THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas
R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2018-001629

Sammie Lee Gerrick, ... Petitioner,

v.

State of South Carolina, ... Respondent.

Appendix – Volume II

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INDEX

Volume I

Trial Transcript 1

Volume II

Trial Transcript (cont.) 501

Motion to Suppress Root 771

Motion to Exclude Novelty Item "Law Stay Away" 773

Response to Motion to Exclude Evidence of Root, Letter, Bottle of Law Keep Away, and Testimony of Early Glover 775

Motion for New Trial 792

Response to Motion for New Trial 795

Transcript of New Trail Motion Hearing 823

Order Denying Motion for New Trial 832

Notice of Appeal 850

Indictment 853

Final Brief of Appellant 858

Final Brief of Respondent 902

Unpublished Opinion No. 2016-UP-092. 960

Remittitur 963

Application for Post-Conviction Relief 964

Return 974

Amended Application for Post-Conviction Relief 980

Transcript of Post-Conviction Relief Hearing 986

Volume III

Transcript of Post-Conviction Relief Hearing (cont.) 1001

Post-Hearing Brief in Support of Application for Post-Conviction Relief 1115

Respondent's Post-Hearing Brief 1156

Response to State's Post-Hearing Brief 1187

Respondent's Reply to Applicant's Post-Hearing Breifg 1202

Order of Dismissal 1228

Rule 59(e), SCRCP Motion 1309

Order Denying Rule 59(e), SCRCP Motion 1350

the Piggly Wiggly.
Q. Did the police come to look at the car?
A. When I got back up there the police was up there and Tyrone's family was up there.
Q. And so after that your family took you back, back home?
A. Yes. They took me back to my car.
Q. Have you ever known Tyrone ever to let anybody to use his bank card?
A. No, sir. Never.
MR. WATERS: Thank you very much. Please answer any questions the defense has.

CROSS-EXAMINATION

BY MR. WILLIAMS:
Q. Ms. Joyner, what do you know about Mr. Donaldson's finances?
A. Nothing.
Q. The solicitor keeps bringing this settlement up. Do you know anything about the terms of the settlement?
A. No, sir.
Q. Do you know he had a Corvette?
A. Yes, sir.
Q. Do you know how he got that?
A. I know he traded in his Camaro.
Q. Okay. And he had a Yukon?

A. Yes, sir.
Q. And he had that little Honda?
A. Yes, sir.
Q. All right. And otherwise you don't know about his personal business; do you?
A. No, sir.
MR. WILLIAMS: All right. Thank you.
THE COURT: Anything else?

REDIRECT EXAMINATION

BY MR. WATERS:
Q. Do you remember what his ex-wife who was killed, do you remember what her name was?
A. Sherell.
Q. And did Tyrone have a tattoo with her name on it, on his arm?
A. Yes, sir.
Q. And it was kind of a cross and it said --
MR. WILLIAMS: Your Honor.
THE COURT: Sustained.
MR. WATERS: I believe he did ask --
THE COURT: Sustained. He asked about a settlement.
MR. WATERS: Thank you.
THE COURT: You may step down.
MR. WATERS: Nothing further.
THE COURT: Next witness.

MR. WATERS: Your Honor, we call Maryann Boehm.

THE COURT: Come around, please.

MR. WATERS: I believe she's in the hallway, sir.

MARYANN E. BOEHM, having been duly sworn, was examined and testified as follows:

THE CLERK: State your full name for the record.

THE WITNESS: My name is Maryann E. Boehm.

DIRECT EXAMINATION

BY MR. WATERS:

Q. Ms. Boehm, how are you doing today?

A. I'm great.

THE COURT: Please spell your last name.

THE WITNESS: B-O-E-H-M.

THE COURT: Thank you.

BY MR. WATERS:

Q. And if you would, tell us what your profession is and where you work.

A. I work at the South Carolina Law Enforcement Division commonly known as SLED.

Q. Okay. And what do you do there?

A. I am assigned to the DNA casework department.

Q. And is that kind of a forensic science-type stuff?

A. Yes, sir. It's forensic DNA analysis.

Q. And if you would, just tell us a little bit about your education and training as you prepared for your career in

this particular field.

A. Sure. I received a Bachelor of Science from James Madison University which is in Harrisonburg, Virginia, in integrated science and technology with a concentration in biotechnology.

When I was employed at SLED, I went through approximately a year of training by court-qualified analysts in the proper procedures and techniques used in our laboratory. I successfully completed competency tests and mock trials, all sorts of training aspects before I became a full forensic DNA analysis -- analyst.

Q. Okay. And how long have you been doing that?

A. Approximately eight years.

Q. And has all of that been with SLED?

A. Yes, sir.

Q. And how many DNA analyses have you done over that period of time?

A. Thousands.

Q. Okay. And have you ever testified in court before on DNA results?

A. Yes, I have.

Q. Okay. How many time, do you think?

A. Approximately 35 times.

Q. Would that be in state court? Federal court?

A. Just in state, county courts.

Q. Okay.

MR. WATERS: Your Honor, at this time, I would move to qualify Ms. Boehm in the field of forensic DNA analysis.

THE COURT: Any cross-examination on her qualifications?

MR. WILLIAMS: Without objection.

THE COURT: Thank you. She'll be so admitted.

MR. WATERS: Thank you, Your Honor.

Q. Ms. Boehm, am I saying that right?

A. Boehm.

Q. I apologize. Did you review any evidence in this particular case, the case with Sammie Gerrick as the Defendant and Tyrone Donaldson as the victim?

A. Yes, sir; I did.

Q. Okay. And, did you analyze any evidence?

A. Yes, sir; I did.

Q. Okay. And if you would, tell us -- just explain to the jury a little bit about how DNA analysis works, how the matches are made.

A. Okay. First I'm going to explain what DNA is. It's a chemical found throughout all the cells of our body except for red blood cells. It gives us our physical features like our hair color and height and eye color. It's also responsible for passing on traits from generation to generation. We get half of our DNA from our mother and

half from our father. With the exception of identical twins, no two people have the same DNA.

In forensic science, we are interested in the portions of DNA that differ from individual to individual. We test 15 different locations. The combination of those test results make up what we call a DNA profile.

So when I get evidence in, I first screen it. If I'm looking for a body fluid such as blood or saliva, I then will take a portion of that evidence sample and extract the DNA out of it and generate a DNA profile. I will also do that to any known standards submitted in that case.

Known standards are usually blood or saliva cells from a known source, a known individual. I will then compare the DNA profile from the evidence to the known standards and either include or exclude those individuals.

Q. Okay. And is there any sort of, I guess, statistical analysis that goes along with that in determining -- in making those matches, or how does that work?

A. Yes. Whenever we say match, when evidence matches a profile we will give a weight to it by statistics which will say how rare that profile is within the population.

Q. Okay. All right. If you would, did you prepare a report in this particular case?

A. Yes, I did.

Q. And you got it in front of you to refer to?

A. Yes, sir.
Q. Okay. And were you asked to process some things that were collected from an automobile?
A. Yes, I was.
Q. Okay. And tell me, what do you -- how do you get evidence to compare that to? I mean, what evidence do you obtain to compare whatever you may collect from, or what may be provided to you that was collected from a particular subject area to persons? How do you go about doing that? I mean, do you get standards or how does that work?
A. Yes. The law enforcement agency who is investigating the case will submit the evidence as well as known standards for comparison.
Q. All right. And what were the standards -- or, who did you have standards from in this particular case?
A. I received standards from Tyrone Donaldson, Charlene Gerrick and Sammie Lee Gerrick.
Q. All right. And tell us -- first of all, if you would, tell us the items that you, particularly that you tested, where they were from, where you actually received some sort of result if you would, please.
A. Okay. Item 15 which was swabs from a shifter knob.
THE COURT: I'm sorry. Fifteen was what?
THE WITNESS: Swabs from a shifter knob.

THE COURT: Spell that, sifter.

MR. WATERS: Shifter.

THE WITNESS: S-H-I-F-T-E-R.

THE COURT: Shifter. Thank you.

THE WITNESS: Swabs -- item 16 was items -- swabs from the left side of the steering wheel.

Item 17 was swabs from the right side of the steering wheel.

Item 18 was swabs from the driver's door armrest.

BY MR. WATERS:

Q. Okay. And let's start with item 15, did you have any result from item 15?

A. Yes.

Q. And tell us what that was.

A. The partial DNA profile developed from item 15 which was the swabs from the shifter knob is a mixture of at least two individuals. Tyrone Donaldson cannot be excluded as a possible contributor to this mixture. Charlene Gerrick and Sammie Lee Gerrick can be excluded as possible contributors to this mixture.

Q. So the shifter knob in Tyrone's car, he could not be excluded from being in his own car; correct?

A. Yes, sir.

Q. So at least from what you developed, it didn't have Sammie Gerrick or Charlene Gerrick in there?

A. That's correct.
Q. All right. Let's go on to 16. And tell me where that was from, and what you found there.
A. Item 16 which was the swabs from the left side of the steering wheel. The DNA profile developed from item 16 is a mixture of at least two individuals. Tyrone Donaldson cannot be excluded as a possible contributor to this mixture.

Charlene Gerrick and Sammie Lee Gerrick can be excluded as possible contributors to this mixture.
Q. So the standard that was developed there, again, Tyrone was, you had -- he could possibly be the subject of what was in his own car, but you didn't get something from Sammie or Charlene; is that correct?
A. Right. They were excluded.
Q. Okay. And then 17, how about that one?
A. Item 17 which was swabs from the right side of the steering wheel. The DNA profile developed from item 17 is mixture of at least two individuals.

Tyrone Donaldson cannot be excluded as a possible contributor to this mixture. Charlene Gerrick and Sammie Gerrick can be excluded as possible contributors to this mixture.
Q. Okay. So same thing. On those three things in Tyrone's car, he could be a possible contributor but at

least from the standard that was developed not Sammie or Charlene; is that correct?

A. That's correct.

Q. How about 18? Tell me what happened with 18. Where was that from?

A. Item 18 was collected from the driver's door armrest. And no DNA profile was developed from this item.

Q. Okay. And, what about item 48? What happened with that one? Excuse me; 49.

A. Item 49 was a cigarette butt from the southeast quarter of the dig site on the ground. And no DNA profile was developed from this item.

Q. And then what about 48? Tell me about that one.

A. Item 48 also was a cigarette butt from the center northwest quarter of dig site in the leaves and no human DNA was detected from item 48.

Q. All right. Well, let's talk about that. You had -- we had three samples from the car where we had Tyrone being in his own car but we couldn't -- or at least the sample that you had didn't show Sammie Gerrick or Charlene Gerrick.

And then you had 18 which was also in his car. And you had no DNA profile whatsoever from that; is that correct?

A. That's correct.

Q. Well, explain to us -- I mean, is it -- explain to us how this works. What particular kind of DNA was being looked for? And explain to us why you might not find DNA in every single instance.

A. Sure. What we are looking for is touch DNA. And when we look for touch DNA it's anytime -- there are skin cells are deposited when you touch an item. So if I touch this arm of the chair, I may or may not leave some skin cells behind.

There are many factors that go into it, how frequently I touch the object. Like if it was my own car, the steering wheel in my own car, it's more likely that my DNA would be found on it than if I just brush up against this arm of the chair, I may not leave enough DNA behind to be detected.

It also depends on how hard or how much force you put on the object. If I just lightly touch the arm of the chair, I may not leave as many cells behind as if I rub the arm of the chair, I'd probably leave more.

Also if I'm sweating, sweating you leave -- there's more potential to leave skin cells behind versus if you're not.

So, it's very common to find the normal user of an object on an item that they use, you know, every day, multiple times a day. Sometimes though you may not find

it just because of how often it was touched or how it was touched.

Q. So if you had a normal user it's just likely you might find some, or it's more likely you might you find some touch DNA. If you had somebody who was in there briefly or something like that, it's not necessarily that you're going to find some touch DNA; is that correct?

A. That's correct.

Q. Okay. And if somebody were to wipe or clean or something like that, that could potentially preclude the possibility of finding touch DNA; is that correct?

A. That's correct.

Q. So if somebody drove a car and they didn't want to be detected and they wiped some things down, they might remove any DNA that they had?

A. Yes. It's possible.

Q. And additionally, just because it's touch DNA you're just, you know, and you're getting standards, taking swabs from the car and that sort of thing, it's -- you're just not going to always find it in every case; is that fair to say?

A. That's correct.

Q. Okay. And have you come across cases where an individual was present somewhere from other evidence but the swabs did not come back with touch DNA?

A. Yes. That's happened.
Q. Okay. And so, touch DNA is really more of a confirmation that somebody was there at some particular time, it's not a exclusion of somebody necessarily being there?
A. That's correct. If I don't find a profile it doesn't mean the person didn't necessarily touch it. It means that they didn't leave enough DNA behind or, you know, they could have had clothing on to protect the skin from that item, or they could have cleaned it.
Q. Okay. And that's not an uncommon thing that we find or we don't find it; is that fair to say?
A. That's fair to say.
Q. In real life, unlike maybe what you see on TV, there's not always some magic piece of evidence in every single case; is that accurate?
A. Right. Every case isn't perfect.
Q. Okay. All right. And there's not always some magic piece of forensic evidence; is that correct?
A. That is correct.
Q. Some cases you just need good old regular police work; correct?
A. Yes. That's correct.
Q. Now you mentioned also and I guess this is along the same lines that we had 18 which was also in his car and

you got nothing from that; correct?
A. Yes. No DNA profile was developed from that item.
Q. Okay. And what exactly does that mean, that it was detected but none, it was insufficient to develop a profile?
A. Right. During the laboratory process we first see how much DNA we have. And for this item there was a tiny bit of DNA there, but not enough to generate any test results.
Q. Okay. And then on 48. And I believe 48 was a cigarette butt from the dig site; is that correct?
A. That's correct.
Q. And then you had no DNA detected on that; is that correct?
A. That's correct.
Q. And so is that another example, I mean, you would expect or there's the possibility of touch DNA from somebody smoking a cigarette or even saliva; is that accurate?
A. Yes. Either touch or I would mainly think saliva would on a cigarette butt.
Q. And would the fact that something's been outside, been weathered, been subject to the elements and that sort of thing, does that -- would that have a negative effect on, potentially have a negative effect on the ability for detection?

A. That's correct. Sunlight and extreme heat and moisture can have a damaging effect on DNA.
Q. Okay. So if you're at a scene and it's in the summertime and it's really hot and there have been thunderstorms and all the rest of it and you got things laying on the ground, that could severely negatively impact the potential of finding any workable DNA evidence there?
A. Yes, sir; that's correct.
Q. Okay. All right.
MR. WATERS: Nothing further. Please answer any questions the defense has.

CROSS-EXAMINATION

BY MR. WILLIAMS:
Q. Ms. Boehm, you tested several item, places in the car, right and the left hand of the steering wheel; correct?
A. That's correct.
Q. And the shift lever thingamajigger?
A. That's correct.
Q. And you found DNA that couldn't be excluded from Tyrone Donaldson but you said you found two or more different types of DNA there?
A. Right. Those items were -- make sure that at least two individuals, meaning more than one person, left DNA behind on those items.

And Tyrone Donaldson could possibly be one of those contributors.

Q. And it could be people with DNA there that we just don't know who they are; is that correct?

A. Right. They do not -- the known standards that were submitted in the case are the only ones I compared the evidence to.

And I included Tyrone Donaldson and I excluded Charlene Gerrick and Sammie Lee Gerrick from those items.

Q. Okay. And are you aware that there was a gun, shotgun case taken from that car as part of this criminal investigation?

A. No, I'm not aware.

Q. Were you asked to do any DNA studies on a shotgun case?

A. No, sir.

Q. And are you aware that there were shotgun shells found at the scene?

A. No, sir.

Q. And were you asked to do any DNA studies on shotgun shells?

A. No, sir.

Q. And I understand what you're telling me that you can't find DNA all the time on something. But when you have a serious case like a murder case, it's important to look;

isn't it?
A. I believe -- that's not up to me to make those decisions of whether DNA analysis is done on certain items.
Q. You don't make that decision but, I mean, DNA analysis can crack the case; can't it?
A. It's possible.
Q. All right. And so, when you got something serious like this going on, you want to look at everything you can even if there's no DNA there just to make sure there's no evidence left behind; correct?
A. I would assume so.
Q. All right. And when police officers do that good old regular police work, that's what they should do, they should bring you everything that you could possibly find some DNA on so you can check it out and verify it; correct?
A. Well at SLED we have a policy. There are guidelines that we have them narrow the evidence down to five items to start with.
And then if we want to do more, if they want us to do more DNA analysis on more items, then they can go ahead and request it at that time. But we start with five items.
Q. And you've never got that request; did you?

A. No, sir.

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

THE COURT: Redirect.

REDIRECT-EXAMINATION

BY MR. WATERS:

Q. You're mentioning the policy at SLED. And that's because it's up to the officer to determine the items that have evidentiary significance and submit those ones to you for DNA testing, the ones that are most likely to contain potential relevant evidence; is that correct?

A. That is correct.

MR. WATERS: Okay. Thank you very much. Nothing further.

THE COURT: You may step down. May she be released to go back to work?

MR. WATERS: Yes, sir, Your Honor.

THE COURT: Or go back to SLED.

THE WITNESS: Yeah.

THE COURT: Be careful. Next witness, please.

MR. ANDERS: Thank you. State call Officer Carl Shultz.

CARL WAYNE SHULTZ, having been duly sworn, was examined and testified as follows:

THE CLERK: If you would, please, sir, have a seat and state your full name for the record.

THE WITNESS: Carl Wayne Shultz, S-H-U-L-T-Z.

DIRECT EXAMINATION

BY MR. ANDERS:

Q. Officer Shultz, where are you employed?

A. I'm currently a lieutenant with the Orangeburg Department of Public Safety.

Q. If you could, just tell the jury a little about your history in law enforcement.

A. I've been in law enforcement a little over 21 years. I started with Orangeburg Public Safety. Also worked at the Beaufort Police Department. I went back to Orangeburg in 2007 to help get their crime scene program off the ground.

Q. And what are your duties? What do you focus on mainly there?

A. Currently I'm the division commander in charge of investigations and forensic services. During the years I've been a crime scene investigator, a latent print examiner. I still do those things. I'm also a certified latent print examiner, certified crime scene investigator, one of 800 in the United States through the International Association of Identification. I also run AFIS which is Automated Fingerprint Identification System.

Q. We'll get to AFIS in a little while, but just to get back to your certification and your education. As far as

latent prints, can you tell the jury a little bit more about any certification you've received and training.
A. Over the years I've had over a thousand hours of training, 200 of that has been in the examination of latent fingerprints. We also do yearly competency testing through the CPS Forensic Services and with SLED. I've been through a SLED internship of over 120 hours.

MR. ANDERS: Your Honor, at this time we'd offer Officer Shultz as an expert in latent fingerprint detection.

MR. WILLIAMS: Without objection.

MR. ANDERS: Thank you, Your Honor.

Q. Were you employed with the Orangeburg Department of Public Safety in July of 2011?
A. I was.
Q. All right. And how did this case -- how did you become involved with the case that we're here today for?
A. On July 22nd, I was supervising the crime scene unit at that time. I was contacted and advised that a white Honda had been recovered in a parking lot off John C. Calhoun Drive. At the time we were told it was a missing person's case and that the Blackville Police Department had asked us to process the vehicle since we found it in our jurisdiction and we have a forensic laboratory.

MR. ANDERS: May I approach, Your Honor?

THE COURT: You may.

BY MR. ANDERS:

Q. I'm handing you what's been marked as State's Exhibit Number Five. Can you tell me what that is?

A. That's a picture of a white Honda parked in the China Express parking lot on John C. Calhoun Drive. It was parked, backed into a parking spot in the rear of the business.

Q. Is that the car that you processed --

THE COURT: Hold on a second. You all agreed on this?

MR. WILLIAMS: I think I'm going to.

THE COURT: Well, look at it before we start talking about it.

MR. WILLIAMS: (Complies.) Without objection.

THE COURT: Without objection, State's Five, photo of car.

(State's Exhibit No. 5, photograph, received into evidence.)

BY MR. ANDERS:

Q. Officer Shultz, is that the vehicle that you processed in July of 2011?

A. Correct.

Q. Can you tell the jury just a little bit about what you

do when you process vehicles?
A. We treat a vehicle just like any other crime scene. A crime scene can be anything from a vehicle to an outdoor scene, a room.

In this case we took pictures all the way around, 360-degree view of the vehicle, inside and out. Prior to that the vehicle was towed to our impound facility so it was secured.

We -- once we take pictures of it we start going through it meticulously to see if there's any evidence we can visually see. We'll photograph any evidence we can collect. After that's done, we'll go through and process it for latent fingerprints.

And that's what we did on that day.

Q. And I believe you were in the courtroom during the testimony of the last witness and she talked about swabs --

A. Correct.

Q. -- on the shifter knob and some other areas of the car. You performed that; correct?

A. Correct. We took the swabs from the vehicle in those areas because those areas stay with the car. We swab them using a wet/dry method. Basically it's just a big Q-tip. We put sterile saline water on it, we swab it. And at the time you don't know if you're getting anything on it or

not. That's when the DNA analysis comes in.

There were other items collected from the vehicle to be turned in to be processed at the lab.

Q. And all those items you collect -- do you recall some of the other items?

A. There was a -- I can refer to my notes, but there was a Sunkist bottle, just a strap from a purse, a Hardee's cup and straw, cell phone charger, some CDs, dried tobacco, paper towel, a gold button, and a CD from the front storage compartment.

Q. So everything you find that there may be some possible evidentiary value to, you sort of package and send it to SLED?

A. Correct.

Q. Along with the swabs?

A. Correct. And in this particular case since we were just processing the vehicle assisting an agency, we package that stuff and send it to SLED. If it was ours, we would have processed it in the vehicle. We wouldn't have to package --

Q. You don't do any of the testing?

A. No, none of the tests on DNA.

Q. All right. I'd like to get back to the fingerprint. Can you tell the jury the process of fingerprinting, how you collect fingerprints, how you process fingerprints?

A. Fingerprints are -- we heard yesterday but they are basically deposits of oily secretions from your fingers along with your perspiration, water, that are left on surfaces. Normally a smooth surface is the best to develop fingerprints off of.

What we do is we use a simple brush. Same technique they used for over a hundred years. In fact, we use black volcanic powder. It adheres to the fingerprint, the moisture in the print and develops the black prints like most of us has seen on TV. Once the print is developed we take clear tape, lift it, and put it on a white index card.

Q. I believe there was testimony and I believe you just said that fingerprints are fragile.

A. They are very fragile.

Q. And, the more likely something is going to be touched or has been touched, the more likely fingerprints are going to be found?

A. That is correct.

Q. Okay. May I approach, Your Honor?

THE COURT: You may.

BY MR. ANDERS:

Q. Officer Shultz, I'm handing you what's been marked as State's Exhibit 63. What is that?

A. Sixty-three is a latent lift that contains several

latent fingerprints that was taken off of the front right passenger door of the white Honda. And that would have been in that position on the door itself.

Q. Okay. But you took these?

A. I took these, yes.

MR. ANDERS: Your Honor, at this time we would move to enter these into evidence.

MR. WILLIAMS: Without objection.

(State's Exhibit No. 63, photograph, received into evidence.)

BY MR. ANDERS:

Q. Officer Shultz, if you would, just tell the jury what that is.

A. This is what I described earlier of when the print's on the car, you put the black powder on it. It comes up in a black, it adheres to the moisture and the ridges that are left, it's lifted onto the tap and then placed on this card.

And what that is, it was taken off the door frame in just this manner. It was the back -- you have a door, you have the window, back of the door frame and you have the prints on it. Just like this. Like someone had shut the door.

Q. What door was that?

A. The front right passenger door.

Q. Front right passenger?
A. Correct.
Q. Okay. And whose prints are those?
A. They were searched through South Carolina AFIS and came back to Mr. Gerrick.
Q. All right. And I see that there's some numbers on there. Is that just 4. --
A. What we do is we mark them by item number. This was item number four in our evidence chain. On the card itself there's three individual latents that are identifiable. There's some others on here that are smudges that are not identifiable, but they're identified 4.2.1, .2 and .3 which are the three fingers on the card that were lifted from the door.
Q. All right. I am now handing you what's been marked as State's Exhibit 64. I believe I've shown this to defense attorney. But can you tell me what that is?
A. This is a printout from the AFIS system. Once the print is run through the system and we come back on identification, this is a printout showing the print from the known print from the system, the latent print and its position in the group that it came back in. It came back as number one.
MR. ANDERS: Your Honor, at this time we'd move to enter State's Exhibit 64 in evidence.

MR. WILLIAMS: Without objection.

(State's Exhibit 64, photograph, received into evidence.)

BY MR. ANDERS:

Q. If you could, just tell the jury what that is again, and whose print is that.

A. The print that came back belonged to Mr. Gerrick. It was the number three finger, which is the middle finger, of the right hand.

Q. The State is now handing you what's been marked as State's Exhibit 65.

A. Same type of fingerprint.

Q. What is that?

A. This is the latent that was entered into the system. This is the latent that was printed or that it was identified to -- belonging to Mr. Gerrick. It is his number -- this -- I'm sorry. This is a chart --

Q. Without saying what it is, let me just -- okay.

MR. ANDERS: Your Honor, I did show all of these to defense. We now --

THE COURT: Any objection to 65?

MR. WILLIAMS: No objection.

THE COURT: Without objection.

(State's Exhibit No. 65, photograph, received into evidence.)

BY MR. ANDERS:
Q. I'm going to go ahead and show you 66 and 67.
THE COURT: Which is this?
MR. ANDERS: Your Honor, this is State's Exhibit 66.
THE COURT: Sixty-six is what?
THE WITNESS: Sixty-six is the AFIS printout identification.
THE COURT: Okay.
THE WITNESS: And this is the same that we saw earlier. This is just a different finger. This is the number two finger of Mr. Gerrick. That's the latent that was put in the system, and this is the identified.
MR. ANDERS: Your Honor, we'd move to enter this into evidence as well.
THE COURT: This being what?
MR. ANDERS: This is State's 66, Your Honor.
THE COURT: Thank you.
(State's Exhibit No. 66, photograph, received into evidence.)
MR. ANDERS: Your Honor, we're now handing 67 to the witness.
Q. Can you identify that, State's 67?
A. This is a chart printout of the last fingerprint that was ran through the system that just shows the identification points.

Q. Okay.

MR. ANDERS: And, Your Honor, we would now move to enter State's Exhibit 67 into evidence.

MR. WILLIAMS: Without objection.

(State's Exhibit No. 67, photograph, received into evidence.)

BY MR. ANDERS:

Q. I'm going to hand these back to you. Just starting with State's Exhibit 64, just tell me what that is, and what the numbers mean. And what -- why does that look like a computer screen? How do you come up with these print identifications?

A. The AFIS system is essentially a computer program -- a computer system -- a computer program. It is similar to what you see on TV but very dissimilar in that it requires a lot of human interaction.

What we do is, the latent print that you saw earlier, we'll take that, scan it into the system. Once it's scanned into the system, I have to go in and make sure that the points or specific features inside the print is marked correctly.

Once it's run through the system it's checked against one of two databases; the FBI database which is a national database, or the state database. These databases hold all offender prints. Anytime someone is arrested, their

prints are put into the system.

This particular print was searched through the state, SC AFIS, database. Once the print is searched, it comes back. It doesn't tell me who it belongs to. It gives me a SCID number which is your South Carolina inmate identification number, essentially. It's on your criminal history. It doesn't tell me who it belongs to. It doesn't give me any particulars, height, weight, date of birth, anything like that.

And it comes up, our system is set to bring back 15 potential matches. This one came back. It was in the number one spot. And the reason it gives us 15 is because it doesn't know anything except the measurement. And what it does is when you're plotting these points, it measures the distance between these points.

No two fingerprints are the same with the same features, however they may have features that are the same distance apart. So what happens is, it comes back with 15 matches and I have to go in and look at this and make sure that the one that it says is number one is essentially the print that I put in. And in this case it was. It came back --

Q. And you did that in this case?

A. I did that in this case. I do that on every -- every latent I run through the system.

Q. And I know you just said this, but there's a database and if you get arrested your fingerprints are there?
A. You are in that database if you have been arrested; correct.
Q. And then you get 15 potentials and you have to go back and --
A. Compare --
Q. -- compare.
A. -- each one to eliminate them or to confirm identification.

MR. ANDERS: May I approach, Your Honor?

Q. I'm handing you what's been moved into evidence as State's Exhibit 67. Could you tell the jury what that is?
A. This is a chart of the print that was matched through AFIS. When it's run through it comes back with a screen that you just saw. This is, once I determine that it is the same fingerprint, I do have a positive identification, I chart this print and I will mark them one through -- this one has, this particular one has one through six on it.

And what that is, that is individual specific features of the latent that was lifted and the known print. And I do a comparison too, so you can see that they're all in the same location.
Q. All right. So, the prints that you found were the

ones that you ran -- well, let me ask you. How many prints did you collect, total?
A. Six, I believe. Let me make sure. Five. There was five all together. Five cards of latents were lifted from the entire vehicle.
Q. All right. And so there was one set belonging to the Defendant?
A. Correct.
Q. And how about the others?
A. They were all ran through the AFIS database with no identifications.
Q. Okay. So, no matches?
A. No matches.
Q. And have you been -- okay. So there's nobody in the system that those matched to?
A. Correct.
Q. And so what can you do with those at that point?
A. At that point we can get an individual's rolled fingerprints.
Q. Uh-huh.
A. And at that particular point we could not get the victim's fingerprints because, like we talked about with DNA, you would assume the victim's fingerprints would be on the car. Mr. Donaldson should have been on there, however we couldn't get his known standard. He was not in

the system.
Q. Okay. And at that point his body was --
A. Deteriorated.
Q. -- not suitable for that?
A. Correct. Correct.
MR. ANDERS: Beg the Court's indulgence.
Thank you, Officer Shultz. Answer any questions Mr. Williams may have.
THE COURT: Mr. Williams?
THE WITNESS: Thank you.

CROSS-EXAMINATION

BY MR. WILLIAMS:
Q. Officer Shultz, before you identified a fingerprint from 4.4. I believe that's on the back of trunk of the car; is that correct?
A. From 4.4?
Q. Right.
THE COURT: Mr. Williams, hold on.
BY MR. WILLIAMS:
Q. And I just -- while we were marking some items I showed you some prints lifted from the trunk.
A. Correct. It was lifted from there. It was not identified.
Q. Okay. They were prints that you could identify, you just don't know who they belonged to?

A. Correct, correct.
Q. All right. And of course you photographed the best you could these prints also?
A. Correct.
Q. I'm showing what we've marked just for identification as three pictures of the trunk.
THE COURT: Number, please?
MR. WILLIAMS: They're Numbers Three, Four and Five, Your Honor, Defendant's Exhibits.
THE COURT: And you're asking him to identify them?
MR. WILLIAMS: Yes.
THE COURT: Can you identify Three, Four and Five?
THE WITNESS: Yes, sir. This is Three, Four and Five are all photographs --
THE COURT: Just, can you or can't you?
THE WITNESS: Yes.
THE COURT: Mr. Williams.
MR. WILLIAMS: Your Honor, I'd offer these into evidence.
THE COURT: Any objection?
MR. ANDERS: No objection.
(Defendant's Exhibit Nos. 3, 4 and 5, photographs, received into evidence.)
BY MR. WILLIAMS:
Q. Let me show you again Defendant's Exhibits Three, Four

and Five. Those were taken by you from the trunk of the car; correct?
A. Correct.
Q. And you ran that through the AFIS system also?
A. That's correct.
Q. And they're not Sammie Gerrick's?
A. They are not.
Q. All right. And we don't know whether they're Tyrone Donaldson's or not?
A. We do not.
Q. And we don't know whose they are?
A. At this time we do not.
Q. And those are dirty fingerprints on the back of the trunk of the car; correct?
A. They were fingerprints on the back of the trunk; yes, sir.
Q. And you processed the car and there was a shotgun case found in the car?
A. In the trunk, yes.
Q. In the trunk. And, once again, Sammie Gerrick's fingerprints, they were found on the passenger door; correct?
A. Correct.
Q. On the front?
A. Correct.

Q. And did you process the shotgun shell case -- the shotgun case in any way?
A. No.
Q. You sent that to SLED to be processed?
A. Everything that was collected out of the vehicle was send to SLED.
MR. WILLIAMS: No further questions.
THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. ANDERS:
Q. The defense attorney brings up the prints on the trunk. We don't know whose they were.
A. I do not.
Q. You ran them?
A. I did.
Q. All you know whoever's prints those are, they weren't in the system.
A. They were not in the system.
Q. And there was a shotgun case that belonged to the victim in the trunk?
A. Correct.
Q. And that's where it was found?
A. Correct.
MR. ANDERS: No further questions.
THE COURT: You may step down. May he be released

from his subpoena?

MR. ANDERS: Yes, sir, Your Honor.

MR. WATERS: Yes, Your Honor.

THE COURT: Thank you. Next witness. Hold on a second. Everybody okay? We'll do one more.

Next witness.

MR. ANDERS: Your Honor, the State calls Ms. Dorothy Creech.

DOROTHY CREECH, having been duly sworn, was examined and testified as follows:

THE CLERK: If you would, please, ma'am, be seated and state your full name for the record. Okay?

THE WITNESS: Dorothy Creech.

DIRECT EXAMINATION

BY MR. ANDERS:

Q. Mrs. Creech, where do you work?

A. Enterprise Bank in Blackville.

Q. How long have you worked there?

A. Twelve and a half years.

Q. What are your duties at the bank?

A. I'm branch manager.

Q. I believe you just told me. Where is that bank located?

A. On Main Street in Blackville.

Q. Okay. In July of 2011, did you have any contact with

Chief Holston of the Blackville Police Department?
A. Yes, I did.
Q. And what was -- why did y'all get together?
A. He brought in a subpoena.
Q. Okay. And did he ask for something specifically?
A. Yes.
Q. Okay. And what did he ask for?
A. He asked for any pictures or documents from an ATM card that was used at our ATM.
Q. Okay. Do you have security cameras --
A. Yes, sir, we do.
Q. -- at the bank? Are they regularly maintained?
A. Yes, sir.
Q. And watched?
A. Yes, sir.
MR. ANDERS: Your Honor, may I approach?
THE COURT: You may.
BY MR. ANDERS:
Q. All right. I'm handing you what's been marked as State's Exhibit 52.
A. Yes, sir.
Q. What is that?
A. This is the actual pictures that we received from our home office from the ATM machine and the cameras out front from the subpoena.

Q. Okay. And did you give this to Chief Holston?
A. Yes, I did.
MR. ANDERS: Your Honor, at this time --
MR. WILLIAMS: No objection.
THE COURT: Without objection.
(State's Exhibit No. 52, CD, received into evidence.)
BY MR. ANDERS:
Q. I'm going to show you what's been marked as State's 53.
A. Yes.
Q. Can you tell us what that is?
A. This is the same. It's the same picture basically, different angle.
Q. Right.
MR. ANDERS: Your Honor, at this time we --
THE COURT: Any objection to 53?
MR. WILLIAMS: No objection.
(State's Exhibit No. 53, CD, received into evidence.)
BY MR. ANDERS:
Q. So, Mrs. Creech, this is security footage from your bank?
A. Yes, sir.
Q. In Blackville?
A. Yes, sir.
MR. ANDERS: Your Honor, permission to publish this to

the jury?

THE COURT: Yes, sir.

MR. WATERS: Your Honor, I apologize. I'm having technical difficulty here.

THE COURT: Do you need some help?

MR. WATERS: I may. Give me one second. I've got it.

THE COURT: I'm going to get you some help.

MR. WATERS: I think I've got it.

THE COURT: Doesn't sound like it. We don't have any children in the audience?

MR. WATERS: Right. If I had my son here we'd be in business.

(Pause. Video played for the jury.)

BY MR. ANDERS:

Q. Mrs. Creech, where is this located at your bank?

A. At the front.

Q. This is at the front?

A. Yes, sir.

THE COURT: Can you identify the date?

MR. ANDERS: I'm sorry. Let me ask you that.

Q. Can you see this date?

A. Yes, sir. It's July 21st, 2011.

Q. All right. And the time? It's military. It's 1451?

A. So it would be two, 2:54.

Q. That's correct. And then this says? Can you -- I

know that's a long way away. East front?
A. Yes, sir.
Q. That's what you just testified to. Thank you.
THE COURT: Can you make it bigger?
MR. WATERS: I think that's as big as we can make it, Your Honor.
THE COURT: Okay. No problem.
MR. ANDERS: Are you ready?
MR. WATERS: Yep.
(Video played for the jury.)
BY MR. ANDERS:
Q. All right. Stop.
Ms. Creech, you just saw this vehicle come into the screen?
A. Yes, sir.
Q. And do you know what kind of vehicle that might be?
A. It's a Honda Accord.
Q. And what color is it?
A. White.
MR. ANDERS: Yep.
MR. WATERS: Yep.
(Video played for the jury.)
BY MR. ANDERS:
Q. All right. And you saw a vehicle come around from this direction; correct?

A. Yes, sir.
Q. And what kind of vehicle does that appear to be?
A. A pickup truck.
Q. Can you make out the color from there?
A. No, sir. Not really.
Q. Okay.
MR. WATERS: Back it up a bit.
(Video played for the jury.)
BY MR. ANDERS:
Q. What color does that appear to you?
A. Burgundy.
Q. Burgundy. All right. Play.
MR. WATERS: All right.
MR. ANDERS: All right. And keep playing.
MR. WATERS: It's coming.
(Video played for the jury.)
BY MR. ANDERS:
Q. As they leave, can you describe what happens in that video?
A. The truck pulls out from the side of the bank and the white Honda pulls out behind the truck and follows it.
THE COURT: What number was that, please, 52 or 53?
MR. ANDERS: That was 52, Your Honor.
MR. WATERS: Fifty-two.
MR. ANDERS: May I approach, Your Honor?

THE COURT: You may.
BY MR. ANDERS:
Q. Ms. Creech, I'm handing you what's been marked State's Exhibit 49.
(Shown to defense counsel.)
THE COURT: Let me have some lights, please.
BY MR. ANDERS:
Q. Can you tell me what that's a picture of?
A. This is the picture of the truck that came by the side of the bank.
Q. Okay. And what is the time and date on that?
A. It is 7-21-2011 at 12:54.
Q. Okay.
THE COURT: 12?
MR. ANDERS: Roughly this time; correct?
THE WITNESS: I mean 2:54. I'm sorry. 2:54.
THE COURT: Is that a still of what's going on here?
MR. ANDERS: This is a still, Your Honor.
THE COURT: Okay.
MR. WILLIAMS: No objection.
MR. ANDERS: We'd enter this into evidence.
THE COURT: Still of Number 52.
(State's Exhibit No. 49, photograph, received into evidence.)
BY MR. ANDERS:

Q. Ms. Creech, now I'm going to show you --
Your Honor, permission to publish State's 53?
THE COURT: That's the other video of the different angle?
MR. ANDERS: Yes, Your Honor.
THE COURT: Different camera?
MR. ANDERS: Yes, Your Honor.
(Video played for the jury.)
BY MR. ANDERS:
Q. Ms. Creech, can you tell the jury if -- what point of view -- where is this camera located and what is it showing?
A. It's the side of the bank parking lot by the ATM.
Q. Can you make out the date and time on that?
A. It is 7-21-2011 at 1454.
Q. Which is?
A. 2:54.
Q. Thank you. Can you describe that truck for the jury?
A. Burgundy Dodge Ram truck.
Q. Thank you. And he would be coming from where?
A. From around the bank.
Q. Okay.
MR. ANDERS: Having some problems with State's Exhibit 53, the remainder of the clips. If I may --
THE COURT: Turn the lights on for me.

MR. ANDERS: -- approach the witness?

THE COURT: You may.

MR. ANDERS: Never mind. I think he got it. Thank you.

MR. WATERS: Sorry everybody.

(Video played for the jury.)

BY MR. ANDERS:

Q. Can you make out that date and time?

A. It is 7-21-2011 at 20 -- well, it's eight o'clock at night.

Q. P.M.?

A. Yes, sir.

Q. And describe that vehicle for the jury.

A. Burgundy Dodge Ram.

THE COURT: This is still part of 53, just later in the day?

MR. ANDERS: Yes, Your Honor. It's 53, it's on the same video.

THE COURT: Thank you.

BY MR. ANDERS:

Q. All right. What is this person doing?

A. They're at our ATM.

Q. Can you identify that person in the vehicle?

A. No, sir.

Q. Okay.

MR. ANDERS: Permission to approach, Your Honor?
MR. WATERS: Lights.
BY MR. ANDERS:
Q. I'm going to hand you what's been marked as State's Exhibit 50. Is that a view from -- or, what is that?
A. This is the same picture from the ATM for the same day.
Q. That's a still of the eight o'clock --
A. Yes, sir.
Q. -- security footage?
A. Yes, sir. It is.
Q. Thank you.
THE COURT: Fifty is the still of the video at eight o'clock?
MR. ANDERS: Yes, Your Honor.
MR. WILLIAMS: No objection.
(State's Exhibit No. 50, photograph, received into evidence.)
BY MR. ANDERS:
Q. All right. And I'm going to hand this picture back to you. And what is that person doing in the vehicle?
THE COURT: Fifty?
MR. ANDERS: Yes, Your Honor.
THE WITNESS: ATM card in their hand to use in the ATM.

BY MR. ANDERS:
Q. Okay. And that is July 21st, 2011, at eight o'clock P.M.?
A. Yes, sir. Yes, sir.
MR. ANDERS: Thank you, Ms. Creech. Please answer any questions defense has.
THE COURT: Cross.
MR. WILLIAMS: Just one.

CROSS-EXAMINATION

BY MR. WILLIAMS:
Q. Let me show you again, Ms. Creech, State's Exhibit 50.
A. Yes.
Q. And you recognize that there's a person there and he's wearing a shirt?
A. Yes.
Q. Describe the shirt for me.
A. It looks like a striped shirt.
Q. Brown and white? Brown and beige?
A. (Nods head). White, burgundy. It looks like got a black stripe in it.
MR. WILLIAMS: Okay. No further questions.
THE WITNESS: Okay.
THE COURT: May Ms. Creech be released from her subpoena?

MR. ANDERS: She may, Your Honor.

THE COURT: Thank you, Ms. Creech.

THE WITNESS: Thank you.

THE COURT: All right. Mr. Foreman, ladies and gentlemen, we're going to take our morning break, about 15 minutes. Please don't discuss the case, don't deliberate.

I'll have the clerk step back and y'all can decide on your lunch. Anything but Little Howie's. Thank you.

Everybody else remain seated.

(Jury exits courtroom at 11:01 A.M.)

THE COURT: Let me see you gentlemen in chambers, please.

(Break taken at 11:02 a.m. At 11:28 A.M., the trial resumed:)

THE COURT: Anything from State before we start back?

MR. WATERS: No, sir, Your Honor.

THE COURT: Mr. Williams?

MR. WILLIAMS: No, sir, Your Honor.

(Jury enters courtroom at 11:29 A.M.)

THE COURT: You may call your next witness.

MR. ANDERS: Thank you, Your Honor. The State calls Angela Cotton.

THE COURT: Ms. Cotton.

ANGELA COTTON, having been duly sworn, was examined

and testified as follows:

THE CLERK: If you would, please, ma'am, have a seat. State your full name for the record.

THE WITNESS: Angela Cotton. C-O-T-T-O-N.

DIRECT EXAMINATION

BY MR. ANDERS:

Q. Ms. Cotton, where do you work?

A. I'm employed with SRP Federal Credit Union here in Barnwell.

Q. How long have you worked there?

A. Twenty-three years.

Q. And what are your duties there?

A. I'm the assistant branch manager.

Q. Okay. And you worked there in July of 2011?

A. I did.

MR. ANDERS: May I approach, Your Honor?

THE COURT: You may.

BY MR. ANDERS:

Q. I'm handing you what's been marked as State's Exhibit 54.

THE COURT: Five-four?

MR. ANDERS: Yes, Your Honor.

Q. What are those? Without saying whose they are.

A. ATM dialog reports.

Q. Okay.

A. They're transactions that have taken place on an account.
Q. Are those records that your business keeps?
A. Yes, they are.
Q. Thank you.
MR. WILLIAMS: Without objection.
THE COURT: Fifty-four, without objection.
MR. ANDERS: Thank you, Your Honor.
(State's Exhibit No. 54, SRP records, received into evidence.)
BY MR. ANDERS:
Q. What's the account number on those, Ms. Cotton?
A. The account number is Member Number [redacted].
Q. Okay. And how about the card number?
A. The card number is [redacted]-[redacted]-[redacted]-[redacted].
Q. And whose account is that?
A. This account is Tyrone Donaldson's account.
Q. And if you could, tell me the dates that these banks records cover.
A. July 24th, July 22nd, July 21st.
THE COURT: Twenty-one, 22, and 24; is that correct?
THE WITNESS: Yes, sir.
THE COURT: Thank you.
BY MR. ANDERS:
Q. Ms. Cotton, if you could, let's start at the top. I

believe it says acquire date. What does that mean?
A. The acquire date is the date of the transaction, when the card was presented.
Q. And you gave these records to law enforcement?
A. Yes, I did.
Q. Okay. And is that your arrow that you put down on your records?
A. Yes, it is.
Q. What is that arrow used to signify?
A. That is either the date that the transaction took place or the date that the transaction cleared the member's account.
Q. And let's go through the first one. On page one at the top, what's the acquire date and time?
A. The acquired time is July 22nd, and it's at 8:30.
Q. All right. And --
THE COURT: A.M. or P.M.?
THE WITNESS: P.M., 2030 is the military time.
BY MR. ANDERS:
Q. All right. What does that transaction, what is it showing us? What is that record showing us of this transaction?
A. That transaction is showing when it cleared the account, Mr. Donaldson's account, from Palm Pantry. It was a $35 charge.

Q. And that was July 22nd at eight o'clock?
A. Correct.
THE COURT: P-A-L-M Pantry?
THE WITNESS: P-A-L-M Pantry One.
BY MR. ANDERS:
Q. And where was the Palm Pantry located or where is it located?
A. This indicates Bamberg, South Carolina.
Q. And let's go to the next transaction. What's the acquire date and time on that transaction?
A. July 22nd, 1950 is the time.
Q. All right. So, in civilian time that would be 7:50?
A. 7:50.
Q. Okay. And what is that transaction? Tell the jury what that transaction is of.
A. This transaction is for Bamberg Auto Parts for $36.36.
Q. All right. And the -- where was -- where did the transaction take place?
A. Bamberg, South Carolina.
Q. All right. If we could go to page two. Would you tell the jury the next acquire date and time?
A. The acquire date in time is July 22nd the time is 8:37 A.M. This is actually when the card was presented at the business. It shows a signature authorization at Bamberg Auto Parts for $36.36.

Q. All right. If we can go to page number three at the top. Can you describe the transaction at the top, please? When it took place, where it took place.
A. July 22nd at 8:25 A.M. This transaction is when the card was presented at Palm Pantry for $35.
Q. And that's Bamberg?
A. In Bamberg, South Carolina.
Q. And the next transaction, please?
A. The next transaction is an ATM withdrawal. And it's July 22nd at 8:22 A.M. It's at Palm Pantry One ATM in Bamberg.
Q. All right. And so this is an in-store ATM that you see in convenience stores?
A. Yes, it is.
Q. And what was the amount of that transaction?
A. The amount of the transaction is $102, $100 would be the amount of transaction and then a $2 fee.
Q. All right. And if you would, please, turn the page to page number four. Could you tell the jury the date and time and the transaction?
A. This is again an ATM transaction on July 22nd at 8:21 A.M., at Palm Pantry in Bamberg, South Carolina. And it is for $202.
Q. All right. So it was $200 and I imagine the other --
A. A $2 fee.

Q. -- $2 fee?
A. For a foreign transaction.
Q. And that was Bamberg?
A. Yes, sir; 2859 Main Highway is the address, yes.
Q. All right. And that was the same as the previous Palm Pantry ATM transaction; correct?
A. Yes, sir.
Q. All right. And the next transaction, I believe you made a notation about that transaction when you gave these records to law enforcement.
May I approach, Your Honor?
A. Yes, sir. This is an ATM withdrawal. It's on July 22nd, at 8:17 A.M. It was for $403 at Bank and Trust, 317 North Main Street, Bamberg.
Q. Okay. Is there anything different about this transaction than the rest of them?
A. This transaction was a withdrawal from his savings account, not his checking account.
Q. Out of Mr. Donaldson's savings account?
A. Correct.
Q. And, again, I apologize, the transaction date and time was, when?
A. July 22nd, 8:17 A.M.
Q. If you could go to page five. If you could just tell jury the date and time of that transaction, please, and

the amount.
A. The first transaction is a bill payment transaction. At -- on July 22nd at 8:34 -- no, excuse me. That's -- that would be 34, so that would be --
Q. That would be 12:34?
A. -- 12:34 in morning. And it's for SCANA Energy, Columbia, South Carolina. And the amount of the transaction is $103.50.
Q. So somebody was paying bills at 12:30 A.M.?
A. Correct.
Q. And the next transaction?
A. The next transaction is also a bill pay transaction on 7-22 at 12:31 A.M. It's also for SCANA Energy out of Columbia, South Carolina, for $603.50.
Q. All right. And if you would turn to page six for me, please. The second transaction.
A. The second transaction is an ATM withdrawal from checking on July 21st. The time is 2001 which would be 8:01 P.M. It's for $302.50 at Enterprise Bank, 227 Main Street, Blackville.
Q. And you were here earlier during the testimony of Ms. Creech?
A. I was.
Q. And there was somebody who made an ATM withdrawal at approximately that time; correct?

A. Correct.
Q. At that same bank?
A. Correct.
MR. ANDERS: Beg the Court's indulgence.
(Pause.) No further questions, Your Honor.
THE COURT: Mr. Williams.

CROSS-EXAMINATION

BY MR. WILLIAMS:
Q. Ms. Cotton, to make these ATM withdrawals you have to have a PIN number; is that correct?
A. That is correct.
Q. Is it the same PIN number for the savings account and the checking account or are they different?
A. No, it's the same number.
MR. WILLIAMS: Thank you, ma'am. That's all I have.
THE COURT: You may step down.
MR. ANDERS: State calls Andre Hightower.
ANDRE HIGHTOWER, having been duly sworn, was examined and testified as follows:
THE CLERK: State your full name for the record.
THE WITNESS: Andre Hightower.
THE COURT: Speak up for me, please.
THE WITNESS: Andre Hightower.

DIRECT EXAMINATION

BY MR. ANDERS:

Q. Good morning, Mr. Hightower, how are you?

A. All right.

Q. Mr. Hightower, tell the jury a little bit about yourself. Where are you from, and where were you raised?

A. I'm from Denmark, South Carolina. I was raised in Denmark, South Carolina.

Q. And what's your present occupation?

A. I run a vending route, vending machine.

Q. Okay. And how about schooling? Did you receive any schooling?

A. Yes, I'm in WIA.

Q. You're nervous, I can tell?

A. Yeah, I'm nervous. I ain't never did this before.

Q. Just slow down. It will be all right.

All right. So you -- so you got a vending machine route; correct?

A. Yes, sir.

Q. All right. And, ironically, do you have the vending -- what is your route, where do you place these vending machines?

A. My route run from Barnwell County all the way to Orangeburg County.

Q. All right. And what kind of -- where do you have

vending machines?
A. One is in the courtroom (verbatim) downstairs. I got several. One is at the fire station. One is at B&B Ford, at the Medical Center and Barnwell Disability Center.
Q. All right. And now are these your vending machines? Are you in business with somebody?
A. They're my machines. I buy used machines and fix them and then put them in places.
Q. All right. So you refurbish machines and put them in and do it that way?
A. Yes. I do my own work.
Q. Let me ask you a question. Let me take you back. Do you know the Defendant?
A. Just saying hey, bye. That's it.
Q. Okay. How did Tyrone Donaldson -- did you know Tyrone?
A. The same situation; speak, keep going.
Q. All right. So it sounds like you didn't know them very well, either of them?
A. No.
Q. All right. Do you recall July 21st, 2011?
A. Yeah. I was in Greenville and my -- Crystal was at her sister house.
Q. Let me just back up. Who's Crystal?
A. Crystal's my girlfriend.

Q. All right. Was --
A. Uh-huh.
Q. So where were you on that date?
A. Greenville.
Q. All right. Do you have kids together? Does she have kids?
A. She got a son.
Q. All right. Was the son with you in Greenville?
A. Yes.
Q. Were you ever with Sammie Gerrick that day?
A. No.
Q. Were you ever with Tyrone Donaldson that day?
A. No.
Q. And, again, how about Big Joe? Does that name ring a bell?
A. I don't even know who that is.
Q. Okay.
MR. ANDERS: No further questions, Your Honor.
THE COURT: Cross.

CROSS-EXAMINATION

BY MR. WILLIAMS:
Q. Mr. Hightower, how long have you been in the used vending machine business?
A. Now for about a year and a half.
Q. How did you get in that business?

A. Just learning about the machines once they break, knowing what's next. Costs more in the vending machine than it do if you just buy it out of the store.
Q. How did you buy your machines?
A. How did I buy them? They scrap machines. They don't cost much, probably 50, $60 and then you go and fix them yourself.
Q. And what other kind of work have you done?
A. I worked at Holland Hitch. I worked at SCANA. I worked at Okonite and I worked at a place in Blackville, I done forgot the name of it. Right there -- Climax Global.
Q. How do you remember being in Greenville specifically on July 21st?
A. I'm not specifically sure of the date because how long it been, but once -- I was in Greenville, me and Crystal, and her brother called and said that Tyrone was missing. And I ain't thought nothing else about it.
Q. Okay.
A. All right. And then we came back, I think the following day or whatever. And Jeffrey Corley little boy came to the house. His mama dropped him off. And he was telling me that the family of Bill DeLoach and the family was calling my name at their house. So I called Chief Holston and I was, like, what's this about my name in this altercation.

Q. Well now, hold on a second. Somebody called you from -- while you were in Greenville and told you about Tyrone?
A. Yes.
Q. You didn't know Tyrone, I didn't think.
A. I didn't. Just telling the family. Crystal is from Blackville.
Q. Yeah. You're from Denmark?
A. Right.
Q. All right.
A. So...
Q. You didn't know Tyrone?
A. They didn't call me. They called Crystal.
Q. How are you related to Charlene Gerrick?
A. Charlene Gerrick?
Q. Yeah.
A. Who is Charlene Gerrick?
Q. You don't know Charlene Gerrick?
A. No.
Q. Is your father and her stepfather related in some way?
A. I don't know.
Q. Okay.
A. My father and her stepfather? I don't know. I don't know.
Q. How do you know O'Shane Dixon?

A. I don't know him.
Q. Do you have dogs?
A. No.
Q. You ever own dogs?
A. Yes.
Q. What kinds of dogs?
A. Pit bulls.
Q. Pit bulls. When did you own pit bulls?
A. That was years ago.
Q. Okay. And let's go back to Bill DeLoach.
A. Uh-huh.
Q. Bill DeLoach was talking about you?
A. Yeah. From what the little boy say.
Q. Okay. And why was you concerned about that?
A. You hear your named called in something, you're going to call and talk to whoever.
Q. But -- are you sure you were in Greenville on the 21st when you get this call about Tyrone, or you don't know?
A. I just, I just can say that I was in Greenville when the call came through. I didn't get the call, again.
Q. Okay. But that could have been on the 22nd or 23rd; right?
A. I mean, you can ask Chief Holston what date it was I called him.
Q. All right. And you went from the Blackville-Denmark

area to Greenville; right?
A. Yes, I left Blackville and went to Greenville.
Q. Right after the 21st; right?
A. No, I'm not saying it was right after the 21st.
Q. How long were you in Greenville?
A. I think two days.
Q. Okay. All right. And who went with to you Greenville?
A. Crystal and her boy.
Q. Does she still live in the Blackville area?
A. No, she don't.
Q. Where is she at?
A. Columbia.
Q. And how old are you?
A. Thirty-two.
MR. WILLIAMS: That's all I have, Your Honor.
MR. ANDERS: Nothing further, Your Honor.
THE COURT: All right. Mr. Hightower, you may step down. You're free to go.
THE WITNESS: All right.
THE COURT: Next witness?
MR. ANDERS: The State calls O'Shane Dixon.
O'SHANE DIXON, having been duly sworn, was examined and testified as follows:
THE CLERK: If you would, please, sir, be seated and

state your full name for the record. Okay?

THE WITNESS: O'Shane Dixon.

DIRECT EXAMINATION

BY MR. ANDERS:

Q. Mr. Dixon, where are you from?

A. Blackville.

Q. Blackville?

A. (Nods head.)

Q. You been there all your life?

A. That's right.

Q. What do you do for a living?

A. I'm unemployed right now.

Q. Okay. How did you know -- how do you know the Defendant?

A. We used to go fishing, whatnot, probably like once a week, sometimes twice a week. And, you know, that's as far as it went.

Q. Did y'all hang out?

A. No, not really.

Q. Fishing buddies?

A. That's it.

Q. All right. Have you been in trouble with the law in the past?

A. Couple years back.

Q. All right. Do you recall when it was and what you

did?
A. I really couldn't -- I really couldn't recall, you know, like, how far, like, how many years back, but I did have a charge one time though.
Q. All right. If I told you burglary second non-violent --
A. Right.
Q. -- and you pled guilty --
A. Right.
Q. -- in 2010 --
A. That's right.
Q. -- and got probation?
A. Right.
Q. You've been in trouble ever since?
A. No.
Q. All right. Do you recall July 2011?
A. Right.
Q. All right. Can you tell the jury what you recall from July of 2011, specifically the 21st?
A. I received, it was, like, say about 6:30, seven o'clock, I received -- well before that, you know, I found out that, you know, that Tyrone been missing. And this was like about 4:30, five. And about seven, 7:30, then I started getting phone calls from, you know, from Mr. Gerrick stating that, you know, did I know that he was

missing and I was, like, yeah, I heard about it. And then after that, you know, I started receiving more phone calls over and over and over, asking me, you know, what else did I hear about the situation about Tyrone.

Q. All right. Let me just interject. When you said more phone calls, who were those phone calls from; do you recall?

A. Sam, Sammie.

Q. Sammie?

A. Uh-huh.

Q. So when you say more phone calls, you know, can you describe? Every couple minutes? Every 10 minutes?

A. Like, I'd say, like, about every 10, 15 minutes.

Q. What was he wanting to know?

A. He wanting to know, you know, what else did I hear whatnot, you know, about the Tyrone situation.

Q. All right. And what did you tell him?

A. I told him I didn't hear nothing else about it. The only thing I told him, you know, was, they still said, you know, they still haven't found him or whatnot.

Q. That was on Thursday the 31st?

A. Right.

Q. All right. Did you talk about anything else with Mr. Gerrick?

A. No, just that.

Q. Had y'all planned on going fishing at some point that day or the next day?
A. It was the next day.
Q. And what conversation did you have with the Defendant?
A. He was, like, you know, you know, whether we still going fishing the next day. And I was, like, you know, you know, now that he came up missing or whatnot and, you know, and he kept calling me over and over and over like that, you know, I kind of like, you know, kind of like postponed the fishing trip and whatnot.

And then after, you know, then he kept calling or whatnot but I still didn't answer the phone, you know. And that was the end of that though.

Q. And you gave a statement to law enforcement?
A. Right.
Q. All right. And what was the reason the Defendant gave you for not going fishing?
A. Say that again.
Q. Did the Defendant give you a reason for him not calling you to go fishing or for y'all not to go fishing?
A. No, he didn't.
Q. Okay. Did you ever speak with the Defendant on the 23rd?
A. No.
Q. All right. Did you speak with the Defendant -- was

there a point in time, without stating any reason why, but was there a point in time when you cut off communication from the Defendant?
A. Right.
Q. When was that?
A. That was, that was on the same day, you know, the same day actually, you know, he went missing, whatnot.
Q. All right. Do you know where you were July 21st, that Thursday, 2011?
A. When he was doing the calling?
Q. Well, where were you? What were you doing on that day?
A. Oh.
Q. Do you recall?
A. I was at the house. I was at, you know, where I was living at, [redacted] Road.
Q. Okay. And what were you doing at the house?
A. I was watching my kids.
Q. How many kids do you have?
A. Three.
Q. And from what time -- how long were you at your house watching your children?
A. From that morning all the way up until about, I'd say between 4:30, five.
Q. What happened at 4:30 or five?

A. Then I went out to my sister house.
Q. Did you go there with anybody?
A. Say that again.
Q. Did you go there with anybody?
A. With my kids.
Q. Okay. Were you dating anybody at the time?
A. My kids' mother.
Q. Okay. And so, where's your sister live?
A. Hampton Apartment.
Q. Were you ever with the Defendant at any time on July 21st, 2011?
A. No.
Q. Were you with him any date on July 22nd, 2011?
A. No.
Q. How about the 23rd?
A. No.
Q. How did you find out that Tyrone Donaldson was missing?
A. Because after I got, when I left from the house and then when I went to my sister house it was a friend I went to school with, he came in and, you know --
Q. What's his name?
A. Reginald Eady.
Q. Okay. What did he say?
A. He came in and, you know, he asked me did I hear

anything about, you know, Tyrone went missing. I was like no. And then, you know, he started telling me about he went missing and that's where I got it from.

Q. Okay. And about what time was that?

A. That was like, between, say about 4:30, five.

MR. ANDERS: Beg the Court's indulgence.

(Pause.)

MR. ANDERS: No further questions, Your Honor.

THE COURT: Mr. Williams?

CROSS-EXAMINATION

BY MR. WILLIAMS:

Q. Mr. Dixon, at 4:30 or five o'clock on July 25th (sic), you already knew that Mr. Donaldson was missing?

A. No.

Q. Am I wrong about that?

A. Right. You're wrong about that.

Q. Huh?

A. You're wrong about that.

Q. What time did you tell me? Correct me.

A. When I left from the house it was like, it was like between 4:30, five and when I found out he was missing when I got out to my sister house. That's when I found out he was missing, when a friend came and told me that he was missing.

Q. So what time was that?

A. I'd say about 4:45.
Q. 4:45?
A. Right. By the time I got to my sister house it's still between 4:30 and five.
Q. Okay. So early that afternoon -- well, in the middle of the afternoon you knew he was missing; right?
A. Yeah.
Q. All right. And you live on [redacted] Road; correct?
A. Yeah, at the time I did.
Q. All right. And you're not working anywhere now?
A. That's right. That's right.
Q. When's the last time you worked?
A. It's been some years, probably about four, five years ago.
Q. Four or five years ago?
A. Right.
Q. And you know Andre; don't you?
A. No.
Q. You don't know Andre?
A. No.
Q. All right. Have you ever seen him around?
A. I seen him around, but I don't know-him-know-him.
Q. And you take care of your kids every day during this period of time?

A. Right.
Q. Is that what you're doing?
A. Right.
Q. Was anybody else staying at home with you?
A. Beside their, you know, beside their mother.
Q. Okay. Do you own pit bulls also?
A. No, sir.
Q. Any kinds of dogs like that?
A. No.
MR. ANDERS: Objection, Your Honor. It's not relevant.
THE COURT: That he owns a pit bull? I'll let him answer it.
MR. WILLIAMS: He already did.
THE COURT: He already has.
BY MR. WILLIAMS:
Q. At 4:45 July 21st, you already knew that Tyrone was missing; right?
A. Yeah, between that time.
MR. WILLIAMS: All right. No further questions.
MR. ANDERS: No further questions
THE COURT: You may step down, Mr. Dixon. Next witness.
MR. ANDERS: Your Honor, the State calls Joe Thomas.
JOE THOMAS, having been duly sworn, was examined and

testified as follows:

THE CLERK: If you would, sir, please be seated and state your name for the record. Okay?

THE WITNESS: My name is Joe Thomas.

DIRECT EXAMINATION

BY MR. ANDERS:

Q. How are you doing, Mr. Thomas?

A. Good.

Q. Mr. Thomas, do you know the Defendant?

A. Yes.

Q. How do you know the Defendant?

A. Pretty much all my life since childhood.

Q. Okay. And do you know Tyrone Donaldson?

A. Yes, sir. Since childhood.

Q. So y'all grew up together?

A. Yes.

Q. Did you go to school with him?

A. No, sir.

Q. Can you tell the jury where you live?

A. Blackville, South Carolina.

Q. What's your physical address?

A. [redacted] Street.

Q. I'm sorry?

A. [redacted] Street.

Q. Is that [redacted] (sic) Street Extension?

A. Yes.
Q. Can you tell the jury what you recall from July 21st, 2011?
A. I was off that day and I stepped on the porch and Sammie Gerrick came through speeding. I gave him a call asking him why he was speeding. He said he was kind of busy. And I asked him about the Bamberg case, about the deputy in Bamberg. He said, he puts his hands on him so he had to get him off. He said he would call me back, he was kind of busy.
Q. And so you saw -- you saw the Defendant speeding by your house on that day?
A. Yes, sir.
Q. And when you say speeding, how fast approximately?
A. Forty-five, 50.
Q. Okay.
A. He just pull off from the stop sign and the motor roar.
Q. And how did you know it was him?
A. I looked at him and called him.
Q. What was he driving?
A. Chrysler truck.
Q. Do you recall the color?
A. I think it was gray and burgundy, like, if I'm not mistaken.

Q. All right. Do you recall another car behind his truck?
A. Yes.
Q. Do you recall what that car was?
A. I kind of glanced because I was in the process of calling Sam.
Q. Okay. Any idea about the color?
A. I kind of glanced. I'm not sure.
Q. Okay. But there was car behind him, you can testify to that?
A. Yes.
Q. All right. And so when you saw him speeding, what did you do?
A. That's when I called him.
Q. Okay. And did you call him and say, hey, why didn't you stop or what you up to?
A. No, I called him really messing with him, jiving and asking him about the case in Bamberg.
Q. Okay. Was it -- did he stop with two shovels at that point and get sand from your house?
A. No, sir.
Q. Did he stop with two shovels at any point and get sand from your house?
A. No, sir.
Q. Do you have sand at your house to give away?

A. No, sir.
Q. Do you keep sand by yourself, dirt?
A. No, sir.
Q. Okay. Do you know where Sunshine Road is?
A. Yes, sir.
Q. Where is it in relation to where your house is?
A. Probably about a mile from my house going north.
Q. Is it north?
A. Yes.
Q. And what time do you recall seeing Mr. Gerrick and another car go by your house?
A. I think it was around three or four P.M.
Q. Okay. And which way were they traveling?
A. North.
Q. Towards Sunshine Road?
A. Yes.
MR. ANDERS: Beg the Court's indulgence. (Pause.)
Q. Mr. Thomas, what was your phone number in 2011; do you recall.
A. I have two phones. I'm thinking it was [redacted]. I have two numbers. It could have been the [redacted].
MR. ANDERS: Your Honor, may I approach?
THE COURT: Hold on one second. Are you okay, ma'am?
UNIDENTIFIED SPEAKER: Yeah.
THE COURT: All right. Go ahead.

MR. ANDERS: May I approach, Your Honor?
BY MR. ANDERS:
Q. Let me show you this.
THE COURT: What is this?
MR. ANDERS: Your Honor, this is State's 15.
THE COURT: Fifteen?
MR. ANDERS: Yes, Your Honor.
BY MR. ANDERS:
Q. All right. Is that your number?
A. Yes, sir.
Q. That's your phone number?
A. Yes.
Q. Can you read it, please?
A. [redacted].
Q. All right. And do you recall, do you recognize that phone number?
A. I'm not sure that's it because I have the number programmed.
Q. Okay. Can you read the number for me?
A. 803-[redacted].
Q. And what is that date that this call was made?
A. 7-21st-2011.
Q. And what time was this call made?
A. 1505.
Q. Which would be 3:05, right, civilian time?

A. Right.
Q. Who did you say you called?
A. Sammie Gerrick.
Q. Is that Sammie Gerrick's number?
A. Yeah.
Q. All right.
MR. ANDERS: Nothing further, Your Honor.

CROSS-EXAMINATION

BY MR. WILLIAMS:
Q. Mr. Thomas, Izlar Extension extends from [redacted] Street on out to Sunshine Road; correct?
A. Yes, yes, sir.
Q. And that's a fairly long street; isn't it?
A. Right.
Q. And you live about a mile from Sunshine Road, so that's, what, a couple miles from town, do you think, or a mile from town?
A. Do I live --
Q. Yeah.
A. -- from Sunshine?
Q. Right.
A. Probably about a mile, mile and a half.
Q. How far from town?
A. Say again.
Q. How far do you live from town?

A. About a mile.
Q. There is a fellow name Alloset (phonetically) lives on that road, pile of dirt backed in to his house, near his house; do you remember?
A. No, sir.
MR. WILLIAMS: Thank you. That's all the questions I have.
MR. ANDERS: Nothing further, Your Honor.
THE COURT: All right. Mr. Thomas, good to see you. You may step down.
THE WITNESS: Uh-huh.
THE COURT: Next witness?
MR. WATERS: Thank you, Judge. we call Early Glover.
EARLY JEROME GLOVER, having been duly sworn, was examined and testified as follows:
THE CLERK: If you would be seated and state your full name for the record.
THE WITNESS: Early Jerome Glover.

DIRECT EXAMINATION

BY MR. WATERS:
Q. Mr. Glover, how are you doing today?
A. All right.
Q. I see you got your handcuffs on. Are you incarcerated right now?
A. Well, I'm in the county; yes, sir.

Q. You're in county?
A. Yes, sir.
Q. What county are you in?
A. Orangeburg Detention Center.
Q. And do you have pending charges in the county? I don't want you to talk any about your case. Just, do you have pending charges?
A. Yes, sir.
Q. Okay. And have you ever been in trouble before?
A. Yes, sir.
Q. I believe you had a criminal domestic violence high and aggravated nature; is that right?
A. Yes, sir.
Q. And you also had burglary third?
A. Yes, sir.
Q. Is that right?
A. Uh-huh.
Q. Okay. And you got probation for the burglary and then you had a probation revocation and you went and did a little time; is that correct?
A. Yes, yes, sir.
Q. And you got the pending charge now; is that correct?
A. Yes, sir.
Q. All right. I want to take you back to October 2011. Where were you staying in October 2011?

A. You say, where was I staying?
Q. Yeah. Were you incarcerated then, too?
A. Yes, sir.
Q. And where were you at that time?
A. At R&E.
Q. Is that Kirkland?
A. Yes, sir.
Q. And is Kirkland R&E, that's where you kind of go when you first get sentenced and they kind of figure out what you're like and what's the best place for you in the system?
A. Yes, sir.
Q. Okay. So you were there; is that correct?
A. Yes, sir.
Q. Did you meet Mr. Gerrick there?
A. Yes, sir.
Q. Do you see him in the courtroom?
A. Yes, sir.
Q. Can you point him out?
A. (Complying). Right over there.
Q. Did you know him prior to that?
A. No, sir.
Q. Ever met him before?
A. No, sir.
Q. But he was in there, too; is that correct?

A. Yes, sir.
Q. At Kirkland R&E?
A. Yes, sir.
Q. And did you, you guys start to talk a little bit and strike up conversations?
A. Yes, sir.
Q. And how did you all start to strike up conversation? What did you talk about?
A. Basically just, you know, being in the penitentiary and, you know, how the system work, and basically, you know, just one thing just led to another.
Q. So you just kind of struck up a friendship with him; is that right?
A. Yes, sir. Yes, sir. Uh-huh.
Q. All right. You knew some of the same people in prison and that sort of thing?
A. Yes, sir.
Q. But you had never met him prior to going prison?
A. Never, never.
Q. Okay. Where are you from?
A. Saint Matthews, Calhoun County.
Q. Okay. What did Mr. Gerrick say about his case? Did he ask you to do anything?
A. Well, basically after -- when I first met him, like I say, we just started talking and, and a few days pass and

then he was, like, you know, he was in a bind, you know.
Q. So that's what he said to you?
A. Yes, sir.
Q. I'm in a bind?
A. Yeah, he was in a bind.
Q. And did he ask you to do anything, or what did he say?
A. Well, at first, you know, he say he needed two guys. He needed two people.
Q. Uh-huh.
A. And, you know, after that he was, like, you know, he was willing to look out for them and he, you know, like I say, he was in that bind. I said, well, hey, I'll help, you know.
Q. So he said he'd look out for them. What do you mean, look out for them in the prison?
A. Yes, sir.
Q. Kind of watch out for them, make sure nothing --
A. Well, you know, what he was referring to as that, when he say he would look out, we was, we was talking about money then.
Q. Okay.
A. Yeah.
Q. And what exactly did y'all discuss about that?
A. Well, he was saying about a statement, he needed a statement.

Q. Uh-huh.
A. You know, and he said he would get back with me on that. So, you know, a few days pass and he had end up writing a statement which was about three or four pages.
Q. Uh-huh.
A. And then that's when I --
Q. Who wrote it? Sammie Gerrick wrote it?
A. Yes, sir.
Q. And what was it written on; do you recall?
A. A plain white piece of paper, what they give you there.
Q. Uh-huh.
A. When you come there to, like, write family and friends with.
Q. So the prison gives you writing paper to use?
A. Yes, sir. Yes, sir.
Q. And he had written it on that?
A. Yes, sir.
Q. And so he gave it to you. What happened? What did he say to you?
A. Well, he, you know, he gave it to me and told me this is how it need to be written.
Q. Uh-huh.
A. And so at that point, you know, I took it to my cell, you know, because we was in different cells. And, you

know, it took me a few days, you know, to write it, you know, how he wanted me to write it and be more Pacific (sic) about certain things and be more, you know, name-wise anyway on that, you know. He said, be sure to say these right words, you know, these names. So I, you know, I wrote the thing out and --

Q. Well, did he say he would -- what did he say he would do for you if you wrote this statement?

A. He'd give me a thousand dollars.

Q. He told you he'd give you a thousand dollars?

A. A thousand dollars; yes, sir. Yes, sir.

Q. And so you agreed to do it?

A. Yes, sir. Yes, sir.

Q. And he brought you sort of a script for you to write in your own hand?

A. Yes. Exactly.

Q. And that's what you did?

A. That's exactly what I did.

Q. I'm going to show you what's been marked as State's Exhibit 68 --

MR. WILLIAMS: Without objection.

(State's Exhibit No. 68, statement, received into evidence.)

BY MR. WATERS:

Q. -- and see if you recognize that. I know it's not the

best copy in the world but...

First of all, let me take you to the back page. Is that your signature right there?

A. Yes, sir.

Q. Okay. And then this, this right here, is that your writing?

A. Yeah. I can recall some of the names, especially that Tyrone.

Q. Uh-huh.

A. Uh-huh. Yes, sir. That's it.

Q. So that's the one that you wrote out?

A. Yes, sir.

Q. Where did you get the information to write out that statement? Did it come from your own head or where did it come from?

A. No, sir. Mr. Gerrick.

Q. Mr. Gerrick gave you something and you recopied it; is that right?

A. Exactly. Yes, sir.

Q. Okay. And I look at this and it's pretty long; right?

A. Yes, sir; it is.

Q. And it's just perfectly written without any scratch-outs really or anything like that or not very many; is that right?

A. Yes, sir.

Q. Is that because you were copying what he had already written out for you?
A. Yes, sir. Yes, sir.
Q. All right. Did you know anything about this?
A. No, not at all.
Q. Do you remember what it said?
A. Some of it.
Q. Well, tell us. Do you remember -- do you remember any of it?
A. Well, I remember Tyrone because he, he was supposed to be the main man, you know. I was -- stuck that in my head. And I remember one where we was supposed to meet two guys in the back.
Q. Uh-huh.
A. In the woods somewhere.
Q. Uh-huh.
A. And, you know, they started arguing, Sammie and one of the guys started arguing.
Q. Uh-huh.
A. You know, and I was, was told to stay in the car, you know, and --
Q. And this is all what Sammie had already written for you?
A. Yes, sir. Yes, sir.
Q. None of that ever happened?

A. No, none of it never happened. Never happened.
Q. Okay. So, Sammie promised you a thousand dollars; right?
A. Yes, sir.
Q. Did he ever pay you the thousand dollars?
A. Never got it.
Q. Never got a thousand dollars?
A. Never got it.
Q. When was he supposed to pay it to you?
A. Well, I was looking for it as soon as I did that, went and got that paper notarized. I was going to get paid then.
THE COURT: Let me have order. Yes, sir.
BY MR. WATERS:
Q. Well, what did he say when you asked him for the money?
A. Well, he said he was waiting on his wife. And, you know, a couple days pass and I asked him again, I said, hey man, what's up, you know. And I just never got it and after I went, went to where I went, to my camp, I just knew I wasn't going to get it then.
Q. Do you recall a couple months after that in December of 2011 -- where did you go? You said you went to your camp. Where did you go after you left Kirkland R&E?
A. Ridgeland.

Q. You went to Ridgeland?
A. Yes, sir.
MR. WATERS: And -- Court's indulgence. Let me get something marked.
(State's Exhibit No. 69, statement, marked for identification.)
BY MR. WATERS:
Q. And do you recall -- you were at Ridgeland; right?
A. Yes, sir.
Q. And do you recall Lieutenant Harley over there, do you recall him coming to see you?
A. Yes, sir.
Q. And do you recall him asking you about this letter?
A. Yes, sir.
Q. And what did you tell him?
A. That I knew right then when I saw him, I knew what it was, you know, basically what it was about.
Q. Uh-huh.
A. And we, we started talking and, you know, I just told him, hey man, I don't know what's, you know, I have no recollection of what happened. All I knew I was asked to do this and I did that.
You know, at the time I was needing some money and, you know, I did that not realizing that it was going to come back at me on this, so --

Q. Uh-huh.
A. -- I told him the truth.
Q. So you told the officers that Sammie Gerrick asked you to write that statement?
A. Yes, sir.
Q. And you agreed to do it for money?
A. Yes, sir. Yes, sir. Yes, sir. Yes, sir.
Q. And that none of it was true?
A. None of it.
Q. He had just asked you to do it?
A. None of it was true.
Q. Sammie put you up to it; right?
A. Yeah.
Q. And promised you money?
A. Yes, sir.

MR. ANDERS: Nothing further, Your Honor.

CROSS-EXAMINATION

BY MR. WILLIAMS:

Q. Mr. Glover, did you keep a copy of this script?
A. No, I gave it back to Mr. Gerrick.
Q. You gave it back to him?
A. Yes, sir. He asked for it and I gave it back to him.
Q. All right. And, there's no question you signed this statement; right?
A. Yes, sir.

Q. And you knew he was going to do something with this statement; correct?
A. Yeah. Like I say, yeah, he was going to do something but what, you know.
Q. All right.
MR. WILLIAMS: No further questions.
MR. WATERS: Nothing further, Your Honor.
THE COURT: All right. Mr. Glover, are you going to go back? Thank you.
THE WITNESS: You're welcome.
MR. WATERS: Your Honor, can we approach briefly?
(Off-the-record discussion.)
THE COURT: Next witness, please.
MR. ANDERS: Thank you, Your Honor. State calls Investigator Jeff Croft, sorry, Special Agent Jeff Croft.
JEFF CROFT, having been duly sworn, was examined and testified as follows:
THE CLERK: Have a seat and state your full name for the record.
THE WITNESS: Jeff Croft.

DIRECT EXAMINATION

BY MR. ANDERS:
Q. Agent Croft, where are you currently employed?
A. I'm currently employed with the South Carolina Law Enforcement Division commonly known as SLED.

Q. If you could, tell the jury a little bit about yourself, where you're from and your experience in law enforcement.
A. I was born and raised here in Barnwell County. I have approximately 10 years experience with law enforcement. I was employed with the Barnwell County Sheriff's Office for about nine years. And I have about a year, year and a half with SLED.
Q. And while you were with Barnwell County Sheriff's Department, what were some of your duties?
A. I was an investigator for the Barnwell County Sheriff's Office. I worked narcotics, I worked criminal investigations.
Q. Can you tell the jury your involvement with this case?
A. I assisted with the interviews. I assisted with the recovery of the body. Basically helped out in any ways that were needed.
Q. At that point it was Blackville case and y'all are involved at some point but then SLED came in?
A. That's correct.
Q. And they assisted everybody?
A. Yes, sir.
Q. Do you recall interviewing the Defendant?
A. I do.
Q. Do you recall when that was?

A. The first time I interviewed the Defendant was on the 21st. The second time -- I'm sorry. The first time was on the 17th. The second time was on the 18th.

THE COURT: 18th of what?

THE WITNESS: Of August.

THE COURT: Do that again. First time was August what?

THE WITNESS: 17th. It was following Lieutenant Harley and Jomar Albayalde's interview and then on the 18th I was requested to meet back with Sammie Gerrick and he wanted to talk with me.

BY MR. ANDERS:

Q. All right. So on August 18th, 2011, that was a requested interview?

A. That is correct. I received a call, if I remember correctly, it was a little after 12, maybe 12:30, 12:45, from Ms. Deloris Charlton who is the head administrator for Barnwell County. And she stated that Sammie Gerrick had requested to see me personally. I had First Sergeant Robbie Sanders escort Mr. Sammie Gerrick over to the Barnwell County Sheriff's Office where I conducted the interview.

Q. And you mentioned August 17th. You were with Investigator -- Agent Harley at some point during that interview as well?

A. Toward the end of that interview, yes, sir. As Jomar Albayalde -- they were finishing up their interview. Jomar Albayalde who is also an agent with South Carolina Law Enforcement Division, he was exiting the room and Mr. Gerrick asked, he said, is Mr. Jeff out there and Joe told him he would check if I was out there. I then went in the room and sat down and talked to him.

Q. All right. We'll get into the substance of that.

A. Okay.

Q. But you've been here all week?

A. Yes, sir.

Q. You've been involved with this case since 2011?

A. Yes, sir.

Q. So you have a pretty good idea of the progression --

A. Yes, sir.

Q. -- of Mr. Gerrick's stories; do you not?

A. Yes, sir.

Q. Okay. May I approach, Your Honor?

And on August 18th, 2011, did you Mirandize the Defendant?

A. I did.

Q. And have you -- was that interviewed record?

A. Yes, it was.

Q. Have you reviewed that --

A. I have.

Q. -- recording?
A. Yes, sir; I have.
Q. Is that a fair and accurate depiction of what took place on August 18th?
A. Yes, sir; it is.
MR. ANDERS: Your Honor, at this time we'd like to publish that to the jury, Court's Exhibit Two, Your Honor.
THE COURT: Court's Exhibit Two. That was without objection.
(Court's Exhibit No. 2, CD of Gerrick interview, received into evidence.)
THE COURT: We're playing a portion of that interview; is that correct?
MR. ANDERS: Correct, Your Honor.
THE COURT: How long is the portion?
MR. ANDERS: I believe it's about 25 minutes.
THE COURT: Go ahead.
MR. WATERS: Thank you.
THE COURT: Mr. Waters, the lunch people were expecting them at 12:30. So let's just break right now and we'll come back and play that interview after we get back from lunch.
All right. Mr. Foreman, I think the restaurant's expecting y'all around 12:30 and this takes about 20

minutes. That puts us a little bit out of the time frame.

So we're going to break now and come back. We'll start court back at two o'clock like we did yesterday. If you get through with lunch a little early and want to enjoy the -- I don't know what's going on outside, but get some fresh air, you're welcome to do that.

Please do not discuss the case with anyone. Do not let anyone discuss it with you. Have a wonderful lunch.

Where are they going?

THE CLERK: Mr. B's.

THE COURT: I think they've got fried chicken today.

We especially ordered -- somebody had a problem yesterday. We especially ordered it.

Seriously, y'all have a wonderful lunch and if you don't like what's on the buffet, you're certainly welcome to order a sandwich or whatever they have there. We'll see you back at two o'clock.

And at two o'clock I can tell you sort of where we are. Thank you.

Everybody else remain seated.

(Jury exits courtroom at 12:27 P.M.)

THE COURT: Agent Croft, you're right in the middle of your testimony. So, please, do not discuss it with anyone at the lunch break.

We'll stand at ease until two o'clock.

MR. WATERS: We may have one more witness but, yes, sir, we're --

THE COURT: All right. Mr. Williams, this looks like it would be the last witness, so be ready for your expert and we'll deal with the Williamson issue.

MR. WILLIAMS: Yes, sir.

THE COURT: And then we'll go after that.

MR. WATERS: Thank you.

THE COURT: Thank you.

MR. WATERS: Thank you.

THE COURT: Two o'clock.

(Lunch break taken at 1:13 P.M. At 2:08 P.M., the trial resumed:)

THE COURT: State ready to proceed?

MR. WATERS: Yes, sir, Your Honor.

THE COURT: Defense?

MR. WILLIAMS: Yes, sir, Your Honor.

THE COURT: Anything for the record before we bring the jury in from the State?

MR. WATERS: I don't believe so, Your Honor.

THE COURT: Mr. Williams?

MR. WILLIAMS: They're transporting Mr. Williamson now, just for your information.

THE COURT: Where's is he coming from?

MR. WILLIAMS: He's in Bamberg now but he's on the way, so...

THE COURT: By the time we finish this witness and the next witness and do the motions.

(Jury enters courtroom at 2:10 P.M.)

THE COURT: You may proceed

MR. ANDERS: Thank you, Your Honor.

DIRECT EXAMINATION (CONTINUED)

BY MR. ANDERS:

Q. Agent Croft, just to recap a little bit about your earlier testimony. You're now an agent with SLED; correct?

A. That is correct; yes, sir.

Q. In 2011, you were with Barnwell County Sheriff's Department?

A. That is correct; yes, sir.

Q. And I think when we left off we were in the process of showing an interview that you conducted on August 18th, 2011?

A. Yes, sir. That is correct.

Q. With the Defendant?

A. With Sammie Gerrick; yes, sir.

Q. Where was that interview taken?

A. At the Barnwell County Sheriff's Office.

THE COURT: Ms. Peeples, do you need a chair? Are you

okay?

THE JUROR: I'm okay.

(Video played for the jury from 2:11 P.M., until 2:33 P.M.)

BY MR. ANDERS:

Q. Officer Croft, you were there for the interview the previous evening?

A. Yes, sir; I was.

Q. All right. And I believe we heard from Investigator Harley that he conducted that interview and at that point he said there was no -- Sammie said his truck was not there?

A. That is correct; yes, sir.

Q. And I believe Investigator Harley said he bluffed?

A. Yes, sir; he did.

Q. And so what happened during this interview?

A. During this interview Sammie began to explain how his truck could have possibly been found or seen in the area. He, he understood that we had witnesses that had seen his truck in there. And now he come up with a reason that his truck could have been seen.

Q. All right. So now he's putting himself at the crime scene?

A. That is correct; yes, sir.

Q. And really the basis of this interview, his, Sammie's

new explanation is a drug deal gone bad?
A. That's correct; yes, sir.
Q. And could you just explain what he tells you in the interview about the package and who owes who and sort of what happened?
A. Yes, sir. According to what he told me in the interview, there was a package that had been messed up.
Q. And let me just stop you. When you say package, what do you mean?
A. Cocaine. A kilo of cocaine that had been messed up. The money was never received by the person who supplied the cocaine which he named a gentleman by the name of Big Joe.
Q. And let me just stop you. Did the Defendant ever tell you who -- is this the same Big Joe that we heard about from Edisto Gardens or is this a different Big Joe?
A. According to the Defendant, Mr. Gerrick, this Big Joe was from Georgia.
Q. And did he ever give you any information on this Big Joe?
A. No, he did not.
Q. Okay. Continue, please.
A. He said that when Mr. Donaldson had gotten him out of jail they had discussed about the package being messed up and that Mr. Donaldson had between eight- and $9,000 that

he was going to take out there and make things right.

He initially said he was supposed to take him out there but he couldn't take him out there. He said that when they did arrive to Andre's house that Andre actually lured them, got them into the woods which is directly behind the house, pretty good way between the house.

And at that point they made contact with Big Joe, Andre, and O'Shane were all in the black Denali. He said when they exited the -- when he and Tyrone exited the vehicle he spoke up and said, hey, I thought everything was going to be all right. He was told to shut up.

And at that point is when he says Tyrone and -- I mean, I'm sorry. Tyrone was there and Andre and O'Shane grabbed Tyrone and Big Joe began to hit him.

Q. All right. And as Tyrone is being hit by O'Shane and Andre, according to the Defendant, where is the Defendant at this point?

A. He's right there.

Q. He's right there. Is he in the process of leaving or is he watching this?

A. He says he sees what's going on. He has been told to go get the money. So, at that point he gets into his vehicle and says he leaves to go see if he can go find the money.

Q. All right. And you were in here earlier when

Mr. Glover testified?
A. Yes, sir.
Q. And Mr. Glover touched on the letter that he wrote and the contents of that for the Defendant?
A. Yes, sir; I was.
Q. And that was the -- that was sort of a drug-deal-gone-bad scenario?
A. That's correct; yes, sir.
Q. Did the Defendant ever mention in this interview Early Glover?
A. No, he did not.
Q. Did he ever mention Early Glover being there?
A. No, he did not.
Q. Riding with him out --
A. No, he did not.
Q. The Defendant said in the interview he was going to try to get some money and he went to his dad's house?
A. Correct.
Q. His dad. From the video that dad said you need to contact the family.
A. Yes, sir.
Q. The Defendant contacted Chief Holston; correct?
A. That's correct; yes, sir.
Q. Were you present in the courtroom when Chief Holston testified?

A. Yes, I was.
Q. Was it his testimony that Chief Holston actually requested to talk with the Defendant?
A. I'm sorry. Say that again.
Q. The initial interview of Chief Holston, it was Chief Holston who requested to interview the Defendant?
A. I don't recall who requested the interview.
Q. All right. And I believe that you asked the question during the interview why he went to go get the car later. Well, let me just back up.

During the interview the Defendant refers to the victim as classmate?
A. Yes, sir.
Q. Do you know why that is?
A. He said they went to school together. They were very good friends.
Q. Okay. And that's how he referred to him?
A. Yes, sir.
Q. And the Defendant at some point, he gets pretty emotional during the interview; correct?
A. Yes, sir; he does.
Q. And what was his explanation for why he never went to the police?
A. He said he was -- he said he was scared, he didn't know what to do.

Q. Okay. But he came out and got that Honda?
A. That's correct.
Q. And in his interview, who does he say held the victim?
A. Andre and O'Shane held the victim while Big Joe struck the victim.
Q. All right. At any time in your investigation to your knowledge, is there any evidence tending to show that Andre and O'Shane were with Sammie on July 21st, 2011?
A. Absolutely not.
Q. And Big Joe was hitting him with what, per the Defendant?
A. He said a pipe or a gun. He couldn't tell. He said -- he named a pipe and a gun.
Q. And I think I touched on this earlier when we first started before lunch but you've had, you've been in a position to sort of watch the progression of the Defendant's statements?
A. Yes, sir; I have.
Q. Okay. And do you recall what the first statement was or the first explanation was from the Defendant?
A. The initial contact was Tyrone had gotten him out of jail over in Bamberg. He had been at Enterprise Bank, I think it is in Blackville. From there to Junior Food Mart and had not seen him since.
Q. And this is probably the last explanation, this is

your interview?
A. I'm sorry?
Q. This is the last explanation from the Defendant during your interview of what happened that --
A. The one we just watched is the last one.
Q. Correct. And that he was there and he watched the murder?
A. That's correct.
Q. And it seems throughout this investigation that the Defendant requested to talk to law enforcement several times; is that correct?
A. Yes, sir. He reached out to law enforcement.
Q. Okay. And does it seem to you that every time he would reach out there would be something new, something -- an explanation for something that occurred during the last interview?
A. Following new information which we received, each time faced with that, shortly after he would reach out to us and there would be a new story which would explain the new information which we had.
Q. When the Defendant moved the car to Orangeburg, what did he tell you he did with the keys? Was somebody supposed to pick up the car?
A. He said that Tyrone was supposed to pick up the car, I think it was. I don't remember where he said he put the

keys, but I remember the hand motion he made. He stuck the keys somewhere.
Q. All right. From there, his explanation about when he moved the car, he told you that Tyrone was supposed to come pick the car up later?
A. That's correct.
Q. Did that make any sense to you?
A. No, sir; it did not.
Q. Does it make any sense to you now?
A. No, it does not.
MR. ANDERS: May I approach, Your Honor?
Q. I'm going to hand you what's been marked State's Exhibit 28. Can you tell me what that is?
A. This is the map that was created showing some cell phone towers.
Q. And if you could, please, sir, take my pen and just show me the area of Sunshine Road where Tyrone Donaldson's body was recovered.
A. Okay. Sunshine Road is not actually shown on here, but the general area does show Healing Springs. Sunshine Road would be right in this area.
Q. All right.
MR. ANDERS: No further questions, Your Honor.
THE COURT: Mr. Williams.

CROSS-EXAMINATION

BY MR. WILLIAMS:
Q. Agent Croft, you were here in Barnwell for nine years; correct?
A. Somewhere in that neighborhood; yes, sir.
Q. And you worked narcotics?
A. Narcotics, criminal investigation; yes, sir.
Q. And that's a scary business those who deal in that; correct?
A. It's enjoyable. I enjoyed working narcotics.
Q. I'm not talking about you enjoyed the work, but people who work with drug dealers, that's a scary kind of thing?
A. I can't speak for them, sir.
Q. All right. But unfortunately people do get threatened over drugs and over money and losing money and not getting their packages and all. That happens; doesn't it?
A. It does happen; yes, sir.
Q. All right. And Sammie was visibly upset when he talked to you that day; correct?
A. Yes, sir; he did show emotion. He was visibly upset.
Q. Right. And it's not inconsistent for someone telling of their involvement in a drug transaction gone bad to be scared and upset; correct?
A. I don't understand what you're asking me on that.
Q. Well, he's -- when he's in front of you that day he's implicating himself in a drug deal gone bad and witnessing

his friend getting beat up; isn't that correct?
A. Yes.
Q. And he's directed to leave, according to what he says, and to go get the money; correct?
A. Yes, sir.
Q. And in fact if he is scared and doesn't turn these people in to the police right away, that's a reason for him to be guilty and upset; correct?
A. That's a reason for him to be upset; yes, sir.
Q. And does -- did you locate where Andre lives at?
A. I do know where Andre lives.
Q. Does he live back there on Sunshine Road?
A. He does.
Q. All right. And so that I'm clear. Sammie told you that he saw this going down, he left and attempted to get money for Big Joe, Andre and O'Shane?
A. He said he left knowing that he didn't have any money, and went to his father for advice to see what to do.
Q. And when he left, according to you, what did the testimony -- the statement he gave you, Tyrone was still alive; correct?
A. When he left Tyrone was being -- at the time being beat amongst his shoulder and back of his neck.
MR. WILLIAMS: Thank you. That's all the questions I have.

THE COURT: Yes, sir. Redirect.

MR. ANDERS: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. ANDERS:

Q. You were present when Mr. Williams brought up Andre Hightower and you were present when he gave testimony today?

A. Yes, sir; I was.

Q. His testimony was that he didn't even know Sammie Gerrick.

A. Yes, sir; it was.

Q. You did just -- Mr. Williams asked you about where the Defendant told you that Big Joe was hitting the victim and that was about the back and the shoulder?

A. That's correct.

Q. Not the head?

A. That's correct.

MR. ANDERS: No further questions.

THE COURT: All right. You may step down. Next witness?

MR. WATERS: Thank you. We call Special Agent Jomar Albayalde.

JOMAR ALBAYALDE, having been duly sworn, was examined and testified as follows:

THE CLERK: If you would, please have a seat and state

your name for the record.

THE WITNESS: Jomar Albayalde, known also by Joe.

MR. WATERS: I apologize, Your Honor, for not getting these pre-marked.

(Pause.)

DIRECT EXAMINATION

BY MR. WATERS:

Q. All right. Agent Albayalde, am I saying that right?

A. Yes, sir.

Q. Can you tell us where you work and how long you've been there?

A. I currently work for the South Carolina Law Enforcement Division also known as SLED. I am assigned to the investigative services division of the agency. I've been in law enforcement for almost 16 years. I initially started my law enforcement career with the City of Charleston before leaving for SLED in September of 2008.

Q. And, you were involved in the investigation of this case; is that correct?

A. That is correct, sir.

Q. And one of the things that you were involved in getting is some phone records; is that accurate?

A. That is correct, sir.

Q. And they've already been admitted into evidence but the first one was State's Exhibit 13 and these were the,

those were an AT&T track phone; is that accurate?
A. That is correct, sir.
Q. And that's some records that we got or that you gathered in the course of the investigation; is that correct?
A. That's correct, sir.
Q. And I want to show you what's been marked as State's Exhibit 73. Is that just a copy of the last page of that particular exhibit?
A. Yes, it is.
MR. WATERS: Your Honor, at this time I'd move State's 73 into evidence.
MR. WILLIAMS: Without objection.
(State's Exhibit No. 73, telephone records, received into evidence.)
BY MR. WATERS:
Q. Let's see. This was a track phone; is that correct?
A. That's correct, sir.
Q. Now I'm going to show you what's been marked as State's Exhibit 16. And is that a set of records that we received as well; is that correct?
A. Yes, sir; it is.
Q. And those are from Alltel?
A. These are from Alltel.
Q. Can you tell me which number that is on the front page

there?
A. 803-[redacted].
Q. Okay. And that's a phone that was registered to Tyrone Donaldson; is that correct?
A. That's correct, sir.
Q. But that is a phone that was used by Kelsea Hollingquest; is that accurate?
A. Yes, sir. His daughter; yes, sir.
Q. All right. And I'm going to show you what's been marked as State's Exhibit 70. And is that a copy of this particular page of that record, just as an exact copy of that particular page?
A. Yes, it is, sir.
THE COURT: Which page?
MR. WATERS: Unfortunately, they are not marked --
THE COURT: Okay.
MR. WATERS: -- Your Honor, but he has verified it's a copy. At this time I'd move State's 70 into evidence.
THE COURT: Any objection?
MR. WILLIAMS: No objection.
(State's Exhibit No. 70, telephone records, received into evidence.)
BY MR. WATERS:
Q. And another set of records you got was for that particular number from Alltel as well; is that correct?

A. Yes, sir; it is.
Q. And could you read that number for us?
A. Yes, sir; the number for this record is 803-[redacted].
Q. And who's the subscriber information for that particular one?
A. These records are for the Defendant.
Q. Okay. Sammie Gerrick?
A. Yes, sir; that's correct.
Q. And I'm going to show you what's been marked as State's Exhibit --
THE COURT: Does it have an exhibit number on that last one, [redacted]?
MR. WATERS: That is State's 15, already in evidence, Your Honor.
THE COURT: Fifteen?
MR. WATERS: Yes, sir, Your Honor.
Q. And I'm going to show you what's been marked as State's 71 and let you hold that for a second. Let's see that first page. All right.
And right here, is that an exact copy of this particular page from State's Exhibit 15?
A. Yes, sir, it is.
Q. And turn to the next page if you would, please. All right. We got a match there?
A. Yes, sir; you do have a match.

Q. Okay. And the next page?
A. Yes, sir.
Q. All right. And then the next page?
A. Yes, sir.
Q. Okay.
MR. WATERS: All right. At this time, Your Honor, I would move State's 71 into evidence.
MR. WILLIAMS: Without objection.
(State's No. 71, telephone records, received into evidence.)
BY MR. WATERS:
Q. Okay. And then finally we've got State's Exhibit 14. And is that -- tell us which number that is and who it's registered to.
A. Yes, sir; it's phone number 803-[redacted]. This number belongs to the victim, Tyrone Donaldson.
Q. All right. And let me -- I'm going to hand you what's been marked as State's 72 and let you hold that real quick. And I'm going to let you compare those two pages.
Is that an accurate copy of that particular page?
A. Yes, sir; it is.
Q. If we go to the next page. I'm going to show you the last page of this particular State's Exhibit. Is that an exact copy there -- or excuse me. I'll do that one.
Do these appear to be text messages; is that correct?

A. That's correct.
Q. Is that an exact copy there?
A. It is.
Q. And how about the very last page, we got a match?
A. Yes, sir; it is a match.
Q. Okay.
MR. WATERS: At this time, Your Honor, I would move State's 72 into evidence.
MR. WILLIAMS: Without objection.
MR. WATERS: Okay.
(State's Exhibit No. 72, telephone records, received into evidence.)
BY MR. WATERS:
Q. So essentially we just got some excerpts from those larger phone records; is that correct?
A. Yes, sir.
Q. I want to ask you this. On August 5th, 2011, were you one of the officers who did a search warrant on an address on [redacted] Drive?
A. Yes, sir.
Q. Okay. And do you recall that address?
A. Yes, sir; [redacted] Street in Blackville, South Carolina.
Q. And is that the same [redacted] Street you heard crime scene Investigator Skipper testify, I guess, yesterday; is

that correct?
A. Yes, sir.
Q. That's the same search that -- you were part of that search as well?
A. Yes, sir.
Q. Where the lure and the netting were observed?
A. Yes, sir.
Q. Can you tell me whose residence is that particular address that y'all searched?
A. Yes, sir. I don't know her last name right off the top of my head but Ms. Claudette at the time who was Sammie Gerrick's girlfriend to our knowledge.
Q. One final question, if I could.
THE COURT: I'm sorry. Whose girlfriend?
THE WITNESS: Mr. Sammie Gerrick, sir.
BY MR. WATERS:
Q. So Claudette's Mr. Sammie Gerrick girlfriend that we've heard testimony about; is that correct?
A. Yes, sir.
Q. And ONE last thing. You've been out to the scene where Tyrone's body was found?
A. Yes, sir; I have.
Q. And is there a turkey blind out in that area; do you recall?
A. I do not recall, unfortunately, sir.

Q. All right.

MR. WATERS: No further questions, Your Honor.

CROSS-EXAMINATION

BY MR. WILLIAMS:

Q. We met, I guess, two weeks ago at SLED; correct?

A. Yes, sir; we did.

Q. And we were going through the evidence of this case?

A. Yes, sir.

Q. And out of the evidence we pulled a shotgun case. Do you remember that?

A. Yes, sir; I do.

Q. No shotgun in it; right?

A. No shotgun in the case, sir.

Q. But nine unspent .12 gauge buckshot shells in that case; correct?

A. I don't recall the exact number but there were unspent shell casings inside the bag; yes, sir.

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

MR. WATERS: Nothing further, Your Honor.

THE COURT: You may step down.

THE WITNESS: Yes, sir.

THE COURT: Next witness.

MR. WATERS: Your Honor, at this time the State rests.

THE COURT: Thank you. Mr. Foreman, ladies and gentlemen of the jury. That concludes the State's

presentation of the evidence.

I have just a few minutes I need to spend with the lawyers. Step back to your jury room. Do not discuss the case. I'll have you back out in just a few minutes.

(Jury exits courtroom at 2:58 P.M.)

THE COURT: Any motions by the State?

MR. WATERS: None, Your Honor.

THE COURT: Mr. Williams?

MR. WILLIAMS: Thank you, Your Honor. If it please the Court.

We'd move for a directed verdict in this case based upon the grounds that the evidence submitted by the State is entirely circumstantial. In this case there's no direct evidence that ties -- implicating my client in this case.

There's been a recent, some recent law in this state that I think helps to clarify how the State should evaluate this. And we've gone over the circumstantial evidence and the direct evidence as to give it the same weight; however, you have to analyze circumstantial evidence differently.

And even though we don't use the old charges as they existed before which said that every fact, circumstantial fact must be proved beyond a reasonable doubt and that every inference to be drawn from that must conclusively

point to the fact of his guilt, I think, Your Honor, the law is clear that's how you have to analyze this.

And what you have to do, and the cases I've got for that --

THE COURT: Well, hand them up to me.

MR. WILLIAMS: Give me second, Judge. I'm sorry. Misorganization.

State versus Logan which is a recent case; State versus Odems which is a 2011 case; and State versus Bostick which is a 2011 case.

And I'm going to start with State versus Odems. And what happens in that case, as in this case, is you have a completely circumstantial set of facts. And the Court goes through, it talks about the fact that circumstantial evidence and direct evidence are to be given the same weight, however you have to analyze the two differently.

And it goes on to say that every circumstance relied upon by the State must be --

THE COURT: Which one are you reading Odems, O-D-E-M-S?

MR. WILLIAMS: Odems.

THE COURT: Okay. I'm listening.

MR. WILLIAMS: And I'm looking at page seven. Every circumstance relied upon by the State must be proven beyond a reasonable doubt and all the circumstances proven

be consistent with each other and taken together point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis.

THE COURT: Hold on a second. Tell me where you're reading from.

MR. WILLIAMS: Page seven, Judge.

THE COURT: You do agree there's a wealth of circumstantial evidence in here --

MR. WILLIAMS: I agree there's a lot of --

THE COURT: -- and for the jury to convict him they must find that those circumstances were proved beyond a reasonable doubt.

MR. WILLIAMS: Agree.

THE COURT: And doesn't that go to the weight of the evidence as opposed to the existence of it? I mean, we all -- you agree that there's a wealth of circumstantial evidence here. It's up to the jury to determine whether or not the State has proven that circumstantial evidence to a reasonable doubt.

I can't direct a verdict if it exists; can I? Or give me something that says I can.

MR. WILLIAMS: Well, if you go on and look at the footnote four.

THE COURT: In Odems?

MR. WILLIAMS: In Odems. Okay.

THE COURT: Hold on. Let me find it. Footnote four. In State versus Grippon.

MR. WILLIAMS: That's correct. And what it talks about, if I'm not mistaken, Grippon is the case that changed the old jury charge from the State had to prove every inference beyond a reasonable doubt and all the inferences had to connect, to prove one thing if there was any other reasonable hypothesis that could be deduced from the facts then the jury had to acquit.

But I believe the standard that you have to analyze this from is if you take all of the facts proven as true, does every inference drawn from that reasonably tend to prove the guilt of Mr. Gerrick beyond each and every other reasonable hypothesis? And if there are other reasonable hypothesis then you need to direct a verdict.

THE COURT: Anything else?

MR. WILLIAMS: Well, if we go through the evidence using that standard, Judge, briefly we've got the pickup truck, the contents of the pickup truck. And out of that there's the root in the pickup truck, and it's got a note on it. And can you infer guilt from that. Well, maybe it's some evidence of guilt but you can also infer other things from that note. All right.

As far as the evidence of the car -- in the car. Clearly Mr. Gerrick's fingerprints are on the car but we

knew that they were friends. We knew that he drove it over there. We know that there was a gun in the back and the gun is missing. Can you infer from that that something is awry? Maybe. But can you confer that he was just a passenger in the car at a different time? Yes.

In other words, taking the car over there does not necessarily tie him to a murder.

If you go to the crime scene there's no DNA evidence. There's no other physical evidence that links him there. There is his statement to Croft which says he was there but that he left.

And, finally, if you take the evidence that's been offered in as to guilty conscience, well is it guilty conscience from actually committing a murder or was it guilty conscience from being involved in this drug deal which went bad? And is he trying to exonerate himself just because he thinks that's the way he should be doing this as opposed to doing it the legal way?

So when you look at all the evidence together, it doesn't conclusively point to the fact that he committed a murder. There are other inferences which can be drawn and I think the verdict has to be directed in his favor.

THE COURT: Thank you. Gentlemen, who's going to argue it?

MR. WATERS: Me, Your Honor.

Your Honor, I'd, of course, like to begin with obviously when Your Honor's addressing this you look at the evidence in the light most favorable to the State.

THE COURT: Everybody agrees with that.

MR. WATERS: And there's no question that this is primarily a circumstantial case.

THE COURT: No question about that.

MR. WATERS: But the fact that Mr. Williams can come up with some alternate hypotheses does not mean in the light most favorable to the State that there's been a failure of proof.

He can certainly argue those to the jury and argue to them that there is an alternate reasonable hypothesis but that's not standard I believe that the Court is to apply.

And if you look at the case he's provided Your Honor, the recent one, Odems. If you look at what the State had there, all they had was the individual was in the car and the individual ran with everybody else. And the Court held that was not sufficient.

Here we presented, as I argued in opening, we've presented extensive evidence, over three days of various circumstances that all point to the guilt of Mr. Sammie Gerrick.

But, first of all, we do have some direct evidence that he was present in the case. First of all we have

Mr. Gerrick having scratches on his arms which we have presented -- and other scratches, which we presented evidence were consistent with someone, you know, scratching at him as they were being attacked and which we've shown he's offered multiple explanations for that, you know, refutes the validity of those.

Secondly, as Mr. Williams pointed out, we have offered the fact that he had his fingerprint on the rear of the victim's car. And also he admits being at the scene.

We have of course phone records and multiple evidence from various witnesses showing that the Defendant and the victim were going off together, out to the woods to dig up a safe and that the victim was never heard from again. He was last seen with Mr. Gerrick by multiple people. We've got phone records to that effect. And then he just drops off the face of the earth with Mr. Gerrick.

Additionally we have the use of the ATM card over the next few days. We have him and his wife surreptitiously moving the car late that night to the Orangeburg location. We have the fact that he took two shovels and put them in the car before they went off to the woods. And again we have just multiple and multiple and multiple things that show consciousness of guilt which is of course evidence under South Carolina law as we have argued before.

We have strong evidence of motive. He didn't have any

money. He wanted to get out of jail. He was behind on his bills. He gets this friend to loan him the money. He, the friend then disappears and Mr. Gerrick is using that individual's card to pay off bills that he desperately needed to pay off.

We have got the issue of the texts from the track phone where the distinctive use of A-M as opposed to I'm. And we have the victim's text where he used the word I'm, I apostrophe M, as opposed to the way Mr. Gerrick does it, again, which is evidence of guilt.

Of course on top of that, we've got the capsule with the note which is -- certainly can be argued to be in the nature of an admission by his possession of that and what it said.

We have -- let's see here. We have Early Glover who, he was put up to sign a fake statement for, and had nothing to do with it, again, which is strong evidence of consciousness of guilt.

And then as far as his alternate explanation. The only alternate explanation that has been offered is based in one of Sammie Gerrick's statements which we put them all in. And of course the fact that all of them are inconsistent, whether it starts with saying it's Maurice and, oh, Jamaal -- excuse me, Tyrone took off with a $100,000 or in the statement to Jamaal about the text,

maybe that will take the heat off me, through the various statements to police, all of which are lies, Your Honor. Every single one of them is a lie.

And then finally we did present the witnesses that he said were supposedly there. And they got up there and said I don't have nothing do with this man, and had nothing to do with that.

And the jury can fairly judge that as to whether or not the hypothesis, an alternate hypothesis is reasonable. And the reasonableness, kind of the nature in reasonable doubt. That's ultimately for a jury question.

But if you take all of the State's evidence and put it together, it's an extremely strong circumstantial case that's far distinguishable from the very thin, patently thin evidence that was reversed in that particular case. And the jury, I think, is entitled to make their decision based on the evidence presented.

Ultimately his arguments today are great for closing argument but they go to the weight of the evidence, not to the necessity of a directed verdict.

THE COURT: Mr. Williams.

MR. WILLIAMS: In a criminal case when it's entirely circumstantial the Court has to do more than just say, well, the evidence is in and it's up to the jury. The trial court has to analyze the evidence and the Court has

to find that every piece of proof -- hold on.

THE COURT: Tell me where you're reading from.

MR. WILLIAMS: I'm looking at the most recent case of State versus Logan, and this is where the Court has authorized an all new charge to the jury when requested by the defendant regarding circumstantial evidence.

THE COURT: Which says that crimes may be proven by circumstantial evidence, page 12.

MR. WILLIAMS: That's right.

THE COURT: The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence. However to the extent the State relies on circumstantial evidence, all the circumstances must be consistent with each other and when taken together point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious the proof has failed.

MR. WILLIAMS: That's correct.

THE COURT: That's what you're relying on?

MR. WILLIAMS: Yeah.

THE COURT: Okay.

MR. WILLIAMS: And I think the Court has to use this type of analysis in weighing the evidence to see if there's another reasonable hypothesis before the

question's submitted to the jury.

And that's what happened in Odems. They go back and rely on this type of analysis as opposed to what it's done for the last 10 years where you say is there any substantial circumstantial evidence.

THE COURT: Well, I mean, that's the charge they're asking us to use henceforth but at this stage of the game where we're talking about a directed verdict, the case law what you gave me is State versus Odems, O-D-E-M-S and State versus Logan.

Says on a standard of review from motion for a directed verdict obviously we all know I have to view in the light most favorable to the State and the Defendant is entitled to a directed verdict when the State fails to produce evidence of the charge. However, if there's any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused then appellate court must find the case was properly submitted to the jury.

A Circuit Court Judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty.

This Court, Supreme Court, has repeatedly affirmed the principal that when the State files produce substantial circumstantial evidence that the Defendant committed a

particular crime the Defendant is entitled to a directed verdict. Thus the evidence presented by the State raised at most in that case the mere suspicion. Has to be more than mere suspicion has to be circumstantial evidence and I find in this case there was as I said before a wealth of circumstantial evidence. I find that circumstantial evidence to be substantial which could reasonably tend to prove his guilt.

It certainly is way above the level of a mere suspicion. I find that therefore it should be submitted to the jury for the jury to determine whether or not the State has proven beyond a reasonable doubt that the circumstances tend to prove the guilt of the Defendant beyond a reasonable doubt.

Respectfully denied for the reasons I set forth.

Anything else by the Defendant?

MR. WILLIAMS: Your Honor, we have the issue of Mr. Dustin Williamson who I think is on the way over here.

THE COURT: You also have an expert.

MR. WILLIAMS: I do but depending on your ruling on Mr. Williamson, I may not call him.

THE COURT: How long are we going to need to take to do the Williamson proffer et cetera, et cetera, and argument and whatever else we need to do?

MR. WILLIAMS: I got a feeling it's going to take 20 to 30 minutes.

THE COURT: Don't be apologetic, just --

MR. WATERS: Your Honor, obviously we have to get through the threshold issue about the letter itself and then as I've expressed to Your Honor, and of course to Mr. Williams we have probably three witnesses that we would submit would be admissible in the event that Your Honor were to allow the statement in but would probably need to be addressed by Your Honor.

THE COURT: Outside of the presence of the jury if I rule it's admissible.

MR. WATERS: I think that obviously that would probably be the wise way to do it.

THE COURT: Well, I understand you. I agree with you. How long will your expert be?

MR. WILLIAMS: Twenty minutes, 30 minutes.

THE COURT: So if it takes us 45 minutes to hash through this, that takes us to four o'clock and depending on my ruling we ought to be able to finish everything up by five?

MR. WILLIAMS: I would think.

THE COURT: All right.

THE WITNESS: Bring the jury in, please.

(Jury enters courtroom at 3:19 P.M.)

THE COURT: Mr. Foreman, ladies and gentlemen, let me tell you where we stand.

The State has completed their case. Now it's time for the defense to, they have an opportunity to put up their witnesses if they choose.

There is a matter that I've got to handle outside of your presence to determine whether or not certain things are allowed or certain things are not allowed. That's going to take us about 45 minutes. That takes us to four o'clock.

Depending on how I rule, I would anticipate either way I rule that we'll probably be able to finish up the testimony that last hour from four to five. That gives us 40 minutes of downtime. Not for us, but for you.

I don't like -- I don't have a lot of patience as y'all have learned. And I don't like to sit back there and twiddle my thumbs for 45 minutes.

I can say, let's take a break for 45 minutes. You all go back and stretch your legs and be back in here at four o'clock and try to finish it up by five; or I can say, I'll cut y'all loose until tomorrow. But what that will do for tomorrow is lengthen tomorrow because if I can finish the testimony today when we come in at 9:30 in the morning we can go straight to the arguments, straight to my charge and you'll get it to start deliberating, I'm not

going to say mid morning, but certainly before noon.

So, what's your pleasure, try to finish it up today?

FOREPERSON OF THE JURY: I think we want to get as much done today as we can.

THE COURT: Any objection if I let them go out and stretch their legs?

MR. WATERS: Not at all, Your Honor.

MR. WILLIAMS: None, Your Honor.

THE COURT: All right. Getting sort of down to the short rows as -- if any of you are farmers. Somebody's smiling.

I'm going to let y'all take a break until four clock. You're welcome to go outside. You're welcome -- please, we got a lot of people out here in the audience. And, you know, they may be outside getting fresh air, too. Don't let anybody discuss this case with you. Stay away from them. And don't discuss it with anybody. If anybody tries to, please get the name.

I'll see y'all back at four o'clock. You're welcome to sit back and enjoy the Coca-Colas and all the snacks that we got back there or you're welcome to go out and walk around the block, exercise.

Thank you.

(Jury exits courtroom at 3:23 P.M.)

THE COURT: We've got about 45 minute's worth of

work. I'm going to allow those who need to leave to leave now, because once we get cranked up you can't go. So if you need to leave, you're welcome to leave. We'll start back at four o'clock.

Please, y'all, do not discuss the case outside with anybody on this jury. If I find out that anybody tries to or attempts to, I'm not saying that you would, but I'm going to hold you in contempt of court. And you're going to -- I can put you in jail. But please don't make me do that, please. Y'all have been great. I'm not suggesting that it would happen, but that's what happens if it happens.

Thank you.

Any of those want to leave now you can go ahead and leave now so we can go ahead and proceed in an orderly fashion.

(People exit courtroom.)

THE COURT: All right. Mr. Williams.

MR. WILLIAMS: We would call Dustin Williamson to the stand.

DUSTIN WILLIAMSON, having been duly sworn, was examined and testified as follows:

THE CLERK: If you would, please, sir, be seated and state your full name for the record. Okay.

THE WITNESS: My name is Dustin Williamson.

THE COURT: Hold on, Mr. Williamson. Ma'am, do you need to leave? Thank you, Mr. Bamberg. Does she need the elevator?

MR. BAMBERG: She's fine.

THE COURT: Let the record reflect that Dustin --

THE WITNESS: Yes, sir.

THE COURT: -- Williamson is getting ready to testify. In the courtroom present with him is Adam Ness, attorney-at-law from Bamberg who I have appointed to represent him in connection with his involvement or his participation or lack thereof. And I say lack thereof, if he invokes his right to remain silent, his Fifth Amendment right in these proceedings.

And, Mr. Ness, have you had enough time to, do you feel like, to speak to him and to advise your client properly?

MR. NESS: I have, Your Honor.

THE COURT: And, sir, have you had enough time to speak with Mr. Ness and understand what's going on?

THE WITNESS: Yes, sir.

THE COURT: All right. Mr. Williams.

MR. WILLIAMS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Mr. Williamson, you've given a statement to law enforcement that implicates you in the murder of Tyrone Donaldson; have you not?

A. I hereby invoke my rights against self-incrimination.

Q. Based upon that...

THE COURT: All right. Based upon that, obviously he has the constitutional right to invoke that privilege. He's done so. He's done so with the advice of counsel and obviously I will not require him to answer any questions in regards to this matter.

Anything else, Mr. Williams?

MR. WILLIAMS: Not from him. I would like to call Agent Shaun Harley to the stand.

THE COURT: Very well. Anything from the State?

MR. WATERS: No, sir, Your Honor.

THE COURT: Thank you very much. Where is he housed?

CORRECTIONAL OFFICER: We transported him from Bamberg. He's going to be housed back in Barnwell.

THE COURT: Adam, thank you for your participation. Do you think we'll need Mr. Ness any more today for this matter?

MR. WATERS: Your Honor, I would like Mr. Williamson to at least stay until we sort out everything.

THE COURT: He's not going to testify. What else is there -- okay. Just hold him back there in the holding cell for a few more minutes.

Mr. Ness, stay with us. Thank you.

Mr. Harley you're still under oath.

THE WITNESS: Yes, sir

THE COURT: Mr. Williams.

SHAUN HARLEY, previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Agent Harley, we briefly in your testimony yesterday talked about the fact that you had contacted a man named Dustin Williamson who was, I think, from the Bamberg Jail now but at one time was in the Barnwell Jail facing pending charges; is that correct?

A. Yes, sir.

Q. And tell us how you came about to talk to Mr. Williamson.

A. I received a phone call. I don't know if it was through the AG's Office or your office in reference to a letter that was found at the Barnwell County Detention Center.

Q. Do you have information in your file about where the letter was found?

A. I interviewed several people from the jail.
Q. And from that interview, were you able to determine where the letter was found?
A. In the cell of Sammie Gerrick.
Q. Okay. And from your information, can you tell us how the letter got, I think it got into Ms. Charlton's hand at some point in time?
A. Yes, yes, sir.
Q. And how did you get the letter?
A. I think received it from, through the jail, I'm not sure, or unless it went to the Barnwell County Sheriff's Office.
Q. All right.
MR. WILLIAMS: Do you want me to mark this as a Court's Exhibit now?
THE COURT: Any objection?
MR. WATERS: No objection.
(Court's Exhibit No. 5, letter of Williamson, received into evidence.)
BY MR. WILLIAMS:
Q. And, Lieutenant Harley, I'm going to show you what we've marked as Court's Exhibit Number Five. Do you recognize that?
A. Yes, sir.
Q. What is that?

A. This is a letter that was given to me, reference to the letter found in Sammie Gerrick's cell.
Q. And you received that either at the sheriff's office --
A. Or the Barnwell County Jail.
Q. -- or the Barnwell County jail. And I believe there are also some incident reports indicating the chain of how it was to come into your possession?
A. Correct. I took a statement from two of the corrections officers.
Q. And do you know who those officers were?
A. Sergeant Johnson, who's sitting there, and Officer Jennings.
Q. And which one of these officers found it in Mr. Gerrick's cell?
A. I believe that Mr. Gerrick, he buzz to the control Office and Officer Jennings was close by. He went to his cell and he got the letter. Sammie Gerrick provided the letter to him through his flap from the cell.
Q. And what did Officer Jennings do with the letter?
A. He then proceeded to give it to Sergeant Johnson.
Q. And then what did Sergeant Johnson do with the letter?
A. She then proceeded to give it to Director Charlton over the Barnwell County Detention Center.
Q. And did you get it from Ms. Charlton?

A. I think I did or from the sheriff's department, one of the two.
Q. All right. And as a result of getting this letter in your ongoing investigation of this case, did you talk to Dustin Williamson?
A. Yes, sir. But the thing, we received this letter about two to three weeks ago.
Q. And did you Mirandize him before you talked to him?
A. Yes, I did; in the presence of his attorney.
Q. And his attorney at that time was Jason Price; correct?
A. Yes, sir.
Q. And he agreed at that point in time to talk to you; correct?
A. Yes, sir; in the presence of his attorney.
Q. And did you ask him who wrote the letter?
A. Yes, sir.
Q. What did he tell you?
MR. WATERS: Your Honor, just to be clear. I would obviously object at this point. I'd object to this as a whole but I know Your Honor wants to hear the circumstances of everything but I believe --
THE COURT: Well, this is a proffer. But you're objecting for what purpose?
MR. WATERS: I'm objecting for hearsay at this point;

yes, sir.

THE COURT: Well, normally, I would sustain that objection and not allow it, but I think out of an abundance of caution, since we're doing it as a proffer and to make a record of it, I will take it for the proffer.

If we were before the jury we'd stop right here.

So, with that understanding --

MR. WATERS: Yes, sir. As long as I'm protected --

THE COURT: -- you are protected.

MR. WATERS: -- and they won't hear the circumstances --

THE COURT: This is a proffer so I will allow it for the purposes of the proffer, not for introduction obviously in the trial. It's here for the proffer right now and then we'll see where we go.

MR. WATERS: At the end of the circumstances then I can make whatever arguments as to admissibility that I need to make.

THE COURT: I've already sustained the objection. I'm going to do the proffer right now to protect the record.

MR. WATERS: Thank you, Judge.

THE COURT: Unless Mr. Williams can show me some reason why I shouldn't take it.

BY MR. WILLIAMS:

Q. Let me go back. Clearly when you got the letter you read it?
A. Yes, sir.
Q. And he makes some admissions in the letter -- Mr. Williamson makes some admissions in the letter; does he not?
A. Yes, sir.
Q. And one of his admissions is that he was involved in killing Tyrone Donaldson; correct?
A. According to the letter.
Q. All right. And you were in the courtroom today when he indicated that he was not going to testify based upon his Fifth Amendment rights; correct?
A. Correct.
Q. And, as a result of you receiving these letters and you being involved in the investigation of Tyrone Donaldson's death, you went and spoke with Mr. Williamson at the jail, correct, or at the sheriff's office?
A. It was done at the Barnwell County Sheriff's Office with his attorney.
Q. And when you talked to him about the admissions in this letter and the contents of the letter, did he admit to you writing the letter?
MR. WATERS: Your Honor, I --
THE COURT: You're protected throughout on your

objection as hearsay. And unless you -- this is the proffer part and you're protected and unless you got a different type of objection.

MR. WATERS: Well, there's a number of issues. Authentication is one of them as well. Authentication and hearsay I think are two things that we absolutely have to get to. And then if we move through those, then there's other issues that arise.

THE COURT: I understand that, but this is a proffer and you're protected on your objection.

MR. WATERS: Thank you, sir.

BY MR. WILLIAMS:

Q. And I'm showing you a copy of the letter and not the actual letter; is that correct?

A. Correct.

Q. And you've got the actual letter?

A. The letter is here.

Q. Okay. So the actual letter is here and that's not different from the actual letter; is it not?

A. No, sir.

Q. All right. And you spoke with him regarding whether he wrote the letter; right?

A. Yes, sir; about the letter.

Q. Did he admit to you that he wrote this letter confessing to killing Tyrone Donaldson?

A. He stated he wrote the letter.
Q. All right. And in fact you went, took the letter back to SLED, also; correct?
A. Correct.
Q. And you had the signature analyzed; correct?
A. Correct.
Q. And they found that signature at SLED to be his signature on the letter; correct?
A. I'd have to read the report again, but I believe so, but I'd have to read the report.
Q. Do you have that report?
A. Not that report but the writing analyst. I don't have it on me.
Q. Okay. But there's no question he owned up and said this letter is one that I wrote?
A. Yes, sir.
Q. And what did he tell you about the contents of the letter?
A. He couldn't provide anything. He said, whatever is in the letter, that's it.
Q. Did he say anything --
A. He would not -- we, myself and Agent Jeff Croft was at the office interviewing him also with his attorney. Once we asked him specifics in the letter, he could not provide anything. He would not say anything.

Q. And have you talked with anybody else to determine whether anybody else could have written the letter other than him?
A. Have I talked to anyone else?
Q. Yes. You analyzed the letter to see if Sammie Gerrick wrote it, correct, or had something to do with it?
A. Correct.
Q. And the strong probability is Sammie Gerrick did not write that letter.
A. I have to look at that report again.
Q. Okay. And you interviewed him a second time in Bamberg; is that correct?
A. Correct; at Attorney Adam Ness office.
Q. And in that interview did he still acknowledge authorship of the letter?
A. Yes, sir.
Q. All right. What else did he tell you about the letter?
A. He could not provide anything. When I asked him specifics about the letter or what, about the case itself he wouldn't, he could not provide anything.
Q. All right. He couldn't tell you about the facts contained in the letter, but clearly he said I'm the one that wrote the letter?
A. He could not provide facts or anything about the case

of Tyrone Donaldson.
Q. Right. But as far as the written statement, he acknowledged he wrote it?
A. Yes, sir.
Q. To you?
A. (Nods head.)
MR. WILLIAMS: Your Honor, based upon the fact that he acknowledged to this law enforcement officer against his interests with his attorney present that he is the author of the statement, we believe that it is admissible into evidence.
THE COURT: Give me some law to support that. Isn't it under Rule 801? I believe.
MR. WILLIAMS: Well, Your Honor, it's admissible as an admission against interest under hearsay. And 804, he's an unavailable declarant.
THE COURT: 804?
MR. WILLIAMS: If I'm not mistaken.
THE COURT: Well, the declarant is available.
MR. WILLIAMS: Once he takes the Fifth he becomes unavailable.
THE COURT: What is the State's position?
MR. WATERS: Your Honor, initially I would like to, so I can sort of flesh out my position, would like to examine the witness on some of these circumstances as well,

subject, of course, to my objection.

I think Mr. Williams is of course going under 804(a)(1) with the claim of privilege and then going under statement against interest. There's, of course, the provision there that provides that a statement in a criminal trial, and I'm speaking off the top of my head, but in a criminal trial tending to expose the declarant to criminal liability and offer the --

THE COURT: Well, hold on a second. Don't speak off the top of your head. Direct me to it.

MR. WATERS: Okay. You're looking at 804(b)(3) and if you look at the last sentence of that particular exception it has a special rule for evidence offered in a criminal trial to exculpate the accused. And it states that there must be corroborating circumstances that clearly indicate the trustworthiness of the statement.

THE COURT: That's 804(b)(3)?

MR. WATERS: Yes, sir, Your Honor.

Now, that particular provision has been interpreted by our courts as requiring trustworthiness that the statement was actually made, not necessarily evidence that the, what the contents were were actually true. However to flesh out my authentication issue, my issue as to why the 803(b)(3), this provision does not apply. And also to flesh out --

THE COURT: 804(b)(3); right?

MR. WATERS: Yes, sir.

THE COURT: You said it 803.

MR. WATERS: My apologies. 804(b)(3). -- as to why it does not apply.

Additionally to address authentication issues as well as my argument that if Your Honor were to allow the letter, why we would be able to present testimony about the circumstances under which it was taken, I need to examine Agent Harley as well.

THE COURT: You may.

MR. WATERS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. WATERS:

Q. All right. Lieutenant Harley, and just to kind of shortchange things -- and this is subject to my objection, Your Honor.

Just to shortchange things, essentially the statements from Ms. Johnson and Officer Jennings were that Sammie Gerrick called the officers saying that he had found this letter on --

A. On his floor.

Q. -- on his floor.

A. Yes, sir. In his cell.

Q. Okay. So it came from Sammie Gerrick, not from Dustin

Williamson; is that correct?
A. Correct.
Q. And you went and interviewed Dustin Williamson in the presence of his attorney on October 30th; is that correct?
A. Correct.
Q. And at that time you asked him about the specifics and while he said -- well, tell us what he said again.
A. Say, whatever's in the letter, that's it.
Q. So whatever is in the letter, that's what happened; correct?
A. Correct.
Q. And could not provide any specifics whatsoever about the contents of that particular letter --
A. No, sir.
Q. -- is that correct? And then subsequently after Mr. Ness was appointed to represent Mr. Williamson on November 13th, 2013, you went and re-interviewed Mr. Williamson; is that correct?
A. Correct.
Q. All right. And did he again reiterate when asked about specifics, could offer nothing more than whatever is in the letter?
A. That was it. Whatever is in the letter.
Q. Okay. And did he ask to be moved somewhere else before he would speak with you?

A. Yes, sir.
Q. And tell us how -- what happened in that. What happened?
A. He asked for, I guess through his attorney, that he could be moved from Barnwell County Detention Center to the Bamberg County Detention Center.
Q. Okay. And did he tell you why that he wanted to get out of the Barnwell County Detention Center?
A. Yes, sir.
Q. And what did he say?
A. He felt like he was going to be killed.
Q. All right. Would he provide the name of the person he felt was threatening him?
A. No, sir.
Q. When you asked him if anyone had put him up to this, did he have a response?
A. No, sir.
Q. And let me provide you if I could -- may I approach Your Honor?
THE COURT: You may, sir.
Q. I'm going to provide you with a copy of your -- I'm going to get this marked as Court's, whatever's next.
(Court's Exhibit No. 6, memorandum of interview of Williamson, received into evidence.)
THE COURT: Anybody got a case of the State versus

McMillan?

MR. WATERS: Are you reading from the rule book, Your Honor? What page are you on?

THE COURT: 1003, 540 -- Adam, 540 SC Second 464. Can you e-mail me that, please?

MR. NESS: Yes, sir.

THE COURT: Do you all mind if I let Mr. Ness e-mail me that case?

MR. WILLIAMS: No, sir.

MR. WATERS: No, sir. Can I ask which section in the notes, Your Honor?

THE COURT: The last case on the right, down at the bottom.

MR. NESS: 540 SC Second?

THE COURT: 464.

MR. WATERS: Yes, sir, Your Honor. And that was what I was saying earlier is that --

THE COURT: I know, but do you have a copy of the case?

MR. WATERS: I unfortunately -- well, I don't know.

THE COURT: That's all right. Adam will e-mail me it.

BY MR. WATERS:

Q. All right. I'm going to provide you with Court's Exhibit Six. Is that a copy of your MOI or memorandum of interview that you prepared after that November 13th

interview with Mr. Williamson?
A. Yes, sir.
Q. All right. And I refer you over to the second page. And starting there when you asked if someone had put him up to this or if he had been threatened in any way, what was his response to you?
A. No.
Q. Okay.
A. Do you want me to read it out?
Q. No. I'm talking about right there.
A. Oh, I'm sorry.
Q. Yeah.
A. Yes. When asked if someone put him up to it, he said I'll tell you this, someone is going to die in six days.
Q. Okay. Would he provide to you the names of the persons who would be killed or who was supposed to do the killing?
A. No, sir.
Q. Okay. Did you ask him if the person who was supposed to be killed was a member of his family?
A. Yes, sir; I did.
Q. And what was his reply to that?
A. He replied by asking me to watch over his residence and make sure his mother was safe.
Q. All right. And, just continue.

A. He stated that everybody else that was in his family could take care of their self.
Q. Okay. Did he say anything about this being deeper than you think?
A. Yes, sir; he did.
Q. And tell us what he said.
A. When I asked him was Sammie Gerrick in on it he answered no, but then he went on to state that this thing is deeper than what you think.
Q. Okay. And then he went on to say that he needed to get out of Barnwell Detention --
A. Because he would be killed.
Q. All right. Now this time when you asked him about the specifics of the letter, did he state -- what did he tell you?
A. When I went on to ask him about the specifics, he said whatever is in the letter. So I then went on to say, really, you're admitting to murder. He replied, I never said I kill Tyrone.
Q. Okay.
A. I went on to say, well, by your letter that you wrote, you were a part of it and therefore by confessing you were a part of the murder.
Q. Did --
A. I think at that point he didn't understand what I was

getting at. So I again provided him, told him a quote, well, the hand of one is the hand of all. And he didn't really get, you know, engage on what I was talking about. I told him --

Q. Now, let me interrupt you there. Did he have a conversation with his attorney during this time?

A. Yes, he did.

Q. When you all were talking about the hand of one is the hand of all?

A. Yes, sir.

Q. And when he kind of started to understand what that meant, what did he do?

A. After understanding what time he could receive, he dropped his head down and said, they played me, they played me. I then went on to ask him who -- what was he talking about, they played me. He just kept say -- he said, they played me.

Q. Okay. So once -- he had said, I didn't kill anybody.

A. Correct.

Q. And then once you told him that under South Carolina law that he could potentially face liability if he was part of a group that killed somebody, but didn't actually do it --

A. Correct.

Q. -- and his attorney actually participated in that

discussion as well --
A. Correct.
Q. -- and then he said, they played me, they played me?
A. He dropped his head down first, and like, you know, he did like, (indicating), they played me, they played me.
Q. So it was clear to him from your -- from what he was telling you that he didn't understand that what he was saying would get him in any trouble?
A. Correct.
Q. Until you all explained it to him?
A. Correct.
Q. So when the statement was made he didn't understand that he was writing himself into trouble; is that correct?
A. Correct.
THE COURT: Agent Harley, do you have any doubt in your mind that Williamson made the statement, wrote the statement?
THE WITNESS: I don't know. His name never came up in the investigation so.
THE COURT: No, no, no, no. The young man, Mr. Ness's client -- Williamson; right? Do you have any doubt that he wrote the statement that we're talking about here, whether it's true or not true, but did he write it?
THE WITNESS: I can't say, Your Honor.
THE COURT: Do you have any evidence that he didn't

write it? And you had his signature --

THE WITNESS: His signature was compared by SLED where I guess, I have to review, but they did compare it that he did sign it. But the printed part of it, they could not say. I don't think so.

THE COURT: So your understanding -- so your recollection of the SLED analysis is that maybe not the printed part --

THE WITNESS: The signature.

THE COURT: -- not the body, but the signature that he acknowledged writing it?

THE WITNESS: Correct. If I'm reading -- if I'm thinking correct; yes, sir.

THE COURT: What else do you want to ask him?

MR. WATERS: That is all I have for the present purposes, Your Honor.

MR. WILLIAMS: Your Honor, I found my case and I apologize for being clumsy a while ago. And it's actually State versus Staten and it cites the McDonald case. If I could pass it up to you, flipped to that page.

THE COURT: Mr. Waters, McDonald is pretty clear. If we find that he's not available, i.e., he's exercised his right to remain silent, then we look to that 804 --

MR. WATERS: (b)(3).

THE COURT: -- (b)(3), and we talk about the

corroboration and it goes to, not to the truthfulness of the statement but to whether or not he actually wrote it.

What else do you have that he didn't write it or he didn't acknowledge writing it by signing it?

MR. WATERS: Okay. And, Your Honor, again, I've got multiple layers but, yes, sir, as to that particular issue. As Agent Harley, or excuse me, Lieutenant Harley has stated, he acknowledged the signature but could not provide any evidence whatsoever of the contents.

But I understand that the law is clear that it is the making of the statement. My argument, my first argument of many, Your Honor --

THE COURT: All right.

MR. WATERS: -- is that, let's look at what the rule says, the hearsay exception. It states --

THE COURT: What rule are you reading from?

MR. WATERS: 804(b)(3).

THE COURT: 804?

MR. WATERS: Right, (b)(3). It states: A statement which was at the time of its making, at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another that a reasonable person in the declarant's position would not

have made the statement unless believing it to be true.

We just heard from Agent -- from Lieutenant Harley that this individual did not understand that this statement being made was going to get him into trouble, that he was making a statement against interest.

And so in the first instance it doesn't fall underneath the rule because he was not -- at the time of its making, he found out later and he dropped his head and said they played me, but at the time of its making he did not understand what he said was putting him in criminal liability.

Now I run into this all the time because I speak to kids at schools and that's one thing I always try to tell them and they don't understand it. That if you're with a group of people and you all go to knocking off a shop and you're just a getaway guy, you're just as guilty.

So it doesn't fall under 804(b)(3) to begin with because he was not making any statement that was contrary to his criminal -- or to his interest at the time of its making which the rule requires.

THE COURT: Well, he was making it. You take the position he didn't know it was.

MR. WATERS: Well, right. So, I mean, that's the basis of the rule is that --

THE COURT: Unless believing it to be true.

MR. WATERS: Right. Unless believing it to be true. And that's the basis of the rule.

The reason why we have this hearsay exception is because of the idea that we can trust the statement. We can trust the statement because the individual making it wouldn't have said it and putting himself in the frying pan unless he believed -- unless he was saying something true. That's the whole basis of this exception.

But we know here that's not the case. That is not the case. So the rule doesn't apply. It blows up the whole reason that this rule developed all the way back from England, all the way back. It was the idea that you don't say things that are going to put you in the frying pan unless you really mean them and they were true. Nobody would do that.

Well, we know he wasn't doing that. And so the rule doesn't apply. That's the whole reason for this rule.

THE COURT: Anything else?

MR. WATERS: Well, yes, sir.

I think we also, we have the authentication issue. I don't believe that the letter has been sufficiently authenticated through Agent Harley's testimony. So I think that's an issue as well.

Additionally, we have --

THE COURT: What do you mean it hasn't been

authenticated?

MR. WATERS: Well, we haven't had any -- Dustin Williamson took the Fifth. And all Agent Harley could provide was what he said he signed the bottom of it which is hearsay in and of itself.

And so I think that there's a failure as far as authentication there, which I guess is before we even get to the 804(b)(3) argument.

THE COURT: Well, he's relied on SLED to say that it was his signature; have you not?

THE WITNESS: Yes, sir.

MR. WATERS: And I'm not going to dispute that he did -- that the signature matched.

THE COURT: Well, that doesn't appeal to me a whole lot.

MR. WATERS: Yes, sir.

THE COURT: What I'm struggling with is this 804(b)(3) and trying to do the right thing, because if you look at the McDonald case obviously it comes in because I think it's corroborating circumstances that the statement was actually made.

But now, Mr. Williams, the other side of that coin though is the State has raised the first part of Rule 804(b)(3) that a reasonable person in Mr. Williamson's position would not have made the statement unless

believing it to be true. And from the totality of the circumstances or from the totality of Agent Harley's interview and subsequent interviews and follow up, I think it's probably not admissible under that portion of the rule.

So I'll let you argue that. Argue your position on that. I mean, do we have any cases that talk about that? I didn't see any in the notes.

MR. WILLIAMS: There was some conversation, I think, at the beginning of the week about some type of competency evaluation being done for Mr. Williams (verbatim). All right. And I think one is presumed to be competent and one is presumed to know the statement that he made --

THE COURT: Well, I don't think it's a competency issue. I think, you know, it's like a reasonable person. Like a negligence-type case. What would a reasonable person in like circumstances do in the same situation. And this guy is doing something that's so unbelievably against his interest that it's -- I don't think he realized what the outcome could possibly be.

MR. WILLIAMS: And I'm not certain that's the analysis. I think the analysis is, is it a true and correct statement of his -- a true statement of his or did he make the statement.

MR. WATERS: And, Your Honor, this is when I would

bring in the second permutation which is Rule 403 and Rule 403 talks about unfair prejudice, misleading the jury.

And, again, we go back to the issue of this -- the whole reason for this rule doesn't apply here. The whole reason it exists does not apply here. And regardless, I think under 403 since we know the circumstances that exist here it clearly --

THE COURT: What circumstances?

MR. WATERS: The circumstances described by Mr., or excuse me --

THE COURT: Harley.

MR. WATERS: -- by Lieutenant Harley that he didn't realize that what he was saying would get him into trouble, that he was actually making a statement against interest.

And therefore I think that we bring in 403 as well which talks about the confusion, the danger of unfair prejudice, misleading the jury. And that would be what's the case here is we have a statement coming in against interest which clearly when it was made by the declarant it was not.

So I think whether you look at the rule itself or if you look at 403 or if you roll them up together, the outcome is the same. That this would have that very danger because this is not what the rule was intended

for. He didn't think he was saying anything wrong that would put himself in danger.

MR. WILLIAMS: I don't know that that's the inquiry. I think the inquiry is if you made the statement.

THE COURT: I think it's a double inquiry.

MR. WILLIAMS: And can you verify that he made that.

THE COURT: I'm going to rule that it is inadmissible under the first portion of 804(b)(3) as argued by the State and my comments concerning it.

Anything else?

MR. WATERS: No, sir, Your Honor.

THE COURT: Mr. Williams, you're protected I think as much as you can be.

MR. WILLIAMS: Your Honor --

THE COURT: I'm not trying to cut you off. If you need to put anything else on the record.

MR. WILLIAMS: I don't think so, regarding this.

THE COURT: All right. What else do we got?

You may step down. You got all of that Court Exhibit so it will be preserved for appeal if necessary?

MR. WATERS: Yes, sir.

And if we could, Your Honor, before he takes -- he leaves the stand, I would offer in -- I had him testify about it. It's in the record. I think we're good to go.

Thank you, Your Honor.

THE COURT: All right. Now, Mr. Williams, having ruled that way, do we still got your expert?

MR. WILLIAMS: Well, as a matter of strategy, Your Honor, I don't think since you're not going to let me get the letter in that I don't want to call the witness. So I'm going to not call this witness and I'm going to rest my case, being the expert regarding the crime scene, the leaves found.

THE COURT: Well, let me ask Mr. Gerrick some questions. Well, strike that.

Are you planning on calling any other witnesses?

MR. WILLIAMS: No. And thank you for bringing that up.

We talked about whether he wants to testify in this case. We talked about, you know, that he would be cross-examined and we talked about the fact that he's got a criminal record and there's some inconsistent statements in here.

And he's elected not to testify. And I agree with that decision and if you wish to inquire of him.

THE COURT: I think it's incumbent upon me. Mr. Gerrick, just raise your right hand quickly for me.

(Defendant placed under oath.)

THE COURT: Be seated.

Mr. Gerrick, we've reached the stage of the trial now

where you can present your own defense, your side of the story.

Please stop me at any time if you don't understand what I'm saying. Fair enough?

THE DEFENDANT: (Nods head.)

THE COURT: By presenting your side of the story or the defense, you have the right to call witnesses. You have the right to introduce relevant exhibits. And you have the right to testify in your own defense, get on the witness stand and testify.

If you testify you will be subjected to the same rules as everyone else who testifies. That is, you can be cross-examined on any relevant subject. If you have a record that the State, if I determine that probative value outweighs the prejudicial effect, they can use that record to attack or question your believability or your trustworthiness or your truthfulness. In other words, they can use it to impeach you.

If they -- if you testified and your record came up, I would instruct the jury that the only reason that they could consider that record would be when they are deciding your believability or credibility. And it could not be used in deciding guilt or innocence in this case. It has to be limited to that one task that they have in establishing or determining your believability when you

testify or your credibility.

So if you testify you'll be cross-examined and your record could possibly come up to be used for impeachment. Do you understand all of that?

THE DEFENDANT: (Nods head.)

THE COURT: And the other side of the coin is you have the constitutional right to remain silent. Under our Constitution of the United States and of the State of South Carolina which basically says that in a criminal trial someone accused of a crime can never ever be made to testify. You have the right to remain silent.

If you exercised your right to remain silent, at the close of the case when I instruct the jury I will tell them that you have the absolute right to remain silent, that you have nothing to prove, that the burden is on the State to prove your guilt beyond a reasonable doubt. And I will tell them that the fact that you exercised your constitutional right, they cannot consider that in any manner whatsoever when they deliberate your guilt or innocence.

And I will further instruct them that they can't even discuss that, it can't come up, it can't be part of the deliberations, and it can't be used against you when they are making a decision between guilt or not guilty -- guilty or not guilty.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: The privilege is yours to exercise. Yours and yours alone. Obviously you can discuss it with Mr. Williams, but in the end it's got to be your decision.

Do you understand all of that?

THE DEFENDANT: Uh-huh.

THE COURT: Any questions you want to ask me about your constitutional right to remain silent?

THE DEFENDANT: No, sir.

THE COURT: Do you need any additional time with Mr. Williams, because we're going to try to conclude the testimony this afternoon, as to whether or not you wish to testify? Do you need to talk with him any further or have you already had the opportunity to discuss that?

THE DEFENDANT: Yeah, we had an opportunity to discuss that.

THE COURT: I need to know if you intend to testify.

THE DEFENDANT: No, sir.

THE COURT: Very well. All right.

Mr. Williams, do we have any other -- yes, sir?

THE DEFENDANT: Before the jury, I just, I just want to address this to you. I feel you's a fair judge. I got a lot of respect for you.

THE COURT: Thank you.

THE DEFENDANT: But at the same time when I came and met with you in May 30th of this year.

THE COURT: You met with me?

THE DEFENDANT: Yes, sir. I had a motion heard.

THE COURT: Okay.

THE DEFENDANT: About this indictment, State versus Gerrick.

THE COURT: Yes, sir.

THE DEFENDANT: And there's a great latitude between July the 1st and August the 4th on this indictment that don't support the affidavit that the Agent Jojamal (phonetically) went to Judge Gantt to get it. It said that I allegedly supposed to kill Tyrone 21st and 22nd. Now they got this great latitude. You said before I left there on that day that you would do a direct verdict and you asked Mr. McIntosh (verbatim) to get with you a straight -- I'm sorry, a direct indictment to narrow it down to the date.

If I was a juror sitting over there in the way that this indictment was presented, it's a great latitude. And I'm being charged with murder for one day. Now they have extended the day to 14 days and that's, to me, being prejudiced by it because it ain't fair.

THE COURT: Okay. And that motion where you were before me and my ruling, that's all a part of the record.

And if you're found guilty and if you appeal, that obviously is something that has been preserved.

Do you agree with that, Mr. Williams?

MR. WILLIAMS: I do.

THE COURT: It's been preserved and if I'm wrong they'll send it back.

THE DEFENDANT: I'm just, I'm just speaking hypothetically.

THE COURT: I understand, but you're protected. You preserved that for an appeal if you lose.

THE DEFENDANT: Because what I do I sits down and I listen. That's my job. I listen. And I understand you, you said yesterday Mr. Williams was protected on certain things but at the same time you asked Mr. McIntosh not to get on that, put something on that screen and once it's on that screen it's in their individual head, even though you say disregard that. You might say disregard that, but at the same time it's still in that individual head.

THE COURT: What are you referring to about that?

THE DEFENDANT: When he got on there and Mr. Williams jumped up and asked for a directed verdict about this can.

THE COURT: Asked for a mistrial.

THE DEFENDANT: Mistrial. But he knew prior to, before getting here and he made a promise not only to the

Court but to you --

THE COURT: I understand.

THE DEFENDANT: -- and to me, but when these people saying that, he didn't -- whether he care or not it don't matter. He go home everyday. He go home everyday. Here he come back around with this Dustin thing.

Even though I respect your position, I don't respect your decision on this --

THE COURT: I understand that.

THE DEFENDANT: -- because he's back there. And if that young man plead the Fifth and I know the law just as well as anybody else, if they -- if Mr. Harley, he know what he's supposed to bring here for the date. How he gets up here, I don't know.

You's a specialist. You know what you're supposed to bring today.

THE COURT: I understand.

THE DEFENDANT: And at the same time, if you had any doubt about this young man right here, get a piece of paper, man. Send it back there. Let him write it again.

THE COURT: I understand. You're protected fully. I stand by my rulings.

Any additional witnesses, Mr. Williams?

MR. WILLIAMS: None, Your Honor. We have -- we renew our motion.

THE COURT: And for the same reason it will be respectfully denied.

Now, gentlemen, he has not offered any witnesses. I understand you'll have the last argument.

MR. WATERS: I believe he did put in Defendant's Exhibits and under the rule I would get last argument.

THE COURT: You're right. And I --

MR. WILLIAMS: I know. I know.

MR. WATERS: I'm a little older than I was.

THE COURT: All right. Bring the jury in for me, please.

(Jury enters courtroom at 4:13 P.M.)

THE COURT: All right. Mr. Foreman, ladies and gentlemen of the jury. That concludes the testimony. I will see you all back at 9:30 in the morning. We will have final arguments and the charge, and then y'all will be in a position to start your deliberations.

What are you going to give them in the morning? They want doughnuts?

THE CLERK: Do you want doughnuts or another type of biscuit?

FOREPERSON OF THE JURY: I'm looking to see.

THE COURT: Who's the decisionmaker on the food?

FOREPERSON OF THE JURY: We want biscuits.

THE COURT: What do you want on them?

(Off-the-record discussion.)

THE COURT: Thank y'all. Y'all have a wonderful evening. Don't discuss the case. Don't deliberate. Don't do any kind of Internet research or anything.

See you bright and early in the morning. We'll give it to you.

(Jury exits courtroom At 4:16 P.M.)

THE COURT: Any particular charges by the State? I intend to charge my regular charge: Duties of the trial judge and the jury; presumption of innocence; credibility of witnesses; reasonable doubt, the kind of doubt that causes a person to hesitate, and my regular charge on that; circumstantial evidence charge that is set out in the cases that y'all gave to me today that I basically read, the latest case; expert witness; failure of the Defendant to testify; prior record of a witness; and murder.

The verdict, not guilty or guilty.

MR. WATERS: I think that's pretty straightforward. I don't see anything.

Just again on your reasonable doubt, it's just hesitate to act?

THE COURT: No, it's the other part too.

MR. WATERS: Firmly convinced?

THE COURT: Firmly convinced. Sort of a two-part

charge.

MR. WATERS: Okay. And I guess as well I'd have a right to open on the law as my option as well?

THE COURT: (Nods head.)

MR. WILLIAMS: Your Honor, just for the record, I'd move for a manslaughter charge also.

MR. WATERS: Your Honor, there's absolutely no evidence in this regard to support a manslaughter charge.

THE COURT: I agree. Anything else?

MR. WATERS: Nothing from the State, Your Honor.

MR. WILLIAMS: No, Your Honor.

THE COURT: All right. We'll stand at ease. We'll start at 9:30 in the morning.

Let me see you gentlemen in chambers, please.

END OF DAY'S PROCEEDINGS: 4:18 P.M.

ON THURSDAY, NOVEMBER 21, 2013 AT 9:40 A.M.:

THE COURT: Let the record reflect that at the conclusion of yesterday's proceedings, I had a lengthy in-chambers discussion with Mr. Williams and Mr. Anders, Mr. Waters, expressing my reservations concerning my ruling on the 804(b)(3) admissibility of the statement of Mr. Williamson.

And we sort of candidly discussed the -- I hate to use the word uncertainty, but it's not a real clear road map of some of the rulings in 804(b)(3).

We discussed the case of the State versus Staten S-T-A-T-E-N, and also State versus McDonald, and the various interpretations of 804(b)(3) all the way from the rulings that when a defendant seeks a hearsay statement he has a formidable burden of establishing that corroborating circumstances clearly indicate the trustworthiness of the statement, that the exculpatory evidence that is not corroborated with other evidence that surely shows its trustworthiness is excluded, and whether a statement has been sufficiently corroborated is a question left to my discretion considering the totality of the circumstances under which the declaration against penal interest was made.

And then we went into the discussion of the opinion written by Justice Pleicones in State versus McDonald that

centered on the proposition as to whether or not the statement was corroborated and the trustworthiness issue there, wherein they concluded that neither the making of the statement nor its truth -- corroborated in that case, but went on to say that the Court took the occasion to emphasize that the corroboration requirement contained in 804(b)(3) goes not to the truth of the statement's contents but rather to the making of the statement.

And in many instances it's not possible to separate those two but goes back to the making and not the truthfulness of the statement.

Of course, the State yesterday they argued that notwithstanding that portion of 804(b)(3), that they hung their hat on that no reasonable person in the declarant's position would have made the statement as it was made in this case.

We met again this morning. Once again, all of us discussed in chambers my struggle with my ruling. And, quite candidly, the State was also concerned with the facts and the application of the facts to this rule. And I understand from the in-chambers discussion that the State will reconsider the objection to that statement provided that they are allowed under 806.

MR. WATERS: Yes, sir, Your Honor.

THE COURT: Offer of witnesses which I think that rule

clearly allows to attack the credibility of the statement or the declaration.

Let me hear from the State on that.

MR. WATERS: Yes, sir, Your Honor.

We obviously made the arguments yesterday and we believe they are applicable but we all realize that we're kind of in unchartered waters here. And I think everyone wants to ensure that --

THE COURT: We want to ensure that Mr. Gerrick gets a fair trial.

MR. WATERS: Absolutely.

THE COURT: And all the rules apply.

MR. WATERS: That's correct.

THE COURT: And that's why I'm giving us the opportunity to go back and revisit.

MR. WATERS: That's correct.

And the State has that concern as well, you know. And we believe in good faith the arguments that we've made but as I've kind of raised throughout the course of this as we've addressed these issues, we believe that if the statement were to be admitted that the manner in which it was obtained and Mr. Williamson's statements about that would be admissible and we would be entitled to bring that out.

And that would be under Rule 806 which, again, states

that if a hearsay statement is entered into evidence, the credibility of the declarant may be attacked by any evidence that would be admissible for those purposes if the declarant had testified.

Which clearly the evidence that we proffered yesterday from Lieutenant Harley, we, of course, had the detention center officers who discovered the statement available. We also have Mr. Williamson's mother who we believe would speak on that issue. We believe all of that would be admissible.

And I have identified cases out there in other jurisdictions that have stated that when you're going under Rule 806 it is not then offered for the purposes of the truth of the matter asserted and it's not hearsay in that regard and therefore Crawford would not be implicated.

Additionally along those lines, I have a number of cases that talk about when you offer a statement not for the truth of the matter asserted but for the, to show the declarant's state of mind or provide context but that's not hearsay either.

So we believe for those reasons the circumstances of the statement would be admissible. And, finally, our just overriding claim in that regard would be just an issue of fundamental fairness given the circumstances that this was

under the, contrary to the interests of justice to give the jury a false impression and that kind of goes back to our 403 argument as well.

THE COURT: All right, sir.

So as I understand, the State will withdraw its objection to the statement providing that the impeaching witnesses for lack of a better term under 806 would be allowed.

MR. WATERS: That's correct, Your Honor.

THE COURT: Sustained.

All right. Mr. Williams, also we discussed in chambers the request, or not the request but the way to handle Williamson's invoking the Fifth Amendment. There's sufficient case law, there's a number of cases that hold that to bring him out to let him invoke the Fifth Amendment in front of the jury is not proper. And we both, we being the Defendant and -- defense counsel, State and me, we all looked at those cases in chambers and I don't think there's any question about that holding. Is that correct, Mr. Williams?

MR. WILLIAMS: It is, Your Honor.

THE COURT: Okay. Now, having said all of that, do we need to call, recall Agent Harley in front of jury, Mr. Williams, are you going to do that? Or as we discussed in chambers that sometimes when you get what you want you may

not want it.

It could be construed or it could be perceived by the jury to not be -- it may not be helpful to your client. Obviously that's a strategic -- a strategy that you have to decide. And you and your client may be at odds over that but you, you know, you're the captain of the ship when it comes to strategy. You do what you feel like is in your client's best interests.

You have Lieutenant Harley here ready to go.

MR. WILLIAMS: Well, Your Honor, as you are aware, there was a gentleman on the stand yesterday named Early Glover who basically testified that he wrote a statement that was false for my client.

And while we disagree with that testimony, I'm concerned about the cumulative effect of having another person coming up and being attacked especially in light of the testimony that's come out, that that statement of Mr. Williamson was found by Mr. Gerrick in his cell. And that Mr. Williamson's not going to get up on the stand himself today and testify and that I can't call him to get him to testify.

THE COURT: Well, he testified yesterday --

MR. WILLIAMS: He did.

THE COURT: -- outside the presence of the jury and unequivocally invoked his right of self-incrimination.

MR. WILLIAMS: He did. And there's no question about the case law that says I can't call him just to have him do that. So I'm left with the issue of just calling Agent Harley to put that statement in and then it being attacked.

THE COURT: Well, that opens to the door to the 806 witnesses including Williamson's mother and other people at the jail describing how they found it, where they found it.

MR. WILLIAMS: It does.

THE COURT: Which could be construed to the jury to be similar to the Early Glover testimony.

MR. WILLIAMS: It does. And, you know, I will tell you that it's my belief that it's not in my client's best interests to call Agent Harley back to the stand. So I'm not going to do that.

I will also tell you that he does not agree with me. And if you wish to address that or if he wishes to address that I'll let you.

THE COURT: That's understandable. That's not unusual in criminal cases.

And as the Supreme Court has said, we can't let the tail wag the dog. Obviously you are an experienced trial lawyer. You've been around, not as long as I have but a long time. You've tried many a criminal case and

sometimes the advice that we have to give our clients doesn't suit them. That's just the nature of the position you're in. And I respect that.

All right. Ready to commence final arguments?

MR. WATERS: Yes, sir, Your Honor. As I requested, I just need a moment to get my exhibits in order.

THE COURT: Fine. Are you going to open on the law?

MR. WATERS: Yes, sir. Just very briefly.

And, Mr. Bamberg, could you help me make sure the technology is working?

(Pause.)

THE COURT: State ready to proceed?

MR. WATERS: Yes, sir, Your Honor.

THE COURT: Mr. Williams?

MR. WILLIAMS: Yes, sir, Your Honor.

THE COURT: All right. Bring the jury in, please.

Ladies and gentlemen, y'all have been great as an audience. I ask you, please, once again, to remain as you have the whole week, no untoward behavior, please.

(Jury enters courtroom at 9:58 a.m.)

THE COURT: Good morning.

THE JURY (COLLECTIVELY): Good morning.

THE COURT: Sorry we're a little bit late getting started. We had some matters, we had a couple other matters that we had to go over and I apologize.

All right. Ladies and gentlemen, Mr. Foreman, we're now at the stage of the trial where the lawyers will present their final arguments. Final arguments are akin to the opening statement. It is not evidence in the case. Obviously you've heard all of the evidence. And you will determine what the true facts are from the evidence that you've heard.

The lawyers will -- in their final arguments, the State will go first. They will go briefly to open the arguments on the law in the case. That will be followed by the defense counsel, Mr. Williams, and then in rebuttal or response to that the State will be allowed final argument.

After the arguments then I will charge or instruct you on the law and then once that is done you'll be sent back to your jury room for commencement of your deliberations.

So I ask that you pay close attention to the final arguments and then once we complete that we'll move into the final phase of the trial which is my charge.

MR. WATERS: Thank you, Your Honor.

Well, here we are. This is the end. And just like the Judge stated, just so y'all know where we're going, the first thing I'm going to do is what's called opening on the law which means right now all I'm going to do is discuss some of the legal issues. I'm not going to talk

about the facts.

And then after that, Mr. Williams will get to stand up and he'll get to give his entire argument however he sees fit on both law and facts. And then at the conclusion of that, I'm going to get up and address the State's view of the facts in this case. Okay?

And the first thing that I want to talk to you about is the concept of murder. And, really, murder is a fairly simple common-law crime in South Carolina. And it's defined as the killing of any person with malice aforethought. The unlawful killing of any person with malice aforethought.

So there's really three things. You've got to kill, and then you have to do it with malice. And what is malice? Well, malice is defined under the law as sort of an evil intent, a hostility, a hatred, a bad intent, the intentional doing of a wrongful act without just cause or excuse with the intent to inflict an injury. Okay. So it's just a bad purpose is what malice boils down to.

And then there's the concept of aforethought. And aforethought means that that malice, that mental state, that evil intent, that bad intent that somebody has when they kill somebody, the bad reason that they do it for, that it has to at least exist -- it doesn't have to exist, like, a long time before. It doesn't have to be planned.

And it does have to exist before and at the time that the Defendant kills the victim.

But that could be a fleeting second before. Okay. And certainly if a crime is planned, if someone lures someone out to a location and kills them, certainly that would be aforethought because that plan, that deliberate action clearly existed prior to the actual killing.

Now that's really murder in a nutshell.

This case is primarily a factual case. It doesn't have extremely complicated legal doctrines to deal with. And that's really the crime that you're going to be asked to decide.

And the Judge will instruct you on the law and give you some additional instructions as well. And of course he's the ultimate judge of the law and he will -- he's the one who's the final word. But that's really what it boils down to. That's what you're going to have to address in this case: Was there an unlawful killing; was it done with malice, a bad intent, a bad purpose; and was there aforethought. And, again, something that's planned is malice aforethought.

All right. The second concept that I want to talk to you about is the concept of reasonable doubt. And you guys probably have all heard about that. And as you heard from the Judge at the very beginning of this trial, it's

the State's obligation to prove the Defendant guilty beyond a reasonable doubt. And that is an important part of our system. It is a fundamental part of our system. It's what makes us Americans. It's something that I believe in very strongly. It is a burden that we accept and we want because it's how the system should work.

And we have that burden to prove the Defendant guilty beyond a reasonable doubt. But one thing I want to tell you about reasonable doubt is that the emphasis is on reasonable. Okay. Reasonable doubt. Not any doubt. Not any conception you can create in your mind. Not any fanciful thing, as in the course of human events. There's few things that we can know with absolute certainty. The only doubt you're looking for is a reasonable doubt. Okay. As long as you are firmly convinced that the Defendant is guilty, then you should -- you have to convict him. That is your duty to do that. Okay.

And so don't let anybody tell that you a mole hill is a mountain and turn some small questions into something big. You just need to be firmly convinced that the Defendant did it. If you are, then you -- he's been proven guilty beyond a reasonable doubt and he has to be convicted.

And that leads me to my last point here which is about duty. And you probably recall when you first got here,

you got in here to jury selection and you're like, oh my gosh, what have I gotten myself into. And you're standing out there and maybe some of you were interested, saying I'd like to be selected and others were like, I really would rather be at work or at home or at school or wherever I should be.

And one of the first things you did though when you got selected was you raised your hand and you took an oath. And you took an oath to well and truly try this case. You took an oath to do your duty. You took an oath to follow the law as the Judge gives it and to take the facts that have been presented to you and to apply that law and to do your duty and come out with the result that is demanded.

And that's interesting because everyone here in this courtroom is essentially a public official. I of course took an oath, Mr. Anders took an oath to become attorneys. We took an oath to become prosecutors. Mr. Williams took an oath to become a lawyer as well. And the Judge took an oath to become a lawyer and took another oath to become a judge. And you guys took an oath as well. And what an oath commands you to do is to do the tough work, is to make the tough call, is to do the right thing. Because you now have that duty. That's a duty that's upon you.

And the reason why I bring that out is because nobody ever says when they say I did my duty, they never say that like, well, yeah, I went and I watched pizza (sic) and watched football with my buddies. I did my duty. Nobody ever says that. Oh, I went shopping with my girlfriends. Nobody says that.

And everybody says -- if somebody says, I did my duty it was because they did the right thing, they did the tough thing, they did what was required of them and they made that tough call. And that's what we have here in this particular case.

Winston Churchill, y'all may remember who he was. He was the leader of England during World War II. And that country, the rest of Europe had fallen and England was about to be overrun by the Nazis. And he rallied that country back from the brink of losing World War II.

And one thing that Winston Churchill said was that jury duty is the highest service that a citizen can perform for his or her country aside from military service. Again, we're talking about Winston Churchill who was a leader in World War II. So I think he knows something about public duty.

And so while it is an important part of the system that you assess whether or not there's reasonable doubt, that is certainly a part of it and again a burden that we

want. But the other half of that is, the other half is that the system depends on people who are willing to make the tough call, who are willing to do their duty and do the right thing and find people guilty and not cop out and do what is necessary to do the right thing and see that justice is done.

Okay. All right.

I appreciate y'all's attention. I appreciate your attention all week. I'm going to turn it over to Mr. Williams now and then I'll speak to y'all at the end.

Thank you.

THE COURT: Mr. Williams?

MR. WILLIAMS: Thank you, Your Honor.

THE COURT: Good morning.

THE JURY (COLLECTIVELY): Good morning.

MR. WILLIAMS: When I stood in front of y'all Monday and told you there was some things that we were going to agree on and there was some things that we knew had happened, and that there was some things that was unclear, and here we are on Thursday and let's go through some of that.

Let's talk about first what I think we can all agree on what happened in this case. It's clear that Tyrone Donaldson and Sammie Gerrick are friends. And it's clear that Tyrone went to help him and went and bailed him out

of jail.

And he got $3,300 of his own money. And he got $3,300 of Maurice Williams' money. And they both agreed that they would bail out Sammie. And he goes on 7-21, July 21, to Bamberg. And he gets him and he brings him home and he takes him to his house. That's clear. That's obvious.

It's also clear and obvious that Tyrone leaves him there. Then goes to his house, changes his shoes, gets his shotgun, gets back in his car and goes back to Sammie's house.

Now, the shotgun's missing. We don't know where it's at. There was unknown shotgun shells found at the scene. We don't know where they're at. There's no forensic evidence on the unknown shells or on the shotgun case that's found in the car in Bamberg. There are unknown fingerprints on the trunk of the car where that shotgun case was at. We know that.

Let me go back to 7-21. Tyrone gets Sammie. Sammie and Tyrone go to the bank. Tyrone cashes a check. Sammie cashes a check. They go to Junior Food Mart. They're seen out, going toward the country. We know that happened from witnesses.

That's where it breaks down. That's where there are conflicting stories about what happened.

The State would have you believe that Sammie lured

Tyrone out into the country. Based upon what Maurice Williams says, they were going to dig up a safe. Remember that? A safe buried in the woods that had between a 160- and a $190,000 in it. That was the evidence. You've got to decide whether that story makes sense.

Now, I don't know Tyrone but he seems like, from talking to his family, he was a reasonably intelligent, sensible person.

We know Maurice was. He's college educated. He's a grants accountant at Denmark Tech. Are they going to believe the story, especially in light of the fact that they know Sammie's in jail and he doesn't have the money to get out of jail, especially in light of the fact that they know that he's got bill problems. All right.

It's obvious from the evidence that he had bill problems. He's behind on his probation. He's behind on his child support. He was in jail because of child support. All right. He tried to leave child support court. We know that.

You've got to decide whether you think that story's believable.

And then the story is that Sammie somehow kills Maurice -- kills Tyrone. Remember, there's no marks on Tyrone's body when he's found. That he somehow buries this big man, he's a 270-pound man, out in the country.

All right.

There's no DNA evidence that connects Sammie to this. There's no other evidence that connects Sammie to this other than the conjecture that the State would have you believe.

But remember this. There was also a nurse that testified that Sammie comes back home, at his home at eight o'clock. And she's pretty observant. Ms. Taylor White. She says, Sammie's wearing a brown and a white shirt and jeans. There's a picture in evidence of that shirt when he's at the bank. She says he's clean. He's not dirty. She's observant.

This is a man who the State would have you believe just dug a grave on a 90-plus hot degree day in the middle of July in Barnwell County. Yet, there's no dirt all over his body. She doesn't see that. She's observant enough to tell you the exact kind of shirt that he has on but she sees no dirt on it.

I don't understand that. I don't understand how that is consistent with the story that the State would have you believe.

I've had problems trying to figure out how you have a man who's severely decomposed, yet there are green leaves in the grave. And there's pictures of those in evidence that you can look at.

So you've got to ask yourself when you hear all of this, does that story make sense.

And Sammie told you a different version of what happened. He told you about going out to Sunshine Road and going to Andre's house. Jeff Croft confirmed that Andre lived out off Sunshine Road. Okay.

He tells you that they're out in this wooded area and that Andre and O'Shane grabbed Tyrone and the fellow named Big Joe started hitting him. And then he tells you that he left. And he went back to town and told his daddy about it. And you've got to ask yourself honestly, does that story make sense.

And, you know, I would be remiss if I didn't tell you I had about three questions in my mind about that story also. The first question I had in my mind was, you know, he's got this ATM card. All right. How did he get this ATM card?

And that question may be going through your mind also. Well, the problem I got with that is he had, he had the PIN number. People don't give their PIN number out unless they want you to use their card.

The other problem I got with that is that Sammie, when he's using this ATM card or debit card, he didn't sign Tyrone's name on it or somebody else's name on it. He signs his own name. What person trying to steal money

using a debit card is going to sign his own name? So, can you believe that maybe Tyrone gave him the debit card?

The second question I have -- and I think maybe you can. The second question I have was about the car, and why he would take the car from the grave to Orangeburg. Well, he said he was scared. And that's what he told you on -- or that's what you got through the testimony of Jeff Croft and through the video that y'all saw. And should he have been scared if a drug deal was going down and if there are drug dealers out there looking for him, who had just harmed his friend? And the answer I think is yes.

And that brings you to the third real question. Sammie, as y'all know, told two different stories how this happened. And I guess that's the problem that I've wrestled with in this is why he did that, and how do I communicate to you that at least on his last story he was telling you the truth.

So I can understand if y'all struggle with these things. But let me tell you a story that I remember from childhood. And all y'all probably remember it too about the boy who cried wolf. Remember that? A boy's out watching the sheep. He's bored so he yells wolf-wolf. And all the people in town come out to the field. And he laughs and says, ha ha, there's no wolf. A week later he does the same thing and about half the people come out and

he says ha ha, no wolf. And third time the wolf really comes. And he's telling the truth, and nobody comes because nobody can believe him.

Sammie's got himself in the same predicament as that boy.

That's why Jeff Croft got on the stand and why Agent Harley got on the stand and said, you're coming to us now with this thing? Why didn't you tell us up front? You told us all these different stories.

He's just like that boy. He's finally telling the truth but nobody wants to believe him because of the inconsistencies before.

Now, should you give him the benefit of the doubt this time? Remember what he looked like on that screen that you saw yesterday? How shaken he was, how upset he was. Jeff Croft confirmed that. He was finally facing what had happened on that day.

That story makes more sense than the story about a safe buried in the woods. I don't know anyone he would take 160- to $190,000 in a safe and bury it in somebody else's land. And I don't know too many people, especially people with a college education, who would believe that kind of story. That story makes absolutely no sense.

And I honestly think that if Sammie had been straight up, and up front before, you wouldn't believe this story

either. But you're faced with those two stories and you don't know whether to believe Sammie now or this other story.

Sammie's story makes more sense and it makes sense that he would tell falsehoods to begin with because he was scared also. He was scared he could be harmed. And that's why they found the note in his truck because of that fear.

The Judge is going to charge you on the law in a bit. He's going to talk about reasonable doubt. He's going to tell you a reasonable doubt is a doubt that will make you hesitate to act.

When you get back into your jury room I would like you to think about those two essential ways that this thing happened. And if you're having the same problem I'm having with this safe story and about whether that's believable, if you would think Sammie Gerrick would actually have all this money hid somewhere yet have all these bills that he's got pay, then maybe that story's not believable.

Maybe the State just doesn't have it right. And maybe the reason Sammie's gotten himself in this position is because he just didn't own up to his misdeeds of being involved in this drug transaction to begin with. If he had just come clean to that, maybe he wouldn't be here

facing a murder charge.

He should have. I can't apologize for him. It was wrong. He shouldn't have done that. What's done is done.

But his story, when you weigh it to the safe buried in the woods, it's a lot more believable. When you get back into your jury room, ask yourself what about these green leaves. Ask about the fact that there's, what about the DNA evidence and blood evidence? There's nothing that ties Sammie to killing Tyrone in that regard. No scientific evidence does that.

And, ladies and gentlemen, after today if you're not sure about what happened, the one thing worse than a murder is sending somebody to jail for something that you're not sure they did.

And, yeah, you got a duty to do your job and find him guilty if you believe beyond a reasonable doubt he did it. But you've also got a duty to find him not guilty if you're not sure beyond a reasonable doubt.

I don't get to talk to you again after the prosecution gets up. So, please, when you get back in that jury room, think about what makes more sense. Think about what is most likely true. Think about whether that story shakes out with your own good common sense.

Thank you.

THE COURT: Ms. Peeples, do you want me to get you a

chair down here? It might be a long stand.

MR. WATERS: Yes, ma'am.

THE JUROR: Okay.

(Pause.)

THE COURT: Can everybody see?

MR. WATERS: Common sense, everybody, common sense. That's the first thing that I want to say to you guys and we'll get to the exhibit. I just wanted to make sure it was working. But that's the first thing I wanted to say to y'all is common sense because that's what we have juries for. That's the beauty of the system that we have is that we get 12 folks out of the community who collectively are going to put their common sense together to make this decision. And that's what we want from juries is we want the exercise of common sense.

And this is a particularly important concept in this case as we deal with the many twists and turns of Sammie Gerrick over there.

And we've heard a lot of evidence. And I think that the main thing that you can do is do exactly that. When you consider this case is to look at it all with just plain good old common sense. The kind of common sense that you use every day to make decisions and make judgments about things that are in your life. It's no more complicated than that.

And really I think the defense pretty much concedes that this was murder. That Tyrone was murdered. And what they say is that he didn't do it. So that's really where the rubber meets the road here. That's what we're here to decide.

And when people are looking to solve crimes, when they're looking to determine who done it, they usually look for three things. The first thing is motive. The second thing is opportunity. And then the third thing is guilty acts, guilty conduct, guilty consciousness.

And those are three things how you can look and determine whether or not somebody is guilty of what they're charged with.

And I'm going to start, first I'm going to talk about motive because we're going to through those. And the first thing is, is motive. Why would someone kill. That's what motive is. Why would someone kill. Why would Sammie Gerrick kill Tyrone? And it goes back to the first thing that I told you on the opening day of trial. Greed, selfishness. Selfishness, the concern for one's own self and one own's problem over anything else. The need for money. The need for money. The oldest motive in the book.

And what evidence of motive did you hear? Well, you heard three main things. Number one, you heard that

Sammie Gerrick was in jail and he wanted out. He had to pay $6600 to get out.

And you heard from Maurice, the young man, the grants accountant at Denmark Tech who had worked there for years who had saved up his money for a house payment and he was contacted by Sammie and he talked to Tyrone and they agreed to loan the money to get Sammie out. $3,300 apiece.

And you also if heard from Johnell Rice who was the officer there who facilitated Sammie getting in contact with these two men. And you heard Maurice say that Sammie promised to pay them back as soon as he got out.

And they believed what Sammie said. And it was the worst mistake that Tyrone ever made.

So that's the first thing. He's in jail.

The second thing for the motive is he needs more money. And that's what this exhibit shows. This is the exhibit from John Burnett, the investigator who interviewed him. And you recall the tape. He was a retired investigator. And he kept asking Sammie about that. Well, Sammie, if you have money, if you had this money, why did you need to borrow money. It doesn't make any sense. And he had Sammie write down that not only did he get the $6600 to get out of jail but write down the money that he spent with Tyrone Donaldson's credit card or

ATM card the next day.

And what was he paying? $700 for the light bill. $300 for the house note. $300 for his probation. And then some other items that he needed for his cars. Okay. Over a thousand dollars that he spent to pay his bills to get his bills back. So he not only needed to get out of jail, he had bills he needed to pay. He had bills he needed to pay.

And he used Tyrone's ATM card to do that. He used Tyrone's ATM card to do that. We put in, and you heard from Angela Cotton. And she put in all those transactions. Those are in the exhibits as well that you can look. He was using that man's ATM card the day after he disappeared off the face of the earth.

And you heard multiple people say Tyrone would never loan out his debit card. He would never do that. And I know the defense says, well, how did he do that? He signed his name on there. He had the PIN. He had the PIN. Well, Sammie Gerrick knew what's up. He can't use that card. He knows everywhere you go there's a camera. Every ATM machine there's a camera. He knew that.

And as we hear from the start all the way to the finish Sammie has an answer for everything. When he knows there's something coming, there's evidence discovered that he has to explain, he comes up with answer for it. It

might be different than what was before but a classic person who tells falsehoods, a classic liar.

He tells this story and then when he finds out, well, you can prove this, well then it moves this way. And then when he finds out you can prove this, then it has to move a little farther. And then when he finds out you can prove that it has to move a little farther. That's what you start to see in this case from start to finish with Sammie Gerrick.

Okay. He knew he was not going to be able to use that credit card. They would have him on footage using it so he had to just say, hey, the man gave it to me. He gave me his card and I said, see you later, man, I'll see you later. And then I never saw him again. That was the first thing he said. That's the first thing he told Chief Holston when they asked where, what happened to Tyrone. You know what happened to Tyrone? That's what he said. Yeah, he gave me his ATM card, you know, let me use it and I haven't seen him since. That was his first story.

He gets out of jail. He needed some more money to pay bills. We're still on motive. The third thing is he has to pay it back and he can't. If he had any money he wouldn't be using Tyrone's card the next day. And Maurice said that he got a call at one p.m. from Tyrone saying that he had Sammie out of jail and that Sammie said they

would be paid. They were going to get the money.

At two p.m., he gets a call says, we're going to get the money. And Sammie says, hey man, I'm going to bless you. I'm going to give you a little extra something for helping me out. Okay. He's promised these guys to get out of jail and he had to get out of jail right now. So he told them all whatever they needed to hear.

Just like Early Glover got told. I'll give you a thousand dollars if you fake a statement for me. Same thing here. Same thing here. He told them whatever they would hear. Yeah, man, I'll pay you back. I got money. I'll pay you back. And they got him out of jail. So he's got to pay them back today, and that's what he's telling everybody. Okay. He's got to pay them back and he can't. That's your third evidence of motive here.

Tyrone doesn't know it but he's on his way out to his death because Sammie can't pay him back and he needs more money as it is. And it's all about Sammie. It's all about just what Sammie needs and Sammie wants. Sammie's selfishness is why Tyrone is dead.

The next thing aside from motive is opportunity. And what does opportunity mean? It means you had the ability to commit the crime. You had the opportunity to do it. You were within the area of where the crime occurred and you're one of the people who could have done it.

And, you've heard tons of evidence, tons of evidence that Sammie had the opportunity. I'm going to go through all of that right now and it's very important.

First of all with Maurice. Had the call at one; I got Sammie, going to get your money. Had the call at two; talked with Tyrone and Sammie, we're on the way out to get your money. Okay.

That's the last time anybody ever talked to Tyrone. The last time anyone ever talked to Tyrone. Tyrone and Sammie said, yeah, they were together and they said we're going somewhere together. We're going to get your money. The last time that Tyrone was ever heard from alive he said, I'm going with Sammie Gerrick. That's who I'm going with.

But that's just not from Maurice. It's also Bradley Smith, the son of Claudette, Sammie's girlfriend, said that Sammie comes over and gets two shovels. Okay. He gets two shovels. Mr. Williams wants you to believe or Sammie wants you to believe that last story he told, but there's nothing about shovels in that story.

He goes and gets two shovels. Well, you know what's out in that woods out there? A hole with a dead body in it. Okay. Bradley Smith says, Sammie Gerrick comes and gets two shovels, gets in his truck, goes off and Tyrone goes off right behind him. Two shovels.

You got Shaneka. Shaneka saw them in town about three p.m. Saw them talking together. Saw Sammie waving his arms around and speaking very rapidly. And then Sammie went off and then Tyrone went off. So you got them together.

And then you got Joe Thomas. Okay. You got Joe Thomas who was the individual who came up here and he said he called Sammie just to mess with him. And Joe Thomas said, I called him about 3:05. And we had Joe Thomas identify where he called him.

Right here. Okay. There's the number that's calling. This is the reception number. Here's the date, 7-21-2011. I know you can't see it very well. 1505, 3:05. Joe Thomas says, yeah, I called him at 3:04. He called him at 3:05. That's it. He said, I saw Sammie going by and another car right behind him and I called Sammie. And there it is, right there in the phone record.

Another thing Sammie later said, oh yeah, I went over to Joe Thomas's. I had the shovels because I wanted to get some sand. And Joe Thomas said, that's a lie. He sat right there and said, that's a lie. That's Sammie's friend. He said, no, there ain't no sand around my house. He didn't come over to get any sand. He came right on by.

Another lie by Sammie Gerrick over there.

Okay. So you got, you got Bradley seeing him leave with shovels at two. You got Shaneka and Joe Thomas seeing them together about three p.m. and the other thing is that Joe Thomas lived on Izlar Extension. And, you know, that's not too far from the scene. I think he testified it was a couple miles from the scene. And Sammie's going on by, heading that way.

But then we have Sammie and Tyrone's phone records. Okay. And I'm going to talk a little bit about these phone records because they're interesting. And I had the people come up. I had Agent Hines come up and testify about how these towers work. I had the lady from Verizon, Alltel, who came up and talked about these records, and about how those towers are marked on these particular records. Okay.

And the reason is is that you can't tell exactly where somebody is, but you can tell roughly where they are. And, again, in rural areas you can kind of stretch out farther. When those maps -- as the agent testified, it's not like those maps are a hard area. But it does give you an idea of where somebody is. All right.

We've got Tyrone's records here. Sammie's number is [redacted]. Tyrone's is 671-0064. These are Tyrone's records right here.

Give me second to zoom in and see if I can focus to see if you all can see better.

All right. These are the last four calls that Tyrone ever makes in his life. [redacted]. Sammie. Tyrone. Sammie. Tyrone. Sammie. Tyrone. 1511. Okay. Those are the last four calls that he makes in his life and after that he drops off the face of the earth, never to be heard from alive again. That's it. Okay. He's gone off with Sammie. The last four calls he makes are with Sammie. And -- right there on those records.

And then if you look at Tyrone's records -- I'm sorry. If you look at Sammie's records. We show you Sammie's records now that we can see better. Here's Joe Thomas at 3:05. Okay. These are all Sammie's numbers right here. And we get up to here to 1533 calling Tyrone right there. 1533 is his last call right there and then Sammie goes off the grid for two hours from 1533 on 7-21-2011 to 1734. Two hours Sammie goes off the grid. And Tyrone after having those calls is never heard from again.

And where are they? Where are they? Let's look at the tower information right here. These calls are 752 -- 1752, sector one. And you heard from the agent. This is the map of Blackville right here. 1752 sector one is this

east section. And you saw where Agent Croft marked the approximate location of the crime scene.

Okay. Opportunity. Hard evidence they were together.

And also, Sammie likes to make a lot of calls. Look at that. Look at all those calls. Look at all those calls during the afternoon. And then right here, 1533 around the last time that Tyrone makes his last call, Sammie's off the grid for two whole hours before he makes another call.

What do y'all think Sammie Gerrick was doing during that two hours? He was killing Tyrone is what he was doing.

These are Tyrone's texts. And you heard the lady talk about delivered. This is the time it comes into their server, not necessarily the time it goes out there. And then once it comes into their server it tries to send it out to Tyrone's phone. Deliver. Deliver. Deliver. Deliver. Okay.

But, if it can't send it out to the phone, then the server keeps trying for a few days and then eventually it declares it undelivered. And why could it not be able to deliver that text message? Well, because the phone is destroyed, the phone is off, or it's out of any service area. And right around the end time of that two-hour period that I just showed you with Sammie, Tyrone's phone

goes from delivered text to undelivered forevermore.

What was Sammie doing when he was off the grid for two hours? He was killing Tyrone.

Opportunity. Motive. They're both here. And they both point conclusively to that man over there, Sammie Gerrick.

But that's not it. That's pretty strong as it is. The motive is there. No one else had the motive that day Tyrone disappeared. The opportunity is there. Nobody else had that kind of opportunity. This kind of hard evidence of being together. This time off the grid. Nobody else had that except Sammie Gerrick. We have the strong evidence of motive. We have the strong evidence of opportunity.

But that's not enough because we also have the third thing, and it is overwhelming. And this man has so many guilty acts it just adds up. And we're going to go through them all.

But you got the motive. You got the opportunity. And now we've got the guilty acts. What are the guilty acts? The acts to conceal, to lie, to cover up, to divert attention, to lie.

And it comes back to what I said at the beginning, common sense. Look at this with common sense. What does your common sense tell you happened here?

The first -- before we go through all Sammie's guilty acts, let's talk about Tyrone and what you all heard about Tyrone. Tyrone was a family man. He took care of those kids, two young kids and his teenage sister. He cooked for them. He cleaned for them. He did their homework. The family and the friends said Tyrone wasn't doing any drugs. Tyrone was not into any drugs. The officer said, we looked into it. Tyrone wasn't in any drugs. The pathologist stated that she sent out his tissues to be tested for drugs, for intoxicants, and came back with none. That's scientific evidence that Tyrone wasn't into any drugs.

His friends say that. His family says that. The officers say that. And the pathologist says that. Tyrone wasn't in any drugs. That's just another lie by Sammie Gerrick to, not only, sully the name of the man he killed.

They said that he would not be one because he had those family responsibilities, he would not be one to just disappear and not call, to not let people know where he was going.

He was not one to just loan out his debit card. This is the kind of man we're talking about.

And Sammie's story doesn't fit with that. It does not fit with that. You haven't heard one person say a bad word about Tyrone except Sammie Gerrick trying to save his

own hide.

But let's talk. And let's go through all of Sammie's guilty acts. And y'all bear with me. The first one I want to talk about is Maurice. And the defense made a big deal, made a big deal about this story makes no sense that Maurice and Tyrone believed that he had a safe with a $190,000 in it.

But the defense is wrong. The defense has got the evidence wrong because Maurice never said that. What he said was, was that Sammie said he had our money and he was going to pay me back when I got off work. And it wasn't until eight o'clock when I found out Tyrone was missing and I go talk to Sammie.

I go talk to Sammie and I say, Sammie, what's up. And Sammie says, me and Tyrone went out in woods and dug up this safe I had that had $100,000 in it. And I gave the $100,000 and I took all of it and I put it in Tyrone's car and Tyrone kissed me on the forehead (makes air kiss) and then he drove off.

That was what Sammie told Maurice. Maurice hadn't heard that until Sammie said it. The defense has it entirely wrong when they're saying don't believe the State's theory, the State's theory's wrong. But that's not what the evidence was. All Maurice was told was that he was going to get his money back at the end of day. And

then when he hadn't got his money and went and asked Sammie Gerrick about it, Sammie Gerrick came up with that story.

So I agree with the defense. That story is unbelievable because it was come up with by Sammie Gerrick. And what did Maurice tell you? He knew it wasn't true. He got scared. That's what he sat right there and told you. He heard that story from Sammie Gerrick and Tyrone isn't calling anybody and everybody knows that Tyrone doesn't go off the grid like this. And he got scared and he called his friend Jamaal Berry. And he was scared. He put his gun in his pocket because he was the other guy. Tyrone's already off the grid. He's the other guy. He's the other guy.

So the defense has it completely wrong. So when they ask you to go back and say, this is the State's theory, this was Sammie Gerrick's first lie, that makes no sense whatsoever and it made no sense to Maurice and he got scared because he knew something wasn't right right then and there. And then he told you that from the stand. He told you that from the stand.

And the interesting thing about Sammie's first story, that he and Tyrone went out into the woods and dug up the safe, is that it does fit with two shovels. And it does fit with what happened to Tyrone.

Because you know what Sammie did? That's the story he told Maurice initially. That's the story he told Tyrone, too. That's the story he told Tyrone, is the money's out in the woods. And you know what he did? He made Tyrone go out there and help dig his own grave.

And Maurice asks him when he sees him that night, asks him and he tells him that story. And Maurice gets scared because he knows it's not right.

Sammie Gerrick's first lie.

And then Sammie Gerrick, while Maurice is standing there, gets on the phone like he's a concerned friend and says, where are you classmate.

That's who he is. That's what we're going to see from start to finish with this. Constantly trying to manufacture evidence to conceal, to divert, to cover up. And who does that but a guilty man? Does an innocent man do that? No. A guilty man does that.

Motive. Opportunity. And guilty acts.

Well, the next day Maurice talks to him and Sammie says, oh hey man, you know, I'm working on getting your money back. This is on 7-22. The third lie.

We're up to three lies. Let's move on.

So, 7-22, the next day. Nobody's heard from Tyrone. They call the police. Chief Holston gets involved. He talks to Sammie Gerrick. And Sammie Gerrick tells his

first story to the police which I mentioned before. Oh, yeah, yeah, the victim gave me his ATM card and then I haven't seen him since.

And, again, he has to say that. You can't use an -- Sammie Gerrick knows that. Think of all the things that he's done in this case to try to throw people off the track. He can't use that card anywhere unless he says he had permission to. He can't do that.

And why -- let's go back to the story he told Maurice. Why in the world do you think he told Maurice that I had a safe with $100,000 in it or $190,000 in it and I put it all in Tyrone's car and he kissed me on the forehead and drove off? Do you think he took my money? Why do you think he told him that story?

He told him that story because he was hoping people would believe that Tyrone said I got 190 grand, I'm going to Mexico. And that his body would never be discovered out in those lonely woods. That's why he told that story. That was the first thing he thought was going to work.

And then, oh well, Ty, you know, he gave me his ATM card because he ran off with 190 grand. That's what he thought was going to work. But as we're going to see, as the police discover more and more evidence he has to change his story. He has to move. He has to bob. He has

to weave.

But he says that -- he tells Chief Holston, yeah, Tyrone gave me his ATM card because he was holding some money for me and I haven't seen him since. Why in the world -- if Tyrone was holding money for Sammie, why in the world would it have taken him so long to get out of jail? And why in the world would they need Maurice to loan money? If Tyrone was holding money for Sammie, why would they need Maurice?

It's just lies.

Lie number four.

Then we get to that evening when we get to the mysterious texts that came in from the track phone. The texts that came in to Kelsea, Tyrone's teenage sister, and came in to Maurice, and it came in to Jamaal. All right. And it came in. And as we'll see, it came in on a track phone which is one of those pre-paid phones that doesn't have any billing subscriber information and I'll show you that in a second.

And really, first of all -- and of course the text said something to the effect of, help this is Tyrone Kim's ex got me need help. Something like that. Right? And of course the whole thing of that is ridiculous, that Tyrone's been kidnapped but the kidnapper's or I guess Kim's ex, the kidnapper, gave Tyrone a cell phone which

hasn't been used, a track phone and then he set it up and somehow allowed him to then send a message ratting out his kidnapper but with no ransom demand or anything like that. I mean, it was absurd. It was absolutely absurd.

But what we can do though in this case is we can show it was Sammie Gerrick over there who did that. And we can do it two ways -- three ways. Three ways.

The first way is what you heard from Maurice. You heard Maurice say, I got that text and it occurred to me that the person said am hurt, A-M hurt instead of I'm hurt, I apostrophe M hurt. And normally that wouldn't be a big deal but he got to thinking about it and he looked through his texts and realized there was only one person that he got texts from that did that. And that was Sammie Gerrick. Okay. That was Sammie Gerrick.

And he showed you those texts. Here's the texts that he got that he forwarded to Agent Albayalde. That's the mysterious text from the track phone that purports to be from Tyrone but nobody had ever seen Tyrone use this telephone number before. Help me Tyrone am hurt Kim ex got me help please.

And then he showed some other texts that he had gotten from Sammie Gerrick. Man am worried. Not, I'm worried.

And then this one. Since they playing games with me am meeting. Am again. Those are texts from Sammie

Gerrick.

But it's not just those texts from Maurice. And here we go. Here's the text from Kim. This is -- from, excuse me, from Kelsea. These are Kelsea's records. Here's the one she got. This Tyrone Kim ex got me am hurt am in Orangeburg help me sister in law.

And then we've got Sammie Gerrick's text. These are his records right here. And I'm going to show you some of his texts, okay, because not only do we have the couple that Maurice sent where he used the word am, but I'm going to show you some here because he uses it all the time. That's a Sammie-ism. There's a few Sammie-isms. He uses it all the time. All right. Right here; am out. Am out. I told you my body was down am at Bamberg getting my leg and stuff checked. Man am worried. There's the text that we showed from Maurice. Am worried. Tyrone sister says am to blame, not I'm to blame. Tyrone sister said am to blame because he came and got me. Am good. Not, I'm good; am good. Sammie, Sammie does that.

Here's his written statement. Right here. It said, please help me man am down. Am down. Okay. Not even in text. In writing. Okay. You heard the defense ask, well, yeah, people do abbreviations. Yes, they do. Absolutely, they do. He does it all the time. Am, not I'm. Am, not I'm.

But, you know, you know who does spell I'm I apostrophe M, the way it's supposed to be done? Here's Tyrone's text. Here's the last text or some of the last texts when he told Kim that he loved her and they talked. This is her. She says am alone must have been no good because I didn't get no good morning phone call. And he responds to her, I'm, I'm sorry you know your loving good at the Unemployment Office my love. I'm sorry. We got a text from Tyrone right there. He doesn't use am. He uses I'm, the way it's supposed to be. And she says, okay baby love you.

And then Kim says, might go to the revival tonight at the church do you want to go with me. Doesn't get a response. And then, where you at. She wasn't going to get to talk to him again.

All right. So, Sammie, Sammie doing I'm. Sammie. Sammie. Sammie doing I'm -- or am, not I'm. Ty does I'm. All right. So that's one way we know it's him.

But we got another way as well. These are the track phone records. Okay. This is the mysterious number from which the text came. Again, a track phone is a pre-paid phone.

So, I mean, that's why they have them really. You can't trace who owns them. You can see right here the information's track phone. The billing party's track

phone. The user information's track phone. So you can't tell whose records they are.

But what we can tell is we can look on this last page here. All right. And these are really the only records that we have on that track phone and we have all these text messages. And let me move it over, and I'll show you.

We have some texts to Jamaal starting right here and then these last three are the texts to Jamaal, to Kelsea and to Maurice. Jamaal, Maurice, Kelsea. I had it backwards. Jamaal, Kelsea, Maurice. Those three texts right there. All right. Those are the help-me-am-hurt text that are purporting to be from Tyrone.

And what we see here is with these texts, and remember what Agent Hines told you. He told you that these numbers right here are longitude and latitude and then this number right here is the way it's pointing. Because, remember, you know, it's -- 90 degrees would be that way, like a compass. And so all of these are the same up to this point. And then you've got the last three right here. All right. Those last three right there.

And what he told you, and he looked, and we saw the map. We saw the map of the AT&T towers because, remember, the phone records for Tyrone, for Kelsea, for Sammie are all on Alltel which used different towers. But the track

phone was on AT&T. Remember what Agent Hines said. He's said, I'm at these two towers based on this longitude and latitude. And you can see right here, you can see where he mapped it. Those digits, just like were on the record itself.

And what we get -- and what he also told you is there's not an AT&T tower in Blackville. He said, as a matter of fact I was driving through on the way here to testify and I have, my personal cell is AT&T and I lost service. Okay. And then he also told you that because, see, these are not going to connect to AT&T -- or to Alltel towers. He also told you that in rural areas, first of all these circles -- sorry. These circles are not hard lines. He just has them as a radius to indicate the sector, but that in the country where you're not going to have the overlapping tower depending on the terrain and the topography, you can actually stretch out long and long and long before you finally lose the signal because there's no competing towers.

And probably all of us have had experience with that as we start to drive down a country road and we got five bars, we got four bars, we got three bars, we got two bars, we got one bar, and then, boom, we're off the grid and then it just says searching. Okay. So that's how that works.

So what we see -- and I wish I could -- I'll just hold it up. What we can see right here is we've got the Williston tower and the Denmark tower and Blackville in the middle. All right. And all these texts right here are for these coordinates down to right here, are pinging off this sector, this little part of the pie chart, on Denmark.

And then the last three texts are pinging off of this part of the pie chart on Williston. And, again, because there's no tower in Blackville, if you're closer this way you can pick up Williston. If you're closer that way you can pick up Denmark. All right.

Why am I doing all of this? What am I trying to show? Well, I'll tell you. We look right here. And we look at all these Williston texts -- or, excuse me, the Denmark texts. 8:39 down to 8:49, 10 minutes. 8:39 to 8:49 and those are all pinging off the Denmark tower.

Well, let's take a look at Mr. Sammie Gerrick's personal cell. Where is Sammie Gerrick when that track phone is going off? So we had 8:39 to 8:49, pinging off the Denmark tower for the track phone.

We look right here. We've got 8:12 and 8:55. 1709. 1709. 1709. 1709. He was, at that particular hour, the eight o'clock hour, the same time the track phone was pinging off of the Denmark tower, Sammie Gerrick's

personal phone was pinging off of 1709. And, ladies and gentlemen -- let me get the right map.

Where is Sammie? Where is Sammie when that track phone is pinging off of Denmark? 1709. He's in Denmark. He's in Denmark.

So we got the am, not the I'm which Tyrone doesn't do. And we've got him in Denmark at the same time that that track phone is pinging off of Denmark.

And if you look at Sammie's records, he's not in Denmark very much. Bunch of 1752s. And then we got 1709 right, right when that track phone is pinging there.

But the third thing about this. Okay, number one, we got am; number two, we got him at the same place as the track phone was pinging; but number three is what he said when they called -- when Jamaal called -- when Maurice called when they got that text and called Sammie Gerrick over there and they said, man, we just got this text that says, Kim ex got him and he's hurt and he needs help.

And what was his response? Was his response, oh my God, we got to do something about that; or oh my God, I can't believe it? No. His response was, see, I told you. Wasn't me. Maybe this will take some of the heat off of me. It was a setup, man. He's just making that up trying to throw people off the track. That was the first thing out of his mouth. His friend's supposedly missing and the

first thing out of his mouth is, see, I told you it wasn't me. It'll take the heat off me. Why? He set it up. He knew he just sent those texts. He knew he just sent them. He was waiting for the call to come so he could say, see, I told you it wasn't me. Somebody else. Who does that but a guilty man? Does an innocent man do that? Common sense. Who does that but a guilty man?

Motive. Opportunity. Guilty acts.

Lies five, six and seven. Each text.

Well, SLED gets involved. And now we have his first statement to Lieutenant Harley, 7-23, two days after Tyrone had disappeared. And you've heard the testimony. You've got Sammie's written statement in evidence in which he admits getting Johnell Rice to call Tyrone to get him out of jail.

And now though he says something about Tyrone having an $18,000 check. And says that when Tyrone got him out that he went home and got cleaned up and took a shower, which is interesting. And it brings up another point that the defense raised about Ms. Taylor White. Because Sammie says as soon as he got out of jail about midday, the first thing he did was go home and get cleaned up and take a shower. Makes sense. If I'd get out of jail that's probably the first thing I'd want to do is go take a shower.

But, you remember, Taylor White states that later on that evening when she sees Sammie, he comes in, he goes back out, he comes back in with a barrel of clothes. He goes in the area where the washing machine is. He comes back out without the clothes. He goes in the bedroom where the shower is and then he doesn't - and then he changes clothes. He comes out in different clothes. Okay. Now, sure, a man can take a shower. By itself that means nothing. But when you put it together with everything else, what does that tell you?

Okay. It's just a, one more circumstance, one more fact that starts to draw that circle around Sammie Gerrick.

All right. Why did he need another shower? He already had one that morning or that afternoon, you know, right when he got out of jail. Why did he need to change for?

But anyway, he claims that Tyrone left and said something about playing cards later and he never saw him. Again, of course, that's a lie.

We have Joe Thomas who already mentioned about the sand. That's what the shovels were for. No. Joe Thomas says no. That's a lie. So now we're up to eight lies.

But one thing that they also do and I think this is crucial, and I'm going to come back to this, that at that

interview on 7-23, two days after Tyrone disappeared, they photographed those scratches on his arm and on his chest. They photograph those scratches. Remember that? I'm going to come back to that.

All right. So next we got the interview with Agent Burnett. That's on July 26. Agent Burnett again was the retired agent up there. And Sammie's story has to change again because they've gathered some more evidence.

How much money he spent. So, you remember in the first exhibit I showed you where he wrote down all the bills that he had to pay and all the rest of it. Right there. All of that money.

Motive. But the most interesting thing about that statement aside from him providing the extra evidence of motive, but not only did he need money to get out of jail but he had to get his bills caught up and pay his probation.

The other thing is is that the story changes because more evidence is coming in. And like Sammie has to do, like a classic liar does, they admit to what you know and then create a story around it but then when you find out new stuff you got to change the story to make the facts fit.

So what's the change here? What's the change here?

He claims now that Tyrone was holding money for him.

And actually Tyrone had money in his account that he owed Sammie, $18,000 that he had received from a backhoe. That is what Sammie's claiming now. And why? Again, he's got to explain why he had the victim's ATM card because from the beginning, from the very beginning he knew that to use it he was going to have to have an explanation for that but now his explanation is, well, he had $18,000 and he was holding the money for me.

And you saw him when he was being interviewed by Agent Burnett. You saw him struggle to come up with answers. You saw him put his head down. You saw him get agitated and jump up. You saw the evidence of a liar.

I think it was Mark Twain who once said that it's easy to tell the truth because you don't have to remember anything. And his point was -- or words to that effect. His point was was that when you start telling lies it's a whole tangled web we weave when first we start to deceive. That whole thing.

Because it gets bigger and it gets bigger and it gets bigger. And that's what you see Sammie doing. Got this because I know they know that. Okay, they know this so now I got to go here. Now they know this so now I got to go here. And now they know this and now I got to go here. Who does that? Does an innocent man do that? Does an innocent man worried about his friend do that?

And again, if he, if Tyrone had $18,000 in the bank that were Sammie's, why would they need to borrow money from Maurice? I mean, we all know it's a lie because Sammie, you know, goes to a different version by the end.

But the point is what he's doing here. It shows his guilty consciousness. It's not about the last story. It shows a desperate man doing anything to try to divert attention away from himself, from faking texts to telling this lie to telling that lie. That's what a guilty man does. Motive. Opportunity. And a string, a string of guilty acts.

But it doesn't stop there. All right. That was 7-26, the interview with Agent Burnett. Now we got the $18,000 backhoe story.

And then we get to 7-30, July 30th, and that's when he makes that call to Chief Holston. And says, Chief, I just got a call from this guy named Black. And Black's got Tyrone. And he wants $25,000. And I need some backup. And the Chief's like, where is he. And he's like, uh, they're supposed to call me back and I'll let you know. Does the Chief ever hear anything? No. Of course not.

Some other concocted elaborate lie to try to throw people off the trail because he knows the trail's getting warm. He's been interviewed now three times. He knows the trail's getting warm. He knows he's at the center of

this. He's tried the desperation text thing. He's tried telling lies. Now he's going to try this other thing. I got this call from people, this ransom. It doesn't even fit with his last story. It was just to try to throw things off.

And I think it's important right now to bring up, if y'all remember Taylor. Taylor White also talked about sometime after the crime she was home and a pink car came down the road that she thought was Tyrone's sister's and Sammie Gerrick saw it and says something like I got to take care of this right now and went outside to make a phone call.

Think he was calling Chief Holston to try to come up with something else to throw people off the track? I mean, it's silly. It's ridiculous. Chief Holston knew it was ridiculous but Sammie's trying to do whatever he can because the seat's getting warm. Actions of a guilty man.

All right. So that was July 30th. And now we get to the big break in the case.

August 3rd. Sammie gets bond revoked so he's in jail. He's not out right now. And his own wife, Charlene, even though he's got a girlfriend, Claudette, but his own wife Charlene says on the night Tyrone was killed, late that night with our young child, we drove out to that scene out in the lonely woods, and we got that Honda that was out

there. And I followed Sammie Gerrick to the old Chinese restaurant in Orangeburg. And he parked that car there behind there and then we left. And you heard it yourself. She didn't want to be here. She said it. But it's the truth.

Who does that? Who does that but a guilty man? Who loads his wife and a young child up in the car at midnight and drives out into the woods to move the car of a man who just happened to be murdered some hours before? Who does that but a guilty man? Conceal. Lie. Cover up. Consistent with everything else. How do you get around that? How do you get around that? You can't.

Motive. Opportunity. A string of guilty acts. The most biggest one is moving that car the night he died.

And y'all know what happened next. They poked the ground and they find Tyrone in that grave.

Motive. Opportunity. The last one seen with him, last phone calls. Tyrone disappears in that two-hour break where Sammie goes off the grid, the same time Tyrone doesn't have any more calls. End of that Tyrone's phone goes from delivered to undelivered.

He comes back and tells that silly lie to Maurice that gets him so scared he goes and gets his gun. And then he starts using his ATM card. How do you get around that? You can't. You can't. It's lie, we're up to 11 now.

But anyway, let's talk about that car a little bit. And of course we know earlier Lana Joyner had seen that car and told the family and they told the police and they went out and looked at it. And we also know that Sammie Gerrick's fingerprints were on that car.

Fingerprint things are right over here. But, I mean, it's not -- he ultimately -- once he knew the police knew that he ultimately had to admit to it, you know, with his stories about, well, yeah, they had my friend and they were killing him but they asked me to move the car and I did it and I took my wife and young child to the place -- whatever. Whatever, Sammie. But his fingerprints were in there.

But, the defense keeps talking about that shotgun case. They keep talking about fingerprints. But you heard about the decomposition of Ty. And the fingerprints there. And also the shotgun case, it has nothing to do with anything. It has nothing to do with anything. Sammie himself never once has said that the shotgun had to do with anything.

And what did the pathologist tell you? The pathologist told you, sat right up here, the doctor, said yes, the decomposition hurts my ability to look at soft tissue injuries so I can't see bruising and things like that. But one thing that I can do is determine whether or

not there were any gunshots or any knife wounds. And there weren't any. Particularly a shotgun, the damage that that does. The shotgun has nothing to do with anything. There's no evidence whatsoever it had to do with anything and it doesn't even come out of Sammie's own mouth. He never once mentions that shotgun in any of his versions. What does it have to do with anything? That's a red herring meant to throw you guys off the trail.

Then you had Maryann Boehm and she talked to you about the DNA. And the defense mentioned the DNA, too. She talked about touch DNA. Okay. And touch DNA is what she described where you touch something and perhaps you leave some skin cells behind that can be gathered and an analysis that can be made.

But one thing that she said was important is that while touch DNA can confirm that you were there, the absence of it doesn't mean that you weren't there. Because touch DNA is fragile and you don't necessarily know that you're going to get it. And in fact this case proves the point because Sammie himself and Charlene admitted he drove the car but the touch DNA wasn't found.

So it's just another red herring. Some cases just depend on common sense and good police work.

I asked Maryann Boehm about that, about this idea that perhaps some people get from TV that every case has some

magic piece of evidence. And she said no, that's just not the case. Just because we don't find touch DNA doesn't mean that somebody wasn't there. And this proves it because we know Sammie drove the car and his DNA wasn't there. So it doesn't mean anything. It doesn't matter.

This case was made by piecing together the puzzle, old school, with common sense.

Motive. Opportunity. Guilty acts.

Just like Crime Scene Investigator Skipper stated. She stated that when investigators are out at the crime scene they gather all kinds of stuff. They gather all kinds of stuff without necessarily determining if it has any evidentiary significance. And the agents make that determination later whether or not there's any evidentiary significance. And that's what happened here. It's routine.

It's kind of like that green netting and the fishing lure that Agent Skipper told you about. They noticed it at the grave site but didn't think anything about it. But later when they went and searched Claudette's house where Sammie was living, that's where they found similar green netting and similar lures. The fact that there's green netting in two places by itself, does that mean anything? We're starting to put that circle together all the way around Sammie Gerrick.

Let's go back to the scene. What did Tyrone's body tell us? Tyrone gets to tell us a little bit. He's dead, but he gets to testify. His body does. He was buried face down. His hands and feet were bound. Malice, ladies and gentlemen. He had that defensive wound on his forearm. Malice, ladies and gentlemen. Protecting himself. That he was tied up. No evidence of any gunshot or knife wounds. No skull fracture. No drugs in his system. Just like you heard from the family.

And he died from suffocation. Choked out. Choked out. And we'll talk about that in a minute. But that's what Ty said the only way he could.

So after finding the body the police go and they search Sammie's truck. You know -- one thing before we get to the truck.

And I don't -- I don't like throwing these pictures around. I use them very infrequently but you have to look at them, ladies and gentlemen. I'm sorry for that, but the defense is -- said something about some leaves and, you know, I'm not sure where they're going, but if you look at this, it's pretty clear. Just like the pathologist said, that that body was consistent with a person who had been buried in a grave for 10 to 14 days. I mean, look at it. You can use your common sense and look at that. He had been down there. He had been down

there.

But anyway, they searched the truck. And what do they find? In this console they find what I'll call the little capsule. Right here. And they find a bottle of Law Keep Away. Law Keep Away found in the console of his truck where people tend to keep their personal items in their car where a lot of us spend our time.

And, you know, normally, again, by itself, it's not really that significant. And there's the capsule itself. But when you open it up and you know what else is going on in Sammie Gerrick's life and you get this. This is what's in there: Set me Sammie Gerrick free.

Let me back it out.

Set me Sammie Gerrick free from murder and revoke bonds. Jack Early set me free now. Jack Early set me free now. Jack Early set me free now. Sammie Gerrick, Sr. Sammie Gerrick, Sr. So shall it be. So shall it be. So shall it be.

Set me free from murder and revoke bonds. What was going on in Sammie Gerrick's life at that time? He had been questioned by the police multiple times. He knew he was the target of this investigation. He was engaging in all sorts of things to try to throw people off the track, whether it was the story about the ATM, or whether it was the track phone, or the lies, or the claim about the

$25,000 to Chief Holston. He knows he's in the fire. He's in the frying pan right now.

Now I don't know what he hoped to accomplish by this but I can say this. It was in his car next to a bottle of Law Keep Away, kept close and personal. And we also know that, as I told you before, a few days prior to that he had had his bond revoked. So I mean, it ties right to this case.

He was hoping somehow this plea would keep him out of trouble. Set me Sammie Gerrick free from murder and revoke bonds. Well, guess what. He is facing a bond revocation and he was a target in a murder investigation. Who does that but a guilty man? Who does that?

And again by itself, the same thing with the Law Keep Away, Law Stay Away. Excuse me. By itself it's just a novelty item. By itself, it's just a novelty item. It's an incense powder. It says Law Stay Away. And it's got this picture, as you can see, a guy pushing away a police officer who's dropping the billyclub. It's law Stay Away incense powder, and it's found right next to this plea and wrapped up in that capsule. Right there together in his console.

He's nervous. He's scared. He knows it's closing in on him. For whatever reason he thought this was going to help him, but who does that but a guilty man?

All right. And I've been up for a while and I'm not going to be too much longer. And I appreciate your attention.

But we've got to talk about his last statement. The police have found Tyrone. They know Sammie's moved the car. He's already in jail for the bond revocation. So on August 17th they call him over to talk to him. And they talk to him about Orangeburg, that they know he was in Orangeburg.

And what does Sammie say? Well, first he's got this story about going to meet Big Joe and getting $200 Big Joe at Edisto Gardens but of course he can't describe or give them any information about Big Joe. You all heard that on the tape. Got a number? Got a name? Got an address? No, no, no. Of course not.

And then he went to Dodge's Convenience Store. Why? Why? Because he knows what the police have now so the story has to change. Just like a classic lawyer who admits -- or, classic liar. That was Freudian; wasn't it?

Liar. Classic liar who admits to what you can prove and then creates a story based on that. And then something new comes up and it has to change and then something new comes up and it has to change. It's so transparent, ladies and gentlemen.

But that's his story. He doesn't say anything about what he finally says about there being some drug deal. He doesn't even admit being to the scene then. He just says that, yes, I went to Orangeburg but still says, I had nothing do with anything else.

But then he gets served with a murder warrant. And now he knows that they know about him moving the car. So he's got to come up with a new lie. And so you heard Agent Harley say at his request he said, can y'all come talk to me. So they come talk to him again. Again, it's transparent. He gets the warrant. He knows now what they know. So he's got to come up with a new story. Okay. Now I'm really going to level with you. And he's got this story about Andre Hightower, O'Shane Dixon, and the mysterious Big Joe except now it's a different Big Joe. It's not the same Big Joe from Edisto Gardens. And he was supposed to get $7,000 from this deal and that's how he's going to repay the victim. And he last saw the victim at the convenience store and never saw him again.

So even then he doesn't admit to being at the scene. After he finds out that they know he moved the car, his only story is is that Andre Hightower called him and said I'll pay you $400 to move the car. He doesn't say about being at the scene. And this was after he knew that he had the murder warrant. So even -- when he got a little

bit more information and he came up with this story but he's still not at the scene.

If he was so scared of bob now -- by now. I mean, by now. You got to the tell the truth if that's the case but it's not. It's just a classic progression of a liar. Got to take a step at a time and the web just gets bigger and bigger and bigger.

And he said, I don't know what happened to Tyrone. I did move the car but I don't know what happened to Tyrone. And so the officers bluff him a little bit. And they say, yeah, well, we know your truck was out there. We know your truck was out there in those woods.

And you heard Lieutenant Harley say that Sammie Gerrick kind of hung his head a little bit and said words to the effect of, oh man, well you got me there. I usually got some funk back at you but you got me there. What a huge admission that is. What a huge admission that is, that this is just all mind games and lies.

Yeah, you got me there. I usually got some good stuff to throw back at you but this time you got me.

Well now, Sammie knows he's in a real bind because he thinks that they know his truck was out there which matters to him because he knows his truck was out there. An innocent man wouldn't change his story but he knows his truck was out there. So he thinks about it overnight.

And that's when he calls and he wants to speak to Mr. Jeff, Jeff Croft.

And then we finally get this cockamany last version where he had a chance to sleep on it overnight and analyze all the evidence that they've got and come up with a new version that can account for everything else. And this is the one about the package that went bad and he's out there with Tyrone and Andre Hightower and O'Shane Dixon and Big Joe in his Denali and they want more money so they start beating on Tyrone and they tell Sammie to leave and go get the money. And then later Andre instructs him to go move the car. And that's the story, which is just patently ridiculous on its face.

And the defense was wrong, too. When he's telling that story, he said you saw him emotional. I agree. He was emotional. Why was he emotional? Because he had gotten served with a murder warrant the day before. And he knew his goose was cooked. And he had thought up a lie all night long. This is his last shot.

Classic liar. Prove this, move the story. Prove that, move the story. Prove that, move the story. And it's just a cockamany thing.

You heard from Andre Hightower. You heard from O'Shane Dixon. They didn't have anything to do with this. You heard from the officers. They looked into it.

Those guys didn't have anything to do with this. You got this mysterious Big Joe that Sammie identified but can't provide any information on and the officers don't have any information on that.

And none of this makes any sense. If that is what was happening, if he was really -- say he was scared of the cops, why wouldn't he have told Maurice, his friend, after he left there, oh man, I went out there to get the money and these guys, they got Tyrone.

Instead, he concocts this story about having $190,000 and putting it in a safe in Tyrone's car and then Tyrone kissed him on the forehead. Again, he concocted that story because he wants people to believe that Tyrone ran off. It doesn't fit. It doesn't fit with his last version.

He would have told Maurice.

But then you saw him getting agitated with Agent Burnett at that next interview, okay, when he was getting asked about the money. And he's getting agitated. You saw him jump up. I didn't kill Tyrone, I didn't -- you're wrong. I didn't kill Tyrone. He's arguing with the police. Again if he's scared, okay, it's one thing to be scared initially but when you're in an interview in the police station with an agent from SLED who's saying, we think you committed a murder, an innocent man would be,

look, I'm scared to death, I got to tell you what happened. That's not what he did. He came up with more of these lies. He was arguing with them. He was arguing with Agent Burnett.

Moves to the point that the police are accusing you of murder, you're a target of a murder and not only that your friend's supposedly missing. And you know the family out here is worried sick about him. It's not what happened.

He just thought that that body was never going to be discovered, and he could continue to tell the story and the police would never be able to prove anything. Because he did it.

And then, and then if his cockamany story is true he not only goes from lying to his friends and lying to Tyrone's family and then arguing with Agent Burnett even though now he knows he's a target of a murder and then he goes on to create all this elaborate ruse about the track phone, the fake texts from the track phone and of the $25,000 story for Black, and then let me get this straight.

His story is that they told him to go get some money. They got Tyrone and they told him to go get some money and he's got Tyrone's debit card. He spent a thousand dollars on it the next day. He said he didn't have any money. He had his debit card. He could've -- if he has his debit

card he could have gone, gotten the money. Why didn't he take it back if that story was true?

Of course it's not. It's ridiculous. I'm just showing you how ridiculous it is. He had the money. And then he says he was instructed to go move the car and so he gets his wife and a young child and goes out to the scene in the middle of the night where supposedly his friend had just been beaten with a gun and a pipe. It's ridiculous.

Classic liar.

Well, he's arrested now. And he goes to Kirkland R&E. And you heard from Mr. Early Glover right there. Even months after the fact he's still trying to work an angle. He's still trying to work an angle.

And you heard what Early Glover said. He promised him a thousand dollars to write a statement saying he can verify that Sammie didn't do it. And Sammie writes a letter and gets to Lieutenant Harley and it says -- and so Lieutenant Harley goes and interviews Sammie and he's like, yeah, I got somebody that can verify my innocence. Go see Early Glover.

And so they go see Early Glover in December and by this time he's somewhere else in Ridgeland. And Early tells them the truth. He said, I don't know anything about that. Sammie said he was in a bind and he needed

two people to write statements. He promised me he'd pay me a thousand dollars. He wrote it out and I just copied what he wrote.

And you saw when it pointed to him, I held it up. You saw. I mean, it was really tight writing. There wasn't, like, a mistake on it. You know, it was, like, five pages of handwritten stuff. Who writes five pages of handwritten stuff, writes out a whole story and doesn't scratch anything out? It was clearly copied, re-copied. He said Sammie wrote it and he just copied it and Sammie promised to pay him a thousand dollars and he doesn't know anything about it.

And what's interesting is, what confirms what Early says is that Sammie Gerrick when he told his final story about being out in the woods with Andre and O'Shane and Big Joe, who did he not mention? He never said anything about Early Glover. Never said anything about anybody else being there.

Common sense.

And the actions of a guilty man trying to manufacture evidence. Just like the track phone. Just like the story about Black. Does an innocent man do that? No. It's what a guilty man does. A desperate man who does -- who knows he's about to get busted. And he's trying anything at this point. It's not an innocent man, it's a guilty

man.

All right. This time I am almost done. It's about time for you to decide this case.

But let's talk about one last thing. Let's let Tyrone have the last word. And I told you before, Tyrone can testify here today. He was found, as I stated before, with -- his hands had been tied. His ankles had been tied. His body face down, suffocated, choked out.

There's one more real interesting thing. The scratches on Sammie. Right through here. Y'all will have this back in the jury room. And you heard the pathologist say that those scratches were consistent with fingernail scratches, consistent with someone in an altercation defending themselves.

And we also know that Sammie Gerrick told lies about that, too. He said the scratches, the scratches were from a light bulb that fell from the ceiling. But you heard evidence from Johnell Rice that when he left he didn't have any injuries on him. You heard evidence from Danny Abraham, the officer who wrote up the report when he claimed that the light bulb was broken and said he didn't have any injuries, we didn't even send him for medical help. So he told that lie about the scratches.

And he also told a lie to Maurice. He also told the lie that the scratches happened when he was tazed. Why

would he lie about this, ladies and gentlemen? Why would he lie about this? What does that tell you?

Is that Tyrone speaking to you right there? Is that Tyrone speaking to you right there? The man who had the motive. The man who had the opportunity. The man who engaged in all these guilty acts and he's got these scratches on him right after this crime happened.

I submit to you that Sammie told Maurice we're going out -- or, excuse me. Sammie told Tyrone we're going out to the woods to get that money. And they got the two shovels because they were going to dig it up. And Sammie went out there and made Tyrone unknowingly help dig his own grave.

And then he struck defensive wounds on the arm. I showed you before. And he overpowered him. He tied him up. He made him give up his PIN number so he could later claim he was entitled to use it. And then he choked him out and Tyrone with his hands tied was doing the best he could. And that's where he got the scratches right there on the inside of the elbow and right there on the chest area, because that's all Tyrone could do. But he couldn't win and he died.

There's only one man that all these circumstances fit. Only one man. And it's Sammie Gerrick.

He's got the motive. He's got the opportunity. He's

got the guilty acts. He's got 16 lies, a classic liar who moves his story all the way down. He's got the track phone, the texts, the capsule, the Law Keep Away, the green netting, Bradley Smith saw him staring off into space when the crime happened. He had never did that before.

You've got, you got Early Glover faking evidence. You got Charlene taking the car and moving it in the middle of the night. You got using the ATM card, and you got Tyrone speaking to you with these scratches. All of this points to one man; Sammie Gerrick.

I got one last thing to say. Tyrone was fooled by Sammie Gerrick's lies and he died for it. Don't y'all be fooled by his lies, too.

On behalf of the State of South Carolina, on behalf of all of Tyrone's family and friends out here, I ask you to do your duty, do the right thing and find this man guilty of murdering Tyrone.

Thank you.

THE COURT: Mr. Foreman, ladies and gentlemen. We've been going now a couple hours. I'm going to take a quick break before I charge you on the law. My charge is about 10 or 15 minutes. Let's go get a quick bathroom break. We'll start back at 12 o'clock sharp, and then you'll be in a position to deliberate shortly after that.

Thank you. Everybody else remain seated.

(Jury exits courtroom at 11:48 a.m. Break taken. At 12:04 the trial resumed:)

THE COURT: The State, anything for the record before we bring the jury in to charge?

MR. WATERS: No, sir, Your Honor.

THE COURT: Mr. Williams?

MR. WILLIAMS: Nothing, Your Honor.

THE COURT: All right. Bring the jury in, please.

(Jury enters courtroom at 12:05 p.m.)

JUDGE'S CHARGE TO THE JURY

THE COURT: Mr. Foreman, ladies and gentlemen of the jury. My instructions are, as they call it, the charge on the law. It's sort of divided into two sections. The first part I will deal with general propositions of law, and then we will go into the specific offense in this matter, the murder charge. And I'll tell you the elements of murder and then some further, after that some further general matters. Will take about 15 minutes maybe, maybe a little bit less.

Now, let me remind you, once again, that the fact that the Defendant was charged, arrested and indicted in this case for the offense of murder is not evidence in the case and cannot be considered as evidence by you of guilt in this case, nor does it create any presumption or inference

of guilt.

The indictment is simply the written instrument which contains the charges against the Defendant. It's the formal document by way this case is brought into the courtroom.

Now, to the indictment of guilty -- of murder. To the indictment of murder the Defendant has pled not guilty and that plea puts the burden on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt.

A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge and instruct you that it is an important rule of constitutional law that a person in a criminal trial, no matter what the seriousness of the charges may be, will always be presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence does not end when you start your deliberations but it stays with the Defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence is not a mere legal theory. It's not just a legal phrase. It is a

substantial constitutional right to which every defendant is entitled unless you the jury are satisfied from the evidence of the Defendant's guilt beyond a reasonable doubt.

What is a reasonable doubt? Sometimes our courts have said this and held this, that reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act.

As I said, the State has the burden of proving the Defendant guilty beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt.

There are very few things in this world that we know with absolute certainty and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crime charged, then you must find the Defendant guilty.

However, if on the other hand you think there is a real possibility that the Defendant is not guilty, you must give the Defendant the benefit of the doubt and find him not guilty.

So that is how our courts define reasonable doubt.

Let me remind you, ladies and gentlemen, that you and

I have certain duties to perform. As the trial judge it has been my responsibility to preside over the trial of the case. I have ruled on the admissibility of the evidence and have made sure that the lawyers asked their questions pursuant to the rules of evidence. So my job is to rule and conduct the trial and also to charge and instruct you on the law.

So as I told you earlier, you must accept the law as I give it to you. If you have a preconceived idea about what the law is and it does not agree with what I say, please set aside any preconceived ideas and accept the law as I give it to you. My position makes me the judge of the law.

You are the judges of the facts. It is your sole responsibility to determine what the true facts are in the case and apply those true facts to the law as I give it to you and render a verdict.

Now, if at any time during the trial of the case you've seen me smile or frown or roll my eyes or yawn or stretch or do anything that you think that I have an opinion about the facts, disregard that. I cannot and I do not. I try cases all over the State, day in and day out, week in and week out. And my position does not allow me to have any opinion whatsoever about the facts. That is your sole responsibility, your sole duty to determine

what the true facts are in the case.

Now, in the trial of cases, there are two types of evidence which are generally presented during a trial. It's called direct evidence and circumstantial evidence.

Direct evidence directly proves the existence of a fact. It does not require any logical deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

If I go outside and it's raining and I see it raining and I get wet, I can come back in here and testify that it's raining. That's direct evidence that it rained. If I go outside and it's cloudy and mud puddles but I don't see it rain, that's circumstantial evidence that it has rained. So that's sort of the difference. That's a pretty basic example, but that's what it is.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Direct evidence proves the existence of a fact and does not require any logical deduction.

Now, crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence. However, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other and when taken together point conclusively to

the guilt of the accused beyond a reasonable doubt.

If these circumstances merely portray the Defendant's behavior as suspicious, proof has failed.

The State has the burden of proving the Defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence or a combination of the two.

So that's the difference between direct and circumstantial evidence and the types of evidence.

As the finders of fact and the judges of the facts, you must determine the credibility of the witnesses who have testified in this case. Credibility simply means believability. Who do you believe.

It becomes your duty as jurors to analyze and to evaluate the evidence and determine which evidence convinces you of its truth. In determining the believability or the credibility of the witnesses who have testified in this case, you may believe one witness over several, several over one. You can disbelieve everything a witness says. You can believe everything a witness says. You can believe a portion and disregard a portion. So it's up to you to use your common sense and determine what the truth is.

As I told you earlier, you spend a lifetime dealing

with wives, husbands, children, friends, employees, employers, and you know how to judge when someone is telling the truth. Utilize that experience in fulfilling your duty here today.

You also have the right to consider whether any witness has exhibited to you any interest, bias, prejudice or other motive in the case and also you may consider the appearance and manner of a witness while on the stand.

We had a couple of witnesses or maybe more that I qualified as experts in certain areas and fields. Normally our rules of evidence do not permit a witness to testify about an opinion or conclusions. An exception to this rule exists for witnesses we call expert witnesses. A witness who by education and experience has become an expert in some art, science, profession or calling may state an opinion as to relevant and material matters in which the witness claims to be an expert and may also state the reasons for the opinion.

You should consider any expert opinion received in evidence in this case and like any other evidence give it the weight you think it deserves. If you decide that an opinion of an expert is not based upon sufficient education and experience, or if you conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you can

disregard the opinion entirely. An expert witness's opinion is to be given no greater weight than that of any others witness simply because the witness was qualified as an expert. Further you're not required to accepted an expert's opinion even though it is not contradicted.

There is another very important constitutional rule of law that exists in our state and nation. I instruct you and emphasize that the fact that the Defendant did not testify is not a factor to be considered by you in any way whatsoever in your deliberation of guilt or innocence and in your consideration of the question of guilt or innocence. The fact that he did not testify must not be considered by you in any manner whatsoever in deciding his guilt or innocence.

A defendant has the constitutional right to remain silent and the exercise of this right must not be considered by you in your deliberations. I repeat. Under your oath, you're to draw absolutely no conclusion whatsoever from the fact that the Defendant in this case did not testify. The fact that he did not testify should not be discussed by you at all in the jury room.

The burden of proof, as I have stated to you, is on the State. The Defendant is not required to prove his innocence. The burden of proof remains on the State to prove guilt to you beyond a reasonable doubt.

At least one witness and perhaps more of the witnesses to testify had a criminal record. A person who has a past criminal record is competent to testify during a trial. A past record does not affect the ability of that witness to testify. The past record may only be considered by you, if at all, in determining the believability or the credibility of the witnesses. You are the sole judges of the facts and the believability of any and all the witnesses is within your domain and duty.

In this case a number of statements were alleged to have been made by the Defendant. They've been admitted into evidence. And while I determined that the statements were admissible, I instruct you, you make the ultimate decision of whether or not the Defendant actually made the statements. And if he made the statements, you must consider and determine whether the statement was made by the Defendant voluntarily and of his own free will. This means that the statements were not caused by pressure, force, fear, threats, coercion or intimidation, or by hope or a promise of leniency or a reward of any kind.

In determining whether the statements were voluntary you should consider both the characteristics of the Defendant and the details of the questions and whether or not the Defendant has had his constitutional rights advised to him including but not limited to: The right to

remain silent; that any statement could be used against him in a court of law; the right to have a lawyer present; that if he or she cannot afford a lawyer, a lawyer would be appointed to represent him without any cost; and that he could stop make a statement at any time.

You must carefully consider all of the surrounding circumstances before you give any weight to an alleged statement.

The State has the burden of proving beyond a reasonable doubt that the alleged statement was voluntary. If you determine it was then you may give the statement any further consideration that you deem proper. You must decide what weight, if any, should be given to the statements. If you determine these statements were not free and voluntarily, then you should not consider the statement at all.

Now, Mr. Foreman, ladies and gentlemen of the jury, that is the general propositions of law that I advise jurors and instruct jurors on in all criminal cases.

Now let's turn to the indictment in this case. In this case as I have told you on a number of occasions, Mr. Sammie Lee Gerrick has been indicted by the Barnwell County Grand Jury for the offense of murder.

The State must prove to you beyond a reasonable doubt that the Defendant killed another person with malice

aforethought. Must prove beyond a reasonable doubt that the Defendant killed another person with malice aforethought.

Our courts have defined malice, that is, hatred, ill will or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances that the law will infer an evil intent.

Malice aforethought does not require that malice exist for any particular time before the act is committed, but malice must exist in the mind of the Defendant just before and at time of the act. Therefore, there must be a combination of the previous evil intent and the act.

Malice aforethought may be expressed or inferred. The terms expressed and inferred does not mean different kinds of malice but merely the manner in which malice may be shown to exist. That is, either by direct evidence or by inference from the facts and circumstances which are proved.

Express malice is shown when a person speaks words which express hatred or ill will for another, or when the person prepared beforehand to do the act which was later accomplished. Malice may be inferred from conduct showing a total disregard for human life.

So, murder is one of our, I guess, the definition of

murder and what's to be proved as far as the elements are, even though it's a serious a crime as it is, the elements are more -- are not that long. The State must prove beyond a reasonable doubt that the Defendant killed another person with malice aforethought.

Now, Mr. Foreman, ladies and gentlemen of the jury, your verdict must be unanimous. All 12 of you must agree as to the verdict.

And obviously we only have one charge so there will be only one charge you'll have to consider and that is whether or not the State has proven to you beyond a reasonable doubt that the Defendant has committed the offense of murder.

You will have a verdict form. Simply, we find the Defendant not guilty, or we find the Defendant guilty. Check whichever one you decide your decision is, your verdict is. Sign the verdict form and then knock on the door and tell us that you're ready to give us the verdict and we will receive you back into the courtroom.

As I said, your verdict must be unanimous. All 12 of you must agree.

Obviously you're not here to reward any friends or to punish any enemies. You're here to give a careful consideration and deliberation of the evidence that has been presented to you, to decide what the true facts are,

and apply those facts to the law as I've given it to you.

If during your deliberation you have any questions that you need to ask of me, you will have a notepad. Please write out the inquiry, knock on the door, the bailiff will present it to me. Sometimes I can answer it, sometimes I can't. But I'll send you back the best I can do. It just depends on what the question is, obviously.

As I said, your decision has to be unanimous.

I'm going to ask in just a few minutes that you return to the jury room. Do not start deliberating quite yet. I have to ask the lawyers if I've left anything out or I need to amend anything. That won't take but a second. Then we have to gather up the evidence. That may take more than a second but certainly won't take more than five minutes to make sure we have everything. And then once we have all the exhibits, the bailiff will present to you the exhibits and the verdict form.

And then you may start your deliberations. As I understand, lunch is being ordered -- has been ordered. When lunch comes, you can continue to deliberate while eating lunch. You can take a break. You can't leave the jury room though once you start deliberating. You're in charge or y'all are in charge. Handle it however you feel is the most efficient way to do it.

And, like I say, once you reach a verdict let us know.

I'm going to ask that you step back your jury room, please. Once again, do not start deliberating until I have delivered the verdict form and the evidence.

Do we have in evidence some of the CDs? Don't we?

MR. WATERS: Court's Exhibit.

THE COURT: That was a Court's Exhibit.

MR. WATERS: Yes, sir.

THE COURT: So you'll have whatever -- the evidence will be sent back to you of what you'll be allowed to look at. Okay. All right.

Step back and we'll send everything out to you in just a few minutes. Be sure and separate the alternate.

THE BAILIFF: All right.

(Jury exits courtroom at 12:28 p.m.)

THE COURT: On behalf of the State, are there any objections to the charge, any requested additions or deletions?

MR. WATERS: No, sir, Your Honor.

THE COURT: Mr. Williams?

MR. WILLIAMS: None, Your Honor.

THE COURT: Mr. Williams, Mr. Waters, would you please come forward and review the exhibits to make sure we have everything? And then I will ask you on the record.

I thought we had at least one CD that was an exhibit.

MR. WATERS: That's correct. I was thinking of the

taped statements. I believe there is the Enterprise footage.

(Attorneys review exhibits.)

THE COURT: Look at the verdict form, please.

(Attorneys comply.)

MR. WILLIAMS: Good enough.

THE COURT: Let the record reflect that the State and defense have reviewed all the exhibits and find them to be in order and accounted for. The verdict form has been reviewed by both sides and both are in agreement to the form.

Is that correct, Mr. Waters?

MR. WATERS: Yes, sir, Your Honor.

THE COURT: Mr. Williams?

MR. WILLIAMS: Yes, sir; that's correct.

THE COURT: All right. You may take that back and tell them they may start their deliberations. According to the clock on the wall it's 12:35.

Ladies and gentlemen, we're going to continue on doing business. The jury is deliberating. If you would like to leave, you are welcome to leave now.

Once a verdict is rendered, we will announce that the jury is back. We'll announce that on the courthouse steps and if you're outside and mingling around, I'll obviously give you an opportunity to get back into the courtroom.

You're more than welcome to stay with us while we conduct additional business. I don't know whether it will be 30 minute, three hours, what.

I have ordered lunch in, pizza, for the jurors. So I would assume at least they're going to eat their lunch.

I can't tell you how long it will be but I'll certainly announce it on the courthouse steps to give you an opportunity to come back in, or you're more than welcome to stay with us as we conduct additional business. However, if you want to leave, you need to leave now because I'm getting ready to do some more stuff.

(People exit courtroom at 12:39 p.m. Thereafter other matters were heard by the Court. At 1:38 p.m., the trial resumed:)

THE COURT: The Defendant ready to receive the verdict?

MR. WILLIAMS: Yes, Your Honor.

THE COURT: State ready?

MR. WATERS: Yes, Your Honor.

THE COURT: Check to see if there's anyone outside.

(Pause.)

THE OFFICER: It's all clear, Your Honor.

THE COURT: Thank you.

Ladies and gentlemen, the jury has announced that they have reached a verdict. I have no idea what it may be,

but if anyone feels like they cannot control their emotions, I'm pleasantly asking you to leave now.

I will not tolerate any outburst of emotions, crying, screaming, crying, whatever, shouting. If you do, I will have you arrested for contempt of court. You have been a wonderful audience all week under the most difficult circumstance and I commend you. Let's let it continue on through the announcement of the verdict.

So, fair warning. If anybody doesn't think they can control them self, I'm going to ask that you step out. Fair enough?

(Jury enters courtroom at 1:39 p.m.)

THE COURT: Mr. Foreman, have y'all reached a verdict?

FOREPERSON OF THE JURY: Yes, sir.

THE COURT: You passed it up to her?

FOREPERSON OF THE JURY: I did; yes, sir.

THE COURT: All right. You may publish it. Stand, please.

THE DEFENDANT: (Complying.)

THE CLERK: In the Court of General Sessions for the Second Judicial Circuit, Indictment Number 2013-GS-06-00465. The State of South Carolina, County of Barnwell versus Sammie Lee Gerrick. As to the offense of murder, we the jury find the Defendant guilty.

UNIDENTIFIED SPEAKER: Amen!

THE COURT: Ma'am!

UNIDENTIFIED SPEAKER: I'm sorry.

THE COURT: Any further -- last warning.

THE CLERK: We unanimously agree, November 21st, 2013, signed by Foreperson Paul Thomas.

THE COURT: Anything further for the jury before I dismiss them, by the State?

MR. WATERS: No, sir, Your Honor.

THE COURT: Mr. Williams?

MR. WILLIAMS: Nothing, Your Honor.

THE COURT: Thank you. You may be seated.

Mr. Foreman, ladies and gentlemen of the jury. That concludes your service this week.

I commend you. You've paid excellent attention. You've done your job well and I thank you on behalf of the State and citizens of Barnwell. It's not an easy task to come in and judge someone but our system is the greatest in the world. When someone is accused of a crime, we take 12 citizens from the community to make the decision and I commend you for you service and you exercised your duty well.

What we have left is sentencing. You're welcome to stay. That will take us about another 15 minutes, or you are welcome to leave now. So, your choice. If you want

to leave, go out the door and we'll go from there. You're welcome to go or welcome to stay. Everybody else remain seated.

Just sit tight for me, Mr. Foreman.

FOREPERSON OF THE JURY: Okay.

(Jury exits courtroom at 1:44 p.m.)

THE COURT: Mr. Williams, I'll give you 10 days to file any post-trial motions.

MR. WILLIAMS: Thank you.

THE COURT: Come forward, please.

THE DEFENDANT: (Complies.)

THE COURT: Mr. Waters, please give me Mr. Gerrick's prior record.

MR. WATERS: Yes, sir, Your Honor.

According to the rap sheet I have, we have assault and battery with intent to kill in 1990.

THE COURT: Hold on one second, please.

MR. WATERS: Yes, sir.

THE COURT: Do you know what the disposition of that was?

MR. WATERS: It says convicted 20 years suspended to nine years confinement, five probation.

THE COURT: 20, nine, five?

MR. WATERS: Yes, sir. And that it was accompanied with a concurrent attempted armed robbery.

In 1997 we had a burglary third. Five years suspended to five years probation and an accompanying grand larceny, 1,000 to 5,000.

THE COURT: Is that it?

MR. WATERS: No, sir.

We also have a 1999 probation revocation on the assault and battery with intent to kill. And we have --

THE COURT: Do you know how much was revoked off that?

MR. WATERS: One moment, Your Honor. Looks like three years, Your Honor.

And we have in 2010, we have a grand, failure to return rented objects greater than 5,000. That was in October 2010.

And then I believe he of course was recently served a sentence for escape.

THE COURT: That was the sort of the origin of all of this activity?

MR. WATERS: Yes, sir.

THE COURT: Mr. Williams?

MR. WILLIAMS: Thank you, Your Honor. If it please the Court.

Sammie is 42. He's from this area. He's married and and has two children. One who's grown. He has a daughter I believe who has cerebral palsy who is six years old and

another daughter who's 17 in Orangeburg.

We understand the jury's verdict and respect it.

And I would like to say that we're sorry for what the Donaldson family's going through in all of this. I know this week has been hard. And I know the last two and a half years have been hard on them.

And if there's -- you know, you've got to give him at least 30 years. If you gave him 30 years he's going to be 72 when he gets out. There's absolutely no chance of parole under that. You can also give him up to life without ever the possibility of getting out.

You know, if he knows he can get out at 72 maybe he's got some hope. Maybe -- based upon what the jury's rendered in their verdict, maybe he doesn't deserve that but I'm asking you to have some kind of mercy on him so that he's got some hope that he can at least be out and enjoy something of his life at some point in time.

I do that realizing that Mr. Donaldson is gone and he's not going -- he's not here to enjoy his family. And that would be giving great mercy to Mr. Gerrick but I still ask you to do that.

THE COURT: Thank you. Do you have anything you want to tell me?

THE DEFENDANT: Yes, sir. If it please the Court.

THE COURT: Sir?

THE DEFENDANT: If it please the Court.

THE COURT: Yes, sir.

THE DEFENDANT: It's overwhelming that I've been found guilty. First of all, I want to say that as Mr. Dan say, my grief do go out to the Donaldson family because Tyrone was nothing but a friend to me.

THE COURT: That's what makes this case so difficult.

THE DEFENDANT: Yes, sir. And at the same time even though there been a lot of inconsistency in statements, I want to address this and address it well. I was out there in the commission of what went on but I can say this to say that, that they -- they are very mad at me.

And I understand I'm going up the road. But at the same time you got two individuals that took that stand that know from the bottom of their heart that they injured this man.

And I'm going to say it again. Andre Hightower and O'Shane Dixon, you outsmarted me this time but, Tyrone, if you listen, I want to say one thing. You've always been a friend to me and I love you from the heart. But I can say one thing again, they outsmarted me.

THE COURT: Who outsmarted you?

THE DEFENDANT: Andre Hightower and O'Shane Dixon. Everything revolves around Sammie Gerrick. That's one thing. But I know they can't sleep at night just as

well.

And I'm going to say it again to the family, I'm sorry.

THE COURT: Well, Mr. Gerrick, it appears to me that it's one person that outsmarted you and that's you. You outsmarted yourself.

THE DEFENDANT: Yes, sir.

THE COURT: And I hope and pray --

THE DEFENDANT: Yes, sir.

THE COURT: -- from the bottom of my heart, that when Tyrone was put into that grave face down, bound, I hope and pray, I hope and pray that he was already dead because I cannot imagine anything worse than being buried alive.

And it's easy to infer in this case your best friend was buried alive.

THE DEFENDANT: Yes, sir.

THE COURT: I've been doing this a long time.

THE DEFENDANT: Yes, sir.

THE COURT: I've seen some grisly murders. I've seen some horrible facts.

THE DEFENDANT: Yes, sir.

THE COURT: But this poor man put into that grave that he apparently helped dig, if he was still alive, may God have mercy on your soul.

THE DEFENDANT: Yes, sir.

THE COURT: Because you'll need it. Anything else you want to tell me?

THE DEFENDANT: No, sir.

THE COURT: Anything, any member of the family? I'll listen to a couple family members if anybody wants to --

MR. WATERS: Yes, sir. And just briefly on behalf of the State, the State feels very strongly that life without parole is the only appropriate sentence given the --

THE COURT: I appreciate that, but sentencing is obviously in my hands.

MR. WATERS: I have spoken with a number of the members of the family and I've gotten the same sentiment from them as well.

I do not know if anybody wants to briefly address the Court, but they have been fairly, I'd say unanimous that life without parole is the only appropriate sentence here.

THE COURT: AS TO INDICTMENT 13-GS-06-465, THE JURY HAVING FOUND YOU GUILTY OF THE OFFENSE OF MURDER, THE SENTENCE OF THIS COURT IS THAT YOU BE COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR THE BALANCE OF YOUR NATURAL LIFE.

Good luck to you.

MR. WATERS: Thank you, Your Honor.

THE COURT: Everybody remain seated. All right. I'm going to ask -- I'm going to ask that the members --

family and friends of Mr. Donaldson to please sit tight for one minute.

I'm going to ask that the law enforcement officers escort Ms. Gerrick out to her car.

I'm likewise going to ask that you please remain seated just for a few more minutes until they're able to transport Mr. Gerrick downstairs and to the officer's vehicles for transport. That should not take more than four or five, 10 minutes at the most. I'm not suggesting anything may happen. I just want to avoid any and all possibilities.

And once again, my heart goes out to the Donaldson family. I commend you, but I can't understand your grief. I'm sorry, I just can't. I hope you have some closure with this. And God bless you.

Let me know when you get him outside and then I'll let this family leave.

Donaldson family. Everybody else not associated with the Donaldson family, please remain seated. Mr. Bamberg, if you'll escort them out, please.

END OF CASE: 2:00 P.M.

***

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, Cheri L. Young, Registered Professional Reporter and Official Court Reporter for the State of South Carolina, Second Circuit-At Large, do hereby certify that the foregoing proceedings were written stenographically by me using computer-aided translation; further, that the foregoing is a true, accurate and complete record, to the best of my skill and ability, of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions for Bamberg County, on the 29th day of October, 2013, on the 13th day of November 2013, in Aiken, and in Barnwell County on the 18th, 19th, 20th and 21st days of November, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

I have hereunder set my hand this 5th day of June, 2014.

Cheri L. Young, RPR
Official Court Reporter

STATE OF SOUTH CAROLINA	IN THE COURT OF GENERAL SESSIONS
	SECOND JUDICIAL CIRCUIT
COUNTY OF BARNWELL	
The State of South Carolina,	
vs.	MOTION TO SUPPRESS ROOT
SAMMIE LEE GERRICK.,	
Defendant.	

FILED FOR RECORD
2013 NOV 13 AM 11:01
RHONDA O. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

TO: S. CREIGHTON WATERS, ESQUIRE and JASON ANDERS, ESQUIRE

PLEASE TAKE NOTICE that the defendant by and through his undersigned counsel, shall move the Court to issue an Order to exclude from evidence in this case the "witch doctor root" found in Defendant's truck after it was searched by law enforcement. In particular, the root contains a note which contains the phrase "Set me Sammie Gerrick free from murder and revoked bond." The note then state multiple times " Jack Early set me free". Upon information and belief, the identity of the person who wrote the note is unknown. Defendant Sammie Gerrick did not write the note. Further the meaning of the note is unclear. The note Constitutes hearsay for which no exception exists to allow it to be admitted in evidence. Further, it is not relevant. Any probative value the note has is far outweighed by its unfair prejudicial effect against Defendant.

BEDINGFIELD & WILLIAMS, L.L.C.

Daniel W. Williams, Esquire
Attorney for Defendant
Post Office Box 616
Barnwell, South Carolina 29812
(803) 259-2759

November 12, 2013
Barnwell, South Carolina

STATE OF SOUTH CAROLINA	IN THE COURT OF GENERAL SESSIONS
COUNTY OF BARNWELL	SECOND JUDICIAL CIRCUIT
The State of South Carolina,	
vs.	MOTION TO EXCLUDE NOVELTY ITEM "LAW STAY AWAY"
SAMMIE LEE GERRICK.,	
Defendant.	

TO: S. CREIGHTON WATERS, ESQUIRE and JASON ANDERS, ESQUIRE

PLEASE TAKE NOTICE that the defendant by and through his undersigned counsel, shall move the Court to issue an Order to exclude from evidence the novelty item "Law Stay Away" (a copy of which is attached) on the grounds the canister is irrelevant to whether Defendant committed any crimes or alternatively, any probative value is outweighed by the unfair prejudicial effect of the evidence

BEDINGFIELD & WILLIAMS, L.L.C.

Daniel W. Williams, Esquire
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Post Office Box 616
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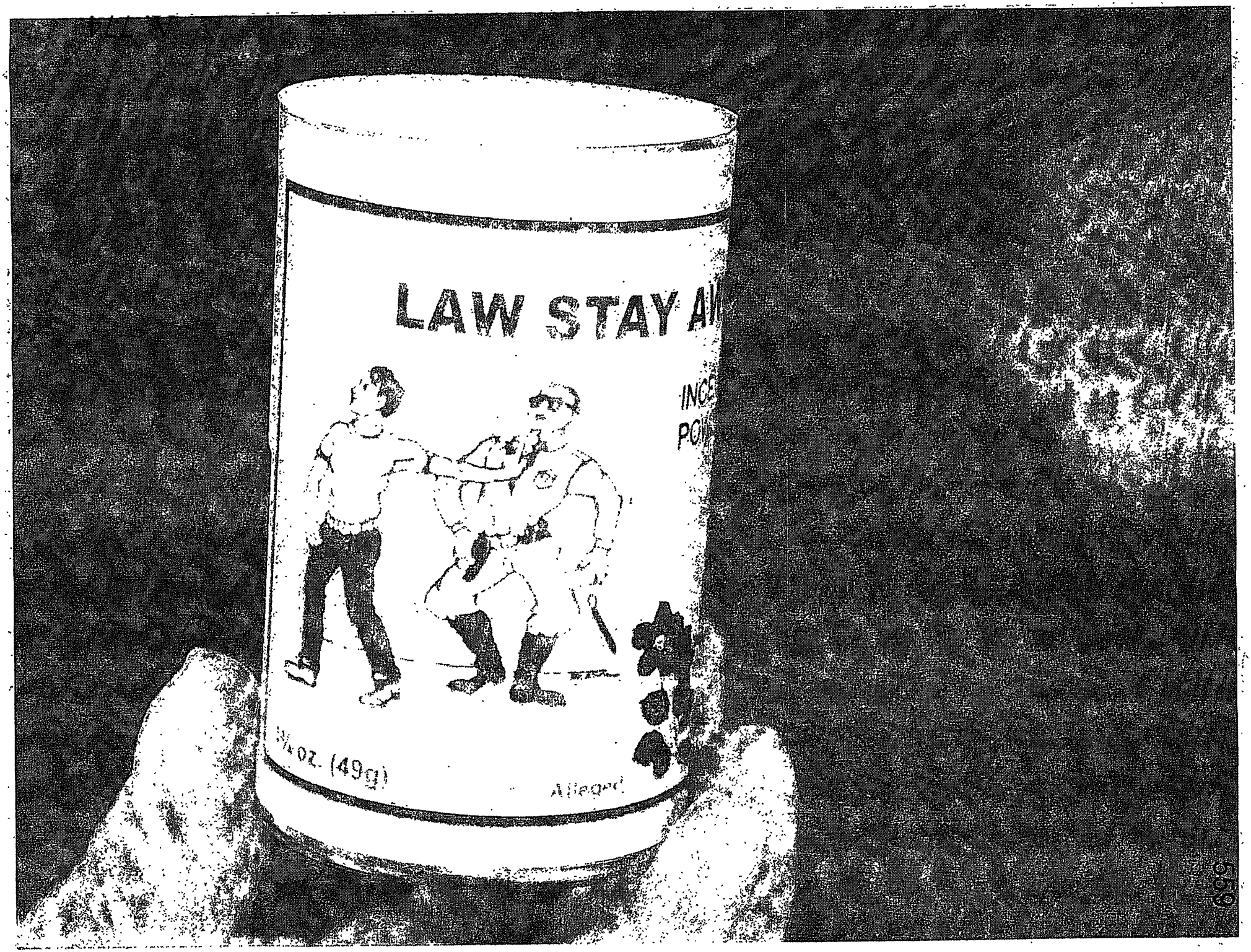
November 12, 2013
Barnwell, South Carolina

FILED FOR RECORD
2013 NOV 13 AM 11:06
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.


LAW STAY A
INC
PO
1/4 oz. (49g)

560

FILED FOR RECORD
2013 DEC 20 PM 2:58
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	SECOND JUDICIAL CIRCUIT
COUNTY OF BARNWELL)	
)	Indictment 2013-GS-06-274
State of South Carolina)	**RESPONSE TO MOTION TO EXCLUDE EVIDENCE OF ROOT LETTER, BOTTLE OF "LAW KEEP AWAY", AND TESTIMONY OF EARLY GLOVER**
v.)	
Sammie Lee Gerrick,)	
Defendant.)	

The State of South Carolina hereby responds as follows to the motion by Sammie Lee Gerrick ("Defendant") to exclude from evidence: (1) a "root" found in the center console of Defendant's truck, (2) a bottle of "Law Keep Away" found in the center console of Defendant's truck, (3) the testimony of Early Glover, who Defendant enticed to write a false statement. As will be seen, all three are clearly relevant to show consciousness of guilt, and are admissible under South Carolina law.

I. THE ROOT AND ACCOMPANYING LETTER ARE CLEARLY ADMISSIBLE TO SHOW CONSCIOUSNESS OF GUILT UNDER LONGSTANDING SOUTH CAROLINA CASELAW.

As the text of the root letter found in Defendant's truck is clearly susceptible of the inference that it displays consciousness of guilt, it is patently admissible under longstanding South Carolina caselaw.

A. Facts

As the Court is aware, Defendant has been indicted for the murder of his friend, Tyrone Donaldson, who had loaned Defendant money so Defendant could bond out of the Barnwell County jail. The victim was last seen alive on July 21, 2011, and he was going

to meet Defendant to get his money back.

After the victim disappeared, Defendant was interviewed by police the next day, on July 22, 2011. He also gave a written statement the following day, on July 23, 2011. He was interviewed twice on July 25, 2011, during which he was not polygraphed because of his SLED history, and on July 30, 2011, Defendant called police with a story that the victim was being held for ransom. Although he promised to call police back with the specific ransom demand, but never did.

Defendant's wife, Charlene Gerrick, led officers out to a deserted road north of Blackville where Defendant earlier had taken her to assist him in moving Tyrone's car, and the body was discovered in the nearby woods on August 4th, 2011. On August 5th, 2011, officers executed a search warrant on Defendant's Dodge Ram truck. In the center console, they found the root – consisting of what appears to be soil, incense, twigs, and pennies, wrapped in a brown piece of paper. On one side of the paper is handwritten Psalm 130. On the other side of the paper is the following:

> Set me Sammie Gerrick free from murder, and reduced bonds,
> Jack Early set me free now
> Jack Early set me free now
> Jack Early set me free now
>
> Sammie Gerrick Sr.
> Sammie Gerrick Sr.
> Sammie Gerrick Sr.
>
> So shalt it be it
> So shalt it be it
> So shalt it be it
>
> Amen
> Amen
> Amen

It is this evidence that is the subject of the first motion to exclude.

B. Law

"As a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt." State v. McDowell, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976) (quoted in State v. Martin, 403 S.C. 19, 742 S.E.2d 42 (2013)). While this rule is most often analyzed in terms of evidence of flight, it can apply to other acts as well, ranging from destruction or concealment of evidence to witness intimidation. As the Court of Appeals noted in Martin, "[t]he rationale underlying the admissibility of flight evidence, that 'it is not to be supposed that one who is innocent and conscious of that fact would flee,' applies to other forms of evasive conduct as well". 403 S.C. at 29, 742 S.E.2d at 47 (addressing dishonesty to police questioning).[1]

Further, in order for certain acts to be evidence of guilty consciousness, there must be some connection between the crime charged, the act, and the defendant. See Martin, 403 S.C. at 29, 742 S.E.2d at 47 (applying the test for flight evidence to other types of guilty consciousness evidence) See also Edwards, 383 S.C. 66, 678 S.E.2d 405 (evidence linked defendant to the witness intimidation).

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[1] See State v. Edwards, 383 S.C. 66, 678 S.E.2d 405 (2009) (evidence of **witness intimidation** admissible to show consciousness of guilt); State v. Beckham, 334 S.C. 302, 314-15, 513 S.E.2d 606, 612-13 (1999) (evidence of extinguished fire behind home was relevant to consciousness of guilty by **destruction of evidence**); State v. Epes, 209 S.C. 246, 39 S.E.2d 769 (1946) (**concealing** wife's body was relevant circumstantial evidence of guilt, and relevant to disprove defendant's claim of a panicked and clouded mind); State v. Winter, 83 S.C. 251, 65 S.E. 243 (1909) (**concealment** of stolen property); State v. Orozco, 392 S.C. 212, 708 S.E.2d 227, 230 (Ct. App. 2011) (holding that evidence of an **attempted suicide** was admissible as evidence of guilty consciousness, and reasoning that it is "easily analogized to other types of circumstantial evidence of guilt based on the accused's behavior after the crime"); State v. Al-Amin, 353 S.C. 405, 411-413, 578 S.E.2d 32, 35 - 37 (Ct. App. 2003) (evidence of **concealing body** of wife so as to divert suspicion from himself was a relevant circumstance tending to show guilt).

C. Analysis

Here, the evidence of the root found in Defendant's truck meets the test for evidence of guilty consciousness. Of course, segments of this State's population believe in or practice root and voodoo spells to help with their problems – such as a legal problem like the one Defendant faced at the time the root was found. See generally State v. Mattison, 276 S.C. 235, 277 S.E.2d 598 (1981) (discussing admitted evidence of the effect of the "roots phenomenon" on defendant, who claimed his wife was working roots on him); Johnson v. Breslin, 2009 WL 3111787 (E.D.N.Y. 2009) (describing testimony where individuals were going to go to South Carolina to see a root doctor for help with their problems).

The letter accompanying Defendant's root undoubtedly provides the specific nexus to this case, as it expressly refers to four relevant things: (1) the murder, (2) the bond revocation, (3) the trial court, and (4) the request to be "set free". Of course, Defendant's inability to pay back the money Tyrone loaned him to get out on bond is the motive for this murder, and it was this Court which set that very bond on the escape charge. If Defendant were to get arrested for murder that could potentially result in a revocation of the bond on the escape charge. Further, defendant had been repeatedly questioned twice by the police about involvement in Tyrone's disappearance prior to the root being discovered. Defendant also had already denied involvement to mutual friends, noting that he hoped a supposed text from the victim would take "heat" off Defendant. Thus, Defendant was aware he was a target of the investigation into Tyrone's disappearance prior to the time the root letter was found in his truck.

Given these facts, the root letters is clearly susceptible of the inference that because

of his consciousness of guilt, Defendant procured the root for whatever help it might bring in warding off a murder charge and related legal problems – indeed, it expressly hoped that Defendant would be "set free". Again, "*any* guilty act or conduct on the part of the accused is admissible as some evidence of consciousness of guilt". Orozco, 392 S.C. at 218, 708 S.E.2d at 230 (emphasis added).

Defendant may argue that the letter is ambiguous or susceptible of some other different inference – however, the caselaw is clear such alternate explanations are a matter for weight, not admissibility. See Beckham, 334 S.C. at 314-15, 513 S.E.2d 612-13 (fact that no evidence was found in the extinguished fire went to weight on the issue of destruction of evidence, not admissibility, and similarly Beckham's innocent explanation for leaving the state also went only to weight, not admissibility of evidence of flight); Orozco, 392 S.C. at 215-16, 708 S.E.2d 227 at 229 (noting trial court admitted evidence of suicide attempt as guilty consciousness despite defense argument that defendant attempted suicide not because he did it, but because of a lack of faith in the system).

The same goes for arguments that the root letter is not in Defendant's handwriting. Again, it is not uncommon for individuals to go to a root practitioner who prepared the root on behalf of the "client". Regardless, though, the root was found in Defendant's constructive possession and, as noted before, it specifically refers to him and murder in a situation where he knows he is the target of a possible murder investigation. This is sufficient for the inference to be made, and the Defendant is free to make whatever arguments to the jury he wants as to weight.

Further, Defendant's objections on the basis of hearsay miss the point. The root is not being offered for the truth of the matter asserted – that is, that Sammie Gerrick should

actually be saved from a murder charge or that this Court should set him free. Defendant's possession of the root with these writings itself is substantive evidence of consciousness of guilt. Regardless, the writings would be admissible under 801(d)(2)(A) or (B), SCRE (statement of party opponent, and statement in which the party opponent has manifested an adoption or belief in its truth), as well as 803(3), SCRE (then existing state of mind).

Accordingly, it is respectfully submitted that the root letter is clearly admissible as evidence of consciousness of guilt. Indeed, other courts have so held in similar circumstances with evidence of voodoo related to the case.[2]

II. THE BOTTLE OF "POLICE REPELLANT" IS ADMISSIBLE FOR SIMILAR REASONS, AND IN CONJUNCTION WITH THE ROOT LETTER IT IS SUFFICIENTLY LINKED TO THIS CASE.

For similar reasons, the bottle of "Law Stay Away" incense found in the truck console near the root is also admissible as evidence of consciousness of guilt. By itself, the link on the "Law Stay Away" may be more attenuated than the root letter, as the latter specifically refers to Defendant, the murder, bond revocation, the trial court, and being "set free". However, both were found together in the same place, and it is in conjunction with the root letter than the police repellant is clearly linked to this case. Like the root letter which set out Psalm 130, the "Law Stay Away" is meant to be burned while Psalms are read for the purpose of protecting one from the law. See

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[2] See People v. Floyd, 2000 W.L. 33406917 (Mich. Ct. App. Sept. 26, 2000) (unpublished) (voodoo doll found in defendant's son's jail cell was admissible where it had "death to [the victim]" written on it and appearance of shotgun wounds, as it showed premeditation and disputed self-defense); People v. Hernandez, 2012 W.L. 1652551 (Cal Dist. Ct. App. 2012) (unpublished) (voodoo dolls discovered in defendant's possession with names of prosecutors, judges, and investigators in the case was "highly probative of his consciousness of guilt").

https://www.wisdomproducts.com/product/6508, and http://luckyhoodoo.com/incense.html.

It is a reasonable inference that both are in the same vein and were to hopefully serve the same purpose in warding off the investigation of Defendant into Tyrone's disappearance. Again, Defendant is always free to make arguments to the jury as to the weight of this evidence, but the caselaw is clear such arguments have no effect on admissibility.

III. EARLY GLOVER'S TESTIMONY IS ALSO ADMISSIBLE AS EVIDENCE OF CONSCIOUSNESS OF GUILT, AS IT SHOW DEFENDANT'S EFFORTS TO MANUFACTURE FALSE EXCULPATORY EVIDENCE.

Finally, the testimony of Early Glover as to Defendant's efforts to bribe him to falsely confess to Tyrone's murder is also admissible as evidence of consciousness of guilt.

A. Facts

On August 17, 2011, Defendant was arrested for the murder of Sammie Gerrick. Subsequently, Early Glover wrote a written letter in which he stated he was at the scene in the woods with Tyrone, Defendant, and another man named "Aundry". Glover's letter claimed Aundry and Tyrone were fighting in the woods when he and Defendant left the scene, and that Tyrone later called Defendant and asked him to move his car.

On December 5th, 2011, Early was interviewed by SLED in which he stated he first met Defendant at Kirkland R&E, in which they found out they knew some of the same people. Early stated Defendant told him he was in a bind and offered Early $1000 to write a statement. Defendant then wrote what he wanted Early to write, and Early re-wrote it in his own handwriting.

B. Analysis

As noted before in the discussion of the root letter, "*any* guilty act or conduct on the part of the accused is admissible as some evidence of consciousness of guilt". Orozco, 392 S.C. at 218, 708 S.E.2d at 230 (emphasis added). South Carolina cases have applied this rule to acts beyond mere flight, to include evidence of destruction of evidence, see Beckham, concealment of evidence, see Al-Amin and Epes, and witness intimidation, see Edwards.

In the present case, we have evidence of a calculated scheme by Defendant to bribe someone to write a false statement which exculpated Defendant. Conceptually, there is no difference between manufacturing false evidence, like Defendant did here, and destroying evidence or concealing evidence, which have been held in South Carolina to be admissible. Similarly, there is no conceptual difference between one who entices a witness with money to provide false evidence, like Defendant did here, and one who intimidates a witness with threats, which has been held in South Carolina to be admissible.

Accordingly, it is respectfully submitted that Early Glover's testimony is clearly admissible in the case in chief. Indeed, other courts have so held in similar situations.[3]

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[3] See People v. Parreno, 760 N.Y.S.2d 839 (N.Y. App. Div. 2003) (effort to manufacture false evidence of alibi is affirmative evidence of consciousness of guilt admissible in case in chief); Barr v. State, 98 S.W.2d 811 (Tex. Crim App. 1936) (noting: "'It is elementary that efforts * * * to manufacture evidence, or to procure false testimony * * * may be shown as indicating a consciousness of guilt,' and many cases are cited supporting the proposition.") Hall v. Commonwealth, 224 S.W. 492 (Ky. Ct. App. 1920) (quoting Corpus Juris: "Fraud on the part of accused in the preparation or presentation of his case, such as the suppression, the destruction, or the concealment of evidence, or an attempt to destroy or to suppress evidence or to fabricate, manufacture, or procure false evidence, may be shown against him as an incriminating circumstance, inconsistent with innocence, and as tending to show a consciousness of guilt, and that his cause lacks honesty and truth. Evidence is relevant to show that accused threatened or assaulted a

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the root, "Law Keep Away", and testimony of Early Glover are all admissible under South Carolina law as evidence of consciousness of guilt, and Defendant's motions should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

S. CREIGHTON WATERS
Assistant Deputy Attorney General

JASON ANDERS
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3693

ATTORNEYS FOR THE STATE

S. CREIGHTON WATERS

November 12, 2013.

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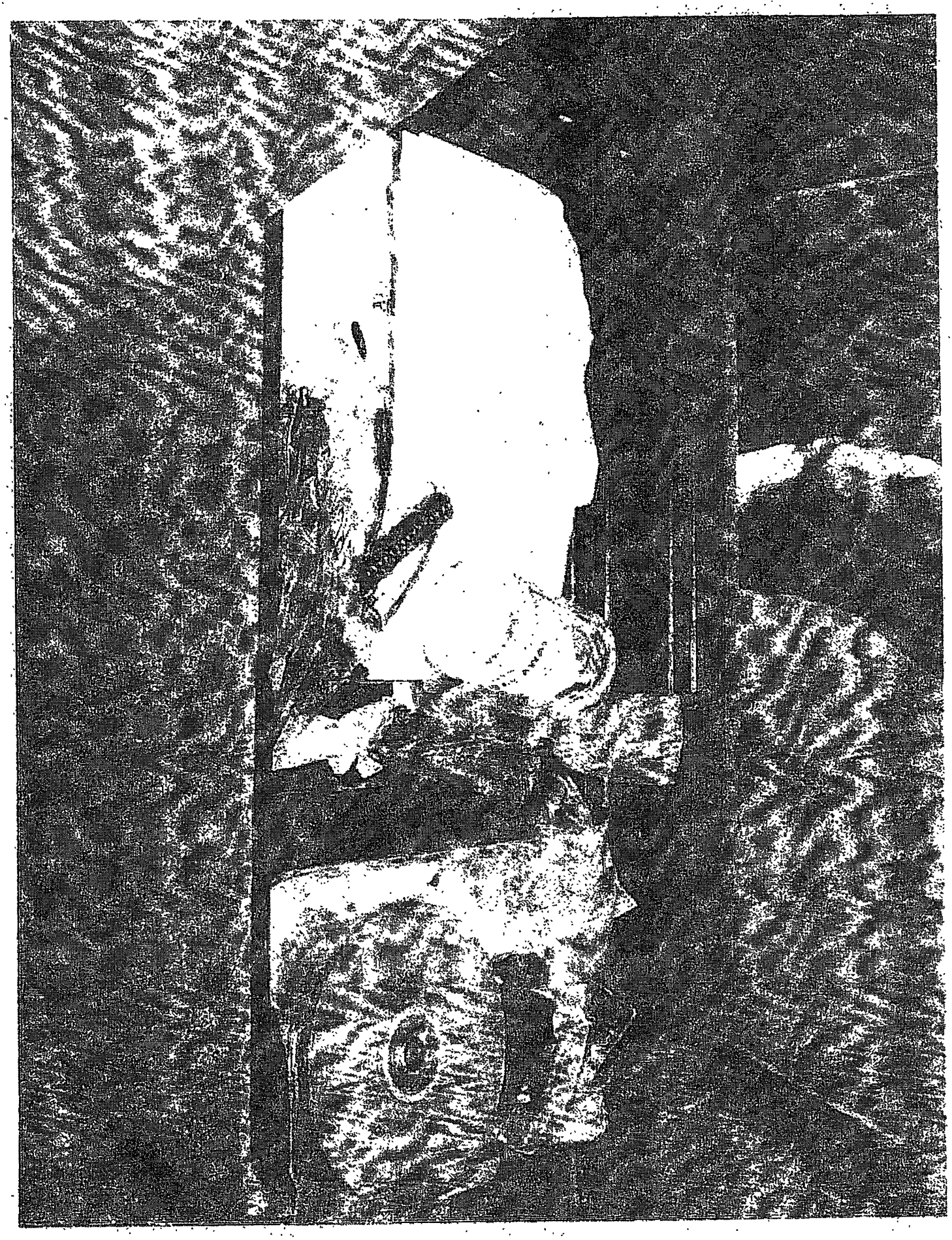
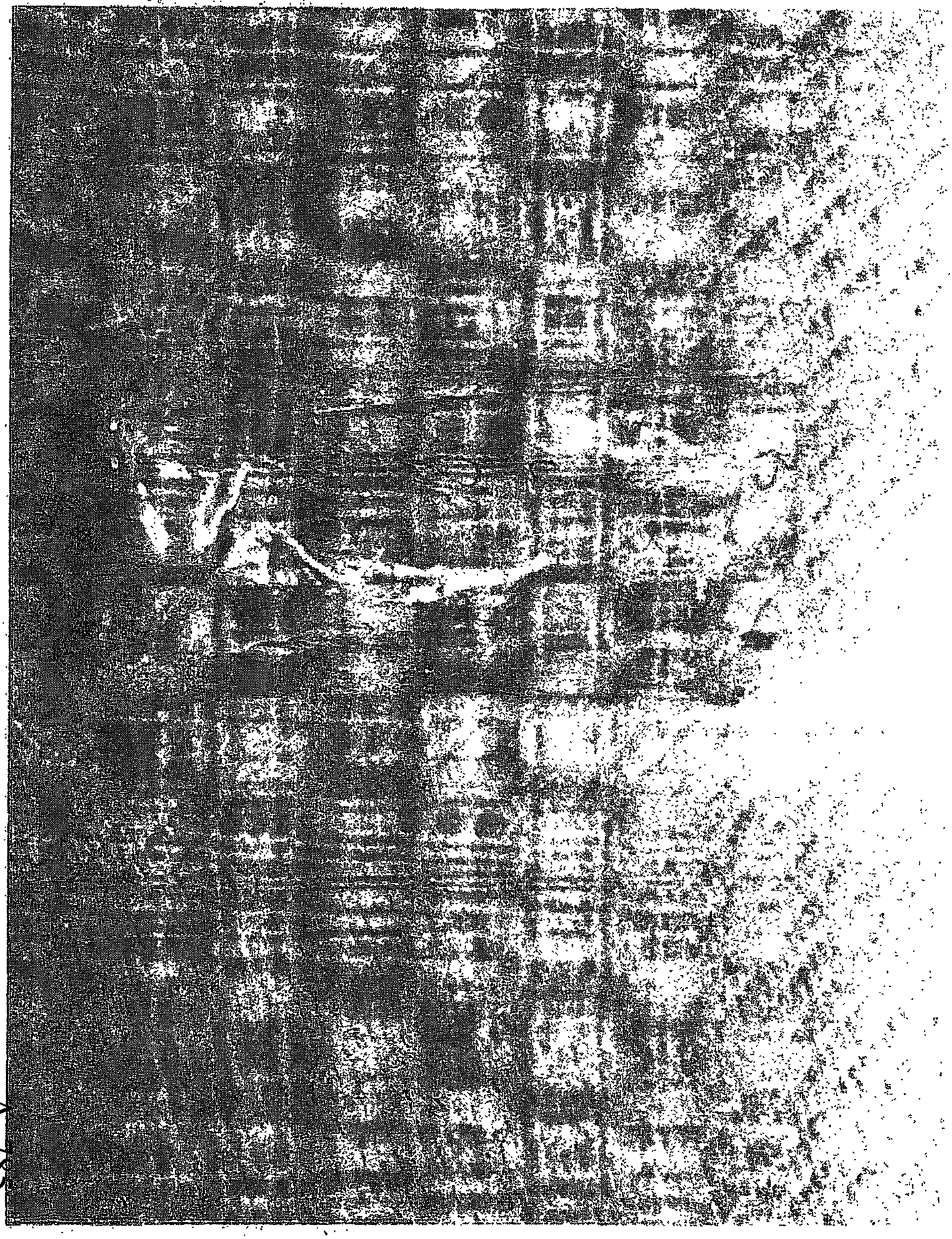
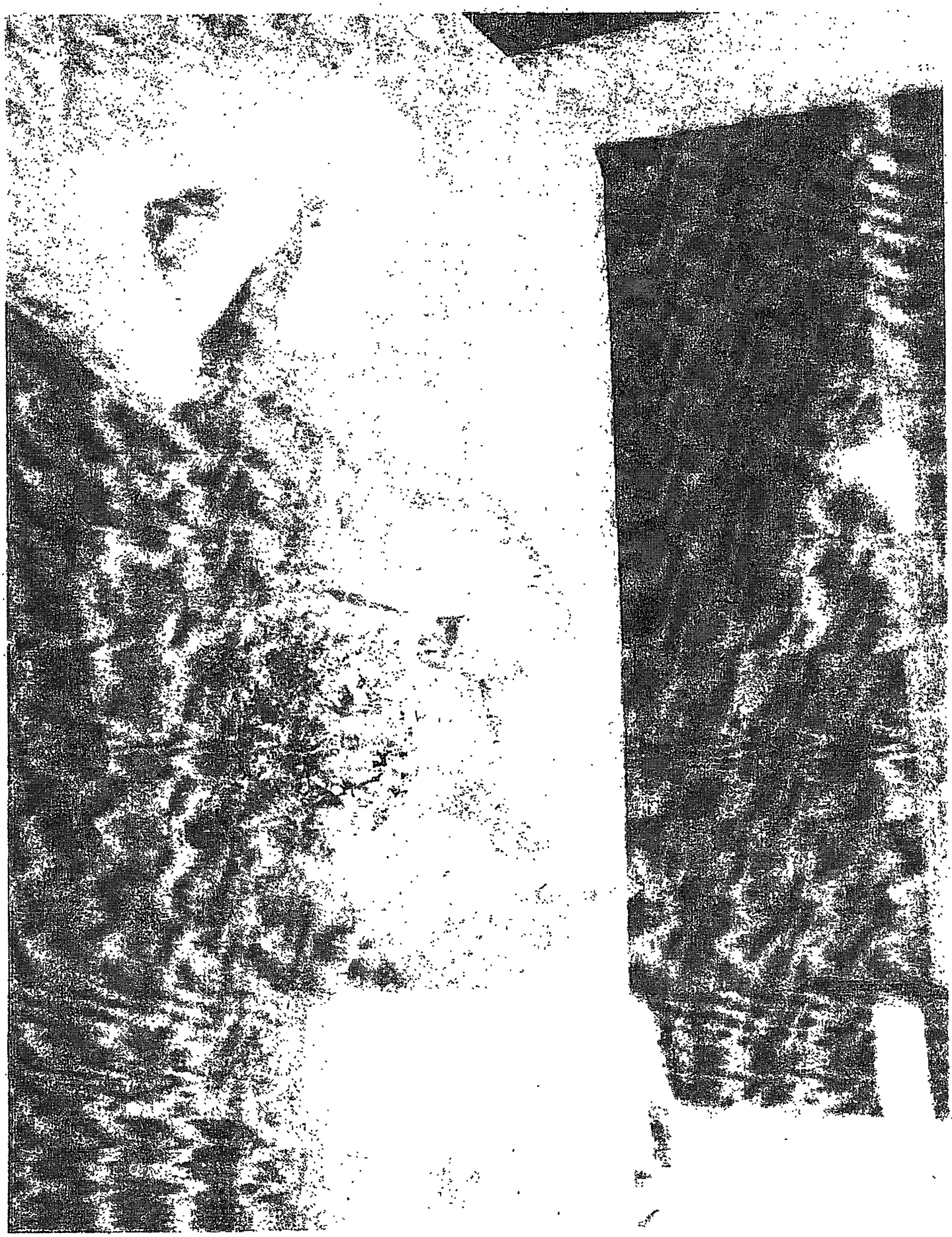
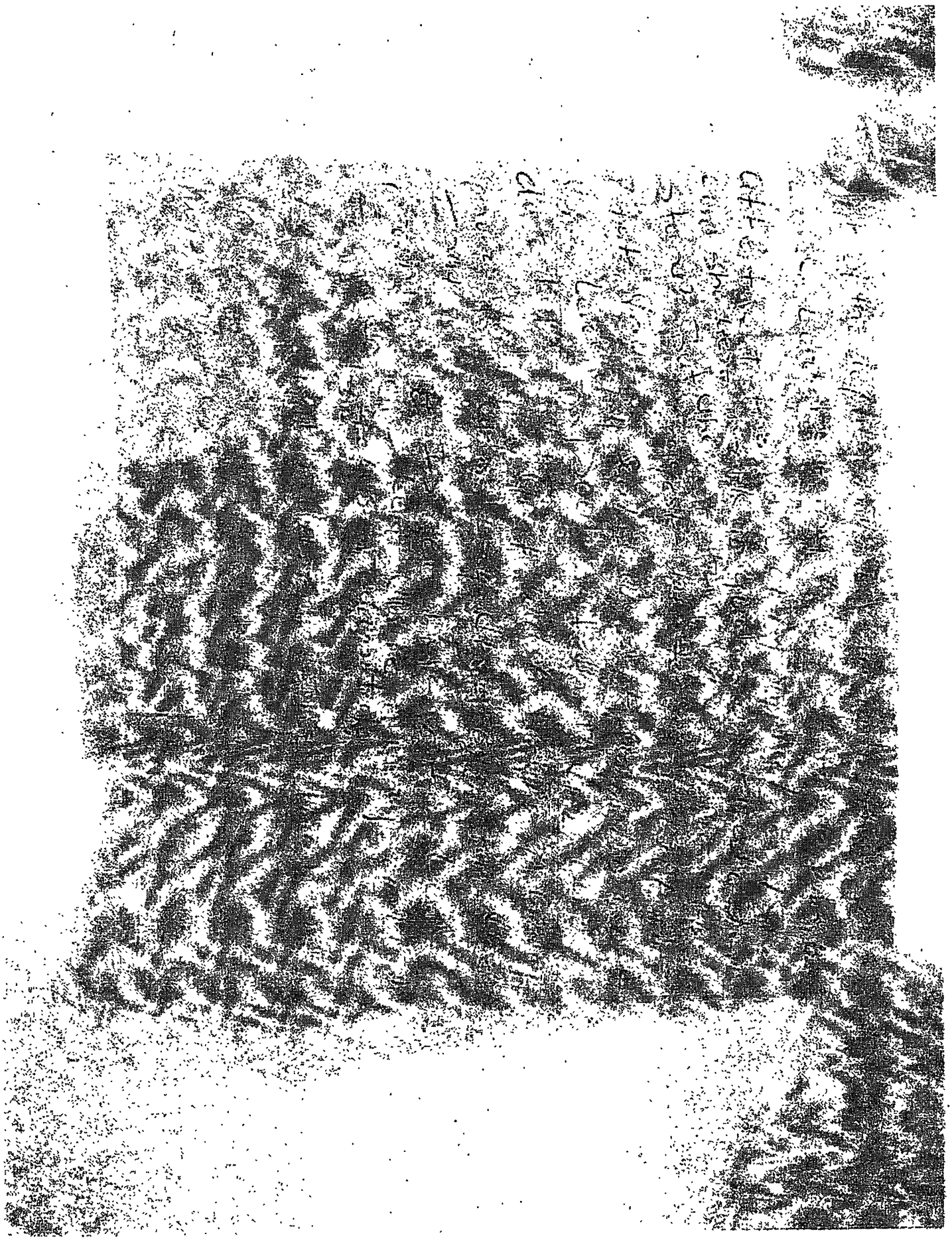
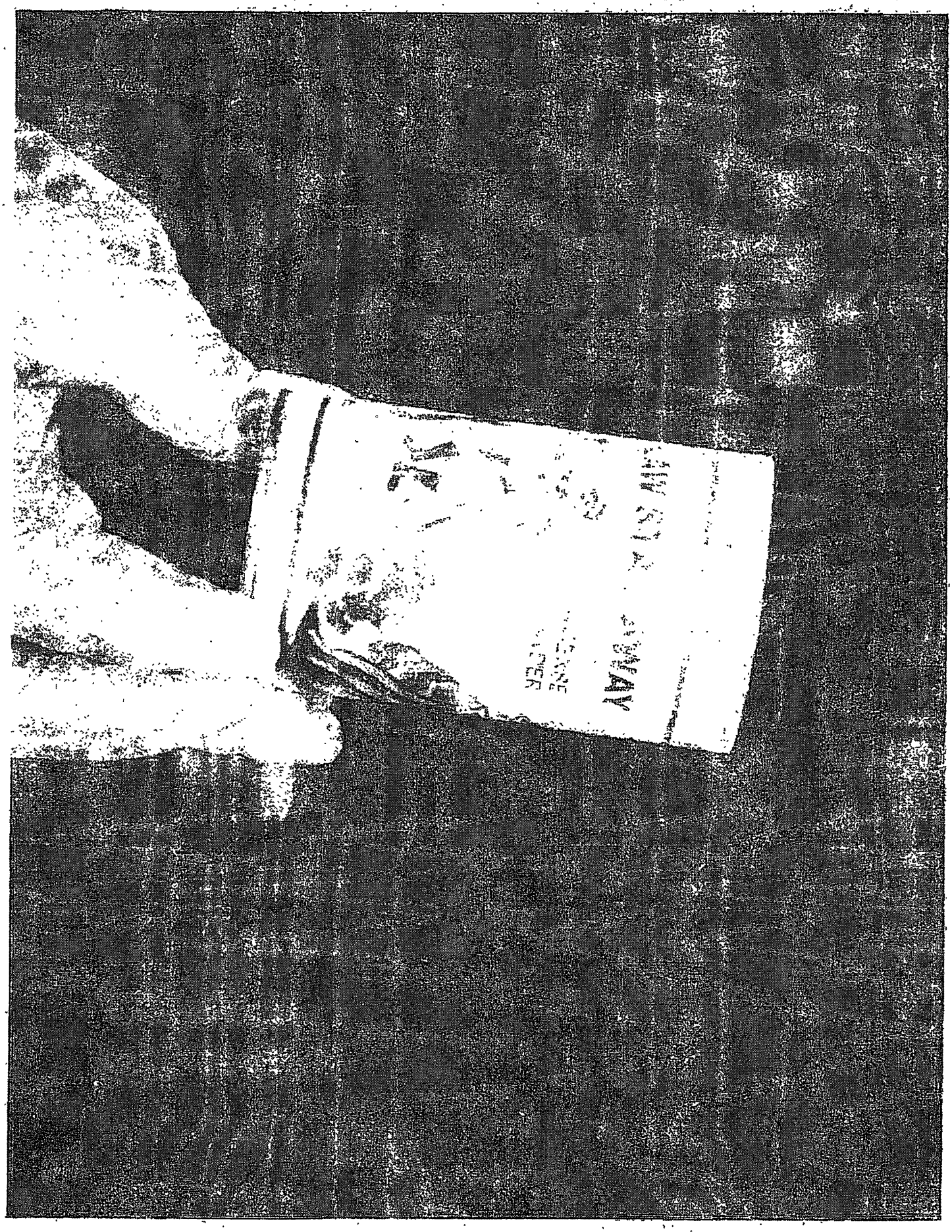
witness or procured, or endeavored to procure, his absence, or endeavored to induce him to testify falsely.").











CASE # 311100167

LEAD #

VOLUNTARY STATEMENT

LAST NAME	FIRST NAME	MIDDLE NAME	AGE	D.O.B.
Glover	Early	Jerome	45	[redacted]

NICKNAME/AKA	M ☒ F ☐	STREET ADDRESS
	S [redacted]	Rigeland SC

CITY	STATE	ZIP	MAILING ADDRESS IF DIFFERENT
Jasper	SC		

HOME TELEPHONE	WORK TELEPHONE	CELL TELEPHONE	OCCUPATION

EMPLOYER	EMPLOYER ADDRESS

DRIVER'S LICENSE NUMBER/STATE	DATE AND TIME OF INTERVIEW
	12/5/2011 3:55p.m

LOCATION OF INTERVIEW
SCAC Rigeland Corrections

INTERVIEWING AGENT	DEPARTMENT	INTERVIEWING AGENT	DEPARTMENT
S. Hadley	SLED		

I, Early Jerome Glover understand I do not have to say anything, and I volunteer the following information of my own free will, for whatever purposes it may serve. (I can) cannot read and write and completed the 13 years grade in school.

EJG I Early J. Glover meet Samie Gerrick at Kirkland RTF around Oct 12, 2011 we started talking, after finding out where we both where from and that we knew some people than as time went by he told me he was in bin and he need two people, AND I was ask for what to write a statc, AND he said I would look out. Anyway I agree to write a statement for him in my handwriting after he wrote it, and once I did I was to recieve 1,000 dollars with in I didn't. But it was his ideal about what to say and all I did was went alot with it, knowing that it was my first meeting Samie AND knowing nothing of him. Beside on July 21 I was At Morris Village treatment center in Columbia AND I got out on that date, And I knew about the incident, beside Samie wrote everything and I just rewrote it, AND a letter of Copy was presented to me by agent Hadley with my signature that I wrote that Samie wrote EJG

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bears my initials, and I certify that the facts contained herein are true and correct.

Date: 12/5/2011 Time: 5:30p.m

x Early J. Glover
Signature of person giving voluntary statement

WITNESS: S. Hadley WITNESS:

I certify that I have been given a copy of this statement consisting of 1 pages.

Form # CF-002 (Rev. 7-24-06)
CALEA 1.2.3, 44.2.3

STATE OF SOUTH CAROLINA COUNTY OF BARNWELL	)	COURT OF GENERAL SESSIONS SECOND JUDICIAL CIRCUIT Indictment 2013-GS-06-274
State of South Carolina v. Sammie Lee Gerrick, Defendant.	)	**CERTIFICATE OF SERVICE**

FILED FOR RECORD
2013 DEC 20 PM 2:57
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL CO., S.C.

I, S. Creighton Waters, certify that on November 12, 2013, I served the State's Response to Motion to Exclude Evidence of Root Letter, Bottle of "Law Keep Away", and Testimony of Early Glover on Defendant's counsel Dan Williams, Esquire, by delivery to danwilliams@bellsouth.net, and delivered a hard copy to him on November 13, 2013.

S. Creighton Waters

December 16, 2013.

STATE OF SOUTH CAROLINA	IN THE COURT OF GENERAL SESSIONS
	SECOND JUDICIAL CIRCUIT
COUNTY OF BARNWELL	
	CASE #: 2013-GS-06-00465
The State of South Carolina,	
	MOTION FOR NEW TRIAL
vs.	
SAMMIE LEE GERRICK.,	
Defendant.	

FILED FOR RECORD
2013 NOV 27 AM 11:04
RHONDA O. MCELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

TO: S. CREIGHTON WATERS, ESQUIRE and JASON ANDERS, ESQUIRE

PLEASE TAKE NOTICE that the defendant by and through his undersigned counsel, shall move for a new trial on the following grounds:

1) The Trial Court improperly admitted a note which was part of the 'witch doctor root". The note and root found in the defendant's truck was not written by him but was portrayed and construed as a confession even though the wording of the note did not confess to the crime of murder. Therefore, the note was not relevant. Further any probative value was substantially outweighed by the unfair prejudicial effect of introducing the note and root.

2) During trial, Defendant agreed to the introduction of a video tape of an interview with defendant conducted by a polygraph examiner so long as the polygraph machine was not shown to the jury. During presentation of the video, the machine was inadvertently shown by the prosecution publishing evidence to the jury that the defendant was given a polygraph; thereby, depriving defendant of a fair trial.

3) The Trial Court should not have admitted the August 17, 2011 interview of defendant since defendant requested to speak with his attorney contemporaneously with being read his Miranda Rights, but was not provided the opportunity to speak with his attorney.

4) All evidence in the trial was circumstantial and taken together did not prove beyond a reasonable doubt defendant committed the crime of murder to the exclusion of any other reasonable hypothesis.

(SIGNATURE BLOCK ON FOLLOWING PAGE)

BEDINGFIELD & WILLIAMS, L.L.C.

Daniel W. Williams, Esquire
Attorney for Defendant
Post Office Box 616
Barnwell, South Carolina 29812
(803) 259-2759

November 27, 2013
Barnwell, South Carolina

STATE OF SOUTH CAROLINA	IN THE COURT OF GENERAL SESSIONS
	SECOND JUDICIAL CIRCUIT
COUNTY OF BARNWELL	
	CASE #: 2013-GS-06-00465
The State of South Carolina,	
	CERTIFICATE OF MAILING
vs.	
SAMMIE LEE GERRICK.,	
Defendant.	

I HEREBY CERTIFY that a copy of the ***Motion for New Trial and Motion for New Sentence*** was served upon all counsel of record as indicated below November 27, 2013, by mailing a copy of same by United States Mail, postage prepaid, to the following address:

FILED FOR RECORD
2013 NOV 27 AM 11:04
BRENDA D. HEELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

S. Creighton Waters, Esquire
Jason S. Anders, Esquire
SC Attorney General's Office
P. O. Box 11549
Columbia, SC 29211

Angela Still

Angela S. Still
Paralegal to Daniel W. Williams

November 27, 2013
Barnwell, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF BARNWELL	COURT OF GENERAL SESSIONS SECOND JUDICIAL CIRCUIT Indictment 2013-GS-06-274
State of South Carolina v. Sammie Lee Gerrick, Defendant.	**RESPONSE TO MOTION FOR A NEW TRIAL**

The State of South Carolina hereby responds as follows to the motion by Sammie Lee Gerrick for a new trial. For the following reasons, the motion should be denied.

I. THE ROOT AND ACCOMPANYING LETTER ARE CLEARLY ADMISSIBLE TO SHOW CONSCIOUSNESS OF GUILT UNDER LONGSTANDING SOUTH CAROLINA CASELAW.

Defendant first contends that the court improperly admitted the capsule containing the letter found in Defendant's console. He argues that the note was not written by him and was portrayed as a confession, and that the prejudicial effect outweighed any probative value.

Of course, this evidence was the subject of a pretrial motion and the State presented a detailed memorandum as to admissibility. This Court ruled the letter admissible. The State will not cut and paste its entire argument here, but will again point out that "[a]s a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt." State v. McDowell, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976) (quoted in State v. Martin,

403 S.C. 19, 742 S.E.2d 42 (2013)). Further, in order for certain acts to be evidence of guilty consciousness, there must be some connection between the crime charged, the act, and the defendant. See Martin, 403 S.C. at 29, 742 S.E.2d at 47.

Here, the letter undoubtedly provides the specific nexus to this case, as it expressly refers to four relevant things: (1) the murder, (2) the bond revocation, (3) the trial court, and (4) the request to be "set free". Of course, Defendant's inability to pay back the money Tyrone loaned him to get out on bond is the motive for this murder, and it was this Court which set that very bond on the escape charge. If Defendant were to get arrested for murder that could potentially result in a revocation of the bond on the escape charge. Further, defendant had been repeatedly questioned twice by the police about involvement in Tyrone's disappearance prior to the root being discovered. Defendant also had already denied involvement to mutual friends, noting that he hoped a supposed text from the victim would take "heat" off Defendant. Thus, Defendant was aware he was a target of the investigation into Tyrone's disappearance prior to the time the letter was found in his truck.

Given these facts, the letter is clearly susceptible of the inference that because of his consciousness of guilt, Defendant procured the letter for whatever help it might bring in warding off a murder charge and related legal problems – indeed, it expressly hoped that Defendant would be "set free". Again, "*any* guilty act or conduct on the part of the accused is admissible as some evidence of consciousness of guilt". Orozco, 392 S.C. at 218, 708 S.E.2d at 230 (emphasis added).

Defendant may argue that the letter is ambiguous or susceptible of some other different inference – however, the caselaw is clear such alternate explanations are a matter for weight, not admissibility. See Beckham, 334 S.C. at 314-15, 513 S.E.2d 612-13. See People v. Hernandez, 2012 W.L. 1652551 (Cal Dist. Ct. App. 2012) (unpublished) (voodoo dolls discovered in defendant's possession with names of prosecutors, judges, and investigators in the case was "highly probative of his consciousness of guilt").

In closing, the State expressly argued that the evidence was only that of guilty consciousness. The State did not claim that Defendant wrote the letter, only that it was clearly an important personal item he kept close to him in the console of his truck, at a time when he knew he was a target in this murder case and was out on bond, and which specifically hoped he would be protected from murder and bond revocation and would be "set free". The evidence was admissible and only argued by the State for the permitted purpose.

The State respectfully asserts this Court ruled correctly at trial and the evidence was properly admitted. Regardless, even if this Court were to change its mind, it cannot be said that given all the evidence in the case this one bit of evidence unduly influenced the jury such that a new trial is warranted.

II. THERE WAS NO PREJUDICIAL ERROR FROM THE BRIEF UNREDACTED DISPLAY OF THE POLYGRAPHER'S COMPUTER EQUIPMENT.

Defendant next moves for a new trial because the video on which the polygrapher's computer equipment was visible was inadvertently and briefly shown to the jury.

The decision to grant or deny a mistrial is within the sound discretion of the trial court." State v. Wiley, 387 S.C. 490, 495, 692 S.E.2d 560, 563 (Ct.App.2010). "The trial court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law." Id. "The power of the trial court to declare a mistrial should be used with the greatest caution under urgent circumstances and for very plain and obvious reasons stated on the record by the trial court." Id. "A mistrial should only be granted when absolutely necessary, and a defendant must show both error and resulting prejudice in order to be entitled to a mistrial." Id. "The granting of a motion for a mistrial is an extreme measure that should only be taken if an incident is so grievous that the prejudicial effect can be removed in no other way." Id. at 495–96, 692 S.E.2d at 563. See State v. Dial, 405 S.C. 247, 746 S.E.2d 495 (Ct. App. 2013).

At trial, the defense moved to exclude the video statement taken by the polygrapher because his computer equipment was visible on the table. The State argued that since the video quality was so poor, and the polygrapher used computer equipment, it was not apparent from the video that the items on the table were anything more than a computer and some note pads. As trial progressed, the State and the defense agreed that the State would take a Wordpad document sized appropriately and overlay it on the video so that the table in the bottom corner could not be seen. All the

videos were played on computer, through a projector, and on to a movie screen visible to the jury.

Unfortunately, in adjusting the sound as the video began to play, the State inadvertently caused the overlay not to be on top anymore. The trial court noticed this and sent the jury out. The defense moved for a mistrial. This Court found the error unintentional, and no prejudice; thus, it denied the mistrial motion. The jury was brought in and the video continued with the overlay in place.

It is respectfully submitted that this Court's decision was correct and no prejudice was suffered. As argued prior to trial, the video is of such poor quality that it cannot be made out that the things on the table are anything but a laptop and some notepads. Nothing was hooked up to the defendant or visibly obvious as polygraph equipment. The quality of the video was even worse and less discernable when it was magnified up on the movie screen, and the video without the overlay was only up for seconds at the very beginning before the error was realized, the video turned off, and the jury sent out. There was simply insufficient time for any juror to make out what was on the table beyond just normal office items like pads and a computer, and indeed it would be impossible given the quality to make out anything beyond normal office items regardless of the time. At no time during the video or the trial was the word polygraph mentioned before the jury.

Given these facts and circumstances, it is respectfully submitted that there was no prejudicial error from the inadvertent and brief showing of the video without the overlay. See State v. Dial, 405 S.C. 247, 746 S.E.2d 495 (Ct. App. 2013) (trial court

properly denied mistrial where, in part, trial court noted that it did not believe any juror could even tell that the small heart-shaped object the witness brought with her to the stand was an urn, and the jury was quickly excused and the problem corrected).

III. THIS COURT PROPERLY ADMITTED THE AUGUST 17, 2011 STATEMENT, AS THE DEFENDANT DID NOT UNAMBIGUOUSLY REQUEST COUNSEL AND THE WAIVER WAS CLEARLY KNOWING AND VOLUNTARY.

Defendant next contends this Court erred in allowing the Defendant's August 17, 2011 statement, which he claims violated his rights inasmuch as he asked to meet with his attorney.

This also was the subject of a pretrial hearing at which the State provided a detailed memorandum, and the State would rely on that memorandum and will not cut and paste it in its entirety here. Briefly, at the beginning of this particular interview, Defendant stated he was willing to talk to police, but his lawyer (on other charges) told him not to talk and he felt he should call his lawyer and let him know he was being interviewed. Police responded that unlike their prior interviews, when Defendant was not in custody and he came down voluntarily, since Petitioner was currently in custody on the Bamberg charges, they were required to read him his rights before they could talk with him. The officer then asked Petitioner if he could proceed reading him his rights and Defendant agreed. During the reading of rights, the officer went over the right of Defendant to have counsel present before and during questioning, and the right to stop the questioning at any time. Following this, Defendant again indicated he wished to proceed with questioning, just as he had done at the beginning of the interaction.

As argued before, an invocation of right to counsel must be unambiguous, as police are not "required to make difficult decisions about an accused's unclear intent and face the consequence of suppression 'if they guess wrong'". State v. Moses, 390

S.C. 502, 512, 702 S.E.2d 395, 400 (Ct. App. 2010) (citing Berghuis v. Thompkins, 560 U.S. 370 (2010)). Here, Defendant started out by clearly stating he wanted to talk to police. He then only added that his lawyer told him not to talk, and he felt like he should let his lawyer know he was there – *not* that he wanted his lawyer actually present before he continued with questioning. This is the definition of an ambiguous statement. In the face of this ambiguous statement, officers proceeded to do a full and fair waiver, after which Defendant agreed to talk. Thus, there was no violation. See Davis v. United States, 512 U.S. 452 (1994) (United States Supreme Court held that the statement "maybe I need a lawyer" was NOT an unambiguous request for counsel).

Moreover, the validity of the ultimate waiver precludes any suppression. After it has been determined that the waiver was valid, the analysis is over:

> [o]nce it is determined that a suspect's decision not to rely on his rights was uncoerced, that he at all times knew he could stand mute and request a lawyer, and that he was aware of the state's intention to use his statements to secure a conviction, the analysis is complete and the waiver is valid as a matter of law."

State v. Binney, 362 S.C. 353, 358-361, 608 S.E.2d 418, 421 - 422 (2005).

Here, a review of the video shows Defendant, an intelligent person with experience in the criminal justice system, was agreeable to talk from the start and was not badgered into waiving his rights by coercive police conduct. The decision was clearly knowing and voluntary after an explanation of the rights. Indeed, he did not even "confess" to anything. As such there is no call for suppression.

It is respectfully submitted that this Court correctly held the statement admissible, and the motion for a new trial on this basis should be denied.

IV. THERE CLEARLY WAS SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE SUFFICIENT TO SUBMIT THE CASE TO THE JURY.

Defendant next contends he should get a newtrial because the evidence was circumstantial and did not prove him guilty beyond a reasonable doubt.

In reviewing a motion for a directed verdict, the trial court is concerned with the existence of the evidence, not with its weight. State v. Brannon, 388 S.C. 498, 501, 697 S.E.2d 593, 595 (2010). The Court must view the evidence in the light most favorable to the State. State v. Lollis, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001).

If there is any direct evidence, or if there is substantial circumstantial evidence, which reasonably tends to prove the defendant's guilt, the trial court properly submitted the case to the jury. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). The trial court should grant a directed verdict when the evidence merely raises a suspicion that the defendant is guilty. Odems, 395 S.C. at 586, 720 S.E.2d at 50.

Defendant contended at trial and contends in his motion that the evidence does not prove guilt to the exclusion of any reasonable hypothesis. This is incorrect. Not only is that not in the jury charge, as it "comes perilously close to shifting the burden of proof:, see State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013), the caselaw is clear that "a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis". State v. Cherry, 361 S.C. at 594, 606 S.E.2d at 478 (2004). See also State v. Hepburn, --- S.E.2d ----, 2013 WL 6492390 (December 11, 2013) (same).

Given these principles, it is clear that the State did more than raise a mere suspicion and in fact presented, as this Court stated at trial, overwhelming

circumstantial evidence. This consists, in part, that Defendant was in jail and needed money to get out, as well as money to pay bills. Maurice and Johnelle Rice testified as to Defendant's promise that he would pay Maurice and the victim back as soon as he got out of jail. Maurice testified to meeting the victim at the bank where they withdrew the money, and that they agreed to do it because Defendant said he could pay them right back. Maurice testified to talking with Defendant and the victim that afternoon when the victim got Defendant out of jail, and then talked with them around 2pm. They said they were on the way to get the money for repayment. Bradley Smith stated the Defendant left around 2pm with shovels, and that the victim was following behind them. Shaneka saw them talking together in their vehicles in Blackville around this time. Joe Thomas saw Defendant go by with another car close behind at 3:04 pm, and called Defendant on his cell. This was confirmed by the phone records, and Thomas's house is near the crime scene.

Additionally, phone records show Defendant and the victim making calls to each other around this time. The victim's last phone calls were to Defendant, at 3:11p.m., in the area east of Blackville where the crime scene was, before the victim's phone goes off the grid permanently, as shown by the undelivered text messages. Meanwhile, Defendant has an approximately two hour break from 3:33p.m. to 5:34 p.m., before his phone makes any further calls.

Defendant then began a string of lies and attempts to cover up his crime. He tells Maurice that evening that they went into the woods, dug up a safe, and Defendant put $100,000 in Tyrone's car and Tyrone kissed him on the forehead and drove off (and,

of course, as noted before the Defendant got two shovels, told Maurice in the presence of the victim they were going to get the money, and the victim was found in the woods in a shallow grave). Defendant feigns a call to victim, asking where he is. The next day, Defendant tells Maurice he is still working on getting the money.

The day after the victim disappears, he is caught on camera using the victim's ATM card. When confronted with this by police the next day, he admits the use but claims the victim let him use it because the victim was holding money for Defendant (which does not fit with the Defendant telling Johnelle and Maurice he needed to borrow money from Maurice and the victim and would pay them right back). Defendant tells Agent Burnett, and records reflect, that he spent sizeable sums with the victim's ATM card on Defendant's light bill, his probation, his mortgage, and personal items.

A mysterious text from a Trac Phone purporting to be from the victim, but not from a phone he had ever been known to use, is sent to some of the victim's friends. When Jamal Berry called Defendant about the text he received, Defendant said "maybe this will take the heat off of me". The message claimed that "Kim's ex got me", and used the word "am" for "I'm". Texts and other written materials from Defendant showed he routinely misused "am" for "I'm", whereas the victim's texts showed the victim correctly used "I'm". Additionally, cell phone records showed that about the same time the Trac Phone was sending texts in Denmark, SC, Defendant's cell phone was pinging off a Denmark tower as well.

Defendant then began a long series of lies to police over a few weeks, where he went from denying any knowledge of what happened to the victim, to, as he was

gradually confronted with more and more evidence, admitting he was at the scene when the victim was attacked, but claiming it was not him who committed the crime. In his first interview with Lt. Harley, two days after the disappearance, he stated that the victim took him home and he never heard from him again. Defendant said he got a shower (which is interesting given that Taylor White testified he came home later that night and took clothes to the washer and changed). Defendant claimed he went by Joe Thomas's place to get some sand, which Joe Thomas testified was not true. The police also photographed scratches on Defendant's arms and chest.

A few days later, in his interview with agent Burnett, Defendant was confronted again with his use of the ATM card. Defendant admitted all the bills he needed to pay with the victim's ATM card, but he claimed he actually did not need to borrow money from the victim because that the victim was keeping Defendant's $18,000 in the victim's account. Multiple witnesses testified the victim would never have loaned his ATM card to anyone.

A few days after that, Defendant called Chief Holston stating he had received a call from "Black", who was holding the victim for $25,000 ransom. Defendant also told the Chief he had talked to the victim. Chief Holston asked for contact information, and Defendant promised to call back. Of course, he never did – yet another lie and attempt to manufacture exculpatory evidence by Defendant.

Most importantly, the police talked with Defendant's wife, Charlene. She finally admitted that late at night on the day the victim disappeared, she followed Defendant out to a isolated wooded area off of Sunshine Road in Barnwell County, and there she

saw the victim's car parked in the woods. Defendant got in the victim's car and Charlene followed him to an old Chinese restaurant in Orangeburg County, where Defendant hid the car. Of course, Defendant's fingerprints were found on the car.

Charlene then led police to the isolated wooded area to where she had followed Defendant on the night the victim disappeared, and police set up a grid search. Nearby they found the shallow grave with the victim's body. He was face down with his ankles and wrists tied, and had defensive wounds on his forearm. The cause of death was probable suffocation. Green netting and lures and similar green netting was found at where the Defendant had been staying.

Police searched Defendant's truck. In the center console, they found a capsule and a bottle of "Law Keep Away" incense. On the paper in the capsule was written:

> Set me Sammie Gerrick free from murder, and reduced bonds,
> Jack Early set me free now
> Jack Early set me free now
> Jack Early set me free now
>
> Sammie Gerrick Sr.
> Sammie Gerrick Sr.
> Sammie Gerrick Sr.
>
> So shalt it be it
> So shalt it be it
> So shalt it be it
>
> Amen
> Amen
> Amen

Having discovered the body, police brought Defendant in for another interview. They advise they have information he was in Orangeburg that night. Confronted with this, Defendant's story changed, and he stated he did go there to get $200 from "Big

Joe". He still denied knowing anything about the victim after the victim dropped him off earlier that day.

Defendant was then served with the murder warrant which mentioned him moving the victim's car from the crime scene. Defendant now needed to come up with a new lie, and he asked for agents to come back and talk. He then claimed that he and Tyrone were supposed to meet Andre Hightower, Oshane Dixon and the mysterious "Big Joe" for a deal, from which Defendant said he was supposed to get $7000 to pay back the victim. He still asserted he left the victim earlier in the day and did not know what happened, but Andre called him that night and offered him $400 to move the car. The officers then bluffed Defendant, stating that they had evidence his truck was at the scene. Defendant then admitted "you got me there".

The next morning, Defendant, obviously believing they had evidence his truck was at the scene (and knowing that it was there), asked to speak to Jeff Croft, from which his final version appeared. Defendant now claimed he went with the victim to meet Big Joe, Andre Hightower, and Oshane Dixon for a drug deal (multiple witnesses testified the victim was not into drugs, and no drugs were found in his system). Defendant claimed they attacked victim and demanded Defendant go and get more money, so Defendant left (but did not return, and instead just spent the victim's money – never reporting any of this to friends or police). He claimed that later Andre called him and told him to go move the car (which he did out in the woods late at night with his wife and a young child). Andre and Oshane both testified they had nothing to do with the victim's disappearance.

The State also presented Early Glover, who testified that while in SCDC, months after the crime, Defendant promised him $1000 if he would write a statement that he and Defendant were out there when the victim was attacked by Andre and the others, after which Defendant and Early left. Glover stated Defendant provided him with the statement which Glover then copied in his own hand. Glover stated that in reality he did not know any of these individuals and only met Defendant in prison. Defendant's versions, of course, never mentioned Early Glover being present at the scene.

Finally, Defendant as noted before had scratches on his arm and chest, which the pathologist testified were consistent with being scratched by someone defending himself in an altercation. Defendant told lies about how the scratches happened, telling Maurice it happened when he was tased and police it happened when a light bulb shattered in the jail. The State presented witnesses that Defendant had no such injuries around those times.

This evidence is substantial circumstantial evidence, and whether by motive, opportunity, or acts of guilt, they all point to Defendant. In short, Defendant owed the victim money and needed more money, Defendant and the victim said they were going off together for Defendant to get the money, Defendant was last seen with the victim around the time the victim disappeared as corroborated by witness testimony and the cell records, Defendant took the victim's car from the crime scene late a night and hid it, he used the victim's ATM card the next day, he ultimately placed himself at the scene in his own statements, and he had defensive wound scratches, on top of all the lies and attempts to manufacture evidence. Together, all of this evidence is very strong. See,

e.g. State v. Rogers, 405 S.C. 554, 748 S.E.2d 265 (Ct. App. 2013) ("circumstantial evidence, however, gains its strength from its combination with other evidence, and all the circumstantial evidence presented in a case must be considered together to determine whether it is sufficient to submit to the jury", and finding substantial circumstantial evidence reasonably proved the defendant's guilt).

The motion should be denied.

V. THE MOTION FOR A NEW TRIAL BASED ON THE SECOND WILLIAMSON LETTER RECEIVED AFTER TRIAL SHOULD BE DENIED AS THE EVIDENCE IS NOT "NEW" UNDER THE LAW, AND REGARDLESS IS PLAINLY WITHOUT ANY CREDIBILITY SUFFICIENT TO MEET THE STANDARD FOR AFTER-DISCOVERED EVIDENCE.

Gerrick finally contends that he should be granted a new trial based on the second letter given by Dustin Williamson after the guilty verdict, in which he again states he committed the crime and states that he does want to testify. For the following reasons, the motion should be denied.

A. Facts before trial

As this Court is aware, a few weeks prior to trial Defendant reported to correctional officers that he had found a letter on the floor of his cell. This letter (the "first letter") was signed by 18-year-old inmate Dustin Williamson. The text of the letter claimed generally that Defendant was innocent and was not present when the victim was killed. The letter further stated the victim was killed in Santee and brought to the burial site, and that Dustin and four other people were involved. At one point, the letter states that the writer does not know Defendant, but at another point claims that Williamson and his friends were supposed to kill Defendant too. The letter also contained idiosyncrasies seen in Defendant's own writing, such as "no" for "know", "rat" for "right", and "knot" for "not".

At a pre-trial hearing the Wednesday before trial, Williamson's counsel Jason Price, Esquire informed the Court that he just realized he had a conflict and would need to withdraw from representation. The State asked the Court to appoint counsel for

Williamson for purposes of the letter and the upcoming trial, and this Court that day appointed Adam Ness, Esquire, for that purpose.

At trial, Dustin Williamson was called to the stand outside of the presence of the jury. He indicated he would not testify and wished to claim his Fifth Amendment privilege against self-incrimination.

The State then offered evidence outside of the presence of the jury about the manner in which the letter was found. Lt. Shaune Harley from SLED testified. He noted he received statements from the jail guards, who stated they got the first letter from Defendant who claimed he found it on the floor of his locked cell.

Lt. Harley interviewed Williamson twice prior to trial. At the first interview, Williamson admitted writing the letter but could not provide any specific details about what allegedly happened, responding only "whatever is in the letter, that's what happened".

At the second interview, Williamson requested that he be taken out of Barnwell Detention Center, so he was taken to Bamberg. At that interview, Williamson again admitted writing the letter, but he again only would say "whatever is in the letter" when asked about specifics of the crime. When he was asked if he had been threatened or put up to writing the letter, Williamson stated that "someone was going to die in six days". When asked if his family had been threatened, Williamson asked the officers to make sure his mother was safe. Williamson also stated he needed to get out of the Barnwell Detention Center because he would be killed.

At one point in the interview, Williamson said that he never claimed that he personally killed the victim. When Lt. Harley and Attorney Ness explained to Williamson the concept of accomplice liability through the "hand of one is the hand of all", Williamson dropped his head and kept repeating "they played me, they played me".

The parties then discussed admissibility of the letter. The State argued, among other things, that the letter was inadmissible as a statement against penal interest pursuant to Rule 804(b)(3), SCRE, because the circumstances of the letter show that when the statement was made, Williamson did not believe he was actually admitting to guilt because he did not understand the concept of accomplice liability. The State noted that the whole rationale for the statement against interest rule is that the statement could be trusted because a person would not make an admission against interest without believing it to be true, and in this case, the circumstances show Williamson clearly did not believe he was admitting anything against his interest. This Court agreed with the State's arguments and (correctly, as seen in the footnote) excluded the letter.[1]

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[1] See State v. Kiser, 284 S.W.3d 227, 266 (Tenn. 2009) ("As commentators have noted, statements should not be admitted under Rule 804(b)(3) 'if the declarant actually believed that he or she was saying something that would be helpful.' Cohen, supra § 8.36(5). In that event, 'reliability is questionable and the statement should not be admitted under this hearsay exception.' Id."). See also Weinstein's Federal Evidence § 804.06[1] ("Statements against interest are admissible because it is presumed that one will not make a statement damaging to one's self unless it is true."); § 804.06[4][c] (concluding that because liars may confess to acts they did not commit, such declarations should be "excluded if counsel opposing admission can persuade the court that the declarant is probably lying", and the trial court should make that determination outside of the presence of the jury); § 804.06[d][i] ("At the moment the statement is made the declarant must believe that the statement is against the declarant's interest. . . . **The court may exclude statements it finds inherently unreliable because the declarant was, for example, currying favor or was ignorant. The court must ascertain whether a particular declarant would know enough to perceive the statement's detrimental character.**") (emphasis added and citing various cases)).

The next morning, the parties again discussed the Williamson issue. The State withdrew its objection to the admissibility, and made the argument that the circumstances surrounding the making of the first letter, and Williamson's statements about the letter to law enforcement described above, should be admissible as impeachment pursuant to Rule 806, SCRE, which allows impeachment of a hearsay declarant if the hearsay statement is admitted, without the necessity of any opportunity to deny or explain. The State noted caselaw holding that introduction of impeachment evidence under Rule 806 does not violate Crawford v. Washington, 541 U.S. 36 (2004), because it is offered for impeachment and not the truth of the matter asserted.[2] Similarly, the State argued the statements about the first letter were admissible as evidence of Williamson's state of mind – again, not for the truth of the matter asserted in violation of the hearsay rule and Crawford.[2] The State argued that the circumstances of

---

[2] See Hernandez v. State, 273 S.W.2d 685 (Tex. Ct. App. 2008) (evidence admitted under Rule 806 to impeach hearsay declarant was offered for impeachment, not the truth of the matter asserted, and thus did not violate Crawford). See generally Michigan v. Bryant, 131 S.Ct. 1143, 1161 n. 11 (2011) (that the Confrontation Clause is not implicated when statements are offered "for purposes other than establishing the truth of the matter asserted." Crawford, 541 U.S., at 60, n. 9).

[2] See State v. Edwards, 373 S.C. 230, 644 S.E.2d 66 (Ct. App. 2007) (victim's statement was not offered to show defendant hit her mother but to show her state of miind and why she behaved as she did); State v. Ruben T., 936 A.2d 270, 278-79 & n.5 (Conn. 2007) (statements of victim not hearsay as they were not admitted to show the truth of the matter asserted, but as circumstantial evidence of the victim's state of mind – that she was afraid of defendant; thus, Crawford was not implicated); State v. Williams, 1999 W.L. 783971 (Ohio Ct. App. 1999) (statements that declarant had been threatened in jail were no offered for truth but state of mind). See generally United States v. York, 572 F.3d 415, 427 (7th Cir. 2009) (statements offered for context of defendant's statements and not truth are not hearsay and Crawford is not implicated).

the statement needed to be admitted in the interests of justice, to preclude the jury from being misled about Williamson's true actions.

This Court agreed with the State's Rule 806 argument and ruled that Williamson's statement to law enforcement about the first letter would be admissible. At this point, the defense then withdrew its offer of the first letter, expressly noting the withdrawal was done for strategic reasons. For context, it is worth noting that another State's witness, Early Glover, already testified that when he and Defendant were in SCDC, Gerrick promised him money if Glover would write a statement that Defendant had nothing to do with the crime. Defendant provided Glover with a statement which Glover then copied in his own hand. Glover testified he did not know Defendant prior to meeting him at SCDC, and that he knew nothing about the crime.

B. Facts after the verdict

The day after Defendant was found guilty of murder, this Court received another letter from Williamson (the "second letter"). In this letter, Williamson again stated Defendant was innocent, and threatened to kill ten officers. Williamson stated he killed the victim, and wanted to speak to police within two hours. Williamson also stated he could tell about a man who was killed in Blackville in May. The letter threatened this Court and his lawyer, and then went on to state he buried the victim face down, that the victim was 250 pounds, that he was buried on a dirt road in Blackville, that the victim had a bald head, that the victim died on Thursday night at 9:30pm, and that "Aundrey Hightower" made Williamson do it.[3] The letter states that Williamson no longer wants to take the Fifth, and demands that the murder charge be taken off of Defendant.

[3] "Aundrey" is another idiosyncrasy also found in the Early Glover letter.

SLED Special Agent Jeff Croft interviewed Dustin after receipt of this letter, and his Memorandum of Interview ("MOI") is attached. Williamson admitted he wrote the letter. When asked if what was written was true, Williamson responded "it could be its in the letter aint it". Williamson threatened Croft, but would not acknowledge the letter was his idea.

Subsequently, Agent Croft interviewed Houston Bryant and Brandon Morrell, who were in the cell adjacent to Defendant on the night after he received his guilty verdict. MOIs, videos, and a statement from these interviews are attached. Morrell told Croft that after his verdict Defendant and Williamson began "fishing" – or communicating in writing with the assistance of Bryant and Morrell who were in the cell between them. Bryant and Morrell read the letters as they assisted in passing them back and forth. In the letters, Defendant again asked Williamson to take Defendant's murder charge, and Defendant promised to help Williamson get an insanity plea if Williamson took Defendant's charge. Morrell stated he knew that Williamson and Defendant also passed letters prior to trial.

Similarly, Houston Bryant also admitted helping Defendant and Williamson pass letters between cells after Defendant received his guilty verdict. Bryant stated Defendant would pass the letter underneath a crack between his and Defendant's cell. In the letters, Williamson apologized and stated he had tried to take the charge for Defendant, and asked if Defendant was "still going to do that for me". The two continued to pass letters, with Defendant promising that if Williamson took Defendant's murder charge Defendant could help Williamson get an insanity plea and not do much

time in prison. Williamson wrote the second letter confessing to the murder and threatening the judge and others, and Defendant would rewrite it correcting Williamson's errors as the letters were passed back and forth.

Special Agent Croft also retrieved surveillance video of the jail. In it, he has been able to document times where Defendant made actions corroborative of the statements of Bryant and Morrell that he passed letters back and forth during the evening.

C. The second letter is not "new" evidence and as such is not a basis for a motion for a new trial.

Although Dustin's second letter was created after the verdict was rendered, it does not qualify under the law as "new" evidence sufficient for a motion for a new trial.

In order to warrant the granting of a new trial on the ground of after-discovered evidence, the movant must show the evidence (1) is such as will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial by the exercise of due diligence; (4) is material to the issue; and (5) is not merely cumulative or impeaching. Johnson v. Catoe, 345 S.C. 389, 548 S.E.2d 587 (2001); State v. Spann, 334 S.C. 618, 619–20, 513 S.E.2d 98, 99 (1999

The defense was of course aware of Williamson's "confession" prior to trial from the first letter – Williamson just decided to invoke the Fifth Amendment and the defense decided to withdraw the motion based on strategic reasons given this Court's evidentiary rulings. The majority of courts considering this issue have held that the mere fact a witness changes his mind after trial about claiming the Fifth is NOT "new" evidence for purposes of a motion for a new trial. See United States v. Jasin, 280 F.3d 355, 364 (3rd Cir. 2002) (deciding to follow the "the majority rule that testimony known to

the defendant at the time of trial is not 'newly discovered evidence,' even if it was unavailable at trial by reason of the witness's Fifth Amendment privilege against self-incrimination", and citing cases to the same effect from multiple jurisdictions).

As such, this basis for a new trial fails.

D. Even if the evidence is "new", it fails under the standard for after-discovered evidence as the Williamson evidence is not credible.

In the alternative, even if the second Williamson letter is considered "new" evidence, it also fails as a basis for relief under prong one of the applicable test set forth in the preceding subsection – as Williamson is not credible and his testimony or the letter would not probably change the result if a new trial was granted.

The caselaw is abundantly clear that under prong one this Court must assess the **credibility** of Williamson in determining whether a new trial should be granted. See State v. Porter, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977) (The credibility of newly-discovered evidence is for the trial court to determine.) (cited in State v. Harris, 391 S.C. 539, 706 S.E.2d 526 (Ct. App. 2011)). As our Supreme Court has stated, "[i]n this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment." State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009). Further, an appellate court will defer to the trial court's findings of fact with regard to the credibility of new evidence, and indeed the South Carolina Supreme Court has at least twice upheld death penalty cases on new trial motions where the trial court the supposed confessions of others to be not credible. See Mercer (upholding in a death penalty *case* the trial court's determination that new evidence regarding inmate's alleged confession to the crime was not credible and thus not sufficient for a new trial);

Johnson, *supra* (upholding in death penalty case denial of new trial where trial court rejected the credibility of a person who confessed to the crime after conviction). See also State v. Harris, 391 S.C. 539, 706 S.E.2d 526 (Ct. App. 2011) (upholding trial court's rejection of credibility of recantation by trial witness, and noting it must defer to the trial court's determination of the credibility of the evidence).

Here, the Williamson evidence is almost laughably not credible. Of course, the circumstances surrounding the first letter as testified to by Lt. Harley would alone support a finding by this Court of a lack of credibility – including Defendant supposedly "finding" the letter in his cell, Williamson's lack of detail, Williamson's inability to recount specifics, Williamson's fear and request to be moved out of Barnwell, Williamson's request that someone watch his mother's house, the idiosyncrasies in both Defendant's communications and the first letter, and most importantly Williamson's statement "they played me" when advised of the "hand of all" doctrine. When combined with the fact that Defendant already did the exact same thing with Early Glover, tried to manufacture exculpatory evidence with the text messages from the trac phone, made the false "ransom" call to Chief Holston, and just generally lied to police and everyone else, it is clear that Williamson's purported confession was manufactured by Defendant and would not probably change the result if a new trial is granted.

But the issue has just gotten *worse* – not better – for Defendant with the second letter received after verdict. There is now new direct evidence from other witnesses of Defendant's efforts to manufacture the Williamson "confession", and this evidence is corroborated by video showing the furtive activities of Defendant as he orchestrated the

contents of the second letter. If anything, the whole sordid tale of Defendant's manipulation of young Williamson is confirmation of his guilt, and thus more inculpatory and exculpatory.

The defense strategically and wisely withdrew the first letter during trial when it became clear that the circumstances under which it was obtained would only serve to help convict Defendant, not exculpate him. Now, the second letter and the circumstances under which it was obtained have only made the Williamson evidence *even stronger evidence of guilt* in favor of the prosecution. It simply is NOT exculpatory evidence in favor of the defense.

It is respectfully submitted that the Williamson evidence is as manifestly without credibility as it possibly could be, and as such the motion for a new trial on this ground should be denied.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that Defendant's motion for a new trial should be denied.

Respectfully submitted,

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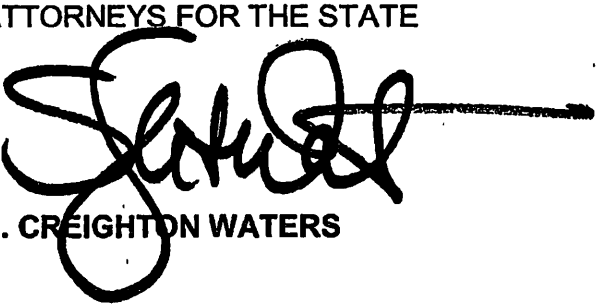
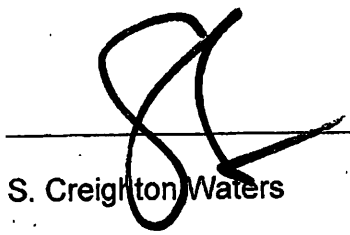


S. CREIGHTON WATERS

December 13, 2013.

STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	SECOND JUDICIAL CIRCUIT
COUNTY OF BARNWELL)	
	Indictment 2013-GS-06-274
State of South Carolina)	
)	**CERTIFICATE OF SERVICE**
v.)	
)	
Sammie Lee Gerrick,)	
)	
Defendant.)	

I, S. Creighton Waters, certify that on December 13, 2013, I served the State's Response to Motion to For a New Trial, on Defendant's counsel Dan Williams, Esquire, by delivery to danwilliams@bellsouth.net, and by delivery of a hard copy to him on December 16, 2013.



S. Creighton Waters

December 16, 2013

State of South Carolina — Court of General Sessions

County of Richland — 2013-GS-06-00274

State of South Carolina :
:
-VS- : TRANSCRIPT OF RECORD
:
Sammie Lee Gerrick :

December 16, 2013
Columbia, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

A P P E A R A N C E S:

Jason Anders, Esquire
Creighton Waters
Attorneys for the State

Dan Williams, Esquire
Attorney for the Defendant

Daphne D. Helms
Circuit Court Reporter

(Court reporter's note: The name Dustin Williamson and Dustin Williams are used interchangeably throughout the proceedings. State's Exhibits 1 through 8 were marked for identification only.)

The Court: Thank you. Please be seated. All right. This is the State versus Sammie Lee Gerrick, G-E-R-R-I-C-K. It's a case out of Barnwell. Mr. Gerrick was convicted of murder a couple of weeks ago. I allowed Mr. Williams, his lawyer, 10 days to file post-trial motions. They were timely filed, and it was set for a hearing today. Mr. Williams, are you ready to proceed?

Mr. Williams: I am, Your Honor.

The Court: Let the record reflect Mr. Williams is obviously present along with Mr. Sammie Lee Gerrick who's been brought over from the department of corrections, along with representatives who prosecuted the case from the Attorney General's office, Mr. Waters and Mr. Anders.

Mr. Williams: Thank you, Your Honor. If it please the Court, there are two motions before you, one for a motion for a new trial and that motion was amended I think on December the 2nd. I will tell you the first four grounds in the amended motion are the exact same as in the previous motion. The additional ground is motion number -- is number five regarding additional evidence that had been retained at the Barnwell County jail through the form of a letter from an

inmate named Dustin Williams who Your Honor is familiar with.

I think that what I will do is just go down my list, if that's all right with you---

The Court: Yes, sir, be fine.

Mr. Williams: ---if I may proceed. The first -- quite frankly, Your Honor, the first three motions are somewhat repetitive in the sense that I believe we've already argued and you've ruled on these motions, but out of an abundance of caution and to make sure I'm protecting all of Mr. Gerrick's rights, I want to go through them briefly to make sure that they're clearly on the record.

The Court: Yes, sir.

Mr. Williams: The first deals with a note that was found in Mr. Gerrick's pickup truck after he was taken into custody on another matter. It was referred to in some police records as a witch doctor root, and what it was---

Court Reporter: I'm sorry. Was a what?

Mr. Williams: Witch doctor root.

The Court: W-I-T-C-H doctor root.

Court Reporter: Yes, sir.

Mr. Williams: And what it was was basically a folded-over letter that's in the Court's records and it says on -- on one side of the note that there's a Bible verse from Psalm 130. On the other side of the letter is language to the effect, "Jack Early set me free," three times and then some

other language. All right? "Protect me, Sammie Gerrick, from murder and from bond revocation."

We filed a motion in limine to have that excluded. We also -- on two grounds. First off, it wasn't shown that he wrote the note. Therefore, it was irrelevant. Second, any probative value of the note would be far outweighed by the prejudicial or, rather, the unfairly prejudicial effect.

Your Honor let the note come in, and the State wisely during its presentation to the jury never referred to it as a witch doctor note. But at the same time one of the officers did refer to it as that. And what I'm concerned with is: It comes in not as a witch doctor note but as a letter, and as that letter -- you know it's not written by him, but the jury would unfairly see that as some kind of confession that Mr. Gerrick wrote and placed in his pickup truck.

Now, take that and combine that with the fact that the officer said while on the stand that it's a witch doctor note and considering that some people on the jury may not view this without a motion, we believe it should have been excluded and that we're entitled to a new trial on that basis.

The Court: Mr. Waters?

Mr. Waters: Your Honor, I provided, of course, the Court and the defense with a memorandum addressing his motion. Obviously, as Mr. Williams points out, this was the

subject of a pretrial hearing.

The Court: Well, it was the subject of a pretrial motion in limine which I did not rule on but I discussed with y'all both on the record and off the record what I thought I was going to do, but obviously I told you I could not rule on it until I heard what was presented during the trial of the case. And during the trial of the case I considered all angles and mostly the 403 comparison of probative versus prejudicial and I made my ruling and allowed it in. That, plus I based my opinion or my ruling on the fact that the consciousness of guilt -- and I cited the cases that I think -- Orozcok, O-R-O-Z-C-O-K, and some others and what I relied on in making my ruling, and I did let it in.

I put my rulings on the record. I considered the 403 analysis, 403(b), and all the other issues involved including the consciousness of guilt, and that was my ruling.

Mr. Waters: And that's -- yes, sir, Your Honor, and we believe that was correct and, again, without being repetitive and that was -- that that was what I was getting at is that we have submitted written documents which Your Honor considered and we would rely on those again today. We think you were -- that it was a correct ruling then and it's a correct ruling now.

The law is clear obviously, as Your Honor has pointed out, that guilty consciousness -- any evidence, any act of

guilty consciousness, is admissible, and I think that was the case here.

There was a brief reference to it being a witch doctor root. At no time did Your Honor say that we couldn't use the word "root," and I was very careful about that. One officer did kind of state that, but I believe, Your Honor, we both quickly shut it down and moved on, and so I don't think there was any prejudice or anything from that particular point. So we would submit that the evidence was properly allowed in and that Your Honor's rulings were correct.

The Court: Anything in response, Mr. Williams?

Mr. Williams: No, Your Honor.

The Court: All right. The next portion of the motion was the polygraph examiner or the videotape, and that, too, was subject to a pretrial motion in limine, and we had, if I recall correctly, had reached an agreement or -- that the -- something was going to be put on the screen to block the computer and it inadvertently got shown. Very quickly -- we shut the computer down very quickly. I'm not sure I gave a curative instruction or at least I think I asked you whether or not you wanted one. I quite frankly can't remember what we did. I don't think you wanted one because it was probably going to call more attention to it than not.

Mr. Williams: That's -- that's my problem with curative instructions, Your Honor, is sometimes you don't want what

you ask for.

The Court: That's right. And you timely and properly moved for a mistrial which I denied, so do not let me cut you off with your argument. That's sort of where we are on that issue, as I understand.

Mr. Anders: And I will renew what I said in that hearing and, Your Honor, I think -- and my concern is with all the equipment I saw what I thought was leads on the thing that could have run to him. No one else saw that, but I thought I saw it on there. So just to make it clear on the record, we believe -- and I know the State -- it was inadvertent what happened as far as the computer screen---

The Court: I know it was inadvertent, but it happened.

Mr. Williams: But it happened and this is a very, very serious charge, and since it did happen, I think he's entitled to a new trial on that ground.

The Court: Thank you. Anything by the State?

Mr. Waters: Yes, sir, Your Honor. Just to recall, that particular video, the quality is very poor and---

The Court: That was a video of one of his alleged---

Mr. Waters: Statements.

The Court: ---statements to the police.

Mr. Waters: Correct. And if you recall, the State argued prior to trial that there was no need to redact it at all because the video is so grainy and because all that you

can make out on the table is just a computer and some notepads. There's obviously nothing hooked up to the defendant. He actually gets up and moves around during the course of the video, so our point was is that there's no -- nothing about that video, given the grainy quality and the equipment that was present, that would indicate that there was a polygraph present in the room. And I think that was even more so true when it was magnified through the projector up on the screen which made it even more fuzzier and grainier.

The Court: Let me stop you right there.

Mr. Waters: Yes, sir.

The Court: At no time during the trial of the case was the word "polygraph" ever mentioned.

Mr. Waters: Absolutely not.

The Court: Never.

Mr. Waters: No, sir. And so I believe that it was up for such a miniscule amount of time -- I don't think that anybody could make it out to begin with even if it had been up the whole time, but it was up such a small amount of time and such a poor-quality video that's been magnified that makes it even worse quality, there's no way that there could have been any sort of prejudice, and of course Your Honor caught it very quickly. It was only up for a few seconds before the jury was sent out and the machine was turned off.

And I would point out the recent case of State v. Dial which I cited in my motion. That's 746 Southeastern Second 495, and in that case the witness came up to the witness stand, the mother of the victim, holding a small heart-shaped urn, and the judge saw that and stopped it real quick and sent the jury out, and the judge made a similar finding that it happened so quickly, that it was not evident from the object itself that the jury would necessarily figure out what that was and make that determination. And I think that's precisely what happened here and, of course, in the Dial case they upheld the judge's denial for a mistrial.

The Court: And likewise I also have to show prejudice that from the time it was up until the time that we realized it was up and sent the jury out, immediately corrected it, and the fact that I couldn't tell what it was showing either... I certainly didn't see any leads, and I just don't see where any prejudice has been shown, even if it were wrong, but I think we corrected it quickly. We gave -- handled it properly, so I'll look at it again though in this post-trial motion. Anything else you want to add to that?

Mr. Waters: No, sir, Your Honor. Thank you.

The Court: Mr. Williams?

Mr. Williams: Nothing else, Your Honor.

The Court: All right. The third area was that -- that was the August 17, 2011, interview and this, too, was -- this

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)

COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

Indictment 2013-GS-06-274

State of South Carolina)
)
v.)
)
Sammie Lee Gerrick,)
)
Defendant.)

ORDER DENYING MOTION FOR A NEW TRIAL

FILED FOR RECORD
2014 FEB 19 PM 3:20
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

Defendant, Sammie Lee Gerrick, was convicted on November 21, 2013 by a jury of murder, and this Court sentenced him to life in prison. He has filed a motion for a new trial based on the following grounds. A hearing was held on this motion on December 16, 2013. For the following reasons, the motion is denied.

I. THE CAPSULE AND ACCOMPANYING LETTER WERE ADMISSIBLE TO SHOW CONSCIOUSNESS OF GUILT UNDER LONGSTANDING SOUTH CAROLINA CASELAW.

Defendant first contends that the court improperly admitted the capsule containing the letter found in Defendant's console. He argues that the note was not written by him and was portrayed as a confession, and that the prejudicial effect outweighed any probative value.

This evidence was the subject of a pretrial motion and the State presented a memorandum as to admissibility. This Court considered the arguments by both sides, and during the course of the trial ruled the evidence admissible. Having further considered the arguments of the State and the Defendant before, during, and after the trial, this Court affirms its previous ruling that the evidence was properly admitted.

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
I, Rhonda D. McElveen, Clerk of Court for Barnwell County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office.
Clerk of Court, Barnwell County, SC
By: SR Date: 2-19-14

XL2-PSI3679 RED

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As a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt." State v. McDowell, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976) (quoted in State v. Martin, 403 S.C. 19, 742 S.E.2d 42 (2013)). Further, in order for certain acts to be evidence of guilty consciousness, there must be some connection between the crime charged, the act, and the defendant. See Martin, 403 S.C. at 29, 742 S.E.2d at 47.

Here, the letter provides the specific nexus to this case, as it expressly refers to four relevant things: (1) the murder, (2) the bond revocation, (3) the trial court, and (4) the request to be "set free". There was evidence at trial from which it could be reasonably inferred that Defendant's inability to pay back the money Tyrone Donaldson loaned him to get out on bond was the motive for this murder, and it was this Court which set that very bond on the escape charge. If Defendant were to get arrested for murder that could potentially result in a revocation of the bond on the escape charge. Further, the evidence showed Defendant had been repeatedly questioned at least twice by the police about involvement in Donaldson's disappearance prior to the capsule and accompanying letter being discovered. Defendant also had already denied involvement to mutual friends, noting that he hoped a supposed text from the victim would take "heat" off Defendant. Thus, Defendant was aware he was a target of the investigation into Donaldson's disappearance prior to the time the letter was found in his truck.

Given these facts, the letter is clearly susceptible of the inference that because of his consciousness of guilt, Defendant procured the letter for whatever help it might bring in warding off a murder charge and related legal problems – indeed, it expressly hoped

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that Defendant would be "set free". Again, "*any* guilty act or conduct on the part of the accused is admissible as some evidence of consciousness of guilt". Orozco, 392 S.C. at 218, 708 S.E.2d at 230 (emphasis added).

Moreover, the caselaw is clear that alternate explanations that could be offered are a matter for weight, not admissibility. See Beckham, 334 S.C. at 314-15, 513 S.E.2d 612-13. See People v. Hernandez, 2012 W.L. 1652551 (Cal Dist. Ct. App. 2012) (unpublished) (voodoo dolls discovered in defendant's possession with names of prosecutors, judges, and investigators in the case was "highly probative of his consciousness of guilt").

Additionally, this Court finds the probative value was not substantially outweighed by any prejudicial effect. The attorneys for the State did not play up or even use the words "voodoo" or "witchcraft", and typically referred to the item as a "capsule". Admittedly, one testifying agent in reviewing her report used the word "witchcraft root" before the jury, but was quickly stopped by both the State and the Court and there was no further discussion of voodoo or related subjects. This Court in considering the case as a whole, finds no prejudice was suffered. The State did not claim that Defendant wrote the letter, but only that it was clearly an important personal item he kept close to him in the console of his truck, at a time when he knew he was a target in this murder case and was out on bond, and which specifically hoped he would be protected from murder and bond revocation and would be "set free." Since the evidence was admissible and only argued by the State for the limited purposes; this Court finds any

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prejudicial effect was minimal and more than outweighed by the probative value as to guilty consciousness. Accordingly, this Court finds the evidence was properly admitted.

II. THERE WAS NO PREJUDICIAL ERROR FROM THE BRIEF UNREDACTED DISPLAY OF THE POLYGRAPHER'S COMPUTER EQUIPMENT.

Defendant next moves for a new trial because the video on which the polygrapher's computer equipment was visible was inadvertently and briefly shown to the jury.

The decision to grant or deny a mistrial is within the sound discretion of the trial court." State v. Wiley, 387 S.C. 490, 495, 692 S.E.2d 560, 563 (Ct. App. 2010). "The trial court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law." Id. "The power of the trial court to declare a mistrial should be used with the greatest caution under urgent circumstances and for very plain and obvious reasons stated on the record by the trial court." Id. "A mistrial should only be granted when absolutely necessary, and a defendant must show both error and resulting prejudice in order to be entitled to a mistrial." Id. "The granting of a motion for a mistrial is an extreme measure that should only be taken if an incident is so grievous that the prejudicial effect can be removed in no other way." Id. at 495–96, 692 S.E.2d at 563. See State v. Dial, 405 S.C. 247, 746 S.E.2d 495 (Ct. App. 2013).

At trial, the defense moved to exclude the video statement taken by the polygrapher because his computer equipment was visible on the table. The State argued that since the video quality was so poor, and the polygrapher used computer equipment, it was not apparent from the video that the items on the table were anything more than a computer and some note pads. As trial progressed, the State and the

defense compromised and agreed that the State would take a Wordpad document sized appropriately and overlay it on the video so that the table in the bottom corner could not be seen. All the videos were played on a computer, through a projector, and on to a movie screen visible to the jury.

In adjusting the sound as the video began to play, the State inadvertently caused the overlay not to be on top anymore. This Court noticed this and sent the jury out. The defense moved for a mistrial. This Court found the error inadvertent and unintentional, and also found no prejudice; thus, it denied the mistrial motion. The jury was brought in and the video continued with the overlay in place.

Having considered the events at trial and the arguments in the post-trial motion, this Court's decision affirms its denial of a mistrial and its conclusion that no prejudice was suffered. This Court finds that even if the video had been shown in its entirety, it is of such poor quality that it cannot be made out that the things on the table are anything but a laptop and some notepads. Nothing was hooked up to the defendant or visibly obvious as polygraph equipment.

Further, this Court finds that the quality of the video was even worse and less discernable when it was magnified on the movie screen, and the video without the overlay was only up for seconds at the very beginning before the error was realized, the video turned off, and the jury sent out. Therefore, this Court finds there was simply insufficient time for any juror to make out what was on the table beyond just normal office items like pads and a computer. At no time during the video or the trial was the word polygraph mentioned before the jury.

DDE

Given these facts and circumstances, this Court finds there was no prejudicial error from the inadvertent and brief showing of the video without the overlay. See State v. Dial, 405 S.C. 247, 746 S.E.2d 495 (Ct. App. 2013) (trial court properly denied mistrial where, in part, trial court noted that it did not believe any juror could even tell that the small heart-shaped object the witness brought with her to the stand was an urn, and the jury was quickly excused and the problem corrected).

As such, this Court concludes a mistrial was properly denied.

III. THE AUGUST 17, 2011 STATEMENT WAS PROPERLY ADMITTED, AS THE DEFENDANT DID NOT UNAMBIGUOUSLY REQUEST COUNSEL AND THE WAIVER WAS KNOWING AND VOLUNTARY.

Defendant next contends this Court erred in allowing the Defendant's August 17, 2011 statement, which he claims violated his rights inasmuch as he asked to meet with his attorney.

This also was the subject of a pretrial hearing at which the State provided a memorandum in support of admission. Briefly, at the beginning of this particular interview, Defendant stated he was willing to talk to police, but his lawyer (on other charges) told him not to talk and he felt he should call his lawyer and let him know he was being interviewed. Police responded that unlike their prior interviews, when Defendant was not in custody and he came down voluntarily, since Petitioner was currently in custody on the Bamberg charges, they were required to read him his rights before they could talk with him. The officer then asked Petitioner if he could proceed reading him his rights and Defendant agreed. During the reading of rights, the officer went over the right of Defendant to have counsel present before and during questioning,

and the right to stop the questioning at any time. Following this, Defendant again indicated he wished to proceed with questioning, just as he had done at the beginning of the interaction.

An invocation of right to counsel must be unambiguous, as police are not "required to make difficult decisions about an accused's unclear intent and face the consequence of suppression 'if they guess wrong'". State v. Moses, 390 S.C. 502, 512, 702 S.E.2d 395, 400 (Ct. App. 2010) (citing Berghuis v. Thompkins, 560 U.S. 370 (2010)). Here, Defendant started out by clearly stating he wanted to talk to police. He then only added that his lawyer told him not to talk, and he felt like he should let his lawyer know he was there – *not* that he wanted his lawyer actually present before he continued with questioning. This is the definition of an ambiguous statement. In the face of this ambiguous statement, officers proceeded to do a full and fair waiver, after which Defendant agreed to talk. Thus, there was no violation. See Davis v. United States, 512 U.S. 452 (1994) (United States Supreme Court held that the statement "maybe I need a lawyer" was NOT an unambiguous request for counsel).

Moreover, the validity of the ultimate waiver precludes any suppression. After it has been determined that the waiver was valid, the analysis is over:

> [o]nce it is determined that a suspect's decision not to rely on his rights was uncoerced, that he at all times knew he could stand mute and request a lawyer, and that he was aware of the state's intention to use his statements to secure a conviction, the analysis is complete and the waiver is valid as a matter of law."

State v. Binney, 362 S.C. 353, 358-361, 608 S.E.2d 418, 421 - 422 (2005).

Here, a review of the video shows Defendant, an intelligent person with experience in the criminal justice system, was agreeable to talk from the start and was not badgered into waiving his rights by coercive police conduct. The decision was clearly knowing and voluntary after an explanation of the rights. Indeed, he did not even "confess" to anything, but continued to deny any involvement in the victim's disappearance. As such there is no call for suppression.

Accordingly, this Court finds the statement was admissible, and the motion for a new trial on this basis is denied.

IV. THERE CLEARLY WAS SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE SUFFICIENT TO SUBMIT THE CASE TO THE JURY.

Defendant next contends he should get a new trial because the evidence was circumstantial and did not prove him guilty beyond a reasonable doubt.

In reviewing a motion for a directed verdict, the trial court is concerned with the existence of the evidence, not with its weight. State v. Brannon, 388 S.C. 498, 501, 697 S.E.2d 593, 595 (2010). The Court must view the evidence in the light most favorable to the State. State v. Lollis, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001).

If there is any direct evidence, or if there is substantial circumstantial evidence, which reasonably tends to prove the defendant's guilt, the trial court properly submitted the case to the jury. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). The trial court should grant a directed verdict when the evidence merely raises a suspicion that the defendant is guilty. Odems, 395 S.C. at 586, 720 S.E.2d at 50.

Defendant contended at trial and contends in his motion that the evidence does not prove guilt to the exclusion of any reasonable hypothesis. This is incorrect. Not only is that not the law, as it "comes perilously close to shifting the burden of proof, see State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013), the caselaw is clear that "a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis." State v. Cherry, 361 S.C. at 594, 606 S.E.2d at 478 (2004). See also State v. Hepburn, --- S.E.2d ----, 2013 WL 6492390 (December 11, 2013).

Given these principles, it is clear that the State did more than raise a mere suspicion and in fact presented, as this Court stated at trial, overwhelming circumstantial evidence. The State set out all of this evidence in its responsive

document to this motion which this Court adopts. The evidence in this case is substantial circumstantial evidence, and whether by motive, opportunity, or acts of guilt, they all point to Defendant. In short, Defendant owed the victim money and needed more money, Defendant and the victim said they were going off together for Defendant to get the money, Defendant was last seen with the victim around the time the victim disappeared as corroborated by witness testimony and the cell phone records, Defendant took the victim's car from the crime scene late at night and hid it, he used the victim's ATM card the next day, he ultimately placed himself at the scene in his own statements, and he had defensive wound scratches. Together, all of this evidence is very strong. See, e.g. State v. Rogers, 405 S.C. 554, 748 S.E.2d 265 (Ct. App. 2013) ("circumstantial evidence, however, gains its strength from its combination with other evidence, and all the circumstantial evidence presented in a case must be considered together to determine whether it is sufficient to submit to the jury," and finding substantial circumstantial evidence reasonably proved the defendant's guilt).

The motion for a new trial is denied.

V. THE MOTION FOR A NEW TRIAL BASED ON THE SECOND WILLIAMSON LETTER RECEIVED AFTER TRIAL SHOULD BE DENIED AS THE EVIDENCE IS NOT "NEW" UNDER THE LAW, AND REGARDLESS IS PLAINLY WITHOUT ANY CREDIBILITY SUFFICIENT TO MEET THE STANDARD FOR AFTER-DISCOVERED EVIDENCE.

Gerrick finally contended in his motion that he should be granted a new trial based on the second letter given by Dustin Williamson after the guilty verdict, in which Williamson again states he committed the crime and states that he does want to testify. However, at the hearing the defense indicated that given what the State had discovered about the circumstances in which the second letter was procured, it was withdrawing the motion. In lieu of testimony, the parties agreed to submit into evidence State's Exhibit 1 through 8, which included: (1) a DVD of the interview by SLED agent Jeff Croft of Dustin Williamson, (2) a DVD of the interview by Agent Croft of Brandon Morrell, (3) a DVD of the interview by Agent Croft of Houston Bryant, (4) and (5) DVDs of the security cameras in Defendant's cell for the time period after he was returned to the cell following the guilty verdict; (6) Memorandum of Interviews ("MOI") and other documents from Agent Croft and other officers regarding their investigation into the second letter, (7) a list of times when Gerrick is visible engaging in relevant activities on the security cameras, as prepared by Agent Croft, and (8) the letter from Early Glover which Glover refuted at trial and testified that Defendant promised him $1000 to write it.

So that the record is clear, however, this Court sets out the following recitation that led to the defense's decision.

A. Facts before trial

A few weeks prior to trial, Defendant reported to correctional officers that he had found a letter on the floor of his cell. This letter (the "first letter") was signed by 18-year-old inmate Dustin Williamson. The text of the letter claimed generally that Defendant was innocent and was not present when the victim was killed. The letter further stated the victim was killed in Santee and brought to the burial site, and that Williamson and four other people were involved. At one point, the letter states that the writer does not know Defendant, but at another point claims that Williamson and his friends were supposed to kill Defendant too. The letter also contained idiosyncrasies seen in Defendant's own writing, such as "no" for "know", "rat" for "right", and "knot" for "not".

At a pre-trial hearing the Wednesday before trial, Williamson's counsel Jason Price, Esquire informed the Court that he just realized he had a conflict and would need to withdraw from representation. The State asked the Court to appoint counsel for Williamson for purposes of the letter and the upcoming trial, and this Court that day appointed Adam Ness, Esquire, for that purpose.

At trial, Dustin Williamson was called to the stand outside of the presence of the jury. He indicated he would not testify and wished to claim his Fifth Amendment privilege against self-incrimination.

The State then offered evidence outside of the presence of the jury about the manner in which the letter was found. Lt. Shaune Harley from SLED testified. He noted he received statements from the jail guards, who stated they got the first letter from Defendant who claimed he found it on the floor of his locked cell.

Lt. Harley interviewed Williamson twice prior to trial. At the first interview, Williamson admitted writing the letter but could not provide any specific details about what allegedly happened, responding only "whatever is in the letter, that's what happened".

At the second interview, Williamson requested that he be taken out of Barnwell Detention Center, so he was taken to Bamberg. At that interview, Williamson again admitted writing the letter, but he again only would say "whatever is in the letter" when asked about specifics of the crime. When he was asked if he had been threatened or put up to writing the letter, Williamson stated that "someone was going to die in six days." When asked if his family had been threatened, Williamson asked the officers to make sure his mother was safe. Williamson also stated he needed to get out of the Barnwell Detention Center because he would be killed.

At one point in the interview, Williamson said that he never claimed that he personally killed the victim. When Lt. Harley and Attorney Ness explained to Williamson the concept of accomplice liability through the "hand of one is the hand of all," Williamson dropped his head and kept repeating "they played me, they played me."

The parties then discussed admissibility of the letter. The State argued, among other things, that the letter was inadmissible as a statement against penal interest pursuant to Rule 804(b)(3), SCRE, because the circumstances of the letter show that when the statement was made, Williamson did not believe he was actually admitting to guilt because he did not understand the concept of accomplice liability. The State noted that the whole rationale for the statement against interest rule is that the statement

could be trusted because a person would not make an admission against interest without believing it to be true, and in this case, the circumstances show Williamson clearly did not believe he was admitting anything against his interest. This Court agreed with the State's arguments and excluded the letter.[1]

The next morning, the parties again discussed the Williamson issue. The State withdrew its objection to the admissibility, and made the argument that the circumstances surrounding the making of the first letter, and Williamson's statements about the letter to law enforcement described above, should be admissible as impeachment pursuant to Rule 806, SCRE, which allows impeachment of a hearsay declarant if the hearsay statement is admitted, without the necessity of any opportunity to deny or explain. The State noted caselaw holding that introduction of impeachment evidence under Rule 806 does not violate Crawford v. Washington, 541 U.S. 36 (2004),

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[1] See State v. Kiser, 284 S.W.3d 227, 266 (Tenn. 2009) ("As commentators have noted, statements should not be admitted under Rule 804(b)(3) 'if the declarant actually believed that he or she was saying something that would be helpful.' Cohen, supra § 8.36(5). In that event, 'reliability is questionable and the statement should not be admitted under this hearsay exception.' Id."). See also Weinstein's Federal Evidence § 804.06[1] ("Statements against interest are admissible because it is presumed that one will not make a statement damaging to one's self unless it is true."); § 804.06[4][c] (concluding that because liars may confess to acts they did not commit, such declarations should be "excluded if counsel opposing admission can persuade the court that the declarant is probably lying," and the trial court should make that determination outside of the presence of the jury); § 804.06[d][l] ("At the moment the statement is made the declarant must believe that the statement is against the declarant's interest. . . . **The court may exclude statements it finds inherently unreliable because the declarant was, for example, currying favor or was ignorant. The court must ascertain whether a particular declarant would know enough to perceive the statement's detrimental character.**") (emphasis added and citing various cases)).

because it is offered for impeachment and not the truth of the matter asserted.[2] Similarly, the State argued the statements about the first letter were admissible as evidence of Williamson's state of mind – again, not for the truth of the matter asserted in violation of the hearsay rule and Crawford.[2] The State argued that the circumstances of the statement needed to be admitted in the interests of justice, to preclude the jury from being misled about Williamson's true actions.

This Court agreed with the State's Rule 806 argument and ruled that Williamson's statement to law enforcement about the first letter would be admissible. At this point, the defense then withdrew its offer of the first letter, expressly noting the withdrawal was done for strategic reasons. For context, another State's witness, Early Glover, already testified that when he and Defendant were in SCDC, Gerrick promised him money if Glover would write a statement that Defendant had nothing to do with the crime. Defendant provided Glover with a statement which Glover then copied in his

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[2] See Hernandez v. State, 273 S.W.2d 685 (Tex. Ct. App. 2008) (evidence admitted under Rule 806 to impeach hearsay declarant was offered for impeachment, not the truth of the matter asserted, and thus did not violate Crawford). See generally Michigan v. Bryant, 131 S.Ct. 1143, 1161 n. 11 (2011) (that the Confrontation Clause is not implicated when statements are offered "for purposes other than establishing the truth of the matter asserted." Crawford, 541 U.S., at 60, n. 9).

[2] See State v. Edwards, 373 S.C. 230, 644 S.E.2d 66 (Ct. App. 2007) (victim's statement was not offered to show defendant hit her mother but to show her state of mind and why she behaved as she did); State v. Ruben T., 936 A.2d 270, 278-79 & n.5 (Conn. 2007) (statements of victim not hearsay as they were not admitted to show the truth of the matter asserted, but as circumstantial evidence of the victim's state of mind – that she was afraid of defendant; thus, Crawford was not implicated); State v. Williams, 1999 W.L. 783971 (Ohio Ct. App. 1999) (statements that declarant had been threatened in jail were no offered for truth but state of mind). See generally United States v. York, 572 F.3d 415, 427 (7th Cir. 2009) (statements offered for context of defendant's statements and not truth are not hearsay and Crawford is not implicated).

own hand. Glover testified he did not know Defendant prior to meeting him at SCDC, and that he knew nothing about the crime.

B. Facts after the verdict

The day after Defendant was found guilty of murder, this Court received another letter from Williamson (the "second letter"). In this letter, Williamson again stated Defendant was innocent, and threatened to kill ten officers. Williamson stated he killed the victim, and wanted to speak to police within two hours. Williamson also stated he could tell about a man who was killed in Blackville in May. The letter threatened this Court and his lawyer, and then went on to state he buried the victim face down, that the victim was 250 pounds, that he was buried on a dirt road in Blackville, that the victim had a bald head, that the victim died on Thursday night at 9:30pm, and that "Aundrey Hightower" made Williamson do it.[3] The letter stated that Williamson no longer wanted to take the Fifth, and demanded that the murder charge be taken off of Defendant.

SLED Special Agent Jeff Croft interviewed Williamson after receipt of this letter, and his Memorandum of Interview ("MOI") is attached. Williamson admitted he wrote the letter. When asked if what was written was true, Williamson responded "it could be its in the letter aint it." Williamson threatened Agent Croft, but would not acknowledge the letter was his idea.

Subsequently, Agent Croft interviewed Houston Bryant and Brandon Morrell, who were in the cell adjacent to Defendant on the night after he received his guilty verdict. MOIs, videos, and a statement from these interviews are attached. Morrell told Agent Croft that after his verdict, Defendant and Williamson began "fishing" – or

[3] "Aundrey" is another idiosyncrasy also found in the Early Glover letter.

communicating in writing with the assistance of Bryant and Morrell who were in the cell between them. Bryant and Morrell read the letters as they assisted in passing them back and forth. In the letters, Defendant again asked Williamson to take Defendant's murder charge, and Defendant promised to help Williamson get an insanity plea if Williamson took Defendant's charge. Morrell stated he knew that Williamson and Defendant also passed letters prior to trial.

Similarly, Houston Bryant also admitted helping Defendant and Williamson pass letters between cells after Defendant received his guilty verdict. Bryant stated Defendant would pass the letter underneath a crack between his and Defendant's cell. In the letters, Williamson apologized and stated he had tried to take the charge for Defendant, and asked if Defendant was "still going to do that for me". The two continued to pass letters, with Defendant promising that if Williamson took Defendant's murder charge, Defendant could help Williamson get an insanity plea and not do much time in prison. Williamson wrote the second letter confessing to the murder and threatening the judge and others, and Defendant would rewrite it correcting Williamson's errors as the letters were passed back and forth.

Special Agent Croft also retrieved surveillance video of the jail. In it, he has been able to document times where Defendant made actions corroborative of the statements of Bryant and Morrell that Defendant passed letters back and forth during the evening.

C. Withdrawal

Given the information discovered by the State about the procurement by Defendant and the falsity of Williamson's second letter, the defense at the hearing

withdrew its motion on this ground for relief. Indeed, the defense strategically withdrew the first Williamson letter during trial when it became clear that the circumstances under which it was obtained would only serve to help convict Defendant, not exculpate him, particularly given the evidence from Early Glover. The second letter and the circumstances under which it was obtained have only made the Dustin Williamson evidence even stronger evidence of guilt in favor of the prosecution.

Accordingly, this basis for relief has been withdrawn.

CONCLUSION

Therefore, since the first four grounds for relief have been rejected by this Court, and the fifth ground has been withdrawn, the Defendant's motion for a new trial is denied.

IT IS SO ORDERED.

The Honorable Doyet A. Early, III
Presiding Judge, Second Judicial Circuit

Feb 4, 2014,
Aiken, South Carolina.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BARNWELL COUNTY
COURT OF GENERAL SESSIONS

Honorable Doyet A. Early, III, Circuit Court Judge

Case No. 2013-GS-06-00465

The State.....Respondent,

v.

Sammie Lee Gerrick.....Appellant.

NOTICE OF APPEAL

Sammie Lee Gerrick appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Doyet A. Early, III, on November 21, 2013. This appeal is taken from the Orders of the Honorable Doyet A. Early, III, dated January 9, 2014, and filed February 19, 2014, which denied appellant's Motion for a New Trial and Motion for Reconsideration of Sentence. Appellant's attorney received written notice of entry of these Orders on February 24, 2014.

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SC Court of Appeals

February 24, 2014
Barnwell, South Carolina

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BARNWELL COUNTY
COURT OF GENERAL SESSIONS

Honorable Doyet A. Early, III, Circuit Court Judge

Case No. 2013-GS-06-00465

The State.....Respondent,

v.

Sammie Lee Gerrick.....Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal by depositing a copy of it in the United States Mail, postage prepaid, on February 25, 2014, addressed to the following:

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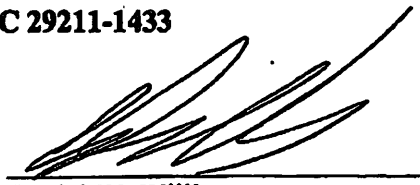

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SC Court of Appeals

February 25, 2014
Barnwell, South Carolina

WITNESSES

State Law Enforcement Division

Shaun E. Harley

Law Enforcement Case #: 311110067

AG

ARREST WARRANT NUMBER

13-DI06-0016

ACTION OF GRAND JURY

True Bill

Ryan A. Hurst

Foreperson of Grand Jury
Date: November 14, 2013

VERDICT

Guilty

Paul E. Thomas

Foreperson of Petit Jury
Date: 11-21-13

638

DOCKET NO. 2013GS0600465

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2013

THE STATE
vs.

Sammie Lee Gerrick

CDR #: 0116

Indictment for

MURDER

§ 16-03-0010

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
I, Rhonda D. McElveen, Clerk of Court for Barnwell County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office.

Clerk of Court, Barnwell County, SC
By: BR Date: 3-19-14

XL2-PSI3675 RED

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR MURDER
	)	
COUNTY OF BARNWELL	)	
	)	§ 16-03-0010

At a Court of General Sessions, convened on November 18, 2013, the Grand Jurors of Barnwell County present upon their oath:

That **SAMMIE LEE GERRICK** did in Barnwell County on or between July 21, 2011 and August 4, 2011, feloniously, willfully and with malice aforethought, kill Tyrone Donaldson. All in violation of §16-3-10, Code of Laws of South Carolina, (1976, as amended).

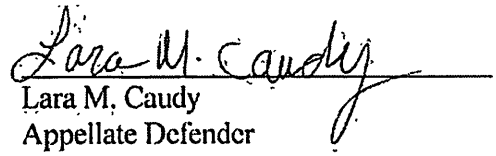
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ALAN WILSON (SCW)
ATTORNEY GENERAL

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

April 30, 2015



Lara M. Caudy
Appellate Defender

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ATTORNEY FOR APPELLANT

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Barnwell County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SAMMIE L. GERRICK,

APPELLANT

APPELLATE CASE NO. 2014-000385

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Caroline M. Scrantom, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 30th day of April, 2015.

Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 30th day of April, 2015.

(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022 .

ORIGINAL

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MAY 20 2015
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Barnwell County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SAMMIE L. GERRICK,

APPELLANT

APPELLATE CASE NO. 2014-000385

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 3

ARGUMENT

1. The court erred by admitting into evidence a "root" associated with witchcraft and a can of "Law Stay Away" that were seized from the center console of Appellant's truck pursuant to a search warrant because this evidence was not relevant and any probative value of this evidence was substantially outweighed by the danger of unfair prejudice to Appellant. 22

2. The court erred by denying Appellant's motion for a mistrial after a law enforcement officer characterized the "brown piece of paper bag" that was "taped up" to form some sort of "capsule" with weeds, twigs, and a penny inside and the words "Set me Sammie Gerrick free from murder and revoked bonds" written on the outside as a "witchcraft root" in front of the jury since this testimony was highly prejudicial and the court's curative instruction failed to cure the prejudice suffered by Appellant. 28

3. The court erred by refusing to grant a mistrial after the state showed a videotape of Appellant's interview with law enforcement before his arrest with a polygraph machine clearly visible on the table since this was unduly prejudicial and denied Appellant a fair trial. 33

CONCLUSION 38

TABLE OF AUTHORITIES

Cases

Dunkle v. Oklahoma, 139 P.3d 228 (2006) 26

Kansas v. Leitner, 272 Kan. 398, 34 P.3d 42 (2001) 26, 30, 31

Mincey v. State, 314 S.C. 355, 444 S.E.2d 510 (1994) 26

Miranda v. Arizona, 384 U.S. 436 (1966). 18

Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989) 27, 31

State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981) 3

State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001) 25

State v. Craig, 267 S.C. 262, 227 S.E.2d 306 (1976) 30, 36

State v. Crim, 327 S.C. 254, 489 S.E.2d 478 (1997) 30, 35

State v. Edwards, 373 S.C. 230, 644 S.E.2d 66 (Ct. App. 2007) 30, 36

State v. Johnson, 376 S.C. 8, 654 S.E.2d 835 (2007) 36, 37

State v. Kennedy, 272 S.C. 231, 250 S.E.2d 338 (1978) 31

State v. Martin, 403 S.C. 19, 742 S.E.2d 42 (Ct. App. 2013) 25

State v. McDowell, 266 S.C. 508, 224 S.E.2d 889 (1976) 25

State v. McGuire, 272 S.C. 547, 253 S.E.2d 103 (1979) 36

State v. Orozco, 392 S.C. 212, 708 S.E.2d 227 (Ct. App. 2011) 24, 25, 26

State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006) 25

State v. Parker, 391 S.C. 606, 707 S.E.2d 700 (2011) 36, 37

State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999) 30, 35

State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007) 24

State v. Pressley, 290 S.C. 251, 349 S.E.2d 403 (1986) 36

State v. Prince, 279 S.C. 30, 301 S.E.2d 471 (1983) 30, 36

State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000) 26

State v. Smith, 290 S.C. 393, 350 S.E.2d 923 (1986) 31

State v. White, 371 S.C. 439, 639 S.E.2d 160 (Ct. App. 2006) 30, 35

Rules

Rule 401, SCRE 24

Rule 402, SCRE 24

Rule 403, SCRE 24

STATEMENT OF ISSUES ON APPEAL

1.

Whether the court erred by admitting into evidence a "root" associated with witchcraft and a can of "Law Stay Away" that were seized from the center console of Appellant's truck pursuant to a search warrant because this evidence was not relevant and any probative value of this evidence was substantially outweighed by the danger of unfair prejudice to Appellant?

2.

Whether the court erred by denying Appellant's motion for a mistrial after a law enforcement officer characterized the "brown piece of paper bag" that was "taped up" to form some sort of "capsule" with weeds, twigs, and a penny inside and the words "Set me Sammie Gerrick free from murder and revoked bonds" written on the outside as a "witchcraft root" in front of the jury since this testimony was highly prejudicial and the court's curative instruction failed to cure the prejudice suffered by Appellant?

3.

Whether the court erred by refusing to grant a mistrial after the state showed a videotape of Appellant's interview with law enforcement before his arrest with a polygraph machine clearly visible on the table since this was unduly prejudicial and denied Appellant a fair trial?

STATEMENT OF THE CASE

A Barnwell County Grand Jury indicted Appellant at the November 2013 term of General Sessions for the offense of murder. R. 638-639. On October 29, 2013, a hearing was held before the Honorable Doyet A. Early, III pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981), to determine Appellant's competency to stand trial. R. 14, ll. 1-6. After Appellant was found competent, a second hearing was held on November 13, 2013 before Judge Early to resolve numerous pretrial motions. R. 16, ll. 1-10.

Appellant's case was ultimately called to trial on November 18, 2013 before Judge Early, and a jury. R. 1. Assistant Attorneys General S. Creighton Waters and Jason S. Anders represented the state, and Daniel W. Williams represented Appellant. R. 1.

On November 21, 2013, the jury found Appellant guilty. R. 553, ll. 21-25. He was sentenced by Judge Early to life without parole. R. 555, ll. 17-21.

This appeal follows.

STATEMENT OF FACTS

Kimberly ("Kim") Smith, the decedent's girlfriend at the time of his death, testified that she last heard from the decedent, Tyrone Donaldson, around 1:30 pm on July 21, 2011. She said she sent him numerous text messages that afternoon and called him when she got off of work that evening, but Tyrone never responded. When she got home, she noticed Tyrone's small white Honda was not in the driveway. R, 53, l. 16 – 54, l. 24. Upon entering the house, she asked Tyrone's young daughter if she had seen her father. According to Kim, the daughter "said she didn't know where he went but he came in the house and changed his shoes and he went in the closet and got a gun out and left. Said he'd be right back." R. 55, ll. 4-18.

Kim drove around Blackville that evening looking for Tyrone and stopping in areas where she knew he would "hang out," but could not find him. R. 55, l. 25 – 56, l. 12. She then contacted Tyrone's mother, who said she had not heard from Tyrone since earlier that day. R. 56, l. 25 – 57, l. 8.

According to Kim, it was unusual for Tyrone not to respond to text messages and telephone calls and she had never known him "to just leave and not call like this." R. 54, ll. 9-15; R. 58, ll. 22-24. Kim testified that Tyrone's mother said "if I don't hear from him by in the morning then she was going to go to the police." R. 58, ll. 2-5.

Maurice Williams testified that he had known Tyrone "all [his] life growing up" and Appellant "was kind of part of my family." He and Appellant "lived right next door to each other." R. 63, ll. 15-21; R. 65, ll. 11-14. Maurice testified that he received a telephone call from Appellant on Friday, July 15, 2011. According to Maurice, Appellant said he was in jail and asked Maurice "did I have any money and how [much] I had to contribute towards

getting him out of jail." Maurice maintained that he told Appellant that he "only had $2,500 which [he] was saving up for a down payment on a house." R. 65, l. 21 – 66, l. 18. He testified that Appellant "told [him] to get with Tyrone [the decedent]. And that was basically the end of that conversation." R. 66, ll. 19-23.

Maurice claimed that he "did get with Tyrone" and Tyrone already knew "that Sammie [Appellant] was wanting us to get him out of jail" and he would "get back with me when he find out how much it cost." R. 66, l. 23 – 67, l. 1. Tyrone contacted him a few days later and said it was going to cost $6,600 "to get him out." R. 67, ll. 11-14. Tyrone told Maurice "that he couldn't pay it all by himself. And, you know, would I help him. Would I give half." R. 67, ll. 15-20. Maurice was concerned about being paid back, but claimed Tyrone told him "that Sam [Appellant] said he'd give it [the money] to us 30 minutes after he get out of jail." R. 67, l. 21 – 68, l. 4. He testified that he agreed to meet Tyrone at the bank on the morning of July 21, 2011 and give Tyrone his half of the money. He claimed he met Tyrone shortly after 10:00 am, gave him $3,300, and then went back to work. R. 68, l. 10 – 71, l. 13.

Tyrone called Maurice later that day between 1:00 and 1:30 pm and said, "I got him [Appellant]. We're on our way back to Blackville. Do you want to talk to him?" R. 71, l. 18 – 72, l. 3. According to Maurice, Appellant then got on the telephone and said, "I appreciate y'all doing that for me. We going to get the money [that Appellant owes them]. I'm going to bless y'all boys." He claimed Appellant was "insinuating [by this last comment] that he was going to give us more money than we gave him." R. 72, ll. 4-18. Maurice also testified that Appellant said "Tyrone should have my [Maurice's] money when I get off work." R. 73, ll. 7-14.

Maurice next heard from Tyrone between 2:00 and 2:30 pm. Tyrone told Maurice he had dropped Appellant off at home to change his clothes and that Tyrone had went home as well to switch cars before "going back to get the money." R. 72, l. 19 – 73, l. 6. Maurice claimed he "had no more contact with either one of them" after this conversation so he called Tyrone when he got off work around 5:30 pm to check on his money. He called Tyrone numerous times, but there was "no answer." R. 73, ll. 15-22. Maurice found this to be "unusual" especially since they "had been talking all day." R. 75, ll. 5-10.

Later that night sometime "between seven and eight o'clock," Maurice spoke to Appellant in the yard near the side of Appellant's house.[1] Maurice said Appellant "asked me did I see Tyrone. And I was like, no, the last time I talked to him y'all was together. He was like, well I gave him the money. He got your money." Maurice claimed Appellant told him he and Tyrone "went out there and dug the safe up . . . [and] when we got the safe open and Tyrone seen all those hundred dollar bills, he kissed me on my forehead." According to Maurice, Appellant did not say where the two went to dig up this safe, but he said there was between $90,000 and $100,000 in the safe. Maurice testified that Appellant then said "we took that money and we loaded that little Honda down with money. Had the back of that Honda loaded down with money because I didn't want to ride with it in the truck." He claimed Appellant said, "Tyrone took off going his way and he [Appellant] went his way" and then Appellant asked, "[D]o you reckon that nigger took my money?" Maurice said that after the two had this conversation he had "a nervous feeling" and "didn't know what was going on." R. 75, l. 22 – 77, l. 20.

[1] As noted above, Maurice testified he and Appellant were next door neighbors. See R. 65, ll. 12-14.

The following night, Maurice received a text message from a telephone number he did not recognize. The text message said, "help me this Tyrone am hurt Kim ex got me help please." After he got this text message, Maurice said he called his friend, Jamaal Berry. Jamaal told Maurice that he had received "basically the same text" from the same number. R. 82, l. 4 – 84, l. 5. Maurice claimed that "[t]he way he [the person who sent the text message] spelled I'm" stood out to him because "it was spelled am, A-M instead of I-M." He testified, "When I paid attention to it, I was like, I know somebody else that text like that. So I went . . . through my phone and I have some texts from Sammie Gerrick [Appellant] in there. And all the text [messages] in there where he used the word I'm, he misspelled it A-M. The same exact way." R. 84, l. 12 – 85, l. 1. For example, Appellant had previously sent Maurice a text message that said, "[M]an am worried like hell didn't sleep or eat dog damn man damn." R. 86, ll. 16-20. Maurice said, "It's supposed to be I'm, but it's spelled A-M, am." R. 86, ll. 21-23.

Additionally, Maurice testified that when he saw Appellant on July 22, 2011, the day after Tyrone disappeared, Appellant "had some scratch marks on his chest." R. 87, ll. 19-25. Maurice said he asked Appellant "what happened" and Appellant told him that law enforcement had tazed him when he was arrested earlier in July and "they had him face down in the parking lot on the pavement. So . . . he was insinuating that the pavement rubbed against his chest and scratched him." R. 88, ll. 1-17.

Bradley Smith testified that in July 2011 he lived in Blackville with his mother, his brother, and Appellant. Smith's mother, Claudette Daniels, was Appellant's girlfriend for nearly a decade and the two were dating in July 2011. R. 115, l. 24 – 116, l. 24. Smith testified that he saw both Appellant and Tyrone Donaldson on July 21, 2011, the day Tyrone

went missing. He said he first saw the two at his house around one or two o'clock in the afternoon. He explained, "Tyrone pulled up. Sam [Appellant] was in the car with him. He [Tyrone] dropped him [Appellant] off. Sam came in the house, changed [his clothes]. Tyrone left. Tyrone probably about 30, 40 minutes later came back. Tyrone was sitting outside on the phone. I looked out the window and saw him. Then Sam came out [of] the [bed]room, got in the car with him [Tyrone]. And they talked and he [Appellant] got back out the car, went behind the barn, grabbed two shovels, put them in the back of his [Appellant's] pickup truck. And he [Appellant] pulled out first [in his pickup truck], then Tyrone pulled out after [in his own car]." R. 117, l. 9 – 118, l. 11.

Smith said he saw Appellant again later that night around ten o'clock. He claimed "[y]ou could tell something was wrong" "[b]ecause he [Appellant] was sitting outside on the steps for hours. He just looked - - just looked like he was facing - - like he had a lot on his mind." R. 118, ll. 12-24.

Shaneka DeLoach testified that she saw Appellant and Tyrone Donaldson around 3:15 pm on July 21, 2011 at a "BP gas station." She claimed, "I seen Tyrone sitting in the car. Tyrone never got out his car. And Sam [Appellant] was standing at the driver's side talking to Tyrone. And I kept noticing that they could have been fussing because he [Appellant] was moving his hands and like looking real mean." R. 123, ll. 9-23. DeLoach said that "Tyrone was in a white Honda Civic" and she thought Appellant was driving a burgundy Dodge truck. R. 123, l. 24 – 124, l. 7. She later admitted that she never actually saw Tyrone, she simply recognized his car. R. 124, ll. 21-22; R. 126, ll. 11-15. According to DeLoach, when Appellant left the gas station he headed in the direction of Denmark, but she could not remember which direction Tyrone went. R. 125, ll. 7-15.

Jamaal Berry testified that he knew both Appellant and Tyrone Donaldson and that Maurice Williams was his best friend. He first learned Tyrone was missing when Kim, Tyrone's girlfriend, called and asked him on July 21, 2011 whether he had seen or heard from Tyrone that day. He said Maurice called him later that night and said "[h]e needed to talk to me real bad. Come to Blackville right now." R. 131, l. 14 – 132, l. 10. According to Jamaal, when he got to Maurice's house around eight or nine o'clock, Maurice "was really scared" and told him "what was going on with Sammie Gerrick [Appellant] and the money." R. 132, l. 11 – 133, l. 4. Specifically, Maurice told Jamaal that Appellant allegedly told him "about that safe in the woods" and "[a]bout digging up the safe out in the woods and putting that money in Tyrone's car." R. 139, ll. 11-23. Jamaal also claimed that Maurice told him "if anything happened to him tell the police Sam [Appellant] did something to me." R. 140, ll. 5-6.

The following night, July 22, 2011, Jamaal received an unusual text message from a telephone number he did not recognize. The message said, "Help me I'm hurt Kim's ex-husband has me or something similar to that or whatever." Jamaal said he talked to Maurice and Kelsea Hallingquest, Tyrone's sister-in-law, about the text message because they had both received a similar message. He also called Appellant. According to Jamaal, when he told Appellant about the text message, Appellant said, "I told you it wasn't me. Maybe this will take some heat off me, or something like that." R. 133, l. 18 – 136, l. 10.

Kelsea Hallingquest was Tyrone's sister-in-law and was living with him at the time of his death. On the morning of July 21, 2011, Tyrone asked her to babysit his daughters and then left. She said she "knew he was going to get Sammie [Appellant] out of jail, but [she] didn't know what jail he was in." Kelsea claimed that Tyrone returned later that

afternoon sometime after one o'clock, changed his shoes, and left again, this time with a shotgun. She said Tyrone told her that he was leaving, but did not tell her where he was going. R. 141, l. 9 – 144, l. 2. When Tyrone did not return later that night, she called his friends looking for him, but she "couldn't get anybody." R. 144, ll. 3-18.

The following night, July 22, 2011, Kelsea received a text message from a telephone number she did not recognize. The message said "help me sister-in-law Kim ex-husband got me am hurt." R. 144, l. 25 – 145, l. 10. She claimed that Tyrone never called her his sister-in-law and that she "was either Kelsea or his sister." R. 145, ll. 11-18. She also explained that on that same day, July 22, 2011, Lana Joyner called her and said she had seen Tyrone's car parked behind the China Express in Orangeburg. After Lana called her, Kelsea reported this information to the Blackville Police Department and drove to Orangeburg. R. 146, l. 25 – 148, l. 12.

John Holston, the Chief of Police for the Blackville Police Department, testified that his agency was contacted by Tyrone's mother, Carol Bracey, on July 22, 2011. Bracey told him that "she believed her son was missing because he had not come home the night before . . . That herself and other family members . . . weren't able to contact him." R. 151, ll. 7-23. After speaking with Bracey, the Blackville Police Department began investigating the report as a "missing person's case" and entered the "vehicle information" for the white Honda Civic, which was the car Tyrone "was last seen driving," into the "National Crime Information Center" (NCIC) database. Holston explained that his office was "contacted by a representative from Orangeburg Public Safety advising that they had located a vehicle matching that description. After they confirmed the information we had entered in NCIC,

they notified us it was indeed the vehicle that was last seen driven by Mr. Donaldson [Tyrone]." This was also on July 22, 2011. R. 152, l. 5 – 153, l. 9.

That same day, July 22, 2011, Holston interviewed Appellant for the first time because, through his initial investigation, he learned Appellant was the last person seen with Tyrone before he went missing. According to Holston, Appellant told him during this interview that Tyrone had gotten him out of jail that day, that they had gone to Enterprise Bank so Appellant could cash a check, and then they "went to the Junior Food Mart, which is the BP station in Blackville." Holston testified that Appellant said this was the last time he had seen Tyrone. R. 153, l. 14 – 154, l. 9.

Holston interviewed Appellant a second time on July 23, 2011. During this second interview, Appellant told Holston the same account he had given the day before, but provided more detail. According to Holston, Appellant explained during this interview that he had been sentenced to six months imprisonment for failing to pay child support and that he was later charged with escape after he ran from the courthouse while he was in custody. Appellant said a Bamberg County Detention Center employee named Johnell Rice helped him contact Tyrone several times while he was in jail about getting the money to post his bond. Tyrone ultimately picked Appellant up on that Thursday morning, July 21, 2011, in his white Honda Civic and drove him home. Once home, Appellant said he went inside, cut his hair, shaved, and showered. After he "cleaned up," Appellant and Tyrone went to Enterprise Bank where Appellant cashed a check for a hundred and four dollars. The two then went to Junior Food Mart where Appellant put thirty dollars worth of gasoline into his 1998 Dodge pickup truck. Appellant again indicated that this was the last time he had seen Tyrone before he disappeared. R. 155, l. 6 – 158, l. 9. Also during this interview, Appellant

told Holston that Tyrone had given him his ATM card that day and he had since used it. R. 154, l. 10 – 155, l. 4; R. 158, ll. 19-24. Holston claimed he also noticed some scratches across Appellant's arms and chest during this interview and photographed them. R. 159, l. 11 – 160, l. 13.

About a week later on July 30, 2011, Holston received a telephone call from Appellant. Holston claimed that when he answered Appellant said, "Tyrone's not - - he not dead . . . they've got him. He said that Black's got Tyrone and they want $25,000 in cash for him. He said, I don't have that kind of money, but I'll do anything to get him back . . ." Holston testified he asked Appellant "do you know where he [Black] got him [Tyrone]" and Appellant said "over around Springfield . . .where Black was from." He claimed he told Appellant that "if they call you back, get more information and then call me back and then we'll see where we'll go from there." R. 160, l. 20 – 162, l. 22. According to Holston, Appellant also told him during this conversation that he had talked to Tyrone and Tyrone said "he was hurt and that he needed help, and they got me." R. 162, l. 23 –163, l. 3.

Appellant's wife, Charlene Gerrick, chose to invoke her marital privilege not to testify about her communications with Appellant. R. 170, l. 18 – 172, l. 7. According to Charlene, Appellant came to her house on July 21, 2011, the day Tyrone disappeared, around nine or ten o'clock at night. She claimed that after they "spent some time together," she "took him [Appellant] to go get a white car . . . back up in the woods." She said they went down a paved road and then "turned and went on a dirt road" into the woods. She identified the car as a white Honda Civic. Charlene alleged that Appellant "got out [of] my car, got into that car [the white Honda Civic], and we came back out [of the woods] and he drove it over to Orangeburg" and parked it behind "the China Express." After Appellant

parked the car, Charlene gave him a ride back to her house and Appellant went home. R. 174, l. 10 – 179, l. 19.

On August 3, 2011, Charlene was interviewed by Lieutenant Shaun Harley, an agent with the South Carolina Law Enforcement Division (SLED). She told Harley exactly what she had told the jury about driving Appellant to the woods to move the white car and how Appellant had driven the white car to the China Express in Orangeburg. Charlene explained that after she told Harley this information, she took the police out to the wooded area off the dirt road where she had gone with Appellant to move the white car and showed them where it was located. R. 180, l. 5 – 181, l. 9.

Lieutenant Harley explained that Chief Holston of the Blackville Police Department had contacted SLED on July 22, 2011 and asked for assistance with this investigation. R. 182, l. 12 – 183, l. 10. He was then assigned to the case. That same day, he drove to Blackville and was "briefed" by Holston about what law enforcement knew about the case at that time. Holston also told Harley about his first interview with Appellant. R. 184, l. 12 – 185, l. 15. Harley then participated in the second interview of Appellant with Holston. This interviewed occurred sometime after midnight on the morning of July 23, 2011. R. 185, ll. 16-24. Harley claimed that during this interview he noticed scratches on both of Appellant's arms and his chest. According to Harley, Appellant said he received these scratches while he was incarcerated at the Bamberg County Detention Center when "a light fixture fell on top of him."[2] R. 187, l. 1 – 188, l. 3.

[2] Danny Abraham, a corrections officer at the Bamberg County Detention Center, testified that on July 19, 2011, he found glass from a broken light fixture on the ground of Appellant's cell. However, he claimed he examined Appellant and Appellant did not have any cuts on his arms or chest nor was he bleeding. R. 346, l. 2 – 347, l. 25.

Harley also interviewed Charlene Gerrick on August 3, 2011. After the interview, Charlene took him to the wooded area where she had gone with Appellant to move the white car. Harley said they went "down a road called Sunshine Road. And off Sunshine Road is a little dirt road called One Way . . . After we made the little left off of Sunshine Road onto One Way . . . it was like two houses to your right. Farther [down] it goes into a heavy wooded area . . ." R. 196, l. 25 – 198, l. 25.

The next day, August 4, 2011, a team of officers from SLED, the Barnwell County Sheriff's Office, and the Blackville Police Department searched the wooded area Charlene had shown them. The officers formed a line standing parallel to each other, but spaced apart, and walked together combing the area. They were "looking for anything that looked out of place or disturbed." Harley testified that the captain of the Barnwell County Sheriff's Office was walking with a stick and would poke the ground as he walked. According to Harley, the captain "came across a disturbed area . . . and when he poked his stick into the ground . . . an odor came up." He claimed this odor smelled like decomposition. R. 199, l. 3 – 200, l. 22. After this discovery, the officers contacted SLED and requested the crime scene division "come down to look at the area." R. 200, l. 23 – 201, l. 5.

Melissa Skipper Wallace, the lead crime scene technician, and her team arrived at the site around 10:45 am. Wallace claimed that when she probed the ground in the area identified as a "potential burial site," it "smelled like rotten meat." The officers removed the soil around the site "very slowly" and then sifted through the soil searching for any evidence. Once they located what appeared to be cotton material from a t-shirt, they notified the coroner. After the coroner arrived, they continued to excavate the area and, around 10:30 that night, they removed the body of a black male identified as Tyrone

Donaldson. R. 272, l. 17 – 274, l. 15; R. 275, ll. 19-21; see also R. 202, ll. 6-25. The body was decomposing and there "were bindings around the wrists and ankles. It [the body] was face down and the knees were bent as if put into the ground on the stomach with the legs bent up." Tyrone's "arms were underneath his chest" and "there was a piece of root that actually went through his arms. And it [the root] was connected on both ends so his arm had gone through and around the root." R. 279, l. 10 – 280, l. 5.

During their search of the area near the burial site, law enforcement found a fishing lure and "some green netting." However, these items were not collected or preserved because "we thought it could possibly be trash." R. 275, ll. 5-18; see R. 294, ll. 3-9.

Lieutenant Harley testified that after they discovered the body, law enforcement, pursuant to a warrant, searched Appellant's Dodge pickup truck, his home with Claudette Daniels, and Charlene Gerrick's house. R. 203, ll. 10-21. All of the searches took place on August 5, 2011. Inside the center console of Appellant's truck officers found "a brown piece of paper bag" that was "taped up" to form some sort of "capsule." Inside the capsule were weeds, twigs, dust, and a penny. The brown paper bag also had words written on it. R. 210, l. 23 – 212, l. 8. On one side of the brown paper it said, "Set me Sammie Gerrick free from murder and revoked bond. Jack Early set me free now. Jack Early set me free now. Jack Early set me free now. Sammie Gerrick, Sr. Sammie Gerrick, Sr. Sammie Gerrick, Sr. So shall it be. So shall it be. So shall it be. Amen. Amen. Amen." On the other side of the brown paper bag were the words from Psalms 130, a verse from the Bible. R. 213, l. 7 – 214, l. 13.

A handwriting expert compared the writing on the brown paper bag to Appellant's handwriting. He concluded the words on the brown paper were **not** written by Appellant.

R. 252, ll. 4-18. Lieutenant Harley admitted that he did not know how the brown paper capsule got into Appellant's truck or who put it there. R. 252, l. 19 – 253, l. 1. Law enforcement also found a bottle or canister inside the center console of Appellant's truck near this brown paper capsule with the words "Law Stay Away" written on the outside. R. 289, ll. 16-18.

During the search of Appellant's home he shared with Claudette Daniels, law enforcement found "green netting and fishing lures which were similar to what [they] had seen [near] the body."[3] R. 291, ll. 13-20; see R. 472, l. 17 – 473, l. 12. They collected the green netting and fishing lures from Appellant's house, but could not compare them to the netting and fishing lure found near the body because they had never collected these items from the grave site. R. 293, l. 25 – 294, l. 12; see R. 299, ll. 15-23.

Dr. Janice Ross Edwards, the pathologist who conducted the autopsy, testified that when she received the body it "was very much covered with dirt and was decomposing." She maintained that the decomposition was "moderate to severe," that there was "skin slippage" where the "skin actually falls away from the body, and some soft tissue had deteriorated. R. 302, l. 21 – 303, l. 18. According to Edwards, the advanced stage of the decomposition made it difficult to see any bruising, abrasions, or other external soft tissue injuries. However, she did do a full body x-ray and found no bone fractures or bullets inside the body. R. 303, l. 22 – 304, l. 20.

[3] Bradley Smith, Claudette Daniels' son, testified that about a year before Tyrone went missing, he, Appellant, his brother, and his mother put down new sod around their house. He claimed the sod came with "some sort of green netting" around it. See R. 118, l. 25 – 119, l. 10.

Edwards testified that "externally the only marks [she] could see were some defects in the back of the left forearm. They were splits in the skin consistent with a laceration." R. 305, ll. 5-7. She claimed this could have been a defensive wound. R. 312, ll. 2-22. In addition to this external wound, Edwards also observed "some ligatures that were essentially like shoe strings around his wrists and his ankles." R. 305, ll. 1-4. The ligatures left marks on the skin. R. 306, l. 2 – 308, l. 19.

Edwards maintained, "The fact that he was buried underneath dirt, and without evidence of shooting or fractured skull, for instance from a beating, it is most likely that there was some kind of asphyxiation. In other words, some kind of strangulation around the neck with . . . an arm as a cause of death. But the whole scenario . . . together makes it a homicide for manner of death." R. 309, ll. 1-8. She also opined that his death could have resulted from "being incapacitated and then buried" alive. R. 309, ll. 9-18.

On cross-examination, Edwards said there was no dirt inside Tyrone's throat or nostrils. She also admitted that there were no visible signs of strangulation on the body. She conceded that while "we all know he was found buried," she does not know exactly how he died. R. 315, ll. 13 – 316, l .6.

Angela Cotton, the assistant branch manager for SRP Federal Credit Union in Barnwell, testified that Tyrone Donaldson's ATM card was used at 8:01 pm on July 21, 2011 at the ATM machine at Enterprise Bank in Blackville. This withdrawal was for $302.50. His card was used again on July 22, 2011 at 12:31 am for a "bill payment transaction" to SCANA Energy in the amount of $603.50. It was used a third time at 12:34 am on July 22, 2011 for a "bill payment transaction" to SCANA Energy in the amount of $103.50. On July 22, 2011 at 8:17 am, the card was used at an ATM machine at Bank and

Trust in Barnwell. This withdrawal was for $403.00. The card was then used three times at 8:21 am, 8:22 am, and 8:25 am on July 22, 2011 at the Palm Pantry in Bamberg. The first two transactions were withdrawals from an in-store ATM. The third was an in-store purchase. The amount of the transactions were $202.00, $102.00, and $35.00, respectively. The card was last used at 8:37 am on July 22, 2011 at Bamberg Auto Parts in the amount of $36.36. R. 408, l. 7 – 414, l. 20. Cotton claimed that in order to make these ATM withdrawals one would have to have had the "PIN number." R. 415, ll. 9-14.

Law enforcement collected several receipts indicating Appellant was the one who used Tyrone's ATM card. See R. 239, ll. 20-22; see also R. 251, ll. 1-19. Appellant also admitted to using the card during his interview on July 23, 2011. R. 158, ll. 19-24; R. 164, l. 7 – 165, l. 3. He said that he and Tyrone had received $18,000 from the sale of "backhoe equipment" and that this joint money was in Tyrone's bank account, which is why Tyrone gave him his debit card on July 21, 2011 and provided him with the "PIN number." R. 194, l. 20 – 195, l. 23.

Lieutenant Harley testified that they interviewed Appellant again on August 17, 2011. Appellant was incarcerated at the Charleston County Detention Center at the time because of a "violation of bond or probation." R. 196, ll. 19-24; R. 203, l. 22 – 204, l. 12. The U.S. Marshall's Task Force transported him to the Barnwell County Sheriff's Office.[4] R. 204, ll. 7-12. Because he was in custody, Harley advised Appellant of his Miranda[5] rights. According to Harley, Appellant said he understood his rights and signed the waiver form. R. 213, l. 16 – 216, l. 23. During this interview, Appellant allegedly mentioned a

[4] It is unclear from the record why the U.S. Marshall's Task Force transported Appellant as opposed to a different agency.

man named "Big Joe" and talked about going to Orangeburg, but did not admit to moving the white car. R. 223, ll. 1-4. After this interview, Appellant was served with a warrant for murder and transported to the Barnwell County Detention Center. R. 223, l. 24 – 224, l. 3.

A couple of hours later, Appellant contacted someone at the detention center and requested to speak with law enforcement again. He was then transported back to the Barnwell County Sheriff's Office. Harley claimed they read Appellant his Miranda rights again and Appellant agreed to waive his rights. During this second interview on August 17, 2011, Appellant allegedly told law enforcement that Tyrone was supposed to complete a drug transaction with Andre Hightower, O'Shane Dixon, and a "Big Joe" after the two parted at the Junior Food Mart that afternoon. Tyrone was supposed to give Appellant $7,000 from the transaction and Appellant was "to repay Tyrone Donaldson $3,000 out of that 7,000" for the bond money. Appellant also allegedly admitted to moving Tyrone's white Honda Civic. Harley claimed Appellant told him "Andre Hightower called and told me to do it" and Hightower was supposed to pay him $400. R. 227, l. 4 – 230, l. 18.

Moreover, Appellant told Harley that he had last seen Tyrone around 3:45 that afternoon and denied he had ever been to the wooded area where the body was found. R. 233, l. 25 – 234, l. 22. Harley said he "bluffed" and told Appellant that one of the homeowners who lived in one of the two houses off Sunshine Road near where the body was found had described seeing a Dodge pickup truck similar to his truck. Appellant still denied he had ever been to that area. R. 234, l. 19 – 236, l. 8.

The next day, August 18, 2011, Appellant requested to speak with Jeff Croft, who at the time was an investigator with the Barnwell County Sheriff's Office. Appellant allegedly

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[5] Miranda v. Arizona, 384 U.S. 436 (1966).

explained how his truck could have been seen in the area near the burial site. Croft claimed Appellant's "explanation" was "a drug deal gone bad." According to Croft, Appellant said that there was a "kilo of cocaine that had been messed up" and "[t]he money was never received by the person who supplied the cocaine" who was "a gentleman by the name of Big Joe." Appellant allegedly went on to say that "when Mr. Donaldson had gotten him out of jail they had discussed about the package [the cocaine] being messed up and that Mr. Donaldson had between eight- and $9,000 that he was going to take out there and make things right." Appellant supposedly said that he went to Andre Hightower's house with Tyrone and Andre "lured them" into the woods a "pretty good way" behind the house. When they went out into the woods, they met Big Joe, O'Shane Dixon, and Andre Hightower. Croft testified that Appellant told him O'Shane and Andre then "grabbed Tyrone and Big Joe began to hit him." Appellant was told to leave to "go get the money" so he left in his truck to see if he could find some money. R. 456, l. 9 – 458, l. 1.

Lieutenant Harley testified that the narcotics division at the Barnwell County Sheriff's Office had never conducted any narcotics investigations involving Tyrone Donaldson. There was also no mention throughout the community about Tyrone being involved in drug activity. R. 241, ll. 11-22. Harley also interviewed Andre Hightower and O'Shane Dixon to corroborate Appellant's statements, but he found no evidence either was involved in Tyrone's death.[6] R. 241, ll. 2-10. He also interviewed Kim Smith's ex-husband, Andre Smith, based on the text messages Maurice Williams, Kelsea Hallingquest,

[6] Andre Hightower and O'Shane Dixon were also called to testify at trial. Both denied any involvement in the death of Tyrone Donaldson. See R. 417, l. 12 – 418, l. 16 and R. 424, l. 18 – 429, l. 5.

and Jamaal Berry had received, but Smith did not know anything about the case. R. 240, l. 3 –241, l. 1.

Early Glover, who was incarcerated at the time of trial at the Orangeburg County Detention Center, admitted that, in addition to his pending charges, he had prior convictions for criminal domestic violence of a high and aggravated nature and third degree burglary. He also served prison time for a probation violation. Glover testified that in October 2011, he was incarcerated at Kirkland Correctional Institution and met Appellant. R. 438, l. 23 – 440, l. 16.

Glover claimed he "struck up a friendship with" Appellant and, a few days after they met, Appellant told him "he was in a bind" and "needed two people." Appellant "was saying [something] about a statement. He needed a statement." R. 441, ll. 4 – 442, l. 25. Glover agreed to help Appellant in exchange for a thousand dollars. R. 444, ll. 7-13. He claimed "a few days pass[ed] and he [Appellant] had end[ed] up writing a statement which was about three or four pages [long]." Appellant allegedly "gave it to [Glover] and told [him] this is how it [the statement] need to be written." R. 443, ll. 2-22. Glover then took the statement to his cell and copied it in his own handwriting and signed the back page. R. 443, l. 24 – 445, l. 19. He then gave the statement he wrote and the original one Appellant wrote back to Appellant. However, Appellant never paid him the one thousand dollars. R. 447, ll. 2-21; R. 449, ll. 19-22. Glover could not remember what the statement said, but he recalled the name Tyrone and that Tyrone, Appellant, and Glover were "supposed to meet two guys . . . [i]n the woods somewhere" and "Sammie [Appellant] and one of the guys started arguing" and Glover "was told to stay in the car." R. 445, l. 5 – 446, l. 21.

The jury ultimately found Appellant guilty and Judge Early sentenced him to life without parole. R. 553, l. 21 – 554, l. 6; R. 555, ll. 17-21.

ARGUMENT

The court erred by admitting into evidence a "root" associated with witchcraft and a can of "Law Stay Away"[7] that were seized from the center console of Appellant's truck pursuant to a search warrant because this evidence was not relevant and any probative value of this evidence was substantially outweighed by the danger of unfair prejudice to Appellant.

Relevant Facts

During the pretrial hearing held on November 13, 2013, defense counsel moved to suppress the "root" associated with witchcraft and the canister with the words "Law Stay Away" written on the outside that were found in the center console of Appellant's pickup truck and seized pursuant to a search warrant. R. 20, ll. 5-23.

The "root" was essentially "a brown piece of paper bag" that was "taped up" to form some sort of "capsule." Inside the capsule were weeds, twigs, dust, and a penny. The brown paper bag also had words written on it. R. 210, l. 23 – 212, l. 8. On one side of the brown paper it said, "Set me Sammie Gerrick free from murder and revoke bond. Jack Early set me free now. Jack Early set me free now. Jack Early set me free now. Sammie Gerrick, Sr. Sammie Gerrick, Sr. Sammie Gerrick, Sr. So shall it be. So shall it be. So shall it be. Amen. Amen. Amen." On the other side of the brown paper bag were the words from Psalms 130, a verse from the Bible. R. 213, l. 7 – 214, l. 13; State's Exhibit Nos. 29-30 (on file with this Court); State's Exhibit Nos. 43-46 (on file with this Court).

Defense counsel argued, "I think that there will be people in the jury box who think

[7] The can of "Law Stay Away" was a small canister or bottle with a label on the outside stating "Law Stay Away." See R. 289, ll. 16-18 and State's Exhibit No. 43 (on file with this Court).

that this is some kind of witchcraft, some kind of devil worship. As soon as they hear it and they connect it to Mr. Gerrick [Appellant], they're going to form an unfavorable opinion of him just because of that. And they may want to convict him not based upon the evidence but upon their emotions about root doctors and witchcraft." R. 21, ll. 15-22. He went on further to say, "But the rule says if it's evidence that's likely to cause a jury to make a decision based upon emotion and not upon the facts in front of them, then it should be excluded. And for that reason, because it doesn't say who wrote it, because it's not clear what it means, and because it has or could have an unfair and prejudicial effect in front of the jury, we think it should be excluded." R. 22, ll. 3-9. Defense counsel maintained that the "canister of Law Stay Away" should also be excluded because it "also appears to be part of this same witchcraft or voodoo." R. 22, ll. 10-16.

The assistant attorney general argued that "long standing law in South Carolina" says "that any act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt." R. 22, l. 24 – 23, l. 3. He claimed Appellant had constructive possession of these items because they were found in the center console of his truck "where people keep personal items." R. 23. ll. 16-23. He also argued that there was a connection between this evidence and the murder offense for which Appellant was charged. He maintained, "At the time they were discovered, Mr. Gerrick [Appellant] had already been interviewed repeatedly by police and was clearly aware, not only of the victim's disappearance, but also that [he] was sort of a central figure in this particular investigation." R. 23, l. 24 – 24, l. 3. Lastly, the assistant attorney general argued that "the text of the letter itself . . . is in the nature of [an] admission. Set me free, protect me from this murder, Jack

Early set me free, set me free. So clearly that's in the nature of an admission." R. 26, ll. 9-13.

Defense counsel responded that "any probative value it [the "root" and the canister] may have is substantially outweighed by" its prejudicial effect. R. 30, ll. 10-13.

The court held that the "root letter, the root itself, and the Law Stay Away can" allegedly found in Appellant's truck were admissible because the evidence "could be construed by the jury as . . . some type of evidence of consciousness of guilt. Therefore I find that it should be admitted and then obviously the jury can give it any weight, whatever weight, or no weight, that it decides it should give it, if any." The court also ruled that the probative value of the evidence outweighs any prejudicial effect to Appellant. R. 208, l. 11 – 209, l. 13.

Discussion

The court erred by admitting into evidence the "root" supposedly associated with witchcraft and the can of "Law Stay Away" that were seized from the center console of Appellant's truck because this evidence was not relevant and any probative value of this evidence was substantially outweighed by the danger of unfair prejudice to Appellant.

"Generally, all relevant evidence is admissible. Rule 402, SCRE. Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. "Relevant evidence may be excluded where its probative value is substantially outweighed by the danger of unfair prejudice." State v. Orozco, 392 S.C. 212, 218, 708 S.E.2d 227, 230 (Ct. App. 2011) (citing State v. Pittman, 373 S.C. 527, 578, 647 S.E.2d 144, 170 (2007) and Rule 403, SCRE). "Evidence is unfairly

prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one." Orozco, 392 S.C. at 218, 708 S.E.2d at 230 (citing State v. Cheeseboro, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001)).

"As a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt." State v. Martin, 403 S.C. 19, 26, 742 S.E.2d 42, 46 (Ct. App. 2013) (quoting State v. McDowell, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976)) (internal quotation marks omitted). "It has long been the rule in South Carolina that evidence of witness intimidation and evidence of attempted flight are probative of the accused's consciousness of guilt." Orozco, 392 S.C. at 218, 708 S.E.2d at 230 (internal citations omitted). However, "[w]here the circumstances fail to show the necessary nexus between a defendant's flight and the current offense for which he is on trial, the flight evidence is not relevant and should not be admitted." Orozco, 392 S.C. at 220, 708 S.E.2d at 231 (citing State v. Pagan, 369 S.C. 201, 209, 631 S.E.2d 262, 266 (2006)). Additionally, in 2011, this Court also held "that evidence of a suicide attempt is probative of a defendant's consciousness of guilt."[8] Orozco, 392 S.C. at 219-220, 708 S.E.2d at 231.

Unlike the state argued below, evidence of the "witchcraft root" and the canister of "Law Stay Away" was not relevant or probative to show consciousness of guilt. It was undisputed that Appellant **did not** write the words that appeared on the outside of the brown paper bag that was used to create the "witchcraft root." See R. 252, ll. 4-18. Additionally, there was no evidence presented as to how the "witchcraft root" and the canister of "Law Stay Away" got into the center console of Appellant's pickup truck. The record is unclear

[8] Our Supreme Court granted a petition for writ of certiorari to review this Court's decision in Orozco. However, Juan Carlos Orozco later moved to dismiss his appeal and our Supreme Court granted his motion before issuing an opinion.

as to the exact date, but Appellant was arrested on a bond revocation sometime between July 31, 2011 and August 2, 2011. See R. 195, l. 24 – 197, l. 6. This evidence was not discovered until August 5, 2011. Therefore, it is possible that the "witchcraft root" and the canister of "Law Stay Away" were placed in Appellant's truck after Appellant was arrested and without his knowledge. See State v. Quattlebaum, 338 S.C. 441, 454, 527 S.E.2d 105, 111-112 (2000). Consequently, there is not a sufficient connection between the "witchcraft root" and the can of "Law Stay Away" and Appellant. See Mincey v. State, 314 S.C. 355, 358, 444 S.E.2d 510, 511-512 (1994).

Furthermore, the meaning of the "witchcraft root" and the canister of "Law Stay Away" is ambiguous thereby making its probative value, if any, extremely low. At most, and this is still sheer speculation, this evidence showed Appellant was aware that there were *suspicions or accusations* that he was involved in the decedent's death because he was the last person to be seen with the decedent before he disappeared. It certainly does not demonstrate Appellant knew law enforcement sought him for murder. In fact, law enforcement **had not even** obtained a warrant for Appellant's arrest at the time this evidence was discovered and certainly had not obtained a warrant before Appellant was arrested on the bond revocation.

Moreover, this evidence was highly prejudicial to Appellant. See Kansas v. Leitner, 272 Kan. 398, 416, 34 P.3d 42, 56 (2001) ("It seems evident that our culture associates witchcraft with Satanic worship and other evil practices. Any mention of a defendant's involvement with witchcraft is highly prejudicial."); see also Dunkle v. Oklahoma, 139 P.3d 228 (2006). It would be evident to most jurors, if not all, that the brown paper capsule with incantations written on the outside and the canister of "Law Stay Away" were associated

with witchcraft or voodoo. Since witchcraft and voodoo have always been associated with the devil and feared by the American people there is no doubt that this evidence prejudiced Appellant and likely caused the jury to convict him based on an improper basis. See Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989).

Additionally, this evidence improperly attacked Appellant's character and was thereby prejudicial. As defense counsel argued below, this evidence likely caused the jury "to form an unfavorable opinion of him [Appellant]" and "convict him not based upon the evidence but upon their emotions about root doctors and witchcraft." R. 21, ll. 15-22; See Mitchell, 298 S.C. at 188-189, 379 S.E.2d at 124.

Because any probative value of this evidence was substantially outweighed by the danger of unfair prejudice to Appellant, the court erred by allowing the state to present this evidence to the jury. As a result, Appellant's conviction should be reversed and this case remanded for a new trial.

2.

The court erred by denying Appellant's motion for a mistrial after a law enforcement officer characterized the " brown piece of paper bag" that was "taped up" to form some sort of "capsule" with weeds, twigs, and a penny inside and the words "Set me Sammie Gerrick free from murder and revoked bonds" written on the outside as a "witchcraft root" in front of the jury since this testimony was highly prejudicial and the court's curative instruction failed to cure the prejudice suffered by Appellant.

Relevant Facts

Melissa Skipper Wallace testified during direct examination that she searched Appellant's Dodge Ram pickup truck on August 5, 2011. She identified a photograph of the inside of the center console of Appellant's truck that was taken during the search of the vehicle. R. 287, l. 16 – 288, l. 24. The following exchange then took place on the record:

> BY MR. WATERS:
>
> Q: And I want to point out two items. First of all, this little brown thing right there. Can you tell me what that is?
>
> A: Yes. It was a taped-up package that we opened up and it was later determined to be a - - it was told to me ***it was a witchcraft root.***
>
> THE COURT: Whoa, whoa. Disregard that, ladies and gentlemen of the jury.
>
> BY MR. WATERS:
>
> Q: Okay. And what's this other bottle, right there?
>
> A: It was a canister that the title on it said something about Law Away.

Q: Okay. All right. And if I could, this is the little brown capsule that you were talking about right there?

A: The package, yes.

Q: And then that is the bottle of Law Away; is that correct?

A: It is.

R. 289, ll. 6-24.

Shortly thereafter, the state concluded its direct examination of Wallace and the court instructed the jury to take its afternoon break. R. 291, ll. 21-23. After the jury was excused, defense counsel immediately moved for a mistrial based on Wallace's testimony that the brown paper capsule was a "witchcraft root." He argued the court's curative instruction to "[d]isregard that" was insufficient and drew more attention to the prejudicial testimony. R. 292, ll. 8-12. The court stated in response, "She's [Wallace] obviously not qualified to give that opinion. Just sort of blurted it out. I gave a curative instruction, and I'll respectfully deny the same." The court later acknowledged that "the cat's out of the bag," but maintained his curative instruction cured any prejudice since it was immediately given. R. 292, ll. 13-20.

Discussion

The court erred by denying Appellant's motion for a mistrial after Wallace referred to the brown paper capsule as a "witchcraft root" in front of the jury since this testimony was highly prejudicial and the court's curative instruction failed to cure the prejudice suffered by Appellant.

"The decision to grant or deny a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an

error of law." State v. White, 371 S.C. 439, 443, 639 S.E.2d 160, 162 (Ct. App. 2006) (citing State v. Crim, 327 S.C. 254, 257, 489 S.E.2d 478, 479 (1997) and State v. Patterson, 337 S.C. 215, 226, 522 S.E.2d 845, 851 (Ct. App. 1999)). In determining whether to grant a mistrial, our Supreme Court has noted that "[t]he less than lucid test is . . . whether the mistrial was dictated by manifest necessity or the ends of public justice, the latter being defined as the public's interest in a fair trial designated to end in just judgment." State v. Prince, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983) (internal citations omitted). Specifically, the trial court is to consider the following factors when ruling on a motion for mistrial: (1) the character of the testimony; (2) the circumstances under which it was offered; (3) the nature of the case; (4) other testimony in the case; and (5) "perhaps other matters." State v. Craig, 267 S.C. 262, 269, 227 S.E.2d 306, 310 (1976) (internal citation omitted). Therefore, although the decision to grant or deny a mistrial is within the trial court's discretion, such discretion is not unfettered. See State v. Edwards, 373 S.C. 230, 236, 644 S.E.2d 66, 69 (Ct. App. 2007).

The trial court acknowledged that Wallace's testimony referring to the brown paper capsule as a "witchcraft root" was error because "[s]he's obviously not qualified to give that opinion" and "[j]ust sort of blurted it out." R. 292, ll. 13-14. It is also clear from the record that the court found Wallace's testimony was error since he immediately interrupted her after she made the prejudicial comment and sua sponte instructed the jury to "[d]isregard that." See R. 289, ll. 7-14.

Not only was this testimony error, it was also unfairly prejudicial to Appellant. As argued above, any mention of a defendant's involvement in witchcraft or voodoo is highly prejudicial. See Leitner, 272 Kan. at 416, 34 P.3d at 56 ("Any mention of a defendant's

involvement with witchcraft is highly prejudicial."); see also Mitchell, 298 S.C. at 188-189, 379 S.E.2d at 124. Wallace's testimony specifically referring to the brown paper capsule as a "witchcraft root" directly confirmed the jurors' thoughts that this evidence was associated with witchcraft, voodoo, or some other devil worshiping religion. Unfortunately, it likely led the jury to convict Appellant on an improper basis, namely that he engages in witchcraft or voodoo which is associated with devil worshiping. This is especially true in this case where the state failed to present any direct evidence of Appellant's guilt and relied solely on circumstantial evidence to establish his guilt.

Moreover, the court's basic and rudimentary instruction, "Disregard that, ladies and gentlemen of the jury," was wholly insufficient to cure the prejudice suffered by Appellant. Despite telling the jury to "disregard that," the court failed to specifically instruct the jury that it was not to consider this prejudicial testimony during its deliberations. State v. Smith, 290 S.C. 393, 395, 350 S.E.2d 923, 924 (1986) ("The jury should be specifically instructed to disregard the evidence, and not to consider it for any purpose during deliberations. A mere general remark excluding the evidence does not cure the error."). The court also failed to instruct the jury that Wallace was not qualified to make such a determination and that her testimony was improper speculation.

However, even if the court had properly instructed the jury during its curative instruction, the instruction still would not have cured the prejudice to Appellant because, as the trial court recognized, at that point "the cat's out of the bag" and one cannot unring the bell. See R. 292, ll. 13-20; see also State v. Kennedy, 272 S.C. 231, 250 S.E.2d 338 (1978) (recognizing some errors are not curable by instruction).

Because the trial court erred in denying Appellant's motion for a mistrial based on Wallace's highly prejudicial testimony and the court's curative instruction was insufficient to cure the prejudice suffered by Appellant, his conviction should be reversed and this case remanded for a new trial.

3.

The court erred by refusing to grant a mistrial after the state showed a videotape of Appellant's interview with law enforcement before his arrest with a polygraph machine clearly visible on the table since this was unduly prejudicial and denied Appellant a fair trial.

Relevant Facts

At the pretrial hearing held on November 13, 2013, defense counsel moved to suppress the videotaped interview of Appellant with a polygraph machine clearly visible on the table. R. 16, l. 25 – 17, l. 5. The assistant attorney general argued that the polygraph machine is "not like the old-school polygraph where you've got the big machine and the graphs . . . It's just a computer . . .I don't think . . . that the jurors would know what it is. It just looks like a computer and some papers on a table just like people would have in an office." R. 17, l. 22 – 18, l. 14. Defense counsel argued in response, "I disagree and think if he's going to put something in there it ought to be audio only and not show any kind of machines." R. 19, ll. 2-5.

Without ruling, the court stated, "We'll discuss that on Monday. But there will be absolutely no mention of a polygraph. And if they even come close to looking like anything other than a computer, who's to say that people on the jury don't know that that's the new polygraph. Who knows. We'll see. We'll deal with it." R. 19, ll. 6-12.

In the middle of trial, the assistant attorney general informed the court that "obviously there was the issue with regards to Agent Burnett's interview that showed the computer on the table. And our position was you couldn't really tell that was a polygraph but understanding Mr. Williams' concern essentially what we're going to do is we're going to play it and I'm going to take a little program box and just put it right up on there so the

full portion of the desk cannot be seen by the jury so they won't be able to see that and **nobody who may know what that is** can draw any conclusions in that regard." Defense counsel and the court agreed that this was the proper way to proceed. R. 206, ll. 4-23 (emphasis added).

John Burnett, a law enforcement officer with SLED, interviewed Appellant on July 25, 2011. The interview was audio and video recorded. During Burnett's testimony, the state presented the videotape of the interview. R. 258, l. 17 – 259, l. 16. The video, Court's Exhibit No. 2, is on file with this Court. Before the tape was published to the jury, the following exchange took place between the court and the assistant attorney general:

> THE COURT: Pursuant to pretrial rulings on the screen, you know how to handle it.
>
> MR. WATERS: Yes, sir. I'm setting that up right now to be consistent with your ruling. Yes, sir.

R. 257, l. 24 – 258, l. 2.

A portion of the videotaped interview was then published to the jury. After Burnett identified himself and Appellant on the tape, the court excused the jury from the courtroom. When the jury had exited the room, defense counsel stated, "Your Honor, they did show the machine on the tape" and then moved for a mistrial. R. 260, ll. 3-15. The court indicated that "[t]he pretrial ruling was that during the interview conducted by Mr. Burnett the machine to his right, to Mr. Gerrick's left, would be covered to avoid any appearance that this machine might be a polygraph machine." The state argued that the polygraph machine was just "a laptop computer." R. 261, ll. 3-15.

Defense counsel argued that publishing the video with the polygraph machine visible was prejudicial because "it seems to me that this is a box here, there are wires here

that possibly run off to them. And I'm scared it's going to - - somebody on there [the jury] is going to identify it as a polygraph." R. 261, ll. 18-23. The witness, John Burnett, admitted that there were wires present on the table, but claimed he could not see them in the video played for the jury. Defense counsel also said the wires were difficult to see on the screen shown to the jury, but were visible on his computer. R. 262, ll. 4-15.

The court stated, "I cannot see, as the Judge in this case, how that . . . video with that, those instruments, i.e., laptop computer - - and you say a black box. I can't discern a black box. - - papers, I don't see how that's prejudicial at all either, how it could be deemed to be a machine of any type. Mr. Coleman (verbatim) [sic] had it hid pursuant to our pretrial instructions. And I think he inadvertently let it slide off or something when he was trying to get the sound off." R. 262, l. 18 – 263, l. 2. The court ultimately denied the motion for a mistrial and instructed the state to "make sure it [the polygraph machine] stays covered." R. 263, ll. 7-9.

Discussion

The court erred by refusing to grant a mistrial after the state showed the videotape of Appellant's interview with John Burnett on July 25, 2011 with a polygraph machine clearly visible on the table since this was prejudicial and denied Appellant a fair trial.

"The decision to grant or deny a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an error of law." White, 371 S.C. at 443, 639 S.E.2d at 162 (citing Crim, 327 S.C. at 257, 489 S.E.2d at 479 and Patterson, 337 S.C. at 226, 522 S.E.2d at 851). In determining whether to grant a mistrial, our Supreme Court has noted that "[t]he less than lucid test is . . . whether the mistrial was dictated by manifest necessity or the ends of public justice,

the latter being defined as the public's interest in a fair trial designated to end in just judgment." Prince, 279 S.C. at 33, 301 S.E.2d at 472 (internal citations omitted). Specifically, the trial court is to consider the following factors when ruling on a motion for mistrial: (1) the character of the testimony; (2) the circumstances under which it was offered; (3) the nature of the case; (4) other testimony in the case; and (5) "perhaps other matters." Craig, 267 S.C. at 269, 227 S.E.2d at 310 (internal citation omitted). Therefore, although the decision to grant or deny a mistrial is within the trial court's discretion, such discretion is not unfettered. See Edwards, 373 S.C. at 236, 644 S.E.2d at 69.

"The general rule is that no mention of a polygraph test should be placed before the jury." State v. Johnson, 376 S.C. 8, 11, 654 S.E.2d 835, 836 (2007) (holding the trial court did not abuse its discretion in granting a new trial based on a reference by a state's witness to a polygraph test that she had taken). "Mention of a polygraph test might arise in any one of many ways. The safer course would normally be to avoid ***any*** mention of a polygraph examination." State v. McGuire, 272 S.C. 547, 551, 253 S.E.2d 103, 105 (1979) (emphasis added). Additionally, "[e]vidence regarding the results of a polygraph test or the defendant's willingness or refusal to submit to one is inadmissible." State v. Pressley, 290 S.C. 251, 252 349 S.E.2d 403, 404 (1986) (holding the trial judge improperly allowed repeated references to the defendant's submission to a polygraph examination where the evidence showed the defendant confessed immediately after taking the polygraph, thus reversing and remanding for a new trial).

The trial court erred in refusing to grant a mistrial after the state published a video to the jury that clearly showed a polygraph machine on the table during Appellant's pre-arrest interview with Agent Burnett in violation of the judge's ruling. See State v. Parker, 391

S.C. 606, 707 S.E.2d 700 (2011). Portions of this interview were the first clips of Appellant's numerous interviews with law enforcement shown to the jury. It is the only interview where a computer, wires, and other equipment are visible on the table. During all the other interviews, the only items that appear on the table are papers and photographs. Despite what the state argued below, the equipment was not just a laptop computer. As defense counsel pointed out, it was obvious that there were wires connecting the laptop computer to a black box in the upper left hand corner of the table.

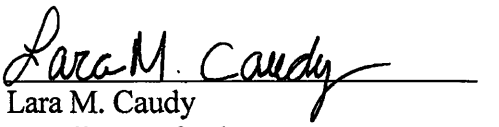
It was error for the state to publish the polygraph machine to the jury, especially after the court ruled the footage displaying the machine was inadmissible because "who's to say that people on the jury don't know that that's the new polygraph." R. 19, ll. 8-12; See Johnson, 376 S.C. at 11, 654 S.E.2d at 836 ("[N]o mention of a polygraph test should be placed before the jury."). Appellant was prejudiced by this error because the jury likely determined this equipment was a polygraph machine and inferred that law enforcement had given Appellant a polygraph test during the early stages of the investigation because they suspected he was being deceptive. This is particularly true since the state argued throughout the trial that Appellant was lying during his interviews with law enforcement and purposefully being deceptive throughout the investigation. This interview also took place before Appellant's arrest. Therefore, the jury also likely inferred that Appellant was arrested because he failed the polygraph test and because law enforcement determined he was being deceptive during his interview on July 25, 2011.

Because the court erred by refusing to grant a mistrial thereby denying Appellant a fair trial, this Court should reverse and remand for a new trial.

CONCLUSION

By reason of the foregoing argument, Appellant's conviction should be reversed and this case remanded to the Barnwell County Court of General Sessions for a new trial.

Respectfully submitted,



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This 20th day of May, 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."

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Barnwell County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SAMMIE L. GERRICK,

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 Caroline M. Scrantom, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of May, 2015.

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of May, 2015.

(L.S.)
Notary Public for South Carolina
My Commission ~~Expires~~: July 24, 2022.

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Barnwell County
Honorable Doyet A. Early, III, Circuit Court Judge

THE STATE,

Respondent,

v.

SAMMIE LEE GERRICK,

Appellant

Appellate Case No. 2014-000385.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

APPELLANT'S STATEMENT OF THE ISSUES ON APPEAL v

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL vi

STATEMENT OF THE CASE 1

STATEMENT OF FACTS 2

ARGUMENT 17

I. Items found in the center console of the Appellant's truck which patently reference the Appellant's desire to free himself of a murder charge and of the law constitute admissible evidence of consciousness of guilt 17

A) Bold-faced evidence of consciousness of guilt is admissible where, as here, a clearly defined nexus can be established between the existence of the items and the charges against the Appellant. 18

B) The root evidence in this case cannot be classified as unduly prejudicial, as it is patently probative and was not presented in a manner invoking emotion. 23

II. No mistrial warranted because no error or prejudice flows from the sole mention of a "witchcraft root." 32

A) The trial court immediately issued the required curative instruction and the jury had already been exposed to the evidence at issue. 33

III. No mistrial warranted where there exists no actual mention of a polygraph 37

A) The trial court meticulously ensured compliance with its *in limine* ruling against any mention of a polygraph. 39

IV. Any error is harmless given the totality of the evidence lending to the Appellant's conviction 42

CONCLUSION 48

TABLE OF AUTHORITIES

Cases

Com. v. Reid, 571 Pa. 1, 811 A.2d 530 (Pa. 2002) 29, 36
Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989) 30
People v. Floyd, WL 33406917 (Mich. Ct. App. Sept. 26, 2000) 28, 29, 36
People v. Hernandez, 2012 WL 1652551 (Cal. Ct. App. May 11, 2012) 28, 36
Prince v. Prince, 18 S.C. Eq. 282 (S.C. App. Eq. 1845) 27
Skinner v. State, 784 S.W.2d 873 (Mo. App. 1990) 30
State v. Bateman, 296 S.C. 367, 373 S.E.2d 470 (1988) 27
State v. Beckham, 334 S.C. 302, 513 S.E.2d 606 (1999) 20, 21, 22, 33, 34, 35, 38
State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009) 28
State v. Brooks, 341 S.C. 57, 533 S.E.2d 325 (2000) 24
State v. Bullock, 235 S.C. 356, 111 S.E.2d 657 (1959) 35
State v. Collins, 409 S.C. 524, 763 S.E.2d 22 (2014) 24
State v. Commander, 396 S.C. 254, 721 S.E.2d 413 (2011) 18
State v. Craig, 267 S.C. 262, 227 S.E.2d 306 (1976) 33, 34, 36
State v. Dial, 405 S.C. 247, 746 S.E.2d 495 (Ct. App. 2013) 40
State v. Edwards, 383 S.C. 66, 678 S.E.2d 405 (2009) 19
State v. Ferguson, 376 S.C. 615, 658 S.E.2d 101 (Ct. App. 2008) 33
State v. Gray, 408 S.C. 601, 759 S.E.2d 160 (Ct. App. 2014) 24, 25
State v. Holder, 382 S.C. 278, 676 S.E.2d 690 (2009) 25
State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011) 18
State v. Kirby, 269 S.C. 25, 236 S.E.2d 33 (1977) 34
State v. Lee, 399 S.C. 521, 732 S.E.2d 225 (Ct. App. 2012) 23
State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013) 42
State v. Martin, 403 S.C. 19, 742 S.E.2d 42 (Ct. App. 2013) 19, 20, 22
State v. Martucci, 380 S.C. 232, 669 S.E.2d 598 (Ct. App. 2008) 23, 24
State v. Mattison, 276 S.C. 235, 277 S.E.2d 598 (1981) 28, 36
State v. McDowell, 266 S.C. 508, 224 S.E.2d 889 (1976) 19
State v. McGuire, 272 S.C. 547, 253 S.E.2d 103 (1979) 39

State v. Mitchell, 286 S.C. 572, 336 S.E.2d 150 (1985) 42
State v. Myers, 359 S.C. 40, 596 S.E.2d 488 (2004) 23
State v. Naylor, 474 N.W.2d 314 (Minn. 2991) 30
State v. Orozco, 392 S.C. 212, 708 S.E.2d 227 (Ct. App. 2011) 19, 20, 22
State v. Pace, 337 S.C. 407, 523 S.E.2d 466 (Ct. App. 1999) 27
State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006) 20, 21, 22
State v. Parker, 391 S.C. 606, 707 S.E.2d 799 (2011) 41
State v. Pressley, 290 S.C. 251, 349 S.E.2d 403 (1986) 39
State v. Robinson, 238 S.C. 140, 119 S.E.2d 671 (1961) 35
State v. Robinson, 305 S.C. 469, 409 S.E.2d 404 (1991) 35
State v. Robinson, 360 S.C. 187, 600 S.E.2d 100 (Ct. App. 2004) 19
State v. Rogers, 405 S.C. 554, 748 S.E.2d 265 (Ct. App. 2013) 42
State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001) 18
State v. Thompson, 352 S.C. 552, 757 S.E.2d 77 (Ct. App. 2003) 32, 33, 34, 38, 39, 42
State v. Turner, 29 Wash. App. 282, 627 P.2d 1324 (Wa. App. 1981) 31
State v. Walker, 366 S.C. 643, 623 S.E.2d 122 (Ct. App. 2005) 19
State v. Waterhouse, 513 A.2d 862 (Me. 1986) 30
State v. White, 371 S.C. 439, 639 S.E.2d 160 (Ct. App. 2006) 33
State v. Winter, 83 S.C. 251, 65 S.E. 243 (1909) 19
Town of Hartsville v. Munger, 93 S.C. 527, 77 S.E. 219 (1913) 19
Trepal v. State, 621 So.2d 1361 (Fla. 1993) 29
United States v. Afolabi, 508 Fed. Appx. 111 (3rd Cir. 2013) 29
United States v. Obi, 239 F.3d 662 (4th Cir. 2001) 20
United States v. Reme, 738 F.2d 1156 (11th Cir. 1984) 29
United States v. Stout, 509 F.3d 796 (6th Cir. 2007) 24
Webb v. State, 327 Ark. 51, 938 S.W.2d 806 (Ark. 1997) 35
Whitener v. State, 261 Ga. 567, 407 S.E.2d 735 (Ga. 1991) 29, 30

Rules

California Evidence Code § 352 28
Rule 401, SCRE 23
Rule 403, SCRE 23, 28

Other Authorities

Black's Law Dictionary 1323 (9th ed. 2009) 24

APPELLANT'S STATEMENT OF THE ISSUES ON APPEAL

1. Whether the court erred by admitting into evidence a "root" associated with witchcraft and a can of "Law Stay Away" that were seized from the center console of Appellant's truck pursuant to a search warrant because this evidence was not relevant and any probative value of this evidence was substantially outweighed by the danger of unfair prejudice to Appellant?

2. Whether the court erred by denying Appellant's motion for a mistrial after a law enforcement officer characterized the "brown piece of paper bag" that was "taped up" to form some sort of "capsule" with weeds, twigs, and a penny inside and the words "Set me Sammie Gerrick free from murder and revoked bonds" written on the outside as "witchcraft root" in front of the jury since this testimony was highly prejudicial and the court's curative instruction failed to cure the prejudice suffered by Appellant?

3. Whether the court erred by refusing to grant a mistrial after the state showed a videotape of Appellant's interview with law enforcement before his arrest with a polygraph machine clearly visible on the table since this was unduly prejudicial and denied Appellant a fair trial?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

1. Did the trial court err by allowing into evidence photographs of a novelty item labeled "Law Stay Away" and a deconstructed "root" found in the center console of the Appellant's truck, where the general rule in South Carolina finds admissible any guilty act, conduct, or statements on the part of the accused as evidence of consciousness of guilt, and where there exists a strong nexus between the admitted evidence and the charge against the Appellant?

2. Did the trial court err by denying the Appellant a mistrial where a single law enforcement officer characterized a photograph of the deconstructed paper capsule as a "witchcraft root," where the trial court immediately issued a curative instruction and where the jury was previously exposed to the item during earlier trial testimony?

3. Did the trial court err in denying the Appellant a mistrial where due to a technical error in the handling of projection equipment, a glimpse of wires and a black polygraph box among other items on an interview table were projected, but where the trial judge took immediate action to remove the jury, and where the polygraph could not be discerned by the naked eye?

4. Did any error in the admission of the "root" evidence or in the polygraph machine's accidental projection prove harmless given the remainder of the State's case?

STATEMENT OF THE CASE

Appellant Sammie Lee Gerrick was indicted by the Barnwell County Grand Jury for the charge of murder. (R. p. 638-639). Daniel W. Williams, Esq. represented Gerrick at a jury trial which began November 18, 2013, before the Honorable Doyet A. Early, III in Barnwell County. (R. p. 1). Assistant Deputy Attorney General S. Creighton Waters and Assistant Attorney General Jason Anders prosecuted the case which lasted four days. (R. p. 1). Gerrick was convicted of murder by a jury, and Judge Early sentenced Gerrick to a term of life imprisonment. (R. p. 555, ll. 17-21). This appeal follows. (R. p. 635-637).

STATEMENT OF FACTS

According to family and friends, they last saw Tyrone Donaldson on July 21, 2011. At that time, Donaldson lived with his sister-in-law, Kelsea Hallingquest. She saw him when she woke up on the morning of July 21, "just like any other day," when he made sure she would look after his daughters while he was out during the day, changed his shoes, and left their house. (R. p. 142, ll. 8-22).

John Rice, a friend of Appellant Sammie Lee Gerrick's who works at the Bamberg County Detention Center, called Donaldson sometime that morning on Gerrick's behalf to tell Donaldson that Appellant Gerrick needed bail money. (R. p. 101, ll. 8-25). Donaldson's friend Maurice Williams also received a phone call from Appellant Gerrick, again asking to be bailed for bail money. (R. p. 66, ll. 4-9). Williams and Donaldson discussed bailing Gerrick out of jail for a total of $6600 in exchange for a promise by Gerrick that he would pay them back on the same day. (R. p. 66, l. 19 – p. 68, l. 4). Donaldson and Williams met at the bank the morning of July 21, 2011. Williams withdrew $3300 in bail money, sat in Donaldson's car to chat, gave Donaldson his half of the bail contribution, and then went back to work. (R. p. 69, l. 11 – p. 71, l. 17).

After that, Donaldson bailed Gerrick out of jail, and they called Williams to let him know. (R. p. 71, l. 20 – p. 72, l. 11). Gerrick expressed appreciation, stating he would "bless" them. (R. p. 72, ll. 7-15). The bailout occurred between 11:00 AM and noon that day. (R. p. 102, ll. 22-25). According to county jail employees, Gerrick was free of scratches or bruising upon his release, although a ceiling lightbulb did bust and fall into his cell at some point during Gerrick's detention. (R. p. 103, l. 1 – p. 105, l. 20; p. 346, l. 3 – p. 347, l. 25).

Early that afternoon, Williams and Donaldson touched base again. During that conversation, Donaldson spoke of his intention to drop Gerrick off, go home, pick Gerrick back up, and then Gerrick was going to reimburse the $6600 as promised. (R. p. 72, l. 19 – p. 73, l. 14). Between 1:00 and 2:00 that afternoon, Donaldson did return home, picked up a shotgun, asked Hallingquest once more to watch his girls as usual, and left. (R. p. 143, ll. 4-25). Donaldson was also seen by Gerrick's girlfriend's son dropping Gerrick off at his girlfriend's home. Donaldson returned to pick Gerrick up less than an hour later. (R. p. 117, ll. 12-24). Before leaving that home in separate vehicles, Gerrick placed two shovels from the barn behind his house into the bed of his own pickup truck. (R. p. 117, l. 24 – p. 118, l. 9). They both left the house, Tyrone following behind Gerrick's truck. (R. p. 118, ll. 9-11).

Donaldson and Gerrick were next seen at 2:54 pm, according to the timestamp from ATM security camera footage at the Enterprise Bank on Main Street in Blackville. (R. p. 396, ll. 17-34). Security footage shows a Honda Accord following a Burgundy pickup truck out of the bank parking lot. (R. p. 401, l. 1 – p. 402, l. 16). At a local gas station and Subway restaurant around 3:15 pm, Shaneka DeLoach, a relative of Donaldson's and someone who knows Gerrick from the community, witnessed Gerrick standing outside of Donaldson's driver's side window speaking to Donaldson and "moving his hands." (R. p. 121, l. 11 – p. 123, l. 17). "He could have been looking mean." (R. p. 123, l. 23). From her position across the street in the gas station parking lot, DeLoach could identify Donaldson's white Honda and Gerrick in a burgundy Dodge truck. (R. p. 123, ll. 1-7). They were parked with the noses of their vehicles headed in opposite directions. (R. p. 123, ll. 8-17). Sometime between 3:00 and 4:00 that same

afternoon, Gerrick's friend Joe Thomas saw Gerrick speed past his house in a gray and burgundy truck; there was another car behind him. (R. p. 433, l. 4 – p. 434, l. 11). Thomas called Gerrick's cell phone, who replied he was busy. (R. p. 433, l. 5 – p. 434, l. 18). Gerrick was headed north; a rural area demarcated by Sunshine Road sits about a mile north of Thomas' house. (R. p. 435, ll. 4-16).

Missing Person

After that, nobody heard from Donaldson. Donaldson's girlfriend, Kim Smith, received a final text from him around 1:30 that afternoon, but when she called his cell later that evening she received no answer. (R. p. 52, ll. 2-21; p. 54, l. 2 – p. 55, l. 3). Williams, who was looking to be reimbursed for his bail contribution when he finished with work for the day, had no success in getting Donaldson to answer his phone. (R. p. 73, ll. 15-22). Some text messages sent to Donaldson expressing worry were not received; phone records would later show that his cell phone was turned off or was outside of a service area for at least 72 hours. (R. p. 340, l. 18 – p. 342, l. 19).

No one saw Donaldson later that evening and into the night, but mutual friends did see and speak with Appellant Gerrick. Williams lived next door to Gerrick. (R. p. 75, ll. 12-14). After work that day, he met Gerrick in the side-yard where Gerrick explained to him that he and Donaldson dug up a safe containing $90,000 to $100,000, "loaded that little Honda down with money," and Donaldson drove off with all of it. (R. p. 76, l. 2 – p. 77, l. 20). Williams began to feel nervous, and made plans to visit with another friend of him and Donaldson's, Jamaal Berry, about an hour later. (R. p. 79, l. 16 – p. 180, l. 14). Williams and Berry sat outside, Williams' gun in his lap, while Williams relayed the day's events regarding Donaldson and Gerrick and the bail money. (R. p. 132, ll. 14-25).

Williams was scared. (R. p. 133, ll. 1-6).

For a period of time that night, Gerrick was at his girlfriend's house. A visitor at that house saw Gerrick enter around 7:30 the evening that Donaldson went missing. Gerrick came in carrying some clothes, went to the laundry room, left some clothes there, went into a bedroom, and emerged wearing a different outfit. (R. p. 109, l. 5 – p. 110, l. 17). Gerrick's girlfriend's son also saw Gerrick later the same night. (R. p. 118, ll. 12-13). Gerrick "looked like he was facing – like he had a lot on his mind" as he sat on the steps outside for hours sometime between ten and midnight. (R. p. 118, ll. 14-24; R. p. 120, ll. 1-3).

The next day, Williams saw Gerrick again and noticed "scratch marks on his chest." (R. p. 87, ll. 19-25). Donaldson's mother contacted the police department because her son did not return home the night before, and because despite efforts to contact him, no one had heard from Donaldson since he was last seen with Gerrick. (R. p. 141, ll. 17-25). Blackville Police Department Chief John Holston began a missing person's case on Donaldson. (R. p. 152, ll. 5-13).

That night, Williams, Berry, and Donaldson's sister-in-law Hallingquest each received a text message from an unknown phone number, 347-8647. (R. p. 83, ll. 9-13; R. p. 134, ll. 9-16). Williams' and Berry's read "help me this Tyrone am hurt Kim ex got me help please." (R. p. 82, ll. 4-17; R. p. 133, l. 18 – p. 134, l. 1). Hallingquest's text stated "help me sister-in-law Kim ex-husband got me am hurt." (R. p. 145, l. 10). Each recipient noticed oddities about the text message, in addition to its receipt from an unknown number. The sender incorrectly spelled "I'm" in this manner: "am." (R. p. 84, ll. 18-19). Additionally, Donaldson never called Hallingquest his "sister-in-law," he referred to her

as either Kelsea or simply as his sister. (R. p. 145, ll. 11-20).

Williams knew Gerrick to spell "I'm" as "am" on a regular basis, and had many comparisons from past messages in his own phone. (R. p. 84, l. 20 – p. 85, l. 21). For example, Gerrick once texted Williams "man am worried . . . ." (R. p. 86, ll. 17-23). Another time it was "since they are playing game with me am meeting with my lawyer . . . ." (R. p. 87, ll. 3-12). When Berry called Gerrick to ask if he sent the text message, Gerrick's response was along the lines of "it wasn't me, maybe this will take some heat off me." (R. p. 135, l. 22 – p. 136, l. 14). When Gerrick provided law enforcement with a handwritten statement, he spelled "I'm" as "am."[1] (R. p. 189, ll. 2-9). The texts came from a trac phone. (State's Exhibit 73; R. p. 468, ll. 3-18).

Discovering Donaldson's Car

One day after the disappearance, Lana Joyner, a friend of Donaldson and Hallingquest, took a detour home from work, spotted Donaldson's white Honda parked at the China Express in Orangeburg, and called Hallingquest to tell her. (R. p. 357, l. 23 – p. 359, l. 10). The Honda was identified by Orangeburg Public Safety as belonging to Gerrick. (R. p. 152, l. 14 – p. 153, l. 9). Meanwhile, Gerrick had been asking others if they had heard from Donaldson, or what they might have heard about Donaldson's disappearance. (R. p. 81, ll. 3-15; R. p. 424, l. 18 – p. 425, l. 25).

Gerrick's wife Charlene later testified as to how the Honda appeared at the Orangeburg China Express. Between nine and ten on the night Donaldson went missing, Gerrick asked Charlene to drive him to retrieve a white Honda Civic "off a paved road,

[1] Gerrick utilized other phonetic spellings, such as spelling "right" r-a-t ("rat") and using "no" where "know" was the appropriate form in context. (R. p. 189, line 10 –R. p. 190, line 11).

back up in the woods," and Charlene obliged. (R. p. 174, l. 10 – p. 175, l. 24). Gerrick had the key to the Honda Civic and drove it over to Orangeburg, parking it at the China Express. (R. p. 176, l. 8 – p. 177, l. 25). Charlene followed behind and then drove Gerrick home. (R. p. 178, ll. 4-21). According to Charlene, they arrived home late that night, and recalled that Gerrick did not stay with her for long. (R. p. 179, l. 23 – p. 180, l. 4).

Several days later on August 3, Charlene took law enforcement to the place in the woods where Gerrick recovered Donaldson's car. (R. p. 181, ll. 2-9). The spot was located off of Sunshine Road, where there is another "little dirt Road called One Way." (R. p. 198, ll. 8-16). They made a left onto One Way, driving past where "there's an open field. And then it goes into a heavy wooded area." (R. p. 198, ll. 14-19). Based upon this information, law enforcement assembled a search in that area beginning August 4. (R. p. 199, ll. 3-10). One officer eventually came across a disturbance underfoot, "and when he poked his [search] stick into the ground . . . an odor came up." (R. p. 200, ll. 7-13). SLED was contacted and a crime scene technician later recovered the body of a black male later identified by a right forearm tattoo as Tyrone Donaldson. (R. p. 200, l. 23 – p. 202, l. 25; R. p. 307, ll. 12-20).

Homicide Investigation

Upon recovery, Donaldson's body "was face down and the knees were bent as if put into the ground on the stomach with the legs bent up." (R. p. 279, ll. 15-17). Donaldson had been buried in a two-foot grave. (R. p. 281, ll. 1-4). Also apparent were bindings which had once bound Donaldson's knees and ankles; "his arms were underneath his chest." (R. p. 279, ll. 14-22). "There was a piece of root that actually went through his arms. And it was connected on both ends so his arm had gone through and

around the root." (R. p. 280, ll. 2-5). SLED agents also found burned charcoal in the soil, a fired shotgun shell, an unfired shotgun shell, a logging chain, a cigar butt, gloves, and "a white appliance top that looked like it had burned charcoal around in it." (R. p. 280, ll. 9-10; R. p. 284, l. 25 – p. 285, l. 8).

At the gravesite, investigators found green netting, which they initially believed to be trash. (R. p. 275, ll. 15-18). Investigators also collected green netting and fishing lures at Gerrick's Blackville residence, "similar to what [they] had seen at the body." (R. p. 291, ll. 16-20;R. p. 293, l. 25 – p. 294, l. 2). Trial testimony from Gerrick's girlfriend's son showed that green netting was also present approximately a year prior to Donaldson's disappearance as part of some sod laid at Gerrick's girlfriend's home. (R. p. 118, l. 25 – p. 119, l. 10).

Forensic Pathologist Dr. Janice Ross conducted an autopsy on Donaldson's body the day after its discovery. (R. p. 302, ll. 6-25). The body, "very much covered with dirt," had decomposed in a moderate-to-severe, or "fairly advanced" fashion due to it being buried for ten to twelve days in a South Carolina July. (R. p. 303, ll. 5-21). Dr. Ross discovered neither fractures nor bullets, and could not clearly identify any bruising or other soft-tissue injury due to the extent of the body's decomposition. (R. p. 304, ll. 2-20). Ross found no visible particles of dirt in the throat or nostrils. (R. p. 315, ll. 13-17). In addition to the ligatures or bindings, Dr. Ross did identify "some defects in the back of the left forearm. They were splits in the skin consistent with a laceration." (R. p. 305, ll. 1-7). Dr. Ross identified these forearm lacerations as defensive wounds, such as the scratches that may be obtained by shielding oneself from harm with his or her arms. (R. p. 311, l. 22 – p. 312, l. 22).

In conclusion, Dr. Ross determined based upon "[t]he fact that he was buried underneath dirt, and without evidence of shooting or fractured skill, for instance from a beating, it is most likely that there was some kind of asphyxiation," strangulation, and a homicide. (R. p. 309, ll. 1-11). Such a homicide, given the circumstances and burial scenario, could result "either from being strangled with some sort of soft item" or "result from somebody being incapacitated and then buried." (R. p. 309, ll. 9-18).

On August 5, law enforcement executed search warrants for Appellant Gerrick's Dodge pickup truck as well as for places he was known to reside. (R. p. 203, ll. 10-14; p. 210, l. 23 – p. 211, l. 1). Gerrick was in custody at that time. (R. p. 256, l. 19 – p. 257, l. 5). Law enforcement found in the center console of Gerrick's truck a "brown package, like a brown piece of paper bag . . . . It was just taped up. Once you open it, it had some dust, weed, twigs, and a penny in it." (R. p. 211, ll. 2-10; State's Exhibits 43 through 46). It was taped up like a capsule. (R. p. 211, ll. 18-20). Law enforcement opened the capsule to find the handwritten words:

> Set me Sammie Gerrick free from murder and revoke bond.
> Jack Early set me free now.
> Jack Early set me free now.
> Jack Early set me free now.
> Sammie Gerrick, Sr.
> Sammie Gerrick, Sr.
> Sammie Gerrick, Sr.
> So shall it be.
> So shall it be.
> So shall it be.
>
> Amen.
> Amen.
> Amen.

(R. p. 213, ll. 4-18; State's Exhibit 29). On the other side a selection resembling Psalm 130:

> Out of the depths[sic], have I cried unto thee, O Lord. Lord hear my viouce[sic]: ut[sic] think ears, be attentive to the voice of my supplications, if that Lord shouldest mark iniquities O Lord, who shall stand? But there is forgiveness with thee that there inaqest[sic] be feared. I wait for the Lord, my sould doth wait, and in his word do I hope my soul waiteth for the Lord more than they that watch for the morning I saw, more than they that watch for the morning. Let Israel hope in the Lord. For with the Lord there is mercy. And with him is plenteous[sic] redemptions. And he shall redeem Israel from all his inguities[sic].

(R. p. 214, ll. 7-15; State's Exhibit 30). Also found in the center console was a small canister labeled "Law Stay Away." (R. p. 289, l. 16 – p. 290, l. 13; State's Exhibit 43).

Law enforcement did not process Gerrick's vehicle for prints because it had been washed and because Donaldson and Gerrick "had knowledge of each other" such that law enforcement characterized it "not a big deal" if Donaldson's fingerprints were found in Gerrick's vehicle. (R. p. 291, ll. 2-12). But Lieutenant Schultz with the Orangeburg Department of Public Safety recovered five of Gerrick's fingerprints from the front right passenger door of Donaldson's white Honda Civic. (R. p. 384, ll. 1-10; R. p. 391, ll. 1-8). Further DNA testing inside the Honda Civic showed no contributions from either Sammie Lee or Charlene Gerrick. (R. p. 366, l. 17 – p. 369, l. 3).

Sammie's Stories

Gerrick made a series of voluntary statements to law enforcement, which were introduced in segments at trial. (Court's Exhibit 2). He made his first statement on July 22, the day after commencement of the missing persons investigation. (R. p. 153, l. 16). Blackville Police Chief John Holston first spoke with Gerrick because Donaldson was last seen in his company. (R. p. 153, ll. 18-21). Gerrick told Chief Holston that Donaldson bailed him out of jail on July 21, they went to Enterprise Bank together

sometime afterwards so that Gerrick could cash a check, and then they went to the BP station in Blackville. Gerrick said they remained at the BP and Junior Food Mart convenience store for a while talking and were not together any time thereafter. (R. p. 153, l. 25 – p. 154, l. 9).

After law enforcement got the tip about Donaldson's Honda Civic from the China Express in Orangeburg, Chief Holston again spoke with Gerrick. (R.. p. 154, ll. 10-20). Chief Holston wanted to know whether Gerrick knew about Donaldson's ATM card. (R. p. 155, ll. 1-2). Chief Holston included SLED Lieutenant Shaun Harley in this second interview, which began late into the night on July 22 and bled into early the next morning. (R. p. 185, ll. 13-24). Gerrick went into the details of his initial arrest,[2] his attempts to contact Donaldson for bail money, and Donaldson ultimately bailing him out. (R. p. 156, l. 1 – p. 157, l. 20). Gerrick's statement included more minutia about his July 21 contact with Donaldson: Donaldson drove him home from jail, Gerrick went inside and cleaned up, then Donaldson and Gerrick went to Enterprise Bank so Gerrick could cash a check for $104, then Gerrick "went to JRs Mart driving [his] 1998 Dodge pickup to put $30 worth of gas in [his] truck while Tyrone was still driving the white Honda Civic." (R. p. 157, l. 21 – p. 158 l. 6). Gerrick referenced his use of Donaldson's ATM card. (R. p. 158, ll. 22-24). Then, according to Gerrick, each told the other they were going home. (R. p. 158, ll. 7-9). During this interview, Chief Holston "did notice that there w[ere] some scratches across . . . Gerrick's arms and across his chest." (R. p. 159, ll. 13-15). Holston photographed the marks. (R. p. 160, ll. 2-13).

[2] The chain of events arose from Gerrick's Bamberg County incarceration following a wholly separate child support issue. Once Gerrick received that sentence, he attempted to escape the courthouse and was apprehended at a Piggly Wiggly. (R. p. 156, ll. 1-11).

Gerrick provided a third statement to Lieutenant Harley at the Barnwell County Sheriff's Office during an interview with Harley and SLED agent John Burnett. (R. p. 191, l. 3 – p. 192, l. 18). In this statement, Gerrick went into details on how Gerrick got in touch with Williams about needing bail money, and then went on to explain how he and Donaldson jointly received $18,000 from a backhoe. Gerrick did not want to tell Williams about that money because "he didn't think that [he] need to bring that up." (R. p. 193, p. 14 – p. 194, l. 3). Gerrick expounded upon financial calculations he made with Donaldson regarding repayment for bail and admits in that statement: "So I received the [ATM] card from there and went to the bank." (R. p. 194, ll. 4-16; Court's Exhibit 2). Gerrick stated he was given Donaldson's ATM card because they shared joint ownership of the backhoe funds. (R. p. 194, l. 20 – p. 194, l. 23).

On July 25, SLED agent John Burnett conducted another interview with Gerrick. (R. p. 258, ll. 19-23). Gerrick stated he had the economic means to get out of jail but was not allowed to make the requisite calls to arrange his bond, and eventually the bail arrangement with Donaldson worked out ten days after Gerrick's initial incarceration. (R. p. 264, l. 20 – p. 265, l. 1). Gerrick also divulged that he had tardy bills totaling somewhere between $1500 and $1800, that Gerrick fronted Donaldson some money at an earlier time, and had no reason for meeting Donaldson post-bailout at Enterprise Bank. (R. p. 265, l. 2 – p. 266, l. 9; R. p. 267, ll. 10-17). Agent Burnett also noticed scratches "visible to the eye" on Gerrick's arms and chest "consistent with having been exposed to the outdoors." (R. p. 266, ll. 10-17).

One week after Donaldson's disappearance, Gerrick called Chief Holston's cell phone. (R. p. 161, ll. 8-12). When Holston picked up the phone, Gerrick said "Tyrone's

not dead. . . . Black's got Tyrone and they want $25,000 in cash for him . . . ." (R. p. 161, ll. 13-19). Gerrick requested "backup" to get Donaldson back, explained that Donaldson must be "over around Springfield" where "Black was from." (R. p. 161, ll. 20-23). Chief Holston told Gerrick that if Gerrick could send him more information and proof of life, they would "go from there." (R. p. 162, ll. 1-7). Gerrick sent no additional information. (R. p. 166, ll. 12-18).

After law enforcement recovered Donaldson's body, they had Gerrick transported from the Charleston County Detention Center[3] to Barnwell County for a fifth interview. (R. p. 204, ll. 1-21). As law enforcement gathered information upon which to question Gerrick, Gerrick provided answers. Gerrick said he went to the BP station to visit with Donaldson, then visited his father's house in Bamberg County, and then walked from there to his wife's house. (R. p. 217, ll. 16-24). Gerrick did state for the first time that he went to Orangeburg, but did not mention the Honda Civic. (R. p. 217, l. 25 – p. 218, l. 3). Gerrick was arrested for Donaldson's murder. (R. p. 223, ll. 21-25).

A few hours after arrest, Gerrick requested to speak with law enforcement again. (R. p. 224, ll. 8-18). Gerrick imparted upon the officers that he wanted to tell the whole story truthfully, opening with "I'm going to put it all out there." (R. p. 226, l. 24 – p. 227, l. 3). Gerrick then told the events in a different light, stating that he and Donaldson planned a drug transaction while riding back from jail. Donaldson was supposed to purchase a kilo of cocaine from Andrew Hightower, O'Shane Dixon and "Big Joe." (R. p. 227, ll. 4-12). Gerrick previously mentioned a Big Joe to Lieutenant Harley, (p. 223, ll. 5-

[3] Gerrick's Charleston County incarceration stemmed from a bond violation. (R. p. 216, ll. 11-14).

11), but Big Joe was identified slightly differently this time. (R. p. 227, l. 21 – p. 228, l. 3; R. p. 457, ll. 14-21). All Gerrick knew about Big Joe was that he was from Georgia and drove a Denali. (R. p. 227, l. 13 – p. 228, l. 3). Gerrick talked about a drug deal set to occur after Gerrick and Donaldson departed from the BP and Junior Food mart, wherein Donaldson was supposed to give Gerrick some of the proceeds, even though Gerrick owed Donaldson $3300 in bail money. (R. p. 228, ll. 7-23). Andre Hightower then instructed Gerrick to move Donaldson's car in exchange for $400, and Gerrick admitted to driving the Honda to Orangeburg. (R. p. 229, l. 2 – p. 233, l. 24).

During the same interview, Gerrick first maintained that he never traveled to the "wooded areas on that one-way dirt road where the car was located and the body was discovered," but after Lieutenant Harley told him homeowners on the road saw his truck, Gerrick changed his story. (R. p. 234, l. 14 – p. 236, l. 8). In a follow-up August 18 interview with SLED agent Jeff Croft, Gerrick "began to explain how his truck could have possibly been found or seen in the area." (R. p. 456, ll. 9-21). Now placing himself at the crime scene, Gerrick declared that the drug deal involving a kilo of cocaine became fumbled and Gerrick looked on while Big Joe, Andre Hightower and O'Shane Dixon began to beat Donaldson. (R. p. 456, l. 22 – p. 458, l. 24). The weapon was a pipe or a gun. (R. p. 461, ll. 10-13).

On yet another occasion in October 2011, Gerrick sent a letter to SLED requesting a further interview during which "he stated that he had somebody that could vouch for his innocence." (R. p. 237, l. 5 – p. 238, l. 25). Another inmate at Lieber, Early Glover, wrote a statement on Gerrick's behalf because Gerrick told him he "was in a bind." (R. p. 239, ll. 3-12; R. p. 442, ll. 1-25). Gerrick promised Glover he would pay

him $1000 to copy a statement Gerrick scripted and passed through the jail cells, and Glover practiced writing the statement to Gerrick's satisfaction, signing Glover's name at the bottom. (R. p. 443, l. 3 – p. 446, l. 5). The statement dealt with Donaldson, who "was supposed to be the main man," meeting two other men in the woods, when an argument ensued involving Gerrick, and whereupon Gerrick was told to stay in the car. (R. p. 446, ll. 6-24). "None of it never[sic] happened" in reality. (R. p. 447, l. 1).

Corroboration

Upon further investigation, zero evidence corroborated other individuals in Donaldson's disappearance. (R. p. 241, l. 2 – p. 242, l. 2). Donaldson had no community reputation for or connection with drugs. (R. p. 241, ll. 11-22). In regards to Gerrick's drug deal narrative, Andre Hightower testified at trial that he hardly knew Gerrick and had never heard about a Big Joe. (R. p. 417, l. 12 – p. 418, l. 16). He also did not know O'Shane Dixon. (R. p. 420, l. 25 – p. 421, l. 1). Hightower was in Greenville with his girlfriend and her son on July 21, (R. p. 417, l. 21 – p. 418, l. 9), and he stayed in Greenville for about two days. (R. p. 423, ll. 2-9). O'Shane Dixon, fishing buddies with Gerrick, also testified. (R. p. 423, ll. 13-21). Dixon was at home watching his children all day on July 21, heard about Donaldson's disappearance that evening, and began receiving phone calls from Gerrick that night onward asking about what Dixon may have heard. (R. p. 424, l. 18 – p. 425, l. 25). Gerrick called off their fishing trip on July 22 without reason. (R. p. 426, ll. 1-21).

Also, just as Gerrick and Donaldson went to the Enterprise Bank ATM on the day of Donaldson's disappearance, Gerrick returned to that same ATM alone at 8:00 that same night in his burgundy Dodge Ram and used Donaldson's ATM card. (R. p. 404, l. 6

– p. 405, l. 25; R. p. 414, ll. 15 – 20). Donaldson's card was also used on July 22 at 7:50 PM at Bamberg Auto Parts, at 8:00 PM at the Palm Pantry in Bamberg, twice more at the in-store ATM at the Palm Pantry, and that morning at the Bank and Trust on North Main Street in Bamberg. (R. p. 411, l. 1 – p. 413, l. 23). Donaldson's same account was used to pay bills for SCANA Energy around midnight on July 22. (R. p. 414, ll. 2-14).

Finally, cell phone records evidence that Donaldson's cell phone permanently left the grid at the same time as the Appellant's, but Donaldson's phone never regained service. (R. p. 325, l. 4 – p. 334; R. p. 340, l. 18 – p. 342, l. 19; R. p. 499, l. 24 – p. 500, l. 9; State's Exhibits 71 and 72). The last four phone calls the victim ever makes are to the Appellant. (State's Exhibits 71 and 72; R. p. 333, l. 15 – p. 334, l. 1; R. p. 469, l. 24 - p. 471, l. 21; R. p. 499, ll. 3-11). After that last phone call, made from the Blackville area, the Appellant's phone escaped from the phone grid for two hours. (R. p. 325, l. 4 – p. 334; R. p. 499, ll. 12-25; State's Exhibits 71 and 72). Other records show that the mysterious "help me am hurt" text messages derived from a trac phone pinging from the same location as the Appellant's phone at the time the texts were sent. (State's Exhibit 73; R. p. 468, ll. 3-18; R. p. 513, l. 13 – p. 514, l. 11).

ARGUMENT

I. Items found in the center console of the Appellant's truck which patently reference the Appellant's desire to free himself of a murder charge and of the law constitute admissible evidence of consciousness of guilt.

The ruling at issue stems from the State's introduction of six photographs which document two uncommon items recovered during the execution of a search warrant on the Appellant's truck. Notably, the items themselves were not introduced at trial. Lieutenant Shaun Harley with SLED first testified as to examining "like a brown piece of paper bag, looked like." "It was just taped up . . . with dust, weed, twigs and a penny inside." (R. p. 211, ll. 7-10; *See* State's Exhibits 45 and 46). Harley testified as to the handwriting on each side of the brown paper, which on one side exhibited the contents of Psalms 130, and on the other appeared as a prayer, which Harley referred to as a letter: "Set me Sammie Gerrick free from murder and revoke bond. Jack Early set me free now . . . Amen." (R. p. 213, l. 4 – p. 214, l. 15; State's Exhibits 29 and 30). SLED crime scene investigator Melissa Skipper Wallace found the items in the center console of the Appellant's truck. Through Wallace, the State introduced photographs of the undisturbed contents of the open center console, the novelty canister of incense powder labeled "Law Stay Away," and close-ups of the brown paper parcel both opened and unopened (R. p. 289, l. 4 – p. 290, l. 24; State's Exhibits 43-46).

Subsequent to a pre-trial motion to suppress, the trial court found photographs of both items admissible because: "it is or could be construed by the jury as to some type of evidence of consciousness of guilt." As a result, "the jury can give it any weight, whatever weight, or no weight, that it decides it should give it, if any." The trial court also conducted a Rule 403, SCRE, analysis, deeming "that the probative value outweighs

any prejudicial effect or prejudicial value or effect on the Defendant." (R. p. 208, ll. 18-25). The court upheld its ruling on the parcel and its written contents post-trial,[4] finding in its February 19, 2014, Order Denying Motion for a New Trial that "[g]iven these facts, the letter is clearly susceptible of the inference that because of his consciousness of guilt, Defendant procured the letter of whatever help it might bring in warding off a murder charge and related legal problems – indeed, it expressly hoped that Defendant would be 'set free.'" (R. p. 618-619). The trial court "in considering the case as a whole, [also found] no prejudice was suffered." (R. p. 619).

Standard of Review

"The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." *State v. Saltz,* 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001). "An abuse of discretion occurs when the trial court's ruling is based on an error law or, when grounded in factual conclusions, is without evidentiary support." *State v. Jennings,* 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011). "To warrant reversal, an error must result in prejudice to the appealing party." *State v. Commander,* 396 S.C. 254, 721 S.E.2d 413 (2011).

A) Bold-faced evidence of consciousness of guilt is admissible where, as here, a clearly defined nexus can be established between the existence of the items and the charges against the Appellant.

As is consistently applied throughout the record and "as a general rule, any guilty act, conduct or statements on the part of the accused are admissible as some evidence of

[4] Defense counsel did not include the trial court ruling regarding the novelty canister of "Law Stay Away" incense as part of its post-trial motion, but the trial court's initial ruling includes both the canister and the brown paper parcel.

consciousness of guilt." *State v. McDowell,* 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976) (rule consistently applied thereafter); *State v. Martin,* 403 S.C. 19, 26, 742 S.E.2d 42, 46 (Ct. App. 2013), *rehearing denied* (June 20, 2013); *State v. Orozco,* 392 S.C. 212, 218, 708 S.E.2d 227, 230 (Ct. App. 2011); *State v. Edwards,* 383 S.C. 66, 72, 678 S.E.2d 405, 408 (2009), *State v. Walker,* 366 S.C. 643, 655, 623 S.E.2d 122, 128 (Ct. App. 2005) (holding "[u]nexplained flight is admissible as indicating consciousness of guilt, for it is not as likely that one who is blameless and conscious of that fact would flee"); *State v. Robinson,* 360 S.C. 187, 195, 600 S.E.2d 100, 104 (Ct. App. 2004); *State v. Winter,* 83 S.C. 251, 65 S.E. 243 (1909).

While the majority of published applications primarily address a defendant's flight, "the admissibility of flight evidence is equally useful in determining the admissibility of evidence of other types of evasive conduct." *State v. Martin, supra* at 28-30, S.E.2d at 46-47 ("we find the test for determining the admissibility of evidence concerning flight also applies to evidence of evasive conduct"). Just as "'false and conflicting statements and attempts to run away have always been regarded as some evidence of guilty knowledge and intent,'" *McDowell, supra* (quoting *Town of Hartsville v. Munger,* 93 S.C. 527, 77 S.E. 219 (1913), personal items found in an area over which an accused harbors a possessory interest constitute evidence of guilty knowledge and intent when those items facially demonstrate a desire to escape conflict with the law. The required showing is that of a causal chain to support inferences that (1) possession of the items in question results from the Appellant's consciousness of guilt; and (2) his consciousness of guilt relates to the crime with which he was ultimately charged and upon which the evidence at issue is offered. *See State v. Martin, supra* at 29, 742 S.E.2d

at 47 (quoting *United States v. Obi,* 239 F.3d 662, 665 (4th Cir. 2001)).

The items in the instant case are "easily analogized to other types of circumstantial evidence of guilt based on the accused's behavior after the crime." *Orozco,* at 218, 708 S.E.2d at 230. "The critical factor to the admissibility of evidence of flight is whether the totality of the evidence creates an inference that the defendant had knowledge that he was being sought by authorities." *State v. Pagan,* 369 S.C. 201, 209, 631 S.E.2d 262, 266 (2006) (citing *State v. Beckham, infra*) (cited by *State v. Martin, supra*)). Regardless of other legal troubles incurred by the Appellant prior to his arrest on the murder charge,[5] the contents when taken together specifically create an inference that the Appellant's obtaining each item was motivated by his belief that law enforcement sought him as responsible for the victim's murder. The canister of "Law Stay Away" is patent corroboration of guilt. Consider that the Appellant warehoused the canister alongside the parcel in the center console of his truck, which is a place traditionally used to store away or conceal personal items considered necessary to carry place to place. The items themselves represent tokens of guilt: the brown paper parcel, once untaped, unfurled and otherwise deconstructed, squarely provides insight into a guilty conscience. It reads "set me Sammie Gerrick free from murder and revoked bonds. Jack Early set me free . . . ." Therefore, the note can be causally linked to the murder charge, the

[5] Appellant first induced the assistance of the victim to bond him out of the Bamberg County Detention Center due to nonpayment of child support as well as a related escape attempt. (R. p. 156, ll. 1-11). Also, between the time of the victim's disappearance and later interviews with the Appellant, he had incurred a bond violation and was remanded to the custody of the Charleston County Detention Center. (R. p. 218, ll. 11-14). The Appellant was then transferred to the custody of the Barnwell County Detention Center when charged with the present murder. (R. p. 225, ll. 21-25).

Appellant's bond from another charge which would be revoked if arrested for murder, the local trial court, and a request to be "set free" from the aforementioned legal peril. The context of the notes on the brown paper parcel as well as the mere possession of the parcel and the canister are "clearly susceptible of the inference that because of his consciousness of guilt, [the Appellant] procured the root for whatever help it might bring in warding off a murder charge and related legal problems." (R. p. 618). The items, when taken both separate and apart, distinctly evidence the desire to be "set free" from a guilty act or conduct on the part of the accused, and thus are admissible as evidence of consciousness of guilt. The items' introduction shows that the Appellant sought to flee from any tie to the murder charge, albeit through the collection of specific items and not in the physical sense.

Additionally, from where the Appellant derived the tokens of guilt is immaterial to the inferences induced from their discovery. "It is sufficient that circumstances justify an inference that the defendant's actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose. Flight or evasion of arrest is a circumstance to go to the jury." *State v. Pagan,* at 209, 631 S.E.2d at 266 (citing *State v. Beckham, infra* at 315, 513 S.E.2d at 612-13). The Appellant's collecting and storing these items cannot be construed in any manner except as that of conduct indicating a willingness to evade the law: he gathered them with hopes that they would keep him out of trouble for murder, and he carried them around with him in his truck for that purpose. The items were aptly discovered after law enforcement questioned the Appellant three times regarding the murder, as well as after the Appellant contacted Chief Holston volunteering information that somebody named Black had the

victim as a hostage. A jury is entitled to weigh those tokens as seen fit in their deliberations. *State v. Beckham,* 334 S.C. 302, 315, 513 S.E.2d 606, 613 (1999).

Appellant maintains, as in *Orozco,* that "because the State failed to present the critical proof that [the Appellant] was aware of the charges at the time" he conceivably gathered the canister and the parcel,[6] that the evidence was irrelevant, prejudicial, and should have been excluded. *Orozco, supra,* at 217-21, 708 S.E.2d at 231-32. The Appellant also contends that because the handwriting on the brown paper parcel is not his own, and because no direct evidence shows how those items ended up in his center console, that the connection between the items and the Appellant is not significant enough to justify its admissibility. These contentions simply do not reflect the standard. Instead, the totality of the contents introduced creates "an inference that that the defendant had knowledge that he was being sought by the authorities" and, thus, constitutes properly admitted evidence of consciousness of guilt. *State v. Pagan,* 369 S.C. 201, 209, 631 S.E.2d 262, 266 (2006) (citing *State v. Beckham, supra* at 315, 513 S.E.2d at 612-13); *State v. Martin, supra* at 26-27, 742 S.E.2d at 46; *State v. Orozco, supra* (holding that the totality of the evidence created an inference that the defendant's suicide attempt was motivated as a result of his belief that criminal allegations had been made against him).[7] Even the apropos timing of the items' discovery in relation to the Appellant having been questioned about the murder is not a necessary link to the item's

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[6] Gerrick was incarcerated at the time of the items' discovery, and his truck was impounded at the time of the search. (R. p. 256, l. 19 – p. 257, l. 5).

[7] In *Orozco,* the court further found the accompanying Rule 403, SCRE, argument without merit due to counsel's failure to articulate how or why the suicide attempt disproportionately prejudiced that appellant so as to preclude otherwise admissible evidence of consciousness of guilt. 392 S.C. at 221, 708 S.E.2d at 232.

introduction at trial because the items' are self-evident of consciousness of guilt. *See* Rule 401, SCRE ("'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.").

Because the items at issue cogently fall within our State's category of admissible evidence of consciousness of guilt, the items also fall within the umbrella of relevant evidence otherwise defined in Rule 401, SCRE, and the trial court properly admitted photographs of those items without exception.

B) The root evidence in this case cannot be classified as unduly prejudicial, as it is patently probative and was not presented in a manner invoking emotion.

The trial court found the evidence at issue "admissible and only argued by the State for the limited purposes," thus the "prejudicial effect was minimal and more than outweighed by the probative value as to guilty consciousness." (R. p. 208-209, 619-620); *See* Rule 403, SCRE ("although relevant, evidence may be excluded if its probative value is *substantially* outweighed by the danger of unfair prejudice") (emphasis added). Just as the trial court has wide discretion in determine relevancy, the trial court has particularly wide discretion in ruling on objections regarding the comparative probative value and prejudicial effect of evidence. *State v. Myers,* 359 S.C. 40, 48, 596 S.E.2d 488, 492 (2004); *State v. Lee,* 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012). Evidence is unfairly prejudicial only where it has an undue tendency to suggest decision on an improper basis such as emotion. *State v. Martucci,* 380 S.C. 232, 251, 669 S.E.2d 598, 608 (Ct. App. 2008). However, "the determination of prejudice must be based on the entire record, and the result will generally turn on the facts of each case." *Id.* (citing *State*

v. Brooks, 341 S.C. 57, 62, 533 S.E.2d 325, 328 (2000)); *State v. Collins,* 409 S.C. 524, 534, 763 S.E.2d 22, 27-28 (2014).

i. Probative Value

Here, the evidence weighs more heavily on the probative side, both in its content and in the manner of its introduction. With a case largely comprised of circumstantial evidence, the State's presentation necessarily affords great importance to the photographs' tendency to prove or disprove the victim's consciousness of guilt. *See State v. Gray,* 408 S.C. 601, 609-10, 759 S.E.2d 160, 165 (Ct. App. 2014) ("'[p]robative' means '[t]ending to prove or disprove'" and '[p]robative value] is the measure of the importance of that tendency to the outcome of the case") (quoting *Black's Law Dictionary* 1323 (9th ed. 2009)). "The evaluation of probative value cannot be made in the abstract, but should be made in the practical context of the issues at stake in the trial of each case." *Id.* at 610, 619, 759 S.E.2d at 165, 170 ("Focusing on the facts of this case and putting them in the practical context of the issues at stake in this trial, we hold the trial court acted within its discretion to admit the autopsy photos.") (reaffirming *State v. Collins, supra* at 202, 208, 727 S.E.2d at 754, 757). "'The more essential the evidence, the greater its probative value.'" *Id.* (quoting *United States v. Stout,* 509 F.3d 796, 804 (6th Cir. 2007).

The canister labeled "Law Stay Away" and the brown paper package, with its "set me free from murder" plea and Psalm 130, serves to corroborate the variety of the Appellant's statements regarding the victim's disappearance and murder. The consciousness of guilt evidenced by those items' introduction combines with and attaches

additional importance to the fact that the Appellant spoke with law enforcement eight times either by letter, phone call, or interview. Each time the Appellant offered a different explanation of what might have happened to the victim.

The tokens of guilt also add importance to friend Jamaal Berry's testimony about the Appellant's answering Berry's question about who sent the mysterious text message after the victim's disappearance. The Appellant's answering Berry that the text message's existence "will take the heat off me" gains additional weight regarding that testimony's evidence of consciousness of guilt. In the same vein, O'Shane Dixon's testimony that the Appellant continued calling Dixon from the night of Donaldson's disappearance onward to ask what Dixon may have heard about the investigation becomes more condemning of the Appellant's guilt. Even more, the items' existence bolsters Early Glover's testimony that he recreated a letter scripted by the Appellant stating that Glover watched the victim's demise in which the Appellant took no part. The photographs' introduction ineludibly and appropriately corroborates other evidence of consciousness of guilt.

ii. Minimally Prejudicial

Next, contrast the probative value of the evidence's consciousness of guilt to the lack of prejudice invoked in its introduction. *See State v. Gray, supra.* "Photos pose a danger of unfair prejudice when they have 'an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.'" *State v. Gray* at 616, 759 S.E.2d at 168 (quoting *State v. Holder,* 382 S.C. 278, 290, 676 S.E.2d 690, 697 (2009). In this case, the focus on the evidence at issue cannot be said to have attached any abstract or emotional importance to the items other than consciousness of

guilt. In fact, the State attached no moral, religious, cabalistic or other miscellaneous context to the introduction of the photographs at issue. Instead, their introduction was purely indicative of the straight-laced investigation into Donaldson's death.

First, the prosecution did not introduce the physical items themselves, only photographs. Further, the prosecution asked law enforcement to describe their findings in a technical manner:

> Q: You talked about finding the body on the 4th, correct?
>
> A: Yes, sir.
>
> Q: August 4th. And then in the next couple of days you all had someone do a search warrant on the Defendant's truck, is that correct?
>
> A: Correct.
>
> Q: And was there discovered in the console of the Defendant's truck a little brown piece of paper, capsule sort of thing?
>
> A: Yes, sir; there was . . .

(R. p. 210, l. 20 – p. 214, l. 15). The prosecutor continues by leading law enforcement's description of the paper parcel and novelty canister so as not to invoke extraneous monikers regarding its potential use or purpose.

Questioning continued to evade the elicitation of any reference to the item which may draw out emotion or attach any type of mystic significance to its function.[8] During SLED Agent Wallace's testimony, the prosecution first had Wallace explain the detailed process by which an investigator processes a vehicle search. (R. p. 287, l. 16 – p. 288, l. 11). Then, counsel asked if Wallace collected any items from the Appellant's truck, and

[8] With the exception of Wallace's sole answer "it was told to me it was a witchcraft root," which was immediately redacted by the trial judge and which is the subject of the second issue on appeal.

had her identify photographs of the center console and each item recovered. (R. p. 288, l. 12 – p. 290, l. 20). The prosecutor's focus with Wallace was on characterizing "what it looked like, all put together" for the jury. (R. p. 290, ll. 4-24). The parties left each item largely undefined throughout the course of the trial. As a result, nothing in the manner of introduction takes the items outside the realm of inventory found during a legal search of the Appellant's possessions. Explanatory testimony regarding the items occurred succinctly without follow-up inquiry. Nothing about the manner of introduction can be interpreted to provoke emotional response. Even in the State's summation, the items' significance strictly links the Appellant to consciousness of guilt. As stated by the prosecutor during closing argument, his possession of those items indicates that he knew he was "in the frying pan." (R. p. 527, l. 2). "He knew he was the target of this investigation. He was engaging in all sorts of things to try to throw people off the track, whether it was the story about the ATM, or whether it was the track phone, or the lies, or the claim about the $25,000 to Chief Holston." (R. p. 526, l. 21 – p. 527, l. 1). "Here, nothing about the questioned evidence invited a decision on an improper basis. Indeed, the probative value of the evidence outweighed its prejudicial effect because the evidence tended to show [the Appellant's] guilty knowledge and intent." *State v. Pace,* 337 S.C. 407, 415-16, 523 S.E.2d 466, 470 (Ct. App. 1999).

iii. Voodoo evidence found relevant and admissible even where its substance has a greater potential to invoke emotion

Our courts have equated a root doctor to an apothecary, *Prince v. Prince,* 18 S.C. Eq. 282, 286 (S.C. App. Eq. 1845), or otherwise have recognized the existence of root doctors and a related following. *State v. Bateman,* 296 S.C. 367, 367-68, 373 S.E.2d 470,

470 (1988) ("Appellants are self-proclaimed members of the United Hebrew Kingdom Reservation of the Dr. Buzzard Cabalistic Order, commonly called root doctors."). Our appellate courts have upheld the introduction of *expert* testimony "as to the general effect of the fear of witchcraft or 'roots'" solely related to a defendant's fear that "his wife was attempting to work 'roots' on him." *State v. Mattison,* 276 S.C. 235, 238-39, 277 S.E.2d 598, 600 (1981) (*overruled on other grounds* by *State v. Belcher,* 385 S.C. 597, 685 S.E.2d 802 (2009)) (recognizing rootwork as "the use of evil spirits and witchcraft to cause great harm to the victim").

The introduction of voodoo evidence has been upheld even with the attachment of mystic significance. In a Rule 403[9] challenge, dolls and bats covered with the names of individuals, prosecutors, judges and investigators were determined admissible as "highly probative of [that defendant's] consciousness of guilt." *People v. Hernandez,* 2012 WL 1652551, at *12-14 (Cal. Ct. App. May 11, 2012). This is because "prejudicial is not synonymous with damaging." Rather, Rule 403 uses the etymological "prejudice." "Unduly prejudicial" evidence is that enveloped by a sense of "prejudging a person or cause on the basis of extraneous factors." *Id.* (internal citations omitted).

A voodoo doll smeared with blood upon which someone inscribed "death to [the victim]" was ruled admissible without exception where, as in the present case, "the doll tended to make more likely that the defendant premeditated and deliberated the victim's murder, a fact of consequence to the determination of the instant action." *People v. Floyd,* WL 33406917, at *2-3 (Mich. Ct. App. Sept. 26, 2000). In another Rule 403 analysis

[9] California Evidence Code § 352 reads: "the court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will . . . (b) create substantial danger of undue prejudice . . . ."

where the appellant argued that "the doll injected unfair emotionalism (negative reaction toward voodoo) into the trial," its probative value prevailed because "it appear[ed] unlikely that the jury placed in the doll any undue significance, especially in light of other trial testimony." *Id.*

While not necessarily characterized as "evidence of consciousness of guilt," courts consistently find references to rootwork, voodoo or hoodoo relevant as to guilt and admissible. In one Pennsylvania case, a folded piece of paper wrapped in cellophane and covered in blue tape found in the defendant's left shoe during a consented-to search bore notations including the names of the victims, local law enforcement and the county district attorney. *Com. v. Reid,* 571 Pa. 1, 23-24, 811 A.2d 530, 543 (Pa. 2002). Not only was that parcel found admissible, but the Commonwealth presented testimony from a law enforcement consultant for crimes involving Afro Caribbean religions, who testified that the "notations on the paper were associated with the Voodoo religion . . . and they invoked assistance from a number of Voodoo deities or gods . . . ." *Id.* That witness concluded that "the person who owned the paper considered the persons named on the paper as enemies and wanted them destroyed or dead." *Id.* The defense team rebutted with a competing expert, "a professor of Caribbean studies." *Id.* at n.23. *See also United States v. Reme,* 738 F.2d 1156, 1164 (11th Cir. 1984) (evidence concerning searches for black magic strongly probative of evidence required to prove an element of the crime charged); *United States v. Afolabi,* 508 Fed. Appx. 111, 117-18 (3rd Cir. 2013) (same); *Trepal v. State,* 621 So.2d 1361, 1364-65 (Fla. 1993) (pamphlet admissible in which defendant wrote about voodoo for a Mensa murder weekend where themes within the pamphlet and a note containing a death threat showed similar); *Whitener v. State,* 261 Ga.

567, 407 S.E.2d 735 (Ga. 1991) (defendant's notebook containing references to the occult admissible as relevant to possible motive); *State v. Waterhouse,* 513 A.2d 862 (Me. 1986) (same); *Skinner v. State,* 784 S.W.2d 873 (Mo. App. 1990) (defendant's devil worship admissible as relevant to identity).

Appellant cites *Mitchell v. State,* 298 S.C. 186, 379 S.E.2d 123 (1989), in support of its proposition that the photographs' admission was unduly prejudicial; however, in *Mitchell,* the court granted post-conviction relief on the basis that trial counsel failed to object to the introduction of impermissible *character* evidence of "devil worship." The evidence in *Mitchell* proved far more excessive in its nature: law enforcement testified at that trial that the defendant's living room was a "ceremony room" with an "altar" in the fireplace and "wax candles with little devils" and "devil figurines" and a "closet with a one-way mirror for viewing." *Mitchell* at 188, 379 S.E.2d 124-25. Another State's witness testified as to her knowledge of the defendant's "work[ing] the candles" which were named for certain acquaintances. *Id.* Any probative value of that evidence remains undisclosed. *Mitchell's* evidence parallels that of *State v. Naylor,* 474 N.W.2d 314 (Minn. 1991), where a dozen seized books and other photographs of book covers related to the practice of witchcraft and satanism were introduced at trial as evidence. *Id.* The titles bolstered testimony regarding the defendants' involvement in witchcraft and the ritualistic aspects of the victim's murder. *Id.* That court determined that each book's contents and cover art were "innocuous" enough so as not to cause substantial prejudice. *Id.* at 318-20.

Here, by the manner in which the canister and parcel were introduced at trial, one cannot say that "the minute peg of relevancy is . . . obscured by the dirty linen hung upon

it." *State v. Turner,* 29 Wash. App. 282, 289, 627 P.2d 1324 (Wa. App. 1981). The trial court did not abuse its discretion in the photographs' admittance, as such evidence is clearly of consequence to the jury's determination of an accused's guilt.

II. No mistrial warranted because no error or prejudice flows from the sole mention of a "witchcraft root."

During SLED agent Wallace's testimony regarding her executing a search warrant on the Appellant's truck, counsel asked what the "little brown thing" found in the Appellant's center console was. Wallace answered "it was a taped-up package that we opened up and it was later determined to be a – it was told to me it was a witchcraft root." (R. p. 289 p. 7-12). The trial judge immediately instructed the jury to "disregard that," and testimony moved along without another mention of witchcraft or roots. (R. p. 289, ll. 13-15). At no time prior had the trial court issued a ruling against any mention of "root" or "witchcraft." (R. p. 613, ll. 3-8).

At the conclusion of agent Wallace's direct examination, the jury exited and defense counsel moved for a mistrial: "I realized it was inadvertent but the mention of witchcraft creates a problem. I realize [the court] gave a curative instruction, but sometimes that just draws more attention to it." (R. p. 292, ll. 3-12). The court acknowledged that Wallace was "not qualified to give that opinion," and she "just sort of blurted it out," but that the trial judge also "gave a curative instruction." (R. p. 292, ll. 13-15). The State added that it would not allude to "witchcraft" at any point in its presentation. (R. p. 292, ll. 16-17). The trial judge replied that "the cat's out of the bag," but because it immediately issued the instruction for the jury to disregard the statement, the motion for mistrial was denied. (R. p. 292, ll. 18-20).

Standard of Review

The decision to grant or deny a mistrial rests within the sound discretion of the trial judge and will not be overturned absent an abuse of discretion. *State v. Thompson,*

352 S.C. 552, 560, 757 S.E.2d 77, 82 (Ct. App. 2003). Granting a motion for mistrial "is an extreme measure which should be taken only where an incident is so grievous that its prejudicial effect can be removed in no other way." *State v. Beckham, supra* at 309, 513 S.E.2d at 610. A mistrial is warranted only when absolutely necessary, and where a defendant shows both error and resulting prejudice. *Thompson* at 560, 757 S.E.2d at 82.

A) The trial court immediately issued the required curative instruction and the jury had already been exposed to the evidence at issue.

"An instruction to disregard incompetent evidence or the withdrawal of such evidence usually is deemed to have cured the error in its admission unless on the facts of the particular case it is probable that notwithstanding such instruction or withdrawal the accused was prejudiced." *State v. Craig,* 267 S.C. 262, 268-69, 227 S.E.2d 306, 309 (1976). Here, the trial court immediately interjected and issued an instruction for the jury to "disregard that, ladies and gentlemen." (R. p. 289, ll. 13-14). While not an extensive measure to cure, instructions to "disregard" improper testimony indicate a suitable exercise in discretion given the circumstances. *See State v. Ferguson,* 376 S.C. 615, 620-21, 658 S.E.2d 101, 104 (Ct. App. 2008); *State v. White,* 371 S.C. 439, 445, 639 S.E.2d 160, 163 (Ct. App. 2006). The curative words acted to move the witness along quickly and refocus the courtroom on permissible testimony. It would have been more damaging to stop the examination, usher out the jury, and take up the utterance with counsel. In that circumstance, "witchcraft" would resonate in the jury as a reason to halt proceedings and thus lend way to contemplation of impermissible testimony. Instead, the trial court did not draw extraneous attention to the improper verbiage or distract the jury from the flow of information. ""The power of a court to declare a mistrial ought to be used with the

greatest caution under urgent circumstances, and for very plain and obvious causes' stated into the record by the trial judge." *Thompson* at 560, 757 S.E.2d at 82 (quoting *State v. Kirby,* 269 S.C. 25, 28, 236 S.E.2d 33, 34 (1977)). The instant mention of "witchcraft" provided neither an urgent circumstance nor a plain and obvious cause for the declaration of a mistrial. In making such a determination, one looks to the character of the testimony, the circumstances under which it was offered, the nature of the case, other testimony in the case, "and perhaps other matters." *Craig* at 268-69, 277 S.E.2d at 309-10.

No prejudice can flow from the testimony at issue when it was not the first of the jury's exposure to the items found in the Appellant's truck. In earlier testimony, Lieutenant Harley described what the paper parcel looked like both when it was initially found in its intact form, and also as to what was contained inside. (R. p. 211, ll. 7-10). Harley also read aloud the prayer, or letter, and the inclusion of Psalms 130 found on either side of the brown paper. (R. p. 213, l. 3- p. 214, l. 15). As a result, any juror who was inclined to draw the inference of rootwork or witchcraft already had the opportunity to do so upon the parcel's initial mention.

Also, agent Wallace's statement that the item "was told to [her] to be a witchcraft root" in no way implies that the Appellant himself practiced witchcraft or held himself out to be a root doctor. It is undisputed that the Appellant did not write the prayer or letter on the brown paper parcel. At the most, the items evidence that because the Appellant acquired the parcel and kept it the center console of his truck, he desired to be "set free" of an impending murder charge. Because no testimony suggested that the Appellant practiced witchcraft, its sole mention cannot warrant a mistrial. *State v. Beckham* at 310,

334 S.E.2d at 610 (witness testimony that murder victim was at a women's shelter did not necessarily imply that the defendant abused the victim); *State v. Robinson,* 305 S.C. 469, 409 S.E.2d 404 (1991) (no error in trial judge's denying mistrial when witness' testimony did not imply appellant was involved in drug dealing merely because the witness knew appellant during time witness was dealing drugs); *State v. Robinson,* 238 S.C. 140, 119 S.E.2d 671 (1961) (witness statement that appellant told him that he was on way to probation office did not tend to create inference that accused had committed another crime); *State v. Bullock,* 235 S.C. 356, 111 S.E.2d 657 (1959) (no inference that the accused raped the murder victim where the examining physician's testimony stated that the victim's body was without undergarments and showed some vaginal discharge). In a similar scenario, an Arkansas court found no error in a trial court's refusal to grant a mistrial where an investigator testified that the appellant informed him that a victim was involved in witchcraft or voodoo. *Webb v. State,* 327 Ark. 51, 63, 938 S.W.2d 806, 813 (Ark. 1997). The testimony occurred in contravention of an *in limine* order not to mention the occult. *Id.* The trial court allowed the testimony because it was not offered "to show that [the victim] was in fact involved in such activity, but rather to demonstrate the way in which Appellant was defaming the victim, the woman he was supposed to have loved enough to marry, only days after she had been murdered." *Id.* at 63-64, 938 S.W.2d at 813-14. The appellate court upheld that ruling, finding that the appellant failed to demonstrate "any reason why the admission of such testimony was prejudicial to him" so as to warrant a mistrial. *Id.*

Additionally, Respondent reiterates that the totality of the brown parcel's introduction was conducted in an explanatory manner not meant to invoke emotional bias

in the jury. Rather, the probative importance of the evidence regarding consciousness of guilt supersedes its accidental characterization as a "witchcraft root." It says "set me free of murder and revoked bonds." Also illustrative are other jurisdictions' allowance of similar testimony, which exemplifies that similar and often more deleterious testimony has found its way into the courtroom as evidence of guilt. *State v. Mattison, supra,* 276 S.C. 235, 277 S.E.2d 598 (1981) (recognizing rootwork as "the use of evil spirits and witchcraft to cause great harm to the victim); *Com. v. Reid, supra,* 571 Pa. 1, 811 A.2d 530 (2002) (testimony from both parties explaining voodoo religion admissible to explain folded piece of paper wrapped in cellophane, covered in tape, and bearing names of victims and local law enforcement); *People v. Hernandez, supra,* 2012 WL 1652551 (Cal. Ct. App. May 11, 2012) (voodoo dolls bearing names of prosecutors, et al. highly probative of guilt); *People v. Floyd, supra,* WL 33406917 (Mich. Ct. App. Sept. 26, 2000) (blood-smeared voodoo doll bearing victim's name admissible as evidence of guilt).

In sum, no prejudice resulted from the statement so as to warrant a mistrial. "A mistrial should not be ordered in every case where incompetent evidence is received and later stricken out." *Craig* at 268-69, 277 S.E.2d at 309. Here, where the brown paper parcel constitutes evidence of consciousness of guilt, testimony regarding the discovery of that evidence should not be overridden by a minute misstep in its delivery, especially where the trial court took the prescribed curative measure.

III. No mistrial warranted where there exists no actual mention of a polygraph.

Subject to a pre-trial ruling, the Appellant's trial was to contain "absolutely no mention of a polygraph." (R. p. 19, ll. 8-9). The cause for such a pre-trial motion stems from one in a series of video clips from the Appellant's interviews with law enforcement. On the interview table in one particular clip laid a laptop computer, its charger and plug, other rolled up wires, a black box, a mouse and mouse pad, a clipboard, files, and paperwork. (Court's Exhibit No. 2). Some of the wires and the black box constituted a polygraph when combined with the laptop, but "not like the old-school polygraph where you've got the big machine and the graphs and everything like that." (R. p. 17, l. 24 – p. 18, l. 2).

The plan for the image's introduction at trial was for "something . . . to be put on the screen to block the computer," but "it inadvertently got shown." (R. p. 613, ll. 15-18). The jury entered, the CD was projected on the screen, the State asked one question of its witness: "who is this this person right here?" (R. p. 260, l. 6). The witness answered, "That's Mr. Gerrick. That's me," identifying each individual in the clip. (R. p. 260, l. 7). Then, the trial judge stated "ladies and gentlemen, y'all step out a second please. Jury, please step out." (R. p. 260, ll. 8-9). In addressing his cause for ushering the jury out of the courtroom, the trial judge explained:

> THE COURT: The pretrial ruling was that during the interview conducted by Mr. Burnett the machine to his right, to Mr. Gerrick's left, would be covered to avoid any appearance that this machine might be a polygraph machine. I'm looking at it right now. I can't tell what it is. If anything, it looks like a computer.
>
> WITNESS: If I can help, Your Honor. It is a laptop computer

THE COURT: All right. It's a lap top computer.

. . .

THE COURT:[addressing defense counsel] Tell me what, what's prejudicial about that.

THE DEFENSE: And perhaps it shows up better on my computer than it does here on this big screen. But it seems to me that this is a box here, there are wires here that possibly run off to them. And I'm scared it's going to – somebody on there is going to identify it as a polygraph. . . . It's not connected. I'm not saying that. I'm just saying the wires are there. . . . With the lights on it's hard to see it. *I got to admit.* I can see it on my computer.

THE COURT: Well, your computer is not being shown to the jury. All right. I cannot see, as the Judge in this case, how that photograph or that video with that, those instruments, i.e., a laptop computer – and you say a black box. I can't discern a black box. – papers, I don't see how that's prejudicial at all either, how it could be deemed to be a machine of any type.

(R. p. 260, l. 21 – p. 262, l. 23 (emphasis added)). The State maintained, and the trial court agreed, that the polygraph did not appear recognizable. "It just looks like a computer and some papers on a table just like people would have in an office." (R. p. 18, ll. 3-10). The trial court denied the motion for mistrial. (R. p. 263, l. 7).

Standard of Review

Again, the decision to grant or deny a mistrial rests within the sound discretion of the trial judge and will not be overturned absent an abuse of discretion. *Thompson* at 560, 757 S.E.2d at 82. A mistrial "is an extreme measure which should be taken only where an incident is so grievous that its prejudicial effect can be removed in no other way." *Beckham* at 309, 513 S.E.2d at 610. It is warranted only when absolutely necessary, and where a defendant shows both error and resulting prejudice. *Thompson* at 560, 757

S.E.2d at 82.

A) The trial court meticulously ensured compliance with its *in limine* ruling against any mention of a polygraph.

"A trial judge should be meticulous in ensuring that the jury makes no improper inference from any reference to a polygraph. *State v. Pressley,* 290 S.C. 251, 252, 349 S.E.2d 403, 404 (1986) (evidence regarding polygraph tests or the defendant's willingness or refusal to submit to a polygraph test inadmissible) (citing *State v. McGuire,* 272 S.C. 547, 253 S.E.2d 103 (1979)). Here, the trial judge acted meticulously in controlling his courtroom. Indeed, the word "polygraph" never reached the ears of any juror. From all accounts, neither did any cognizable projection reach any juror's eyes. The record proves illustrative that the polygraph truly could not be discerned. Even defense counsel's renewal of the issue during post-trial motions illustrates that regardless of his concern "with all the equipment" on the interview table at issue, he only "*thought*" he saw "leads on the thing that could have run to [the Appellant]. *No one else saw that, but I thought I saw it on there.*" (R. p. 614, ll. 6-12 (emphasis added)). At the post-trial hearing, the trial court pointed out that in addition to the deficient quality of the video, no one ever alluded to any "polygraph":

> THE COURT: Let me stop you right there . . . At no time during the trial of the case was the word "polygraph" ever mentioned.
>
> THE STATE: Absolutely not.
>
> THE COURT: Never.
>
> THE STATE: No, sir.

(R. p. 615, ll. 11-17). The court denied that motion for new trial, finding that "even had

the video been shown in its entirety, it is of such poor quality that it cannot be made out that the things on the table are anything but a laptop and some notepads. Nothing was hooked up to the defendant or visibly obvious as polygraph equipment." (R. p. 620-622).

This Court has analogously upheld the denial of a motion for mistrial where a witness began to approach the stand carrying a three by two-and-a-half-inch urn containing the victim's ashes, but where "the trial court immediately prevented her from advancing any further and asked the jury to leave the courtroom." *State v. Dial,* 405 S.C. 247, 257, 746 S.E.2d 495, 500 (Ct. App. 2013). Regardless of the urn's heart shape, "[t]he trial court denied Dial's motion given the small size of the item, the manner in which Richards approached the witness stand, and the fact that the trial court had the best view of the item and still did not know it was an urn." *Id.* at 257-58, 746 S.E.2d at 500. Defense counsel in *Dial* failed to establish that any juror did see the urn, and it was not presented in an attention-grabbing manner. *Id.* Although the trial court issued a curative instruction in *Dial* at the request of defense counsel, counsel in the present case did not wish to draw additional attention to the unintentional projection and so no curative words were issued.

Notwithstanding the lack of curative words and even in light of the court's ruling, "there was no need to redact it at all because the video is so grainy and because all that you can make out on the table is just a computer and some notepads. There's obviously nothing hooked up to the defendant. He actually gets up and moves around during the course of the video." (R. p. 614, l. 24 – p. 615, l. 4). At least one item rests on the table in every interview clip. In fact, no curative words were needed in this case because the jury never garnered the opportunity to draw any inference of a polygraph. The post-trial Order

reflected the same, making a finding similar to that in *Dial*:

> this Court finds that the quality of the video was even worse and less discernable when it was magnified on the movie screen, and the video without the overlay was only up for seconds at the very beginning before the error was realized, the video turned off, and the jury sent out. Therefore, this Court finds there was simply insufficient time for any juror to make out what was on the table beyond just normal office items like pads and a computer. At no time during the video or the trial was the word polygraph mentioned before the jury.

(R. p. 621). It is also undisputed that the misstep occurred inadvertently. (R. p. 263, ll. 5-6; R. p. 613, l. 18; R. p. 614, l. 12); *See State v. Parker,* 391 S.C. 606, 612, 707 S.E.2d 799, 802 (2011) (mistrial appropriate where prosecutor's conduct rises to the level of goading the defendant into so moving).

The record evidences that no mention of a polygraph transpired before the jury. Without the mention of a polygraph, there can be no error in the trial court's denying a mistrial. The record also evidences that regardless of any projection of a polygraph, no prejudice can flow from that projection because the polygraph was not discernible. Thus, no error or prejudice results as a mistrial was not warranted under the circumstances.

IV. Any error is harmless given the totality of the evidence lending to the Appellant's conviction.

Improperly admitted evidence and the denial of a mistrial only constitute reversible error when the admissions cause prejudice. *State v. Thompson, supra,* 352 S.C. 552, 562, 757 S.E.2d 77, 83 (Ct. App. 2003). "Whether an error is harmless depends on the circumstances of the particular case. No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." *State v. Mitchell,* 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). Where a review of the entire record establishes the error is harmless beyond a reasonable doubt, meaning that the error could not reasonably have affected the result of the trial, the conviction should not be reversed. *Thompson, supra.*

Evidence of the Appellant's guilt proves overwhelming even absent the brown paper parcel, canister, and projection of the video at issue.[10] The remainder of the evidence is circumstantial, not unlike the parcel and novelty canister. But, the totality of the remaining evidence allows for the connection of collateral facts which paints a narrative of guilt. *See State v. Logan,* 405 S.C. 83, 97-98, 747 S.E.2d 444, 451-52 (2013); *State v. Rogers,* 405 S.C. 554, 748 S.E.2d 265 (Ct. App. 2013). Here, there is no other reasonable explanation. First, the Appellant's incarceration and his need for bail and bill money establishes motive. Because the Appellant could not pay his bills, he also could not refund the victim and his friend Maurice Williams for their bonding the Appellant out of jail.

[10] Respondent asserts that even if the trial court sustained the Appellant's objection to projecting the video clip at issue, the audio contents of the video remained admissible evidence for the jury's consideration.

The victim followed behind the Appellant after the bailout with the expectation that the Appellant was collecting money for repayment. The two were spotted in tandem the remainder of that afternoon. First they left the Appellant's house, but not before the Appellant put two shovels in the bed of his truck (the victim was recovered from a shallow grave). (R. p. 117, l. 24 – p. 118, l. 9). Then they were seen at the Enterprise Bank ATM and at the Junior Food Mart, both in Blackville. (R. p. 123, ll. 1-23; R. p. 396, ll. 17-34). Joe Thomas saw the Appellant drive past Thomas' house with another car close behind around 3:00 that afternoon, which is corroborated by a call from that friend to the Appellant. (R. p. 433, l. 4 – p. 434, l. 18). The Appellant said during an interview with law enforcement that he went by Thomas' house to get sand, but according to Thomas, that never happened. (R. p. 434, l. 19 – p. 435, l. 3). Thomas' house lies within a mile or so of the crime scene. (R. p. 435, ll. 4-16).

No one heard from the victim after, and then the victim's cell phone permanently goes off the grid, as evidenced by undelivered text messages. (R. p. 340, l. 18 – p. 342, l. 19; State's Exhibit 72). Cell phone records show that the last four phone calls the victim ever makes are to the Appellant. (R. p. 469 l. 24 – p. 471, l. 21; R. p. 499, ll. 3-11; State's Exhibits 71 and 72). After that last phone call, made from the Blackville area, the Appellant's phone escaped from the grid for two hours during the same time period as when the victim's phone forever lost service. (R. p. 325, l. 4 – p. 334, l. 1; R. p. 499, l. 12 – p. 501, l. 1; State's Exhibits 71 and 72).

The Appellant resurfaced that evening, telling Maurice Williams that he and the victim dug up a safe full of money to reimburse him for the bailout, but that the victim drove off with it. (R. p. 76, l. 2 – p. 77, l. 20). Also that night, a visitor at the Appellant's

residence saw him change clothes around 7:30 and place his other clothes in the laundry room. (R. p. 109, l. 5 – p. 110, l. 17). This was after the Appellant came home to shower after being bailed out of jail.

The next day, an ATM camera catches the Appellant using the victim's debit card to withdraw money. The victim's card was also used several times the day the victim disappeared, including paying energy bills around midnight. (R. p. 404, l. 6 – p. 405, l. 25; R. p. 411, l. 1 – p. 413, l. 23; R. p. 414, ll. 2-14). The victim went missing long before midnight. The victim's sister-in-law, with whom he lived, testified that the victim would never lend his debit card or PIN number to anyone. (R. p. 148, ll. 19-23).

Maurice Williams also sees the Appellant the next day and notices scratches on his chest. (R. p. 87, ll. 19-25). When questioned about those scratches by law enforcement, who also noticed them, the Appellant stated that a lightbulb burst overhead in his jail cell days prior, causing injury. Jailhouse employees testified that the Appellant did not report any injury during his incarceration, nor did it appear that he had any scratches. (R. p. 103, l. 1 – p. 105, l. 20; R. p. 159, ll. 13-15;R. p. 206, ll. 10-17; R. p. 346, l. 3 – p. 347, l. 25).

The victim's friends also received a mysterious text message purporting to be from the victim, but from an unknown number, claiming that the victim was hurt and asking for help. (R. p. 82, ll. 4-17; R. p. 133, l. 18 – p. 134, l. 1). When one recipient asked the Appellant about the text, the Appellant replied that it might take the heat off of him. (R. p. 135, l. 22 – p. 136 l. 14). The texts incorrectly used "am" as a substitute for "I'm," just like the Appellant consistently did as well. (R. pp. 84-87). Those texts came from a trac phone pinging from the same location as the Appellant's phone at the time the

texts were sent. (State's Exhibit 73; R. p. 468, ll. 3-18; R. p. 513, l. 13 – p. 514, l. 11).

Of import, the Appellant's wife testified that late during the night of the victim's disappearance, the Appellant asked her to follow him out to the woods near Sunshine Road so that the Appellant could collect the victim's car, drive it to Orangeburg, and park it at the China Express. (R. pp. 174-180). The Appellant's wife actually took law enforcement to the woods where the Appellant initially retrieved the victim's car; those woods proved to be the crime scene. (R. pp. 198-99). The victim was found in a shallow grave, face-down, with asphyxiation the probable cause of death. (R. p. 281, ll. 1-4;R. p. 309, ll. 1-18). Autopsy results showed defensive lacerations on the victim's left arm. (R. p. 305, ll. 1-7).

Investigators found full set of the Appellant's fingerprints on the victim's car. (R. p. 384, ll. 1-10; R. p. 391, ll. 1-8). Also apparent at the crime scene was some green netting. (R. p. 275, ll. 15-18). That same type of netting was present in the Appellant's yard from sod which was laid about a year prior, and more green netting was collected from the Appellant's other Blackville residence. (R. p. 118, l. 25 – p. 119, l. 10; R. p. 291, ll. 16-20;R. p. 293, l. 25 – p. 294, l. 2).

Adding insult to injury, the Appellant provides a series of voluntary, yet incongruent statements to law enforcement. Each time law enforcement received a new tip in their investigation, Gerrick came forward with "a new story which would explain the new information." (R. p. 462, ll. 13-20). The Appellant first explained that the victim bailed him out of jail and took him home, where the Appellant took a shower. The Appellant said that went to Enterprise Bank and the Junior Food Mart with the victim, but then went home. (R. pp. 153-54). Then the Appellant said he has access to the victim's

bank account because they had joint ownership of $18,000 from a backhoe. (R. p. 193-95). Days later, the Appellant contacted Chief Holston to say that "Black" held the victim for $25,000 ransom, but did not re-contact the Chief with proof of life or contact information as requested. (R. p. 161-66).

Having discovered the victim's body, law enforcement brought in the Appellant for another interview, confronting him with the information about the victim's car. (R. p. 204). The victim admitted to being in Orangeburg, but did not come forward with information that he was at the crime scene. (R. p. 217). It was not until the Appellant was served with the murder warrant that he began to claim that he remained with the victim after their stop at the Junior Food Mart. (R. pp. 226-27). After Lieutenant Harley told him homeowners on the R.d saw his truck, Gerrick changed his initial story about never being present at the crime scene. (R. p. 234, l. 14 – p. 236, l. 8).

The Appellant next divulged a drug deal which allegedly also involved Andre Hightower and O'Shane Dixon. (R. pp. 368-461). Both Hightower and Dixon testified that they had no knowledge or involvement with a drug deal; they had an alibi for the day the victim disappeared. (R. pp. 417-25). Dixon added that the Appellant kept calling him after the victim disappeared to see if Dixon knew anything about the investigation. (R. p. 424, l. 18 – p. 425, l. 25). The Appellant instead stated that he was instructed by Hightower to move the victim's car to Orangeburg in exchange for $400. (R. pp. 229-233).

The morning after his arrest, the Appellant asked to speak with law enforcement again, now claiming he looked on as the others involved in the drug deal beat the victim. (R. pp. 456-461). The victim allegedly arranged the drug deal with "Big Joe" from

Georgia, and the Appellant stated that he went along on the deal because he was supposed to receive some of the funds. (R. p. 228). However, the victim had no connection to drugs, nor did he test positive for any drugs during autopsy. (R. p. 241, ll. 11-22; R. p. 317, ll. 5-17).

Then, Early Glover testified that months after the crime, the Appellant promised him $1000 in exchange for copying a statement that said Glover and the Appellant were present when the victim was beaten, but that neither of them had anything to do with it. The Appellant wrote the statement and Glover copied and signed it. The Appellant never mentioned Early Glover in any prior statement, but did send a letter to SLED stating that somebody could vouch for his innocence. (R. pp. 237-39;R. pp. 442-47).

The evidence in this case constitutes substantial circumstantial evidence. Whether by motive, opportunity or acts of guilt, when one strings it together, all evidence points to the Appellant. Thus, any erroneous admission of the paper parcel and its "set me free" contents, novelty canister labeled "Law Stay Away," and the nondescript black polygraph box seen on the video projection are harmless beyond a reasonable doubt.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should affirm the appellant's conviction.

Respectfully submitted,

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Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
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ATTORNEY FOR RESPONDENT

May 20, 2015
Columbia, South Carolina

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Barnwell County
Honorable Doyet A. Early, III, Circuit Court Judge

THE STATE,

Respondent,

v.

SAMMIE LEE GERRICK,

Appellant

Appellate Case No. 2013-000385.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent, complies with Rule 211(b), SCACR, and the August 13, 2007, Order of the South Carolina Supreme Court, "Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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May 20, 2015
Columbia, South Carolina

ATTORNEY FOR RESPONDENT

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Barnwell County
Honorable Doyet A. Early, III, Circuit Court Judge

THE STATE,

Respondent,

v.

SAMMIE LEE GERRICK,

Appellant

Appellate Case No. 2014-000385.

PROOF OF SERVICE

I, Caroline M. Scrantom, counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance by depositing two (2) copies of the same in the United States mail, addressed to his attorney of record at:

Lara M. Caudy
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served. This 20th Day of May, 2015.

CAROLINE M. SCRANTOM
Assistant Attorney General
SC Bar No. 101357

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.

Sammie Lee Gerrick, Appellant.

Appellate Case No. 2014-000385

Appeal From Barnwell County
Doyet A. Early, III, Circuit Court Judge

Unpublished Opinion No. 2016-UP-092
Submitted February 1, 2016 – Filed February 24, 2016

AFFIRMED

Appellate Defender Lara Mary Caudy, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy Attorney General John W. McIntosh, Senior Assistant Deputy Attorney General Donald J. Zelenka, and Assistant Attorney General Caroline M. Scrantom, all of Columbia; and Solicitor James Strom Thurmond, Jr., of Aiken, for Respondent.

PER CURIAM: Sammie Lee Gerrick appeals his conviction for murder, arguing the trial court erred by (1) admitting into evidence photographs of a root[1] and a canister labeled "Law Stay Away," (2) denying his motion for a mistrial after a witness testified the root was associated with witchcraft, and (3) denying his motion for a mistrial after the State showed an interrogation video that purportedly pictured a polygraph machine on a table. We affirm[2] pursuant to Rule 220(b), SCACR, and the following authorities:

1. We find the trial court did not abuse its discretion by admitting the photographs. *See State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." (citation omitted)); Rule 401, SCRE ("'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."); *State v. Martin*, 403 S.C. 19, 26, 742 S.E.2d 42, 46 (Ct. App. 2013) ("As a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt." (quoting *State v. McDowell*, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976))); *id.* at 26-27, 742 S.E.2d at 46 (finding evasive conduct is admissible to show consciousness of guilt).

2. We find the trial court did not err in denying Gerrick's motion for mistrial as to the "witchcraft" statement. *See State v. Stanley*, 365 S.C. 24, 33, 615 S.E.2d 455, 460 (Ct. App. 2005) ("The decision to grant or deny a mistrial is within the sound discretion of the trial [court]. The [trial] court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law." (citations omitted)); *id.* at 34, 615 S.E.2d at 460 ("[A] defendant must show both error and resulting prejudice in order to be entitled to a mistrial."); *id.* ("The granting of a motion for a mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way."); *State v. Craig*, 267 S.C. 262, 268, 227 S.E.2d 306, 309 (1976) (providing that a curative instruction to disregard incompetent evidence "usually is deemed to have cured the error in its admission").

---

[1] The "root" was a brown piece of paper with writing on it, rolled up with various items inside of it, and taped closed.

[2] We decide this case without oral argument pursuant to Rule 215, SCACR.

3. We find the trial court did not err in denying Gerrick's motion for mistrial as to the video. *See Stanley*, 365 S.C. at 33, 615 S.E.2d at 460 (noting a trial court's denial of a motion for a mistrial is subject to an abuse of discretion standard of review on appeal); *id.* at 34, 615 S.E.2d at 460 ("[A] defendant must show both error and resulting prejudice in order to be entitled to a mistrial.").

AFFIRMED.

FEW, C.J., and SHORT and THOMAS, JJ., concur.

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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March 25, 2016

The Honorable Rhonda Dale McElveen
PO Box 723
Barnwell SC 29812-0723

REMITTITUR

Re: The State v. Sammie L. Gerrick
Lower Court Case No. 2013GS0600465
Appellate Case No. 2014-000385

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
Lara Mary Caudy, Esquire
Donald J. Zelenka, Esquire
Caroline M. Scrantom, Esquire
John W. McIntosh, Esquire
James Strom Thurmond, Jr., Esquire

MC-AS
MC-A.G.

FORM 5

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)

~~Sammie Lee Gerrick, #165940~~
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

2016-CP-06-00111

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 Lieber Correctional Institution (S.C.D.C.)
2. Name and location of Court which imposed sentence Barnwell County Court (G.S.)
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) 2012-GS-0600-322/(Murder) - 2012-GS-0600-465/(Unknown)
   (b) 2013-GS-0600-274/(Unknown)
   (c) 2013-GS-0600-465/(Murder)
5. The date upon which sentence was imposed and the terms of the sentence:
   (a) November 21, 2013 (L.W.O.P)
   (b) " " "

Revised 3/2003

(c) November 21, 2013 (L.W.O.P.)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty N/A

(b) after a plea of not guilty Trial after plea of not guilty

(c) after a plea of nolo contendere N/A

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. S.C. Court of Appeals

ii. N/A

iii. N/A

(b) the result in each such Court to which you appealed:

i. Affirmed

ii. N/A

iii. N/A

(c) the date of each such result:

i. February 24, 2016

ii. N/A

iii. N/A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Appellate Case No.2014-000385 - OP No. 2016-UP-092 (Affirmed - February 24, 2016)

ii. N/A

iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) N/A

(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: (See Attached Addendum)

(a) (See Attached Addendum)

(b) " " "

(c) " " "

11. State concisely and in the same order the facts which support each of the grounds set out in (10): (See Attached Addendum)

(a) (See Attached Addendum)

(b) " " "

(c) " " "

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NONE

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NONE

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NONE

(d) any other petitions, motions or applications in this or any other Court? NONE

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application: N/A

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(b) the name and location of the Court in which each was filed:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

YES

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. (q)Trial Court Error

ii. (r)Trial Court Error

iii. (s)Trial Court Error

(b) the proceedings in which each ground was raised:

i. (q)Direct Appeal

ii. (r)Direct Appeal

iii. (s)Direct Appeal

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) N/A

(b) N/A

(c) N/A

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A

(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? N/A

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. Nicholas McCarley - P.O. Box 267 - Barnwell, SC 29812

ii. Daniel W. Williams - P.O. Box 616 - Barnwell, SC 29812

iii. Lara M. Caudy - 1330 Lady St., Ste 401 - Columbia, SC 29201-3332

(b) the proceedings at which each such attorney represented you:

i. Pretrial

ii. Pretrial and Trial

iii. Direct Appeal

19. State clearly the relief you seek in filing this application:

Vacate Conviction and Sentence

20. Are you now under sentence from any other court that you have not challenged?

YES

STATE OF SOUTH CAROLINA)
)
County of BARNWELL)

VERIFICATION

I, , 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.

Sammie Lee Gerrick #165940

Sammie Lee Gerrick, #165940

SWORN to and subscribed before me this 9th day of March, 2016.

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: March 26, 2020

Dorchester, South Carolina
March 9, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF BARNWELL	)	
Sammie Lee Gerrick, #165940	)	ADDENDUM
	)	
	)	TO APPLICATION FOR
	)	POST-CONVICTION RELIEF
V.	)	
	)	
State of South Carolina.	)	

APPLICATION FOR POST CONVICTION RELIEF NO. 10 (ADDENDUM)

GROUND ONE: Preliminary proceedings - INDICTMENT(S)

(a)Whether defense counsel was ineffective for failing to move to quash the indictment?
(b)Whether defense counsel was ineffective for failing to move to quash indictment when irregularities was discovered in grand jury proceedings?
(c)Did the trial court lack subject matter jurisdiction due to flaw in indictment for murder?

GROUND TWO: Pretrial proceedings - (ARREST WARRANT) Investigation

(d)Whether defense counsel was ineffective for failing to investigate circumstances of arrest warrant and move to have the arrest warrant charging murder dismissed prior to indictment?
(e)Was defense counsel ineffective for failing to investigate the Coroner's office report leading to the arrest warrant charging murder that was later dismissed?
(f)Was defense counsel ineffective for failing to challenge trial court jurisdiction when arrest warrant charging murder that led to indictment had been dismissed on the day of trial?

GROUND THREE: Failure to protect defendant's right to confrontation of witness:

(g)Was defense counsel ineffective for failure to protect defendant's right to confrontation of witness?
(h)Was defense counsel ineffective for failing to interview or investigate Coroner's findings?
(i)Was defense counsel ineffective for willingness to accept government version of facts of Coroner's findings?
(j)Was defense counsel ineffective for failure to investigate whether case was properly bonded over to Court of General Session where time, place, and manner of death had not properly been determined by Coroner?

GROUND FOUR: Unconstitutional jury instruction - (burden shifting)

(k)Was defense counsel ineffective for failing to object to or take exceptions to the trial court's unconstitutional and confusing malice charge to the jury?
(l)Whether burden shifting instructions given at trial constituted harmless error?
(m)Was burden shifting instruction allowing the jury to presume murder defendant's malice from evil intent, harmless error?
(n)Was appellate counsel ineffective for failing to raise unconstitutional burden shifting jury charge on direct appeal?
(o)Whether trial court unconstitutional burden shifting instruction deprive petitioner of fourteenth amendment right to due process by relieving state of burden of proof beyond a reasonable doubt?

GROUND FIVE: Prosecutor's closing argument

(p)Whether defense counsel was ineffective for failing to object to prosecutor comments during closing argument commenting on facts not in evidence?

GROUND SIX: Trial court errors

(q)Whether the court erred by admitting into evidence a "root" associated with witchcraft and a can of "Law Stay Away" that were seized from the center console of Defendant's truck pursuant to a search warrant because this evidence was not relevant and any probative value of this evidence was substantially outweighed by the danger of unfair prejudice to defendant?
(r)Whether the court erred by denying Defendant's motion for a mistrial after a law enforcement officer characterized the "brown piece of paper bag' that was "taped up" to form some sort of "capsule" with weeds, twigs, and a penny inside and the words "Set me Sammie Gerrick free from murder and revoked bonds" writen on the outside as a "witchcraft root" in front of the jury since this testimony was highly prejudicial and the court's curative instruction failed to cure the prejudice suffered by Appellant?
(s)Whether the court erred by refusing to grant a mistrial after the state showed a videotape of Appellant's interview with law enforcement before his arrest with a polygraph machine clearly visible on the table since this was unduly prejudicial and denied Appellant a fair trial?

APPLICATION FOR POST CONVICTION RELIEF - NO.11 (ADDENDUM)

SUPPORTING FACT(S): (a)Defense counsel was ineffective for failing to move to quash the indictment. (b)Defense counsel was ineffective for failing to move to quash the indictment when irregularities were discovered in the grand jury proceedings. (c)It is elementary an indictment must enumerate all elements of the charged offense. Petitioner challenge essential element of indictment as to time, place an manner in which victim was killed, hereby, press a claim the trial court lacked subject matter jurisdiction due to flaw in indictment for murder. ((d)(e)(g)(h)(i)supporting fact(s) together for judicial economy) Defense counsel ineffective for failing to interview or investigate, acquiesced the Coroner's statement/findings had caused the declarant to be absent and prevented him from testifying, denied defendant opportunity to cross examine him. His willingness to accept the Coroner circumstance of version of facts of the case as to time, place and manner of death as ground for arrest warrant and indictment and failure to move to dismiss the arrest warrant or quash the indictment was not a legitimate trial tactic or prudent trial strategy. Had counsel taken interest in the defense of his client by conducting a thorough investigation of Coroner's findings he could have impeached him at trial. Defendant had not intentionally waived or abandoned his confrontation right as to counter the Coroner who had made a finding of a specific time, place and manner of death in his findings that was used to obtain arrest warrants and indictments, but was not made available for critical integrity of the fact finding process at trial and thus unavailable to impeachment testimony of forensic pathologist as to time, place, and manner of death essential to indictment for murder in South Carolina. (f)Defense counsel was ineffective for failing to challenge trial court jurisdiction when arrest warrant charging murder that led to indictment had been dismissed on the day of trial. (j)Defense counsel was ineffective for failing to investigate whether case was properly bonded over to the court of general session where time, place, and manner of death had not properly been determined by the Coroner. (k)Defense counsel was ineffective for failing to object to or take exceptions to the trial court's unconstitutional and confusing malice charge to the jury. ((l)(m))Burden shifting instructions in the context of the jury charge as a whole, violated the Fourteenth Amendment's requirement that the state prove every element of a criminal offense beyond a reasonable doubt and not harmless error. (o)The trial court unconstitutional burden shifting instructions on intent malice, in the context of the jury charge as a whole, violated the Fourteenth Amendment's requirement that the state prove every element of a criminal offense beyond a reasonable doubt. (p)Defense counsel was ineffective when he failed to contemporaneously object to comments made by prosecutor during closing arguments. (q)The court erred by admitting into evidence a "root" associated with witchcraft and a can of "Law Stay Away" that were seized from the center console of Apellant's truck pursuant to a search warrant because this evidence was not relevant and any probative value of this evidence was substantially outweighed by the danger of unfair prejudice to Appellant.

(r)The court erred by denying Appellant's motion for a mistrial after a law enforcement officer characterized the "brown piece of paper bag" that was "taped up" to form some sort of "capsule" with weeds, twigs, and a penny inside and the words "Set me Sammie Gerrick free from muurder and revoked bonds" written on the outside as a "witchcraft root" in front of the jury since this testimony was highly prejudicial and the court's curative instruction failed to cure the prejudice suffered by Appellant. (s)The court erred by refusing to grant a mistrial after the state showed a videotape of Appellant's interview with law enforcement before his arrest with a polygraph machine clearly visible on the table since this was unduly prejudicial and denied Appellant a fair trial.

Sammie Lee Gerrick, #165940
Petitioner (pro se)

Lieber Cor. Inst./SA-35
P.O. Box 205
Ridgeville, SC 29472

Dorchester, South Carolina
March 9, 2016

NOCS
NOSASE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF BARNWELL	)	
	)	
	)	2016-CP-06-0111
Sammie Lee Gerrick, #165940,	)	
	)	
Applicant,	)	**RETURN**
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED FOR RECORD
2016 OCT 10 PM 4:30
RHONDA C. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

In response to the post-conviction relief application filed on March 15, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Aiken County Clerk of Court's orders of commitment. Applicant was indicted by the November 2013 term of the Barnwell County Grand Jury for one count of Murder (2013-GS-06-465). Daniel W. Williams, Esquire, represented him. On November 18, 2013, Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable Doyet A. Early, III sentenced Applicant to confinement for life without parole.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California, 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Gerrick, Op. No. 2016-UP-092 (filed on February 24, 2014). The Remittitur was issued on March 25, 2015.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel
2. Lack of subject matter jurisdiction due to flaw in indictment
3. "Trial Court Errors"
    a. Unconstitutional burden shifting jury instructions
    b. "Whether the court erred by admitting into evidence a 'root' associated with witchcraft and a can of 'Law Stay Away' that were seized from the center console of Defendant's truck pursuant to a search warrant because this evidence was not relevant and any probative value of this evidence was substantially outweighed by the danger of unfair prejudice to defendant?"
    c. "Whether the court erred by denying Defendant's motion for a mistrial after a law enforcement officer characterized the "brown piece of paper bag" that was "taped up" to form some sort of "capsule" with weeds, twigs, and a penny inside and the words "Set me Sammie Garrick free from murder and revoked bonds" written on the outside as a "witchcraft root" in front of the jury since this testimony was highly prejudicial and the court's curative instruction failed to cure the prejudice suffered by Appellant?"
    d. "Whether the court erred by refusing to grant a mistrial after the state showed a videotape of Appellant's interview with law enforcement before his arrest with a polygraph machine clearly visible on the table since this was unduly prejudicial and denied Appellant a fair trial?"

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, the record on appeal and Court of Appeals opinion. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent construes Applicant's first allegation as alleging ineffective assistance of counsel. Respondent asserts that Applicant's allegation of ineffective assistance of trial counsel is

without merit. Respondent also asserts that Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner 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).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an

evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits that Applicant's claim that the circuit court lacked subject matter jurisdiction is meritless. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003) (citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001)). In this case, Applicant was indicted by the Barnwell County grand jury. That indictment was true-billed and signed by the foreman of the grand jury. The said indictment contains all the necessary elements of the offense, and further cites the applicable statute. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. See, e.g., Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). Defects in the language of an indictment do not divest an otherwise proper court of subject matter jurisdiction over a case. U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). Applicant cannot show any irregularity because the indictments in question are sufficient on their face. Therefore, Respondent moves for summary judgement on this allegation pursuant to S.C. Code Ann. § 17-27-70 (2003), because there is no issue of material fact relating to this allegation and it should be dismissed as a matter of law.

V.

Applicant's third allegation is an allegation of trial court errors. This allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on

direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

September 30, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BARNWELL	)	
	)	
	)	2016-CP-06-0111
	)	
SAMMIE LEE GERRICK, #165940	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

FILED FOR RECORD
2016 OCT 10 PM 4:30
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
807 Gervais St Ste 203
Columbia, SC 29201-3163

DATED this 30th day of September, 2016.

Jocelyn Baker, Legal Assistant
For Respondent

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SECOND JUDICIAL CIRCUIT
COUNTY OF BARNWELL	)	
	)	Case No. 2016-CP-06-00111
Sammie Lee Gerrick,	)	
Applicant,	)	
	)	**Amended Application for Post-Conviction**
vs.	)	**Relief**
	)	
	)	
State of South Carolina,	)	
Respondent	)	
	)	

Pursuant to the Uniform Post-Conviction Relief Act, S.C. Code Ann. § 17-27-10 *et. seq.*, Sammie Gerrick submits the following amended application for post-conviction relief ("PCR"):[1]

1) At the time Mr. Gerrick filed his PCR application, he was confined at the Lieber Correctional Institution. Mr. Gerrick is currently confined at the Perry Correctional Institution.

2) The Honorable Doyet A. Early III, Presiding Judge for the Court of General Sessions for Barnwell County, imposed the sentence.

3) There were not any co-defendants.

4) The State originally indicted Mr. Gerrick for murder in indictment number 2012-GS-06-00274 and re-indicted him in indictment number 2013-GS-06-00465.

5) Judge Early sentenced Mr. Gerrick to life imprisonment without the possibility of parole for murder on November 21, 2013.

6) The sentence was imposed following a plea of not guilty and a jury trial.

7) Mr. Gerrick appealed the conviction and sentence.

[1] This pleading is based on Form 5, Revised 3/2003, which can be found on the South Carolina Judicial Department website.

8) The South Carolina Court of Appeals affirmed the conviction and sentence. *State v. Sammie Lee Gerrick*, Appellate Case No. 2014-000385, Op. No. 2016-UP-092 (Filed Feb. 24, 2016).

9) Not applicable because Mr. Gerrick appealed.

10) Mr. Gerrick was denied the right to effective assistance of counsel, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution.

11) Trial counsel's performance was both unreasonable and prejudicial. *See Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's acts or omissions included, but are not limited to, the following:

a) Not moving for Judge Early to recuse himself when the prosecution planned to present evidence that Judge Early was mentioned in a "root." Under the circumstances, Judge Early presiding over the case conveyed to the jurors the trial court's opinion about the "root" evidence and constituted a conflict of interest.

b) Failing to investigate and present available evidence explaining the "root."

c) Failing to object to the trial judge's opening comments and final instruction on the law, instructing the jurors to find the "true facts," including but not limited to the opening instruction, "[A]t the conclusion when you 12 acting collectively as one determine what those true facts are, then you apply those facts to the law as I give it to you and you will be in a position to render a verdict;" and the final instructions to the jurors, "It is your sole responsibility to determine what the true facts are in the case and apply those true facts to the law as I give it to you and render a verdict;" "That is your sole responsibility, your sole duty to determine what the true facts are in this case:" and "You're here to give careful consideration and deliberation of the evidence

presented to you, to decide what the true facts are, and apply those facts to the law as I've given it to you."

d) Failing to object to the trial judge excluding Mr. Gerrick from hearings to determine whether to retain or excuse juror numbers 9 and 23 in violation of Mr. Gerrick's constitutional right to be present during all critical stages of his jury trial.

e) Failing to make an offer to stipulate to graphic photographs of the victim's body when those photographs were so prejudicial, inflammatory, and intended to arouse sympathy, passion, and prejudice in the jurors' minds as to deny Mr. Gerrick due process.

f) Failing to move to exclude the testimony of Charlene Gerrick that was obtained in violation of the spousal privilege and as a result of improper witnessed intimidation.

g) Failing to object to improper victim impact evidence that was not relevant and which were intended to arouse sympathy, passion, and prejudice in the jurors' minds.

h) Failing to object to testimony that violated the confrontation clauses of the state and federal constitutions.

i) Failing to object to impermissible character testimony that violated Rule 404, SCRE.

k) Failing to object to the prosecutor's statements in closing argument that were not supported by the evidence in the case and misstated testimony presented at trial when those statements amounted to a violation of due process.

l) Failing to request the trial judge allow defense counsel an opportunity to respond to the prosecutor's statements in closing argument that were not supported by the evidence in the case and misstated testimony presented at trial when those statements amounted to a violation of due process.

m) Failing to object to statements by the prosecutor during closing argument which were intended to arouse sympathy, passion, and prejudice in the jurors' minds and urged the jurors to seek justice for the victim rather than to determine whether the State met its burden of proof.

n) Failing to object to inflammatory statements by the prosecutor which were intended to arouse sympathy, passion, and prejudice in the jurors' minds and were so defamatory to Mr. Gerrick that it denied him due process.

o) Failing to move to quash the indictment when it was discovered that one of the grand jurors that indicted Mr. Gerrick was also a witness in the case, which denied Mr. Gerrick's right to a fair and impartial grand jury presentment.

p) Failing to investigate, develop, and present evidence that someone other than Mr. Gerrick killed the victim.

q) Failing to federalize the objections related to the three issues briefed by appellate counsel on the direct appeal.

r) The cumulative effect of trial counsel's errors requires a new trial.

12) Prior to filing this application, Mr. Gerrick has not filed any petition in state court under South Carolina law, and petition in state or federal court for habeas corpus or post-conviction relief, any petition in the United States Supreme Court for certiorari, or any other petitions, motions, or applications in this or any other court.

13) Not applicable because no prior petitions have been filed in any other court.

14) No ground set forth in paragraph 10 has been presented to this or any other court.

15) Not applicable because no prior petitions have been filed in any other court.

16) The grounds set forth in paragraph 10 have not been presented to any other court because this is the first opportunity to raise ineffective assistance of counsel.

17) Mr. Gerrick was represented at the guilty plea and sentencing by the attorneys identified in paragraph 18. The undersigned counsel assisted Ms. Gerrick in preparing this amended PCR application.

18) The following attorneys represented Mr. Gerrick:

a) Daniel W. Williams, PO Box 616, Barnwell, SC 29812, represented Mr. Gerrick during his jury trial and sentencing hearing.

b) Lara Mary Caudy of the Appellate Division of the South Carolina Commission on Indigent Defense, P.O. Box 11433, Columbia, SC 29211, represented Mr. Gerrick on his direct appeal.

19) Mr. Gerrick respectfully requests this Court vacate the conviction and sentence and order a new trial.

20) Mr. Gerrick is not under the sentence of any other court that she has not challenged.

Respectfully Submitted,

By _____

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for the Sammie Gerrick

May 3, 2018
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SECOND JUDICIAL CIRCUIT
COUNTY OF BARNWELL	)	
	)	Case No. 2016-CP-06-00111
Sammie Lee Gerrick,	)	
Applicant,	)	
	)	**Amended Application for Post-Conviction**
vs.	)	**Relief**
	)	
	)	
State of South Carolina,	)	
Respondent	)	
	)	

I certify that I have served a copy of this pleading on the State of South Carolina by placing a copy in the US Mail, postage prepaid, on the date reflected below, addressed to

Julie A. Coleman, Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

By _____

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

May 3, 2018
Greenwood, South Carolina

State of South Carolina)		In the Court of Common Pleas
)		Second Judicial Circuit
County of Aiken)		2016-CP-06-00111
Sammie Lee Gerrick, Jr.,)		
)		
Plaintiff,)		
)		
vs.)		Transcript of Record
)		
The State of South Carolina,)		
)		
Defendant.)		
)		
)		

May 7, 2018

Aiken, South Carolina

B e f o r e:

The Honorable R. Scott Sprouse, Judge

A p p e a r a n c e s:

E. Charles Grose, Jr., Esquire
Attorney for the Applicant

Julie Coleman, Esquire
Caroline Scranton, Esquire
Attorneys for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

WITNESS/DESCRIPTION	DIRECT	CROSS	REDIRECT	RE-CROSS	PAGE NO.
Case Called/Ms. Coleman					4
CHARLENE GERRICK					
Mr. Grose	9		20		
Ms. Coleman		17		21	
DAN WILLIAMS					
Mr. Grose	22		100		
Ms. Coleman		66		105	
SAMMIE LEE GERRICK					
Mr. Grose	108				
DR. JANICE ROSS					
Mr. Grose	117				
Ms. Coleman		123			
Decision by the Court					126
Certificate Page					128

E X H I B I T S

NO.	DESCRIPTION	I.D.	EV.

-- NO EXHIBITS ENTERED --

(On the record at 9:34 a.m.)

MS. COLMAN: May it please the Court?

THE COURT: Yes, ma'am.

MS. COLEMAN: This is *Sammie Lee Gerrick v the State of South Carolina*, docket No. 2016-CP-06-111. Applicant is currently incarcerated in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court.

Applicant was indicted by the November 2013 term of the Barnwell County Grand Jury for murder, and that's Indictment No. 2013-GS-06-465. And Applicant was re-indicted in 2013 as well by the Attorney General's Office.

Daniel Williams, Esquire, represented him on the charges; and Assistant Deputy Attorney General Creighton Waters, Esquire, of the South Carolina Attorney General's Office, prosecuted the case. This was a conflict case with the -- the local county solicitor's office, so it was prosecuted by the AG's office.

On November 18, 2013, applicant proceeded to a jury trial before the Honorable Doyet A. Early III and was found guilty as indicted. Judge Early sentenced applicant to imprisonment for life without parole. Trial counsel filed a motion for a new trial and a new sentence, and both were denied. And those motions and orders should be in your packet.

A timely notice of appeal was filed on Applicant's behalf, and an appeal was perfected pursuant to *Anders v California*. The South Carolina -- oh. I'm sorry. That's incorrect. I apologize.

The notice of appeal -- the appeal was perfected, there were briefs filed by both parties, and the Court of -- the Court of Appeals dismissed the opinion -- or the -- the case and affirmed it in an unpublished opinion on February 24, 2016. I apologize, Your Honor. I believe that was incorrect in the return.

The remittitur was issued on March 25, 2015.

THE COURT: Thank you.

MS. COLEMAN: Applicant filed a timely application for post conviction relief on March 15, 2016, alleging that he was being held in custody unlawfully based on the following allegations: Ineffective assistance of trial counsel, lack of subject matter jurisdiction, and trial court errors. The State filed it's return on September 30, 2016, and Applicant served an amended application on the State on May 3, 2018. And there should be a copy of that in your packet. And he's present today and is represented in this matter by Mr. Charles Gross.

And Your Honor, I just -- I'd like to point out that we were served with the amendment less than a week ago. We're prepared and ready to go forward today, but I would

just ask for the opportunity that, if some issue should arise and we should need further testimony from another witness that we don't have here today or -- or to submit some kind of case law on the issue, we would request the opportunity to do that after the hearing. Thank you, Your Honor.

THE COURT: All right. Mr. Grose?

MR. GROSE: And I don't -- I don't have any objection to that. In fact, I think when it comes to case law, that you're probably gonna need either briefs from the parties or proposed orders from the parties after the hearing because it's not all terribly complicated, but a lot to keep up with. So ...

THE COURT: Okay.

MR. GROSE: And I don't know how you want to proceed as far as opening statements or anything like that. I don't have a lot prepared, but I could give you some idea of what we're getting ready to do if you want.

THE COURT: Well, I can -- I can see from the -- from the amended petition what the issues are. If you'd like to just proceed straight into your testimony.

MR. GROSE: I ---

THE COURT: If you'd like to give an opening statement, I'd be happy to hear from you.

MR. GROSE: I -- I don't think it's necessary with a

non-jury unless -- if there was something that would assist Your Honor.

THE COURT: Okay. Yeah, and I -- the Court doesn't -- doesn't need that, but ---

MR. GROSE: Okay.

THE COURT: --- if you're ready to proceed, you can call your first witness.

MR. GROSE: Okay. Well, the -- the -- the first witness that I want to call is Charlene Gerrick. And one of the reasons that I want to call her is -- is that she actually has counsel here today, and I don't want to hold him up from being able to leave.

The reason that she has counsel has to do -- she is Mr. Gerrick's wife, and there was assertion of the spousal privilege at trial. So her testimony was limited, and part of the reason why she has counsel is to try to make certain that those parameters are not exceeded today. So I just put that on the record.

I -- I don't plan to go into any communications between her and her husband, but I wanted to put that on the record before I called her as a witness.

THE COURT: So noted.

MR. GROSE: All right. Ms. Gerrick.

CHARLENE GERRICK, having been first duly sworn, testifies as follows:

CLERK OF COURT: Please have a seat in the witness chair, and state your full name.

THE WITNESS: Charlene Gerrick.

DIRECT EXAMINATION

BY MR. GROSE:

Q Mrs. Gerrick, are you, in fact, married to Sammie Gerrick?

A Yes, I am.

Q And how long have y'all been married?

A We got married February 10, 1995.

Q Okay. And been continuously married ever since?

A Yes, sir.

Q Okay. And you were here when I represented to the Court that you have a marital privilege that you intend to assert with regards to communications between you and your husband Sammie; is that right?

A Yes, sir.

Q Okay. And you even have retained a lawyer, Mr. Rauch Wise, for the purposes of protecting that here today?

A Yes, sir.

Q Okay. I don't want to go into any communications that you had with your husband, but I do have two or three areas that I want to ask you about regarding this case.

First of all, were you ever contacted by law enforcement about giving an interview regarding this case?

A Yes.
Q Okay. And do you recall who it was that contacted you?
A I -- I know it was -- the SLED came by my house, and Mr. Holster, I think, with Blackville Police Department.
Q Okay.
A Yes, sir. They came out to my house.
Q All right. And he's a police officer?
A Yes, sir.
Q Is he the chief?
A Yes, sir.
Q Or was the ---
A Yes, sir.
Q Was the chief at the time.
A Yes, sir.
Q Okay. And did you ever give them any interviews?
A Yes.
Q And how long did those interviews last, if you recall?
A I know we went to -- I think it was the Barnwell County Sheriff Department. Maybe 'bout a hour, I'm thinking. If I can recall, probably 'bout a hour.
Q Okay. And prior to that, was it just one interview or was it more than one?
A I know they came to my house and they -- they searched my house. And then, I think, the next day they came back

and I think we went to Barnwell.

Q Okay. Prior to interviewing you, did they ever advise you about your rights under the spousal marital privilege?

A No, sir.

Q Okay. And again, I don't want to go into anything that they asked you about, but did they ask you about communications between you and your husband Sammie Gerrick?

A Mr. Dowling, he made threats towards me. So ...

Q Okay. And before we get into that, did he ask you about anything that Sammie had said to you or you had said to Sammie, without getting into the substance of it?

A Yes.

Q Okay. And when you say he made threats, what kind of threats did he make?

A He told me that if I didn't say that my husband ---

MS. COLEMAN: Objection. Hearsay.

MR. GROSE: Your Honor, this goes -- this goes to her state of mind and it goes to -- there's a claim of ineffective assistance of counsel for not moving to suppress her testimony. And you know, that would've been a non-jury issue where the rules of evidence are -- are relaxed.

I think for the -- the purposes she -- she can -- of what we're offering her for, she can get into that.

THE COURT: All right. I'm gonna overrule the

objection.

MR. GROSE: Thank you.

MS. COLEMAN: Thank you.

Q All right. And -- and did he threaten you?

A Yes, sir. Mr. Dowling told me that if I didn't say that my husband, Sammie Gerrick, had killed Tyrone, that I -- he would -- they would charge me for murder, and it was gonna -- they was gone take my daughter away from me and I would never see her again.

Q Okay. Let's talk about your daughter for a second. Is that a daughter that you and Sammie have together?

A Yes, sir.

Q And what is her name?

A Shamika Gerrick.

Q And is she a special needs child?

A Yes, sir. She has cerebral palsy.

Q Okay. And what did you understand it meant when they said they would take your child away from you forever?

A I thought DSS would come involved, and I would never see my daughter again.

Q Okay. And do you think that would've been good for your daughter?

A No, sir.

Q Okay. Now, you -- you recall testifying at trial; is that correct?

A Yes, sir.
Q All right. In that trial, I do believe you did assert the spousal privilege; is that also correct?
A Yes.
Q Okay. Now, the -- the testimony at trial had to do with you taking law enforcement and helping them locate a car that was evidence in the case; is that correct?
A Yes, sir.
Q Okay. If law enforcement had not asked you about your communications with your husband, would they have learned that you knew how to locate that car?
A No, sir.
Q Okay. Prior to trial, did you have any conversations with Mr. Williams who was your husband, Sammie's, trial lawyer?
A I know I was going back and forth with Mr. Williams to see, you know, how the case was going on.
Q Okay. And did he talk to you about the -- you know, what happened in the interview with law enforcement, your interview with law enforcement?
A Not that I can recall.
Q All right.
A I'm not sure.
Q All right. I want to shift gears. Do you know somebody by the name of "Gerard Saxon"?

A Yes, sir.
Q And is he here today?
A Yes, sir.
Q Okay. And without going into anything that Mr. Saxon told you, did he -- did you do anything with him with regards to this case?
A Yes, sir. I took Mr. Gerard Saxon to Bamberg County Sheriff Department, and we went in front of Officer Bamberg. And Gerard Saxon had told Officer Bamberg that my husband Sammie Gerrick didn't kill Tyrone.
Q Okay. And again, he's here today. So I'm gonna ask him about that later on.
Were you present when he gave that interview?
A Yes, I was.
Q Okay. And was there anything being done to record that interview?
A Like I said, I know Officer Bamberg -- you know, he had, like, a body cam --
Q Uh-huh.
A -- on his -- it was on his -- on his shirt or on his vest --
Q Okay.
A -- at the time.
Q Part of his uniform?
A Yes, sir.

Q Whether it was his shirt or the vest over the uniform, it was part of that?

A Yes, sir.

Q And was it your understanding that he was using that to record that statement?

A Yes, sir.

Q Okay.

MR. GROSE: Beg the Court's indulgence for a moment.

(Brief pause.)

Q Are you aware that, at trial, there was issue about what's referred to as a "root" being found in an automobile?

A Yes, sir.

Q Okay. Do you have any personal knowledge about that root?

A Yes, sir.

Q Okay. And why do you have personal knowledge about that root?

A I, Charlene Gerrick, wanted to advise the Court that I put a can of "Law Stay Away," a twig, and a brown piece of paper and one penny in the console of my husband's truck on August 1, 2011.

Q Okay. And ---

THE COURT REPORTER: I'm sorry. A can of what?

THE WITNESS: Law Stay Away.

Q And can you explain what is meant by a can of, quote/unquote, "Law Stay Away"?
A To free my husband from the law.
Q And the -- the note, did that note have anything -- do you recall what was written on that note?
A Yes, sir. Judge Early name was wrote on the note.
Q Okay.
A The reason how I know Judge Early name is because I went to one of my husband's bond hearing, and he revoked it when my husband was in Aiken Hospital.
Q Okay.
A In Aiken, South Carolina.
Q All right. And was Judge Early the trial judge that tried your husband?
A Yes, sir.
Q Okay. And did it say anything about Judge Early in the root -- in the note?
A It never meant it to hurt Judge Early. I was asking him to free my husband Sammie Gerrick of the murder.
Q Okay. Now, did Sammie know that you had put this note in the car?
A No, sir.
Q Okay. And why did you do it?
A Because I kept hearing people 'round town, you know, saying that my husband killed Mr. Tyrone.