

ORIGINAL

VOLUME III OF III

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Lexington County

Honorable R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID RICHARD WALKER, JR.,

APPELLANT

APPELLATE CASE NO. 2017-000550

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

ALAN WILSON
Attorney General

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

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

ATTORNEY FOR APPELLANT

CAROLINE SCRANTOM
Assistant Attorney General

P.O. Box 11549
Columbia, SC 290211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT #2 (CD IN-CAR VIDEO) AND
STATE’S EXHIBIT #45 (REDACTED CD IN-CAR VIDEO)**

MOTIONS AND MATTERS

1 MR. WALKER: Right.

2 THE COURT: --- that it included both the redacted
3 version and the completed we'll say approximately forty minute
4 so is it now Defense 1?

5 MR. WALKER: No, it, it, uh, -- well, I mean, that, Your
6 Honor, I, um, I I thought that, I mean, I objected and that
7 was the reason under the rule of evidence and I thought you,
8 uh, abided with my objection and and that's why it went full.

9 THE COURT: Well, that's why I always say read the rule
10 and I say that to myself, I wasn't sayin' that to you. I tell
11 seasoned lawyers don't ever go to court without your rule book
12 and and I never do. See, 106 says, When a writing or recorded
13 statement or part thereof is introduced by a party, an adverse
14 party may require the introduction, at that time, of any other
15 part or any other writing or recorded statement which ought in
16 fairness to be considered contemporaneous with it, so the rule
17 allows the adverse party, when a part of a recorded statement
18 is introduced, the opposing party may require the
19 admissibility of other portions to ensure the partial
20 statements are not taken out of context; however, only that
21 portion or the remainder of any statement which explains or
22 clarifies the previously admitted statement should be allowed
23 into evidence, of course I, we had the conversation, uh, with
24 our court reporter, it was recorded, concerning whether or not
25 you wanted or either side actually, I think I, my comments are

MOTIONS AND MATTERS

1 more directly to you, directed to you, if there was any
2 request to redact any of it, that the rule merely entitled the
3 defendant to introduce to -- additional portions of recordings
4 to explain the portions introduced by the State, my reading of
5 that is it will then be a defense exhibit.

6 MR. WALKER: Uh, if I may, Your Honor, uh, I I understand
7 right there where it says an an -- a adverse party may require
8 the introduction at that time so I'm therefore thinkin' that I
9 require them to, uh, to introduce the whole video and
10 therefore it makes it their exhibit.

11 THE COURT: Well I'm I'm citing *State vs. Oglesby*, 384
12 South Carolina 289, I'll read it, uh, closer. The notes in
13 Rule 106 say, The parties seeking to introduce the remainder
14 of a written or recorded statement can now require the
15 remainder to be introduced at the same time the other part of
16 the written or recorded statement is introduced, says, The
17 rule does not change the order of truth as to the remainder of
18 an unrecorded conversation, the party seeking to bring out the
19 remainder must do so during cross-examination or during the
20 party's case, and a course you off -- you offered it during,
21 uh, cross-examination. I'll, uh, study it a little further.
22 Alright, uh, anything fro -- anything from the State 'fore we
23 bring in our jury?

24 MR. GRAHAM: No, Your Honor.

25 THE COURT: Does the defense, Mr., uh, Walker?

JANICE EDWARDS ROSS - DIRECT EXAMINATION BY MR. GRAHAM

1 MR. WALKER: No, sir, not at, no, sir, not at this time.

2 THE BAILIFF: Yes. Yes, sir, Your Honor.

3 (The following takes place in the presence of the jury.)

4 THE COURT: Alright, uh, welcome back, uh, ladies and

5 gentlemen, please continue give your, the parties your

6 complete and undivided attention, thank you very much.

7 Solicitor, you may call your next witness.

8 MR. GRAHAM: Thank Your Honor, the State calls Dr. Janice
9 Ross.

10 THE COURT: Alright, Doctor, if you'd come around and
11 join us, please.

12 (Whereupon, the witness came forward.)

13 JANICE EDWARDS ROSS, having been
14 first duly sworn, testified as follows:

15 THE CLERK: Have a seat, Doctor, once you're seated state
16 your full name spelling your last please, ma'am.

17 THE WITNESS: Janice Edwards Ross, R-O-S-S.

18 THE COURT: Alright, Solicitor.

19 MR. GRAHAM: Thank Your Honor.

20 DIRECT EXAMINATION BY MR. GRAHAM:

21 Q. Dr. Ross, you're a forensic pathologist, is that correct?

22 A. Correct.

23 Q. Would you explain to the jury what a forensic pathologist
24 is.

25 A. Yes. Uh, first of all, um, I received a bachelor's

JANICE EDWARDS ROSS - DIRECT EXAMINATION BY MR. GRAHAM

1 degree from the University of South Carolina in biology and
2 then I did four years of medical school in Upstate Medical
3 Center in Syracuse, New York so I am a physician, a doctor. I
4 did further study in the field of pathology and pathology as
5 opposed to surgery or pedia -- pediatrics is the study where
6 we learn how to identify diseases, um, by usin' the
7 microscope, by lookin' at tissue, um, by, uh, look -- usin'
8 work, uh, lab work at the hospital, we also learn how to do an
9 autopsy to identify a cause of death; a forensic pathologist
10 uses that medical knowledge towards legal matters such as
11 homicide, suicides, accidents, uh, rapes and that kinda thing,
12 so forensic pathologist is further trained to do a for -- a
13 forensic autopsy, identify patterns of injury, document, um,
14 the patterns of injury for a court of law, take fluids for
15 toxicology, um, and identify a cause and manner of death,
16 I -- okay, let's see.

17 Q. How many autopsies have you performed, ma'am?

18 A. Over eleven thousand.

19 Q. Alright. How many times have you testified as an expert,
20 um, in criminal court?

21 A. In South Carolina 'bout two hundred and forty times.

22 MR. GRAHAM: Your Honor, the State would off -- offer
23 Dr. Janice Ross as an expert in the field of forensic
24 pathology.

25 THE COURT: Alright. Uh, Mr. Walker?

JANICE EDWARDS ROSS - DIRECT EXAMINATION BY MR. GRAHAM

1 MR. WALKER: No objections, Your Honor.

2 THE COURT: No objection?

3 MR. WALKER: That's correct.

4 THE COURT: I I apologize again, Mr. Walker, I didn't
5 understand ya, I heard you but I didn't understand you.

6 MR. WALKER: Said no objections, Your Honor.

7 THE COURT: Thank you. Again, ladies and gentlemen,
8 you've heard my charge on expert testimony before, uh, this
9 witness, uh, Dr. Ross is qualified as an expert in the field
10 of forensic pathology to give opinion testimony and the basis
11 of those opinions, uh, you do not acc -- have to accept those
12 opinions or the basis, it is for you, the jury, to determine
13 the the, uh, weight and value, if any, you deem fit and
14 appropriate. Thank you, uh, Solicitor.

15 MR. GRAHAM: Thank you, Your Honor.

16 BY MR. GRAHAM:

17 Q. Dr. Ross, did you have, um, the opportunity to perform an
18 autopsy on Carrie Banty?

19 A. Yes.

20 Q. And what was the date and time of your autopsy?

21 A. It was, uh, December 12th 2012 and we started the autopsy
22 at 9:30 a.m.

23 Q. And is it fair to say that the police came to you and
24 provided you information regarding, um, possible, a possible
25 overdose being involved in this case?

JANICE EDWARDS ROSS - DIRECT EXAMINATION BY MR. GRAHAM

1 A. Yes, the, uh, the coroner, I think it was Deputy Coroner,
2 um, Robert Johnson called to schedule the autopsy and
3 authorized the autopsy, uh, along with the law enforcement,
4 um, and he expressed to me that, uh, uh, this, uh, lady was
5 found dead in her residence along and in the residence also
6 was a syringe and and a belt, uh, that a -- appeared to be
7 maybe it it could have been a, um, tourniquet for IV drug
8 abuse.

9 Q. Let me show you a photograph marked 46A and ask if that
10 would assist you in explaining your testimony the jury.

11 A. Yes, it would.

12 MR. GRAHAM: Your Honor, the State would move 46A into
13 evidence at this time.

14 THE COURT: Subject to, uh, previous objections,
15 Mr. Walker?

16 MR. WALKER: As, uh, yes, sir, that's correct, Your
17 Honor.

18 THE COURT: Alright, uh, ---

19 MR. WALKER: Also, I, if I may, Your Honor, um, I would,
20 I was gonna add to the objections if I may, Your Honor.

21 THE COURT: Yes, sir, you may.

22 MR. WALKER: Um, basically, uh, I -- if if so, I mean, I
23 I wish to do so outside a the jur -- the presence of a jury,
24 Your Honor, should be very quick, Your Honor.

25 THE COURT: Alright, thank you. Step to your jury room

JANICE EDWARDS ROSS - DIRECT EXAMINATION BY MR. GRAHAM

1 please; do not discuss the case.

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Alright, Mr. Walker.

5 MR. WALKER: My my objections, Your Honor, is a -- this
6 photo and all all autopsy photos, um, such photos are
7 calculated to arouse sympathy and a pre -- prejudice
8 prejudice, a prejudice of the jury and not such that, not
9 necessary to substantial facts, that's my objection.

10 THE COURT: Alright, well as I said, uh -- yes,
11 Solicitor, I'll be glad to hear from ya.

12 MR. GRAHAM: Uh, not unless you need to, Your Honor.

13 (Pause.)

14 THE COURT: Well I agree that 46A and all other
15 photographs which I have had marked for identification
16 purposes have some probative value in helping the jury and I
17 further recognize that the photos add a visual element not
18 present in the testimony of witnesses and relevant evidence
19 means evidence having any tendency to make the existence of
20 any fact that is of consequence the determination of the
21 action more probable or less probable, although relevant,
22 relevant evidence may be excluded if its probative value is
23 substantially outweighed by the danger of unfair prejudice.
24 The relevancy materiality and admissibility of photographs as
25 evidence are a matter left to the sound discretion of the

1 trial judge. If the offered photographs serve to corroborate
2 testimony, it is not an abuse of discretion to admit it. When
3 balancing the danger of unfair prejudice against the probative
4 value, the determination must be based on the entire record
5 and will turn on the facts of each individual case. A judge's
6 decision regarding the comparative probative value and
7 prejudicial effect of the evidence should be reversed only in
8 exceptional circumstances. I find as to, uh, 46A that that
9 evidence is highly probative, corroborative and material in
10 establishing the elements of the offense charged, that being
11 murder, its probative value outweighs its potential prejudice.
12 It is not offered and is not such that would cause a jury to
13 base its decision based on emotion, passion, prejudice or any
14 consideration not in evidence in the case. The standard is
15 not whether the evidence is prejudicial, rather the standard
16 under Rule 403 is whether there is a danger of unfair
17 prejudice that substantially outweighs the probative value.
18 The State has the burden of proving the elements the offense
19 charged, there are no eyewitnesses to the incident resulting
20 in the victim's death. The photographs provide concrete
21 evidence as to what transpired on that fateful day.

22 MR. WALKER: At ---

23 THE COURT: I believe all of the photographs that were
24 viewed by me were taken before and do not show any actual
25 incisions at the autopsy and they were perhaps conducted as a

JANICE EDWARDS ROSS - DIRECT EXAMINATION BY MR. GRAHAM

1 means to document the extent and nature of the victim's
2 injury, although I would, uh, say the two black and white in
3 State's 54 I believe were taken, uh, at the autopsy, all of
4 'em were taken at the autopsy. Um, most of the photographs
5 show the unaltered condition of the victim except to the
6 extent of the black and white photographs I believe. As I say
7 my ruling now is only to 46 which shows a hand and parsh --
8 part of the arm of the victim and a belt, uh, laid over the
9 victim arm; um, and it is that visualization and would assist
10 the doctor in the corroboration of her testimony and I do not
11 find 46A gruesome in any manner either. Alright, go right
12 ahead, Mr. Walker.

13 MR. WALKER: Your Honor, I-I I I will further, uh, I I
14 see the ph -- I see it fit that they be entered in black and
15 white rather than color.

16 THE COURT: Alright, I I will deny that, um, I think the
17 ones that would even would get close to the line of being
18 gruesome would be those that have been offered in black and
19 white and even 46A I would present it with 46B at the same
20 time which showed some, uh, tissue, um, that, uh, was redacted
21 by the State and to me, um, if they're not gruesome they are
22 admissible if they're relevant, they're not un -- there's not
23 unfair prejudice and substantially as to the probative value.
24 Additionally, um, quite frankly, uh, perhaps I'm too folksy as
25 they're accusin' me a bein' in, uh, in law school and they're

JANICE EDWARDS ROSS - DIRECT EXAMINATION BY MR. GRAHAM

1 right, um, and I'm certainly not, uh, degrading the, uh,
2 sanctity of, uh, this or any other victim, uh, nor of the, uh,
3 professionalism of, uh, Dr. Ross and her chosen field of
4 forensic pathology but quite frankly you can see things, uh,
5 just like that if you were an invader or a, at a, uh, a
6 butcher shop quite frankly, um, so I I don't find them to be
7 gruesome, uh, whatsoever, those that eva -- even even get
8 towards the line have been, uh, changed to, uh, either
9 redacted are only bein' offered, uh, in black and white.

10 MR. WALKER: May ---

11 THE COURT: Alright, Mr. ---

12 MR. WALKER: --- may ---

13 THE COURT: --- Walker.

14 MR. WALKER: Yes, sir. May I, I I'm look lookin' up, uh,
15 maybe Your Honor can find it a -- as well as me, I'm lookin'
16 under *State vs. Middleton*, uh, my subscription is not lettin'
17 me, uh, review it but, uh, from what I ---

18 THE COURT: *State vs. Middleton*?

19 MR. WALKER: Yes, sir, and that's ---

20 THE COURT: And that was a picture of a knife wound of a
21 murder victim in Charleston County?

22 MR. WALKER: Uh, I'm not sure, Your Honor, I'm tryin' to
23 view it now, my subscription ---

24 THE COURT: Think it was reversed on other grounds
25 because they were, he was, uh, if I'm thinkin' of the right

JANICE EDWARDS ROSS - DIRECT EXAMINATION BY MR. GRAHAM

1 Middleton, he was a, uh, either a trustee or escape I think a
2 trustee on, uh, some kind of work crew with Department a
3 Corrections and I thought he had killed two victims, uh, close
4 in time, I thought that was a *Lyle* issue but, uh, tell me the
5 cite.

6 MR. WALKER: Okay, co -- I'm about to get for Your Honor,
7 I had it and I just lost it, I went to the ---

8 THE COURT: Sir?

9 MR. WALKER: Uh, that I beg for your indulgence. I, that
10 is gonna be tve -- it looks to be 28 or 288 S.C. 21 is what
11 I'm ---

12 THE COURT: S.C., 288 S.C. 21, you send that to me.

13 MR. WALKER: Yes, sir, that's correct, Your Honor.

14 THE COURT: Alright, give me just a moment.

15 (Whereupon, a discussion was held off the record.)

16 (Pause.)

17 THE COURT: Now the the *Middleton* I'm looking at, um, I'm
18 sorry, I was citin' 295 S.C. 318, let me look at the other one
19 that

20 (Whereupon, a discussion was held off the record.)

21 THE COURT: Prejudicial effect of one murder victim
22 clearly outweighs any evidentiary value and thus such
23 photographs were inadmissible, alright, but it's the same,
24 *Middleton's* just a, it's another trial.

25 (Whereupon, a discussion was held off the record.)

JANICE EDWARDS ROSS - DIRECT EXAMINATION BY MR. GRAHAM

1 THE COURT: Uh, as, uh, *Middleton* says, as I've just
2 said, Although photographs may be used to corroborate other
3 evidence, it is well-established that photographs calculated
4 to arise -- arouse the sympathies, prejudice of the juries are
5 to be excluded if they are irrelevant or unnecessary to the
6 issues at trial. Appellate's counsel offered to stipulate to
7 any relevant information contained in the photograph and it is
8 clear the information was not really at issue; furthermore,
9 the testimony of the forensic pathologist nega -- negated any
10 arguable evidentiary value of the photographs. The prejudice
11 created by the photographs clearly outweighed any
12 evidentially -- evidentiary value, uh, uh, further, uh,
13 *Middleton* argued there should be an adoption of a special rule
14 for autopsy photographs; however, it would be inappropriate to
15 adopt a new rule of law where an existing rule can be applied.

16 (Pause.)

17 THE COURT: *Middleton*, both *Middleton 1* and *Middleton 2*
18 were, this crime was in 1984, the decision, Brooke, what's the
19 most recent one?

20 LAW CLERK: Um, 1988.

21 THE COURT: Was 1988.

22 LAW CLERK: '88.

23 THE COURT: '88?

24 (Whereupon, a discussion was held off the record.)

25 THE COURT: The rules of, uh, South Carolina Rules of

JANICE EDWARDS ROSS - DIRECT EXAMINATION BY MR. GRAHAM

1 Evidence were, uh, codified September 3rd 1995 'cording to
2 the, uh, rule book I have in front of me and I cite from *State*
3 *vs. Collins* which is a Court of Appeals case and then South
4 Carolina Supreme Court case it was decided.

5 MR. WALKER: Your Honor, if I may ---

6 THE COURT: Oh, please let let let me, let me think just
7 a minute, let me find the case, find it here. *State vs.*
8 *Collins*, a a South Carolina Supreme Court decision was
9 decided, 409 S.C. 524 (2014) so, uh, *Collins* is very recent,
10 uh, a addressing of the issues. In that case, uh, the Court
11 of Appeals actually found they were gruesome and it involved
12 an attack of a child by a pack or number of, uh, pit bull dogs
13 in, uh, Dillon County and the wounds were so impressive the
14 pathologist have actually left the autopsy, went on and got a
15 photograph 'cause even the, uh, pathologist said he had never
16 seen anything quite like that with that type of damage.
17 Because of the elements and the State bearing the burden of
18 proof, actually the Court of Appeals, uh, reversed it and the
19 Supreme Court reversed the Court of Appeals and upheld the,
20 uh, the trial court in the use of his discretion that it was
21 not an abuse of discretion 'cause it corroborate the testimony
22 of the pathologist, assist the pathologist, uh, with his
23 testimony in that case and was not there for purpose of
24 arousing the passion or prejudice of the jury, so with that
25 being said, uh, 46A which is the only one I'm focused on right

JANICE EDWARDS ROSS - DIRECT EXAMINATION BY MR. GRAHAM

1 at this moment, uh, I will find that it is more probative and
2 is not gruesome, uh, and, um, is not unfair, substantially
3 unfairly prejudicial. What else would you like to say,
4 Mr., uh, Walker?

5 MR. WALKER: Uh, nothin', Your Honor.

6 THE COURT: Thank you, uh, bring us our jury, please.

7 THE BAILIFF: Yes, sir.

8 THE COURT: You have the same standing objections to each
9 and every one of photographs that are being offered?

10 MR. WALKER: That is correct, Your Honor.

11 THE COURT: Alright, thank you, uh, Mr. Walker.

12 MR. WALKER: Thank you.

13 (State's Exhibit No. 46A, photograph, admitted into
14 evidence.)

15 (Whereupon, a discussion was held off the record.)

16 (The following takes place in the presence of the jury.)

17 THE COURT: Thank you, uh, thank you, Mr. Walker, uh,
18 Mr. Solicitor, you may continue.

19 MR. GRAHAM: Thank Your Honor.

20 BY MR. GRAHAM:

21 Q. Dr. Ross, can you see 46A on the overhead?

22 A. Yes.

23 Q. I don't know, it may actually show it better in person,
24 so let me ask -- can I ask her to step down, Your Honor?

25 THE COURT: Ye -- yes, ma'am, just keep your voice up,

JANICE EDWARDS ROSS - DIRECT EXAMINATION BY MR. GRAHAM

1 uh, . . .

2 (Whereupon, the witness left the stand.)

3 Q. Now and if you would stand over here (indicating) and
4 face toward the court reporter, Dr. Ross, want you to move
5 down there (indicating). Uh, just lookin' at 46A it's my
6 understanding that the police or the coroner brought a belt
7 that was, um, left at the crime scene as a tourniquet, is that
8 correct?

9 A. That's correct.

10 Q. And what is it that this sh -- picture shows?

11 A. This (indicating) is, uh, the upper left arm and here
12 (indicating) there are two bruises, they're ---

13 THE COURT: Can you ---

14 A. --- blue ---

15 THE COURT: --- see better over here (indicating),

16 Mr. Walker?

17 MR. WALKER: I'm just, I'm alright right here.

18 THE COURT: You alright?

19 MR. WALKER: I'll come over to the jury, Your Honor, if
20 I, if I may.

21 (Whereupon, the defendant moved closer to the jury.)

22 THE COURT: Can you see?

23 MR. WALKER: Yes, sir.

24 A. --- two somewhat linear bruises that are parallel here
25 (indicating) and they are, uh, are pretty much the same at,

JANICE EDWARDS ROSS - DIRECT EXAMINATION BY MR. GRAHAM

1 uh, there's the same width between the the, uh, bruises as
2 the, as the wi -- belt is wide and when you press down on skin
3 like that, the pressure, um, pushes blood out so that where
4 the pressure was it won't, it'll be white, it'll be a
5 non-bruised, the bruising'll be along the lines of the, uh,
6 belt. Now that's not, it's consistent with, it's not, doesn't
7 say it could be, it could be two fingers, uh, pressin' down
8 for instance on the arm.

9 Q. You would step to the jury let them see.

10 (Whereupon, the witness complied.)

11 So the purpose of this photo is to show that the belt
12 could possibly have made those two linear bruises on Carrie's
13 arm?

14 A. That's correct.

15 Q. And where, using my arm, where on the arm are we talking
16 about?

17 A. Up here (indicating).

18 Q. And when you did the external examination of Carrie
19 Banty, what, if anything, did you find down below?

20 A. Well down below in the crux in elbow, uh, crease was a a
21 needle punc, what looked like it could be a needle puncture.

22 Q. Thank you, Doctor, if you will just . . .

23 (Whereupon the witness returned to the stand.)

24 THE COURT: You gonna keep usin' her down?

25 THE WITNESS: Um, ---

JANICE EDWARDS ROSS - DIRECT EXAMINATION BY MR. GRAHAM

1 MR. GRAHAM: It depends on how they show, Judge, ---

2 THE COURT: Oh.

3 MR. GRAHAM: I'm sorry.

4 THE COURT: I'd get my exercise.

5 BY MR. GRAHAM:

6 Q. Now, Doctor, based on the police bringing you the
7 tourniquet tellin' you about the syringe and you've seen the
8 puncture wound and their concerns about a possible overdose,
9 um, a toxicology kit was collected, is that correct?

10 A. That's correct.

11 Q. And your findings for, uh, the cause and manner of death
12 wasn't final until the toxicological report came back, is that
13 right?

14 A. That's correct.

15 Q. And it came back negative, is that right?

16 A. That's correct.

17 Q. So do you have an opinion about the presence of the belt,
18 the needle mark, the syringe at the scene and the possibility
19 that belt was used to make those bruises, what does that tell
20 you?

21 A. It's certainly, uh, possible it still could be the
22 syringe but it, uh, could also be, um, two fi -- uh, fingers
23 goin' across the the arm.

24 Q. Let me show you State's 47, 48, 49, 50, 51, 52 and 54 and
25 ask if you recognize those photographs.

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1 A. Yes, I I recognize those.

2 Q. And would those photographs assist you in explaining to
3 the jury the injuries you observed on your external
4 examination of Carrie Banty?

5 A. Yes, it would.

6 MR. GRAHAM: Your Honor, the State would offer 47, 48,
7 49, 50, 51, 52 and 54 into evidence.

8 THE COURT: Mr. Walker?

9 MR. WALKER: Uh, same objections, Your Honor.

10 THE COURT: Alright, subject to a previous objection.
11 Let let me see 'em, uh, again real quick, please.

12 (Pause.)

13 THE COURT: Alright, uh, 47, 48, 49, 50, 51, 52 and 54
14 are in evidence subject to defense objections.

15 (State's Exhibit Nos. 47, 48, 49, 50, 51, 52 and 54,
16 photographs, admitted into evidence.)

17 BY MR. GRAHAM:

18 Q. Dr. Ross, when you do an autopsy, what's the first thing
19 you do?

20 A. Uh, the the patient is brought to us in a body bag at the
21 morgue in Newberry County Memorial Hospitals, we open the bag,
22 we take photographs of the body as it came to us. Uh, she had
23 some clothing on, so we took the clothing off and then we take
24 photographs externally of, uh, the front and back a the body
25 before we proceed with the autopsy.

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1 Q. So and then the first part a the autopsy is an external
2 examination, ---

3 A. That's correct.

4 Q. --- is that correct? Were you able determine what, um,
5 Carrie's heighth was?

6 A. Yes, let me check. Um, we measured her at 68 inches in
7 height which is 5 feet 8 inches.

8 Q. That what, if anything, on the external examination did
9 you find, if you would just start at the head and work your
10 way down.

11 A. Oh, yes. Um, externally, um, we found a a abrasion, a
12 scrape a the skin on the s -- on the bridge a the nose, uh, on
13 the neck we found an abrasion, contusion, uh, a linear mark
14 'cross the neck, fronta the neck, uh, on the chest we found a
15 non-patterned, uh, so -- somewhat circular bruise over the
16 anterior, uh, left shoulder and on the arms, the upper arms
17 and the forearms had, uh, several bruises and abrasions but
18 not on the hands, uh, we found some bruises and abrasions over
19 both knees, um, over the, uh, left ankle and over the tops of
20 both both feet.

21 Q. I'm gonna try the overhead and let's see, uh, if it works
22 or not. State's No. 47, what are we looking at there,
23 Doctor?

24 A. Yes, that's the, uh, right upper arm. Um, in the arm
25 there you can see some circular, ---

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1 (Whereupon, a laser pointer was handed to the witness.)

2 --- thank you, some circular contusions which could be
3 fingertips.

4 Q. Now there's other redness up near the top under the
5 armpit area and the breast area, what is that from?

6 A. That's from, uh, the the, uh, settling of blood, it's
7 called "livor mortis."

8 Q. And that's not a result of the injury itself, that's just
9 the blood settling?

10 A. Correct.

11 Q. State's No. 48.

12 A. Again, the right arm you can see the little circular, um,
13 bruises that coulda been made by fingertips, uh, the back of
14 the right elbow and the, uh, right forearm you'll see
15 abra -- abrasions which are scrapes a the skin, there's no
16 specific pattern to it like a baseball bat or somethin' like
17 that but it could be made by scrapin' on the ground ---

18 MR. WALKER: Objection, Your Honor.

19 THE COURT: Sir?

20 MR. WALKER: Objection.

21 THE COURT: And, uh, what is a basis of your objection?

22 MR. WALKER: Are, uh, irrelevant testimony.

23 THE COURT: Alright, uh, I would, uh, overrule that
24 objection. Thank you, uh, so, Doctor, you may continue.

25 A. It could be, uh, from a fist or from scrape, being

JANICE EDWARDS ROSS - DIRECT EXAMINATION BY MR. GRAHAM

1 scraped on the ground.

2 UNIDENTIFIED WOMAN: Ready?

3 Q. Doctor, can you tell the jury what the difference between
4 a bruise and an abrasion is.

5 A. Yes. A an abrasion is a scrape the surface, a scrape of
6 the surface of the skin, um, uh, leaves a red mark and takes
7 the surface of the skin off. A contusion is a bruise, that
8 bruise, uh, is underneath the skin, um, it's caused by a
9 pressure on the skin and the blood vessels underneath the
10 skin, it causes blood to to get outta the blood vessels and
11 and into the soft tissue under the skin.

12 Q. State's number 49, this area right up here (indicating),
13 what do we see right there? Want me to show it to you, ---

14 A. Yeah, I think ---

15 Q. --- Doctor?

16 A. --- it's -- alright, that's that's the, uh, left upper
17 chest, the anterior shoulder and somewhat of a circular
18 bruise, um, this purple bruise, again, it's -- there's no
19 specific pattern to it, could ---

20 Q. And ---

21 A. --- be caused by a fist ---

22 Q. --- so and where on ---

23 A. --- or ---

24 Q. --- Carrie's body is that?

25 A. The left anterior shoulder.

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1 Q. So anterior is the front of the body, is that correct?

2 A. Yes. This (indicating) is the left armpit, this
3 (indicating) is the left upper arm, up here (indicating) would
4 be the top of the shoulder, uh, the bruise is in here
5 (indicating).

6 Q. So, uh, using yourself, Doctor, can you show where that
7 would be.

8 A. Right here (indicating).

9 Q. Let me show you State's Number 50 and ask what that
10 picture is depicting.

11 A. Uh, that's the, uh, left arm on the inside and it shows
12 some markings, uh, looks like ink of, uh, which are blue,
13 purple and green.

14 Q. And what, if any, bruising does it show?

15 A. And it also shows those two parallel, uh, blue bruises on
16 the upper left arm.

17 (Whereupon, the exhibit was published to the jury.)

18 Q. State's Number 51, let me see if you're able to see that.

19 A. Uh, those are the knees, a right knee and the left knee,
20 you can see the bruises and abrasions on, mostly on the right
21 knee.

22 Q. State's Number 52?

23 A. The top of the right ankle there's some, a couple of
24 abrasions.

25 Q. And let me show you, Doctor, looking at the picture of

JANICE EDWARDS ROSS - DIRECT EXAMINATION BY MR. GRAHAM

1 itself, not on the overhead, do you see any bruising there?

2 A. Yes, ---

3 Q. And would ---

4 A. --- there's some.

5 Q. --- you describe that to the jury, please.

6 A. There's some bruising, uh, just above on the anterior,
7 uh, calf, the, um, or the tibial area.

8 Q. And again, the anterior is the front of the body, is that
9 correct?

10 A. That's right, um.

11 Q. State's Number 54, ---

12 A. Yes, ---

13 Q. --- see there.

14 A. --- that's -- yes.

15 Q. What is that?

16 A. That's, uh, the upper neck you see, um, an abrasion,
17 contusion, it's kind of a combination, uh, that goes across
18 the, uh, upper neck, you can also see the bruise on the left
19 shoulder, anterior shoulder.

20 Q. Well I believe all of her injuries were on her front
21 side, is that correct?

22 A. Correct.

23 Q. Now when we talk about defensive wounds, what are
24 defensive wounds?

25 A. Defensive wounds are just like they sound, it's a,

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1 it's a defensive mechanism that's automatic in people who see
2 something comin' at them that they don't want to hit them, um,
3 usually you see wounds on the anterior or on posterior
4 forearms, uh, in that case.

5 Q. And did you see some a those wounds on Carrie?

6 A. Yes.

7 Q. As far as her hands themselves, did you notice any
8 abrasions or contusions, uh, on her hands as if she was
9 striking anything or something had struck her on her hands?

10 A. No, the hands were clean.

11 Q. After the external examination, and you did do an
12 internal examination, ---

13 A. Yes.

14 Q. --- okay, and can you tell the jury what you found when
15 you did that.

16 A. Uh, internally we found some more bruising, uh, in
17 addition to the external bruising. We s -- found bruising
18 over her collarbones and over the anterior sternum, the chest,
19 mid-chest, we also found bruising underneath the scalp on the
20 top of the head and just to the right of the midline.

21 Q. Alright, so can you describe, uh, can you describe what
22 the bruising looked like when under -- it wasn't visible on
23 the outside, is that correct?

24 A. Correct.

25 Q. So when you looked under the scalp that you, are we

JANICE EDWARDS ROSS - DIRECT EXAMINATION BY MR. GRAHAM

1 talking about on the skull or what what did you see?

2 A. It's a, right right above the skull, it's, um, it wasn't
3 visible, uh, externally and you, sometimes that happens on the
4 bruises you can see, uh, see it deep in the fatty tissue
5 underneath the skin but it doesn't show on the outside.

6 Q. Can you describe the size and the shape of that wound.

7 A. The -- there, uh, the wounds were, uh, the wound on the
8 frontal, uh, area went kind horizontally, um, and was maybe a
9 couple of inches long.

10 Q. So is that on on her forehead or on the top of her
11 head?

12 A. In in the front hairline area but there's no specific
13 pattern like a baseball bat or, um, anything like that.

14 Q. Is that what's known, would that be something known as
15 "blunt force?"

16 A. Yes, all the injuries I've described so far are blunt
17 force injuries.

18 Q. And what does that mean when we use that term?

19 A. That's means that the, um, the skin, uh, that you're hit
20 with something or something or, um, you fall and hit
21 something, uh, it it's a injury, a force against the soft
22 tissue that causes bruises, abrasions and lacerations.

23 Q. So something hit Carrie or Carrie hit something ---

24 A. Correct.

25 Q. --- with the he -- the hairline area of her head.

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1 A. That's correct.

2 Q. The other, and the other injuries that you found when you
3 did the internal examination on Carrie was bruising I think
4 you said in the shoulders and sternum area, is that correct?

5 A. Yes.

6 Q. Would you describe that in more detail, please.

7 A. Uh, there was no pot -- pattern to them, it just, uh, uh,
8 on the, on top of the collarbones towards the outside there
9 was a lot of bruising, um, more round than anything else.

10 Q. What was the size and shape of those injuries?

11 A. They were approximately one and a half inches each in
12 greatest that dimension.

13 Q. One thing we didn't talk about was, um, did you look at
14 Carrie's eyes?

15 A. Yes, all injuries I say all the, all the previous
16 injuries I talked about were blunt force injuries and we also
17 saw evidence of strangulation which, uh, means that the, there
18 was force against the front of her neck such that the, um,
19 blood vessels, especially the veins were collapsed from the
20 force. Uh, when you, when you put pressure against the veins
21 of your neck and strangle somebody, um, blood builds up behind
22 it, the blood that's in the brain and in the head trying to
23 get back down to the heart, uh, for normal circulation is
24 blocked and so pressure builds up in the blood vessels above
25 it and that the, some blood ve -- some blood escapes the

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1 capillaries and causes little red dots and we saw those in the
2 eyes, uh, the whites of the eyes, they're ca -- they're called
3 "petechia."

4 Q. And those little red dots appear because the blood is
5 trapped in the head and can't escape down to the heart?

6 A. That's correct.

7 Q. So you you don't have to crush somebody's windpipe to
8 strangle them, is that what I'm hearing?

9 A. That's right.

10 Q. How long -- what kinda force is necessary to cause the
11 petechial hemorrhages in the eye?

12 A. Uh, it's, a a significant a force, enough to collapse
13 blood vessels but, uh, the the blood ve -- the veins are, um,
14 somewhat like, um, a lengthy, uh, uh, rubber band, it's it,
15 they're easily collapsed, uh, so it doesn't take a lotta
16 pressure, I've seen a lot of them, um, from people who hang
17 themselves by putting a noose around their neck and just
18 leaning forward, uh, so that's that's amount pressure. The
19 larynx is made up of a a cartilage which is not as hard as
20 bone but it's it's hard, har -- almost as hard as bone and in
21 order to collapse a larynx it takes a lotta pressure, maybe a
22 car be on top of you or you can find it in ligature hangings
23 or or ligature, uh, at, uh, asphyxias where somebody puts a
24 tight rope around you and pulls very very very tight but that
25 rarely see any kind of injury to the larynx, uh,

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1 strangulation.

2 Q. So in layman's term what's the larynx?

3 A. A larynx is a, the voice box basically from the, from the
4 voice box the, um, down to the lungs is called the "trachea"
5 and then the trachea, um, is an airway and then it divides
6 into the right and left bronchi to go to the, to the lungs.

7 Q. So when you breath in then it goes in your mouth, down
8 through your larynx, into your lungs.

9 A. Correct.

10 Q. Did you find any evidence that Carrie's larynx had been
11 crushed?

12 A. No, I did not.

13 Q. Do you have an opinion of whether her larynx had been
14 crushed and then popped back open again?

15 A. I I have an opinion, yeah.

16 Q. And what would that be?

17 A. That it was not. The, if that had happened, uh, he would
18 have seen some swelling or some bruising.

19 MR. WALKER: Objection, Your Honor.

20 THE COURT: Overr -- what's the basis of your objection,
21 Mr. Walker?

22 MR. WALKER: Solicitor's leading.

23 THE COURT: And do you have an opinion what, I do not
24 consider that a leading question, I'll overrule the objection.

25 MR. WALKER: Sorry, Your Honor, thank you.

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1 THE COURT: It's alright. Yes, sir, Solicitor, you may
2 continue.

3 MR. GRAHAM: Thank Your Honor.

4 BY MR. GRAHAM:

5 Q. How long, Doctor, we talked about the amounta force, how
6 how long would significant force needed to be put on a
7 person's veins I think is what you testified to to cause the
8 petechial hemorrhages?

9 A. Probly up to a minute, thirty to, thirty seconds to a
10 minute.

11 Q. A continuous significant ---

12 A. Of ---

13 Q. --- pressure?

14 A. --- continuous force, yes.

15 Q. Alright. How long would it take an individual to lose
16 consciousness with that same amount of force continuous before
17 the individual would lose consciousness?

18 A. Uh, people, uh, people have ha -- hanged themselves, uh,
19 and taken videos and it shows that with that pressure across
20 the neck it only takes about five to eight seconds to go
21 unconscious but it takes a full four to five minutes to die
22 from that of co -- consistent, uh, force on the neck.

23 Q. Four to five minutes of significant consistent force to
24 cause death.

25 A. Correct.

JANICE EDWARDS ROSS - CROSS-EXAMINATION BY MR. WALKER

1 Q. Doctor, do you have an opinion as an expert in the field
2 of forensic pathology as to the cause and manner of Carrie
3 Banty's death?

4 A. Yes, I do.

5 Q. And what is it?

6 A. Asphyxia which means, uh, the brain is not getting oxygen
7 due to strangulation, the manner of death is homicide.

8 Q. Thank you, Dr. Ross, please answer any question
9 Mr. Walker has for you.

10 A. Thank you.

11 THE COURT: Alright, uh, Mr. Walker.

12 CROSS-EXAMINATION BY MR. WALKER:

13 Q. How you doin', Ms. Ross?

14 A. Fine as well.

15 Q. Um, yeah, so you conducted the autopsies a Ms. Catherine
16 Banty, is that correct?

17 A. Yes.

18 Q. Alright. Uh, why, well why generally, um, did you, why
19 generally did you substance the, uh, the belt, uh, and the
20 syringe relevant to your autopsy?

21 A. It's, uh, where the scene investigation showed, um,
22 possibility of drug abuse and I had a history that this
23 patient had used drugs in the past.

24 Q. And you said earlier that your findings to the toxicology
25 was -- co -- toxicology was negative and at upon that findin'

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1 to the, to the toxicologist, uh, upon the toxicologist, um,
2 it was found negative and within that toxicology that was for
3 drugs also.

4 A. Correct.

5 Q. Alright. Um, that you gave a little bit a testimony
6 about defensive wounds and and abrasions and and contusions
7 and whatnot, um, if if if you may, um, that if if you may a a
8 contusion is just just a simple injury like a scab or whatnot,
9 is that not right?

10 A. A contusion in a bruise.

11 Q. A bruise or a simple injury.

12 A. Yes.

13 Q. Now when you're dealin' with contusions you normally,
14 normally after someone is dead as in Ms. Banty's case once you
15 received her body, um, well she was approximately dead for
16 maybe forty-eight hours, is that not right?

17 A. Correct.

18 Q. Alright, maybe longer, who knows. Um, at upon findin',
19 upon findin' that, you you received injuries injuries as such,
20 is that not right?

21 A. Correct.

22 Q. Alright. Just generally when you deal with injuries, um,
23 as you could tell this looks very very scenic and very very as
24 as most, some people would say gruesome but, I mean, kinda,
25 kinda in general it it it looks kinda rough, is that not

1 right?

2 A. S -- yes, it's superficial, ---

3 Q. S ---

4 A. --- yes.

5 Q. And and superficial means?

6 A. It's in the skin.

7 Q. It's inside the skin.

8 A. The bruise and con -- and abrasions are a a affect the
9 skin of the knees.

10 Q. Now, uh, it -- on this particular wound right here
11 (indicating) especially, uh, especially in this area right
12 here (indicating), and I'm I'm showin' right here
13 (indicating), especially that area there, if if that area, if
14 let's say me and you was, uh, uh, fightin' or whatnot, let's
15 say, let's say you slipped on a hill, maybe it was at a river
16 or a lake or somethin', you slipped down a hill and you hit
17 your knees on some rocks, um, and and you survive that and
18 immediately after it would be totally, the the wound would be
19 totally different than what you're seein' now, is that not
20 correct?

21 A. No, it be the same, that the bruise will be there, um,
22 eventually they turn different colors, I mean, you bruised
23 yourself, you -- turns out, it starts out bluish-purple, it
24 might turn, uh, green and yellow.

25 Q. So well basically, um, you're sayin' no petechia appears

JANICE EDWARDS ROSS - CROSS-EXAMINATION BY MR. WALKER

1 in the decomposin' on the body, is that right?

2 A. Well they -- the are, they appear no, not, they're not
3 after decomposition, no.

4 Q. So so basically is the wounds that we're witnessin',
5 especially especially wounds like so, a as you see, uh, this
6 this here (indicating), especially especially right there
7 (indicating) it's very dark and that's that's, uh, aged
8 petechia, is it not?

9 A. Those are not petechia, those are abrasions and they're
10 red-based; if it's a, if it's a an abrasion after death then
11 they'll be kinda yellow lookin' because the circulation wasn't
12 goin'.

13 Q. Right, um, so so petechia is not, is not blood that
14 appears in the skin, is that right?

15 A. It can show, they can be, they can be seen in the skin,
16 yes, or the face or wherever or the, uh, eyes if you have
17 pressure around the neck. You're thinkin' that if if a person
18 it, um, dies and their legs are s -- uh, dependent by gravity,
19 say you're talkin' about tardo spots which are little red dots
20 but they don't look like this at all and they, uh, are very
21 obviously after decomposition.

22 Q. Well, uh, I I must say, I must say you're you're the
23 pathologist, I'm not. Um, so back to the defensive wounds and
24 I'm pretty sure we've we've seen the defenses wounds that you
25 claim to be and and you're sayin' that if if if I was the the,

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1 uh, attacker or, you know, if I was the attacker or if I was
2 the, uh, the the the person who killed Ms. Banty, I would be,
3 whenever I left that her body, I woulda seen them same wounds,
4 is that not correct, the wounds would appear the same as as
5 soon as she died as what you're viewin' now.

6 A. Yes, but after, uh, after she's been lyin' for instance
7 on her back with the blood gravitating towards the back after
8 the circulation has stopped you might see, um, uh, with with
9 more easily the, uh, bruises on the fronta the arms.

10 Q. What what we might could call "arrousement" to the color
11 and to the, to the wound?

12 A. Well it's just that the rest a the blood has drained down
13 so it it leaves the bruising very obvious.

14 Q. Uh, so so and I I just asked the question, ma'am, and
15 that it's basically they're they're unchangeable from the
16 time of death, especially in a 48-hour period, that ---

17 A. Correct.

18 Q. --- that they appear the same.

19 A. Correct.

20 Q. Correct, alright. Let's let's get, um, Ms. Ms., uh,
21 Ms. Ross, you you, uh, did eleven thousand autopsies, that's a
22 lotta people, ha.

23 A. Yes, it is.

24 Q. Alright. Um, and you did two hundred and forty in South
25 Carolina, um, ---

JANICE EDWARDS ROSS - CROSS-EXAMINATION BY MR. WALKER

1 A. That's that's my court appearances.

2 Q. Oh, alright. Well, um, let's say not all people who are
3 deceased get their time in court, is that not right?

4 A. Correct.

5 Q. Right. Uh, well I'm gonna get a little bit on on this
6 belt, uh, that the State is throwin' around, what, um, that,
7 uh, do you honestly in your opinion think that they're
8 moreover what caused the bruisin' rather than fingertips or
9 whatnot that you caused, that you said?

10 A. It could be either one.

11 Q. Alright. Um, and then, uh, and you have no opinion as to
12 which one may be moreover than the other?

13 A. Uh, no, I do not.

14 Q. Alright. Um, when you're dealin' with wounds typically
15 as this victim has got in, got into, um, typically do you, is
16 is is that just your normal domestic violence or is that some
17 aggressive action there?

18 A. Huh, well that domestic violence can do that, either one.

19 Q. Mean, is that, is that just a a a brawl, a fighting or is
20 that a a major league fight there?

21 A. It shows there's an altercation, a fight, uh, with
22 physical, uh, injury.

23 Q. And and and you couldn't put any in -- credibility into
24 it or or you couldn't put any credibility to or opinion into
25 how rough or how how many, how much actions this, I mean, do

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1 you, you answered somethin' or another they were not defensive
2 wounds, you seem to be familiar with that, um, on the
3 defensive wounds, are they seem to be pretty relevant for a
4 lotta defense or just simple defense or that . . .

5 A. Looked like a lot of defenses on both arms.

6 Q. Alright, on on both arms. Um, and along here
7 (indicating) it seems to have a little, uh, re -- rigor mortis
8 but other than that -- I I believe this is rigor mortis, is it
9 not?

10 A. No, rigor mortis has to do with stiffening of the
11 muscles, ---

12 Q. Alright, ---

13 A. --- is this, ---

14 Q. --- go there.

15 A. --- this this right here (indicating) would be livor
16 mortis, uh, these (indicating) are bruises that are left when
17 the blood drains away from it.

18 Q. Okay, when you say it "drains away," um, typically if she
19 was layin' on her side and basically maybe before she died her
20 her skin was like maneuvered a certain way like pinched but
21 not necessarily with force, if, and if it was right before her
22 death basically them them them well marks right there
23 (indicating) would show up, is that not correct?

24 A. If the blood was circula -- the blood had to be
25 circulating at the time those wounds, those bruises

JANICE EDWARDS ROSS - CROSS-EXAMINATION BY MR. WALKER

1 occurred ---

2 Q. But if sh ---

3 A. --- but whether it was before death or right at the time
4 death.

5 Q. But it, a a witness testified that he relocated the body
6 so the body is not in its normal position that it was deceased
7 and so if she was typically layin' on the side then basically
8 you would get all what you're gettin' here, is that correct?

9 A. Well if she's layin' on her side, they put her on her
10 back, you'd still see those circular bruises.

11 Q. Well well you you conducted the autopsy, Ms. Ross, what
12 what position do you think that she lied in after her death
13 for them forty-eight hours?

14 A. I wasn't at the scene, I can't tell you.

15 Q. I mean, uh, usually is it, is -- would you agree that
16 blood usually, um, once it goes to one side or the other it,
17 uh, basically is it it darkens the skin very very much so is
18 that, is that not correct?

19 A. Yes, but if you move the body, um, within a few hours it
20 can change, the livor mortis can change.

21 Q. But this bo -- this bodicly -- this body typically wasn't
22 moved say twelve hours or so that wouldn't, would that mean
23 anything?

24 A. Well that that would mean that the livor mortis was
25 probably fixed which means that if you move the body

1 afterwards then it won't change.

2 Q. But typically that's what you're gonna get is this right
3 here (indicating) if a body is laid on the side, is that
4 right?

5 A. That's right..

6 Q. And typically if these marks right here (indicating) was
7 pinched 'cause you're dealin' with a deceased person and the
8 blood stops circulate and therefore all them wounds and and
9 scratches become very transplant or transparent, is that
10 correct?

11 A. In the areas where there's not livor mortis, yes.

12 Q. And could, uh, where there's not livor mortis, um, and
13 livor mortis would deteriorate this on what what conditions?
14 What what ---

15 A. It wouldn't deteriorate, it might just ---

16 Q. What ---

17 A. --- mask it.

18 Q. --- what what would mask the view? I mean, what what
19 would it do? It would basically show like what I'm sayin'
20 that ---

21 A. It might mask it, it might have, uh, cover it up ---

22 Q. Is it ---

23 A. --- but if we suspect it, we'll cut into the skin a
24 little bit and see if there's truly blood underneath there.

25 Q. Alright. Alright, we'll move on. Now you said earlier

JANICE EDWARDS ROSS - CROSS-EXAMINATION BY MR. WALKER

1 that there was a lotta defensive wounds on the, uh, on the
2 arms, uh, now typically defensive wounds are inside inside, is
3 that right?

4 A. Could be on the outside or in the inside.

5 Q. Well what makes, I mean, if if if, typically, if if
6 someone is fightin' then if they're presentin' their hands as
7 so or of they're presentin' their hands as so, typically what
8 would be the difference? What i -- what is the most known
9 common marks for defensive wounds, is it the inside or the
10 outside?

11 A. They can -- it can be either one ---

12 Q. And there's no ---

13 A. --- or both.

14 Q. Can be both, correct, but here you stated that there's a
15 tremendous amount of wounds but I have two arms, that right
16 there (indicating) is full a crayons and if I may I wanna show
17 the jury this, uh, this photo a little closer and then you
18 have this one (indicating) which typically there's a dark
19 inbrasion [sic] which is typical when somebody fallen,
20 slidin', fightin' in the yard, uh, playin' rugby football, uh,
21 but there's no defensive wounds, 'scratching', uh, anything,
22 there's no fist marks there where she was hittin', you know,
23 guarded a fist, anything, would you agree with that? Would
24 you think that I was correct?

25 A. I said it could be cons -- could be consistent, some of

1 it could be consistent with of, uh, defense wounds caused by
2 blunt trauma caused by, um, a fist.

3 Q. Right, so you're sayin' that a fist and as you see my
4 fist it, uh, that would march.[sic] that wound there
5 (indicating)?

6 A. It might.

7 Q. How how 'bout that wound right there (indicating)?

8 A. It it would, could.

9 Q. Maybe the side of the fist.

10 A. It could, yes.

11 Q. Mean, that woulda been had to be some pretty hard
12 hittin', is that right, is that not right?

13 A. Pretty good force, yes.

14 Q. You say "force," maybe hittin', breakin' a a block, a
15 piece a wood or just a candy stick, candy cane, uh, what what
16 type a force would be needed to make that bruise, ---

17 A. It's, ---

18 Q. --- uh, ---

19 A. --- uh, it's significant force, uh, there's no no pattern
20 so I can't tell ya what made it exactly.

21 Q. If I give, if I put two pencils up hand-to-hand holdin'
22 'em like that (demonstrating) and punched it and them bein'
23 held very tightly, would the force needed to break that pencil
24 be the same force, greater force, or less force than to make
25 that wound with a fist?

JANICE EDWARDS ROSS - CROSS-EXAMINATION BY MR. WALKER

1 A. Probly less force.

2 Q. Probly less. Alright, um, I'm gonna show the jury this,
3 uh, picture here (indicating), Your Honor, if I may approach
4 the jury. If ya'll will see ---

5 THE COURT: Madam clerk, would you, uh, hand that to the
6 jury foreperson.

7 MR. WALKER: I'll just hold it with me.

8 THE COURT: Oh, you just wanna hold it?

9 MR. WALKER: Yes, sir.

10 THE COURT: Oh, alright, yes, sir.

11 MR. WALKER: If ya'll will see there's no wounds on that
12 arm, it's corayla [sic].

13 THE COURT: You you can't testify.

14 MR. WALKER: Can't testify. Can't testify. If you, if
15 you will look ---

16 THE COURT: No, no, ---

17 MR. WALKER: --- this pic ---

18 THE COURT: --- sir, you you can show it to the jury,
19 that's what publication is.

20 (Pause.)

21 BY MR. WALKER:

22 Q. Now and you say there's some circular contusion due to
23 the fingers, um, where did you find that out on body?

24 A. On the right upper arm.

25 Q. Right upper arm. The right one or the left one?

1 A. Right.

2 Q. Well is that (indicating) a right arm?

3 A. Yes.

4 Q. And can you point where you've seen that.

5 A. Uh, these (indicating) circular little marks could be
6 from fingertips.

7 Q. And that's that's definitely no effects due to death
8 other than, uh, other than a little off.

9 A. No, that's, that that in itself is not fatal, no.

10 Q. Uh, I'm not askin' if it's fatal, I'm askin' if it's, if
11 the wounds show, if the wounds could show anything different
12 rather than death and if the wounds, uh, uh, the death they
13 would cause any circumstances, condition or anything to them,
14 to them wounds.

15 A. No, I -- it's not postmortem, no.

16 Q. But in in your view of eleven hundred autopsies, um, I'm
17 pretty sure you've been profound to find out what happens
18 before death and especially with your medical degree as a
19 pathology which is, uh, takes a lot of schoolin' and a a lot
20 of knowledge in in in medical that you you don't think that if
21 I did this (demonstrating) to my arm it would not leave a, it
22 leaves a mark like that, why would you say it has to be
23 constant pressure all over?

24 A. It has to be pretty good pressure for I don't know how
25 long.

JANICE EDWARDS ROSS - REDIRECT EXAMINATION BY MR. GRAHAM

1 Q. Well thirty seconds? one hour? you know what's how
2 long?

3 A. I don't know, could be seconds ---

4 Q. Okay.

5 A. --- if it's hard enough.

6 Q. Thank you. No further questions.

7 THE COURT: Thank you, uh, Mr. Walker. Uh, redirect,
8 Solicitor?

9 MR. GRAHAM: Very briefly, Your Honor.

10 REDIRECT EXAMINATION BY MR. GRAHAM:

11 Q. Dr. Ross, a bruise you have to be alive, is that correct?

12 A. Correct.

13 Q. Once the, once you're dead, once the heart stops
14 circulating, blood is no longer flowing, you don't bruise
15 anymore, is that correct?

16 A. Correct.

17 Q. You mentioned something about postmortem, what is
18 postmortem?

19 A. After death.

20 Q. Did you see any postmortem injuries on Carrie?

21 A. No, I did not.

22 Q. Would you review your report 'cause I think that there
23 was ---

24 A. I wasn't ---

25 Q. --- one on her foot and would ask ---

JANICE EDWARDS ROSS - RECROSS-EXAMINATION BY MR. WALKER

1 A. Oh, I'm ---

2 Q. --- that you check that ---

3 A. --- sorry, yes, on the top the left foot it looked, um,
4 kinda yellow-based like I said, that was the only one.

5 Q. Was only one. Was that a -- so can you describe that
6 injury.

7 A. It was non-patterned, it's was small, it was probly half
8 an inch in greatest dimension.

9 Q. It's not a bruise though because blood's not flowing,
10 right?

11 A. Right, it's just scrape a the skin.

12 Q. Thank you, Doctor.

13 THE COURT: Recross, Mr. Walker?

14 MR. WALKER: Uh, yes, sir, Your Honor.

15 THE COURT: Okay.

16 RECROSS-EXAMINATION BY MR. WALKER:

17 Q. I I believe that's (indicating) what he's speaking of, is
18 that not right?

19 A. That's on the right foot, the other, the left foot is,
20 well is not the, you don't have a picture of it.

21 Q. Oh.

22 MR. WALKER: And and no further question, Your Honor.

23 THE COURT: Thank you, uh, thank you very much, uh,
24 Doctor, thank you for, uh, bein' with us today, you may step
25 down.

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1 (Whereupon, the witness left the stand.)

2 MR. GRAHAM: Your Honor, the State would ask for Dr. Ross
3 be excused from her subpoenas.

4 THE COURT: She may be excused, any objections,
5 Mr. Walker?

6 MR. WALKER: Uh, sh -- well I I have, uh, she's still on
7 my subpoena, Your Honor.

8 THE COURT: Alright, uh, so she would be on telephone
9 standby?

10 MR. WALKER: Uh, here in the mornin' Your Honor.

11 THE COURT: 'scuse me?

12 MR. WALKER: I need her here tomorrow. Yes, sir, Your
13 Honor.

14 MR. GRAHAM: But, Your Honor, Dr. Ross informed me that
15 she's not under subpoena by the defense.

16 THE COURT: I'm sorry?

17 MR. GRAHAM: Dr. Ross informed me that she is not under
18 subpoena by the defense, just by the State.

19 MR. WALKER: Hang on one second, Your Honor, I beg your
20 indulgence.

21 (Pause.)

22 MR. WALKER: May I speak with Ms. Ross one second?

23 Ms. ---

24 THE COURT: Speak with who?

25 MR. WALKER: May I speak with Ms. Ross one second?

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1 THE COURT: I'll leave that up to, uh, Dr. Ross.

2 MR. WALKER: If I have ---

3 (Whereupon, a discussion was held off the record.)

4 DR. ROSS: May it please the Court, um, I'm not available
5 tomorrow.

6 THE COURT: Do you -- you could be available later in the
7 week, Doctor?

8 DR. ROSS: Possibly in the afternoon.

9 THE COURT: Do do you object to speak with Mr., uh,
10 Walker at this time?

11 DR. ROSS: No.

12 THE COURT: Alright, uh, you may speak to her,
13 uh, . . .

14 (Whereupon, a discussion was held off the record.)

15 MR. WALKER: Just so, Your Honor, answer your question,
16 all all is correct, ---

17 THE COURT: Uh, not only did ---

18 MR. WALKER: --- have no objection.

19 THE COURT: --- I not understand ya, I couldn't hear you
20 that time, Mr. Walker.

21 MR. WALKER: I said all is correct, Your Honor, no
22 objections.

23 THE COURT: No objections. Thank you, uh, thank you very
24 much, uh, Mr. Walker. Alright, uh, Solicitor, you may call
25 your next witness.

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1 MS. DAVIS: Your Honor, at this time the State would
2 rest.

3 THE COURT: Alright, thank you, uh, thank you very much,
4 Solicitor. Alright, uh, ladies and gentlemen, perhaps now
5 would be a good time to take our evening recess, uh, please
6 recall my instructions, you can probly repeat them back to me
7 by now, do not discuss this case with others: your fellow
8 jurors, family, friends, anyone else, do not read, watch,
9 listen to any news accounts about the case, do not do, uh, any
10 independent investigation or any investigation on them, keep
11 an open mind, remember, you do not, uh, begin your
12 deliberations until you've heard all the evidence, all the
13 testimony from the parties, closing arguments by the parties,
14 instruction on the law by the Court and then in directed by
15 the Court to begin your deliberations with your fellow jurors
16 and to, uh, we'll both thank you very much, uh, for your, uh,
17 work ethic and patience, ladies and gentlemen, I would ask you
18 to be please be back at 9:30 in the mornin', 9:30 in the
19 mornin', hope ya'll have a pleasant evenin', thank you,
20 uh, . . .

21 UNIDENTIFIED JUROR: You too, sir.

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: You have any motions, uh, Mr., uh, Walker?

25 MR. WALKER: Yes, sir, I do, Your Honor, for directed

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1 verdict.

2 THE COURT: Alright, I'll be glad to hear from ya.

3 MR. WALKER: Yes, sir, Your, uh, Your Honor. Um, that I
4 would like to move for directed verdict, I I don't think the
5 State has produced, uh, anything anything in general, um, uh,
6 there there's, everything that they produced is just a spicion
7 [sic], um, uh, and I think that the *State vs. Bostick*, I think
8 that that pretty much sums it up as far as suspicion, um, and
9 that the State holds no, the State holds no no factual
10 evidence that I committed, um, the crime, all they have, all
11 they have produced through evidence that there was a homicide
12 which is the death by another and they have not produced any
13 any evidence, um, any any evidence rather than a homicide and,
14 uh, they haven't tied me to the homicide, um, whatsoever and
15 they especially haven't produced, uh, any type of evidence for
16 murder or anything to that nature, um, they haven't produced,
17 uh, any any, um, anything that meets the grounds for murder,
18 Your Honor. Uh, they they haven't met, uh, they haven't met
19 aforethought, Your Honor, they ha -- they haven't met any
20 malice, uh, that there's there's no one, nothin' that ties me
21 to have a wicked heart or a deprived heart, um, that committed
22 this crime, um, and and it all, it it just readibly the State
23 has just brung a suspicions of murder to the hands of the
24 Court and they tied me as tryin' to say that they have proved,
25 um, with evidence, uh, all all circumstances and alls, all

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1 clauses of murder, um, and they haven't, have not did that.
2 Alright, uh, relatively, relatively, Your Honor, um, I I don't
3 see any evidence that that exists that can pinpoint me to
4 their accusation, uh, of of murder. Um, there there is,
5 there's testimony of of people, there's there's, uh,
6 circumstantial, there's a few circumstantial evidence, there
7 there's definitely not enough to, uh, to call upon, uh, I
8 think the only circumstantial evidence in this case is, uh, is
9 the testimony that I given that I said I was wanted for
10 murder, uh, to the Aiken County Police Department, um, or the
11 Aiken County Sheriff's Office, um, outside a that there's a,
12 outside a that there's there's no other testimony that that
13 proves and with that only bein' the only circumstantial
14 evidence, that does not, uh, produce any element, um, any
15 element whatsoever for a, for directed, uh, uh, for, uh, for
16 murder. I I believe there's a case, Your Honor, I was, I was
17 a li -- I'm a little unprepared for this, uh, directed
18 verdict, I was hopin' to, um, take a recess or or have a
19 recess overnight to to, um, do this to motion for this
20 directed verdict. Um, if the Court still sees proper, I would
21 like to come back in the mornin' and and continue to argue, if
22 not I will proceed with my argument.

23 THE COURT: Alright, uh, alright, Mr., uh, Walker, uh, we
24 will, uh, recess for the evening, we'll start back, uh,
25 promptly at 8:30 in the morning, 8:30 in the morning.

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1 MR. WALKER: Your Honor, may I ask the Court's
2 indulgence, uh, with with, well for one second and that bein',
3 um, I need stay here. I I understand it's six o'clock and,
4 uh, the sheriff deputies need to get home and, uh, the DOC
5 officers brought me but I was wonderin' if I could have about
6 an hour at at minimum, to, uh, try to prepare my defense with
7 my PI, whatnot, here and I get get some things squared away
8 that's as me goin' into my defense and and I know Ms., uh,
9 Maddox asked the Court recommendations under that, I was
10 hopin' that, uh, I mean, a hour is, I I don't even think I can
11 do what I gotta do in a hour but I'm definitely gonna try.

12 THE COURT: Based on the, uh, recommendations of, uh,
13 Dr. Maddox and Dr. Frierson by email that's marked as a
14 court's exhibit, I would order that he remain at the
15 Westbrook, uh, Courthouse until, uh, 6:45, ---

16 MR. WALKER: Thank you.

17 THE COURT: --- give him time to, uh, meet with his, uh,
18 investigator and/or standby counsel and any other staff
19 member.

20 MR. WALKER: Thank you so much.

21 THE COURT: How you, uh, how you feelin', Mr. Walker?

22 MR. WALKER: I'm feelin' alright, Your Honor. Um, there
23 was one, you know, I just come off, I I I was alright but I,
24 like I got off Ms. Janice Ross on the witness stand, I I
25 wanted to stay a little longer but I kinda got sidetracked and

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1 got off early and I don't know why I keep doin' that, Your
2 Honor, I I try to, I'm tryin' to question the witness and I I,
3 it's not that I get frustrated, I just get sidetracked and I
4 just close my argument and by the time I sit back down I'm
5 like, well, you know, but I guess that's, I guess that's what
6 ya have to do, you know.

7 THE COURT: It's like I was when I tried cases,
8 Mr. Walker, ---

9 MR. WALKER: Yeah, I I understand it's ---

10 THE COURT: --- get frustrated and I sit down and I think
11 a things.

12 MR. WALKER: Yeah, I I I definitely understand that it's,
13 you know, it's it's it's not outside of the normal human
14 nature, especially with lawyers and whatnot, you know, so once
15 they start to do somethin', especially question a witness,
16 once they sit down but I I, you know, my situation is I I
17 just, I I lose track of thought, Your Honor, when I'm up there
18 I'm tryin' to questionin' and especially if I'm gettin' a
19 little frustrated like I can't get, can't say what I want,
20 I'll just close and, you know, I I don't mean to, I just do
21 and but I guess that comes with everybody, you know.

22 THE COURT: You had any symptoms today?

23 MR. WALKER: Not not too many psychedelic symptoms, um, I
24 did have one little episode earlier where I was like, uh, like
25 I I guess my heart rate just kinda dropped and I I like went

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1 went kinda like a little little state, it wasn't so much as
2 delusional but it was, it was a little stage, you know, uh,
3 little, uh, I I don't know, I I don't know what to call it, I
4 went, you know, I I kind of, kinda went out there for a
5 minute, I think I did that twice but other than that, uh, I've
6 been alright.

7 THE COURT: Alright, uh, alright, we'll, uh, recess. I
8 wanna thank the officers for their cooperation, uh, with the
9 Court, uh, very much. Uh, as I say I rely on, uh, uh, all
10 trials are stressful on attorneys, uh, parties, witnesses,
11 family members but I really do appreciate, uh, when I say
12 order, I don't like to order people to do anything, a wise
13 judge first tell me -- first told me best thing to do when ya
14 have a lot of power or authorities don't use less you have to,
15 uh, but, uh, I do appreciate ya'll, uh, cooperating, uh, very
16 much, uh, with the Court. Alright, uh, 8:30 in the morning
17 and, uh, you may review and, uh, Ms. Hann, also, uh, that
18 issue of that marking of the, uh, fully complete video kinda
19 nags me a little bit, if ya'll would, uh, see if ya'll find
20 any research, uh, in that regard.

21 MS. MAULDIN: Yes, sir.

22 THE COURT: Thank you, uh, Ms. Mauldin, thank you, uh,
23 Solicitor. Alright, court'll be in recess till 8:30 in the
24 mornin', thank you very ---

25 THE BAILIFF: Thank ---

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1 THE COURT: --- much.

2 THE BAILIFF: --- you, Judge.

3 (Proceedings February 28, 2017)

4 THE COURT: Alright, uh, Mr., uh, good mornin',

5 Mr. Walker.

6 MR. WALKER: Good mornin', sir. How you doin' today,

7 Your Honor?

8 THE COURT: I'm good, I'm asking you the same thing, how
9 you doin' today, Mr. Walker?

10 MR. WALKER: I'm doin' alright, Your Honor.

11 THE COURT: Alright, did you have the opportunity to, uh,
12 remain at the, uh, courthouse, uh, after hours?

13 MR. WALKER: Yes, sir, I did, I did and I I went back to
14 SCDC about seven o'clock or so.

15 THE COURT: And you had the opportunity to, uh, prepare
16 further for the directed verdict motion?

17 MR. WALKER: I I did, Your Honor, I I I got back to my
18 cell at about eleven o'clock last night, I took about three
19 and a half hours, uh, researched on my directed verdict as
20 much as possible, um, did that. Soon as I got back to the
21 institution they told me that I had to immediately pack up, no
22 if and or buts, and, uh, so I had to pack most a all my case
23 laws and everything, all my materials inside of a a a what
24 they call a duffel bag so they can seal it and lock it after
25 it's, after it's inventoried and, uh, once they did that then

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1 they kinda blocked all my preparation, um, to get ready for
2 trial, all I could do was my directed verdict and and also,
3 Your Honor, if you may, I I had a pretty pretty rough night as
4 far as my episodes, my my ---

5 THE COURT: Far as what?

6 MR. WALKER: My episodes.. I I had a s -- was pretty
7 psyched out last night.

8 THE COURT: Uh, do you want me to have, uh, Dr. Maddox
9 and check her schedule and see if she can come down today?

10 MR. WALKER: Yeah, if she may, Your Honor, that it ---

11 THE COURT: Sir?

12 MR. WALKER: If if she may, uh, it's it's relevant, if
13 not, it's no, it's no large deal.

14 THE COURT: I'll check on her schedule. Alright, well
15 yesterday you had begun your argument on, uh, your directed
16 verdict motion and you were, had cited one case, uh, *State vs.*
17 *Bostick*, I'll be glad for you to continue, uh, with your, uh,
18 argument, uh, on the directed verdict motion, Mr. Walker.

19 MR. WALKER: I, uh, I will shortly glad to continue, Your
20 Honor, if I can pull up, uh, *State vs. Bostick* real quick.

21 THE COURT: Yes, sir.

22 (Pause.)

23 THE COURT: Alright, Mr. Walker.

24 MR. WALKER: Yes, sir, Your Honor. Um, if I may, uh, if
25 if the Court finds consideration, I'd, um, like continue my

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1 directed verdict, um, I didn't start -- I did leave off at
2 *State vs. Bostick*. Um, *State vs. Bostick* is, uh, cumulative
3 that that, uh, generally if somebody, uh, somebody at trial,
4 uh, when the State only produces suspicion therefore it's
5 allowed or shall be granted a directed verdict, um, and if I
6 may, Your Honor, uh, I'd like to point the Court to the, uh,
7 indictment, um, in this case and, uh, if I shall read it, it
8 says, uh, In that or about, uh, 12/10/2002 while at [REDACTED]
9 Alexander Street, West Columbia David Richard Walker, Jr. did
10 with malice aforethought cause the death, cause the death of
11 his girlfriend Catherine Carrie Banty with whom he cohabitated
12 and has a child in common, defendant caused the victim's death
13 by manual strangulation and blunt force trauma to her head and
14 and body, the murder occurred at the shared home while the
15 4-year-old daughter was in the residence, Walker was the
16 witness by the neighbor to be at house ---

17 THE COURT: You reading the indictment, ---

18 MR. WALKER: That's ---

19 THE COURT: --- or ---

20 MR. WALKER: --- correct, Your Honor.

21 THE COURT: --- the arrest warrant?

22 MR. WALKER: Arrest warrant.

23 THE COURT: Alright.

24 MR. WALKER: Uh, the nei, uh, uh, Walker was, Walker was
25 seen by a neighbor at the house at the estimounted --

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1 estimated time the death, the defendant then failed, uh, fled
2 leavin' their daughter with the victim's dead body. Walker
3 was stopped by Aiken County deputies on 12/17/2017 actin'
4 suspicious without provocation, stated that he was wanted for
5 murder, this was the first contact that he had with anybody,
6 uh, and and s -- and then it it just further state that, uh,
7 crime of murder violation.

8 Your Honor, uh, in in criminal cases the -- a defense is
9 titled to a directed verdict when the State fails to produce
10 evidence of the offense charged. A criminal defendant must be
11 convicted, if convicted at all, of a particular offense
12 charged in the bill of indictment and a material variance
13 between charge and proof entitles the defendant to a directed
14 verdict, there is sure a variance in what the State has
15 produced and what they have said in the indictment. They've
16 produced cell phone maps, Your Honor, they've produced phone
17 records, they produced autopsy photos, they provided --
18 produced a ID card, they produced a blood toxicologist, uh, a
19 sample, they were produced a 911 call, a in-car video dash cam
20 of Aiken County Sergeant Kowalski [sic] and a interview with
21 me taken by a West Columbia Detective Lieutenant Bruce Wade
22 and, uh, ahead ---

23 THE COURT: I do not think that's in evidence, uh, in the
24 State's case-in-chief that was in camera.

25 MR. WALKER: What ---

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1 THE COURT: Detective Wade -- Captain Wade was not called
2 as a witness in the trial of the case.

3 MR. WALKER: Page Moore was, Your Honor.

4 THE COURT: Sir?

5 MR. WALKER: Thought Page Moore was.

6 THE COURT: Not in the trial of the case.

7 MR. WALKER: Well there's a video, is ---

8 THE COURT: That ---

9 MR. WALKER: --- that ---

10 THE COURT: --- was, uh, that was in camera in the, uh,
11 *Jackson vs. Denno* hearing.

12 MR. WALKER: Well we have it in evidence in this trial,
13 Your Honor.

14 THE COURT: No, sir, it's not for the jury. I consider
15 the record that's been introduced in front of the jury, not
16 pretrial.

17 MR. WALKER: I I don't know, I I was examine the evidence
18 this morning, Your Honor, and I seen the video in there so I'm
19 I'm glad that it's not included.

20 THE COURT: Let let me see that video, please. What what
21 exhibit is it?

22 MR. WALKER: I'm not sure, Your Honor, I may look ---

23 THE COURT: If I can see all the exhibits, madam court
24 reporter.

25 MR. WALKER: CDs, Madam court.

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1 (Whereupon, the exhibits were handed to the Court.)

2 THE COURT: Thank you, uh, ---

3 COURT REPORTER: You're welcome.

4 (Pause.)

5 THE COURT: The video, there, actually there was no, uh,
6 video of that, uh, conversation between you and, uh, Captain
7 Wade and, uh, Investigator McCraw. I think it was, uh, the
8 audio, is that what you're referring to?

9 MR. WALKER: Yes, sir, says, Statement interview.

10 THE COURT: Alright, here's the 911 call State's 8,
11 in-car video redacted State's 45. There is an interview with,
12 uh, marked State's 3, is that in evidence?

13 COURT REPORTER: No.

14 THE COURT: State's 3's not in evidence, it's that, it
15 interviewed with David Walker and it's got T. McCraw on it,
16 that's not in evidence.

17 MR. WALKER: I I'm, I was under the impression because I
18 was told that it was evidence this mornin', that's why I was
19 under impression. I didn't, I didn't remember it goin' in
20 either, Your Honor, but I I don't ---

21 THE COURT: That's that's not in evidence, uh, before the
22 jury and then there's, uh, State's Exhibit 2 which is, uh,
23 Detective Kostyk's, uh, full video, unredacted version, and so
24 the, uh, the, uh, audio conversation between you, Captain, uh,
25 Wade and Detective McCraw is not in evidence before the jury.

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1 MR. WALKER: Alright, thank you, Your Honor, but the
2 State has produced autopsy photos that tends to prove a
3 homicide but for not a murder. Typically the State has
4 produced what is better known as a "homicide" but they failed
5 to tend a corpus dilect that tends that I acted or engaged in
6 murder. In a criminal case before a defendant can be required
7 to go into his defense it is necessary the State establish
8 some proof corpus delecti. Uh, the prosecution must show the
9 fact of injury or harm and the existence of some person who is
10 criminally respons -- is proven responsibility, that is, the
11 actual commission by someone of the particular offense charged
12 and you're, the reason I state that is basically because that
13 they they, that they show enough, can can prove a homicide
14 which is a commonly is is is a corpus delecti [sic] but they
15 can't tend that I I'm associated with their corp delecti.

16 THE COURT: Alright, well then address that issue.

17 MR. WALKER: Um, basically, Your Honor, uh, I, that a a
18 corpus delect is basically ---

19 THE COURT: No, that you said they can prove that so ---

20 MR. WALKER: No, I said that ---

21 THE COURT: --- address the issue ---

22 MR. WALKER: I I'm sayin', ---

23 THE COURT: --- on the ---

24 MR. WALKER: --- I I'm sayin' that they have, they have
25 a body, Your Honor, and corpus delective [sic], uh, ---

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1 THE COURT: I'm saying you have just said they can prove
2 the corpus delecti, address the issue of the directed verdict
3 as to how it applies to you.

4 MR. WALKER: I mean, typically it doesn't apply to me,
5 Your Honor, but that I I I I didn't, I didn't establish it to
6 the Court to, uh, to better me or to to entitle myself to a
7 directed verdict, I I basically brought it to the Court's,
8 brought it into this motion because, um, it it's it's natural
9 law when it comes to a a homicide and when it comes to a
10 typical typical homicide and and and murder and whatnot, um,
11 and I I just thought that the State, you know, cannot tend me
12 to their corpus delect, uh, delecti.

13 THE COURT: Alright, uh, anything further, Mr. Walker?

14 MR. WALKER: Yes, sir, Your Honor.

15 THE COURT: Alright, and continue please.

16 MR. WALKER: Alright, um, and and, again, Your Honor,
17 they they've not shown murder, they've shown homicide and, uh,
18 they -- there's -- they especially tied their their facts and
19 their alleged facts to the ground, to a ground of murder and
20 are grounds that I committed the alleged acts or accused a
21 murder. A conviction cannot be exstantial [sic] without any
22 evidence to show intent or better known as guilt. There is no
23 mensrea, uh, spelt M-E-N-S-R-E-A, showing aforethought malice
24 and especially not expressed and/or implied of basic
25 attempt -- intent, with that bein' said the State has shown no

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1 state of mind of myself that tends and shows aforethought or
2 malice expressed or applied. The basic rule is that one
3 cannot be convicted of an offense unless his mental state was
4 that required by the particular offense. Criminal cases
5 throughout the history show that malice is defined as a hatred
6 or ill will, the State fails to produce hatred or ill will;
7 further, malice indicates a wicked or deprived spirit, intent
8 or wrongdoing, the State cannot vouch to my intentions or
9 especially not produce or show any or even one ground of the
10 wicked or deprived spirit. Malice malice is a legal term
11 imply weakness and it excluding in just cause or excuse, the
12 State has failed to produce wickedness and/or exclude just
13 cause and/or excuse. The term "malice" is found purpose and
14 design to do a wrongful act under the circumstances that
15 exclude legal right to do it, the State produced no evidence
16 that shows malice, shows that I par -- partake or, excuse me,
17 Your Honor. The State produced no evidence that shows malice
18 partaked by me, myself the defendant and cannot and has not
19 either produced a subjective to the element forethought. I'm
20 presumed to be innocent, the State has concluded their
21 evidence upon that, they produced no direct evidence, they
22 produced no eyewitnesses, they they no proof that the accused
23 strangulation was not in self-defense, defense of another or
24 any other hypothetical reasoning and thereof shows no proof
25 but in a suspicion. The prosecutor must show the guilt of

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1 accused beyond a reasonable doubt as to every element of the
2 crime charged, uh, that is *State vs. Simmons* and *State vs.*
3 *Barksdale*. The autopsy photos is circumstantial that tend to
4 show a homicide, death at the hands of another, not murder.
5 Circumstantial evidence is proof of a chain of facts and
6 circumstance indicatin' the existence of a fact where a fact
7 has produced circumstantial evidence to a homicide not a
8 murder, also their chain of circum -- circumstantial evidence
9 is unlinked meaning they have broke the chain, they are not
10 together, therefore do not tier to produce the chain of facts
11 and circumstance indicatin' the existence of a fact, the last
12 word "fact" in this, in this case typically is the element of
13 murder that must be met with aforethought or malice either
14 expressed or implied, there must be a stantial evidence which
15 reasonably tend to prove the guilt of the accused. The
16 defendant is titled to a directed verdict when the State fails
17 to produce evidence of defense charged, *State vs. Weston*.

18 THE COURT: *Weston*?

19 MR. WALKER: Yes, sir, Your Honor.

20 THE COURT: Was that a Richland County murder case?

21 MR. WALKER: Uh, 367 S.C. 279.

22 THE COURT: Had to do with a search of a vehicle on the,
23 uh, ammunition, ---

24 MR. WALKER: I ---

25 THE COURT: --- is that *Weston*?

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1 MR. WALKER: --- I'm not sure, Your Honor, I just come
2 across the cite on the, uh, sentences.

3 THE COURT: Go right ahead.

4 MR. WALKER: Your Honor, I I -- the State, uh, that the
5 State, the State basically it interference, show interference
6 but they they, there's no possible way that they show murder,
7 Your Honor, and their their tiers of circumstantial evidence
8 is unlinked therefore they can't be considered as a consistent
9 circumstantial evidence links together, that they're, they
10 can't link together, Your Honor. Um, with that bein' said,
11 Your Honor, um, if if I may, that they they brought
12 indictment, um; and arrest warrant on me statin' malice
13 aforethought caused by blunt trauma to the head, manual
14 strangulation, um, and and, uh, all this is inconsistent with
15 with me committin' mur -- with me committin' murder, Your
16 Honor, there's there's there's no way that they can possibly
17 tend or tier circumstantial evidence enough to, uh, to
18 proceed. Thank you, Your Honor.

19 THE COURT: Thank you, uh, Mr. Walker, uh, Solicitor.

20 MR. GRAHAM: Thank Your Honor. At this stage, Your
21 Honor, um, the Court looks at the testimony and the facts, um,
22 and evidence in the light most favorable to the State on a
23 directed verdict motion, in that regard, Your Honor, you'll
24 remember Nikki Inabinet, she was the co-worker, she said that
25 she was aware that Mr. Walker was coming to live with Carrie,

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1 that Carrie was nervous, excited about it but then her
2 demeanor changed once it actually occurred. She said that
3 Carrie told her what was going on in the house, she described
4 David Walker as mean and the last two days of her life ---

5 MR. WALKER: Objection, Your Honor.

6 THE COURT: Don't don't interrupt, please.

7 MR. GRAHAM: The last two days of her life she testified
8 that Carrie at work was crying and upset, um, her advice to
9 Carrie after their conversations was for her to leave him.
10 You go to the phone records, Your Honor, the phone records put
11 him at the house up until 11:00 p.m. The following day around
12 noon Mr. Eugene Ray finds 3-year-old Cassidy in in her pajamas
13 wandering down the street crying. Where's Mr. Walker? He's
14 supposed to live at that house, everybody knows he lives at
15 the house, we had Judy Banty the stepmother, you had Nikki
16 testify to it, you had the Lexington Medical Center testify
17 that that was his address and provided that with being his
18 phone number but where was he? he wasn't there, he ran.
19 There's no sign of forced entry to the house, there's just him
20 and running. Flight is evidence of guilt or can be argued as
21 evidence of guilt, Your Honor. Eight days later he's found,
22 he's found in Aiken County during a Terri stop by Sergeant
23 Kostyk the Aiken County Sheriff's Department and their
24 conversations which is on video and Your Honor has heard
25 test -- Your Honor has heard testimony to. Sergeant asked him

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1 what does he have a warrant for, he says, Murder. He,
2 Mr. Walker put in the next part which says, Have you done
3 murdered somebody, and he answered, Yes, not have you killed
4 somebody, not have you done it in self-defense, not have you
5 done in accident but murder which is the legal definition, the
6 State can convict -- the the jury could find him guilty of
7 that just on the statement to Officer Kostyk. He told Johnny
8 Darby that he killed his baby's mama.

9 When you look specifically at malice, Your Honor, you can
10 look at the fact that he ran, you can look at the way that the
11 scene was left, there's evidence the, we argue the jury can
12 infer that Mr. Walker staged the scene, that there was a belt
13 as a tourniquet at the scene, that there was puncture wounds
14 or needle puncture wounds on Carrie's I believe left arm, that
15 the doctor said that the belt could have made the two linear
16 bruises on her upper arm, there was the syringe found outside
17 that had cocaine in it, although she had no new drugs in her
18 system, that's evidence of staging that the jury could find
19 malice showing his actions before, during and after the crime.
20 In addition, in addition, Your Honor, the substantial
21 bruising, blunt force trauma, finger marks, abrasions shows
22 that Carrie Banty was fighting for her life. The doctor is an
23 expert in the field of forensic pathology says that it takes
24 four to five minutes of consistent significant force for
25 strangulation so for four or five minutes, Your Honor, well

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1 past the time that she passed out, well past the time that
2 petechia was in her eyes, well past the time that there was
3 any struggle, David Walker continued to strangle her, you
4 also have postmortem abrasions on Carrie's ankle showing that
5 something happened to her after she was died, either she was
6 struck with something or she was drug across the carpet or
7 something along those lines, her pants you can tell had been
8 moved up, there's some alteration of the scene and it's not by
9 Mr. Eugene Ray rolling him over, there's plenty of evidence of
10 malice, there's plenty evidence that it's Mr. Walker
11 committed, convict of the murder, Your Honor, is jury
12 question. Thank you.

13 THE COURT: Thank you, uh, Solicitor. Mr. Walker.

14 MR. WALKER: Yes, sir, Your Honor. I I think Tabatha
15 Inabidits, uh, or Taneta, Taneta Inabit's [sic], uh, testimony
16 is highly irrelevant. Uh, basically she can testify, she can
17 testify as she sees fit, um, uh, she she can basically say
18 what she wants, she can tell any any story she wishes to say,
19 um, and especially with Car -- the victim bein' her friend so
20 therefore she's kind of a hostile witness and, uh, despite my
21 pro se status I really can't get the the elected testimony I
22 need so I I, Your Honor, with with that bein' said she sh --
23 she's not really, sh -- sh -- she's not committed to, uh,
24 telling the truth. Um, I did ask her some questions that what
25 didn't seem truthful to me, um, so I I I think her testimony

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1 is highly irrelevant and, uh, I think it should be excluded
2 and, uh, determine directed verdict, um, also, uh, the
3 solicitor has said somethin' another about a, 'bout phone
4 records tie me into, uh, the crime, whatnot, um, I I I know
5 of, uh, that I I know of cases, Your Honor, that I can't top
6 off the top a my head that typically state that, uh, cell
7 phone records are not significant to locate someone via that
8 your mother could have your phone, it could be tied to your
9 dog's collar or it could ---

10 THE COURT: That that goes to the weight, not the
11 admissibility, uh, con ---

12 MR. WALKER: Continue?

13 THE COURT: Make your next point, uh, Mr. Walker.

14 MR. WALKER: Alright. Uh, also, Your Honor, that, uh,
15 Solicitor Graham has stated the pathologist states that I
16 strangulation or, uh, in in this case, uh, there there's
17 typically no one denyin' strangulation in this case, uh, if
18 the, if the pathologist says it was strangulation in the case,
19 it's strangulation, uh, but what you, what you gotta get at is
20 strangulation can occur in self-defense, strangulation can
21 occur ---

22 THE COURT: There's no ---

23 MR. WALKER: --- in ---

24 THE COURT: --- evidence in the record before the jury
25 that it was self-defense.

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1 MR. WALKER: But that is opinion, Your Honor.

2 THE COURT: That's, uh, my opinion and that's who's
3 rulin' on the directed verdict. There's no evidence in the
4 record for the jury that this is self-defense.

5 MR. WALKER: Right, um, but well, yes, sir, Your Honor,
6 so I'll I'll take it, I'll take it that that, I mean, even if
7 there was strangulation, the the pathologist says that it was,
8 it takes one minute to four minute, uh, one to four minutes
9 and, uh, to to strangle someone and that she she fails to
10 neglect in her opinion or I don't agree with her opinion
11 'cause someone can be strangled in a tier, uh, in a a tier
12 strangulations that could, that could, uh, ---

13 THE COURT: No evidence in the record as to that.

14 MR. WALKER: Am I allowed to state my opinion, Your
15 Honor?

16 THE COURT: You're allowed to stay focused on the
17 directed verdict, you're not allowed to testify when you're
18 makin' a motion for directed verdict nor is the solicitor.
19 You're allowed to rely on the evidence in the record or the
20 lack of evidence in the record.

21 MR. WALKER: Alright. Well, Your Honor, there's there's
22 there's a lack a evidence that, uh, that that there's a lack
23 of opinion, Your Honor, by by Janice Ross that that that
24 shoulda been addressed that wasn't addressed and and I think
25 there's many more circumstances in the homicide that cou --

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1 could be relevant to the cause of death, um, so if the Court
2 will take that in consideration, also, the solicitor has, uh,
3 addressed flight. Uh, in *State vs. Pagan*, 369 S ---

4 THE COURT: *State vs. Pagan*?

5 MR. WALKER: Yes, sir, three-sixty ---

6 THE COURT: Florence County?

7 MR. WALKER: I'm not sure.. 369 S.C. 201, that the the
8 Court held ---

9 THE COURT: Tell you who he killed in a second.

10 MR. WALKER: Thank Your Honor.

11 THE COURT: Know who the other suspect was a guy named
12 Stephen Blite -- Blathers whose DNA was actually in the, uh,
13 victim, it's also a good case to read for flight.

14 MR. WALKER: That was ---

15 THE COURT: Go right ahead, tell me about *Pagan*.

16 MR. WALKER: That the, Your Honor, in *State vs. Pagan*
17 the Court held that the fight evidence was not relevant
18 because there was no nexus between flight and the charged
19 offense of murder.

20 THE COURT: I believe that conviction was affirmed.

21 MR. WALKER: Yes, Your Honor, but, uh, it's, it, the
22 Court has typically stated that the, I'm I'm not addressin'
23 affirmity here or what the Court has said, I'm addressin' what
24 what the Court has stated and the Court, the Court held in
25 this that flight evidence is not relevant when there's no

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1 nexus between a flight and the charge, and the charged offense
2 of murder, the evidence did not create an interference that
3 defendant alleged failure to in this case stop for blue lights
4 was a motive for his belief that the police officer was
5 seekin' him for his pendin' murder charge, therefore I state,
6 Your Honor, that because I; because I wasn't at the residence
7 the State can't produce flight and even if I was at the
8 residence and I left the residence, the State has no tendency
9 to show flight because they can't say that I was eludin'
10 prosecution, ---

11 THE COURT: Alright.

12 MR. WALKER: --- also, one other thing, Your Honor, the
13 the State said that, uh, that because I gave a conviction or a
14 testimony, if I, because I I s -- gave a statement to, um,
15 Sergeant Kowalski sayin' that, uh, uh, sayin' that, uh, I I
16 typically murdered somebody but, uh, this this this is for,
17 uh, the weight, Your Honor, not necessarily, um, the Court in
18 *State vs. White*, 311 S.C. 289, um, states, A a conviction
19 cannot be held on a confe -- a confession unless corroborated
20 by proof aliunde [sic].

21 THE COURT: Proof aliunde that that all that means is
22 you've got to prove the corpus delecti, you can't, you can't
23 convict a person on a confession alone unless you can prove
24 the corpus delecti of a crime, ---

25 MR. WALKER: Correct.

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1 THE COURT: --- and that that really comes into play more
2 with, uh, in my opinion with no body cases. You've got to
3 prove, uh, that the victim, uh, uh, has been, uh, murdered
4 even though you may not be able to find a, and may not be able
5 to find a, uh, body, ---

6 MR. WALKER: Right.

7 THE COURT: --- so first thing you have to do is prove
8 corpus delecti before, uh, you look at a statement or
9 confession made.

10 MR. WALKER: Right, and ---

11 THE COURT: Somebody can't go in police department and
12 confess to committing a homicide and then, uh, police, uh,
13 can't find the body or the police can't even find that person
14 existed or such like that more than anything else. Uh, ---

15 MR. WALKER: I I I think with that, Your Honor, is the
16 same person rule that kinda that that same person that runs,
17 you know, tells someone they did somethin' ---

18 THE COURT: Well that's that Colorado case where the guy
19 told the officers that God told him to confess, ---

20 MR. WALKER: Um, familiar with ---

21 THE COURT: --- Colorado ---

22 MR. WALKER: --- that.

23 THE COURT: --- vs. *Connelly, Connelly or Springs,*
24 *Connelly or Spring,* go right ahead, Mr., uh, ---

25 MR. WALKER: Your Honor, what I was gettin' at is, uh,

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1 and in the notes that I'm readin' it it further is in, uh,
2 S -- State vs. Williams, 321 S.C., uh, 381, Proof of a corpus
3 delecti is not a, uh, pre -- prerequisite, uh, uh, if I may I'll
4 spell it, pre -- P-R-E-R-U, uh, R-E-Q-U-I-S-I-T-E ---

5 THE COURT: You've already addressed corpus delecti.

6 MR. WALKER: Alright, I I'm gettin' back on the
7 confession that they they they basically sayin' that I I give
8 a statement that that can corroborate as a, as a confession is
9 what the the State is gettin' at there, Your Honor, and what
10 I'm gettin' at is that it's irrelevant, uh, even with a
11 corporate [sic] delecti, there's no corroboration to, I
12 mean, ---

13 THE COURT: Alright. ---

14 MR. WALKER: --- and that ---

15 THE COURT: Anything further, Mr. Walker?

16 MR. WALKER: Yeah, uh, yes, sir, Your Honor. I I don't
17 think that they provided, uh, significant independence
18 evidence that would serve to corroborate the -- my, uh,
19 judicial exjudicial statement, um, and with with s -- with the
20 statements that per -- per -- permits a reasonable belief a
21 the crime that occurred, that basically, Your Honor, I I can
22 say I I I murdered somebody or I can say I I was, uh, drinkin'
23 in a car but that doesn't make me liable for DUI, you know,
24 so . . .

25 THE COURT: Depends on where you're at. If you're at the

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1 intersection of, uh, Main Street and South Lake drinkin' in
2 the car slumped over the wheel, you might be guilty a DUI.

3 MR. WALKER: They say long as the keys' in ---

4 THE COURT: There'll be ---

5 MR. WALKER: --- ignition.

6 THE COURT: --- circumstances, that's what circumstantial
7 evidence is. Thank you, uh, Mr. Walker.

8 MR. WALKER: Thank Your Honor.

9 THE COURT: Mr. Walker, uh, had cited, uh, *State vs. uh,*
10 *Bostick*, 392 South Carolina 134, 2011 case which was a
11 homicide case out of, uh, Jasper County where Mr. Bostick was
12 accused and convicted of killing one ---

13 MR. WALKER: Your Honor, if I may, I think -- I
14 believe that ---

15 THE COURT: Please ---

16 MR. WALKER: --- case was ---

17 THE COURT: --- please don't interrupt me.

18 MR. WALKER: Yes, Your Honor.

19 THE COURT: What what what do you want now, Mr. Walker?

20 MR. WALKER: I just wanna correct, Your Honor, I think
21 that, I think that case was in Colleton County, not Jasper
22 County.

23 THE COURT: Uh, no, sir, it's, I'm sitting here, uh,
24 reading it, uh, which I read it until about two o'clock this
25 mornin'.

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1 MR. WALKER: Sorry.

2 THE COURT: Uh, defendant was convicted in a jury trial
3 in circuit court Jasper County, Steven H. John's Judge.

4 MR. WALKER: I thought it was ---

5 THE COURT: Now I assume that's the case you're
6 citing, ---

7 MR. WALKER: That's correct.

8 THE COURT: --- it's a circumstantial evidence case, ---

9 MR. WALKER: Directed verdict.

10 THE COURT: --- it cites that case within it out of
11 Colleton County which is called, uh, *State vs. Arnold* where
12 the victim was Jennings Cox who was shot and his body was
13 found off a dirt road in Colleton County, it also cites *State*
14 *vs. Schrock* which was a homicide in Orangeburg County, uh,
15 both of which, uh, Schrock and, uh, Arnold were convicted and
16 the Court found that, uh, the judge was was in error, the
17 trial judge, and reversed it, uh, and held that a directed
18 verdict of acquittal should have been granted, it also cites
19 *State vs.*, uh, *Mitchell* which is a burglary case and I'm not
20 sure what county, uh, that was out of but if that's not the
21 case you cited, please ha -- hand me up a correct *State vs.*
22 *Bostick*.

23 MR. WALKER: I I I'm sorry, Your Honor, I was relevant, I
24 thought, I thought that it was, uh, relevant to the Colleton
25 County rather than Jasper County, sorry for ---

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1 THE COURT: So ---

2 MR. WALKER: --- intruding.

3 THE COURT: --- I'm I'm reading the correct case or have
4 read the correct case that you cited.

5 MR. WALKER: Ye -- yes, sir, Your Honor.

6 THE COURT: Alright, thank you. In *Bostick*, uh, Ms., uh,
7 Polite, uh, was the treasurer and secretary of her church and
8 lived with her son Rudy and she, uh, being the treasurer a
9 church she brought home a briefcase containing money from
10 church every Sunday for deposit at the bank on Monday. On
11 Sunday afternoon, uh, her house caught on fire and as the fire
12 department was attempting to extingly -- or extinguish the
13 fire her body was found in the kitchen and removed by
14 firefighters. She was struck in the head with a blunt force
15 object but a subsequent autopsy revealed that she actually
16 died as a result of carbon monoxide from the fire. Her son
17 had left the house early in the day to go get an au -- to an
18 auto parts store to purchase a part for his mother's car, when
19 he returned the house was engulfed in fla -- flames and it
20 appeared it had been ransacked when he looked through the
21 window. He was present when the fire department kicked in the
22 back door and found his mother's body in the kitchen and arson
23 investigators determined the fire originated in Rudy's
24 bedroom, the son, and gasoline was used as an accelerant. Uh,
25 investigation was such that Polite's car keys, calculator and

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1 other items from her home was found in Bostick's, the
2 defendant's, family burn pile. The fire in the burn pile was
3 accelerated with either kerosene or diesel fuel and Bostick's
4 mother did not use those accelerants when she burned in the
5 fire pile. Bostick had a pattern that matched gasoline on his
6 shoes and gasoline was the accelerant used for the house fire.
7 While the DNA from the blood found on Bostick's jeans excluded
8 about 99 percent of the population, the blood could not be
9 matched to Polite's DNA; in addition, the weapon used to beat
10 the victim in the head was never introduced into evidence;
11 further, no evidence was introduced concerning Bostick's
12 knowledge that Polite may have had money in the briefcase or
13 if indeed any money was in the briefcase on that particular
14 Sunday. Our court ruled that the evidence presented by the
15 State raised at most a mere suspicion of guilt. A mere
16 suspicion in looking at the definit -- di, uh, dictionary
17 definition the mere means nothing more than; nothing more
18 important than a suspicion is defined as the apprehension or
19 imagination of the existence of something wrong based only on
20 inconclusion and slight evidence or possibly even no evidence
21 though *Schrock* and, uh, *Arnold* appear to follow that same
22 line of reasoning. Cited in, uh, *Polite* is a case should be
23 submitted to the jury when the evidence is circumstantial if
24 there is any substantial evidence which reasonably tends to
25 prove the guilt of the accused or from which his guilt may be

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1 fairly and logically deduced, the jury weighs the evidence but
2 when there is an absence of evidence, it's becomes the duty of
3 the trial judge to direct a verdict. Evidence must constitute
4 positive proof of facts and circumstances which reasonably
5 tends to prove guilt. Unless there is a total failure of
6 competent evidence as to the charges alleged, refusal by the
7 trial judge direct his verdict of acquittal is not evidence.

8 As to, uh, the evidence that has been presented in this
9 case, as an initial matter, uh, you have, uh, Cassidy age 3 at
10 the time, uh, wandering the streets and bein' encountered by
11 Mr. Ray at about noon 'bout midday on the date of, let's see,
12 what was the date of the homicide, hand me the indictment
13 please, madam clerk.

14 THE CLERK: Yes, Your Honor.

15 (Whereupon, the clerk handed the indictment to the
16 Court.)

17 THE COURT: And there is a calendar for December 12 in
18 evidence but on the date of 10 December of 2012, police are
19 called, uh, to the, uh, residence at that time, uh, a
20 actually, uh, before the police are called the body of, uh, of
21 the victim Ms. Banty is discovered in the, uh, bedroom, uh, by
22 Mr., uh, by Mr. Ray. Testimony both, uh, Mr. Ray also
23 including what, uh, was said to her -- to him by, uh, Cassidy
24 is that the body was cold to the touch, he thought something
25 was wrong with her mama 'cause her body was so cold, uh,

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1 giving some, uh, reasonable inference that she had been dead
2 for a, uh, period of time although there was not yet any
3 visible, uh, deterioration but there was, uh, lividity and
4 some, uh, some rigor mortis as I understand it. Uh, going
5 from there the testimony both from Mr. Banty and the records
6 at the Lexington Medical Center put three, Ms. Banty, the
7 stepmother put three people as residents of that location: Ms.
8 Banty, Mr. Walker and, uh, Cassidy. Uh, Mr. Walker, uh, is
9 not present at that time of the police arrival, uh, nor
10 throughout the course of the, uh, crime scene investigation,
11 uh, on, uh, the date of the, it's alleged in the indictment on
12 the homicide; also, uh, State's Exhibit No. 21 appears the
13 door of the residence there is no forced entry, um, also,
14 there photographs that have been offered into evidence as to,
15 uh, the condition of the residence, State's 27, 28 and perhaps
16 others; fact, there are others, uh, hand me that, 22, 23, 24,
17 25 that there's no disarray, uh, within the house whereby a,
18 uh, uh, there was an intruder or there was a burglary or
19 something, uh, something of a, something of that nature
20 although, uh, it's in the record that a missing person was,
21 uh, put out, an endangered person as to Mr. Walker, um, and
22 the Officer, uh, Kostyk, uh, testified to that and perhaps on
23 day two that it was put out, uh, he's not present, not to be
24 found at that time. Um, there's also within the residence
25 items of clothing that belong to a male and they find in

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1 there, State's Exhibit No. 29, a photograph of the
2 identification card of David Richard Walker, uh, although the,
3 uh, address on the card is Walterboro, uh, having gone to the
4 emergency room the night before the address I believe
5 Ms. Walker testified to was, uh, [REDACTED] uh, [REDACTED] [REDACTED] Alexander
6 Street.

7 Uh, one difference between Pol, uh, between, uh, Bostick
8 and the homicide of Ms., uh, Polite and Walker is Bostick was
9 not a resident of the, uh, crime scene and there's no one
10 that, uh, ever saw him at the crime scene, he didn't live
11 with, uh, Ms. Bostick but we have the other resident of the,
12 uh, crime scene where the homicide occurred and it's clear
13 from the autopsy, the testimony of Dr. Ross, um, that this is
14 a a, uh, homicide manual strangulation, bruises, uh, injuries,
15 uh, from basically the top from her head all the way down, uh,
16 all the way down to her feet bilatery on her arms, uh, on her
17 shoulder blades, on her knees, throughout her body, it's clear
18 that it is a, uh, malicious whether expressed or implied, uh,
19 homicide, i.e., it's murder.

20 Uh, police begin, uh, looking for, uh, the, uh,
21 defendant, there are cell phone records, uh, in looking at the
22 charts on both State's Exhibit 42 and 43, uh, is the diagrams,
23 uh, by Mr., uh, Hines, Agent Hines concerning the, uh, cell
24 phone records and on State's Exhibit 42 it indicates, uh, [REDACTED]
25 Alexander Street, West Columbia within the, uh, tower that was

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1 hit and on State's Exhibit 43 although, uh, it is not marked
2 the same, when you come down, uh, number 1 right before, uh,
3 right after number 1 splits off a 12th street, actually is a
4 green mark there where it's A-L-E-X-A-R, so Mr., uh, Walker's
5 cell phone was, uh, hitting that tower and there records from
6 that cell phone, State's Exhibits No. 41 and and 42, uh, where
7 that cell phone was used at various times on the, uh, let's
8 see, what's the date on, uh, -- where's that indictment?

9 (Pause.)

10 THE COURT: On the date of, included within the, uh, time
11 of the, uh, homicide, uh, that's a circumstantial evidence,
12 uh, circumstantial evidence is resident there, circumstantial
13 evidence had a cell phone, circumstantial evidence his cell
14 phone was hitting towers which included the, uh, location of
15 the crime scene. Circumstantial evidence may go to the
16 weight, clearly not the admissibility that generally
17 individual whose cell phone is the individual using, using
18 that cell phone. Um, as we, uh, go on through the, uh,
19 evidence or the testimony I should say, Mr. Sullivan, uh,
20 Mr. Sullivan the crime scene officer from, uh, West Columbia,
21 uh, photographs the, uh, outside the garbage containers and
22 then, uh, searches the, uh, container itself and finds in the
23 trash a syringe, syringe later on, uh, tested for toxicology,
24 uh, testing positive for cocaine and veterinarian heartworm
25 medicine, uh, found to be a cutting agent in that; also, you

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1 have the, uh, belt, it appears to be a male's belt, a
2 photograph of that belt State's Exhibit No. 20, excuse me, 32
3 in the bedroom where the body, the victim's body was found and
4 a, uh, what appeared to be a a and a a needle, uh, entry that
5 was testified to or needle mark by Dr. Ross and the pattern
6 injury of the belt is consistent with that belt having been
7 used and perhaps having been used as a, uh, tourniquet and the
8 drug that was used to cut the cocaine is L-E-V-A-M-I-S-O-L-E
9 testified to by Lieutenant Smith, he further testifies as to
10 the the lack of any, uh, legal or illegal drug in the sy -- in
11 the system of, uh, the victim with the exception of 0.016
12 which just is above the threshold as to be positive for
13 ethanol. Uh, then we come to, uh, the encounter with a
14 Sergeant Kosky [sic] in, uh, Aiken County on I believe 17
15 December so Mr. Walker had not been seen, heard from that
16 we're aware of for six days and he's found a number of miles
17 away in Aiken County acting, uh, as the officer's observations
18 indicate with his training and experience in law enforcement,
19 uh, as a suspicious individual. He is approached under a
20 valid, uh, Terri stop, he's searched, officers in getting, uh,
21 officer in getting information, uh, asked him if he, asked him
22 his name which he gives him and asked him if he's wanted for
23 anything, warrants or anything, he said yes, uh, indicates,
24 uh, there's a warrant for him for murder, uh, that is the
25 State's, uh, case-in-chief evidence from, uh, Sergeant Kosky,

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1 thereafter under the rule of completeness which I will
2 consider the remainder of, uh, the full and complete in, uh,
3 video and audio of the encounter between Sergeant Kosky's --
4 Kostyk, I'm sorry, the Aiken sergeant and Mr. Walker where he
5 says, uh, yes, he killed someone and, um, it it goes from
6 there and thereafter we get to the issue of, uh, Mr. Darby,
7 uh, it appears from the testimony that unsolicited Mr. Darby
8 writes a letter to the solicitor about a time when he's a
9 cellmate of Mr. Walker indicating that he had some information
10 as I understand it that he thought the solicitor should know
11 indicating that Mr. Darby [sic] confessed to murder his baby's
12 mama, the only testimony in the record as to that is that his
13 baby's mama is, uh, Catherine Banty, he's the, uh, father,
14 Catherine was the mother, in neither *Bostick*, *Arnold*, *Schrock*
15 or any of those cases are there any, uh, statements as to, uh,
16 as to, uh, guilt by the, uh, defendant. Uh, when I further
17 looked at, uh, *State vs.*, uh, *Pearson Pearson*, 'pologize I
18 don't have the cite but it's appellate case number, well it's
19 opinion number 27612, South Carolina Supreme Court 2016, uh,
20 is a case, uh, that was, the trial judge denied motion for
21 directed verdict, Court of Appeals reversed, Supreme Court
22 granted cert, Supreme Court reversed trial, that the Court,
23 Supreme Court reversed the Court of Appeals. The trial court
24 when ruling on a directed verdict motion views the evidence in
25 the light most favorable to the case and must submit the case

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1 to the jury if there's any substantial evidence which
2 reasonably tends to prove the guilt of the accused or from
3 which his guilt may be fairly and logically deduced. Cite on
4 *Pearson's* 415 South Carolina 463. Although the jury must
5 consider alternate hypothesis, the Court must concern itself
6 solely with the existence or nonexistence of evidence from
7 which a jury could reasonably infer guilt, the object -- if
8 this objective test is founded upon reasonableness,
9 accordingly ruling on a directed verdict motion where the
10 State relies on circumstantial evidence, the Court must
11 determine whether the evidence presented is sufficient to
12 allow a reasonable jury to find the defendant guilty beyond a
13 reasonable doubt. Uh, *Bostick* is also a footnote --
14 footnoted, uh, in, uh, *Pearson*, actually *Pearson* cites
15 *Bostick*, *Arnold* and *Mitchell* as examples where the Court found
16 circumstantial evidence was insumi -- insu -- insufficient.
17 Court indicated while we have certainly considered these other
18 cases *Bostick*, *Schrock*, *Bostick*, *Arnold* and *Mitchell*; however,
19 involving jurisprudence or inquiries or inquiries necessarily
20 fact-intensive and the holdings in these cases are limited to
21 their particular facts, so we have the facts, uh, in this
22 case, uh, as they are of both, uh, he being a resident, if not
23 a resident, um, left his ID there but he clearly was a
24 resident of the homic -- of the location of the homicide, we
25 have all the other, uh, totality of the facts and

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1 circumstances, uh, based on the standard that I must apply in
2 the light most favorable to the State, I would, uh,
3 respectfully, uh, deny the motion for directed verdict.

4 Alright, Mr. Walker, come around to the podium for me,
5 please.

6 (Whereupon, the defendant came forward)

7 THE COURT: Madam clerk, uh, place Mr., uh, right here
8 (indicating), right here in the center, ---

9 THE CLERK: Right there (indicating).

10 THE COURT: --- right here in the center. Have Mr.,
11 uh, ---

12 THE CLERK: Raise your right hand.

13 THE COURT: --- place Mr. Walker under oath.

14 THE CLERK: Okay.

15 THE COURT: Alright.

16 THE CLERK: Raise your right hand.

17 MR. WALKER: Alright.

18 DAVID RICHARD WALKER, having been
19 first duly sworn, testified as follows:

20 EXAMINATION BY THE COURT:

21 Q. Mr. Walker, uh, we're at the, uh, stage of the trial
22 where the State has rested, I have to go over a few things
23 with you, I do this with everyone is -- who is on trial and I
24 need their responses to be under oath, that's why I had the,
25 uh, clerk place you under oath. The defense now has the

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1 opportunity to present evidence for the jury, do you
2 understand where we are in the trial of the case?

3 A. Yes, sir, my understandin' is where I need to make a
4 decision to pr -- present a defense or or a allow the State to
5 go with a a closing argument then go to a closing argument
6 afterwards.

7 Q. In this regard you may call witnesses to testify on your
8 behalf and if you choose to testify yourself you may do so, do
9 you understand?

10 A. Yes, sir.

11 Q. No one can force you to testify, you have an absolute
12 right to remain silent and if you choose not to testify I will
13 tell this jury that they cannot hold your silence against you
14 in any way, I will tell them that they are not to discuss that
15 in the jury room whatsoever, do you understand?

16 A. Yes, Your Honor, but I I I believe that that that it is
17 at your discretion but upon my request that that may not be
18 entered, if I do not, uh, if I do not testify I do not wish
19 for that that instruction.

20 Q. Well, I am charged with the duty and responsibilities of
21 a South Carolina circuit court trial judge to charge the
22 law ---

23 A. I thought ---

24 Q. --- and no one can waive me charging the law. If I think
25 the law applies, I'm going to charge the law.

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1 A. I thought that you could waive the Fifth Amendment
2 charge.

3 Q. I am not -- I'm charged with the responsibility of
4 instructing the jury on the law that applies.

5 A. I I -- sorry.

6 Q. Alright, I'm I'm not talking to you about charges right
7 now, I'm talkin' to you about your right to testify.

8 A. Thank you.

9 Q. If your side offers no evidence at all; in other words,
10 if neither you nor anyone on your behalf testifies or offers
11 any exhibits then you will get to make the last argument to
12 the jury, otherwise the prosecutor gets to make the last
13 argument, do you understand?

14 A. Yes, sir, Your Honor.

15 THE COURT: Solicitor, does Mr. Walker have any prior
16 criminal history that would subject him to impeachment under
17 Rule 609?

18 MR. GRAHAM: He does, Your Honor. Um, ---

19 THE COURT: What would that be?

20 MR. GRAHAM: --- he has a breaking and entering that he
21 pled to on 10/27/2010 and at the same time coming from, uh,
22 the same warrant that I guess an indictment and sentencing
23 sheet, Your Honor, he has a larceny after breaking and
24 entering, he also pled on the same date the larceny of a motor
25 vehicle. Um, the breaking and entering was a felony, I don't

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1 know about the other ones, Your Honor, but they're all
2 involving crimes of dishonesty and I have certified copies
3 that I've already provided in discovery to make a court's
4 exhibit if Your Honor would like to see 'em too.

5 EXAMINATION BY THE COURT:

6 Q. Alright. Do you question the the validity of the factual
7 information that you have the breaking and entering, larceny
8 and the larceny -- stand back up here, Mr. Walker.

9 A. Um, I -- sorry, Your Honor.

10 Q. Do you question the validity that you have a prior
11 conviction for breaking and entering, larceny and larceny of a
12 motor vehicle?

13 A. I I don't deny it, Your Honor, but I have not received
14 this -- the indictments that Mr. Graham is speakin' of.

15 Q. Alright, I'll have him, uh, make you -- I have a copy
16 made for you. If you, if you do testify, the law allows the
17 prosecutor to ask you in fronta the jury 'bout whether y -- or
18 not you had, whether you've been convicted of certain offenses
19 in the past, that being breaking and entering, larceny and
20 larceny of a motor vehicle, they cannot go into details of the
21 prior, the details of the prior offenses but they can ask you
22 if you have been convicted of those offenses, if that happens
23 I will tell this jury that they cannot consider that evidence
24 against you, if they consider it at all, on the issue of where
25 your testimony is believable and for no other purpose, do you

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1 understand?

2 A. Correct, Your Honor.

3 Q. The decision about which -- whether you testify or not is
4 your decision to make and yours alone, I expect that you have
5 conferred with others whose opinions you value on life's
6 important decisions; perhaps your standby counsel, perhaps
7 your private investigator and/or others but the decision about
8 whether you testify or not is your call to make, your
9 decision, do you understand?

10 A. Yes, sir, Your Honor.

11 Q. Has anyone exercised any undue influence over you to get
12 you to choose to testify or not testify?

13 A. No, sir, not at this time, Your Honor.

14 Q. Today are you under the influence of any drugs, alcohol,
15 medication or anything that negatively affects your thinking
16 ability?

17 A. Not negatively, Your Honor, but the Court may consider
18 the Tylenol 3s.

19 Q. Do you suffer --- and it does not negatively affect your
20 thinking ability?

21 A. That's correct, Your Honor.

22 Q. Do you suffer from any physical or mental problems that
23 affect your thinking ability negative today?

24 A. Yes, sir, Your Honor, extensively.

25 Q. Whatever decision you have made about whether to testify

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1 or not to testify is it your decision made of your own free
2 will and accord?

3 A. Yes, sir, Your Honor.

4 Q. Have you made that decision?

5 A. No, sir, Your Honor.

6 Q. And do you have any questions you would like to ask me
7 about your decision to testify or not testify?

8 A. Would it be relevant, uh, as Ms., uh, Schwartz-Maddox is
9 here to, uh, maybe competency, uh, the ability to testify,
10 uh, ---

11 Q. Say that again, Mr. Walker, I apologize.

12 A. I I don't know if the Court has ever, I've I've never
13 seen it and I've never never known it done but I with my
14 neurological [sic] de -- defi, uh, deficits and also my, uh,
15 mentally, my mental deficits at this time, um, it may render
16 my ability to testify and answer questions, um, if I was to
17 take the stand so I I think it may be proper or understandin'
18 that, uh, Ms. Maddox when she comes, uh, relevant with me to
19 maybe inter into that a little bit and maybe she can recommend
20 some recommendations as to, uh, what may be needed on the
21 stand and what may not be needed on my competency to take the
22 stand if it's, I've never seen it done, Your Honor, but it may
23 or may not be relevant.

24 Q. Uh, no, sir, Dr. Maddox is a forensic psychiatrist, one
25 of many of her specialties is, uh, competency evaluations, a

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1 competency to stand trial such as that, uh, I'm not gonna
2 delay the trial for her to give you opinions about your
3 tactics, uh, she's not an expert, she's not a trial lawyer. I
4 think you're very lucid, alert, aware, made an effective
5 argument as to your directed verdict motions, asked for a
6 continuance, uh, of that motion, uh, when we began hearin' it
7 last night so I I'm not gonna delay the trial in that regard.

8 A. Right.

9 Q. If you wanna talk to, uh, your standby counsel or if you
10 wanna talk to, uh, mis -- Mr. Watkins or or others, ---

11 A. Um-hum.

12 Q. --- others on your defense team, I'll allow you, uh, some
13 time to do that.

14 A. If I may, Your Honor, I would like the remainder of the
15 day.

16 Q. No, sir, I'm not gonna give you the remainder of the
17 day,

18 A. Um, ---

19 Q. --- I'll give you thirty minutes.

20 A. Alright.

21 Q. Now do you intend to present any other evidence or
22 testimony?

23 A. Well thirty minutes bein' bein' did Your Honor I probly
24 can't, I probly can't, uh, present a defense, uh, so I guess
25 I'll have to make a decision.

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1 Q. You have other witnesses that you wish to call?

2 A. Uh, relevantly, Your Honor.

3 Q. Sir?

4 A. Relevantly. I I I I may or ---

5 Q. I don't ---

6 A. --- may not ---

7 Q. --- know what that answer means rele ---

8 A. I ---

9 Q. --- vently.

10 A. --- I I I haven't made a decision as to whether to to
11 object, it it -- I have not -- to produce any evidence or
12 testimony, I have not.

13 Q. Well you know the State rested yesterday afternoon, ---

14 A. Yes, sir, Your Honor.

15 Q. --- you began your directed verdict motion, ---

16 A. That's correct, Your Honor.

17 Q. --- I gave you the evening to organize yourself as you
18 said, I believe, maybe I'm paraphrasin', to be prepared to
19 argue your directed verdict motion, you knew the stage of the
20 trial, correct, we're goin' forward, ---

21 A. Yes, sir, Your Honor.

22 Q. --- Mr. Walker.

23 A. I I'm not sayin' that but, uh, if if I may, Your Honor, I
24 I'd like to state that as I said earlier today when I come
25 back from, when I got back to SCDC, I never got back into my

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1 cell till eleven o'clock ---

2 Q. I've al -- I've already heard that, ---

3 A. Alright, ---

4 Q. --- Mr. Walker, ---

5 A. --- I understood ---

6 Q. --- and I've already said I will give you thirty minutes.

7 A. Okay, Your Honor, that it is what it is, thank you.

8 Q. Sir?

9 A. I said I'm sorry, it is what it is or I can't, I can't
10 make, I I probly will not be able produce -- present a
11 defense, Your Honor, I have, I have ---

12 Q. That you can call any witness you want to call,
13 Mr. Walker, if they're not here I'll send the sheriff to get
14 'em, ---

15 A. Yes, sir.

16 Q. --- don't don't put in the record you probly won't be
17 able to present a defense.

18 A. Well, Your Honor, I'm I'm -- I asked for evidence
19 overnight, the evidence come back illegit, they're they're not
20 correctly done, uh, there's evidence that I'm plannin' to
21 produce that is not here yet at the courthouse.

22 Q. Alright, and who do you need here at the courthouse,
23 Mr. Walker?

24 A. Evidence, Your Honor. I need pictures, photographs, my
25 PI's, uh, partner's bringin' in some photographs.

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1 Q. And when are those photographs gonna be here?

2 MR. WATKINS: They're here now.

3 THE COURT: They're here?

4 MR. WATKINS: He's right outside.

5 THE COURT: He's right outside.

6 A. Alright, I wasn't aware of that, Your Honor. Um, and
7 basically, I mean, I I can try, Your Honor, but I I don't
8 think I'm gonna go any further with my defense if I'm only
9 allowed thirty minutes.

10 Q. You don't think what?

11 A. I don't think I'm gonna go any further with my defense if
12 I'm only allowed thirty minutes so I'll rest and take closin',
13 Your Honor.

14 Q. I'll give you till eleven o'clock.

15 A. That's, Your Honor, I I'm not tryin' to make the Court be
16 considerate of me but that's not enough time, Your Honor,
17 there's ---

18 Q. I've been considerate of you throughout the trial of this
19 case, Mr. ---

20 A. I ---

21 Q. --- Walker, ---

22 A. --- I know, ---

23 Q. --- I've signed orders on your behalf ---

24 A. --- I know that ---

25 Q. --- but anyway, uh, that that's really, uh, as you say,

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1 that's really not in front of me, that's irrelevant. I'll give
2 you till eleven o'clock and then I'll come back and, uh,
3 revisit that issue and make a decision ---

4 A. Thank you, Your Honor.

5 Q. --- and I certainly, uh, certainly will do so. Thank
6 you, uh, Mr. Walker.

7 A. Thank you.

8 THE COURT: Alright, uh, court'll be in recess until
9 eleven o'clock.

10 (Whereupon, a recess was taken.)

11 THE COURT: Mr. Walker, uh, would you come back around to
12 the podium, please.

13 (Whereupon, the applicant came forward.)

14 THE COURT: Alright, uh, it's now, uh, right at 11:15, I
15 gave you about an hour, uh, have you made your decision about
16 whether or not you're going to testify or not testify?

17 MR. WALKER: That's correct, Your Honor, I'm I'm no
18 longer gonna, uh, I'm not gonna present a defense and I'm
19 gonna allow the State to, uh, proceed with their closin'.

20 THE COURT: Alright, so, uh, you're not testifying.

21 MR. WALKER: That's correct, Your Honor.

22 THE COURT: Alright, and is that your decision ---

23 MR. WALKER: That's correct, Your Honor.

24 THE COURT: --- made of your own free will and accord?

25 MR. WALKER: That's correct, Your Honor.

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1 THE COURT: Alright, so, uh, the form in which we will
2 proceed is the State would close, thereafter you would make
3 your final closing.

4 MR. WALKER: That's correct, thank Your Honor.

5 THE COURT: Alright, uh, how 'bout any specific requests
6 to charge, Mr. Walker.

7 MR. WALKER: Uh, Your Your Honor, um, there's relevantly
8 I would ask for involuntary manslaughter maybe, uh, due to the
9 simple fact that if you, if you try to say that there's a
10 homicide it could be, the homicide could be involuntary
11 manslaughter, the homicide could be voluntary manslaughter and
12 a homicide can be, uh, murder, I do understand there's a lotta
13 different stipulations but herefore the State has produced no
14 particular evidence in my view but the Court may see fit
15 otherwise.

16 THE COURT: Any other request to charge?

17 MR. WALKER: No, sir, Your Honor.

18 THE COURT: So as a lesser included offense you're asking
19 me to charge involuntary manslaughter.

20 MR. WALKER: That's correct, Your Honor.

21 THE COURT: No other request to charge.

22 MR. WALKER: No, sir, not at this time, Your Honor.

23 THE COURT: Alright. Thank you, uh, thank you very much.
24 Alright, uh, Solicitor, any request to charge, any response?

25 MR. GRAHAM: Um, I think it's murder or nothing, Your

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1 Honor. There's no testimony, no facts, no anything that would
2 support an involuntary manslaughter charge.

3 THE COURT: Alright, thank you, uh, thank you, Solicitor.
4 And do you have, do you have any request to charge?

5 MR. GRAHAM: Nothing specific other than your standard
6 charge, Your Honor. I'm not sure the language, um, Your Honor
7 uses for malice, I know that some judges have switched to
8 where they just say hatred and ill will, um, I know the older
9 language that I believe is still good law talks about the
10 wicked heart, um, the depraved heart, I would ask for that
11 language.

12 MR. WALKER: I would deny that, Your Honor.

13 THE COURT: You would deny?

14 MR. WALKER: Yes, sir, if it's, if that's bol ---

15 THE COURT: No, I'll I'll pull my charge, my charge
16 book's back there, I can ---

17 MR. WALKER: I'm ---

18 THE COURT: --- give ya'll a copy.

19 MR. WALKER: --- I would object to that, Your Honor.

20 THE COURT: Sir?

21 MR. WALKER: Object, I'm objectin' to it.

22 THE COURT: Alright, I I'll get my, uh, standard charge
23 that I've used, uh, and, uh, I'll give ya'll a copy of, uh, my
24 murder charge. Let me look at, uh, involuntary a moment.

25 (Whereupon, a discussion was held off the record.)

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1 MR. WALKER: Your Honor, ---

2 THE COURT: Yes, sir.

3 MR. WALKER: --- this this matter will be before you
4 'cause basically the Court is busy and I I'd ask for, uh, some
5 quick indulgence that I I allo -- I'm allowed to exit and
6 place my tie on my shirt.

7 THE COURT: You're what now?

8 MR. WALKER: I I'm I'm askin' to allow to exit the
9 courtroom to grab my, uh, tie.

10 THE COURT: Before the jury comes back in?

11 MR. WALKER: Correct, Your Honor.

12 THE COURT: Yes, sir, I I'll allow you to do that, you
13 don't ha -- you -- we'll do that 'fore the jury comes back
14 in, ---

15 MR. WALKER: Um-hum.

16 THE COURT: --- okay?

17 MR. WALKER: Alright.

18 THE COURT: Just a moment.

19 (Pause.)

20 THE COURT: Uh, citing from, uh, *State vs.*, uh, *Chatman*,
21 C-H-A-T-M-A-N, 519 southeast second 100, a trial court should
22 refuse to charge a lesser included offense only where there is
23 no evidence the defendant committed the lesser rather than the
24 greater offense citing *State vs. Smith*, 315 South Carolina
25 547, Involuntary manslaughter is (1) the unintentional killing

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1 of another without malice but while engaged in an unlawful
2 activity not naturally tending to cause death or great bodily
3 harm or (2) the unintentional killing of another without
4 malice while engaged in a lawful activity with reckless
5 disregard for the safety of others, an unintentional killing
6 resulting from an unlawful assault and battery not of a
7 character of itself can cause death is involuntary
8 manslaughter, death resulting from a blow from a fist may be
9 involuntary manslaughter that because although it was unlawful
10 a blow to the face with a hand is not likely to be intended
11 with dangerous or fatal consequences or citing *State vs.*
12 *C-O-B-O*, 90 Utah 89, 1936, The greater weight of authority is
13 that an unintentional killing resulting from an unlawful
14 assault and battery which in and of itself is not of a
15 character to cause death is held to constitute involuntary
16 manslaughter. Uh, my interpretation of number 1 under
17 involuntary manslaughter the unintentional killing of another
18 without malice while engaged in an unlawful activity not
19 naturally tending to cause death or great, uh, bodily harm,
20 uh, although, uh, many of the multiple injuries and bruises on
21 the body of the victim may not be such of a nature as
22 naturally intending to cause death or great bodily harm the
23 manual strangulation of an individual until such time as that
24 individual, uh, is no longer able to, uh, take a breath it is
25 an unlawful activity but it is, it is an activity which, uh,

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1 naturally tends to cause death or great bodily harm to
2 another, and then number 2 the unintentional killing of
3 another without malice while engaged in a lawful activity with
4 reckless disregard for the safety of others, there is no
5 testimony in the record that the defendant was engaged in a
6 lawful activity at the time of the homicide and; therefore,
7 I'll respectfully deny the motion to charge involuntary
8 manslaughter as a less included offense on the facts of this
9 case.

10 Alright, uh, I think what -- yes, Solicitor.

11 MR. GRAHAM: Uh, Your Honor, for the, for the record I
12 was gonna point out that the defense has, regarding the
13 preparation of his case, there are multiple people in the
14 courtroom that have been subpoenaed by him, if I could ask 'em
15 to stand so that Your Honor would be able to see who was
16 subpoenaed by the defense to be here today.

17 (Whereupon, members of the gallery stood.)

18 MR. GRAHAM: I'm counting one, two, three, four, five,
19 six, seven, eight, nine, ten, eleven and his brother 12 and
20 also his daughter Cassidy is, um, next door, all those people
21 were under subpoena, Your Honor, by the defense and were
22 present in the courtroom, um, if he wanted to call 'em. At
23 this time I would ask that they be released from their
24 subpoena because he is going to rest his case and ask that
25 anybody who doesn't wanna stay could leave, Your Honor.

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1 THE COURT: Mr. Walker, ---

2 MR. WALKER: No objection, Your Honor, I was gonna do the
3 same but solicitor, uh, moved it for me.

4 THE COURT: Alright, uh, thank ya'll, uh, thank ya'll for
5 bein' here and complyin' with the, uh, subpoena of the Court,
6 uh, you're now excused, thank you, uh, thank you very much.
7 Mr. Walker, I want you to understand now I, uh, I'm not gonna
8 charge self-defense that do you understand?

9 MR. WALKER: Yes, sir, Your Honor, I I I I do, I mean, I
10 I'm well aware of that, um, there's not much I can do, Your
11 Honor, um, I am at at this point in time, I am feelin' kinda
12 kinda, uh, irritable and and kinda kinda I guess deterred, I
13 guess you might wanna say, uh, kinda ill, Your Honor, I'm, uh,
14 not not, gettin' kinda spacey and and whatnot so you might
15 just wanna keep -- bear with me, Your Honor.

16 THE COURT: Alright, well I think what I'm gonna do is
17 I'm gonna send the jury to lunch, ask them to report back at,
18 uh, 12:45. How much time you need for closin', Solicitor?

19 MR. GRAHAM: I I would guess, Your Honor, maybe twenty
20 minutes, twenty-five minutes.

21 THE COURT: How much te -- time you need to close,
22 Mr., uh, Walker?

23 MR. WALKER: Your Honor, a as I've given testimony
24 before, I I I don't know for the simple fact that I I may get
25 in there and get twined up and and have to not be able to say

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1 what I say or I might be able to put it in there. If I can,
2 if I can do what I need to say maybe a hour, Your Honor.

3 THE COURT: Alright, I would allow you, uh, no more than
4 one hour.

5 MR. WALKER: Thank you, Your Honor.

6 MR. GRAHAM: Your Honor, I would ask that the Court
7 instruct Mr. Walker that he has to confine his, um, closing
8 arguments to the evidence and that he cannot testify like he
9 did in his opening statement.

10 MR. WALKER: And I would ask the solicitor stay in the
11 record, Your Honor.

12 THE COURT: Do what?

13 MR. WALKER: I would ask the solicitor just stay in his
14 record.

15 THE COURT: Well both of ya'll can object if you think
16 the other is violating the rules.

17 MR. WALKER: Well that, Your Honor, if I may, uh, I
18 understand that there is no law on time limit but if I may ---

19 THE COURT: There actually is a law, I think it's called
20 *State vs. El*, E-L and a judge can, uh, limit the amount of
21 time ---

22 MR. WALKER: Right.

23 THE COURT: --- that is available within, uh, his or her
24 discretion, I think that's the name a the case.

25 MR. WALKER: That's correct, Your Honor, the cite is

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1 280 -- 286 S.C. 56.

2 THE COURT: Uh, although there may not be no bright-
3 line rule, I think a reasonable amount of time, there has only
4 been ---

5 MR. WALKER: I'm ---

6 THE COURT: --- I think, uh, twelve witnesses I believe
7 is correct ---

8 MR. WALKER: Yes, sir.

9 THE COURT: --- as far as the trial of the case in front
10 of the jury so no more than one hour. In my time if you talk
11 too law -- long, regardless the judge will start goin' like
12 that (demonstrating), a metronome, ---

13 MR. WALKER: Yes, sir.

14 THE COURT: --- he got the message pretty quick. I said
15 I'll allow you, uh, no more than one hour, ---

16 MR. WALKER: That, ---

17 THE COURT: --- no more ---

18 MR. WALKER: --- Your Honor, that ---

19 THE COURT: --- than an hour.

20 MR. WALKER: --- I'm not tryin' to irritate the Court
21 but ---

22 THE COURT: You're not irritating me, I ---

23 MR. WALKER: --- I ---

24 THE COURT: --- I ---

25 MR. WALKER: --- I I would just like to put objection on

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1 the record, Your Honor, and that objection be at that hour,
2 uh, I would like, I would like to state that, you know, the
3 general, the general rule in South Carolina is that either
4 side can take, uh, no more than two hours, um, and it is at
5 your discretion so, I mean, ---

6 THE COURT: And ---

7 MR. WALKER: --- and there's ---

8 THE COURT: --- it is at my discretion and I ---

9 MR. WALKER: Yes.

10 THE COURT: --- have ruled that you can have no more than
11 one hour.

12 MR. WALKER: Thank you so much, Your Honor.

13 THE COURT: Yes, sir.

14 MR. GRAHAM: Just one more thing, Your Honor, I
15 apologize. I would as that, um, Mr. Walker use a microphone
16 durin' his closing argument ---

17 MR. WALKER: Well, Your Honor, that ---

18 MR. GRAHAM: --- so that I can hear him.

19 MR. WALKER: --- they have a body, I mean, is -- that was
20 there a body mic purchased?

21 THE COURT: You know, Mr. Walker, I'm not gonna require
22 you to use the microphone, I've told you from the beginning
23 it's your day, your week in court, if the jury can't hear
24 you ---

25 MR. WALKER: Yes, sir.

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1 THE COURT: --- that they're not gonna be able to take
2 your argument into consideration.

3 MR. WALKER: Well maybe then, maybe once the solicitor
4 gets finished with 'em I'll try to relax 'em a little bit so
5 they're, so they're ---

6 MR. GRAHAM: Here ---

7 MR. WALKER: --- not as ill, um, . . .

8 THE COURT: Alright, bring bring us, uh, our jury,
9 please.

10 THE BAILIFF: Yes, sir, Your Honor.

11 (The following takes place in the presence of the jury.)

12 THE COURT: Alright, uh, good morning, uh, ladies and
13 gentlemen, uh, welcome back. As you recall yesterday the
14 State has rested, you've heard all the evidence, all the
15 testimony you're going to hear from the State in its case-in-
16 chief. The defense if it so chooses now has the opportunity
17 to present evidence and testimony on its behalf, on his behalf
18 I should say. As I have stated before, a criminal defendant
19 in South Carolina regardless of the serious nature of whatever
20 the charges may be is never required to prove himself or
21 herself innocent, the burden of proof is on the State and
22 remains on the State throughout the trial of the case to prove
23 each and every element of the offense charged beyond a
24 reasonable doubt, again, however, a defendant may present
25 evidence and testimony if the defendant chooses to do so, with

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1 that in mind I now -- we now turn our attention to Mr. Walker.
2 Mr. Walker, does the defense intend to present any evidence or
3 testimony?

4 MR. WALKER: No, sir, Your Honor.

5 THE COURT: Does the defense rest?

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

7 THE COURT: Thank you, uh, Mr. Walker. You have now
8 heard all the evidence and all the testimony you're going to
9 hear in the trial of this case, the procedure we follow now is
10 closing arguments by the parties, that, uh, will occur with
11 the State going first, be the party bearing the burden of
12 proof beyond a reasonable doubt, thereafter, uh, followed by
13 Mr. Walker on his behalf. After the closing arguments by the
14 attorneys I will instruct you on the law that you must apply
15 to the facts of the case as you find the facts to be, you, the
16 jury, being the judges of the facts of the case. The parties,
17 uh, have been in the courtroom out -- outside of, uh, one
18 break this morning, since nine o'clock this morning and been
19 working, uh, very diligently, uh, to move the case forward in
20 an efficient and judicial manner. I am going to give them,
21 uh, an opportunity to, uh, think, review, review their notes
22 and such prior to goin' into the closing arguments, so after
23 holding you captive back there since, uh, 9:30 this mornin'
24 I'm gonna ask you if you will take a, somewhat of an early
25 lunch and be back at quarter to one. At quarter to one, uh,

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1 we will go into the closing arguments I said first by the
2 solicitor then by, then by Mr. Walker. I have have limited
3 the parties, uh, to certain, uh, time frames, uh, however, it
4 may take for both parties a cumulative, uh, up to, uh, two
5 hours, not not two hours each but up to two hours, uh, could
6 take less, as I tell people all the time I can predict
7 anything but the future but, uh, I have, uh, limited to, uh,
8 that period a time. My instruction to you, uh, and generally
9 in the range of thirty, thirty-five minutes and then the case
10 will be submitted to you for your deliberations. Uh, please
11 remember my instructions: Do not discuss the case with anyone,
12 do not read, watch, listen to any news accounts, do not do any
13 indent -- any independent investigation or investigation on
14 the Internet, with that being said, uh, you may now take your
15 lunch and recess and please be back at, uh, 12 -- 12:45,
16 alright. Thank you, uh, thank you very much, ya'll have a
17 pleasant lunch.

18 (Whereupon, a discussion was held off the record.)

19 (The following takes place outside the presence of the
20 jury.)

21 THE COURT: Anything further, Solicitor?

22 MR. GRAHAM: No, Your Honor.

23 THE COURT: Mr. Walker?

24 MR. WALKER: No, sir, Your Honor.

25 THE COURT: Alright, I'll have my, uh, my law clerk'll

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1 make a copy of my charge on murder and, uh, she will get it to
2 both Mr. Walker and to, uh, and to the State. Thank you very
3 much, 12:45.

4 (Whereupon, a recess was taken.)

5 THE COURT: Anything from the State before we bring in
6 our jury?

7 MR. GRAHAM: No, Your Honor.

8 THE COURT: Defense, Mr. Walker?

9 MR. WALKER: Um, no, sir, not at this time, Your Honor.
10 I I didn't receive that murder, uh, charge yet, Your Honor.

11 THE COURT: I think my law clerk, uh, just, uh, emailed
12 it.

13 MR. WALKER: I don't have email.

14 THE COURT: Madam clerk, will you make a copy of this,
15 please.

16 THE CLERK: Yes, sir, Your Honor.

17 (Whereupon, a discussion was held off the record.)

18 (Pause.)

19 THE COURT: Alright, both parties now have a copy of the,
20 uh, charge on murder, anything further, uh, Solicitor?

21 MR. GRAHAM: No, Your Honor.

22 THE COURT: Mr. Walker?

23 MR. WALKER: Uh, can I read it real quick, Your Honor?
24 You may go ahead, Your Honor.

25 THE COURT: Alright, uh, uh, ladies and gentlemen, uh, in

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1 the gallery, I would advise that I do not allow any movement
2 in or out of the courtroom while an attorney or Mr. Walker is
3 addressing the jury panel, you may certainly leave between the
4 arguments; in other words, after, uh, the solicitor concludes
5 his or her argument, you may leave 'fore Mr. Walker begins
6 his. At the of Mr. Walker's, uh, argument, you may certainly
7 leave at that time; otherwise, you remain in the jury room,
8 excuse me, in the courtroom, uh, while the attorney or
9 Mr. Walker is addressing the jury; further, I do not allow
10 any, uh, body language, uh, in agreement and/or disagreement
11 with the parties while they are addressing the jury panel. If
12 you feel you cannot stay, uh, the entirety of the solicitor's
13 closing argument or the entirety of Mr. Walker's closin'
14 argument, uh, I'll ask you to leave at this time; further, um,
15 if I see, uh, any body language, uh, in agreement or
16 disagreement during the course of the argument and identify
17 that individual, I will have a contempt hearing on that
18 individual after the case is submitted to the jury for its
19 deliberations. Alright, uh, bring us that jury panel.

20 THE BAILIFF: Yes, sir, Your Honor.

21 THE COURT: And Ma -- Madam clerk, hand up the
22 indictments.

23 THE CLERK: Oh, yes, sir..

24 (Whereupon, a discussion was held off the record.)

25 THE COURT: Also, uh, I'm going to mark State's 2 as

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1 court's next number and it will go to the jury, uh, that's the
2 full video, alright.

3 (State's Exhibit No. 2, complete in-car video, remarked
4 Court's Exhibit No. 13 for identification.)

5 (The following takes place in the presence of the jury.)

6 THE COURT: Alright, uh, welcome back, uh, ladies and
7 gentlemen, hope ya'll had a pleasant lunch. As you recall we
8 are at the, uh, stage of the closing arguments, uh, by the
9 parties, uh, first there will be a presentation on behalf of
10 the State by the solicitor. I would advise you the closing
11 arguments are different than opening statements, they are true
12 arguments, they may comment on the facts, the reasonable
13 inferences that may be drawn from the facts and the law as
14 they understand the law is. I would ask you to please give
15 the parties your complete and undivided attention, with that
16 being said, uh, solicitor, you may address the jury.

17 MR. GRAHAM: Thank Your Honor. David Richard Walker, Jr.
18 strangled Carrie Banty to death, the last face she saw was his
19 as her life slipped away, the face of a murderer, the face of
20 a killer, the face of evil ---

21 MR. WALKER: Objection, ---

22 MR. GRAHAM: --- and a heart, ---

23 MR. WALKER: --- Your Honor.

24 THE COURT: Overruled..

25 MR. GRAHAM: --- the face of evil and a heart filled with

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1 malice. You all have heard the evidence. Nikki Tenetia
2 Inabinet worked with her at Circle K, she's the one who works
3 at Waffle House now and came off shift. She told you that
4 she'd worked with Carrie for about six months, she knew that
5 the baby's daddy was comin' in the house, Carrie was excited,
6 she was nervous and the month after he moved in what did she
7 tell you all? Carrie's demeanor changed, she became withdrawn,
8 she wasn't her normal happy self. They talked about what was
9 goin' on in the house and what did Nikki tell her? Wha'd her
10 co-worker tell her, leave him, but she didn't and she's dead.
11 The last two days that Nikki saw her at work she was crying
12 and she was upset. 25-year-old Carrie Banty was lookin'
13 forward to havin' her family, she's lookin' forward to havin'
14 her baby's daddy in the house so that they could raise her
15 3-year-old daughter, their 3-year-old daughter. December 11th
16 2012 12:00 p.m. 3-year old Cassidy [REDACTED] who'd been in with
17 her mother's dead body for we don't know how long
18 went to, ---

19 MR. WALKER: Objection, Your Honor.

20 THE COURT: Overruled.

21 MR. WALKER: --- went wandering down the street crying,
22 upset, in her pajamas, luckily a good samaritan found her,
23 Mr. Gene Ray. He goes in to find out what's goin' on, Little
24 girl, where do you live, show me where you live, and she takes
25 him to the house. He pounds on the door and he doesn't get an

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1 answer, he goes inside and what's he find? what's he find? he
2 finds Carrie dead. He checks her pulse, rolls her from this
3 (indicating) position, puts her back, check her neck and
4 checkin' her wrist, cold and stiff. This (indicating) is how
5 Carrie was found. How did he leave her we don't know. Did he
6 leave her with a blanket over her or did that come some other
7 way. We know there wasn't any forced entry in the house, we
8 have pictures. The police checked, one a the first things
9 they check sign of forced entry, nobody broke into that house,
10 there's no robbery, there's just murder. Cassidy was left in
11 the house alone with her dead mother. There are markers in
12 the box, there's drawing on Carrie, there's a blanket on her.
13 Did she crawl on her mother and sleep and pull the blanket
14 over both of them or did he leave her that way? We know that
15 she was, somethin' happened to her after she died, she had
16 postmortem injury on her left ankle I believe is what the
17 pathologist said, so somehow after she is dead, after her body
18 is no longer alive, after blood is no longer flowing something
19 happened, either somethin' struck her or maybe she was drug
20 'cross the carpet and put in this (indicating) position. Why
21 would he do that? Maybe it had to do with staging the scene
22 and what do I mean by staging? to make it look like somethin'
23 else, to make it look like somethin' different, so what do we
24 have for staging? we have a syringe outside in the trash,
25 cocaine, tested positive, we have a tourniquet, a man's belt

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1 left in the bedroom with Carrie doubled through the buckle
2 like a tourniquet, they take that to the autopsy and she said,
3 Yeah, that coulda been used, that could be those two bruises,
4 could be fingers, could be somethin' else but it's somethin'
5 with solid lines but why do we have a tourniquet in there?
6 Why did the, why did the pathologist find a needle puncture
7 wound but no drugs in her system? because David Walker wanted
8 it to look like somethin' else, wanted to make it look like
9 somethin' different than what it was than the strangulation
10 and the killing and the murder of Carrie, make it look like
11 it's her fault.

12 What else did we find at the crime scene? Law
13 enforcement found the ID of the defendant, it's like a calling
14 card, men's clothing left at the house but who wasn't at the
15 house? Was David Walker at the house, the house he lived in?
16 nope. Was he supposed to be there? yep. Multiple people
17 testified that he lived there with 'em: Judy Banty the
18 stepmother, Nikki and then you had the people from LMC, they
19 got up and they went down. What they said was he had gone to
20 the hospital, he'd given that address and he'd given his phone
21 number but David Richard Walker wasn't there. Why wasn't he
22 there? 'cause the guilty run, the guilty hide, guilty flee
23 and that's exactly what this man did.

24 His phone records. Agent Hines from SLED got up and
25 there's phone records that run before the date of the 11th

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1 when Cassidy was found and after the date of the 11th when
2 Cassidy is found and what did he tell us? he told us that on
3 the 10th, this shows the days actually the 8th, 9th and 10th,
4 you look at data usage, cell phone usage, text usage, it's got
5 David Walker's phone, the number he gave to the hospital at
6 the house all the way up until 11:00 p.m. on the 10th the day
7 before Cassidy was found and on the 10th what's he doing?
8 there are two text messages, one at 4:09 and one at 11:10 p.m.
9 and there's data usage. Is he surfen' the Internet? Is he
10 lookin' at Facebook? He's doin' somethin' with the phone but
11 you know what he's not doin' with his phone, he's not callin'
12 911, he's not callin' the police, he's not callin' an
13 ambulance, ---

14 MR. WALKER: Objection, Your Honor.

15 THE COURT: Overruled.

16 MR. GRAHAM: --- there's no more usage of that phone after
17 11:10 p.m. on the 10th, that's what the records show and
18 that's what the agent testified to, no more usage, no more
19 cell towers, never hits again, it doesn't show calls on his
20 phone to check on Cassidy, it doesn't show phone calls to
21 check on Carrie 'cause he knew she was dead, he knew that he
22 killed her, no calls to his family, no calls to her family,
23 total silence. David Walker was gone because the guilty run.

24 December 17th 10:30 p.m. Sergeant Kostyk with the Aiken
25 County Sheriff's Department sees somebody he thinks is

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1 suspicious, and you saw the video and you can watch it again
2 if you need to, he rolls up on him, what's David Walker say?
3 Sergeant Kostyk has no clue what's goin' on, he doesn't know
4 anything about Carrie Banty bein' killed at that moment,
5 didn't know anything about her being dead, didn't know
6 anything about David Walker being missing, he rolls up on the
7 scene, he asks for his name, his date a birth and a routine
8 question, You got any warrants, what's he say? murder, I got a
9 warrant for murder. How would he know that if he hadn't
10 murdered her? And what else does Sergeant Kostyk ask? says,
11 You done murdered somebody? murdered, that's what he said,
12 You done murdered somebody, and he said, Yes. If you don't
13 think he's guilty though you find him not guilty, those are
14 your choices: he's guilty a murder or he's not.

15 Carrie was in the fight of and for her life and she lost.

16 The pictures ---

17 MR. WALKER: Objection, ---

18 MR. GRAHAM: --- you, ---

19 MR. WALKER: --- Your Honor.

20 MR. GRAHAM: --- the ---

21 THE COURT: Overruled.

22 MR. GRAHAM: --- pictures you have at the house show a
23 clean house, did the fight go all over the house and he
24 cleaned it up or was it just in the bedroom? There's not a
25 lotta damage in that house but there's a heck of a lotta

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1 damage to Carrie. You look at her pant leg, is that
2 (indicating) how it was left or did she get moved? The
3 postmortem abrasion on her left ankle why is it there? The
4 injuries to her legs, her knees, fighting for her life, the
5 abrasions to her right forearm (indicating), the bruising to
6 her upper arm consistent with fingerprin -- fingertips as he's
7 grabbing her as she's fighting for her life (indicating), the
8 inside of her upper arm (indicating), the bruise on her left
9 shoulder (indicating), the contusion (indicating), her right
10 arm (indicating), finger marks or a tourniquet (indicating)?
11 The coloring (indicating), ---

12 MR. WALKER: Objection, Your Honor.

13 THE COURT: Overruled.

14 MR. GRAHAM: --- the bruising on her legs fighting for
15 her life (indicating), her right leg the bruising and the cuts
16 and the abrasions (indicating), her throat (indicating), what
17 you didn't see that the doctor talked about, what she
18 testified to is the petechial hemorrhages, blood vessels in
19 your eye. What you didn't see but she testified to was after
20 she cut into Carrie during the autopsy the bruising on her
21 shoulders and on her sternum, the blood around the throat.

22 So what is murder? This (indicating) is what ya'll will
23 consider back there: the unlawful killing of another with
24 malice aforethought expressed or implied, and the judge is
25 gonna tell what you malice is, that it's ill will, it's

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1 hatred, it's hostility, it's an evil intent, that's what he
2 did 'cause if he didn't do it with malice he's not guilty,
3 that's your job to find him not guilty.

4 So let's talk about malice. The pathologist, an expert,
5 I think she said she has done eleven thousand autopsies and I
6 don't even remember how many times she said she's been
7 qualified as an expert, said the police came to her thinkin'
8 that it maybe it was an overdose 'cause we have those marks,
9 we have the belt, we had the needle, we had the puncture wound
10 but no drugs in the system, she saw the petechial hemorrhages
11 but when she decided in her opinion as an expert was asphyxia
12 due to strangulation so the blood not coming down from the
13 head, no oxygen to the brain. She says you can lose
14 consciousness in five to eight seconds, that quick if you put
15 the pressure on the right spot, five to eight seconds. Thirty
16 seconds to a minute gets you the blood vessels bursting in
17 your eye just like Carrie had but she said death, she said
18 four to five minutes of consistent significant constant
19 pressure, five minutes of malice, five minutes to take your
20 hands off, five minutes to let her go, that's malice, that's
21 ill will, that's hatred, that's evil, that's David Walker,
22 staging the scene malice, leaving a 3-year-old daughter by
23 herself in the house with her dead mother, ---

24 MR. WALKER: Objection, Your Honor.

25 THE COURT: Overruled.

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1 MR. GRAHAM: --- you give that weight whatever you wanna
2 give it. Four, five minutes. What's goin' on in that four or
3 five minutes? she's fighting for her life. His hands are
4 around her throat, he's cutting off the blood coming down,
5 he's stranglin' her, he's stranglin' her to death and he meant
6 to, he did it with malice, he did it with evil, he did it with
7 hatred, he did it with ill will, did it with hostility and he
8 kept strangling. Five to eight seconds she loses
9 consciousness and David Walker kept strangling her, she's not
10 fighting anymore, she's not struggling anymore. What would
11 make a man continue to strangle a woman after she loses
12 consciousness? it's malice, it's his evil heart, it's the ill
13 will he has for her, it's the hatred he has for her, he wants
14 her dead and he keeps strangling her. Thirty seconds to a
15 minute later the blood vessels in her eyes burst, she's not
16 struggling anymore though and still he continues to strangle
17 her: What's he thinking? really what is he thinking? She's
18 lying there, she's not fighting, she's not even conscious and
19 he continues to strangle her, the constant significant
20 pressure around her throat and he doesn't let go, David Walker
21 kept strangling her. Two minutes in and he's still strangling
22 her. She's unconscious, her blood vessels have burst, she's
23 not fighting, what's going on in his head and that's exactly
24 what you have to determine when you're back there. Did he
25 have malice when he killed her or not and I submit to you

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1 that's the only thing that he had in his heart and in his head
2 when he continued to grab her around the throat and keep
3 applying the pressure for four to five minutes and he's
4 thinking and he continue to strangle her, she wasn't fighting,
5 she was lying there dying.. Three minutes in now, still a
6 minute, he could still let go and she'd still be here with us
7 today but he didn't 'cause he wanted her dead and he kept
8 strangling her, he kept his hands around her throat, he kept
9 the pressure, a constant significant force stopping the blood
10 draining from her head, she woulda had brain damage by this
11 point but she'd be alive, he didn't want her alive, he wanted
12 her dead, David Walker kept strangling her ---

13 MR. WALKER: Objection, Your Honor.

14 THE COURT: Overruled.

15 MR. GRAHAM: She's not fighting, she's not conscious, her
16 blood vessels have burst, he wants her dead and he kept
17 strangling her and he kept strangling her and he kept
18 strangling her and he kept strangling her and she's dead, four
19 to five minutes and that's how long it was, if that's not
20 malice I don't know what it is. David Walker strangled Carrie
21 Banty till she was dead, the last face she saw as she lost
22 consciousness was his, the father of her 3-year-old daughter
23 who was in the house, that (indicating) man, his face fills
24 with evil, his heart filled with malice, he's guilty of
25 murder. Thank you.

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1 THE COURT: Thank you, uh, thank you very much, uh,
2 Solicitor.

3 MR. GRAHAM: I have just a second, Your Honor, while I
4 move all this outta the way.

5 MR. WALKER: Can you bring this to her?

6 MR. GRAHAM: Sure.

7 (Pause.)

8 MR. WALKER: How ya'll doin' today? Uh, sorry that I
9 think this proceedin' is gonna come to a close now. Um, to
10 start with I think I'm gonna, I'm gonna read a little poem,
11 you know. It says, Innocent ---

12 THE COURT: Make make sure that you keep your voice up,
13 uh, Mr. Walker, so all the members of the jury can hear you,
14 okay.

15 MR. WALKER: Thank you so much, Your Honor.

16 THE COURT: Yes, sir.

17 MR. WALKER: Alright, what I'm gonna read is by, uh,
18 Joan, uh, Dadon [sic], says, Innocent ends when one is
19 stripped of the delusion that one likes oneself, ---

20 THE COURT: Uh, ---

21 MR. WALKER: --- uh, ---

22 THE COURT: --- the foreperson indicates to the bench
23 that he cannot hear a word.

24 MR. WALKER: Can can ya hear me?

25 JURY FOREPERSON: Not really.

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1 MR. WALKER: Not really. Alright, uh, I'll read this to
2 ya, Mr. Foreman. I said, I said, Innocent ends when one is
3 stripped of the delusion that one likes oneself, therefore,
4 innocent is stripped when someone has a personality to
5 disagree or not to like someone. Um, as you know I'm accused
6 of murder, um, they've accused me of killin' Catherine Carrie
7 Banty, she's the victim in this case. She, uh, as as, uh, you
8 may or may not hear -- have heard testimony, uh, she was kind
9 of a psychotic person, she, uh, she had lived in her own
10 world; um, you may have got that from her relevancy when I was
11 question her stepmother, um, and ---

12 THE COURT: What? questioning who?

13 MR. WALKER: Uh, Ms. Judy Banty.

14 THE COURT: Alright, go right ahead.

15 MR. WALKER: Uh, so, you know, ---

16 JURY FOREPERSON: I really think you need to use the
17 microphone, ---

18 MR. WALKER: A microphone? I was hopin' ---

19 JURY FOREPERSON: --- don't say I didn't, ---

20 MR. WALKER: --- they could give me a body mic ---

21 JURY FOREPERSON: --- just sayin', brother.

22 THE COURT: Uh, no, no, s -- now, Mr. Walker, don't don't
23 go back to a body mic, you know the efforts I've took to get a
24 body mic and the technical folks told me it couldn't be done,
25 they had to hook it up to this system.

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1 MR. WALKER: I didn't know, Your Honor, I wasn't aware of
2 that, I really don't even ---

3 THE COURT: Yes, sir, you were in here.

4 MR. WALKER: I did not, I -- well I did not recall that,
5 Your Honor.

6 THE COURT: Alright, well well please, as the jury
7 pers -- foreperson has said and as I've told you throughout
8 the course of the proceeding that this is your day in court,
9 your week in court, you want the jury to hear you, Mr. Walker.

10 MR. WALKER: Thank you.

11 THE COURT: Yes, sir, that that's that's all the
12 gentleman is saying, our foreperson, that's all I'm saying to
13 you is please speak up ---

14 MR. WALKER: Right.

15 THE COURT: --- so that the jury can hear you, they can't
16 determine what the facts are if they can't hear 'em.

17 MR. WALKER: Right, Your Honor. I mean, I I don't wanna
18 disagree with the foreman but, I mean, I was, if they hear me,
19 Your Honor, Your Honor, they hear me, if not then it is what
20 it is, you know.

21 THE COURT: Yes, sir, Mr. Walker.

22 MR. WALKER: It's at their discretion, Your Honor.
23 Alright, ---

24 THE COURT: I -- isn't there, isn't there another
25 microphone that'll reach over there?

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1 THE CLERK: It's right there ---

2 MR. WALKER: Right there (indicating).

3 THE CLERK: --- Your Honor.

4 MR. WALKER: This one here, (indicating) I believe, Your
5 Honor. Alright, again, uh, you know, uh, Mr. Graham, here
6 he's put on a good good show for ya'll, I mean, he really has.
7 He's he's indicated that, uh, you know, that that I've
8 murdered and and, uh, by law, you know, there's certain
9 circumstances that ya have to meet by murder and you as ladies
10 and gentlemen of this jury you you can't interfere and just
11 say, Hey, he's convicted a murder and he has to, he has to
12 meet certain step, certain guidelines and I think Mr., uh,
13 Mr. Graham pointed them out to you, uh, which is, which
14 malice, um, and, uh, and hatred, uh, ill ill hatred and and
15 whatnot, um, and also the State has to prove beyond a
16 reasonable doubt, um, that them them conclusions and that
17 clause in that statute by law was was did and was implied, uh,
18 and he hasn't, that he hasn't state to me, uh, or no one on
19 the stand or or Mr. Graham's closin' argument has not, has not
20 produced any testimony to that, um, that I feel necessary but
21 ya'll may take that into consideration or you may not.

22 Um, and, you know, uh, mur -- murder is, uh, murder is
23 defined as a willful and felonous [sic] killin' of a human
24 bein' by a human bein' with malice aforethought but that
25 malice bein' either expressed or implied. Um, as I, as I told

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1 you my, uh, earlier statement, uh, that in basics I I I kinda
2 know what Catherine happened but, you know, I I kinda know
3 what happened to Catherine but, um, I I didn't, I didn't.
4 murder Ms. Ms. Banty and that's somethin' that I think you
5 should take in consideration when you consider your verdicts
6 and your whatnot.

7 MR. GRAHAM: Objection, Your Honor, he's testifying.

8 THE COURT: No, sir, there's no evidence in the record,
9 um, as to that, a jury'll draw its own conclusion from the,
10 uh, their determination of the facts and the consideration of
11 the inferences that you deem may properly be drawn from the
12 evidence. I'll overrule the objection, go right ahead,
13 Mr. ---

14 MR. WALKER: Thank Your Honor.

15 THE COURT: --- Walker.

16 MR. WALKER: Um, that within the State's, uh, testimony
17 or or presentation that they would, they would ex -- they've
18 expressed that I I killed this person by a staged drug
19 conspiracy to make her look like she did drugs or somethin'
20 with a puncture arm or a tourniquet or somethin' to that
21 nature, um, I mean, relevantly it, uh, honest, I mean, or any
22 person could. If if someone has a tourniquet in their arm and
23 and or a a needle puncture and and there's a a a homemade
24 tourniquet and the the victim is not, doesn't have any drugs,
25 there's no stagin', it's like runnin' a car with no motor,

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1 there's there's no nothin' there, you know, um, that the State
2 has produced no hostile words for attacks, they've not
3 produced no attacks, they they've produced wounds that are
4 typical to a criminal domestic violence fightin', uh, someone
5 fightin'. Uh, you know, Catherine Catherine may have been,
6 uh, rock hoppin' or, um, anything to that nature, I'm just
7 sayin', um, as as far as the evidence are really point out to
8 but, um, like I, like I said in my openin' statement, you
9 know, you you should take into consideration that there
10 there's other laws besides murder that the State has not, uh,
11 has not excluded in consideration. I don't think the judge
12 is gonna give your ability to, uh, make a decision as to
13 whether I'm entitled to them or them, they actually happened
14 but you you must consider that these other facts that that the
15 State has not, uh, basically excluded.

16 Um, that the the State has said that I fled from the
17 scene, uh, the State has no proof that I fled from the scene
18 and within the law to flee from a scene you'd have to, uh,
19 basically that the State has to prove beyond a reasonable
20 doubt and most a that means a reasonable doubt actually means
21 proof, um, that that I fled and I willfully or destructed I
22 tried to, uh, immediately, uh, away away away from
23 prosecution. Uh, they they they don't have any, uh, they
24 don't prove that I'm at the home, that I'm at the house, they
25 say I have a ID, I mean, uh, ladies and gentlemen, if I asked

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1 you right now for your IDs, would all of ya'll have your IDs
2 to present, ---

3 THE COURT: You ---

4 MR. WALKER: --- I mean, if ---

5 THE COURT: --- cannot appeal to the jury personally, ---

6 MR. WALKER: Sorry.

7 THE COURT: --- either, uh, individually or collectively.

8 MR. WALKER: If, and if anybody in this courtroom today
9 had IDs, you know, if I asked each and every one if they had a
10 ID, they probly wouldn't have all their IDs, it probly be
11 sittin' on the counter, and typically I moved in many houses
12 and when you move in houses about one a the things you
13 typically find somebody's ID in chest a drawers or or a a
14 maybe a closet, you know, it's it's typical to find a ID so I
15 don't think the ID, and, uh, the solicitor said it was a
16 calling card, it's a calling card for the State to produce,
17 uh, false and untruthful testimony on.

18 Um, now I -- I'm -- I -- I'm pretty sure the facts state
19 that Ms. Banty was strangulated but I'm I'm not sure they are
20 presentin' murder. Um, there's no, there's no, uh,
21 aforethought which means premeditated and, uh, by law, you
22 know, somebody has to prove that there was aforethought in the
23 situation and that she was typically murdered by expressed or
24 implied, uh, malice, malice is the ill hatred, and you also
25 have to do away with what they call "passion," basically that

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1 means the passion to kill someone, uh, for that you get into a
2 little bit a lesser offense which is called a "voluntary
3 manslaughter" ---

4 MR. GRAHAM: Objection, relevancy. .

5 THE COURT: Yes, sir, uh, voluntary manslaughter is not
6 an issue, uh, before this court or this jury.

7 MR. WALKER: Thank Your Honor. Uh, the ju -- the
8 solicitor kept sayin' I wanted her dead, um, I have no need
9 for, I mean, Ms. Banty's dead now but or deceased but I have
10 no need for Ms. Banty, um, 'to be dead, uh, Ms. Ms. Banty was
11 the mother of my child, um, she she was, uh, she had, sh --
12 she had some issues with abusin', uh, children supposedly ---

13 MR. GRAHAM: Objection, not in the record, Your Honor.

14 THE COURT: Yes, sir, that is, uh, you may only argue the
15 facts and circumstances and reasonable inferences to be drawn
16 from those facts in the record and the law that I will
17 instruct in the trial of this case, Mr. Walker.

18 MR. WALKER: Thank you, Your Honor. Alright, uh,
19 Mr. Mr. Shawn Graham he stated, uh, there was a lotta damage
20 to the house and, again, uh, of course there was damage, there
21 was, you know, somethin' happened there but it wasn't murder,
22 you know, it wasn't, it wasn't a willful, willfully killing of
23 Catherine Banty, it was someone protectin' theirselves, that
24 person was me.

25 MR. GRAHAM: Objection, Your Honor, for arguing facts not

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1 in evidence again.

2 THE COURT: Uh, I I'm I'm not sure, uh, based on
3 your argument, uh, who you're referring to, uh, Mr.,
4 uh, Mr. Walker.

5 MR. WALKER: I'm I'm just, I'm I'm referrin' to openin'
6 and I'm referrin' to, uh, Mr. Graham's testimony as I was in
7 the house, um, I mean, that I don't know if this closin' is is
8 evidence, I mean, I guess it's not but it's considered
9 evidence.

10 THE COURT: The opening statement is not evidence, ---

11 MR. WALKER: Right.

12 THE COURT: --- the closing arguments are not evidence in
13 the case, it's testimony of witnesses testifyin' under oath
14 from the jury, physical items of evidence and any reasonable
15 inferences the jury think, the jury may think can properly be
16 drawn from the evidence.

17 MR. WALKER: I would, I would go with, um,
18 Mr. Walker's -- Mrs. Walker's testimony on that I lived at her
19 residence and I'll also go with Judy's Judy's residence that I
20 was there and the State's conclusion that they had ---

21 THE COURT: And you'd also go with what?

22 MR. WALKER: Uh, Judy Banty's testimony that I lived at
23 her residence.

24 THE COURT: If if that's in the record, you can
25 certainly, uh, argue to the jury that you lived at the

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1 residence.

2 MR. WALKER: Thank you.

3 THE COURT: Yes, sir.

4 MR. WALKER: Um, the record shows very little, ladies and
5 gentlemen. Um, the record shows wounds, knees, uh, you know,
6 on the knees it's typical football wounds I call 'em, you
7 know, scrapin' in the yard. Uh, you may, you may think
8 that's, uh, wicked or you may think that's aforethought but I
9 don't, you know. And that the State has the burden a proof
10 beyond a reasonable doubt. I'd like to get into reasonable
11 doubt with ya'll for a little while. Um, a a reasonable doubt
12 is typically sumtin' that ya'll is or or any jury, uh, within,
13 uh, I'm guessing the nation which I I speak of the nation as
14 the United States, um, ha -- has to abide by one rule and
15 it's, uh, reasonable doubt and State a South Carolina, uh,
16 well to me just the, it it basically means the, it it means,
17 it means proof, I mean, it means, you know, it it -- it's
18 it's, there's no tier in reasonable doubt, you can't, you
19 can't administrate, uh, doubt and and have consistency at the
20 same time, you must have one or the other normally. Um, I
21 think the judge is gonna get into it, uh, to the, for for your
22 consideration, um, and that or that he's gonna, he's gonna get
23 in some charges and let ya'll know basically what the law is,
24 um, on on, uh, certain circumstances, uh, he may get in, I'm
25 I'm pretty sure he's gonna get into reasonable doubt, um, and

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1 be -- before I steer off, uh, I have what they call the
2 "presumption of innocent," that means until ya'll make ya'lls
3 decision I am, uh, presumed innocent. Um, uh, I have another
4 point that that is innocent is kind of a insanity. Uh, you
5 may or may not think I'm insane but, you know, certain people
6 have in my life ---

7 MR. GRAHAM: Objection, that's not in evidence or
8 relevant either, Your Honor.

9 THE COURT: Yes, sir, Mr., uh, ---

10 MR. WALKER: Presumption of innocent?

11 THE COURT: --- Walker.

12 MR. WALKER: I I'm I'm goin' on the law of presumption of
13 innocency.

14 THE COURT: Mr. Walker, uh, the issue of insanity is not
15 before this trial jury or this court.

16 MR. WALKER: Alright, sorry, Your Honor. And, uh, you
17 also should take things in conclusion like when people give
18 testimony such as, um, Ms. Ms., uh, Sarah Walker, she gave
19 testimony that, um, um, my address was on record at the
20 hospital that night basically statin' that I was at that
21 residence or I lived at that residence, um, and then Mr.
22 Graham come back and said that, uh, that Ms. Walker stated
23 that I was, uh, that I had given her that information, I think
24 that she was testifyin' as to the record, that information was
25 on record, it wasn't, it wasn't relevant, uh, relatively me

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1 puttin' it on the record, uh, again, you should always
2 consider the victim in in this case, um, especially her
3 actions and her dos and her don'ts. Um, you know, that
4 Ms. Ms. Banty may have died for many reasons and, um, you
5 know, she could have died in process, uh, as Mr. Shawn Graham
6 says continuous strangulation but that coulda been in the
7 period of, uh, one or two to three strangulations overnight
8 somebody typically arguing.

9 MR. GRAHAM: Objection, Your Honor, there's no evidence
10 and not in the record either.

11 THE COURT: It's it's overruled.

12 MR. WALKER: And upon that, you know, you should always
13 consider that, um, Mr. Graham, Mr. Graham stated that I wanted
14 the victim dead, again, I I I see no reason for Ms. Banty to
15 be dead, I, I mean, I don't see why anybody would kill anyone,
16 you know, killin' is such a extreme measuring, such a bad
17 measure, um, that, you know, hostile words, attacks, actions,
18 you know, they they all require requirements and they all
19 require innocence and they all require, uh, maybe a guilty
20 person, you know, and it's it's, uh, me, myself or my --
21 may -- maybe you you should consider justice, you know,
22 justice in hostile words, justice in attacks, you know, them
23 are the things that meet malice, them are the things that meet
24 meet typical murder, you know, um, and and, uh, you know, all
25 things that are truly wicked, you know, they start innocent so

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1 you may take that in consideration too. I not sayin' that
2 anybody was wicked and this this victim was wicked or I as a
3 defendant in this case, that and, um, uh, you know, the State
4 has produced very small testimony, they produced, produced
5 cell maps, they produce phone records, autopsy photos, that
6 may be credibility to someone, may not. Um, ID card, uh,
7 everybody holds a ID card, uh, blood toxicologists, uh, a vile
8 a blood, they produced a 911 phone call, a in-car video, mean,
9 I I don't think that meets standards for murder but for
10 everyone's consideration it may or may not. Um, you know, I I
11 would ask, uh, if I could have everyone's attention, um, that,
12 you know, what is adjustifful, uh, what is adjustable [sic]
13 homicide, you know? A adjustable homicide is, uh,
14 basically ---

15 MR. GRAHAM: Objection, Your Honor.

16 THE COURT: Hadn't, uh, quite, hadn't quite heard,
17 uh, ---

18 MR. WALKER: Homicide, Your Honor.

19 THE COURT: --- where you, where you may be going, uh,
20 Mr. Walker, um, ---

21 MR. WALKER: Typically homicide's the death, hands of
22 another not typically murder but it calculates murder so you
23 can ---

24 THE COURT: Yes, sir.

25 MR. WALKER: --- uh, it seems like it'd be relevant with

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1 law of murder, homicide.

2 THE COURT: Well you you may continue, I'll give you some
3 leeway. Again, ladies and gentlemen, the facts are as you
4 find them to be of the, uh, evidence and testimony presented,
5 uh, during the course of the trial of this case but you, uh,
6 you may continue, uh, Mr. Walker.

7 MR. WALKER: Alright, Your Honor, thank you. You know,
8 what is a justified homicide? Ladies and gentlemen a the
9 jury, they they must commit, they must must understand adjust,
10 uh, a an adjustable homicide due to the fact that it's their
11 duties, you know, under the law.

12 Um, you know that I I I was arrested, as the indictment
13 Your Honor read, on, uh, March the 4th 2013 I think it was,
14 um, I I stayed in jail for a long time, uh, after after that
15 wait to get these charges taken care of and as you can probly
16 calculate they're just now gettin' taken care of. Um, a
17 lotta evidence in this case, uh, that doesn't seem, uh, too
18 legit, uh, on my basis they they may have been tampered or or
19 are illegit, um, there's a, there's a lotta people in this
20 case. Uh, typically typically when you're dealin' with
21 homicide and and and victims in murder, uh, typically people
22 get angry and, uh, sometimes as they try to say in the law
23 that the attack was the bad person, sometimes the victim's
24 friends and family's the bad persons also so you might take
25 that in consideration when you're reviewing evidence and

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1 whatnot that it may or may not be tampered with.

2 Um, a again, I was, I was, uh, charged with this murder
3 and, uh, I was charged by West Columbia Police Department, um,
4 and they alleged that, uh, s -- they allege strangulation and
5 blunt trauma to the head. Um, there's there's a lotta
6 evidence, you know, um, they never come at me with criminal
7 intent in the whole four years that I've been dealin' with
8 this thing, um, not one time have they they showed a
9 conclusion that that stipulates or leads to murder and I've
10 I've tried numerous times to get this taken care of before
11 meets ya'lls presence, um, and, uh, there's there's there's no
12 cause for this, you know, there's no no legit reason. Um,
13 that if I may, uh, to accuse somebody a murder you you have to
14 meet them guidelines and you just can't say that someone's a
15 residence at a home and and, you know, that they're, that they
16 used hostile words and attacks and actions and whatnot, I
17 mean, and typically that's that's, you'd need a video or
18 somethin', you know, to to prove that facts, um, but you're
19 allowed to weigh 'em, anyone is allowed to weigh them facts as
20 they see fit, um, and, you know, Ms. Ms. Banty, uh, upon her
21 death she she sat in a body bag for about forty-eight hours
22 for autopsy so in consideration them them autopsy photos that
23 are kinda excruginize [sic]; they kinda kinda rough, I don't
24 know, I'm sure as anybody will see when you get into these
25 these murders and whatnot or the or autopsies come in clusion

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1 [sic] it's pretty gruesome and, um, and you also have to weigh
2 the facts from of the actual death and, um, and whatnot, man,
3 you know. Uh, you know, you also should weigh in
4 paraphernalia, there was some paraphernalia found at the
5 scene, uh, me, uh, they never tied it to me even though the
6 State accuses me, uh, I'd like to know if the State knows
7 where I got it from, you know, 'cause I I didn't get it, A
8 didn't get it from nowhere and they tried to say that I used
9 it to, uh, stipulate a murder on paraphernalia; I don't think
10 that that's so, um, again, just credibility to the State and
11 their process of examin'in' things and their histories, their
12 description. Um, and, uh, that you may take, um, you may
13 take, uh, uh, me and the victim's child into consideration,
14 uh, you know, for children are innocent and though justice,
15 while most of us are wicked and actually prefer mercy, um,
16 somethin' you should take in consideration, uh, in your
17 verdicts. Uh, typically, you know, she was a child, she was
18 3-years-old at the time, you know, bein' with her mother and
19 when she grows up she has to have, she has some issues, you
20 know, she might she might find that they're not the same, she
21 might be thinkin' about different things, you know, I hope
22 that's not so, I hope she's credibility in the right state a
23 mind but I I think and anybody will tell you from my view that
24 Cassidy had a rough life until I inervened.

25 MR. GRAHAM: Objection, Your Honor, there's no facts in

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1 evidence support that.

2 THE COURT: Yes, sir, I I would, uh, sustain that
3 objection, uh, there is no evidence in the record before this
4 jury, again, however, ladies and gentlemen, you're the fact
5 finders in the case.

6 MR. WALKER: Now I I would typically like to, I leave it
7 at that but I I would like to get in, you know, the facts a
8 strangulation. You know there's it's a lotta facts in
9 strangulation that you cons -- you should consider, you know,
10 um, or are not necessarily strangulation but, uh, you know, in
11 self-defense, you know, typically not ju -- not self-defense
12 as law but self-defense as as a tactic, you may consider that
13 as and and within the death of victim, you know, ---

14 THE COURT: That's ---

15 MR. GRAHAM: Objection, Your Honor.

16 THE COURT: Mr., uh, Mr. Walker, um, that is not, uh,
17 evidence before this, uh, trial court or this trial jury, you
18 know what my, uh, ---

19 MR. WALKER: Right.

20 THE COURT: --- rulings have been in that regard when we
21 had our charge conference.

22 MR. WALKER: Yes, sir, Your Honor. You know that the
23 victim was choked and she coulda been choked in any way, any
24 fashion, any manner, not necessarily what the State says. Um,
25 State it doesn't say what happens, you know, I think it's

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1 other persons and people say what's, you know.

2 Um, Ms. Teneta [sic] Inabinet, uh, she was kind of an
3 African lady, kinda big, got on the stand, she, uh, she gave
4 some testimony as bein' a friend or acquaintance to the
5 victim, um, you know, typically as I said early your friends
6 aint always your friends when it comes to homicides, you know,
7 you might take her consideration. Um, uh, you seen
8 Mr. Kowalski's [sic], uh, video, he said I was lookin' kinda
9 crazy or whatnot, uh, that was the Aiken County officer, um,
10 with that to come into play you might take, uh, mental states
11 into mind, um, I'm pretty sure be relevant me as a pro se
12 defendant are comin' through this, uh, processes. As as you
13 notice me, I I'm not very fit all the time, I have numerous
14 medical and and mental conditions, um, as as you may have
15 noticed, Mr. Kowalski noticed at the same time. Um, if it may
16 be fit I was, uh, typically comin' off a medication called
17 "Clozaril," um, upon the time of of me and Mr. Kowalski's
18 interest.

19 MR. GRAHAM: Objection, Your Honor.

20 THE COURT: Again, ladies and gentlemen, the, uh, facts
21 are as you find them to be from the testimony and witnesses,
22 uh, testifying before you during the course of the trial.
23 Thank you, uh, Solicitor. Thank you, Mr. Walker, you may
24 continue.

25 MR. WALKER: Thank you, Your Honor. Uh, Clozaril is a,

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1 is a very very, uh, hard medication and it, uh, it typically
2 tranquilizes you, it's pretty much a tranquilizer, it stops
3 the process of thought, stops stops the process a mind, um,
4 stops the process a mu -- muscle movement and it stops the
5 process of, uh, other things basically, uh, anybody who's, uh,
6 has any type of affective disorder it's gonna stop it and
7 especially Clozaril is just the ---

8 THE COURT: Step ---

9 MR. WALKER: --- the ---

10 THE COURT: --- step down here to my court reporter.
11 Step right here (indicating). Solicitor, you may step
12 to . . .

13 (Whereupon, the following was held outside the hearing of
14 the jury.)

15 THE COURT: It's in the record.

16 COURT REPORTER: Okay.

17 MR. WALKER: Your Honor, that these, um, a lotta these
18 drugs it's like make me ill lately or ---

19 THE COURT: Understand you can't -- medications
20 itself ---

21 MR. WALKER: Yeah.

22 THE COURT: --- that you're -- or medications ---

23 MR. WALKER: Yeah.

24 THE COURT: --- or what it or it does to you and others
25 there's just not, it's not in the record. You got to argue

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1 facts that are in the record and reasonable inferences from
2 the facts and the law. You have to control yourself. I
3 don't, I don't wanna see you'll tell the jury 'bout that, it's
4 not in the record.

5 MR. WALKER: And other stuff.

6 THE COURT: Other stuff it's in here.

7 MR. WALKER: That ---

8 THE COURT: You need a few minutes?

9 MR. WALKER: Um, nah, I don't wanna, you know, hold up
10 the jury.

11 UNIDENTIFIED JUROR: This is fine.

12 THE COURT: He has to be here, you know, but it's not
13 their day in court, it's your day in court and you need a few
14 minutes?

15 MR. WALKER: No, I don't.

16 THE COURT: Well just, alright, well just just stay
17 focused on it now.

18 MR. WALKER: Yes, Your Honor.

19 THE COURT: Thank you, uh, thank you, Mr. Walker.

20 MR. WALKER: Thank you so much, Your Honor.

21 THE COURT: Thank you, uh, Solicitor.

22 MR. GRAHAM: Yes.

23 THE COURT: Alright, thank you, uh, Mr. Walker, you may
24 continue.

25 MR. WALKER: Thank you, Your Honor. You know there was,

CLOSING ARGUMENTS

1 there was injuries, uh, a blunt trauma, blunt head trauma,
2 there's also evidence that the child was left alone for a few
3 hours with, uh, victim, you know, kids will typically be,
4 typically, I wanna bouncie, throw things, hit things, you
5 know, uh, so you might take that in consideration especially
6 there's some wounds or whatnot that was supposed to be
7 post-death or after death.

8 Um, uh, uh, so so innernce -- innocence is is -- innocent
9 ends when one is stripped of the delusion that one likes
10 oneself. Um, I hope that you you as ladies and gentlemen a
11 the jury can take innocent into effect in your considerations,
12 um, especially bein' the duties that you have to produce
13 today. Um, I hope that, uh, I hope that the law abides and,
14 uh, that you, that you take in your consideration, uh, every
15 law and, um, every stipulation that may, uh, provide my
16 innocence -- innocency [sic], um, you know, there is a
17 innocence and, uh, ad -- admiration occurs in one who has not
18 yet realized that they might one day be admired, I hope not to
19 be admired today but I hope to be innocent so that may or may
20 not be willful for your consideration.

21 Um, again, the bruises and whatnot was very minor, small,
22 there was neck lacerations circled the neck but side
23 lacerations don't typically, not typically murder, you know,
24 there's a difference between criminal domestic violence, uh,
25 and murder, it's a difference between a lotta laws and murder.

CLOSING ARGUMENTS

1 Um, blunt force to the head typically takes an object, um, you
2 may may take that in consideration, uh, you might also take
3 that in consideration as Ms. Banty holdin' a object whenever
4 and she was, uh, was deceased, uh, there's also some, uh, some
5 evidence a violent, this circumstantial evidence, direct
6 evidence, whatnot you should take that into your 'sideration.
7 Uh, circumstantial evidence usually a tier or somethin', uh,
8 upon, they're they're like chain-links or one evidence must
9 meet the other but when you have one link over here
10 (indicating) and one link here (indicating) they do not
11 intertwine therefore they're not circumstantial evidence, um,
12 you should take that in con -- in your consideration 'cause
13 you must have a tier, a complete chain-link so you can't say
14 that, uh, that, uh, paraphernalia or blood toxicology, uh, or
15 a negative toxicology leads up to cell phones or or or phone
16 records or whatnot because they don't interlink. Um, I I do
17 not personally believe that there's any direct evidence in
18 this complete case, you may, uh, use, ladies and gentlemen a
19 the jury, may consider direct and circumstantial evidence in
20 your considerations. Um, I believe the the judge is gonna
21 charge ya'll, uh, on murder and whatever else he sees fit to
22 charge ya'll, um, I I just typically hope, uh, for your
23 condolence, your innocence and I hope that you take that in
24 consideration today.

25 Um, I'm pro se, um, I was pro se in this case, um,

CLOSING ARGUMENTS

1 typically people have lawyers come up here and say the right
2 words, the right things, the right times, you know, uh, by by
3 the Constitution, uh, and by by some rulings on the U.S.
4 Supreme Court, they're called "Faretta rights," uh, I'm
5 granted to go pro se, um, therefore that allows me to proceed
6 without an attorney, um, and I I do have a standby counselor,
7 I believe she was introduced, her name's Ms. Sarah Mauldin,
8 sh -- you may, Ms. Mauldin, stand up, ---

9 (Whereupon, Ms. Mauldin stood.)

10 MR. WALKER: --- she is my standby counsel, she's helped
11 me all through this case, uh, she supplied me numerous and
12 numerous, uh, legal documents, uh, so I could learn the law to
13 basically understand the law and I pretty much have been in
14 ya'lls ya'lls square today before, I know how it feels not to
15 know the law and try to learn the law and one thing I noticed
16 in the law was justice and that's somethin' I always kept in
17 my heart so maybe ya'll could keep, uh, justice in my heart
18 and I always had a friend, uh, call on through hard times, her
19 name is Shannon O'Cain, she's a paralegal, she's the paralegal
20 of, uh, Ms. Mauldin over there, uh, or she may, she looks
21 occupied, I aint even gonna make her stand up. Wait, stand
22 up, Ms. Ms. O'Cain, ---

23 (Whereupon, Ms. O'Cain stood.)

24 MR. WALKER: --- she's alright, thank you so much. And
25 that other guy over there (indicating) he, his name's

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1 Christopher Watkins, he's a, he's always open for business,
2 he's a private investigator, he's, uh, he runs, uh, Watkins
3 Digital Forensic and he's pretty good guy.

4 Um, you know, I ask you take, uh, innocence -- innocent
5 in all consideration and and three people today, that being
6 Cassidy, uh, our biological child 'tween me and the victim, I
7 ask you to take me in in your condolence and innocey [sic] and
8 also ask you to take Catherine, uh, on whatever grounds that
9 you see fit and, uh, you know, uh, malice is a ill will, I
10 hope you, ladies and gentlemen, will research malice and
11 understand innocent, also keep justice in your heart, thank
12 you so much ya'll.

13 THE COURT: Thank you, uh, thank you very much, uh,
14 Mr. Walker.

15 MR. WALKER: Thank you, Your Honor.

16 THE COURT: Ladies and gentlemen of the jury panel, if
17 you'd now please give me your complete and undivided
18 attention. My, uh, instructions to the jury generally takes,
19 uh, thirty to thirty-five minutes so if you would, uh, please,
20 uh, give me your attention throughout the course of my
21 instruction. The way I instruct a, uh, trial jury is first I
22 cover the general criminal law that applies to all criminal
23 cases South in Carolina. Uh, when I change from one
24 particular topic to another, I will give you the subject
25 matter at the beginning of that instruction to you, uh, each

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1 and every time, uh, thereafter I will charge you, uh, the, uh,
2 specific, uh, 'scuse me, the specific charge in the indictment
3 of murder and; finally, I will charge you the form of the
4 verdict.

5 Charge, arrest, indictment not evidence. The indictment
6 charges the defendant with murder. I remind you that the fact
7 that the defendant was arrested, charged and indicted in this
8 case is not evidence in the case and cannot be considered by
9 you as evidence of guilt in this case nor does this
10 indictment, this document create any presumption or inference
11 a guilt, this document is simply the formal written instrument
12 which contains the charges made against the defendant whereby
13 this case is brought before the Court.

14 Presumption of innocence as you've heard me say, uh, on
15 other occasions throughout the trial of this case the
16 defendant has pled not guilty to the indictment and that plea
17 puts the burden on the State to prove the defendant guilty. A
18 person charged with committing a criminal offense in South
19 Carolina is never required to prove himself or herself
20 innocent. I instruct you that it is an important rule of the
21 law that the defendant in a criminal trial no matter what the
22 seriousness of the charge may be will always be presumed to be
23 innocent of the crime for which the indictment was issued
24 unless guilt has been proven by evidence satisfying you of
25 that guilt beyond a reasonable doubt, this presumption of

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1 innocence does not end when you begin your deliberations but
2 it accompanies the defendant throughout the trial until you
3 reach a verdict of guilt based on evidence satisfying you of
4 that guilt beyond a reasonable doubt. The presumption of
5 innocence has been said to be like a robe of righteousness
6 placed about the shoulders of the defendant which remains with
7 the defendant until it has been stripped from the defendant by
8 evidence satisfying you of the defendant's guilt beyond a
9 reasonable doubt. The presumption of innocence is not a mere
10 legal theory, it is not just a legal phrase, it is a
11 substantial right to which every defendant is entitled unless
12 you, the jury, are satisfied from the evidence of the
13 defendant's guilt beyond a reasonable doubt.

14 Reasonable doubt. What is a reasonable doubt in the law?
15 A reasonable doubt is the kind of doubt that would cause a
16 reasonable person to hesitate to act. The State has the
17 burden of proving the defendant guilty beyond a reasonable
18 doubt. Some of you in the past may have served as jurors in
19 civil cases where you were told that it is only necessary to
20 prove that a fact is more likely true than not true such as by
21 the greater weight or the preponderance of the evidence, in
22 criminal cases the State's proof must be more powerful than
23 that, it must be beyond a reasonable doubt. Proof beyond a
24 reasonable doubt is proof that leaves you firmly convinced of
25 the defendant's guilt. There are very few things in this

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1 world that we know with absolute certainty and in criminal
2 cases the law does not require proof that overcomes every
3 possible doubt. If based on your consideration of the
4 evidence you are firmly convinced that the defendant is guilty
5 of the crime charged, you must find the defendant guilty, if,
6 on the other hand, you think there is a real possibility that
7 the defendant is not guilty, you must give the defendant the
8 benefit of the doubt and find him not guilty.

9 Duties of trial jury and trial judge. I remind you that
10 during this trial you and I have certain specific duties to
11 perform. As the trial judge, it is my responsibility to
12 preside over the trial of this case and I also have the duty
13 to rule on the admissibility of evidence offered during the
14 trial. You are to consider only the competent evidence before
15 you. If there was any testimony ordered stricken from the
16 record in this case during this trial, you must disregard that
17 testimony. You are to consider only the testimony which has
18 been presented to you from the witness stand, an any exhibits
19 which have been made a part of the record in this case and any
20 stipulation of the parties. I have the additional duty to
21 instruct you the law applicable to this case. As the
22 presiding judge, I am the sole judge of the law of this case
23 and it is your duty as jurors to accept and apply the law as I
24 now state it to you. If you already have any ideas what the
25 law is or what the law ought to be and it does not agree with

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1 what I now tell you the law is, you must abandon, you must
2 disregard your ideas because you're sworn, you've taken an
3 oath to accept the law and apply the law exactly as I state it
4 to you. In every case tried in this court before a jury, the
5 jury becomes the sole and exclusive judge of the facts in a
6 case. A trial judge cannot intimate, state, comment on or
7 make any statement to a trial jury about the facts in the
8 case. You are the sole judge of the facts in this case, you
9 are not to infer from what I have said during the progress of
10 this trial on, uh, in ruling upon the admissibility of
11 evidence or otherwise or anything that I now say during -- during
12 the course of this instruction to you that I have any opinion
13 about the facts in this case, the law, our law does not allow
14 me as the trial judge to have an opinion about any facts in
15 this case, that is a matter solely for you, the jury, to
16 determine. As jurors it is your duty to determine -- to determine
17 the effect, the value, the weight and the truth of the
18 evidence that has been presented to you, before you during the
19 trial of this case.

20 Direct and circumstantial evidence. There are two types
21 of evidence which are generally presented during a trial:
22 direct evidence and circumstantial evidence. Direct evidence
23 is the testimony of a person who claims to have actual
24 knowledge of a fact such as an eyewitness or an earwitness, it
25 is evidence which immediately establishes the main fact to be

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1 proved. Circumstantial evidence is proof of a chain of facts
2 and circumstances indicating the existence of a fact, it is
3 evidence which immediately establishes a collateral fact from
4 which the main fact may be inferred, excuse me.

5 Circumstantial evidence is based on inference and not on
6 personal knowledge or observation. The law, our law makes
7 absolutely no distinction between the weight or the value to
8 be given to either direct or circumstantial evidence nor is
9 there a greater degree of certainty required of circumstantial
10 evidence than of direct evidence. You should weigh all of the
11 evidence in the case. After weighing all of the evidence if
12 you are not convinced of the guilt of the defendant beyond a
13 reasonable doubt, you must find the defendant not guilty.
14 After weighing all of the evidence if you are convinced of the
15 guilt of the defendant beyond a reasonable doubt, you must
16 find the defendant guilty.

17 Credibility a witnesses. Necessarily, you must determine
18 the credibility of the witnesses who have testified in this
19 case. Credibility as you all know simply means believability,
20 becomes your duty as jurors to analyze -- analyze and to evaluate
21 the evidence and determine which evidence convinces you of its
22 truth in determining the believability of the witnesses who
23 have testified in this case coming from the background of your
24 individual and collective good judgment and common sense. You
25 may believe one witness over several or several witnesses over

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1 one, you may believe a part a the testimony of a witness and
2 reject the remaining part of the testimony of that same
3 witness, you may believe the testimony of a witness in its
4 entirety or reject the testimony of a witness in its entirety,
5 you may consider whether any witness has exhibited to you any
6 interest, bias, prejudice or other motive in this case, you
7 may also consider the appearance and the manner of the witness
8 while on the witness stand again reaf -- rea, uh, affirming to
9 you all of this is against that backdrop of your individual
10 and collective good judgment and common sense and the skills
11 each and every one of you use in evaluating the credibility of
12 witnesses, the credibility of people and what you hear, what
13 is told, corroboration, lack of corroboration, consistent
14 statements, inconsistent statements, all such as that you take
15 into account.

16 Expert witnesses, and I know you heard a this, uh,
17 throughout the, uh, course of the, uh, of the trial, I must
18 instruct you on it again, the rules of evidence ordinarily do
19 not permit witnesses to testify to opinions or conclusions, an
20 exception to this rule exists for witnesses we call "expert
21 witnesses," a witness who by education, experience, training,
22 has become expert in some arts, science, profession, craft or
23 calling may state an opinion as to relevant and material
24 matter in which the witness claims to be an expert and may
25 also state the reasons, the basis for holding those opinions

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1 that he or she may have. You should consider any expert
2 opinion received in evidence in this case and like any other
3 evidence give it the weight you think it deserves. You decide
4 that the opinion of an expert witness is not based on
5 sufficient education or training or experience or if you
6 conclude that the reason given in support of the opinion are
7 not sound or that the opinion is outweighed by other evidence,
8 you may disregard the opinion in its entirety. An expert
9 witness's testimony is to be given no greater weight than that
10 of any other witness simply because the witness is an expert,
11 further you are not required to accept an expert's opinion
12 even though it is not contradictory.

13 I instruct you and emphasize that the fact that the
14 defendant did not testify is not a factor to be considered by
15 you in any way in your deliberation and in your consideration
16 on the question of the guilt or the innocence of the
17 defendant, it must not be considered by you in any manner
18 whatsoever. A defendant has a constitutional right to remain
19 silent and the assertion of this right must must not be
20 considered by you in your deliberations, I repeat, under your
21 oath you're to draw no conclusion whatsoever from the fact
22 that the defendant in this case did not testify, the fact that
23 this defendant did not testify should not even be discussed in
24 the jury room, Mr. Foreman. The burden of proof as I have
25 stated to you is on the State. The defendant is not required

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1 to prove himself innocent, the burden of proof remains on the
2 State to prove guilt beyond a reasonable doubt.

3 Intent. In order to establish criminal liability,
4 criminal intent is required. For example, the mental state
5 required to be proven for a particular crime might be
6 purposefully, intentionally, knowingly, recklessly or
7 criminally negligent, had the levels of intent depending on a
8 particular crime. Criminal intent must be proven by the State
9 beyond a reasonable doubt. Criminal intent is always a matter
10 that must be determined by the jury from the circumstances
11 surrounding the situation. There's no way to prove intent to
12 a mathematical certainty, there's no way medical science can
13 dissect a person's brain and determine what the person had in
14 mind so the law, our law, says that criminal intent may be
15 inferred from the circumstances shown to have existed, this is
16 how you make your determination of whether or not the element
17 requiring intent was present. It is not necessary to
18 establish intent by direct and positive evidence but intent
19 may be established by inference in the same way as any other
20 fact by taking into consideration the acts of the party or
21 parties and all the facts and circumstances of the case.
22 Criminal intent is a mental state, a conscious wrongdoing, it
23 is up to you to determine what the defendant intended to do
24 based on the circumstances showing to have existed. Criminal
25 intent can arise from action or a failure to act, it may arise

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1 from negligence, recklessness or an indifference to duty or to
2 consequences that is considered by the law to be equivalent to
3 criminal intent, that is the, uh, the general criminal law
4 that applies to all criminal cases in South Carolina.

5 Next I will cover the, uh, charge in the indictment:
6 murder. The defendant is charged with murder, the State must
7 prove beyond a reasonable doubt that the defendant killed
8 another person with malice aforethought. Malice is hatred,
9 ill will, hostility towards another person. Malice is the
10 intentional doing of a wrongful act without just cause or
11 excuse and with an intent to inflict an injury or under
12 circumstances that the law will infer an evil intent. Malice
13 aforethought is the intersection of the malice and the
14 aforethought does not require that malice exist for any
15 particular period of time before the act is committed but
16 malice must exist in the mind of the defendant just before and
17 at the time the act is committed; therefore, there must be
18 that combination of a previous evil intent and the act.
19 Malice aforethought may either be expressed or inferred.
20 These terms "expressed" and "inferred" do not mean different
21 kinds of malice but merely the manner in which malice may be
22 shown to exist, that is, either from direct evidence or by
23 inference from the facts and circumstances which are proved.
24 Expressed malice is shown when a person speaks words which
25 express hatred or ill will for another or when the person

JURY CHARGE

1 prepared beforehand to do the act which was later
2 accomplished. Examples of expressed malice are lyin' in wait
3 for a person or any other acts of preparation going to show
4 that the deed was within the defendant's mind would be
5 expressed malice.. Malice may be inferred from conduct showing
6 a total disregard for human life, that is, the charge on
7 murder.

8 Finally, ladies and gentlemen, the form of the verdict.
9 There are two possible verdicts which you may find in this
10 case: guilty or not guilty. There's no significance
11 whatsoever in the order in which I just stated those
12 possibilities nor the order in which they will be presented on
13 the verdict form, Mr., uh, Foreman, ladies and gentlemen, it's
14 simply that one must be stated before the other. Your verdict
15 must be unanimous, all twelve of you must agree. Your
16 verdict may not be based on passion, prejudice or bias,
17 sympathy or any other motive not in evidence in this case. As
18 I say you'll have this, uh, form of the verdict, it has the
19 caption a the case, indictment number and such, it's ver --
20 very simple. Indictment Number 2015-GS-32-02341, Please mark
21 the appropriate verdict below and follow the accompanying
22 instructions carefully, uh, quite frankly there are no couple
23 of, uh, there no accompanying instructions except my verbal
24 instructions, uh, to you. We, the jury, as to murder, we, the
25 jury, unanimately [sic] find the defendant and there's a,

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1 below that, Guilty of murder, and a line to the left and then
2 below that, Not guilty, and a line to the left. If after your
3 determination of the facts in the case, reasonable inferences
4 to be drawn, you take those facts as you, the jury, find them
5 to be, you apply them to the law, the standard, the law, the
6 yardstick of the law as I have instructed you, if you find the
7 State has failed to meet its burden of proof beyond a
8 reasonable doubt and that finding is unanimous, your verdict
9 would be not guilty and I would ask you to please make a
10 checkmark next to those two words "not guilty" and circle both
11 the checkmark and the two words "not guilty," Mr. Foreman, uh,
12 sign as presiding juror and date it. If after your
13 determination of the facts in the case or from the testimony
14 and the reasonable inferences to be drawn from the testimony,
15 you take those facts as you, the jury, find them to be, apply
16 them to the yardstick to the standard of the law you find that
17 the State has met its burden of proving its case beyond a
18 reasonable doubt and your verdict is a unanimous one of
19 guilty, I would ask you to please check to the left of those
20 three words "guilt of murder" and circle both the checkmark
21 and the three words "guilty of murder," sign and date. Again,
22 ladies and gentlemen, your verdict must be unanimous, all
23 twelve of you must agree. Once you have reached that
24 unanimous verdict and a form has been, uh, executed
25 appropriately as I have instructed you, I would ask you to

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1 please knock on the jury room door, inform your bailiff that
2 you have reached a verdict, at that time we will receive you
3 back into the courtroom.

4 Uh, ladies and gentlemen, I'm going to ask you to please
5 momentarily return to your jury room, the law requires me to
6 meet one final time outside of your presence to, uh, speak
7 with the attorneys, uh, should I have misstated or forgotten
8 or need to give any additions to my instructions to you. If I
9 do not have to bring you back out here for further
10 instruction, what will occur is I will have the parties
11 marshall the exhibits that have been introduced into evidence,
12 um, they will, they will then simultaneously be submitted, uh,
13 to you and everybody looks great so our fine one remaining,
14 uh, alternate would come out of the jury room and you will
15 then be instructed by the Court to begin your deliberations
16 with your fellow jurors. Uh, if at any time you need a, I
17 wanna say 8-track, those aren't 8-tracks anymore, what are
18 they, that, uh, technical stuff, if you need any equipment or
19 anything like that, please let me know, um, I'll certainly,
20 uh, make it or have someone make it available for you. If you
21 should have any questions during your course of your
22 deliberation, you please write me out a note, knock on the
23 jury room door, the bailiff will deliver it to me and I will
24 try to, uh, address that, uh, question or concern in a timely
25 manner. I'm gonna allow you to take your notes with you at

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1 this time, again though do not begin your deliberations until
2 you're instructed to do so. Thank you, uh, thank you very
3 much for your patience, folks, now you, uh, that you may now
4 go with your bailiff.

5 (The following takes place outside the presence of the
6 jury.)

7 THE COURT: Alright, uh, any, uh, objection, Solicitor?

8 MR. GRAHAM: No, Your Honor.

9 THE COURT: Any objections, Mr. Walker?

10 MR. WALKER: No, no, ---

11 THE COURT: Sir?

12 MR. WALKER: --- sir, no, sir, Your Honor. I have one
13 question for Your Honor.

14 THE COURT: Yes, sir.

15 MR. WALKER: Is it -- I I I read it in a case that it was
16 probable to ask, uh, for basically a witness's testimony to be
17 transcribed and go back to the jury, uh, with the evidence, is
18 that probable?

19 THE COURT: I don't allow that.

20 MR. WALKER: Thank you, Your Honor.

21 THE COURT: Uh, if you'd give me a cite on that case I
22 wouldn't mind readin' it, the only one I know is *Lemire* but
23 that has nothin' to do with the testimony of a witness but
24 with the instructions and I do not allow instructions to go to
25 the jury room either, uh, at this stage. I would like to put

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1 on the record, solicitor began his, uh, closing argument at
2 12:54, he concluded his closin' argument at 1:14 which was
3 twenty minutes. Uh, during the course of that there was a an
4 objection after one minute concerning the word "evil" I
5 overruled; there was an objection, uh, at 1:02, uh,
6 concerning, uh, that Mr. Walker did not call the police on his
7 cell, did not call and check on Cassidy or Carrie, I
8 overruled; there was an objection at 1:04 that, uh, Carrie was
9 fighting for her life which I overruled; there was an
10 objection at 1:06 concerning bruising which I overruled; there
11 was an objection at 1:08 concerning the 3-year-old daughter
12 Cassidy, uh, bein' with her mom or what action she may have
13 taken which I overruled and there was an objection at 1:13 and
14 that the defendant kept strangling her, referring to Carrie
15 that I overruled, I overruled those based on the fact that
16 the, there were either facts in the record or reasonable
17 inferences to be drawn from the record.

18 At 1:15 the defendant started his closing argument which
19 ended at 1:52 which amounted to a total of thirty-seven
20 minutes, I of course uh, preauthorized that he could argue
21 for up to one hour or sixty minutes. Mr. Graham objected to,
22 uh, at 1:21, uh, where the defendant, uh, stated to the jury
23 he did not murder Carrie, uh, I overruled, uh, further, uh, as
24 to voluntary manslaughter, uh, I advised that was not a part
25 of this case, uh, further, as to, uh, child abuse I did not

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1 allow that, there was no evidence in the record; further, the
2 solicitor objected upon Mr., uh, Walker's argument that the,
3 that Carrie could have been choked three or four times also
4 leading to a s -- strangulation, I overruled the objection in
5 that regard, uh, as to, uh, Cassidy's, uh, having a rough
6 life, I did sustain that objection, there was no evidence in
7 the record in that regard and then, uh, there was objection
8 when Mr. Walker began discussing the medications he was takin'
9 and discussin' them by name, I, uh, sus -- allowed some a
10 that, I then, uh, uh, sustained the objection, I went down
11 from the bench and discussed at a bench conference with the
12 court reporter outside of the hearing of the jury that there
13 was no evidence and asked Mr. Walker to please, uh, stay
14 focused on the, uh, facts and the reasonable inferences to be
15 drawn that were part of the record.

16 Alright, here's the form of the verdict, if ya'll will
17 please check the, uh, check the, uh, uh, exhibits so we can
18 get it to the, uh, jury panel. Thank you, uh, thank you very
19 much.

20 (Pause.)

21 THE COURT: Exhibits straight, Mr., uh, Walker?

22 MR. WALKER: Yes, sir, all proper and correct, Your
23 Honor.

24 THE COURT: Alright. What did I do with that form
25 verdict?

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1 THE CLERK: I have it, Judge.

2 THE COURT: Alright, have ya'll seen the form of verdict,
3 Solicitor, that suit you?

4 MS. DAVIS: Yes, sir.

5 THE COURT: Well that suit you, Mr. Walker?

6 MR. WALKER: Yes, sir.

7 THE COURT: Alright, uh, let's deliver it, bring our, uh,
8 alternate out, we'll awaitin' our jury's verdict. Thank you,
9 uh, thank you very much.

10 (Whereupon, the jury began deliberations at 2:30 p.m.)

11 (Whereupon, a note was received from the jury at 3:16
12 p.m.)

13 THE COURT: Thank you, uh, please be seated. Thank you.
14 Have a, uh, note from the jury foreperson and the note says,
15 "Is this a death penalty case issue?" Alright, uh, Solicitor,
16 you have any position as to how I ought to respond to this?

17 MR. GRAHAM: I don't think they're supposed to consider
18 the penalty even though I think it's fine telling that it's
19 not.

20 THE COURT: Alright, thank you. Uh, Mr. Walker, do you
21 have any position, uh, you would, pending you'd share it with
22 me before I decide what I'm going to do?

23 MR. WALKER: No, sir, Your Honor. Um, I know typically,
24 uh, that that I don't think a life sentence or parole on
25 anything that come in effect with what what you gotta say so I

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1 really don't have anything to say, Your Honor.

2 THE COURT: Alright, so you you have no position?

3 MR. WALKER: N -- no, sir.

4 THE COURT: Alright.

5 THE BAILIFF: Bring the jury?

6 THE COURT: (No audible response.)

7 (The following takes place in the presence of the jury.)

8 THE COURT: Alright, uh, Mr. Foreman, ladies and
9 gentlemen a the jury, I received the note, "Is this a death
10 penalty case issue," um, the simple answer to that, the direct
11 answer that is no, it is not, uh, the extended answer that is,
12 uh, unless it were a death penalty case, uh, that would never
13 be part of your consideration in your determination of
14 punishment, if, any would not be a part of your consideration,
15 um, in your deliberations. Um, I I won't go into all the
16 details, uh, in the structure of, uh, death penalty cases but
17 except for those, uh, the sentences is if an individual would
18 be found guilty of an offense charged, the sentencing would be
19 left up to the, uh, discretion of the, uh, trial judge, he
20 would, uh, he or she would impose, uh, whatever sentence he or
21 she deemed appropriate within the case law and the guidelines
22 of our statutes and such so, um, it's not a, it's not a death
23 penalty case and punishment, if any, if any, uh, would be, uh,
24 left entirely up to the, uh, sentencing authority which in
25 this case of course would be, uh, the trial judge. Alright,

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1 does that respond ---

2 JURY FOREPERSON: Great.

3 THE COURT: --- to your question?

4 JURY FOREPERSON: Yes, sir.

5 THE COURT: Alright, thank you, uh, thank you very much.

6 (The following takes place outside the presence of the
7 jury.)

8 (Whereupon, the jury continued deliberations at 3:22
9 p.m.)

10 THE COURT: Any objections to what I just stated to the
11 jury, Mr. Walker?

12 MR. WALKER: No, sir, Your Honor.

13 THE COURT: Solicitor?

14 MR. GRAHAM: No, Your Honor.

15 THE COURT: Alright, thank you, uh, thank you very much,
16 we'll be awaiting the, uh, jury's verdict.

17 (Whereupon, the jury reached a verdict at 3:56 p.m.)

18 THE COURT: Good afternoon, please be seated, thank you.
19 Alright, I understand our, uh, jury has a verdict. Before I
20 bringin' 'em in I, before I bring 'em in I would advise, uh,
21 uh, those in the courtroom in the gallery, uh, and I tell
22 this, uh, to all spectators at the time of the return of the
23 jury verdict, uh, particularly, uh, in cases of, uh, this
24 magnitude that I do not allow any show of emotions or
25 outbursts or anything of that nature, I would ask you please

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1 maintain the, uh, decorum and dignity of the courtroom, this
2 can be very emotional for one side, the other, or both. If
3 you feel like you cannot, uh, contain your emotions, I would
4 ask you, uh, to leave at this time. I do have, uh, officers
5 that would, uh, take you into, uh, custody and I would have a
6 contempt hearing so just please, uh, please keep that in mind.

7 Alright, anything from the State 'fore we bring in our
8 jury, Solicitor?

9 MR. GRAHAM: No, Your Honor.

10 THE COURT: Mr. Walker?

11 MR. GRAHAM: No, sir. Upon sentencin' if they convict,
12 uh, there's somethin' I'd like take up with the Court before
13 before sentencin'.

14 THE COURT: Well like I told you, Mr. Walker, you can
15 can, you can, uh, I can predict anything but the future.

16 MR. WALKER: Ms. Donna Schwartz-Watts would like to speak
17 with you via phone conversation before sentencing if a
18 conviction comes back.

19 THE COURT: I won't take that up at this time, I won't
20 take that up until, uh, the jury returns its verdict,
21 Mr. Walker. Thank you very much.

22 THE BAILIFF: Yes, sir, Your Honor.

23 (The following takes place in the presence of the jury.)

24 THE COURT: Alright, uh, madam clerk.

25 THE CLERK: Mr. Foreman, have you reached a verdict?

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1 JURY FOREPERSON: Yes, ma'am, we have.

2 THE CLERK: Please pass it up by the bailiff.

3 THE BAILIFF: Have a seat young man.

4 (Whereupon, the verdict was handed to the Court.)

5 THE COURT: Alright, the, uh, verdict appears to be, uh,
6 in the proper form signed by our presiding juror dated today's
7 date. Madam clerk, would you publish our verdict, please.

8 THE CLERK: Indictment 2015-GS-32-02341 the State a South
9 Carolina vs. David Richard Walker, Jr., As to murder we, the
10 jury, unanimously find the defendant guilty of murder and it
11 is so signed by the foreperson February 28th 2017.
12 Mr. Foreman, ladies and gentlemen of the jury, if this is your
13 verdict, please indicate each of you by raising your right
14 hand. All hands raised, Your Honor.

15 THE COURT: Thank you, uh, thank you very much, uh, madam
16 clerk. Uh, Solicitor, anything further for the jury?

17 MR. GRAHAM: No, Your Honor.

18 THE COURT: Mr. Walker, anything further for the jury?

19 MR. WALKER: No, sir, Your Honor.

20 THE COURT: Alright, thank you, uh, thank you very much.
21 Alright, uh, ladies and gentlemen, momentarily I'm gonna
22 release you, uh, from your jury service both for the, uh,
23 remainder of the day and the remainder of the week, uh,
24 obviously. I never, uh, criticize nor, uh, commend the jury
25 for its, uh, verdict whatever it may be 'cause it's not within

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1 my provence to do so. I I don't know that I'm a jury watcher
2 but, um, I try to, uh, track 'em and noticed that, making sure
3 they're tracking, they're focused, they're attentive, they
4 have the work ethic and, uh, quite like laser so to speak.
5 Um, each and every time I did look, I I noted ya'll, uh, were
6 tracking the evidence and the testimony regardless of what
7 party may have been presenting evidence whether it was direct,
8 cross-examination of what witness may be on the stand. I
9 realize, uh, the sacrifice if -- and disruption it causes to
10 both your personal and professional lives just jury service
11 and you start off with a week I think, if I think correctly
12 and somebody correct me if I'm wrong, I believe Monday week
13 ago was a holiday so you start off with a short week and
14 generally that's a good week to have jury duty because it's
15 it's a compressed period a time and, uh, uh, obviously it
16 went into the second week and I was so impressed that, uh, uh,
17 although some may have not wanted to serve, nobody requested
18 to, uh, be transferred or anything of that nature and I, and I
19 certainly understand that you're scheduled for one week and
20 you go into two, uh, can be, uh, even a greater burden, uh,
21 quite frankly the, uh, tryin' to think of the right word, the
22 pleasure or honor of being a circuit court judge is number one
23 to people I work with in the courtroom, uh, both, the
24 plaintiffs, lawyers, solicitor, defense attorneys, public
25 defenders, their staff, uh, the parties, uh, clerk personnel,

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1 bailiffs, uh, just everyone involved throughout South Carolina
2 is just, uh, wonderful to be with but over and above that it's
3 really the people, the juries that come in week in and week
4 out throughout throughout South Carolina, uh, 'cause we really
5 couldn't do it without you. Um, people are entitled to a jury
6 trial, they should be, uh, they should be under our justice
7 system and they are and I have found that regardless of
8 whatever devices in this there may be in our country, I've
9 never found that on a jury panel, they always do their job and
10 make the decisions that they think is right usin' common sense
11 and good judgement, I I'm not sure why when we get more
12 numbers it seems more and more divisive, uh, sometime two
13 people can't even agree but, uh, I've seen it throughout South
14 Carolina. My pleasure and privilege to serve with ya'll this
15 week, um, as I say you're released from your jury service.
16 What I -- on a trial such as this it's probly the second,
17 maybe third longest I've had in the last, well that's not
18 true, I think in the last three months I had one that lasted
19 nine days but I almost feel like I'm losin' a part a my
20 family, ha, ha, ha, a little bit but, uh, be that as it may,
21 thank you, uh, thank you very much here for your service,
22 you're now excused.

23 (Whereupon, a discussion was held off the record.)

24 THE COURT: Alright, uh, Mr. Walker, you have any
25 motions?

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1 MR. WALKER: Uh, no, sir, Your Honor, a directed verdict.

2 THE COURT: Alright, uh, ---

3 MR. WALKER: I review all -- I I renew all my objections
4 and all my motions.

5 THE COURT: Any other motions?

6 MR. WALKER: Not at this time, Your Honor.

7 THE COURT: Uh, speak to, uh, standby counsel for me,
8 please.

9 (Whereupon, the defendant complied.)

10 MR. WALKER: Your Honor, I now move for a new trial.

11 THE COURT: Alright, thank you, uh, thank you very much,
12 I would, uh, respectfully deny your motion for directed
13 verdict, um, based on my previous rulings at the close of the
14 State's, uh, evidence, I will reaffirm all my previous, uh,
15 trial and evidentiary rulings, uh, throughout the course of
16 the case and I would respectfully, uh, deny your motion for a
17 new trial. Now as to sentencing you mentioned Dr., uh, Donna
18 Maddox, ---

19 MR. WALKER: That's correct.

20 THE COURT: --- you wanna take that up with me at this
21 time?

22 MR. WALKER: Yes, sir. Yes, sir, Your Honor. Um,
23 Ms. Maddox she would like to to consult with you. Uh, she
24 has, she has some features and things that she would like to
25 get known to the Court, uh, before sentencin'. I I think she

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1 sh -- she's got some issues she would like to to subject, uh,
2 to Your Honor and also to the Court in general if she may.

3 THE COURT: So Dr., uh, Donna Maddox would, uh, like to
4 appear, uh, to, uh, convey certain information to the Court
5 before I impose sentencing?

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

7 THE COURT: Have you spoken with her?

8 MR. WALKER: I believe, uh, Ms. Mauldin has, standby
9 counsel.

10 THE COURT: Alright, uh, Ms. Mauldin, yes, ma'am.

11 MS. MAULDIN: Your Honor earlier Dr. Maddox had expressed
12 to me that she would like to provide some more information in
13 mitigation and, um, I've been in touch with her today and let
14 her know where we're on progression of the trial, um, and a
15 little while ago I let her know that we were closin' in on a
16 verdict and, um, she asked me whether Your Honor would permit
17 her to testify by telephone.

18 THE COURT: Any objection from the State?

19 MR. GRAHAM: To her testifying by telephone, no, Your
20 Honor.

21 THE COURT: Alright, and she she cannot be here tomorrow
22 in person.

23 MS. MAULDIN: Your Honor, I didn't ask her that question.

24 THE COURT: Alright. Uh, quite frankly I would, uh,
25 guess my preference is for her to be here in person tomorrow

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1 but that if she cannot be in, here in person tomorrow, I I
2 will, I will hear from her by telephone, my preference is, uh,
3 not to impose sentence this afternoon.

4 MS. MAULDIN: Yes, Your Honor.

5 THE COURT: Alright, uh, where where will he be housed at
6 this time?

7 POLICE OFFICER: SCDC, Your Honor.

8 THE COURT: Sir?

9 POLICE OFFICER: SCDC until tomorrow as I schedule
10 release from SCDC.

11 THE COURT: Alright, and he still has, uh, items at South
12 Carolina Department a Corrections?

13 POLICE OFFICER: That's correct, Your Honor.

14 THE COURT: And then tomorrow he would be transferred
15 to ---

16 MR. WALKER: Lexington.

17 POLICE OFFICER: Be Lexington ---

18 THE COURT: And ---

19 MR. WALKER: Office ---

20 THE COURT: --- then for sentencing?

21 POLICE OFFICER: Yes, sir.

22 THE COURT: Alright, uh, Mr., uh, Walker, is there anyone
23 else, uh, that the Court can assist you with, uh, being here
24 on your behalf as far as, uh, mitigation is concerned
25 tomorrow?

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1 MR. WALKER: Uh, not that I know of, Your Honor, not that
2 I know of. I might ask someone to speak with my grandmother
3 see if she wants to come in, she she's ---

4 THE COURT: Your grandmother?

5 MR. WALKER: That's correct, Your Honor, she she said
6 somethin' earlier about it, uh, but it's been a few years,
7 maybe a year or two, so she may not still have the same issues
8 and especially ---

9 THE COURT: And where where does your grandmother live,
10 don't give me address but what town or county?

11 MR. WALKER: She's in Walterboro, Colleton County.

12 THE COURT: In Colleton County? Anyone else?

13 MR. WALKER: No, sir, I, none that I can think of.

14 THE COURT: Alright, and, Solicitor, can the members of
15 the victim's family be present tomorrow if I start about ten?

16 UNIDENTIFIED WOMAN: Yes, sir.

17 MR. GRAHAM: Yes, Your Honor.

18 THE COURT: Alright, uh, I I would rather take it up
19 tomorrow, uh, quite frankly, it's, uh, tha'd be my preference.
20 Alright, so, uh, Mr., uh, Mr. Walker's, uh, remanded back into
21 the custody as he has been of the, uh, South Carolina
22 Department a Corrections and, uh, if he can be back at, uh,
23 ten o'clock in the mornin'. Thank you, uh, thank you very
24 much. Thank you, uh, Solicitor, thank you, uh, Mr. Walker.
25 Alright, court'll be in recess till ten o'clock in the

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1 mornin'.

2 (Proceedings March 1, 2017)

3 THE COURT: Alright, Mr., uh, Walker, if you'd come
4 around to the podium for me, please.

5 MR. WALKER: Should I go up to the stand or the middle
6 podium, Your Honor.

7 THE COURT: (No audible response.)

8 (Whereupon, the defendant came forward.)

9 THE COURT: Alright, uh, Solicitor, anything further from
10 the State?

11 MS. DAVIS: Yes, sir, Your Honor. Your Honor is aware of
12 the facts a the case so I have his prior record and we have
13 three members of the victim's family who would like to address
14 the Court at the appropriate time.

15 THE COURT: Alright, yes, ma'am.

16 MS. ADAMS: Um, his prior record: In 2001 a breach of
17 peace, two counts of felony larceny, two counts of alluding
18 [sic] arrest with aggravating factors, failed to heed light or
19 siren, a reckless driving to endanger, possession of stolen
20 goods, assaulting a government official; 2002 probation
21 violation and a felony possession of stolen goods; 2003
22 carjacking with great bodily harm for which he was sentenced
23 to four years; 2010 in North Carolina, um, a felony breaking
24 and entering, larceny after breaking and entering, larceny of
25 a motor vehicle, possession of stolen goods, trespass,

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1 breaking and entering with intent to commit a felony, an auto
2 larceny and then most recently in 2016 three counts of
3 throwing bodily fluids which he got while he was in the jail
4 on these charges, Your Honor.

5 THE COURT: And didn't I, um, didn't I hear, uh,
6 testimony pretrial he had a criminal domestic violence
7 conviction in Colleton County?

8 MS. DAVIS: It was not a conviction, it was an arrest,
9 Your Honor.

10 THE COURT: It was an arrest ---

11 MS. DAVIS: Yes.

12 THE COURT: --- and the case is still pending?

13 MS. DAVIS: No, sir, um, it was dismissed, I I don't
14 believe that Ms. Banty cooperated with them at that time.

15 MR. GRAHAM: And it it was dismissed then expunged, Your
16 Honor.

17 THE COURT: And when, uh, when was it dismissed?

18 MR. GRAHAM: Uh, I don't know. I know when we got the
19 case from West Columbia in 2013 there was information in there
20 with a rap sheet about it and then by the time our office was
21 preparing for trial this past year it had been expunged and
22 gone.

23 THE COURT: Alright, thank you, uh, thank you very much.
24 Alright, uh, Solicitor, victim impact?

25 MS. DAVIS: Yes, sir, Your Honor. Your Honor, the first

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1 person you're gonna hear from is the victim's sister Samantha
2 Gutknecht, I have provided how to spell her last name to the
3 court reporter.

4 THE COURT: Alright, thank you. Uh, yes, ma'am, tell me
5 your full name, please, and spell your last name for our court
6 reporter.

7 MS. GUTKNECHT: Samantha Dawn Gutknecht, it's
8 G-U-T-K-N-E-C-H-T.

9 THE COURT: Alright, uh, I'll be glad to hear from you.

10 MS. GUTKNECHT: Okay. Um, a life was stolen from this
11 world unfairly and unjustly at the hands of evil. Because of
12 David I have lost the co-conspirator of my youth, my 17-year,
13 uh, roommate and no longer do I have a sister to reminisce of
14 my childhood with, our memories are no longer ours, they
15 belong solely to myself, moreover Cassidy lost the chance to
16 know and belong to a wonderful and dedicated mother. Through
17 the pain and grief I have gained a daughter. It hurts my
18 heart to acknowledge the life and world that Carrie is missing
19 but my husband and I are honored to take on the role as
20 parents. For four years, uh, we have raised her as our own
21 safely, securely and away from malice and darkness in a
22 fashion that Carrie would love, I know she appreciates this
23 from above and at long last with this behind us we can pursue
24 adoption and make it legally so.

25 To the prosecution I thank you for your diligence and

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1 care and to the jury I thank you for letting us move on and
2 keeping our daughter safe and out of his hands. Um, to the
3 Court I beg for maximum sentence as to protect our daughter
4 from this man. It is imperative that he not have the chance
5 to show up on our doorstep and ask for her before she is able
6 to underha -- understand and comprehend the severity of the
7 situation. Our main goal is the safety and the contentment of
8 this sweet little girl just as Carrie would have done. Thank
9 you so much for your time and allowing me to say the things
10 that I've needed to say to him for four years.

11 THE COURT: Thank you, uh, thank you very much, thank
12 you, uh, for bein' here. Solicitor.

13 MS. DAVIS: Your Honor, next is gonna be Mr. Thomas
14 Banty, he is, um, the victim's father.

15 MR. WALKER: Your Honor, may I, may I leave the courtroom
16 while they give testimony, the victim's family?

17 THE COURT: No, sir. Alright, uh, Mr. Banty, I'll be
18 glad to hear from ya.

19 MR. BANTY: Fine. Of course my name is Thomas Banty,
20 B-A-N-T-Y, I'm the father of the victim. The last four years
21 have been very difficult to say the least, you're not
22 supposed, ---

23 MS. DAVIS: You want me to read?

24 MR. BANTY: --- uh, ---

25 MS. DAVIS: You're ---

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1 MR. BANTY: Thank you.

2 MS. DAVIS: --- not supposed to have to bury your
3 children, especially from such a violent manner. The
4 relationship between Carrie and Cassidy was great, I will
5 cherish the last year we will -- we lived together. She was
6 so happy to settle down as a family with David, of course I
7 was skeptical and at the same time supportive. She was just
8 wanted -- she just wanted to have a family of her own.
9 Cassidy has adjusted amazingly with Samantha and Brian,
10 they're a great family, I'm so happy for that. This will have
11 us -- this will haunt us forever. I think she should -- he
12 should get the maximum sentence for such a crime. There are
13 so many thoughts that I had trouble writing this, I would like
14 to thank law enforcement, the jury, the Court and prosecutors
15 for a fine job. I have found my attitude and behavior has
16 changed since the incident, I am not the same person I was and
17 I'm a little more bitter.

18 THE COURT: Thank you, uh, thank you, uh, Mr. Banty.

19 MR. BANTY: I have a couple a photos, sir, if you don't
20 mind.

21 THE COURT: I do not.

22 MS. DAVIS: May I approach, Your Honor?

23 THE COURT: Yes, ma'am.

24 (Whereupon, counsel handed the photos to the Court.)

25 THE COURT: Thank you.

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1 (Pause.)

2 THE COURT: Alright, uh, Solicitor.

3 MS. DAVIS: Your Honor, we have one more, um, Ms. Robin
4 Banty, she is the victim's mother.

5 MS. BANTY: David, that on the night you murdered my
6 little girl, Cassidy's mother, you've changed lives it, of
7 many and but, David, it hurts the loved ones and close
8 friends. As I have watched you fight for your life the last
9 seven days, you've showed no remorse for evil things you done
10 to Carrie, Cassidy's mama. As I sit here today and hear your
11 punishment, your fate, in my heart whatever sentence you are
12 given, excuse me, whatever sentence you are given, it will
13 never, it will never compare to what you did to Cassidy's mama
14 and my little girl. With that bein' said I will say to you
15 that life is not good enough for you but you will continue to
16 live unlike Carrie, Cassidy's mama, my Carebear. Uh, I hope
17 every day you continue to live your actions of evil you've
18 done haunts you in your mind and your heart although I see no
19 compassion or remorse for the evil murder you committed I can
20 and will hope, uh, that you rot away in your cell for the
21 choices you have made. There are no winners here today but
22 you deserve so much pu -- so much more punishin' -- punishment
23 than any you will be given here today. Thank you. I'd also
24 like to thank the Court, all the staff for the wonderful job
25 you've done and support, thank you.

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1 THE COURT: Thank you, uh, thank you very much,
2 Ms. Banty. Anything anything further, uh, Solicitor?

3 MS. DAVIS: Your Honor, that's all from the State.

4 THE COURT: Alright, thank you. Uh, Mr. Walker, uh, ---

5 MR. WALKER: How you doin', Your Honor?

6 THE COURT: --- do you have any witnesses to appear on
7 your behalf?

8 MS. MAULDIN: Your Honor, if I may speak for Mr. Walker.

9 THE COURT: Yes, ma'am.

10 MS. MAULDIN: Dr. Donna Maddox is here and I believe
11 she'd like to address the Court, uh, I don't think we really
12 need to call her as a witness but I think she can just
13 prepare, she can just share her prepared remarks.

14 THE COURT: Of course. Uh, doctor, if you'd come around,
15 please.

16 (Whereupon, the witness came forward.)

17 DR. MADDOX: Good afternoon.

18 THE COURT: Good afternoon, Doctor.

19 DR. MADDOX: Your Honor, what I wanted to do, most of
20 this, uh, most of what I'm gonna be talkin' about I think is
21 in evidence already and just wanted to bring to the Court's
22 attention. Um, Mr. Walker he first developed symptoms of
23 mental illness in 2002, so about 13 years ago, so there's a
24 very long documented history of mental illness and I just
25 wanna bring that to your attention.

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1 The first time that we ever had notations of him having
2 symptoms was in October 2002. At that time he was, um,
3 acting, that this is somewhat bizarre behavior but acting like
4 a robot and, uh, noted to be acting strange and those were the
5 first symptoms he had when he came to clinical attention. He
6 was, um, incarcerated in South Carolina Department of
7 Corrections as the solicitor had mentioned and while he was
8 there he was seen in 2004. He had slit wrists at that time,
9 he had, uh, requested protective custody because he thought
10 another inmate was going to stab him. He was seen by
11 psychiatry at that time and he was diagnosed with premorbid
12 psychosis and that was the first time that he was placed on
13 antipsychotic medications. Three months later they changed
14 his diagnosis to schizophrenia, so the first time that we've
15 seen him in the records have a diagnosis of schizophrenia was
16 in 2004.

17 The next encounter we had he was seen at Palmetto Health
18 Richland Springs so he would've been out in the community and
19 that woulda been in 2007 and they diagnosed him with bipolar
20 disorder which is a mood disorder.

21 Next he went to treatment at Coastal Empire Mental Health
22 Center and that's near Walterboro where he was, uh, living and
23 they also, as an outpatient, so this is without legal charges,
24 this is him outta the legal system just using services. In
25 the community he's hospitalized and diagnosed with, um,

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1 bipolar and then and at the Coastal Empire Mental Health
2 Center he was diagnosed with schizophrenia. They noted, their
3 records describe things that he would become disorganized in
4 his thought, he had a flat affect or looked like he had no
5 emotion, uh, appearing unemotional, that is a very common
6 symptom of schizophrenia where people do not appear emotional
7 about certain things, they also noted in that record that he
8 lacked facial expressions, they also at that time found him
9 walking in the middle of the road and he had been missing for
10 several days so that's where earlier in the testimony with a
11 history that he wanders sometimes when he's psychotic, it came
12 that that was first noticed, um, in 2008.

13 He was hospitalized at Bryan Hospital which is where I
14 used to work from February 20th until March 11th. Um, Your
15 Honor, for someone to be in the ho -- acute hospital for three
16 weeks he must have been sick, um, as I've worked there, uh,
17 the average length a stay for a patient under my service
18 woulda been about ten days so he was quite ill, he also was
19 diagnosed at that time with schizophrenia.

20 His next hospitalization was at MUSC in 2008, he stayed
21 from July 28th until August 8th, he was discharged again with
22 a diagnosis of schizophrenia. This is the first time though
23 that we see some substance abuse, uh, becoming involved in
24 2008, um, they diagnosed him with cocaine abuse and alcohol
25 abuse. Um, at this time, at this hospitalization he had

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1 delusions that his family was spying on him and they also
2 noted that he was responding to hallucinations.

3 His next hospitalization occurred in 2009, he was in, uh,
4 Central Regional Hospital in Raleigh, North Carolina. They
5 noted at that time that he was suspicious and guarded, um, he
6 had, uh, his hygiene was very poor, he was smiling
7 inappropriately. During that hospitalization he called 911
8 and asked for the FBI and also during that hospitalization he
9 attempted to assault an 85-year-old patient, he accused the
10 patient of taking something out of his eye, so that's the
11 first time that we look in his history that we see some, um,
12 aggressiveness associated with his psychotic state.

13 Uh, while he was in North Carolina he served the 11-month
14 sentence for felony breaking and entering, while he was there
15 he was noted to become increasingly bizarre. He was
16 defecating on himself and he had a very rare syndrome --
17 symptom, Your Honor, called "catatonia" and what that is
18 that's a motor illness that you see with schizophrenia where
19 persons don't move, they can maintain a posture for a very
20 long period of time and that's a symptom associated with very
21 regressed schizophrenia.

22 He was at -- hospitalized again in Central in November
23 2011, at that time he had been involuntarily committed by a
24 judge at the end of his prison sentence. He was found, uh, he
25 was treated with various, uh, neuroleptics and this is the,

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1 uh, hospitalization where he was discharged on Clozaril.

2 Clozaril is a medication in psychiatry that we reserve for the
3 most severe forms of schizophrenia, it's usually the end a the
4 line treatment when other medications don't work, that one is,
5 it's a very expensive medication, it requires weekly blood
6 draws and those sorta things and that's the medication I
7 believe that he was on at the time that was being tapered
8 when, uh, this, uh, crime happened. He, uh, responded well in
9 that medication. Um, he then left and was in a a residential
10 group home called Evergreen in Charleston but his father took
11 him outta that home and that's how we ended up in this
12 situation. He was in a group home, his father took him out,
13 had -- did not feel that the group home, uh, it was a dirty
14 place, he was concerned about the level a care Mr. Walker was
15 receiving so he took Mr. Walker out of this home.

16 On the night before the offenses the Court is well aware
17 he was scene at the Lexington Medical Center, he went there
18 for strep throat or pharyngitis but, uh, uh, Ms. Banty had
19 reported that the hospital note indicated that she felt he was
20 slipping and not doing well. He was offered a shot, he didn't
21 take it. Um, he was discharged and was found not to be
22 civilly committable and they released him and then the next
23 day this crime occurred.

24 After the offense he was found to be confused by the
25 police on December 17th 2012. He did tell the police at that

MOTIONS AND MATTERS

1 time he was homicidal, they co -- took him to the Aiken
2 Regional Medical Center where he would not answer questions,
3 all he would do was shake his head, he made no eye contact
4 with the doctor there. The on-call -- they called the
5 psychiatrist there, the psychiatrist did not even go in to see
6 him, they called by phone and the psychiatrist said to release
7 him and the staff felt so strongly about that they recontacted
8 the on-call psychiatrist, uh, they were concerned about his
9 behavior. He was released anyway by Aiken, uh, Regional
10 Medical Center and the Aiken She, uh, County Sheriff's
11 deputies transported him to West Columbia where as you know he
12 was, uh, apprehended. Uh, he was taken to, the West Columbia
13 Officers also had some concern and took him to Palmetto Health
14 Richland Hospital. He was seen there and they took him from
15 that emergency room to the Medical University a South
16 Carolina. Um, he was agitated, he was hospitalized there, he
17 was, um, delusional there and he was again delusional about
18 his parents, thinking that his parents had something to do
19 with his girlfriend's death. They had noted that he was not
20 taking care of himself, that he had been wandering. He was
21 hospitalized from December 30th until January 7th at, uh, MUSC
22 and they had him on, uh, antipsychotic medications, so as you
23 can see, Your Honor, and then of course during, um, the course
24 of this hospitalization he went back to Forensic Services
25 where he was treated and stabilized on medications and during

MOTIONS AND MATTERS

1 that hospitalization he also assaulted the male that he felt
2 was, uh, spitting on his bed, so there's been a very long
3 documented history for him for his symptoms and they have been
4 very bizarre. He he has this, all the classic symptoms of
5 schizophrenia, there's no question that's his diagnosis. He
6 has delusions which are fixed false beliefs, he believes
7 things that are not true. His main delusions as I mentioned
8 earlier in the week appear to be somatic in nature. He
9 believes that he's infested with the worms, the three
10 different kinds, and that they eat, uh, some of his body
11 parts. Also, Your Honor, um, in addition to him being
12 mentally ill, I a course had Dr. Troy Brawley to see him, I
13 was very concerned when I first evaluated him back in 2013, it
14 was very obvious that he had some cognitive deficits. Uh, he
15 had a history of a head injury when he was a small child, uh,
16 he was in the back seat of his mother's car, she got in a
17 wreck if he had a traumatic brain injury. Dr. Brawley saw
18 him, he did try, he was cognitively impaired but it was too
19 difficult to know, Your Honor, because he, because of his
20 mental illness those cognitive deficits can be seen with
21 schizophrenia and and they can also be seen in persons that
22 have closed head injuries, so on top of his mental illness he
23 definitely has cognitive impairment.

24 Um, lastly, I wanted to just bring to your attention his
25 his medical health. Um, as you know he's got that genetic

MOTIONS AND MATTERS

1 disorder and he's predisposed to cl -- blood clots and
2 pulmonary emboli and he will most likely have a very short
3 life span because of that..

4 Um, final things, I just wanna say he, I think he's very
5 self-serving and he's very self-protective but in my opinion
6 he has not malingered, I've not seen him malinger any
7 symptoms. Um, I was very careful in my testimony to the
8 Court, I didn't wanna give ideas about how to do that but and
9 I I've not seen him malinger even though I think the time he's
10 been self-serving at times, I haven't seen any evidence that
11 he's malingered and nor did Dr. Frierson. Thank you.

12 THE COURT: Doctor, let me, let me, ---

13 DR. MADDOX: Yes.

14 THE COURT: --- let me track somethin', um, that if if
15 I'm tracking correctly, the night before the homicide ---

16 DR. MADDOX: Yes, sir.

17 THE COURT: --- he went, Ms. Ca -- Ms. Banty, uh, went
18 with him to the Lexington Medical Center, ---

19 DR. MADDOX: Uh, correct.

20 THE COURT: --- uh, and hi -- his complaint was a throat
21 or a, some type of a a bronchitis, whatever, whatever ---

22 DR. MADDOX: Yes, he ---

23 THE COURT: --- it's called to ---

24 DR. MADDOX: --- complained, he had said he had stomach,
25 I think some stomach problems and then a sore throat.

MOTIONS AND MATTERS

1 THE COURT: I'll I'll I'll speak with you in a moment,
2 Mr. Walker. And, uh, Ms. uh, Banty reported to staff at the
3 Lexington Medical Center her concerns and believe as you had
4 put it that he was slipping and not doing very well.

5 DR. MADDOX: Correct.

6 THE COURT: Was he seen by a psychiatrist at -- or what
7 what would be the protocol, uh, I almost, I'd al -- I almost
8 don't wanna put it into the phrase of if you know because I
9 think you know everything, Doctor, but what would be the
10 protocol for the hospital to follow in that regard when a,
11 with that type of complaint?

12 DR. MADDOX: That's good question, I'm not sure. I know
13 Dr. Lohr, L-O-H-R, saw him but I'm not sure if Dr. Lohr is a
14 psychiatrist and it depends, Your Honor. If someone comes
15 into the emergency room and there's a question whether they're
16 psychotic, um, that the emergency room doctor may consult with
17 a psychiatrist, um, they offered him medications but I'm not
18 sure of the qualification ---

19 THE COURT: Did he ---

20 DR. MADDOX: --- of Dr. ---

21 THE COURT: --- get, ---

22 DR. MADDOX: --- Lohr.

23 THE COURT: --- did he take that shot?

24 DR. MADDOX: He did not.

25 THE COURT: And what what would that have been an

MOTIONS AND MATTERS

1 injection of?

2 DR. MADDOX: Geodon. They offered him a shot of Geodon
3 which is a short acting, it would have lasted for about, uh,
4 twelve hours, a 12-hour injection.

5 THE COURT: And and what what is the normal affect of
6 that medication on an individual with the, uh, diagnosis that
7 he has?

8 DR. MADDOX: It would organize his thinking, it will calm
9 him down, it would, it would be beneficial.

10 THE COURT: Alright, anything further, Doctor?

11 DR. MADDOX: Uh, yes, sir, one one, uh, final thing. I
12 will contact the Department a Corrections. I spoke with
13 Mr. Walker today, he's more than willing to work with mental
14 health so Stoney Drake is the mental health, um, the head of
15 mental health over at the Department a Corrections and I will
16 contact them upon the conclusion and and let them know to, uh,
17 that he's comin' into, uh, make sure that they try to make an
18 appointment with him.

19 THE COURT: Doctor, uh, you s -- you also s -- yes,
20 ma'am, thank you, and you also said that Aiken
21 psychiatrists ---

22 DR. MADDOX: Um-hum, ---

23 THE COURT: --- that would come to see him.

24 DR. MADDOX: --- that's correct.

25 THE COURT: Thank you, uh, thank you, Doctor, and on

MOTIONS AND MATTERS

1 behalf a the Court and others for your, uh, efforts, uh,
2 during the course of the trial and prior, obviously prior to
3 trial, uh, and your, uh, visits and discussions and
4 conversations with, uh, Mr. Walker, ---

5 DR. MADDOX: Thank you, ---

6 THE COURT: --- thank you very ---

7 DR. MADDOX: --- Your Honor.

8 THE COURT: --- much. Alright, uh, Ms., uh, Ms. Mauldin,
9 uh, . . .

10 MS. MAULDIN: Thank, Your Honor. We would, uh, we've
11 provided a copy of Dr. Frierson's Capacity to ---

12 THE COURT: I have read Dr. Frierson's report and I have
13 read Dr. Brawley's report and I'll make them both, uh, court's
14 exhibits.

15 MS. MAULDIN: Thank Your Honor. If Your Honor and if you
16 would just let me say a few things, um, that Mr. Walker is
17 someone who as you've heard has a very long history of severe
18 mental illness. I asked his father how long he remembered
19 Mr. Walker bein' sick and he said that it was from the '90s.
20 Um, Your Honor, he was hospitalized in North Carolina
21 following a prison sentence, he was in the hospital in North
22 Carolina for a year and was released from there in -- on
23 November 9th of 2012 so roughly a month before this all
24 happened. As you heard he was coming off of his medicine
25 which you heard was the Clozaril, a very powerful medication,

MOTIONS AND MATTERS

1 so we have a person with severe mental illness coming off of a
2 very strong medication moving into a home with Ms. Banty and
3 her child. Um, he had never lived with a woman before, this
4 is his only child, he'd never lived with with her, I think
5 that probly woulda been a lot for anybody to adjust to but
6 certainly it was that much worse because of the situation that
7 he was in.

8 Um, there was a tape of an interview that was conducted
9 by the West Columbia Police Department with Tonya Banty, um,
10 Ms. Banty's mother, and in that interview they were still
11 tryin' to put the pieces together and trying figure out what
12 had happened and she provided some additional information
13 about what was goin' on in the home at that time and that
14 conversation revealed that both families had been pretty
15 cautious and kind of worried about Ms. Banty and Mr. Walker
16 movin' in together, they tried to help 'em set up a household
17 but they were very worried. Um, her interview also talked
18 about how they'd been struggling financially. Mr. Walker at
19 the time was receiving a disability check but the money was
20 going to his father rather than to him and there was some
21 dispute about how much of the money he was gonna get, he
22 wasn't getting all of the money that his -- he thought his dad
23 needed to give him, um, so they they were strugglin'
24 financially, there was concern about how to make the rent.
25 Um, there was comment that her mother made and she, they were

MOTIONS AND MATTERS

1 talkin' about, you, you know, whether either party was abusive
2 to the other, she said that she certainly wouldn't
3 characterize, um, Carrie's behavior as abusive, um, sh -- but
4 she mentioned, and I I I don't wanna speak ill of her but I
5 think it's important to say, no but she does a lot of yelling
6 and pushing buttons too, um, and she was concerned that she
7 felt like Ms. Banty might be tryin' to kind of control
8 Mr. Walker and I just say that to let the Court know this was
9 a very difficult situation that he was in, um, I I think it
10 was just more than he could handle, he was just in over his
11 head. Um, we've seen with this trial this week that sometimes
12 he gets himself into a situation and he just struggles once
13 he's there and I think that's probably the same thing that was
14 happenin' when he was in that home with Ms. Banty and it was
15 just comin' off the medicine with his mental illness and all
16 of that think was just more than he could take. I I think
17 everybody here wishes that he had been on the appropriate
18 medication, been receiving the appropriate mental ke -- health
19 care because then none of this would have happened the way it
20 did.

21 Um, Your Honor, he he really doesn't have any family
22 involvement anymore, his parents I I think just don't know how
23 to deal with this, um, so he really, he didn't have anybody.
24 Um, Your Honor, I can say I've represented him since March a
25 2013, while we've we've had many many heated disagreements

MOTIONS AND MATTERS

1 about the case and the the best way to handle this, I can tell
2 Your Honor he's never said an unkind thing to me, he's never
3 made personal attack, never cursed at me and a lotta people in
4 his situation mighta been a lot different.

5 Um, Your Honor, I know based on the the jury's verdict
6 that a substantial sentence is warranted; however, I feel like
7 a 30-year sentence is certainly a substantial one, I, yeah, I
8 share Dr. Maddox's concerns with his medical conditions, um,
9 that's gonna be a long time, um, and we know that certainly
10 people don't get exactly premium care in the Department of
11 Corrections, um, that's why we'd ask the Court consider the
12 mandatory minimum instead of a longer sentence in this case.

13 Um, ---

14 THE COURT: Thank you, uh, thank you very much, uh, thank
15 you, uh, for your service too, Ms. Mauldin, uh, I know, uh, I
16 know you -- your profession is appointed cases, I understand
17 that but, uh, thank you, uh, thank you very much for s --
18 being, uh, counsel and standby counsel for, uh,
19 Mr. Walker, ---

20 MS. MAULDIN: Thank Your Honor.

21 THE COURT: --- appreciate your service. Alright, uh,
22 Mr. Walker, anything you'd like say?

23 MR. WALKER: Yes, sir, Your Honor, um, just there's there
24 seems to be a lotta issues about medication, one thing I think
25 Your Honor should consider is, uh, I have neurological [sic]

MOTIONS AND MATTERS

1 conditions and I'm also known as to be hypersensitive to
2 medi -- medication and I can take a standard over-counter
3 Tylen -- over -- standard -- over-counter Tylenol and it it
4 gives me side effects more -- moreover than side effects of
5 normal person or even more of the the allergical [sic] person
6 that you normally⁷ come in contact. Medication messes my
7 nerves up real bad especially mental health medications. Um,
8 I'm not one take 'em very long, I can't take 'em because, uh,
9 s -- most a the time they do more damage than they do help
10 especially when I have somethin' goin' on in my life that I
11 feel is important. Uh, as Ms. Maddox'll tell you, medications
12 typically, uh, will sedate you, uh, make you where you can't
13 move, make you where you wanna lay around all the time. I'm a
14 very active person, I I believe in health, uh, I'm a health,
15 kind of a health fanatic and, um, my health is very very down,
16 very poor, um, I'm just a happy goin' person, I'm a easy goin'
17 person, uh, and like I said, uh, as as everybody seems to
18 consider the situation was very awkward and bad situation, I
19 did not kill Ms. Banty in in vain, did not kill Ms. Banty or
20 hurt ---

21 THE COURT: Well what do you mean you did not kill
22 Ms. Banty in vain, I don't understand that.

23 MR. WALKER: Your Your Honor, I I didn't -- I I protected
24 myself from Ms. Banty and I I can't, I I don't think I can put
25 it the way that I wish to put it or how it needs to be put

MOTIONS AND MATTERS

1 but, I mean, Ms. Banty was a psychotic person, she kept
2 plannin' to kill me and, you know, I I don't know what was
3 goin' on in Ms. Banty's head, I don't know what was goin' on
4 in Ms. Banty's life, I tried to stay outta Ms. Banty's life as
5 much as possible, uh, she -- I was worried, my father made me
6 go live with her, Ms. Banty conjure, uh, persuaded me pretty
7 much with my dad's persuasion, my dad's force made me go live
8 with her, um, and therefore as her mother may have testified
9 that she tried to control me or whatever but that wasn't the
10 fact, she had intentions of plannin' to kill me, I had to
11 protect myself, Your Honor, and and, you know, based on that I
12 have a little girl that was bein' abused, I tried, I tried my
13 whole, my whole life, her whole life that, you know, to
14 protect my little girl and do what's right for my little girl,
15 there's no more in my life or anything better or greater than
16 my daughter and I just, I just wish it wasn't, it wasn't so
17 but Ms. Banty I don't think wished to have a little girl,
18 didn't wish to have kids, um, from my understanding Ms. Banty
19 was the type a person that like stay in drug houses, crack
20 houses, coke houses, prostitute, um, all type of evil evil
21 intent things and, you know, that the way, that's not the type
22 a person I am, I'm a outdoors person, I like, you know, I like
23 goin' to river, whatever, I like family life, Your Honor, and
24 I don't think she was one for a family life and she basically
25 when she mets, when she met me as as I I gave testimony in the

MOTIONS AND MATTERS

1 the stand your ground hearing, um, uh, on the CDV, Ms. Banty,
2 uh, soon as we met, she come and she met me at my house, she,
3 uh, she started lunatickin', she, uh, started lyin', tryin' to
4 say I hit her, she tried to get the police called on me, I I I
5 want her, got her outta my house, um, by that time she was
6 already pregnant and I stayed away from her the rest, for a
7 year, Your Honor, I never went back around, I tried to stay
8 where she emailed me, I go to a ho -- I went to a hospital, I
9 was at a jail, she, that when I was at jail in North Carolina
10 they said she would call law there harassin' them, tellin'
11 them I need to do this, I need, that that they need to make me
12 do this, make make me do that, they asked who she was, they
13 was gonna put a warrant on her for harassin' them tryin' to
14 make them attack me and and things like that. They come to me
15 and I just told 'em to leave her alone that she just a
16 psychotic person, you you you know your profession you've had
17 that and I told 'em if they do wanna put a warrant they could
18 put a warrant, um, but and once I went to the mental hospital,
19 um, up in North Carolina I was receivin' threats through
20 email, um, there was a pay phone that we used generally, she
21 was callin' there, she was, uh, threatenin', threaten me
22 constantly on the pay phone, threatened to kill my little
23 girl, threatened to kill me, I mean, it's it's typical, it's
24 just typical things that Ms. Banty did.

25 Um, Your Honor, I understand, I understand, um, I'm here

MOTIONS AND MATTERS

1 today, uh, the jury has found me guilty, um, I know your your
2 less that you can put on is 30 years, Your Honor, um, there's
3 there's my main con -- my main concern right now is I don't
4 want a life sentence, Your Honor, 'cause if I have to spend 30
5 years in SCDC, um, they have, uh, Department of Justice has
6 somethin' called, uh, a Second Chance Pell Program gives
7 education to prisoners so I'd like at least to get a education
8 right behind the wall, Your Honor.

9 THE COURT: Well what do you think Ms. Banty would
10 like?

11 MR. WALKER: Your Honor, I've never vouched for Ms. Banty
12 in my life and I never will, Your Honor. I ha -- I ha -- I
13 have condolence for Ms. Banty but I never wished to associate
14 her when she was livin', I damn sure don't wish to associate
15 when she's dead, Your Honor. It's not my fault she's dead,
16 Your Honor, protected myself, Your Honor.

17 THE COURT: Anything further, Mr. Walker?

18 MR. WALKER: No, sir, Your Honor.

19 THE COURT: Thank you, uh, thank you, uh, Mr. Walker ---

20 MR. WALKER: Thank you.

21 THE COURT: --- and thank you again, Ms., uh, Ms.

22 Mauldin. Anything, uh, anything further, uh, Solicitor?

23 MR. GRAHAM: No, Your Honor.

24 (Pause.)

25 THE COURT: I, of course, uh, when I sentence, uh,

MOTIONS AND MATTERS

1 individuals I take into account, uh, all that is in the
2 record, both, uh, during the trial and during the, uh,
3 sentencing hearing, both, uh, aggravation and/or, uh,
4 mitigation, I also, uh, realize I've done this, uh, long
5 enough, perhaps some would say too long, that I don't, uh,
6 sentence people as a bad person or a good person, I sentence
7 behavior by the, uh, that everything in life's a choice: good
8 choice, bad choice, moral choice, immoral choice, lawful
9 choice, unlawful choice. I take into account, um, your long
10 and significant, uh, mental health history and it always
11 concerns me whether someone's pleadin' in front of me or I'm
12 sentencing someone after a trial, it always concerns me that
13 there's nobody, there's people there for him, they work very
14 hard, very diligent, but there's no, uh, no family support but
15 Ms., uh, Ms. Banty's, uh, sister is, think the second word she
16 says is a word that I visit each and every time I sentence
17 somebody, you know, I I say it a little differently, she said,
18 uh, Stolen, uh, stolen my sister. I think the worst crime
19 that can be committed is stealing, bein' a thief. Somebody
20 breaks in your house and steals your items, somebody steals
21 your car, I think murder is the stealing of a life and that's
22 what all crime comes down to: taking what's not yours and
23 takin' it away from somebody else. I think that's the worst
24 crime that can be committed is stealing, taking a a loved and
25 loving person and turning that life into a corpse. Now I

MOTIONS AND MATTERS

1 don't think, uh, I don't think, uh, domestic violence should
2 be given any no more than a home invasions or drive-by
3 killings, uh, it's all stealin' a human life, that that
4 individual had the right to live. I guess a ace of a
5 crowd -- cloud in this dark lining is Cassidy, I was so
6 impressed with her, she's beautiful child, so bright, during
7 her, uh, testimony before the Court, I hope she won't have
8 memories of this event, it's a shame she may not even have
9 memories of her mother. As Mr. Banty says it's not, it ain't
10 right to bury your own children, that I've done that myself
11 and from that point of view I have learned, for me at least,
12 some wounds never heal.

13 There's different theories of punishment, Mr. Walker,
14 it's, uh, rehabilitation, retribution, deterrence. I don't
15 think retribution is, uh, appropriate, I think deterrence is
16 and also I think, uh, one has to face one responsibilities for
17 the conduct. I don't think you can go through life and you
18 haven't blamed it, you haven't blamed it on your mental
19 health, you blamed it on your daddy, your family, the victim:
20 Ms. Banty was at a drug house or a crack house or a coke
21 house, well she certainly wasn't on the night she was murdered
22 and I I don't believe ya. She had no drugs in her system, she
23 had a minimal amount alcohol, you say you were protectin'
24 yourself, there was no injuries on her hands at all, all her
25 other injuries were defensive wounds, all of 'em, and manual

SENTENCE

1 strangulation's not like takin' a gun and shootin' somebody at
2 a distance, it ain't even like thrustin' a knife which is much
3 more personal than just shootin' somebody, the deadly weapon
4 were your hands and the target was her throat. I I just, I
5 just don't believe you about, uh, Ms. Banty, I I'm sorry,
6 forensic evi -- no, I'm not sorry, I'm not sorry that I can
7 evaluate facts correctly, forensic evidence doesn't bear that
8 out whatsoever, not in the least.

9 Alright, uh, 2015-GS-32-02341 David Richard Walker, Jr.,
10 the defendant having been convicted by a jury the crime of
11 murder, defendant's committed to the State Department a
12 Corrections a determinate term of 50 years, he is to be
13 in cre -- given credit for all time served. Good luck to you,
14 uh, Mr. Walker. Thank, you, uh, thank you very much.

15 MS. MAULDIN: You too.

16 THE COURT: Alright, madam court reporter, would you, uh,
17 mark those for me, please.

18 COURT REPORTER: Sure thing.

19 (Neuropsychological evaluation by Dr. Brawley marked
20 Court's Exhibit No. 15 and SCDMH evaluation marked Court's
21 Exhibit No. 16 for identification.)
22
23
24
25

WITNESSES

West Columbia Police Department

Scott Neal

Law Enforcement Case #: 1229782

DSG

ARREST WARRANT NUMBER

2013A3221100569

ACTION OF GRAND JURY

TRUE BILL

Pamela Baker
Foreperson of Grand Jury

Date: 11/28/2015

VERDICT

Guilty

Donald V. Myers
Foreperson of Petit Jury

Date: 2/28/17

DOCKET NO. 2015GS3202341

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

OCTOBER TERM 2015

THE STATE

vs.

David Richard Walker Jr

CDR #: 0116

Indictment for

Murder

§ 16-03-0010

DONALD V. MYERS, SOLICITOR

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.O.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

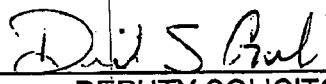
INDICTMENT FOR
Murder

§ 16-03-0010

At a Court of General Sessions, convened on October 2015, the Grand Jurors of Lexington County present upon their oath:

That **David Richard Walker Jr** did in Lexington County on or about December 10, 2012, unlawfully willfully, intentionally and feloniously kill one Catherine Carrie Banty with malice aforethought, by strangling the victim and the victim did die as a proximate result thereof, in violation of § 16-3-10, Code of Laws of South Carolina, 1976, as amended.

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


DEPUTY SOLICITOR

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

THE STATE

vs.

DAVID RICHARD WALKER, JR.,
Defendant.

2015 APR -1 AM 8:26

DEBRA A. CARTER
CLERK OF COURT
LEXINGTON, SC

WARRANT NUMBERS:

2013A3221100569; 2014A3210200758;
2014A3210201874; AND 2014A3210201875

ORDER GRANTING DEFENDANT'S
MOTION TO PROCEED PRO SE

This matter comes before the Court upon motion by the Defendant, David Richard Walker, Jr. The Defendant is charged with one count of Murder and three counts of Throwing Bodily Fluids. He is incarcerated at the Lexington County Detention Center. The Lexington County Public Defender's Office was appointed to represent the Defendant, and the case was assigned to Sarah H. Mauldin, an attorney at the Public Defender's Office.

The Defendant has a history of mental illness and a history of mental health treatment. The Court previously ordered a competency evaluation to be performed by Department of Mental Health (DMH). DMH evaluated the Defendant and found him to be competent, according to its report dated April 25, 2014.

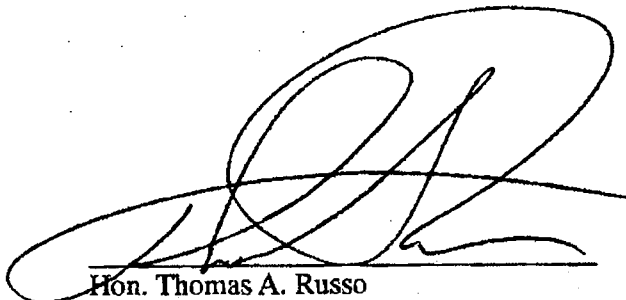
On March 25, 2015, the Defendant moved before this Court for an order allowing him to proceed pro se. The Court reviewed the report of the Department of Mental Health, and Ms. Mauldin did not object to the findings in the evaluation report. Therefore, the Court finds that the Defendant is competent to stand trial, and, therefore, competent to represent himself pursuant to State v. Barnes, 407 S.C. 27, 753 S.E.2d 545 (2010).

At the hearing, the Court examined the Defendant regarding his desire to represent himself and warned the Defendant of the dangers of self-representation. The Court is satisfied that the Defendant understands the dangers of representing himself and that the Defendant's waiver of counsel is made

knowingly and intelligently. The Court hereby grants the Defendant's motion to proceed pro se. Ms. Mauldin is hereby relieved of representing the Defendant but shall serve as standby counsel for him.

Additionally, the Defendant has requested materials, equipment, and privileges that he believes will assist him in preparing for trial. The Court will consider these requests at a later date, upon further motion by the Defendant.

IT IS SO ORDERED.



Hon. Thomas A. Russo
Eleventh Judicial Circuit

Lexington, South Carolina

Date: 3-26-2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

The Honorable R. Knox McMahon, Circuit Court Judge

Case No. 2015-GS-32-02341

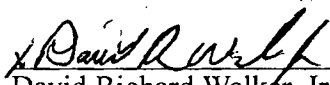
The State,.....Respondent,

v.

David Richard Walker, Jr. Appellant.

NOTICE OF APPEAL

David Richard Walker, Jr. appeals his conviction and sentence in this case. The sentence was imposed by the Honorable R. Knox McMahon on March 1, 2017. David Richard Walker, Jr. was convicted at jury trial on February 28, 2017.


David Richard Walker, Jr., Pro Se
Inmate Number: 00294267
South Carolina Department of Corrections

Other Counsel of Record:

Shawn Graham, Assistant Solicitor
205 East Main Street
Lexington, SC 29072

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APPELLATE DEFENSE

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

The Honorable R. Knox McMahon, Circuit Court Judge

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The State,.....Respondent,

v.

David Richard Walker, Jr. Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Shawn Graham, by depositing a copy of it in the United States mail, postage prepaid, on March 1, 2017, addressed to Shawn Graham, Assistant Solicitor, 205 East Main Street, Lexington, SC 29072.



David Richard Walker, Jr., Pro Se

Inmate Number: 00294267

South Carolina Department of Corrections

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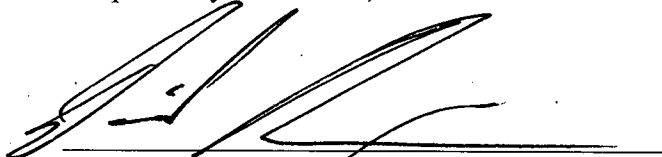
SC Court of Appeals

1202

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line.

David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 5th day of July, 2018.