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| **STATE OF SOUTH CAROLINA** | ) | **IN THE COURT OF GENERAL SESSIONS FOR THE FIFTEENTH CIRCUIT** |
| **COUNTY OF HORRY** | ) | |
| **STATE OF SOUTH CAROLINA** | ) | **MOTION TO DISMISS** |
| **v.** | ) | **Indictment No.'s: 2002GS2602765, 2002GS2600772** |
| **Gary Wayne Bennett** | ) | |
| **Defendant.** | ) | **Charges: Murder, Armed Robbery** |

**YOU WILL PLEASE TAKE NOTICE** that Defendant, Gary Wayne Bennett, through his undersigned counsel, hereby moves for an order dismissing the above-captioned indictments based upon the State of South Carolina's destruction of evidence and failure to comply with the holdings in *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny.

Specifically, the State of South Carolina (hereinafter "the State"), including employees of the Fifteenth Circuit Solicitors Office and the Horry County Police Department, have engaged in a pattern of systematic misconduct related to this case that spans nearly 20 years. Defendant's charges stem from the 2000 murder of Eva Marie Martin.

From the early investigation of this case to the present, the State has committed the following misconduct:

- Engaged co-defendant Andrew Lindsay to meet with his wife in an interrogation room at the Horry County Police Department, where he had sex with his wife and confessed to the above-mentioned crimes;
- Made a video recording of the above-mentioned sex act and confession;
- Concealed the occurrence of the above-mentioned sex act and confession from the Defendant;
- Concealed the existence of the videotape containing the sex act and confession from the Defendant;

- Misled Defense Counsel and the Court about the occurrence of the sex act and confession;
- Misled Defense Counsel and the Court about the existence of the videotape containing the sex act and confession;
- Destroyed and failed to preserve the videotape containing the sex act and confession of Andrew Lindsay.

Defendant cannot receive a fair trial now nor at any time in the future, and cannot be afforded due process of law pursuant to the Fourteenth Amendment of the United States Constitution and Article I Section 3 of the South Carolina Constitution, because of the destruction of evidence and the cumulative effect of the misconduct committed by the State in this case. Furthermore, Defendant's trial cannot proceed without the missing videotape containing the sex act and confession of Andrew Lindsay.

Therefore, in the face of the past and ongoing prosecutorial misconduct described herein, it is incumbent on this Honorable Court to exercise its supervisory powers and dismiss the above-captioned indictments. Defendant relies upon the following in support of this Motion:

## BACKGROUND AND PROCEDURAL HISTORY

Eva Marie Martin was killed in her home on May 23, 2000. Shortly thereafter, the co-defendant in this case, Andrew Lindsay, fled the State of South Carolina to Arizona. Detectives with the Horry County Police Department located Lindsay in Arizona and extradited him back to Horry County on July 20, 2000 in connection with Eva Marie Martin's murder. The videotaped evidence that is the subject of this motion was recorded on July 24, 2000 at the Horry County Police Department upon Lindsay's arrival.

Ten (10) days later, on August 4, 2000, Defendant and his co-defendant, Andrew Lindsay, were arrested and charged with the murder and armed robbery of Eva Marie Martin. Prior to Defendant's trial, Lindsay gave several conflicting recorded statements to police regarding his and

Defendant's involvement in the murder and armed robbery of Eva Marie Martin. Defendant maintained his innocence and produced an alibi. Ultimately, Defendant was tried, alone, for the above-referenced indictments.

At Defendant's trial, Lindsay's testimony was the *only* evidence presented to sustain Defendant's conviction. Notably, in his opening statement at Defendant's trial, Fifteenth Circuit Solicitor Steve Kodman conceded that Lindsay's testimony was the only evidence the State possessed, stating to the jury:

> "Now, I'm going to be upfront with you. What are you not going to hear? We don't have any physical evidence in this case. You're not going to have any. Does that mean the police didn't do their job in this case? No, it doesn't. Was physical evidence gathered? Yes, it was, but not in every case does physical evidence lead to suspects. What we do have in this case is an eye witness, the co-defendant, Andrew Lindsay, and I'll also tell you up front that Andrew Lindsay is no model citizen. You and I probably wouldn't invite Andrew Lindsay over for dinner at our house tonight."
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> August 14, 2002 Transcript, p. 67/12-23 (Exhibit A).

Lindsay accepted a plea deal to Accessory After the Fact in exchange for his testimony against Defendant at trial. At trial, Lindsay testified that he was present in the victim's kitchen and using the victim's telephone while Lindsay overheard Defendant killing the victim in her bedroom. Defendant was convicted of murder and armed robbery on August 14, 2002.

Defendant appealed his conviction, alleging that the trial judge erred when ruling that the jury was not permitted to hear impeaching evidence of Lindsay's prior murder conviction at Defendant's trial. Lindsay was convicted of murdering a woman in the State of Illinois in 1990. Defendant's appeal of this impeachment issue was heard by the South Carolina Court of Appeals, who determined that the trial judge erred and the jury should have heard details of Lindsay's prior

murder conviction. However, the South Carolina Court of Appeals did not overturn Defendant's conviction, holding that the trial judge's error was harmless pursuant to South Carolina law. Consequently, Defendant's conviction was sustained on March 17, 2005.

Defendant subsequently petitioned the Court for Post-Conviction Relief based on ineffective assistance of counsel. The Honorable Judge Culbertson granted Defendant Post-Conviction Relief on August 14, 2014, finding that counsel was ineffective for 1) failing to attack the credibility of the co-defendant, Lindsay, with other evidence in addition to his prior murder conviction, 2) failing to meet with Defendant and review discovery until the day of trial and failing to conduct any investigations to challenge the State's case, 3) failing to either object to non-disclosed incomplete Verizon phone records or utilizing the records to impeach Lindsay, and 4) failing to investigate possible alibi witnesses listed in discovery material provided by the State. The South Carolina Court of Appeals affirmed Judge Culbertson's Order for Post-Conviction Relief in February 2016 when it denied the State's Petition for Writ of Certiorari.

On May 5, 2016, Defendant was appointed counsel for his retrial. However, the State failed to prosecute Defendant's case or produce complete discovery, and appointed counsel failed to investigate on behalf of Defendant, for nearly one year. As a result, the undersigned counsel took Defendant's case *pro bono* in June 2017. Since June 2017, through her independent investigation of this case, the undersigned counsel has discovered gross misconduct by the Horry County Police Department and malicious prosecution by the Fifteenth Circuit Solicitors Office that the State concealed from Defendant while Defendant's charges were pending, during his first trial, during his appeal, and during his PCR proceedings.

In addition, since June 2017, the Fifteenth Circuit Solicitors Office engaged in willful blindness and misled the undersigned counsel and the Court in an effort to conceal the past

misconducts of the State. Notably, when Defendant petitioned this Honorable Court and requested for the State to test the physical evidence in his case for DNA, he was met with considerable opposition from the State that lasted over a year. Moreover, when the DNA evidence was finally tested pursuant to a court Order, both SLED and Defendant's independent expert concluded that Defendant's DNA was *not* present on any items of evidence when compared to the multiple partial DNA profiles that SLED collected.

Defendant has been incarcerated and awaiting retrial of the above-referenced indictments since August 14, 2014.

## STATEMENT OF FACTS

On July 24, 2000, Detective George Merritt of the Horry County Police Department, who is now deceased, directed then-murder suspect Andrew Lindsay to meet with his then-wife, Tera McDermott, in an interrogation room at the Horry County Police Department M.L. Brown Building. June 15 Transcript, p. 20/11-21/5 (Exhibit B). In addition to being the co-defendant's wife, McDermott was the god-daughter of Captain Guy Osborne of the Horry County Police Department, who was Detective Merritt's superior at the time. She was also the daughter of a well-known Myrtle Beach Police Officer, Chuck Strawhorn.

While in the interrogation room, Lindsay confessed to the murder of Eva Marie Martin. Specifically, Lindsay confessed to McDermott that he raped the victim and slit the victim's throat. Immediately afterwards, McDermott mounted Lindsay, who was restrained in a chair and wearing an orange jumpsuit, and had sex with him in the interrogation room. June 15 Transcript, p. 25/3-7 (Exhibit C). The interaction between Lindsay and McDermott was recorded. *See*, Affidavit of Tera McDermott (Exhibit D).

Officer Paul Partin, who was an Horry County Police Officer at the time, was asked to make video recordings of the July 24, 2000 interviews in this case. June 15 Transcript, p. 36/3-9 (Partin's June 15 Testimony attached hereto as Exhibit E). Detectives with the Horry County Police Department instructed Partin to make two videos – one of Lindsay and McDermott alone, and a second video of the investigators' interview with Lindsay. Two 8-millimeter tapes were used. June 15 Transcript, p. 39/20-24 (Exhibit E).

After setting up the equipment and starting the recording, Partin left the area where the interviews took place. June 15 Transcript, p. 37/22-25 (Exhibit E). When Partin returned after the first interview was over, the detectives who were present told him that Lindsay and McDermott had sex in the interview room. Thereafter, Partin removed the tape of Lindsay and McDermott from the recorder and inserted a blank tape to start recording the interview between Lindsay and investigators. June 15 Transcript, p. 39/9-21 (Exhibit E).

As such, Lindsay's confession and sex act were recorded on the first 8-millimeter tape that Partin set up, and an interview between Lindsay and investigators was recorded on the second tape that Partin set up. After both interviews, Partin labeled each tape and completed an evidence chain of custody sheet. June 15 Transcript, p. 40/15 – 41/5 (Exhibit E). Partin then entrusted the labeled videotapes and chain of custody sheet with Detective Merritt, who was the lead investigator on this case. June 15 Transcript, p. 45/3-10 (Exhibit E). (Partin's chain of custody sheet attached hereto as Exhibit F).



Defendant was unaware of the interaction between McDermott and Lindsay and the existence of these videotaped interviews when Defendant's charges were pending, during his first trial, during his appeal, and during his PCR proceedings. Defendant's counsel was unable to

discover the existence of the videotaped exculpatory evidence until after post-conviction relief had been granted on unrelated grounds.

In response to discovery requests related to the retrial of Defendant's case, Defendant received edited versions of the video recordings that did not contain the meeting between McDermott and Lindsay. The edited versions were of poor quality and in a digital format. Defendant's Counsel then requested to view the original tapes in person. June 15 Transcript, p. 41/20-42/3 (Exhibit E).

When Defendant's Counsel viewed the recordings in person at the Fifteenth Circuit Solicitors Office, the State provided versions of the recordings that were on VHS tapes. These VHS tapes contained edited versions of the same interview that repeated multiple times, and had 47 minutes of additional content that was intentionally excluded from the digital version. June 15 Transcript, p. 42/4-9 (Exhibit E). Neither the digital copy produced nor the VHS tapes at the Fifteenth Circuit Solicitors Office contained footage of Lindsay and McDermott alone.

When Defendant's Counsel informed the Assistant Solicitor that chain of custody sheets referenced 8-millimeter tapes, and further requested to view the original 8-millimeter tapes, the State provided Defendant with another digital copy of what was purported to be copies of the two original 8-millimeter tapes recorded on July 24, 2000. This new digital version was exactly the same as the VHS versions, except the beginning of one of these tapes showed McDermott and Lindsay in an interrogation room alone and kissing each other goodbye. June 15 Transcript, p. 42/3-43/4 (Exhibit E).

Defendant's Counsel, the Assistant Solicitor, and Partin later met at Coastal Carolina University to view the original 8-millimeter tapes. At that time, Partin made it clear to Defendant's

Counsel and the Assistant Solicitor that, although the Assistant Solicitor had the original 8-millimeter tape cases with his signature on them, the footage on the tapes was not what he recorded on July 24, 2000. June 15 Transcript, p. 55/4-14 (Exhibit G). Partin further informed the Assistant Solicitor and Solicitors Office Investigator, Ginger Pop, that the tapes the State repeatedly produced to Defendant's Counsel in 2017 and 2018 were not the original tapes that he recorded on July 24, 2000.

Partin also made it clear that he had told the Assistant Solicitor and Investigator Pop, in detail, about his involvement in recording the interview between Lindsay and McDermott and about his knowledge of the recorded sex act. Despite learning this information from Partin, Investigator Pop failed to address the discrepancies in her investigative notes or reports that were produced to Defendant's Counsel in discovery. June 15 Transcript, p. 55/15-56/4 (Exhibit G). Specifically, Investigator Pop's report, dated March 6, 2018, purported to Defendant's Counsel that Partin merely set up equipment and did not have any knowledge as to what he recorded. (Supplemental Report of Ginger Pop attached hereto as Exhibit H).

Furthermore, the Assistant Solicitor, after speaking to Partin at length one week earlier, misrepresented to this Honorable Court at a hearing on March 16, 2018, that: 1) Partin made two videotapes; 2) the State located the videotapes that Partin made; and 3) the State produced the original 8-millimeter tapes for Defendant's Counsel. March 16 Transcript, p. 7/1 – 8/1. (Assistant Solicitor's March 16 Testimony is attached hereto as Exhibit I).



The Assistant Solicitor also misrepresented to the Court that she had spoken to every person who was connected to the interviews and that there was no recording that involved only McDermott and Lindsay:

> We have sought out each individual that is still with us that had anything to do with that interview. Each person said they never saw a tape, never saw any sort of tape that involved just conversations between Andrew Lindsay and his wife… We have two tapes, they both have Paul Partin's markings on them and signature. We have converted them into CDs and handed those over. That is all we have and we've handed that over.
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> March 16 Transcript, p. 8/1-12 (Exhibit I).

At the March 16, 2018 hearing, after the Assistant Solicitor informed the Court that she had spoken with *everyone* involved in the interviews and that there was no tape that involved only Lindsay and McDermott, the Assistant Solicitor referenced "two sheets of paper" that the Horry County Police Department Internal Affairs Investigator, Don Causey, brought to the hearing. March 16 Transcript, p. 11/13-18 (Exhibit I). The "two sheets of paper" documented the written reprimand of Detective Merritt, and specifically referenced the recording of the sex act between Lindsay and McDermott at the ML Brown Building on July 24, 2000.

The Assistant Solicitor thereafter informed the Court that she had spoken to Investigator Causey, that her analysis was that the "two sheets of paper" were *Giglio* material, but that she did not want to view them herself:

> MS. LIVESAY: And, Your Honor, actually, if [Defendant's Counsel] wants to view it, she can. I do not want to view it. I don't think -- from what he's told me, it's *Giglio*, so it would be inappropriate, but I'm fine with her viewing it.
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> March 16 Transcript, p. 11/23 – 12/1 (Exhibit I).



Following the March 16, 2018 hearing, the Fifteenth Circuit Solicitors Office produced the "two sheets of paper" to Defendant's Counsel, which stated that Detective Merritt had received a written reprimand on July 31, 2000 for observing Lindsay have sex with McDermott in the M.L. Brown Building interrogation room on July 24, 2000 without interrupting, stopping, or exercising corrective action. In part, the written reprimand states:

> On July 24, 2000, you were present and did observe an incarcerated murder suspect have sexual intercourse with his wife in a Horry County Police interview/interrogation room. That you did have personal knowledge of the activity without stopping, interrupting, or exercising corrective action. The incident was recorded and preserved on video without [sic] audio emission.
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> Merritt Reprimand, attached. (Exhibit J).

The written reprimand of Detective Merritt was signed by Horry County Captain, Guy Osborne, who was also McDermott's godfather.

The written reprimand of Detective Merritt definitively proved that a recording existed of Andrew Lindsay having sex with McDermott and confessing to the murder of Eva Marie Martin. However, the original tape containing the sex act and confession no longer exists. Defendant further proved the existence of the tape at a Motion to Compel hearing before the Honorable Judge Hyman on June 15, 2018, and Judge Hyman ordered "as to the confession, sex tape of Mr. Andrew Lindsay, the State must turn it over if it still exists." However, the State conceded that the tape no longer exists. (Judge Hyman's Form 4 Order attached as hereto Exhibit K).

Moreover, the Horry County Police Department destroyed the videotape in bad faith and the State withheld exculpatory evidence from Defendant when Defendant's charges were pending, during his trial, during his appeal, and during his PCR proceedings. Despite continuously being confronted with evidence regarding the existence and contents of this videotape, the Assistant Solicitor and the Fifteenth Circuit Solicitors Office have engaged in willful blindness and misled Defendant's Counsel and the Court in a blatant effort to conceal the existence of Andrew Lindsay's confession and the extent of the State's misconduct in this case.

## LAW AND ARGUMENT

This Court should dismiss the above-referenced indictments based upon the State's destruction of evidence and failure to comply with the holdings in *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny. To establish a due process violation based on destruction of evidence in South Carolina, a defendant must demonstrate that 1) the evidence possessed an exculpatory value apparent before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means, or 2) that the state destroyed the evidence in bad faith. *State v. Cheeseboro*, 346 S.C. 526, 538–39 (2001). Furthermore, to establish a *Brady* violation, a defendant must demonstrate that the State suppressed exculpatory evidence. *Brady v. Maryland*, 373 U.S. 83,86 (1963).

### I. Destruction of Evidence

*A. Destruction of Apparent Exculpatory and Irreplaceable Evidence*

The South Carolina Supreme Court addressed the destruction of apparent exculpatory and irreplaceable evidence in *State v. Jackson*, 302 S.C. 313, 396 S.E.2d 101 (1990). In *Jackson*, the South Carolina Supreme Court found that an Horry County defendant's due process rights had been violated when the defendant was prosecuted for driving under the influence after the prosecution destroyed a videotape containing exculpatory evidence. Specifically, the prosecution originally dismissed the charges against the defendant based on the videotaped evidence of the defendant's field sobriety and breathalyzer tests and then destroyed videotape. However, a second prosecutor later reinstated the charges against the defendant after the videotape had been destroyed and the defendant was found guilty of driving under the influence at his trial. *Id.*

In *Jackson*, the defendant argued that his due process rights were violated when the videotaped evidence was destroyed and that his trial should not have proceeded without the missing evidence. *Id.* The South Carolina Supreme Court agreed with the defendant, reasoning that because 1) the exculpatory value of the evidence was apparent before its destruction (and was the reason for its destruction), and 2) the defendant had no other evidence and could not obtain any evidence of comparable value, the defendant's case should not have proceeded to trial. *Id.* Furthermore, the Court in *Jackson* noted that although the destruction of the tape was explained to the jury at the defendant's trial, the value of the tape could not be replaced. Ultimately, the South Carolina Supreme Court held that the defendant's due process rights were violated and the charges against the defendant in *Jackson* were dismissed. *Id.*

In this case, similar to the defendant in *Jackson*, Defendant's due process rights were violated when the State destroyed the videotaped testimony and confession of Defendant's co-defendant, Andrew Lindsay. First, the exculpatory nature of the evidence was apparent before the videotaped evidence was destroyed, as the very nature of the evidence made it exculpatory: it was the videotaped confession of the co-defendant whose testimony is the *only* evidence that places Defendant at the scene of the crime with which he is charged. Detectives of the Horry County Police Department deliberately solicited a confession from Lindsay when they invited McDermott to the police station where Lindsay was to tell his wife, while being video and audio recorded, "the truth" about his own involvement in the murder of Eva Marie Martin. In many ways, the exculpatory nature of the evidence is the very reason for its destruction, because it plainly illustrates the misconduct that the Horry County Police Department and Fifteenth Circuit Solicitor's Office have attempted to cover up for the past 19 years. Moreover, even more so than

the prosecution in *Jackson*, the Sate in this case was well-aware of the exculpatory nature of the evidence it destroyed.

In addition, similar to the defendant in *Jackson*, Defendant has no other evidence of Lindsay's confession to the murder of Eva Marie Martin, and cannot obtain evidence of comparable value. Under oath, Lindsay testified that he overheard Defendant killing the victim and that Lindsay did not kill not victim. Conversely, on the destroyed videotape, Lindsay confessed to raping the victim and slitting her throat. This videotaped evidence of Lindsay's sex act and confession no longer exists and cannot be recreated. The Horry County Police Officers and Detectives who were involved in and witnessed the recording of Lindsay's sex act and confession have since died or been indicted for various reasons, including fraudulently investigating cases. Nevertheless, similar to the destroyed evidence in *Jackson*, even if the destruction of the videotaped confession of Lindsay could be explained to the jury at Defendant's trial, the value of the tape could not be replaced by any other means. For these reasons, similar to the Supreme Court's reasoning in *Jackson*, Defendant's due process rights were violated when the videotape was destroyed and Defendant's trial cannot proceed without the missing tape.

*B. Destruction of Evidence in Bad Faith*

The South Carolina Supreme Court further addressed bad faith destruction of evidence in *State v. Cheeseboro*, 346 S.C. 526, 538–39 (2001). In *Cheeseboro*, the South Carolina Supreme Court set forth a two-part test derived from *Jackson*, when it held that a defendant's due process rights were not violated when police officers destroyed a gun used as evidence in the defendant's trial. Specifically, the South Carolina Supreme Court held that to establish a due process violation, a defendant must demonstrate that 1) the State destroyed evidence in bad faith, or 2) the evidence

possessed an exculpatory value apparent before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means. *Id.*

In *Cheeseboro*, a SLED agent tested the gun used as evidence against the defendant and determined that the markings on the test-fired bullets matched the markings on bullets from a then-unsolved murder investigation. The agent kept the bullets and photographs of the gun, should the SLED agent need any evidence from the gun later, but returned the gun to the Columbia Police Department in an envelope marked "do not destroy." A Columbia Police Officer later testified that she received the gun from SLED and did not see a "do not destroy" tag. Thereafter, she advertised the gun as "unclaimed property" and then destroyed it pursuant to the Columbia Police Department's policy. *Id.*

Ultimately, the Court found that there was no evidence of bad faith in *Cheeseboro* because the agent and officers' actions were at most negligent and in accordance with normal procedure. *Id.* Furthermore, comparable evidence including bullets, photographs, test results, and the SLED agent's testimony were admitted at trial, and it is likely that any further evidence obtained from the gun would have been incriminating and not exculpatory. *Id.* Therefore, the Supreme Court in *Cheeseboro* found that the exculpatory nature of the gun was not apparent before the gun was destroyed, and the defendant had access to other evidence of comparable value at his trial. *Id.*

Conversely, unlike the destruction of evidence in *Cheeseboro*, the State in this case destroyed the videotape of Lindsay's confession and sex tape in bad faith. In this case, the Horry County Police Department destroyed the videotape of Lindsay and McDermott after Detective Merritt was given a written reprimand for allowing the sex act to occur and be memorialized on video. Thereafter, the videotape of Lindsay's sex act and confession was destroyed, and the

videotape of Horry County Investigators interviewing Lindsay was edited, split and copied onto the two 8-millimeter tapes purported to be the "original" tapes that the State turned over to Defendant in 2018.

Unlike the State's conduct in *Cheeseboro*, the aforementioned conduct was not merely negligent or simply in accordance with the Horry County Police Department's normal policy and procedure. Rather, the State *intentionally* destroyed the videotaped evidence of Lindsay's sex act and confession to conceal its own grave misconduct in this case, including allowing a murder suspect to have sex with and confess to his wife in an interrogation room at the police department and recording it on video. Therefore, unlike the defendant in *Cheeseboro*, Defendant's due process rights were violated when the State destroyed the videotape of Lindsay to conceal its own misconduct, and Defendant's trial cannot proceed without the missing tape – an apparently exculpatory and irreplaceable piece of evidence that was intentionally destroyed in bad faith.

*C. Persuasive Authority*

Furthermore, courts in other jurisdictions apply tests that are similar to the two-part test in *Cheeseboro* and dismiss criminal charges under circumstances similar to this case. For example, the Court of Appeals of Wisconsin applied a two-part test similar to that of *Cheeseboro*, and dismissed a second-degree intentional homicide charge because the State of Wisconsin failed to preserve apparently exculpatory evidence in the form of voicemail messages. *State of Wisconsin v. Huggett*, 783 N.W.2d 675 (Wis.App. 2010). Specifically, the Wisconsin Court of Appeals held that "a defendant's due process rights are violated if the police: 1) failed to preserve evidence that is apparently exculpatory; or 2) acted in bad faith by failing to preserve evidence which is potentially exculpatory." *State v. Huggett*, 783 N.W.2d 675, 678 (citing *State v. Greenwold*, 189

Wis.2d 59,67 (1994)). In *Huggett*, the police took the defendant's cell phone into evidence during a homicide investigation because the defendant told the police about exculpatory voicemail messages that were stored on his phone. *Id.* Although the police noted that there were exculpatory voicemail messages on the defendant's phone, the police failed to preserve the messages which were deleted by the defendant's cell phone carrier before the defendant's trial. *Id.* Ultimately, the Court of Appeals in Wisconsin dismissed the charges against the defendant with prejudice, finding that his due process rights were violated because the State of Wisconsin failed to preserve the voicemail messages which were apparently exculpatory and the defendant could not obtain other evidence of comparable value. *Id.*

Similarly, the Court of Criminal Appeals of Alabama found that a defendant's due process rights were violated because the State of Alabama withheld potentially exculpatory evidence in *Jones v. State*, 536 So.2d 102, 104 (Ala.Cr.App. 1986). In *Jones*, the Court of Criminal Appeals of Alabama declined to uphold a defendant's conviction after an Alabama prosecutor engaged in willful blindness with respect to a mugshot of the defendant that was apparently exculpatory in his case. The State of Alabama, in *Jones*, argued that the defendant's due process rights were not violated because the specific prosecutor on defendant's case had not actually viewed the mugshot photograph that the defendant requested. Ultimately, the Court in *Jones* found that it was not relevant whether the prosecution actually viewed the photograph because the prosecution had a duty to produce all exculpatory evidence for the defendant prior to his trial. *Id.* Further, the Alabama Court of Criminal Appeals held that the Defendant's due process rights were violated when the prosecution could not produce exculpatory evidence that rendered a fair trial of his case impossible and a violation of his rights inevitable. *Id.*

More recently, courts in other jurisdictions have held that due process violations occurred where prosecutors destroyed evidence similar to the evidence destroyed in this case. For example, the United States District Court for the Eastern District of Arkansas vacated a defendant's conviction based upon the prosecution's destruction of a confession *Jimerson v. Kelley*, 350 F.Supp.3d 741, 754 (E.D.Ark. 2018). In *Jimerson*, the Court held that the prosecution violated the defendant's due process rights when the prosecution used a jailhouse informant to obtain a confession from a co-defendant, then lost or destroyed the recording of that confession. *Id.* In addition, the Supreme Court of Mississippi reversed a defendant's conviction based upon the prosecution's destruction of a videotape in *Freeman v. State*, 121 So.3d 888, 895 (Miss. 2013). In *Freeman*, the Supreme Court found that the loss of a videotape of a traffic stop violated the defendant's due process right to present a complete defense, noting that destruction of the video seriously impaired the defendant's ability to cross-examine the State's key witness. *Id* at 896. Also, the United States Court of Appeals for the Seventh Circuit held that a criminal defendant's due process rights were violated when the prosecution, in bad faith, destroyed evidence of an alternate suspect in *Armstrong v. Daily*, 786 F.3d 529, 546 (7th Cir. 2015). In *Armstrong*, the prosecution was alleged to have intentionally framed the defendant for murder, and the Court noted that the bad-faith destruction of evidence is an immediate constitutional violation. *Id* at 552.

Similar to the defendants in *Huggett* and *Jones*, Defendant's due process rights in this case were violated when the state destroyed and suppressed the exculpatory video evidence in this case. In addition, the evidence destroyed in this case, which is a videotape containing a confession pointing to an alternate suspect, is similar to the evidence that was destroyed in *Jimerson*, *Freeman*, and *Armstrong*. Moreover, the destruction of evidence in this case was an immediate constitutional violation, and satisfies both prongs articulated in *Cheeseboro*, although only one is necessary to

establish a due process violation. Therefore, this Court should dismiss the above-captioned indictments because the videotape containing the sex act and confession of Lindsay was destroyed in bad faith and concealed from Defendant for 18 years, *or* because the exculpatory value of the videotape was apparent before its destruction and Defendant cannot obtain evidence of comparable value.

*D. Anticipated Rebuttal*

In opposition, the State may argue that the Court's dismissal of the above-referenced indictments is too drastic of a remedy in this case. The Supreme Court of South Carolina addressed the Court's discretion to dismiss criminal charges against a defendant based on the State's destruction of evidence in *State v. Hutton*, 358 S.C. 622, 633 (2004), warning that "dismissal of criminal charges is a drastic remedy which should rarely be invoked as a sanction for the State's failure to preserve evidence." However, the Court in *Hutton* declined to dismiss the defendant's charges because the defendant could not demonstrate that the State's destruction of evidence satisfied either prong of the two-part test established in *Cheeseboro*, further finding that the State did not destroy the evidence in *Hutton*, but merely failed to preserve it. *Id.*

Conversely, in this case, both prongs of the two-part test established in *Cheeseboro* are satisfied, although only one is necessary to establish a due process violation. As previously discussed, the State destroyed the videotape of Andrew's Lindsay's sex act and confession to conceal its own misconduct and mishandling of this case. In addition, the evidence that was destroyed in this case was exculpatory because it contained the intimate confession of Lindsay to his wife about his own involvement in the crime for which Defendant is accused, proving that the State's only witness, whose testimony is the State's only evidence against Defendant, lied about

Defendant's involvement in this crime. Therefore, although dismissal of criminal charges in some cases can be considered a drastic remedy, it is the only practical solution in this case. The destruction of evidence by the Fifteenth Circuit Solicitors Office and the Horry County Police Department was not merely a failure to preserve evidence, but an intentional act to destroy exculpatory evidence in bad faith.

## II. *Brady* Violation

In addition to the due process concerns addressed in *Jackson* and *Cheeseboro*, the above-referenced indictments should be dismissed because the State has failed to comply with the holdings in *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny. In *Brady*, the Supreme Court of the United States held that a defendant's constitutional due process rights were violated during his murder trial when the prosecution suppressed a co-defendant's confession to killing the victim. *Brady v. Maryland*, 373 U.S. 83,86 (1963).

Moreover, a *Brady* violation occurs when the State conceals evidence and there is a reasonable likelihood that the evidence could have affected the judgment of the trier of fact. *United States v. Valenzuela-Bernal*, 458 U.S. 858, 874 (1982). *See also Gibson v. State*, 514 S.E.2d 320 (S.C. 1999) (*Brady* violation where the prosecution failed to fully disclose all exculpatory and impeachment evidence regarding its key witness's statements when the withheld information provided an infinitely stronger basis for challenging the key witness and for exculpating the defendant), *Riddle v. Ozmint*, 631 S.E.2d 70 (S.C. 2006). (*Brady* violation where prosecution suppressed certain evidence regarding a witness's statement and failed to correct misstatements made by the witness while testifying against the defendant).

In this case, similar to the prosecution in *Brady,* the State has suppressed the co-defendant's confession to killing the victim. As such, pursuant to *Brady*, the State has violated Defendant's due process rights. Furthermore, the State concealed the videotape of Lindsay's sex act and confession, that contained evidence of both police misconduct during the investigation of this case and an exculpatory and impeaching statement by the State's key witness Andrew Lindsay, which absolutely affected the outcome of Defendant's first trial and will affect the outcome of his retrial. It is impossible for Defendant to obtain evidence of a comparable value prior to his retrial because the State destroyed the confession and sex tape. Moreover, a violation of defendant's due process rights at his retrial is inevitable should this case proceed to trial without the missing tape, and Defendant cannot receive a fair trial now or at any time in the future and cannot be afforded due process because of the State's material *Brady* violation in this case. Therefore, it is incumbent on this Honorable Court to exercise its supervisory powers and dismiss the above-captioned indictments.

## CONCLUSION

The cumulative effect of the State's misconduct in this case, including the destruction of exculpatory evidence and failure to comply with *Brady*, has polluted Defendant's criminal proceedings to the point where he cannot receive a fair trial now or at any time in the future and cannot be afforded due process of law.

There is no evidence, other than the testimony of Andrew Lindsay, that the State can produce to sustain a conviction of Defendant in this case. There is no physical evidence that ties Defendant to this crime, as both SLED and Defense Counsel's independent expert have concluded that Defendant's DNA was *not* present on any of the evidence tested for DNA. There is no

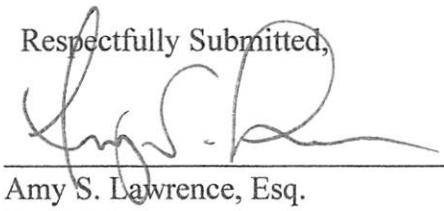
question that a videotape containing Andrew Lindsay's confession and sex act existed. However, the State destroyed the exculpatory and impeaching evidence and concealed its existence from Defendant for 18 years. In addition to concealing the confession of a co-defendant, the State also concealed its own grave misconduct in this case. The State maliciously prosecuted Defendant for murder in 2002 and should not be granted the opportunity to do it again in a retrial of this case without the missing videotape.

Furthermore, much like the Court in *Cheeseboro* stressed, this retrial cannot proceed without grave due process violations because the destroyed evidence cannot be recreated or explained away to the jury. The crucial value of the videotape is irreplaceable and the content on the video is absolutely material to Defendant's meaningful defense. Defendant did not commit the murder of Eva Marie Martin, and produced an alibi as to his whereabouts the night of the crime. In an effort to cover up its own misconduct in this case, the State destroyed the videotaped sex act and confession of Andrew Lindsay and knowingly used false statements of a confessed murderer as the sole evidence to convict Defendant in 2002. The State failed to correct Lindsay's misstatements under oath at Defendant's first trial, and will allow Lindsay to testify the same falsities under oath at Defendant's retrial should this case go forward.

In conclusion, Defendant's retrial will be fundamentally unfair if the jury cannot view or hear the State's *only* witness confess to the crime for which Defendant is accused. Furthermore, it will be an egregious miscarriage of justice if the jury cannot view and appreciate the severity of the Horry County Police Department's misconduct – misconduct that was acknowledged internally through a written reprimand when detectives invited and encouraged Andrew Lindsay to confess to his then-wife and have sex at the police station on video, and thereafter, destroyed the evidence and framed Defendant, an innocent man, for murder. For these reasons, and for additional reasons

to be further supported at the hearing for this matter, Defendant respectfully request that this Court exercise its supervisory powers and issue an Order dismissing the above-captioned indictments.

Respectfully Submitted,



Amy S. Lawrence, Esq.
Sarah M. Austin, Esq.
Attorneys for the Defendant
The Lovely Law Firm
1053 London Street
Myrtle Beach, SC 29577
843-839-4111
amy@justiceislovely.com
sarah@justiceislovely.com

September 20, 2019.

1 normal any more because later that evening, the
2 defendant, along with a co-defendant, Andrew Lindsay,
3 paid the victim a visit at her house. You're going to
4 hear testimony from Andrew Lindsay, who is also
5 charged with murder in this case, he's going to tell
6 you about what happened when he and the defendant went
7 to the victim's house. He's going to tell you how the
8 defendant acted prior to going there. He's going to
9 tell you about the defendant's actions while they were
10 there, and he will tell you about the defendant's
11 actions after he left there.
12 Now, I'm going to be up front with you. What
13 are you not going to hear? We don't have any physical
14 evidence in this case. You're not going to have any.
15 Does that mean the police didn't do their job in this
16 case? No, it doesn't. Was physical evidence
17 gathered? Yes, it was, but not in every case does
18 physical evidence lead to suspects.
19 What we do have in this case is an eye
20 witness, the co-defendant, Andrew Lindsay, and I'll
21 also tell you up front that Andrew Lindsay is no model
22 citizen. You and I probably would not invite Andrew
23 Lindsay over for dinner at our house tonight.
24 It's your job, as the Judge is going to tell
25 you, to judge the credibility and believability of

1 MS. LAWRENCE: We're right there, judge.
2 Q So after all this, shortly after that Andrew fled
3 to Arizona; is that correct?
4 A Yes.
5 Q Okay. Now, where did he -- how did you know that
6 he got back, the police brought him back?
7 A Detective Merrit.
8 Q Okay. While -- let's talk about this real quick.
9 When he fled, did you ever hear from any police
10 officers?
11 A Yes, I did. I heard from Detective Merrit --
12 Q Okay.
13 A -- and one other detective, I can't remember his
14 name.
15 Q Okay. What did they say?
16 A They told me to come down to the police station.
17 I was at work, and I told them I couldn't because I was
18 on the job. And then Detective Merrit talked to my
19 supervisor, and they told me to go ahead and go.
20 Q Okay.
21 A So I went down to the police station.
22 Q Okay.
23 A At the M.L. Brown building.
24 Q Okay. And when you got to the M.L. Brown
25 building, who met you?

A Detective Merritt.

Q Okay. What did he say?

A He said that, thank you for coming, that Andrew wanted to talk to me. And he said he wanted to tell me the truth.

Q Okay.

A Because I was being lied to this whole time.

Q What did Detective Merritt tell you about being recorded?

A He told me that there is going to be audio and video recording of our conversation.

Q And you consented to that?

A Yes, I did.

Q Okay. Now, tell me, when you went -- where did he take you, did he take you to the room?

A He took me to a room, yes.

Q Okay. Tell me about that room.

A I walked in and there was a table and some chairs, and then Andrew sitting along the wall. And then I saw a two-way mirror.

Q Okay. Now, what did Andrew say to you? Tell me about that conversation.

A Andrew did tell me that he was sorry for bringing me into the situation that we were in. And I said, the only thing I want is the truth. I said, I don't want

1 judge.
2 THE COURT: Okay, all right.
3 Q What happened after that confession sometime later
4 in that room, what did Andrew ask you for?
5 A Andrew asked me if I would have sex with him.
6 Q And did you?
7 A And I did.
8 Q Why?
9 A I guess it was because I loved him and I didn't
10 want to believe that he went and done something like
11 this.
12 Q Did any investigators contact you after all this?
13 A No.
14 Q To testify?
15 A No. No.
16 Q Okay.
17 MS. LAWRENCE: No further questions, Your Honor.
18 THE COURT: All right. Ms. Livesay?
19 MS. LIVESAY: Thank you, judge.
20 CROSS-EXAMINATION
21 BY MS. LIVESAY:
22 Q Ms. Lindsey, we've met before; do you remember
23 that?
24 A Yes, ma'am.
25 Q Okay. And how about that lady in the back,

| | | |
|---|---|---|
| **STATE OF SOUTH CAROLINA** | ) | **IN THE COURT OF GENERAL SESSIONS** |
| | ) | |
| | ) | **FOR THE FIFTEENTH CIRCUIT** |
| **COUNTY OF HORRY** | ) | |
| | ) | |
| **STATE OF SOUTH CAROLINA** | ) | **AFFIDAVIT OF** |
| | ) | **TERA MCDERMOTT** |
| | ) | |
| | ) | |
| **v.** | ) | |
| | ) | |
| **Gary Wayne Bennett** | ) | |
| | ) | |
| **Defendant.** | ) | |
| _____ | ) | |

Personally appeared before me, Tera McDermott, who being duly sworn, deposes and states as follows:

On the evening of Marie's murder, I was working at K-Mart. I got off work at approximately 5:30p.m. My husband at the time, Andrew Lindsay, was supposed to pick me up from work but never showed. My mother sent my step-dad to pick me up and took me home. Andrew did not come home for dinner. Andrew came home at approximately 10:30p.m and he looked pale and would not say where he had been. We got into an argument and he shoved me on my chest, so hard it left bruising. Andrew left and went to taco bell, he came home, ate and took a shower. I recall getting a phone call at home from Gary asking if we had heard about what happened to Marie. It was news to me, I asked what happened and Gary told me that he did not know because the police had not told anyone yet. I gave the phone to Andrew who was in the bathroom. I heard Andrew say, "I can't believe she's dead, I can't believe it happened, what did I do?"

When Andrew got out of the shower he threw his clothes away. I picked them out of the trash and put them in the washer. I asked him multiple times "What happened? What did you do?" and he did not respond. He told me not to worry about it.

Gary called around 3:30 am and said that Marie had been killed. When I asked what happened Gary said that Marie's throat was slit and she was raped. I asked how he knew and he said the police told them. I told Gary not to call again that my mom was upset.

The next morning, two detectives showed up at my house asking for Andrew. I had accidentally set off the alarm when I opened the door and was worried that I had woken up my young nephew. Andrew went outside with the detectives and I listened to them questioning him from Kathy's open bedroom window. The detectives asked if



/ TM

Andrew knew Marie and he said yes, that he had hung out with her a few times when he was with Amber and Gary. The detectives asked if he knew that she had been killed and he said that he did not know until someone called and told him. Detectives told Andrew that they had proof that he was at Marie's house. I became upset and went back to my own bedroom. When he came back in, I kept asking him "What did you do?" and he did not answer. He left approximately 30 minutes later and said "I have to take care of something." I later learned that he had taken some stolen golf clubs and threw them in the river near our home. Shortly after that, Andrew packed his things and told me that he had to go to Arizona.

Later, detectives came to my work and escorted me out to question me. They asked me questions about Marie and what I knew. I told them I didn't know anything and that Andrew would not talk about it. Detective Merritt then asked me if I knew about Andrew's past and I told him that Andrew told me it was self-defense. Detective Merritt told me that it was not self-defense and that his previous murder victim had been strangled, beaten and left in a manhole. He offered to show me photos but I did not want to see them. Detective Merritt also told me that he found a couple of condoms at Marie's and that Andrew's semen was on one of them, and that Andrew's fingerprint was on Marie's phone. Then the detectives asked me where Andrew was, and I told them that I did not know but that I knew he was on his way to Arizona.

Detective Merritt warned me that if I went to Arizona that I would be aiding and abetting a fugitive. Guy Osborne, an Horry County Police Officer who was a friend of ours, gave me the same warning and told me that he would beat my ass if I went. I told Guy Osborne I would not go.

Andrew called a couple days after I spoke to the detectives asking when and how I was going to get to Arizona. I told him that I was not going to Arizona because I did not want to be involved and I didn't want to go to prison for aiding and abetting a fugitive. I told him I gave all of his stolen stuff to the police, and I was not going to get in trouble for anything that I didn't have a part in. I told him that guilty people run and innocent people stay.

A few days later they found Andrew in Arizona at his brother's house and two Horry County detectives went out and brought him back to Horry County. Detective Merritt contacted me when Andrew got back and told me that Andrew wanted to talk to me so that he could "come clean." I told him that I could not miss work but that I would come later when I got off work because I was afraid of losing my job.

When I got to the police department Detective Merritt met me and told me that Andrew wanted to talk to me so that he could come clean and asked if I wanted to speak with Andrew. I said that I wanted to hear what Andrew had to say because I had been lied to. Detective Merritt told me that the room was being recorded and that Andrew would be restrained.

When I went into the room Drew was wearing orange and sitting in a chair. The

conference room had a two way mirror. I sat down in front of Andrew face-to-face. Andrew told me that he was sorry for lying to me and that he did have something to do with Marie's death. I asked him why he lied to me and what is going on. Andrew told me that he did not tell me because he didn't want me to be involved in it. I told him that he already got me involved because I lost a lot. I told him that all he had to do was tell me the truth the first time. He told me that he was sorry. I told him to tell me what he did and asked him how he did it. Andrew said that he raped Marie, held her down, and after he was done he slit her throat from ear to ear and left her to die. I freaked out. Andrew said "That's why I didn't tell you, because I didn't want to see the expression on your face." I was crying and upset and I asked him if Gary had anything to do with it. Andrew said that Gary held her down. I never believed Gary was a part of this, you would have just had to been there, it's like Andrew was trying to say that he wasn't the only bad one.

After I calmed down and went outside for a cigarette, I came back inside and Andrew asked if I would have sex with him one last time because he was going to spend his life in prison. I am not sure why I did, but I did. When I left the conference room, Detective Merritt told me "Great job, girl!" He thanked me and told me that he knew that what Andrew said was not what I wanted to hear but that he was glad I got to hear the truth. I was embarrassed that I had sex with Andrew asked Detective Merritt if he saw the last part. He said yes.

The police never contacted me after my talk with Andrew at the Police Department. I visited Andrew on August 30, 2000 and told him that I wanted a divorce. He went nuts and head-butted the glass and the wall.

After that visit, he sent me a birthday card and said that he would kill me if I told anyone what he did. I called the Horry County Police Department, the person who answered the phone told me that because I lived in the Conway City limits I would have to talk to the City Police. So I took the card to the Conway City Police Department and told them what happened and let the cop read the card. I got a restraining order.

Further affiant sayeth not.

Tera McDermott

Tera McDermott
226 Clayton Drive
Newport, NC 28570
252.269.1515

Sworn to me and Subscribed before
me this 7th day of March 2018

Notary of Public for NC
My Commission Expires: 6/2/21

3 TM

I know who he is.

MS. LAWRENCE: We don't need to go into all that, judge.

THE COURT: And I know that he was working with the Horry County Police back in 2000. Right, Mr. Partin?

MR. PARTIN: Yes, sir.

THE COURT: We know each other; don't we, Mr. Partin?

MR. PARTIN: Yes, sir.

PAUL PARTIN, after being duly sworn, testified as follows:

THE CLERK: State your name and spell your last name.

THE WITNESS: My name is Paul Partin. Spelling of the last name is P-A-R-T-I-N.

DIRECT EXAMINATION

BY MS. LAWRENCE:

Q Thank you, Mr. Partin, for being here. In July of 2000, were you asked by either Detective Merritt Cox or Maxwell to record any tapes?

A Yes, ma'am.

Q Tell us about that.

A At the time I was assigned to the narcotics and vice unit, we had access to cameras, audio and

1 videotapes and equipment. I went up and I -- that
2 morning I was very busy. And I asked them, did they
3 really need help or whatever the case may be. And they
4 said they were bringing the wife in to speak. And they
5 asked that I put a tape in.
6 Q Okay. So you set up the equipment?
7 A Yes.
8 Q And were you recording visually and audibly?
9 A Correct.
10 Q Okay. Now, where did you set this equipment up?
11 A In a hallway that was designed behind two-way
12 mirrors.
13 Q Okay.
14 A Down a row of interview rooms.
15 Q Okay. And was the video equipment visible from
16 the room, inside the room?
17 A No, ma'am.
18 Q Behind the two-way mirror?
19 A Correct.
20 Q Okay. Now, when they tasked you to do these
21 tapes, were they specific in how they wanted the tapes
22 recorded?
23 A Just they said they wanted a tape with the husband
24 and wife speaking and then an interview.
25 Q Okay. So there was supposed to be two separate

1 tapes?
2 A Yes.
3 Q One of the husband and wife, one of just
4 interviews with Mr. Lindsey?
5 A Correct.
6 Q Okay. Now, what did you observe in that interview
7 room when you started recording? You hit the record
8 button; correct?
9 A I hit the record button. And actually, the --
10 what I asked them to allow me to do, set it up, get it
11 recorded. And I had other things going on.
12 Q Right. Before you left, though --
13 A Yes.
14 Q -- what did you observe?
15 A It would be the Defendant or the gentleman.
16 Q Yes.
17 A I'm not familiar with --
18 Q The husband and wife, you can just refer to them
19 as --
20 A -- the names, the dates. The husband and wife in
21 the room.
22 Q Yeah. Okay. Did you see them doing anything?
23 A No. I left at that point.
24 Q Okay.
25 A I hit record and left.

1 Q But it was just them in the room. Okay. Now,
2 what did you do next?
3 A I left and went back to my office and was working
4 on whatever I was working on. And at some point I went
5 back up the hall.
6 Q Now, were they supposed to come get you when the
7 tapes -- to change them?
8 A Yes.
9 Q Did they come?
10 A I think I just went back up there. I got to a
11 stopping point, whatever I was doing, and I walked back
12 up there.
13 Q So some time had went by?
14 A Sure, quite a bit of time.
15 Q Okay, good. Now, then what did you do when you
16 went to check, what did you observe when you came
17 around the corner?
18 A When I came around the corner there were several
19 detectives in that corner. As I explained to both
20 sides here, it's not uncommon when you're in the middle
21 of a big case and several people standing around
22 waiting to see what needs to be done next.
23 So when I came out the back and rounded the
24 corner, and there were several people standing there.
25 And I'm sorry, 18 years, I can't remember who all was

1 there.
2 Q No, that's okay. And do you remember if Detective
3 Merritt was there?
4 A In the hallway, I don't remember, no.
5 Q Okay. What were they doing?
6 A Standing there in the hall.
7 Q Were they laughing?
8 A No. I don't remember them laughing.
9 Q Did they tell you about anything that happened in
10 that room?
11 A They made -- somebody made the comment, said,
12 you're not going believe they just had sex in the room.
13 Q Okay. All right. Now, what did you do then?
14 A When I went in to change the tape?
15 Q What was happening in that room?
16 A They were in the room, but they were both fully
17 clothed and not having sex.
18 Q Okay. That's good; right?
19 A Um-hum.
20 Q So what did you do, did you change the tapes?
21 A I changed the tapes.
22 Q Okay. And for the record, what kind of tapes were
23 you using at the time?
24 A 8-millimeter.
25 Q Okay. Not VHS tapes?

1 A No.
2 Q Okay. When you started the new tapes, what were
3 you recording; do you remember what you recorded before
4 it started, right when it started?
5 A It was -- if I started to say the tape, I'm
6 thinking this could be the interview with the
7 detectives and the gentleman.
8 Q Okay. Because that's what they wanted and how
9 they wanted it?
10 A Right.
11 Q Now, did you do any paperwork? When you
12 stopped -- let me ask you this. Did you come back and
13 stop the recording?
14 A No, ma'am.
15 Q Who stopped it?
16 A You talking about in between?
17 Q The second tape.
18 A The second tape, yes, I would have stopped -
19 Q Okay, awesome.
20 A -- both of them.
21 Q Now, when you got done doing that, what did you do
22 with the tapes?
23 A Always what I do is take the tape out. First I
24 rewind it, take it out. Had, I believe it was a red
25 tab on the top to prevent you from recording over it,

1 always flip the tab. Labeled my tapes, labeled my
2 label itself, did an evidence sheet and placed --
3 Q Did you label the tapes themselves?
4 A I'm pretty sure I would have. That was normal
5 procedure.
6 MS. LAWRENCE: Your Honor, I should note there's
7 no labels on the tapes provided by the State.
8 THE WITNESS: On the --
9 MS. LAWRENCE: On the case but not on the actual
10 tape.
11 THE COURT: I'm lost. Have you been provided with
12 the tapes or not?
13 MS. LAWRENCE: The tapes that they present are the
14 correct tapes that do not show any sex or Ms. Lindsey.
15 THE COURT: Wait a minute. Do they show -- do
16 they have any tape of this interaction with the witness
17 who we just heard from and her husband?
18 MS. LAWRENCE: Let me explain something, judge.
19 THE COURT: I wish you would.
20 MS. LAWRENCE: When I got this discovery, I
21 received some digital -- in digital form on a disc a
22 bunch of cut up versions of an interview. And so
23 something didn't feel right about it. So I inquired to
24 Ms. Livesay and her office and said, I want to come see
25 these in person. The audio was horrible. Everything

had an echo to it, and just my gut said something wasn't right. I want to see the originals is what I requested.

I went to the solicitor's and I watched these videos that she provided. They were VHS tapes. And those VHS tapes were multiple cut up pieces of the same interview over and over again. But the difference was there was 47 minutes from mine that she provided me on digital than she had on VHS.

So I wrote a letter to Ms. Livesay telling her about how the 47 minutes were missed, and also that on the chain of evidence sheet it shows that they're 8-millimeter tapes, that what she provided me to see was not the original tapes, I wanted to see them. And so she's -- I now know they couldn't find those tapes.

And then I was made aware -- and that was in February when I wrote the letter -- I became aware in March that they had actually found what they purported to be these alleged original tapes on February 19th by Lori Dudley and somewhere in the evidence room of some sort. So we said, let's look at these tapes.

THE COURT: 8-millimeter tapes?

MS. LAWRENCE: Yes. She provided me a digital copy of these 8-millimeter tapes, and I've also seen them in person. They are exactly what we saw on the

1 VHS tapes uninterrupted except there's two of them.
2 There's one difference. The first 20 seconds of this
3 video, we're going to watch it, show Tara Lindsey and
4 Andrew Lindsey kissing each other goodbye.
5 THE COURT: Okay.
6 MS. LAWRENCE: So I found out Mr. Partin -- I also
7 just got provided this by Mr. Partin, super nice man.
8 I was hoping that 18 years later he would remember
9 something, and he remembered it like it was yesterday.
10 I was two sentences in and he said, I remember, Amy.
11 And so I asked him, why, why was it so -- why do
12 you remember it? And we're going to talk about that in
13 a minute. And he will testify, I think, that this is
14 not an accurate depiction of what he recorded.
15 THE COURT: Okay. Well, let's go on with it,
16 then, okay.
17 MS. LAWRENCE: Okay.
18 Q Now, Mr. Partin, I'm handing up an evidence sheet,
19 a chain of custody sheet. Can you tell me what that
20 is.
21 A Yes, ma'am. It's a chain of custody filled out on
22 two 8-millimeter tapes and two audio cassette tapes.
23 Q Is that your signature?
24 A That's my initials at the bottom.
25 Q Oh, yeah.

1 A I've typed it up and then put my initials beside
2 it, yes. That is my handwriting.
3 Q Is that an accurate depiction of the chain of
4 evidence sheet you did back in 2000?
5 A Yes, ma'am, to the best of my knowledge.
6 Q Yeah.
7 A I mean, this is my normal procedures --
8 Q Right.
9 A -- on filling it out.
10 Q All right.
11 A The same way I'd fill out anything else.
12 Q And this was provided by Ms. Livesay in discovery.
13 MS. LAWRENCE: Your Honor, we would ask that this
14 be admitted into evidence as a defense exhibit.
15 THE COURT: All right. But I'm going to
16 substitute a copy of this hearing.
17 MS. LAWRENCE: Would you like a copy too?
18 THE COURT: It may end up being a Court's exhibit
19 or need to be introduced in the actual trial of this
20 case. And I just want to make sure it doesn't get
21 lost, left out, whatever, okay.
22 MS. LAWRENCE: Thank you, judge.
23 THE COURT: You probably have a copy anyway.
24 MS. LAWRENCE: It is. It is, Your Honor.
25 (WHEREUPON, Court's Exhibit No. 1 was marked for

1 identification only.)
2 THE COURT: Go ahead.
3 Q Now, tell me about that chain of custody. When
4 did you do the chain of custody?
5 A Did the chain of custody on July 24th of 2000.
6 Q Okay. And who did you give it to?
7 A When I exited the room, Detective Merritt in the
8 hallway, Detective Merritt's office was to the right.
9 I walked out, put the evidence sheet and tapes on his
10 desk with the evidence sheet in the tapes.
11 Q Okay. And on this record, can you tell me when
12 they were relinquished to the evidence locker by
13 Detective Merritt?
14 A It says here that he released them on August 10th
15 of 2000.
16 Q So that's 17 days approximately after you handed
17 them over?
18 A Yes, ma'am.
19 Q Is that normal? Let me ask you this
20 A I wouldn't sit on them that long.
21 Q What is proper procedure when handling evidence,
22 how long should you wait?
23 A As soon as possible be turned in to the evidence
24 locker.
25 Q Okay. Now, let's look at these tapes provided,

1 we've got a digital copy that Ms. Livesay gave us.
2 MS. LAWRENCE: And we're not going to watch a lot
3 of it, we're only going to watch maybe the first minute
4 of the first tape. I apologize, I'm not real good at
5 technical stuff.
6 This is what the State has produced as the first
7 tape that Mr. Partin recorded.
8 (WHEREUPON, the video was played at 11:38 a.m.)
9 MS. LAWRENCE: I don't think we really need to
10 watch any more of that.
11 THE COURT: Okay. That was the beginning of the
12 tapes?
13 MS. LAWRENCE: Yes. Because he was present for
14 when he started recording the tapes, judge.
15 THE COURT: Okay.
16 MS. LAWRENCE: I didn't think it was necessary to
17 watch all of it.
18 THE COURT: Okay, all right.
19 MS. LAWRENCE: It was a bunch of interviews.
20 Q Is this an accurate depiction of where you started
21 recording the first tape?
22 A No, ma'am. That appears to be towards the end.
23 Q And specifically, you were asked to do two tapes?
24 A Um-hum.
25 Q Okay. What did they want on this first tape?

A The conversation between the husband and wife.

Q Okay. I just want to make sure that's clear. Now, you were recording audio and visually the whole time, and we can hear the sound on this video; correct?

A Yes, ma'am.

Q Now, let's watch the piece of the second because when you changed over the tapes.

(WHEREUPON, the video was played at 11:39 a.m.)

THE COURT: Let's stop a minute. Ms. Lawrence?

MS. LAWRENCE: Um-hum.

THE COURT: Where are you going here?

MS. LAWRENCE: This is not a --

THE COURT: Let me tell you how I perceive this, okay. First of all, you have established through a witness that says, I had a conversation, it was exculpatory to the Defendant, and it was taped. You have the person who says he taped it.

MS. LAWRENCE: Um-hum.

THE COURT: Okay. You have the State saying we no longer have it, we don't got it. If we got it, it's been -- you say it's been changed, tampered around in this evidence, okay, all right. So if all that is here, don't we have a spoliation issue, not a production issue? Because I can't order them to produce what they say they don't have.

always flip the tab. Labeled my tapes, labeled my label itself, did an evidence sheet and placed --

Q Did you label the tapes themselves?

A I'm pretty sure I would have. That was normal procedure.

MS. LAWRENCE: Your Honor, I should note there's no labels on the tapes provided by the State.

THE WITNESS: On the --

MS. LAWRENCE: On the case but not on the actual tape.

THE COURT: I'm lost. Have you been provided with the tapes or not?

MS. LAWRENCE: The tapes that they present are the correct tapes that do not show any sex or Ms. Lindsey.

THE COURT: Wait a minute. Do they show -- do they have any tape of this interaction with the witness who we just heard from and her husband?

MS. LAWRENCE: Let me explain something, judge.

THE COURT: I wish you would.

MS. LAWRENCE: When I got this discovery, I received some digital -- in digital form on a disc a bunch of cut up versions of an interview. And so something didn't feel right about it. So I inquired to Ms. Livesay and her office and said, I want to come see these in person. The audio was horrible. Everything

1 had an echo to it, and just my gut said something
2 wasn't right. I want to see the originals is what I
3 requested.
4 I went to the solicitor's and I watched these
5 videos that she provided. They were VHS tapes. And
6 those VHS tapes were multiple cut up pieces of the same
7 interview over and over again. But the difference was
8 there was 47 minutes from mine that she provided me on
9 digital than she had on VHS.
10 So I wrote a letter to Ms. Livesay telling her
11 about how the 47 minutes were missed, and also that on
12 the chain of evidence sheet it shows that they're
13 8-millimeter tapes, that what she provided me to see
14 was not the original tapes, I wanted to see them. And
15 so she's -- I now know they couldn't find those tapes.
16 And then I was made aware -- and that was in
17 February when I wrote the letter -- I became aware in
18 March that they had actually found what they purported
19 to be these alleged original tapes on February 19th by
20 Lori Dudley and somewhere in the evidence room of some
21 sort. So we said, let's look at these tapes.
22 THE COURT: 8-millimeter tapes?
23 MS. LAWRENCE: Yes. She provided me a digital
24 copy of these 8-millimeter tapes, and I've also seen
25 them in person. They are exactly what we saw on the

1 VHS tapes uninterrupted except there's two of them.
2 There's one difference. The first 20 seconds of this
3 video, we're going to watch it, show Tara Lindsey and
4 Andrew Lindsey kissing each other goodbye.
5 THE COURT: Okay.
6 MS. LAWRENCE: So I found out Mr. Partin -- I also
7 just got provided this by Mr. Partin, super nice man.
8 I was hoping that 18 years later he would remember
9 something, and he remembered it like it was yesterday.
10 I was two sentences in and he said, I remember, Amy.
11 And so I asked him, why, why was it so -- why do
12 you remember it? And we're going to talk about that in
13 a minute. And he will testify, I think, that this is
14 not an accurate depiction of what he recorded.
15 THE COURT: Okay. Well, let's go on with it,
16 then, okay.
17 MS. LAWRENCE: Okay.
18 Q Now, Mr. Partin, I'm handing up an evidence sheet,
19 a chain of custody sheet. Can you tell me what that
20 is.
21 A Yes, ma'am. It's a chain of custody filled out on
22 two 8-millimeter tapes and two audio cassette tapes.
23 Q Is that your signature?
24 A That's my initials at the bottom.
25 Q Oh, yeah.

1 A I've typed it up and then put my initials beside
2 it, yes. That is my handwriting.
3 Q Is that an accurate depiction of the chain of
4 evidence sheet you did back in 2000?
5 A Yes, ma'am, to the best of my knowledge.
6 Q Yeah.
7 A I mean, this is my normal procedures --
8 Q Right.
9 A -- on filling it out.
10 Q All right.
11 A The same way I'd fill out anything else.
12 Q And this was provided by Ms. Livesay in discovery.
13 MS. LAWRENCE: Your Honor, we would ask that this
14 be admitted into evidence as a defense exhibit.
15 THE COURT: All right. But I'm going to
16 substitute a copy of this hearing.
17 MS. LAWRENCE: Would you like a copy too?
18 THE COURT: It may end up being a Court's exhibit
19 or need to be introduced in the actual trial of this
20 case. And I just want to make sure it doesn't get
21 lost, left out, whatever, okay.
22 MS. LAWRENCE: Thank you, judge.
23 THE COURT: You probably have a copy anyway.
24 MS. LAWRENCE: It is. It is, Your Honor.
25 (WHEREUPON, Court's Exhibit No. 1 was marked for

# HORRY COUNTY POLICE DEPARTMENT
## EVIDENCE RECORD

INCIDENT TYPE: Homicide CASE# 0036883

VICTIM: Eva Marie Martin

LOCATION: HCPD

SUSPECT: Drew Lindsay

DATE AND TIME: 7-24-00 OFFICER: Det. Paul H. Partin

ITEMS (S): 1.) 2- Fuji DR-II audio Cassettes of interview

2.) 2- Sony 8mm Video Tapes of interview



**CHAIN OF CUSTODY:**

ITEM # Above DATE: 7-24-00

RELINQUISHED BY: Det. Paul H. Partin PHP

RECEIVED BY: Det. George Merritt GM

PURPOSE OF CHANGE: Evidence

ITEM # All DATE: 8-10-00

RELINQUISHED BY: Det. Merritt

RECEIVED BY Evidence Locker :

PURPOSE OF CHANGE: Evidence

EXHIBIT
F

1 MS. LAWRENCE: Just real quick.

2 REDIRECT EXAMINATION

3 BY MS. LAWRENCE:

4 Q And when we watched those, did you make it clear

5 that those were not what you -- an accurate depiction

6 of what you did?

7 A Correct.

8 Q And to be clear, did those appear to be the

9 original tape cases?

10 A Yes, ma'am.

11 Q Not the original tapes?

12 A Yes, ma'am.

13 Q Correct?

14 A Correct.

15 Q Now, I have one more question. You met with

16 Ms. Livesay and Ms. Popp like March 6th and 8th. Did

17 you tell them everything you told us here today?

18 A Yes, ma'am.

19 Q Would it surprise you that Ms. Popp didn't say

20 anything in her investigative notes about you, how you

21 recorded the tapes, who asked you to record the tapes,

22 that you were tasked with doing two specific tapes.

23 None of those were in her notes, but you told her that?

24 A Yes. That's what our discussion -- I've told both

25 sides of it.

1 Q The exact same thing; correct?
2 THE WITNESS: Your Honor, I've told both sides. I
3 can't tell but the truth, and that's what it is. I
4 went in and I recorded.
5 Q And that's all we're looking for.
6 A And I went back in and did a second.
7 THE COURT: That's all I need. That's all I need,
8 Mr. Partin.
9 THE WITNESS: Yes, sir.
10 THE COURT: I just need the basics. This is a
11 motion hearing. If I can get the basics. The defense
12 I need, the rule, that's all I need.
13 MS. LIVESAY: And, judge, can I ask one more
14 question?
15 THE COURT: Certainly.
16 RECROSS-EXAMINATION
17 BY MS. LIVESAY:
18 Q Mr. Partin?
19 A Yes, ma'am.
20 Q When I looked at these tapes, there is a red tab
21 on it.
22 A Yes, ma'am.
23 Q What does that mean, do you know?
24 A Yes. That's where I testified earlier that I
25 could flip the tab to prevent it from being recorded

SUPPLEMENTAL FOR STATE VS GARY BENNETT

March 6, 2018 met with Paul Partin in reference to this case. He advised that in his role as a Narcotics officer during thee of this incident he assisted with recording equipment of the interview of Andrew Lindsay. He advised his only role was that he placed two tapes into the camcorder and then turned them over to lead Detective. He states he labeled the tapes as well. He advised he never viewed the tapes and never knew what was on them. He also says he never spoke to anybody that viewed the two tapes.

March 8 2018

Met with Scott Rutherford. He states he never saw any tapes from this case. He states he never watched any tapes from this case. He states he never knew the contents or had been questioned about the contents of any tapes until this year. He states that back during the incident time he was only spoken to about conduct that happened in the interview room and nothing about a tape of any conduct.

March 8 2018

Met with Paul Partin. I was able to show him a picture of two tapes from this case that Lori Dudley provided from evidence. Paul immediately stated that it was handwriting on the outside of the tapes. I asked him if he labeled any other tapes this case and he stated no. He states that these two tapes were the only two things that he ever dealt with in this case at all and he never viewed them.



---

Inv Ginger L Pop

March 6, 2018

1 MS. LIVESAY: Yes, sir, Your Honor. In fact, the state
2 attached, which I didn't include because I didn't want it
3 released, but the state actually went out and interviewed,
4 doing due diligence -- she told me the tape existed, so went
5 out and did due diligence. Mr. Partin is here. Would you
6 raise your hand? Paul Partin is here. We interviewed him
7 first because he ran the video tape. We interviewed him on
8 March 8th of 2018. At that time he told us that he did two
9 interview tapes regarding Andrew Lindsey. We then went back
10 to the evidence custodian and said, look, show me every 8mm
11 tape you have, that's what Paul Partin says, it was, we want
12 to see it, send us a picture. I'm gonna had up to the state
13 now and it was included in the email I sent you as well as Ms.
14 Lawrence. These are the tapes that they sent us. Those are
15 three tapes. We asked at that time Paul Partin to tell us if
16 those were the two tapes marked Andrew Lindsey that he did for
17 Horry County Police Department. And this is his statement,
18 Your Honor. Again, it's included, everybody's got it. But,
19 on March 8th, 2018, he told my investigator that those were
20 the only tapes he had regarding Andrew Lindsey interviews.
21 Those are his markings that are marked 1 and 2. The state has
22 taken those 8mm tapes to Coastal Carolina because there's
23 nothing for us to view the tapes on. We don't have anything
24 that plays 8mm tapes. At Coastal Carolina, the guy there
25 converted it into a DVD. At that time, I took possession of



one DVD, and we turned one over to Ms. Lovely. We have sought out each individual that is still with us that had anything to do with that interview. Each person said they never saw a tape, never saw any sort of tape that involved just conversations between Andrew Lindsey and his wife. To my knowledge, all I can tell you is there is no tape at Horry County Police Department between Andrew Lindsey and his wife. The man that did all the recording was Paul Partin. He says he only did two tapes regarding Andrew Lindsey. We have two tapes, they both have Paul Partin's markings on them and signature. We have converted them into CDs and handed those over. That is all we have and we've handed that over.

THE COURT: All right. So, in this, is that the one that you're talking about that you said you viewed that one and 47 minutes are missing?

MS. LAWRENCE: Yes. The -- they provided me with a disc in, in my first round of discovery.

THE COURT: Okay, so -- well, let's -- you're wanting what they have found, the 8mm tapes. Did they give that to you?

MS. LAWRENCE: I received a disc ---

THE COURT: Okay.

MS. LAWRENCE: --- that is supposed to be the duplicate of these 8mm tapes.

THE COURT: Okay.

1 MS. LAWRENCE: After speaking with Tara Lindsey, Paul
2 Partin, and other people who work at the Horry County Police
3 Department, I believe that there was a recording of this sex
4 confession tape and Paul Partin is the only person who can
5 speak to what Ms. Livesay has just stated. But, also, there's
6 more to it and he can corroborate that this is not an accurate
7 reflection -- what is on that video is not an accurate
8 reflection of what was recorded that day.
9 THE COURT: All right. So, what y'all need to do is get
10 in some room that can play all of the 8mm tapes, Mr. Partin
11 will need to be present, counsel will need to be present. You
12 play it. After it's done, you question Mr. Partin all you
13 want to about this. All right? After that, after that, then
14 you can come back with the Court as to what problems there are
15 if any. Okay?
16 MS. LAWRENCE: Your Honor, can I just say something for
17 the record?
18 THE COURT: Yes, ma'am.
19 MS. LAWRENCE: In the new tape, this new disc that I've
20 received recently in the last couple of days, there is a
21 difference, and the difference is that this video begins with
22 -- the difference is is, one, it has the 47 minutes of missed
23 interview time that the VHS has reflected. But, there's also
24 about 20 seconds at the beginning that has been nowhere in
25 discovery for 18 years.

1 THE COURT: All right. Well, and that's good. Okay.
2 That's what I'm saying.
3 MS. LAWRENCE: It's ---
4 THE COURT: You get to the original 8mm tapes.
5 Solicitor, you collect those, you find someplace here in Horry
6 County, someplace that can play it. All right? You set up a
7 date and a time where you, the defense counsel, and Mr. Partin
8 will be there. Y'all are gonna look at every single second of
9 those 8mm tapes. All right? After that, both of you can ask
10 Mr. Partin any questions you want to about it. Okay? After
11 that's over with, if there remain problems, then you file
12 another motion. All right? We'll go to the originals, y'all
13 look at every second of it, spend three days talking to Mr.
14 Partin, I don't care how long it is. Okay? Get all your
15 answers. If problems exist after that, you file another
16 motion. Okay?
17 MS. LIVESAY: Yes, sir.
18 THE COURT: All right. Let's talk about the DNA testing.
19 MS. LAWRENCE: Well, Your Honor, there's -- I have some
20 more things on my motion to compel if you don't mind.
21 THE COURT: Okay.
22 MS. ANDREW: Your Honor, I asked Internal Affairs
23 Investigator Don Causey to come today and bring the Internal
24 Affairs files pertaining to -- anything that was pertaining to
25 this missing video of sex and confession. And he's here today

and we ask that the Court give us leave to have any of that information that would corroborate the existence of this tape, and it's my understanding that there is something within those files.

THE COURT: All right. So, the person is here?

MS. LAWRENCE: Yes, yes, Your Honor.

THE COURT: Do they have their files?

MS. LAWRENCE: They do.

THE COURT: Great. Y'all go find some conference room. Y'all look at the files, and see what's in them. And, Solicitor, if there's information about this case, make copies, turn them over to Defense.

MS. LIVESAY: Your Honor, if I don't -- if you don't mind, and we'll do it however you want it. He's here, he's ---

THE COURT: We're not taking the testimony.

MS. LIVESAY: No, sir; no, sir; definitely not. And in fact, from what he told me, it's only two sheets of paper ---

THE COURT: Whatever it is, whatever it is, y'all get together, you look at it, you make copies of whatever it is. Again, ma'am, you've got questions of him, you can ask questions of him. Okay? Do that today. All right?

MS. LIVESAY: And, Your Honor, actually, if she wants to view it, she can. I do not want to view it. I don't think -- from what he's told me, it's *Giglio*, so it would be

1 inappropriate, but I'm fine with her viewing it.
2 MS. LAWRENCE: My question is why would she not want to
3 view it.
4 THE COURT: I ---
5 MS. LAWRENCE: Sorry.
6 THE COURT: Solicitor, you can do what you want to do,
7 okay. I would expect the state to be completely and fully
8 prepared and have knowledge about all possible evidence in
9 this case and not stand here and say, well, I just didn't look
10 at it. Okay? But you do what you want to do. You can answer
11 about that later. Thank you very much.
12 MS. LAWRENCE: Judge, I have some more.
13 THE COURT: Yes, ma'am.
14 MS. LAWRENCE: I'm so sorry. The solicitor provided us
15 with copies of these audio tapes of audio cassettes and
16 they're inaudible. You can't make out a word that they're
17 saying. We ask that they provide us with a clear reflection
18 of the copy of the recordings that they have or allow us to
19 view them in the solicitor's office in the original state.
20 THE COURT: Any problem with that, Solicitor?
21 MS. LIVESAY: Yes, sir. I don't have a clean copy
22 myself. She's got the same copy I've got.
23 THE COURT: Well, whatever you have, you make that
24 available to them and let them listen to whatever it is that
25 you have.

2560 N. Main St., Suite 7
Conway, South Carolina 29526

Phone: (843) 248-1521
Fax: (843) 248-1886

# Horry County Police Department

July 31, 2000

George Merritt, Detective
2560 North Main Street
Conway, South Carolina 29526

Detective Merritt,

This letter is to notify you that on July 31, 2000, you were found to be in violation of Horry County Policy. A review of the charges have been made and it has been determined that you are to receive a Written Reprimand for 7.06 (Rules of Conduct), Section B (Group A Violation), Item 2., Inefficiency or lack of application in performance of duty and Section B (Group B Violation), Item 9., Any action or practice which causes embarrassment for the County or County officials.

On July 24, 2000 you were present and did observe an incarcerated murder suspect have sexual intercourse with his wife in a Horry County Police interview/interrogation room. That you did have personal knowledge of the activity without interrupting, stopping, or exercising corrective action. The incident was recorded and preserved on video without audio emission.

In many cases, issues can be corrected by casual comment or informal discussion between the employee and his or her immediate supervisor. In regards to this incident it is necessary to administer discipline that is consistent with the guidelines established within the Horry County Personnel Policy. Law enforcement officers are called to a higher duty and standards of care.



The Staff has recommended and Chief Goward has approved this discipline based on the following:

The Horry County Policy manual states under section 7.06 Rules of Conduct, Section A. General, Subsection 2.

***It is recognized that there are certain positions with the County that employees are called to higher duties and standards of care; such positions will include**, but not necessarily be limited to, **law enforcement**, medical services, firefighters, airport safety security, 911, animal and insect officers, as well as department heads, deputy department heads, and supervisory staff. These factors can be taken into consideration in determining applicable disciplinary action appropriate for an offense*

The Horry County Policy manual states under section 7.06 Rules of Conduct, Section B. Rules of Conduct, Group A. Item 2 and Group B. Item 9 Violations.

> *Group A: 2. Inefficiency or lack of application in performance of duties.*
> *Group B: 9. Any action or practice which causes embarrassment for the County or County official.*

You are advised that you have opportunity for redress on this action in the form of a grievance as outlined in Section 8 of the Horry County Personnel Policies and Procedures Manual. If you desire to do so, you may request an explanatory hearing from the Chief of Police. This process will not serve as a grievance but, rather, a more detailed explanation of the disciplinary process and the criteria upon which it was based.

Victor D. Neal, Lieutenant
Criminal Investigations Division

Guy Osborne, Captain
Criminal Investigations Division

VDN/vdn

Xc: Human Resources
Personnel File
Captain Guy Osborne
Major Kenneth Canterbury
Chief Paul S. Goward



This is to acknowledge receipt of a Written Reprimand issued this 31st Day of July 2000.

George Merritt, Detective — Date: 7-31-00

Victor D. Neal, Lieutenant — Date: 7/31/00

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

**ORDER IN A CRIMINAL CASE**
WARRANT(S) CAW20020627
G515571

IN THE COURT OF GENERAL SESSIONS

INDICTMENT(S):

State of South Carolina

Gary Wayne Bennett
DEFENDANT(S)

| This form order submitted by: Judge Larry Hyman | Attorney for : ☐ State ☐ Defendant or ☐ Self-Represented Litigant |
|---|---|

**DISPOSITION TYPE**

☐ **DECISION BY THE COURT AFTER HEARING.** This action came to a hearing before the court. The issues have been heard and a decision rendered. ☐ See below for additional information.

☐ **DECISION BY THE COURT AFTER STATUS CONFERENCE.** This case came for a status conference before the court. The status of this case and pending issues in this case were discussed and a decision rendered. ☐ See below for additional information.

☒ **MOTION: 2nd Motion to Compel Disclosure of Favorable Evidence**

☐ GRANTED ☐ DENIED ☐ CONTINUED ☐ WITHDRAWN

☐ WITHDRAWN BY MOVING PARTY: _____
Signature of Moving Party

☐ OTHER:

FILED
2018 JUN 15 PM 12:46
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

**IT IS ORDERED AND ADJUDGED:** ☐ See Order of the Court below ☐ See attached order
☐ Formal Order to follow; to be prepared by: ☐ State ☐ Defendant ☐ Other:

**ORDER INFORMATION**

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk :

As to the confession, sex tape of Mr Andrew Lindsey the state must turn it over if it still exist State says tape does not exist.

Circuit Court Judge

2152
Judge Code

6-15-18
Date

EXHIBIT
K

**For Clerk of Court Office Use Only**

This judgment was entered on the 15 day of June, 2018 and a copy mailed first class or placed in the appropriate attorney's box on this 15 day of June, 2018 to attorneys of record or to parties (when appearing pro se) as follows:

Nancy Livesay

ATTORNEY(S) FOR THE STATE

Amy Lawrence

ATTORNEY(S) FOR THE DEFENDANT(S)

Renee Elvis

CLERK OF COURT

Court Reporter:

FILED
2018 JUN 15 PM 12:46
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC