

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

Honorable D. Craig Brown, Circuit Court Judge

ORIGINAL

THE STATE,

v.

TOMMY MCGEE,

RESPONDENT

APPELLANT

RECEIVED
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SC Court of Appeals

APPELLATE CASE NO 2017-001927

RECORD ON APPEAL

KATHRINE H. HUDGINS
Appellate Defender

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

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

SAMUEL BAILEY
Assistant Attorney General
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

E.L. CLEMENTS, III.
Solicitor, 12th Judicial Circuit

ATTORNEYS FOR RESPONDENT

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE'S EXHIBIT NO. 2 (DVD- SURVEILLANCE VIDEO)

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF FLORENCE)

2016-GS-21-01134

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

September 12-14, 2017

TOMMY WILLIAMS MCGEE,)

Defendant.)

B E F O R E:

Honorable D. Craig Brown
Florence County Courthouse
Florence, South Carolina

A P P E A R A N C E S:

John Woodrow Holt, IV, Esquire
Attorney for Plaintiff

Rose Mary Parham, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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BY THE COURT

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1 **SEPTEMBER 12, 2017 - DAY ONE**

2 **(On the Record - 11:12 A.M.) ,**

3 BY THE COURT:

4 THE COURT: Thank you. Be seated please. All right.

5 All right. Y'all ready? The State ready to proceed?

6 MR. HOLT: Yes, sir, Your Honor, we are.

7 THE COURT: Defense Counsel?

8 MS. PARHAM: Yes, Your Honor.

9 THE COURT: If you'll call your case, please, sir?

10 MR. HOLT: Yes, sir. If it please the Court, at this
11 time, the State will call the following case: The State of
12 South Carolina versus Tommy William McGee. Judge, he's
13 indicted under indictment number 2016-GS-21-1134, the charge
14 of murder.

15 MR. JEPERTINGER: Your Honor, may I approach one second?

16 THE COURT: Yes, sir.

17 (REPORTER'S NOTE: A bench conference was held off the
18 record.)

19 THE COURT: Mr. Holt, because we didn't have all the
20 jurors in here when we initially started, would you call your
21 case again, please?

22 MR. HOLT: I would, Judge. The State would call The
23 State of South Carolina versus Tommy William McGee. He's
24 indicted for murder under indictment number 2016-GS-21-1134.

25 THE COURT: All right. All right, ladies and gentlemen,

1 Now, in order to preserve everyone's rights, I will give
2 the parties an opportunity to object to anything that I have
3 said to the jury.

4 Any exception or objection to anything that I have said
5 to the jury by the State?

6 MR. HOLT: None, Judge.

7 THE COURT: Defense Counsel?

8 MS. PARHAM: No, Your Honor.

9 THE COURT: All right. Ladies and gentlemen, we will now
10 begin the trial of this case. The State is recognized for
11 opening statement.

12 MR. HOLT: Thank you very much, Your Honor, if it please
13 the Court, Ms. Parham.

14 OPENING STATEMENT BY HOLT:

15 MR. HOLT: Ladies and gentlemen of the jury, in the early
16 morning hours of October 28th, 2015, at a little bar called
17 The Office, downtown Lake City, the Defendant in this case,
18 Tommy McGee, did beat about the head and face of James Welch,
19 called Jimmy to his friends, and he did it in such a manner
20 that shortly thereafter, Jimmy died. Cause of death, blunt
21 head trauma.

22 Now in America, so many times we heard when we were
23 little, that we live under the law and it wasn't until I got
24 this job that I realized what that meant. We don't have a
25 supreme leader, we don't have a dictator, we don't have

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OPENING BY HOLT

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1 somebody in America who is our ruler and tells us what's gonna
2 happen. Instead, the law grants us certain rights, the right
3 to live how we want to live, the right to do how we want to
4 do, and it also gives our rulers certain laws that they can't
5 take away our rights. And y'all all of course are familiar
6 with this, I don't have to tell you what it's like to be an
7 American; you live here every day. But during the course of
8 this trial, you'll be hearing about some of those laws and
9 some of those checks on the power of the government. Okay?
10 That'll be your role, listening to the facts, just like the
11 Judge just described to you.

12 Now what are the facts? What does the State purport to
13 show? The State purports to show that on October 27th, it was
14 a Tuesday, 2015, the victim in this case, James Welch, who is
15 Jimmy to his friends, he was in construction, went about his
16 day at work. Then shortly there afterwards, he went to get
17 his girlfriend's car fixed and, because she did not have a
18 car, he went to her place of employment. And you'll meet Ms.
19 Gibson. Michelle Gibson is her name. She was dating the
20 victim the night he died. He went to her bar and was waiting
21 around for her to close and he was having some beers with his
22 friends and he was playing pool, where in America you've got
23 the right to do and be wherever you want to be unless you hurt
24 somebody. He was there that night. Terry Feagin was there.
25 A fellow by the name of Catfish owned the bar, he's a really

OPENING BY HOLT

1 cool guy, he won't be here, but his wife, Ms. Kay, will be
2 here, and you'll hear from all the people that were there that
3 night and they'll tell you what happened. And what happened
4 was this, as they sat there getting toward closing time, Tommy
5 McGee walks into the bar. He walks into the bar and he
6 purports to play some pool. But, they don't play for money
7 and they let Tommy know that and you'll hear from them. Tommy
8 then starts an argument at random with the victim. The
9 victim, at no time, says or does anything that caused his own
10 death, and you'll know this and you'll see this and I'll prove
11 this to you. The victim comes over to the bar to get a swig
12 of his beer and, while he's doing that, the Defendant in this
13 case, puts down his cigarette, turns away from him, then turns
14 around real quick, sucker punch. And before any of the other
15 people who were there that night could do anything, he climbs
16 on top of the man, he hits him 1, 2, 3, 4, 5, 6, on up to 12
17 times. I'm not gonna sit here and do it the whole time, but
18 you'll see all this because not only are you gonna hear
19 testimony from the individuals who stood no farther from here
20 to the whole thing, you're actually gonna see this entire
21 altercation on video.

22 And I tell you that because I need you to understand one
23 thing. One thing is why my side has all of this because I
24 have the burden. You can't just decide that you like my side
25 better and vote for me when you go back there. I'm gonna have

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OPENING BY PARHAM

1 to prove this case to you beyond a reasonable doubt, and
2 that's one of those checks to make sure the State can't take
3 our rights. That's one of those things that the government
4 provides for us to make sure nobody can come take what's ours,
5 but it's nothing that I'm scared of in this case. When I sit
6 down I want you to know two things that this case is gonna be
7 about. It's gonna be about the vicious beating that left the
8 victim dead less than two hours later and it's gonna be about
9 the fact that the victim didn't see it coming because he had
10 nothing at all to do with it.

11 Thank you very much, ladies and gentlemen.

12 THE COURT: Ms. Parham?

13 MS. PARHAM: Thank you. May it please the Court,
14 Solicitor?

15 THE COURT: Yes, ma'am.

16 OPENING STATEMENT BY PARHAM:

17 MS. PARHAM: Good afternoon. I know this is not how many
18 of you expected to spend the second week in September, but my
19 client and I appreciate your being here. I'll introduce you
20 to my client; this is Tommy McGee. He's glad that you're
21 here. He's been waiting for this day for almost two years
22 now. In your being here today, you're exercising one of the
23 most important rights that you have as an American citizen and
24 that's the right to serve on a jury. You wouldn't know that
25 by the fact that only about 50 people showed up of 165 that

OPENING BY PARHAM

1 were summoned, but you are in fact exercising one of the most
2 important rights you have and that is the right to serve on a
3 jury.

4 And as the Judge told you, you are the judge of the facts
5 of the case. People call you judges without robes. And, in
6 essence, what your job is, is to consider the facts that you
7 hear off the witness stand, and you can judge those however
8 you want, you can find them credible or not credible, you can
9 find some parts of someone's testimony credible and other
10 parts not credible, or you can just rule out someone's entire
11 testimony because you think they're incredible, and then you
12 consider the evidence as it's admitted into evidence, and then
13 you render a verdict that speaks the truth at the end of the
14 case. And veredicto is a Latin word that means to speak the
15 truth and that's in essence all you do. You listen to the
16 facts, you apply the evidence and the law that the Judge gives
17 you, and you render a verdict at the end of the case that
18 speaks the truth in this case. And each of you were selected
19 by the government and the defense because we believe that you
20 can fairly consider the evidence and render a verdict that
21 speaks the truth at the end of the case. And I submit to you
22 that the verdict at the end of the case that speaks the truth
23 is that my client is not guilty of murder, because murder is
24 the intentional killing of another person with malice. And,
25 my client did -- this is a horrible incident at this bar, but

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OPENING BY PARHAM

1 they were playing pool. We believe the evidence will show
2 that my client is 31. He was working at Superior Machine,
3 both were drunk. Unfortunately, the video has no audio, but
4 -- there's a video, but no audio, so you can't hear what's
5 said between the parties, but you can see. You know, you all
6 have common sense and experience in life. You can see who's
7 talking, whether two people are talking or one person is
8 talking; you can see the body language. So, so the video has
9 a lot to say even though, you know, there is no audio in the
10 video.

11 At any rate, my client does punch the victim, who falls
12 on the floor and then my client punches him more times and
13 then my client is thrown out of the bar, and my client had no
14 idea that the victim had passed away or died. And I submit to
15 you that this would be one of the weirdest murder cases
16 because no one in that bar had any -- obviously, when you
17 watch the video, inclination that this was a serious time.
18 Seventeen minutes go by before anyone calls 911, and I submit
19 to you that's important. And so what happened is, unbeknownst
20 to my client, unbeknownst to the people in the bar, the victim
21 fell and cracked his skull on the concrete floor and had a
22 brain bleed and, and help was not called for 17 minutes, and
23 then help didn't even get there until over 20 minutes. So you
24 can tell from what the other people who were left at the bar
25 do, that they had no idea how serious this situation was,

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KAY BOATWRIGHT FLOYD - DIRECT BY HOLT

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1 neither did my client. I mean, this was a bar fight. I'm not
2 excusing the fact that he hit Mr. Welch at all. That was not
3 at all good or right and very remorseful for all in this
4 situation, but it is not a murder because at no time did he
5 intend to kill that man. And, that would be for you to
6 determine and we look forward to presenting this case before
7 you.

8 Thank you.

9 THE COURT: Call your first witness.

10 MR. HOLT: Judge, at this time, we're gonna have to call
11 Kay Floyd to the stand. I don't know how Your Honor wishes
12 to proceed, I'm gonna have to go get them since they were
13 sequestered. We sent somebody to go get them.

14 THE COURT: You got three other people sitting there.

15 MR. HOLT: Yes, sir.

16 CLERK: Ma'am, if you will please place your left hand on
17 the Bible and raise your right hand.

18 KAY BOATWRIGHT FLOYD, HAVING BEEN
19 DULY SWORN TESTIFIES AS FOLLOWS:

20 CLERK: Please be seated and state your full name for the
21 record.

22 MS. FLOYD: My name is Kay Boatwright Floyd.

23 DIRECT EXAMINATION OF KAY BOATWRIGHT FLOYD BY MR. HOLT:

24 Q: Ms. Kay, my first question was gonna be your whole name
25 but we got that out the way. Can you tell us what your

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KAY BOATWRIGHT FLOYD - DIRECT BY HOLT

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- 1 occupation and your profession is?
- 2 A: I own The Office bar.
- 3 Q: And where is that bar located?
- 4 A: Lake City.
- 5 Q: Now is that in Florence County?
- 6 A: Yes, sir.
- 7 Q: Okay. And how long have y'all had that bar?
- 8 A: I bought it in 2011.
- 9 Q: And what did it used to be called?
- 10 A: WC's.
- 11 Q: All right. Now do you have a partner; did somebody buy
- 12 it with you?
- 13 A: No.
- 14 Q: Okay. Do you have a significant other that works with
- 15 you up there a lot?
- 16 A: Yes, used to.
- 17 Q: And what's his name?
- 18 A: William Carey.
- 19 Q: Well, what's his nickname?
- 20 A: Catfish.
- 21 Q: Okay. And is it okay if I call him Catfish, too?
- 22 A: Yes.
- 23 Q: Now, is Catfish well?
- 24 A: No.
- 25 Q: And what's wrong with him?

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KAY BOATWRIGHT FLOYD - DIRECT BY HOLT

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1 A: He's had to have heart surgery. He has an aneurysm that
2 they feel like it's about to rupture and he's in the nursing
3 home. He can't move his legs and he's incontinent.

4 Q: All right. Now, back in October of 2015, early
5 Wednesday morning, would've been October 28th, but the prior
6 day would have been October 27th, it would've been a Tuesday
7 -- technically it would have been on like a Tuesday night.

8 Were you working at The Office on that night?

9 A: I was in the office part of The Office.

10 Q: Okay. And can you explain to the jury what the office
11 part of The Office is?

12 A: It's where our office is, where we keep our books and
13 that type stuff.

14 Q: All right. Now, were you alerted at any time that night
15 that there was a problem?

16 A: Not until after the fact.

17 Q: Okay. And can you tell the jury what you learned that
18 night and what you witnessed first-hand?

19 A: Once I was told?

20 Q: Yes, ma'am.

21 A: I came out and Jimmy was on the floor and Ray was working
22 with him. He had -- he turned him to the side, and then I
23 went to Michelle because she was very upset, and we waited on
24 the ambulance to come and -- but he wasn't moving.

25 Q: Now, what did Michelle do for you?

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KAY BOATWRIGHT FLOYD - DIRECT BY HOLT

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- 1 A: She's my bartender.
- 2 Q: All right. And do you know, do you recall about what
3 time of night this was?
- 4 A: I knew it was after 12.
- 5 Q: Okay. Let me ask you something about The Office, your
6 building. Is it under video surveillance?
- 7 A: Yes, it is.
- 8 Q: Okay. And have you ever looked at video surveillance on
9 your computer system before?
- 10 A: Not on my computer; I have a T.V. monitor.
- 11 Q: Okay. And so you're familiar with how it works?
- 12 A: Yes, sir.
- 13 Q: All right. And I'm gonna ask permission to approach,
14 Judge?
- 15 THE COURT: Yes, sir.
- 16 Q: And I want to show you what's been marked as State's
17 Exhibit 2. And without telling the jury what it is, can you
18 tell me if you've seen it before?
- 19 A: Yes, I have.
- 20 Q: Okay. And since the last time you've seen it, have there
21 been any changes, alterations, deletions made to it?
- 22 A: No, sir.
- 23 Q: Okay. Can you tell the jury what it is?
- 24 A: It's the video of that night.
- 25 Q: And what night is that; is that October 28th, 2015?

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KAY BOATWRIGHT FLOYD - DIRECT BY HOLT

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1 A: Yes, sir.

2 Q: All right. And have you watched the video?

3 A: Yes, I have.

4 Q: And were you able to tell from the video if the events
5 purported took place in The Office?

6 A: Yes.

7 Q: The bar, not your office?

8 A: Yes.

9 Q: And do you believe the video to be a hundred percent
10 accurate?

11 A: Yes, I do.

12 Q: Judge, at this time, we'd like to move State's Exhibit 2
13 into evidence?

14 A: Any objection?

15 MS. PARHAM: I just have some voir dire questions of my
16 own for how it just got on to that disc?

17 THE COURT: I'll allow you in cross examination.

18 MS. PARHAM: All right.

19 THE COURT: Over the objection, I'm gonna allow it in at
20 this point.

21 MS. PARHAM: Okay.

22 STATE'S EXHIBIT NUMBER 2

23 ADMITTED INTO EVIDENCE

24 MR. HOLT: Thank you very much, Judge,

25 BY MR. HOLT:

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KAY BOATWRIGHT FLOYD - DIRECT BY HOLT

59

1 Q: Now, and you told -- of course, you told the jury that
2 you have watched it since then?

3 A: Yes, sir.

4 Q: And can you tell the jury a little bit about what
5 happened that night, once you realized there's a problem -- I
6 think you left off when you were comforting Michelle?

7 A: Right.

8 Q: What did you witness after that and what happened?

9 A: Ray Wright was trying to help Jimmy. I went to Michelle
10 and then some first responders came and the police -- well,
11 the police came, I believe, and then the first responders and
12 then the ambulance came and took him to the hospital.

13 Q: Probably about what time did you get out of there that
14 day?

15 A: By the time the police left, it was around 6:00, 6:30
16 that morning.

17 Q: And that was a Wednesday morning?

18 A: Correct.

19 Q: All right. Ms. Kay, please answer any questions Defense
20 Counsel might have. Okay?

21 A: Okay.

22 THE COURT: Ms. Parham?

23 MS. PARHAM: Thank you. May I approach the witness?

24 THE COURT: Yes.

25 CROSS EXAMINATION OF KAY BOATWRIGHT FLOYD BY MS. PARHAM:

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KAY BOATWRIGHT FLOYD - CROSS BY PARHAM

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1 Q: This exhibit, State's Exhibit 2, were you the one that
2 put the video on this disc?

3 A: No, ma'am; I don't know how to do that.

4 Q: Okay. Well, then how did this disc -- how was it
5 created?

6 A: The police department.

7 Q: The police department. And so tell me, if you will, how
8 that happened; when did it happen, who did it, who came?

9 A: There was so many officers, ma'am, and I think two or
10 three of them tried to get it on there, but Patrick Miles knew
11 how to do it and he came and put it on.

12 Q: Okay. Did he do it that night or ---

13 A: Yes, ma'am.

14 Q: He did it before 6 o'clock in the morning you believe?

15 A: Yes, ma'am.

16 Q: Okay. So, Patrick Miles is the one that somehow got it
17 off of your system and onto this disc?

18 A: Yes, ma'am.

19 Q: All right. And your system records for how long?

20 A: Thirty days.

21 Q: Thirty days?

22 A: Uh-huh (affirmative response).

23 Q: So, and it just rolls over and records on itself for 30
24 days?

25 A: Right.

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1 Q: And so who was the person that decided what portion of --
2 where this video would start and where this video would end?

3 A: I guess the police department.

4 Q: All right. Would that have been Mr. Patrick Miles?

5 A: I'm not sure which one.

6 Q: Okay. But he's the one that put it on this?

7 A: Yes, ma'am.

8 Q: All right. And so if the video starts shortly before my
9 client hit the victim, is it -- is it accurate to say that the
10 preceding video would also have been on the system, what
11 happened before then?

12 A: Uh-huh (affirmative response).

13 Q: In fact, up to 30 days before would've been on the
14 system?

15 A: Yes, ma'am.

16 Q: Okay. Did you receive a letter from my office after I
17 was hired in this case asking for the video that preceded this
18 video?

19 A: No, ma'am.

20 Q: Okay. You're not aware of that?

21 A: Not of any correspondence.

22 Q: Did anyone ever request that you provide the video that
23 happened before this?

24 A: Only the police department.

25 Q: Did the police ever ask you or come back and get the

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- 1 video that happened before what's on this disc?
- 2 A: No, the only time that they put anything was that time.
- 3 Q: Okay. But you had video for up to 30 days prior to this
- 4 disc?
- 5 A: Yes.
- 6 Q: Okay.
- 7 A: Of just regular everyday stuff.
- 8 Q: All right. And, and did you have this disc in your
- 9 office of The Office or did they bring this?
- 10 A: I never had a disc.
- 11 Q: Okay. How many cameras do you have in your office?
- 12 A: I think there is five inside and three outside.
- 13 Q: So, there are five interior cameras?
- 14 A: Uh-huh (affirmative response).
- 15 Q: And are those separate cameras like with different views?
- 16 A: Yes, ma'am.
- 17 Q: And this is just one view?
- 18 A: That's the only one that would pick up where it was
- 19 actually at.
- 20 Q: Okay. And so the other four cameras, did you look at
- 21 those four views?
- 22 A: Uh-huh (affirmative response).
- 23 Q: Did they have anything on them?
- 24 A: No, ma'am.
- 25 Q: Okay. But they were not downloaded, those four cameras?

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- 1 A: No, ma'am.
- 2 Q: And the outside cameras were not -- this was the only one
3 that was downloaded by law enforcement?
- 4 A: That's the only one that had it on there.
- 5 Q: Okay. And who made that determination, you or ---
- 6 A: The police department.
- 7 Q: The officer?
- 8 A: We -- they came into my office.
- 9 Q: Uh-huh (affirmative response).
- 10 A: And put that -- made the disc.
- 11 Q: Okay. All right. Patrick Miles did?
- 12 A: He was the one that knew how to put it on a disc.
- 13 Q: Okay. All right. And were -- did -- were you present
14 when someone called 911 in this case or did you come out after
15 that happened?
- 16 A: I don't recall.
- 17 Q: Okay.
- 18 A: I think that they had already been called, but I'm not
19 sure.
- 20 Q: That's all I have. Thank you, Your Honor.
- 21 THE COURT: Any redirect?
- 22 MR. HOLT: No, sir, Judge.
- 23 THE COURT: Ma'am, you may step down. Thank you.
- 24 MR. HOLT: Judge, at this time, I'd ask if Ms. Kay could
25 be relieved from her subpoena?

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1 THE COURT: Any objection?

2 MS. PARHAM: No, Your Honor.

3 THE COURT: Without objection, ma'am, you're free to go.
4 You have no further responsibility under your subpoena. Have
5 a nice day.

6 A: Thank you.

7 MR. HOLT: Judge, at this time, the State would call
8 Michelle Gibson.

9 CLERK: Ma'am, if you'll please come up to the front.
10 Come up to the witness stand and place your left hand on the
11 Bible and raise your right hand -- right hand, please.

12 MICHELLE BROACH GIBSON, HAVING BEEN
13 DULY SWORN TESTIFIES AS FOLLOWS:

14 CLERK: Please be seated and state your name for the
15 record?

16 MS. GIBSON: Michelle Broach Gibson.

17 DIRECT EXAMINATION OF MICHELLE BROACH GIBSON BY MR. HOLT:

18 Q: Ms. Gibson, can I call you Michelle?

19 A: (Indicates affirmatively.)

20 Q: Michelle, where do you currently live?

21 A: Effingham.

22 Q: Okay. And how old are you?

23 A: Forty-five.

24 Q: And are you currently employed?

25 A: Yes.

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- 1 Q: And where are you employed?
- 2 A: The Office.
- 3 Q: All right. And how long have you been employed there?
- 4 A: Probably about three years.
- 5 Q: You lived in Florence County your whole life?
- 6 A: Yeah.
- 7 Q: And The Office, that's in Florence County, isn't it?
- 8 A: Yeah.
- 9 Q: It's actually in what city?
- 10 A: Lake City.
- 11 Q: Okay. And who owns that bar?
- 12 A: Kay Floyd.
- 13 Q: Okay. And the victim that we're here about today, James
- 14 Welch; did you know him?
- 15 A: Yes.
- 16 Q: And what did you call him?
- 17 A: Jimmy.
- 18 Q: Okay. And how long have you known Jimmy; how long had
- 19 you known him?
- 20 A: Probably about six years.
- 21 Q: And had y'all been dating all that time?
- 22 A: Most of it, yes.
- 23 Q: Okay. Now, would Jimmy ever come see you at the bar?
- 24 A: Yeah.
- 25 Q: Okay. And about how many nights a week do you think he

1 would come?

2 A: Several, three or four.

3 Q: And when you were off, would y'all like to go up there

4 together?

5 A: Yeah.

6 Q: So, y'all spent a lot of time at The Office?

7 A: Yeah.

8 Q: Now, on the day in question, October 28th, technically

9 very early Wednesday morning, let's just say on that Tuesday,

10 was anything special going on? What was Jimmy doing there?

11 A: Working.

12 Q: He had been working earlier there that day?

13 A: Yeah.

14 Q: Now, did you and Jimmy both own automobiles at that time?

15 A: Yeah.

16 Q: Were they both working?

17 A: No.

18 Q: What was going on?

19 A: My car was broke down, so we were sharing the truck.

20 Q: So, Jimmy had to come get you?

21 A: Yeah.

22 Q: All right. Can you tell the jury a little bit about what

23 had gone on prior in the day, what time had you got to work

24 and so on from there?

25 A: I got to -- well, I actually -- he was working like down

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1 the road from the house. So, I dropped him back off and I
2 drove the truck to work, and I opened up at 4 every day. And
3 then later on, he got dropped off over -- up there whenever he
4 got off work.

5 Q: Okay. And what did he like to do when he got off work?

6 A: Shoot pool.

7 Q: And would he be drinking while he was doing that?

8 A: Yeah.

9 Q: And what did Jimmy drink?

10 A: Bud Light.

11 Q: Okay. And on the day in question, had he been drinking
12 Bud Light?

13 A: Uh-huh (affirmative response).

14 Q: All right. Are you aware that the bar has a video
15 surveillance system?

16 A: Yes.

17 Q: And have you ever looked at it before?

18 A: Yes.

19 MR. HOLT: Permission to approach, Judge?

20 THE COURT: Yes.

21 BY MR. HOLT:

22 Q: I want to show you what has been marked and entered as
23 State's Exhibit 2 and I'm gonna ask you if you've ever seen
24 that before?

25 A: Yes.

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1 Q: And since the last time you seen it, have there been any
2 changes, alterations or deletions made to it?

3 A: No.

4 MR. HOLT: Judge, at this time, the State would ask to
5 show the evidence to -- the victim -- the victim -- so we
6 could further ask questions?

7 THE COURT: Is that Number 2?

8 MR. HOLT: Yes, sir.

9 MS. PARHAM: No, Your Honor. We would ask that the
10 entire video be played.

11 THE COURT: Go ahead.

12 (REPORTER'S NOTE: State's Exhibit Number 2 published to the
13 jury.)

14 BY MR. HOLT:

15 Q: Michelle, I'm so sorry that I've made you watch that so
16 many times. But with the Judge's permission, I'd like you to
17 come down here real quick and just point some people out to
18 the jury.

19 THE COURT: Mr. Holt, Ms. Parham, if you want to go to
20 the other side. What I want you to do, ma'am, turn the video
21 screen -- I want her facing back towards me so she's talking
22 towards my Court Reporter so she can hear. Okay? They're
23 gonna turn the screen and if you want to come over here, Ms.
24 Parham, I'm sorry, you can -- wherever you can get to see, but
25 the witness needs to be on the side -- the same side as Mr.

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1 Godbolt looking back this way and talking.

2 BY MR. HOLT:

3 Q: Michelle, please talk loud enough for everybody to hear
4 including the Court Reporter.

5 THE COURT: And make sure everyone -- you're blocking the
6 view of this young man at the end. Make sure you make it
7 where everyone can see. Okay?

8 BY MR. HOLT:

9 Q: Okay. Can you show the jury where you are?

10 A: I was back here.

11 Q: And is that behind the bar or in front of the bar?

12 A: Behind it.

13 Q: All right. And who is this right here?

14 A: Terry Feagin.

15 Q: And who is this man right here?

16 A: Ray Wright.

17 Q: And who is this man right here in the mirror?

18 A: It's Jimmy.

19 Q: Okay. Here he is in the mirror, but where would he be in
20 the bar?

21 A: He was on this pool table at the other end racking the
22 balls.

23 Q: Okay. And Ms. Kay Floyd that testified earlier, where
24 would she be right now?

25 A: She was in the back room.

1 Q: Okay. Where is the direction of that from right here?

2 A: Like back this way.

3 Q: All right. And, if we could put this down, I'd
4 appreciate it.

5 And does that represent about everybody that was in the
6 bar that night?

7 A: Yeah.

8 Q: And can you name off all the people that were in there at
9 that time when that video started?

10 A: Me, Ray Wright, Terry Feagin, Catfish, Kay, and Tommy,
11 and Jimmy.

12 Q: Okay. Now, everybody beside Tommy, about how long had
13 they been in the bar that day?

14 A: Kay and Catfish was already there. I got there at 4:00.
15 Terry probably got there around 8:00, I'm saying. Ray got in
16 there a little bit later. I'm not exactly sure, maybe 9:30,
17 10:00, something like that, and Jimmy got there probably I'm
18 gone say around 9:30, also.

19 Q: What time did the Defendant walk in?

20 A: I want to say it was a little bit later, maybe 10:30,
21 11:00.

22 Q: How long had Tommy McGee been there?

23 A: I don't think he had been there very long.

24 Q: Now, were you aware of what time this video was taken?

25 A: Yeah.

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- 1 Q: And what time was that?
- 2 A: 1:20-something.
- 3 Q: Okay. So, before this video, how long do you think Tommy
- 4 McGee had been there?
- 5 A: Maybe an hour or so.
- 6 Q: So, he couldn't have gotten there at 10:00?
- 7 A: Well, it just seems like he came in late.
- 8 Q: Okay. All right. After, after he started to beat the
- 9 victim, were you the one that pulled the Defendant off of the
- 10 victim?
- 11 A: Yeah.
- 12 Q: Okay. But after that, why didn't you immediately call
- 13 911 right time it happened?
- 14 A: Because I didn't think he was hurt.
- 15 Q: What did you think at that time?
- 16 A: I thought he had just knocked him out.
- 17 Q: And what did you think was gonna happen?
- 18 A: I thought he was gonna get up and he was gonna get ready
- 19 -- he was gonna be ready to go, so I'd have all my stuff ready
- 20 so we could go.
- 21 Q: And so that's why you were counting the money?
- 22 A: Yeah.
- 23 Q: Did you know it was that serious at that time?
- 24 A: No.
- 25 Q: What did you do when you realized how serious it was?

1 A: I really -- I didn't realize it until they actually
2 started doing chest compressions on him.

3 Q: So, you didn't even think it was that serious when you
4 called 911?

5 A: No, I thought I was gonna follow them to the hospital;
6 that's why I had to get the keys.

7 Q: So, that's why you were closing down?

8 A: Yes.

9 Q: Before this happened, before the beating took place, did
10 you see the victim in any way change his demeanor to include
11 aggression?

12 A: No.

13 Q: Was he prepared in any way for the punch that hit him?

14 A: No.

15 Q: Was he in any way having a loud boisterous argument with
16 the Defendant?

17 A: No.

18 Q: Do you think that James Welch was mad at the Defendant
19 when he got hit?

20 A: No.

21 Q: Did the Defendant appear to be aggravated?

22 A: He said a few words, but then I didn't think he was
23 really, you know ---

24 Q: What did he say?

25 A: For some reason, he just said you owe my daddy money.

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1 Q: And who did he say that to?

2 A: He said it to Jimmy.

3 Q: Did he appear to be more confused when he said that or
4 more angry?

5 A: He seemed like he was a little pissed off about that.

6 Q: Was it a surprise to you ---

7 A: Yes.

8 Q: --- when he struck him the first time?

9 A: Yes.

10 Q: When you finally managed to get the Defendant off of your
11 boyfriend, what did you say to make him leave the bar?

12 A: I pulled him back and I looked at him and I said some
13 ugly words to him.

14 Q: Well, did you chase him out of there or push him out of
15 there or run him out of there?

16 A: Hu-huh (negative response).

17 THE COURT: I need a yes or no.

18 A: No.

19 THE COURT: Thank you.

20 BY M. HOLT:

21 Q: And after it happened, did you lock the door or not lock
22 the door?

23 A: Yeah, I got the key and handed it to Catfish, and he
24 locked the door.

25 Q: And why did you lock the door?

1 A: Because I didn't want him coming back in.

2 Q: Michelle, if you'll do me a favor and answer any
3 questions that Defense counsel has. Okay? Thank you.

4 THE COURT: Ms. Parham, cross examination?

5 MS. PARHAM: Thank you, Judge.

6 CROSS EXAMINATION OF MICHELLE BROACH GIBSON BY MS. PARHAM:

7 Q: How many years have you been working at The Office?

8 A: About two.

9 Q: How many years prior to this happening, two?

10 A: Maybe a year-and-a-half, two, I guess, maybe.

11 Q: Okay. And what is the layout in there, is it just one
12 big room with pool tables or are there any nooks and crannies
13 or ---

14 A: On the side, where you saw where the pool tables were?

15 Q: Uh-huh (affirmative response).

16 A: There was also another side that's opened up that leads
17 back to a dance floor.

18 Q: Okay. And where are all the cameras inside The Office?

19 A: We have several cameras around different places.

20 Q: Okay. How many of them are in that big open area with
21 the pool tables and the bar?

22 A: I really don't know, maybe four or five.

23 Q: Okay. So, there are four or five cameras in that area?

24 A: I'm guessing. There are several. I mean ---

25 Q: And those are the ones inside the room where we saw the

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1 pool table and the bar?

2 A: Yeah.

3 Q: Okay.

4 A: Well, there's -- on that side I think there may have been
5 one then, and then maybe there was another one on the other
6 side.

7 Q: Okay. Are there any facing the door area and the mirror
8 where we saw people coming in and out?

9 A: I can't answer that; I don't know.

10 Q: Okay. And when the Solicitor first asked you the
11 question, what your best estimate was as to when my client got
12 there, you told him 10:30 or 11:00; is that your best estimate
13 as to when he got there?

14 A: It seems like he came in kinda late. I don't really know
15 the time.

16 Q: Okay. But you made Tommy leave; as soon as the assault
17 happened, you pushed him out the door and made him leave?

18 A: Well, I didn't actually push him out, but, yeah, we were
19 getting him towards the door ---

20 Q: Right.

21 A: --- so we could lock it.

22 Q: Right. Now what time does your bar usually close?

23 A: Different times. We don't have a set closing time.

24 Q: Give me a ball park?

25 A: Usually, on Saturdays it's 2:00; anytime during the week,

1 it could be anywhere from 11 o'clock to 3 o'clock.

2 Q: Okay. Do you have a rule as to when you have to close or
3 stop serving alcohol?

4 A: Just on Saturday nights.

5 Q: Okay. Now, in that video, you showed the jury where you
6 were standing kind of part of you is blocked by that, I guess
7 it's like a Budweiser or some kind of thing?

8 A: Right.

9 Q: Who was the man standing next to you?

10 A: Catfish.

11 Q: Catfish. And he's one of the owners?

12 A: Yeah.

13 Q: All right. And so before the assault happened, there's a
14 finger that's pointing from behind the bar talking towards
15 Jimmy and that would be Catfish's finger, right?

16 A: Yeah.

17 Q: Okay. And did you see that finger pointing and talking
18 at the same time?

19 A: Yeah.

20 Q: Okay. What was he saying?

21 A: I don't remember. Knowing Catfish, he was saying
22 something about pool.

23 Q: Okay.

24 A: He always schooled them boys on pool.

25 Q: Okay. But that is kind of the beginning of the talking

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1 that brought Jimmy into the visual of the camera. In other
2 words, it seemed like there was a heated discussion among all
3 people in there?

4 A: No, ma'am.

5 Q: You don't recall that?

6 A: No, ma'am.

7 Q: And you don't recall what exactly Catfish was saying when
8 he was pointing his finger?

9 A: No, ma'am.

10 Q: Okay. All right. And do you recall what Jimmy was
11 saying when he was doing like this (indicating)?

12 A: He -- he's saying man, I don't even know you. He said I
13 do carpentry work for a living and that's whenever he dropped
14 his hands. Just like you're getting me confused kind of
15 thing..

16 Q: And Terry Feagin, who did he come -- who was he -- who
17 was he there with?

18 A: He was by hisself.

19 Q: Okay. Were all these men by themselves or did somebody
20 come together?

21 A: They were all by themselves.

22 Q: All right. And what was Terry Feagin saying when he came
23 up to Tommy and had both pool sticks in his hand and he was
24 putting them against the ground?

25 A: I don't know.

1 Q: You don't know what he was saying; you don't recall
2 hearing it?

3 A: I didn't hear that.

4 Q: Okay. Now, you said that you did not call 911 because
5 you didn't realize the seriousness of this?

6 A: No, ma'am.

7 Q: Had you seen fights happen in that bar before?

8 A: Not in that bar, but another bar that I had worked at
9 previously.

10 Q: Okay. So, you've seen fights in bars before?

11 A: Yeah.

12 Q: All right. And, and so based on what you saw, you just
13 did not realize the seriousness?

14 A: I didn't.

15 Q: Now, those first men that came in were the police
16 officers, the two men. And what were they doing when they
17 left Mr. Welch on the floor; they looked like they left and
18 went to another part of the building; do you know what they
19 were doing?

20 A: No, ma'am.

21 Q: And they never did any kind of CPR or anything like that,
22 the police officers, because they were there before the
23 firemen that started the first CPR, correct?

24 A: Yes, ma'am.

25 Q: So, what -- because it looked like you walked out with

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1 some of the police -- do you know who the two policemen were
2 that came in with the flashlights?

3 A: No, ma'am, but I walked out looking for the ambulance
4 again.

5 Q: Okay. And -- and the first responders that were doing
6 the CPR, those were actually firemen, correct?

7 A: I think they're -- some are volunteer firemen, yeah.

8 Q: Before the emergency EMT's came?

9 A: Yes, ma'am.

10 Q: And my client was paying pool prior to this incident,
11 correct?

12 A: I think he was on the first table over with Terry. I
13 know they were over there in that corner and Jimmy and Ray was
14 on the first table.

15 Q: Okay. And do you recall having a conversation with my
16 client about whether people could play for money on pool
17 tables?

18 A: Yes, ma'am.

19 Q: And what was that about?

20 A: I heard him say something to Terry about betting \$5.

21 Well I didn't say anything because everybody knows that you
22 can't gamble on the tables. Within a minute or two later, I
23 heard him say something about \$10 a rack and I spoke up, and I
24 said, you cannot do that in here.

25 Q: Okay.

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BY THE COURT

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1 A: And then that's whenever he looked at me and said, well,
2 I'll just go somewhere else then, and I said fine.

3 Q: Okay. And ---

4 A: And then it was shortly after that ---

5 Q: The discussion about betting on tables, all right. But
6 you don't recall what Terry was saying with the pool sticks
7 and you don't recall exactly what Catfish was saying?

8 A: No, ma'am; I didn't hear Terry was saying.

9 Q: All right. I believe that's all I have. Thank you.

10 THE COURT: Any redirect?

11 MR. HOLT: No, sir, Your Honor. In fact, I'd like to
12 approach with Ms. Parham before we call the next witness.

13 THE COURT: You may step down. Thank you.

14 (REPORTER'S NOTE: A bench conference was held off the record
15 in the presence of but out of hearing of the jury.)

16 BY THE COURT:

17 THE COURT: Ladies and gentlemen of the jury, I'm gonna
18 ask you to step to the jury room. I'll give you a break. I
19 told you I think this morning, we go an hour and a half to two
20 hours between breaks. I'll get you back out here as quickly
21 as possible. Do not -- do not discuss the case and we'll get
22 you back out here in just a few minutes.

23 (REPORTER'S NOTE: Jury exits courtroom - 3:46 P.M. The
24 following takes place outside the presence of the jury.)

25 THE COURT: We'll stand down for about five minutes.

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BY THE COURT

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1 (RECESS - 3:47 P.M.)

2 *****OFF THE RECORD*****

3 (On the Record - 3:54 P.M.)

4 THE COURT: Thank you. Be seated, please.

5 What do you have as far as prior record?

6 MR. HOLT: Judge, you know, just for the record, it's a
7 motion in limine on the next witness, Mr. Terry Feagin, before
8 we call him to the stand. As far as the prior record, Judge,
9 I believe he has one DUI and a tampering with a jury from
10 1993. The State, of course, would say that neither one of
11 them can come in after his testimony.

12 THE COURT: Ms. Parham?

13 MS. PARHAM: Does Your Honor generally follow the 10-
14 rule, 10-year rule?

15 THE COURT: Yeah.

16 MS. PARHAM: Okay.

17 THE COURT: I mean, any reason you called him up here
18 right now?

19 MR. HOLT: I thought we had to have a motion on it,
20 Judge. Mr. Feagin, if you'll just come right on back.

21 He's gonna be our next witness though.

22 THE COURT: Well, while the jury is out, let's do this.
23 You handed up to my Court Reporter, Mr. Holt, like 46
24 photographs?

25 MR. HOLT: Yes, sir, Judge.

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BY THE COURT

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1 THE COURT: Many of which, I, and I've looked at every
2 one of them, and I'm sure -- I mean, I don't -- I assume that
3 they've been given to you, but I mean, I expect you all
4 together to go through these photographs, see which ones you
5 agree on, which ones you don't agree on -- and it's always
6 been my policy to have the lawyers go through the items of
7 evidence, let me know what you agree on, what you don't agree
8 on, what you don't agree on, and I'll start making decisions
9 on it. It's kinda like you've just kind of thrown them up
10 here to see what sticks and what doesn't stick. A lot of them
11 seem to be duplicative to me.

12 MR. HOLT: Yes, sir.

13 THE COURT: Some of them, you know -- so, I'm gonna give
14 those back to you, Mr. Holt, and at the appropriate time,
15 y'all can go through them together.

16 Now look here, we're not gonna do this right now. Y'all
17 have had x number or how long?

18 MR. HOLT: Two years.

19 THE COURT: Well, you both have had two years to talk
20 about it. All right?

21 MR. HOLT: Yes, sir, Judge.

22 THE COURT: It's not the first case y'all have tried in
23 front of me.

24 Anything before I bring the jury back out?

25 MR. HOLT: Nothing, Your Honor.

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1 THE COURT: Defense counsel?

2 MS. PARHAM: No, Your Honor.

3 THE COURT: Bring me the jury please, sir.

4 (REPORTER'S NOTE: Jury enters courtroom - 3:58 P.M.)

5 THE COURT: Call your next witness, please.

6 MR. HOLT: Thank you very much, Judge, if it would please
7 the Court, the State would call Terry Feagin to the stand.

8 CLERK: Sir, if you'll please step up to the -- place
9 your left hand on the Bible and raise your right hand.

10 TERRY DEXTER FEAGIN, HAVING BEEN DULY
11 SWORN TESTIFIES AS FOLLOWS:

12 CLERCK: Please be seated and state your full name for
13 the record.

14 MR. FEAGIN: Terry Dexter Feagin.

15 THE COURT: Spell your last name for the Court Reporter
16 please, sir.

17 MR. FEAGIN: F-E-A-G-I-N.

18 THE COURT: Very well.

19 Mr. Holt, you may proceed.

20 MR. HOLT: Thank you, Judge.

21 DIRECT EXAMINATION OF TERRY DEXTER FEAGIN BY MR. HOLT:

22 Q: Mr. Feagin, how old are you?

23 A: Fifty-four.

24 Q: And where do you live?

25 A: Scranton, South Carolina.

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- 1 Q: And how long have you been there?
- 2 A: Probably 20 years or better.
- 3 Q: Where did you live before that?
- 4 A: In Lake City.
- 5 Q: So, you've been in Florence County your whole life?
- 6 A: Yeah.
- 7 Q: Do you know a little bar called The Office in Lake City?
- 8 A: Yeah.
- 9 Q: Okay. And who owns that bar?
- 10 A: Ms. Kay Floyd.
- 11 Q: And do you ever go there?
- 12 A: Yeah, I go there in the afternoons to play pool after
- 13 work.
- 14 Q: And the victim in this case, James Welch, did you know
- 15 him?
- 16 A: Yeah, he was a friend of mine.
- 17 Q: And what did you call him?
- 18 A: Jimmy.
- 19 Q: And how long have you known him?
- 20 A: I'd say 10 years or so.
- 21 Q: Okay. And did the two of you ever hang out at The
- 22 Office?
- 23 A: Yeah, we'd meet up there after work and play pool and
- 24 have a couple of beers or whatever.
- 25 Q: Was that a pretty common occurrence?

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1 A: Yeah.

2 Q: And did you know if he was dating anybody at this time in
3 October of 2015?

4 A: Yeah, he was dating a girl that worked there that's one
5 of the bartenders, Ms. Michelle.

6 Q: And were they dating on the day of the murder, October
7 28th, 2015?

8 A: Yes, they are -- were.

9 Q: Did you and James plan on meeting up that night?

10 A: Not really. Usually in the afternoon we ride by and see
11 whose there and who isn't. You know, if they've got a decent
12 pool game going, we'll stop and play.

13 Q: Okay. But did you have occasion, did you go that day?

14 A: I just cut by.

15 Q: Well, how about on Tuesday, October 27th, 2015, the night
16 that James Welch was murdered, were you in there that night?

17 A: Yes, I was.

18 Q: Okay. And who all was playing pool that night?

19 A: There was a guy named Ray from out of town working with
20 Farmer's Telephone, I think, doing some contractor work, me
21 and a couple of other guys, I can't remember them by name but
22 -- we usually got four or five guys that's taking turns
23 playing. We see who can last the longest on a table and win
24 the most games or whatever. And it was just a routine
25 afternoon playing pool.

1 Q: And do you work on Wednesday?

2 A: Yeah.

3 Q: Okay. Now, about, about how long before the murder did
4 Tommy McGee show up that night?

5 A: It was after midnight because we were kinda down to the
6 last three or four players and, you know, it was dwindling
7 down, and if I recall right, I think he came in and he asked
8 were we playing -- still playing, and I said yeah, and he
9 said, y'all mind if I play now? And everybody said, no, put
10 your quarters on the table because I had just lost my turn and
11 I think I was in the process of getting ready to leave or
12 cleaning up or doing some straightening up or whatever, and I
13 was telling Michelle bye or whatever my routine, see you
14 tomorrow or see you in a couple of days or whatever from what
15 I remember. I mean, it's been two years.

16 Q: Okay. And what happened after Tommy got there?

17 A: From my understanding, Jimmy was fixing to play that guy
18 Ray, and Jimmy was racking the balls and they were changing
19 words about something being done to -- I think Tommy had asked
20 him did -- are you the guy that my daddy worked on your truck
21 and I think you owe him some money, from what I understand.

22 Q: Uh-huh (affirmative response).

23 A: And I think Jimmy said, no, I really don't know who your
24 dad is. I don't think he's ever worked on anything of mine.
25 And, I really don't remember much of nothing after that

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1 because I was still talking to Michelle and I think I was
2 picking up the sticks and putting them in the rack or doing
3 something, and I was just getting ready to leave, preparing to
4 leave.

5 Q: Did you ever hear Jimmy get mad?

6 A: No, other than he just said, I don't think your daddy has
7 worked on anything of mine.

8 Q: Did you see Jimmy's demeanor change?

9 A: No, not --- not in an aggressive way.

10 Q: If you had to describe Tommy McGee's demeanor to the
11 jury, how would you do that?

12 A: They were just carrying on about if your daddy worked on
13 my truck or if your daddy didn't work on my truck. I mean, it
14 wasn't really a heated argument, it was just, you know, I
15 really didn't see nothing happen until I turned around and it
16 was pretty much he was on the floor, it was all over with.

17 Q: And once you saw him on the floor, what did you do?

18 A: I ran over there like all the rest of us. We all tried
19 to break them apart and separate them and we got them apart
20 and ---

21 Q: And then after the beating, what did you do?

22 A: I think I went back over to the bar and I grabbed some
23 paper towels and I walked over to Jimmy and leaned over on him
24 and told him to roll over, don't let the blood -- his nose was
25 bleeding real bad, I said if you get choked on your blood -- I

1 said roll over on your side and I gave him a handful of paper
2 towels and asked him was he all right, and he asked me to give
3 him a minute, give him a few minutes. So, he spoke to me and
4 I said all right. I said, but you might better go to the
5 emergency room and get your nose checked; I think you might've
6 broke your nose, you know with a typical fight, you know. And
7 then I kinda made my way on out and left and went home, and I
8 got a phone call that morning that he had passed away.

9 Q: You called it a fight just then. Did you ever see Jimmy
10 throw any blows?

11 A: I didn't see Jimmy have the opportunity to throw no
12 blows.

13 Q: When Tommy McGee walked in, were you in any way
14 aggressive towards Tommy McGee?

15 A: No, I spoke to Tommy. I've seen Tommy before; I know
16 him. And, he asked me was we playing, and I said, yeah, we're
17 still playing. I think -- I said I just got beat; I'm fixing
18 to leave I think. And, he walked over and put his money on
19 the table and came back over, and then they started talking
20 because I had my back turned and was talking to the bartender.

21 Q: Now, were you aware of, of the victim and the Defendant
22 getting verbal with each other at any other location?

23 A: Hu-huh (negative response). I've never seen it before.

24 Q: How about any other location in the bar that night? Did
25 you see them arguing or fighting at any other location in the

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1 bar that night?

2 A: No, I didn't.

3 Q: Would you please answer any questions that Defense
4 Counsel might have?

5 A: Sure.

6 THE COURT: Ms. Parham, cross examination?

7 MS. PARHAM: Thank you.

8 CROSS EXAMINATION OF TERRY DEXTER FEAGIN BY MS. PARHAM:

9 Q: Were you there when the police got there?

10 A: No, ma'am.

11 Q: Why did you leave?

12 A: I was in the process of leaving anyway, and I didn't even
13 know if they were gonna call the police or they were gonna
14 take him to the emergency room their self or what was going
15 on.

16 Q: So, when did you leave?

17 A: Pretty much right after I asked him was he all right and
18 he said just give me a minute. I said, well give me a call if
19 you need anything. I'll talk with you later.

20 Q: Okay. So, basically, if we go back and watch the video,
21 then right before you leave, that's when you were able to
22 speak with him?

23 A: Right before, yeah, because after I spoke with him and
24 gave him paper towels and told him he needed to go the
25 emergency room and get his nose checked, I think it's broke,

1 I got back up then and walked back over to the bar and
2 gathered the pool sticks up and kind of helped Michelle
3 straighten up like I always do.

4 Q: Do you recall how, how long that was after he was on the
5 floor that you spoke with him?

6 A: I'd say five minutes or so.

7 Q: Okay.

8 A: Five or ten minutes, maybe.

9 Q: All right. And, so you just didn't think it was that
10 serious at that point?

11 A: I didn't; no, I really didn't.

12 Q: All right. And so you spoke with him and then you
13 straightened up the pool sticks and you left?

14 A: Yeah, pretty much that's what happened.

15 Q: And so when did the police first come and talk to you?

16 A: The following day, I believe.

17 Q: Okay. And do you recall making a handwritten statement
18 to the police on October 30th, 2015?

19 A: Yeah, I think Officer Jerry Gainey called me to his
20 office.

21 Q: Okay. And you mentioned to the prosecutor that Jimmy was
22 playing Ray in pool?

23 A: Yeah, because Ray was standing there. It was Ray's turn
24 to play him, because Ray had just beat me in the game. That's
25 why I was ready to leave because I didn't win. I don't think

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1 I even put my money back up to play again, because Jimmy was
2 racking them for Ray and when Jimmy walked back around, that's
3 when he and Tommy started talking with each other.

4 Q: Do you recall telling the police on October 30th, 2015,
5 Jimmy had won the game between he and I, so Tommy racked a new
6 game to play Jimmy, and they started playing?

7 A: I don't recall that.

8 Q: Let me show you this statement. May I approach the
9 witness to see if that refreshes your memory?

10 THE COURT: Yes.

11 A: I guess Tommy might've played Jimmy before Ray did, but I
12 know Ray beat me and Jimmy was racking them.

13 Q: All right. Well ---

14 A: I didn't even put my money back up to play again. I was
15 gonna get change.

16 Q: Is this your handwriting and your signature?

17 A: Yes, ma'am.

18 Q: And so did you in fact tell the police that Tommy racked
19 a new game to play Jimmy and they started playing?

20 A: Yeah.

21 Q: You told them that?

22 A: Yeah.

23 Q: And that you walked over to the counter to get change?

24 A: Yeah, I was gonna get change and that's when everything
25 happened, and so I never got change and I never played again.

1 Q: Okay.

2 A: I left.

3 Q: All right. And in the video, there's a scene where it
4 looks like you have two pool sticks in your hand and you're
5 kind of pounding them on the floor as you're talking to Tommy;
6 do you recall what you were saying to him?

7 A: I think I may have asked him if he wanted to use one.
8 One was like and 18 ounce and one was like a 17 ounce and I
9 was -- one is lighter than the other. I asked him if he
10 wanted to use one and I think he told me no.

11 Q: Okay.

12 A: So, I was gonna take them and hang them up.

13 Q: Okay. So, that's what you believe you were saying when
14 you approached him with the pool sticks?

15 A: Yeah.

16 Q: Okay. Had the fellow that you said that was from out of
17 town, had you ever played pool with him before?

18 A: Yes, I have.

19 Q: Okay. What's his name?

20 A: All I know is his name is Ray.

21 Q: Okay.

22 A: I don't know his last name.

23 Q: Had he played with you and Jimmy before?

24 A: Oh, yeah.

25 Q: Oaky. So -- so, who was kind of in the grove of people

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1 who played pool regularly? It would be you, Ray, Jimmy ---

2 A: Yeah, and there's another guy named Bruce that plays.

3 Q: Well, I should qualify, of the people who were there that
4 night ---

5 A: Yeah.

6 Q: --- who were the ones that played? You, Jimmy, and Ray?

7 A: Right. And, I mean, there was some more guys there, but
8 they had already left, too, you know.

9 Q: Okay. But of the ones remaining, that was kinda the
10 circle that played together?

11 A: Right.

12 Q: That's all I have. Thank you.

13 THE COURT: Any redirect?

14 MR. HOLT: None, Judge.

15 THE COURT: Mr. Feagin, you may step down, sir.

16 MR. HOLT: Judge, at this time, the State would like to
17 call Ms. Dana Barron.

18 CLERK: Ma'am, if you will please come up and place your
19 left hand on the Bible and raise your right hand.

20 DANA LAKESHA BARRON, HAVING BEEN DULY
21 SWORN TESTIFIES AS FOLLOWS:

22 CLERK: Please be seated and state your full name for the
23 record.

24 MS. BARON: Dana Lakesha Barron.

25 DIRECT EXAMINATION OF DANA LAKESHA BARRON BY MR. HOLT:

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DANA LAKESHA BARRON - DIRECT BY HOLT

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- 1 Q: Ms. Barron, and your first name is Dana?
- 2 A: Yes.
- 3 Q: And where do you live?
- 4 A: Lake City.
- 5 Q: Lake City?
- 6 A: Yes.
- 7 Q: Where are you from?
- 8 A: Lake City.
- 9 Q: Lake City; you spent your whole life in Lake City?
- 10 A: Yes.
- 11 Q: And how about where do you work right now?
- 12 A: Florence County Emergency Management.
- 13 Q: Okay. And how long have you worked there?
- 14 A: Almost five years.
- 15 Q: Okay. And in Emergency Management, what do you do?
- 16 A: We answer admin and 911 calls, dispatch fire, law
- 17 enforcement, and, EMS.
- 18 Q: And how does that work, can you tell us? If somebody
- 19 calls 911, what happens next?
- 20 A: It depends on the console you're working. When somebody
- 21 calls 911, you answer it, get as much information as you can,
- 22 it goes through the console that needs to be dispatched. So,
- 23 if I'm working EMS and law enforcement needs to be dispatched,
- 24 it'll go through the dispatcher that's dispatching law
- 25 enforcement and they will get the information and dispatch it

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1 over the radio.

2 Q: Okay. So, you don't hang up with the person calling 911
3 and then immediately get the police and say, hey, you need to
4 go here; that's not how it works?

5 A: No.

6 Q: All right. Now, how about in October 28th in the early
7 morning hours, like the first part like around 1:30, 2
8 o'clock, that area, 2015, were you working with Florence
9 County EMS -- Florence County Emergency Management?

10 A: Yes.

11 Q: All right. And was your job the same then as it is now?

12 A: Yes.

13 Q: All right. Now, I want to show you something and without
14 telling --- permission to approach, Judge?

15 THE COURT: Yeah.

16 Q: Without telling the jury what it is, can you tell me if
17 you recognize it?

18 A: Yes.

19 Q: And if the record reflect, I'm showing our exhibit,
20 what's been marked for identification purposes as Exhibit 1.
21 And, have you seen that item before?

22 A: Yes.

23 Q: And since the last time you seen it, have there been any
24 changes, alterations, or deletions made?

25 A: No.

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1 Q: And can you tell the jury what that item is?

2 A: It's a copy of the 911 call.

3 Q: And who received that call?

4 A: I did.

5 Q: And was that a call from October 28th, 2015?

6 A: Yes.

7 MR. HOLT: And, Judge, at this time, the State would ask
8 to move Exhibit 2 into evidence -- Exhibit ---

9 THE COURT: It's not 2, 2 is already in.

10 MR. HOLT: 1.

11 THE COURT: Any objection?

12 MS. PARHAM: No, Your Honor.

13 THE COURT: Without objection, so admitted.

14 STATE'S EXHIBIT NUMBER 1

15 ADMITTED INTO EVIDENCE

16 MR. HOLT: Judge, at this time, I'd like to ask
17 permission to play it.

18 THE COURT: Yes, sir.

19 (REPORTER'S NOTE: State's Exhibit 1 published to the Jury -
20 not transcribed herein.)

21 BY MR. HOLT:

22 Q: Now, was that your voice?

23 A: Yes.

24 Q: And did you receive that call?

25 A: Yes.

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DANA LAKESHA BARRON - CROSS BY PARHAM

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1 Q: Okay. I don't have any further questions for you. If
2 you'd please answer any that Defense counsel might have.

3 THE COURT: Ms. Parham, cross examination?

4 MS. PARHAM: Thank you.

5 CROSS EXAMINATION OF DANA LAKESHA BARRON BY MS. PARHAM:

6 Q: What time did you receive that phone call?

7 A: It was around 1:40; somewhere around 1:40.

8 Q: Do you have a log that tells you exactly what time?

9 A: We do.

10 Q: Okay. Did you bring that with you?

11 A: I didn't.

12 Q: Okay. May I approach?

13 THE COURT: Yes, ma'am.

14 Q: Is that the CAD file?

15 A: Yes.

16 Q: Okay. Can you tell from that what time you received the
17 call?

18 A: I can't tell from this one. This is not ours.

19 THE COURT: Speak up please, ma'am. Would you speak up?

20 Q: So this CAD Report, can you tell from that what time you
21 called -- when you received the call?

22 A: I can't from here. This looks like the EMS report;
23 that's not from dispatch.

24 Q: So those times on here are from EMS and not your agency?

25 A: This one is, yeah.

1 Q: Okay.

2 A: It was received at 1:41.

3 Q: 1:41, okay. And then what time was it dispatched?

4 A: 1:43.

5 Q: Okay. Thank you. That's all I have. Thank you.

6 THE COURT: Mr. Holt?

7 MR. HOLT: No follow-up, Judge.

8 THE COURT: Ma'am, you may step down.

9 MR. HOLT: And, Judge, can Ms. Dana be excused, please?

10 THE COURT: Any objection?

11 MS. PARHAM: No, sir.

12 THE COURT: Ma'am, you're free to go. You have no
13 further responsibilities here. Have a nice afternoon.

14 A: Thank you.

15 MR. HOLT: At this time, the State would call Wesley
16 Dorrell to the stand.

17 COURT REPORTER: Mr. Holt, may I have those 2 exhibits
18 back up here, please?

19 THE COURT: 1 and 2?

20 COURT REPORTER: Yes, sir.

21 CLERK: Sir, if you will please step up, please stand and
22 place your left hand on the Bible and raise your right hand.

23 WESLEY DORRELL, HAVING BEEN DULY

24 SWORN TESTIFIES AS FOLLOWS:

25 CLERK: Please be seated and state your full name for the

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WESLEY DORRELL - DIRECT BY HOLT

1 record.

2 MR. DORRELL: My name is Wesley Dorrell.

3 DIRECT EXAMINATION OF WESLEY DORRELL BY MR. HOLT:

4 Q: How do you pronounce your last name?

5 A: Dorrell.

6 Q: There's some debate in my office.

7 A: Dorrell, some pronounce it Dorrell, but ---

8 Q: Where are you currently employed?

9 A: Lake City Police Department.

10 Q: And in what capacity?

11 A: Patrol Sergeant.

12 Q: Patrol. How about in October of 2015, where were you
13 employed?

14 A: Lake City Police Department.

15 Q: In what capacity?

16 A: Sergeant Patrol.

17 Q: Okay. About how long have you been in law enforcement?

18 A: I've been in law enforcement since January of 2007, 10
19 years.

20 Q: Ten years. And can you explain to the jury what the
21 duties of somebody who works patrol -- what a patrol officer
22 duties might be, sir?

23 A: We do property checks, we respond to service calls,
24 anything from a general alarm in a business or a house, we
25 traffic enforcement, things like that.

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WESLEY DORRELL - DIRECT BY HOLT

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1 Q: All right. And you say you respond to calls?

2 A: Yes, sir.

3 Q: Did you happen to respond to a call; do you know where
4 The Office is?

5 A: Yes, sir.

6 Q: And did you happen to respond to a call there on the
7 night of the 27th, early morning hours of the 28th?

8 A: Yes, sir.

9 Q: Okay. And, and what did you find when you went to the
10 call?

11 A: When I arrived at the scene, I observed the victim inside
12 the business on the floor unconscious, bleeding profusely from
13 his face, unconscious.

14 Q: All right. And what steps did you take then? Who was
15 with you?

16 A: Patrolman Sikes was on my shift at the time. He was --
17 he was there maybe a minute before I was, somewhere in there.

18 Q: And as the sergeant on the shift, are you -- are you in
19 charge of Sikes?

20 A: Yes, sir.

21 Q: Okay. And so what did you and Sikes do when you got
22 there?

23 A: When we got there, we noticed his condition and knew that
24 we had to go ahead and get EMS on route, and I think the only
25 EMS emergency services that were free, were coming from Olanta

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WESLEY DORRELL - DIRECT BY HOLT

1 so we went ahead and notified first responders with Lake City
2 Fire Department.

3 Q: And why did you do that?

4 A: Due to his condition. You know, his face was turning a
5 deep purple, he was -- he looked like he was barely breathing
6 and about to stop breathing.

7 Q: So, you weren't gonna wait around for EMS to come from
8 Olanta?

9 A: No, sir.

10 Q: All right. Well, what happened after that?

11 A: We made contact with a witness and also the victim's
12 girlfriend that was the bartender at the time.

13 Q: Okay. Did you develop a suspect?

14 A: Yes, sir.

15 Q: And who was the suspect?

16 A: He was positively identified by those two witnesses as
17 Tommy McGee.

18 Q: All right. And what did y'all do next? Did you leave
19 the scene or did you stay there?

20 A: I stayed there. When EMS arrived, Officer Sikes went to
21 the hospital with EMS. I notified Investigator Jerry --
22 Investigator Sergeant Jerry Gainey and he responded to the
23 scene.

24 Q: Now, why -- why is that, patrol officers, do y'all not
25 just start investigating the crime right time you get there?

1 A: No, sir. It's normal protocol with us so we called the
2 investigator out due to the seriousness of the crime.

3 Q: Okay. And when Jerry -- when Investigator Gainey got
4 there, what did y'all do next?

5 A: We started -- we reviewed the video tape, he started
6 speaking with witnesses and stuff like that, taking pictures,
7 and he took pictures, and I think Patrolman Sikes also had
8 taken some pictures.

9 Q: Okay. When you left the bar, what did you do?

10 A: We went to try to locate the suspect. I believe it was
11 myself, Investigator Patrick Miles, Investigator John Stewart,
12 Officer Sikes, Officer Odette Akers, who was with the Police
13 Department at the time and Sergeant Jerry Gainey.

14 Q: Now where did y'all go looking?

15 A: We went to his residence on Valley Street.

16 Q: And was he home?

17 A: No, sir; he was not home.

18 Q: Okay. Did you look around the house?

19 A: We did.

20 Q: And was there anything interesting about his house?

21 A: We went around to the back and I believe the back door
22 was open at the time. The screen door was shut, but the main
23 door was open.

24 Q: Uh-huh (affirmative response).

25 A: We made entry to the house and noticed that there were

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WESLEY DORRELL - CROSS BY PARHAM

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1 several long guns laying on a table. I believe it was in a
2 kitchen.

3 Q: And is the kitchen the room that's closest toward that
4 back door?

5 A: I can't recall.

6 Q: Okay. Were you able to find him there?

7 A: No, sir.

8 Q: All right. And after you left his house, what did you do
9 next?

10 A: We did -- I can't remember what officer made contact with
11 his father, but he stated that he hadn't seen him and after
12 that, I think once we cleared the call around 4:30; I think
13 that was my end of tour of duty.

14 Q: And so you clocked out?

15 A: Yes, sir; I went home.

16 Q: All right. Well do me a favor and please answer any
17 questions that Defense Counsel has for you. Okay?

18 A: Yes, sir.

19 CROSS EXAMINATION OF WESLEY DORRELL BY MS. PARHAM:

20 Q: Once Tommy realized y'all were looking for him, he turned
21 himself in at 8 o'clock in the morning, correct?

22 A: I can't recall what time it was, but he did turn himself
23 in the next day.

24 Q: Well, you say the next day, several ---

25 A: Well, several hours later.

- 1 Q: --- hours after the incident?
- 2 A: Yes.
- 3 Q: Because this happened in the wee hours of the morning?
- 4 A: Yes, ma'am.
- 5 Q: But he turned himself in to the police department?
- 6 A: I'm not sure if he turned himself in to the police
7 department or Florence County Sheriff's office.
- 8 Q: Okay. But he turned himself in?
- 9 A: Yes, ma'am.
- 10 Q: All right. Now when you got there, you appear in the
11 video to look at Mr. Welch with a flashlight and then you walk
12 away and you're kind of out of the picture for a while; what
13 were you doing during that time period?
- 14 A: I can't recall. I can't recall.
- 15 Q: Okay. And the officer that was with you would've been
16 Sikes?
- 17 A: Yes, ma'am.
- 18 Q: And he's out of the picture, too. Do you remember what
19 y'all were doing?
- 20 A: No, ma'am; I can't recall.
- 21 Q: Okay. And as a police officer, do you ever perform CPR?
- 22 A: No, ma'am.
- 23 Q: You wait for the first responders?
- 24 A: Yes, ma'am.
- 25 Q: And in this case, it was the fire department and they

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WESLEY DORRELL - CROSS BY PARHAM

1 weren't called until you called them and realized they were
2 needed?

3 A: Yes, ma'am.

4 Q: All right. And then -- and then after the fire
5 department showed up, were you there when EMS showed up?

6 A: Yes, ma'am, as far as I recall I was.

7 Q: And so the two men with the kind of yellow lapels that
8 kind of shined in the footage, those were the volunteer fire
9 department -- fire fighters that were doing the CPR, correct?

10 A: Yes, ma'am, as far as I can recall.

11 Q: Right. And then when EMS showed up, it looked like CPR
12 was continued, but not until an additional crew of EMS showed
13 up was there a stretcher and equipment to intubate Mr. Welch;
14 do you recall that?

15 A: No, ma'am; I don't recall.

16 Q: Okay. Are you aware that there's a difference in what
17 EMT basics can do and paramedics can do?

18 A: No, ma'am.

19 Q: 'You don't know anything about that?

20 A: No, ma'am; I have no medical training.

21 Q: Okay. Were, were you the one -- well, let me ask you
22 this, you said you reviewed the videotape?

23 A: Yes, ma'am.

24 Q: Okay. Who made the decision of what portion of the
25 videotape to copy in this case?

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MICHAEL SIKES - DIRECT BY HOLT

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1 A: I don't recall that. An investigator showed up on scene
2 and they took over from there.

3 Q: All right. You didn't make that decision?

4 A: No, ma'am.

5 Q: All right. And are you any relation to Retha Welch
6 Dorrell?

7 A: Not that I -- no, ma'am, not that I know of.

8 Q: Okay. That's all I have. Thank you.

9 MR. HOLT: No redirect, Judge.

10 THE COURT: Sir, you may step down.

11 Sir, if you'll hold on just a minute.

12 MR. HOLT: Judge, at this time, we would like to call
13 Patrolman Sikes to the stand.

14 CLERK: Sir, if you will please step up and place your
15 left hand on the Bible and raise your right hand.

16 MICHAEL SIKES, HAVING BEEN DULY SWORN

17 TESTIFIES AS FOLLOWS:

18 CLERK: Please be seated and state your full name for the
19 record?

20 MR. SIKES: Corporal Michael Sikes with the Lake City
21 Police Department.

22 DIRECT EXAMINATION OF MICHAEL SIKES BY MR. HOLT:

23 Q: Corporal Sikes, were you with the Lake City Police
24 Department in October of 2015?

25 A: I was.

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MICHAEL SIKES - DIRECT BY HOLT

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1 Q: In what capacity?

2 A: I was a patrolman on the Patrol Division.

3 Q: All right. And now you're a Corporal?

4 A: I am. I work with the Community Action Team.

5 Q: Okay. And how long have you been in law enforcement you
6 think?

7 A: Just over four years.

8 Q: So, not long?

9 A: No, sir.

10 Q: All right. On the night of the wee morning hours of
11 October 28th, 2015, it would've been a Tuesday night, like
12 Tuesday the 27th, that night just after 12:00 into the next
13 day, were you called to respond to The Office in Lake City?

14 A: I was.

15 Q: Okay. And did you?

16 A: Yes.

17 Q: And can you tell the jury a little bit about what
18 happened once you got there?

19 A: I responded to the scene at The Office. I arrived at
20 approximately about 1:47 is when I got on scene and I observed
21 the victim laying on the ground. He was bleeding profusely,
22 had a lot of swelling in his face. We, we were waiting on EMS
23 to come and it would take a while because they were coming
24 from Olanta, several minutes away. And, we were standing
25 there and Sergeant Dorrell instructed me to take some pictures

1 of the victim while he was -- while we were waiting on EMS
2 because we could tell this was a little bit of an abnormal
3 scene for an assault. While I was taking pictures, the flash
4 of the camera made it where I could see that his, his face and
5 ears were turning blue and it appeared that he was not
6 breathing. So, I notified our dispatch center that I believed
7 the victim was not breathing and that we needed to send some
8 first responders to come and help try and -- try and save him,
9 which they did.

10 Q: When they got there, what did you see them do?

11 A: When they arrived on scene, they immediately started CPR
12 on him.

13 Q: And after, after they got there and started working on
14 him, what did you do in relation to the case then?

15 A: Once he was loaded into the ambulance, I was instructed
16 by my supervisor to follow the ambulance to the hospital.

17 Q: Did you do that?

18 A: Yes, I did.

19 Q: And what did you see at the hospital and what did you do
20 there?

21 A: Once, once he was taken into the emergency room, they
22 were performing CPR on him throughout the whole time and
23 several minutes after I arrived, he was pronounced dead.

24 Q: And after he was pronounced dead, do you know about what
25 time of night that was?

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MICHAEL SIKES - DIRECT BY HOLT

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1 A: I don't recall.

2 Q: You know about how long after y'all arrived it was?

3 A: It, it -- I don't want to speculate. It, it was several
4 minutes, I know that.

5 Q: Was it more than 30 minutes or less than 30 minutes?

6 A: I would say it's more than 30 minutes. But again, that's
7 ---

8 Q: Now, and after the victim passed away, what did you do in
9 relation to the case then?

10 A: I called my supervisor, Sergeant Dorrell, and I informed
11 him that he had been pronounced dead.

12 Q: Okay. And why don't you just take the jury through what
13 happened next?

14 A: The on-call investigator was called and as well as
15 several other investigators responded to the scene and the
16 coroner arrived on scene. I was also instructed to take a
17 couple of -- a couple of photographs of the -- of the victim
18 there and so I did that as well.

19 Q: And were you part of any of the units that went out
20 looking for Tommy McGee?

21 A: Yes.

22 Q: Okay. And where did y'all go?

23 A: I do not recall the exact address, but it was -- it was
24 Mr. McGee's address on Valley Street.

25 Q: And did you go inside the home?

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MICHAEL SIKES - DIRECT BY HOLT

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1 A: Yes.

2 Q: Okay. And what did you notice about the home that
3 might've been peculiar?

4 A: I noticed that there were a lot of -- there were some
5 bags laid out and also the back door of the residence was --
6 was open, standing open.

7 Q: Now, when you went to the house, did you just go right up
8 to the back door like you knew him or what did you do? Did
9 they knock on the front door first?

10 A: I believe they did, yes.

11 Q: And was anybody at the back door when you knocked on the
12 front door?

13 A: No -- well, I don't remember specifically.

14 Q: But you knocked on the front door?

15 A: Yes.

16 Q: Then you go around to the back door ---

17 MS. PARHAM: Objection, leading his witness, Your Honor.

18 Q: You knocked on the front door first?

19 A: Yes.

20 Q: And then what did you do next?

21 A: I went around to the back.

22 Q: And was the back door open or closed?

23 A: Open.

24 STATE'S EXHIBIT NUMBER 34 THROUGH 47

25 MARKED FOR IDENTIFICATION

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BY THE COURT

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1 Q: Okay. I want to show you what's been previously marked
2 for identification purposes only as -- and I'm gonna ask you
3 without showing them to the jury, without saying what they
4 are, just ask you first if you recognize them?

5 A: Yes, I do.

6 Q: Okay. And since the last time you've seen them, have
7 there been any changes, alterations, deletions made; has
8 anything been digitally altered?

9 A: No.

10 Q: Let me see what numbers those are. And, Judge, at this
11 time, the State would ask to move State's Exhibit 38, 37, 39,
12 40, 42, 43, 34, 45, 46, 35, 47, 41, and 36 into evidence?

13 MS. PARHAM: I'd like a chance to look at those and make
14 any objections with Your Honor.

15 May we approach, Your Honor?

16 (REPORTER'S NOTE: A bench conference was held off the record
17 in the presence of but out of hearing of the jury.)

18 BY THE COURT:

19 THE COURT: Ladies and gentlemen, I'm gonna have to deal
20 with this outside of your presence. Rather than send you all
21 back there, I'm not exactly sure how long this is gonna take.
22 I'm gonna let you go home for the balance of the day. Do not
23 discuss the case. Do not discuss the case at all. As I've
24 said from the outset, you are to decide this case based solely
25 upon the testimony and evidence as presented in this courtroom

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BY THE COURT

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1 and nowhere else. I'm gonna ask you to be back in the
2 courtroom, back in your jury room tomorrow morning at 9:30.
3 Be back at 9:30 tomorrow morning and we will resume the trial
4 of this case as promptly at that time as possible.

5 Thank you very much. Have a nice evening. I'll see you
6 tomorrow.

7 (REPORTER'S NOTE: Jury exits courtroom. 4:39 P.M. The
8 following takes place outside the presence of the jury.)

9 THE COURT: Here are a few photographs, Mr. Holt, that I
10 held up here.

11 MR. HOLT: Will you answer me, what would -- I've
12 forgotten the point, Judge, what were you saying about these?

13 THE COURT: These are these photographs that I held up
14 here because they didn't need to be part of the grouping that
15 was given earlier and I just wanted to know what relevance
16 they were going to be, if there was any.

17 Now, we've gotten I think it was a total of 13
18 photographs or did I miss a number?

19 MR. HOLT: Judge, they were all out of order. We're just
20 getting them organized where we can talk about them.

21 THE COURT: Well and I had put them out of order to some
22 extent because I put the ones that I thought were somewhat
23 duplicative together, which were not necessarily in the order
24 that they were numbered. That's why they were out of order.

25 MR. HOLT: Yes, sir, and when I have to get them in

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BY THE COURT

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1 through, you know, through the witnesses, I have to make sure
2 that they in fact are the ones that took the photographs and
3 were there. So, we did it like that again and the numbers
4 that I iterated on the record ---

5 THE COURT: Are all the jurors gone? Mr. Sammie?
6 Well that's what I was wondering because I heard something
7 click.

8 CLREK: Maybe it was just the door shut.

9 THE COURT: I'm sorry, I just wanted to make sure.

10 MR. HOLT: Judge, the record can reflect Mr. Sammie is
11 back there opening drawers.

12 THE COURT: Mr. Sammie, all my jurors are gone?

13 BAILIFF: Yes, sir.

14 THE COURT: Okay. Very well. I'm sorry, Mr. Holt, go
15 ahead.

16 MR. HOLT: And the numbers that I iterated, would Your
17 Honor allow me to go through them again that these are the
18 photographs ---

19 THE COURT: Yes.

20 MR. HOLT: --- that Officer Sikes took and it's 34, 35,
21 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47. And per
22 his testimony, Judge, these are photographs that he took at
23 the scene and then when he left the scene, he went to Lake
24 City Hospital and took some additional photographs. That's
25 the photographs in question here.

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BY THE COURT

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1 THE COURT: And it's your desire to introduce every one
2 of those that you just listed?

3 MR. HOLT: Judge, I would be happy to reach some
4 agreement with Your Honor on what comes in and what doesn't,
5 but it's my desire to introduce them all; I mean, they all
6 tell the story.

7 THE COURT: Well, I understand. What I would like for
8 you to do, which has always been, is talk to Ms. Parham -- and
9 y'all may not agree on any of them; I don't know. But it is
10 y'all's responsibility to sit down, look at these, because
11 there's no need for me to address all 13 to 15 photographs if
12 y'all agree on them.

13 MR. HOLT: Judge, I don't think that Ms. Parham is gonna
14 be able to agree on any of them.

15 MS. PARHAM: I'll agree on some.

16 THE COURT: That's why you look at them. You've got 14
17 photographs, if I got my numbers right.

18 MS. PARHAM: You want me to go through?

19 I'm ready, Your Honor.

20 THE COURT: All right. Tell me what you agree on first,
21 Ms. Parham?

22 MS. PARHAM: Well, Your Honor, I agree on State's Exhibit
23 41 and 47 and then in these other piles, I agree to one. It
24 looks like there are several pictures that are the same.
25 First of all I agree to 41 and 47. And then it looks like 35

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BY THE COURT

1 and 36 are the same or very similar, so I just didn't
2 understand the relevance of both of them.

3 THE COURT: Okay. So the only ones you agree on is 41
4 and 47?

5 MS. PARHAM: Yes, and I agree to one of 35 and 36 and one
6 of 37, 38, 39, and 40. In other words, it looks there are
7 lots of pictures of the same thing.

8 THE COURT: Duplicative.

9 MS. PARHAM: Right.

10 THE COURT: All right.

11 MS. PARHAM: So, on 37, 38, 39, and 40, it appears to be
12 blood on the floor and some plastic packaging. You know, I'm
13 not sure of the relevance of this, but I would agree to one
14 just because it shows the position of everything. But I don't
15 understand the relevance and I think too much blood is kind of
16 more prejudicial than probative. But I think that one would
17 be admissible to show where everything was or maybe how the
18 body was lying on the floor. I don't know. So, but these
19 four look very similar, 37 through 40.

20 THE COURT: All right. What about 34?

21 MS. PARHAM: 34, 46, and 45 are all pictures of -- are
22 close-up photographs of the victim's face while at the
23 hospital after he's pronounced dead, and he has the airbag in
24 his mouth. So, all three of those are very close-up
25 photographs of his face, and I think all three of those are

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BY THE COURT

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1 more prejudicial than probative and I don't understand -- I
2 object because they're not relevant and I object because they
3 are more prejudicial than probative.

4 And I would add to my objection that there has been a lot
5 of testimony about the victim's appearance and the sequence of
6 events.

7 THE COURT: Okay. Now, what about photographs 42, 43,
8 and 44; I hadn't heard anything on those?

9 MS. PARHAM: Your Honor, all three of those are pictures
10 of him coming up with a white sheet at the hospital with his
11 arm coming out the side. There's one picture that has his
12 face but, again, I object as they are not relevant and that
13 they're more prejudicial than probative. I don't know why the
14 State would be admitting those, for what purpose they're being
15 admitted. Specifically, Your Honor, 42 and 43.

16 THE COURT: Yes, ma'am.

17 MS. PARHAM: Well, 42, the victim is lying on a stretcher
18 completely covered up by a white sheet; 43 completely covered
19 up with a white sheet with his left arm hanging out of the
20 sheet; and then 44 shows left arm hanging out as well as his
21 face.

22 THE COURT: All right. Anything else, Ms. Parham?

23 MS. PARHAM: No, Your Honor.

24 THE COURT: How about it, Mr. Holt?

25 MR. HOLT: Thank you very much, Judge. Your Honor, as

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BY THE COURT

1 Your Honor is well aware, I have to prove malice, either
2 express or implied, to prove that a murder took place here. I
3 think all of these photos are fair indicators of the amount of
4 malice that accompanied this act. I think, secondly and most
5 importantly, Ms. Parham has characterized this throughout her
6 opening statement and her questions as a bar fight. I think
7 these photos show that it went beyond a bar fight. It lets
8 the jury know that there's more here than the pitter-patter of
9 two drunks late at night slapping each other around some. I
10 think the victim's face rightly should come in to let the jury
11 know the level of abuse that it inflicted.

12 THE COURT: Can I see the pictures.

13 MR. HOLT: Of the face? And, Judge, these are pictures
14 45, 46, and 34.

15 THE COURT: 34.

16 MR. HOLT: Judge, the State would be happy with either 34
17 or 45. We'd be okay with losing two of them. Judge, we would
18 be okay with losing anything you believe to be duplicative.
19 But, we would just remind Your Honor that malice has to be
20 proven.

21 THE COURT: All right. I'll take a look at those. Now,
22 let me hear from you on 35 and 36?

23 MR. HOLT: 35 and 36, Judge, show the position of the
24 victim's head at the time Mr. Sikes, Officer Sikes arrival. I
25 would have the same argument for these as for the other

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BY THE COURT

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1 photographs.

2 THE COURT: Well, it's my understanding 35 and 36 are
3 same or similar, very similar; 37, 38, 39, and 40 are very
4 similar ---

5 MR. HOLT: I would ---

6 THE COURT: --- hold on. Of which Ms. Parham said she
7 would agree to one, correct, Ms. Parham?

8 MS. PARHAM: Yes, sir.

9 THE COURT: Okay.

10 MR. HOLT: Of those two, Judge, I would take 35; and of
11 these four, Judge, I would take 37.

12 THE COURT: You said 37?

13 MR. HOLT: Yes, sir.

14 THE COURT: All right. The only ones I think we have not
15 addressed is 42, 43, and 44; is that right?

16 MS. PARHAM: Yes, sir.

17 MR. HOLT: Yes, sir, Your Honor.

18 Judge, and the State's position would be that I do have
19 to prove that a murder occurred and, for a murder to occur,
20 you're gonna need a dead person, Judge.

21 THE COURT: All right. Anything else from the State?

22 MR. HOLT: No, sir, Judge.

23 THE COURT: Ms. Parham?

24 MS. PARHAM: No, Your Honor.

25 THE COURT: All right. So, what I have here, Ms. Parham

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BY THE COURT

1 agrees to 41, 47, 35, and 37; is that right, Ms. Parham?

2 MS. PARHAM: Yes, Your Honor.

3 STATE'S EXHIBIT NUMBERS 35, 37, 41, AND 47

4 ADMITTED INTO EVIDENCE

5 Your Honor, could -- this might be an odd request, but I
6 was wondering, could we show all the photographs right now
7 because I would hate for Your Honor to rule on these if there
8 are other photographs that are similar but less prejudicial.
9 I just didn't know if I might just look at all their exhibits
10 because, you know, rather ---

11 THE COURT: I tell you what ---

12 MS. PARHAM: --- than discuss them piece-meal ---

13 THE COURT: I've got 34, 45, 46, 42, 43, and 44 that I
14 want to look at that are still outstanding. In the meantime,
15 you all look at the remainder of photographs that the State
16 intends to use, what you can agree on and what you can't. Be
17 back at 9 o'clock in the morning and I'll address every one of
18 them at that point.

19 MS. PARHAM: Yes, Your Honor.

20 THE COURT: Sir, you may step down. Do not -- you are
21 not allowed to discuss your testimony at all with anyone.
22 When you return in the morning, before I bring the jury back
23 out, I'll have you come back around and take the seat where
24 you are right now and I'll make my ruling, and then we'll
25 proceed with the jury. Okay?

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BY THE COURT

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1 MR. SIKES: Yes, sir.

2 THE COURT: Thank you. You may step down.

3 MS. PARHAM: When would you like to take up the issue
4 about the witness that I just found out had had the stabbing?

5 THE COURT: It depends on when the State intends to ---

6 MS. PARHAM: Call him? Okay.

7 THE COURT: Yeah, or if they intend to call him.

8 MR. HOLT: I'd like to call him in the morning, Judge.

9 THE COURT: Well, okay. We'll deal with it before he
10 takes the stand in the morning. Okay?

11 MS. PARHAM: Yes, sir.

12 THE COURT: It's my understanding y'all told me at side
13 bar that they had had a fight in high school; how many years
14 ago?

15 MR. HOLT: I don't know, Judge. I found out about it on
16 my way in the courtroom this morning. When he looked at him
17 and realized he knew him.

18 MS. PARHAM: I would just like more information about it
19 because I'm kind of -- I just know that he stabbed my client;
20 that's all I know.

21 THE COURT: Okay. Well, I mean, you may know as much as
22 you just told me.

23 MS. PARHAM: Okay.

24 THE COURT: I don't know.

25 MS. PARHAM: All right.

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BY THE COURT

1 THE COURT: I don't know if he's given any statements on
2 it or not, but I expect the State will comply with discovery
3 rules.

4 MS. PARHAM: Thank you, Judge.

5 THE COURT: All right. 9 o'clock.

6 (RECESS - 4:59 P.M.)

7 *****OFF THE RECORD*****

8 END OF DAY ONE.

9 SEPTEMBER 13, 2017 - DAY TWO

10 (On the Record - 9:34 A.M.)

11 (REPORTER'S NOTE: The following takes place outside the
12 presence of the jury.)

13 THE COURT: All right. Prior to me taking the bench, I
14 met with the attorneys in chambers to discuss photographs that
15 were left with me overnight for me to review and make a
16 determination of what would be admissible and what would not
17 be admissible. I have reviewed the photographs as previously
18 stated and talked with the attorneys. I'll go ahead and put
19 my ruling on the record concerning such and then I'll give the
20 attorneys an opportunity if they wish to add anything.

21 Prior to breaking yesterday, photographs 41 -- State's
22 Exhibit 41, 47, 35, and 37 were admitted into evidence without
23 objection, which left 34, 45, 46, 42, 43, and 44. Based upon
24 my review of those photographs, I am going to allow photograph
25 number 42 into evidence, as well as photograph number 45 into

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BY THE COURT

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1 evidence as conveyed to the attorneys in chambers. The
2 Defendant is charged with murder under Section 16-3-10, murder
3 is the killing of any person with malice aforethought either
4 expressed or implied. Pursuant to case law, malice in the
5 notes of said statute, malice is a term importing wickedness
6 and excluding a just cause or excuse. Furthermore, in the
7 context of murder, malice does not require ill will toward the
8 individual injured, but rather it signifies a general
9 malignant recklessness of the lives and safety of others or a
10 condition of the mind, which shows a heart regardless of
11 social doing and fatally bent on mischief. The photographs
12 that I'm allowing into evidence corroborate testimony. And
13 more specifically, photograph number 45, which is a facial
14 shot of the victim, corroborates the testimony of State's
15 witness, Mr. Terry Feagin, as well as Mr. Wesley Dorrell, and
16 Michael Sikes. Testimony being that the victim had
17 significant injuries to his face, that he was bleeding
18 profusely and there was a lot of swelling in the victim's
19 face. Photograph 45 corroborates such and certainly aides the
20 State in proving malice as previously defined by this Court.
21 It will certainly help the jury understand the nature of the
22 attack as well as the injuries of the victim. While the
23 photograph is certainly not pleasant to look at, so to speak,
24 it certainly corroborates testimony that's been elicited from
25 the stand. And the test, standard so to speak, is not whether

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BY THE COURT

1 the evidence is prejudicial but whether there is a danger of
2 unfair prejudice that substantially outweighs the probative
3 value of the evidence. I believe that the photographs, more
4 specifically photograph 45, is more probative and more
5 probative than prejudicial, and the mere fact that a
6 photograph is gruesome is not reason for its exclusion.
7 That's the basis of my ruling in admitting such photographs.

8 With regards to photograph 33 -- I'm gonna give this back
9 to you, Mr. Holt -- this is something the pathologist could
10 testify to concerning that. So, I'm not gonna rule on the
11 admissibility of that at this time. It will be based upon the
12 testimony that's elicited from the stand whether or not such
13 is corroborated. All right?

14 MS. PARHAM: May I just renew the objection on the record
15 ---

16 THE COURT: Absolutely.

17 MS. PARHAM: --- before the jury comes in.

18 THE COURT: Yes, ma'am.

19 MS. PARHAM: With regard to pictures 42 and 45, Your
20 Honor, we believe that there are other photographs that would
21 be the photograph of the victim on the floor of the bar that
22 better depicts the testimony of the individuals who testified
23 earlier because that was more proximate. Those are more
24 proximate in time while he was still at the bar on the floor,
25 that would've been around 1:45 when police got there. And Mr.

BY THE COURT

1 Feagin testified that he left prior to the police getting
2 there and so those photographs were taken obviously at the
3 hospital after the victim was pronounced dead. I believe
4 after 3 o'clock in the morning, so it would've been a
5 substantial time delay between the time that the witness saw
6 the victim and when the swelling had set in and things like
7 that. So, we would just renew our objection that the
8 prejudice outweighs the probative value on Government's
9 Exhibits 42 and 45.

10 THE COURT: Very well. So noted.

11 STATE'S EXHIBITS NUMBERS 42 AND 45

12 ADMITTED INTO EVIDENCE

13 THE COURT: Anything before I bring the jury in?

14 MR. HOLT: No, sir, Your Honor.

15 THE COURT: Sir, if you'd come back around and take the
16 stand.

17 Bring me the jury please, sir.

18 Sir, I will remind you that you're still under oath,
19 okay?

20 MR. SIKES: Yes, sir.

21 THE COURT: And I'll ask you this before the jury comes
22 in. Did you comply with the Court's instructions not to
23 discuss your testimony?

24 MR. SIKES: Yes, sir.

25 THE COURT: Very well.

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BY THE COURT

1 MR. HOLT: Judge, just briefly, so that the records clear

2 ---

3 THE COURT: Somebody tell him to hold up just a second
4 then.

5 MR. HOLT: And I apologize for this. It was just brought
6 to my attention that I may have failed to ask to be released
7 Michelle Gibson, Terry Feagin, and Wesley Dorrell from their
8 subpoenas and I will so move at this time.

9 MS. PARHAM: No objection, Your Honor. And as we also
10 discussed in chambers, I would object to any other testimony
11 about long guns at my client's house.

12 THE COURT: Well, if he testifies of that you may
13 certainly make an objection. It's not my understanding ---
14 he's already testified to that.

15 MS. PARHAM: No, no, another witness did, not this
16 witness.

17 THE COURT: Okay. Anything else?

18 MR. HOLT: That's all I have.

19 THE COURT: Tell him to bring the jury, please, ma'am.

20 (REPORTER'S NOTE: Jury enters courtroom - 9:44 A.M.)

21 THE COURT: Good morning, ladies and gentlemen, I hope
22 you all had a nice evening last night and are ready to proceed
23 today. What we are going to do is the State's going to
24 continue direct examination of this witness. At this time, I
25 am going to so recognize the State.

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1 Mr. Holt, you are so recognized. You may continue.

2 MR. HOLT: Thank you very much, Judge, if it pleases the
3 Court.

4 CONTINUATION OF DIRECT EXAMINATION OF MICHAEL SIKES BY MR.

5 HOLT:

6 Q: Officer Sikes, I did not make good notes on where we left
7 off yesterday, so I'm gonna start with a couple of questions.
8 Can you briefly describe to the jury what you witnessed when
9 you got there yesterday -- to the bar and The Office, describe
10 to them what your duties were just briefly and where you were
11 at when we left yesterday?

12 A: Would you like me to start from when I arrived on scene
13 again?

14 Q: Yes, sir.

15 A: Okay. So, I arrived at The Office about 1:47 in the
16 morning and I noticed the victim was lying on the floor
17 unconscious, bleeding profusely and had a great amount of
18 swelling in his face, facial area. Again, as I stated
19 yesterday, Sergeant Dorrell instructed me to take some -- some
20 -- some photographs of the victim where he was lying due to
21 the seriousness of his injuries as it appeared. As I took
22 those pictures, the flash of the camera showed that he was
23 appeared to be turning purple or blue, which led me to believe
24 that he may not be breathing. So I called for first
25 responders and the fire department responded and immediately

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1 started CPR on him when they arrived.

2 Q: Can you tell the jury why the fire department came
3 instead of what they would consider to be an ambulance?

4 A: The fire department are considered to be first responders
5 if there's a serious incident. They can respond to the scene
6 quicker than -- a lot of times quicker than EMS can make it
7 there and can a lot of times implement life-saving procedures
8 to, to try and help the victim. And again as I stated
9 yesterday, EMS was coming from Olanta, so that's -- it would
10 be several minutes before they would be able to make it on
11 scene.)

12 Q: And then after you left The Office, where did you go
13 then?

14 A: I followed the ambulance to the hospital.

15 Q: I waited as the doctor and the nurses worked on him for a
16 while and shortly after, he was pronounced dead. I was then
17 asked to take some photographs of him at the hospital as well.

18 A: All right. Officer, I want to show you what's been
19 marked and entered into evidence as State's Exhibit 47, 35,
20 41, 37, 45, and 42 and permission to approach, Judge?

21 THE COURT: Yes, sir.

22 Q: I'm gonna hand you these and I want you to look at them
23 and I want you to ask me if you recognize them and, if you do
24 so recognize them, I'd like you to tell the jury where you
25 recognize them from.

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1 A: Yes, I do. These are the photographs that I took at The
2 Office bar as well as at the hospital.

3 Q: All right. And with the Judge's permission, I would like
4 for you to hold up in order one photo at a time, give loudly
5 the number of the photograph, show it to the jury, and explain
6 to the jury what they're looking at.

7 A: This is Number 47, this is the front of The Office bar;
8 this was taken at the time of the incident or shortly after
9 the incident. This is Number 35, this is a photo that I took
10 of the victim laying on the floor shortly upon our arrival.

11 Q: Is that the photograph where you noticed the changes in
12 color?

13 A: It is and you can notice in the picture that he is
14 noticeably blue around the face and ears. Number 41 is a
15 photograph that I took after he was placed in the ambulance of
16 the -- the blood on the floor. 37 is another angle of the
17 area where he was lying and how he was oriented and how the
18 blood was left on the floor after he was placed in the
19 ambulance. Number 45 is a picture that I took in the hospital
20 shortly after he was pronounced dead. And Number 42 is just
21 an overall picture of him after he was pronounced dead in the
22 hospital.

23 Q: All right. And Officer, if you would just take your
24 time and answer any questions that Defense Counsel might have,
25 I would really appreciate it.

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MICHAEL SIKES - CROSS BY PARHAM

1 CROSS EXAMINATION OF MICHAEL SIKES BY MS. PARHAM:

2 Q: Did you interview any witnesses in this case?

3 A: I did not.

4 Q: Okay. Do you know was still at the bar when you got
5 there as far as witnesses?

6 A: I'm trying to think.

7 Q: Well, Terry Feagin had left before the police got there,
8 correct?

9 A: I don't -- I don't recall him being there

10 Q: And what about William Carey, Catfish; was he still there
11 when you got there?

12 A: I don't believe I ever met him. I wouldn't recognize him
13 if I ---

14 Q: Okay. So, those two individuals left before the police
15 got there?

16 A: I'm not sure; I didn't see them when I was there.

17 Q: Okay. And what time -- you arrived at 1:47?

18 A: Yes.

19 Q: In your experience as a police officer, is it important
20 for the witnesses to any kind of crime to remain at the scene?

21 A: Yes.

22 Q: And why would that be?

23 A: So they could be interviewed about what happened so we
24 can keep track of them.

25 Q: And, and the interview would be better proximate in time

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1 to the time of the incident?

2 A: That depends on the type of incident. A lot of times
3 with a traumatic incident, you'll have people have problems
4 remembering things. Sometimes, it's better to interview them
5 later down the road, but ---

6 Q: You can't even make that determination of they're not
7 there when you get there?

8 A: Yeah, I would agree with that.

9 Q: Nothing further.

10 THE COURT: Any redirect?

11 MR. HOLT: Nothing, Judge.

12 THE COURT: Sir, you may step down. Thank you.

13 MR. HOLT: Judge, could this -- could Officer Sikes be
14 released from his subpoena?

15 THE COURT: Any objection?

16 MS. PARHAM: No objection.

17 THE COURT: Without objection. Sir, you're free to go;
18 you have no further responsibility here. Have a nice day.

19 A: Thank you, sir.

20 MR. HOLT: If we could get Ray Wright.

21 CLERK: Sir, if you'll please step around to the stand,
22 place your left hand on the Bible and raise your right hand.

23 RAY NATHAN WRIGHT, III, HAVING BEEN

24 DULY SWORN TESTIFIES AS FOLLOWS:

25 CLERK: Please be seated and state your full name for the

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RAY NATHAN WRIGHT - DIRECT BY HOLT

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1 record.

2 MR. WRIGHT: Ray Nathan Wright, II.

3 DIRECT EXAMINATION OF RAY NATHAN WRIGHT, III BY MR. HOLT:

4 Q: Mr. Wright, how old are you?

5 A: I'm 35.

6 Q: And where do you currently reside?

7 A: Landrum, South Carolina.

8 Q: And where is Landrum for those of us who don't know?

9 A: It is on the other side of the state about a mile before
10 you go into North Carolina.

11 Q: Okay. What were you doing -- do you ever have occasion
12 to visit Lake City?

13 A: I used to, yes, sir.

14 Q: And why would you go to Lake City?

15 A: Well, I'm still in the same profession, but the company I
16 worked with, South Carolina Tel-Con, I built and maintained
17 cell phone towers.

18 Q: All right. And your work took you to Lake City?

19 A: Yes, sir. We was down there working on a big project for
20 Farmer's Telephone.

21 Q: And how about in October of 2015, were you in Lake City
22 frequently?

23 A: Yes, I was.

24 Q: Did you get to know people in Lake City?

25 A: Yes, sir.

1 Q: Did you spend time going out and being social in Lake
2 City?

3 A: Yes, sir.

4 Q: All right. Have you ever been to the bar called The
5 Office?

6 A: Yes, sir.

7 Q: Now on October 28th, it would have been a Wednesday,
8 2015, early morning hours, so really it's like a continuation
9 of Tuesday night, would you have gone to The Office that
10 night?

11 A: Yes, sir; I did.

12 Q: And can you tell the jury like, you know, about what time
13 you got there and what you were up to?

14 A: I would say I got there around 9:30, 10 o'clock, and I
15 was playing pool and having a few beers winding down for the
16 evening.

17 Q: Now, who all was there?

18 A: At that time, when I got there, myself; the bartender,
19 Michelle; Catfish, the owner; I believe Spencer was there;
20 Terry; and probably a few other people that I don't remember.

21 Q: Okay. And y'all were just playing pool?

22 A: Yes, sir.

23 Q: Now, did you know the victim in this case, Jimmy Welch?

24 A: Yes, sir, only from there.

25 Q: Okay. And did you know the Defendant in this case, Tommy

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1 McGee?

2 A: Yes, sir.

3 Q: And who do you think you knew better?

4 A: Probably Tommy I would say at the time.

5 Q: Okay. And, and were you in contact with these guys; did
6 you call them whenever you were gonna go out or did you just
7 meet them in Lake City?

8 A: Tommy, yes, sir, I did. I would call him on occasion
9 when I was out and he would come play pool with me.

10 Q: All right. And did Tommy come to the bar that night?

11 A: Yes, he did.

12 Q: And what were you and him doing?

13 A: We were playing pool.

14 Q: Okay. And probably, just to get the jury straight, had
15 you been drinking alcohol that night?

16 A: Yes, sir; I had.

17 Q: And probably how many did you have?

18 A: Five to six beer probably.

19 Q: All right. And can you tell the jury what you witnessed
20 that night?

21 A: Yes, sir. An altercation between Tommy and Jimmy, which
22 at -- after exchanging words, Jimmy was known to be a loud
23 person, I heard him say that they were -- well, I heard him
24 say that he didn't owe his father any money, which led me to
25 believe they were arguing about money.

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1 Q: Okay. Now, when you say arguing, did you hear or notice
2 in Jimmy's demeanor any aggression or anger?

3 A: No, sir.

4 Q: All right. And what happened next?

5 A: They exchanged words a few times. After that, you know,
6 I just kind of backed out of it because I'm not the kind of
7 person to get into other peoples' business, but I did notice
8 they were talking about it back and forth.

9 Q: And what happened after that?

10 A: Jimmy approached the bar next to me. I was standing next
11 to Tommy and I believe he reached toward his beer on the bar
12 and that's when Tommy hit him the first time.

13 Q: Okay. And what happened next?

14 A: Tommy proceeded to hit him numerous times after he was
15 unconscious, I believe.

16 Q: Before Tommy hit him numerous times after he was
17 unconscious, did you know that violence was about to happen?

18 A: No, sir, but it was likely to happen. Like I said,
19 that's why I keep to my own -- keep to myself when things like
20 that happen, especially in a bar.

21 Q: I understand that. What happened after that?

22 A: Well, we broke the fight up. Tommy left, and I cared for
23 Jimmy until the paramedics got there.

24 Q: Okay. Are you aware that there was maybe some time lag
25 between the beating and 911 getting called?

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- 1 A: Yes.
- 2 Q: And can you tell me why that was?
- 3 A: At the time, we didn't think it was as bad as it was
- 4 until I realized that it was and I told them they should --
- 5 they needed to call someone.
- 6 Q: And you spent a lot of time looking after the victim
- 7 after the beating, didn't you?
- 8 A: The entire time, yes, sir.
- 9 Q: Okay. And did you stay until law enforcement got there?
- 10 A: Yes, sir; I did.
- 11 Q: And did you speak with law enforcement?
- 12 A: Yes, sir; I did.
- 13 Q: And what happened after that, after you spoke to law
- 14 enforcement -- about what time did you get out of there that
- 15 morning?
- 16 A: Well, probably 4 o'clock in the morning.
- 17 Q: Did you make it to work the next day?
- 18 A: Yeah.
- 19 Q: Have you ever watched the video?
- 20 A: Yes, sir; I have.
- 21 Q: Okay. And where did you watch it?
- 22 A: I watched it that night with the police officers in the
- 23 back room where the recording -- recording device was. I
- 24 watched it here, as well.
- 25 Q: Now, do you think that video fairly and accurately

1 depicts what happened?

2 A: Yes, sir.

3 Q: Okay. At any other time in that night, did you see
4 Tommy, the Defendant, and Jimmy, the victim, did you ever see
5 them have another fight or another verbal altercation?

6 A: No, sir.

7 Q: Was there anything that led you to believe that this
8 incident, the beating, was a continuation of another incident?

9 A: No, sir.

10 Q: Okay. Mr. Wright, I appreciate you coming all the way
11 down from up top of the state. Please answer any questions
12 the Defense Counsel may have.

13 THE COURT: Cross examination?

14 MS. PARHAM: Thank you.

15 CROSS EXAMINATION OF RAY NATHAN WRIGHT, II BY MS. PARAHM:

16 Q: Good morning, Mr. Wright?

17 A: Good morning.

18 Q: You said that they were exchanging words and arguing.
19 About how long did that take place that night?

20 A: The actual argument?

21 Q: Yes.

22 A: Maybe five minutes or less.

23 Q: All right. And when you said that Jimmy had a tendency
24 to be loud, what did you mean by that?

25 A: He was just a loud person, not obnoxiously loud, he was

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1 just a very loud person. You know, when he walked in the
2 door, you knew he was there.

3 Q: Okay. And was this arguing that they were doing back and
4 forth, was it a loud argument?

5 A: Definitely Jimmy was, yes.

6 Q: Jimmy was loud?

7 A: Well, yes, sir -- yes, ma'am -- sorry.

8 Q: Okay. And to the best of your recollection, you recall
9 the argument being about his father?

10 A: About Mr. Welch, Jimmy, owing his father money, I believe
11 is what was said.

12 Q: Okay. And, and the best of your recollection is this
13 argument was around five minutes?

14 A: Yes, ma'am, may have been more or less.

15 Q: Okay. That's all I have.

16 THE COURT: Any more redirect?

17 MR. HOLT: No redirect, Judge, and I certainly ask that
18 Mr. Wright be relieved from his subpoena so that he can back
19 to the upper part of the state.

20 THE COURT: To Landrum?

21 MR. HOLT: Landrum.

22 THE COURT: Sir, you're free to go. You may step down.

23 A: Thank you, sir.

24 THE COURT: You have no further responsibilities here.
25 Have a nice day.

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1 Call your next witness, please.

2 MR. HOLT: Judge, at this time, the State would call Dr.
3 Nicholas Batalis.

4 CLERK: Sir, if you would please come up to the stand,
5 place your left hand on the Bible and raise your right hand.

6 NICHOLAS IKE BATALIS, HAVING BEEN
7 DULY SWORN TESTIFIES AS FOLLOWS:

8 CLERK: Please be seated and state your full name for the
9 record.

10 DR. BATALIS: My name is Nicholas Ike Batalis, and it's
11 B-A-T-A-L-I-S.

12 DIRECT EXAMINATION OF DR. NICHOLAS IKE BATALIS BY MR. HOLT:

13 Q: Mr. Batalis, could you please state your occupation?

14 A: Yes, I'm a forensic pathologist at the Medical University
15 of South Carolina.

16 Q: Are you a duly licensed physician?

17 A: Yes, I'm licensed to practice medicine here in South
18 Carolina.

19 Q: So, so really it's Dr. Batalis?

20 A: Correct.

21 Q: Okay. And how long have you been licensed to practice in
22 your profession?

23 A: When I was in training, I had a training license for two
24 or three years and then I've had my permanent license in South
25 Carolina for ten to twelve years now.

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1 Q: All right. Are you presently in the practice of your
2 profession?

3 A: Yes, sir.

4 Q: And where did you receive your training in pathology?

5 A: So, after graduating Medical School from Indiana
6 University, I then came to Charleston to MUSC to do a
7 residency training in general pathology. So, pathology is a
8 field of medicine that's a study of disease. So, a
9 pathologist would function in a couple of ways kind of behind
10 the scenes. If you have a biopsy taken, if you have a tumor
11 taken out by a surgeon, they would send that to the
12 pathologist. The pathologist would then determine if it's
13 cancer or if it's not cancer and would tell your surgeon or
14 your physician kind of what to do. A pathologist also
15 receives the clinical labs. So, if you have any blood work
16 done, it gets sent to the lab and a pathologist would be
17 overseeing all of that. So, I completed a four-year training
18 program in general pathology at MUSC. After completing that,
19 I then passed a national certification to become board
20 certified in what they call anatomic and clinical pathology or
21 general pathology and then went on for a one-year sub-
22 specialty fellowship, a specialty training in forensic
23 pathology at the Dallas County Medical Examiner's Office in
24 Dallas, Texas. Again, after that one year of specialty
25 training, I passed another board exam to become certified in

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1 forensic pathology and then I took my current position.

2 Q: And what is your current position again?

3 A: I'm a forensic pathologist at the Medical University of
4 South Carolina.

5 Q: And during the course of your work, do you perform
6 autopsies on people?

7 A: Yes, performing autopsy is one of the main things that we
8 do in forensic pathology.

9 Q: And probably how many have you done?

10 A: I don't have an exact log, but somewhere probably around
11 2,000 autopsies over the years.

12 Q: Okay. And many years has that been?

13 A: There were, again, four years during -- four or five
14 years of training and then I'm nine and a half years in my
15 faculty role.

16 MR. HOLT: Okay. Judge, at this time, the State would
17 move that Dr. Nicholas Batalis be qualified as an expert
18 examiner in the field of forensic pathology.

19 THE COURT: Ms. Parham?

20 MS. PARHAM: We stipulate.

21 THE COURT: Ladies and gentlemen, let me tell you
22 something real quick before we go any further in the case.
23 Normally, when a person testifies, they cannot give opinion
24 testimony. Normally, when a person testifies, they must
25 testify as to what they either saw, heard, or sensed by smell

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1 or something of that nature. However, there is an exception
2 when someone is qualified because of education or experience.
3 They are permitted to give their opinion in certain areas if
4 the Court qualifies them to do so. This witness, ladies and
5 gentlemen, will be qualified as an expert in the field of
6 forensic pathology, to give opinion testimony in that area.
7 That does not mean that you must accept the opinion, but it is
8 evidence for you to use in any way that you see fit and give
9 it the weight and credibility that you believe is appropriate.

10 You may continue, sir.

11 MR. HOLT: Thank you very much, Judge.

12 BY MR. HOLT:

13 Q: Dr. Batalis, did you have occasion to perform an autopsy
14 on James E. Welch on October 29th, 2015?

15 A: Yes, I did.

16 Q: And can you tell the jury a little bit about how that
17 autopsy proceeded and what you learned?

18 A: Could you clarify what you mean by how the autopsy
19 proceeded?

20 Q: Well, just walk the jury through the steps of a typical
21 autopsy and then I'll ask more specific questions.

22 A: Sure. So, when we receive an autopsy, we perform
23 autopsies for various counties across the State. We will take
24 information down from a coroner who reports the case. We then
25 bring the body into our autopsy suite. We take a set of

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1 photographs before we manipulate the body in any way. We'll
2 then document any clothing, any medical gear, kind of anything
3 that's on the body. We then remove that sort of stuff, get
4 the body cleaned up, take another set of photos after the body
5 is cleaned and nude, and then perform an external exam.

6 So, an external exam is basically just a head-to-toe
7 examination of the body. We're looking for basic stuff like
8 identifying eye color, hair color, tattoos, and then also
9 evidence of any natural disease, and then evidence of trauma.
10 After we complete that external examination, we then move on
11 to the internal exam part, where we make surgical type
12 incisions and go through the internal organs one by one,
13 again, looking for any evidence of natural disease, any trauma
14 in an attempt to determine the cause and manner of death.

15 In the course of the autopsy, sometimes we will collect
16 fluids to submit for toxicology. Sometimes, we'll collect
17 tissues to look under the microscope. At the end of it, we
18 then put a report together that we then issue to the coroner's
19 office.

20 Q: And did you issue a report in this case?

21 A: We did.

22 Q: And what was your findings for the cause of death?

23 A: So, the major findings in this case that led to the cause
24 of death was blunt head trauma or blunt force trauma of the
25 head.

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1 Q: And how did you discover these and what did you discover
2 that caused you to say blunt force head trauma?

3 A: Sure. So, the major findings as part of the external
4 exam, there were three lacerations or basically tears of the
5 skin, so not just a scrape, so that where the skin was
6 actually torn, kind of the bridge of the noes. Also, there's
7 a palpable fracture of the nose. So, there's one area that we
8 don't really examine very well at the autopsy and that's
9 actually the face because it could disfigure the body. So, we
10 don't really peel back the face, but just by palpation, you
11 could feel that the nose was fractured. So those were the --
12 and then additionally, there was one other thing and we call
13 it periorbital ecchymosis. So, that's basically a fancy word
14 that both of the eyes were swollen, kind of concentrically,
15 very symmetrically around both eyes were swollen and also had
16 a blue discoloration. Basically, the eyes were bruised and
17 swollen on both sides. So, those were the external exam
18 findings.

19 Once we got internally, we started seeing kind of each
20 layer we went we saw more trauma. So, the first thing we do
21 is we'll -- we'll peel the scalp back to examine the scalp and
22 the skull. Once we did that, you could see in the scalp there
23 was -- there were hemorrhages underneath the scalp, so we
24 couldn't necessarily see it on the outside of the head before,
25 through the hair and through the outside of the skin, but when

1 we pulled it back, you could see deep bruising on the scalp.
2 Then we opened the skull. When we did that, we saw that there
3 was bleeding around the brain in a couple of different areas.
4 So, there was -- you have a protective coating around the
5 brain called dura, so it just kind of help protect it a little
6 bit and let's your brain move around a little bit. So, he had
7 bleeding underneath that dura, so between the skull and the
8 brain. And you have another type lining on the brain called
9 the arachnoid layer. So, it's just a very -- again, it's
10 right against the brain. So, he had blood in two separate
11 areas surrounding the brain. We then took the brain out, we
12 could see contusions or bruises of the brain where the brain
13 would've kind of been slamming against the base of the skull
14 to cause bruises just like you would get on your skin. Once
15 we remove that, we could then see that there was an extensive
16 skull fracture that started on the right parietal area, so it
17 would be kind of the right side of the head and then went
18 across the base of the skull. So, kind of -- basically, the
19 base of your skull is kind of at ear or nose level and that
20 almost went all the way across to the other side. So, an
21 extensive skull fracture went from the right side of the head
22 almost all the way over to the left side of the head.

23 Q: Did you discover -- did you examine the rest of his body?

24 A: Yes.

25 Q: Did you discover anything else that could've caused his

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1 death?

2 A: We did not.

3 Q: Now, did you examine the victim's hands in any way?

4 A: Yes, we did.

5 Q: And did you discover any wounds to his hands?

6 A: On the back side of the left third finger, it looked like
7 there was a healing abrasion. So, kind of a scrape that had
8 been healing for, for some period of time. I can't tell if it
9 was a day or three days, but it wasn't something that happened
10 immediately before he died.

11 Q: All right. Permission to approach, Judge?

12 THE COURT: Yes.

13 Q: Dr. Batalis, I want to show you what's previously been
14 marked as State's Exhibit 33 and I want to ask you if you are
15 familiar with that -- with what it is?

16 A: Yes, I am.

17 Q: And since the last time you've seen what's been marked
18 for identification purposes only as State's Exhibit 33, have
19 there been any changes, alterations or deletions made?

20 A: No, there have not.

21 Q: Can you tell me and the jury what State's Exhibit 33 is?

22 A: State's Exhibit 33 is a picture I took during the course
23 of the autopsy of the decedent's brain.

24 MR. HOLT: And, Judge, at this time, the State would ask
25 to enter State's Exhibit 33 into evidence.

1 THE COURT: Any objection?

2 MS. PARHAM: Yes, subject to our earlier objection, Your
3 Honor.

4 THE COURT: All right. Over Defense Counsel's prior
5 objection, State's Exhibit 33 is admitted into evidence.

6 MR. HOLT: Thank you very much, Judge.

7 STATE'S EXHIBIT NUMBER 33

8 ADMITTED INTO EVIDENCE

9 BY MR. HOLT:

10 Q: Dr. Batalis, I'm sorry to interrupt you like, but you
11 could take State's Exhibit 33, show it to the jury and then
12 explain to them what they're looking at?

13 A: Sure. So, again, this is a photograph I took of the
14 decedent's brain at the autopsy. So, the brain has been
15 removed and then placed upside down. So, this would be the
16 bottom part of the brain, so we're looking at the under
17 surface of the brain. That part that's tagged here has
18 FA15720,, that's a unique case identifier just used for this
19 case, and that's sitting on this part of the brain here, which
20 we'd call your brain stem and cerebellum, so that sits really
21 kind of low and end the back of your head and controls your
22 breathing, you know, very important stuff there. And then
23 basically, the rest of this is the cerebrum. So, that's
24 really what takes up most of your cranial ball; it takes up
25 most of your head and the bulk of your brain. And what you

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1 can see I'm sure even from there, the normal brain should be
2 this same -- this tan color. So, again, down here it's
3 perfectly normal, it's normal here, but then towards the front
4 of the brain, on both sides, you see that there are large dark
5 red, purple areas. So, these are aggregates of that blood I
6 was talking about, some of that subdural and subarachnoid
7 blood and then there's also a little bit more pale areas, but
8 again, they are also kind of dark red that are the cerebral
9 contusions or the bruises to the brain. So, again, in
10 summary, this would be the under surface of the brain showing
11 multiple different areas of bleeding and contusions.

12 Q: And how did that -- how did that picture or even looking
13 at the brain in person that day, how did that inform your
14 decision for cause of death?

15 A: When we approach an autopsy, again we're looking for
16 different findings that, that could explain why they died.
17 And so as kind of as we're going through, it's almost like
18 solving a puzzle searching through. Once we -- and again, the
19 head is typically the last thing we examine and, again to that
20 point hadn't seen anything significant. Once you get to the
21 head -- again, each of the things I mentioned to you kind of
22 helps us determine the trauma. If you just had some of that
23 scalp hemorrhage, that would mean you took a pretty good blow
24 to the head, maybe could concuss you, but you're probably not
25 gonna die if you just have scalp hemorrhage. But then once we

)

1 start seeing the bleeding around the brain, that tells us
2 there was significant force. So, again, you know, it's more
3 force than just kind of falling down when we start getting
4 bleeding around the brain, again, same thing. As you see a
5 skull fracture, you know that that was additional force or
6 it's a significant force that was placed on his head. So,
7 kind of each finding you see, the bleeding in the different
8 areas, the bruising of the brain, the fracture, just kind of
9 keeps mounting up to show you the -- that there is an extreme
10 amount of pressure on the head or force on the head and that
11 the brain would have suffered due to that.

12 Q: Now, during a normal autopsy, if you see damage to the
13 right side of the brain, would that mean that the blow came
14 from the right side of the brain?

15 A: It can. Sometimes, you can get damage to the brain where
16 the blow is, other times you can get it on the opposite side.
17 And so kind of the simplest thing is, you know, if you would
18 hit me with a baseball bat right here, it could cave in the
19 skull, it could cause damage to the brain right underneath
20 where you hit me. The other thing that can happen though is
21 if I would fall to the ground, sure you could get some trauma
22 here, but then the brain will kind of go back and forth. If
23 there's trauma to the brain, the brain will kind of bounce.
24 So, you can get trauma where you're being hit, but then also
25 on the other side as the brain will kind of go back and forth.

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1 So, you can get trauma directly where you're hit but also on
2 the other side.

3 Q: And if one side of your head was stopped from moving and
4 was held against something hard, would that result in anything
5 different if you were hit on the side that was free, and the
6 other side was against something hard, that same type of thing
7 could happen?

8 A: Yeah. So, if one side is against a fixed surface,
9 there's gonna be more pressure that's gonna be sustained in
10 the head. So, I mean if you're at a, you know, hit me while
11 I'm standing up, my head can kind of move around, that force
12 coming from the blow, can kind of get dissipated or broken
13 away and the head's moving around. If the head is against an
14 object, a firm object, and it can't move, all that force is
15 gonna be directed into the head and, again, predominantly at
16 the point where it's against that firm surface because the
17 head can't move around. So, any force put onto the head will
18 be kind of transferred through the skull to wherever the head
19 is touching and not moving.

20 Q: Dr. Batalis, I appreciate you coming up here from
21 Charleston. Thank you for your time. Please answer any
22 questions that Defense counsel might have.

23 CROSS EXAMINATION OF DR. NICHOLAS IKE BATALIS BY MS. PARHAM:

24 Q: Good morning, Doctor.

25 A: Good morning.

1 Q: Certainly falling on a concrete floor could crack
2 someone's skull, correct?

3 A: From a standing height, it could.

4 Q: Okay. Now, do you make any kind of determination with
5 regard to blood loss when you do an autopsy?

6 A: If there's a significant amount of blood that remains in
7 the body, then we will make a determination.

8 Q: Did you do that in this case?

9 A: The bleeding around the brain was minimal. It was not to
10 the point that it accumulated enough there would be a
11 significant loss, so it was not detailed.

12 Q: All right. But you, once you receive a body, you don't
13 -- you don't know how much blood was lost, for example at a
14 crime scene?

15 A: It depends on the case. Sometimes, we'll see detailed
16 photos and videos of the crime scene, but much of the time,
17 that's true, that we don't know how much blood was left
18 outside the body.

19 Q: Okay. And the scalp and nasal areas bleed quite a bit,
20 correct?

21 A: Anything in the head and neck area can bleed quite a bit.
22 Regarding this case specifically, there were no external --
23 excuse me -- no external wounds on the scalp, so I wouldn't
24 expect any bleeding externally except for from the nose where
25 there were some tears and again the fracture of the nose.

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1 Q: Thank you. That's all I have.

2 THE COURT: Any redirect?

3 MR. HOLT: None, Judge. We'd also ask that his subpoena
4 -- he be released from his subpoena.

5 THE COURT: Any objection?

6 MS. PARHAM: No, Your Honor.

7 THE COURT: Doctor, you may step down. You're free to
8 go. You have no further responsibilities. Have a nice day.

9 A: Thank you, Your Honor.

10 CLERK: Sir, if you'll please place your left hand on the
11 Bible and raise your right hand.

12 JOHN STEWART, HAVING BEEN DULY SWORN

13 TESTIFIES AS FOLLOWS:

14 CLERK: Please be seated and state your full name for the
15 record.

16 MR. STEWART: It's Investigator John Stewart.

17 DIRECT EXAMINATION OF JOHN STEWART BY MR. HOLT:

18 Q: And Investigator Stewart, where are you currently
19 employed?

20 A: The Lake City Police Department.

21 Q: And how long have you been there?

22 A: A little over 10 years.

23 Q: How long you been in law enforcement?

24 A: Fifteen.

25 Q: Where did you work before?

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1 A: I did about 10 years with Lake City. I've worked with
2 the Clarendon County Sheriff's Office and Darlington County.

3 Q: And what specifically is your position at the Lake City
4 Police Department?

5 A: Narcotics officer, assigned to the Narcotics Division.

6 Q: And what does a narcotics officer do?

7 A: We normally investigate narcotics complaints from the
8 community.

9 Q: And on October 28th, 2015, were you employed with Lake
10 City Police Department?

11 A: I was.

12 Q: In what capacity?

13 A: Narcotics investigator.

14 Q: Okay. Now, did you have occasion to visit The Office,
15 it's a bar in Lake City, that night?

16 A: I did.

17 Q: And why did you do that?

18 A: I received a call from my supervisor, Investigator
19 Patrick Miles, telling me to come to The Office, there had
20 been an assault.

21 Q: Okay. And did you go?

22 A: I did.

23 Q: And what did you discover upon getting there?

24 A: When I got there, I was informed that the victim of the
25 assault had passed away and that the suspect was no longer on

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1 scene.

2 Q: All right. And what steps did you take then?

3 A: Got with the other patrol and the investigators there and
4 we went looking for the suspect at his residence.

5 Q: Now, I'm confused. Why would a narcotics officer be
6 involved in a beating at a bar?

7 A: We're normally called out because we're a small
8 department and we're there mainly for support to support the
9 Criminal Investigations Division.

10 Q: And did you do that that night?

11 A: I did.

12 Q: All right. Investigator Stewart, please answer any
13 questions that Defense counsel might have.

14 A: Yes, sir.

15 THE COURT: Cross examination?

16 MS. PARHAM: No questions.

17 THE COURT: Sir, you may step down.

18 MR. HOLT: Judge, could he also be relieved from his
19 subpoena?

20 THE COURT: Any objection?

21 MS. PARHAM: No, Your Honor.

22 THE COURT: Sir, you're free to go. You have no further
23 responsibility here. Have a nice day.

24 A: Same Judge.

25 THE COURT: Call your next witness, please.

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BY THE COURT

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1 MR. HOLT: Thank you very much, Judge. At this time the
2 State would call Curtis Hancock.

3 BY THE COURT:

4 THE COURT: Okay. Before the next witness comes in,
5 we're gone take a short minute, a short break. I ask the jury
6 to step to the jury room. Do not discuss the case, do not
7 discuss the case at all. When you're ready to come back out,
8 if you'll knock on the door and let my bailiff know that
9 you're ready to come back out and we'll get you back in here
10 as quickly as possible.

11 Let me tell you before you go out, while you're in there,
12 I would ask that you all select a foreperson. The foreperson
13 cannot be Ms. Corbett. Select a foreperson, write the
14 foreperson's name on a piece of paper and give it to my
15 bailiff when you all come back out, and whoever you all select
16 as a foreperson will sit in the seat on the very front row
17 where this gentleman in the green shirt is seated. That will
18 be the foreperson's seat throughout the remainder of this
19 trial. The foreperson will be the only one to have assigned
20 seating, so to speak, throughout the remainder of the trial.
21 But if you'll do that while you're back there on your break
22 and write it down and give it to the bailiff before you come
23 back out.

24 Knock on the door when you're ready to come back out and
25 we'll get you back in here and continue the trial.

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BY THE COURT

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1 (REPORTER'S NOTE: Jury exits courtroom. 10:24 A.M.)

2 THE COURT: Sir, you can have a seat.

3 We'll stand down for a few minutes. One of the jurors
4 needed to go to the restroom. We'll stand down for just a
5 minute.

6 (RECESS - 10:24 A.M.)

7 *****OFF THE RECORD*****

8 (On the Record - 10:45 A.M.)

9 THE COURT: Thank you. Be seated please.

10 Anything before I bring the jury back out?

11 MR. HOLT: Not from the State, Judge.

12 THE COURT: Defense counsel?

13 MS. PARHAM: No, Your Honor.

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

15 (REPORTER'S NOTE: Jury enters courtroom. 10:45 A.M.)

16 THE COURT: All right. For the record, Mr. Timmons has
17 been elected or selected, however you want to put it, as the
18 foreperson of this jury. A couple of things I should have
19 told you all -- and that's been made a Court's Exhibit Number
20 1.

21 COURT'S EXHIBIT NUMBER 1

22 MARKED FOR IDENTIFICATION

23 THE COURT: Ladies and gentlemen of the jury, a couple of
24 things I probably should have told you before we started this
25 trial and that is, one, the person who usually sits in that

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CURTIS HANCOCK - DIRECT BY HOLT

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1 seat, is the one that gets selected as the foreperson of a
2 jury. The second thing is some of you may be cold in here.
3 My Court Reporter over here has got socks on, my Deputy Clerk
4 over here is wrapped up in a sweater. If I have anything to
5 do with the thermostat, and most days I do, it's gonna be cool
6 in here. I sit up here with a undershirt on, a shirt, a tie,
7 and this robe is part of my uniform so to speak, and so I'm
8 pretty hot natured, too. So, I want you to be comfortable. I
9 don't know that we have any blankets that I can give you
10 today, but just bring a jacket if you're cold up here. When I
11 went to college, I went to undergrad at the Citadel down in
12 Charleston. When I was there, they didn't have air
13 conditioner. You know, my wife and I, when we first got
14 married, kind of went back and forth a lot over the
15 thermostat. And I told her, I said when I was at the Citadel
16 we didn't have air conditioner and, as hot as I got, I
17 couldn't take off but so much clothes, but when I got cold, I
18 could put plenty of clothes on. So, I want you to be
19 comfortable and, if you need to bring a jacket, please bring a
20 jacket while you sit up here and serve this week. Okay?

21 At this time, ladies and gentlemen, we're gonna continue
22 the trial of this case.

23 Mr. Holt, you're so recognized. Call your next witness
24 please.

25 MR. HOLT: Thank you, Judge. At this time, the State

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1 would like to call Curtis Hancock to the stand.

2 THE COURT: Sir, if you'll come around to be sworn.

3 CLERK: Please come up to the stand and place your left
4 hand on the Bible and raise your right hand?

5 CURTIS AARON HANCOCK, HAVING BEEN

6 DULY SWORN TESTIFIES AS FOLLOWS:

7 CLERK: Please be seated and state your full name for the
8 record.

9 MR. HANCOCK: Curtis Aaron Hancock.

10 DIRECT EXAMINATION OF CURTIS AARON HANCOCK BY MR. HOLT:

11 Q: Curtis, how old are you?

12 A: Twenty-five.

13 Q: And where do you live?

14 A: Currently, I reside in Coward.

15 Q: Okay. And where are you from?

16 A: Around Coward.

17 Q: Where are you currently employed?

18 A: Florence County EMS.

19 Q: And how long have you been employed there?

20 A: I've been employed there full time since February. I did
21 start part-time work with them November of 2015.

22 Q: All right. How about on October 28th of 2015, where were
23 you employed at that time?

24 A: Full-time with Lake City Fire Department and had a part-
25 time job with a private transport company out of Kingstree,

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1 Adams Life Link.

2 Q: Okay. As far as your full-time gig back in 2015, what
3 were your duties, you know, and what kind of stuff did you
4 have to do as part of that position?

5 A: I was -- my title was firefighter engineer; just
6 firefighting operations, also with us we do respond to medical
7 calls as first responders.

8 Q: And as part of your first-responder job in 2015, on
9 October 28th early morning hours, I would say Tuesday night
10 but the reality of it is Wednesday morning, did you have
11 occasion to visit The Office?

12 A: I did.

13 Q: And how were you notified to be there?

14 A: We were notified by a dispatcher over the radio; they
15 toned us out.

16 Q: Okay. And when you arrived, what did you witness?

17 A: When we arrived, came walking in and found the victim
18 laying on the floor.

19 Q: All right. And what did you do next?

20 A: Came up, asked them, you know, a few basic questions,
21 kind of what happened, walked up to him, started assessing
22 him, saw where he was not breathing and did not have a pulse.
23 From then on we made a decision to start CPR and as a group,
24 everybody that showed up there from the fire department, we
25 started CPR on him.

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1 Q: You say you talked to the witnesses. You didn't speak to
2 the person on the ground, did you?

3 A: Just besides the assessment part of it trying to check
4 his responses, no.

5 Q: Okay. So, he wasn't breathing and he didn't have a
6 pulse, what did you decide to do?

7 A: Once that part was noticed, we said all right, we need to
8 start CPR. We rolled him over to his back, told -- actually
9 my brother was on the scene. I believe he was that began
10 chest compressions. While he started chest compressions, we
11 just started gathering everything that we needed as far as to
12 perform CPR. We have bag valve mask and oxygen to breathe for
13 him and also we placed an AD on him.

14 Q: What is an AD?

15 A: An AD is an external defibrillator.

16 Q: What does that do?

17 A: Once you place the pads on, it's actually a way you can
18 identify lethal rhythms. It's just certain rhythms it can
19 identify -- if it's able to shock, it will do a shock and try
20 to reset the heart.

21 Q: And did it send out any shocks that night?

22 A: No, it did not.

23 Q: Okay. How long did y'all perform CPR on him and what
24 happened next; who came next?

25 A: As far as a definite timeline, I don't recall. Once we

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1 got there, we might've had one or two more volunteers come in
2 and then just we worked him until EMS arrived.

3 Q: And after EMS arrived, what did y'all do?

4 A: Once EMS arrived, we just gave a quick basic handoff,
5 told them what happened -- kind of what we heard that
6 happened, what we done, and we were there to assist them.

7 Q: All right. And what did you do next?

8 A: Once EMS arrived, I gave them the report. We just
9 assisted load him up on the stretcher, loaded him up into the
10 truck. We -- Lake City Fire Department provided a driver and
11 I rode in the back to help EMS continue chest compressions and
12 CPR.

13 Q: And y'all continued that right up until when?

14 A: To the hospital.

15 Q: All right. When you got to the hospital, what did you
16 do?

17 A: To the hospital, just assisted them bringing him in and
18 transferred out -- they did the transfer to the hospital
19 personnel and, after that, we were done.

20 Q: All right. Now, is this your first time testifying?

21 A: Yes, sir.

22 Q: Thank you. Please answer any questions defense Counsel
23 might have.

24 A: Will do.

25 THE COURT: Cross examination?

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CURTIS HANCOCK - CROSS BY PARHAM

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1 MS. PARHAM: Thank you.

2 CROSS EXAMINATION OF CURIS AARON HANCOCK BY MS. PARHAM:

3 Q: Did y'all -- were y'all able to establish an airway or
4 did that happen when the ambulance got there?

5 A: With us, we were able to drop an oropharyngeal airway
6 with a piece of plastic -- a piece of plastic that pretty much
7 helps keep it open. We was not able -- we don't do any
8 advanced airways.

9 Q: You don't do intubation?

10 A: No, ma'am.

11 Q: That would be something when EMS got there?

12 A: That would be a paramedic's job.

13 Q: But, but you're able to put the piece of plastic and
14 squeeze the bag; did you squeeze bag?

15 A: With a bag valve mask, yes, ma'am.

16 Q: And you did that in this case?

17 A: Yes, ma'am.

18 Q: Do you remember what time you got there?

19 A: Dispatch -- we were dispatched at 1:52, and we arrived at
20 1:54.

21 Q: Dispatched at 1:52; arrived at 1:54.

22 That's all I have. Thank you.

23 THE COURT: Anything else?

24 MR. HOLT: None, Judge. We'd ask that -- we'd ask that
25 Mr. Curtis be allowed to go ahead and leave.

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JUSTIN TAYLOR - DIRECT BY HOLT

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1 THE COURT: Sir, you may step down.

2 Any objections, Ms. Parham?

3 MS. PARHAM: No, Your Honor.

4 THE COURT: You're free to go. You have no further
5 responsibilities here. Have a nice day.

6 A: Thank you, sir.

7 MR. HOLT: Judge, at this time the State would call
8 Justin Taylor.

9 CLERK: Sir, if you'll please come around to the stand.
10 Place your left hand on the Bible and raise your right hand.

11 JUSTIN TAYLOR, HAVING BEEN DULY SWORN

12 TESTIFIES AS FOLLOWS:

13 CLERK: Please be seated and state your full name for the
14 record.

15 MR. TAYLOR: My name is Justin Taylor.

16 DIRECT EXAMINATION OF JUSTIN TAYLOR BY MR. HOLT:

17 Q: Justin, I see you got a gun on your hip?

18 A: Yes, sir.

19 Q: Where are you currently employed?

20 A: Darlington County Sheriff's office.

21 Q: In what capacity?

22 A: Patrol deputy.

23 Q: How long have you been with Darlington County?

24 A: Five months.

25 Q: Five months. Do you like it?

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JUSTIN TAYLOR - DIRECT BY HOLT

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- 1 A: Oh, yeah.
- 2 Q: Now, before you were in law enforcement, did you have
3 another job?
- 4 A: Yes.
- 5 Q: And what was that?
- 6 A: Full-time paramedic at Florence County EMS.
- 7 Q: And how long did you do that job?
- 8 A: Four-and-a-half years.
- 9 Q: All right. Did you like that job?
- 10 A: Uh-huh (affirmative response).
- 11 Q: Okay. Now, specifically on October 28th in the early
12 morning hours of 2015, where were you employed on that day?
- 13 A: Florence County EMS.
- 14 Q: All right. And were you called out anywhere?
- 15 A: Uh-huh, (affirmative response).
- 16 Q: Were you called out to The Office?
- 17 A: The Office?
- 18 Q: The bar in Lake City?
- 19 A: Oh, yes, yes.
- 20 Q: Okay. Can you tell the jury a little bit about what you
21 saw when you got to The Office?
- 22 A: When my partner and I, when we arrived on the scene, you
23 had fire and police there. When we walked in, you had fire,
24 who is first responders, they were administering first aid,
25 CPR, and the victim was lying on the ground, and that's when

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JUSTIN TAYLOR - DIRECT BY HOLT

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1 we went in and started doing what we needed to do.

2 Q: And can you tell the jury specifically what you needed to
3 do and what steps you took?

4 A: Well, considering it was toned out as a unconscious
5 person resulting in a suspected fight, we suspected trauma.
6 So, when we got there, the first responders told us he wasn't
7 breathing, he doesn't have a pulse. So, that immediately
8 converts over to cardiac arrest. And simply, cardiac arrest,
9 you want to do CPR and you want to ventilate. Being in the
10 bar, you can't really perform many interventions other than
11 CPR and ventilate. So, we put him on a backboard because he
12 fell on the concrete and put the neck brace on, got him on the
13 backboard, put him on the stretcher, got him loaded in the
14 ambulance. And in the ambulance, that's when we started our
15 advanced interventions, which is as a paramedic, started an IV
16 for fluids and medications. I intubated him, which means
17 putting a tube down his throat to breathe for him better and
18 continued CPR, bagging him, which is ventilation, and
19 administering epinephrine, which is a cardiac drug for cardiac
20 arrest, and transported him to the hospital.

21 Q: And when you got to the hospital, what did you do?

22 A: To the hospital it's -- we relay the information to the
23 doctor, what we found, what we did, transfer him from our
24 stretcher to their bed and we release care to the hospital.

25 Q: And is that what you did that night?

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JUSTIN TAYLOR - CROSS BY PARHAM

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1 A: Yes.

2 Q: All right. And what did you do after that?

3 A: After the call, we cleared up from the hospital and we
4 went back to the station so I could do my report.

5 Q: Did you do your report that night?

6 A: To the best of my ability, I believe I did. It doesn't
7 give me a time stamp on here, but to the best of my ability, I
8 think I did do it that night before laying back down.

9 Q: Deputy, thank you for coming. Please give Defense
10 counsel your attention and answer any questions they have.

11 A: Okay.

12 THE COURT: Ms. Parham?

13 CROSS EXAMINATION OF JUSTIN TAYLOR BY MS. PARHAM:

14 Q: Good morning. What time did you get to the bar in Lake
15 City?

16 A: According to our dispatch, we arrived on scene at 02:02
17 that morning.

18 Q: So 2:02?

19 A: Yes, ma'am.

20 Q: And what time approximately did you get the victim into
21 the ambulance?

22 A: Approximately -- let's see here -- about 02:08 according
23 to my report documentation.

24 Q: And when you say meaning interventions can't be performed
25 in a bar, what do you by meaning interventions?

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JUSTIN TAYLOR - CROSS BY PARHAM

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1 A: I said certain interventions, meaning the advanced
2 interventions. You know we're trying to get him loaded up
3 ready to go as far as starting IV and stuff like that. Just
4 your kind of a crunch moment so you can do all that in the
5 ambulance.

6 Q: Right. And after any kind of trauma, would it be
7 important to get that going as soon as possible?

8 A: When it's a cardiac arrest event, your CPR and your
9 ventilations are your main concern.

10 Q: All right. And ---

11 A: CPR, that's what gets the blood going and gets the oxygen
12 going.

13 Q: And why is important to get people treatment from EMS as
14 soon as possible?

15 A: The better outcome possibly that they may survive.

16 Q: That's all I have.

17 THE COURT: Anything further?

18 MR. HOLT: Nothing, Judge. Nothing further from the
19 State and we'd ask that he be relieved from his subpoena.

20 THE COURT: Any objection, Ms. Parham?

21 MS. PARHAM: No, Your Honor.

22 THE COURT: Sir, you may step down. You're free to go.
23 You have no further responsibility here. Have a nice day.

24 A: Thank you, sir.

25 MR. HOLT: Judge at this time, the State would like to

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JERRY LOUIS GAINNEY - DIRECT BY HOLT

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1 call Officer Jerry Gainney.

2 CLERK: If you'll please place your left hand on the
3 Bible and raise your right hand.

4 JERRY LOUIS GAINNEY, HAVING BEEN DULY
5 SWORN TESTIFIES AS FOLLOWS:

6 CLERK: Please be seated and state your full name for the
7 record.

8 MR. GAINER: Jerry Gainney, Jerry Louis Gainney.

9 DIRECT EXAMINATION OF JERRY LOUIS GAINNEY BY MR. HOLT:

10 Q: Officer Gainney, what position do you currently hold with
11 Lake City Police Department?

12 A: Lieutenant over patrol.

13 Q: All right. And how long have you been in law
14 enforcement?

15 A: Since 1987.

16 Q: '87?

17 A: Yes, sir.

18 Q: And how many years is that?

19 A: Twenty-nine years.

20 Q: And how many positions -- how long have you been with
21 Lake City?

22 A: Going on 15 years.

23 Q: Where did you work before that?

24 A: Williamsburg County.

25 Q: On October 28th of 2015, where were you employed at that

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JERRY LOUIS GAINEY - DIRECT BY HOLT

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1 time?

2 A: Lake City Police Department.

3 Q: And in what capacity?

4 A: Over investigation.

5 Q: Okay. And how is investigations different than patrol?

6 A: Investigation is basically -- well, a patrol officer,
7 what they do is they go and they handle the complaints and
8 everything. If it's something that they need to be
9 investigated, like a break-in or something that occurred, they
10 go and do a report. They call me and then I come in and
11 investigator come and see if I can get the information and
12 dust for prints and so forth.

13 Q: So in October of 2015, you were over investigations?

14 A: Yes, I was.

15 Q: All right. Did you have occasion to get called out to
16 The Office the night of October 28th?

17 A: Yes, I received a call from Sergeant Dorrell stating that
18 it was an assault that took place at The Office or W.C. Bar
19 and I told him I'm on my way.

20 Q: Now you said W.C. Bar, can you explain to the jury why
21 you just said that?

22 A: Before they called it The Office place, I always known it
23 as the W.C. Bar.

24 Q: Now, was this in the 80s?

25 A: Yes, sir.

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JERRY LOUIS GAINNEY - DIRECT BY HOLT/

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1 Q: Investigator Gainney, what did you notice when you got
2 there?

3 A: When I pulled up to the scene, I met Sergeant Dorrell on
4 the outside and he told me what they had. I took pictures and
5 everything on the outside because the body already -- of the
6 victim was taken to the hospital already. When I got there, I
7 took pictures on the outside and I went on the inside. I saw
8 where they had a towel or something on the floor where the
9 blood was. Then I saw Sergeant Dorrell talking to a gentleman
10 at the table and I think his name was Ray. So at that time, I
11 think he was taking a statement from him and after I looked
12 around to -- seeing everything behind it, then what I done was
13 I went and took photos of everything on the inside.

14 Q: All right. Permission to approach, Judge?

15 THE COURT: Yes, sir.

16 Q: Investigator Gainney, I want to show you what's been
17 marked as State's Exhibit 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13,
18 14, 15, 16, 17, 18, 19, and 20, and without telling the jury
19 what those are, can you tell me if you recognize them?

20 MS. PARHAM: I have no objection to their admission.

21 THE COURT: All right.

22 MR. HOLT: Judge, at this time, the State would move into
23 evidence State's Exhibit 3 through 20.

24 THE COURT: Without objection, so admitted.

25 STATE'S EXHIBIT NUMBERS 3 THROUGH 20

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JERRY LOUIS GAINES - DIRECT BY HOLT

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1 ADMITTED INTO EVIDENCE

2 BY MR. HOLT:

3 Q: Now, Investigator Gaines, if you could do me a favor and
4 pull those photographs out one at the time and show them to
5 the jury and explain to the jury what they're looking at so
6 that they know.

7 A: This is an identification card of James Welch.

8 Q: Where was that found?

9 A: This was on the floor, right there on the floor. So I
10 took a photo of it.

11 Q: Yes, sir.

12 A: This is the outside of The Office place. This is another
13 photo of the outside with some cars that parked at The Office
14 place. Also the same way, this is -- about the same thing,
15 picture taken on the outside, different angle. This is
16 another picture taken on the outside on a different angle on
17 the other side of The Office place. This is the front picture
18 taken of The Office place. This is a picture taken inside the
19 door, once again inside on the right-hand side to the wall
20 side, but this is Mr. Ray sitting on the other side at the
21 time.

22 This is another angle of the place that was taken with a
23 camera ---

24 THE COURT: Officer, make sure that when you hold up a
25 picture and show the jury, reference what exhibit number it is

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JERRY LOUIS GAINEY - DIRECT BY HOLT

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1 before you start talking, please, so the record is clear on
2 that.

3 A: Okay. I think this Exhibit 10 is a photo taken inside at
4 a different angle of the pool table in The Office place where
5 the bar at. Exhibit 11 is another picture, I'm standing at
6 the back taking it forward so it can show the whole backside
7 of The Office place where he was inside the building. Exhibit
8 12, where I took a different angle of the bar, the area where
9 they were supposed to've been standing inside The Office
10 place. Exhibit 13 is another angle of the same shot, just a
11 closer in shot of the bar. Exhibit 14 is where another angle
12 with the pool table where the body was supposed to be lying
13 where the towels stuff were located at The Office place.
14 Exhibit 15 is another shot of the pool table area of The
15 Office place. Exhibit 16 is another angle of the shot where
16 the body was supposed to've been lying, just a different angle
17 shot. Exhibit 17 is another part of The Office place where
18 the restroom area at. Exhibit 18 another shot of the pool
19 table at a different angle where you could see across the room
20 where the pool table and the bar. Exhibit 19 is the closest
21 shot where the body was supposed to've been lying on the floor
22 of The Office place. And Exhibit 20, a different angle of the
23 body's supposed to be where the pool table at.

24 Q: All right. Investigator Gainey, after you took these
25 photographs, what did you do at that time?

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1 A: At that time, Sergeant Dorrell was still talking getting
2 a statement from Ray. I asked him, I want to see the video so
3 I could know what took place there myself. They took me in
4 the backroom shortly before -- after I got there, Investigator
5 Miles and Investigator Stewart came in, and what I did was
6 ask to view the tape of what took place. I viewed the tape
7 and shortly after that part, I got a call from the coroner
8 that said that they needed me to come to the hospital. So, I
9 asked Investigator Miles could he go ahead and get me a copy
10 of this and I give him the Fire Stick to go ahead and download
11 it so we can get the information that we need on it we need a
12 copy of, and I left there and went to the hospital. Upon
13 arriving to the hospital, they showed me that the victim had
14 deceased and I took photographs of the victim.

15 BY MR. HOLT:

16 Q: All right. What did you do next?

17 A: We all got together and try see if we can go to the
18 residence where Mr. Tommy live. We all got together and then
19 we went there. Upon arriving at the residence, I wasn't too
20 sure whether which house was his one. So I stood on the front
21 side of the door, knocked on the front door and no one didn't
22 come to the front door. Somebody went to the backside.

23 Q: And, and, and after y'all left his house, what did y'all
24 do next?

25 A: After we left the house and everything, no one didn't

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JERRY LOUIS GAINEY - DIRECT BY HOLT

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1 know exactly where he could be. We were trying to find
2 information where he might be. And later on, that's when I
3 got a call from Investigator Tilton, Roger Tilton.
4 Q: Had you been to sleep yet?
5 A: No, I had not.
6 Q: Okay. And you keep saying everybody.
7 A: Everybody worked with me was -- was Miles, Stewart, Akers
8 -- Officer Akers, Dorrell, Stewart. I forgot who the rest
9 that been there with us. We all went to the house together.
10 Michael Sikes also.
11 Q: Who was in charge though; who was in charge of everybody?
12 A: I was in charge of everybody going so we could try to see
13 could we apprehend him and talk with him.
14 Q: Because you're superior to them, right?
15 A: Correct.
16 Q: Okay. All right. And then the next day you hadn't been
17 to sleep, what happened?
18 A: We got a call that he had turned his self in.
19 Q: Okay.
20 A: Yes. I went up -- well, I went up there but he already
21 lawyer up so I didn't talk with him.
22 Q: You didn't talk with him and ---
23 A: So, I called and tried to get the rest of the -- the
24 witness there. I needed to talk to every one of them.
25 Q: So, you hunted the witnesses down?

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MOTION FOR MISTRIAL

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1 A: Right.

2 Q: Okay. And were they amenable to meeting with you?

3 A: Yes, I had no problem with it. I got some phone numbers
4 of them and I called them and they came in and we talked.

5 Q: And they -- they laid out what; what did they tell you?

6 MS. PARHAM: Judge, I have a motion outside the presence
7 of the jury.

8 THE COURT: Hold on. Y'all approach.

9 (REPORTER'S NOTE: A bench conference was held off the record
10 in the presence of but out of hearing of the jury.)

11 THE COURT: Ladies and gentlemen, I have to ask you to
12 step to the jury room for a minute. Do not discuss the case.
13 I'll get you back out here in just a minute.

14 (REPORTER'S NOTE: Jury exits courtroom. 11:12 A.M. The
15 following takes place outside the presence of the jury.)

16 THE COURT: Yes, ma'am.

17 MOTIONS:

18 MS. PARHAM: Thank you, Judge. I would move for a
19 mistrial because of what this officer just testified to that
20 my client, that they went around to talk to him, but he had,
21 quote, lawyered up. It's a comment on my client's right to
22 remain silent and not incriminate himself. In fact he had not
23 hired me until November 2nd; I just looked at my contract.
24 But, it's highly prejudicial, it's highly inappropriate, and
25 it's a comment on the Defendant's right to remain silent and

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1 it's an inappropriate -- it's a serious case and it's, it's
2 just completely inappropriate, and I believe it's grounds for
3 a mistrial.

4 THE COURT: All right. Mr. Holt?

5 MR. HOLT: Thank you very much, Judge. I think certainly
6 where it is not, you know, the optimum of what you want, but I
7 don't think it's grounds for a mistrial. Investigator Gainey
8 ---

9 THE COURT: It's certainly highly -- I mean, it is
10 inappropriate.

11 MR. HOLT: It's inappropriate.

12 THE COURT: Very much so.

13 MR. HOLT: Investigator Gainey could've equally just've
14 said he declined to talk with us at that time, and those kind
15 of things are brought out in trial all the time. Your Honor,
16 is gonna give a long speech at the end of this. I might not
17 remember how Your Honor likes to handle pictures, but I
18 certainly know that your charge is going to include that if he
19 does not testify, you can't hold that against him. That's
20 gonna be taken up by the charge. I don't think that there's
21 any way that it's so extremely prejudicial that it can't be
22 overcome with Your Honor simply telling them. I think
23 everybody in America knows that you don't have to talk to the
24 police if you don't want to and I don't think that's gonna
25 come as a shock to any of them that somebody doesn't want to.

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1 MS. PARHAM: The problem is the cure highlights it as
2 well. I mean, the fact is, you're not allowed to talk about
3 that in front the jury. If somebody chooses not to talk to
4 the police, you're not allowed to say it. You're not allowed
5 to talk about lawyering up. You're not allowed to say
6 somebody refused to talk to us; it's just not permitted. And
7 this is a murder case, Your Honor.

8 THE COURT: I understand. I mean, there's no question, I
9 mean, it's inappropriate.

10 MR. HOLT: Judge, I don't think there's a case law on
11 point that they're not allowed to say that didn't speak with
12 anybody.

13 THE COURT: There is case law out there. I mean, that's
14 what I'm looking for because I've seen it on the
15 inappropriateness of law enforcement or anyone to testify that
16 they invoke their rights under the Fifth Amendment. All
17 right. I want to look at something real quick.

18 You may step down, officer, but do not discuss your
19 testimony.

20 **(RECESS - 11:17 A.M.)**

21 *******OFF THE RECORD*******

22 **(On the Record - 11:48 A.M.)**

23 THE COURT: All right. I am going to respectfully deny
24 Defendant's motion for a mistrial. Granting of a mistrial is
25 an extreme measure. It should be taken only where an incident

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1 is so grievous that the prejudicial effect can be removed no
2 other way. I've gone back and looked at *Doyle v. Ohio*, U.S.
3 Supreme Court 426 U.S. 610 which was a 1976 case, as well as
4 *State v. Bell*, which is a State of South Carolina case, 347
5 S.C. 267, both of which it would be improper -- and those
6 cases hold the proposition that it would be improper to
7 comment on a Defendant's post-arrest silence under the -- for
8 impeachment purposes where the Defendant is on cross
9 examination and, for instance, gives a story in his trial for
10 the first time and the State cross examines him to the effect
11 of, well, you didn't tell police that at the time of your
12 arrest. And in both of those situations, were situations
13 where Miranda warnings had been given to a Defendant and then
14 the State by cross examination brought it out and the Court
15 said that was error.

16 Now, in this particular case, in this particular case,
17 and I went back just now and listened specifically to the
18 testimony of Officer Gainey. Officer Gainey's testimony was
19 that he got a call that he, being the Defendant, turned
20 himself in, but I didn't talk to him because he had already
21 lawyered up. He is not referring to the Defendant refusing to
22 talk to him, it was his decision not to go talk to the
23 Defendant for whatever reason. That was his reason. It was
24 not the Defendant's exercise of his constitutional right to
25 Gainey and Gainey commenting on his decision not to give a

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1 statement as provided or allowed under the protection of the
2 fifth amendment.

3 Now, having said that and made my ruling upon that, if
4 you wish Ms. Parham for me to give any type of instruction to
5 the jury, curative instruction, I'll be happy to do so.

6 MS. PARHAM: I would like to be able to do some research
7 at lunch, because I, just quickly on my phone, I found where
8 Florida had reversed a case that seemed very similar for not
9 declaring a mistrial and some other South Carolina cases. I
10 believe this is ---

11 THE COURT: Well, I've made my ruling. You can do
12 whatever research you want to do from here forward. We're
13 gonna proceed with the trial at this time.

14 MS. PARHAM: Yes, sir.

15 THE COURT: Again, the statement by Officer Gainey, as
16 I've stated on the record, was his decision not to go talk to
17 the Defendant; it was not him going to the Defendant and the
18 Defendant saying I'm not talking to you, I'm exercising my
19 Fifth Amendment right. So ---

20 MS. PARHAM: Can I just note some things on the record?

21 THE COURT: Sure.

22 MS. PARHAM: *Gaddison v. State*, a Florida Appellant Court
23 that was reversed for failure to grant a new trial; South
24 Carolina cases in evaluating *Doyle v. Ohio*.

25 THE COURT: You got the Florida case cite, I'll be happy

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1 to look at it.

2 MS. PARHAM: I don't -- I didn't write -- I don't; I'm
3 sorry.

4 THE COURT: Get those to my clerk and I'll look at them
5 as well.

6 MS. PARHAM: I will. I'm sorry, I'm trying to do it on
7 my cell phone.

8 THE COURT: That's okay.

9 MS. PARHAM: It has to be so prejudicial as to affect the
10 entire trial. South Carolina cases interpreting *Doyle v. Ohio*
11 hold that due process prohibits the government for commenting
12 on an accused right to remain silent. *Payne v. State*, the
13 State may not directly -- and that's 355 S.C. 642, the State
14 may not directly or indirectly comment on the Defendant's
15 right to remain silent. In *South Carolina v. Heyward*, it was
16 not reversible error because the Defendant had waived his
17 right to remain silent and was shouting things out in front of
18 the police, and they found that it was error but it was
19 harmless error. There was not resulting prejudice because the
20 Defendant had waived his right to remain silent but continued
21 shouting out.

22 This, Your Honor, is different because -- I understand
23 what you're saying, Your Honor, but he says I tried to go talk
24 to him, but he had already lawyered up.

25 THE COURT: He didn't say he went to try to talk to him.

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1 I just listened to the testimony. He said I chose not to go
2 talk to him. He didn't say he tried to go talk to him.

3 MS. PARHAM: Either way, I did not talk to him because he
4 had already lawyered up -- the fact that he says because he
5 had lawyered up, that is a direct comment on my client's right
6 to remain silent. Anyway, people know what lawyering up means
7 and it means that they choose not to talk to the police. I
8 mean, so -- so, the fact that he says he had already lawyered
9 up, it's a direct comment on my client's not wanting to talk
10 to police.

11 THE COURT: Well, you've made your record. I disagree
12 with you. I've made my ruling.

13 MS. PARHAM: Okay.

14 THE COURT: But your objection is so noted and I've given
15 you the option if you want me to give a curative -- any kind
16 of curative instruction, I'll do it -- possibly do it.

17 MS. PARHAM: Okay. Thank you.

18 THE COURT: Any request on that?

19 MS. PARHAM: I'd like to do a little bit more research at
20 lunch if I could before I make a decision on that.

21 THE COURT: All right. Anything else before I bring the
22 jury out from the State?

23 MR. HOLT: Nothing, Judge.

24 THE COURT: Defense Counsel?

25 MS. PARHAM: No, Your Honor.

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1 THE COURT: All right. Bring my jury, please. Well,
2 hold on a minute.

3 Mr. Gainney, if you'll come back and take the stand
4 please.

5 THE COURT: Can the lawyers approach a minute, please?
6 (REPORTER'S NOTE: A bench conference was held off the
7 record.)

8 THE COURT: All right. Bring me the jury, please.
9 (REPORTER'S NOTE: Jury enters courtroom. 11:58 A.M.)

10 THE COURT: All right. Mr. Holt?

11 CONTINUATION OF DIRECT EXAMINATION OF JERRY LOUIS GAINNEY BY

12 MR. HOLT:

13 Q: Investigator Gainney, that's all the questions I have. If
14 you would please answer any from Defense counsel.

15 THE COURT: Ms. Parham, cross examination?

16 MS. PARHAM: No questions.

17 THE COURT: All right. Sir, you may step down.

18 Mr. Holt?

19 MR. HOLT: Judge, at this time, the State would rest.

20 BY THE COURT:

21 THE COURT: All right. All right. Ladies and gentlemen,
22 the State has rested its case. They've put up all the
23 evidence that they're going to put up. What we're going to do
24 at this time is I'm gonna let you go ahead and go to lunch.
25 There are some matters that I need to take up outside of your

1 presence. We're going to do that.

2 I'm gonna ask you to be back in your jury room at 2:30,
3 2:30, and we will resume the trial as promptly at that time as
4 possible. Do not, do not discuss this case at all with
5 anyone, with anyone. Do not do any independent investigation
6 on your own. As I've told you from the outset, you are to
7 decide this case based solely upon the testimony and evidence
8 as presented in this courtroom and nowhere else. You all are
9 free to go to lunch. I'll see you back at 2:30.

10 (REPORTER'S NOTE: Jury exits courtroom. 12:00 P.M. The
11 following takes place outside the presence of the jury.)

12 THE COURT: All right. Anything at this time, Ms.
13 Parham?

14 MOTIONS:

15 MS. PARHAM: Yes, Your Honor. We would move for a
16 judgment acquittal that the State has not provided a
17 sufficient evidentiary basis for implied malice with a charge
18 of murder.

19 THE COURT: Mr. Holt?

20 MR. HOLT: Judge, I think the level of evidence I have
21 put forth to you is a scintilla. I think -- I think the video
22 is more than a scintilla. I think the corroborating evidence
23 of everyone that was there is more than a scintilla. I think
24 that the evidence of what the actual beating did that the
25 doctor brought in, that his face was turning purple with the

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BY THE COURT

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1 fire department people; I think all of that passes my hurdle.

2 THE COURT: All right. In reviewing the evidence in the
3 light most favorable to the State, the non-moving party, if
4 there is any evidence, any evidence reasonably tending to
5 prove guilt of the accused in a case, then the case is
6 required -- the Court is required by law to submit the case to
7 the jury. I certainly believe that there is evidence
8 reasonably tending to prove the guilt of the accused and
9 therefore it would be improper for the Court to grant a
10 directed verdict, but your motion is so noted for the record
11 and respectfully denied.

12 BY THE COURT:

13 THE COURT: What I'm going to do at this time is I'm
14 going to advise the Defendant of his rights and then we're
15 going to stand down for lunch and you'll have time to talk to
16 him, Ms. Parham, about what he wishes to do.

17 Sir, if you'll stand please and raise your right -- swear
18 him in please.

19 CLERK: Please raise your right hand.

20 TOMMY WILLIAM MCGEE, HAVING BEEN DULY
21 SWORN TESTIFIES AS FOLLOWS:

22 THE COURT: Sir, you are Tommy William McGee?

23 MR. MCGEE: Yes, sir.

24 THE COURT: All right. At this time, I'm going to
25 explain to you certain rights that you have, okay. If you do

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TOMMY WILLIAMS MCGEE - BY THE COURT

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1 not understand these rights, I'll give you an opportunity to
2 ask me any questions about them. If you want me to explain
3 them in more detail, I will do my best to do that as well. Do
4 you understand that?

5 MR. MCGEE: Yes, sir.

6 THE COURT: We've now reached the stage of the trial
7 where you may present your defense. You have the right,
8 however, to claim the protections given to you by the Fifth
9 Amendment to the constitution and that fifth amendment to the
10 constitution states in part that no person, no person shall be
11 compelled in any criminal case to be a witness against
12 himself. This means that you cannot be required to testify in
13 this case. You have the right to testify on your own behalf,
14 however, no one can make you testify, and this is a personal
15 right and no one can waive this right except you. If you
16 decide to testify, you will be subject to the same rules that
17 govern other witnesses and you may be examined and cross
18 examined on any relevant issue in this case. In addition, if
19 you have any convictions involving dishonesty or false
20 statement or for crimes punishable by imprisonment for more
21 than a year and this Court determines that the probative value
22 of admitting this evidence outweighs its prejudicial effect to
23 you, the prosecutor will be able to introduce your record to
24 attack your credibility. If you decide to testify, this
25 decision on your part, must be freely, voluntarily, and

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BY THE COURT

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1 intelligently made with knowledge of the protections given to
2 you by the Fifth Amendment and the consequences of your
3 decision to testify. If you decide not to testify, I will
4 instruct this jury that they cannot give the fact that you did
5 not testify any consideration whatsoever and that there is to
6 be absolutely no prejudice to you because you did not testify.

7 Now, it is left entirely up to you whether or not you
8 testify. You may talk with your attorney, your family,
9 friends or whomever you like, but the ultimate decision of
10 whether or not you testify is left entirely up to you.

11 Do you understand what I've explained to you here today?

12 MR. MCGEE: Yes, sir.

13 THE COURT: Do you have any questions about what I've
14 explained to you?

15 MR. MCGEE: No, sir.

16 THE COURT: Now, what we're going to do is I'm gonna --
17 we're gonna stand down and we'll give you some time to talk to
18 your lawyer concerning what I have just advised you about and
19 when we resume here this afternoon or before we resume, I will
20 expect an answer from you.

21 MR. MCGEE: Yes, sir.

22 BY THE COURT:

23 THE COURT: All right. All right. Anything further from
24 the State at this time?

25 MR. HOLT: Nothing from the State, Your Honor.

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BY THE COURT

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1 THE COURT: Defense Counsel?

2 MS. PARHAM: No, Your Honor.

3 THE COURT: All right. I ask that you all be back at 2
4 o'clock.

5 MR. HOLT: Yes, Your Honor.

6 MS. PARHAM: What time did you say?

7 THE COURT: 2 o'clock.

8 MS. PARHAM: And the jury is coming back at ---

9 THE COURT: 2:30.

10 **(RECESS - 12:08 P.M.)**

11 *******OFF THE RECORD*******

12 **(On the Record - 2:44 P.M.)**

13 (REPORTER'S NOTE: The following takes place outside the
14 presence of the jury.)

15 THE COURT: Thank you. Be seated please.

16 All right. When we broke for lunch. When we broke for
17 lunch, I had advised the Defendant of his rights to testify.

18 Mr. McGee, if you'd stand please, sir. I'll remind you
19 that you're still under oath, okay? When we broke for lunch
20 or prior to breaking for lunch, I advised you of your right to
21 testify. I told you that we'd stand down and give you an
22 opportunity to talk to your lawyer, your family, friends,
23 whomever you wished to talk to. Did you have an opportunity
24 to talk with them?

25 MR. MCGEE: Yes, sir.

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BY THE COURT

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1 THE COURT: You need any more time to talk to anyone?

2 MR. MCGEE: No, sir.

3 THE COURT: Do you wish to testify in the trial of your
4 case?

5 MR. MCGEE: I will testify.

6 THE COURT: All right. Very well. And that's your
7 decision and your decision alone?

8 MR. MCGEE: Yes, sir, but I do feel like I'm -- I kind of
9 feel like something's being hide with Jerry Gainey.

10 THE COURT: If that's the case, you have the right to
11 testify, but you cannot be made to testify. I just want you
12 to understand that. You understand that?

13 MR. MCGEE: Yes, sir.

14 THE COURT: All right.

15 Yes, ma'am, Ms. Parham?

16 MS. PARHAM: Your Honor, based on the statement of
17 Investigator Gainey, that my client lawyered up, my client
18 feels like it leaves the jury with the only inference that he
19 has something to hide. So, that's what he is trying to
20 articulate to the Court that he feels like when Investigator
21 Gainey testified that he lawyered up that it makes it look
22 like to the jury that he has something to hide and that is why
23 is making the decision to testify.

24 THE COURT: Well, again, I've ruled on that. I think
25 that's the appropriate ruling.

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BY THE COURT

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1 MS. PARHAM: Yes, sir.

2 THE COURT: I've given the option of giving a curative
3 charge on that. And again, it goes back to not the Defendant
4 asserting his rights, but law enforcement making a concerted
5 or a choice on their own not to go talk to him because of
6 that.

7 MS. PARHAM: Right.

8 THE COURT: And that was the -- and I went back and I
9 listened to the testimony of Officer Gainey on that very
10 issue, because I wanted to make sure I had exactly what he
11 said. Okay? But your objection is so noted for that and it
12 is -- it's in the record.

13 MS. PARHAM: Thank you, Judge.

14 THE COURT: All right. Anything before I bring the jury
15 out?

16 You may sit down, sir.

17 Anything before I bring the jury back out from the State?

18 MR. HOLT: No, sir, Judge.

19 THE COURT: Defense counsel? Ms. Parham, anything before
20 I bring the jury back out? Anything else?

21 MS. PARHAM: No, Your Honor.

22 THE COURT: Bring me the jury please, sir.

23 (REPORTER'S NOTE: Jury enters courtroom. 2:47 P.M.)

24 THE COURT: All right. I have all the jurors back. I
25 hope y'all had a pleasant lunch and are ready to proceed here

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TOMMY WILLIAMS MCGEE - DIRECT BY PARHAM

1 this afternoon. at this time, I'm gonna recognize Defense
2 counsel.

3 Ms. Parham, you are so recognized.

4 MS. PARHAM: Thank you, Your Honor. The Defense calls
5 Tommy McGee.

6 THE COURT: Sir, if you'd come around to be sworn,
7 please, sir.

8 CLERK: Sir, if you'll step up to the stand and place
9 your left hand on the Bible and raise your right hand.

10 TOMMY WILLIAMS MCGEE, HAVING BEEN
11 SWORN TESTIFIES AS FOLLOWS:

12 CLERK: Please be seated and state your full name for the
13 record.

14 MR. MCGEE: Tommy William McGee.

15 DIRECT EXAMINATION OF TOMMY WILLIAM MCGEE BY MS. PARHAM:

16 Q: Tommy, how old are you?

17 A: Thirty-one.

18 Q: And speak in that microphone so we can all hear you
19 please.

20 A: Thirty-one.

21 Q: All right. And where are you from?

22 A: Lake City.

23 Q: Have you lived in Lake City all your life?

24 A: Yes, ma'am.

25 Q: Where did -- did you go to Lake City High School?

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- 1 A: Yes, ma'am.
- 2 Q: What did you do after high school?
- 3 A: Got out and started working.
- 4 Q: All right. And where have you worked?
- 5 A: I worked at Bobby's Auto Repair about 10 years. I worked
- 6 with L&B Developers out of Lake City, and I've been employed
- 7 at Superior Machine Company off of -- off Cashua in Florence
- 8 for the last five years.
- 9 Q: And what do you do at Superior Machine?
- 10 A: I am a machine operator.
- 11 Q: Okay. And, and you're married to Jennifer McGee?
- 12 A: Yes, ma'am.
- 13 Q: How long have y'all been together?
- 14 A: We've been together about 13 years.
- 15 Q: All right. And y'all have children?
- 16 A: Yes, ma'am.
- 17 Q: How old are they?
- 18 A: My son is six years old and my daughter is twelve.
- 19 Q: Okay. And let's talk about this night that you went to
- 20 The Office that we're here on trial about today. What time
- 21 did you get off work that day?
- 22 A: I got off of work at 4:30.
- 23 Q: And that was from Superior Machine?
- 24 A: Yes, ma'am.
- 25 Q: And then where did you go after you got off work?

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TOMMY WILLIAMS MCGEE - DIRECT BY PARHAM

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1 A: I went home for a little while to make sure my dogs and
2 stuff was fed and went to the Long Branch for Happy Hour and
3 drunk a few beers.

4 Q: Okay. And after -- and that's a bar called Lone Branch?

5 A: Yeah, Long Branch.

6 Q: Long Branch. And where did you go after that?

7 A: After I left there, I went to another little bar, there's
8 an old bar they call the City Bar in Lake City and they had
9 re-opened and I left -- I stayed there and drunk a few beers
10 there.

11 Q: All right. And then where did you go after that?

12 A: I left there and I went to The Office.

13 Q: Okay. Did you go there by yourself or with someone?

14 A: I went there by myself.

15 Q: All right. And about what time did you get to The
16 Office?

17 A: Probably about 11:30, 12 o'clock probably.

18 Q: Okay. And what did you do when you were at The Office?

19 A: I sat down and drunk a few beers and shot a couple of
20 games of pool.

21 Q: Okay. And so you were playing pool; do you remember who
22 you were playing pool with?

23 A: Mostly, Terry Feagin is the one I play pool with some.
24 Just whoever gets in line, you know, to play, that's basically
25 who we play, you know, just seeing who can beat one another.

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TOMMY WILLIAMS MCGEE - DIRECT BY PARHAM

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1 Q: At -- let me ask you, did you know Mr. Jimmy Welch prior
2 to this evening?

3 A: I've been around him a few times in The Office when I
4 went up there to shoot pool. I never had any dealings with
5 him on the outside, I just knowed of him from the bar.

6 Q: Had y'all ever been in any arguments before this
7 particular evening?

8 A: No, ma'am; this is the first time.

9 Q: Okay. At some point at the office -- were you getting
10 ready to play pool with him?

11 A: I believe so; yes, ma'am.

12 Q: All right. At some point, did y'all get into an
13 argument?

14 A: Yes, ma'am. It was over a little bit of money. About
15 over he owed my daddy, which, you know, it was kind of a
16 miscommunication. I was trying to calm him down and, you
17 know, he kept wanting to get loud with me and show anger and
18 stuff towards me, I guess, because he was drinking a little
19 bit and ---

20 Q: Now, let me interrupt. You were intoxicated at the time,
21 too?

22 A: Yes, ma'am.

23 Q: Okay. So, y'all were both drinking?

24 A: Yes, ma'am.

25 Q: Okay. And so you said that he was loud?

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1 A: Yes, ma'am.

2 Q: Was anyone else loud?

3 A: Everybody was in there talking. You know, the few people
4 that was in there talking and stuff like that. You know, a
5 bar, you know, is kinda loud, but mainly he was, you know, the
6 loudest one.

7 Q: All right. And then what happened?

8 A: We, you know, he come to me talking, you know, about the
9 money and stuff like that. I said, man, you know, just calm
10 down, you know, it don't mean nothing. And he kept saying I
11 don't owe your daddy no money. I said, I know that, just
12 leave it alone. But anyway, he kept getting louder and louder
13 with me because, you know, he was drinking or whatever, and we
14 ended up getting in a little fight.

15 Q: All right. But you hit him?

16 A: Yes, ma'am.

17 Q: All right. And what caused you to continue hitting him?

18 A: Me being intoxicated and it happened so fast, I didn't
19 realize I went to the dirt with him, you know, the way I did,
20 and I never meant for any of this to happen. It just happened
21 so quick. I mean, I wish I could take all of it back because
22 I, never meant for any of this to happen.

23 Q: Did you -- what happened after you hit him on the ground,
24 what do you remember next?

25 A: They -- the few people that was in the bar broke the

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TOMMY WILLIAMS MCGEE - CROSS BY HOLT

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1 fight up or whatever and they told me to leave, and I had left
2 and went to my wife's house and told her that I might be going
3 to jail for simple assault and battery. That's where I stayed
4 the night at.

5 Q: All right. Did you know that -- did you happen -- did
6 you know he had passed away, the victim?

7 A: No, ma'am. I did find out the next morning when I woke
8 up, I did find out.

9 Q: And who told you that?

10 A: It was on Facebook and it was on the news.

11 Q: And did you turn yourself in when you learned that?

12 A: Yes, ma'am. I went right on and turned myself in right
13 then.

14 Q: Who did you turn yourself in to?

15 A: Roger Tilton.

16 Q: And what department does he work with?

17 A: He used to work with Lake City Police Department, but now
18 he's with the Sheriff's Department in Florence.

19 Q: Please answer any questions that the State Prosecutor may
20 have?

21 THE COURT: Mr. Holt, cross examination?

22 MR. HOLT: Thank you very much, Judge.

23 CROSS EXAMINATION OF TOMMY WILLIAM MCGEE BY MR. HOLT:

24 Q: Mr. McGee, you kept calling this a fight, correct?

25 A: Yes, sir.

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1 Q: Okay. Did you watch the video in here the other day?

2 A: I didn't watch it in here the other day, but I did see
3 it.

4 Q: Okay. And, and at what point, did the victim in this
5 case, Jimmy McGee, what time did he fight back in that video?

6 A: Who?,

7 Q: If y'all were in a fight, when was Jimmy in the fight,
8 when did he fight back because I didn't see that in the video?

9 A: Yes, sir. He never did fight back in the video. I
10 guess, I guess whenever I hit him he never did have a chance
11 to fight back.

12 Q: And after you hit him that first time, you left and went
13 home?

14 A: No, sir.

15 Q: What did you do next?

16 A: When I hit him the first time, we went to the ground. I
17 went to the ground with him. And then after I went to -- got
18 up from the ground, they told me to leave. That's when I
19 left.

20 Q: They told you or they pulled you off of him?

21 A: They pulled me off and made me leave.

22 Q: Okay. They pulled you off after you had got through
23 hitting him or they pulled you off during you continuously
24 hitting him?

25 A: They pulled me off, I guess, during, but I was in the

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1 process of getting up, you know.

2 Q: And you said you saw the video?

3 A: Yes.

4 Q: So, you know that Jimmy was just reaching for his beer
5 when you put your cigarette down?

6 A: I never -- I never did realize that he was putting his
7 beer down at the time.

8 Q: Uh-huh, (affirmative response). Uh-huh, (affirmative
9 response). But you put your cigarette down before you took
10 the swing, didn't you?

11 A: I can't recall.

12 Q: Okay. Well, do you recall ever throwing everything down
13 in your hands and getting so mad and then starting a fight or
14 do you recall calmly deciding you were gonna hit him, putting
15 your cigarette down and then hitting him. Which one do you
16 recall?

17 A: I just remember hitting him. I don't remember exactly
18 you know, what happened.

19 Q: Okay.

20 A: You know, things just happened so fast, you know, with
21 the communication that was going on and stuff. I was
22 intoxicated.

23 Q: So, so he accused you of owing him money and got loud
24 with you?

25 A: No, he didn't accuse me of owing him money.

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1 Q: Okay. You accused him of owing somebody money?

2 A: Yes, but it was a communication ---

3 Q: And then you got mad when he said he didn't owe you any
4 money?

5 A: No, I never did get mad. I was trying to calm the
6 situation down telling him, you know, don't worry about it,
7 everything will be okay.

8 Q: So, you never got mad?

9 A: No.

10 Q: Okay. Well, what were you when you hit him?

11 A: I wasn't really mad, I was just, you know, just a little
12 aggravated. You know, I never meant for any of this to
13 happen.

14 Q: Now, would you describe -- do you think a sudden fit of
15 rage came over you or do you think you were just a little bit
16 mad at him?

17 A: Just a little bit of rage, you know, not a whole lot. I
18 never meant for any of this to happen.

19 Q: And you're sorry all this happened?

20 A: Yes, sir. I wish I could take it all back.

21 Q: How many beers do you think you had that night?

22 A: I had quite a few and plus I was drinking liquor.

23 Q: Okay. Well, more than 10 beers or less than 10?

24 A: Probably more than 10 beers.

25 Q: Okay. More than 15 or less than 15?

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1 A: Ten or more; I don't know exactly how many.

2 Q: So, we'll say 10 or more. Now, how many liquor drinks do
3 you think you had?

4 A: Probably five, and I drink Crown, you know, when I drink
5 liquor.

6 Q: Okay. Brown liquor?

7 A: Yes, sir.

8 Q: Okay.

9 A: I never meant for this to happen.

10 Q: Now, do you think it's possible that maybe Jimmy was just
11 a loud kind of guy like other people have testified and after
12 10 beers and 5 liquor drinks, you just made a mistake and
13 thought he was being mad with you?

14 A: I never meant for any of this -- I never meant for any of
15 this to happen. I just wish I could take it all back.

16 Q: Do you think you maybe were wrong that Jimmy was mad with
17 you?

18 A: He probably was. I just ---

19 Q: Do you think maybe if somebody were to come into your bar
20 and accuse you of being a person that don't pay his bills,
21 that you might have to tell him, hey, I pay my bills, man; do
22 you think you would probably have to do that?

23 THE COURT: Hold on a minute. Sir, you need to remain
24 seated or you need to exit the courtroom.

25 I'm sorry, go ahead, Mr. Holt.

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TOMMY WILLIAMS MCGEE - CROSS BY HOLT

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1 BY MR.. HOLT:

2 Q: Do you think maybe if somebody came -- if somebody came
3 into your bar and accused you of being somebody who don't pay
4 their bills, you might have to respond to that person; don't
5 you think that's appropriate?

6 A: Yes, sir.

7 Q: You know, how much money do you think it was owed?

8 A: It was -- it was -- it wasn't a whole lot. You know,
9 like I said, I was trying to calm the situation down, but he
10 kept getting loud with me and kind of wanted to come in my
11 space and all.

12 Q: But his beer was in your space, correct?

13 A: It was over there on the table.

14 Q: Which is where you were standing, correct?

15 A: Yeah, a little bit further down, yes, sir.

16 Q: So, it wasn't like he came over in your space
17 specifically to get in your face, was it?

18 A: When he come over, he, he was talking and talking kinda
19 loud, you know, you know, telling -- saying that he don't owe
20 no sorry mechanic no money or anything like that. I said,
21 man, just calm down; man, things is gonna work out.

22 Q: Uh-huh (affirmative response). You wanted him to be
23 calm, didn't you?

24 A: I just wanted everything to calm down so it wouldn't lead
25 to nothing. Things got out of hand. I never meant for any of

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TOMMY WILLIAMS MCGEE - REDIRECT BY PARHAM

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1 this to happen. I wish I could take it all back.

2 Q: Thank you, Mr. McGee.

3 THE COURT: Any redirect?

4 REDIRECT EXAMINATION OF TOMMY WILLIAM MCGEE BY MS. PARHAM:

5 Q: When he said he didn't owe money to a sorry mechanic, to
6 whom was he referring when he said sorry mechanic?

7 A: My father.

8 Q: Do you think those words triggered your actions?

9 A: Yes, ma'am; it could have.

10 Q: That's all I have.

11 THE COURT: Anything else, Mr. Holt?

12 MR. HOLT: No, thank you, Judge.

13 THE COURT: Sir, you may step down. Thank you.

14 MS. PARHAM: The Defense rests.

15 BY THE COURT:

16 THE COURT: All right. Ladies and gentlemen, I'm gonna
17 have to ask you to step back to the jury room. There are some
18 matters of law that I need to take up. I'll try to get you
19 back out here as quickly as possible. You've heard all the
20 evidence and testimony that you're going to hear in this case.

21 The State have anything in reply?

22 MR. HOLT: Nothing, Judge.

23 THE COURT: You've heard all the evidence and testimony
24 that you're going to hear in this case. That which remains is
25 arguments of counsel and my charge on the law to you. I'll

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BY THE COURT

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1 get you back out here as promptly as I can and we'll move
2 forward with closing arguments and my charge on the law to
3 you. Please be patient and I promise I'll get you back out
4 here as quickly as possible. Okay. Do not discuss the case.

5 Step to the jury room.

6 (REPORTER'S NOTE: Jury exits courtroom. 3:02 P.M. The
7 following takes place outside the presence of the jury.)

8 THE COURT: All right. Sir, in the green shirt, would
9 you stand up, please? Tell me your name for the record.

10 MR. WELCH: Jason Welch.

11 THE COURT: Okay. I'm not sure who you are or what
12 you're in -- are you a family member of the victim in this
13 case?

14 MR. WELCH: Yes, sir; it's my brother.

15 THE COURT: Okay. I understand. I understand that
16 emotions may be high in this situation. That's evidenced by
17 about 30 people that are in here observing this trial, more
18 than normal, but I will not tolerate you or anyone else
19 standing up or doing anything what I perceive to be
20 inappropriate during the course of this trial. For the
21 record, you stood up during this Defendant's testimony for
22 what reason, I don't know, because you maybe wanted to see him
23 because the podium was in the way or the T.V. was in the way,
24 but I'm not gonna allow you or anybody else in this courtroom
25 to stand up or do anything that I perceive to be

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MOTIONS

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1 inappropriate. Am I clear on that?

2 MR. WELCH: Yes, sir.

3 THE COURT: If it happens again, this Court very well
4 could hold you in contempt of court and sentence you to
5 incarceration; you understand that?

6 MR. WELCH: Yes, sir.

7 THE COURT: You will not be allowed to make any
8 distractions whatsoever during the course of this trial. Am I
9 clear on that?

10 MR. WELCH: Yes, sir.

11 THE COURT: All right. We'll stand down for just a
12 minute. Go ahead -- do you have any additional ---

13 MOTIONS:

14 MS. PARHAM: Yes, we renew our motion for judgment of
15 acquittal and directed verdict we made earlier in the case.

16 THE COURT: All right. As previously stated,
17 respectfully, I deny such motions and I do want to go over,
18 let's see, bear with me just a minute.

19 Well let's step back in my chambers for a minute, the
20 lawyers, and go through this jury charge.

21 MS. PARHAM: May I speak to my client for one minute
22 before I come back there?

23 THE COURT: Yes, ma'am.

24 MS. PARHAM: Thank you.

25 **(RECESS - 3:06 P.M.)**

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BY THE COURT

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*****OFF THE RECORD*****

(On the Record - 3:50 P.M.)

BY THE COURT:

THE COURT: Thank you. Be seated please.

All right. After meeting with the attorneys in chambers and going through the jury charge and realizing the time of day it was getting to, based upon our discussions, I think than argue and charge this late in the afternoon, the jury would probably not get the case until 5:00 or sometime thereafter. I am going to send the jury home for the balance of the day and we will resume at 9 o'clock in the morning and go right into arguments and my charge on the law to them thereafter and they will be able to go from there.

All right?

Anything from the State before I bring the jury back out?

MR. HOLT: No, sir, Judge.

THE COURT: Defense Counsel?

MS. PARHAM: No, Your Honor.

THE COURT: Bring me the jury please, sir.

(REPORTER'S NOTE: Jury enters courtroom. 3:52 P.M.)

THE COURT: All right. I've got all the jurors present back in the courtroom. Ladies and gentlemen, I'm sorry that you've had to sit back there as long as you have. What I'm gonna do at this time, I was hoping that we could go ahead and move into closing arguments and my charge on the law to you

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BY THE COURT

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1 today but, if we did that today, it would probably be 5:00 or
2 sometime after 5:00 before you got the case today. Rather
3 than do that, I'm gonna send you home for the balance of the
4 day. I'm gonna ask that you be back here tomorrow morning at
5 9 o'clock, at 9 o'clock, and we will move right into closing
6 arguments, and my charge on the law to you at 9 o'clock and
7 hopefully get the case to you by 10:15 or so. Okay?

8 During your overnight break, same instructions remain.
9 Do not discuss the case. Do not do any independent
10 investigation on your own. You are to decide this case based
11 solely, solely, on the testimony and evidence as presented in
12 this courtroom, that's what you are to decide this case on.

13 Anything from the State before I release the jury until
14 in the morning?

15 MR. HOLT: No, sir, Judge.

16 THE COURT: Defense counsel?

17 MS. PARHAM: No, Your Honor.

18 THE COURT: If you all will be back at 9 o'clock in the
19 morning, like I said, we'll start this case, resume as
20 promptly at that time as possible. I hope you all have a nice
21 evening and look forward to seeing you all tomorrow morning at
22 9 o'clock.

23 BAILIFF: Follow me out to the hallway, please.

24 (REPORTER'S NOTE: Jury exits courtroom. 3:54 P.M. The
25 following takes place outside the presence of the jury.)

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CHARGE CONFERENCE

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1 CHARGE CONFERENCE:

2 THE COURT: Bear with me just a minute, please.

3 We have gone through the jury charge back in chambers.

4 The attorneys had an opportunity to review the charge while we
5 were in chambers. There were a few changes that were made.

6 More specifically, with regards to malice, express and
7 inferred malice, pursuant to *State v. Stanko*, S-T-A-N-K-O, 402
8 S.C. 252, I think that certainly changes the malice charge, at
9 least the inferred malice portion of the charge in this

10 particular case and therefore, I did strike through a large
11 portion of the inferred malice charge as it relates to murder
12 and have or gave the attorneys an opportunity both to look at
13 that redacted portion. Any objection to that from the State?

14 MR. HOLT: No, sir, your Honor.

15 THE COURT: Defense Counsel?

16 MS. PARHAM: No, Your Honor.

17 THE COURT: All right. In addition, I am going to charge
18 murder to the jury as well as voluntary manslaughter. Ms.
19 Parham indicated in chambers that she would be requesting a
20 charge on involuntary. I told her I would certainly give her
21 an opportunity to place on the record what she so desired with
22 regards to that particular charge.

23 I'll be happy to hear from you, Ms. Parham?

24 MS. PARHAM: Thank you, Your Honor. Your Honor, pursuant
25 to *State v. Chapman*, 336 S.C. 149, 1999 case, and *State v.*

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1 Battle, which is 408 S.C. 109, 2014 case, and *State v. Mekler*
2 379 S.C. 12, 2008 case, we would ask the Court for a jury
3 instruction of involuntary manslaughter. I believe the
4 portion of that charge that could apply to this case, is that
5 it was an illegal act that would not necessarily cause serious
6 bodily injury. I know that -- that there is a debate about
7 how many times my client hit and whether that would --
8 reasonable bodily injury would be foreseeable or not, but we
9 would take the position that someone -- that punching someone
10 would not necessarily amount to serious bodily injury. It did
11 in this case obviously, but we believe there are circumstances
12 in boxing matches, for example, where the goal is to get
13 points or knock someone out, you know, where it's not always
14 going to amount to serious bodily injury, the act of punching
15 someone in the face. And so for that reason, we would ask for
16 a charge on involuntary manslaughter.

17 THE COURT: All right.. Anything in response from the
18 State?

19 MR. HOLT: Judge, the State wholeheartedly disagrees. We
20 don't think an evidence was presented that fits the factors
21 for involuntary.

22 MS. PARHAM: And I misspoke, Your Honor. The standard is
23 naturally tending to cause death or great bodily harm. So
24 it's engaged in unlawful activity not naturally tending to
25 cause death or great bodily harm. That would be the language.

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1 THE COURT: All right. Under *State v. Collins*, 409 S.C.
2 524, to establish involuntary manslaughter, the State must
3 show defendant killed another person without malice and
4 unintentionally while the defendant was engaged in either (1)
5 an unlawful activity not amounting to a felony and not
6 natural, and not naturally tending to cause death or great
7 bodily injury. I don't believe that you get beyond the
8 unlawful activity not amounting to a felony. Assault and
9 battery high and aggravated nature as well as assault and
10 battery first degree are both felonies. There's ample
11 testimony within the record by the injuries to this victim,
12 which would've taken that into either one of those classes or
13 categories, both of which were felonies. So, I don't even
14 think you get to the second portion of Number 1 on the
15 elements of involuntary manslaughter, but your objection is
16 been so noted for the record on that issue.

17 MS. PARHAM: Thank you, Judge. I would like to put one
18 other request to charge on the record.

19 THE COURT: Yes, ma'am.

20 MS. PARHAM: It is the charge on independent intervening
21 cause, which is an act of an independent person or entity that
22 destroys the causal connection between the Defendant's act and
23 the victim's injury and thereby it becomes the cause of the
24 victim's injury. We would just rely upon the evidence of the
25 delay in calling for help for 16 minutes and that,

CHARGE CONFERENCE

1 specifically, one of the witnesses testified that before he
2 left the bar, he actually spoke to the Defendant and the
3 Defendant spoke to him and said, give me a minute, which
4 according to that witness' testimony, the victim was able to
5 speak and talk to him and was obviously conscious at that time
6 and, over the 16 minute delay, when no one called for help or
7 911, the Defendant's condition deteriorated and so we would
8 just rely upon that testimony for that independent intervening
9 cause charge.

10 THE COURT: Okay.

11 MS. PARHAM: And finally, Your Honor, I believe I gave
12 Your Honor my only copy ---

13 THE COURT: You did. You did. *State v King*, which is
14 158 S.C. 251.

15 MS. PARHAM: Yes, sir. And finally we would ask for the
16 *State v. King* charge that, quote, if the jury has reasonable
17 doubt as to whether the defendant was guilty of murder or a
18 lesser offense, the doubt must be resolved in favor of the
19 lesser offense. And that's all of our requested charges.

20 THE COURT: Well, and you did bring that up and mention
21 that in chambers and I'll read the portion of my current
22 charge, which I believe encompasses all of that and that
23 portion of my reasonable doubt charge says, I charge you that
24 the Defendant is entitled to every reasonable doubt arising in
25 the whole case. If upon any issues of fact essential to

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1 conviction and a verdict of guilty, you have a reasonable
2 doubt as to how that issue should be resolved, it would be
3 your duty to resolve that reasonable doubt in favor of the
4 defendant.

5 My concern about the *State v. King* charge, to some
6 extent, is almost instructing the jury, if you don't find the
7 Defendant guilty of murder, then you got to find him guilty of
8 manslaughter and I don't think that would be proper. I'm
9 giving a reasonable doubt charge that gives him a reasonable
10 doubt as to all, all of the issues and those that may be
11 essential to conviction. If there is any doubt, then it needs
12 to be resolved in his favor, in his favor. Okay?
13 It is so noted.

14 MS. PARHAM: Thank you, Your Honor.

15 THE COURT: Anything else?

16 MR. HOLT: Not from the State, Judge.

17 THE COURT: Defense Counsel, anything?

18 MS. PARHAM: No, Your Honor.

19 THE COURT: I will say this, before I release everyone
20 that's in this courtroom, I've noticed yesterday and today
21 there has been approximately 30 people in here watching this
22 trial on both sides. I understand emotions are very high as
23 it relates to this case. It is a very tragic situation for
24 all parties involved; I understand that. I will remind you
25 that I've told this jury that they are not to do any

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1 independent research, investigation in this case throughout.
2 I've told them that they are to decide this case based solely
3 on the testimony and evidence as presented in this courtroom.
4 I will instruct and warn those that are out in the audience,
5 that any type of efforts to influence this jury other than
6 what goes on in this courtroom is improper. It carries a
7 potential sentence of up to 10 years' incarceration. I want
8 to make that abundantly clear. Any effort to reach out to
9 this jury, whether it be by internet, social media or anything
10 else, very well could put you in a position of facing up to 10
11 years in jail. So, my instruction is don't do it. Don't do
12 it.

13 All right. Anything further from the State?

14 MR. HOLT: No, sir.

15 THE COURT: Defense Counsel?

16 MS. PARHAM: No, Your Honor.

17 THE COURT: 9 o'clock in the morning.

18 **(RECESS - 4:08 P.M.)**

19 *******OFF THE RECORD*******

20 **END OF DAY TWO.**

21 **SEPTEMBER 14, 2017 - DAY THREE**

22 **(On the Record - 9:33 A.M.)**

23 (REPORTER'S NOTE: The following takes place outside the
24 presence of the jury.)

25 THE COURT: Be seated please.

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1 All right. Anything from the State before I bring the
2 jury out?

3 MR. HOLT: No, sir, Your Honor.

4 THE COURT: Defense counsel?

5 MS. PARHAM: Yes, Judge.

6 THE COURT: I just wanted to put on the record ---

7 THE COURT: Hold on.

8 You ready, Kay?

9 COURT REPORTER: Yes, sir.

10 MS. PARHAM: I'm sorry. That we renew all previous
11 motions including the motion for mistrial. We'd also add to
12 the motion for mistrial the prejudice of the testimony from
13 the firearms that had nothing to do with this case.

14 In addition, Your Honor, with regard to the Court's
15 charge, I received it last night and I would just object to
16 two portions of the charge if I could just put it on the
17 record?

18 THE COURT: Yes.

19 MS. PARHAM: On Page 11, malice -- malice be -- arise
20 when a deed is done with a deadly weapon. A deadly weapon is
21 an article, instrument, or substance which is likely to cause
22 death or great bodily harm.

23 THE COURT: Where are you now?

24 MS. PARHAM: On Page 11.

25 THE COURT: I've already taken all of that out.

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1 MS. PARHAM: Oh, you have? I didn't ---

2 THE COURT: The only thing I said was malice may be
3 inferred from conduct showing a total disregard for human life
4 is what we talked about in chambers yesterday.

5 MS. PARHAM: Okay.

6 THE COURT: That was taken out.

7 MS. PARHAM: Okay. And then the only other thing I had
8 was I believe the state of our law is that words alone are not
9 enough to be legal provocation when the death is caused by a
10 deadly weapon.

11 THE COURT: I got your email last night. It's kind of a
12 -- I think it's kind of a double-edged sword on that. You're
13 asking me to charge something on words alone accompanied with
14 deadly weapon, maybe.

15 MS. PARHAM: No, my position would be that that
16 paragraph, the third full paragraph on Paragraph 12 should
17 just be struck in its entirety.

18 THE COURT: On Page 12?

19 MS. PARHAM: Yes, sir. Well, it might be different if
20 you've deleted something and it's moved up.

21 THE COURT: Let's see. Go ahead, I'm sorry. Words
22 alone, however vulgar or insulting, are not enough to be legal
23 provocation.

24 MS. PARHAM: Yes, Your Honor, that, that paragraph and it
25 continues where death is caused by the use of a deadly weapon.

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1 Words must be accompanied by -- I would -- my position would
2 be that the entire paragraph should be deleted and so we would
3 object to ---

4 THE COURT: Hold on a minute.

5 Mr. Holt?

6 MR. HOLT: Judge, I think -- I think the period there
7 kind of sums it up. I think words alone however vulgar and
8 insulting are not enough to be legal provocation. And then
9 secondly, where death is caused by the use of a deadly weapon,
10 the words must be accompanied by some overt threatening act,
11 which could have produced the heat of passion.

12 THE COURT: That's what it says now.

13 MR. HOLT: Yes, sir, but what I'm saying is, there's
14 nothing wrong with the words, however vulgar and insulting are
15 not enough to be legal provocation. I think that's the law.
16 The second point I would make, Judge, is that there is case
17 law that hands can be a deadly weapon.

18 THE COURT: There is.

19 MR. HOLT: We can put that in there if we want to, but I
20 thought according to *Stanko*, y'all wanted to avoid that and
21 that's why we settled on the language we settled on.

22 MS. PARHAM: I believe the South Carolina case law is
23 words alone, however vulgar or insulting, are not enough to be
24 legal provocation where death is caused by use of a deadly
25 weapon. I believe that's the status of South Carolina Law,

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1 that that sentence cannot stand alone without the continued
2 where death is caused by the use of a deadly weapon.

3 THE COURT: And that's your position that it ought to
4 include that?

5 MS. PARHAM: Yes, sir.

6 THE COURT: Use of a deadly weapon?

7 MS. PARHAM: Well, words alone however vulgar or
8 insulting are not enough to be legal provocation where death
9 is caused by the use of a deadly weapon, period, but -- or
10 take the entire paragraph out. I just think that's -- and I
11 think this case does not involve a deadly weapon.

12 THE COURT: I mean, fists can be used as a deadly weapon.
13 I mean, that's clear law in this state.

14 MS. PARHAM: But under *Stanko*, I don't know that it can
15 be charged when you have ---

16 THE COURT: I mean, you're asking for your cake and eat
17 it too, so to speak. I mean you're asking me to just leave it
18 out there for a jury to just well, he didn't use a deadly
19 weapon, when that's not the status of the law. The law is
20 that fists can be considered a deadly weapon. I mean, that
21 law is clear. We talked about that in chambers yesterday.

22 MS. PARHAM: I thought the deadly weapon language came
23 out because of the *Stanko* case. Whatever, Your Honor wants to
24 do. I just want to make sure I ---

25 THE COURT: I understand. What the law in *Stanko* was the

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1 charge -- telling the jury that they could infer malice by the
2 use of a deadly weapon, and then going on to comment as to --
3 and give them examples of deadly weapon. That's where you
4 started running afoul with that.

5 Hold on a minute.

6 What if I charge, words alone however vulgar or insulting
7 are not enough to be legal provocation. Words must be
8 accompanied by some overt threatening act, which could've
9 produced the heat of passion.

10 MS. PARHAM: I object to that just because I think that
11 South Carolina Law is words alone are not enough to be legal
12 provocation where death is caused by the use of a deadly
13 weapon, period. I think that's the status of our case law.

14 THE COURT: Okay. Anything else, Mr. Holt?

15 MR. HOLT: No, sir, Judge.

16 THE COURT: Well, and I -- I believe it's appropriate to
17 define what a deadly weapon is because it's -- and I'm gonna
18 do that. So, I'm gonna change the charge.

19 So, I'm gonna define deadly weapon for the jury and,
20 after that paragraph, I'm gonna put in a deadly weapon is any
21 article, instrument, or substance which is likely to cause
22 death or great bodily harm, whether an instrument has been
23 used as a deadly weapon depends on the facts and circumstances
24 of each case. The following are examples of instruments which
25 may be deadly weapons: a pistol, a shotgun, a rifle, a dirk, a

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1 dagger, a knife, slingshot, metal knuckles, razor, gasoline,
2 fire bomb or Molotov cocktail and lighter fluid. A gun may be
3 a deadly weapon even if it's not operating. A hand or fist is
4 not normally considered a deadly weapon; however, under some
5 circumstances, depending on the manner and means of its use,
6 the wounds inflicted and other relevant facts, a hand or fist
7 may be considered a deadly weapon. It is for you to decide in
8 this case beyond a reasonable doubt whether or not a hand or a
9 fist is a deadly weapon. And then the exercise of a legal
10 right, no matter how offensive it is to another is never
11 sufficient legal provocation for voluntary manslaughter and
12 finish out that paragraph.

13 All right.

14 MS. PARHAM: Just for the record, we would just object to
15 that definition that Your Honor just read as well as the
16 sentence before it. We just think it should all be out of
17 that charge.

18 THE COURT: So, you're asking me not to define deadly
19 weapon at all for the jury and let them assume or draw their
20 own conclusions on that when the law is clear what definitions
21 of a deadly weapon are?

22 MS. PARHAM: Well, my position would be take out the
23 paragraph before it, too, that refers to a deadly weapon, so
24 there's no discussion of a deadly weapon at all.

25 THE COURT: Well, then that's not the law.

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BY THE COURT

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1 MS. PARHAM: I'm just making the objection for the
2 record. Okay?

3 THE COURT: I understand. Your objection is so noted for
4 the record, Ms. Parham.

5 MS. PARHAM: Thank you.

6 THE COURT: But I'm gonna -- and at the conclusion of my
7 charge, you need to make that objection as well. Okay?

8 MS. PARHAM: Yes, sir, but I don't want to make it in
9 front of the jury.

10 THE COURT: No, but after I send them out and before we
11 send everything back ---

12 MS. PARHAM: Yes, sir.

13 THE COURT: --- just renew your objections on that.

14 MS. PARHAM: Yes, sir.

15 THE COURT: Okay.

16 MS. PARHAM: Thank you.

17 THE COURT: All right. Anything else before I bring the
18 jury out, Mr. Holt?

19 MR. HOLT: No, sir, Judge.

20 MS. PARHAM: No, sir, Judge.

21 THE COURT: Bring me the jury, please.

22 (REPORTER'S NOTE: Jury enters courtroom. 9:47 A.M.)

23 BY THE COURT:

24 THE COURT: Good morning, ladies and gentlemen.

25 JURY: Good morning.

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CLOSING BY HOLT

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1 THE COURT: I told you we were gone start at 9 o'clock
2 and it is almost 10 till 10:00 and I apologize. You heard the
3 old saying of all roads are paved with good intentions; it was
4 fully my intention to start at 9 o'clock and I apologize for
5 you all having to wait back there. In our judicial system,
6 there are many pieces to the machine that make it go, so to
7 speak. For instance, if one of you hadn't been here at 9
8 o'clock, we would've had to wait. And, so, when one of those
9 pieces of the machine isn't totally lined up, it kind of
10 throws things off a little bit, but I apologize to you for
11 having to wait back there. I appreciate your patience. There
12 are occasions when jurors have had to sit back there for
13 various reasons and, and I've had juries knock on the door and
14 say when are we gonna get to come out. So, I appreciate your
15 patience as you sat back there this morning patiently waiting
16 for us to get you out here. Okay?

17 As I told you yesterday when we broke, that which
18 remained would be the charge on the law, excuse me, the
19 closing arguments by the lawyers and then my charge on the law
20 to you and I'd give you the case. I will tell you, ladies and
21 gentlemen, like I told you with regards to opening statements,
22 the attorneys' arguments are not evidence in this case, it's
23 not evidence in this case. Okay?

24 At this time, I'm gonna recognize the State.

25 Mr. Holt?

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CLOSING BY HOLT

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1 MR. HOLT: Thank you very much, Your Honor.

2 THE COURT: Hold on a second. The order in which this
3 will go, Mr. Holt will open on the law, Defense counsel will
4 then close and then Mr. Holt will close, and then I'm gonna
5 give you the charge. Okay?

6 Mr. Holt?

7 CLOSING BY HOLT:

8 MR. HOLT: Thank you very much, Your Honor. If it please
9 the Court, Ms. Parham, ladies and gentlemen of the jury, what
10 I want to talk to you about first is the law, the law as how I
11 see it in this certain situation.

12 Now, I talked to y'all at the beginning about living
13 under the law and you are Americans, you all understand we
14 don't have any rulers, nobody makes our decisions for us. The
15 flip side of that is Americans have to make the decisions.
16 Citizens of Florence County are gonna have to make this
17 decision. You're gonna have to make it based on the evidence
18 I showed you at the trial, but you're also gonna have to make
19 it how it fits to the law. There's no going back there and
20 deciding I feel sorry for somebody, I hate that something
21 happened. Somebody testified that they were sorry. That
22 doesn't enter the thought process. What enters the thought
23 process is how do these facts fit with this law. And the only
24 way the facts fit in the law is with murder. They don't fit
25 manslaughter. Manslaughter is not I didn't intend to kill

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CLOSING BY HOLT

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1 him, I hate it happened. There's certain defined things that
2 create manslaughter. I've actually got them pulled up on the
3 computer. I wasn't expecting it to go in exact order, but I
4 will tell you is that manslaughter requires two things, the
5 killing of a person without malice aforethought. We'll talk
6 about malice aforethought a lot. It's a legal term. But you
7 have to have what they call sufficient legal provocation and a
8 sudden heat of passion. You have to have those two things for
9 a manslaughter verdict. Sufficient legal provocation is not
10 somebody saying, I don't owe your daddy money when you accuse
11 them of not paying their bills. A sudden heat of passion is
12 not calmly putting down my cigarette as I prepare to sucker
13 punch somebody. So, you have to think about that in your
14 head. You have to think, I'm gonna put this cigarette down
15 and make it look like I'm over here and then I'm gonna snap
16 up, sucker punch and knock you out. A sudden heat of passion
17 is when a man on the other side of the pool table says, I
18 don't owe your daddy anything and you become enraged and fly
19 at him. Sufficient legal provocation cannot be based on the
20 words alone. Now since I can't put it up on the screen right
21 now, what I'll do is I'll go through exactly what I think it
22 is. Voluntary manslaughter, taking the life of another in a
23 sudden heat of passion based on sufficient legal provocation,
24 both of which must be available, present at the time of the
25 killing. A sudden heat of passion is a passion that may

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CLOSING BY HOLT

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1 affect a person's self-control and temporarily disturb a
2 person's reason. And, you don't calmly set a cigarette down
3 if your reason has been disturbed. A sudden heat of passion
4 will make a person unreasonable to coolly reflect on his
5 actions and pronounce an uncontrollable impulse to do
6 violence. Sufficient legal provocation must be the type that
7 will make a person of ordinary reason and caution become
8 enraged and lose control temporarily. Neither one of those
9 two things are available here and I think -- I think we'll get
10 my recitation up it in just a minute and I'll go over the law
11 of murder.

12 And you need two things to have a murder. You need a
13 killing. You need a killing and you need malice aforethought.
14 And what is malice aforethought? It's a legal term and it can
15 be described the wrongful intent to injure another person, but
16 you can't get in somebody's brain and decide just what their
17 intent was. What you have to do to decide you have malice is
18 to look at the actions surrounding that. Express malice,
19 okay, could be I'm gonna kill you and then running over there
20 and doing it. Inferred malice can be inferred -- and the
21 Judge is gone tell you this in the law -- from the actions
22 that you witness. They do not imply different kinds of
23 malice, it's just -- they're both malice.

24 And then aforethought, and aforethought simply means that
25 it was planned before and there's no legal definition of when

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CLOSING BY HOLT

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1 before is; one second, one microsecond, one millisecond before
2 is enough. You don't have to go to a place that night and
3 plan on killing somebody to plan on it before you kill them.

4 Manslaughter, I think we've already went over. Sudden
5 heat of passion based upon sufficient legal provocation. You
6 have to have both. You can't say, well, I see the sudden heat
7 of passion, so we're covered in that regard. You have to also
8 to have the sufficient legal provocation.

9 And reasonable doubt, you'll hear a lot about the Judge
10 -- you'll probably hear a lot from Ms. Parham about what
11 reasonable doubt is. One of the things about the law is,
12 y'all can't just decide you like my side more than that side.
13 I have to prove this case to you beyond a reasonable doubt and
14 it is a high burden, but it's not a fanciful or a weak doubt.
15 Reasonable doubt is a doubt that you can ascribe a reason to.
16 The Judge will charge you that law, and if you think I said
17 anything that's gonna back up from his version of the law,
18 then you'll have to side with him. But when I stand back up
19 next time, I'll go over the facts, what everybody's said, how
20 it was presented to you, and we'll talk about the evidence and
21 we'll talk about how they fit those specific laws.

22 Thank you, ladies and gentlemen.

23 MS. PARHAM: May we approach, Judge?

24 THE COURT: Yes.

25 (REPORTER'S NOTE: A bench conference was held off the record

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CLOSING BY PARHAM

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1 in the presence of but out of hearing of the jury.)

2 CLOSING BY PARHAM:

3 MS. PARHAM: May it please the Court, Mr. Solicitor,
4 ladies and gentlemen, good morning.

5 JURY: Good morning.

6 MS. PARHAM: This is the only time I'll get to speak with
7 you. The Prosecutor will get to speak again, that might suit
8 some of you just fine. Thank you for your attention over the
9 past four days. I can tell y'all listened to all the evidence
10 and saw it come off the screen.

11 You know the problem with this case for the government is
12 exactly what he was talking about with regard to murder. You
13 have to have malice aforethought. You have to kill someone,
14 intend to kill someone with malice aforethought. It's not
15 during thought or after thought, it's aforethought. And so
16 the law on murder is that you have to want to kill someone or
17 intend to kill someone. There's no evidence of that in this
18 case. The evidence in this case is that my client wanted to
19 assault someone. He had no intention of killing the victim,
20 no intention. And like he said, this case is to be decided
21 not on emotion, but on the facts of this case. My client
22 could not have known that it was gonna take the victim's
23 friends 9 minutes, excuse me, 14 minutes to call 911 and 9
24 minutes -- you remember Mr. Feagin's testimony that he spoke
25 to Mr. Welch before he left and Mr. Welch spoke to him and

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CLOSING BY PARHAM

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1 said, just give me a minute, just give me a minute. If you
2 look at that video, that is 9 minutes after the assault. The
3 assault took place at 1:27, I believe, and it took 9 minutes.
4 The victim was still talking 9 minutes later and no 911 was
5 called. I mean, how can my client be responsible for
6 someone's death when no one calls 911 for 14 minutes, 14
7 minutes; he could not know that. You know, my client -- the
8 Judge will tell you that malice aforethought is evil, hatred,
9 wanting to kill someone, you know, lying in wait, all these
10 things. You know, there's no evidence of lying in wait.
11 There's no evidence of my client coming and hitting somebody
12 with a pool stick, a knife, shooting someone with a gun. And
13 let me tell you that even if -- even if someone shoots someone
14 with a gun, it does not necessarily mean that it's murder,
15 that there's malice aforethought to kill someone. There has
16 to be malice aforethought. That intent has to exist
17 beforehand and there is no evidence that my client wanted to
18 do anything more than assault someone before the assault.
19 There is no evidence that he wanted to kill him. There is no
20 evidence that he didn't care whether he lived or died. You
21 know, this is not about whether, you know, what my client did
22 was wrong. I mean, that's clear. Or, whether this was a
23 horrible tragedy because the victim died; that is abundantly
24 clear. But, what this case is about is whether the State can
25 prove to you beyond a reasonable doubt, not whether they think

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CLOSING BY PARHAM

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1 my client had this intent or he probably had this intent, but
2 beyond a reasonable doubt that he had the intent to kill
3 someone and that he took the person's life.

4 You know, even the medical examiner, you know, testified
5 that Mr. Welch fell and cracked his skull. And then, you
6 know, you've seen the video. I mean, the bartender, she steps
7 over, she's counting money, she's smoking cigarettes, no one
8 calls for help, no one. His friend talks to him and then both
9 of his friends leave the bar, leave the bar before the police
10 get there. That's strange to me. I mean, if your friend had
11 just been assaulted and you wanted the person who did it to be
12 held responsible -- you know, why would Catfish leave the bar,
13 why would Mr. Feagin leave the bar before help gets there.
14 And you know we do have this video. Unfortunately, we don't
15 have sound. And unfortunately we don't have the video that
16 happened before this video. And you'll see from the exhibits
17 -- I think it State's Exhibit 15 -- that there's another
18 camera that would be above the bar and would shine -- it would
19 video the whole pool table scene. If you had that video,
20 you'd be able to see what Mr. Welch was doing. What we do
21 know is that there was an argument by their own witnesses.
22 You don't have to listen to anything that my client says, by
23 their own witnesses. And most of those witnesses were friends
24 with Mr. Welch. We know that there was an argument. I wrote
25 quotes down from Mr. Wright's testimony and these are quotes.

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CLOSING BY PARHAM

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1 There was an altercation between Tommy and Jimmy. Jimmy was
2 loud. We broke the fight up. They were arguing. There's
3 testimony that, that they were arguing around five minutes.

4 You know, the State indicted this charge for murder and
5 now, now there's -- now they're talking about manslaughter and
6 murder. You know, I submit to you that it's not either
7 because there's not proof beyond a reasonable doubt that my
8 client is the one that killed that man. And, and, and there's
9 not any -- I don't think anyone in this courtroom believes
10 that my client went in there to kill someone. What he did was
11 he assaulted someone who passed away later. Is he guilty of
12 assault? Absolutely. Is he guilty of assault and battery of
13 a high and aggravated nature? Absolutely. But is he guilty
14 of planning to kill someone? No, that is not murder. This is
15 a fight and it is not murder. This is not a murder case.
16 This is a horrible fight where someone died. You know, we
17 have sports in this country, most of which I don't agree with,
18 but, you know, you can see on television boxing and there's
19 just kind of all out fighting now on television where anything
20 goes. It's kinda like -- I don't know what it's called but
21 it's a combination of wrestling and boxing and all that. I
22 don't know why we have those sports. But, you know, to take
23 the position that anytime someone punches someone repeatedly
24 in the face they're trying to kill them, it's not -- it's just
25 not consistent with the law or what's going through someone's

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REPLY CLOSING BY HOLT

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1 mind. You know, what if this happened at a high school? You
2 know, what if a child hits someone and gets on top of them and
3 hits them more and that person dies because no one calls for
4 help? Is that murder? I submit to you that it's not, it's not
5 murder, and it's not manslaughter if my client didn't cause
6 the death.

7 You know, this is a horrible situation, no question about
8 it, but it's the State's burden to prove this case to you
9 beyond a reasonable doubt. That is the doubt that protects
10 all of us citizens from being wrongfully accused or wrongfully
11 convicted. And in this case, it is an important case for my
12 client. You know, he went into that bar drunk. Everyone was
13 drunk in that bar, and he and another man start having words
14 and he hits him but at no time did my client want to kill him
15 or plan to kill him or anything like that. There's just no
16 evidence of that. And so I would submit to you and request
17 that y'all come back with a verdict of not guilty on both
18 counts.

19 Thank you.

20 REPLY CLOSING BY HOLT:

21 MR. HOLT: If it please the Court, Judge, on October
22 28th, 2015, Tommy McGee beat Jimmy Welch about the head. He
23 beat him about the head until a crack opened up in the outside
24 and until he cracked it all the way across, and he beat about
25 the head until Michelle Gibson jumped on top of him with two

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REPLY CLOSING BY HOLT

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1 other grown men and pulled them off. If you forget anything
2 else I say, remember this, I don't think the medical examiner
3 said anything about him falling and cracking his head. I
4 think what the medical examiner said was that he was cracked
5 on one side of the head and then a fixed object pressed
6 against this side and, if you're materially beat on this side,
7 the evidence of destruction is gonna be over here and the
8 blood on the brain is not on the back of the head. So, we're
9 not here charging somebody for murder because he fell. If you
10 punch somebody one time and you run out of the room, you might
11 have an argument for manslaughter. Ms. Parham described in
12 her time with you what a perfect case for manslaughter would
13 be. You hit somebody one time, you don't mean to do it and
14 you run away, maybe you got a manslaughter case. But if we
15 could pull this up, the facts in this case here, are what
16 we're gonna go over next, and I don't think she spoke to the
17 facts in this case at all.

18 What I'll do is I'll go over the facts with y'all and
19 then we'll talk a little bit more. Michelle Gibson, she's the
20 first person we saw. She testifies, she didn't hear any
21 argument from the victim, that she didn't saw any violence
22 coming, that she was directly behind these men. Don't forget,
23 don't ever forget that the beating didn't stop until Michelle
24 Gibson came involved. Now, we can judge her two years later
25 and 10 o'clock in the afternoon while we're sober, all right.

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REPLY CLOSING BY HOLT

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1 But two years ago in the dead of night at 2 o'clock in the
2 morning when everybody is having some drinks and she said she
3 didn't think it was that serious, she might not have. You
4 heard the 911 call. Okay? She didn't think it was that
5 serious. I hate that but it was mistake she made and mostly
6 everybody else made there. That doesn't assuage the guilt of
7 Tommy McGee for beating that man because people afterwards
8 made mistakes. We're here trying Tommy McGee. We're not here
9 trying the mistakes of some people that were drunk at 2
10 o'clock in the morning on Tuesday two years ago. Terry
11 Feagin, he was a friend of the victim. Here again we see
12 there was no fight going on. There was no fight earlier.
13 There's nothing that the video is missing. Okay? If you have
14 a bunch of people talking about a fight on the stand, what
15 you're gonna hear is, man, it'd be nice if we had a video.
16 But, if you got a video, what you're gonna hear is where is
17 all the other video. I put those photographs in to let you
18 know how desolate downtown Lake City was at that time. There
19 was no other fights going on. Terry didn't expect violence.
20 He left because he didn't think it was that serious. Kay
21 Floyd, she was the bar owner. She knew about the video
22 system. I had to put here, fumbled through her testimony and
23 I apologize for that, but she puts the video in.
24 Now, Ray Wright, this is interesting. Of all the people
25 who were there that night, excluding the Defendant himself who

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1 testified and we'll get to him later, Ray Wright was a friend
2 of Tommy McGee's. How much different is Ray Wright's
3 testimony from everybody else that was there? And I'm gonna
4 tell you, it's not a lot. He was an acquaintance of the
5 Defendant. He did not see any violence earlier. Jimmy was
6 loud, but not violent. He said he was just a loud person.
7 Okay? And I don't know if any of y'all missed that, because
8 when Ray got up there, she continuously talked about Jimmy
9 getting loud. But I think Ray's point was, he was just a loud
10 guy.

11 Now, our direct witnesses tell us a couple of things;
12 that there was no buildup of aggression, that there were no
13 indicators of hostility on any part of the victim. There was
14 no fight earlier. And when I say there was no fight earlier,
15 I want everybody to remember, if I forget to tell you later,
16 how this fight started. This fight started with him putting
17 that cigarette down on the sneak and sucker punching this man.
18 He planned to do that. Okay? You can't plan to do that and
19 then something bad happens, then you sorry about it, then it's
20 not murder. That's not how the law works.

21 The fire department and EMS, okay, nobody was there.
22 They had to call some people from Olanta, so they end up
23 getting the guys from the fire department up there. And I
24 think Curtis and Justin Taylor did a good job of describing to
25 you why they went. Okay? Normally you would expect EMS at a

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1 bar or at a fight or in a serious situation, you want to call,
2 you want to get EMS, but you got the fire department. What
3 happened when the fire department arrived and you'll have the
4 video; it's in evidence. You look at the times, if you feel
5 the times are important and the government's job and the --
6 and the witnesses' job wasn't good enough for y'all, you can
7 watch the video and see, but they'll tell you that when they
8 got there, just a short time later, he's blue, he's purple;
9 you'll see the pictures and they start chest compressions.

10 Now, Jerry Gainey is a good friend of mine and I always
11 like to tease him. He surprised me this term. He normally
12 gives me years. I think he said he started in '87. I put
13 everybody up here from the police just so y'all would know how
14 a typical investigation occurs, and I think the police, they
15 gave us some of the best pictures I feel like. Jerry's
16 pictures, I think are useful and these are them right here and
17 they show you exactly the scene as it happened. I think
18 Sikes' pictures, even though they were taken with his cell
19 phone are useful because they show you what he saw there.
20 What he saw when he walked in -- and I think all that stuff is
21 useful for you to know and for you to judge precisely how
22 these things played out that night.

23 Now, Dr. Batalis, I don't remember him saying word one
24 about somebody falling and cracking their skull, maybe he said
25 those things separately. Maybe that skull cracked and maybe

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1 he said he fell, but the implication was that bleeding on the
2 brain on his right side and I asked him if one side was
3 against a fixed object, what would happen if you were beat on
4 the other side. Just so we're clear, if you're hit on this
5 side and this side is on the floor, this is where your damage
6 is gonna be; this side that is pressed up against the floor
7 with nowhere to go. I think Batalis was pretty clear on how
8 that worked. I also asked him another thing, and maybe a lot
9 of you were paying attention to it, the only thing on this
10 man's finger was an old bruise. Okay? If you're involved in
11 a fight, for those of you who might've been in fights before,
12 you'll know, your fingers, they show signs of it. It's just
13 another piece in the example that Jimmy was not in any type of
14 fight.

15 Now, the Defendant got on the stand and he admitted that
16 he admitted that he did the beating that resulted in the man's
17 death. He wanted to tell you he was just a little aggravated.
18 And what really stood out to me from Tommy McGee's testimony
19 was that he was just trying to make peace. Well, he certainly
20 walked away with a piece of a sword. There certainly wasn't
21 anymore conversation left when Tommy McGee was finished. I
22 think he certainly made his point. He wanted to get mad at a
23 man who he accused of owing his father money and then he
24 accused the man of continuing the conversation that Tommy
25 McGee started.

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1 I think I've got it written down somewhere of how many
2 times the Defense side has said the word bar fights. Okay?
3 It's more than once, it's more than twice, it's more than
4 three times. This was not a bar fight. This was a bar
5 ambush. Okay? I think the video clearly shows that. Even
6 the Defendant in his own testimony, guess he didn't have a
7 chance to fight back. He admits that. It happened so quick.
8 The only person making anything happen in this was Tommy. He
9 was the only person in control through the entire time. Jimmy
10 never put up his hands to defend himself. And the Judge is
11 gonna tell you that evidence can corroborate or impeach.
12 Okay? Other evidence. And I want you to look at that tape;
13 it can't lie. He might be sorry about what happened now in
14 front of us. He's very sorry about it. Okay? But it
15 happened. Even if Jimmy was defending himself verbally in the
16 conversation about owing the Defendant's father money, words
17 are not enough to rise to sufficient legal provocation. Okay?
18 And that's how you get a manslaughter with sufficient legal
19 provocation. Words aren't enough. If you see Jimmy do
20 anything else, then you can find for manslaughter, but you're
21 not gonna see it. You're gonna see the whole video, and he's
22 gonna give you the law. The killing of any person with malice
23 aforethought -- and that's where y'all are gonna spend a lot
24 of your time on is what is malice aforethought, either express
25 or implied. It does not necessarily import ill will toward

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1 the individual that was injured, but rather a general
2 recklessness of the lives and safety of others. Malice is the
3 wrongful intent, not to kill somebody, but to injure another
4 person. Malice is a legal term implying the wickedness and
5 excluding a just cause or excuse. The Judge will read to you
6 exactly what malice aforethought is, and I suggest and I hope
7 that you pay a lot of attention. Malice can be one or two
8 ways. We can't cut somebody's head open and examine what they
9 were thinking. So, we have malice -- either you say I'm gonna
10 kill you or you present actions that demonstrate I don't care
11 if you die. And you can't hammer somebody's head into the
12 concrete 10, 11, 12 times, you can count it, okay, and not say
13 you care whether they live or die; you don't.

14 Aforethought. You got to think about it before you do
15 it. Okay? And the single greatest piece of evidence, and
16 I've harped on it, is the fact that he puts that cigarette
17 down. What was he planning on doing when he put that
18 cigarette down? Okay? What was he planning on doing? He was
19 planning on committing an act and the act was a severe
20 beating.

21 Manslaughter, now we're talking about manslaughter Ms.
22 Parham said. We're talking about it because the Judge is
23 gonna charge it. Okay? That's why it's up here. You're
24 gonna get a sentencing sheet with murder, which is what it is,
25 or you can find him guilty of manslaughter. What I'm telling

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1 you that it can't be manslaughter based on the law. Unlawful
2 killing of another without malice, express or implied.
3 Voluntary manslaughter is the unlawful killing of a human
4 being without malice in sudden heat of passion and upon
5 sufficient legal provocation. You have to have both of these.
6 Heat of passion alone will not suffice. Both heat of passion
7 and sufficient legal provocation must be present at the time.
8 You can't plan on committing an act and make arrangements to
9 do it and lie in wait for the person to get near you, then
10 calmly put your cigarette down, commit the act, then calmly
11 retrieve your cigarette and your beer. Okay? You can't do
12 those things in that order and claim sufficient heat of
13 passion. And we've already said and you'll hear it. I want
14 you to wait for those words. Words are not enough for
15 sufficient legal provocation and if you ever saw Jimmy do
16 anything other than words, I didn't.

17 Now, I'm not scared of reasonable doubt. It is a high
18 burden, I will admit to you. Okay? But, it is not a fanciful
19 doubt or a weak doubt. You will never make a decision in your
20 life where you're a hundred percent certain of anything. But
21 if you don't want to find him guilty of murder, then you have
22 to give a clear and justified reason that a reasonable person
23 would like. This was not a fight. If you forget everything
24 else I say, just remember, you don't accidentally punch
25 somebody in the head more than 12 times. Okay? This was a

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1 bar ambush, and it only ended when the other people in the bar
2 stopped it. I understand you're sorry now, I get that. I
3 understand it's pitiful. Okay? But the law is the law and
4 that's the price we pay for living under the law. We can't
5 change it to suit us when things don't work out like we want
6 them to.

7 (REPORTER'S NOTE: Portion of State's Exhibit Number 2
8 published.)

9 MR. HOLT: Put the cigarette down, sneak attack, falls
10 down like a board, he's clearly out of it, his hands never get
11 up. I fought to put this into evidence with Ms. Kay Floyd and
12 you can watch it as many times and the entire length of it as
13 you want to, to make the correct decision. But I encourage
14 you to watch this video from the mirror angle till when he
15 goes down and you count how many and how hard and in what
16 direction those blows went, and in so doing, he demonstrates
17 to y'all a recklessness and a disregard for human life that
18 you can infer malice from common sense and you can find him
19 guilty of murder.

20 Ladies and gentlemen, please take your time to make the
21 correct decision.

22 Thank you very much.

23 CHARGE TO JURY:

24 THE COURT: Everyone on the jury okay? Anyone need a
25 break before I give you the charge on the law?

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1 CHARGE TO JURY

1 Okay. All right. Ladies and gentlemen, it's now my duty
2 as the Trial Judge under the Constitution of this state to
3 charge and instruct you on the law applicable to this case.
4 It is your duty as jurors to accept and apply the law as I
5 will now state it to you. Furthermore, it is your exclusive
6 duty to decide all the issues of fact in this case and to
7 determine the effect, value, and weight of the evidence. Both
8 the State and the Defendant have a right to expect that you
9 will carefully consider and evaluate the evidence and apply
10 the law of this case to it, so that in the end, both the State
11 of South Carolina and the Defendant will receive a fair and
12 impartial trial.

13 I want you to understand that when I use the word
14 Defendant, I refer to Mr. Tommy McGee. Furthermore, the
15 charge alleged in the indictment is murder. Now to this
16 charge, the Defendant has entered a plea of not guilty. This
17 plea of not guilty places the burden of proof on the State to
18 prove the guilt of the Defendant to you, the jury, beyond a
19 reasonable doubt. I remind you, ladies and gentlemen, that
20 the fact that the Defendant was arrested, charged, and
21 indicted in this case is not evidence in this case and cannot
22 be considered by you as evidence of guilt in this case, nor
23 does it create any presumption or inference of guilt. The
24 indictment is simply the formal written instrument which
25 contains the charge made against the Defendant and is the

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1 formal document by which this case is brought into this Court.
2 It is vital to understand, ladies and gentlemen, that the
3 Defendant is presumed under the law to be innocent of this
4 charge. The Defendant has no obligation to prove his
5 innocence. It is a fundamental rule of our law that a
6 Defendant irrespective of the seriousness of the charge
7 against him is always presumed innocent of the crime for which
8 he is charged unless and until his guilt has been proven by
9 evidence that satisfies you, the jury, beyond a reasonable
10 doubt. The presumption of innocence is not a mere legal
11 theory or a legal phrase. The presumption of innocence is
12 very important and you need to understand that this
13 presumption accompanies the Defendant from the time of his
14 arrest and appearance in this court and continues with the
15 Defendant even after you retire to the jury room to
16 deliberate. In other words, the Defendant receives the
17 benefit of the presumption of innocence until the very end of
18 this trial when you, the jury, will deliberate upon the
19 evidence and decide whether the State has proven his guilt
20 beyond a reasonable doubt.

21 Now, what is a reasonable doubt? A reasonable doubt is
22 the kind of doubt that would cause a reasonable person to
23 hesitate to act. Proof beyond a reasonable doubt is proof
24 that leaves you firmly convinced of the Defendant's guilt.
25 Now, there are very few things in this world that we know with

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1 absolute certainty. So even in criminal cases, the law does
2 not require proof that overcomes every possible doubt.
3 However, if based on your consideration of the evidence you
4 are firmly convinced that the Defendant is guilty of the crime
5 charged, you must find him guilty. If on the other hand, you
6 think there is a real possibility that he is not guilty, you
7 must give him the benefit of the doubt and find him not
8 guilty. Ladies and gentlemen, please understand that
9 reasonable doubt may arise from evidence which has been
10 presented in the case or from the lack of evidence in the
11 case. It is your responsibility to determine whether or not
12 reasonable doubt exists as to the guilt of this Defendant. I
13 charge you that the Defendant is entitled to every reasonable
14 doubt arising in the whole case. If upon any issues of fact
15 essential to conviction and a verdict of guilty you have a
16 reasonable doubt as to how that issue should be resolved, it
17 would be your duty to resolve that reasonable doubt in favor
18 of the Defendant. Thus, in summary, it is important to
19 understand that a Defendant is not required again to prove his
20 innocence. Instead, the State -- the State is required by law
21 to prove every essential element of the offense charged
22 against the Defendant by evidence which satisfies you of guilt
23 beyond a reasonable doubt. Only then can you convict the
24 Defendant and find him guilty.

25 Now, ladies and gentlemen, there are two types of

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1 evidence which are generally presented during a trial; direct
2 evidence and circumstantial evidence. Direct evidence
3 directly proves the existence of a fact and does not require
4 deduction. Circumstantial evidence is proof of a chain of
5 facts and circumstances indicating the existence of a fact.
6 Crimes may be proven by circumstantial evidence. The law
7 makes absolutely no distinction between the weight or value to
8 be given to either to direct or circumstantial evidence.
9 However, to the extent the State relies on circumstantial
10 evidence, all of the circumstances must be consistent with
11 each other and, when taken together, point conclusively to the
12 guilt of the accused beyond a reasonable doubt. If these
13 circumstances merely portray the Defendant's behavior as
14 suspicious, the proof has failed. The State has the burden of
15 proving the Defendant guilty beyond a reasonable doubt. As I
16 have told you from the outset, this burden rests with the
17 State regardless of whether the State relies on direct
18 evidence, circumstantial evidence or some combination of the
19 two.

20 Now, ladies and gentlemen, during the course of this
21 trial, you and I have had separate duties to perform. As the
22 Trial Judge, it's my responsibility to preside over this
23 trial, and I also have the duty to rule upon the admissibility
24 of the evidence offered during the process of this trial. In
25 that regard, ladies and gentlemen, you are to consider only

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1 the competent evidence before you and you are to disregard
2 from your mind any testimony ordered stricken from the record
3 of this case during the process of this trial if there was
4 any. And, you are to consider only the testimony which has
5 been presented from this witness stand together with any
6 exhibits admitted into the record of this case and any
7 stipulations of counsel made into the record, if there were
8 any. Furthermore, I have the additional duty to charge you on
9 the applicable law of this case and, in that regard, ladies
10 and gentlemen, I am the sole judge of the law of this case.
11 It is your duty to accept and apply the law as I state it to
12 you. If you have any preconceived ideas as to what the law is
13 or what the law ought to be and it does not agree with what I
14 tell you the law is, you, ladies and gentlemen, are obligated
15 under your oath to abandon these preconceptions because you
16 are sworn to accept the law precisely as I state it to you.
17 In this trial, ladies and gentlemen, you, you are the
18 sole and exclusive judge of the facts, and I am the judge of
19 the law. Do not infer that I have any opinion about the facts
20 in this case from anything that I have said during the course
21 of this trial. In ruling upon the admissibility of evidence
22 or otherwise or from anything that I say during the course of
23 this charge to you. In this regard, the law simply does not
24 permit me to have an opinion about the facts. As jurors, it
25 is your duty and your duty alone to determine the effect,

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1 value, and weight of the evidence presented during the course
2 of this trial. In determining what the facts in this case
3 are, you, ladies and gentlemen, must judge the credibility,
4 which simply means the believability of the witnesses and the
5 value of weight to be given to their testimony. You alone
6 must decide the force, effect, and truth of the testimony. In
7 making this decision, there are many things that you may and
8 should take into consideration, such as the appearance and
9 manner of the witness on the stand, a characteristic often
10 referred to as the demeanor of the witness. Was the witness
11 forthright or hesitant; was the witnesses testimony consistent
12 or did it contain discrepancies; what was the ability of the
13 witness to know the facts about which he or she testified; did
14 the witness have a cause or reason to be biased and prejudiced
15 in favor of the testimony he or she gave; was the testimony of
16 the witness corroborated or made stronger by other testimony
17 and evidence; or was it made weaker or impeached by such other
18 testimony and evidence?

19 As jurors, please understand you have the right to
20 believe a small portion of a witness' testimony and discard
21 the larger portion or vice versa. You may believe all of a
22 witness' testimony or none. You may believe the testimony
23 of a single witness against that of many witnesses or the
24 other way around. In exercising your mental processes in
25 attempting to decide the truth, the law simply requires that

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1 you exercise your good judgment, your common sense, your sense
2 of logic and reason, and your experiences in life. You then
3 apply these attributes to the evidence and apply the law as I
4 state it to you and thus arrive at a verdict.

5 Now ladies and gentlemen, during the course of the trial,
6 you heard the testimony of an individual that was qualified as
7 an expert witness. The rules of evidence, as I told you
8 previously, ordinarily do not permit witnesses to testify to
9 opinions or conclusions. An exception to this rule exists for
10 witnesses that we call expert witnesses, a witness who by
11 education and experience has become an expert in some art,
12 science, profession, or calling may state an opinion as to a
13 relevant and material matter in which the witness claims to be
14 an expert and may also state the reasons for the opinion. You
15 should consider any expert opinion received in evidence in
16 this case and, like any other evidence, give it the weight
17 that you think it deserves. If you decide that the opinion of
18 an expert witness is not based on sufficient education and
19 experience or if you conclude that the reasons given in
20 support of the opinion are not sound, or that the opinion is
21 outweighed by other evidence, you may disregard the opinion
22 entirely. Furthermore, an expert witness' testimony is to be
23 given no greater weight than that of other witnesses simply
24 because the witness is an expert. Further, you are not
25 required to accept an expert's opinion even though it is not

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1 contradicted.

2 Now, ladies and gentlemen, in order to establish criminal
3 liability, criminal intent is required. For example, the
4 mental state to be -- excuse me -- the mental state required
5 to be proven by the State for a particular crime might be
6 purpose, intent, knowledge, recklessness, or criminal
7 negligence. Criminal intent must be proven by the State
8 beyond a reasonable doubt. Criminal intent is always a matter
9 that must be determined by you, the jury, from the
10 circumstances surrounding the situation. There is no way,
11 ladies and gentlemen, to prove intent to a mathematical
12 certainty. There is no way that medical science can dissect a
13 person's brain and determine what the person had in mind. So,
14 the law says that criminal intent may be inferred from the
15 circumstances shown to have existed. This is how you make a
16 determination of whether or not the element requiring intent
17 was present. It is not necessary, ladies and gentlemen, to
18 establish intent by direct and positive evidence, but intent
19 may be established by inference in the same way as any other,
20 fact, by taking into consideration the acts of the parties and
21 all the facts and circumstances of the case. Criminal intent
22 is a mental state, a conscious wrongdoing. It is up to you to
23 determine what the Defendant intended to do based on the
24 circumstances shown to have existed. Criminal intent can
25 arise from action or a failure to act. It may arise from

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1 negligence, recklessness, or an indifference to duty or to
2 consequences that is considered by the law to be the
3 equivalent of criminal intent.

4 Now, ladies and gentlemen, the Defendant in this case is
5 charged with the offense of murder. The State must prove
6 beyond a reasonable doubt that the Defendant killed another
7 with malice aforethought. Malice is hatred, ill will, or
8 hostility towards another person. It is the intention of
9 doing of a wrongful act without just cause or excuse and with
10 an intent to inflict an injury or under circumstances that the
11 law will infer an evil intent. Malice aforethought does not
12 require that malice exists for any particular time before the
13 act is committed but malice must exist in the mind of the
14 Defendant just before and at the time of the act is committed.
15 Therefore, there must be a combination of the previous evil
16 intent and the act. Malice aforethought may be expressed or
17 inferred. These terms express and infer do not mean different
18 kinds of malice, but merely the manner in which malice may be
19 shown to exist. That is either by direct evidence or by
20 inference from the facts and circumstances which are proved.

21 Express malice is shown when a person speaks words which
22 express hatred or ill will for another or when the person
23 prepared beforehand to do the act which was later
24 accomplished. For example, lying in wait for a person or any
25 other acts of preparation going to show that the deed was

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1 within the Defendant's mind would be express malice.
2 Malice may be inferred from conduct showing a total disregard
3 for human life.

4 Now, ladies and gentlemen, if you find that the State has
5 failed to prove beyond a reasonable doubt that the Defendant
6 committed murder, you may consider whether the State -- you
7 must consider whether the State has proved by a reasonable
8 doubt that the Defendant committed voluntary manslaughter. To
9 prove voluntary manslaughter, the State must prove beyond a
10 reasonable doubt that the Defendant took the life of another
11 in the sudden heat of passion based on sufficient legal
12 provocation. Both heat of passion and sufficient legal
13 provocation must be present at the time of the killing to
14 constitute voluntary manslaughter. Sudden heat of passion may
15 for a time affect a person's self-control and temporarily
16 disturb a person's reason. The sudden heat of passion must be
17 the type that would make an ordinary person unable to coolly
18 reflect on his actions and would produce an uncontrollable
19 impulse to do violence.

20 Sufficient legal provocation must be the type that would
21 make a person of ordinary reason and caution become enraged
22 and to lose control temporarily. The provocation needed for
23 voluntary manslaughter must come from some act of or related
24 to the victim. Words alone, however vulgar or insulting, are
25 not enough to be legal provocation. Where death is caused by

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1 the use of a deadly weapon, the words must be accompanied by
2 some overt threatening act, which could have produced the heat
3 of passion.

4 Now, whether an object has been utilized, ladies and
5 gentlemen, as a deadly weapon, depends upon the facts and
6 circumstances of each case. A deadly weapon is any article,
7 instrument, or substance which is likely to cause death or
8 great bodily harm. The following are examples of instruments
9 which may be deadly weapons: a pistol; a shotgun; a rifle; a
10 dirk; a dagger; a knife; a slingshot; metal knuckles; a razor,
11 gasoline; a fire bomb or Molotov cocktail; and lighter fluid;
12 a gun may be a deadly weapon even if it is not operating. A
13 hand or fist, ladies and gentlemen, is not normally considered
14 a deadly weapon. However, under some circumstances, depending
15 on the manner and means of its use, the wounds inflicted and
16 other relevant facts, a hand or fist may be considered a
17 deadly weapon. It is for you to decide in this case beyond a
18 reasonable doubt whether or not a hand or a fist is a deadly
19 weapon.

20 Now, ladies and gentlemen, the exercise of a legal right,
21 no matter how offensive it is to another is never sufficient
22 legal provocation for voluntary manslaughter. If the heat of
23 passion had cooled or if there was enough time between the
24 provocation, if any, and the killing for the passion of a
25 reasonable person to cool, the killing would not be voluntary

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1 manslaughter. In deciding whether a reasonable person would
2 have had enough time to cool off, you should consider all of
3 the circumstances surrounding the killing. You may consider
4 the nature of the provocation, if any, the Defendant's mental
5 and physical state and the circumstances and relationship
6 between the parties.

7 Now, ladies and gentlemen, I am now drawing near the end
8 of my charge, and I want you to clearly understand that you
9 are not partisans or advocates for the State of South Carolina
10 or the Defendant. It is your duty to determine the facts and
11 then take the law as I've given you and apply them and thus
12 arrive at a verdict.

13 Once you retire to the jury room, the bailiff will give
14 the verdict form to you, Mr. Foreman, when, you, the jury,
15 arrive at a verdict as to the offense charge in this case, the
16 foreman will indicate your verdict on the verdict form. If
17 the State has failed, if the State has failed to prove the
18 guilt of the Defendant beyond a reasonable doubt, you will
19 indicate your verdict by placing an X beside not guilty.
20 Likewise, if the State has proven the guilt of the Defendant
21 beyond a reasonable doubt, your verdict will be an X beside
22 guilty.

23 Mr. Foreman, once a decision has been made, you will
24 check or put an X by whichever choice is the verdict of the
25 jury. The verdict, ladies and gentlemen, that you render in

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1 this case, must be the verdict of each and every juror. It
2 must be your unanimous verdict. All twelve jurors must agree
3 on the verdict, which you authorized the foreman to write for
4 the jury.

5 Now, ladies and gentlemen, I want you to further
6 understand the order in which the choices of the verdict
7 appear on the verdict form, are not suggestive of any verdict
8 on the part of this Court. The verdict in this case is to be
9 determined by you the jury, not the Court. Furthermore,
10 please understand that even though I will give the verdict
11 form to the foreman, it is not his verdict alone, it is the
12 verdict of all twelve of you and I emphasize again that it
13 must be your unanimous verdict. I'm also going to give you a
14 copy of these instructions in written form. During your
15 deliberations, you may refer to the instructions to guide your
16 decision making. You must consider the instructions as a
17 whole and not follow some and ignore others. Please, Mr.
18 Foreman, return these instructions to the Court at the time
19 your verdict is rendered.

20 Now, I am going to ask you in just a minute to retire to
21 the jury room, but not to begin your deliberations until
22 you're told to do so. The law requires that I consult with
23 the attorneys to make sure that I have not left anything out
24 of these instructions. After I have spoken with the
25 attorneys, the bailiff will bring in the items of evidence

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1 along with a copy of these instructions and the verdict form.

2 Now during your deliberations, should you have any
3 questions, Mr. Foreman, it will be your responsibility to
4 reduce such question to writing, knock on the door and let the
5 bailiff know that you all have a question and he will get that
6 question to me and I'll answer how I deem appropriate. Also,
7 once you all have reached a unanimous verdict, knock on the
8 door, advise the bailiff that you have reached a unanimous
9 verdict and we will get you back into the courtroom as
10 promptly as possible.

11 Is everyone on the jury feeling okay; anyone not feeling
12 well?

13 (REPORTER'S NOTE: No response.)

14 THE COURT: All right. I'm gonna ask that you all step
15 to the jury room, but do not, do not discuss the case until
16 you're instructed to do so.

17 (REPORTER'S NOTE: Jury exits courtroom. 10:44 A.M. The
18 following takes place outside the presence of the jury.)

19 THE COURT: Can y'all come up and look at the items of
20 evidence first, please?

21 MS. PARHAM: May I put something on the record, Your
22 Honor?

23 THE COURT: Yeah.

24 MOTIONS:

25 MS. PARHAM: I would object to the Court not requiring

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MOTIONS

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1 the State -- I thought there had been a change in procedure
2 and I can't look it up right now, but just to protect the
3 record, I object to the Court not requiring the State to open
4 in full on the facts and law. It's my understanding that the
5 procedure has been changed and that they're supposed to only
6 merely have a response or rebuttal much like the federal law.
7 So, I would ask for a mistrial based on that procedure that
8 was undertaken in closing argument.

9 THE COURT: Mr. Holt?

10 MR. HOLT: That is not true, Judge. That's not the law.

11 THE COURT: Objection so noted for the record.

12 MS. PARHAM: Thank you.

13 THE COURT: And also renewing your prior objections?

14 MS. PARHAM: Yes, sir. I renew all the prior objections
15 regarding the charge and the grounds for a mistrial.

16 THE COURT: So noted and the rulings on those remain the
17 same.

18 MR. HOLT: Thank you, Judge.

19 MS. PARHAM: This is -- I mean, the change that was gonna
20 be made resulted in this charge, but then the change wasn't
21 made. In other words, it was ---

22 THE COURT: I wasn't gonna stop it there and that's what
23 I -- Mr. Holt -- put your objections on the record ---

24 MS. PARHAM: Well, no, my point is is that the law is
25 words alone are not enough to be legal provocation where death

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MOTIONS

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1 is caused by use of a deadly weapon, period. That's how all
2 the case law is worded and that -- then you were gonna change
3 that but then include this is what I thought.

4 THE COURT: No, I didn't.

5 MS. PARHAM: I mean, can you change it on the written
6 version?

7 THE COURT: No, I mean, that's the charge that I gave
8 them and I'm not gonna give them something different than what
9 I've given them from -- that's our charge out of our charge
10 book, and if it's wrong, you've made your objection on it.

11 MS. PARHAM: Okay.

12 THE COURT: Okay?

13 MS. PARHAM: All right. Because otherwise -- in other
14 words, this is the same way it was last night ---

15 THE COURT: Right.

16 MS. PARHAM: In other words, I thought the reason you
17 were gonna give the -- was because of the change in ---

18 THE COURT: Because I'm talking about a deadly weapon.

19 MS. PARHAM: Okay. I thought the reason you were gonna
20 give the first charge is because you were changing this
21 paragraph.

22 THE COURT: I gave the first charge because I was gonna
23 define deadly weapon and included that in there.

24 MS. PARHAM: The words are the same, it's just where the
25 punctuation is ---

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MOTIONS

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1 THE COURT: I understand that. Okay.

2 MR. HOLT: Before it goes back, don't you ---

3 THE COURT: Do you have Ms. Corbett who is my alternate?

4 MR. HOLT: I might not have heard you ask if there were
5 any changes or alterations we need and I just need to say on
6 the record that?

7 THE COURT: What?

8 MR. HOLT: Don't you have to ask us on the record if
9 there are any changes or alterations according to my charge?

10 THE COURT: Are there any other objections that you
11 haven't already put on the record to my charge?

12 MR. HOLT: No, sir.

13 THE COURT: Ms. Parham?

14 MS. PARHAM: We renew our objection about ---

15 THE COURT: Is it something new; that's is my question?

16 MS. PARHAM: No.

17 THE COURT: Okay. It's already on there. So noted. If
18 there's any question if it goes up on appeal, she has made
19 that objection and has not waived in any way about not
20 restating it on the record.

21 MS. PARHAM: Is this gonna be made a part of the Court's
22 record as an exhibit or ---

23 THE COURT: We have that all in the record. I mean, I
24 can make it a Court's Exhibit.

25 MS. PARHAM: Can we make that a Court's Exhibit? Thanks.

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BY THE COURT

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1 COURT'S EXHIBIT NUMBER 3

2 MARKED FOR IDENTIFICATION

3 THE COURT: I need you to get Ms. Corbett out and have
4 her come up here, please.

5 BAILIFF: Yes, sir.

6 (REPORTER'S NOTE: Deliberations begin at 10:54 A.M. Juror 25
7 enters courtroom and is released.)

8 BY THE COURT:

9 THE COURT: All right. I've asked my Deputy Clerk of
10 Court to go on and go back and take lunch orders for this
11 jury. Any objection from the State?

12 MR. HOLT: None, Judge.

13 THE COURT: Defense Counsel?

14 MS. PARHAM: No, Your Honor.

15 THE COURT: All right.

16 Listen up, those of you are in the audience that are here
17 with regards to this case, the State v. Mr. Tommy McGee, if
18 you are here as part of the, the victim's family, I need you
19 to leave the courtroom. I have a plea that I need to take and
20 it's involving a lot of people. Ms. Christine, if you'll put
21 those individuals in this conference room out here right
22 outside this Solicitor's office, right there. Go ahead and do
23 that. Nothing is gonna happen on this case without y'all not
24 coming back in here, but I just got to have room out in the
25 audience for this plea I got to take. Those of you who are

State v. McGee - 2016-GS-21-01134
BY THE COURT

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1 here on behalf of Mr. McGee, you all are gonna go up to the
2 10th floor; there's a waiting area up there. And again,
3 nothing is gonna happen without everybody coming back in here.
4 But I've got to have room out there for people seated on this
5 next plea. Let them get seated first and then I'll have you
6 all escorted up or sent up to 10.

7 All right. We'll stand down for just a minute.

8 **(RECESS - 11:02 A.M.)**

9 ******OFF THE RECORD******

10 **(On the Record - 12:10 P.M.)**

11 (REPORTER'S NOTE: The following takes place outside the
12 presence of the jury.)

13 THE COURT: All right. I got a note out from the jury in
14 State v. McGee and I've got it marked as an exhibit. They
15 want to see the video, The Office Bar video. The State is
16 prepared to send back a laptop with the video for viewing by
17 the jury. Any objection to that from the State?

18 MR. HOLT: There is none, Judge. However, I will remind
19 the Court and put on the record that this is not a DVD.
20 Keith will have to put that in and pull it up for them to
21 watch because once it's on the laptop.

22 THE COURT: Any objection, Ms. Parham?

23 MS. PARHAM: No, Your Honor, as long as he might could
24 leave the room and not stand in there with them.

25 THE COURT: No, he's not gone stay in there with them.

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VERDICT OF THE JURY

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1 THE COURT: Without objection.

2 Mr. Sammy, would you escort him in there, Keith?

3 (RECESS - 12:11 P.M.)

4 *****OFF THE RECORD*****

5 (On the Record - 1:58 P.M)

6 VERDICT OF JURY:

7 THE COURT: Be seated, please. All right. It's my
8 understanding that the jury has a verdict in this case. Before
9 I bring the jury out, anything from the State?

10 MR. HOLT: Nothing from the State, Your Honor.

11 THE COURT: Defense Counsel?

12 MS. PARHAM: No, Your Honor.

13 THE COURT: All right. I'll remind everyone in this
14 courtroom, regardless of what the verdict is, to keep your
15 emotions in check. Failure to do so could result in you being
16 held in contempt of Court and which could be by fine and/or
17 incarceration. If you do not believe that you can keep your
18 emotions in check, now is your time to exit the courtroom.

19 Bring me the jury please, sir.

20 BAILIFF: Yes, sir.

21 (REPORTER'S NOTE: Jury enters courtroom. 1:59 P.M.)

22 THE COURT: All right. Madam Clerk?

23 CLERK: Mr. Foreman, did y'all reach a verdict?

24 MR. FOREMAN: Yes, ma'am.

25 THE COURT: All right. You may publish the verdict.

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BY THE COURT

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1 CLERK: The State of South Carolina, County of Florence,
2 in the Court of General Sessions, indictment number 2016-GS-
3 21-1134, State of South Carolina versus Tommy McGee. As to
4 the charge of murder of James Welch, we, the jury, unanimously
5 find the Defendant Tommy McGee guilty dated September 14th,
6 2017 signed Christopher Timmons, foreperson.

7 Members of the jury, if this is your verdict, please
8 raise your right hand?

9 (REPORTER'S NOTE: Jury unanimously respond by raising of
10 hands.)

11 THE COURT: All right. Anything from the State before I
12 release the jury?

13 MR. HOLT: No, sir, Your Honor.

14 THE COURT: Defense Counsel?

15 MS. PARHAM: No, Your Honor.

16 BY THE COURT:

17 THE COURT: All right. Ladies and gentlemen, I want to
18 thank you for your service this week here on jury service. I
19 know that jury service never ever comes at a convenient time,
20 but our system cannot work, cannot work without people such as
21 yourself. As this case was tried, I certainly watched you and
22 appreciate how attentive you were throughout the trial of this
23 case. I've told people this many times and, as jury service
24 never comes at a convenient time, when you went through the
25 qualification process on Monday, every one of you come from

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BY THE COURT

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1 different walks of life so to speak. We got a small glimpse
2 of where you come from and what you do, and maybe what your
3 spouse does, but it takes people such as yourself. You
4 wouldn't want me or any other judge walking into a courtroom
5 and saying to one of the deputies, go find me 12 people on the
6 street and bring them up here and let's try this case, no more
7 than you would want me or any panel of judges, so to speak,
8 sitting up here deciding these cases. It certainly gives you
9 an opportunity to see what goes on in your community. And I
10 want to thank you for your service. It's not easy serving on
11 jury duty, but it's a responsibility and an obligation that I
12 believe we have as citizens of this country.

13 Now, when I release you here today, you cannot be made to
14 talk about the case. I've told you throughout not to talk
15 about it, when you leave here, you can talk about it as much
16 or as little as you want to, but nobody can make you talk
17 about it. If someone tries to talk to you about it and you
18 tell them you don't want to talk about it and they don't leave
19 you alone, you let the Court know and it will be taken care
20 of. Okay?

21 If any of you need a work excuse, it's my understanding
22 you can go to the Clerk's Office.

23 CLERK: Yes, sir, and it will also be attached to their
24 checks when they come in the mail.

25 THE COURT: You will get a check, you heard the

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BY THE COURT

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1 proverbial statement, the check's in the mail -- no amount of
2 money can pay you for what your service is worth; I can
3 promise you that. A check will be mailed to you for your
4 service this week along with a work excuse that will be
5 attached.

6 Now, you all have fulfilled your responsibilities as
7 jurors. When I release you here today, you're done for the
8 week. You're done for the week. You will not have to come
9 back. The panel that was on the jury that was tried upstairs,
10 the jury that was picked after you all, that case was tried
11 yesterday and the remainder of the panel, excluding you all
12 because you were still on this case, had to come back this
13 morning, another jury was picked and they tried a case or are
14 trying a case right now is my understanding. You all have
15 fulfilled your responsibility as jurors. That which will take
16 place next is sentencing, and sentencing is conducted by the
17 Court, by me. You all are free to stay and observe sentencing
18 or you are free to go. I'll leave that up to you all. I
19 encourage you to stay, but I'll leave that up to you all.
20 Okay? If you wish to leave, you may do so at this time.

21 BAILIFF: Just follow me, please. Y'all follow me the
22 ones who want to leave.

23 (REPORTER'S NOTE: Jury is released by remain in courtroom.)

24 THE COURT: Yes, sir, let's proceed with sentencing.

25 SENTENCE BY THE COURT:

State v. McGee - 2016-GS-21-01134
SENTENCE OF THE COURT

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1 MR. HOLT: Thank you very much, Judge. And this is 2016-
2 GS-21-1134, we just prepared the sentencing sheet for Your
3 Honor. Judge, I know that you were aware as I am that the
4 majority of the cases we try up here are not so densely
5 populated. We've got 15 people from the victim's family. I
6 know at certain times, they would like to be heard. Judge, I
7 don't think there's anything -- traditionally, at this time,
8 the State presents the facts. Judge, I know you've seen the
9 facts, you've seen all the evidence and you heard about prior
10 records or the lack thereof during the trial preparations and
11 when we were getting ready to go. Judge, what I would say to
12 the State's point of view that was always the biggest problem
13 here was not the initial blow. I think the brutality of the
14 follow-up blows that killed this man are what was always the
15 biggest problem here. And I know that, Judge, Ms. Penny would
16 like to be heard and Ms. Jenna Grace, the victim's daughter
17 would like to be heard.

18 THE COURT: All right.

19 MS. ANDERSON: Your Honor ---

20 THE COURT: State your full name for the record please?

21 MS. ANDERSON: Penelope Anderson.

22 THE COURT: Yes, ma'am, Ms. Anderson.

23 MS. ANDERSON: Jimmy was my brother. He was only 47
24 years old. We are a very close family. I have two other
25 brothers, an older one and one that's younger. Jimmy left

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SENTENCE OF THE COURT

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1 behind two girls. One, [REDACTED] is her birthday; she's 27 years
2 old. Jimmy didn't get to see her graduate college and I
3 walked her down the aisle at her wedding because he was taken
4 from us. He's got another daughter that'll be turning 17 this
5 November. She is gonna miss her dad at her graduation, as far
6 as high school, college, or wedding. It was all taken from
7 us. Our family has just been distraught, Judge. We ask that
8 you give him the maximum that the law allows. Thank you.

9 THE COURT: Yes, ma'am, tell me your name?

10 MS. WELCH: Jenna Grace Welch.

11 THE COURT: Did you get her name?

12 COURT REPORTER: Yes, sir.

13 THE COURT: I'm sorry, go ahead.

14 MS. WELCH: Jimmy was my daddy, the only daddy that I'll
15 ever have. My daddy was by far my best friend and he was my
16 rock. Him being taken from me is one of the hardest things
17 I've ever been through, that I continue to go through. For
18 the past almost two years, I have just prayed that this was
19 all a dream. My daddy will ever be able to see me go to my
20 junior prom this year and my daddy won't even see me get my
21 class ring this year. He will not be able to see me graduate
22 and he will not be able to see me in my wedding dress or walk
23 me down the aisle. The only way I hear his voice now is in my
24 dreams that I frequently have about him. Living without my
25 daddy in my life, has completely changed me as a person, and I

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SENTENCE OF THE COURT

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1 strongly believe that my daddy is here with me today and my
2 family. I am requesting the maximum sentence on behalf of
3 myself and my family.

4 THE COURT: All right. Anyone else on behalf of the
5 victim's family?

6 MR. HOLT: No, sir, Your Honor, and I've already queried
7 law enforcement. They feel that they don't have to speak the
8 same as me that the trial has showed you everything that
9 mattered.

10 THE COURT: All right. All right, Ms. Parham, I'll be
11 happy to hear from you.

12 MS. PARHAM: I think his wife, Jennifer, would like to
13 address the Court.

14 THE COURT: Tell me your name for the record, please?

15 MS. MCGEE: Jennifer McGee.

16 THE COURT: Yes, ma'am.

17 MS. MCGEE: I'm Tommy McGee's wife. Tommy's never been,
18 you know, a bad person. He has bad ways; he made a mistake.
19 He has two children, a 12-year-old daughter -- (inaudible) --
20 I understand the whole concept of the entire case. I mean, I
21 am so sympathetic and so -- my utmost condolences to the man's
22 family, but I don't think it's fair for him to spend the rest
23 of his life possibly in jail over a simple mistake. We're all
24 human; we all make mistakes. I don't feel like -- I know what
25 he did was not right. There was no sense to it, but alcohol

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SENTENCE OF THE COURT

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1 and high emotions and, if you've ever been in a bar scene,
2 it's a bad situation to start with; everybody is drunk,
3 everybody's mouthy, things get out of hand, accidents happen.
4 But he's got two children a home that need him. He just, like
5 I said, he has his ways. He's not a bad person. He'd give
6 you the shirt off of his back. I mean, I do not believe ever
7 in my heart that he meant to kill somebody, ever. I will
8 never believe it. It doesn't matter what anybody, anybody
9 says; I know my husband. I know he was not intending to kill
10 that man. He came straight home to me and he did tell me that
11 he was probably going to be arrested for assault, but he did
12 not know until -- the man didn't make it and his words were
13 no, that's a lie, he's not dead. He did not believe it. A
14 man that intended to kill somebody does not have remorse. He
15 did not -- he did not know. He cried just as hard as I did
16 when he found out. He didn't know, and he didn't intend for
17 this to happen and I know that everybody that knows him and
18 loves him knows he's got a great heart, but he just has -- a
19 mistake. He's, you know, got to deal with it. I don't think
20 it's fair that, you know, he just spends the rest of his life
21 for a mistake, a human mistake.

22 THE COURT: Thank you, ma'am.

23 Anyone else?

24 MS. PARHAM: No, Your Honor. I know my client would like
25 to address the Court, but I would just like to say a few

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SENTENCE OF THE COURT

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1 things. He is very remorseful. I'd go to the jail and meet
2 with him often and he has been crying at the jail. He is very
3 sad about this. He had no idea that the man had passed away
4 until the next morning. You know, most of us who were waiting
5 on the jury's verdict had sat in here for another very hard
6 sentencing hearing where a drunk driver had killed two people
7 and, as Your Honor said, alcohol and drugs cause so many of
8 the problems that we're here for everyday and this is no
9 different. But the minimum sentence in this case is more than
10 sufficient to punish Tommy for his actions. That's an
11 extremely long time and he would serve the better part of his
12 life in prison. And, I know that he wants to address the
13 Court.

14 THE COURT: All right. Thank you, Ms. Parham.

15 Mr. McGee, happy to hear from you, sir.

16 MR. MCGEE: I want to say I am very sorry. I've cried
17 every day about this situation and I want to tell the family I
18 am very, very sorry that this has happened. I never meant for
19 any of this to happen. I never even tried to kill nobody,
20 never even thought of myself being in this situation for
21 something like this and I do want to tell the family I am
22 very, very sorry. I wish I could take all of it back.

23 THE COURT: All right. Anything else, Ms. Parham?

24 MS. PARHAM: No, Your Honor.

25 THE COURT: How long has he been in jail, Ms. Parham,

State v. McGee - 2016-GS-21-01134
SENTENCE OF THE COURT

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1 since his arrest?

2 MS. PARHAM: Almost two years; it's been about 20 months
3 I think, 22 and 1/2 months.

4 THE COURT: What was the date of arrest?

5 MR. HOLT: Judge, I believe -- I left my file over there,
6 but I think it was October the 29th, 2015.

7 THE COURT: Where is the indictment?

8 MR. HOLT: October 28th.

9 MS. PARHAM: October 28th, 2015.

10 THE COURT: All right. Ms. Parham, you were in here and
11 Mr. Holt and so many others working the court system for the,
12 felony DUI that was in front of me today, during the jury's
13 deliberations. Ninety-plus percent of what ends up in this
14 courtroom is because of drugs and alcohol. If I've said this
15 once, I've said it I don't know how many times since I've been
16 on the bench, as my mother used to tell me, nothing, nothing
17 good goes on after midnight, nothing. The older I get and the
18 more I sit in this position, the more I see how true that is.

19 No question in my mind that, Mr. McGee, that under /
20 ordinary circumstances, if you hadn't drank 10-plus beers that
21 night and 5 or more liquor drinks that night you wouldn't be
22 standing in here today. No question in my mind. The other
23 side of that is if you'd have been home with your wife and two
24 children, none of this would have ever happened.

25 On indictment 2016-GS-21-1134, the Defendant's committed

State v. McGee - 2016-GS-21-01134
SENTENCE OF THE COURT

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1 to the State Department of Corrections for a period of 30
2 years, given credit for 688 days. Good luck to you, Mr.
3 McGee.

4 MS. PARHAM: Thank you, Judge.

5 (REPORTER'S NOTE: Defendant exits courtroom.)

6 THE COURT: Now, ladies and gentlemen, some of you may be
7 wondering on the 30-year sentence that was just given how much
8 time the Defendant may do on that. Under South Carolina Law,
9 murder is considered a violent offense. It's also considered
10 a most serious offense. And what that means is he will do at
11 least, at least 85 percent of that sentence before he's even
12 eligible for parole. If somebody pleads guilty in the courts
13 of this state to a murder charge, I tell Defendants just like
14 every other Judge tells them, you can count on doing day for
15 day for that 30 years. So, that's what the sentence is in
16 that particular case. He'll do at least whatever 85 percent
17 of 30 years is, approximately 25 years, a little over 25 years
18 before he will even be eligible for parole. Murder in this
19 state carries a minimum of 30 years up to life in prison.

20 So, again, I want to thank you for your service. Thank
21 you for your time. I hope you realized during your service
22 this week, this isn't television. This is not television and
23 television, in my opinion, for what it's worth, has done more
24 to harm our judicial system than anything because this is not,
25 this is not television at all. So, thank you again for your

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SENTENCE OF THE COURT

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1 service and law enforcement will escort them down and make
2 sure they get out. They got an elevator holding for you.
3 Thank you again.

4 BAILIFF: Follow me to the hallway, please.

5 (REPORTER'S NOTE: Jury exits courtroom.)

6 THE COURT: Mr. Holt, Ms. Parham. Put here just renew
7 all your prior motions.

8 MS. PARHAM: We would just renew all of the prior motions
9 that we made during the trial and the motion for mistrial as
10 well as the way the case was argued on closing argument.

11 THE COURT: All right. Very well.

12 MS. PARHAM: Thank you. The case is *Beaty*, it came out
13 in 2017 on the closing arguments, it's a Supreme Court case.
14 Thank you.

15 THE COURT: All right. Thank you.

16 (ADJOURNED - 2:22 P.M.)
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State v. McGee -.2016-GS-21-01134
CERTIFICATE OF COURT REPORTER

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C E R T I F I C A T E

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I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of *State of South Carolina versus Tommy Williams McGee*, held in the Court of General Sessions for Florence County, Florence County Courthouse, Florence, South Carolina, on September 12-14, 2017.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson

Official Court Reporter

January 11, 2018.

229
Jerry Gainey

WITNESSES

Lake City Police Department

John W. Holt, IV

ARREST WARRANT NUMBER

2015A2120400494

ACTION OF GRAND JURY

TRUE BILL

Joan Davis

Foreperson of Grand Jury

Date: 8-25-16

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-21-01134

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

AUGUST

TERM

2016

THE STATE

vs.

TOMMY MCGEE

Indictment for

MURDER

FILED

2016 AUG 25 PM 1:31

JOANIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on AUGUST 25 2016 the Grand Jurors of FLORENCE County present upon their oath:

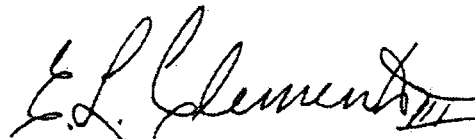
COUNT ONE- MURDER

MURDER

CDR: 0116 16-03-0010,0020

That Tommy McGee did in Florence County, on or about October 28, 2015, willfully, feloniously, and intentionally kill the victim, James Welch (Deceased), with malice aforethought, either express or implied, by means of beating the victim about the head and face area, and the victim did die as a proximate result thereof on or about OCTOBER 28 2015 in Florence County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

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COUNTY OF Florence
STATE VS.Tommy Mcgee

AKA:

Race: White Sex: M Age: 31DOB: 5-1985 SS#: [REDACTED]Address: Valley St.City, State, Zip: Lake City, SC 29560DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / MurderINDICTMENT/CASE#: 2016-GS-21-01134A/W#: 2015A2120400494Date of Offense: 10/28/2015S.C. Code §: 16-03-0010; 16-03-0020CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116.☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Holt, IV, John W.77495
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 688000☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.75

TOTAL

\$128.75

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal. consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.Clerk of Court/ Deputy Clerk MBurnsCourt Reporter: KRichardson

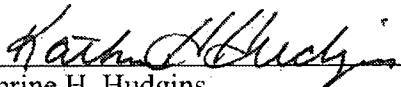
SCCA/217 (07/2016)

Presiding Judge D. C. [Signature]Judge Code: 2160Sentence Date: 9-14-17

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 5th day of November, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 5th day of November, 2018.

RECEIVED
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SC Court of Appeals