

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry County
Steven H. John, Circuit Court Judge

Appellate Case No. 2017-002553

ORIGINAL

RECEIVED

MAY 28 2019

The State, Respondent,
SC Court of Appeals

v.

Tommy Lee Benton, Appellant.

RECORD ON APPEAL
VOLUME II

R. Walker Humphrey, II
WILLOUGHBY & HOEFER, P.A.
133 River Landing Drive, Suite 200
Charleston, South Carolina 29492
(843) 619-4426

Alan Wilson
Donald J. Zelenka
Melody J. Brown
**OFFICE OF THE ATTORNEY
GENERAL**
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

Robert M. Dudek
Chief Appellate Defender
**SOUTH CAROLINA COMMISSION
ON INDIGENT DEFENSE**
1330 Lady Street, Suite 401
Columbia, South Carolina 29201
(803) 734-1330

Jimmy Richardson
**SOLICITOR
FIFTEENTH JUDICIAL CIRCUIT**
Post Office Drawer 1276
Conway, South Carolina 29526
(843) 915-5460

Attorneys for Respondent

Attorneys for Appellant

INDEX

Order of Mistrial – dated July 26, 2017	R-4
Notice of Appeal – dated December 14, 2017	R-6
Trial Transcript – dated March 14, 2017	R-10
Trial Transcript – dated July 17-19, 2017	R-24
Trial Transcript – dated December 4-8, 2017	R-57
Witness Robert Gray Lawson	
Direct by Ms. Richardson	R-68
Witness Douglas Thomas	
Direct by Mr. Terrell	R-70
Cross by Mr. Brittain	R-91
Witness Sammy Charles Smith	
Direct by Ms. Richardson	R-95
Witness Kenneth Todd	
Direct by Mr. Terrell	R-100
Witness Alex Smith	
Direct by Ms. Richardson	R-103
Witness Jill Domogauer	
Direct by Ms. Richardson	R-117
Witness Lori Dudley	
Direct by Mr. Terrell	R-151
Witness Jennifer Dalmida	
Direct by Ms. Richardson	R-155
Witness Edward Leroy Proctor	
Direct by Ms. Richardson	R-159
Witness Lori Dudley	
Direct by Mr. Terrell	R-167
Witness Jonathon Martin	
Direct by Ms. Richardson	R-188
Cross by Mr. Brittain	R-208

Witness Lisa Katlin Rose	
Direct by Ms. Richardson	R-209
Cross by Mr. Brittain	R-216
Redirect by Ms. Richardson.....	R-219
Witness Mitchell Cheatham	
Direct by Ms. Richardson	R-220
Cross by Mr. T. Brittain.....	R-268
Trial Transcript – dated December 8, 2017	R-298
Witness Christy Hudson	
Direct by Mr. Brittain	R-299
Cross by Ms. Richardson	R-316
Witness Gregory Hudson	
Direct by Mr. Brittain	R-319
Cross by Mr. Terrell.....	R-328
Witness Shelby Fowler	
Direct by Mr. Brittain	R-330
Witness Steven Bielinski	
Direct by Mr. Brittain	R-333
Cross by Ms. Richardson	R-334
Witness Devin McLachlen	
Direct by Mr. Brittain	R-335
Cross by Ms. Richardson	R-338
Arrest Warrant – 2014A2610201255.....	R-357
Arrest Warrant – 2014A2610201195.....	R-359
Arrest Warrant – 2014A2610700452.....	R-361
Indictment – Docket No. 2016-GS-26-01719	R-363
Indictment – Docket No. 2016-GS-26-05008	R-365
Indictment – Docket No. 2016-GS-26-05009.....	R-367
Indictment – Docket No. 2016-GS-26-05010.....	R-369
Indictment – Docket No. 2016-GS-26-05011.....	R-371

State's Trial Exhibit 71 (Cell Phone Records).....	R-373
State's Trial Exhibit 72 (Cell Phone Records).....	R-418
State's Trial Exhibit 76 (Cell Phone Records).....	R-439
Voluntary Statement of Garland Rose	R-450
Voluntary Statement of Mitchell Cheatham	R-451
Horry County Fire Reports	R-458
Horry County Fire Investigation Report.....	R-476
Anatomical Pathology Report.....	R-496
Horry County Police CSI Notes.....	R-501
Mutual Reciprocal Disclosure Request & Notice of Intent to Impeach by Evidence of a Conviction.....	R-510
Certificate of Counsel	R-511

**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE'S TRIAL EXHIBITS 16-57 (PHOTOGRAPHS)**

ANATOMICAL PATHOLOGY RESULTS

PATIENT: SMITH, CHARLES BRYANT

ACCESSION #: FA-14-106

CONTRIBUTING CAUSE OF DEATH

BLUNT FORCE TRAUMA TO CHEST WITH RIB FRACTURES AND HEMORRHAGE.

MANNER OF DEATH

HOMICIDE.

I certify that I personally conducted the diagnostic evaluation of the above specimen(s) and have rendered the above diagnosis(es).

Signed <<Signature on File>>

EDWARD JR PROCTOR

06/20/14

HORRY COUNTY POLICE DEPARTMENT

CRIME SCENE INVESTIGATIONS UNIT

Incident Type - Death Investigation - Homicide Case # 14-035367

CSI # 14-0561

Notification Date: 4-29-14 Notification Time: 0430 hrs Notified By: L. Cestare

Location of Incident: 4605 E. Hwy 501 Aynor SC 29511 Time of Arrival: 0500

Approx Date & Time of Incident: 0300 4-29-14 Occurred: Indoors / Outdoors / Both / Vehicle / Other

Weather Conditions: Clear Skies Temperature Outside: 77° Temperature Inside: N/A

1st Officer: D. Smith Detective: A. Smith Supervisor: L. Cestare CSI: Domugauer

Consent / Warrant Issued By: Mayers Time Enter Scene: 0515 Time Cleared Scene: 1200

Victim's Name: Charles Bryan Smith WB HO MF - Victim DOB: 9-13-45

Victim's Address: Same Victim SSN/DL: N/A

Other Name: N/A Male / Female - Other DOB: N/A

Other Address: N/A Other SSN/DL: N/A

Other is: Spouse / Suspect / Witness / 2nd Victim / Other explain N/A Coroner: Hendrick

Doors/Windows: Burnt / Shattered Conditions Subject to Change: Fire

Lighting Outside/Inside: Flash / Daylight GPS Coordinates: North: 33°56'49" West: 79°10'19"W

Crime Scene Notes (These are rough draft worksheet notes)

Was Victim Moved Prior to CSI - Yes / No Explain: N/A Victim Last Seen: _____

Where was Victim Found: West side Front of Residence poss. livingroom area

Position of Victim:

on back Face up left arm bent & Hand cuff on wrist. Right arm broken
off hand separated from body. legs bent at knee.

Victim's Clothing Detailed Description:

a shirt found under victim only & Back of & , pants burned to body.
No Shoes

Wounds / Injuries to Victim:

injury to Forehead resembles GSW also mark on back of head resembles GSW
& During Autopsy NOT GSW but pressure pops from fire gas build up in body &

Weapon: Y / N Description:

unknown at this time

Make: N/A Model: N/A Serial #: N/A Caliber: N/A Color: N/A

HORRY COUNTY POLICE DEPARTMENT CRIME SCENE INVESTIGATIONS UNIT

CASE # 14-035367

CSI # 14-3561

CRIME SCENE NOTES WORKSHEET

4605 E Hwy 501 is described as a single wide mobile home with tan vinyl siding and white underpinning that faces Hwy 501 to the west. It has a porch attached on the west side. The date of incident the description is a burnt structure of a single wide mobile home, there were no standing walls and the residence was a burnt shell of what it once was. On the west side of property there were two vehicles a Winnebago Sc tag 786P4X heavy damaged by fire and a GMC Jimmy Sc tag J20767 also heavy damaged by fire.

I arrived on scene and was briefed by the Fire Department and Det A. Smith. Det Smith advised the Fire Department received a call in reference to a structure fire with flames showing at 0245hrs. Upon arrival of Fire Department the residence was completely involved a request was made for police at 0319hrs. Officers with Horry county Police attempted to locate the victim of that residence at his place of business with no success. The Fire Department after containing the fire discovered human remains. The scene was secured, however Fire Department personnel continued to extinguish the fire.

HORRY COUNTY POLICE DEPARTMENT
CRIME SCENE INVESTIGATIONS UNIT

CASE # 14-035367

CSI # 14-0561

CRIME SCENE NOTES WORKSHEET

I began by taken overall photographs of the structure and measurements. I then observed the remains, & located on the west side of the structure. The body was burnt beyond recognition. The victim was on its back face up legs slightly bent at the knee. The left arm was bent at elbow and had a closed hand cuffs around the wrist. The other end of the hand cuffs was closed. The right arm was broken off and the right hand was located to the North of the body. I collected a GPS measurement of the body and photographed. The body was then rolled and I observed a part of a T-shirt under the body. The body was then removed from the location and the Fire department finished extinguishing the fire. While a warrant for search was obtained. At 0740 hrs I recieved confirmation a warrant was obtained for the residence by Det. Martin and issued by the honorable Judge Mayers. At this time I re photographed the residence due to it was now daylight. The victim's body was removed and transported for autopsy at a later time. The victim's body did have injury to the head located in the center and in back will check w/ pathologist

HORRY COUNTY POLICE DEPARTMENT
CRIME SCENE INVESTIGATIONS UNIT

CASE # 14-035367

CSI # 14-0561

CRIME SCENE NOTES WORKSHEET

to determine what cause injury. I located in the floor area where the body was parts of a recliner type chair also a brass Frim Shotgun shell this was photographed and collected. I located part of a t-shirt in the debris area where the body was moved. The shirt appeared to be the back portion this was photographed then sealed in a ~~metal~~ metal can and collected into evidence (CS-2). Units then began hand shifting thru the debris to locate any evidence. Several casing and projectiles (unfired) were photographed and collected (see Evidence section for details). Located in the east side of the structure was a fire safe, this was removed and photographed. Entry was then made into the safe and the contents removed was \$120,000.00 in U.S. currency. This was photographed then sealed in a metal can and secured. A section of floor debris near the body was removed and sealed in a metal can and collected into evidence for further testing. (CS-7). Located near the area of the body was rope and a pair of Smith + Wesson handcuffs serial number 646123 and a pair of peerless cuffs serial number 719162. These items were photographed and collected into evidence (12A, 12B, 12C)

Page 2 C

HORRY COUNTY POLICE DEPARTMENT CRIME SCENE INVESTIGATIONS UNIT

UCR # 14-035367

CSI # 14-0561

CRIME SCENE NOTES WORKSHEET

Located near the west side by the handcuffs was the remains of a burnt/melted lighter, this was photographed and collected into evidence. (CS-16). Also located during the hand shifting was a burnt magazine to a handgun, a Forward grip to a weapon and several more casings and projectiles (unfired) all items were located in the west side of residence with in the same vicinity as the victim's remains. Located in the north "bedroom" area was a live 12 ga shell, 6 six brass rims from shotgun shells. All items were photographed and collected. Detectives advised that the victim owned shotguns however during the search no weapons were located and are believed to be missing at this time. I conducted a briefing with Lt. Cestare and Sr. Detective Chatfield and the scene was released.

On Tuesday April 29, 2014 at 1530hrs I attended the victim's autopsy at Grand Strand Regional Medical Center. Dr. Proctor performed the autopsy and was assisted by Mr. Leroy Rush. Dr. Proctor had three X-rays of the victim taken these were collected into Evidence (A-1) I took over all photographs of the body. Dr. Proctor began his external exam and stated

Page 2 D

HORRY COUNTY POLICE DEPARTMENT CRIME SCENE INVESTIGATIONS UNIT

UCR # 14-035367

CSI # 14-0561

CRIME SCENE NOTES WORKSHEET

that the injuries to the victim's head was cause by gas build up in the body while it was on fire causing a pressure blow not from any trauma. Dr. Proctor continued the external exam and removed the handcuff, Smith and Wesson serial number 879954 from the left wrist by severing the hand. I photograph and collected the handcuffs into evidence (A-2). Dr. Proctor then began his internal exam, Dr. Proctor did advise the victim had blunt force trauma to the right chest with fractures in ribs 7-10 and hemorrhage within the muscular tissue and soft tissues overlying fracture sites. this was documented using photography. Dr. Proctor also extracted blood from the heart for toxicology testing and performed a carboxyhemoglobin test during autopsy. The result were a level of 50.690. I collected into evidence a blood swab from the heart of the victim (A-3). Per law enforcements request Dr. Proctor removed the two teeth from the victim's lower jaw. I collected them into evidence (A-4). Dr. Proctor stated cause of death was asphyxia due to carbon monoxide inhalation and extensive burning, manner of death homicide. The Autopsy was then concluded.

Page 2 E

**HORRY COUNTY POLICE DEPARTMENT
CRIME SCENE INVESTIGATIONS UNIT - EVIDENCE WORKSHEET**

CASE # 14-035367

CSI # 14-0561

ITEM #	LOCATION OF ITEM	MEASUREMENTS POINTS 1 & 2
1 Brass From 12ga Shotgun shell	Inside Residence thru out	N/A no walls
2 Victim's shirt	under body	
3 38cal winchest casing	Inside Residence thru out	
4 Brass in color Rock	↓	
5 Money From burnt safe	Inside Burnt safe east side	
6 Exploded Brass From 9mm melted copper casing	Inside Residence	
7 Floor debris	living room area	
8 38cal Winchester casing	Inside Residence thru out.	
9 38cal Winchester casing	↓	
10 Brass From 12ga Shotgun	↓	
11 Melted copper	↓	
12 12 GA Remington-Union City 71963	By Body Inside Residence west side	
13 9mm Luger casing	Inside Residence Thru out	
14 9mm projectile	NOT FIRED From Gun	
15 9mm projectile	↓	
16 Burnt lighter	By body Inside Residence west side	
17 9mm projectile	NOT FIRED From Gun	
18 Exploded 9mm ELO casing	Inside Residence Thru out.	
19 9mm projectile	NOT FIRED From Gun	
20 Magazine From Gun	Inside Residence Thru out	
21 (2) 9mm projectiles	NOT FIRED From Gun	
22 38 cal Winchester casing	Inside Residence Thru Out	
23 38cal Winchester casing	Inside Residence Thru out.	
24 Forward grip from weapon	west side Inside	
25 1 live 12 GA Remington Shotgun shell (Bedroom) north		
6 Brass From 12GA Shotgun shell	Page 3	↓

**HORRY COUNTY POLICE DEPARTMENT
CRIME SCENE INVESTIGATIONS UNIT**

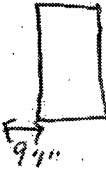
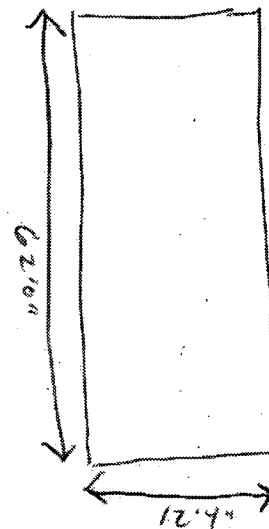
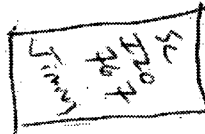
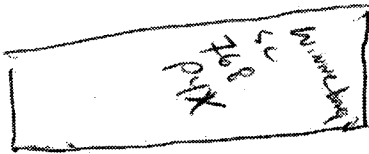
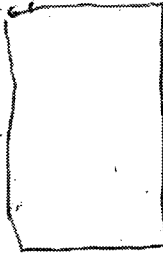
N↑

CRIME SCENE SKETCH WORKSHEET

CASE #14-035367 CSI # 14-056

Death Investigation Homicide
4605 E Hwy 501, Aynor, SC 29511
Tuesday April 29, 2014 Det Chatfield
Vic: Smith, Charles

Porch
9'11"
7'8"



Hwy 501

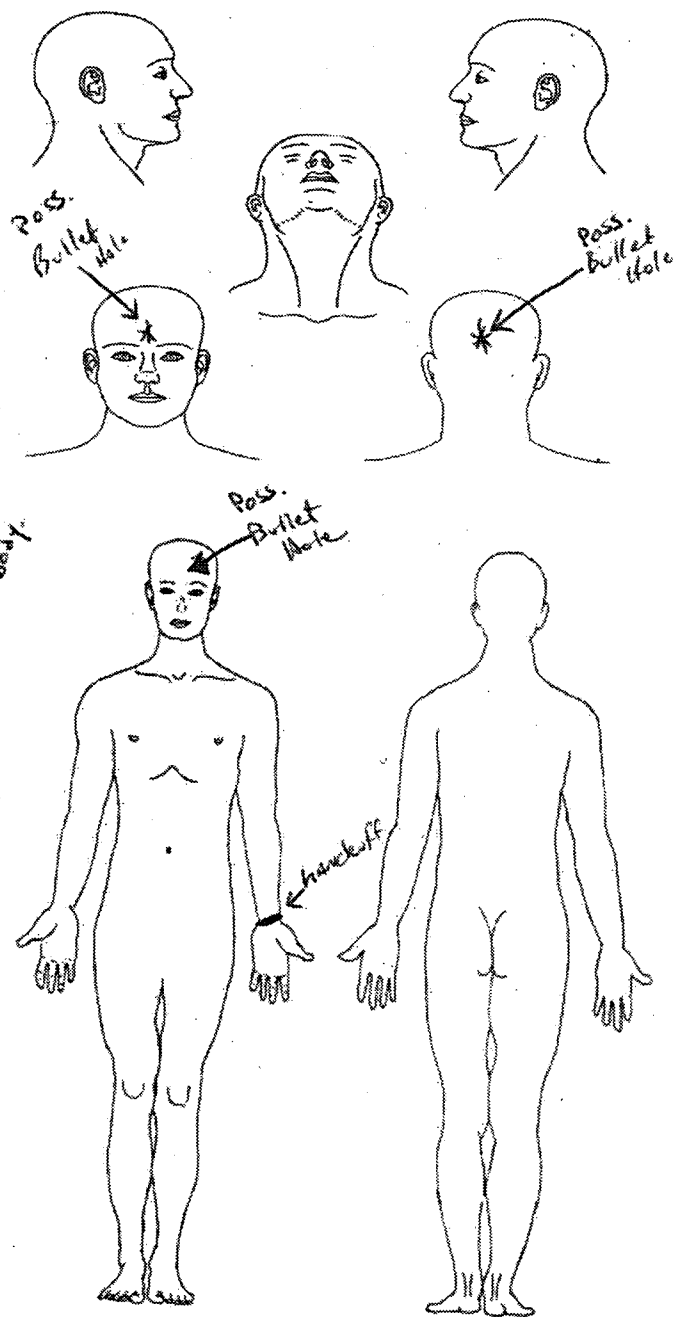
This is a rough draft sketch only - Indicate the direction of North

**HORRY COUNTY POLICE DEPARTMENT
CRIME SCENE INVESTIGATIONS UNIT**

CRIME SCENE HUMAN BODY WORKSHEET

UCR # 14-035367 CSI # 14-0561

* During Autopsy Dr. Proctor
Stated injuries to head was
NOT Bullet holes. They were
caused by the "blow out" when
the pressure from fire caused
gas build up in body.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF HORRY	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	MUTUAL RECIPROCAL DISCLOSURE
VS.	)	REQUEST & NOTICE OF INTENT TO
	)	IMPEACH BY EVIDENCE OF A
TOMMY LEE BENTON	)	CONVICTION
	)	
DEFENDANT	)	FILE: 15H05521
	)	

CHARGES: MURDER

Pursuant to Rule 609(b) of the South Carolina Rules of Evidence, this shall serve as advance, written notice of the State's intention to use all convictions of crimes in excess of ten years old to impeach the Defendant in this matter. Those crimes are listed on the Defendant's NCIC report of criminal activity. This will be the only notification you will receive in this regard.

In accordance with Rule 5, the State is placing you on NOTICE that it intends to engage in Mutual Reciprocal Disclosure.

FAILURE ON YOUR PART TO COMPLY WITH DISCLOSURE WILL END DISCLOSURE FROM THIS OFFICE.

The State, by and through SENIOR ASSISTANT SOLICITOR, LAUREE RICHARDSON, hereby requests:

1. In accordance with Rule 5(b)(1):
 - (a) Notice of any books, papers, documents, photographs, tangible objects, or copies of tangible objects, or copies of portions thereof which are in the possession, custody or control of the Defendant and which the Defendant intends to introduce as evidence in chief at the trial so that the prosecution may inspect and copy the same if Defendant's attorney is requesting disclosure and under Rule 5(a)(1)(C) or 5(a)(1)(D).
 - (b) Notice of any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the Defendant which the Defendant intends to introduce as evidence in chief at the trial or which at trial when the results or reports relate to his testimony if Defendant's attorney is requesting disclosure under Rule 5(a)(1)(C) or 5(a)(1)(D).
2. The State requests written notice of Defendant's intention to offer an alibi defense as to the charge(s) noted hereinabove which allegedly occurred on or about **APRIL 29, 2014 IN THE AYNOR SECTION OF HORRY COUNTY, SC.**
3. The State requests written notice of the Defendant's intention to rely upon the defense of insanity at the time of the crime or to enter a plea of guilty but mentally ill.

DATE: APRIL 1, 2016

LAUREE RICHARDSON
SENIOR ASSISTANT SOLICITOR

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Steven H. John, Circuit Court Judge

Appellate Case No. 2017-002553

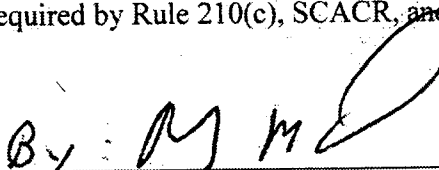
The State,Respondent,

v.

Tommy Lee Benton,Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties, material required by Rule 210(c), SCACR, and not any other material.

By: 
R. Walker Humphrey, II
WILLOUGHBY & HOEFER, P.A.
133 River Landing Drive, Suite 200
Charleston, South Carolina 29492
(843) 619-4426

Robert M. Dudek
Chief Appellate Defender
**SOUTH CAROLINA COMMISSION
ON INDIGENT DEFENSE**
1330 Lady Street, Suite 401
Columbia, South Carolina 29201
(803) 734-1330

Attorneys for Appellant

Charleston, South Carolina
May 23, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Steven H. John, Circuit Court Judge

RECEIVED

MAY 23 2019

SC Court of Appeals

Appellate Case No. 2017-002553

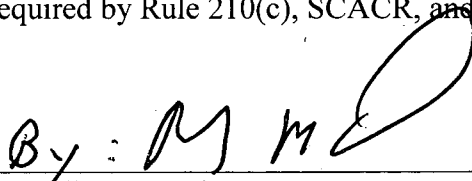
The State, Respondent,

v.

Tommy Lee Benton, Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties, material required by Rule 210(c), SCACR, and not any other material.

By: 
R. Walker Humphrey, II
WILLOUGHBY & HOEFER, P.A.
133 River Landing Drive, Suite 200
Charleston, South Carolina 29492
(843) 619-4426

Robert M. Dudek
Chief Appellate Defender
**SOUTH CAROLINA COMMISSION
ON INDIGENT DEFENSE**
1330 Lady Street, Suite 401
Columbia, South Carolina 29201
(803) 734-1330

Attorneys for Appellant

Charleston, South Carolina
May 23, 2019