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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM JASPER COUNTY

The Honorable Perry M. Buckner, Circuit Court Judge

APPELLATE CASE NO: 2019-001842

Alfred T. Walker, #307914,

Appellant,

Vs.

STATE OF SOUTH CAROLINA

Respondent.

RECORD ON APPEAL

Alfred T. Walker, #307914
Broad River Correctional Institution
4460 Broad River Rd.
Columbia, S. Carolina

29210

APPELLANT

03.30.2021

 307941

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Martin Psychiatric Services PC
Thomas V. Martin, M.D.

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Forensic Psychiatric
Evaluation**State of SC, County of Barnwell vs. Alfred Walker**

NAME: WALKER, Alfred Tyrone
CASE #: 01-GS-10-3093
CHARGES: Murder (2 cts.)
Assault and Battery with Intent to Kill
Possession of a Weapon during the Commission of a Crime
Armed Robbery
DOB: September 1, 1982
SSN: 040-55-4880
REFERRAL: Hon. Perry Buckner
Presiding Court Judge
General Sessions Court
For the Second Judicial Circuit
EVALUATION: January 26, 2005
REPORT: February 7, 2005
EXAMINER: Thomas V. Martin, M.D.

COMPETENCY TO STAND TRIAL: YES.**CRIMINAL RESPONSIBILITY: YES.****CAPACITY TO CONFORM: YES.**

INTRODUCTION: Alfred T. Walker is a 22-year-old single African-American male, of Barnwell County, SC and former fast-food restaurant cook who is charged with Murder (2 cts.), Assault and Battery with Intent to Kill, Possession of a Weapon during the Commission of a Crime, and Armed Robbery and is facing the death penalty for crimes committed on or about October 18, 2000. Mr. Walker has a prior psychiatric history that includes depression and significant alcohol, cocaine, and cannabis abuse. Mr. Walker appeared to be a good historian and genuine in his presentation.

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REASONS FOR THE EVALUATION: This Forensic Psychiatric Evaluation of Mr. Walker was requested by the General Sessions Court for the Second Judicial Circuit, in order to determine if Mr. Walker suffers from a mental disease or defect, is competent to stand trial, criminally responsible for his actions on or about October 18, 2000, and if he had the ability to conform his actions to the requirements of the law. This evaluation will address whether Mr. Walker suffers from a mental condition that would prohibit him from making an informed decision in negotiating a plea bargain in lieu of the death penalty.

STATEMENT OF CONFIDENTIALITY: Mr. Walker vocalized an understanding of the purpose for this consultation; and that its contents, findings, and recommendations would be submitted to his attorney, Mr. Carl B. Grant, the Barnwell County Solicitor's Office and to the General Sessions Court for the Second Judicial Circuit. No part of the content, opinions or conclusions derived would be discussed with unauthorized parties.

SOURCES OF INFORMATION:

- 1) Court-Ordered Psychiatric Evaluation, January 19, 2005.
- 2) Barnwell County Sheriff's Office, Incident Report, October 19, 2000.
- 3) Report of Michael T. Gantt, Investigator, Barnwell City Police, no date.
- 4) Newberry Pathology Associates, P.A. Necropsy Report of Joshua D. Brewer, October 20, 2000.
- 5) Newberry Pathology Associates, P.A. Necropsy Report of Albert S. Still, Jr., October 20, 2000.
- 6) Voluntary Statement, Mr. Shawn Edwards, unsigned and no date.
- 7) SC Law Enforcement Division (SLED), Record of Interview of Shawn Edwards, October 19, 2000.
- 8) Transcribed Interview of Alfred T. Walker, no date or time taken.
- 9) State of SC, City of Denmark, Rights and Waiver, October 19, 2000 at 4:43 AM.
- 10) Transcribed Interview of Alfred T. Walker by Investigator Martin, October 19, 2000 at 5:32 AM.
- 11) Voluntary Statement, Mr. Alfred T. Walker, October 20, 2000 at 3:02 PM.
- 12) State of SC, City of Barnwell, Rights and Waiver, October 21, 2000 at 1:53 PM.
- 13) Letter to Mr. Shawn Edwards from the Defendant, October 21, 2000 at 1:54 PM.
- 14) State of SC, City of Barnwell, Rights and Waiver, October 21, 2000 at 4:45 PM.
- 15) Notes on Mr. Wallace Ralphell Priester, Codefendant, October 19, 2000.
- 16) Transcribed Interview of Mr. Wallace Priester by Investigator Martin, October 19, 2000 at 2:30 AM.
- 17) Voluntary Statement, Mr. Wallace Priester, October 19, 2000 at 9:26 AM.
- 18) Transcribed Interview of Lee Worthy by unnamed investigator, no date at 1:40 AM.
- 19) Notes on Mr. Lee Anderson Worthy, October 21, 2000.
- 20) Voluntary Statement, Mr. Lee Worthy, October 21, 2000 at 1:24 AM.
- 21) Voluntary Statement, Mr. Shelton "Rocky" O'Berry, Jr., October 19, 2000.
- 22) Voluntary Statement, Mr. Thomas L. Frye, October 19, 2000.
- 23) Voluntary Statement, Ms. Julie Lane Kinard, October 19, 2000.
- 24) Voluntary Statement, Ms. Lindsey Elizabeth Graffing, October 19, 2000.
- 25) Voluntary Statement, Mr. Jessi Hair, October 19, 2000.

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- 26) Voluntary Statement, Mr. Bruce L. Murray, November 11, 2000.
- 27) Voluntary Statement, Mr. William J. Pellerin, October 19, 2000.
- 28) Voluntary Statement, Mr. Chad David Wilson, Jr., October 20(?), 2000.
- 29) Voluntary Statement, Mr. Robert James Mowell, II, October 19, 2000.
- 30) Voluntary Statement, Mr. James O. Donahue, October 20, 2000 at 4:30 PM.
- 31) Arrest Warrants, G-150820 through G-150824, October (?), 2000.
- 32) SC Department of Juvenile Justice (SCDJJ), Psychological Evaluation of Defendant, February 7, 1996.
- 33) SCDJJ, Midlands Evaluation Center, Social Work Report of Defendant, March 19, 1998.
- 34) SCDJJ, Midlands Evaluation Center, Psychological Evaluation of Defendant, March 10, 1998.
- 35) Forensic Psychiatric Evaluation of Defendant by Pamela M. Crawford, M.D., April 29 and May 2, 2002.
- 36) Consultation with Ms. Margaret O'Shea, Social Worker Consultant.
- 37) 3-hour clinical psychiatric interview with Mr. Alfred T. Walker, defendant, at the Barnwell County Detention Center, on January 26, 2005.

PERTINENT PSYCHIATRIC DATA:

Mr. Walker and available mental health documents report a long history of addictive substance dependence. He was raised in a broken home by his mother and later by a guardian. His parents never married and his father was unavailable geographically and emotionally to the family. Mr. Walker failed in his attempts to get close to his father and learned that his father often misled him with ingenuous attention to gain sexual contact with his mother. Mr. Walker would tag along with his father only to be neglected and left alone while he abuse alcohol and other substances with his friends. Young Mr. Walker subsequently felt rejected, abandoned and inadequate as a person. As his mother needed to work outside the home to support the family, Mr. Walker found some solace in his guardian, Ms. Minnie Green, who seemed to offer the most structure and consistency within the family. Mr. Walker still felt an outcast from his family and sought outside relationships at a very early age. His closest relationship was with his sister, Latasha, who was near his age. Mr. Walker fell into his own seedy crowd, similar to his father's, where he was regularly exposed to alcohol and illicit drugs. By age 11 years, Mr. Walker was drinking alcohol on a daily basis. In his early youth, he may consume up to a quart of liquor in one day. He developed a tolerance to alcohol and drank consistently avoiding hangovers. His use of alcohol was criticized by his family, and his association with inappropriate crowds thwarted his more healthy and responsible interpersonal development.

Mr. Walker meets the diagnostic criteria for *Alcohol Dependence*.

In conjunction with alcohol use, Mr. Walker began smoking marijuana at age 11 years. The effects of marijuana seemed to complement the sedating and calming effects of alcohol. He smoked several "blunts" daily and developed a tolerance by his early teen years. Mr. Walker was charged with "simple possession" in school due to his abuse of marijuana, but he denied this event as any serious difficulty.

Mr. Walker used

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marijuana and alcohol as a youth to self-medicate chronic feelings of low self-esteem and sadness. Mr. Walker meets the diagnostic criteria for *Cannabis Dependence*.

By age 17 years, Mr. Walker expanded his illicit drug use to that of cocaine. His use of cocaine began and was fueled by his association with his codefendant, Mr. Wallace Priester, who was also several years his junior. He would snort up to 14g of cocaine in one day and developed a significant tolerance for the substance. His use created paranoia and agitation. He claimed no significant pleasure or comfort from cocaine use, but his abuse of the substance rapidly escalated. Although recognizing its addictiveness, Mr. Walker never wanted to use cocaine, but the focus of his relationship with Mr. Priester revolved around cocaine and addictive substance abuse. [REDACTED]

[REDACTED] Mr. Walker hid his cocaine use from his sister and guardian, who initially thought he was improving his behavior. His school grades had been above average, but declined rapidly with cocaine use. [REDACTED]

Mr. Walker meets the diagnostic criteria for *Cocaine Dependence*.

Mr. Walker's substance abuse contributed to his continued association with unhealthy and delinquent crowds and by age 13 years, he was arrested for *Burglary, Breaking and Entering, Criminal Conspiracy, Possession of a Firearm, Malicious Injury to Personal Property, and Grand Larceny of a Motor Vehicle*. He learned to drive at a very young age, and found unattended cars appealing. His knowledge of starting and driving an automobile contributed to his ease into car theft. Mr. Walker was committed to the SC Department of Juvenile Justice in 1996. A psychological evaluation revealed a Full Scale IQ of 76, which falls into the borderline range of intelligence. This was consistent with a below average reading level assessed during the examination. The assessment revealed how at an early age, Mr. Walker tended to limit his emotional involvement with others. He had limited motivation and failed to accept responsibility for his own actions. Testing described a highly impulsive and defensive young man entering situations without consideration for possible consequences for his actions. The SCDJJ report also included how Mr. Walker had difficulty effectively modulating his expression of anger and was insensitive to the rights of others. The psychological evaluation concluded that Mr. Walker suffered from *"Oppositional Defiant Disorder, mild"* and no personality disorder. There was no diagnosis of substance abuse, however, drug and alcohol abuse was acknowledged in the report and substance abuse rehabilitation was recommended. Mr. Walker was court-ordered to outpatient substance abuse rehabilitation after released from SCDJJ, which he attended for less than one year.

Mr. Walker was readmitted to SCDJJ at age 15 years after charged with *Burglary, Petty Larceny, and Grand Larceny of an Automobile*. He participated in substance abuse rehabilitation although he underrepresented the extent of his substance abuse. It was further emphasized that Mr. Walker lacked a male role model throughout his youth and the significance this impacted his development of taking responsibility and establishing healthy interpersonal relationships. Mr. Walker was not diagnosed with a major illness, but was considered to suffer from *Disruptive Behavior Disorder, Not Otherwise Specified, rule out Alcohol Abuse, rule out Cannabis Abuse, and Borderline Intellectual Functioning*. He was not thought to be excessively aggressive, and often acted out to

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satisfy his need for immediate gratification of impulses and suggestibility, particularly in the company of his peers. His Total Risk Score calculated by the SCDJJ continued to escalate with greater number of crimes he committed. SCDJJ also reported Mr. Walker's substance abuse compromised his reasoning and judgment. The examiners found no outstanding symptoms for ingrained antisocial attitudes. Some of Mr. Walker's limitations in perception and judgment were associated with his lower level of intellectual functioning and the absence of a strong base of learning experiences associated with the absence of a father figure or strong male role model to assist in formulating decisions.

Mr. Walker was eventually released from SCDJJ after arduous attempts to improve his behavior and regain trust with the treatment staff, his family, and within the community. He was accepted into the Outward Bound program in an effort to attend school and earn credits for college hours while in a structured setting. He soon after left the Outward Bound program feeling that his mother needed him at home.

As a condition of his release from SCDJJ, Mr. Walker was also to enter outpatient substance abuse rehabilitation at "Axis I." It is not clear that he ever started the rehabilitation program. [REDACTED]

Mr. Walker reports attending mental health treatment prior to his index crimes, but records of such have not been made available by the SC Department of Mental Health.

INTERPERSONAL RELATIONSHIP DEVELOPMENT:

Mr. Walker's ability to develop appropriate and healthy interpersonal relationships was clearly hampered since his early youth. He was born in Bamberg and raised in Barnwell County, SC. His biological parents were never married, and his father was estranged from the home and died in 1996 of an intestinal illness. Mr. Walker had little to no contact with his father throughout his development, except to live with him briefly on two occasions. To this date, affirmed by previous mental health assessments, Mr. Walker felt a chronic and significant loss and sense of abandonment secondary to the absence of his father. He has experienced a longstanding unresolved conflict and anger over the perceived critical behavior his father expressed during the few times they were together. Mr. Walker described his father as an abusive man, physically towards his mother, and emotionally towards himself. His father's aberrant and hostile behavior was exacerbated by his alcoholism. It is important to note that Mr. Walker placed a great deal of emotional investment in bringing their relationship closer, only to be repeatedly disappointed, frustrated, and at times, enraged. Following his father's death, Mr. Walker had no skills to bring closure to the issue with his father or to grieve his loss. He still has recurrent dreams, and feels anger towards his father, and himself, for not developing a more close and loving relationship. Mr. Walker has harbored sadness, resentment, and ambivalent feelings towards his father, which have impaired his development of relationships at home, in school and in the neighborhood. This has fueled a subclinical depressive condition that was suspected at an early age, but yet not clearly recognized or treated as Mr. Walker felt ashamed about any perceptively frail emotional condition. Instead, Mr. Walker self-medicated with addictive substances, and continued making

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deviant interpersonal relationships that invariably led to criminal behavior. Mr. Walker would enter physical altercations at school and had difficulties "fitting in." Mr. Walker believes he failed school or was held back one or two grades, but this is not clearly annotated in scholastic records. He had difficulty maintaining his temper, was disrespectful to authority, and would eventually run away from school rather than face public embarrassment of his declining scholastic performance. This ultimately resulted in school suspension. He was never placed in remedial classes or special education as his early scholastic performance was above average. His grades and performance declined with increasing substance abuse, truancy and his association with irresponsible peers. Mr. Walker's overall character development and attitudes is consistent with *Antisocial Personality Disorder*.

Mr. Walker's more intimate relationships were as superficial and fleeting as his everyday acquaintances. He described his initial sexual experience at the age of 10 years. He never had a traumatic sexual experience and he denied abusing others physically or sexually. He reported more than 30 brief sexual partners; never married, and his longest relationship was for two months with the woman who bore his now four year old son.

Mr. Walker continually chose his friends badly and would not listen to close family recommendations. [REDACTED] His life of ill-shaped responsibility, lack of a consistent male role model, and his aberrant development of interpersonal and social relationships ultimately led to associations with a criminal environment, substance abuse, and ultimately with his co-defendant, Mr. Wallace Priester. Mr. Walker desired employment and secured a cook's position at the local Sonic Drive-In.

INDEX OFFENSE:

Mr. Walker had a position as cook at the Sonic Drive-In located in Barnwell County. He had a brief disagreement with his supervisor, Mr. Joshua Brewer, that senior management reported was later resolved. Mr. Walker seemed ambivalent about his continued plans to work at the restaurant, but on the evening of October 18, 2000, he was in the local area, needed a ride home, and hoped to pick-up his paycheck from the evening manager, Mr. Brewer. Mr. Walker was accompanied by an acquaintance, Mr. Priester and the two had been drinking alcohol. Mr. Walker did not describe any significant cognitive impairment on the evening in question due to the influence of alcohol. [REDACTED]

[REDACTED] On October 18, 2000, Mr. Walker and Mr. Priester were back and forth from the Sonic Drive-In to friends' homes, Mr. Walker ultimately seeking a ride back to his home. Near midnight on October 18, 2000, Mr. Walker and Mr. Priester enter the Sonic Drive-In and Mr. Priester presents a firearm to the few remaining restaurant staff closing up the store. Mr. Walker felt he lost touch with any of Mr. Priester's intentions or plans and adamantly denies planning to commit a crime at this scene. [REDACTED]

[REDACTED] Mr. Walker adamantly denies trying to shoot Mr. Edwards or attempting to kill him. Mr. Walker felt that Mr.

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Priester had control over the scene, escorting the manager to the register, ordering him to open it, and giving him (Priester) all the cash. Over a very brief few moments, Mr. Walker recalls Mr. Priester shooting the three victims, Mr. Brewer, Mr. Still, and Mr. Edwards, fatally wounding the first two [REDACTED]

[REDACTED] They ran to a friend's home disposing of the firearms along the way. At the friend's home, looking for a ride to Mr. Walker's house, the friend, Mr. Lee Worthy noted that the two looked exasperated and made inquiries to their appearance. [REDACTED]

[REDACTED] Still needing a ride home, Mr. Walker, Mr. Priester, and Mr. Worthy found transportation with Mr. "Rocky" O'Berry. Barnwell Police stopped their vehicle shortly thereafter for a traffic violation, where all were apprehended and questioned.

In an initial interview in a police vehicle, Mr. Walker recalls denying direct knowledge of the shooting at the Sonic Drive-In. At an interview later on October 19, 2000, Mr. Walker admits to his presence at the Sonic Drive-In, but denies firing any weapon. On an October 20, 2000 statement, Mr. Walker admits to carrying a .25 cal automatic handgun and accidentally shooting Mr. Edwards in the leg. He also reports that Mr. Priester shot Mr. Edwards, Mr. Brewer and Mr. Still in the head. Mr. Walker reported that his automatic handgun jammed as evidenced by its inability to self-reload after firing the first and only time. Forensic ballistics reports substantiate that Mr. Walker's handgun fired the one shot into Mr. Edwards' leg, and Mr. Priester's .22 cal handgun fired the fatal shots into Mr. Brewer and Mr. Still, and seriously wounding Mr. Edwards. Mr. Walker reports remorse for his participation in the crime and empathy for the victims and their families. Mr. Walker reflected his remorse in a letter later written to Mr. Edwards.

Mr. Walker reports a rapid decline in his mental status after his arrest and charges filed. He admitted to associating with Mr. Priester who he claimed committed the murders on October 18, 2000. Although associated with the crime, Mr. Walker adamantly denies planning to kill anyone. He feels unjustly accused and is becoming more hopeless in his perspective. His periods of increasing sadness are fraught with irritability and acting out behaviors. He has entered into physical altercations with staff or fellow inmates while in jail. He reports a serious difficulty acclimating to the jail environment. He feels helpless and hopeless, has nightmares fearing he will be attacked, and makes self-destructive comments suggesting an underlying depressive mood. His mood is neither significantly aberrant nor incapacitating, but Mr. Walker's chronic self-esteem has been traditionally low, with sadness, frustration, and irritability surrounding the loss of his father, the lack of adequate social skills, and an increasing ability to get into trouble rather than following a healthier lifestyle. While incarcerated, Mr. Walker reports mental health assessment for his depressive symptoms. Records of mental health assessment and treatment in the Barnwell County Detention Center have not been made available.

MENTAL STATUS EXAMINATION:

On the date of this evaluation, Mr. Walker was alert and oriented to person, place, time, and situation. He accurately explored the location and reason for the forensic evaluation. He appeared neatly groomed in a correctional facility uniform and cooperated with the examiner. He maintained good eye contact and manifested no abnormal movements. He

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was pleasant, polite, genuine, and interactive. He made efforts to establish appropriate interpersonal rapport with the examiner. Mr. Walker's speech was of normal rate, tone, and rhythm. He described his mood as "anxious, anticipating, afraid, and hopeful," and displayed a constricted range of emotional expression. His thoughts were goal-directed and coherent with no evidence of delusions, hallucinations, or paranoia. He demonstrated thinking that was without flights of ideas or loosening of associations. Cognitive examination revealed intact concentration and memory surrounding history documented in legal reports. Mr. Walker denied current active suicidal or homicidal ideations, plans, or intent.

COMPETENCY TO STAND TRIAL:

Mr. Walker was able to recite his Miranda Warning and reported the same during the investigation in October 2000. He demonstrated no difficulty comprehending the meaning of the Miranda Warning. Mr. Walker was very clear about the charges levied against him and accurately described their meaning in his own words. He was aware of the death penalty petition and the various means of execution. He correctly identified the role of his defense attorney and in a rational manner how he would assist him in formulating a defense. Mr. Walker stated he has told his attorney everything he knows about the allegations made against him. He correctly identified the roles and names of the Judge and Solicitor, and described the appropriate selection of a jury panel and their part in a trial. He appreciated the importance of appropriate courtroom behavior and believed he would act accordingly. Mr. Walker clearly conveyed an understanding of trial structure, guilt and sentencing phases. Mr. Walker described and demonstrated both a factual understanding of the legal system and sufficient present ability to rationally consult with his attorney. Therefore, it is my opinion that Mr. Walker is currently competent to stand trial.

CRIMINAL RESPONSIBILITY:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] He fled the scene after the crime further suggesting self-protective measures evading apprehension. Mr. Walker also described abuse of alcohol several hours before the crime, but he gave no indication of subsequent memory, judgment or volitional impairment. Mr. Walker did not suffer from a compulsion or mental illness at the time of the crime, October 18, 2000. It is my opinion that Mr. Walker would have been able to distinguish legal or moral right from legal or moral wrong and therefore he would have been criminally responsible pursuant to the McNaughten Test for his actions on or about October 18, 2000.

CAPACITY TO CONFORM:

Likewise, I found no evidence that Mr. Walker was suffering from a compulsion or a mental illness that would have substantially impaired his capacity to conform his conduct to the requirements of the law.

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DRAFT**DIAGNOSTIC IMPRESSIONS:****DSM-IV**

AXIS I: ALCOHOL DEPENDENCE.
CANNABIS DEPENDENCE.
COCAINE DEPENDENCE.

AXIS II: BORDERLINE INTELLECTUAL FUNCTIONING.
ANTISOCIAL PERSONALITY DISORDER.

AXIS III: NO DIAGNOSIS.

AXIS IV: Psychosocial Stressors: Incarceration, separation from family and legal issues.

AXIS V: 65

CONCLUSIONS:

Mr. Walker suffers from significant alcohol, cannabis, and cocaine dependence. He has developed antisocial personality characteristics that have led him to associating with a more criminal and unhealthy crowd. He has lacked a male and father role model that may have instilled in him a greater sense of self-importance, drive to achieve, and being accountable for his own behavior. He has never closely attached emotionally to anyone, except his sister from whom he eventually hid his declining behaviors.

Mr. Walker does not suffer from an incapacitating mental illness. He would benefit from interactive supportive counseling to explore unresolved issues of losing his father, low self-esteem, and towards developing better anger management tools and social coping mechanisms. Mr. Walker may also benefit from a trial of antidepressant medication to help maintain a stable mood.

Mr. Walker understands the charges levied against him and is considered competent to stand trial and participate with his attorney in formulating a viable defense. He understands the ramifications of the death penalty, and the risks and benefits surrounding a plea bargain. As he suffered no significant mental impairment on or about October 18, 2000, Mr. Walker is considered criminally responsible for his actions and had the capacity to conform his behavior to the requirements of the law.

Thomas V. Martin, M.D.

Psychiatrist

Diplomate, Psychiatry, American Board of Psychiatry and Neurology

Diplomate, Forensic Psychiatry, American Board of Psychiatry and Neurology

Clinical Assistant Professor, Psychiatry, USC School of Medicine

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BARNWELL)

SECOND JUDICIAL CIRCUIT

State of South Carolina)

vs.)

Alfred Tyrone Walker,
Defendant.)

ORDER re: Media Coverage

Indictment Number(s): 01-CP-06-118
01-CP-06-119
01-CP-06-120
01-CP-06-121
01-CP-06-122
01-CP-06-123
01-CP-06-134

CLERK OF COURT
BARNWELL COUNTY
05 MAR - 1 AM 9:25
FILED FOR RECORD

#1
PMB
The matter of media coverage of the above-entitled action having been full considered by this Court, the following Order is hereby entered and pertains to all future Circuit Court proceedings in the above referenced case. The purpose of this Order is to provide the parties a fair trial on the issues in this case, preserve the dignity of these proceedings, and allow the media reasonable access to these proceedings.

- 1.) There will be no use of flashbulbs, strobe lights or other artificial lights anywhere in the courtroom.
- 2.) There will be no still or television cameras or recording devices permitted in the courtroom during any portion of jury selection. Photographing during the voir dire process will be prohibited.
- 3.) The privacy of jurors being of paramount importance to this Court, the photographing of jurors at any time during the trial will be prohibited.
- 4.) Sidebar conferences shall not be photographed, and there shall be no audio pickup or broadcast of conferences which occur between attorneys and their clients, between co-counsel of a client, between adverse counsel, or between counsel and the presiding judge.

Burgess Investigations

&

Associates Inc.

Ref: Investigative Report

Subject: Alfred Tirone Walker

Date: July 2, 2018 Monday

May 15, 2018 Friday, Investigator James T. Burgess spoke with Mr. Rushad Jackson by phone. Mr. Jackson explained Mr. Walker's case and asks if I would be willing to travel to Barnwell County Detention Center located in Barnwell South Carolina and retrieve copies of the Transportation Sheets dated October 19, 2000 through October 30, 2000. Mr. Jackson also requested if possible interview any Detention Officers that was on duty the night Mr. Walker was booked into the Detention Center.

May 30, 2018 Wednesday Investigator Burgess meet Miss. Latash Bradshaw in Greenville South Carolina and signed a Contract.

June 11, 2018 Monday Investigator Burgess traveled to the Barnwell County Detention Center. Investigator Burgess was able to retrieve the Transportation Sheets dated October 19, 2000, October 20, 2000, October 21, 2000 and October 25, 2000. Investigator Burgess also interviewed Detention Officer Bruce Johnson one of the Detention Officers on duty the night of Mr. Walker's arrest.

June 29, 2018 Friday Investigator Burgess traveled to the Barnwell County Court House in and attempt to look over some of the case file and Court Records. Investigator Burgess was able to look over some of the Court Records and make copies.

AFFIDAVIT OF JAMES T. BURGESS

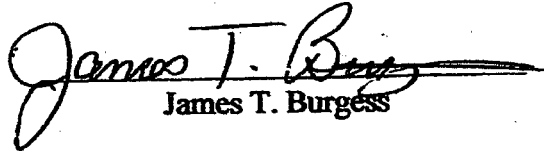
My name is James T. Burgess. On Friday, May 18, 2018, I spoke with Mr. Rushad Jackson by telephone. Mr. Jackson explained Mr. Walker's case and asked if I would be willing to travel to Barnwell County Detention Center located in Barnwell, South Carolina and retrieve copies of the Transportation Sheets dated October 19, 2000 through October 30, 2000. Mr. Jackson also requested that, if possible, I interview any Detention Officers that were on duty the night Mr. Walker was booked into the Detention Center.

On Wednesday, May 30, 2018, I met with Ms. Latisha Bradshaw in Greenville, South Carolina, and signed a Contract.

On Monday, June 11, 2018, I traveled to the Barnwell County Detention Center. I was able to retrieve the Transportation Sheets dated October 19, 2000, October 20, 2000, October 21, 2000 and October 25, 2000. I also interviewed Detention Officer Bruce Johnson, one of the Detention Officers on duty the night of Mr. Walker's arrest.

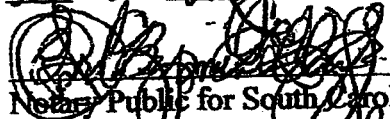
On Friday, June 29, 2018, I traveled to the Barnwell County Courthouse in an attempt to look over some of the case file and Court Records. I was able to look over some of the Court records and make copies.

Please see the attached "Exhibit A", collectively.


James T. Burgess

Sworn to before me this

29th day of May, 2019


Notary Public for South Carolina

My Commission expires August 16, 2020

Burgess Investigations
&
Associates Inc.

Statement Form

I Bruce Johnson, without coercion of any kind by Burgess Investigations give this statement to the best of my knowledge to James T. Burgess, Investigator representing Burgess Investigations free and voluntarily.

On October-19-2000 I officer Bruce Johnson was working that night when Alfred Walker was booked in Barnwell County Jail during the booking Mr. Walker combative talking alot and Figidy Stated that he did not kill anyone, Mr. Walker looked To be Intoxicated on Alcohol or drugs. End of Statement.

SWORN TO BEFORE me this 11th
day of JUNE, 2018.

James T. Burgess
Notary Public for South Carolina
My Commission Expires: March 23, 2019

Bruce Johnson
6-11-18

BARNWELL COUNTY DETENTION CENTER

TRANSPORTATION SHEET

FOR Questioning AT Court House

NAME OF INMATE Walker, Alfred DATE 10-19-00

TIME LEFT 0435 OFFICERS ON DUTY R. Picard

OFFICER TRANSPORTING Way MS

TIME RETURNED 0610 DATE 10/19/00

AMOUNT OF BOND SET ON CHARGES AS FOLLOWS:

CHARGES	AMOUNT OF BOND
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____

RETURNING OFFICER'S SIGNATURE Way MS

RECEIVING OFFICER'S SIGNATURE Milledge

BARNWELL COUNTY DETENTION CENTER

TRANSPORTATION SHEET

FOR ? AT BPD

NAME OF INMATE Walker, Alfred DATE 10-20-00

TIME LEFT 2030 OFFICERS ON DUTY Brown

OFFICER TRANSPORTING Wayne Martin ^{1-MB} Rice

TIME RETURNED _____ DATE 10-20-00

AMOUNT OF BOND SET ON CHARGES AS FOLLOWS:

CHARGES	AMOUNT OF BOND
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____

RETURNING OFFICER'S SIGNATURE T. G. Rice

RECEIVING OFFICER'S SIGNATURE _____

BARNWELL COUNTY DETENTION CENTER

TRANSPORTATION SLIP

FOR Investigation AT Barnwell

NAME OF INMATE Walton, Alfred DATE 10-21-00

TIME LEFT 1645 OFFICERS ON DUTY Batchler, Myers, White ^{Woods}

OFFICER TRANSPORTING Wayne MA

TIME RETURNED 1720 DATE 10-21-00

AMOUNT OF BOND SET ON CHARGES AS FOLLOWS:

CHARGES	AMOUNT OF BOND
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____

RETURNING OFFICER'S SIGNATURE Wayne MA

RECEIVING OFFICER'S SIGNATURE J. Batchler

BARNWELL COUNTY DETENTION CENTER

TRANSPORTATION SHEET

FOR Bond Hearing AT Judge Witherspoon

NAME OF INMATE Walker, Alfred : DATE 10-25-2010

TIME LEFT 1015 OFFICERS ON DUTY Hutto, Devore
Johnson, Brown

OFFICER TRANSPORTING Fisher 109

TIME RETURNED 1030 DATE 10/25

AMOUNT OF BOND SET ON CHARGES AS FOLLOWS:

CHARGES	AMOUNT OF BOND
1. <u>2 CTS Murder</u>	
2. <u>ABW TK</u>	
3. <u>Armed Robbery</u>	
4. _____	
5. _____	
6. _____	

RETURNING OFFICER'S SIGNATURE Fisher 109

RECEIVING OFFICER'S SIGNATURE Sgt Johnson

STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL)

COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

State of South Carolina,)
Plaintiff,)

NOTICE OF MOTIONS AND MOTION FOR
A NEW TRIAL, OR, IN THE ALTERNATIVE,
TO AMEND THE SENTENCE

vs.)

Warrant No.(s): 2001GS0600118,
2001GS0600119, 2001GS0600120,
2001GS0600121, 2001GS0600123,
2001GS0600134

Alfred T. Walker #307941,)
Defendant.)

TO: THE SOLICITOR, J. STROM THURMOND, JR., ESQUIRE, BARNWELL COUNTY,
S.C., SECOND JUDICIAL CIRCUIT:

YOU WILL PLEASE TAKE NOTICE that your Movant will move this Honorable Court at a day, date, and time, as ordered by this Honorable Court to grant your Petitioner a new trial, or, in the alternative, to amend your Petitioner's sentence to decrease the same. These Motions are based upon the following grounds and for the following reasons:

- (1.) That there are discrepancies in the transcript of testimony at trial and the Transportation Sheets, which are attached to the Affidavit of James T. Burgess, and all of which are made a part of these Motions;
- (2.) That although your Petitioner repeatedly informed law enforcement that he did not wish to talk, law enforcement continued to question him on multiple occasions;
- (3.) That, when statements were made by your Petitioner, although it is not a mitigating circumstance, your 18-year-old Petitioner was intoxicated, under the influence of drugs, and diagnosed with antisocial personality disorder, and which could have or did effect any answers or statements made by him. Payne v. Arkansas, 356 U.S. 560 (1958);
- (4.) That the content of these statements may have been either impeaching or exculpatory, and the mere fact that they might have been violates your Petitioner's Constitutional rights and due process of law; the State has an affirmative duty to disclose all evidence, exculpatory or impeaching, which may be helpful to the Defendant. Brady v. Maryland, 373 U.S. 83 (1963);

It is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a State has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a State to procure the conviction and

imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation. In *Pyle v. Kansas*, 317 U.S. 213, 215 – 216, we phrased the rule in broader terms:

Petitioner's papers are inexpertly drawn, but they do set forth allegations that his imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and, if proven, would entitle petitioner to release from his present custody. *Mooney v. Holohan*, 294 U.S. 103. [373 U.S. 83, 87]

The Third Circuit in the Baldi case construed that statement in *Pyle v. Kansas* to mean that the "suppression of evidence favorable to the accused was itself sufficient to amount to a denial of due process. 195 F.2d, at 820. In *Napue v. Illinois*, 360 U.S. 264, 269, we extended the test formulated in *Mooney v. Holohan* when we said: "The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." And see *Alcorta v. Texas*, 355 U.S. 28; *Wilde v. Wyoming*, 362 U.S. 607. *CF. Durley v. Mayo*, 351 U.S. 277, 285 (dissenting opinion).

We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

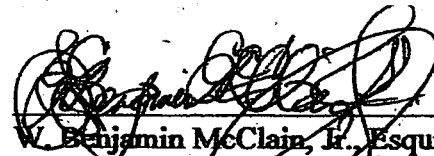
The principle of *Mooney v. Holohan* is not punishment of society for misdeeds of a prosecutor but an unfair trial to the accused. Society wins not only when the guilty are convicted by when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: "The United States wins its point whenever justice is done its citizens and the courts.: 2 A prosecution that withholds evidence on demand of an accused which, if made available, [373 U.S. 83, 88] would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice, even though, as in the present case, his action is not "the result of guile," to use the words of the Court of Appeals. 226 Md., at 427, 174 A. 2d, at 169.

- (5.) That it is well stated that, when an involuntary statement is introduced as part of the evidence before the jury, a conviction cannot be allowed to stand, unless there is significant evidence of guilt apart from the confession, *Brady v. Maryland*, supra;

- (6.) That these statements were or may have been cumulative or exculpatory and affected your Petitioner's entering a guilty plea or preparation for trial;
- (7.) That the State may have or did fail to disclose all pertinent, exculpatory, and impeaching information to the defense for the purpose of fundamental fairness, and the evidence not submitted may have fundamentally changed the outcome of this proceeding;
- (8.) That any evidence acquired from or as a result of these undisclosed statements taints and excludes all other evidence acquired as a result of these statements Wong Sun and James Wah Toy v. United States, 371 U.S. 471 (1963);
- (9.) That your Petitioner's Constitutional rights have been violated, and he has been denied due process of law.

WHEREFORE, your Petitioner respectfully requests a new trial, or, in the alternative, a reduction in his sentence, and a hearing is necessary and proper, in reference to this Motion, and your Defendant requests a hearing, in reference to this Motion.

Respectfully submitted,


W. Benjamin McClain, Jr., Esquire
W. Benjamin McClain, Jr., L.L.C.
Attorney at Law
Attorney for the Defendant
S.C. Bar No.: 003740
1300 East Washington Street, Suite I
Greenville, S.C. 29607-1858
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(864) 271-9098
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Dated: June , 2019
Greenville, S.C.



Ward McClain <mcclainwb@gmail.com>

Alfred Walker Motion for New Trial

1 message

David Miller <DMiller@aikencountysc.gov>
To: "pbucknerj@sccourts.org" <pbucknerj@sccourts.org>
Cc: "mcclainwb@gmail.com" <mcclainwb@gmail.com>

Tue, Jun 11, 2019 at 11:53 AM

Judge Buckner and Mr. McClain:

I received the attached Motion for New Trial filed by Mr. Benjamin McClain on behalf of Alfred T. Walker today. I have copied Mr. McClain on this email. I have reviewed the motion and note the defendant requests a hearing on the matter. If you determine a hearing is necessary, I assume Mr. McClain would waive venue in Barnwell County to have the motion heard. ~~If that is not the case, I'd respectfully request that he object to the motion being heard outside Barnwell County by reply to this email.~~ I would be happy to travel wherever you direct to have the motion heard at your convenience. Please advise.

DWM

"We are Lawyers on the Side of People. Never let us forget that the Law is never settled until it is settled right, it is never right until it is just, and it is never just until it serves society to the fullest."

- Harry Philo

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David W. Miller
Deputy Solicitor,

2nd Judicial Circuit
Post Office Box 845
Barnwell, South Carolina 29812
Telephone: (803) 541-1091
Facsimile: (803) 541-1112

 **MOTION FOR NEW TRIAL.pdf**
3368K

1 In the Court of Common Pleas for the
2 State of South Carolina, County of Barnwell

3

4 Case No.: 2011GS0600119

5

6 State of South Carolina,

7 Plaintiff(s),

8 vs. Transcript of Record

9 Alfred Tyrone Walker,

10 Defendant(s).

11

12

13

14

15

16 September 26, 2019

17 Ridgeland, South Carolina

18

19

20

21

22 BEFORE:

23 The Honorable Perry M. Buckner

24

25

1 APPEARANCES

2
3 REPRESENTING THE STATE

4 David Miller, Esquire

5 2nd Circuit Solicitor's Office

6 PO Drawer 3368

7 Aiken, SC 29802

8 dmiller@aikencountysc.gov

9
10
11 REPRESENTING THE DEFENDANT(S):

12 W. Benjamin McClain, Esquire

13 1300 East Washington Street, Suite I

14 Greenville, SC 29607

15 mcclainwb@gmail.com

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17 Description Marked Received

18 1 2005 order 67 67

19

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21

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25

PROCEEDINGS

1
2 THE COURT: All right. I had a brief meeting this
3 morning. And let the record reflect that before me
4 this morning is Mr. Alfred Walker, also with his
5 attorney, Ben McClain, and also, David Miller with the
6 Second Judicial Circuit Solicitor's Office.

7 I need to start with housekeeping matters that I
8 discussed with counsel just now in chambers this
9 morning. Number one, we are all dealing with an
10 abbreviated transcript. We were not able to obtain a
11 full transcript of all of the proceedings that took
12 place in this trial. But we've agreed to, everybody
13 has agreed to go forward with the agreed --

14 Austin, do you have pages for me?

15 THE LAW CLERK: Yes, sir.

16 THE COURT: Where are they? All right. I'm going
17 to put on the record the pages that are missing. It
18 appears that Pages 451 to 453, two pages there, are
19 missing from the transcript. It appears that Pages 901
20 to 1350 are missing, and pages 2249 to 2254 are
21 missing. And finally, Pages 2695 to 2714 are missing.
22 Both Mr. McClain and Mr. Miller attempted to acquire
23 the missing pages, but they both have agreed that they
24 would proceed because the missing pages in the opinion
25 of both lawyers are not relevant to the motion before

1 the Court this morning. And they've agreed to go
2 forward without the missing pages.

3 Is that correct, Mr. McClain?

4 MR. McCLAIN: That's correct, Your Honor.

5 THE COURT: Is that correct, Mr. Miller?

6 MR. MILLER: It is, Your Honor.

7 THE COURT: All right. Next of all, I mentioned
8 to the lawyers that before we started this morning that
9 this matter would be subject to the Rules of Criminal
10 Procedure and we went over the requirements of the
11 rules. Both Mr. McClain and Mr. Miller agree that Rule
12 29 of the South Carolina Rules of Criminal Procedure
13 governs any post-trial motion and they both agree that
14 they are bound by Rule 29.

15 Is that correct, Mr. McClain?

16 MR. McCLAIN: Yes, Your Honor.

17 THE COURT: Is that correct, Mr. Miller?

18 MR. MILLER: It is, Your Honor.

19 THE COURT: Finally, in Rule 29, there is a
20 sentence that says, Except by consent of the parties,
21 argument on a post-trial motion shall be heard in the
22 circuit where the trial or hearing was held.

23 Mr. McClain wrote my law clerk, copied Mr. Miller
24 several months ago and said that he would request that
25 the hearing be held in any county other than Barnwell

1 County where the trial was held. Mr. Miller agreed
2 that he would be willing to come anywhere. Court
3 administration has issued an order giving me
4 jurisdiction over second judicial circuit general
5 sessions non-jury matters for today and they understand
6 this matter will be heard in Jasper County by consent
7 of the parties.

8 Is that correct, Mr. McClain?

9 MR. MCCLAIN: Yes, Your Honor.

10 -THE COURT: Is that correct, Mr. Miller?

11 MR. MILLER: It is, Your Honor.

12 THE COURT: So, argument on this motion, even
13 though not being heard in the circuit where the trial
14 or hearing was originally held, both parties have
15 agreed to proceed today in Jasper County.

16 Correct, Mr. McClain?

17 MR. MCCLAIN: Yes, Your Honor.

18 THE COURT: Correct, Mr. Miller?

19 MR. MILLER: Yes, Your Honor.

20 THE COURT: Very good. Now, that takes care of
21 our housekeeping matters.

22 Before we begin, I understand from counsel that
23 Mr. McClain says he has two witnesses. He has the
24 burden under Rule 29. The State wants the opportunity
25 to make argument to me on procedural grounds, which I

1 will hear after I hear any evidence that the defendant
2 wishes to present.

3 For the purposes of the people in my courtroom,
4 Rule 29 has two sections, an A and a B section, and it
5 defines the conditions under which a post-trial motion
6 can be made, including time restraints. It is alleged
7 in this petition or motion for new trial or, in the
8 alternative, to amend the sentence, that one, there are
9 discrepancies in the transcript or testimony and --
10 held at trial and the transportation sheets. And it is
11 alleged -- which was, and we will get to that. It is
12 alleged in the petition other matters concerning
13 statements made by the defendant.

14 The burden, of course, will be on the moving party
15 and I'm ready to hear testimony in connection with
16 that.

17 Mr. McClain, do you want to call your first
18 witness?

19 MR. McCLAIN: Yes, sir, may it please the Court.

20 We would call Mr. Burgess.

21 Thereupon,

22 JOHN THOMAS BURGESS

23 was called as a witness, having been first duly sworn,
24 was examined and testified as follows:

25 THE COURT: If you will state your full name and

DIRECT EXAMINATION OF JOHN THOMAS BURGESS BY MR.
MCCLAIN

1 spell your last name for the court reporter, please.

2 THE WITNESS: James Thomas Burgess, B-U-R-G-E-S-S.

3 THE COURT: Your witness, counsel, direct
4 examination.

5 MR. MCCLAIN: May it please the Court, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. MCCLAIN:

8 Q Mr. Burgess, you go by the name of Buddy, is that
9 correct?

10 A Yes.

11 Q And you have a law enforcement background, don't
12 you?

13 A Yes, sir, I do.

14 Q Briefly, tell us what that law enforcement
15 background is.

16 A It's twenty-five years. I started out in Anderson
17 County. I worked for Anderson City for seven years, went to
18 Greenville, South Carolina, where I stayed until I retired.
19 I worked uniform patrol, narcotics and homicide was my
20 expertise.

21 THE COURT: With what law enforcement agency?

22 THE WITNESS: Greenville City Police Department.

23 BY MR. MCCLAIN:

24 Q Did you ever work for the Federal law enforcement?

25 A I did. I worked on two task forces -- well,

DIRECT EXAMINATION OF JOHN THOMAS BURGESS BY MR.
MCCLAIN

1 actually, three task forces. One was with the United States
2 Marshal Services, one was the FBI Violent Crimes Task Force,
3 and one was DEA.

4 Q Okay. And I think you retired after 25 years?

5 A Twenty-five years and four months.

6 Q Okay. And opened your own private investigation
7 agency, is that correct?

8 A Yes, sir.

9 Q Okay. And you were employed by Albert's family,
10 is that correct?

11 A Yes, sir.

12 Q And for what reason were you employed?

13 A I was contacted on Friday, May the 18th, by
14 Mr. Rischad Jackson by telephone, which he asked me would I
15 be willing to travel to Barnwell County and retrieve some
16 transportation sheets to where Mr. Walker had been
17 transported to be interviewed. I told him I would. On May
18 the 30th, I met with Ms. Latasha Bradshaw, where she signed
19 the contracts, which has to be done by the State of South
20 Carolina rules for me to be able to investigate it. We took
21 care of that matter.

22 On Monday, June the 11th, 2018, I traveled to
23 the Barnwell County Detention Center, where I was able to
24 retrieve transportation sheets dated October the 19th, 2000,
25 October the 20th, 2000, October the 21st, 2000, and October

DIRECT EXAMINATION OF JOHN THOMAS BURGESS BY MR.
MCCLAIN

1 the 25th, 2000. While I was there, I received another phone
2 call from Mr. Rischad Jackson and asked that I interview any
3 detention officers that were still working at the time that
4 Mr. Jackson was brought into the detention center. I was
5 able to locate one detention officer that was still there.

6 Q Is that Mr. Bruce Johnson?

7 A Yes, sir, Mr. Bruce Johnson, where he give a
8 written statement as to what he witnessed the night of the
9 incident when he was brought to jail.

10 Q That's attached to this motion, correct?

11 A Yes.

12 Q Okay. Did you obtain transportation sheets?

13 A Yes, I did.

14 Q How many?

15 A Four.

16 Q Okay. And those transportation sheets are
17 attached to this motion?

18 A Yes, sir, they are.

19 Q Okay. And how did you acquire those?

20 A I went to the Barnwell Detention Center, where I
21 spoke with the lieutenant there and they pulled them out of
22 the archives for me.

23 Q Okay. So, these were -- this whole file was in
24 archives?

25 A Yes, sir.

DIRECT EXAMINATION OF JOHN THOMAS BURGESS BY MR.
MCCLAIN

1 Q And they did identify these as the transportation
2 sheets?

3 A Yes, sir.

4 Q And you're the one that took Mr. Johnson's
5 affidavit?

6 A Yes, sir, he wrote it himself and I witnessed it.

7 Q And I'm sorry, when were you hired again?

8 A I was actually hired on May the 30th, 2018, which
9 was a Wednesday.

10 Q But you didn't discover these transportation
11 sheets until when, June 29th?

12 A No, I traveled to Barnwell on June the 11th.

13 Q Okay. And that's where you -- according to your
14 affidavit, that's where you interviewed Officer Bruce
15 Johnson, correct?

16 A Correct.

17 Q Then, on Friday, June 29th --

18 THE COURT: Speak up, Mr. Burgess.

19 MR. MCCLAIN: Sir?

20 THE COURT: Speak up a little bit.

21 MR. MCCLAIN: I'm sorry. I'm sorry. I don't hear
22 well.

23 THE COURT: Mr. McClain, when you put your head
24 down, it causes your voice not to be able to be picked
25 up by the court reporter.

DIRECT EXAMINATION OF JOHN THOMAS BURGESS BY MR.
MCCLAIN

1 MR. MCCLAIN: I'm sorry, I don't hear as well
2 after that second heart attack.

3 Q So, on June the 29th is when you traveled to the
4 Barnwell County Courthouse and attempted to look over the
5 case file and the court records?

6 A Yes, sir, I did.

7 Q Okay. What did you find as far as the court of
8 records?

9 A There was very little at the courthouse. There
10 wasn't much to see. It was all in archives, so I couldn't
11 look at -- most of it was just the warrants and a copy of
12 the indictments is pretty much all that I was able to view.

13 Q And was that the extent of your work on this case?

14 A Yes, sir.

15 Q And I think you've also talked to Alfred a couple
16 of times?

17 A I did talk to him by phone once or twice. And
18 then, myself and you went down to Columbia and spoke to him
19 in person.

20 Q Is there anything else you can add to your
21 testimony?

22 A No, sir.

23 MR. MCCLAIN: That's all I have of this witness,

24 Your Honor.

25 THE COURT: Cross examination.

DIRECT EXAMINATION OF JOHN THOMAS BURGESS BY MR.
MCCLAIN

1 MR. MILLER: Thank you, Your Honor, may it please
2 the Court.

3 CROSS EXAMINATION

4 BY MR. MILLER:

5 Q Mr. Burgess, who's Rischad Jackson?

6 A He said he was the uncle of Mr. Walker.

7 Q So he's a family member of the defendant?

8 A Yes.

9 Q In your affidavit, you say, on Friday, May 18th,
10 2018, I spoke with Mr. Rischad Jackson by telephone.

11 Mr. Jackson explained Mr. Walker's case and asked if I'd be
12 willing to travel to Barnwell County Detention Center in
13 Barnwell, South Carolina, and retrieve copies of the
14 transportation sheets dated October 19th, 2000, through
15 October 30th of 2000. Is that an accurate statement?

16 A Yes, sir.

17 Q And Mr. Jackson, it goes on -- your affidavit goes
18 on, Mr. Jackson also requested that, if possible, I
19 interview any detention center officers that were on duty
20 the night Mr. Walker was booked into the detention center,
21 is that correct?

22 A Yes.

23 Q Okay. So, you were aware at the -- on May the
24 18th of 2018 that there were transportation sheets dated
25 October 19th, 2000, through October 30th, 2000 that you

CROSS EXAMINATION OF JOHN T. BURGESS BY MR. MILLER

1 needed to get, correct?

2 A Yes, sir, it was actually May the 15th, but yes,
3 sir.

4 Q It was May the 15th?

5 A Yes, sir.

6 Q Okay. Your affidavit says May 18th, may we
7 correct that?

8 A Well, I'm looking at this one, it says the 15th.

9 Q Well, let's make sure we're talking about the same
10 document then. I'm looking at a copy --

11 THE COURT: Give him the date of the affidavit.

12 MR. MILLER: I'm sorry, Your Honor.

13 THE COURT: Give him the date of the affidavit or
14 hand him his affidavit.

15 THE WITNESS: I'm looking at my report. I'm not
16 looking at what was wrote by the attorney. It was May
17 the 15th that I know I traveled there.

18 BY MR. MILLER:

19 Q Okay. All right. Well, that goes into my next
20 question, did you prepare this affidavit?

21 A No, not that one, no, sir.

22 Q Okay. Let me show this affidavit to you and ask
23 you if you recognize it?

24 A I do. I've seen this, yes.

25 Q Is that the affidavit that you signed -- that is

CROSS EXAMINATION OF JOHN T. BURGESS BY MR. MILLER

1 your signature on the affidavit, correct?

2 A It is. It is.

3 Q And you just testified that the attorney prepared
4 this affidavit for you?

5 A This one, yes, sir.

6 Q All right. Did you prepare any other affidavits
7 in this case?

8 A The only other affidavit that I would prepare was
9 my report, which is attached to it, the second one.

10 Q All right. So, May the 15th of 2018, you got this
11 call from Mr. Jackson?

12 A Yes.

13 Q Telling you about these transportation sheets?

14 A Yes, sir.

15 Q And once you were retained as the investigator in
16 this case for the defendant and you went to the Barnwell
17 County Detention Center, how long did it take for you to get
18 these transportation sheets dated October the 19th, 2000,
19 through October 30th, 2000?

20 A I'm not sure. It was a good while because they
21 had to pull them out of archives. It was very hot that day
22 and they had to dig them out. So, I was there a good while.

23 Q So, on Monday, June the 11th -- did you get them
24 the same day? Because it says on Monday, June 11, 2018 --

25 A Yes. Yes.

CROSS EXAMINATION OF JOHN T. BURGESS BY MR. MILLER

1 Q -- you went there and you got them. Was that the
2 same day?

3 A Yes.

4 Q So it took a matter of hours?

5 A Yes.

6 Q And did you inform -- who were you working for in
7 this case, who had retained you?

8 A Mr -- actually, the lady, Latasha Bradshaw, was
9 who I met that signed the contract.

10 Q How was she related to the defendant?

11 A I think she might have been a niece or something,
12 I'm not sure. Or a sister, I'm not sure.

13 Q So, you have Mr. Jackson, who was related to the
14 defendant, and you have Ms. Bradshaw, who is related to the
15 defendant?

16 A Yes.

17 Q Ms. Bradshaw retained you?

18 A Yes, sir.

19 Q And within two weeks of you being retained, you
20 were able to get these transportation sheets?

21 A Yes, sir.

22 MR. MILLER: No further questions.

23 THE COURT: Redirect?

24 MR. McCLAIN: Yes, sir. May it please the Court.

25 REDIRECT EXAMINATION

REDIRECT EXAMINATION OF JOHN T. BURGESS

1 BY MR. McCLAIN:

2 Q Buddy?

3 A Yes, sir.

4 Q This affidavit that my office prepared?

5 A Uh-huh. (Indicating affirmatively.)

6 Q We went over this, didn't we?

7 A We did.

8 Q Okay. And it's based on your report?

9 A Yes, sir.

10 Q Okay. And I assume that May 18th was a
11 typographical error?

12 A It was.

13 Q Okay. And you first became aware of these
14 transportation sheets in June, is that correct?

15 A Yes.

16 Q And did the family ask you to obtain and look into
17 anything other than transportation sheets?

18 A At the time, no. I was asked to see if I could
19 locate any of the guards or anyone that was on duty the
20 night that Mr. Walker was brought in and obtain a statement
21 from them. I was able to locate Mr. Bruce Johnson at the
22 time.

23 Q So, you looked into other things other than the
24 transportation sheets?

25 A That's it, yes, sir.

REDIRECT EXAMINATION OF JOHN T. BURGESS

1 Q And you were asked to do that?

2 A I'm sorry, I didn't understand you.

3 Q I'm sorry, you were asked to do that?

4 A Yes, sir.

5 Q You just made an investigation?

6 A Yes, sir.

7 Q Did anybody tell you before your investigation why
8 they wanted these sheets?

9 A Nobody went into any real detail other than it was
10 needed for a hearing, that's all I was told.

11 Q And that was before I was retained, correct?

12 A Yes.

13 THE COURT: You have to say yes or no for the
14 Court.

15 THE WITNESS: Yes, sir.

16 MR. McCLAIN: That's all I have, Your Honor.

17 THE COURT: Recross, limited to the redirect.

18 MR. MILLER: No, Your Honor.

19 THE COURT: As to this witness, Mr. McClain, may
20 he be excused?

21 MR. McCLAIN: Yes, Your Honor.

22 THE COURT: Any objection?

23 MR. MILLER: No objection, Your Honor.

24 THE COURT: Mr. Burgess, you may step down from
25 the witness stand. You are excused from this hearing,

REDIRECT EXAMINATION OF JOHN T. BURGESS

1 you may leave the courtroom.

2 Call your next witness.

3 MR. McCLAIN: May it please the Court, we call the
4 defendant, Mr. Walker.

5 Thereupon,

6 ALFRED WALKER

7 was called as a witness, having been first duly sworn,
8 was examined and testified as follows:

9 THE COURT: Pull that chair up so that you are
10 close to that microphone, it'll amplify your voice.
11 State your full name and spell your last name, for the
12 court reporter.

13 THE WITNESS: My name is Alfred Walker, last name
14 spelled, W-A-L-K-E-R.

15 THE COURT: Speak up for me, Mr. Walker, so
16 everybody out there can hear you and the court reporter
17 can hear you.

18 You also, Mr. McClain. Your witness, direct
19 examination.

20 MR. McCLAIN: Yes, sir, may it please the Court.

21 DIRECT EXAMINATION

22 BY MR. McCLAIN:

23 Q Mr. Walker, obviously, this motion and all this
24 has involved you?

25 A Yes, sir.

DIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 Q Okay. Now, procedurally, I believe you had the
2 trial, correct?

3 A Yes, sir.

4 Q You appealed that trial?

5 A Yes, sir.

6 Q Okay. And the appeal was dismissed?

7 A Yes, sir.

8 Q Okay.

9 THE COURT: And for the record, counsel, so
10 that -- let's enter right now a stipulation. The rule
11 says that I am not allowed to hear a motion for a new
12 trial based on after-discovered evidence because it
13 cannot be made while the case is on appeal unless the
14 appellate court upon motion has suspended the appeal
15 and granted leave to make a motion. Leave of the
16 appellate court is not required if no appeal has been
17 taken or if the appeal has been finally decided in the
18 appellate court.

19 My understanding is there's been a final
20 disposition, is that correct?

21 MR. MCCLAIN: Yes, sir.

22 THE COURT: You agree with that, Mr. Miller?

23 MR. MILLER: I do, Your Honor.

24 THE COURT: Very well. You may proceed. I want
25 to make sure we comply with Rule 29.

DIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 MR. MCCLAIN: Yes, sir. Thank you, Your Honor.

2 Q Alfred you've had your trial, you've had your
3 appeal, which was dismissed. I believe you filed a PCR?

4 A Yes, sir.

5 Q Okay. And that was not granted?

6 A No, sir, it was a lot of discrepancies with my
7 post-conviction relief hearing.

8 Q Okay. And --

9 THE COURT: Wait. Repeat that answer so she can
10 get it about the PCR.

11 THE WITNESS: Sorry. I was saying that there was
12 a lot of discrepancy with my PCR which caused me to be
13 time barred. The State had represented me, Ms. Paige
14 Tiffany, she's a prosecutor for the Solicitor's Office
15 now, but she represented me in my post-conviction
16 relief hearing. And the judge was ordered to do a
17 proposed order -- each attorney to do proposed orders,
18 but nobody notified me about my case being dismissed or
19 anything, so I ended up being time barred. When I
20 finally got in contact with her, she told me it was
21 denied. So, she went about writing a letter to get me
22 to be able to proceed. But each stage or phase after
23 that, I just constantly got shut down because of the
24 time bar issue.

25 Q Okay. And I believe you also filed a habeas

DIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 corpus action?

2 A Which got shut down because of the time bar issue,
3 where nobody notified me about my denial.

4 Q Okay. And you understand that today we're hear
5 for a motion for a new trial, or, in the alternative, to
6 reduce your sentence?

7 A Yes, sir, I do.

8 Q Okay. And for the record, you understand that
9 should this Honorable Judge grant this motion that the case
10 would have to be retried, possibly?

11 A Yes, sir. I understand that. That's what I
12 wanted from the beginning in the first place.

13 Q Okay. And you understand that if we were to go to
14 trial and lose, that you could possibly be facing execution
15 again?

16 A Yes, sir.

17 Q Okay. So, you're fully aware of that?

18 A Completely.

19 Q Okay. Now, let's go to -- first, let's go to
20 Mr. Johnson's affidavit. Excuse me, sir. Mr. Johnson's
21 affidavit says that on October 19th, 2000, he was working
22 the night that you were booked in the Barnwell County jail.
23 Is that correct?

24 A Yes, sir. Vaguely. Well, at this point, I kind
25 of remember a lot.

DIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 THE COURT: Pull the microphone -- lift it up so
2 you can talk into it. You're talking above it.

3 THE WITNESS: Can you hear me now?

4 THE COURT: Yes. Are you okay, Mona.

5 THE WITNESS: Vaguely I remember -- I remember a
6 lot more now than I did in the beginning, because I was
7 under the influence of a lot of cocaine.

8 Q Were you under the influence of any other drug,
9 alcohol?

10 A Yes, sir, cocaine, alcohol and marijuana. They
11 diagnosed me when they did a mental evaluation that said
12 that I was cocaine dependent, alcohol dependent, marijuana
13 dependent and had antisocial personality disorder.

14 Q Okay. Now, let's go to the transportation sheets
15 here. There's one signed by the turning officer's
16 signature, T.G. Rice. Have you looked that over? Do you
17 have it?

18 A I don't have it, but I got it in my mind. I know
19 exactly which transportation sheet you're referring to.

20 Q That's the one that has Wayne Martin scratched
21 through?

22 A Yes, sir.

23 Q And it has that you left -- well, first of all, it
24 has at the top four with a question mark, right?

25 A Yes, sir.

DIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 Q And that you were taken to the Barnwell Police
2 Department?

3 A Yes, sir, that's correct.

4 Q Okay. And it says, time left, 2030 hours?

5 A Yes, sir.

6 Q Do you know what time that was?

7 A 5:30 in the afternoon.

8 Q Okay. And it says time returned --

9 THE COURT: What was your answer?

10 THE WITNESS: 5:30 in the afternoon.

11 BY MR. MCCLAIN:

12 Q Okay. And it says, time returned, and that's left
13 blank, right?

14 A Yes, sir.

15 Q Okay. Did Mr -- I'm sorry, did Detective, I
16 believe, at the time or Officer Wayne Martin, indeed,
17 transport you that day?

18 A Yes, sir, he did transport me that day.

19 Q Okay. Now, in the transcript at Page 2,451,
20 during the direct examination of Mr. Martin, he says that he
21 interviewed you or questioned you on October --

22 THE COURT: What line, Counselor?

23 MR. MCCLAIN: Sir?

24 THE COURT: Page 2451, what line for the record?

25 MR. MCCLAIN: I'm sorry, it starts at the top.

DIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 THE COURT: Line one?

2 MR. MCCLAIN: Yes, sir. Line one through four, I
3 believe -- or lines one through four, excuse me.

4 THE COURT: Proceed.

5 MR. MCCLAIN: Yes, sir. May it please the Court.

6 BY MR. MCCLAIN:

7 Q Okay. It says there -- excuse me, that Wayne
8 Martin talked with you on October 20th, 2000, at 10:22 a.m.?

9 A Yes, sir, that's correct.

10 Q Okay. Do you remember -- do you remember that he
11 did talk to you and what the substance of that conversation
12 was?

13 A Well, he wrote down that the contents of the
14 conversation was about like further participation in the
15 crime, location of the gun and stuff like that right there.
16 The whole entire meeting only came about because he -- well,
17 I told him he made it look like I didn't want to -- like I
18 initiated the contact. I never wanted to talk to him.
19 Where there is a discrepancy at is that I told Mr. Wayne
20 Martin that I didn't want to talk to him. But nobody
21 documented this right here. The extension in the motion
22 that you -- the transportation sheet you're referring to
23 right now, referring to 530, that's a whole 'nother meeting
24 and encounter that's not documented nowhere in my Rule 5
25 motion of discovery anywhere. And they tried to mark his

DIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 name out like he wasn't present at that, but he was there.

2 And he ended up taking me to the Barnwell
3 Police Department. But there's nothing in my record,
4 nothing nowhere, documented any place, from him, on the
5 stand; in my motion, nowhere that refers to a meeting that
6 occurred at the Barnwell Police Department. And that's
7 where the discrepancy lies in at because he never recorded
8 this. And all of this is just an inducement that he was
9 trying to cover up, because I did inform him that I did not
10 want to talk to him as well either.

11 And nobody let me say any of this when I was
12 going to trial. They kept me away from it. They didn't let
13 me get on the stand. They didn't let me speak my mind.
14 They didn't let me get any of this off my chest. So, I had
15 a muzzle over my mouth during my Jackson V. Denno hearing
16 because nobody would let me talk. They felt like I was just
17 going to injure myself or that I was dreaming this up or
18 that I was just making this up. Because he got on the stand
19 as well, too, and denied a lie about ever taking me to the
20 jail -- to the county -- to the Barnwell Police Department
21 or picking up Ms. Donna Bradshaw and transporting her to the
22 Barnwell Police Department as well.

23 Q What was the purpose, by the way, of bringing
24 Ms. Bradshaw?

25 A Because I told -- that night, the first night that

DIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 he apprehended me, when they came and got me, when he
2 talking about I told him that I did not want to -- that I
3 was -- the police was putting me in the car. While he was
4 putting me in the car, I told him I'd be at the county jail,
5 come talk to me. Man, that's a lie. I never told him I
6 would be at the county jail, come talk to me.

7 So, when we got to the county jail and he
8 started booking me in and doing all of this as far as the
9 booking process, I didn't have an option. When he came and
10 told me that I had to go to the Solicitor's office with him,
11 that's what I did because I didn't have an option. But I
12 did not want to go. And I wish that Mr. Bruce Johnson, I
13 wish Ms. Milledge, Officer Milledge, all these people that
14 was at the county jail would have still been there at the
15 time and we could have confronted them as well, too.
16 Because I'm quite sure that there's somebody that overheard
17 me telling him at this particular time that I did not even
18 want to go with him.

19 So when I did get to the county jail and they
20 transported me to the Solicitor's office, I was quiet. I
21 did not want to talk to him. After being belligerent like
22 Mr. Bruce Johnson said I was, I became quiet and didn't want
23 to even talk to him.

24 So he asked the other officers to step out.
25 So when the other officers stepped out, that's when he began

DIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 to ask me do I really want to him. And I said, No, man, I
2 don't want to even talk to you. And why are you still
3 bothering me, man? And I promise you that I told him at
4 that particular time on everything I love that I -- why you
5 won't get me a lawyer or something like that. Now, let me
6 see my mama.

7 THE COURT: Slow down a little bit.

8 THE WITNESS: But I did tell him that I wanted a
9 lawyer, I swear. And I told him that I wanted a lawyer
10 and I wanted to see my mother. He disregarded the part
11 about me wanting to see a lawyer or anything like that,
12 and went straight into talking about my mother and her
13 being in danger. While I was at the crime scene, I
14 swear to the God, there was an officer, Sheriff
15 Blackwell. He was there at the crime scene. I was 18
16 years old. While there, Sheriff Blackwell was telling
17 me, Lee Worthy, Wallace Priester, all of us that he
18 wanted any of us to run. After Blackwell had left, he
19 was -- I promise you he was saying, I want anybody to
20 run right now, I'll shoot you dead just like I did
21 those people over there. I swear to the God.

22 They don't have him nowhere in the record, but
23 Sheriff Blackwell was present at that crime scene that
24 night. And he was walking back and forth belligerent.
25 He had a vehicle that should have been -- I know he got

DIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 a tape on his --

2 THE COURT: Slow down a little bit.

3 THE WITNESS: I'm sorry, I'm getting crunk because
4 I'm finally getting an opportunity to get all this off
5 my chest. And I just want to be heard. I want
6 everything on the record.

7 THE COURT: I want to hear you, but you got to
8 slow down so the court reporter can keep up with you.

9 THE WITNESS: Yes, sir. I'm sorry.

10 MR. MCCLAIN: May it please the Court, Your Honor.

11 BY MR. MCCLAIN:

12 Q Back to when Mr. Martin first, I think you said,
13 had you in the Solicitor's office?

14 A Yes, sir.

15 Q And he asked Officer Smiley, I believe it was, to
16 step out?

17 A Yes, Officer Smiley.

18 Q Okay. What did he ask you at that time? Why did
19 he pull -- ask Ms. Bradshaw to come in?

20 A Because I told him that I didn't want to talk. I
21 wanted to see my mother. And that's when he began to tell
22 me that not only was -- I couldn't leave the county jail
23 without a bulletproof vest on. I was receiving threats on
24 my life and all of that. They was constantly getting calls.
25 And the policeman is already at the crime scene threatening

DIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 our lives and all type of stuff, too. So he used that as an
2 extension to show that danger was also being placed on my
3 family.

4 Q Did he tell you that?

5 A He told me, not only do you -- you have to think
6 about -- I can't remember verbatim, but I know along these
7 lines, it was you got to think about more than just you.
8 You got to think about yourself. And that's when he began
9 to tell me, yeah, pretty much that my mother's life was in
10 danger or could be, too. So if I wanted to help myself or I
11 wanted him to help me that, yeah, I had to think about my
12 mother as well, too. So, yeah, somehow, someway, we got
13 along to get started from that conversation to me ended up
14 giving incriminating statements against myself.

15 Q Did Ms. Bradshaw come talk to you?

16 A Well, she couldn't come see me because I was under
17 investigation and was a capital defendant. Well, I wasn't
18 really capital, but it was all under investigation. So, at
19 that particular time, nobody could come see me. So in order
20 for her to come see me, I had to have some type of special
21 approval. That's when Wayne Martin and Glenn Rice came and
22 got me on 10/20 from the county jail at 5:30 and took me to
23 the police department, went to pick my mother up from Red
24 Oak and brought her to the police department as well and
25 allowed me to be able to sit with her for a period of time

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1 as a show that he done his part, that he was doing -- that
2 he was keeping his end of the bargain, that he was keeping
3 her safe to try to assure me that everything was all right.

4 Q You said to keep his end of the bargain, what
5 bargain?

6 A Pretty much that if I incriminated -- if I gave
7 statements or whatever, he would make sure that my mother --
8 no harm came to my family, nothing like that happened to me,
9 everything would have been straight, pretty much in so many
10 words.

11 Q So, you had a bargain with Wayne Martin that if
12 you gave statements, your family would be safe?

13 A Pretty much, yes, sir. But there was no way for
14 me to prove this because it would have been my word against
15 his word. And when he got on the stand, he denied ever
16 going to pick my mother up, he denied ever going to do
17 anything. So, it really became even more difficult for me
18 to be able to prove anything like this because man, wasn't
19 nobody going to believe me.

20 And it took me so long to be able to get this
21 far because I ain't never had the money. I ain't never had
22 no money to pay no lawyers or pay no private investigators
23 or pay nobody to be able to come and help me do no research
24 to find anything. I'm black and I'm broke, so it's harder
25 for a defendant that's incarcerated under those

DIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 restrictions.

2 Q Okay. So, Wayne Martin talked to you on
3 10/20/2000 at 10:22 in the morning?

4 A Yes, sir.

5 Q And then he came back again that same day at
6 approximately 5:30?

7 A Yes, sir, he did.

8 Q Do you know how long that statement took, or did
9 you give him a statement then?

10 A I don't remember, but I just know that -- and even
11 in the transcripts that I've read, when they was documenting
12 or tagging everything so that everything could be before the
13 Honorable Judge, at that particular time, they spoke about
14 Exhibit 1, 2, 3, 4, 5, 6. And then when they got to the
15 time, which should have been allotted for this particular
16 transcript, they never mentioned it and it went straight to
17 7, 8, 9, 10. And they just totally disregarded this
18 particular transcript -- or transportation sheet, which
19 should have been documented, period, point blank, because I
20 was a capital defendant and everything had to be before the
21 court so that I could continue to fight for my life with all
22 of my bullets in my gun. Bad pun, but you know what I mean.

23 Q Did Wayne Martin ever talk to you orally without
24 writing it down?

25 A When we was at that -- I don't remember -- see, it

DIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 was so long, but I know that we was talking -- even while we
2 were there, we talked orally, we talked like everything. He
3 was always taking notes. We was talking at that particular
4 time. Especially, once I saw my mother, I felt like
5 everything was -- like, she was safe and everything was
6 straight. So I really became kind of like more fluent or
7 more at ease because I just felt like, okay, everything's
8 all right. I wasn't as uptight as I was prior to seeing
9 her. Like, I was real fidgety. Like, I was just going --
10 worrying, going through a lot.

11 Q When you talked with Mr. Martin at this time when
12 he made this bargain with you?

13 A Okay.

14 Q Did you feel threatened or under dress in any way?

15 A Man, I was scared. I felt like something was
16 going to be happening to somebody in my family as well.
17 Like, I could not really leave without a bulletproof vest
18 on. I was already worried that something might happen to
19 me, but I was worried about my family as well.

20 Q Would you have talked to him if he had not said
21 that?

22 A No, I --

23 MR. MILLER: Objection.

24 THE COURT: Sustained. Leading, counsel.

25 Rephrase the question.

DIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 BY MR. MCCLAIN:

2 Q Did his talking to you -- what bearing, if any,
3 did his talking to you --

4 A I did not want to talk to Mr. Wayne Martin. When
5 Wayne Martin came and picked me up, I did not want to talk
6 to him. I told him as well, I did not want to talk to him.
7 Nobody allowed me an opportunity to be able to get this off
8 of my chest in the beginning. Nobody. I never got on the
9 stand. I never -- nobody said nothing at my Jackson V.
10 Denno hearing. I wanted to be able to say these things, but
11 they would not allow me to, my attorneys. I don't know what
12 was going on.

13 Q What effect, if any, did your bargain with
14 Mr. Martin have on your decision whether or not to talk to
15 him?

16 A Everything. If it wasn't for him, if it wasn't
17 for him putting this in my head, I would have never spoke to
18 that man. I would have never said nothing to this man. I
19 didn't want to go with this man. I promise you I didn't
20 want to do that. Especially that night, I was -- man, I was
21 so out of my mind, I promise you, I was going in. I didn't
22 want him around. I didn't want to talk to him. And I shut
23 completely down when he got me to that Solicitor's Office.
24 I shut completely down. I did not want -- I'm talking
25 about, I shut completely down.

DIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 Q Did you ask for an attorney?

2 A I did tell him -- well, briefly, very quickly, on
3 everything that I love, I did say -- when he -- when Officer
4 Smiley stepped out of the room and it was just me and Mr.
5 Wayne Martin there, he asked do I want to talk to him. I
6 said, Man, I already told you I don't want to talk. Why you
7 won't get me a lawyer and let me talk to my mama or
8 something. That was the intent of it. We never went into
9 any detail or nothing like that because we went straight
10 into talking about my mother.

11 Q Do you know why he saw you twice on the same day?

12 A For -- because he had done picked my mom up and
13 brought her to come see me and he was doing all of this
14 talking about trying to find a gun and all kind of little
15 stuff like that.

16 MR. MCCLAIN: Court's indulgence, Your Honor.

17 Q Do you remember anyone, if there were such a
18 person, do you remember anyone talking with you and your
19 talked with them orally from law enforcement, or the
20 Solicitor's Office or the State, do you remember any
21 discussion that you had with anybody that was not recorded?

22 A I don't -- I don't know. I don't know.

23 Q Well, when you were talking with these police
24 officers, et cetera, were you or were you not intoxicated?

25 THE COURT: Sustained. Rephrase the question,

DIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 Counselor.

2 MR. MCCLAIN: Okay. Thank you, Your Honor.

3 Q Were you aware, fully aware of what was going on
4 and what discussion, what statements, if any, you were
5 making when you made them?

6 A Yes.

7 Q Okay. Now, were those statements in any way --
8 and I don't mean in mitigation, I mean as far as your
9 thought processes. You had testified that you were under
10 the influence of drugs and alcohol. Were you ever under the
11 influence of drugs and alcohol when you talked to these
12 officers?

13 A Yes, sir.

14 Q When?

15 A The night they -- the night that they picked me up
16 --

17 Q Please speak up, please.

18 A The night that he picked me up and took me to the
19 Solicitor's Office, I was under the influence of cocaine,
20 marijuana, alcohol and -- well, yeah, I had cocaine,
21 marijuana and alcohol. And they had a toxicology report on
22 my co-Defendant to where he was, what, one or two times, two
23 times over the limit for adults. And he's only 15. And
24 when they did all of their investigations, they pretty much
25 agreed that we both were getting high.

DIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 Q Sorry, over what?

2 A That he was over the limit, so it was only right
3 that they would infer that I was also over the limit as
4 well, I believe.

5 Q Did your intoxication and effective drugs in any
6 way affect your statement, your actions and statements?

7 A I don't know. And I say that because it could
8 have -- when I heard what was being said about my life being
9 threatened and my mother's life and my family and stuff like
10 that, that could have heightened my sense of wanting to
11 protect my family, wanting to protect myself, just wanting
12 to make sure that they were straight because I was worried
13 about them. And I guess at some point in time, yeah, I
14 start feeling protective. And I think that came from a
15 sense of just worrying about my family and being up under
16 all that duress, I guess.

17 Q Now, you're familiar with the transcript of this
18 trial, correct?

19 A Yes, sir.

20 Q I suppose you've read it over and over?

21 A Yes, sir.

22 Q Okay. Now, were there any statements, oral or
23 written, of which you are aware that are not recorded in the
24 transcript?

25 A I don't know. I don't -- I don't think so, but I

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1 don't know because I don't have everything to really read
2 and review again. And it's been so long since I really read
3 over everything that was in the motion of discovery back
4 when we was going to trial. So, I would have to have
5 everything in front of me again to really be able to read
6 over it all and really be able to pinpoint certain things
7 that's not there or, you know, things of that nature.

8 Q So you don't recall whether or not when you met
9 with Mr. Martin at 10:22 a.m. on October 29th, 2000, you're
10 not aware of whether or not he recorded or wrote down any
11 statements?

12 A Not saying that he did not, not saying that he
13 did, just saying I don't know, I don't remember because at
14 that point in time, even through our conversations, which I
15 can't recollect to perfection, I was more so concerned about
16 spending time with my mother. And after that, any
17 discussions we may or may not have had, I really don't
18 remember. I just don't really remember. The times
19 conflict.

20 Q Now, you said Mr. Martin came and picked up your
21 mother?

22 A Yes, sir.

23 Q And brought her to you?

24 A Yes, sir.

25 Q Do you know what the purpose of that was?

DIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 A Because I told him pretty much I needed to see my
2 mother and that's how I eventually end up giving
3 incriminating statements against myself.

4 Q How is that, Alfred?

5 A Because the very first time he came to speak to me
6 to the county jail, when he noticed I got -- yeah, took me
7 from the county jail and took me to the Solicitor's Office,
8 after he asked Officer Wayne Smiley to step out of the room,
9 that's when he and I began to talk. And I just vaguely
10 remember this conversation because I just know that that's
11 how I ended up getting to see my mother and I know that's
12 how he ended up getting me to say anything to him in the
13 first place. He told me -- I can't remember verbatim, but I
14 know that that's the whole meeting ever came about. Would
15 have never -- it never -- like, that's the whole reason I
16 feel he never mentioned it at the first trial, that he never
17 mentioned it in my motion for discovery that, that he never
18 mentioned it or said anything about it and denied and did
19 all of this. Because in his mind, he knew what he had done
20 was wrong and that if he would have allowed it to be put out
21 there in the open, it would have declared -- my
22 incriminating statements would be declared inadmissible.

23 Because it would have been looking real funny
24 like, why you didn't say anything about this meeting, why
25 did you deny going to pick her up, why did you deny taking

DIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 him to the county jail, why did you deny these things? If
2 you did nothing wrong, why didn't you include this in your
3 investigation just like you included 1 through 10? Why did
4 you feel the need to exclude this particular encounter?

5 Q So your testimony is that particular encounter was
6 excluded?

7 A Yes, sir.

8 Q Do you know whether or not that particular
9 encounter was recorded in writing by a recordation device or
10 any other way?

11 A No, sir, I have no idea.

12 Q Do you recall if it were?

13 A No, I don't.

14 Q I notice that you entered an Alford plea at your
15 trial, correct?

16 A Yes, sir.

17 Q Okay.

18 A I entered an Alford plea because I did not want to
19 plead guilty. But in order to get me to plead guilty, my
20 lawyers and -- I want to say my lawyers and the prosecutor
21 went to Mr. Perry Buckner and asked him to hold on -- my
22 third day of trial, they asked him to hold on before the
23 trial get started. And that's when they had got, I guess,
24 the night before or whatever, Mr. Glenn Walters, Mr. Carl
25 Grant, they were searching for people to come try to find me.

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1 to -- to come get me to plead guilty. And that's what
2 Ms. Page Tiffany, the now solicitor, was arguing at my
3 post-conviction relief hearing. They were arguing that my
4 guilty plea should have not never been accepted because I
5 didn't want to plead guilty in the first place. But in
6 order to get me to plead guilty and change my mind, what
7 they did was they found Ms. Green, brought her to the
8 jail -- the Solicitor's Office and locked us in a room
9 before she came to talk to -- before they brought me before
10 you and sat us down and got her to talk me into pleading
11 guilty.

12 And at a hearing that y'all had about the
13 fees that was supposed to go to, the fees that were supposed
14 to go to the jury consultant, the social workers and all of
15 them, that's when Glenn Walters began to tell you that she
16 was the only thing that came in and changed my mind in five
17 minutes. But other than that, I would have continued with
18 my trial.

19 But after she talked to me and did all of
20 this here, they came back in and then came to you, like,
21 okay, he wants to change his mind and plead guilty. But I
22 just got tired of all of them badgering me about pleading
23 guilty. They had done brought my family to the county jail
24 to try to get me to plead guilty. They brought her up there
25 the next day to try to get me to plead guilty.

DIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 I was just tired of everybody coming at me
2 trying to get me to plead guilty. And she came in telling
3 me about, don't let people kill me. God going -- I'm a
4 praying woman, God going to do this. You just got to
5 believe. Come on, Alfred. So I started to hear -- I got
6 tired. I was in tears already. And then I did want it to
7 be over. Like, I'm not no monster. I didn't want the
8 family to be going through all of this anyway. I wanted it
9 to end for them as well, too. That's why when I was going,
10 I didn't ask you for leniency, mercy or none of that. I
11 just wanted it to end for the family as well, too. Like, I
12 wanted it to be over. But more than this, I wanted it to be
13 over by way of trial because I never wanted to forfeit all
14 of my rights. I don't want to be stuck in prison unable to
15 argue my arguments.

16 THE COURT: Ask a question, direct examination.

17 MR. MCCLAIN: Yes, sir.

18 BY MR. MCCLAIN:

19 Q Had all of this not taken place with the
20 questioning by Mr. Martin -- and did you say Ms. Walters
21 came in to see you?

22 THE COURT: I couldn't hear that, rephrase that
23 question.

24 MR. MCCLAIN: I'm sorry.

25 THE COURT: Rephrase that question.

DIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 MR. MCCLAIN: Yes, sir. Yes, sir.

2 BY MR. MCCLAIN:

3 Q Mr. Martin came and talked to you, correct?

4 A Yes, sir.

5 Q On more than one occasion?

6 A Yes, sir.

7 Q Did you say a Ms. Walters came and talked to you
8 during your trial?

9 A No, Ms. Green. Mr. Walters was my attorney. And
10 Ms. Green, they got Ms. Green to be able to go before me.

11 Q Who is Ms. Green?

12 A Ms. Green was -- she was an influential individual
13 in my life. And she was used to get me to plead guilty.
14 The only thing I -- the only reason I even brought that up
15 is because in order for me to get to a guilty plea, my
16 attorneys felt that my statements were a key thing that had
17 me bounded or binded. And that, ultimately, led them to do
18 what they did in order to have this guilty plea. But what
19 I'm saying is, if my statements and everything like that
20 could have been properly reviewed and before the Court, then
21 my guilty plea would have never even been a factor. They
22 would have never been pushed to try to get me to plead
23 guilty.

24 Q Would you have pled guilty had everything been
25 before the Court?

DIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 A No, sir.

2 Q And I noticed in a part of the transcript that we
3 do have, it is replete with your saying, I don't want to
4 talk anymore, is that correct?

5 A Yes, sir, that's correct. That's why -- go ahead.

6 Q Okay. Did you say that every time law
7 enforcement -- did you or did you not say that every time
8 law enforcement tried to question you?

9 A I did. And that's the reason Wayne Martin never
10 said anything about this particular meeting because the
11 Judge accepted the secret portions of my incriminating
12 statements because he felt that they scrupulously honored my
13 Fifth Amendment assertion. But that wasn't the case. But I
14 couldn't prove any of that because I didn't have anything
15 before me to really support it.

16 Q Okay. And I noticed that His Honor asked you as
17 a -- in questioning, do you understand that you are pleading
18 guilty and you are waiving your Constitutional rights, that
19 you are waiving your rights to a jury trial, et cetera?

20 A Yes, he did.

21 Q Okay. And why did you answer those questions the
22 way that you did?

23 A I didn't have a choice. Because once me and my
24 attorneys and all of us got together, they pretty much
25 explained to me, I'm fixing to go before a judge, over a

DIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 plea and I can't go out there talking about, I don't want to
2 plead guilty, I ain't kill nobody and they were already
3 telling me they can't accept it if you say this or that.

4 And they couldn't tell me how much time the Judge was
5 talking about giving me. Because they knew if he was giving
6 me something crazy, I couldn't go out there then. So, when
7 I asked how much time I was looking at, they wouldn't say a
8 specific time. They were saying 20, 25 years, regardless.

9 They didn't want to say he was going to give
10 me a life sentence, and because they knew that I would say
11 I'm not going to plead guilty to two life sentences, 75
12 years.

13 Q Okay. I understand, Your Honor, that this is kind
14 of a catch-all question, but why we are having this
15 discussion -- and talk slowly, okay. Are there any other
16 things about which you would like to address the Court?

17 A Not at this moment.

18 Q Were you given your Miranda rights prior to every
19 interview?

20 A That I can recollect, pretty much, yes, sir.

21 MR. MCCLAIN: That is that all I have, Your Honor.

22 THE COURT: Cross examination.

23 CROSS EXAMINATION

24 BY MR. MILLER:

25 Q Mr. Walker, you brought up the fact that you were

CROSS EXAMINATION OF ALFRED WALKER BY MR. MILLER

1 evaluated by a psychiatrist to -- and you said that you were
2 found to be cocaine and alcohol and other drug dependent; is
3 that correct?

4 A Yes, sir.

5 Q And you have seen that evaluation, haven't you?

6 A Yes, sir.

7 Q And you recall the person who evaluated you?

8 A No, sir. Well, was it -- no, no, Thomas Martin.

9 Q All right. Thomas Martin evaluated you, and in
10 his evaluation do you recall him saying that Mr. Walker
11 appeared to be a good historian and genuine in his
12 presentation, he was talking about you?

13 A Yes, sir.

14 Q And in his evaluation, you recall that Dr. Martin
15 said, This evaluation will address whether Mr. Walker
16 suffers from a mental condition that would prohibit him from
17 making an informed decision in negotiating a plea bargain in
18 lieu of the death penalty. That is why you were getting
19 evaluated to determine if you could do that?

20 A Yes, sir, to see if I were competent.

21 Q To see if you were competent. And while you were
22 speaking with Dr. Martin you knew that it was important to
23 be truthful with him, didn't you?

24 A I ain't know if it was important to be truthful or
25 not. I just know that I did talk to him to make sure that

CROSS EXAMINATION OF ALFRED WALKER BY MR. MILLER

1 he understood that I was competent to stand trial. I can
2 have lied to him and it would have been the same effect. I
3 could have been lying out of my mind and he would have
4 proven me to be competent because I proved to be a good
5 historian.

6 Q You didn't tell him about any -- you told him
7 about your alcohol abuse?

8 A I told him about a lot of things that he asked me
9 about, yes, sir.. Alcohol, cocaine, a lot of things.

10 Q Otherwise he couldn't have found that you had all
11 of these dependencies, correct?

12 A No, he could have still found it out. I did
13 evaluations prior where they had diagnosed me Axis I
14 treatment and was asked things like that. I had a court
15 order to go before a judge and I had to attend certain
16 services like that.

17 Q According to Mr. Martin's report you were
18 evaluated on January the 26th of 2005. So, that would have
19 been four plus years after the incident, correct?

20 A A lot of years sober, yes, sir.

21 Q All right. And in -- I want you to tell me what
22 you disagree with about this statement from Mr. Martin's
23 evaluation. In an initial interview in a police vehicle
24 Mr. Walker recalls denying direct knowledge of the shooting
25 at the Sonic drive-in. And in an interview later on

CROSS EXAMINATION OF ALFRED WALKER BY MR. MILLER

1 October 19th, 2000, Mr. Walker admits to his presence at the
2 Sonic drive-in but denies firing any weapon. And in an
3 October 20th, 2000 statement, Mr. Walker admits to carrying
4 a 20 caliber automatic handgun and accidentally shooting
5 Mr. Edwards in the leg. And he also reports, Mr. Priester
6 shot Mr. Edwards, Brewer, and Mr. Still in the head.

7 Mr. Walker reported his automatic handgun
8 jammed by evidence of inability to self reload after firing
9 the first and only time. Mr. Walker reports remorse for his
10 participation in the crime and sympathy for the victim and
11 their family. Mr. Walker reflects his remorse in a letter
12 later written to Mr. Edwards.

13 Do you recall when you wrote that letter to
14 Mr. Edwards?

15 A I recall that Mr. Martin advised me that it would
16 be a good idea to write this because it would be able to
17 help the families seeing me as a remorseful individual and
18 help with sentencing and stuff like that. I had no idea
19 that Mr. Sean, Mr. Ellis (phonetic) would have gotten the
20 letter, I didn't know none of that. I was just going along
21 with what Mr. Martin advised would be a good move.

22 Q You told all of this to your attorneys?

23 A I did.

24 Q You told Glenn Walters?

25 A I did.

CROSS EXAMINATION OF ALFRED WALKER BY MR. MILLER

1 Q You told --

2 A Carl Grant and Thomas Simms.

3 Q Thomas Simms was not on the case anymore, you told
4 him this upfront?

5 A I told him.

6 Q You told him that you had been lied to and you had
7 told the police on every single occasion that you wanted to
8 stop the questioning but they kept questioning you?

9 A I didn't tell him on every single occasion. I
10 told him that the first night that Wayne Martin came to talk
11 to me. They took me to the Barnwell jail to the Solicitor's
12 office. And I told Mr. Rodney Pruett on several occasions.

13 Q So, after you pled guilty on the third day of your
14 trial, the morning of the third day of your trial, you filed
15 an appeal?

16 A Yes, sir.

17 Q And before that appeal was dismissed, you filed a
18 PCR?

19 A Yes, sir.

20 Q And what is the purpose of the PCR?

21 A The purpose of the PCR is to declare ineffective
22 assistance -- well, to file any complaints that you might
23 have pertaining to your case pretty much.

24 Q So, that would include ineffective assistance of
25 counsel?

CROSS EXAMINATION OF ALFRED WALKER BY MR. MILLER

1 A That is kind of like why I abandoned my appeal and
2 went directly to a PCR, because I had plead guilty and I was
3 under the impression that I would have had to argue
4 ineffective assistance of counsel. And in order to get
5 relief I would have had to challenge my plea.

6 Q You testified in your PCR?

7 A Yes, sir.

8 Q In your PCR application you didn't say anything
9 about, I told my lawyers all of these things and they didn't
10 bring any of them up at the Jackson Denno hearing?

11 A Because I was under the impression that --

12 Q I will let you explain why, but I want to make it
13 clear. You didn't say anything in your petition and you
14 didn't say anything at your PCR hearing and your attorney
15 made no mention at your PCR hearing of any of this
16 discrepancy about what these three lawyers, Mr. Simms,
17 Mr. Grant and Mr. Walker had not done at the trial?

18 A Can I explain?

19 Q You can answer whether or not that is true first
20 and then I'll let you explain.

21 A No, sir, I didn't.

22 Q Okay. Now you can explain.

23 A Okay. The only reason I didn't is because they
24 told me that I should -- I couldn't argue Constitution. I
25 was under the impression that you couldn't argue

CROSS EXAMINATION OF ALFRED WALKER BY MR. MILLER

1 constitutional issues and stuff like that, like I had to go
2 through the long processes of getting this way out of the
3 way before I could file something about the statements. I
4 thought that. I had to state through ineffective assistance
5 of counsel, and that is why I was so hung up on ineffective
6 assistance of counsel claims.

7 Q So, did you ask your PCR lawyer about asserting
8 these?

9 A Unfortunately with all due respect, Ms. Page
10 Tiffany didn't know much about what to do at a PCR hearing.
11 She works with y'all now. She didn't know that I was
12 supposed to -- she didn't try to get Ms. Green there to show
13 that they got me there to plead guilty. They didn't do an
14 investigation and she didn't know that the ineffective
15 assistance of counsel appeal of my denial of the PCR. That
16 is why I had to get delayed appeal, because she didn't know
17 much about what was to be done, with all respect.

18 Q Now, to answer the question, did you tell her, I
19 want to raise these issues, or did you not tell her that you
20 wanted to raise the issues?

21 A I did tell her that I wanted to raise them.

22 Q Okay. So, ultimately there's an order of
23 dismissal in your PCR and you say that you had to get a
24 belated appeal of your PCR?

25 A In order to proceed and move forward, yeah.

CROSS EXAMINATION OF ALFRED WALKER BY MR. MILLER

1 Because she never did notify me, so she had to write a
2 letter saying that it was her fault. But they still time
3 barred me about everything, because they say that I nor my
4 attorney wrote one.

5 Q So, you told Mr. Simms about all of this stuff
6 that had gone on and you told Mr. Grant and you told
7 Mr. Walters, so you knew all of these discrepancies
8 existed -- at the very latest you had to have known all of
9 these discrepancies existed back in 2005 on the day of your
10 Jackson Denno hearing, correct?

11 A Yes, sir.

12 Q And you didn't bring up about it and you didn't
13 allege anything about it?

14 A They had --

15 Q In your subsequent PCR or your appeal. Have you
16 filed a Federal habeas petition?

17 A They wouldn't hear none of that. After my PCR
18 they would hear nothing about my case because I was time
19 barred. Once you get time barred -- go ahead.

20 Q Well, let's go back to your PCR. You testified in
21 your PCR, you got on the stand and you testified --

22 A But I was dealing with ineffective assistance of
23 counsel, I wasn't dealing with prosecutory misconduct to
24 where the attorney, the attorney, the lead investigators and
25 prosecutors withheld evidence that would have proven that,

CROSS EXAMINATION OF ALFRED WALKER BY MR. MILLER

1 you know, what I'm saying. My statements should have been
2 declared admissible or not guilty like that. I was under
3 the impression because I plead guilty, ineffective
4 assistance of counsel --

5 Q Did you not think that it would be ineffective
6 assistance of counsel for your attorneys to tell you that we
7 are not going to raise issues about the questionability of
8 these statements?

9 A I didn't know. I didn't know. I started reading
10 and doing a lot of research on my own after they started
11 telling me that my time barred issue was in effect and that
12 there was nothing that I was going to be able to do. So, I
13 had to start researching and figuring out some type of plot
14 or something that had to be done. Not plot, but some type
15 of research. I had to do something. I didn't have an
16 attorney or anything else after that. Once my time bar came
17 into play all of the attorneys and aid/assistance went out
18 the window.

19 Q What changed now?

20 A I got an attorney. And I finally got a private
21 investigator to be able to go and get any type of
22 indication, inclination that something was afoot to be able
23 to have more than just my word, which I felt like nobody
24 would have cared about, or it wouldn't -- nobody wouldn't
25 have cared what I had to say or none of that.

CROSS EXAMINATION OF ALFRED WALKER BY MR. MILLER

1 Q Who is Rischad Jackson?

2 A Rischad Jackson, he's my nephew.

3 Q Edwards --

4 A Ms. Natasha Bradshaw, she is my sister.

5 Q Sorry, Ms. Bradshaw, who is that?

6 A My sister.

7 Q Okay. So let's be clear, just so we can make sure
8 that we are all on the same page. There's a statement that
9 you gave to Rodney Pruett on the side of the road the night
10 of the incident or immediately after, midnight the night of
11 the incident, and then there was a second statement that was
12 given to Wayne Martin in the early morning hours of
13 October 19th of 2000. There was a third statement,
14 according to the testimony in the trial, that was given
15 October the 20th at 1022 in the morning. That statement was
16 given to Wayne Martin at the courthouse. There is no
17 reference anywhere in the transcript about you going to the
18 Barnwell police department with Glenn Rice (phonetic) on
19 October the 20th?

20 A Glenn Rice and Walker -- and Wayne Martin.

21 Q There is a statement that you gave to Wayne Martin
22 at the Barnwell jail on October the 21st, that is the fourth
23 statement. And then, later on that day, on October the
24 21st, there was a fifth statement given to Wayne Martin
25 after he had taken you from the jail and you showed him

CROSS EXAMINATION OF ALFRED WALKER BY MR. MILLER

1 where the gun was found. So there were five statements that
2 were discussed. How many statements do you say that you
3 gave to law enforcement?

4 A I don't know, maybe six or seven. I don't know.
5 It depends if you consider just having conversation about
6 it, stuff like that, things in that nature, or we got
7 together. I know that we did talk when he took me to the
8 police department to see my mother. We had talking, like,
9 after, after he assured me that my mother was safe and all
10 type of stuff like that, I did -- I don't know.

11 Q Well, that's the thing, you say that it was a
12 magical transformation seeing that your mother was safe on
13 the evening of October the 20th, but you had already talked
14 to Wayne Martin twice before that?

15 A And that is the only reason the conversation even
16 started. That is the only reason that it ever started when
17 he took me to the Solicitor's office that very first night
18 and asked Wayne, Officer Smiley, to step out of the room
19 because he knowed I was not going to talk. That very point
20 right there, that is when we made, it all began.

21 And I guess that he could only get her at
22 that late a time when he did get her.

23 Q So, your testimony here today is you didn't say
24 anything to Wayne Martin on October the 19th in that room at
25 the Solicitor's office and you didn't say anything to him on

CROSS EXAMINATION OF ALFRED WALKER BY MR. MILLER

1 October the 20th at the courthouse in the Solicitor's
2 office, it wasn't until after you saw your mother on October
3 the 20th, sometime around 8:00, that you talked to Wayne
4 Martin?

5 A No, I'm saying that the night of the 19th, before
6 I began giving any incriminating statements against myself,
7 in order to start talking, me and Mr. Wayne Martin agreed
8 that my mother's life was in danger and that if I didn't say
9 something that I would -- that, you know what I'm saying,
10 that is how it all began.

11 Q Let me ask you, why would your mother's life have
12 been in danger?

13 A Because the police officers was at the crime scene
14 threatening my life. I was already receiving threatening on
15 my life. For me to be under -- it was not a gang. Like, I
16 couldn't leave her without a bullet proof vest on. If I
17 left the building without a bullet proof vest on, I never
18 would have been transported any place period.

19 Q So, your testimony is today that Wayne Martin
20 convinced you that police officers posed a threat to murder
21 your mother if you didn't talk?

22 A No, I don't. He didn't say specifically police
23 officers.

24 Q Well, who else was it going to be?

25 A I don't know, I don't know who it could have been,

CROSS EXAMINATION OF ALFRED WALKER BY MR. MILLER

1 I don't know.

2 Q , These weren't drug dealers, and these weren't gang
3 members, these weren't people who would come after you if
4 you shot and killed him the way that they did?

5 A Why would a police officer say that? He was going
6 to shoot and kill us in the first place. It's not
7 irrational for me to think he's referring to the police
8 officers, if at the crime scene the officer is telling us in
9 our face that he will shoot us. It's not irrational for me
10 to think that he could have done that.

11 Q Where is somebody to testify to that?

12 A Lee Worthy.

13 Q Where is Lee Worthy?

14 A We can get him present if you need that. We can
15 continue it and get more information, if you felt like
16 that's what needed to be done. I could easily get proof
17 this was happening.

18 Q No recording?

19 A Sir.

20 Q No recording?

21 A I mean, it should have been recorded, they should
22 have had it. I'm quite sure that the Sheriff Blackwell
23 (phonetic) in his vehicle got that. And I'm quite sure that
24 it was on that night. I am a hundred percent sure that you
25 will not be able to find it any place, but I bet that he's

CROSS EXAMINATION OF ALFRED WALKER BY MR. MILLER

1 got that in your car. And I bet that you can prove that he
2 was at the scene of the crime that night.

3 Q You told your attorneys about this?

4 A Yes, and Priester told them about it at his trial.

5 Q And your attorneys had an investigator for you?

6 A Say that again?

7 Q Your attorneys had an investigator for you?

8 A Yes, sir.

9 THE COURT: You have to say yes or no.

10 A I say yes, sir.

11 BY MR. MILLER:

12 Q And none of them did anything with any of this
13 information?

14 A I don't know what was going on. Nobody did
15 nothing, I don't know what was going on. But just because,
16 I don't know what was going on and because I ain't no
17 attorney or no perfect person to be able to get all of this
18 out there wasn't -- doesn't mean that it was not happening.
19 It doesn't mean that it didn't happen.

20 Q Let's talk about what did happen. Do you deny
21 being armed in the Sonic that night when those three men
22 were shot?

23 MR. McCLAIN: Your Honor, I'll have to object to
24 that, because I don't think that that goes to whether
25 or not our motion should be granted.

CROSS EXAMINATION OF ALFRED WALKER BY MR. MILLER

1 MR. MILLER: Your Honor, he's talking about the
2 statements that he gave and that part of our --

3 THE COURT: In light of the allegations based on
4 that discovery and evidence, the objection is
5 overruled. Proceed with cross examination.

6 MR. McCLAIN: Thank you.

7 BY MR. MILLER:

8 Q So, do you deny being there that night?

9 A Before I respond to that, with all due respect,
10 what motion -- what is the motion that we are here for
11 again?

12 MR. MILLER: It is your motion.

13 A And the motion is pertaining to whether or not
14 there was discrepancies in the transcripts or testimony or
15 the attorneys. How does my --

16 Q That is what you want it to be about. I'm asking
17 you a question. Do you or do you not deny that you were
18 present in the Sonic armed on the night that these three men
19 were shot?

20 A No, sir.

21 Q You don't deny that?

22 A Huh-uh. (Indicating negatively.)

23 MR. MILLER: No further questions, Your Honor.

24 THE COURT: Redirect.

25 MR. McCLAIN: Yes, sir, may it please the Court.

REDIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 REDIRECT EXAMINATION

2 BY MR. MCCLAIN:

3 Q Opposing counsel asked you about Mr. Martin's
4 evaluation?

5 A Yes, sir.

6 Q Okay. And that was sometime after this incident
7 occurred and you were questioned, correct?

8 A Yes, sir.

9 Q Okay. Were you or were you not under the
10 influence of anything when you talked to Mr. Martin?

11 A Talking about the psychological? You talking
12 about the psychological evaluation?

13 Q Yes.

14 A No, sir, that was four years later.

15 MR. MILLER: Sorry, I didn't hear that.

16 A I said, No, sir, that was four -- you said that
17 was four years later when I gave, had the psychological
18 evaluation.

19 Q Did you or did you not think that anyone other
20 than police officers might harm you or your family?

21 A I didn't know what was going on at the county
22 jail. I couldn't be around nobody, inmates, officers, none
23 of that. These two officers, none of that.

24 Q But my question, Alfred, is did you or did you not
25 think that someone other than the police officers, the law

REDIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 enforcement, might harm you and/or your family members?

2 A I didn't know who or what, could have been
3 anybody.

4 Q Okay. In fact, you said that you had to wear a
5 bullet proof vest?

6 A I could never leave the building without a bullet
7 proof vest on. It didn't matter if I was going any place.

8 Q Whose idea was that?

9 A I don't know, but whoever the administrator is and
10 people who were in charge, I could never leave the building
11 without a bullet proof vest on. I was considered a caution
12 inmate. I could never do none of that.

13 Q And you were asked about post conviction relief,
14 weren't you?

15 A Yes, sir.

16 Q And whether or not you raised these discrepancies
17 at that time?

18 A Yes, sir.

19 Q Did you?

20 A I was under impression that I couldn't. I was
21 under the impression that I had to wait until everything was
22 exhausted in my case before I could begin to allege
23 constitutional violations. And I was under the impression
24 that this 14th amendment was a constitutional violation.

25 Q That you were not aware of that as far as

REDIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 post-conviction relief?

2 A No, sir.

3 Q You became aware of that?

4 A When -- I became aware of it, officially, once I
5 started reading and began looking for an attorney and stuff
6 like that. So I don't know, maybe in '16, '17, up in that
7 area, I started reading and doing research once they started
8 telling me that my time barred had overruled everything and
9 in order to get back to court, in court, I needed to find
10 something and I hired an independent attorney to speak to
11 me, Dane Phillip (phonetic). He came to talk to me and I
12 talked to him about my case, what I had going on, what I
13 needed to do. And he actually advised me that I needed to
14 find some type of evidence that could get me back in court
15 pertaining to my statement issues.

16 Q That was after your post conviction?

17 A Yes, sir.

18 Q After your appeal?

19 A Yes, sir.

20 Q After your Federal habeas corpus?

21 A Yes, sir.

22 Q And you testified, I think, on cross examination
23 that you had indeed had oral conversations with the police
24 or law enforcement that were not recorded?

25 A I don't know.

REDIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 THE COURT: Counsel, I'm trying to give you
2 latitude but you are testifying and it's redirect
3 examination. Ask a question and don't testify.

4 MR. MCCLAIN: Okay.

5 BY MR. MCCLAIN:

6 Q Did you or did you not have oral conversations
7 with anybody involved with law enforcement that were not
8 recorded or brought up in your trial?

9 MR. MILLER: Your Honor, I'm going to object.
10 He's asked the question about a half dozen times and
11 I've not objected to any of the form of the questions,
12 but he's asked the question and the witness said he
13 doesn't remember.

14 MR. MCCLAIN: I don't think, Your Honor, he said
15 that about these oral conversations. I think that that
16 came up in context of written or recorded
17 conversations.

18 THE COURT: Okay. Of course the record will speak
19 for itself. I'll allow you to ask whether or not he
20 did remember. Let's move on counselor, this is
21 redirect now.

22 BY MR. MCCLAIN:

23 Q Do you or do you not remember any oral
24 conversation with law enforcement that were not recorded in
25 any way?

REDIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 A I don't remember.

2 THE COURT: Move along, Counselor.

3 MR. MCCLAIN: Okay.

4 BY MR. MCCLAIN:

5 Q And in reference to your motion to -- in the
6 alternative to amend your sentence, are you indeed
7 remorseful, Albert?

8 A Yes, sir, I regret that this happened every day of
9 my life. It's been rough, Man, ever since this happened.

10 THE COURT: You have to speak up.

11 A I said, of course I do, every day of my life.
12 It's been real hard dealing with it, Man, like I don't --
13 would hope that people wouldn't think that I'm just that
14 type of person that could just be excited or happy about
15 tragedy in anybody's life. Like, that's not the type of
16 person I am, period. And I spend a lot of the days in my
17 incarceration now helping a lot of people and doing a lot of
18 good things. Right now I'm being certified with peer
19 support to be a peer support specialist incarcerated now.

20 And I deal with helping a lot of people with
21 drug addiction trying to show that they could deal with drug
22 addiction and coping facilitation classes to help people get
23 through what they are going through. And I get
24 recommendations from the warden that would highly attest to
25 my character as a man. I'm not an 18-year-old boy, not that

REDIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 same 18-year-old boy living with his mom in high school.
2 And I'm not that person that was under the influence of
3 drugs. I'm a completely, totally different person than
4 that, seriously. I wish that I could show the world who I
5 am rather than being judged by one incident or encounter in
6 my life.

7 Q I think that is why you were transported to
8 Allendale County to the peer program?

9 A Yes, I'm present now in Allendale, a level two
10 institution, that I'm not supposed to be at. But Bryant,
11 the warden, awarded us the opportunity for us to be able to
12 go because he wanted more people to be in prison to, to
13 support, to help people. They have been having a lot of
14 overdoses in drugs and a lot of people dying in the prison
15 now.

16 They wanted to get as many people trained to
17 be able to be on call to help those people and help staff
18 and people like that, to help people get through these
19 encounters.

20 Q Do you volunteer for that?

21 A Yes, sir.

22 Q And how long have you been incarcerated, Alfred?

23 A Nineteen years.

24 Q And you are a different person today?

25 A Yes, sir.

REDIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 MR. MCCLAIN: That is all I have, Your Honor.

2 THE COURT: Recross, limited to redirect.

3 MR. MILLER: No. Thank you, Your Honor.

4 THE COURT: You may step down, Mr. Walker.

5 Call your next witness.

6 MR. MCCLAIN: We have no further witnesses, Your
7 Honor. That is our case.

8 THE COURT: Very well. Does the State wish to
9 present any evidence for purposes of this motion? Your
10 Honor, the only evidence that we would, we would call
11 to the Court's attention, is there was an order filed
12 March the 1st of 2005 in Barnwell County, in the trial
13 of this case. And it is the Court's order to disclose
14 a redacted copy of the forensic evaluation that we have
15 been discussing from Dr. Thomas Martin. It is a matter
16 of record in Barnwell County, a redacted copy. But I
17 would call it to the Court's attention and I do have
18 copies here for the Court as well as the court
19 reporter.

20 Do you want to make it an exhibit for this
21 hearing? Hand it to the court reporter. Are there any
22 objections?

23 MR. MCCLAIN: No, sir, I would just like to see
24 it.

25 MR. MILLER: Aside from that, Your Honor, the

REDIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 State would have no other request to introduce.

2 I was informed that there was some writing on the
3 back of that paper. Let me change it out.

4 THE COURT: Okay. I didn't see what it was, but
5 there is ink writing on the back.

6 MR. MILLER: I have been provided with a clean
7 copy, Your Honor.

8 THE COURT: Do you have a copy, Mona? Okay.
9 State's 1 in evidence without objection.

10 *(Whereupon, State's Exhibit No(s). 1 marked for*
11 *identification and received in evidence.)*

12 MR. MILLER: Thank you.

13 THE COURT: Okay. I think that Mr. Miller stated
14 it, for the record, but it's my order of February 21st,
15 2005 and attached to that order is Exhibit A and
16 Exhibit A is a redacted evaluation forensic psychiatric
17 evaluation by Dr. Thomas V. Martin M-A-R-T-I-N, Mona.

18 And there are -- the redacted part is blacked out
19 on the order so you can tell what was taken out for
20 purposes of it. Anything further from the State?

21 MR. MILLER: Nothing from the State, Your Honor.

22 THE COURT: All right. Mr. McClain, I'll hear you
23 briefly, in argument. And also, you, Solicitor,
24 pursuant to Rule 29.

25 MR. MCCLAIN: Yes, sir. May it please the Court,

REDIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 first of all I'll try to start with the minor, smaller
2 issue. First of all, I realize that intoxication is
3 not a mitigating circumstances but it goes to a state
4 of mind. Excuse me, that issue goes to the state of
5 one's mind when one gives statements to law
6 enforcement, or for that matter, to anybody else.
7 Apparently there is some duress when some statement was
8 given to Mr. Martin, or at least there was a
9 conversation because he feared for his family's safety
10 as well as his own and he was 18 years old.

11 The other thing is that -- the real question in my
12 mind under the case, as Your Honor is aware, under the
13 case of Brady versus Maryland, if the prosecution has
14 anything to exculpate the defendant of guilt, they have
15 to use it. It's uncontroverted today that he had oral
16 conversations with Mr. Martin and other law enforcement
17 officers that were not recorded in any form.

18 I take the position that the mere fact that they
19 may have been exculpatory is enough to suppress them
20 and he should therefore be granted a new trial. Alfred
21 was not aware of these constitutional issues until
22 after he had exhausted everything else. And that is a
23 ground for a new trial in and of itself. Normally one
24 would have to prove that the evidence was indeed
25 exculpatory..

REDIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 THE COURT: I understand the evidence is that your
2 client can't remember whether or not statements were
3 recorded or not. So, we are talking about there might
4 not have been any document to produce pursuant to
5 Brady. And you are speculating as to what could have
6 occurred. I understand what Mr. Walker testified to,
7 but you haven't cited me to any document that was in
8 existence that was -- the State failed to produce
9 pursuant to Brady. Your argument is, could have been
10 exculpatory and it may have been an oral statement, is
11 that correct?

12 MR. MCCLAIN: Yes, sir. Any statement, the mere
13 fact that it may have been exculpatory is enough to
14 suppress it, if not produced, which was not produced at
15 trial.

16 And my other arguments are set forth in my motion.

17 THE COURT: I have a copy of that.

18 MR. MCCLAIN: Yes, sir, just to be brief I'm sure
19 that Your Honor has read it.

20 THE COURT: I have read it completely. And the
21 transcript.

22 MR. MCCLAIN: Yes, sir. Thank you. And that is
23 real -- the Brady issue is the real question in my mind
24 as to whether or not that's kosher. And that is a --
25 that is one of the main issues in this case, were there

REDIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 any conversations, and if so, were they recorded. Even
2 if they had not been recorded, they should have been
3 brought up at trial by the State.

4 THE COURT: Very well. Mr. Miller, let me hear
5 from you.

6 MR. MILLER: Your Honor, as to Rule 29, Rule 29B
7 first sentence, a motion for a new trial based on
8 after-discovered evidence must be made within one year
9 after the date of the actual discovery of the evidence
10 by the defendant or the date when the evidence could
11 have been obtained by the exercise of reasonable
12 diligence.

13 Your Honor, this entire hearing and this whole
14 discussion that I do appreciate the Court for listening
15 to is all about stuff that was in the mind and was in
16 the knowledge and purview of the defendant from the day
17 that it happened. He spoke at length in -- to
18 Dr. Thomas Martin when he was being forensically
19 evaluated. He doesn't say anything about any
20 statements that weren't referenced later on and hadn't
21 previously been referenced. He supposedly had three
22 lawyers -- well, he did have three lawyers at the time
23 of his trial. He supposedly had.

24 THE COURT: I suppose that you recall, and I don't
25 know whether or not Mr. McClain talked to the trial

REDIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 judge. Mr. Simms who originally represented Mr. Walker
2 was employed by the Solicitor's office I think.

3 MR. MILLER: The first circuit.

4 THE COURT: In another circuit, not the second,
5 but the first judicial circuit. And it was for that
6 reason that he was relieved, as I recall. But that was
7 early on. Mr. Simms, to my knowledge, did not
8 participate not only in the trial, in the jury
9 selection. But I don't recall if he even participated
10 in any pretrial motions or not.

11 MR. MILLER: The only participation that he had
12 was speaking with Mr. I.S. Levy Johnson who the Court
13 appointed for the special purpose of determining it.

14 THE COURT: For that hearing.

15 MR. MILLER: Whether a conflict would result. And
16 ultimately I think that it was the appropriate thing to
17 do. And ultimately, at that time the Court, at
18 Mr. Johnson's suggestion, why create the problem, let's
19 get him a new lawyer. That is what happened. That is
20 why Mr. Walters got involved. But the position taken
21 by the defendant, these two excellent lawyers, Carl
22 Grant and Glenn Walters, knew all of this information
23 and chose not to do anything with it.

24 And, Your Honor, I find that not credible in and
25 of itself. But additionally, that he didn't inform his

REDIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 PCR attorney about it. He didn't put any of this
2 information or anything about these alleged missing
3 statements in his PCR application. He didn't raise any
4 of those allegations when he was on the stand. And he
5 claims now, some 13 years, 14 years after the trial,
6 that this was all because he misunderstood the law.

7 And Your Honor is well aware that that is not a
8 justifiable excuse under the law, Your Honor. I don't
9 think that this -- any of this testimony or any of
10 these allegations constitute after-discovered evidence
11 within the meaning of Rule 29, and accordingly the
12 motion should be dismissed in its entirety.

13 THE COURT: Now, let me first of all, remind both
14 of you, and first since you raised it, Rule 29 begins
15 with Subsection A, which is called 29A. And its
16 heading is generally, and it says, first of all, that
17 there's a time limit for post-trial motions, a motion
18 for new trial. It says, except for motions for new
19 trial based on after-discovered evidence, post-trial
20 motions shall be made, mandatory language, within 10
21 days after the imposition of the sentence.

22 Then we get to the subsection B there's obviously
23 more than ten days has elapsed and this motion is dated
24 by Ms. McClain June the 3rd, 2019. Subsection B says,
25 a motion for a new trial based on after-discovered

REDIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 evidence must be made within one year of the date of
2 actual discovery of the evidence, or after the date
3 when the evidence could have been obtained by the
4 exercise of reasonable ability. My understanding is
5 that you believe, your argument to me is that you
6 believe that the section that applies to
7 after-discovered evidence has not been met in that it
8 had not been made within one year after the date of
9 actual discovery of the evidence, or after the date
10 when the evidence could have been obtained by the
11 exercise of reasonable diligence. Is that correct?

12 MR. MILLER: That's correct, Your Honor.
13 Additionally, I would point out the testimony of
14 Mr. Burgess that when he did, in fact, go to the
15 Barnwell county jail and say, I need this. Despite the
16 fact that he had to go dig it out of archives, he did
17 it the same day. It wasn't some very long process.
18 And, in fact, he had been told, according to his
19 testimony, and he had been told about the existence of
20 the evidence on May the 15th of 2018.

21 And at that point in time certainly, not only was
22 the defendant aware, but the Defendant's family members
23 were aware. And the investigator, all he did was one
24 day get down there and ask for it. And I would submit
25 to the Court that Mr. Burgess seemed like a reasonable

REDIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 guy, but I don't think that he had any special power
2 over the Barnwell jail. Anybody could have done that.
3 Anybody could have gotten those records in that time
4 period of one day.

5 MR. MCCLAIN: Your Honor, if I may briefly reply.

6 THE COURT: Hold on a second, Counselor. I didn't
7 let him interrupt you and you are not going to
8 interrupt him.

9 MR. MCCLAIN: I thought that he was finished.

10 THE COURT: Your argument, I believe, in telling
11 me about Mr. Burgess is based on the fact that the
12 evidence could have been obtained by the act of
13 reasonable diligence; is that your point?

14 MR. MILLER: That is my point.

15 THE COURT: Anything else, Mr. Miller?

16 MR. MILLER: No, sir.

17 THE COURT: All right. Mr. McClain, brief reply.

18 MR. MCCLAIN: Okay, may it please the Court.
19 According to Mr. Burgess' affidavit and investigative
20 report, these were not -- this evidence was not
21 discovered by Alfred or anybody else until it couldn't
22 have possibly been before June the 11th. He was sent
23 June the 11th to not only see if there was any
24 transportation receipts but any other evidence. And he
25 did not -- was not able to obtain that until June 29th,

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1 2018. This motion was made less than a year from the
2 time he discovered those. Because Mr. Burgess'
3 investigation had continued. So we got this filed
4 within a year, for the record.

5 THE COURT: All right. All right. I'll ask you
6 both to submit proposed orders to me. Listen carefully
7 and take notes as to how I want them. And I also want
8 you to provide my law clerk with a working copy. I
9 expect your proposed orders to be emailed to me. You
10 will send my law clerk a copy, and that is
11 pbucknerlc@sccourts.org. I introduced you to him this
12 morning, Austin McCoy. He gets a working copy.

13 You will send me your proposed order at
14 pbucknerj@sccourts.org. And because this was criminal
15 court, obviously, we don't have electronic filing in
16 criminal court, so we are still using paper. But I
17 want you to email your orders, and you will copy
18 opposing counsel when you transmit the order.
19 Remember?

20 And I'll expect your orders within ten days of
21 today sent to me with opposing counsel copied. Any
22 transmittal to Counsel by email, United States mail,
23 facsimile, any type of transmittal of communication to
24 the Court you must copy opposing counsel on your
25 transmittal to the Court.

REDIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 The orders, I'll expect within ten days of today,
2 September 26th, 2019. I'll expect you to confine your
3 orders to Rule 29 of the Rules of Criminal Procedure of
4 our state and the case law that follows from Rule 29 on
5 the standard for a motion, post-trial motion, and the
6 time requirements of the motion as well as the
7 requirements of the rule.

8 I have taken copious notes today on my pad and I
9 have read the petition and reviewed the transcript.
10 It's not necessary for you to send me any additional
11 documents. I'm taking with me so I have the one
12 exhibit that was made, which was State's Exhibit No. 1,
13 which was my order that contained also the report of
14 Dr. Martin, and that will be with me.

15 I'll expect you to address your proposed orders in
16 a timely fashion consistent with what I require. Any
17 questions about the proposed order procedure from
18 counsel for the defendant?

19 MR. MCCLAIN: Yes, sir, just -- could you repeat
20 those emails for me, please sir?

21 THE COURT: Do what now?

22 MR. MCCLAIN: Could you please repeat those
23 emails? I don't hear as well as I did.

24 THE COURT: I understand. I have shot a shotgun
25 all of my life and my hearing is not very good. But

REDIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 I'm sensitive for my court reporters, if they can't
2 hear they can't do their job. Pbucknerlc@sccourts.org
3 and pbucknerj@sccourts.org

4 Mr. McClain, let me educate you. I realize when
5 you and I started practicing law and I did, we didn't
6 have a lot of electronic discovery. If you know the
7 Judge's name in this state, and I'm certain that you
8 know the judges in your circuit, if you know their
9 names then you know their email address. For instance,
10 I'm Perry Buckner, I'm pbuckner, and J for judge,
11 @sccourts.org. And regardless of who my law clerk is,
12 my law clerk's email is pbucknerlc, for law clerk,
13 @sccourts.org. That is where most people miss it.
14 I'll spell it out for you. Pbucknerlc@sccourts.org and
15 pbucknerj@sccourts.org. Do you have it now,
16 Mr. McClain?

17 MR. MCCLAIN: Yes, sir, thank you.

18 THE COURT: Mr. Miller, you got it.

19 MR. MILLER: Yes, sir.

20 THE COURT: Any questions about the proposed
21 procedure from the State?

22 MR. MILLER: Nothing from the State, sir.

23 THE COURT: The record is now closed with respect
24 to this hearing and I will expect your proposed orders
25 with copies to opposing counsels within ten days of

REDIRECT EXAMINATION OF ALFRED WALKER BY MR. MCCLAIN

1 today's date. Thank you very much.

2 (Whereupon, the hearing concluded.)

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1 ~~now reflects your responses had a motion been made. I~~

2 would also put on the record that when I inquired of
3 counsel late yesterday afternoon in Edgefield as to whether
4 or not there were any matters of law pertaining to the
5 selection of the jury that need to be decided before the
6 jury was sworn, the State told me it did not have any
7 motions. The defense counsel conferred with their client,
8 Mr. Walker, and after conferring with Mr. Walker, Defense
9 Counsel noted on the record yesterday in Edgefield that it
10 was Mr. Walker's decision as well as their's not to make
11 any motion concerning the selection of the jury.

12 I think that now takes care of the matter of
13 the selection of the jury. Let's move now to the motions
14 that have been filed. It's my intention, unless there's
15 some agreement otherwise to take them in the order in which
16 they're filed.

17 MS. MORGAN: Yes, Judge, that would be the
18 motion to suppress or -- Motion 34.

19 THE COURT: Motion 34 was the first one filed
20 which is the motion concerning to suppress because no
21 probable cause for arrest.

22 JACKSON VS. DENNO HEARING

23 MS. MORGAN: Yes, sir. State would call Tom
24 Gantt to the stand.

25 ///

Thomas W. Gantt - Direct Examination In Camera by Ms. Morgan

1 THEREUPON,

2 THOMAS W. GANTT,

3 after being duly sworn, testified as follows:

4 THE CLERK: Please take the witness chair,
5 please. State your full name for the record.

6 MR. GANTT: Thomas W. Gantt, Barnwell County
7 Sheriff's Office.

8 **DIRECT EXAMINATION - IN CAMERA**

9 By Ms. Morgan:

10 Q And you work with the Barnwell County Sheriff's
11 Department in what capacity?

12 A Chief Deputy.

13 Q And what were your duties and responsibilities with the
14 Barnwell County Sheriff's Department back on October
15 18, 2000?

16 A Chief Deputy.

17 Q All right. And could you tell us were you called out
18 on the night of the October 18, 2000?

19 A Yes.

20 Q Could you please tell us what you were called out for
21 and how you responded?

22 A I was notified, I was at my residence. I was notified
23 by our communication center that "Sergeants Robbie
24 Sanders was requesting me to respond to Sonics which is
25 located here in Barnwell in reference to a shooting.

1 Q ~~Okay. And what information did you have as to the~~
2 shooting?

3 A I think that was basically all I had until I arrived
4 there at the scene.

5 Q All right; sir. When you got that call what did you
6 do?

7 A I got dressed and responded.

8 Q All right. And how long did it take you approximately
9 to get there?

10 A Approximately 12, 15 minutes.

11 Q All right. And what did you do when you got there,
12 Chief Deputy?

13 A I immediately got in touch with Sergeant Sanders which
14 was the shift supervisor and he informed me that they
15 had individuals, three individuals shot, two deceased,
16 one wounded. He told me that he was informed by a
17 truck driver that two black males had been seen in the
18 area around vehicles at Sonics and also that the truck
19 driver had seen them running from that area diagonally
20 across the parking lot, Wal-Mart parking lot toward

21 Litchfield Road.

22 Q Okay. For those of us who don't know that much about
23 it, I know we don't have exhibits for you today, but
24 could you explain -- Sonic is located out on the four
25 lane?

Thomas W. Gantt - Direct Examination In Camera by Ms. Morgan

1 A Yes, ma'am.

2 Q And what is it -- it's not there now, but what other
3 stores are right there or along with it?

4 A Sonic is located at the front, it's near the four lane
5 in front of the Wal-Mart Store. Also in that area is
6 Sears and there's also a filling station beside it.
7 And there's a Mexican restaurant.

8 Q Are there any homes in the area?

9 A Across -- behind Wal-Mart is the Litchfield Apartments.
10 In front of -- across the four lane are Woodmont
11 Apartments and some other apartments in the back.

12 Q Okay. All right. So you get briefed. Where are you
13 when you're briefed about the circumstances?

14 A At Sonics, in the parking lot.

15 Q All right.

16 (WHEREUPON some equipment was dropped off of a
17 table.)

18 THE COURT: Is that a microphone?

19 MS. MORGAN: Judge, they prepped for tomorrow
20 with the SLED guy so that they can listen to the tapes.

21 THE COURT: I see.

22 By Ms. Morgan:

23 Q All right. You have got two -- does the -- does
24 Sergeant Sanders indicate how they're killed?

25 A Been shot.

Thomas W. Gantt - Direct Examination In Camera by Ms. Morgan

1 Q ~~All right. And you have any idea where? I mean did he~~
2 tell you how they were shot? Head, body?

3 A No, ma'am.

4 Q Two shot, one injured, what do you do after that?

5 A Well Sergeant Sanders informs me that the individuals
6 were seen by a truck driver running, like I said
7 diagonally over towards Litchfield Road, which is
8 across the Wal-Mart parking lot. I asked him who had
9 the road shut done down. He said nobody at that point.
10 They'd been busy.

11 Q And why would you want to shut that road down, Chief
12 Deputy Gantt?

13 A Well, that's the way they were seen. You know we were
14 going to have the bloodhounds coming in. That was the
15 only route in and out of that area, back there at the
16 Litchfield Apartments was Litchfield Road. I was
17 wanting it shut down to prevent any escape that the
18 individuals would try to make whether on foot or in a
19 vehicle.

20 Q And did you have information of any descriptions from
21 the person that was -- that survived the shooting? Was
22 it -- did he describe one or two or three or four? Did
23 you have any idea?

24 A No, ma'am, I did not at that time.

25 Q All right. But you had a description of two black men

1 running ---

2 A Yes, ma'am.

3 Q Back -- in front of Wal-Mart, back behind it, which
4 would have been to the Litchfield Apartments?

5 A Yes, ma'am.

6 Q And again, the road there, is there any way, any other
7 road out of Litchfield or in Litchfield Apartments,
8 other than that road there?

9 A No, ma'am.

10 Q Right there beside Wal-Mart?

11 A No, ma'am.

12 Q So you asked him who shut the road down?

13 A I told Sergeant Sanders, you know, to get it shut down,
14 but at the same time, Sergeant Sanders got in his
15 vehicle and I got in my vehicle.

16 Q Okay.

17 A Sergeant Sanders was responding to Litchfield Road and
18 so was I, but my purpose of leaving was to go to the
19 corner where they were seen running around the edge
20 near Litchfield Road, to see if I could find a running
21 track to start the bloodhounds on.

22 Q All right. Because, tell me Chief Deputy Gantt, your
23 training, you have a lot of training in what I call the
24 dog tracking business?

25 A Yes, ma'am.

Thomas W. Gantt - Direct Examination In Camera by Ms. Morgan

1 Q ~~All right. So you were, your purpose of going down~~

2 along the edge of Wal-Mart, to the back corner was to
3 do what again, sir?

4 A To find a running track, a shoe impression.

5 Q Okay. And what -- did you instruct Sergeant Sanders to
6 do?

7 A To shut down the Litchfield Road, to let nobody in or
8 out until we could identify them. He was by himself at
9 that time but we was trying to get more vehicles to
10 him.

11 Q All right. And did you have, while you were there in
12 that area, see any cars coming out of this -- that
13 area? See any cars coming out of that area?

14 A Sergeant -- well ---

15 Q Prior to you getting there?

16 A No, ma'am.

17 Q All right. So what did you do next?

18 A All right. As I said, Sergeant Sanders got in his
19 vehicle, I got in mine. We were going across the
20 parking lot. He was taking, I guess you'd say the high

21 side of the parking lot towards Litchfield. I was
22 going at an angle across the parking lot, basically the
23 same direction I was told the individuals were seen
24 running. To that corner. As we were, got I guess
25 three quarters of the way across the parking lot, maybe

Thomas W. Gantt - Direct Examination In Camera by Ms. Morgan

1 a little further, a vehicle came out, leaving

2 Litchfield heading toward the four lane.

3 Q All right. And what did you do?

4 A Well, as I saw -- I saw the vehicle same as Sergeant --
5 about the same time Sergeant Sanders saw it. We saw it
6 about the same time and I knew that he would be
7 stopping the vehicle and so, any way, he positioned his
8 vehicle for a stop, I fell in behind him. He then
9 "activate the blue light." The vehicle did stop.

10 Sergeant Sanders exited the vehicle. He approached the
11 driver as I approached the rear of the vehicle.

12 Q And what happened next?

13 A Sergeant Sanders informed me that the individuals
14 stated that the individual stated they did not have any
15 identification on them. And ---

16 Q And what did you instruct him to do?

17 A I told him to get the individuals out of the vehicle
18 and as far as try to make some ID on the individuals.

19 Q All right. And how close to the car that was stopped
20 were you at that time?

21 A I was at the rear of the vehicle.

22 Q All right. And could you identify anybody, count how
23 many people were in the car?

24 A There were four individuals.

25 Q All right. And what happened next after you instructed

1 Sergeant Sanders to get them out of the car?

2 A Sergeant -- we got the individuals out and I had two on
3 my side, Sergeant Sanders had two on his side and we
4 were trying to obtain ID; you know, ask them who they
5 were, just to make some ID on them.

6 Q Okay. And what happened next?

7 A One of the individuals, which later on I found out to
8 be Mr. Walker, Mr. Alfred Walker, he started getting
9 real hinky or antsy and he was running his hands in his
10 pockets and I told him to get his hands out of his
11 pockets, which he immediately did. He run his hands
12 back in his pockets. He did it on two or three
13 different times in and started, he started flinging his
14 arms. I didn't know -- I was concerned, but I didn't
15 know whether he might have a weapon or what. The other
16 individual I had just stood there. I didn't feel any
17 threat, you know, from him, or, you know he was calm or
18 whatever.

19 Mr. Walker, he at one point, he wanted to know
20 what was going on. I told him to just be calm
21 everything was going to be all right. At one point he
22 even tried to walk off and I stopped him from walking
23 off. At some point, an individual broke and ran, which
24 was on (Sergeant Sanders' side.)

25 Q All right.

Thomas W. Gantt - Direct Examination In Camera by Ms. Morgan

1 A Which later I found out it was O'Berry.

2 Q Which was who? I'm sorry?.

3 A Mr. O'Berry.

4 Q Shelton O'Berry?

5 A Shelton O'Berry.

6 Q Yes, sir.

7 A And at that point, I grabbed hold of Mr. Walker.

8 Q Well, let me ask you this. When somebody got the
9 rabbit, when the fellow broke and ran in the front of
10 the car with Sergeant Sanders, what did ya'll do? What
11 did he do? Sergeant Sanders?

12 A He grabbed hold of the other individual that was on his
13 side.

14 Q All right.

15 A And I grabbed hold of Mr. Walker.

16 Q Were any weapons drawn at that time?

17 A Sergeant Sanders -- when he grabbed ahold of Priester,
18 I believe was his name, he noticed blood on the
19 britches leg, pants leg and he put Priester upside the
20 car, run his hand, you know, his hands down in his
21 pockets, pulled out a wad of cash money and also an ID,
22 which at that point, he told me belonged to one of the
23 kids. And he did, yes, ma'am, draw his gun out at some
24 particular point in that area.

25 Q All right. When you said Sanders identified one of the

Thomas W. Gantt - Direct Examination In Camera by Ms. Morgan

1 kids, one of the kids' wallets which one did he have?

2 That came out of Priester, the individual Sergeant
3 Sanders had? Which kid?

4 A One of the deceased at the Sonics.

5 Q Okay. So he's -- he's got one that rabbited and ran?

6 A Yes, ma'am.

7 Q And he puts the other one -- he's got at the front of
8 the car, cleans out his pocket to clear that out and he
9 sees the victim from the Sonics wallet on the ground?

10 A Well, not on the ground. He pulls it out and puts it
11 on the vehicle?

12 Q All right. And did he tell you what he saw?

13 A Yes, ma'am.

14 Q All right. And what do you do?

15 A I grabbed hold of Mr. Walker, you know, I get him down.
16 The other individual that's on my side automatically
17 got down and then Sergeant Sanders goes to call for

18 back up on the radio.

19 Q What kind of situation would you call this, Chief
20 Deputy Gantt?

21 ~~A I mean it was a tense situation. It was -- and fast,~~
22 you know.

23 Q What -- how -- I mean when they ran, Sergeant Sanders
24 drew his weapon?

25 A Yeah.

Thomas W. Gantt - Direct Examination In Camera by Ms. Morgan

1 Q How about you? Did you have a weapon?

2 A No, ma'am.

3 Q All right. So how did you contain the defendant,
4 Alfred Walker?

5 A We just went down to the ground.

6 Q You didn't have anything?

7 A No.

8 Q All right. And you said the other individual that was
9 in the back of the car, what did he do?

10 A He went down automatically.

11 Q All right.

12 A As I said earlier, Sergeant Sanders pulled his weapon
13 and, you know, he was hollering for everybody to get
14 down.

15 Q In other words he went down?

16 A Yes, ma'am.

17 Q You didn't ever have to put your hands on him?

18 A No, ma'am.

19 Q Okay. And when you say you went down, what did you do
20 with the defendant, Alfred Walker?

21 A Just held him there until we got backup.

22 Q All right. What you mean?

23 A Called for other units.

24 Q Okay. And when other units came what did you do?

25 A Well, he was handcuffed and then Sergeant Sanders

Thomas W. Gantt - Direct Examination In Camera by Ms. Morgan

1 said -- once we got the other units in there, we just

2 kind of stood back for a second and collected our
3 thoughts and took a breather.

4 Q Okay.

5 A And you know, tried to figure out exactly what
6 happened.

7 Q All right.

8 A And, you know, we also had the one that bush bonded on
9 us so we had the dogs called in -- you know, the dogs
10 to put on his trail.

11 Q Okay. At that time you got three of the four people
12 from the car?

13 A Yes, ma'am.

14 Q Other than Mr. Priester that you found the victim's
15 wallet in his pants, did you know who the other
16 individual might be who was involved in the shooting at
17 that time?

18 A No, ma'am.

19 Q Okay. So what did you do with -- what were your
20 intentions in regard to the one that rabbited or left?

21 A To get the bloodhounds, you know, and to put a tracking
22 team in and try to locate him.

23 Q Okay.

24 A As I said, we didn't know who was involved in what at
25 that particular time.

Thomas W. Gantt - Direct Examination In Camera by Ms. Morgan

1 Q All right. And what did you do with the two that you
2 had at the back of the car. You said you got back up.
3 What did backup do to them?

4 A Well we got them handcuffed. I believe that at that
5 point, ma'am, I believe Mr. Walker was placed in
6 Investigator Pruitt's car and I believe -- and then
7 Priester was placed in my car.

8 Q So Priester, the one who had the wallet, got in your
9 car?

10 A Was placed in my car, yeah.

11 Q All right. Prior to putting Priester in your car and
12 leaving the other two with the other officers, did you
13 notice anything in the area that you thought might be
14 relevant to the shooting at Sonic?

15 A Yes, ma'am. And I pointed out to my brother, Chief
16 Deputy -- I mean, well he wasn't Chief of Police then,
17 but he was Chief Investigator ---

18 Q All right.

19 A --- some bullets that I seen on the edge near the
20 sidewalk.

21 Q You saw a bullet on the edge of the sidewalk?

22 A Right.

23 Q And you pointed it out to him?

24 A Right.

25 Q And I believe you previously testified at the other

Thomas W. Gantt - Direct Examination In Camera by Ms. Morgan

1 ~~trial as to pictures and the bullet that you saw on the~~
2 sidewalk at Dunbarton?

3 A Right.

4 Q One second. Would you tell us, show to the Court what
5 Walker was doing flinging his hands, putting them in
6 his pockets and taking them out?

7 A Yes, ma'am. If I may stand up?

8 THE COURT: Yes, sir, you may.

9 By Ms. Morgan:

10 A He was -- it was a motion, just running in and out like
11 this here, run his hand in here and out like that.

12 Q All right. And ---

13 THE COURT: Just a moment. You're referring to
14 pants pockets? Or are you showing me your coat.

15 DEPUTY GANTT: Coat.

16 THE COURT: Coat pocket?

17 By Ms. Morgan:

18 Q And you indicated that prior to taking the defendant,
19 having taken him to the ground, (he attempted to walk
20 away?)

~~21 A Yes, ma'am. That was basically about the same time or~~

22 right at the same time that O'Berry ran.

23 Q Okay. You're talking about the driver?

24 A Right.

25 Q Okay. And did you actually have to place your hands on

Thomas W. Gantt - Direct Examination In Camera by Ms. Morgan

1 him to get him back before everything went down?

2 A Yes, ma'am, I just grabbed hold of his arm.

3 Q Okay. And what did you tell him?

4 A I just, I was trying to tell him, you know, everything
5 was going to be all right. Just calm down,
6 everything's going to be all right.

7 Q Okay. Did any of those four people have any IDs on
8 them that you were aware of?

9 A No, ma'am.

10 Q Other than --

11 A Other than -- that I'm aware of.

12 Q All right. And approximately how much time passed
13 between you all determining what you had at Sonic and
14 setting up the stopping the car?

15 A It was just a matter of a couple of minutes. I mean,
16 as soon as I got there, I drove up. Sergeant Sanders
17 told me what I testified to earlier and then right
18 away, you know, I told him get the road shut down. So
19 just a matter of a couple of minutes.

20 Q And again, Chief Deputy Gantt, the reason why you
21 instructed your officers to shut that road down to --
22 from the four lane to the Litchfield Apartments was
23 what?

24 A Because that was the only exit or entrance in that
25 area, Litchfield Road, by vehicle.

Thomas W. Gantt - Cross-Examination In Camera by Mr. Grant

1 Q And that that was the area that the two suspects was
2 indicated had been running?

3 A Yes, ma'am, towards that area.

4 Q All right. Answer any questions they might have for
5 you.

6 THE COURT: Mr. Grant?

7 MR. GRANT: Thank you, Your Honor.

8 **CROSS-EXAMINATION - IN CAMERA**

9 By Mr. Grant:

10 Q Chief Deputy Gantt, when you got the call, sir, to come
11 out to the area where the alleged crime had occurred,
12 where were you?

13 A I was at my house.

14 Q Okay. And how long have you been a police officer?

15 A Since 1977.

16 Q And they called you and told you that an actual killing
17 had occurred at the Sonic Restaurant?

18 A I believe sir, what I was actually told was there had
19 been a shooting.

20 Q A shooting?

21 ~~A Yes, Sir.~~

22 Q All right.

23 A And then Sergeant Sanders requested that I come.

24 Q I want to make sure I understand this. You got a call
25 that there was a shooting and your testimony is that

Thomas W. Gantt - Cross-Examination In Camera by Mr. Grant

1 you went to the shooting scene to do police work
2 without your own weapon?

3 A Yes, sir. I have done that -- well, I'm Chief Deputy
4 and I do mostly administrative work at that time and
5 that was a bad habit that I did have. But that's a
6 fact, yes, sir.

7 Q Okay. All right. And information that you received
8 was that a truck driver said that two black men had
9 either jogged or ran across the property in the area of
10 the Sonic, the shooting or of the Wal-Mart, is that
11 right?

12 A Yeah, that's true.

13 Q All right. Now, that wouldn't strike you as any
14 particular information to identify two other black men,
15 would it?

16 A No, sir, if I understand you right, no, sir.

17 Q In other words, that would be just a general
18 description?

19 A Yes, sir.

20 Q Two black men?

21 A Right.

22 Q It could be any two black men?

23 A Any, yes, sir.

24 Q All right, sir. So you had information that a shooting
25 had occurred and a truck driver had given some

Thomas W. Gantt - Cross-Examination In Camera by Mr. Grant

1 information that he saw two black men running across

2 the Sonic -- excuse me the Wal-Mart parking lot?

3 A That's correct.

4 Q All right. Now, when you get to the scene there on
5 Litchfield Road, you said you talked to Sanders?

6 A At Sonics, I talked to Sanders.

7 Q All right. You talked to Sanders at Sonic?

8 A Right.

9 Q And then who made the decision to block the road coming
10 out of the apartments?

11 A I did. I did.

12 Q All right. And the information that you had received
13 is that the people who were running may or may not have
14 been the people involved in the crime, but those people
15 that were running were actually on foot, is that right?

16 A That's correct.

17 Q So then, there was nothing to really connect the
18 possible criminals to an automobile, is that right?

19 A No, sir. What I was told -- if I'm understanding you
20 right, I was told by Sergeant Sanders that the truck

21 driver had seen two individuals, two black males up in
22 the Sonics area around the vehicles and then he also
23 saw them running across the Wal-Mart parking lot.

24 Q Okay.

25 A If that's what you're asking me.

Thomas W. Gantt - Cross-Examination In Camera by Mr. Grant

1 Q Yes, sir. But the information that you received was
2 that he saw them running across the Wal-Mart parking
3 lot towards Litchfield Apartments?

4 A Yes, sir.

5 Q But they didn't drive toward Litchfield Apartments?

6 A No, sir.

7 Q So they were on foot?

8 A Correct.

9 Q You received absolutely no information that there was
10 an automobile involved in the possible get away of the
11 possible killers, is that right?

12 A No, sir.

13 Q That's not correct?

14 A That's correct, what you're saying.

15 Q Okay. All right. So I am correct in that statement?

16 A Yes, sir.

17 Q All right. Without having any reason to believe that
18 an automobile was involved in the crime, you all
19 decided to block the exit to Litchfield Apartments, is
20 that right?

21 A I had, yes, sir, I did that.

22 Q All right. And without having any information that an
23 automobile was used or any type of description of an
24 automobile, you decided to stop this particular vehicle
25 coming out of Litchfield Apartments is, is that right?

Thomas W. Gantt - Cross-Examination In Camera by Mr. Grant

1 A That's correct.

2 Q All right. You certainly had no reason to believe that
3 this particular automobile that you stopped was
4 involved in this crime in anyway whatsoever, is that
5 right?

6 A If -- I'm trying to answer your questions, but can I
7 explain my reasons why I did that.

8 Q Yes, sir.

9 THE COURT: You may explain.

10 By Mr. Grant:

11 A Yes, sir. Well, no, sir, we did not have any
12 description of a vehicle at that time. We did get a
13 report they were running on foot. But my thinking was
14 and my reasoning was that if they got in back there in
15 the back at Litchfield that they could get a ride out
16 of there, you know, get some help and get a ride out.
17 That's why I wanted the road shut down to check anybody
18 coming in and out, you know, and to identify anybody.

19 Q But that particular vehicle that you did stop could
20 have been anybody's vehicle leaving the Litchfield

21 Apartments based upon the information that you had?

22 A You're correct, yes, sir.

23 Q All right. And when you stopped that vehicle ---

24 A Yes, sir.

25 Q --- there was no violation of the traffic laws or

Thomas W. Gantt - Cross-Examination In Camera by Mr. Grant

1 anything like that that served as a basis for stopping
2 that particular vehicle, was there?

3 A No, there wasn't.

4 Q So you only stopped that vehicle pretty much out of
5 chance, is that fair to say?

6 A Yes, sir, yes, sir, out of chance and for
7 identification purposes, yes, sir.

8 Q All right. And so, in other words, there was no
9 traffic violation that would have been a proximate
10 cause for you stopping the vehicle in the first place?

11 A No, sir, it would not be.

12 Q And where did you say your vehicle was parked after the
13 vehicle was stopped coming out of Litchfield? Where
14 was your vehicle in relation to their vehicle?

15 A My vehicle was right behind Sergeant Sanders' vehicle,
16 which was, you know, we had, you know, the vehicle we
17 stopped, Sergeant Sanders and my vehicle.

18 Q Was Sanders' vehicle in front of the vehicle?

19 A No, sir.

20 Q Where was it?

21 A Behind it.

22 Q Behind the vehicle?

23 A Yes, sir.

24 Q And your's is behind Sanders'?

25 A Yes, sir, you're right.

Thomas W. Gantt - Cross-Examination In Camera by Mr. Grant

1 Q And did Sanders' put on his police light?

2 A Yes, sir.

3 Q So in other words he showed police authority?

4 A Yes, sir, he did.

5 Q As a basis for stopping the vehicle?

6 A Yes, sir, he did.

7 Q And again, as you indicated when he showed the police
8 authority and stopped that vehicle, there was no
9 violation of any traffic law when he did that?

10 A That's right.

11 Q Okay. Now, when the show of police authority was made
12 by you and Sanders, when you went up to that vehicle,
13 were the people in the vehicle free to leave your
14 presence if they wanted to at that time? Or would you
15 have prohibited them from doing so?

16 A I would have prohibited them from doing so until we
17 could identify them. TEXAS V. BROWN (shows this is wrong)

18 Q Okay. Let me talk to you about Mr. Walker. You said
19 that when you came up to the vehicle and talked to him,
20 you said he was doing something with his hands?

21 A Yes, sir.

22 Q Was he in the vehicle at that time or out of the
23 vehicle?

24 A Out of the vehicle.

25 MR. GRANT: If I may have one moment, Your

Thomas W. Gantt - Redirect Examination In Camera by Ms. Morgan

1 Honor.

2 By Mr. Grant:

3 Q Did you search Mr. Walker, sir?

4 A No, sir, I did not. I might have did a pat down, but
5 as far as a search, no, sir. Once I got him down, sir,
6 you know, when we were down and that's when we got the
7 backup there and you know, I didn't even have a weapon.
8 I didn't even have handcuffs.

9 Q And you didn't actually see him throw anything out of
10 his pockets did you?

11 A No, sir, I did not actually see him throw anything out.

12 Q Thank you, sir.

13 MR. GRANT: No further questions, Your Honor.

14 THE COURT: Redirect?

15 MS. MORGAN: Just to clarify.

16 **REDIRECT EXAMINATION - IN CAMERA**

17 By Ms. Morgan:

18 Q Chief Deputy Gantt, the information you had was that
19 the truck driver saw two black males coming from the
20 Sonic area run across diagonally through Wal-Mart, and
21 back around to Litchfield?

22 A Yes, sir, back in that area.

23 Q And that was within -- after the call -- the initial
24 call had come out?

25 A That's what was told me, yes, ma'am.

1 Q I mean moments?

2 A Yes, ma'am.

3 Q Okay. And you all responded -- Deputy Sanders or
4 Officer Sanders, Sergeant Sanders was there within
5 minutes afterwards?

6 A That's what I was -- yes, ma'am.

7 Q From the initial call? Tell me, who made the initial
8 call to ya'll? How did ya'll find out there was a
9 shooting at Sonics?

10 A Ma'am, I don't -- dispatch notified us, but what I
11 understand an individual at Sonics made the call.

12 Q One that survived the shooting?

13 A Right.

14 Q Okay. And you made the decision to stop any and all
15 vehicles coming out of Litchfield?

16 A Yes, ma'am.

17 Q Again that's the only road in and out of that area back
18 there?

19 A Yes, ma'am.

20 Q Approximately how many houses are back there?

21 A Ma'am, there's apartments and I guess, guessing maybe

22 60.

23 Q Okay. But a lot of people in the back there?

24 A Yes, ma'am.

25 Q And a lot of cars, vehicles. People have cars there?

1 A Yes, ma'am.

2 Q And purpose was to stop any cars coming in or going
3 from Litchfield?

4 A Yes, ma'am.

5 Q And this was the first car that you stopped?

6 A The first car.

7 Q And when Sergeant Sanders turned on the blue light, did
8 it, in fact, stop?

9 A Yes, ma'am, it did.

10 Q Okay. Thank you.

11 THE COURT: Recross?

12 MR. GRANT: None, Your Honor.

13 THE COURT: Very well. You may step down,

14 Mr. Gantt.

15 Call your next witness.

16 MS. MORGAN: That would be the State's -- as to
17 the probable cause for the stop.

18 THE COURT: Very well. Be happy to hear from
19 you. Your motion.

20 MR. GRANT: Thank you, Your Honor.

21 THE COURT: Yes, sir?

22 MR. GRANT: Thank you, Your Honor, may it
23 please the Court?

24 THE COURT: Yes, sir.

25 MR. GRANT: Your Honor, it's our position that

1 of the written motion -- and that motion is respectfully
2 denied.

3 Next motion.

4 MS. MORGAN: Could we take a ---

5 THE COURT: He's filed a motion to suppress
6 statements.

7 MS. MORGAN: If they want to put parameters on
8 that or do you want me -- do they --

9 THE COURT: Which one?

10 MS. MORGAN: I don't know how they want to do
11 it. It's their motion. They've been given -- hold on let
12 me pull their motion, Judge.

13 Can we take a 2 minute break?

14 THE COURT: We'll take a 5 minute recess.

15 MS. MORGAN: Thank you, Judge.

16 (WHEREUPON a short recess was observed.)

17 THE COURT: Is the State ready to proceed?

18 MS. MORGAN: Yes, Your Honor.

19 THE COURT: Defendant ready to proceed?

20 MR. WALTERS: Yes, sir, Your Honor.

21 THE COURT: Very well. The next motion is the
22 motion of February 28, 2005, I believe, Solicitor, is that
23 correct?

24 MS. MORGAN: That is correct, Your Honor.
25 That's a motion and notice of motion to suppress

1 I mean, really within sufficient perimeter type thing that
2 they would have put up in terms of when he was saying he
3 was going to do the bloodhounds.

4 They were ready to track it and that's why he
5 was at that end of Wal-Mart. He's thinking they're on foot
6 and he's going to check for the bloodhounds and then they
7 also want to make sure they're checking cars because any
8 individuals that have fled on foot, just because they have
9 fled on foot doesn't mean they're going to leave the area
10 on foot and I don't think any law enforcement officer is
11 precluded from, given the "exigent circumstances" and nature
12 of the crime from stopping vehicles under the circumstances
13 we have in this case. It's the only road in, only road
14 out, it's 12 o'clock at night. I think they have the right
15 to stop them.

16 THE COURT: Very well.

17 MS. MORGAN: And arrest them under the
18 circumstances.

19 THE COURT: Very well. Mr. Grant, anything in
20 reply?

21 MR. GRANT: No, Your Honor, we stand on our
22 motion and our argument.

23 THE COURT: After listening to the testimony
24 and arguments of Counsel, Mr. Grant, I believe there was
25 probable cause to stop and that motion, which is the basis

1 ~~statements -- any and all statements made by Alfred Walker,~~
2 written, oral included, not limited to, by the police
3 authorities.

4 THE COURT: Solicitor, so that the record is
5 complete, because I, of course, don't know anything about
6 this matter, other than what I've learned from hearing
7 motions in this case, but if there is more than one
8 statement, I believe I have to rule on them individually.

9 MS. MORGAN: Yes, sir.

10 THE COURT: Just so that we make a clear
11 record. I just wanted to point that out.

12 MS. MORGAN: Yes, sir, I think -- I was aware
13 of that. Yes, sir. The State's ready.

14 THE COURT: Call your witness.

15 MS. MORGAN: The State would call -- Your
16 Honor, for the record, the first statement was taped that
17 night, approximately 12:37 a.m. while sitting in a car by
18 Rodney Pruitt. It is taped and I have it and I have it
19 ready to play so you can hear it in its entirety just
20 because of some circumstances. The State would call Rodney
21 ~~Pruitt to the stand.~~

22 THEREUPON,

23 RODNEY PRUITT,
24 after being duly sworn, testified as follows:

25 THE CLERK: Have a seat in the witness stand.

Rodney Pruitt - Direct Examination In Camera by Ms. Morgan

1 State your full name for the Court.

2 MR. PRUITT: Rodney Pruitt.

3 **DIRECT EXAMINATION - IN CAMERA**

4 By Ms. Morgan:

5 Q And you work with the Barnwell County Sheriff's Office?

6 A I do.

7 Q In what capacity, please, sir?

8 A Current capacity is Chief Investigator.

9 Q All right. And back on October 18, October 19, what
10 was your capacity at the Barnwell County Sheriff's
11 Office?

12 A 2000, you're referring too?

13 Q Yes, sir, 2000.

14 A Just a regular investigator.

15 Q All right. And tell me, how were you called out that
16 night of October 18 and 19?

17 A It was about 12:30, after midnight. And we got a page
18 that there had been a shooting at the Sonic and they
19 were asking units to come to that location.

20 Q All right.

21 A They meaning dispatch.

22 Q All right. Tell me where did you come from that night?

23 A Williston.

24 Q So where are you on the hierarchy of being called out?
25 Were you aware that there were already people at the

1 scene?

2 A By the time I woke up and got going, I realized there
3 was a lot going on.

4 Q And how do you know that?

5 A You just hear it on your radio and when I called in to
6 dispatch and said what's going on and they told me
7 there had been a shooting and they wanted everybody
8 that they could get to come to the scene.

9 Q All right. So you're coming from Williston. What kind
10 of code do you run coming from Williston?

11 A We were running to get to Barnwell to the Sonic pretty
12 quick.

13 Q Blue lights?

14 A Yes, ma'am.

15 Q Okay. So it was whatever the code is, it was get there
16 as fast as you can?

17 A Yes, ma'am.

18 Q All right. And about what time did you arrive?

19 A I'd have to speculate. It would have been 12, 15
20 minutes after getting that call. Sometime before 1:00.

21 ~~Q And when you get there, what, other than the fact that~~

22 there was a shooting at Sonic, what do you know?

23 A I don't know anything.

24 Q All right, sir. And where did you go?

25 A I pulled up to the -- what I saw was the first area

Rodney Pruitt - Direct Examination In Camera by Ms. Morgan

1 where there were some of our officers there to sort of
2 the get a clue what they may want me to do.

3 Q All right. And could you describe the area where you
4 first pulled up? Where were your officers?

5 A Okay. As I come around the curve at the Sara Lee Sock
6 Company, I see blue lights in all kinds of different
7 directions down towards the Wal-Mart plaza.

8 Immediately to my left is Litchfield Road that goes
9 down into the Litchfield apartments. I see one, two,
10 maybe three police cars generally in that location and
11 I see some more at the Sonic. And just because they
12 are the first ones that I see, I stop at that location
13 at Litchfield to find out what my assignment or how I
14 can help or whatever may be.

15 Q And what do you find when you get there, Investigator
16 Pruitt?

17 A I approached, I believe at that time Sergeant Sanders
18 was in that general area. I believe that Investigator
19 Todd Gantt at the time, he was investigator at the
20 time, I believe he was already on the scene, but I know
21 for a fact that when I get there I see police cars with
22 blue lights on and two young black males sitting either
23 at the front of the police car or front and to the
24 side. In other words, one's sitting where maybe your
25 headlights would be and one's sitting around maybe

Rodney Pruitt - Direct Examination In Camera by Ms. Morgan

1 where the tire would be located.

2 Q All right. And when you say they're sitting, how are
3 they sitting?

4 A They're sitting on their buttocks with their hands
5 handcuffed behind their backs with -- I think they had
6 paper bags on their hands.

7 Q And why would anybody put paper bags on anybody's
8 hands?

9 A For potential use as gunshot residue kits later on.

10 Q All right. And what was your impression of the status
11 of those two handcuffed and bagged individuals sitting
12 on their bottoms and near police cars?

13 A They were, obviously, potential suspects in this case
14 and had been detained or arrested and were -- I was
15 just told to watch them.

16 Q All right. And you remember who told you to watch
17 them?

18 A You know, I'm not sure, maybe I wrote it in my notes,
19 but one of the officers asked me to watch these two
20 young men until they figure out something else they may
21 want me to do.

22 Q All right. So what did you do?

23 A I hang out, just sort of watch them.

24 Q All right. You out of your car?

25 A I am.

Rodney Pruitt - Direct Examination In Camera by Ms. Morgan

1 Q All right. And how close to those two individuals
2 sitting on the ground are you?

3 A Just a couple of feet, maybe.

4 Q And do you, other than the fact that you see all these
5 blue lights and knew there was a shooting, you know
6 anything else?

7 A No.

8 Q Okay. Do you know anything about another individual
9 that fled on foot or any ---

10 A I they I may have heard that on the way on the radio,
11 oh, golly, we got one running, something like that on
12 the radio, if that hadn't already happened before I got
13 on. But I did know that somebody had run from the
14 scene.

15 Q All right. So you get there, you're watching two
16 individuals, is one of those individuals Alfred Walker?

17 A Yes, ma'am.

18 Q All right. And what, if anything, happens between you
19 and both those individuals?

20 A Just a few minutes passes and I don't recall which one
21 said it first, but one of the suspects that was sitting
22 on the road asked me could they speak to me about
23 whatever. Can I talk to you is what they said. And
24 once the first one said it, the second one said I want
25 to talk to you too. And you want me to just continue?

Rodney Pruitt - Direct Examination In Camera by Ms. Morgan

1 Q Yeah.

2 A You know, considering what we were called out for and
3 considering the fact that there's multiple
4 jurisdictions in the county and not wanting to step on
5 any toes, I didn't take it upon myself to just start
6 talking to somebody because they said they wanted to
7 talk. I went and found Investigator Gantt, who was
8 going to be the overseer of this case because it
9 happened in the city.

10 Q And just to clarify, Investigator Gantt is the City's
11 Investigator at that time, now he's the Chief of
12 Police?

13 A That's correct.

14 Q But he was the Chief Investigator for the city, Chief
15 Deputy Tom Gantt is his brother, but he's the Chief
16 Deputy of the Sheriff's Department?

17 A That's correct.

18 Q All right. So you find Chief of Police Gantt now?

19 A Yes, ma'am.

20 Q And he's in charge because of what now?

21 ~~A Because of his position at the time. He would have~~

22 been the investigator in charge of the scene.

23 Q All right. And what, if any conversation did you have
24 with Chief Investigator Gantt?

25 A It was sort of brief. I just touched him on his back.

Rodney Pruitt - Direct Examination In Camera by Ms. Morgan

1 He was doing some stuff in the back of his vehicle
2 getting ready to do whatever he was going to do and I
3 asked him, I said -- or I made him aware of the fact
4 that as I was standing there, these two fellow wanted
5 to talk to somebody and, you know, would he recommend I
6 speak to them or did he want to talk to them later or
7 whatever. And he said, yeah, if there's somebody
8 wanting to talk, go ahead and talk to them.

9 Q All right. Now, did you get any instructions about how
10 you would be talking to them?

11 A No.

12 Q Did you do anything to prepare to talk to them?

13 A Yes. Of course, when I left them, I asked somebody
14 else to watch them and speak to Todd Gantt. And then
15 after he instructed me that he did want me to speak to
16 them, I went to my police car which was some couple
17 hundred feet maybe from where the suspects were and got
18 me my tape recorder and prepared to go back and speak
19 to both individuals.

20 Q All right. And did you inform them of any rights while
21 they were seated on the ground out there on the street?

22 A Yes, ma'am, I verbally went over the rights information
23 just to clarify that nobody was going to change their
24 mind and both said they still wanted to talk to me.

25 Q All right. And tell us how you did both of them. I

Rodney Pruitt - Direct Examination In Camera by Ms. Morgan

1 mean, where were they when you Mirandized them.

2 initially?

3 A Still at the front of the car sitting down. I just
4 verbally, like I said, you know, went across your
5 rights: You have a right to remain silent, you can get
6 an attorney if you need one, you can quit talking at
7 any time; nobody's coercing or threatening you. It was
8 just a verbal thing. Again, I didn't have the tape
9 running at that time.

10 Q Okay. And so after you gave them the Miranda as they
11 were seated on the ground in this situation, what did
12 you do? Did they indicate to you any desire to still
13 talk to you?

14 A Yes, ma'am, both said they still wanted to speak.

15 Q All right. So what did you do?

16 A I picked up Alfred Walker first just by chance, didn't
17 have a clue who was who. I didn't know any names. He
18 was just the first one that I happened to speak with
19 and I picked him up and there was a lot going on.

20 Q What you mean there was a lot going on? .

21 A Well, of course, there's sirens all over the place and

22 police are running back and forth at different

23 locations looking for things and it's sort of chaotic

24 and you know, when you get something like this

25 particular situation, you know, I don't know because I

Rodney Pruitt - Direct Examination In Camera by Ms. Morgan

1 wasn't there when this man may have been searched, this
2 young man may have been searched, so I'm a little
3 cautious about it, but I do want to let him speak if
4 he's got anything he wants to say. So when I stand him
5 up, I start to check his pockets for anything and he
6 made a statement to me that he'd already been searched
7 and I said, well, you know, something like, we're going
8 to be talking and I'm just going to check you out real
9 quick.

10 And I didn't find anything particular other than
11 in his front right pants pocket when I reached down in
12 there to clear that pocket out, I felt something and
13 when I pulled it out, I recognized it as either a .22
14 or a .25 caliber bullet to include the cartridge casing
15 and the lead end of it.

16 Q So like an unfired complete bullet?

17 A That's correct.

18 Q All right. And you pulled it out of his pocket?

19 A That's right.

20 Q And what if anything did he say or you say when that
21 bullet came out of his pocket?

22 A Well certainly I was an investigator at the time and I
23 know now there's a shooting potentially being
24 investigated here, so I just ask him, where did this
25 bullet come from and he told me that sometime maybe the

Rodney Pruitt - Direct Examination In Camera by Ms. Morgan

1 ~~previous Sunday, I think is what he said to me, that he~~
2 found it in the yard at his house and put it in his
3 pants.

4 Q All right. What day are we talking about this
5 occurred? The night October 18, 19th?

6 A I think it's a Wednesday, going into Thursday.

7 Q Okay. And so when he told you that, you had the
8 bullet, what if anything did you do with it?

9 A I considered it potential evidence and I called for
10 another investigator, Darlene Cook to come and get the
11 bullet from me that I had gotten from his pants.

12 Q Okay. Did you just hand it to her or ---

13 A Yes, ma'am. He was wanting to talk. I didn't want to
14 stop then and start doing anything else. So I asked
15 her to come get it and I said make sure Todd knows
16 about this bullet.

17 Q All right. You gave it to her and then what did you
18 do?

19 A Then escorted, after making sure we didn't have any
20 other weapons or anything, escorted Mr. Walker to the

21 ~~back seat of a police car. The same car, I think he~~

22 was in front of. I think we just came around the
23 corner of the car and got in the back seat and ---

24 Q You didn't take him all the way to your car?

25 A No.

Rodney Pruitt - Direct Examination In Camera by Ms. Morgan

1 Q Okay. You took him to the back of the car that was
2 right there?

3 A Yes, ma'am.

4 Q Okay. Then what did you do?

5 A Got in the back seat with him, turned on my tape
6 recorder and we started talking.

7 Q And did you on tape Mirandize him?

8 A Yes.

9 MS. MORGAN: Judge, we're ready to play -- I
10 believe, Your Honor, Counsel has already gotten a copy.
11 It's been -- Your Honor, for the record, I believe --
12 Judge, I've got -- did I give you a copy?

13 THE COURT: You did.

14 MS. MORGAN: Judge, for the record, the
15 interviews that were transcribed by a certified court
16 reporter, Brenda Douglas. They've been made available for
17 a long time, way back, to defense counsel. I will say that
18 some of them might have changed format, but I don't believe
19 this is the one that changed format. We were trying to
20 blow up for purposes to be used at trial and we had it
21 electronically transmitted between Ms. Douglas, but I don't
22 think this is the ---

23 THE COURT: Let the record reflect that defense
24 counsel holds a copy of the transcript, I assume this is of
25 what you referred to earlier, Solicitor, as the 12:37 a.m.

Rodney Pruitt - Cross-Examination In Camera by Mr. Walters

1 tape by Mr. Pruitt, is that correct.

2 MS. MORGAN: Yes, sir, it's a little bit past.
3 that time, but, yes, sir.

4 THE COURT: All right. And you have a copy, is
5 that right, Mr. Walters?

6 MR. WALTERS: Yes, sir, Your Honor.

7 THE COURT: All right. Let the record reflect
8 the Court's been handed a copy.

9 Solicitor, you may proceed.

10 MS. MORGAN: All right. And Judge, I'm ably
11 assisted by Marion Washington of SLED, who is here because
12 he's going to be involved in using this equipment.

13 (WHEREUPON the tape was being played for the
14 judge to listen to.)

15 THE COURT: Anything further for this witness?

16 MS. MORGAN: No, Your Honor.

17 THE COURT: Cross?

18 MR. WALTERS: May it please the Court.

19 THE COURT: Mr. Walters?

20 MR. WALTERS: Yes, sir.

21 **CROSS-EXAMINATION -- IN CAMERA**

22 By Mr. Walters:

23 Q Good afternoon, Mr. Pruitt?

24 A Hello, sir.

25 Q Mr. Pruitt, Officer Pruitt, I'm sorry. How long have

Rodney Pruitt - Cross-Examination In Camera by Mr. Walters

1 you been a police officer?

2 A Just under 20 years.

3 Q All right. And I believe you participated before in
4 what we refer to as a Jackson vs. Denno hearing haven't
5 you?

6 A Yes.

7 Q And what is your understanding ---

8 (WHEREUPON there was a disturbance from the
9 tape system.)

10 THE COURT: Proceed.

11 MR. WALTERS: Yes, sir, Your Honor.

12 By Mr. Walters:

13 Q I believe you stated you've been a police officer for
14 20 years, is that correct?

15 A Just under 20 years.

16 Q All right. And I believe you also participated in
17 numerous Jackson vs. Denno hearings, is that correct?

18 A Several.

19 Q And of course when we talk about Miranda, you would
20 agree Miranda is designed to determine if a statement
21 is freely and voluntarily given, is that right?

22 A Yes.

23 Q All right. And, of course, what we're trying to do is
24 determine if the defendant is waiving his Fifth
25 Amendment right, is that correct?

Rodney Pruitt - Cross-Examination In Camera by Mr. Walters

1 A ~~That's correct.~~

2 Q That's a right against self-incrimination?

3 A Yes.

4 Q All right. And as a police officer and all of us have
5 seen it on TV, we always hear that statement about, you
6 have a right to remain silent, anything you say can and
7 will be used against you in a court of law, is that
8 correct?

9 A Yes.

10 Q All right. And I believe you got it memorized when you
11 talk to a defendant, is that right?

12 A Pretty much.

13 Q All right. And on this particular night, I believe you
14 stated first of all that you were called in and you
15 traveled from Williston to Barnwell, is that right?

16 A That's correct.

17 Q Okay. And when you arrived, you first stated that you
18 were told to watch the two defendants and I believe
19 they were in front of Robbie Sanders' car, is that
20 right?

21 A ~~That's correct. I can't say for sure Robbie Sanders'~~
22 car. They were in front of a police car.

23 Q All right. I think that's what you put inside your
24 report?

25 A Okay. It could be Robbie's or some other car but

Rodney Pruitt - Cross-Examination In Camera by Mr. Walters

1 there's a police car there.

2 Q All right. And where was Mr. Walker positioned on that
3 particular day?

4 A I refer to my notes, apparently you would have a copy,
5 on Page 1 of my notes. It says I noted two black males
6 were in custody at that location. Both were handcuffed
7 and their hands covered with paper bags. One suspect
8 was sitting on the ground in front of Sanders' patrol
9 car. This was later determined to be Lee Worthy. The
10 other suspect was sitting on the ground on the
11 passenger side of Sanders' vehicle. This was later
12 determined to be Alfred Walker.

13 Q All right. And I believe you stated that one of the
14 suspects stated I want to talk, is that right?

15 A Both did.

16 Q All right.. But I believe you stated one said that and
17 then you moved on and both stated they wanted to talk,
18 is that right?

19 A It was instantaneous. One says -- it's like this,
20 you're walking by or standing there and one of the guys
21 goes, hey man, I want to talk to somebody.

22 Q All right.

23 A And me too.

24 Q And ---

25 A I want to talk to somebody.

Rodney Pruitt - Cross-Examination In Camera by Mr. Walters

1 ~~Q I didn't want to interrupt you during your answer.~~

2 A Okay.

3 Q And also I believe that there were some questions asked
4 about, can I get a cigarette to smoke, is that right?

5 A Yes.

6 Q All right. And I believe you also told this particular
7 defendant, you don't identify them, you said you would
8 provide a cigarette?

9 A I think later I did.

10 Q All right. Do you smoke cigarettes?

11 A No.

12 Q Okay. So you had to go get a cigarette from someone
13 else?

14 A I'd have to get them somewhere.

15 Q All right. Now, it's my understanding that when you
16 read Miranda -- and let's talk about specifically with
17 Alfred Walker, you simply went through the statements
18 of Miranda and as we listened to the tape, you
19 responded in an affirmative way, he just simply said
20 yes, I realize what I'm doing, I understand what I'm

21 ~~doing, is that correct?~~

22 A That's correct.

23 Q All right. And you're training of 20 years with law
24 enforcement, what are you supposed to do if a defendant
25 simply states, I don't want to talk anymore?

Read

2414

Rooney Cross-Examination In Camera by Mr. Walters

1 A Find out what he really means.

2 Q All right. And let me ask you a question. If I simply
3 said to you, I don't want to talk anymore are you
4 stating you don't understand that or you need to
5 inquire further to understand what that means?

6 A In my training, I've always been -- my understanding of
7 our training of what we do in interrogations or
8 interviews is to make sure we have an absolute
9 understanding of whether or not the individual truly
10 desires to stop the investigation or stop the
11 interview.

12 Q So if someone says, I don't want to talk anymore ---

13 A We clarify.

14 Q --- you're supposed to continue questioning?

15 A I clarify.

16 Q Okay. All right. And in your training, I want to go
17 through that. You said something about your training.
18 What were you told to do if someone says, I don't want
19 to talk anymore? What are you supposed to do after
20 that?

21 A Is that the same question you just asked me.

22 Q Yes, sir, I want -- you referred to your training. I
23 want to know what type of training you received when
24 someone says I don't want to talk anymore, what were
25 you trained to do after that happens?

1 A To clarify what their true meaning is.

2 Q All right. And ---

3 A It ---

4 Q --- how do you clarify what their true meaning is?

5 A I'm sorry I was still in the middle of answering.

6 Q I apologize.

7 A That's all right. Miranda, as I understand it and as I
8 was trained is invoked when someone says to you, I
9 don't want to talk anymore, I want a lawyer. So if
10 they leave that last part dangling, we have always been
11 -- I was trained to make sure what that dangling part
12 missing is. Do you really don't want to talk or I
13 don't know how much more clear I can make it. I
14 clarify whether they want to stop or not.

15 Q All right. So Officer Pruitt, your training is that a
16 person must state, I don't want to talk anymore, I
17 would like to have legal representation?

18 A Or like in this case, at some point later Alfred Walker
19 says to me, I'm just not wanting to talk anymore. And
20 his demeanor changed drastically from earlier when he
21 said it.

22 Q All right. Well ---

23 A I'm not sure I answered your question.

24 Q Well I want to explore that further. Let's turn to
25 page 12 because I want to know how many times does a

Rodney Pruitt - Cross-Examination In Camera by Mr. Walters

1 defendant have to state he doesn't want to talk before
2 the interrogation stops?

3 A And I don't know if I was supposed to respond to that
4 yet or if you left it open for me to respond.

5 Q Let's turn to page 12 and you can explain your answer?

6 A You said something about the word interrogation. I
7 don't think we were anywhere near that at this point.
8 I didn't know for sure whether he or anybody else had
9 anything to do with anything at this point. I'm just
10 responding to him saying he wanted to tell me
11 something.

12 Q All right. Well let me ask you a question about that.
13 You didn't believe that there was an interrogation
14 going on?

15 A I'm not interrogating anybody. I don't know any of the
16 circumstances. I don't know what kind of questions to
17 ask or anything, really. I found a bullet that I'm
18 interested in. I know that much. And ---

19 Q But it's my understanding, your testimony was, number
20 one there were multiple jurisdictions there?

21 A That's correct.

22 Q All right. And as far as you taking some type of
23 action on your part, you consulted with the individual
24 in charge and that was Officer Gantt, is that correct?

25 A That's correct.

Rodney Pruitt - Cross-Examination In Camera by Mr. Walters

1 Q ~~And you knew before you could do anything that you~~

2 needed to check with the man in charge, is that right?

3 A I didn't want to mess up anything he may have going on.

4 Q You were informed that there was a shooting at the
5 Sonic, is that correct?

6 A That's correct.

7 Q Is that correct?

8 A That's correct, again.

9 Q After you were informed there was a shooting at the
10 Sonic, and you checked with the individual that was in
11 charge, you stated that this individual, this defendant
12 would like to talk, is that correct?

13 A At that time he wasn't a defendant. At this time, he
14 was a guy on the sidewalk that was stopped. I'm not
15 trying to elude your answer. I just wanted to answer
16 it right. I don't know what's really going on.

17 There's a shooting. These guys have been stopped. I
18 don't know anything at this time about any money being
19 found on somebody, an ID being found on somebody. I do
20 know that someone ran from the car, so I think it's a
21 ~~little bit of concentrated effort being focussed here,~~
22 but I don't know any of the circumstances until I got
23 to that bullet when I picked him up. And I know at
24 some point, I'd like to discuss that while we're in the
25 back of the car.

Rodney Pruitt - Cross-Examination In Camera by Mr. Walters

1 Q You stated you didn't believe there was an
2 interrogation, is that correct?

3 A That's correct.

4 Q All right. Did you have handcuffs on Alfred Walker?

5 A I did not. He had handcuffs on him. I don't know how
6 they got there or who put them on there.

7 Q A multiple jurisdiction basis of this, nevertheless, he
8 was detained, he had handcuffs on him?

9 A I will agree he was detained, no doubt.

10 Q He could not leave the scene?

11 A No, sir.

12 Q So he was not an individual that was standing on the
13 side of the road?

14 A Standing -- no, sir, he was not standing.

15 Q All right. In other words he couldn't freely walk off?

16 A No, sir.

17 Q So there was a decision made by someone within the
18 multiple jurisdictional basis here to detain this man.
19 He was in custody?

20 A That's correct.

21 Q All right. So once he was placed in custody, it's my
22 understanding at that time, that's when Miranda kicks
23 in if you would like to talk with someone. Is that or
24 is that not correct, based on your training?

25 A I think I can basically agree, yeah.

Rodney Pruitt - Cross-Examination In Camera by Mr. Walters

1 Q All right. So we can agree that Miranda is invoked

2 when someone is put in custody, if there is a custodial
3 interrogation?

4 A Yes.

5 Q All right. So you would agree now, that there was an
6 interrogation conducted by you and someone was placed
7 in custody?

8 A I think I'm just weird with the word interrogation.
9 You know, I don't have facts that I can dispute with
10 him. If I was interrogating him, I would want to be
11 more prepared to, you know, try to question stuff that
12 he throws at me. I didn't know a thing about it. I
13 just knew I had a bullet I wait a minute to talk about.

14 Q Well, you've been in law enforcement for 20 years if
15 you were investigating a robbery, an individual is a
16 witness to it, you simply go out and interview them,
17 isn't that correct?

18 A That's correct.

19 Q All right. You ask him what did you see?

20 A That's correct.

21 Q What color clothes was the person wearing? And you

22 simply take that information down and go back and begin
23 to put your information together, isn't that right?

24 A That's right.

25 Q But if you place that individual under arrest, then

Rodney Pruitt - Cross-Examination In Camera by Mr. Walters

1 there's certain rights that go along with that person
2 being arrested, isn't that right?

3 A Certainly.

4 Q Right?

5 A Yes.

6 Q And that's when you begin your interrogation. You see
7 on TV all the time. You do it every day. You put a
8 person in a room, somebody plays good cop, bad cop, you
9 go in and asked questions don't you?

10 A I don't know, no.

11 MS. MORGAN: Judge I'm going to object to
12 continuing this line. I think he's asked this line of
13 questioning and gotten the same answer I think at least
14 three times.

15 THE COURT: Please don't be repetitive counsel,
16 but I will let him answer this question and then move onto
17 another question.

18 By Mr. Walters:

19 Q I believe your testimony was that in order to invoke
20 your rights under Miranda, it's a two part process.
21 You stated they have to state, I don't want to talk
22 anymore. And they also have to state, I would like to
23 have a lawyer present, isn't that correct?

24 A I think you could leave -- I don't know where you're
25 headed. You could leave out, I don't want to talk

Rodney Pruitt - Cross-Examination In Camera by Mr. Walters

1 said, is that correct?

2 A That's correct.

3 Q Read line 16?

4 A A - I don't.

5 Q All right. So that's the second time you're being told
6 by the defendant, I don't want to talk to you anymore.

7 All right. Is that correct?

8 A Correct.

9 Q All right. Turn to line 18?

10 A 18.

11 Q Would you read that to me?

12 A A - no man, because I'm going -- excuse me sir, I'm
13 doing a lot of talking and I don't know man I don't
14 know. Uh-huh. No man, this ain't right here. I
15 shouldn't even have to go through all this.

16 Q All right. So again he's affirming to you, I'm not
17 going to, sir. Excuse me, sir, I'm doing a lot of
18 talking, and I don't -- is that correct?

19 A Can you say that exactly that way again.

20 Q All right. Let's move on. Turn to page 13?

21 A Okay. Page 13.

22 Q All right. Now we've essentially read three different
23 particular places where he's invoking his right to say
24 I don't want to talk. On middle page 13, turn to line
25 13. I tell you what, start with line 12. Read it for

Rodney Pruitt - Cross-Examination In Camera by Mr. Walters

1 ~~anymore. You could just say, I want a lawyer and I~~

2 quit.

3 Q Either one?

4 A No.

5 Q Which one?

6 A I want a lawyer is the key for me.

7 Q All right. So the key for you is that if they ask for
8 a lawyer, you'll stop the interrogation?

9 A As per my training.

10 Q But if they said, I don't want to talk anymore, you
11 continue the interrogation?

12 A You clarify what they want.

13 Q Now, let's turn to page 12?

14 A I'm at page 12.

15 Q All right, sir. Let's look at line 13 of the testimony
16 that was given on the tape.

17 A Yes, sir.

18 Q Would you read line 13 to me?

19 A A - I don't want to talk no more.

20 Q All right. And that is Alfred Walker, is that correct?

21 A That's correct.

22 Q All right. Read line 14 to me?

23 A What do you -- excuse me, Q - what do you mean you
24 don't want to talk no more.

25 Q That's you, you're attempting to clarify what he just

Rodney Pruitt - Cross-Examination In Camera by Mr. Walters

1 me.

2 A Line 12. A - man, ya'll going to find out tonight. I
3 don't want to talk no more.

4 Q All right.

5 A Ya'll ---

6 Q All right. Go ahead.

7 A Where you want me to stop at?

8 Q You can stop there.

9 A All right.

10 Q That's four different occasions where someone has
11 stated to you, a defendant has stated to you, I don't
12 want to talk no more. Did you need further
13 clarification in this interrogation process? Why did
14 you continue?

15 A I obviously don't think I've got an answer?

16 Q Was that part of your training to continue to question
17 someone after they simply state I don't want to talk

18 anymore four different times?

19 A Yes.

20 Q All right. Tell me more about your training. What
21 does your training say about that?

22 A We've already talked about this. My training says
23 until we think that there's a true invocation of the
24 rights and when I hear somebody say, I want a lawyer,
25 that's absolute.

Rodney Pruitt - Cross-Examination In Camera by Mr. Walters

1 Q So only if he stated I want a lawyer, that's absolute?

2 A That's correct.

3 Q All right. But if he didn't state he wanted a lawyer,
4 you can continue the process?

5 A That's correct.

6 MR. WALTERS: Beg the Court's indulgence, Your
7 Honor.

8 By Mr. Walters:

9 Q If you could, sir, would you turn to page 14?

10 A Page 14.

11 Q All right. Would you read line 9 to me, sir?

12 A 9, A - no man, Julie gave me a ride. Man, I'm
13 straight. I'm sorry I went to line ten.

14 Q All right. And would you read line 17?

15 A 17, A - I don't want to say anything else, sir.

16 Q All right. So that's five different occasions where he
17 simply stated, I don't want to say anything else, sir.
18 And you continued to ask questions?

19 A Is that a question?

20 Q Is that correct?

21 A That is correct.

22 Q All right. Turn back to page 3.

23 A Page 3. Give me a moment.

24 Q Start with line 13.

25 A Page 3?

Rodney Pruitt - Redirect Examination In Camera by Ms. Morgan

1 Q Line 13.

2 A Line 13. All right. I'm going to give you one after
3 we get to start talking. If at any time you want to
4 stop talking, all you've got to say is -- all you got
5 to do is say hey, I've said enough. I don't want to
6 say anymore. Do you understand me.

7 Q All right. At any time did you inform him that the
8 only way I'll stop is if you request a lawyer?

9 A No, sir.

10 Q All right. So you never informed him of that. You
11 told him on page 3 all he has to say is hey, I've said
12 enough. I don't want to say anymore. You simply asked
13 him do you understand that. Is that right?

14 A That's correct.

15 Q So on page 3 when you said that on five different
16 occasions, he simply stated he didn't want to say
17 anything more, why did you continue?

18 A Sometimes he would just continue, not me.

19 MR. WALTERS: Your Honor, I have no further
20 questions.

21 THE COURT: Redirect?

22 MS. MORGAN: Yes, sir.

23 **REDIRECT EXAMINATION - IN CAMERA**

24 By Ms. Morgan:

25 Q Investigator Pruitt, put me in context of what -- tell

Rodney Pruitt - Redirect Examination In Camera by Ms. Morgan

1 me this whole taping conversation was initiated by
2 whom?

3 A Me. Well, I mean if you go back to the full sequence
4 of -- it was one of the two fellows, whichever one
5 first yells up to me, hey I want to talk to you and the
6 other one jumps up and says the same thing, me too,
7 I've got to talk to you also.

8 Q And this discussion where you were talking about it's
9 not an interrogation versus, it wasn't one. You said
10 that usually when you're doing an interrogation when
11 you're an investigator, you have information that you
12 know you're looking for or understand it's placement?

13 A Yes, ma'am, I would have something whereby maybe I
14 could challenge somebody's statement. In this case, I
15 didn't know a thing. I just knew about the bullet was
16 all I knew for sure.

17 Q And that bullet that you found, you found -- how did
18 you know about the bullet?

19 A Because one of them said they wanted to talk, the other
20 one said they wanted to talk, I got authority to talk
21 to them, went and got my tape recorder, come back,
22 checked his pocket and found a bullet.

23 Q Okay. And was there any problem with him talking and
24 answering your questions?

25 A No, ma'am.

Rodney Pruitt - Redirect Examination In Camera by Ms. Morgan

1 Q And tell me, what if anything do you think changed or
2 when it -- was it a surprise to you that it changed?

3 A Yes, ma'am. As I said, there's a lot going on and when
4 you hear the tape, of course, you can hear things that
5 you can't read. There's police cars up and down the
6 highway. There's a helicopter in the area. He gets
7 distracted looking at the helicopter sometimes, I get
8 distracted looking at the helicopter trying to figure
9 out what's going on. But his demeanor, to me in this
10 interview in the back of the car changed drastically
11 when I tried to refocus his attention to when we were
12 outside and I found that bullet in his pocket. And,
13 again, that's when his demeanor sort of changes.

14 Q And when he first says ---

15 A I will have to find it on ---

16 Q Page 12?

17 A 12.

18 Q He asked, you know, he says, I don't want to talk
19 anymore, what are you doing after he says that?

20 A I've just got through 10 through 12. All right. Now,
21 this is me talking, as I was searching you just a
22 minute ago -- and as I'm saying that to him in the back
23 of this police car, I'm touching my pocket and I'm
24 saying, all right. Look, when I was searching you
25 earlier, you said you wanted to talk to me and I kept

Rodney Pruitt - Redirect Examination In Camera by Ms. Morgan

1 on searching you and then he said I don't want to talk
2 anymore.

3 Q Okay. And what do you do when he says that?

4 A I clarify.

5 Q All right. And is that what you do when you continued
6 questioning a little bit further?

7 A Yes, ma'am.

8 Q And then, in fact, does he -- does he start talking
9 even when you haven't questioned him any further?

10 A Yes, ma'am.

11 Q And do you -- after he finishes talking to you
12 literally say, a minute ago you said you might not want
13 to say anything else?

14 A I recall that. Where are you at?

15 Q I'm on page 14.

16 A Yes, ma'am. I remember him saying -- me clarifying,
17 yes.

18 Q And, in fact, are some of your questions -- you don't
19 even question him, you just, when you asked about the
20 job is that a whole different area that you really know
21 nothing about?

22 A That's correct. I had no clue.

23 Q All right, sir. And, in fact, where there's Q's on
24 page 13 and page 14, you're not really even
25 questioning, you're just saying, all right. Isn't that

Rodney Pruitt - Redirect Examination In Camera by Ms. Morgan

1 ~~correct? On page 13, line 23? You're not even asking~~

2 him a question are you?

3 A 23?

4 Q Yes, sir.

5 A Yeah, he's just continuing on. I just said all right.

6 Q You're just saying all right. You're saying all right.

7 A Yes, ma'am.

8 Q All right. The next page you say all right?

9 A Yes, ma'am.

10 Q And you didn't even ask him, so you didn't stop by

11 Sonic?

12 A I'm sorry?

13 Q You're even asking him, so you didn't stop by Sonic?

14 A Yeah, he mentioned something about that, I ain't even

15 stopped by Sonic. So I said, okay, so on your way to

16 Litchfield, I don't know if the words are here, but I

17 see this, I see him telling me this he's coming from

18 Barnwell Arms to Litchfield. Unless you take a weird

19 route, you can't go to Barnwell Arms to Litchfield

20 without walking past the Sonic.

21 ~~Q But he says he didn't stop, you affirm he didn't stop?~~

22 A Right.

23 Q You don't have any further information?

24 A That's correct.

25 Q You finish your clarification, you ask him again, so

Rodney Pruitt - Redirect Examination In Camera by Ms. Morgan

1 you want to get all the details ---

2 MR. WALTERS: Your Honor, I'm going to object.

3 At least, she's leading her own witness.

4 By Ms. Morgan:

5 Q You ask him some more questions, or clarify and get the
6 clarification?

7 A Yes, ma'am.

8 Q And you stop questioning?

9 A Yes, ma'am.

10 Q Okay. Thank you.

11 THE COURT: Recross?

12 MR. WALTERS: No further questions, Your Honor.

13 THE COURT: May this witness step down?

14 Anything further of this witness, Solicitor?

15 MS. MORGAN: No, sir.

16 THE COURT: You may step down. Any other
17 testimony as to the 12:37 tape?

18 MS. MORGAN: No, sir.

19 THE COURT: All right. Let's move to the next
20 one. I will give you chance to argue each one at the end.
21 I want to finish the testimony.

22 MR. WALTERS: Yes, sir.

23 MS. MORGAN: Do -- okay -- I wasn't sure
24 either.

25 The State would call Wayne Martin to the stand.

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 THEREUPON,

2 WAYNE MARTIN,

3 after being duly sworn, testified as follows:

4 THE CLERK: State your name for the record.

5 MR. MARTIN: Wayne Martin.

6 THE COURT: Solicitor, would you identify what
7 statement, alleged statement this is in regards to.

8 MS. MORGAN: Judge, we've got -- let me put it
9 in context. Investigator Martin, I believe comes on the
10 scene after Pruitt is finished his initial tape and is
11 taping or might have even taped the other defendant on the
12 ground, Mr. Worthy. So I was going to put him in context
13 with the defendant at this time, meaning he talked to him.
14 Then he goes and gets him from the jail, Mirandizes him, I
15 believe the initial Miranda is 10/19 at 4:43 a.m. He goes
16 and picks him back up. I have a Miranda form for that but
17 I was going to put some parameters on that before we
18 started.

19 THE COURT: Very well.

20 **DIRECT EXAMINATION - IN CAMERA**

21 By Ms. Morgan:

22 Q All right. Investigator Martin, tell me, back on
23 October 19, of 2000, were you called out to a shooting
24 at Sonic?

25 A Yes, ma'am.

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 Q Can you tell us where were you working back October 19,
2 2000?

3 A I was an investigator with the Solicitor's Office of
4 the Second Judicial Circuit.

~~5 Q All right. And what were you doing there that night?~~

6 A I was living in Aiken at the time. I got a phone call
7 from Mr. Grant Gibbons around midnight on the 18th,
8 going into the 19th. I was informed that there was a
9 double homicide at the Sonic in Barnwell and I needed
10 to get there quickly.

11 Q All right. And did you in fact get there quickly?

12 A Yes, ma'am.

13 Q All right. Approximately what time did you arrive?

14 A It was approximately 12:30, 12:35 a.m.

15 Q What did you do when you got there?

16 A I didn't make it all the way to the Sonic. I came down
17 the four lanes heading west toward Sonic and there was
18 blue lights and officers at Litchfield Road by the
19 Exxon Station before you get to Sonic. So I stopped
20 there first.

21 Q Okay.

22 A Once I got there, I was approached by SLED Agent Ed
23 Carroll and Chief Deputy Tom Gantt and they asked me to
24 carry Wallace Priester for an interview or conduct an
25 interview on Wallace Priester.

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 Q Okay. And did you have a whole lot of information at
2 that time? What was the sum total of your intelligence
3 of what had happened at Sonic that night?

4 A I knew there was a double homicide or that's what I'd
5 been told. Agent Carroll and Chief Deputy Gantt said
6 that Wallace Priester was involved. But they wanted me
7 to do an interview with him. That's basically ---

8 Q They gave you some information but then told you to get
9 the details?

10 A Yes, ma'am.

11 Q All right. So what did you do with the defendant
12 Wallace Priester?

13 A Okay. I transported Wallace Priester to my office here
14 at the courthouse. And I also called Chief
15 Investigator Todd Gantt and SLED Agent Carroll while I
16 was in route to get a uniform officer to meet me at my
17 office to witness the interview.

18 Q All right, sir. And did you interview the defendant,
19 Wallace Priester that night.

20 A Yes, ma'am.

21 Q And how long did that process take in your interview
22 with Wallace Priester?

23 A If you'll give me one minute, please.

24 Q Yes, sir.

25 A I advised Wallace Priester of his Miranda rights at

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 1:13 a.m. on October 19th, 2000.

2 Q Yes, sir.

3 A I took notes of the interview, which includes about 2
4 pages of notes. And then we did an audio tape
5 statement.

6 Q All right.

7 A That according to -- the statement started at 2:30 a.m.
8 and concluded at 2:52 a.m.

9 Q Okay. So first and foremost, you were sent by now
10 Sheriff Carroll and Chief Gantt, now Chief Gantt and
11 you took Wallace Priester and took a taped statement
12 from him?

13 A Yes, ma'am.

14 Q You Mirandized him first, took some notes to get your
15 bearings and took a statement from him?

16 A Yes, ma'am.

17 Q And a copy of that statement was transcribed and it was
18 on the tape?

19 A Yes, ma'am.

20 Q Okay. All right. You finished with him, what do you
21 do?

22 A When we finished with that, then I transport Wallace
23 Priester back to Litchfield Road where the officers
24 were still at and ---

25 Q I apologize, tell me when you were finished. What

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 time? Approximately?

2 A I think it was 2:52 a.m. I'll look and make sure.
3 2:52 a.m.

4 Q Okay.

5 A And I got back to the Litchfield Road and met with the
6 other officers. Also Priester was turned over to the
7 officers from the Barnwell City Police Department and
8 then Investigator Pruitt approached me and informed me
9 that he had an audio taped statement of another subject
10 that was there that was being detained. He asked me to
11 listen to the statement and I did.

12 Q Okay. And you listened to it and then what did you do
13 if anything in regards to the defendant Alfred Walker?
14 Did you see him?

15 A When I got finished listening to the statement, the
16 Barnwell City officers were placing Mr. Walker in the
17 back of a police car.

18 Q Okay.

19 A In the back seat. And I went up to the back seat of
20 the car as he was getting in it and I said, Alfred do
21 you want to talk to me about this incident.

22 Q Okay.

23 A He said I'll be at the jail, come see me.

24 Q So the defendant said, I will be at the jail come see
25 me. What do you do?

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 A Well, shortly thereafter, I go to the jail and go see
2 him.

3 Q All right. Just to put this in context for us all
4 Investigator Martin, do you know a whole lot of
5 forensics, anything from the crime scene itself?

6 A At that time, I had not spoken to any crime scene
7 officers. I had not spoken with anyone concerning
8 physical evidence other than maybe what Wallace
9 Priester had said in his statement.

10 Q Okay. So what do you do in regards to this defendant,
11 Alfred Walker?

12 A After -- well, I'm at the jail now.

13 Q All right.

14 A And when I got to the jail, I asked Alfred if he wanted
15 to go to my office and talk about this incident and he
16 stated that he did. I then transported Alfred to the
17 Solicitor's Office where we were met by Reserve Deputy
18 Wayne Smiley. When we got into the Solicitor's Office,
19 this investigator advised Alfred of his Miranda rights
20 and Alfred signed a form stating that he understood his
21 Miranda rights and wished to waive them at that time.
22 (Per Alfred's request?) Deputy Smiley stayed in a
23 separate office of the Solicitor's Office while this
24 interview was being conducted.

25 Q Okay. And you -- I show you -- can you identify the

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 piece of paper I gave you?

2 A Yes, ma'am. This is a Miranda rights form that I used
3 to advise Mr. Alfred Walker of his Miranda Rights.

4 Q All right. And is that upon arrival at your office
5 here in the courthouse?

6 A Yes, ma'am.

7 Q And that's before any questioning is going on?

8 A Yes, ma'am.

9 Q All right. And any time between going to the jail he
10 indicated he wished to speak to you?

11 A At the jail he did.

12 Q Okay. And so you transported him to the office and it
13 was approximately 4:43 a.m. at that time?

14 A Yes, ma'am.

15 Q All right. And tell us, here's -- there's the Right's
16 form, what do you do -- although it says City of
17 Denmark at the Top? Go ahead and tell us ---

18 A Well, the reason that is, I was investigator for the
19 circuit and I had worked some cases in Denmark and this
20 was the closest thing I had to me so I ---

21 Q Okay. So tell us the circumstances. Was the defendant
22 in handcuffs?

23 A Yes, ma'am.

24 Q All right. Were the bags still on him?

25 A No, ma'am, no, ma'am, not on Walker.

Wayne Martin - Direct Examination In Camera by Ms. Morgan

- 1 Q Okay. They were on Priester?
- 2 A They were on Priester not on Walker, yes, ma'am.
- 3 Q And tell us, what did you do in regards to Mirandizing
- 4 the defendant, Alfred Walker?
- 5 ~~A I read these Miranda Rights aloud to him.~~
- 6 Q And did you go through each and every one of them?
- 7 A I did.
- 8 Q And did he appear to have any difficulty understanding
- 9 ~~each and every right as listed on this form?~~
- 10 A No, ma'am.
- 11 Q And did you go through once understanding it, did you
- 12 go through a separate waiver form of those rights?
- 13 A Yes, ma'am, at the bottom, I went through -- I read the
- 14 waiver of rights to Alfred. He stated he understood
- 15 them and he signed the waiver at the bottom.
- 16 Q And at any time prior to -- did you offer him any hope,
- 17 promise of reward, threaten, do anything to him before
- 18 you started any questioning?
- 19 A No, ma'am.
- 20 Q Okay. All right. So you've got him to sign both the
- 21 understanding of the rights and the waiver of rights of
- 22 which you witnessed. You said that an officer -- who
- 23 did not want Officer Smiley there?
- 24 A Alfred Walker.
- 25 ~~Q And so when he's indicated he did not want him present,~~

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 what did you do?

2 A I asked Officer Smiley to go to another office outside
3 of my office.

4 Q All right. And following your procedures after getting
5 the waiver of rights, what did you do?

6 A I interviewed Alfred Walker. As I say interviewed him,
7 it was just basically letting him tell me what happened
8 that night and I took notes of that interview.

9 Q And you did what?

10 A Took notes of that interview.

11 Q All right, sir. You took notes to try to orient
12 yourself and then what did you -- and copies of those
13 notes, did you make them available?

14 A Yes, ma'am.

15 Q All right. And then after taking notes and getting
16 some information, what do you do?

17 A Then we did an audio taped statement.

18 MS. MORGAN: Give us one second, Your Honor.

19 By Ms. Morgan:

20 Q Let me ask you this, Investigator Martin, any time
21 prior to, while you were taking notes, did at any time
22 he indicate he wanted to stop talking to you?

23 A No, ma'am, he didn't.

24 Q At any time did he ask -- did he say he wanted a lawyer
25 present while he was talking to you?

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 A No, ma'am.

2 Q Did he request -- did you at any time threaten him in
3 any way, coerce him, offer him any hope of reward?

4 A I did not.

5 Q Okay.

6 (WHEREUPON they were preparing a tape to be
7 played for the Court.)

8 MS. MORGAN: Judge, the only difference is, I
9 believe in the copy they have is we numbered the pages when
10 we did the original Rule 5 so they could go through the
11 pages separately. The pages are numbered, but we've put
12 additional circled numbers as they pertain to the complete
13 report that we gave them so in the Rule 5 some 250 is
14 numbered.

15 THE COURT: The pages I have are one through
16 15, is that correct?

17 MS. MORGAN: Yes, sir, that's correct.

18 THE COURT: Is that what you have, Counsel.

19 MR. WALTERS: Yes, sir.

20 THE COURT: So when you refer to page number --
21 let the record reflect that Counsel for the State has
22 handed the Court a transcript of the interview -- entitled
23 interview of Alfred Tyrone Walker by Investigator Wayne
24 Martin, pages 1 through 15 and Defense Counsel indicates
25 they have a copy.

Wayne Martin - Cross-Examination In Camera by Mr. Walters

1 MS. MORGAN: That is correct, Your Honor.

2 THE COURT: All right.

3 (WHEREUPON the tape is played for the Court.)

4 MS. MORGAN: I have nothing further in regards
5 to this statement, finishing at 5:49 a.m. on October 19th.

6 THE COURT: 5:32 a.m. statement?

7 MS. MORGAN: Yes, sir.

8 THE COURT: Counsel, do you want to allow him
9 to cross-examine now or you want to wait until you finish?

10 MS. MORGAN: He can cross-examine. Fine with
11 me, Your Honor.

12 THE COURT: All right. You want to
13 cross-examine now as to the 5:32 statement, Mr. Walters?

14 MR. WALTERS: May it please the Court?

15 THE COURT: You may proceed.

16 **CROSS-EXAMINATION - IN CAMERA**

17 By Mr. Walters:

18 Q Officer Martin, I believe that the testimony was that
19 you traveled from Aiken over to the Sonic, is that
20 correct?

21 A Yes, sir.

22 Q All right. And I believe that you initiated some kind
23 of contact with Alfred Walker. You stated he was being
24 placed in a police car?

25 A Yes, sir, later that morning, yes, sir.

Wayne Martin - Cross-Examination In Camera by Mr. Walters

1 Q Okay. How many police officers would you guess were
2 around the Sonic and in that particular area at that
3 time?

4 A Well, like I said, we weren't really at the Sonic, we
5 ~~were down the road at Litchfield Road.~~

6 Q Yes, sir.

7 A I'm guessing maybe eight or ten.

8 Q A lot of police officers?

9 A Yes, sir.

10 Q All right. A lot was going on?

11 A Yes, sir.

12 Q All right. And you had your lights on? Everybody had
13 their lights on?

14 A Pretty much, yes, sir.

15 Q All right. And in this particular case, you're aware
16 that the defendant was 18 years old?

17 A At the time I talked to him -- if that -- yeah, I think
18 it was on Pruitt's statement. So after I would have
19 heard his statement, I would have known.

20 Q All right. And at that time that you were there,
21 Mr. Walker, he was being placed inside a police car?

22 A Yes, sir.

23 Q Who was placing him in that police car?

24 A It was a Barnwell City Police Officer. Maybe two of
25 them, but I don't remember which one.

Wayne Martin - Cross-Examination In Camera by Mr. Walters

1 Q All right. And it's your testimony he stated, I'll be
2 at the jail, come see me?

3 A Yes, sir.

4 THE COURT: Proceed.

5 By Mr. Walters:

6 A I'm looking at my notes here.

7 MR. WALTERS: He's finding the answer.

8 THE COURT: I thought you were waiting on the
9 door to close.

10 By Mr. Walters:

11 A Yeah, Alfred stated that he would be at the county jail
12 and for this investigator to come out there and talk to
13 him.

14 Q Was anyone else present that heard that statement?

15 A I'm sure one or two officers that was getting into the
16 car.

17 Q What are their names?

18 A I can't remember who they are.

19 Q So as to the date they ---

20 A It would just be me.

21 Q It would just be you?

22 A Yes, sir.

23 Q At any time, did Mr. Walker assert his rights under the
24 Fifth Amendment and Sixth Amendment during the --
25 before the statement was taken?

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 A Not to me, no, sir.

2 Q Any time when you were down at the jail when you had
3 him picked up?

4 A No, sir.

5 Q All right. Did you pick him up personally from the
6 jail?

7 A Yes, sir.

8 Q All right. And during the time that he was picked up
9 from the jail and you were talking to him, did he

10 discuss his rights at any time?

11 A No, sir, not with me, no.

12 MR. WALTERS: Your Honor, I have no further
13 questions.

14 THE COURT: Any redirect as to the 5:32 a.m.
15 statement, Solicitor?

16 MS. MORGAN: No, Your Honor.

17 THE COURT: Very well. You may proceed with
18 this witness.

19 MS. MORGAN: All right.

20 DIRECT EXAMINATION - IN CAMERA

21 By Ms. Morgan:

22 Q Investigator Martin, I think you went back -- returned
23 Alfred to the jail that morning at 5:32 when you
24 finished?

25 A I returned him to the jail, yes, ma'am, after the

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 statement.

2 Q And tell me, what did you do next?

3 A Give me one minute, please.

4 Q Uh-huh.

5 A Okay. I then went back to the crime scene at Sonic and
6 met with the other officers that were on the scene.

7 While I was there, SLED Agent Diane Bodie informed me
8 that she had recovered two different caliber shell

9 casings from the scene. I then went to the Barnwell

10 Hospital where Wallace Priester was located in the

11 custody of the other officers. I informed those

12 officers that I would need to talk to Wallace again at

13 the Solicitor's Office again when he was dismissed.

14 And I did several minutes later.

15 Q All right. Prior to talking to Diane Bodie, who was on
16 the SLED forensic team ---

17 A Yes, ma'am.

18 Q --- did you have any idea that there was more than one
19 gun at Sonic?

20 A No, ma'am.

21 Q All right. And so the stories that you'd gotten from
22 both defendants indicate one shooter, one gun?

23 A Yes, ma'am.

24 Q That wasn't what you found -- what SLED was finding at
25 the scene?

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 A Right.

2 Q So you realized that there might be more than one gun,
3 so what do you do?

4 A I went to the hospital -- well, I asked, I think it was
5 ~~Chief Investigator Gantt where Wallace was and I~~

6 informed Investigator Gantt of the inconsistencies with
7 the statements and the evidence at the scene. And
8 asked him where also Priester was. He said he was at
9 the hospital, getting ready to be transported to DJJ.

10 Q All right. And you went and got another statement from
11 Wallace Priester?

12 A Yes, ma'am.

13 Q All right. And did you -- this is still 10/19, I
14 think. Am I correct?

15 A This would be 10/19, yes, ma'am.

16 Q Which is, if I'm doing my math right, is now Thursday?

17 A Yes, ma'am.

18 Q All right. And get some additional information from
19 Wallace?

20 A Yes, ma'am.

21 Q And you witness it, you do what's -- Mirandize him, do
22 all that stuff?

23 A Yes, ma'am.

24 Q After you finish with Wallace, you go back to the crime
25 scene?

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 A I returned to the crime scene, yes, ma'am.

2 Q All right. And when you did -- did you do some follow
3 up with some other individuals?

4 A Later on the 19th I was instructed to go to the
5 Barnwell Sheriff's Office to interview Shelton O'Berry,
6 Jr., and I did.

7 Q All right. And Shelton O'Berry was the infamous driver
8 of the car?

9 A Yes, ma'am.

10 Q The one that fled the scene?

11 A Yes, ma'am.

12 Q Okay. And did you get a lengthy statement from him?

13 A Pretty lengthy. I'd have to get it here.

14 Q But you talked to him?

15 A Yes, ma'am.

16 Q All right. And did you have an opportunity to go back
17 and talk to the defendant, Alfred Walker?

18 A On the 20th. Which was the Friday.

19 Q All right. And during that time, had you -- what if
20 any additional evidence was -- you said when you talked
21 to Diane Bodie, you indicate there was the presence of
22 two guns. Had you found any weapons or when were you
23 aware that they might have found a weapon?

24 A I can't tell you exactly when they told me they found
25 the first weapon.

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 Q All right.

2 A And that was the only one that they had found to my
3 knowledge. But what had changed after the first
4 interview with Alfred and then on the 19th was that the
5 ~~second interview with Wallace Priester and the shell~~
6 casings, being two different caliber shell casings
7 being found at the scene.

8 Q Two different guns. The shell casings that can't be
9 fired by the same weapon?

10 A Right.

11 Q All right. And you have information from -- from the
12 officers that you -- there are two different weapons
13 used at Sonic and there's been one gun recovered?

14 A Yes, ma'am.

15 Q All right. And is that gun, the information you
16 understand that that's from Wallace Priester?

17 A Yes, ma'am.

18 Q Okay. And -- so that's the 19th. This is Friday the
19 20th. Am I correct? I think I got my dates right?

20 A Yes, ma'am.

21 Q All right. So on Friday the 20th, what do you -- what
22 do you do in regards to the defendant, Alfred Walker?

23 A Okay. I went to the county jail and picked up Alfred
24 Walker.

25 Q Why?

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 A For the purpose -- to see if he'd give another
2 statement or confront him with the new evidence.

3 Q All right. And the new evidence as being what?

4 A The information from the crime scene detectives and--

5 MS. MORGAN: I realize I didn't put the Miranda
6 in that I gave everybody on the previous -- the first one,
7 Judge. I'd move to introduce it:

8 THE COURT: Mr. Walters, any objection? She
9 wants to put in -- she handed you earlier, a Miranda form
10 from the statement that this witness, Mr. Martin took at
11 the 5:32 a.m. Any objection to making it an exhibit as
12 part of this hearing.

13 MR. WALTERS: No, sir, Your Honor.

14 THE COURT: Very well.

15 MS. MORGAN: And also, Judge, I think we'd need
16 to put the tape of the first one by Investigator Pruitt and
17 the tape and transcript of that one and tape and transcript
18 of the first one we've just done with this investigator.

19 THE COURT: All right. She's now moving to put
20 in the tape of Mr. Pruitt, 12:37 and transcript. She's
21 moving to put in tape and transcript of Mr. Martin of 5:32
22 a.m. Any objection?

23 MR. WALTERS: Excuse me, Your Honor. No
24 objection, Your Honor.

25 THE COURT: All right. The tape and transcript

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1 of Mr. Pruitt, earlier testified to without objection, as
2 well as tape and transcript of this witness, Mr. Martin, of
3 the 5:32 a.m. statement, tape and transcript without
4 objection.

5 ~~Proceed, Solicitor. You've handed me a written~~
6 statement now.

7 MS. MORGAN: Yes, sir. And I think what I need
8 to make sure that we have them marked and we have the right
9 numbers for -- in terms of the hearing.

10 (WHEREUPON the exhibits were being marked by
11 the court reporter.)

12 THE COURT REPORTER: Judge, we have Exhibits 1
13 through 6, State's Exhibits for ID.

14 THE COURT: I understand they're in for
15 identification for this hearing but for the record in case
16 we need to prefer to exhibit numbers, tell us which each
17 one is now that you've marked them, please.

18 THE COURT REPORTER: State's one is the tape
19 with Investigator Pruitt.

20 THE COURT: All right.

21 THE COURT REPORTER: State's 2 is the
22 transcript of that tape.

23 THE COURT: Of Investigator Pruitt?

24 THE COURT REPORTER: Yes, sir.

25 THE COURT: State's 3 is the tape with

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1 Investigator Martin. State's 4 is the transcript of that
2 interview with Mr. Martin. No. 5 is the Miranda Rights
3 with -- at 4:44 a.m. on 10/19 and No. 6 is the Miranda on
4 10/20/00 at 10:22. All right. All of which are admitted
5 for identification without objection, 1 through 6.

6 Now I'm holding State's Exhibit No. 6 in my
7 hand, Solicitor, I believe that's where you were before we
8 stopped to put these in evidence.

9 MS. MORGAN: Yes, Your Honor.

10 By Ms. Morgan:

11 Q All right, sir. You indicated -- we're now to Friday,
12 Investigator Martin, Friday the 20th?

13 A Okay.

14 Q You said -- I believe you went back to the Barnwell
15 Detention Center to potentially confront Mr. Walker
16 about the presence of another weapon?

17 A Yes, ma'am.

18 Q All right, sir. So tell me the circumstances of going
19 back to the jail on 10/20?

20 A Okay. I transported him to my office at the
21 Solicitor's Office. Informed him that we had new
22 evidence and information on his part of this incident
23 and I asked Alfred if he wanted to give another
24 statement on his part of this and he stated that he
25 did. I then advised Alfred of his Miranda Rights and

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1 he initialed his Miranda Rights on the top of the
2 voluntary statement form stating he understood his
3 Miranda Rights and wished to waive them at that time.

4 Q All right. And do his initials appear at the side

~~5 where you set forth the Miranda Rights on State's~~

6 Exhibit 6? His initials where you're reading the --
7 rights?

8 A They're at the side of the Miranda Rights and at the
9 end of the Miranda Rights.

10 Q Right. Indicating that he understood them. Did he
11 have any problem understanding them?

12 A No, ma'am.

13 Q And at any time did you promise him anything, threaten
14 him in any way, offer him any inducements, coerce him
15 in any way at any time?

16 A No, ma'am.

17 Q Okay. And did he indicate his willingness to give you
18 a statement at that time?

19 A He said he wanted to give a statement.

20 Q Okay. So tell me, what did you do when he indicated he
21 wanted to give a statement?

22 A After waiving his rights, he basically just wrote out
23 this statement.

24 Q All right. That's what I was going to ask you. You

~~25 gave him the paper after he had initialed the rights he~~

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 had and his waiver of rights in State's 6?

2 A Yes, ma'am.

3 Q And who wrote, I Alfred Walker was carrying?

4 A Alfred Walker.

5 Q Okay. And did you question him at any time? Or he's
6 just writing that out?

7 A He's just writing.

8 Q Okay. And when he finished writing, how did you know
9 he was finished?

10 A He signed it at the bottom.

11 Q All right. Did you ask him anything further?

12 A He -- according to his statement, it says here about
13 two thirds of the way down, I threw the gun behind the
14 backside of Litchfield, then we caught a ride and was
15 stopped. After he told me -- or after he wrote this
16 about the gun being thrown behind the backside of
17 Litchfield, he drew a little diagram, or we did
18 together, of the area that he through it in behind
19 Litchfield.

20 Q All right. And what was that diagram for?

21 A It was -- it was supposedly, it was to help us locate
22 the gun where he said he threw it. But after we did
23 this diagram, I contacted SLED Agent Carroll and
24 advised him of this information and Agent Carroll
25 requested that I bring Alfred to the area where he's

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 saying he threw the gun so he could point to the area.

2 So I did transport Alfred out to Litchfield to the area

3 where he said he threw the gun and he pointed to the

4 general direction where to look for the gun and I then

5 ~~transported Alfred back to the county jail.~~

6 Q Okay. So you go there for the purposes of confronting
7 him with the fact that you've got evidence now that
8 there's two guns?

9 A Yes, ma'am.

10 Q All right. And he gives you this statement that
11 indicates he did have possession of a different weapon?

12 A Yes, ma'am.

13 Q And I think -- what does he indicate he did?

14 A It says, I Alfred Walker was carrying a .25 automatic,
15 black with a brown handle. While in the store, I
16 actually shot Shawn, I think in the leg, but it was
17 accidental. Then we, Wallace and myself, had everyone
18 go to the back of the store, then Wallace shot Shawn,
19 then Josh, then we left and I through the gun behind
20 the backside of Litchfield. Then we caught a ride and
21 was stopped. After the .25 was shot, the gun jammed
22 and couldn't shoot.

23 Q So you've got this information, you're trying to --
24 what's your purpose when he's told you there's a .25,
25 ~~what are you trying to do, Investigator Martin?~~

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 A Well, we're trying to locate another gun.

2 Q Okay. And so you had him draw out where he said he
3 threw it?

4 A Well, we did it together, yes, ma'am.

5 Q All right. And then you actually, physically did what
6 with him?

7 A I transported him to that area and met with Chief Todd
8 Gantt and SLED Agent Carroll and many other officers so
9 Alfred could point to the area where he through the
10 gun.

11 Q And did he point to the area where he threw the gun?

12 A He pointed to the area where he said he threw the gun.

13 Q Okay. And when he pointed to the area where he said he
14 threw the gun, what did you do with the defendant,
15 Alfred Walker?

16 A Transported him back to the county jail.

17 Q And what did you and the various officers there -- what
18 did you do to that area where he said he threw the gun?

19 A After transporting Alfred back to the county jail, I
20 went back out there and assisted officers for several
21 hours in this area trying to locate this gun.

22 Q You say several hours, how many police were searching
23 that area?

24 A A lot.

25 Q We're talking hours?

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 A Yes, ma'am.

2 Q And were you lucky in locating that gun where he said
3 he through it?

4 A No, ma'am.

5 Q ~~Okay. And this is now -- this shooting occurs midnight~~
6 Wednesday, Thursday?

7 A Yes, ma'am.

8 Q Now we're talking Saturday. Saturday? I think ---

9 A Friday.

10 Q Friday?

11 A Late Friday, Friday evening.

12 Q And about how late do you work trying to locate this
13 gun?

14 A I think we stayed out there until dark.

15 Q Okay. All right. And did you find anything?

16 A No, ma'am.

17 Q All right. Did you call it quits for that day?

18 A No, ma'am.

19 Q What did you do?

20 A Later that night, I assisted the sheriff's office in
21 serving a search warrant out in the county.

22 Q Uh-huh. And was that at Horse Rat's?

23 A Yes, ma'am.

24 Q They had it on the transcript, Horse Rats, but it's
25 Horse Rat?

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 A Horse Rat.

2 Q And that is, for lack of a better term, a juke joint?

3 A Yes, ma'am.

4 Q Or kind of place out in the county?

5 A Yes, ma'am.

6 Q All right. Anything found there that could relate to
7 this crime?

8 A Not to my knowledge, no, ma'am.

9 Q All right. So now we're getting, how about the next
10 day, which I believe now is finally Saturday?

11 A Yes, ma'am.

12 Q How much sleep do you think you've had when you're up
13 to Saturday?

14 A Not much.

15 Q Okay. So Saturday, what are you doing?

16 A Saturday, I went to the jail to interview Lee Worthy.
17 And obtained a written statement from Lee. And while
18 obtaining this written statement, I was advised by an
19 center of the jail that Alfred Walker wanted to speak
20 with me.

21 Q All right. And were you feeling like you wanted to
22 talk to him?

23 A I had not pursued talking to him at this point. He had
24 sent message through the jail guard.

25 Q All right. So what did you do?

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 A I asked him to bring Alfred Walker up, but away from
2 Lee Worthy that I would go back and forth.

3 Q Okay.

4 A And when I met with Alfred, he asked me if he could
5 ~~write a letter to Shawn and I told him that was his~~
6 choice. He stated that he wanted to, so I advised
7 Alfred of his Miranda Rights and he signed the form
8 stating he understood his Miranda rights and wished to
9 waive them at that time.

10 Q Okay. So on Saturday, you filled out Miranda warnings.

11 MS. MORGAN: State's 7 and 8.

12 THE COURT: Any objection to State's 7 and 8
13 for identification only from the defendant?

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

15 THE COURT: All right. Which is 7 and which is
16 8, Solicitor?

17 MS. MORGAN: 7 I think would be the form, 8
18 would be the letter.

19 THE COURT: No. 7, which is entitled, these are
20 your rights, read carefully. Without objection No. 8,
21 letter of 10/21/2000 1:54 p.m., without objection. You may
22 proceed.

23 MS. MORGAN: All right.

24 THE COURT: For identification only.

25 ~~MS. MORGAN: Yes, sir.~~

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 By Ms. Morgan:

2 Q And Investigator Martin, you've got the -- you did not
3 initiate any contact with the defendant at this time?

4 A No, ma'am.

5 Q But when he said he wanted to talk to you, you filled
6 out the Miranda form, identified as State's 7?

7 A Yes, ma'am.

8 Q And even though you didn't initiate, you went through
9 the whole procedure with him again?

10 A Yes, ma'am, I did.

11 Q Went through the Miranda warnings, starting at the top
12 explaining his rights? Did he understand his rights?

13 A Yes, ma'am.

14 Q Did he acknowledge his waiver of his rights?

15 A Yes, ma'am.

16 Q And that's when he indicated he wanted to write a
17 letter to Shawn?

18 A Yes, ma'am.

19 Q All right. Did you ask him anything else?

20 A No, ma'am.

21 Q How did he write the letter to Shawn? Did he do this
22 in your presence?

23 A Some of it. I was going back and forth between he and
24 Lee Worthy and I saw him writing some of it, but I
25 cannot say I saw him write the entire thing. But he's

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 the one that gave it to me.

2 Q And did you -- this was on 10/21, at 1:53 p.m. Did you
3 do anything else with him after he told you he wanted
4 to write the letter?

5 A Okay. Well we discussed the letter. He said he wanted

6 to give the letter to me so I explained to him that I
7 would take the letter, but I would have to get
8 permission to give it to Shawn. I also explained to
9 him Shawn might not accept the letter. He stated he

10 understood and still wanted me to take the letter. I
11 took possession of the letter, went back to the area
12 where Alfred had told us where he threw the gun and
13 searched for the gun, but we were unable to find it.

14 Q Okay. And did he change -- did you talk to him at that
15 time about any, you know, they couldn't find the gun?

16 A No, ma'am, not ---

17 Q When Shawn's -- I don't know if you're following me.
18 But when Shawn -- I mean not when Shawn. When he got
19 the letter of apology to Shawn, did you ask him at that
20 time anything else? Did you ask him about ---

21 A No, this conversation was solely about the letter.

22 Q Okay.

23 A And I was dealing with Lee Worthy and this was just him
24 approaching me wanting to give me this letter.

25 Q Okay. Well, did you have a whole lot of patience with

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 him at that time?

2 A Yes, ma'am.

3 Q Okay. And so you got the letter and what did you do
4 with it?

5 A I took possession of the letter and then went back to
6 the area to continue looking for the gun.

7 Q All right. So you're still looking at the gun where he
8 told you it was. And did you have any luck on that
9 Saturday afternoon?

10 A No, ma'am.

11 Q All right. And did you finally call it a day or want
12 to call it a day on 10/21 a little after 4:00 in the
13 afternoon?

14 A Yes, ma'am.

15 Q I think the letter to Shawn, that was all before 2
16 o'clock?

17 A Right. Just before 2 o'clock.

18 Q All right. So you -- 2 o'clock you go back, search for
19 the gun some more. No luck. What did you decide you
20 were going to be doing?

21 A I decided I was going home.

22 Q Okay. And were you headed home?

23 A Yes, ma'am.

24 Q All right. And then what happened?

25 A I got a call on the radio from the county jail or from

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 someone. I think it was the county jail. It was the
2 county jail. They informed me that Alfred Walker
3 wanted to speak with me. And I turned around and went
4 back to the county jail.

5 Q All right.

6 A And met with Alfred. Alfred told me he was ready to
7 tell the truth about where he put the gun. I then
8 advised him of his Miranda Rights. He signed the form
9 stating he understood his Miranda Rights and wished to
10 waive them at that time. I then placed Alfred Walker
11 into my patrol car and Alfred stated he would take me
12 to the gun. This investigator informed other officers
13 of this and was met in the vicinity of Wal-Mart by
14 other officers. Alfred pointed to an area of where the
15 gun should be. Officers searched the area and located
16 the gun. I again advised Alfred of his Miranda Rights
17 and Alfred initialed his Miranda Rights on top of the
18 voluntary statement form, stating he understood his
19 Miranda Rights and wished to waive them at that time.
20 He then gave a voluntary written statement at that
21 time. I then transported him back to the county jail.

22 Q Okay. So, put me in sequence. You were on your way
23 home?

24 A Yes, ma'am.

25 Q You hadn't found any gun?

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 A No, ma'am.

2 Q All right. And when you got a call, Alfred wanted to
3 see you, I thought you'd just seen him?

4 A Shortly before, yes, ma'am.

5 Q All right, sir. So what kind of -- when you said he
6 told you he was ready to tell the truth, why did he
7 tell you that? I mean ---

8 A I don't know why he told me that.

9 Q Okay. Is this when you were at the jail when you
10 filled out a Miranda form, which I believe would be ID
11 No. 9?

12 MS. MORGAN: Without objection?

13 MR. WALTERS: Without objection, Your Honor.

14 THE COURT: State's Exhibit No. 9 admitted for
15 identification without objection which is Miranda form of
16 10/21/2000, 4:45 p.m.

17 MS. MORGAN: All right.

18 By Ms. Morgan:

19 Q On No. 9, you indicated at the -- he said he was ready
20 to tell the truth and take you to the gun?

21 A Yes, ma'am.

22 Q And that is after you -- and you made sure you filled
23 out a Miranda Rights at the Barnwell County Jail?

24 A Yes, ma'am.

25 Q And that was at 4:45 p.m.?

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 A Yes, ma'am.

2 Q And again, you went through his rights, you made him
3 acknowledge it that he understood it and that he waived
4 it by filling out the form?

5 A Yes, ma'am.

6 Q Did he appear to understand what you told him?

7 A Yes, ma'am.

8 Q Did he appear to -- did he clearly and unequivocally
9 ~~waive his rights to talk to you and show you where the~~
10 gun was?

11 A He did.

12 Q And at -- okay. And at any time, Investigator Martin
13 did you offer him any promises, in any way? Did you
14 threaten him, did you offer him any inducements? Did
15 you coerce him and use any violence or intimidation
16 against this defendant?

17 A None at all.

18 Q Okay.

19 MS. MORGAN: Give me one second. This is
20 State's 10.

21 By Ms. Morgan:

22 Q And Investigator Martin, tell me, were you ---

23 THE COURT: Any objection to State's 10 for
24 identification, Counsel?

25 MR. WALTERS: No, sir, Your Honor.

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 THE COURT: State's 10, which is the statement
2 of 4:55 p.m., 10/21/2000, Alfred Walker admitted for
3 identification without objection. You may proceed,
4 Solicitor.

5 By Ms. Morgan:

6 Q Then, if you would, Investigator Martin, you picked him
7 up at the jail. He says he's going to take you to
8 where the gun is?

9 A Yes, ma'am.

10 Q Tell us how you do that. What do you do?

11 A Well when he told me that, I read him his rights. We
12 load up in the car. I call the officers when we leave
13 the jail, tell them we're on the way back out there.
14 We get there, he points to an old shed on Litchfield
15 Road across the street from the Wal-Mart Plaza.
16 Officers go into that area of that shed and find the
17 gun and I then advised him of his Miranda Rights again.
18 And we did another statement.

19 Q All right. And is that the one that's been marked
20 identified for identification as Attachment 10?

21 A Yes, ma'am.

22 Q And where is this being written?

23 A It's on Litchfield Road.

24 Q You're literally write -- the shed where the gun is
25 found is right at the Wal-Mart Plaza or across the

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 little Litchfield Road in the thicket if you will?

2 A Yes, ma'am.

3 Q All right. And he goes right to the gun?

4 A Well, he points to it and the officers go right to it.

5 ~~Q All right. Was that in any way near the vicinity of~~

6 where you had been searching for the last couple of

7 days?

8 A No, ma'am.

9 ~~Q Okay. And once they found the weapon, you took this~~

10 statement from him?

11 A Yeah. Well, as soon as they gave me a hands up, we

12 started the statement.

13 Q All right. And did you -- had you found any other

14 items that you wanted to follow up with him and

15 question?

16 A Yes, ma'am. There had been some car keys found on top

17 of the Wal-Mart Supercenter on the end of the

18 Supercenter by Litchfield Road and we talked about that

19 and he said that -- well the question was where exactly

20 did Wallace throw the keys to Josh's car and he wrote

21 -- Alfred wrote, on top of the building, the last

22 section of Wal-Mart Supercenter.

23 Q All right. And then, so the writing on State's 10 is

24 his writing, the first paragraph and then you did some

25 quick follow up questioning?

Wayne Martin - Direct Examination In Camera by Ms. Morgan

1 A Yes, ma'am, two questions.

2 Q Okay. And again the handwriting on the first
3 paragraph, it's got his initials at the beginning and
4 the end. It looks like it?

5 A Yes, ma'am, he has his initials at the beginning of his
6 first paragraph.

7 Q And at the end?

8 A And at the end of the last answer, yeah.

9 Q And at the scribbles in between, there's ---

10 A Yes, ma'am.

11 Q Okay. And the two questions, the two Q's that are
12 written, that's your handwriting?

13 A Yes, ma'am.

14 Q Okay. And at any time during this exchange while
15 you're out in the car as he pointed to the gun, did you
16 threaten him in any way, coerce him in any way,
17 offer -- promise him anything, threaten him?

18 A No, ma'am.

19 Q Offer any hope of anything?

20 A No, ma'am.

21 Q Okay. Did you have any question that he understood
22 exactly what he was doing?

23 A There was no question.

24 Q Okay. And is that the end of your questioning of the
25 defendant, Alfred Walker?

Wayne Martin - Cross-Examination In Camera by Mr. Walters

1 A Yes, ma'am.

2 Q Thank you.

3 THE COURT: Cross-examination? -

4 MR. WALTERS: May it please the Court?

5 ~~THE COURT: Yes, sir.~~

6 CROSS-EXAMINATION - IN CAMERA

7 By Mr. Walters:

8 Q Officer Martin, at any time during the investigation
9 ~~did you have an opportunity to talk to Officer Pruitt?~~

10 A When I returned Wallace Priester back to Litchfield
11 Road, he approached me with the taped statement he had
12 of Alfred Walker.

13 Q At any time did Officer Pruitt inform you that Alfred
14 Walker did not want to talk anymore?

15 A He didn't tell me that, but I listened to the tape.

16 Q All right. So Officer Pruitt never informed you that
17 on four different occasions, Alfred Walker stated, I
18 don't want to talk anymore. I have nothing to say?

19 A I don't recollect Officer Pruitt telling me that, but I
20 did listen to the tape.

21 Q But there were a lot of police officers there, multi
22 jurisdictional?

23 A Yes, sir.

24 Q All right. And you're coming in from the Solicitor's
25 Office, is that correct?

Wayne Martin - Cross-Examination In Camera by Mr. Walters

1 A Right.

2 Q All right. And you had the Williston Police Department
3 come in? Is that correct?

4 A I had a Williston police officer with me during the
5 first interview with Wallace Priester.

6 Q All right. And you had Barnwell City Police Officers
7 there is that correct?

8 A At Litchfield Road?

9 Q Yes, sir.

10 A Yes, sir.

11 Q And then you had the Barnwell Sheriff's Department, is
12 that correct?

13 A At Litchfield Road.

14 Q All right. And all of you are officers that are sworn
15 to uphold the laws of the State of South Carolina, is
16 that correct?

17 A Yes, sir.

18 Q All right. And there was a common effort from all of
19 you to attempt to solve this crime?

20 A Yes, sir.

21 Q All right. And in this process, did anyone ever sit
22 down and say, this particular individual or these
23 individuals will conduct the interrogations?

24 A You mean like a meeting?

25 Q Yes, sir.

Wayne Martin - Cross-Examination In Camera by Mr. Walters

1 A Not to my knowledge, no, sir.

2 Q So there was no organizational meeting on these people
3 will conduct the interrogations, these people will
4 search the grounds, these people will go out and find
5 individuals that may be witnesses to what is going on?

6 A No, not to my knowledge, there was no meeting like
7 that.

8 Q All right. So essentially, I believe Officer Gantt was
9 over the city, is that correct?

10 A Yes, sir.

11 Q All right. But other than that, individuals were
12 doing, basically what they do in policing, is that
13 correct?

14 A Basically. Now, we would, you know, if he would direct
15 us, you know, as to what he wanted us to do or we would
16 ask him what he wanted us to do.

17 Q So if Alfred Walker invoked his Fifth Amendment right,
18 I don't want to incriminate myself, I got nothing to
19 say and he said it to someone from the city, would you
20 know about that?

21 A If he said it from someone in the ---

22 Q If he said it to a police officer in the city, you
23 wouldn't know anything about that because you're coming
24 from Aiken ---

25 A Right.

Wayne Martin - Cross-Examination In Camera by Mr. Walters

1 Q --- and you're with the Solicitor's Office?

2 A Right, yes, sir.

3 Q Right. And of course, if he said it to someone that
4 worked for the sheriffs Department, someone from the
5 city might not know that?

6 A He could have told any officers outside of my presence
7 anything, you know.

8 Q But it's your testimony that when you first saw Alfred
9 Walker, you approached him and said do you want to talk
10 to me. Is that correct?

11 A After returning Wallace Priester back to Litchfield
12 Road, I listened to the tape of Officer Pruitt and I
13 approached him at the car, yes, sir.

14 Q But you had no idea that he had told Officer Pruitt on
15 four different occasions, I don't want to talk anymore?

16 A I listened to the tape. I heard it on the tape.

17 Q All right. So then you had knowledge of the fact that
18 he said, I don't want to talk anymore?

19 A I had knowledge that he said that to Officer Pruitt.

20 Q Right. And when he said that to Officer Pruitt, even
21 after hearing that information, you proceeded to go and
22 ask Alfred Walker, do you want to talk to me?

23 A Right. I felt like there had been ample time that had
24 went by between him making that statement to Officer
25 Pruitt and between that time and then me approaching

Wayne Martin - Cross-Examination In Camera by Mr. Walters

1 him.

2 Q Well, let's talk about the time. What time is the
3 statement given to Officer Pruitt?

4 A It's in testimony, sir. I don't have it?

5 ~~Q Well, let me ask you this, how many hours or how many~~
6 minutes after the statement was given to Officer Pruitt
7 did you begin your process of interrogation?

8 A My process of interrogating Alfred Walker?

9 Q Yes, sir.

10 A From the time he did what now? I'm sorry.

11 Q Let me ask you another question.

12 A All right.

13 Q You went down to the jail and informed him, we've got a
14 weapon, is that correct?

15 A My first trip to the jail?

16 Q Yes, sir.

17 A I asked Alfred -- my first trip to the jail to see
18 Alfred Walker, I asked Alfred if he wanted to talk to
19 me and tell me about this incident.

20 Q All right. But your second trip to the jail, you told
21 him, we have a weapon, isn't that correct? After you
22 got the statement?

23 A My second trip to the jail ---

24 Q On 10/20?

25 A 10/20, thank you. I explained to him we had new

Wayne Martin - Cross-Examination In Camera by Mr. Walters

1 evidence and information on his part of the incident.

2 Q Did Alfred Walker call you and tell you to come out on
3 10/20/05 because he wanted to talk to you?

4 A No, on 10/20/2000, he didn't, no, sir.

5 Q So you went out there on your own initiative and said,
6 let's have a conversation?

7 A Yes, sir.

8 Q All right. So on two different occasions, you
9 initiated contact and you inquired?

10 A Yes, sir.

11 Q After hearing the tape from Officer Pruitt where Alfred
12 Walker stated, I don't want to talk anymore?

13 A Like I said, again, I thought there had been ample time
14 that had elapsed since he made that statement to
15 Officer Pruitt and the time that I approached him at
16 the car.

17 Q Well, let me ask you this, how long have you been a
18 police officer?

19 A How long have I been one?

20 Q Yes, sir?

21 A A little over 9 and-a-half years.

22 Q All right. And what do you consider ample time?

23 A Well, I tried to find out what ample time is and I have
24 been unsuccessful. My understanding of Miranda Rights,
25 my training on Miranda Rights is if they invoke their

Wayne Martin - Cross-Examination In Camera by Mr. Walters

1 right to remain silent, there has to be ample time
2 before you re approach them to question them. But
3 nobody can tell me what average time is.

4 Q But ---

5 A If he had ---

6 THE COURT: Let him finish his answer.

7 Proceed.

8 By Mr. Walters:

9 A If he had invoked his right to an attorney, I wouldn't
10 have approached him at all.

11 Q I don't want to interrupt you, are you through with
12 your answer?

13 A Thank you, yes, sir.

14 Q Well, isn't it true, also in your training, you were
15 also told that the defendant must voluntarily waive his
16 Fifth and Sixth Amendment right, isn't that right?

17 A Repeat that please?

18 Q The defendant must waive his rights before he will talk
19 to you, is that correct?

20 A Any defendant?

21 Q Yes.

22 A Yes, sir.

23 Q All right. So after hearing that information on the
24 tape as you heard the tape of Officer Pruitt. We're
25 sitting here with a transcript, but you heard the tape

Wayne Martin - Cross-Examination In Camera by Mr. Walters

1 that night?

2 A Yes, sir.

3 Q You can't tell me how much time passed between hearing
4 the tape and talking to Alfred Walker?

5 A I listened to the tape and then directly approached
6 Alfred Walker. Now how much time there had been from
7 the time he actually was on this tape and me

8 approaching Alfred Walker was a much longer time.

9 Q What time did you arrive at the scene?

10 A Which time?

11 Q The first time. Coming from Aiken?

12 A It was approximately 12:00 or 12:30. I don't have it.

13 Q 12:00 or 12:30?

14 A I don't have it with me.

15 Q What time did the robbery occur?

16 A According to incident report, they were dispatched at
17 2324 hours.

18 Q Right. And what is that in civilian time?

19 A 11:24 p.m.

20 Q 11:24. And you arrived at what time?

21 A I arrived on the scene approximately 12:30, 12:35 a.m.

22 Q Okay. All right. So we know what time you arrived and
23 you stayed -- you immediately went on and talked to
24 Alfred Walker, is that correct?

25 A No, sir. No, sir. You're talking about when I arrived

Wayne Martin - Cross-Examination In Camera by Mr. Walters

1 from Aiken right?

2 Q Right.

3 A No, sir, when I arrived from Aiken, I was approached by
4 Agent Carroll.

5 Q Uh-huh.

6 A And Chef Deputy Gantt to interview Wallace Priester.

7 Q How long did the interview take with Priester?

8 A Give me one second, please. I informed Mr. Priester of
9 his Miranda Rights at 1:13 a.m. on the 19th. And we

10 concluded his statement at 2:52 a.m. on the 19th.

11 Q All right, sir. After you concluded the statement, did
12 you then approach?

13 A I transported Wallace Priester back to Litchfield Road,
14 turned him over to the Barnwell City Police officers.

15 I was approached by Officer Pruitt with the tape,
16 listened to the tape and I approached Alfred Walker.

17 Q So a little after 3 o'clock then? I know you can't
18 say an exact time, but give an estimate. If you
19 finished at 25 ---

20 A There were so many days and so lack of sleep. If
21 you'll bear with me one second, I can give it to you.

22 Q Yes, sir.

23 (WHEREUPON Investigator Martin was looking
24 through his notes.)

25 ///

Wayne Martin - Redirect Examination In Camera by Ms. Morgan

1 By Mr. Walters:

2 Q You ready to proceed?

3 A Yes, sir. I concluded the statement with Wallace
4 Priester at 2:52 a.m.

5 Q Yes, sir.

6 A And returned to -- yes, sir, around 3 o'clock.

7 Q Okay. Around 3 o'clock?

8 A Yes, sir.

9 Q So the robbery occurs about 11:20, 11:30, then at 3
10 o'clock you conclude with Wallace Priester and then you
11 initiated contact with Alfred Walker?

12 A Right.

13 Q All right.

14 MR. WALTERS: Your Honor, I have no further
15 questions.

16 **REDIRECT EXAMINATION - IN CAMERA**

17 By Ms. Morgan:

18 Q Let me clarify something if I can. Officer Martin,
19 you're initial Miranda warnings of this defendant on
20 the 19th was at what time? I believe that's
21 State's ---

22 A My initial ---

23 Q State's Exhibit 5?

24 A Started at 4:43 a.m. and ended at 4:44 a.m.

25 Q Okay. And you're -- tell me -- and what was the time

Wayne Martin - Redirect Examination In Camera by Ms. Morgan

1 that you -- 4:43, that's when you'd taken him to the
2 courthouse? Picked him up from the jail and taken him
3 to the courthouse?

4 A No, ma'am -- 4:43 is when I get to the courthouse with
5 ~~him and start the Miranda.~~

6 Q All right. Guesstimate how much time it would take
7 from picking him up at the jail and bringing him to the
8 courthouse?

9 A 3 or 4 minutes.

10 Q Okay. It's not far?

11 A No, ma'am.

12 Q All right, sir. And did you do anything in between the
13 time you asked him, will you talk with me and he said
14 I'll see you at the jail? I'll be at the jail, come
15 see me?

16 A I'm sure I spoke with Chief Investigator Gantt and
17 informed him of what was going on and may have spoken
18 to other officers, but there was not a long period of
19 time between me approaching Alfred and reading his
20 Miranda Rights.

21 Q So if you had to guesstimate, 4:43, would you back it
22 up 15, 20, 30 minutes?

23 A You're talking about from the time I initiated the
24 contact with Alfred to the time I advised him of his
25 rights?

Wayne Martin - Redirect Examination In Camera by Ms. Morgan

1 Q Yeah. The initial after hearing the tape, approaching
2 him when he's getting in ---

3 A I heard the tape approximately 3:00 a.m.

4 Q Okay.

5 A I approached him right around that same time. So there
6 was some time -- they did some booking processing and
7 stuff, fingerprinting, all that at the jail. There was
8 a period of time between me approaching him and asking
9 if he wanted to talk to me and me going to the jail to
10 get him to talk.

11 Q All right. So it's past 3 when you talk to him at --
12 out at Litchfield after you brought Priester back?

13 A Yes, ma'am.

14 Q Because Priester's was concluded almost 3 o'clock,
15 right.

16 A Yes, ma'am.

17 Q Okay. And then you started initial talking to him and
18 Mirandized him again at 4:43?

19 A Right.

20 Q Okay. All right. And at any time from the very
21 beginning on the tape that you heard from Investigator
22 Pruitt, based on the time you talked to him at the car
23 when he was going to the jail, when you picked him up
24 at the jail, when you took him to the courthouse, when
25 you Mirandized him and talked to him, took notes, put

Wayne Martin - Redirect Examination In Camera by Ms. Morgan

1 him on the tape, went back and searched -- he showed
2 you where the gun was -- went back and pointed out the
3 begun?

4 MR. WALTERS: Your Honor.

5 By Ms. Morgan:

6 Q At any time ---

7 THE COURT: Just a moment.

8 What's the objection, Counsel?

9 ~~MR. WALTERS: Is there a narrative here or a~~
10 question here?

11 THE COURT: I will allow some leading in this
12 hearing, Counsel. I certainly gave you that leeway also.

13 Go ahead, Counsel, you may finish the question.

14 By Ms. Morgan:

15 Q At any time did this defendant ever indicate he wanted
16 a lawyer present?

17 A No, ma'am.

18 Q And at any time to you, Investigator Martin, did he
19 ever say he wanted to stop talking?

20 A No, ma'am.

21 Q And at any time did you promise him anything?

22 A No, ma'am.

23 Q Threaten him in any way?

24 A No, ma'am.

25 Q Coerce him?

Rodney Pruitt - Direct Examination In Camera by Ms. Morgan

1 A No, ma'am.

2 Q Use any physical force, threats?

3 A No, ma'am.

4 Q Okay. Thank you.

5 THE COURT: Recross Mr. Walters?

6 MR. WALTERS: I have no questions, Your Honor.

7 THE COURT: Very well. May this witness step
8 down?

9 MS. MORGAN: Yes, sir.

10 THE COURT: You may step down.

11 Solicitor, does the State intend to introduce
12 any further testimony in regards to the motion to suppress.

13 MS. MORGAN: Yes, sir, just potential, Your
14 Honor.

15 The State would quickly like to call Rodney
16 Pruitt back up to get the time frame, Your Honor.

17 THE COURT: Mr. Pruitt, you're still under
18 oath, if you'd come around and have a seat on the witness
19 stand, please.

20 MR. PRUITT: Yes, sir.

21 **DIRECT EXAMINATION - IN CAMERA**

22 By Ms. Morgan:

23 Q Investigator Pruitt, could -- you said you arrived at
24 Litchfield and Dunbarton a little -- sometime after
25 12:00?

Rodney Pruitt - Direct Examination In Camera by Ms. Morgan

1 A I don't think I actually got the call until 12:36.

2 Q Closer to 1:00?

3 MR. WALTERS: Your Honor, I object.

4 By Ms. Morgan

5 Q What time was it?

6 THE COURT: Sustained. Rephrase your question,

7 Counsel.

8 By Ms. Morgan:

9 Q Tell us the time frame in terms of talking to and
10 taping the defendant, Alfred Walker?

11 A As an investigator, I'm sorry to say, we didn't put
12 that on the tape, but I would say my best guess would
13 be about 1:20 when I would have started any discussion
14 with Mr. Walker.

15 Q All right. And do you have any idea when you finished?

16 A Ever how long the tape is. I don't know. 8 or 12
17 minutes, whenever it took for us to get to where he
18 didn't want to talk anymore.

19 Q And after you finished with Mr. Walker, did you
20 interview somebody else?

21 A Yes, I did. I interviewed the second party that was
22 sitting on the ground.

23 Q And who was that second party on the ground?

24 A I apologize again. Not bringing my notes, I didn't
25 know I was going to be recalled. But all I can tell

Rodney Pruitt - Direct Examination In Camera by Ms. Morgan

1 you is there were two parties on the ground. I
2 interviewed Mr. Walker and then I interviewed on tape
3 another suspect.

4 Q All right. And did -- and did you make a tape of the
5 next person that you interviewed?

6 A Yes, ma'am.

7 Q And did you get that tape transcribed?

8 A Yes, ma'am. Mr. Walker, at some point in our
9 interview, you know, said something about who this
10 other person was. My memory wants to say Lee Worthy,
11 but I just don't have any notes to reflect that. And I
12 asked him, is that Lee, if that's who it is, on the
13 ground by the car. And he said, yeah. And I said,
14 well, okay. Once I got done with him, I interviewed
15 the other person.

16 Q All right, sir. And did you have a tape of that
17 person?

18 A Yes, ma'am.

19 Q And has that been transcribed?

20 A Yes, ma'am.

21 Q And have you read it? Does it contain a time?

22 A I haven't read it.

23 Q You haven't ---

24 A My conversation with Lee Worthy, I have never read.

25 MR. WALTERS: Your Honor, I'm going to object.

1 MS. MORGAN: All right. I will do it a
2 different way.

3 Thank you, Officer Pruitt. I don't have
4 anything further.

5 THE COURT: Cross-examination?

6 MR. WALTERS: No, sir, Your Honor.

7 THE COURT: You can step down.

8 MR. PRUITT: Yes, sir.

9 MS. MORGAN: There are no further questions,
10 Your Honor. No further witnesses.

11 THE COURT: Does the State -- no further
12 witnesses from the State.

13 Does the defendant intend to introduce any
14 witnesses at this time in support of the motion to
15 suppress?

16 MR. WALTERS: May it please the Court, Your
17 Honor, after consulting with our client, we do not want to
18 present any witnesses.

19 THE COURT: Very well. I'm going to take a
20 short break at this time while I consider this. I'll come
21 back and let you have argument on the motion and then I
22 will rule on it. We'll take 5 minutes.

23 MR. WALTERS: Thank you, Your Honor.

24 MR. GRANT: Thank you, Your Honor.

25 ~~(WHEREUPON a short recess was observed.)~~

1 THE COURT: All right. Mr. Grant, Mr. Walters,
2 this is your motion. The State tells me they have no
3 further testimony. I'll be happy -- which one of you is
4 going to argue?

5 MR. GRANT: Mr. Walters.

6 THE COURT: Mr. Walters, I will be happy to
7 hear from you. This is the motion of February 28, 2005, to
8 suppress statements.

9 MS. MORGAN: May it please the Court.

10 THE COURT: Yes, sir.

11 MR. WALTERS: Your Honor, in this particular
12 case, it is clear that there was a multi jurisdictional
13 effort with regards to the Sheriff's Department, the city,
14 also the Williston Police Department attempting to solve
15 this crime. All individuals involved, working as agents
16 for the State of South Carolina, attempting to enforce the
17 laws. It is clear that there was no organizational
18 management with regards to that issue. It's a tough job,
19 small town. Three people had been shot, two homicides in
20 this particular case. If we look carefully at the
21 testimony, there was no hierarchical meeting to establish
22 who was supposed to do what.

23 And in this particular case, we start with
24 Officer Pruitt. Officer Pruitt, in his testimony, first of
25 all, I'd like to deal with his understanding of Miranda.

1 And of course, what he did was, he simply stated first of
2 all, that he wanted to define what an interrogation is. Of
3 course in this particular case, we went through the process
4 of, number one, Alfred Walker was placed in custody. He

5 ~~was not an individual that was simply standing out on the~~
6 street; number two, in addition to being placed in custody,
7 after being placed in custody, questions, inquiries were
8 made with regards to what happened at the Sonic.

9 ~~Officer Pruitt at this time said, well I don't~~
10 know if I was conducting an interrogation. I said, well
11 you weren't talking to an individual on the street. If
12 someone had robbed the local Piggly Wiggly, you'd talk to
13 an individual that's a witness and you simply take a
14 report. In this particular case, this individual was
15 handcuffed, placed in front of a police car and there was
16 an interrogation going on.

17 Second of all, Officer Pruitt in his testimony,
18 he attempted to co-mingle the Fifth Amendment of the United
19 States Constitution with the Sixth Amendment of the United
20 States Constitution. His understanding of Miranda was that
21 you have to invoke your right to remain silent so you would
22 not incriminate yourself and in addition to that, you must
23 also ask for an attorney. And clearly the case law does
24 not indicate that. It does not state that you must invoke
25 ~~your Fifth Amendment right and your Sixth Amendment~~

1 right ---

2 THE COURT: You have a case you want to cite to
3 the Court?

4 MR. WALTERS: May it please the Court?

5 THE COURT: Yes, sir.

6 MR. WALTERS: Your Honor, the first case that
7 I'll cite is a statement obtained as a result of a
8 custodial interrogation is inadmissible unless the suspect
9 was advised of and voluntarily waived his rights under the
10 law. And this is Miranda V. Arizona, 284, U.S., 436, 1966.
11 The record is replete. And I will go through ---

12 THE COURT: Yes, sir, I'm familiar with the
13 Miranda case. I'm familiar with the Miranda case. Are you
14 citing me a case in which you're telling me case law is
15 replete with the fact that if you invoke your Fifth
16 amendment privilege against self-incrimination?

17 MR. WALTERS: Yes, sir.

18 THE COURT: As opposed to your Sixth Amendment
19 right to Counsel, that case law is replete on that issue?

20 MR. WALTERS: Yes, sir.

21 THE COURT: Tell me what cases you're referring
22 to.

23 MR. WALTERS: Your Honor, when a suspect
24 invokes his right to remain silent, and I'll simply cite
25 the case, law enforcement officers must scrupulously honor

1 it. And I'm referring to ---

2 THE COURT: I agree they must scrupulously
3 honor if you invoke your constitutional right. What case
4 are you referring too?

5 ~~MR. WALTERS: I'm referring to Michigan vs.~~
6 Moseley. Moreover, this case does not state that you
7 must ---

8 THE COURT: Give me a cite, would you, Counsel,
9 so I can ---

10 MR. WALTERS: Michigan vs. Moseley, 423, U.S.,
11 96, 1975. This case does not state that you must invoke
12 your Fifth Amendment and Sixth Amendment right. It just
13 simply says that you must invoke your right to remain
14 silent. And of course the words they use are the officer
15 must scrupulously honor.

16 THE COURT: I agree. Those are the words of
17 that opinion.

18 MR. WALTERS: Your Honor, in addition to that,
19 if I could continue to move through my analysis of this
20 particular officer, he then went on and stated, in addition
21 to requiring the two to be co-mingled together, which we
22 believe is incorrect, we then state, well when does someone
23 invoke their rights and he said, well, I have to look at
24 what they say. And we said, well simply turn to page 12.
25 The first time that Alfred Walker invoked his rights, he

1 said, I don't want to talk no more. And that's on page 12,
2 line 13 of the transcript with regards to Officer Pruitt.
3 In that particular case, I inquired of Officer Pruitt, what
4 does that mean to you? Does that mean that someone does
5 not want to talk.

6 Now, it's my understanding in dealing with
7 police officers, when they tell me to stop, I have to
8 understand the plain meaning of what they say. If an
9 officer says sit down and I have to sit down, I don't
10 simply inquire and say what do you mean sit down. What do
11 you mean by stop. Moreover, our Supreme Court has
12 addressed that issue about what does a person mean by what
13 they say. And I will cite this case, it simply says
14 talismanic incantation is not required to satisfied
15 Miranda. And that's State vs. Fred Singleton, 326 SE 2nd
16 153, 1985.

17 Our Supreme Court has sat down and said, you
18 don't have to sit down and come up with some type of reason
19 as to why you want to invoke your Miranda Rights. You
20 don't have to say any type of magic words. No talismanic
21 incantation is required. The plain meaning of what you say
22 is what is applicable. And in this particular case, the
23 second time he invoked his right is on page 12, line 16.
24 What do you mean you don't want to talk no more. Line 16.
25 I don't. It goes onto state online 18, no man, because,

1 excuse me, sir, I'm doing a lot of talking and I don't
2 know. Man I don't know, huh-huh, no man, this ain't right
3 here. I shouldn't even have to go through all this.

4 Again he's unequivocal in his statement, saying
5 ~~look, I simply don't want to talk anymore. Page 13, line~~

6 13. He simply says, I don't want to talk no more. Again
7 the talismanic meaning of this is not required. He just
8 simply has to use the plain language. Page 14, line 9, it
9 ~~goes onto state, I don't want to say anything else, sir.~~

10 I'm sorry, Your Honor, that's line 17. That's on five
11 different occasions, where this particular individual
12 simply said, I don't want to talk anymore.

13 Now, Your Honor, in addition to defining what
14 an interrogation is and a co-mingling of a Fifth and Sixth
15 Amendment and the plain meaning of the law, Officer Pruitt
16 admitted under -- while on the stand, on page 3, if at any
17 time you want to stop talking, all you've got to do is say
18 hey, I have said enough. I don't want to say no more. Do
19 you understand. And on five different occasions Alfred
20 Walker, the plain meaning of what he said was, I don't want
21 to talk anymore.

22 We then move to officer Martin, because what
23 this case is really about is the unfettered discretion of
24 police officers. And that's what Miranda is designed to
25 address. They cannot define what stop means, they cannot

1 define what go means, they must use a plain language of
2 what's available. That cannot co-mingle the Fifth and
3 Sixth Amendment and most importantly they can't define what
4 an interrogation is.

5 And it's clear in this case, there was a
6 custodial interrogation. Someone was arrested, they were
7 detained and they were being questioned by a police
8 officer. We then move to Officer Martin and Officer Martin
9 in this particular case, we don't have to sit down and
10 wander or somehow guess or engage in speculation or
11 conjecture as to whether we can impute what Officer Pruitt
12 knew to, did officer Martin know that. No. He admits on
13 the stand, I heard the tape. I was aware of what was said.
14 He listened to it. He clearly states that he listened to
15 all of that testimony on the tape that Officer Pruitt had
16 on the tape. And he carefully listened to it and then he
17 turned around and he says do you want to talk to me. Again
18 he began the interrogation process. And in this particular
19 case, it's an interesting process.

20 THE COURT: What time period, do you argue to
21 this Court, Mr. Walters, occurred from the testimony I've
22 just heard between the time the first tape was given, which
23 in my recollection of the testimony was it took 8 or so
24 minutes, maybe 10 and that it started approximately at 1:20
25 a.m. and the second questioning began sometime after 3:00

1 a.m. Would you agree we're talking about a period of at
2 least 1 hour and a half or 90 minutes?

3 MR. WALTERS: May it please the Court, Your
4 Honor, I'll just simply use the testimony of Officer
5 ~~Pruitt, the person who took the tape.~~

6 THE COURT: Well, that's what I'm asking.

7 MR. WALTERS: His testimony was, I guess. I
8 think around 1:20. He was not sure. He was not sure as to
9 what time the tape ---

10 THE COURT: But it's the only testimony I have
11 for purposes of this hearing.

12 MR. WALTERS: Right.

13 THE COURT: If it took 8 to 10 minutes and he
14 said we'd have to look at the length of the tape because
15 there is no time on the tape, you recall that?

16 MR. WALTERS: Yes, I understand.

17 THE COURT: All right. And if it began at
18 1:20, approximately, a.m., and it ended no later than 1:30
19 and sometime shortly after 3:00 a.m. was the testimony from
20 the next witness, Mr. Martin, then you would agree then
21 that we're talking about a minimum period of time of 90
22 minutes?

23 MR. WALTERS: Your Honor, I would not agree.

24 THE COURT: All right. Then tell me why.

25 MR. WALTERS: Officer Pruitt could not give us

1 an exact time. Officer Pruitt is required to give personal
2 knowledge of what he is aware of. His testimony was I
3 don't really know. A person's Fifth Amendment right does
4 not fade with time. And in this particular case, this
5 officer could not offer testimony with regards to exactly
6 what time the taping occurred. All he can state is I know
7 how long it took to make the tape. But he never could give
8 us exact testimony about what time it occurred.

9 Officer Martin, he could give us some time. He
10 stated he arrived around 3 o'clock and, thereafter, 3
11 o'clock he initiated this conversation with Alfred Walker.
12 His testimony is clear. The testimony of Officer Pruitt in
13 this particular case is, he's not exactly sure. So I will
14 not concede that there was a 90 minute period of time. I
15 will concede that it took 8 or 10 minutes to take the tape
16 and conduct the taping process, but as far as the time as
17 when the tape was conducted we don't know. And this
18 witness who conducted the taping has never offered any
19 testimony with regards to what time he conducted this
20 process. But nevertheless, Officer Martin had actual
21 knowledge that there was a refusal by Alfred Walker. He
22 invoked his Fifth Amendment right. He simply stated, I
23 don't have anything else to say. I don't want to talk
24 anymore.

25 Officer Martin testified he heard it on the

1 tape. He was aware of it. I'd like to draw an analogy
2 here. Officer Pruitt, if he continued to question Alfred
3 Walker, would be in violation of Miranda. There's no
4 difference because Officer Martin drove from Aiken and he
5 ~~listened to the tape, he had actual knowledge. And then he~~
6 began the interrogation process. Moreover, we question
7 Officer Martin and say, what is an ample period of time?
8 What does your training, your knowledge tell you? And what
9 ~~did he say? I don't know. No one's ever told me. So we~~
10 have one officer that believes that the Fifth and Sixth
11 Amendment should be co-mingled and we shouldn't use the
12 plain meaning of what people say and he's not sure what an
13 interrogation process is. And we have another officer that
14 comes in and says, I listened to the tape, had actual
15 knowledge, but I wasn't sure about what actual time period
16 it was, but I continued any way.

17 All agents working for the same common goal
18 arising out of the same circumstances and events, all
19 attempting to enforce the laws of the State of South
20 Carolina. In addition to that, after he heard the tape, he
21 proceeded forward and said, do you want to talk to me. And
22 of course, I'll cite the cases that simply say that the
23 defendant has to initiate that process. It cannot be
24 initiated by law enforcement.

25 THE COURT: Are you telling me, Mr. Walters,

1 that it's your position that at no period of time since
2 you're arguing to me for purposes of argument the time is
3 unclear. Are you telling me there's no period of time
4 under case law in this country in which an officer after a
5 Fifth Amendment right is invoked can attempt to talk to a
6 defendant about an ongoing investigation? And if so, tell
7 me what case you're relying on for that proposition.

8 MR. WALTERS: It is our position, Your Honor,
9 that in this particular case, Officer Pruitt has offered no
10 testimony about what time he began taping.

11 THE COURT: I'm past the time issue,
12 Mr. Walters. I'm asking -- you said case law is clear.
13 I'm asking you to tell me what case you rely on that says
14 no officer under no period of time can come back.

15 MR. WALTERS: All right. I will refer to
16 Michigan vs. Moseley.

17 THE COURT: The same case you cited to me
18 earlier?

19 MR. WALTERS: Yes, sir.

20 THE COURT: All right.

21 MR. WALTERS: Your Honor, in this particular
22 case, Officer Martin then moved forward. He then
23 approached the defendant, do you want to talk to me. And
24 in this particular case, I inquired and said, well who else
25 heard you say this. He said well there were some officers

1 from the city, I can't remember who it is, but I heard
2 Alfred Walker say to me, I believe the words were, you
3 know, I will be at the jail, come by and see me. And of
4 course, I said, well you were aware of this tape with

5 ~~Officer Pruitt. He said, yes, I am. He then approached~~
6 him in this particular case, there's been no other
7 testimony to substantiate that Alfred Walker initiated some
8 type of contact with Officer Martin in this particular case
9 ~~other than the fact that he says he initiated some contact~~
10 with him.

11 Now, Your Honor, under the circumstances ---

12 THE COURT: Well now that's not completely
13 correct, Mr. Walters. There is testimony that later on,
14 that I heard today, Mr. Walker did, in fact, initiate
15 contact with officers. So are you referring just to the
16 statement which I have called previously for purposes of
17 the record the 5:32 a.m. statement, Mr. Walters?

18 MR. WALTERS: My argument is that when he
19 invoked his Fifth Amendment right to remain silent, it
20 carried over with regards to each and every conversation.
21 There was a multi jurisdictional effort going on here and
22 no one was in charge of what the other person was doing.

23 THE COURT: You don't concede for purposes of
24 this argument that your client did initiate contact with
25 ~~law enforcement subsequently on his own.~~

1 MR. WALTERS: Your Honor, what I will concede
2 is that my client initiated his Fifth Amendment right and
3 because there was little organization where they had maybe
4 two people that would handle the interrogation ---

5 THE COURT: I understand your argument,
6 Mr. Walters, I want you to answer any question. My
7 question is do you not concede for purposes of this
8 argument, that your client subsequently did, in fact,
9 initiate contact with law enforcement rather than law
10 enforcement initiating contact with him?

11 MR. WALTERS: Your Honor, I will not concede
12 that.

13 THE COURT: Very well.

14 MR. WALTERS: Your Honor, if I could continue
15 my argument?

16 THE COURT: Yes, sir.

17 MR. WALTERS: It's sort of a carry-over theory.
18 The problem you have here is that if you've got five or ten
19 people, they've got a tough job. A serious crime has
20 occurred. The problem is, is there's no organizational
21 management here. And if you've got numerous people in and
22 out, attempting to talk with defendants, in this particular
23 case disorganization, tapes being passed among people and
24 they attempt in this process to do their job, but the
25 Constitution says this unfettered discretion on the part of

1 law enforcement is prohibited. And in this particular
2 case, they dropped the ball. They've got a tough job, but
3 they dropped the ball in this particular case.

4 THE COURT: So it's your argument, then,

~~5 Mr. Walters, to the Court for purposes of this motion~~

6 and that being the February 28, motion, that once, as you
7 argue to me, the Fifth Amendment privilege is invoked,
8 which you argue to me was done during the 12:37 a.m. tape
~~9 that we have the transcript of. I believe the transcript~~
10 is actually State's 2 for identification, then you believe
11 all subsequent statements after that are inadmissible
12 because of the invocation of the Fifth Amendment and you do
13 not concede that your client initiated any contact to law
14 enforcement for purposes of that argument, is that a
15 summary of what you're telling me?

16 MR. WALTERS: Yes, sir, Your Honor. And in
17 addition to that, I'll give a simple analogy. And the case
18 I'm referring to is Minnick vs. Mississippi, 498, U.S. 146.
19 It simply says, when Counsel is requested after Miranda,
20 interrogation must cease and officials may not reiterate
21 interrogation without counsel present. Whether or not the
22 accused has consulted ---

23 THE COURT: Is there a difference between the
24 invocation of your Sixth Amendment privilege, right to
~~25 counsel as far as whether you can initiate again without~~

1 Counsel present and an invocation of your Fifth Amendment
2 privilege, the right to remain silent without counsel
3 present? Isn't that what that case says, because that case
4 dealt with the Sixth Amendment which required the presence
5 of counsel?

6 MR. WALTERS: Your Honor, it's our position
7 that if you invoke your Fifth Amendment right, the
8 interrogation ceases. If you invoke your Sixth Amendment
9 right, the interrogation ceases.

10 THE COURT: Is it also your position that if
11 you invoke your Fifth Amendment right there can be no
12 further interrogation at any time?

13 MR. WALTERS: Yes, sir.

14 THE COURT: Under any circumstances?

15 MR. WALTERS: Under any circumstances.

16 THE COURT: Do you have any case law to support
17 that proposition, Mr. Walters?

18 MR. WALTERS: Sure, Your Honor, I would simply
19 go back to when a suspect invokes his right to remain
20 silent, the Fifth Amendment, law enforcement officers must
21 scrupulously honor it, Michigan vs. Moseley, 423, U.S., 96,
22 1975.

23 THE COURT: Very well. I think I understand
24 it. Thank you very much.

25 MR. WALTERS: Yes, sir.

1 THE COURT: Solicitor?

2 MS. MORGAN: Please the Court, Your Honor. I
3 respectfully disagree with Mr. Walters opinion. First of
4 all, Your Honor, I think we have to look at the totality of
5 ~~the circumstances that surround the initial -- and I think~~
6 in this case in all candor to the Court, it would be
7 appropriate to describe the taped interview of Mr. Walker
8 as one initiated by the subject to an officer who clearly
9 ~~does not think he's even interrogating because what does he~~
10 say candidly to the Court? I don't know nothing.

11 In fact, the only thing he knows is that these
12 guys want to talk to him. There's some double murder. He
13 doesn't even know if they're related. In fact, that's what
14 he's questioned about. Do you know anything? The only
15 thing he knows with this individual that comes to mind is
16 that he finds a cartridge in his pants. That's all he
17 knows. And he gets -- at this defendant's initiation, gets
18 him in the car and what does he do? He tapes it. He tapes
19 it. So there's no question we know what's going on. And
20 we've got the look at the whole tape, as a whole. He gets
21 him in the car. He's Mirandized him out sitting on the
22 ground. He Mirandizes him again and what I think we hear
23 from Investigator Pruitt is, you know, he's telling me this
24 stuff, he talks to me about all kinds of stuff.

25 And then when there becomes a problem, I don't

1 want to talk. He goes, all right. Now as I was
2 searching ---

3 THE COURT: You're referring to page 12?

4 MS. MORGAN: Yes, sir.

5 THE COURT: Let the record reflect the
6 solicitor is referring to page 12 of State's Exhibit 2.

7 MS. MORGAN: Yes, sir.

8 THE COURT: Proceed what line?

9 MS. MORGAN: It's really, the original, 10, 11,
10 and 12. Your Honor, he says he doesn't know anything, that
11 one thing he does know as Investigator Pruitt says is I
12 know I found a cartridge in your pants pocket and he
13 describes to you that at that juncture in the questioning,
14 he goes, as I was searching you just a minute ago I found a
15 cartridge casing. And he goes, I don't want to talk. And
16 he clarifies, what do you mean you don't want to talk to
17 me? Can I finish my question.

18 In fact, if you look at it, Officer Pruitt,
19 listen to me, I realize we've got one or two dead people in
20 the building, is there anything you can tell me. He goes
21 away. He doesn't even talk anymore about any bullet. He's
22 just going back to, does anybody know anything about this
23 situation. Is there anything you can tell me about it and
24 what happens? This defendant starts talking. In fact,
25 Officer Pruitt doesn't even really do a whole lot more

1 questioning. He just goes all right, all right. He
2 realizes he's saying he wasn't back at Sonic and he ends
3 the conversation.

4 He doesn't overcome his will. He doesn't do
5 ~~anything to him. He doesn't really get anything more~~
6 incriminating whatsoever. He just says he clarifies that
7 he doesn't want to talk about it and he gives him a
8 cigarette at the end. And ---

9 ~~THE COURT: For purposes of this, do you agree~~
10 that on the transcript -- and I'm looking at State's
11 Exhibit 2, for identification, page 12, at line 13, the
12 defendant says, I don't want to talk no more?

13 MS. MORGAN: Yes, sir.

14 THE COURT: You agree that that is an
15 invocation of his Fifth Amendment right?

16 MS. MORGAN: I think that the officer has a
17 right to clarify if that is indeed an unequivocal
18 invocation of his Fifth Amendment right.

19 THE COURT: Do you have some case law to
20 support that proposition?

21 MS. MORGAN: Yes, sir, I handed that up to you,
22 Your Honor.

23 THE COURT: Is this the case you handed me, the
24 State vs. Benjamin?

25 ~~MS. MORGAN: Yes, sir, it really addresses the~~

1 whole concept of re interviewing someone that's invoked
2 only their Fifth Amendment right. And I think, Your Honor,
3 I'm kind of proud of the law enforcement agency -- agents
4 that testified because they said there is no specific time
5 that they're aware of that there is some golden rule of is
6 it a half an hour, is it 30 hours, what's the time frame.
7 The Courts aren't always consistent about it, but I believe
8 the case that I handed up to Your Honor and made a copy of
9 for the State is fairly insightful.

10 But let me go in -- I want to finish what my
11 argument was. I think Investigator Pruitt says, he talks
12 about the bullet, he waits a minute to clarify, he at least
13 wants to say so you didn't go back to Sonic. He clarifies
14 it. He honors his right. He realizes it's unequivocal.
15 He doesn't in questioning, he doesn't try to overcome him,
16 his will in any manner after that juncture. He leaves the
17 bullet alone and just winds down the conversation just --
18 in fact, most of the talking is done, not at the
19 questioning of Pruitt if you look at it at the totality of
20 the circumstances. And he ends it. There's nothing going
21 on.

22 My -- the question then becomes, if he has
23 invoked his right, was it honored? Yes I think it was
24 honored. I think they gave an opportunity to clarify it.
25 They clarified it, they stopped. In fact, they were good

1 enough to share that it wasn't -- I didn't talk to him, I
2 didn't know what it was. They got a tape, they want him to
3 hear the tape, here it is. The officers know it's not a
4 Sixth Amendment right because I'm confident of the law of
5 ~~this United States. We all agree that if it was Sixth~~
6 Amendment, got to have a lawyer present, can't do it. I
7 believe that and I think there is no testimony anywhere
8 that any Sixth Amendment of this defendant was violated in
9 ~~any manner because he's never even invoked it.~~

10 The only thing, Your Honor, is overwhelmed with
11 is that he is clearly advised at each juncture he has a
12 right to have an attorney present with him for questioning
13 at any and all junctures. Going to the question, once he
14 invoked the right to silence on the first statement, what
15 about any subsequent statement. That's where Benjamin
16 comes into play. In this case, our own Agent Kenny Mears,
17 who's not here, but he's legendary in certain parts of this
18 State. And Your Honor, in that case, I believe it was one
19 hour that was found sufficient to be sufficient time.

20 THE COURT: One hour and 40 minutes, Solicitor,
21 in that case.

22 MS. MORGAN: I thought it said -- well it
23 came -- I read -- I thought it was 1 hour.

24 THE COURT: Well we were looking at the Florida
25 case I had.

1 MS. MORGAN: Well I was looking at ---

2 THE COURT: It was 1 hour in Benjamin?

3 MS. MORGAN: Yes, sir, on page 4, approximately
4 at the Jackson vs. Denno, the sheriff testified at 1:30 and
5 Kenny Mears went in at 2:30. That's 1 hour based on my
6 math class.

7 THE COURT: You're correct, it does.

8 MS. MORGAN: Your Honor, also, in this case,
9 although Mr. Pruitt might not have exact times, it is clear
10 to me and I think we can all agree that the finishing of
11 the statement of Mr. Walker occurred give and take 1:15 to
12 1:45 and that Mr. Martin did not come back to the scene and
13 listen to the tape or have any discussions until after
14 3:00. And that he clearly did not initiate any actual
15 conversation with him until 4:40 at the jail. And that he
16 did not overcome his will. He did not do anything other
17 than ask him, if you didn't want to talk to him, will you
18 talk to me.

19 THE COURT: Let me ask you about that because
20 of the argument that Mr. Walters made, Solicitor.
21 Mr. Walters wants -- I asked him about the time.
22 Mr. Walters' argument to me was time was unclear,
23 particularly in the light of the testimony of Mr. Pruitt.
24 It's clear that Mr. Martin testified that he went to see
25 Mr. Walker shortly after 3:00 a.m. You agree that that was

1 his testimony?

2 MS. MORGAN: He saw him as they were putting
3 him in the car sometime after 3:00 because he was bringing
4 Priester back and the tape was played and it was after 3:00
5 ~~when he approached him in a car as he -- as Walker was~~

6 being placed in the car, he asked him, you didn't want to
7 talk to him, do you want to talk to me. Alfred, do you
8 want to talk to me. He said, I'll see you at the jail, or
9 ~~whatever the exact phrase was, but I will see you at the~~
10 jail, come see me.

11 There's even a question whether he initiates it
12 by saying look, I will be at the jail, come see me. Okay.
13 So I believe, my understanding of the time frame is that
14 it's after 3:00. So that's an hour and-a-half at least.
15 And then, not questioned. He says, I will be at the jail
16 come see me. Then it's after 4:40 when he gets at the jail
17 and what does he do? He scrupulously makes sure he is
18 advised of each and every Miranda right and he makes sure
19 that he's scrupulously understanding it and waives it and
20 signs it and protects it and continues to do so.

21 He brings him up here, he makes him sign it, he
22 makes him sign his name, he makes him date it. He tapes it
23 and at no time is there any invocation of his right to
24 remain silent. In fact, the person in charge of all these
25 ~~interrogations is sitting right over there. Mr. Walker is~~

1 clearly in charge of everything as he's going and he is
2 thinking the whole way. And Judge, my belief that the
3 State -- the law in this State and these United States, if
4 I'm reading these cases correctly, Benjamin was an hour.
5 They reference on page 6 -- cases now, I'm not saying we
6 always want to quote Minnesota, but there was a 20 minute
7 lag in one that -- 20 minutes after invocation of a right
8 and involving the same crime. That was upheld. They list
9 in page 6 of the State -- an analysis of the second
10 interrogation is not render it unconstitutional simply
11 because it involves the same subject matter discussed
12 during the first interview.

13 THE COURT: You agree that Mr. Walters is
14 correct that this Court's issue should be whether or not if
15 there was an invocation of the Fifth Amendment privilege
16 that it was scrupulously honored by law enforcement, if it
17 was invoked.

18 MS. MORGAN: Yes, sir, it was clear and
19 unequivocal. That's your analysis. It's got to be clear
20 and unequivocal. And that's why I believe, they have the
21 right to clarify and in this case, they clarified, got just
22 a few more answers and really didn't question much at all
23 and ended it, gave him a cigarette. Ended it. So they
24 honored it. And I think the State's case -- the case of
25 the State vs. Franklin Benjamin puts it the best way. It

1 also quotes some United States Supreme Court, U.S. vs.
2 Shawensla or something, Judge. It says the
3 constitutionality of subsequent police interview depends
4 not on its subject matters, but whether the police in
5 ~~conducting the interview sought to undermine the subjects~~
6 resolve to remain silent. And it's clear he did not have
7 any resolve to remain silent. His rights were scrupulously
8 honored at every juncture. He was initiating some. He was
9 playing them.

10 I mean, come on, he gives them a bogus location
11 for the gun. He lets them go and search one place for a
12 while until they come back and then he writes his Dear
13 Shawn, oops I didn't mean to shoot you in the leg. This is
14 not somebody's will that has been undermined and the
15 totality of the circumstances which Your Honor is governed
16 by under State vs. Kennedy is the totality of
17 circumstances. He did not unambiguously invoke his right
18 -- I mean he did not use Counsel, so there's no question of
19 his Sixth Amendment right. Once Miranda was waived, it's
20 clear his will is not overborne and his capacity to
21 critically decide when and what to do is clear. This
22 defendant had the wherewith all and understood exactly what
23 he was doing and the subsequent Miranda warnings, waivers,
24 rights and statements to the law enforcement.

25 MR. WALTERS: May it please the Court?

1 THE COURT: Yes, sir.

2 MR. WALTERS: Your Honor, there's no factual
3 finding on the record before the Court from Officer Pruitt
4 as to when he took this statement. There's no finding as
5 to exactly what time he taped this statement. There is
6 only a finding as to how long it took to take the
7 statement. Your Honor, and I will use the case that the
8 Solicitor just handed up to you. It simply says that
9 unless the police wear down a defendant by repeatedly
10 questioning on the same subject after invocation of his
11 rights, it's a violation of Miranda and they must
12 scrupulously honor Miranda.

13 And in this particular case, he not only
14 invoked his right once, not twice, not three time, but four
15 times and a fifth time. Your Honor, in this particular
16 case, we would ask that all evidence, all statements, any
17 evidence whether it's direct or derivative as a result of
18 these statements should be suppressed. And in this
19 particular case, it's clear that this defendant was worn
20 down. The State has presented witnesses and they presented
21 this case before Your Honor and they've argued about an
22 hour, hour, 15 minutes, 2 hours, hour and 40 minutes. But
23 the record is devoid as to the time the statement was
24 taken. And the officer that took the statement, simply
25 stated he doesn't remember, or he could not give us a

1 record of what time it was. They're asking the Court to
2 engage in speculation and conjecture. And somehow put
3 together, piece mill some type of time frame where you can
4 draw some type of finding or conclusion. And in this
5 particular case, there has been no information presented
6 before this Court. And again, if we look at the first time
7 he invoked his rights, the second time he invoked his
8 rights, the third time he invoked his rights, the fourth
9 time, we can honestly say that these officers did not
10 scrupulously honor the process.

11 And that's because there was no organization,
12 there with this multi jurisdictional effort on the part of
13 law enforcement. And of course in this particular case, as
14 far as the times are concerned ---

15 THE COURT: Let me ask you this, Mr. Walters,
16 is it your argument that if there was an invocation -- and
17 I will ask the solicitor this second, but I will give you
18 the opportunity since you're the moving party first, if
19 there was an invocation, an invoking of the Fifth Amendment
20 privilege, your argument is that everything after that
21 should be suppressed if there was an invocation during
22 the -- on page 12, beginning at page 12 of the 12:37
23 a.m. -- we know exactly what time the tape started I
24 believe do we not?

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

1 THE COURT: I wrote a note, 12:37 and I'm
2 asking -- I'm wondering where I got that from.

3 MS. MORGAN: I think he arrived at the ---

4 THE COURT: He arrived at the scene at 12:37
5 and it was shortly thereafter.

6 MS. MORGAN: He got the call at 12:37.

7 THE COURT: I referred to it as the 12:37 tape.
8 So I wondered if there was anything on the tape that wasn't
9 on the transcript. Is it your argument to me that if there
10 was an invocation in the -- and I won't call it any time at
11 this point, but of the tape that was taken by Mr. Pruitt of
12 Mr. Walker, that there request never be -- and particularly
13 in light of the case that the solicitor cites to me, the
14 Benjamin case which deals with scrupulously honoring a
15 defendant's Fifth Amendment privilege. You argued to me
16 earlier, there can never be, even if the Court were to
17 suppress from page 12, the balance of that statement, is it
18 your contention, Mr. Walters that under no circumstances
19 can law enforcement then come back if in fact that were the
20 case and interrogate a defendant once there has been an
21 invocation of the Fifth Amendment?

22 MR. WALTERS: Your Honor, they can. They can.

23 THE COURT: Under what circumstances would you
24 invite this Court then to say that they could?

25 MR. WALTERS: If I know what time the tape was

1 taken. And I can simply look at the case law and then I
2 know what ample time is.

3 THE COURT: Well, we know that the witness
4 certainly couldn't give you a time to the minute, but the
5 ~~witness said that approximately 1:20 and that it took 8 to~~
6 10 minutes. Wasn't that his testimony?

7 MR. WALTERS: Your Honor, I believe his
8 testimony was that he didn't know. He told us what time he
9 ~~arrived, but he didn't tell us what time he initiated this~~
10 taping. And because the record does not have a finding
11 with regards to when he started taking this tape of Alfred
12 Walker, this analysis is not applicable. This analysis is
13 based on a premise that we have a finding as to what time
14 we began the process, at what time he invoked his Miranda
15 Rights and at what time they reinitiated the process. This
16 analysis is sound and it makes sense as long as you have
17 those findings. But in this particular case, this record
18 doesn't have those findings. We don't have a beginning,
19 all we have is an end.

20 THE COURT: Thank you. Solicitor, I will ask
21 the same question. Even if everything from page 12 where
22 you invited me to look, where there is a first argument
23 that there is an invocation of the Fifth Amendment.

24 MS. MORGAN: Yes, sir.

25 THE COURT: Is it the State's position that

1 even if that were suppressed by this Court because the
2 Fifth Amendment privilege had been invoked, is it the
3 State's position that all statements after that because of
4 invocation can never be obtained because there has been
5 some invocation of the Fifth Amendment?

6 MS. MORGAN: No, sir.

7 THE COURT: Tell me your position.

8 MS. MORGAN: My position is in the case that I
9 handed up to Your Honor.

10 THE COURT: And under that I have to follow
11 then, the Benjamin case and determine whether or not if
12 there was an invocation, it was scrupulously honored.

13 MS. MORGAN: Yes, sir.

14 THE COURT: And that you can reinitiate under
15 the Fifth Amendment issue, not Sixth because I think that
16 starts a whole other issue.

17 MS. MORGAN: I agree.

18 And that's -- some of the case law gets a
19 little confusing because it's Fifth and Sixth, but clearly
20 in Fifth; you have the right to reassess the situation.
21 And I think the Benjamin law, in that case, it was an hour.
22 In this case, Your Honor, I understand we might not have a
23 minute, and I think Investigator Pruitt was clear. I don't
24 know what -- exactly what time, but I got you the tape.
25 It's as long as the tape was. I told you when I arrived

1 and I arrived, he says it's 1:20 to 1:30, his best
2 guesstimate. I'm just expanding it 10 or 15 minutes
3 because we know it's real close to that time. Because he
4 reads his notes in the initial statement as to when he

~~5 arrived and he told Your Honor when he arrived, he put the~~

6 time in the record. He also told you that the first thing
7 that happens is these two guys going, can I talk to you
8 man, can I talk to you man. He can't tell you which one
~~9 started it, but they both wanted to talk to him. He goes~~
10 over, asks if he should. And what does he do? He protects
11 this defendant's right by taking him, he gives him Miranda
12 out on the road as they're sitting on their fannies,
13 handcuffed, he makes sure they understand it. He makes
14 sure they're initiating it. This is their initiation.

15 And I think that's a distinguishing factor in
16 this case. It's his initiation to talk to him and that's
17 why I think it's so important that he has a right to
18 clarify. It's not officer saying come talk to me. It's
19 defendant saying would you talk to me, I want to talk to
20 you man, I want to talk to you man. And it's clear they
21 have initiated, he wants to talk to him and he's talking to
22 the officer. And I think if you listen, because we had the
23 opportunity to listen, Your Honor, it's more than just what
24 we are reading. We can hear what what happens. It kind of
25 surprised him. ~~It surprised this officer because the only~~

1 thing he thought there was a question of the bullet.

2 That's what starts, remember when I was
3 searching you a minute ago. So he goes I don't want to
4 talk. And he's going, well can we clarify this, can I ---

5 THE COURT: Do you concede for purposes of
6 argument, Solicitor, that at that point, and I'm referring
7 to page 12, line 13.

8 MS. MORGAN: Yes, sir.

9 THE COURT: That there is an invocation of the
10 defendant's Fifth Amendment privilege against
11 self-incrimination.

12 MS. MORGAN: I think there is -- it is not
13 necessarily unequivocal under the circumstances. And I
14 think because he initiated it, he initiated and given the
15 tape and the totality of the circumstances, I think this
16 officer has a right to make sure and clarify it's un
17 equivocalness. And he does so.

18 And Judge, guess what, he doesn't really get
19 anything additional. The defendant initiates and is
20 talking more. He doesn't overcome his will. If anything,
21 he's just listening to him discuss some things and does not
22 question him. There's no overcoming of will. And that's
23 what the constitution guarantees are about.

24 THE COURT: Thank you very much. All right.
25 I'm going to take a minute. I want to look at both cases.

1 I've already reviewed, Solicitor, I already had in my file
2 the Benjamin case, but I have not looked at the case you
3 cited to me, Counsel, so I'm going to take a look at that.
4 And I will be back with you in just one moment.

~~5 (WHEREUPON a short recess was observed.)~~

6 THE COURT: I have carefully listened to the
7 testimony that's been presented pursuant to this motion.
8 And have conducted a very lengthy in camera hearing
9 pursuant to Jackson vs. Denno as to the admissibility of
10 statements. And I am considering this, all the evidence
11 which has been offered by the State. The defendant chose
12 not to offer any evidence. And I am convinced by a
13 preponderance of the evidence considering the totality of
14 the circumstances that, number one, I believe that on page
15 12, at line 13, there was an invocation of the Fifth
16 Amendment privilege by the defendant when he States at line
17 13, I don't want to talk no more. And so to the extent
18 that anything occurred after that, it is -- your motion is
19 granted to suppress.

20 I then turn to the issue of whether or not
21 having reviewed the Benjamin case in its entirety as well
22 as the case you cited to me, Mr. Walters, Michigan vs.
23 Moseley, from the United States Supreme Court, I believe
24 the following: That I have to take the testimony at this
25 stage and consider what's here in the testimony; that

1 before any statement was obtained from the defendant the
2 defendant was fully advised of his rights under the Fifth
3 and Sixth Amendments to the Constitution of the United
4 States, that the defendant was advised of his
5 constitutional safeguards required by Miranda vs. Arizona.
6 He was advised that he had the right to remain silent. He
7 was advised that if he waived his right to remain silent
8 and made a statement that such statement can and will be
9 used against him in a court of law. He was advised that he
10 had the right to employ an attorney of his own choice, if
11 he couldn't afford one, one would be appointed for him. He
12 was advised that he had the right to consult with an
13 attorney. He was advised that he had the right to
14 interrupt and terminate interrogation, that he had the
15 right to stop answering questions, that he was advised that
16 if he desired an attorney that an attorney would be
17 provided for him and he would be given an opportunity to
18 consult with an attorney. I believe in light of the
19 factors that I've been presented from the cases that the
20 defendant knowingly and intelligently waived his rights
21 under the Fifth and Sixth Amendments of the Constitution of
22 the United States and the constitutional safeguards
23 required by Miranda vs. Arizona and that the alleged
24 statements obtained from the defendant was freely and
25 voluntarily given without duress, without coercion, without..

1 undue influence, without reward or without promise or hope
2 of reward or promise of leniency, without threat of injury,
3 without compulsion or inducement of any kind and that such
4 alleged statements were the voluntary product of the free
5 ~~and unconstrained will of the defendant.~~

6 This Court makes all of those foregoing
7 findings by a preponderance of the evidence and I,
8 therefore, find that the subsequent statements that were
9 introduced during this hearing are admissible into
10 evidence. Your motion to suppress other than that portion
11 of the first statement, which is granted are respectfully
12 denied.

13 MR. WALTERS: Thank you, Your Honor.

14 THE COURT: Thank you. Are there any other
15 matters that we need to place on the record before we
16 adjourn for the evening?

17 MS. MORGAN: Not with the hour, no, sir.

18 THE COURT: I realize -- you anticipated that
19 this would take a while.

20 MS. MORGAN: I told you.

21 THE COURT: Yes, you did. And I understand
22 that.

23 MS. MORGAN: I understand.

24 THE COURT: There's nothing else that the State
25 wishes to place on the record?

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COUNTY OF BARNWELL

IN THE GENERAL SESSIONS COURT
OCT 14 2019
SECOND JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA, OF
BARNWELL COUNTY

SOLICITOR

**ORDER DENYING
MOTION FOR NEW TRIAL**

v.

ALFRED T. WALKER, #00307941,

Defendant.

2001-GS-06-00118, 2001-GS-06-00119,
2001-GS-06-00120, 2001-GS-06-00121,
2001-GS-06-00122, 2001-GS-06-00123.
2001-GS-06-00134

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This matter came before this court for a hearing on the Defendant's motion for a new trial based on after-discovered evidence or, in the alternative, to amend the sentences imposed on the above referenced indictments. The hearing was conducted on September 26, 2019 at the Jasper County courthouse. The Court Reporter for the hearing was Circuit Court Reporter Mona Manley. The Defendant was present for the hearing and represented by his attorney, Benjamin McClain of Greenville, South Carolina. The State was represented at the hearing by Second Circuit Deputy Solicitor David Miller. Prior to the hearing, a number of stipulations of counsel were placed on the record. First, counsel stipulated that the transcript of the trial proceedings in the underlying case was incomplete, but that all efforts had been made to obtain a complete transcript. Despite the failure to obtain a complete transcript, both parties agreed the missing transcript pages were not relevant to the pending motion. Second, the lawyers and the Defendant consented to the hearing of the motion in Jasper County instead of Barnwell County where the original trial took place or in the Judicial District where the trial was held. It was then noted that South Carolina Court Administration had assigned this Court General Sessions Non-jury jurisdiction for Barnwell County to hear this motion. Finally, the parties stipulated that the motion had been filed and would be heard pursuant to Rule 29 of the South Carolina Rules of

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
I, Rhonda D. McElveen, Clerk of Court for Barnwell County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office.

Rhonda D. McElveen
Clerk of Court, Barnwell County, SC

By: SR Date: 10-11-19

Criminal Procedure. This Court has considered the testimony and other evidence presented at the hearing, the arguments of counsel, and the applicable South Carolina Rules of Criminal Procedure and hereby denies the Defendant's motion for the reasons stated below.

PROCEDURAL HISTORY

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The Defendant is presently confined in the South Carolina Department of Corrections pursuant to orders of the Barnwell County Clerk of Court. He was indicted for two counts of murder (2001-GS-06-00118 and 2001-GS-06-00119), burglary in the second degree (2001-GS-06-00120), assault and battery with intent to kill (2001-GS-06-00121), criminal conspiracy (2001-GS-06-00122), armed robbery (2001-GS-06-00123) and possession of a weapon during the commission of a violent crime (2001-GS-06-00134). The State gave Notice of Intention to Seek the Death Penalty on March 26, 2001. The Defendant was initially represented by Thomas Sims and Carl Grant, both of Orangeburg County. Early on in the case, a potential conflict regarding Mr. Sims's representation was identified. In an abundance of caution, Mr. Glenn Walters of Orangeburg County was substituted as counsel for the Defendant to eliminate any potential conflict. Messrs. Grant and Walters represented the Defendant for the duration of the case in General Sessions.

Before the third day of testimony in the jury trial, on March 8, 2005, the Defendant entered an Alford plea to both counts of murder and entered guilty pleas to the remaining charges. He was sentenced by this Court to consecutive life sentences for each murder and to concurrent maximum sentences on the remaining charges.

A notice of appeal was filed and perfected. Following submission of an Anders brief, the appeal was dismissed. State v. Walker, Op. No. 2008-UP-021 (S.C. Ct. App. filed Jan. 10, 2008). The remittitur was sent January 28, 2008.

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The Defendant filed an application seeking post-conviction relief in Barnwell County (2006-CP-06-0277) on November 15, 2006, while his appeal was pending. The State made its Return on June 4, 2007. The PCR action was stayed pending the outcome of the appeal. The State Amended its Return on or about February 1, 2009. An evidentiary hearing on the PCR was convened on February 3, 2009. The Defendant was represented at the hearing by attorney Paige Tiffany of Aiken County. The Defendant testified at the PCR hearing as did his sister, Latasha Bradshaw, and his two previous lawyers, Glenn Walters and Carl Grant. At the hearing, the Defendant alleged ineffective assistance of trial counsel, that his guilty plea was involuntary, and due process violations. The Honorable Doyet A. Early, III denied the PCR by order dated March 5, 2009 and filed March 10, 2009.

On June 1, 2010, Defendant filed a second PCR application seeking a belated appeal of his first PCR application pursuant to Austin v. State, 409 S.E.2d 395 (S.C. 1991). The court entered a consent order dismissing the Second PCR application and granting a belated appeal of Defendant's first PCR application.

On October 7, 2011, the Defendant filed a notice of appeal of the court's denial of his first PCR application. The South Carolina Supreme Court denied his appeal on November 2, 2011, and the Remittitur was sent to the Barnwell Clerk of Court on November 18, 2011.

On January 25, 2012, the Defendant filed a third PCR application (2012-CP-06-0034) which was still pending when Petitioner filed a Habeas Corpus Petition with the Federal District Court on June 5, 2012. The Habeas Corpus Petition was denied by order filed August 26, 2013.

The third PCR application was subsequently denied by order dated July 2, 2013 and filed July 11, 2013.

APPLICABLE LAW

Post-trial motions, including motions for new trial, are governed by Rule 29 of the South Carolina Rules of Criminal Procedure. Rule 29 provides, in relevant part, "[E]xcept for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence." Rule 29(a), SCRCrimP. A motion for a new trial based on after-discovered evidence must be made within one (1) year after the date of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence. Rule 29(b), SCRCrimP.

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To prevail on a motion for a new trial based on after discovered evidence, a defendant must show (1) the evidence is such as will probably change the result if a new trial is granted; (2) the evidence has been discovered since the trial; (3) the evidence could not have been discovered prior to trial by the exercise of due diligence; (4) the evidence is material; and (5) the evidence is not merely cumulative or impeaching. State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (S.C. 1998). Only the trial court and not the appellate court has the power to weigh the new evidence offered in support of new trial motion; the trial court's judgment will not be disturbed except for error of law or abuse of discretion. State v. Harris, 391 S.C. 539, 706 S.E.2d 526 (S.C. Ct. App. 2011).

THE CURRENT MOTION

The Defendant filed and served his current motion on June 3, 2019. In the motion, the Defendant makes four specific allegations of misconduct. They are:

- 1) There are discrepancies in the transcript of testimony at trial and the Transportation Sheets from the Barnwell County jail.

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- 2) Law enforcement continued to question the Defendant in violation of his right to remain silent after he repeatedly informed the officers he did not wish to talk.
 - 3) At the time the Defendant spoke to law enforcement, the Defendant was intoxicated, under the influence of drugs, and diagnosed with antisocial personality disorder, which could have or did effect any answers or statements made by him.
 - 4) The State failed to document or record statements made by the Defendant and the failure of the State to do so constituted a violation of Brady v. Maryland, 373 U.S. 83 (1963).

Drawing from these allegations, the Defendant claims his convictions were the direct result of violations of his constitutional rights to remain silent and to due process. Additionally, the Defendant claims the State's failure to disclose the allegedly undocumented statement(s), particularly a statement Defendant claims to have made on October 20, 2000 at the Barnwell Police Department, may have fundamentally changed the outcome of the proceeding.

During the hearing, the Defendant offered the testimony of a private investigator, James T. Burgess. Mr. Burgess testified he was contacted by a family member of the Defendant seeking his assistance on May 15, 2018. Mr. Burgess said the family member asked if he could obtain copies of the Transportation Sheets from the Barnwell County jail dated October 19, 2000 (the date of the Defendant's arrest) through October 30, 2000. Mr. Burgess testified he went to the Barnwell Jail on Monday, June 11, 2018 and obtained copies of the Transportation Sheets from four separate dates, October 19, 2000, October 20, 2000, October 21, 2000, and October 25, 2000. Mr. Burgess testified the jail staff had to get the file from the archives, but he was able to get the copies the same day he asked for them. Additionally, Mr. Burgess testified he obtained a statement from an individual who claimed to be a jail employee at the Barnwell Jail the night the Defendant was arrested. This individual, identified as Brice Johnson, claimed the Defendant appeared to be under

the influence of alcohol or drugs when he was brought into the jail in the early morning hours of October 19, 2000.

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The Defendant then testified he had been questioned several times regarding the October 18, 2000 incident following his arrest. He stated he informed the Solicitor's Investigator, Wayne Martin, prior to and during each interview that he did not wish to talk and that he wanted to talk to a lawyer and his mother. He claimed each time he stated he did not want to talk, but he was told that he needed to talk about what happened or his family could be in danger. When asked to elaborate on that allegation by his attorney, Defendant stated the Barnwell County Sheriff had told him and other individuals initially detained near the scene of the crime "he wished they'd try to run so he could shoot them the way they shot those boys in there." This alleged threat was not captured on any recording device(s) and no other person alleged to have been present at the time was offered to corroborate the Defendant's claim. The Defendant claimed Investigator Martin repeatedly told him his mother's life was going to be in danger if he did not cooperate with the investigation.

The Defendant claimed a Transportation Sheet¹ showing he was taken to the Barnwell Police Department on October 20, 2000 by Officer Glenn Rice was for a meeting set up by Investigator Martin where the Defendant was allowed to meet with his mother. Despite the fact that the Transportation Sheet shows the Defendant was transported at 2030 (8:30p.m.) the Defendant claims he was transported to the Police Department at 5:30p.m. There is no return time listed on the Transportation Sheet. He claimed after that meeting investigator Martin claimed he was "keeping his mother safe" and would continue to do so as long as he cooperated with the

¹ No documents were entered into evidence by the Defense at the hearing, but an Affidavit of James T. Burgess along with copies of the Transportation Sheets and a written statement from Bruce Johnson were attached as exhibits to the Defendant's filed motion.

investigation. There is no documentation of any statement being taken from the Defendant at the alleged meeting with his mother.

On cross examination, the Defendant testified that no information regarding the circumstances or the number of statements he had given was unknown to him at the time of his trial. He admitted he had been evaluated by Dr. Thomas Martin to determine if he was competent to stand trial in January of 2005. As part of that evaluation, Dr. Martin noted the Defendant "appeared to be a good historian and genuine in his presentation." Dr. Martin summarized each of the Defendant's statements to law enforcement as follows:

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In an initial interview in a police vehicle, Mr. Walker recalls denying direct knowledge of the shooting at the Sonic Drive-In. At an interview later on October 19, 2000, Mr. Walker admits to his presence at the Sonic Drive-In, but denies firing any weapon. On an October 20, 2000 statement, Mr. Walker admits to carrying a .25 cal automatic handgun and accidentally shooting Mr. Edwards in the leg. He also reports that Mr. Priester shot Mr. Edwards, Mr. Brewer and Mr. Still in the head. Mr. Walker reported that his automatic handgun jammed as evidenced by its inability to self-reload after firing the first and only time. Forensic ballistic reports substantiate that Mr. Walker's handgun fired the one shot into Mr. Edwards' leg, and Mr. Priester's .22 cal handgun fired the fatal shots into Mr. Brewer and Mr. Still, and seriously wounding Mr. Edwards. Mr. Walker reports remorse for his participation in the crime and empathy for the victims and their families. Mr. Walker reflected his remorse in a letter later written to Mr. Edwards.
State's Ex. 1, pg. 11 (Forensic Psychiatric Evaluation of Alfred Walker by Dr. Thomas Martin).

The Defendant admitted Dr. Martin's recitation of the summary of Defendant's statements to law enforcement was accurate and that he spoke to Dr. Martin about each of the statements.

Defendant claimed that he told all his lawyers, including Mr. Thomas Sims who was subsequently relieved, he had told Investigator Martin he did not want to talk to him before each statement was taken. He claimed he told all of his lawyers about Investigator Martin's threats and intimidation to convince him to give multiple statements. Despite this, the Defendant alleges his lawyers would not let him testify to any of the information during the Jackson v. Denno hearing

and would not make any arguments to keep the statements out of evidence. The Defendant admitted that he made no allegation regarding the alleged undocumented statements or his attorneys' failure to challenge the statements in his subsequent appeals, PCR actions, or in the federal habeas action because "he didn't think he could raise those claims". Finally, the Defendant admitted he did not tell his PCR attorney about any of these issues because "she didn't know what she was doing" and it would not have done him any good to raise the claims to her.

DISCUSSION

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As a threshold matter, it is undisputed that any inconsistency or discrepancy between the actions of the investigating officers testified to during the Jackson v. Denno hearing, and later at the trial, and what the Defendant alleges actually happened was known by the Defendant at the time of the trial. Rule 29 requires that a motion for a new trial based on after discovered evidence must be made within one (1) year after the date of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence. The Defendant admits he was fully aware of the information presented at his motion at the time of his trial in 2005. He rest his claim for relief on the "newly discovered evidence" of the copies of the Barnwell Jail Transportation Sheets. However, his Investigator testified he went to the Barnwell Jail after being retained, asked for copies of the Transportation Sheets, and received them *the same day he requested them*. If obtaining these documents had been pursued with *any* diligence, they could have been obtained in a matter of a day instead of more than fourteen years later.

Additionally, an examination of the requirements for the "evidence" offered to warrant a new trial pursuant to State v. Needs exposes its inadequacy. First, the Defendant must show the evidence is such as will probably change the result if a new trial is granted. If a new trial was

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granted, there would be another Jackson v. Denno hearing where the Defendant and his attorneys would be making the same claims of intimidation and coercion made before this Court during this hearing. These claims lack credibility and it is improbable a subsequent Court, considering the totality of the circumstances, would rule the statements of the Defendant were not voluntarily made by the preponderance of the evidence. State v. Simmons, 384 S.C. 145, 162, 682 S.E.2d 19, 28 (Ct. App. 2009). Furthermore, even without the Defendant's statements, or the recovery of the pistol that resulted therefrom, there remains overwhelming evidence to convict the Defendant of the offenses charged. Second, the Defendant must show the evidence has been discovered since the trial. It is undisputed that the Transportation Sheets were not discovered before the trial, however the Defendant is also required to show the evidence could not have been discovered prior to trial by the exercise of reasonable diligence. Here, as outlined above, the Defendant fails to meet his burden. Next, the Defendant must establish the evidence is material. The existence of the October 20, 2000 Transportation Sheet is not material to the Defendant's guilt or innocence. The State made no claim the Defendant gave a statement on the evening of October 20, 2000. According to the Defendant's Investigator the Transportation Sheets attached to his Affidavit were the only ones available, but there has been no testimony offered to establish Transportation Sheets were filled out *every* time a defendant is taken from the jail. Furthermore, it is clear from the face of the document that the forms are not meticulously maintained, considering there is no indication on the form of the time the Defendant was returned to the jail after allegedly meeting with his mother and the reason for the Defendant leaving the jail is listed as a question mark. Finally, the Defendant must establish the evidence is not merely cumulative or impeaching. The evidence could only be used to impeach Investigator Martin's testimony regarding the circumstances surrounding the Defendant's statements from October 19, 2000 until October 21, 2000.

The State sought to use five statements given by the Defendant in the March 2005 trial. Accordingly, a Jackson v. Denno² hearing was conducted on March 5, 2005. Barnwell County Chief Deputy Thomas Gantt, Barnwell County Sheriff's Office Investigator Rodney Pruitt and Investigator Martin testified at the hearing.

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The Defendant's first statement was taken while the Defendant was in a patrol vehicle after he and others were stopped by law enforcement near the scene of the crime. The Defendant was advised of his Miranda³ rights, including the fact that he could stop answering questions at any time, by Investigator Rodney Pruitt. (Trial Tr. 2397). The interview occurred shortly after midnight on the morning of October 19, 2000. After talking with Investigator Pruitt for several minutes, the Defendant said he did not want to talk further. Despite that request, Investigator Pruitt continued to question the Defendant for several more minutes. At the Jackson v. Denno hearing, counsel for the Defendant successfully argued Defendant's request to end the interview rendered everything said to Investigator Pruitt after he continued questioning inadmissible.

The remainder of the Defendant's statements addressed at the Denno hearing were given to Investigator Martin. Investigator Martin testified he advised Defendant verbally and in writing of his Miranda rights prior to each statement and provided a timeline of his interviews⁴, which is summarized below:

1st Statement, October 19, 2000 at 04:43 a.m. at the Barnwell Solicitor's Office.

2nd Statement, October 20, 2000 at 10:22 a.m. at the Barnwell Solicitor's Office.

3rd Statement, October 21, 2000 at 1:54 p.m. at the Barnwell Jail.

4th Statement, October 21, 2000 at 4:45 p.m. at location of firearm recovery.

² Jackson v. Denno, 378 U.S. 368, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964).

³ Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

⁴ Times noted are the time recorded on the Miranda advisement forms entered in evidence at the Denno hearing.

In the first statement to Investigator Martin, the Defendant admitted to being in the Sonic when his co-defendant, Wallace Priester, shot everyone there. This statement was given at the Barnwell Solicitor's Office. After providing the Defendant with his Miranda rights and speaking to the Defendant, a recorded statement was taken beginning at 5:32 a.m. and concluding at 5:49 a.m. (Trial Tr. 2441:4-6). Investigator Martin testified that at no time did he threaten, coerce, or offer any hope of reward to the Defendant during this interview. (Trial Tr. 2440: 2-4).

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After that statement was given in the early morning hours of October 19, 2000, Investigator Martin learned from the officers processing the crime scene that two calibers of shell casings were collected at the scene, leading them to believe at least two guns had been used in the crimes. (Trial Tr. 2445:5-9). He then returned to the jail and interviewed Priester and Shelton O'Berry, another one of the individuals stopped the previous night in the car with Priester and the Defendant. (Trial Tr. 2446:10-11; 2447:4-13).

Investigator Martin then interviewed the Defendant a second time, on October 20, 2000 at approximately 10:22 a.m. (Trial Tr. 2451:18- 2452:3). Investigator Martin testified he brought the Defendant back to the Solicitor's Office to speak to him. During this second interview, the Defendant admitted having a gun and "accidently" shooting victim Shawn Edwards in the leg before the co-defendant shot everyone. Additionally, the Defendant informed Investigator Martin he has thrown the gun "behind Litchfield", the apartment complex the Defendants had run toward after the robbery. (Trial Tr. 2453:12-15). Investigator Martin testified that at no time did he threaten, coerce, or offer any hope of reward to the Defendant during this interview. (Trial Tr. 2452: 13-16). Investigator Martin relayed information on the location of the gun as reported by the Defendant to other officers, and took the Defendant to the location so he could point out the general area where he had thrown the pistol. (Trial Tr. 2453:21-25). Investigator Martin returned the

Defendant to the jail and returned to the Litchfield area to continue searching for the pistol. The officers searched the area until dark, but were not able to locate the pistol. Thereafter, Investigator Martin testified he assisted the Barnwell County Sheriff's Office with the execution of a search warrant at a location in the county. (Trial Tr. 2456:14-25).

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In the third statement, Investigator Martin testified he was at the Barnwell County Jail to interview the fourth occupant of the vehicle that had been stopped on October 18, 2000, Lee Worthy. (Trial Tr. 2457:16). While at the jail to interview Worthy, Investigator Martin testified he was approached by the Defendant, who wanted to write a letter of apology to Mr. Edwards. Investigator Martin again advised the Defendant of his Miranda rights. (Trial Tr. 2458:4). After receiving the letter of apology to Mr. Edwards, Investigator Martin returned to the area where the Defendant said the pistol would be located but was still not able to find it.

Investigator Martin testified as he returned home that afternoon, he was contacted by dispatch and informed the Defendant was willing to take law enforcement to the real location where he had hidden the pistol. (Trial Tr. 2461:25- 2462:4, 2464: 2-18). After advising the Defendant of his Miranda rights for a fourth time, Investigator Martin was led to the exact location by the Defendant and the pistol was recovered. (Trial Tr. 2465:11-18). Investigator Martin testified that at no time did he threaten, coerce, or offer any hope of reward to the Defendant during this interview. (Trial Tr. 2464: 12-17).

Investigator Martin was vigorously cross examined by counsel for the Defendant at the Jackson v. Denno hearing, most notably because he heard the Defendant during Investigator Pruitt's audio recorded interview of the Defendant, which included Defendant saying he did not want to talk any further, prior to interviewing the Defendant the first time. Messrs. Walters and Grant strenuously argued the Defendant's decision to end the interview by Investigator Pruitt

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should have prohibited Investigator Martin from attempting to speak to Defendant some four hours later. The Defendant now claims that his attorneys not only failed and refused to argue potentially meritorious grounds to suppress these statements, but also prohibited the Defendant from testifying during the in camera hearing about them. The Defendant's claims are not credible. It is inconceivable these experienced trial lawyers would not have put their client on the stand to testify if he had given them any indication he had also refused to speak to Investigator Martin, or if there were any other discrepancies they were aware of regarding the statements. Furthermore, during an in camera hearing after a change in the plea by Defendant before the third day of testimony in the jury trial, the Defendant testified that he was pleading guilty of his own free will. (Trial Tr. 3012: 10-12). The Defendant also testified that he did not have any complaints that he wished to make against representatives of the Court, or the Solicitor's Office, or any law enforcement officials in connection with this matter. (Trial Tr. 3012: 13-17). When asked by the Court "has anybody connected with this case mistreated you in any way?" the Defendant replied "No sir." (Trial Tr. 3012:18-20).

Investigator Martin testified three of the four statements the Defendant made followed the Defendant requesting to speak to him; the first statement where the Defendant told him to come talk to him at the jail; the third statement where the Defendant approached Investigator Martin while he was interviewing another witness at the jail; and the fourth and final statement where Investigator Martin was contacted by dispatch because the Defendant was requesting to speak with him. Furthermore, the Defendant summarized his conversations with Investigator Martin to his own expert, Doctor Thomas Martin, less than two months before his trial and no significant discrepancies were noted between that recitation of the statements to Dr. Martin and the testimony of Investigator Martin.

CONCLUSION

Having considered the evidence presented at the hearing, together with the records of the Barnwell County Clerk of Court and the arguments of counsel, I hereby find and rule as follows:

1. The Defendant has failed to present any evidence to this Court that would qualify as after-discovered evidence within the meaning of Rule 29, SCRCrimP.; and,
2. Any evidence presented during the hearing could have been discovered by the exercise of reasonable due diligence at any time before or after the trial of these indictments, but was not presented to this court within one year of the date of sentencing, rendering the motion untimely; and,
3. The allegedly new evidence presented would not probably change the result if a new trial was granted; and
4. The evidence has been discovered since the trial; however,
5. The evidence could have been discovered prior to trial by the exercise of reasonable diligence; and
6. The evidence is not material to the Defendant's guilt or innocence in this matter; and,
7. The evidence is merely cumulative or impeaching.

Accordingly, the Defendant's motion for a new trial or in the alternative a modification of sentence based upon after discovered evidence should be, and hereby is DENIED.

IT IS SO ORDERED.


Perry M. Buckner, III,
Presiding Judge
Second Judicial Circuit

October 9, 2019
Walterboro, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

IN THE GENERAL SESSIONS COURT
SECOND JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,

v.

ALFRED T. WALKER, #00307941,

Defendant.

ORDER GRANTING MOTION FOR NEW
TRIAL

2001-GS-06-00118, 2001-GS-06-00119,
2001-GS-06-00120, 2001-GS-06-00121,
2001-GS-06-00122, 2001-GS-06-00123,
2001-GS-06-00134

This matter came before this Court for a hearing, pursuant to the Defendant's Motion for a new trial based on after-discovered evidence, or, in the alternative, to amend the sentences imposed on the above referenced indictments. The hearing was conducted on September 26, 2019, at the Jasper County Courthouse. The Defendant was present for the hearing and represented by his attorney, W. Benjamin McClain, Jr., of Greenville, South Carolina. The State was represented at the hearing by Second Circuit Deputy Solicitor, David Miller. Prior to the hearing, a number of stipulations of counsel were placed on the record. First, counsel stipulated that the transcript of the trial proceedings in the underlying case was incomplete, but that all efforts had been made to obtain a complete transcript. Despite the failure to obtain a complete transcript, both Parties agreed the missing transcript pages were not relevant to the pending Motion. Secondly, the attorneys and the Defendant consented to the hearing of the Motion in Jasper County, instead of Barnwell County, where the original trial took place. It was then noted that South Carolina Court Administration had assigned the Court of General Sessions non-jury jurisdiction for Barnwell County to hear this Motion. Finally, the Parties stipulated that the Motion had been filed and would be heard, pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure. This Court has considered the testimony and other evidence presented at the hearing, the arguments of counsel, and the applicable South Carolina Rules of Criminal

Procedure and hereby grants the Defendant's Motion For A New Trial for the reasons stated hereinbelow.

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APPLICABLE LAW:

Post-trial motions, including motions for a new trial, are governed by Rule 29 of the South Carolina Rules of Criminal Procedure. Rule 29 (a) provides in relevant part, "[E]xcept for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence." Rule 29(a), SCRCrimP. However, a motion for a new trial based on after-discovered evidence must be made within one, (1), year after the date of actual discovery of the evidence by the defendant or after the date, when the evidence could have been ascertained by the exercise of reasonable diligence. Rule 29(b), SCRCrimP. James T. Burgess, a private investigator with much law enforcement experience, testified at the hearing that he retrieved the two, (2), transportation sheets, which are attached to the Defendant's Motion, from the archives. Mr. Burgess' Affidavit and his attached report of Burgess Investigations & Associates Inc. buttress this fact. It is uncontroverted that the date of his discovery of these transportation sheets was on Monday, June 11, 2018. The Defendant's Motion was filed on June 5, 2019, at 3:26 p.m. Clearly, this Motion was timely made, pursuant to Rule 29(b) of the South Carolina Rules Of Criminal Procedure. The Defendant, himself, obviously could not have discovered this new evidence on his own. From the history of the procedure in this case, nowhere does it appear that this evidence could have been ascertained by the exercise of reasonable diligence. Nowhere in the record is it established that this evidence existed, much less was it produced.

To prevail on a motion for a new trial based on after discovered evidence, a defendant must show (1) the evidence is such as will probably change the result if a new trial is granted; (2) the evidence has been discovered since the trial; (3) the evidence could not have been discovered, prior to trial by the exercise of due diligence; (4) the evidence is material; and (5) the evidence is not merely cumulative or impeaching. State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998). Only the trial court, and not the appellate court, has the power to weigh the new evidence offered in support of a new trial motion; the trial court's judgment will not be disturbed, except for error of law or abuse of discretion. State v. Harris, 391 S.C. 539, 706 S.E.2d 526 (S.C. Ct. App. 2011).

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Defendant's grounds for his Motions are, as follows;

- (1.) That there are discrepancies in the transcript of testimony at trial and the Transportation Sheets, which are attached to the Affidavit of James T. Burgess, and all of which are made a part of these Motions;
- (2.) That although the Defendant repeatedly informed law enforcement that he did not wish to talk, law enforcement continued to question him on multiple occasions;
- (3.) That, when statements were made by the Defendant, although it is not a mitigating circumstance, the 18-year-old Defendant was intoxicated, under the influence of drugs, and diagnosed with antisocial personality disorder, and which could have or did effect any answers or statements made by him. Payne v. Arkansas, 356 U.S. 560 (1958);
- (4.) That the content of these statements may have been either impeaching or exculpatory, and the mere fact that they might have been violates the Defendant's

Constitutional rights and due process of law; the State has an affirmative duty to disclose all evidence, exculpatory or impeaching, which may be helpful to the Defendant. Brady v. Maryland, 373 U.S. 83 (1963);

- (5.) That it is well stated that, when an involuntary statement is introduced as part of the evidence before the jury, a conviction cannot be allowed to stand, unless there is significant evidence of guilt apart from the confession, Brady v. Maryland, supra;
- (6.) That these statements were or may have been cumulative or exculpatory and affected the Defendant's entering a guilty plea or preparation for trial;
- (7.) That the State may have or did fail to disclose all pertinent, exculpatory, and impeaching information to the defense for the purpose of fundamental fairness, and the evidence not submitted may have fundamentally changed the outcome of this proceeding;
- (8.) That any evidence acquired from or as a result of these undisclosed statements taints and excludes all other evidence acquired as a result of these statements Wong Sun and James Wah Toy v. United States, 371 U.S. 471 (1963);
- (9.) That the Defendant's Constitutional rights have been violated, and he has been denied due process of law.

At trial, the State made no claim that the Defendant gave a statement on the evening of October 20, 2000. Had any statement been given to Wayne Martin, it could have been not only exculpatory, but also impeaching, especially in light of the discrepancies of Wayne Martin's testimony and James T. Burgess' Affidavit and accompanying report. Brady v. Maryland, 373 U.S. 83 (1963)

[6]. See, e.g., *Graham v. Florida*, 560 U.S. 48, 74 (2010); *Roper v. Simmons*, 543 U.S. 551, 578 (2005).

HOME

ABOUT

VOLUME 54

PAST VOLUMES

SU

[7]. See *Roper*, 543 U.S. at 578.

[8]. *Graham*, 560 U.S. at 74–75.

[9]. See *id.* at 60–61; *Roper*, 543 U.S. at 564–68.

[10]. Though beyond the scope of this comment, this class of offenders should also be categorically spared from the death penalty. See generally Andrew Michaels, *A Decent Proposal: Exempting Eighteen- to Twenty-Year-Olds From the Death Penalty*, 40 N.Y.U. L. & Soc. Change 139 (2016).

[11]. See Am. Civil Liberties Union, *supra* note 3, at 26 tbl.7; E. Ann Carson & William J. Sabol, U.S. Dep't of Justice, *Aging of the State Prison Population, 1993–2013*, at 21 tbl.15 (2016) (basing data on prisoners sentenced to more than one year in state prison on new court commitments).

[12]. See, e.g., Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 Developmental Rev. 339, 343 (1992) [hereinafter Arnett, *Reckless Behavior*] (reckless behavior); Graham Bradley & Karen Wildman, *Psychosocial Predictors of Emerging Adults' Risk and Reckless Behaviors*, 31 J. Youth & Adolescence 253, 253–54, 263 (2002) (peer pressure).

[13]. *Roper*, 543 U.S. 551.

[14]. *Graham*, 560 U.S. 48.

[15]. *Miller v. Alabama*, 567 U.S. 460 (2012).

[16]. While exempting twenty-four- and twenty-five-year-olds from life without parole would be ideal, this paper posits that our country is much more likely to accept the categorical exemption of eighteen- to twenty-year-olds than of eighteen- to twenty-five-year-olds. Twenty-one years of age is already a culturally significant marker of maturity. See Gun Control Act of

1968, Pub. L. No. 90-618, 82 Stat. 1213 (codified at 18 U.S.C. § 922(b)(1), (c)(1) (2012)) (prohibiting anyone under twenty-one years of age from purchasing handguns from Federal Firearms Licensees); National Minimum Drinking Age Act of 1984, Pub. L. No. 98-363, 98 Stat. 437 (codified at 23 U.S.C. § 158 (2012)) (prohibiting anyone under twenty-one years of age from purchasing alcohol); Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, § 201, 122 Stat. 3949 (2008) (providing states with financial incentives to extend the age of eligibility for foster care services to twenty-one years of age). Twenty-two, twenty-three, twenty-four, and twenty-five are not culturally significant ages. Until twenty-five years of age reaches the same cultural significance as twenty-one, society will likely be less willing to support the categorical exemption of twenty-one to twenty-five-year-olds.

[17]. *See, e.g., Atkins v. Virginia*, 536 U.S. 304, 312–13 (2002) (describing the categorical tests).

[18]. *Id.* at 321 (mentally disabled offenders); *Roper*, 543 U.S. at 578 (juvenile offenders).

[19]. *Graham*, 560 U.S. at 74–75.

[20]. *Miller*, 567 U.S. at 479.

[21]. *Atkins*, 536 U.S. at 321. The Court emphasized it had repeatedly held that “it is a precept of justice that punishment for crime should be graduated and proportioned to [the] offense.” *Id.* at 311 (quoting *Weems v. United States*, 217 U.S. 349, 367 (1910)). The Eighth Amendment states, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII.

[22]. *Atkins*, 536 U.S. at 312–13.

[23]. *Id.* at 314–16.

[24]. *Id.* at 316.

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[25]. *Id.* at 321. The second prong of this test invokes what is known as the proportionality principle. *See id.* at 311 (“We have repeatedly applied this proportionality precept in later cases interpreting the Eighth Amendment.”).

[26]. *Id.* at 306.

[27]. *Id.* at 306, 319–20.

[28]. *Id.* at 321 (quoting *Ford v. Wainwright*, 477 U.S. 399, 406 (1986)).

[29]. *Roper v. Simmons*, 543 U.S. 551, 578 (2005). *Roper* extended the protection to sixteen- and seventeen-year-olds as the Court had already provided for those under sixteen years of age. *Id.* at 570–71; *see Thompson v. Oklahoma*, 487 U.S. 815, 838 (1988).

[30]. *Roper*, 543 U.S. at 564.

[31]. *Id.* at 567–68. The Court even recognized that “the United States is the only country in the world that continues to give official sanction to the juvenile death penalty.” *Id.* at 575.

[32]. *Id.* at 568–75.

[33]. *Id.* at 568 (quoting *Atkins*, 536 U.S. at 319).

[34]. *Id.* at 569–70. The Court cited Arnett, *Reckless Behavior*, *supra* note 12, for the first finding; Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychol. 1009, 1014 (2003), for the second finding; and Erik H. Erikson, *Identity: Youth and Crisis* 26–28 (1968), for the third finding. The Court noted these differences reflected both what “any parent knows” and what scientific and sociological studies tend to confirm. *Roper*, 543 U.S. at 569.

[35]. *Roper*, 543 U.S. at 571.

[36]. *Id.* at 574.

[37]. *Thompson v. Oklahoma* held that offenders under sixteen years of age could not be sentenced to the death penalty. 487 U.S. 815, 838 (1988).

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[38]. *Roper*, 543 U.S. at 574.

[39]. *Id.* at 572–73. There is an American Psychiatric Association rule forbidding psychiatrists from diagnosing juveniles with antisocial personality disorder, otherwise known as psychopathy or sociopathy. *Id.* at 573 (citing Am. Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders 701–06 (4th ed. text rev. 2000)). The Court argued that “[i]f trained psychiatrists with the advantage of clinical testing and observation refrain, despite diagnostic expertise, from assessing any juvenile under 18 as having antisocial personality disorder, . . . [s]tates should refrain from asking jurors to issue a far graver condemnation—that a juvenile offender merits the death penalty.” *Id.*

[40]. *Id.* at 564; *Atkins v. Virginia*, 536 U.S. 304, 312–13 (2002).

[41]. *Graham v. Florida*, 560 U.S. 48, 61–62 (2010).

[42]. *Id.* at 74–75.

[43]. *Id.* at 62.

[44]. *Id.*

[45]. *Id.*

[46]: *Id.* at 64. Florida imposed the significant majority of sentences, and California, Delaware, Iowa, Louisiana, Mississippi, Nebraska, Nevada, Oklahoma, South Carolina, and Virginia imposed the remainder. *Id.* at 63–65 (citations omitted).

[47]. *See id.* at 62.

[48]. *Id.* at 68–69.

[49]. *Id.* at 69–71.

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[50]. *Id.* at 71–74.

[51]. *Id.* at 68 (citing *Roper v. Simmons*, 543 U.S. 551, 569–70 (2005)). The Court cited juveniles' (1) "lack of maturity and . . . underdeveloped sense of responsibility"; (2) vulnerability "to negative influences and outside pressures, including peer pressure"; and (3) character being "not as well formed" as adults' character. *Id.* (quoting *Roper*, 543 U.S. at 569–70).

[52]. *Id.* at 71.

[53]. *Id.* at 68 (citing *Roper*, 543 U.S. at 569).

[54]. *Id.*

[55]. *Id.* (citing Brief for the American Medical Ass'n et al. as Amici Curiae in Support of Neither Party at 16–24, *Graham*, 560 U.S. 48 (Nos. 08-7412, 08-7621) [hereinafter Brief for the AMA]; Brief for the American Psychological Ass'n et al. as Amici Curiae Supporting Petitioners at 22–27, *Graham*, 560 U.S. 48 (Nos. 08-7412, 08-7621)).

[56]. *Id.* at 69.

[57]. *Id.* at 69–70.

[58]. *Id.* at 70. The Court reasoned that "[a] 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only." *Id.* (citation omitted).

[59]. *Id.*

[60]. *Id.* at 71–74.

[61]. *Id.* at 71–72.

[62]. *Id.* at 72.

[63]. *Id.* at 72–73.

[64]. *Id.* at 73–74.

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[65]. *Id.* at 74.

[66]. *See* *Miller v. Alabama*, 567 U.S. 460, 471–73, 477, 479 (2012).

[67]. *Id.* at 474. The Court reasoned that precedent had established that “children are constitutionally different from adults for purposes of sentencing.” *Id.* at 471.

[68]. *Id.* at 479.

[69]. *See id.* at 480, 482–83. Although the Court discussed “objective indicia” in regards to the first prong of the categorical exemption test, *id.* at 482–83, the crux of the holding relied on a line of precedent mandating individualized sentencing, *id.* at 483, 485 n.11.

[70]. *See id.* at 470–71.

[71]. *See id.* at 474.

[72]. *Id.* at 489. The Court pointed out that the “distinctive (and transitory) mental traits and environmental vulnerabilities” of juveniles are not crime-specific. *Id.* at 473. However, the Court still limited its holding to juveniles convicted of homicide offenses. *Id.* at 479–80. One of the petitioners’ arguments was that the Eighth Amendment requires a categorical ban on life without parole for all juveniles, regardless of the crime, at least for those under fourteen years old. *Id.* at 479. The Court declined to consider the argument because it reasoned it could sufficiently decide *Miller* by holding that life without parole cannot be mandatory for juvenile homicide offenders. *Id.* at 479–80.

[73]. This comment posits that our country is much more likely to accept the categorical exemption of eighteen- to twenty-year-olds than of eighteen- to twenty-five-year-olds. *See supra* note 16.

[74]. See, e.g., Jeffrey Jensen Arnett, *Emerging Adulthood: A Theory of Development from the Late Teens Through the Twenties*, 55 Am. Psychologist 469, 469 (2000); Bradley & Wildman, *supra* note 12, at 253–54, 263; Kathryn L. Modecki, *Addressing Gaps in the Maturity of Judgment Literature: Age Differences and Delinquency*, 32 Law & Hum. Behav. 78, 85 tbl.3 (2007) (reporting a distinct difference between college-aged and older adult participants on measures of temperance).

[75]. Steinberg & Scott, *supra* note 34, at 1013 (citing Laurence Steinberg & Elizabeth Cauffman, *Maturity of Judgment in Adolescence: Psychosocial Factors in Adolescent Decision Making*, 20 Law & Hum. Behav. 249, 260 (1996)) (“[I]mpulsivity increases between middle adolescence and early adulthood and declines thereafter . . .”).

[76]. Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 Child Dev. 28, 35 tbl.1 (2009) [hereinafter Steinberg et al., *Age Differences*].

[77]. See Elizabeth Cauffman et al., *Age Differences in Affective Decision Making as Indexed by Performance on the Iowa Gambling Task*, 46 Developmental Psychol. 193, 203–04 (2010).

[78]. Modecki, *supra* note 74, at 85 (“[O]n measures of temperance, adults were significantly more mature than young-adults, college students, and adolescents.”). While this study recognizes that young adults, who are between the ages of twenty-two and twenty-seven, scored similarly to college-aged adults, this simply reinforces the claim that full maturity, both psychological and neurological, is not attained until the mid- to late-twenties. *Id.* at 89 (“[E]motional temperance may continue to improve through the mid to late twenties.”).

[79]. See *id.* at 86 (“[A]dults showed less delinquency than the adolescent, college student, and young-adult samples, whereas young-adults showed less delinquency than adolescents or college students.”). Modecki examined three

different areas of delinquency in her research: "stealing offenses, property offenses, and assault offenses." *Id.* at 84.

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[80]. See Laurence Steinberg et al., *Are Adolescents Less Mature Than Adults?: Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip Flop,"* 64 Am. Psychologist 583, 591 fig.3 (2009).

[81]. See, e.g., Bradley & Wildman, *supra* note 12, at 263.

[82]. *Id.* at 257.

[83]. *Id.* at 263.

[84]. *Id.*

[85]. See, e.g., Barbara L. Atwell, *Rethinking the Childhood-Adult Divide: Meeting the Mental Health Needs of Emerging Adults*, 25 Alb. L.J. Sci. & Tech. 1, 20 (2015) ("One way to best serve emerging adults is to recognize that their brain development continues until the age of twenty-five."); Nico U.F. Dosenbach et al., *Prediction of Individual Brain Maturity Using fMRI*, 329 Sci. 1358, 1359 fig.1 (2010) (reporting that functional brain maturity levels out around twenty-five years of age); Robin Marantz Henig, *What Is It About 20-Somethings?*, N.Y. Times (Aug. 18, 2010), <http://www.nytimes.com/2010/08/22/magazine/22Adulthood-t.html> ("This new understanding comes largely from a longitudinal study of brain development sponsored by the National Institute of Mental Health, which started following nearly 5,000 children at ages 3 to 16 The scientists found the children's brains were not fully mature until at least 25.").

[86]. Modecki, *supra* note 74, at 79.

[87]. Vivian E. Hamilton, *Immature Citizens and the State*, 2010 B.Y.U. L. Rev. 1055, 1115 (2010).

[88]. Brief for the AMA, *supra* note 55, at 16-18 (citations omitted).

[89]. *Id.* at 18.

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[90]. *See id.* at 20. Gray matter is comprised of “neurons that perform the brain’s tasks, such as the higher functions that are carried out in the prefrontal cortex.” *Id.* at 19.

[91]. *Id.*

[92]. *Id.*

[93]. *Id.* at 21.

[94]. *Id.*

[95]. Catherine Lebel & Christian Beaulieu, *Longitudinal Development of Human Brain Wiring Continues from Childhood into Adulthood*, 31 J. Neuroscience 10937, 10939 fig.2 (2011) (reporting a statistically significant increase in white brain matter volume for subjects between twenty and twenty-five years old); Adolf Pfefferbaum et al., *A Quantitative Magnetic Resonance Imaging Study of Changes in Brain Morphology from Infancy to Late Adulthood*, 51 Archives Neurology 874, 885 (1994) (reporting that after age twenty, white matter volume did not change until about approximately age seventy).

[96]. Brief for the AMA, *supra* note 55, at 21–22, 22 n.67.

[97]. *Id.* at 24. Myelin, a fatty white substance, insulates the pathways in which neural signals travel. *Id.* at 21–22. Myelination is the process by which these pathways are coated with myelin, and this process “continues through adolescence and into adulthood.” *Id.* at 22.

[98]. *See Brain Maturity Extends Well Beyond Teen Years*, NPR (Oct. 10, 2011, 12:00 PM), <http://www.npr.org/templates/story/story.php?storyId=141164708>.

[99]. *Id.*

[100]. *Id.*

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[101]. While the Supreme Court has held that juveniles are categorically exempt from life without parole, mandatory or discretionary, for non-homicide offenses, *Graham v. Florida*, 560 U.S. 48, 74–75 (2010), it has declined to rule on whether juveniles should be categorically exempt from life without parole for all crimes, *Miller v. Alabama*, 567 U.S. 460, 479–80 (2012). Others have argued the Eighth Amendment should be interpreted to categorically exempt all juveniles from life without parole, whether mandatory or discretionary. See generally Mary Berkheiser, *Developmental Detour: How the Minimalism of Miller v. Alabama Led the Court's "Kids Are Different" Eighth Amendment Jurisprudence Down a Blind Alley*, 46 Akron L. Rev. 489 (2013) (criticizing *Miller* for failing to hold that the Eighth Amendment categorically bans the imposition of life without parole on juveniles, regardless of the crime). While it is beyond the scope of this comment, it is the author's position that the Eighth Amendment should in fact be interpreted to require a categorical ban on life without parole for juvenile offenders, regardless of the crime or whether the sentence is mandatory. This Part therefore assumes the categorical exemption test is extended to all juveniles with regard to life without parole and to eighteen- to twenty-year-olds with regard to the death penalty. See generally Michaels, *supra* note 10.

[102]. See, e.g., *Roper v. Simmons*, 543 U.S. 551, 567–75 (2005).

[103]. *Graham*, 560 U.S. at 61.

[104]. *Roper*, 543 U.S. at 563.

[105]. *Graham*, 560 U.S. at 62.

[106]. While it is beyond the scope of this paper, further scholarly study should address why there is a lack of information regarding sentencing practices unless they involve juveniles or the death penalty, and how this lack of

transparency could potentially decrease the public's confidence in the criminal justice system.

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[107]. Federal life imprisonment is effectively "life without parole" because federal parole was abolished in the 1980s. *See* U.S. Sentencing Comm'n, Guidelines Manual 2016, at 2 (2016), <http://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2016/GLMFull.pdf>.

[108]. Glenn R. Schmitt & Hyun J. Konfrst, U.S. Sentencing Comm'n, Life Sentences in the Federal System, at 1 (2015), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20150226_Life_Sentences.pdf.

[109]. *Id.*

[110]. *Id.*

[111]. *Id.* at 9.

[112]. *Id.* at 3. These guidelines are for offenses involving "murder, treason, certain drug trafficking offenses, and certain firearms offenses committed by career offenders." *Id.*

[113]. *Id.* at 3–4.

[114]. *Id.* at 4.

[115]. *Id.* at 7.

[116]. *See id.*

[117]. Carson & Sabol, *supra* note 11, at 21 tbl.15.

[118]. The author recognizes that this conclusion is based on inferences. However, because of the lack of data on this subject, these are some of the only viable statistics available that contribute to the national consensus discussion required by the first part of the Court's categorical exemption test. *See supra* note 106.

It is a requirement that cannot be deemed to be satisfied by mere notice and hearing, if a State has contrived a conviction through the pretense of a trial, which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a State to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation. In Pyle v. Kansas, 317 U.S. 213, 215 – 216, we phrased the rule in broader terms:

Petitioner's papers are inexpertly drawn, but they do set forth allegations that his imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and, if proven, would entitle petitioner to release from his present custody. Mooney v. Holohan, 294 U.S. 103. (373 U.S. 83, 87).

The Third Circuit in the Baldi case construed that statement in Pyle v. Kansas, *supra*, to mean that the "suppression of evidence favorable to the accused was itself sufficient to amount to a denial of due process. 195 F.2d, at 820. In Napue v. Illinois, 360 U.S. 264, 269, we extended the test formulated in Mooney v. Holohan, when

we said: "The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected, when it appears." And see Alcorta v. Texas, 355 U.S. 28; Wilde v. Wyoming, 362 U.S. 607; CF. Durley v. Mayo, 351 U.S. 277, 285, (dissenting opinion).

We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

The principle of Mooney v. Holohan is not punishment of society for misdeeds of a prosecutor but an unfair trial to the accused. Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the Department Of Justice states the proposition candidly for the federal domain, "The United States wins its point whenever justice is done its citizens and the courts. A prosecution that withholds evidence on demand of an accused which, if made available, (373 U.S. 83, 88) would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice, even though a sin in

the present case, his action is not “the result of guile”, to use the words of the Court of Appeals, 226 Md., at 427, 174 A. 2d, at 169.

At the Motion hearing, the Defendant testified that, when communicating with all involved law officers, that he repeatedly told them that he did not wish to talk further, but law enforcement officials continued to question him, anyway. See the in camera testimony of Wayne Martin. (beginning at Tr. pg. 2443-2444, line 11 and testimony of Wayne Martin at trial, beginning at pg.2762, Tr. 2489, line 6- pg. 2491, line 19).

Communications between the Defendant and Wayne Martin occurred while Wayne Martin was transporting the Defendant on several occasions. None of these communications have been recorded, and, if so, were not disclosed to the defense (Tr. pg. 2443, line 11, pg.2444, line 11). The mere fact that the contents of these statements may have been impeaching or exculpatory or both violates the Defendant’s Constitutional Rights and due process of law; the State has an affirmative duty to disclose all evidence, exculpatory and impeaching or both, which may be helpful to the Defendant. Brady v Maryland supra. The suppression of any evidence favorable to the accused is sufficient to amount to a denial of due process.” The same result obtained, when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.” Mooney v. Hollohan, supra. See also Alcantara v. Texas, 355 U.S. 28; Wilde v. Wyoming, 362 U.S. 607 CF Durley v. Mayo, 351 U.S. 277, 285 (dissenting opinion).

The Defendant also testified that Wayne Martin coerced his statement at the Solicitor’s office by informing him that both his and his Family’s lives were in danger, and that he needed to give a statement, at least implying that if the Defendant did not give a statement, some harm may come to him or his Family members. The Defendant’s Mother was also transported to the

location of this statement in an attempt to coerced the Defendant into giving a statement. Clearly, the Defendant was fearful and under duress at this time.

When an involuntary statement is introduced as part of the evidence before the jury, a conviction cannot be allowed to stand, unless there is significant evidence apart from the confession. Maryland v. Brady, supra. There is no evidence that Wayne Martin discussed any of the Defendant's Constitutional rights, when he picked up the Defendant from the jail, while he was talking with him. (Pg, 243, line1, pg. 2444, line 13). These statements were or may have been cumulative and exculpatory and may have affected your Petitioner's decision for entering a guilty plea or going forward with his jury trial. The State may have or did fail to disclose all pertinent, exculpatory and impeaching information to the defense for the purpose of fundamental fairness, and the evidence not submitted may have fundamentally changed the outcome of this proceeding. In addition, on several occasions, Wayne Martin testified that he listened to Rodney Pruitt's tape recordings of the Defendant before he even questioned the Defendant, and Wayne Martin admitted that he had heard the Defendant on the recordings before he ever questioned the Defendant. Any evidence acquired from or as a result of these undisclosed statements taints and excludes all other evidence acquired as a result of these statements. Wong Sun and James Wah Toy v. United States, 371 U.S. 471 (1963). Any evidence obtained from these statements are tainted and inadmissible. The Defendant made his Motion within one, (1), year after the date of actual discovery of evidence, which could not have been acquired by him, since it was neither made known, nor produced by the State. This new evidence presently would most probably have changed the result of this case. This evidence is not only material to your Petitioner's decision to plea or try his case, but also is material to his guilt or innocence in this matter, as well as

cumulative and impeaching. Clearly, the Defendant's Constitutional rights have been violated, and he has been denied due process of law.

For good cause shown,

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Defendant, Alfred T. Walker, is hereby granted a new trial in this case.

AND IT IS SO ORDERED.

October_____, 2019
Walterboro, South Carolina

Perry M. Buckner, III,
Presiding Judge
Second Judicial Circuit

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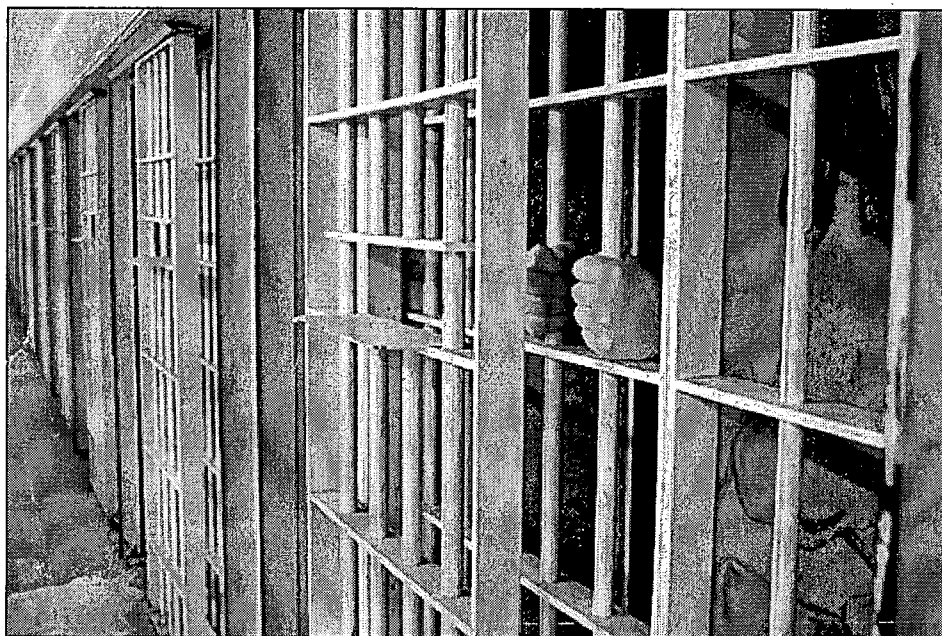
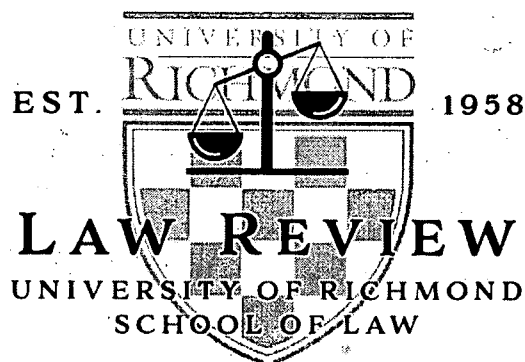
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Underdeveloped and Over-Sentenced: Why Eighteen- to Twenty-Year-Olds Should Be

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*Emily Powell**

Reynolds Wintersmith was just twenty years old when he learned he may spend the rest of his life in prison.[1] In 1994, he was sentenced to life without the possibility of parole for a nonviolent drug crime.[2] It was his first conviction.[3]

When United States District Judge Philip Reinhard was sentencing Reynolds, he struggled with the mandatory minimum requirements:[4]

Under the federal law I have no discretion in my sentencing. Usually a life sentence is imposed in state courts when somebody has been killed or severely hurt, or you got a recidivist [T]his is your first conviction, and here you face life imprisonment [I]t gives me pause to think that that was the intent of Congress, to put somebody away for the rest of their life.[5]

This comment contends that Reynolds Wintersmith belonged to a class of offenders who should be categorically exempt from sentences of life imprisonment without the possibility of parole. Sentencing eighteen- to twenty-year-olds to life without parole should be considered cruel and unusual because it is disproportionate to this class of offenders' culpability.

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The United States Supreme Court has categorically exempted classes of offenders from punishment before.[6] In *Roper v. Simmons*, the Court held that sentencing juveniles to death violated the Eighth Amendment's ban on cruel and unusual punishment.[7] The Court also held in *Graham v. Florida* that juveniles were categorically exempted from life imprisonment without the possibility of parole for non-homicide offenses.[8] In coming to these decisions, the Court has given the same two reasons for categorically banning particular sentences for classes of offenders: (1) a national consensus has formed against the sentence for the class of offenders, and (2) the sentence is disproportionate to the culpability of the class of offenders.[9]

This comment argues that eighteen- to twenty-year-olds should be categorically spared from life without parole for these same two reasons.[10] First, sentencing data suggests only a small portion of those sentenced to life without parole were between eighteen and twenty years old at the time of their crimes.[11] This low rate illustrates that the country appears to oppose sentencing eighteen- to twenty-year-olds to prison for the rest of their lives without any opportunities for release. Second, sentencing eighteen- to twenty-year-olds to life without parole is a disproportionate punishment because scientific research shows that this class of individuals shares the same mitigating characteristics as juvenile offenders.[12] These characteristics diminish culpability and thus make life without parole a disproportionate sentence for these offenders.

Part I of this comment describes the legal foundation for establishing categorical sentencing exemptions for classes of offenders, discussing the Supreme Court's decisions in *Roper*, [13] *Graham*, [14] and *Miller v. Alabama*. [15] Part II outlines the behavioral, psychological, and neurological research surrounding the culpability of eighteen- to twenty-year-olds, arguing that there is scientific confirmation that eighteen- to twenty-year-olds' brains are similar to those of juveniles. Part

III applies the Court's categorical exemption test and concludes that eighteen- to twenty-year-olds should be exempt from life without parole.[16] In the end, eighteen- to twenty-year-olds have more to offer the world in the long lives they have ahead of them.

I. The Supreme Court's Categorical Exemption Jurisprudence

The Supreme Court created a test to categorically exempt offenders from sentences,[17] and has applied this test to the death penalty with regard to mentally disabled offenders and defendants under eighteen years of age at the time of their crimes.[18] The Court has also applied the test to life without parole for non-homicide juvenile offenders.[19] While the Court held it is unconstitutional to sentence juveniles to mandatory life without parole in homicide cases, it bypassed the categorical exemption test because it was not necessary to decide the case in question.[20] This part discusses the Court's categorical exemption test and the relevant cases in which it has been implemented.

A. *Atkins and Roper: The Supreme Court's Two-Part Categorical Exemption Test*

In 2002, the Supreme Court held in *Atkins v. Virginia* that the execution of defendants with mental disabilities violated the Eighth Amendment.[21] To support its holding, it engaged in a two-part analysis.[22] First, the Court recognized that numerous states were no longer executing those with mental disabilities, and "even in those [s]tates that allow the execution of mentally [disabled] offenders, the practice is uncommon." [23] The Court found that because the practice had become so unusual, "a national consensus [had] developed against it." [24]

Second, the Court engaged in an independent proportionality inquiry and held that executing those with mental disabilities "will [not] measurably advance the deterrent or the retributive purpose of the death penalty." [25] The Court recognized that

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those with mental disabilities “do not act with the level of moral culpability that characterizes the most serious adult criminal conduct.”[26] People with mental disabilities are less likely to be deterred by capital punishment because of “their disabilities in areas of reasoning, judgment, and control of their impulses.”[27] Therefore, the Court found capital punishment was “excessive” after “[c]onstruing and applying the Eighth Amendment in the light of our ‘evolving standards of decency.’”[28]

Three years later, in *Roper v. Simmons*, the Court held that the execution of defendants younger than eighteen years of age at the time of their crimes violated the Eighth Amendment.[29] In reaching its decision, the Court engaged in its two-part analysis from *Atkins*. [30] It held that a national consensus had formed in opposition to executing juveniles, which was evidence that society views juveniles as “categorically less culpable than the average criminal.”[31]

The Court then engaged in its independent proportionality inquiry and held the death penalty was an excessive punishment for juveniles under the Eighth Amendment.[32] The Court reasoned that “[c]apital punishment must be limited to those offenders who commit ‘a narrow category of the most serious crimes’ and whose extreme culpability makes them ‘the most deserving of execution.’”[33] It reasoned that juveniles cannot be classified among the worst of offenders because they differ from adults in three meaningful ways: (1) they lack maturity and a developed sense of responsibility; (2) they are “susceptible to negative influences and outside pressures, including peer pressure;” and (3) their character is not as well-formed.[34] The Court concluded these characteristics diminished culpability, and the two clear social purposes served by the death penalty—retribution and deterrence—were therefore not as adequate of justifications with regard to juveniles as they are with adults.[35]

While the Court acknowledged that “[t]he qualities that distinguish juveniles from adults do not disappear when an

individual turns 18," it decided that a bright line needed to be drawn.[36] After recognizing that logic previously used to exclude offenders under age sixteen from the death penalty [37] could be extended to those under eighteen, the Court concluded that because eighteen years of age was "where society draws the line for many purposes between childhood and adulthood," this is also where "the line for death eligibility ought to rest." [38] As the risk of executing juvenile offenders with diminished culpability could not be remedied by an individualized sentencing regime, offenders under eighteen years old are categorically exempt from the death penalty.[39]

B. *Graham: Analyzing Actual Sentencing Practices to Find a National Consensus Against a Punishment*

While *Atkins* and *Roper* provided the two-part categorical exemption test,[40] *Graham* clarified the first prong of the test in 2010.[41] In *Graham*, the Court applied the two-part test and held that juveniles were categorically exempted from life without parole for non-homicide offenses.[42] It found that a national consensus existed against this punishment even though the majority of states permitted it.[43] After considering the practices of states where the sentence was permitted, the Court found the punishment was rarely utilized. [44] For this reason, "an examination of actual sentencing practices . . . discloses a consensus against its use." [45] The Court went on to note that only one state imposed the "significant majority" of the sentences, and only ten states imposed the remainder.[46] *Graham* therefore clarified that a national consensus against a practice can be established by the mere infrequency of the particular sentence.[47]

When applying the second prong of the categorical exemption test, the Court held that life without parole is a violation of the Eighth Amendment when imposed on juvenile offenders for non-homicide offenses for three reasons: (1) the offender's lessened culpability; [48] (2) the severity of life without parole; [49] and (3) the lack of any legitimate penological

justification—such as retribution, deterrence, incapacitation, or rehabilitation—to justify the sentence.[50]

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For the first concern, the Court reiterated the same three mitigating characteristics outlined in *Roper*.^[51] It also emphasized that “[a] sentence lacking any legitimate penological justification is by its nature disproportionate to the offense.”^[52] The Court continued to recognize that “because juveniles have lessened culpability they are less deserving of the most severe punishments.”^[53] Furthermore, the Court pointed out that “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds,”^[54] including that “parts of the brain involved in behavior control continue to mature through late adolescence.”^[55]

When discussing its second concern—the severity of life without parole—the Court noted the sentence shares characteristics with the death penalty that other sentences do not.^[56] For instance, the Court recognized the only hope offenders have in the restoration of their most basic liberties is the remote chance of executive clemency, “which does not mitigate the harshness of the sentence.”^[57] Furthermore, the Court emphasized the importance of time when it reasoned that after imposition of this sentence, “a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender.”^[58] Therefore, imposing life without parole on juvenile offenders was especially severe.^[59]

Finally, the Court examined four penological justifications for sentencing juveniles to life without parole for non-homicide offenses and found that none of them adequately justified the sentence.^[60] The Court ruled out (1) retribution because of juvenile offenders’ lessened culpability,^[61] (2) deterrence because of juveniles’ impulsiveness,^[62] (3) incapacitation because of their capacity for change,^[63] and (4) rehabilitation because the sentence itself is contradictory to the rehabilitative ideal.^[64] Due to the lack of legitimate

justification for sentencing juveniles to life without parole for non-homicide offenses, the Court held the sentence was disproportionate and therefore violated the Eighth Amendment.[65]

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C. Miller: Bypassing the Categorical Exemption Test

The Supreme Court continued to rely on juvenile development as a justification for exempting categories of juvenile offenders when it decided *Miller v. Alabama* in 2012.[66] The Court held it is unconstitutional to sentence juveniles to mandatory life without parole for homicide cases because mandatory sentencing schemes do not allow judges or juries to consider the characteristics of youth as mitigating factors.[67] According to the Court, this mandatory sentencing scheme posed “too great a risk of disproportionate punishment” because it made “youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence.”[68]

The Court did not rely on the two-part categorical exemption test in its holding.[69] Rather, it combined its reasoning in *Roper* and *Graham* regarding juvenile culpability with precedent requiring individualized sentencing when imposing capital punishment.[70] The Court noted that life without parole should be treated similarly to capital punishment when the offenders are juveniles because it is such a severe sentence.[71] Therefore, because youth is significant in sentencing, the Court held that “a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.”[72]

II. Scientific Findings Surrounding the Culpability of Young Adults

This Part outlines the behavioral, psychological, and neurological research surrounding the culpability of eighteen- to twenty-year-olds. As it will show, eighteen- to twenty-year-olds’ brains are similar to those of juveniles. Therefore, they

should be viewed similarly to adolescents in terms of culpability due to the seriousness of life without parole.[73]

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A. *Behavioral and Psychological Research*

Behavioral and psychological research reveal eighteen- to twenty-year-olds are more similar to adolescents than older adults.[74] For example, research shows impulsiveness increases until early adulthood and subsequently declines.[75] Eighteen- to twenty-year-olds score lower than older adults on a test measuring the anticipation of consequences,[76] and those under twenty-one years of age are more likely to engage in risky behavior and less likely to be sensitive to negative consequences than those between twenty-two and thirty years of age.[77] One study showed college-aged adults had a lesser ability to evaluate a situation before acting when compared to older adults, but there was no statistically significant difference in this ability when college-aged adults were compared to adolescents.[78] In regards to delinquency, there was no statistically significant difference in rates of offenses between college-aged adults and adolescents, but there was a difference between college-aged adults and older adults.[79] Furthermore, eighteen- to twenty-one-year-olds were more similar to ten- to seventeen-year-olds in a study measuring psychosocial maturity than they were to those who were at least twenty-six years old.[80]

Research suggests eighteen- to twenty-year-olds are also highly susceptible to peer pressure.[81] One study of 380 eighteen- to twenty-five-year-olds, with a mean age of twenty, [82] found that "antisocial peer pressure was a highly significant ($p < 0.001$) predictor of reckless substance use and total recklessness . . . [and] . . . a more marginally significant ($p < 0.05$) predictor of reckless driving and sexual behaviors." [83] This indicates that "the reputedly 'adolescent' characteristic of peer pressure towards antisocial behavior continues to have an important influence into emerging adulthood" and thus "[p]eer pressure would . . . appear to be a suitable target for

intervention for all youth, at least until the early-twenties age group.”[84]

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B. *Neurological Research*

Neurological research also highlights how eighteen- to twenty-year-olds differ from older adults. Research has shown that human brains are not fully mature until at least the age of twenty-five.[85] It has been recognized that “college-aged individuals may have yet to fully develop neurologically . . . and thus may not be equipped for mature judgment,”[86] and that “[h]igher-order executive function, emotional regulation, and impulse control also improve through the mid-twenties.”[87]

The prefrontal cortex, which is the area of the brain “associated with voluntary behavior control and inhibition such as risk assessment, evaluation of reward and punishment, and impulse control,” is “one of the last brain regions to mature.”[88] Eighteen- to twenty-year-olds’ prefrontal cortexes are undeveloped in two ways.[89] First, the gray matter of the brain has not fully matured until after age twenty.[90] Through a process called pruning, gray matter decreases as the brain matures.[91] Pruning is a process that enhances overall brain function because it “leads to greater efficiency of neural processing and strengthens the brain’s ability to reason and consistently exercise good judgment.”[92] The prefrontal cortex is “one of the last regions where pruning is complete and this region continues to thin past adolescence.”[93] Therefore, “one of the last areas of the brain to reach full maturity . . . is the region most closely associated with . . . the ability to reliably and voluntarily control behavior.”[94]

Second, the white matter of the brain does not fully mature until after age twenty.[95] White matter facilitates communication between different parts of the brain in a fast and reliable manner.[96] According to the American Medical Association, “resistance to peer influence . . . may be linked to the development of greater connectivity between brain regions,” and “the development of improved self-regulatory

abilities during and after adolescence is positively correlated with white matter maturation through the process of myelination.”[97]

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The underdevelopment of gray and white matter also impacts the brain’s reward system, which makes eighteen- to twenty-year-olds more susceptible to outside pressures than older adults.[98] According to one neuroscientist, “[t]he brain’s reward system becomes highly active right around the time of puberty and then gradually goes back to an adult level, which it reaches around age 25.”[99] Due to these changes, “young adults become much more sensitive to peer pressure than they were earlier or will be as adults. . . . [A] 20 year old is 50 percent more likely to do something risky if two friends are watching than if he’s alone.”[100] This neurological research, in addition to the behavioral and psychological research discussed above, supports the conclusion that eighteen- to twenty-year-olds lack the culpability for their crimes necessary to sentence them to life without parole.

III. Application of the Court’s Two-Part Categorical Exemption Test

This Part argues that the categorical exemption test should be extended to eighteen- to twenty-year-olds for life without parole.[101] If there is a national consensus against this sentencing practice, and if such a sentence is disproportionate to the culpability of this class of offenders, then the Court should hold that the Eighth Amendment categorically bans the sentencing of eighteen- to twenty-year-olds to life without parole.[102] Applying the Court’s categorical exemption test leads to the conclusion that eighteen- to twenty-year-olds should be excluded from life without parole sentences.

A. Part One: There is a National Consensus Against Sentencing Eighteen- to Twenty-Year-Olds to Life Without Parole

The first part of the Court’s categorical exemption analysis requires determining whether a national consensus against

the sentencing practice exists.[103] In doing so, the Court first considers “objective indicia of society’s standards, as expressed in legislative enactments and state practice.”[104] However, the Court has recognized “actual sentencing practices” are also integral when inquiring into national consensus.[105] A review of sentencing practices suggest there is a national consensus opposed to sentencing eighteen- to twenty-year-olds to life without parole.

Few statistics exist on the subject,[106] but it is clear the imposition of life imprisonment in the federal criminal justice system[107] is rare, regardless of age.[108] In 2013, only 153 offenders were sentenced to life imprisonment in the federal system.[109] There are at least 45 federal statutes requiring life imprisonment as a minimum sentence, and 69 of those 153 offenders were subject to this mandatory minimum.[110] Of the remaining 84 cases, 79.8% were subjected to guidelines where a life sentence was the only term of imprisonment provided.[111] The United States Sentencing Commission (the “Commission”) specifically provides for life imprisonment in only four of the over 150 guidelines in the Commission’s *Guidelines Manual*. [112] Even though life imprisonment is possible at the high end of sentencing ranges for other offenses, life sentences “generally occur only in cases where multiple sentencing enhancements in the guidelines had applied and where the offender had a significant prior criminal record.”[113] As of January 2015, there were 4436 federal prisoners serving life sentences, which is only 2.5% of the offenders in the Federal Bureau of Prisons’ system.[114]

Statistics specifically involving eighteen- to twenty-year-olds suggest that sentencing this class of offenders to life without parole is uncommon. The ages of the 153 federal offenders sentenced to life imprisonment in 2013 ranged between twenty- and eighty-years-old, with an average age of thirty-seven.[115] This means that of the few people sentenced to life in prison in federal court, no eighteen- or nineteen-year-olds were sentenced to federal life imprisonment in 2013.[116]

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Even studies broadly examining the ages of offenders suggest that young adults are rarely sentenced to life without parole. A Bureau of Justice Statistics study concluded that in 2013, only one percent of eighteen- to thirty-nine-year-olds were sentenced to life, life without parole, life plus additional years, or death.[117] While this study examined an extremely large age bracket that included four different types of sentences, this data supports the notion that there is a national consensus against sentencing eighteen- to twenty-year-olds to life without parole. If only one percent of offenders in an age bracket spanning twenty-one years was sentenced to the harshest punishments in the criminal justice system, then it is likely that only a tiny portion of this already small statistic was between eighteen and twenty years old when they were sentenced to life without parole in 2013.[118]

Reading these Bureau of Justice statistics alongside a smaller, sentence-specific study further supports the idea that there is a national consensus against this sentencing practice. Out of 355 prisoners ranging from eighteen to fifty-seven years old at the time of arrest, who were sentenced to life without parole for nonviolent offenses, only 5.4% were twenty years old or younger.[119] If the American Civil Liberties Union's data is an accurate reflection of the entire prison population serving life without parole sentences for nonviolent crimes, then only roughly 5.4% of these prisoners were between eighteen and twenty years old when they committed their crimes.[120]

While sentencing eighteen- to twenty-year-olds to life without parole is not statutorily barred, "those sentences are most infrequent" according to the few statistics that exist.[121] The *Graham* Court concluded there was a national consensus against imposing life without parole on juvenile nonviolent offenders because the sentence was so rare, despite the numerous opportunities to administer it.[122] Similarly, the infrequency of sentencing eighteen- to twenty-year-olds to life without parole does not stem from a lack of opportunity, as this age group is statistically the most violent.[123] The top

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four individual age groups arrested for murder and non-negligent manslaughter in 2010 were nineteen-year-olds, eighteen-year-olds, twenty-one-year-olds, and twenty-year-olds, respectively.[124] While eighteen- to twenty-year-olds—along with twenty-one-year-olds—are statistically the most violent,[125] only one percent of eighteen- to thirty-nine-year-olds were sentenced to life, life without parole, life plus years, or death in 2013.[126]

Even though sentencing this class of offenders to life without parole is rare, so long as it is legally permissible, there is an intolerable risk of sentencing an eighteen- to twenty-year-old to life without parole when he or she lacks the culpability to deserve such an extreme sentence. While the statistics cited above are not conclusive, they facially satisfy the first of the Court's two necessary conditions for categorical exemption because there appears to be a national consensus against sentencing eighteen- to twenty-year-olds to life without parole.

B. Part Two: Life Without Parole is a Disproportionate Punishment for Eighteen- to Twenty-Year-Olds

The second prong of the Court's categorical exemption test requires determining whether sentencing eighteen- to twenty-year-olds to life without parole violates the Eighth Amendment. [127] This analysis requires "consideration of the culpability of the offenders at issue in light of their crimes and characteristics; along with the severity of the punishment in question" and whether the practice serves legitimate penological goals.[128] Using the Court's logic, sentencing eighteen- to twenty-year-olds to life without parole is a disproportionate punishment, regardless of the crime, and the three mitigating characteristics recognized of juveniles negate the penological justifications for sentencing eighteen- to twenty-year-olds to life without parole.[129]

The Lack of Culpability of Eighteen- to Twenty-Year-Olds

As discussed above, eighteen- to twenty-year-olds are similar to juveniles in that they are prone to risky behavior[130] and susceptible to negative outside influences.[131] According to the Court, "[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside." [132] However, the mitigating qualities the Court was referring to have not yet subsided by age eighteen, and even the Court has recognized this.[133] The Court has also acknowledged that "[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed." [134] For this same reason, the criminal justice system should not hold psychologically and neurologically immature eighteen- to twenty-year-olds to the same standard of culpability as thirty-year-olds.

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1. The Severity of Life Without Parole

The Court recognized that "life without parole is 'the second most severe penalty permitted by law.'" [135] Life without parole "deprives the convict of the most basic liberties without giving hope of restoration." [136] It stands for a "denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convict], he will remain in prison for the rest of his days." [137] The Court acknowledged that life without parole is an especially severe punishment for juveniles because "a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender. A 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only." [138]

Similarly, an eighteen- to twenty-year-old and a seventy-five-year-old would receive the same punishment in name only. There is little difference between sixteen years of age and

twenty years of age when one is framing the discussion around the years of life ahead of them. Eighteen- to twenty-year-olds still have numerous years and a greater percentage of their lives ahead of them than older offenders. For this reason, life without parole is equally severe for eighteen- to twenty-year-olds as it is for juveniles.

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1. The Inadequacy of Penological Justifications for Life Without Parole

The Court has considered each traditional penological justification and held that they are inadequate to support sentencing juvenile non-homicide offenders to life without parole.[139] The Court's reasoning for each penological justification applies to eighteen- to twenty-year-olds. The first justification, retribution, is "an attempt to express the community's moral outrage or . . . an attempt to right the balance for the wrong to the victim." [140] However, while retribution is a legitimate penological justification for punishment, "[t]he heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender." [141] Behavioral, psychological, and neurological research indicate eighteen- to twenty-year-olds are more similar to juveniles than to older adults in regards to traits that influence culpability, including risk-taking,[142] temperance,[143] and susceptibility to peer pressure.[144] Just as "retribution does not justify imposing the second most severe penalty on the less culpable juvenile nonhomicide offender," [145] it does not justify imposing this sentence on eighteen- to twenty-year-olds who lack the culpability of older adults.

The second justification, deterrence, should also be discounted. The *Graham* Court noted that "the same characteristics that render juveniles less culpable than adults suggest . . . that juveniles will be less susceptible to deterrence." [146] Similarly, eighteen- to twenty-year-olds are less likely to be deterred because they lack culpability. They

lack the ability to anticipate future consequences,[147] have lower levels of temperance,[148] and are more likely to engage in risky behavior.[149]

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Third, incapacitation does not justify sentencing eighteen- to twenty-year-olds to life without parole. Just as “[a] life without parole sentence improperly denies the juvenile offender a chance to demonstrate growth and maturity,”[150] it also disregards eighteen- to twenty-year-olds. The neurological processes that lead to the maturation of the brain have not yet matured by eighteen years old,[151] and “[h]igher-order executive function, emotional regulation, and impulse control . . . improve through the mid-twenties.”[152] Life without parole sentences impair eighteen- to twenty-year-olds’ abilities to demonstrate they will not be risks to society for the rest of their lives.[153]

The fourth and final justification, rehabilitation, was discounted by the Court because “[t]he penalty forswears altogether the rehabilitative ideal.”[154] Denying an eighteen- to twenty-year-old’s “right to reenter the community . . . makes an irrecoverable judgment about that person’s value and place in society.”[155] As discussed above, these offenders’ brains still need time to mature.[156] Life without parole assumes eighteen- to twenty-year olds are irredeemable, and therefore does not give them the chance to reenter society and prove they are rehabilitated. Consequently, following the Court’s proportionality analysis in *Graham*,[157] there is no penological theory that justifies life without parole for eighteen- to twenty-year-olds.

I. The Risks of Discretionary Life Without Parole

The Court has also addressed individualized sentencing of juveniles.[158] The *Graham* Court held that “[t]he differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive a sentence of life without parole for a nonhomicide crime ‘despite insufficient culpability.’”[159] Similarly, the

psychological and neurological predispositions of eighteen- to twenty-year-olds are too well known to ignore. There is too great a risk that “the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the . . . offender’s objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe” than life without parole. [160] Due to these risks, individualized sentencing is insufficient for a class of individuals who lack the culpability to warrant such a harsh sentence.[161] The Court should go as far as holding that life without parole is a disproportionate sentence for eighteen- to twenty-year-olds under the Eighth Amendment.

Conclusion

Reynolds Wintersmith did not think he would die in prison, but rather thought his sentence was so unjust that it would inevitably be corrected.[162] He decided to take the advice of a fellow inmate: “You can do prison two ways. You can come here and die mentally or physically—you can make it your graveyard. Or, you can use it as a school and you can learn things that you could never learn anywhere else that will help you better your life.”[163] While Reynolds was incarcerated, he completed a 4100-hour teaching apprenticeship program in order to gain the necessary qualifications to teach.[164] He also counseled fellow inmates who struggled emotionally with their incarceration.[165] Even though he was sentenced to life without parole, he led a re-entry program that helped inmates prepare for their release from prison.[166]

President Obama commuted Reynolds’s sentence on December 19, 2013, and Reynolds was released on April 17, 2014.[167] He had served more than twenty years of his life sentence for a nonviolent crime.[168] Now, Reynolds has found a career as a counselor at an alternative Chicago high school.[169] He counsels students who face significant barriers, such as working, paying rent, and raising children, while trying to finish high school.[170]

Reynolds is a success story. A mandatory sentence wrote Reynolds off as irredeemable without giving him the chance to show he would not always be a risk to society.[171] He is able to prove himself now that he is free, but there are others still in prison who, under the current doctrine, will never get the chance to redeem themselves. The current doctrine does not reflect the value of rehabilitating offenders so they can once again be productive members of society. If offenders are imprisoned for lacking the requisite culpability for one of the harshest sentences available, the public could lose faith in the legitimacy of the criminal justice system.

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The Supreme Court should interpret the Eighth Amendment to categorically exempt eighteen- to twenty-year-olds from life without parole. While the statistics addressed in this comment were not conclusive, they did suggest there is a national consensus against sentencing eighteen- to twenty-year-olds to life without parole. Furthermore, behavioral, psychological, and neurological research indicate eighteen- to twenty-year-olds lack the requisite culpability to be sentenced to such an extreme punishment. The Court should therefore apply its categorical exemption test and hold that the Eighth Amendment categorically bans the imposition of life without parole on eighteen- to twenty-year-old offenders.

* J.D. Candidate, 2018, University of Richmond School of Law. B.A., 2015, University of Virginia. I wish to express my sincere gratitude to Professors Mary Kelly Tate and Corinna Barrett Lain for their guidance and expertise. I would also like to thank the *University of Richmond Law Review* staff and editors for their assistance in preparing this comment for publication. I also wish to thank my parents, Michael and Kathleen Powell, for their unconditional love and support. Finally, I wish to convey appreciation for my fiancé, Chris Plavcan, for his unending love and encouragement; without him, I would still be without a title for this piece.

[1]. *Reynolds Wintersmith*, FAMM, <http://famm.org/reynolds-wintersmith/> (last visited Mar. 1, 2018) [hereinafter FAMM].

[2]. *Id.*

[3]. *Id.* Reynolds's involvement with drugs was unsurprising, given his childhood. As a child, Reynolds was surrounded by drugs. John Kuhn, *From the War on Drugs, a Story of Redemption*, Chi. Rep. (Aug. 19, 2014), <http://chicagoreporter.com/war-drugs-story-redemption/>. When he was eleven years old, he watched his mother die of a heroin overdose. *Id.* After her death, he lived with his drug-dealing grandmother and was constantly amid gang violence. *Id.*; Annie Sweeney, *Year After Obama-Ordered Prison Release, Ex-Drug Dealer Finds Career*, Chi. Trib. (Jan. 1, 2015), <http://chicagotribune.com/news/ct-life-after-prison-met-20141229-story.html>. After his grandmother was sent to prison, Reynolds began to sell drugs to provide for his younger siblings when he was seventeen years old. Kuhn, *supra*; Sweeney, *supra*. It was not long before the adults in the gang brought him further into the drug ring as a leader. Kuhn, *supra*; FAMM, *supra* note 1. He was arrested when he was nineteen years old and convicted on four counts as part of a conspiracy to possess crack cocaine with intent to distribute. Am. Civil Liberties Union, *A Living Death: Life Without Parole for Nonviolent Offenses* 67 (2013), <https://www.aclu.org/files/assets/111813-lwop-complete-report.pdf>; Kuhn, *supra*.

[4]. Kuhn, *supra* note 3. To calculate his sentence, Reynolds's crimes were run through a formula that considered several factors, which resulted in a sentence of life plus forty years in federal prison. *Id.* Reynolds was effectively sentenced to life without parole because the federal government abolished parole in the 1980s. *See infra* note 107.

[5]. FAMM, *supra* note 1.

[119]. Am. Civil Liberties Union, *supra* note 3, at 26 tbl.7

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[120]. Again, the author recognizes this is far too small of a sample size to conclusively claim that the ACLU's data is reflective of the entire prison population. *See supra* note 106.

[121]. *See* *Graham v. Florida*, 560 U.S. 48, 62 (2010).

[122]. *Id.* at 67.

[123]. *See* Howard N. Snyder, U.S. Dep't of Justice, Arrest in the United States, 1990–2010, at 17–18 tbl.3 (2012), <https://www.bjs.gov/content/pub/pdf/aus9010.pdf>.

[124]. *Id.*

[125]. *See id.*

[126]. Carson & Sabol, *supra* note 11, at 21 tbl.15.

[127]. *See Graham*, 560 U.S. at 61.

[128]. *Id.* at 67.

[129]. *See id.* at 68, 74, 77–78 (holding that juveniles' mitigating characteristics rendered penological justifications inadequate to justify the severity of life without parole for juvenile non-homicide offenders, and discretionary sentencing of juveniles to life without parole was too dangerous of a risk to allow).

[130]. *See, e.g.,* Cauffman et al., *supra* note 77, at 203–04.

[131]. *See, e.g.,* Bradley & Wildman, *supra* note 12, at 263.

[132]. *Roper v. Simmons*, 543 U.S. 551, 570 (2005) (quoting *Johnson v. Texas*, 509 U.S. 350, 368 (1993)).

[133]. *Id.* at 574 (“The qualities that distinguish juveniles from adults do not disappear when an individual turns 18.”).

[134]. *Id.* at 570.

[135]. *Graham v. Florida*, 560 U.S. 48, 69 (2010) (quoting *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991) (Kennedy, J., concurring)).

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[136]. *Id.* at 69–70.

[137]. *Id.* at 70 (citation omitted).

[138]. *Id.*

[139]. *Id.* at 74.

[140]. *Roper v. Simmons*, 543 U.S. 551, 571 (2005).

[141]. *Graham*, 560 U.S. at 71 (quoting *Tison v. Arizona*, 481 U.S. 137, 149 (1987)) (alteration in original).

[142]. Cauffman et al., *supra* note 77, at 204.

[143]. Modecki, *supra* note 74, at 85.

[144]. Bradley & Wildman, *supra* note 12, at 263.

[145]. *Graham*, 560 U.S. at 72.

[146]. *Id.* (quoting *Roper v. Simmons*, 543 U.S. 551, 571 (2005)).

[147]. Steinberg et al., *Age Differences*, *supra* note 76, at 35 & tbl.1.

[148]. Modecki, *supra* note 74, at 85.

[149]. Cauffman et al., *supra* note 77, at 204.

[150]. *Graham*, 560 U.S. at 73.

[151]. *See* Brief for the AMA, *supra* note 55, at 16–24.

[152]. Hamilton, *supra* note 87, at 1115.

[153]. *See Graham*, 560 U.S. at 73.

[154]. *Id.* at 74.

[155]. *See id.*

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[156]. *See* Brief for the AMA, *supra* note 55, at 16–24.

[157]. *Graham*, 560 U.S. at 74.

[158]. *Id.* at 77–79.

[159]. *Id.* at 78 (quoting *Roper v. Simmons*, 543 U.S. 551, 572–73 (2005)).

[160]. *See Roper*, 543 U.S. at 573.

[161]. Again, while it is beyond the scope of this comment, the Court should apply this same logic to juvenile homicide offenders. *See supra* note 101.

[162]. *See Sweeney*, *supra* note 3.

[163]. Kuhn, *supra* note 3.

[164]. *Id.*

[165]. *Id.*

[166]. FAMM, *supra* note 1.

[167]. *Id.*

[168]. Kuhn, *supra* note 3.

[169]. *Sweeney*, *supra* note 3.

[170]. *Id.*

[171]. *See* Kuhn, *supra* note 3.

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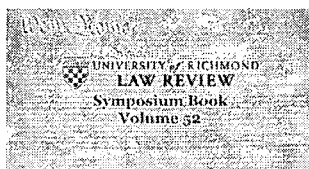
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