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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

G. Thomas Cooper, Circuit Court Judge

RODERICK GERMAINE WYNN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000477

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

COURT OF GENERAL SESSIONS
2014-GS-42-0313

The State of South Carolina

 -VS-

Roderick Germaine Wynn,

 Defendant.

TRANSCRIPT OF RECORD

August 27 & 28, 2014
 Spartanburg, South Carolina

Ordered: September 14, 2014

Delivered: November 9, 2014

BEFORE:

The Honorable R. Keith Kelly, Presiding Judge, and a jury.

APPEARANCES:

Mr. Derrick Balsa, Esquire
 Deputy Solicitor for the State

Ms. Mary Stuart Lyall, Esquire
 Public Defender for the Defendant

Pamela Faucette
 Circuit Court Reporter

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August 27, 2014

9:37 A.m.

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(The jury roll call and qualification not transcribed.)

(Off-the-Record Discussion)

THE COURT: Okay. Solicitor, do we have anything before we bring the jury around?

MR. BULSA: Not from the State, Your Honor.

THE COURT: Defense?

MS. LYALL: Yes, Your Honor.

THE COURT: Okay.

MS. LYALL: A few short things. First of all, I would like to exclude all the witnesses from the courtroom and that — while the testimony is going on.

THE COURT: You want to sequester the witnesses. Any objection?

MR. BULSA: No, no objection.

THE COURT: Without objection.

MR. BULSA: That's for both sides?

THE COURT: Yes, absolutely, both sides. Okay.

MS. LYALL: Then, Your Honor, I have a motion in limine and it's very short, to exclude the witnesses from — and I know Mr. Bulsa knows this, I just hoped he's talked to his witnesses about this — from calling my client a pimp or alluding to that fact, saying he's gotten into fights before, beaten other people up, the fact that he's on probation, or has a criminal history.

THE COURT: Mr. Bulsa?

6

1 **MR. BULSA:** Well, Your Honor, that actually has not been any
2 part of my discussion with the witnesses. We've only talked about what they
3 observed.

4 **THE COURT:** The facts in this case?

5 **MR. BULSA:** Yes, sir.

6 **THE COURT:** Okay.

7 **MS. LYALL:** Well, they do say that in their statements. And it
8 would be improper for them to say that in front of the jury. I'm just making
9 sure that he lets them know that before they start ----

10 **THE COURT:** Well, I'm sure -- I'm sure Mr. Bulsa will control his
11 witnesses.

12 **MR. BULSA:** I don't intend to ask them anything along those
13 lines.

14 **THE COURT:** Okay.

15 **MS. LYALL:** I just hope he makes them aware that they can't
16 say that on the stand.

17 **THE COURT:** All right. We're not going to allude to pimps,
18 probation, and fights. How about that?

19 **MR. BULSA:** Okay.

20 **THE COURT:** Thank you. Only the fights in this case; they can
21 talk about the fight in this case.

22 **MS. LYALL:** Yes, Your Honor.

23 **THE COURT:** Okay.

24 **MS. LYALL:** And that's it.

25 **THE COURT:** All right. We're ready for the jury. Maxie, bring

1 them around.

2 **(Whereupon, the jury panel was summoned and entered the**
3 **courtroom at 9:43 a.m.)**

4 **Voir Dire**

5 **THE COURT:** All right. Thank you, ladies and gentlemen.
6 We've waited a little bit here for some jurors that were tardy. We're still
7 missing one, but we can't wait any longer. And, once again, I've had to do
8 something that's unpleasant for me, and that is to send the County for that
9 individual. But it must be done.

10 Nonetheless, we are here and ready to try the next case, the case of
11 *The State of South Carolina vs. Roderick Germaine Wynn*. Mr. Wynn is
12 charged by indictment with the offense of murder. And he is seated at
13 counsel table with his attorney, who will be introducing herself momentarily.

14 I'll remind you that you are under oath. You were placed under oath
15 earlier this week. You remain under oath and, once again, I have the same
16 series of questions that I must ask that I have asked previously in this
17 courtroom two mornings.

18 Again, we are about to begin the trial of *The State of South Carolina*
19 *vs. Mr. Roderick Germaine Wynn* charged with murder by the indictment. I
20 remind you, once again, the indictment is merely a piece of paper.

21 It is the charging instrument that brings Mr. Wynn before the Court for
22 a trial. And in no way is it evidence of any guilt against him.

23 Mr. Wynn has pled not guilty to the indictment and that puts the
24 burden on the — on the State of South Carolina to prove his guilt beyond a
25 reasonable doubt as to each and every element in the indictment.

8

1 Now, here are the questions that I'm required to ask: Has anyone ever
2 been related, by blood or marriage, to Roderick Germaine Wynn? Am I
3 saying that correctly, Miss ---

4 **MS. LYALL:** Yes, Your Honor.

5 **THE COURT:** Roderick Germaine Wynn, anybody ever been
6 related, by blood or marriage, to Mr. Wynn? Please, stand.

7 **(No Response)**

8 **THE COURT:** Does anybody have a close personal or social
9 ship with Mr. Wynn; go to church with him, friend him on Facebook, some
10 relationship to Mr. Wynn? If so, please, stand.

11 **(No Response)**

12 **THE COURT:** The following is a list of potential witnesses in this
13 case: Ernestine Goldsmith, Jeana Blackston, Kerri Blanchard, Joyce Ann
14 Brewton, Jimmie Cothran, Megan Ann Lake, Katina Price, Freddie Young,
15 Eugina Britt, Jeffrey Holt, Sandra Adorina — is that right?

16 **MR. BULSA:** Yes, sir.

17 **THE COURT:** Sandra Adorina, Chris Banks, Courtney Burgess,
18 Doris Boozer, Sonya Degraffinreid?

19 **MR. BULSA:** Yes, sir.

20 **THE COURT:** Ed Guthro, Russell Porter, David Traxler, and Dr.
21 David Wren. Also Marion Bridges, Matthew Teamer — I think I called Ms.
22 Blackston — it's the same, yes — Mike Holt, Donald Stepp, again, Kerri
23 Blanchard, and Investigator Russell Porter.

24 Is anyone related, by blood or marriage or ever been related, by blood
25 or marriage, to any of these potential witnesses in this case? If so, please,

1 stand.

2 (No Response)

3 THE COURT: Does anyone have a close personal or social
4 relationship with any of the potential witnesses in this case? If so, please,
5 stand.

6 (No Response)

7 THE COURT: I'm going to ask the lawyer to introduce
8 themselves to you. Yes, sir?

9 MR. BULSA: Thank you. My name is Derrick Balsa. I'm with
10 the solicitor's office. I believe we met on Monday.

11 THE COURT: Yes, ma'am?

12 MS. LYALL: My name is Mary Stuart Lyall and I represent Mr.
13 Rodrick Wynn.

14 (Mr. Wynn stands and faces the jury panel.)

15 THE COURT: Has anyone ever been related, by blood or
16 marriage, to either of the lawyers in this case? If so, please, stand.

17 (No Response)

18 THE COURT: Does anyone have a close personal or social
19 relationship with either of the lawyers in this case? If so, please, stand.

20 (No Response)

21 THE COURT: Has anyone every — ever testified for the
22 Seventh Circuit Solicitor's Office in Spartanburg or Cherokee County? If so,
23 please, stand.

24 (No Response)

25 THE COURT: Anyone ever been represented by anyone

10

1 associated in Ms. Lyall's firm, please, stand? There are several lawyers over
2 there. And, if you were in that office, you would know, so I'm not going to —
3 I'll miss somebody if I try to call all the names. But anybody ever been into a
4 law office and saw her name and other lawyers there? If so, please, stand.

5 **(No Response)**

6 **THE COURT:** Anybody have a close personal or social
7 relationship with anyone employed by the Seventh Circuit Solicitor's Office
8 whether they be a lawyer or a non-lawyer? In other words, a staff person?
9 Anyone, please, stand.

10 **(No Response)**

11 **(Brief Pause)**

12 **THE COURT:** Is there any member of the jury panel related, by
13 blood or marriage, to a law-enforcement officer such as a city police officer or
14 — of any municipality here in — in the state — well any municipality — a
15 deputy sheriff, a state trooper, or a state law-enforcement officer in this state
16 or another state?

17 I believe there's somebody who has somebody in another state. If so,
18 please, stand.

19 **(Potential jurors stand in response.)**

20 **THE COURT:** Yes, sir?

21 **POTENTIAL JUROR:** 175, my father and both of my brothers are
22 police officers in New Jersey.

23 **THE COURT:** Would that interfere with your ability to give both
24 sides a fair and impartial trial?

25 **POTENTIAL JUROR:** No, sir.

1 **THE COURT:** Thank you. You may stay. Yes, ma'am?

2 **POTENTIAL JUROR:** 178, my brother-in-law and nephew. And I
3 do — is Dr. Wrenn a pathologist?

4 **THE COURT:** Yes.

5 **POTENTIAL JUROR:** Yeah, I work with his daughter and him at
6 the hospital.

7 **THE COURT:** Okay. Would any of that association interfere
8 with your ability to give both sides a fair and partial trial?

9 **POTENTIAL JUROR:** No.

10 **THE COURT:** Thank you, ma'am, you may stay. Yes, ma'am?

11 **POTENTIAL JUROR:** Thirteen (13).

12 **THE COURT:** Okay.

13 **POTENTIAL JUROR:** My husband is with Union County.

14 **THE COURT:** Would that interfere with your ability to give both
15 side a fair and impartial trial?

16 **POTENTIAL JUROR:** No, sir.

17 **THE COURT:** Thank you. You may stay. Yes, sir?

18 **POTENTIAL JUROR:** Number 109, my brother-in-law is a wildlife
19 officer.

20 **THE COURT:** Yes, sir. Would that interfere with your ability to
21 give both sides a fair and impartial trial?

22 **POTENTIAL JUROR:** No, Your Honor.

23 **THE COURT:** You may stay. Yes, ma'am?

24 **POTENTIAL JUROR:** 19, and my ex-husband is a federal
25 investigator retired. And my stepson is a DEA agent in Texas.

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THE COURT: Would that interfere with your ability to give both sides a fair and impartial trial?

POTENTIAL JUROR: No, sir.

THE COURT: Thank you. You may stay. Yes, ma'am?

POTENTIAL JUROR: 59.

THE COURT: Yes, ma'am?

POTENTIAL JUROR: I have a cousin that works for Spartanburg County.

THE COURT: Would that interfere with your ability to give both sides a fair and impartial trial?

POTENTIAL JUROR: No.

THE COURT: Thank you. You may stay.

(Brief Pause)

THE COURT: Is there any member of the jury panel a financial or political supporter of the — of the Solicitor for the Seventh Circuit? If so, please, stand.

(No Response)

THE COURT: Is there any member of the jury panel a member of Mothers Against Drunk Driving, Students Against Drunk Driving, Citizens Against Violence or other such organizations? If so, please, stand.

(Potential jurors stood in response.)

THE COURT: Yes, sir, your number?

POTENTIAL JUROR: 159, a number of years ago I was staff advisor to a school chapter of SADD, Students Against Drunk Driving.

THE COURT: Yes, sir. Would that interfere with your ability to

1 give both sides a fair and impartial trial?

2 **POTENTIAL JUROR:** No, sir.

3 **THE COURT:** Thank you. You may stay. Yes, ma'am?

4 **POTENTIAL JUROR:** Juror 97, and I used to be on the Alcohol
5 and Drug Abuse Commission as well as It's Your Family, You Can't Beat
6 Them (phonetic), for the office of criminal domestic violence and Drug
7 Management Counseling (phonetic).

8 **THE COURT:** Would that interfere with your ability to give both
9 sides a fair and impartial trial?

10 **POTENTIAL JUROR:** No.

11 **THE COURT:** Thank you. You may stay.

12 **(Brief Pause)**

13 **THE COURT:** Is there any member of the jury panel a member
14 or a financial contributor to any group which has as its primary concern the
15 promotion of law enforcement or victims' rights? If so, please, stand.

16 **(Potential juror stood in response.)**

17 **THE COURT:** Yes, ma'am?

18 **POTENTIAL JUROR:** I do a lot of things for (inaudible) ----

19 **COURT REPORTER:** I can't hear her. I can't hear.

20 **THE COURT:** My court reporter can't hear you. Please, speak
21 up just a little bit?

22 **COURT REPORTER:** And I need her number. We need her
23 number.

24 **POTENTIAL JUROR:** Oh, juror number 55.

25 **THE COURT:** Yes, ma'am?

14

1 **POTENTIAL JUROR:** I used to clerk for the solicitor's office doing
2 many things and — and lots of other administrative (phonetic) stuff.

3 **THE COURT:** Sure. Would that interfere with your ability to give
4 both sides a fair and impartial trial?

5 **POTENTIAL JUROR:** No.

6 **THE COURT:** Thank you. You may stay.

7 **POTENTIAL JUROR:** Thank you.

8 **THE COURT:** Anybody else?

9 **(No Response)**

10 **THE COURT:** Has any member of the jury panel or an
11 immediate — either you yourself, or an immediate family member, ever been
12 the victim of a violent crime? If so, please, stand.

13 **(Potential jurors stood in response.)**

14 **THE COURT:** Yes, ma'am, your number please?

15 **POTENTIAL JUROR:** 179.

16 **THE COURT:** Yes, ma'am?

17 **POTENTIAL JUROR:** I was the victim of an assault and battery.

18 **THE COURT:** Would that interfere with your ability to give both
19 sides a fair and impartial trial?

20 **POTENTIAL JUROR:** No.

21 **THE COURT:** Thank you. You may stay. Yes, ma'am?

22 **POTENTIAL JUROR:** 56.

23 **THE COURT:** Yes, ma'am?

24 **POTENTIAL JUROR:** A victim of criminal domestic violence.

25 **THE COURT:** Would that interfere with your ability to give both

1 sides a fair and impartial trial?

2 **POTENTIAL JUROR:** No, sir.

3 **THE COURT:** You may stay. Yes, ma'am?

4 **POTENTIAL JUROR:** I don't know if this falls under it, but spousal
5 abuse, number 12.

6 **THE COURT:** Number 12, would that interfere with your ability to
7 give both sides a fair and impartial trial?

8 **POTENTIAL JUROR:** No.

9 **THE COURT:** Thank you. You may stay.

10 **(Brief Pause)**

11 **THE COURT:** Does any member of the jury panel know of any
12 reason whatsoever why he or she should not serve as a juror in this case,
13 with particular emphasis being placed on your ability to be fair and impartial
14 to both the State and the Defense? If so, please, stand.

15 **(Potential juror stood in response.)**

16 **THE COURT:** Yes, ma'am? Your number?

17 **POTENTIAL JUROR:** Juror 74.

18 **THE COURT:** Okay.

19 **POTENTIAL JUROR:** I do believe I know the parent of the
20 Defendant.

21 **THE COURT:** Would that affect — would that interfere with your
22 ability to give both sides a fair and impartial trial?

23 **POTENTIAL JUROR:** Yes, sir.

24 **THE COURT:** It would?

25 **POTENTIAL JUROR:** Yes, sir.

1 **THE COURT:** You are excused from the trial of this case. Just
2 stay where you are, but you will not be selected. Number 74?

3 **POTENTIAL JUROR:** Yes, sir.

4 **THE COURT:** Okay. Anybody else?

5 **(No Response)**

6 **THE COURT:** Anything from the State?

7 **MR. BULSA:** May we approach?

8 **THE COURT:** Yes, sir.

9 **(Whereupon, a bench conference was had with both attorneys**
10 **present.)**

11 **THE COURT:** Is there any member of the jury — any other
12 member of the jury panel that knows a relative of the — is it the Defendant
13 that you knew?

14 **POTENTIAL JUROR:** Yes, sir.

15 **THE COURT:** The Defendant? Is there any member of the jury
16 panel related, by blood or marriage, to Mr. Roderick Wynn's parents or ever
17 been related to one of his parents or a family member? If so, please, stand.

18 **(No Response)**

19 **THE COURT:** Any member of the jury panel have a close
20 personal or social relationship with his parent or parents or ever had such a
21 relationship, please, stand; such as toing to church with them, living in the
22 same neighborhood, things of that sort?

23 **(No Response)**

24 **THE COURT:** The ind — the victim in this case or the
25 decedent in this case is a Curtis Edward Goldsmith. Anybody related, by

1 blood or marriage, or were related by blood or marriage, to Mr. Goldsmith? If
2 so, please, stand.

3 (No Response)

4 THE COURT: Anybody have a close or personal relationship
5 with Mr. Goldsmith's family or are related to Mr. Goldsmith's family? If so,
6 please, stand.

7 (No Response)

8 THE COURT: Solicitor, anything?

9 MR. BULSA: No, sir.

10 THE COURT: Defense?

11 MS. LYALL: No, Your Honor.

12 THE COURT: Okay.

13 (Off-the-Record Comments)

14 (Voir dire concluded at 9:58 a.m.)

15 (Brief pause while jury strike list is generated and distributed.)

16 Jury Selection 10:00 A.m.

17 MADAM CLERK: As I call your name, if you would, please, come
18 forward. Juror number 122, Grady Ray.

19 (Potential juror stepped forward.)

20 MADAM CLERK: What say the State?

21 MR. BULSA: Please present the juror.

22 MADAM CLERK: What say the Defense?

23 (Brief Pause)

24 MS. LYALL: Please swear the juror.

25 MADAM CLERK: Juror number 21, Jerry Burdette.

18

1

(Off-the-Record Comments)

2

(Potential juror stepped forward.)

3

MADAM CLERK: What say the State?

4

MR. BULSA: Please present the juror.

5

MADAM CLERK: What say the Defense?

6

(Brief Pause)

7

MS. LYALL: Please strike the juror.

8

MADAM CLERK: Juror number 82, Alan Jackson.

9

(Potential juror stepped forward.)

10

MADAM CLERK: What say the State?

11

MR. BULSA: Please present the juror.

12

MADAM CLERK: What say the Defense?

13

MS. LYALL: Please swear the juror.

14

MADAM CLERK: Juror number 4, Tanya Andrews.

15

(Potential juror stepped forward.)

16

MADAM CLERK: What say the State?

17

MR. BULSA: Please present the juror.

18

MADAM CLERK: What say the Defense?

19

MS. LYALL: Please swear the juror.

20

MADAM CLERK: Juror number 8, Derek Aylestock.

21

(Potential juror stepped forward.)

22

MADAM CLERK: What say the State?

23

MR. BULSA: Please present the juror.

24

MADAM CLERK: What say the Defense?

25

(Brief Pause)

1 **MS. LYALL:** Please strike this juror.

2 **MADAM CLERK:** Juror number 12, Evelyn Bishop.

3 **(Potential juror stepped forward.)**

4 **MADAM CLERK:** What say the State?

5 **MR. BULSA:** Please present the juror.

6 **MADAM CLERK:** What say the Defense?

7 **MS. LYALL:** Please strike this juror.

8 **MADAM CLERK:** Juror number 148, Tucker Sweet.

9 **(Potential juror stepped forward.)**

10 **MADAM CLERK:** What say the State?

11 **MR. BULSA:** Please present the juror.

12 **MADAM CLERK:** What say the Defense?

13 **(Brief Pause)**

14 **MS. LYALL:** Please swear this juror.

15 **MADAM CLERK:** Juror number 126,

16 Cindy Rody.

17 **(Potential juror stepped forward.)**

18 **MADAM CLERK:** What say the State?

19 **MR. BULSA:** Please present the jury.

20 **MADAM CLERK:** What say the Defense?

21 **MS. LYALL:** Please strike this juror.

22 **MADAM CLERK:** Juror number 105, Ptia Mckelvin.

23 **(Potential juror stepped forward.)**

24 **MADAM CLERK:** What say the State?

25 **MR. BULSA:** Please present the juror.

20

1

MADAM CLERK: What say the Defense?

2

(Brief Pause)

3

MS. LYALL: Your Honor, may we approach?

4

THE COURT: Certainly.

5

MS. LYALL: Thanks.

6

(Brief Pause)

7

(Whereupon, a bench conference was had with all attorneys

8

present.)

9

MR. BULSA: I think we're back to me. We'll excuse Miss ----

10

THE COURT: Okay.

11

MR. BULSA: ---- Mckelvin.

12

(Brief Pause)

13

MADAM CLERK: Juror number 37, Joseph

14

Davis.

15

(Potential juror stepped forward.)

16

MADAM CLERK: What say the State?

17

MR. BULSA: Please present the juror.

18

MADAM CLERK: What say the Defense?

19

(Brief Pause)

20

MS. LYALL: Please swear this juror.

21

MADAM CLERK: Juror one -- juror number 58, Michael Goodwin.

22

(Potential juror stepped forward.)

23

MADAM CLERK: What say the State?

24

MR. BULSA: Please present the juror.

25

MADAM CLERK: What say the Defense?

1 MS. LYALL: Please strike this juror.

2 MADAM CLERK: Juror number 19, Melanie Brown.

3 (Potential juror stepped forward.)

4 MADAM CLERK: What say the State?

5 MR. BULSA: Please present the juror.

6 MADAM CLERK: What say the Defense?

7 (Off-the-Record Discussion)

8 MS. LYALL: Please strike this juror.

9 MADAM CLERK: Juror 145, Nathaniel Stowell.

10 MS. LYALL: I'm sorry, what number was it?

11 MADAM CLERK: One, forty-five (145).

12 (Potential juror stepped forward.)

13 MADAM CLERK: What say the State?

14 MR. BULSA: Please present the juror.

15 MADAM CLERK: What say the Defense?

16 MS. LYALL: Please swear the juror.

17 MADAM CLERK: Juror number 64, Chelsea Hammett.

18 (Potential juror stepped forward.)

19 MADAM CLERK: What say the State?

20 MR. BULSA: Please present the juror.

21 MADAM CLERK: What say the Defense?

22 MS. LYALL: Please swear the juror.

23 (Brief Pause)

24 MADAM CLERK: Juror number 142, Bryan Staton.

25 (Potential juror stepped forward.)

22

1

MADAM CLERK: What say the State?

2

MR. BULSA: Please present the juror.

3

MADAM CLERK: What say the Defense?

4

MS. LYALL: Please swear the juror.

5

MADAM CLERK: Juror number 79, Apollo Houser.

6

(Potential juror stepped forward.)

7

MADAM CLERK: What say the State?

8

MR. BULSA: Please present the juror.

9

MADAM CLERK: What say the Defense?

10

(Off-the-Record Discussion)

11

MS. LYALL: Please swear the juror.

12

MADAM CLERK: Juror number 94, Kenneth Lovingood.

13

(Potential juror stepped forward.)

14

MADAM CLERK: What say the State?

15

MR. BULSA: Please present the juror.

16

MADAM CLERK: What say the Defense?

17

MS. LYALL: Please swear the juror

18

MADAM CLERK: Juror number one (1), Jeffrey Abee.

19

(Potential juror stepped forward.)

20

MADAM CLERK: What say the State?

21

MR. BULSA: Please present the juror.

22

MADAM CLERK: What say the Defense?

23

MS. LYALL: Please swear the juror.

24

MADAM CLERK: Juror number 135, John Seay.

25

(Potential juror stepped forward.)

1 **MADAM CLERK:** What say the State?

2 **MR. BULSA:** Please present the juror.

3 **MADAM CLERK:** What say the Defense?

4 **MS. LYALL:** Please strike this juror.

5 **MADAM CLERK:** Juror number 13, Natasha Blackwell.

6 **(Potential juror stepped forward.)**

7 **MADAM CLERK:** What say the State?

8 **MR. BULSA:** Please present the juror.

9 **MADAM CLERK:** What say the Defense?

10 **MS. LYALL:** Please strike this juror.

11 **MADAM CLERK:** Juror number 78, Jacob Holdon — Horton.

12 **(Potential juror stepped forward.)**

13 **MADAM CLERK:** What say the State?

14 **MR. BULSA:** Please present the juror.

15 **MADAM CLERK:** And what say the Defense?

16 **(Brief Pause)**

17 **MS. LYALL:** Please swear this juror.

18 **(Brief Pause)**

19 **MADAM CLERK:** And this will be for the alternate number one.

20 Juror number 123, Angela Reinhardt.

21 **(Potential juror stepped forward.)**

22 **MADAM CLERK:** What say the State?

23 **MR. BULSA:** Please present the juror.

24 **MADAM CLERK:** What say the Defense?

25 **MS. LYALL:** Please strike this juror.

1 **MADAM CLERK:** Juror number 106, Frank Merritt.

2 **(Potential juror stepped forward.)**

3 **MADAM CLERK:** What say the State?

4 **MR. BULSA:** Please present the juror.

5 **MADAM CLERK:** What say the Defense?

6 **(Off-the-Record Discussion)**

7 **MS. LYALL:** Please swear this juror.

8 **MADAM CLERK:** Juror number 84, Edwin Joyce.

9 **(Potential juror stepped forward.)**

10 **MADAM CLERK:** What say the State?

11 **MR. BULSA:** Please present the juror.

12 **MADAM CLERK:** What say the Defense?

13 **(Off-the-Record Discussion)**

14 **MS. LYALL:** Please strike this juror.

15 **MADAM CLERK:** Juror number six (6), Blake Atkins.

16 **(Potential juror stepped forward.)**

17 **MADAM CLERK:** What say the State?

18 **MR. BULSA:** Please present the juror.

19 **MADAM CLERK:** What say the Defense?

20 **(Brief Pause)**

21 **MS. LYALL:** Please swear this juror.

22 **(Jury selection ended at 10:12 a.m.)**

23 **(Brief Pause)**

24 **THE COURT:** Any matters from the State?

25 **MR. BULSA:** No, Your Honor.

1 **THE COURT:** Any matters from the Defense?

2 **MS. LYALL:** No, Your Honor.

3 **THE COURT:** All right. Ladies and gentlemen who were not
4 selected, I'm sorry. Maybe you'll get another chance yet.

5 We're going to ask you to return to your jury assembly room and be
6 released from there. I would ask you to call after 12:00 noon; please call
7 after 12:00 noon. In the event that something happens that we need you, I
8 can get you back by 2:00.

9 So, if — if you call back and the message says to come in, I'll give you
10 advance notice it would say to report at 2 o'clock.

11 I've got to check with Judge Couch. And, then, Judge Hayes is here
12 this morning as well. So it may be that they need you this afternoon or I
13 could need you this afternoon.

14 But, if you would, return to your jury room, collect your personal
15 belongings, and, please, call after 12:00 noon that magic number.
16 Thank you.

17 **(Whereupon, the jury panel exited the courtroom.)**

18 **THE COURT:** Juror number 82, Mr. Jackson, where are you,
19 sir?

20 **MR. JACKSON:** (Raises hand) Right here.

21 **THE COURT:** Mr. Jackson, I'm hereby appointing you the
22 foreman of this jury. It is my custom to alternate between a foreman and a
23 forelady and yesterday I had a forelady. So it's a — it's a foreman's time
24 today.

25 And, if we have to pick another jury this week, it'll be back

1 to a forelady. So, Mr. Jackson, you're hereby appointed the foreman or
2 foreperson of the jury.

3 It will be your duty to preside in the jury room. It will also be your duty
4 to write the verdict at the end of this case, but I'll speak with you more about
5 that at the close of this case.

6 I'm going to give you a small break now so that you can see where the
7 new jury room is if you've not been — you have not been to this jury room yet.
8 It's a different room from where you have been. And this will be the room
9 that you'll report to; every time we take a break, you'll go there.

10 There are restroom facilities there. There should be coffee, water. If
11 not, if you'll speak to one of these fine bailiffs that we have here, they'll make
12 sure that's presented for you. And, again, there are restroom facilities there
13 as well.

14 When we break for lunch and return, when we return, you'll come back
15 to that location as well. And your belongings will be secured there.

16 So, at this time, Mr. Foreman — oh, let me tell you this: Mr. Foreman
17 and my two alternates have assigned seating. Everyone else is free to move
18 around.

19 You can sit on the front. You can sit on the back. You can sit to the
20 left or the right. It does not matter to me. But Mr. Foreman and my
21 alternates will have assigned seating.

22 And I would ask, Mr. Foreman, that you always be in that seat so that,
23 when I look up, I know exactly where my foreman is.

24 With that, Mr. Foreman, if you would take your jury and go follow the
25 bailiffs.

1 (Whereupon, the jury exited the courtroom at 10:16 a.m.)

2 THE COURT: We're going to take about a — well, to the bottom
3 of the hour there to give you time to organize. And, if anybody needs
4 anything, I'm going to get some water.

5 (Whereupon, a recess was taken from 10:17 a.m. till 10:31 a.m.)

6 (Whereupon, State's Exhibits 1 through 7 were marked for
7 identification.)

8 THE COURT: Mr. Balsa, anything?

9 MR. BULSA: Yes, sir, if I may. The State has some — some
10 lay, witnesses, Your Honor, that have criminal records. I'd like to review
11 those records. And I've provided those records to the Defense.

12 I've highlighted the — the ones that I felt were appropriate for cross
13 examination and provided those to Defense Counsel. And I believe she
14 should be restricted to those — those prior convictions.

15 I don't know if she had any intention of trying to go beyond that.

16 THE COURT: I don't know.

17 MS. LYALL: No, Your Honor. I've reviewed the ones he gave
18 me and the ones he highlighted, the — the appropriate ones to go into.

19 At some point — and I don't know if we want to do it right now ---
20 I do want to clarify, if my client tries to testify, what he intends to go into.

21 MR. BULSA: All right. We'll do that right now.

22 MS. LYALL: Okay.

23 THE COURT: Okay. All right. But we're clear about that. If — if
24 — if you impeach the witness, and they admit the record,
25 that's all we get, right?

28

1 MS. LYALL: With what he's highlighted?

2 THE COURT: Yes.

3 MS. LYALL: Yes.

4 THE COURT: Okay.

5 MS. LYALL: I'm not going to ask them about everything they've
6 ever arrested or ever been convicted of.

7 THE COURT: Okay. All right. I believe we're clear on that.

8 MR. BULSA: Okay.

9 THE COURT: Okay. Anything? Ready for the jury?

10 MR. BULSA: Yes, sir.

11 THE COURT: Okay.

12 (Whereupon, the jury was summoned and entered the courtroom
13 at 10:34 a.m.)

14 THE COURT: Madam Clerk, will you swear the jury to try this
15 case?

16 MADAM CLERK: Okay.

17 (Whereupon, the jury was impaneled.)

18 PRELIMINARY INSTRUCTIONS 10:36 A.m.

19 THE COURT: Mr. Foreman and ladies and gentlemen of the jury,
20 we are about to try the case of *The State of South Carolina vs. Roderick*
21 *Germaine Wynn*, who has been indicted for the offense of murder.

22 The indictment, as I've told you previously, is not any evidence of guilt
23 against the Defendant, Mr. Wynn whatsoever. It is merely a charging
24 instrument by which this case comes before the Court.

25 Mr. Wynn has entered a plea of not guilty to the indictment,

1 and therefore, the burden is on the State of South Carolina to prove, beyond 29
2 a reasonable doubt, each and every allegation contained in the offense of
3 murder beyond a reasonable doubt.

4 Now, I tell you that many people do not have a chance to attend a
5 court session, as you're doing, and believe from watching television, movies,
6 or reading articles that trials are always full of high drama and intense action
7 and riveting circumstances.

8 And, while all of these may be true at times, this trial is not for
9 entertainment purposes. This trial is a fundamental part of our democracy; a
10 search for the truth in an effort to make sure that justice is done before the
11 Court.

12 Searching for the truth is often done slowly, deliberately, and
13 repetitively, just the opposite of what we have come to expect by watching
14 television or seeing in movies.

15 This courtroom is a place of honor dedicated to the protection and
16 preservation of citizens' rights through what many have called the greatest
17 justice system ever created.

18 The attorneys appearing before you are advocates for the parties that
19 they represent. But, first and foremost, they are officers of this Court, sworn
20 to uphold the integrity and the fairness of our judicial system and to help you
21 in the search for the truth.

22 You should expect them to be professional, competent, and ethical in
23 their representation of their clients' interest.

24 And, again, we thank you for your service.

25 Mr. Foreman, ladies and gentlemen, what I tell you now is intended

30

1 to serve as an introduction to the trial of this case. And my remarks are not a
2 charge on the law.

3 I will instruct you on the law at the end of this trial before you retire to
4 consider your verdict. My remarks are merely an explanation of the
5 procedure that we will follow, in the trial of this case, so that you may
6 understand what may be happening.

7 You are not allowed to take any notes during the trial of this case. As I
8 previously told you, the Defendant is charged with the offense of murder and
9 he has pled not guilty to that and the State — the burden is on the State to
10 prove him guilty beyond a reasonable doubt.

11 Ladies and gentlemen, it will be your duty to decide whether or not the
12 State has met that burden of proof. Your — your purpose as jurors is to find
13 and determine facts.

14 You are the sole judge of the facts. If at any time, I make any
15 comment regarding the facts, you must disregard it. You are to determine
16 the facts from the testimony you hear and the other evidence introduced in
17 this courtroom.

18 It is up to you to determine the inferences which you think may be
19 properly drawn from the evidence presented in this case.

20 It is especially important that you perform your duty of determining the
21 facts diligently and conscientiously because ordinarily there is no way to
22 correct an erroneous determination of facts by a jury.

23 On the other hand, and with equal emphasis, the law that makes you
24 the judge of the facts makes me the judge of the law in this case. The law as
25 given by the Court is the only law that you may consider. You must accept

1 it and follow it even if you disagree with it.

2 You — I cannot tell you what the facts are and you cannot disagree
3 with me about what the law is or should be or ought to be. Your job is to
4 take the law, as I give it to you, and apply it to the facts as you find them to be
5 from the testimony of the witnesses and any other evidence that is properly
6 introduced during the trial.

7 After doing so, you will render a verdict. And your verdict — the
8 verdict that you took a solemn oath a moments ago, to render.

9 Until I tell you that you may begin to deliberate, you must not discuss
10 the case with anyone, including fellow jurors, friends, family members, and
11 anyone involved in this case.

12 The attorneys and the parties in this case have been advised by me
13 that they are not to speak to you. So, if you see anyone involved in this case,
14 and he or she does not speak to you, I assure you they are not being rude;
15 they're simply following the instructions of the Court.

16 You must decide this case based solely on the evidence presented in
17 this courtroom. During the trial, you must not conduct any independent
18 research about the case, any facts in the case, the evidence presented,
19 or the people or organizations involved in any way.

20 Please, do not try to learn information from any source outside of this
21 courtroom. In other words, you must not look at dictionaries or other
22 reference materials, search the internet, websites, or blogs, or use electronic
23 tools to discover or receive information about this case or to help you decide
24 it.

25 You may not use computers, telephones, cell phones, smart

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1 phones, tablets, the Internet, or other tools of technology with communication
2 capability at any time while you are in the courtroom or during your
3 deliberations.

4 During your breaks for meals or overnight, if necessary, you may use
5 those devices, but you must not use those devices to communicate with
6 anyone about this case until it is ended.

7 This means you must not use phone calls, emails, text messages,
8 instant messages, Twitter, or any blog, chat, or other web site, including
9 Facebook, Google Plus, My Space, Linked-in, U-Tube, or any social media
10 websites to send or receive information about this case.

11 This includes information about a party, a witness, a lawyer, or a court
12 officer, news accounts about the case, research on any topics raised, or any
13 topic that you may think would be helpful in deciding the case, or any
14 testimony presented by any witness.

15 During this trial, do not read, listen to, or watch any news reports about
16 the case. This includes anything that may be in a newspaper or on the
17 Internet, radio, or television.

18 You must not consider anything you may have read or heard about
19 this case outside of the courtroom whether before or during the trial.

20 Information on television, radio, or the Internet or from other sources
21 may be wrong or incomplete. And, in our judicial system, it is important that
22 you are not influenced by anything or anyone outside of this courtroom.

23 If you become aware of another juror's violation of my instructions,
24 please, inform me of that immediately.

25 It is important that you keep an open mind and not decide any issue

1 in this case until all of the evidence has been presented, the parties have
2 made their closing arguments, and I have instructed you on the law.

3 It is your solemn responsibility to determine the guilt or innocence of
4 the Defendant. Ad your verdict must be based solely on the evidence as it is
5 presented to you in this trial and on the law as I instruct you during and at the
6 close of the trial.

7 In just a few moments, the Solicitor will make what is called an
8 opening statement, in which the Solicitor will explain to you the issues in this
9 case, or at least what the Solicitor believes the issues to be.

10 The attorney for the Defendant is also allowed to make an opening
11 statement, although she is certainly not required to do so. What the
12 attorneys tell you, during their opening statement, is not evidence in this
13 case; it is only their contention as to what the issues are.

14 The evidence in this case will be presented to you by the testimony of
15 sworn witnesses from the witness stand and/or by exhibits that may be
16 introduced into evidence.

17 Now, from time-to-time during this trial, you may hear one of the
18 lawyers say something like, "Your Honor, I believe we have a question or a
19 matter of law to discuss," or "May we approach the bench?"

20 Sometimes I myself find it necessary to excuse you from the
21 courtroom, for a short while, so the attorneys and I can discuss a matter of
22 law.

23 The reason for you being removed from the courtroom is that because
24 you are the judges of the facts in the case and sometimes, when I am
25 discussing a matter of law with the lawyers, it may be necessary for me

1 to make some comment on a fact in connection with ruling whether or not a
2 particular law applies.

3 I cannot tell you what I think the facts are so I will excuse you from the
4 courtroom while my discussions take place so that in no way will you be
5 influenced by anything that I might say or do in connection with the facts.

6 In determining what the true facts are in this case, you must decide
7 whether or not the testimony of a witness is believable. It will be my
8 responsibility to rule, as a matter of law, as to whether certain testimony is
9 admissible. But, once the testimony is admitted, whether or not you believe it
10 is solely for you to determine.

11 In deciding whether to believe a witness, you have the right to consider
12 the interest of a witness, any bias of a witness, any prejudice of a witness,
13 and the opportunity for that witness to have seen any matter that he or she
14 may be testifying about.

15 And you also can consider the way the witness acts on the witness
16 stand. You have a right to consider anything that is in the record to help you
17 evaluate the testimony of a witness.

18 And that means that it is your duty to pay close attention to the witness
19 and to observe them, to listen to them, and pay close
20 attention to the lawyers and to the Court.

21 I ask you, please, do not let your thoughts to wander, but give strict
22 attention to the testimony so that, at the end of the trial, you will be able — in
23 a position to determine the true facts and to render a verdict.

24 Solicitor, ready?

25 **MR. BULSA:** Yes, sir.

1 **THE COURT:** Give your attention, ladies and gentlemen, to the
2 Solicitor.

3 **Opening Statements** **10:45 A.m.**

4 **MR. BULSA:** Ladies and gentlemen, just over a year ago, on
5 August the 14th, 2013, Curtis Goldsmith died in the Money Tree parking lot.

6 He was there. He had driven his vehicle there. He was in the parking
7 lot and he was confronted by the Defendant, a person he knew.

8 They had words and a fight broke out. And the Defendant killed Curtis
9 Goldsmith.

10 The police were called. The case was investigated. The Defendant
11 was not at the scene. He was found about four (4) days later and charged
12 initially with aggravated assault and battery because of the autopsy pending
13 on the victim.

14 The victim was about 56 years old. And you'll hear from his wife,
15 Ernestine Goldsmith, about his physical condition and basically his daily
16 routine.

17 The autopsy revealed that he was killed by blunt force trauma, a blow
18 to the head. And, therefore, the charges were up — upgraded to murder.
19 And that's what he stands trial for today.

20 This is more than just a fight. It's about a man dying here in
21 Spartanburg County at the hands of the Defendant.

22 Please, listen to the witnesses, witnesses that saw the incident, they
23 saw parts of the incident, where — where they saw those — those things
24 from their perspective that they had.

25 And I submit to you that there are people that were there that you

1 will not hear from because everybody didn't stay and talk to the police. And
2 everybody didn't come back and talk to the police.

3 And the police did what they could and they found the witnesses they
4 could and they put this case together and they identified the culprit that
5 committed this crime. And that's the Defendant.

6 And, at the close of this case, I'll ask you to convict him of the crime of
7 murder. Thank you.

8 **THE COURT:** Ms. Lyall?

9 **MS. LYALL:** Thank you, Your Honor.

10 **THE COURT:** Yes, ma'am.

11 **(Ms. Lyall's opening statement began at 10:47 a.m.)**

12 **MS. LYALL:** Good morning. Again, my name is Mary Stuart
13 Lyall and I have the privilege today of representing Mr. Roderick Wynn.

14 As you heard from the Solicitor, this was a fight. This isn't a normal
15 murder case where you would come in and we would hear, you know, a
16 drastically different version of events from the Solicitor, from the Defense.

17 We're not saying that Roderick was not there. We're not saying they
18 didn't get into a fight. In fact, from most of the witnesses that you're going to
19 hear from, from the State and the Defense, most people are going to say the
20 same thing.

21 The alleged victim in this case and Roderick came to this parking lot.
22 They got into a disagreement, everyone agrees they were screaming at each
23 other.

24 The only reason that most people came to attention to this
25 is because loud words were exchanged by both parties.

1 This is not a great area. You're going to hear from a lot of these
2 people. A lot of these people have criminal histories. It's the area of the
3 Money Tree on the corner of Magnolia and Asheville Highway.

4 They've knocked down the Sunshine Inn, but at the time, the Sunshine
5 Inn was still standing. In this area, there's a lot of prostitutes hanging out, a
6 lot of drug dealing going on. And you'll hear that fights in this area and bad
7 things happening is a normal occurrence.

8 On this day, Curtis Goldsmith pulled up in his Jeep, you'll hear from
9 different witnesses, and Roderick Wynn and Curtis Goldsmith got into an
10 argument.

11 This got very heated. And you'll hear from witness on both sides that
12 they started swinging at each other.

13 Most of the witnesses are going to tell you that Curtis Goldsmith threw
14 the first punch at Mr. Roderick Wynn. He got out of his car, threw a punch,
15 one, two, and Mr. Roderick Wynn, what was he supposed to do?

16 You'll hear that yes, Roderick Wynn did start punching, but it was in
17 self defense.

18 These two men, middle aged men -- Roderick Wynn, as you'll hear, is
19 45 years old. You'll hear -- as you heard from the Solicitor, that Curtis
20 Goldsmith is 55 years old. They're both middle aged men.

21 You'll also hear they're approximately the same size. You'll hear that
22 Roderick Wynn is 5'9" and in his 170s and that Curtis Goldsmith was 5'9" and
23 in his 170s.

24 At this point, they're just fighting. You'll hear that they started rolling
25 on the ground, punching each other,

1 and that people, even though they noticed the fighting, kept walking.

2 They said, "Oh, two men fighting," normal occurrence. "We noticed
3 the fight, but no big deal." And kept walking.

4 You'll hear that, during this fight — you'll see pictures and you'll hear
5 from witnesses, that next to the car where they were fighting, there was a
6 huge trash dumpster, one of those huge metal ones.

7 And, as they're fighting, Curtis Goldsmith hit his head against it. This
8 is not murder. You will hear that Roderick Wynn, as he is fighting in self
9 defense and rolling on the ground with this man, that this man's head
10 accidentally hit that dumpster.

11 You'll hear that there were not broken bones on this man. He doesn't
12 have broken bones on his face. That it is simply what the Solicitor said, that
13 he had head trauma from hitting that garbage can.

14 This is a tragic accident. And it is very unfortunate, but what — at the
15 end of all the evidence and testimony, we hope that you will find Mr. Roderick
16 Wynn not guilty of murder. Thank you.

17 **(Ms. Lyall's opening statement concluded at 10:53 a.m.)**

18 **THE COURT:** Solicitor?

19 **MR. BULSA:** The State calls Jeffrey Holt.

20 **(Off-the-Record Comments)**

21 **(The witness stepped forward to be sworn.)**

22 (Whereupon,

23 **MR. JEFFREY HOLT**

24 having been first duly sworn, testified as follows:)

25 **THE COURT:** Mr. Holt, tell us who you are and spell

1 your last name for my court reporter, please.

2 **THE WITNESS:** My name is Jeffrey Holt. I'm a paramedic with the
3 Spartanburg County EMS. Last name "Holt," H-o-l-t.

4 **THE COURT:** Thank you. Solicitor?

5 **Direct Examination by Mr. Bulsa:** **10:54 A.m.**

6 **Q.** Mr. Holt, How long have you been with EMS?

7 **A.** About ten years.

8 **Q.** Okay. And what are your actual duties with them?

9 **A.** I'm a C-degree (phonetic) paramedic, which means I'm a lead
10 paramedic on an ambulance that works throughout the county.

11 **Q.** Okay. And back on August the 14th, 2013, did you get a call to go to
12 the Money Tree off South Church Street?

13 **A.** Yes, sir, I did.

14 **Q.** And it's just right down the street, isn't it?

15 **A.** Yes, sir.

16 **Q.** In fact, the — the Money Tree sits sort of between Magnolia Street and
17 South Church Street?

18 **A.** Yes, it's like a corner.

19 **Q.** Okay. And what was the nature of that call?

20 **A.** We were called out for a subject unconscious.

21 **Q.** And, when you arrived, what did you observe?

22 **A.** There were several people in the parking lot pointing toward a vehicle.
23 I observed a black male in the vehicle slumped over. He had blood running down
24 his face.

25 We opened the door and on exam we found him pulse-less

1 and not breathing.

2 Q. All right.

3 (Brief pause while exhibits retrieved.)

4 Q. Let me show you what's been marked as State's Exhibit Number 7.

5 MR. BULSA: And I believe we're offering this without objection.

6 MS. LYALL: That's correct.

7 THE COURT: Without objection.

8 (Whereupon, State's Exhibit Number 7 was admitted into evidence
9 without objection.)

10 (Exhibit shown to the witness.)

11 Q. Would that be the vehicle that you found him in?

12 A. Yes, sir, it would be.

13 Q. And the driver's door is open?

14 A. I opened the driver's door.

15 Q. Okay. And the victim was what kind of a subject?

16 A. Appeared to be a male probably in his 50s at the time. He was in the
17 driver's seat with his head slumped down. There was blood on his face and he had
18 vomited.

19 And, then, I went to obtain a pulse, did not find one, saw that he wasn't
20 breathing. We, then, extricated him from the vehicle onto our stretcher and began
21 CPR.

22 Q. Okay. And were there any other individuals around the vehicle?

23 A. Yes, sir, there were several bystanders that had pointed --
24 pointed to the vehicle when we pulled in.

25 Q. Was anybody there at the vehicle trying to attend to this victim?

1 A. Not really, not trying to attend to. They were — I think there were a
2 couple calling names, trying to call his name, trying to get his attention. I didn't see
3 anybody doing actually anything else.

4 Q. When you put him on the stretcher, what did you, then, do with him?

5 A. We began CPR. I began chest compressions. My partner began
6 trying to secure him to the — to the back board.

7 I was holding the ventilator mask on his face and I actually had one of
8 the bystanders to squeeze the bag for me when I instructed them to do so.

9 Q. Okay. Did the wound to his head appear visible to you?

10 A. He had a deformity to his left temporal forehead area that appeared to
11 be a — a fairly small contusion with a laceration above it. It seemed to have a
12 curved indentation to it on exam.

13 Q. Did you pay any attention to the surrounding area to determine if there
14 was anything that might have caused that wound?

15 A. Not at that time, no, sir.

16 Q. Okay. Your focus was on ----

17 A. On the patient, yes, sir.

18 Q. Okay. And how long were you actually on scene?

19 A. From the time we made contact till the time we were at the hospital, it
20 was 20 minutes, I believe, almost exactly.

21 Q. Okay. Did you ever resuscitate him?

22 A. No, sir, we did not.

23 Q. Did you later learn that he was declared deceased at the hospital?

24 A. Yes, sir.

25 Q. Okay.

1 (Brief Pause)

2 MR. BULSA: Thank you. Answer any questions Ms. Lyall may
3 have.

4 Cross Examination by Ms. Lyall:

10:55 A.m.

5 Q. He was in his vehicle, right?

6 A. Yes, ma'am, in the driver's seat.

7 Q. And the door was closed?

8 A. Yes, ma'am.

9 Q. Was the car on or off when you got there?

10 A. I believe it was off.

11 Q. Okay. And you said there was a contusion on his head and it was a
12 little indented with a scrape in it?

13 A. Yeah, it had a laceration above just at the hairline. And a fairly small
14 contusion, a hematoma on the left side just above his eye. And it was kind of ---
15 looked like a curved indentation into the hematoma itself.

16 Q. In your opinion, could that have been caused by slamming your head
17 into a big metal trash can?

18 A. No, ma'am. It would have had to have been a curved surface.

19 Q. Okay. The side of it?

20 A. It would — I — I couldn't comment on that. I really don't know.

21 Q. Okay. But it was just that one area?

22 A. That's the only injury that I noted.

23 Q. Okay. He didn't have a broken nose?

24 A. I didn't — I didn't pay a lot of attention to the nose.

25 I was too busy just trying to make sure — trying to get him back.

1 Q. You didn't notice a broken nose?

2 A. I noticed blood on his face, but I didn't know -- I didn't ----

3 Q. Okay.

4 A. I really couldn't tell you where it came from.

5 Q. Didn't have broken eye sockets?

6 A. Not -- no way I could tell.

7 Q. Broken cheek bones?

8 A. No way for me to tell.

9 Q. His face wasn't destroyed?

10 A. No, no.

11 Q. So what you noticed was that one ----

12 A. That was -- that was the initial -- that was the initial impression that I
13 got was just the injury above the eye.

14 Q. Just that one area?

15 A. That's the only thing I saw that I really remember that I recall.

16 Q. Okay. And you would make -- if there were other things severely
17 wrong with his face, you would make note of that?

18 A. Yes.

19 Q. And you would attend to those injuries?

20 A. No, ma'am.

21 Q. Well, as best as you could if ----

22 A. Well, if he's -- if he's pulse-less and not breathing, that's going to be
23 where my attention would fall. And any secondary injuries would be after the
24 resuscitation attempt.

25 Q. But you made note of that injury because it was what was

1 wrong with his face?

2 A. That was the first thing I noticed, yes.

3 Q. Okay. And you didn't make note of any other injuries to his face?

4 A. No. Mostly we were — my thought process was the fact that he had
5 vomited and was not breathing and had a visible — there was possible head injury
6 that had caused something.

7 Q. In that one area?

8 A. That was only thing I noted at that time.

9 MS. LYALL: Thank you.

10 MR. BULSA: Just briefly.

11 Redirect Examination by Mr. Balsa:

10:59 A.m.

12 Q. She — she's roughly saying your notations. Did you prepare a report?

13 A. Yes, sir, I did.

14 Q. And, in that report, you had a narrative. Describe what — to the folks
15 what that narrative is.

16 A. The narrative is just a brief statement from the time I arrived on scene
17 until I discharged the patient to the hospital.

18 Q. And you're noting your initial observations?

19 A. Yes, sir.

20 Q. And — and what you did?

21 A. Yes, sir.

22 Q. Okay. And the thing that stood out, in your observations, is that one
23 on the forehead?

24 A. That was — that was the most obvious thing to me.

25 Q. Okay. And you weren't there to examine him for any other injuries?

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A. No.

MR. BULSA: Thank you. That's all I have.

MS. LYALL: Nothing further, Your Honor.

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

Please, be careful.

(The witness complied with the request.)

MR. BULSA: We ask that he be excused?

THE COURT: Any objection?

MS. LYALL: No, Your Honor.

THE COURT: You may stay or go, sir.

THE WITNESS: Thank you, sir.

(Whereupon, the witness was excused.)

MR. BULSA: Officer Adorina — Adorina?

(Brief pause while the witness is summoned.)

(The witness stepped forward to be sworn.)

(Whereupon,

Officer Sandra Adorina

having been first duly sworn, testified as follows:)

THE COURT: Officer, tell us who you are and where you're employed and spell your last name for my court reporter, please.

THE WITNESS: My name is Sandra Adorina;
A-d-o-r-i-n-a, is my last name. And I work for the Spartanburg City Police Department.

THE COURT: Thank you. Solicitor?

Direct Examination by Mr. Bulsa:

11:00 A.m.

1 Q. Officer, how long have you been with the Spartanburg Police
2 Department?

3 A. A little over three (3) years.

4 Q. And have you been employed with any other departments?

5 A. I was with Animal Services for Spartanburg City before I became a
6 police officer.

7 Q. Okay. And what do you do for the police department?

8 A. I'm a patrol officer.

9 Q. Okay. And were you a patrol officer back in August of last year?

10 A. Yes, sir.

11 Q. On August the 14th, 2013, did you receive a call to go to the Money
12 Tree on South Church Street?

13 A. I received a call there was one man down at the Money Tree.

14 Q. Okay. Were the first officer to arrive?

15 A. I arrived shortly after EMS.

16 Q. What did you observe taking place?

17 A. Well, when I arrived, EMS had just loaded a — a black male into the
18 ambulance. And there was two females around the ambulance.

19 I got out and started asking the — the females at the ambulance what
20 was going on and went from there.

21 Q. Okay. Were other officers called to the scene?

22 A. Shortly after I arrived, it seemed like the whole — the whole city
23 arrived.

24 Q. Okay. And did you know which females you spoke with?

25 Did you note their names?

1 (Brief pause while the witness reviews document.)

2 A. I spoke with — what was her name — Ms. Blanchard — I believe she
3 was the first one — and Ms. Price.

4 Q. Okay. And did they tell you who might have been involved in this
5 incident?

6 A. Yes. They said that the — it was a black male. They believed his
7 name was — they knew him as...

8 MS. LYALL: Well, objection to hearsay.

9 THE COURT: What's the question?

10 MR. BULSA: Well, she was the first officer on the scene, Your
11 Honor. This is immediately after it occurred. I believe there's a hearsay
12 exception; present (phonetic) sense impression.

13 THE COURT: What's the question again, Mr. Bulsa?

14 MR. BULSA: Who did they identify was involved in the incident,
15 the two females that she was speaking with. And, Your Honor, they're both
16 here and they're going to testify as well.

17 THE COURT: I'm going to allow it subject to them testifying.

18 MR. BULSA: Yes, sir.

19 Q. (By Mr. Bulsa) Did you see who they noted was involved?

20 A. They noted — they said that it was a black man by the name as Curtis
21 Goldsmith.

22 Q. Okay. Curtis Goldsmith being the victim?

23 A. Yeah. They knew him as a gentleman that worked at the Fremont
24 School.

25 Q. Okay. Did they indicate who else might have been involved?

1 (Brief pause while witness examines documents.)

2 A. Someone by the name of Roger. It was a black man by the name of
3 Roger. They believed his last name to be Wynn.

4 Q. Okay. Was that — was that person on scene?

5 A. No, sir.

6 Q. Okay. All right. And did you put out information to have the police
7 look for Mr. Wynn?

8 A. I was given a description and a name and I put a BOLO out. Then, I
9 went on.

10 Q. Okay. And the vehicle that was there, was that registered to Mr.
11 Goldsmith's wife?

12 A. Yes, uh-huh (affirmative).

13 Q. Okay. All right. Did you participate in any other investigation of this
14 case?

15 A. I helped take written statements of the two females that were there on
16 scene. And I transported them to City Hall to speak with Investigator Porter.

17 Q. Okay.

18 MR. BULSA: All right. Thank you. That's all I have. Answer
19 any questions Ms. Lyall may have.

20 MS. LYALL: I have no questions.

21 THE COURT: Officer, you may step down. Please, be careful.

22 THE WITNESS: Thank you.

23 (The witness complied with the request.)

24 MR. BULSA: We ask that she be excused.

25 THE COURT: Any objection?

1 MS. LYALL: No objection.

2 THE COURT: You may stay or go, Officer.

3 THE WITNESS: Thank you.

4 (Whereupon, the witness was excused.)

5 MR. BULSA: I'd call Ernestine Goldsmith.

6 (The witness stepped forward to be sworn.)

7 (Whereupon,

8 ERNESTINE GOLDSMITH

9 having been first duly sworn, testified as follows:)

10 MS. LYALL:: Your Honor, may we approach for a moment?

11 THE COURT: Certainly.

12 (Whereupon, a bench conference was had with all attorneys
13 present.)

14 THE COURT: Has she -- has she been sworn?

15 MADAM CLERK: Yes, sir.

16 THE COURT: Ma'am, tell us your name and --- and spell your
17 last name, please.

18 THE WITNESS: My name is Ernestine Goldsmith, spelled G - O - L
19 - D - S - M - I - T - H.

20 THE COURT: Thank you. Solicitor?

21 Direct Examination by Mr. Bulsa:

11:07 A.m.

22 Q. Good morning, Ms. Goldsmith. I know this is a tough day for you. You
23 were married to Curtis Goldsmith?

24 A. I was.

25 Q. How long were you all married?

1 A. 25 years.

2 Q. And where did you all live?

3 A. We lived — currently we live in Woodruff, South Carolina.

4 Q. And how old was he when he died?

5 A. Curtis was 56.

6 Q. Okay. And what was his physical condition, his health?

7 A. Curtis was in very good physical condition. I had only known him to go
8 to the doctor twice since I've known him.

9 Q. And, when he died, he had no ailments that you knew of?

10 A. Not that I know of.

11 Q. Okay. What was his business?

12 A. Curtis' business, he has always been self-employed/maintenance
13 man. That's always been his desire to own his own business so that's what we did.
14 At the time of his death, we did own a franchise. And he was also maintenance at
15 several apartment complexes.

16 Q. Okay. Did he used to work at the Fremont Apartments there near the
17 Money Tree?

18 A. He did.

19 Q. Okay. And the day in question, do you remember when he left the
20 house?

21 A. Curtis left the house about 7 o'clock that morning.

22 Q. And did you know what he was -- had on his schedule that day?

23 A. The same as usual, to go to property to go paint apartments and later
24 on that day, start cleaning businesses.

25 Q. Was it his normal course of practice to be --- to --- to take

1 the Magnolia Street route?

2 A. He worked in that area. I would say yes because he did work in some
3 apartments in that location.

4 Q. Okay. So it wasn't unusual for him to be in that area?

5 A. No.

6 Q. And that -- that -- in particular, you didn't know why he was at the
7 Money Tree, did you?

8 A. No, I don't.

9 Q. Okay. And when were you notified of this incident?

10 A. I was notified that afternoon. And, at the time, I had gotten a cell
11 phone that didn't get good reception at my job. So I wasn't notified until like at 5
12 o'clock that afternoon.

13 Q. And you responded to the hospital?

14 A. I went to the police department. My sister went -- found me at my job
15 and took me to the police department.

16 MR. BULSA: All right. Thank you, ma'am. That's all I have.

17 THE WITNESS: Thank you.

18 THE COURT: Yes, ma'am?

19 MS. LYALL: Thank you, Your Honor.

20 Cross Examination by Ms. Lyall:

11:09 A.m.

21 Q. As part of this investigation, your family had -- you and your family had
22 to answer some questions to the coroner's investigator; is that true?

23 A. I -- as far as what kind of questions are you referring to?

24 Q. About his previous health and what kind of physical condition
25 he was in prior to the death, kind of like you've been in court today.

1 A. I don't recall that. I was in disarray that day so I -- I remember the
2 corner talking more to me, telling me what had happened vs. asking me questions.

3 Q. Okay. Well, the coroner's investigator, do you remember talking to
4 someone named Mr. Traxler?

5 A. I do. I remember that name.

6 Q. Okay. And do you remember Mr. Traxler asking you about the
7 physical health and you saying you're not sure what kind of physical health he was
8 in because he was afraid of going to the doctor?

9 A. I don't remember saying that.

10 Q. You don't remember telling the doctor [sic] that?

11 A. As I said, I was in disarray. I don't remember saying that at the time.

12 Q. Okay. But you could have said it?

13 A. I don't -- maybe, but I don't recall it. I don't -- I don't remember ever
14 saying something like that about my husband.

15 Q. Okay. But if Doctor -- if Mr. Traxler said you said it, it's -- it's possible?

16 A. As I said, I was in disarray so I guess it's possible.

17 Q. Okay. What about the fact that you told the investigator that your
18 husband has been a heroin abuser all of his life?

19 MR. BULSA: Objection.

20 A. I've never said that about my husband.

21 MR. BULSA: Objection, Your Honor.

22 A. Never.

23 THE COURT: Let me see the lawyers.

24 (Whereupon, a bench conference was had with all attorneys
25 present.)

1 **THE COURT:** Mr. Foreman, ladies and gentlemen of the jury,
2 this is one of those times I need to talk to the lawyers outside of your
3 presence. So, Mr. foreman, if you would, if you would take your jury back to
4 the jury assembly room, please. Do not begin deliberating. We have not
5 completed the case.

6 **(The jury exited the courtroom at 11:12 a.m.)**

7 **THE COURT:** Okay. What's the --- what's the objection, Mr.
8 Bulsa?

9 **MR. BULSA:** The objection is to relevance and as well as
10 deception. I'm looking at the coroner's report and the reference to any drug
11 abuse comes from the sister, Tina Gray (phonetic), and not the spouse.

12 **THE COURT:** Okay.

13 **MR. BULSA:** She's deliberately misled this jury into what the
14 wife knows about her husband.

15 **THE COURT:** Ms. Lyall?

16 **MS. LYALL:** Their family was together giving a report. She has
17 told the jury -- I did not put this witness up to say he was in perfect physical
18 condition.

19 The fact that I told him not to go into that and the fact that they have
20 given information to the coroner and the coroner's investigator that he is a
21 heroin abuser his entire life; they weren't sure what type of physical condition
22 he was in because he was afraid of doctors.

23 He was an alcohol that morning and on hydrocodone. I mean, I didn't
24 open the door to bring this stuff in.

25 I wouldn't have brought it in had they not put up that he was

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1 in perfect physical condition. So, I mean, they're the ones that gave me the
2 report. I think it's admissible now due to the fact that they're painting him as
3 a angel.

4 **THE COURT:** Mr. Bulsa?

5 **MR. BULSA:** Your Honor, the report references Tina Gray. It
6 does not reference Ernestine Goldsmith. She is telling this jury that Mrs.
7 Goldsmith has told them that.

8 If she wants to put up Ms. Gray, then, we'll argue about relevancy at
9 that point. But, whether the victim was using heroin, does not mean that he
10 was not in good physical health. And there was no heroin in his system per
11 the drug report.

12 **(Brief Pause)**

13 **THE COURT:** Well, I -- I -- I agree that the door is opened, but, if
14 she's not the one that said it, you're going to have to ask somebody else
15 about it. I mean, she said she didn't tell the coroner that.

16 **MS. LYALL:** Okay. Well, she was sitting right there, so she's
17 denying ----

18 **MR. BULSA:** She doesn't know that. How do you know she
19 was sitting right there?

20 **MS. LYALL:** Because they were sitting there as a family
21 when ----

22 **MR. BULSA:** She -- she testified she didn't get there to 5
23 o'clock. The man died at noon.

24 **THE COURT:** I don't know that she was there. You can ask her
25 if she were there. And, if -- if she were there, if she's the one that told it, she

1 told it and — and you can ask her about that certainly. But, if — if she -- if
2 she didn't — if she was not there or — even, if she didn't say it, you'd have to
3 ask Ms. Gray if that --- if that's the sister. I don't know.

4 MS. LYALL: Okay.

5 THE COURT: Anything else?

6 MR. BULSA: No, Your Honor.

7 THE COURT: All right. We're ready for our jury.

8 MS. LYALL: May I have one second so we can go get a
9 subpoena served on the sister?

10 THE COURT: Yeah. Go out there and call Donald or somebody
11 and tell them.

12 (Brief pause while Ms. Lyall stepped out of the courtroom.)

13 THE COURT: Ready?

14 MS. LYALL: I have to email them.

15 THE COURT: Okay.

16 MS. LYALL: They won't accept that.

17 THE COURT: Okay.

18 (Brief Pause)

19 MS. LYALL: All right. I'm ready. Thank you.

20 THE COURT: Okay. Yes, sir, we're ready.

21 (Whereupon, the jury was summoned and entered the courtroom
22 at 11:16 a.m.)

23 THE COURT: All right. Yes, ma'am?

24 MS. LYALL: Thank you, Your Honor.

25 Continued Cross Examination of Ms. Christine Goldsmith by Ms. Lyall:

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1 Q. Are you aware that your husband tested positive for hydrocodone that
2 day?

3 A. Yes.

4 Q. Are you aware that he tested positive for hydrocodeine that day?

5 A. I don't know, whichever one is the pain medicine. The coroner did tell
6 me there was a small amount that he found in his system, but it was not enough to
7 do anything.

8 Q. Are you aware he tested positive for alcohol that day?

9 A. No, I was not. The coroner did not mention that.

10 Q. Okay. But you say he was just going to work?

11 A. He went to work.

12 Q. Okay.

13 (Brief Pause)

14 MS. LYALL: I have no further questions.

15 THE COURT: Thank you. Anything, solicitor?

16 Redirect Examination by Mr. Bulsa: 11:19 A.m.

17 Q. Ma'am, do you know the Defendant?

18 A. No, sir.

19 Q. Okay. How many people did Mr. Goldsmith have employed with him?

20 A. It's hard to say because we had a lot of businesses and Curtis would
21 pick up people really as needed. So, on a given day, if I had to guess, 5 to 10
22 people on any given day.

23 Q. Okay. And where would he know these people?

24 A. We were — different — I worked with a group at certain buildings and
25 he would work with groups at certain buildings. So we were kind of spread out.

1 Q. Did he sometimes get people from the neighborhood?

2 A. He always got people from the neighborhood because Curtis believed
3 in going back into the neighborhood and helping people. That's what he did. That's
4 what he did.

5 Q. Would that be how he knew the Defendant?

6 A. More than likely that's how he got to -- he got in touch with -- with him,
7 yes.

8 MR. BULSA: Thank you, ma'am.

9 THE COURT: Anything?

10 MS. LYALL: No, Your Honor.

11 THE COURT: Thank you. Ma'am, you may step down. Please,
12 be careful.

13 (Witness complied with the Court's request.)

14 MR. BULSA: Freddie Young.

15 (Brief pause while the witness is summoned.)

16 (The witness stepped forward to be sworn.)

17 (Whereupon,

18 Freddie Young

19 first being duly sworn, testified as follows:)

20 THE COURT: Sir, slide up just a little to that microphone and tell
21 us your name, please, and spell your last name for my court reporter.

22 THE WITNESS: Freddie Young, Y - O - U - N - G.

23 THE COURT: Thank you, sir. Solicitor?

24 MR. BULSA: Thank you, Your Honor.

25 Direct Examination by Mr. Bulsa:

11:23 A.m.

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- 1 Q. Mr. Young, how old are you, Sir?
- 2 A. Fifty-three (53).
- 3 Q. Where do you currently live?
- 4 A. Carissa Drive (phonetic).
- 5 Q. Is that a hotel?
- 6 A. Yes, sir.
- 7 Q. And did you currently [sic] live at a hotel on church Street?
- 8 A. Yes, sir.
- 9 Q. Where did you formerly -- formerly live?
- 10 (No Response)
- 11 Q. Is that the one they tore down?
- 12 A. Yes, sir.
- 13 Q. What was that called?
- 14 A. Sunshine Inn.
- 15 Q. Sunshine Inn? And how long did you live there?
- 16 A. Probably about three to four months.
- 17 Q. Okay. And, sir, do you know a man by the name of Curtis Goldsmith?
- 18 A. No, sir.
- 19 Q. Do you know a man by the name of Roderick Wynn?
- 20 A. I just saw him briefly. I really didn't know him like that.
- 21 Q. Okay. So you knew who he was?
- 22 A. Just by seeing him, yeah, a face.
- 23 Q. And where did you see this person?
- 24 A. Well, he was just around the motel. And every once in a while I saw
- 25 him there.

1 Q. Okay. And what name did you know him by?

2 A. Rod (phonetic).

3 Q. Okay. And you knew him when you saw him?

4 A. No, I didn't know him. I mean, me and him got introduced to each
5 other. I mean, he, you know...

6 Q. But, if you saw him on the street, would you know his name? Would
7 you know who it is?

8 (No Response)

9 Q. Would you recognize him?

10 A. Yeah, if I saw him on the street from seeing him around the motel,
11 yeah.

12 Q. Okay. And do you remember the day something occurred at the
13 Money Tree last August?

14 A. Well, little incidents, right.

15 Q. Okay. This is the day a man died. Do you remember that day?

16 A. Yes, sir.

17 Q. Okay. Could you tell us what you were doing that day? That was
18 August the 14th, 2013.

19 A. Well, I was at the back side of the motel where the — where the wood
20 fence is at in the motel. I was working on a car. And basically I just heard a
21 conversation, you know.

22 I don't know who it was. It was just two people walking up the alley.
23 And, I don't know, it's like, when I came around, went to my room, got my bicycle
24 and started out ----

25 Q. Let me stop you right there. The conversation you heard,

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1 did you recognize one of the voices to be the Defendant's, Roger?

2 A. I heard a girl call his name and that was it. You know, I didn't actually
3 see him or the female. I just heard the conversation.

4 Q. Okay.

5 A. I didn't actually see anybody until I got around to the other side.

6 Q. Well, did you know the voices you heard?

7 A. Well, I had heard one of the voices and everything.

8 Q. Whose voice was it that you heard?

9 A. It was the female's voice that I heard, Megan or something like that;
10 that was her name.

11 Q. Okay. Did you know the man that she was speaking to?

12 A. No, not right off because I didn't see him. I mean, I just heard her, you
13 know, briefly talking to him and telling him don't do this and don't do that or
14 whatever.

15 Q. What kind of emotions did you hear between the two of them? How
16 did they appear to be talking about this?

17 A. I mean, I — I just heard the female just saying, you know,
18 basically, you know, just leave the situation alone or something like that.

19 I don't know what they was talking about. I just heard her say, "Just
20 leave the situation alone," or whatever.

21 Q. Okay.

22 A. And, then, it's like I kept continuously working on the car and
23 everything.

24 Q. Mr. Young, you actually met with the police, didn't you?

25 A. Yes, sir.

1 Q. You actually wrote a written statement yourself?

2 A. Right.

3 Q. With your own hand?

4 A. Right.

5 Q. And that would have been the day of the incident?

6 A. Right.

7 Q. Okay. And...

8 **(Brief pause while document is retrieved and shown to Ms. Lyall.)**

9 Q. Mr. Young, I want you to --- I'm going to hand you the statement and
10 just read over it to yourself and see if that refreshes your memory, okay?

11 **(Document handed to the witness.)**

12 **(Brief pause while witness examines document.)**

13 A. All right.

14 Q. Okay. You actually referenced in your statement the male voice; is
15 that right?

16 A. Right.

17 Q. And whose male voice was it?

18 A. We'll, obviously, it had to have been Roger that she was talking to
19 because, when I got around to the other side of the motel, after on the bicycle,
20 I mean, he was like in a confrontation with -- with, you know, the guy ---

21 Q. Okay.

22 A. --- that was there.

23 Q. All right. And, in your statement, did you reference his response to the
24 lady's pleading?

25 A. Well, I mean, I heard a conversation that, you know, she's

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1 saying, "Leave the situation alone," and he said he was going to take care of
2 business or whatever.

3 Q. Okay. So she was -- and you actually use the word pleading, did you
4 not? The lady was pleading with the guy?

5 A. Right.

6 Q. And he insisted he was going to take care of business, right?

7 A. Right.

8 Q. And, then, you got your bike and went around to the parking lot?

9 A. Right.

10 Q. Okay. And what part of the Money Tree parking lot did you go to?

11 A. I was up in the upper end close to the highway when I first got around
12 there.

13 (Brief pause while documents retrieved and shown to Ms. Lyall.)

14 (Off-the-Record Comments)

15 Q. Now, you and I -- you met with me in my office, right?

16 A. Yes, sir.

17 Q. Remember we looked at some overhead pictures?

18 A. Correct.

19 Q. Show the parking lot and the surrounding buildings?

20 A. Right.

21 Q. Would you look at these exhibits, State's 1, 2, and 3.

22 (Exhibits handed to the witness.)

23 MR. BULSA: Your Honor, these are offered without objection, I
24 believe.

25 MS. LYALL: That's correct, Your Honor.

1 **THE COURT:** Without objection.

2 **(Whereupon, State's Exhibits Numbers 1, 2, and 3 were admitted**
3 **into evidence without objection.)**

4 **(Exhibits handed to the witness.)**

5 **Q.** (By Mr. Bulsa) Look at those while I set up this machine and see if
6 you recognize that area, okay?

7 **A.** Yes, sir.

8 **(Witness complied with the request.)**

9 **Q.** Okay. Do you recognize the area?

10 **A.** Yes, sir.

11 **Q.** If you would, I'm going to display these on this — this screen, and you
12 need to remember to continue to speak loudly, okay?

13 **A.** Okay.

14 **Q.** State's Exhibit Number one ---

15 **(Brief pause while State's 1 placed on overhead.)**

16 **Q.** I'm going to hand you a pointer, Mr. Young. Do you see the red
17 button?

18 **A.** Right.

19 **Q.** Point to the motel where you would have been.

20 **(Witness complied with the request.)**

21 **A.** Well, I would have been right here (indicating).

22 **Q.** Okay.

23 **A.** That's the main highway. I would've been right here (indicating).

24 **Q.** And that's where you drove your -- rode your bike going to?

25 **A.** Right.

1 Q. Let's back up a minute, and using this picture, show the jury where you
2 would've been when you heard that conversation.

3 A. I would've been on this side of the motel right here (indicating).

4 Q. Okay.

5 A. That's where the wooden fence is at, right here (indicating).

6 Q. So the wooden fence is just off of the sidewalk?

7 A. Right. I mean, it's on this side of the sidewalk here (indicating).

8 Q. Okay. And, then, the voices you heard were walking in which
9 direction?

10 A. They were walking this way (indicating), up towards the Money Tree.

11 Q. All right. And where would you have gone to get your bicycle?

12 A. To the front side of the motel, on this side (indicating) over here
13 (indicating).

14 Q. Okay. So, on the picture on the right side of the building, and you
15 would've have ridden that down the sidewalk?

16 A. No.

17 Q. No?

18 A. No, because you can't go down the sidewalk. From here (indicating), I
19 went through the corridor and went to this side of the motel (indicating). And, then, I
20 went up this side (indicating) of the street ----

21 Q. Okay.

22 A. --- to right over here (indicating)..

23 Q. All right.

24 (Brief Pause while State's 2 placed on overhead.)

25 Q. State's Exhibit Number 2 is a closer view of the parking lot.

1 And whereabouts did you come in?

2 A. I came in from this area here (indicating),

3 Q. Okay.

4 A. Right up in here (indicating).

5 MR. BULSA: For the record, Your Honor, these are — State's 1
6 and 2 are pictures pulled from the Internet. They do not depict the day in
7 question of the incident location.

8 Q. (By Mr. Bulsa) And, then, State's 3, is sort of a street view looking
9 down the parking lot?

10 A. Right.

11 Q. Okay. Now, tell us what you observed.

12 A. I mean, when I got right here (indicating) from -- from this side of the
13 motel, when I started riding the bicycle, I got right up in here (indicating), I just saw
14 a confrontation that was going on here (indicating). And it appeared like they was
15 arguing or whatever.

16 And, then, it got into a — a physical confrontation where they was just,
17 I guess, fighting as you would say.

18 Q. Okay.

19 (Off-the-Record Comments)

20 Q. Did you see --- you referenced in your statement, who did you
21 reference throwing the first punch?

22 A. I mean, when I pulled up on the situation, they pretty much was
23 already engaged in as fight.

24 Q. Okay. But you write in your statement, sir, that "When I came
25 around the motel front, I saw Roger, the suspect, pull a punch at the victim

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1 not him." (Phonetic)

2 A. Well, when I saw it, when I came around this side here (indicating), I
3 mean, both of them was out -- outside of the -- the vehicle. And the first punch I
4 saw was, you know, Roger.

5 I don't know if the guy throwed a punch first or whatever. I'm just
6 saying what I saw when I came around the building.

7 Q. I understand that. But what you referenced in your report to the
8 police ---

9 A. Right.

10 Q. -- is that what you wrote?

11 A. Right.

12 Q. "I saw Roger pull a punch to the victim."

13 A. Right.

14 Q. And then you wrote, "They started to argue at that time."

15 A. Right.

16 Q. Right?

17 A. I mean, after they had a little fistfight, I mean, it's like they just started
18 verbally -- you know, a little verbal confrontation with each other. And, then, I guess,
19 it started back to fighting again.

20 Q. All right. And what did you do?

21 A. I mean, I sit and watched for a few minutes, but, then, I kind of like
22 rode closer and I just asked him what was going on, you know.

23 And the only thing I heard was like, you know, "He owes me some
24 money," and, you know, I just left the situation and went on.

25 Q. Who said that?

1 A. Well, Roger told me that the guy owed him some money.

2 Q. Okay. What was the victim doing in this fight?

3 A. I mean, he was basically fighting too.

4 Q. Okay.

5 A. Both of them was.

6 Q. Was he trying to cover-up and protect himself?

7 A. I mean, normally, naturally, I mean, if somebody is throwing a punches
8 at you, that's what you do.

9 Q. Do you need to reference your statement again, sir?

10 (No Response)

11 Q. Do you need to reference your statement again?

12 A. No. I mean, I'm — I'm just saying, I mean, usually, when people are
13 fighting, I mean, they're going to pretty much so try to defend themselves or be the
14 -- the aggressor or whichever one.

15 Q. "I saw Roger throwing punches to the victim's head and the victim was
16 trying to cover up." And, then, you actually addressed or spoke to Roger, didn't
17 you?

18 A. Well, I rode up ---

19 Q. Right.

20 A. --- on the situation ---

21 Q. Right.

22 A. --- and I asked him what was going on, you know.
23 And he just said the guy owed him some money.

24 Q. And ----

25 A. And that was the end of the conversation.

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1 Q. Were you trying to stop him?

2 A. No. No, I really didn't have anything to do with it. I mean, I was just
3 trying to figure out what was going on, why they was fighting.

4 Q. You wrote in your statement that, "The guy responded that the victim
5 owed him money and that he was going to get his money." Is that what Roger told
6 you?

7 A. Well, he said he was going to get his money, yeah, uh-huh
8 (affirmative).

9 (Brief Pause)

10 Q. What caused Roger to stop hitting the victim?

11 (Brief Pause)

12 A. I really --- I really couldn't tell you what caused him to stop or whatever.
13 I mean, I don't know if it was just the conversation I had with him briefly or whatever
14 that maybe he thought about it, why he was doing this incident or whatever, but I
15 don't know; it continued.

16 Q. But it stopped after you confronted him?

17 A. Right, it stopped for a second.

18 Q. Then what happened?

19 A. I mean, him and the guy just kept verbally, you know, going at each
20 other that way. And, then, they started back fighting again .

21 Q. Okay. Where was the victim when he was getting hit?

22 A. I mean, he was ---

23 Q. Was he's standing up or on the ground?

24 A. He was standing up at first, but, then, he went to the ground.

25 Q. Okay. The victim went to the ground?

1 A. Yes, sir.

2 Q. Was the Defendant over the top of him?

3 A. I mean, yeah, he was -- they was down on the ground fighting, yeah. I
4 mean, I guess him being an older guy ---

5 Q. Who was getting the better of who in the fight?

6 A. Well, I -- from the way it looked to me,, I mean, not to say it that way,
7 but, I mean, it seemed like Roger had kind of the advantage, though, when he went
8 down on the ground.

9 I don't know if the guy lost his balance or whatever during the fight or if
10 he just got knocked out or whatever. But, I mean, when I approached them, like I
11 say, he was on top of him again and, when I said something to him, he got up.

12 Q. Okay.

13 A. He stopped.

14 Q. And, then, the victim got up?

15 A. Both of them got up.

16 Q. Roger got off the victim?

17 A. He got off of him.

18 Q. And the victim got up. And how was he acting, the victim?

19 A. I mean, he was still verbally -- you know, they was still having verbal
20 conversations at that time. And, then, it's just like, I don't know, they started back at
21 it again.

22 Q. You write in your statement that, "The victim was kind of woozy
23 when he stood up "?

24 A. Yeah. I mean, he was -- he was kind of dizzy.

25 Q. Okay. And did the Defendant strike him again after he got

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1 up, after the victim got up?

2 A. I mean, when he got up off the ground, I mean, they started verbally
3 arguing with each other again and they kind of both kind of met each other.

4 And I just saw Roger pick him up and, you know, he slammed him
5 down to the ground pretty much so that was -- I figured that was pretty much so the
6 end of it then.

7 Q. You saw Roger pick up this older man and ---

8 A. I mean ----

9 Q. ---- slam him on the ground?

10 A. ---- when they was duking and everything, the guy was just throwing
11 punches I mean I guess; I don't know what he was trying to do. Then, he just
12 grabbed him by the legs and got him back down on the ground

13 Q. How many times did he do that?

14 A. I only saw it once.

15 Q. Okay. And when, if at all, did the victim hit the dumpster?

16 A. That was like the -- when he picked him up, you know. I guess his
17 head just hit or whatever when he picked him up because they started over near the
18 truck.

19 But, then, the conversation ended up over there near the dumpster.
20 And, when they started duking it out again, that's when he just grabbed him in the
21 legs and stuff and I guess his head just hit the trash can, I mean....

22 (Brief Pause)

23 Q. Okay. Where were you actually when you were watching this at that
24 point?

25 A. I was basically about right in this area here (indicating).

1 Q. Okay.

2 A. Because I was talking to people over in here (indicating). And -- and
3 there was people all around, all around this area here (indicating). So there were
4 several people in the area.

5 (Exhibit shown to witness)

6 Q. Do you recognize that?

7 (No Response)

8 Q. State's Exhibit 5?

9 A. Right.

10 MR. BULSA: Your Honor, this is being offered without objection
11 as well.

12 MS. LYALL: That's correct.

13 THE COURT: Without objection, it's admitted.

14 (Whereupon, State's Exhibit Number 5 was admitted without
15 objection.)

16 Q. (By Mr. Bulsa) Okay. So where would you have been in relation to
17 that vehicle when you were watching this going on?

18 A. About right over here (indicating).

19 Q. Okay.

20 A. But that vehicle wasn't that close to that trashcan. That vehicle was
21 over here (indicating).. I don't know how it got here, but it was over here (indicating),
22 close to a parking space.

23 Q. Was it in a parking space?

24 A. It was in a parking space right here (indicating).

25 Q. Okay.

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1 A. That's why I say I don't know how it got right here (indicating) unless
2 the guy got in it and moved it backwards or whatever. I don't know. I was gone at
3 that particular time because after, you know, I saw him -- when he hit his head right
4 here (indicating), then, they got up and they continue arguing, I went ahead and left
5 on my bicycle and went down toward the north side.

6 Q. All right. What did the Defendant holler at you when he saw you
7 there?

8 A. What he hollered at me?

9 Q. Yes, sir. You wrote in your statement -- can you read the second
10 page?

11 A. Well, he said that the guy owed him some money. That's ---

12 Q. All right.

13 A. That was basically it.

14 Q. Let me refresh your memory with your statement.

15 **(Brief pause while the statement is retrieved by Mr. Bulsa.)**

16 Q. And after you said, "He fell up against the trash dumpster ---"

17 **(Brief Pause)**

18 A. Well, yeah. I mean he -- I mean, basically he was just telling him, you
19 know, that, you know, I guess while he was in the confrontation, to just call the
20 police or whatever because that's what he needed to do. And, whenever you get in
21 a confrontation with somebody, you obviously ----

22 Q. Wait a minute. This reads, "Roger then hollered, "Call the police
23 because that's what you do anyway," is that right?

24 A. No, not referring to me. I mean, he was talking to the -- the -- the
25 victim. He was telling him to call the police, not me.

1 Q. Okay. And what did Roger do, the Defendant?

2 A. I mean, they both got up and I guess the victim started walking toward
3 his car or whatever. And they had another little confrontation and I just saw him hit
4 him one last time.

5 And, I mean, he went down. I don't know if he got back up or
6 whatever. Like I say, I had already exited after I saw him hit him the last time. I left,
7 and when I came back, that's when everybody was telling me that the guy had died.

8 Q. So, when the victim was leaving to go back to his vehicle ---

9 A. They was still ---

10 Q. --- the Defendant struck him again?

11 A. --- hit him in the face again.

12 Q. Struck him again?

13 A. Right. And they ----

14 Q. And he threw him on the ground again?

15 A. He turned around toward Roger and he said something. And I just
16 saw Roger hit him that last time. Then, he went down on the ground, but -- but,
17 when I left, had went down, like I say, toward the north side, I mean, he was up and
18 he was getting back into his vehicle. So, I didn't see anything else after that.

19 Q. And where did the Defendant go?

20 (No Response)

21 Q. Where did Roger go?

22 A. I --- I think he went toward the north side or whatever.

23 Q. The same direction you did?

24 A. Right.

25 Q. Okay. And when did you later learn that this was more serious

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1 than ---

2 A. After I had went to a -- a soup kitchen and I was looking for
3 somebody. When I rode back up, there was a guy that approached me down at the
4 end of the apartment section and he said, "Hey, you was the guy that was on the
5 bicycle and you saw everything. I'm just letting you know that guy died. And they're
6 looking for the other guy that that did the beating," or whatever.

7 I said, "Well, I hadn't saw him." I said, "When I left, I left on the bicycle
8 and he was behind me going towards the school."

9 Q. How did you come to go to the police station?

10 A. Well, after I got back and everybody was crowded up at the Money
11 Tree, there was a -- a lady officer who came over that said, "Was you riding a
12 bicycle?" I said, "Yes, ma'am." And she was like, "Well, everybody say that you
13 saw the incident," And, then, I was like, "Yeah, I did."

14 And she was like, "Can you go downtown and make a statement?"
15 And I said, "Well, I'll go down and write what I know of it, what I saw."

16 Q. Well, you not only saw the incident, you heard the conversation before
17 the incident ----

18 A. Right, but like I said ----

19 Q. -- comments by Roger about getting some money?

20 A. Right. I mean, just -- I couldn't really visually see anybody between
21 me and the fence, you know what I'm saying.

22 Q. Yes, sir, I do. When you got ----

23 A. I just heard the conversation.

24 Q. Listen to me, when you got around the corner, at the end of the
25 parking lot, is that when you realized it was Roger that you heard; Roger's

1 voice you heard talking to the female?

2 A. Right.

3 Q. Okay. And so you heard him talking to the female about getting his
4 money. And, then, you also --- Roger also told you yourself, while he was beating
5 the man, that he was going to get his money?

6 A. Right.

7 (Brief Pause)

8 Q. So you went to the police station --- department and gave your
9 statement?

10 A. True.

11 Q. What is your line of work, sir?

12 A. I'm a mechanic.

13 Q. Have you got your own business?

14 A. Yes, sir.

15 Q. How long have you been doing that?

16 A. About 23 -- 23 years or whatever.

17 Q. Did you happen to see where the girl was during this?

18 A. She was standing on the other side of the road. I mean, she didn't
19 even come into the parking lot. She was standing over closer to the church looking
20 over that way.

21 Q. And did you know her name?

22 A. I know her as Megan. That's --- I don't know her correct name; that's
23 all I know of her is Megan, a heavysset woman.

24 Q. You didn't know her full name?

25 A. No, sir.

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1 Q. Is she a white lady or a black lady?

2 A. White.

3 Q. Did you see anybody else out there?

4 A. I mean, it was several -- several people out there. The parking lot was
5 basically full.

6 Q. Full of what?

7 A. Just people.

8 Q. People watching this?

9 A. Right.

10 Q. Okay. So, when you went to the police station, did you see any of
11 those people at the police station?

12 A. I mean, I saw a couple of the -- the girls that was -- was out there.

13 Q. Two -- two girls, Ms. Blanchard and Ms. Price?

14 A. Right.

15 Q. Anybody else from the people that you saw?

16 A. I mean, really, while the confrontation was going on, I mean, you just
17 look around; you know what I'm saying? It's not like you just pick somebody out
18 individually.

19 I just saw a crowd of people that was watching. And my thing was
20 everybody was seeing this, why did nobody get involved? You know what I'm
21 saying?

22 Q. But you actually tried to?

23 A. Well, I just asked what was going on because I thought that was the
24 proper thing to do. I just asked him what was going on to see if I could kind
25 of intervene or stop the situation or whatever before it escalated. But I didn't

1 know it was going that ---

2 Q. And your intervention sort of worked, right?

3 A. Sir?

4 Q. It sort of worked?

5 A. Well, it worked briefly at least, you know what I'm saying, before they
6 got back into a verbal confrontation or got back into the physical part of it.

7 Q. Right.

8 MR. BULSA: Thank you, sir.

9 THE COURT: Yes, ma'am?

10 MS. LYALL: Thank you, Your Honor.

11 **Cross Examination by Ms. Lyall:**

12 Q. Mr. Young, we've talked before, right?

13 A. Right.

14 Q. Okay. And I've asked you a few questions about what happened?

15 A. (Nods affirmatively.)

16 Q. Okay. I'm going to go over a little bit over what Mr. Bulsa just did, so
17 try to bear with me.

18 So you were on the other side of the fence from where you say that a
19 female and a male were walking up the Street?

20 A. True.

21 Q. And you said you don't know who those — those people were; you
22 think it was a girl named Megan?

23 A. Right.

24 Q. Okay. And you're just assuming it was Mr. Wynn from what you saw
25 later?

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1 A. Right.

2 Q. Okay. But you can't be sure because you don't know the voice; you

3 don't really know him, just kind of from around this area?

4 A. (Nods affirmatively.)

5 Q. You've got to answer out loud. Sorry.

6 A. True.

7 Q. Okay. Thank you. And, after you heard that conversation -- and when

8 we're talking about a fence, the picture is still up. It's a tall wooded fence. You can't

9 actually see over it if you're on one side or the other?

10 A. No.

11 Q. Okay. And you were on one side of that fence?

12 A. True.

13 Q. And, after you heard that conversation, you went down that parking lot

14 on that side of the fence to the other side of the motel?

15 A. I went through a corridor.

16 Q. Okay.

17 A. Where I was walking through was the corridor of the ----

18 Q. Okay. But you were still on this side of the fence (indicating)?

19 A. Right.

20 Q. And you went through a corridor to the other side of the motel?

21 A. True.

22 Q. So you couldn't see anything happening at the Money Tree when you

23 were on that other side of the ----

24 A. Yeah.

25 Q. ---- motel?

- 1 A. No.
- 2 Q. And you went into where you lived at that time?
- 3 A. True.
- 4 Q. And you got your bike, got ready for whatever you were going to do?
- 5 A. True.
- 6 Q. And you said you came out. About how long do you think that took
- 7 you?
- 8 A. Probably about five, ten (10) minutes.
- 9 Q. Okay. So, when you came out, you came out on the Asheville
- 10 Highway side?
- 11 A. True.
- 12 Q. And where this fight occurred, that's on the Magnolia Street side?
- 13 A. True.
- 14 Q. And, when you came around, you said you saw a fight occurring, but it
- 15 could have already been happening; you just saw a punch being thrown?
- 16 A. Right.
- 17 Q. But you're not sure when that fight started?
- 18 A. No, I didn't know when it got started.
- 19 Q. Okay.
- 20 A. I just come around while --
- 21 Q. While the fight is happening?
- 22 A. Right.
- 23 Q. Okay. So you're not sure who threw the first punch?
- 24 A. Right.
- 25 Q. You're not sure how the fight started?

1 A. No.

2 Q. Okay. You come around to see two middle-aged men fighting each

3 other?

4 A. True.

5 Q. And they're about the same size, right?

6 A. True.

7 Q. Each 5'9" 175?

8 A. Around that.

9 Q. Okay. And you're still pretty far away so you can't hear -- you can

10 here, as you described to him, them yelling at each other, fussing with each other,

11 but you can't hear exactly what they're saying?

12 A. No.

13 Q. So you don't know what they were fighting about?

14 A. No.

15 Q. You just see two middle-aged man swinging at each other?

16 A. True.

17 Q. And, while they're swinging at each other, they're both getting punches

18 in?

19 A. True.

20 Q. And they're -- you said the car was parked closer to the middle?

21 A. Yes, ma'am.

22 Q. And they started fighting in the middle?

23 A. Right.

24 Q. Each punching each other standing up?

25 A. True, yeah.

- 1 Q. Did you see where they were punching each other; face, stomach, just⁸¹
2 kind of wildly punching?
- 3 A. It was just wild.
- 4 Q. Okay.
- 5 A. I mean, they was just fighting.
- 6 Q. Just two man fighting?
- 7 A. Right.
- 8 Q. And, then, they punched --- pushed each other towards that garbage
9 can at some point?
- 10 A. I guess the fight started there, but it eventually ended up near the trash
11 can.
- 12 Q. Okay. Pushing each other ----
- 13 A. Right.
- 14 Q. ---- and stuff like that?
- 15 A. Yes, ma'am.
- 16 Q. And you said, at some point, you yelled over to them?
- 17 A. Well, I -- you know, me seeing Roger just briefly over at the motel, you
18 know, me and him just kind of talked. We didn't really know each other. I just asked
19 him what was going on.
- 20 Q. So you were concerned for him and the other man?
- 21 A. I was concerned for both of them because I didn't understand what --
22 what they was fighting about.
- 23 Q. Two middle-aged man fighting?
- 24 A. Yeah.
- 25 Q. Okay.

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- 1 A. I just wanted to see if I could stop it, you know.
- 2 Q. And it wasn't that you were concerned for one or the other ---
- 3 A. No, no.
- 4 Q. --- you were just concerned two men were fighting in a parking lot?
- 5 A. I did know either one of them like that ---
- 6 Q. Yeah.
- 7 A. --- I just wanted them to resolve whatever issues they had and just
- 8 kind of ---
- 9 Q. Go their separate ways?
- 10 A. Right.
- 11 Q. You didn't want the police to come because two men were fighting?
- 12 A. I mean, I just figured that it was just like normal people, they had a
- 13 confrontation with each other. And I figured it would be resolved just really by a
- 14 verbal thing before it got to a physical thing.
- 15 Q. Okay. But you didn't ever ride your bike up to them, did you?
- 16 A. I rode past them.
- 17 Q. But you didn't -- while you were talking, you said you were in this part
- 18 (indicating) of the parking lot?
- 19 (Brief Pause)
- 20 A. No, I wasn't that far back. I had rode on up closer ---
- 21 Q. Like there (indicating)?
- 22 A. --- when I approach them about the fight.
- 23 Q. Okay.
- 24 A. I was pretty much up close of the vehicle itself.
- 25 Q. Okay. But, when -- did they just stop fighting and stand

1 there while you were talking to them?

2 A. I mean, he stopped ---

3 Q. But they were still arguing with each other?

4 A. They're still arguing, but he stopped ---

5 Q. And still tussling?

6 A. --- and just listened to what I was saying. And, then, I guess, they

7 just ---

8 Q. Okay.

9 A. The argument started back and, then, they started back again.

10 Q. But they didn't just stop and have a conversation with you?

11 A. No, they didn't just stop to have a conversation like that. I mean, they
12 was arguing with each other.

13 Q. Right.

14 A. I just asked him, you know, what was going on with the situation and
15 He stopped briefly.

16 Q. So he is semi-talking to you but still arguing with that ---

17 A. Right.

18 Q. --- with him? So some of what he's saying to you may have just been
19 that argument?

20 A. That's right.

21 Q. You know, he's arguing with ----

22 A. He's arguing with the guy.

23 Q. ---- Mr. Goldsmith and having to defend himself against punches.
24 He's not actually turning to you and talking?

25 A. No. I mean, they were still facing each other when I asked him ---

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1 Q. He's not going to turn to you and get punched in the back of the neck?

2 A. I would hope not. I mean, I would hope not.

3 Q. Okay. So it's not -- some of what he said might not have been

4 interpreted correctly?

5 (Brief Pause)

6 A. Correct.

7 Q. Okay. Because he's in the midst of a fight?

8 A. Correct.

9 Q. Okay. And you said, at certain points -- you had said in your
10 statement that the victim had to cover up at one point?

11 (Brief Pause)

12 A. I mean, that's a natural thing.

13 Q. Right.

14 A. When you're fighting with somebody, you're going to cover up. If
15 somebody is getting the best of you or you're getting the best of them or whatever,
16 it's a natural ---

17 Q. So it would be natural if Mr. Wynn had to cover up at certain points?

18 A. I am sure he did.

19 Q. So, at each point, you saw one of them getting the best of the other?

20 A. True.

21 Q. Okay. So it wasn't that Mr. Wynn, during this whole fight, got the best
22 of Mr. Goldsmith and he was just getting a beat down?

23 A. No, it was pretty much even before he hit the trash can.

24 Q. Okay. So it was a even fight up until a punch made Mr. Goldsmith hit
25 the trash can?

1 A. Basically.

2 Q. And Mr. Wynn did not take Mr. Goldsmith by the throat and shoved
3 him into the trash can; it was a punch that he fell into the trash can is what you
4 testified to?

5 A. Right.

6 Q. Okay. So, up until the point where he hit the trash can, they're just
7 getting the best of each other, fighting like two individuals?

8 A. True.

9 Q. True? And Mr. Goldsmith accidentally hit this trash can during -- when
10 he fell from a punch?

11 A. True.

12 Q. Okay. And you have described to Mr. Balsa that Mr. Goldsmith -- and
13 you did this (indicating) -- he was punching -- he had turned to get back in his car,
14 he was walking away.

15 Then, something was said and he turned around and started punching
16 really fast. And so Mr. Wynn sort of grabbed him by his feet -- his knees and he
17 fell; is that accurate?

18 A. Yes, ma'am.

19 Q. Okay.

20 A. Because, when he started back to his vehicle, he got right at
21 his door. They were still in a -- I guess a argumental confrontation, and I -- I guess,
22 you know, when he just took the last swing or whatever, and I just saw him go down
23 to his knees after he hit him

24 Q. Okay. So the reason you left --- and we have discussed this earlier --
25 is because you saw the victim get back up, get in his car, close the door?

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1 A. True.

2 Q. And the whole time, what you had seen, is two men ---

3 A. Just basically a normal fight.

4 Q. --- a normal fight?

5 A. And it was over with.

6 Q. It was over?

7 A. It was over. I left, then, I came back, and that's when they told me the
8 man had died.

9 Q. And what I had discussed with you is that what you saw -- you were a
10 main witness in this case -- I asked if you thought that this ---

11 MR. BULSA: Objection as to what he thought.

12 MS. LYALL: Okay.

13 THE COURT: Sustained.

14 Q. (By Ms. Lyall) Was this an intentional murder?

15 MR. BULSA: Objection, Your Honor. That's just another way of
16 asking that same question.

17 THE COURT: Sustained.

18 Q. (By Ms. Lyall) This entire time, this was a mutual fight?

19 A. True.

20 Q. Do you see it as anything other than that?

21 MR. BULSA: Objection, Your Honor.

22 THE COURT: Sustained.

23 (Brief Pause)

24 Q. (By Ms. Lyall) This was two men fighting?

25 A. True

1 MS. LYALL: Thank you.

2 Redirect Examination by Mr. Bulsa:

3 Q. Mr. Young, do you remember going to the police station and talking to
4 this man right here (indicating)?

5 A. Yes, sir.

6 Q. Investigator Porter?

7 A. Yes, sir.

8 Q. And you have your statement in front of you?

9 A. Yes, sir.

10 Q. And you can read it, can't you?

11 A. Yes, sir.

12 Q. Okay. It says the time the interview began is when?

13 A. 3:10 P.m.

14 Q. Okay. And the time it was completed?

15 A. 3:45 P.m.

16 Q. 3:45? Okay. So you're standing there talking to Mr. Porter for about
17 35 minutes; am I right?

18 A. True.

19 Q. And, then, he gave you these pieces of paper and it had -- handed it to
20 you and said, "Freddie, please write your statement out." Is that what you did?

21 A. Yes, sir.

22 Q. Okay. And, in this statement, do you at any time reference the victim
23 hitting the Defendant?

24 (Brief Pause)

25 A. No.

1 Q. Read over it.

2 (Brief Pause while the witness reviews document.)

3 A. No, no.

4 Q. You reference no -- no blows being thrown by the victim, do you?

5 A. No, sir.

6 Q. But you referenced the Defendant striking the victim on several
7 different occasions, don't you?

8 A. Yes, sir.

9 Q. "I saw Roger throw a punch at the victim."

10 "I saw Roger throwing punches to the victim's head. The victim was trying to cover
11 up." "Roger stopped hitting the victim and stood up. The victim was ---"

12 MS. LYALL: Objection. Is there a question?

13 MR. BULSA: Yes.

14 A. True.

15 Q. (By Mr. Bulsa) Isn't that what your statement says?

16 A. Yes, sir.

17 Q. Okay. "Victim was kind a woozy when he stood up, then, Roger --
18 suspect threw one last punch to the victim's head."

19 A. True.

20 Q. So you referenced several times the Defendant striking the victim, but
21 you never referenced the victim striking the Defendant; is that right?

22 A. True.

23 Q. In fact, you only referenced the victim trying to cover up and protect
24 himself ----

25 A. I mean, I -- I wrote the statement ---

1 Q. --- is that right?

2 A. True, true.

3 Q. And the statement is in your own written hand?

4 A. True. I wrote this statement, but, you know, I'm writing this statement
5 in reference to it being a fight, a confrontation between two guys. I mean, I'm just
6 saying because it was like -- the situation was -- was who was more or less the
7 aggressor or whatever in this fight.

8 I mean, when you got two people fighting, both people are going to be
9 throwing punches obviously.

10 Q. Mr. Young, in your own hand, you never said the victim threw a
11 punch, did you?

12 A. No, I didn't.

13 Q. And you're describing this as a fight?

14 A. A fight.

15 Q. But the man you said threw all the punches was the Defendant; is that
16 right?

17 A. True.

18 Q. Okay. Right?

19 A. True.

20 Q. And the conversation you heard behind the fence was about a man
21 getting his money?

22 A. True.

23 Q. And that's the exact same comment the Defendant made to you when
24 you asked him what was going on, right?

25 A. True.

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1 (Brief Pause)

2 MR. BULSA: Thank you. That's all I have.

3 THE COURT: Anything?

4 Recross Examination by Ms. Lyall:

5 Q. You don't know Mr. Wynn ----

6 A. No, ma'am.

7 Q. ---- personally?

8 A. No, ma'am.

9 Q. And you have no reason to lie for him?

10 A. No.

11 MS. LYALL: Thank you

12 THE COURT: Sir, you may step down. Please, be careful.

13 (Witness complied with the Court's request.)

14 (Off-the-Record Comments)

15 THE COURT: Let me see the lawyers.

16 (Whereupon, a bench conference was had with all attorneys
17 present.)

18 MR. BULSA: Kerri Blanchard?

19 (Brief pause while the witness is summoned.)

20 (The witness stepped forward to be sworn.)

21 (Whereupon,

22 Kerri Blanchard

23 first being duly sworn, testified as follows:)

24 THE COURT: Ma'am, will you tell us your name and spell your
25 last name, please.

1 THE WITNESS: Kerri Blanchard, B - L - A - N - C - H - A - R - D.

2 THE COURT: Thank you. Solicitor?

3 Direct Examination by Mr. Balsa: 12:01 P.m.

4 Q. Ms. Blanchard, tell us how old you are.

5 A. I'm 32.

6 Q. Where do you live?

7 A. Roebuck.

8 Q. With whom?

9 A. Mom and dad.

10 Q. And were you living there back in August of 2013?

11 A. No, sir.

12 Q. Where were you living back then?

13 A. Just from here to there, wherever.

14 Q. Okay. You didn't have a regular address?

15 A. (Shakes head negatively.)

16 Q. You have to answer "yes" or "no."

17 A. No, sir.

18 Q. Okay. And do you know the Defendant?

19 A. Yes.

20 Q. How do you know him?

21 A. He's been a good friend of mine for about 10 years.

22 Q. Ten (10) years?

23 A. Yes.

24 Q. Okay. And did you know the man that died ---

25 A. Yes, sir.

1 Q. ---- Curtis Goldsmith?

2 A. Yes, sir.

3 Q. By what name did you know him?

4 A. Curtis.

5 Q. How did you know him?

6 A. When I was living at the Fremont Apartments, he was the
7 maintenance manager.

8 Q. And how long were you at those apartments?

9 A. I lived there about — about a year and a half give or take.

10 Q. So you knew both of these men when you saw them on sight?

11 A. Uh-huh (affirmative).

12 Q. Do you remember the day Curtis died?

13 A. Yes, sir.

14 Q. You actually saw part of it, didn't you?

15 A. I didn't see nothing what happened. I was just, you know, trying to
16 help.

17 Q. You're the one that called 911, right?

18 A. Yes, sir.

19 Q. How is it that you came to call 911?

20 A. I seen what state he was in and I just thought I needed, you know, to
21 get him some help

22 Q. Okay. How did you happen to find him?

23 A. Sir?

24 Q. How did you find him at the parking lot at the Money Tree?

25 A. My friend, Roger, came and let me know they had been...

1 Q. Came and let you know what?

2 A. That he needed some help, that the man needed help.

3 Q. How -- tell us about that. How did he come to you?

4 A. He just walked to me on the sidewalk and said that Curtis had swung
5 at him and that he had hit him back. And that...

6 (Brief Pause)

7 A. And I went -- I walked with him to -- to the parking lot to check on him.

8 Q. He said more than that, didn't he?

9 A. He said that he had hit him, yeah.

10 Q. How hard?

11 A. Sir?

12 Q. How hard?

13 A. I don't recall.

14 (Brief Pause)

15 Q. He didn't tell you he hit him so hard that he can't move?

16 A. He said he wasn't, yes, sir. He said he wasn't moving.

17 Q. Okay. And where were you when he came and told you this?

18 A. I was walking up the sidewalk on Magnolia Street.

19 Q. Okay.

20 (Brief pause while exhibit placed on overhead.)

21 Q. States Exhibit Number 1, do you remember what --- can you look at
22 that and do you remember what you had been -- you would have been near;
23 whereabouts you would have been walking up Magnolia?

24 A. Yes. I was almost to the Money Tree parking lot, but...

25 (Off-the-Record Comments)

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1 Q. You have to speak up, okay? The court reporter needs to hear you,
2 okay?

3 A. I was ----

4 Q. If you need to step down, you can step down, okay?

5 A. I was about -- wait a minute. Is this -- is this the motel?

6 Q. It used to be, yes, ma'am.

7 A. Okay. I was about around about here (indicating) — wait a minute.

8 Q. Were you able to see ----

9 A. I'm not sure where the parking lot begins, sir.

10 Q. Okay. Right here (indicating), this is the motel (indicating).

11 A. Uh-huh (affirmative).

12 Q. And here's the fence (indicating).

13 A. Okay.

14 Q. Okay. I believe there's a chain link (phonetic) right here (indicating).

15 A. Yes, sir.

16 Q. Where is —

17 A. Well I was - - -

18 Q. And this would be the Money Tree (indicating).

19 A. Okay. I would have been around about here (indicating) then.

20 Q. Okay. So you -- could you see into the Money Tree parking lot from
21 where you were?

22 A. No, sir.

23 Q. Okay. Was anybody walking with you?

24 A. Not on the same side with me, no, sir. There were people across the
25 street on the other side of the parking lot.

1 Q. Who were those folks?

2 A. I'm only really sure of one, and that was Katina Price.

3 Q. Katina Price?

4 A. Yes, sir.

5 Q. Okay. And you're walking towards the Money Tree and the Defendant
6 comes up to you?

7 A. Yes.

8 Q. Was he running or walking?

9 A. He was walking pretty fast.

10 Q. Walking pretty fast?

11 A. Yes.

12 Q. And he ran into you?

13 A. Uh-huh (affirmative).

14 Q. You weren't expecting to meet him, were you?

15 A. No, sir.

16 Q. And, then, what happened?

17 A. He just told me that Curtis had swung at him and that he hit him and
18 that he wasn't moving.

19 Q. And what did you do?

20 A. I walked back with him to the Money Tree parking lot to check on him.

21 Q. Okay. And what did you find?

22 A. I was — when I got there, he was still breathing, but he wasn't
23 breathing normally. I mean, his heart was beating extremely fast.

24 Q. Where was Curtis?

25 A. In his car.

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1 Q. Okay.

2 (Brief Pause)

3 Q. Oh, it's right there in front of you. Is that the truck he was in?

4 A. Yes, sir.

5 Q. Okay. State's Exhibit Number 7, do you know — do you recall if the
6 door was open or closed?

7 A. The door was open.

8 Q. It was open?

9 A. Uh-huh (affirmative).

10 Q. Did you close it at any time?

11 A. No, sir — no, sir.

12 Q. Was the car running?

13 A. Yes, sir.

14 Q. So the car was running.

15 (Brief pause while exhibit placed on overhead.)

16 Q. And, in State's Exhibit Number 5, do you see that right there
17 (indicating)?

18 A. Yes, sir.

19 Q. Does that appear to be where it was positioned
20 when you came upon it?

21 A. Yes, sir.

22 Q. And how was Curtis seated in that car again?

23 A. He was in the driver's seat. And he was kind of — his head was down.

24 Q. And what did you do when you saw him like that?

25 A. I checked him. I kept listening to him breathing and I

1 checked his heart rate and pulse.

2 Q. All right. And, then, what did you do?

3 A. I dialed 911.

4 Q. Okay. And what did you tell 911?

5 A. That something had happened at Money Tree. I believed there was a
6 fight and that the ambulance needed to come.

7 Q. And, when you called 911, what did the Defendant do?

8 A. Well, after I called 911, he left (phonetic).

9 Q. Okay. Well, how did he leave?

10 A. Sir?

11 Q. How did he leave?

12 A. He —

13 Q. Did he run away?

14 A. Pretty much, yeah.

15 Q. So he ran off?

16 A. Yes, sir.

17 Q. Right?

18 A. But he did have something to do with me calling 911. He — he did ask
19 me to call them.

20 Q. In fact, you had to call 911 twice, didn't you?

21 A. Uh-huh (affirmative).

22 Q. The first time what did you tell them?

23 A. I told them that I really didn't know what was going on, but someone
24 just needed help.

25 Q. Right. And, then, you called back a second time?

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1 A. Yes.

2 Q. Was that after Roger had ran away that you called back the second
3 time?

4 A. Yes, sir.

5 Q. And what did you tell 911 the second time?

6 A. That — I don't know, that it wasn't looking good. That Curtis — that
7 they needed to hurry up and get there.

8 Q. And that you did know what happened, right?

9 A. Yes — well, that I —

10 Q. And you, then, called it a fight?

11 A. Yes.

12 Q. But the first time, when Roger was with you, you didn't say there was
13 anything serious about it, anything that needed the police, right?

14 A. Well, I didn't ask for the police because I — the — they asked — they
15 told me that they were going to send the police.

16 Q. The first time you didn't talk — you didn't say anything about how he
17 might have gotten hurt?

18 A. No, sir. I was just trying to get the man help.

19 Q. You said that there might be somebody passed out in his car?

20 A. Right.

21 Q. But the second time you shared with 911 that it was actually an
22 assault, and it was more serious than you led on the first time?

23 A. Yes, sir.

24 Q. Is that right?

25 A. Yes, sir.

1 Q. Okay. The difference between those calls is the Defendant was with
2 you one time and not the second time ----

3 A. Okay.

4 Q. — right?

5 (No Response)

6 Q. Is that right?

7 A. I — I guess.

8 Q. You were there?

9 A. I don't — sir, I wasn't in my right mind.

10 Q. Why not?

11 A. I was using drugs myself. I just knew the man needed help. I mean,
12 regardless of whether he was there or he wasn't there, I was trying to get the man
13 help.

14 (Brief Pause)

15 Q. And how long did you say you've known the Defendant?

16 A. About ten (10) years.

17 Q. And he's a good friend of yours?

18 A. Yes, sir..

19 (Brief Pause)

20 Q. Did the Defendant tell you about Curtis owing him some money?

21 A. Yes, sir.

22 Q. Okay. And did he leave you to believe that's what the incident was
23 about?

24 A. Yes, sir.

25 (Brief Pause)

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- 1 Q. I believe you actually turned the car off, didn't you?
- 2 A. Yes.
- 3 Q. And you waited there for the police?
- 4 A. Yes, sir.
- 5 Q. And you spoke with the police when they got there?
- 6 A. Yes, sir.
- 7 Q. And you actually went to the police department with them, right?
- 8 A. Yes, sir.
- 9 Q. And Ms. Price came into the parking lot too, right?
- 10 A. Yes, sir.
- 11 Q. Did she try to help as well?
- 12 A. Yes, sir.
- 13 Q. Who was it that helped try to assist EMS with reviving Mr. Goldsmith?
- 14 A. Me.
- 15 Q. That was you?
- 16 A. (Witness nods affirmatively.)
- 17 Q. Okay. So you were trying — you were squeezing the pump?
- 18 A. (Witness nods affirmatively.)
- 19 Q. Okay.
- 20 (Brief Pause)
- 21 Q. Between the time of this incident and the time that Mr. Wynn was
- 22 arrested, did you speak to him?
- 23 A. I don't — I don't think so. I think I tried to call his home a few times,
- 24 but I don't...
- 25 Q. You do know there was a four-day window?

1 A. Yes -- welll, whatever it was. I couldn't remember what it was.

2 Q. And there was a good time before he eventually was arrested?

3 A. Yes, sir.

4 MR. BULSA: Okay. Thank you, ma'am.

5 THE COURT: Yes, ma'am?

6 MS. LYALL: Thank you, Your Honor.

7 Cross Examination by Ms. Lyall:

8 Q. Hi, Ms. Blanchard.

9 A. Hi.

10 Q. We spoke before; you remember that?

11 A. Yes, ma'am.

12 Q. You said that you had heard some commotion up the road, but you
13 didn't see any of it?

14 A. No, ma'am.

15 Q. And all of a sudden Roger came walking past you. And, then, he
16 actually -- the first time went back up the road?

17 A. I didn't hear the commotion until he had walked past me the first time.
18 And, then, turned around and went back to him. That's when I heard the
19 commotion, yes.

20 Q. Okay. And, then, he came walking back past you?

21 A. (Nods affirmatively.)

22 Q. And he told you, "Curtis swung at me"?

23 A. Yes, sir -- Yes, ma'am.

24 Q. "And I hit him back and he's not moving"?

25 A. Yes, ma'am.

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1 Q. And the two of you all walked back up to the Money Tree together
2 pretty fast?

3 A. Yes, ma'am.

4 Q. Because Mr. Wynn was upset at this point?

5 A. Yes.

6 Q. And you were concerned as well?

7 A. Yes, ma'am.

8 Q. So he took you right over to Mr. Goldsmith's vehicle; is that correct?

9 A. Yes, ma'am.

10 Q. And the two of you started checking for a pulse and trying to figure out
11 if he was okay?

12 A. Yes, ma'am.

13 Q. And the two of you did that together?

14 A. Yes, ma'am.

15 Q. And who --- you and Mr. Wynn together decided to call 911?

16 A. Yes, ma'am.

17 Q. And you all are actually the person that called 911?

18 A. Yes, ma'am.

19 Q. But Mr. Wynn was standing there with you?

20 A. Uh-huh (affirmative), yes, ma'am.

21 Q. And he wanted Mr. Goldsmith to get help?

22 A. Yes, ma'am.

23 Q. And the two of you together did what you could while you were
24 standing there?

25 A. Yes, ma'am.

1 Q. But you're not medical personnel obviously.

2 A. Right.

3 Q. And do you remember Mr. Wynn also --- you all discussed whether or
4 not you all could -- the two of you could take him to the hospital?

5 A. I can't recall that.

6 Q. But you all decided that calling 911 was a better idea?

7 A. Yes, ma'am.

8 Q. And between -- you all had to wait a long time for 911 to get there?

9 A. Yeah. I actually had to call them back a second time.

10 Q. And that's why you called them back a second time because they
11 weren't coming?

12 A. Yes, ma'am.

13 Q. And so you told them it was a more serious situation than when you
14 called the first time?

15 A. Yes, ma'am.

16 Q. The first time, you didn't want to give them your name or really get
17 involved?

18 A. No, ma'am.

19 Q. But you did want the man to get help?

20 A. Yes.

21 Q. You were very concerned about his situation?

22 A. Yes, ma'am.

23 Q. But, the second time 911 had not come, an ambulance had not come;
24 no one was arriving?

25 A. Right.

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1 Q. So you decided you needed to give them more information and tell
2 them how serious it was?

3 A. Yes, ma'am.

4 Q. And, at that time, you did give them your name?

5 A. Yes, ma'am.

6 Q. You did tell them, "You need to come; this is very serious"?

7 A. Uh-huh (affirmative).

8 Q. And they did come at that point?

9 A. Yes, ma'am.

10 Q. And you stayed around?

11 A. Yes, ma'am.

12 Q. And you told them what you knew?

13 A. Yes.

14 Q. At that point, Mr. Wynn, he got scared and ran off?

15 A. Yes. He — he actually had left before I called the second time.

16 Q. Okay.

17 A. But he — he was there when I placed the first phone call.

18 Q. And he stayed to make sure that Mr. Goldsmith was going to get help?

19 A. Yes, ma'am..

20 Q. And you said that Mr. Wynn came down the side of the road where the
21 fence line goes around where Sunshine Suites was — Sunshine Inn?

22 A. Yes, ma'am.

23 Q. And that's where you were walking?

24 A. Yes, ma'am.

25 Q. And you saw him come down the road and walk next to you

1 and he talked to you?

2 A. Yes, ma'am.

3 Q. And, then, the two of you walked back up together and dealt with Mr.
4 Goldsmith?

5 A. Yes, ma'am.

6 Q. And you said across the street, on the other side of Magnolia, was
7 Katina Price?

8 A. Yes, ma'am.

9 Q. At any point, did you see Mr. Wynn cross the road and go talk to
10 Katina Price?

11 A. No, ma'am.

12 Q. At any point, did Katina Price join the two of you and go deal with Mr.
13 Goldsmith?

14 A. No, not — I really can't recall.

15 Q. So Ms. Price actually joined the crowd after Mr. Wynn had already
16 left?

17 A. Yes, ma'am.

18 Q. So you and Ms. Price were there together after Mr. Wynn had already
19 left and when 911 was en route?

20 A. Yes, ma'am.

21 Q. So you never saw Mr. Wynn talk to Katina Price?

22 A. No, ma'am.

23 Q. It would have been physically impossible for him to go talk to Katina
24 Price because he ran into you and the two of you went up together?

25 A. Yes, ma'am.

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1 Q. Did you ever see Freddie Young there?

2 A. I don't recall --- no, ma'am.

3 Q. And do you know him?

4 A. Yes, ma'am, I do.

5 Q. Okay.

6 A. I don't recall ----

7 Q. Did --- did you see a lot of people there?

8 A. I don't know him like personally, but I've --- I've seen him around, yes.

9 Q. Okay. But, Katina Price, you know her and you know where she was?

10 A. Yes, ma'am.

11 MS. LYALL: Thank you.

12 THE COURT: Solicitor, anything further?

13 MR. BULSA: Yes, sir.

14 Redirect Examination by Mr. Bulsa:

15 Q. Ms. Blanchard, I want to make sure the jury understands this that
16 you're telling us that Mr. Wynn actually came down Magnolia Street twice?

17 A. Yes, ma'am --- I mean, sir.

18 Q. Okay.

19 (Brief Pause)

20 Q. And the first time he came by he didn't say anything to you?

21 A. No.

22 Q. But --- but, when he walked past you the first time ---

23 A. He walked a little past me and, then, turned around and went back.

24 Q. And went back?

25 A. Yes. And, then ---

1 Q. Okay. So where you --- where would you have been the first time?

2 A. More up towards Rich Street (phonetic) like.

3 Q. This is Rich Street (indicating).

4 A. Yeah, it would have been in that area.

5 Q. You would've been further down this way (indicating)?

6 A. Yeah.

7 Q. Okay. So he had come all the way down here (indicating), saw you,
8 walked past you, and went back this way (indicating)?

9 A. Yes.

10 Q. Okay. Did you see him go into the Money Tree parking lot?

11 A. No. At that time, I don't know if Curtis was in the parking lot. I don't
12 know what made him come around. I don't know any of that.

13 Q. Right.

14 A. I just know he had walked past me, he didn't say nothing, then, he
15 turned around and walked back in that direction.

16 Q. I understand. So you --- so you don't know where he came from this
17 first time, do you?.

18 A. No, sir.

19 Q. He just walked past you, turned, and, then, walked the opposite
20 direction?

21 A. Yes, sir.

22 Q. And I think you told the officer that that's when you --- you used the
23 word "commotion," but in your statement you said you heard a scream or a noise
24 coming from the parking lot ---

25 A. Yeah.

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1 Q. ---- and went to see ----

2 A. It wasn't like yelling, like you could tell someone was in — you know,
3 having a confrontation.

4 Q. I just wonder why you used the word "scream."

5 A. I don't know; I couldn't tell you.

6 Q. And it was after that is when Mr. Wynn came back down Magnolia?

7 A. Yes.

8 Q. And that's when he told you that he hit him so hard that he can't
9 move?

10 A. Yes.

11 Q. Okay. And, then, the both of you went back —

12 A. Yes, sir.

13 Q. — to check on him?

14 A. Yes, sir.

15 Q. But you stayed and he ran off?

16 A. Yes, sir.

17 Q. Okay.

18 (Brief Pause)

19 MR. BULSA: Thank you.

20 THE COURT: Anything?

21 MS. LYALL: Just one thing, Your Honor.

22 Recross Examination by Ms. Lyall:

23 Q. I know this is a little unpleasant, but you've been arrested before,
24 right?

25 A. Yes, ma'am.

1 Q. And that's — you have been arrested before for forgery?

2 A. Yes, ma'am.

3 Q. You been arrested before for unlawful neglect of a child?

4 A. Yes.

5 (Brief Pause)

6 MS. LYALL: I have nothing further.

7 THE COURT: Thank you, ma'am. You may step down. Please,
8 be careful.

9 THE WITNESS: Sir, may I say something?

10 THE COURT: No, ma'am. It's not in response to a question.
11 Please, step down.

12 (Witness complied with the Court's request.)

13 THE COURT: Is she excused or do you need her to stay?

14 MR. BULSA: I'd — I'd like her to stay.

15 THE COURT: Okay. You are not excused from your subpoena
16 ma'am, but you may have a seat in the back of the courtroom.

17 (Witness complied with the Court's request.)

18 THE COURT: All right, ladies and gentlemen —

19 Mr. Foreman, ladies and gentlemen of the jury, it's a little after 12:00.

20 We try to break for lunch somewhere around 12:30, no later than 1:00 if
21 possible. And it's 12:20, so it's probably a good time to take a break.

22 I'm going to instruct you that you are not to begin deliberating about
23 this matter. You have not heard all of the evidence in this case. So don't
24 even consider it within your own mind.

25 I've had some people after juries ask me about that and —

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1 and say, "How can I not think about it?" Well, don't, think about a — a ball
2 game whichever ball game you want to think about or some other sporting
3 event, but don't think about this case while you have some lunch and enjoy
4 yourself.

5 After all, this is work and you don't want to go home and think about
6 work. So, with that, we're going to give you a good hour and 10 minutes or
7 so; give you a few minutes to get in and out of the courtroom and the
8 courthouse.

9 So, if you would kindly be back in your jury room about 1:30, 1:30 —
10 let's make it 1:35, okay? No later than 1:35. Be back around 1:30, 1:35. If
11 everybody's back at 1:30, we'll go ahead and get started.

12 I generally don't go anywhere to eat lunch. I usually bring a little
13 something and eat here so I'll be here. And the lawyers will probably be
14 close by.

15 But, if you'll be excused until about 1:35. But, please, please be
16 reassembled by then ready to go.

17 Mr. Foreman, would you take your jury out, please.

18 **(Whereupon, the jury exited the courtroom for the luncheon**
19 **recess at 12:21 p.m.)**

20 **(Off-the-Record Comments)**

21 **THE COURT:** Okay. Anything before — before we break for
22 lunch?

23 **MR. BULSA:** No, sir.

24 **(Off-the-Record Comments)**

25 **THE COURT:** We'll be in recess until 1:35.

1 (Whereupon, a luncheon recess was taken from 12:21 p.m.until

2 1:34 p.m..)

3 (Off-the-Record Comments)

4 (Ms. Lyall steps out of the courtroom.)

5 (Brief Pause)

6 THE COURT: Everybody ready?

7 (Off-the-Record Discussion)

8 THE COURT: Ready everybody?

9 MR. BULSA: Yes, sir.

10 THE COURT: Okay.

11 (Off-the-Record Discussion)

12 (Whereupon, the jury was summoned and entered the courtroom

13 at 1:36 p.m.)

14 THE COURT: Mr. Foreman, is the jury okay? Need anything?

15 MR. JACKSON: We're good right now.

16 THE COURT: Anything is good? Okay. Thank you. All right.

17 Solicitor?

18 MR. BULSA: The State calls Katina Price.

19 (Brief pause while the witness is summoned

20 and entered the courtroom.)

21 (The witness stepped forward to be sworn.)

22 (Whereupon,

23 Katrina Price

24 first being duly sworn, testified as follows:)

25 THE COURT: Ms. Price, pull close to that microphone,

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1 please, and tell us your full name and spell your last name for my court
2 reporter.

3 **THE WITNESS:** It's Katina Renée Price, P-R-I-C-E.

4 **THE COURT:** Okay. And you can move that microphone. There
5 you go. Thank you. Solicitor?

6 **Direct Examination by Mr. Balsa:**

1:36 P.m.

7 **Q.** Ms. Price, I'm over here, okay?

8 **A.** Okay.

9 **Q.** Ma'am, how old are you?

10 **A.** Forty (40).

11 **Q.** And where do you live?

12 **A.** I live at — I'm presently in Una, but I've been staying at my mother's.

13 It's Hampton Road (phonetic), Lyman, South Carolina.

14 **Q.** Okay. And, ma'am, do you know the Defendant, Mr. Wynn?

15 **A.** Yes, I do.

16 **Q.** How long have you known him?

17 **A.** Probably about seven (7) years.

18 **Q.** Do you consider him a friend?

19 **A.** Yeah, I do.

20 **Q.** Did you know Curtis Goldsmith?

21 **A.** Yes, sir., I did.

22 **Q.** How long have you known him?

23 **A.** About four (4) years.

24 **Q.** And where do you know Mr. Goldsmith from?

25 **A.** He used to be the maintenance guy at the Fremont building. I

1 had met him through my sister. She had knowed him and her ex-husband had
2 knowed him and everything. And I met him through him, Bruce Little (phonetic).

3 Q. You said at the Fremont building? That's the Fremont Apartments
4 down Magnolia Street?

5 A. Yes, sir.

6 Q. Right near the Money Tree?

7 A. Yes, sir.

8 Q. Were you there the day he died?

9 A. Yes, sir.

10 Q. That was August 14th, 2013.

11 A. Yes.

12 Q. Can you tell us what you remember about that incident?

13 A. That day me and a friend of mine, Kerri Blanchard, we was walking
14 coming up Magnolia towards the Money Tree on the — coming up from that way, it
15 would be on the left-hand side of the road.

16 And I heard Mr. Wynn, he was — he had been arguing. And he come
17 down through there and Kerri had went across the street. And she went over and
18 she had talked to him.

19 And he was pretty mad and everything, you know. And I really didn't
20 catch and caught what he was saying and everything. I didn't know who it was or if
21 it was actually him or somebody had just flared him up and everything like that just
22 got him started or what the deal was.

23 And Kerri had said some things. I guess she asked him what had
24 happened or whatever, and I heard him say, "I lit his ass up." I didn't know what he
25 was talking about, you know.

1 I figured that Roger done got into a fight, you know, or something like
2 that. I wasn't for sure because I didn't see nothing.

3 Q. Okay. But ----

4 A. And ----

5 Q. All right. But you were actually -- you were across the street and he
6 was loud enough for you to hear that?

7 A. Yes, sir.

8 Q. Okay. Continue.

9 A. Me and -- Kerri had already turned around and she was trying to calm
10 Roger down. And they went back up on the right-hand side of the sidewalk and
11 went around the fence because the motel was there. I don't know, if the fence is still
12 there, but you couldn't see into the Money Tree parking lot still.

13 Another female, by the name of Megan, had come down the
14 sidewalk and had met us right there. And she was also talking about stuff that she
15 had seen. And ----114

16 Q. Okay. You can't go into what she said, because that would be
17 hearsay, but what happened after you saw her?

18 A. I just know that, when I -- when we walked on up and everything like
19 that, Kerri was standing on the opposite side of -- of where Curtis' car was parked
20 in the parking lot. And Roger was on the same side with her. And they was talking.

21 I don't know really what was said or anything like that.
22 And she -- all I know is that Roger went to talk to her and, I don't know, Roger --
23 Roger left right after that. He -- he had left.

24 And ----

25 Q. How did he leave? Did he walk off or run off?

1 **A.** He — I seen him -- when I seen him leaving, he was — he was
2 walking. He was walking off.

3 And I still — I still didn't know what had happened, you know, or
4 anything else. And Kerri was looking at me. She said, "I think he's dead." I said,
5 "No, he ain't."

6 And I walked up to her and that's when I just — you know, I got
7 hysterical because he was — he was — his head was down like this (demonstrates)
8 and just he was drooling everywhere. There wasn't no response out of him or
9 nothing.

10 I could barely feel a pulse. It was very faint.

11 **Q.** Okay. And, then, what happened?

12 **A.** I'm not sure exactly what it was, but Kerri called 911 and someone
13 else did I think. She's out here now. And, when the ambulance come there, we
14 assisted them in trying to help them try to save him.

15 And after that, we — that's when the detectives and the investigators
16 and all come.

17 **Q.** Do you remember Mr. Wynn still being there when Ms. Blanchard
18 called 911?

19 **A.** I don't really recall. But I don't think so.

20 **Q.** You're not sure of the sequence as to when he left and when 911 was
21 called?

22 **A.** No, I don't know. Then, I hadn't seen Kerri pick up the phone. I —
23 and, when Kerri — when I realized that Kerri was on the phone, he was nowhere
24 around.

25 **(Brief Pause)**

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1 Q. Did you stay there until the police arrived?

2 A. Yes, sir.

3 Q. And did you speak to the police?

4 A. Yes, sir. We was took downtown to the City Police Department where
5 we all had to give written statements and interviews and stuff.

6 Q. Okay.

7 (Brief Pause)

8 MR. BULSA: Thank you, ma'am. That's all I have.

9 THE COURT: Yes, ma'am?

10 MS. LYALL: Thank you, Your Honor.

11 Cross Examination by Ms. Lyall:

12 Q. You didn't see any of the fight?

13 A. No, ma'am.

14 Q. So you don't know what happened?

15 A. No.

16 Q. And you don't know how Curtis got into his vehicle?

17 A. No.

18 Q. And, as you said, you were on the other side of Magnolia —

19 A. Yes.

20 Q. — when Mr. Wynn came walking down?

21 A. Yes.

22 Q. And Kerri Blanchard was on the same side with him?

23 A. No, she was on the side with me when Roger come down through
24 there. She was asking him what was wrong and he said the words, "I lit his ass up."
25 And Kerri and him was talking real low then because Kerri and him are

1 real good friends and she could always calm Roger down with anything ----

2 Q. And ---

3 A. --- and he could do the same for her.

4 Q. --- they were talking on the other side of of Magnolia?

5 A. Yeah, she went across to him, yes.

6 Q. Okay. And you said, from the other side of the street, you could hear
7 what they were saying?

8 A. I --- I could --- no, I didn't say I could hear. I heard them --- you know,
9 they was talking and everything like that, which Roger was pretty well upset. He
10 wasn't talking low.

11 I don't know what she asked him, but undoubtedly she said or might
12 have asked him, what's --- you know, what happened ----

13 Q. What happened?

14 A. Or what --- you know, what was what. And Roger just --- he spoke up
15 in a very loud voice. I mean, everybody could hear, "I lit his ass up."

16 Q. Would you say that Ms. Blanchard would be the best person to say
17 what he actually said?

18 A. Yes, ma'am. Because I can't say. I --- that would be like me, you
19 know, just putting words and some hearsay because I did not hear what she asked
20 him; I just heard his response.

21 Q. Okay. Because she was the one actually with him?

22 A. Yes.

23 Q. And she's the one that actually walked up the street with him?

24 A. Yes.

25 Q. You stayed on the other side of the road?

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- 1 A. Yes, me and the other lady, Megan.
- 2 Q. Okay.
- 3 A. We -- we continued to walk on up very slow. And, as I got into view, I
- 4 realized -- you know, I seen -- I still didn't know who it was yet. I didn't know it was
- 5 Curtis yet --
- 6 Q. But you weren't concerned enough to walk fast up the street with
- 7 them?
- 8 A. Well, we had -- no, at that point in time, I didn't really think nothing
- 9 about it. I know he was -- he was having some problems --
- 10 Q. Right. So ----
- 11 A. -- recently, Mr. Wynn was. So I -- I just figured he was being --
- 12 Q. Okay.
- 13 A. So, but ----
- 14 Q. So, you 'just continued to walk slowly, mind your own business?
- 15 A. Yeah. And, when I got on up through there, that's when I seen him on
- 16 the side of -- the way Curtis' car was parked. And I seen Curtis in there. And --
- 17 Q. So you don't know what Ms. Blanchard and Mr. Wynn did when they
- 18 they got on up there first?
- 19 A. No, I don't because I couldn't see that fence -- you can't see because
- 20 the --
- 21 Q. You can't see into the parking lot?
- 22 A. No, you can't.
- 23 Q. So you don't know what happened when they got there?
- 24 A. No, I don't.
- 25 Q. Are you aware that Ms. Blanchard called 911 twice?

- 1 **A.** She said afterward she did. I know she did call once, but I know there
- 2 were several other people that had called —
- 3 **Q.** But you're saying you found out afterwards she called 911 twice?
- 4 **A.** I know of one time. I didn't — I didn't know of twice.
- 5 **Q.** So you don't know, if the first time when she called 911, if Mr. Wynn
- 6 was sitting there with her?
- 7 **A.** No, he wasn't there. He wasn't right there with her the first time she
- 8 picked up the phone, no.
- 9 **Q.** Well, you said you don't know that she called tries, so you don't —
- 10 **A.** I don't know that she called twice. The first time she ever called, the
- 11 second time I don't know of. The first time I do know —
- 12 **Q.** How do you know if it was the first or the second time?
- 13 **A.** Because —
- 14 **Q.** You said you don't even know.
- 15 **A.** — she pulled the phone out of her pocket and the whole time, when I
- 16 seen her, she was never on the phone.
- 17 **Q.** You didn't see what was going on up the road. You just told everyone
- 18 that.
- 19 **A.** Okay, I'm telling you what —
- 20 **Q.** You have no idea if she called 911 the first time?
- 21 **A.** That was the first time she said she had called them. She told me in
- 22 the parking lot that was the first time she had called. I said, "Have you called
- 23 them?" She said, "I've done called them once."
- 24 **Q.** But you just told everyone you had no idea until afterwards that she
- 25 called twice?

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1 A. No, you just told me that. You said she called twice. I don't know
2 about the second time. The first time that — it came out of her mouth. She said, "I
3 called them once." She didn't say twice, she said once.

4 Q. So you only saw one?

5 A. Uh-huh (affirmative).

6 (Brief Pause)

7 Q. And you didn't see anything that happened when they walked up the
8 road?

9 A. (Shakes head negatively.)

10 Q. Ms. Price, you've gotten into a little bit of trouble before, haven't you?

11 A. Plenty.

12 Q. Plenty?

13 A. Uh-huh (affirmative).

14 Q. You've been convicted of trafficking cocaine?

15 A. Uh-huh (affirmative).

16 Q. Is that a "yes"?

17 A. Yes, ma'am.

18 Q. You've been convicted of possession of meth or cocaine base?

19 A. Yes, ma'am.

20 Q. You been convicted of financial transaction card fraud?

21 A. Yes, ma'am.

22 Q. Actually two times?

23 A. Yes, ma'am.

24 (Brief Pause)

25 MS. LYALL: I don't have any other question at this time.

1 THE COURT: Mr. Bulsa?

2 MR. BULSA: Just briefly.

3 Redirect Examination by Mr. Bulsa:

4 Q. Ms. Price, what was your state of mind when you saw Mr. Goldsmith in
5 the car?

6 A. Well, at first I thought he was dead. There was no movement or
7 nothing. When I felt the pulse, I knew then, and I figured --- I just lost hope when I
8 felt the pulse because, when I felt it, the pulse was faint, I knew it wasn't much time.

9 I mean I've had experience. I used to work in a nursing home and all
10 and I pretty well know. I just didn't know whether --- I wanted to take him up --- pick
11 him up, but, I mean, as little as I am compared to Mr. Goldsmith, there wasn't no
12 way.

13 I didn't know where to move him. I just --- I didn't know really what to
14 do because I just --- I was thinking all --- everything was running through my head.
15 If I move him, maybe there's going to be trouble, you know, or save him or --- I just
16 didn't know what to do.

17 Q. So, after you felt his pulse, your attention was pretty much on him?

18 A. Yes.

19 Q. And how long did you say you knew Mr. Wynn?

20 A. About seven (7) years --- seven (7), eight (8) years, around there.

21 MR. BULSA: Thank you, ma'am.

22 MS. LYALL: Nothing further, Your Honor.

23 THE COURT: Thank you, ma'am. You may step down. Please,
24 be careful.

25 (Witness complied with the Court's request.)

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MR. BULSA: Joyce Brewton.

(Brief pause while the witness is summoned and steps into the courtroom.)

(The witness stepped forward to be sworn.)

(Whereupon,

Joyce Brewton

first being duly sworn, testified as follows:)

(Off-the-Record Comments)

THE COURT: Ma'am, you can adjust that microphone anywhere you'd like. Tell us your name and spell your last name, please.

THE WITNESS: Joyce Ann Brewton; Brewton, B-R--E-W-T-O--N.

THE COURT: Thank you. Solicitor?

Direct Examination by Mr. Bulsa:

1:53 P.m.

Q. Ms. Bruton, can you tell us how old you are?

A. Forty-three (43).

Q. And where do you live now?

A. Whitlock Street (phonetic), Spartanburg.

Q. Are you married?

A. No.

Q. Do you have any children?

A. Five (5).

Q. Do they still live with you?

A. I'm about to put two of them out this weekend. They're gone.

Q. Ms. Brewton, do you do use the Money Tree to pay your bills?

A. Yes, sir, I do.

1 Q. How does that work?

2 A. Excuse me?

3 Q. Do you just go in and give them money and they send it off to ---

4 A. Oh, no, I've got to take the bill to them.

5 Q. Okay. And how long have you been using their services?

6 A. Forever.

7 Q. So back in August of 2013, you would been using their ----

8 A. Yes, sir.

9 Q. --- their services?

10 A. Uh-huh (affirmative).

11 Q. Now, on August 14, 2013, when you were coming out of the money
12 — actually, when you were going into the Money tree, did you notice something
13 happening in the parking lot?

14 A. Yeah. Some people was having an altercation down by the dump can.

15 Q. Okay. Did you tell who those persons were?

16 A. I wasn't really looking. I was going to pay my bills.

17 Q. You called it an altercation. What do you mean?

18 A. They were arguing, but I ain't — couldn't hear what they were saying.

19 Q. Okay. So you went on inside and about how long did it take you to pay
20 your bills?

21 A. Well, I always pick at the girl in the store, so it took me about a couple
22 of minutes because I'll be talking to her and stuff.

23 Q. Okay. When you came back out, what — what did you see?

24 A. They was fighting.

25 Q. The two men were fighting?

- 1 A. Uh-huh (affirmative).
- 2 Q. Okay. So you didn't actually see the beginning of any blows, did you?
- 3 A. No.
- 4 Q. You just saw the argument had turned into a fight?
- 5 A. No, I seen — I heard the argument when I went in, and when I came
- 6 out, they was fighting.
- 7 Q. All right. Okay. You don't know when the argument turned into a fist
- 8 fight?
- 9 A. I was in the store.
- 10 Q. Okay. All right. And what did you do when you saw the fight going
- 11 on?
- 12 A. Excuse my language. I said, "Damn, they fighting."
- 13 Q. Did you just sit there and watch it?
- 14 A. Yeah, for a few minute — well, I watched them until I got to the truck I
- 15 was in.
- 16 Q. Okay. So you drove the vehicle —
- 17 A. Nope, I didn't no vehicle; I was in that vehicle.
- 18 Q. Okay. Somebody drove you?
- 19 A. Uh-huh (affirmative).
- 20 Q. Okay. And I think that person was waiting in the parking lot for you?
- 21 A. Yes, sir, he was.
- 22 Q. So you walked to where your ride was?
- 23 A. Uh-huh (affirmative).
- 24 Q. Okay. At any time did you realize who the two men were?
- 25 A. I didn't know one of the men, but I knew Roger.

1 Q. Okay. You knew Roger?

2 A. Yeah.

3 Q. Was he the younger of the two?

4 A. Say what?

5 Q. Did he appear to be the younger of the two men?

6 A. I don't know.

7 Q. You don't know? Okay. What was Roger doing when you saw him?

8 A. Fighting.

9 Q. How? Can you describe what he was doing?

10 A. When I came back to the car, I looked and I said, "They fighting." I
11 seen whoever the other person swing and he whooped his ass — whooped him; I
12 mean, jumped on him, Roger.

13 Q. Roger jumped on the other guy?

14 A. I mean, I seen the other guy hit him and he hit him back. They was,
15 you know....

16 Q. Did you see either one of them on the ground?

17 A. No.

18 (Brief Pause)

19 Q. What was going on when you left the parking lot?

20 A. Well, I don't know. I don't know.

21 I had told one of the girls, I said, "You all need to call the police because I think the
22 man dead." She said, "How do you know?" I said, "I've watched enough CSI to
23 know."

24 And he was. I mean — and I called in the store and told the girl there. I
25 said, "You need to call the police because I think the man is dead." But she said, "I

1 can't see it from the camera (phonetic) store. So I guess she called and Officer

2 Porter called me on coming up to the store.

3 Q. So the -- the people inside could not see --- were in no position to see
4 what was happening outside?

5 A. No, she was behind glass.

6 Q. Okay. Okay. So what caused you to call in and tell them to check on
7 whether he was dead or not?

8 A. Because he was -- after he was fighting, then he went back and fell in
9 the car and just did like this ((demonstrating), slumped down. And I told the girl that
10 was out there, on the other side of the car, when he got in the car, I said, "He looks
11 dead to me." And that's what it was.

12 Q. Okay.

13 (Brief Pause)

14 Q. Did you see anybody else out there that might've seen what was going
15 on?

16 A. Yeah, there was three white girls.

17 Q. Did you know any of them?

18 A. I knew one of them.

19 Q. Which one?

20 A. I think her name is Mindy (phonetic).

21 She go with my niece baby daddy. But I haven't seen her since then.

22 Q. Okay.

23 (Brief Pause)

24 Q. Now, you left and called the Money Tree and told them they needed to
25 check on him?

1 A. No, I didn't leave. I was talking to her — I was still at the store when I
2 called her. I got down by — in front of the truck and I called her in the store.

3 Q. So did you leave out the — the exit of the driveway from the parking lot
4 where the car was?

5 A. Uh-huh (affirmative).

6 Q. Okay. So you drove past him and saw how he was?

7 A. Uh-huh (affirmative). I was like --- well, when he was — he was pulling
8 out, we was right here (indicating) and they was right there (indicating) by the
9 garbage can. And he was slumped over.

10 Q. What happened to Roger?

11 **(Brief Pause)**

12 A. I don't know. I left.

13 Q. Was he still there when you left?

14 A. Yes.

15 Q. He was?

16 A. Yes.

17 Q. Was he doing anything?

18 A. Yeah, he was talking about the man, he was over him. Him and the
19 other girl was over there by the man that was slumped over in the car. And he was
20 like, "I knocked him out. He all right. He all right." And I kept saying, you know,
21 "That man dead."

22 Then, we left. And, then, about ten minutes later, the girl from the
23 store called. She said she gave the police -- she said, "I gave the police your
24 phone number."

25 And I said, "Why the hell did you do that for?" She

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1 said, "They want to talk to you." I said, "I ain't getting into that stuff." And I came
2 back up to the store and him (indicating) and some other officers were there and I
3 told them the exact same thing. "I ain't got nothing to do with it."

4 Q. And you didn't want to be involved?

5 A. No, because it wasn't my business

6 Q. Okay. And you didn't write a written statement?

7 A. Sure didn't.

8 Q. Okay. And you did not know the man that you saw in the truck?

9 A. Huh-uh (negative).

10 Q. But you knew Roger. How well did you know Roger?

11 A. I went to school with him. He used to cut my kids' hair.

12 (Brief Pause)

13 Q. Just so that the jury understands, you're telling us there was a girl
14 nearby when you were driving past the truck?

15 A. Yeah.

16 Q. And what was her name?

17 A. I don't know her name. I ain't — I didn't know — I've never seen that
18 girl until that -- until that day of the incident.

19 Q. Okay. Now, you've been outside in the lobby with these women.

20 A. And that's — that's the girl that I was telling to call the police.

21 Q. So one of the girls out there is the one that you saw ----

22 A. Yeah.

23 Q. ---- up at the truck? Okay.

24 A. And, as we was pulling out, the other one with the curly hair, her and
25 another girl was on the other side by the church.

1 Q. Okay. Did you happen to catch the name —

2 A. No, I didn't ---

3 Q. — of the girl on the other side?

4 A. No.

5 Q. Okay.

6 (Brief Pause)

7 Q. All right.

8 (Brief Pause)

9 MR. BULSA: Thank you, Ms. Brewton. That's all I have.

10 THE COURT: Yes, ma'am?

11 MS. LYALL: Thank you, Your Honor.

12 Cross Examination by Ms. Lyall:

13 Q. Ms. Brewton, I'll try and keep this short. So, when you went in the
14 store, you could just hear some men arguing?

15 A. Yeah.

16 Q. And, when you came out the store, you saw two men fighting?

17 A. Yes.

18 Q. And you didn't really notice anything about them other than you said
19 later you realized you knew one of them because they used to cut your
20 children's hair?

21 A. Uh-huh (affirmative).

22 Q. And you said it was just basically two men fighting?

23 A. Fighting, like (demonstrating) back and forth fighting.

24 Q. Back and forth fighting? And you didn't call the police at that time
25 because it was just two men fighting?

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- 1 A. I didn't call the police period.
- 2 Q. Okay.
- 3 A. I told the girl in the Money Tree to do it.
- 4 Q. Okay. And, at the end of it, you said you thought the guy was dead
- 5 because he's slumped over in his car?
- 6 A. Uh-huh (affirmative).
- 7 Q. But, before that, there was nothing out of the ordinary; just two men
- 8 fighting?
- 9 A. That's it.
- 10 Q. And that's all you saw?
- 11 A. That's all.
- 12 Q. And, then, at the end, when the man was slumped over in the car, you
- 13 saw one of those ladies outside?
- 14 A. Yeah.
- 15 Q. And Mr. Wynn over at his car kind of messing saround with him?
- 16 A. Yeah.
- 17 Q. Maybe trying to see if he was okay?
- 18 A. Yeah, because he was like, "Get up, man, get up. He all right. I just
- 19 knocked him out," because they was fighting.
- 20 Q. Okay. And, you know, trying to wake him up to see if he's all right;
- 21 maybe checking his pulse or something like that?
- 22 A. I don't — I haven't been to medical school. I didn't say that. I just said
- 23 he was over by him.
- 24 Q. Okay. And, then, you told them to call 911 and —
- 25 A. I told the girl

1 Q. You told the girl to call 911?

2 A. Uh-huh (affirmative).

3 Q. And you don't know what they did at that point?

4 A. I didn't care.

5 Q. But Mr. Wynn was still there at that point?

6 A. Yeah, he was there when we pulled off.

7 Q. Okay. And you didn't — you never saw him on the ground?

8 A. Who?

9 Q. Either of them?

10 A. No, huh-uh (negative).

11 Q. No? Just two men fighting?

12 A. (Nods affirmatively.)

13 MS. LYALL: Your Honor, I don't have any other questions.

14 Redirect Examination by Mr. Bulsa:

15 Q. Did you hear Roger say anything?

16 A. Like what?

17 Q. When you were driving by, did he say anything to the girls?

18 A. If he did, I didn't hear it. He probably — I think he told them to move,
19 the other two girls across the street. I can't remember; it was so long ago. But he — I
20 think he might have told them to go across the street or something or leave or
21 something.

22 But I know one of the girls stayed over there was messing with the
23 phone calling the police — I mean, the rescue squad.

24 Q. You saw Roger talking to the other ones telling them go leave?

25 A. To go across the street or move or something. I can't

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1 remember. But I know it was the man that was fighting him, two more --- three more
2 white girls.

3 But, when everything was going on, two was across the street. When I
4 pulled out, they were standing right in front of the church. And the other girl was --- I
5 guess she was on the phone calling the emergency squad.

6 Q. How was the victim, the man in the truck, able to get away from him?

7 A. They was struggling (phonetic) and, then, they broke loose. I guess it
8 was over. He just walked on and got in his car and sat down.

9 Q. Okay. Are you telling us at that point Roger stayed there?

10 A. Yeah, he didn't leave. He went up ---

11 Q. He didn't --- he didn't walk down the street and come back?

12 A. If he did, I didn't see him leave. But he didn't --- he was there when I
13 left.

14 Q. And the other girl was there also?

15 A. Yeah, and the two was across the street.

16 MR. BULSA: Okay. Thank you.

17 THE COURT: Ma'am, you may step down. Please, be careful.

18 (Witness complied with the Court's request.)

19 MR. BULSA: I ask that she be excused.

20 THE COURT: Any objection?

21 MS. LYALL: No, Your Honor.

22 THE COURT: Ma'am, you may stay or go. You -- you're
23 excused.

24 (Off-the-Record Comments)

25 (The witness stepped forward to be sworn.)

1 (Whereupon,

2 **Officer Chris Banks**

3 first being duly sworn, testified as follows:)

4 **THE COURT:** Officer, tell us who you are and spell your last
5 name, please.

6 **THE WITNESS:** My name is Christopher Banks,
7 B - A - N - K - S.

8 **THE COURT:** Thank you. Solicitor?

9 **Direct Examination by Mr. Bulsa:**

2:04 P.m.

10 **Q.** You work for whom?

11 **A.** For the City of Spartanburg Police Department.

12 **Q.** How long have you been with the police department?

13 **A.** I was hired October, 1988

14 **Q.** So almost 26 years?

15 **A.** Twenty-six (26) years, yes, sir.

16 **Q.** Okay. And back in August of 2013, what were your duties?

17 **A.** Well, I've currently been assigned since '09 to the investigation
18 division, burglary task force. At that time I was motor officer in the area.

19 **Q.** You were a what officer in the area?

20 **A.** A motorcycle officer.

21 **Q.** Okay. And, on August 14th of 2013, did you go to the Money Tree after
22 this incident?

23 **A.** Yes, I did.

24 **Q.** On a motorcycle?

25 **A.** Yes, I did.

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1 Q. Okay. And just for the record, the Money Tree, that's located within
2 the City of Spartanburg, is that right?

3 A. Yes, it's on North Church Street.

4 Q. Okay. And what was taking place when you arrived?

5 A. When I pulled up, there was just several officers in the parking lot, an
6 assault had occurred.

7 The last I heard, the suspect ran towards the Fremont School
8 Apartments (phonetic) on Magnolia Street. I left that area and went towards the
9 apartments.

10 Q. Okay. And did you assist in trying to locate this person?

11 A. Yes, I did. Several minutes later, I was informed on the radio that a
12 possible location of the suspect's girlfriend was at 700 West Main Street., which is
13 Main Street Motel, room number I believe 29.

14 Q. Where is that? Does that motel still exist?

15 A. Yes, it is. It's pretty much right at the corner of Baltimore and West
16 Main Street.

17 Q. So that's not the Sunshine Inn; that's been destroyed?

18 A. Yeah..

19 Q. Okay. So did you go to that motel looking for Mr. Wynn?

20 A. Yes. At that time, I located a female in room number
21 29.

22 (Brief Pause)

23 A. A Gina Blackston (phonetic).

24 Q. Okay. And did you speak with Ms. Blackston?

25 A. Yes, I did.

1 Q. Was the Defendant there?

2 A. No, he was not. Ms. Blackston did inform me, though, that she had
3 talked to him on the phone and he had requested her to get him a cab.

4 Q. Okay. And did you — what happened after she told you that?

5 A. After several minutes, her phone rang again. She started talking to a
6 person that she said was Mr. Roderrick Wynn. And I asked her to ask him just a
7 few questions.

8 At that time, he wouldn't talk to her where he was located, so I got on
9 the phone and asked him if he would come talk to me in person at the apartment ---
10 at the motel.

11 Q. And was that the person you were looking for?

12 A. Yes, it was, the name was.

13 Q. Okay. And did he identify you on the phone as being Roderick Wynn?

14 A. Yes, he did.

15 Q. And where did you tell him to meet you?

16 A. At the Main Street Motel where he had been staying with her.

17 Q. Did he acknowledge that he would do so?

18 A. Yes. He said he would respond to my location. And that was around
19 1:10 in the afternoon p.m. And I did not leave the motel room until approximately
20 3:45 in the p.m. the same day.

21 Q. And he did not ----

22 A. He did not show up.

23 Q. What did you do when he didn't --- well ,why did you leave at that
24 point?

25 A. Ms. Blackston was taken to City Hall to talk to investigation

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1 then. And we assumed that he would not show up so we left then.

2 Q. Okay. And did you continue to assist in trying to locate him?

3 A. Yes, until my shift was over.

4 Q. Okay. And, at any time, was he found at that —

5 A. Not to my knowledge, not --- not by 5 o'clock.

6 MR. BULSA: Okay. All right. Thank you, Officer Banks.

7 THE COURT: Yes, ma'am?

8 MS. LYALL: Thank you, Your Honor.

9 **Cross Examination by Ms. Lyall:**

10 Q. Mr. Banks, you talked about the conversation you had with Mr. Wynn
11 on the telephone?

12 A. Yes.

13 Q. And you actually were not honest with him, were you?

14 A. No, I was not.

15 Q. And you told him you wanted to talk to him about a dispute with his
16 girlfriend?

17 **(Brief Pause)**

18 A. You said earlier you didn't want us to discuss his prior incidences.

19 Q. Well, I'm asking specifically about this.

20 A. Okay, yes.

21 Q. You wanted — you were calling from his girlfriend's phone?

22 A. No, he called her.

23 Q. Well, you were talking to him on —

24 A. Yes.

25 Q. — his girlfriend's phone. And you asked him about a dispute

1 with his girlfriend?

2 A. Yes. At the time, we used a ploy to try to get him to show up at my
3 location.

4 Q. You wanted him to come talk to you, at his girlfriend's house ----

5 A. Yes.

6 Q. --- about a dispute with his girlfriend?

7 A. Yes.

8 Q. Why weren't you just honest with him?

9 A. At the time, we assumed that he was in flight from this incident that
10 had occurred.

11 Q. You wanted him to come to a place where he was fighting with his
12 girlfriend and talk to him about that when he has just gotten into a fight with a man?

13 A. Yes.

14 Q. Why do you think he would come talk to you about that? Why do you
15 think he would be interested in talking with you about a dispute with his girlfriend?

16 A. It's just a ploy that I tried to apply at the time.

17 Q. Maybe he would've come if you had been honest with him and said,
18 "We need to talk with you about a fight you've had with a man."

19 A. Well, I gave the phone number that he called from to investigations
20 and they tried to call him and he wouldn't answer after that.

21 (Brief Pause)

22 Q. No one actually talked to him about this. You have him on the
23 phone ----

24 A. Uh-huh (affirmative).

25 Q. ---- and you decided to lie to him?

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1 A. Yes.

2 Q. And to tell him, "We want to talk to you about a dispute you've had with
3 your girlfriend. Come to your girlfriend's house and let's figure this out"?

4 A. Yes.

5 Q. I certainly wouldn't come either.

6 A. I'm sorry.

7 Q. What makes you think he would come to talk to you about that at a
8 time like this?

9 A. At the time, I knew, if he knew I knew what happened at the other
10 location, he definitely wouldn't come. So I thought, since he had already been in
11 reference to this other case, I would be able to try to use that.

12 (Brief Pause)

13 Q. But you never once told him you wanted to talk to him about this
14 incident?

15 A. No.

16 Q. So you never gave him the chance to come talk to you about this
17 incident?

18 A. I just said I used a ploy to talk to him about something else and he
19 refused to come to me about that.

20 Q. So he never refused to come talk to you about this incident; he
21 refused to come talk to you about an incident with his girlfriend?

22 A. That had already occurred, yes.

23 MS. LYALL: Thank you. I have no other questions.

24 THE COURT: Mr. Bulsa?

25 Redirect Examination by Mr. Bulsa:

1 Q. And he actually agreed to come over, didn't he?

2 A. Yes, he did.

3 Q. And he did not?

4 A. No, he did not. He'd already been arrested for the other charge. He
5 had nothing to worry about coming in for that.

6 Q. So he agreed to come, but, then, he didn't?

7 A. No, he did not.

8 MR. BULSA: Thank you.

9 THE COURT: Thank you, officer. You may step down. Please,
10 be careful.

11 (Witness complied with the Court's request.)

12 MR. BULSA: The State calls Russell Porter.

13 (The witness stepped forward to be sworn.)

14 (Whereupon,

15 Investigator Russell Porter

16 first being duly sworn, testified as follows:)

17 THE COURT: Officer, tell us your name and spell your
18 last name, please.

19 THE WITNESS: Russell Porter, P-O-R-T-E-R.

20 THE COURT: Thank you. Solicitor?

21 Direct Examination by Mr. Bulsa:

22 Q. Officer Porter, who are you employed with?

23 A. I'm employed with the Spartanburg City Police Department.

24 Q. How long have you been with the police department?

25 A. This May it'll be twenty — 22 years.

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1 Q. Back in August of last year, what were your duties?

2 A. I was a criminal investigator.

3 Q. How long had you been an investigator?

4 A. Fourteen (14) years.

5 Q. Were you the lead investigator in this case?

6 A. I was.

7 Q. Did you respond to the scene?

8 A. I did.

9 Q. At the time of the incident?

10 A. At the time -- just shortly after the incident occurred, yes.

11 Q. And what was taking place at that point?

12 A. Once I arrived on scene, of course, the ambulance had been there.

13 The scene was already secured by other officers, you know, established the crime
14 scene. And witnesses were being, you know, gathered or rounded up to talk to.

15 Q. Okay. When you arrived, did there seem to be a lot of other
16 individuals around, bystanders?

17 A. Yes. At that time, the hotel was out there, the store was open. Just
18 general people walking up and down, you know, the streets.

19 Q. And how did you go about trying to identify witnesses?

20 A. Some of the witnesses were pointed out to me
21 by patrol officers. Some actually just walked to me and talked to me.

22 And the store itself, you know, there were a couple of ladies from the
23 actual store itself as well.

24 Q. So how did you find Ms. Brewton?

25 A. The employee in the store told me that she had been by

1 and had known Ms. Brewton for several years. So I -- I gave her a call.

2 Q. And she came down and spoke with you?

3 A. Yes, that's correct.

4 Q. But didn't want to write anything down?

5 A. That's correct.

6 Q. In fact, she was kind of colorful in her interview with you, was she not?

7 A. She was.

8 Q. Okay. And how did you find Mr. Young?

9 A. Mr. Young was on -- on a bicycle. One of the patrol officers had made
10 a note that he had come by or was seen there. And somebody pointed him out and
11 gave his name. And I located him.

12 Q. Okay. And he came down to the police station that day?

13 A. Yes, he did.

14 Q. And gave his statement?

15 A. He did.

16 Q. And we've got the two ladies that were Ms. Price and Ms. Blanchard?

17 A. That's correct.

18 Q. Okay. Did you identify or locate the lady by the name of Megan I think
19 whose name was mentioned?

20 A. Megan? I don't think I talked to a Megan.

21 Q. You remember Ms. Price said that there was a Megan ----

22 A. Right.

23 Q. ---- that met up with her?

24 A. Right.

25 Q. Okay. But you weren't able to find anybody by that name?

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1 A. That's correct.

2 Q. Okay. It doesn't mean she doesn't exists; it just means you couldn't
3 find her?

4 A. That's correct.

5 Q. To your knowledge, is that common in these investigations, people
6 don't want to get involved?

7 A. That's — that's correct. They don't want to get involved.

8 Q. Okay. I believe we saw a little bit of that today here in court, right?

9 A. That's correct.

10 Q. What efforts were made to try to find Mr. Wynn?

11 A. On the initial — the initial day of the incident, a K-9, a couple of tactical
12 officers, we received information that he had fled from the scene and went across
13 the street to the Magnolia Street Townhome Apartments (phonetic).

14 He had a prior address at 620 Magnolia Street (phonetic), which were
15 apartments. So the K-9 guys and a couple of tactical guys actually went to that
16 apartment, surrounded it, and we began to search it. And they actually used a K-9
17 to try pick up a scent and, then, try to track the north side (phonetic) area.

18 Q. Were they successful?

19 A. They were not.

20 Q. Okay. What other efforts were made to try to locate him?

21 A. Information put in the media, flyers were made up with just a picture
22 and information on it. And, as Officer Banks stated, we were actually passing out
23 flyers; you know, going to different areas passing out flyers, wanted posters, as I
24 say, with his information on it.

25 Q. Did you try — try to locate family members that might know

1 where he is?

2 A. Yes. The only family members that we could find was his mother by
3 accident. I didn't talk to her about what -- what was going on, but just was aware
4 that he had a mother.

5 Q. Did you put out information that you were looking for him?

6 A. Yes.

7 Q. Okay. When was he actually found?

8 A. Four (4) days later.

9 Q. Do you know where he was found?

10 A. He was found in a house, an abandoned house. Apparently, a citizen
11 or a crime stopper called in, a tip call, saw -- someone saw him going into an
12 abandoned house there on Asheville Highway.

13 Once again, a K-9 and several tactical guys were called out and -- and
14 went to that house and located him.

15 Q. Now -- so he was arrested there? Was he brought to City Hall?

16 A. Yes.

17 Q. All right. Did you meet with him at City Hall?

18 A. I did.

19 Q. Okay. And did -- did you notice any injuries about him?

20 A. I didn't note any -- any -- didn't note any injuries about his hands
21 or his face or anything about him.

22 Q. Did anything about his appearance indicate that he had been in a
23 altercation recently?

24 A. No.

25 (Brief Pause)

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1 Q. And was he arrested and taken to jail after that?

2 A. He was after — after the interview, yes.

3 MR. BULSA: Okay. Thank you. Answer any questions Ms.

4 Lyall has.

5 THE COURT: Yes, ma'am?

6 MS. LYALL: Thank you, Your Honor.

7 (Brief Pause)

8 Cross Examination by Ms. Lyall:

9 Q. You're pretty familiar with this area, right?

10 A. I am.

11 Q. The area around the Money Tree and Asheville Highway, Magnolia,
12 and the Sunshine Inn that's no longer there, but — but it was there?

13 A. Uh-huh (affirmative).

14 Q. Can you tell me a little bit about the area?

15 A. What about the area? What do you want? The business is located in
16 the — in the island located between Magnolia and Church Street.

17 Q. Okay.

18 A. The motel is right behind that.

19 Q. We've talked previously, right?

20 A. You and I?

21 Q. Yes.

22 A. I don't think so. I don't remember talking to you.

23 Q. We talked on the phone. There's a lot of prostitutes in this area, drugs
24 going on?

25 MR. BULSA: Your Honor, I'm going to object. I'm not

1 sure of the relevance of this in this case.

2 **THE COURT:** Let me see the lawyers.

3 **(Whereupon, a bench conference was had with both attorneys**
4 **present.)**

5 **THE COURT:** I sustain.

6 **Q.** (By Ms. Lyall) You've heard testimony today that there were a lot of
7 witnesses in the area that didn't happen to stay and talk to the police. Is that normal
8 in this area?

9 **A.** It's normal anywhere in — in the city.

10 **Q.** Okay. And you also talked to a —

11 **(Brief Pause)**

12 **Q.** I had asked you previously about if fights were — are prevalent in this
13 area?

14 **MR. BULSA:** Objection, Your Honor, unless it's — just an
15 objection. I don't know why that's relevant in this matter as to what any other
16 fights have to do with this one.

17 **MS. LYALL:** It's something people — people normally see in
18 this area.

19 **(Brief Pause)**

20 **MS. LYALL:** I'll move on.

21 **THE COURT:** Thank you.

22 **Q.** (By Ms. Lyall) You said that Mr. Wynn was found in a house on
23 Asheville Highway?

24 **A.** That's correct.

25 **Q.** So he didn't go far from this area?

1

A. No.

2

Q. And he was arrested four days after this?

3

A. That's correct.

4

Q. So it wasn't a significant period of time later?

5

A. (No Response)

6

Q. It wasn't months later, weeks later?

7

A. No, days later, yes.

8

Q. Days later?

9

A. Yes.

10

Q. And you didn't note any injuries on his hands?

11

A. That's correct.

12

Q. He didn't have bruised knuckles? He didn't have open wounds on his

13

knuckles?

14

A. No.

15

Q. He had no injuries on his hands or his face is what you said?

16

A. Not that I noted, no.

17

Q. Okay. And it was only four (4) days later?

18

A. That's correct.

19

(Brief Pause)

20

Q. When I spoke to you previously, you stated to me that,

21

on the way to the jail, Mr. Wynn kept stating something to you. Can tell me what

22

that was?

23

(Brief Pause)

24

A. Stated something -- he was trying to tell us about what happened.

25

Q. He kept telling -- trying to tell you, "Get the video. We need

1 to get — you need to get the video. It'll show you what happened”?

2 A. Okay. Yes, he did.

3 Q. Did he keep saying that to you?

4 A. That's correct.

5 Q. “Please get the video from the Money Tree”?

6 A. That's correct.

7 Q. “It'll show what happened. It'll show — it'll show you what happened.

8 Please, get the video”?

9 A. That's correct.

10 Q. And can you tell me what the result of that was?

11 A. Prior to talking to him, I had already did that. There was no video
12 available. The owner of the business had removed that camera from his business.
13 So there was no camera; there was no video to show at all.

14 Q. Okay. When you go up to the Money Tree, there actually is a camera
15 up in the corner; is that correct?

16 A. The corner of...?

17 Q. The Money Tree?

18 A. Once again, the camera system was not working.

19 Q. Right.

20 A. The owner had removed that system from the building.

21 Q. So there's a camera there that would make someone think it's
22 recording, but nothing is actually happening?

23 A. That's correct.

24 Q. So there would be a reason that Mr. Wynn, being in that parking lot,
25 would be begging you to get the video, get the video, help me out, get the video?

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1 A. Which was pointed out to me when I got there; "Ill be glad to go look."

2 But it wasn't there when I got there.

3 Q. There's no working video, but there is a camera?

4 A. Once again, it had been stated and pointed that camera out to me
5 when I got there.

6 Q. Who are you saying ----

7 A. When I arrived on the scene of the incident, he was not there to point
8 that camera out ----

9 Q. Okay.

10 A. ---- and say that.

11 Q. But, on the ride to the jail, he kept telling you ----

12 A. After he was arrested, he said that, yes.

13 Q. ---- "Please get the video. Please get the video"?

14 A. Yeah, after he was arrested, yes, that's what he told me.

15 Q. And there would be a reason that he would think there was a video
16 there?

17 A. He must have just remembered it. He had four (4) days to tell me.

18 Q. Okay. And, as you stated, you did try to get the video, but there is no
19 video available?

20 A. That's correct.

21 (Brief Pause)

22 Q. Working on the street, you hear about issues between people; is that
23 correct?

24 A. In twenty-two (22) years, yes, I've heard a lot of issues.

25 Q. Okay. What have you heard about -- between Freddie Young

1 and Mr. Wynn?

2 A. I haven't heard a thing on them.

3 MR. BULSA: Your Honor ----

4 A. I haven't heard anything about it.

5 THE COURT: Hang on — hang on a second.

6 MR. BULSA: I think she was asking for hearsay.

7 MS. LYALL: I was asking for word on the street.

8 (Brief Pause)

9 MR. BULSA: That's hearsay.

10 THE COURT: Well, word on the street doesn't ----

11 MR. BULSA: May we approach?

12 (Whereupon, a bench conference was had with both attorneys
13 present.)

14 MS. LYALL: All right. I have no further questions.

15 THE COURT: Yes, sir?

16 MR. BULSA: Your Honor, just briefly.

17 **Redirect Examination by Mr. Bulsa:**

18 Q. Investigator Porter, there was reference about the video. In the course
19 of this investigation, you had already looked to see if there was any video?

20 A. That's correct.

21 Q. In fact, did you look at any other locations around to see if there was
22 any video?

23 A. The motel didn't have any available at all. Those are the only two
24 locations that would have had any. The church was no longer occupied.

25 So the only place was the Money Tree that had a video. And

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1 the other church just the opposite of it didn't have any camera either.

2 Q. Okay. So that was part of your investigation?

3 A. Yes.

4 Q. So you weren't surprised when the Defendant was talking about it?

5 A. Right.

6 MR. BULSA: Thank you.

7 THE COURT: Thank you, Officer. You may step down. Please,
8 be careful.

9 (The witness complied with the request.)

10 (Off-the-Record Comments)

11 MR. BULSA: The State calls Dr. Wren.

12 (Brief pause while the witness is summoned.)

13 (The witness stepped forward to be sworn.)

14 (Whereupon,

15 Dr. David Wren

16 having been first duly sworn, testified as follows:)

17 THE COURT: Doctor, tell us who you are and spell your last
18 name, please.

19 THE WITNESS: John David Wren, W-R-E-N.

20 THE COURT: Solicitor?

21 Direct Examination by Mr. Bulsa:

2:26 P.m.

22 Q. Good afternoon, Dr. Wren. Can you tell what your occupation is?

23 A. I'm a medical doctor with a degree and specialty in pathology.

24 Q. And where do you work?

25 A. I work for Carolinas Pathology Group. And as such I work

1 with a group under contract with Spartanburg Regional Medical Center. I'm the
2 medical --- laboratory medical director there and for Spartanburg Hospital
3 Restorative Care.

4 Q. Could you give us the benefit of your education, sir?

5 A. I have a bachelors degree, a master's degree, and a Doctor of
6 Philosophy degree from Clemson University in chemical engineering.

7 I have an M.D. degree from the Medical University of South Carolina.
8 I graduated in 1979. I graduated early with my class because I took courses
9 together rather than separately with vacation.

10 I started a pathology residency at the Medical University in February of
11 1979. With research and --- with research that I've done on my doctorate degree, I
12 was able to complete five years of pathology training in three years and 10 months,
13 qualifying for a combined anatomic and clinical pathology boards.

14 While I was there, I was chief resident in both anatomic
15 and clinical pathology. I --- also, while I was there, I started, in June of 1980, as
16 assistant medical examiner for Charleston County.

17 And, about four or five months later, I started doing forensic pathology
18 autopsies for the Medical University on bodies that were sent from all over the state,
19 at that time one weekend a month, and filling in from --- for the clinical --- for the
20 forensic pathologists that were there.

21 While I there, I did over a hundred autopsies in
22 forensic pathology under the supervision of forensic pathologists. And I became
23 qualified to take boards in forensic pathology.

24 I passed my first anatomic board in pathology, in anatomic pathology,
25 on my first try in Sept --- in November of 1984. And I did my clinical

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1 pathology boards in November of 1987. That was the first try there.

2 Although I've never taken the boards in forensic pathology, I've been
3 qualified as a — an expert in forensic pathology in probably half the counties in this
4 state.

5 I also — when I came here, I started doing coroners' cases. And I've
6 done probably — well, we counted up a couple of months ago and I'd done between
7 four thousand, five hundred (4,500) and five thousand (5000) autopsies since I
8 started my training.

9 Q. And you've testified before as an expert approximately how many
10 times?

11 A. At least 200. I've testified in Dillon, Marion County, Orangeburg,
12 Berkeley, Beaufort, George — not George — Fairfield, Anderson, Greenville,
13 Spartanburg, and Cherokee, Chester, Union, Greenwood, and several others in the
14 lower part of the state.

15 I — it — I'd have to think a few minutes to — to remember those.

16 MR. BULSA: Your Honor, we'd offer Dr. Wren as an expert in
17 the area of forensic pathology

18 THE COURT: Any objection?

19 MS. LYALL: No, sir.

20 THE COURT: Ladies and gentlemen, a person normally cannot
21 give an opinion when a person testifies. They must testify as to what they
22 either saw, heard, sensed by smell, or something of that nature.

23 But there is an exception when someone is qualified because of their
24 education, experience, knowledge, skill, and training. That person is
25 permitted to give an opinion in certain areas if the Court so qualifies them.

1 This Court qualifies this witness as an expert in forensic pathology.

2 This means that he is allowed to give an opinion or testimony in that area.

3 That does not mean that you must accept his opinion, but it is
4 evidence for you to use in any way you see fit and give the weight and
5 credibility that you believe is appropriate. Solicitor?

6 **MR. BULSA:** Thank you.

7 **Q.** (By Mr. Bulsa) Dr. Wren, did you perform an autopsy on the body of
8 Curtis Goldsmith back on August the 14th, 2013?

9 **A.** Yes. I did an autopsy on an individual identified as Curtis Edward
10 Goldsmith on Aug — August the 14th, 2013, in SRMC emergency — I mean,
11 autopsy room beginning at 4:15 p.m.

12 **Q.** And before he was given to you for the autopsy, did medical personnel
13 attempt to resuscitate him?

14 **A.** Yes, they did.

15 **Q.** And was there actually evidence of that, that you found during your
16 autopsy?

17 **A.** Yes. He had — well, the clothing he had on had been cut away to
18 expose the anterior portion of the body. There were no defects on the clothing other
19 than some paint stains on the pants that were dried.

20 And, as I said previously, they had been cut away to expose the body
21 for resuscitation. They had put in test tubes in the lateral chest bilaterally to make
22 sure he didn't have any bleeding into his thoracic cavities where the lungs are.

23 And I'm not sure he — he had a little bit of hemorrhage in the
24 precardial area. That means underlying the heart where they had done chest
25 compressions.

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1 Q. Okay. So those efforts failed and he was pronounced dead. And,
2 then, he was given to you for the autopsy. What — when you begin an autopsy, do
3 you measure his size and weight?

4 A. Yes. This individual was 69 inches long, which can vary plus or minus
5 two (2) inches depending on relaxation of the body and how a person stands. But
6 he was measured 69 inches in length and he weighed a hundred and seventy-three
7 (173) pounds.

8 Q. Did he appear to be in normal physical shape?

9 A. Yes. Yes, he — he was in reasonable physical shape.

10 Q. Okay. And did you examine his extremities?

11 A. Yes. He had — he had some abrasions and with a little bit of
12 hemorrhage along his elbow, more towards the medial surface, which is on the side.
13 If you hold your palms out, it's toward the — the inside of the arm.

14 He also add a little vulgarus (phonetic) skin, like the skin was torn up
15 on — on the distal right ulnar area.

16 The ulnar bone is on the — the side where the little finger is. And the
17 -- the radius is on the side where the thumb is. So it was on the opposite side where
18 it had torn the skin a little bit there.

19 He also had some abrasions on his knees bilaterally.

20 Q. The wounds to his forearm, would that be consistent with a defensive
21 wound?

22 A. It could have been, but more likely falling, falling against something.

23 Q. Okay. Is that the same with the knees?

24 A. Yes.

25 Q. Okay. So based on the examination of his legs and arms

1 it appeared that he had fallen on the ground or up against something?

2 A. He had probably fallen against something, yes.

3 Q. Okay. And what wounds, if any, did he have to his head?

4 A. Well, that was a little bit more severe. He had a one-centimeter
5 diameter area of hemorrhage on the vertex of the scalp. He had a three-centimeter
6 diameter area of hemorrhage on the left parietal area, which is a part of the skull
7 that sort of overlies the ear.

8 It's divided into frontal, parietal, and the occipital, meaning the back of
9 the head. And he had a lot of hemorrhage in his temporalis muscle, which is
10 underneath that — the muscle that's just over the ear.

11 And I took sections of those two areas to look at under the microscope
12 and see how long they had been there.

13 Q. And how long? Could you determine ----

14 A. There was no vital (phonetic) reaction meaninging that there's no
15 evidence of a healing response starting. So it would have had to have occurred
16 within no more than 30 minutes, before he passed away, and could be up to an hour
17 or two hours maybe.

18 Q. Okay.

19 A. Depending on the blood flow.

20 Q. What type of — how could that wound have been inflicted?

21 A. From a blunt force to the head.

22 Q. Meaning an object or....?

23 A. Either — some flat object, yes.

24 Q. Okay. Could it have been striking him or falling into something?

25 A. Either, it could have been either.

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1 Q. Okay.

2 A. Him falling or — or — what — what you look for to try to find out what
3 you have or whether it is falling or an object, of course, is the — the wound itself.

4 If you have a fracture — if one has a fractured skull, if they hit them
5 with something that's round and relatively sharp, you'll probably leave a — a fracture
6 in the skull. If they fell against something, the fracture will be more lineal usually.

7 Also, if you — if your — your head is moving and you hit something
8 relatively hard enough, then, you'll get what is called a contrecoup contusion. That
9 means the contusion is not what where the blow happened, but on the opposite side
10 of the brain.

11 So the best way of thinking about it is, if you hit somebody and you
12 fracture their skull, and it pressed the bone in a little bit, you'll see a —
13 a bruise on the brain underneath that blow. That's called a contusion.

14 On the other hand, if you were riding in a car, if one was riding in a car,
15 a body in motion tends to remain in motion, as everybody knows. If the car hit a
16 brick wall, and you weren't restrained well enough, your head would keep going
17 forward maybe and hit something.

18 When that hits, the — the brain itself is a gelatinous — it's gelatinous
19 tissue; it doesn't have much structure and it can move around in the head.

20 And so, when it — it continues to keep moving even though your head
21 stops because it — it won't go any further when it hits something. The brain pushes
22 up against there and, then, it recoils.

23 When it recoils, it often causes a contusion where — from the opposite
24 of where the blow was. In other words, if my head hit something, the bruise would
25 be in the back. So you look for that to see if the head was in motion

1 or whether it wasn't.

2 He didn't have either a contusion or a contrecoup contusion that I
3 could see, but that doesn't — it doesn't always happen. That's what — what a
4 pathologist looks for to try to — to try to get further information.

5 Q. Okay. So, before you issued a cause of death, did you have some
6 blood testing done?

7 A. Yes, but I need — I guess I need to tell you what I found inside the
8 head.

9 Q. All right.

10 A. He didn't have a contusion and he didn't have a contrecoup
11 contusion, but he did have bleeding beneath the dura. Now, the — the head — the
12 — the cranial vault has a space between the inside of the bone and what's called
13 the dura, which is almost like a sheet of — it's a sheet of tissue that's real thin, but
14 it's real tight and not very stretched — I mean, you can't stretch it very well.

15 It's just — it's real firm like you'd have a — a little thin piece of metal in
16 there.

17 And so, what happens is, if you fracture the skull, you can get fractures
18 that bleed above that area, which is called an epidural hemorrhage, meaning above
19 the dura. Or you can have a subdural hemorrhage, which is beneath the dura.

20 And that's between the dura, that little thin lining that covers all of — all
21 of the brain and the surface of the brain itself, which has a thin transparent
22 membrane on it that's called a arachnoid membrane.

23 So you have an epi — an epidural above it, subdural below it, and,
24 then, you can have subarachnoid hemorrhage meaning it's — it's bleeding beneath
25 that little thin membrane.

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1 Now, he had subdural hemorrhage, which — what happens to get a
2 subdural hemorrhage is that the brain moves and there are little vessels that run
3 between the surface of the brain and that dural that collects the blood and channels
4 it back into the base of the skull and, then, down through the internal and external
5 jugular veins and back into the heart for re-oxygenation.

6 Those little veins are very thin and very pliable (phonetic), so, if you
7 have a — if you head moves, it can stretch those veins and cause those — those
8 veins to tear and you bleed very slowly. On the other hand, an epi-dural
9 hemorrhage occurs from — from arterial blood and one bleeds much faster from
10 that.

11 He did not have an epidural hemorrhage because he didn't have a
12 skull fracture. But he did have an sub-dural hemorrhage and a subarachnoid
13 hemorrhage that was concentrated; some along the circle of Willis (phonetic), which
14 is the base of the brain, the cerebral part, which is upper part of the brain, and the
15 brain stem and cerebellum, which is more interior.

16 He had some subarachnoid hemorrhage and a little bit of
17 intraventricular (phonetic) hemorrhage, which means in the ventricles where the
18 spinal fluid resides.

19 So he had — actually had internal hemorrhage in the brain.
20 And he also had microscopically — I looked at sections and he had what's called
21 rotational injuries, which one can see under the microscope, disruption of — of the
22 nerve fibers and — where they have been twisted and can cause death very easily.

23 Q. How hard of a blow would it take — would it take to cause that kind of
24 an injury?

25 A. Well, it — it doesn't take a lot. It's just some people are

1 more susceptible than others. It's — you know, as — as everyone knows, some
2 people can fall and hit their head and they get up and walk away; others are
3 unconscious, so...

4 And they've — they've fallen the same distance. Some people are just
5 more susceptible than others, particularly if they have underlying diseases or they
6 bleed easier or they --- they have atrophy where the brain can move more.

7 It's just a lot of factors that could go into what can cause it. But one
8 can get it from falling from four (4) or five (5) feet if they fall hard enough.

9 Q. How about a blow by a fist?

10 A. I don't think a blow by a fist would cause something like that.

11 Q. In your opinion, if — what did it appear to have happened to Mr.
12 Goldsmith?

13 A. Well, without knowing anything about it, I — I would say that he was
14 either thrown up against something or he fell and hit something; lost his balance,
15 was moving and fell or something hit him that was swung and hit --- hit him, not —
16 not a fist.

17 A fist would have probably not caused any internal injuries like that.

18 Q. So that wound was the ultimate cause of death?

19 A. Yes. I signed out the cause of death as closed head trauma
20 with subdural, subarachnoid, and a intraventricular hemorrhage secondary
21 to a witnessed altercation. That's what I was told; he had, had an altercation.

22 Q. So, in your expert opinion, he died as a result of that al — that
23 altercation?

24 A. Yes. I found nothing else that could have — could have caused it.
25 I mean, there were no other injuries. He did have some — some pathology

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1 which I can go through all of it, if anyone wants me to, but....

2 Q. What was the purpose of some drug testing?

3 A. Just to make sure. We always do that in a homo — well, every death
4 in Spartanburg County is examined for toxicology.

5 He did have hydrocodeine, which was point oh six (.06) milligrams per
6 liter. That's six one hundredths. A therapeutic level is eighteen hundredths to fifty-
7 one hundredths.

8 So it was below therapeutic; much below toxic and much — even more
9 below lethal levels — lethal limits. Lethal limits is two hundred (200) to one
10 thousand, six hundred (1,600) milligrams per liter.

11 Q. And there was no evidence of any drug related ----

12 A. No, he didn't have any other drugs on board that were identified by
13 SLED. And he could have — you know, hydrocodone is a pretty normal drug
14 people give if they have pain or something like that.

15 Q. All right.

16 (Brief Pause)

17 Q. I know we talked about the extremities, but I failed to ask you:
18 Did he have any marks on his hands?

19 A. Pardon?

20 Q. Did he have any marks on his hands?

21 A. I don't think he did, no. I don't think he did. I don't recall. I read over
22 this, "The hands were without injuries. No splintering of the fingernails."

23 Q. Okay.

24 MR. BULSA: All right. Thank you, Dr. Wren.

25 THE COURT: Yes, ma'am?

1 MS. LYALL: I have no questions.

2 THE COURT: All right. Dr. Wren, you may step down. Thank
3 you. And, please, be careful, sir.

4 (Witness complied with the Court's request.)

5 MR. BULSA: And we, of course, ask that he be excused.

6 THE COURT: Any objection?

7 MS. LYALL: No, Your Honor.

8 THE COURT: Doctor, you may stay with us or go, whichever you
9 choose.

10 THE WITNESS: I got to go do an autopsy.

11 THE COURT: Thank you, sir.

12 MR. BULSA: May we approach?

13 THE COURT: Yes, sir.

14 (Whereupon, a bench conference was had with both attorneys
15 present.)

16 THE COURT: Mr. Foreman, ladies and gentlemen, it's — we've
17 been running about an hour and 20 minutes now. I don't like to keep
18 anybody sitting for — for more than about an hour and 20 minutes to an hour
19 and a half if I can.

20 This is a good time, after that witness' testimony, to take a little break.
21 So let's take 15 minutes and let everybody use the facilities, get a drink of
22 water.

23 I remind you the case is not at an end, so, therefore, please, do not
24 begin to deliberate within your own mind, much less speaking with someone
25 else about it.

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Mr. Foreman, if you would, take your jury to the jury room, please.

(Whereupon, the jury exited at 2:50 p.m.)

THE COURT: All right. Let's take — let's take 15 minutes. And, then, we'll — before we bring the jury back, then, we'll take up any matters that we might have.

MR. BULSA: Yes, sir.

MS. LYALL: Okay.

(Whereupon, an afternoon recess was taken from 2:50 p.m. until 3:07 p.m.)

(Off-the-Record Comments)

(Whereupon, a bench conference was had with both attorneys present.)

THE COURT: Okay. Before we bring the jury in, Solicitor, do you have the next witness or are we ----

MR. BULSA: No. The State is prepared to rest and at a bench conference I referenced two photographs that had previously been marked but hadn't been discussed. I'd like to introduce those into evidence so the jury can have them with respect to the — the location.

THE COURT: I understand that's without objection?

MS. LYALL: Yes, Your Honor.

THE COURT: Okay. They're admitted without objection. They are numbers ----

MR. BULSA: They're numbers 4 and 6.

(Whereupon, State's Exhibits 4 and 6 were admitted into evidence without objection.)

1 **THE COURT:** Anything else from the State?

2 **MR. BULSA:** No, sir.

3 **THE COURT:** The State has now rested.

4 **(Brief Pause)**

5 **THE COURT:** Ms. Lyall, is the Defense ready to go?

6 **MS. LYALL:** She's marking photos ----

7 **THE COURT:** Oh, I'm sorry.

8 **MS. LYALL:** ---- but other than that, yes, Your Honor.

9 **THE COURT:** Okay.

10 **(Whereupon, Defendant's Exhibits 1 through 3 were marked for**

11 **identification.)**

12 **(Off-the-Record Comments)**

13 **THE COURT:** Any matters before we bring the jury?

14 **MR. BULSA:** No, sir.

15 **MS. LYALL:** (No Response).

16 **THE COURT:** Are there any matters ----

17 **MS. LYALL:** Oh, I'm sorry. No, Your Honor.

18 **THE COURT:** Okay. We'll have the jury.

19 **MR. BULSA:** Your Honor?

20 **THE COURT:** Sir?

21 **MR. BULSA:** Is he going to testify? Are we going to address

22 that now?

23 **MS. LYALL:** We might as well go ahead and address it. We're

24 not sure if he's going to testify, but...

25 **THE COURT:** Well, I just sent for the jury.

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1 **MS. LYALL:** That's fine. I didn't know that -- I mean, we can
2 take a break before that.
3 **THE COURT:** We'll take a break before that.
4 **MR. BULSA:** Okay.
5 **THE COURT:** Do you anticipate -- I'm not pinning you down,
6 two, three, four witnesses?
7 **MS. LYALL:** We're going to have three (3) witnesses.
8 **THE COURT:** Okay.
9 **MS. LYALL:** Three, maybe four.
10 **THE COURT:** I was just looking at the clock, okay?
11 **MS. LYALL:** Okay.
12 **THE COURT:** Got you.
13 **(Off-the-Record Comments)**
14 **(Whereupon, the jury was summoned and entered the courtroom**
15 **at 3:12 p.m.)**
16 **THE COURT:** Mr. Foreman, anything from the jury?
17 **MR. JACKSON:** No, sir.
18 **THE COURT:** Everything is good?
19 **MR. JACKSON:** Yes, sir.
20 **THE COURT:** All right. Yes, ma'am?
21 **MS. LYALL:** Thank you, Your Honor. The Defense calls
22 Donald Stepp.
23 **THE COURT:** All right.
24 **(Brief pause while the witness is summoned.)**
25 **(The witness stepped forward to be sworn.)**

(Whereupon,

Donald Stepp

having been first duly sworn, testified as follows:)

THE COURT: Mr. Stepp, tell us who you are and spell your last name for my court reporter, please.

THE WITNESS: I'm Donald Stepp. The last name is spelled S-T-E-P-P.

THE COURT: Thank you.

THE WITNESS: And I'm the senior investigator with the public defenders office.

THE COURT: Thank you.

THE WITNESS: Yes, sir.

THE COURT: Yes, ma'am?

Direct Examination by Ms. Lyall:

3:15 P.m.

Q. Mr. Stepp, in the investigation of this case, you had a chance to go to the Money Tree; is that ----

A. Correct.

Q. And that's where the incident in this case took place?

A. Correct.

Q. And we actually went there together; is that true?

A. We did.

Q. And, when we were there, we were looking for a camera?

A. Correct.

Q. And did we -- did -- did you find a camera?

A. We found one camera on the front corner of the building on

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1 — on the North Church Street side that was aimed toward Magnolia Street.

2 Q. Okay. And, when we found the camera, what did you do next?

3 A. We made some — well, we went inside first and talked to the clerk
4 about whether the camera was functioning or not. She told us it did not work. It was
5 not — upon further questioning, she said it was not working at the time this occurred.

6 Q. So it was not working at the time it occurred?

7 A. Huh-uh (negative).

8 Q. This incident occurred about a year ago and it was not working now?

9 A. Correct.

10 Q. And did we have the opportunity to take some photos of that camera?

11 A. We did.

12 (Brief Pause)

13 Q. I'm going to show you a few photos. I'm going to hand you
14 Defendant's Exhibit Number 1.

15 (Exhibit handed to the witness.)

16 Q. Do you recognize this photo?

17 A. Yes, ma'am. That's the camera that's on the front corner of the
18 building on the North Church Street side and it's aimed toward Magnolia Street.

19 Q. And how do you recognize that photo?

20 A. It's the one I made a picture of last Friday afternoon.

21 Q. Okay. So you took it?

22 A. Yes, ma'am.

23 Q. And does this photograph, marked as Defendant's Exhibit 1,
24 accurately depict the Money Tree and the camera as it stands today?

25 A. It does.

1 Q. And, after speaking with the person inside, does it accurately depict 167
2 that camera as it — as it was a year ago?

3 A. Yes, ma'am. That is the only camera on the building.

4 Q. Okay. And what is that a picture of?

5 A. It's the camera that's mounted on the corner of the North Church
6 Street side of the Money Tree building.

7 MS. LYALL: At this time, I would ask that Defendant's Exhibit
8 Number 1 be moved into evidence.

9 THE COURT: Any objection?

10 MR. BULSA: No, sir. And I probably won't object to any other
11 that were shown to me.

12 MS. LYALL: Okay. It's the same ones.

13 (Brief pause while exhibits shown to Mr. Bulsa.)

14 MR. BULSA: Your Honor, we have no objection to any of these
15 photos.

16 THE COURT: All right. You moving them all in at this time?

17 MS. LYALL: Yes, Your Honor, I'm — I'm moving all three into
18 evidence.

19 THE COURT: They're into evidence without objection.

20 (Whereupon, Defendant's Exhibits 1, 2, and 3 were admitted into
21 evidence without objection.)

22 Q. (By Ms. Lyall) I'm just going to ask you a question about Number 2
23 and 3.

24 (Exhibits shown to the witness.)

25 Q. Number 2, is that a picture stepping back a few feet towards

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1 where the incident occurred?

2 A. It is.

3 Q. And Number 3, is that going all the way back to past swhere the
4 incident occurred?

5 A. It is.

6 Q. And, from that angle where the incident occurred, can you — is the
7 camera pointing directly at that?

8 A. It is, but you really can't — Number 3 you really can't see it's so far
9 back from the security camera. It just ----

10 Q. Okay.

11 A. ---- looks over the apartments (phonetic).

12 Q. But, if the camera was working, it would have been videotaping what
13 was happening?

14 A. Yes, ma'am.

15 (Brief Pause)

16 MS. LYALL: I have no more questions for this witness.

17 THE COURT: Solicitor?

18 MR. BULSA: Thank you, Your Honor.

19 Cross Examination by Mr. Bulsa:

20 Q. Mr. Stepp, before you took these pictures, did you review
21 the photographs that the police had made?

22 A. I did not.

23 Q. So do you — do you have any idea where the incident occurred in the
24 parking lot?

25 A. Just what Ms. Lyall told me.

1 Q. And where was that to your knowledge?

2 A. Back near the trash — in picture number 3 where the trash dumpster
3 is visible, back in that area, back right in here (indicating).

4 Q. All right. We're showing — depicted on State's Exhibit...

5 (Brief pause while exhibit is retrieved.)

6 Q. ...Number 5?

7 (Exhibit shown to the witness.)

8 A. Yes, sir.

9 Q. Okay. Now, you said you went inside and spoke with a clerk ---

10 A. I did.

11 Q. --- is that correct? While you were in there, did you look out the
12 window to see what you could — if it was possible to see anything occurring out in
13 the parking lot?

14 A. Well, depending on what angle you were looking at, you could, and
15 depending upon how much traffic was actually parked in the parking lot.

16 Q. Well, I got State's Exhibit 2. It shows several signs in that window.
17 Where would the clerk be?

18 A. Where the clerk is back down this way (indicating), across there
19 (indicating).

20 Q. So your -- so your picture doesn't show where the clerk would have
21 been?

22 A. No, sir.

23 Q. Okay.

24 (Brief Pause)

25 Q. How far away from the window was the clerk positioned?

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1 A. Well, the clerk — the clerk's window is not directly in front of the door.
2 It's probably 15 to 18 feet from the actual door where she's behind another glass
3 partition and the counter.

4 Q. So she's some distance away from the front glass?

5 A. Yes, sir.

6 Q. So it would have been difficult for anybody behind that — where she
7 was to see out?

8 A. I would think so, yeah. They — they have a lot of advertisement for
9 cigarettes and the like posted in the windows and you can't.

10 Q. And especially could not see the location depicted in State's 3 where
11 this incident occurred?

12 A. I wouldn't think so, but again, depending on how much traffic was
13 parked and how much was in the parking lot because there are two lines of traffic
14 and parking spaces between her and where that occurred.

15 Q. As well as what was taking place in the store?

16 A. Exactly.

17 Q. Okay. And they confirmed with you that, while there appears to be a
18 camera, it wasn't working or recording?

19 A. That's what we were told.

20 MR. BULSA: Thank you.

21 THE WITNESS: Yes, sir.

22 THE COURT: Yes, ma'am?

23 MS. LYALL: No other questions.

24 THE COURT: Thank you, sir. You may step down. Please, be
25 careful.

1 (The witness complied with the request.)

2 (Off-the-Record Discussion)

3 THE COURT: Yes, ma'am?

4 MS. LYALL: The Defense calls Matthew Teamer.

5 THE COURT: Okay.

6 (Brief pause while the witness is summoned.)

7 (The witness stepped forward to be sworn.)

8 (Whereupon,

9 Matthew Teamer

10 having been first duly sworn, testified as follows:)

11 THE COURT: Sir, pull that microphone close to you and tell us
12 who you are and spell your last name for my court reporter, please.

13 THE WITNESS: Okay. My name is Matthew Teamer.

14 THE COURT: And the spelling?

15 THE WITNESS: Spelling, T-E-A-M-E-R.

16 THE COURT: Thank you. Yes, ma'am?

17 MS. LYALL: Thank you, Your Honor.

18 Direct Examination by Ms. Lyall:

3:20 P.m.

19 Q. Mr. Teamer, you happened to be in the parking lot of
20 the Money Tree when this incident occurred; is that correct?

21 A. Yes, ma'am.

22 Q. And you were driving through there. You were actually in a vehicle?

23 A. Yes, ma'am.

24 Q. And you were present when the fight started?

25 A. Yes, ma'am.

1 Q. And you don't know why the fight started?

2 A. No, ma'am.

3 Q. Because you were in a car with the windows rolled up?

4 A. Yes, ma'am.

5 Q. But tell me a little bit about what you saw.

6 A. I pulled into the — into the parking lot. And I looked over there; it was
7 two men was over there arguing.

8 So I really wasn't thinking too much of it. So — and I — and I looked
9 again, I seen the older gentlemen hit Mr. Wynn.

10 Q. Okay.

11 A. And, when I seen that, this — that's when both of them had fell to the
12 ground.

13 Q. Okay.

14 A. And, after that, they had got — they was both getting back up,
15 scuffling. And — and that's when — that's when Mr. Wynn had — was punching.
16 And — and he was throwing — and he was kneeing the other gentleman.

17 Q. Okay.

18 A. After that, that was over with, Mr. Wynn had grabbed his book bag
19 and he was leaving the — he was leaving out the parking lot.
20 And the other gentleman, he was going to his vehicle.

21 Q. Okay. So what you saw was you saw some sort of argument and,
22 then, you saw the other gentleman — you don't — you don't know who he is?

23 A. No, ma'am, I don't.

24 Q. You saw him throw a punch at this gentleman (indicating)?

25 A. Yes, ma'am.

- 1 Q. And, then, you saw them start fighting?
- 2 A. Yes, ma'am.
- 3 Q. I'm not sure I remember what words you used, but you saw them
- 4 fighting?
- 5 A. Yes, ma'am.
- 6 Q. Then, you saw them fighting on the ground?
- 7 A. Yes, ma'am.
- 8 Q. And, then, you saw them get back up and fight?
- 9 A. Yes, ma'am.
- 10 Q. And, then, you saw them get away from each other?
- 11 A. Yes, ma'am.
- 12 Q. And you saw the other gentlemen go to his car?
- 13 A. Yes, ma'am.
- 14 Q. Did you see him get in his car or did you just see him go towards his
- 15 car?
- 16 A. I seen him go — not as far as getting in; I didn't see him get in. But I
- 17 see him open it up.
- 18 Q. Okay.
- 19 A. You know, open up the door.
- 20 Q. And you saw this gentleman (indicating) walking away?
- 21 A. With — with his book bag.
- 22 Q. With his book bag? Okay. But all you saw was just two people
- 23 fighting?
- 24 A. Yeah — yes, ma'am. To be honest with you, it didn't look that serious.
- 25 Q. Okay. Is that why you didn't call the police?

1 A. Yes, ma'am. And, to be honest with you, from my looks of it, couldn't
2 neither one of them couldn't even fight. And I basically don't call it a fight.

3 Q. Okay. So it wasn't that serious of a fight; to you it didn't appear to be
4 that serious of a fight?

5 A. They was both on the ground scuffling, grabbing each other.

6 Q. Scuffling on the ground and grabbing each other?

7 A. Uh-huh (affirmative). You know, like — you know, but that's really not
8 a fighti —

9 Q. To you, did it look like two middle-aged men fighting?

10 A. Two -- two older men fighting.

11 Q. Two older men fighting? Okay. And did you continue driving? Did
12 you leave the parking lot?

13 A. Yes, ma'am.

14 Q. And, if it had looked — looked really serious to you, do you think you
15 would have stopped to help or called 911?

16 A. Honestly, I would have dialed 911.

17 Q. Okay.

18 (Brief Pause)

19 Q. Did you ever hear what they were saying?

20 A. No, ma'am.

21 Q. So it wasn't loud enough for you to hear what they were saying through
22 your car?

23 A. No, ma'am.

24 Q. You could just tell they were fighting and, then, you saw the fight?

25 A. Yes, ma'am.

1 Q. Okay.

2 MS. LYALL: I don't have any other questions right now.

3 THE COURT: Thank you. Solicitor?

4 Cross Examination by Mr. Bulsa:

5 Q. How long have you known Mr. Wynn?

6 A. Years ago, I guess, when I was probably about nine (9) or 10 years
7 old, his — my mother and my father used to carry me to his barber shop and to get
8 my hair — hair cut. But, then, after that, I probably haven't seen him in probably 15
9 years or more.

10 Q. Did you know it was him when you saw him out there in the parking
11 lot?

12 A. To be honest with you, no, I didn't. I didn't know who he was until
13 probably three days after they say someone had got killed at the Money Tree.

14 Q. Okay. So when did you realize it was him?

15 A. I realized it was him when they had him in the newspaper.

16 Q. Okay. Was that before he was arrested, when they were looking for
17 him?

18 A. Yeah. Yeah, I think he was still wanted I think. I'm — I'm really not for
19 sure.

20 Q. Okay. So you were an average citizen saw that he was wanted for
21 this, right?

22 A. Yes.

23 Q. Okay. All right. Now, what kind of car were you in?

24 A. I was in an F-350 Ford truck, a '95.

25 Q. A big truck?

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- 1 A. Yes, sir.
- 2 Q. Okay. Do you use it at work?
- 3 A. Yes, sir.
- 4 Q. What kind of work do you do?
- 5 A. I recycle pallets. That's what I was doing during that time.
- 6 Q. Okay. And what took you to the Money Tree?
- 7 A. What — what took me to the Money Tree, I was — I was riding by
- 8 there and I thought that I seen my cousin's SUV, but it wasn't her.
- 9 Q. All right. And explain what road were you on before you turned into
- 10 the Money Tree?
- 11 A. I was on Church Street.
- 12 Q. On Church Street going which direction going towards Wofford College
- 13 or away from Wofford College?
- 14 A. I was going towards Boiling Springs.
- 15 Q. Towards Boiling Springs? So you would have been on the other
- 16 side ----
- 17 A. I was on the right, yes.
- 18 Q. Okay. And you were driving past the motel?
- 19 A. Yes.
- 20 **(Brief pause while exhibit shown on overhead.)**
- 21 Q. State's Exhibit 1, this is the motel (indicating) and here's Church
- 22 Street ----
- 23 A. Yes.
- 24 Q. ---- and the Money Tree (indicating). You would have been driving
- 25 over here (indicating)?

1 A. Yes, sir.

2 Q. Okay. And you said you saw somebody's truck in this area
3 (indicating)?

4 A. Yes.

5 Q. And which part of the parking lot did you pull into?

6 A. I — I pulled in on the left side.

7 Q. The left side? Okay. So the jury understands. All right. Was anybody
8 with you?

9 A. No, sir.

10 Q. Okay. Where did you think you saw your — the person's car?

11 A. In the parking lot.

12 Q. In what part of the parking lot? I'm not sure it's there. Point it out to
13 me on this one.

14 (Exhibit shown on overhead.)

15 A. Okay. I kind of thought it was like right in there, right there (indicating).

16 Q. Okay. About midway down?

17 A. Yes, sir.

18 Q. Now, this isn't a picture of the day ----

19 A. No.

20 Q. ---- of the incident. This is just showing ----

21 A. Yeah.

22 Q. ---- the area.

23 (Brief Pause)

24 Q. Did you pull into a parking space and stop?

25 A. No, ma'am — no, sir.

1 Q. Okay. You just pulled through?

2 A. Yes, sir.

3 Q. How long would you estimate you were -- it took you to drive through
4 that parking lot?

5 A. I guess about -- I guess -- I guess, when that happened, it was a
6 little longer. I looked because, you know. I really can't specifically tell you how
7 long.

8 Q. Okay. So you didn't actually see the start of the fight?

9 A. No. No, and I seen -- when the lick was -- was -- was actually taken
10 part of. Now, as far as what it was about, I don't know.

11 Q. Right. So you don't know what had been said or done before ---

12 A. No.

13 Q. ----- you drove in ----

14 A. No, sir.

15 Q. --- is that right? Okay. And, when you -- did you stay and watch the
16 whole thing till they broke up and went their separate ways?

17 A. I mean, it was -- it was actually -- it was actually real quick.

18 Q. Real quick?

19 A. Yeah.

20 Q. Really?

21 A. I mean, like I say, one lick was throwed and -- and both of them --
22 both of them fell on the ground.

23 Q. So you're telling me the victim -- did you know the victim?

24 A. No, sir.

25 Q. After you heard his name, did you recognize the name?

1 A. No, no, sir.

2 Q. Okay. So you saw one guy. How do you know which of the two threw
3 the blow?

4 A. Because with the guy that — that took — that — that passed the lick,
5 he had a on like a brownish shirt.

6 Q. A brownish shirt?

7 A. Yes, sir.

8 Q. And you're telling this jury he threw one blow and it knocked both men
9 to the ground?

10 A. Yes, but they was — was — started grabbing each other, and, then ---

11 Q. Okay. And, after that, what happened?

12 A. They both was on the ground. Somehow Mr. Wynn was able to get
13 up.

14 Q. On top of him?

15 A. Yeah. And, then — and then — and, then, the other guy was coming
16 at him, and he — and he used his knee to — to — to get him off of him.

17 Q. Who used his knee to get off of whom?

18 A. Mr. Wynn did.

19 Q. Used his knee to get the dead guy off of him?

20 A. Yeah.

21 Q. Were they still on the ground?

22 A. No, Mister — Mr. Wynn was up, but the other guy was — was — was
23 kind of slumped over coming towards Mr. Wynn.

24 Q. All right. So, at what point did you leave the parking lot? What was
25 going on?

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- 1 A. Well, when I was leaving the parking lot, he, Mr. Wynn, had his book
2 bag going this — going that way (indicating).
- 3 Q. Uh-huh (affirmative).
- 4 A. And the other guy was going towards his — his vehicle.
- 5 Q. And where was his vehicle?
- 6 A. His vehicle was on the other — it was on the other side of the parking
7 lot.
- 8 Q. Okay.
- 9 A. In other words, right in there (indicating).
- 10 Q. Was it in a parking space?
- 11 A. No, sir.
- 12 Q. It wasn't?
- 13 A. (Shakes head negatively.)
- 14 Q. Okay.
- 15 **(Exhibit shown on overhead.)**
- 16 Q. All right. I'm showing you this one first, then, I'm going to a different
17 one, okay?
- 18 A. Okay.
- 19 Q. You pointed to me, at the witness box, that you were driving
20 down South Church Street this way?
- 21 A. Yes, sir.
- 22 Q. Okay. I don't know when it becomes North Church Street, but you're
23 driving down this way (indicating) going towards Boiling Springs, which meant you
24 would have been taking a right?
- 25 A. Yes, sir.

- 1 Q. Okay. And instead you said you saw a vehicle somewhere over here¹⁸¹
- 2 (indicating).
- 3 A. Yes.
- 4 Q. And you said, "Hey, let me check this out." And you drive in here
- 5 (indicating)?
- 6 A. Yes.
- 7 Q. And realize it's not the person you thought it was?
- 8 A. Yes, sir.
- 9 Q. And you're going to just drive through?
- 10 A. Yes, sir.
- 11 Q. Was there a point in driving there and, then, get back on and go this
- 12 way?
- 13 A. Sir?
- 14 Q. Was it your plan to come through here ----
- 15 A. Yeah, yeah.
- 16 Q. ---- and go back here (indicating) and around?
- 17 A. Yes, sir.
- 18 Q. But you said instead something caught your eye?
- 19 A. Two men fighting.
- 20 Q. Two men fighting. And, then, you positioned -- where was the victim's
- 21 car? Somewhere here over by the trash dump?
- 22 A. Yes.
- 23 Q. Okay. Let me show you another picture.
- 24 (Exhibit shown on overhead.)
- 25 Q. State's Exhibit Number 5. Does that look like about where it was?

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- 1 A. Yes.
- 2 Q. It didn't look like it had been moved anywhere?
- 3 A. No.
- 4 Q. Okay. So it wasn't actually parked ----
- 5 A. No.
- 6 Q. ---- in a space?
- 7 A. No.
- 8 Q. Okay.
- 9 A. It was -- it was not -- not in a -- a parking space.
- 10 Q. Okay. But it wasn't moving?
- 11 A. No, it was sitting ----
- 12 Q. And you don't know what caused that car to stop in an odd position
- 13 like that, do you?
- 14 A. No, sir.
- 15 Q. Okay. So you don't know if some words were said from some guy
- 16 walking up to the man driving and that might have made him stop, do you?
- 17 A. I don't know.
- 18 Q. Okay. You just say -- let's look at this closer picture here, State's
- 19 Number 2.
- 20 (Exhibit shown on overhead.)
- 21 Q. You would have driven in -- and whereabouts along the building were
- 22 you?
- 23 A. (No Response)
- 24 Q. When you stopped your truck to look?
- 25 A. I ----

1 Q. Were you past the Money Tree building?

2 A. I guess like at that little bump right there (indicating). I was -- I was --
3 I was like coming over there.

4 Q. Okay. And you would have seen it over here (indicating), right?

5 A. Uh-huh (affirmative).

6 Q. That's what you're telling us?

7 A. Yes.

8 Q. Are you being honest with us?

9 A. Yes, I'm being honest.

10 Q. Well, a few times you said, "to be honest with you." And you didn't
11 say that this time.

12 A. I ---

13 Q. I mean, you said that a couple of times on your direct. You would
14 answer a question and, then, you said, "To be honest with you" about that.

15 A. Yeah.

16 Q. So are you being honest with me now?

17 A. Yeah.

18 Q. I hope you're honest all the time.

19 A. Yeah, I'm honest. That's -- I mean, that's one of my
20 -- a term that I use a lot.

21 Q. But you've been convicted of assault and battery of a high and
22 aggravated nature, haven't you?

23 A. (No Response)

24 THE COURT: No, sir, answer the question.

25 A. Yes, I have.

1 Q. And you've been convicted of petit larceny, haven't you?

2 A. Yes, sir.

3 Q. You've been convicted of drug charges, haven't you?

4 A. Yes, sir.

5 Q. And another petit larceny, haven't you?

6 A. Yes, sir.

7 Q. Okay. Now, you said you stopped and you saw this altercation. You
8 claim it's the start of it. And, then, it lasts a few seconds?

9 A. I kind of believe.

10 Q. Huh?

11 A. Yes, sir.

12 Q. And, when you were driving off, you said the man you know to be Mr.
13 Wynn was walking off — look at the picture — walking this way (indicating)?

14 A. No, he was — he was ---

15 Q. Walking this way (indicating) towards Fremont Apartments?

16 (Brief Pause)

17 A. By that church.

18 Q. Toward the church?

19 A. Uh-huh (affirmative).

20 (Brief Pause)

21 Q. This church here (indicating)?

22 A. Yes.

23 Q. Okay.

24 MR. BULSA: And, for the record, that's depicted on State's

25 Exhibit Number 1.

1 (Brief Pause)

2 Q. (By Mr. Bulsa) All right. Did you look back and see anything
3 afterwards?

4 A. No, sir.

5 Q. Did you see any girls with him, any ladies?

6 A. No, sir.

7 Q. No?

8 A. (Shakes head negatively.)

9 Q. Okay. You say it was over in a matter of seconds?

10 A. Yes.

11 Q. All right.

12 (Brief Pause)

13 MR. BULSA: That's all have.

14 THE COURT: Anything?

15 MS. LYALL: No, Your Honor.

16 THE COURT: Sir, you may step down. Please, be careful.

17 (The witness complied with the request.)

18 THE COURT: Do you need him to stay/leave?

19 MS. LYALL: (No Response)

20 THE COURT: Go right outside, sir.

21 (The witness complied with the request.)

22 MS. LYALL: The Defense calls Marion Bridges.

23 THE COURT: Marion Bridges.

24 (Brief pause while witness is summoned.)

25 (The witness stepped forward to be sworn.)

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(Whereupon,

Marion Bridges

having been first duly sworn, testified as follows:)

THE COURT: Mr. Bridges, tell us who you are, please,
and spell your last name.

THE WITNESS: Marion Hill Bridges (phonetic), B-R-I-D-G-
E-S.

THE COURT: Thank you. Yes, ma'am?

MS. LYALL: Thank you, Your Honor.

Direct Examination by Ms. Lyall:

3:37 P.m.

Q. Mr. Bridges, who — you were up at the Money Tree on the day this
incident occurred in August of last year; is that true?

A. Yes, ma'am, I was.

Q. And who were you up there with?

A. I was up there with a sister-in-law of mines and my granddaughter.

Q. And who is your sister-in-law?

A. Joyce Ann Brewton.

Q. Okay. And we heard from her earlier today?

A. (No Response)

Q. Is that true?

A. Right.

Q. And she act — you drove her up there?

A. Yes, I did.

Q. But you waited in the car for her?

A. Yes, ma'am.

1 Q. So you were actually outside the whole time?

2 A. Right.

3 Q. And you had your special needs granddaughter in the car?

4 A. That's right.

5 Q. And what drew your attention — or did something draw your attention?

6 A. Yes, ma'am, it did.

7 Q. And what was that?

8 A. My granddaughter told me to look — look behind me. There were two
9 — two guys back there arguing.

10 Q. Okay.

11 A. And whenever I looked back there, I seen Mr. Goldsmith jump out of
12 the vehicle.

13 Q. Okay.

14 A. And slam on Roger and there was a little tumble then, so — I mean, I
15 never know the guy was hurt that serious, you know?

16 Q. Okay. Well, let's — let's slow down a bit.

17 A. Okay.

18 Q. Your special needs granddaughter told you to look over because two
19 guys were arguing?

20 A. Right.

21 Q. And you turned around. That's what drew your attention to these two
22 gentlemen?

23 A. That's correct.

24 Q. And, when you turned around and started paying attention, you said
25 you saw Mr. Goldsmith get out of his car ----

- 1 A. Right.
- 2 Q. --- and they were arguing?
- 3 A. Right.
- 4 Q. And, then, you saw him take a swing at Mr. Wynn?
- 5 A. Right.
- 6 Q. What happened after he took -- took a swing at Mr. Wynn?
- 7 A. They scuffled a little bit and Mr. Goldsmith got back in his vehicle and
- 8 slumped over to the right.
- 9 Q. Let's -- let's slow that down a -- a little bit. By scuffling and fighting,
- 10 do you mean they were punching at each other?
- 11 A. Yes, I mean, you know ---
- 12 Q. Scuffling?
- 13 A. Right.
- 14 Q. Wrestling?
- 15 A. Right.
- 16 Q. They got rolling around on the ground ---
- 17 A. I never seen them on the ground.
- 18 Q. Never saw them on the ground?
- 19 A. No, ma'am.
- 20 Q. But you did see them punching each other?
- 21 A. Yeah, I seen them get out in a fight. Roger maybe hollered or
- 22 something. And, as a matter of fact, I pulled over, you know, naturally with it going
- 23 on. And, he -- then, I mean, "He owes me some money and he took a swing on
- 24 me," you know.
- 25 Q. Okay. "He owe me some money and he took a swing ---

1 A. Yeah.

2 Q. --- on me," is what he said?

3 A. Yeah.

4 Q. And, then, you said Mr. Goldsmith got back in his car?

5 A. Yes, ma'am, he did.

6 Q. And it looked like he might be injured is what you said?

7 A. Right.

8 Q. He was slumped over?

9 A. Right.

10 Q. And, then, what happened?

11 A. Well, I -- I asked Roger, I said, "What's going on?" He said, "Man, I
12 just knocked the 'H' out of him," you know.

13 Q. Okay.

14 A. And so I -- I just pulled on off, you know. Like I say I didn't know the
15 guy was really that injured, you know.

16 Q. And before you pulled off, did -- did you all talk about calling 911 or
17 anything like that?

18 A. No, my sister-in-law done that, yeah.

19 Q. Okay. That was your sister-in-law?

20 A. Right.

21 Q. And you all talked about Curtis swinging on him, which you -- you
22 saw?

23 A. Yes.

24 Q. And did you all talk about anything esle?

25 A. No, ma'am.

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1 Q. What about telling him to stay?

2 A. Well, I did tell him, I said, "Don't walk off. I mean you got — you got a
3 right to stand your ground," you know. And so I guess he panicked or whatever. So
4 he was walking across the street so I went on about my business.

5 Q. So you told him to stay because he had a right to stand his ground?

6 A. Yes.

7 Q. I believe you also told me he — you told him, "Stay, you have a right to
8 defend yourself"?

9 A. You do.

10 Q. Okay. And so you feel like you saw the whole fist fight; maybe not the
11 whole argument,, but you feel like you saw the whole ---

12 A. Not — not the whole argument, but I seen the scuffle and I also seen
13 Mr. Goldsmith get back in his vehicle and slump over to the right.

14 Q. Okay.

15 A. Yeah.

16 Q. And would you characterize it as a fist fight between two middle-aged
17 men?

18 A. Yes, it was.

19 MS. LYALL: Okay. I don't think I have any other
20 questions at this time.

21 THE COURT: Thank you. Solicitor?

22 Cross Examination by Mr. Bulsa:

23 Q. You know him, don't you?

24 A. Yeah, I knew him through the years.

25 Q. How long have — how long do you all go back?

1 A. Probably, ten (10), 15 years off and on.

2 Q. And how old are you?

3 A. I'm 60 — 59 years old at this time.

4 Q. Okay. And, now, I didn't hear you tell us where you were positioned in
5 the parking lot when you say you saw this.

6 A. Sitting — sitting looking — looking in the door. And, then, my
7 granddaughter told me that they was back there arguing and I looked over my
8 shoulder like that (demonstrating), beside the trash bin. There's a trash bin sitting
9 there.

10 Q. And ---

11 **(Exhibit shown to the witness.)**

12 Q. Okay. On State's 1, where were you?

13 **(Brief Pause)**

14 A. Let's see, Magnolia Street is — is right in there and I was right at that
15 vehicle (phonetic).

16 Q. Let me put it on the big screen.

17 A. Okay.

18 **(Exhibit shown on overhead.)**

19 Q. State's 1 on the big projector. Turn around this way.

20 **(The witness complied with the request.)**

21 Q. Which road did you pull into the Money Tree off of?

22 A. Pulled off of what?

23 Q. Which road did you pull in off of, Church Street or Magnolia Street?

24 A. From Magnolia.

25 Q. Which direction had you come up Magnolia, toward the

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1 courthouse or away from the courthouse?

2 A. I come off of Church Street into Magnolia, in front of — in front of the
3 — of the — in front of the Money Tree.

4 Q. So you pulled off of Church?

5 A. I come around the building into the parking lot.

6 Q. I'm confused, around the building. This way (indicating)?

7 A. (No Response)

8 Q. Here's the Money Tree (indicating). Do you see that?

9 A. (Nods affirmatively).

10 Q. And this would be Church Street (indicating). And this would be
11 Magnolia Street (indicating).

12 A. That's right.

13 Q. So were you on Magnolia and pulled in here (indicating)?

14 A. Right. I come off — I come off of Church Street into Magnolia,
15 between the front of the — the Money Tree, yeah.

16 Q. Uh-huh (affirmative). So, which of these parking lot entrances did you
17 turn into?

18 A. I come into the parking lot right there at the Money Tree.

19 Q. This one right here (indicating), off of Magnolia Street?

20 A. Uh-huh (affirmative), coming around in front of the building.

21 Q. Right here (indicating)?

22 A. Right.

23 Q. This way (indicating)?

24 A. Yeah.

25 Q. Okay. You — you say you had to turn around in your car

1 to see this, okay? That's why I'm trying to get this jury to understand where you
2 were actually located in that parking lot, sir.

3 (Exhibit shown on overhead.)

4 Q. Here's a closer picture, State's Number 2. So you didn't go to the
5 police and tell them what you knew?

6 A. I didn't do what?

7 Q. You didn't go to the police and tell them what you knew, did you?

8 A. No, I did not report it.

9 Q. Okay. So where would you have been parked in this parking lot?

10 A. That's my vehicle right there (indicating).

11 Q. No, it's not. This was taken off the computer. Here's the dumpster
12 (indicating), okay? Where were you in relation to the dumpster?

13 A. Right across from the dumpster.

14 Q. Over here (indicating)?

15 A. Yeah, right there in front of the door going into the — into the building
16 there.

17 Q. Up this side (indicating)?

18 A. (No Response)

19 Q. So you got the Money Tree building and I don't what this business
20 is right here (indicating). Do you know what it is?

21 A. Know what, what is?

22 Q. The one right next to the Money Tree building?

23 A. Well, you got the motel and, then, you've got the fire station behind the
24 Money Tree, the old fire station behind the Money Tree.

25 Q. Uh-huh (affirmative). If I'm standing in the parking lot looking

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1

at the Money Tree door ----

2

A. Right.

3

Q. ---- going into the left ----

4

A. Right.

5

Q. ---- what is that building?

6

A. The building to the left?

7

Q. Yes, sir, this one right here (indicating)?

8

(Brief Pause)

9

A. The only building — the building to the left would be — I'm saying like

10

that right there would be the church across Magnolia.

11

Q. Okay.

12

A. Right.

13

Q. So were you towards — closer to Church Street in the parking lot or

14

closer to Magnolia?

15

A. No, I was closer to Magnolia.

16

Q. You were closer to Magnolia?

17

A. Right.

18

Q. Looking at the building?

19

A. Right.

20

Q. Okay. And where was your granddaughter?

21

A. She was sitting in the back seat behind me.

22

Q. In the back seat?

23

A. Right.

24

Q. Okay. And what kind of car were you in?

25

A. It's an Explorer, a Ford Explorer.

1 Q. A Ford Explorer?

2 A. Right.

3 Q. And Ms. Brewton, then, left and went inside?

4 A. She was in the store.

5 Q. Okay. Do you recall anything going on when she got out to go inside?

6 A. No, it didn't. When she got out, wasn't nothing going on.

7 Q. You didn't see anything ---

8 A. As a matter of fact, Ms. Brewton — Ms. Brewton didn't even see it.

9 Ms. Brewton was in the store and, when she come out, I told her what had
10 happened.

11 And she told me, she said, "Look, man, that man hurt." And she
12 picked the phone up to called back in the store and told them, said "I think
13 somebody hurt in the parking lot."

14 Q. Uh-huh (affirmative).

15 A. And they called the detective, police or whoever, you know.

16 So I went on — I had to get home so I went on about my business.

17 Q. And you're telling this jury that all this happened while Ms. Brewton
18 was in the Money Tree?

19 A. Yeah.

20 Q. How long did all of this take place?

21 A. How long did it take place?

22 Q. Yes, sir.

23 A. I guess she probably been in there for 25 — 25, 30 minutes.

24 Q. Okay.

25 (Brief Pause)

1 Q. Ms. Brewton was in the store 25 to 30 minutes?

2 A. Yeah, she went in to get some money or — or something; I mean, pay
3 her rent or something. I've done forgot what it was, you know.

4 Q. Okay. And, then, how long did this altercation that you claim you
5 witnessed occur?

6 A. Well, I guess, when she come out and got in, I pulled up. She was in
7 the truck and I pulled up and asked Roger what was going on. And he told me what
8 was happening.

9 And I said, "Well, you know, I just don't — you know, I seen the — I
10 said "well..." and, then, my sister-in-law said, "Somebody's hurt. I'm going to call
11 back in the store. So I — I went on about my business.

12 As a matter of fact, I went to — I brought her back up there to see Mr.
13 Porter. When she called me and asked me to bring her back, I brought her back up
14 there.

15 Q. You're telling me you brought Ms. Brewton ----

16 A. Yeah.

17 Q. ---- to talk to Mr. Porter about ----

18 A. Yeah.

19 Q. ---- an incident that she didn't even see?

20 A. Yeah. Yeah, she — she called saying Mr. Porter might call her on her
21 phone and ask her to come back up there. She didn't have a vehicle at that time so
22 I drove her back up there. She only lives six, seven houses from me. So I carried
23 her back up there.

24 Q. Well, we appreciate you doing that, but you're telling this jury that she
25 didn't even see anything.

1 A. Who told you that?

2 Q. Didn't you say she didn't ----

3 A. No, she wasn't out there.

4 Q. Okay.

5 A. Yeah, she was in the store when it happened.

6 Q. All right. Well why, when you brought her up to the police department,
7 why didn't you walk in there and say, "Hey, she didn't see it, I did"?

8 A. It — that wasn't for me to do. It wasn't my problem.

9 Q. In fact, you knew Roger.

10 A. Yeah, I know Roger, but Roger wasn't there. I mean, if it had been Mr.
11 Goldsmith, I mean, I — I would have done the same thing that I'm up here helping
12 him. I would have told the same thing for Mr. Goldsmith, you know.

13 Q. Do you know Mr. Goldsmith?

14 A. I didn't know him, but I would have told — done this right here.

15 Q. You didn't know him?

16 A. Huh?

17 Q. You didn't know him from Adam, did you?

18 A. No, I didn't know him from Adam, but I would have done this for him
19 the same way, however you put it, you know. I'd told what I seen, I'd told the
20 detective; I mean, you, whatever, I seen there.

21 Q. Well, you had that opportunity back in 2014 [sic], didn't you?

22 A. 2014?

23 Q. 2013?

24 A. What?

25 Q. A year ago, when you brought Ms. Brewton into City Hall, you

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1 didn't go in there and tell them.

2 A. Yeah, I — I brought her to City Hall. I didn't go to City Hall.

3 Q. Okay.

4 A. I dropped her off at City Hall.

5 Q. Okay. Mr. Bridges, isn't it true you've been convicted of two counts of
6 drugs offenses in 2011?

7 A. Yeah, I was.

8 Q. Okay.

9 MR. BULSA: Thank you, sir.

10 THE COURT: Anything?

11 Redirect Examination by Ms. Lyall:

12 Q. You said you didn't call the police because you thought he had been
13 drinking. You didn't know he was dead; is that true?

14 A. No, I sure didn't.

15 MS. LYALL: Okay. Nothing else.

16 THE COURT: Thank you, sir. You may step down. Please, be
17 careful.

18 (The witness complied with the request.)

19 (Off-the-Record Comments)

20 THE COURT: Yes, ma'am?

21 MS. LYALL: Your Honor, may we approach a moment?

22 THE COURT: Certainly.

23 (Whereupon, a bench conference was had with both attorneys
24 present.)

25 THE COURT: All right. Mr. Foreman, ladies and gentlemen

1 of the jury, I've been asked to take about a five- or seven-minute, just a very 199
2 short recess, for a little administrative matter that the lawyers need to attend
3 to. So, Mr. Foreman, I'm going to ask you to take the jury out.

4 It'll be a very short -- I'm told it'll be a very short break here and we'll
5 have you back. Please, do not begin to deliberate. You're not at the end.
6 Thank you.

7 (Whereupon, the jury exited the courtroom at 3:54 p.m.)

8 THE COURT: Okay. You need to ---

9 MS. LYALL: Just a moment in the jail room.

10 THE COURT: Okay.

11 MS. LYALL: Thanks.

12 THE COURT: I'm going to stay on the bench.

13 (Whereupon, a brief recess was taken while Ms. Lyall speaks with
14 the Defendant.)

15 THE COURT: Yes, ma'am?

16 (Off-the-Record Comments)

17 MS. LYALL: We are done with our defenses.

18 He is not going to testify.

19 THE COURT: Okay. Do I need to -- do you want to put all that
20 on the record?

21 MS. LYALL: Yes, Your Honor. You're going to need to
22 inquire ----

23 THE COURT: I will.

24 MS. LYALL: ---- on the record.

25 THE COURT: I will.

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1 (Brief Pause)

2 THE COURT: Mr. Wynn, if you would, stand and be sworn,
3 please?

4 (The witness complied with the request.)

5 (Whereupon,

6 Roderick Wynn

7 having been first duly sworn, testified as follows:)

8 THE COURT: Mr. Wynn, I'm going to ask you to speak loudly, in
9 a clear and audible voice. This lady is a court reporter, as you well know, and
10 she's taking down what we say. So I'm going to ask you to be clear in your
11 answers.

12 At this time, I'm going to explain to you certain rights that you have. If
13 you do not understand anything I say, please, let me know.

14 If you want me to explain anything in detail, I will do so. And also, sir,
15 at any time, if you wish to speak with your lawyer, I will stop and allow you to
16 speak to your lawyer; do you understand that?

17 MR. WYNN: Yes, sir.

18 THE COURT: We have reached the stage in this trial where
19 you may present your defense. You have a right to claim the protections
20 given to you by the Fifth Amendment to the Constitution of the United States.
21 And this Amendment states in part: "No person shall be compelled, in any
22 criminal case, to be a witness against himself."

23 Also, you have the right to claim the protections given to you by Article
24 I, Section (12) of the South Carolina Constitution which states in part: "No
25 person shall be compelled, in any criminal case, to be a witness

1 against himself.”

2 This means that you cannot be required to testify in this case. You
3 have the right to testify, on your own behalf, but no one can make you testify.
4 This is a personal right and no one can waive this right except you.

5 If you decide to testify, you will be subject to the same rules that
6 govern other witnesses. And you may be examined and cross examined on
7 any relevant issue in this case.

8 In addition, if you have any convictions involving dishonesty or false
9 statements or for crimes punishable by imprisonment for more than one year,
10 and this Court determines that the probative value of admitting this evidence
11 outweighs its prejudicial effect to you, the Solicitor will be able to introduce
12 your record to attack your credibility.

13 If you decide to testify, this decision on your part must be freely,
14 intelligently, and voluntarily made with knowledge of the protections given to
15 you by the Constitutions of the United States and the State of South Carolina,
16 and the consequences of your decision to testify.

17 If you decide not to testify, I will instruct the jurors that they
18 cannot give the fact that you did not testify any consideration whatsoever.
19 And that there is to be absolutely no prejudice to you because you did not
20 testify.

21 It is left entirely up to you whether or not you testify. You may speak
22 with your lawyer, your family and friends, or anyone else, but the final
23 decision must be left entirely up to you.

24 Sir, do you understand what I have explained?

25 **MR. WYNN:** Yes, sir.

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- 1 **THE COURT:** Do you have any questions about what I have
2 explained?
- 3 **MR. WYNN:** No, sir.
- 4 **THE COURT:** Have you discussed with your lawyer whether you
5 should or should not testify?
- 6 **MR. WYNN:** Yes, sir, I have.
- 7 **THE COURT:** Do you wish to -- to talk with your lawyer
8 anymore?
- 9 **MR. WYNN:** No, sir.
- 10 **THE COURT:** Do you wish to testify?
- 11 **MR. WYNN:** No, sir.
- 12 **THE COURT:** Do you voluntarily, intelligently, and freely waive
13 your right to testify?
- 14 **MR. WYNN:** Yes, sir, I do.
- 15 **THE COURT:** Have you had plenty of time to speak with your
16 lawyer about this matter?
- 17 **MR. WYNN:** Yes, sir, I have.
- 18 **THE COURT:** Has she answered all of your questions?
- 19 **MR. WYNN:** Yes, sir, she has.
- 20 **THE COURT:** Have you understood all the answers?
- 21 **MR. WYNN:** Everything she said, sir.
- 22 **THE COURT:** Are you completely satisfied with her legal
23 representation of you up to this point?
- 24 **MR. WYNN:** Yes, sir, I am.
- 25 **THE COURT:** And, again, sir, the decision is yours not to testify?

1 MR. WYNN: Yes, sir.

2 THE COURT: All right. Thank you, sir. You may be seated.

3 (The witness complied with the request.)

4 THE COURT: Yes, ma'am, Defense rests?

5 MS. LYALL: The Defense rests, Your Honor.

6 THE COURT: All right. For planning purposes here, ladies and
7 gentlemen, I think I'm going to call the jury back, release them for the day,
8 and have them return at 9:00 tomorrow.

9 My law clerk has already worked on a jury charge. If you want to talk
10 about that a little bit this afternoon, or if you want to think about it overnight
11 and email something to her, that's fine.

12 But I would love for us to meet in the morning, 8:00, 8:15 or something
13 like that about the jury charge. So, when the jury gets here, I'd like to move
14 right into closing and charging. Sound good?

15 MR. BULSA: If we could just see what you've got?

16 THE COURT: Yeah, you can. Let's get the jury back in so I can
17 release them for the day. We can go back in chambers or we can do it right
18 here ----

19 MR. BULSA: Yes, sir.

20 THE COURT: ---- after we release everybody.

21 (Off-the-Record Comments)

22 (Whereupon, the jury was summoned and entered the courtroom
23 at 4:03 p.m.)

24 THE COURT: Mr. Foreman and ladies and gentlemen of the jury,
25 the — the State rested previously. The Defense has now rested its case,

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1 which means that we are now at the end of the trial, at the end — ended all
2 the testimony in this trial.

3 So, mechanically, there will be no more testimony put up for your
4 consideration. It's a little after 4:00 p.m. at this point, we lawyers — the judge
5 and the lawyers have a — have a couple of housekeeping matters that we'll
6 have to take care of and get ready for the next stage, which is called the
7 closing arguments and the charge on the — on the law, which will be coming
8 to you.

9 Also, the lawyers have to review all of the exhibits and make sure
10 everything is accounted for up here. Quite honestly, that takes about an hour
11 to an hour and fifteen minutes.

12 So what we're going to do is, we are going to recess you; not us, but
13 we're going to recess you for the day since it is a little after 4:00 p.m. and ask
14 for you to be back tomorrow morning 8:50, 8:52, 8:55, whatever it might be.
15 But we intend to begin at 9:00 tomorrow morning.

16 Now, when I say we intend to begin at 9:00 tomorrow morning, that
17 would mean that our work will be done with the mechanical things that we
18 have to do.

19 So we would expect that you would begin — you would begin listening
20 to the closing arguments of the lawyers, if any; they're not required to make
21 them, but they generally do. And, then, I am required to give you the charge
22 on the law.

23 And I — and we all anticipate being read to go by 9 o'clock tomorrow
24 morning. That way, as soon as you get here, we can go to work with that.

25 With that, I remind you, you are charged not to read any

1 news account of this trial whatsoever. I don't know, if there will be a news
2 account of it or not, but, if there is, please, have your loved one, family
3 member, or friend to place that aside and you can read after the end of the
4 trial is over.

5 Do not begin deliberating this. Do not try to learn anything outside of
6 this courtroom. Remember my — my previous instructions; all — everything
7 must come from inside the courtroom and nothing in news accounts or
8 internet.

9 Do not begin to deliberate within your mind, much less with anybody
10 else. And with that, Mr. Foreman, if you — where do you want them released
11 from, the jury room?

12 **BAILIFF:** Yes, sir.

13 **THE COURT:** If you'll go with the bailiff to the jury room and be
14 released from there. And, please, please, be back there timely in the
15 morning and we'll start at 9 o'clock sharp. Thank you.

16 **(Whereupon, the jury was excused from the evening and**
17 **exited at 4:06 p.m.)**

18 **THE COURT:** Anything from the State or the Defense regarding
19 the jury?

20 **MR. BULSA:** No, sir.

21 **MS. LYALL:** No, Your Honor.

22 **THE COURT:** Okay. We'll be in recess until 9:00 tomorrow
23 morning.

24 **(Off-the-Record Comments)**

25 **(Whereupon, Court was adjourned at 4:07 p.m. and**

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reconvened on October 28, 2014, at 9:03 a.m.)

October 28, 2014

9:03 A.m.

(Brief Pause)

(Off-the-Record Comments)

THE COURT: Okay. There's — there's a couple of things in here that I'd like — there's a punishment paragraph I'm not going to read.

MS. LYALL: Okay.

THE COURT: Yeah, and there's a paragraph about me giving — sometimes I give a copy to the jury for their deliberation; I'm not going to do that ----

MS. LYALL: Okay.

THE COURT: ---- in this case, a couple of things like that. But it's substantially what I'm going to read though.

(Draft of jury charge given to Counsel for review.)

(Off-the-Record Comments)

(Brief pause while Counsel review proposed jury charge.)

MS. LYALL: Your Honor, would you like me to go ahead with my motions? What — what are we doing right now?

THE COURT: Yeah, I was just giving you some time there if you were...

MS. LYALL: He's going to read these.

THE COURT: Okay. All right. Yes, ma'am?

(Off-the-Record Comments)

THE COURT: Okay. We're ready. Yes, ma'am.

MS. LYALL: Your Honor, at this time, I have a motion

1 for a directed verdict in this case.

2 Mr. Wynn is only charged with murder in this case. And murder —
3 specifically, the indictment in this case says:

4 The Defendant is charged with murder, specifically that
5 Roderick Germaine Wynn did, in Spartanburg County, on or about
6 August 14th of 2013, kill Curtis Edward Goldsmith with malice
7 aforethought, either expressed or implied, in that he beat the victim
8 about the head and body resulting in the death of the victim, in
9 violation of the Code of Laws of South Carolina.

10 You've now heard all of the testimony in this case from the witnesses;
11 specifically from Freddie Young, Joyce Brewton, Kerri Blanchard, Katina
12 Price, Matthew Teamer, and Marion Bridges.

13 Each one of the people in this case stated that — in their different
14 ways, that it was a simple fight between two middle-aged men; that none of
15 them thought was a big deal.

16 They all said that Mister — the victim is the one that threw the first
17 punch. And that Mr. Wynn did throw punches back, but they were engaged
18 in a fight.

19 Testimony was also brought out that Mr. Goldsmith was actually in the
20 process of throwing punches and Mr. Wynn grabbed him by the legs to get
21 him to stop throwing punches. And that, at that point, Mr. Goldsmith fell
22 backwards onto a trash can.

23 That is not the intentional killing of another person, which is a required
24 element of murder.

25 This also says that he died by beating the victim about the head

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1 and body. You specifically heard from Dr. Wren, who stated that this
2 kind of injury cannot be obtained by punches.

3 So Dr. Wren, their own witness, stated that it was impossible for this to
4 happen by what they have charged him with. They have specifically charged
5 him with an intentional beating about the head and body, which goes strictly
6 against what their own pathologist said; that, that is impossible, not how he
7 died.

8 Dr. Wren stated that you can get this from falling into something. You
9 can get this from falling four (4) to five (5) feet; that it doesn't take a very hard
10 hit to the head, but you 100% cannot get this from a punch to the head.

11 **(Brief Pause)**

12 **MS. LYALL:** Mutual fighting, self defense, being hit and, then,
13 hitting someone back, any of these things that could be obtained from what
14 the testimony was heard from every single witness does not amount to
15 murder in this case.

16 There's not a single person that testified that he intentionally hit this
17 man and caused his death.

18 Every single person testified that it was either him hitting this guy back
19 because he hit him first or, if you'd like to infer that they got into a mutual
20 fight, that he was grabbing his legs to keep from the guy punching him at the
21 time and that the guy fell back, not that Mr. Wynn took him and threw him into
22 the trash can, which is an intentional act;

23 Not that he beat him in the head which caused his death. None of
24 those things, which are intentional acts, which would be required in murder.

25 This is at most a manslaughter. And that is not what the State

1 chose to charge him with. So, at this time, I would ask for a directed verdict.

2 Even, in the light most favorable to the State, this is not a murder and I
3 would ask for a directed verdict at this time.

4 **THE COURT:** Mr. Bulsa?

5 **MR. BULSA:** Well, one, Your Honor, murder is not the
6 intentional killing of a person. It's the killing of a — a person, but it does not
7 have to be intentional. It can be an unintentional killing if it's accompanied by
8 malice aforethought.

9 And clearly from the facts in this case malice can be inferred by the
10 actions of the Defendant. The jury can believe that he went there with the
11 intention of confronting the — the victim and getting his money no matter
12 what cause (phonetic) it took him.

13 Your Honor, the — the victim died as — as a result of the beating he
14 took from the Defendant, whether it was by his own hand or by an object that
15 he threw him into.

16 Clearly, the jury could find that the Defendant murdered Mr. Goldsmith.
17 And that's a factual issue for the jury.

18 **THE COURT:** Yes, sir. I — I agree with that. The motion is
19 denied. I don't know whether or not picking him up, as the witness testified —
20 I think Mr. Freddie Young testified that picking him up or attacked him around
21 the knees or legs and picking him up is what he said, whether — whether that
22 became a defensive or a — or a offensive move, but that's a matter for the
23 jury to decide.

24 Anything else?

25 **MS. LYALL:** No, Your Honor.

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1 THE COURT: Okay.

2 (Off-the-Record Comments)

3 (Brief Pause)

4 THE COURT: Okay. All right. We're ready.

5 (Whereupon, the jury was summoned and entered the courtroom at
6 9:21 a.m.)

7 THE COURT: Good morning, Mr. Foreman and ladies and
8 gentlemen. Any issues for the jury before we proceed?

9 MR. JACKSON: No, sir.

10 THE COURT: All right. We are now ready to go to closing
11 arguments. Pay — please, pay close attention to the lawyers. Yes, ma'am?

12 (Ms. Lyall's closing argument began at 9:22 a.m.)

13 MS. LYALL: Good morning. Again, my name is Mary Stuart
14 Lyall and I appreciate your attentiveness in this matter for the last day.

15 As I spoke to you yesterday morning, I told you that, as you listened
16 to the witnesses in the trial, that there wouldn't be much conflict in what they
17 were saying. And I think that was true as you heard from each of them.

18 First you heard from Freddie Young. He testified that he heard
19 someone walking up the street. He didn't know who it was; he still doesn't
20 know who it was. He just heard a woman talking to someone saying, "Let it
21 go. Let it go."

22 And later he assumed — he still doesn't know who it was, but he
23 assumes it might have been Mr. Wynn because something happened later.
24 But he, at that time, went back to his house, on the other side of the motel, he
25 got ready, he got on his bike, and he came around Asheville Highway

1 side, and he saw a fight happening.

2 He stated, when he pulled up, there was already a fight happening.

3 He didn't see what it was — he didn't see why it started. He didn't see who
4 started it, but he saw two men fighting.

5 He said nothing out of the ordinary. There was nothing crazy about it.
6 It was just two men taking some punches at each other.

7 He said, and I quote, "it was a little incident." He didn't call the police
8 because he said, "It was just two men fighting. There was nothing big about
9 it. I — I didn't think anything was going to happen. It — it was just normal."

10 So he went on his way. He said he did talk to the men, before he went
11 on his way, and tried to get them to stop.

12 But he didn't see a need for an ambulance or anything like that
13 because they were just throwing a few punches. And so he left and went on
14 his way. But, before he did, he did see them breaking up.

15 Next you heard from Joyce Brewton. Excuse my language, but all she
16 said was, "Damn, they fighting." She was in the store when it started. She
17 didn't see how it started. But, when she came out of the store, she just said
18 she saw two middle-aged men fighting, just throwing a few punches.

19 Again, she said nothing out of the ordinary. It wasn't serious, nothing
20 serious happening. But, again, "Damn, they fighting." And she went on her
21 way.

22 She said she called out to them and said, "Maybe you should call 911."
23 And they did. She didn't want to get involved because she didn't think it was
24 that serious. So she left.

25 Next you heard from Ms. Blanchard. She didn't see anything.

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1 She didn't hear anything because she wasn't there.

2 But she did meet up with Mr. Wynn afterwards. Mr. Wynn told her,
3 "Curtis hit me. I hit him back. He's not moving; come help me."

4 They went up to the Money Tree. They tried to see if he was okay.
5 You heard her testify they checked his pulse. They called out to him. They
6 messed with him. They both decided to call 911.

7 They sat there and waited. They messed with him a little more, but
8 they're not medical personnel. They were trying to see if he was okay.

9 Kerri said they just sat there and waited for a little while. And, at that
10 point, Mr. Wynn panicked and he left.

11 911 was called again. Ms. Blanchard said, at that point, Ms. Price
12 joined her. She said Ms. Price was across the street at this time, was not
13 present when any of his happened, couldn't have seen anything and couldn't
14 have heard anything.

15 She wasn't even on the same side of the street as the Money
16 Tree. She was down the street and across the street with another woman.

17 You did hear from Ms. Price. She said she heard a few things; she
18 couldn't hear much, but she did hear. But we've already heard from Ms.
19 Blanchard who said where she was.

20 She couldn't have heard anything. She didn't even show up until the
21 second 911 call was made and the police and paramedics were almost there.

22 She admitted to you herself she didn't even come on scene until Mr.
23 Wynn was already gone. How is she supposed to testify to anything?

24 (Brief Pause)

25 MS. LYALL: You heard from Mr. Teamer, Matthew Teamer.

1 He testified that he witnessed this whole alt -- altercation. Now, he was in a 213
2 car, so he could not hear what it was about, but he saw Mr. Goldsmith throw
3 the first punch. He saw Mr. Goldsmith punch Mr. Wynn and, then, Mr. Wynn
4 punched him back defending himself.

5 And, then, they ended up in I believe he said a tussle, wrestling. He
6 used a couple of different words. But he said it looked like two old men
7 fighting; nothing serious.

8 He laughed about what they looked like. He said it wasn't much of a
9 fight; two old man just pushing each other around.

10 He didn't even stop. He said he paused because it looked like
11 something was going on. So he looked over, saw what he thought was two
12 old men trying to fight.

13 And so he looked over and looked at it for a little while and, then, just
14 kept going. He said he would have stopped if he thought something was
15 serious and would have gotten in the middle of it or called 911. But it was so
16 ridiculous that he didn't think he needed to do anything.

17 You also heard from Marion Bridges. Marion Bridges told you that he
18 was sitting in his car with his special needs granddaughter. He had driven
19 Ms. Brewton, who you also heard from, up to the store.

20 While she was in there, paying her bills — she had to take her bills up
21 there as you heard. They would give checks to her, then, they would send off
22 the checks. So he had to sit in his car and wait for her.

23 While he was waiting for her, his special needs granddaughter said,
24 "Look, look." And he looked over and two men were verbally arguing.

25 A few seconds later, he said Mr. Goldsmith punched Mr.

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1 Wynn, punched him in the face.

2 And, after Mr. Goldsmith punched Mr. Wynn in the face, they started
3 fighting. If someone punches you in the face, you have the right to defend
4 yourself.

5 You heard from Marion Bridges that he sat there and watched them
6 fight for a few minutes before his sister-in-law, Joyce Brewton, came out.
7 And he sat there and told Mr. Wynn, "You have the right to defend yourself.
8 Stand your ground," because that's what he saw.

9 He saw Mr. Goldsmith take a swing at Mr. Wynn. And he saw Mr.
10 Wynn defending himself. So he told Mr. Wynn, "Stand your ground. You
11 have the right to defend yourself. Don't leave this parking lot scared.

12 "I saw what you did. Stand your ground. You have the right to defend
13 yourself in this situation."

14 You heard him testify to that. He saw the whole thing as he was sitting
15 there for Ms. Brewton to come out.

16 Now, you heard from Investigator Porter, who did this whole
17 investigation. He heard him say that, when he arrested Mr. Wynn, Mr. Wynn
18 said, "Please get the tape. Please get the tape. It will show what happened
19 in this circumstance. It'll show everything."

20 You saw the pictures, which you'll have back in evidence with you. It
21 shows there was a video camera, a video camera pointing directly to where
22 this happened. Now, unfortunately, they have a video camera, but it's not in
23 operable condition.

24 Mr. Wynn hoped it had been. He was begging for them to get that
25 tape because he was hoping there was a tape of what happened to show

1 that he was defending himself.

2 He was punched first as you heard from witnesses. He was punching
3 back when someone punched him in the face.

4 You also heard that he had no injuries on his hands. He wasn't
5 beating someone mer — mercifully (phonetic). He didn't have cuts on his
6 knuckles where he was beating someone in the face.

7 You also heard from the pathologist that the victim didn't have any
8 other injuries. He didn't have a broken nose, a broken face. He just had a
9 few scratches on his arms and his legs where you heard witnesses say these
10 two men rolled on the floor, cuffed (phonetic) up with each other; you know,
11 tumbling, fighting.

12 There were no injuries to his hands or his face either. That shows
13 how not serious this fight was. Neither man had injuries to their hands.
14 Neither man had injuries to their face. And all the witnesses told you how not
15 serious this fight actually was.

16 You did hear from Freddie Young when he said, "I saw one part of the
17 fight. I saw Mr. Goldsmith punch, punch, punching Mr. Wynn in the face.
18 And Mr. Wynn grabbed him by his knees to try and stop him. And Mr.
19 Goldsmith fell backwards. And I think he hit his head on that dumpster."

20 (Brief Pause)

21 MS. LYALL: You have a right to defend yourself. If someone is
22 punching you in the face, it is a normal reaction and a legal reaction to
23 defend yourself against being punched in the face.

24 Mr. Wynn grabbed this man by the knees to try to take him to the
25 ground so he would stop punching him in the face. He did not take

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1 his head and slam it into a trash can.

2 He did not take his head and slam it into the ground.

3 As he was being punched in the face by this man, he grabbed him by
4 the knees to try and attempt to get him to stop punching him in the face.
5 And, unfortunately, Mr. Goldsmith fell backward and, because they were
6 fighting near a trash can, he hit his head on that trash can.

7 You heard from the State's witness, the pathologist in this case, Dr.
8 Wren. I know you learned a lot about brain injury in this case and a lot of it
9 had nothing to do with this case, but what did have to do with this case was
10 the fact that this was a subdural hemorrhage.

11 He says, to get a subdural hemorrhage, it doesn't take a very hard hit
12 to the head. It doesn't take a very hard blow.

13 I think one of the examples he used was some people trip and fall and
14 they die. Some people trip and fall and they get back up. That's what a
15 subdural hemorrhage is.

16 It's a very unfortunate way to die. He said some people are more
17 susceptible to this kind of death. He said you can get this from falling four (4)
18 to five (5) feet. It's a very, very small distance to fall to die.

19 He said that it's from blunt force to the head with a flat object, which
20 would be the trash can. He said it could be from falling into something.
21 However, he said you cannot get this from a punch to the head; impossible.

22 It would have to be from falling into something or being hit with
23 something hard. But it's not possible for this death to occur from being
24 punched in the head. The only logical thing to have happened in this case is
25 exactly what the witnesses testified to.

1 Dr. Wren also testified there were no other injuries to the body
2 except the injuries that were occurred from them putting a trach in him. He
3 said there was no — nothing on his clothes other than some paint stains, no
4 blood. And nothing else was injured on him except that internal injury, that
5 blow on this side of his head (indicating).

6 He didn't have a broken nose. In fact, nothing on him was fractured.
7 Neither of these men, according to any evidence, were injured in this fight.
8 It's — everyone has said it was a simple fist fight and unfortunately he fell and
9 hit his head.

10 Not a single person has said that he intentionally hurt this man. What
11 people have said is that Mr. Goldsmith punched him first and he punched him
12 back. And they continued to fight until the fight was over.

13 Mr. Goldsmith got back up, got in his car, and, then, the — his head
14 injury caused him to slump over and he died later en route to the hospital.

15 This is a very, very unfortunate accident. But it is not something that
16 this man (indicating) intended to do. And it's not something this man started.

17 He was punched by Mr. Goldsmith. And, unfortunately, he had to
18 return these punches and the fight continued until both men walked away.

19 To be convicted of murder in this state, it has to be that Mr. Wynn
20 killed another person with malice aforethought. Malice is hatred, ill will, or
21 hostility towards another person.

22 It's the intentional doing of a wrongful act without just cause or excuse
23 and with an intent to inflict an injury or under circumstances that the law will
24 infer an evil intent.

25 He certainly did not intend to cause this act. You've heard that

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1 from all of the witnesses.

2 (Brief Pause)

3 MS. LYALL: You will also hear from the Judge instructions for
4 what's called voluntary manslaughter. Voluntary manslaughter is the unlawful
5 killing of another without malice, expressed or implied, in the sudden heat of
6 passion upon suff -- sufficient legal provocation.

7 The State must prove that the Defendant unlawfully killed another
8 without malice in sudden heat of passion based on sufficient legal
9 provocation.

10 Heat of passion alone will not suffice. Both heat of passion and legal
11 provocation must be present. "Heat of passion must be such as would
12 nationally disturb the sway of reason and render the mind of an ordinary
13 person incapable of cool reflection."

14 What all of this says is that he basically lost his mind and caused the
15 death in the middle of this fight. That is not what anyone has said. Everyone
16 has said that a man hit him first and he continued to punch back, while he
17 was being punched.

18 And, then, as he's being punched in the face, he grabs the guy by the
19 knees to stop being punched in the face. And the guy falls back and hits his
20 head.

21 That is not heat of passion killing. If it was a heat of passion killing,
22 you would have him, in the middle of the fight, slamming the guy's head into
23 the trash can. That would mean he was provoked enough to actually kill him.

24 That is not what we have here. Heat of passion killing is not a guy
25 falling back and hitting his head on a trash can.

Heat of passion would be this man actually doing something to kill him, taking him and slamming him, hitting him in the head until he died, punching him until his skull fractured. That is not what we have here.

You'll also get an instruction on involuntary manslaughter. Involuntary manslaughter is the unintentional killing of another without malice while engaged in an unlawful activity that is not a felony and does not naturally tend to cause death or great bodily harm.

In this case, yes, they were involved in an unlawful activity if you believe that they were fighting each other because they agreed to. This would have been — if you believe they agreed to fight each other, this would have been an assault and battery.

And, second, fighting each other, and an assault and battery, would not naturally tend to cause the death of another. When you go out and decide to fight another person, two men just punching each other, that does not naturally tend to cause the death of another.

(Brief Pause)

MS. LYALL: So, on first look, you would think that involuntary manslaughter might fit this case. It's the only one that might fit this case. However, you have to consider that he came to this situation and yes, they were speaking about money.

They were arguing. Everyone has said that they were arguing. That is not against the law. People have arguments every single day. People have arguments — I would assume everyone in this room as had argument this week of some sort.

Having an argument with someone does not mean they can

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1 punch you in the face. If someone punches you in the face, you have the
2 right, in South Carolina, to meet force with force.

3 You will be given an instruction on self-defense. Self-defense is a
4 complete defense to every single charge that you will be given.

5 If you find that he acted in self-defense, you will have to find him not
6 guilty of every single charge.

7 You will have to find that he is not — he is without fault in bringing
8 about the situation. What that means is he did not start the fight.

9 You have heard from every single person that saw the beginning of the
10 fight that Mr. Goldsmith threw the first punch. That would mean he did not
11 start the fight. If he did not start the fight, he can meet force with the same
12 force.

13 And everyone has testified that he did not use any more force than Mr.
14 Goldsmith did. Everyone that has testified has said Mr. Goldsmith threw the
15 first punch, and, then, he punched back and, then, it just kept going.

16 Mr. Goldsmith punched him. And you can continue with force until
17 force is no longer needed.

18 You certainly don't have to stand there and get punched in the face.
19 And you certainly do not have to — if it is not reasonable to do so, you do not
20 have to run away.

21 We would not have this situation if, once Mr. Goldsmith had punched
22 Mr. Wynn, and Mr. Wynn had punched him back, if Mr. Goldsmith had just
23 curled up in a ball or something and he was punching back.

24 That's not the situation we have. You've heard from everyone
25 that Mr. Goldsmith continued punching Mr. Wynn. He had the right

1 to continue punching until the fight was over.

2 (Brief Pause)

3 MS. LYALL: You will have the full self-defense instruction when
4 the judge gives it to you. And there is no burden upon the Defendant to
5 prove self-defense.

6 All of the witnesses that have testified have testified that the other guy
7 threw the first punch. That is enough to prove that he was acting in self-
8 defense.

9 Another thing that you will have to consider is that one has a right to
10 use force in repelling another person's force; a punch for a punch, or in
11 protecting oneself.

12 And one cannot be required to make a nice calculation as to the
13 degree or quantity or amount of force which may be necessary for one's
14 complete protection from serious bodily injury or death.

15 "One may continue to use force until such time one is safe from
16 danger." That's what I've been talking about this whole time. Until the fight
17 was over, he could continue to use the same amount of force, punching, that
18 was used.

19 (Brief Pause)

20 MS. LYALL: I know, at the beginning of this, I told you that we
21 would not disagree on much because all of the witnesses would pretty much
22 say the same thing, which I think you see they did.

23 But what we do disagree on is the fact that Mr. Wynn is not guilty
24 of murder. He is not guilty of voluntary manslaughter. He is not guilty of
25 involuntary manslaughter.

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1 And the reason is he was acting in self-defense at the time this
2 happened. And I hope that you find him not guilty. Thank you.

3 (Ms. Lyall's closing argument ended at 9:48 a.m.)

4 THE COURT: Thank you. Mr. Bulsa?

5 MR. BULSA: Thank you. May it please the Court?

6 THE COURT: Yes, sir.

7 MR. BULSA: Ladies and gentlemen, let me take you back to
8 August 14th, 2013. You met the victim's wife, Ernestine Goldsmith. She told
9 you a little bit about her husband.

10 How he was a business man that used to work at Fremont Apartments
11 as a maintenance man. They had a business themselves cleaning up
12 apartments.

13 He had apartments in the area where this occurred. So he had every
14 right to be in that area.

15 This occurred around 12 o'clock noon August the 14th at a local
16 business, the Money Tree, in the parking lot. I submit to you that the victim
17 was going about his business when confronted by the Defendant. That's
18 important.

19 I submit to you he was going about his business when this man
20 (indicating) confronted him because what reason did Mr. Goldsmith have to
21 go to this man on that day in question?

22 We don't know how they knew each other. Mrs. Goldsmith testified
23 that perhaps Mr. Goldsmith had him do some work for him in the past
24 because Mr. Goldsmith was about giving back to his community, inviting
25 people to work with him in his business of cleaning up apartments.

1 Perhaps that was the situation. We don't know. Maybe that's why he
2 thought he owed him more money.

3 I think that's about the only thing that's clear is that this guy (indicating)
4 thought the victim owed him some money. And he, seeing Mr. Goldsmith in
5 the area, he, as was told by Mr. Young, was talking to a girl about going and
6 getting his money. And what was that girl telling him?

7 She was pleading with him to leave it alone. So this man (indicating)
8 went and confronted Mr. Goldsmith in the parking lot of a local business.

9 That's important because the Defense attorney told you about self
10 defense. Well, the first element of self-defense that must exist before you
11 can excuse him of this homicide is that he must be without fault.

12 I submit to you that he cannot be without fault if he went there to
13 confront the victim with the attitude that caused a lady to plead with him to
14 leave the situation alone.

15 His attitude was one of anger and confrontation. He was going to take
16 care of business and get his money. He created this situation. He brought
17 this about.

18 **(Brief Pause)**

19 **MR. BULSA:** Everybody, ladies and gentlemen, did not tell you
20 who started this fight. And I submit to you to think about what you consider a
21 fight. Is a fight argument or it is only a fight when a blow is thrown?

22 You have fights, as she says, in your everyday lives. And I ask you to
23 use your every day commonsense and world
24 experiences. People fight verbally. They fight physically.

25 This man (indicating), I submit to you, started the verbal fight

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1 if — and I submit to you it's a big if because is not been shown — none of
2 these State's witnesses; Ms. Blanchard, Ms. Price, and Mr. Young, Ms.
3 Brewton, none of them said they saw who threw the first blow; none of them.

4 Yet, Ms. Lyall wants you to say that everyone, all the witnesses said
5 that. Well, I'll submit to you only two witnesses came in and told you that Mr.
6 Goldsmith threw the first blow. And that was — and that was Mr. Teamer and
7 Mr. Bridges.

8 The State called all the witnesses that stayed in the area, that were
9 identified by the police that they could find and came to the police station to
10 speak to them. We put all those up to you.

11 Mr. Teamer didn't go to the police. Mr. Bridges sounds like he went to
12 the police dropping Ms. Brewton off who he says didn't even see what
13 happened. Does that make sense?

14 Use your common day life experiences and your commonsense and
15 you judge the credibility of those witnesses. Are they believable? Was what
16 they said believable?

17 Mr. Teamer, "The victim threw a punch and both men tumbled to the
18 ground." Does that make sense?

19 You look at their past history, whether that shows if they're reliable or
20 believable.

21 **(Brief Pause)**

22 **MR. BULSA:** And you look at their actions, look at how they
23 testified, and look at the bias they have.

24 Everyone, even the State's witnesses, they all know this man
25 (indicating). Mr. Young has known him for the least amount of time. Mr.

1 Teamer and Mr. Bridges I believe testified they knew him for years and years.

2 The two ladies knew him for years.

3 The two ladies are the only two that, from what I recall, knew Mr.
4 Goldsmith. And now did they know Mr. Goldsmith? He was the
5 maintenance man at Fremont Apartments.

6 He was a man that had a job, a clean-up business, who employed
7 people in the community to give back.

8 This man (indicating) brought about the confrontation, the argument,
9 and I submit to you — I'll go back to this point --- if --- if Mr. Goldsmith threw
10 the first blow, one, it doesn't matter. But if he did, who provoked him?

11 (Brief Pause)

12 **MR. BULSA:** The judge will charge you on the law of self-
13 defense. He's going to charge you on four elements. I submit to you that the
14 two main ones that are not going to be shown in this case, the evidence
15 essentially disproves, is that he is not without fault.

16 Number two, he had a duty to retreat because you cannot fight in
17 public. Now, you have a right to defend yourself, but, if you have an ability to
18 leave the situation and walk off, as Mr. Wynn did — we know he walked off
19 one time past Ms. Blanchard, then, went back. And, then, she heard the
20 commotion and, then, he comes back.

21 You have a right — you have a duty to retreat. We live in a civilized
22 society, ladies and gentlemen. You can't just get involved in a fist fight out in
23 public, in the community.

24 You saw where the victim's car was positioned. It gives the
25 appearance as if he was trying to drive off when confronted by this man.

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1 It would have been nice if we had a video of what happened. The
2 police did their job and checked. Unfortunately, the business didn't have any.

3 But, you can look at the overall circumstances, the time of day, the
4 relationship of the parties, the — the apparent dispute they had over some
5 money, the positioning of the vehicle. It all I submit to you infers that Mr.
6 Goldsmith wasn't looking for a fight.

7 He wasn't looking for a confrontation. He left the house that day to go
8 about his business and do his job. Not so with the Defendant.

9 Now, this wasn't a big case about CSI and all this forensic evidence.
10 Usually that stuff comes into play when they're trying to prove who did
11 something; trying to prove the identity of the person who did it.

12 Well, we have witnesses who saw who did this. But we did have a
13 pathologist who talked about the injuries. And it's clear that the cause of
14 death was the blow to the head which was the result of the altercation with
15 the Defendant.

16 So he caused the death of Mr. Goldsmith. But what was also
17 important is that Mr. Goldsmith had abrasions to his knees, an abrasion to his
18 right arm, which is consistent with him being on the ground.

19 The dumpster was there. And, as Mr. Young testified,
20 the Defendant picked him up and slammed him either into the ground or into
21 the dumpster.

22 You are responsible for your actions and whatever natural and
23 probable consequence is of your action. You are responsible.

24 This man entered into a confrontation, into a fight, and he killed a man.
25 And he is responsible for that death. And he needs to be held accountable.

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(Brief Pause)

MR. BULSA: He is guilty of murder. I submit to you, when he went to confront Mr. Goldsmith, his state of mind and the victim's unwillingness to bend, shown by the argument, that the malice existed in his mind.

Murder is not premeditated in South Carolina. It's based upon the malice. It doesn't have to actually be intentional. It's the killing of another person with malice aforethought and that malice is either implied or expressed.

You can imply the malice. You can find the malice from the circumstances; from the actions of the person, the picking up and slamming of someone. And it only has to exist in your mind a split second (snaps fingers) before the actual deadly blow is inflicted, okay?

The judge, however, will charge you with lesser included offenses, lesser included offenses Ms. Lyall went over with you. And I'll go over them briefly again.

Voluntary manslaughter is the first step down. Voluntary manslaughter is the unlawful killing of a person without malice. Essentially that malice is negated by sufficient provocation by the victim, which sufficiently enraged the Defendant into killing the man.

So, if you believe that the victim somehow provoked this man, which led him to beat him and slam him into an object hard enough to kill him, then, you can find him guilty of voluntary manslaughter.

The next step down is involuntary manslaughter. That's the unintentional killing of someone who is involved -- who is not involved in an

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1 illegal activity not likely to cause death or great bodily injury. And I submit to
2 you, when you engage in a fight, you're not considering the consequences.

3 When you pick somebody up like he did and slam them into an — an
4 object, that can cause great bodily injury or death, as it did in this case. So
5 he was not involved in an unlawful activity not causing death because it did
6 'cause death. So I submit to you it's not involuntary manslaughter.

7 The diff — the question you have I submit is it murder or is it voluntary
8 manslaughter? Those are what I would propose to you.

9 And, in reaching those, the judge will charge you those elements of
10 self-defense. And I submit to you that at least two do not -- are not there. If
11 all four aren't there, you can't rely on it.

12 But there's another concept of law that you may have heard of and
13 may actually have a — a — an idea of what it is, but may actually not
14 understand how it applies. And that is the concept of mutual combat.

15 Mutual combat is when two people enter into essentially an agreement
16 to fight, okay? And something bad usually happens when that — when that
17 mutual combat occurs.

18 If you think this was a fight that both men were willingly involved in,
19 over a pre-existing dispute, which would have been apparently some dispute
20 over money, then, you can find they were engaged in mutual combat.

21 Mutual combat does not mean he shouldn't be convicted of anything.
22 What it means is, is both parties willingly entered into a fight. That means
23 neither one of them is without fault.

24 So self-defense doesn't apply. So mutual combat actually negates or
25 takes out the self-defense.

1 So that removes self-defense from the equation. And we're back to
2 the question I posed to you: Is it murder or voluntary manslaughter? Okay?

3 You're going to have a lot of law that's going to be read to you here in
4 a few minutes. I submit to you listen closely, take it all in.

5 You'll have the exhibits, which are essentially just pictures. You're not
6 going to have the statements of witnesses. You're going to have your
7 memory of their testimony.

8 Now, if you think you heard something different, you have a right to
9 ask that testimony be replayed. And I bring this up because I told you earlier
10 the State called the four people that willingly came to the police department
11 and met with the detectives and gave statements.

12 And you probably sensed it yesterday when Mr. Young was testifying.
13 I had to keep going back and bring him back to his statement that he wrote in
14 his own hand.

15 People are more free to talk and put things on paper when they're not
16 around the person they're talking about. Then, when they come into court,
17 and they have to sit here and see a man that they know, an acquaintance, a
18 friend, they tend to want to back away from what they wrote down.

19 Mr. Young, I submit to you, had the best overall information to give you
20 to help you understand what actually took place because he's the one that
21 heard the discussion as they were coming up along the fence.

22 He knew the voice. He said it was Roger and a girl that he knew as
23 Megan. He did know who was talking. He wrote it in his statement.

24 Then, after speaking with the detective for about 35 minutes, he writes
25 out his statement.

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1 And he told you, you know, when he heard that, he got on his bike and
2 rode around and came up into the parking lot and he realizes, "Hey, the guy
3 is really doing what he told the girl. He's going to get his money." And he
4 sees something going on.

5 Now, he testified — he talks about Mr. Goldsmith striking the
6 Defendant. That was perplexing. But, in his own handwritten statement —
7 and I didn't — we couldn't introduce as a Rule of Evidence because he
8 admitted to the inconsistencies between his testimony to his statement.

9 But, in his own handwritten statement, not one time — not one time ---
10 did he reference Mr. Goldsmith swinging during the blows.

11 When he talks about blows being thrown in his statement, I went
12 through with you, is was this man (indicating), he was doing all the punching.
13 The victim was covering up.

14 The victim got up woozy. The victim is the one walking back to his
15 truck. The victim was the one trying to remove himself from the situation.

16 This is the man (indicating) who caused the confrontation, engaged in
17 the fight, assaulted the victim, and killed him by his actions.

18 And, then, what did he do? He went and saw Ms. Blanchard
19 and said, "I — I popped him good," loud enough — he made that sort of
20 comment loud enough that Ms. Price, on the other side of the street, could
21 hear him.

22 And Ms. Blanchard walks up to see what he's talking about. He
23 comes with her. She realizes it's Curtis, someone she knows. She goes to
24 call 911, and what does he do? He gets out of there; consciousness of guilt.
25 He flees the scene.

1 The police talk to him that afternoon. They go to his girlfriend, talked²³¹
2 to him, "Hey, come here. I need to talk to you." Yeah, they didn't tell him
3 about what — specifically what it was about.

4 But he said, "Okay. I'll come over." Didn't come over. They put up
5 flyers in the neighborhood, put out information in the community. Mr. Teamer
6 said he heard it. He saw it in the paper before he was arrested.

7 It took a tip from Crimestoppers to locate him in an abandoned house
8 on Asheville Highway. The man knew he did wrong. He was hiding out from
9 the police. He fled from his misconduct, from his actions.

10 (Brief Pause)

11 **MR. BULSA:** I ask you, ladies and gentlemen, to use your
12 common sense, the logic behind the situation, common world experiences.
13 Listen to the judge's charge on the law, apply it to the facts which you can
14 glean as a collective group, and decide which offense it was: murder,
15 manslaughter? You'll have involuntary, but I submit to you the decision is
16 one of the first two.

17 The State will respect your verdict. It's the nature of what we have
18 here. We rely on witnesses that come forward, witnesses that cooperate,
19 not the witnesses who don't make sense who come to court as a friend of the
20 Defendant who sound — their story sounds kind of weird.

21 Certainly not a man who drives a lady up to the police station to give a
22 statement who he says didn't see anything. I submit to you, you can't rely on
23 that kind of evidence.

24 Please rely on the evidence that the State brought to you and reach a
25 verdict of guilty. Thank you.

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(Mr. Bulsa's closing argument concluded at 10:10 a.m.)

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Jury Charge

THE COURT: Thank you, Solicitor. Mr. Foreman and ladies and gentlemen of the jury, you have seen and heard the evidence presented, as well as the arguments of Counsel. And it is now my duty and obligation to instruct you on the law in this case.

It will, then, be your solemn duty and obligation to begin your deliberations through which process you will decide the facts, apply the law as I instruct it, and render a fair and impartial decision.

It is your exclusive duty to determine what the facts are in this case. You do that based on your own common sense examination and evaluation of the testimony and other evidence received during the trial of the case.

You 12 jurors alone will decide what effect, value, and weight is to be given to any particular testimony or other evidence received. Quite simply, ladies and gentlemen, your ultimate goal is to find the truth in this case.

And by doing so you will have fulfilled your obligations as jurors in giving both the State and the Defendant a fair and impartial trial based on the evidence presented and the law applicable to this case.

The indictment charges the Defendant with the offense of murder. I remind you that the fact the Defendant was arrested, charged, and indicted in this case is not evidence in the case and cannot be considered by you as evidence of guilt.

Nor does it create any presumption or inference of guilt. This document, the indictment, simply is a formal written instrument which contains the charge made against the Defendant. It is the formal document by which the case is brought before the Court.

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1 The Defendant has pled not guilty to the indictment. And that puts the
2 burden on the State of South Carolina to prove the Defendant guilty.

3 A person charged with committing a criminal offense in South Carolina
4 is never required to prove himself innocent.

5 I charge you that is a cardinal, important, and vital rule of law that, in a
6 criminal trial, no matter what the seriousness of the charge may be for which
7 he stands charged, the defendant will always be presumed to be innocent of
8 the crime for which the indictment was issued unless guilt has been proven
9 by evidence satisfying you of that guilt beyond a reasonable doubt.

10 This presumption of innocence does not end when you begin your
11 deliberations, but it accompanies the Defendant throughout the trial until you
12 reach a verdict of guilt based on evidence satisfying you of that guilt beyond a
13 reasonable doubt.

14 The presumption of innocence is like a — is like a robe of innocence
15 placed about the shoulders of the Defendant which remains with him from the
16 moment of his arrest and continues until it has been stripped from his
17 shoulders by evidence satisfying you of his guilt beyond a reasonable doubt.

18 The presumption of innocence is not mere legal theory. It is not just a
19 legal phrase, but a substantial right to which every defendant is entitled
20 unless you 12 jurors are satisfied from the evidence of his guilt beyond a
21 reasonable doubt.

22 I remind you that, during the trial, you and I have certain duties to
23 perform. As the trial judge, it is my responsibility to preside over the trial of
24 this case and I also have the duty to rule the admissibility of evidence offered
25 during the trial.

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

5 I have the additional duty to charge you the law in this case. As the
6 presiding judge, I am the sole judge of the law of this case and it is your duty
7 as jurors to accept and apply the law as I now state it to you.

8 If you have any idea as to what the law is or what the law ought to be
9 or what the law should be, and it does not agree with what I now tell you the
10 law is, you must abandon your idea because you are sworn to accept the law
11 and apply it exactly as I state it to you.

12 In every case tried in this court before a jury, you, the jury, become the
13 sole and exclusive judge of the facts in this case. A trial judge cannot
14 intimate, state, comment on, or make any statement to a jury about the facts
15 in a case.

16 You, the jury, are the sole judge of the facts in this case. You are not
17 to infer from what I have said, during the progress of this trial in ruling upon
18 the admissibility or — of evidence or otherwise, or anything that I say now
19 during the course of my instructions to you, that I have an opinion about the
20 facts in this case.

21 The law of this state does not allow me to have an opinion about the
22 facts in this case. This is a matter solely for you, the jury, to determine.

23 As jurors, it is your duty to determine the effect, value, weight, and
24 truth of the — of the evidence presented during this trial.

25 The State has the burden of proving the Defendant guilty

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1 beyond a reasonable doubt. In criminal cases, the State's proof must be
2 beyond a reasonable doubt.

3 Ladies and gentlemen proof, beyond a reasonable doubt, is proof that
4 leaves you firmly convinced of the Defendant's guilt. There are very few
5 things in this world that we know with absolute certainty, and in criminal
6 cases, the law does not require proof that overcomes every possible doubt.

7 A reasonable doubt may also be described as the kind of doubt that
8 would cause a reasonable person to hesitate to act. If you have such a
9 doubt, as to the guilt of the Defendant, then, he would be entitled to a verdict
10 of not guilty.

11 Reasonable doubt may arise from evidence which is in the case or
12 from the absence or lack of evidence in the case. If, based on your
13 consideration of the evidence, you are firmly convinced that the Defendant is
14 guilty of the crime charged, you must find him guilty.

15 If, on the other hand, you think there is a real possibility that he is not
16 guilty, you must give him the benefit of the doubt and find him not guilty.

17 You alone must make the determination of whether or not reasonable
18 doubt exists as to the guilt of the Defendant.

19 There are two types of evidence which are generally presented during
20 a trial: Direct evidence and circumstantial evidence.

21 Direct evidence is the testimony of a person who claims to have actual
22 knowledge of a fact, such as an eyewitness. It is evidence which immediately
23 establishes the main fact to be proved.

24 Circumstantial evidence is proof of a chain of facts and circumstances
25 in — indicating the existence of a fact.

1 It is evidence which immediately establishes collateral facts from which
2 the main fact may be inferred. Circumstantial evidence is based on inference
3 and not on personal knowledge or observation.

4 The law makes absolutely no distinction between the weight or value
5 to be given to either direct or circumstantial evidence. Nor is a greater
6 degree of certainty required of circumstantial evidence than of direct
7 evidence.

8 You should weigh all of the evidence in this case. And, after weighing
9 all the evidence, if you are not convinced of the guilt of the Defendant,
10 beyond a reasonable doubt, you must find him not guilty.

11 Under the Constitution of South Carolina, you are the finder of facts in
12 this case. Necessarily, you must determine the credibility of witnesses who
13 have testified.

14 Credibility simply means believability. It becomes your duty as jurors
15 to analyze and to evaluate — and to evaluate the evidence and determine
16 which evidence convinces you of its truth.

17 In determining the believability of witnesses who have testified, you
18 may believe one witness over several or several over one. You may believe
19 a part of the testimony of a witness and reject the remaining part of that
20 witness' testimony.

21 You may believe the testimony of a witness in its entirety or reject the
22 testimony of a witness in its entirety. You may consider whether any witness
23 has exhibited to you any interest, bias, prejudice, or other motive in this case.

24 You may also consider the appearance and manner of a witness while
25 on the witness stand.

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1 Simply put, do you believe the witness was telling the truth?

2 You may consider how the witness came to know the facts to which he
3 or she testified and whether or not the witness had an opportunity to hear,
4 observe, or perceive a fact by means of their senses.

5 Whatever your good judgment and common sense tells you is the
6 most believable testimony, is the testimony that you should accept and reject
7 that testimony which you find not to be credible or believable.

8 The Rules of Evidence ordinarily do not permit witnesses to testify to
9 opinions or conclusions. An exception to this rule exists for witnesses we call
10 expert witnesses.

11 A witness, who by education and experience has become an expert in
12 some art, science, profession, or calling, may state an opinion as to relevant
13 and material matters in which the witness claims to be an expert and may
14 also state the reason for his or her opinion.

15 You should consider any expert opinion received in evidence in this
16 case and, like any other evidence, give it the weight you think it deserves.

17 If you decide that the opinion of an expert witness is not based on
18 sufficient education and experience, or if you conclude that the reasons given
19 in support of the opinion are not sound or that the opinion is outweighed by
20 other evidence, you may disregard the opinion entirely.

21 And expert witness's testimony is to be given no greater weight than
22 that of other witnesses simply because the witness is an expert. Further, you
23 are not required to accept an expert's opinion even though it is not
24 contradicted.

25 I instruct you, ladies and gentlemen, and emphasize that the fact

1 that the Defendant did not testify is not a factor to be considered by you in
2 any way in your deliberations and in your consideration of the question of
3 guilt or the innocence of the Defendant.

4 It must not be considered by you in any manner whatsoever. A
5 defendant has the constitutional right to remain silent. And the assertion of
6 this right must not be considered by you in your deliberations.

7 I repeat, under your oath, you are to draw no conclusion whatsoever
8 from the fact that the Defendant in this case did not testify. The fact that this
9 Defendant did not testify should not be discussed in the jury room.

10 The burden of proof, as I have stated previously, is on the State of
11 South Carolina. The Defendant is not required to prove his innocence. The
12 burden of proof remains on the State to prove guilt beyond a reasonable
13 doubt.

14 Criminal intent is a necessary element of each crime that must be
15 proved by the State beyond a reasonable doubt. Criminal intent is always a
16 matter that must be determined by the jury from the circumstances
17 surrounding the situation.

18 There's no way to prove intent to a mathematical certainty. There is
19 no way medical science can dissect a person's brain and determine what he
20 had in mind.

21 So the law says that criminal intent may be inferred from the
22 circumstances shown to have existed. This is how a jury makes a
23 determination whether or not the element requiring intent was present.

24 Criminal intent is a state of mind, which operated jointly with an act, is
25 the commission of a crime. Criminal intent is a state of mind, a conscious

1 wrongdoing, so it is up to you, the jury, to determine what the Defendant
2 intended to do based on the circumstances shown to have existed.

3 I tell you that the State must prove criminal intent beyond a reasonable
4 doubt, just as the state must prove every element beyond a reasonable doubt
5 as I previously explained.

6 It is not necessary to establish intent by direct and positive evidence,
7 but intent may be established by inference in the same way as any other fact
8 or by taking into consideration the acts of the parties and all of the facts and
9 circumstances of the case.

10 While the state may prove motive, it is unnecessary that the State do
11 so, but the State must prove intent.

12 I have instructed you that the Defendant is charged with the offense of
13 murder. I will now read to you, in part, Section 16-3-10 of the South Carolina
14 Code of laws which says, "Murder is the killing of any person with malice
15 aforethought either expressed or implied."

16 The Defendant is charged with murder; specifically that he did, in the
17 County of Spartanburg, State of South Carolina, on or about August —
18 August 14, 2013, kill Curtis Edward Goldsmith with malice aforethought,
19 either expressed or implied, in that he beat victim about the head and body
20 resulting in the death of the victim, all in violation of the Code of Laws of this
21 State.

22 The State must prove, beyond a reasonable doubt, that the Defendant
23 killed another person with malice aforethought.

24 Malice is hatred, ill will, or hostility towards another person. It is the
25 intentional doing of a wrongful act without just cause or excuse and with

an intent to inflict an injury or under circumstances that the law would infer an evil intent.

Malice aforethought does not require that malice exist for any particular time before the act is committed, but malice must exist in the mind of the Defendant just before and at the time the act is committed.

Therefore, there must be a combination of the previous evil intent and the act.

Malice aforethought may be expressed or inferred. These terms, "expressed" and "inferred," do not mean different kinds of malice, but merely the manner in which malice may be shown to exist; that is, either by direct evidence or by inference from the facts and circumstances which are proven.

Expressed malice is shown when a person speaks words which express hatred or ill will for another or when the person prepared beforehand to do the act which was later accomplished.

Malice — malice may also be inferred from conduct showing a total disregard for human life.

Should you find that the State has not proved murder, beyond a reasonable doubt, you must, then, consider the lesser included offenses of voluntary manslaughter and involuntary manslaughter.

Voluntary manslaughter is the unlawful killing of another without malice expressed or implied. It is the unlawful killing of a human being without malice in sudden heat of passion upon sufficient legal provocation.

The State must prove, beyond a reasonable doubt, that the Defendant unlawfully killed another without malice in sudden heat of passion based on sufficient legal provocation.

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1 Heat of passion alone will not suffice. Both heat of passion and
2 legal provocation must be present at the time of the killing to constitute
3 voluntary manslaughter.

4 Heat of passion must be such as would naturally disturb the sway of
5 person. And render the mind of an ordinary person incapable of cool
6 reflection and produce what may be called an uncontrollable impulse to do
7 violence.

8 The passion need not be so overwhelming as for a time to shut out
9 knowledge and destroy violation (phonetic).

10 **(Brief Pause)**

11 **THE COURT:** To constitute sufficient legal provocation, the
12 provocation must come from some act or be — or related to the victim ---
13 some act of or related to the victim.

14 The provocation must be such as naturally and instantly produces, in
15 the mind of the person ordinarily constituted, the highest degree of
16 exasperation, rage, anger, sudden resentment, or terror rendering the mind
17 incapable of cool reflection.

18 If sufficient legal — if sufficient legal provocation does not exist, the
19 killing, even if committed during the heat of passion, is not voluntary
20 manslaughter.

21 The provocation must deprive one of the powers of self control, but it
22 need not entirely dethrone (phonetic) reason.

23 In determinating whether the act which caused death was impaled by
24 heat of passion, all the surrounding circumstances and conditions are to be
25 taken into consideration, including previous relations

- and conditions connected with the tragedy, as well as those existing at the time of the killing.

In determining whether a reasonable time for cooling off had elapsed, you should consider all of the circumstances surrounding the event, the nature of the provocation, the Defendant's — the Defendant's physical and mental condition, the Defendant's conversation throughout the entire incident, and the circumstances and condition in life, the Defendant's education, habits, conduct, manner, and relationship between the parties.

Involuntary manslaughter is the unintentional killing of another without malice, while engaged in an unlawful activity that is not a felony and does not naturally tend to cause death or great bodily harm, or the unintentional killing of another without malice while engaged in a lawful activity with reckless disregard for the safety of others.

Unintentional means the Defendant did not intend for anyone to be killed or seriously injured. A reckless disregard for the safety of others signifies an indifference to the consequences of one's act.

It means something more than mere negligence or carelessness, which indicates inadvertence; that is, the failure to exercise due care, sometimes called ordinary care, meaning such care as a person of ordinary reason and prudence would exercise in the same circumstances.

Recklessness, willfulness, and wantonness, which convey the same general idea, mean a conscious failure to exercise due care or ordinary care.

Willfulness is the fact or quality of acting purposely or by design.

Recklessness exists where one, who is aware that ordinary care or prudence requires him to use certain precautions for the safety of others, with

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1 unconcern or indifference, fails to do so or who, aware that a course of
2 conduct or act is negligent, with unconcern or indifference, follows such
3 course or does such act.

4 This signifies an indifference to the consequences of one's acts.

5 A person engaged in the commission of an unlawful activity is legally
6 responsible for all the consequences which naturally or necessarily flow from
7 the act as one of its probable and natural consequences, even though what
8 was done was not intended as part of the original design.

9 I tell you that self-defense is a complete defense. If established, you
10 must find the Defendant not guilty. There are four elements required by law
11 to establish self defense. First, the Defendant must be without fault in
12 bringing on the difficulty.

13 Second, the Defendant must have been in actual imminent danger of
14 losing his life or sustaining serious bodily injury or he must have actually
15 believed he was in imminent danger of losing his life or sustaining serious
16 bodily injury.

17 Third, if his defense is based upon his belief of imminent danger, a
18 reasonably prudent person of ordinary firmness and courage would have
19 entertained the same belief.

20 If the Defendant actually was in imminent danger, then, the
21 circumstances were such as would warrant a person of ordinary prudence,
22 firmness, and courage, to strike the fatal blow in order to save himself from
23 serious bodily harm or losing his own life.

24 Fourth, the Defendant had no other probable means of avoiding the
25 danger of losing his own life or sustaining serious bodily injury than to

1 act as he did in this particular instance.

2 These are the elements of self defense. A Defendant, in a self-
3 defense case, has the right to act on appearances.

4 A Defendant must have believed he was in imminent danger, not that
5 he was actually in such danger, because he had the right to act on
6 appearances and, under the circumstances, as they appeared to him, he
7 believed he was in such danger and a reasonable, prudent man of ordinary
8 firmness and courage would have entertained the same belief.

9 Words accompanied by hostile acts may, depending on the
10 circumstances, a plea of self-defense (phonetic) if the Defendant is justified in
11 striking a blow, the Defendant is justified in — in continuing until it is apparent
12 that the danger to his life and body has ceased.

13 Ordinarily, a Defendant is not justified in striking blows after the
14 adversary has been disarmed or disabled. One has a right to use force in
15 repelling force or in protecting oneself.

16 And one cannot be required to make a nice calculation as to the
17 degree or quantity or amount of force which may be necessary for one's
18 complete protection from loss of life or serious bodily harm to oneself.

19 One may continue to use force until such time as one is safe from
20 danger.

21 There is no burden upon the Defendant to prove self-defense. The
22 Defendant is not required to prove any element of self-defense. The burden
23 is on the State to disprove self-defense beyond a reasonable doubt.

24 If you have a reasonable doubt of the Defendant's guilt, after
25 considering all of the evidence, including evidence of self-defense,

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1 then, you must find the Defendant not guilty.

2 On the other hand, if you have no reasonable doubt of the Defendant's
3 guilt, after considering all of the evidence, including the evidence of self-
4 defense, then, you must find him guilty.

5 If the Defendant voluntarily participated in mutual combat,
6 for purposes other than protection, he cannot justify or excuse the killing of
7 the victim in the course of such conflict on the ground of self-defense,
8 regardless of what extremity or imminent peril he may be reduced to in the
9 progress of the combat, unless before the killing was committed, he withdrew
10 and endeavored in good faith to decline further conflict and, either by word or
11 act, made that fact known to the victim.

12 Mutual combat exists when there is mutual intent and willingness to
13 fight. Mutual intent is a manif — is manifested by the acts and conduct of the
14 parties and the circumstances attending and leading up to the combat.

15 Further, it must be shown that both parties....

16 **(Brief Pause)**

17 **THE COURT:** Mutual combat bars a claim of self-defense
18 because it negates the element of being at fault.

19 The mutual combat doctrine is triggered when both parties contribute
20 to the resulting fight. Self-defense is available only when the Defendant is
21 without fault in bringing on the difficulty.

22 Ladies and gentlemen, Mr. Foreman, you have been selected as fair
23 and impartial jurors sworn to impartially try and determine the facts of this
24 case. And, when you comply with your oath to do so, no one will have a right
25 to criticize your verdict and you will have fully discharged your duty as jurors.

1 You are to decide this case, according to the testimony that you heard
2 from the sworn witnesses, along with other evidence that has been
3 introduced.

4 During your deliberations, you may only discuss the case in the jury
5 room with your fellow jurors because they have seen and heard the same
6 evidence you have seen and heard; however, you must not discuss this case
7 with anyone else until you have returned a verdict and the case is at an end.

8 I further tell you, Mr. Foreman, ladies and gentlemen, when you are in
9 the jury room deliberating, in the event that a juror needs to take a break, go
10 to a restroom facility, get a drink of water, that is outside of the deliberations,
11 all deliberations must cease until that juror has — juror or jurors have
12 returned and all 12 of you are together.

13 Now, Mr. Foreman, I told you, at the very beginning of this trial, and
14 explained to you that you would be — it would be your duty to write the verdict
15 in this case. And I'm now going to instruct you on that.

16 I'm holding in my hand what is known as a jury verdict form. This form
17 has the caption of the case and the case number. And it says, "We, the jury,
18 unanimously find the Defendant, Roderick Germaine Wynn, on the charge of
19 murder, not guilty or guilty."

20 If you answer "guilty" to the first question, you would stop at question
21 one. And that is written on this form.

22 If you find him not guilty to question one, you'll proceed to question
23 two. Question two is, "We, the jury, unanimously find the Defendant, Mr.
24 Wynn, on the charge of voluntary manslaughter, not guilty or guilty."

25 The instructions are the same. If you find him guilty of

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1 question number two, on voluntary manslaughter, you would stop there and
2 sign your name and not go any further.

3 In the event that you answered not guilty to question two, you would
4 proceed to question three: "We, the jury, unanimously find the Defendant, Mr.
5 Wynn, on the charge of involuntary manslaughter, not guilty or guilty," and
6 sign your name.

7 Finally, it says, "I certify this decision was unanimous decision --
8 was a unanimous decision." As I told you, it must be all 12, a unanimous
9 decision.

10 Mr. Foreman, I'm — in just a minute, I'm going to ask you to take your
11 jury and go to the jury room. The two alternates will go with you. Please, do
12 not begin any discussion of the case or deliberation of the case.

13 All of these exhibits that are here belong to you, the jury. Also this
14 form (indicating). When this form comes back to you, I'm going to — let me
15 tell you what I'm going to do.

16 When you go out, I'm going to ask the lawyers to come up. Madam
17 Court Reporter keeps a record of the exhibits. They are going to review
18 those exhibits, one through however many they've introduced, and ensure
19 that they're all present and that there's nothing in there that should not come
20 to your attention and everything is there that should come to your attention.

21 Once the lawyers agree that those are the documents, I will, then, put
22 this on top of those exhibits for you, this verdict form,. The bailiff will, then,
23 bring this form and the exhibits to you.

24 That is your signal that you are free to begin your deliberations.

25 At the same time, for my two alternate jurors, my bailiff will retrieve

1 you from the jury room because it's only proper for those 12 to begin the
2 deliberations.

3 He will, then, segregate both of you all just in case — in the event that
4 we would to need one of you.

5 **(Brief Pause)**

6 **THE COURT:** And I think that's it. All right. Mr. Foreman, at this
7 time, if you would, take all 14 of you, but do not begin deliberations, but go to
8 the jury room.

9 **(The jury charge concluded at 10:37 a.m.)**

10 **(Whereupon the jury and the two alternates exited the courtroom**
11 **at 10:37 a.m.)**

12 **THE COURT:** Anything from the State?

13 **MR. BULSA:** No, sir.

14 **THE COURT:** Anything from Defense?

15 **MS. LYALL:** No, Your Honor.

16 **THE COURT:** All right. If you both, lady and gentleman, would
17 look at the exhibits, please. And here is the jury verdict form.

18 **(Whereupon, Counsel checked all exhibits.)**

19 **(Off-the-Record Comments)**

20 **THE COURT:** Get my two alternates. They are to begin their
21 deliberations.

22 **(Whereupon, the jury began deliberating at 10:40 a.m.)**

23 **THE COURT:** Okay. We're going to be in recess for a few
24 minutes here. And I think there might be a plea or two. I don't know.

25 **(Off-the-Record Comments)**

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(The jury had a question at 10:53 a.m.)

THE COURT: The jury has written a note here, which I'll make a Court's exhibit. It says, "Def voluntary versus involuntary." It's my understanding from the bailiff he believes that they want it in writing.

I'll do either one. I'll — I'll do what the lawyers want me to do. I'll give it to them in writing or I will — by cutting and pasting, or I'll bring them in and recharge them.

MR. BULSA: In writing is fine with me, Your Honor.

MS. LYALL: In writing is fine with me.

THE COURT: Okay. Give us a second and we'll.... They've agreed to in writing, so, I'll just give it to them in writing since they've agreed and let Kim print it.

(Off-the-Record Comments)

THE COURT: Okay. Both lawyers come and look at this.

(Counsel complied with the Court's request.)

THE COURT: All right. Let's make this a Court's exhibit.

(Whereupon, Court's Exhibits 1 and 2 were marked for identification and admitted into the record.)

THE COURT: (To Bailiff) And, then, you can ask them if that's what they want. And, if they would rather hear it from me, I'll be happy to do that. And I'll wait for you to come back.

(Brief Pause)

BAILIFF: That was fine.

THE COURT: That was fine? Okay. All right.

(A verdict was reached at 12:10 p.m.)

1 (Pause while parties re-assemble in courtroom.)

2 (Verdict taken at 12:31 p.m.)

3 **THE COURT:** I understand we have a verdict. Solicitor, I — I
4 understand we have a — have a verdict, and I want you to take just a minute,
5 if you've not already done so, to talk to assorted personnel in the courtroom.

6 There will be no emotional outbursts, no cheering. If there is, these
7 officers will take somebody into custody, okay?

8 No celebrating one way or the other. If you can't control your
9 emotions, I would ask you to, please, please leave now or these officers will
10 take you into custody if that happens.

11 Are we good to go? All right. Let's have our jury. Everybody has
12 been warned.

13 (Whereupon, the jury was summoned and entered the courtroom
14 at 12:27 p.m.)

15 **THE COURT:** Mr. Foreman, has the jury reached a verdict?

16 **MR. JACKSON:** We have, Your Honor.

17 **THE COURT:** If you would, hand that to my bailiff, please?

18 (The foreman complied with the request.)

19 **THE COURT:** Madam Clerk?

20 **MADAM CLERK:** The State of South Carolina, County of
21 Spartanburg, *The State of South Carolina vs. Roderick Germaine Wynn*,
22 indictment number 2014-GS-42-0313. We, the jury, unanimously find the
23 Defendant, Roderick Germaine Wayne — Wynn, on the charge of murder,
24 not guilty.

25 We, the jury, unanimously find the Defendant, Roderick

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1 Germaine Wynn, on the charge of voluntary manslaughter, guilty. Signed by
2 the foreperson, Alan Jackson, and dated today's date, August 28th, 2014.

3 Ladies and gentlemen of the jury, is this your verdict and still your
4 verdict? If so, please, raise your right hand.

5 **(Jurors complied with the request.)**

6 **MADAM CLERK:** So say you all.

7 **THE COURT:** Polling of the jury, Solicitor?

8 **MR. BULSA:** No, sir.

9 **THE COURT:** Polling of the jury?

10 **MS. LYALL:** No, Your Honor.

11 **THE COURT:** Okay. Mr. Foreman, if you would, come forward,
12 please, and sign the indictment.

13 **(The foreman of the jury complied with the request.)**

14 **THE COURT:** Solicitor, do we need to notate that it's not
15 murder?

16 **MR. BULSA:** Yes, sir, guilty of voluntary manslaughter.

17 **(Off-the-Record Discussion)**

18 **THE COURT:** Can I see the lawyers just for a moment?

19 **(Whereupon, a bench conference was had with both attorneys**
20 **present.)**

21 **THE COURT:** Mr. Foreman, ladies and gentlemen of the jury, as
22 well as our two alternates who are seated in the back of the courtroom, thank
23 you so very much for your service this week. We could not do what we do
24 without you being here.

25 I hope you've learned something. And I don't know, if you've

1 ever served before on a jury, but I certainly hope it's been educational for you
2 and hasn't been a — and it hasn't been too much of an inconvenience in your
3 personal and professional lives.

4 This ends your jury service for the week. The — the jury trials for this
5 week are now at an end. We have other work to do this afternoon and some
6 other work to do tomorrow, but it does not require the presence of a jury to do
7 that.

8 So, once again, thank you for your service. This does end your
9 service this week.

10 **(Continued Off-the-Record Comments regarding jury's dismissal.)**

11 **(The jury was excused and exited the courtroom at 12:31 p.m.)**

12 **THE COURT:** Any matters from Defense?

13 **MS. LYALL:** Yes, Your Honor. At this time, I would renew my
14 motion for a directed verdict based on all previous arguments and based on
15 the — all previous objections.

16 **THE COURT:** Solicitor?

17 **MS. LYALL:** I would also ----

18 **THE COURT:** I'm sorry. Go ahead.

19 **MS. LYALL:** Sorry. I would also make a motion for a new trial
20 based on I don't think there was sufficient evidence — evidence presented
21 for the crime of voluntary manslaughter.

22 There was no evidence presented that there was malice expressed or
23 implied — well, I guess for voluntary manslaughter there doesn't have to be.

24 But in this case, what the jury had to find is that it was an
25 unlawful killing of another without malice expressed or implied, but

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1 that it was in the sudden heat of passion upon sufficient legal provocation.

2 In this case, what was testified to is that he grabbed him by the ankles,
3 while the other guy was punching him, and that the other guy fell back and hit
4 his head.

5 That is not killing another in heat of passion with legal provocation. I
6 gave examples of what think would be heat of passion based on suff ---
7 sufficient legal provocation.

8 And if — what would have been needed in this case is for him to take
9 his head and hit it against something or do something where he was
10 provoked with heat of passion. In this case, that's not what happened. He
11 grabbed him by the legs to have someone stop punching him and the guy fell
12 back.

13 He doesn't do something out of angry, out of heat of passion, based
14 on legal provocation. That's not what was testified to. And that's not what
15 anyone testified to.

16 Based on that, I would ask for a new trial and basically there was no
17 evidence presented that the jury could have found him guilty of voluntary
18 manslaughter.

19 **THE COURT:** Solicitor?

20 **MR. BULSA:** Your Honor, the jury spoke. They heard all the
21 witnesses and arguments. And the Defense case hinged upon the victim
22 inflicting the first blow, which the jury could easily see as provocation.

23 The Defendant went up to the victim upset about some money. So he
24 clearly could have become enraged as a result of the blow by the victim.

25 So the charge is sufficient. The jury had exam of all the charges

1 plus all the offenses available to them.

2 **THE COURT:** The motion for — renewal of the motions, they are
3 denied again for the same reasons here before enunciated by the Court.
4 The motion for the new trial is denied as well in that there is ample evidence
5 for the jury to support the jury's decision.

6 Anything else?

7 **(Brief Pause)**

8 **MS. LYALL:** No, Your Honor.

9 **THE COURT:** Okay. Anything from the State?

10 **MR. BULSA:** Your Honor, he does have a criminal record. And
11 the victim's wife would like to speak with respect to sentencing.

12 **(Brief Pause)**

13 **THE COURT:** We have a probation matter too and Agent
14 Manigan is on her way I think.

15 **(Brief Pause)**

16 **MS. LYALL:** Your Honor, at the appropriate time, I mean, we
17 would like to speak on his behalf. And we do have testimony of witnesses
18 that would like to speak on his behalf.

19 **THE COURT:** Oh, certainly. I'll give everybody a chance to
20 speak.

21 **(Off-the-Record Comments)**

22 **Sentencing** **12:37 p.m.**

23 **THE COURT:** All right.

24 **MS. LYALL:** Would you like for us to come forward?

25 **THE COURT:** Yes, come around. And we will let the

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1 Defense go first. And, then, I'll hear from the State.

2 (The Defendant stepped forward with Ms. Lyall.)

3 THE COURT: Yes, ma'am?

4 MS. LYALL: Your Honor, as you heard in this case, this was a
5 fight. It was a fight that was not started by Mr. Wynn. It was a fight over a
6 small amount of money that was a verbal argument.

7 Mr. Goldsmith took it to the next level and punched Mr. Wynn.
8 And, yes, they did have a small fight, but it was not anything serious
9 according to all of the witnesses.

10 There was not a single injury to either one of them other than the blow
11 that actually killed Mr. Goldsmith, which was caused by him hitting his head
12 on the garbage can.

13 There were no broken bones by either of them. There was no blood
14 on the clothing. This was a simple fight that had a tragic ending.

15 It could not have been something that anyone would have thought
16 happened. People fight every single day. This is not a bloody fight; it was a
17 couple of punches. And he grabbed him to stop him from punching him and
18 he hit his head.

19 It is extremely unfortunate. He is very, very sad and sorry that this
20 man is dead, but it is not something that anyone would have thought would
21 have happened when two people punch each other a couple of times.

22 Mr. Wynn does have a criminal history. But that should not make a big
23 difference in this case. The difference in this case is what happened.

24 An argument does not mean that someone is going to die.

25 A few punches does not mean that someone is going to die.

1 I still think that this case was involuntary manslaughter. I think the
2 appropriate punishment would be five (5) years. We've said that all along.

3 I understand the jury has spoken, and we accept that, but this should
4 not have happened. It did not mean to happen. The coroner — the
5 pathologist testified that it did not happen from punches to the head.

6 He was not the one physically causing this injury to cause the death.
7 He hit his head and he died.

8 He's not taking no -- no blame for this. He was the one there and this
9 death did occur. But I do think that a punishment that actually fits the crime
10 would be appropriate.

11 We're hoping Your Honor would consider something in that range
12 because 30 years is appropriate if he had come to the scene, with a baseball
13 bat or something of that nature, and actually beat this man to death, done
14 something where this man provoked him and he had grabbed an object and
15 actually beat him, 30 years would be appropriate in that case.

16 That is not what happened in this case. And I understand a person is
17 dead, but he should not spend the rest of his life in prison or what will be the
18 rest of his life — he is a 45-year-old man — because of a tragic circumstance
19 that happened in this case.

20 You will hear a significant history. It's not great, but it's not for killing
21 other people. Everyone that got up here, the victim has a criminal history.
22 Every witness had a criminal history. This just was not a great situation. But
23 he's the one standing here today unfortunately.

24 But I hope you'll consider what actually happened in this case
25 in sentencing him. And I hope you will consider somewhere around

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1 the five- year mark, which would have been involuntary manslaughter.

2 And I hope you will — he — he can be on probation as long as you
3 want, with as much time hanging over his head as you want, because, then, it
4 will be his choice whether or not to go to prison.

5 And I think he will be able to handle himself out on probation. I
6 understand that there is a probation issue that we have to take care of.

7 We were ready, willing, and able to take care of that, you know,
8 months — a long, long time ago for four years; that's what he had agreed to.
9 He did six months ago.

10 The only reason we did not take care of that, at the time, they wanted
11 to do four years concurrent to whatever we did in this case. The reason we
12 didn't do it is because I didn't want him shipped off to the Department of
13 Corrections.

14 I told him, "You're not taking this plea because, if you get shipped off
15 to the Department of Corrections, I cannot do your case."

16 I have another client charged with murder and he is in the Department
17 of Corrections. And all that's happening in his case is he keeps threatening
18 the bar — he keeps trying to fire me because we're not together working on
19 his case.

20 He stayed in Spartanburg. And we talked to each other all the time.
21 We were able to work on his case. And that's where people need to be when
22 they're charged with serious stuff like this.

23 So I told him, "Don't accept the four years concurrent with your case,
24 stay here and..." — so we continued his violation of probation case.

25 The judge allowed us to do that.

1 But I hope that you will take into consideration that offer that stood, the²⁵⁹
2 four years concurrent with whatever sentence he got on this case, because
3 that was what was being offered to him.

4 And the only reason he hasn't taken it up to this point is that I needed
5 for him to stay in Spartanburg County to prepare a very serious case.

6 I would like you to hear from his family that's here, his father Glenn
7 Manning (phonetic) would like to speak to you if he could come forward.

8 **THE COURT:** Absolutely. I'd be happy to.

9 **(Family member stepped forward to address the Court.)**

10 **MR. MANNING:** Yes, Your Honor. May it please the Court?

11 **THE COURT:** Yes, sir. Tell — tell us ---

12 **MR. MANNING:** I'm Glenn Manning. I'm ----

13 **THE COURT:** Yes, sir. Thank you. I'm sorry.

14 **MR. MANNING:** I'm a member of the bar and have been for many,
15 many years. I've — I'm Roger's father. His mother is Shirley.

16 And I've sat here listening intently to the testimony and all the
17 proceedings of this trial. And I also understand, based on my own
18 experience in what the law says, that the jury speaks the truth.

19 I would say this to you, Your Honor, I've tried many cases from simple
20 assault to death penalty cases. I — the Brad Herring (phonetic), that — that
21 was my case, the first murder case I ever tried in my life.

22 Also the Manning case, the death penalty case, that deals with the jury
23 venue (phonetic). I would say this to the Court — and I never sat on a jury in
24 my life, so I don't try to second guess what a jury does.

25 I will state to the Court that, in my opinion, this was purely a

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1 classic case of self-defense. If I would put myself in the same position that
2 Roger was in, somebody came and starts beating on me or hitting on me, I
3 would defend myself.

4 And I know the jury has the last word, but in this instance, there was
5 no weapons involved, just plain two men fighting. I don't know what the age
6 of the victim is or was, but I know Roger's age.

7 And I would have done the same thing. I think anyone else would
8 have done the same thing. know that he died from blunt force trauma, which
9 is particular in a fight.

10 Your Honor, I realize what the law says. And I know what the
11 parameters are that you can sentence him based on what the law says. But
12 I would ask you, if you really look at the evidence presented in this case, in
13 my opinion, again — and he's my son, but this is not a case, in my opinion,
14 that he should have been found guilty of anything based on what actually
15 happened.

16 At — at what time does a person have to stand there and just let
17 somebody beat them or hit them and you not defend yourself? Here's a
18 classic example of a man being punished for defending his — his own body
19 beating of injuries. That's what it is; nothing more, nothing less.

20 He had no gun, he had no weapon, he just used his plain — his plain
21 old fists. There were no — no weapons involved on either side. But, if you
22 can't defend yourself, what in the world are we going to do?

23 And I practiced law for 40 years, Your Honor, so I — I've been around
24 the bush. I've been around — been around the block. But, at the same time,
25 if he were not my son, I would say the same thing about any

1 defendant or any other person I would represent.

2 I don't see -- of course, you have the last word, but I would ask the
3 Court to consider giving him the minimum sentence that you can give him
4 based on the facts of this case; not because he's my child, but based on the
5 facts that were presented in this court. Thank you, Your Honor.

6 **THE COURT:** Thank you, Mr. Manning.

7 **MS. LYALL:** Your Honor, his mother is here, but I don't think
8 she's able to speak today. She's been supportive of him this entire time.

9 She's been in court today, but I -- I don't think she would be capable
10 of speaking in front of you. But I do want you to know that she and his
11 stepfather are very supportive of him and they've supported him throughout
12 his life and throughout this case and are here for him and will be here for him
13 -- for him after this as well.

14 **THE COURT:** Okay. Thank you. Anything else?

15 **MS. LYALL:** No, Your Honor.

16 **THE COURT:** Okay. Solicitor?

17 **MR. BULSA:** Thank you, Your Honor. First ---

18 **THE COURT:** I'm sorry. Let me -- I'm sorry. I did not give you a
19 chance to speak, sir.

20 **MS. LYALL:** Right.

21 **THE COURT:** I'm sorry.

22 **MR. WYNN:** Thank you.

23 **THE COURT:** You -- you may speak.

24 **MR. WYNN:** Your Honor, it's all -- it's been a -- a bad situation
25 not only for myself but for their family also. And I know -- God knows

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1 I know — I don't know exactly the pain that they feel. And there's no question
2 about where I was and why didn't I stay.

3 I'm not going to lie to you; I was scared. I didn't leave him or abandon
4 him.

5 When I came back and saw him there in the truck, I begged — begged
6 her — I begged Kerri to call the police. I begged her to call for an ambulance
7 to come get him.

8 I stayed there and I stayed there. And the more time I stayed there —
9 and I'm not — I'm not going — I'm not trying to hide nothing from nobody. I
10 didn't — I'm going to tell you, I didn't want to get on the stand because of my
11 record.

12 And I know that they would take that against me; they would have
13 used that against me. I know that's what he was going to do; I know this.

14 But I stayed there with him. And, when I saw him in the condition that
15 he was, this man right here — I know how everybody feels, but this was a
16 friend of mine.

17 This man helped me; not only me, but everybody in that neighborhood.
18 We had a bad misunderstanding and I said something that ticked him off.
19 And I shouldn't have said what I said.

20 And that's the bottom line. That's how all of this got started because of
21 my mouth, by me saying something to him. And I shouldn't have said it.

22 And I know they're upset me me. I know they've been upset with me.
23 I didn't go out — I didn't — I didn't — I didn't intend for none of this to happen.
24 I apologize to his wife. I apologize to his family.

25 I've worked with this man. This man has helped me over the

1 years, God as my witness; not only me, there's quite a few people. And it's
2 the people that was sitting up here on the stand yesterday that he has helped
3 in the past also.

4 There's been times when we walked down the street and we didn't
5 have a dollar bill in our doggone pocket and we'd stop — we'd stop him and
6 try to help him do something. And he would reach in his pocket and he would
7 give me five dollars.

8 So for me to start a fight with him about money, that's — that's —
9 that's — that's unheard of, Your Honor. People say, yes, he owed me
10 money, when I was questioned about it, I said something about it. And, yeah,
11 it started because I asked him about the money.

12 That's where the — that's where the disagreement began. But I said
13 something else that — that took him — that — that ticked him off. That's
14 what did it.

15 I wasn't that I went to this man and started something with him
16 because he owed me money. That's been all taken out of proportion.

17 This is — this is tragic — tragic not only to me, not only to their family.
18 This has affected more than one life. It's affected everybody that's involved.

19 I — I — his wife, Mrs. Goldsmith, she don't remember me, but I worked
20 with them a couple times. I worked with her at the Vic Bailey Honda. That's
21 where I know her from. That's the only way I even recognized who she was.

22 She was just — she's — I have nothing bad to say about neither one of
23 them. Till the day that I worked — till the day that I know that I worked for
24 her, she was just as sweet as she could be. She treated me like somebody.

25 Every time they asked me to do something I did exactly what

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1 they asked me to do.

2 (Brief Pause)

3 MR. WYNN: I'm — I'm — I'm sorry. I — I — I'll have no trouble
4 throwing myself on the mercy of the Court, Your Honor, and ask you to do in
5 this case — I mean, no matter what you do, you know, it's — it's like I said,
6 it's going to affect my family. It's going to affect my kids and it's going to
7 affect my mother.

8 My mother has been there all my life with me. My mother helped me
9 through all the struggles that I've had. My mother told me a long time ago to
10 tell her the truth about everything no matter what it is and that's the only
11 person I have ever told the truth about everything that I've ever did because I
12 got in trouble one time before because somebody told a lie on me. And she's
13 the only person that helped me out to get the truth out.

14 And, in this case here, yes, with my probation, she asked me to stay.
15 At one time I wanted to sign off so I could get away because of the pressure
16 sitting inside of that cell dealing with other people and their problems.

17 (Brief Pause)

18 MR. WYNN: During the time that I have been there, I have
19 worked in that jail, Your Honor. And here's a letter from — from the people
20 that are at the jail. I've worked ever since — since February of this year
21 around other people, around other inmates, dealing with their problems and
22 trying to help them with their problems. And I've been dealing with my own.

23 You can call Mr. Moore who's — that's one of the supervisors that's
24 over me. And he'll tell you that I've — I've caused him no problems
25 at all. I've caused nobody no problem.

1 I loved this man. I prayed every night ever since this happened. I — 265
2 tried to pray for peace for them, for her to be able to some day forgive me, for
3 your family to forgive me.

4 I didn't — I didn't — I didn't want this. I didn't want this right here. I
5 just saw it as a fight when I walked off. When I came back, I saw that he was
6 in bad shape and I — I — I just — I just — I asked Kerri to call — dial 911.

7 Yes, I saw Joyce and him. Everybody that testified, testified to the
8 truth to their ability to what I could understand.

9 All of them had different accounts of how it happened, but each one of
10 them — the time limit was different, but the majority of them told the truth
11 about everything.

12 We both were — it wasn't just me hitting him; he was hitting me. It —
13 it was both ways, Your Honor. And I'm sorry and I apologize to everyone
14 that's involved.

15 (Brief Pause)

16 THE COURT: Anything else, sir?

17 MR. WYNN: (Shakes head negatively.)

18 THE COURT: Thank you.

19 MR. WYNN: No, sir.

20 THE COURT: Thank you, sir. Solicitor?

21 MR. BULSA: First, as to his criminal record, Your Honor,
22 criminal domestic violence in 1990; grand larceny, three counts, 1992;
23 forgery, 1992; possession of marijuana, 1994; burglary second non-violent in
24 1997;

25 Resisting arrest, two counts, 1997; criminal domestic violence,

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1 1997; possession of stolen vehicle, 1998.

2 Then, he has a series that he pled guilty to all at once; reckless
3 driving, criminal domestic violence, burglary second non-violent, four counts;
4 petit larceny, three counts; grand larceny, failure to stop, resisting arrest,
5 possession of stolen vehicle. That was all in 1999.

6 Criminal domestic violence third, two counts, in 2004; assault and
7 battery of a high and aggravated nature in 2006; resisting arrest, 2008;
8 failure to stop for a blue light and hit and run in 2008; assault and battery,
9 2008;

10 Two counts of false information to police in 2008; receiving stolen
11 goods, possession of stolen vehicle, failure to stop in 2008; receiving stolen
12 goods, two counts, and a third offense property charge in 2013. I believe
13 he's still on probation for a few of these.

14 Your Honor, he's had revocations in 1996, a parole revocation in 1999.
15 And, then, this will be a violation of whatever probation he was on.

16 **THE COURT:** A parole revocation in ninety — in '96?

17 **MR. BULSA:** Ninety-nine ('99).

18 **THE COURT:** In '99?

19 **MR. BULSA:** On the burglary — on the burglary charge.

20 **THE COURT:** Okay. All right, sir.

21 **MR. BULSA:** And I have — I think Mrs. Goldsmith would like to
22 speak.

23 **(Family member stepped forward to address the Court.)**

24 **MRS. GOLDSMITH:** Your Honor, I stand here today —
25 it's very hard for me to do. I stand here today to represent my

1 husband that for 25 he was my best friend. He was my lover; he was my
2 confident.

3 When this man took his life last year, it turned my life upside down
4 also. I loved my husband dearly. My husband didn't die — didn't deserve to
5 die the way he died.

6 He helped people. He showed compassion to people. He helped
7 people and gave them opportunities when nobody else would give them
8 opportunities.

9 He helped people when they didn't have a dime in their pocket. He
10 gave them what they needed. And he just ran into somebody who didn't
11 appreciate his help.

12 My husband had a degree in social work. That shows you how much
13 he loved helping the community. And he did not deserved to die like a dog in
14 the street. And I will defend him untill I can't defend him with my last breath.

15 He did not deserve it. And I'm asking you to give him the maximum —
16 the maximum sentence — because my husband deserves justice. Thank
17 you, sir.

18 **THE COURT:** Thank you, ma'am.

19 **(Brief Pause)**

20 **MR. BULSA:** Anyone else want to come?

21 **(Family member stepped forward to address the Court.)**

22 **MR. BULSA:** If you would, state your name for us.

23 **MS. CRYSTAL:** Your Honor, I'm Loretta Smith Bryson (phonetic).
24 I'm Curtis' oldest living sister.

25 On behalf of the family, young man, I will say that we accept

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1 your apology. I do realize that it doesn't take but a split second for any of us
2 to do something stupid. We all have done it. Yours just happened to be the
3 nature that it is.

4 I'm grateful for your acknowledging my brother's work because his
5 work actually became a ministry. He had a very interesting life as a young
6 man. He did do something as a young man, but before he turned 20, he
7 went to prison.

8 And the Lord blessed him to have a major turnaround. And so many
9 people gave Curtis so many opportunities in his life. And he wasn't like a lot
10 of people.

11 A lot of people, when they make it big --- because Curtis was really
12 blessed that he really flourished as he came out of prison and went to college
13 and so on and so forth. But he never forgot where he came from.

14 My brother never forgot where he came from just like the man
15 acknowledged. And I appreciate that, young man; I really appreciate that
16 coming from you because it's the truth. That's my true brother's life.

17 We all make mistakes, so I appreciate you telling the Court the life that
18 my brother truly lived because he reached out to any and everybody that he
19 could. He never forgot his humble beginnings. He never forgot that.

20 Yes, he made mistakes like we all do, and I do understand
21 that it doesn't take but one split second for any of us to do what has occurred.

22 And I leave the rest, Judge, in your hands because that's your
23 assignment. But I want to acknowledge I appreciate you giving my brother
24 his due because it's truly his due because that was his ministry and his work
25 and his effort in society.

1 And I bid you God's speed however it works out. But I'm not angry
2 with you. I can't give it that kind of energy.

3 **THE COURT:** Thank you, ma'am.

4 **MR. BULSA:** Anybody else coming?

5 **(Brief Pause)**

6 **THE COURT:** Anything else, Solicitor?

7 **MR. BULSA:** I believe we've got just one more, Your Honor.

8 **THE COURT:** Yes, sir.

9 **MR. BULSA:** Ms. Goldsmith?

10 **(Family member stepped forward to address the Court.)**

11 **THE COURT:** Yes, ma'am. Tell us your name, please?

12 **(Family member becomes emotional.)**

13 **MR. CAMPBELL:** I'm Laura Goldsmith (phonetic). I'm next to the
14 baby of the siblings. So Curtis was my big brother. And I just want him to
15 know that I still hurt because he's not here with us.

16 I'm sorry that I'm here today, but you just don't know what hurt you
17 have inside that you have put on me. That was my brother. He took my —
18 he took my son and he — he helped my son get a good life when my son
19 ended up going through a little hard bit in prison (phonetic).

20 And my brother took him under his job and got him working out in the
21 field. And my son is doing excellent. My son is 30 years old now.

22 So I owe all of that to my brother. And I just owe that to my brother so
23 much and — and I don't understand why God had to take him so soon.

24 But I just want you to know, Judge, that I really don't hold any
25 animosity, really I don't. It's just that I still hurt so much for him.

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1 And I just want the best judgment that you can give to the man I want
2 the best by (phonetic). I just miss my brother. I miss my brother. Thank you,
3 Judge.

4 **THE COURT:** Yes, ma'am. Thank you.

5 **MR. BULSA:** That's all, Your Honor.

6 **THE COURT:** Okay.

7 (Brief Pause)

8 **PROBATION AGENT:** Your Honor, probation would like to provide
9 you a violation report for violation of supervision.

10 **THE COURT:** Okay.

11 (Documents handed up.)

12 **THE COURT:** Yes, sir, a courtroom citation?

13 **PROBATION AGENT:** The warrant has already been served, Your
14 Honor.

15 **THE COURT:** The warrant is already served?

16 **PROBATION AGENT:** Yes, sir.

17 **MS. LYALL:** We've already gone to court a couple of times as I
18 told you.

19 **THE COURT:** Okay. Let me hear from you, Mr. Probation
20 Agent.

21 **PROBATION AGENT:** Currently, Your Honor, he has a seven-year
22 exposure time. The violations that are indicated in the violation report: Not
23 reporting, changing his address without consent, not paying financial
24 obligations, not going to Alcohol and Drug Abuse Commission as ordered.
25 The agent's recommendation in this case is revocation.

1 **THE COURT:** Recommendation of...?

2 **PROBATION AGENT:** Revocation in full and civil judgement.

3 There is three victims in the case: Spartanburg Dodge, a private individual,
4 and Spartanburg County Sheriff's Office are individuals — are individuals
5 listed as victims in the case.

6 **(Brief Pause)**

7 **THE COURT:** The — the guilty verdict itself violates the
8 probation? That is in itself a violation of probation?

9 **PROBATION AGENT:** Yes, sir.

10 **THE COURT:** And do you admit the other allegations contained
11 in the warrant, the probation warrant, the probation citation?

12 **MR. WYNN:** Yes, sir.

13 **MS. LYALL:** Yes, Your Honor.

14 **THE COURT:** Okay. All right. The Court makes a willful finding
15 of viol — of the other violations previously noted.

16 Sir, I agree with you, a whole lot of lives have been ruined by this, a
17 whole lot of lives; yours, the decedent's family members. I have no magic
18 words for you. I -- I -- I -- I really don't.

19 2014-0313, the sentence of the Court is you be confined to the State
20 Department of Corrections for a period of twenty (20) years. That will be
21 consecutive to the violation of probation sentence. I'll give you credit for the
22 time that you have served.

23 He's revoked in full and they'll run consecutive to each other. Thank
24 you and good luck.

25 **(Off-the-Record Comments)**

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PROBATION AGENT: Do you want a civil judgement with that,

Your Honor, or...?

THE COURT: Yes, sir. That'll be fine.

(Whereupon, the proceeding concluded at 1:03 p.m.)

REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 272, were transcribed by me and represent a true and accurate transcript of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

November 8, 2014

A handwritten signature in cursive script, reading "Pamela S. Faucette", is written over a horizontal line.

Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RODERICK GERMAINE WYNN,

APPELLANT

APPELLATE CASE NO. 2014-001887

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by denying Appellant's motion for a new trial where there was no evidence to support the jury's verdict of voluntary manslaughter?

STATEMENT OF THE CASE

A Spartanburg County Grand Jury indicted Appellant at the January 27, 2014 term of General Sessions for the offense of murder. R. 237 – R. 238. His case was called to trial on August 27, 2014 before the Honorable R. Keith Kelly, and a jury. R. 1. Assistant Solicitor Derrick Balsa represented the state, and Mary Stuart Lyall represented Appellant. R. 1.

On August 28, 2014, the jury acquitted Petitioner of murder, but found him guilty of the lesser included offense of voluntary manslaughter. R. 215, l. 20 – 216, l. 6. Judge Kelly sentenced Appellant to twenty years imprisonment. R. 235, ll. 19-24.

This appeal follows.

STATEMENT OF FACTS

On the afternoon of August 14, 2013, Appellant was involved in a physical altercation with Curtis Goldsmith in the parking lot of the Money Tree Check Cashing Service in Spartanburg. The altercation began as a verbal argument when Appellant approached Goldsmith and asked him about money Goldsmith owed Appellant. None of the state witnesses saw how the physical fight began.

Freddie Young, who was living at a motel near the Money Tree, testified he overheard a conversation shortly before the altercation began between a female named Megan and a male who he believed to be Appellant. He did not see either person because he was on the other side of a wooden fence, but he heard their voices. Young claimed the female told the male to "leave the situation alone" and the male responded that "he was going to take care of business." R. 24, l. 17 – 27, l. 7.

Shortly thereafter, Young retrieved his bicycle and rode down a "corridor" to the Money Tree parking lot. When he entered the parking lot, Young saw Appellant and Goldsmith arguing and fighting. The first punch he saw came from Appellant, but because he rode up during the middle of the fight, Young did not "know if the guy [Goldsmith] threw a punch first." R. 27, ll. 8-12; R. 29, l. 11 – 31, l. 19.

During the middle of the physical fight, Young rode his bicycle closer to the men and asked "what was going on." Appellant allegedly told Young that Goldsmith owed him money. R. 31, l. 20 – 32, l. 1. The men continued to fight and argue. Young opined that Appellant had the advantage over Goldsmith and explained that both men were eventually fighting on the ground. When the two finally stood up, they continued to argue until Goldsmith started "throwing punches." When Goldsmith continued to "throw punches,"

Appellant "grabbed him by the legs and got him back down on the ground." Young explained that when Goldsmith fell to the ground, he hit his head on a trash dumpster. R. 32, l. 2 – 35, l. 21. After Goldsmith hit his head, he got up and walked back towards his car. While walking to his car, Goldsmith turned around and said something to Appellant. Young claimed Appellant punched Goldsmith one last time and then Goldsmith finally got into his car. Young then rode away on his bicycle. R. 38, ll. 1-18.

Joyce Brewton testified that she saw Goldsmith and Appellant arguing by the dumpster when she went into the Money Tree that afternoon. When she came back outside, she saw the men physically fighting. She saw Goldsmith punch Appellant and Appellant punch him back. R. 87, l. 11 – 89, l. 17. She maintained that she never saw either man on the ground. R. 89, ll. 16-17. As Brewton was leaving the parking lot, she said she watched Goldsmith walk back to his car, get inside, and sort of "slump down" in the seat. R. 89, l. 19 – 90, l. 11. Brewton testified that Appellant and a female were standing over Goldsmith as he "was slumped over in the car" and that Appellant kept saying, "I knocked him out. He all right. He all right." R. 91, ll. 10-21.

Matthew Teamer, who was driving through the Money Tree parking lot that afternoon, testified that he saw Appellant and Goldsmith arguing, but he could not hear what they were saying because his windows were rolled up. He said he saw Goldsmith hit Appellant first and then both men fell to the ground and were "scuffling." The men continued to fight until eventually Appellant walked off with his book bag and Goldsmith walked towards his car. R. 135, l. 19 – 137, l. 24.

Marion Bridges, who was at the Money Tree with Joyce Brewton, testified that he was waiting in the car with his granddaughter while Brewton was in the store. His

granddaughter pointed out that two men were arguing behind them. Bridges looked back and claimed he saw Goldsmith jump out of his car and “slam on Roger [Appellant].” He said Goldsmith took the first swing at Appellant and then the two “scuffled a little bit.” They were punching each other and wrestling. Bridges never saw either man on the ground. He explained that after the fight ended Goldsmith got back into his car and it looked like he was injured because he was slumped over. R. 150, l. 11 – 153, l. 9.

After the fight ended, Appellant ran down the street seeking help and ran into Kerri Blanchard who was walking up the sidewalk towards the Money Tree. Blanchard testified that Appellant was upset and told her “that Curtis [Goldsmith] had swung at him” and that he hit Goldsmith back and Goldsmith “wasn’t moving.” R. 60, ll. 5-18; R. 66, l. 22 – 67, l. 5. Appellant and Blanchard walked back to the Money Tree together. When they got to the parking lot, Goldsmith was slumped over in the driver’s seat of his car with the door open and the engine running. Blanchard explained that Goldsmith “was still breathing, but he wasn’t breathing normally” and “his heart was beating extremely fast.” R. 60, l. 19 – 61, l. 13. Appellant asked her to call 911. Blanchard told the 911 operator “[t]hat something had happened at Money Tree. I believed there was a fight and that the ambulance needed to come.” After Appellant ensured 911 had been called and that Goldsmith would get the medical attention he needed, he left the scene. R. 62, ll. 2-19.

When EMS arrived at the scene, they found Goldsmith unconscious. R. 7, ll. 11-20. He was “slumped over” in the driver’s seat of his car and had vomited. R. 7, l. 21 – 8, l. 18. The paramedics could not find a pulse and despite efforts were never able to resuscitate him. R. 8, l. 19 – 9, l. 22. Goldsmith was declared dead at the hospital upon arrival. R. 9, ll. 23-25.

Law enforcement arrested Appellant four days later and charged him with murder. R. 107, ll. 5-8.

Dr. David Wren, the pathologist who conducted the autopsy, testified that Goldsmith died of blunt force trauma to the head that was caused by Goldsmith either falling into or being struck by a flat object. R. 119, ll. 3-25. The blunt force trauma caused internal hemorrhaging or bleeding to the brain which led to Goldsmith's death. However, Goldsmith did not suffer a skull fracture. Wren maintained that it does not require a lot of force to cause an injury like Goldsmith's. He explained, "It's just some people are more susceptible than others." R. 122, l. 23 – 123, l. 8. Wren opined that Goldsmith's injuries were not caused by "a blow by a fist" and again were likely caused by Goldsmith being "thrown up against something or he fell and hit something." R. 123, ll. 9-17.

The court charged the jury on murder, the lesser included offenses of voluntary and involuntary manslaughter, self-defense, and mutual combat. R. 204, l. 12 – 210, l. 21. Thirteen minutes into its deliberations, the jury asked the court for written definitions of voluntary and involuntary manslaughter. R. 213, l. 22 – 214, l. 24. It reached a verdict about an hour and a half later and found Appellant guilty of voluntary manslaughter. R. 214, l. 25 – 216, l. 6.

ARGUMENT

The court erred by denying Appellant's motion for a new trial where there was no evidence to support the jury's verdict of voluntary manslaughter.

Relevant Facts

After the jury returned its verdict finding Appellant guilty of voluntary manslaughter, defense counsel made a motion for a new trial arguing there was insufficient evidence to support the jury's verdict. She argued there was no evidence presented that Appellant acted in the sudden heat of passion or upon sufficient legal provocation and thus there was no evidence of voluntary manslaughter. R. 217, l. 19 – 218, l. 18.

The assistant solicitor argued in response that there was evidence of both sufficient legal provocation and sudden heat of passion. He stated, "[T]he Defense case hinged upon the victim inflicting the first blow, which the jury could easily see as provocation. The Defendant went up to the victim upset about some money. So he clearly could have become enraged as a result of the blow by the victim. So the charge is sufficient." R. 218, l. 20 – 219, l. 1.

The court ultimately denied the motion finding "there is ample evidence . . . to support the jury's decision." R. 183, ll. 2-5.

Discussion

The court erred by denying Appellant's motion for a new trial where there was no evidence to support the jury's verdict of voluntary manslaughter. Specifically, there was no evidence Appellant acted in the sudden heat of passion or upon sufficient legal provocation, both necessary elements of voluntary manslaughter.

“In considering a new trial motion based on insufficiency of the evidence, the trial court is concerned with the existence of evidence rather than its weight. The weight of the evidence is a question for the jury. Where there is any evidence supporting the jury’s verdict, the court commits no error in denying the motion.” State v. Smith, 363 S.C. 111, 115, 609 S.E.2d 528, 530 (Ct. App. 2005) (citing State v. Pauling, 264 S.C. 275, 278, 214 S.E.2d 326, 327 (1975)) (internal citations omitted).

“Voluntary manslaughter is the unlawful killing of a human being in the sudden heat of passion upon sufficient legal provocation. Both heat of passion and sufficient legal provocation must be present at the time of the killing. The provocation must be such as to render the mind of an ordinary person incapable of cool reflection and produce an uncontrollable impulse to do violence.” State v. Cooley, 342 S.C. 63, 67, 536 S.E.2d 666, 668 (2000) (internal citations omitted).

“A defendant is not entitled to a voluntary manslaughter charge merely because he was in a heat of passion.” State v. Starnes, 388 S.C. 590, 596-97, 698 S.E.2d 604, 608 (2010) (citing State v. Wharton, 381 S.C. 209, 215, 672 S.E.2d 786, 788 (2009)). “Conversely, a defendant is not entitled to voluntary manslaughter merely because he was legally provoked.” Starnes, 388 S.C. at 597, 698 S.E.2d at 608 (citing State v. Pittman, 373 S.C. 527, 576, 647 S.E.2d 144, 170 (2007)).

There was no evidence presented that Appellant was overcome by a sudden heat of passion as would produce an “uncontrollable impulse to do violence.” The only evidence presented by the state was Young’s testimony that Appellant told him Goldsmith owed him money and that was why they were arguing. It was unclear why the physical altercation

began or who started it. However, several witnesses testified that this was a normal fist fight between two middle aged men.

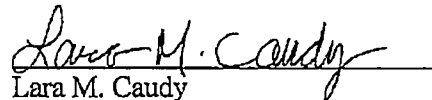
Moreover, there was no evidence presented that Goldsmith had legally provoked Appellant. While there was some conflicting testimony that Goldsmith threw the first punch, this was not evidence to establish sufficient legal provocation.

Because there was no evidence to support the jury's verdict convicting Appellant of voluntary manslaughter, this Court should reverse his conviction and sentence and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his conviction and sentence and remand for a new trial.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

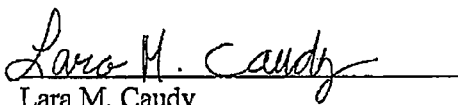
ATTORNEY FOR APPELLANT

This 27th day of July, 2015.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and 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."

July 27, 2015


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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

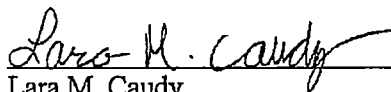
V.

RODERICK GERMAINE WYNN,

APPELLANT

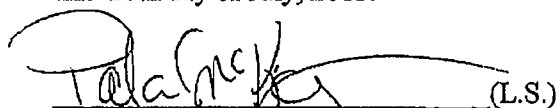
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 27th day of July, 2015.


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of July, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case No. 2014-001887

THE STATE,

Respondent,

vs.

RODERICK GERMAINE WYNN,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Any issue with the trial judge's denial of Appellant's motion for a new trial was not properly preserved for appellate review because the grounds raised in support of that motion were not raised during trial and, instead, were improperly raised for the first time after the jury reached a verdict. However, even assuming the issue was somehow preserved for appellate review, the trial judge correctly denied Appellant's motion for a new trial because the evidence and testimony presented during trial established Appellant's guilt for each and every element of voluntary manslaughter, including that Appellant fatally injured the victim while acting in a sudden heat of passion that resulted from sufficient legal provocation.

STATEMENT OF THE CASE

In August of 2013, Appellant Roderick Jermaine Wynn was arrested after he fatally injured another man during a physical altercation. In January of 2014, the Spartanburg County Grand Jury indicted Appellant for one count of murder. On August 27, 2014, a jury trial was commenced in the Spartanburg County Court of General Sessions with the Honorable R. Keith Kelly, circuit court judge, presiding. At the conclusion of trial, the jury acquitted Appellant of murder and convicted him of the lesser-included offense of voluntary manslaughter. Following the verdict, Appellant moved for a new trial, and the trial judge denied the motion. Thereafter, the trial judge sentenced Appellant to a twenty-year term of imprisonment. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

On August 14, 2013, Jeffrey Holt, a paramedic in Spartanburg, South Carolina, received a report of an unconscious individual situated in the parking lot of the Money Tree, and he quickly responded to the scene. (R. p. 7). Upon arriving, he was directed to a vehicle parked in the parking lot by several bystanders and observed a man seated in the driver's seat of the vehicle with his head slumped down. (R. pp. 7-8). He then approached the vehicle, examined the man, and discovered the man had no pulse, was not breathing, and had recently vomited. (R. pp. 7-8). He further noticed the man had a "fairly small" contusion to his left temporal forehead, a small indentation into the contusion, and a laceration above that injury. (R. pp. 9-10). In response, he removed the man from the vehicle, began resuscitation efforts, and quickly transported the man to the hospital by ambulance. (R. pp. 8-9). However, his resuscitation efforts were unsuccessful, and the man – fifty-six-year-old Curtis Goldsmith ("Victim") – was pronounced deceased at the hospital. (R. p. 9; p. 18; p. 117).

Meanwhile, officers from the Spartanburg Police Department arrived at the location where Victim was discovered and began speaking to the bystanders to ascertain what led to Victim's injuries and death. (R. pp. 13-16; pp. 97-98; pp. 103-104). After speaking with the bystanders, the officers determined Victim had just been involved in an altercation with Appellant Roderick Jermaine Wynn, and they began attempting to locate Appellant. (R. pp. 15-16; pp. 98-99; p. 106). While searching for Appellant, Officer Christopher Banks discovered Appellant's girlfriend lived at a nearby motel and went to the motel to speak with her. (R. p. 98). During his ensuing conversation with Appellant's girlfriend, Appellant called her phone but refused to tell her where he was located. (R. p. 99). Officer Banks then took the phone and asked Appellant to meet with

him at the motel in regard to an unrelated incident, and Appellant agreed to do so. (R. pp. 99-100; p. 103). However, Appellant never arrived at the motel to meet with the officer, and his whereabouts remained unknown. (R. pp. 99-100; p. 106).

Later that afternoon, Dr. David Wren, an expert in forensic pathology, conducted an autopsy on Victim's body. (R. pp. 114; pp. 116-117). During the autopsy, Dr. Wren discovered abrasions along Victim's elbow, abrasions to both of Victim's knees, and an injury to Victim's right forearm that was consistent with a fall against something. (R. p. 118). Additionally, he located hemorrhages on the vertex of Victim's scalp and just above Victim's left ear that were inflicted shortly before Victim's death and that could have resulted from strikes or a fall. (R. p. 119). Furthermore, Dr. Wren discovered Victim had sustained a subdural hemorrhage, a subarachnoid hemorrhage, and an intraventricular hemorrhage in his brain. (R. pp. 121-122). Based on Victim's injuries, Dr. Wren determined Victim died as a result of an altercation and Victim's specific cause of death was closed head trauma with subdural, subarachnoid, and intraventricular hemorrhages. (R. p. 123).

Thereafter, a tipster informed the investigating officers four days after Victim's death Appellant was hiding in an abandoned house. (R. p. 107). In response, officers quickly headed to that location, found Appellant there, and apprehended and arrested him for his involvement in Victim's death. (R. p. 107). Subsequently, the Spartanburg County Grand Jury indicted Appellant for murder, and he elected to proceed forward to trial. (R. p. 2; pp. 237-238).

During trial, Holt testified about his attempts to resuscitate Victim, and the officers from the Spartanburg Police Department testified about their investigation into Victim's death that resulted in Appellant's arrest for the killing. (R. pp. 7-9; pp. 14-16;

pp. 97-100; pp. 104-107). Likewise, Dr. Wren testified about the injuries he discovered through the autopsy he conducted on Victim's body. (R. pp. 117-123). During his testimony, Dr. Wren opined Victim's injuries could have resulted from Victim falling four to five feet and were unlikely to have been caused solely by a blow from a fist. (R. p. 123). Based on Victim's injuries, Dr. Wren concluded Victim died as a result of an altercation and was likely thrown up against something, fell and hit something, or was hit by an object that was swung at him. (R. p. 123).

In addition to that testimony, Freddie Young, a resident of a motel located near the Money Tree, testified he was working on a car outside of the motel when he heard a woman pleading with someone to "just leave the situation alone" in a nearby alley and the other person responding he was "going to take care of business." (R. pp. 23-27). After that, Young indicated he went to investigate, saw Appellant engaged in an argument with Victim that turned physical, observed Appellant throw the first punch he saw exchanged between the men, and heard Appellant state Victim owed him money and he was going to get it from him. (R. pp. 30-31; p. 33; pp. 42-43). Regarding the fight, Young testified Victim tried to protect himself from Appellant's punches, Victim seemed dizzy after he was knocked to the ground by Appellant, and Appellant picked Victim up by the legs and slammed him to the ground. (R. pp. 33-35; p. 50). He further stated he believed Victim hit his head on a trash can during the fight and testified Appellant struck Victim again and caused him to fall to the ground while Victim was attempting to walk back to his car. (R. p. 35; pp. 37-38; p. 50). However, Young indicated he was not sure who actually threw the first punch and noted the men were already engaged in the altercation when he arrived on the scene. (R. p. 30; p. 44).

Additionally, Kerri Blanchard, a “good friend” of Appellant’s, testified about the events of August 14, 2013, noted she did not see anything that happened during the incident, and stated she called 911 after Appellant told her Victim needed help because he had punched Victim so hard Victim could no longer move. (R. pp. 56-58; p. 62; p. 73). Blanchard further testified Appellant informed her Victim owed him money and had swung at him, and she indicated Appellant was upset at the time. (R. p. 58; p. 64; pp. 66-67).

Likewise, Katrina Price, another of Appellant’s friends, testified for the State, indicated she was walking with Blanchard towards the Money Tree, and watched as Blanchard crossed the street and began talking with Appellant, who had been arguing. (R. pp. 76-77). During Appellant’s conversation with Blanchard, Price stated she overheard Appellant say he “lit his ass up” and she noticed Appellant was “pretty” mad, “pretty well upset,” and was speaking in a “very loud” manner at the time. (R. p. 77; p. 81). Price further indicated she believed Appellant had been involved in a fight while conceding she did not see any of the fight that had occurred. (R. p. 78; p. 80).

Furthermore, Joyce Brewton testified about the incident and indicated she went to the Money Tree on August 14, 2013, to pay her bills. (R. pp. 86-87). On that date, Brewton stated she saw Appellant and another man arguing before she entered the business, remained inside for a few minutes, exited, and saw the men engaged in a physical fight at that time. (R. pp. 87-89). Additionally, she testified she saw the other man throw a punch at Appellant followed by Appellant “whoop[ing] his ass.” (R. p. 89). Brewton further testified Appellant’s opponent appeared to be dead at the time she left the parking lot of the Money Tree, and she noted she heard Appellant state he had knocked the other man out while claiming the other man was okay. (R. pp. 89-91).

Subsequently, the State rested its case, and defense counsel called several witnesses to testify in Appellant's defense. (R. p. 127; p. 129; p. 135; p. 150). Amongst those witnesses, Matthew Teamer, a convicted felon, testified he was driving through the parking lot of the Money Tree when the incident occurred while inconsistently claiming he was and also was not present when the fight began. (R. p. 135; p. 142; pp. 147-148). Regarding the fight itself, Teamer stated he observed Appellant and another man arguing, the other man struck Appellant, and then both men fell to the ground. (R. p. 136). After that, Teamer claimed Appellant and the other man got back up before Appellant punched, threw, and kneed the other man. (R. p. 136). He stated he then continued to leave the parking lot and did not perceive the altercation to be a serious one. (R. pp. 137-138).

Similarly, Marion Bridges, the sister-in-law of Brewton, testified about her observations during the incident and stated she drove Brewton to the Money Tree, waited in her vehicle while Brewton went inside, and saw Victim and Appellant arguing. (R. pp. 150-151). After that, Bridges indicated Victim "took a swing" at Appellant, Appellant and Victim "scuffled a little bit" while punching and wrestling with each other, and then Victim got into his vehicle and slumped over. (R. pp. 151-152). Additionally, she claimed Appellant "hollered" during the incident about how Victim owed him money and had taken a swing at him, and she stated Victim informed her he "just knocked the 'H' out of" Victim when she asked him what happened. (R. pp. 152-153). Furthermore, she admitted she did not see the whole argument between Appellant and Victim and noted Appellant panicked and fled when Brewton called 911. (R. pp. 153-154).

Following the presentation of that testimony, the defense rested, and the trial judge presented the solicitor and defense counsel with copies of his proposed jury instructions. (R. p. 167; p. 170). Defense counsel then moved for a directed verdict on

the murder charge, arguing the killing was not intentional and Victim's injuries were not directly caused by punches. (R. pp. 170-173). Defense counsel further contended Appellant's actions constituted "at most a manslaughter." (R. p. 172). After considering the arguments of counsel, the trial judge denied the directed verdict motion. (R. p. 173). Thereafter, the parties presented their closing arguments to the jury, and the trial judge instructed the jury on the applicable law, including on the law of murder, voluntary manslaughter, involuntary manslaughter, and self-defense. (R. pp. 174-213). The trial judge then inquired of the parties whether they had any issues, and defense counsel responded: "No, Your Honor." (R. p. 213).

Subsequently, at the conclusion of trial, the jury acquitted Appellant of murder and convicted him of the lesser-included offense of voluntary manslaughter. (R. pp. 215-216). Following the verdict, defense counsel renewed her motion for a directed verdict and additionally moved for a new trial. (R. pp. 217-218). In seeking a new trial, defense counsel contended – for the first time – the evidence presented during trial was not sufficient to prove the offense of voluntary manslaughter based on the fact there was allegedly no evidence Appellant killed Victim in a sudden heat of passion upon a sufficient legal provocation. (R. pp. 217-218). In response, the solicitor noted the evidence presented during trial could have supported a finding Appellant confronted Victim about money and became enraged when Victim struck him, which would have been sufficient to establish Appellant's guilt for voluntary manslaughter. (R. pp. 218-219). Thereafter, the trial judge denied defense counsel's post-trial motions, including the motion for a new trial, after finding ample evidence had been presented to support the jury's verdict. (R. p. 219). The trial judge then sentenced Appellant to a twenty-year term of imprisonment. (R. p. 235).

ARGUMENT

Any issue with the trial judge's denial of Appellant's motion for a new trial was not properly preserved for appellate review because the grounds raised in support of that motion were not raised during trial and, instead, were improperly raised for the first time after the jury reached a verdict. However, even assuming the issue was somehow preserved for appellate review, the trial judge correctly denied Appellant's motion for a new trial because the evidence and testimony presented during trial established Appellant's guilt for each and every element of voluntary manslaughter, including that Appellant fatally injured the victim while acting in a sudden heat of passion that resulted from sufficient legal provocation.

Appellant contends the trial judge erred by denying his motion for a new trial. In support of that contention, Appellant maintains the jury's guilty verdict on the charge of voluntary manslaughter was allegedly not supported by the evidence in light of the fact no evidence or testimony was presented establishing Appellant acted in a sudden heat of passion resulting from sufficient legal provocation at the time he fatally injured Victim. Initially, Appellant's challenge to the sufficiency of the evidence of voluntary manslaughter, which was raised for the first time through his post-trial motion for a new trial, was not properly preserved for appellate review due to the fact defense counsel did not raise such a challenge to the sufficiency of the evidence during trial and specifically indicated she had no objection after the trial judge submitted the voluntary manslaughter charge to the jury. However, notwithstanding any issue preservation concerns, the trial judge correctly denied Appellant's new trial motion because the evidence and testimony presented during trial, including the testimony establishing Appellant fatally injured Victim during a physical altercation that followed a heated argument between the two, established Appellant's guilt for each and every element of voluntary manslaughter, including that Appellant fatally injured the victim while acting in a sudden heat of passion that resulted from sufficient legal provocation. Appellant's conviction should be affirmed.

STANDARD OF REVIEW

In a criminal case, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). A decision as to whether to grant or deny a motion for a new trial is left to the sound discretion of the trial judge and will not be reversed absent a clear abuse of discretion. State v. Johnson, 376 S.C. 8, 11, 654 S.E.2d 835, 836 (2007); see State v. Jamison, 221 S.C. 312, 319, 70 S.E.2d 342, 344 (1952) (“The granting or refusal of a motion for a new trial is within the discretion of the Trial Judge and unless he commits an abuse of discretion, this Court is powerless to interfere.”). “An abuse of discretion occurs when a trial court’s decision is unsupported by the evidence or controlled by an error of law.” State v. Hughes, 346 S.C. 339, 342, 552 S.E.2d 35, 36 (Ct. App. 2001).

ANALYSIS

A. Issue Preservation

In order for an issue to be preserved for appellate review, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004); see JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 57 (2nd ed. 2002) (identifying the four requirements that must be met in order for an issue to be properly preserved for appellate review). “If a party fails to properly object, the party is procedurally barred from raising the issue on appeal.” State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005). “Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it considered all relevant facts, law, and arguments.” I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

Regarding the requirement a timely objection be raised, a defendant must make a contemporaneous objection to a perceived error during trial in order to preserve the issue for further review. State v. Blalock, 357 S.C. 74, 79, 591 S.E.2d 632, 635 (Ct. App. 2003); see State v. Hoffman, 312 S.C. 386, 393, 440 S.E.2d 869, 873 (1994) (“A contemporaneous objection is required to properly preserve an error for appellate review.”). Thus, when a perceived error arises, the defendant must object at the first opportunity to do so or the issue is waived. State v. Sullivan, 310 S.C. 311, 314, 426 S.E.2d 766, 768 (1993); see State v. Williams, 303 S.C. 410, 411, 401 S.E.2d 168, 169 (1991) (“A defendant must object at his first opportunity to preserve an issue for appellate review.”); see also State v. King, 349 S.C. 142, 157, n.1, 561 S.E.2d 640, 647 (Ct. App. 2002) (“[N]o objection was made contemporaneously with this testimony so as to preserve the issue for review. King's belated objection to subsequent testimony came too late.”). Significantly, “[i]t is axiomatic that an issue cannot be raised for the first time in a post-trial motion.” Bank of New York v. Sumter County, 387 S.C. 147, 159, 691 S.E.2d 473, 479 (2010) (emphasis added).

In the case at bar, any issue with the trial judge's denial of Appellant's motion for a new trial was not properly preserved for appellate review because the grounds raised in support of that motion were not raised at any point prior to the verdict. Critically, during Appellant's trial, defense counsel moved for a directed verdict on the indicted offense of murder while conceding Appellant's actions may have constituted “at most a manslaughter.” Then, at the close of the evidentiary phase of trial, the trial judge presented the parties with a draft of his proposed jury instructions before instructing the jury on the applicable law, including on voluntary manslaughter. After that, the trial judge asked the parties if they had any objections or issues to raise at that time, and

defense counsel specifically affirmed to the trial judge she had no objections. Thus, prior to the submission of the case to the jury and prior to the jury finding Appellant guilty of the lesser-included offense of voluntary manslaughter, defense counsel did not raise any objections to the sufficiency of the evidence in regard to voluntary manslaughter and did not object to the submission of the voluntary manslaughter charge to the jury. See State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) (“Appellant is limited to the grounds raised at trial.”); cf. Collins Cadillac, Inc. v. Bigelow-Sanford, Inc., 276 S.C. 465, 468, 279 S.E.2d 611, 612 (1981) (“Collins failed to raise this issue in its motion for a directed verdict. Therefore, it was not a proper ground upon which to base its motion for a new trial, and will not be heard on appeal.”). Instead, defense counsel indicated to the trial judge she had no objection to his presentation of jury instructions that included a charge on the law of voluntary manslaughter, which constituted a waiver of any objection Appellant may have had to such a charge. See State v. Brown, 402 S.C. 119, 125, 740 S.E.2d 493, 496 (2013) (holding Brown’s issue with a jury instruction was not preserved for appellate review where Brown explicitly stated to the trial judge he had no objection to the instruction); State v. Rios, 388 S.C. 335, 342, 696 S.E.2d 608, 612 (Ct. App. 2010) (“Even after the trial court specifically asked if there were any objections to the charges given, Rios responded, ‘None.’ By failing to contemporaneously object to the jury charges, Rios has waived his right to allege error on appeal.”). As a result, any issues regarding the submission of the voluntary manslaughter charge to the jury or the sufficiency of the evidence to prove that charge were waived, and Appellant was precluded from raising such a challenge through a post-trial motion for a new trial. See Bank of New York, 387 S.C. at 159, 691 S.E.2d at 479 (“It is axiomatic that an issue cannot be raised for the first time in a post-trial motion.”); see also State v. Black, 319

S.C. 515, 521, 462 S.E.2d 311, 315 (Ct. App. 1995) ("It is a fundamental principle that a contemporaneous objection is required at trial to properly preserve an error for appellate review.").

Significantly, in Appellant's case, defense counsel raised her first and only objection in regard to the sufficiency of the evidence of voluntary manslaughter through a post-trial motion for a new trial made after the jury returned with a guilty verdict. Cf. Bowers v. Charleston & W. Carolina Ry. Co., 210 S.C. 367, 371, 42 S.E.2d 705, 706 (1947) (not reviewing an issue on appeal where the issue was not raised at the time the allegedly objectionable argument was made but, instead, was raised for the first time in a motion for new trial made after the jury issued its verdict). However, pursuant to South Carolina's issue preservation rules, defense counsel was not permitted to wait and see if the trial resulted in an outcome favorable to Appellant and then use a motion for a new trial to raise a new, previously-unraised objection if and when the desired outcome did not come to fruition. See State v. Penland, 275 S.C. 537, 538, 273 S.E.2d 765, 766 (1981) ("One may not preserve a vice until he learns what the result will be and then, take advantage of the error on appeal."); State v. Burnett, 226 S.C. 421, 424, 85 S.E.2d 744, 746 (1954) ("A defendant may not reserve vices in his trial, of which he has notice as here, taking his chances of a favorable verdict, and in case of disappointment, use the error to obtain another trial."); State v. Ballew, 83 S.C. 82, 87, 63 S.E. 688, 690 (1909) ("The general principle that a party can not take his chances of a successful issue, reserving vices in the trial, of which he has notice, for use in case of disappointment, is universally recognized and obviously just."); see also State v. Logan, 279 S.C. 345, 348, 306 S.E.2d 622, 624 (1983) ("Appellant can neither take advantage of an error he contributed to at trial nor preserve a vice and, upon learning of the outcome of trial, raise

it on appeal.”). Accordingly, for the foregoing reasons, any issues regarding the trial judge’s denial of Appellant’s motion for a new trial or the sufficiency of the evidence presented to establish Appellant’s guilt for voluntary manslaughter were not properly preserved for appellate review and cannot now appropriately be raised or addressed on appeal. See State v. Holmes, 320 S.C. 259, 266, 464 S.E.2d 334, 338 (1995) (“Because a new trial motion may not be used to raise an evidentiary issue for the first time, appellant’s argument is not preserved for review.”); cf. State v. Jones, 172 S.C. 129, 131, 173 S.E. 77, 78 (1934) (“Having not taken the legal steps to secure a preliminary, and not having informed the Court that one was wished, it must be held that the appellants waived any and all right to such examination. To hold otherwise would be to encourage numerous uncalled-for new trials, for many defendants, hoping to be acquitted, would keep quiet as to preliminary examinations until their hope for acquittal had resulted in disappointment.”). Appellant’s conviction should be affirmed.

B. Propriety of the Trial Judge’s Denial of the Motion for a New Trial

In criminal cases, a motion for a new trial is the only appropriate method to raise a post-trial challenge to the sufficiency of the evidence. State v. Miller, 287 S.C. 280, 282, n. 2, 337 S.E.2d 883, 884 (1985); see State v. Taylor, 355 S.C. 392, 394, 585 S.E.2d 303, 304 (2003) (“It is well-settled that a verdict in arrest of judgment should not be granted based on the insufficiency of the evidence; the proper remedy is a new trial.”). “In considering a new trial motion based on insufficiency of the evidence, the trial court is concerned with the existence of evidence rather than its weight.” State v. Smith, 363 S.C. 111, 115, 609 S.E.2d 528, 530 (Ct. App. 2005). Significantly, when no evidence exists to support a conviction, a trial judge should grant a properly-raised motion for a new trial challenging the sufficiency of the evidence. See State v. Garrett, 350 S.C. 613,

619, 567 S.E.2d 523, 526 (Ct. App. 2002) (“If there is no evidence to support a conviction, we should uphold an order granting a new trial.”); see also Collins Cadillac, 276 S.C. at 468, 279 S.E.2d at 612 (holding an issue not raised in a motion for a directed verdict during trial was “not a proper ground” upon which to base a motion for a new trial). However, when any competent evidence is presented establishing the defendant’s guilt, the trial judge may not substitute his or her judgment for that of the jury and should deny a motion for a new trial based on the sufficiency of the evidence. State v. Prince, 316 S.C. 57, 63, 447 S.E.2d 177, 181 (1993); see State v. Pauling, 264 S.C. 275, 278, 214 S.E.2d 326, 327 (1975) (“Where there is any evidence tending to establish guilt on the charges alleged, neither a refusal to direct a verdict of acquittal nor a refusal to grant a new trial is error of law.”).

In the case at bar, Appellant’s motion for a new trial challenging the sufficiency of the evidence of voluntary manslaughter was improper because defense counsel never challenged the sufficiency of that evidence during trial and specifically assured the trial judge she had no objections after he submitted the voluntary manslaughter charge to the jury. See Holmes, 320 S.C. at 266, 464 S.E.2d at 338 (instructing a new trial motion cannot be used to raise an issue for the first time); see also Winters v. Fiddie, 394 S.C. 629, 639, 716 S.E.2d 316, 321-322 (Ct. App. 2011) (“South Carolina jurisprudence indicates that a moving party must raise the objectionable issue at the appropriate time during trial; thus, unobjected to trial error cannot be advanced as grounds for a new trial.”). As a result, the trial judge committed no error in denying that improper motion. See State v. Bailey, 253 S.C. 304, 310, 170 S.E.2d 376, 379 (1969) (recognizing a trial judge commits no error by rejecting an improperly-raised objection). However, even assuming the grounds raised by defense counsel could somehow have properly been

raised for the first time through a post-trial motion for a new trial, the trial judge nonetheless correctly denied Appellant's new trial motion because the evidence presented during trial established Appellant's guilt for each and every element of voluntary manslaughter. See Smith, 363 S.C. at 115, 609 S.E.2d at 530 ("Where there is any evidence supporting the jury's verdict, the court commits no error in denying the [new trial] motion.").

Looking to the elements of the offense, voluntary manslaughter is "the unlawful killing of a human being in sudden heat of passion upon a sufficient legal provocation." State v. Gardner, 219 S.C. 97, 104, 64 S.E.2d 130, 134 (1951). In order for a killing to constitute voluntary manslaughter, both heat of passion and sufficient legal provocation must exist at the time of the killing, and the heat of passion must result from the legal provocation. State v. Starnes, 388 S.C. 590, 596-597, 698 S.E.2d 604, 608 (2010). Sudden heat of passion resulting from sufficient legal provocation in the context of voluntary manslaughter "need not dethrone reason entirely, or shut out knowledge and volition[.]" State v. Smith, 391 S.C. 408, 413, 706 S.E.2d 12, 15 (2011). However, it "must be such as would naturally disturb the sway of reason, render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence." Id. "In determining whether the act which caused death was impelled by heat of passion . . . , all the surrounding circumstances and conditions are to be taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing." State v. Norris, 253 S.C. 31, 35, 168 S.E.2d 564, 566 (1969).

In Appellant's case, the testimony presented during trial established Appellant angrily confronted Victim about a perceived debt owed to him, and a heated argument ensued between the two men. See State v. Locklair, 341 S.C. 352, 360, 535 S.E.2d 420, 424 (2000) ("[I]t is proper to charge voluntary manslaughter where the defendant and the victim had been in a heated argument prior to the [killing]."); State v. Wiggins, 330 S.C. 538, 549, 500 S.E.2d 489, 495 (1998) (finding sufficient evidence existed to support a voluntary manslaughter conviction where the evidence established Wiggins was engaged in a heated argument with the victim and the victim's sister prior to the killing); State v. Lowry, 315 S.C. 396, 399, 434 S.E.2d 272, 274 (1993) (holding the trial judge committed reversible error by not instructing the jury on the law of voluntary manslaughter where the testimony tended to show Lowry was engaged in a heated argument with the decedent and the decedent was about to initiate a physical encounter when the fatal shooting occurred). Furthermore, the testimony presented during trial demonstrated the heated argument eventually turned into a physical fight between Appellant and Victim, and Appellant struck Victim repeatedly and knocked him to the ground during the fracas. See State v. Pittman, 373 S.C. 527, 573, 647 S.E.2d 144, 168 (2007) (recognizing "an overt, threatening act or physical encounter may constitute sufficient legal provocation"). In fact, Appellant's own witnesses' testimony established Appellant punched, kneed, threw, and "knocked the 'H' out of" Victim just before Victim died from the injuries he sustained during the fight.

In light of that trial testimony, including the testimony suggesting Victim may have struck Appellant first before Appellant began physically assaulting him, sufficient evidence existed from which the jury could rationally and logically conclude Victim was fatally injured by Appellant while Appellant was acting in a sudden heat of passion that

resulted from sufficient legal provocation. See State v. Davis, 278 S.C. 544, 546, 298 S.E.2d 778, 779 (1983) ("Here, a witness testified that appellant and the victim had been 'fighting.' From this circumstance of 'provocation' and 'heat of passion,' guilt of voluntary manslaughter could be fairly and logically deduced and was thus a proper matter for jury determination."). Accordingly, under those circumstances, the trial judge properly denied Appellant's motion for a new trial even assuming that motion had somehow been proper. See id. ("[W]here there is evidence tending to establish guilt on the charge, neither a refusal to direct a verdict of acquittal nor a refusal to grant a new trial is error."). Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

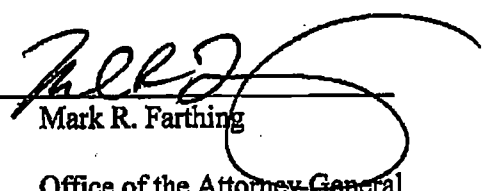
Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

July 7, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case No. 2014-001887

THE STATE,

Respondent,

vs.

RODERICK JERMAINE WYNN,

Appellant.

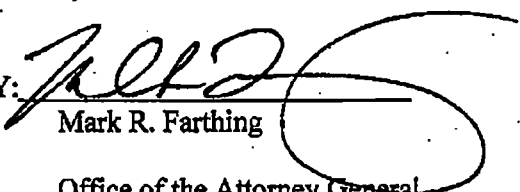
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and 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."

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

BY: 
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July 7, 2015

STATE OF SOUTH CAROLINA
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Appeal from Spartanburg County
Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case No. 2014-001887

THE STATE,

Respondent,

vs.

RODERICK JERMAINE WYNN,

Appellant.

PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Lara M. Caudy, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 7th day of July, 2015.


ANNE A. MUELLER
Legal Assistant

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Columbia, SC 29211
(803) 734-3727

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Roderick Jermaine Wynn, Appellant.

Appellate Case No. 2014-001887

Appeal From Spartanburg County
R. Keith Kelly, Circuit Court Judge

Unpublished Opinion No. 2015-UP-525
Submitted October 1, 2015 – Filed November 18, 2015

AFFIRMED

Appellate Defender Lara Mary Caudy, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Mark Reynolds Farthing, both of
Columbia; and Solicitor Barry Joe Barnette, of
Spartanburg, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) ("In

criminal cases, the appellate court sits to review errors of law only."); *State v. Dunbar*, 356 S.C. 138, 141, 587 S.E.2d 691, 694 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal."); *State v. Johnson*, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005) ("If a party fails to properly object, the party is procedurally barred from raising the issue on appeal."); *State v. Rios*, 388 S.C. 335, 342, 696 S.E.2d 608, 612 (Ct. App. 2010) (holding the failure to contemporaneously object to jury charges fails to preserve the issue for appellate review).

AFFIRMED.¹

HUFF, WILLIAMS, and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF

Spartanburg

IN THE COURT OF COMMON PLEAS

Roderick Germaine Wynn #257393
Full name and prison number (if any) of Applicant.**2016-CP-42-0618**

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Institution, 386 Redemption
McCormick, SC 29899
2. Name and location of Court which imposed sentence Spartanburg SC
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Involuntary Manslaughter 2014-GS-42-0313
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 8/28/14 20 years
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. State S.C. court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. November 18, 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. State v. Wynn, Unpublished Opinion No 2015-
- ii. up - 525
- iii. Filed November 18, 2015
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
 (b) _____
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Counsel was ineffective for failing to investigate this
 (b) case by failing to interview potential witnesses. Counsel has
 (c) a duty to investigate, See Arnd v. Catoe, 642 S.E.2d 590, 597 (2000)

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
 ii. _____
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. N/A
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. N/A
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) This is the first opportunity the Applicant has
- (b) had to present these issues
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? ~~yes~~ NO

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

i.

ii. Ms. Mary Stuart Lyall, Spartanburg County Public Defenders, off
Spartanburg

iii. Lara McCauley Appellate Defender, for SC Commission on
Independent
Defense

- (b) the proceedings at which each such attorney represented you:

i.

ii. A 18(a) ii - 17(b) cc)

iii. ~~18(a) iii~~ 18(a) iii - 17(d)

19. State clearly the relief you seek in filing this application:

- Reverse Conviction and sentence and Remand for new trial, and
any other Relief this court deems just and proper
20. Are you now under sentence from any other court that you have not challenged?

NO

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STATE OF SOUTH CAROLINA)

County of McCormick)

VERIFICATION

Roderick Germaine Wynn

I, it, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Roderick Germaine Wynn #57393

SWORN to and subscribed before me this 11
day of February, 2016.

JCA Franklin (L.S.)
Notary Public

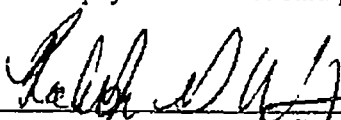
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**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

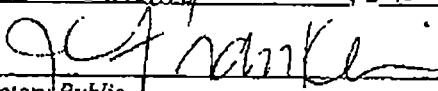
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this

11 day of February, 2016.



Notary Public

My Commission Expires: 12-16-2019

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H. HOFER, CLERK

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Roderick Germaine Wynn. #257393	)	Case No.: 2016-CP-42-0618
	)	
Applicant,	)	
	)	RETURN AND MOTION FOR
v.	)	A MORE DEFINITE STAMTENT
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on February 17, 2016, would respectfully show this Court:

1.

Roderick Germaine Wynn ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the January 2014 term of Spartanburg County Grand Jury for murder (2014-GS-42-0313). Mary Stuart Lyall, Esquire, represented Applicant. On August 28, 2014, Applicant proceeded to trial before the Honorable R. Keith Kelly and a jury. The jury found Applicant guilty of the lesser included offense of voluntary manslaughter. Judge Kelly sentenced Applicant to confinement for a period of 20 years.

A timely notice of appeal was filed on Applicant's behalf and an appeal was perfected. Lara Mary Caudy, Esquire, represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Wynn, Op. No. 2015-UP-525 (S.C. Ct. App. filed November 18, 2015). The Remittitur was returned to the Circuit Court December 4, 2015.

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Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the transcript from Applicant's trial, and Applicant's records for the Department of Corrections and appellate records. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Counsel was ineffective for failing to investigate this case by failing to interview potential witnesses. Counsel has a duty to investigate, See *Ard v. Catoe*, 642 S.E. 2d 590, 597..."

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 147, 386 S.E.2d 624, 625 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness."

under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, Counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant specifically claims that trial counsel failed to investigate by failing to interview potential witnesses. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any

ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003). Respondent submits Applicant can show neither deficiency nor prejudice with respect to this allegation.

V.

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing.

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

VII.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VIII.

WHEREFORE, having made its Return and Motion for More Definite Statement, Respondent requests that a hearing be held solely on the claims of ineffective assistance of trial counsel.

Respectfully submitted,

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Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

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October 13th, 2016

2016 OCT 17 PM 12:20

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS

3 Roderick G. Wynn,)
4 Applicant,) TRANSCRIPT OF RECORD
5) 2016-CP-42-0618
6 -vs-)
7 The State.) November 13 & 16, 2017
8) Spartanburg, South Carolina
9)
10)

11 B E F O R E:

12 HONORABLE G. THOMAS COOPER, JUDGE
13
14

15 A P P E A R A N C E S:

16 RODNEY W. RICHEY, ESQUIRE
17 Attorney for the Applicant

18 VALERIE GIOVANOLI, ESQUIRE
19 Attorney for the State
20
21

22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

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No exhibits entered into evidence.

1 (Proceedings November 13, 2017)

2 MS. GIOVANOLI: This is Roderick Wynn vs. the State,
3 Your Honor.

4 THE COURT: All right. Ms. Giovanoli.

5 MS. GIOVANOLI: Thank you, Your Honor.

6 Roderick Wynn vs. the State of South Carolina, Docket
7 No. 2016-CP-42-0618.

8 We're before the Court on an application for post
9 conviction relief filed February 17th of 2016.

10 Applicant was indicted at the January of 2014 term of
11 the Spartanburg County Grand Jury for murder.

12 Mary Stewart Lyall -- she is now Shealy -- represented
13 applicant. On August 28th of 2014 applicant proceeded to
14 trial before the Honorable R. Keith Kelly and a jury. The
15 jury found applicant guilty of the lesser included offense
16 of voluntary manslaughter. Judge Kelly sentenced applicant
17 to confinement for a period of 20 years.

18 A timely notice of appeal was filed and the appeal was
19 perfected by Lara Caudy of the Office of Appellate Defense.

20 The South Carolina Court of Appeals affirmed
21 applicant's conviction and sentence.

22 The state is present and ready to proceed. Applicant
23 is also present and represented by Mr. Rodney Richey.

24 The state did make a motion for a more definite
25 statement. Applicant's allegations in his application were

1 vague just to the extent --

2 THE COURT: Is there an amended application?

3 MS. GIOVANOLI: No, Your Honor, there is not. So the
4 state would at this point request some specificity with
5 regard to the allegations.

6 THE COURT: All right. Mr. Richey, what grounds are
7 you going forward on, please?

8 MR. RICHEY: Your Honor, I have a motion prior to
9 that. I can say either one of them.

10 I'm asking -- I'm requesting a continuance, and I'll
11 tell you my basis if the Court wants me to take -- I know
12 we're going on failure to investigate, which is in the
13 application; failure to investigate and failure to
14 interview potential witnesses. That's in the allegations
15 outline. That was an issue going on.

16 In terms of continuance, Your Honor, the applicant has
17 a witness, his father, Glenn Manning.

18 THE COURT: He has what?

19 MR. RICHEY: He has a witness.

20 THE COURT: A witness?

21 MR. RICHEY: Yeah, a witness that he would like to
22 call today -- Glenn Manning.

23 THE COURT: And where is he?

24 MR. RICHEY: Huh?

25 THE COURT: Where is he?

1 MR. RICHEY: He -- he's down in Bennettsville. He
2 called me. I called him this morning to say, hey, what's
3 going on, and he told me he got his dates mixed up. He
4 thought it was tomorrow instead of today.

5 He asked me to ask the Court to continue it until
6 tomorrow or somehow to get him here.

7 I will say, Your Honor, his testimony -- he was
8 involved in a case. He wrote a letter to trial counsel
9 outlining some of the issues he had with the case and all
10 of that.

11 And so he was set to testify today, but, as I say to
12 the Court, I called him this morning. He said, hey, sorry,
13 got his days mixed up, that he thought it was tomorrow.
14 And he asked me to ask this Court and my client did -- if
15 he could have the case continued until tomorrow or
16 something to that nature.

17 We were previously before the Court, and Judge
18 Stilwell with his order said we would not get another
19 continuance unless it was exigent circumstances and, Your
20 Honor --

21 THE COURT: That meant past the term?

22 MR. RICHEY: Yes, sir. And so, Your Honor, his dad is
23 in Bennettsville. He was here last time. He wants to be
24 here.

25 THE COURT: Is this all true, Mr. Wynn?

1 THE APPLICANT: Yes, sir.

2 THE COURT: And this witness is your father?

3 THE APPLICANT: Yes, sir.

4 THE COURT: Is he able to come to court?

5 THE APPLICANT: Yes, sir.

6 THE COURT: Ms. Giovanoli.

7 MS. GIOVANOLI: Your Honor, this case has been
8 continued twice previously, and he's correct. The last
9 time that it was heard it was set for June.

10 Judge Stilwell ordered a continuance but also ordered
11 no further continuance be granted absent exigent
12 circumstances. Applicant's father getting his days
13 confused is hardly exigent circumstances.

14 In addition to that it is my impression from speaking
15 with counsel that his father is an attorney and he's
16 offering him as an expert witness as an attorney, and
17 there's case law on that. That's Green vs. State as well
18 as Dawkins -- State vs. -- Dawkins vs. Fields that says
19 that an attorney can simply not testify as an expert to --
20 with regard to legal issues.

21 THE COURT: Right. But he can testify as to factual
22 issues.

23 MS. GIOVANOLI: Right. It's my understanding that he
24 has nothing about factual issues to testify to.

25 THE COURT: I don't know.

1 MR. RICHEY: He's going to testify to the
2 investigation of the case, his contact with the trial
3 lawyer and some of the things that they asked her to do in
4 terms of investigating the case. And that's basically what
5 the testimony is going to be.

6 There's an issue about him testifying in this case.

7 THE COURT: Is he an attorney?

8 MR. RICHEY: Yes. Glenn Manning.

9 THE COURT: All right.

10 MR. RICHEY: He's in Bennettsville, South Carolina.

11 THE COURT: All right. How about your witness, Ms.
12 Giovanoli?

13 MS. GIOVANOLI: Your Honor, she has been here every
14 single time this matter has been scheduled, and the last
15 time it was continued until about 4:00 p.m. She sat in the
16 courtroom all day. She is in private practice, so time is
17 valuable.

18 THE WITNESS: And I am not available tomorrow or
19 Wednesday.

20 THE COURT: All right. Call Mr. Wynn and tell him
21 he'd better be here this afternoon.

22 MR. RICHEY: Okay. Mr. Manning? Yes, sir.

23 THE COURT: What?

24 MR. RICHEY: Mr. Manning.

25 THE COURT: I'm sorry. Mr. Manning.

1 MR. RICHEY: Yes, sir.

2 THE COURT: Tell him I want him here this afternoon.
3 I want him here. Bennettsville -- do you live in
4 Bennettsville?

5 THE APPLICANT: No, sir. I'm here from Spartanburg.
6 My father's from Bennettsville.

7 THE COURT: It's two hours maybe, three at the most?

8 MR. RICHEY: Probably, I'd say, two and a half, three.

9 THE COURT: Comes Highway 9. Tell him I want him here
10 at 2:00 o'clock.

11 MR. RICHEY: Okay. Thank you, Your Honor.

12 (Whereupon, a recess was taken.)

13 MR. RICHEY: Judge, I talked to Mr. Manning. That's
14 the witness' dad.

15 THE COURT: Shouldn't he be in here?

16 MR. RICHEY: I'm sorry, Judge.

17 (Pause for the applicant to be returned to the
18 courtroom.)

19 MS. GIOVANOLI: For the court reporter, we're on the
20 record with Roderick Wynn vs. the State of South Carolina,
21 Docket 2016-CP-42-0618.

22 Counsel.

23 MR. RICHEY: Thank you, Your Honor.

24 Your Honor, I've called the witness, Mr. Glenn B.
25 Manning, and I expressed to him the Court wanted him at

1 2:00 o'clock. He informed me that he's in Dillon. It's
2 about three hours.

3 He does not have transportation. He has set up
4 transportation for tomorrow, he told me. Somebody's going
5 to drive him up here. And he expressed to me it's a long
6 country ride. And-but I told him what the Court had
7 relayed to me, and he told me, he said he just doesn't have
8 a way, transportation, to get up here.

9 THE COURT: He's a lawyer and doesn't have a car?

10 MR. RICHEY: He's a -- I think he's retired, Your
11 Honor.

12 THE COURT: He's retired?

13 THE APPLICANT: Yes, sir.

14 MR. RICHEY: And he did come to court last time. He
15 had a lady. I don't know -- his girlfriend or somebody.
16 But she was a little bit younger than him.

17 THE COURT: Where is Ms. Kelly, I mean, Ms. -- the
18 lawyer, his lawyer?

19 MS. GIOVANOLI: Oh, his attorney. She just stepped
20 out, but I have her number. I can call her back. I
21 thought we were going to resume at 2:00 o'clock.

22 THE COURT: Ms. Lyall.

23 MR. SHEALY: Her name is actually Ms. Shealy.

24 THE COURT: Shealy.

25 MS. GIOVANOLI: She's married, and at the time of this

1 it was Lyall.

2 THE COURT: Okay. That's fine. See if she can be
3 here Thursday.

4 MS. GIOVANOLI: Okay.

5 THE COURT: I'm going to hear this case one way or the
6 other.

7 MR. RICHEY: Yes, sir.

8 THE COURT: If he doesn't show up you go without him.

9 MR. RICHEY: Yes, sir.

10 THE COURT: I'm going to bend over backwards to
11 accommodate your client.

12 MR. RICHEY: Yes, sir.

13 THE APPLICANT: Thank you, Judge. Thank you, Your
14 Honor.

15 THE COURT: Yes, sir.

16 You're entitled to it. You've got a long way ahead of
17 you. You're entitled to have your day in court.

18 THE APPLICANT: Yes, sir.

19 THE COURT: But I can't -- I'm not going past this
20 week.

21 THE APPLICANT: I understand, sir. No problem.

22 MR. RICHEY: That's the 16th.

23 THE COURT: Well, y'all reschedule. Y'all reschedule
24 it and let me know.

25 MS. GIOVANOLI: Okay.

1 THE COURT: Do you need an order keeping him here? Do
2 it Friday afternoon if we have to. Do you need an order
3 keeping him here?

4 MS. GIOVANOLI: An order keeping him here? No.

5 Let us first establish what day we're going to hear
6 it, and then we will request an order because if he's going
7 to be staying in the jail we probably --

8 MR. RICHEY: No. He's going back.

9 THE COURT: I can order him be held here if necessary.

10 MR. RICHEY: Yes, sir.

11 THE COURT: Just hold him until we work this out,
12 please.

13 END OF PROCEEDINGS NOVEMBER 13, 2017
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1 (Proceedings November 16, 2017)

2 MS. GIOVANOLI: This is the case of Roderick Wynn vs.
3 the State of South Carolina, Docket No. 2016-CP-42-0618.

4 We're before the Court on an application for post
5 conviction relief filed on February the 17th of 2016.

6 Applicant was indicted in January of 2014 for murder.
7 Mary -- now -- Shealy represented applicant. And on
8 August 28th of 2014 applicant proceeded to trial before the
9 Honorable R. Keith Kelly and a jury.

10 The jury found applicant guilty of the lesser included
11 offense of voluntary manslaughter and Judge Kelly sentenced
12 applicant to confinement for a period of 20 years.

13 A timely notice of appeal was filed on applicant's
14 behalf and the appeal was perfected. The South Carolina
15 Court of Appeals affirmed applicant's conviction and
16 sentence.

17 The state is present and ready to proceed. Applicant
18 is also present and represented by Mr. Rodney Richey.

19 The allegations in the application are slightly vague,
20 just a failure to investigate the case and interview
21 potential witnesses.

22 The state did move for a motion for a more definite
23 statement. So at this point I would just like for the
24 motion to be addressed and the allegations clarified for
25 the record.

Roderick G. Wynn
Direct examination by Mr. Richey

1 THE COURT: All right. Mr. Richey.

2 MR. RICHEY: Thank you, Your Honor. May it please the
3 Court.

4 Your Honor, the allegation -- I think is to fully
5 investigate and call witnesses and interview witnesses
6 before the trial and to investigate the case and facts and
7 circumstances around the case.

8 Your Honor, and also we don't say -- not investigate.
9 An adequate decision was not made on whether he should
10 testify or not based on inadequate investigation.

11 THE COURT: All right.

12 MR. RICHEY: Thank you, Your Honor.

13 RODERICK G. WYNN, having been
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. RICHEY

16 Q Sir, can you state your name, please?

17 A Roderick Wynn.

18 Q Mr. Wynn, are you currently incarcerated in the
19 Department of Corrections?

20 A Yes, sir, I am.

21 Q And what are you incarcerated for?

22 A Voluntary manslaughter.

23 Q Okay. And in what county were you convicted of those
24 charges?

25 A Spartanburg County.

Roderick G. Wynn
Direct examination by Mr. Richey

- 1 Q Okay. And who represented you on those charges?
- 2 A Ms. Lyall -- Mary Stewart Lyall.
- 3 Q Okay. And were you originally charged with murder?
- 4 A No, sir. My original charge was aggravated assault.
- 5 Q Okay. And then your case was enhanced?
- 6 A Yes, sir.
- 7 Q Okay. All right. You filed an application for post
- 8 conviction relief, is that correct?
- 9 A Yes, sir, I did.
- 10 Q And you allege that your lawyer did not properly
- 11 represent you, correct?
- 12 A Yes, sir.
- 13 Q A brief background for the Court of what actually
- 14 happened in your case. Can you give us a brief background
- 15 of what happened? It was a gentleman in the neighborhood.
- 16 Y'all had an argument, and pursuant to that argument he was
- 17 injured and killed, is that correct?
- 18 A Yes, sir.
- 19 Q Okay. And it's always been your contention that you
- 20 didn't intentionally --
- 21 A No, sir. I didn't.
- 22 Q Is that correct?
- 23 A Yes, sir.
- 24 Q Okay. You -- you believe that counsel in your case
- 25 did not properly investigate your case, is that correct?

Roderick G. Wynn
Direct examination by Mr. Richey

1 A Yes, sir.

2 Q And can you tell me exactly what you believe counsel
3 should have done?

4 A Well, for one, sometime in March of 2013 -- I mean --
5 2014 I received part of my Rule 5, which is my motion of
6 discovery, which was just the coroner's report.

7 As far as any statements that other -- that so-called
8 witnesses had or written against me, I didn't receive none
9 of those things.

10 when she came to see me that day I explained to her
11 that I had not received it. She said that she would send
12 it to me. I never did receive it.

13 Also, I gave her names of individuals such as
14 Mr. Marion Bridges. I explained that to her from day one
15 that I saw him there.

16 A few weeks later -- well, maybe a month or so later
17 someone said something to me about a Matthew Teamer
18 claimed -- well, you know, made a statement that he was
19 there. I explained to her. I gave her his name.

20 Come to find out maybe a month or so later he was
21 incarcerated for a violation of probation. I notified her
22 to let her know that he was -- that he was incarcerated for
23 a violation of probation.

24 She told me that she would -- she asked me was he
25 represented by her office, and I told her yes. So she

Roderick G. Wynn
Direct examination by Mr. Richey

1 stated she would contact whomever was his -- was his public
2 defender with their office and, you know, she would get in
3 contact with him or she would get an interview with him.

4 Time goes by. A few months go by. He's incarcerated.
5 He was sent to the Department of Corrections. She had told
6 me that she was going to have to set up an interview with
7 him over the telephone. She would have to do an interview
8 over the telephone. That -- that -- evidently that never
9 happened.

10 Also, there was a Frederick Gist who also -- someone
11 had let me know that he was there and he witnessed it.
12 Himself and his girlfriend were there. And I gave him -- I
13 gave her Frederick's name.

14 She said that she -- she found out that he was
15 represented by the public defender's office. She said that
16 she would have an interview with him, she would set up an
17 interview with him and she'd speak to his attorney to make
18 sure that it was okay for her to get an interview with him.
19 That never happened. She never contacted him.

20 His girlfriend, which name was Yolanda Carter --
21 she -- outta all of the witnesses that testified in my case
22 she's the only individual that had nothing to do, you know,
23 one way or the other. She had no record. She didn't know
24 me. She didn't know the victim. Almost everyone in my
25 case knew who I was. Everyone, you know, knew me. This

Roderick G. Wynn
Direct examination by Mr. Richey

1 was the only other person that did not have any idea who I
2 was.

3 The conversation that Mr. -- Mr. Young claims that he
4 overheard, I explained to her within length that this
5 conversation did not happen. He claims that I spoke with
6 her -- I spoke with him during the time that the incident
7 was occurring. And I explained to her that I never talked
8 to this man. I never saw him there.

9 He claimed that me and this gentleman was -- was
10 fighting. Actually, after I read over the transcript and
11 started going through everything that was said I could
12 understand that he didn't see everything that he claimed
13 that he saw from the -- from his statement, from coming
14 from the hotel to the area where it happened. He -- he
15 didn't see everything that he said that he saw.

16 He -- and I explained to her when he told -- he
17 testified that I picked the victim up by his legs and
18 slammed him into the dumpster. And, like I told her, this
19 never happened.

20 When she read me about the coroner's report she kept
21 asking me what did I hit the gentleman with. I explained
22 to her that this gentleman never -- I never hit him with
23 anything other than my hands.

24 She asked me -- well, I told her he had to hit his
25 head on the front of his Jeep, on the bumper of his Jeep.

Roderick G. Wynn
Direct examination by Mr. Richey

1 She kept asking me where the indenture came from on
2 his forehead that they had pictures of. And if you take
3 that picture and you put it up against the tag that was on
4 his Jeep, it would match perfectly with it.

5 I -- when he was testifying to this I was telling her
6 that he was lying. She told me that he was helping us and
7 truth -- and a lie is not going to help us. He was lying.

8 And I felt as if when it came to Dr. Wren, I felt that
9 she should have questioned him. Reason being he is the
10 only person -- he's not going to volunteer any information.
11 The only way he's going to give any information is for you
12 to ask. And he would be able to tell, being a pathologist,
13 which side of the head the fatal blow came from, which was
14 the front of his head.

15 He never touched the dumpster. This gentleman
16 testifies that I picked this man up by his legs and slammed
17 him into the dumpster. He also turns around and later on
18 when she speaks -- when she cross-examined he states that I
19 punched him and he fell into the dumpster. And there's two
20 conflicting stories.

21 Also, in Mr. Bulsa's closing arguments he speaks about
22 on page 29 --

23 MS. GIOVANOLI: I'm going to object at this point as
24 nonresponsive. I don't believe counsel's questioning was
25 with regard to the solicitor's closing. And at this point

Roderick G. Wynn
Direct examination by Mr. Richey

1 it's become a narrative.

2 THE WITNESS: Okay. I apologize.

3 Q Let me ask you a question.

4 This fight, the gentleman came out of the car, and
5 there was testimony at trial that he actually swung at you
6 first, correct?

7 A Yes, sir.

8 Q Okay. And as a result of this fight between your
9 interaction -- was anybody armed during this?

10 A No, sir.

11 Q Nobody was armed.

12 A There was no weapons.

13 Q And -- and so this was a hand-to-hand combat kind of
14 thing, correct?

15 A Yes, sir.

16 Q Is that correct?

17 A Yes, sir.

18 Q And pursuant to that the gentleman was killed,
19 correct?

20 A Yes, sir.

21 Q And it's your position that -- that counsel did not --
22 some of these witnesses actually at trial said that the guy
23 swung at you first, correct?

24 A Yes, sir.

25 Q It's your position that that testimony was not

Roderick G. Wynn
Direct examination by Mr. Richey

1 developed properly, is that correct?

2 A Yes, sir.

3 Q And you believe that also with Dr. Wren, did not
4 question him, did not help develop your defense, correct?

5 A Yes, sir.

6 Q And in talking to you about the case, just you as a
7 potential witness, do you believe counsel talked to you
8 enough to develop your testimony as a witness?

9 A No, sir, I do not.

10 Q And do you believe that she should have called you as
11 a witness?

12 A Yes, sir.

13 Q And if you had been called as a witness what kind of
14 information could you have provided?

15 A The thing of it is, is that everyone thinks that
16 this -- this altercation, this fight, was caused or started
17 behind money because this gentleman owed me money. That's
18 not what started this fight.

19 what started the fight, the gentleman made a comment
20 to me about him not having the money on him at the present
21 time and that I would -- and he told me that -- I explained
22 to him that I was living in a hotel at the time and that --
23 and he explained to me that he would pay me the money on --

24 MS. GIOVANOLI: Objection to hearsay.

25 THE WITNESS: How is that hearsay when --

Roderick G. Wynn
Direct examination by Mr. Richey

1 THE COURT: Go ahead. You go ahead and tell me about
2 it.

3 THE WITNESS: Okay.

4 A The gentleman explained to me. Well, he told me that
5 he didn't have any money on him at the present time and
6 that he would pay me later. And I told him that I was
7 living at Main Street Motel, Room 29.

8 I asked him that if he was to bring my money, to bring
9 it to me after 5:00 o'clock because, you know, me and my
10 girlfriend had gotten into it that morning. She may tell
11 me that he brought the money; she may not. But to keep,
12 you know, the confusion, you know, just to bring it to me
13 after 5:00.

14 He saw one of the young ladies that was walking across
15 the street and he said to me that it's a good thing that he
16 didn't have the money at the present because I wouldn't do
17 anything but go over there and spend it on one of those
18 girls.

19 And I told him, well, what if I tell your old lady you
20 come over here and pick them up in the morning. That's
21 what you're doing, isn't it? And I looked at him. I
22 pointed to him. I said, yeah, don't pay no money, that's
23 what I'll do, I'll tell your old lady. And I just laughed
24 and walked off.

25 The gentleman got out of his car. I didn't know that

Roderick G. Wynn
Direct examination by Mr. Richey

1 he'd gotten out of his car. He got out of his car and he
2 pursued me.

3 I heard something sounded like change or keys, and
4 when I turned around he punched me twice. I grabbed him
5 and we began to wrestle. He fell to my left. I fell to my
6 right. The gentleman hit his head on the front of his
7 Jeep.

8 Q Okay. And so -- so, essentially, the person who
9 knowed how the fight started was you.

10 A Sir?

11 Q The person who knew why -- actually why the fight
12 started was you, correct?

13 A Yes, sir.

14 Q And you and -- you and your attorney did not discuss
15 that.

16 A Yes. We did.

17 Q Y'all discussed that.

18 A Yes, sir. We did.

19 Q And did y'all discuss whether you should provide that
20 testimony in court?

21 A Yes, sir, we did.

22 Q And -- and tell me the reasoning why you did not
23 testify.

24 A She explained to me that she did not want my record to
25 be introduced to the jury, because it's no secret, you

Roderick G. Wynn
Direct examination by Mr. Richey

1 know. I have a few charges on my record such as C.D.V.,
2 assault and battery. I also have an aggravated assault
3 charge on my record also, which, you know, all of those
4 charges not being violent but would be looked at upon, it
5 appears, as being violent.

6 Q Did y'all -- did y'all determine whether the risk was
7 beneficial to you? Did y'all weigh it and say -- did y'all
8 do a weigh in the system where y'all tried to determine
9 whether it would be more harmful than not testifying or
10 harmful to testify?

11 A At the time when she -- when we discussed it she said
12 she felt that it would be harmful to my -- to my defense if
13 that information was introduced.

14 Q And -- and who -- if you could not get that evidence
15 into the trial, how would it come in? Was that --

16 A That was never discussed.

17 Q And you believe that was a critical part of the case,
18 correct?

19 A Yes, sir.

20 Q Because, essentially, all of the witnesses who testify
21 and all of the other witnesses you talked about, none of
22 them could provide that critical part, correct?

23 A No, sir.

24 Q Okay. So, basically, your defense in the case could
25 not be brought forward because of the decision not to

Roderick G. Wynn
Direct examination by Mr. Richey

1 testify, correct?

2 A Yes, sir.

3 Q And did you agree with that?

4 A At the time I was -- I was nervous; I was afraid. I
5 didn't know. I just felt to go over what she was saying, I
6 mean, I...

7 Q Okay. Thank you.

8 A I felt -- I felt -- I felt that -- you know, at the
9 time, because I felt that I was -- the best thing for me to
10 do was what she was saying to do. But the thing of it is,
11 is that my theory and my thinking and the way that I felt
12 things should be done as far as by not -- by not
13 questioning Dr. Wren and so forth, these things here
14 planning to make it seem like, you know, I'm just fishing
15 up a story if -- if you're not following the things that
16 I'm telling you that happened, the thing of it is that, you
17 know, this gentleman is lying. But you're saying that he's
18 helping me, which he's not helping me. He's making -- I
19 mean, this man never touched the dumpster. That's number
20 one.

21 I -- I never -- I never discussed with anybody about
22 I'm going to get any money one way or another or I was
23 going to -- I was going to handle my business. But I did
24 say I was going to handle my business, but it was taken out
25 of context. When I said I was going to handle my business

Roderick G. Wynn
Cross-examination by Ms. Giovanoli

1 the female asked me something about him, and I told her,
2 well, let me handle my business. After I handle my
3 business, I don't care what y'all do, because, you know,
4 I'm under the assumption that the gentleman was going to
5 pay me. He explained to pay me why he wasn't able to pay
6 me. I left it alone.

7 Q Answer any questions the attorney general has.

8 CROSS-EXAMINATION

9 MS. GIOVANOLI

10 Q Good morning, Mr. Wynn.

11 A Good morning, ma'am.

12 Q Okay. So I'm going to start with -- you said that you
13 gave your attorney the name Matthew Teamer.

14 A Yes, ma'am.

15 Q And he actually testified in your trial, didn't he?

16 A Yes, ma'am, he did.

17 Q And do you recall that he testified that he saw the
18 victim hit you first?

19 A Yes, ma'am.

20 Q Okay. So, in fact, you did have witnesses that
21 corroborated your story. And you didn't have to testify,
22 is that correct?

23 A He corroborated, but there's some things that -- that
24 I feel like had she got in touch with him sooner, because
25 some people, you know, they forget some things. And

Roderick G. Wynn
Cross-examination by Ms. Giovanoli

1 that's -- that was my -- my whole point, was if you contact
2 these people ahead of time such as like Mr. --

3 Q But my question is did Matthew Teamer testify that the
4 victim hit you first and corroborated your story.

5 A Yes, ma'am.

6 Q Okay. And there was also another witness, Marion
7 Bridges. You mentioned him on direct. He also testified
8 at your trial, didn't he?

9 A Yes, ma'am.

10 Q And didn't he testify that he saw the victim hit you
11 first?

12 A Yes, ma'am.

13 Q So that also corroborated your story without you
14 having to testify, isn't that correct?

15 A To a point, yes, ma'am.

16 Q Okay. And then going to your criminal record, you
17 mentioned that you have a criminal domestic violence
18 conviction from 1990, is that correct?

19 A Yes.

20 Q And you also had a grand larceny, three counts of
21 that, in 1992, is that correct?

22 A Yes, ma'am.

23 Q And you also had another -- let's see, forgery in
24 1992, is that correct?

25 A Yes, ma'am.

Roderick G. Wynn
Cross-examination by Ms. Giovanoli

1 Q You had a possession of marijuana in 1994, is that
2 correct?

3 A Yes, ma'am.

4 Q You had a burglary second nonviolent in 1997. That's
5 correct. And then you had a resisting arrest, two counts
6 of that, in 1997, is that correct?

7 A Yes, ma'am.

8 Q You had another criminal domestic violence in 1997, is
9 that correct?

10 A Yes, ma'am.

11 Q You also had a possession of a stolen vehicle in 1998,
12 is that correct?

13 A Yes, ma'am.

14 Q Okay. Then you also had a series of reckless driving,
15 criminal domestic violence, burglary second nonviolent,
16 four counts of that, petty larceny, three counts, grand
17 larceny, failure to stop, resisting arrest, possession of a
18 stolen vehicle. And that was all in 1999, that conviction,
19 correct?

20 A Yes, ma'am.

21 Q Okay. And then it goes on. Criminal domestic
22 violence third. Two counts of that in 2004, is that
23 correct?

24 A Yes, ma'am.

25 Q Okay. You also had assault and battery of a high and

Roderick G. Wynn
Cross-examination by Ms. Giovanolì

1 aggravated nature in 2006, is that correct?

2 A Yes, ma'am.

3 Q And a resisting arrest in 2008, is that correct?

4 A Yes, ma'am.

5 Q And you had a failure to stop for a blue light and a
6 hit and run in 2008, is that correct?

7 A Yes.

8 Q Assault and battery in 2008, is that correct?

9 A Yes, ma'am.

10 Q Okay. You also had two counts of false information to
11 police in 2008, is that correct?

12 A Yes, ma'am.

13 Q Receiving stolen goods, possession of stolen vehicle,
14 failure stop in 2008, is that correct?

15 A Yes, ma'am.

16 Q And I'm almost done. Receiving stolen goods, two
17 counts, and a third offense property charge in 2013, is
18 that correct?

19 A Yes, ma'am.

20 Q You were also on probation on a few of those at the
21 time of the trial, is that correct?

22 A Yes, ma'am.

23 Q Okay. And you had a probation revocation in 1996 and
24 a parole revocation in 1999, is that correct?

25 A I've never had a parole revocation, ma'am.

Roderick G. Wynn
Cross-examination by Ms. Giovanoli

1 Q Okay. How about the probation revocation?

2 A Yes, ma'am.

3 Q Okay. So you agree that if you would have been called
4 to testify a lot of that criminal history would have been
5 presented to the jury.

6 A Yes, ma'am.

7 Q And do you agree that the jury may have looked upon
8 that negatively?

9 A There's a possibility, but the thing of it is, is the
10 only way that they would know the truth, if I'd testified,
11 ma'am.

12 Q But you just testified that Matthew Teamer and Marion
13 Bridges -- other witnesses saw the victim hit you first.

14 A The thing of it is, ma'am, is that Mr. Young misled
15 the jury to believe that I went to start something with
16 this man.

17 Q Okay. And he was a state's witness, correct?

18 A Yes, ma'am.

19 Q Okay. But his testimony was inconsistent when the
20 state was directly examining him and whenever your defense
21 counsel cross-examined him, is that correct?

22 A Yes, ma'am.

23 Q He changed his story.

24 A Yes, ma'am.

25 Q would you agree that the jury felt he was incredible

Roderick G. Wynn
Cross-examination by Ms. Giovanoli

1 since he changed his story while he was on the stand?

2 A I -- I feel like they -- I believe -- I believe that
3 they believed what he was saying.

4 Q So which part -- when the state was directly examining
5 him or what he told the jury the defense was?

6 A well, here's the thing. Mr. Bulsa would -- would
7 clean up his story. That's what I'm saying, ma'am.

8 Q Okay. So do you think that Ms. Shealy -- well, it was
9 Ms. Lyall when she represented you. She's now Ms. Shealy.
10 She's gotten married. Do you think that she did a good job
11 cross-examining that state's witness?

12 A Yes.

13 Q She was able to give him -- make him tell a different
14 story during her cross-examination, is that correct?

15 A Yes, ma'am. Part of it.

16 Q Okay.

17 MS. GIOVANOLI: So beg the Court's indulgence to look
18 at a note.

19 (Pause.)

20 Q Okay. You testified that you think that defense
21 counsel could have more thoroughly cross-examined Dr. Wren.
22 How is that?

23 A I feel like that if she had -- had she asked him which
24 side of the head the blow came from that he would -- he --
25 the fatal blow came from -- it would show that this man

Roderick G. Wynn
Cross-examination by Ms. Giovanoli

1 never hit the back of his head on a dumpster. The blow
2 that he would have been able to testify, that the fatal
3 blow came from the front of his head.

4 I explained to her in detail, great detail, that he
5 never touched the dumpster.

6 Q And the witnesses that testified on your behalf also
7 testified to that, didn't they, that he was --

8 A No. No one -- no one else said anything about him
9 hitting the dumpster. Just Mr. Young.

10 Q Marion Bridges didn't testify that he didn't see his
11 head hit the dumpster.

12 A No, he did not. He said -- as a matter of fact, he
13 said he couldn't see on the other side of the vehicle.

14 Q Didn't Marion Bridges testify that he saw the victim
15 throw a punch at you, it wasn't a serious fight and then he
16 went directly to his car and slumped over -- the victim?
17 Isn't that what Marion Bridges' testimony was?

18 A Yes, ma'am. He just asked me did he -- did Marion
19 Bridges testify that he hit the dumpster. He didn't hit
20 the --

21 Q That's a good distinction, but he did testify that the
22 victim threw the first punch. There was a small fight.
23 The victim then went to his car and slumped over.

24 A Yes, ma'am.

25 Q Okay. So there was testimony that he did not hit his

Roderick G. Wynn
Cross-examination by Ms. Giovanoli

1 head on -- well, there was -- there was testimony that what
2 was seen -- that the victim was never seen hitting his head
3 on a garbage bin.

4 Do you recall the testimony of Ms. Brewton?

5 A Yes, ma'am.

6 Q And she also testified that she witnessed you guys
7 fighting.

8 A Yes, ma'am. She also lied, also. I was going to
9 bring that up as a point.

10 Q That's okay. That's not my question.
11 when did you receive your discovery in your case?

12 A All of it?

13 Q All of it.

14 A She sent it to me back in -- I think it was September.
15 Okay. July of this year.

16 Q Okay. And-but she met with you and y'all reviewed the
17 discovery.

18 A She told me some things that were said. She didn't
19 tell me everything. I did not have any type of -- zero
20 things.

21 When I -- when you're -- when you're up for murder,
22 ma'am, you need everything that you have at your disposal
23 as where you can look at it. You need it as -- I needed it
24 for myself, not for it to be over in someone's else's
25 office for them to be able to look at it when they wanted

Roderick G. Wynn
Cross-examination by Ms. Giovanoli

1 to.

2 Q Y'all discussed mutual combat, didn't you?

3 A No, ma'am, we did not.

4 Q But that jury instruction was read to the jury.

5 A I think -- well, they -- that was never one of the
6 charges. That was never one of the charges that they put
7 in.

8 The charges that they put in was murder, voluntary
9 manslaughter and involuntary manslaughter. Those were the
10 charges. Those were the three charges that they had to
11 choose from.

12 Q Okay. So your testimony today is that there was no
13 charge of self-defense and there was no charge of mutual
14 combat.

15 A They discussed that. But what I'm saying is --

16 Q When did they discuss that?

17 A I don't know exactly where it's at in my -- in my --
18 in my transcript, but that was discussed. All of those
19 things were said. But the charges to the jury were murder,
20 voluntary manslaughter and involuntary manslaughter.

21 Q Okay. Well, we'll let the record speak to that. I
22 have no further questions. Thank you.

23 MR. RICHEY: No other questions.

24 We call Glenn Manning.

25 MS. GIOVANOLI: Your Honor, I would just like to place

Roderick G. Wynn
Cross-examination by Ms. Giovanoli

1 something on the record with regard to this witness.

2 It's been, you know, relayed to me that the purpose of
3 his testimony is to offer an opinion as to the
4 representation by Ms. Lyall or Ms. Shealy. I apologize.
5 And the state would just object to that line of testimony
6 based on Green and Dawkins -- Dawkins vs. Fields and Green
7 vs. State. But I want to place that objection on the
8 record prior to him testifying.

9 MR. RICHEY: Can I respond to that?

10 THE COURT: Yes, sir.

11 MR. RICHEY: Your Honor, I don't think that's
12 applicable because essentially what the attorney general
13 says is that if you have a parent lawyer, then your parent
14 can never testify.

15 THE COURT: I don't think she said that. She just
16 said he can't offer a legal opinion.

17 MR. RICHEY: Right. Okay.

18 THE COURT: But that's -- that's for the Court.

19 MR. RICHEY: Yes, sir.

20 THE COURT: I'm sorry this -- your name, sir.

21 THE WITNESS: Glenn B. Manning.

22 THE COURT: All right.

23

24

25

Glenn B. Manning
Direct examination by Mr. Richey

GLENN B. MANNING, having been
first duly sworn, testified as follows:

3 THE COURT: Do you understand what the attorney
4 general just said?

5 THE WITNESS: No. I did not understand her.

6 THE COURT: All right. She's objecting -- are you --
7 I understand you're an attorney, is that correct?

8 THE WITNESS: Yes. I'm Casey Manning's brother.

9 THE COURT: Well.

10 THE WITNESS: And I'm also a lawyer. I finished law
11 school in '74.

12 THE COURT: Okay. You live in Dillon?

13 THE WITNESS: I live in Bennettsville, but I grew up
14 in Dillon.

15 THE COURT: Okay. Well, I'm glad to meet Casey
16 Manning's brother, but I still can't -- I can't let you
17 offer an opinion about this case. You can talk about the
18 facts that you know of, but you can't offer a legal
19 opinion.

20 THE WITNESS: I understand that, Your Honor.

21 THE COURT: That's what the attorney general said.
22 That's what she said.

23 THE WITNESS: Right.

24 THE COURT: She said she would object if you start to
25 offer legal opinions about this case. So just keep that in

Glenn B. Manning
Direct examination by Mr. Richey

1 mind when you're testifying.

2 THE WITNESS: I will, Your Honor. But I'm not really
3 sure what she may mean by legal opinion. I mean, I think I
4 know, but people have different variation about what one
5 might be.

6 THE COURT: Well, we're going to find out.

7 THE WITNESS: Okay. That's great.

8 THE COURT: Have a seat.

9 THE WITNESS: Thank you, Your Honor.

10 DIRECT EXAMINATION BY MR. RICHEY

11 Q Sir, how are you related to Roderick? How are you
12 related to him?

13 A He's -- that's Roderick.

14 Q Yeah. How are you related to him?

15 A Huh?

16 Q Are you his father?

17 A Yes.

18 Q Okay. You were -- you were involved at the time of
19 this case going on, correct?

20 A Well, not really involved. I attended the case, but I
21 was not involved in it. I offered to participate, and the
22 lawyer told me that she did not want me there, can sit
23 behind me and write notes and when you do them I'll ask for
24 them, something. But no. I was not involved in it at all.

25 Q What -- what I mean involved in it, were you involved

Glenn B. Manning
Direct examination by Mr. Richey

1 in it with your son, talking to your son about his case?

2 A I talked to him, yes, off and on, yes.

3 Q Y'all discussed how the case was being done, correct?

4 A He told me pretty much the things that he knew and
5 what I asked him.

6 Q And you came to Spartanburg to have a meeting with the
7 attorney, is that correct?

8 A I met with her, yes.

9 Q Okay. And you met with her to discuss how the case
10 was being pursued and developed, is that correct?

11 A I asked her those questions, yes.

12 Q Okay. And were you satisfied with the development of
13 the case?

14 A Well, not really because I -- it's kind of hard for me
15 to sit here because I've tried many cases in my lifetime.

16 Q No. I'm not asking you about how you tried cases.
17 I'm just asking you that you -- were you satisfied with the
18 development of the case, what was being done? Were you
19 satisfied with that?

20 A Let me answer it this way. I -- I -- I would not have
21 done the case. And the questions that I asked her, I was
22 not satisfied with it because of how I have tried murder
23 cases, death penalty cases myself. And so I -- no. I
24 was -- to answer your question without elaborating, I was
25 not satisfied with that, not at all. But, I mean, she's a

Glenn B. Manning
Direct examination by Mr. Richey

1 lawyer. I can't tell her what to do. And I didn't.

2 Q Okay. And -- and was it your belief that Roderick was
3 going to testify in this case?

4 A After he told me he was going to testify. I -- this
5 case I sat through. I was shocked when she said that he
6 wasn't going to testify. I said why is he not going to
7 testify. She said, well, he doesn't want to testify.

8 Well, my conversation with him was totally the
9 opposite of that. And with him being a witness and the
10 victim, there are things that, just like he testified
11 earlier -- just like he testified earlier, he talked about
12 the blows and stuff like that.

13 No one was there to see what happened but Roderick.
14 Roderick knows what went on. Nobody could have told the
15 story like Roderick could tell it. I'm not saying that he
16 was telling the truth or not. I believe what he told me.
17 There's no reason for him not to tell me the truth. But I
18 put it like -- help me out. Is this a legal opinion?
19 If --

20 Q No, no. I don't want your legal opinion. It's
21 just --

22 A No, no.

23 Q -- do you believe -- do you believe in this case that
24 he should have testified?

25 A I said yes already to that. I'm saying if I had been

Glenn B. Manning
Direct examination by Mr. Richey

1 trying the case he would have testified.

2 MS. GIOVANOLI: Objection to that response.

3 THE COURT: I'm going to allow that.

4 Go ahead.

5 THE WITNESS: Thank you.

6 A No one could have told the story like Roderick could
7 have told it, just like he told stuff up here today.

8 The jury is sitting over there, 12 men and women.
9 They only heard what the state offered -- they only heard
10 what the state offered.

11 And there's another thing. There are some witnesses
12 too that Roderick told me about that were not present -- a
13 girl named Megan Lake who was -- who would have been an
14 ideal witness. But she was not present to testify.

15 I asked Roderick what happened. He said, well, I gave
16 the name to my lawyer. That's all I could do. And he was
17 incarcerated, obviously. And he told me he gave it to her,
18 the different addresses where she was.

19 She had been in jail at one time, but she was back
20 out, and Roderick told her that too. But he told me that
21 she never got -- I know she didn't testify at trial but --

22 THE COURT: Take your time.

23 Q And you did memorialize some of this in a letter to
24 her on August 28th.

25 MR. RICHEY: May I approach the witness, Your Honor?

Glenn B. Manning
Cross-examination by Ms. Giovanoli

1 Q On August 28th of 2014. You did memorialize some of
2 those statements in that letter, is that correct?

3 A Yeah. I don't -- I don't see that good. Would you
4 read it?

5 Q Well, no. I'm just asking you. Is that your
6 signature on that letter?

7 A Yeah, this is my signature. This is my letter, yes.
8 I sent that to her dated August the 28th of 2014 -- Mary
9 Stewart Lyall, Esquire.

10 Q So you did contact her and memorialize some of the
11 issues you had, correct?

12 A It is.

13 Q Thank you. Answer any questions the attorney general
14 has.

15 CROSS-EXAMINATION

16 BY MS. GIOVANOLI

17 A Ma'am, I don't hear that well, so you have to speak
18 loudly.

19 Q I'll try to speak loudly. Can you hear me?

20 A Okay.

21 Q Thank you for being here, Mr. Manning.

22 A Thank you.

23 Q You didn't raise Roderick, did you?

24 A No, I did not raise Roderick. His mother raised him.
25 His mother is sitting back there.

Glenn B. Manning
Cross-examination by Ms. Giovanolì

1 Q And you, in fact, didn't play any role in his growing
2 up.

3 A Huh?

4 Q You didn't play any role in his growing up.

5 A I visited him from time to time. Not very often. But
6 I did, yes.

7 Q Whenever you spoke with Ms. Shealy -- well, she was
8 Ms. Lyall at the time of the trial. I'm referring to her
9 as Ms. Shealy. It's the same person. She -- you testified
10 that she didn't want you to be involved in the trial, is
11 that correct?

12 A That is correct. She told me that she did not want
13 me. I could sit back there and I could make notes and pass
14 them up to her. She would ask me for them. But I made
15 notes. She never asked me for those notes.

16 When they had a break she said Roderick wasn't going
17 to testify. I said -- I said, well, he told me he was
18 going to testify. She said, no, he's not going to testify.
19 He said he doesn't know. She said that he said he did not
20 want to testify. But I talked to Roderick since that time
21 and that's not the story that Roderick told me. So I don't
22 know.

23 Q Isn't it true that Ms. Shealy told you that if you
24 wanted to sit second chair you could file a notice of
25 representation?

Glenn B. Manning
Cross-examination by Ms. Giovanoli

1 A Say that again. Make sure I understand it.

2 Q Okay. Isn't it true that Ms. Lyall-Shealy told you
3 that if you wanted to sit second chair and assist in the
4 trial that you could file a notice of representation?

5 A No. She didn't say anything like that. She told me
6 that I could not participate, I can sit back there where
7 regular people sit and if I -- I could make notes and pass
8 them up to her and she would ask me for them later. That's
9 all she told me. When she said that, that's her case. I
10 respect her as being a lawyer. But I was not going to
11 interfere.

12 Not only that. I had emotions about representing
13 Roderick myself. I mean, I had never represented my child
14 before in anything -- either one of my kids. I have
15 several kids. Never represented any one of them.

16 And another thing too. I had the feeling that if the
17 jury knew that I was his father -- not that that would not
18 have been known -- they was -- may assume that I was just
19 telling things in Roderick's behalf because he is my son.

20 I mean, I've been a lawyer for a long, long time, and
21 I've done all kind of cases. The Blair hearing -- that's
22 my case. I did that case in Marlboro County in 1977, a
23 long time ago. So I've been around a long time. And I
24 respect the court system and I also respect the judges. I
25 respect that.

Glenn B. Manning
Cross-examination by Ms. Giovanoli

1 But, at the same time, I also got enough sense to
2 realize how jurors perceive things too. I'm not crazy. I
3 might be stupid, but I ain't crazy. I may be both of them,
4 but I don't think I'm either one of them.

5 Q But you were aware that Ms. Shealy was appointed to
6 this case, right, from the public defender's office?

7 A I'm aware of that -- I'm aware of that.

8 Q Okay. So if you were -- you testified that you were
9 not satisfied with the development of the case. Why at
10 some point did you not just file a notice of representation
11 and represent him yourself?

12 THE COURT: I think he just answered that.

13 A I just -- I thought I explained that to you.

14 Q Okay. But you have so much experience you don't think
15 the jury could overlook the --

16 A I offered my experience to her to sit and help her.
17 That's -- that's the best I can do.

18 Q And did she ever turn away your --

19 A I told you she told me no, I could not sit there, I
20 can sit back there in the audience and make notes. And I
21 did that.

22 Q Okay. I have no further questions. Thank you very
23 much.

24 MR. RICHEY: No other questions.

25 THE COURT: Thank you.

Mary Stewart Shealy
Direct examination by Mr. Richey

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: Good luck to you.

3 THE WITNESS: Thank you.

4 MR. RICHEY: We call Ms. Shealy.

5 MARY STEWART SHEALY, having
6 been first duly sworn, testified as follows:

7 THE COURT: State your full name for the record.

8 THE WITNESS: It's Mary Stewart Shealy. It was Lyall
9 at the time of the trial.

10 DIRECT EXAMINATION BY MR. RICHEY

11 Q Ms. Shealy, did you represent Roderick Wynn?

12 A I did.

13 Q And did you -- was that in Spartanburg County?

14 A Yes, it was.

15 Q And did you represent him through the public
16 defender's office?

17 A That is correct.

18 Q Okay. I'm going to get to this, to the last witness.

19 Do you -- you recall talking with Mr. Manning, is that
20 correct?

21 A Yes. I spoke to him a few times. I spoke to him on
22 the phone. I had spoke to him in my office with Mr. Wynn's
23 mother and stepfather. I gave him a copy of the discovery
24 at that point, which was allowed by my client.

25 Q Did -- go ahead. I'm sorry.

Mary Stewart Shealy
Direct examination by Mr. Richey

1 A I further -- I had a conversation with him. He wanted
2 to sit at counsel table. I told -- I spoke to my boss
3 about that as well. I told him he was more than welcome to
4 do that if he wanted to file a notice of representation but
5 other than that he could sit in those chairs behind the
6 table and pass up any notes that he wanted to.

7 Q Did he -- did you discuss the case, how to pursue it
8 or anything, with him?

9 A Yes, I did in those meetings. And then during the
10 trial when we would take breaks we actually spoke in the
11 hallway directly to our right on those benches about a few
12 different issues.

13 Q And this issue about testifying, did y'all have a
14 conversation? When I say y'all, I mean Roderick and his
15 dad. Did y'all have a conversation about him testifying or
16 not testifying?

17 A Not together because they were not allowed to be
18 together.

19 Q Right.

20 A But prior to trial our thought process and preparation
21 with Mr. Wynn was that he was going to testify. I do have
22 notes where we wrote his criminal history down and what I
23 thought the state could use.

24 I, obviously, told him the 1990 C.D.V. would not be
25 something that would likely come in but his more recent

Mary Stewart Shealy
Direct examination by Mr. Richey

1 crimes of dishonesty would most likely come in.

2 I also had myself and our investigator, Curtis
3 Jones -- came to the jail, and we did a mock testimony
4 where I asked him questions that I would ask him, and then
5 I had Curtis very meanly ask him questions, because that's
6 how the prosecutor would have treated him. So we did a
7 mock presentation of what it would be at trial.

8 we decided that, you know, depending on how the trial
9 went, it would be his decision.

10 we did take a break in the trial for maybe 15 or 20
11 minutes before, because we had defense witnesses that also
12 testified. So he would not have been our only witness.
13 And we went in the jail room and discussed it.

14 I told him it was ultimately up to him, and he chose
15 not to testify. And the judge went over that with him.

16 Q So the charges that the attorney general read off to
17 Mr. Wynn, all of those cases were not going to be used to
18 impeach him, correct?

19 A Right. And if you would like to see what Mr. Wynn and
20 I went over in regards to his criminal history, we wrote
21 out his entire criminal history and then circled the ones
22 that I thought -- obviously, it's up to a judge to
23 determine what to let in to impeach him with, but this is
24 what we went over, his entire criminal history.

25 And then you can see impeachable offenses are squared,

Mary Stewart Shealy
Direct examination by Mr. Richey

1 and it's a few at the bottom -- false information to police
2 times two, receiving stolen goods, possession of a stolen
3 vehicle, receiving stolen goods times two, another property
4 offense and another false information.

5 So we went over his whole history and what I thought
6 would actually be allowed to be used impeach him if he
7 testified.

8 Q So -- so all of the assaults and all of that would not
9 be -- could not be used to impeach him, is that correct?

10 A In my opinion, no.

11 Q Okay.

12 A Some of them are more than ten years old and then
13 some, I did not believe, had relevance. There's case law
14 on that that I would have argued.

15 So I told Mr. Wynn I did not think that, you know, a
16 2004 C.D.V. third would be introduced. Judge Kelly may
17 have ultimately decided that it could be, but I told Mr.
18 Wynn it was in my opinion that the ones that we had squared
19 would be the ones that he could be impeached with.

20 Q Okay. In talking to him about his case did you -- did
21 you -- were you told or did y'all discuss why this fight
22 actually got started?

23 A Yes.

24 Q Okay. And what was relayed to you why it actually got
25 started?

Mary Stewart Shealy
Direct examination by Mr. Richey

1 A It was relayed to me. I would say it's very similar
2 to what Mr. Wynn testified to, is what he told me. That
3 this gentleman owed him some money.

4 Mr. Wynn had been in jail, had gotten out I believe
5 either the night before or that morning. He needed money.
6 He asked for the money. The guy said he didn't have it,
7 and then some words were exchanged. I don't remember the
8 exact words, but it was something about Mr. Wynn saying he
9 had -- he'd dealt with prostitutes. And then the guy got
10 mad and a fight started. And then, unfortunately, another
11 guy died but...

12 Q And what was the -- what was the original charge?

13 A When he first got arrested they could only arrest him
14 for ABHAN. They had not gotten the coroner's report back
15 yet, so they weren't sure if the guy died from a heart
16 attack, something just completely unrelated to this
17 incident. so they felt they couldn't prove ABHAN because
18 of all of the witnesses and the fight and the damage.

19 Shortly thereafter we did get a coroner's report.
20 They said that the death was as a result of the fight and
21 they charged -- they indicted him for murder.

22 So he was never indicted for ABHAN. That was just the
23 way for them to arrest him and place him in jail.

24 Q And -- and he was acquitted on the murder, is that --

25 A That's correct.

Mary Stewart Shealy
Direct examination by Mr. Richey

1 Q Okay. Looking at this evidence about what started
2 this fight, was there anybody else able to give that
3 information to the jury other than him?

4 A Yes, many people, and many people that testified.
5 Marion Bridges. I went over to his house and spoke to him
6 about it, got a lot of information. He was very helpful.

7 He was sitting in the car with his granddaughter while
8 his daughter went inside. His daughter ultimately
9 testified too.

10 He said that the other guy started the first fight --
11 Mr. Goldsmith -- and that he saw Roderick after the fight
12 walking away from the scene. And he said something to the
13 effect of don't leave, it was self-defense, man, it was
14 self-defense. And that came in at trial.

15 The daughter also testified that she saw it was just
16 two grown men fighting and that the other guy threw the
17 first punch. She decided to leave after that. She didn't
18 feel the need to stay around and talk to 9-1-1 or anything
19 like that.

20 Q My question -- my question is the thing that ignited
21 the fight, him with this issue with his wife, okay, was
22 there any other witness that could testify the fight was
23 started over Roderick telling the guy that he was spending
24 his money on prostitutes? Was there anybody else who could
25 testify to that fact, what initiated the fight other than

Mary Stewart Shealy
Direct examination by Mr. Richey

1 Mr. Wynn? Anybody else give that testimony?

2 A No. That particular sentence, no one else could give
3 that, but I didn't think it was as important as to why the
4 fight started as other people testifying that a guy jumped
5 on Mr. Wynn for no apparent reason.

6 Q And -- and that fight, that starting of the fight,
7 culminated with everybody else.

8 Do you believe that would have been beneficial if the
9 fight was started because you said this and then everybody
10 else said they saw him hit him first? Do you think all that
11 in combination could have been beneficial?

12 A Can you say the question again? I don't think I
13 understand.

14 Q Yeah. Well, and I'm just saying.

15 Okay. The case was tried first saying he's not
16 testifying but everybody else says this guy swung and hit
17 him first, right?

18 A Correct.

19 Q The other guy was the instigator, right?

20 A Right.

21 Q Well, but then there was nothing to say why this guy
22 would swing on him without provocation, correct?

23 A Correct.

24 Q Mr. Wynn -- if he had have testified do you believe
25 that he could have gave a provocation for the actual

Mary Stewart Shealy
Direct examination by Mr. Richey

1 swinging on him, meaning Mr. Wynn says I said all of this
2 stuff, which gives the man the provocation, provocation to
3 swing at him, kind of connected to it?

4 A Yes. Certainly he could have given that statement as
5 to why the fight started. But testifying in your own trial
6 is a balancing act, and it's certainly not my decision
7 whether he testifies or not. If you'd like to know our
8 conversation regarding whether he should testify or not, I
9 can let you know that as well.

10 Q Well, so -- so you do what's the standard. You'll do
11 a balance act. You say, Mr. Wynn, this is your impeachable
12 record, if you testify this is what's going to be heard,
13 correct?

14 A Correct.

15 Q If you don't testify they hear none of that, none of
16 the fight about what's coming in and what's not coming in,
17 correct?

18 A Correct.

19 Q That'll be the end of the fight. Okay. Well, when
20 you balance that, then you have the -- then you would
21 balance over here saying, okay, these are the facts that
22 happened, this is the provocation that shows how this is
23 connected, which one is better for him, this set or that
24 set, correct?

25 A Correct.

Mary Stewart Shealy
Direct examination by Mr. Richey

1 Q And it's your testimony that you and Mr. Wynn went
2 through analyses and y'all believed that it was better for
3 him not to produce the provocation that started the fight,
4 is that correct?

5 A Well, I wouldn't say that decision was both of ours.
6 The conversation was, you know, these would be the good
7 things about testifying, these would be the bad things
8 about testifying.

9 I told him at this point I think I can get a
10 self-defense instruction based on what's happened. I told
11 him I also think I could get an involuntary manslaughter
12 instruction as well, which I did on both of those, and told
13 him that ultimately it was him to him. He said, you know,
14 I'm not sure.

15 I actually went out, and I spoke to his dad about that
16 because he wanted to know whether his dad thought he should
17 testify. His dad said there was good things and bad
18 things.

19 Ultimately, Mr. Wynn said he didn't want to take the
20 chance. And it was one hundred percent his decision at
21 that point.

22 Q I'm going to go over some of this other stuff. The
23 discovery, do you recall when you sent him the complete
24 file?

25 A Yes. When the case started I sent him the discovery,

Mary Stewart Shealy
Cross-examination by Ms. Giovanoli

1 the beginning discovery, which would have -- was just
2 witnesses, E.M.S., the normal police reports.

3 And then I sent him another -- as soon as I got the
4 coroner's report, which was March 3rd of 2014, I sent him a
5 second set of discovery which had that in it. And we had
6 already discussed the case prior to getting the coroner's
7 report. I told him the coroner's report would be coming
8 soon, and he got that in the mail.

9 After -- it's our office's policy that they get one
10 copy of discovery. He got a copy. His dad got two copies.
11 And then after the trial was over Mr. Wynn asked for
12 another copy. So, ultimately, he and the family got four
13 full copies of discovery.

14 Q Thank you. Answer any questions the attorney general
15 may have.

16 CROSS-EXAMINATION

17 BY MS. GIOVANOLI

18 Q Good morning, Ms. Shealy.

19 A Good morning.

20 Q So you were talking about the going and reviewing some
21 of the -- well, let me rewind.

22 How long have you been practicing criminal law?

23 A Ten years.

24 Q Okay. And has that all been criminal?

25 A Yes.

Mary Stewart Shealy
Cross-examination by Ms. Giovanoli

1 Q And you've been with the public defender's office for
2 that full ten years?

3 A I was with the public defender's office in Florida for
4 five years; the Spartanburg County Public Defender's Office
5 for five years. And I am now in private practice.

6 Q Okay. So at the time of this case you were appointed
7 to represent the defendant, correct?

8 A Yes.

9 Q The applicant. When you got all of the discovery you
10 met with the applicant, correct?

11 A Yes, I did.

12 Q And you reviewed every single piece of that discovery,
13 didn't you?

14 A Yes, I did. And at that point he gave me some people
15 that he thought could be potential witnesses in the case.

16 Q Right. So when he gave you that witness list, what
17 did you do next?

18 A I actually spoke to all of the witnesses. Some of the
19 witnesses that he gave me -- and I can give you a list of
20 the witnesses he gave me if you would like.

21 Q Well, the state's are the witness that actually
22 testified at trial. You obviously used those. But there
23 was mention of a Megan. Do you have that name?

24 A He did not give me that name. The names he gave me
25 were Jenna Blackston --

Mary Stewart Shealy
Cross-examination by Ms. Giovanoli

1 Q Right.

2 A -- who ultimately sat in the jail room. She was
3 incarcerated on other charges, but she was dressed out for
4 trial. We ultimately did not call her based on some things
5 she told me. And I did not think she could add anything at
6 that point.

7 Matthew Teamer who I spoke to with an investigator
8 multiple times beforehand. He came to the trial and
9 testified.

10 Marion Bridges. I went to his house and spoke to him
11 with an investigator. He came to the trial and testified.

12 His daughter -- I'm sorry. I can't remember her name.

13 Q Ms. Brewton?

14 A Yes. Came and testified.

15 He gave me a name of a witness as a guy on bike. I
16 actually was able to find out who that was.

17 And he gave me a few other witness names as well
18 including some of at the Money Tree, which would have been
19 very not helpful.

20 Q Okay. So you actually went out to the Money Tree,
21 right?

22 A Twice.

23 Q And you spoke to the girl that worked at the Money
24 Tree, right?

25 A Correct.

Mary Stewart Shealy
Cross-examination by Ms. Giovanoli

1 Q And what did she tell you?

2 A She told me he straight up murdered that guy.

3 Q Okay. The state -- were they aware of this witness?

4 A No. I said thank you very much, I'm leaving. And my
5 investigator was with me.

6 I told Mr. Wynn about that conversation. I said you
7 better pray that Mr. Bulsa does not go to the Money Tree
8 and speak to these people.

9 She said that Mr. Wynn had been sending people up to
10 threaten her if she did not testify to what he would like
11 and that he straight up murdered that guy. And that's --
12 that's not my words. That's hers.

13 Q Okay. And she did not know. She was not acquainted
14 with Mr. Roderick, was she?

15 A No. She was working at the Money Tree the day this
16 happened.

17 Q Okay. But the witnesses that he gave to you, he was
18 familiar with all of those witnesses, correct?

19 A Familiar in a somewhat way. I don't believe he knew
20 Matthew Teamer. I think he talked to someone that then
21 ultimately said that Matthew Teamer had been driving by at
22 the time that this happened and that he could be a helpful
23 witness. So Matthew Teamer was not a friend of his.

24 He was acquainted with the Bridges but not in any very
25 close -- they weren't family, cousins, anything like that.

Mary Stewart Shealy
Cross-examination by Ms. Giovanoli

1 Q I think he said that the applicant actually cut Marion
2 Bridges' hair.

3 A Right.

4 Q His barber.

5 A Right.

6 Q Okay. So let's go to the witness list. Were there
7 any witnesses that he provided to you that you didn't
8 follow up on?

9 A No. There are some additional witnesses he gave me --
10 a Johnny Evans, Mike Holmes, Matthew Teamer, Marion
11 Bridges.

12 Q And you talked to all of these people.

13 A Yes. And I have notes on my conversation with all of
14 them. And I talked to the state's witnesses as well.

15 Q Well, we don't have to go too into the specifics on
16 what each one of those people said, but did you ultimately
17 decide which ones were going to be beneficial at trial and
18 which ones had no use?

19 A Right. Some of them said I have no idea what you're
20 talking about and I'm not coming in to testify.

21 Q Okay. Let's go forward and talk about his decision
22 not to testify. So just for the record, once again, it was
23 a hundred percent his decision not to testify, is that
24 correct?

25 A Yes.

Mary Stewart Shealy
Cross-examination by Ms. Giovanoli

1 Q Did you advise him one way or the other?

2 A I did not advise him whether to testify or not. I
3 advised him as to what I thought were the benefits versus
4 the cons, I mean, the pros and cons of testifying at that
5 point.

6 And one of the main things in having a defendant
7 testify in a case like this is it's usually a defendant and
8 a victim and the defendant is literally the only one that
9 can give -- allow you to get a self-defense instruction.
10 well, at that point I'd already had multiple people testify
11 that they believed it was self-defense, and we got a
12 self-defense instruction.

13 Q Okay. And you also reviewed with him his criminal
14 history and the offenses that you thought would be
15 admissible for impeachment purposes, is that correct?

16 A That's correct.

17 Q Okay. But you mentioned a number of property crimes,
18 but with regard to -- he had an assault and battery of a
19 high and aggravated nature in 2006. Are you aware of when
20 he was released from S.C.D.C. on that sentence?

21 A I would have been at the time. I can look at his
22 criminal history. And I'm not saying that that would have
23 not come in because of it being more than ten years. I
24 just think the relevance of it coming in would have been
25 tricky.

Mary Stewart Shealy
Cross-examination by Ms. Giovanoli

1 Q And you think that you could have argued case law
2 against its admissibility.

3 A That's correct.

4 Q Okay. And that goes for the other assault and battery
5 and resisting arrest in 2008, right?

6 A That's correct.

7 Q Okay. With regard to Mr. Manning's, I guess,
8 involvement in this case, you never turned him away in
9 assisting you in this trial, did you?

10 A No. I always involve family members in cases. With
11 Mr. Manning it was a little bit different. I don't
12 generally give copies of discovery to fathers in the case.
13 It was a little bit different because Mr. Wynn told me I
14 could. And Mr. Manning is an attorney, and, you know, I
15 was fine with him reviewing the discovery.

16 Q And your testimony was that they -- that between
17 Mr. Wynn and Mr. Manning they received four copies of
18 discovery.

19 A Yes.

20 Q And only one of those was at the trial.

21 A One copy.

22 Q One copy was only at the trial. You said you
23 gave one.

24 A No. Two copies. One to Mr. Wynn was given in July of
25 this year.

Mary Stewart Shealy
Cross-examination by Ms. Giovanoli

1 Q Okay.

2 A And one to his father was given, I believe, the same
3 week as the trial but after the trial.

4 Q Do you remember receiving a letter from Mr. Manning?

5 A I do not.

6 MS. GIOVANOLI: Beg the Court's indulgence.

7 (Pause.)

8 Q Was the name Frederick Gist ever given to you?

9 A Yes. I have a little torn-off piece of paper from
10 paperwork that Mr. Wynn had at the jail. It says Frederick
11 Gist, Yolanda Carter and gives an address. This was given
12 to me September 9th of 2014 by him at 4:00 p.m. in the
13 jail.

14 I had visited him that day to go over the motion to
15 reconsider sentence and appeal and what he would like to
16 do.

17 He came to me with these two witnesses, and I said I'm
18 not sure what you want me to do with these now. And he
19 said I know there's nothing you can do with them now but I
20 still wanted to give them to you.

21 Q Did you think that that was the basis for asking for a
22 continuance?

23 A Well, it couldn't have been a continuance. It was,
24 like, a week after the trial.

25 Q I'm sorry. I thought you said September. Oh, yeah.

Mary Stewart Shealy
Cross-examination by Ms. Giovanoli

1 I don't think --

2 A The trial was in August.

3 Q That's right. August 27th and 28th. I was thinking
4 it was in November. I apologize.

5 So those names were given to you after the trial.

6 A Yes.

7 Q Let's go to -- there's been allegations regarding your
8 cross-examination of Dr. Wren. What was, in fact, the
9 cause of death per the coroner's report?

10 A Blunt force trauma, I believe was what he said.

11 When he testified I was completely shocked because Dr.
12 Wren is generally very damaging to the defense.

13 When Mr. Bulsa was asking him questions, Mr. Bulsa
14 said, well, this would happen as a result of him slamming
15 his head against something, and the coroner said, no,
16 that's not correct. An injury such as this could be
17 something as simple as someone tripping and hitting their
18 head. They can just be walking down the street and this
19 can happen. And gave many reasons that were extremely
20 helpful to our case and not the state's case because he did
21 not back up their version that it would have happened by a
22 head slamming against a trash bin.

23 Q So you didn't believe you could get any more favorable
24 testimony out during cross-examination.

25 A Right. I mean, he said on direct exactly what I would

Mary Stewart Shealy
Redirect examination by Mr. Richey

1 have wanted him to say.

2 Q Exactly. And it is true that you got an instruction
3 for self-defense and mutual combat, correct?

4 A That's correct.

5 Q And involuntary manslaughter, which was per your
6 request.

7 A Yes.

8 Q Okay. No further questions. Thank you.

9 REDIRECT EXAMINATION

10 BY MR. RICHEY

11 Q I just have a couple of questions, ma'am.

12 The employee at the Money Tree that claimed that
13 Roderick murdered the guy, isn't it true that that
14 particular witness could have been easily discredited
15 because where she was at, there's a question whether she
16 could see any of what went on, correct?

17 A Yes. That's true. But why would you call a witness
18 to say he murdered someone and then say, oh, but you
19 couldn't have seen it? That's not really helpful to our
20 case.

21 Q What I'm saying is -- no. What I'm saying, if the
22 state had called that witness -- if the state had called a
23 witness and Derrick Bulsa had gotten ahold of that lady and
24 called her as a witness --

25 MS. GIOVANOLI: Objection. Relevance. They didn't

Mary Stewart Shealy
Redirect examination by Mr. Richey

1 call.

2 MR. RICHEY: She just testified that the lady said
3 that he murdered the guy. And the state -- we don't want
4 the state to get our hands on that.

5 THE COURT: Repeat your question.

6 Q That -- that if the state had got -- called that
7 witness that would have been a witness that you could have
8 easily discredited by the location of where she was,
9 correct?

10 A That's correct, just like any of the state's witnesses
11 during cross-examination. But it's -- it -- it still would
12 have been hurtful to have someone testify that he murdered
13 someone.

14 Q And --

15 THE COURT: This is all speculation at this point.

16 MR. RICHEY: Okay.

17 THE COURT: Just move on, please.

18 MR. RICHEY: I'm sorry. And no more questions.

19 MS. GIOVANOLI: Nothing further, Your Honor.

20 THE COURT: You may come down. Thank you.

21 THE WITNESS: Thank you.

22 THE COURT: Next witness.

23 MR. RICHEY: No objection. No more witnesses. No
24 objection to her.

25 THE COURT: Be excused without objection.

1 MS. GIOVANOLI: Thank you, Your Honor.

2 THE WITNESS: Thank you.

3 (Whereupon, the witness was excused.)

4 THE COURT: Any witnesses on behalf of the state?

5 MS. GIOVANOLI: No, Your Honor. The state would rest.

6 THE COURT: Thank you very much.

7 END OF REQUESTED TRANSCRIPT OF RECORD

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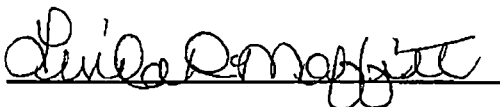
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 13th and 16th days of November 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 28, 2018

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", is written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Roderick Germaine Wynn, #257393

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2016-CP-42-0618

**ORDER OF DISMISSAL
WITH PREJUDICE**

2018 MAR -5 PM 9:42
CLERK OF COURT

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Roderick Wynn (Applicant) on February 17, 2016. The State (Respondent) made its return requesting an evidentiary hearing be held and also a motion for a more definite statement. An evidentiary hearing into the matter was convened on November 16, 2017 at the Spartanburg County Courthouse. Applicant was present and represented by Rodney Richey, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. Applicant also called his father, Glenn B. Manning, Esquire, to testify on his behalf. Mary Shealy, Esquire, (Counsel) also testified. This Court had before it a copy of the Spartanburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the direct appeal records, the PCR application, Respondent's return, and Applicant's supplemental application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at

GL

the January 2014 term of Spartanburg County Grand Jury for murder (2014-GS-42-0313). Mary Stuart Lyall (now Shealy), Esquire, represented Applicant. On August 28, 2014, Applicant proceeded to trial before the Honorable R. Keith Kelly and a jury. The jury found Applicant guilty of the lesser included offense of voluntary manslaughter. Judge Kelly sentenced Applicant to confinement for a period of 20 years.

A timely notice of appeal was filed on Applicant's behalf and an appeal was perfected. Lara Mary Caudy, Esquire, represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Wynn, Op. No. 2015-UP-525 (S.C. Ct. App. filed November 18, 2015). The Remittitur was returned to the Circuit Court on December 4, 2015.

In his PCR application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Counsel was ineffective for failing to investigate this case by failing to interview potential witnesses. Counsel has a duty to investigate, See Ard v. Catoe, 642 S.E. 2d 590, 597..."

At the start of the hearing, in response to the State's motion for a more definite statement, Applicant clarified the allegations were that Counsel did not adequately confer with Applicant about him testifying and that Counsel failed to investigate and interview witnesses.

FACTS ADDUCED AT TRIAL

On August 14, 2013, Jeffrey Holt, a paramedic in Spartanburg, South Carolina, received a report of an unconscious individual situated in the parking lot of the Money Tree, and he quickly responded to the scene. (Tr. p. 39). Upon arriving, he was directed to a vehicle parked in the parking lot by several bystanders and observed a man seated in the driver's seat of the

 2

vehicle with his head slumped down. (Tr. pp. 39-40). He then approached the vehicle, examined the man, and discovered the man had no pulse, was not breathing, and had recently vomited. (Tr. pp. 39-40). He further noticed the man had a "fairly small" contusion to his left temporal forehead, a small indentation into the contusion, and a laceration above that injury. (Tr. pp. 41-42). In response, he removed the man from the vehicle, began resuscitation efforts, and quickly transported the man to the hospital by ambulance. (Tr. pp. 40-41). However, his resuscitation efforts were unsuccessful, and the man – fifty-six-year-old Curtis Goldsmith ("Victim") – was pronounced deceased at the hospital. (Tr. p. 41; p. 50; p. 153).

Meanwhile, officers from the Spartanburg Police Department arrived at the location where Victim was discovered and began speaking to the bystanders to ascertain what led to Victim's injuries and death. (Tr. pp. 45-48; pp. 133-134; pp. 139-140). After speaking with the bystanders, the officers determined Victim had just been involved in an altercation with Applicant Roderick Germaine Wynn, and they began attempting to locate Applicant. (Tr. pp. 47-48; pp. 134-135; p. 142). While searching for Applicant, Officer Christopher Banks discovered Applicant's girlfriend lived at a nearby motel and went to the motel to speak with her. (Tr. p. 134). During his ensuing conversation with Applicant's girlfriend, Applicant called her phone but refused to tell her where he was located. (Tr. p. 135). Officer Banks then took the phone and asked Applicant to meet with him at the motel in regard to an unrelated incident, and Applicant agreed to do so. (Tr. pp. 135-136; p. 139). However, Applicant never arrived at the motel to meet with the officer, and his whereabouts remained unknown. (Tr. pp. 135-136; p. 142).

Later that afternoon, Dr. David Wren, an expert in forensic pathology, conducted an autopsy on Victim's body. (Tr. pp. 150; pp. 152-153). During the autopsy, Dr. Wren discovered

abrasions along Victim's elbow, abrasions to both of Victim's knees, and an injury to Victim's right forearm that was consistent with a fall. (Tr. p. 154). Additionally, he located hemorrhages on the vertex of Victim's scalp and above Victim's left ear that were inflicted shortly before Victim's death and that could have resulted from strikes or a fall. (Tr. p. 155). Furthermore, Dr. Wren discovered Victim had sustained a subdural hemorrhage, a subarachnoid hemorrhage, and an intraventricular hemorrhage in his brain. (Tr. pp. 157-158). Based on Victim's injuries, Dr. Wren determined Victim died as a result of an altercation and Victim's specific cause of death was closed head trauma with subdural, subarachnoid, and intraventricular hemorrhages. (Tr. p. 159).

Thereafter, a tipster informed the investigating officers four days after Victim's death Applicant was hiding in an abandoned house. (Tr. p. 143). In response, officers headed to that location, found Applicant there, and apprehended and arrested him for his involvement in Victim's death. (Tr. p. 143). Subsequently, the Spartanburg County Grand Jury indicted Applicant for murder, and he elected to proceed forward to trial. (Tr. p. 7; Indictment).

During trial, Holt testified about his attempts to resuscitate Victim, and the officers from the Spartanburg Police Department testified about their investigation into Victim's death that resulted in Applicant's arrest for the killing. (Tr. pp. 39-41; pp. 46-48; pp. 133-136; pp. 140-143). Likewise, Dr. Wren testified about the injuries he discovered through the autopsy he conducted on Victim's body. (Tr. pp. 153-159). During his testimony, Dr. Wren opined Victim's injuries could have resulted from Victim falling four to five feet and were unlikely to have been caused solely by a blow from a fist. (Tr. p. 159). Based on Victim's injuries, Dr. Wren concluded Victim died as a result of an altercation and was likely thrown up against something, fell and hit something, or was hit by an object that was swung at him. (Tr. p. 159).

In addition to that testimony, Freddie Young, a resident of a motel located near the Money Tree, testified he was working on a car outside of the motel when he heard a woman pleading with someone to "just leave the situation alone" in a nearby alley and the other person responding he was "going to take care of business." (Tr. pp. 58-62). After that, Young indicated he went to investigate, saw Applicant engaged in an argument with Victim that turned physical, observed Applicant throw the first punch exchanged between the men, and heard Applicant state Victim owed him money and he was going to get it from him. (Tr. pp. 65-66; p. 68; pp. 77-78). Regarding the fight, Young testified Victim tried to protect himself from Applicant's punches, Victim seemed dizzy after he was knocked to the ground by Applicant, and Applicant picked Victim up by the legs and slammed him to the ground. (Tr. pp. 68-70; p. 85). He further stated he believed Victim hit his head on a trash can during the fight and testified Applicant struck Victim again and caused him to fall to the ground while Victim was attempting to walk back to his car. (Tr. p. 70; pp. 72-73; p. 85). However, after further questioning, Young indicated he was not sure who actually threw the first punch and noted the men were already engaged in the altercation when he arrived on the scene. (Tr. p. 65; p. 79).

Additionally, Kerri Blanchard, a "good friend" of Applicant's, testified about the events of August 14, 2013, noted she did not see anything that happened during the incident, and stated she called 911 after Applicant told her Victim needed help because he had punched Victim so hard Victim could no longer move. (Tr. pp. 91-93; p. 97; p. 108). Blanchard further testified Applicant informed her Victim owed him money and had swung at him, and she indicated Applicant was upset at the time. (Tr. p. 93; p. 95; p. 99; pp. 101-102).

Likewise, Katrina Price, another of Applicant's friends, testified for the State, indicated she was walking with Blanchard towards the Money Tree, and watched as Blanchard crossed the

street and began talking with Applicant. (Tr. pp. 112-113). During Applicant's conversation with Blanchard, Price stated she overheard Applicant say he "lit his ass up" and she noticed Applicant was "pretty" mad, "pretty well upset," and was speaking in a "very loud" manner at the time. (Tr. p. 113; p. 117). Price further indicated she believed Applicant had been involved in a fight while conceding she did not see any of the fight that had occurred. (Tr. p. 114; p. 116).

Furthermore, Joyce Brewton testified about the incident and indicated she went to the Money Tree on August 14, 2013, to pay her bills. (Tr. pp. 122-123). On that date, Brewton stated she saw Applicant and another man arguing before she entered the business, remained inside for a few minutes, exited, and saw the men engaged in a physical fight at that time. (Tr. pp. 123-125). Additionally, she testified she saw the other man throw a punch at Applicant followed by Applicant "whoop[ing] his ass." (Tr. p. 125). Brewton further testified Applicant's opponent appeared to be dead at the time she left the parking lot of the Money Tree, and she noted she heard Applicant state he had knocked the other man out while claiming the other man was okay. (Tr. pp. 125-127).

Subsequently, the State rested its case, and defense counsel called several witnesses to testify in Applicant's defense. (Tr. p. 163; p. 165; p. 171; p. 186). Amongst those witnesses, Matthew Teamer, a convicted felon, testified he was driving through the parking lot of the Money Tree when the incident occurred while inconsistently claiming he was and also was not present when the fight began. (Tr. p. 171; p. 178; pp. 183-184). Regarding the fight itself, Teamer stated he observed Applicant and another man arguing, the other man struck Applicant, and then both men fell to the ground. (Tr. p. 172). After that, Teamer claimed Applicant and the other man got back up before Applicant punched, threw, and kneed the other man. (Tr. p. 172).

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He stated he then continued to leave the parking lot and did not perceive the altercation to be a serious one. (Tr. pp. 173-174).

Similarly, Marion Bridges, the sister-in-law of Brewton, testified about her observations during the incident and stated she drove Brewton to the Money Tree, waited in her vehicle while Brewton went inside, and saw Victim and Applicant arguing. (Tr. pp. 186-187). After that, Bridges indicated Victim "took a swing" at Applicant, Applicant and Victim "scuffled a little bit" while punching and wrestling with each other, and then Victim got into his vehicle and slumped over. (Tr. pp. 187-188). Additionally, she claimed Applicant "hollered" during the incident about how Victim owed him money and had taken a swing at him, and she stated Victim informed her he "just knocked the 'H' out of" Victim when she asked him what happened. (Tr. pp. 188-189). Furthermore, she admitted she did not see the whole argument between Applicant and Victim and noted Applicant panicked and fled when Brewton called 911. (Tr. pp. 189-190).

Following the presentation of that testimony, the defense rested, and the trial judge presented the solicitor and defense counsel with copies of his proposed jury instructions. (Tr. p. 203; p. 206). Defense counsel then moved for a directed verdict on the murder charge, arguing the killing was not intentional and Victim's injuries were not directly caused by punches. (Tr. pp. 206-209). Defense counsel further contended Applicant's actions constituted "at most a manslaughter." (Tr. p. 208). After considering the arguments of counsel, the trial judge denied the directed verdict motion. (Tr. p. 209). Thereafter, the parties presented their closing arguments to the jury, and the trial judge instructed the jury on the applicable law, including on the law of murder, voluntary manslaughter, involuntary manslaughter, and self-defense. (Tr. pp. 210-249).

Subsequently, at the conclusion of trial, the jury acquitted Applicant of murder and convicted him of the lesser-included offense of voluntary manslaughter. (Tr. pp. 251-252). Following the verdict, defense counsel renewed her motion for a directed verdict and additionally moved for a new trial. (Tr. pp. 253-254). In seeking a new trial, defense counsel contended – for the first time – the evidence presented during trial was not sufficient to prove the offense of voluntary manslaughter based on the fact there was allegedly no evidence Applicant killed Victim in a sudden heat of passion upon a sufficient legal provocation. (Tr. pp. 253-254). In response, the solicitor noted the evidence presented during trial could have supported a finding Applicant confronted Victim about money and became enraged when Victim struck him, which would have been sufficient to establish Applicant's guilt for voluntary manslaughter. (Tr. pp. 254-255). Thereafter, the trial judge denied defense counsel's post-trial motions, including the motion for a new trial, after finding ample evidence had been presented to support the jury's verdict. (Tr. p. 255). The trial judge then sentenced Applicant to a twenty-year term of imprisonment. (Tr. p. 271).

SUMMARY OF TESTIMONY AT PCR

I. Applicant testified to the following:

Applicant testified Counsel reviewed his discovery with him but did not give him all of his discovery. He claimed he gave Counsel names of potential witnesses, but Counsel failed to interview them. Among those names were Marion Bridges, Matthew Teamer, Fredrick Gist, and Yolanda Carter. Applicant testified Counsel told him she would schedule an interview with Teamer and Gist through their attorneys, who were also public defenders, but that never happened. Applicant also complained the State's witness, Freddie Young, lied on the stand because he did not speak to him and did not witness the fight. When Applicant brought this to

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Counsel's attention, Counsel told him it would help their case. Applicant also claimed Counsel failed to cross examine Dr. Wren, the doctor who performed the autopsy of the victim.

Applicant explained the confrontation between he and victim was a fist fight and involved no weapons. However, Applicant testified the fact that the victim swung at him first was not developed at trial.¹ Applicant also testified the fight started because the victim owed Applicant money and when Applicant confronted him, the victim hit Applicant. Applicant testified Counsel should have advised him to testify because he was the only person who could explain this and without his testimony, no one could tell the jury how the fight started.² Applicant complained Counsel advised him not to testify because of his criminal record. Because Applicant was nervous, he followed her advice. Counsel also never discussed how they would get in the information that the victim hit Applicant first and that no one could testify to that.

II. Glenn B. Manning testified to the following:

Manning testified he is a retired attorney, Applicant's father, and the brother of the Honorable L. Casey Manning, circuit court judge. Manning testified he attended Applicant's trial, but he did not participate. He discussed the case with Applicant. He also talked with Counsel about how the case was being pursued and developed, but he was not satisfied with it. Manning believed Applicant should have testified. Manning also recalls Applicant told him about witnesses that were not present at trial. Manning referred to a letter he allegedly wrote to Counsel on August 28, 2014 memorializing some of the issues he took with the trial. When

¹ A State's witness, Brewton, and both defense witnesses, Teamer and Bridges, testified at trial that the victim threw the first punch. ((Tr. p. 125; p. 172; pp. 187-188). The State's witness, Blanchard, also testified that immediately after the fight, Applicant told her the victim threw the first punch. (Tr. p. 93, 95).

² The State's witness, Blanchard, testified Applicant told her the fight was because the victim owed Applicant money. (Tr. p. 99). Also, the defense witness, Bridges testified that at the time of the incident, Applicant said the victim owed him money and took a swing at him. (Tr. p. 188).

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asked if he was unsatisfied with his son's legal representation, why did he not represent him, he testified he was worried the jury would not believe what he said because he was Applicant's father.

III. Counsel testified to the following:

Counsel has been practicing criminal law for ten years. She was appointed to represent Applicant as an Assistant Public Defender. She recalled speaking to Manning a number of times on the phone, in the office, and with Applicant's mother and step-father. She gave Manning a copy of the discovery with Applicant's approval. Counsel testified Manning was more than welcome to assist with the preparation of the defense and in trial if he filed a notice of representation. She recalled speaking to Manning during breaks of the trial as well. Counsel never recalled having a discussion regarding Applicant testifying at trial with Manning present, but she did discuss it with Applicant at length. She believed he would testify. In order to prepare Applicant to testify, she used her investigator, Curtis Jones, to do a mock cross-examination in which Jones asked difficult questions. Ultimately, Applicant would decide at trial whether or not he wanted to testify. When the time came, Counsel spoke with Applicant in a holding cell for 15-20 minutes about testifying. She went over his entire criminal history and made a list of which crimes she thought would be admissible. Although she weighed pros and cons of testifying with Applicant, Counsel testified it was his decision and she could not and would not make it for him.

Counsel testified Applicant was originally charged with ABHAN, which was later enhanced to murder after the coroner determined the cause of death was the fight. However, Applicant was acquitted of murder and convicted of voluntary manslaughter. Counsel got a charge on voluntary and involuntary manslaughter, self-defense, and mutual combat. Counsel

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testified that she interviewed every witness Applicant gave to her. She also went to the scene with her investigator and found a witness the State luckily had not found. The attendant at the Money Tree store told Counsel and her investigator she saw Applicant murder the victim, however, the State never located that witness. Counsel testified many of the witnesses gave the same story as Applicant. Some were called as State's witnesses and she called some as defense witnesses.

When sent the complete discovery, she reviewed all of it with Applicant and provided him a copy. She also gave additional copies to Manning upon his request. Counsel recalls giving Applicant and his family 4 copies of discovery in total. Counsel denied ever receiving the letter Manning referred to in his testimony.

When asked why she did not cross examine Dr. Wren, she explained that Dr. Wren usually testifies for the State and his testimony is usually damaging for the defense. However, Dr. Wren actually testified that the head trauma could have been caused by a blow to the head from being hit with something, not how the State's star witness claimed – being slammed into a dumpster. Counsel believed the inconsistent testimony was beneficial to the State and felt no need to cross-examine him when he could potentially say something damaging.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that Counsel was deficient or that he was prejudiced by any deficiency. A Post-Conviction Relief

application is not a venue for questioning each and every decision of trial counsel. Rather, the Applicant must demonstrate by a preponderance of the evidence that trial counsel was deficient and that the deficiency prejudiced the outcome of his trial. Applicant has failed to do so.

I. Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, *Id.* The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18.

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Failure to adequately advise Applicant about testifying at trial

This Court finds Applicant has failed to show that Counsel was ineffective in her advice regarding him testifying in his trial. This Court finds Applicant's self-serving testimony on this issue not credible as the record clearly contradicts Applicant's testimony. Applicant complained Counsel did not develop testimony regarding why and how the fight started. He claimed the only way the jury could know was if he had testified and therefore Counsel was deficient by telling him not to testify. First of all, numerous witnesses, both for the State and the defense testified that they saw, or heard Applicant claim, the victim owed Applicant money and the victim hit Applicant first. Furthermore, this Court finds Counsel's testimony regarding her discussions and advice about testifying to be credible. Counsel is correct it was Applicant, and Applicant alone, who had to make the decision whether or not to testify. This Court finds Applicant made that decision after much discussion and sound advice from Counsel weighing the pros and cons of testifying.

Additionally, Applicant could not have been prejudiced by not testifying. The two facts to which he wanted to testify, were that the victim owed him money and when he confronted the victim, the victim hit him first. These facts were presented to the jury from numerous witnesses. Had Applicant taken the stand to tell the jury the same thing, he would only open the door for the State to admit evidence of his prior criminal history, which included crimes of dishonesty. Therefore, having failed to meet his burden of proof, this allegation is denied and dismissed with prejudice.

Failure to interview witnesses

This Court finds Applicant has failed to show that Counsel was ineffective for either not interviewing or calling two witnesses for his trial. First, this Court notes any claims surrounding

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the failure to present testimony from a witness assumes the testimony from the witness would have been favorable to the defense and therefore affected the outcome of the trial. However, this contention is based on pure conjecture and speculation. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Because Applicant failed to produce the testimony of the witnesses, any prejudiced derived from any of Counsel's actions leading to her not testifying is purely speculative.

Secondly, this Court finds Counsel's testimony on the issue more credible than that of Applicant. Counsel testified she spoke to each and every witness she knew of and even found a witness that would have been very helpful to the State that the State didn't even know about. Counsel was not deficient in this regard, and Applicant cannot show how he was prejudiced even if she was deficient. Therefore, this allegation is denied and dismissed with prejudice.

Failure to investigate

This Court finds Applicant has not met his burden to prove Counsel was ineffective by failing to properly investigate his case. To show ineffective assistance in this regard, Applicant must present evidence to show what counsel could have discovered had he more fully

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investigated. Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial."). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

First, Applicant has failed to present evidence to show what Counsel could have discovered had he more fully investigated. Furthermore, the record shows Counsel discussed the case with Applicant as Counsel had a full grasp of the evidence and the facts at the time of trial. Counsel also testified credibly she reviewed all the discovery, spoke to all the witnesses, and went to the scene and spoke to an additional, unknown witness. Her performance at trial is also indicative of her proper investigation and familiarity with the facts of the case. This Court having found Applicant has failed to prove either prong of Strickland, finds this allegation meritless. Therefore, this claim is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any violations that would require this Court to grant his application. This Court finds Applicant has failed to prove any deficiencies on the part of Counsel and further, Applicant has failed to prove prejudice from any alleged deficiencies in Counsel's representation of him. Therefore, as Applicant has failed to meet his burden of proof in this post-conviction relief action, his application is denied and dismissed with prejudice.

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This Court notifies Applicant he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 2nd day of March, 2017.



G. THOMAS COOPER, JR.
Presiding Judge
Seventh Judicial Circuit

Chacon, South Carolina

2018 MAR -5 AM 9:42
M. HOFF BLANCHARD

1. SENTENCE MADE	WITNESSES
2. REPORT ENDED	
3. CHECKED	
4. INDEXED	
5. CHECKED WARRANTS	
6. CHECKED SIGNATURE	
7. ASSESSMENT AND FINE CARD MADE	
8. TRAFFIC VIOLATION COPY	

ARREST WARRANT NUMBER

Direct Indictment (2013A4210103239)

ACTION OF GRAND JURY

True Bill

[Signature]

Foreperson of Grand Jury JAN 22 2014
Date:

VERDICT

Guilty Voluntary Manslaughter

[Signature] 8/28/14
Foreperson of Petit Jury
Date:

DOCKET NO. -

14-GS-42-0313
The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JAN 27 2014

TERM

THE STATE
vs.

Roderick Germaine Wynn

Indictment for

MURDER

SC Code 16-03-0010
CDR Code 116
Class FEL-EXM

FILED
CLERK OF COURT
2014 JAN 24 AM 10:38
H. ROSE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

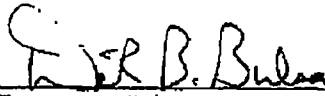
JAN 22 2014

At a Court of General Sessions, convened on _____, the
Grand Jurors of Spartanburg County present upon their oath:

MURDER

That Roderick Germaine Wynn did in Spartanburg County on or about August 14, 2013 kill Curtis Edward Goldsmith with malice aforethought, either express or implied, in that he beat the victim, Curtis Edward Goldsmith, about the head and body resulting in the death of the victim, in violation of Section 16-3-0010, 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