19 Q: Okay. And then how long after that encounter did you and  
20 she strike up a conversation/relationship?

21 A: She called me that afternoon. I remember the phone call.  
22 It was kind of odd.

23 Q: Okay. And just for, you don't have to give the exact day  
24 or time, but we know that April 21st, 2008 is when Mr. Engel  
25 was killed?

Rogers v. State - 2014-CP-26-06589  
TIMOTHY J. ROGERS - DIRECT BY TAYLOR

19

1 A: Okay.

2 Q: How long do you think you had been involved with Sherry  
3 prior to that date?

4 A: About a year.

5 Q: Okay. So, sometime in 2007 was when you met her?

6 A: Yes, ma'am.

7 Q: Okay. Now, through that year period and, again, just  
8 briefly, did y'all start and have a relationship immediately  
9 where you together all the time or just give us some idea  
10 about how that relationship evolved?

11 A: We met and I wasn't together with her all the time  
12 through the whole relationship. There were long periods where  
13 I was by myself. She would stay in South Carolina and I would  
14 be in Kentucky.

15 Q: And so initially when you saw her, she would come up to  
16 Kentucky and that's when y'all would get together for a bit?

17 A: Yes, ma'am.

18 Q: And then she'd come back to Myrtle Beach?

19 A: Yes, ma'am.

20 Q: And did you know at the beginning of the relationship  
21 that she was married?

22 A: No, ma'am; she said she wasn't married. I asked her that  
23 question.

24 Q: Okay. About how long into it did you find out that that  
25 had been untrue?

Rogers v. State - 2014-CP-26-06589  
TIMOTHY J. ROGERS - DIRECT BY TAYLOR

20

1 A: A few months. I don't know, roughly four or six months,  
2 something like that maybe; a couple of months, a few months.

3 Q: And you've already told us and this was in the part where  
4 you were getting a divorce from the 20-year marriage.

5 A: Yes, ma'am.

6 Q: At that point in time, either right before your divorce  
7 was proceeding and throughout those first couple of months, as  
8 it's still in the process and you're meeting Sherry Engel, had  
9 you had any concerns about your mental health, your state of  
10 mind?

11 A: Yeah, my divorce hurt. I couldn't think clearly. I went  
12 to the doctor. I couldn't function at work really well. I  
13 was lead carpenter building custom homes and I used to just  
14 operate normally. You know, I used to keep all this stuff in  
15 my memory, what we were doing at work, and it got to the point  
16 where I would make out a punch list of things to do at work  
17 and when I got to the end of the punch list I was kinda lost.  
18 You know.

19 Q: You said you went to a doctor; did you go to a medical  
20 doctor, a health, regular doctor?

21 A: Yes, ma'am.

22 Q: Did you ever go to a mental health professional?

23 A: Yeah, I went to Elizabethtown Hospital and I just -- I  
24 told them something was wrong, you know, I said I need some  
25 help, something is wrong. They admitted me to, I guess, they

Rogers v. State - 2014-CP-26-06589  
TIMOTHY J. ROGERS - DIRECT BY TAYLOR

21

1 call it the psych ward. I stayed there about a week. And  
2 when they told me I was okay, I said no, I'm not. I need some  
3 help. Something is wrong. I don't know why I can't think  
4 right, but I can't think like I used to. And so they told me  
5 about a place next-door, which was called Communicare. So I  
6 admitted myself into there for a week and stayed through  
7 there. That place helped pretty good.

8 Q: Okay. Did any of those places prescribe any medication  
9 for you?

10 A: Yes, ma'am, the Communicare. I don't remember the name  
11 of the medication, but the doctor -- I can't remember his name  
12 -- Pinto, Dr. Pinto prescribed something and I -- all I  
13 remember it had something to do with the way the brain absorbs  
14 something and there was something oil-based and water-based or  
15 something. I'm -- you know, it was something like that.

16 Q: Did, did that doctor or any other doctor tell you that  
17 they were prescribing medication for a particular reason as in  
18 depression or anxiety or any, you know, did they define for  
19 you what they thought the problem is what they were  
20 prescribing the medication for?

21 A: Yeah, I think it would have been depression, I think.

22 Q: And do you, either today or reflecting on back then,  
23 believe that you were going through a depressive state?

24 A: Yes, ma'am.

25 Q: And you told us that you were working as a carpenter or

1 building houses and that you had been married for 20 years.

2 During that 20-year marriage, had you pretty much had either  
3 that same job or held a job down?

4 A: I had two major jobs in my life. I managed -- assistant  
5 manager at KFC in Leitchfield for 11 years, Leitchfield,  
6 Kentucky for 11 years. And then after that job, I worked lead  
7 carpenter building custom homes for another 11 years.

8 Q: So, in that 20-year period, leading up to your 40th year,  
9 you were married, had a child, never been arrested and you  
10 were working?

11 A: Right.

12 Q: And then you meet Sherry Engel?

13 A: Yes, ma'am.

14 Q: Now, in the course of that relationship, was there ever  
15 any occasion where Sherry Engel got involved in what she  
16 suggested was your mental condition?

17 A: Yes, ma'am. She told me that she would be a nurse.

18 Q: She gave me Xanax one time -- well, a few times and there  
19 were two other pills. I don't remember what they were called,  
20 but I can describe them. I think they were -- one as a  
21 triangular shape, I think it was red and one was a blue one.  
22 I don't remember what the names of them were, though.

23 Q: Okay. So, she would give you some kind of pills?

24 A: Yes, ma'am.

25 Q: What about supplements or vitamins or any or other kind

Rogers v. State - 2014-CP-26-06589  
TIMOTHY J. ROGERS - DIRECT BY TAYLOR

23

1 of things that go in food?

2 A: I don't remember anything like that.

3 Q: Okay. Do you remember her making food for you and giving  
4 it to you?

5 A: Yes, ma'am.

6 Q: What kind of things would she make?

7 A: She made some jelly one time when I was at Debbie's, when  
8 I was living at Debbie's, brought to me; she made some fudge  
9 one time.

10 Q: When she would make these foods for you, would she tell  
11 you anything specifically about the food?

12 A: The fudge part was she said it was special fudge, yeah.

13 Q: Special in what way?

14 A: I don't know, just that word. It caught me peculiar when  
15 she said it.

16 Q: How would you describe your relationship with her? Was  
17 it an equal, loving, caring relationship?

18 A: When I first met her, yeah, I kinda was falling for her.  
19 In my mind, I could see this little spark of light, you know,  
20 for a while, but it wasn't very long until -- actually, I  
21 remember seeing that spark kind of disappear, you know. There  
22 was nothing else there. So, the love part kind of went away.

23 Q: And was there ever a point in time where Sherry Engel  
24 posed a threat to you in some physical way?

25 A: Yes, ma'am.



1 Q: Tell us about that.

2 A: One time when I was a few months into our relationship, I  
3 was staying in the motel in Leitchfield, Kentucky, Lee's  
4 Motel. And, I think that's the first time I tried to just  
5 kind of separate myself from her and, as I was driving up to  
6 Louisville, I was gonna stay with my sister -- I was leaving  
7 the motel room, I was gonna stay with my sister -- as I was  
8 driving up to her house, I was on the phone with Sherry and  
9 there was comments about her brothers could get rid of me and  
10 do away with the body or something like that. You know, and I  
11 was kinda scared, you know. I stopped at a church. I was --  
12 I was sitting there thinking what am I gonna do, you know. I  
13 went on up to my sister's house.

14 Q: Was there ever a point in time where she threatened  
15 another member of your family?

16 A: Yes, ma'am, my wife, my ex-wife, Tammy. When I was  
17 living at my sister's house, she threatened to go down to my  
18 wife's job in Breckenridge County, Kentucky. My wife worked  
19 for a recreation department at Rough River Lodge and she  
20 threatened to take a baseball bat ---

21 MR. SCHMECKPEPER: Your Honor, I object. This is  
22 hearsay.

23 THE COURT: I'll allow you just ---

24 MS. TAYLOR: I can create a foundation for it if you want  
25 me to.

Rogers v. State - 2014-CP-26-06589  
TIMOTHY J. ROGERS - DIRECT BY TAYLOR

25

1 THE COURT: I'll go ahead and allow the question.

2 MS. TAYLOR: Thank you.

3 THE COURT: Basically, he's testifying that this woman  
4 threatened his family.

5 MS. TAYLOR: And, and this is the only way we can get in  
6 for you to consider what he would've testified to at the  
7 trial. Sherry was clearly a witness at trial; so, this would  
8 have been admissible at trial.

9 THE COURT: It's hearsay, but I'll allow it; go ahead.

10 MS. TAYLOR: Thank you.

11 BY MS. TAYLOR:

12 Q: And we're almost done with that. So I think you were --  
13 you were -- did you finish that sentence?

14 A: Well, she had threatened to hit or beat up Tammy with a  
15 baseball bat. I left my sisters and went down to my ex-wife's  
16 place and stayed with her.

17 Q: Okay. So, you went and picked up your wife and your son  
18 and stayed overnight with them?

19 A: Yes, ma'am.

20 Q: Nothing happened?

21 A: Right.

22 Q: Okay. Now after what you've described about this  
23 relationship, why did you stay in the relationship with her  
24 and to such extent that you came down to South Carolina  
25 because she asked you to and stayed in a hotel that she set

1 you up in?

2 A: I guess I kinda felt like that if I could keep her away  
3 from Tammy that she would be safe and I figured if I stayed  
4 with her that Tammy would be safe. So I -- and I stayed with  
5 her.

6 Q: Now moving to April of 2008, you told us that you were in  
7 the relationship for a little over a year or so. You come  
8 down here and, again, Sherry lived here with her husband Fred  
9 Engel?

10 A: Yes, ma'am.

11 Q: And you were staying -- at some point, did you ever know  
12 where Sherry's house was with her husband?

13 A: Yes, ma'am.

14 Q: Okay. About how far away was that from the hotel where  
15 you were staying?

16 A: It wasn't very far; within a few miles.

17 Q: What would be your general -- you were here for about  
18 three weeks, I think at the time of April?

19 A: I think so, yeah.

20 Q: And had been here for two weeks in the month of March and  
21 then went back?

22 A: Yes.

23 Q: What were you doing during the day at the hotel?

24 Generally speaking, did you have a job here in South Carolina?

25 A: No, ma'am. I was looking for work during the day. A few

Rogers v. State - 2014-CP-26-06589  
TIMOTHY J. ROGERS - DIRECT BY TAYLOR

27

1 days I would go up to the employment office right up the road  
2 from the place where I stayed and check and see what they had  
3 on the computer as far as jobs. I went to a job interview at  
4 North Myrtle Beach High School one time. I had another guy  
5 that I was talking to on the phone, which never got back in  
6 touch with me, about a construction job. What would I do at  
7 the motel? I would watch T.V., play solitaire -- I played a  
8 lot of solitaire -- or sit outside and smoke and talk.

9 Q: And so if you weren't meeting with Sherry or going out  
10 with Sherry on an evening, you would not have been looking for  
11 a job, did you have any other friends that you would go out  
12 and about and visit?

13 A: No, ma'am.

14 Q: So, you would just be in that hotel?

15 A: Yes, ma'am.

16 Q: All right. Now I'm gonna come to the date of April 21st.

17 A: Okay.

18 Q: You know that now -- it was a Monday. And you were  
19 obviously still the relationship with Sherry?

20 A: Yes, ma'am.

21 Q: Y'all were seeing each occasionally, calling each other  
22 occasionally, up until that time?

23 A: Yes, ma'am.

24 Q: And then on April 21st, what do you remember about that  
25 day as far as where you were and what you were doing?

Rogers v. State - 2014-CP-26-06589  
TIMOTHY J. ROGERS - DIRECT BY TAYLOR

28

1 A: I was in my motel room. Sherry had brought a big platter  
2 of brownies over for me, special brownies that she made.

3 Q: Those were the ones you told us earlier, she said these  
4 were special?

5 A: Yes, ma'am.

6 Q: And did she leave those with you?

7 A: Yes, ma'am.

8 Q: Did she eat any of them?

9 A: She what?

10 Q: Did she eat any of them?

11 A: Not that I know of.

12 Q: Did you eat any of them?

13 A: I ate all of them, yeah.

14 THE COURT: Did you say all of them?

15 A: Yes, sir.

16 THE COURT: Okay. All right.

17 BY MS. TAYLOR:

18 Q: They were special?

19 A: I'm a chocolate fanatic.

20 Q: And what, what were they packaged in? How did she bring  
21 the brownies to you?

22 A: They were a glass -- they were on a glass platter, a  
23 pretty good sized platter, and wrapped, the best I remember  
24 with cellophane.

25 Q: All right. So, she brings them -- do you remember about

Rogers v. State - 2014-CP-26-06589  
TIMOTHY J. ROGERS - DIRECT BY TAYLOR

29

1 what time she would have come over to your hotel room that day  
2 and brought the brownies?

3 A: It was early. Lunch -- it was kind of early though.

4 Q: Okay. And then she left?

5 A: Yes, ma'am.

6 Q: Did you see her again that day?

7 A: No, ma'am.

8 Q: Did you talk with her again on your phone that day?

9 A: No, ma'am.

10 Q: Did you eat the brownies that day?

11 A: Yes, ma'am.

12 Q: Do you remember whether you left your hotel room to go  
13 out into Myrtle Beach/Conway area at all that evening?

14 A: No, ma'am, I didn't.

15 Q: Did you have sort of a regular bedtime when you were at  
16 the hotel on your own about what time you'd go to sleep?

17 A: It's always been about 10 o'clock roughly, give or take.

18 Q: Okay. Do you remember anything unusual happening that  
19 evening on the 21st at your hotel?

20 A: No, ma'am.

21 Q: Do you remember specifically what time you went to sleep?

22 A: No, ma'am.

23 Q: Do you remember when you -- did you -- were you woken up  
24 by anything in the middle of the night?

25 A: No, ma'am.

Rogers v. State - 2014-CP-26-06589  
TIMOTHY J. ROGERS - DIRECT BY TAYLOR

30

1 Q: When do you recall waking up on April 22nd, that next  
2 day?

3 A: The next day, I woke up and answered my phone.

4 Q: Okay. Do you remember approximately what time?

5 A: No, not exactly, no; 10:00 or 11:00 maybe. I don't ---

6 Q: So, mid-morning?

7 A: Yes.

8 Q: Okay. And who was on the phone?

9 A: It was Bobby, her brother.

10 Q: And when you say her, you mean Sherry?

11 A: Yes, ma'am; Sherry's brother.

12 Q: And Bobby provided you at that point the information  
13 about Fred being dead?

14 A: Yes, ma'am.

15 Q: Is that the extent of that conversation as far as what  
16 you said to him?

17 A: Yeah, I said, oh my God, and that was about -- we were  
18 supposed to go to a revival in Arkansas and the reason why he  
19 called me was to say that we're not going now because Sherry's  
20 husband had been killed.

21 Q: And Bobby is Sherry's brother, but he obviously knew you  
22 and you knew him, right?

23 A: Yes, ma'am. Yes, ma'am.

24 Q: And that was because you met in Kentucky?

25 A: Yes.

Rogers v. State - 2014-CP-26-06589  
TIMOTHY J. ROGERS - DIRECT BY TAYLOR

31

- 1 Q: Did you notice anything missing from your hotel room that  
2 morning?
- 3 A: Yeah, the, the glass plate that the brownies were on was  
4 gone. I never did know what happened to it.
- 5 Q: Okay. Court's indulgence one moment, Judge.  
6 Your hotel room, did it have manual keys or key cards?
- 7 A: It was a key card.
- 8 Q: And who had key cards to the room?
- 9 A: Yes, ma'am.
- 10 Q: Who had?
- 11 A: Oh, who had. I had one and Sherry had one.
- 12 Q: Court's indulgence one moment.  
13 One other area we need to visit as far as your trial back  
14 in 2010.
- 15 A: Yes, ma'am.
- 16 Q: Kia Wilson had been your attorney?
- 17 A: Yes.
- 18 Q: And you had met with her?
- 19 A: Yes.
- 20 Q: You knew you were going to trial?
- 21 A: Yes.
- 22 Q: They had offered you a plea, as I understand it, to  
23 murder and a 30-year sentence?
- 24 A: Yes, the best I remember, yeah.
- 25 Q: And what was your response to that plea?



Rogers v. State - 2014-CP-26-06589  
TIMOTHY J. ROGERS - DIRECT BY TAYLOR

32

1 A: I did not take the plea; I was going to trial.

2 Q: Okay. Why were you going to trial?

3 A: Because I didn't kill him.

4 Q: And at that trial, had you had meetings with Kia where  
5 she explained to you what a trial was like, that witnesses  
6 would be called, and she would there with you, and you could  
7 testify or not testify?

8 A: Yes, ma'am.

9 Q: And what, at that time, was your decision prior to  
10 walking into the courtroom the last day of the trial and being  
11 asked by the Judge, what was your plan or wish as far as  
12 testifying or not?

13 A: I was gonna testify.

14 Q: And do you remember on the day that the State rested and  
15 there was a discussion with Judge Hyman where he's asking you  
16 about you have the right to testify or not testify?

17 A: Yes, ma'am.

18 Q: And prior to that happening, what was your decision, were  
19 you going to testify or not?

20 A: I was gonna testify and when I was ready to do that, I  
21 told Ms. Wilson, I said, I'm ready. She said I don't think  
22 you need to or something like that. And I said, well, I'm  
23 ready to testify, and again she said, well, really you  
24 shouldn't do this or something like that. I don't remember  
25 the exact words but you shouldn't do this, so I didn't.

Rogers v. State - 2014-CP-26-06589  
TIMOTHY J. ROGERS - DIRECT BY TAYLOR

33

1 Q: And do you remember -- and again, this is in the record  
2 as far as the discussion with the Judge -- that during the  
3 discussion when the Judge is asking you questions, you take a  
4 few moments and you and Ms. Wilson have a private conversation  
5 and then he resumes the questions and ultimately, you do say  
6 on the record I understand and I'm not gonna testify.

7 A: Yes, ma'am.

8 Q: Today, how do you feel about that decision? Are you  
9 happy with that decision or do you regret it?

10 A: I regret that decision.

11 Q: You sat in that courtroom through your trial, you heard  
12 the evidence against you?

13 A: Yes, ma'am.

14 Q: I'm gonna ask you these questions. Did you have a plan  
15 with Sherry Engel to kill her husband for her?

16 A: No, ma'am.

17 Q: Did you go that night in your truck, your cell phone  
18 calling her and park it by the mailboxes in that subdivision?

19 A: No, ma'am.

20 Q: And did you sneak up on Fred Engel and strangle him and  
21 carry his body to the woods?

22 A: No, ma'am.

23 Q: That's all I have.

24 THE COURT: All right. Yes, sir?

25 MR. SCHMECKPEPER: Thank you, Your Honor.

Rogers v. State - 2014-CP-26-06589  
TIMOTHY J. ROGERS - CROSS BY SCHMECKPEPER

34

1 CROSS EXAMINATION OF TIMMY J. ROGERS BY MR. SCHMECKPEPER:

2 Q: Good morning, Mr. Engel.

3 A: Good morning, sir.

4 Q: The first thing I'd like to ask you about is your  
5 decision to testify or not testify?

6 A: Yes, sir.

7 Q: Do you have a transcript in front of you?

8 A: No, sir.

9 Q: I'm just gonna ask you some questions about the  
10 transcript. Tell me if you don't remember and we can get you  
11 a transcript. But you remember the Judge advising you -- and  
12 your counsel asked you these questions too -- about your right  
13 to testify?

14 A: Yes, sir.

15 Q: And the Judge telling you that it was your constitutional  
16 right and it was a personal right to testify or not testify?

17 A: Yes, sir.

18 Q: Do you remember the Judge telling you that it was your  
19 decision and only your decision to testify or not to testify?

20 A: I don't remember specifically that.

21 MS. TAYLOR: May I approach to just hand these to him?

22 THE COURT: Sure. That's the transcript page?

23 MS. TAYLOR: It is Page 306 and 307.

24 BY MR. SCHMECKPEPER:

25 Q: And it's fair to say the Judge asked you or the Judge

Rogers v. State - 2014-CP-26-06589  
TIMOTHY J. ROGERS - CROSS BY SCHMECKPEPER

35

1 informed you that it was entirely up to you, looking at Page  
2 306, and not your attorney; it's your decision?

3 A: Yes, sir. I see that and he says it's -- I want you to  
4 understand that it is entirely up to you and not your  
5 attorney; it is your decision, although I would advise you to  
6 follow the advice of your attorney.

7 Q: Absolutely, but he did say it was your decision?

8 A: Yes, sir.

9 Q: And you acknowledge that it was your decision?

10 A: Yes.

11 Q: And ultimately, you chose not to testify?

12 A: Right, under the advice of my attorney.

13 Q: Moving on -- and you were advised -- your counsel told  
14 you your rights to testify and not to testify?

15 A: Say again?

16 Q: Did your counsel explain to you your right to testify?

17 A: I don't remember that specifically, no.

18 Q: But the Judge did, correct?

19 A: Yes.

20 Q: Let's move on. Let's talk a little bit about your  
21 relationship with the Codefendant, Ms. Engel?

22 A: All right.

23 Q: Now you said I think you guys started seeing each other  
24 -- you met at the storage unit and she called you. How did  
25 your relationship progress?

1 A: Through phone calls for a while and then we met again.  
2 Q: And I think you testified at one point you were going  
3 through a divorce at that time?  
4 A: Yes, sir.  
5 Q: Did meeting Ms. Engel prompt the divorce or were you  
6 being divorced anyway?  
7 A: No, I was getting divorced anyway.  
8 Q: How many times did you and Ms. Engel talk a day?  
9 A: I don't remember, it seemed like a lot.  
10 Q: Did you ever visit her in South Carolina before -- I  
11 guess the month before the murder?  
12 A: I had visited her before, but I don't remember when it  
13 was exactly.  
14 Q: And she visited you in Kentucky, correct?  
15 A: Yes, sir.  
16 Q: Were you in love?  
17 A: I think, yeah. At first there was something, but  
18 afterwards, no.  
19 Q: When did -- when did you stop being in love?  
20 A: A few months into the relationship.  
21 Q: And then after that -- so you were in a relationship, but  
22 not in love another six to eight months?  
23 A: Correct.  
24 Q: And your testimony today is that the only reason that you  
25 went to South Carolina, the only reason you left Kentucky for

Rogers v. State - 2014-CP-26-06589  
TIMOTHY J. ROGERS - CROSS BY SCHMECKPEPER

37

1 South Carolina is because you were afraid Ms. Engel would hurt  
2 your ex-wife?  
3 A: Yeah, that's what prompted me, yeah.  
4 Q: That was the only reason?  
5 A: Well, I was looking for work, too.  
6 Q: And you went twice, right; you went, you know, for three  
7 weeks and then you went again later?  
8 A: Yes, sir.  
9 Q: So were you not concerned about your ex-wife's safety in  
10 the interim?  
11 A: No, sir.  
12 Q: Now, Ms. Engel gave you special brownies the night of the  
13 murder or -- the night that the victim was killed, your  
14 testimony is that Ms. Engel gave you special brownies?  
15 A: Yes, sir.  
16 Q: And that was at what time?  
17 A: Mid-day, mid-morning, something 10 or 11 o'clock roughly.  
18 Q: What's the last thing you remember that day; the last  
19 thing? If you can remember something that day, what is it?  
20 A: Her bringing me the brownies.  
21 Q: And what's the very last thing you remember?  
22 A: I guess I ate them, I remember that; they were pretty  
23 good.  
24 Q: After that, what's the next thing you remember?  
25 A: Bobby calling me on the phone.

1 MR. SCHMECKPEPER: I beg the Court's indulgence.

2 BY MR. SCHMECKPEPER:

3 Q: So even if this Judge believes everything you say  
4 today, right; do you actually know he killed the victim or do  
5 you know you didn't kill the victim, or do you not know?

6 A: I did not kill the victim.

7 Q: So you know for a fact you didn't kill the victim even  
8 though you don't remember anything from that entire day?

9 A: Correct.

10 Q: But if you don't remember anything, how do you know you  
11 didn't kill the victim?

12 A: Because I didn't kill him.

13 Q: How do you know that if you don't remember? Do you see  
14 what I'm getting -- let me ask it a different way.

15 A: Yeah, please.

16 Q: You say you don't remember anything; you blacked out, ate  
17 the brownies, and the next thing you remember is getting the  
18 phone call. How do you know that you didn't go to the  
19 victim's house and kill him? And that's assuming that  
20 everything you're saying is true; how do you know that?

21 A: Because I didn't kill him. I don't know what else to  
22 say. I guess the same way I know that I didn't walk through  
23 those doors back there, I came in the other way, or I did come  
24 through that way, but the same way I know I didn't go in his  
25 office or whatever. You know, I didn't go in there.

Rogers v. State - 2014-CP-26-06589  
TIMOTHY J. ROGERS - CROSS BY SCHMECKPEPER

39

1 Q: But you remember walking through those doors, right?

2 A: Actually, I think it was those back there, sir.

3 Q: I just got a couple more quick questions. Did you tell  
4 your attorney about your mental health history?

5 A: Yes. Yeah.

6 Q: You told her about the prescription drugs you were given?

7 A: Yes.

8 Q: You told your attorneys about being checked in with the  
9 psychiatric ward?

10 A: Yes.

11 MS. TAYLOR: Just for the record, you mean his trial  
12 counsel?

13 MR. SCHMECKPEPER: Correct. Correct, your trial counsel,  
14 not your PCR counsel.

15 BY MR. SCHMECKPEPER:

16 Q: Did you tell your trial counsel about your depression?

17 A: My depression?

18 Q: You testified earlier that you were diagnosed with  
19 depression.

20 A: Right.

21 Q: And you told your attorney about that?

22 A: I'm sure I did, I don't specifically remember, but I'm  
23 sure I did.

24 Q: And you testified earlier that you never talked to Ms.  
25 Engel about killing her husband?



Rogers v. State - 2014-CP-26-06589  
TIMOTHY J. ROGERS - REDIRECT BY TAYLOR

40

1 A: Correct.

2 Q: Now, do you have any other memory lapses, or that just  
3 didn't happen, or you don't remember if that happened?

4 A: No, I didn't talk to her about killing her husband.

5 Q: Do you have any other memory lapses between -- about your  
6 relationship with Ms. Engel or is it just that day?

7 A: No.

8 MR. SCHMECKPEPER: I beg the Court's indulgence.

9 Your Honor, I have no further questions.

10 THE COURT: All right. Anything on redirect?

11 MS. TAYLOR: Just one question and I just need to  
12 retrieve those pieces of paper.

13 REDIRECT EXAMINATION OF TIMMY J. ROGERS BY MS. TAYLOR:

14 Q: Who wanted your divorce, Timmy?

15 A: Say again?

16 Q: Who wanted the divorce in your marriage?

17 A: Tammy.

18 MS. TAYLOR: May I retrieve those?

19 THE COURT: Sure.

20 BY MS. TAYLOR:

21 Q: One other little area, the Attorney General was asking  
22 you what you did that day ---

23 A: Yes, ma'am.

24 Q: I just want to be clear.

25 A: Yes, ma'am.

Rogers v. State - 2014-CP-26-06589  
TIMOTHY J. ROGERS - RECROSS BY SCHMECKPEPER

41

1 Q: You ever -- are you saying that you had a blackout and  
2 forgot something or are you saying you were in your hotel  
3 room, you ate some brownies, you went to sleep and woke up the  
4 next morning around 10:00?

5 A: I don't remember any blackout. I just ate brownies, went  
6 to sleep like any other day. I mean ---

7 Q: And the individual who did this act got into a pickup  
8 truck, drove it several miles, made several telephone calls,  
9 killed a man, drug his body into the woods and then got back  
10 in the truck and drove it back somewhere and talked on the  
11 phone. Do you have a recollection of doing any of those  
12 things which would have required some cognitive ability to  
13 function?

14 A: No, ma'am. I have no recollection of doing any of those  
15 things.

16 Q: All right. Thank you.

17 THE COURT: All right. You can step down.

18 MR. SCHMECKPEPER: Your Honor, if I could ask just one  
19 question.

20 THE COURT: Yeah, I'll let you. Obviously -- go ahead,  
21 she'll get a chance to ask another one, too. Go ahead.

22 RECROSS EXAMINATION OF TIMMY J. ROGERS BY MR. SCHMECKPEPER:

23 Q: Earlier you testified you didn't remember anything that  
24 happened that day, then on redirect you changed your story and  
25 said you just fell asleep. So, did you fall asleep or you did

Rogers v. State - 2014-CP-26-06589  
DEBBIE JEAN PARRIS - DIRECT BY TAYLOR

42

1 not remember anything?

2 A: I just fell asleep. It's just -- I don't remember what I  
3 had for lunch yesterday sometimes. I mean, we don't remember  
4 everything that we do every day.

5 MR. SCHMECKPEPER: I have no further questions.

6 MS. TAYLOR: No questions.

7 THE COURT: You can step down. Thank you, sir.

8 MS. TAYLOR: We would call Ms. Debbie Parris.

9 THE COURT: All right. Yes, ma'am.

10 MS. TAYLOR: Thank you.

11 DEBBIE JEAN PARRIS, HAVING BEEN SWORN

12 TESTIFIED AS FOLLOWS:

13 COURT REPORTER: State your full name, please.

14 MR. PARRIS: Debbie Jean ---

15 THE COURT: Go ahead.

16 MS. PARRIS: I'm sorry.

17 THE COURT: That's all right.

18 MS. PARRIS: Debbie Jean Parris (spelled phonetically).

19 DIRECT EXAMINATION OF DEBBIE JEAN PARRIS BY MS. TAYLOR:

20 Q: Thank you. Is it okay if I call you Debbie?

21 A: Yes, please.

22 Q: Debbie, you are related to Timmy how?

23 A: He's my brother.

24 Q: And are you older or younger?

25 A: I'm his older sister; his oldest sister.

Rogers v. State - 2014-CP-26-06589  
DEBBIE JEAN PARRIS - DIRECT BY TAYLOR

43

- 1 Q: So you've known him all his life?
- 2 A: Yes, ma'am.
- 3 Q: At some -- and you know we're here today talking about  
4 what happened at his trial in 2008 and the incident involving  
5 the death of Mr. Engel?
- 6 A: Yes, ma'am.
- 7 Q: And I know that's eight years ago, so you don't have to  
8 give the exact dates but we're trying to get a timeline. Was  
9 there some period of time prior to April 2008 when you recall  
10 your brother being involved with Sherry Engel and when he  
11 lived at your home for a couple of months?
- 12 A: Yes.
- 13 Q: And so you saw him on a fairly regular basis during that  
14 time?
- 15 A: He was there every day.
- 16 Q: And would she sometimes be there?
- 17 A: He was there with me every day for a few months before I  
18 saw her, before she came.
- 19 Q: Was there a period of time when you met Sherry Engel?
- 20 A: Yes, so after he was living with me, due to his divorce  
21 was happening, about approximately a couple of months, he  
22 asked could he bring someone he'd like to introduce to me, and  
23 I said sure. So, he brought her over.
- 24 Q: And did you see their relationship, them interact with  
25 each other?

1 A: Yes.

2 Q: Did you form any conclusions about who might have been in  
3 control or who might have been a passive member of that  
4 partnership such as it was?

5 A: She seemed very in control. As she introduced herself to  
6 me, she introduced herself as my sister, which I thought was  
7 very odd.

8 Q: Did you have any occasion to see her bring food items  
9 that she had made, specifically for Timmy, to your home?

10 A: Yes. She would come on occasions and shower him with  
11 little gifts and presents and say she would make him jellies  
12 and they would be just for him only and she didn't want  
13 anybody else to be getting in them because she had the  
14 different types of jellies, and so she would call them her  
15 special jellies.

16 Q: Try not to tell us what she said.

17 A: Okay.

18 Q: Just what you saw.

19 A: Yes. I saw her bring the jellies and hand them directly  
20 to him.

21 Q: Okay.

22 A: And tell us, don't eat ---

23 Q: Not what she said?

24 A: Okay. I'm sorry.

25 Q: That's okay.

Rogers v. State - 2014-CP-26-06589  
DEBBIE JEAN PARRIS - DIRECT BY TAYLOR

45

1 THE COURT: It's hard; trust me.

2 A: I don't know how to do this.

3 Q: But so there were these special items of food. Did you  
4 see your brother receive those special items?

5 A: Yes, ma'am.

6 Q: And did you ever notice after she would make her delivery  
7 and she would then leave and go back to -- because her family  
8 lived in Kentucky, too, right?

9 A: Yes, ma'am.

10 Q: She wasn't coming back up to Breckenridge County just to  
11 see Timmy?

12 A: No.

13 Q: She was coming up and staying with her family and when  
14 she was there she might see him?

15 A: Yes, ma'am.

16 Q: So, after she would come to your house and leave these  
17 special foods that she had made just for him, would you see  
18 him eat them?

19 A: Yes, ma'am.

20 Q: Did you see ever anything unusual after that?

21 A: Yes, ma'am, he would sleep an inordinate amount of time.  
22 Basically, just asleep and I couldn't really get his attention  
23 to see if he wanted dinner or anything. He'd just sleep the  
24 whole afternoon and the next day.

25 Q: Okay. Did you ever see her give him any drugs of any

1 sort or pills or substances?

2 A: I saw her bring in bottles that she said were natural  
3 health type things like St. John's wort that would help with  
4 depression. Some of the bottles were open and she said she  
5 had some herself and he could just take those.

6 Q: Remember just to tell us what you saw. That's okay.

7 A: I saw her bring him those bottles.

8 Q: Did you see any pills of any sort?

9 A: There were pills in those bottles.

10 Q: When he would sleep, did you ever know your brother to  
11 walk in his sleep or get up in some sort of stupor and do  
12 things?

13 A: No.

14 Q: Did you ever know your brother to have a blackout where  
15 he would not remember what he had done?

16 A: Never.

17 Q: Is your brother a drinker?

18 A: No, ma'am.

19 Q: And other than these pills that -- whatever Sherry  
20 might've given him, did you ever know your brother to be a  
21 recreational user of any kind of drugs?

22 A: No, ma'am; absolutely not.

23 Q: And other than what you heard him testify about taking  
24 some -- visiting some doctors and mental health facility type  
25 places and being prescribed something one time from them, do

Rogers v. State - 2014-CP-26-06589  
DEBBIE JEAN PARRIS - DIRECT BY TAYLOR

47

1 you remember him ever taking narcotics or any prescription  
2 pills?

3 A: No, ma'am.

4 Q: Now, obviously you've come down from Kentucky today to  
5 appear at this hearing. Do you love your brother?

6 A: Yes, absolutely.

7 Q: You heard him testify about being married for 20 years,  
8 working -- that was in Kentucky. Is that when you were living  
9 there as well?

10 A: Could you repeat that, I'm having a little ---

11 Q: You live in Kentucky now?

12 A: Yes.

13 Q: And how long have you lived there?

14 A: All my life.

15 Q: And so when he was living in Kentucky, you were also  
16 there?

17 A: Yes, ma'am.

18 Q: Do you know Tammy, his wife?

19 A: Yes, ma'am.

20 Q: You know Tyler, his son?

21 A: Yes.

22 Q: And you knew about his jobs and what he told us here that  
23 he was married, working, never been arrested, all of that; you  
24 knew that to be true?

25 A: Absolutely true; all of it.



1 Q: Did you ever talk to your brother about his relationship  
2 with Sherry or your feelings for Sherry?

3 A: He asked what did I think after I immediately met her,  
4 and I thought it was a little odd she would call me sister and  
5 I personally was a little -- thought she may be ingenuine  
6 because she seemed too good to be true.

7 Q: Okay. She ever say anything to you that you learned  
8 later was untruthful?

9 A: Most everything she said to me was untruthful.

10 Q: Do you know how old she was?

11 A: I found out that she was older than me, I believe, right?  
12 And she was telling me she was in her 40s.

13 Q: She was older than Timmy?

14 A: Definitely.

15 MS. TAYLOR: Court's indulgence just one moment.

16 THE COURT: Sure.

17 BY MS. TAYLOR:

18 Q: Do you ever know of your brother, growing up, as an  
19 adult, any point in his life, to be a violent person? Ever  
20 fight with anybody even?

21 A: No, my brother takes after my grandfather, and he's very  
22 passive, lives his life according to God and how he feels God  
23 would like for him to. He'd meet people in the parking lot  
24 and offer to carry their groceries. I'm very proud of him.  
25 He is very much the gentleman, and he's always there for

Rogers v. State - 2014-CP-26-06589  
DEBBIE JEAN PARRIS - DIRECT BY TAYLOR

49

1 anyone who is in need of help.

2 MR. TAYLOR: One moment, Your Honor.

3 BY MS. TAYLOR:

4 Q: That's all the questions I have, Debbie. Thank you.

5 THE COURT: Yes, sir?

6 MR. SCHMECKPEPER: Your Honor, I have no questions for  
7 this witness.

8 THE COURT: Okay. Yes, ma'am, you can step down.

9 You're gonna have one more witness?

10 MR. TAYLOR: No, sir, that's it for us. I would have  
11 argument that you may want to take that at the end once he has  
12 his. I believe he's gonna call one witness.

13 THE COURT: Yeah, let me take -- I need a quick personal  
14 break to make a quick phone call.

15 THE COURT: Take five or ten minutes.

16 MS. TAYLOR: Thank you.

17 \*\*\*\*\*OFF THE RECORD\*\*\*\*\*

18 (On the Record.)

19 THE COURT: All right. So, we've heard all the testimony  
20 we're gonna hear from -- yeah, get him back in here.

21 MS. TAYLOR: Yes, sir.

22 (REPORTER'S NOTE: Mr. Rogers enters courtroom.)

23 THE COURT: Okay. You can call your first witness.

24 MR. SCHMECKPEPER: Your Honor, the State calls Kia  
25 Wilson.

1 KIA WILSON, HAVING BEEN SWORN

2 TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION OF KIA WILSON BY MR. SCHMECKPEPER:

4 Q: Good afternoon, Ms. Wilson.

5 | A: Hi.

6 Q: How are you doing?

7 A: I'm good; thank you.

8 Q: I've got some questions about your representation of Mr.

9 Rogers here. You were appointed in this case; is that

|    |          |
|----|----------|
| 10 | correct? |
|----|----------|

11 | A: Yes.

12 Q: And when were you appointed?

13 A: It looks like our file was opened on May 16th, 2008 and

14 -- I'm looking for a certificate of representation in here.

15 I'm not seeing it offhand.

16 Q: Is it fair to say you were appointed through the Public  
17 Defender's office?

18 A: That's correct.

19 Q: And how long have you been in the Public Defender's  
20 office?

21 A: Just over 12 years.

22 Q: Was that your first job?

23 A: No, actually it was not. Before that, I worked at the  
24 Centers -- what was -- it was the Centers for Equal Justice,  
25 but it was what is now Legal Aid. I was there for about six

Rogers v. State - 2014-CP-26-06589  
KIA WILSON - DIRECT BY SCHMECKPEPER

51

1 months. Before that, I worked at father's office.

2 Q: You have a good deal of experience representing  
3 indigents?

4 A: Yes.

5 Q: At least 12 years of representing indigent criminals; is  
6 that fair to say?

7 A: That's correct.

8 Q: Now, concerning your representation of Mr. Rogers,  
9 roughly how many times did you meet with him?

10 MS. TAYLOR: If you could just provide those dates, it  
11 might save us some time if you're gonna look them up as you  
12 go. Just tell us the dates, that would be great?

13 A: Okay. The first one -- apparently I don't have a note,  
14 but I have a lot of writing --it would've been shortly after I  
15 was appointed. So, I have -- it says a fax from Defendant's  
16 sister that was on June 24th, 2008, so it was sometime shortly  
17 thereafter. Then, on -- it was -- well, it had to be the 25th  
18 because apparently, on the 26th we had another meeting and  
19 there was a discussion about bond. So, June 24th of '08, June  
20 26th of '08. Then we fast forward a couple of months,  
21 8/21/08. I sent discovery in September and October of 2008 --  
22 October 9th, specifically. We met again -- January of '09, we  
23 met. That was January 26th, specifically. I met him again on  
24 April 22nd of '09. It looks like no contact. In May, he  
25 wrote me. So, I saw him -- I don't know, I don't see anything

1 about a response. 7/1/09, that would've been July 1st of  
2 2009, I met with him again because he requested to see me.

3 BY MR. SCHMECKPEPER:

4 Q: I don't mean to cut you off. I'm sure the Applicant's  
5 attorney will ask you more. It's fair to say though that you  
6 spent a substantial amount of time with the Applicant?

7 A: Absolutely.

8 Q: And these weren't five-minute meetings?

9 A: Oh, no, no. They were definitely long meetings.

10 Q: So, you were able to talk back and forth with him?

11 A: Oh, yes, he was -- and the stories weren't always the  
12 most linear but, definitely -- I mean, he tended to ramble and  
13 I don't say that with any disrespect. However, he was very  
14 vocal about the things that concerned him with his interaction  
15 with Sherry, I guess in hindsight.

16 Q: Now, in light of your experience as a criminal defense  
17 attorney and the time that you spent with him, did you ever  
18 have any concerns as far as competency?

19 A: No, you know, and this is -- I mean, I certainly in  
20 hindsight maybe there was a problem. At that moment, I was  
21 very clear that he was talking to me. He was very clear about  
22 the things that he was clear about. There was no question  
23 that he knew Sherry had given him some substances that he  
24 wasn't really clear what they were at the time. I think she  
25 tried to present them as herbal supplements or something of

Rogers v. State - 2014-CP-26-06589  
KIA WILSON - DIRECT BY SCHMECKPEPER

53

1 that sort, but he knew she was giving him things. He knew  
2 that she had lied to him about the babies. You know, there  
3 were things that he was definitely clear about. There was  
4 very little that he was unclear about except for what happened  
5 the day of the murder or that night. He was talking to me. I  
6 have notes about our conversations. I don't have any issue  
7 about that. I'm clear that he was able to discuss it with me  
8 and he understood the things that I was saying to him.

9 Q: Did he assist in the preparation of his defense?

10 A: He did. The case came from what he told me. Everything  
11 I presented at trial is based on what he said. That stuff  
12 wasn't in the discovery. This is what Timmy said and I made  
13 that the focal point for a variety of reasons, but those are  
14 the things that kinda explained what was going on in this  
15 relationship and what was going on with her, and I hope that I  
16 was successful at least in painting in the jury's minds what  
17 kind of person she was, and I think that at the end of the  
18 day, I was ultimately successful in that. But, that -- that's  
19 the direction that we went based on what he explained to me.

20 Q: I think we've heard a lot about the circumstantial nature  
21 of this case and that a lot of this case depended on the  
22 testimony of the Codefendant; is that fair to say?

23 A: It did. I think that without her, they had the worst  
24 case ever. They only had a slightly better case with her, but  
25 it was enough because she indicated that she was involved and

Rogers v. State - 2014-CP-26-06589  
KIA WILSON - DIRECT BY SCHMECKPEPER

54

1 that they did it together, and that was a repetitive, you  
2 know, it was theme with her during her, her testimony. They  
3 planned it, they -- that's what she kept saying. And I knew  
4 she was gonna say that. I definitely was aware of that, which  
5 is why I wanted to make her seem as unreliable as possible.

6 Q: So, with that being your main strategy to make their  
7 defense -- their star witness seem unreliable and not  
8 credible?

9 A: Oh, yes. I spent more time questioning her than any  
10 other witness. I mean, she was their star witness. Everybody  
11 else was there to talk about things, but they had no real  
12 firsthand knowledge of anything. She was the only person who  
13 had any real firsthand knowledge. She's saying we planned it,  
14 we did this, we did that. And I spent -- I don't know how  
15 long her testimony took, but I remember it taking over close  
16 to two hours, maybe. I'm not 100-percent certain about that,  
17 but I want to say it took a lot of time.

18 Q: And if the Applicant had got up there, got up on the  
19 stand and testified that she was manipulative, would that have  
20 supported her story or would that have helped your case?

21 A: I think it would. If he said that she was manipulative,  
22 it would have supported the story. The problem with him  
23 testifying in my mind and I -- it wasn't just me -- I, you  
24 know, obviously I was prepping a murder. I wanted to, you  
25 know, get the information or get the opinion of people, you

Rogers v. State - 2014-CP-26-06589  
KIA WILSON - DIRECT BY SCHMECKPEPER

55

1 know, more learned than myself in my office. And at the end  
2 of the day, I didn't feel that he could offer a lot to help us  
3 when I think it was really apparent that she was unreliable.  
4 She had already changed her -- before even going to trial, she  
5 had already changed her story multiple times to the police.  
6 It was clear that she had been lying. Then she calls them  
7 back, gives another statement. It was obvious that she was  
8 lying. I didn't think we needed bolstering in that respect  
9 and I was concerned that his explanation about what happened  
10 that day, the actual day of the murder and his inability to  
11 say anything specific about what happened that day, what he  
12 did, was gonna hinder us more than help us. I certainly  
13 didn't want the Solicitor getting ahold of him and going that  
14 route with him.

15 Q: Were you concerned about possible credibility issues with  
16 the Applicant testifying?

17 A: Well, definitely. It's not as believable that you don't  
18 recall anything all day long, you know, from mid-day until the  
19 next morning. I mean, it's just not believable, and I didn't  
20 want that to be an issue at trial. I felt that it was easier  
21 and better to not risk opening that door.

22 Q: Now, let's take one step back to the actual decision of  
23 whether or not to testify. Whose decision was it to testify  
24 or not testify?

25 A: Ultimately it was his decision and I made sure that he



1 understood that. I don't think there was any doubt about  
2 that.

3 Q: Did he -- I'm sorry.

4 A: I'm sorry. I'm sorry.

5 Q: Did he express his desire to you that he wanted to  
6 testify?

7 A: I don't recall that. And you know, certainly it's been a  
8 number of years. I could be mistaken. And I certainly don't  
9 want to, you know, speak out of turn. I do not recall him  
10 planning to testify up until we got to trial. I specifically  
11 recall us discussing it. I do recall telling him I did not  
12 advise him to testify. I kind of knew the direction -- well  
13 no, I knew the direction I wanted to go with the trial as far  
14 as the case. I knew I wanted to paint Sherry as the  
15 unreliable, evil, manipulative, you know, person that I, you  
16 know, that I think she is, but I didn't think that he could  
17 help. I thought it would be more of a hindrance and I -- I'm  
18 99 percent certain I advised him not to testify, but it didn't  
19 happen the morning of trial or at the time that he was set to  
20 testify, the day of. I remember him saying that he would have  
21 his sister testify and that he was comfortable with that.

22 Q: There are a number of allegations -- a number of claims  
23 alleging that you weren't effective for failing to object to  
24 various comments by the Solicitor. I'm not gonna ask you  
25 about them specifically; I'm just gonna ask you about your

Rogers v. State - 2014-CP-26-06589  
KIA WILSON - DIRECT BY SCHMECKPEPER

57

1 recollection of the transcript and the Judge's charge to the  
2 jury. Do you remember the Judge telling the jury in his  
3 charge that the Defendant had the right to remain silent?

4 A: Yes.

5 Q: And that they could in no way -- and I, I understand I'm  
6 asking about specific portions of the transcript. I can bring  
7 it -- do you have a copy of the transcript?

8 A: Yes, I do.

9 Q: Could you turn your attention to Page 429 and that's the  
10 larger of the two transcripts? Actually starting from the  
11 very end of 428 through 429?

12 A: Okay.

13 Q: Do you recall the Judge specifically emphasizing to the  
14 jury that they were not to consider the fact that the  
15 Applicant did not testify in any way whatsoever?

16 A: Yes, I see it; I recollect that.

17 Q: If you can turn your attention to Page 422. Do you  
18 remember the Judge telling the jury that they were the sole  
19 judges of fact in this case, starting around Line 8?

20 A: I'm sorry. Specifically, I don't actually have a  
21 recollection of that, but generally I listen and I try to make  
22 sure, but I see it here. Yes.

23 MR. SCHMECKPEPER: And, Your Honor, if it's easier, I can  
24 just bring this up in closing argument. It's all in the  
25 transcript other than requesting the witness look over

Rogers v. State - 2014-CP-26-06589  
KIA WILSON - CROSS BY TAYLOR

58

1 everything.

2 THE COURT: Sure.

3 MR. SCHMECKPEPER: I beg the Court's indulgence.

4 BY MR. SCHMECKPEPER:

5 Q: I have no further questions. Thank you, Ms. Wilson.

6 THE COURT: Yes, ma'am?

7 MS. TAYLOR: Thank you.

8 CROSS EXAMINATION OF KIA WILSON BY MS. TAYLOR:

9 Q: Kia, is it okay if I call you Kia?

10 A: Please.

11 Q: Just going over these same things we just talked about;  
12 these comments made by Mr. Richardson. You were, at this  
13 point in time, I think you told us had been at the Public  
14 Defender's office for was it for -- was it four years?

15 A: About six, I think. This was in what year, 2010?

16 Q: Yeah, that's right. I'm thinking eight.

17 A: So, it would've been six years.

18 Q: The trial itself -- you started representing him in '08,  
19 so you had two years when you went to trial. So you had --  
20 had you tried cases?

21 A: Yes, I had tried cases.

22 Q: So, you'd been in trial; you knew how it worked?

23 A: Yes, ma'am.

24 Q: And you were trial counsel, you had fully investigated  
25 this case, seen the evidence such as it was, there were

Rogers v. State - 2014-CP-26-06589  
KIA WILSON - CROSS BY TAYLOR

59

1 several statements, one witness, Ms. Maluda and then forensic  
2 information, a lot of that. Was there any forensic evidence  
3 linking Timmy Rogers to the crime scene?

4 A: Off hand, I don't recall there being anything specific.  
5 What I -- well, this is what I remember. I remember there  
6 being something about blood being found in his truck. I  
7 remember that being tested. I remember there being something  
8 about them going to the hotel room and testing in the tub or  
9 something for blood. I think that came back -- nothing at all  
10 was found in his hotel room. And I'm trying to recall  
11 something else specific, I think they -- that's all that's  
12 really coming back to me and you'll have to forgive me for not  
13 being a little more familiar.

14 Q: As -- go through the files?

15 A: Right, yes, ma'am.

16 Q: And I might -- I'm sorry that I only have the one copy.  
17 I think it may be -- sorry ---

18 Court's indulgence, Your Honor. We had a few of the  
19 forensic stuff. Judge, just for explanation, this is the  
20 forensic evidence that was sent up to SLED and the results  
21 that came back that I got from Ms. Wilson about three years  
22 ago when she shared her file with me.

23 And it's just one thing -- I'm not gonna ask you about  
24 the whole -- obviously it was a bunch, but I do have one  
25 question that I'm gonna get to and I just wanted to make sure

Rogers v. State - 2014-CP-26-06589  
KIA WILSON - CROSS BY TAYLOR

60

1 there's no objection.

2 THE COURT: Any objection to that?

3 MR. SCHMECKPEPER: Nothing on the questions unless it's  
4 coming into evidence -- unless the actual paper is coming into  
5 evidence.

6 MS. TAYLOR: I'm only using it so she can refresh her  
7 memory once we get to it.

8 THE COURT: Yeah, I'll allow that.

9 MS. TAYLOR: Thank you.

10 BY MS. TAYLOR:

11 Q: Okay. So, obviously you had the case for a while and  
12 you've looked at everything. You've heard Timmy testify today  
13 as far as what he would have said at trial?

14 A: Yes.

15 Q: That he saw her that morning, she brought some brownies  
16 over, he went to sleep. He doesn't -- didn't go anywhere,  
17 didn't do anything, just sleeping in the hotel room until  
18 Bobby's call the next morning woke him up. Is that  
19 inconsistent with what he told you?

20 A: To a small degree, yes. Now, I don't doubt any part of  
21 the -- there's no change in any part of the testimony about  
22 him being at the room. He told me specifically that he didn't  
23 call and there were actually moments over the course and maybe  
24 he as just, you know, it's a murder; he's been accused of  
25 murder. I'm sure that it's emotionally draining and maybe

Rogers v. State - 2014-CP-26-06589  
KIA WILSON - CROSS BY TAYLOR

61

1 that's a little bit of what was going on from time to time,  
2 but there were a couple of times there where he said to me,  
3 you know, maybe I did it; I don't know; I don't know. It  
4 wasn't of the nature of I fell asleep, that's not what our  
5 discussion was, what our conversation was. It was of the  
6 nature of, you know -- and I guess it was a hindsight thing,  
7 you know, she must've given me something in the brownies and  
8 he was out. He did not have any recollection and again, the  
9 other part about him coming to Court that morning of when --  
10 and I don't remember obviously what day it was but ---

11 Q: You're talking about at trial?

12 A: At trial when he came in and the Judge is asking if he's  
13 gonna testify or not. I don't recall there being a question  
14 about whether or not he intended to testify that day. I  
15 thought we had settled that well before and he was in total  
16 agreement with it, but mainly it was because of, like I said,  
17 it was his -- his explanations weren't exactly the clearest  
18 and I didn't want that in front of a jury to mull and pick  
19 through and I certainly didn't want the Solicitor to have a  
20 chance to do it, so I don't recall that part being correct or  
21 true.

22 Q: The part about him wanting to testify?

23 A: Yes.

24 Q: Okay. And do you remember when you met with him prior to  
25 trial? What was the most recent time if you'll check your

1 record, prior to trial?

2 A: I see a note from 7/26/2010. Then I have -- I'm sorry,  
3 I'm going all the way back. I'm seeing as late as September  
4 2010, no, October 2010. I say October, it looks like my last  
5 written note in the system I had, because he and I had talked  
6 it looks like this last visit on October 13th, 2010 was  
7 created by our office investigator and I had him go show some  
8 CDs to the Defendant, but it was in preparation for trial.

9 Q: Okay.

10 A: At that point, it looks like I was having people come in,  
11 I met with his parent, his mom, sister, but it was trial prep  
12 mostly at that point.

13 Q: Gotcha.

14 A: That's what it looks like.

15 Q: Okay. And you obviously knew, I don't remember when, but  
16 we had talked on his examination, there was an offer made that  
17 was rejected sometime prior to the actual trial?

18 A: Right.

19 Q: So you knew this was going to be a trial?

20 A: Oh, yeah.

21 Q: You knew there were witnesses gonna testify for the  
22 government and you were preparing to deal with them?

23 A: Right, right.

24 Q: You told us about the incident with Sherry and obviously  
25 that took a great deal of time to prepare for cross examining

Rogers v. State - 2014-CP-26-06589  
KIA WILSON - CROSS BY TAYLOR

63

1 Sherry Engel?

2 A: Oh, yes.

3 Q: And you had multiple inconsistent statements from her  
4 that you were getting together so you could use to impeach all  
5 of that.

6 A: Uh-huh (affirmative response).

7 Q: And we talked again just briefly about the SLED  
8 information. You're familiar with the fact that SLED, the  
9 police, local police took a series of items and they sent it  
10 to SLED for testing?

11 A: Correct.

12 Q: Do you recall that?

13 A: Yes. You're talking about the car and ---

14 Q: There was -- from the scene itself ---

15 A: Right, yes.

16 Q: --- from where the body was discovered, there was blood  
17 there; there was glasses; there were prints; there were nail  
18 scrapings?

19 A: Yes.

20 Q: They were not productive, but there was a long list of  
21 things that were taken?

22 A: Yes.

23 Q: I want to hand up -- I'll show you, this is from the June  
24 6th, 2008 -- I'm sorry, SLED lab report and I'll ask you if  
25 you would look at Number 37 on that report and just identify



Rogers v. State - 2014-CP-26-06589  
KIA WILSON - CROSS BY TAYLOR

64

1 what was sent for testing.

2 A: Right. It says swabs from steering wheel of Timmy Rogers  
3 S10 truck.

4 Q: So, that would've been DNA touch test ---

5 A: Yes.

6 Q: --- from the steering wheel of his truck. And this is  
7 the page that shows the results -- indicates the results from  
8 Item Number 37, which is the swab taken from Timmy's truck.

9 A: Yes.

10 Q: And what does that tell us they found?

11 A: It says the partial DNA profile developed Item 37 is from  
12 an unidentified individual.

13 Q: Was Timmy Rogers an identified individual?

14 A: Yes, he was. He certainly was, yes.

15 Q: And Sherry Engel was an identified individual?

16 A: I believe that she was, yes.

17 Q: Do you have any question about that? I can show you ---

18 A: I'm sorry?

19 Q: Do you have any question ---

20 A: I'm not doubting you, no. I'm saying I don't have it in  
21 front of me, but I'm certainly not doubting you.

22 Q: No, I understand. She was a Codefendant?

23 A: Right.

24 Q: Clearly, they were sending to SLED her information, too?

25 A: Right.

Rogers v. State - 2014-CP-26-06589  
KIA WILSON - CROSS BY TAYLOR

65

1 Q: I want to go back for a minute just to these statements  
2 that were made by Mr. Richardson and I don't know if you have  
3 an independent recollection of those things. I think I had  
4 only briefly shown you the comments, and I really only want to  
5 talk to you about the first one. And this was in opening  
6 argument. And, at this point in time, based on what you had  
7 told us, your plan or understanding at that time was that  
8 Timmy would not be testifying, period, but were Timmy ever to  
9 testify or in any conversations that he had with you, did  
10 Timmy ever say to you I strangled Fred Engel?

11 A: No.

12 MS. TAYLOR: I'm going to approach the witness and show  
13 her this statement, if I may?

14 THE COURT: Sure.

15 BY MS. TAYLOR:

16 Q: And it is highlighted and just ask you, Do you recall in  
17 the courtroom hearing the Prosecutor tell the jury in opening  
18 argument that Timmy Rogers' testimony would establish that he  
19 had strangled Fred Engel?

20 A: I don't recall it, but I certainly see it here in print.

21 Q: Is that something that you normally as a defense lawyer  
22 in a homicide trial would object to?

23 A: I mean, you know, maybe I should've objected to it. I  
24 don't know that I even focused in on it, and I certainly was  
25 listening. Hindsight, I would say sure, yes. Absolutely, I

Rogers v. State - 2014-CP-26-06589  
KIA WILSON - CROSS BY TAYLOR

66

1 wouldn't want the jury to hear that, but certainly I didn't  
2 and I don't recall thinking it was, you know ---

3 Q: Maybe if I rephrase slightly because I mean we've all  
4 been in courtrooms and know how -- what happens and what you  
5 catch or don't catch, but looking at this, would it have been  
6 any strategic benefit to Timmy Rogers for -- to allow a  
7 prosecutor to say what is clearly an untrue statement in every  
8 sense of the word?

9 A: Well, of course it wouldn't have been a strategic -- it  
10 wouldn't have been of any help. I just would say that I don't  
11 know that I felt that it hurt him because certainly  
12 opportunity to cure, especially during -- the fact that he,  
13 number one, wasn't testifying. And, two -- so, I mean it's  
14 just an untrue statement by the State. The jury clearly knows  
15 he didn't take the stand and they knew, you know, that he  
16 didn't give any kind of statement. They didn't hear from him.

17 Q: This was in opening argument?

18 A: I don't disagree.

19 Q: So, they would not have known that when they heard those  
20 words?

21 A: Well, I mean they're gonna take everything in  
22 consideration when they deliberate, and certainly there was an  
23 entire trial, days' worth of opportunity and time for him to  
24 possibly get on the stand. I understand what you're saying to  
25 me and I agree with you. In hindsight, I would love to have

Rogers v. State - 2014-CP-26-06589  
KIA WILSON - CROSS BY TAYLOR

67

1 been able to have objected to that and us not have this  
2 discussion right now. But, I just think that at the end of  
3 the day, the opportunity to, to cure any problem created by  
4 the Solicitor's statement was great, and I think it was  
5 handled because I don't believe that the jury was missing any  
6 testimony from Timmy because I tried my darnedest to make -- I  
7 hope it's okay that I say that -- I tried to make sure that  
8 when I questioned specifically, Sherry, I brought out the  
9 things that he wanted to say without him getting on the stand.  
10 The things that were salient and that were gonna be most  
11 critical to the Court's understanding about what was really  
12 going on in this case, and those weren't things that were in  
13 the discovery.

14 Q: Okay. And again, there was not an objection at the time?

15 A: There was not.

16 Q: And there was never a curative instruction given by the  
17 Judge?

18 A: No, ma'am.

19 Q: And there was no testimony ever from any source that  
20 Timmy Rogers ever said I strangled Fred Engel?

21 A: I don't believe so. I don't think Sherry's words were  
22 those words, no, not specifically.

23 Q: Well, I mean, specifically from Timmy Rogers?

24 A: No, that statement was not made; no, ma'am.

25 Q: And did you have any discussions with Mr. Richardson

Rogers v. State - 2014-CP-26-06589  
KIA WILSON - CROSS BY TAYLOR

68

1 about Sherry Engel's deal?

2 A: I don't recall specifically. I don't recall him saying  
3 to me, you know, I'm pretty sure I became aware that she was  
4 trying to work with the State before trial. I don't recall if  
5 that was through her attorney at the time or if the Solicitor  
6 called me up. Jimmy Richardson was pretty transparent about  
7 what was going on in the trial in his trial prep with me and,  
8 you know, I certainly would have made the effort to touch base  
9 with him. I don't recall that specifically.

10 Q: Did you ever ask him what her deal was prior to the  
11 trial?

12 A: I'm sure I would've if he told me that he was gonna use  
13 her because I knew then that she was turning State's evidence  
14 so that she could work herself a deal which fit with  
15 everything Timmy had explained to me about her.

16 Q: I'm sorry, maybe I'm inartfully asking, did you ever  
17 inquire of the Prosecutor what was the deal that Sherry Engel  
18 is getting for testifying against Timmy?

19 A: Well, that's why I'm saying it the way I am. I don't  
20 recall specifically and I wish I could say I have a note that  
21 says this is what happened. I don't have that. I'm having to  
22 guess at it based on what my normal actions would be and if he  
23 told me that she was going to -- she done a proffer, I -- I'm  
24 sure I would have asked him about her deal, but I don't recall  
25 it. I do not recall that on my own at this point. If you

Rogers v. State - 2014-CP-26-06589  
KIA WILSON - CROSS BY TAYLOR

69

1 have something to refresh me with, I'll be glad to ---  
2 Q: I looked through your file. I did not see anything.  
3 A: Okay.  
4 Q: But that doesn't mean that I didn't miss something.  
5 Again, it's paper and we all miss stuff. Do you have any  
6 independent recollection or any notations in your file that  
7 you filed a formal written request of the government of South  
8 Carolina to reveal proffer information or any deals extended  
9 to Sherry Engel in exchange for her testimony against her  
10 Codefendant?  
11 A: I do not see anything like that, no, ma'am.  
12 Q: With your assessment of the facts of the case result --  
13 you think it is proper to presume that Sherry Engel would have  
14 been found guilty of murder or is, is legally guilty of murder  
15 based on her admissions of what she did that day with whomever  
16 she did it; she acknowledged, she planned and set up her  
17 husband ---  
18 A: Yes.  
19 Q: --- to be killed?  
20 A: Yes.  
21 Q: And that accessory before the fact of manslaughter not  
22 only carries a maximum of 30 as opposed to life, but it is  
23 also a parolable offense and murder is not?  
24 A: Right.  
25 Q: So there was clearly a benefit?

1 A: Oh, absolutely.

2 Q: Was that ever provided to the jury.

3 A: Matter of fact, I think, I -- I read this in the  
4 transcript, but I spent a lot of time questioning her, and I  
5 saw that I asked her about the deal ---

6 Q: You ---

7 A: --- and I even, I made it a point to bring out the fact,  
8 and I think I beat a little too much probably but -- that she  
9 was up there because it benefited her, not because she just  
10 suddenly, you know, felt so sorry about, you know, what she'd  
11 done. She didn't care about that. She cared about being in  
12 trouble and that's what I wanted to get out. So, I -- I tried  
13 to make that apparent to the Court and the jury.

14 Q: Did she ever answer you by saying, yes, I have a deal?

15 A: I don't recall. I think, if I remember from the  
16 transcript what she ends up saying is something like -- I  
17 don't remember -- do you know the page where she's ---

18 Q: I don't know the page, but let me see if this is the same  
19 thing you recall. It's my recollection -- it's her answers  
20 and you were asking her questions was that, I need to give  
21 justice to my husband, that was why she was in court  
22 testifying.

23 A: Right.

24 Q: She felt bad.

25 A: I remember that.

Rogers v. State - 2014-CP-26-06589  
KIA WILSON - CROSS BY TAYLOR

71

1 Q: And to give this family justice. That's what she said  
2 and then shortly thereafter in her plea to accessory?

3 A: Right. But I think that if I remember correctly, I  
4 didn't -- it didn't just end there and I think the entire line  
5 of questioning was about the fact that she was trying to cut  
6 herself a deal at Timmy's expense because she kept saying that  
7 they did it together and that she certainly did participate,  
8 but she was trying to minimize her involvement which was also  
9 something that I kept bringing up.

10 Q: And do you recall -- you had mentioned she had made  
11 several inconsistent statements previously. Do you recall  
12 that when she was first questioned by the police and they  
13 asked the general question they do, do you know anyone who  
14 might have wanted to hurt your husband? She provided the name  
15 of a young man who lived in the neighborhood?

16 A: I remember that.

17 Q: And they may have charged him. I know that they  
18 investigated him but, thankfully for him, he had been to  
19 Walmart and was on camera at the time of the homicide.

20 A: Yes.

21 Q: So, do you recall ever -- Timmy talking to you about  
22 possible witnesses back at the -- I want to call it True  
23 Value, but that's not right -- Value Place Hotel, people that  
24 when he was at the hotel on his own, he would occasionally  
25 have smoke breaks with or ---



1 A: Yeah, I remember something about a True Value, because I  
2 remember when he said that he couldn't remember anything, I  
3 was -- you know, I was thinking there has to have been  
4 somebody or something. The keycard situation, I remember,  
5 showed specifically that somebody had come in and left.

6 Q: I'm sorry?

7 A: I remember something about there being some other people.  
8 I just don't recall it with any specificity.

9 Q: Let's go back to the keycard. You said, tell me about  
10 that again. Somebody came in and left?

11 A: There was something about the keycard and I'm trying to  
12 remember what it was about some -- the room -- somebody coming  
13 in -- I don't remember. I want to say it was something about  
14 somebody coming in or the keycard was used, but I don't recall  
15 the specifics, but there was something about the keycard.  
16 There was something about -- I don't remember the specifics.  
17 It was something about a keycard and the keycard being used  
18 that night.

19 Q: And of course they couldn't identify -- there were no  
20 video cameras ---

21 A: There was no video.

22 Q: --- in the hallways.

23 A: Because I even went by there, but there was no video  
24 being made.

25 Q: Does it ring any bells in your recollection about a guy

Rogers v. State - 2014-CP-26-06589  
KIA WILSON - CROSS BY TAYLOR

73

1 in a wheelchair that he used to hang out with and smoke?

2 A: Not specifically a wheelchair ---

3 MR. SCHMECKPEPER: Your Honor, I just want to make an  
4 objection. At this point, I think we're outside of any of the  
5 allegations that have been raised in the application or ---

6 THE COURT: You gonna bring it back some way? I'll give  
7 you a little leeway. Go ahead.

8 MS. TAYLOR: Only just because what, what she is now  
9 saying is that he remembered nothing. So ---

10 THE COURT: Yeah. I'll allow it.

11 MS. TAYLOR: And I only have one more. One other person.

12 THE COURT: Okay.

13 BY MS. TAYLOR:

14 Q: Do you recall him ever asking you to see if you could  
15 find a lady by the name of Muriel, who was a housekeeper at  
16 the hotel or -- yeah, hotel that he would sometimes have his  
17 smoke breaks with?

18 A: I remember there being a discussion about someone from  
19 the hotel. I don't remember specifically. I don't think we  
20 could find this person. There was a problem with it, but I  
21 remember there being something about a person that he knew  
22 from the place, but she didn't have any information from that  
23 day, from the day of the murder.

24 Q: And unfortunately, the homicide happened on April 21st.  
25 He didn't get arrested until early May in Kentucky and he

1 wasn't brought back down here until at least three weeks after  
2 that date, right?

3 A: Right.

4 Q: And probably not the first time as a criminal defense  
5 lawyer and you talk to somebody after the passage of time  
6 about an event that is not in any way significant because they  
7 were just home doing something; is that fair to say?

8 A: That certainly could be fair to say, yes.

9 Q: Court's indulgence just one moment. And my last  
10 question, Ms. Wilson, in the two years about that you  
11 represented Timmy while he was in the Horry County jail, did  
12 you ever have any problems with him; did he ever get into  
13 fights with anybody; was he a difficult guy to deal with?

14 A: Oh, no, no, no. As a matter of fact, I remember telling  
15 Mr. Schmeckpeper that he's honestly -- two of the nicest  
16 clients I've ever had have been defendants on trial for murder  
17 and Timmy is one of those two. He was always extremely kind  
18 and polite, never a harsh word, just always very, very nice,  
19 very nice.

20 Q: Thank you.

21 THE COURT: Anything from the State?

22 MR. SCHMECKPEPER: Your Honor, I have no further  
23 questions.

24 THE COURT: Okay. You can step down. Thank you so much.  
25 Anything else?

Rogers v. State - 2014-CP-26-06589  
CLOSING ARGUMENT BY TAYLOR

75

1 MR. SCHMECKPEPER: Your Honor, the State rests.

2 THE COURT: Okay. Anything on rebuttal?

3 MS. TAYLOR: Not on rebuttal, no, sir.

4 THE COURT: Okay. I'll be happy to hear briefly from  
5 both of you if you want to sort of sum up your positions.

6 Ladies first?

7 CLOSING ARGUMENT BY TAYLOR:

8 MS. TAYLOR: Thank you, Judge. The only -- I mean  
9 obviously you've heard anything, you'll have the opportunity  
10 to see more. But, I would like to just reiterate some of the  
11 issues as far as that were brought up on as far as his  
12 decision not to testify or testify, being prepared to testify.  
13 What you heard from him as well as from his sister and  
14 probably can draw from conclusions about this relationship  
15 with Sherry Engel, is that he tends to be a passive guy, and  
16 that he was 40 years old, never had been arrested, never had  
17 been in court, never experienced any of this type of stuff.  
18 Even experienced criminal defendants find it a little  
19 unnerving to actually be in a courtroom on trial.

20 He wanted to testify. He wanted to say what he could say  
21 and, yes, like anybody else who their defense is I'm home  
22 alone when you say I did something. I had nobody with me.  
23 And had the police shown up that day at the hotel on Sunday  
24 and said, hey, you know, we think we saw your truck and it was  
25 a similar truck, no tags, no identification of the driver. We

Rogers v. State - 2014-CP-26-06589  
CLOSING ARGUMENT BY TAYLOR

76

1 tracked your cell phone -- then he could have said at that  
2 point specifically or would have been more likely to be able  
3 to have said, wait a minute, no, last night that could not  
4 have been me; I was here. I was watching whatever I was  
5 watching on T.V. A month later, when he is speaking and he  
6 did speak with the police initially and told them the same  
7 thing that he told us and that he told Kia, I didn't do it,  
8 not that I had a blackout. That somebody who is inexperienced  
9 in this kind of situation as he is, as well as the gentle kind  
10 of passive guy that as soon as somebody starts to push him,  
11 he'll just agree with whatever, and they take the position  
12 that shoot, you know, we, as lawyers do with our clients  
13 sometimes when we're trying to either prepare them to testify  
14 or to push to see whether they're going to be good if they  
15 testify or what the problems may be. And he can only say what  
16 he can say. He can't say I remember this and I remember this  
17 and I remember this and I was there and I was with this  
18 person. His memories are limited. He's sitting in a hotel  
19 room where he's been for two weeks, three weeks almost,  
20 waiting for this girl to come by on occasion, doesn't have any  
21 friends, doesn't have anything to do other than play cards and  
22 watch T.V. They all run together. There's nothing that makes  
23 that leap out in his mind, but he still want to say -- he  
24 wants to take the stand and say to the jury I did not kill  
25 this man. And yeah, we're not saying he had a blackout and

Rogers v. State - 2014-CP-26-06589  
CLOSING ARGUMENT BY TAYLOR

77

1 was dissociative and did it and just can't remember. The  
2 inference that we are trying to suggest based on the fact that  
3 she brought him these brownies, they were on a plate, the  
4 plate was gone mysteriously the next day, coincidentally the  
5 same night that someone would have come in with a keycard,  
6 taken his keys and his phone, and driven the truck just in  
7 case somebody saw something, he was the patsy. He was the guy  
8 they set up, whoever Sherry and her compatriot might have  
9 been. He was the one that if anybody saw anything around the  
10 area, then they would come back to him.

11 THE COURT: So, let me get this straight and -- I'm  
12 serious. Your theory is that she brings him brownies that  
13 somehow make him incapacitated and then someone uses the  
14 keycard. There was testimony that she had a card to his room.

15 MS. TAYLOR: Yes, sir.

16 THE COURT: Comes in, gets the phone, which would be  
17 tracked and the truck, maybe drives the route or route?

18 MS. TAYLOR: Uh-huh (affirmative response).

19 THE COURT: Comes back, puts the phone and everything  
20 back in, and then a third party kills Mr. Engel?

21 MS. TAYLOR: Well, that -- that same party who comes  
22 there is -- would be, I mean, yeah, that would be the theory  
23 because somebody ---

24 THE COURT: So integral to that is that she gave him  
25 something in those brownies that completely -- and there's

Rogers v. State - 2014-CP-26-06589  
CLOSING ARGUMENT BY TAYLOR

78

1 nothing -- nobody ever did a toxicology report on him?

2 MS. TAYLOR: Sadly, no, because he was not arrested until  
3 three week later and not transported down here. When he was  
4 arrested in Kentucky, they didn't take any blood. All they  
5 did was a DNA swab, so there was nothing to be tested.

6 THE COURT: No hair or anything?

7 MS. TAYLOR: Nothing.

8 THE COURT: Okay.

9 MS. TAYLOR: And nothing was done subsequent.

10 THE COURT: And I didn't mean to interrupt you, I just  
11 wanted to make sure I had that.

12 MS. TAYLOR: And that's the frustrating part because  
13 there was this -- you know, it's not like this happened and  
14 the next day these people were arrested and -- wait a minute,  
15 wait, no, no, let's do what we need to do. Weeks had passed  
16 and then days before he came back down here. But my point, I  
17 think where I started, Judge, was he's in trial, he's never  
18 been charged, he's never been in this situation. He wants to  
19 testify. His attorney has reservations, totally justifiable.  
20 She advises him, I don't think you need to testify. I think  
21 we can do what needs to be done without your testimony. And  
22 then the Judge who questions him, says that he advises him to  
23 take her advice and passive Timmy does.

24 But ultimately I think that it -- it can be persuasive if  
25 for no other reason, to have a defendant who can take the

Rogers v. State - 2014-CP-26-06589  
CLOSING ARGUMENT BY SCHMECKPEPER

79

1 stand when they're charged with murder, who has 40 years of  
2 good life, never been arrested, never any incidents of  
3 violence, worked, married, all these things, we don't often  
4 have that in a client that's going to trial, no criminal  
5 record. And I think that was invaluable and could have been  
6 potentially persuasive if only one jury heard him testify,  
7 juxtapose him to Sherry Engel and there is no doubt -- I mean,  
8 I didn't talk to any of the jurors, but the Judge made it very  
9 clear that Sherry Engel was disingenuous personified, and that  
10 he would not believe anything that came out of her mouth and  
11 probably the jury caught on to that as well.

12 So, it would've created, I think, a reasonable doubt  
13 within one or more of those jurors to give the benefit of the  
14 doubt in an extremely in fact an entirely circumstantial case  
15 to Mr. Rogers had he been able to look them in the eye and  
16 tell them what he was able to tell them.

17 THE COURT: Okay. I thank you very much.

18 Yes, sir?

19 CLOSING ARGUMENT BY SCHMECKPEPER:

20 MR. SCHMECKPEPER: Thank you, Your Honor. Looking at  
21 this issue that was just discussed, I think the first thing  
22 that's important to know is that applicant's right to testify  
23 or not testify wasn't violated. The applicant was clearly  
24 informed of his rights, the implications of those rights and  
25 informed that it was his decision. I think the point here is



1 that it's important to focus on this issue through the context  
2 of -- Whether or not counsel, in giving that advice, assuming  
3 she gave that advice, was ineffective -- was deficient or  
4 whether that -- you know, which means whether or not that  
5 advice was unreasonable under professional norms; and two,  
6 whether it was prejudicial. I think counsel's testimony  
7 clearly establishes that it was not deficient. Counsel  
8 testified as to her reasoning. I would say her valid  
9 reasoning, but the level of deference there doesn't really  
10 even require me to agree with it or for this Court to agree  
11 with it.

12 Second, turning to the prejudice prong, we heard  
13 counsel's testimony -- I'm sorry -- we've heard Applicant's  
14 testimony. I would argue there's some credibility issues  
15 right there that counsel brought up. Counsel indicated that  
16 she thought there might be credibility issues with his  
17 testimony. But looking, looking at the theory -- and this  
18 isn't -- this isn't a forum to determine whether or not there  
19 was a third party who came in and stole off with his truck and  
20 whether or not he's innocent. But, looking at that theory, it  
21 strikes me as a little ridiculous considering the fact that  
22 the Codefendant reportedly created this scheme and ended up  
23 getting caught herself and also in light of the 30-year  
24 sentence or in facing a 30-year sentence or a life sentence  
25 also indicated the Applicant.

Rogers v. State - 2014-CP-26-06589  
CLOSING ARGUMENT BY SCHMECKPEPER

81

1           For that reason I think this allegation should be  
2 dismissed as failing to meet the *Strickland* prong. Any of the  
3 other allegations, in looking specifically at the claims that  
4 counsel was ineffective for failing to object to various  
5 comments by the Solicitor, Your Honor, I think it's refuted by  
6 the record. First off, none of those statements were so  
7 outrageous as to deny the Applicant his right to due process.  
8 And that's the standard. The standard is -- and that's the  
9 prejudice standard. Looking at -- looking at counsel's  
10 testimony today, it doesn't appear that she really felt she  
11 needed to object to any of these statements. I think that's  
12 supported by the record. The Solicitor -- the Solicitor's  
13 comment about Timmy Rogers' testimony will tell you that he  
14 strangled Fred Engel at the time at the mailbox at California  
15 [sic] Forest. Timmy didn't -- Mr. Rogers didn't testify, but  
16 there were statements in evidence from Mr. Rogers. Mr. Rogers  
17 called the Codefendant and said, I did it. So, if you changed  
18 the word testimony to words, then it's inferable for the  
19 record and that's as far as it goes here. I don't think  
20 there's really any argument that this comment on the  
21 Applicant's right to remain silent, the right to testify, in  
22 any nefarious way or that there was any implication or any  
23 inference the jury could make that the Applicant didn't  
24 testify based on this opening statement comment because he was  
25 guilty. And even if there were -- even if the jury did come

Rogers v. State - 2014-CP-26-06589  
BY THE COURT

82

1 to that inference, the Judge clearly charged the jury that  
2 they were not to consider the fact that the Applicant  
3 testified or did not testify in anyway whatsoever.  
4 Looking at the other -- in looking at the remaining  
5 allegations as far as the Solicitor's closing statement, I'd  
6 be happy to address any -- if Your Honor has any questions  
7 about them. But, I think it's important to note that the  
8 Trial Judge specifically stated the Solicitor's statements or  
9 the attorneys' statements were not in evidence, that the only  
10 evidence they were to consider come from witnesses and  
11 exhibits. Again, I'd be happy to answer any of your  
12 questions.

13 THE COURT: No, no. I think y'all have done a good job  
14 of putting the issues in front of me. Obviously, I got to  
15 read this transcript.

16 MS. TAYLOR: Yes, sir.

17 THE COURT: It's my law clerk's first week, so this will  
18 be her first chance to get to read through one of these.

19 Yeah, I'll take it under advisement and let you know  
20 because obviously I've got a lot of transcripts to read. You  
21 need to -- there's a lady behind you -- her sister wants to  
22 ---

23 MS. TAYLOR: Okay. Just hold on for one second.

24 THE COURT: Talk to her.

25 MS. TAYLOR: If I -- could I -- I forgot one thing. Can

Rogers v. State - 2014-CP-26-06589  
BY THE COURT

83

1 I just add one other thing ---

2 THE COURT: Sure.

3 Ms. TAYLOR: --- just on the issue of the impermissible  
4 statements. In addition to the effect of them, also the  
5 failure to object failed to preserve them for appellant  
6 review.

7 THE COURT: Okay.

8 MS. TAYLOR: This was in the *Anders* case. And, I did  
9 have one case, *Edmond v. State of South Carolina*, which is  
10 sort of on point because it talks about the statements are  
11 sort of different, but it talks about especially in a case  
12 which was circumstantial and in which the Defendant does not  
13 testify, then the looking at impermissible comments on Fifth  
14 Amendment violation is particularly high.

15 THE COURT: Yeah, if you've got a copy of that, that'd be  
16 great.

17 MS. TAYLOR: I have a copy of it, Judge, and I'm happy to  
18 give it to you now. I have it highlighted and it's in giant  
19 blind old lady print, but I'm happy to give it to you.

20 THE COURT: You know what, if it says -- unless you've  
21 got something added there that you added a sentence in with  
22 your typewriter, I'm good.

23 MS. TAYLOR: No, sir.

24 THE COURT: That will just save me time from looking.

25 MS. TAYLOR: Yes, sir.

BY THE COURT

1 THE COURT: Yeah, talk to her and make sure.

2 MS. TAYLOR: Court's indulgence.

3 The only other thing -- I am done with everything else as  
4 far as the record.

5 MR. SCHMECKPEPER: Nothing further from the State, Your  
6 Honor.

7 MS. TAYLOR: And I had asked the Court earlier if the  
8 family might just have a word with him. I don't know if you  
9 have five minutes where you can sit on the bench and do  
10 something on your computer. The deputies said that they would  
11 allow no touching, nothing, but ---

12 THE COURT: It's up to them.

13 DEPUTY: Judge, it's fine with me.

14 THE COURT: Yeah, I'll sit here.

15 MS. TAYLOR: Thank you.

16 THE COURT: They came a long way and -- yeah, just no  
17 touching and that's just for security reasons.

18 MS. TAYLOR: They're not gonna get out of their chairs  
19 and we'll be brief.

20 THE COURT: Yeah, I'll sit here. Let me tell the family  
21 something. There's a lot of counties where the deputies  
22 wouldn't be this nice. I've been down here a lot and these  
23 guys have protected me very well and been very nice to me and  
24 this is -- they're going out of their way for you.

25 (ADJOURNED.)

ORIGINAL

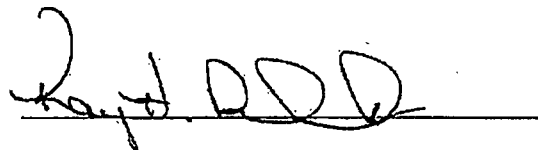
Rogers v. State - 2014-CP-26-06589  
CERTIFICATE OF COURT REPORTER

85

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Timmy Rogers versus State of South Carolina, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on August 9, 2016 by Dixie C. Eubank.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson

Official Court Reporter

June 28, 2017.

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF HORRY ) FOR THE FIFTEENTH JUDICIAL CIRCUIT

Timmy J. Rogers, ) Case No.: 2014-CP-26-6589  
S.C.D.C. No. 343260, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

**ORDER OF DISMISSAL**

FILED  
Horry County  
2017 SEP 11 PM 1:28  
CLERK OF COURT  
HORRY COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed by Timmy J. Rogers ("Applicant"), by and through counsel Donna K. Taylor, Esquire, on October 8, 2014. Respondent made its return and motion to dismiss on or about March 25, 2015, arguing the application was not timely filed. The Court convened an evidentiary hearing into the matter on August 9, 2016, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Donna K. Taylor, Esquire and D. Lynn Bowley, Esquire. Patrick L. Schmeckpeper and Caitlin B. Hastings, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's sister, Debbie Jean Parris, and trial counsel Kia T. Wilson, Esquire ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, and the pleadings. Additionally, the Court has before it a transcript of the August 9, 2016, proceeding in the preparation of this Order. The Court finds as follows:

## I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the July 2008 term of the Horry County Grand Jury for murder (2008-GS-26-2450). Kia T. Wilson, Esquire, and James C. Galmorc, Esquire, represented Applicant. Jimmy A. Richardson, II, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. Applicant proceeded to trial before the Honorable Larry B. Hyman, Jr. and a jury. The jury found Applicant guilty as indicted on October 14, 2010. Judge Hyman sentenced Applicant to imprisonment for a term of 35 years.

Applicant filed a timely notice of appeal and a direct appeal was perfected by David Alexander, Esquire. At issue in that appeal was:

Whether the trial court erred in denying [Applicant's] motion for a directed verdict when the State presented substantial circumstantial evidence of [Applicant's] guilt?

Brief of Respondent at 2, State v. Rogers, 405 S.C. 554, 748 S.E.2d 265 (Ct. App. 2013). By opinion decided September 4, 2013, after exhaustively exploring the sufficiency of the circumstantial evidence introduced at trial,<sup>1</sup> the South Carolina Court of Appeals affirmed Applicant's convictions, finding "the State presented evidence of Rogers' guilt that meets the substantial circumstantial evidence test[.]" State v. Rogers, 405 S.C. 554, 571, 748 S.E.2d 265, 274 (Ct. App. 2013). The Remittitur was issued on September 20, 2013.

---

<sup>1</sup> In weighing the sufficiency of the circumstantial evidence, the Court of Appeals picked out 15 discrete pieces of evidence to support the conviction. Rogers at 565-67. Additionally, the Court rejected Applicant's "attempts to isolate . . . single pieces of evidence and argue each one alone does not constitute substantial circumstantial evidence[.]" Id. at 571. The Court found that co-defendant Sherry Engel's testimony in particular, together with the other evidence, was sufficient to place Applicant at the scene of the crime at the relevant time. Id. at 569.



### Present Application

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of trial counsel, in that:
  - a. "There was a foot print found at the scene that was never tested or reviewed by counsel, and was not introduced at the trial, there was some minor testimony regarding the collection of that evidence that came out before the Jury which resulted in a Jury question during deliberation; however because it was not introduced by either party it could not be considered."
  - b. "Additionally despite substance issues and mental health history no evaluation or assessment was conducted."
  - c. "[I]nappropriate statement made by Solicitor in closing argument were not objected to by counsel"

As previously indicated, Respondent filed its return and motion to dismiss on March 27, 2015, arguing the application should be dismissed as untimely. The Honorable Steven H. John issued a Conditional Order of Dismissal filed April 9, 2015, granting Respondent's motion while granting Applicant 30 days to provide specific reasons why the application should not be dismissed. Accordingly, Applicant filed a response on May 15, 2015, arguing that either federal law or equitable tolling should permit his application to go forward. By e-mail dated May 27, 2015, Judge John informed the parties that he would not issue a Final Order of Dismissal and that the matter should be set for a hearing.

Respondent thereafter submitted a revised "Notice of Motion and Motion to Dismiss" on August 3, 2015, asking the Court to affirm the Conditional Order of Dismissal. Applicant filed a response thereto on August 11, 2015. That same day, the parties proceeded to a motion hearing before the Honorable G. Thomas Cooper, Jr. Applicant was present at the hearing and represented by Donna K. Taylor, Esquire. Joshua L. Thomas, of the South Carolina Attorney General's Office, represented Respondent. By order dated September 18, 2015, and filed

September 23, 2015, Judge Cooper adopted the reasoning set forth the Conditional Order of Dismissal and dismissed the matter with prejudice.

Applicant thereafter filed on December 18, 2015,<sup>2</sup> a motion pursuant to Rule 59(e), SCRPC, asking the Court to vacate its order on the basis that Applicant "was represented by counsel and had relied on her to file his PCR action on his behalf. Entirely through her error, the action was filed late." Motion to Reconsider, Alter or Amend Pursuant to Rule 59(e) at 1-2, Rogers v. State, 2014-CP-26-06589. More specifically, in the letter sent with the motion, Applicant's counsel emphasized that the failure to timely file was her own error, her first in a long career, and in no way the fault of Applicant. Respondent filed its return to the motion on January 7, 2016. By order dated February 1, 2016, and filed February 4, 2016, Judge Cooper granted Applicant's motion and ordered a full evidentiary hearing.

At the evidentiary hearing on August 9, 2016, Applicant proceeded forward on the second and third allegations of ineffective assistance of trial counsel quoted above. Additionally, Applicant introduced substantial testimony regarding advice he received leading to his decision not to testify at trial, but did not otherwise amend his application with this allegation.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

---

<sup>2</sup> Applicant's counsel asserts that she did not receive the order until December 8, 2015.

### A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this

prong, attorney performance is measured by its "reasonableness under professional norms." Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

***IAC Allegation #1 – Failure to Review or Introduce Footprint Evidence***

Applicant's first allegation involves the investigation and utilization of certain footprint evidence that was not introduced at trial. At the evidentiary hearing, Applicant specifically withdrew this issue. Tr. p. 5, ll. 11-23. Accordingly, the Court finds this issue is **WITHDRAWN**, and it forms no part of the Court's other analysis.

***IAC Allegation #2 – Failure to Evaluate Applicant's Mental Health History***

Applicant's second allegation is that Counsel failed to evaluate his mental health or substance abuse history and raise that as a defense at trial. To establish counsel failed to adequately prepare for trial, an applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998).

Under the "M'Naughten test", an accused who lacks the capacity to distinguish moral or legal right from moral or legal wrong at the time of the crime is relieved of responsibility for his acts. S.C. Code Ann. § 17-24-10; State v. Law, 270 S.C. 664, 667, 244 S.E.2d 302, 304 (1978); State v. Cannon, 260 S.C. 537, 547-48, 197 S.E.2d 678, 682 (1973). The question of a defendant's sanity is a question of fact to be determined by the jury. State v. Allen, 231 S.C. 391, 98 S.E.2d 826 (1957).

Additionally, due process prohibits the conviction of a person who is mentally incompetent. Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992) (citing Bishop v. U.S., 350 U.S. 961 (1956); Pate v. Robinson, 383 U.S. 375 (1966)). The test of competency to enter a plea or stand trial is one in the same: the accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him. Id., 417 S.E.2d at 596 (citing State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976); Carnes v. State, 275 S.C. 353, 271 S.E.2d 121 (1980)). An applicant alleging incompetence in fact must show by a preponderance of the evidence he was incompetent at the time of trial. Id.

An applicant alleging ineffective assistance of counsel for failure to seek a mental health evaluation must still satisfy the two prongs of Strickland: applicant must demonstrate (1) a 'reasonable probability' that he was not competent at the time of the crime or at the time of the plea or trial, and (2) that counsel's failure to seek an evaluation was unreasonable. Jeter at 233, 417 S.E.2d at 596. Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. Id.

At the evidentiary hearing, Applicant did not introduce any professional evaluation of his present mental health or evaluation of his condition as it existed either at the time of trial or at

the time of the murder. Rather, Applicant testified that he "couldn't think clearly" or "function at work really well" during his divorce. Tr. 20, ll. 11-12. Applicant also testified he admitted himself to "Elizabethtown Hospital" and "Communicare" for treatment,<sup>3</sup> where he was prescribed anti-depression medication. Tr. 20-21. Applicant testified that co-conspirator, Sherry Engel, provided him Xanax, other unidentified pills, and "special" foods implied to be laced with medications. Tr. 22-23. Applicant claimed that he consumed "special brownies" provided by Ms. Engel the day of April 21, 2008, and lost all memory thereafter until waking in his hotel room to a mid-morning phone call on April 22, 2008, at which time he was told by Ms. Engel's brother that the victim, Mr. Fred Engel, was dead. Tr. 27-30. Applicant could not specifically remember telling Counsel about his depression diagnosis, but asserted he was sure he did so. Tr. 39, ll. 16-23. Applicant's sister, Ms. Parris, described Ms. Engel as "very in control" and testified to witnessing Applicant sleep for inordinate periods of time after consuming "special" foods provided by Ms. Engel on prior occasions. Tr. 44-46.

Counsel testified that she spent substantial time with Applicant in preparing his case and that "[h]e was very clear about the things that he was clear about." Tr. 52. Applicant very substantially assisted in the preparation of his defense. Tr. 53. Counsel indicated that nobody performed a toxicology examination on Applicant because he was not arrested until weeks after the murder and not returned to South Carolina until a number of days after that. Tr. 78.

This Court finds that Applicant has failed to meet his burden of proof as to this allegation. The Court finds credible Counsel's testimony that Applicant thoroughly assisted in the preparation of his defense and that he was cogent in the matters within his recollection. Counsel was entitled to use her judgment in determining whether Applicant was competent.

---

<sup>3</sup> Applicant introduced no records of this medical treatment.

Furthermore, Applicant's failure to introduce any medical records or reports is fatal to his claim given the allegation is that Counsel did not seek them. Applicant has shown neither deficiency nor prejudice. Accordingly, Applicant's request for relief as to this allegation is **DENIED**.

***IAC Allegation #3 – Failure to Object to State's Remarks Implying Applicant Would Testify***

Applicant alleges Counsel was ineffective for failing to object to opening remarks by the solicitor which implied that Applicant would testify at trial. Namely:

- "If Timmy Rogers wasn't laying in wait in that wood line with that string and choked him to death he would be alive today. Or they would have found some other time to do it, but it's 100 percent, 100 percent. Don't worry about assigning fault. I'll tell you now you're not going to like Sherry. But there is enough blame to go around, and it certainly covers Timmy. **Timmy Rogers' testimony will tell you that he strangled Fred Engel at that the [sic] mailbox at Carolina Forest.**" Oct. 12, 2010, Tr. 88-89 (emphasis added).
- "This means an awful lot to Timmy Rogers. It's the date he's waited for. He pled not guilty, and I would ask you to listen to all the evidence and don't jump to any conclusion and say, 'I'm mad at Timmy Rogers. I'm mad at Sherry Engel. Let's find a tree and hang this crowd.' That's not how our system is set up. I want you to listen to all the evidence, and give him every benefit of the doubt. **Listen to him.** There is more than enough evidence here." Oct. 12, 2010, Tr. 94-95 (emphasis added).

It is impermissible for the prosecution to comment, directly or indirectly, upon the defendant's failure to testify. Johnson v. State, 325 S.C. 182, 187, 480 S.E.2d 733, 735 (1997); Edmond v. State, 341 S.C. 340, 345, 534 S.E.2d 682, 685 (2000). "However, improper comments on a defendant's failure to testify do not automatically require reversal if they are not prejudicial to the defendant." Johnson at 187, 480 S.E.2d at 735 (citations omitted). For example, the Supreme Court of South Carolina has found no prejudice where the State merely suggested in its opening remarks that the defense would introduce witnesses and testimony. State v. Dawkins, 297 S.C. 386, 391-93, 377 S.E.2d 298, 301-02 (1989).

Operating in reverse order, the second of the two remarks is very plainly not prejudicial. In context, the solicitor is encouraging the jury to respect the appropriate standards and properly consider all of the evidence presented.

As to the first remark, it simply is not a remark on the right to remain silent. To the contrary, the solicitor's suggestion that Applicant would testify and inculcate himself is a poor forecast: Applicant did not testify, let alone admit to strangling Fred Engel. The statement is a non-scquitur in the context of surrounding the transcript. Considering the remark with the entire record in mind, the Court is inclined to agree with Respondent's argument that it was intended to reference Applicant's call to Sherry Engel after the murder was performed, at which time Applicant told Ms. Engel "[i]t's done." Oct. 11, 2010, Tr. 186, ll. 17-19. The Court finds that this statement was not so outrageous as to deny the right to due process. If one reads the solicitor's use of "testimony" to mean "words", the remark is a permissible reference to facts eventually introduced by the testimony of Ms. Engel. On the other hand, if the solicitor intended to predict Applicant would theatrically admit his guilt on the stand, the prediction is something akin to a Dawkins remark that did not come to pass, and such an error could only reflect more poorly on the credibility of the solicitor than the Applicant. Accordingly, Applicant's request for relief as to these allegations is **DENIED**.

***IAC Allegation #4 – Failure to Object to Remarks and Argument Not Supported By Evidence***

Applicant alleges that Counsel was ineffective for failing to object to three instances of opening or closing remarks by the State that implied evidence not put on the record. Namely:

- "The family members of Sherry Engle, hey, something is going on. You need to look at this red haired guy. They put that together, got a photograph, took it to Karla Green so A.T.&T. will bring you the phone records of both Sherry and Timmy Rogers. And it will show hundreds of calls. Maybe not dollars, **but at least over a hundred calls over a four or five day period.** Bam, bam, bam.



Hang up, call again. Much in love. Much in love. A tight wound conspiracy." Oct. 12, 2010, Tr. 91-92 (emphasis added).

- "You may very well not like her. I don't think you should like her. She played a huge part in the death of her husband. And she is charged for that. **She's looking at the same time; the same sentence that her codefendant is.**" Oct. 11, 13-14, 2010, Tr. 386, ll. 5-10 (emphasis added).
- "But it shouldn't be minimized to the point to say: we got a picture of the truck. And somebody makes telephones calls. Uh – No. No, no, no, no. It's not that easy people. It is that: At 9:40, when she says he was there; **when Kimberly Maluda said he was there**, the cell tower, another disinterested party, says: He's right there (indicating)." Oct. 11, 13-14, 2010, Tr. 395, ll.10-20 (emphasis added).

Opening remarks serve to inform the jury of the general nature of the trial and the issues involved so that they can better understand the evidence presented. State v. Kornahrens, 290 S.C. 281, 284, 350 S.E.2d 180, 183 (1986). The solicitor is permitted in opening statement to outline the facts the State intends to prove, and so long as the State introduces evidence to reasonably support the stated facts, there is no error. Id. At closing arguments, a solicitor may not rely on statements not in evidence, and must confine him or herself to evidence in the record. State v. Huggins, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997). Where a solicitor fails to be so confined, a new trial will not be granted unless the "prosecutor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id. (citing State v. Coleman, 301 S.C. 57, 389 S.E.2d 659 (1990)).

The Court finds that sufficient evidence was introduced to support each of the bolded claims above. As to the first remark, Ms. Engel testified to calling Applicant "[f]ifteen, 20 times a day" prior to the murder. Oct. 12, 2010, Tr. 210, ll. 2-5.

As to the second argument, Ms. Engle testified that she appeared under proffer and that no promises had been made to her at the time of trial, such that she was at that time still facing

the charge for murder. Oct. 11, 13-14, 2010, Tr. 190-192. Additionally, the argument was plainly in response to Counsel's own closing argument attacking Ms. Engel's credibility: "This woman is expecting a deal." Oct. 11, 13-14, 2010, Tr. 370, 1.23.

Finally, as to the third remark, Ms. Maluda testified to seeing a truck that matched the description of Applicant's truck: a red Chevrolet S10. Oct. 12, 2010, Tr. 101, ll. 20-23. On cross-examination, Ms. Maluda admitted that she did not see the driver of the truck and was not familiar with who owned which vehicles in her neighborhood. Oct. 12, 2010, Tr. 108-09. While the State's argument in closing does not perfectly capture these caveats elicited by Counsel, it captures the State's circumstantial and ultimate conclusion for which ample evidence was introduced: the truck seen by Ms. Maluda was driven by Applicant as he prepared to murder the victim.

Applicant has failed to prove either deficiency or prejudice in these allegations. Accordingly, Applicant's request for relief as to these allegations is **DENIED**.

***IAC Allegation #5 – Failure to Object to Solicitor's Statement Regarding Reasonable Doubt***

Applicant alleges that Counsel was ineffective for failing to object to the solicitor's description of the jury's duty in weighing the evidence against Applicant. Namely:

- "And you've got a duty. And that duty is to seek justice. **It's not to seek reasonable doubt.** If there's reasonable doubt, you'll have it. Judge Hyman's going to tell you: You must be firmly convinced. I submit to you, in your heart, you already know who the killer is here. You are already firmly convinced." Oct. 11, 13-14, 2010, Tr. 419-420 (emphasis added).

The Court finds nothing objectionable in this statement. A prosecutor may legitimately appeal to the jury to do their full duty in enforcing the law, or to return the verdict which he conceives it to be their duty to return under the evidence, and may employ any legitimate means of impressing on them their true responsibility in this respect. State v. Durden, 264 S.C. 86, 92, 212 S.E.2d

587, 590 (1975) (quoting 23A C.J.S. Criminal Law § 1107). The prosecutor may ask for a conviction, or assert the jury's duty to convict. *Id.* The solicitor properly stated that the jury must be firmly convinced, and any error or confusion caused by the argument was cured by the Court's thorough instructions on the matter. *See State v. Portee*, 278 S.C. 260, 261, 294 S.E.2d 421 (1982) (finding the trial judge's proper instruction cured prosecutor's remark that "the reasonable doubt standard in criminal cases was something good defense lawyers use to free guilty defendants."). Accordingly, Applicant's request for relief as to this allegation is **DENIED.**

***LAC Allegation #6 – Counsel Misadvised Applicant to not Testify at Trial***

At the evidentiary hearing,<sup>4</sup> Applicant alleged Counsel was ineffective for advising him not to testify at his trial. The Supreme Court of South Carolina has found counsel ineffective where the advice to not testify was based upon an error of law. *See Horton v. State*, 306 S.C. 252, 411 S.E.2d 223 (1991).

Applicant testified that it was his intent to testify at trial, but that when the time came to inform the Court of his desire to do so, Counsel advised against doing so—so he didn't. Tr. 32, ll.18-25. Applicant indicated regret for the decision. Tr. 33, ll. 8-10. On cross-examination, Applicant conceded that the decision was his own. Tr. 35, ll.9-10.

Counsel testified that she did not feel Applicant's testimony would offer much help where Ms. Engel's deficiencies in credibility were already apparent, and where Applicant himself had credibility issues due to his professed inability to remember the day of the murder. Tr. 54-55. In particular, Counsel testified that "[i]t's not as believable that you don't recall anything all day long, you know, from mid-day until the next morning. I mean, it's just not

---

<sup>4</sup> The allegation was not raised in the original application, which was prepared by counsel, nor amended prior to the evidentiary hearing.

believable, and I didn't want that to be an issue at trial. I felt that it was easier and better to not risk opening that door." Tr. 55, ll. 17-21. Counsel also testified that she did not recall Applicant indicating a desire to testify prior to trial, but that she was sure that she advised him in advance of trial not to testify. Tr. 56, ll. 5-21.

The Court finds that Counsel has expressed a clear, competent, and reasonable trial strategy upon which she advised Applicant to not testify at trial. Furthermore, upon observation of the witnesses, the Court finds Counsel's testimony credible and Applicant's testimony not credible. The alternative conspiracy offered and implied by Applicant does not pass muster. With that in mind, the Court finds that Counsel's advice was well founded. Accordingly, Applicant's request for relief as to this allegation is **DENIED**.

*[Conclusion and signature on following page]*

### III. CONCLUSION

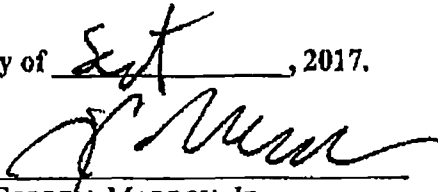
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

#### IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 8 day of Sept, 2017.

  
 J. CORDELL MADDOX, JR.  
 Presiding Judge  
 Fifteenth Judicial Circuit

, South Carolina

**WITNESSES**

Joseph Hawes Horry County Police Department

DOCKET NO. 2008-GS-26- 02450

**The State of South Carolina**

**County of Horry**

Francis A. Humphries, Jr.  
08H01914

**COURT OF GENERAL SESSIONS**

**July, 2008 TERM**

**ARREST WARRANT NUMBER**

1319833

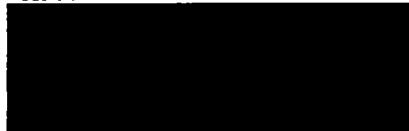
CDR: 0116 16-03-0010, 0020

DOA: 5/7/2008

**THE STATE**

**VS.**

Timmy J Rogers  
W/ M



**ATTORNEY: Wilson, Kia T.**

**ACTION OF GRAND JURY**

*Samuel Wilburn*  
Foreperson of Grand Jury

Date: JUL 10 2008

**VERDICT**

**Indictment for**

**Murder**

**J. Gregory Hembree, Solicitor**

**ORIGINAL**

Foreperson of Petit Jury  
Date:

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

## INDICTMENT

At a Court of General Sessions, convened on July 10, 2008, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Timmy J. Rogers did in Horry County, on or about April 21, 2008, willfully, feloniously, and intentionally kill the victim, Frederik Nicholaas Engle, with malice aforethought, either express or implied, by means of strangling the victim with a ligature, and the victim did die as a proximate result thereof on or about April 21, 2008, in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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

  
J. GREGORY AMBREE  
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

909

COUNTY OF  
STATE

Horry

VS.

Timmy J Rogers

AKA:

Race: W Sex: M Age: 43

DOB:

Add:

City:

DL#: SID#:

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was  
TO: Murder (30 - Life)

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116

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

Richardson, II, Jimmy A.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of 35 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.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 (Criminal  
Domestic Violence ) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

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

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

☐ Set by SCDPPPS

Recipient: \_\_\_\_\_

Fine:

|                                        |         |                            |
|----------------------------------------|---------|----------------------------|
| § 14-1-206 (Assessments 107.5 %)       | \$      | \$                         |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ 100.00                  |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$                         |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$                         |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$                         |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$                         |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$ 25.00                   |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$                         |
| § 50-21-114 (BUI Breath Test Fee)      | \$50    | \$                         |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$                         |
| Proviso 90.5 (SCCJA Surcharge)         | \$5     | \$ 5.00                    |
| § 44-53-450(C) (Conditional Discharge) | \$350   | \$                         |
| 1% to County (if paid in installments) | \$      | \$ 3.90                    |
| TOTAL                                  | \$      | \$ 133.90 + 40.00 = 173.90 |

Clerk of Court/ Deputy Clerk

Court Reporter:

INDICTMENT/CASE#: 2008GS2602450

A/W#: J319833

Date of Offense: 4/22/2008

S.C. Code § : 16-03-0010, 0020

CDR Code #: 0116

## SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd in equal, consecutive weekly/monthly  
pmts. of \$ 25.00 beginning 11/14/2005

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Condition Discharge, § 44-53-450(C) requires  
\$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk  
during probation.

Presiding Judge

Judge Code: 2 152

Sentence Date: 10/14/10



## ARREST WARRANT

J-319833

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

THE STATE  
against

Timmy J Rogers

Address:

Phone: SSN:

Sex: M Race: W Height: 6 3 Weight:

DL State: #:

DOB: Agency ORI #: SC0260400

Prosecuting Agency: Horry County Police Department

Prosecuting Officer: Joseph Hawes - 1180

Offense: Murder / Murder

Offense Code: 0116

Code/Ordinance Sec: 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused  
is to be arrested and brought before me to be  
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

## RETURN

A copy of this arrest warrant was delivered to  
defendant Timmy J. Rogers  
on 5-7-08 2245

Signature of Constable/Law Enforcement Officer

## RETURN WARRANT TO:

General Sessions  
PO Box 677  
1301 2nd Avenue  
Conway, SC 29528

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Personally appeared before me the affiant Joseph Hawesbeing duly sworn deposes and says that defendant Timmy J Rogersdid within this county and state on or about 04/22/2008State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Horry

in the following particulars:

DESCRIPTION OF OFFENSE Murder / Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On April 22nd, 2008 one Frederik Nicolaas Engel was found deceased in a wooded area behind the mail box station at the south east end of Balmore Drive in the Carolina Forest section of Horry County. Detectives with the Horry County Police Department initiated an investigation, which revealed the manner of death was Homicide. This investigation has shown probable cause to believe that the defendant was directly responsible for the victim's death through the careful review of cellular telephone records, video surveillance footage, lawful searches, circumstantial evidence, witness statements and other evidence gathered through the course of the investigation. Based on this information the Affiant is informed and believes that probable cause exists to establish that the defendant did commit the offense of Murder a violation of South Carolina Code of Laws Section 16-3-10.

Case Number 80840147

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Affiant's Address 2560 N. Main StreetConway, SC 29526-Affiant's Telephone (843)915-5350TRANSFERRED  
TO

## ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

I am empowered from the above affidavit that there are reasonable grounds to believe that

on or about 4/22/2008defendant Timmy J Rogers

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Horry

) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 05/02/2008Signature of Issuing Judge  
Aaron C. ButlerJudge Code: 5022

(L.S.)

Judge's Address J. Reuben Long Detention CenterConway, SC 29526-1071Judge's Telephone (843)915-5145Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

## AFFIDAVIT

Form Approved by  
SC Attorney General  
April 21, 2003  
SCCA 518FILED  
Horry County  
2008 MAY 13 PM 11:26

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v.

Timmy Rogers, Appellant.

Appellate Case No. 2010-176426

---

Appeal From Horry County  
Larry B. Hyman, Jr., Circuit Court Judge

---

Opinion No. 5172  
Heard June 5, 2013 – Filed September 4, 2013

---

**AFFIRMED**

---

Appellate Defender David Alexander, of Columbia, for  
Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy  
Attorney General John W. McIntosh, Senior Assistant  
Deputy Attorney General Donald J. Zelenka, and  
Assistant Attorney General Alphonso Simon, Jr., all of  
Columbia; and Solicitor John Gregory Hembree, of  
North Myrtle Beach, for Respondent.

---

**FEW, C.J.:** A jury found Timmy Rogers guilty of murdering his paramour's husband, Fred Engel. Rogers argues the trial court erred when it refused to direct a verdict in his favor. We affirm.

**I. Background**

In the early morning hours of April 22, 2008, police found Engel's body in the woods near a bank of mailboxes in the subdivision where he lived. A forensic pathologist determined the killer strangled Engel to death. Three months later, a grand jury indicted Rogers for murder.

At trial, the State theorized Rogers killed Engel because Rogers was having an affair with Engel's wife Sherry. Sherry testified for the State, claiming she and Rogers devised a plan to kill Engel that they carried out the evening of April 21. Rogers moved for a directed verdict, which the trial court denied. After the jury convicted Rogers, the court sentenced him to thirty-five years in prison.

## **II. The Evidence**

At trial, the State presented the following evidence to prove Rogers murdered Engel.

### **A. The Motive to Kill**

Sherry testified the affair with Rogers began in May 2007 when she met him while visiting Kentucky. Thereafter, Sherry traveled from her home in Myrtle Beach to Kentucky to visit Rogers every month. She had family and a treating physician in Kentucky, which gave her excuses to visit. Throughout the affair, Sherry claimed Rogers frequently discussed "getting rid" of Engel "because he felt like [Engel] was going to take [her] away from him." In fact, she testified Rogers even tried to hire one of his family members to kill Engel. The family member, whom Sherry claimed "was a sharp shooter," ultimately refused Rogers' request. Although Sherry initially protested the plan to kill Engel, she claimed she "became more compliant with th[e] idea of having [Engel] killed" and discussed it with Rogers every day.

### **B. The Plan to Murder**

According to Sherry's testimony, Rogers told her the morning of April 21, 2008, that "This was going to be the day that [Engel] died." Rogers was in Myrtle Beach that week, staying at a motel located ten miles from the Engels' home. Sherry drove to the motel, where she and Rogers discussed their intention to kill Engel. Knowing she could not change Rogers' mind, Sherry told him, "Well, if you're going to do it you go ahead and do it."

Rogers' plan was to park his red Chevrolet pickup truck in the parking area of the Engels' subdivision that night and hide in the bushes behind the mailboxes. Sherry was to call Rogers when Engel walked outside to check the mail. Rogers would lay in wait for Engel and shoot him when he approached the mailboxes. He told her he bought a gun from a man staying in the motel, but Sherry never saw the gun.

### C. The Murder

Sherry testified Rogers called her that night at 11:00 p.m. to tell her he was positioned at the mailboxes.<sup>1</sup> Sherry claimed she then asked Engel to check the mail, and when he left the house, Sherry called Rogers and told him, "He's leaving." She testified that when she hung up the phone, she knew she had "fulfilled her part of the agreement."

Rogers called her back later that night and said, "It's done." During that conversation, Sherry recalled "he was out of breath and . . . I could barely understand a lot of what he was saying. But I could tell he was in the woods cause of the way he was stomping and everything."

Around midnight, Sherry called Rogers to make sure he was out of the area and safely at his motel before she put the next part of their plan into action. He told her he made it back and, in Sherry's words, was "cleaning himself up from where he killed [Engel]." He had worn coveralls and boots Sherry had purchased for him, and Rogers told her he had to get "the blood off of his hands . . . and get[] his coveralls and . . . boot [off] because he had stepped in the blood."

After she got off the phone with Rogers, Sherry "sound[ed] the alarm." She testified she walked to the house of her next-door neighbors, Tom and Karen Rickerson, and told them she could not find Engel. Tom testified he drove around the neighborhood searching for Engel but could find no trace of him. At that point, Sherry told Tom they needed to go to the mailboxes because, as she explained to Tom, Engel took the mailbox key with him when he left. Sherry, however, claimed that she "knew something had happened at the mailbox"; she knew Rogers "was supposed to do it" there. When they arrived, Sherry saw "blood on the front of the [mail]boxes" and Engel's glasses laying on the ground. At that point, Sherry "had no doubt in [her] mind that [Engel] was dead," and she "knew who did it."

---

<sup>1</sup> The State's expert in tracking cell phone calls presented cell phone records that are consistent with this phone call, but show the call being placed by Sherry to Rogers.

#### **D. Finding the Body**

A police officer from the Horry County police department testified they found Engel's body in the woods approximately thirty feet from the mailboxes early the next morning. He also stated a shoestring was found around his neck, and it appeared Engel had been dragged face-down by his left arm into the woods. A pathologist with a local hospital in Myrtle Beach told the jury it would take significant strength to make the marks on Engel's neck that were left by the shoestring. He further testified Engel had a "fresh" head laceration that could have been inflicted by "[a]nything blunt that you either fall against or get hit with," and a defensive wound on his finger from pulling against the shoestring.

The police submitted twenty pieces of evidence for DNA swabs, but none contained Rogers' DNA. The police also made casts of footwear impressions found at the scene, but they yielded no useful information.

#### **E. Placing Rogers at the Scene**

The State introduced the testimony of an employee who worked at the motel where Rogers stayed. She testified Rogers reserved a room from April 8 until May 5, 2008, which Sherry paid for in cash. She also confirmed that Rogers was a guest at the motel on the night of April 21, 2008. However, she testified Rogers checked out on April 30 and did not stay the full twenty-eight days he had reserved. The employee also testified Rogers drove a red Chevrolet S-10 pickup truck.

Kimberly Maluda, a resident of the subdivision where the Engels lived, testified that she passed a red Chevrolet S-10 pickup truck in the neighborhood on her way home from work the evening of April 21, 2008. She saw the same truck "back in" to a parking spot across from the mailboxes with the headlights off. However, she did not see the truck's license plate or driver. Maluda stated the truck was gone the next morning.

Michael Graham—an expert in tracking cell phone calls and text messages—testified about calls and text messages made from and received by Rogers' and Sherry's cell phones.<sup>2</sup> According to Graham's testimony, there were at least

---

<sup>2</sup> Graham's testimony refers to a cell phone number with a 502 area code, later identified as Rogers' cell phone number, and a cell phone number with an 843 area code, later identified as Sherry's cell phone number.

fourteen phone calls and text messages sent between Sherry and Rogers on April 21, 2008. However, only two phone calls were made between Rogers and Sherry the next day, and the phone calls remained scarce thereafter.

Relying on Rogers' cell phone records, Graham testified to phone calls made between Rogers' and Sherry's cell phones the night Engel died and to Rogers' general location at the time of these calls based on which cell towers his phone accessed to make or receive those calls:

- (1) Sherry called Rogers at 9:06 p.m., and Rogers' cell phone accessed a tower within the vicinity of Rogers' motel;
- (2) Sherry and Rogers exchanged a series of phone calls and text messages between 9:41 and 9:44 p.m., and Rogers sent and received them by accessing three different towers that covered the subdivision where the Engels lived;
- (3) Sherry placed a twenty-six-second phone call to Rogers at 10:35 p.m., and Rogers' cell phone accessed the tower covering the subdivision where the Engels lived;
- (4) Sherry placed an eleven-second phone call to Rogers at 11:05 p.m., and Rogers' cell phone accessed the tower covering the subdivision where the Engels lived;
- (5) Rogers placed a three-minute phone call to Sherry at 11:42 p.m., accessing the tower covering Rogers' motel; and
- (6) Sherry placed a seven-and-a-half-minute phone call to Rogers at 12:03 a.m., and Rogers' cell phone accessed the tower covering his motel.

The State argued this evidence corresponded with Sherry's testimony regarding phone calls made between her and Rogers the night Engel died and put Rogers at the scene of the crime around the time Maluda claimed she saw a red truck in the neighborhood. Also, the State theorized that Rogers' cell phone accessed three different towers for the calls made between 9:41 p.m. and 9:44 p.m. because he was driving to the Engels' home at that time. However, Graham and another witness indicated the phone records showed only that the cell phones were used in the general area of the cell towers routing the calls; the information did not conclusively prove who was using the cell phones or pinpoint exactly where the phones were used.

#### **F. The Aftermath**

Sherry testified to conversations she had with Rogers after Engel's death. She claimed she and Rogers spoke only twice the week after Engel's murder. One of those times, Rogers called and told her he had Engel's watch and keys and asked what he should do with them. Additionally, Rogers told her he had washed the steering wheel of his truck with bleach to remove Engel's blood from it, and he had painted his red truck gray.

Sherry testified that before the funeral, Sherry viewed Engel's body and noticed Engel's head was "all mashed in . . . where he [had] been hit with something," and he had "a lot of scratching and bruising down his arm and on . . . his right side." Sherry told the jury she found this odd because their plan did not include "beating [Engel] up or hitting him with anything." She also noticed there was no bullet wound on Engel's body. Afterward, Sherry asked Rogers how he killed Engel, and Rogers explained that Engel "was standing by the mailbox, and I came out behind him" and "put the gun to the back of his head and I pulled the trigger." Although Sherry admitted Rogers had never mentioned strangling Engel when they made their plan to kill him, she told the jury Rogers "had said something about a rope."

### III. Directed Verdict Analysis

Rogers argues the evidence discussed above is not sufficient to create a jury question as to his guilt because (1) the State presented no direct evidence he murdered Engel, and (2) the State's circumstantial evidence did not meet the standard for submitting a purely circumstantial evidence case to the jury.

In reviewing a denial of a directed verdict, we must view the evidence in the light most favorable to the State. *State v. Lollis*, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001). If there is any direct evidence, or if there is substantial circumstantial evidence, that reasonably tends to prove the defendant's guilt, we must find the trial court properly submitted the case to the jury. *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011).

#### A. The Existence of Direct Evidence

We begin by addressing whether there was any direct evidence proving Rogers murdered Engel. Direct evidence "is based on personal knowledge or observation and . . . , *if true*, proves a fact without inference or presumption." *Black's Law Dictionary* 636 (9th ed. 2009) (emphasis added). The presentation of direct evidence "immediately establishes the main fact to be proved." *State v. Salisbury*, 343 S.C. 520, 524 n.1, 541 S.E.2d 247, 249 n.1 (2001). Circumstantial evidence,

on the other hand, is proof of a chain of facts and circumstances from which the existence of a separate fact may be inferred. *State v. Cherry*, 361 S.C. 588, 596, 606 S.E.2d 475, 479 (2004). Circumstantial evidence is "based on inference and not on personal knowledge or observation," *Black's Law Dictionary* 636 (9th ed. 2009), and establishes "collateral facts from which the main fact may be inferred." *Salisbury*, 343 S.C. at 524 n.1, 541 S.E.2d at 249 n.1.

The State made no argument at trial or in its brief to this court as to the existence of any direct evidence of Rogers' guilt. In fact, the State asserted in its closing argument that all the evidence it relied on to convict him was circumstantial. In its brief, the State argued only that the circumstantial evidence proving Rogers guilty was substantial, and thus met the standard for submitting a case to the jury on purely circumstantial evidence. At oral argument, this court questioned Rogers' counsel regarding whether Sherry's testimony that Rogers said, "It's done," constituted direct evidence, to which counsel responded it was not. Later responding to this question, the State told the court that, "on second thought," it believed the statement was direct evidence. The State explained that because Sherry, the person who heard the statement and testified to it, interpreted it to mean Rogers had killed Engel according to their plan, this was direct evidence proving Rogers' guilt.

There are two additional pieces of evidence that arguably constitute direct evidence of Rogers' guilt—Sherry's testimony that Rogers told her in a phone call later that night he was cleaning himself up from where he killed Engel, and her testimony that Rogers told her "I put the gun to the back of [Engel]'s head and pulled the trigger." The definitions of direct and circumstantial evidence cited above tell us that direct evidence is that which requires only the factfinder's determination that the evidence is credible before it may find the existence of a disputed fact. Circumstantial evidence, on the other hand, requires the factfinder not only to determine that it believes the evidence, but also to make at least one additional inference from the evidence before concluding the fact has been proven. As to each of these three pieces of evidence, and all other evidence in this record, the jury could not find Rogers guilty of murder simply by believing any one piece of the evidence. At least one additional inference is necessary before any of the evidence proves murder.

As to the statement, "It's done," the jury had to infer what Rogers meant by both the words "it" and "done" before it could determine whether he confessed to murder. Thus, the jury could not find Rogers guilty of murder simply by determining whether it believed Sherry. While the circumstances in the case



indicate persuasively that the mere statement "It's done" means he just killed Engel, the statement itself does not prove murder without further inference.

The statement "I put the gun to the back of [Engel]'s head and pulled the trigger" is not direct evidence that Rogers murdered Engel because we know from indisputable forensic evidence that it is not a true statement.<sup>3</sup> Engel died from strangulation, not from a gunshot to the head. Therefore, for the jury to conclude from this statement that Rogers is guilty of murder, it must infer that by saying he shot and killed Engel, he actually meant he strangled Engel to death.

Sherry's testimony that Rogers told her he was cleaning himself up from where he killed Engel is the most difficult of the three. If in fact Rogers told Sherry, "I am cleaning myself up from where I killed Engel," that would be direct evidence of murder. Sherry's actual testimony, however, was:

Yeah, he was telling me that he was getting the blood off his hands and everything and getting his coveralls and everything off. And his boot and everything because he had stepped in the blood, and he was cleaning his self up from where he killed Fred [Engel].

From this testimony, it is unclear whether Rogers actually said "from where I killed Engel" or whether that is what Sherry inferred he meant. The assistant solicitor did not follow up on this statement to clarify what Rogers actually said, but moved on to another topic. Thus, for the jury to conclude from this statement that Rogers murdered Engel, it not only must have found Sherry's testimony to be credible, but it must also have inferred from her testimony that Rogers *said* he "killed" Engel, not simply that Sherry thought that is what he meant.

We find the State's proof that Rogers is guilty of murder consisted entirely of circumstantial evidence, and therefore, we review the trial court's decision to deny his directed verdict motion under the "substantial circumstantial evidence" standard from *Odems*. 395 S.C. at 586, 720 S.E.2d at 50 (stating "if there is . . . *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury"); *see also State v. Frazier*, 386 S.C. 526, 532, 689 S.E.2d 610, 613 (2010) (affirming denial of directed verdict because State offered "substantial circumstantial evidence of [defendant]'s guilt").

---

<sup>3</sup> Sherry also testified Rogers "told me he had shot him."

## **B. The Sufficiency of the Circumstantial Evidence**

The State presented the following circumstantial evidence at trial:

- (1) Sherry's testimony that Rogers had an ongoing affair with her at the time Engel was killed;
- (2) Sherry's testimony that she and Rogers conspired to kill Engel because Rogers "wanted [Engel] out of the way;"
- (3) Maluda's testimony that she saw a red Chevrolet S-10 truck in the neighborhood that night, and the State's evidence that Rogers drove a red Chevrolet S-10 pickup truck;
- (4) Cell phone records and the cell tower locations that indicated Rogers' cell phone was used in the vicinity of the crime scene around the time Maluda claims she saw a red Chevrolet S-10 truck in the neighborhood;
- (5) Sherry's testimony that Rogers told her he would be waiting by the mailboxes, which were thirty feet from where the police found Engel's body and near where Maluda saw the truck park, and Sherry's testimony that when she talked to Rogers that night, he told her he was "in place" behind the bushes next to the mailboxes;
- (6) Sherry's testimony that she was to call, and did in fact call, Rogers when Engel left the house, and cell phone records corroborating that she made a call to Rogers at 11:05 p.m.;
- (7) Sherry's testimony that when Rogers called her later that night, he stated, "It's done;"
- (8) Sherry's testimony that during this phone call, it sounded like Rogers was in the woods and was out of breath, which is consistent with testimony that Engel's body was dragged to the woods and that it took significant strength to strangle Engel;
- (9) Sherry's testimony that she called Rogers around midnight to make sure he was away from the scene, which is consistent with cell phone records showing Sherry made a call to Rogers at 12:03 a.m.;
- (10) Sherry's testimony that during this phone call, Rogers indicated he was at the motel washing off Engel's blood and taking off his coveralls and boots, which is consistent with cell tower locations that indicated his phone was used in the vicinity of his motel, and with Sherry's testimony that he told her he wore coveralls and boots when he committed the crime;

- (11) Sherry's cell phone records showing she communicated with Rogers at least fourteen times the day Engel died, but their communication became very limited thereafter;
- (12) Sherry's testimony that Rogers cleaned the interior of his truck with bleach sometime after the incident;
- (13) Testimony that Rogers painted the exterior of his truck before Engel's funeral;
- (14) Sherry's testimony that after Engel's death, Rogers mentioned "something about a rope" in connection with Engel's death; and
- (15) Sherry's testimony that Rogers asked her before the funeral what he should do with Engel's watch, which is consistent with the State's theory that the watch came off when Rogers dragged Engel's body into the woods by his left arm, and with Sherry's testimony that Engel wore a watch on his left wrist.

We find this evidence meets the "substantial circumstantial evidence" requirement and reasonably tends to prove that Rogers killed Engel, and thus was sufficient for the trial court to submit the case to the jury.

### C. Rogers' Other Arguments

Rogers makes several arguments, however, that a directed verdict was required based on decisions of our supreme court regarding the sufficiency of purely circumstantial evidence. These arguments challenge the State's evidence by isolating pieces of evidence and contending those individual pieces are insufficient to prove his guilt. We acknowledge the State's evidence, when separated out and viewed individually, may merely raise a suspicion of Rogers' guilt. *See Odems*, 395 S.C. at 586, 720 S.E.2d at 50 (stating directed verdict appropriate when the evidence merely raises a suspicion of defendant's guilt); *State v. Schrock*, 283 S.C. 129, 132, 322 S.E.2d 450, 452 (1984) (stating a "trial judge should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty"). Circumstantial evidence, however, gains its strength from its combination with other evidence, and all the circumstantial evidence presented in a case must be considered together to determine whether it is sufficient to submit to the jury. *See Frazier*, 386 S.C. at 532, 533, 689 S.E.2d at 613, 614 (viewing circumstantial evidence "collectively" and "as a whole" to hold directed verdict properly denied); *Cherry*, 361 S.C. at 595, 606 S.E.2d at 478 (finding the circumstantial evidence, when combined, was "sufficient for the jury to infer [guilt]").

Keeping this in mind, we turn to Rogers' first argument—that the State's evidence failed to place him at the scene of the crime. Rogers' argument is based on a line of cases in which our supreme court held, in part, the State's lack of evidence placing the defendant at the crime scene necessitated a directed verdict.<sup>4</sup> He claims the trial court was required to direct a verdict based on the holdings in these cases because the State's evidence does not prove he was at the mailboxes when Engel went to check the mail. Specifically, Rogers challenges (1) the cell phone and cell tower evidence and (2) Maluda's testimony regarding the red truck she saw that evening as insufficient to place him at the scene of the crime. We agree neither the cell tower evidence nor Maluda's testimony, standing alone, conclusively places Rogers at the scene of the crime. The cell tower evidence proved only that Rogers' cell phone was used in the general vicinity of the cell towers—not that Rogers called or that he was at the mailboxes when Engel checked the mail—and Maluda's testimony established only that she saw the same type of vehicle driven by Rogers parked near the mailboxes that night—not that Rogers, or his truck, was there.

Rogers' argument, however, is flawed for two reasons. First, a directed verdict is not required merely because the State cannot conclusively show the defendant was at the crime scene at the relevant time. As the supreme court stated in *Frazier*, the holdings in *Arnold*, *Martin*, and *Schrock* did not alter or increase "the sufficiency of evidence standard a trial court is to apply in a case based on circumstantial evidence." *Frazier*, 386 S.C. at 532, 689 S.E.2d at 613. The court explained this is because those holdings were based on the State's failure to present *any* evidence placing the defendant at the scene, not the State's inability to provide conclusive proof on that point. *Id.* Second, this evidence, when considered together and in combination with other evidence—particularly Sherry's testimony<sup>5</sup> that Rogers told

---

<sup>4</sup> See *State v. Bostick*, 392 S.C. 134, 141-42, 708 S.E.2d 774, 778 (2011) (reversing denial of directed verdict and noting "[n]o direct evidence linked [the defendant] to the crime scene"); *State v. Arnold*, 361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004) (holding directed verdict proper, in part, because no evidence directly proved defendant was at the scene of the crime); *State v. Martin*, 340 S.C. 597, 602-03, 533 S.E.2d 572, 574-75 (2000) (reversing denial of directed verdict and stating "[m]ost significantly, the State's evidence failed to place either defendant inside the apartment"); *Schrock*, 283 S.C. at 132, 134, 322 S.E.2d at 452, 453 (reversing denial of directed verdict and relying, in part, on lack of evidence placing defendant at the scene of the crime).

<sup>5</sup> Although Rogers questioned Sherry's credibility, we consider only the existence or non-existence of evidence, not witness credibility, in reviewing the denial of a

her he was there that night waiting near the mailboxes—is sufficient to place Rogers at the scene of the crime at the relevant time, and thus to distinguish this case from *Arnold*, *Martin*, and *Schrock*.

Rogers also challenges the evidence of his affair with Sherry, arguing this case is distinguishable from *State v. Frazier* because evidence of Rogers' and Sherry's affair does not prove Rogers was at the scene of the crime or committed the murder. In *Frazier*, the defendant argued the State's evidence was insufficient to place him at the murder scene. 386 S.C. at 531, 689 S.E.2d at 613. The court disagreed and listed seven pieces of circumstantial evidence<sup>6</sup>—one being evidence of an ongoing affair between the defendant and the victim's wife—and found "[t]his evidence, when viewed collectively, presented a jury question as to [the defendant]'s guilt." 386 S.C. at 531-32, 689 S.E.2d at 613. In listing this evidence, particularly the evidence of the affair, the court did not mean to imply that each piece of evidence proved the defendant was at the scene of the crime. Instead, the court evaluated the seven pieces of evidence in combination with one another and determined they "collectively" met the "substantial circumstantial evidence" test. *Id.* Thus, Rogers' reliance on *Frazier* is misplaced because here, as in *Frazier*,

---

directed verdict. *See State v. Cherry*, 348 S.C. 281, 286, 559 S.E.2d 297, 299 (Ct. App. 2001) (en banc) (affirming trial court's denial of directed verdict "without passing on the weight of the evidence"), *aff'd in result*, 361 S.C. at 594, 606 S.E.2d at 478 (stating "[w]hen the state relies exclusively on circumstantial evidence and a motion for directed verdict is made, the circuit court is concerned with the existence or nonexistence of evidence, not with its weight"); *State v. Scott*, 330 S.C. 125, 131 n.4, 497 S.E.2d 735, 738 n.4 (Ct. App. 1998) (finding circumstantial evidence was substantial even though witnesses' testimony conflicted because the jury, not the court, assesses witness credibility and weighs testimony).

<sup>6</sup> The court found the following evidence to constitute substantial circumstantial evidence: (1) the ongoing affair between the defendant and the victim's wife; (2) the victim was shot twice at point-blank range while the victim's wife was unharmed; (3) a witness overheard the defendant and victim's wife discussing a trip to the beach where the victim was shot; (4) the defendant requested three days off from work a week before the murder and the murder occurred on the second of those three days; (5) the defendant borrowed a friend's car for those three days; (6) the defendant attempted to fight the victim days before the murder; and (7) two witnesses observed the defendant "lurking around the murder scene just before the murder was committed," and both independently identified the defendant in a photographic lineup. 386 S.C. at 531-32, 689 S.E.2d at 613.

evidence of the affair is merely one piece of the evidence that collectively was sufficient to submit the case to the jury.

Nonetheless, Rogers argues *Frazier* is distinguishable because there were no witnesses placing Rogers at the crime scene—especially considering Maluda could not identify the driver or license plate of the red Chevrolet S-10 truck—and there was no evidence indicating Rogers had a prior confrontation with Engel. The absence of this particular evidence means this case is different from *Frazier*, but it does not mean the case is distinguishable. In fact, the evidence in this case is stronger than in *Frazier* because Sherry testified to (1) Rogers' plan to kill Engel, (2) Rogers' approximate whereabouts before and after the murder that are corroborated by cell phone records and other testimony, and (3) inculpatory statements and actions made by Rogers. While there was no evidence of any confrontations between Rogers and Engel and there were no eyewitnesses conclusively placing Rogers at the mailboxes, evidence of the affair and the additional evidence presented at trial, "*when viewed collectively*, presented a jury question" as to Rogers' guilt. 386 S.C. at 532, 689 S.E.2d at 613 (emphasis added).

Rogers next argues the statement, "It's done," failed to show he actually committed the act of strangling Engel, especially considering Sherry testified Rogers shot, not strangled, Engel. He relies on *Martin* and argues that his potentially inculpatory statement is not "per se substantial circumstantial evidence." In *Martin*, the defendant's girlfriend testified that when she asked the defendant and co-defendant why they were late picking her up from work, the defendant responded, "some shit happened," and the codefendant added, "somebody may have died tonight." 340 S.C. at 600, 533 S.E.2d at 573. Later that morning, the victim was found dead in his apartment, drowned in a pot of water. 340 S.C. at 600, 533 S.E.2d at 573. Despite these inculpatory statements, the supreme court reversed the trial court's denial of a directed verdict. 340 S.C. at 602-03, 533 S.E.2d at 574-75. Considering the evidence as a whole in that case, the court determined "the State failed to place [Martin] at the scene of the crime or show his participation in the killing." 340 S.C. at 602, 533 S.E.2d at 574.

This case is distinguishable from *Martin* for two reasons. First, Rogers' statement, "It's done," is stronger evidence than the inculpatory statements in *Martin*. Rogers' statement did not merely reveal Engels' death, but tied itself to Rogers' elaborate scheme of murder because it informed his co-conspirator that he had executed *their* plan to kill Engel. Also, the statement was corroborated by other details of that conversation, particularly Rogers being out of breath and in the woods, and was consistent with the State's theory that Rogers killed Engel and then dragged his

body into the woods. Second, this case is distinguishable from *Martin* because Rogers' inculpatory statements are part of a large body of evidence not present in that case. Rogers' attempts to isolate this and other single pieces of evidence<sup>7</sup> and argue each one alone does not constitute substantial circumstantial evidence are misplaced. The supreme court has consistently evaluated the circumstantial evidence in a case as a whole, not in isolation from other evidence. *See, e.g., Frazier*, 386 S.C. at 531-32, 533, 689 S.E.2d at 613, 614; *Cherry*, 361 S.C. at 594-95, 606 S.E.2d at 478; *State v. Buckmon*, 347 S.C. 316, 323-24, 555 S.E.2d 402, 405-06 (2001). As we have discussed, the State presented evidence of Rogers' guilt that meets the substantial circumstantial evidence test, and the trial court properly submitted the case to the jury.

#### IV. Conclusion

For the reasons set forth above, the trial court's refusal to grant Rogers' motion for a directed verdict is **AFFIRMED**.

**GEATHERS and LOCKEMY, JJ., concur.**

---

<sup>7</sup> Rogers also challenges the following pieces of evidence, individually, in his brief: (1) the connection between Rogers owning a pair of boots and the shoe impressions found at the scene, (2) the alleged conspiracy to kill Engel, and (3) the testimony that Rogers cleaned the interior of his truck and painted the exterior after Engel's death.