

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Cherokee County

Honorable Grace Gilchrist Knie, Circuit Court Judge

JOEY CLARK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001627

APPENDIX

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Chase Harbin - Direct examination
by Mr. Stroud

1 statements that are dealing with the credibility of the, of
2 the investigators that is not laid -- properly lay the
3 foundation. What she, what she said---

4 MS. JAMESON: This is all argument for the end. I
5 think he needs to ask him about these portions, and why he
6 did or did not object. But this is all editorial
7 comments---

8 MR. STROUD: Okay.

9 MS. JAMESON: -- and argument.

10 MR. STROUD: Well, it's not editorial comment because
11 it is in the transcript.

12 MS. JAMESON: Yes, but you're saying that it was
13 improper, it was vouching, altered characterizations. That
14 is for the judge to determine.

15 MR. STROUD: Okay.

16 MS. JAMESON: Our position is it's for the judge to
17 determine, Your Honor.

18 MR. STROUD: Okay. But if I don't bring it out, how's
19 she gonna determine it?

20 THE COURT: Okay. Mr. Stroud, and, Ms. Jameson, I
21 think that, because we are technically on direct here, that,
22 Mr. Stroud, you can point the witness to the portion of the
23 transcript that you would like for him to review, and then
24 you, you can ask him why he handled that that way---

25 MR. STROUD: Okay.

Chase Harbin - Direct examination
by Mr. Stroud

1 THE COURT: ---or why he did not, why did you not
2 object to that. But I don't think that it's necessary for
3 you to proffer it or publish it and then have him read it.

4 MR. STROUD: Okay.

5 THE COURT: Okay.

6 MR. STROUD: All right.

7 THE COURT: I, I, I think that might save a little time
8 as well.

9 MR. STROUD: Okay.

10 THE COURT: Okay?

11 MR. STROUD: All right.

12 A I, I think I understand your, your question.

13 Q Yeah. Okay.

14 A I disagree with your premise, but, but I understand
15 your question. I, I -- you know, attorneys, both defense
16 and, and prosecutors, are given a little bit of latitude in
17 closing.

18 Q Uh-huh. (Affirmative).

19 A Obviously it's an editorial, and it's, it's coming from
20 a biased place, and, you know, for, for a purpose. I didn't
21 find that she was improperly vouching. I think she was just
22 telling the jury that she believed in her case, and she
23 thought she had a good case. And it, it certainly wasn't
24 crossing a line to the extent that I thought that, if I
25 stood up and objected, that a judge was actually gonna make

Chase Harbin - Direct examination
by Mr. Stroud

1 her change her course, and it was something that I, I fully
2 believed a jury already takes for granted that the
3 prosecutor believes in her own case, and that's pretty much
4 what she was saying there.

5 Q Okay. All right. Now, my -- let's see. I'm not gonna
6 read anything, but if you'll refer to Page 608, Lines 1
7 through 15.

8 MS. JAMESON: 633.

9 Q 633. And read line -- the next question deals with one
10 through fifteen -- Lines 1 through 15.

11 A Okay.

12 Q And let me know---

13 A I'll, I'll read it real quick, and then I'll --.

14 (Pause.)

15 A Is -- your question is why did I not object to her
16 using the sentence or the, the adjectives fantastic, and
17 suggesting that the -- Cherokee County should be glad to
18 have---

19 Q Yeah, it's---

20 A ---Billy Anthony?

21 Q Yeah, there's some Court cases -- well, okay.

22 MS. JAMESON: Objection.

23 MR. STROUD: Yeah.

24 MS. JAMESON: Argument.

25 MR. STROUD: Okay.

Chase Harbin - Direct examination
by Mr. Stroud

1 A I, I mean, again, I, I think, for purposes of this
2 hearing, I'm happy to --

3 Q Yeah.

4 A -- to, you know, address what I believe the course of
5 the question is, is that, you know, you, you have to pick
6 a -- again, I, I recognize that, that you want me to object
7 to every little thing. But, you know, she said that her
8 investigator, you know, player on her team, did a, a, a good
9 job, and that, you know, I, I can see where you're coming
10 from that perhaps she shouldn't have suggested that Cherokee
11 County should be glad to have particular investigators.

12 But I, I, I, I certainly would, if I did it over again,
13 I -- I would not object to that. It's just not a --
14 substantive issues that's going to sway a jury one way or
15 the other. I'm, I'm, I'm not entirely certain it's
16 improper, you know, as a bright line rule. But, if it were,
17 it would certainly barely be so, and not worth the
18 objection---

19 Q Okay.

20 A ---in my opinion.

21 Q All right. All right. Now, our next reference point
22 will be Pages 608, 609 of the trial transcript.

23 All right. Since I can't refer you to the reference
24 point, basically it's having, it's having to do with not
25 laying a foundation or -- and offering state of mind.

Chase Harbin - Direct examination
by Mr. Stroud

1 A Okay. what, what, what lines would you like me to look
2 at?

3 Q All right. It's Lines 22 through Number 1 on 634.

4 A Okay. what's your question?

5 Q Okay. When the solicitor made these statements, you
6 offered no objection.

7 Could you please explain why that was?

8 A You had previously said the word state of mind. If, if
9 you are suggesting that there's an objectionable statement
10 by the solicitor by essentially offering a, a narrative, you
11 know, I, I think, in my opinion, you might be confusing what
12 is allowable in direct, and what is allowable in closing. I
13 think it's within the prerogative of closing attorneys to
14 offer a narrative to, to fill in blanks for juries, and to
15 suggest what they think happened, and that appears to be
16 what Ms. Leskanic was doing at the time.

17 Q Okay. All right. Our next reference point, the trial
18 transcript Pages 655 through 656 dealing with implied
19 malice. Yeah.

20 All right. If you look at it.

21 A I'm, I'm on the page.

22 Q Okay. All right. why did you fail to object to Judge
23 King's implied malice by use of a deadly weapon jury charge
24 when the State could not even identify what the deadly
25 weapon---

Chase Harbin - Direct examination
by Mr. Stroud

1 MS. JAMESON: Objection. Argument.

2 MR. STROUD: Okay.

3 A Well, it -- he. I'm sorry. I, I, I won't answer it.

4 THE COURT: Okay. That is sustained, but I, I -- he
5 did ask why did you not object. Okay. And so you can
6 explain that.

7 A The State offered some amount of proof that the
8 deceased -- the, the manner of death was stabbing. So, I, I
9 think that's the answer to your question is that if
10 there's -- you know, you're stabbed with a weapon. So --.

11 Q All right. Did they produce the knife?

12 A I don't remember that they did.

13 Q Okay.

14 A I can't remember actually.

15 Q Mr. Harbin, why did you not request that Ms. Winter
16 wingard's fingernail clippings be tested by the State?

17 A I do not have 100 percent clear recollection of that,
18 but I do remember thinking that it's almost certain that
19 Joey's, you know, DNA or something would be on there
20 because, again, that was kind of the, the -- some, some of
21 the State's, you know, evidence that -- well, they lived
22 together. Their DNA is all over each other. And, you know,
23 they were using to decent effect, but that would of been
24 another kind of notch in their belt. I don't recall those
25 specifically. So, I'm not sure that -- I, I can't offer you

Chase Harbin - Direct examination
by Mr. Stroud

1 a complete---

2 Q Okay.

3 A ---answer on that.

4 Q All right. So, you had the -- why didn't you go ahead
5 and request State funding to test these fingernail clippings
6 that were -- and, and then you could of decided whether to
7 introduce that as evidence or not, but fingernail clippings
8 in the case -- the murder case typically indicates---

9 MS. JAMESON: Objection.

10 MR. STROUD: Okay.

11 A I think the same answer. I, I don't know that I've got
12 any more info for you---

13 Q Okay.

14 A ---on that.

15 THE COURT: Okay. And, for the record, the objection
16 is sustained, but the question was why did you not request
17 funding to have the fingernail---

18 MR. STROUD: Uh-huh. (Affirmative).

19 THE COURT: ---clippings tested, and I think you did
20 answer that, correct?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Okay. Thank you.

23 Q Okay. On the trial transcript on Page 278 -- okay.
24 Three -- big number 303.

25 A Yes, sir.

Chase Harbin - Direct examination
by Mr. Stroud

1 Q Okay. Why did you not require the State to test the
2 cigar butts found in the yard considering that no one
3 involved in the trial smoked cigars?

4 A Number one, I do not know whether it is true that no
5 one did or did not smoke cigars, but I -- it -- I don't
6 think that I, when, when I heard something about cigar, I
7 believe it was in your -- was it in your application?

8 Is that the one I read first?

9 Q Yes.

10 A I have no recollection of that, and I, I don't have any
11 recollection---

12 Q Okay.

13 A ---of that today.

14 Q All right. Mr. Harbin, why did you not request that
15 Judge King add voluntary murder as a lesser included charge
16 to the substantive law as well as adding voluntary
17 manslaughter, guilty or not guilty, to the verdict form?

18 A I discussed that with Joey. It was, I suppose you'd
19 say, our collective opinion, that, if that was offered, that
20 would have been taken by the jury. In other words, I was
21 afraid the jury was gonna split the baby, and, and, again, I
22 discussed that with Joey. Joey had the opportunity to --
23 cause I, I was not entirely against it. Had Joey told me I
24 absolutely want that, then I would of requested it.

25 Don't know if the judge would have given it or not, but

Chase Harbin - Direct examination
by Mr. Stroud

1 I was pretty convinced that the jury would of done that,
2 and, and I think then, in our discussion, that was
3 essentially a, a -- pretty close to -- we were worried that
4 that would of been pretty close to a guarantee that he was
5 gonna get a very significant number of years, you know, out
6 of, you know, trial, sentencing for voluntary manslaughter.

7 Q Okay. In the State's April 4th, 2014, response to your
8 Motion to Reconsider, do you, do you need to be refreshed---

9 A Yes, sir, please.

10 Q ---on that?

11 All right. Your Honor, the State has no objection to
12 moving Exhibit 16, which is the response letter to
13 Mr. Harbin's Motion to Reconsider the sentence, that, that
14 one, and this will be him -- his. He can -- just to
15 refresh.

16 MS. JAMESON: No objection, Your Honor.

17 THE COURT: Okay. And so Exhibit No. 16 is, is moved
18 into evidence without objection, Applicant's Exhibit 16.

19 (WHEREUPON, the letter was marked as Applicant's
20 Exhibit No. 16, and received into evidence at this time.)

21 A And did you want to give me the question?

22 Q Yeah.

23 A That way I can read this---

24 Q Okay.

25 A ---with some context?

Chase Harbin - Direct examination
by Mr. Stroud

1 Q All right. Did the State, in its response, say that
2 you had offered no evidence during the trial to substantiate
3 the claim for manslaughter/heat of passion?

4 A Number two of their response says no evidence was
5 offered by the defense during trial to substantiate a claim
6 for manslaughter.

7 Q Okay. And -- Your Honor, State has no, no objection to
8 entering Exhibit No. 15, which is his actual motion to
9 reconsider the sentence that was dated March 27th, 2014.

10 THE COURT: Is that correct, counsel?

11 MS. JAMESON: No objection, Your Honor.

12 THE COURT: Okay. So, Applicant's Exhibit No. 15 is
13 moved into evidence without objection.

14 (WHEREUPON, the Motion for Reconsideration was marked
15 as Applicant's Exhibit No. 15, and received into evidence at
16 this time.)

17 MR. STROUD: And I'm also -- let him refresh that.
18 That has been a while.

19 A Yes, sir.

20 Q Yeah.

21 A I've, I've had the opportunity to review that.

22 Q Okay. I kind of lost my place here.

23 Okay. Mr. Harbin, why did you fail to present any
24 evidence that manslaughter/heat of passion during
25 Mr. Clark's murder trial?

Chase Harbin - Direct examination
by Mr. Stroud

1 A That was not our strategy to---

2 Q Okay.

3 A ---go for manslaughter essentially.

4 Q All right. After the trial apparently -- did you then
5 consider that it -- because you had -- you included in your
6 Motion to Reconsider. So, this was -- you formed the
7 possibility that, after the trial, in your Motion to
8 Reconsider, that could of -- that you should -- maybe wanted
9 to do that or did your strategies changed?

10 A No, I think there's a difference in a cold blooded
11 killer.

12 Q Uh-huh. (Affirmative).

13 A Somebody that just spent time planning, and just
14 decided they, you know, hated someone enough to take them
15 off this earth and just plan it. There's a difference in
16 that person, and what that sentence might be, and somebody
17 that simply had kind of a, a passionate moment or, or even,
18 you know, amount -- some amount of time, and, and, and I was
19 pointing that out in, in, in some attempt to convince the
20 judge that 45 years was, was more than Joey deserved.

21 Q All right. All right. Based on what you just said
22 then, it, it does seem like -- you said---

23 MS. JAMESON: Objection.

24 MR. STROUD: Okay.

25 MS. JAMESON: Argument.

Chase Harbin - Direct examination
by Mr. Stroud

1 MR. STROUD: All right. All right.

2 THE COURT: Sustained.

3 Q Okay. The -- if there was a difference between
4 manslaughter and cold blooded murder, would -- why would you
5 not want to at least bring that up during the trial instead
6 of waiting if it -- till after the trial and try and get a
7 lighter sentence based on that fact?

8 A Well, I wasn't arguing to the Judge in the Motion to
9 Reconsider that Joey was only guilty of manslaughter. Not
10 every murder is dispassionate. You can still have a
11 certainly, you know, emotions and, and things running high
12 and running hot. But, again, your specific question was why
13 I didn't offer evidence of, of, of essentially manslaughter
14 during the trial because we were defending on the theory of
15 actual innocence for the murder. So, it, it wouldn't have
16 made any sense for us to do that.

17 Q Okay. And so you did consider that, in the trial,
18 you're allowed to offer hypothetical alternative evidence?

19 A That's right. But, again, we didn't -- we decided not
20 to ask for the charge for manslaughter to begin with.

21 Q Okay. Mr. Harbin, did the State make an offer to
22 reduce the charge from murder to voluntary manslaughter that
23 was set to expire in November of 2013?

24 A My recollection is that they did.

25 MR. STROUD: Okay. Your Honor?

Chase Harbin - Direct examination.
by Mr. Stroud

1 THE COURT: Yes, sir.

2 MR. STROUD: The State has no objection to our Exhibit
3 18, which is Mr. Harbin's response, in an email, to the
4 assistant solicitor that he missed a deadline about this
5 specific plea offer.

6 THE COURT: Okay. And what exhibit is that?

7 MR. STROUD: Exhibit No. 18.

8 MS. JAMESON: I would ask that it be shown to the
9 witness and he identifies it---

10 MR. STROUD: Yeah.

11 MS. JAMESON: ---for foundation purposes.

12 MR. STROUD: Okay.

13 MS. JAMESON: If he does, I likely won't. But I think
14 we need to get there first.

15 MR. STROUD: Okay.

16 THE COURT: Okay. Why don't you first have Mr. Harbin
17 identify the email?

18 Q Mr. Harbin, in your -- from your files that you gave
19 us---

20 A Uh-huh. (Affirmative).

21 Q ---we happened upon this.

22 Would -- do you recognize this, and can document that
23 you did have this email conversation?

24 A Yeah, that, that -- this appear to be a copy of the
25 email chain between myself and Ms. Leskanic where I

Chase Harbin - Direct examination
by Mr. Stroud

1 essentially told her that I had forgotten about the date for
2 the expiration of her plea offer. We had previously
3 discussed it, and previously rejected it, but, you know, as
4 with all of these---

5 Q uh-huh. (Affirmative).

6 A ---you know, especially these larger cases, you want to
7 give every possible opportunity to take that plea. And, as
8 I recall, and this isn't in the email, but just for context,
9 as I recall, Ms. Leskanic did kind of offer me a little
10 grace period that, had we had that conversation, and, and he
11 wanted to take it then, that that was still doable. But,
12 but, ultimately, we, we rejected the offer.

13 Q Okay.

14 THE COURT: Counsel, Exhibit No. 18?

15 MS. JAMESON: No objection.

16 THE COURT: Okay. Exhibit No. 18 by Applicant is moved
17 into evidence.

18 (WHEREUPON, an email was marked as Applicant's Exhibit
19 No. 18, and received into evidence at this time.)

20 Q why -- during, during the murder trial, from reading
21 the transcript, why did you -- it appeared that, during the
22 trial, you did not inform Judge King about the plea offer of
23 voluntary manslaughter.

24 why did you not do that?

25 A I, I don't have an explanation. I, I, I think that,

Chase Harbin - Direct examination
by Mr. Stroud

1 based upon the -- on the face of my Motion to Reconsider, I
2 admitted that I did not include some, some details that I
3 felt, at the time that I wrote the Motion to Reconsider,
4 might have been, might have been important or possibly would
5 of swayed the judge. You know, I think we can always think
6 that, you know, we could do better.

7 Q Uh-huh. (Affirmative).

8 A But I, I don't have a specific explanation.

9 Q Okay. Chase, why did you not request a change of the
10 venue considering that you won't -- you had, in the notes,
11 we found you brought up information that there was -- been a
12 lot of publicity about this---

13 MS. JAMESON: Objection.

14 MR. STROUD: Okay.

15 MS. JAMESON: Testifying and---

16 MR. STROUD: All right.

17 THE COURT: Okay. And so thank you. I will sustain
18 the objection as to the continuation of the question, but I
19 believe the question is why didn't you request a change in
20 venue.

21 A I didn't, I didn't believe that it was gonna be an
22 issue as to being able to impanel a fair and impartial jury.
23 And, and any questions of publicity, and that kind of thing
24 are handled, you know, in jury qualification.

25 Q Okay. Chase, did Mr. Clark make a threat -- did

Chase Harbin - Direct examination
by Mr. Stroud

1 Mr. Clark make a threat that concerned your safety?

2 A I, I really don't -- I'll -- and I'll -- just for the
3 Court's information, I discussed this with Ms. Leskanic, and
4 Ms. Jordan as well, because I did not have a specific
5 recollection of this. But I, I do have a recollection of a
6 conversation with Joey where, I don't remember actually what
7 we were talking about, but that Joey and I were discussing
8 essentially how jailhouse rumors and things get started. I
9 don't remember the thing about the recorded phone call or
10 anything like that. I never really had a -- you know, I
11 never had any kind of tension with Joey.

12 He was easy to work with. He was forthright. You
13 know, he -- I, I -- it was pretty good working relationship,
14 and, and I wish I could tell you that I remember, remember
15 specifically---

16 Q Yeah.

17 A ---that somebody had told me that he had threatened my
18 safety, but I never really felt that personally.

19 Q Okay. All right. Who initiated -- do you -- was it --
20 do you remember whether you initiated a request to withdraw
21 as Mr. Clark's appointed counsel?

22 A I think that Joey had. I, I know I didn't, but I, I
23 assume---

24 Q Okay.

25 A ---that, therefore, that Joey did.

Chase Harbin - Direct examination
by Mr. Stroud

1 Q Okay. Mr. Harbin -- well, let me -- Exhibit 19, the,
2 the page -- show this to him for foundation. This is --.

3 (Pause.)

4 MR. STROUD: Your Honor, I'm gonna -- may, may I
5 approach Mr. Harbin and show him an email converse --
6 electronic conversation between him and Ms. Les -- the
7 assistant solicitor about a, a possible conflict of
8 interest?

9 THE COURT: Certainly.

10 Q Does that look like -- again, we found this in the
11 information that you gave us, and you, you look like the
12 doctor -- the conversation that y'all had regarding the
13 subject matter of that email?

14 A Yeah, apparently Judge Stillwell was the -- I'm sorry.
15 Judge Kelly---

16 Q Uh-huh. (Affirmative).

17 A ---was the resident judge that had represented one of
18 the jailhouse informants several years prior, and we were
19 addressing the possibility of a conflict since he was likely
20 to be the judge on any given term. I, I want to say that I
21 remember we actually -- the, the three of us met.

22 Q Okay.

23 A And Judge Kelly had indicated that he really didn't
24 specifically remember representing Mr. Stillwell, but that I
25 don't -- I think, essentially, we just decided to put it in

Chase Harbin - Direct examination
by Mr. Stroud

1 front of somebody else to avoid it all together.

2 Q Okay.

3 (Pause.)

4 MR. STROUD: All right. The State has no objection to
5 entering our Exhibit 19, which is the email from the
6 assistant solicitor to Mr. Harbin dealing with the potential
7 conflict of interest.

8 MS. JAMESON: No objection.

9 THE COURT: Okay. So, Applicant's Exhibit No. 19 is
10 moved in without objection. Thank you.

11 (WHEREUPON, the email was marked as Applicant's Exhibit
12 No. 19, and received into evidence at this time.)

13 Q Okay. Mr. Harbin, during the murder -- at -- during
14 the murder trial, the March 7th, March 17th murder trial
15 at the very beginning, why did you consent to having
16 Mr. Clark wear a security taser belt, and offer no objection
17 to that?

18 A I, I don't recollect anything specifically about that.
19 I, I, I don't know that I would of necessarily thought that
20 that was much more than a courtesy kind of a question if it
21 was asked, asked of me. I don't -- I've never been asked as
22 to what amount of security is required or not required for
23 any particular --

24 Q Okay.

25 A -- client.

Chase Harbin - Direct examination
by Mr. Stroud

1 MR. STROUD: Your Honor, at this time, that's all the
2 questions I have of Mr. Harbin, and we would ask (sic) any
3 questions that the State has for you. Appreciate it.

4 A Yes, sir.

5 THE COURT: Okay.

6 MS. JAMESON: Moments indulgence to set up, Your Honor.

7 THE COURT: Okay. Well, this would normally be the
8 time when -- our morning break. And so we will be in recess
9 for ten minutes. We'll come back at five till 11:00.

10 Mr. Harbin, sir, you're still under oath.

11 THE WITNESS: Yes, ma'am.

12 THE COURT: Okay. But you're free to get up, walk
13 around. Just don't talk to anybody.

14 THE WITNESS: Got you.

15 (WHEREUPON, a short recess was taken at this time.)

16 THE COURT: Okay.

17 MS. JAMESON: May it please the Court?

18 THE COURT: Okay. And possibly, before we begin our --
19 the cross of Mr. Harbin, can counsel just come up for one
20 moment?

21 We just need to talk about -- for, for planning
22 purposes.

23 (WHEREUPON, a bench conference was held at this time.)

24 THE COURT: And so now we are ready with the
25 cross-examination of Mr. Harbin.

Chase Harbin - Cross-examination
by Ms. Jameson

1 Is that correct?

2 MS. JAMESON: Yes, Your Honor.

3 May it please the Court?

4 THE COURT: Yes, ma'am.

5 CROSS-EXAMINATION

6 BY MS. JAMESON:

7 Q Mr. Harbin, I'm gonna kind of start with some
8 background.

9 How long have you been practicing law?

10 A I graduated Law School in 2001, and passed the bar,
11 and, and started working at the Thirteenth Circuit
12 Solicitor's Office for a couple of years, and been in
13 private practice since.

14 Q And you were in private practice when you represented
15 Mr. Clark?

16 A Yes, ma'am.

17 Q Were you appointed?

18 A I was. -

19 Q Do you recall approximately when you were appointed?

20 A I do not.

21 Q Were you Mr. Clark's first attorney?

22 A To my recollection, I was, but I don't know that. I
23 don't -- the only reason I think that I might not be is only
24 because you asked the question, but I thought that I was.

25 Q Was Mr. Clark in pretrial detention or was he released

Chase Harbin - Cross-examination
by Ms. Jameson

1 on bond?

2 A Pretrial detention.

3 Q How many times did you meet with him before his trial?

4 A I, honestly, have no idea. It was many.

5 Q Can you give me a range?

6 Was it more than ten?

7 A Well, you know, so, as typically happens, you meet him
8 at the beginning, and then, you know, he was in jail for
9 quite a while. So, you're not really visiting that much
10 during the pendency of the trial. And then, when -- or I'm
11 sorry. The pendency of the case. And then, when the trial
12 is set, you meet a bit more regularly, and, obviously, the
13 several days leading up to the trial in preparation. So,
14 you know, maybe ten. I'm, I'm, I'm not sure.

15 Q And I believe you testified on direct that you
16 described to -- Mr. Clark as forthright, and you had a good
17 working relationship with him?

18 A He was -- I've had many clients that are very difficult
19 to communicate with, and he was not one of them.

20 Q And you don't recall that you ever moved to be
21 relieved?

22 A Not that I moved. I believe he had a, a motion that
23 he, that he withdrew.

24 Q And you don't recall any threats he had made against
25 you or your safety?

Chase Harbin - Cross-examination
by Ms. Jameson

1 A Certainly not to me personally.

2 Q Did you file the, the standard discovery, Brady, Rule 5
3 motions here?

4 A Yes, ma'am.

5 Q Did the State comply and hand those -- that discovery
6 over?

7 A Yes, ma'am.

8 Q Did you review the discovery materials with Mr. Clark?

9 A Yes, ma'am.

10 Q Explain the State's evidence to him?

11 A Yes, ma'am.

12 Q I don't think we've -- can you briefly characterize the
13 State's evidence against the Applicant?

14 I don't think we've, we've done that for the Court yet.

15 A So, you know, he's accused of having killed his live in
16 girlfriend, or ex-girlfriend, on again, off again. It was,
17 essentially, a girlfriend that, that, depending on who you
18 believe was no longer actually together together, but living
19 in the same house, and in that same house or in that trailer
20 was the victim's mother, Beverly. I believe that Beverly
21 and Joey also worked together, and Joey was in town because
22 he is a skilled -- is a pipe welder or something like that,
23 but some skilled labor where he, he was making a pretty good
24 living, and would come where, where the jobs were as I
25 understand it.

Chase Harbin - Cross-examination
by Ms. Jameson

1 And that there had been some -- I, I think the State's
2 theory was that Joey was jealous of a female companion of
3 a -- Winter's. Sexual relationship with a girl named Anna
4 Mooney. And that he had essentially gotten mad, and, and
5 overcome, you know, somehow with, with enough rage to, to
6 kill Winter. And I think their theory was that something
7 started at the house, and he basically deposited the body
8 away from the house at Mike's Creek Road.

9 Q How were cell phone records used in this case?

10 A I, I have a pretty poor memory of exactly how they were
11 used, but the -- they certainly had the ability or -- well,
12 let me back up.

13 The records as opposed to actual cell phone calls and
14 stuff. So, they had the calls from Joey to Winter. I think
15 the State's theory was that Joey was so smart that he made
16 these calls to pretend that he didn't know what had happened
17 to Winter. Our theory, of course, was that they were simply
18 honest calls as to, you know, hey, where are you, I'm
19 worried about you kind of thing.

20 Q Were there records of text messages back and forth
21 between Mr. Clark and Winter, the victim, and the girlfriend
22 and all three of them sort of repeatedly texting each other?

23 A Yes.

24 Q And that was introduced at trial?

25 A That's correct.

Chase Harbin - Cross-examination
by Ms. Jameson

1 Q Did any of these text messages include allegations that
2 winter, the victim, had AIDS or HIV and potentially was
3 giving it to new girlfriend?

4 A I recall some---

5 Q Can you---

6 A ---mention of that.

7 Q ---expound on that a little bit?

8 A I, I don't -- my recollection's not specific enough to
9 tell you anymore then I think it was basically hey, if
10 you're messing around with my girlfriend, you're gonna get
11 AIDS or, you know, something, something with that tone of it
12 anyway if not those specific words.

13 Q Okay. And was there any proof that, that any of these
14 parties did actually have AIDS?

15 A I don't recall that there was.

16 Q Okay. And would you agree the state's evidence was
17 essentially that Mr. Clark was repeatedly harassing winter,
18 repeatedly harassing her new girlfriend, Anna?

19 A I think that was essentially the thrust of their case,
20 yeah.

21 Q And Mr. Clark had been asked to move out of the home,
22 correct?

23 A That's what the state had said. I don't believe
24 that -- I, I don't think that's what Joey had told me. I, I
25 think that the -- kind of the revisionist, if you want to

Chase Harbin - Cross-examination
by Ms. Jameson

1 like -- I'm speaking kind of editorially, but revisionist
2 history of the State's witnesses was that there was more
3 discord at the time than, than Joey told me there was at the
4 time.

5 Q Do you recall the victim's mother, Beverly Patrick,
6 testifying?

7 A I do.

8 Q Do you recall her testifying that Winter and Mr. Clark
9 had broken up for good in October, he moved out for a week
10 at her request, and then, essentially, had kind of moved
11 back in cause he claimed he didn't have anywhere else to
12 live?

13 A Not specifically, but certainly that, that -- I
14 remember her testifying something to that effect.

15 Q So, there was -- there was a contentious relationship
16 going on between Mr. Clark and, and Winter and Winter's
17 mother at this point---

18 A That was---

19 Q ---according to the State?

20 A That was what -- again, I, I would, just, just to be
21 clear, that is not what Joey, Joey's position was, but that
22 is what the State was alleging---

23 Q well, what---

24 A ---and offering. That's what the State's witnesses
25 offered as the case.

Chase Harbin - Cross-examination
by Ms. Jameson

1 Q Okay. What was Joey's position or how did he
2 characterize their relationship to you?

3 A I -- as I recall, he admitted that there was kind of on
4 again off again. He also admitted that there was a
5 relationship between her and Anna, but that it was just kind
6 of a -- I don't want to say like swinger, but it was kind
7 of -- it wasn't -- there was no monogamy going around I
8 think is pretty, pretty much what he said. I don't know if
9 you asked me for a more specific answer, but --.

10 Q That's, that's fine.

11 Mr. Clark's semen was found in Ms. Winter's mouth,
12 correct?

13 A I believe so.

14 Q And, again, he was claiming on again off again.

15 So, what was your response to why the semen would of
16 been found in her mouth?

17 A That, that they were still having an on again off again
18 sexual relationship.

19 Q And Mr. Clark's DNA was found on a briar and a tree
20 limb at Mike's Creek, correct?

21 A I believe so.

22 Q There was also a fiber matching the same Wolverine
23 boots that Mr. Clark had that was found on the barbwire
24 fence?

25 A Yes, ma'am.

Chase Harbin - Cross-examination
by Ms. Jameson

1 Q And then the statements of the four -- alleged
2 confession from the four jailhouse informants, correct?

3 A Yes, ma'am.

4 Q Okay. Can you think of any other vital pieces of that
5 the, the State presented other than that?

6 A Well, they found, I think, the keys to the car in the
7 field out behind their trailer. I, I, I can't recall
8 much---

9 Q Where was the car found, the car that winter
10 supposedly -- do, do you recall the timeline of when the
11 killing, killing happened?

12 A No, not really. And I mean if you're asking a -- I'm
13 not sure exactly how specific you need me to be in answering
14 that question. So, I'm not sure if you're asking like a
15 time of night or anything.

16 Q Yes, a time of night or early morning.

17 A Yeah, I mean it was late night, early morning kind of
18 thing as I recall.

19 Q Okay. And there were text messages up until a certain
20 point when then Winter's phone went dead, and any text
21 messages didn't, didn't go out at that point, right?

22 A Right, that, that would of been -- the State's theory,
23 obviously, is the, the reason for that is that Joey had
24 killed her, and, and our, I guess, our response to that
25 would have been that, you know, you can't just assume that's

Chase Harbin - Cross-examination
by Ms. Jameson

1 why, you know.

2 Q And then the vehicle was found near the Songbird Lane
3 trailer that Winter and her mom shared, and that Mr. Clark
4 had been at that evening, early morning, around 3:00AM,
5 correct?

6 A I think so.

7 Q So, there was about a 45 minute interval when the State
8 alleged this, this murder had occurred, the struggle in the
9 home---

10 A Yes.

11 Q ---taken in the car to Mike's Creek, and then the car
12 was returned by 3:00AM?

13 A That sounds approximately correct, yeah.

14 Q Did you discuss Mr. Clark's version of events with him?

15 A Yes.

16 Q When did he say he last saw Winter?

17 A Oh, gosh. I think he said that he had seen her or at
18 least heard her. I don't know if he saw her or just heard
19 her leave when the text messages would of documented that
20 she was leaving. There was something about her -- I don't
21 know if it's a text or a call, but her going to the hospital
22 to get tested.

23 Q Okay.

24 A It was kind of unclear as to exactly what the urgency,
25 why that time of night. I had always assumed that there

Chase Harbin - Cross-examination
by Ms. Jameson

1 were drugs involved just because none of that quite made a
2 whole lot of sense.

3 Q Well, there was texting going back and forth where
4 Mr. Clark was repeatedly telling Anna that winter had HIV,
5 correct?

6 A Correct.

7 Q And, and the State presented some evidence that she had
8 called 9-1-1 to get directions and the address to the
9 hospital, correct?

10 A I believe so, yeah.

11 Q All right. And so he, he had told you he last saw her
12 when, when she was leaving in the car?

13 A I, I think that's -- yeah, I think he, he recollected
14 that he was there when she left the trailer to go. I don't
15 know that he knew that's where she was going, but the text
16 messages would say that's where she was intending to go or
17 the text or calls. I can't remember now.

18 Q And then Beverly testified that Mr. Clark woke her up
19 round 4:00AM, and said that winter hadn't returned home,
20 correct?

21 A If -- I, I -- I don't recall exactly, but that's
22 certainly some -- something very similar to that.

23 Q How did Mr. Clark explain his semen in winter's mouth
24 to you?

25 A I think he just said that they had had sex.

Chase Harbin - Cross-examination
by Ms. Jameson

1 Q Did you use a private investigator?

2 A I don't think so, and, I'm sorry, I, I had a lot of
3 cases back then. But I don't, I don't recall using a
4 private investigator.

5 Q What sort of investigation did you do in this case?

6 A So, I actually spent more time than I'd ever spent in
7 Cherokee County for sure tracking down -- trying to track
8 down the jailhouse informants, going to Mike's Creek. There
9 was a, a -- I believe where the -- I want to say where the
10 truck was found or the SUV was found was, if I recall
11 correctly, that was suppose to be the trailer for a, for
12 lack of a better term, a drug dealer or somebody that was
13 supplying -- that would supply winter with pills
14 occasionally. I went and talked to those folks and their
15 neighbors.

16 went to speak with a couple of the other folks in the
17 jail that Joey had given me their information that they were
18 potentially helpful witnesses. One of which specifically I
19 visited, when he got released, he just was -- unfortunately,
20 he just wasn't very credible, and, and he had a pretty nasty
21 criminal history that I don't know would of ultimately
22 helped Joey. But, but basically on the ground investigation
23 like visiting the scene, checking behind, you know, their
24 reports of, of where things happened, and trying to get a
25 good idea in my own head of exactly the kind of blocking of

Chase Harbin - Cross-examination
by Ms. Jameson

1 everything, and then, of course, discussions with, with
2 Joey.

3 Q So, you went out to Mike's Creek?

4 A I did.

5 Q How many times did you go out to the Mike's Creek?

6 A I think I only went out there twice.

7 Q Do you recall what the dirt looked like at Mike's
8 Creek?

9 A Not specifically, no.

10 Q When you say not specifically, do you -- was it red
11 clay?

12 Was it---

13 A Yeah. Well, so, in, in referencing the Applicant's
14 case, it -- you know, we all know what red mud is I think
15 anyway, and that certainly was one of the assumptions that I
16 made during the case of my case. And dirt near water and
17 creeks and stuff doesn't tend to be red. It tends to be,
18 you know, a little darker and a little more moist for
19 obvious reasons. So, I, I think that my recollection is
20 consistent with that.

21 Q And you went to Songbird Lane and the, and the trailer
22 where the vehicle was found in front of?

23 A Yes.

24 Q Do you recall what the terrain and soil looked like
25 there?

Chase Harbin - Cross-examination
by Ms. Jameson

1 A I, I think it was basically -- looked like a field that
2 they had put some -- put a U -- I think a U-shaped drive in,
3 and put trailers on, you know, either side of the drive, and
4 just, you know, red dirt.

5 Q And I believe you testified on direct that you
6 interviewed or attempted to interview all four of those
7 jailhouse informants?

8 A That's right.

9 Q And one of them requested you get off his property, and
10 refused to talk to you?

11 A I think that was Skeet, Bryant Phillips.

12 Q What about the other three?

13 A So, the -- I can not recall the -- if you, if you tell
14 me the names, I can probably figure out which ones, but
15 there was -- one of the four I could not find. Went by the
16 last known address several times and, and nobody ever
17 answered.

18 Sent my investigators actually to North Carolina to
19 visit with Mr. Stillwell the first time. He was the one
20 that was incarcerated in North Carolina.

21 Q Just, just to go back real quick.

22 So, you did use an investigator in this case?

23 A No, my, my---

24 Q Oh.

25 A My, my investigator at my---

Chase Harbin - Cross-examination
by Ms. Jameson

1 Q Office?

2 A ---office, yeah.

3 Q Okay.

4 A And investigator is his title. He does a whole bunch
5 of things.

6 Q Okay.

7 A One of which was to go up and visit.

8 Q Thank you for clarifying.

9 A Yes, ma'am.

10 And there was a, an informant that I did find. He was
11 local in, in the county, and I found him at his home. Met
12 his mother. Talked with him. He was the one that probably
13 would have had the potential to be the best witness, but he
14 was scared of something that he would not tell me, and
15 changed his story several times during my own, my
16 conversation with him.

17 And to the extent that his testimony would of been
18 helpful, it would have opened up a can of worms that I did
19 not want to open because he was essentially alleging that
20 the police had told him exactly what to say, which, without,
21 you know, some substantive proof of that, I just thought
22 that was a really bad idea to, you know, try to look so
23 desperate in, in front of a jury, and, and I'm sure Ms.
24 Leskanic would of done her job, and, and, you know, exploded
25 essentially.

Chase Harbin - Cross-examination
by Ms. Jameson

1 So, I didn't want, I didn't want to prejudice the case
2 by, you know, kind of just having no evidence and, and
3 offering something that, that kind of explosive with his
4 testimony.

5 Q And I believe you testified your investigator went up
6 to the -- one informant who wasn't local up in North
7 Carolina.

8 Do you recall his, his discussions or---

9 A Yeah. So---

10 Q ---recollection of that?

11 A Mr. Stillwell, and this, and this is through my
12 investigator telling me -- my investigator is an ex-cop, and
13 he was a cop for about 20 years. Mr. Stillwell was adamant
14 that he would not be helpful to Joey. He told my
15 investigator to tell me to tell Joey that he needed to shut
16 up and stop talking. And that, if he was put on the stand,
17 he was gonna do what he had to do to not mess his sentence
18 up.

19 Q So, after interviewing and investigating these
20 witnesses, I believe you testified you made a strategic
21 decision you didn't want them on the stand?

22 A That's correct.

23 Q Did Mr. Clark want to proceed to trial?

24 A He didn't want to plead.

25 Q Yeah.

Chase Harbin - Cross-examination
by Ms. Jameson

1 A I guess that's a probably more appropriate statement
2 for me to make.

3 Q Were -- and I believe you testified there was a plea
4 offer to voluntary manslaughter, correct?

5 A That is my recollection, yes, ma'am.

6 Q And that you did present it to him?

7 A Yes, ma'am.

8 Q And, obviously, he turned it down?

9 A That's correct.

10 Q And I can't recall which exhibit it is, but you were
11 presented with an email exchange between yourself and one of
12 the prosecutors referencing that the, the plea had expired,
13 correct?

14 A Ms. Leskanic, yes, ma'am.

15 Q And I believe you testified that, that she responded to
16 that email and gave you some additional time to, to discuss
17 it with Mr. Clark and consider the offer, correct?

18 A I, I don't know whether that was by email or not, but
19 my recollection is that Ms. Leskanic was not going to set it
20 for trial based upon my missing the deadline by 24-hours or
21 so. And that gave me the grace period to actually go visit
22 the next day that I've referenced in the email and did.

23 Q And you did go talk to Mr. Clark, discuss the plea
24 offer?

25 A That's right. And, and so, we had already rejected

Chase Harbin - Cross-examination
by Ms. Jameson

1 kind of, if you want to call it informally or, or before the
2 deadline, rejected it. But the kind of final rejection so
3 that Ms. Leskanic would go ahead and set it for trial was,
4 was thereafter.

5 Q And I believe you testified on direct that your trial
6 strategy was that he was not the killer?

7 Not that this was heat of passion, and you were going
8 for voluntary manslaughter.

9 It was just Joey did not commit this crime, correct?

10 A That is correct.

11 Q And there's been some discussion that this was a
12 circumstantial case.

13 How did that impact your trial strategy?

14 A Well, you just have to attack the, the credibility of
15 the, of the witnesses, and then, thereafter, really just to
16 highlight what -- you know, kind of what is not there,
17 right. You're, you're pointing out what the police did not
18 do, what they did incorrectly, what evidence they relied
19 upon that perhaps they should not have relied upon just to,
20 to try to implant doubt in the jury's mind.

21 Q And I believe you testified you did discuss this with
22 Mr. Clark ahead of time, and he was on board with this
23 strategy?

24 A That's correct. Although I don't want to mislead the
25 Court, and, and I don't know how -- like the vocabulary of

Chase Harbin - Cross-examination
by Ms. Jameson

1 that conversation. I think it's just in the natural
2 conversation of discussing the case, and the things that we
3 are going to -- that we're concerned about with the State's
4 case. I think it -- the -- it all comes out in the wash
5 type of thing. So that -- I think the answer to your
6 question is essentially yes, but the formality of that is,
7 is, is perhaps not what the question would suggest by the --
8 just the phrasing of it, but --.

9 Q And so, based on this strategy, you strategically
10 didn't introduce any evidence of heat or passion or to
11 mitigate to warrant a voluntary manslaughter jury
12 instruction?

13 A That's correct. And, and, of course, you know, Joey
14 never admitted to, to the crime. And so it would of been
15 fairly impossible for me to do so at least through his --
16 you know, to be consistent with his statements.

17 Q And it would of been an incongruent defense to present
18 to the jury that he wasn't the killer, but if he was, he
19 didn't -- there was a reason to mitigate it?

20 A That's -- yes. Correct.

21 Q Okay. And Mr. Clark was on board with this strategy
22 not to, not to try to seek a voluntary manslaughter charge?

23 A That's correct. And my -- his, his, his understanding,
24 you know, with the sentencing range of manslaughter, and the
25 fact that this was a trial, that he would get, if, if he

Chase Harbin - Cross-examination
by Ms. Jameson

1 took that route, whether by plea or to have that as a lesser
2 included or, or an alternative for the jury, that he would
3 get a number of years that he would not be agreeable with.
4 So, it was kind of an all or nothing type of deal at the end
5 of it.

6 Q How old was Mr. Clark at the time of trial?

7 A I want to say late thirties, early forties. I'm not,
8 I'm not certain of that, but I think approximately.

9 Q Did that have any impact on his decisions to reject the
10 plea offer based on your conversations with him?

11 A I think I recall -- I'm not sure if this is one of
12 those things that I'm thinking or that we actually spoke
13 aloud is, is, you know, how old he would be after serving so
14 many years. And I, I think that's -- that was certainly
15 his -- one of his concerns. I believe he had children at
16 home as well. So, missing the formative years of, of their
17 life was what, I think, was forefront in his mind.

18 Q Judge King required, even the prosecutors, to stipulate
19 to the admission of lots of exhibits before hand, correct?

20 A I believe so.

21 Q Do you have any recollection as to why or discussions
22 you might of had with the prosecutors about this?

23 A I mean I, I recall that we did a, a pretty good amount
24 of work organizing things so that they would run
25 efficiently, and the judge -- that the, the judge would

Chase Harbin - Cross-examination
by Ms. Jameson

1 suffer no fools, and, and he was -- he wanted it to be
2 efficient, and it, and it was.

3 Q Do you recall approximately how many photographs you
4 got in discovery?

5 A No, but it was hundreds, if not thousands. I don't
6 know. It was a lot.

7 Q And all those photographs didn't come in, correct?

8 A That's correct.

9 Q Do you recall any of the photos being overly gruesome?

10 A Yeah, the, the -- there was, you know, photos of a, of
11 a woman laying dead with, you know, stab wounds. So, yeah,
12 there---

13 Q Did you see -- but those had probative value to the
14 case or the State argued they did, correct?

15 A Are you asking about the photos that I received in
16 discovery or the photos---

17 Q No.

18 A ---that got entered into evidence?

19 Q No, the photos that got entered into evidence. I'm
20 sorry.

21 A I, I don't remember specifically, but I remember that
22 there was a concern from myself and from the State just to
23 protect the record. I'll give them credit, that they only
24 put in what -- I mean I'm sure they weren't trying to clean
25 it up completely for obvious reasons. But just what, what

Chase Harbin - Cross-examination
by Ms. Jameson

1 was necessary for them to get their case across, and I, I
2 believe I was satisfied, at the time, that we had done that.

3 Q And you've testified that you did hire a DNA expert,
4 doctor -- is it Demers or Demers?

5 A I remember that it's Demers.

6 Q Demers.

7 okay. And he assisted you pretrial with explaining DNA
8 I believe?

9 A He did.

10 Q And helping prepare you for the cross-examination of
11 the SLED agent or analyst?

12 A That is correct.

13 Q Okay. Did your expert, Doctor Demers, review the
14 underlying SLED data, the reports?

15 A He did.

16 Q Okay. Do you recall whether he talked to the SLED
17 agent or analyst?

18 A I, again, same as I told Mr. Stroud. I believe he did.
19 I, I only recall that because I thought it was unusual, I
20 mean unfortunate, but unusual in a good way I supposed.

21 Q Can you expound -- expound on what you mean in a good
22 way?

23 A Well, it---

24 Q How did that help this issue?

25 A In other words, she was, she was transparent in, in

Chase Harbin - Cross-examination
by Ms. Jameson

1 that. So, we were -- nobody was hiding the ball. We had an
2 opportunity -- and I say we. He had an opportunity to, you
3 know, ask a scientist, a scientist, or a learned person, a
4 learned person so that he could then explain it to, you
5 know, somebody like me that is completely untrained in that
6 area. And, and also have a good understanding of exactly,
7 or at least I had a perception, that he had a good
8 understanding of exactly how she was going to testify as
9 well.

10 Q And, based on his review of the underlying raw data, in
11 speaking with the SLED analyst, he prepared some questions
12 for you, correct---

13 A That's correct.

14 Q ---for cross-examination?

15 A Correct.

16 Q And I believe you testified he was on standby at trial?
17 He could of driven in from Atlanta or flown in from
18 Atlanta during the trial?

19 A That's correct.

20 Q Did you utilize his prepared questions?

21 I think it's been couched as a report, but that seven
22 page document, did you use that to prepare and to
23 cross-examine the analyst from SLED?

24 A I, I did. As I recall, it, it was better than I -- as,
25 as far as how easy it was to follow, and, and, you know,

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by Ms. Jameson

1 because I'm -- I probably don't remember anything that he
2 taught me for that trial now, but I recall that exactly --
3 well, I shouldn't say exactly, but it was really good the
4 way that he had told me this was gonna happen, and then ask
5 this, and this is gonna happen, then ask this. And she's
6 gonna say this, and that's what that means, and, therefore,
7 you can ask about this and that and the other.

8 Q Did you feel you were able to elicit beneficial
9 testimony for Mr. Clark from Agent, Agent Alyssa on
10 cross-examination?

11 A I did. And, in fact, I don't know that I said this on
12 direct, but I was able to speak with Doctor Demers, after
13 her testimony, to go over what she had said, and what she
14 had not said so that he could kind of help me evaluate
15 whether or not we got where we wanted to go --

16 Q Uh-huh. (Affirmative).

17 A -- right. We got the information that we wanted, and
18 the -- that was part of the evaluation that I did that
19 decided that we had gotten so much information, favorable to
20 our theory of the case anyway, or, or gotten out of it what
21 we could of that his, his in person testimony would of kind
22 of been redundant at that point. And, and so, at that, at
23 that moment, you're evaluating whether you're willing to
24 give up last argument for him to come and repeat what the
25 SLED agent had already essentially admitted.

Chase Harbin - Cross-examination
by Ms. Jameson

1 Q And I believe you testified to this yesterday. You
2 also -- it was beneficial that you were able to get this
3 favorable information from Mr. Clark from the State's own
4 witness without having to put up your own, correct?

5 A Correct.

6 Q Okay. So, it was a strategic decision that -- one of
7 the things that went into your strategic, strategic decision
8 not to call your own expert?

9 A That is fair to say.

10 Q Okay. And I believe you said you testified from or you
11 discussed with, with Doctor Demers the agent's testimony.

12 Is that -- did you have anyone assisting you at trial
13 that might of been taking notes so you could discuss more
14 fully what her testimony was?

15 A My paralegal sat beside me the whole time, and so she
16 was able to take notes on top of my notes as well. So --.

17 Q And did you use those to have your discussion with
18 Doctor Demers?

19 A I'm sure that I did. I don't recollect specifically
20 whether it was my notes or hers that I was looking at when I
21 was talking to him.

22 Q You have a copy of the transcript in front of you,
23 correct?

24 A I do.

25 Q I'm gonna reference some pages regarding your

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by Ms. Jameson

1 cross-examination.

2 You testified before you were able to elicit some
3 pretty favorable testimony from the SLED analyst?

4 A Yes, ma'am.

5 Q You were able to get in some testimony regarding
6 secondary transfer, correct?

7 A I recall that I did, yes, ma'am.

8 MR. STROUD: Could you, could you---

9 MS. JAMESON: Yes, I'm about to reference.

10 MR. STROUD: Okay.

11 Q If you'll turn to Page 577?

12 I'm using the big record on appeal numbers that are
13 easier to read.

14 A Okay. I'm with you.

15 Q Particularly if you'll read to yourself starting at
16 Line 15.

17 A Okay.

18 Q So, you had the SLED agent explain to the jury what
19 secondary transfer is, correct?

20 A Yes, ma'am.

21 Q And then if you'll turn two pages over to Page 579, and
22 review that to yourself as well.

23 A The, the, the entire page you'd like me to read?

24 Q It -- start at 14 down.

25 A Okay.

Chase Harbin - Cross-examination
by Ms. Jameson

1 Q And just refresh if you don't mind.

2 MR. STROUD: Could you repeat that page number one more
3 time?

4 MS. JAMESON: 579. On your page it's gonna be 554.

5 A Okay.

6 Q So you're able to elicit testimony that if, if
7 secondary transfer had occurred, you'd expect a very small
8 amount of DNA sample to be there, correct?

9 A That's right.

10 Q Do you recall if you were able to elicit any testimony
11 that there was a very small amount of DNA on, on several of
12 these items?

13 A I, I recall that, that is -- that I believe that to be
14 true. I don't recall specifically the answer to your
15 question, but I, I -- I'm guessing that that is correct
16 cause I believe that we did accomplish that. But I don't
17 recall it specifically. I'm sure it's in the record or it's
18 not.

19 Q If you'll, if you'll look at 578 to refresh your
20 recollection on that. Particularly regarding the briar,
21 which is Item 21.1.

22 A I'm, I'm on that page.

23 Is there a specific question I can answer so that I
24 don't confuse --?

25 Q Yes.

Chase Harbin - Cross-examination
by Ms. Jameson

1 Are you able to elicit testimony that the, the DNA
2 sample is very small?

3 There's a very small amount of DNA that the agent had
4 to work with?

5 A Oh, okay. I, I didn't see the bottom of the page.
6 Yeah, that -- it's---

7 Q On to the next page as well.

8 A That's right.

9 Q Okay.

10 A It's a very small amount of DNA from which she had to
11 work with and extract a profile out, and then she answered I
12 would say that's fair, yes, sir.

13 Q And so you were able to elicit testimony that, when
14 it's a secondary transfer situation like you were alleging
15 here, it'd be a very small amount of DNA, correct?

16 A Right.

17 Q Okay.

18 A The, the idea of being kind of logical proposition that
19 if my DNA gets somewhere because my DNA got on to you, and
20 then you deposited my DNA, that that sample is going to be
21 very tiny.

22 Q And that was one of your theories of the case that
23 Mr. Clark and Winter had engaged in some sort of sexual act,
24 and that's how the DNA got out there.

25 Is that -- was that -- is that a fair --

Chase Harbin - Cross-examination
by Ms. Jameson

1 A Right, and within a very---

2 Q ---statement?

3 A ---close proximity in time too because my understanding
4 of that, whether it's in the record, was certainly that, as
5 time passes, your secondary transfer is, is gonna be less
6 and less. But the immediacy of the encounter with somebody
7 would increase the likelihood that you could, could
8 accomplish that secondary transfer.

9 Q Do you recall discussing with the SLED analyst that the
10 semen could of come from a consensual act?

11 A I think so.

12 Q Okay.

13 A Or at least that -- I don't know that that was really
14 within her prerogative to, you know, assume that it would be
15 some nonconsensual act, but --.

16 Q Okay. If you'll look at 581 please, and
17 particularly -- just review the whole page, but starting at
18 Line 17. I've some questions about the quantity of DNA that
19 was found.

20 A Okay.

21 (Witness complies.)

22 A Okay.

23 Q Were you able to elicit testimony that this was a very
24 small quantity, and, and was a weak positive for Mr. Clark?

25 A Yes, ma'am.

Chase Harbin - Cross-examination
by Ms. Jameson

1 Q Do you recall discussing with the SLED analyst possible
2 contamination at the scene, and how that would of impacted
3 her results?

4 A I believe so.

5 Q If you'll turn to Page 583 and 584, and I'm gonna
6 briefly have some questions about the level found on the
7 briar.

8 A Okay. I'm sorry.

9 Q Yeah.

10 A I don't remember if you asked me---

11 Q No, I just wanted you to refresh before I started
12 asking questions.

13 The swab from the briar, were you able to elicit
14 testimony that it was 90 percent approximately from Winter's
15 DNA?

16 A Yes, ma'am.

17 Q And were you able to elicit testimony that there was
18 very, very little DNA there to even develop a profile?

19 A Yes, ma'am.

20 MR. STROUD: Your Honor, at this point, I'm gonna
21 object. This is cumulative repetition, and we've already --
22 we're, we're (sic) already established that he has been able
23 to do cross-examination, and that, at this point, we know
24 that he did cross-examine. That's -- don't see any reason
25 now to keep going over each individual item as it is a fact.

Chase Harbin - Cross-examination
by Ms. Jameson

1 We've establish that fact.

2 MS. JAMESON: Your Honor, if I could respond?

3 THE COURT: Yes, ma'am.

4 MS. JAMESON: He, he presented an expert, Ms. Megan
5 Clement, to testify that the cross-examination was not
6 thorough, was not complete, and that she would of gone into
7 several specific things. And I'm going through those
8 specific things right now with Mr. Harbin.

9 One of those was failure to present evidence that was
10 90 percent winter on the briar. I don't believe this has
11 been testified to before or introduced for the Court, and I
12 believe I have a duty to respond to these allegations.

13 THE COURT: Okay. Mr. Stroud, at, at this point, sir,
14 I, I will overrule the objection, and, and let her continue
15 down this path with that explanation. Thank you, sir.

16 MR. STROUD: Okay.

17 THE COURT: All right.

18 Q Do you recall -- you, you were able to, not just for
19 the briars, but elicit testimony that several of these
20 samples were very small amounts?

21 A Yes.

22 Q Correct?

23 A Yes, ma'am.

24 Q Okay. So much so that there was a need to amplify the
25 DNA for testing?

Chase Harbin - Cross-examination
by Ms. Jameson

1 A That's correct. I think I called it juicing it up.

2 Q And did you ask the SLED analyst to explain the
3 potential implications of this juicing up process as you
4 called it?

5 A I believe so.

6 Q And what were some of the ramifications from this
7 amplification process?

8 A I knew you were gonna ask me that.

9 Do you happen -- I, I don't recall exactly.

10 Q Yes, I think it might be helpful if you turn to Page
11 583 and review that to yourself. It comes up several
12 points, but that might be a good part to start with.
13 Through 584.

14 A Yeah. As I recall it, I think that, when she did the
15 amplification that's kind of like making a copy of a copy of
16 a copy, and eventually the quality of that copy just gets
17 degraded, and so, therefore, the testing would, ultimately,
18 be less precise, and, and theoretically less reliable.

19 Q Was there any testimony about some possible phantom
20 alleles that were there or shouldn't have been there and
21 impacts on testing?

22 A And, if I'm correct, is -- that may of been what she
23 was calling artifacts, which I, I just kind of, kind of
24 thought was almost like, you know, trash or like it's
25 impure. That's, that's not her words. That was just kind

Chase Harbin - Cross-examination
by Ms. Jameson

1 of my understanding of it, but that each time you do that
2 process, it, it has the potential to essentially mess up
3 the, the test or mess up the, the quality of the results.

4 Q Okay. One of the allegations is that you failed to
5 elicit some hypotheticals from the DNA expert of how
6 Mr. Clark's DNA could of got to the, the scene at Mike's
7 Creek.

8 Will you turn to Page 586, and review Line 15 down to
9 yourself?

10 (Witness complies.)

11 A Okay.

12 Q Were you able to elicit any testimony from the SLED
13 agent that the DNA could of gotten there by consensual
14 sexual contact?

15 A Yes, ma'am.

16 Q And, again, you'd already gotten her to concede that,
17 when it's very small samples, secondary transfer is more
18 likely to have occurred, correct?

19 A That's correct.

20 Q If you'll turn to Page 588 to 589. Particularly on
21 588, Lines 20, through the next page, Line 7. If you'll
22 briefly review that.

23 (Witness complies.)

24 A Okay.

25 Q Okay. Were you able to elicit testimony that several

Chase Harbin - Cross-examination
by Ms. Jameson

1 items had too little DNA there to, to even analyze?

2 A Insufficient for reliable interpretation is what she
3 said, yes, ma'am.

4 Q If you'll flip back -- sorry to have you flipping
5 around a little bit. I was trying to go in order. If you'll
6 go back to 576 to 577, and look at the bottom starting with
7 Line 15 on 576 through 577, the, the top portion.

8 A (Witness complies.)

9 Q And my question pertains to Mr. Clark's shirt that
10 was -- the cuttings from that shirt.

11 (Witness complies.)

12 A Okay.

13 Q You, you were able to elicit testimony from the SLED
14 analyst that only Mr. Clark's DNA was found on his shirt,
15 correct?

16 A That's correct.

17 Q No DNA from, from Winter or Beverly or anyone else?

18 A That's correct.

19 Q Regarding the allegations of the, the pocketknife that
20 wasn't tested, do you recall the background of this
21 pocketknife or whose it was or how it came into law
22 enforcement custody?

23 A I, I could guess, but that would be spec -- I don't
24 recall specifically about the pocketknife right now.

25 Q Do you recall questioning several witnesses about

Chase Harbin - Cross-examination
by Ms. Jameson

1 whether this pocketknife was tested?

2 A Honestly, I don't. I'm, I'm sure that if you're
3 referring to something I did, but I don't have a specific
4 recollection of pocketknife related questioning.

5 MS. JAMESON: Moments indulgence, Your Honor.

6 (Pause.)

7 Q While I'm looking for my cite for the pocketknife, if
8 you'll look at 577 through 78, which is, I believe, where
9 you already are.

10 Were you able to elicit any testimony about fingernail
11 clippings and whether those were tested?

12 A That's correct. She -- I said there were some
13 fingernail clippings sent to you, but they were not tested,
14 is that correct?

15 She said that's correct.

16 Q And there was evidence presented by the State that the
17 victim, winter, had been dragged at Mike's Creek, correct?

18 A I certainly think that was their theory, and they
19 presented things consistent with that.

20 Q If you're dragged, are you likely to -- let me back up
21 a minute.

22 When winter was found, she was nude, correct, or
23 partially nude?

24 A That's correct. Yes, ma'am.

25 Q And contained a great deal of dirt and debris on her

Chase Harbin - Cross-examination
by Ms. Jameson

1 body, correct?

2 A Correct.

3 Q And, again, your theory was that they had engaged in
4 consensual sexual activity shortly before her death,
5 correct?

6 A That's right.

7 Q And I believe you testified on direct that one of the
8 reasons you didn't want the fingernails to be tested or
9 didn't request they be tested by the State or seek your own
10 funding is that his DNA was likely under her fingernails
11 cause they lived together and had engaged in consensual
12 sexual activity, correct?

13 A That's correct.

14 Q I found the cite for the pocketknife.
15 If you'll look at 592 please?

16 (witness complies.)

17 Q The top, the top portion. Really, really it starts at
18 the end of the -- 591, Line 24, through 592, Line 10.

19 A Yeah, I asked about a pocketknife, and was told that
20 there was no processing performed on the knife, and that it
21 was not taken -- did not take custody of the knife or
22 received any samples for testing.

23 Q Okay. Going back to the, the red soil or the soil.

24 Do you recall questioning witnesses about how common it
25 was for red dirt or red soil to be found in the Upstate?

Chase Harbin - Cross-examination
by Ms. Jameson

1 A The -- I know that that was one of the things I was
2 trying to make a point about. I don't recall specifically,
3 but I know that was something I was attempting to elicit or
4 to get the jury to believe that red mud is everywhere around
5 here or dirt.

6 Q Will you turn to Page 400 please?

7 (Witness complies.)

8 A Okay.

9 Q Were you able to get Detective Burgess to concede that
10 red dirt is literally everywhere around here?

11 A Yes, ma'am.

12 Q If you'll turn to Page 404 and 405. The bottom
13 portion. Line 18 on 404 through 405.

14 (Witness complies.)

15 A Okay.

16 Q Did you, again, get Detective Burgess to concede that
17 red dirt is found everywhere in Cherokee County?

18 A It appears that I did, yes, ma'am.

19 Q And do you later get him to admit that it's not so much
20 the red dirt that linked him to the trailer, but it's the
21 phone call that Winter made at 2:03AM?

22 A Is -- are you -- and I'm sorry.

23 Q Sorry.

24 A What lines are you looking at?

25 Q 405. Lines 20 through 24.

Chase Harbin - Cross-examination
by Ms. Jameson

1 A Right. I, I basically had him admit that he wasn't
2 excluding a possibility that she was assaulted possibly
3 anywhere else in Cherokee County because of the existence of
4 the red dirt.

5 Q Do you recall highlighting this to the jury in your
6 closing argument?

7 A I believe I made a decent point about making that or,
8 or making that point, yes, ma'am.

9 Q Okay.

10 A Thank you.

11 Q I can't recall if you were asked this on direct, but
12 did you ever consider calling a soil expert?

13 A / No, ma'am, I did not.

14 Q Actually, I believe you testified you didn't want to
15 make a big deal out of the soil cause you didn't think it
16 was crucial to the State's case, correct?

17 A That's right. I mean -- whether or not the body was
18 moved from a place where red dirt was to a place where
19 darker than red dirt was doesn't really have anything to do
20 with whether or not Joey did that. And, and, because of the
21 prevalence of red dirt around there, it just did not seem
22 like a -- it didn't seem like a significant piece of the
23 puzzle.

24 Q And, again, the -- Winter's car was found or seen at
25 3:00AM by the trailer, correct?

Chase Harbin - Cross-examination
by Ms. Jameson

1 A I think that's correct, yes, ma'am.

2 Q And, and the keys and her cell phone and her cell phone
3 battery were also found in the field behind the trailer,
4 correct?

5 A I believe that's right, yes, ma'am.

6 Q So, the State's theory is the killer was already linked
7 to the trailer on Songbird Lane?

8 A Or somewhere in that vicinity, that's right, or at
9 least my, my understanding anyway.

10 Q One of the allegations is that you failed to ask the
11 jury to go to the various crime scenes.

12 Did, did you consider that?

13 A I, I didn't.

14 Q Is that something you normally do in, in trials?

15 A I've, I've never had the opportunity to have a trial
16 where any jury took a field trip, no, ma'am.

17 Q Do you think it was necessary here?

18 A I don't believe so.

19 Q Going back to the jailhouse informants, they were all
20 listed as State's -- potential State's witnesses, and
21 present in the courtroom, correct?

22 A Yes, ma'am, or in the courthouse at least. I believe
23 one of them was incarcerated in the hole.

24 Q And you testified that, as a whole, they were gonna
25 seem credible for the State?

Chase Harbin - Cross-examination
by Ms. Jameson

1 A Well, I, I don't want to characterize them as credible
2 or not credible. I was more worried about the unknown than
3 I was with what I considered to be a, a fairly weak set of
4 statements that, on, on their face, were inconsistent, if
5 not blatantly untrue.

6 I don't want to characterize that particular decision
7 as if it was a flippant one or easy. It was -- I mean it
8 was certainly a, a significant decision than one that, you
9 know, I, I, quite frankly, have to second guess because the
10 result. Because, again, being put in the same position, I
11 think that I would make the same decision --

12 Q Okay.

13 A -- today.

14 Q And one of the witnesses, I can't believe if it -- if
15 it was Patrick or Stillwell.

16 He had stated that Mr. Clark had stabbed winter in the
17 kitchen at Songbird Lane, correct?

18 A That's correct.

19 Q And the police had searched and there was no evidence
20 to support that?

21 No blood, no cleaning solution, nothing like that
22 found---

23 A That---

24 Q ---correct?

25 A That is correct.

Chase Harbin - Cross-examination
by Ms. Jameson

1 Q Did you cross-examine Detective Burgess about that?

2 A I believe I did.

3 Q I think you testified on direct regarding your opinions
4 on Detective Burgess' testimony as being -- how, how would
5 you characterize his testimony?

6 A I think---

7 Q Was he a good witness for the State?

8 A I don't think he was nearly as good as they would of
9 wanted for sure, and, and, as far as, you know -- you have
10 a -- you have an expectation, as a defense attorney, as to
11 how well a particular witness might do or officer might do.
12 And in the, in the grand scheme of things, I, I think we
13 did -- our case did well with him. I think he could of done
14 better, and we were able to highlight some things that he
15 could have done better in the case. Not just as, as -- not
16 just having done better on the stand, but having done better
17 on the case. And I think that was effective for, for that
18 point anyway.

19 Q You had him admit that he had sort of a confirmation
20 bias, that he had assumptions early on, and kind of stuck
21 with them throughout, correct?

22 A That was certainly my intent, and I, and I hoped that
23 that, if not explicitly came out that way, but that that was
24 the understanding by the time he was done.

25 Q If you'll look at Page 410 on -- at the bottom on to

Chase Harbin - Cross-examination
by Ms. Jameson

1 Page 411. And on to the top of 412. I apologize. I have a
2 few questions about that portion.

3 A Okay.

4 Q Okay. Did he admit that -- did Detective Burgess admit
5 that he didn't really do anything to check on Mr. Phillip's
6 statement?

7 A That's right. He didn't check. He wasn't aware of
8 what charges he was in on, what the disposition of those
9 charges were, and I believe he admitted to not having kind
10 of crosschecked Mr. Phillips' statement with the three
11 people that Mr. Phillips said was within earshot of his
12 statement, which would be Arnold Banks, Trey Clark, and
13 Ralph Smith.

14 Q If you'll turn to Page 419. The bottom portion. Line
15 21.

16 A Okay.

17 Q Are you able to elicit testimony from him that
18 Mr. Stillwell was incorrect in his statement to law
19 enforcement?

20 A Yes, ma'am.

21 Q And that no blood was found in the kitchen area?

22 A That's right.

23 Q Did you ask him if he thought Mr. Stillwell was lying?

24 A I did.

25 Q And would he admit that he was lying?

Chase Harbin - Cross-examination
by Ms. Jameson

1 A He would not admit that Mr. Stillwell had essentially
2 fabricated that portion of the statement.

3 Q I believe you testified to this on direct, but did that
4 hurt Detective Burgess' credibility in front of the jury?

5 A In my opinion, I think that anytime that you're not
6 willing to admit the obvious that you lose credibility with,
7 with the jury.

8 Q Did you discuss Mr. Clark's right to testify with him?

9 A Yes.

10 Q Did he want to testify?

11 A He did not want to testify.

12 Q Why not?

13 A I'm, I'm not sure. I mean he didn't -- I don't, I
14 don't think he was -- I don't think he was scared. I, I
15 don't know. I don't know that I really know the answer.
16 But I, but I think that I was, I was confident in his
17 understanding of his right, and that he, you know, had
18 simply made a, you know, a grown-up decision that he didn't
19 want to do it.

20 Q Was he advised by Judge King about his right to
21 testify?

22 A I believe he was.

23 Q Regarding the failure to move for directed verdict, I
24 believe you testified you think you have a ethical
25 obligation not to make motions to the Court that don't have

Chase Harbin - Cross-examination
by Ms. Jameson

1 any merit, correct?

2 A That's correct.

3 Q And based on your previously discussed trial strategy,
4 you didn't present any evidence of heat or passion -- of
5 heat of passion or self-defense, correct?

6 A That's correct.

7 Q So, based on that, did you see any reason to object to
8 Judge King's jury instruction on implied malice from the use
9 of a deadly weapon?

10 A I didn't see any at the time. I'm not sure I
11 understand what the objection would be if there is one.

12 Q Did you see any grounds to move for a mistrial during
13 this trial?

14 A I, I can't recall. I mean I -- obviously I didn't. I
15 can't recall that, looking back on it, that there would be
16 any.

17 Q I believe you testified you didn't see any reason to
18 move for a change of venue, correct?

19 A That's correct.

20 Q When you took this case, did you do any sort of
21 investigation or research into pretrial publicity or
22 anything like that?

23 A I, I googled it, and, you know, a couple of news
24 articles came up. The -- frankly, the reason I did that was
25 that I believed it was Joey's wife had some concerns about

Chase Harbin - Cross-examination
by Ms. Jameson

1 how quickly the media was there when he was arrested. And
2 so the -- I, I don't think that was something that was
3 ultimately able to be presented to, to the jury in, in a
4 fashion that would of been acceptable to -- let me, let me
5 make sure I say this correctly. That it would be evidence
6 that would be allowed in to this trial to suggest that the
7 police had kind of corroborated or coordinated some things
8 that perhaps were untoward or, or something like that.

9 That kind of harkens back a little bit to that
10 informant that was suggesting that the police were being a
11 little overeager in getting statements, but was unable to
12 develop any, any evidence that I could present to the jury
13 in, in the trial through my own investigation.

14 Q Do you recall if Judge King, during jury qualification,
15 asked the jurors if they had heard any news about this case?

16 A I think he did.

17 Q And this trial spanned a few days, correct?

18 A It did.

19 Q Do you recall if Judge King asked the jurors, when they
20 returned to Court the next morning, if they had heard or
21 read any news, news articles about the case?

22 A I don't recall specifically, but that sounds correct.

23 Q If the record reflects he did, you don't have any
24 reason to, to dispute that, correct?

25 A I would not dispute that.

Chase Harbin - Cross-examination
by Ms. Jameson

1 Q Do you have any recollection of a juror being seated
2 who was present for Mr. Clark's polygraph examination?

3 A I don't.

4 MS. JAMESON: A moments indulgence, Your Honor.

5 THE COURT: Yes, ma'am.

6 (Pause.)

7 Q I believe you testified you didn't ask for a formal
8 report from Doctor Demers because then you would of had to
9 turn it over to the State, correct?

10 A That's correct.

11 Q Regarding the inmates' statements, you were aware that
12 you might have possible objections based on hearsay or the
13 confrontation clause or the Fifth Amendment, correct?

14 A If the State had attempted to introduce those
15 statements as statements, and not from the stand with the
16 speakers speaking words. And, and I -- obviously some of
17 the statements, I believe, were repeating words of other
18 people, and that would, that would be hearsay with possible
19 hearsay exceptions, but, yes, ma'am.

20 Q And, with this knowledge, you still made a strategic
21 decision to introduce these statements, correct?

22 A Correct. My, my -- and, and, to be clear, I didn't
23 introduce the statements. I introduced---

24 Q Oh, cause---

25 A I opened the door to the statements.

Chase Harbin - Cross-examination
by Ms. Jameson

1 Q Correct.

2 A And then the State did what I kind of expected them to
3 do, which is to complete that statement, and introduce it in
4 full.

5 Q And that was in an attempt to not have these four
6 informants take the stand, correct?

7 A That's correct. It also allowed the jury to look at
8 Michael Stillwell's statement that was clearly a lie. Like
9 it was a -- it didn't rely on their memory. It was an
10 actual document that one of the State's witnesses had lied.

11 Q Regarding Applicant Exhibit 19, and these allegations
12 that Judge Kelly had some sort of conflict, Judge Kelly
13 didn't try this case, correct?

14 A That's correct.

15 MS. JAMESON: Moments indulgence, Your Honor.

16 THE COURT: Yes, ma'am.

17 (Pause.)

18 MS. JAMESON: No further questions, Your Honor.

19 THE COURT: Okay. Redirect, counsel.

20 MR. STROUD: Just one or two questions.

21 REDIRECT EXAMINATION

22 BY MR. STROUD:

23 Q Let me get my page here.

24 Mr. Harbin, are you---

25 A Yes, sir.

Chase Harbin - Redirect examination
by Mr. Stroud

1 Q Are you familiar with the -- Frazier versus State?

2 It's a 1991 South Carolina case dealing with -- and I
3 apologize, Your Honor. I don't have an Internet connection
4 in here. So, I can't produce the Frazier case, but --.

5 A I, I -- if you're asking me if I know what Frazier --
6 State v. Frazier is, I, I don't.

7 Q Okay.

8 A I would hope to recognize whatever theory of law.

9 Q But it's, it's the case dealing with---

10 MS. JAMESON: Objection. The witness has indicated
11 he's not aware of that case.

12 MR. STROUD: Okay.

13 MS. JAMESON: And anything else would be arguing at
14 this point.

15 THE COURT: Okay. Mr. Stroud, do you want to rephrase
16 the question?

17 MR. STROUD: Yeah.

18 Okay. Frazier deals with when it might be
19 determined---

20 MS. JAMESON: Objection. Argument.

21 MR. STROUD: All right.

22 THE COURT: Okay. Mr. Stroud, since this is on
23 redirect, is, is there something that was brought up in
24 cross that you want to address that was new with this case?

25 MR. STROUD: Yeah. This is where ineffective

Chase Harbin - Redirect examination
by Mr. Stroud

1 assistance of counsel can be derived -- well, from when
2 you -- the difference between hiring a DNA expert versus
3 using cross-examination when you don't have a DNA expert to
4 testify.

5 So, as she was pointing out that, through the
6 cross-examination -- I mean through, through her -- yeah,
7 the cross-examination, about how he brought out these
8 things, there is a distinction between a -- the effective --
9 go ahead.

10 MS. JAMESON: Well, I, I believe this---

11 MR. STROUD: Yeah.

12 MS. JAMESON: ---is all argument---

13 MR. STROUD: It is.

14 MS. JAMESON: ---to present to the Court at the end.
15 Not questions for this witness.

16 MR. STROUD: Okay.

17 MS. JAMESON: And it is beyond the scope of my
18 cross-examination.

19 MR. STROUD: Cause I just don't have my case -- the
20 case with me. It's in the PCR. It's mentioned as
21 justification, but I don't have it with me right now.

22 THE COURT: Okay. And, sir, you can certainly---

23 MR. STROUD: Uh-huh. (Affirmative).

24 THE COURT: ---bring that up again in, in your
25 closing---

1 MR. STROUD: Uh-huh. (Affirmative).

2 THE COURT: ---but is there a question that you have---

3 MR. STROUD: Based on -- not really, Your Honor.

4 THE COURT: Okay. Anything else of Mr. Harbin?
5 Counsel?

6 MS. JAMESON: Oh.

7 Are you done questioning?

8 MR. STROUD: Yeah.

9 MS. JAMESON: No additional from the State, Your Honor.

10 THE COURT: Okay. Is there any objection to Mr. Harbin
11 being released?

12 MR. STROUD: You talking about for the day or --?

13 MS. JAMESON: Potentially, do you intend -- do you
14 intend to call your client?

15 MR. STROUD: I do.

16 MS. JAMESON: I would ask that he not be released until
17 after Mr. Clark testifies.

18 THE COURT: Okay. Mr. Harbin's been subpoenaed?
19 Is that correct?

20 MS. JAMESON: Yes.

21 THE COURT: Okay. Mr. Harbin, sir, you may step down.
22 Thank you. Be careful. Watch your step, and you get to
23 stay.

24 THE WITNESS: Thank you.

25 THE COURT: Okay. Mr. Stroud, next witness.

1 MR. STROUD: All right. Your Honor, could we take
2 about a five minute break?

3 Mr. Clark needs to use the bathroom.

4 THE COURT: Sure.

5 All right. We will be in recess for five minutes.
6 Normally we would get a little longer than that, but we're
7 trying to get as much accomplished as we can before the
8 lunch hour.

9 MS. JAMESON: Thank you, Your Honor.

10 THE COURT: Okay.

11 (WHEREUPON, a short recess was taken at this time.)

12 THE COURT: Okay. So, our next witness?

13 MR. STROUD: Your Honor, could we have a side bar --

14 THE COURT: Yes, sir.

15 MR. STROUD: -- before we --?

16 (WHEREUPON, a bench conference was held at this time.)

17 MR. CLARK: May I speak?

18 MS. JAMESON: Sir, just, just one moment.

19 okay?

20 (WHEREUPON, the bench conference was continued at this
21 time.)

22 THE COURT: Okay. All right. So, counsel, are we
23 ready to proceed?

24 MR. STROUD: We're now ready to proceed. We'll call
25 Mr. Joey Clark.

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1 THE COURT: Mr. Clark, sir, if you'll please come
2 around.

3 (Witness complies.)

4 THE COURT: Okay. Good afternoon, sir. If you will
5 raise your right-hand.

6 JOEY CLARK, being first duly
7 sworn, testified as follows:

8 THE COURT: Okay. Thank you.

9 As other witnesses have done, just make yourself
10 comfortable. I don't know how comfortable you're gonna be
11 in that chair, but just -- and you may need to pull forward
12 a little bit.

13 okay?

14 THE WITNESS: Can you hear me?

15 MR. STROUD: Okay.

16 THE COURT: Okay. All right.

17 DIRECT EXAMINATION

18 BY MR. STROUD:

19 Q Mr. Clark, what basis do you have today to say that
20 Mr. Harbin was ineffective beyond harmless error?

21 MS. JAMESON: Your Honor, I would object. The
22 application sets forth 38 pages of his allegations. I
23 believe we're getting into the territory of a narrative,
24 and, and I would object to that.

25 THE COURT: Well, counsel, why don't we get into first,

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1 and this is the reason that he's here is to go through the
2 allegations of his application. And now he's on the stand.
3 And he's allowed to do that.

4 MS. JAMESON: Thank you, Your Honor.

5 THE COURT: Okay. And so I will overrule that
6 objection at this time.

7 Please continue.

8 A Mr. Harbin testified yesterday that he did not want to
9 put the inmates on the stand because they could of added or
10 took away from their statements. But he said his trial
11 strategy was to show the jury discrepancies and
12 contradictions in the inmates' statements as to what they
13 said.

14 Okay. First of all, during my trial, and in that
15 transcript, I do not see anywhere in that transcript where
16 the State called the jurors -- the State called the, the
17 inmates to come testify at all. I don't see it.

18 To me -- okay. My -- one of my defenses -- and that
19 is -- the pages that -- where we show they didn't testify is
20 on Page 374 or 399.

21 I'm sorry. This is why I wanted to bring this because
22 there's so many discrepancies in that transcripts with the
23 numbers that I was just getting totally confused cause
24 y'all's are different then mine, and the numbers are
25 different in this and this. And---

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1 THE COURT: Well -- and I tell you what, sir. For the
2 purposes of, of what we're doing, if you want to -- we'll go
3 ahead and, and say for the record which number you're
4 referring to, and I'm just gonna show you my transcript.

5 Okay?

6 THE WITNESS: Okay.

7 THE COURT: So, are you referring to the big number or
8 the little number?

9 Yours is probably the little number.

10 THE WITNESS: 374.

11 THE COURT: Right.

12 THE WITNESS: 374.

13 THE COURT: Okay.

14 THE WITNESS: If not 374, 399.

15 MR. STROUD: Your Honor, would you -- would it help if
16 you---

17 THE WITNESS: These are---

18 THE COURT: Just, just one second, sir.

19 MR. STROUD: Okay.

20 THE WITNESS: It's the end of the---

21 THE COURT: Okay.

22 THE WITNESS: ---direct examination---

23 THE COURT: Okay. So here we are.

24 THE WITNESS: ---from the State.

25 THE COURT: Here we are.

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by Mr. Stroud

- 1 Okay.
- 2 THE WITNESS: Okay. Yeah.
- 3 THE COURT: See that number?
- 4 THE WITNESS: Yeah.
- 5 THE COURT: 374?
- 6 Right here. It's underneath the 399.
- 7 THE WITNESS: Yes, ma'am, that's it.
- 8 THE COURT: Okay.
- 9 THE WITNESS: That's it.
- 10 THE COURT: So, for the purposes of---
- 11 THE WITNESS: It's 399.
- 12 THE COURT: ---what we're going to be doing, I want you
- 13 to refer to the small number.
- 14 Will that be easy for you?
- 15 THE WITNESS: 399 is the page.
- 16 THE COURT: Okay. It's the big number?
- 17 THE WITNESS: Yeah, it's the big number.
- 18 THE COURT: So, which one do you want to be referring
- 19 to?
- 20 THE WITNESS: Big number.
- 21 THE COURT: All right. So---
- 22 THE WITNESS: I'm not -- no, I'm not sure, ma'am,
- 23 because---
- 24 THE COURT: Okay.
- 25 THE WITNESS: ---the discrepancies in one is saying

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1 this, and then the other one's saying this one. So --.

2 THE COURT: Right. Right.

3 THE WITNESS: We just -- what we gonna have to do is
4 just look at it, you know.

5 THE COURT: Okay.

6 THE WITNESS: Cause that's---

7 THE COURT: All right.

8 THE WITNESS: ---that's where I'm going to have this
9 because---

10 THE COURT: I was going to try to make it a little
11 easier.

12 THE WITNESS: It's more than likely the big numbers
13 though since---

14 THE COURT: Okay.

15 MR. STROUD: The little number.

16 THE COURT: Okay. And so---

17 MR. STROUD: Okay. Will it help if I just let you
18 have---

19 THE WITNESS: Well, it shows on 399 that, during the
20 State's direct, that they never called any of these inmates
21 to the stand to testify to the allegations. And this is at
22 the, the end. This, this -- 399 is the end. They, they --
23 on cross-examination.

24 Okay. An effective defense attorney would of seen no
25 discrepancies, no contradictions, no inmate statements

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1 because there was no inmates to testify.

2 I know Mr. Harbin tried to explain his reasons for his
3 actions. I'm pretty sure he said he done this strategy just
4 to show the jury one of the main reasons I was in jail, and
5 why I shouldn't have been in jail. Mr. Harbin testified he
6 was afraid to put the inmates on the stand because they
7 could add or take away. Understand this, they could add or
8 take away from their statements.

9 But what if -- but what if they could of took away?

10 why wouldn't you wanted to use them if they could of
11 took something away and said like this man didn't tell me
12 that, or this man didn't say this to me, this man never said
13 I stabbed her to death?

14 This man never said I killed her. I butchered her.
15 This man never said any of this.

16 They was no inmates -- you said they was there.

17 Okay. They was there.

18 why didn't you put them on the stand?

19 what I want to understand is I'm not a lawyer.

20 Okay. I'm a welder and I don't know the law that much,
21 but I do know Mr. Harbin is an intelligent man. We've
22 listened to him today. He's, he's real smart. I, I dealt
23 with him for three and a half year, but on -- but an
24 effective lawyer should have seen, if you're going to read
25 the statements to show discrepancies and contradictions, why

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1 just not put the witnesses on the stand?

2 They were there, right?

3 They were there. Y'all done testified they were there,
4 and you said there was four of them, but they was five of
5 them. They were there.

6 His excuse is that the witnesses could of possibly
7 added on things.

8 Can I read the statements that are placed into this---

9 Q well, the---

10 A ---this exhibit?

11 Do we have the statements in the -- any of the inmates'
12 statements?

13 Can I read them?

14 THE COURT: Counsel.

15 MR. STROUD: Yeah. Yeah. Well, go ahead.

16 MS. JAMESON: well, I believe they're already in the
17 record. The best evidence would be the statements.

18 THE WITNESS: Okay. Can I, can I repeat the
19 statements?

20 It's not hearsay because they in evidence, right?

21 Q All right. So, you---

22 A I want to repeat what the inmates said.

23 Q well, you just want to read the statements out loud?

24 A I just want to repeat---

25 Q And then comment on what they said?

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1 A Yeah.

2 THE COURT: Okay. Counsel, is there any objection to
3 him publishing the statements that are in evidence by the---

4 MS. JAMESON: No objection, Your Honor.

5 A Okay.

6 Q All right. So, you need a copy---

7 THE COURT: ---witnesses?

8 Q ---of the statements, right?

9 A Yes.

10 THE COURT: Okay.

11 MS. JAMESON: No objection.

12 Q This was the PC (sic) application, and what we did,
13 when it was filed, we just attached all of them as an -- as
14 part of that?

15 A Then hand them here.

16 Q Yeah.

17 THE WITNESS: Your Honor, if it's, if it's possible,
18 could the, the officer here help me turn the pages or
19 whatnot so --?

20 THE COURT: Sure.

21 Okay. Officer, if you don't mind?

22 THE OFFICER: Yes, Your Honor.

23 THE COURT: Okay. And so---

24 THE WITNESS: Y'all have an objection to the officer---

25 THE COURT: Helping him turn the pages?

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1 MS. JAMESON: No objection.

2 Q Okay.

3 A Okay. One of the statements that Mr. Harbin allowed to
4 be entered into evidence -- because he initially done this.
5 The State didn't, didn't open the door. Mr. Harbin opened
6 the door for these statements on it.

7 One of the statements is that the guy come in -- well,
8 I'm, I'm gonna skip some -- I don't want to read the whole
9 thing. I just want to jump to it.

10 Okay. I'll read the whole thing. Yesterday---

11 THE COURT: Okay. And I tell you what, counsel, why
12 don't you come up and help him turn the pages?

13 MR. STROUD: Okay.

14 THE COURT: Okay.

15 THE OFFICER: Yes, Your Honor.

16 THE COURT: Which statement are, are we starting with?

17 THE WITNESS: I am on the so called inmate named Bryan
18 Phillips.

19 THE COURT: Okay. At this time then, Mr. Clark will
20 publish the statement of Bryan Phillips.

21 Okay. I'm just standing.

22 Okay?

23 Q All right. You can just -- you want to just get the
24 part -- pertinent parts?

25 You want to---

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1 A Yes, I just want to get the pertinent part.

2 Q Okay.

3 A Okay. And Mr., Mr. Bryan Phillips statements, one of
4 the, one of the most damaging, and, and, and that I would
5 say that a jury shouldn't of heard was they found her
6 butchered to death. He said they found her near Mike's
7 Creek Church. He said he went to his girlfriend's mom house
8 to get the keys, and, when he was leaving, a cab -- he got
9 put in jail for driving under suspension.

10 Okay. I understand that Mr. Harbin says that his trial
11 strategy was to show the, the discrepancies -- the, the
12 discrepancies and the contradictions of these statements.

13 will you turn the next page?

14 All right.

15 Q All right. Now you're going to this Mr. Stillwell?

16 A Michael Stillwell.

17 Q All right.

18 THE COURT: And now Mr. Clark is going to publish
19 the -- partially publish the statement of Michael Stillwell.

20 MR. STROUD: Uh-huh. (Affirmative).

21 A In this statement, Michael Stillwell states that he
22 heard me or I told him that I had killed Winter in the
23 kitchen area of the house that we were staying in.

24 okay. Could you go to the next one?

25 Q All right. This is the statement of Michael B.

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1 Covington.

2 THE COURT: Okay. At this time, Mr. Clark will
3 partially publish the statement of Mr. Covington.

4 A Mr. Covington states that, while sitting at a table, I
5 asked him what you in for. He said they trying to say I
6 killed my wife.

7 Okay. He asked me -- I asked him how she died. He
8 said she was -- that he stabbed her, and something about
9 dropping her off at Mike's Creek.

10 Okay. That's -- go to the next page.

11 Q This is---

12 A Keep on going.

13 Q Keep going?

14 A Yeah, keep on.

15 Q Crosby?

16 Is that it?

17 A Yeah, that's Crosby.

18 Q All right. This is the Ridge F. Crosby statement.

19 Ridge, Ridge -- you have to turn several pages.

20 THE COURT: Okay. All right. The next statement that
21 will be partially published is Ridge Crosby.

22 A Mr., Mr. Ridge Crosby, he says he asked me what I was
23 in for, and he says I told him I was in for murdering and
24 killing my girl.

25 Okay. That was the Ridge Crosby statement.

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1 Go to the next one if you would please?

2 Q That one right there?

3 A John Raymond Austin?

4 Q Yeah.

5 Okay. This is John Raymond Austin.

6 A Okay.

7 THE COURT: Okay. At this time, Mr. Clark will
8 partially publish the statement of Mr. John Raymond Austin.

9 A John Raymond Austin said that I said I murdered my
10 wife, and that she was stabbed up.

11 okay. These words, these words were read to the jury.

12 okay. They were read to the jury. The statements say
13 I killed winter. They say I confessed. They say I stabbed
14 her.

15 Like I said, I'm not a lawyer, but I can't see how
16 these inmates could of got on the stand and added any more
17 damage than what the statements implicated.

18 What, what happened was this opened the door --
19 Mr. Harbin is, by allowing them statements in, opened the
20 door for the State to bring these statements in without
21 bringing the inmates to the stand. I think I had the right
22 to know that he was gonna do this. I did not know he was
23 opening that door, and I had the right to face my accusers.

24 If they was there, I didn't see them. If they wrote
25 statements on me, they never told me that. I never heard

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1 them say they wrote statements on me. Never. And I was in
2 that jail for three and a half years, and I talked to a lot
3 of people in that jail, but I never told anybody that I
4 killed Winter Wingard.

5 Mr. Harbin might of been trying to go somewhere, but
6 his strategy only benefited the State. It allowed the jury
7 to hear Kim Leskanic, in her closing argument, say -- and
8 this is in the transcript, it's on page -- in her closing
9 argument. I'm not sure where it is, but it's also in the
10 Application.

11 I need to repeat it so you'll know where it's at
12 before---

13 THE COURT: No, sir, I've got it.

14 A His strategy only benefited the State. It allowed the
15 jury to hear Kim Leskanic statement in the State's closing
16 that he state that he confessed to people in the cell block
17 stating that I confessed to inmates that -- who are they?

18 where are they?

19 I don't know who these inmates are.

20 Do y'all?

21 Does (sic) anybody can tell me that it is in this court
22 transcript or anywhere that these inmates made these
23 allegations besides Mr. Harbin, and Ms. Leskanic, and
24 Detective Burgess?

25 Ms. Leskanic, Ms. Leskanic said he confessed to the

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1 people in the cell block that he killed her. I stabbed her.
2 She was butchered.

3 A jury heard this. A jury heard this, but they didn't
4 hear from the people that was suppose to say this. They
5 don't even know if they exist. For all the jury knows,
6 these people were just made up out of thin air cause they
7 never got to see them. They never got to talk to them.
8 They never got to hear their testimony. I didn't either.
9 Neither did Chase Harbin, and neither did Ms. Leskanic, and
10 neither did the judge.

11 Then Mr. Harbin stated to the jury, in his closing
12 argument, I'm not trying to insult your intelligence, but
13 there is evidence that suggests Joey could of did it.

14 That's on 615 or six -- yeah, 615.

15 It is also in the Application, ma'am.

16 MR. STROUD: Your Honor, I'm -- is it all right if I
17 just sit down for a second?

18 THE COURT: Yes, sir, if there's no objection by
19 counsel.

20 MS. JAMESON: The, the same objection prior to -- that
21 we're at a narrative at this point. This is direct
22 examination.

23 MR. STROUD: well, I was just saying I was gonna sit
24 down. I'm---

25 MS. JAMESON: My, my objection to this, this testimony,

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1 at this point, is we're in a narrative.

2 THE COURT: Right.

3 MS. JAMESON: We're not in a direct examination.

4 THE COURT: Okay. And so, Mr. Stroud, first of all,
5 sir, if you do need to sit, you've been standing for a very
6 long time today, and, and I, I will take no offense at that,
7 sir. That's the first thing.

8 The second thing is that, if you have follow-up
9 questions for Mr. Clark, now would be the time or maybe to
10 inquire if he has further things that he would like to
11 communicate regarding the same topics that he is just talked
12 about.

13 THE WITNESS: Yes, ma'am, I do.

14 THE COURT: Okay.

15 THE WITNESS: I do. I have, I have more.

16 THE COURT: Okay.

17 MR. STROUD: All right.

18 THE COURT: And, yes, sir, you can sit as needed.

19 A On Page 621 to 646 -- 621 or 646. I'm not sure
20 because, like I said, the transcripts are messed up.

21 Mr. Harbin said to the jury, in his closing argument,
22 the other piece of evidence that I think would -- I would
23 irrelevant (sic) as potential -- potentially the strongest
24 piece of evidence by the State, which was by Mr. Harbin, but
25 by the State is what he said, would be the statements by the

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1 jailhouse witnesses.

2 The State didn't put this evidence in. Mr. Harbin put
3 this evidence in. I can't blame the State for jumping on
4 it. It was so easy to get. Mr. Harbin opening the door for
5 the State allowed the State to run, run with it all the way
6 to their closing argument. Then backs the State up in his
7 closing argument.

8 This is not an effective strategy. This is ineffective
9 beyond, beyond harmless error.

10 Another issue. I can't see an effective attorney
11 that's able to receive funds from the Courts for an expert
12 witness used them to get a telephone degree instead of using
13 the expert themselves at the trial.

14 Mr. Harbin testified yesterday that he went to Mike's
15 Creek Road in this courtroom. He said, and today, he said
16 he didn't remember if he took pictures, and he never said
17 whether the road (sic) was black fertile dirt or red dirt.
18 And he never said that today.

19 On Page 242 and -- or, or 217. The detectives
20 testified that the red dirt and the inmates' statements was
21 the ultimate reason for charging me with murder of Winter
22 wingard. During Jimmy Henson's testimony, he states red
23 dirt over and over, and I think this may be on Page 243 or
24 218 of Jimmy Henson's testimony.

25 Is that the right pages?

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1 Q You said what page now?

2 A Either 243 or 218.

3 Q You're using the little numbers, right?

4 A It's got a lot of statements about red dirt.

5 Q All right. So, it is 243, the big number.

6 A Okay. During Jimmy Henson's testimony, he states red
7 dirt over and over. Burgess was asked, and I think this may
8 be on the same page, I'm not sure, but it's in the---

9 Q It would be under---

10 A It's in the trial transcript.

11 Q It would be under Burgess, the section dealing with his
12 cross, cross-examination.

13 A Okay. That might be on 400 or four -- 375. 400 or
14 375. That's where it is.

15 Mr. Burgess says it seems to match, which is
16 highlighted on -- I don't have the number to the line, but
17 it's in there.

18 Q All right. It's---

19 A It's on that---

20 Q It's on Page 375 under the Detective Burgess cross.

21 A Okay. Burgess was asked if the dirt stains matched the
22 red dirt at ████ Songbird. He said it seemed to match. He
23 didn't say that it matched. He said it seemed to match.

24 This struck me because it implies there was no soil
25 analysis done by Mr. Harbin or by the State. The State

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1 experts called out their fields of, of expertise, and I
2 believe there was no mention of soil experience from none of
3 the experts. If you can prove it -- if you can prove me
4 wrong, I mean -- I'm not saying I am, but the testimonies
5 are in the transcripts of their expertise. It's in the
6 trial transcript, and I do not believe any of them was
7 certified or was a soil expert. Not even Mr. Harbin.

8 Then Jimmy Henson goes on to testify Mike's Creek Road
9 is black fertile soil. There is no red dirt on Mike's Creek
10 Road at all. I'm not sure what page that is, but it is in
11 the -- I think it's in the---

12 Q Are we -- was that Detective Ben -- Burgess or --?

13 A Jimmy Henson.

14 Q All right.

15 A Where he testified there was no red dirt at Mike's
16 Creek Road at all.

17 Q All right. I think it's in the four---

18 A It may be 400 and---

19 MR. STROUD: Does anybody have the soil expert or --
20 gentleman?

21 It was in there. He quoted him.

22 A I'm not sure. I think the soil expert did quote to it,
23 and it should of been in the records. But it is in the
24 trial transcript that Jimmy Henson goes to testify Mike's
25 Creek Road is black fertile soil. There is no red dirt on

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1 Mike's Creek Road at all.

2 Just like he says no red dirt over and over in his
3 statements. He says black dirt over and over also in his
4 statements.

5 Q Now, that's, that---

6 THE COURT: Okay. And just to move this along, the
7 page number is 243 and 218.

8 THE WITNESS: Thank you, ma'am.

9 THE COURT: Okay.

10 THE WITNESS: Yes, ma'am.

11 Then Detective Burgess, who is not listed as an expert
12 in soil, repeats red dirt over and over in his testimony,
13 and testifies that there is no red dirt on Mike's Creek Road
14 over and over. Only black dirt.

15 Now, Detective Burgess was not a soil scientist, and he
16 was -- didn't have anything that shows in the trial
17 transcript of being an expert in it.

18 Now, Mr. Harbin was ineffective because he knew, from
19 the beginning of the investigation, red dirt was a factor in
20 this case. A major factor. I am not aware and I have never
21 been aware that Mr. Harbin had or has a degree in soil
22 analysis, but Mr. Harbin knew that this red dirt, and the
23 inmates' statements were the main reason that I was locked
24 up, and charged with the murder of Winter Wingard.

25 I'm not sure if, if Mr. Harbin could of got that over

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1 the telephone with a soil expert, expert or not. I'm not
2 sure.

3 Yesterday, a real soil expert testified in this
4 courtroom that it would take more than decades, not one
5 decade. This murder happened in the -- 2010, and that's
6 been, what, less than eight years or maybe right at eight
7 years?

8 It's less than eight years. This expert said decades
9 for this soil on Mike's Creek Road to change from black, if
10 it was ever black, to red dirt.

11 Now, during my trial, we didn't have no expert to say
12 that, and Mr. Harbin didn't hire an expert to say that when
13 he knew the red dirt was a major factor in my arrest.
14 Mr. Harbin was ineffective beyond harmless error to not
15 having a soil expert testify or analyze the red dirt versus
16 black fertile soil mentioned in the trial transcript, and
17 the preliminary hearing for probable cause.

18 Q Okay. Is there another issue beyond red dirt?

19 I think we've got pictures there.

20 Can you move on to another issue?

21 A Mr. Harbin not objecting to anything at all in my trial
22 when there was so many places to object. It was ineffective
23 assistance of counsel.

24 The fingernails -- the fingernail clippings, and I
25 think there was cigarette butts that wasn't tested by a DNA

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1 expert or by SLED or the law enforcement. Mr. Harbin,
2 today, he testified the reason he did not want the
3 fingernail testings was because he feared my DNA was under
4 them.

5 The, the trial transcript shows that there was a third
6 person involved or in this DNA mixture. They -- it was so
7 small they couldn't find out who this person was because it
8 is shown in the trial transcript that it is a person. They
9 couldn't find out who this person was. I feel that if
10 Mr. Harbin would of had these DNA -- these fingernail
11 clippings tested and analyzed, we might know who killed
12 winter today or I might because some of y'all think that I
13 did it.

14 MS. JAMESON: Your Honor, the state would object.
15 There isn't a line of questioning going on. This is a
16 narrative.

17 THE COURT: well, actually counsel did just ask him if
18 there was anything else.

19 And so, counsel, would you like to continue with your
20 questioning?

21 Q All right. Joey, do you have -- do you have any other
22 items that -- from, from your notes?

23 A Yes, I have more items---

24 Q All right.

25 A ---from the trial transcript---

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1 Q All right.

2 A ---and the testimonies---

3 Q And---

4 A ---that was done here.

5 Q And are they -- well, I guess what might be helpful
6 right now, could you just sort of real quickly summarize --
7 you can probably do it by -- but just kind of give us a
8 roadmap like failure to test the fingernails, and---

9 A I did that. It's covered in the questioning---

10 Q Yeah. Yeah, I'm just saying like --.

11 A It's covered in the questions---

12 Q A list---

13 A ---and it's covered---

14 Q Just give me an idea---

15 A ---and it's covered in the allegations.

16 Q ---of you were gonna say this or you're gonna say that.

17 A Okay.

18 Q Okay. And so we will kind of have an idea of where
19 you're headed here.

20 A I'm sorry. I was, I was leaving out the pages where
21 you can find this at. I'm sorry. But it is in the
22 transcript, and Your Honor were to -- she's gonna read the
23 transcript, she'll get to see this. And I just -- I'm sorry
24 that I didn't do that.

25 on 579, I'm not sure, on Beverly Patrick's testimony,

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1 and Mr.---

2 Q I forgot my job. I'm suppose to be helping you turn
3 pages.

4 A I got it. I got this part.

5 Mr. Harbin talked today and was asked by the State,
6 during the cross-examination on the record here today, about
7 the vehicle, and where it was found. He stated that the
8 vehicle was found at a drug dealer's house or at the home.
9 I, I think he stated both of them the first time if I'm not
10 mistaken. I think he stated both of them.

11 I wanted to know -- okay. Harbin knows, from Ms.
12 Patrick's testimony, that the vehicle was found across from
13 the drug dealer's house. Having no soil scientist or no
14 soil expert was ineffective of Mr. Harbin because the State
15 assumes that a altercation happened in [REDACTED] songbird in the
16 yard, but nobody ever testified or ever -- Mr. Harbin never
17 brought it. Being ineffective, Mr. Harbin knew that the
18 truck was found at, at Tom Briggs' uncle's house, and he
19 ever had an expert or never went and investigated that yard
20 for DNA or scuffles in the grass or ground or whatever was
21 there that would show that maybe something happened to
22 winter at that location. Mr. Harbin was ineffective for not
23 bringing these allegations up in the trial.

24 I'm not sure where the board that was found under
25 winter wingard's head is. I think it's in Jimmy Henson's

Joey Clark - Direct examination
by Mr. Stroud

1 testimony, but it is in the trial transcript.

2 Jimmy Henson testified that there was a board found
3 under Winter Wingard's head where she was deceased that had
4 blood on it. Mr. Henson said they didn't take it for
5 collection. They just left it on Mike's Creek Road.

6 Mr. Harbin never refuted the issue to that that board
7 was not tested by the State, and he never had -- he had a
8 DNA expert. He was given the money to get one. He never
9 had Doctor Demers to run a test on that. He just used
10 Doctor Demers, as I take, a teacher in DNA.

11 THE COURT: Okay.

12 THE WITNESS: Mr. -- I think that's it.

13 THE COURT: Well, it's one o'clock, and I -- and I'm
14 not saying that that concludes your testimony, but that
15 concludes it at this time.

16 Okay?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: And so, with that, we will recess for lunch
19 until 2:00.

20 Let me talk to counsel for just a moment.

21 Yes, and, sir, you can return to counsel table at this
22 time.

23 THE WITNESS: Yes, ma'am.

24 MS. JAMESON: Your Honor, I would ask that you remind
25 the witness that he can not speak since he's --.

Joey Clark - Direct examination
by Mr. Stroud

1 THE COURT: Yes.

2 MS. JAMESON: -- you know, still subject to
3 cross-examination.

4 THE COURT: I understand.

5 Sir, you're not allowed -- you're not allowed to confer
6 with counsel concerning your testimony because we're
7 interrupting the testimony at this time.

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Not you ending it.

10 THE WITNESS: Okay.

11 THE COURT: Do you understand?

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Okay. You can talk to him about the
14 weather. You can talk to him about lunch, but you can't
15 talk to him about the case.

16 THE WITNESS: Okay.

17 THE COURT: All right.

18 THE WITNESS: Thank you, ma'am.

19 THE COURT: All right. Can you come up please?

20 I've been informed that I have about ten pleas this
21 afternoon.

22 (WHEREUPON, a bench conference was held at this time.)

23 THE COURT: Okay. So what we're gonna do, we're gonna
24 come back at 2:00 after lunch. We will continue with the
25 testimony of the Applicant. He will then be subjected to

Joey Clark - Direct examination
by Mr. Stroud

1 cross-examination. We will then conclude until tomorrow for
2 the two additional witnesses, as I understand it, and then
3 Mr. Harbin can be released.

4 MS. JAMESON: Potentially. I might recall him, but
5 today.

6 THE COURT: Okay. Well, that -- Mr. Harbin needs to
7 clone himself. He's, he's busy, and I know that, and I'm
8 just trying to accommodate another Court that needs him.

9 MS. JAMESON: I, I may have like one or two questions
10 for him on redirect, and we can definitely get through it
11 today easily by 3:15.

12 THE COURT: Okay. And just for everybody's
13 information, they had scheduled pleas for me today, and I'm
14 still trying to get that accomplished because there are
15 attorneys that are planning to be here this afternoon to
16 represent their clients, and then I don't know if these
17 defendants are all incarcerated or not, but -- okay. So,
18 we're just trying to get as much done as we can without
19 inconveniencing everybody to the point that it's not
20 logical.

21 Okay. All right. I'll see you-all back at 2:00.

22 Okay?

23 MS. JAMESON: Thank you.

24 MR. STROUD: Thank you.

25 (WHEREUPON, Court was in recess for the lunch hour.)

Joey Clark - Direct examination
by Mr. Stroud

1 THE COURT: Okay. So, I believe, when we recessed for
2 lunch, the Applicant was on the stand on direct examination.
3 So, I would ask Mr. Clark, sir, if you will please come back
4 up.

5 (WHEREUPON, the witness returns to the stand.)

6 THE COURT: And, if you need some assistance, I'll let
7 your assistant help you carry your things up if you need to
8 bring anything up.

9 THE WITNESS: Yes, ma'am.

10 THE COURT: All right, sir. Just make yourself
11 comfortable, and you are still under oath, sir.

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Okay. Yes, sir.

14 MR. STROUD: Okay.

15 CONTINUED DIRECT EXAMINATION

16 BY MR. STROUD:

17 Q Mr. Clark, you were -- when we broke, you were -- had
18 you completed the, the discussion of---

19 A Yes, sir.

20 Q ---that, that you would---

21 A Yes, sir.

22 Q Do you have anymore notes that you want to bring out?

23 A No, sir, I'm finished with that question.

24 Q Say that again.

25 A I'm finished with that question.

Joey Clark - Direct examination
by Mr. Stroud

1 Q Okay. All right. I understand.

2 But do you have anymore notes after that you want to
3 bring out from your notes?

4 A No. No.

5 Q Okay. All right.

6 All right. Bear with me a moment, Your Honor, cause
7 there's a lot of the questions I needed -- Mr. Clark, during
8 the up to ten times I believe that Mr. Harbin said he
9 visited you, did he ever tell you anything about the not --
10 the -- what he had learned about the DNA, and that he had
11 decided -- well, I guess -- let me back up.

12 Did he ever tell you straight -- anytime, during those
13 ten visits, that he did not intend to call Doctor Demers?

14 A Would you repeat that question?

15 Q Okay. It's been brought out that Mr. Harbin, over the
16 period of time, he probably visited you maybe ten times.

17 During the -- during any of those visits, did he ever
18 actually tell you that Doctor Demers would not be there to
19 testify?

20 A He told me that Doctor Demers would not be there to
21 testify during the trial.

22 Q And---

23 A Not during any of the visits. He said, during the
24 visit, he said that Doctor Demers was going to be
25 testifying.

Joey Clark - Direct examination
by Mr. Stroud

1 Q Okay. And so at what point, during the trial, did he
2 tell you this that he -- did he---

3 A I think it was around the time of Catherine Lesley, the
4 State DNA expert. I'm not sure if it was before or after,
5 but I know it was in that area.

6 Q Okay. Did he ever explain, during that conversation,
7 what information he had obtained that would allow him to
8 suddenly change the game plan?

9 A No, he did not.

10 Q During the time that you learned this information, were
11 you prepared that for -- well, I guess what I'm asking
12 you -- well, I didn't, I didn't -- having to rearrange some
13 questions here, but where -- were you -- what was your
14 reaction that -- you may of answered this in your narrative.

15 But what was your reaction when you found out, right
16 after -- I mean, during this trial, he wasn't gonna be
17 there?

18 A I was a, I was a little upset.

19 Q Okay. Okay. We've -- you've -- I think we've covered
20 the inmates' statements very well.

21 All right. Let's talk a little bit about plea
22 agreements and things like that.

23 On the first visit, did you -- well, the first visit of
24 those ten times or anytime during those ten times, did you
25 ever inform Mr. Harbin that you would not take a plea deal

Joey Clark - Direct examination
by Mr. Stroud

1 of any kind?

2 A Yes, I did.

3 Q Okay. Did that answer or that reasoning of yours that
4 you did not want a plea deal, did that ever changed at
5 anytime either during -- after that first meeting or during
6 the trial?

7 A No, it didn't.

8 Q Okay. So, during those ten times, did Mr. Harbin ever
9 suggest to you that sometimes a plea deal would be an option
10 that you might want to consider, and did he go over any of
11 the pros and cons of your initial decision?

12 A No, he didn't.

13 Q Okay. All right. So, basically then if even at --
14 during the trial, if, if the State had said we're gonna give
15 you five years, you would of said no because you wanted --
16 you were innocent?

17 A Can I elaborate on that question in form?

18 THE COURT: Sir, you can answer the question, and then
19 you can explain your answer.

20 A Could you repeat the --?

21 Q Okay. At anytime or during the trial or anytime, if,
22 if the State had made an offer, and Chase Harbin had brought
23 it to you, let's just say, for instance, that they were --
24 would allow you to serve five years instead of going to
25 trial, would you have still said no, and explain your

Joey Clark - Direct examination
by Mr. Stroud

1 reasons for that?

2 A I would of still said no because Mr. Harbin had brought
3 it to my attention that he had spoke to a judge, and the
4 judge wasn't gonna go below 23 years.

5 Q Okay. All right. All right. All right. And you may
6 of covered this, but why do you believe you need a new
7 trial?

8 A Because the ineffectiveness of Mr. Harbin, and, and all
9 the issues that he played ineffectiveness in as far as to
10 allowing the admission of the statements into evidence, and,
11 without the evidence, without the, the, the people coming
12 forward to testify. And, by opening the door, to allow the
13 prosecution to bring up the statements without the people
14 coming forward to testify. All -- about all the issues
15 that, that are on the PCR application.

16 Q Okay. All right. At this time, Mr. Clark, that's all
17 the questions I have, and the State will ask -- please
18 answer any questions the State has during the
19 cross-examination.

20 A Yes, sir. Thank you.

21 THE COURT: Ms. Jameson.

22 MS. JAMESON: Thank you, Your Honor.

23 May it please the Court.

24 CROSS-EXAMINATION

25 BY MS. JAMESON:

Joey Clark - Cross-examination
by Ms. Jameson

1 Q Mr. Clark, I believe you testified that Mr. Harbin
2 never discussed the inmates' statements with you?

3 A No, I don't believe I testified to that.

4 Q So, he did?

5 He discussed the inmates' statements with you?

6 A Yeah, to a, to a certain extent.

7 Q Well, when you say to a certain extent, what do you
8 mean?

9 A He didn't want the inmates to be put on the stand. He
10 felt that, if they put them on the stand, that it was gonna
11 open up, like he testified to, he felt like it was gonna
12 open up a chance for them to add things to it, and, and take
13 things away from it.

14 Q When did you guys discuss that?

15 A I'm not sure, ma'am.

16 MR. STROUD: I'm a little hard of hearing.

17 Could he possibly speak up louder or --?

18 THE COURT: Yes, sir.

19 Can you speak a little bit louder please?

20 THE WITNESS: To that answer, I said I'm not really
21 sure. I can't give a definite answer to a date or a time
22 that happened.

23 Q When he told you that he had this strategy that he, he
24 didn't want to put them on the stand so they could
25 elaborate, what was your response to him?

Joey Clark - Cross-examination
by Ms. Jameson

1 A When Mr. Harbin told me that he didn't want to put them
2 on the stand?

3 Q Yes.

4 A I'm not sure if Mr. Harbin told me that.

5 Q You, you just testified that he did tell you that.

6 A No, I testified that he testified.

7 Q Okay. Did Mr. Harbin discuss these inmate statements
8 with you?

9 A Yes, he did. He told me five inmates had wrote
10 statements on me.

11 Q When did he discuss these statements?

12 A I'm gonna say -- I'm don't -- I'm not -- we had so much
13 time together. I'm not sure, ma'am. We spent three and a
14 half years together. I'm really not sure.

15 Q Okay. And he reviewed all the discovery with you,
16 right?

17 A No, he did not.

18 Q Did he show you these five inmate statements?

19 A Yes, he did.

20 Q Did you discuss the contents?

21 A Yes, we did.

22 Q Did he discuss whether he had investigated these
23 inmates with you?

24 A He told me that he has sent an investigator. I believe
25 it was Fred, his investigator, to North Carolina to speak

Joey Clark - Cross-examination
by Ms. Jameson

1 with a Michael Stillwell, but I have no proof of that.

2 Q So, did he tell you he didn't want to put them on the
3 stand or did he not?

4 A He said -- his words to me was, if the State put them
5 on the stand, that he would cross-examine them. He never
6 said that he was gonna open the door, and allow the
7 statements in. He never said anything about him actually
8 putting them on the stand, on the stand.

9 MS. JAMESON: Moments indulgence, Your Honor.

10 THE COURT: Yes, ma'am.

11 (Pause.)

12 Q I believe you testified you told Mr. Harbin you didn't
13 want to take any plea deals, correct?

14 A Correct.

15 Q And that never changed?
16 You wanted to go to trial?

17 A Yes, ma'am.

18 MS. JAMESON: Moments indulgence.

19 (Pause.)

20 MS. JAMESON: No further questions, Your Honor.

21 THE COURT: Okay. Any redirect?

22 MR. STROUD: Your Honor, no redirect at this time.

23 THE COURT: Okay. Then, sir, you may step down. Thank
24 you.

25 THE WITNESS: Thank you.

1 THE COURT: Next witness.

2 MR. STROUD: Your Honor, at this time, the Plaintiffs
3 rest their case.

4 THE COURT: Okay. And, Mr. Stroud, sir, just to be
5 clear, I know there were a lot of exhibits, and I'm not
6 telling you how to try your case---

7 MR. STROUD: Uh-huh. (Affirmative).

8 THE COURT: ---but I want to make sure that you've put
9 in all the exhibits or at least attempted to put in all
10 exhibits that you wish for me to consider, sir.

11 MR. STROUD: Do we -- do you have a list?

12 Can you read out the list?

13 THE COURT: We, we have a list. The court reporter has
14 a list of the exhibits that have been placed into
15 evidence---

16 MR. STROUD: Yeah.

17 THE COURT: ---that she can hand to you, sir. And then
18 I have --.

19 MR. STROUD: I know I had sent everyone---

20 THE COURT: -- an email that was sent. Just bear with
21 me one moment. There was a list, I think, attached to the
22 email.

23 (Pause.)

24 THE COURT: Okay. Mr. Stroud, according to the list
25 that was emailed to me, again, I have not opened these

1 individual exhibits---

2 MR. STROUD: Okay.

3 THE COURT: ---based upon the State's request until
4 these were admitted into evidence, but, according to the
5 list that was provided to me, there are 24 listed exhibits.

6 MR. STROUD: Right.

7 THE COURT: Madam Court Reporter, how many are in?

8 THE COURT REPORTER: They're all different numbers,
9 Judge. So, there's---

10 MR. STROUD: Cause this was an initial list. There's
11 just---

12 THE COURT REPORTER: Thirteen. Thirteen.

13 MR. STROUD: ---preliminary possibility if -- so
14 everybody would know where we were possibly gonna---

15 THE COURT: As I understand it, from my notes, and the
16 court reporter's notes, there are 13 exhibits that are, are,
17 are actually in the record at this time.

18 MR. STROUD: Thirteen out of---

19 THE COURT: Out of---

20 MR. STROUD: Okay.

21 THE COURT: ---24, sir.

22 MR. STROUD: All right. I thought we had done the
23 invoices yesterday, but may be -- maybe we didn't.

24 THE COURT REPORTER: There are two invoices in.

25 THE COURT: What numbers are they?

1 THE COURT REPORTER: 22 and 23.

2 MR. STROUD: Yeah.

3 THE COURT REPORTER: 22 and 23.

4 THE COURT: Okay. Mr. Stroud, just to move this
5 along---

6 MR. STROUD: Yeah.

7 THE COURT: ---apparently Exhibits 22 and 23 are in
8 evidence.

9 MR. STROUD: Okay. That -- okay.

10 THE COURT: And those -- I don't know that those are
11 the ones that you're referring to.

12 MR. STROUD: Yes.

13 THE COURT: But it's my understanding those---

14 MR. STROUD: Yeah, those are---

15 THE COURT: ---are invoices.

16 MR. STROUD: Right. That, that was the, the --.

17 THE COURT: Involving Doctor Demers.

18 MR. STROUD: uh-huh. (Affirmative).

19 Your Honor, at, at this time, I think that is the ones
20 we will put in. Some of the others---

21 UNIDENTIFIED PERSON: The entire invoice collection was
22 21 through 24, Your Honor.

23 MR. STROUD: Well, I guess the only other one that we
24 would consider -- we have the---

25 THE COURT: Is 21 in?

1 THE COURT REPORTER: That's an ex parte order.

2 MR. STROUD: The regular---

3 THE COURT: Okay. So, Exhibit 21 was the order of
4 Judge Couch allowing the funds.

5 And what about 24?

6 MR. STROUD: 24 was the invoice -- I mean the canceled
7 check dated 9/16/14.

8 THE COURT: That is -- that is not in?

9 THE COURT REPORTER: No.

10 MR. STROUD: Okay. That's where --.

11 MS. JAMESON: What number is that?

12 THE COURT: 24.

13 MR. STROUD: All right. So, I mean I'm a little bit
14 lost.

15 You, you said that -- what is our -- what is now our
16 24?

17 Is that what the question was?

18 All right.

19 THE COURT: 21 is in.

20 MR. STROUD: Okay. 21.

21 All right. 22 -- all right. And the other -- all
22 right.

23 MS. JAMESON: I might have some objections to some of
24 these.

25 MR. STROUD: All right. 24 was the---

1 MS. JAMESON: Do you want to try to move -- I, I don't
2 know if they---

3 MR. STROUD: Okay. All right.

4 All right. This -- I don't know what number it will be
5 now, but we originally called it -- this is an invoice
6 March -- dated March 2nd, 2014.

7 MS. JAMESON: I think she said 22 and 24 are in.

8 THE COURT: That's in.

9 MR. STROUD: Okay.

10 (Pause.)

11 MR. STROUD: Okay. Then the only other exhibit we
12 might want to get in is the relevant -- it was in the --
13 just the relevant portions.

14 MS. JAMESON: We have an objection to proposed Exhibit
15 No. 5 based on relevance and best evidence. It appears to
16 be portions of the transcript with commentary next to them,
17 and I believe his investigator already testified to that.
18 He's not here to verify for the authenticity of this. So,
19 the State would object based on relevance, best evidence,
20 and authenticity grounds.

21 MR. STROUD: Okay.

22 THE COURT: Who were the notes made by?

23 MR. STROUD: All right. These notes were -- they're
24 not actually notes. What this is -- what this is is
25 taken -- I went through the transcript, and I -- in one

1 place, I listed or typed out every single reference in the
2 transcript regarding red dirt and black dirt. So, this is
3 just a copy -- a reference point, a compilation in one --
4 yeah, in one place, and they're no comments on -- this is
5 just basically, if, if we were to lose---

6 MS. JAMESON: It's, it's -- the State would still
7 object. It is commentary, and argumentative in nature, and
8 these are more appropriate for an argument. Not to be an
9 exhibit before the Court.

10 MR. STROUD: But---

11 THE COURT: Okay. Well, unless---

12 MR. STROUD: Would it help you to look at this?

13 THE COURT: No, sir. I think that -- I'm just trying
14 to -- what I think that you could do, sir, and I certainly
15 will give counsel the opportunity, opposing counsel, if that
16 is a summary of your position as to the, the differences in
17 the soil or, or the testimony regarding the soil, and you
18 think that would be -- it's not really -- I would let you
19 submit that to me subsequent to the hearing, and I will let
20 counsel submit anything like that that she would like to as
21 well because I understand that you've put it together as
22 an -- to assist the Court in com -- maybe comparing the
23 testimony of your expert with regard to the testimony at
24 trial.

25 MR. STROUD: well, actually I didn't even -- that was

1 not my original -- that was not even my intent. This is---

2 THE COURT: Okay.

3 MR. STROUD: ---has no purpose other than -- it's
4 not -- no one testified about this. This is all in the, in
5 the transcript.

6 THE COURT: Okay.

7 MR. STROUD: It's a different---

8 THE COURT: So, it's a summary. It would be a tool---

9 MR. STROUD: A summary.

10 THE COURT: ---to assist the Court?

11 MR. STROUD: It's just a summary of a -- like a
12 business record. A summary, but---

13 THE COURT: with regard to the testimony on the
14 different soil?

15 MR. STROUD: The trial testimony.

16 MS. JAMESON: Again, I believe it would be more
17 appropriate in an argument, and I would---

18 MR. STROUD: Okay.

19 THE COURT: Okay.

20 MS. JAMESON: ---vehemently oppose it coming in---

21 THE COURT: Okay.

22 MS. JAMESON: ---as a business record under hearsay.

23 THE COURT: Okay.

24 MR. STROUD: Well---

25 THE COURT: And so---

1 MR. STROUD: ---I would---

2 THE COURT: ---what I will do, sir, is I will give you
3 an opportunity to give me that information in a different
4 way---

5 MR. STROUD: Okay.

6 THE COURT: ---as, as part of your closing, and then
7 you can submit---

8 MR. STROUD: Okay.

9 THE COURT: ---it as part of those documents that I
10 have said you could submit---

11 MR. STROUD: Okay.

12 THE COURT: ---subsequent to it.

13 MR. STROUD: That, that works.

14 THE COURT: How about that?

15 MR. STROUD: Yeah. All right.

16 THE COURT: Okay.

17 MR. STROUD: And, like I said, that's it. We rest at
18 this point.

19 THE COURT: Okay.

20 MS. JAMESON: The State would recall Chase Harbin to
21 the stand.

22 THE COURT: Okay, sir. You are still under oath.

23 THE WITNESS: Okay.

24 THE COURT: Thank you.

25 CHASE HARBIN, having been previously

Chase Harbin - Direct examination
by Ms. Jameson

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. JAMESON:

4 Q Good afternoon, Mr. Harbin.

5 Do you recall any specific plea offers you received
6 from the State?

7 A I recall the offer to manslaughter that I don't believe
8 came with a specific recommendation. But I do believe that
9 we were able to have a chambers meeting where the judge was
10 kind enough to offer, on his limited knowledge from a
11 summary of the facts, that he might be inclined to produce a
12 number. I do not know if 23 was the number, but that sounds
13 very, very much in line with what I, I believed it would be,
14 and, again, as Joey said, that was of no interest to him as
15 far as a plea anyway.

16 Q So, he told you he never wanted a plea offer?

17 A That's my recollection. That's, that's correct.

18 Q And that was consistent throughout the three years you
19 represented him?

20 A That's right. Joey had proclaimed his innocence, and
21 his desire to go to trial the entire time.

22 Q Did you review all the discovery with him?

23 A Yeah. And now -- when you say all the discovery, we
24 had boxes of like cell phone tower, you know, like computer
25 type data. I, I, I know that we didn't go over that. I

Chase Harbin - Direct examination
by Ms. Jameson

1 know that we didn't go over every picture and stuff like
2 that. That was electronic, and I don't think Joey wanted to
3 see pictures of Winter anyway. But, but as far as the
4 substantive content of what the State was attempting to
5 present at trial, yes, ma'am.

6 Q Did that include those five jailhouse informant
7 statements?

8 A Yes, ma'am.

9 Q Did you---

10 A And I apologize. I know I said four multiple times. I
11 can't even think of the fifth one's name, but I'm, I'm
12 certain that Joey probably remembers more correctly than I
13 do.

14 Q Did you guys discuss the contents of these statements?

15 A Yes, ma'am.

16 Q Did you discuss any strategy regarding these
17 statements?

18 A Yeah. Basically Joey, obviously, said they were lying.
19 He never said that. And Joey did a pretty good job of kind
20 of giving me a little bit of the politics inside the jail,
21 and who was who, and who kind of runs their mouth, and who
22 doesn't, who kept quiet. And, essentially, the idea was to
23 discredit, to discredit them as people that were trying to
24 sell this information to get some kind of benefit for
25 themselves.

Chase Harbin - Direct examination
by Ms. Jameson

1 Q And did that---

2 A Or each---

3 Q Oh.

4 A Or at least have that implication, yeah.

5 Q And that guided your investigation into these
6 statements?

7 A Certainly.

8 Q And you discussed that with your client?

9 A Yes, ma'am.

10 MS. JAMESON: No further questions, Your Honor.

11 THE COURT: Okay. Any cross-examination?

12 MR. STROUD: No. No cross, Your Honor, at this point.

13 THE COURT: Okay. Thank you.

14 All right. Mr. Harbin, sir?

15 May he be released?

16 MS. JAMESON: Yes.

17 THE COURT: Okay. And we can go off the record for
18 just a second.

19 (WHEREUPON, an off-the-record discussion was held at
20 this time.)

21 THE COURT: Okay. Thank you for being here.

22 THE WITNESS: Thank you very much, Your Honor.

23 MS. JAMESON: Thank you very much, Mr. Harbin.

24 MR. STROUD: Appreciate it.

25 THE WITNESS: Yes, sir.

1 MS. JAMESON: Your Honor, my next witness is gonna be
2 lengthy. Would -- I know we have a time concern.

3 How would Your Honor prefer to proceed?

4 THE COURT: Well, rather than bifurcating the
5 testimony, which I don't like to do normally, I would say
6 that we will reconvene tomorrow. I cannot give you an exact
7 time. However, there are three matters in the morning, and
8 it's my understanding that those are suppose to be brief.

9 MR. COX: Yes, Your Honor.

10 THE COURT: Okay.

11 MR. COX: It's just a---

12 THE COURT: We're starting at 9:30, and so it might be
13 safe if you-all are here possibly by 10:00.

14 MR. STROUD: That works.

15 THE COURT: Okay. All right. So thank you-all very
16 much.

17 MS. JAMESON: Thank you, Your Honor.

18 THE COURT: And have a nice evening.

19 MS. JAMESON: Thank you.

20 THE COURT: Afternoon and evening.
21 Okay?

22 MR. STROUD: All right. Thank you.

23 MR. COX: Thank you, Your Honor.

24

25

1 (WHEREUPON, Court was in recess for the evening.)
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1 Thursday, June 21st, 2018.

2

3 THE COURT: Okay. Counsel, are we ready to proceed on
4 Mr. Joey Clark?

5 MS. JAMESON: Yes, Your Honor.

6 May it please the Court?

7 THE COURT: All right.

8 MS. JAMESON: The---

9 THE COURT: Thank you.

10 MS. JAMESON: ---State would call Prosecutor Kimberly
11 Leskanic to the stand.

12 THE COURT: Okay.

13 MS. JAMESON: Leskanic. Having trouble with that one.

14 THE COURT: Good morning.

15 THE WITNESS: Good morning, Your Honor.

16 KIMBERLY LESKANIC, being first
17 duly sworn, testified as follows:

18 THE COURT: Thank you. Please be seated. Make
19 yourself comfortable.

20 Okay.

21 DIRECT EXAMINATION

22 BY MS. JAMESON:

23 Q Good morning.

24 A Good morning.

25 Q where are you presently employed?

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1 A At the Cherokee County Sheriff's -- Solicitor's Office.

2 Q What's your role there?

3 A I'm the deputy solicitor.

4 Q And you were a prosecutor on this case?

5 A Yes, ma'am.

6 Q When did you first become involved with this case
7 roughly?

8 A December of 2010 or January, 2011 probably. Soon after
9 the defendant's arrest.

10 Q Did anyone assist you in the prosecution of this case?

11 A Yes, Jennifer Jordan.

12 Q Can you briefly characterize for the Court the, the
13 State's main evidence against Mr. Clark?

14 A Certainly.

15 This was a murder investigation, murder case, that
16 began when an individual was driving down Mike's Creek Road
17 in Cherokee County. This was about 3:30 in the afternoon on
18 December 2nd of 2010. That individual saw a dead body on
19 the side of the road. Called 9-1-1. The body was badly
20 beaten, stabbed, and mostly nude on the side of the road.

21 Investigators came out about four o'clock in the
22 afternoon. There was no identification on the body. And
23 they began their investigation.

24 About seven o'clock that same evening, there was a
25 missing persons report filed by Beverly Patrick, which was

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1 the mother of the victim, Winter Wingard. And, at that
2 point, police began a, a more detailed investigation because
3 they had a name, and a starting point for the investigation.

4 During the investigation, police discovered that the
5 victim in this case, Winter, had been in a relationship with
6 the defendant, Joey Clark, that she had ended that
7 relationship with him, but that he continued to come around.

8 At one point, I believe they had lived together at the
9 Songbird Lane address, but he had been kicked out. Winter
10 lived there with her mother, and Winter was actually, on
11 December 2nd, she was very sick. I think her mother had
12 testified that she had a temperature of about 103. She was
13 ill on that day, and, apparently, that's why Mr. Clark came
14 to the home saying that he was gonna bring her something.

15 But, in fact, he ended up drinking moonshine with her
16 mother, and, according to text messages, Winter did not want
17 to be with him anymore. Winter had met another female by
18 the name of Anna Mooney, and they had begun a relationship.
19 And, based upon the testimony of Ms. Patrick, Ms. Mooney,
20 and text messages that we received from all of the phones,
21 Winter no longer wanted a relationship with Mr. Clark, and
22 he was not gonna have that.

23 So, the way that the, the case proceeded, crime scene
24 investigators came out to the home. They did a grid search
25 at Songbird Lane of, of a field behind the house. And,

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1 during that grid search, they were able to find Winter's
2 cell phone, the battery that had been removed from the cell
3 phone, and also keys to Ms. Patrick's vehicle that had been
4 used to transport the body.

5 MS. JAMESON: Your Honor, may I approach?

6 THE COURT: Yes.

7 Q I'm gonna show you what's been premarked as State's
8 Exhibit 1.

9 Do you recognize that document?

10 A Yes, I do.

11 Q What is that---

12 A This is---

13 Q ---a picture of?

14 A This is a photograph of the backyard area at [REDACTED]
15 Songbird Lane. It includes part of the grown-up area where
16 police did the grid search in the backyard, and they found
17 the cell phone belonging to the victim, the battery, and the
18 keys to the vehicle.

19 From this, you can also see the location. They're two
20 mobile homes pictured, and, in that location, you can see
21 where Ms. Patrick's vehicle was found, where it had been
22 left and seen at three o'clock in the morning by Mr. Briggs.

23 MS. JAMESON: Your Honor, at this time, the State would
24 move to introduce State's Exhibit 1 into evidence.

25 THE COURT: Mr. Stroud.

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1 MR. STROUD: No objection.

2 MS. JAMESON: Your Honor, I have a courtesy copy for
3 you if you'd like it.

4 THE COURT: Thank you.

5 State's Exhibit No. 1 is moved into evidence without
6 objection.

7 Thank you.

8 And you gave one to Mrs. Green?

9 MS. JAMESON: Yes, they've already been premarked.

10 THE COURT: All right.

11 MS. JAMESON: Yes, Your Honor.

12 THE COURT: All right. Thank you.

13 (WHEREUPON, State's Exhibit No. 1 was received into
14 evidence at this time.)

15 A And this also shows -- I know there was testimony
16 earlier, I have been here all week, of the soil, and this
17 photograph shows what, as a lay person, we describe as red
18 dirt or red soil outside the home of Songbird Lane. And
19 that same type of substance was found, the red dirt, over
20 the front of Winter's body.

21 As I stated, she was found mostly nude on the side of
22 the road, and there was this red dirt covering the front of
23 her body. There were also red dirt fingerprints of Winter's
24 found on the vehicle that had been parked outside the home
25 as well as I believe it was a palm print in that same type

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1 of red dirt belonging to the defendant, Joey Clark.

2 MS. JAMESON: Your Honor, may I approach?

3 THE COURT: Yes, ma'am.

4 Q I'm gonna hand you what's been premarked as State's
5 Exhibit No. 2.

6 Do you recognize that photograph?

7 A Yes, ma'am.

8 Q What is that photograph?

9 A This is a photograph showing the driver's side door of
10 the vehicle that belonged to Winter's mother, Beverly
11 Patrick. It shows where fingerprints were examined by crime
12 scene investigators, and they were able to identify two
13 separate prints belonging to Winter Wingard, the victim, in
14 this case, and one print, and I believe it was a palm print,
15 belonging to the defendant, Joey Clark.

16 There was testimony at trial by the crime scene
17 investigator that these prints appeared to have this same
18 red dirt substance that was found at Songbird Lane as if the
19 struggle had begun at that location.

20 MS. JAMESON: Your Honor, the State would move to
21 introduce or admit Exhibit No. 2, the photograph of the car.

22 THE COURT: Okay. Mr. Stroud.

23 MR. STROUD: And no objection. All this was previously
24 entered as---

25 MS. JAMESON: Do you have any objection to any of them?

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1 MR. STROUD: Well, let me look at all of them.

2 MS. JAMESON: Okay. Here's---

3 MR. STROUD: I'm not---

4 THE COURT: Thank you.

5 MR. STROUD: ---sure where you're going. If we're just
6 going over the facts of the case.

7 MS. JAMESON: I can do them one, one at a time if you
8 prefer.

9 MR. STROUD: Well, I don't mind looking at them if
10 you---

11 MS. JAMESON: Yeah. And the rest are of the---

12 MR. STROUD: Okay. And you're basically gonna use them
13 just to show the---

14 MS. JAMESON: The crime scene.

15 MR. STROUD: ---the crime scene.

16 (WHEREUPON, State's Exhibit No. 2 was received into
17 evidence at this time.)

18 (Pause.)

19 MR. STROUD: And were these the same photographs that
20 were actually depicted -- shown during the trial?

21 MS. JAMESON: They were in the file. I can ask her
22 about that, if they were all in the file of the crime scene
23 investigators.

24 MR. STROUD: Okay. Photographs sometimes---

25 MS. JAMESON: I believe -- I can try to introduce them,

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1 but if you have an objection---

2 MR. STROUD: Okay.

3 MS. JAMESON: ---then that's a---

4 MR. STROUD: Okay. I just need a little background on
5 them.

6 MS. JAMESON: Okay. Then I'll move them in one at a
7 time. No, no problem.

8 MR. STROUD: Okay.

9 Q Ms. Leskanic, so it sounds like the first crime scene
10 was Songbird Lane, that trailer area, correct, and then the
11 second was the, the car?

12 A Yes, that's correct.

13 Q This Songbird Lane area, was this just the trailer that
14 Winter and Beverly lived in or can you kind of describe the
15 area a little bit for the Court?

16 A Sure. What I recall, and I went to that location a
17 couple of times, but it's, it's a drive with trailers on
18 both sides. Kind of a cul-de-sac or a turn area at the end.
19 But they're multiple mobile homes in this area on Songbird
20 Lane.

21 Q And I believe you testified, as to State's Exhibit 2,
22 that that car -- where was that car discovered?

23 A It was discovered, I believe, according to the
24 transcript, it was about 600 yards from Songbird Lane. You
25 could see it from the back of the house. There was

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1 actually -- from the, the back of the home, you would walk
2 through that field, walk across a road, and then the vehicle
3 was parked there at the home of Nathan Hollis I believe is
4 where it was left. But it was pretty much a direct shot
5 coming from where the vehicle was left, following the
6 murder, back to Songbird Lane.

7 Q Can you see the location where the car was in State's
8 Exhibit No. 1?

9 A Yes, ma'am. As, as I stated, there are two mobile
10 homes that you can see at a distance, and I believe that
11 it's somewhere near those two mobile homes. I can't give
12 you an exact location without going back out there.

13 Q Okay.

14 A But it was something that you could see, but it was at
15 a great distance, and that was one of the pieces of evidence
16 in the case is that the owner of the vehicle, when she and
17 the defendant walked outside the back of the house, and
18 they -- Winter was a missing person at that point, that Ms.
19 Patrick, who owned the vehicle, didn't recognize that as her
20 vehicle, but Mr. Clark said I, I think your vehicle is over
21 there.

22 Q In addition to the fingerprints and palm prints that
23 were recovered from the vehicle, was there any other
24 physical evidence discovered in the vehicle, any blood or
25 DNA?

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1 A There was. There was blood evidence on the passenger
2 side of the vehicle. There was also another fingerprint of
3 the defendant found on the passenger side of the vehicle.
4 And what it appeared, the State's theory of the case, and is
5 that she was bleeding when she was in the vehicle in the
6 passenger side. She was never able to get into the driver's
7 side of the car, and there were specs of blood as if she was
8 aspirating, I believe that's what the pathologist testified
9 to, that she may of been aspirating, and the injury had
10 already occurred to her. But she was definitely bleeding
11 inside of the vehicle.

12 But not a great amount of blood. There were specs of
13 blood on, on the window, and, and different areas inside the
14 car that were recovered and tested.

15 Q what did the, the pathologist testify was the cause of
16 death?

17 was it the stab wounds or the blunt force trauma?

18 A Blunt force trauma. There was a -- you could see, from
19 the autopsy, a great deal of blood. I want to say it was
20 the left side of the brain, but that's just from memory.
21 It's been a long time. But the picture stands out in my
22 mind the amount of blood that was on one side of her brain
23 from the blunt force trauma, and that was the cause of
24 death.

25 There was blunt force trauma to the head. There was

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1 also evidence of strangulation because she had petechia in
2 her eyes, and there were 13 stab wounds to her neck, which
3 the pathologist stated were probably delivered close in time
4 to winter's death because there was not a great deal of
5 blood. So, she did not think that her heart was still
6 pumping at a level as if, as if those were the first wounds
7 that were inflicted.

8 Q And I believe you testified, before winter's body was
9 discovered at Mike's Creek the next day, the -- December the
10 2nd, correct?

11 A December the 2nd, that's correct. She had left home --
12 she was leaving home -- just to give a little bit of
13 background and some of the other evidence that we used in
14 the case.

15 She was -- Mr. Clark was in the home. Her mother was
16 in the home, but had gone to bed. And winter was in the
17 home, and she was sick. Mr. Clark had been texting with the
18 new girlfriend as well. He had her number and had told her
19 that winter had AIDS, and that she should stay away from
20 winter.

21 Q well, the---

22 A okay.

23 Q Sorry to interrupt.

24 Were these text messages a new thing or had this been
25 going on for a little bit between the three of them?

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1 A It had been going on for a little bit, but it seemed to
2 escalate that evening.

3 MR. STROUD: Your Honor, could we have a side bar?

4 THE COURT: Yes, sir.

5 (WHEREUPON, a bench conference was held at this time.)

6 Q I apologize, Ms. Leskanic. I think you were discussing
7 the text messages back and forth, and there had been an
8 assertion that the defendant had texted Anna, the new
9 girlfriend, that winter had AIDS?

10 A That's correct. And although winter was apparently
11 sick, she was going to go to the hospital to get a blood
12 test done to prove to Anna that she did not have AIDS, that
13 she was finished with her relationship with the defendant,
14 and that he was lying just to try to interfere with their
15 relationship.

16 There was a 9-1-1 call that we received in discovery
17 where she had actually called the hospital, and she was
18 getting directions to the hospital. She wrote down 1544. I
19 believe that was the last four digits of the telephone
20 number to the hospital.

21 We know that Mr. Clark saw that because he sent a text
22 to Anna that said, you know, something about 1544, and
23 stupid, stupid. There was a text that he sent to Anna that
24 said, you know, you're brim swimming with sharks. And I
25 believe his last text message, and it would be in the

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1 record, was something along the line you like pain. I'll
2 send you something in the morning. And that was his last
3 text to the new girlfriend, Ms. Mooney.

4 Q Approximately what time were these text messages sent?

5 A I believe 2:00AM, and a little bit after, 2:03, 2:08AM.
6 The last text message that we were able to discover during
7 our case was at 2:14AM, and that was a text message that was
8 being sent from the victim, Winter, to Ms. Mooney. And
9 Lindsey testified that that was an interrupted text meaning
10 it was a text message that was sent, but never received.

11 He believes, and his testimony was, that that was
12 probably when the battery was removed from the phone, which
13 is why the State's theory was that the assault began at the
14 home. The two men -- women were texting to each other.
15 There's the interrupted text. The battery is found in the
16 back field of the home. And then the texting with Mr. Clark
17 and Winter stops.

18 And so that's where -- I know there was a lot of
19 testimony about the, the soil. This was part of the
20 evidence showing that, at 2:14, there's an interrupted text.
21 She's trying to leave the home. There are fingerprints from
22 the victim and the defendant matching the red dirt at the
23 home where the vehicle was parked on the vehicle.

24 Q Uh-huh. (Affirmative).

25 A And then the blood is found in the passenger seat as if

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1 that is where she's seated.

2 Q And the, the third crime scene, and the ultimate
3 resting place of Winter was Mike's Creek, correct?

4 A That's correct.

5 Q Okay. Did -- did you go out there and visit Mike's
6 Creek ever?

7 A Yes, ma'am.

8 MS. JAMESON: Your Honor, may I approach?

9 MR. STROUD: Yes, ma'am.

10 Q I'm handing you what's been premarked as State's
11 Exhibit 3 through 7.

12 will you look through those and see if you can identify
13 them?

14 A Sure.

15 (Witness complies.)

16 A Yes, ma'am.

17 Q what are these photographs of?

18 A These are photographs that were taken by crime scene
19 investigators of, of Mike's Creek Road.

20 State's Exhibit 3 shows trash and items and, and
21 partially shows Ms. Wingard's body.

22 State's Exhibit 4 is a photograph showing her body
23 where it is partially drug underneath the barbwire fence.
24 Her sweatshirt, at that point, had been pulled off of her,
25 and her sweatpants are down around the lower part of her

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1 knee and ankle.

2 State's Exhibit 5 is a photograph showing the red dirt
3 that is found on the outside of her sweatpants, and I think
4 you can see, from the photographs, and I know there was
5 testimony from the, the soil expert, but that this is a
6 different color soil. It's darker in nature then what was
7 at Songbird, and different in nature than what is seen on
8 her sweatpants. And that was additional evidence that the
9 attack began at Song -- Songbird Lane.

10 State's Exhibit 6 is another photograph just showing
11 the leaves that have fallen, and the darker dirt that is
12 found at Mike's Creek Road compared to Songbird Lane.

13 And State's Exhibit 7 is a footprint that police ended
14 up being able to identify to one of the 9-1-1 callers, the
15 gentleman that went out to scene. They were able to
16 identify that as belonging to him I believe, but it is
17 another photograph showing the type of soil that is found at
18 Mike's Creek compared to that found at Songbird Lane.

19 Q And were these all taken in investigation of this case?

20 A Yes, ma'am.

21 Q And found in your file?

22 A Yes, ma'am.

23 MS. JAMESON: The State would move to introduce
24 Exhibits 3 through 7.

25 THE COURT: Mr. Stroud.

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1 MR. STROUD: At this time, I have no objection.

2 THE COURT: Thank you.

3 MS. JAMESON: May I approach?

4 THE COURT: So, State's Exhibits 3 through 7,
5 additional photographs, are moved into evidence without
6 objection. Thank you.

7 (WHEREUPON, State's Exhibit Nos. 3 through 7 were
8 received into evidence at this time.)

9 THE COURT: And, counsel, are they in the correct
10 order?

11 MS. JAMESON: They are, Your Honor, and I also have a
12 scanned copy if Your Honor would prefer an electronic. I
13 can email Your Honor and Mr. Stroud a copy when we take a
14 break.

15 THE COURT: Okay. Thank you. But I think this will be
16 all right.

17 MS. JAMESON: Thank you.

18 Your Honor, may, may I approach so I can go over the
19 photographs?

20 THE COURT: Yes, ma'am.

21 Q Okay. If you'll turn back to Photograph Number 3
22 please.

23 MR. STROUD: Now, if you'll just hold that up where I
24 can see what it is.

25 MS. JAMESON: Yes, I will.

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1 MR. STROUD: Okay. That was -- yeah. All right.

2 Okay.

3 Q What is Photograph Number 3?

4 What does the soil appear to look like in Photograph
5 Number 3?

6 A There's a lot of leaves that have fallen. This was in
7 December. This is on the very side of the roadway from what
8 I recall. You have Mike's Creek Road, and then there's a
9 little kind of lift that goes up onto just a small bank. A
10 few inches high, but it is definitely a darker soil than
11 what was found at Songbird Lane.

12 Q If you'll look at State's Exhibit No. 4.

13 Does that show a, a general -- more of a far, a far
14 back photograph of kind of the crime scene and where the
15 body was located?

16 A It, it does and it shows the darker soil, but it also,
17 with Ms. Wingard's sweatpants, it shows the red dirt that is
18 on her sweatpants, again, indicating that the assault took
19 place somewhere other than Mike's Creek Road. And, again,
20 the -- all of the evidence led back to it be -- beginning at
21 Songbird Lane probably around 2:14AM.

22 Q Is there any sort of fencing shown in that photograph?

23 A Yes, ma'am, there's a barbwire fence. There were
24 fibers found from a Wolverine boot on that fence that were
25 collected. It appeared that Mr. Clark, when he was dragging

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1 the body, hit the fence. It would of been dark outside.
2 Hit the fence, could not drag the body any further. The
3 boot rubbed against the fence or he tried to climb over the
4 fence to continue to pull her. And there was a boot fiber
5 that came from a Wolverine boot I believe, which was the
6 same type of boot that was owned and used by Mr. Clark.

7 Q You said the same type of boot owned and used by
8 Mr. Clark.

9 Were any boots recovered during the investigation of
10 this case?

11 A Yes, ma'am, there was a pair of Wolverine boots that
12 were recovered from [REDACTED] Songbird Lane. Ms. Jordan handled
13 the examination of the DNA. So, she can correct me. But I
14 believe that there was DNA found of both winter and the
15 defendant in those boots, that they both wore them at times.
16 But that the DNA expert, the fiber expert, was able to
17 testify that it was the same type of fiber from those boots
18 that was found on the barbwire fence, and it was from direct
19 contact. It was not something that had been blown by the
20 wind. There was an actual rubbing of the boot against that
21 fence.

22 Q And I'm handing you State's Exhibit No. 5.

23 MR. STROUD: Okay.

24 Q Does that appear to show the -- well, what do you
25 appear to see on those sweatpants?

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1 A On the sweatpants, again, is blood, what appears to be
2 blood. And also what appears to be red soil, different from
3 the soil found at Mike's Creek Road. And it was consistent
4 with the same type of red dirt that is found on the chest of
5 winter's body as if she was drug across that red soil.

6 Q And if you'll look at six and seven briefly.

7 Do, do these describe the soil the night the body was
8 found?

9 A Yes, ma'am, that's correct. These are photographs
10 taken by crime scene investigators at the time back in
11 December of 2010.

12 Q Okay. Other than this red soil, and the text messages,
13 was there anything else linking the killer back to the
14 Songbird Lane property?

15 A Well, we knew that he was there, and he admitted that
16 he was there. He had the, the boots there. Ms. Patrick
17 stated that he was there. They actually worked together.

18 If you can maybe---

19 Q The, the car was discovered there, correct?

20 A The, the car was discovered---

21 Q Nearby?

22 A ---nearby at 3:00AM. Like I say, the -- it appears
23 from when the interrupted phone message came through, that
24 was at 2:14AM. Mr. Briggs found the vehicle when he
25 returned home from work or he was going to work at 3:00AM,

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1 which left approximately 45 minutes for the strangulation,
2 beating, stabbing, and dumping of the body to occur. Inside
3 the vehicle, Ms. Wingard's purse was found. That also had
4 the red dirt on it along with, I believe, \$93.00 and some
5 change. So, this was not a robbery.

6 Q How far away is Songbird Lane from Mike's Creek?

7 A About three and a half miles I think. To drive it, it
8 was about five and a half to six minutes from Songbird to
9 the location of the body on Mike's Creek Road.

10 Q One of the allegations that you've probably heard
11 discussed is a pocketknife that was collected.

12 Do you recall whether a pocketknife of the defendant's
13 was collected by law enforcement?

14 A Yes, I believe it was collected days after the murder
15 because, of course, he wasn't arrested immediately. They,
16 they conducted their investigation. It may have been on his
17 person when he was arrested. I know that that knife was
18 sent for testing, and no blood was indicated on that knife.
19 But we didn't have any -- we were not alleging that that was
20 the weapon that was used. However, since the knife was
21 collected on the defendant, in an abundance of caution, we
22 sent that in, but no blood was indicated on that knife.

23 Q Was there any need for further DNA testing at that time
24 since no blood was found?

25 A We did not think so, no, ma'am.

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1 Q Do you recall if any fingernail clippings were taken
2 from winter during her autopsy?

3 A Probably. I think it's standard that they collect
4 fingernail clippings, but we did not request that those be
5 tested.

6 Q Why did you not request those be tested?

7 A Honestly, in my time as a prosecutor, I've been
8 prosecuting since 2002, and fingernail clippings have always
9 been described to me as kind of a last resort because you
10 don't know how often someone has washed their hands, what
11 they've come in contact with, and often it can create more
12 confusion than give clarity. And certainly you're trying to
13 get clarity and make sure you make the proper arrest in any
14 case. In, in particular, a murder investigation.

15 Q And, again, winter's body was, was dragged shortly
16 before death, correct?

17 A Her body was dragged. He was in the home. There would
18 probably be a likelihood that his DNA would be under her
19 fingernails. Possibly. We just didn't see the benefit with
20 all of the other evidence that we had against Mr. Clark.

21 Q Do you recall any cigars or cigar wrappers or cigar
22 butts being collected from Songbird Lane?

23 A Yes, ma'am. At the front of the residence near the
24 walkway -- now, the vehicle was parked towards the back of
25 the residence, and that's where the items of evidence were

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1 found as far as the cell phone, and the car keys. But there
2 were two cigar tips and a cigar wrapper that were found
3 during a subsequent search of the home, and I believe that
4 was on December the 7th. So, that was days after the body
5 was found.

6 Q Were those tested for DNA?

7 A They were not. We had no indication that those were
8 linked to the crime in anyway, and, again, days had passed.
9 And this is a trailer park neighborhood area. And it was
10 found towards the front of the home on the walkway.

11 Q I believe you just testified those were discovered on
12 the second time the home was searched.

13 How many times was, was the Songbird Lane trailer of
14 Beverly and Winter searched?

15 A I, I think two. There may, there may have been more.
16 I know that investigators went out there initially, and then
17 they received information that maybe the stabbing had
18 occurred in the kitchen. And, in order to investigate that
19 further, they went back out to the home, but they did not
20 find any evidence to support that allegation.

21 Q What was that -- the allegation of the, the stabbing in
22 the home in the kitchen?

23 Where did that come from?

24 A I believe it was an inmate, a Michael Stillwell.

25 Q And law enforcement got another -- a subsequent search

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1 warrant, searched, and didn't find any evidence of blood?

2 A That's correct.

3 Q Did they find any evidence of a thorough cleaning,
4 harsh chemicals, or anything like that?

5 A No, ma'am, there was no indication that that was an
6 accurate description of where the assault had taken place.

7 Q Were there any other jailhouse inmates' statements in
8 this case?

9 A Yes, ma'am.

10 Q How many were there?

11 A Four I believe. It may have been five. I can't recall
12 exactly.

13 Q And these statements, they were made by inmates who
14 were incarcerated with Mr. Clark at the Cherokee County
15 Detention Center?

16 A Yes, ma'am.

17 Q Other than giving these statements to law enforcement
18 initially, was there any law enforcement investigation after
19 these statements were collected?

20 A You mean regarding the---

21 Q Regarding the statements.

22 Did, did your officers go out and speak to these four
23 or five individuals?

24 A I believe Detective Burgess, who was the lead
25 investigator on this case, received information that these

Kimberly Leskanic - Direct examination
by Ms. Jameson

1 inmates had some information they wanted to speak to him
2 about, and they gave the statements. At the time of trial,
3 I spoke, I know, with at least two of them personally. I
4 have investigators do, do other work, but I, I spoke with
5 two of them personally about their testimony at trial.

6 Q And you believe investigators likely spoke with the
7 other two?

8 A They may have. I, I, I know we would have attempted to
9 speak with them, and I know everyone was under subpoena for
10 Court.

11 Q So, you intended to, to call these four witnesses?

12 A Yes, ma'am.

13 Q Were they present in the courtroom during trial?

14 A Yes, ma'am, from my recollection.

15 Q What was your anticipated strategy with these
16 witnesses?

17 A They had given information about winter being stabbed
18 and beaten. This was information that was not available to
19 the general public at that time, and they stated they
20 received this information from the defendant. Even when the
21 victim's mother was shown a photograph for identification,
22 her neck was covered up so that the stab wounds were not
23 evident even to the mother because they knew that this was a
24 key part of the investigation.

25 And these inmates had information that Mr. Clark was in

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1 jail, and stating that his girlfriend or wife, he referred
2 to her both ways, had been stabbed. And actually, when I
3 spoke with inmates, the reason we wanted to call them is
4 they gave us additional information than what was contained
5 in the statement. I know one of them had told me his
6 testimony would include that, when Mr. Clark told him about
7 his wife or girlfriend being killed, that there was no
8 emotion in, in his demeanor about her.

9 And another inmate clarified. His statement said that
10 Mr. Clark had said his girlfriend or wife was killed. And,
11 in my meeting with him, he said that he needed to clarify.
12 He said I killed her, and this was testimony that we planned
13 on presenting at trial.

14 Q So, you intended to flesh out their statements a little
15 more and add more color?

16 A That's correct.

17 Q Did they take the stand?

18 A They did not.

19 Q Why was that?

20 A Detective Burgess had testified first, one of our first
21 witnesses. And, frankly, Mr. Harbin had done a very
22 effective cross-examination on him, and had shown some
23 inconsistencies -- not so much inconsistencies, but had been
24 able to lead Detective Burgess, I guess, down the road he
25 wanted to lead him on.

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1 He was able, also with Detective Burgess, to get in to
2 the statements, and point out inconsistencies in these
3 statements. And we were not anticipating that. We have --
4 you know, when you prosecute a case, you have sort of a
5 roadmap. Ms. Jordan and I met numerous times to say what's
6 the order of our witnesses, how do we want to present our
7 case. And so, when that came up in that way, that was not
8 how we had planned on presenting the State's case.

9 So, we were then faced with the statements have to come
10 in. Do we still want to call the inmates to testify?

11 And, frankly, Mr. Harbin had been able to point out
12 their inconsistencies. Although we would have possibly, and
13 if they testified they, they told me, gained additional
14 information, he would of had yet another opportunity, right
15 after our lead investigator had not done great on
16 cross-examination, have an opportunity to point out the
17 inconsistencies again in these inmates' statements. We felt
18 that the strongest part of our case had to do with the DNA,
19 the crime scene, and the forensics. And we decided just to
20 head down that road in our case.

21 Q Mr. Harbin didn't make a directed verdict motion at the
22 close of the State's case, did he?

23 A No, he did not.

24 Q Do you believe the State had presented sufficient
25 evidence to withstand a DV motion if he had made one?

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1 A Absolutely.

2 Q Okay. Was any evidence presented to mitigate the
3 murder or establish self-defense?

4 A No, ma'am.

5 Q None presented to the jury, correct?

6 A That's correct.

7 Q Based on your investigation into this case, was there
8 any available that you knew of?

9 A Can you --?

10 Q Did you see any evidence supporting self-defense based
11 on your investigation in the case?

12 A No, ma'am. No evidence of self-defense.

13 Q And the evidence that there was a struggle in the
14 kitchen, that ended up being unfounded when law enforcement
15 searched the kitchen?

16 They didn't find any blood?

17 A Exactly.

18 Q Did Judge King give a jury instruction on voluntary
19 manslaughter?

20 A No, he did not. There was no evidence presented at
21 trial of voluntary manslaughter because the defendant --
22 this was a who done it case. Not I did it because.

23 Q And that was the, the defense theory?

24 A That is correct.

25 Q Was -- he wasn't the killer?

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by Ms. Jameson

1 Not that there was mitigation or it was in
2 self-defense?

3 A That is correct.

4 Q So, there's no evidence of self-defense?

5 There's no evidence of provocation or heat of passion,
6 and no voluntary manslaughter charge was given, correct?

7 A That is correct.

8 Q Did you see anything improper about the implied malice
9 from the use of a deadly weapon charge that was given by
10 Judge King?

11 A No, ma'am.

12 Q And you prosecute out of the Cherokee office, correct?

13 A That is correct.

14 Q What amount of pretrial publicity did this case get?

15 A I don't recall there being much. I think there were a
16 few articles. Certainly, when there's a murder I think in
17 any jurisdiction, there's gonna be a newspaper article about
18 it. But I don't remember any kind of TV cameras or TV
19 interviews or anything that -- of that nature.

20 Q During jury qualification, did Judge King inquire, as
21 to the potential jurors, if they had heard about the case?

22 A Yes, ma'am.

23 Q Did he also file -- this, this trial lasted more than a
24 day, correct?

25 A That's correct. I believe we started some pretrial

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1 motions on Monday, selected our jury on Tuesday, and
2 finished the case Thursday afternoon.

3 Q Do you recall whether Judge King asked the jurors, each
4 morning they returned, whether they had watched any news or
5 heard anything about the case?

6 A I'm, I'm sure that he did. I know that's standard for
7 most judges.

8 Q Do you recall whether any of the jurors indicated they
9 had heard news or any other reporting on the case?

10 A I don't recall anything of that nature.

11 Q Did you have any venue concerns that Mr. Clark wouldn't
12 be able to get a fair trial in Cherokee County?

13 A No, ma'am.

14 Q Do you have any recollection of a juror being seated
15 who was present for his polygraph examination?

16 A No, ma'am.

17 Q I know some of the photos that were taken during
18 investigation I've introduced here today. Seven of them.

19 Do you recall roughly how many photographs were taken
20 during the investigation of these three crime scenes?

21 A Hundreds. I probably had ten disks. Some of them just
22 fingerprint evidence, but there were, there were multiple
23 photographs in this case. Hundreds of photos.

24 Q Did you introduce all those photographs?

25 A No, ma'am.

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by Ms. Jameson

1 Q How did you determine which photographs you were gonna
2 use?

3 A Ms. Jordan and I met. We went through each photograph
4 wanting to show the evidence that we thought was relevant
5 and pertinent in this prosecution. And we selected
6 photographs to show that aspect of it. Such as where the
7 phone was found, where the battery was found, the keys, the
8 vehicle, things of nature. Just photographs that we needed
9 to present our case.

10 Q Did you have a specific purpose for each photograph you
11 introduced?

12 A Yes, we did. We went through that and we discussed
13 that with Mr. Harbin. Judge King had asked us to get
14 together, the prosecution and defense, and stipulate on as
15 much of the evidence as we could. He wanted it to be a fair
16 and smooth trial, and wanted -- did not want anyone to be
17 surprised by handing up of any evidence. So, he wanted us
18 to review all of that with Mr. Harbin prior to the start of
19 trial.

20 Q And you did that at the Court's instruction?

21 A That is correct.

22 Q Do you recall -- and photographs were introduced of, of
23 winter's body, correct?

24 A That's correct.

25 Q How did you select the different photographs of, of

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by Ms. Jameson

1 winter's body you were going to use at trial?

2 A And, and I don't have those in front of me to say which
3 ones. I know that Ms. Jordan and I met. I know that there
4 were some -- and it -- and it's difficult in a case like
5 this because you do have a mostly nude body. There was
6 petechia in the eye. There was the blunt force trauma.
7 There was bruising to the chest. There were 13 stab wounds.

8 But in order to tell the story, and the timeline of how
9 this occurred, we had photographs to show the red dirt on
10 the front of her body showing that that would line up with
11 the time that the cell phone battery was removed from the
12 phone, that they were at Songbird Lane. We had, of course,
13 photographs of the vehicle with those red fingerprints.

14 We had photographs, like we've presented today, showing
15 the red dirt on the sweatpants. Again, trying to show that
16 this started at the home, and that the only other person
17 with winter at that home was the defendant other than her
18 mother, who was asleep.

19 Q Turning to the allegations regarding your closing
20 statement, do you have a copy of the transcript up there
21 that you can reference?

22 A Yes, ma'am.

23 Q And I'm gonna be using the record on appeal numbers,
24 which are the larger, bold numbers.

25 A Yes, ma'am.

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by Ms. Jameson

1 Q If you'll turn to Page 624, and review Lines 19 through
2 22 to yourself.

3 (Witness complies.)

4 A Yes, ma'am.

5 Q Why did you make that particular argument?

6 A Because we had statements from those inmates that he
7 had told them that he had killed Winter Wingard, and that is
8 a confession. I mean any statement made by the defendant,
9 it wouldn't have to be a statement made to law enforcement.
10 Any admission that he makes is a confession, and that's the
11 way that it was presented during the trial, and I argued
12 that in my closing.

13 Q That's directly based on evidence that was admitted at
14 trial?

15 A Yes, ma'am.

16 Q If you'll turn the page to 626, and review Lines 5
17 through 9 to yourself.

18 (Witness complies.)

19 A Yes, ma'am.

20 Q Why did you present this argument?

21 A It reads so investigators worked and worked to find the
22 truth. They did. They went out to the home. I know there
23 were at least three search warrants in this case. They did
24 the grid search of that back field. They took the DNA from
25 the, the branch and the briar at the scene, the fiber

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by Ms. Jameson

1 collected from the barbwire fence.

2 They worked hard. And even when they received
3 information from this inmate that the stabbing took place in
4 the kitchen, they didn't just dismiss that. That was
5 information, you know, beneficial to the defense that this
6 inmate had said this statement, and it proved not to be
7 true, but that's what they were doing. They weren't trying
8 to pin it on someone. They were looking for the truth. In
9 any place that they thought they could, could find evidence,
10 they looked for it.

11 That was testified to. It's a closing argument, and I
12 was arguing that they worked very hard on this case, and
13 they did.

14 Q And Mr. Harbin, particularly through Detective Burgess,
15 had made some inferences or argument that the case had --
16 the State kind of had rested on their laurels, got a little
17 bit of evidence, and then got confirmation bias, and didn't
18 follow-up, correct?

19 A That's correct.

20 Q If you'll turn to Page 633.

21 (Witness complies.)

22 Q Lines 1 through 15. If you'll review that to yourself.

23 (Witness complies.)

24 A Yes, ma'am.

25 Q Is that a similar type of argument as the, as the

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by MS. Jameson

1 previous portion?

2 A Yes, ma'am, it is. This, this case came down to crime
3 scene and forensics and some common sense, the telephone
4 records. But the crime scene investigators in this case put
5 the pieces of the puzzle together.

6 There's no eye witness. Ms. Wingard was dead. She
7 couldn't tell us what happened, and no one else was there.

8 They -- going to the scene, Detective Henson testified
9 that, as he was moving towards the body, there was a limb
10 there that he was gonna hit, and he figured, if he was gonna
11 hit it, then the person who drug her there may of hit it.
12 And so he cut that limb, and that's where they were able to
13 get the DNA from the defendant, I believe, from that limb.

14 Same thing with the barbwire fence. They looked so
15 closely at it. They found the fibers on this, but they were
16 then able to match up to Wolverine boots. And all of this
17 was based on the testimony that was presented at trial. And
18 it was my argument, as an advocate for the State, that an
19 advocate for what I believed to be the truth.

20 Q Further down on that page, Line 22 through Line 1, on
21 the following page, 634, if you'll review that to yourself.

22 (Witness complies.)

23 A Yes, ma'am.

24 Q Is that argument based on inferences to admissible
25 evidence that was introduced at trial?

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by Ms. Jameson

1 A Yes. And our theory of the case, you know, without eye
2 witnesses, you have to try to piece together things. And
3 you present, in your closing argument, just as the defense
4 is going to present their theory of the case, and the lack
5 of evidence, what the State has not been able to prove, it's
6 a prosecutor's job, based upon the evidence, to present our
7 theory based on every witness that we had spoken to working
8 on this case nonstop for a long period of time. And you
9 piece together what you believe happened, and, based upon
10 that evidence, present that to a jury in your closing
11 argument.

12 MS. JAMESON: Moments indulgence, Your Honor.

13 THE COURT: Yes, ma'am.

14 (Pause.)

15 Q One additional point.

16 was, was there any semen evidence in this case?

17 A There was. There was the defendant's semen was found
18 in Winter's mouth during her autopsy, and, again, going
19 through the text messages, there was no indication from
20 those that we believed Winter would of had any sort of
21 consensual sexual encounter with the defendant on December
22 the 2nd. She had a 103-degree temperature, and she was
23 trying to prove to her girlfriend that she didn't have AIDS.

24 Q And they'd broken up?

25 she already had another girlfriend?

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by Ms. Jameson

1 A That's correct. And he had been kicked out of the
2 home, but had returned.

3 MS. JAMESON: No further questions, Your Honor.

4 THE COURT: Okay. Mr. Stroud.

5 MR. STROUD: I do have some cross-examination
6 questions.

7 CROSS-EXAMINATION

8 BY MR. STROUD:

9 Q Good morning.

10 A Good morning, Mr. Stroud.

11 Q My first question is who told you that fingernail
12 clippings are a test of last resort?

13 A I've attended a lot of conferences.

14 Q Uh-huh. (Affirmative).

15 A I can't tell you anyone in particular. It's just
16 during the course of my time as a prosecutor that they
17 can -- they can sometimes confuse an issue more than clarify
18 an issue.

19 Q Uh-huh. (Affirmative).

20 A And, in this case, we had so much other evidence
21 pointing to Mr. Clark --

22 Q Uh-huh. (Affirmative).

23 A -- that we did not test those or request that those be
24 tested.

25 Q All right. I'm not quite sure.

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by Mr. Stroud

1 could you elaborate a little bit, I'm confused on the
2 issue, in, in, in terms of what way?

3 A It may not be reliable as to who the last person was
4 with her.

5 Q Uh-huh. (Affirmative).

6 A And, and, in this case, she had been -- her body -- the
7 front part of her body was covered in that red dirt. Her
8 hands were. So, it seemed to be a very contaminated piece
9 of evidence to attempt to test, and then use as reliable
10 evidence. We wanted reliable evidence to get the right
11 person.

12 Q Uh-huh. (Affirmative).

13 A And did not think that fingernail clippings would
14 provide that.

15 Q All right. So, you decided, rather than bring that
16 forward, it would just be better to exclude it altogether,
17 whatever information that test would of brought out?

18 A In looking at the evidence that we had, SLED will test
19 so many things. You can request additional testing.

20 Q Uh-huh. (Affirmative).

21 A And we could of requested that. I'm not gonna say that
22 we couldn't. But they will take a certain number of items
23 on particular cases.

24 Q Uh-huh. (Affirmative).

25 A The more serious the case, I believe the more items

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by Mr. Stroud

1 that they will agree to take and test without a special
2 request. But, in this case, we had him as the last person
3 with her.

4 Q Uh-huh. (Affirmative).

5 A We had text messages showing he was jealous and angry.
6 we had evidence that he had been drinking moonshine. we had
7 evidence that winter never made it to the hospital, that it
8 was not a robbery. Her purse was found in the car. That
9 there was an interrupted text message at 2:14AM where the
10 battery had been removed to -- from her---

11 Q Right.

12 A ---phone.

13 Q Okay.

14 A Thrown in the field. And that the vehicle was left
15 within walking distance to the home, and the one person who
16 needed to make it back to that home was Mr. Clark. And
17 those keys were found in the field in a direct path back to
18 the home where he needed to be in the morning to go to work
19 with Ms. Patrick.

20 Q Uh-huh. (Affirmative).

21 A We had the semen in her mouth. we had the fingerprints
22 on the vehicle. we had the DNA on the tree limb at the
23 crime scene.

24 Q Uh-huh. (Affirmative).

25 A And we had the wolverine boot fiber at the Mike's Creek

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by Mr. Stroud

1 crime scene as well. So, in this case, we did not request
2 the fingernails be tested. Her body had been drug and
3 beaten throughout the dirt.

4 Q Okay. That's a very -- it was -- I remember it was a
5 very impressive list of items that could of been tested, but
6 there -- the DNA did show that there was a third person
7 involved.

8 These other items you've listed that you explained why
9 you didn't test them, does it seem to explain why, if there
10 was a third person, that you'd neglected to---

11 MS. JAMESON: Objection. He's testifying.

12 MR. STROUD: All right.

13 Q Well---

14 THE COURT: Well, he, he is on cross, and I will give
15 him latitude.

16 Yes, sir.

17 MS. JAMESON: Thank you, Your Honor.

18 THE COURT: Please continue.

19 MR. STROUD: All right.

20 THE COURT: Overruled.

21 Q Just why, in light of the fact that your own evidence
22 showed that there, DNA evidence specifically, why didn't you
23 go ahead and test it?

24 A I believe, based on the levels, and, again, Ms. Jordan
25 handled the DNA. I may have to defer to her---

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by Mr. Stroud

1 Q Uh-huh. (Affirmative).

2 A ---for some of this.

3 Q Okay.

4 A But from what I recall, the levels were lower, and they
5 believed that the DNA came from Joyce Patrick, and I
6 believe, based on Mr. Harbin's testimony, that's what his
7 expert, Doctor Demers, had told him as well.

8 Q Okay.

9 A Because there was another individual inside the home,
10 and that was Winter's mother, Joyce Patrick.

11 Q All right. But it is not definitive, what, what you're
12 saying?

13 You, you can't say it was definitive that a test would
14 not have identified the third person?

15 A Under the fingernails?

16 Q Right.

17 I think---

18 A I, I mean I don't have any evidence that there's a
19 third person involved in this case.

20 Q All right.

21 A So, I don't think the fingernail scrapings would have
22 identified a third person, no, sir.

23 Q All right. But the State DNA expert testified that
24 there was three DNA samples, and you just admitted that
25 there were -- the small amount was probably gonna be Beverly

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by Mr. Stroud

1 Patrick or somebody because they lived in the house.

2 So, it's---

3 A Can you tell me which item the three samples were found
4 on so that I make sure we're discussing the same thing?

5 Q Yeah, let me see.

6 It would be somewhere in the testimony probably of --
7 okay. Let's see.

8 (Pause.)

9 Q Okay. This is -- I'm using the big numbers now.
10 On Page 583, during the cross by Mr. Harbin -- all
11 right. May I approach her and just show her what we found
12 so far?

13 A I have a copy of the transcript---

14 Q Okay.

15 A ---if you would like to---

16 Q All right. It's---

17 THE COURT: If you can just give me the page and the
18 line numbers please.

19 Q 583 is one in -- line -- I guess starting with Line 8
20 down to, I guess, 17. And then on 585, Lines 22 through, I
21 guess, Page 580 -- 586 on Lines 1 through 5 I guess.

22 A And maybe I wasn't clear in my question.

23 Can you tell me what DNA sample you are referring to?

24 Q I'm trying -- we're trying to find -- trying to find
25 that now. I'm assuming it's going to be in the exhibit

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by Mr. Stroud

1 list, but I'm -- I guess -- if I can't find the exhibit
2 list, I guess what I'm showing you, at least, indicates that
3 there was a third person. So, let me --.

4 A Maybe. I'm just not sure on what, and that's---

5 Q Yeah.

6 A ---what I want to make sure that I testify to
7 accurately---

8 Q All right.

9 A ---and not just say there was a third person found on
10 every piece of evidence---

11 UNIDENTIFIED PERSON: Your Honor, I think it's 4.6.

12 A ---so that's not correct.

13 Q Okay. Okay. All right. Yeah, it would be -- if
14 you'll -- Page 571. It appears that we're talking about
15 SLED 4.6. And then 572 is -- I guess cross was where he
16 also brought that out, and that, you know, that should of
17 been -- cause we're looking to -- for the exhibit number.
18 So, apparently it's Exhibit -- SLED Exhibit 4.6 based on the
19 information in the transcript at Page 571 and five seven --
20 and 572.

21 A Yes, sir, and it appears that -- and, again, I'm not
22 sure where the DNA was taken from, but there was DNA showing
23 that the major contributor was that of Joey Clark, and the
24 matching major contributor is approximately one in 120
25 quadrillion. So, there was, I think, a smaller amount of

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by Mr. Stroud

1 DNA, but that the major contributor matched that of the
2 defendant.

3 Q Uh-huh. (Affirmative).

4 All right. Because I want to -- on Page 572, the
5 transcript says, again, there's a -- one minor DNA type,
6 that's not attributable to Winter Wingard or Joey Clark,
7 Joyce Patrick is excluded as a possible contributor.

8 So, I guess my question was, because there was at --
9 actual evidence that there was more, more than two people,
10 shouldn't that -- you have gone ahead and disregarded these
11 beliefs of yours, and had it tested just on the remote
12 possibility that, you know, that it, it would of helped your
13 case perhaps?

14 It would of said Joey Clark or -- I guess I'm trying to
15 understand why, since you already proved -- pretrial you
16 knew that there was more than -- there was these at least
17 three DNA, what you call them, alleles or samples?

18 A Yes, sir.

19 Q Didn't, didn't you have a -- your -- in the interest in
20 excluding it, regardless of your opinion that it was a last
21 resort, but to at least get that tested?

22 A No, sir, I don't. I stand by our decision. All of the
23 evidence in the case pointed to the fact that Mr. Clark was
24 the last one with Ms. Wingard.

25 Q Okay.

Kimberly Leskanic - Cross-examination
by Mr. Stroud

1 A I don't, I don't want to go---

2 Q All right.

3 A ---go through everything again.

4 Q That's right.

5 A But -- and in the DNA sample that you're referring to,
6 and, again, I'm still not certain where that sample was
7 obtained from.

8 Q Uh-huh. (Affirmative).

9 A However, I was reading where you read there is one
10 minor DNA type that is not attributable to Winter Wingard or
11 Joey Clark, and Joyce Patrick is excluded as a possible
12 contributor to the mixture. You've read that, but the
13 testimony continued.

14 As it relates to Joey Clark's DNA profile matching the
15 major contributor, do you have a probability in terms of a
16 percentage with him?

17 The same statistic would apply as Item 4.5. The
18 probability of randomly selecting an unrelated individual
19 having a DNA profile matching the major contributor, which
20 is that of Mr. Clark --

21 Q Uh-huh. (Affirmative).

22 A -- is approximately one in 120 quadrillion. There was
23 no evidence of a third person in this case. We knew who the
24 last person was with her.

25 Q Okay.

1 A We knew who was jealous. We knew who was upset. And
2 all of the evidence pointed to him being the killer in this
3 case.

4 Q Okay. And I totally agree with you. However, you're a
5 prosecutor.

6 A Yes, sir.

7 Q You have a special duty --

8 A Yes, sir.

9 Q -- regarding a -- possible exculpatory evidence,
10 discovery, and things like that. Your duty -- you, you
11 (sic) duty, as a prosecutor, was not to shove that out based
12 on some theory that you've learned from CLE classes that
13 it's last resort. Yes, it's a last resort.

14 But why did you violate your duty to not test that, and
15 give those results as potential exculpatory evidence?

16 A I did not violate my duty. I have a duty to look at
17 the evidence and make decisions on the prosecution of the
18 case. As you will look at these photographs where Winter's
19 body was dumped, it's surrounded by trash. We, we can't
20 test every piece of trash. We---

21 Q But the fingernail clippings aren't trash.

22 A They were not, but---

23 Q They were taken by the off---

24 THE COURT: Okay.

25 Q ---by the pathologist.

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by Mr. Stroud

1 THE COURT: All right. Mr. Stroud, let her finish her
2 answer---

3 MR. STROUD: Oh, okay.

4 THE COURT: ---so that our court reporter can take down
5 one person---

6 MR. STROUD: Okay.

7 THE COURT: ---at a time.

8 MR. STROUD: Yeah.

9 THE COURT: Okay?

10 MR. STROUD: Okay.

11 THE COURT: Then you'll have an opportunity to
12 follow-up.

13 MR. STROUD: Oh, okay. I'm sorry.

14 THE COURT: Thank you, sir.

15 Okay. Yes, ma'am, please continue.

16 THE WITNESS: Thank you, Your Honor.

17 There's best evidence, and we discussed all of the
18 evidence in this case.

19 Q Uh-huh. (Affirmative).

20 A And did not feel that fingernail clippings, based on
21 what we had, was the best evidence or would be helpful in
22 finding any -- anything additional in this case.

23 The way that her body had been pulled and dragged, and
24 with fingernail scrapings, what can get under the
25 fingernails remained on the fingernails. We made a decision

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by Mr. Stroud

- 1 not to. The -- just because something is collected by
2 someone does not mean that we have an obligation to test
3 everything.
- 4 Q Right.
- 5 Okay. I understand -- and I, I -- like I say, I
6 totally agree with that.
- 7 My point though is, as a prosecutor, you have not been
8 able to exclude that as potential ex -- exculpatory
9 evidence.
- 10 A We turned over all the -- such as the search of the
11 kitchen---
- 12 Q Right. But I'm---
- 13 A ---there was nothing---
- 14 Q But I'm---
- 15 A ---found. That's turned over. There was, I believe,
16 a -- what they thought---
- 17 Q I---
- 18 A ---to be a blood drop found on the carpet inside the
19 house that was tested.
- 20 Q All right.
- 21 A I want to say that came back---
- 22 Q I totally agree---
- 23 A ---that it wasn't even human blood.
- 24 THE COURT: All right.
- 25 Q I totally agree with you.

Kimberly Leskanic - Cross-examination
by Mr. Stroud

1 A Any exculpatory evidence---

2 Q Okay.

3 A ---is turned over to the defense as soon as we learn of
4 it.

5 Q Okay. And I agree with you. My point is about these
6 fingernail clippings. They did contain potential
7 information.

8 MS. JAMESON: Objection. Asked and answered.

9 MR. STROUD: Okay. All right. I don't think she
10 answered it, but, but---

11 THE COURT: And I may need for Mr. Stroud to repeat the
12 beginning of that question.

13 MR. STROUD: Okay.

14 THE COURT: Sir, can you repeat that please?

15 MR. STROUD: Yeah.

16 All right. My point is that, as a prosecutor, she has
17 a special duty to search for the truth and not just convict.
18 She---

19 THE COURT: Yes. Yes, sir, I understand that. And,
20 and, again---

21 MR. STROUD: Yeah.

22 THE COURT: And, and, again---

23 MR. STROUD: All right.

24 THE COURT: In your closing---

25 MR. STROUD: My---

Kimberly Leskanic - Cross-examination
by Mr. Stroud

1 THE COURT: ---I'm gonna give you an opportunity to say
2 that.

3 MR. STROUD: Okay. All right.

4 THE COURT: But with regard to your question of her---

5 MR. STROUD: Yeah.

6 THE COURT: ---if you could just repeat that for me.

7 MR. STROUD: Okay. All right.

8 THE COURT: I'm, I'm not certain that that had been
9 asked and answered, but I want to make sure.

10 MR. STROUD: Oh, okay. All right.

11 Did you potentially exclude, when you elected not to
12 test the DNA evidence -- the fingernail clippings collected
13 by the autopsy, the pathologist, potential exculpatory
14 evidence?

15 A I, I don't believe so.

16 Q Okay.

17 A But based on---

18 THE COURT: And I will allow it, counsel, and---

19 MS. JAMESON: That's a different question---

20 THE COURT: Okay.

21 MS. JAMESON: ---then before, Your Honor.

22 THE COURT: All right.

23 MS. JAMESON: So, I withdraw my objection.

24 MR. STROUD: Okay.

25 THE COURT: Thank you.

Kimberly Leskanic - Cross-examination
by Mr. Stroud

1 MR. STROUD: You know I can't remember one question
2 from the next.

3 THE COURT: Okay. And I'm sorry to -- I just wanted to
4 make sure that we---

5 MR. STROUD: Yeah.

6 MS. JAMESON: Thank you, Your Honor.

7 THE COURT: ---keep the record as clean as possible.

8 MR. STROUD: Okay.

9 THE COURT: Yes, ma'am, if you would please answer it.

10 THE WITNESS: Thank you, Your Honor.

11 Based upon the evidence in this case, the types of
12 cases where fingernail clippings may be used, and the levels
13 of contamination that can be contained under fingernails,
14 they were not tested in this case. They were collected and
15 not tested. And they're many pieces of evidence that may be
16 collected and not tested.

17 Q Okay.

18 A We make decisions on that based upon our training,
19 experience, the fact and evidence that you do have in a
20 case.

21 Q Okay.

22 A If this was a type of case where we had no idea, there
23 was no evidence pointing to anyone---

24 Q Uh-huh. (Affirmative).

25 A ---as a last resort, we'll check the fingernails. That

Kimberly Leskanic - Cross-examination
by Mr. Stroud

1 was not what we had in this case.

2 Q Okay. Did you exclude the scratchings on Ms. Winter's
3 back as -- how -- or how -- how did you exclude the
4 scratches on Mr. Winter's back as drag marks?

5 Couldn't they have been scratches from the assailant?

6 A We had evidence -- you can see Mike's Creek Road. It's
7 a, it's a gravel type road. There was the red dirt all over
8 the front of her body. We're -- I think, common sense, if
9 you look at those pictures, she was drug across Songbird
10 Lane.

11 Crime scene investigators also testified that her body
12 had been drug 15 feet across the road at Mike's Creek. And
13 they appeared consistent with drag marks based on what crime
14 scene investigators testified to. Not scratch marks from
15 the assailant.

16 Q Okay. All right. So, you never produced any
17 evidence -- you said there was a struggle.

18 So, by your definition of a struggle, you're totally
19 excluding that the struggle would of included some sort of
20 scrapings -- she was -- Ms. Winter -- Ms. Winter's -- I
21 mean, yeah, she weighed over 300 -- almost. Well, 290
22 pounds or somewhere in that fashion. Joey, at the time, I
23 think -- Joey, how -- you weighed how much?

24 THE COURT: Counsel?

25 MS. JAMESON: Your Honor, objection.

Kimberly Leskanic - Cross-examination
by Mr. Stroud

1 THE COURT: Counsel?

2 MR. STROUD: Oh.

3 THE COURT: Okay. That's not appropriate.

4 MR. STROUD: Okay. All right.

5 Well, anyway, she weighed -- he weighed, I want to
6 say---

7 MS. JAMESON: Objection. He's testifying.

8 MR. STROUD: Okay. I'm testifying. Okay.

9 All right. My, my point is---

10 THE COURT: Okay. Mr. Stroud, sir, if you can just
11 rephrase that into a question please.

12 MR. STROUD: Oh, okay.

13 All right. By your own admission, you stated there is
14 a struggle that ensued.

15 Therefore, how do you know for certain that, during
16 that struggle, whatever -- there was no scrapings under
17 those fingernails that might be rele -- relevant?

18 A What we had evidence of was the injury that occurred to
19 her. There was beating about the chest. There was petechia
20 in the eyes. There was evidence of strangulation, and there
21 were 13 stab wounds. Her body was covered in the red type
22 dirt found outside of Songbird Lane as if she had been
23 pulled, and, at some point, her shirt had lifted because her
24 chest was covered with this red dirt.

25 Crime scene investigators went out to Mike's Creek.

Kimberly Leskanic - Cross-examination
by Mr. Stroud

1 They measured 15 feet from where the drug marks began to
2 where her body had been attempted to be pulled through the
3 barbwire fence. So, that would explain, and I believe they
4 testified as the experts, that those appeared to be drag
5 marks from her body.

6 Q Okay.

7 A But, but what I was testifying to were the injuries
8 that were sustained by Ms. Wingard when she was murdered.

9 Q Okay. So, strangulation, by it's definition, involves
10 putting your hands on -- around the neck. Therefore -- and
11 you've admitted that a struggle occurred -- a struggle of
12 some sort of physical movement perhaps. You don't know for
13 a fact they knocked her unconscious at Songbird Lane.

14 So, by the act of putting her hand -- his hands around
15 her neck, and she, obviously, was able to move for a little
16 while, are you saying that there---

17 A I don't know that.

18 Q Are you -- well, I'm quoting your own testimony. I
19 mean your -- the trial transcript where you -- and you just
20 said a struggle ensued where he strangled her.

21 How can you exclude -- if there's evidence of someone
22 strangling someone over -- by putting their hands around
23 them -- because you couldn't -- you just said strangled.
24 You never said he took a, a girl out or anything like that.
25 You were saying, in the testimony, that it could possibly be

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by Mr. Stroud

1 his fists or things like that, that he struck her with his
2 fists.

3 So, if you strike someone with your first, it -- as, as
4 we found out yesterday how easily DNA is transferred, why
5 couldn't there be evidence under -- reliable evidence under
6 those fingernail clippings?

7 A Under her fingernail clippings---

8 Q Yeah, that's where we've been trying---

9 A ---that he struck her with his fist?

10 I, I don't know how---

11 Q well, okay. what I'm saying is he -- the alleged
12 assailant strangled her.

13 A There was evidence of petechia in the eyes---

14 Q That---

15 A ---which the pathologist testified to is consistent
16 with---

17 Q Okay.

18 A ---strangulation.

19 Q All right.

20 A Yes, sir.

21 Q And the strangulation, you never anywhere said you
22 found a garage (sic) -- or any other way to strangle
23 someone. So, whoever did the strangling had to put the
24 hands around them. Therefore, she -- my point is you don't
25 just go limp immediately. She was -- and you've said that a

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1 struggle ensued (sic). So, perhaps when, in the process of
2 being strangled, she would of made contact with her, her
3 fingernails and gotten some relevant DNA of that alleged
4 assailant.

5 So, how -- again, I ask you, how -- by your own
6 admission, there's a strangulation involved here, how could
7 you not say that there was potentially necessary to test
8 those -- test those clippings?

9 A I, I think I've, I've answered this that, based on all
10 the evidence that we had---

11 Q Okay.

12 A ---I don't have -- and I said this during the trial.

13 Q Okay.

14 A Unfortunately, I don't have an eye witness, and I don't
15 have a victim who survived. So, I don't know the order in
16 which things happened.

17 Q Uh-huh. (Affirmative).

18 A I don't know if the strangulation occurred first, if
19 the blunt force trauma occurred, and there was no struggle
20 during the strangulation.

21 We -- what we had to put together in this case is who
22 was with her, who was upset with her, her phone had an
23 interrupted message at 2:14AM. The defendant's handprint
24 and her handprint are in the same red dirt on the vehicle.

25 Q Uh-huh. (Affirmative).

Kimberly Leskanic - Cross-examination
by Mr. Stroud

1 A Her blood is in the passenger side of the vehicle.
2 That -- this is a -- there was evidence of a strangulation
3 from the petechia, which is a personal crime normally. That
4 is something up close and personal.

5 There is his semen in her mouth, and there are 13 stab
6 wounds, again very personal, to her neck that were probably
7 inflicted when she was very close to death.

8 Q Okay.

9 A I didn't have evidence that she was able to scratch the
10 assailant because I couldn't ask her any questions --

11 Q All right.

12 A -- about what happened.

13 Q Okay.

14 A We went with the evidence, evidence, that we had --

15 Q Yeah.

16 A -- which was from the pathologist as to the cause of
17 death where the struggle began and where the body---

18 Q Uh-huh. (Affirmative).

19 A ---was left.

20 Q Okay. All right. Then -- since you said the evidence
21 was from the pathologist, on Page 465 of, of Doctor -- of --
22 in the transcript, Doctor Janice Ross, your direct, on
23 Lines -- starting with 16 through 25. Let me let you
24 read -- refresh.

25 A Yes, sir.

Kimberly Leskanic - Cross-examination
by Mr. Stroud

1 Q Okay. When you asked Doctor Ross what the abrasions --
2 what could cause the abrasion like that on her back, did she
3 give a definitive answer in absolute terms?

4 A May I read her answer?

5 Q Yeah.

6 A She stated it could be from dragging across the ground.

7 Q All right. Doesn't that -- doesn't that possibly
8 include scratch marks if she can not say definitely?

9 It was could be dragging.

10 A Again, this is Doctor Ross' testimony. I can't get
11 into what---

12 Q Right. Right.

13 A But---

14 Q But it's your question that you asked her, and you
15 heard the answer.

16 A It, it is. And she said it could be dragging from
17 across the ground.

18 Q Uh-huh. (Affirmative).

19 A And we were trying to determine, also with that
20 testimony, whether she was close to death by the time she
21 was on Mike's Creek Road and her body was stabbed. And we
22 were getting into---

23 Q Uh-huh. (Affirmative).

24 A ---whether there was still a great amount of blood
25 flowing---

Kimberly Leskanic - Cross-examination
by Mr. Stroud

1 Q Right.

2 A ---from winter's body.

3 Q Right.

4 A But it was, it was her impression, apparently from the
5 testimony, that those types of scratches or abrasions to her
6 back was consistent. I don't think anyone can testify---

7 Q Right.

8 A ---with absolute certainty---

9 Q Right.

10 A ---because---

11 Q Okay.

12 A ---they weren't there. But based upon her being a
13 pathologist and qualified as an expert, it was her opinion
14 that those drag marks were consistent with being drug across
15 the ground.

16 Q Okay. All right. Well, let's just move on.

17 Is it possible that Joey has been convicted because you
18 elected not to test the clippings, fingernail clippings?

19 A No, sir.

20 Q And, and your answer -- basis for your answer is what?

21 A I mean I'll be happy to go over all of the evidence.

22 Q Okay.

23 MS. JAMESON: Objection.

24 MR. STROUD: Okay.

25 MS. JAMESON: Calls for speculation.

Kimberly Leskanic - Cross-examination
by Mr. Stroud

1 MR. STROUD: All right.

2 THE COURT: Okay. That is sustained.

3 MR. STROUD: Okay.

4 THE COURT: Let's move on, Mr. Stroud.

5 MR. STROUD: All right.

6 okay. All right. In the pretrial phase of this, you
7 had requested a third party guilt motion exclusion.

8 why did you do this even you, you know -- you knew that
9 the DNA evidence was gonna show the small, small chance that
10 there was a third party --

11 A I---

12 Q -- and -- well, go ahead.

13 A It's somewhat standard in cases of this nature---

14 Q Okay.

15 A ---for us to file that motion. We try to prevent
16 mistrials or things coming out in front of a jury that you
17 can't unring the bell. And, often times, the defense may
18 want to put forth some evidence that some unknown person
19 committed the crime.

20 Q uh-huh. (Affirmative).

21 A And, of course, under third party guilt, that evidence
22 has to also exclude them. So, we filed that motion to make
23 sure that is brought up before the Court prior to trial so
24 that we do not have a mistrial halfway through.

25 Q okay. All right. So, the -- in your, in your lay

Kimberly Leskanic - Cross-examination
by Mr. Stroud

1 opinion testimony about the soil color, is it reliable
2 testimony, when we've produced a soil expert that testified
3 that leaves, leaves -- okay.

4 All right. My, my question is, in your testimony
5 dealing just now with, with -- on direct, about the soil
6 color was black. It was red, based on humus and things like
7 that, and you pointed to one of those exhibits, and said
8 look at the leaves, the soil covering. It shows it's black.

9 Could we read that back?

10 MS. JAMESON: Objection.

11 A I don't believe---

12 MS. JAMESON: I don't believe she gave any sort of
13 opinion. She---

14 MR. STROUD: All right.

15 MS. JAMESON: Expert opinion. She's not an expert
16 witness.

17 MR. STROUD: Well, I know. That's my question. She's,
18 she's not an expert opinion -- expert.

19 THE COURT: Okay. All right. Well, there's been a
20 request to replay testimony.

21 MR. STROUD: Okay.

22 THE COURT: And I believe, before we can do that or a
23 request can be made for that, the witness would have to
24 state that they either disagreed with what you perceived
25 they said or the witness does not recall---

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by Mr. Stroud

1 MR. STROUD: Okay.

2 THE COURT: ---what they said. And so, first, I think
3 Ms. Leskanic needs to be given an opportunity to respond.

4 MR. STROUD: Okay. All right.

5 THE COURT: And then I believe the purpose would be to
6 impeach her with her prior statement made on direct. But I
7 will --.

8 MR. STROUD: Okay.

9 THE COURT: -- now defer to Ms. Leskanic---

10 MR. STROUD: Okay.

11 THE COURT: ---with regard to her response to
12 statements about the soil. And I think it was the color or
13 if -- if you will.

14 THE WITNESS: Thank you, Your Honor.

15 I do not believe I testified regarding humus cause I
16 don't know anything about the humus and color charts and
17 that. But looking at the photographs---

18 Q Uh-huh. (Affirmative).

19 A ---and visiting the crime scenes, there is a distinct
20 difference between, between the coloration of the soil found
21 at Songbird Lane, and the coloration of the soil at Mike's
22 Creek Road.

23 Now, with a soil expert and color charts and how it
24 looks---

25 Q Uh-huh. (Affirmative).

Kimberly Leskanic - Cross-examination
by Mr. Stroud

1 A ---almost eight years later, I don't know. But we have
2 photographs that were available to the jury to look at the
3 difference, and they were described in, in lay terms---

4 Q Uh-huh. (Affirmative).

5 A ---and, and available for their review. This was not a
6 case based on soil. The red dirt became relevant because,
7 along with the interrupted call, where the items were found
8 in the backyard---

9 Q Uh-huh. (Affirmative).

10 A ---the red dirt fingerprints of the defendant and the
11 victim on the vehicle, we were trying to show -- we were
12 trying to figure out what happened. And all of that pointed
13 to the assault beginning at Songbird Lane. It -- that, that
14 same type of red soil at Songbird matched what covered
15 winter's body---

16 Q Uh-huh. (Affirmative).

17 A ---her purse, the fingerprints, what is found on her
18 sweatpants at Mike's Creek. But it was not a, a soil case.
19 It was just where did this take place.

20 Q All right. And I believe I was referring to, to the
21 photograph that has the leaves on it is where I thought
22 you -- no, not that one.

23 THE COURT: What exhibit number are we talking about
24 for the record?

25 THE WITNESS: I'll figure out---

Kimberly Leskanic - Cross-examination
by Mr. Stroud

1 MR. STROUD: That one -- where you might of put---

2 THE WITNESS: This was -- this is State's Exhibit 6.

3 Q Yeah. Where you might of said something about leaves,
4 the coloring of the leaves showing it was black.

5 A That -- I believe I testified this murder occurred in
6 December.

7 Q Uh-huh. (Affirmative).

8 A The ground is covered with leaves, and the soil is of a
9 darker color than that found in State's Exhibit 1---

10 Q Okay.

11 A ---of Songbird Lane.

12 Q Okay. All right. Let me -- I think -- let me -- a
13 moment please.

14 THE COURT: Yes, sir.

15 MR. STROUD: And I apologize for my -- these are some
16 questions that I was handed. Joey, Joey might want me to
17 ask.

18 (Pause.)

19 Q Okay. In your direct examination, I believe that you
20 stated the vehicle was found behind the house in the
21 direction of the keys and cell phone across a street.

22 Is, is that -- yes or no?

23 A Yes, there's the, the mobile home, the back of the
24 mobile home, and then there is a field that goes to a road,
25 and I can't remember the name of that---

Kimberly Leskanic - Cross-examination
by Mr. Stroud

1 Q Okay.

2 A ---that road. And then it's my recollection that,
3 immediately across that road, there was a little dirt, not
4 really driveway, but just kind of a parking area.

5 Q Uh-huh. (Affirmative).

6 A And that's where the vehicle was left.

7 Q Okay. And, again, I'm asking questions because -- that
8 Mr. Clark wants me to ask.

9 was there an investigation -- okay. At the
10 residence -- of the residence across the street behind the
11 house where the vehicle was found?

12 of that---

13 A What type of investigation---

14 Q The ve -- yeah. Yeah, of those residents.

15 A They spoke with Mr. Hollis. He gave a statement in
16 this case. That was not admitted at trial. I think we
17 didn't even offer that because it contained information that
18 we thought was probably more -- was gonna be deemed more
19 prejudicial.

20 Mr. Hollis had given a statements to police that he had
21 spoken with winter. She had told him about problems that
22 she had had with Mr. Clark, and she made a statement to him
23 that, if I'm ever found dead, he's the one that did it, but
24 we didn't admit that at trial.

25 So, they did, as far as conduct an investigation, they

Kimberly Leskanic - Cross-examination
by Mr. Stroud

1 spoke with the homeowner, and they took a statement from him
2 that was included in the case file. But we deemed that
3 evidence that would probably be inadmissible as more
4 prejudicial than probative.

5 Q Uh-huh. (Affirmative).

6 A So, we did not offer that in our case in chief.

7 Q Okay. Let's see.

8 What color was the soil at the residence behind --
9 well, at this particular residence, do you recall what color
10 the soil was -- where the, where the vehicle was found?

11 A I don't. As I, as I recall, there was just a little
12 dirt drive where you would park the vehicle, and then there
13 was grass.

14 Q Okay.

15 A But that's, that's my recollection from 2011---

16 Q Yeah.

17 A ---probably or '14, I guess, when we---

18 Q Yeah.

19 A ---were getting ready to try the case.

20 Q Okay. What color -- oh, no, I've read that one
21 already.

22 Were, were these pictures -- pardon me.

23 Your Honor, would I -- would you allow me to -- I'm
24 having trouble reading this question that he wrote.

25 THE COURT: Okay. I was trying to get to the end of

Kimberly Leskanic - Cross-examination
by Mr. Stroud

1 the cross, but it doesn't look like we're gonna do that by
2 noon.

3 MR. STROUD: Yes.

4 THE COURT: And so it's time for us to -- we've been
5 going now for an hour and a half. And probably we need a
6 break for about ten minutes.

7 MR. STROUD: And then I can---

8 THE COURT: And I also need to talk with the lawyers on
9 the other case. I understand that one of the witnesses has
10 to be in court in Laurens. And so we may be breaking this,
11 unfortunately, during cross to take up another case that I
12 think may be rather brief. I'm not certain.

13 MR. STROUD: How---

14 THE COURT: Okay. Ten minutes.

15 MR. STROUD: All right. All right. I'm --
16 technically, I'm really not suppose to talk with him once we
17 break.

18 THE COURT: Oh. Now you can. You can't talk with this
19 witness---

20 MR. STROUD: Okay.

21 THE COURT: ---that's on the stand.

22 MR. STROUD: Okay. All right. But I can still with --
23 okay.

24 THE COURT: Yes.

25 MR. STROUD: All right.

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by Mr. Stroud

1 THE COURT: Yes, you can.

2 MR. STROUD: Okay.

3 THE COURT: Because his testimony has been completed.

4 MR. STROUD: Okay. I wanted to be absolutely certain.

5 THE COURT: Okay. All right.

6 (WHEREUPON, a short recess was taken in this case.)

7 THE COURT: Okay. And so the people that are here with
8 regard to the -- Mr. Clark, it is my intent to take this up,
9 go to lunch, and come back at 2:00 or 2:15 taking only an
10 hour for lunch. If we don't break at 1:00, it's Mr.
11 Richey's fault. I just want y'all to know.

12 MR. COX: Absolutely.

13 THE COURT: Okay. And so if that gives you-all some
14 guidance about where you are and what you need to be doing.

15 MR. STROUD: That does -- I've only -- he's only got
16 two more questions.

17 THE COURT: Okay. All right.

18 MR. STROUD: And that's---

19 THE COURT: That's a moving target. I know.

20 MR. STROUD: Yeah.

21 THE COURT: Okay.

22 MR. STROUD: Cause I'm, cause I'm hard of hearing.

23 THE COURT: Yes, sir, why don't you just plan to be
24 back here at 2:00?

25 MR. STROUD: At -- sounds good.

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1 THE COURT: Okay. It's my hope that we're gonna break
2 at 1:00 or 1:15, and, and then we'll either be back at 2:00
3 or 2:15.

4 okay?

5 MR. STROUD: All right. Thank you.

6 THE COURT: All right. And so, counsel, I'm assuming
7 that your witnesses could also leave if it's their wish.
8 okay?

9 MS. JAMESON: Thank you, Your Honor.

10 THE COURT: All right.

11 (WHEREUPON, this case was in recess for the lunch
12 hour.)

13 MR. STROUD: Your Honor, I think I -- I think I was in
14 the, in the middle of -- I had two last questions, Joey,
15 that he wanted me to, to read.

16 THE COURT: Okay. And so this was the
17 cross-examination of Ms. Leskanic.

18 Ma'am, if you will please come forward.

19 (Witness complies.)

20 THE COURT: You're still under oath. Watch your step.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: Yes, ma'am.

23 Okay. Mr. Stroud, whenever you're ready.

24 MR. STROUD: Okay.

25 CONTINUED CROSS-EXAMINATION

Kimberly Leskanic - Cross-examination
by Mr. Stroud

1 BY MR. STROUD:

2 Q On Page -- I'm using big, big numbers now in the
3 transcript, but on Page 357, Lines 1 through 11, and, Kim,
4 did you, did you hear me -- hear that?

5 A Yes, sir, I'm reviewing it.

6 Q Okay.

7 A Yes, sir.

8 Q Okay. Why did you decide or why did you not the --
9 test the wood when there was blood splatter on it?

10 A I'm not sure that the piece of wood was collected.
11 This colloquy is between myself and Detective Henson as to
12 whether or not he believed that piece of wood that was shown
13 in a photograph had any evidentiary value.

14 Q Uh-huh. (Affirmative).

15 A And based on his experience and training, I believe his
16 testimony was it appeared that the blood that was on it came
17 from the stab wounds of the neck, and was not used as the
18 weapon.

19 Q Okay. On Page 327 of, big numbers again, Lines 20
20 through 24, and then on Page -- I think just stick with Page
21 327 please. That's what he's elicited to. Lines 20 through
22 24.

23 A Yes, sir.

24 Q Okay. You previously testified that Joey's
25 fingerprints were in the vehicle, and that also, according

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by Mr. Stroud

1 to this trial transcript, there was a fingerprint identified
2 that, that was, I guess, the -- I don't have the page number
3 right, but it appeared that the fingerprint would, would not
4 be Beverly or the victim.

5 My question to you is what efforts did the State take
6 to identify this other fingerprint that was found in the
7 blood splatter?

8 A I'm not sure. I, I didn't conduct the fingerprint
9 examination. I can continue reading this, but I believe we
10 did -- we presented the evidence to the jury that there was
11 an unidentified fingerprint found. So, that was before the
12 jury, and that was provided to the defense.

13 Q Okay. All right. Okay. At this point, that's,
14 that's -- this is all the cross-examination I have, and,
15 unless she has some redirect, I'm through.

16 MS. JAMESON: May it please the Court, Your Honor?

17 THE COURT: Okay. Thank you, Ms. Jameson.

18 If we might just take one moment. I see our deputy
19 clerk.

20 (Pause.)

21 THE COURT: Thank you.

22 MS. JAMESON: Thank you.

23 REDIRECT EXAMINATION

24 BY MS. JAMESON:

25 Q A lot of evidence was collected in this case, correct?

Kimberly Leskanic - Redirect examination
by Ms. Jameson

1 A Correct.

2 Q This is a murder case, and you testified previously, on
3 direct, about all the lengths your investigators and
4 deputies at the Cherokee County Sheriff's Department went
5 through in collecting evidence, correct?

6 A Yes, ma'am.

7 Q And you actually got permission to send more to SLED
8 than typically is tested, correct?

9 A That is correct.

10 Q And I believe you testified that you specifically
11 requested items to be tested based on where your
12 investigation led, correct?

13 A That is correct.

14 Q There was some questioning on cross about possible --
15 the drag marks that were on Winter's back, correct?

16 A Yes.

17 Q And you were questioned about whether you considered if
18 those were scratch marks rather than drag marks.

19 If these were scratch marks on Winter's back from the
20 assailant, then Winter's -- the assailant's DNA wouldn't be
21 under Winter's fingernails, correct?

22 A That's correct. And that was the same thing I was
23 saying that, if the defendant punched her in the head, that
24 would not produce DNA under her fingernails.

25 Q So, even if the assailant scratched Winter, Winter's

Kimberly Leskanic - Redirect examination
by Ms. Jameson

1 DNA would be under the fingernails, not reverse, correct?

2 A That's correct.

3 Q One important thing we left out from the timeline.

4 When did Ms. Patrick first discover that Winter was
5 missing?

6 A The next morning from what I recall. When she awoke
7 the next morning, Joey told her that Winter had left to go
8 get cigarettes, and possibly to go see this other female,
9 and had not returned home.

10 Q Do you recall what time in the morning this was?

11 A I think it was relatively early. I, I don't recall an
12 exact time. I'll be glad to refer back to the transcript,
13 if necessary, but I believe they had to be at work early the
14 next morning. And that she and the defendant rode to work
15 together because she was upset that her car was gone.

16 Q Will you turn to Page 141, I'm referring to the record
17 on appeal numbers, to refresh your recollection as to how
18 Mr. Patrick realized her daughter was missing.

19 A It appears 4:00AM.

20 Q And, and how did she find out that her daughter was
21 missing?

22 A The defendant was standing at the foot of her bed when
23 her alarm went off at 4:00AM, and he immediately said I
24 know -- it's time to get up, and Winter didn't come home
25 last night. So, he was apparently in her room waiting for

Kimberly Leskanic - Redirect examination
by Ms. Jameson

1 her alarm to go off at 4:00AM.

2 Q And the evidence established that the last text message
3 that Winter attempted to send was at 2:14AM, correct?

4 A 2:14. That was the interrupted text, and Lindsey
5 McGraw testified that that would of been due to, in all
6 likelihood, the phone battery being removed from Winter's
7 cell phone.

8 Q And, 3:00AM, Ashawn Briggs sees the car near the
9 Songbird Lane trailer, correct?

10 A That's correct. At the location that it was later
11 discovered by Ms. Patrick and the defendant.

12 Q And, 4:00AM, the Applicant wakes Beverly up to say that
13 Winter is missing?

14 A That is correct.

15 MS. JAMESON: No further questions, Your Honor.

16 THE COURT: Okay. Thank you.

17 May this witness be excused?

18 MS. JAMESON: Yes, Your Honor.

19 THE COURT: Okay.

20 THE WITNESS: Thank you.

21 THE COURT: Thank you, ma'am.

22 MS. JAMESON: Your Honor, the State would call

23 Assistant Solicitor Jennifer Jordan.

24 THE COURT: Good afternoon,

25 If you'll please raise your right-hand.

Jennifer Jordan - Direct examination
by Ms. Jameson

1 JENNIFER JORDAN, being first duly
2 sworn, testified as follows:

3 THE COURT: Thank you. Please be seated.

4 State your full name.

5 THE WITNESS: Jennifer Ann Judy Jordan.

6 DIRECT EXAMINATION

7 BY MS. JAMESON:

8 Q Good afternoon, Ms. Jordan.

9 where are you presently employed?

10 A Seventh Circuit Solicitor's Office.

11 Q How long have you been with the Solicitor's Office?

12 A Here since July of 2004.

13 Q Okay. When you say here, were you at another

14 Solicitor's Office previously?

15 A I was. I worked two years previously at another
16 Solicitor's Offices before I came here. So, I've been a
17 prosecutor since 2002.

18 Q Did you prosecute this case?

19 A I did, along with Deputy Solicitor Kim Leskanic.

20 Q What was your primary role in this case?

21 A I came into the case to help with the DNA experts and
22 the experts from SLED.

23 Q DNA testing was done on numerous items in this case,
24 correct?

25 A Yes, ma'am.

Jennifer Jordan - Direct examination
by Ms. Jameson

1 Q Do you recall what items had Mr. Clark's DNA on them?

2 A Yes, ma'am. If I may -- I've got a copy of the
3 transcript. I'm sure I'll refer to it. I know the
4 Wolverine boots had the defendant's DNA on them.

5 Q And those were the same Wolverine boots that had the
6 fibers on the barbwire fence where Winter's body was
7 discovered?

8 A Yes, ma'am.

9 Q Were there any oral swabs that were taken from Winter's
10 mouth?

11 A Yes, they were taken during the autopsy as part of the
12 sexual assault kit.

13 Q Do you recall whether or not those swabs were --
14 whether the defendant's DNA was found on those swabs?

15 A His DNA was found on those swabs, and it was found to
16 be -- the defendant was a major contributor with a random
17 possibility of selecting another individual in one in 120
18 quadrillion.

19 Q Did the SLED analyst, did she -- how did she
20 characterize that?

21 Was that a, a match?

22 A Yes.

23 Q And there was a possible minor contributor as well to
24 that oral swab, correct?

25 A There was.

Jennifer Jordan - Direct examination
by Ms. Jameson

1 Q Okay.

2 A It says on the official record at 569, when the SLED
3 agent is speaking, she said that there's a minor DNA type
4 that is not attributable to Winter Wingard that's also
5 present in the mixture, and that Joyce Patrick, who is
6 Winter's mom, Beverly, was excluded as a possible
7 contributor to the mixture.

8 Q And she testified to that in front of the jury?

9 A Yes, ma'am.

10 Q Were any briars or tree limbs or anything from the
11 Mike's Creek area collected?

12 A Yes, ma'am.

13 Q Were any briars tested by SLED Agent Lacey?

14 Is it Lacey?

15 A I always mispronounce her name. So, I'm not sure.

16 Q We'll just go with SLED analyst.

17 Did the SLED analyst test any briars?

18 A She did. She tested---

19 Q And it's 561 if you need to refresh on that.

20 A On 561, she stated she tested State's 135, which was a
21 swab from briar, which was SLED's 21.1, and in a mixture --
22 there was a mixture of at least three individuals, and part
23 of it was attributed to the defendant as a possible
24 contributor with the ratio of 1 in 96.

25 Q Was a tree limb also tested?

Jennifer Jordan - Direct examination
by Ms. Jameson

1 Do you recall?

2 A Yes.

3 Q Was -- could Mr. Clark be excluded as a contributor to
4 that tree branch from Mike's Creek?

5 A He could not be excluded on trial or in official record
6 563. It's noted in there that Winter Wingard and Joey Clark
7 can not be excluded as possible contributors to this
8 mixture, and the probability of randomly selecting an
9 unrelated individual who could have contributed to this
10 mixture is approximately, approximately 1 in 3,700. And
11 Winter's mom was excluded.

12 Q So, he can't be excluded from two pieces of evidence at
13 Mike's Creek, the briar and the tree limb, correct?

14 A Correct.

15 Q Did you -- do you know what secondary transfer is?

16 A Yes.

17 Q Did you cover secondary transfer with the SLED analyst?

18 A I covered it, and then, in reviewing in the record and
19 from my memory from the trial, Chase Harbin also covered it
20 in cross.

21 Q Were you aware, prior to the trial, whether or not
22 Mr. Harbin had retained a DNA expert?

23 A I was aware.

24 Q Were you anticipating, anticipating a DNA expert would
25 testify?

Jennifer Jordan - Direct examination
by Ms. Jameson

1 A I knew that he had one, and that, I guess, since he had
2 one, he had a potential to call one if he wanted to call
3 one. But he, he did not call one at trial, but he did
4 cross-examine our DNA expert.

5 Q And he was able to elicit testimony regarding secondary
6 transfer?

7 A Yes.

8 Q And a, a possible reason for why the defendant's DNA
9 would been on the briar or the tree limb?

10 A Yes.

11 Q Did he cross-examine the SLED analyst as to whether the
12 semen could of been from a consensual act?

13 A He did. She testified that all she can tell you is
14 that the semen was there, and who she could attribute it to
15 or not. But that she can't tell you how the DNA gets to
16 where it is on any item that she's given.

17 Q Did -- was there any testimony about a possible third
18 contributor from any of these items?

19 A Yes.

20 Q Did -- do you recall going over that with the SLED
21 agent on direct examination?

22 A We did.

23 Q I---

24 A And you---

25 Q Oh, I'm sorry. Go ahead.

Jennifer Jordan - Direct examination
by Ms. Jameson

1 A Oh, no, I was just gonna say I went over it in direct,
2 and I know Mr. Harbin also went over it in cross.

3 Q Do you recall how big some of these samples were?
4 Some of them were incredibly small, right?

5 A Yes.

6 Q Was there any testimony elicited about -- that the weak
7 positive results, including from the semen in Winter's
8 mouth, could of been because the samples were so small?

9 A There was testimony about that, but I believe that the
10 SLED agent negated that testimony.

11 Q But Mr. Harbin was able to elicit that there were very
12 small samples on the briar, the tree limb, the semen?

13 A Yes.

14 Q Those things that were matches, that they were very
15 small amounts?

16 A He was. Because I remember she went through
17 explanations of how they have to amplify, amplify the DNA
18 when they don't have a large quantity to deal with. And I'm
19 not a SLED expert on DNA, but that's my understanding of the
20 descriptions that she used.

21 Q Was there any discussion on the record before the jury
22 about possible detrimental impact from this amplification
23 procedure?

24 A I believe there was.

25 Q Possible phantom alleles or an inability to read some

Jennifer Jordan - Direct examination
by Ms. Jameson

1 results?

2 A I believe what you're referencing to or speaking about
3 is stutter, which I think she refers to it as stutter or a
4 or a technical artifact. And that's something that can
5 sometimes happen when something is replicated multiple times
6 throughout the process that they use. And I went over that
7 as well as Mr. Harbin.

8 Q Was there any questioning of the SLED agent about
9 whether she tested for DNA on the knife that was recovered
10 from Mr. Clark?

11 Do you recall that?

12 A Can I look through Chase's cross cause that's where I
13 think it is?

14 Q Yes. And I can, I can hopefully find you a page cite.
15 One moment.

16 A Okay.

17 (Pause.)

18 A I believe it's on Page 592.

19 Q Okay.

20 A She states that Item 36, a knife, was submitted. There
21 was no processing performed on the knife, and that she never
22 took custody of the knife or received it. I think it means
23 she never did anything with this knife.

24 Q That doesn't mean that SLED didn't do any testing with
25 the knife?

Jennifer Jordan - Direct examination
by Ms. Jameson

1 A Correct.

2 Q Possibly serology or something else?

3 It's just there was no need to take it on to the DNA
4 process?

5 A Correct.

6 Q Correct?

7 A And normally, when items are submitted to SLED, there's
8 someone who goes through it first, and I forget their name
9 that they use, an evidence technician, who looks at the
10 items to see if there is any sort of DNA on those items.
11 And then, from there, they're sent from processing to the
12 analysis -- the analyst.

13 Q So, just because something wasn't tested for DNA
14 doesn't mean it wasn't examined by some SLED agent?

15 A Correct.

16 Q It's just there -- it might not of had beneficial
17 results and been presented at trial?

18 A It might -- yeah, it might not of produced any DNA on
19 the item.

20 Q And I believe your co-counsel testified to this, but
21 you guys actually sent more to SLED than, than you
22 standardly do for testing?

23 A Yes.

24 Q You got permission to send more stuff.
25 Moments indulgence, Your Honor.

Jennifer Jordan - Direct examination
by Ms. Jameson

1 THE COURT: Yes, ma'am.

2 (Pause.)

3 Q If you'll turn to Page 583. I have a question to ask
4 you about sample two of -- 2.1, which is the briar.

5 A Yes, ma'am.

6 Q Okay. Was Mr. Harbin able to elicit any testimony
7 about what percentage of that DNA mixture came from winter?

8 A Yes, I believe it starts on -- Chase's questions starts
9 on Line 18 where it says now I apologize. I'm referring to
10 my notes. I'm -- then Line 20 is on Item 21.1.

11 Is that the one?

12 Q Yes.

13 A Okay. The -- his question was, and her answer to this
14 was that's correct. Is -- there is a swab from a briar. It
15 is -- is it correct that most of the actual DNA sample there
16 was from winter, and that a smaller amount, maybe 90 percent
17 or so, was actually from winter, but the rest was not?

18 Is that correct?

19 And the SLED agent's response was that's correct. The
20 major contributor to the mixture does match the profile of
21 winter wingard, our victim, and she would have been a
22 significant contributor to that mixture.

23 Q And, again, there were several items that were sent to
24 the SLED analyst that she couldn't get enough DNA for a
25 reliable interpretation, correct?

Jennifer Jordan - Direct examination
by Ms. Jameson

1 A I believe some items never went to the analyst because
2 nothing was found at the forensic technician's portion of
3 SLED.

4 Q If you'll turn to Page 588 to refresh. 20 to 25. Line
5 20 to 25.

6 A Oh, yes, she, she talks about she, she did look at the
7 key. And I also think the key fob. I may be off. I'll
8 have to look back at that. But she did look at those and
9 was not able to -- the DNA profile was insufficient for
10 reliable interpretation. That was the key that belonged to
11 the SUV. And there may have been one other object as well
12 that's referenced in the transcript.

13 MS. JAMESON: Moments indulgence.

14 (Pause.)

15 MR. STROUD: No further questions of this witness.

16 THE WITNESS: Thank you.

17 THE COURT: Thank you.

18 Cross-examination.

19 MR. STROUD: I only have a couple of questions.

20 CROSS-EXAMINATION

21 BY MR. STROUD:

22 Q Ms. Cox (sic), good afternoon. It's been a long day.

23 A Yes, sir.

24 Q All right. Just a little clarification. I notice that
25 your part in the trial transcript was the direct exam of the

Jennifer Jordan - Cross-examination
by Mr. Stroud

1 DNA person.

2 Was it your role also or someone else's role to
3 initially work with the detectives in the investigative
4 phase of this when you determined or the State had
5 determined that Joey Clark was the suspect?

6 A No, sir, I didn't become involved in this case until --
7 I can't remember if it was December of 2013 or the very,
8 beginning of 2014. Initially, initially Solicitor Barnette
9 was going to try the case with Ms. Leskanic. However, he
10 ended up with a death penalty and another homicide case
11 here, and I came in at that point and tried the case with
12 Kim in Gaffney.

13 Q Okay. Would you know who would have attended the
14 probable cause hearing from y'all's office?

15 A No, sir.

16 Q Okay. Do you, do you know if -- is it standard
17 practice that somebody would of attended the initial
18 probable cause hearing?

19 A Are you referring to a preliminary hearing?

20 Q Yeah, the preliminary hearing where they -- and, and
21 Chase's notes, he'd talked about attending the preliminary
22 hearing, and discussing the, the---

23 MS. JAMESON: Objection.

24 A Again, I didn't become involved in this case until
25 either late 2013---

Jennifer Jordan - Cross-examination
by Mr. Stroud

1 Q Okay.

2 A ---or the beginning of 2014.

3 Q All right.

4 A But normally, in our office here in Spartanburg, we
5 have one person who's the main one who attends all of our
6 prelims.

7 Q Okay.

8 A I believe, in our Cherokee County, since it's smaller,
9 the prosecutor attends the prelim. Each, each individual
10 prosecutor attends the prelim.

11 Q So that would of been Ms. -- Mr. Barnette I guess?

12 A No, sir, I, I don't know who, if anybody, would of
13 attended this prelim.

14 Q Okay. All right. Okay. In addition, you say you came
15 in 2013.

16 Did you review the probable cause or did you make any
17 determination that whatever charging documents they had
18 found probable cause to arrest him would of been sufficient?

19 A I mean, at this point in time, I, I don't know if he
20 had a prelim or not.

21 Q Okay.

22 A But it had a judge -- a magistrate judge would of
23 signed the warrant based upon, based upon probable cause.

24 Q Okay.

25 A Then if there had been a prelim, which I don't know,

Jennifer Jordan - Cross-examination
by Mr. Stroud

1 know if there was in this case or not---

2 Q Uh-huh. (Affirmative).

3 A ---that would of been another finding of probable
4 cause. Then when it was submitted to the Grand Jury, that
5 would of been an additional finding of probable cause at
6 that point.

7 Q Uh-huh. (Affirmative).

8 A And then we, of course, move to beyond a reasonable
9 doubt---

10 Q Okay.

11 A ---when we go before a jury.

12 Q Okay. And I guess the reason I'm asking is that, if I
13 remember correctly, at the -- right before the start of the
14 March 17th trial, Mr. Harbin was asked did he want to
15 waive, waive the reindictment. So, I'm taking it that
16 someone in your office felt the need to---

17 MS. JAMESON: Objection.

18 MR. STROUD: Okay.

19 MS. JAMESON: Testifying.

20 MR. STROUD: Okay. All right. Well -- all right.

21 Well---

22 THE COURT: Well, Mr. Stroud, if you can just rephrase.

23 MR. STROUD: Okay.

24 THE COURT: And make it a little more direct question.

25 MR. STROUD: Okay.

Jennifer Jordan - Cross-examination
by Mr. Stroud

1 THE COURT: And I understand. You have to give a
2 little bit of background.

3 MR. STROUD: Yeah.

4 THE COURT: Okay.

5 Q Okay. Was the original indictment that was prepared by
6 someone, did it have to be modified in some way so that, at
7 the trial, Mr. Harbin was given a choice to contest that or,
8 or whatever?

9 A I know what you're referring to in the transcript---

10 Q Yeah.

11 A ---as far as the waiver---

12 Q Uh-huh. (Affirmative).

13 A ---of arraignment right before---

14 Q Yeah.

15 A I think it was the Monday before the trial on---

16 Q I think so.

17 A ---Tuesday.

18 Q Yeah.

19 A But as far as the changes and things that occurred with
20 that indictment, I do not know the answer to that. That
21 would have occurred from Ms. Leskanic.

22 Q Okay. All right. Okay.

23 A And I know we probably discussed it. I just don't
24 remember.

25 Q Yeah.

Jennifer Jordan - Cross-examination
by Mr. Stroud

1 okay. All right. Okay. And I guess the last thing --
2 one of the last things would be in terms of the
3 investigation. I realize -- realizing that most of it was
4 done before you got on there, but prior to the case being
5 called for trial, did you do any review to determine if
6 the -- there was any possibility that a more -- that
7 something additional investigation should of been done other
8 than -- the supposition was he was the girlfriend -- that he
9 was the -- that he -- Ms. Winter was his girlfriend. He
10 lived at the trailer park, the inmate statements, and, let's
11 see what else, the color of the soil.

12 So, did you feel any need, at that point, to review
13 anything just to cover your tracks?

14 A well, I, I think, in your quick summary right there of
15 the facts---

16 Q Uh-huh. (Affirmative).

17 A ---you're missing all of the other stuff that we had in
18 this case.

19 Q Okay.

20 A The text messages and the timeline of the text
21 messages, to us, were very important because we knew that
22 when Winter's mom, Beverly, went to bed that night, that
23 Joey was in the house with Winter. Winter was sick with
24 what her mom testified was 104 fever, that they -- that put
25 them together.

Jennifer Jordan - Cross-examination
by Mr. Stroud

1 We knew that there was an ongoing texting, I would
2 refer to it as, you know, either harassment or battle
3 between Joey, and, you know, Joey firing shots at Anna, the
4 new girlfriend---

5 Q Uh-huh. (Affirmative).

6 A ---in Georgia. And also the conversations going on
7 between Anna and Winter. We know that there were the
8 allegations by the defendant that he had AIDS, and now
9 Winter had AIDS.

10 Q Uh-huh. (Affirmative).

11 A And that would be -- and Anna was gonna be welcomed to
12 the AIDS family based upon all of this.

13 Q Uh-huh. (Affirmative).

14 A We also knew that there was the texts from Anna to
15 Winter about marry me and the interrupted text---

16 Q Right.

17 A ---response back. So, it wasn't just the statements of
18 the, the jailhouse defendants. It wasn't just that he lived
19 there. There was a lot more to it.

20 Q Okay.

21 A I don't think you can narrow it down to just those
22 facts.

23 Q Okay.

24 A You also have to look at the DNA as well that his
25 DNA---

Jennifer Jordan - Cross-examination
by Mr. Stroud

1 Q Okay.

2 A ---was at the scene, on Mike's Creek, that he, he
3 returns back to the scene at Songbird Lane, and I believe
4 it's like four o'clock in the morning when he goes to wake
5 up Beverly.

6 Q Uh-huh. (Affirmative).

7 A Because he and Beverly work construction together.

8 Q Right.

9 A And he announces that Amber -- winter's not there. And
10 also the fact that the vehicle is found with his palm print,
11 winter's fingerprints, and I don't remember which -- if it
12 was a palm or a fingerprint of his on the other side of the
13 vehicle as well. And in-between the vehicle that was
14 located and the house that he resided in or he was staying
15 at with our victim and her mother were her keys, her cell
16 phone, I think the battery to her cell phone may of been in
17 a separate location. Inside of her vehicle was the purse
18 that she had \$92.50 in.

19 Q Uh-huh. (Affirmative).

20 A So, if it was a robbery or anything like that, why was
21 there still money in her purse?

22 So, I think that you have a narrow view of what our
23 case was.

24 Q Uh-huh. (Affirmative).

25 A But when you look at it as a whole---

Jennifer Jordan - Cross-examination
by Mr. Stroud

1 Q Right.

2 A ---there was so much more there to it.

3 Q All right. Okay. And, like I say, just same as I
4 said, I was just doing it based on memory. I wasn't
5 inferring that was all of it.

6 All right?

7 A (Witness nods affirmatively.)

8 Q The -- when you -- in your dealings with the DNA, when
9 the investigators told you that they found cigar butts, did
10 you know -- did the investigators tell you anything about
11 the cigar butts, who smoked them, or did they---

12 A No, sir, but they were found -- I believe that they
13 were -- there was a cigar filter that I believe was found in
14 the back area between the---

15 Q Uh-huh. (Affirmative).

16 A ---victim's mom's car, the SUV---

17 Q All right.

18 A ---and the house, and I believe that there were some
19 cigarettes tips.

20 Q Wrappers or something.

21 A Or cigar tips or wrappers---

22 Q Yeah. Yeah.

23 A ---that were found near the front yard. And no, sir,
24 those were not analyzed. Those were not analyzed in the
25 case.

Jennifer Jordan - Cross-examination
by Mr. Stroud

1 Q Okay.

2 A I believe the cigarette butt that was found in the back
3 wasn't found until maybe December 10th. But I'd have to
4 look back at Investigator Henson's notes for that.

5 Q Yeah.

6 A I do believe that the cigar butts and the cigar paper
7 was found on either the 3rd -- right about the time, you
8 know, closer in time to Winter's murder than the cigarette
9 filters were found.

10 Q Okay. And the -- did, did, did the investigators
11 inform you, at any time, whether or not any of the
12 inhabitants of the Songbird Lane -- since this -- if I
13 understand correctly, the cigar butts found at Song (sic)
14 were in post (sic) proximity to the cell phone and things
15 like that.

16 Did they collect these and say we're taking these
17 because we believe someone at Songbird Lane smokes a cigar
18 or why -- do you have any knowledge of that?

19 A I don't have any knowledge of that.

20 Q Okay. All right. It -- would it surprise you that, in
21 my dealings with at least Joey Clark, he does not smoke a
22 cigar?

23 A I mean I, I don't think it's really a surprise. It's
24 --.

25 Q Okay.

Jennifer Jordan - Cross-examination
by Mr. Stroud

1 A I mean it's not a surprise as in that he just -- he
2 doesn't smoke a cigar.

3 Q Yeah.

4 Okay. And so, at anytime did -- knowing that you came
5 on at a later date, and you were reviewing all the -- I mean
6 there was like -- like we said, voluminous amounts of DNA
7 things collected, but at anytime did it occur that -- since
8 cigars would certainly have a lot of DNA being put in the
9 mouth, that it would of been prudent to test those cigars
10 either for the benefit of the State or as potential
11 exculpatory evidence?

12 A We tested the information that was submitted or we had
13 the information -- we had items that were submitted to SLED
14 that we tested.

15 Q Uh-huh. (Affirmative).

16 A And those came back to Winter. You know, they came
17 back as reported in the SLED analysis there. Not everything
18 was sent to be tested. I mean --

19 Q All right.

20 A That's a fact in a case. Not everything was sent
21 there. But the evidence was presented through SLED Agent
22 Lacey about the items that were tested and how they came
23 back.

24 Q Okay. And I think Joey wants -- that's all the
25 questions I have right now, but I think Joey wants me to

Jennifer Jordan - Cross-examination
by Mr. Stroud

1 reference -- reframe -- let's see. I'm just gonna read it
2 verbatim. I don't -- Joey wants me, wants you to reform
3 the -- about the fingerprint and, and the State said it was
4 unidentified, and it was not his---

5 MS. JAMESON: Objection.

6 MR. STROUD: Okay. Yeah.

7 MS. JAMESON: Testifying.

8 MR. STROUD: All right. You understand I have to
9 follow, to follow-up---

10 THE WITNESS: There was, there was information about a
11 fingerprint that was not attributable to anybody. That was
12 brought out in trial through Investigator Skipper Wallace
13 from SLED.

14 Q Okay. All right. Thank you. And if she's got any
15 redirect. Then we may be getting closer to getting out of
16 here.

17 A Yes, sir. Yes, sir.

18 THE COURT: Thank you, sir.

19 Ms. Jameson.

20 MS. JAMESON: Yes. Moments indulgence. I'm trying to
21 find one page cite real quickly. It might speed us up.

22 (Pause.)

23 REDIRECT EXAMINATION

24 BY MS. JAMESON:

25 Q Ms. Jordan, do you recall the date that the cigar tip

Jennifer Jordan - Redirect examination
by Ms. Jameson

1 or the cigar end was found?

2 If you don't -- I'm trying to find a page cite. I just
3 didn't know if you---

4 A I do not, but in reviewing Investigator Henson's
5 report, something was recovered -- I believe the cigar tips
6 were recovered on the 3rd or the 4th, and then the cigarette
7 butt or filter was recovered on the 10th.

8 Q And this murder occurred on the 1st into the 2nd.

9 Do you recall where that cigar tip was found?

10 A I think the cigar tip was found in the backyard when
11 the -- they went back and did the grid by grid search
12 between the trailer that the victim and her mom and the
13 defendant were at and the SUV.

14 Q The wrap -- there, there was some cigar or cigarette --
15 some smoking material that was also found in the front yard
16 by a walkway?

17 A Yes.

18 Q Correct?

19 A And I believe that was found earlier in the
20 investigation. I don't -- I want to say it was on the
21 3rd, but I could be incorrect on that.

22 Q Did you go out to Songbird Lane ever?

23 A I did. Ms. Leskanic and I rode to Songbird Lane and to
24 Mike's Creek.

25 Q Would you agree that this wasn't an isolated trailer?

Jennifer Jordan - Redirect examination
by Ms. Jameson

1 There were other trailers around there?

2 Other people live, live in this vicinity?

3 A Yes.

4 MS. JAMESON: Moments indulgence.

5 (Pause.)

6 Q One thing I did want to clarify. I asked Ms. Leskanic.

7 She works from the Cherokee County office.

8 which office do you work at?

9 A Spartanburg.

10 MS. JAMESON: No further questions.

11 THE COURT: Okay. May this witness be excused?

12 MS. JAMESON: Certainly.

13 THE WITNESS: Thank you.

14 THE COURT: All right. Thank you, ma'am. You may step
15 down.

16 MS. JAMESON: The State has no additional witnesses to
17 call.

18 THE COURT: Okay. Mr. Stroud, is there anything else,
19 sir, that you would like to present, and I'm not referring
20 to your -- to closing arguments?

21 MR. STROUD: Okay. I'm gonna wait till the closing
22 argument. At that time I feel like it might be appropriate
23 to try to get in Exhibit, Exhibit No. 5, the summary of the
24 soil testimony.

25 THE COURT: And that would be a summary of your

1 position?

2 MR. STROUD: Well, no. No. No. It's a -- as, as I
3 was -- as I finished reading---

4 THE COURT: But, sir, you drafted it, right?

5 MR. STROUD: I -- that's right. I drafted it taking it
6 from -- I understand your concerns that I might have,
7 somehow, accidentally missed some wording or stuff like
8 that. But it was just something that I thought was helpful
9 to -- because there -- I mean it was like four pages -- if
10 you go through this thing, it's just tons of references to
11 the soil color on so many different pages. And, and I grant
12 that I'm not a hundred percent certain that I didn't make a
13 mistake, but if it doesn't come in, that's fine, cause it is
14 there in the transcript if anybody comes after me wants to
15 take the trouble to dig it out and find it.

16 THE COURT: Counsel, what is your position to
17 Mr. Stroud submitting, as I understand it, it's an outline,
18 if you will, of the different reference to -- references to
19 the soil makeup throughout the transcript?

20 MS. JAMESON: I would object. The transcript is the
21 best evidence. I think that's something appropriate he can
22 share with the Court during his closing argument, but
23 doesn't need to be introduced as, as Applicant's Evidence or
24 a Court's Exhibit is our position.

25 THE COURT: Okay. Mr. Stroud, I am happy for you to

1 summarize that in your closing as I stated.

2 MR. STROUD: Okay.

3 THE COURT: Let me think about whether or not that can
4 come in as a summary of what your position is as well,
5 but---

6 MR. STROUD: Okay.

7 THE COURT: ---of course, you can use that as, as, as a
8 reference when you're making your closings.

9 All right. Do you-all need a moment before you make
10 your closing or do think you're ready?

11 MR. STROUD: I'm, I'm ready.

12 MS. JAMESON: You can go ahead. That's fine.

13 MR. STROUD: Well, do you, do you want to go first?

14 MS. JAMESON: I think you're the Applicant. So, if
15 you---

16 MR. STROUD: Yeah, I'm the Applicant. Yeah.

17 MS. JAMESON: ---you'd like to go first, I mean---

18 MR. STROUD: Yeah.

19 THE COURT: Well -- and, and, not to muddy the water,
20 Mr. Stroud, I, I believe I was asking if there was
21 anything -- I mean we're in a civil proceeding.

22 Is there anything on reply that you would like to, to
23 call a witness and reply to anything new that was brought
24 up?

25 MR. STROUD: Oh.

1 THE COURT: I just want to make sure we're clear---

2 MR. STROUD: At---

3 THE COURT: ---before we move forward.

4 MR. STROUD: Okay.

5 THE COURT: And this would be only as to anything new.

6 MR. STROUD: Yeah, anything new that she brought up.

7 Okay. At this point, I don't think so.

8 THE COURT: Okay. Okay. And so, with that, I am ready
9 for your closings if -- unless somebody needs to take a
10 break.

11 (No response.)

12 THE COURT: Okay. And, if you need the podium, you can
13 bring it over.

14 MR. STROUD: Thank you.

15 MS. JAMESON: Thank you.

16 MR. STROUD: Mr. Harbin testified under oath that the
17 cross-examination questions he asked Detective Burgess were
18 intentional and were designed to have the written inmates'
19 statements entered into evidence rather than allowing the
20 State to call these witnesses at the proper time and place.
21 He stated that he intentionally ignored the Sixth Amendment
22 Confrontational Clause, the Crawford holding, and the South
23 Carolina Rules of Evidence pertaining to admission of
24 hearsay.

25 He told us that he relinquished his inherent right and

1 duty to cross-examine the actual inmates because he didn't
2 want them on the stand. He stated that he remembered the
3 assistant solicitor was surprised with this strategy. He
4 stated this is -- he stated this is a murder trial, and that
5 he wasn't here to win any popularity contests when Judge
6 King expressed surprise that their written statements were
7 entered into evidence without the inmates taking the stand.

8 Mr. Harbin stated that, if they were on the stand, they
9 might add or subtract information that was different from
10 the written statements, and that, on rehab, these additions
11 or deletions would be in the record.

12 We also heard Mr. Clark's testimony where he stated his
13 unequivocal opposition to having Mr. Harbin open the door
14 allowing the written inmate statements to be placed into
15 evidence. Mr. Clark told us that he wanted his
16 constitutional rights to face his accusers, and have his
17 attorney cross-examine these accusers under oath, and also
18 on the stand. Mr. Clark stated there was nothing that these
19 inmates could of added to the testimony that would of been
20 any worse than having these written inmate statements
21 entered into evidence and taken back to the jury.

22 Mr. Clark then went on to explain that these inmates
23 were present, and could of taken the stand, but, because
24 they didn't, the jurors never got to see whether these were
25 actual people or to observe how they testified under oath.

1 Mr. Harbin's trial strategy of intentionally violating
2 some of the most important constitutional, constitutional
3 provisions designed to protect the rights of the accused can
4 never be a reasonable strategy. Any strategic reason
5 asserted by Mr. Harbin as to why he chose a strategy would
6 open the door for subjective, rather than objective,
7 enforcement of how trials are to be conducted.

8 Mr. Harbin admitted that he failed to object to these
9 written inmates' statements being admitted into evidence.
10 He admitted that Mr. Clark's direct appeal was an Anders
11 brief. Mr. Harbin admitted that, in his closing, he told
12 the jury that there was evidence to believe that Joey Clark
13 committed the crime. He even told the jury there was
14 possible motive in that Mr. Clark could of been jealous.

15 His explanations for asking Detective Burgess whether
16 he considered the written inmate statement to be credible,
17 to be credible, and in which Detective Burgess responded
18 yes, was that he was using sarcasm and voice inflection to
19 show the jury that this was not believable.

20 Again, this was a murder trial. Using sarcasm and
21 voice inflection is not gonna show up in a trial testimony.
22 The trial testimony is the only thing the appellate attorney
23 has to work with. When an appellate counsel reads the
24 transcript, he has to take ver -- what the record says as
25 substantive and the truth. Inflections do not come across

1 in a credible -- in a transcript.

2 His strategy was not reasonable, and any strategic
3 reason expounded for this strategy cannot excuse the
4 deficient conduct.

5 Mr. Trial -- Harbin's trial performance meets both
6 prongs of Strickland, and cannot be dismissed under any
7 harmless error analysis. Therefore, Mr. Clark is entitled
8 to a new trial.

9 And, at this point, what I would say is that you can
10 take every other allegation that's in this tran -- in my
11 PCR, while they are valid and can be rebutted probably by
12 the State, I do not believe that any amount of trying to
13 justify deliberate, intentional violations of constitutional
14 rights can be condoned.

15 This was ineffective assistance of counsel. And, when
16 you consider that these inmates were there, and that the
17 defendant himself saw these inmates, and he watched enough
18 TV through his formative years that he knew he had the right
19 to have him take the stand, and one of the things that Joey
20 told me is when this -- when Mr. Clark, during the trial, we
21 never -- he never understood why Mr. Clark -- Mr. Harbin did
22 this, but to -- but when he did it, Joey told me that he
23 fell out, and just about fell out of his chair. And to hear
24 Mr. Harbin, the other day, say that he goaded the inmates, I
25 mean the -- Detective Burgess, at that time and place, was

1 not proper.

2 I do -- and I want to say this for the benefit of the
3 State. I fully believe that the State would have, at the
4 proper time and place, done the right thing, and brought
5 these inmates in, had them testify under oath, and given
6 Mr. Harbin a chance to rebut those statements. However,
7 given them -- giving that add -- I guess praise, I still do
8 not believe that it was proper for the State to take
9 advantage of Mr. Harbin's egregious error.

10 At any point on redirect of Mr. -- of Detective
11 Burgess, they could of ignored that and waited. The inmates
12 were still in the holding cell, and they should of brought
13 them out and done it fair. Because, in all honesty, if
14 they've done that, my biggest constitutional error that that
15 was in this transcript would of been negated. I would not
16 have been able to sit here and talk about that.

17 And there -- like I said, he failed to object affected
18 the Anders brief. For whatever reason, every law student
19 first year is taught, in criminal law, doesn't matter what
20 it, it says. You do a Rule 19 directed verdict at the end
21 of the case -- the chief's -- the case in chief, and you
22 renew it.

23 Now, I'm not a trial lawyer, and I realize that
24 sometimes I get befuddled when it comes to rephrasing
25 questions. However, one thing I am good at is analysis of

1 transcripts. I've never seen a transcript like this, and
2 you can object about it's my opinion, but, as I said in the
3 tran -- in the PCR Application, it's the longest
4 transcript -- I mean the longest PCR Application I have ever
5 done because I simply could not determine which parts of the
6 cross-examination was good to leave out.

7 And I appreciate the Judge's bearing with me, the
8 State's bearing with me, but I'm, I'm here today to try to
9 get Mr. Clark a new trial. I'm not saying he's innocent. I
10 don't know. But I am saying that if ever there is a need to
11 grant a PCR, and let the State do this with, with -- under
12 better circumstances, this is it.

13 Now, this is coming from someone who will readily admit
14 that 99 percent of PCRs are a waste of time. The PCR
15 process only should -- should of been used for these types
16 of cases. And this is the case where the state should be
17 saying we should spend the additional money it takes for a
18 new trial.

19 Thank you.

20 THE COURT: Thank you, sir.

21 MS. JAMESON: May it please the Court?

22 THE COURT: Yes, ma'am.

23 MS. JAMESON: I'm gonna try to tackle these. I've,
24 I've grouped up -- as Your Honor knows, the application is
25 quite lengthy, 38 pages. I've tried to group them together,

1 and I'm gonna try to take them in, in different groups.

2 The overarching allegation for ineffective assistance
3 of counsel and prosecutorial misconduct. One of, I think
4 as, as counsel just told the Court, one of the biggest
5 allegations was pertaining to the opening of the door of the
6 introduction of the jailhouse statements from those four
7 witnesses.

8 Counsel testified that this was a strategic decision
9 after thoroughly weighing the State's evidence, his own
10 investigation into all of these witnesses, and the direct
11 examination testimony of Detective Burgess. Counsel
12 testified that he reviewed the witness statements with his
13 client, and Mr. Clark acknowledged that they had reviewed
14 these witness statements together.

15 Counsel testified that he and his investigator talked
16 or attempted to talk to each one of these witnesses. The
17 out of state witness, I believe who was in North Carolina,
18 Mr. Harbin testified, appeared credible, and made
19 threatening comments that Mr. Clark should stop talking, and
20 he was not gonna say anything beneficial if he was put on
21 the stand by the State to Mr. Clark.

22 One of the local witnesses was irate, demanded
23 Mr. Harbin leave his property, and indicated he, again,
24 would not be helpful to Mr. Clark.

25 The only witness out of this investigation who

1 indicated he might be helpful to Mr. Clark, and indicated
2 or, or sort of surmised that law enforcement had planted
3 these confessions in the inmates' heads had credibility, and
4 has identity problems. Mr. Harbin testified it would of
5 been hard and very risky to prove that law enforcement had
6 coached or help fabricate these statements particularly when
7 none of the rest of his investigation supported this theory.

8 Mr. Harbin listened to the -- to Detective Burgess'
9 direct examination testimony, which he described as not
10 going well before the jury, and that Detective Burgess did
11 not appear overly credible before the jury. He lost some
12 credibility when he refused to acknowledge that one of --
13 that one of the -- one of the inmates, I can't remember if
14 it was Mr. Patrick or Mr. Stillwell, his statement clearly
15 had blatant lies in it, and Detective Burgess still wouldn't
16 admit that on the stand.

17 So, after hearing all of this, Mr. Harbin testified he
18 made an intentional decision to open the door so that the
19 state would seek to admit these statements without calling
20 these witnesses. This deprived the state of an opportunity
21 to offer additional information to corroborate these witness
22 statements, explain the discrepancies between them, which
23 was Mr. Harbin's goal in opening the door to these
24 statements. And I would strongly refute counsel's
25 statements that Mr. Harbin ignored the Confrontation Clause,

1 proffered any hearsay arguments before weighing his decision
2 because that is directly contradicted by the testimony we
3 have from Mr. Harbin. He said he considered all of those
4 things before he made his decision.

5 So, his decision to open the door was based on a
6 reasonable trial strategy, and the State would submit he
7 cannot be found deficient for that.

8 I have a, a case I'd like to cite to Your Honor. I do
9 have one copy, but if Your Honor would like to pass -- me to
10 pass it up. If not, I can give you the cite. It's Bowman
11 v. State, 422 S.C. 19. It's a capital PCR action that the
12 opinion -- the published opinion came from the Supreme Court
13 this year. And, in that case, the Supreme Court determined
14 that it was reasonable trial strategy for counsel to open
15 the door to otherwise inadmissible evidence after counsel
16 thoroughly weighed the benefits and risks, and decided to
17 proceed forward with the strategy for opening the door to
18 otherwise inadmissible evidence.

19 Bowman specifically mentions that the State's response,
20 once the door was opened, was proportional and confined, and
21 that is the same situation we have here. Once the door was
22 opened, the State merely walked through it, and introduced
23 these statements. They did not seek to otherwise call
24 witnesses or present any other extrinsic evidence pertaining
25 to these statements, and needed help to rehabilitate.

1 Similarly, any of the allegations pertaining to
2 prosecutorial misconduct or other constitutional violations
3 pertaining to the State's conduct in introducing and
4 referencing these statements throughout the trial is
5 unfounded.

6 Another case I want to cite to Your Honor is State v.
7 Page, which is 378 S.C. 476. That is a 2008 published
8 opinion from our Courts of Appeals. And it recognizes that
9 otherwise inadmissible evidence, including evidence that
10 would typically violate the confrontation clause, can be
11 admitted when the defense opens the door to such evidence.
12 So, here the State did nothing improper by introducing these
13 statements through Detective Burgess.

14 Additionally, as previously discussed, the State's
15 response was measured and appropriate. They didn't do
16 anything to guild the lily. They merely introduced these
17 statements, and didn't call the additional witnesses.

18 So, because the door was properly opened pursuant to
19 Counsel Harbin's strategic decisions, there was nothing
20 improper about the testimony referencing these statements
21 including Detective Burgess's testimony, and any of the
22 closing arguments that the State made referencing these
23 statements. So, we'd ask you to deny relief as to
24 ineffective assistance of counsel and prosecutorial
25 misconduct as to the allegations pertaining to opening the

1 door to these statements.

2 The second chunk of allegations involved counsel's
3 failure to call a soil expert. Counsel Harbin testified he
4 visited the crime scenes, and that the soil at Mike's Creek
5 was substantially different, in color, to then the soil at
6 Songbird Lane. This was confirmed by the testimony of the
7 prosecutors, and it's also confirmed by the photographs that
8 are in evidence before Your Honor.

9 Therefore, the descriptions given by the various
10 witnesses, including the law enforcement detectives, were
11 correct, and they properly reflected the conditions of the
12 soil at the time of the murder, which is December of 2010,
13 when those photographs were taken. Applicant's soil analyst
14 merely stated the color of the soil now in June, 2018, and
15 used hyper-technical terms. But I would note to the Court
16 that he even, at certain points, referred to the soil at
17 Songbird Lane as red soil or red dirt during his testimony.

18 Counsel also testified he did not want to overly focus
19 on the soil issue. He said it was a red herring that was
20 not really pertinent to the ultimate issues in the case, and
21 I would submit it's a red herring in this PCR.

22 Counsel repeatedly, in both cross-examination of
23 witnesses, and during his closing, highlights to the jury
24 that essentially all of Cherokee County and the Upstate is
25 covered in this red dirt thereby challenging the State's

1 theory that the red dirt on Winter's body, purse, clothing,
2 and car established that the initial altercation, and the
3 initial fatal blows to her head came from Songbird Lane.

4 Additionally, Mr. Clark can not establish any prejudice
5 as the killer was already linked to the Songbird Lane scene
6 through other evidence including the car being seen by the
7 neighbor at 3:00AM, the keys, cell phone, and cell phone
8 battery, which had been removed from the cell phone, that
9 was all found in the field directly behind the house, and
10 the text messages linking him to the house at 2:14, and
11 again at 4:00AM when Beverly Patrick woke up when the
12 defendant told her his daughter -- her daughter was missing.

13 Similarly, counsel testified there was no reasonable
14 basis to ask the jury to view the crime scene, and that's
15 something that's not standard practice in South Carolina.
16 So, that specific sub-issue, there's also no deficiency of
17 counsel, and so the State would submit that any of the
18 allegations pertaining to the soil or failing to call a soil
19 expert should be denied and dismissed.

20 There's also been allegations pertaining to the failure
21 to object or move for a mistrial. Applicant failed to state
22 exactly what counsel should have objected to, and,
23 therefore, we can merely speculate as to what deficient
24 performance based on the bare assertion that he didn't
25 object at all during trial. Similarly, he failed to

1 establish when or why counsel should of moved for a mistrial
2 or that one would of been granted. And, to establish
3 presence in a Post-Conviction Relief context, he has to
4 establish that counsel not only should of moved for the
5 mistrial, but the mistrial would of been granted by Judge
6 King.

7 Similarly, his reliance on appellate counsel's filing
8 of an Anders brief is insufficient to establish any
9 prejudice or deficiency, and the State would ask the Court
10 to deny relief as to both of those grounds.

11 There's also been allegations made that counsel was
12 ineffective for failing to move for a directed verdict.
13 Counsel testified he did not move for directed verdict
14 because he did not have any good faith basis to move for a
15 directed verdict, and he did not think one would be granted
16 as the State had presented substantial circumstantial
17 evidence establishing the guilt of Mr. Clark. And,
18 therefore, the State had met its burden pursuant to recent
19 case law from our Supreme Court including State v. Pearson,
20 which is 415 S.C. 463. It's a 2016 case, case from our
21 Supreme Court setting forth the standard to overcome a
22 directed verdict motion in circumstantial evidence cases.

23 So, counsel testified he is an officer of the Court,
24 has a duty not to make frivolous motions. He didn't believe
25 one would be granted, and he didn't believe, in good faith,

1 that he could make that motion to the Court. So, therefore,
2 the State would ask this allegation to be denied and
3 dismissed.

4 There were also several allegations pertaining to
5 failure to present evidence of heat of passion or
6 mitigation, failure to move for a jury instruction on the
7 lesser included offense of voluntary manslaughter.

8 Counsel testified that well before trial he talked to
9 Mr. Clark about this, and made a strategic decision that
10 they weren't gonna present any evidence of a struggle for
11 two reasons. His client told him he wasn't the killer, not
12 that the killer was somehow justified, and, since that was
13 the defense, they determined it would be incongruent to say
14 he's not a killer, but he also killed her, but there was
15 self-defense, there was heat of passion, there was something
16 that provoked him.

17 Those are just incongruent, and I think, if, if he had
18 presented both of those defenses, then we would be in a
19 different situation here today where he'd be alleging
20 counsel was ineffective for presenting two incongruent
21 defenses.

22 Additionally, he, he testified that, during trial, he
23 discussed this with Mr. Clark, and then he decided not to
24 ask the Court to charge the lesser included offense of
25 voluntary manslaughter because they believed, that after

1 listening to all of the evidence, they might, I think he
2 said, split the difference or split the baby, and end up
3 convicting him of voluntary manslaughter when they were
4 going for the acquittal to murder.

5 similarly, because there was no evidence introduced of
6 self-defense or anything to mitigate the crime, there's
7 nothing objectionable about Judge King's implied malice
8 based on the use of a deadly weapon charge, and the Belcher
9 opinion was not violated. So, we'd ask the Court to deny
10 all of those allegations.

11 There was also an allegation pertaining to failure to
12 properly present and advise Applicant of plea offers. The
13 uncontroverted testimony before this Court is that Applicant
14 did not want to plead guilty, and he wanted to proceed to
15 trial. Both Mr. Harbin and Mr. Clark testified to that.
16 And that plea offers were made by the State to plead
17 straight up to voluntary manslaughter, and that those were
18 properly conveyed to Mr. Clark and denied. So, he has not
19 met his burden of proof as to those allegations.

20 Additionally, there were several allegations of both
21 ineffective assistance of counsel and prosecutorial
22 misconduct regarding the State's closing arguments. A
23 solicitor's closing argument may not vouch for the witness'
24 credibility or otherwise rely on the prestige of the State
25 to make personal assurances of a witness' voracity.

1 Similarly, a closing argument must not be intended to appeal
2 to the witness' (sic) personal biases or prejudices, and
3 that is not what happened here.

4 You have to consider the propriety of the solicitor's
5 closing arguments in whole, but, here, even if you look at
6 these specific subsections that were cherrypicked by
7 Applicant, Ms. Leskanic's closing argument was properly
8 confined to the record, and reasonable inferences from the
9 record, did not vouch for the credibility of witnesses, and
10 was not calculated to arose -- arouse the passions or the
11 prejudices of the jury. Therefore, the State would ask that
12 these allegations for failing to object be denied, and,
13 additionally, that the prosecutorial misconduct allegations
14 regarding these must be denied as well as these comments
15 were proper. And Mr. Harbin also testified, after reviewing
16 each of these portions, that he found them to be proper, and
17 would not have objected to them.

18 There are several allegations regarding failure to have
19 various items tested. I believe the cigar, cigar butts, and
20 wrappers, the knife, and the fingernail clippings.

21 Initially, we have testimony from the State that they
22 tested the knife, determined there was no blood on it, and
23 once they determined there was no blood, there was no need
24 for further testing. So, they did not test the knife for
25 DNA.

1 Counsel testified he did not move for testing of the
2 fingernail clippings because Mr. Clark and Ms., the victim,
3 winter, lived together. He alleged that they had recently
4 engaged in sexual acts, and, therefore, he expected her DNA
5 to be under the fingernails. And he didn't move for
6 independent funding for testing, and didn't request the
7 State test the fingernails because he thought it likely
8 would of helped the State because, more likely than not,
9 Mr. Clark's DNA would of been under, under those fingernails
10 because they lived together, and, again, his theory was that
11 they had recently had some consensual sexual conduct.

12 Moreover, Mr. Clark has failed to have any of these
13 items tested. So, we can't establish any sort of -- he
14 can't establish any sort of prejudice. It's mere
15 speculation at the point what, what testing these items
16 would yield, and he needs to bring more into this Court to
17 ask an application be granted at this time. He needs to
18 show some more prejudice, and, at this point, it would be
19 speculative.

20 Additionally, as for the prosecutorial misconduct
21 allegations, the State has no duty to perform testing on
22 every piece of evidence collected. That's a duty that's not
23 been imposed by the Courts in our state, and that's not
24 something that prosecutors were required to do. Both of
25 them tested -- testified that they tested the items that

1 they felt necessary based on where the case led them. So,
2 we'd ask the Court deny any allegations pertaining to the
3 failure to have the items tested.

4 There's also allegations pertaining to failure to call
5 a DNA expert. Mr. Harbin testified he moved for funds to
6 hire, and then duly hired a D -- a DNA expert, Doctor
7 Demers, who he spent hours communicating with on the phone,
8 and email prior to trial. Doctor Demers reviewed all the
9 underlying data, spoke with the SLED analyst on the phone,
10 and then crafted specific questions to aid in Counsel
11 Harbin's cross-examination of the State's DNA expert.

12 The transcript reveals, and Mr. Harbin testified, as
13 well as Ms. Jordan, that Counsel Harbin was able to elicit
14 very favorable testimony from the State's own expert
15 including secondary transfer, transfer, the incredibly small
16 amount of DNA that was found on numerous items, possible
17 third contributors, the need to amplify the DNA, and the
18 numerous pitfalls associated with such amplification
19 procedures, alternative theories to how Mr. Clark's DNA
20 could of been at Mike's Creek on the briar and the tree limb
21 without him being present, and the inability to test many
22 items due to the extremely small amount of DNA found on
23 them.

24 After eliciting all of this testimony, he, again,
25 consulted with Doctor Demers, and he made a reasonable

1 strategic decision not to call Detective -- Doctor Demers as
2 a defense expert. So, we'd ask the Court to deny those
3 allegations pertaining to the DNA.

4 Additionally, there's been allegations about failure to
5 move to be relieved due to threats. Counsel testified he
6 had a good working relationship with Mr. Clark. They had no
7 issues, and Mr. Clark testified similarly. Additionally,
8 counsel denied any threats from Applicant, and Applicant has
9 failed to bring any of these threats or any credible
10 evidence of these threats into this Court. And so we'd ask
11 that allegation be denied.

12 There's also been allegations pertaining to failure to
13 move for a change of venue. All of the attorneys involved
14 in this underlying case, Mr. Harbin and the prosecutor,
15 testified that there were no pretrial publicity concerns.
16 Mr. Harbin said he had no reason to believe that Applicant
17 couldn't be fairly tried by a jury of his peers in Cherokee
18 County. Judge King questioned the potential jurors during
19 jury selection, and again during each new day of the trial.
20 And no one indicated that they had read news articles or had
21 any extrinsic information about the case or they were
22 predisposed to Mr. Clark one way or the other.

23 There's also been an allegation pertaining to failure
24 to strike a juror presented -- who was present during his
25 polygraph examination. He has failed to present any

1 evidence or argument regarding this. And so the State would
2 ask that this claim be summarily dismissed.

3 The final grouping of allegations pertain to failing to
4 object to the excessive use of graphic photographs. Counsel
5 and Ms. Leskanic testified that there were hundreds, if not
6 thousand of pictures, that were taken including those of the
7 crime scene, but that the State specifically selected only
8 certain pictures to introduce that were necessary to prove a
9 specific aspect of their case such as a specific angle of
10 Winter's body at Mike's Creek. And that they did not
11 needlessly introduce excess -- excessively gruesome
12 photographs. Additionally, Applicant hasn't brought any of
13 those photographs into the Court to show that they were,
14 were unduly gruesome, and, therefore, can not establish
15 prejudice.

16 And one thing that was mentioned more in the PCR
17 application, but I think is important to note, is, in the
18 application, the Applicant was asking this Court to grant
19 based on a cumulative error analysis. The State would
20 submit that that's not proper here for this Court. South
21 Carolina has never adopted a cumulative error analysis for
22 Post-Conviction Relief actions.

23 And, recently, in Smalls v. State, which is a case from
24 our Supreme Court earlier this year, that's Smalls v. State,
25 422 S.C. 174, the Supreme Court discusses the importance of

1 tying the prejudice to the deficiency in PCR. You have to
2 establish -- Applicant has to establish both, both
3 deficiency and prejudice, and the Supreme Court stressed
4 again that any sort of prejudice needs to be linked back to
5 the specific deficiency of counsel.

6 And so I think that's guiding on this Post-Conviction
7 Relief action, that he needs to establish both deficiency
8 and prejudice as to each of these 50 odd allegations, and
9 that he has not done so here. So, as to ineffective
10 assistance of counsel, he's failed to establish that
11 Mr. Harbin was constitutionally ineffective in his
12 performance pursuant to the Sixth Amendment, and those
13 allegations should be denied.

14 Additionally, he's failed to meet his burden of showing
15 any prosecutorial misconduct on behalf of the prosecutors or
16 any of the State's agents, and we'd ask this Court to deny
17 this application in full.

18 THE COURT: Thank you.

19 Okay. Anything else, counsel?

20 MR. STROUD: The only---

21 MS. JAMESON: Not from the State.

22 MR. STROUD: The only thing I guess I would say, say is
23 that she's correct in the section of the, the PCR where I
24 talked about plea deals. At that -- when I initially
25 prepared this, I think I had thought that Joey told me that

1 he would of taken a plea deal. But -- so, I based that
2 group of allegations on what I thought he had said. But
3 after I already submitted it, I didn't go back and verify
4 that.

5 So, just -- I think it's important that I, at least, be
6 truthful and say that that particular allegation, I
7 didn't -- until he got up on the stand and say he would not
8 of -- even -- I think I even asked him, you know, if they
9 said they'd give you only five years, he still wouldn't of
10 pled. That was news to me.

11 THE COURT: ' Okay. Thank you.

12 MS. JAMESON: Thank you, Your Honor.

13 THE COURT: Okay. So, is there anything else that
14 counsel -- I know that, at the commencement of this, I said
15 that I would give you an opportunity to submit a summary of
16 your positions, if you would like to, subsequent to today's
17 or this week's proceeding, and I'm not withdrawing that
18 offer to you. But I also don't want you to resubmit what
19 you've already submitted.

20 And, and so, with that, I will leave the record open
21 for ten days. If you do send me something, it needs to be
22 in the form of a legal argument. I've had folks, for
23 example, send me statements of their family members, and
24 affidavits, and whatnot. And that, that, of course, is not
25 what I'm referring to, and I was not able to review that,

1 that sort of documentation that was forwarded to me after
2 the hearing.

3 And if -- when you do send it to me, I would prefer
4 that you send it to me in word format, and copy it to each
5 other at the same time that you're sending it to me.

6 Okay. So that I know that everybody's getting it at
7 the same time.

8 All right.

9 MS. JAMESON: Thank you, Your Honor.

10 THE COURT: Thank you-all for your wonderful
11 presentations, and your professionalism.

12 And, again, sir, Mr. Clark, this -- I'm taking this
13 under advisement, sir, as I explained to you earlier in the
14 week. And it, it will be a while before you get a decision.
15 And I don't want you to be discouraged or anxious about
16 that. That's the way I handle these types of hearings,
17 and---

18 THE APPLICANT: Yes, ma'am.

19 THE COURT: ---these issues.

20 Okay?

21 THE APPLICANT: Yes, ma'am. Thank you, ma'am.

22 THE COURT: All right. Thank you-all.

23 MS. JAMESON: Thank you, Your Honor.

24 MR. STROUD: I do have just one question.

25 THE COURT: Yes, sir.

1 MR. STROUD: Will you be issuing your order -- your
2 determinative order, do you think, prior to getting the
3 transcript back because, if we were to do a 59(e), I would
4 really need the transcript to be able to respond to that?

5 THE COURT: Well, normally I rule -- I have ruled
6 without being provided a transcript.

7 MR. STROUD: Okay. Now, this is just my clarification.

8 THE COURT: Yes, sir, and I understand. And I -- to --
9 I have never had the use of a transcript, to my knowledge,
10 in ruling in any matter that I've ruled on thus far in this
11 position except when something has been brought before me as
12 a reconsideration matter.

13 MR. STROUD: Uh-huh. (Affirmative).

14 THE COURT: Okay. And I know that, that it takes a lot
15 of time to, to -- I mean we've been here for a few days, and
16 that -- and it would be extremely time consuming to, to have
17 that drafted. I'm not prohibiting you from forwarding that
18 to me, but I believe that I need to move forward with this
19 as quickly as I can, but knowing that it will take some
20 time.

21 MR. STROUD: Okay. And I, I -- the other thing. I,
22 you know, I'm not even sure. I probably won't submit any
23 new stuff that I have, but the -- within -- the ten days
24 thing. In other words, you'll make the decision, and don't
25 need any more of us to do a proposed order.

1 THE COURT: Well, normally, and, again, normally what I
2 do, I will issue written instructions, and sometimes they
3 are lengthy.

4 MR. STROUD: Uh-huh. (Affirmative).

5 THE COURT: The instructions are, are lengthy, but,
6 ultimately, I instruct one of the attorneys to draft the
7 order --

8 MR. STROUD: Okay.

9 THE COURT: -- and expanding upon those instructions,
10 and that order is to be copied to opposing counsel for
11 review and approval before I get it.

12 MR. STROUD: Okay.

13 THE COURT: Okay.

14 MR. STROUD: All right.

15 THE COURT: And, and so that -- that's normally the way
16 I handle this. I know every judge does this a little
17 differently. Some judges rule from the bench. I'm not, I'm
18 not able to do that in a case like this.

19 MR. STROUD: Okay.

20 THE COURT: Okay. There's a lot for me to review.

21 All right. So, I am going to leave the record open for
22 ten days, and so that gives y'all until -- today's the---

23 MR. COX: I believe the 21st.

24 THE COURT: So, excluding what the -- so, that would
25 give you-all really until --?

1 MR. COX: July 1st.
2 THE COURT: July the 2nd.
3 MR. COX: Okay.
4 THE COURT: Which is a Monday.
5 MS. JAMESON: Thank you, Your Honor.
6 MR. STROUD: And I appreciate all you're---
7 THE COURT: Yes, sir.
8 MR. STROUD: Everything.
9 THE COURT: Okay. It's been a pleasure. Thank you.
10 MS. JAMESON: Thank you, Your Honor.
11 MR. COX: Thank you, Your Honor.

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14 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *
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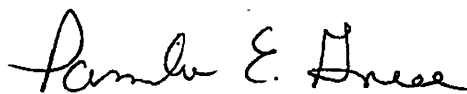
C E R T I F I C A T E

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I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 19th, 20th and 21st day of June, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

November 16th, 2018



PAMELA E. GREEN, Court Reporter

ELBERT T. (TED) LANDRETH, JR.

Club Circle • Greenville, South Carolina 29611 • (864)414-0961

**QUALIFICATION SUMMARY**

Dedicated, proactive individual with considerable experience in Investigative Services, Security Enforcement (recruiting, training, managing and motivating teams), Executive and VIP Protection and Technical Surveillance Countermeasures. Excellent communication, motivational, interpersonal, in and presentation skills. Proven leader with a firm but fair attitude and an established reputation for honesty, integrity, and loyalty. Calm, decisive and level headed in crisis situations and/or emergencies.

EMPLOYMENT**PRIVATE INVESTIGATOR**

Carolina Associates – Investigative Solutions

(2017 - PRESENT)

Greenville, South Carolina

RESPONSIBILITIES:

SC Law Enforcement Division Licensed Private Investigator

Criminal Defense Investigations

Technical Surveillance Countermeasures

CERTIFICATIONS

State Law Enforcement Division – Private Investigator

National Rifle Association - Certified Firearms Instructor

National Rifle Association - Certified Personal Protection Instructor

PRESIDENT – CEO

Triad Protection Group, Inc.

(2014 - PRESENT)

Greenville, South Carolina

RESPONSIBILITIES:

Responsible for managing day-to-day operations of the company -

Licensed Private Investigator – (SC Law Enforcement Division)

Criminal Defense Investigations

Personal Protection/Licensed Security – (SC Law Enforcement Division)

Technical Surveillance Countermeasures

Security Consultant

CERTIFICATIONS

State Law Enforcement Division – Private Investigator

State Law Enforcement Division – Security Enforcement Officer

National Rifle Association - Certified Firearms Instructor

National Rifle Association - Certified Personal Protection Instructor

VICE-PRESIDENT (OPERATIONS)
Sharpshooters Indoor Range, Inc.

(2011 - PRESENT)
Greenville, South Carolina

RESPONSIBILITIES:

Responsible for managing day-to-day operations of this multi-million dollar facility –
SC Concealed Weapons Permit - Training Course – Certified Instructor
Utah Concealed Firearms Permit - Training Course – Certified Instructor
Home Invasion Prevention - Training Course - Instructor
Home & Business Threat Assessment & Management - Security Consultant

CERTIFICATIONS

State Law Enforcement Division - Certified Firearms Instructor
 Utah Department of Public Safety - Certified Firearms Instructor
 National Rifle Association - Certified Firearms Instructor
 National Rifle Association - Certified Personal Protection Instructor

PRESIDENT (GENERAL MANAGER)
ShootersZone Firearms Training Academy, Inc.

(2000 - 2011)
Greenville, South Carolina

RESPONSIBILITIES:

SC, Utah & Florida Concealed Carry – Training Course - Instructor
Home Invasion Prevention - Training Course - Instructor
Home & Business Threat Assessment & Management - Security Consultant

CERTIFICATIONS

State Law Enforcement Division - Certified Firearms Instructor
 Utah Department of Public Safety - Certified Firearms Instructor
 National Rifle Association - Certified Firearms Instructor
 National Rifle Association - Certified Personal Protection Instructor

SALES DIRECTOR (CO-OWNER)
QHD Stickbuilt, LLC.

(2005 - 2009)
Greenville, South Carolina

RESPONSIBILITIES:

Sales and Project Management - Custom Residential; Garages
 South and North Carolina

V. PRESIDENT/CO-OWNER
Tactical Strategies, Inc.

YEARS EMPLOYED (2000 - 2005 (BUSINESS SOLD))
Greenville, South Carolina

RESPONSIBILITIES:

Security Consultant
 Counter-Surveillance Specialist

GENERAL MANAGER (CO-OWNER)
Eltech International, Inc.

YEARS EMPLOYED (1990 - 2000 (BUSINESS CLOSED))
Greenville, South Carolina

RESPONSIBILITIES:

General Manager - Eltech was a successful textile supply parts business until the majority of the US textiles mfg. firms closed or moved out of the United States, as a result the business was forced to close.

DIRECTOR OF SECURITY/SAFETY
Greenville Hilton - Belz Enterprises

YEARS EMPLOYED (1988 - 1990)
Memphis, Tennessee

RESPONSIBILITIES:

Head of Hotel's Security Program and Staff
 Frequently served as MOD (Manager on Duty) in Charge of Hotel facility and operations.
 My responsibilities were to assure that hotel guest, employees and hotel property remained safe and secure. I assisted the Secret Service Vice-Presidential Protection Team protecting V.P. George H. W. Bush during his visits to the area on numerous occasions.

PRIVATE INVESTIGATOR
Davis Investigative Services

YEARS EMPLOYED (1986 - 1988)
Greenville, South Carolina

RESPONSIBILITIES:

Field Investigator
 Surveillance Specialist
 Surveillance Equipment Systems Designer

EDUCATION & TRAINING

HIGH SCHOOL DIPLOMA
Carolina High School

(1960 - 1965)
Greenville, South Carolina

BACHELOR OF SCIENCE/PUBLIC COMMUNICATIONS
Southeastern University (Non-Accredited)

(1975-77)
Greenville, South Carolina

HONORARY DOCTORATE OF HUMANITIES
Southeastern University

(1978)
Greenville, South Carolina

DEPUTY WILDLIFE CONSERVATION OFFICER
South Carolina Wildlife and Marine Resources Dept.

(1990)
Columbia, South Carolina

BASIC STATE CONSTABLE COURSE
Greenville Technical College

(1996)
Greenville, South Carolina

CONSTABLE RECERTIFICATION
Greenville Technical College

(1997)
Greenville, South Carolina

SLED INSTRUCTOR CERTIFICATION
TriCounty Technical College

(2004)
Greenville, South Carolina

DISASTER INSPECTOR CERTIFICATION
Parr Inspections

(2005)
Little Rock, Arkansas

STATE DISASTER MANAGEMENT (IS-208)
FEMA Emergency Management Institute

(2005)
Washington, DC

EMERGENCY PROGRAM MANAGER (IS-001)
FEMA Emergency Management Institute

(2005)
Washington, DC

NATIONAL RESPONSE PLAN (IS-800)
FEMA Emergency Management Institute

(2005)
Washington, DC

MULTI-HAZARD EMERGENCY PLANNING FOR SCHOOLS (IS-00362)
FEMA Emergency Management Institute

(2008)
Washington, DC

EMERGENCY PLANNING (IS-235)
FEMA Emergency Management Institute

(2008)
Washington, DC

Curriculum Vitae**Meghan E. Clement, MS, D-ABC****Education**

- 1985** **Master of Science, Forensic Science**
University of New Haven, West Haven, Connecticut
Honors: Graduate Fellow, 1984
- 1983** **Bachelor of Science, Biology**
Westfield State College, Westfield, Massachusetts
Graduated Cum Laude

Professional Experience**FORENSIC SEROLOGY/ DNA CONSULTANT** April 2017-Present

Clement Consulting, LLC
Owner

Provide Forensic Serology and DNA consultation to civil and military attorneys, law enforcement and civilian clients. Review case files and raw data to assist in understanding the serological and STR, Y-STR or mtDNA testing performed, suggest potential new and/or additional testing if applicable, educate as to what conclusions can and cannot be drawn by the testing results, explain the limitations of testing results and assist with trial preparation as well as cross-examinations.

DIRECTOR OF OPERATIONS June 2015- April 2017

Bode Cellmark Forensics, LabCorp Specialty Testing Group
Lorton, VA

Responsibilities: Oversee all forensic laboratory operations, quality assurance aspects, applied research endeavors and work closely with the General Manager on other aspects of the business, perform case consultations, case reviews and provide expert testimony.

SENIOR DIRECTOR July 2012- December 2015

Cellmark Forensics, LabCorp Specialty Testing Group
Dallas, TX

Responsibilities: Manage the daily responsibilities of laboratory personnel and flow of both contract and independent casework, manage implementation

of new tests, participate in analysis of casework and interpretation of results of STR, Y-STR and mtDNA analysis, perform technical reviews and administrative reviews, provide expert testimony, participate in marketing and sales functions.

TECHNICAL DIRECTOR, FORENSIC IDENTITY May 2000- July 2012

Laboratory Corporation of America
Research Triangle Park, North Carolina

Responsibilities: Manage the daily responsibilities of laboratory personnel and flow of casework, as well as implementation of new tests, participate in analysis of casework and interpret results of DNA analysis, prepare reports, provide expert testimony, direct and coordinate marketing and sales functions.

ASSOCIATE DIRECTOR, FORENSIC IDENTITY Aug. 1998- May 2000

Laboratory Corporation of America
Research Triangle Park, North Carolina

Responsibilities: Direct and participate in the DNA analysis of samples submitted to the laboratory, prepare reports of results and provide expert testimony, supervise and direct laboratory technologists and lab clerk positions, direct and coordinate marketing and sales functions.

ASSISTANT DIRECTOR, FORENSIC IDENTITY Nov. 1994- Aug. 1998

Laboratory Corporation of America (formerly Roche Biomedical Laboratories)
Research Triangle Park, North Carolina

Responsibilities: Conduct forensic DNA analysis on biological samples using both RFLP and PCR techniques, oversee and direct the laboratory technologists in the production of forensic DNA casework, prepare reports of results and provide expert testimony, assist in laboratory operations to ensure timely handling of cases and QA/QC measures, assist in the marketing and sales aspects of the Forensic Identity department.

FORENSIC BIOLOGIST March 1991 - Nov. 1994

Tarrant County Medical Examiner's Office
Fort Worth, Texas

Responsibilities: Forensic analysis of biological samples using traditional serological techniques as well as RFLP DNA profiling, conduct research and validation of new techniques in the forensic biology field, provide expert testimony, provide training to officer's in various law enforcement agencies concerning the collection and preservation of evidence, crime scene investigation.

SENIOR CRIMINALIST March 1985 - March 1991

City of Albuquerque, Police Department, Criminalistics
Albuquerque, New Mexico

Responsibilities: Assisted in implementing a DNA section including setting up quality control measures and population data bases, as well as performing validation studies, traditional serological analysis, blood/breath alcohol concentration analysis, provide expert testimony, crime scene investigation, train new personnel, officers and detectives.

TEACHING ASSISTANT, FORENSIC SCIENCE Sept. 1984- Mar. 1985

University of New Haven, West Haven, Connecticut

Responsibilities: Assist in teaching serological techniques to graduate students in the Criminalistics laboratories, assist in research projects being conducted.

TEACHING ASSISTANT, BIOLOGY Sept. 1983 - Sept. 1984

University of New Haven, West Haven, Connecticut

Responsibilities: Set up and assist in teaching various biology laboratories to undergraduate students.

FORENSIC SCIENCE INTERNSHIP August 1984

New Mexico State Police Crime Laboratory,
Santa Fe, New Mexico

Observed and participated in case analysis under the supervision of New Mexico State Police forensic analysts in the serology, trace, drugs and firearms sections.

Affiliations

American Academy of Forensic Sciences, Member

Southwestern Association of Forensic Scientists, Member

ASCLD/LAB-Biology Proficiency Review Committee Member (2013-Present)

Expert Testimony and Depositions

Testified 360+ times in 33 states

Testified in local, state, military and federal courts

Forensic Laboratory Experience**Original Qualifying Date**

• RFLP	1989
• PCR Analysis and Interpretation	1990
• DQ Alpha + Polymarker Testing	1995
• Paternity Testing	1995
• Mitochondrial DNA Analysis	1997
• Commercial Kit STR Analysis	2002
• Y-STR Analysis	2003

Certifications

Molecular Biology Diplomate - American Board of Criminalistics (ABC)

Publications and Oral Presentations

Budowle, B., Monson, K., Anoe, K.S., Baechtel, S., Bergman, D.L., Buel, E., Campbell, P.A., Clement, M.E. et al (1991) A Preliminary Report on Binned General Population Data on Six VNTR Loci in Caucasians, Blacks and Hispanics from the United States. *Crime Lab Digest* 18:9-26.

Validation of Multiplex STR Profiling Systems for Forensic Casework Specimens
American Academy of Forensic Sciences, Feb. 1998

Developing a DNA Laboratory on a Shoestring Budget
Southwestern Association of Forensic Scientists, Spring Meeting 1991

Continuing Education

Feb 2017	<i>AAFS Annual Meeting</i> , New Orleans, LA
Sept 2016	<i>International Symposium on Human Identification</i> , Minneapolis, MN
Oct 2015	<i>International Symposium on Human Identification</i> , Grapevine, TX
Feb 2015	<i>AAFS Annual Meeting</i> , Orlando, FL
Sept 2014	<i>Genome ID Forum</i> , Greensboro, NC <i>Forensic Genomic Applications</i>

May 2014 ***ASCLD Annual Meeting***, Scottsdale, AZ
Workshop-Solving Mixtures Genome-wide: Practical, Measureable Solutions

Feb 2014 ***AAFS Annual Meeting***, Seattle, WA

Oct 2013 ***International Symposium on Human Identification***, Atlanta, GA

Feb 2013 ***AAFS Annual Meeting***, Washington, DC

June 2012 ***2012 NIJ Meeting***, Arlington, VA

Feb 2012 ***AAFS Annual Meeting***, Atlanta, GA

Oct 2011 ***Mixture Interpretation Workshop-Promega International Symposium on Human Identification***, National Harbor, DC

Nov 2011 ***CODIS Meeting***, Jasonville, FL

Feb 2010 ***AAFS Annual Meeting***, Seattle, WA

Aug 2009 ***HID Future Trends in DNA Technology***, Applied Biosystems, Richmond, VA

Ape 2009 ***FBI DNA Auditor's Refresher Training***, Raleigh, NC

Feb 2009 ***AAFS Annual Meeting***, Denver, CO

July 2008 ***NIJ Meeting***, Arlington, VA

Feb 2007 ***AAFS Annual Meeting***, San Antonio, TX

Aug 2006 ***AFDAA Summer Meeting***, Austin, TX

May 2006 ***ABI Human Identity University***, Research Triangle Park, NC

Feb 2006 ***AAFS Annual Meeting***, Seattle, WA

Jun 2005 ***6th Annual DNA Grantees Workshop***, Arlington, VA

Apr 2004 ***FBI DNA Auditor's Training***, Quantico, VA

Feb 2004 ***AAFS Annual Meeting***, Dallas, TX
Forensic Human mtDNA Analysis Workshop



John H. Thorp
Soil & Environmental Consultant

Summary of Qualifications:

Mr. Thorp has over 35 years of professional experience in geomorphology, soil delineation, land classification, and wetlands assessments in SC, NC, TX, VA, WVA, LA & AL. He possesses extensive experience performing soil surveys, silvicultural interpretations and detailed on-site investigations for sanitary wastewater dispersal. Mr. Thorp also has broad environmental regulatory expertise at the local, state, and federal levels, including providing testimony to the US Senate Sub-committee on the Environment on behalf of the American Forest Products Association. He currently serves as Chairman of the S.C. L.L.R. Soil Classifiers Advisory Board and was a member of the Research Advisory Committee for the National Council for Air and Stream Improvement (NCASI).

Education: B.S. Agronomy, Clemson University (cum laude) 1979

Additional courses:

Soil Hydrology in the Vadose Zone Course - NC State University 2006
BioStatistics I & II at Medical University of S.C. 1987 - 1988

Professional Experience:

October 2012 to present: Land and Soil Consulting – Sole Proprietor

Mr. Thorp uses his extensive knowledge of the soils, vegetation, and landscapes of the Southeastern and Gulf Coastal Plains to help his clients make informed decisions regarding land transactions and land development. He provides both preliminary and detailed soil evaluations for on-site wastewater disposal, wetland determinations and subdivision development feasibility. Mr. Thorp has served as an expert witness in several lawsuits involving jurisdictional and isolated wetlands.

July 2007 to Sept. 2012: General Manager Land Management Group of SC, LLC

Mr. Thorp and his staff performed field investigations, created reports and provided decision support for on-site wastewater disposal, wetland determinations and subdivision development feasibility. His team created over 200 Soil Classifier's Reports for permitting Specialized on-site residential wastewater treatment systems. They also calibrated the soil hydrology of three new municipal wastewater dispersal fields for a combined treatment expansion of > 1 million gallons/acre/day. Several Permits to Fill wetlands with compensatory mitigation were also obtained for clients by his company.

1998 - July 2007: Silva-Soils Consulting – Sole Proprietor

Mr. Thorp produced soil maps & site-specific silvicultural interpretations on approximately 270,000 acres of timberlands in S.E. Texas at 1:15,840 scale. He refined MeadWestvaco's S.C. forest soil survey interpretations, mapped new land acquisitions and resolved wetland issues affecting land sales. He also performed detailed soil evaluations and created Soil Classifier's Reports for permitting Specialized on-site

wastewater treatment systems per SCDHEC's Regulation 61-56, Alternative Standard 362/610. He has provided expert witness testimony in a lawsuit against a SC homebuilder/developer.

1988 – 1998

Westvaco Corp. Forest Research Summerville, S.C

As a Research Scientist (Level II & III), Mr. Thorp inspected and correlated the contract soil mapping of over 400,000 acres across nine S.C. counties. He was responsible for the creation and maintenance of soils data in Westvaco's GIS decision-support system in S.C. He wrote over 600 statistically-based soil mapping unit descriptions based on over 22,000 profile descriptions. He led the interdisciplinary team that created silvicultural interpretations for six Company soil survey handbooks. He successfully integrated soils information into MeadWestVaco's operational forestry planning and silvicultural research. He also participated with the USDA US Forest Service staff on two published investigations (Bottomland Hardwood Ecosystems & Carolina Bay Water Quality). For 10 years, he represented Westvaco Corp. on various wetland issues at local, state and national levels. He testified on behalf of the American Forest Products Association before the U.S. Senate Subcommittee on the Environment at a hearing on the federal definition of jurisdictional wetlands.

1984 - 1988

Westvaco Corp. Forest Research Summerville, S.C.

As a Project Assistant and Research Scientist (Level I), he performed field research for a large study of soil productivity and loblolly pine growth. He co-authored two in-house research publications equivalent to Masters Degree projects. He developed and led a pilot silvicultural soil survey project on 40,000 acres of Company timberlands.

1981 - 1984

International Paper Co. Conway, S.C. & Wilmington, N.C.

Mr. Thorp conducted field mapping, cartography, and correlation of three Order II soil surveys at 1:15,840 scale, mapping approximately 200,000 acres of forestland across 12 counties. He collected detailed soil and tree stem analysis data for a regional study of loblolly pine productivity. He co-authored three Company soil survey handbooks with silvicultural interpretations.

1979 - 1980

N.C. Dept. of Natural Resources / NRCS New Bern, N.C.

Soil Surveyor – In Training: Trained by USDA NRCS to identify and map soils at 15,840 scale for County Soil surveys in Pamlico, Craven and Carteret Counties.

Licensure and Professional Memberships

Licensed Soil Classifier, S.C. License #49 (since 1986)
Current Chairman - S.C. L.L.R. Soil Classifiers Advisory Board
Founding Member – S.C. Onsite Wastewater Association
Treasurer - Soil Science Society of S.C.
Former Technical Investigative Liaison for the S.C. L.L.R. (2011 – 2013)

John H. Thorp
Licensed S.C. Soil Classifier
1985 Riviera Drive Suite 103 #207
Mount Pleasant, SC 29464



May 15, 2018

Joel F. Stroud, Attorney, PLLC
P.O. Box 516
Chesterfield, SC 29709

Re: Post-Conviction Relief (PCR) proceeding for Mr. Joey Lynn Clark

Dear Mr. Stroud,

Per your request, I have reviewed the documents related to the original trial and conviction of Mr. Joey Lynn Clark, specifically the Transcript of Record 2013-GS—11-01167 filed in the Cherokee County, S.C. Court of General Sessions. I have also been informed of the reported locations of both the currently surmised initial homicide event and the actual recovery site of the Victim's body.

I have reviewed the Natural Resource Conservation Service (NRCS) Cherokee County Soil Maps of both areas, which show very similar soil types, specifically the Cecil and Madison series. Both of these soil types are formed from the same red colored geologic parent material and both are classified as fine, kaolinitic, thermic Typic Kanhapludults in formal Soil Taxonomy. Soil Classifier's use a standardized color book with over 200 different color chips to formally describe each soil horizon.

In their natural, undisturbed state, both the Cecil and Madison soil types have a dark colored surface horizon (topsoil with humus) underlain by a brownish yellow subsurface horizon, which transitions downward into a red subsoil. After the native forest was cleared and agriculture was begun centuries ago, the process of erosion variably removed most of the surface horizons, exposing the red colored subsoils.

After reviewing several aerial photographs of both sites, it appears to me that both the victim's home location and most of the length of Mike's Creek Road have long been deforested and exposed to the forces of erosion.

Referring to the trial transcripts Page 227, Lines 15 – 19, Investigator Jimmy Henson is questioned about the soil color alongside Mike's Creek Road by Ms. Lescanic. His categorical answer that "all the dirt along Mike's Creek Road is real fertile soil. It's black" seems oversimplified and may be inaccurate.

When unpaved roads are constructed in the S.C. Upstate, bulldozers remove the darker, loamy surface soil horizons to expose the more stable, clayey red subsoils. Unpaved roads are also maintained by motor graders, which scrape the surface and edges of the roadbed. Typically the side banks of this type of rural road reveal the red colored subsoil of the adjacent undisturbed soil.

State of South Carolina)
County of Cherokee)
State of South Carolina,)
v.)
Joey Lynn Clark,)
Defendant.)
_____)

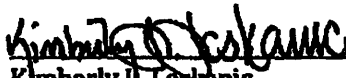
In the Court for General Sessions
Seventh Judicial Circuit

2013-GS-11-1167

State's List of Potential Witnesses

1. ☒ Joyce Beverly Patrick
2. ☒ Anna Mooney
3. ☒ Representative from Verizon
4. ☒ Robert Brackett, 911 Communications
5. ☒ Representative from Upstate Carolina Medical Center *GP*
6. Lindsey McGraw, Spartanburg County Sheriff's Dept.
7. ☒ Aaceshon J. Briggs
8. ☒ James Wilkerson
9. ☒ Clarence Taylor
10. CSI Jimmy Henson, Cherokee County Sheriff's Dept. *Big Role*
11. ☒ CSI Billy Anthony, Cherokee County Sheriff's Dept. *40 year Knife*
12. ☒ Deputy Chris Blake, Cherokee County Sheriff's Dept. *look into person's report*
13. ☒ Detective Richard Burgess, Cherokee County Sheriff's Dept. *Blue Tire*
14. Michael Stillwell
15. Ridge Crosby
16. Michael B. Covington
17. John R. Austin
18. Bryant Phillips
19. ☒ Janice E. Ross, M.D., Forensic Pathologist, Newberry Pathology
20. ☒ Dennis Fowler, Coroner *State's List*

21. Verona Gibson, Evidence Processing Technician, SLED
- ~~22.~~ Melissa Skipper Wallace, SLED
- ~~23.~~ Michael R. Moskal, Forensic Scientist, SLED
24. Catherine Leisy, Forensic Scientist, SLED
25. Captain Tim Clark, Cherokee County Sheriff's Dept.
26. Detective Tracy Fowler, Cherokee County Sheriff's Dept.
27. Agent Harvey Owens, SLED (didn't know he was SLED)
28. Investigator, Richard Duckett, Cherokee County Sheriff's Dept.
29. Agent Darrell Betsill, SLED
30. Deputy Mark Vanderburg, Blacksburg City Police Dept.
31. Nathan L. Hollis
32. Lauren Mitchell
33. Jeff Shipley
34. Thomas A. Talbert
35. Ashley Bell, Forensic Serologist, SLED
36. Representative from Cherokee County Detention Center
37. Representative from T-Mobile
38. Representative from Alltel
39. Representative from AT&T


Kimberly L. Leskaniemi
Assistant Solicitor
Seventh Judicial Circuit

Cherokee, South Carolina
March 18, 2014

SC Bar # 70074

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

State of South Carolina,
Plaintiff

-vs-

Joey Clark,
Defendant

GENERAL SESSIONS COURT
SEVENTH JUDICIAL CIRCUIT
Indictment No.: 2013-GS-11-1167

**MOTION TO RECONSIDER
SENTENCE**

This motion comes before The Court by and through Attorney H. Chase Hargan, undersigned counsel of the Defendant.

Mr. Clark was tried and found guilty after a jury trial on March 20, 2014 for the above-listed charge of Murder. The Court sentenced Mr. Clark to 45 years in prison.

After the sentencing of Mr. Clark, the State was given an opportunity to deliver their input, and have the victims heard. The victims declined to speak, but asked for a sentence above the minimum 30 years. The State noted that the Court was able to hear the relevant facts during trial, and they did not need to input anything further.

Thereafter Counsel for Defendant was allowed to speak on behalf of Mr. Clark, whereupon it was suggested that the crime, although violent, was not a pre-planned and deliberate action, but rather one of uncontrolled emotion, and thus deserving of mercy from the Court, however little. Upon reflection, Defense Counsel neglected to offer to the Court information relevant to the determination of Defendant's sentence, including work history, and marital and family status.

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2014 MAR 27 P 4:11
BRADY W. MOORE

The Defense therefore respectfully requests this Court to reconsider the sentence in light of the relevant personal history not shared with the Court prior to sentencing on March 20, 2014.

Joey Clark is 43 years old and has been married to Anita Clark, of McColl, South Carolina for nine (9) years. They have been together since high school. Joey and Anita Clark have a biological son named Patrick, age 26, who is married with an eleven month old child. Mr. Clark also has a son, Mark (age 19) and has assisted in raising Anita Clark's daughter, Whitney (age 20) from a previous relationship. Joey has worked as a pipefitter/welder for approximately 23 years and has routinely spent long periods away from home on long-term seasonal or project-oriented contracts. He would work and live on part of those earnings, mostly his *per diem* checks, and send the remainder of his paycheck home to his wife and family.

Had Joey's family been present, his mother, stepfather and wife would have respectfully requested the Court to consider a sentence of thirty (30) years so that Joey may be able to be reunited with his family at an age young enough to actively participate in their lives. Specifically, his family asked the Court to consider that upon release from a minimum sentence of 30 years, Joey would be approximately sixty-five (65) years old – hopefully still able-bodied enough to support himself and to be actively engaged in the lives of this children and remaining relatives.

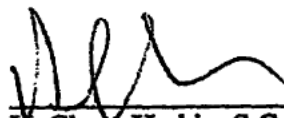
Joey Clark obtained his GED and has worked full time since high school. Upon entering the South Carolina Department of Corrections he will be leaving behind his mother, Ruby Stubbs, Stepfather Parker Stubbs, and aunt Betty Walters, all of whom were present

during trial along, with his wife Anita, but not able to be summoned to the courthouse in time to appear for sentencing.

The Defense reiterates the previously made points in reference to the act for which he was convicted, in that: the crime appears to be one of passion, not timed, planned, or thought-out. Additionally, it does not appear that this crime was committed for personal financial gain, or other personal benefit.

The Defense respectfully moves this Court for a reconsideration of his sentence.

Respectfully Submitted,



H. Chase Harbin, S.C. Bar No. 70074
Attorney for Defendant
419 Vardry St.
Greenville, SC 29601
(864) 235-7788

March 27, 2014

State of South Carolina



Spartanburg County Court House
180 Magnolia Street
Spartanburg, S.C. 29306
Phone (864) 596-2575
Fax (864) 596-2386

1259
Cherokee County Court House
Floyd Baker Blvd.
Gaffney, S.C. 29340
Phone (864) 487-2576
Fax (864) 487-2753

BARRY J. BARNETTE
Solicitor Seventh Judicial Circuit

April 4, 2014

The Honorable Howard P. King
SC Circuit Court
PO Box 189
Sumter, SC 29151

Re: State v. Joey Lynn Clark
Motion to Reconsider Sentence

Dear Judge King:

I am in receipt of the letter and Motion to Reconsider filed by Mr. Harbin in the above-referenced matter. In response thereto, I offer the following:

1. The sentence of 45 years is appropriate given that the sentencing range for murder is 30 years to life.
2. No evidence was offered by the defense during trial to substantiate a claim for manslaughter/heat of passion.
3. This murder, although possibly not premeditated [which is not required for murder], clearly met the element of malice.
4. More than one injury was inflicted upon the victim that could have caused her death. The murder included blunt force trauma to the head, which could have caused the victim to become unconscious and die within minutes; strangulation, which would have caused the victim to at least become unconscious; thirteen stab wounds to a body that was already too close to death to save; and other trauma to her chest and face.
5. Defendant has a prior criminal history, including but not limited to robbery and assault and battery of a high and aggravated nature in 1992; failure to stop for police in 2000; third degree burglary in 2001; and assault and battery 3rd degree in 2010.

In light of the brutal nature of this murder and the defendant's prior history, the State respectfully requests that the Defendant's motion to reconsider sentence be denied. Thanking you for your kind consideration and wishing you well, I remain

The Honorable Howard P. King
SC Circuit Court
PO Box 189
Sumter, SC 29151
Page -2-

Sincerely,


Kimberly L. Leskanic

Cc: H. Chase Harbin

11/11/13

Gmail - Joey Clark



Chase Harbin <[REDACTED]>

Joey Clark

2 messages

Kim Leskanic <Kim.Leskanic@cherokeecountysc.com>
To: "chaseharbin@gmail.com" <chaseharbin@gmail.com>

Fri, Nov 8, 2013 at 4:53 PM

Chase:

Do you know whether your client has made a final decision on the plea offer?

Also, do you have anything in writing regarding his waiver on the attorney issue? Just want to make sure we are good to go in December. Thanks.

Kim Leskanic

Assistant Solicitor

Cherokee County Solicitor's Office

864.487.2576

Chase Harbin <chaseharbin@gmail.com>
To: Kim Leskanic <Kim.Leskanic@cherokeecountysc.com>

Mon, Nov 11, 2013 at 1:39 PM

I screwed up and forgot about the decision deadline. I had planned on going to Gaffney to see him tomorrow - that plan was made while I was in the middle of not remembering he had a deadline. I cannot get to Gaffney today, but will keep my appointment for tomorrow. I anticipate that his mind has not changed, but if it does, I'll beg you and the Judge to allow him to plead b/c of my ill-planning.

I plan getting a written offer acceptance or rejection as well as a his signature on a waiver of his motion to have me relieved as counsel as well as a waiver of any potential conflicts with Judge Kelly.

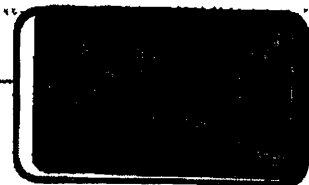
One way or the other I'll be in touch tomorrow after I visit with Joey. If all goes as planned I'll drop off a hard-copy at your office before I leave town.

Chase

[Quoted text hidden]

H. Chase Harbin
Attorney

Law Office of H. Chase Harbin
419 Vardry Street

**State v. Joey Clark**

1/11/2013

Kim Leskanic <Kim.Leskanic@cherokee-county-sc.com>

Mon, Oct 21, 2013 at 9:21 AM

To: "chaseharbin@gmail.com" <chaseharbin@gmail.com>

Cc: "Barnette, Barry" <bbarnette@spartanburgcounty.org>, "Kelly, R. Keith Law Clerk (Joseph T. Odom)" <kkellylc@sccourts.org> <kkellylc@sccourts.org>

Chase:

It is my understanding that Judge Kelly represented Michael Stillwell back in 2011 on charges that were prosecuted by Asst. Solicitor Matt Kendall. It appears that Mr. Stillwell was arrested in October of 2009, and pled guilty in July of 2011. Mr. Stillwell is a potential witness in the State v. Joey Clark, and that case is presently set in front of Judge Kelly for the week of December 9, 2013. I wanted to bring this to everyone's attention, as we may need to meet with the Judge to address whether this presents an issue with proceeding in December. I am copying Solicitor Barnette and Judge Kelly's Clerk on this email. Please give me your thoughts.

Kim Leskanic

Assistant Solicitor

Cherokee County Solicitor's Office

864.487.2576

Chase Harbin <chaseharbin@gmail.com>

Mon, Oct 21, 2013 at 11:35 AM

To: Kim Leskanic <Kim.Leskanic@cherokee-county-sc.com>

Cc: "Barnette, Barry" <bbarnette@spartanburgcounty.org>, "Kelly, R. Keith Law Clerk (Joseph T. Odom)" <kkellylc@sccourts.org> <kkellylc@sccourts.org>

Kim,

I think we can probably work around this -pending what the Judge has to say. I'd agree that we should sit down with Judge Kelly to discuss things, though.

I will have to get Joey's thoughts before signing off on anything, but I'm optimistic that it wouldn't present an unsolvable problem from our perspective

Thanks,

Chase.

[Quoted text hidden]

H. Chase Harbin

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)
)
STATE OF SOUTH CAROLINA,)
)
PLAINTIFF,)
)
VS.)
)
JOEY LYNN CLARK,)
)
DEFENDANT.)

IN THE COURT OF GENERAL SESSIONS

WARRANT NO.: M-132899

EX PARTE ORDER FOR EXPENSES

This matter came to be heard by me *ex parte* pursuant to the Motion of the undersigned attorney for the Defendant, and Sections 17-3-50(8) and (C) of the 1976 SC Code of Laws, as amended. Upon hearing arguments of Counsel for the Defendant, it appears and I so find that services are reasonable and necessary to insure the adequate representation of the Defendant.

I further find that because of the seriousness of the charge pending against the Defendant, and the complexity of this case, that payment for these services in excess of the rates set forth in Section 17-3-50(8) is both reasonable and necessary to provide effective assistance of counsel and that such payment is appropriate. I also find that the circumstances of this case and nature of the request justify the expenditure of funds prior to the conclusion of the case allowed by SCACR 602(g).

NOW, THEREFORE, upon motion of Counsel for the above named Defendant and under the authority of Sections 17-3-50(8) and (C) of the SC Code of Laws, as amended.

IT IS ORDERED that Counsel is authorized to retain the services of Daniel B. Demers, Ph.D. for the purpose of case review, case consultation, and testimony at trial as a DNA Expert Witness. The cost of such service is not to exceed the sum of Two Thousand Two Hundred (\$2,200.00) Dollars without further Order of this Court.

IT IS FURTHER ORDERED, that the Office of Indigent Defense shall issue payment for these services not to exceed the above amount upon a proper submission of the necessary documents with the further Order of this Court.

AND IT IS SO ORDERED.

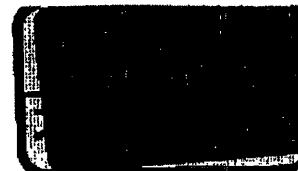
S. Prager L. Couch
Honorable Roger L. Couch
Seventh Judicial Circuit

This the 12th day of March, 2014

I SO MOVE:

H. Chase Harbin
H. Chase Harbin, Attorney for the Defendant
419 Vardry Street
Greenville, SC 29601/(864) 288-6763
SC Bar No. 70074

A CERTIFIED COPY
M. Hope Mackey
CLERK OF COURT
SPARTANBURG COUNTY
BY C. S. [Signature]
DATED 2/13/14

**Invoice****March 7, 2014**

Client:
H. Chase Harbin
419 Vardry Street
Greenville, SC 29601

Remit To:
Daniel B. Demers, PhD
6 Purple Martin Lane
Hilton Head, SC 29926

Client Case #State v. Joey Clark
IntelliGenetics Case #13-0480

<i>Items Tested</i>	<i>Procedure</i>	<i>Charge</i>	<i>Credits</i>
SLED #L11-00998 State v. Joey Clark	Case review/consultation	\$500.00	\$0.00
	Testimony, 1 day	\$1,500.00	\$0.00
	Travel, mileage and per diem (518 miles round trip)	\$200.00	\$0.00

Balance Due: \$2,200.00


DNA Laboratory

IG
IntelliGENETICS

1265
aa Accredited
ASCLD/LAB

Invoice



June 23, 2014

Client:
H. Chase Harbin
419 Vardry Street
Greenville, SC 29601

Remit To:
IntelliGenetics, LLC


Client Case #State v. Joey Clark
IntelliGenetics Case #13-0480

Items Tested

Procedure

Charge

Credits

SLED #L11-00998
State v. Joey Clark

Case review/consultation

\$2,250.00

\$1,000.00

Balance Due: \$1,250.00

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Joey Clark, SCDC #187595

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-11-0509

ORDER OF DISMISSAL

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2018 AUG 29 AM 11:38
BRANDY W. HODGE

This matter comes before this Court by way of an application for post-conviction relief filed on July 20, 2016, by retained counsel Joel F. Stroud on behalf of Joey Clark (Applicant). Respondent served its return on May 16, 2017, requesting an evidentiary hearing. An evidentiary hearing was held on June 19-21, 2018, before this Court at the Spartanburg County Courthouse. Applicant was present and was represented by counsel Stroud. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson and Assistant Attorney General Jordan Cox. At the hearing, testimony was taken from trial counsel H. Chase Harbin, Seventh Circuit Assistant Solicitors Kimberly L. Leskanic and Jennifer Jordan, private investigator Ted Landreth, DNA analyst Meghan E. Clements, soil classifier John H. Thorp.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations and denies this application with prejudice.

PROCEDURAL HISTORY

The records before this court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. During its November 2013 term, the Cherokee County Grand Jury indicted Applicant for murder (2013-GS-11-1167) for the death of Winter Wingard.

H. Chase Harbin, Esquire, was appointed to represent Applicant. Assistant Solicitor's Kimberly L. Leskanic and Jennifer Jordan of the Seventh Circuit Solicitor's Office prosecuted the case. On March 17, 2014, Applicant proceeded to a jury trial in the Cherokee County Court of General Sessions before the Honorable Howard P. King, circuit court judge. On March 20, 2014, the jury found Applicant guilty as indicted. Judge King sentenced Applicant to imprisonment for forty-five years.

Applicant filed a timely notice of appeal. Appellate Defender Robert M. Pachak of the South Carolina Commission on Indigent Defense—Office of Appellate Defense filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). Applicant then filed his own *pro se* brief. On August 19, 2015, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Clark, Op. No. 2015-UP-433 (Ct. App. filed August 19, 2015). The remittitur was returned to the circuit court on September 9, 2015.

SUMMARY OF FACTS ADDUCED AT TRIAL

On December 1, 2010, Winter Wingard lived in a doublewide trailer off of Songbird Lane in Cherokee County with her mother, Beverley Patrick. (ROA 124-28). Applicant, who was Wingard's former boyfriend, had previously lived with Wingard and Patrick, but had been asked to move out when the relationship ended a few months earlier. (ROA 126-28, 134). Despite being asked to move out, Applicant still frequented the home. (ROA 128-29). Wingard had begun dating Anna Mooney, a young woman who lived in Georgia, which upset Applicant greatly. (ROA 129-30). Applicant, Wingard, and Mooney all exchanged near constant text messages back and forth, with Applicant repeatedly trying to interfere in Mooney and Wingard's relationship—including falsely telling Mooney that Wingard had AIDS in the hope Mooney and Wingard would break up (ROR 178-204).

Applicant and Patrick worked together at a construction company and had worked

together on December 1st. (ROA 124, 135-36). After work, Applicant and Patrick went to their friend's house to pick up a quart of moonshine and pizza before heading back to the trailer on Songbird Lane. (ROA 136-37, 162). When they arrived, Wingard was sick with bronchitis and had a fever of 104 degrees. (ROA 138-39). Wingard was upset that Applicant was imbibing in moonshine for fear of how he would behave while intoxicated. (ROA 138). After eating pizza and drinking approximately three shots of moonshine, Patrick left Wingard on the couch and went to bed around 10 p.m., expecting Applicant would not be spending the night. (ROA 138-40). Text messages from Applicant, Wingard, and Mooney revealed that the three were exchanged in a near constant texting argument throughout the evening. Wingard attempted to send a text message to Mooney at 2:14 a.m. that was interrupted, likely by her phone losing power or having the battery removed. (ROA 379-82). This was the last text message attempted from Wingard's phone. (ROA 379-82).

At approximately 4 a.m. the next morning (December 2nd), Patrick was awoken by her alarm and found Applicant standing at the foot of her bed, which was unusual because Applicant was usually not awake at that time. (ROA 140-42). Applicant told Patrick that Wingard, who was sick with a 104 degree fever, had left the house in the middle of the night in Patrick's car to get cigarettes but never returned home and that he suspected she had really left to visit Anna. (ROA 139, 141, 150). Patrick tried to call Wingard numerous times without success and eventually rode to work with Applicant. (ROA 142-43).

Patrick received several text messages from Applicant throughout the day, including a message that indicated Applicant left work early but would be back to pick Patrick up when she finished working. (ROA 143). Applicant later returned to pick up Patrick, and after visiting the house where Applicant was supposed to be living, both returned to the trailer on Songbird Lane. (ROA 143-44). Applicant was helping Patrick dispose of old tomato plants when he suddenly

announced that he noticed Patrick's car parked down the road at a neighbor's home. (ROA 145). Applicant and Patrick went to the vehicle and discovered Wingard's purse was in the front seat; however, Wingard's cell phone and keys were not in the vehicle. (ROA 145-46, 152). Patrick asked a neighbor when the car appeared there and the neighbor said it was there when he woke up that morning. (ROA 146). Another neighbor later reported he noticed Patrick's vehicle parked in this location when he returned from work around 2:20 a.m. on December 2nd (ROA 215-18). Patrick called 911 and law enforcement arrived shortly thereafter. (ROA 146, 163, 172-73).

A few hours earlier on December 2nd, James Wilkerson was driving on Mikes Creek Road when he saw what he thought was a blow up doll. (ROA 221-22). When he got closer, he discovered it was not a doll but Wingard's nude body. (ROA 222, 228). Wilkerson did not have cell phone service, so he left the scene to get assistance. (ROA 223) Wilkerson found Clarence Taylor, who went to the scene at Mikes Creek and confirmed what Wilkerson had reported—the discovery of Wingard's lifeless, nude body with sweatpants pulled around her ankles and her legs folded back. (ROA 228). Wingard's body and sweatpants were smeared with reddish colored soil inconsistent with the soil at Mikes Creek. (ROA 243-45, 252).

Taylor called 911 and waited for law enforcement to arrive. (ROA 229). Investigator Jimmy Henson of the Cherokee County Sherriff's Department arrived and began processing Wingard's body and the scene at Mikes Creek. He noticed the reddish soil on Wingard's body and clothing, as well as blood. (ROA 242-46). It appeared as though someone had dragged Wingard's body to its final resting place near a barbed wire fence. (ROA 242-52, 258). Wingard had been stabbed thirteen times. (ROA 13). Investigator Henson collected several various items for testing, including briars and tree limbs near Wingard's body. (ROA 253-56).

Investigator Henson and other law enforcement officers also processed the trailer at Songbird Lane. Investigator Henson noted the soil at Songbird Lane was reddish colored, much

like the soil smeared on Wingard's body and clothing. (ROA 292). Officers recovered Wingard's cell phone with the battery removed, the cell phone battery separate from the phone, and the keys and remote to Patrick's car in the vegetation surrounding the trailer. (ROA 292-94, 304, 308). Officers processed various areas of the trailer and found no signs of any struggle inside. (ROA 300-01).

Law enforcement also processed Patrick's car. (ROA 309). Fingerprints of reddish soil were found on the driver's side, passenger's side, and steering wheel. (ROA 311-12). The car was dusted for fingerprints; Applicant's print was identified on the rear quarter panel of the car. (ROA 318). Other fingerprints recovered did not match Applicant, Wingard, or Patrick. (ROA 327-28, 373, 498). Spatter of Wingard's blood was discovered on the passenger door and dashboard. (ROA 320-22).

Applicant was arrested on December 6th for an unrelated traffic violation. (ROA 398). While he was in the detention center, several inmates housed with Applicant reported to law enforcement that Applicant had made incriminating statements implicating himself in Wingard's murder. (ROA 404-14, 435-44). Many of these statements had internal inconsistencies and did not fully comport with the evidence and investigation underway. Regardless, Applicant was charged with Wingard's murder shortly thereafter. (ROA 404, 444).

An autopsy of Wingard's body revealed she died from blunt force trauma to the head that caused internal bleeding to the brain. (ROA 464-66). The pathologist who performed the autopsy opined the blunt force trauma to the left side of Wingard's head likely caused her to lose consciousness and she was later stabbed thirteen times in the neck area. (ROA 462, 466-68). Petechiae was also noted in Wingard's eyes, indicating Wingard was strangled but this was not the cause of death. (ROA 463-64). The pathologist estimated Wingard died between 2 a.m. to 3 a.m. on December 2nd, but she could not conclusively determine a time of death or the location

where she was killed. (ROA 470-71)

Fibers recovered from the scene at Mikes Creek were later determined to be consistent with the fibers on Wolverine boots similar to those owned by Applicant. (ROA 500-510). Additionally, DNA analysis determined Applicant could not be excluded as a contributor to a DNA mixture recovered on a briar from Mikes Creek or a DNA mixture recovered from a tree limb at Mikes Creek. (ROA 561-63). Applicant was also a major DNA contributor to a DNA mixture recovered from an oral swab of Wingard's mouth, identified as semen. (ROA 566-69, 572-74).

ALLEGATIONS RAISED IN THE APPLICATION AND AT THE HEARING

In his application for post-conviction relief, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Counsel's cross examination of Detective Burgess "sabotaged any chance that [Applicant] had in getting a fair trial."
 - b. Counsel's "closing argument reinforced the jury's impression that [Applicant] had confessed to the murder of [the victim]."
 - c. Counsel failed to move to suppress or object to inmate statements being admitted into evidence.
 - d. Allowed inadmissible hearsay statements to be admitted during the trial.
 - e. "[Counsel's] failure to object left [Applicant's] direct appeal attorney no alternative other than to file an Anders brief because no issues were preserved for appellate review."
 - f. Counsel failed to request a directed verdict.
 - g. Counsel failed to object to State's improper closing argument.
 - h. "[Counsel] failed to either request that the State test the fingernail clippings or request funding from the State to have the clippings DNA tested."
 - i. Counsel "failed to either request that the State DNA test the cigar butts or request funding from the State to have the cigar butts tested."
 - j. Counsel failed to call a DNA expert to testify.
 - k. Counsel failed to develop trial strategy or adequately communicate to Applicant the theory of defense.
 - l. Counsel "failed to request that Judge King add voluntary murder as a lesser included charge to the substantive law, as well as adding voluntary manslaughter, guilty or not guilty, to the verdict form."

- m. Counsel failed to present any evidence of manslaughter/heat of passion.
- n. Counsel offered improper advice to Applicant "about whether to accept or reject the State's voluntary murder plea offer."
- o. Counsel mailed Applicant a letter advising him of the plea offer, but Applicant never received the letter and never discussed the plea offer with Counsel.
- p. Counsel failed to request a pre-trial hearing to determine whether sufficient probable cause existed to arrest Applicant for murder.
- q. Counsel failed to object to the jury charge that malice could be implied by the use of a deadly weapon.
- r. Counsel failed to renew his request to withdraw after Judge Kelly refused his initial request to withdraw, even after receiving a threat of great bodily harm from Applicant.
- s. Counsel failed to put on a defense in order to have the last closing argument.
- t. Counsel failed to request a mistrial.
- u. Counsel failed to object to the excessive use of graphic pictures that went beyond and were not necessary for the proof of the State's case.
- v. Counsel failed to request a change of venue based on the highly publicized murder in Cherokee County.
- w. Counsel failed to retain a "expert witness soil scientist" to compare and analyze the red dirt found on the victim's body.
- x. Counsel failed to request sequestration of the State's witnesses.
- y. Counsel failed to request a jury view of the crime scene.
- z. Counsel failed to investigate or present mitigating evidence.
- aa. Counsel failed to strike juror who Applicant claims was present during his polygraph examination.

2. Prosecutorial Misconduct

- a. "The Assistant Solicitor committed prosecutorial misconduct when she impermissibly bolstered and impermissibly vouched for the credibility of the crime scene investigators and again told the jury that [Applicant] confessed."
- b. "The State committed prosecutorial misconduct when it impermissibly allowed Detective Burgess to read the inmate statements into evidence.
- c. "The State also committed prosecutorial misconduct in its closing argument when it impermissibly referenced the statements of the inmates, as well as, impermissibly bolstering the credibility of the State's investigators and offering improper state of mind speculations regarding [Applicant's] reasons about why he would cooperate with the police investigators. [Assistant Solicitor] Leskanic offered no foundational support for these improper state of mind speculations."
- d. "The State committed prosecutorial misconduct when it failed to perform DNA testing of fingernail clippings found underneath the fingernails of the victim."
- e. "The State committed prosecutorial misconduct when it failed to perform DNA testing of cigar butts found in the yard at the victim's

house, even though neither [Applicant], nor the victim and residents of the house smoked cigars.”

3. The trial transcript does not reflect the actual order of testimony of the State's witnesses.

Applicant proceeded forward on these allegations at the evidentiary hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented at the evidentiary hearing, which allowed the Court to scrutinize the credibility of all witnesses presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant has alleged numerous instances of ineffective assistance of counsel against trial counsel, H. Chase Harbin (counsel) and related allegations of prosecutorial misconduct against the assistant solicitors who prosecuted him.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland does not guarantee perfect representation, only a “ ‘reasonably competent attorney.’ ” 466 U. S. at 687 (quoting McMann v. Richardson, 397 U. S. 759, 770 (1970)); Representation is constitutionally ineffective only if it “so undermined the proper functioning of

the adversarial process" that the defendant was denied a fair trial. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Although courts may not indulge "post hoc rationalization" for counsel's decision making that contradicts the available evidence of counsel's actions, Wiggins, 539 U. S., at 526-527, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Yarborough v. Gentry, 540 U. S. 1, 8 (2003) (per curiam). After an adverse verdict at trial even the most experienced counsel may find

it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011)

With respect to prejudice, an applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." Id. at 693. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id. at 687. See Harrington, 562 U.S. 86.

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371 (2010), and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." United States v. Timmreck, 441 U.S. 780, 784 (1979). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689–690. Even under de novo review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." Id. at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney's representation amounted to incompetence

under "prevailing professional norms," not whether it deviated from best practices or most common custom. Strickland, 466 U.S. at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U. S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is "reasonably likely" the result would have been different. Id. at 696. This does not require a showing that counsel's actions "more likely than not altered the outcome," but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693. Harrington, 562 U.S. 86.

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. Each allegation is addressed fully below:

Allegations Pertaining to Opening the Door to the Introduction of the Jailhouse Witness Statements

Applicant alleges trial counsel was ineffective for opening the door to the admission of statements from numerous jailhouse witnesses during the examination of Cherokee County Sheriff's Department Detective Burgess. Applicant alleges counsel's questioning of Detective Burgess during cross-examination about the statements allowed the State to introduce these statements during its redirect-examination without calling the jailhouse witnesses, thereby depriving Applicant of the ability to cross-examine these witnesses about their credibility or problems with their statements. This Court finds this allegation must be denied and dismissed, as counsel made well-reasoned, strategic decision to open the door to the admission of these statements.

During the evidentiary hearing, counsel testified he made a deliberate strategic decision to open the door to these statements during the examination of Detective Burgess after thoroughly weighing the State's evidence, his investigation into all the witnesses (including the jailhouse witnesses), and his perception as to how the examination testimony of Detective Burgess was going before the jury. Counsel testified that prior to trial, he reviewed the witness statements with Applicant and Applicant similarly testified he had reviewed the statements with counsel. Counsel testified he and his investigator talked or attempted to talk to each jailhouse witness who had provided a statement implicating Applicant in Wingard's death. Counsel testified several of the jailhouse witnesses were local men who were known by law enforcement and one of the witnesses resided out of state. He testified based on his investigation, the out of state witness appeared like he would be a credible and beneficial witnesses for the State, and therefore, would not likely be helpful for the defense. He elaborated that this witness made threatening comments that Applicant should stop talking and he was not going to say anything beneficial to Applicant when testifying. Counsel testified one of the local witnesses was irate that counsel had tracked him down, demanded counsel leave his property, and indicated he would not be helpful to Applicant when testifying. Counsel testified only one witness indicated he might be helpful to Applicant's case and made comments referencing that law enforcement had planted the confessions with inmates. However, counsel testified this witness had credibility and hesitancy issues that did not make him an ideal witness for the defense. Counsel testified it would have been very hard and risky to prove that law enforcement had coached or helped fabricate the statements, particular when none of the rest of his investigation supported this theory of law enforcement collusion.

Additionally, counsel testified he listened intently to Detective Burgess's direct examination, which he described as not going well and Detective Burgess did not appear overly

credible before the jury. Counsel testified that at that point, he did a risk versus benefit analysis and determined he would intentionally and strategically question Detective Burgess about these statements to open the door to their admission so the State would seek to admit the statements without calling the informants. He testified this method of allowing the statements in through Detective Burgess deprived the State the opportunity to present these jailhouse informants as witnesses to offer additional information to corroborated or explain discrepancies between the statements, which was counsel's goal in opening the door. Counsel testified he specifically considered Applicant's constitutional rights, including his right to confront witnesses being presented against him, and any hearsay concerns when weighing his decision to open the door to these statements.

This Court finds counsel's testimony as to this allegation is credible, particularly in reference to his strategic reason for opening the door to the admission of the various statements through Detective Burgess. Moreover, this Court finds counsel made an objectively reasonable strategic decision to question Detective Burgess as to these statements and open the door to their admission after thoughtful consideration of the facts of the case, his full investigation (including of these particular witnesses), and observing Detective Burgess during direct examination. Therefore, this Court finds counsel's performance was not deficient. See Bowman v. State, 422 S.C. 19, 809 S.E.2d 232 (2018) (in a capital PCR action, the Supreme Court determined that it was reasonable trial strategy for counsel to open the door to otherwise inadmissible evidence, after counsel thoroughly weighed the benefits and risks and decided to proceed forward with the strategy of opening the door, and moreover, that the State's response once the door was opened was proportional and confined). Additionally, this Court notes that by introducing the statements through Detective Burgess rather than calling each witness individually, the State elected not to call these witnesses and therefore, was unable to rehabilitate the witnesses or afford them an

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opportunity to clarify or correct discrepancies between the statements and the evidence presented, which was the intended goal of counsel's strategic decision. Counsel's performance was not deficient.

Moreover, this Court notes that Applicant cannot establish any requisite prejudice, as the substance of these statements would have clearly been introduced at trial through the individual witnesses had the statements not come in through Detective Burgess. The prosecutors testified these witnesses would have been called as witnesses during Applicant's trial and they would have attempted to clear up any discrepancies or inconsistencies when each witness was testifying. Therefore, Applicant is unable to establish any resulting prejudice from counsel's strategic decision to open the door to these statements through Detective Burgess. This Court finds Applicant cannot establish any constitutional ineffective as to this allegation, which must be denied and dismissed with prejudice.

To the extent that Applicant has also raised an allegation of prosecutorial misconduct for introducing these statements through Detective Burgess rather than calling each witness individually, this Court rejects Applicant's claims of prosecutorial misconduct. Once the door was opened pursuant to counsel's strategic decision, the State merely introduced the statements and did not seek to otherwise call the witnesses or present other extrinsic evidence pertaining to these statements. The State's response to the opening of the door was measured and reasonable and simply does not arise to the level of prosecutorial misconduct. See State v. Page, 378 S.C. 476, 663 S.E.2d 357 (Ct. App. 2008) (recognizing that otherwise inadmissible evidence, including evidence that would typically violate the Confrontation Clause, can be admitted when the defense opens the door to such evidence). The State did nothing improper in introducing these statements through Detective Burgess once the door was opened by counsel's strategic decision. Moreover, these witnesses would have been called during the State's case and the

substance of their statements would have been presented to the jury. Therefore, this allegation must be denied and dismissed with prejudice.

Allegations pertaining to failure to call a soil expert or asking the jury to visit the crime scenes

Applicant alleges trial counsel was ineffective for failing to retain and present testimony from a soil expert to show the soil at Mikes Creek was reddish in color and not distinct from the soil at Songbird Lane. Applicant asserts various State's witnesses testified improperly that the soils were distinct, which the prosecutorial highlighted in her closing argument, and used this testimony to argue Applicant had gotten into an altercation with Wingard at Songbird Lane prior to dumping her body at Mikes Creek based on the red soil covering her body, clothing, and purse, as well as the reddish handprints on Patrick's car. Applicant argues counsel should have retained an expert to educate the jury as to the actual properties of the soil at each location.

In support of this allegation, Applicant presented testimony from John H. Thorp, a licensed South Carolina soil classifier who was admitted as an expert. Thorp testified he had visited the scene on Mikes Creek Road and the scene on Songbird Lane the day prior to his testimony (June 18, 2010), approximately seven-and-a-half years after the discovery of Wingard's body. He used technical terms to describe the soil at both locations, but ultimately agreed the soil at Songbird Lane was reddish in color. However, he disputed the characterizations of the soil at Mikes Creek as darker or fertile as it was described during Applicant's trial and noted he saw quite a bit of soil that was reddish hued at Mikes Creek. He testified that if he had been called as a witness at trial, he could have testified as to the particularities of the soil at each location. He testified as to various types of testing that also could have been conducted prior to trial to further classify the soil.

In response to this allegation, counsel testified he visited both scenes prior to Applicant's trial and the soil at Mikes Creek was substantially different in color than at Songbird Lane.

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Additionally, both prosecutors testified they visited Mikes Creek and Songbird Lane and confirmed the soil was noticeably different at the two scenes, with the soil at Mikes Creek being darker and brown in color compared to the reddish soil at Songbird Lane. Additionally, Respondent introduced several photographs of both locations, admitted as Respondent's Exhibits No. 1-7, which allowed this Court to view the soil at both locations near the time of Wingard's death.

Counsel also testified he cross-examined numerous witnesses about how common red soil was throughout the upstate and that red soil was not unique to the Songbird Lane area, which many witnesses acquiesced in response to his questioning. Additionally, counsel testified he did not want to overly focus on the soil issue, as he say it as a red herring that was not pertinent to the ultimate issues of the case. He also testified Wingard's killer was already linked to the Songbird Lane location because Wingard's cellphone, keys, purse, and car were all recovered at Songbird Lane.

After reviewing the record, the testimony of the witnesses at the evidentiary hearing, and the photographs of Songbird Lane and Mikes Creek taken near the time of Wingard's death, this Court finds counsel was not ineffective for failing to call a soil expert during Applicant's trial. Initially, this Court notes the descriptions given by the various witnesses during Applicant's trial and the closing by the State properly reflect the conditions of the soil at the time of Wingard's murder in December of 2010 and there is a noticeable difference between the soils at both locations—the soil at Mikes Creek is darker in color than the red soil at Songbird Lane based on the pictures of the locations, admitted as Respondent's exhibits. Applicant's soil analyst merely stated the hyper-technical terms for the color of the soil now in June 2018, early seven-and-a-half years following Wingard's murder, but his testimony ultimately would not have had any impact on Applicant's case.

Additionally, the record establishes counsel repeatedly, both in cross-examination of witnesses and during his closing, highlighted to the jury that essentially all of Cherokee County and the surrounding areas of the upstate are covered in red soil, thereby challenging the State's theory that the red soil on Wingard's body, purse, clothing, and the car somehow established the initial altercation and blows came while Applicant and Wingard were at Songbird Lane. This Court agrees with counsel's assessment that as the killer was already linked to the Songbird Lane area by other means, the any focus on the soil would not have had any impact on the verdict and would have been a red herring. The Court finds counsel was not deficient for not calling a soil classification expert as a witness during Applicant's trial.

Additionally, this Court finds that Applicant cannot establish any resulting prejudice, as Wingard's killer was already linked to the Songbird Lane scene through other evidence presented at trial, such as the location of the vehicle at approximately 2:20 a.m. near the trailer and the discovery of Wingard's keys, cell phone, and cell phone battery in the vegetation surrounding the trailer. Calling an expert on soil classification would have had no impact in defeating this other evidence linking the killer to the Songbird Lane area. This Court finds Applicant cannot establish any prejudice from counsel's failure to call a soil classification expert.

Additionally, to the extent Applicant argued counsel was ineffective for failing to request the jury physical visit both scenes so they could observe the color of the soil, this Court finds this allegation is without merit. As discussed above, the photographs introduced to the jury and available for the jury to view clearly show the color of the soil at both locations, making a trip to the scenes unnecessary. This allegation is denied and dismissed.

Allegations pertaining to failure to object or failure to move for a mistrial

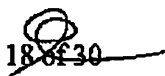
Applicant alleges counsel was ineffective for failing to sufficiently object throughout his trial, noting the lack of objections contained in the record and surmising that this is likely why a

non-merit Anders brief was filed by appellate counsel. Additionally, Applicant alleges trial counsel should have moved for a mistrial. However, Applicant failed to state specifically what counsel should have objected to, and the mere speculation that counsel's performance was deficient based on a bare assertion that he did not object at trial is not enough to establish either deficiency or prejudice. Similarly, Applicant's reliance on appellate counsel's filing of an Anders brief as proof of ineffectiveness is insufficient to establish any deficiency or prejudice. Similarly, Applicant has failed to establish when or why counsel should have moved for a mistrial, or that one would have been granted. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Allegations pertaining to failure to object or failure to move for a directed verdict

Applicant alleges counsel was ineffective for failing to move for a directed verdict at the close of the State's case, arguing this is standard motion that should always be made by competent defense counsel at the close of the State's case in a criminal trial. When questioned about this allegation, counsel testified he did not move for a directed verdict because he did not have any good faith basis to move for a directed verdict because the State had presented substantial circumstantial evidence establishing Applicant's guilt.

The standard for denial of a directed verdict and sending the case to the jury is whether the State has presented any direct or substantial circumstantial evidence tending to prove the guilt of the defendant when viewing the evidence and all reasonable inferences in the light most favorable to the State. State v. Pearson, 415 S.C. 463, 470, 783 S.E.2d 802, 806 (2016) (quoting State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)). Trial counsel is not deficient for failing to move to a directed verdict when the State has presented any substantial evidence, either direct or circumstantial, which tends to prove the guilt of the defendant. See Brown v. State, 307 S.C. 465, 468, 415 S.E.2d 811, 812 (1992) (trial counsel's failure to move for a directed verdict


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was not deficient performance which prejudiced petitioner, and the PCR judge correctly denied petitioners PCR application, where the State presented substantial evidence, either direct or circumstantial, which tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced).

This Court finds counsel was not ineffective for failing to move to a directed verdict, as the State had presented substantial circumstantial evidence Applicant killed Wingard. The record establishes Applicant was the last person to see Wingard and had been feuding with Wingard and her new girlfriend on December 1st and December 2nd, Applicant's semen was found in Wingard's mouth despite testimony from numerous witnesses that they two were no longer romantically involved, Applicant could not be excluded as a contributor to DNA mixtures found in numerous locations at Mikes Creek near Wingard's body, fibers from boots of the same type as Applicant's Wolverine boots were discovered near the body, and numerous witnesses provided statements that Applicant confessed to killing Wingard. Clearly there was substantial circumstantial evidence tending to prove the guilt of Applicant when viewing the evidence and all reasonable inferences in the light most favorable to the State. Therefore, this Court finds counsel was not deficient for failing to move for a directed verdict, and moreover, Applicant cannot establish any prejudice because any directed verdict motion would have been denied by the trial court. Therefore, this allegation must be denied and dismissed with prejudice.

Allegations pertaining to failure to present evidence of heat of passion or mitigation, failure to move for a jury instruction on the lesser-included offense of voluntary manslaughter, and failure to object to the jury instruction based on Belcher

Applicant alleges trial counsel was ineffective for failing to present evidence of heat of passion or mitigation and for failure to request a jury instruction on the lesser-included offense of voluntary manslaughter. At the evidentiary hearing, Applicant failed to present any evidence that

there was a struggle or altercation between Applicant and Wingard that led to her death that could or should have been presented during his trial.

When questioned about this allegation, counsel testified he made a strategic decision not to present any evidence of a struggle for two reasons: first, Applicant told him that he did not kill Wingard, not that the killing was somehow justified; and second, that because his defense was that Applicant was not the killer, it would be incongruent to also present evidence that there was some sort of struggle or altercation between Applicant and Wingard that led to her death. Additionally, Counsel testified he discussed this with Applicant and both agreed as strategy not to request the lesser-included of voluntary manslaughter because they believed, after listening to all the evidence presented, that the jury might split the difference and convict him of voluntary manslaughter rather than acquit him of murder if the jury believed the State had not proven its case. Additionally, counsel testified because no evidence was presented as to heat of passion, Applicant would not have been entitled to a voluntary manslaughter instruction.

This Court finds counsel's testimony on this issue credible. Moreover, Applicant failed to introduce any evidence of heat of passion to this Court. This Court finds counsel was deficient for failing to present evidence of heat of passion or a struggle in mitigation, as he was not presented with any such evidence. Moreover, since no such evidence was presented, any request for a jury instruction on the lesser-included offense of voluntary manslaughter would have been denied. See Cook v. State, 415 S.C. 551, 556, 784 S.E.2d 665, 667 (2015) (internal citations omitted) ("The trial court must determine the law to be charged based on the evidence at trial. When the record contains no evidence to support it, a voluntary manslaughter jury charge should not be given.")

Applicant also argues counsel was ineffective for failing to object to the trial court's instruction that malice could be implied from the use of a deadly weapon pursuant to State v.

Belcher, 385 S.C. 597, 685 S.E. d 802 (2009) (holding the jury could not be instructed to infer malice from use of weapon if evidence was presented that would reduce, mitigate, excuse, or justify homicide). See ROA 680 ("Now, the law says that if one intentionally kills another one with a deadly weapon, the implication of malice may arise. If facts are proven beyond a reasonable doubt sufficient to raise the inference of malice to your satisfaction, this inference would simply be an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in this case, and you may give it such weight as you determine it should receive.") However, because no such evidence of mitigation was introduced, there is nothing objectionable about the court's implied malice from the use of a deadly weapon charge and Belcher was not violated.

Allegation pertaining to failure to properly present and advise Applicant of plea offers

In his application, Applicant alleged counsel was ineffective for failing to properly present and advise Applicant as to all plea offers made by the State. However, the uncontroverted testimony presented at the evidentiary hearing established Applicant did not want to plead guilty, but rather, wished to maintain his innocence and proceed to trial. Both Counsel and Applicant testified this, and both confirmed that counsel had properly conveyed plea offers and Applicant rejected these offers. At the conclusion of the hearing, Applicant conceded there was no basis for relief as to this allegation. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Allegations pertaining to the State's closing argument

Applicant alleges the prosecutor made several objectionable comments during her closing argument, which amounted to prosecutorial misconduct, and that counsel was ineffective for failing to object to these comments. The following passages from the State's closing argument were highlighted by Applicant as improper:

"When Joey Clark was in jail he confessed to fellow inmates that he killed Winter Wingard. He confessed to people in the cell block with him that he killed her. 'I stabbed her. She was butchered.'" (ROA 624 lines 19-22).

"So investigators worked and worked and worked to find the truth. They didn't know who it was. They didn't even know who she was. This wasn't a plan to pin something on someone. This was an investigation to do their job and they did it very well and to find the truth." (ROA 626 lines 5-9).

"Detective Henson did a fantastic job and Cherokee County should be glad to have he and Billy Anthony as their crime scene investigators. When Detective Henson went out to that body, not knowing anything about anything, he knew that when he was moving towards the body he bumped into briars and the tree limb. And he said if I did, the killer may have, and so he took those. And lo and behold 99 percent of the population would be excluded as possible contributors to DNA left on the briar and tree limb. You know who is not excluded out of 99 percent of the population? That man right there, the one that we know was the last one with her, the one that didn't want her leaving, the one whose dirty hand print, palm print is on that vehicle. His DNA is at the scene. The fibers from his boots are on the wire, and he confessed." (ROA 633 lines 1-15).

"Common sense, who is going to put the keys in the backyard of [REDACTED]? But you know what? You just killed somebody and things are probably going to get a little haywire in your mind, I would think. Oh, gosh, I got out of the car. I got these keys. Its pitch black. I got to get back to the house. Throw them out, and that's where they're found, because he had to get back, because he had to tell Beverley she went to cigarettes and tell her Anna Mooney about it." (ROA 633 line 22-634 line 4).

Applicant claims these passages amount to vouching for the credibility of the law enforcement officers or are not supported by the record.

"Solicitors may not vouch for a witness's credibility, as doing so improperly invades the province of the jury and places the government's prestige behind the witness. Thus, solicitors must confine their closing remarks to the record and the reasonable inferences that may be drawn therefrom. Tappeiner v. State, 416 S.C. 239, 250, 785 S.E.2d 471, 477 (2016) (internal citations omitted). "A review of a solicitor's closing argument is based upon the standard of whether his

comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury. The argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom." Von Dohlen v. State, 360 S.C. 598, 609-10, 602 S.E.2d 738, 744 (2004) (internal citations omitted).

After reviewing the above passages in conjunction with a thorough review of the record as a whole, including the entire closing argument, this Court finds the State's closing argument was proper. The State did not put its prestige behind the law enforcement witnesses but rather, reviewed the thorough investigation undertaken by law enforcement that established Applicant's guilt. Additionally, the argument was properly confined to the record and reasonable inferences from the record, did not vouch for the credibility of the witnesses, and was not calculated to arouse the passions or prejudices of the jury. Therefore, the allegations alleging prosecution misconduct related to these passages of the closing argument must be denied. Additionally, as the State's closing argument was proper, this Court finds counsel cannot be deficient for failing to object. Therefore, this allegation must be denied and dismissed with prejudice.

Allegations Pertaining to Failure to Have Various Items Tested

Applicant alleges the State committed prosecutorial misconduct for failing to perform DNA testing on fingernail clippings collected during Wingard's autopsy, a knife recovered from Applicant when arrested, and cigar tips and wrappers found at Songbird Lane. Applicant similarly alleges trial counsel was ineffective for failing to request these items be tested or for failing to have the items tested himself.

Initially, this Court notes Applicant did not perform DNA testing on any of these items, and therefore, it is speculative what evidence, either beneficial or harmful to Applicant's case,

could have been yielded from testing. Cf. Bagwell v. State, 410 S.C. 259, 763 S.E.2d 630 (Ct. App. 2014) (granting PCR where applicant introduced DNA test results indicating blood found on three pieces of glass recovered from the victim's glass patio door did not match applicant to support his allegation that counsel was ineffective for failing to conduct DNA testing on the glass). As Applicant has failed to have any items tested, any argument as to what the results would have been would be improper and speculative. Therefore, this Court finds Applicant cannot establish any resulting prejudice.

Moreover, the record establishes the knife was tested and once it was determined that there was no blood present on the knife, there was no need for further testing. Counsel testified he did not move for testing of the fingernail clippings because Applicant and Wingard lived together and he alleged they had recently engaged in sexual acts, and therefore, he expected to find Applicant's DNA on her body, including her fingernails. Therefore, he strategically did not move for DNA testing of fingernails because likely would have helped State if DNA was present. Therefore, this Court finds Applicant cannot establish any deficiency of counsel.

Additionally, this Court finds Applicants allegations that the state committed prosecutorial misconduct by not testing these items is without merit, as the State has no duty to perform DNA testing on every piece of evidence collected. The record reflects a large number of items were sent to SLED for testing, which was confirmed by the prosecutors and counsel. The State was not derelict in its testing of evidence collected. This allegation must be denied and dismissed with prejudice.

Allegations Pertaining to Failure to Call a DNA Expert

Applicant asserts counsel was ineffective for failing to present testimony from a DNA expert to counter the testimony presented by SLED DNA Analyst Catherine Leisy. In support of this allegation, Applicant presented testimony from DNA expert Meghan Clements, who testified

she had reviewed the underlying DNA data, the testimony of Analyst Leisy, and the notes from Dr. Demers (the DNA analyst counsel retained and consulted with, but ultimately did not call as a witness at trial). At the evidentiary hearing, Clements testified that if she had been called as an expert witness at Applicant's trial, she would have been able to provide beneficial testimony on a variety of topics, including: how DNA is transferred from person to person and place to place; how Applicant's DNA could have been transferred to various areas of Mikes Creek based on the semen in Wingard's mouth; provide a better explanation to the jury as to what "small" meant when discussing DNA; provide hypotheticals as to how three people's DNA could be on a sample; and provide better explanation of the DNA statistics presented by the State, particularly as to the inability to exclude Applicant as a contributor to DNA mixtures. Applicant alleges that Dr. Demers, or another expert such as Clements, should have been presented at his trial and counsel's decision not to call an expert amounts to ineffective performance.

When questioned about this allegation, Counsel testified he moved for funds to hire and subsequently hired a DNA expert, Dr. Demers, with whom he spent hours communicating by phone and by email prior to trial. Counsel testified Dr. Demers reviewed all of the underlying DNA data, spoke with the SLED analyst on the phone, and then crafted specific questions for counsel to aid counsel in his cross-examination of the State's DNA expert. Counsel testified he was able to elicit very favorable testimony from the State's own expert, including regarding secondary transfer, the incredibly small amount of DNA on numerous items, possible third contributors, the need to amplify the DNA numerous and the pitfalls associated with such amplification, alternative theories as to how Applicant's DNA could have been at Mikes Creek without him being present, and the inability to test many items due to such small samples. The record establishes counsel was able to elicit this testimony on cross-examination. Counsel testified that following his cross-examination of Analyst Leisy, he called Dr. Demers and

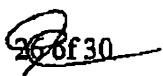
reviewed the information he elicited from the State's DNA expert. He testified he and Dr. Demers agreed he had elicited beneficial testimony from the State's expert and there was no need to call Dr. Demers as a defense witness, particularly since he would be subject to cross-examination from the State. Counsel also testified it is always better when you can elicit favorable testimony from the State's own witness without having to call your own witness, and since he was able to do so here, he made a strategic decision not to present Dr. Demers.

This Court finds counsel's testimony credible as to this allegation. Counsel properly retained and consulted with a DNA expert numerous times who helped prepare and shape his cross-examination of the State's DNA expert. The record reveals counsel was able to elicit favorable testimony from the State's own expert, thereby negating the need to call a defense expert subject to cross-examination from the State. This Court finds counsel's decision not to call Dr. Demers was a reasonable strategic decision.

Additionally, this Court finds Applicant failed to meet his burden of establishing any prejudice, as the testimony from Clements was ultimately consistent with the testimony counsel was able to elicit from the State's DNA expert. The testimony from Clements would not have had any impact on the jury's verdict. Therefore, this allegation must be denied and dismissed with prejudice.

Allegations pertaining to counsel's failure to move to be relieved following threats

Applicant alleges counsel was ineffective for failing to move to be relieved after Applicant threatened him. However, at the evidentiary hearing, both counsel and Applicant testified they had a good working relationship. Counsel denied Applicant made any threats against him and Applicant failed to produce any credible evidence to support such threats. This Court finds Applicant has failed to meet his requisite burden of proof and this allegation must be denied.

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Allegation pertaining to failure to move for a change of venue

Applicant asserts counsel should have moved for a change in venue due to pre-trial publicity in Cherokee County and his failure to do so amounts to constitutionally ineffective assistance of counsel. Applicant failed to present any evidence that he was unable to receive a fair trial in Cherokee County due to excessive publicity.

"[T]he right to a fair trial guarantees to the criminally accused a fair trial by a panel of impartial, indifferent jurors." Irvin v. Dowd, 366 U.S. 717, 722 (1961). A venireman must be indifferent as he stands unsworn and his verdict must be based upon the evidence developed at the trial. Id. at 722. However, there is no requirement that the jurors be totally ignorant of the facts and issues involved in a case, particularly in light of the "swift, widespread, and diverse methods of communication" existing in the modern world. Id. "To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard." Id. at 723. Neither the United States Supreme Court nor this Court had ever adopted such an unrealistic or stringent standard that mere exposure to pre-trial publicity disqualifies potential jurors.

Rather, our Supreme Court has held that "[m]ere exposure to pretrial publicity does not automatically disqualify a prospective juror. Instead, the relevant question is not whether the community remembered the case, but whether the jurors had such fixed opinions that they could not judge impartially the guilty of the defendant." State v. Evins, 373 S.C. 404, 414, 645 S.E.2d 904, 909-10 (2007) (quoting Sheppard v. State, 357 S.C. 646, 655, 594 S.E.2d 462, 468 (2004))). The moving party bears the burden of establishing actual juror prejudice as a result of such pre-trial publicity. State v. Manning, 329 S.C. 1, 8, 495 S.E.2d 191, 194 (1997). When a motion for a change in venue is made based on pre-trial publicity, the preferred practice is to postpone ruling

on the motion until the jury panel is voir dired to determine what prejudice, if any, exists. Id. (citing State v. Easler, 322 S.C. 333, 417 S.E.2d 745 (Ct. App. 1996), affirmed as modified, 327 S.C. 121, 489 S.E.2d 617 (1997)).

This Court finds Applicant has failed to establish a motion for a change of venue would have been granted had counsel so moved. Counsel testified there were no pretrial publicity concerns that caused him to believe Applicant could not be fairly tried by a jury of his peers in Cherokee County and that he had searched for news about the case so that he would be aware of any publicity concerns. Additionally, the trial court questioned potential jurors during jury selection, and again during each new day of the trial, and no juror indicated they were biased or predisposed to Applicant's case. Applicant has failed to present any evidence that the jurors were untruthful in their responses to the court's questioning or that he was otherwise deprived of his right to a fair trial in Cherokee County. Therefore, this Court finds Applicant has failed to meet his requisite burden of proof and this allegation must be denied.

Allegation pertaining to failure to strike a juror present during Applicant's polygraph examination

In his application, Applicant alleged counsel was ineffective for failing to strike a juror who was present during his polygraph examination. However, Applicant failed to present any evidence to support this claim. Therefore, Applicant has failed to meet this requisite burden of proof. This Court finds this allegation must be denied and dismissed with prejudice.

Allegation pertaining to failure to object to the excessive use of graphic photographs

Applicant alleges counsel failed to object to the introduction of an excessive amount of graphic photographs that were introduced during trial. However, Applicant failed to point to any specific photographs that were introduced as prejudicial or otherwise present argument as to how he was prejudiced by the photographs introduced at trial.

Counsel and the prosecutors testified that hundreds, if not thousands, of pictures were taken, including of the crime scene, but that the State specifically selected only certain pictures necessary to prove their case and did not needlessly introduce excessively gruesome photographs. This Court finds this testimony credible and finds Applicant has failed to meet his requisite burden of establishing any ineffectiveness of counsel regarding the photographs introduced at trial. Therefore, this allegation must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds Applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 24th day of August, 2018.

R. D. Knie

GRACE GILCHRIST KNIE
Presiding Judge
Seventh Judicial Circuit

August 24, South Carolina

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CLERK OF COURT
CHEROKEE COUNTY, S.C.

2018 AUG 29 PM 2:41

BRANDY W. MCBEE

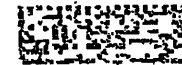
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After 5 Days Return To:
Mrs. Brandy W. McBee
Clerk Of Court, Cherokee County
Post Office Drawer 2289
Gaffney, S.C. 29342

SC Attorney General's Office
ATTN: PCR Division
PO Box 11549
Columbia, SC 29211-1549

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CLERK OF COURT
CHEROKEE COUNTY, S.C

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Post Office Drawer 2289
Gaffney, S.C. 29342

Joel F. Stroud
PO Box 516
Chesterfield, SC 29709

**PROOF OF SERVICE OF A NOTICE OF APPEAL/PETITION FOR
CERTIORARI IN A PCR CIVIL CASE
THE STATE OF SOUTH CAROLINA IN THE SUPREME COURT**

APPEAL FROM CHEROKEE COUNTY
COURT OF COMMON PLEAS PCR EVIDENTIARY HEARING

HON. GRACE GILCHRIST KNIE, PCR PRESIDING CIRCUIT COURT
JUDGE

CASE NO. 2016 – CP – 11 – 0509

Joey Lynn Clark,

PCR Applicant,

v.

State of South Carolina,

Defendant.

**PROOF OF SERVICE OF A NOTICE OF APPEAL/PETITION FOR
CERTIORARI
BASED UPON AN ORDER OF DISMISSAL FROM A PCR
EVIDENTIARY HEARING**

The undersigned attorney hereby certifies that a true copy of the Notice of Appeal/Petition for Certiorari in the above-referenced case has been served upon opposing and anticipated counsel to the proper addressees, and to the Cherokee County Clerk of Court, by mailing the documents with postage prepaid on **September 04, 2018**.

Date Signed: Signature and Printed Name of: Joel Stroud, PCR Attorney for Joey Clark
SC Bar No. 73797 PO Box 516, Chesterfield, SC 29709

Anticipated Appellate Counsel of Record SCCID PO Box 11433 Columbia, SC 29211-1433

Other Counsel of Record: Megan Harrigan Jameson, Post-Conviction Relief Division
S.C. Attorney General's Office

**NOTICE OF APPEAL/PETITION FOR CERTIORARI IN A PCR CIVIL
CASE**

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas, PCR Hearing

The Hon. Grace Gilchrist Knie, Presiding Circuit Court Judge

Case No. 2016 – CP – 11 – 0509

Joey Lynn Clark, SCDC
Number: 187595

PCR Applicant,

v.

State of South Carolina,

Respondent/
Defendant.

NOTICE OF APPEAL/PETITION FOR CERTIORARI

Joey Lynn Clark seeks appellate review of the PCR Order of Dismissal issued by the Presiding Judge, The Honorable Grace Gilchrist Knie, **dated August 24, 2018 and filed on August 29, 2018** by the Cherokee County Clerk of Court. **See Enclosed Order of Dismissal and Proof of Service.**

Tuesday, September 4, 2018 Signature and Printed Name of the PCR Attorney

Joel Stroud, PCR Attorney for Joey Clark: SC Bar No. 73797 PO Box 516
Chesterfield, SC 29709

**Anticipated Appellate Counsel of Record: Office of Indigent Counsel, Appellate Division
SCCID PO Box 11433 Columbia, SC 29211-1433 Telephone: 803-734-1343**

**Other Counsel of Record: Megan Harrigan Jameson, Senior Assistant Deputy Attorney
General Post-Conviction Relief Division S.C. Attorney General's Office**



ATTORNEY JOEL STROUD
JOEL F. STROUD, ATTORNEY, PLLC
PO Box 516 Chesterfield, SC 29709
stroudlaw@shtc.net
South Carolina Bar Number: 73797

Tuesday, September 4, 2018

Attention: Ms. Paula Murdoch:
Legal Services Coordinator
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11433
Columbia, SC 29211 – 1433

Re: Notice of Appeal/Petition for Certiorari
PCR Order of Dismissal Joey Lynn Clark
Case Number: 2016 – CP – 11 – 0509 SCDC Number: 187595

Dear Ms. Murdoch:

My client, Mr. Joey Lynn Clark, seeks appellate review of the denial of his post – conviction relief evidentiary hearing. Mr. Clark's evidentiary hearing was held on June 19 – 21, 2018 at the Spartanburg County Court House.

The Order was signed by the Hon. Grace Gilchrist Knie on August 24, 2018.

The Order of Dismissal was filed at the Cherokee County Courthouse on August 29, 2018 by the Cherokee County Clerk of Court.

I am enclosing the Order of Dismissal, the Notice of Appeal/Petition for Certiorari, and the Proof of Service

I have also sent correspondence to the South Carolina Supreme Court, South Carolina Atty. Gen.'s Office and to the Cherokee County Clerk of Court advising of Mr. Clark's intent to seek appellate review/petition for certiorari.

If you have any questions, please email.

Sincerely,

Joel Stroud

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP1100509

Joey Lynn Clark #00187595

State Of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☒ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court;

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/ Grace Gilchrist Knie
Circuit Court Judge

2760
Judge Code

08/29/2018
Date

For Clerk of Court Office Use Only

This judgment was entered on 8/29/18, and a copy mailed first class or placed in the appropriate attorney's box on 8/29/18, to attorneys of record or to parties (when appearing pro se) as follows:

Joel Flake Stroud
PO Box 516
Chesterfield, SC 29709

Alan McCrory Wilson
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Brandy W. McBee

Court Reporter

Brandy W. McBee - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2018 AUG 29 PM 2:29
BRANDY W. MCBEE