

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Honorable J. Derham Cole, Circuit Court Judge

KARLITA DESEAN PHILLIPS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001346

APPENDIX

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Pages 1-500

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JULY 15, 2015	1
TRIAL TRANSCRIPT DATED JULY 20-23, 2015	104
APPLICATION FOR POST-CONVICTION RELIEF DATED FEBRUARY 20, 2018	641
RETURN DATED JUNE 6, 2018	652
ORDER CONTINUING CASE AND SETTING CASE FOR DATE CERTAIN DATED JUNE 21, 2021	666
ORDER CONTINUING CASE AND SETTING CASE FOR DATE CERTAIN DATED OCTOBER 19, 2021	668
FIRST AMENDED APPLICATION FOR POST-CONVICTION RELIEF DATED MARCH 7, 2022	669
ORDER CONTINUING CASE, RELIEVING COUNSEL, AND APPOINTING NEW COUNSEL DATED JULY 21, 2023	689
ORDER APPOINTING COUNSEL DATED JULY 31, 2023	690
SECOND AMENDED APPLICATION FOR POST-CONVICTION RELIEF DATED AUGUST 13, 2024	691
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED AUGUST 19, 2024	693
ORDER OF DISMISSAL DATED JUNE 12, 2025	735
INDICTMENTS	760

State of South Carolina)
) Court of General Sessions
 County of Abbeville) 2014-GS-01-212, 213

State of South Carolina)
) vs.) Transcript of Record
)
 Karlita D. Phillips)
) DEFENDANT)

July 15, 2015
 Greenwood, South Carolina

B E F O R E:

Honorable Frank R. Addy, Judge

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 Official Court Reporter

I N D E X O F W I T N E S S E S

(IC) - Denotes In Camera
(DW) - Denotes Defense Witness
(SW) - Denotes State's Witness

(SW) Michael Collins (Jackson v. Denno)

Direct examination by Mr. Stumbo: 9

Cross-examination by Ms. Bolen: 19

(SW) Nick Marshall (Jackson v. Denno)

Direct examination by Mr. Stumbo: 22

Cross-examination by Ms. Bolen: 36

Redirect examination by Mr. Stumbo: 40

(SW) Natalie Talbert (Jackson v. Denno)

Direct examination by Mr. Stumbo: 42

Cross-examination by Ms. Bolen: 50

(SW) Bo Barton (Jackson v. Denno)

Direct examination by Mr. Stumbo: 53

Cross-examination by Ms. Bolen: 65

1	<u>(SW) Michael Collins (Jackson v. Denno)</u>	
2	Direct examination by Mr. Brown:	88
3	Cross-examination by Ms. Bolen:	91
4	Examination by the Court:	92
5		
6	Certificate of Reporter	103
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

E X H I B I T SState's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
1	Statement		X	16
2	Disk		X	32
3	Statement		X	33
4	Miranda Rights		X	42
5	DVD Disk		X	57
6	Statement		X	61
7	Statement		X	61

1 THE COURT: The next case is the State versus Karlita
2 Phillips. The record should reflect that Ms. Phillips is
3 present. My understanding is the purpose of the hearing
4 this afternoon is a Jackson v. Denno hearing concerning
5 various statements that Ms. Phillips gave law enforcement.
6 This is a case that we are looking at trying next week in
7 Abbeville. And somebody probably needs to note that we
8 have got a different Court Reporter, obviously, this week
9 than we will have next week. Ms. Scott is suppose to be
10 with me next week and we have Ms. Holston here. So if
11 there is any need for a transcript you are going to need
12 to, somebody needs to note that it is her that is doing
13 this transcript.

14 MR. STUMBO: Yes, sir.

15 THE COURT: Is everyone ready to proceed at this
16 point and time?

17 MR. STUMBO: We are, Your Honor.

18 MS. BOLEN: Yes, sir.

19 THE COURT: And I don't know if I said this, but the
20 record should reflect that Ms. Phillips is present. All
21 right, Solicitor, you want to give me an overview. Y'all
22 indicated to me in-chambers, I think Monday afternoon,
23 that there were a number of statements given by Ms.
24 Phillips after, or during the investigation of this
25 incident.

1 MR. STUMBO: There are, Your Honor. And for the
2 record, do you need the indictment number?

3 THE COURT: Please, go ahead.

4 MR. STUMBO: Indictment numbers on this case is
5 accessory before the fact of murder, indictment number on
6 that one is 2014-GS-01-213. And there is another
7 indictment for using a minor to commit a violent felony or
8 violent crime, excuse me. Indictment 2014-GS-01-212. And
9 that obviously, Judge, they are Abbeville County cases
10 that will be on the record next week in front of Your
11 Honor.

12 Your Honor, this case involves, I know you are maybe
13 somewhat familiar with the facts just from chambers
14 meetings with the attorneys. This involves the murder of
15 a young man by the name of Jamil Phillips. This murder
16 occurred out in the area of Abbeville County, really
17 between Hodges and Abbeville at [REDACTED]
18 [REDACTED]. This is the house of Jamil's parents, Dale
19 Phillips, Sr; and Ms. Martha Phillips. Your Honor, it is
20 the State's theory in this case, the intended target of
21 this murder was actually Dale Phillips, Jr.; who is
22 Karlita Phillips husband. Ultimately an individual by the
23 name of Tavarious Settles who has also been charged with
24 murder in this case, for the murder of Jamil Phillips, was
25 the one that was at the house who lay in wait and pulled

1 the trigger shooting Mr. Phillips three times in the back.
2 Judge, initially a vehicle was seen at the neighbor's
3 house, the Phillips' neighbor's house, a lady by the name
4 of Mary Stamps. There is a car there, silver in color, a
5 Toyota Camry. Several of the neighbors see this car back
6 into this little driveway lined up with the neighbor's
7 house. And ultimately, Judge, that car is somewhat
8 identified that night as possibly belonging to Dale
9 Phillips, Jr.'s estranged wife, Ms. Karlita Phillips. So,
10 as SLED is called in, and the time the sheriffs department
11 was in transition, Coroner Ronnie Ashley was the sheriff
12 over there, he called SLED in immediately to help with
13 this as it was a homicide case. Special Agent Michael
14 Collins responded that night, was assigned by his agency
15 by SLED, he responded. That night they go out to Karlita
16 Phillips apartment which is here in Greenwood, Georgetown,
17 in the Georgetown Apartment area there, I think it is
18 actually off of [REDACTED]. Judge, they respond to her
19 apartment, they make contact with her. When she comes to
20 the door and speaks with Agent Collins, Agent Marshall,
21 they get a written statement that night. So from the
22 beginning Ms. Phillips was a suspect in this case.
23 Ultimately, Your Honor, she was arrested several months
24 later in December of 2013. She gives another, sits down
25 for another interview with the Abbeville County Sheriffs

1 Office, that statement is recorded via audio on December
2 18th. She comes back the next morning and Captain Talbert
3 and Investigator Marshall, who are both here today and
4 will testify, take a written statement from her, a
5 four-page written statement and also audio record that one
6 on December 19th. The next day, December 20th she is
7 interviewed by Lieutenant Bo Barton with SLED, he
8 responds, he had just gotten involved with the case that
9 day. He goes into an interview room at the sheriffs
10 office with Karlita Phillips. That statement is videoed
11 and it is audio recorded. During the course of this three
12 and a half hour videotaped interview she gives two written
13 statements and we have those statements as well, Judge.
14 So, total we have four written statements, we have an
15 audio CD with two audio recordings for the 18th and the
16 19th. We have a video recording from December the 20th.
17 So, if my math is correct, Your Honor, I think we would
18 have four plus two, we would have six total exhibits for
19 purposes of the Jackson v. Denno hearing today. I think
20 we can mark those in the course of having the witness
21 testify. And I am assuming, we are set up here, witnesses
22 will be called to this lonely chair against the wall.

23 THE COURT: I think that is probably the only option
24 that we have.

25 MR. STUMBO: Okay. I think that is an overview of

1 the case, Judge. Ultimately we ended up with these
2 statements and that is what we would seek to introduce at
3 trial. That is our intention and obviously for purposes
4 of this hearing and the case law under Jackson v. Denno we
5 would propose to Your Honor the voluntariness of those
6 statements and we are ready to proceed.

7 THE COURT: Very good. Just for housekeeping
8 purposes, Ms. Bolen, are there any statements that y'all
9 agree should come in or there are no problems with or are
10 y'all challenging all six statements?

11 MS. BOLEN: We are challenging all six, Your Honor.

12 THE COURT: Very good, proceed.

13 MR. STUMBO: Thank you, Judge, the State would call
14 Special Agent Michael Collins to the stand.

15 MICHAEL COLLINS, being
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 By Mr. Stumbo:

19 Q Good afternoon, Agent Collins.

20 A Good afternoon.

21 Q You work for the State Law Enforcement Division?

22 A That's correct.

23 Q How long have you been with them?

24 A I have been with them for two and a half years now.

25 Q Is that a Special Agent Investigator?

1 A Yes, sir.

2 Q And you are assigned to which region?

3 A I am assigned to the Piedmont Region which included,
4 basically be the upstate of South Carolina.

5 Q Were you assigned to work the murder of Jamil
6 Phillips?

7 A That's correct, I was.

8 Q Who called you out that night?

9 A The Abbeville County Sheriffs Office contacted SLED.
10 And I received a call from my Captain at the time and
11 assigned me and another agent, Agent Kindley who is now a
12 Lieutenant, to assist.

13 Q Captain Robbie Henderson?

14 A Captain Robbie Henderson.

15 Q He had received a call from Abbeville County for
16 SLED's assistance in this case?

17 A Yes, sir.

18 Q And were you able to respond that night?

19 A Yes sir, I was.

20 Q Did you respond to the scene of the crime?

21 A Yes sir, I did. I responded to, I believe, 1522 Old
22 Douglas Mill Road in Abbeville.

23 Q And the deceased, Jamil Phillips, had what
24 relationship to the homeowner?

25 A He was the son of the homeowners.

1 Q That is Dale Phillips and Martha Phillips?

2 A That is correct.

3 Q Did you have an occasion through the course of that
4 night to make contact with the defendant in this case,
5 Karlita Phillips?

6 A Yes sir, I did.

7 Q And what was her relationship to the victim, the
8 parties in this case?

9 A The victim, Jamil Phillips, had a brother by the name
10 of Dale Phillips, Jr. While we were on the scene we made
11 contact with him and he made a statement that he believed
12 that he was the intended victim and that Ms. Phillips, his
13 ex-wife, was the person who was responsible.

14 Q So based on information from Dale Phillips, Jr., who
15 is the estranged husband of the defendant, you respond to
16 Ms. Phillips residence?

17 A In correlation with the description of a vehicle that
18 was seen leaving the scene and also, Mr. Phillips also
19 said that Ms. Phillips, Ms. Karlita Phillips drove a
20 silver colored car, I think at the time he told it was a
21 Toyota Camry.

22 Q That was a description given by neighbors who had
23 seen a car out there?

24 A That's correct, the neighbors stated that they had
25 seen a silver colored car leaving the area just after the

1 shots were fired.

2 Q Now, when you go to Greenwood, where is it that you
3 go to make contact?

4 A We go to an apartment complex off [REDACTED], it is
5 in Greenwood County, I believe it is [REDACTED]. We
6 pulled into the apartment complex, we locate a silver
7 colored vehicle, we ran a tag on it. It comes back to Ms.
8 Karlita Phillips at apartment, I believe it was [REDACTED]. At
9 that time we tried to make contact with her.

10 Q And the incident is on March 25th, 2013, is that
11 correct?

12 A That's correct.

13 Q And this would be, and what time of day did the
14 incident occur approximately?

15 A It was approximately 10:00 o'clock at night. We had
16 been out on the scene for a couple of hours, I believe by
17 the time we got to Ms. Phillips house it was probably the
18 following morning.

19 Q Early morning hours of the 26th?

20 A Correct.

21 Q Did she respond to, did you knock on the door, I am
22 assuming?

23 A Yes sir, we did.

24 Q And did she respond?

25 A Initially she did not. When Investigator Marshall

1 and I first arrived, he was running the tag. We initially
2 noticed there were some lights on inside of the apartment
3 where the car was parked in front of. When his radio went
4 off we then proceeded with information, the lights inside
5 of that apartment went off. We knocked on the door, I
6 announced myself who I was. I believe I told her I was
7 SLED or a State police. No answer. We continued to
8 knock. A couple of minutes later a Greenwood County
9 Deputy arrived on the scene, stated that they had received
10 a phone call from a female inside saying that there was
11 somebody banging on her door saying that they were the
12 police. At that time she opened the door for him and I
13 introduced myself and made contact with her.

14 Q Was there any vehicle out front that matched any
15 description of a vehicle?

16 A Again, when we first were there we noticed that a
17 silver car, ran a tag on it, came back as Ms. Phillips as
18 a silver, as a Toyota Camry. Registered to her and the
19 apartment, I believe it was ■.

20 Q When you go inside did you have a conversation with
21 Ms. Phillips, the defendant?

22 A I did. Again, I introduced myself and introduced
23 Investigator Marshall, basically told her why we were
24 there. We had been called out to a shooting
25 investigation, a death investigation that Mr. Jamil

1 Phillips had been killed at his parents residence. And
2 just basically asked her, had she been anywhere in the
3 area and asked her to kind of walk us through her day.
4 She did so, provided her written statement.

5 Q Just a summary of what her day was according to her?

6 A The statement that she gave, she had gone to the
7 Greenwood County Sheriffs Office earlier to get a report
8 about a break-in that had happened. She and her daughter
9 had visited a couple of pawn shops looking for items that
10 may have been stolen and then pawned at these shops. They
11 ended up going to Captain D's and Chick-fil-a, they came
12 back home. She and her daughter rode up and down the
13 driveway of the apartment complex, she was teaching her
14 daughter how to drive. And pretty much she was in for the
15 rest of the night. I asked her what was some of the pawn
16 shops that she visited. She gave us a list of the pawn
17 shops. I asked her if she had been in Abbeville County at
18 any point during the day. She said that she had not been
19 to Abbeville County at any point during the day. Also
20 asked her if she had let anyone borrow her vehicle. She
21 said that no one had borrowed her vehicle.

22 Q Now, at any time did you advise Ms. Phillips of her
23 Miranda rights?

24 A I did not advise her of her rights. But on our
25 statement form that she wrote her statement on it is all

1 captured in that. And the reason why I did not advise her
2 of her rights, again, because I was at her residence. If
3 she had of told me to leave or get lost we would have
4 simply had to leave.

5 Q At that time she wasn't in custody?

6 A She wasn't in custody, she wasn't under arrest or
7 anything of that nature.

8 Q You did take a written statement from her?

9 A That is correct.

10 Q Agent Collins, I am going to hand you what has been
11 marked for ID as State's exhibit number 1. Agent Collins,
12 do you recognize that?

13 A Yes, sir.

14 Q What is that?

15 A This is a voluntary, SLED statement form, voluntary
16 statement form that I issued, I gave to Ms. Phillips. She
17 filled out the basic information. I told her a voluntary
18 statement and she wrote her statement in the lines below.

19 Q Okay. And is this a fair and accurate copy of the
20 original statement?

21 A Yes sir, it is.

22 Q This is a copy of it. And you have had a chance to
23 review it?

24 A That's correct.

25 Q And does it fairly and accurately depicts and is it a

1 fair and accurate copy of the written statement that the
2 defendant gave on March 26th?

3 A That's correct.

4 MR. STUMBO: Judge, at this time we would offer, for
5 purposes of this hearing, State's 1 into evidence. I
6 believe the defense has had an opportunity to look at it.

7 THE COURT: Without objection State's 1 will be in
8 evidence.

9 (Whereupon, State's Exhibit 1 was admitted into
10 evidence.)

11 Q Now, on State's 1, I am going to hand this back to
12 you, Agent Collins. At the top, the preprinted part right
13 below your name, will you read that into the record for
14 the Court.

15 A Duly warned and advised by me and I know and I
16 understand that I have the following rights. That I have
17 the right to remain silent and do not have to answer any
18 questions or make any statements at all. That any
19 statement I make can and will be used against me in court
20 or courts of law for the offense or offenses concerning
21 which the following statement here, that the statement is
22 herein made. That I have the right to consult with an
23 attorney of my own choice before or and any time during
24 any questioning or statements I make. That if I cannot
25 afford to hire a lawyer I may request and have a lawyer

1 appointed for me by the proper authority before or at any
2 time during the questioning, before any questioning or
3 statements that I make without cost or expense to me.

4 That I can stop answering at any time or make any
5 statements at any time that I choose. And call for the
6 presence of a lawyer to advise me before continuing any
7 more questioning or making any more statements whether or
8 not I have already answered some questions or made some
9 statements. I do not want to talk to a lawyer and I
10 hereby knowingly and purposely waive my right to remain
11 silent and my right to, my right to have a lawyer present
12 while, while I make the following statement to the
13 aforesaid person knowing that I have the right and
14 privilege to terminate the interview at any time hereafter
15 have a lawyer present with me before answering any more
16 questions or make any more statements if I choose to do
17 so.

18 Q Did she write this part at the top, her name and, was
19 that written by you or by her?

20 A I believe I wrote the first Greenwood County, of
21 Greenwood and she filled the rest.

22 Q Okay. You wrote your name?

23 A Yes, that is correct.

24 Q And in the body of the statement here, whose
25 handwriting is that?

1 A That is Ms. Phillips.

2 Q And the signature down here down at the bottom, whose
3 signature is that?

4 A That is Ms. Phillips signature.

5 Q And you witnessed her sign that?

6 A That is correct.

7 Q And that is your signature on the witness line?

8 A That is my signature on the witness line.

9 Q Okay. And you said Investigator Marshall was there
10 in this as well?

11 A That is correct.

12 Q That was indicated at 3:50 a.m. on March 26th of
13 2013, is that an accurate time?

14 A Yes, sir.

15 Q And I believe you already summarized earlier the
16 statement she gave you is State's 1, that is in the
17 record.

18 A Yes.

19 Q That is in the record. She indicated she didn't have
20 any knowledge of the killing or murder of Jamil Phillips?

21 A She didn't.

22 Q She said she hadn't gone to Abbeville?

23 A She said she hadn't been to Abbeville, she hadn't let
24 anyone borrow her car either.

25 Q You stayed involved with this investigation after

1 that night?

2 A Yes sir, I did.

3 Q Were you SLED's lead agent on this case?

4 A I was.

5 Q Ms. Phillips was arrested some time later, correct?

6 A That is correct.

7 Q Subsequent interviews that were done with Ms.

8 Phillips, you did not participate in those?

9 A No sir, I did not.

10 Q Who was that, who did those?

11 A Investigator Marshall, Captain Talbert, Lieutenant
12 Barton and I believe that was it.

13 Q Lieutenant Barton did the last interview?

14 A Yes sir.

15 Q He works in the agency?

16 A Yes sir, correct.

17 Q All right. For purposes of this hearing I have no
18 other questions.

19 CROSS-EXAMINATION

20 By Ms. Bolen:

21 Q I have a couple of questions for you. You arrived at
22 the house, it was about 3:00 in the morning, correct?

23 A Out to Ms. Phillips house?

24 Q Yes.

25 A Around about, I don't know the exact time. It would

1 have been around 3:00, the statement was around 3:50.

2 Q 3:50 or so?

3 A Yes.

4 Q And you went out with yourself and Lieutenant
5 Marshall with the Abbeville County Sheriffs Office, right?

6 A That is correct.

7 Q Were you in separate cars or in one car?

8 A We were in the same vehicle.

9 Q Okay. And you were knocking on her door?

10 A Yes.

11 Q And, again, at 3:00 o'clock in the morning?

12 A Yes.

13 Q And then the Greenwood Sheriffs Deputies arrived,
14 correct?

15 A Yes.

16 Q Did they stay while you were talking to her?

17 A I don't recall. I know they were there when we went
18 to the door and we went inside. I am not sure if he
19 actually stayed during the entire time.

20 Q And you said she gave you a list of pawn shops,
21 right, that she had been to?

22 A Yes.

23 Q Did you go back and verify that she had been to any
24 of those?

25 A I don't think I personally went back and interviewed,

1 talked to any of the pawn shop owners.

2 Q And you were testifying on direct that you did not
3 read her her Miranda rights, right?

4 A I did not?

5 Q You did not read out loud her Miranda rights to her?

6 A No. Basically what I told her, I was there to talk
7 to her, she could give me a statement if she wanted to.

8 Q So as far as you were concerned at that point she was
9 not under arrest, right?

10 A No, she was not under arrest.

11 Q She wasn't a suspect at that time?

12 A I wouldn't say not a suspect. Again, we didn't have
13 anything specific that we were looking into. We had
14 received information, we were following up on the
15 information.

16 Q And the statement that she gave you wasn't video or
17 audio recorded, right. It was just memorialized in the
18 form of a written statement?

19 A That's correct.

20 Q That is all I have. Thank you.

21 THE COURT: Thank you very much, Mr. Collins, you can
22 step down. I guess you are free to go, very good. Call
23 your next witness, please.

24 MR. STUMBO: I would call Investigator Nick Marshall.

25 NICK MARSHALL, being

1 first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 By Mr. Stumbo:

4 Q Good afternoon, Investigator Marshall.

5 A Good afternoon.

6 Q You work for Sheriff Watson over in Abbeville?

7 A Yes sir, I do.

8 Q Okay. And you are an investigator, is that your
9 title?

10 A Yes, sir.

11 Q Did you work in Abbeville for the sheriffs office
12 before he took office as well?

13 A Yes, sir.

14 Q The homicide of Jamil Phillips, were you involved
15 with that investigation?

16 A Yes sir, I was.

17 Q Okay. That occurred out on [REDACTED]?

18 A [REDACTED].

19 Q And you did respond to the scene that night?

20 A Yes sir, I did.

21 Q Were you able to help secure the scene that night?

22 A Yes, sir.

23 Q And Jamil Phillips body was found where?

24 A It was, when I approached the residence his body was
25 to the right, right side of the front door.

1 Q Okay. And Jamil's parents were there at the house?

2 A Yes sir, they were inside the residence.

3 Q You were able to make contact with them?

4 A Yes sir, I was.

5 Q We heard from Agent Collins that the defendant, Ms.

6 Phillips, was developed as a suspect in this case early on

7 based on information you were given?

8 A Yes, sir.

9 Q Okay. Did you go with Agent Collins to Karlita

10 Phillips apartment?

11 A Yes sir, I did.

12 Q And did y'all knock on the door of the apartment?

13 A He knocked on the front and I actually went around
14 the back because I think, if I remember correctly, there
15 was two, I think there was a front door and a back door.

16 Q And at that time she didn't respond to the door, is
17 that correct?

18 A That's correct.

19 Q Ultimately a Greenwood County deputy did assist?

20 A Yes, sir. I believe, I called Greenwood County
21 Dispatch to have an officer come out there. And while I
22 was on the phone with them they said that, they were
23 actually online with Ms. Phillips.

24 Q She was on the phone with dispatch?

25 A Yes, sir.

1 Q Ultimately did y'all go in the apartment?

2 A Yes, sir.

3 Q And you, were you present during the course of this
4 conversation with the defendant?

5 A Yes, sir.

6 Q Did you ever threaten Ms. Phillips with anything?

7 A I did not.

8 Q Did you ever make her any promises?

9 A No, sir.

10 Q Or any reward to be given?

11 A No, sir.

12 Q How would you characterize this being in her house,
13 was she under arrest at that time?

14 A She was not under arrest, no sir.

15 Q Was in custody at all?

16 A She was not in custody. We were just sitting in the
17 couch with her.

18 Q At that time if she had of told y'all to pack sand
19 and get out of the house would you have done that?

20 A We would not have had any other choice.

21 Q Okay. The description of the vehicle that was
22 allegedly seen by neighbors that night, was there a
23 vehicle matching that description outside?

24 A Yes sir, there was.

25 Q Now, I am going to hand you State's 1, what is in

1 evidence for the purposes of this hearing, State's 1. Do
2 you recognize this statement?

3 A Yes sir, I do.

4 Q And direct your attention to the bottom of that
5 statement where it says witness. Is that your signature?

6 A Yes sir, it is.

7 Q You witnessed Ms. Phillips writing this statement out
8 at the course of the interview?

9 A Yes, sir.

10 Q You memorialized that with your signature on State's
11 1?

12 A Yes, sir.

13 Q And she was given an opportunity to fill out the top
14 part and obviously read, given an opportunity to read the,
15 what there is on the sheet, the Miranda warnings, correct?

16 A Yes, sir.

17 Q Did you read the Miranda warnings at that time?

18 A I did not.

19 Q Did Agent Collins?

20 A Not that I recall.

21 Q All right. Did she ever request to speak with a
22 lawyer or anything?

23 A Not that I recall.

24 Q And you, y'all did indicate to her that she was free
25 to not give a statement if she so chose?

1 A I don't recall if that was.

2 Q But she voluntarily wrote this in her own
3 handwriting, correct?

4 A Yes, sir.

5 Q Signed it with her own hand there, the signature of
6 person giving a voluntary statement, correct?

7 A Yes, sir.

8 Q We are going to fast forward a little bit. You
9 stayed involved with this investigation?

10 A Off and on, yes sir, it was primarily handled by
11 State Law Enforcement Division.

12 Q At that time would you consider SLED being the lead
13 agency?

14 A Yes, sir.

15 Q They were still working with the sheriffs office at
16 that time?

17 A Yes, sir.

18 Q I am going to fast forward to December 18th, 2013.
19 Were you still involved at that time with this
20 investigation?

21 A Yes, sir.

22 Q Did you have occasion to interview Ms. Phillips
23 again?

24 A I did.

25 Q Where did that interview take place?

1 A This was the Abbeville County Sheriffs Office in our
2 conference room.

3 Q Okay. And how did y'all record, did you record this
4 interview?

5 A Yes sir, I did. I used my county issued Sony digital
6 recorder.

7 Q Digital handheld recorder?

8 A Yes, sir.

9 Q And did you record the entirety of that interview
10 with Ms. Phillips?

11 A Yes sir, I did.

12 Q Any other officers in the room?

13 A My Captain, Captain Talbert was in the room as well.

14 Q Captain Natalie Talbert?

15 A Yes, sir.

16 Q And on the 18th, the entirety of that interview with
17 Ms. Phillips was recorded?

18 A Yes sir, that is correct.

19 Q Now, at that point was she under arrest?

20 A Yes sir, she was under arrest.

21 Q She was under arrest for a charge of using a minor to
22 commit a violent crime?

23 A Yes sir, I believe that is correct.

24 Q And you say it happened in y'all's interview room,
25 you didn't have that set up at that time?

1 A As you mentioned earlier, during the transmission we
2 had, we didn't have a interview room per se, we didn't
3 have a audio/video recording device in the sheriffs office
4 to use. They had installed one but during that time there
5 was some kind of problem with it and we weren't able to
6 use it so that is why we--

7 Q You didn't use it that night, you used your handheld
8 audio recorder?

9 A Yes sir, that is correct.

10 Q Now, at that time she was under arrest, did you read
11 her her rights?

12 A On the 18th Captain Talbert, I believe, read her her
13 rights.

14 Q You were present for that?

15 A Yes sir, I was.

16 Q And that audio recorded interview lasted--

17 A It was a very lengthy audio. I want to say it is
18 close to three hours long.

19 Q Okay. And the entirety of that is recorded and it
20 has been provided to us in discovery?

21 A Yes, sir.

22 Q And at any time during that two and a half to three
23 hours did this defendant, Ms. Phillips, ever exercise her
24 right to remain silent?

25 A No sir, she did not.

1 Q Did she ever ask for a lawyer?

2 A No sir, she did not.

3 Q And she was advised of those rights that she could
4 remain silent, correct?

5 A Yes, sir.

6 Q And she had the right to an attorney?

7 A Yes, sir.

8 Q And one would be provided for her at no cost if she
9 wanted?

10 A That is correct, yes sir.

11 Q And at no time during this interview did she request
12 one?

13 A No, sir.

14 Q Did you ever threaten her in any way?

15 A No, sir.

16 Q Ever promise any reward?

17 A No, sir.

18 Q Did she have access to the bathroom facilities if she
19 had needed them?

20 A If she had asked we definitely would have taken her
21 where ever she needed to go.

22 Q Did she have access to drink if she was thirsty?

23 A Again, I believe I, I believe I brought her a drink,
24 if I am not mistaken, during the interview. Asked her if
25 she wanted one.

1 Q Was there any food if she needed something to eat?

2 A Of course, we have a snack machine and we would have
3 gotten her whatever.

4 Q She was in the custody of the sheriffs department at
5 that time?

6 A Yes sir, that is correct.

7 Q And to the best of your observations of Ms. Phillips
8 she was given the statement free and voluntary?

9 A Yes, sir.

10 Q After this two and a half to three hour interview
11 which was recorded was she brought back in front of you
12 and Captain Talbert some point later?

13 A Yes sir, the next day on the 19th.

14 Q Brought her back into the same interview room?

15 A Yes, sir.

16 Q Did you record that interview?

17 A Yes sir, I did.

18 Q Using what?

19 A The same audio recorder I had used the day before.

20 Q Okay. So it was a separate--

21 A Separate files.

22 Q -digital file using the same recorder?

23 A Yes, sir.

24 Q And during that interview, did you record the
25 entirety of that interview?

1 A Yes, sir.

2 Q From the time she came into the room and y'all are
3 talking to the time she leaves, correct?

4 A The majority of that interview is probably silence
5 because she wrote a very long statement, took a very long
6 time for her to write a statement.

7 Q Okay. So she was given the opportunity to write out
8 at the conclusion what y'all's, question and answer?

9 A Yes, sir.

10 Q And that is on this recording as well, correct?

11 A Yes, sir.

12 Q Now, you have had a chance to review those digital
13 files?

14 A Yes, sir.

15 Q Before coming to court today?

16 A Yes, sir.

17 Q I am going to hand you, if I could have this marked
18 for ID as State's 2. This is State's exhibit 2, what has
19 been marked for ID as State's 2, it is a disk. Have you
20 had an opportunity to review the contents of the disk
21 before coming to court?

22 A Yes, sir.

23 Q And it is a fair and accurate representation, a copy
24 of your interviews with Ms. Phillips?

25 A Yes, sir.

1 Q Okay.

2 MR. STUMBO: Your Honor, I would move State's 2 into
3 evidence.

4 MS. BOLEN: No objection.

5 THE COURT: It is admitted.

6 (Whereupon, State's Exhibit 2 was admitted into
7 evidence.)

8 Q At any time during this second interview, on the 19th
9 which is on State's 2, Ms. Phillips request a lawyer?

10 A No, sir.

11 Q Did she ever say she didn't want to talk?

12 A Not that I recall, no sir.

13 Q Never exercised her right to remain silent?

14 A No sir, I do not recall.

15 Q She continued to answer your questions and
16 Investigator Talbert's questions?

17 A Yes, sir.

18 Q Again, on the 19th, she had access to the bathroom
19 facilities?

20 A Yes, sir.

21 Q Had access to a drink if she needed it?

22 A Yes, sir.

23 Q Had access to food if she was hungry?

24 A Yes, sir.

25 Q Did you threaten her in any way?

1 A No, sir.

2 Q Hold out any hope or reward for her giving her
3 statement to you that day?

4 A No, sir.

5 Q The best of you perceiving did she give that
6 statement voluntarily, freely?

7 A Yes, sir.

8 Q You mentioned that during the second interview on
9 December 19th that there is a lot of dead time on it,
10 silence?

11 A Yes, sir.

12 Q And the defendant, Ms. Phillips, was writing out a
13 statement at that time?

14 A Yes, sir.

15 MR. STUMBO: If we can go ahead and mark this as
16 State's 3, it is four pages.

17 Q I am going to hand you what has been marked for ID as
18 State's number 3. If you could, just take a look at that
19 briefly.

20 MS. NELSON: If I could, Your Honor, would like to
21 see State's 3.

22 MR. STUMBO: Let me hand State's 3 to Ms. Nelson.

23 MS. NELSON: Thank you.

24 (Whereupon, State's Exhibit 3 was admitted into
25 evidence.)

1 Q I am going to hand you back State's, marked for ID as
2 State's 3, Detective Marshall. This is a four-page
3 written statement, correct?

4 A Yes, sir.

5 Q And who wrote the body of that statement?

6 A Ms. Karlita Phillips.

7 Q And with her own hand wrote out these words?

8 A Yes, sir.

9 Q And this is during that second interview, I know I
10 have already asked you this question. But at the time she
11 is writing this did she ever ask for an attorney?

12 A No, sir.

13 Q Ever say I want to stop and get out of here?

14 A No, sir.

15 Q And she ultimately signs the statement?

16 A Yes, sir. I believe all four pages.

17 Q All four pages are signed by her?

18 A Yes, sir.

19 Q Did you witness all four pages?

20 A I did.

21 Q Is that your signature at the bottom of all four
22 pages?

23 A Yes, sir.

24 Q And the time on this would have been what time?

25 A 10:01.

1 Q 10:01 a.m. on December 19th?

2 A Yes, sir.

3 Q She gives this written statement?

4 A Yes, sir.

5 Q And Captain Talbert was in the room for the interview
6 on the 19th as well?

7 A Yes, sir.

8 Q Anyone else from your agency during either the
9 interview on the 18th or the 19th come in the room?

10 A Yes sir, I believe Sheriff Watson came in a few times
11 on the 18th, not to sit down, just came in and said a few
12 words.

13 Q And that is recorded?

14 A Yes sir, all that is on audio, yes sir. All that,
15 yes sir. We identified him to Ms. Phillips when he spoke
16 as who he was.

17 Q I am going to save asking you the contents of that
18 four-page for now. But at any time during your interviews
19 with Ms. Phillips, going back to March 26th, at any time
20 did she express to you that she wanted a lawyer before she
21 talked to you?

22 A No, sir.

23 Q She gave those statements free and voluntary?

24 A Yes, sir.

25 MR. STUMBO: No further questions of this witness for

1 purposes of this hearing.

2 CROSS-EXAMINATION

3 By Ms. Bolen:

4 Q I have just got some follow-up questions. Going back
5 first to the March, 2013, you went out about 3:00 in the
6 morning, right?

7 A I recall us going out, actually getting to this house
8 around 12:30 that morning but I can't remember exactly.
9 But sometime in that timeframe.

10 Q And she lived in an apartment building, right?

11 A Yes, ma'am.

12 Q How many apartments were there, would you say?

13 A I couldn't really say honestly, accurately, maybe
14 two. I am not one-hundred percent sure.

15 Q Okay. And it was in a kind of urban neighborhood,
16 not out in the country?

17 A Yes, ma'am. It is in like the city, I guess the
18 county.

19 Q Okay. And that discussion with her was not recorded
20 other than her writing, right?

21 A Not to my knowledge, no ma'am.

22 Q Okay. And you then talked to her again December
23 18th?

24 A Yes, ma'am.

25 Q And that was recorded?

1 A Yes, ma'am.

2 Q Just audio, right?

3 A Yes, ma'am.

4 Q And that was, as you said, a pretty lengthy
5 conversation, right?

6 A Very long, yes ma'am.

7 Q And there were a good numbers of pauses, right, it is
8 not just two and a half hours of steady talking, right?

9 A Yes ma'am, that is very fair to say.

10 Q Okay. And both you and Captain Talbert, right?

11 A Yes, ma'am.

12 Q And a couple of points, you tried different tactics
13 with her, right. Do you remember talking to her about
14 church and about you need to get right with God?

15 A Yes, ma'am.

16 Q Okay. Do you remember getting pretty upset with her
17 at one point, yelling and saying you were going to leave?

18 A I believe I did probably raise my voice, yes ma'am.

19 Q And at some point, I think both you and Captain
20 Talbert talked to her about taking a polygraph, right?

21 A Yes ma'am, we did.

22 Q And she did agree to take one, correct?

23 A I believe ultimately she did, yes ma'am.

24 Q And then one was not offered to her, right?

25 A Not to my knowledge.

1 Q And do you remember while you were talking to her you
2 told her you could get a search warrant for her person?

3 A I did say that.

4 Q And you could strap her down?

5 A Yes, ma'am.

6 Q And you could force her to take a polygraph?

7 A Yes, ma'am.

8 Q The statement from December 19th, going back to the
9 18th for a minute. There is no written statement from
10 that discussion?

11 A Not to my knowledge. No ma'am, I don't believe she
12 wrote a statement on the 18th.

13 Q And how long had she been, when was she booked on the
14 18th, do you remember?

15 A I couldn't really honestly tell you the exact time.

16 Q Do you remember when you talked to her?

17 A The 18th, it was probably around 3:30 in the
18 afternoon.

19 Q Okay. In the afternoon. So you talked to her for
20 two and a half, three hours, starting around 3:30?

21 A Yes.

22 Q And then the next day you go back to talk to her,
23 correct?

24 A Yes, ma'am.

25 Q That is not something where she comes to you and

1 says, I have more information, right?

2 A Yes, ma'am. I believe you are correct.

3 Q So was initiated by you and/or Captain Talbert?

4 A Yes, ma'am.

5 Q And again, on the 19th there is a good amount of
6 pause, right. Again, it is not--

7 A It is a very long amount of dead space, for lack of a
8 better term.

9 Q And since you were one of the officers, you respond
10 on the scene, you also went to talk to her that day, I
11 guess March 26th, you said you went out to talk to her?

12 A Yes ma'am, it would have been that following morning.
13 So, yes, March 26th.

14 Q And you talked to her that day, did you also look in
15 the parking lot for a car?

16 A Yes ma'am, when we pulled up.

17 Q And it is true that no witness told you a silver
18 Camry, right?

19 A No one, I don't recall anyone saying a Toyota Camry.

20 Q Okay. One witness said a silver car, right, one said
21 a light colored car?

22 A Yes, ma'am.

23 Q Without make or model and one said, just said a car,
24 correct?

25 A Yes, ma'am. I believe that is correct.

1 Q Just to clarify, on the 18th you talked, somewhere
2 between two and a half, three hours; right?

3 A Yes, ma'am.

4 Q To Ms. Phillips?

5 A Yes, ma'am. I believe it was like three hours.

6 Q And then the 19th it was, again, two and a half to
7 three hours, correct?

8 A I believe so, yes ma'am.

9 Q What time in the morning did that start on the 19th?

10 A I want to say it was around 7:00, 7:30, 7:45,
11 something like that.

12 Q And you didn't meet with her in her cell, right. You
13 would have taken her to the conference room?

14 A Yes, ma'am.

15 Q At the law enforcement conference room?

16 A Yes ma'am.

17 Q That is all I have, thank you.

18 THE COURT: Any redirect.

19 MR. STUMBO: Yes, Your Honor, just briefly.

20 REDIRECT EXAMINATION

21 By Mr. Stumbo:

22 Q Ms. Bolen mentioned talking about God with Ms.
23 Phillips in the interview. That is not the first time you
24 have done that?

25 A No sir, it is not the first time and it is not going

1 to be the last.

2 Q Okay. But you did, indeed, tell her that you could
3 get a search warrant and make her take the polygraph?

4 A Yes sir, I did.

5 Q You couldn't really do that?

6 A No, I can not.

7 Q Okay. Is that the first time you have done that in
8 an interview?

9 A No, sir.

10 Q Did you ever try to intimidate her to get physical
11 with her?

12 A No, sir.

13 Q She indeed said she was willing to take the
14 polygraph?

15 A She did, yes sir.

16 Q No further questions, Your Honor.

17 THE COURT: Thank you, sir, you can step down. We
18 are going to take a very brief break.

19 (Whereupon, a short break was taken.)

20 THE COURT: We are going back on the record in the
21 State versus Phillips. Solicitor, if you will call your
22 next witness, please.

23 MR. STUMBO: Thank you, Judge. Just before then just
24 a housekeeping matter. And I discussed this with Ms.
25 Bolen and Ms. Nelson before, during the break. I was

1 possibly was going to recall Investigator Marshall. There
2 is a Miranda rights form that I, quite frankly, thought I
3 had behind the statement. They have been given in
4 discovery, I don't think they are challenging the validity
5 of this statement. I marked it as State's 4. And I don't
6 believe they have any objection, just for purposes of this
7 hearing to have it marked, put into the record.

8 THE COURT: For purposes of this hearing we will go
9 head and receive that into the record.

10 MR. STUMBO: And just for the record, Judge, that is
11 the statement of Miranda rights waiver of rights signed by
12 Ms. Phillips and witnessed by Investigator Nick Marshall
13 on December 19th, 2013 at 7:57 a.m. This is the a.m.
14 statement.

15 THE COURT: Very good.

16 (Whereupon, State's Exhibit 4 was admitted into
17 evidence.)

18 THE COURT: The State would call Captain Natalie
19 Talbert to the stand.

20 NATALIE TALBERT, being
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 By Mr. Stumbo:

24 Q Good afternoon, Captain Talbert?

25 A How are you.

1 Q Fine, hope you are. You are a little ginger there, I
2 hope your back--

3 A Yes, I have a little back issue going on.

4 Q We will try to keep you here not too long. You
5 currently work for the Abbeville County Sheriffs office,
6 correct?

7 A Yes, I do.

8 Q And you went over there when Sheriff Watson took
9 office?

10 A I did.

11 Q And before that time you worked at Greenwood County?

12 A I did.

13 Q And you have been at SLED for some years in the past
14 as well?

15 A That's correct.

16 Q How many years total do you have in law enforcement?

17 A July 1st will be 35 years.

18 Q And during the time you came on with Sheriff Watson
19 over in Abbeville County, you were essentially second in
20 command to Sheriff Watson at the Sheriff's office?

21 A Yes, I am.

22 Q You had an opportunity to work on the case involving
23 the homicide of Jamil Phillips?

24 A Yes, sir.

25 Q And did you have an opportunity to interview the

1 defendant in this case, Karlita Phillips?

2 A Yes I did.

3 Q And she is in the courtroom here today?

4 A Yes, she is.

5 Q And we have heard Investigator Marshall's testimony,
6 you were with Investigator Marshall on December 18th when
7 Ms. Phillips was interviewed in relation to this case?

8 A Yes, I was.

9 Q And that was recorded, correct?

10 A Yes, it was.

11 Q And it was recorded by Investigator Marshall using
12 his handheld digital recorder?

13 A Yes, sir.

14 Q And on the 18th Ms. Phillips had been arrested at
15 that point, correct?

16 A Yes, she had.

17 Q She was in custody of Abbeville County?

18 A Yes, she was.

19 Q Now, did, prior to the time that you and Investigator
20 Marshall go into the interview room, had you interviewed
21 Ms. Phillips before that?

22 A No, I had not.

23 Q So, the entirety of the interview was documented with
24 the audio recording?

25 A That's correct, it was.

1 Q Who read Ms. Phillips her rights?

2 A I did.

3 Q And that was on the audio recording?

4 A Yes, it was.

5 Q And you had an opportunity before court today to
6 review State's exhibit 2, this disk?

7 A Yes and it has my initials on it.

8 Q You initialed it after you reviewed it?

9 A I did.

10 Q And fairly and accurately depicts the interviews with
11 the defendant, Karlita Phillips?

12 A Yes sir, it does.

13 Q That would be the interview on the 18th and then the
14 next morning on December 19th, correct?

15 A Yes, sir.

16 Q At the beginning of the interview on the 18th, did
17 you have occasion to read Ms. Phillips her rights?

18 A Yes, I did.

19 Q And how did you do that?

20 A We have a Miranda rights form, I read those to her
21 and asked her if she understood them. She initialed them
22 all and signed.

23 Q What are those rights, what did you ask her, or what
24 did you tell her her rights were?

25 A I told her she had the right to remain silent,

1 anything that she says can be used against her in a court
2 of law. She has a right to an attorney, if she cannot
3 afford an attorney one would be offered to her without any
4 cost. If she wish she can stop answering questions at any
5 time. She said she understood her rights and she signed
6 and she waived her rights.

7 Q So she didn't ask to remain silent at that point?

8 A She did not.

9 Q Did she ask for a lawyer?

10 A She did not.

11 Q Did you promise her anything in exchange for her
12 waiver of rights?

13 A No, I did not.

14 Q Did you threaten her at that time to get her to talk
15 to you?

16 A No, I did not.

17 Q And ultimately this was a pretty long interview on
18 the 18th, correct?

19 A Yes, it was very long.

20 Q How long did it last, approximately?

21 A Two hours and forty-eight minutes.

22 Q Okay. So it is a long interview. And other than you
23 and Investigator Marshall anybody else come into the room
24 during that interview?

25 A Sheriff Watson came in a couple of times during the

1 interview.

2 Q That is not uncommon for Sheriff Watson, if he is
3 involved with the case to sometimes to pop in an interview
4 room?

5 A No, it is not, no.

6 Q And did Investigator Marshall, during the course of
7 this interview, to your recollection, threaten or
8 intimidate the defendant in any way?

9 A No sir, he did not.

10 Q Did Sheriff Watson promise her anything?

11 A No, he didn't.

12 Q Threaten her in any way?

13 A No, he did not.

14 Q She was given access to the restroom facilities
15 during this long interview?

16 A Yes, she was.

17 Q Had access to a drink if she needed it?

18 A Yes.

19 Q Access to food if she was hungry?

20 A Yes sir, she was.

21 Q And during that course, I think the questions that I
22 just asked you would pertain to the interview on the 18th,
23 interview on the 19th was she threatened in any way?

24 A No sir, she was not.

25 Q Was she promised any reward if she would give y'all a

1 statement?

2 A No sir, she was not.

3 Q And she was given access to the restroom, food and
4 water and so forth?

5 A Yes sir, she was.

6 Q To your observation, Captain Talbert, did Karlita
7 Phillips give these, sit for these interviews in a free
8 and voluntary manner?

9 A Yes sir, she did.

10 Q Never asked for an attorney during either one of
11 these interviews?

12 A She did not.

13 Q Ever tell y'all, I want to stop talking now and go
14 back to my jail cell?

15 A No sir, she never did.

16 Q Morning of the 19th, I believe what is in, is State's
17 4, the morning of December 19th, 2013. This is what is in
18 as State's 4. Does that look like the County's, the
19 statement of rights from?

20 A Yes sir, it is.

21 Q Is this a fair and accurate representation of the
22 rights Ms. Phillips waived?

23 A Yes, it is.

24 Q On December 19th?

25 A Yes.

1 Q Did she reduce, the defendant, Ms. Phillips reduce
2 any of these interviews to writing, any statement?

3 A The one on the 19th she did.

4 Q So no writing, no written statement on the evening of
5 the 18th or afternoon evening of the 18th?

6 A No, sir.

7 Q State's number 3, I am going to let you take a look
8 at that.

9 A Yes, sir. That is her written statement.

10 Q That is the defendant's written statement?

11 A Yes, sir.

12 Q She wrote all four of these pages out in her
13 handwriting?

14 A Yes, she did.

15 Q She signed it, that is her signature?

16 A Yes.

17 Q And did you promise her anything to give you the
18 written statement?

19 A No sir, I did not.

20 Q Did you promise her or threaten her in any way to get
21 her to write this stuff down?

22 A No sir, I did not.

23 Q Did she ever ask for a lawyer before she wrote this?

24 A She did not.

25 Q Captain Talbert, there is a portion, I believe you

1 reviewed the audio recordings of these interviews,
2 correct?

3 A Yes sir, I did.

4 Q And during the second interview there is a long time
5 where it is just silence on there, there is nobody talking
6 while it is playing. What was going on during that time?

7 A She was writing out her statement.

8 Q So that was the time she was writing this four-page
9 statement?

10 A That is correct.

11 Q Would it be fair to say that takes up the majority of
12 that second audio recorded interview?

13 A Yes sir, it does.

14 Q Ms. Phillips interviewed again after y'all got done
15 on the 19th by anyone in law enforcement?

16 A Yes, she was.

17 Q Who conducted that interview?

18 A Lieutenant Bo Barton.

19 Q You weren't involved in that particular interview,
20 were you?

21 A No, I was not.

22 Q That is all I have.

23 THE COURT: Ms. Bolen.

24 CROSS-EXAMINATION

25 By Ms. Bolen:

1 Q Captain Talbert, during the, you refer to the 18th as
2 the first interview, the 19th as the second. During the
3 first interview you and Nick Marshall both were
4 interviewing Ms. Phillips, right?

5 A That's correct.

6 Q And that is the one where Sheriff Watson kind of
7 comes in and out a few times?

8 A That's correct.

9 Q And during that interview you tell her some stuff
10 about the case that isn't true, right. Tell her there is
11 a soil match?

12 A That's correct.

13 Q And Investigator Marshall tells her there is blood on
14 the car, they found blood on the car?

15 A I can't recall which one.

16 Q And when talking about the polygraph, you remember
17 that during the first interview that both you and
18 Investigator Marshall are talking to her about taking a
19 polygraph, right? I think it is during that time period
20 that Sheriff Watson is kind of popping in and out, right?

21 A That's correct.

22 Q And she agreed to take one, right?

23 A Yes, she did.

24 Q And I think Sheriff Watson comes in and says, no, we
25 are not going to let her, something like that?

1 A I would have to listen to the interview.

2 Q Also during that interview both her daughter and her
3 son are brought up by you and Investigator Marshall,
4 right?

5 A I recall, yes.

6 Q And at least in the initial report her son is a
7 potential suspect, right?

8 A That is correct.

9 Q And both of them are brought up during this
10 interview, right?

11 A That's correct.

12 Q In the context, you know, she wouldn't want to see
13 them get arrested, right?

14 A I would, it is so long I would have to sit down and
15 listen through all of it. I do recall speaking about her
16 son.

17 Q And her son and her daughter, to make sure it is
18 clear on the record, they are both in their late teens,
19 but they are both still in high school, right?

20 A At that time I know the daughter was still in high
21 school. I can't recall about her son.

22 Q On the second interview on the 19th, who goes and
23 actually gets her, you or Investigator Marshall or both of
24 you? Do you remember?

25 A I don't remember.

1 Q You both talked to her in the second interview?

2 A We both talked to her.

3 Q And, again, that was initiated by you and
4 Investigator Marshall, right, not by Ms. Phillips?

5 A Yes, that is correct.

6 Q And on the 18th is it fair to say that both of you
7 and Investigator Marshall got pretty frustrated during
8 that, right, you both raised your voices?

9 A Yes, we did.

10 Q And Investigator Marshall threatened to walk out and
11 leave and said he was done with her?

12 A I couldn't say threatened, I know he said he would
13 walk out and leave.

14 Q Okay. I don't have anything further. Thank you.

15 THE COURT: You may step down. Call your next
16 witness.

17 MR. STUMBO: The State calls Lieutenant Bo Barton to
18 the stand.

19 BO Barton, being
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 By Mr. Stumbo:

23 Q Good afternoon, Lieutenant Barton, you work with
24 SELD?

25 A I do.

1 Q How long have you been with SLED?

2 A 27 years.

3 Q And currently what is your role there as a Lieutenant
4 at SLED?

5 A A Lieutenant, supervisor in charge of behavioral
6 science.

7 Q And you work statewide?

8 A I do, there are three of us and we all, three of us
9 work statewide.

10 Q And so you are there to assist the agents that are in
11 the regions that are working in investigations, correct?

12 A Particuarly violent crimes, yes sir.

13 Q Did you have an occasion to be involved with this
14 particular case involving the defendant, Karlita Phillips?

15 A Yes sir, I did.

16 Q Did you interview her?

17 A I did, at the request of the Abbeville County
18 Sheriffs Department.

19 Q What date did you interview her?

20 A The 20th of December.

21 Q What year?

22 A 2013.

23 Q About what time of day?

24 A Right after lunch, so maybe between 12:00 and 1:00.

25 Q Early afternoon?

1 A It was early afternoon, yes sir.

2 Q Before December 20th had you been to Abbeville in
3 relation to this case?

4 A No, sir?

5 Q That was your first day on the case?

6 A That's correct.

7 Q Did you receive any kind of briefing from the
8 investigators involved?

9 A I did.

10 Q You got an overview of where they were at this point
11 in the investigation?

12 A Correct and a copy of what she had written
13 previously.

14 Q Copy of all the previous statements that Karlita
15 Phillips had given?

16 A Correct.

17 Q And at that point she was in custody, correct?

18 A Yes, sir.

19 Q Custody of Abbeville County Sheriffs Department?

20 A Yes, sir.

21 Q And where did you interview her?

22 A At the Abbeville County Sheriffs Department.

23 Q Interview room?

24 A In the interview room.

25 Q Was it equipped with any kind of recording equipment?

1 A Audio and video.

2 Q And it wasn't your equipment that you were using?

3 A No sir, it was not. It was equipment that was
4 installed in the room.

5 Q Okay. Now, were you able to record this interview?

6 A I am sorry?

7 Q Were you able to record this interview?

8 A Yes, Abbeville County recorded it.

9 Q They recorded it for you?

10 A Right.

11 Q Did it record the entirety of your interview?

12 A Yes, sir.

13 Q It was pretty long, right?

14 A Like three and a half hours.

15 Q And I want to mark this disk as State's 5 for ID
16 purposes.

17 (Whereupon, State's Exhibit 5 was marked for
18 identification only.)

19 Q I hand you what has been marked for ID as State's 5,
20 what is this?

21 A It is a DVD recording interview that we did that day
22 on December the 20th. It has my initials that I placed on
23 there.

24 Q You have been able to review this actual disk?

25 A This actual disk, yes sir.

1 Q And initialed it?

2 A Yes, sir.

3 Q And it is a fair and accurate representation of your
4 interview, three and a half hour interview with Karlita
5 Phillips?

6 A That's correct.

7 MR. STUMBO: Your Honor, at this time we would move
8 State's 5 into evidence for purposes of this hearing.

9 THE COURT: For purposes of this hearing it will be
10 in evidence.

11 (Whereupon, State's Exhibit 5 was admitted into
12 evidence.)

13 Q Now, if you could, you did produce a memo in this
14 case of your three and a half hour interview, is that
15 correct?

16 A That's correct.

17 Q And you reduced that to a one-page memo?

18 A That is correct.

19 Q Do you have a copy of that?

20 A I do.

21 Q Just to refresh your memory?

22 A Yes, sir.

23 Q Would it be fair to say this is summary of the three
24 and a half hour interview?

25 A Yes, sir.

1 Q It doesn't have every detail?

2 A Very brief summary.

3 Q And what did Ms. Phillips tell you in the course of
4 this interview, just tell the Court. Well, let me back
5 up. Did you read her her rights?

6 A I did.

7 Q How did you read her her rights?

8 A From a Miranda card.

9 Q And that is documented on the video?

10 A It is.

11 Q That is several minutes in the video, is that fair to
12 say?

13 A Yes, sir.

14 Q And what did you tell her her rights were?

15 A She has a right to remain silent. Anything she says
16 can and will be used against her. She has a right to an
17 attorney. If she cannot afford one one will be appointed.
18 She can stop questioning at any time until she speaks to
19 an attorney. And having those rights in mind do you wish
20 to talk to us.

21 Q And did she answer in the affirmative?

22 A She did.

23 Q Did she ever ask for a lawyer?

24 A No, sir.

25 Q Ever say I don't want to talk to anyone?

1 A No, sir.

2 Q During this three and a half hours?

3 A No, sir.

4 Q At any point did she ask for an attorney?

5 A Never did.

6 Q Okay. She had access to the facilities?

7 A She did.

8 Q Food and drink, was she provided food and drink?

9 A She was provided McDonald's.

10 Q Cheeseburger?

11 A Cheeseburger, drink, I think is what she got.

12 Q If she said she was tired during three and a half
13 hours would you have agreed to step down and resume at
14 some point later?

15 A Sure, absolutely.

16 Q Did she ever ask to stop?

17 A No.

18 Q Would it be fair to say that during this three and a
19 half hours there is more than just question and answer,
20 correct?

21 A That's correct.

22 Q She gives you statements during this three and a half
23 hour time?

24 A Two statements.

25 Q Two different written statements?

1 A Yes, sir.

2 Q Detective Barton, I am going to hand you State's 6
3 and 7. We can start with 6. Do you recognize State's 6?

4 A I do.

5 Q And what is that?

6 A It is the statement, the initial statement that was
7 given on the 20th, witnessed by, that is my signature at
8 the bottom.

9 Q Is this the first statement that Karlita Phillips
10 gives you in writing?

11 A It is the first statement, yes.

12 Q And what time was that?

13 A 13:05 which would be 1:05 in the afternoon.

14 Q When did it conclude?

15 A 2:05.

16 Q So it took her about an hour to write this statement
17 out?

18 A Yes, sir.

19 Q And that is recorded as part of this three and a half
20 hours?

21 A It is.

22 Q Okay. Fair and accurate representation of that
23 written statement, State's 6?

24 A It is, yes sir.

25 Q State's number 7. Is that statement number two?

1 A It is.

2 Q How, when was that recorded, what time was that?

3 A 2:50 and concluded at 3:55.

4 Q So this took about another hour of that three and a
5 half hour videotaped, State's number 5?

6 A Yes, sir.

7 Q And she signed that statement as well voluntarily?

8 A She did.

9 Q You signed it as a witness on both of those, correct?

10 A I did.

11 Q And State's 7 fairly and accurately represents the
12 second statement that Karlita Phillips gave you that day?

13 A That's correct.

14 MR. STUMBO: Your Honor, a sufficient foundation has
15 been layed by the witness. We would offer State's 6 and 7
16 into evidence for purposes of this hearing.

17 THE COURT: For purposes of this hearing they will be
18 in evidence.

19 (Whereupon, State's Exhibit 6 and 7 were admitted
20 into evidence.)

21 Q Now, just referring back to the memo you did, what
22 did Ms. Phillips tell you. Will you summarize for the
23 Court how this three and a half hour interview proceeded?

24 A Initially the request that I have, which I normally
25 do in the course of a lot of interviews, is I want to

1 establish a baseline for the facts of the statement, the
2 statements that I had read previously didn't speak towards
3 what she did that night, it was what she didn't do or what
4 she didn't do that night. So the initial request was
5 write me a statement of what you actually did that night.
6 So that is why that first statement is there. Once I read
7 the statement then I went back in and started talking to
8 her about some issues that I saw in that initial
9 statement, some problems that I saw to which, she
10 eventually agreed that she did, in fact, speak with
11 individuals after her house was broken into, she believed
12 that her husband had broken into the house. She was
13 really upset about it and eventually talked to Settles who
14 agreed to go beat up her husband.

15 Q That was ultimately the second written statement she
16 gives after you come back in, after the first written
17 statement which is State's 6?

18 A Yes, sir.

19 Q And State's 7, she finally admits to having, asking
20 this guy named Settles, Purp Settles, asking him to go
21 beat up her husband?

22 A And allow Purp to use the car and gave him the
23 address to the house.

24 Q Until this second written statement that she gives
25 you in regards that, had she told you that earlier, before

1 she wrote it down?

2 A That's correct.

3 Q And before that time had any of her other statements
4 admitted to being involved in any way with Jamil Phillips
5 death?

6 A No, sir.

7 Q Had she admitted to you at any point before to any of
8 her statements to having any kind of relationship with
9 Tavarious Settles?

10 A Not that I am aware of.

11 Q Okay. Did she tell you during this interview that
12 she wanted, retribution, that she didn't want anybody
13 killed?

14 A That's correct.

15 Q And State's number 7, she reduced that admission to
16 you in writing, correct?

17 A Yes, sir.

18 Q And did you at any time promise her anything to give
19 you State's number 7?

20 A No, sir.

21 Q Did you threaten her in any way to write this out?

22 A No, sir.

23 Q Were you aggressive, did you yell at her during the
24 course of this interview?

25 A Very casual conversation we had throughout the whole

1 process.

2 Q Okay. You have interviewed how many people over the
3 course of your career, hundreds, thousands?

4 A I would say thousands.

5 Q You have had a chance to size up the demeanor of
6 people sitting across the table from you, correct?

7 A Yes, sir. That is what I have been trained to do,
8 yes sir.

9 Q Okay. Could you describe Ms. Phillips demeanor to
10 you during the course of this interview, did it change,
11 let me back up. Did her demeanor change during the course
12 of the interview?

13 A Yes.

14 Q Explain that?

15 A It was, we talked about in interview interrogation
16 classes, we talk about giving the individual an hour for
17 the reason for why they did what they did. And once I
18 suggested that, even that she had talked to these people
19 and they maybe, they had gone too far, the demeanor for
20 her that changed, it was something that she could attach
21 to. And it was slight, it wasn't overnight because the
22 entire conversation that we had was very amenable, it
23 wasn't any screaming, any hollering, it wasn't anybody
24 upset with each other, it wasn't a conflictual type
25 interview. It was more of a conversation.

1 Q And between statement one which she gave you which is
2 State's 6, statement number two which she gave you which
3 is State's 7, the story changes, doesn't it?

4 A Yes, sir.

5 Q That is all I have at this time.

6 THE COURT: Ms. Bolen.

7 CROSS-EXAMINATION

8 By Ms. Bolen:

9 Q Lieutenant Barton, you were just talking about that
10 you, I don't remember the exact term, where you offer
11 people an out or something like that?

12 A Yes, sir.

13 Q And your memo that you write up at the interview, do
14 you write, that you suggest certain things to her,
15 correct?

16 A Yes, ma'am.

17 Q And is that the out you were offering her
18 essentially?

19 A That's correct.

20 Q And you suggest to her, well first of all, when you
21 go in and talk to her this is, you have already testified
22 a three and a half hour interview, right?

23 A Yes, ma'am.

24 Q And that is after she had already talked to law
25 enforcement for somewhere between five and six hours,

1 right?

2 A I don't know how long she talked, I know I just
3 talked to her that day.

4 Q Okay. And you, in your write-up, you used the words
5 suggest, you suggest certain things to her, right?

6 A Yes, ma'am.

7 Q And you suggest that she was upset about her house
8 being burglarized and that you suggest that she wanted
9 some justice and that she had asked these boys to
10 essentially beat up her ex-husband, right. And you also
11 suggested to her that they went far beyond her request,
12 right?

13 A That's correct.

14 Q And she ends up saying she didn't want anyone to be
15 killed, right?

16 A That's correct.

17 Q And then her statement that she ends up giving you
18 reflects that, correct?

19 A Yes, in more detail than that, than what you just
20 said. That would be correct.

21 Q And at the point that you questioned her had you
22 already reviewed her prior written statements given on the
23 18th and 19th?

24 A I had.

25 Q And had you also reviewed the two and a half to three

1 hour statement she had given?

2 A No, I hadn't.

3 Q Had you talked to those investigators at all about
4 what she had said?

5 A Talked to Captain Talbert but it was, just in regards
6 to what the statement, it was basically as to what the
7 statement had said.

8 Q So you were aware going in that she had already told
9 Captain Talbert and Investigator Marshall that she had
10 lent her car to this, Settles, correct?

11 A No, I was not aware of that.

12 Q I don't have anything else. Thank you.

13 THE COURT: You can step down. Any additional
14 witnesses.

15 MR. STUMBO: No further witnesses, Your Honor. And I
16 know, I think basked on our conversation earlier in the
17 week and the length of the audio and video recordings,
18 that is why we agreed to provide them to Your Honor
19 yesterday.

20 THE COURT: Right.

21 MR. STUMBO: I don't intend to publish them right now
22 as part of this hearing, we would be here all night. So,
23 but we would rest on the testimony of all four of these
24 officers as to the free and voluntary nature of these
25 statements given by Karlita Phillips. The first

1 statement, I think, Your Honor; was not custodial,
2 probably Miranda doesn't even apply there. But that being
3 said it was on the form that she wrote out, Miranda was
4 even on there. And but as to the other statements that
5 are custodial, our argument would be, Judge, that Miranda
6 was given numerous times to Ms. Phillips. She waived her
7 rights on several occasions. At the beginning really of
8 each interview she was read her rights. One of those was
9 reduced to a written Miranda waiver of rights form which
10 is State's 4. So, Judge, we would rely on the exhibits
11 that we have offered and any testimony of the officers as
12 to the free and voluntary nature of all of the statements
13 given by Ms. Phillips. And we believe they pass
14 constitutional muster and are admissible.

15 THE COURT: Was there any testimony, I am assuming
16 there was no testimony that y'all intend to offer at this
17 point and time, Ms. Bolen, is that correct?

18 MS. BOLEN: That's correct, yes sir. But we would
19 like to have our argument.

20 THE COURT: Certainly.

21 MS. BOLEN: Your Honor, our position is that four of
22 the statements should be excluded. With respect to the
23 first one in March. That is a statement given by one
24 officer's testimony sometime after midnight. And by
25 another one, you know, some time between 3:00 and 3:50 in

1 the morning, with multiple officers coming into her house,
2 one going in her back door and one going to her front
3 door, I think a reasonable person would think at that
4 time, they are under custody, if in the middle of the
5 night two officers are banging on both doors of their
6 house. So, we would, and since Miranda was not read we
7 would move that statement be excluded. Regarding the two
8 statements on the 18th and 19th, and actually one of our
9 arguments would go to all three, on the 18th, 19th and
10 20th, just the sheer length of the questioning, Your
11 Honor, where they are, she is not initiating this
12 questioning. They are getting her out of her cell,
13 bringing her, keeping her there for, you know, three,
14 three and a half hours at a time. During the interview on
15 the 18th there are physical threats to her that she will
16 be strapped down. I don't see how else to construe that
17 other than a threat to her physical safety. There are
18 some threats made about her children, that they could be
19 arrested. And I know of this, Your Honor, would hear on
20 the actual tape in greater detail than this gone into in
21 today's hearing. But there are threats to her physically,
22 there is also that both, Captain Talbert and Investigator
23 Marshall agreed that they had gotten angry. I think
24 Officer Marshall testified that he lost his temper, both
25 agreed that they had raised their voices, all of which I

1 think can be construed as threatening behavior towards
2 her. There is also testimony that they are not truthful
3 with her about what they actually have. That they told
4 her things like, soil matches when in fact there is no
5 such evidence there. I think that goes to coercion, Your
6 Honor, and affects the voluntariness and the, whether she
7 gave those statements intelligently or not. But our main
8 objections, Your Honor, are the sheer length, the fact
9 that they keep going back and talking to her. They are
10 talking to her first at 3:00 a.m. And then they are
11 talking to her in the evening. And then they are getting
12 her out of her cell at 7:00 o'clock in the morning,
13 talking to her for another two or three hours. They are
14 making threats that they are going to strap her down to
15 some machine. I think all of that taken as a whole goes
16 against the voluntariness of these statements and we would
17 ask, and also the threats against her children, we would
18 ask that they be excluded.

19 THE COURT: Very good. Based upon what I have heard
20 so far, the very first statement that was taken in March,
21 obviously the fact that it was taken at 3:00 o'clock in
22 the morning, the early morning hours, it does not appear
23 that that statement involved focused custodial
24 interrogation requiring Miranda to be given. But
25 obviously the defense will be at liberty to argue the

1 voluntariness of that statement at trial in light of the
2 overall factors and circumstances surrounding the getting
3 of that statement. The subsequent statements, the 18th,
4 19th and 20th, I have been able to read the handwritten
5 statements given by Ms. Phillips but I have not as yet had
6 a chance to listen to the audio tapes because they were
7 only provided yesterday and I was out-of-pocket yesterday.
8 My initial reaction is if the tapes are essentially as has
9 been testified to here today it would appear that Miranda
10 was provided appropriately, contemporaneously with all the
11 other statements being taken. Concerning the 18th, the
12 statement taken on the 18th with the, shall we say,
13 animated displays by law enforcement, I would like an
14 opportunity just to kind of listen to that before I firmly
15 rule that that is my decision. So, the way we should
16 proceed, the default setting that we are now is, I think
17 you understand, Ms. Bolen, that the default setting that I
18 am in is that Miranda has been given, it appears that it
19 was appropriately given. And anything in terms of
20 inaccurate information or misleading statements that were
21 made by the officers on the 18th or other points in time,
22 that would not necessarily affect the admissibility under
23 Miranda. Any threats or anger that was directed or
24 frustration that was directed at Ms. Phillips, I do want a
25 chance just to try and find that on the audio tapes. And,

1 Mr. Brown, if you have a rough idea of where that falls in
2 the tape of the 18th just shoot me an email or something
3 and let me know kind of where that is, like 30 minutes or
4 an hour in, or whatever. You don't have to listen to it
5 again, just estimate as best you can. So my basic ruling,
6 unless you hear otherwise from me, it sounds as if Miranda
7 has been complied with and obviously the voluntariness of
8 that statement is a matter for the jury. And that will be
9 the default position of the Court unless you hear
10 otherwise from me in the next day or so.

11 MS. BOLEN: Your Honor, we have one more matter.

12 THE COURT: Certainly.

13 MS. BOLEN: Assuming that the statements do come in.
14 There is a number of times, particularly in the 18th
15 interview as well as the 20th interview and I am going to
16 have to review the 19th, I don't have notes that this
17 happened. In at least both of those there were several
18 times when law enforcement tells her about things that
19 other people said that would incriminate her. We would
20 ask that those be redacted as inadmissible hearsay against
21 her, just the same as if, you know, they start talking
22 about someone's criminal history. That would have to come
23 out of the tape. Given that it is not her statement and
24 it says the same things like, so and so has already told
25 us this. You might as well tell us. I think, unless that

1 is evidence directly from that person that they can
2 present at trial we would ask that all be redacted from
3 those tapes.

4 THE COURT: And this on the recording of the 18th and
5 the 20th?

6 MS. BOLEN: Definitely the 18th and the 20th. I am
7 going to have to review the 19th. I would have to review
8 it to make sure if it is on the 19th.

9 THE COURT: All right. Solicitor, how do y'all
10 intend to address that. Will you have the individuals who
11 relayed this information to law enforcement, will they be
12 testifying for you so that this would be--

13 MR. STUMBO: Your Honor, I think it is primarily,
14 what Ms. Bolen is referring to would be from the
15 codefendant Settles and there may be others that she is
16 talking about. They confront her with some statements,
17 Purp said this. And I think you will be able to review
18 that when you are able to get an in-camera. And we will
19 try to pinpoint those places in the record too by time and
20 we will email you a copy of that on those places in the
21 record where that may be an issue. And I think maybe we
22 can come back and argue that, when you have had a chance
23 to review it.

24 THE COURT: That would be fine.

25 MR. STUMBO: I don't recall that being a huge part of

1 the questioning, it would be a very brief part of it but
2 they do confront her with information that they have.
3 That would be correct, in the course of the back and forth
4 and the questions.

5 THE COURT: Okay.

6 MR. STUMBO: If we get to a point where we need to do
7 some redactions, I guess, maybe cross that bridge when we
8 get to it, Judge.

9 THE COURT: That will be fine. I just don't want
10 this to unnecessarily delay the trial. The hearings we
11 have got, at least one day's worth of audio tape to play
12 for the jury and my experience is very often they want to
13 hear audio tapes again.

14 MS. BOLEN: And, Your Honor, that is why I raised it
15 today. But also with at least the 18th and 20th, there is
16 a good bit of what I would call dead time that she is
17 writing that we can agree that nothing is going on.

18 MR. STUMBO: We can fast forward through that and
19 start back when they start talking again.

20 MS. BOLEN: I don't think we have any problem with
21 that.

22 MR. STUMBO: And stipulate to the jury that the dead
23 time--

24 MS. BOLEN: It is time that is nothing, no
25 conversations having.

1 THE COURT: Very good. Okay. Try and get me those
2 times as far as relaying what other people have told law
3 enforcement. If those people are available and are
4 testifying that might take care of the hearsay issue
5 because then you have got the ability to confront, perhaps
6 dealing with that, the testimony that would be cumulative.
7 But my understanding is that Settles is not testifying.

8 MR. STUMBO: As of today that would be correct.

9 THE COURT: My default setting on that would probably
10 that if there is something, okay, Purp Settles told me X,
11 Y and Z. Then my initial reaction is that's probably not
12 going to be something you are going to be able to play in
13 front of the jury.

14 MR. STUMBO: Correct. It would certainly, would be
15 testimony and Crawford would be--

16 THE COURT: --right.

17 MR. STUMBO: If it is statements given to law
18 enforcement which here it would be.

19 THE COURT: This would clearly fall under Crawford.

20 MR. STUMBO: No question about that.

21 THE COURT: Okay. I think that covered all the
22 bases. There was the other issue but I think y'all can
23 probably talk about that.

24 MS. BOLEN: Yes, Your Honor. I wanted to bring that
25 up and also as well, we are making a motion under the

1 Fourth Amendment to suppress the search warrant on the
2 car. I think we can do that this afternoon. I don't
3 think it would take us that long. But we did want to
4 address the Lawrence Postell issue.

5 MR. STUMBO: Judge, I could probably, we talked and I
6 don't think we are going to call him, Judge. There is a
7 possibility there is another jail house informant
8 representing that Settles gives some statements. And we
9 may have to get in the hearsay and issues with that. But
10 I think that is a little premature for us to discuss that.
11 Postell though, and that witness--

12 MS. BOLEN: And, Your Honor, I did represent him at
13 one time.

14 THE COURT: I had Jane Merrill as taking those pleas,
15 Judge.

16 MS. BOLEN: We conflicted it for exactly this reason.

17 THE COURT: Okay. So, we are not in the same
18 position with McDuffie as we were with Postell.

19 MR. STUMBO: The value of McDuffie's statements is
20 limited. But, Judge, I would like to explore that in a
21 little bit more detail. I mean, obviously, they have had
22 that statement in discovery for months. So presumably
23 have known that is an issue. I didn't know they
24 represented McDuffie. I did a search in my system and Ms.
25 Merrill represented. All that to say, Judge, Lawrence

1 Postell will not be called.

2 MS. BOLEN: I am not sure he says anything against
3 Ms. Phillips.

4 THE COURT: It was solely against Mr. Settles.

5 MR. STUMBO: Well, Settles is who he was locked up
6 with. Settles makes, and there again we can get into
7 this, I don't think that they, probably sit here and
8 discuss whether there is a hearsay exception and whether
9 Crawford is in play with that statement. I would probably
10 argue that it is not, it is not a statement that was given
11 to law enforcement, it is not testimonial. He would be
12 attacked via cross-examination.

13 THE COURT: Let's address the Fourth Amendment search
14 issues since you are wanting to raise those this
15 afternoon. And we can look at McDuffie at some point I
16 guess.

17 MS. NELSON: Unless you would rather wait until, I
18 mean, if you want to.

19 THE COURT: Let's go ahead and deal with the Fourth
20 Amendment.

21 MS. BOLEN: Thank you, Your Honor. We are making a
22 motion to suppress the search warrant issued on, I
23 believe, March 26th, I think they have, if I can take a
24 look at the copy. It is on March 26th, Your Honor. Just
25 to give you some background, this was a search warrant

1 that was obtained by going to, I believe, Magistrate Ryan
2 Johnson's house. It has Ryan Johnson's name in it but
3 apparently Judge Martin signs it. Your Honor, it is our
4 position that this warrant is not supported by probable
5 cause. Looking at the affidavit and this is sought, I
6 believe, early in the morning of the 26th which would be,
7 sometime within, I think, about a twenty-four hour time
8 period after the incident. And I think it is actually a
9 good bit less than twenty-four hours. At that time the
10 information that law enforcement has and this is
11 information that is obtained by SLED and the Abbeville
12 County Sheriffs Office. At this time they have responded
13 to the scene of the shooting. According to their incident
14 report they have spoken with three neighbors. A Charles
15 Scroggs, a Mary Stamps and a Gary Parrman or Pairmen.
16 They have also spoken with the parents of the deceased and
17 two brothers of the deceased, Dale Phillips, Jr.; and
18 Kareem Phillips. According to the incident report and to
19 statements given by those three neighbors the information
20 they have obtained is Charles Scroggs hears gunshots and
21 sees a silver car. Gary Parrman hears something and says
22 he sees a car, no description of any kind given, just I
23 have seen a car. Mary Stamps, in her written statement
24 says, it is a light colored car. That's further developed
25 in the incident report where whoever speaks with her says

1 she is not able to give a model or make. It is a light
2 colored car, no model or make. So, what we have about the
3 car, Your Honor, is number one, the silver car; number
4 two, a car; number three, a light colored car with no
5 model or make. They also speak with some of the family
6 members of the deceased. They speak with Dale Phillips
7 who says he is the, I think he uses the word, estranged
8 husband of Ms. Phillips, that he thinks she has something
9 to do with it. Kareem Phillips, according to the incident
10 report, I don't have a written statement from Kareem, but
11 Kareem Phillips, in the incident report states that there
12 was a contiguous divorce between my client and Dale
13 Phillips, that there were physical altercations between
14 Deondre Wideman. Deondre Wideman who is Ms. Phillips son,
15 physical altercations between Deondre and Dale. But there
16 is no mention in the incident report of any kind of
17 physical altercations between my client and Dale Phillips.
18 Based on that, Your Honor, law enforcement goes and gets a
19 search warrant. And just to read, I am just going to read
20 the affidavit, Your Honor, out on the record. Reasons for
21 the affiant's belief that the property side is on the
22 premises. At approximately 12:30 a.m., March 26th the
23 officer was informed of a homicide that occurred at about
24 10:20 p.m. on March 25th at that residence of 1522 Old
25 Douglas Mill Road. Then it goes on to give the substance

1 of the support. It says the decedent in this case is
2 named Jamil Phillips. During the course of the
3 investigation witnesses reported hearing gunshots at
4 approximately the above listed time at the incident
5 location. Witnesses also saw a silver vehicle leaving the
6 scene at a high rate of speed. Again, that is just one
7 witness who reports seeing a silver vehicle. The others
8 report light colored or just a car. The affidavit goes on
9 to say that the decedent, Jamil Phillips, bears a striking
10 resemblance to his brother, Dale Phillips, Jr. And then
11 states, according to witness reports the brother of the
12 decedent, Dale Cleveland Phillips, Jr., is going through a
13 complicated and contentious divorce with his spouse,
14 Karlita Phillips. Witnesses have also reported physical
15 conflicts involving Dale Phillips, Karlita Phillips and
16 her son. There is no mention in discovery and I have
17 quite a bit of discovery, of anyone talking about any kind
18 of physical conflict between Dale and Karlita. What they
19 have at the time they get the warrant, Your Honor, is that
20 three neighbors see a car, could be a silver car, could be
21 a light colored car, could be just a car, with no
22 indication about make or model. And even if it is a
23 silver car or a light colored car, Your Honor, that's
24 very, very common. I was looking at this yesterday and I
25 looked outside my office window, looked in the parking

1 lot, counted 15 light colored cars. They have the
2 statement of Dale Phillips saying he thinks Karlita had
3 something to do with it. It is our position, Your Honor,
4 that that simply doesn't even come close to probable
5 cause. That is not even reasonable suspicion, it is mere
6 speculation. You have got the statement of husband who is
7 involved in a divorce with this woman who doesn't like
8 her, saying I think she had something to do with it. That
9 is just speculation, it is nothing more.

10 THE COURT: I hate to interrupt you, may I ask a
11 question though just for clarification. The incident
12 where this took place, you have got the statements, there
13 were statements taken from three of the neighbors who said
14 they saw a car. Did the defendant ever reside at that
15 address where the shooting took place. Because if
16 typically, if someone, if you see your neighbor coming or
17 going in a car you often associate that car with that
18 individual. People know, my neighbors know Kelly's car
19 and they know my car and they know the difference because
20 we just live close to each other so they see us. So did
21 she ever reside at that address?

22 MS. BOLEN: I don't believe she did but I believe all
23 three statements say that they hear the gunshots and then
24 see the car. So I don't think it is something where they
25 see an unusual car there and anything is unusual.

1 THE COURT: Right.

2 MS. BOLEN: One of them may, let me look.

3 MR. BROWN: Mr. Scroggs says he lives across the
4 road, he had left his house and saw a silver colored car
5 parked at this driveway. He goes and gets food and comes
6 back and the car is still there. One of them, I believe,
7 after they go into the house they hear some popping noise
8 and then the car drives off. Along with Ms. Stamps who
9 lives next door to the property, it was actually, I
10 believe, her driveway that this light colored car is
11 parked in. And then a third neighbor sees a light colored
12 car also. And, Judge, I don't know if it is my time to
13 argue this or not, but combine that with the contentious
14 divorce that is going on.

15 THE COURT: It is probably not your turn to argue.
16 This takes place during the evening, correct?

17 MR. BROWN: Yes, sir.

18 THE COURT: It is dark outside. Okay, go ahead.

19 MS. BOLEN: And, Your Honor, it is true that Mr.
20 Scroggs says that. However, he also says the reason he
21 notices, he talks to law enforcement a few times. He
22 actually thinks the car belongs to someone named Brittany
23 Davis and he thinks that the car is someone out to get
24 him. So he thinks it is a hit and it was all suppose to
25 be on him. So his noticing of this, notice of this car

1 seems to be his own, I guess, fear that someone is there
2 for him involved in some sort of drug deal. But, Your
3 Honor, back to the probable cause. What they have when
4 they get the warrant is the brother's statement that he
5 thinks his ex-wife is involved, nothing more. The fact
6 that a car was seen, a car with very little description,
7 nothing rising to the level of probable cause to match it
8 with Karlita's car. There is a statement in the affidavit
9 that there has been reports of physical violence between
10 them but there is nothing to support that in the
11 discovery. The only report is from Greenville saying that
12 there had been some physical conflict between Dale
13 Phillips and Deondre Wideman. And, Your Honor, that is
14 simply not enough to rise to the level of probable cause.
15 And, Your Honor, Deondre at the time was living in
16 McCormick County, was not living with Karlita. So, any
17 sort of error, connection on that would be cured by the
18 fact that he is not even living in Greenwood with her. So
19 if that is who they were trying to look for, he is in
20 McCormick County. Your Honor, in terms of case law we
21 found a number of cases that list what is sufficient for
22 probable cause which I know Your Honor is familiar with.
23 But in particular State v. Tench which is at 353 SC 531,
24 it is a 2003 case that involves a search warrant on a car.
25 And there they have a witness statement as well as someone

1 seeing the defendant run from the scene with, I believe,
2 blood on him and I believe blood on the car. The other
3 one, Your Honor, that I thought showed a good list of when
4 probable cause is met is State v. Herring, 387 SC 201
5 which is a 2009 case. But in this case there is just
6 speculation. There is just, hey, I think she had
7 something to do with it. And, you know, a description of
8 a car that is so vague and matches so many cars that it
9 would provide a search warrant for a car on many, many
10 people. And so we are asking that Your Honor suppress the
11 search warrant.

12 THE COURT: Mr. Brown.

13 MR. BROWN: Judge, looking at the affidavit, and
14 SLED, after they responded to the location where Jamil
15 Phillips was killed, they talked to the neighbors, they
16 talked with all the Phillips' over there. They learned at
17 that time that Dale Phillips, Jr. was going through a
18 divorce and there was some background there between
19 Karlita and Dale. And that Dale provided them with
20 information that she owned a car, a silver in color Camry
21 matching the description of what some of the other
22 neighbors had seen that night. Specifically Charles
23 Scroggs saying he saw a silver in color Camry parked
24 there. I believe he was able and he will be able to
25 testify this next week, saw the car was, and able at a

1 earlier time, when he got home when it was dark, I think
2 it was there a little bit while it was light so you can
3 get a view of that car. And then when he left and came
4 back the car was still sitting there on the side of the
5 road. Combine that with Ms. Stamps who saw a car parked
6 in her driveway which was not normal and seeing this light
7 colored car. And then hearing the shots come. And the
8 other neighbor, Mr. Parrman who also saw a light colored
9 car and also heard the shots. All of these, I guess these
10 descriptions from the neighbors remembered that car
11 because it was out of the ordinary. It was parked in a
12 spot that is usually not parked on that road. And the
13 totality of the circumstances with a car parked there,
14 shots, Agent Collins getting the description from Dale
15 Phillips, Jr. about the car that Ms. Phillips drove or was
16 in her possession, was in her name. Combine that with the
17 fact that they were going through a divorce. There had
18 been some problems between Dale Phillips, Jr. and also Ms.
19 Phillips son, Deondre Wideman. That they did go and
20 investigate. And low and behold when they go to Ms.
21 Phillips house there is a silver in color Camry, that has
22 some mud on the bottom of the car which next week Agent
23 Collins will be able to testify that there was a mud
24 puddle, or it was not a mud puddle but a muddy area where
25 the car was parked. I think it had rained that night.

1 They were able to get tire impressions off that car and
2 also compare that with the tire marks left in that road.
3 So they are able to compare that when they pull up to Ms.
4 Phillips house and see there is fresh mud on the car or
5 what appears to be fresh mud. So the totality of the
6 circumstances based on everything they were given that
7 night, from Mr. Phillips, Dale Phillips talking about
8 their divorce, the type of car Ms. Phillips drove, what
9 the neighbors saw that night. Judge, there is probable
10 cause there to search that car and to find or what they
11 put in the search warrant is not unreasonable on what
12 their search was for that car. And they are looking for
13 any type of firearms, unfired cartridges, spent shell
14 casing, pistols, blood, skin, hair, any other type of
15 biological material; soil, grass, mud or any other
16 vegetation at the incident location; clothing or shoes
17 that may have been worn; clothing or shoes that may had
18 been samples of grass or mud. So, was tailored
19 specifically to what we found in that car. Again, the
20 totality of the circumstances there, there is probable
21 cause.

22 THE COURT: Just a couple of questions. First, was
23 there any supplemental oral testimony given to the
24 Magistrate in addition to what was placed in the warrant
25 or can you speak to that.

1 MS. BOLEN: I can't.

2 THE COURT: All right. The part about the fresh mud
3 and the tire tracks, was that also in the affidavit?

4 MR. BROWN: The description of the property sought
5 was soil, grass, mud or other vegetation from that
6 location, that they were hoping to match up. Now, I don't
7 know if they had mentioned that there was a tire track
8 there at that location and they were looking to get a
9 sample of the car. But my understanding, the search
10 warrant came after they arrived at Karlita Phillips house.
11 They saw the car, saw there was fresh mud on the car,
12 after they had already investigated out there at the
13 location, Phillips residence and also saw there was a tire
14 track there. I can't say for certain that they told that
15 to the Magistrate but I am sure that is what was making
16 the comparison here. That was the driving force along
17 with other folks seeing a silver Camry, just made too much
18 sense to have a silver Camry and have these same
19 characteristics.

20 THE COURT: May I see the search warrant and
21 supporting affidavit, please. Did you desire to recall
22 the officer and ask him about what was related to, was it
23 Johnson or was it Martin.

24 MR. STUMBO: Judge Martin, Judge.

25 THE COURT: Was that your intention?

1 MR. BROWN: We can.

2 THE COURT: All right.

3 MR. BROWN: Michael Collins.

4 THE COURT: You are still under oath, of course.

5 DIRECT EXAMINATION

6 By Mr. Brown:

7 Q Agent Collins, you have already gone over that you
8 responded to [REDACTED] that night, in response
9 to a homicide?

10 A Yes, sir.

11 Q Again, when you got to that location, what did you
12 begin doing?

13 A What we initially did was, I made contact with the
14 Abbeville County Sheriffs Office, Investigator Lynn
15 Carnes, she normally works there. She gave me some
16 information saying that they had, there was a canvas of
17 the neighborhood, spoke to some neighbors and that they
18 eventually said that, several of the neighbors, a couple
19 of the neighbors said that they saw a silver car, a light
20 colored car fleeing the scene after they heard the shots.
21 They had also spoken, Dale Phillips, Jr. who told them
22 that he believed that it was his ex-wife and that he was
23 the intended victim, that she drove a silver in colored
24 Toyota Camry. I spoke to him myself, he relayed that same
25 information to me. After we finished, you know, kind of

1 did some things around the crime scene we found fresh tire
2 tracks on the other side of, opposite of the victim's
3 residence. And it looked like the car had sped out of
4 that area, it was cold and I think it had rained that
5 night or the night before so it was still a little bit
6 muddy. And that you could see the tire, the tire
7 impression pretty well. Once we received the information
8 from Dale Phillips, Jr., that is when we went out to
9 [REDACTED], to Ms. Phillips apartment. When we pulled
10 in, we had already ran her information and basically knew
11 what kind of car that she had. We pulled into the
12 apartment complex, we located what we thought was the car
13 fitting the description that we had, that we knew what we
14 was looking for, ran the tag on it, confirmed that it was
15 registered to, I believe it was her and Mr. Dale Phillips,
16 Jr. At that time we basically pulled up right beside it
17 and I was riding in the front passenger seat with
18 Investigator Marshall. The car in question was on my
19 right side. When I exited his patrol vehicle I looked at
20 that silver in colored car, I saw mud around the front rim
21 of the front tire and also going down the side, on the
22 drivers side door. Again, we ran that tag, confirmed that
23 it came back to Ms. Phillips at [REDACTED] and at that
24 point is when I made contact with her. Initially, I think
25 earlier I was quoted that we arrived around 3:00 o'clock,

1 that was incorrect, we actually arrived sometime shortly
2 after midnight. By the time we talked to her and got the
3 statement and got the search warrant, because I was
4 calling in this information to Assistant Solicitor
5 Demetrious and giving him the information as far as what
6 we needed for the search warrant. So I was on the scene
7 giving him information as far as what, you know, what we
8 had at the crime scene and what we were looking for and
9 what we had in reference to this car. He actually typed
10 up that search warrant. We went and retrieved it, we read
11 over it, we presented it, we went out to Judge Martin's
12 residence that morning. I told him what we were there for
13 and we responded in reference to the homicide, did a
14 canvas of the crime scene, mud tracks, witnesses saying a
15 silver colored car, light colored car, fleeing the scene
16 just after the shots were fired. When we got to the
17 residence saw there was mud around the tire, there was mud
18 down the driver's side of the car. And then he read over
19 the warrant, signed it and we went back and executed it.

20 Q Also when you were there initially at the incident
21 location did anybody tell you the direction the car sped
22 off in?

23 A I don't think they told me specifically but we did
24 have information that it sped to the left. I don't know
25 if that is East, West, North but it didn't cross in front

1 of the residence, it sped away, away from the residence
2 and continued on to the left side, if you are standing on
3 the front porch of the residence.

4 Q So, you did, when you went and talked with Judge
5 Martin, you did, with Magistrate Martin, you did tell him
6 in a affidavit or orally that the car out at the location
7 of Ms. Phillips, that it had fresh mud on it?

8 A Yes, sir.

9 Q And that was conveyed to him?

10 A Yes, sir.

11 Q And ultimately he did sign the search warrant?

12 A Yes, sir.

13 MR. BROWN: Judge, at this time I believe that is
14 everything from that night surrounding the issuance of the
15 search warrant.

16 THE COURT: Any questions of the witness on this
17 issue, Ms. Bolen?

18 MS. BOLEN: Really quickly, Your Honor.

19 CROSS-EXAMINATION

20 By Ms. Bolen:

21 Q So your supplemental, I guess oral testimony to Judge
22 Martin was just that you saw mud on her car?

23 A No, I gave him all the information that I originally
24 gave Demetrious Andrews. I gave him that information and
25 I also relayed that same information as far as what we had

1 at the crime scene and what we saw about the car and the
2 witness description. I told him all of that information.

3 Q And that is all, so everything that is in your
4 affidavit is what you told Judge Martin?

5 A There is a lot of information that is in there but I
6 made sure that I told him what we had at the crime scene,
7 what the witnesses said and what we saw on the car when we
8 arrived.

9 Q Did you record your conversation with Judge Martin at
10 all?

11 A I did not.

12 EXAMINATION BY THE COURT

13 BY THE COURT:

14 Q Did this take place at Judge Martin's house?

15 A It did.

16 Q In the evening?

17 A No, it wasn't in the evening. It was in, probably
18 early hours of the morning.

19 Q And did you relate to Judge Martin, just so that I am
20 clear on this, maybe I missed something or didn't catch it
21 right. Did you specifically relate to him that the tire
22 tracks that you saw at the incident location, that those
23 were left or do you recall whether you told him about
24 that?

25 A What I told him that there were tire tracks at the

1 scene that were left that we were able to get a mold of
2 and we would like to compare the vehicle in question to
3 that tire tracks that we had, simply because there was mud
4 that which would have been consistent with them leaving
5 that area.

6 Q I am just trying to picture this in my head. And you
7 had mentioned that the car, the silver car that was
8 described as being at the incident location was in a
9 driveway but then it was parked between a tree line?

10 A The way the property is laid out, it is kind of hard,
11 there is a yard, there is a house on the residence, it has
12 a big front yard. On the property there is tree line that
13 divides one property from the neighbor's residence. There
14 is a little turnaround spot, like around a bush where the
15 car was seen parked and in which we found those tire
16 tracks close to the wood line.

17 Q Close to the tree line?

18 A On the neighbors side of the tree line, close to the
19 road.

20 Q Okay. I think I have got it in my head. I was
21 trying to visualize what was being described.

22 THE COURT: Any additional questions, Mr. Brown?

23 MR. BROWN: Not from the State.

24 THE COURT: Ms. Bolen?

25 MS. BOLEN: No, Your Honor.

1 THE COURT: You may step down.

2 MS. BOLEN: Thank you, Your Honor, just to respond to
3 what Solicitor Brown said. There were three neighbors who
4 give witness statements that night that Agent Collins
5 would have been aware of. And, again, one of them says
6 silver car, one says a light colored car; the other one,
7 Mr. Parrman specifically says just car with no description
8 at all. There is nothing in the search warrant affidavit
9 about seeing any tire impressions at the scene. The
10 problem with the warrant, Your Honor, there is nothing to
11 relate Karlita's car which is what they get the search
12 warrant on, with the alleged crime or the scene itself.
13 At best they have some fuzzy descriptions of the car and I
14 don't think anyone is disputing there was a car there.
15 But, again, I think we would be in a much different
16 situation if they said it was a 1957 Red Mustang or
17 something that is very distinctive. Instead the
18 statements are extremely generic, could describe half the
19 cars on the road, probably more than that, Your Honor.
20 There is, to tie that car to Karlita, all they have is
21 this speculation by Dale Phillips. That is all it is, I
22 think she had something to do with it. That is not
23 probable cause, that is not reasonable suspicion, that is
24 just him saying, I think she had something to do with it.
25 They don't have statements that there were physical

1 altercations between the two of them because that is no
2 where in the discovery. They don't have anything to tie
3 what happened at [REDACTED] to Karlita's car.
4 There is no probable cause to say that evidence about this
5 crime will be found here. They don't have enough at that
6 point. And I think it is clear from Agent Collins'
7 testimony as well as just the paper trail that they got
8 this warrant from is fairly early in the morning. So I
9 think we are really looking at more like a twelve hour
10 window.

11 THE COURT: You do have some degree of contingency
12 involved in this, not only because it is a car but it is
13 also a car parked outside. And if there is mud or was mud
14 that could have been compared or specific vegetation.
15 Abbeville is not that far from Greenwood, I think we
16 probably share most of the same native plants and species.

17 MS. BOLEN: That was going to be my next point, that
18 mud is mud. I mean if it is raining that night and
19 someone drives in a little bit of mud it is going to be
20 the same whether it is in Abbeville or Greenwood. Mud
21 alone is not, simply not going to give rise to probable
22 cause and I believe at the point that she talks to Agent
23 Collins which is before he gets the search warrant, she
24 has told him that, yes, she has driven her car earlier
25 that day. Again, if it is a rainy day there is going to

1 be mud, there is mud on peoples car. So, our position,
2 Your Honor, is that there is simply, it is simply
3 speculation, it is not enough to be probable cause. And
4 we would ask that the search warrant and its results be
5 suppressed under the Fourth Amendment.

6 THE COURT: Mr. Brown.

7 MR. BROWN: Judge, I think one of her statements said
8 that she had not gone anywhere and not loaned her car
9 anywhere that night, that she had parked it. And but then
10 there is fresh mud on there. If you look again at the
11 totality of the circumstances you have a contentious
12 divorce going on, you have witnesses, neighbors talk about
13 a silver in colored car, a light colored car, turning out
14 of the drive. And you have law enforcement, they didn't
15 go to the house with a search warrant, they went there and
16 actually saw fresh mud on the side of the car. And at
17 that point, you tie those two together with all of the
18 totality of the circumstances, present that to Judge
19 Martin to get the search warrant. With all of that, it is
20 our position that they did have probable cause.

21 THE COURT: What apartment complex did Ms. Phillips
22 reside at?

23 MS. PHILLIPS: It is called Holly Tree.

24 THE COURT: Holly Tree. I want to double check my
25 recollection of Herring. My initial impression is that

1 there is sufficient evidence and the affidavit and the
2 sworn statement given to the Magistrate to qualify as
3 probable cause for the search warrant. So my initial
4 impression is based on the totality of the circumstances
5 the affidavit is sufficient. I would, however, appreciate
6 the opportunity to review Herring tonight sometime. So I
7 am going to leave you with that. That will be my ruling
8 unless you hear otherwise from me. Okay.

9 MR. STUMBO: Your Honor, would you like a copy of the
10 search warrant.

11 THE COURT: I am planning on hanging on to the copy
12 that y'all have already given me. Perhaps y'all should
13 have that back and let me have a copy.

14 MR. STUMBO: This is a copy.

15 THE COURT: Thank you. Anything else in this case.

16 MR. STUMBO: I think we are done, Judge. One issue I
17 know we brought up in-chambers the other day, one was that
18 we may have some chain witnesses from SLED that handled
19 the evidence. I don't really need to get into that now.
20 I think we can take that up probably Monday. But under
21 State v. Hatcher we would ask for several of those
22 witnesses, although they will be identified by the
23 witnesses, to not be called as live testimony. I think we
24 can cross that bridge when we get to it.

25 THE COURT: You all have tried cases in front of me

1 before, you know what, what my usual ruling about Hatcher
2 is going to be, so long as Hatcher is complied with we are
3 okay. The other issue was, you have something else?

4 MS. BOLEN: No, sir. I would just bring up--

5 THE COURT: The CI, yes. Have y'all had any
6 conversations along those lines?

7 MR. STUMBO: We have and in fact I got a call from
8 the ATF agent last night that he is supposedly, according
9 to Agent Collins he initially believed they were still
10 using them. I think this guy, apparently according to
11 what the ATF is telling me, they still haven't given us
12 the name of this guy. But he tells me that he hasn't had
13 contact with this guy in about a year. The agent that was
14 using him used to work this area, has been transferred to
15 Wilmington. It is an agent by the name of Chuck Styla.
16 Judge, I think what I am getting from him is basically
17 there is this bureaucratic machine that is the ATF, that
18 if you reveal CI's that it is going to have to go through
19 some kind of request to process. Now, Agent Collins was
20 in the interview when this particular person was
21 interviewed. We may be able, there again, I don't think I
22 can give you a firm answer right here as we stand. But I
23 think we may be able to get to a point where I can get
24 that information from Agent Collins to pass to the
25 defense, at least a name and a contact number for this

1 individual under some kind of confidentiality. That is my
2 goal. I don't have the name as of right now. I believe
3 we may be able to get there through SLED Agent Collins
4 without necessarily having to go through the ATF to get
5 the information, if that makes sense.

6 THE COURT: I would prefer to try to go that route.
7 If we cannot go that route I would like, as I mentioned
8 Monday, somewhat a better understanding and I realize your
9 explanation creates a bureaucratic problem with the fed's
10 which doesn't really answer my question.

11 MR. STUMBO: I agree with that. I will say this,
12 Judge, and there again, I know we talked about this the
13 other day and we, Your Honor isn't privy to all of the
14 other statements that were given. There were several
15 other witnesses that gave similar information that I guess
16 was kind of described as word on the streets, for lack of
17 a better term. That would be my descriptor of the other
18 statements, that there is this drug dealer named Rail,
19 (phonetic), that may have been the target of this. But,
20 ultimately Judge, as I indicated the other day
21 in-chambers, based on where we are now on this case, I
22 can't conceive of any relevance or materiality to the
23 information or would be exculpatory at this point. And
24 really I don't know that it can be used for anything more
25 at this time but for some third party guilt, speculative

1 third party guilt claim. There are other named witnesses
2 that give similar information in the discovery. And I
3 don't know if the defense has followed up with any of
4 them. I don't disagree with you, Judge, that they are
5 entitled to informants, they give information that they be
6 ultimately exculpatory or under Brady were relevant
7 material under Rule 5. I just don't think any of this, at
8 this point, rises to that level, under the Humpheries case
9 and other case law that I have looked at.

10 THE COURT: I will ask you to see if we can, at the
11 very least, afford them through that agent you are talking
12 about or talking to, if they are willing to go that route.
13 It sounds like the fellow is not working for anybody at
14 this point.

15 MR. STUMBO: Correct and if we can maybe, just to
16 kind of be, safe rather than sorry side, if we can do some
17 kind of confidentiality order to limit the information to
18 this case.

19 THE COURT: I have no issue, whatever issue in that
20 order.

21 MR. STUMBO: I'll see what I can do, Judge.

22 MS. BOLEN: Just to make sure the record is clear,
23 Your Honor, I know this is now coming up just a few days
24 before trial. I know it is something I had asked for
25 previously, the documentation I can find is that first

1 asked specifically for this piece of information on June
2 15th, didn't hear back, emailed again, June 22nd. So it
3 is something that we have been trying to get. I mean I
4 understand all the red tape they have to go through. But
5 I have been trying to get this.

6 THE COURT: I understand. The last thing the Court
7 wants to do is, and I am sure the Solicitor appreciates
8 this, but sooner or later at some stage or another in the
9 future, assuming that the State's theory of this case is
10 correct, ultimately this individual's information will be
11 brought out and it will come forward and it will come
12 forth. Because ultimately time is going to pass and the
13 fellow is not going to be used anymore. That needs to be
14 communicated to the law enforcement folks. So, assuming
15 the State is able to meet its burden of proof, at some
16 subsequent point and time the last thing that the State
17 wants to have happened is relevant information or
18 potentially relevant information come to light that allows
19 an attorney in post conviction relief or some attorney can
20 argue after discovered evidence. Because clearly they
21 have made the record that we want this information, we are
22 trying to get this information, please give this
23 information to us. The last thing that we need is
24 material information coming to light after the trial or
25 material information coming to light at the time of PCR

1 because that just means we do it all over again. So,
2 encourage law enforcement and if you are correct, none of
3 this material, then I do not see where there is any harm
4 whatsoever in providing them with the name and us getting
5 this right the first time.

6 MR. STUMBO: I don't disagree with you, Judge.

7 THE COURT: Very good.

8 MS. BOLEN: Thank you, Your Honor.

9 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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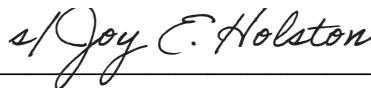
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1 CERTIFICATE OF REPORTER
2
34 State of South Carolina)
5 County of Newberry)
6
78 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Abbeville, South
14 Carolina on the 15th day of July, 2015.15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
1718 January 27, 2016
1920
21 
22

Joy E. Holston, Court Reporter

23 My Commission expires: March 13, 2016
24
25

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

EIGHTH JUDICIAL CIRCUIT
IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 KARLITA DESEAN PHILLIPS,)
)
 DEFENDANT.)
 _____)

CASE NO.: 2014-GS-01-212
2014-GS-01-213

TRANSCRIPT OF RECORD

JULY 20-23, 2015
ABBEVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE FRANK R. ADDY, JR., JUDGE, AND A JURY

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

ATTORNEY FOR PLAINTIFF:

DAVID STUMBO, SOLICITOR
YATES BROWN, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

PATRICIA BOLEN, ESQUIRE
JANNA NELSON, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

INDEXWITNESSPAGE NO.

IN-CAMERA TESTIMONY

Lashay Higgins,

Direct Examination by Mr. Stumbo.....74

Cross-Examination by Ms. Bolen.....80

Redirect Examination by Mr. Stumbo.....81

Ashanti Polk,

Direct Examination by Mr. Stumbo.....94

Cross-Examination by Ms. Bolen.....100

Anthony Moss,

Direct Examination by Mr. Brown.....110

Cross-Examination by Ms. Bolen.....113

Redirect Examination by Mr. Brown.....114

Opening Statement by Mr. Brown.....129

Opening Statement by Ms. Bolen.....133

TRIAL TESTIMONY-WITNESS

Kimberly Wells,

Direct Examination by Mr. Stumbo.....137

Dale Phillips, Sr.,

Direct Examination by Mr. Stumbo.....141

Cross-Examination by Ms. Bolen.....151

Redirect Examination by Mr. Stumbo.....153

Martha Phillips,	
Direct Examination by Mr. Brown.....	155
Cross-Examination by Ms. Bolen.....	164
Mary Stamps,	
Direct Examination by Mr. Brown.....	165
Gary Parrman,	
Direct Examination by Mr. Stumbo.....	169
Cross-Examination by Ms. Bolen.....	176
Richard Craig Birchmore,	
Direct Examination by Mr. Brown.....	178
Ronnie Ashley,	
Direct Examination by Mr. Stumbo.....	184
Sam Ferguson,	
Direct Examination by Mr. Brown.....	188
Vickie Hallman,	
Direct Examination by Mr. Stumbo.....	191
Cross-Examination by Ms. Bolen.....	218
Dr. Brett Woodward,	
Direct Examination by Mr. Brown.....	223
Cross-Examination by Ms. Bolen.....	232
Kenya Griffin,	
Direct Examination by Mr. Brown.....	233
Cross-Examination by Ms. Bolen.....	237
Nick Marshall,	
Direct Examination by Mr. Stumbo.....	238

Cross-Examination by Ms. Bolen.....	275
Redirect Examination by Mr. Stumbo.....	288
Recross-Examination by Ms. Bolen.....	290
David Grubbs,	
Direct Examination by Mr. Stumbo.....	292
Cross-Examination by Ms. Bolen.....	299
Lilly Gallman,	
Direct Examination by Mr. Brown.....	300
Cross-Examination by Ms. Bolen.....	312
Michelle Eichenmiller,	
Direct Examination by Mr. Stumbo.....	315
Cross-Examination by Ms. Bolen.....	327
Lashay Higgins,	
Direct Examination by Mr. Stumbo.....	331
Anthony Moss "Dre",	
Direct Examination by Mr. Brown.....	335
Ashanti Polk,	
Direct Examination by Mr. Stumbo.....	339
Cross-Examination by Ms. Bolen.....	343
Michael James Collins,	
Direct Examination by Mr. Brown.....	344
Cross-Examination by Ms. Bolen.....	358
Natalie Talbert,	
Direct Examination by Mr. Brown.....	363
Cross-Examination by Ms. Bolen.....	374

Redirect Examination by Mr. Brown.....	378
Bo Barton,	
Direct Examination by Mr. Stumbo.....	381
Cross-Examination by Ms. Bolen.....	402
Dale Phillips, Jr.,	
Direct Examination by Mr. Brown.....	405
Cross-Examination by Ms. Bolen.....	411
Amanda Fallaw,	
Direct Examination by Mr. Brown.....	413
Cross-Examination by Ms. Bolen.....	417
Redirect Examination by Mr. Brown.....	419
PROFFER IN-CAMERA TESTIMONY-WITNESS	
Tavarious Settles,	
Direct Examination by Mr. Stumbo.....	422
TRIAL TESTIMONY-WITNESS	
Tavarious Settles,	
Direct Examination by Mr. Stumbo.....	443
Cross-Examination by Ms. Bolen.....	450
Closing Argument by Mr. Stumbo.....	477
Closing Argument by Ms. Bolen.....	493
Charge of the Court.....	508
Verdict of the Jury.....	526
Sentence of the Court.....	536
Certificate of Reporter.....	537

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
S-1	911 CD		140
S-2-S-9	Photographs		181
S-10-S-32	Photographs	201	203
S-42	Photograph	143	143
S-43	Map	169	170
S-44	Crime Scene Sketch	199	199
S-45	Photograph	212	213
S-46	Cigarette Butts in Box Inside Pouch		306
S-33-S-37	Photographs	226	227
S-47	Projectiles	319	321
S-48	Buccal Swabs	307	308
S-49	Statement		254
S-50	Waiver		255
S-51	Redacted Statement 3A		273
S-38-S-41	Photos		297
S-53	Voluntary Statement	380	388
S-54	Voluntary Statement	380	388
S-55	Insurance Paperwork	413	415
C-1	Emails		269

1 TRIAL DAY 1-07/20/15

2 THE COURT: Ladies and gentlemen, we're now about to
3 begin the selection of a jury on the case that we're going
4 to try this week. Solicitor, if you would, go ahead and
5 call the case, please.

6 MR. STUMBO: Thank you, Your Honor. If it please the
7 Court, State calls the case of *State vs. Karlita Desean*
8 *Phillips*, indictment number 2014-GS-01-213. That's an
9 indictment for accessory before the fact of murder. Second
10 indictment, 2014-GS-01-212. Your Honor, that is an
11 indictment for using a minor to commit a felony. Both of
12 these indictments were presented true bill to the Abbeville
13 County Grand Jury on May 23rd, 2014. Your Honor, the State
14 is ready for trial. If I may approach, please.

15 THE COURT: Is the Defense ready to proceed?

16 MS. BOLEN: Yes, Your Honor.

17 THE COURT: Very good. Ladies and gentlemen, we're
18 about to begin the trial of the *State of South Carolina vs.*
19 *Karlita D. Phillips*, and I've been handed two indictments to
20 charge Ms. Phillips with the offenses of accessory before
21 the fact to murder, and using a minor to commit felony. In
22 this case, ladies and gentlemen, I'm going to begin by
23 instructing you that these indictments, of course, are not
24 evidence of any of the allegations contained in the
25 indictments. These indictments are just pieces of paper.

1 They're the method by which the case is brought before the
2 Court, and the fact that the person has been indicted or
3 charged with a crime, of course, is not in any way, shape or
4 form proof of any of the allegations contained in the
5 indictment. In this case Ms. Phillips has pled not guilty
6 to these charges and that plea, of course, puts the burden
7 of proof on the State to prove her guilt beyond a reasonable
8 doubt. Now, in this case Ms. Phillips is being represented
9 by Ms. Patricia Bolen of the Abbeville Bar and Ms. Janna
10 Nelson of the Greenwood Bar. Ms. Bolen, if you would care
11 to introduce yourself, and certainly your client and Ms.
12 Nelson to the jury panel, please.

13 MS. BOLEN: Thank you, Your Honor. My name is Patricia
14 Bolen. I'm a lawyer in Greenwood County. I practice in
15 both Greenwood and Abbeville County. Together with Janna
16 Nelson we represent Karlita Phillips.

17 THE COURT: Thank you very much, Ms. Bolen. The State
18 of South Carolina is being represented in this case by Mr.
19 David Stumbo and Yates Brown. Mr. Stumbo, if you would care
20 to introduce yourself to the jury panel, and certainly
21 anyone seated as the counsel table with you.

22 MR. STUMBO: Thank you, Your Honor. My name is David
23 Stumbo. I'm your elected Solicitor for the Eighth Circuit,
24 which is not only Abbeville but Greenwood, Laurens, and
25 Newberry County. So we have four counties in our circuit.

1 Our job is essentially as solicitor in our state, a district
2 attorney who prosecutes all cases that are generated by law
3 enforcement agencies. This case is one of those that came
4 out of Abbeville County. Seated to my direct -- or standing
5 here to my direct left is Deputy Solicitor Yates Brown, and
6 one of our investigators Courtney Smith. Deputy Solicitor
7 Brown runs our docket in Greenwood and Abbeville.
8 Investigator Smith is one of our investigators that works on
9 Greenwood and Abbeville cases. We present this case to you.
10 Thank you.

11 THE COURT: Thank you. We now have specific questions
12 that I need to ask you with regard to this particular case.
13 We'll use the same process as before. So if any question
14 applies to you, I'm going to ask that you just stand up and
15 tell me how that question applies to you. Okay?

16 The first question, very simple. Is there any member
17 of the jury panel who has previously been represented or is
18 currently being represented by any of the attorneys involved
19 in this case, either Ms. Bolen, Ms. Nelson, Mr. Stumbo or
20 Mr. Brown. If so, please stand.

21 (Whereupon, jury panel remains seated.)

22 THE COURT: No one is standing. Is there any member of
23 the jury panel who has any close family, business or social
24 relationship with any of the members -- or any of the
25 attorneys that are going to be trying this case? If so,

1 please stand.

2 (Whereupon, jurors stand.)

3 THE COURT: Yes, sir. What's your name?

4 THE JUROR: My name is Kevin Allen. I'm juror number
5 two.

6 THE COURT: Yes, sir.

7 THE JUROR: My brother actually works for the
8 Solicitor's Department.

9 THE COURT: In Greenwood?

10 THE JUROR: Yes, sir.

11 THE COURT: What's your brother's name?

12 THE JUROR: Dale Allen. He works with the PTI program.

13 THE COURT: So he is employed by Mr. Stumbo; is that
14 correct?

15 THE JUROR: Yes, sir.

16 THE COURT: All right. And you reside -- does your
17 brother reside here in Abbeville or does he live in
18 Greenwood?

19 THE JUROR: Calhoun Falls.

20 THE COURT: He lives in Calhoun Falls?

21 THE JUROR: Yes, sir.

22 THE COURT: And you reside on New Road In Abbeville,
23 correct?

24 THE JUROR: Yes, sir.

25 THE COURT: Mr. Allen, the fact that your brother is

1 employed by the Solicitor's Office, would that affect your
2 ability to be fair and impartial in this case?

3 THE JUROR: No, sir.

4 THE COURT: You're absolutely certain of that?

5 THE JUROR: Yes, sir.

6 THE COURT: Very good. You can have a seat, sir.

7 And yes, ma'am. What's your name, please?

8 THE JUROR: Naomi Nelson.

9 THE COURT: Ms. Nelson. Do you remember your juror
10 number, Ms. Nelson?

11 THE JUROR: Number 95.

12 THE COURT: 95. And yes, ma'am. Who do you know?

13 THE JUROR: I know Patricia Bolen.

14 THE COURT: And how do you know Ms. Bolen?

15 THE JUROR: I know her socially. I work with her
16 husband.

17 THE COURT: At Erskine?

18 THE JUROR: At Erskine.

19 THE COURT: The fact that you know Ms. Bolen socially
20 and that you work with her husband, would that affect your
21 ability to be fair and impartial to the State and the
22 Defense in this case?

23 THE JUROR: I don't think so.

24 THE COURT: Very good. So you can remain fair and
25 impartial and decide this case based solely on the evidence?

1 Is that correct, ma'am?

2 THE JUROR: Yes, sir. It is.

3 THE COURT: Very good. Thank you. The Defendant in
4 this case is Karlita Phillips. Is there any member of the
5 jury panel who has any close business or social
6 relationships or is related by blood or marriage to Ms.
7 Phillips? If so, please stand.

8 (Whereupon, jury panel remains seated.)

9 THE COURT: No one is standing. The decedent in this
10 case is named Jamil Phillips. Is there any member of the
11 jury panel related by blood or marriage or has any -- or
12 have any close business or social relationships with the
13 decedent in this case, Jamil Phillips? If so, please stand.

14 (Whereupon, a juror stands.)

15 THE COURT: Yes, ma'am. What is your name, please?

16 THE JUROR: Mary Johnson.

17 THE COURT: Ms. Johnson. And you knew Mr. Phillips?

18 THE JUROR: Yes, sir.

19 THE COURT: How did you know Mr. Phillips?

20 THE JUROR: We're related.

21 THE COURT: You are related? What's the relationship,
22 ma'am.

23 THE JUROR: We're cousins, but I'm not exact sure what,
24 you know.

25 THE COURT: Not first cousins then?

1 THE JUROR: No, sir.

2 THE COURT: Second or third cousins?

3 THE JUROR: No, sir.

4 THE COURT: Even more distant than that?

5 THE JUROR: Yes.

6 THE COURT: The fact that you are related to the
7 decedent in this case, would that affect your ability to be
8 fair and impartial to either the State or the Defense?

9 THE JUROR: No, sir.

10 THE COURT: You're certain of that?

11 THE JUROR: I'm certain.

12 THE COURT: Very good, ma'am. You can have a seat.
13 Anyone else?

14 (Whereupon, jury panel remains seated.)

15 THE COURT: No one is standing. And what was your
16 number again, ma'am?

17 THE JUROR: 64.

18 THE COURT: 64. Thank you. Potential witnesses in
19 this case, ladies and gentlemen, are the following
20 individuals. And I may read these names out more than one
21 time. I need you to pay close attention to this list
22 because at the end of me reading this list of possible
23 witnesses I'm going to ask whether or not you're related by
24 blood or marriage to any of these folks or you have any
25 close business or social relationships with any of these

1 individuals. Okay? Again, these are just possible
2 witnesses. Not all these folks are going to testify. But
3 these are just possible witnesses who might testify during
4 the case this week. Here are the potential witnesses. Jeff
5 Kindley, K-I--d-l-e-y, who works with SLED. Kevin Suggs,
6 who works with SLED. David Grubbs with SLED. Michael
7 Collins of SLED. Steve Gambrell with SLED. Nick Marshal
8 with the Abbeville Sheriff's Office. Lynn Pickard with the
9 Abbeville Sheriff's Office. Neddra Singleton with the
10 Abbeville County Sheriff's Office. Richard Birchmore,
11 B-I-r-c-h-m-o-r-e, with the Abbeville Sheriff's Department.
12 Natalie Talbert with the Sheriff's Department. Ronnie
13 Ashley who is the Coroner here in Abbeville. Ken Smith,
14 also with Abbeville Sheriff's Department. Dale Phillips,
15 Sr., Dale Phillips, Jr., Martha Phillips, Sheila Campbell,
16 Charles Scroggs, Gary Parrman, Mary Paige Stamps, Terrell
17 Campbell. T-e-r-r-e-l-l, Campbell. Kareem Phillips, Kerry
18 Ray Parrman. Kimberly Wells with Abbeville 911. Sharmelle
19 Miller with 911. Sam Ferguson who is the Deputy Coroner.
20 Dr. Brett Woodard, who is a pathologist. Ashanti Polk.
21 A-s-h-a-n-t-I, Polk, P-o-l-k. Emyle McDuffie. E-m-y-l-e,
22 McDuffie. Kenya Griffin. Brian Picard, P-I-c-a-r-d, with
23 the Anderson Sheriff's Department. Vickie Hallman with
24 SLED. Haley Quam, Q-u-a-m, with SLED. Lilly Gallman also
25 with SLED. Bo Barton of SLED. Brittany Burke of SLED. Don

1 Claycomb with SLED. Mindy Worley with SLED. Michelle
2 Eichenmiller, E-I-c-h-e-n-m-I-l-l-e-r, also with SLED.
3 Thomas Darnell of SLED. Courtney Smith of SLED. Amy
4 Stephens of SLED. Marquitta, -a-r-q-u-I-t-t-a, Shay
5 Higgins, H-I-g-g-I--s, Anthony Moss, Henry Buchanan, Deondre
6 Wideman, DW [REDACTED], Amanda
7 Fallaw, Pierce Sullivan, Tavorious Settles, T-a-v -- I'm
8 sorry, Tavarious, T-a-v-a-r-I-o-u-s, Settles. Marquita
9 Higgins, Ashanti Polk, Natalia Talbert, Nick Marshal. Both
10 of those last two are with the Sheriff's Department.
11 Sheriff Ray Watson with the Sheriff's Department. Chris
12 Wilkie with the Solicitor's Office. Andrew Hodges who is an
13 attorney in Greenwood. Deandre Wideman, DW [REDACTED],
14 DW [REDACTED], Damon Kato, Charles Scroggs,
15 Gary Parrman, P-a-r-r-m-a-n, Mary Stamps, Brittany Davis,
16 Willie Lanier, Victor Paul, Todd Allen, Michael Alewine,
17 Deborah Batson, Josh Sellers, Ed Smith, Terry Phillips,
18 Xavier Jones, Roselyn Crawford, David Grubbs, Anthony Moss.
19 Michael Collins with SLED. Bo Barton with SLED. Lynn
20 Picard. Sergeant Gambrell with SLED. Markese Moore. M-a-
21 r-k-e-s-e, Moore, M-o-o-r-e. Renee Donalds, Kathy Wideman,
22 and Tavarious Settles.

23 Again, ladies and gentlemen, is there any member of the
24 jury panel who is related by blood or marriage or has any
25 close business or social relationship with any of those

1 potential witnesses? If so, please stand.

2 (Whereupon, jurors stand.)

3 THE COURT: Yes, ma'am. What's your name, please?

4 THE JUROR: Veronica Crawford.

5 THE COURT: Ms. Crawford, juror number 29. And which
6 of those witnesses do you know, Ms. Crawford?

7 THE JUROR: Dale Phillips, Jr.

8 THE COURT: Dale Phillips, Jr.?

9 THE JUROR: Yes, sir.

10 THE COURT: How do you know Mr. Phillips?

11 THE JUROR: He's one of my best friends.

12 THE COURT: He's a best friend of yours?

13 THE JUROR: Yes, sir.

14 THE COURT: If Mr. Phillips were to testify in this
15 case, would that affect your ability to be fair and
16 impartial to either side, either the State or the Defense?

17 THE JUROR: Yes.

18 THE COURT: It would? Okay. Ms. Crawford, then I'll
19 let you sit this one out. Okay? We will not use Ms.
20 Crawford. Just stay where you are, Ms. Crawford. I'm not
21 excusing you from the courtroom. I just need you to stick
22 around. Okay?

23 Yes, ma'am. What's your name?

24 THE JUROR: Jenette Kennedy. I know Neddra Singleton.

25 THE COURT: Say again, ma'am.

1 THE JUROR: Neddra Singleton.

2 THE COURT: Yes. Neddra, N-e-d-d-r-a, Singleton with
3 the Abbeville Sheriff's Department. Do you know that
4 individual?

5 THE JUROR: Yes, sir.

6 THE COURT: How do you know her?

7 THE JUROR: She's my niece by marriage.

8 THE COURT: Your niece by marriage?

9 THE JUROR: Yes, sir.

10 THE COURT: And what's your name, please, ma'am?

11 THE JUROR: Jenette Kennedy.

12 THE COURT: King?

13 THE JUROR: Kennedy.

14 THE COURT: Kennedy. Which number? 67. Ms. Kennedy,
15 if that witness were to testify, would that affect your
16 ability to be fair and impartial to both the State and the
17 Defense?

18 THE JUROR: No.

19 THE COURT: Very good, Ms. Kennedy. Thank you. You
20 can have a seat. Anyone else?

21 (Whereupon, jury panel remains seated.)

22 THE COURT: No one is standing. Is there any member of
23 the jury panel how has any close business or social
24 relationship with anyone who works with the Eighth Circuit
25 Solicitor's Office or any law enforcement agency here in

1 Abbeville County? Any close relationship with anyone who
2 works either at the Solicitor's Office or with the Sheriff's
3 Department?

4 (Whereupon, a juror stands.)

5 THE COURT: Yes, sir. What's your name?

6 THE JUROR: Benji Taylor.

7 THE COURT: Mr. Taylor?

8 THE JUROR: Yes. My father is with the Abbeville
9 Sheriff's Department.

10 THE COURT: How long has he been there, sir?

11 THE JUROR: Three or four years now, I believe.

12 THE COURT: And what's your father's name?

13 THE JUROR: John Taylor.

14 THE COURT: Mr. Taylor. He was not on the witness
15 list, was he?

16 THE JUROR: No, sir.

17 THE COURT: Okay. And what was your name again, sir?

18 THE JUROR: Benji Taylor.

19 THE COURT: Number 133.

20 THE JUROR: I didn't recognize any of the names from
21 the ---

22 THE COURT: Very good. Thank you for that information,
23 Mr. Taylor. You can have a seat. Anyone else?

24 (Whereupon, jury panel remains seated.)

25 THE COURT: No one is standing. Is there any member of

1 the jury panel who has ever been involved with the political
2 campaign for either Sheriff Ray Watson or Solicitor David
3 Stumbo? Anybody who ever made contributions to the
4 campaign, financial contributions to their campaigns or put
5 out yard signs, that kind of a thing? If so, please stand.

6 (Whereupon, jury panel remains seated.)

7 THE COURT: No one is standing. Is there any member of
8 the jury panel who is either a member of or has a very close
9 relative who is a member of any victims advocacy groups such
10 as Mothers Against Drunk Driving, or Students Against Drunk
11 Driving, or CAVE, C-A-V-E? If so, please stand.

12 (Whereupon, jury panel remains seated.)

13 THE COURT: No one is standing. Is there any member of
14 the jury panel who has a close family member, very close
15 relative or close friend who has ever been the victim or
16 charged with a serious or violent crime? If so, please
17 stand.

18 (Whereupon, jury panel remains seated.)

19 THE COURT: No one is standing. Is there any member of
20 the jury panel who has any strongly held feelings against
21 attorneys or lawyers, particularly persons or attorneys who
22 either prosecute or defend criminal cases? If so, please
23 stand.

24 (Whereupon, jury panel remains seated.)

25 THE COURT: No one is standing. Is there any member of

1 the jury panel or any close member of your family or close
2 friend who has ever been a civilian or military law
3 enforcement officer? If so, please stand.

4 (Whereupon, jurors stand.)

5 THE COURT: We've got you. If you're talking about
6 your dad, we've got you, Mr. Taylor.

7 And yes, ma'am. What's your name, please?

8 THE JUROR: Whitney Giles.

9 THE COURT: Ms. Giles. And who do you have in your
10 family?

11 THE JUROR: Howard Giles was the Sheriff of Abbeville
12 County was my grandfather.

13 THE COURT: That was a long time ago. But he's your --

14 THE JUROR: Grandfather. It was a long time ago.

15 THE COURT: That's your grandfather, I suppose?

16 THE JUROR: Yes, sir.

17 THE COURT: I was just taking a guess based upon your
18 youthful appearance. Very good, ma'am. Thank you for that
19 information. You may have a seat.

20 Yes, ma'am. What's your name again?

21 THE JUROR: Naoma Nelson. My two brothers are retired
22 police officers.

23 THE COURT: Where did they work, Ms. Nelson?

24 THE JUROR: In Missouri, Arkansas.

25 THE COURT: Thank you very much for that information.

1 Does anybody -- does any member of the jury panel have
2 a deeply held belief that a criminal defendant is guilty of
3 the crimes just because that defendant has been accused or
4 charged with committing a crime? Anyone who feels that an
5 individual is guilty of a crime merely because they have
6 been charged with it? If so, please stand.

7 (Whereupon, jury panel remains seated.)

8 THE COURT: No one is standing. As I explained a
9 moment ago, ladies and gentlemen, in this state and in our
10 country the burden of proof is always on the State to prove
11 a defendant guilty. Is there any member of the jury panel
12 who believes that a person charged with a crime should be
13 required -- or that you have a need to hear from that person
14 charged with that crime in order to make a decision?
15 Anybody who believes that the defendant has any burden of
16 proof in a criminal case or that you have to hear a defense
17 or from the defendant themselves in any criminal case? If
18 so, please stand.

19 (Whereupon, jury panel remains seated.)

20 THE COURT: No one is standing. Now, ladies and
21 gentlemen, from time to time during the trial sometimes
22 matters do get somewhat emotional. Is there any member of
23 the jury panel who would be affected substantially by any
24 witness who displayed emotional or cried on the witness
25 stand during the course of their testimony? If so, please

1 stand.

2 (Whereupon, jury panel remains seated.)

3 THE COURT: No one is standing. Is there any member of
4 the jury panel who would place more or less weight on a
5 person's statement or a witness' testimony if that witness
6 had engaged in an adulterous relationship, or was engaging
7 in an adulterous relationship at the time that they gave a
8 statement or gave testimony? If so, please stand.

9 (Whereupon, jury panel remains seated.)

10 THE COURT: No one is standing. Now, in this case,
11 ladies and gentlemen, the basic allegations are that Ms.
12 Phillips conspired with a young man by the name of Tavarious
13 Settles -- the State, again, is alleging and has not, of
14 course, proven any of this. But the State is essentially
15 alleging that the Defendant in this case, Ms. Phillips,
16 conspired with Mr. Settles, who was 17 at the time of this
17 incident, to have Mr. Settles kill a Dale Phillips, Jr., who
18 was the Defendant's estranged husband. It is alleged that
19 the two of them basically conspired to have Mr. Settles kill
20 Mr. Phillips, the Defendant's husband. Is there any -- and
21 there's also been from time to time some press coverage
22 about this particular case in the local media. Is there any
23 member of the jury panel who thinks that they may know
24 anything about this case or may have heard anything about
25 this case, or has formed or expressed any opinion

1 concerning the underlying allegations involved in this case?
2 If so, please stand. Anyone who thinks that they may know
3 anything about these allegations whatsoever either from the
4 newspaper, people talking, TV, Internet, media, whatever?
5 Anybody who thinks that they may know anything about these
6 particular allegations? If so, please stand.

7 (Whereupon, jury panel remains seated.)

8 THE COURT: No one is standing. Ladies and gentlemen,
9 have there been any -- is there any member of the jury panel
10 who has heard any news stories or heard any news events,
11 current events in recent years about particular crimes or
12 specific crimes which would affect your ability to be fair
13 and impartial or would cause you any bias against either the
14 State of South Carolina or the Defendant in this particular
15 case? If so, please stand.

16 (Whereupon, jury panel remains seated.)

17 THE COURT: No one is standing. Is there any member of
18 the jury panel who knows of any reason whatsoever why you
19 cannot give both the State of South Carolina and the
20 Defendant in this case a fair and impartial trial? Any
21 reason whatsoever why your ability to judge this case based
22 solely on the evidence and the facts, why that could be
23 affected, whether you have any bias whatsoever? If so,
24 please stand.

25 (Whereupon, jury panel remains seated.)

1 THE COURT: Is there any member of the jury panel who
2 has any deeply held moral or religious beliefs which would
3 prevent you from sitting on a jury, such as a religious
4 belief which would prevent you from sitting in judgment of
5 another citizen? If so, please stand.

6 (Whereupon, jury panel remains seated.)

7 THE COURT: No one is standing. Is there any member of
8 the jury panel who went through a contested divorce or a
9 rather contentious divorce? And if we need to discuss the
10 specifics of this, what I'm going to do is give you an
11 opportunity to come forward and speak with me down front.
12 Okay? So is there any member of the jury panel who has been
13 involved in a contested or particularly contentious divorce?
14 If so, please stand.

15 (Whereupon, jury panel remains seated.)

16 THE COURT: No one is standing. Is there any member of
17 the jury panel who again knows of any reason whatsoever why
18 you cannot be fair and impartial in this particular case or
19 feel that you may have heard anything or know anything about
20 this particular case? And if anybody wants to come forward
21 and speak privately with me down front that's perfectly
22 fine. Again, that's always the last thing that I do during
23 jury qualifications. So if there's any person who has
24 anything that they need to tell me about their knowledge of
25 this case, or anything that could affect their ability to be

1 fair and impartial, simply stand and I'll invite you to come
2 forward and speak privately down here with me up front. If
3 so, please stand.

4 (Whereupon, jury panel remains seated.)

5 THE COURT: All right. No one is standing. Counsel,
6 approach, please.

7 (Whereupon, a sidebar was held.)

8 THE COURT: Ladies and gentlemen, we're going to
9 proceed with selecting a jury on this particular case. In
10 this case the Defense, of course, will have 10 strikes. The
11 State has five. The way that we select a jury in a criminal
12 case, ladies and gentlemen, is a little bit different from
13 how they're picked in a civil case. If your name is called,
14 what I need you to do is come forward with any items that
15 you brought to the courthouse today, pocketbooks, books,
16 what have you, and just come forward and stand right here
17 down front where this copy machine is. This gray copy
18 machine. And then turn around and face towards the back of
19 the courtroom. Okay? At that point in time the State will
20 have an opportunity to seat you or excuse you, and the
21 Defendant will have a similar opportunity. Okay?

22 I'm going to tell you what I tell every jury, ladies
23 and gentlemen. If for some reason one of the lawyers
24 excuses you, do not take offense at it. Okay? Every lawyer
25 has a different way of picking a jury, and it could be

1 something as simple as the kind of shirt that you have on
2 today. So please do not take offense if for some reason
3 somebody asks that you not serve on this particular jury.
4 Again, it ain't personal. It's just business. All right?
5 So with that, Madam Clerk, at your leisure.

6 You all approach, please.

7 (Whereupon, a sidebar was held.)

8 THE COURT: Corrections. Strikes will be five and
9 five.

10 MADAM CLERK: 56, Joseph Helms. What say you for the
11 State?

12 MR. STUMBO: Please excuse Mr. Helms from the trial.

13 MADAM CLERK: You may take a seat back in the
14 courtroom.

15 MADAM CLERK: 57, Heather Hembree. What say you for
16 the State?

17 MR. STUMBO: Please present Ms. Hembree.

18 MADAM CLERK: What say you for the Defense?

19 MS. BOLEN: Please seat Ms. Hembree.

20 MADAM CLERK: You may take a seat in the jury box.

21 (Whereupon, juror takes seat in jury box.)

22 MADAM CLERK: Number 3, Richard Anderson. What say you
23 for the State?

24 MR. STUMBO: Please present Mr. Anderson.

25 MADAM CLERK: What say you for the Defense?

1 MS. BOLEN: Please seat Mr. Anderson.

2 MADAM CLERK: You may take a seat in the jury box.

3 (Whereupon, juror takes seat in jury box.)

4 MADAM CLERK: 34, Betty Edwards. What say you for the
5 State?

6 MR. STUMBO: Please present Ms. Edwards.

7 MADAM CLERK: What say you for the Defense?

8 MS. BOLEN: Please seat Ms. Edwards.

9 MADAM CLERK: You may take a seat in the jury box.
10 (Whereupon, juror takes seat in jury box.)

11 MADAM CLERK: 33, Marquita Donaldson. What say you for
12 the State?

13 MR. STUMBO: Please present Ms. Donaldson.

14 MADAM CLERK: What say you for the Defense?

15 MS. BOLEN: Please seat Ms. Donaldson.

16 MADAM CLERK: You may take a seat in the jury box. 24,
17 William D. Collins. What say you for the State?

18 MR. STUMBO: Please present Mr. Collins.

19 MADAM CLERK: What say you for the Defense?

20 MS. BOLEN: Please excuse Mr. Collins.

21 MADAM CLERK: You may take your seat back in the
22 courtroom. 54, Mary Johnson. What say you for the State?

23 MR. STUMBO: Please present Ms. Johnson.

24 MADAM CLERK: What say you for the Defense?

25 MS. BOLEN: Please excuse Ms. Johnson.

1 MADAM CLERK: You may take your seat back in the
2 courtroom. 77, Samantha Lohr. What say you for the State?

3 MR. STUMBO: Please present Ms. Lohr.

4 MADAM CLERK: What say you for the Defense?

5 MS. BOLEN: Please seat Ms. Lohr.

6 MADAM CLERK: You may take a seat in the jury box.

7 (Whereupon, juror takes seat in jury box.)

8 MADAM CLERK: 128, Elaine Sparks. What say you for the
9 State?

10 MR. STUMBO: Beg the Court's indulgence.

11 THE COURT: Yes, sir.

12 MR. STUMBO: Please excuse Ms. Sparks from the trial of
13 this case.

14 MADAM CLERK: You may take your seat back in the
15 courtroom. 35, John Ellis. What say you for the State?

16 MR. STUMBO: Please present Mr. Ellis.

17 MADAM CLERK: What say you for the Defense?

18 MS. BOLEN: Please seat Mr. Ellis.

19 MADAM CLERK: You may take a seat in the jury box.

20 (Whereupon, juror takes seat in jury box.)

21 MADAM CLERK: 41, David Fogle. What say you for the
22 State?

23 MR. STUMBO: Please present Mr. Fogle.

24 MADAM CLERK: What say you for the Defense?

25 MS. BOLEN: Please seat Mr. Fogle.

1 MADAM CLERK: You may take a seat in the jury box.

2 133, Benjamin Taylor. What say you for the State?

3 MR. STUMBO: Please present Mr. Taylor.

4 MADAM CLERK: What say you for the Defense?

5 MS. BOLEN: Please excuse Mr. Taylor.

6 MADAM CLERK: You may take a seat back in the
7 courtroom. 130, Whitney Stone. What say you for the State?

8 MR. STUMBO: Please present Ms. Stone.

9 MADAM CLERK: What say you for the Defense?

10 MS. BOLEN: Just one moment.

11 THE COURT: Certainly.

12 MS. BOLEN: Please seat Ms. Stone.

13 THE COURT: You may take a seat in the jury box.

14 (Whereupon, juror takes seat in jury box.)

15 MADAM CLERK: 75, Emily Little. What say you for the
16 State?

17 MR. STUMBO: Please present Ms. Little.

18 MADAM CLERK: What say you for the Defense?

19 MS. BOLEN: Please seat Ms. Little.

20 MADAM CLERK: You may take a seat in the jury box.

21 (Whereupon, juror takes seat in jury box.)

22 MADAM CLERK: 67, Jeanette Kennedy. What say you for
23 the State?

24 MR. STUMBO: Please present Ms. Kennedy.

25 MADAM CLERK: Say you for the Defense?

1 MS. BOLEN: Please seat Ms. Kennedy.

2 MADAM CLERK: You may take a seat in the jury box.

3 (Whereupon, juror takes seat in jury box.)

4 MADAM CLERK: 90, Betty Moore. What say you for the
5 State?

6 MR. STUMBO: Please present Ms. Moore.

7 MADAM CLERK: What say you for the Defense?

8 MS. BOLEN: Please excuse Ms. Moore.

9 MADAM CLERK: You may take a seat back in the
10 courtroom. 66, Jordan Kendrick. What say you for the
11 State?

12 MR. STUMBO: Please excuse Mr. Kendrick from the trial
13 of this case.

14 MADAM CLERK: You may take a seat back in the
15 courtroom. 147, Le'tavious Williams. What say you for the
16 State?

17 MR. STUMBO: Please present Mr. Williams.

18 MADAM CLERK: What say you for the Defense?

19 MS. BOLEN: Please seat Mr. Williams.

20 MADAM CLERK: You may take a seat in the jury box.

21 (Whereupon, juror takes seat in juror box.)

22 MADAM CLERK: 141, Frances Veach. What say you for the
23 State?

24 MR. STUMBO: Please present Ms. Veach.

25 MADAM CLERK: What say you for the Defense?

1 MS. BOLEN: Please present Ms. Veach.

2 MADAM CLERK: You may take a seat in the jury box.

3 (Whereupon, juror takes seat in jury box.)

4 THE COURT: All right. We're going to select two
5 alternates. Strikes will be one for the State, two for the
6 Defense on each alternate.

7 MADAM CLERK: 112, Marie Rodriguez. What say you for
8 the State?

9 MR. STUMBO: Please present Ms. Rodriguez.

10 MADAM CLERK: What say you for the Defense?

11 MS. BOLEN: Please present Ms. Rodriguez.

12 MADAM CLERK: You may take a seat in the jury box.

13 (Whereupon, juror takes seat in the jury box.)

14 MADAM CLERK: 13, Don Brown. What say you for the
15 State?

16 MR. STUMBO: Please present Mr. Brown.

17 MADAM CLERK: What say you for the Defense?

18 MS. BOLEN: Please excuse Mr. Brown.

19 MADAM CLERK: You may take a seat back in the
20 courtroom. 69, Christine Kimsey. What say you for the
21 State?

22 MR. STUMBO: Please present Ms. Kimsey.

23 MADAM CLERK: What say you for the Defense?

24 MS. BOLEN: Please seat Ms. Kimsey.

25 MADAM CLERK: You may take a seat in the jury box.

1 THE COURT: All right. Any issues concerning selection
2 or composition of the jury from the State?

3 MR. STUMBO: None from the State, Your Honor.

4 THE COURT: None from the Defense?

5 MS. BOLEN: No.

6 THE COURT: Very good. Ladies and gentlemen of the
7 jury, I'm going to ask that you adjourn to the jury room in
8 the back. The bailiff will show you where that is. Don't
9 get too comfortable, because after a few moments, after I
10 excuse the rest of the jury panel, I'm going to have you
11 back out here. I'm going to give you some additional
12 instructions and then probably release you for lunch. So if
13 you would, adjourn to the jury room. Don't discuss the case
14 though. I will tell you when you can talk about it. That
15 will be a common refrain. I'm going to be telling you that
16 every time that you go and take a break. Obviously that
17 should be very easy at this point in time because you know
18 absolutely nothing about this particular case. All right?
19 So adjourn to the back. Talk about the heat, but not this
20 case. We'll have you back in a moment.

21 (Whereupon, the jury exits the courtroom at 11:49 a.m.)

22 THE COURT: Solicitor, Ms. Bolen, would you all
23 approach, please, real quick.

24 (Whereupon, a brief sidebar was held.)

25 THE COURT: Well, ladies and gentlemen who were

1 summoned for jury duty this morning and not picked, all I
2 can say is I'm sorry. I just consulted with the Solicitor
3 and Ms. Bolen and the Solicitor tells me that should this
4 case conclude early -- earlier than we have anticipated, we
5 have enough work to do in terms of guilty pleas, bond
6 matters and other things to occupy my time. So I see no
7 reason whatsoever to put you on a call in system where you
8 call back. Okay? So what that means, ladies and gentlemen,
9 is that you are free to go about your business and your
10 life. Before you go though let me mention this. You will
11 get paid -- how much?

12 MADAM CLERK: 15, a check.

13 THE COURT: You will be getting a check for \$15 big
14 dollars from the Clerk of Court to compensate you for the
15 inconvenience that we have caused you this morning. You
16 know, many people -- I'll go ahead and mention this to you
17 because I think it is important. But a lot of folks, I'm
18 sure, when you got this jury summons you were not terribly
19 excited. More often than not people don't like their
20 schedules disrupted and their day disrupted. Think about it
21 this way though, ladies and gentlemen. In the grand scheme
22 of things we live in a country where the government can only
23 make you do three things. Okay? They can make you show up
24 every April the 15th and pay your taxes. If we're attacked
25 by another country they can put a gun in your hand and draft

1 you and force you to go off to war. And they can also force
2 you to serve on a jury. In the grand scheme of things, in
3 light of how painful paying taxes is and how miserable going
4 to war must be, maybe jury duty isn't so bad in the grand
5 scheme of things. Okay? So please except that as just my
6 general observation. And truly, I do hope that you get an
7 opportunity to serve at some point in the future, because
8 I've talked to people who loathed the idea of jury service
9 and ultimately they got picked on a jury and they said it
10 was one of the best experiences of their lives. Okay? They
11 said it was one of the most educational and interesting
12 times of their lives. So I will hope that you get a chance
13 or an opportunity in the future to serve on a jury. But it
14 will not be this week. If you need an excuse for work or
15 for school, the Clerk can provide one of those to you. Just
16 feel free to come forward and we'll get you an excuse for
17 work or school. Look for that check in the mail. It is in
18 the mail. And when you get it, cash it, and -- you're not
19 going to be able to buy 15 bucks -- much with 15 bucks, so
20 just blow it on something. All right?

21 Hope you all stay cool, have a lovely summer, and I
22 hope I have a chance to see you all again. Take care. If
23 you need the work excuse, come on down.

24 We'll be at ease for about five minutes.

25 (Whereupon, the jury pool was released at 11:52 a.m.)

1 (Whereupon, a recess was held from 11:52 a.m. to
2 12:06.)

3 THE COURT: We're back on the record in the *State vs.*
4 *Phillips*. Before we proceed, I know that we have a number
5 of things that need to put on the record, including one
6 issue concerning the strikes that the Court afforded to the
7 Defense. We put that on the record. But I want to go ahead
8 and let the jury leave for lunch. In light of discussions
9 in chambers, I'm going to have them back here at 2:15. I
10 think that should be enough time for us to take up what we
11 need to take up. And if we run over into the lunch hour
12 I'll just have the jury either hang around or let them
13 wonder around the square for 15 minutes.

14 Let's have the jury out, please.

15 (Whereupon, the jury entered the courtroom at 12:06 pm)

16 THE COURT: Let the record reflect that the jury is
17 back and seated. Ladies and gentlemen of the jury, don't
18 get too comfortable. I'm about to release you for a lunch
19 break because there are a few matters that don't involve you
20 that I need to take up concerning this case before we
21 proceed with the trial in earnest and I see no reason to
22 keep you all in the back there while we're addressing those
23 purely strictly legal matters. So what I'm going to do is
24 ask that you be back at the courthouse at a quarter after
25 2:00. That should give you plenty of time to grab something

1 to eat, and also give court personnel a chance to grab a
2 bite.

3 I will tell you, of course, while on break don't
4 discuss the merits of this case with anyone. Okay? And
5 while the case is going on it will be very important to not
6 read or conduct any sort of independent research about any
7 of the facts involved in this case. Ladies and gentlemen, I
8 will assure you that you're going to get every bit of
9 information that you need from this witness stand in order
10 to make a decision concerning this case, and obviously you
11 cannot allow your opinion, or your vote once it is submitted
12 to you, to be affected by anything somebody else says to you
13 or something else that you might see in the media,
14 newspaper, et cetera. Okay? So go ahead and take your
15 lunch break. And if you would, be back here at the
16 courthouse by 2:15. I anticipate that should be enough time
17 to get all the legal issues done. If we need additional
18 time though, I'll have one of the bailiffs simply meet you
19 at the top of the stairs and probably give you another 15
20 minutes or so to wonder around the square and do maybe a
21 little bit of light shopping. Okay? So just be back at the
22 courthouse at 2:15. I see you then, and I hope you enjoy
23 your lunch. You are excused. Thank you.

24 (Whereupon, the jury exited the courtroom at 12:09 pm)

25 THE COURT: The record should reflect that the jury is

1 out. One housekeeping matter that we do need to put on the
2 record. After the jury is qualified with regard to this
3 particular case, the Court erroneously stated the Defense
4 would be entitled to 10 peremptory challenges. I had a
5 sidebar at the bench. The court reporter's microphone was
6 closely -- was very close to me, and I basically stated into
7 the microphone the Defense was protected with their
8 objections and would be able to put on the record after jury
9 selection the fact that they felt that they were entitled to
10 10 challenges toward the jury. And I showed them the
11 provision of law 14-7-1110 that basically listed the crimes
12 for which the Defense was entitled 10 peremptory challenges.
13 Obviously accessory before the fact of murder carries the
14 exact same potential penalty as does murder, and Ms. Nelson
15 and Ms. Bolen were of the opinion that they were entitled to
16 10 challenges for that reason.

17 Am I correctly stating what we said at the sidebar, Ms.
18 Bolen?

19 MS. BOLEN: Yes, sir. It is our position that we would
20 have been entitled to 10, given that accessory before the
21 fact carries the same as murder, has the same penalty.

22 In addition, Your Honor, just to make the record
23 complete, there are persons on the jury that had we had the
24 10 strikes we would have struck. We know we had one -- we
25 had one left, but we were being careful of those strikes

1 since we were limited to the five. In particular, Your
2 Honor, the young woman whose grandfather was an Abbeville
3 County Sheriff is someone we would have struck had we had
4 the 10 strikes.

5 THE COURT: That was Ms. Stone?

6 MS. BOLEN: Yes, sir.

7 THE COURT: Whitney Stone.

8 MS. NELSON: And just to be clear, Your Honor, we were
9 specifically saving our fifth strike for a very specific
10 person that we had information about that we knew we did not
11 want on the jury. So we weren't just being cautious. We
12 were specifically saving that one for a person who ended up
13 not being called.

14 THE COURT: Okay. I do appreciate your position. I
15 understand the objection at the time I informed you that is
16 noted. The record is protected and you are protected on
17 appeal for that issue.

18 The record should also reflect that last week in
19 Greenwood we did engage in a *Jackson vs. Denno* hearing at
20 the courthouse in Greenwood. The court reporter on that
21 case was Ms. Holston. Joy Holston, who is Judge Griffith's
22 court reporter normally. Certain exhibits were introduced
23 into the record during the course of that hearing. My clerk
24 has delivered those to the Clerk of Court here. She gave
25 them to Tara. She gave them to the current court reporter

1 to hang onto. And, of course, those will be given to Ms.
2 Emily. The *Jackson vs. Denno* hearing, I indicated to
3 counsel that I would be leaning towards admitting the
4 statements, because from the testimony that was presented
5 last week, the Miranda rights were read. There was no
6 indication of excessive or inappropriate force being applied
7 during the questioning of the Defendant. I had a chance, I
8 think it was either Wednesday night or Thursday night, to
9 listen to the tapes again, and that I've reviewed them again
10 yesterday afternoon. And with the exception of the video
11 where I could not really listen -- I could not get
12 sufficient audio on the video to really hear what was being
13 said. And we can address that maybe in a moment. But
14 clearly my ruling is going to stand from last week, that
15 Miranda was given and there's no evidence of any effort to
16 overbear the Defendant when she was being questioned. So
17 that will be my ruling on the *Jackson vs. Denno*.

18 Similarly my ruling is going to stand on the search of
19 the car. But based upon the totality of the circumstances,
20 there was sufficient evidence from which the Magistrate
21 could properly find that probable cause existed and issue
22 the search warrant seizing the car. The case that, I think,
23 is most appropriate, the cite for that is 353 S.C. 537. And
24 I wrote the case name down in a different notebook, so I
25 don't have that, but I did have the cite. So those will be

1 my rulings with regard to those two issues, unless anyone
2 needs to further supplement the record with either the
3 *Jackson v. Denno* or the search warrant at issue.

4 Are we okay on that, or does anybody need to put
5 anything else on the record?

6 MR. STUMBO: Nothing from us, Your Honor.

7 MS. BOLEN: Other than some issue of redaction,
8 nothing, Your Honor.

9 THE COURT: Very good. We do have the co-defendant,
10 Mr. Settles, here. We have his court appointed attorney,
11 Mr. Nassrollahi, present as well. It's my understanding --
12 my understanding, Mr. Nassrollahi, that your client attends
13 basically to assert his Fifth Amendment rights not to
14 testify in this particular case?

15 MR. NASSROLLAHI: He will be invoking his Fifth
16 Amendment rights, Your Honor.

17 THE COURT: You've advised him, of course, about the
18 right -- his right not to testify in this particular charge,
19 correct?

20 MR. NASSROLLAHI: I have, Your Honor.

21 THE COURT: If we could, let's ask Mr. Settles to step
22 out, please, and I'll let him assert those rights on the
23 record outside the presence of the jury.

24 (Whereupon, Mr. Settles enters courtroom.)

25 THE COURT: Mr. Settles, you can stand right there if

1 you want to, sir. Just, if you could, just raise your right
2 hand. I just need to put you under oath.

3 TAVARIOUS SETTLES, having been
4 first duly sworn, testified as follows:

5 THE COURT: Are you -- sir, are you Tavarious Dequan
6 Settles?

7 MR. SETTLES: Yes, sir.

8 THE COURT: Put your hand down. Thank you, Mr.
9 Settles. Mr. Settles, Mr. Nassrollahi has told me that if
10 you were called as a witness in this case it would be your
11 intention to assert your Fifth Amendment right not to
12 testify. Is that correct, sir?

13 MR. SETTLES: Yes, sir.

14 THE COURT: All right. So it is your attention to
15 assert your Fifth Amendment rights, correct?

16 MR. SETTLES: Yes, sir.

17 THE COURT: I noted for the record then that Mr.
18 Settles will be asserting his Fifth Amendment rights.
19 Obviously there's case law that says this should not be done
20 in front of the jury. So anything further with regard to
21 this issue, or can I excuse Mr. Settles? Anything further
22 from the State?

23 MR. STUMBO: Nothing from the State.

24 THE COURT: From the Defense?

25 MS. BOLEN: Nothing from the Defense.

1 THE COURT: Thank you. Thank you, sir.

2 (Whereupon, Mr. Settles exits the courtroom.)

3 THE COURT: In chambers this morning we did discuss the
4 audio and the video case. And again, I did have a chance to
5 review those last night. Ms. Bolen had emailed to me at the
6 tail end of last week, and also, I think, Saturday morning,
7 some specific areas of the tapes that she did object to.
8 And I have reviewed those and was prepared to move forward
9 with the discussion of those, but my understanding is at
10 this point in time the State is not intending to play those
11 tapes. The State, of course, will be offering them into
12 evidence, but the State does not intend to actually play
13 those tapes which, of course, are very long and have lots of
14 dead space in them, to the jury; is that correct?

15 MR. STUMBO: That's correct, Your Honor. That would be
16 as to the audios on December 18th, December 19th. The
17 videotape we still intend to offer.

18 THE COURT: Okay. I have not had a chance, for the
19 reasons I explained earlier, to review the videotape. What
20 I had suggested in chambers, clearly we're not going to get
21 to this issue today, the playing the of the tapes. What I
22 had suggested in chambers was that to the extent either side
23 would want to play specific parts of those tapes, clearly
24 they would be entitled to do that. And obviously if there's
25 any testimony that differs from what was said on those

1 tapes, then clearly they could be played for the jury at
2 that particular point in time. Since there's no intent to
3 play those tapes, Ms. Bolen, I'm assuming that the court
4 does not need to address the issue of redaction. The only
5 issue that I could see would be -- and we probably need to
6 go ahead and get to this in a moment. But should the State
7 seek to elicit any hearsay testimony, or testimony that
8 might be in violation of *Crawford*, which I think is what you
9 were getting at with your email Saturday morning -- or maybe
10 I'm wrong, but --

11 MS. BOLEN: Yes, sir.

12 THE COURT: -- with regard to what Mr. Settles may have
13 told the police. But if there's any objection, I'm just
14 going to need to hear it, I guess, when the question is
15 asked, unless you feel the need to go ahead and address
16 redaction.

17 MS. BOLEN: Well, Your Honor, the only -- and, you
18 know, we may -- under Rule 106 we may want one or both of
19 those tapes in. We're not -- I don't think we're
20 necessarily at the point where we can make that call right
21 now. But since we are discussing redaction, and since I
22 believe it's the State's intention to introduce written
23 statements, it's our position that there's portions of that,
24 the written statements, that would also need to be redacted.
25 In the written statements, Your Honor, all -- I'm talking

1 about the ones that are given on the 19th and the 20th. Not
2 the one from March 22nd.

3 In those statements, Your Honor, there's several times
4 where Karlita refers to things that were said, but she's
5 doing that in response to things law enforcement said. So
6 they bring up "Purp says this." And it's our position that
7 the only reason she's writing that is in response to these
8 statements that they bring up, and we'd ask for those to be
9 redacted.

10 THE COURT: And you're referring to the statements --
11 not the initial statement of March 26th, but you're
12 referring to the statement of December the 19th and 20th?

13 MS. BOLEN: Yes, sir. Your Honor. For example, on the
14 one given on the 19th that's four pages long, she says
15 something at the very -- let's see. Page 2 at the bottom
16 she wrote, "He never said anything about the job done," and
17 that's in quotes. That's because one of the officers
18 directly quoted that to her.

19 THE COURT: Okay.

20 MS. BOLEN: And then shortly down from that, Your
21 Honor, "Offering you however much money." Again, that's in
22 response to something the officers had said to her about
23 what he had said. On page 3 of the same statement, the top
24 of -- well, second full sentence, "It's been said that I
25 offered Purp Settles some insurance money." Again, that's

1 in response to hearsay statements that they were making when
2 they were interviewing her.

3 There's a few more times, Your Honor. I can mark up a
4 sort of proposed redaction. But anytime she's referring to
5 what they told her, him telling the Abbeville sheriffs, is
6 not -- it's not -- "Purp is not being truthful," and I guess
7 him telling the Abbeville Sheriff, "It was my idea without
8 him." Again, the only reason she's knowing he's saying that
9 is because they told her that.

10 THE COURT: Are there any other portions of the
11 statement that you specifically want redacted?

12 MS. BOLEN: Let me just -- if I can just have --

13 THE COURT: Sure.

14 MS. BOLEN: Page 4 of that statement she writes, "He's
15 not being truthful." Again, that's the lead in to a
16 statement made to her by them. "Everything being said is
17 not true."

18 I believe that's it, Your Honor, but I can go over the
19 statement a little more thoroughly at lunch and just make
20 sure I'm not missing anything. But I think that was the
21 extent of it.

22 THE COURT: All right. Solicitor, what's the State's
23 position with regard to the motion to redact the statements
24 concerning Mr. Settles -- what Mr. Settles said?

25 MR. STUMBO: Your Honor, certainly in terms of the

1 audio I think the Defense has an absolutely legitimate
2 argument under *Crawford*, that anything that Captain Talbert
3 or Detective Marshal or Sheriff Watson said to her that
4 "Purp said this, Purp said that."

5 As to the statements in her own words and her own
6 handwriting, you know, her own written statement here, I
7 mean, I think it falls under essentially Miranda. I mean,
8 she was warned beforehand that anything you say in these
9 statements can be used against you. She's writing these
10 things that she heard from other people freely, voluntarily.
11 I just legally, Your Honor, I don't know that it's hearsay
12 by definition under the rule because they're statements of
13 the Defendant. Statements of a party opponent. So I think
14 under 801 they come in. And, there again, I think
15 constitutionally she was warned here of anything that she
16 says could be used against her. No matter what the source
17 is of what she said they're her words in her own handwriting
18 that she gave voluntarily. So, Judge, I think
19 constitutionally these come in. I don't think they violate
20 *Crawford* for that very reason. If they were testimonial
21 hearsay being offered through one of the State's witnesses,
22 that would be different, Your Honor. I think certainly
23 those have merit under the *Crawford* case and would be
24 excluded under the confrontation clause. But in that these
25 statements were given freely and voluntarily, given by the

1 Defendant herself. Like I said, it's not even a summary or
2 written by law enforcement and her signing it. That may
3 even be different if she's contesting that she actually said
4 it. But this is her own handwriting, Judge, that she wrote
5 while officers weren't even in the room.

6 So constitutionally I think these statements come in.
7 I think there's a distinction between the statements made by
8 her here as opposed to testimony of hearsay that would come
9 through one of the officers.

10 There's a couple -- I think one of the places where Ms.
11 Bolen pointed out says "It's been said that I paid insurance
12 money to kill my husband." Your Honor, that -- there again,
13 it doesn't say who said that. It's been said. That could
14 have come through the officers directly by the statements
15 that Settles made to them, and were also other witnesses
16 that Settles said this to that I believe would be non-
17 testimonial type hearsay. So --

18 THE COURT: And that's what I was about to get at. The
19 research that I conducted yesterday, the Federal courts
20 seemed to be, at this stage of the game, pretty much an
21 agreement on the testimonial versus non-testimonial nature.
22 Under *Crawford*, if Settles gave a statement to law
23 enforcement and realized that he was speaking to a law
24 enforcement officer, essentially the Second, Third, Seventh,
25 Eighth and Eleventh Circuit have all concluded that there's

1 South Carolina authority on this. You all feel free to
2 point me to that.

3 MR. STUMBO: Your Honor, can I give you that? I have
4 four cases on that very point.

5 THE COURT: Yeah. From South Carolina?

6 MR. STUMBO: Yes, sir.

7 THE COURT: I had Federal under *Crawford*. I just found
8 *Crawford* and then searched that. What have you found in
9 South Carolina?

10 MR. STUMBO: These are all cases since 2007. I'll give
11 you the most recent, Judge. This was -- it's actually not
12 even published yet, but it was in the advanced sheets last
13 week. It's *State vs. Bratchi*, B-r-a-t-s-h -- c-h-I. The
14 number on this is -- at least through Westlaw right now, is
15 2015 WL 4269685. That was in the advanced sheets put out
16 last week by the Supreme Court. *State vs. Brockmeyer*,
17 B-r-o-c-k-m-e-y-e-r. That's 406 S.C. 324. That's a 2013
18 Supreme Court case. *State vs. Garner*, 389 S.C. 61. That's
19 a South Carolina Court of Appeals case, Your Honor.

20 THE COURT: 389 S.C. what?

21 MR. STUMBO: 389 S.C. 61. That's a 2010 Court of
22 Appeals case. And *State vs. Ladner*, L-a-d-n-e-r. And
23 that's 373 S.C. 103. That's a 2007 case.

24 And, Your Honor, I read all those cases. I don't know
25 that any one of them is directly on point with the issues

1 we're dealing with here, but they all stand for the
2 proposition of non-testimonial hearsay doesn't trigger the
3 constitutional confrontation clause analysis in the Sixth
4 Amendment. But it's essentially, at that point, in the
5 realm of the Rules of Evidence as to whether that non-
6 testimonial hearsay is admissible in a criminal trial.

7 And, of course, we would also agree with, Your Honor,
8 on the Federal case law of *Crawford* and its progeny. I
9 believe our state courts are simply echoing what seems to be
10 the consensus on the Federal courts right now.

11 THE COURT: The *Bratchi*, B-r-a-t-c-h-I case that came
12 out last week, has that been released for publication? I
13 can't seem to find that in the slip opinions.

14 MR. STUMBO: No. Quite frankly, I saw it in the Bar
15 newsletter that comes out and just happened to click on it
16 and read it. So I was lucky last week. Otherwise, I
17 probably would not have found it either.

18 MS. NELSON: We have one to give you as well when
19 you're ready, too, Your Honor.

20 THE COURT: Sure.

21 MR. STUMBO: And just for the record, Your Honor, the
22 opinion number on the *Bratchi* case is opinion number 5327.
23 It was out of Florence County. It looks like Judge Brown
24 was the -- Craig Brown was the Circuit Court Judge.

25 THE COURT: This case deals with the testimonial nature

1 and non-testimonial nature of a 911 recording being played.

2 They go through a 403 analysis on this as well.

3 What's the cite that you all have?

4 MS. NELSON: Let me get right back to it, Your Honor.

5 It's a 2000 South Carolina Supreme Court case. It's *State*
6 *vs. Holmes*, 342 S.C. 113. And we found this to be -- to be
7 on point where the Supreme Court said it was a violation of
8 the confrontation clause to admit a hearsay statement of a
9 non-testifying accomplice's untested confession. And this
10 was a statement that had been given to -- not to the police,
11 but to -- I believe to a roommate, and the non-testifying
12 co-defendant told this friend or roommate that he and the
13 Defendant and another person were involved in the crime, and
14 the Supreme Court found that that -- that it did violate the
15 Defendant's right to confrontation for that statement to be
16 admitted when the accomplice was not testifying.

17 MS. BOLEN: And, Your Honor, we have one more as well.

18 THE COURT: What's the other case that you all have?

19 MS. BOLEN: Thank you, Your Honor. It is *State v*
20 *Brewer*, 411SC401. It's a 2015 case. And, Your Honor, it's
21 not exactly on point with respect to some of the issues in
22 the *Brewer* case, but what it does say is a case where a
23 defendant interview is admitted. In the interview are
24 numerous statements by law enforcement that were objected to
25 but were also admitted. And it holds that inadmissible

1 hearsay statements by law enforcement are -- should be
2 inadmissible. Statements that the law enforcement officers
3 are making that contain hearsay that they're using as part
4 of a interrogation technique are inadmissible. And it's our
5 position, Your Honor, especially listening to the tapes, law
6 enforcement speaks with Ms. Phillips for a length of time.
7 They tell her a number of different things, including what
8 some other people have said, and including some other stuff
9 that just is not relevant at all. But she then writes a
10 statement essentially memorializing what they talk about and
11 also in response to what they talked about. And what she's
12 doing in her statement is responding to what they brought up
13 and responding to what they told her. So she's not putting
14 in what she believes Purp said. She's saying, "They said
15 Purp said this. That's not true." She's essentially
16 regurgitating what law enforcement told her in the
17 interview. And the Brewer case stands for the proposition
18 that the -- what law enforcement -- hearsay statements law
19 enforcement makes in an interrogation are inadmissible. And
20 since she's merely restating those to respond to them in her
21 statement, we believe that those parts should also be
22 redacted as inadmissible hearsay.

23 THE COURT: Has the State had a chance to review the
24 *Holmes* case? The thing I do find curious about *Holmes* is
25 *Holmes* came out in 2000 which predates *Crawford* by four

1 years, but it follows the *Crawford* analysis, obviously
2 without citing *Crawford* because *Crawford* hadn't been --
3 hadn't been cited yet. *Holmes*, however, differs from the
4 Federal cases that have interpreted *Crawford* in this
5 context.

6 Solicitor, just so that the record is clear, I'm
7 assuming that you have a witness who is non law enforcement
8 who had a conversation with Mr. Settles. You intend to call
9 that witness to testify as to what Mr. Settles told him, and
10 portions of that statement implicate the Defendant, Ms.
11 Phillips. Is that correct?

12 MR. STUMBO: Correct. That's correct. There would be
13 actually three witnesses that we intend to maybe proffer. I
14 think we can do this during the course of the trial. I'm
15 not sure we'll hear that today. But that would be correct.
16 And we would offer those as non-testimony hearsay in a
17 *Crawford* analysis and statements against interest, under
18 804b.

19 Your Honor, I was going to point out the same thing. I
20 believe the fact that the *Holmes* case came out in 2000,
21 there is an analysis that's similar to *Crawford*. But just
22 from my brief reading of it just now I do not really see the
23 Court in *Holmes* delve into this distinction between
24 testimonial and non-testimonial hearsay. They talk about
25 whether a statement is self-inculpatory or not. And they do

1 have -- they talk about -- they do give essentially a
2 confrontation clause analysis. But essentially I think
3 prior to *Crawford* this distinction between testimonial or
4 non-testimonial was not necessarily on the Court's radar
5 screen and it is obviously on our Court's radar now post
6 2004. So I, on that basis, don't know how --

7 THE COURT: But here's the strange thing, Solicitor.
8 They cite the *Williamson* decision which was *Crawford*'s older
9 brother is what governed these types of situations.
10 *Crawford* essentially overruled *Williamson* and added the
11 testimonial -- or added the confrontation clause,
12 testimonial, non-testimonial distinction, that the Defendant
13 would have to have the opportunity to meaningfully question
14 the declarant in the context of the hearsay statement.
15 *Williamson* was much more generous than *Crawford* was in terms
16 of what the state could introduce, especially under an 804
17 admission against interest scenario.

18 MR. STUMBO: And I believe you're --

19 THE COURT: Yet *Holmes* finds *Williamson* -- or cites
20 *Williamson* as being controlling when that's more of a lax
21 standard than *Crawford*.

22 MR. STUMBO: It does seem to be opposite here, Your
23 Honor. I'll agree with that. *Crawford* generally -- in a
24 post *Crawford* era more statements are kept out than kept in,
25 but here there was the opposite effect when they cited

1 *Williamson*.

2 I would say this, Your Honor. In 2004 I think *Crawford*
3 created maybe for the first time this very bright line rule
4 between testimonial over non-testimonial hearsay. I think
5 that was really what *Crawford* stood for. And ultimately I
6 think generally when we're dealing with these cases you're
7 dealing with statements or confessions that are made by co-
8 defendants to law enforcement. And here I would agree that
9 statements that were made by the accomplice and co-
10 defendant, *Settles*, to law enforcement would be excluded
11 under *Crawford*. I just don't know that any of the
12 statements that the Defendant makes in this written
13 statement would fall under the category. Particularly in
14 the fact that she's essentially just -- there again, it's
15 kind of a free-flowing four page statement here, Judge. And
16 she does cite things, what's been said this, but here's my
17 answer. Here's my response to it. Certainly she was warned
18 of her rights beforehand. I think anything he said, I think
19 she's to some degree, assuming it's voluntarily admissible,
20 I think kind of waiving the right to challenge those things
21 under the rules.

22 There again, I know that's part of -- I'm mix matching
23 my arguments here, Judge. But I ultimately think under
24 *Crawford* there's statements made within the written
25 statement that the Defense seeks to exclude here that could

1 be interpreted as non-testimonial hearsay that's going to be
2 admitted through other witnesses anyway that I believe were
3 statements against interest. And we would -- we're going to
4 seek to admit those under the Rules of Evidence, and our
5 position would be that they would not be in violation of the
6 confrontational clause in a *Crawford* analysis because
7 they're non-testimonial.

8 There again, Judge, quite frankly, it's one of the
9 reasons why we made the decision to go ahead and not play
10 those audiotapes, because there's so many statements made
11 within those tapes by our Abbeville County officers that
12 say, well, Purp told us this, Purp told us that. Obviously
13 under *Crawford* all that stays out. And I would agree with
14 that, because clearly they're testimonial hearsay. But
15 under the *Crawford* analysis, anything that's said by Purp to
16 other people, there again, I think would be under an
17 analysis where it's non-testimonial. And if they are, in
18 deed, construed as statements against interest, I think they
19 come in.

20 THE COURT: All right. Well, I'm quite certain if I
21 were to turn to Ms. Bolen at this point in time and ask her,
22 she would point out to me that obviously the right to
23 confront witnesses is also contained in the South Carolina
24 Constitution, and clearly the Supreme Court of this state is
25 entitled to afford to the citizens of South Carolina greater

1 protections than the Federal due process and confrontation
2 clauses afford all citizens of country. Right?

3 MS. BOLEN: Yes, sir.

4 THE COURT: Which is maybe what *Holmes* is telling us,
5 even though *Holmes* was decided four years before *Crawford*.

6 MR. STUMBO: And, Your Honor, I would just say that the
7 four cases we cited are all state cases recognizing that
8 bright line rule that *Crawford* established between
9 testimonial or non-testimonial. So I don't think there is a
10 greater protection in the State Constitution, at least based
11 on those four cases. But there seems to be a very bright
12 line rule between statements offered that are non-
13 testimonial versus testimonial.

14 THE COURT: The *Brewer* case, and I'm just quoting from
15 it, "We find no support in the law for the State's argument
16 that the interrogator's statements were admissible for
17 purposes of conduct or for the effect that the statements
18 had on Defendant. Allowing agents to narrate the course of
19 their investigations and thus spread before jury is damning
20 information that is not subject to cross-examination will go
21 far towards abrogating Defendant's rights under the Sixth
22 Amendment and the hearsay rule. The only effect these
23 statements had on the Defendant was to make him repeatedly
24 deny shooting anyone. The meaning of these repeated denials
25 is obvious and requires no explanatory context. The effort

1 by the State to rescue the admission of this unmistakable
2 hearsay must be rejected. We emphasize that today's
3 decision is not a categorical rule that any statement by an
4 investigator during an interview is inadmissible at trial,"
5 blah, blah, blah. "At that end, we would like to remind
6 trial courts that the questions police pose during suspect
7 interviews may contain false accusations, apparently
8 unreliable, unconfirmed or false statements and inflammatory
9 remarks that constitute legitimate points of enquiry during
10 police investigation but that would otherwise be admissible
11 in open court." Then it goes into a harmless error analysis
12 where it finds that the error was not harmless.

13 Solicitor, it may at some point in time be necessary
14 for you to proffer the testimony that you intend to elicit
15 so that the Court can make a determination on whether it is
16 appropriate to admit it in this case. The fact that *Holmes*
17 follows the *Crawford* analysis in light of *Williamson*, I'm
18 still trying to wrap my head around that. But that would
19 appear to be perhaps the law. The current law obviously, as
20 you correctly point out, and as I stated with the Federal
21 circuits, is the current law, at least in the Federal courts
22 interpreting *Crawford*, is that testimony to someone other
23 than law enforcement officer -- a law enforcement officer is
24 non-testimonial in nature. *Holmes*, of course, also rests on
25 a hearsay ground. It's not lost upon the Court though that

1 the basis for the hearsay rule is essentially a
2 confrontation clause type requirement. That the witness
3 should be required to come into court and say what they
4 observed and allow the person to confront in front of the
5 witness. Scalia's opinion in *Crawford*, I think, pointed
6 that out succinctly. That there was some portion in his
7 *Crawford* opinion where I think he said something of the
8 effect of dispensing with the right of confrontation simply
9 because the court finds that information reliable under the
10 rules of evidence is akin to denying a person a jury trial
11 because their guilt is overwhelming, and Scalia is --

12 THE STUMBO: Well, he's a civil libertarian, so there's
13 --

14 THE COURT: At the very least, yes.

15 THE STUMBO: -- what you get from Scalia. But, Judge,
16 I don't disagree with your analysis, I guess, to some extent
17 where we're going as to any statements that are made within
18 these interviews by law enforcement to the Defendant. I
19 think maybe to overlap that upon independent witnesses that
20 may come in and say, "Hey, Purp Settles told me that he
21 killed Jamil Phillips. Purp Settles told me that Karlita
22 offered him insurance money to kill Dale Phillips."
23 Essentially there again, there's no law enforcement
24 involvement with them passing that information along to Ms.
25 Phillips and it ending up in these statements. Maybe -- I

1 don't know. I guess maybe what I'm saying is we should deal
2 with the issues separately. I'm not sure that here what
3 they say to -- what the officers from Abbeville County say
4 to the Defendant in the 18th and 19th interviews -- they had
5 already interviewed Purp Settles at that point. So whether
6 they're talking about their interview with Purp Settles,
7 which would be testimonial hearsay, or whether they're
8 referring to statements made by third parties, I don't know
9 if we can really make that distinction, unless they say in
10 the interview, "Hey, Purp told us this."

11 THE COURT: If it came solely from Purp I think that
12 you're out of luck, that it's not coming in. You have an
13 argument that maybe there's a collateral source for the
14 information that law enforcement got if Purp said it and
15 witness A or witness B say it. Okay? I think that you have
16 that argument that there's a collateral source independent
17 of Purp. *Brewer* though, *State vs. Brewer*, seems to speak to
18 the question that you pose, and it's not really in your
19 favor. I understand your position that she has been
20 questioned. This is her statement. We're dealing with
21 Miranda. We're dealing with her right to remain silent.
22 Clearly she waived that right. Clearly she gave a
23 statement. But again, she denied the allegations. For
24 those allegations to come in as substantive evidence to
25 prove a link between her and Settles, by my reading of

1 *Brewer*, appears to be inappropriate to allow inadmissible --
2 otherwise inadmissible statements in that confession to be
3 used as substantive evidence absent the right of
4 confrontation, even though she denies it. You know, you get
5 my point. And that's kind of what *Brewer* -- that's kind of
6 what *Brewer* is talking about. And I'm just laying it out
7 there.

8 MR. STUMBO: Exactly, Judge. And that's what I'm
9 saying. I agree with you in the analysis in the context,
10 which is really what we're arguing about in this motion.
11 These statements. Maybe I'm putting the cart before the
12 horse, but, you know, obviously there are witnesses. We
13 intend to call these other witnesses that are going to offer
14 non-testimonial hearsay that are statements against
15 interests made by her.

16 THE COURT: And I think that you're entitled clearly to
17 put any evidence in concerning non-testimonial -- or
18 whatever Purp said is fair game as far as it affects Purp.
19 What Purp says or may have said to some third party as it
20 relates to Ms. Phillips, that might be a different matter
21 entirely.

22 MR. STUMBO: As it applies to him it wouldn't even be
23 hearsay, Judge.

24 THE COURT: Correct.

25 MR. STUMBO: They're statements by party opponent. I

1 don't even think we're talking about that. Obviously here
2 it would be hearsay. It is hearsay. I'm not denying that
3 it's hearsay. It is hearsay -- non-testimonial hearsay
4 though by an unavailable declarant, which is Purp Settles.
5 Based on what we just heard from Purp Settles himself and
6 his attorney, he is going to be unavailable for testimony
7 this week. I don't think there's any question that he
8 qualifies as an unavailable witness under Rule 804. I think
9 the only question at that point, if it's non-testimonial
10 hearsay, is whether it's a statement against interest or
11 not. And then ultimately that's the Court's analysis,
12 because we're outside of *Crawford* in the confrontation
13 clause at that point, according to the four cases I cited
14 from our state court that essentially rely on *Crawford*. So
15 --

16 THE COURT: And I agree with you that as it relates to
17 Purp, as it relates to Mr. Settles, Mr. Settles and
18 information that implicates or incriminates Mr. Settles
19 that's coming in through some other witness is certainly
20 fair game. The problem that we're faced with is what
21 information might incriminate Ms. Phillips from that same
22 witness. I'm looking at *Brewer*, I'm looking at *Holmes*, and
23 I'm saying that your -- based upon my reading of the statute
24 -- and I want to look at it again hard. But based upon my
25 reading of the statute, I don't know that you're going to be

1 able to question those witnesses about what Settles may have
2 said concerning Ms. Phillips.

3 MR. STUMBO: Well, there again, I think we need to
4 maybe flush that out, Judge, because I would -- obviously if
5 Purp Settles were on trial right now I wouldn't think this -
6 - we wouldn't be having the confrontation clause issue
7 because it's not an issue.

8 THE COURT: Correct.

9 MR. STUMBO: And under 801 they're not hearsay.
10 They're not even defined as hearsay. What we're talking
11 about here is can non-testimonial hearsay statements be used
12 that are statements against interest when the declarant is
13 unavailable. And I think post *Crawford*, and according to
14 these four cases from the Supreme Court -- or State Supreme
15 Court and Court of Appeals, have made it very clear that the
16 confrontation clause is not in play at that point. That
17 there's a bright line because it's non-testimonial hearsay.
18 Non-testimonial hearsay by an unavailable witness doesn't
19 implicate the Sixth Amendment right to confrontation.

20 THE COURT: Give me an example of the type of evidence
21 that you're seeking to elicit from one of the witnesses.

22 MR. STUMBO: Well, one of the witnesses, Your Honor --
23 we can just put this out here. Obviously the Defense knows
24 about this. It's an ex-girlfriend. An ex-girlfriend of
25 Purp Settles says, "In June Purp came and told me who he was

1 cheating with." They broke up as a result of him cheating
2 on her. And he was cheating with a woman named Karlita, and
3 that he killed a boy named Jamil. And indicates a guy named
4 Mike gave those details. Judge, there's two other witnesses
5 that are cousins, actually, of Purp Settles who give
6 statements to law enforcement. One of those is Shay --
7 Lashay Higgins. Lashay Higgins discusses the fact that --
8 and there again, I can -- you know, for purposes of this
9 hearing, Your Honor, I can give you their written statements
10 to law enforcement, and essentially that's what we're going
11 to elicit. We've met with those witnesses and that's what
12 they're going to testify to. This will be the statement of
13 Lashay Higgins that's been turned over in discovery.

14 First thing I'm going to hand you, Judge, are
15 statements of Ashanti Polk, who is the ex-girlfriend.
16 That's the statement that says, "Purp told me he was
17 cheating with Karlita, and I killed -- he informed me that
18 he shot Jamil one night in which Mike drove him there." The
19 statement of Lashay Higgins indicates that she found out
20 that Karlita was messing around with Quan. She indicates
21 ultimately that she had a conversation with Quan, who is
22 Settles. Purp Settles. That's her cousin. And says
23 essentially, "He stated to me that she offered to pay him
24 \$10,000 to commit the crime from the insurance money that
25 she may receive." She said also, "I remember Karlita saying

1 her husband broke into her home and stole jewelry and
2 stuff." So this is somebody who had a conversation with
3 both Karlita and with Purp. Obviously, anything she says
4 that Karlita told her would be, I believe, admissible as
5 non-hearsay.

6 But there again, those are the two statements I'm going
7 to pass up to Your Honor now. I would say under *Brewer* and
8 *Holmes*, Judge, what we're talking about, there again,
9 statements of law enforcement making in the course of the
10 investigation. I don't know how *Brewer* is on point at all
11 to third party witnesses coming in and testifying to what
12 someone told them. I just don't know how *Brewer* is on point
13 with that. I would acknowledge that it's on point with
14 anything that is said in the course of the law enforcement
15 interview. And I think it's an important distinction, Your
16 Honor.

17 MS. BOLEN: And, Your Honor, I wasn't trying to imply
18 in any way that *Brewer* would apply to any third party
19 statements. I was citing it merely with respect to her
20 statements.

21 Your Honor, in response about these third party, which
22 I believe he's talking about, Marquita Lashay Higgins and
23 Ashanti Polk, our position, Your Honor, that both of those
24 would invoke confrontation clause. Our position that those
25 should not come in at all as they're clearly using them as

1 evidence against her, obviously, or wouldn't be trying to
2 introduce them. And she does have the right under the Sixth
3 Amendment to confront her witnesses.

4 Additionally, Your Honor, under *Holmes*, and as well as
5 the United States Supreme Court, which it cites *Williamson*
6 *vs. United States*, 512 U.S. 594, it's our position that if
7 Your Honor were to allow any testimony from Marquita Lashay
8 Higgins and/or Ashanti Polk, that their testimony and their
9 statements would have to be very narrowly tailored. Both
10 *Williamson* and *Holmes* state that the 804, I think it's (d)3
11 or (b)3 are very narrow exceptions to the hearsay rule.
12 They make a distinction between self-inculpatory statements
13 and non-self-inculpatory statements. But obviously many
14 statements made by people might contain elements of both.
15 Something that's self-inculpatory and something that's not.
16 In both of those cases are very clear that if something does
17 come in through a third party, it can only be the self-
18 inculpatory statements. So it would be our position, Your
19 Honor, that with respect to Ms. Higgins, I don't believe any
20 of her statement, with respect to what Tavarious told her,
21 would be admissible, because there's nothing in there that
22 is self-inculpatory with respect to Tavarious.

23 With respect to Ashanti, Your Honor, Ms. Polk, it's our
24 position that just -- again, it would be our position,
25 first, that none of it would come in under the confrontation

1 clause. But if it were to come in, that only the part of
2 her statement where she says that Tavarious said I killed a
3 guy named Jamil, or Jamal. That's the only part of that
4 statement that is self-inculpatory, and the rest of it would
5 be non-self-inculpatory and therefore not subject to the
6 804(d)3 exception.

7 And, Your Honor, I believe that's very clearly stated
8 in *Holmes* and *Williamson*. I believe I have another case on
9 point as well, but I'd have to -- I think I left my stack of
10 cases back at the office, Your Honor. I can certainly
11 refresh that. But I believe the case law is clear on that
12 issue, Your Honor, that they can't get in all these non-
13 self-inculpatory statements through that exception.

14 MR. STUMBO: Your Honor, I would point out, and I think
15 Your Honor mentioned this earlier, *Crawford* essentially
16 introduced a new analysis, I think, in these types of
17 statements.

18 THE COURT: I agree with you, Solicitor. I'd just love
19 to see the Supreme Court of South Carolina use it.

20 MR. STUMBO: Well, I don't know that in our State cases
21 that we've cited there's ever been a specific reference --
22 they do reference *Crawford* a number of times and cite it,
23 Judge. I think the *Gardner* case, I cited this to you a
24 moment ago. I had a chance to read the *Gardner* case. I
25 think it's very clear what the court indicates there that

1 there's a distinction between non-testimonial and
2 testimonial hearsay, and ultimately the Rules of Evidence
3 control at that point your out of confrontational clause
4 analysis if it's deemed to be non-testimonial.

5 Judge, all that to say, *State vs. Anders* -- and I know
6 I'm sitting here arguing that cases prior to *Crawford* really
7 are under a different and distinct analysis. But in *State*
8 *vs. Anders* -- and there again, I may be getting a little bit
9 ahead of ourselves here with statements against interest
10 with third party witnesses testifying. *State vs. Anders* is
11 a Supreme Court case. It's cited at 331 S.C. 474. That's a
12 1998 case. Now, what the court did was overrule -- overturn
13 a conviction on the basis of the fact that a co-defendant's
14 admission they said was not -- not -- it was admitted
15 improperly. Now, what they said there was because -- and
16 what I think makes it distinct from this case is that was a
17 case where two defendants were tried jointly. Essentially
18 one of the defendant is the declarant in the statement
19 that's admitted in the case and chief was available for
20 testimony. And ultimately what the court said is the
21 804(b)3 exception of statements against penal interest did
22 not apply because the witness was actually available. Here
23 certainly I think we've established already that Purp
24 Settles is unavailable because he's taking his right to
25 remain silent.

1 So there again, I don't know that *Anders* goes into an
2 analysis, but I think it is instructed here, this
3 discussion, particularly as to statements, because here it's
4 a statement that's made by a co-defendant to another
5 individual. And that other individual said this particular
6 person said this, and it was a non-testimonial type hearsay
7 statement. But because the witness in that case -- the
8 declarant was available according to the court, the 804(b)3
9 did not apply.

10 Your Honor, I just would rest on the fact that we're in
11 the post *Crawford* era and for us to analyze these legal
12 issues under the *Williamson* case and a 2000 case, *State vs.*
13 *Holmes*, there again, the court at that point had not -- the
14 courts had not established a bright line rule and a
15 distinction between testimonial and non-testimonial hearsay.
16 That analysis is what I believe is what is appropriate.
17 Based on the case law that we've had in South Carolina
18 since. So even though the courts have not gone into an
19 extremely detailed analysis of *Crawford* in the four cases
20 that I cite, they all cite it, and they all talk about
21 testimonial versus non-testimonial, hearsay, which I think -
22 - there again, Your Honor, maybe we're mix matching issues.
23 I know we started this as a discussion about what could be -
24 - should be redacted out of the witness statement. I don't
25 know that -- because so much of that could be testimonial

1 hearsay it would be excluded under the confrontation clause
2 pursuant to *Crawford*. I'm not so sure that we're in the
3 same realm as third parties coming in and testifying what
4 Purp said. It's not the same thing. If there is a
5 distinction, or law between testimonial or non-testimonial.

6 THE COURT: If there is that distinction.

7 MR. STUMBO: And there again, I would rest on those
8 four cases I cited, Judge. They all cite *Crawford* and they
9 all acknowledge the authority of *Crawford*.

10 THE COURT: All right. I'm probably in desperate need
11 of a break, as is my court reporter. What testimony are you
12 going to be eliciting today, Solicitor? Who will you be
13 calling as witnesses?

14 MR. STUMBO: I didn't plan to call those three
15 witnesses we just mentioned; Ms. Polk, Ms. Higgins. We were
16 going to bring them over here tomorrow was my intention. It
17 wasn't my intention to get into all this before we started
18 opening statements and getting into our case.

19 THE COURT: I just wanted to address it. And you hit
20 the nail on the head, opening statements. I don't -- I
21 would love to have more time to look at the cases cited by
22 both sides and play with those in my head a little bit
23 tonight. If you're intending to make reference to what
24 those three folks who are going to testify to tomorrow in
25 your opening, you intend to refer to their statements, it's

1 going to be necessary for the Court to make a much quicker
2 decision, because we've got the jury coming back at 2:15.

3 MR. STUMBO: Mr. Brown is going to give the opening
4 statement.

5 THE COURT: Are you going to talk about that, Mr.
6 Brown, or where are we --

7 MR. BROWN: I can stay away from that.

8 THE COURT: All right. We'll be at ease until 2:15.
9 I'll see you all back.

10 (Whereupon, a recess was held from 1:13 p.m. to 3:07
11 p.m.)

12 THE COURT: We're going back on the record in the *State*
13 *vs. Karlita Phillips*. I would like for the record to
14 reflect that I did have further discussion with counsel in
15 chambers, in a nutshell, and we've fleshed this out in
16 greater detail. But the Court is of the opinion that the
17 three statements that we are dealing with here today are
18 non-testimonial in nature per the holdings in *Bratchi*,
19 *Brockmeyer*, *Garner*. Particularly *Garner*, G-a-r-n-e-r, and
20 *Ladner*, L-a-d-n-e-r, cited by the State. However, of
21 course, Rule 403 -- 804 still comes into play, and there's a
22 question as to how much of the statement which implicates
23 Mr. Settles, how much of that statement and the pour over
24 that implicates Ms. Phillips, in terms of that is, in fact,
25 admissible under 804. So what we are going to do is go

1 ahead and allow the jury to adjourn for the evening and the
2 Court is going to receive -- or allow the State, rather, to
3 proffer the testimony of the witnesses so that I can make a
4 decision -- the Court can make a decision under 804 as to
5 what is admissible in the State's case and chief with regard
6 to these witnesses.

7 So, with that, let's have the jury out, please.
8 Solicitor, what time do you think we would be advised to
9 have them back tomorrow morning?

10 MR. STUMBO: I'd say 9:30, Judge.

11 THE COURT: Yeah, but I mean the jury, because we have
12 to deal with two others that aren't available right now.

13 MR. STUMBO: We can start at 9:00. Those will be very
14 short witnesses, and have the jury report at 9:30. I think
15 that will give us plenty of time.

16 THE COURT: Okay, very good.

17 (Whereupon, the jury entered the courtroom at 3:09
18 p.m.)

19 THE COURT: Let the record reflect the jury is back and
20 seated. Ladies and gentlemen of the jury, before the court
21 personnel here broke for lunch I was dealing with some
22 evidentiary issues, and over lunch I've had an opportunity
23 to consider some of those issues. Long story short, what is
24 necessary for the Court to do at this particular point in
25 time is to continue with those matters. This might actually

1 help in expediting the case to a certain degree. But
2 instead of keeping you back there in the hopes that we can
3 get to opening arguments and start taking some testimony --
4 instead of doing that, which I think is probably not very
5 likely, I'm going to go ahead and release you for the
6 evening and ask that you be back here at the courthouse --
7 I'm going to ask you to be here at 10:00 tomorrow morning.
8 Okay? And then we're going to proceed with the trial at
9 that particular point in time. We're going to be here a
10 little bit earlier working on those issues. So if you get
11 here and you're not allowed into the courtroom, just kind of
12 stay downstairs or outside or what have you. We'll get you
13 in here just as soon as possible. But I expect -- and I
14 hate being kept waiting, ladies and gentlemen. I'm the
15 first to admit that nothing irritates me more in all the
16 world. If I had a reservation at a restaurant for 8:00 and
17 my table is not ready, that bugs me. Okay? If I had an
18 appointment with my doctor for 3:00 and I can't see him
19 until 4:30, that bugs me. So I don't like keeping you
20 waiting. I know you don't like to be kept waiting.
21 Sometimes it's unavoidable though, and I do apologize for
22 that.

23 Now, I'm well aware that when you got this jury summons
24 you told your husband and wife that you had to appear here
25 today. Husband and wife, significant other, whoever it is

1 in your life. And naturally when you come home tonight --
2 or you go home tonight, they're going to ask you, well, were
3 you picked on a jury. Perfectly fine to say yes. Yes, I
4 was selected on a jury. Well, what's the next question
5 they're going to ask you? Well, what kind of case it is,
6 honey? All right? That's where you have to draw the line.
7 Because again, as I explained to you before you left for
8 lunch, you have to judge this case based solely on the
9 evidence that's presented from this witness standing. You
10 can't let your opinion and your vote be affected no matter
11 how well -- no matter how well intentioned your spouse might
12 be, you can't let it be affected by anything that they may
13 say to you. So when they ask you what kind of case is it,
14 just explain the judge has told me I can't talk about it and
15 as soon as this case is over with I will talk to you about
16 it.

17 I don't think that the delay here is going to affect
18 the timetable for trial of this case. I'm quite certain
19 that we will still have it to you by Thursday at the
20 earliest, Friday at the latest. Okay? With that, have a
21 great evening, try and stay cool, and I'll see you all back
22 here tomorrow morning at 10:00. But thank you for your
23 continued patience and you help.

24 (Whereupon, the jury was released at for the day at
25 3:09 p.m.)

LASHAY HIGGINS: DIRECT EXAMINATION

74

1 THE COURT: The record should reflect that the jury is
2 out. Do you have your first witness here or are they
3 en-route?

4 MR. STUMBO: She's here, Your Honor. Let me just --
5 give us about two minutes --

6 THE COURT: Certainly.

7 MR. STUMBO: -- and then we'll get her in the
8 courtroom.

9 THE COURT: Very good.

10 (Whereupon, a brief pause was held.)

11 MR. STUMBO: We're ready to call her, Judge. Judge,
12 this is Lashay Higgins.

13 LASHAY HIGGINS, having been duly
14 sworn, testified as follows:

15 PROFFER IN-CAMERA

16 DIRECT EXAMINATION

17 BY MR. STUMBO:

18 Q Good afternoon, Ms. Higgins. Thank you for getting
19 over here so quickly. I know it's kind of a change of
20 plans. You live in Greenwood?

21 A Yes.

22 Q Tavarious Dequan Settles, also known as Purp, do you
23 know him?

24 A Yes.

25 Q Who is he?

1 A That's my cousin.

2 Q And how long have you known Purp?

3 A Since he was born.

4 Q How old are you?

5 A Twenty-eight.

6 Q And so you're about 10 years older than him; is that
7 correct?

8 A Yes.

9 Q You live in Greenwood and you have children at this
10 point?

11 A Yes.

12 Q And I'm going to take you back to 2013. You go by
13 Shay; is that correct?

14 A Yes.

15 Q Ms. Shay, 2013. Did you also at that time know the
16 Defendant, Karlita Phillips?

17 A Yes.

18 Q And how long have you known Karlita?

19 A Not that long.

20 Q What was the nature of your relationship with her?
21 Friendship, acquaintance? How would you describe that?

22 A She was -- she was cool. She was an acquaintance,
23 friend.

24 Q Had you ever done anything in any social settings with
25 her, parties or whatnot?

LASHAY HIGGINS: DIRECT EXAMINATION

76

1 A A couple of times. Once or twice.

2 Q Now, you know your cousin, Purp Settles, you know
3 Karlita Phillips, the Defendant. She's in the courtroom
4 today; is that correct?

5 A Yes.

6 Q Okay. Now, what was the nature of their relationship?
7 Did you -- were you given any information by either one of
8 them of them knowing each other in any form or fashion?

9 A At some point she was, I guess, not in a relationship
10 with my cousin or -- I don't know. They were messing around
11 or something.

12 Q By messing around, they were physically involved with
13 each other?

14 A Yeah, from what he told me.

15 Q That came from what Purp told you?

16 A Yeah.

17 Q Did you ever have a conversation with Karlita about
18 that?

19 A I think I mentioned something to her once about it.
20 She basically admitted, yeah, that they had something going
21 on.

22 Q So she -- both of them at different points admitted to
23 you that they were having sex; is that correct?

24 A I won't say having sex, but --

25 Q But that they were involved --

1 A Yeah.

2 Q -- physically in some form or fashion?

3 A Yeah.

4 Q Did you ever have any conversation with Purp about
5 other things involved with this case? Anything that Karlita
6 had asked him to do?

7 A I mean, one night he came to me and he was talking to
8 me and saying that she wanted him to kill her husband, or
9 something, for insurance money or something like that. Or
10 she was going to pay him with the insurance money or
11 something. And I just told him to leave it alone, pretty
12 much. Don't get involved, and don't tell anybody else what
13 he just told me.

14 Q So the way it was presented to you by him is that -- by
15 Purp Settles is that Karlita had asked him to kill her
16 husband?

17 A Yeah.

18 Q And that she was going to offer him some money out of
19 the insurance proceeds to pay him for that?

20 A Yes.

21 Q And at that time he had not -- give me a timetable on
22 that. Do you recall when you had that conversation with
23 Purp?

24 A I think it was in March, but I'm not sure.

25 Q Okay. I'm going to hand you a prior statement and see

LASHAY HIGGINS: DIRECT EXAMINATION

78

1 if you can refresh your memory on that. Have you had a
2 chance to review that before Court. Did you give a
3 statement to law enforcement about this at some point, what
4 we're talking about today?

5 A Yeah. But on here it's saying that the only thing I
6 said was in early March. So that pretty much verifies what
7 I just said.

8 Q So this conversation occurred sometime in early March
9 of -- and the year you gave the statement was 2013?

10 A Yes.

11 Q March of 2013? Okay. At that time you indicated that
12 you responded back to Purp Settles at -- you care about Purp
13 as a family member?

14 A Yes.

15 Q Would that be fair to say?

16 A Yes.

17 Q And you asked him not to get involved with this? Not
18 to do it?

19 A Yes. And he told me that he wouldn't get involved and
20 he wouldn't have anything to do with it.

21 Q But you had some concern at the time that -- with him
22 telling you this that there might have been something to it?

23 A It was -- it was some concern. But after me and him
24 had a conversation, it seemed to me that I didn't have any
25 concern where I needed to contact anybody or anything

1 because I didn't think it was that serious, you know.

2 Q So he kind of put your fears to rest by telling you --

3 A Yeah.

4 Q -- don't worry about it, I'm not going to do it? Is
5 that what you're telling me?

6 A Yeah.

7 MR. STUMBO: I beg the Court's indulgence, Your Honor.

8 THE COURT: Yes, sir.

9 Q Did Purp tell you anything about this -- Karlita's
10 ex-husband? I mean, was there anything else he said that
11 was --

12 A I don't know. He told me a couple of different
13 stories, that he had broke in her house or something one
14 time before, and another time he was saying something about
15 he choked her or something.

16 Q I assume that he's telling you this to say why she's
17 asking him to kill her husband?

18 A Well, no, because he didn't tell me that on the same
19 day. These were just different stories.

20 Q That was a different conversation?

21 A Yeah.

22 Q Did he give you a specific amount that he was going to
23 get paid for doing this out of the insurance money?

24 A I think he said \$10,000.

25 Q Is there anything else about conversations you had with

LASHAY HIGGINS-CROSS-EXAMINATION

80

1 Purp Settles that you -- your cousin that you think was
2 related to this request for him to kill her husband?

3 A No.

4 MR. STUMBO: Thank you, Ms. Higgins. Your Honor,
5 that's all I have at this time for purposes of proffer.
6 Please answer any questions Ms. Bolen may have.

7 MS. BOLEN: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. BOLEN:

10 Q Ms. Higgins, Purp is your -- is he your nephew?

11 A Cousin.

12 Q Cousin. First cousin?

13 A Second.

14 Q Second, okay. And did you two live together?

15 A No. He was at my house all the time though.

16 Q Okay. So he was at your house -- how often is all the
17 time? Is it once a day, once a week?

18 A Just about every day.

19 Q Every day. And you said this conversation you had with
20 him was sometime in March, you think, right?

21 A Yes.

22 Q And it didn't give you any great concern, right?
23 That's what you said?

24 A No, not after I talked to him.

25 Q Okay. And that's all the information you got from

1 Purp, right? From Tavarious Settles?

2 A Yes.

3 Q Not from Karlita?

4 A No.

5 Q How often would you say you saw Karlita?

6 A Like I said, I only seen Karlita probably twice.

7 Q What kind of settings did you see her in?

8 A Well, I know I had a get-together at my house probably
9 two times and she was there.

10 Q Did you ever do anything with her just you and her?

11 A No.

12 MS. BOLEN: That's all I have. Thank you, Your Honor.

13 MR. STUMBO: Just follow-up briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. STUMBO:

16 Q You say that these get-togethers at your house where
17 Karlita Phillips showed up, when were those? Were they
18 around the time all this was going on?

19 A I really can't remember. But yeah, it was about around
20 that time.

21 Q When I say that around the time, that Purp was telling
22 you about her wanting to pay him to kill her husband?

23 A That was afterwards.

24 Q After the party?

25 A Yeah. That probably was about a month afterwards

1 actually.

2 THE COURT: Thank you, ma'am. You may step down.

3 MR. STUMBO: Thank you, Judge.

4 THE COURT: I'm happy to hear argument. My initial
5 reaction to Ms. Higgins' statement is that, as it relates to
6 the Defendant, it would be appropriate to allow her to
7 testify that the Defendant admitted or indicated that she
8 was physically involved with Mr. Settles.

9 Now, with regard to the statement, the second one, that
10 Settles came to the witness and said that he was asked to
11 kill the Defendant's husband by the Defendant in return for
12 insurance money, that conversation taking place in March,
13 the witness testified that he told her that he wouldn't be
14 getting involved and that he was not going to do it. I
15 think in that case the -- perhaps the case of *State vs.*
16 *Prioleau*, P-r-I-o-l-e-a-u, would be more on point.
17 Although, clearly some of the other cases are on point
18 concerning 804. That's more of a self-exculpatory
19 statement, as I understand the *Prioleau* decision to define
20 it. And in this case, you know, we are not dealing with a
21 situation where he is admitting after the fact to having
22 committed the homicide. So because it's self-exculpatory, I
23 do not know that necessarily the State could get into that.
24 Would the State care to give me their position on that
25 statement and how the fact that he admitted without

1 necessarily collaterally implicating the Defendant?

2 MR. STUMBO: Judge, I think the -- you know, the only
3 argument I would have as to that point -- and I think
4 Solicitor Brown and I discussed this a lot preparing this
5 case, is whether that is a statement against penal interest
6 or not. And I understand, Your Honor, a ruling that it
7 could be construed if you believe, I guess, his statement
8 back to her to allay fears or suspicions to her that I'm not
9 going to do this. They could be self-exculpatory.

10 My only argument would be the timing of this, as it
11 happened between the time that he was asked to do it and the
12 time I believe we will be able to prove with a variety of
13 different types of evidence in this case, through direct and
14 circumstantial, that he did actually kill Jamil Phillips.
15 But the fact that he was asked to do it, and he ultimately
16 did it, and this conversation he had in between that time is
17 telling her what's going on. Telling his cousin. My
18 argument would be that I don't know any other reason for him
19 to be talking to her about this other than he had to bounce
20 it off of her to test the waters to see what her reaction
21 is, because it's obviously an older cousin who he seemed to
22 have a good relationship with. That I think if you frame it
23 that way it could be viewed as self-inculpatory. Obviously
24 him telling her, well, I'm not going to do it, would cut
25 against that.

1 That being said, Your Honor -

2 THE COURT: What I'm focusing on, Solicitor, is more
3 the first phrase under 804(b)(3). A statement which was at
4 the time of its making, with the emphasis on "at the time of
5 its making", so far contrary to the decedent's pecuniary,
6 proprietary interest, or subject him, or the declarant, to
7 criminal liability, yada yada yada, at the time of the
8 statements making.

9 MR. STUMBO: Well, I think it can be construed, or
10 interpreted, Your Honor, based on the testimony we've just
11 heard, that the conspiracy was already underway to some
12 extent. He didn't come out and tell her, "Hey, I've agreed
13 to do this." But the conversation had been had. And
14 ultimately he does go over there and kill who he thought was
15 Dale Phillips, Jr., that being Jamil. But based on what we
16 know and what the outcome is -- we're not talking about just
17 a pure solicitation case here. There ultimately was an act
18 carried out by Purp Settles. He's been charged with the
19 murder here and we intend to prove that he did it. Did
20 commit the crime. That if we're talking about a statement
21 being made by the declarant, hey, I've been asked to kill
22 this lady's husband, and she's saying, well, please don't do
23 it and trying to talk him out of it, it must have been more
24 than him just flippantly saying, hey, by the way, this lady
25 asked me to kill her husband. I think it's gone past that

1 at that point if this witness is trying to talk him down
2 from that. Which is -- that's the interpretation I would
3 have.

4 So my argument would be this. If the conspiracy had
5 already taken place, there has already been discussion about
6 this and perhaps a meeting of the minds, that it would be
7 against his pecuniary interest.

8 THE COURT: I don't know which of you want to address
9 this. The flip side of what I've just said is that the
10 Defendant in this case is charged with soliciting a minor to
11 commit a felony, which criminalizes asking someone 18 years
12 of age or younger to use, solicit, direct, hire, persuade,
13 induce, entice, coerce or employ a person under 18 years of
14 age to commit a violent crime. How would the State go about
15 proving that if they weren't allowed to introduce evidence
16 of a minor being solicited to commit a crime by the
17 Defendant? And in this case we have a statement --

18 MS. NELSON: They'd have to prove it with something
19 admissible, Your Honor. They'd have to prove it through an
20 admission by the Defendant who's on trial. They'd have to
21 prove it through a witness that actually overheard them
22 coming to this meeting of the minds, or heard Ms. Phillips
23 solicit him to do something wrong. They would have to have
24 the evidence to prove it. And what you've got here is a
25 statement from an unavailable witness, not subject to cross-

1 examination, that is -- that is outside the scope of 804.
2 The case law seems clear to me that you're able to admit
3 statements that are against the declarant's interest, but
4 not against anyone else's interest, including Karlita
5 Phillips, and allowing the statement that Karlita asked him
6 to do something. And that's all it is. She asked him --
7 this person asked me to do something. That statement, at
8 the time it was made, does not subject him to criminal
9 liability in any way. And all it could be offered for is
10 the purpose of implicating Ms. Phillips, which the rule does
11 not contemplate. The rule is strict, Your Honor, because
12 this is not normally --

13 THE COURT: Pretty lethal stuff.

14 MS. NELSON: Yes, sir. It's not normally what we let
15 in when somebody can't be cross-examined. So our position
16 is that it just -- it does not fit. And any concern about
17 the State's ability to prove its case shouldn't enter into
18 whether it fits.

19 THE COURT: That's not really -- that's not really the
20 Court's concern as far as what other evidence they may have.
21 I was thinking out loud. Because obviously soliciting
22 someone to commit a violent crime, there has to be that
23 activity prior to the attempt or the commission of the
24 violent crime. There has to be that conversation that takes
25 place back and forth.

1 MS. NELSON: I think you have to have some sort of
2 overt act toward it like -- for example, if Karlita had gone
3 to a store and bought Purp a gun, or if they -- or if
4 Karlita had confessed to conspiring, or if Mr. Settles had
5 confessed to conspiring, or if someone -- another party
6 overhead it who was actually here testifying. That seems to
7 me would be how you prove a conspiracy, rather than
8 inadmissible hearsay.

9 MR. STUMBO: Well, Your Honor, that's why we believe
10 the timing is so important here, because it's what -- it's
11 what arguably makes this a statement against interest.
12 Against penal interest. Because the conversation had
13 already taken place at that point. Now, I would agree at
14 that point arguably, and just playing the Devil's advocate
15 here, Judge, would be the fact that Ms. Phillips, the
16 Defendant, at that point would have been guilty of a
17 solicitation to commit murder. But as someone who was close
18 to Purp, and I think Ms. Higgins has established that under
19 oath here today, her fairly close relationship with her
20 cousin. There again, giving him reasons why he didn't need
21 to get involved with this. She must have -- must have
22 interpreted what he was telling her as this is something
23 that I talked to Karlita about, so much so that she asked
24 him directly and he said, well, I'm not going to do it. And
25 I guess at that point, Your Honor, you know, him talking to

1 her is an act -- you know, there again, it would be a
2 nontraditional step in direction of committing a crime. But
3 it wouldn't be to the extent of buying the gun, or to the
4 extent of planning it out.

5 But, Judge, we would argue that to some extent here
6 there is self-inculpatory. Ultimately he flips and says,
7 well, I'm not going to do it when she asks him. But at that
8 point, you know, it may be a -- well, I'll stick with this
9 argument for now, Judge. I think a co-conspirator's
10 statement in furtherance of the conspiracy is another
11 hearsay exception. I know we're not in that vein right now,
12 but I think the case law on 801 that talks about co-
13 conspirator statements talks about statements to allay fears
14 or suspicions.

15 And here again, Judge, if you want to maybe -- I don't
16 have that case law in front of me right now directly, but I
17 think that that could be another path here based on what I'm
18 hearing. I think the stronger argument is ultimately he's
19 talking to Ms. Higgins to bounce this idea off of her to see
20 what she thinks, you know, to kind of test the waters, which
21 I think can be construed as a self-inculpatory type
22 statement against interest. He's letting Ms. Higgins
23 ultimately in on the secret so to speak.

24 MS. BOLEN: And, Your Honor, just to add. 804 -- the
25 plain language of 804 is a statement so far contrary to the

1 person's criminal or civil interest, to the declarant's
2 interests, and even apparently by the State's own words, it
3 cannot be construed it's so far contrary. It needs to be
4 something that is under the plain reading of the rule, Your
5 Honor. It needs to be something that is clearly on its face
6 so against your interests that it exposes you to criminal
7 liability, and that's just not present here. Neither the
8 statement itself nor Ms. Higgins' account of it where she
9 wasn't even concerned at all. There's no reading of that
10 that exposes Tavarious on -- simply on the statement he gave
11 her exposes him to criminal or civil liability. And, in
12 fact, he tells her -- she testified today that he said he
13 wouldn't get involved and he wouldn't do it. That's the
14 opposite of exposing himself to criminal liability, Your
15 Honor. So I think under a plain reading of 804 the
16 statement should not come in.

17 MR. STUMBO: Judge, I would say it does expose him to
18 criminal or civil liability if he ultimately follows through
19 on the plan, which he did.

20 MS. BOLEN: And, Your Honor, again, the rule -- the
21 plain language of the rule says the statement at the time.
22 It doesn't talk about anything in the future.

23 THE COURT: All right. Rule 804 hearsay exceptions
24 where the declarant is unavailable is pretty explicit.

25 (B)3) specifically says, "A statement which at the time of

1 its making, so far contrary or subjecting the declarant to
2 civil or criminal liability." It's specific, "At the time
3 of its making." In this instance, the Court cannot find
4 that that statement under 804(b)(3), at the time it was
5 made, would have subjected Mr. Settles to any sort of
6 criminal liability.

7 With regard to the conspiracy argument, I may as well
8 go ahead and address that. It's the *Sims* case, "The
9 statement must be made in furtherance of the conspiracy,"
10 and casual conversations under *Sims* or conversations to
11 other people that do not further the conspiracy are not non-
12 hearsay under 801. And that's the holding in *Sims*, S-I--s.

13 So that's where we are as far as her testimony. I
14 don't know how to disentangle. Settles came to her and said
15 that he was asked by her to kill her husband for insurance
16 money. There's no way to disentangle that and -- for it to
17 be -- for it to only implicate Mr. Settles and not also
18 implicate the Defendant. I don't know that we can talk
19 about that. That's my initial ruling.

20 Well, it's --

21 MS. NELSON: Thank you, Your Honor.

22 THE COURT: Yes, ma'am. Go ahead.

23 MS. NELSON: I just thank you, Your Honor.

24 MR. STUMBO: I understand. We understand --

25 THE COURT: I'm just ruling based upon -- I'm calling

1 balls and strikes up here, folks, so no need to thank me.

2 Is there anything else that we can address this
3 afternoon since it's only quarter to 4:00 or --

4 MR. STUMBO: Judge, obviously the other two witnesses -
5 - we were going to try to get one up here, but I think both
6 of them will be better in the morning.

7 THE COURT: That's fine. Let's just reconvene around
8 9:00 --

9 MR. STUMBO: We'll be here at 9:00.

10 THE COURT: Yeah, let's reconvene around 9:00. Well,
11 9:00, 9:15. Somewhere in there. We're at east until
12 tomorrow morning. Thank you.

13 MR. STUMBO: Thank you.

14 MS. BOLEN: Thank you, Your Honor.

15 (Whereupon, proceedings adjourned at 3:36 p.m.)

16 TRIAL DAY 2-07/21/2015

17 (Whereupon, State's Exhibit No. 1 was marked for
18 identification.)

19 THE COURT: Sorry for the delay in arrival this morning
20 everybody. It was a Murphy's Law morning. My clerk did
21 inform me that -- we will, of course, be going back on the
22 record in the *State vs. Phillips*. Ms. Phillips is present
23 with counsel.

24 One of the jurors, juror number 77, apparently is in
25 the hospital. I don't know if the Clerk has already

1 informed you all of that. That's Samantha Lohr, L-o-h-r.
2 We did receive confirmation from the hospital that she has
3 been admitted. So we will simply move the first alternate
4 up. Once we begin the case in earnest it will be my
5 intention.

6 My clerk had also informed me, Ms. Nelson, that you
7 needed to put something on the record?

8 MS. NELSON: Yes, sir, Your Honor. I believe that one
9 of the witnesses that the State was going to proffer is Ms.
10 Ashanti Polk. We had information from our investigator that
11 when the Solicitor's Office -- and I don't know if this is
12 accurate. This is thirdhand information. But that when the
13 Solicitor's Office went to speak with Ms. Polk, I guess last
14 week, that she told them that she had lied and made up the
15 statement because she was angry, and then changed her mind
16 and called back and said she would testify. But that she
17 was afraid of Mr. Settles and his family and what they might
18 do to -- to the baby that she is pregnant with.

19 If this is accurate -- I don't know whether it is. But
20 if it is accurate, we believe this is something that should
21 have been disclosed to us as material under *Brady* and *Kyles*
22 *V. Whitley*, and we just would like to ask on the record if
23 this is correct information and, of so -- or if it's close,
24 that we be told what actually transpired, if anything, in
25 that regard.

1 THE COURT: All right. Let me understand. What's the
2 source of the information that you're getting this?

3 MS. NELSON: Our investigator got this information
4 secondhand.

5 THE COURT: Can the State speak to that?

6 MR. STUMBO: We did meet with her twice Friday, Judge.
7 She came in. And quite frankly, that's not something I had
8 a conversation with her on Friday. But it is accurate. The
9 first time she comes in she says everything in her statement
10 is correct with the exception of -- and, quite frankly, I
11 was going to get into this on direct today with her on the
12 stand. So it's not to be a secret. It's going to be on the
13 record, that the first time we talked to her Friday she
14 said, well, he did tell me he killed Jamil. We got a call
15 from her just a little while later. One of my
16 investigators. Not Mr. Smith, but Investigator Wilkie, that
17 she wanted to come back in. She came back in and said I was
18 scared. I -- everything in my statement is true. I was
19 scared. That's why I said that a few moments ago. So that
20 is accurate, Your Honor. Quite frankly we were going to get
21 into that here proffering it today outside the presence of
22 the jury. And I will say that's probably something we
23 should have had a conversation about over the weekend,
24 because it happened late Friday, but we did not.

25 THE COURT: All right. Sounds like it is -- what your

ASHANTI POLK-DIRECT EXAMINATION (IN CAMERA)

94

1 investigator found out is correct and accurate. So they
2 have confirmed it, and apparently we are in a position to
3 move forward. And I'm assuming that the witness will be
4 candid about it. If she's not, then we'll hear from your
5 investigator.

6 Are we ready to proceed with the additional witnesses?

7 MR. STUMBO: Yes, sir.

8 THE COURT: Go ahead and call your next one then,
9 please.

10 MR. STUMBO: Thank you, Judge. The State would call
11 Ashanti Polk to the stand.

12 ASHANTI POLK, having been first duly
13 sworn, testifies as follows:

14 PROFFER IN-CAMERA

15 DIRECT EXAMINATION

16 BY MR. STUMBO:

17 Q You go by Ashanti?

18 A Uh-huh.

19 Q And say yes or no --

20 A Okay.

21 Q -- so this lady right here talking into this thing is
22 trying to take down every word.

23 A Okay.

24 Q So we would appreciate that. Ashanti, do you know Purp
25 Settles?

1 A Yes.

2 Q And his real name is what, Tavarious?

3 A Tavarious.

4 Q Tavarious. Everybody calls him Purp?

5 A Yes.

6 Q Why is he called Purp?

7 A Just a name that the neighborhood gave him when he was
8 younger.

9 Q Okay. Nickname?

10 A Uh-huh.

11 Q Now --

12 MS. NELSON: I'm sorry, is the microphone on? It's just
13 real quiet.

14 THE COURT: It doesn't appear to be.

15 (BRIEF PAUSE IN PROCEEDINGS)

16 Q Thank you, Ashanti. Just keep your voice up to make
17 sure Ms. Scott hears you. You and Purp were dating,
18 boyfriend and girlfriend?

19 A Yes.

20 Q About how long did you all date for?

21 A About three years off and on.

22 Q And this is -- how old are you now?

23 A Twenty.

24 Q What ages were you when you all were dating?

25 A I would say we started talking maybe when I was about

1 16.

2 Q Okay. So 16, 17, 18?

3 A Uh-huh.

4 Q Does that sound right?

5 A Yes.

6 Q How old was Purp at the time?

7 A He was either 14 going on 15 or 15 at the time.

8 Q Okay. He's a little bit younger than you?

9 A Yeah.

10 Q And I'm going to take you to June of 2013. What caused
11 you and Purp to break up?

12 A Well, it was rumors that he was cheating, and it was
13 also a rumor that he had a baby on the way.

14 Q Okay. And did you confront him about this?

15 A Yes.

16 Q And what did he say?

17 A Well, he said it was untrue about the baby part, but
18 that yes, he was dealing with somebody else.

19 Q He was dealing with somebody else. He was dating them?

20 A Yes. Well, messing around with somebody else.

21 Q All right. Did he tell you who it was he was messing
22 with?

23 A Yes.

24 Q Who was it?

25 A He told me that he was messing with an older woman

1 named Karlita.

2 Q Did you know --

3 A No.

4 Q -- who this was?

5 A No.

6 Q Now, what else did he tell you at that time about --
7 that was of note to you? I mean, did he tell you about
8 anything else he had done?

9 A Talking about with her?

10 Q Yeah, with her.

11 A No. The only thing that he said about her was that she
12 was older. I didn't really ask him anything else because I
13 didn't know her, so...

14 Q Now, in the course of talking to him -- and this was
15 when? Do you remember when this was?

16 A Well, we had the conversation like a few days before he
17 got locked up, so I can't -- I can't remember an accurate
18 date.

19 Q You say when he got locked up. Over here? What was he
20 locked up for? Do you know?

21 A He was locked up for the other case in Greenwood.

22 Q He was charged with murder in Greenwood?

23 A Yes.

24 Q And that involved a Hispanic person?

25 A Yes.

1 Q And did he tell you anything he had done as far as
2 hurting somebody else or --

3 A He told me about Jamil.

4 Q And how did that conversation go? How did that come
5 up?

6 A Well, he basically just said that he had shot someone,
7 and that was as brief as it was.

8 Q He said he'd shot someone. How did that -- did he tell
9 you who he shot? How did that conversation go?

10 A He told me the name and told me that he had done it.
11 Can't really recall the whole conversation word for word.
12 It was years ago. But I just remember he -- I guess he was
13 trying to come clean about it. I guess he was just trying
14 to let me know, because we was about to start back. You
15 know, just getting back -- back friends or whatever, so...

16 Q And who did he say he shot?

17 A Jamil.

18 Q He said the name Jamil?

19 A Uh-huh.

20 Q Did you know a Jamil that had been shot?

21 A No. I still don't know him. I don't know neither of
22 them.

23 Q And you gave this information to law enforcement some
24 time later when they come to see you?

25 A Yeah. They came to my house like months after that and

1 asked me about it.

2 Q Now, Friday of last week you came to my office --

3 A Uh-huh.

4 Q -- correct? And you looked at your statement, right?

5 The one that you gave. I'm going to show you this real

6 quick, if you need to refresh your memory. You looked at

7 the statement you gave law enforcement?

8 A Yes.

9 Q And you told me initially that everything in that
10 statement was true, correct?

11 A Yes.

12 Q But except for the fact you said, well, he didn't tell
13 me he shot Jamil.

14 A Yes.

15 Q Correct?

16 A Uh-huh.

17 Q Now, what happened later that day? Did you come see me
18 again?

19 A Yes. The first time I did come I -- you know, like I
20 said, I was trying to put all of it behind me. It wasn't
21 that I was fearful of his family, you know. I was -- you
22 know, I didn't want to have to deal with the consequences or
23 the judgment from both sides. But yes, I did feel bad about
24 it and I came back in and told the truth.

25 Q Why is it the first time you said consequences? Were

1 you scared that if you told --

2 A Kind of.

3 Q If you ratted him out that he'd be upset or he'd have
4 somebody come back on you for that?

5 A Yes. I -- you know, I was with him, you know, and
6 there was still feelings there. So it was a part of me that
7 didn't want to see him go down. But then it was a part of
8 me that, you know, I had to do the right thing and give the
9 family justice. So I came back in and told the truth.

10 Q And what you're saying here today is the truth?

11 A Everything in that statement is true.

12 Q Everything you gave law enforcement back in December,
13 in this statement you signed --

14 A Yes.

15 Q -- was the stuff that really happened?

16 A Yes.

17 Q The conversation you had with Purp Settles?

18 A Yes.

19 MR. STUMBO: That's all we have at this time, Your
20 Honor.

21 MS. BOLEN: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. BOLEN:

24 Q. Ms. Polk, you said you dated Tavarious for about
25 three years?

1 A. Yes.

2 Q. So you were still dating him back in June, 2013?

3 A. We was broken up at the time, but we was just
4 starting back to communicate. Yes.

5 Q. When did you break up?

6 A. I'd like to say maybe around March of 2013.

7 Q. So you broke up in March and you say you started
8 talking again at some point?

9 A. Yes. We didn't start back talking until around
10 June.

11 Q. And you said you had broken up with him because
12 you heard he had been cheating?

13 A. Yes.

14 Q. When you were dating him how often would you see
15 him?

16 A. I'm going to say every other day. I saw him all
17 the time.

18 Q. And did you guys go to school together?

19 A. Yes. But he was in a grade below me, so...

20 Q. Okay. But you were in the same high school?

21 A. Yeah.

22 Q. So you could see him in halls and stuff like that?

23 A. Yeah.

24 Q. And then did you hang out after school and on
25 weekends and stuff?

1 A. Yeah.

2 Q. During April, May of 2013 you still saw him at
3 school?

4 A. No. I graduated January of 2013, so...

5 Q. So then you just saw him --

6 A. Outside of school.

7 Q. Outside of school?

8 A. Uh-huh.

9 Q. And that was every other day or so?

10 A. Yes.

11 Q. Would you say that was every other day for all of
12 2013 until he got locked up?

13 A. No. After me and him broke up I wasn't seeing him
14 anymore.

15 Q. But you were talking to him in June?

16 A. Yes. He in-boxed me and told me that he missed
17 me. So that's how we started back communicating.

18 Q. So that's on Facebook or --

19 A. Yes.

20 Q. So you kind of had some electronic communications
21 a little bit?

22 A. That was it.

23 Q. That was it?

24 A. But for those months we wasn't together, no. We
25 didn't have any communication.

1 Q. And then in June did you see him just one time or
2 more than once?

3 A. I seen him more than once, but not a lot. He came
4 to my house and told me all the information.

5 Q. Do you remember what day he came to your house?

6 A. No. I don't remember an accurate date.

7 Q. Was that the first time you'd seen him since
8 March?

9 A. Yes.

10 Q. Did you see him again after that?

11 A. No. Like I said, a few days after that he got
12 locked up.

13 Q. So he told you in June that he shot a guy named
14 Jamil?

15 A. Yes.

16 Q. Where did this conversation take place?

17 A. At my house.

18 Q. Was anyone else there?

19 A. It was just me and him there.

20 Q. So in the afternoon, like after school for him?

21 A. I'm guessing it was in the afternoon.

22 Q. So he tells you this and then he leaves?

23 A. No, he stays.

24 Q. How long did he stay?

25 A. He stayed a little while longer. Like I said,

1 that's been years ago, so I don't remember how long he
2 stayed after that. I didn't kick him out or anything after
3 he told me that.

4 Q. So you didn't kick him out of the house or
5 anything like that, right?

6 A. No.

7 Q. And you didn't call the police or anything, right?

8 A. No.

9 MS. BOLEN: That's all I have. Thank you, Your Honor.

10 THE COURT: Thank you, ma'am. You may step down.

11 (Whereupon, witness steps down from the witness stand.)

12 THE COURT: With regard to this witness' statement, my
13 initial impression -- and I'm happy to hear from you all.
14 But my initial impression is that it is admissible, that Mr.
15 Settles told this witness that he had shot someone, that he
16 had told her the name and that he had done it, and that her
17 impression was that he was trying to come clean about it
18 because they were trying to get back together, and that he
19 said he had shot Jamil.

20 The part about him messing around with Karlita, I think
21 at the very least that would be cumulative to the other
22 testimony that we've already had where Ms. Phillips has
23 admitted -- or admitted to the other witness, Ms. Higgins,
24 who we heard from yesterday, that he, in fact, had been
25 engaged in a relationship with her. That would be my

1 initial reaction. Thoughts?

2 MR. STUMBO: Judge, I would just -- I would say based
3 on -- I don't know that it's cumulative just in the sense
4 that this is a witness that was dating him. Really the
5 whole reason they had the conversation in the first place
6 was to discuss the fact that he had cheated on her. And
7 it's going to be difficult for us to, I guess, frame the
8 testimony as to why he just out of the blue tells her that
9 he killed somebody outside of the context of him talking
10 about fairly intimate stuff, like here's who I cheated with
11 and -- it gives context to the statement, I guess, would be
12 my only --

13 THE COURT: I was ruling -- I was ruling for you that
14 the part about relationship with Ms. Phillips was
15 admissible.

16 MR. STUMBO: Oh, did you say it was? Okay.

17 THE COURT: Yeah.

18 MR. STUMBO: I misheard that, Judge. I thought you
19 ruled that the admission that he killed Jamil was but the
20 other was not.

21 THE COURT: That's my initial impression. I haven't
22 heard from them yet.

23 MR. STUMBO: Okay. Thank you.

24 MS. BOLEN: Your Honor, our position is that the
25 statement about him killing Jamil would likely be admissible

1 under 804(b)(3), but that the part about him messing with an
2 older woman named Karlita would not be admissible because
3 that's, again, not self-inculpatory. It's not a statement
4 against his interest. It doesn't expose him to any sort of
5 criminal or civil liability. And again, under *Holmes* and
6 *Williamson*, and I think that exception is very narrowly
7 applied and that that part of the statement should be
8 severed.

9 MS. NELSON: In addition to that, the other statement
10 from Ms. Higgins, I believe, came -- she testified that came
11 directly from Ms. Phillips.

12 THE COURT: Correct.

13 MS. NELSON: Said Ms. Phillips admitted to her. Not
14 something Mr. -- I mean, Mr. Settles said some other things,
15 but I thought that was the part you were letting in related
16 to Ms. Higgins that allegedly came out of Karlita's mouth
17 and not Mr. Settles.

18 THE COURT: Correct. But I gave this some thought last
19 evening. And I understand that the 804 analysis that we are
20 dealing with here -- you know, adultery, I think, is still
21 against the law in this state, if I'm not mistaken. Unless
22 they've repealed it. So technically, that is a criminal
23 offense in this state. Additionally, adultery, or having an
24 affair with someone -- what I'm getting at, in a not so
25 inartful way, is that it basically takes two to tango to

1 engage in adultery, and clearly you cannot simply have
2 someone admitting to adultery by themselves. So the very
3 nature of that crime, the very nature of that act, implies
4 that someone else is involved. In this case there's the
5 testimony of Ms. Higgins that your client -- basically that
6 Ms. Phillips did, in fact, admit to having a relationship
7 with Mr. Settles. That makes this cumulative. So even
8 under an 804 analysis. If somebody admits to adultery, they
9 have to be having adultery with somebody else. They can't -
10 - there's no way to separate -- you see what I'm getting at?
11 There's no way to separate your individual culpability in
12 adultery without also implicating someone else in adultery,
13 by its very nature.

14 MS. BOLEN: Your Honor, I understand what you're
15 saying. I think though with respect to Tavarious'
16 statement, he doesn't -- he doesn't say anything that makes
17 him liable or guilty of adultery because he doesn't say
18 anything about either himself or Karlita being married. In
19 order to expose himself to criminal or civil liability, if
20 there's adultery, that would have had to have been part of
21 the statement.

22 THE COURT: Well, I take "messaging with Karlita" to mean
23 a physical relationship. You're free to argue to the jury
24 that that is not the case. That messaging means merely
25 kissing or some lower form of intimacy. I took the

1 witness's testimony, however, to indicate a sexual
2 relationship, and I suppose that's something y'all can argue
3 to the jury if that inference is inappropriate.

4 MS. BOLEN: I think I'm getting more at, Your Honor,
5 that -- and just to make sure that the record is clear so
6 our objection is preserved, that my understanding -- I've
7 been on both sides now for probably eight years. I've never
8 seen adultery charged here. But my understanding is that it
9 would require one of the parties at least to be married, and
10 there's nothing in his statement to indicate that either he
11 or the person he was messing with is married. So it
12 wouldn't expose him to any -- any sort of criminal or civil
13 liability.

14 MR. STUMBO: Well, I'd say based on, I guess, the other
15 -- the part and parcel of res gestae out of this case is
16 indicated that he did know she was married because of a
17 request for him to kill her husband. So, Judge, I was a
18 little bit hesitant to bring up the adultery statutes, even
19 though they are absolutely still legitimately on the books
20 in this state. Because it seems like every time we bring
21 that up it gets scoffed at. But you are absolutely correct,
22 Your Honor, that under the laws of this state, admitting to
23 an adulterous relationship does -- is against your interest
24 to some degree. So we would agree with the legal analysis.

25 THE COURT: And, Ms. Bolen, I did not disagree with you

1 that I've never seen adultery charged in this court. I do
2 tend to agree with you. I know that it's often used as a
3 shield in Family Court when you're calling the other spouse
4 as a hostile witness who perhaps is engaged in adultery, and
5 then they take the Fifth because technically under the laws
6 of this state it is classified as, I believe, a five year
7 offense. And at that point in time the lawyer for the
8 cheating spouse -- or the one that was not cheating, rather,
9 the one that calls the witness -- the hostile witness, they
10 then go to the Solicitor and get a waiver, or an agreement
11 from the Solicitor not to prosecute for it, so -- go ahead,
12 Ms. Nelson.

13 MS. NELSON: Just to make the record clear, I pulled up
14 the adultery statute and it does say when either is lawfully
15 married to somebody else, but it also requires living
16 together and having carnal intercourse, or habitual carnal
17 intercourse. And, I guess, the only argument we would add
18 is that messing around doesn't necessarily rise to the level
19 of habitual carnal intercourse. Just so we've made a
20 complete record.

21 THE COURT: Go ahead.

22 MS. BOLEN: One more thing, Your Honor, just again to
23 make sure the record is complete. Under 804(b)(3) the
24 language again, just looking at the plain language of the
25 exception, it says, "The statement which was at a time so

ANTHONY MOSS-DIRECT EXAMINATION (IN-CAMERA)

110

1 far contrary to the declarant's pecuniary or proprietary
2 interest are so far tended to subject the declarant to civil
3 or criminal liability." Your Honor, it's our position that
4 since adultery is not prosecuted, and even if he were to
5 have admitted to adultery -- which I don't think he did.
6 But even if he did, that doesn't go so far as to subject him
7 to criminal liability.

8 THE COURT: I understand your position, and obviously
9 he doesn't have civil reliability because we've gotten rid
10 of alienation of affection as a common pleas action that can
11 be brought. My ruling stands. Call your next witness.

12 MR. STUMBO: State calls Anthony Moss.

13 Anthony Moss, having first been
14 duly sworn, testified as follows:

15 PROFFER IN-CAMERA

16 DIRECT EXAMINATION

17 BY MR. STUMBO:

18 Q Good morning, Mr. Moss. Tell me your full name.

19 A Anthony Natadrick Moss.

20 Q And, Mr. Moss, how do you know -- do you know Tavarious
21 Settles?

22 A He's my little cousin.

23 Q And does he go by any other name?

24 A Purp.

25 Q Purp. Now, going back to -- did you ever talk to law

1 enforcement about this case?

2 A Yes.

3 Q And what was that conversation about?

4 A Karlita. That's it.

5 Q About Karlita. And what about Purp?

6 A About him being in a relationship with her.

7 Q Did you know -- did you ever talk to Purp about their
8 relationship?

9 A He told me they were messing around and --

10 Q What does that mean? What do you mean by messing
11 around?

12 A Having sex.

13 Q And he told you that?

14 A Yeah.

15 Q What else did he tell you about Purp and Karlita?

16 A That she came to him saying that she wanted her husband
17 killed. And we told him -- I told him leave the situation
18 alone. As far as I know, he left it alone. I ain't hear no
19 more about that.

20 THE COURT: I missed that last part, sir. Would you
21 repeat that?

22 THE WITNESS: I told him leave the situation alone. As
23 far as I know they ain't mess around again. I didn't see
24 him again.

25 Q Did you ever see him and Karlita together?

ANTHONY MOSS-DIRECT EXAMINATION (IN-CAMERA)

112

1 A Just one time at my sister's party. That's my first
2 time meeting her.

3 Q And your sister is who?

4 A Shay. Shay Higgins.

5 Q Shay Higgins. Now, Anthony, did he ever tell you
6 anything that Karlita did for him?

7 A He told me she bought him some shoes and gave him some
8 money from time to time. Not a big amount of money, but he
9 get like \$20 here. Something like that.

10 Q Buy him shoes?

11 A Yeah.

12 Q Did she ever buy him clothes, from what he told you?

13 A I don't know nothing about clothes, but shoes. I know
14 she got him some shoes.

15 Q And when did this conversation with Purp happen?

16 A I can't -- I really can't remember.

17 Q Was it before Jamil Phillips was killed or after?

18 A Before.

19 Q Before Jamil Phillips was killed?

20 A Yeah.

21 Q And again, how are you and Purp related?

22 A He's my cousin.

23 Q And Purp told you this directly?

24 A Yes.

25 MR. STUMBO: I have no further questions.

1 CROSS-EXAMINATION

2 BY MS. BOLEN:

3 Q Mr. Moss, when was Jamil Phillips killed?

4 A I don't know.

5 Q You don't know?

6 A No.

7 Q And you said you saw Karlita one time?

8 A Uh-huh.

9 Q At one of your cousin's parties?

10 A My sister. She testified yesterday.

11 Q Your sister.

12 A Yeah.

13 Q I'm sorry. Your sister. At one of her parties?

14 A Uh-huh.

15 Q You never talked to Karlita?

16 A No.

17 Q How often would you see Tavarious?

18 A About every weekend. I pick him up.

19 Q So you spent the week at your house or --

20 A Most of the time. If I had to work that weekend, he
21 didn't.

22 Q So did you see him every weekend up until when he was
23 arrested? Was there ever a time when you stopped seeing him
24 every weekend?

25 A No. I at least seen him. If I ain't see him Saturday,

ANTHONY MOSS-REDIRECT EXAMINATION (IN CAMERA)

114

1 I saw him Sunday.

2 MS. BOLEN: That's all I have. Thank you, Your Honor.

3 MR. STUMBO: Just a few more questions.

4 REDIRECT EXAMINATION

5 BY MR. STUMBO:

6 Q Mr. Moss, did you know Karlita also?

7 A I just -- only time I met her was at the party.

8 Q Did you ever see her again after that?

9 A Yeah, I saw her one night.

10 Q How did that go?

11 A Well, I went to her house and -- yeah, that's it.

12 That's it.

13 Q Again, are you older than Tavarious?

14 A Yeah, I'm 24.

15 Q So you're the older cousin?

16 A Yeah.

17 MR. STUMBO: No further questions.

18 THE COURT: Thank you, sir. You can step down.

19 (Whereupon, the witness steps down from the witness
20 stand.)

21 THE COURT: All right. You object to the statement the
22 same way as Mr. Higgins -- or, sorry, the Higgins' statement
23 from yesterday, Ms. Higgins, under 804, the portion that
24 deals with her wanting him to kill the husband, correct?

25 MS. BOLEN: Yes, sir. We'd also object to the part

1 about Karlita buying him new shoes and giving him money, as
2 that clearly did not make him guilty of anything and does
3 not expose him to any sort of criminal or civil liability.

4 MR. BROWN: Judge, with regard to the -- first the
5 shoes. That would also go into our argument that as part of
6 her swaying, enticing or anything like that to solicit. So
7 I think that's definitely relevant.

8 THE COURT: There is a substantial difference in the
9 ages. He would have been about 16 at this time and she
10 would have been --

11 MR. BROWN: He would have been 16, a teenager, and
12 she's twice his age. Could have been his mother. And she's
13 buying him shoes and giving him money. Also with regard to
14 Settles telling him Karlita wanted her husband killed.
15 Again, that would be the same argument we did with Shay
16 Higgins. We've heard what your ruling was yesterday, but
17 feel that would be planting those seeds for conspiracy
18 continuing that. He's bouncing off his cousin. Somebody he
19 trusted and has spent a lot of time with.

20 THE COURT: The same ruling with regard to Ms. Higgins
21 and her statement about Ms. Phillips allegedly soliciting
22 him to commit murder or to kill her husband is not
23 admissible under 804. And the case law I cited yesterday.
24 The portion about Purp saying that they were having sex and
25 the shoes and money, that is admissible for the reasons

1 argued by the State. And it's also cumulative to the
2 admission that Ms. Phillips gave to Ms. Higgins that she was
3 engaged in this relationship.

4 MS. NELSON: Just so the record is clear that we --
5 again, the shoes and money, despite what they say about this
6 going toward a conspiracy, that is -- it's not an admission
7 of anything. Mr. Moss didn't testify that he saw the shoes
8 being bought or the money being given. This is coming to
9 him directly from a statement of an unavailable witness who
10 we cannot cross who has -- this is a statement outside the
11 confines of 804, Your Honor.

12 THE COURT: I understand your position. The money and
13 the shoes, things like that, that's relevant to the nature
14 of the relationship between the two. And again, your client
15 has already admitted to Ms. Higgins that she was in a
16 relationship. I mean, we are where we are.

17 MS. NELSON: Well, Ms. Higgins says that. Yes, sir.

18 MR. BROWN: Judge, one other thing. Mr. Moss stated on
19 the stand that his one night relationship with Karlita. I
20 want to make it clear that --

21 MS. BOLAND: I'm not sure what you're making clear.

22 MR. BROWN: That he had sex with Karlita also.

23 THE COURT: Is that something that you all -- did you
24 all catch that when she was testifying -- or he was
25 testifying?

1 MS. NELSON: I think we're going to object to relevance
2 if they try to get into that before the jury. I don't see
3 how it's relevant in the issue in this case at all. They're
4 not saying she asked Mr. Moss to do anything as a result of
5 that contact.

6 THE COURT: I would tend to agree.

7 MS. NELSON: But we can get to that, if they want to
8 ask it.

9 THE COURT: Do you all intend to go there?

10 MR. STUMBO: I think we will concede that.

11 THE COURT: Very good. I would have been surprised if
12 you suggested otherwise. I think we know where we stand
13 with regard to what the Court will be permitting.

14 Solicitor, you know your case better than I do. I
15 don't know whether you have additional evidence involving
16 motive or the insurance or whatever that would be competent
17 under *Crawford* and 804. I really cannot speak to that. As
18 we mentioned in Chambers, the Court feels constrained to
19 rule according to what *Crawford* requires of the Court and
20 what 804 requires. And again, I'm just throwing balls and
21 strikes up here. If you feel that I am in error, and
22 there's insufficient evidence based upon my ruling, and that
23 my rulings are erroneous, I would much rather not
24 inconvenience the jury, and if your attention is to take an
25 appeal it certainly is your right, if you feel that I'm

1 materially -- that these rulings have materially prejudiced
2 your case. I kind of rather know sooner rather than later.

3 MR. STUMBO: Your Honor, based on your rulings, I think
4 that you called it according to the law as you see it and
5 we're going to proceed, Judge. We don't have any other
6 witnesses on this point.

7 THE COURT: Yes, sir.

8 MR. STUMBO: Certainly as we talked about in chambers
9 yesterday, any testimonial statement that Purp Settles made
10 to law enforcement is clearly excluded under *Crawford*.
11 We've known that the whole time. And just to make that
12 clear that no reference -- law enforcement is not going to
13 testify to anything he said. So we're going to, I think,
14 proceed.

15 Judge, quite frankly, I think based on your rulings,
16 clearly statements against interest that have been made by
17 Purp through witnesses that were non-testimonial in nature,
18 we believe are proper. Certainly I know we've argued a
19 couple other issues as to the statements of Karlita asking
20 him to kill her husband. But there again, your Honor, I
21 think we're in a place right now where we're ready to
22 proceed. I don't intend to appeal those rulings at this
23 point. We're ready to proceed.

24 THE COURT: Very good. I'm assuming that the jury is
25 milling about outside. Let's go ahead and scan the jury in.

1 Get them in here. I'll swear them. We'll make whoever the
2 first alternate was a regular member of the jury pool. That
3 would be Ms. Rodriguez, I believe. So she'll be a member of
4 the jury. And proceed from there.

5 Solicitor, if at some point in time you desire to make
6 Mr. Settles' statements to law enforcement part of the
7 record, that's perfectly fine. I'm kind of thinking in my
8 mind that we need, for purposes of perhaps later review, we
9 kind of need a full record of everything, even un-redacted
10 items. So may I suggest that at some point this evening, or
11 this afternoon, you all review those and we can make them
12 State's exhibits not in evidence. Just so that there's a
13 complete record of everything.

14 MR. STUMBO: Certainly, Your Honor. We would put in --
15 we can offer as part of the record, whether it's a State's
16 or Court's exhibit, Tavarious Settles' statements to
17 Abbeville County in regards to this case.

18 THE COURT: We'll be at ease for a few moments.

19 (Whereupon, a recess was held from 10:07 a.m. to 10:24
20 a.m.)

21 THE COURT: We'll go back on the record. The jury is
22 present. I'm assuming they have been checked in. Let's go
23 ahead and bring them out.

24 (Whereupon, the jury enters the courtroom at 10:24
25 a.m.)

1 THE COURT: Ladies and gentlemen of the jury, welcome
2 back. As you'll notice, one of the seats is vacant.
3 Unfortunately, last evening one of the jurors, Ms. Lohr, was
4 taken to the hospital. I'm told that she is pretty much
5 okay. And so, obviously she will not be participating in
6 this trial. That means that we're going to move to the
7 alternate that was chosen last, and I think that was Ms.
8 Rodriguez -- or the first alternate that was chosen, Ms.
9 Rodriguez. Is that you, ma'am?

10 THE JUROR: Yes.

11 THE COURT: All right. Move on up there, Ms.
12 Rodriguez. And, ma'am, if you want to move one seat up.

13 And the first order of business, ladies and gentlemen,
14 is to appoint a foreperson in this case. Who's Marquita
15 Donaldson? Who's Ms. Donaldson?

16 (Whereupon, juror acknowledges.)

17 THE COURT: Ms. Donaldson, if it's okay with you, I'd
18 like to make you the foreperson of the jury. Your vote
19 counts no more, no less than any other juror's vote. Okay?
20 And essentially your primary responsibility would really be
21 just to preside over the deliberations once the case is
22 submitted to you and just make sure everyone has a chance to
23 have their fair say. So if it's okay with you, I'd just
24 like to appoint you the foreperson, if that's all right.

25 THE JUROR: That's fine.

1 THE COURT: All right. After we take a break, when we
2 come back, if you'll have a seat in the seat that the
3 gentlemen is sitting in with the black shirt. Black Polo
4 shirt. And, ma'am, if you'll stay in that seat throughout
5 the trial. That's the designated seat for the alternate.
6 During the course of the trial, ladies and gentlemen, if
7 anyone has any difficulty hearing any of the testimony, I
8 want you to simply raise your hand. Okay? And that will be
9 my cue to ask the witness or the attorneys to speak up. If
10 you also need a break, simply raise your hand. I know that
11 typically we go about 45 minutes or so. Between 45 minutes
12 or so to an hour between breaks. So if at any time you need
13 to take a break, simply raise your hand. If you have back
14 issues or anything like that and feel the need to stand up
15 and just sort of move around a little bit, that'll be
16 perfectly okay, too. All right? Now, ladies and gentlemen,
17 we're about to begin the trial of the case of the *State of*
18 *South Carolina vs. Karlita Phillips*, and I want to let you
19 know that this trial is probably going to be a little bit
20 different from what you've come to expect from seeing trial
21 depicted on TV and in the movies. From what you see in
22 popular culture you often get the impression that trials are
23 filled with intense drama and riveting circumstances, and
24 certainly sometimes that is the truth. More often than not
25 though, trials take a lot longer than the two hours or the

1 hour on TV. And understand, ladies and gentlemen, that's
2 because obviously real life is nothing like TV, and the
3 rules of evidence have to be followed, and sometimes it
4 simply takes a great deal of time to present to a jury all
5 the relevant evidence. So I want to thank you going forward
6 for your participation. I want to thank you going forward
7 for your patience with us as we move through this case. And
8 I want to thank you for your willingness to accept this
9 responsibility. I know that none of you volunteered for
10 this. I know that you were essentially drafted to come in
11 here and required to be here. But please understand, this
12 is part of your responsibility as a citizen to live in a
13 really great country. Okay? This is just part of your
14 civic duty. And even though you're doing your duty this
15 week, I do, however, want to thank you for your willingness
16 to participate in the process and to give your attention to
17 the attorneys and the witnesses and the Court while we are
18 going forward. So thank you.

19 With that, I'm going to ask that you stand up where you
20 are, raise your right hand so the Clerk can administer your
21 oath to you as jurors.

22 (Whereupon, the jury is sworn.)

23 THE COURT: Now, ladies and gentlemen, what I say to
24 you now is intended to serve as an introduction to the trial
25 of this case, and these remarks are not an instruction on

1 the law. I'll instruct you on the law that applies at the
2 conclusion of the trial before you retire to deliberate your
3 verdict. Again, this is merely an explanation of the
4 process that we'll use going forward so that you can better
5 understand what's happening.

6 Now, in this case, ladies and gentlemen, the Defendant,
7 Ms. Karlita Phillips, has been charged with indictments
8 filed in this Court with the offenses of using a minor to
9 commit a felony and accessory before the fact to murder.
10 The Defendant in this case, of course, as I mentioned
11 yesterday, as pled not guilty to these charges, and these
12 indictments, of course, are simply the means by which a case
13 is brought to the Court. They are not in any sense of the
14 word evidence of any of the allegations contained in the
15 indictments. Again, Ms. Phillips has pled not guilty and
16 that plea puts the burden of proof on the State to prove
17 each and every element of the indictments beyond a
18 reasonable doubt. It will be your duty, ladies and
19 gentlemen, to determine whether the State has met this
20 burden.

21 Now, your purpose as jurors, ladies and gentlemen, is
22 to find and determine the facts in this case. You're the
23 sole judges of the facts. So if at any time I make any
24 comment concerning the facts you must disregard it, because,
25 again, you are the sole judges of the facts. You'll

1 determine the facts from the testimony that you hear and the
2 other evidence which is introduced into Court. It will be
3 up to you to determine the inferences which you feel may
4 properly be drawn from the evidence presented.

5 Now, ladies and gentlemen, it's especially important
6 that you perform your duty of determining the facts
7 diligently and conscientiously because ordinarily there is
8 no way to correct an erroneous determination of facts by a
9 trial jury. On the other hand and with equal emphasis, the
10 same law that makes you the judge of the facts makes me the
11 judge of the law. The law as given by the Court is the only
12 law that you can consider. You'll have to accept it and
13 apply it even though you may disagree with it. Again, I
14 can't tell you what the facts are in this case, and you're
15 not permitted to disagree with me about what the law is or
16 what the law should be. Your job will be to take the law as
17 I give it to you, apply it to the facts as you find them to
18 be from the testimony of the evidence, and after doing that
19 you'll render your verdict under the oath that you have just
20 taken as jurors.

21 Now, until I advice you to begin your deliberations,
22 ladies and gentlemen, you cannot discuss this case with
23 anyone, including your fellow jurors, friends, family
24 members or anyone involved in this case. After the case has
25 been submitted to you, you can discuss it only in the jury

1 room in the presence of all 12 jurors.

2 Now, the parties have been told, the attorneys and the
3 various individuals involved with this case have been told
4 that they're not to have anything to do with you while the
5 case is going on. So if you happen to see one of the
6 lawyers or one of the parties coming or going from the
7 courthouse and they don't say hello to you, please
8 understand it's not that they're being rude to you. It's
9 just that we have a rule that the jurors are off limits
10 while the case is going on. Okay? The reason for this is
11 self-evident. If the other side were to see one of the
12 lawyers or someone talking to you, it could easily be
13 misinterpreted as an effort at jury tampering. Okay? So
14 the easiest way to keep that issue from even arising is just
15 to say the jurors are off limits while the case is going on.

16 Now, of course, ladies and gentlemen, as I mentioned
17 yesterday, during the trial please do not read, listen to or
18 watch any news reports about this case. This includes
19 anything that may have been in the newspaper or anything
20 that's on the Internet. You cannot consider anything which
21 you may have read or heard about this case outside the
22 courtroom whether before or during the trial. That means,
23 ladies and gentlemen, that it would be a violation of your
24 oath as jurors to perform any sort of independent research.
25 Again, I'm telling you that you will get the evidence that

1 you need to judge this case from the witness stand, and it
2 would be a violation of your oath to go online and try and
3 Google one of the party's names or to do any kind of search
4 online of one of the party's names. And regrettably at
5 times other judges have been faced with situations where it
6 came to light that a juror did, in fact, go home, log on to
7 their personal computer and start doing their own
8 independent research on the case. I'll tell you that when
9 the judge became -- or when judges become aware of that kind
10 of thing, they're not very happy. Okay? They're not very
11 happy with that particular juror. I've never been placed in
12 that kind of a position. All right? Please don't be the
13 one to put me in that kind of a position is what I'm asking
14 of you. Again, the rules of evidence have been designed and
15 have been tested over centuries to give you the best most
16 accurate information possible. The same is not true for
17 popular media. The same is not true for the newspaper or
18 the Internet. As you well now, anybody can put something
19 online whether it's true or not. So rely upon the evidence
20 presented in this Court and do not feel that you need to
21 conduct any sort of independent investigation in violation
22 of your oath.

23 Now, ladies and gentlemen, it'll be important that you
24 keep an open mind throughout the case and not decide any
25 issue involved in this case until all the evidence has been

1 presented. You've heard the argument of the attorneys and
2 you've received my instructions on the law. It's you solemn
3 responsibility to determine the guilt or the innocence of
4 Ms. Phillips and your verdict must be based solely upon the
5 evidence presented during the course of the trial and the
6 law that I instruct you.

7 Now, ladies and gentlemen, in a moment the Solicitor
8 will make what's known as his opening statement in which
9 he'll explain to you what the issues are, or at least what
10 he contends the issues are in this case. The attorneys for
11 the Defendant will also be -- will also have an opportunity
12 to make an opening statement, although they're not required
13 to do so. What the lawyers say during their openings, of
14 course, is not evidence. It's merely their contention as to
15 what will be proven or what will not be proven. Again, the
16 evidence will be presented through the sworn testimony of
17 witnesses, as well as any exhibits introduced into the
18 record.

19 Now, from time to time during the trial, ladies and
20 gentlemen, it may be necessary for me to ask that you leave
21 the courtroom while I take up an issue of law with the
22 attorneys. The reason that I ask that you leave the
23 courtroom during those breaks or during those discussions is
24 that sometimes in ruling on an issue of law it's necessary
25 for me to make a comment on what evidence has been

1 presented, what facts have been presented. I ask you to
2 leave so that anything I say about the comments I can be --
3 about the facts, I can be sure that those comments don't
4 ultimately affect what you determine those true facts to be.
5 So during those breaks, please don't speculate as to what I
6 might be saying concerning the facts because that is
7 irrelevant in terms of what you ultimately find the facts to
8 be. That is solely for you to determine. In determining
9 what the true facts are in this case, ladies and gentlemen,
10 you have to decide whether or not the testimony of witnesses
11 is believable or not. It will be my responsibility to rule
12 as a matter of law as to whether certain testimony is
13 admitted. But once it's admitted, whether you choose to
14 believe it is solely for you to determine. Deciding whether
15 to believe a witness who testifies, you have the right to
16 consider the interest of any witness, the bias of any
17 witness, the prejudice of any witness, the opportunity for
18 the witness to have seen the matters and things about which
19 the witness testifies. You can also consider the way the
20 witness acts on the witness stand. You're allowed to
21 consider anything that's in the record in this case which
22 will help you evaluate the testimony of the witnesses. That
23 means it's your duty to pay close attention to them, listen
24 to them, observe them, and please pay close attention to the
25 attorneys in the Court. Try and keep your thoughts from

1 wondering. Instead, give strict attention to the testimony
2 so that at the conclusion of the trial you'll be in as best
3 a position as possible to determine what the true facts are
4 and thus render a verdict.

5 Now, in order to preserve everyone's rights, I'll give
6 the parties an opportunity to object to anything that I've
7 said to you during these opening remarks, and then we'll
8 proceed with opening statements.

9 Any objections from the State?

10 MR. STUMBO: No objections from the State, Your Honor.

11 MS. BOLEN: No objections. But if we may just approach
12 for just a moment, Your Honor.

13 THE COURT: Certainly, come on up.

14 (Whereupon, a sidebar was held.)

15 MR. STUMBO: And, Your Honor, Deputy Solicitor Brown
16 will be addressing the jury on opening.

17 THE COURT: Very good. Mr. Brown, you're recognized
18 for your opening, sir.

19 MR. BROWN: May it please the Court.

20 THE COURT: Yes, sir.

21 OPENING STATEMENT

22 BY MR. BROWN: A nightmare. What comes to mind when
23 you hear the word nightmare? A situation that's terrifying,
24 horrifying. A situation that's hard to deal with. You
25 might also think, wake up. Wake up from that nightmare.

1 Wake up from your sleep and realize it's just a dream.

2 Ladies and gentlemen, on March 25th, 2013, the Phillips
3 family real life nightmare began. The Phillips sitting on
4 the second row, who live at [REDACTED].
5 And they've been living that nightmare ever since, all
6 because that lady, Karlita Phillips, wanted her estranged
7 husband killed.

8 Now, to give you background. Dale Phillips, Jr., who's
9 in the cream shirt, he and Karlita were going through a
10 divorce. Dale was living with his parents, Dale Phillips,
11 Sr., and Ms. Martha Phillips, at their house at [REDACTED]
12 [REDACTED]. His younger brother, Jamil, was also
13 living at that location. Jamil started a new job at CarMax
14 of Greenwood. He was getting his feet back under him. He
15 was living at the house as well.

16 On March 25th, 2013, that evening, Mr. Dale Phillips,
17 Sr. and Ms. Martha Phillips were at their house at 1522 Old
18 Douglas Mill Road. Ms. Martha had gotten home a little
19 earlier, around 8:00, and knew her son, Jamil, would be
20 getting home from work at CarMax and be home. So she goes
21 to her kitchen and prepares him a meal that was one of his
22 favorite meals; baked salmon filet, greens, and mashed
23 potatoes. She had it waiting on him. Put it on the stove
24 waiting for him to get home. She and Mr. Phillips were in
25 their front den watching television, waiting on their two

1 boys to come home, when they hear one of the boys come up on
2 the porch. It sounded like he got his key out, about to
3 come in the house. Before that door opened gunfire rang
4 out.

5 Jamil was gunned down on the front porch. His parents
6 hop to their feet, ran out to the front door and what do
7 they see. They see their son lying face down on their front
8 porch bleeding and dying. Ms. Phillips called 911 and begs
9 and pleads for them to come help. Jamil died in their arms
10 that night.

11 That night law enforcement got involved. They quickly
12 responded. Abbeville County Sheriff's Office. SLED got
13 involved. They came out and began their investigation.
14 They talked to neighbors which saw a getaway car take off.
15 A light colored car, one said silver, take off up the road.
16 It was parked on a neighboring property and pulled off on
17 the driveway. Law enforcement also went out to where that
18 car was parked and found tire marks. They got tire
19 impressions that night. They went through the cut of the
20 wood line and what do they find? They found cigarette
21 butts. Four of them. You'll hear through this trial
22 through testimony and through evidence presented that the
23 cigarette butts had DNA on them. They had DNA belonging to
24 the shooter. Belonging to the killer, Purp Settles.
25 Tavarious Settles, also known by Purp. You'll also hear

1 that law enforcement gathered other information. They
2 talked to the Phillips family and asked them what was going
3 on. What was going on right now. They learned that Dale
4 Phillips, Jr. and Karlita were going through a divorce. She
5 had a silver Camry. Law enforcement goes to her house that
6 night and gets a statement from her. She lied. She lied
7 that night. My car's never been in Abbeville. Later on she
8 gave other statements.

9 Throughout this trial, through the testimony coming
10 from that stand, you'll see those statements and hear about
11 those statements and you'll hear how they changed from that
12 first night.

13 Ladies and gentlemen, through this trial you'll find
14 out and you'll see Karlita Phillips is the person
15 responsible for the death of Jamil Phillips. She convinced,
16 persuaded Purp Settles to go to his parents' house at [REDACTED]
17 [REDACTED] to murder her estranged husband.
18 But instead, Purp shot Jamil.

19 So what's Karlita charged with? She's charged with
20 accessory before the fact of a felony. In this case,
21 murder. She's also charged with the use of a minor to
22 commit a violent felony. So what are those? What does that
23 mean? Accessory before the fact of murder, a person who
24 aids in the commission of a felony, who was an accessory
25 before the fact of commission of a felony by counseling, by

1 hiring, or otherwise procuring the felony to be committed.
2 What's use of a minor to commit a violent felony? It's
3 unlawful for any person at least 18 years of age or old to
4 knowingly and intentionally use, solicit, direct, hire,
5 persuade, induce, entice, coerce, or employ a person under
6 the age of 18 to commit a violent felony. Those are the two
7 charges.

8 The State in this case has the burden of proof to prove
9 to you all beyond a reasonable doubt that Karlita Phillips
10 did do what we say she did. That she was an accessory
11 before the fact of murder, and also she used a minor under
12 the age of 18 to commit a violent felony. The burden of
13 proof is proof beyond a reasonable doubt, and that's the
14 proof that leaves you firmly convinced of the Defendant's
15 guilt. Firmly convinced of the Defendant's guilt.

16 Now, ladies and gentlemen, after you hear testimony on
17 the stand and see the evidence, we ask you to listen
18 carefully. To look at the evidence. And at the end of the
19 trial we'll come back before you and ask that you find
20 Karlita Phillips guilty as charged on these two charges.

21 THE COURT: Thank you, Mr. Brown. Ms. Bolen, you are
22 recognized for your opening.

23 MS. BOLEN: Thank you, Your Honor. May it please the
24 Court?

25 THE COURT: Yes, ma'am.

1 OPENING STATEMENT

2 BY MS. BOLEN: The State came and said this case is a
3 nightmare. And one thing I want to be up front from the
4 very beginning with you all is, yes, this case is a
5 nightmare. It's an absolute tragedy. No family should have
6 to go through what the Phillips family went through. And
7 we're not disputing that what happened to Jamil was a
8 tragedy. But what happened to Jamil Phillips, him being
9 gunned down on his front porch. He was gunned down because
10 Tavarious Settles did that, and he did that on his own. He
11 did that without any aid or assistance from Karlita.

12 This is also a nightmare for Karlita, because she is a
13 woman who had no idea how far someone else would go. She
14 had no idea that Tavarious would do this. And because he
15 did it, she is now in a nightmare, too. This is an
16 emotional case. Again, it's a tragedy. No family should
17 have to go through what the Phillips went through that night
18 and continue to go through. But don't let the emotions of
19 the case cloud your judgment.

20 Mr. Brown said the State has the burden of proof in
21 this case. Karlita is presumed innocent. She's presumed
22 innocent. She's presumed innocent of having any involvement
23 in what happened to Jamil that night. The State has to
24 prove to you the evidence. They have to show you through
25 evidence, through facts, that what Tavarious did, he did

1 because of her, and they basically can't show you that.

2 What he did, he did on his own. Not because of anything

3 Karlita said or asked him to do.

4 Now, again, the emotions of the case -- it's hard to
5 separate emotions in a case like this. But your job, your
6 duty as jurors is to look at the facts. To look at the
7 facts and the evidence. Not to look at emotions, not to
8 look at how hard this might be on either side, but to look
9 at the facts. Our position is the State simply doesn't have
10 the facts to back up the allegations that they're making.

11 Now, what they do have, as Mr. Brown told you, they
12 believe Tavarious Settles, also goes by Purp, came in,
13 waited at this tree line and shot Jamil. There's also some
14 statements that Karlita made. And again, you can see and
15 hear in her statements that she had no intent of Tavarious
16 doing anything like this. She had absolutely no intent to
17 have Tavarious go and shoot anyone. Now, she did do
18 something bad. And again, I'm going to be up front about
19 that. She does make the statement to law enforcement that
20 she asked Tavarious to go beat up her ex-husband. She was
21 angry. They were in the middle of a nasty divorce. Again,
22 emotions were high. She was upset, and she did something
23 she shouldn't have done. She said, yeah, can you go beat
24 him up. But that's it. That is the extent of her
25 involvement. She never asked go kill him. She never did

1 anything to try to get Tavarious to do anything other than
2 beat him up.

3 Your job as jurors is to listen carefully to the facts
4 in evidence that come from that witness stand. There might
5 be physical evidence. There will certainly be testimonial
6 evidence. But each one of you -- each one of you as jurors
7 has taken an oath to evaluate that evidence. It's your job
8 and your duty to stick to what your interpretation of what
9 that evidence is. And we ask you to do that. Listen
10 carefully to the evidence and the facts presented, and to
11 not let the emotions of this case cloud your judgment.
12 Because I think when you've heard what the state presents to
13 you, you'll find that they simply don't have the evidence to
14 back up the allegations. Not as cut and dry as the State
15 wants you to think it is. Karlita is not guilty of this
16 simply because they say she is. The State saying she's
17 guilty does not make her guilty. Again, she is presumed
18 innocent. We ask you to listen to the facts of the
19 evidence, to evaluate it in a logical manner without letting
20 your emotions cloud your judgment. And we think when you
21 hear the facts of the evidence the State has, you'll find
22 that there's simply not nearly enough to overcome their
23 burden of proof beyond a reasonable doubt and we're asking
24 you to find Karlita is not guilty. Thank you.

25 THE COURT: Thank you, Ms. Bolen. Solicitor, if you'd

1 call your first witness, please.

2 MR. STUMBO: Judge, the State calls Kimberly Wells.

3 KIMBERLY WELLS, having been first
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. STUMBO:

7 Q Good morning, Ms. Wells.

8 A Good morning.

9 Q I take it by that jacket you're wearing there, you work
10 for Abbeville County?

11 A Yes, sir.

12 Q What do you do for Abbeville County?

13 A I'm a 911 dispatcher. I'm also a supervisor.

14 Q You supervise the dispatch unit for the county?

15 A Yes, sir.

16 Q Basically you get calls --

17 A Yes, sir.

18 Q -- all day long? People dial 911 it comes straight to
19 your unit, correct?

20 A Yes, sir.

21 Q And what do you all do when you get a 911 call? Just
22 generally if you could tell the jury.

23 A I take the call, get the address, the phone number, the
24 name, the call information and dispatch it out to the
25 correct responders.

KIMBERLY WELLS-DIRECT EXAMINATION

138

1 Q Okay. So when a call comes in your gather the
2 information and then you can send law enforcement, fire
3 service --

4 A Police, medical. Yes, sir.

5 Q -- EMS?

6 A Yes, sir.

7 Q As part of your job with Abbeville County did you have
8 occasion to take in, or your unit have occasion to take in a
9 call on the homicide on [REDACTED]?

10 A Yes, sir.

11 Q And do you remember what date that was?

12 A March 25th.

13 Q March 25th of --

14 A 2013.

15 Q -- 2013. Okay. And that was what time of day?

16 A I'm not sure.

17 Q Evening hours?

18 A Yes.

19 Q And which dispatcher in your unit took the call?

20 A India White. India.

21 MR. STUMBO: If I may approach the witness, Your Honor.

22 THE COURT: Please.

23 Q I hand you what's been marked for ID as State's Exhibit
24 No. 1. Ms. Wells, have you had a chance to review the
25 contents of that disk?

1 A Yes, sir.

2 Q And is it a clear and accurate depiction of a call
3 taken in by your unit?

4 A Yes, sir.

5 Q And it's kept in the regular course of business of --
6 for Abbeville County?

7 A Yes, sir.

8 Q And it is a fair and accurate representation of a call
9 made coming from the residence at [REDACTED]
10 to the dispatch that night?

11 A Yes, sir.

12 Q And what was the nature of that call?

13 A It was her son who had been shot on their front porch.

14 Q And her son. And that's Ms. Phillips?

15 A No. It's the resident at the address.

16 Q So she did not identify her name? She just said --

17 A I believe she did, but I don't remember.

18 MR. STUMBO: Your Honor --

19 Q Well, let me ask you one more question, Ms. Wells. You
20 had a chance to review it. Those are your initials on the
21 disk?

22 A Yes, sir.

23 MR. STUMBO: Your Honor, at this time the State would
24 offer State's 1 into evidence.

25 THE COURT: Any objection?

DALE PHILLIPS SR-DIRECT EXAMINATION

140

1 MS. BOLEN: No, sir.

2 THE COURT: Very good. State's 1 will be in evidence.

3 (Whereupon, State's Exhibit No. 1 was admitted into
4 evidence.)

5 THE COURT: Do you wish to publish?

6 MR. STUMBO: Permission to publish, please. I beg the
7 Court's indulgence to get it set up.

8 THE COURT: Go ahead.

9 (Whereupon, State's Exhibit No. 1, 911 audio, was
10 published for the jury.)

11 MR. STUMBO: No further questions of this witness, Your
12 Honor.

13 THE COURT: I don't know if Ms. Bolen intends to use
14 that in her cross, but if she does, leave it up.

15 MS. BOLEN: I have no cross, Your Honor.

16 THE COURT: Very good. Ma'am, thank you. You can step
17 down. You are free to go.

18 THE WITNESS: Thank you.

19 (Whereupon, the witness stepped down from the witness
20 stand.)

21 THE COURT: Solicitor, call your next witness.

22 MR. STUMBO: Thank you, Your Honor. The State calls
23 Dale Phillips, Sr.

24 THE COURT: While he's coming up, I meant to ask before
25 the other witness -- previous witness came up here. If we

1 could go ahead and sequester any fact witnesses and asked
2 that they step out. I don't know who -- who will be called
3 to testify or which witnesses might be in the courtroom at
4 this point in time. So if you intend to testify in this
5 case, you need to step out, with the exception of the lead
6 investigator, of course, parents of the decedent and his
7 brother.

8 DALE PHILLIPS, SR., having been
9 first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. STUMBO:

12 Q Tell this jury where you grew up, where you're from?

13 A I'm from Abbeville County.

14 Q Born and raised here?

15 A Yes. The Taylor Town community.

16 Q And you got married here?

17 A Yes. Me and my wife got married in the courthouse.
18 The court right up here. Just came and visited from the
19 Navy.

20 Q So you were in the military?

21 A In the Navy at the time, yes.

22 Q How long did you do in the Navy? How many years?

23 A Total -- it was six years total.

24 Q And you and Ms. Martha got married in the middle of
25 that?

1 MS. BOLEN: Your Honor, I would object as to leading.

2 THE COURT: Overruled. This is just in the way of
3 background.

4 MR. STUMBO: Thank you, Your Honor.

5 Q When did you and Ms. Martha get married? What year?

6 A I think it's '77, I believe. August 4th, 1977.

7 Q So if my math is correct, that's about 38 years?

8 A Yes. It'd be 39 August 6th.

9 Q Now, how many kids you and Ms. Martha have?

10 A Three sons.

11 Q And who was the firstborn?

12 A Dale, Jr.

13 Q How old is Dale? How old is Dale, Jr.?

14 A I think he's 38 now, I believe.

15 Q Who was the second born?

16 A Jamil Phillips.

17 Q And when was Jamil born?

18 A He was born on [REDACTED].

19 Q And how was the third born?

20 A Kareem Phillips.

21 Q Is Kareem here in court today?

22 A Yes.

23 Q How old is Kareem?

24 A Kareem is 31, I believe. 31.

25 MR. STUMBO: If I could have a picture marked for ID,

1 Judge.

2 THE COURT: Please.

3 (Whereupon State's Exhibit No. 42 was marked for
4 identification purposes.)

5 MR. STUMBO: If I may approach the witness, Your Honor.

6 Q I show you a picture that's just been marked for ID
7 purposes as State's No. 42. Do you recognize the people in
8 that picture, Mr. Phillips?

9 A Yes, sir.

10 Q And who are the picture in -- who are the three young
11 men in this picture?

12 A Dale, Jr., Jamil Phillips and Kareem Phillips.

13 MR. STUMBO: Judge, at this time we'd offer State's 42
14 into evidence.

15 THE COURT: Any objection?

16 MS. BOLEN: Your Honor, we have no objection other than
17 just wanting to note for the record that that hadn't been
18 previous disclosed. But no objection.

19 THE COURT: All right. Without objection then it is in
20 evidence.

21 (Whereupon, State's Exhibit No. 42 was admitted into
22 evidence.)

23 MR. STUMBO: Thank you, Your Honor.

24 Q Mr. Phillips, I'm going to go back and -- before we do
25 this, I'm going to say we're going to go back to March 25th,

1 2013. That night. Okay? Where were you and Ms. Martha
2 living at that time?

3 A Living at home in the den.

4 Q Okay. But what's the address? What was your address
5 there?

6 A [REDACTED].

7 Q Where is that? That's in Abbeville County?

8 A Yes. It's 4.5 miles from Abbeville going towards
9 Hodges.

10 Q So is this the road that goes straight shot to
11 Abbeville?

12 A Straight to Abbeville High School. Straight from
13 Abbeville High School.

14 Q Past the high school on --

15 A It's straight. No turns. Yeah, it's straight. Yeah.

16 Q What kind of area is this? Is it out in the country?
17 Would that be fair to say?

18 A It's out in the country area. Yes.

19 Q Have any houses around you all out there?

20 A Some out maybe quarter mile, half mile. The closest --
21 it's a house right across the road. It's not very close.
22 We're about 220 feet from our road and they're about another
23 180 feet right across the road. Both houses not close.

24 Q On the day of March 25th, 2013 -- and I think you said
25 a second ago you were in the den at the house. What did you

1 do that day? Could you tell the jury what you did that day?

2 A We went out during the day. I can remember all we
3 done, you know, because I had a - at that time I had a major
4 stroke. I remember the last hour or two before -- most of
5 the day we went to different stores. I think we went out to
6 eat or something, I believe.

7 Q So a normal day for you and Ms. Martha?

8 A Yes. Yes.

9 Q Was she working that day or not?

10 A I think she was off that day.

11 Q And by the evening hours around March 25th were you all
12 back at the house at that point?

13 A Yes. We went back home. A couple more hours, I think,
14 she went with her mother and her aunt to do some work at the
15 house. Her brother, did some work. She was gone for a
16 couple of hours. I was home by myself.

17 Q Ms. Martha came home later? Is that -- was she at home
18 when this incident --

19 A After we came home she left and went with her momma and
20 her brother to do some work on some stairs at her aunt
21 house.

22 Q And she was back home by dinner time? Is that --

23 A She came back home about -- I think she came home about
24 maybe 8:00. 7:00 or 8:00, something like that maybe. Yeah.

25 Q What were you doing at that point?

1 A I was sitting and just relaxing, looking at TV.

2 Q And after Ms. Martha got home what was she doing while
3 you were watching TV?

4 A Well, she was making dinner for Jamil when he come
5 home.

6 Q You all -- did you expect him home that night, Jamil?

7 A He always come home around -- every night he always
8 come home around about 10:00. He get out of work at 9:00
9 from CarMax. He was a buyer.

10 Q He worked for CarMax?

11 A Yeah, he was a buyer.

12 Q And where at CarMax? What city was he in working?

13 A Greenville.

14 Q The CarMax in Greenville?

15 A Greenville, yes.

16 Q I want you to describe, Mr. Phillips, for the jury what
17 happened around 10:00 when Jamil was due home. If you can
18 tell them what happened.

19 A We just sitting looking at TV, and looking at the TV
20 serious come on called Dallas. After the show, about five
21 or 10 minutes after 10:00 when the show went off, that when
22 we heard about three or four shots on the porch. And it was
23 real loud. And it startled us, you know. It was like a
24 flashing. A real bright flashing. And both of us jumped up
25 and we went to the door. We cut the outside light on. I

1 think my wife went out there first. And my wife said, Dale,
2 Dale, Dale shot. Dale shot. Then we looked around and I
3 said no -- I told my wife, I said, that's not Dale. That's
4 Jamil. That's Jamil laying there, you know, so...

5 Q She said Dale's shot?

6 A She said Dale three times. She said, Dale, Dale got
7 shot, you know.

8 Q By Dale she meant Dale, Jr.?

9 A Yeah. She thought -- we thought that was Dale out
10 there, you know.

11 Q And at this point was Dale, Jr. living at home with you
12 all?

13 A Yes.

14 Q Did you all expect him home that night?

15 A Yes.

16 Q And was he working at the time? Dale, Jr.?

17 A Yeah, he was working. Yes.

18 Q Where was he working?

19 A He work at Eaton.

20 Q Eaton, that plant over in Greenwood --

21 A Yeah.

22 Q -- off of 72?

23 A Yes. And then, you know, he works -- he works for --
24 in the evening, too. He work in the evening, too, also.

25 Q And when you got out on the porch what did you see,

1 when you got out on your front porch? Can you tell the jury
2 what you saw at that point.

3 A I was just shocked. I seen Jamil laying there face
4 down. And he was making a noise. He was trying to catch
5 his breath. My wife, she got on the phone and called 9-1-1.
6 While she was on the phone with 9-1-1 I was -- I was
7 comforting him, you know. Rubbing his back, holding him,
8 because, you know, really I was shocked. I didn't know to
9 move him or not, you know. So I rubbed him. He was still
10 breathing, you know. So I think about five, 10 minutes he
11 was breathing and all of a sudden he stopped breathing. And
12 then during the 911 operators, they were telling
13 instructions. Things to do. Turn him over. Turn his body
14 over. I looked at his face, you know. His face, you know,
15 his eyes and -- he was real big and we would turn around a
16 couple of times and he almost fell off the porch. It took
17 both of us to bring him back off the porch, you know,
18 because he keep turning around. So I hold him for a long
19 time. But I was just in shock. It was like a nightmare. I
20 thought it was dream.

21 Q You say he was breathing when you first got to him, or
22 trying to breath?

23 A Yeah. Yes, he was laying face down. And I came down -
24 - I was on my knees around him. His momma -- my wife's on
25 the phone and he was -- she was doing all she can to dial 9-

1 1-1 and get some peoples to come in. All I was doing was
2 comforting him as best I can. I comforted him for a long
3 time, you know. That's what I was trying to do was to
4 comfort him while she was on the phone.

5 Q Was he able to say anything to you?

6 A No. He was making a noise. He was gurgling. He was
7 crying, too, you know. He was making a whole lot of noise.
8 Then after the noise was over with you could still feel him
9 breathing. He was breathing heavy, you know. And I hold
10 his hand and I could feel he was still breathing. I was
11 holding him as long as he's still living, you know. Then
12 after five, 10 minutes it's like -- it just stopped, you
13 know.

14 Q Mr. Phillips, did you see anyone out in the yard at
15 that time or anything that when you went out -- I know your
16 attention was with Jamil, but did you see anything else?

17 A When we first got there, opened the door, my wife was
18 first. I heard footsteps going towards the woods. And I
19 seen a car. A car -- back lights of the car. Like a --
20 Like they on brakes. And we heard a slam -- slam door
21 closed and the car sped off going towards Abbeville.

22 Q Going towards Abbeville would have been turning in
23 which direction --

24 A You couldn't see the turn going towards Stevenson Cross
25 Roads Road left or right because of the woods and

1 everything. You can't see if you turn left or right. But I
2 know they go straight as far as I can see.

3 Q To go to -- so this is -- you're if you're looking out
4 your front porch, the direction was --

5 A If you're going left you're going toward Abbeville.

6 Q On the left?

7 A Yeah.

8 Q EMS arrived while Ms. Martha was still on the phone
9 with 9-1-1, or do you remember?

10 A Yeah. She was still on the phone with them. I was --
11 I was shocked. I couldn't stand it no more. What I did was
12 I -- I was at my computer in my chair -- office chair. I
13 just sit there. I just sit there with, you know -- still in
14 shock, you know. My wife was on the porch with EMS or
15 whatever still talking. I just stood there.

16 Q. Who was your son, Dale Phillips, Jr., married to
17 at this time?

18 A. Karlita Phillips.

19 Q. That's the Defendant? Is she in the courtroom
20 today?

21 A. Yes.

22 Q. Can you identify her for the jury?

23 A. Yes.

24 (Whereupon, Witness identifies Defendant.)

25 Q. Sitting at this table over here with her lawyer?

1 A. Yes.

2 THE COURT: Let the record reflect the witness has
3 identified the Defendant.

4 Q And you said Dale Phillips, Jr., your son, was living
5 with you all at this time, correct?

6 A At that time, yes.

7 Q Were he and the Defendant, Karlita Phillips, separated?

8 A Yes, they had separated.

9 Q But they were not divorced, correct?

10 A They hadn't got divorced yet, no.

11 Q How long had they been separated?

12 A I think about Mother's Day, 2012. Around Mother's Day.
13 Mother's Day, 2012. That's when he came back home.

14 Q So he had been home for several months at this point?

15 A Yes.

16 MR. STUMBO: Beg the Court's indulgence, Your Honor.

17 THE COURT: Yes, sir.

18 MR. STUMBO: Thank you, Mr. Phillips. Please answer
19 any questions that Ms. Bolen or Ms. Nelson may have for you,
20 sir.

21 MS. BOLEN: Just very briefly, Your Honor.

22 THE COURT: Yes, ma'am.

23 CROSS-EXAMINATION

24 BY MS. BOLEN:

25 Q Mr. Phillips, I just have a very few follow-up

1 questions. You said that Dale, Jr. and Karlita separated
2 Mother's Day, 2012?

3 A Around that time. Around that time, yes.

4 Q Okay. And Dale started living with you when they
5 separated; is that right?

6 A Yes, he moved in. He moved around the same time when
7 they separated. Dale came straight home.

8 Q Okay. So he was living with you about 10 months?

9 A How long he lived there?

10 Q Yeah. About 10 months, May to March?

11 A Dale came back home around Mother's Day, around that
12 area, 2012 until my son's death, Jamil got killed. We left.
13 My mother-in-law's house is in the country. Left early
14 morning around about 2:00, 3:00 in the morning. We got out
15 clothes and we leave all our vehicles there. We've been
16 there ever since.

17 Q And so, they separated in May, right? But they weren't
18 divorced at that point?

19 A No. They weren't divorced yet, no.

20 Q And Karlita initiated the separation, right?

21 A Say again?

22 Q Karlita initiated the separation?

23 A I don't know what expired from that, but I know --

24 Q You don't know?

25 A I don't know what -- he came home, but --

1 Q You said on direct that Jamil was a big fellow? He was
2 tall?

3 A Yes.

4 Q He was taller than Dale, right?

5 A Yes.

6 Q And also a little bit bigger in stature than Dale?

7 A Yes.

8 MS. BOLEN: I don't have anything further. Thank you.

9 THE COURT: Thank you, sir.

10 MR. STUMBO: Just one more.

11 REDIRECT EXAMINATION

12 BY MR. STUMBO:

13 Q You said you changed out of your clothes? You
14 indicated that?

15 A Say it again?

16 Q You changed out of your clothes later that night?

17 A Yeah, changed clothes.

18 Q At 2:00 or 3:00 in the morning, you said?

19 A No, no. I say we went to leave coats and everything to
20 go to our mother-in-law's house. We couldn't -- we couldn't
21 move our cars, because the investigation was ongoing. We
22 had to leave. I think my son, Dale, and some other people
23 was outside. We couldn't -- people couldn't come down the
24 driveway to move us. So we -- I stayed with my regular
25 clothes on. I didn't change no clothes. We had to carry

1 our coats. We left for a couple days. We wouldn't go back
2 to our house.

3 Q Did you have any blood on your clothes that night?

4 A Yeah, I had blood on my clothes. I had to -- I slept -
5 - I slept a couple days with the blood on my clothes. I
6 couldn't no kind of sleep or nothing. I just -- I didn't
7 sleep. I didn't change my clothes. I had just blood on --
8 in the bed and everything.

9 MR. STUMBO: Thank you, Mr. Phillips. No further
10 questions.

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

12 (Whereupon, the witness stepped down from the witness
13 stand.)

14 THE COURT: Ladies and gentlemen, we'll take a quick
15 five minute break. You can use the facilities, get
16 something to drink. But, of course, don't discuss the case.
17 We'll be at ease for a few moments. If any of you smoke,
18 let the bailiff know and he'll take you downstairs so you
19 can have a cigarette.

20 (Whereupon, the jury exited the courtroom at 11:27
21 a.m.)

22 (Whereupon, a recess was held from 11:28 a.m. to 11:43
23 a.m.)

24 THE COURT: Let's have the jury back in, please.
25 State, call your next witness.

MARTHA PHILLIPS-DIRECT EXAMINATION

155

1 MR. BROWN: The State calls Martha Phillips.

2 (Whereupon, the jury entered the courtroom at 11:43
3 a.m.)

4 THE COURT: Let the record reflect that the jury is
5 back and seated and is present. Mr. Brown, if you'll call
6 the next witness, please.

7 MR. BROWN: The State calls Ms. Martha Phillips.

8 MARTHA PHILLIPS, having been first
9 duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BROWN:

12 Q Ms. Martha, let me first -- where do you live?

13 A [REDACTED] in Abbeville, South
14 Carolina. [REDACTED], Abbeville, South
15 Carolina.

16 Q All right. Ms. Martha, I'm going to move this
17 microphone a little bit closer to you so everybody can hear
18 you. Ms. Martha, where do you live?

19 A [REDACTED], Abbeville, South Carolina.

20 Q And, Ms. Martha, how long have you been living at that
21 location?

22 A Oh, we've been there 30 some years. Thirty some years.

23 Q And who do you live in that house with?

24 A My husband.

25 Q And your husband is?

MARTHA PHILLIPS-DIRECT EXAMINATION

156

1 A Dale Phillips.

2 Q How long have you all been married?

3 A Thirty-eight years. It'll be 39 this year. In August
4 this year.

5 Q Thirty-nine this year?

6 A Uh-huh.

7 Q And, Ms. Martha, are you working?

8 A Yeah.

9 Q Where do you work at?

10 A I work at Harris Plant in Greenwood.

11 Q And what do you do there?

12 A I make cloth. I'm a cloth maker.

13 Q And, Ms. Martha, you said you were married for 39 years
14 coming up. Do you have any children?

15 A Three.

16 Q And what are their names?

17 A I had three. Dale, Jr., Jamil Phillips and Kareem
18 Phillips.

19 Q Ms. Phillips, I'm going to stand back here, and you can
20 talk to me kind of a little bit louder so everybody can --

21 A Dale Phillips, Jamil Phillips and Kareem Phillips.

22 Q And, Ms. Phillips, what are their -- what are their
23 ages and what were they doing?

24 A Jamil -- when Dale was born [REDACTED], and
25 Jamil was born [REDACTED], and Kareem was born

1 [REDACTED].

2 Q Jamil was the middle one?

3 A The middle child.

4 Q Now, Ms. Phillips, that year before this event took
5 place, March 25th, 2013, what was the health of your
6 husband, Dale Phillips, Sr.?

7 A Well, on May the 3rd, 2012 I was getting ready to go to
8 work that day and Dale -- there wasn't something quite right
9 about the way he acting. And I called my sister and I asked
10 her something and she say get him to the hospital. He
11 having a stroke. So I took him to the hospital and he was
12 having a stroke.

13 Q And was he, at the time Jamil was killed, was he still
14 recovering from that stroke?

15 A Yeah.

16 Q Is he to this day still recovering from the stroke?

17 A Yeah.

18 Q Ms. Phillips, can you tell me what your day was like on
19 March 25th of that year, 2013?

20 A Yeah. I remember I got up that morning and Jamil was
21 sitting on the side of the bed, and I say, Hey, Jamil, and I
22 say -- I stopped at the door and I said, Jamil, you want
23 some breakfast? And he say, yeah, momma. So I went in the
24 kitchen and I cooked some scrambled eggs and grits and
25 sausages, and I say, Jamil, let me fix your plate first.

MARTHA PHILLIPS-DIRECT EXAMINATION

158

1 Because Dale had went to the store. And I say, I don't know
2 when Dale -- I call him Dale. I say, I don't know when Dale
3 get back. And I say, you go fix your plate first. And he
4 say, okay, momma. And he fix his plate and I fixed my
5 plate, and I left the food on the stove for Dale, you know.
6 His part to eat. And after that I was sewing. Because I
7 sew a little bit. Making some slips and stuff. And Jamil
8 was at home. He stayed at home until he got ready to go to
9 work that evening. He left about -- he had to be at work
10 about 6:00, I think. So I think he left about 4:00, 4:30,
11 something like that. But I had already left, because I went
12 down to my aunt's house where my mom and my brother was
13 going to be, because my brother was building ramp for my
14 aunt. And so, I stayed down there until about -- I guess it
15 was about 8:00. A little after 8:00 or something. And I
16 came from Abbeville direction. From the direction of
17 Abbeville, because my aunt stay down that way. And I got
18 home. I fixed Jamil some salmon. Because Jamil loved
19 salmon. He lived baked salmon. I cooked some baked salmon
20 and mashed potatoes and had collard greens and corn bread.
21 And I had told Jamil that I was going to fix it before he
22 left to go to work, because he loved that. It was his
23 favorite. And when I left the house I remember saying, bye,
24 Jamil. Have a good day. And that was the last time I seen
25 him alive. And, like I say, I got home -- I got home about

1 8:00. I fixed him some baked salmon. And I heard -- I
2 heard some -- one of them come home. I didn't know which
3 one it was really, if it was Dale or Jamil, because I had to
4 look out. I just heard somebody come home. And I was
5 watching TV, because our -- our couch is faced this way for
6 the window. The window is right behind us and the couch is
7 faced this way, and the door is right here. And when I
8 heard somebody come home I heard -- I see -- I heard a key
9 go in the door and took it out. And then I'm sitting up
10 there, you know, watching TV, and hmmm, which one put the
11 key in the door and took it out. And I was saying that, you
12 know. I'm not thinking nobody outside the home, because we
13 never had any kind of confrontation out there because it
14 just the country area. You know, nobody come out that far,
15 you know. And he put his key in the door and he took it
16 out. I was sitting there, why did he do that. I didn't
17 know whether Dale or Jamil. And then I started back
18 watching TV not thinking nothing about it and then I started
19 saying to myself, whose taking so long fixing to come in the
20 house. And then when I realized, I started saying to
21 myself, there must be somebody out there.

22 (Whereupon, there was a loud beeping noise from the
23 courtroom sound system.)

24 THE COURT: Sorry to interrupt. Go ahead.

25 A I wasn't thinking nobody out there would harm him.

MARTHA PHILLIPS-DIRECT EXAMINATION

160

1 Just like a mother's intuition. I felt like there was
2 somebody out there. But I didn't think it was nobody home.
3 I just maybe -- you know, I don't know what. But anyway,
4 we're still watching TV, you know. And then all of a sudden
5 we heard a shot. And Dale said Mot. My nickname is Mot.
6 Mot, that's a shot. And I jumped up and I put my hand on my
7 head. I didn't know what to do. And then before I could
8 get to the door I heard some more shots. And by the time I
9 got to the door, opened the door, I seen Jamil -- the first
10 thing I say was Dale, Dale, Dale. First thing, I see a body
11 on the porch, I say, Dale, Dale, Dale. And then we turned
12 him over. When we turned him over to see who it was it was
13 Jamil. And Dale say, Mot, it's Jamil. And I called 9-1-1,
14 and I talked to the dispatch and everything. She's sending
15 somebody out, you know. I pulled his shirt up, you know,
16 and I see a hole in his back where he got shot in his back.
17 And I really wasn't worried, because I thought, oh, you
18 know, he just got shot in the back. He'll be all right.
19 He'll be all right. So I wasn't worried, you know. And
20 then I heard -- I see a little -- just a little blood on his
21 forehead, a crease on his forehead or something. And I seen
22 where he got shot in the back. And I really wasn't worried.
23 I figured he was going to be all right, because I didn't see
24 no more -- at the time I didn't see no more bullet holes,
25 you know. I didn't think to pull up his shirt in the front.

1 I just seen the bullet hole in the back, and I say he going
2 to be all right. You know, I thought that. I would listen
3 to him breath and talking to dispatch the whole time. And I
4 say -- I say -- talking to the dispatch. And he just -- I
5 tell her to hurry up, you know, because he started breathing
6 funny. He started making kind of funny noise like his
7 throat was filling up full of blood. Like his throat was
8 filling up full of something I assumed was blood, you know.
9 His throat was filling up. And he made this kind of
10 gurgling noise. And a little before the ambulance came he
11 just stopped breathing. He passed.

12 Q Ms. Martha, how long -- was it a pretty short time
13 between when you heard him coming up on the porch and when
14 gunfire rang out?

15 A I couldn't -- see, that's the thing. I know it was a
16 few minutes, but I don't know how many minutes. Because,
17 see, I started -- after I heard putting the key in the door,
18 taking it out the door, I know it wasn't no lot of minutes,
19 but I know it was a few minutes that I didn't hear nothing.
20 And so, I was just wondering why -- did he come in the
21 house, you know? Why did he come in the house? And then we
22 heard the shots. I didn't realize nobody was out there.

23 Q Ms. Phillips, when you and Mr. Dale, Sr. went out the
24 door was your outside light on?

25 A We cut it on.

MARTHA PHILLIPS-DIRECT EXAMINATION

162

1 Q You cut it on?

2 A We cut it on and went out.

3 Q So it was pretty dark?

4 A We cut the light on and went out. I cut it on. We cut
5 it on. We cut the light on and then we went outside. When
6 we had come to the door the light was not on.

7 Q Now, when you all went out on the front porch did you
8 see anything else, or notice anything besides --

9 A We went out on the front porch. I went out first. I
10 heard somebody running sounded like they were light on their
11 feet. Like somebody that wasn't real heavy that was
12 running, because you could hear him running. And then I
13 heard, you know, the door slam, and heard a car speeding
14 around. Almost like it was getting stuck or something, and
15 then it took off.

16 Q Where?

17 A Down the road towards Abbeville.

18 Q Where was that car? Where was that car parked?

19 A It was on the other side of the fence at our house.
20 There was a lot of trees. A lot of trees and stuff, you
21 know, on this side where you can't see good, you know. You
22 can't see. You know, you can see -- you can see -- I seen
23 the light and everything and we heard the car, but you could
24 not see -- at that time I didn't see the car, you know, or
25 nothing. I didn't see what color the car was. And then I

1 was so busy trying to call 9-1-1 and get Jamil some help.

2 And my first thought was to get him help. But I did think
3 about going after the people that did this. But then I
4 said, no, I got to stay here and make sure Jamil is all
5 right.

6 Q And, Ms. Martha, when you first went out the door and
7 you saw Jamil laying there you said you initially thought it
8 was Dale?

9 A First thing I said, Dale, Dale, Dale.

10 Q And why did you think it was Dale?

11 A Because he was having a nasty divorce. That's all. He
12 was going through -- he was having problems.

13 Q Did they also -- did Dale and Jamil resemble each
14 other?

15 A Yeah. Jamil was a little taller and about 20 pounds
16 heavier than Dale. They look a lot alike.

17 Q Ms. Phillips, that night while you were calling 9-1-1,
18 did Jamil die there that -- with you and Mr. Phillips?

19 A Yes, he did. He did. He died a little before the
20 ambulance came. A few -- I guess a few minutes before the
21 ambulance came, or about the same time. And I told them, I
22 say, he's gone now. They couldn't say nothing. They put
23 the little thing on to check his heartbeat and everything
24 and they took it off and they walked away because they knew
25 he was dead.

MARTHA PHILLIPS-CROSS-EXAMINATION

164

1 Q Ms. Phillips, I'm going to show you what's been marked

2 State's Evidence 42. Do you recognize that picture?

3 A Yeah, those my boys. Pride and joy.

4 Q Ms. Phillips, you're going from your left to your right

5 what's -- who's in that picture?

6 A Kareem, Dale, Jr. and Jamil.

7 Q I show you what's been marked State's Evidence 42. Ms.

8 Phillips, is that picture a picture of your boys?

9 A Yeah, those are my boys.

10 Q Which one is Jamil?

11 A The one on the right. The tallest one. The tallest

12 and the biggest one.

13 Q March 25th, 2013 Jamil died --

14 A Yeah.

15 Q -- on your front porch?

16 A Yeah.

17 MR. STUMBO: I beg the Court's indulgence. No further

18 questions.

19 THE COURT: Ms. Bolen.

20 MS. BOLEN: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. BOLEN:

23 Q Ms. Phillips --

24 MS. BOLEN: Permission to approach, Your Honor.

25 THE COURT: Yes.

1 Q Let me just look at this picture with you. So that's
2 Jamil and that's Dale, Jr., and that's Kareem. Do you
3 remember when this picture was taken?

4 A No.

5 Q I've just gone one follow-up question, Ms. Phillips. I
6 just want to make sure I understand correctly. You said
7 that when you went outside that night you turned the porch
8 light on?

9 A Either I turned it on or Dale turned it on. It wasn't
10 on. It was not on. I don't think it was already on. I
11 don't think it was.

12 MS. BOLEN: Nothing further. Thank you.

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

14 (Whereupon, the witness stepped down from the witness
15 stand.)

16 THE COURT: Call your next witness, please.

17 MR. BROWN: The State calls Mary Stamps.

18 MARY STAMPS, having been first duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. BROWN:

22 Q Ms. Stamps, please state your full name for us.

23 A Mary Paige Stamps.

24 Q Ms. Stamps, where do you live?

25 A [REDACTED].

MARY STAMPS-DIRECT EXAMINATION

166

1 Q Here in Abbeville County?

2 A Yes, sir.

3 Q Ms. Stamps, do you know the Phillips?

4 A Yes, sir.

5 Q And where do they live?

6 A Right across the road from me.

7 Q So the Phillips are just directly across the road from
8 you?

9 A Over at my house, a little bit over to the left of me.

10 Q Now, Ms. Stamps, how long have you lived there?

11 A About 40 years, 35 years, I guess.

12 Q So you've all known each other a long time?

13 A Yes, sir.

14 Q Ms. Stamps, do you remember March 25th, 2013?

15 A Yes, sir.

16 Q Do you remember speaking to law enforcement that night?

17 A Yes, sir.

18 Q Ms. Stamps, that night, March 25th, 2013, what do you
19 remember about that night?

20 A I remember that we heard something that we -- my
21 husband thought it might have been firecrackers. And then a
22 little bit later my dog got in the window. And I looked out
23 the window because I was right there at my window, and I
24 seen -- I seen a car with its lights shining on my -- up the
25 road. And it sit there for just a couple of minutes and it

1 went toward Abbeville.

2 Q So the lights were shining at your house?

3 A Toward my house.

4 Q Were you able to see what color car it was?

5 A It was a light colored car.

6 Q And car, do you mean was it an SUV or truck, or was it
7 some type of car?

8 A I think it was a car.

9 Q And now, your house, again, you're across -- kind of
10 diagonal across the street from the Phillips' house?

11 A Yes, sir.

12 Q And Ms. Sheila Campbell's property is more directly
13 across from you?

14 A Yeah. They're actually -- yeah, their property is,
15 yeah.

16 Q So you're really in front of both the Campbell's and
17 the Phillips?

18 A In between them, yeah.

19 Q And -- but you did -- but that night -- what time of
20 night was this that you ended up seeing that car?

21 A It was late. Around 10:30, I guess, or so. It was
22 late.

23 Q Sometime after 10:00?

24 A Uh-huh.

25 Q And when did you speak with law enforcement that night?

GARY PARRMAN-DIRECT EXAMINATION

168

1 A I can't remember.

2 Q Sometime --

3 A Sometime after, yeah.

4 Q And again, you saw that car parked -- how far away is
5 your house from [REDACTED]?

6 A I'm off the road like, I'd say, at least 400 feet or
7 more. Four hundred, 500 feet off the road. I'm back off
8 the road.

9 Q And do you have any lights in your yard?

10 A I do have a light in my yard, yeah.

11 Q Did that help you --

12 A That's the only way I could tell, you know, that the
13 car was a light colored car that I seen.

14 Q And again, the light colored car, the headlights were
15 shining down towards your house?

16 A Toward my house, yeah.

17 MR. BROWN: No further questions.

18 THE COURT: Ms. Bolen?

19 MS. BOLEN: No cross, Your Honor.

20 THE COURT: Thank you, ma'am. You may step down.

21 (Whereupon, the witness stepped down from the witness
22 stand.)

23 THE COURT: Call your next witness, Solicitor.

24 MR. STUMBO: The State calls Gary Parrman.

25 GARY PARRMAN, having been first

GARY PARRMAN-DIRECT EXAMINATION

169

1 duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. STUMBO:

4 Q Good morning, Mr. Parrman. You live here in Abbeville?

5 A Yes, sir.

6 Q You work here in Abbeville?

7 A Yes, sir.

8 Q Where do you live?

9 A [REDACTED].

10 Q [REDACTED]?

11 A [REDACTED]. Yes.

12 Q That's what part of the county here in relation to
13 Abbeville?

14 A Sir?

15 Q What part of the county is it? Where is it in --

16 A Out past the high school.

17 Q Go past the high school towards Hodges?

18 A Towards Hodges. Go straight. I think it's like three
19 miles out.

20 Q And just to orient us, Mr. Parrman --

21 MR. STUMBO: Judge, beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 (Whereupon, State's Exhibit No. 43 as marked for
24 identification.)

25 Q I'm going to show you what's been marked just now as

GARY PARRMAN-DIRECT EXAMINATION

170

1 State's 43 for ID purposes.

2 A Uh-huh.

3 Q It's satellite imaging. Just take your time and look
4 at it.

5 A Uh-huh. All right.

6 Q Does this area look familiar here?

7 A Yeah.

8 Q And is it a fair and accurate depiction of the area you
9 live out on --

10 A Yes.

11 Q -- [REDACTED]?

12 A Yes.

13 MR. STUMBO: Judge, we'd offer State's 43 into
14 evidence.

15 THE COURT: Any objection?

16 MS. BOLEN: No objection, Your Honor.

17 THE COURT: Without objection, State's 43 is in
18 evidence.

19 BY MR. STUMBO:

20 Q No, Mr. Parrman, just so we can -- I'm going to try to
21 position myself here where the jury can see this. This
22 roadway here. What road is that?

23 A That's [REDACTED].

24 Q And where do the Phillips live? Your neighbor?

25 A Right over here, on this side of the road.

1 Q This house with the car in front of it?

2 A Yes. My house is straight across.

3 Q You're here?

4 A Uh-huh.

5 Q The way these parcels are drawn out, this parcel right
6 here?

7 A I'm straight across the -- my driveway connects to
8 theirs.

9 Q Okay. Their road is directly to the right of you if
10 you're facing out -- facing out --

11 A If I'm facing out you have the -- it's an empty house.
12 It's my landlord's house. And then the house next to that
13 is Ms. Stamps.

14 Q Ms. Mary?

15 A Ms. Mary. Yes, sir.

16 Q And that's this driveway here --

17 A Uh-huh.

18 Q -- that's across --

19 A Straight across.

20 Q -- the little driveway there?

21 A Yes, sir.

22 Q And this area on the Phillips' property, are these
23 woods here?

24 A Uh-huh.

25 Q What kind of trees are those?

GARY PARRMAN-DIRECT EXAMINATION

172

1 A Just little pine trees, shrubs, a few cedars. Stuff of
2 that sort, right along the fence line.

3 Q I'm going to take you back, Mr. Parrman, to March 25th,
4 2013. What did you do that day?

5 A Mainly been working.

6 Q And you said you work in Abbeville. Where do you work?

7 A At that time I was working for John Martin. Martin
8 Wrecker Service.

9 Q And what time did you get off work that day?

10 A Right at about dark. Right around there.

11 Q Who else lived at the house with you at the time?

12 A My son. I got Danny, Robert, Charles and my wife.

13 Q Did you drive home from work, somebody pick you up or
14 --

15 A Yes. Well, he come back out and picked me up at work.
16 He had the truck that day.

17 Q You said he. Who is --

18 A My son, Charles.

19 Q Charles?

20 A Uh-huh.

21 Q What's his last name?

22 A Scroggs.

23 Q So Charles Scroggs came to pick you up?

24 A Uh-huh.

25 Q What did you all do after that?

1 A We went by Subway and picked up some, you know, supper,
2 because it was so late that evening, afternoon, and headed
3 back toward the house.

4 Q You were going to eat at the house?

5 A Uh-huh.

6 Q You got it to go?

7 A Yeah, got it to go.

8 Q Leaving the house, or coming back to the house, did you
9 notice anything out of the ordinary?

10 A Well, when we got down there, just right in front of
11 the house, right in front of Ms. Stamps, there was a little
12 light colored car backed off the road up by the edge of them
13 trees. Didn't pay it no attention. Thought it might just
14 be somebody broke down and they just shoved it off the road.
15 You know, up in that little clearing. We went on in the
16 house, sat down and was getting ready to eat.

17 Q Is there a little driveway there where that car was
18 pulled off?

19 A Yeah, a little pull off like. It looked like an old
20 house place or something.

21 Q Is that reflected on the map here?

22 A Uh-huh.

23 Q Let me position myself.

24 A Yeah. Just about right across from Ms. Stamps' yard.
25 Right here is her driveway. And you see this little spot

GARY PARRMAN-DIRECT EXAMINATION

174

1 right there? Right in there is that little concrete. It's
2 like an asphalt pad coming off the edge of the road right
3 there. It kind of goes right up to the edge of the woods
4 right here.

5 Q If you can show the jury where the car was parked.

6 A It was parked right -- right in there. Right at the
7 edge of the tree line.

8 Q Which direction was it facing?

9 A It was pointed out toward the road.

10 Q Pointed back out towards the road?

11 A Yes. The headlights was coming toward the road.

12 Q And you said this was what time? About dusk?

13 A Just dusky dark whenever we -- whenever we, you know,
14 got to the yard.

15 Q And you went back up to the house and to eat?

16 A Yeah. We just had run in the house. Sat down. Two of
17 the boys went in the bedroom and turned the TV on to eat
18 their sandwiches. I just had opened mine up and getting
19 ready to take a bite when they were -- when we heard
20 gunshots.

21 Q Have you heard gunshots before this?

22 A Oh, yeah. Oh, yeah.

23 Q Was it distinct to you that it was a gunshot?

24 A Oh, yeah. It was a gunshot. There was no denying it.
25 It was a land cannon. That sucker rang out.

1 Q What did you and Charles do after you heard those
2 shots?

3 A Well, whenever heard the gunshots initially, I went
4 toward the door, and my son -- other two sons was coming out
5 of the bedroom and we all converged. Me and Charles went
6 out across the yard, because we didn't know what it was. We
7 didn't know where it come from. But we know that it was a
8 large gun that had been fired.

9 Q Did you hear anybody talking at that point?

10 A The next door neighbor was -- well, I guess she had
11 made it to the yard or on her porch or what have you, but
12 she yelled somebody -- somebody shot him. They killed him.
13 That's all I -- you know, and she was frantic. I'm talking
14 frantic. Yelling they've shot him, they've shot him,
15 they've shot him.

16 Q And that's coming from whose house?

17 A From the next door neighbor. Directly across from us.

18 Q Directly across. Ms. Phillips?

19 A Uh-huh, Ms. Phillips.

20 Q Did you see anything?

21 A We made it -- I was about halfway across the yard when
22 she started yelling. And caddy-corner off that little
23 wood spot, there was a car pulled out from there and
24 headed back toward Abbeville wide open. Just as hard
25 as it could go it was going that way.

GARY PARRMAN-CROSS-EXAMINATION

176

1 Q And describe that car for us.

2 A It was a little like silverish blue, either a Toyota,
3 Nissan, something like that. Little bitty ole car like
4 that.

5 Q Some kind of Japanese made? It was a small --

6 A Yeah, just a small compact car.

7 Q It was silverish color, you said?

8 A Silverish blue. Something like that. Like I said, it
9 was dusky dark when I seen it. So it was just a light
10 colored car. It was either like a silver blue or -- you
11 know, something like that.

12 Q How long was this -- did this car pull out from the
13 time you heard the gunshot?

14 A It was -- it took long enough they shot, boom, boom,
15 long enough for me to get up from where I was at, make it
16 about midway in my yard and it was taking off.

17 Q Did you give law enforcement a statement that night as
18 to what you saw?

19 A Yes, sir.

20 MR. STUMBO: No further questions. Mr. Parrman, please
21 answer any questions Ms. Bolen may have for you.

22 THE WITNESS: Yes, sir.

23 CROSS-EXAMINATION

24

25 Q A few quick questions, Mr. Parrman.

1 A Yes, ma'am.

2 Q So you had come home from work, right?

3 A Uh-huh.

4 Q And you were -- I believe your testimony was that you
5 were eating and your sons were watching TV?

6 A Yes.

7 Q And it was on your way home that you saw a car sitting?

8 A Uh-huh.

9 Q And you thought maybe it had been broken down or
10 something?

11 A I thought it -- you know, it just looked like, you
12 know, like somebody broke down and they just pushed it off
13 the edge of the road, you know, back up in that little
14 clearing.

15 Q And Solicitor Stumbo had asked you, you did give a
16 statement to law enforcement that night, right?

17 A Yes.

18 Q But you didn't put in that statement that you'd seen a
19 car on your way home from work, right?

20 A No.

21 Q And the car that you see, you said I think, wide open
22 coming out of the car --

23 A Uh-huh.

24 Q -- out of the road. In your statement you just
25 described it as a car, right, without any color?

CRAIG BIRCHMORE-DIRECT EXAMINATION

178

1 A Uh-huh.

2 Q And no make or model or anything in your statement?

3 A Yes. They asked me what I seen and I told them.

4 MS. BOLEN: Thank you.

5 THE WITNESS: They didn't give me no details.

6 THE COURT: Thank you, sir. You can step down.

7 THE WITNESS: Yes, sir.

8 (Whereupon, the witness stepped down from the witness
9 stand.)

10 THE COURT: Call your next witness, Solicitor.

11 MR. STUMBO: The State calls Craig Birchmore. Your
12 Honor, obviously Mr. Parrman can be released at this time.

13 THE COURT: Certainly.

14 CRAIG BIRCHMORE, having been first
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. BROWN:

18 Q Good afternoon, Mr. Birchmore.

19 A Good afternoon.

20 Q Mr. Birchmore, what's your full name?

21 A Richard Craig Birchmore.

22 Q And what do you go by?

23 A Craig.

24 Q And first of all, where do you work now?

25 A I work at Due West Police Department now.

1 Q And how long have you worked for Due West?

2 A Since March of this year.

3 Q And before you went to Due West Police Department where
4 did you work?

5 A Abbeville County Sheriff's Office.

6 Q And how long did you work with the Sheriff's Office?

7 A Two and a half years maybe.

8 Q Back on March 25th, 2013 were you with the Sheriff's
9 Office?

10 A I was.

11 Q And what were your duties as a Sheriff's -- working
12 with the Sheriff's Office?

13 A I was on uniform patrol.

14 Q And on the 25th of March, 2013, were you on uniform
15 patrol then?

16 A Yes, sir.

17 Q And did you have any occasion to respond to 1522 Old
18 Douglas Mill Road?

19 A Yes, I did.

20 Q And what was that call about?

21 A We received a call through 911 that an individual had
22 been shot and was on the front porch, and I was first on the
23 scene.

24 Q And when you pulled on the scene what did you do?

25 A I observed an individual laying face down to the right

CRAIG BIRCHMORE-DIRECT EXAMINATION

180

1 of the front door on the porch. Two other individuals
2 outside around it, that I later learned were his parents.

3 Q And when you arrived was -- the individual, was he
4 still breathing or had he --

5 A He was not.

6 Q He had already passed away?

7 A Yes.

8 Q Had 911 gotten there yet -- or had EMS gotten there
9 yet?

10 A They were a couple minutes behind me, to the best of my
11 knowledge.

12 Q To the best of your knowledge though and what you
13 remember, by the time you got there he was already gone?

14 A Yes.

15 Q Now, Mr. Birchmore, I want to show you what's been
16 marked for ID purposes as State's ID 2 through 9 and ask if
17 you recognize these photos.

18 A Yes, sir.

19 Q And what are those photos show?

20 A These are the incident location of the call I went to,
21 and it's also the victim I was describing.

22 Q Do these pictures clearly and accurately reflect what
23 you saw that night?

24 A Yes, sir.

25 MR. BROWN: The State moves in what's marked for ID

CRAIG BIRCHMORE-DIRECT EXAMINATION

181

1 purposes State's ID 2 through 9 as State's Evidence 2
2 through 9.

3 THE COURT: Any objection?

4 MS. BOLEN: No, sir.

5 THE COURT: Without objection, they're entered into
6 evidence.

7 (Whereupon, State's Exhibit Nos 2 through 9 were
8 admitted into evidence.)

9 Q Officer Birchmore, I want to show you State's Evidence
10 2. What does that -- what's State's Evidence 2 show?

11 A That's the mailbox of the incident location.

12 Q What's the address on that location?

13 A [REDACTED].

14 Q And that -- what county is that in?

15 A Abbeville County.

16 Q State's Evidence 3?

17 A That's the actual residence, [REDACTED]
18 [REDACTED].

19 Q And when you arrived that night is that how the cars
20 were parked in the drive?

21 A Yes.

22 Q State's Evidence 4. What does that depict?

23 A That's [REDACTED].

24 Q State's Evidence 5?

25 A That's the victim I observed at their residence.

CRAIG BIRCHMORE-DIRECT EXAMINATION

182

1 Q And when you arrived at [REDACTED] that
2 night is that the position --

3 A Yes, sir.

4 Q -- Mr. Phillips was lying in?

5 A Yes, sir.

6 Q And that's what you saw that night?

7 A Yes, sir.

8 Q And when you arrived the victim was already gone --

9 A Yes, sir.

10 Q -- passed away? State's Evidence 6. Again, what does
11 that picture show?

12 A That's [REDACTED], and also that's the
13 front of the residence and the victim lying to the right of
14 the front door.

15 Q State's Evidence 7?

16 A That would be the victim's right hand.

17 Q On the porch?

18 A Yes.

19 Q State's Evidence 8?

20 A The victim's keys and some blood.

21 Q Lastly, State's Evidence 9?

22 A Also blood near the front door.

23 Q And in relation to this picture where is Jamil Phillips
24 lying?

25 A He would be off to the right.

1 Q And, Officer Birchmore, once you arrived, you said you
2 were the first one on the scene?

3 A Yes, sir.

4 Q Did other officers arrive at that location?

5 A Yes. Interim Sheriff Ashley was probably 10 seconds
6 behind me, and Sergeant Neddra Singleton was also right
7 there behind him.

8 Q And the EMS arrived also?

9 A Yes.

10 Q Once officers arrived at that location what was the
11 next step?

12 A EMS started trying to work with him anyway. And we
13 roped the crime scene off and started calling in other units
14 as we needed.

15 Q What was the purpose of roping off the crime scene?

16 A To secure evidence and make sure nobody tampered with
17 it.

18 Q And shortly after you arrived on scene that was done?

19 A That's correct.

20 Q The whole yard roped off?

21 A Yes.

22 Q No other people coming in or out?

23 A No.

24 MR. BROWN: No further questions.

25 MS. BOLEN: No cross, Your Honor.

RONNIE ASHLEY-DIRECT EXAMINATION

184

1 THE COURT: Thank you, sir. You may step down.

2 (Whereupon, the witness steps down from the witness
3 stand.)

4 THE COURT: Call your next witness.

5 MR. STUMBO: Your Honor, the State calls Coroner Ronnie
6 Ashley.

7 CORONER RONNIE ASHLEY, having been
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. STUMBO:

11 Q Good morning, Coroner, how are you doing?

12 A Good morning. How you doing?

13 Q How long you been the Coroner of Asheville County?

14 A Fifteen years.

15 Q And for a short period of time you were actually the
16 Sheriff of Abbeville County, correct?

17 A For five months.

18 Q And that was when? What year was that?

19 A 2013.

20 Q Two years ago?

21 A Two years ago.

22 Q And this was between the time that Sheriff Goodwin had
23 left and Sheriff Watson --

24 A Correct.

25 Q -- was elected to take over, correct?

1 A Correct.

2 Q Now, March 25th, 2013 you were the Sheriff at that
3 point, correct?

4 A Yes.

5 Q Interim Sheriff.

6 A Yes.

7 Q And you recall an incident that your department
8 responded to out at [REDACTED] -- [REDACTED]?

9 A Yeah.

10 Q And what was the nature of that incident?

11 A The call came in that somebody had been shot, laying on
12 the porch. Three deputies and myself responded. We was
13 there in seven minutes from the call. Got there and Mr.
14 Phillips was laying on the front porch.

15 Q Just to refer you to what's already in evidence. It's
16 State's 2 through 9. I'm going to show you what's in as
17 State's -- State's 4. Is that how the residence appeared
18 that night? Is that a --

19 A Yes.

20 Q -- fair representation?

21 A Yes.

22 Q State's No. 6.

23 A That's correct.

24 MS. BOLEN: Your Honor, I objection as being cumulative
25 because another witness has already testified as to all of

RONNIE ASHLEY-DIRECT EXAMINATION

186

1 these.

2 MR. STUMBO: Well, I'll move on soon, Judge. It won't
3 take me long.

4 THE COURT: Overruled. Go ahead.

5 Q Coroner Ashley, is this how the body appeared when you
6 appeared on the scene?

7 A It was.

8 Q Now, you were in the role of Sheriff at this point but
9 you have been a Coroner for 15 years, correct?

10 A Yes, sir.

11 Q So do you have experience responding to death scenes?

12 A Yes, sir.

13 Q Was he checked by EMS while you were there?

14 A Yes. Well, as soon as I got there I checked it, and
15 then EMS checked him. There was no pulse.

16 Q And were you all able to ascertain that he had passed
17 away?

18 A Yes.

19 Q And who was the decedent?

20 A Jamil Phillips.

21 Q He was the son of those who lived in the house?

22 A Correct.

23 Q What decision did you make as to how the investigation
24 would proceed at that point?

25 A As soon as we knew he was deceased I called my Deputy

1 Coroner, which was the acting Coroner at the time, Sam
2 Ferguson, and then I turned around and called SLED and asked
3 for a forensic team supervisor and an investigation team to
4 come down.

5 Q And why did you call SLED?

6 A Because it's a criminal case. When my -- when my
7 Coroner -- or as acting Sheriff, if I have a death scene
8 that's -- I always call SLED in.

9 Q And their crime scene --

10 A Crime scene.

11 Q -- team responded?

12 A Correct.

13 Q And ultimately did other investigators from SLED
14 respond --

15 A Yes.

16 Q -- as well?

17 A Yes.

18 Q Your agency, the Sheriff's Office, assisted SLED --

19 A Correct.

20 Q -- in the investigation?

21 A Correct.

22 Q Once they got involved, Coroner, who would you consider
23 the lead agency at that point? Would it have been the
24 Sheriff's Office or SLED?

25 A SLED.

SAM FERGUSON-DIRECT EXAMINATION

188

1 Q By the time arrests were made in relation to this case
2 you were no longer Sheriff at that point?

3 A No, sir.

4 Q At that point it was Sheriff Watson who had taken
5 office?

6 A Sheriff Watson.

7 MR. STUMBO: No further questions of the Coroner, Your
8 Honor.

9 MS. BOLEN: No cross.

10 THE COURT: Thank you very much, Mr. Ashley. You are
11 free to go.

12 (Whereupon, the witness stepped down from the witness
13 stand.)

14 THE COURT: Does anybody need five? Are you okay?
15 Call your next witness, please.

16 MR. BROWN: The State calls Sam Ferguson.

17 SAM FERGUSON, having been first
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. BROWN:

21 Q Good afternoon, Mr. Ferguson.

22 A Good afternoon.

23 Q Mr. Ferguson, where do you work?

24 A I work for the Coroner's office in Abbeville.

25 Q And what's your position there?

- 1 A Chief Deputy Coroner.
- 2 Q And how long have you been Chief Deputy Coroner?
- 3 A About 18 years.
- 4 Q Back in 2013, about a five month span, were you the
- 5 Coroner?
- 6 A Yes, sir.
- 7 Q Why was that?
- 8 A The Coroner was taking over as Sheriff.
- 9 Q On March 25th, 2013 did you respond to [REDACTED]
- 10 [REDACTED]?
- 11 A Yes, sir. I did.
- 12 Q And, you know, what was the nature of that call?
- 13 A It was just reported to me as a homicide.
- 14 Q What time did you arrive that night?
- 15 A I was on scene at 10:27. Oh, I'm sorry. That's when I
- 16 got the call. I was on scene at 10:44. Excuse me.
- 17 Q Once you arrived on scene did you talk with Sheriff
- 18 Ashley at the time?
- 19 A Yes, I did.
- 20 Q And once you were on the scene what was your job there
- 21 that night?
- 22 A Just check the victim to see that he was deceased and
- 23 pronounced him as deceased. And then we backed out of the
- 24 scene to wait on SLED. We didn't want to contaminate the
- 25 scene.

SAM FERGUSON-DIRECT EXAMINATION

190

1 Q So after you all pronounced him dead you all did back
2 off and let SLED take over?

3 A Yeah. We backed off until SLED got there and then
4 worked with SLED.

5 Q After SLED performed their investigation later on that
6 night, or early the next day on March 26th, 2013, did you
7 end up taking custody of Jamil Phillips?

8 A Yes, sir.

9 Q What did you do with his body at that time?

10 A It was placed in a body bag and sent to the morgue in
11 Anderson at AnMed.

12 Q And the purposes of that was for --

13 A Autopsy.

14 Q And when was that autopsy scheduled?

15 A The next day, if I'm not mistaken, or that day. The
16 26th.

17 Q And ultimately was an autopsy performed?

18 A Yes, sir.

19 Q I want to show you State's Evidence 6. Do you remember
20 -- does that look familiar? That picture?

21 A Yes.

22 Q And who is that on the porch?

23 A That's Mr. Phillips.

24 Q And is that who you ended up taking custody of and
25 taking to AnMed?

VICKIE HALLMAN-DIRECT EXAMINATION

191

1 MR. BROWN: No further questions, Your Honor.

2 THE COURT: Cross?

3 MS. BOLEN: No cross, Your Honor.

4 MS. BOLEN: No cross, Your Honor.

5 THE COURT: Mr. Ferguson, you may step down.

6 (Whereupon, the witness stepped down from the witness
7 stand.)

8 THE COURT: Call your next witness.

9 MR. STUMBO: The State calls Vickie Hallman.

10 THE COURT: You are free to go. You don't have to hang
11 around if you don't want to.

12 VICKIE HALLMAN, having been first
13 duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. STUMBO:

16 Q Good afternoon, Ms. Hallman.

17 A Good afternoon.

18 Q Or should I say Lieutenant Hallman?

19 A No. Special Agent.

20 Q Special Agent. Agent Hallman, you work for SLED?

21 A Yes, I do.

22 Q And what is your role currently at SLED?

23 A About nine months ago I transferred to the Regulatory
24 Department and I currently do lottery investigations.

25 Q Where did you transfer out of? What department?

VICKIE HALLMAN-DIRECT EXAMINATION

192

1 A I started at SLED in April of 2004 in the latent prints
2 crime scene unit and continued to work there until that
3 transfer.

4 Q Were you a crime scene investigator at SLED?

5 A Yes, sir. I was.

6 Q And what agency did you come from before joining SLED?

7 A I actually worked from 1991 until 2004 at the Lexington
8 County Sheriff's Office.

9 Q So from 1991 until today you've been in law
10 enforcement?

11 A Yes, sir.

12 Q The time you were at Lexington County and SLED, an
13 estimate, how many crime scenes have you worked over the
14 years?

15 A Probably over -- I know it's over a 1,000. I couldn't
16 give you a definitive number, but over 1,000.

17 Q And does that include homicide scenes?

18 A Yes, sir.

19 Q Did you have occasion while in the SLED crime scene
20 unit to work the homicide of Jamil Phillips?

21 A Yes, sir. I did.

22 Q And that would have been March, 2013?

23 A Yes, sir.

24 Q Where were you when you were called out to that scene?

25 A I was actually at home, because the call came in a

1 little bit before 11:00 that night. So I was at home that
2 night.

3 Q What area of the state do you live in?

4 A I actually live in the Batesburg-Leesville area.

5 Q So when you got the call you got dressed and went
6 straight -- came straight to Abbeville?

7 A I would have gotten dressed. The young lady who worked
8 the scene with me, the other agent, Whitney Bark, was fairly
9 new to the unit, so I would have gone to Columbia and met
10 her and we would have ridden up together.

11 Q About what time did you arrive at the scene?

12 A Approximately 12:45 in the morning. So it would have
13 took us, I think, about, what, two hours to get up -- to get
14 ready -- get up, get ready and to actually get to the scene.

15 Q When you arrived at the scene -- well, let me back up a
16 little bit. Have you ever been qualified as an expert in
17 courts of this state in crime scene investigations?

18 A Yes, sir. I have.

19 Q How many times?

20 A With crime scenes probably roughly 10 times.

21 Q And have you ever been qualified as an expert in
22 footwear or tire impressions --

23 A Yes.

24 Q -- in the courts of this state?

25 A Yes, sir. I have.

VICKIE HALLMAN-DIRECT EXAMINATION

194

1 Q How many times?

2 A Approximately five.

3 Q And you've worked hundreds of crime scenes?

4 A Yes, sir. And I have -- just to give you a little bit
5 more of a background, I have an undergraduate degree from
6 the University of South Carolina. I also have a Master's
7 degree from the University of South Carolina. All total
8 I've spent approximately 14 and a half years of my career in
9 law enforcement in the area of working crime scenes. And
10 that includes latent print processing. I did do latent
11 print comparisons at one point. Footwear, tire tread
12 comparison and blood stain pattern analysis.

13 Q And during that 14 and a half years you received
14 additional training in those areas?

15 A Absolutely.

16 MR. STUMBO: Your Honor, at this time we would offer
17 Agent Hallman as an expert in two areas. One, crime scene
18 investigations, and secondly in footwear and tire
19 impressions.

20 THE COURT: All right. Any questions or objections to
21 her qualifications?

22 MS. BOLEN: May I have a moment, Your Honor?

23 THE COURT: Certainly.

24 MS. BOLEN: Your Honor, we do object on the tire
25 analysis grounds because we don't believe a proper

1 foundation has been laid to qualify her as an expert in that
2 area.

3 THE COURT: All right. Solicitor, would you care to
4 ask some additional questions?

5 MR. STUMBO: I can, Your Honor.

6 Q What specific training have you had in tire
7 impressions, footwear impressions?

8 A Some of the basic training that we receive at SLED when
9 we come to the crime scene unit is the two year in-house
10 training program with other court qualified examiners. And
11 those areas of that, I've spoken of previously the latent
12 prints, the footwear, tire tread and the blood stain pattern
13 analysis. On top of doing that two year in-house training
14 program, I've attended two 40 hour courses. One
15 specifically for footwear and tire tread -- or one
16 specifically for footwear and then another week specifically
17 for tire tread. As part of being qualified as an expert and
18 doing those disciplines within the SLED laboratory I have
19 also been required to do a year proficiency as part of the
20 ASCLD, or the certification of the laboratory itself that is
21 graded by an outside agency.

22 Q ASCLD. What is -- that's the certification agency?

23 A It is. It's the certification agency for laboratories,
24 or for forensic laboratories. It basically means that --
25 ASCLD has a governing set of rules and regulations and SLED

1 -- the SLED forensic laboratory has to be audited every two
2 years, and every time it's been audited it has received the
3 accreditation. And those things that we do in the
4 laboratory are actually monitored and we have to complete
5 those testings in order to be deemed proficient in order to
6 issue reports.

7 Q Are you certified through the training agency to do
8 foot and tire impressions?

9 A I've completed all the training within the SLED
10 laboratory. I do the yearly proficiencies. I'm also a
11 certified senior crime scene analysis -- or analyst through
12 the International Association for Identification.

13 Q And five different courts in this state have qualified
14 you as an expert in foot and tire impressions --

15 A Yes, sir.

16 Q -- to date?

17 A Yes.

18 MR. STUMBO: Your Honor, I believe there's sufficient
19 foundation.

20 THE COURT: Same objection, any objection, Ms. Bolen?

21 MS. BOLEN: No, sir.

22 THE COURT: All right. Ladies and gentlemen, in this
23 case the Court has found that this witness is an expert in
24 the field of crime scene investigations, as well as footwear
25 and tire impressions. Okay? And I anticipate that we'll

1 hear from additional expert witnesses throughout the trial,
2 so I'll go ahead and explain this to you.

3 Normally when a witness testifies, like the other
4 witnesses we've heard from this morning, they have to
5 testify as to something they've seen, observed, smelled,
6 heard, et cetera. Something they observed with one of their
7 five senses. Okay? An exception to this rule exists for
8 witnesses who by some experience, education or training are
9 found to be experts in a science or a field. In those
10 cases, an individual who is qualified as an expert can give
11 opinion testimony based upon their experience and their
12 qualifications. Of course, it does not mean that you have
13 to accept their opinion, but it is evidence for you to use
14 as you deem appropriate. Okay? So expert witnesses are
15 permitted to give opinion testimony as opposed to just
16 simply factual testimony to prove something that they have
17 observed.

18 Go ahead, Solicitor.

19 MR. STUMBO: Thank you, Your Honor.

20 Q When you arrived at [REDACTED] that
21 night to the crime scene, who was with you?

22 A Special Agent Brittany Burke.

23 Q And was the scene secure when you arrived, to your
24 estimate?

25 A Yes, sir. It was.

1 Q And which agency had requested your assistance?

2 A I had -- after hours we have a 24 hour number that
3 agencies can call in and request our assistance. We call it
4 OD, or officer of the day. I had been notified by SLED OD
5 and had been given the contact information for -- at the
6 time it was Sheriff Ashley, Ronnie Ashley, that he needed
7 our assistance. I actually called him before I left my home
8 and spoke to him on the phone about what had occurred and
9 what specifically that he needed before we responded.

10 Q And you were able to do a complete workup of the crime
11 scene that night?

12 A Yes, sir.

13 Q And you generated a report as a result of your all's
14 findings that night?

15 A Yes, sir.

16 Q The crime scene team?

17 A Yes, sir.

18 Q You have that report with you?

19 A Yes, sir.

20 Q Feel free to refer to that and refresh your memory at
21 any point.

22 A Okay.

23 Q Now, Agent Hallman, as part of your report, did you
24 generate a sketch -- a computer generated sketch of the
25 scene?

1 A Yes, we did.

2 Q And you have the original copy of that sketch with you
3 on the scene?

4 A I have a copy of it. Yes, sir.

5 Q Is it a color or a black and white copy?

6 A I believe I have a color copy. Let me get to it.
7 There's the color copy.

8 Q What you've just handed me --

9 MR. STUMBO: If I may mark it for ID, Your Honor.

10 Q I'm going to mark this as State's 44, Agent Hallman.

11 A Okay.

12 (Whereupon, State's Exhibit No. 44 was marked for
13 identification.)

14 Q I'm going to hand you what we've just marked as State's
15 44. Does that fairly and accurately represent -- or depict,
16 maybe not to scale, but the crime scene that night?

17 A Yes, sir. It does.

18 MR. STUMBO: We move 44 into evidence, Your Honor.

19 MS. BOLEN: Without objection, Your Honor.

20 THE COURT: State's 44 is in evidence.

21 (Whereupon, State's Exhibit No. 44 was admitted into
22 evidence.)

23 Q Agent Hallman, I'm going to place State's 44 here on
24 the overhead projector. Can you see that from where you're
25 sitting, Agent Hallman?

1 A Yes, sir. I can.

2 Q I'm going to hand you a little laser pointer as well,
3 if you need that. That's right in the middle, if you need
4 to refer to any point on the sketch.

5 A Okay.

6 Q And If you could describe for the jury, you know, where
7 the positioning of the house is at this point.

8 A Okay. The main road, which is [REDACTED],
9 actually would run parallel here. This is actually the
10 driveway up to the front of the house. There were several
11 cars located at the residence. They're actually all marked
12 on the sketch. There was an older model pickup truck here
13 that did not appear that it was being driven at the time.
14 It was just kind of parked in the yard. This is actually a
15 Chrysler Sebring which we were able to determine belonged to
16 Mr. Phillips. There was like a little branch off, and this
17 is like a covered garage area, and there were three vehicles
18 sitting in that area. This is a red in color Toyota Camry.
19 That's a blue Ford Mustang, and then we had a Honda Accord.
20 And I believe that one was kind of silver in color. And
21 then there was a green Escalade parked right here, right
22 beside the front porch. There's a wood line. If you're
23 facing the house it would be to the right side of the
24 residence. And along those wood lines you can see we have
25 marker one. And I'm not sure which is which from here. But

1 there are four markers located here. Those were actually
2 cigarette butts that were found at the scene. They appeared
3 to be fairly fresh. They were not wet, and it had been
4 raining earlier in that evening, so they attracted our
5 attention. So we collected those as evidence. And then the
6 victim was actually located here on the front porch of the
7 residence.

8 Q Thank you, Agent Hallman. I'm going to hand you know a
9 series of pictures which have been marked for ID purposes as
10 State's No. 10 -- 10 through 32. If you'll just review
11 those briefly, Agent Hallman.

12 A Okay.

13 Q Do you recognize those pictures?

14 A Yes, sir. I do.

15 Q And do they fairly and accurately depict --

16 MS. BOLEN: We think we know what she's looking at, but
17 can we just --

18 Q Do they fairly and accurate depict images from your
19 investigation that night and the next day?

20 A Yeah. Actually I think it was two -- or the day later.
21 We actually got the initial call on the 26th, and then we
22 also did some work on the 28th. So the two scenes that I
23 was involved in, yes, they do accurately depict some of the
24 information and the scenes from those days.

25 Q The first scene was the house, correct?

1 A That's correct.

2 Q The second scene, second set of pictures here, involve
3 what?

4 A They involve a vehicle that the Sheriff's Office had
5 obtained a search warrant on. And during the course of our
6 investigation at the house and the area around the house we
7 had found some tire treads, and they had a vehicle that they
8 wanted us to take tire tread impressions from to compare to
9 the impressions that we found at the scene. So that was the
10 second scene that we went to the next day or the day after
11 was the actual vehicle to do the impressions of the tires.

12 MS. BOLEN: And, Your Honor, we just want to renew our
13 prior motion on that matter.

14 THE COURT: Subject to the earlier ruling, objection
15 noted.

16 MR. STUMBO: Your Honor, we would move 10 through 32
17 into evidence at this time.

18 MS. BOLEN: If I could see the numbers. Your Honor,
19 it's without objection as to 10 to 18 -- actually, 10
20 through 20. But I don't believe a foundation has been laid
21 for the remaining, so we would object to those.

22 THE COURT: Show her.

23 Q 19 through 32, those pictures depict what, Agent
24 Phillips?

25 A They depict --

1 Q Agent Hallman. Excuse me.

2 A I'm sorry. They depict a silver in color Toyota Camry
3 that a search warrant was obtained for by the Abbeville
4 County Sheriff's Office that we were requested to come and
5 process and roll the tires on the -- or from the vehicle to
6 make impressions on the 28th of March.

7 Q And you did this search of the car?

8 A Yes, sir. I did. Along with a couple other agents
9 from SLED, but I was present for the whole time.

10 Q Okay. Then I'll ask you again. Do they fairly and
11 accurately depict your work which you did on this car that
12 day?

13 A Yes, sir. They do.

14 MR. STUMBO: We'll move them into evidence, Your Honor.

15 THE COURT: State's 10 through 32 are in evidence.

16 MS. BOLEN: Again, just to --

17 THE COURT: Subject to your earlier objections.

18 (Whereupon, State's Exhibit Nos. 10 through 32 were
19 admitted into evidence.)

20 MR. STUMBO: Thank you, Judge.

21 Q Now, Agent Hallman, you indicated these markers one,
22 two, three and four, those yellow markers, were cigarette
23 butts that were found at the scene?

24 A That's correct.

25 Q I'm going to show you what's in evidence as State's 10.

1 Can you describe that for the jury, please.

2 A Basically, when we process a crime scene, we go around
3 and we take general photographs once we arrive on the scene
4 before anything is moved. Then we move to areas and start
5 looking for evidence. We'll put those yellow markers down
6 to mark those so that they're more visible in photographs,
7 and then we'll do a set of general photographs with those
8 markers in. And then we come back and we do what's called
9 closeup photograph, which is basically -- we try to get as
10 much of just that one area in the frame as you can so you
11 can see with the marker and the item what specifically we're
12 looking for and what we're getting ready to collect as
13 evidence. And that photograph would be a closeup of the
14 cigarette butt at marker one.

15 Q And the cigarette butt's there to the right of the
16 marker?

17 A That's correct.

18 Q State's 11?

19 A That's basically a photograph of the cigarette butt.
20 It's just to the left of the marker that we collected from
21 marker number two.

22 Q State's 12? Describe that.

23 A Same principal. The cigarette butt is going to be to
24 the right-hand side of the marker, but that's the cigarette
25 butt from marker three.

1 Q State's 13?

2 A Same thing. This is a cigarette butt. It's actually a
3 little bit to the right of the marker from marker number
4 four.

5 Q State's 14?

6 A That's a general photograph so that you can kind of see
7 the area where those -- where actually all four cigarette
8 butts were located. At the time we had only located three
9 of the cigarette butts. The fourth one was actually located
10 when we were picking up the other three, so there's only
11 three markers that are shown in that particular photograph.

12 Q Was the fourth cigarette butt found in close proximity
13 to these three?

14 A Yes, sir. It was.

15 Q And that was, according to the crime scene sketch,
16 right along the wood line?

17 A Yes, sir.

18 Q State's 15?

19 A Basically that shows when it gets cool -- I believe it
20 was around freezing. Around 30 something degrees, maybe a
21 little bit warmer, when we processed this crime scene. You
22 get dew on the grass. And what we saw in this photograph is
23 that a vehicle had left an area where the dew had come up in
24 the grass. And you can see the outline of a tire -- or a
25 tire impression that was left in the dirt in the grass.

1 Q So State's 16?

2 A That would be kind of just the general so you can see
3 what the makeup of the ground is in that particular area.
4 And that's where that tire impression would have been
5 located.

6 Q Just briefly, 17?

7 A It's kind of a little bit more of a closeup photograph
8 so you can see it. And you can also tell that there's some
9 -- there appear to be enough force behind the tire that once
10 you hit the highway, where the white mark is, you can
11 actually see that it left some rubber on the roadway. So
12 they probably left at a high rate of speed.

13 Q And on the left side of the picture here? Is that
14 anything significant?

15 A There's actually some mud and dirt --

16 Q And what I'd be referring to, Agent Hallman, is this
17 area here.

18 A I'm not -- you're talking about right here?

19 Q Correct.

20 A It just appears that there's -- I believe that's
21 actually another impression that would have been muddy as it
22 left. So one side has mud, one side does not, and you get
23 the different textures here as opposed to here.

24 Q And that -- would that depict which direction a car was
25 leaving this area?

1 A It would appear that the vehicle at this point is
2 moving this way. So to the --

3 Q It's facing out turning left out of that --

4 A Yes. Or it could -- yes, that's correct. I had to
5 think about that. I'm sorry. I'm not good at left and
6 right.

7 Q That's all right. I turned you around there a little
8 bit. State's 18?

9 A Basically that's just a little bit more of a distant
10 shot from the one that you just saw.

11 Q State's 19.

12 A As a part of what we do with doing footwear or tire
13 tread comparisons, if we have an impression we can actually
14 photograph it. There's different types of lighting
15 techniques that we use. The big thing for us is that we
16 have to make sure that we have a scale in it, which is this
17 L-shaped scale, so that the person who develops the
18 photographs for us can make it -- make the photograph one-
19 to-one, which means true to size. So this would be a
20 photograph that we took to use for comparison. It does have
21 the L-scale. And then there's also another scale that we
22 put alongside. If the impression is fairly long we'll try
23 to divide the impression up, but we want to make sure that
24 we have overlap. So this scale actually helps us to have
25 that overlap to make sure that we get a full impression.

1 Q State's 20? Is this similar to State's 19 --

2 A Yes.

3 Q -- in nature?

4 A Yes, sir. It is.

5 Q And were you able to develop tire impressions from both
6 sets of tires coming out?

7 A I don't recall right offhand.

8 Q I think we're out of order here a little bit, but 21.

9 A That would be -- we actually came back -- we actually
10 came back on the 28th, that morning, to the Abbeville County
11 Sheriff's Office and met with them there. They had obtained
12 a search warrant, and this was the vehicle that we actually
13 executed the search warrant on. And it's a silver Toyota
14 Camry.

15 MS. BOLEN: And, Your Honor, we just have a continuing
16 -- subject to our earlier objection.

17 THE COURT: You have a continuing objection to anything
18 with regard to that issue we addressed last week concerning
19 the Camry and the search warrant and you do not need to
20 object further. You are protected. Go ahead.

21 MR. STUMBO: Thank you, Your Honor.

22 Q State's 22?

23 A When we do any type of search on a vehicle we're going
24 to do those same general photographs that we do at a crime
25 scene. So we would start maybe at the front of the vehicle

1 and basically photograph all sides of the vehicle. If we're
2 going to do a search inside the vehicle, we're going to open
3 up each door and take a series of photographs so you can see
4 what the contents of the vehicle is. So this would be just
5 one of the photographs that we use as part of the general
6 photographs of the exterior of the vehicle.

7 Q Anything of evidentiary note to you in this picture?

8 A We just noticed we had the mud that was present at the
9 scene, and we've also got something -- some mud on the tires
10 that could be similar. They appeared to be similar just by
11 glancing at it or looking at it to what we had on the scene
12 the night -- that evening when we worked the initial scene.

13 Q And when you do the search on the car the -- this is
14 the next day from then -- when you were at the scene?

15 A Yes. Because we actually got the call on the 26th. We
16 didn't clear it until technically the 27th. So this is the
17 28th.

18 Q And similarly, State's 23. Is that another picture of
19 the outside of this vehicle?

20 A Yes, sir. It is.

21 Q And what make and model of car was this?

22 A It is a Toyota Camry.

23 Q What color is it?

24 A Silver.

25 Q State's 24.

VICKIE HALLMAN-DIRECT EXAMINATION

210

1 A Excuse me. One of the things that we do if we find
2 items in the vehicle is we take those items out and
3 photograph them. In this case, this was a -- it's actually
4 -- this is just a closeup photograph. It's -- I believe
5 it's a change of address label that was on a piece of mail
6 that was in the vehicle.

7 Q And what name is on that change of address label?

8 A Karlita Phillips.

9 Q State's 25?

10 A The label that you saw is this -- from the last
11 photograph is here. Basically we pull out all the insurance
12 and registration information and just document it, because
13 it gives us the tag number and the vehicle identification
14 number, the VIN number, and gives us some information about
15 the person who owns the vehicle.

16 Q Okay. And who did this vehicle appear to belong to,
17 Agent Hallman? I could zoom it in if we need to.

18 A Dale Cleveland -- wait a minute. Let's see. Dale
19 Cleveland Phillips, Jr. or Karlita -- and I don't want to
20 mispronounce, but I think it's Desean Phillips of Greenwood.

21 Q Thank you, Agent Hallman. State's 26?

22 A Those were actually three separate receipts that were
23 found in the vehicle. One of them is the -- this one on the
24 left-hand side. It's from the Dollar General. I don't
25 remember specifically where it's located. The middle one is

1 from a Chick-fil-A, and then the one on the right is from a
2 McDonald's.

3 Q State's 27?

4 A Part of what we do when we do the tire tread comparison
5 -- I'm sorry. I'm used to saying footwear and tire tread
6 together. When we do a tire tread comparison we want to
7 actually take photographs of the tires. We take photographs
8 of the outside of the tire, and then also the actual tread
9 itself. And this photograph would be the tread from one of
10 the tires. We put the scale in it just in case the
11 photograph needed to be enlarged, just so we could see what
12 the actual tread looks like in a photograph.

13 Q And I'm going to show you 28 and then 29. Are these
14 depicting the same thing on different tires?

15 A Yes, sir. Part of what we do is we would do that for
16 each tire that we have on the vehicle. So in all there
17 should have been four photographs taken from the front
18 driver, front passenger, rear driver, rear passenger.

19 Q State's 30, 31. Again, pictures of -- closer up
20 pictures of the tires and mud on the tire?

21 A Yeah. Specifically because we knew -- because I had
22 worked the scene and I knew what the scene looked like and
23 because there was mud at the scene, we took some photographs
24 just so you could see that there was actually some mud and
25 dirt left on the tire itself. And I wanted to make sure

1 that you could see that in photographs. And we actually did
2 collect the sample of the dirt from the tire well.

3 Q And you put all that into evidence?

4 A Yes, sir. I did.

5 Q State's 32?

6 A When we roll the tires it's kind of a tedious process.
7 We use cork chart boards because they're fairly sturdy, and
8 we actually get down on our hands and knees and we ink up
9 the tire just like you would somebody who's going to be
10 fingerprinted. And this is basically just the general setup
11 so you can see how it was done. The vehicle -- the tire
12 would be inked and it would -- we would actually just
13 physically push the vehicle so that the ink from the tire
14 would come off on these boards. And we would do it for all
15 four tires.

16 Q Thank you, Agent Hallman.

17 MR. STUMBO: I'm going to bring this package up now and
18 have it marked for ID, if I could, Judge.

19 THE COURT: Please.

20 (Whereupon, State's Exhibit No. 45 was marked for
21 identification.)

22 Q Agent Hallman, I'm going to show you what's just been
23 marked for identification purposes as State's 45. Take a
24 look at that. What are State's 45?

25 A State's 45, the last photograph that was shown with the

1 cork presentation board, or whatever, this would be the
2 actual presentations that we collected that day from that
3 vehicle.

4 Q You collected these yourself?

5 A Yes. Along with several other agents, but yes.

6 Q And what was in State's 32 is the car about to drive
7 over this white looking board? Is that what was going on?

8 A Yes.

9 Q Now, these were made in your possession until you were
10 able to make a comparison with the impression that you found
11 at the scene?

12 A Yes.

13 Q And you were able to make such a comparison?

14 A Yes, sir. I was.

15 MR. STUMBO: Your Honor, I would ask for State's 45 to
16 be introduced into evidence at this time.

17 THE COURT: Any objection?

18 MS. BOLEN: Just subject to our previous, Your Honor.

19 THE COURT: Subject to the earlier objection, State's
20 45 will be in evidence.

21 (Whereupon, State's Exhibit No. 45 was admitted into
22 evidence.)

23 Q Based on State's 28 and 20 -- or 19 and 20, I'm sorry,
24 which were found -- excuse me, pictures that you took at the
25 scene. Are these the impressions that were taken to be

1 compared to the impressions off the car?

2 A We actually also pulled a tire cast. We actually use
3 dental stone, which is basically if you've ever had braces
4 or had a cast made at the dentist, we use the same thing,
5 and we actually pour that into those impressions that are
6 left, because the dental stone is really good at holding
7 minute detail and reproducing that detail. So if we pulled
8 a cast that night at the scene on top of doing the
9 photographs, and I did a report and a comparison of the
10 impressions from the scene to the impressions that we
11 collected from the vehicle.

12 Q Do you have an opinion as to the comparison of the mold
13 at the scene and the tread from the Toyota Camry?

14 A When we do footwear and tire tread comparisons you can
15 have several different results. You can have a result that
16 says known on the -- in this case, these impressions, which
17 are State's --

18 Q 45.

19 A -- 45 would be my known standards, because I collected
20 them from a known source. We can say that the unknown
21 impression that we had, which would be my cast from the
22 crime scene, could actually be identified to these, which
23 means that it's the same size, shape, tread design, and
24 there's actually even something else that went a little bit
25 farther, like a gash or a cut that was reproduced in the

1 unknown impression that matched what I had in my known
2 impression. So that would be identified. We have another
3 result basically saying that it had the same size, shape,
4 tread design and even a wear pattern. Because when people
5 drive their cars the tires on the car wear, depending on
6 whether your alignment is on or off, in different ways. We
7 have a combined class characteristics, which means that it
8 has the same size, shape and tread design, but those other
9 two elements that push it a little bit farther for the other
10 two results aren't present in this one, which basically
11 means that the impression could have been made by my known
12 standard, or if somebody else had those same tires, it could
13 have been their tires. And then we have something that is
14 basically a total elimination. Usually the biggest thing is
15 if the tread design is not the same then I can automatically
16 say that tire did not produce that impression. And in this
17 case, with the tire cast that we collected, I had one of the
18 -- I selected two different impressions in the cast. One of
19 those impressions I basically said could have been made by
20 the item 42 tire, which was from the front driver's tire,
21 the Toyota Camry, which means it met -- it was the same
22 size, shape and tread design. There was nothing else there
23 that I could go any farther. So it could have made it, but
24 it could have been made by another tire that looked the
25 same. And then the other impression I had I excluded item

VICKIE HALLMAN-DIRECT EXAMINATION

216

1 45, or State's 45, from making that impression.

2 Q So one impression was consistent with the design --

3 A That's correct.

4 Q -- and the other one was not?

5 A That's correct.

6 MR. STUMBO: Mark this for ID purposes, Your Honor, as
7 State's 46.

8 (Whereupon, State's Exhibit No. 46 was marked for
9 identification.)

10 Q Agent Hallman, I'm going to hand you for ID State's 46.
11 If you can take a look at that. Do you recognize that
12 package?

13 A When we collect evidence at SLED we have different
14 types of containers that we put items in. In this case, the
15 night that we collected the cigarette butts I used these
16 little small boxes. They're each marked. And I'm not sure
17 you can see them. I put like marker one, and then I put
18 cigarette butt. The other ones would say marker two, marker
19 three, marker four. I did seal them up with evidence tape,
20 and then they went into a heat sealed pouch at SLED which
21 was also sealed up with my initials and the date, and they
22 were logged into the forensic laboratory for processing.

23 Q You submitted those to the lab?

24 A I did.

25 Q And you all collected these at the scene that night?

1 A Yes, sir. We did.

2 Q And this is markers one through four in the pictures
3 we've already seen?

4 A That's correct.

5 Q They were submitted for DNA?

6 A Yes.

7 MR. STUMBO: Beg the Court's indulgence, Your Honor.
8 Just briefly, Your Honor.

9 Q It looks like it's getting rattled around in there.
10 Does this look familiar?

11 A Yes.

12 Q What are those? The markings on the outside?

13 A Basically just like the heat sealed pouch. If it
14 doesn't fit in a pouch we'll put it in some type of box.
15 All areas are covered in tape and then we put the sealed
16 tape, or tamper tape, on top of that tape, and it's logged
17 into the laboratory to go to whatever department needs to do
18 the analysis. And the tamper tape you can actually -- we
19 would be able to tell if somebody had cut the tape. So
20 basically it maintains the integrity of the evidence.

21 Q Does it appear as if that tape's been cut?

22 A No, it does not.

23 Q Did you put the contents of this box in here? Does
24 this tire -

25 A It was the tire cast in probably one piece, but it

1 doesn't feel like it's in one piece.

2 Q It was in one piece and you made a comparison to these

3 --

4 A Yes, sir. And because we use dental stone when we do
5 those casts, you can actually put the puzzle pieces back
6 together and you would not lose any detail that's actually
7 in the impression itself because of the way the dental stone
8 is made.

9 Q And is that like when the dentist puts a mold in your
10 mouth?

11 A Absolutely. It's the same type of material.

12 MR. STUMBO: No further questions of Agent Hallman at
13 this time.

14 THE COURT: Ms. Bolen.

15 MS. BOLEN: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. BOLEN:

18 Q Agent Hallman, I've just got a couple questions for
19 you. With respect to the tires. So you got four tire
20 impressions from the car, correct, one from each wheel?

21 A That's correct.

22 Q And then you've got -- you were comparing those to two
23 tire impressions, right, that you had gotten previously?

24 A Yes.

25 Q And you were -- on direct you were talking about how

1 there's basically -- there's several different options when
2 you do a comparison, right?

3 A Yes.

4 Q There's the option that no, it's not from this car,
5 right?

6 A That's correct.

7 Q There's the option that yes, it's identifying because
8 of, you said --

9 A Size, shape --

10 Q -- size, shape --

11 A -- tread design. And usually it has another -- like an
12 accidental -- what's classified as an accidental
13 characteristic, which would be like a cut or a gash, a
14 thumbtack, a nail in the case of the tire. That kind of
15 thing.

16 Q And then there's a third option where there's size,
17 shape, but no other identifying characteristics, right?

18 A That's correct.

19 Q And are those the three options or are there more?

20 A There's another one just under the identified. They
21 actually -- because wear shoes in different ways, and cars
22 wear tires in different ways, there's also a step in between
23 the identified and the class, which means that there are
24 wear patterns that are present on both the unknown and the
25 known that are identical.

1 Q So there's four categories, and if we kind of go in
2 order of the least up to the most it would be no, not from
3 this car, and then it would be maybe, or could be --

4 A Could be.

5 Q And then there's --

6 A Enough to include them as a possibility.

7 Q So it could be.

8 A Yes.

9 Q That's number two. And then we have number three which
10 would be some kind of wear --

11 A Yeah. It's a little bit more of a step above the
12 actual class characteristic, because you have that added
13 element of the wear, and then you have the identified.

14 Q Okay. And so, in this case it fell into that one right
15 about no, right? The could?

16 A Yes.

17 Q And you didn't make any comparisons to any other cars,
18 correct?

19 A I didn't -- I was not told of any other cars I needed
20 to make comparisons to. So no, ma'am.

21 Q And I believe you stated you issued a report, right?

22 A That's correct.

23 Q And you also said you had collected some soil from the
24 tire?

25 A Yes.

1 Q And that was not analyzed, right? On your report it
2 was not examined?

3 A It wouldn't be something that falls under my area to
4 analyze. I logged it into the laboratory. I'm not sure
5 what happened to it after that.

6 MS. BOLEN: I don't have anything further. Thank you.

7 THE COURT: All right. Thank you very much. You may
8 step down.

9 THE WITNESS: Thank you, sir.

10 (Whereupon, the witness stepped down from the witness
11 stand.)

12 THE COURT: All right. Ladies and gentlemen of the
13 jury, as I mentioned yesterday I have to be in Charlotte to
14 pick up my wife from the airport. Her flight actually got
15 pushed up, and so she's arriving at 4:00. So I need to be
16 in Charlotte at 4:00. I'll cross my fingers. We're going
17 to go ahead and break for the evening. I'm going to ask
18 that you be back tomorrow morning in the jury room, please,
19 at 9:15. Okay. The same thing I said yesterday. Please
20 don't talk about this case with anyone. We'll resume
21 tomorrow morning at 9:15 and continue with this trial. I'm
22 still very confident we are on schedule. So the afternoon
23 is yours. You have a pleasant afternoon, lovely evening,
24 and I'll see you all back tomorrow. You are excused. Thank
25 you.

1 (Whereupon, the jury exited the courtroom at 1:24 p.m.)

2 THE COURT: Is that everybody? See you all in the
3 morning.

4 MR. STUMBO: Thank you, Judge.

5 (Whereupon, proceedings adjourned at 1:24 p.m.)

6 TRIAL DAY 3-07/22/15

7 THE COURT: We'll go back on the record in *State vs.*
8 *Karlita Phillips*. The record should reflect the Defendant
9 is present with counsel. I am told that the jury is
10 present. Anything before we bring them out from the State
11 or Defense?

12 MR. STUMBO: Nothing from the State, Your Honor.

13 MS. BOLEN: Nothing from the Defense, Your Honor.

14 THE COURT: You want to go ahead and get your next
15 witness in here. I'll have the jury come on out.

16 (Whereupon, the jury entered the courtroom at 9:19
17 a.m.)

18 THE COURT: The record should reflect that the jury is
19 back and seated. Ladies and gentlemen of the jury, I trust
20 that you all had a pleasant evening last night. Thank you
21 for being back here with us. Of course, we're still engaged
22 in the case of the State vs. Ms. Phillips. And at this
23 point in time we, of course, are still in the State's case
24 in chief. So, Solicitor, if you would call your next
25 witness.

1 MR. BROWN: The State calls Dr. Brett Woodard.

2 DR. BRETT WOODARD, having been
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BROWN:

6 Q Good morning, Dr. Woodard.

7 A Good morning.

8 Q Dr. Woodard, where do you work?

9 A I work with Piedmont Pathology Associates in Anderson,
10 South Carolina.

11 Q And how long have you been there?

12 A Since 1982.

13 Q And, Dr. Woodard, what is your job description there?

14 A I'm a pathologist, and by speciality training I'm a
15 forensic pathologist with that group.

16 Q And, Dr. Woodard, to become a forensic pathologist,
17 what type of education have you received?

18 A You have to receive a Baccalaureate degree and then a
19 medical degree, and you have to do a four year residency in
20 anatomic and clinical pathology, and then you have to do
21 fellowship training and forensic pathology.

22 Q And, Dr. Woodard, where did you do your undergraduate
23 work?

24 A I went -- I got my Baccalaureate degree from the
25 University of Pittsburgh. I attended medical school and got

1 my degree from Tulane University in New Orleans. I did
2 general residency in pathology at Duke University Medical
3 Center in Durham, North Carolina, and I did forensic
4 pathology training through the North Carolina Medical
5 Examiner's Office.

6 Q And to be a pathologist in the state of South Carolina
7 do you have to be board certified?

8 A No, but you have to have a medical license.

9 Q And you are current through your medical license?

10 A Yes, I am. And I am board certified by the American
11 Board of Pathology in both anatomic clinical and forensic
12 pathology.

13 Q And after you go through school do you have to keep up
14 with continuing education?

15 A Yes, you do. You have to maintain a certain number of
16 continuing medical education courses both in general
17 pathology and then your subspeciality area. In my case,
18 forensic pathology.

19 Q Dr. Woodard, roughly how many -- if you can recall the
20 number. How many autopsies have you done over your career?

21 A I do anywhere from 200 to 300 autopsies a year. On
22 average about 250. I've done that since the early '80s.

23 Q And, Dr. Woodard, what exactly is forensic pathology?
24 What does that entail?

25 A Forensic pathologist is a special area of pathology

1 that deals with injuries and their affect of injuries on the
2 human body up into the place of death, and the causation of
3 those injuries.

4 Q Dr. Woodard, have you ever been deemed an expert in
5 forensic pathology in the courts of South Carolina?

6 A Yes, I have.

7 Q Roughly how many times?

8 A Multiple times.

9 MR. BROWN: Judge, at this time the State offers Dr.
10 Woodard as an expert in forensic pathology.

11 MS. BOLEN: Without objection, Your Honor.

12 THE COURT: Again, ladies and gentlemen, an expert
13 witness normally is not able to -- or normally a witness has
14 to give testimony about something that they've observed, but
15 in this case the parties have agreed that Dr. Woodard is an
16 expert in the field of forensic pathology. So he can give
17 opinion testimony in that area that you may use as you deem
18 appropriate.

19 Go ahead, Mr. Brown.

20 MR. BROWN: Thank you, Your Honor.

21 Q Dr. Woodard, on March 26th, did you have an opportunity
22 to perform an autopsy on Jamil Phillips?

23 A Yes. I received the body from the Abbeville County
24 Coroner's Office, and Deputy Coroner Sam Ferguson authorized
25 a complete autopsy.

1 Q And what time was that autopsy conducted?

2 A Approximately 11:30 a.m.

3 Q Dr. Woodard, how -- when you first received Mr.

4 Phillips how did the autopsy go? If you could just go

5 through --

6 A The body is received as it was discovered and

7 pronounced dead at the time. In this particular case he was

8 dressed in clothing. He had a jacket with a logo for CarMax

9 on it and he had a shirt with a logo for CarMax on it. He

10 had some khaki pants, a belt, appropriate underclothing,

11 shoes and socks.

12 We examined the clothing to see if there were any

13 defects or abnormalities with the clothing. If there were,

14 then we look specifically under those areas of defect or

15 abnormality for evidence of an injury to the surface of the

16 body. When we looked at the clothing we saw two defects.

17 One associated with the right armpit area. The other

18 associated with the right posterior hip. And underlying the

19 body we saw two defects consistent with entry wounds by

20 gunshot, and then we saw a separate gunshot across the

21 forehead.

22 Q Dr. Woodard, I want to show you what's been previously

23 marked as State's ID 33, 34, 35, 36 and 37. Take a look at

24 these and tell me if you recognize these pictures.

25 A Yes. 33 represents a general identification photo that

1 shows the clothing of the upper body, and it also shows the
2 injury to his left side of his forehead. Picture 35 shows a
3 gunshot wound to his right hip, and picture 34 shows a
4 gunshot wound that's going into the armpit area, the axilla,
5 on the right side into his chest. Then picture number 36
6 shows a relatively intact copper clad lead projectile, and
7 picture number 37 shows a badly deformed copper jacket. In
8 this particular case, that was removed from the hip area.

9 Q Dr. Woodard, do those pictures clearly and accurately
10 reflect what you saw that day during your autopsy?

11 A Yes.

12 MR. BROWN: At this time the State moves in State's ID
13 33 through 37.

14 THE COURT: Any objection?

15 MS. BOLEN: Without objection, Your Honor.

16 THE COURT: Without objection, State's 33 through 37
17 will be in evidence.

18 (Whereupon, State's Exhibit Nos. 33 through 37 were
19 admitted into evidence.)

20 Q Dr. Woodard, I'm going to give you a pointer. I show
21 you what's been marked as State's Evidence 33.

22 THE WITNESS: May I stand?

23 THE COURT: Please, go ahead. Feel free to move about,
24 Doctor, if you need to.

25 Q If you can tell me what we're seeing in that picture.

1 A This is essentially how we received the body. The
2 CarMax logo jacket, CarMax logo shirt that I spoke of. And
3 here you can see the left side of his forehead. There's --
4 right here in his left eyebrow is an entry wound, and here
5 is an exit wound along the edge of the forehead. The bullet
6 passed underneath disattached skin and then back out on this
7 edge above the temple area on the left.

8 Q Dr. Woodard, that is a photo of Jamil Phillips?

9 A That's correct.

10 Q I show you what's been marked State's Evidence 35.

11 A This represents his right hip. We've removed the
12 clothing. You can see an entry wound into the right hip
13 area here. This is our number of our autopsy for
14 identification. This bullet will go forward and fracture
15 the sacrum, and we'll recover that copper jacketed material
16 in that area.

17 Q I show you what's been marked State's Evidence 37.

18 A This, again, is our number. Identification number.
19 And here's the copper jacket material. You can see it's
20 bent back and deformed. But we removed that from the hip
21 area. The jacket material is important, because when the
22 bullet goes down the down barrel the markings, or the shape
23 of the inside of the barrel, are stamped on that material,
24 and then it can be tied back to a specific gun.

25 Q State's Evidence 34.

1 A This shows a gunshot wound going into the armpit area
2 on the right side. We see a slight scrap here in the arm.
3 This tells us the arm was somewhat lifted at the shoulder at
4 the time the gunshot wound went in because the arm's gotten
5 out of the way. And this projectile will pass through the
6 center of the chest and hit the aorta, and then pass into
7 the soft tissues of the left arm where we'll retrieve the
8 projectile.

9 Q State's Evidence 36.

10 A Again, this is our identification number. Here you see
11 the projectile. It's in really excellent condition. You
12 can see the copper material that covers the lead material of
13 the bullet.

14 Q Now, Dr. Woodard, seeing the bullets in those photos,
15 were those bullets packaged up?

16 A Yes. I placed them into hard plastic tubes, put our
17 identification label on the outside, and then sealed them in
18 a tamper proof bag. They were given to a SLED agent who
19 took them to SLED for additional evaluation.

20 Q Dr. Woodard, I want to show you what's been marked
21 State's -- for ID purposes as State's ID 47.

22 A This is a SLED evidence bag. Inside the evidence bag
23 are my two tubes that bear the number, the deceased's name,
24 some other identifying marks on the sides of the tubes, and
25 then two removed projectile. One is the intact projectile

1 and one is the jacketed material that we removed from the
2 hip area.

3 Q And again, these items were packaged up, you said, in
4 those tubes inside?

5 A That's correct.

6 Q And given to a SLED agent?

7 A And then placed in our tamper proof bag. They've
8 substituted theirs once they did their examination.

9 Q Now, Dr. Woodard, you mentioned there were three entry
10 wounds to Mr. Phillips?

11 A That's correct.

12 Q Entry wound to the rear-end, again, or to the upper or
13 lower back, what damage did that --

14 A It broke the sacrum. The sacrum is a big black bone
15 that your spinal column attaches to, and then the sacrum is
16 used as an anchor for the sides of your pelvis. It broke
17 that bone and tore some soft tissues.

18 Q And then the second gunshot wound to the lower
19 underarm?

20 A It went into the chest. Went through the upper portion
21 of the right lung through the aorta, right before the
22 branches come off that go to your arms and to your head.
23 And then went through the upper portion of the left lung,
24 broke the rib and passed into the soft tissues at the back
25 of the arm on the left side where we recovered the bullet.

1 Q Dr. Woodard, that shot and the bullet going through the
2 aorta, what would that have done to Jamil?

3 A Very quickly he would not have been able to maintain
4 enough blood pressure going to his brain so his brain could
5 tell him to stay erect. So he would have lost control of
6 his ability to stand. He would have collapsed. And then
7 over a short time period, between two maybe three minutes,
8 he would go into irreversible shock and then ultimately die
9 in five, six minutes.

10 Q Dr. Woodard, would this shot and these type of
11 injuries, is it out of -- is it normal to hear noises of
12 somebody that sustained that type of injury?

13 A Breathing, even though the person would be unconscious
14 or have -- their level of consciousness would be below, it
15 normally would -- they would continue to breath. Blood
16 would be accumulating in the lungs because of the holes the
17 bullet produced in the lungs. So there would be gurgling
18 type sounds that somebody who might be listening to them
19 might hear. Early on in the first couple of minutes the
20 person may even attempt to speak.

21 Q And based on your opinion, how long would somebody be
22 able to live after sustaining some type of wound like that?

23 A Five, six minutes if they were in excellent physical
24 condition.

25 Q Dr. Woodard, you were able to find two bullets. Those

1 were located in the lower back, or in the abdomen area, and
2 then also one in the soft tissue of the left arm. Were you
3 able to recover the third bullet?

4 A No. That bullet passed. It went into the skin right
5 above the eyebrow, passed underneath the skin over the
6 surface of the skull, and then came out the temple area. It
7 would have produced a concussive type blow. A hit to the
8 head. But it didn't fracture the skull and it didn't bruise
9 the underlying brain. So it wouldn't have produced instant
10 unconsciousness, but it would have been a stunning injury.
11 It would be at least equivalent to a reasonable blow to the
12 head.

13 Q Dr. Woodard, based on a reasonable degree of medical
14 certainty, do you have an opinion as to the cause of death
15 in this case?

16 A Yes. The gunshot wound to the chest which resulted in
17 the hole in the aorta and that he died by hemorrhage, blood
18 loss into the chest cavity.

19 Q How did you rule this death?

20 A A homicide.

21 MR. BROWN: No further questions.

22 THE COURT: Any questions?

23 CROSS-EXAMINATION

24 BY MS. BOLEN:

25 Q Dr. Woodard, as part of your autopsy you also get a

1 decedent's height and weight, correct?

2 A That's correct.

3 Q And in this case the height was a little bit over six
4 feet?

5 A Yeah. It was 72 and a half inches, so just a hair over
6 six feet.

7 Q And the weight was?

8 A Approximately 300 pounds.

9 MS. BOLEN: Thank you. Nothing further.

10 THE COURT: Thank you, Doctor, you may step down.

11 (Whereupon, the witness stepped down from the witness
12 stand.)

13 THE COURT: Call your next -- no objection to excusing
14 Dr. Woodard?

15 MS. BOLEN: No objection, Your Honor.

16 THE COURT: Sir, you are free to go. Call your next
17 witness, please.

18 MR. BROWN: The State calls Kenya Griffin.

19 KENYA GRIFFIN, having been first
20 duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. BROWN:

23 Q Good morning, Officer Griffin.

24 A Good morning.

25 Q Where do you work?

KENYA GRIFFITH-DIRECT EXAMINATION

234

1 A The Greenwood City Police Department.

2 Q And how long have you been with Greenwood City?

3 A For 12 years.

4 Q And what are your duties there at Greenwood City?

5 A I'm the crime scene evidence technician.

6 Q And how long have you been the crime scene evidence
7 technician?

8 A For a little over seven years.

9 Q Now, Ms. Griffin, you didn't have any involvement in
10 the Abbeville investigation --

11 A No.

12 Q -- that we're here for today, right?

13 A No.

14 Q Ms. Griffin, did you have on occasion to investigate a
15 case out of Greenwood County concerning Tavarious Settles?

16 A Yes, sir. I did.

17 Q And when did that case -- what was the nature of that
18 case?

19 A It was a murder investigation.

20 Q And when did that murder investigation begin?

21 A May the 30th of 2013, I believe.

22 Q And who -- do you know who -- what was the
23 circumstances in that case?

24 A There was a Hispanic male that was walking alone, I
25 believe it was Franklin Street in the city limits of

1 Greenwood. He was robbed and shot and he succumbed to his
2 injuries.

3 Q Now, as part of your investigation on the Greenwood
4 case were DNA samples taken from Mr. Settles?

5 A They were, yes.

6 Q When was that sample taken from Mr. Settles?

7 A Looks like September 27th, 2013.

8 Q And were those samples -- what would you call that
9 sample?

10 A It's called a buccal swab.

11 Q And how do you obtain those samples?

12 A We just take a sterile Q-tip and swab inside of the
13 cheeks.

14 Q And after you swab inside the cheeks what do you do
15 with that Q-tip?

16 A It's put into what's called a swab box, which basically
17 is just a little slender cardboard box and then it's sealed
18 into an envelope.

19 Q Were these -- or was this swab ever taken to SLED?

20 A They were. Yes, sir.

21 Q When was it taken to SLED?

22 A October the 4th, 2013.

23 Q Do you have a SLED lab number?

24 A Yes, sir. I do. SLED lab number is L13-07501.

25 Q And that was the buccal swab of Tavarious Settles' DNA?

1 A That's correct.

2 Q When you took it down to SLED -- you said what date did
3 you take it to SLED?

4 A October the 4th, 2013.

5 Q Do you know who you turned it over to?

6 A It was given to Amy Stephens in the SLED login
7 department.

8 Q Now, Ms. Griffin, the case we're talking about in
9 Greenwood County, has that case been court?

10 A Yes, sir. It has.

11 Q And do you know the outcome of that case?

12 A Mr. Settles was found guilty.

13 Q Of?

14 A Murder.

15 Q I'm going to show you -- show you what's been marked
16 for ID purposes State's ID 48. Take a look at that and tell
17 me what that is.

18 A These are the buccal swabs from Mr. Settles.

19 Q And how do you know those are buccal swabs?

20 A These are my initials and the date on the back, and
21 also my handwriting that has his name and date of birth on
22 the front of the envelop.

23 Q And are those the items that you sent down to SLED on
24 October 4th, 2013?

25 A That's correct.

1 Q And that -- tell me again what that lab number is.

2 A It's L13-07501.

3 MR. BROWN: No further questions.

4 THE COURT: Cross.

5 CROSS-EXAMINATION

6 BY MS. BOLEN:

7 Q Ms. Griffin, the murder that you took the buccal swab
8 from Tavarious Settles in, that's unrelated to this, right?

9 A Correct.

10 Q And it was -- you said it took -- it was -- the murder
11 was somewhere around May, 2013?

12 A That's correct.

13 MS. BOLEN: Thank you.

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

15 (Whereupon, the witness stepped down from the witness
16 stand.)

17 THE COURT: Call your next witness.

18 MR. STUMBO: Thank you, Judge. The State calls
19 Detective Nick Marshall to the stand.

20 NICK MARSHALL, having been first
21 duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. STUMBO:

24 Q Good morning, Detective Marshall.

25 A Good morning, Mr. Stumbo.

1 Q I take it from that star on your chest you work with
2 the Sheriff?

3 A Yes, sir.

4 Q What do you do for the Sheriff of Abbeville County?

5 A I am an investigator for the Sheriff's Office in
6 Abbeville.

7 Q How long have you been working at the Sheriff's Office?

8 A I'd say about five years.

9 Q The time you've been there, did you start out as a
10 detective -- or tell the jury about what you've done there
11 --

12 A Well, I actually started out working in the jail, and
13 worked there for a while. The previous Sheriff gave me an
14 opportunity to go on the road, which I did complete the
15 Academy. Went on the road for a couple of years. And then
16 requested to go in investigations and they gave me an
17 opportunity to get in there and prove myself. So that was
18 about three years ago.

19 Q So you've been in investigations for about three years?

20 A Yes, sir.

21 Q What kind of cases have you investigated?

22 A with the caseload we had, we investigated larcenies,
23 burglaries, assaults, domestics, murders. You name it, we
24 get it. It's -- you know.

25 Q One of the murders you were able to investigate was the

- 1 one involving Jamil Phillips as the victim?
- 2 A Yes, sir.
- 3 Q Where did that occur at?
- 4 A It was at [REDACTED].
- 5 Q That's out in the county towards Hodges?
- 6 A Yes, sir. Just past Stevenson road headed down there
- 7 toward your way to Hodges.
- 8 Q When did this homicide occur?
- 9 A This would have been on March 25th, 2013.
- 10 Q What time of day?
- 11 A It was at night. Based on what I was told by people on
- 12 the scene, it was estimated to be around 10:00, 10:15 that
- 13 night.
- 14 Q About what time did you get there?
- 15 A I don't recall exactly what time I got there, but it
- 16 couldn't have been shortly thereafter because I live within
- 17 miles of the incident location, so...
- 18 Q You heard it go out over the radio?
- 19 A I got called by dispatched and they advised me I needed
- 20 to respond.
- 21 Q Describe for the jury the scene that you find when you
- 22 get there at [REDACTED].
- 23 A Well, when I responded there was already responding
- 24 officers on scene. They had started a crime scene log, just
- 25 to keep track of who's coming in and out, what time they get

1 there, and stuff like that. I could see from the road when
2 I pulled up a human being laying on the front porch. To the
3 right side of the front porch. I was already advised by
4 Coroner Ronnie Ashley that this victim was deceased at that
5 time.

6 Q And did you find out who it was that was deceased?

7 A Yes, sir. It was Jamil Phillips.

8 Q How was he related to the homeowners there?

9 A He is the son -- one of the sons of the homeowners, Mr.
10 and Mrs. Phillips, that live there.

11 Q What's already in evidence as State's 2 through 9. I'm
12 just going to show those to your briefly, if you want to
13 look at them. Just let me know when you're done.

14 A Yes, sir. I'm done.

15 Q Do those fairly and accurately depict what you saw that
16 night at the scene?

17 A Yes, sir.

18 Q I'm also going to show you here on the screen,
19 Detective Marshall, what's been marked as State's 44. It's
20 already in evidence. Who worked the crime scene that night?

21 A We secured it for SLED. SLED came down. Was requested
22 by Ronnie Ashley to come down and process the scene.

23 Q And obviously what was just on the screen, you didn't
24 produce that image, did you?

25 A No, sir.

1 Q And that's part of the investigation though? SLED
2 produced that?

3 A Yes, sir.

4 Q While you were on the crime scene that night did you
5 have opportunity to interact with some of the SLED agents?

6 A Yes, sir. I did.

7 Q Did you have an opportunity to observe the items of
8 evidence that were being taken by the SLED agents?

9 A Yes, sir.

10 Q Were you able to interview witnesses?

11 A Yes, sir. I was.

12 Q Did you interview the family members?

13 A I did. Yes, sir.

14 Q And based on the information that had been gathered
15 early on in the crime scene, did you have any suspects early
16 on in this case?

17 A I wouldn't necessarily say that we had a definite
18 suspect.

19 Q Persons of interest maybe?

20 A Maybe a person of interest. Yes, sir.

21 Q Who were those?

22 A That would have been Karlita Phillips.

23 Q And were there descriptions given by neighbors of a car
24 at the scene?

25 A Yes, sir.

1 Q How did they describe this car?

2 A Well, I actually spoke with -- well, I didn't speak to
3 him myself. I spoke with Lieutenant Smith. He was one of
4 the responding officers, Ken Smith with the Sheriff's
5 Office. He had spoken with a neighbor that actually lives
6 just across -- if you're standing in front of the incident
7 -- on the front porch, you could look across and see Mr.
8 Charles Scroggs' house. After I spoke with Mr. and Mrs.
9 Phillips in the home, I spoke with Lieutenant Smith who
10 advised me that he had spoken with Mr. Charles Scroggs
11 before I got there and stated that around 9:30-ish that
12 night Mr. Scroggs told him that he had left out of his home,
13 and when he did --

14 MS. BOLEN: Your Honor, at this point I am objecting as
15 to hearsay.

16 Q And maybe we can back up here a little bit,
17 Investigator Marshall. We'll ask another question. Based
18 on the information you received, was there a car you all
19 were looking for?

20 A There was. Yes, sir.

21 Q And what kind of car was that?

22 A What was described to me by different people as either
23 a silver car or a light in color car.

24 Q And you said Karlita Phillips was a person of interest
25 here. Was that a name given by family members to you?

1 A Yes, sir.

2 Q Was there a connection made to a light colored car that
3 she may have been driving?

4 A I don't remember anybody telling me that she drove a
5 light colored car. But I did speak with one of the victim's
6 brothers, Kareem Phillips.

7 MS. BOLEN: Your Honor, again, I would just object as
8 to hearsay.

9 THE COURT: Sustained. We need to shy away from there
10 unless you can give me an exception.

11 MR. STUMBO: Understood, Judge.

12 Q Did you go to Greenwood that night?

13 A Yes, sir. We did.

14 Q Who were you looking for in Greenwood?

15 A I was with SLED Agent Michael Collins.

16 Q You were with Agent Collins. Who were you looking for?

17 A Looking for Ms. Karlita Phillips.

18 Q And where did you go to look for her?

19 A We went to an apartment on [REDACTED]. We had --
20 I had actually run her information through dispatch while I
21 was on the scene and got her address. She lived in an
22 apartment on [REDACTED] in Greenwood County.

23 Q You were with SLED Agent Collins at that point?

24 A Yes, sir.

25 Q He was already involved in the case?

NICK MARSHALL-DIRECT EXAMINATION

244

1 A Yes, sir. He had arrived a short time later. He was
2 one of the field agents working the case.

3 Q When you get to the address at [REDACTED], tell the
4 jury what you did?

5 A So we pulled up. Like I said, I had already run her
6 information through DMV, South Carolina Department of Motor
7 Vehicles, and I had found that she had, among other
8 vehicles, a 2004 Toyota Camry registered to her. When we
9 got -- and they gave me the tag number for the car. When we
10 got there we pulled up to where her apartment was, and we
11 actually did see this car parked out front. In front of the
12 apartment. I verified it with the tag number that I had
13 already been given, which was on the vehicle.

14 Q So that vehicle was parked outside of the apartment?

15 A Yes, sir.

16 Q Was there anything of significance that you saw on the
17 outside of that vehicle at that time?

18 A Nothing that I saw.

19 Q Detective Marshall, what were the conditions at the
20 scene? What were the weather conditions?

21 A It was very cold. It was a very cold night. And dew
22 had started to set in the grass. And we actually had -- I
23 believe we had some rain the night -- or the day before, so
24 the ground was still kind of wet.

25 Q Was it muddy anywhere?

1 A Yes, sir.

2 Q I'm going to show you what's already in evidence as
3 State's 21, 22, 23. What's in those pictures?

4 A This is Ms. Phillips' car. The Toyota Camry.

5 Q The same one you saw outside the apartment that night?

6 A Yes, sir.

7 Q It was at night. What time did you get there at the
8 apartment?

9 A We -- SLED arrived on scene around 12:30. So it was
10 between there and -- it could have been between there and
11 3:00 maybe that morning. Sometime between there. But I'm
12 not exactly sure exactly what time we got to the apartment.

13 Q Is there anything that you and/or Agent Collins were
14 looking for on the car?

15 A Yes, sir. They were looking for any kind of like mud
16 or dirt that may have been slung up on the vehicle.

17 Q And that was based on what?

18 A That was based on -- well, like I was saying when I was
19 on the scene, before we had went to Greenwood, through
20 speaking with the neighbors and whatever I actually had gone
21 -- there's a property that sits next to the incident
22 location, [REDACTED]. It's a big lot. And I had
23 observed along the tree line that separates these two
24 properties tire tracks in the grass. And also, where this
25 property meets the road there's like an asphalt pull-off.

1 And in that pull-off there was actually -- there was wet
2 dirt. And I had -- I had observed for myself very prominent
3 tire tracks in the dirt. In the wet dirt, wet mud.

4 Q Did they appear to be fresh?

5 A Yes, sir.

6 MS. BOLEN: Your Honor, just for the record, I just
7 want to renew our objection.

8 THE COURT: You are protected.

9 MS. BOLEN: Thank you, Your Honor.

10 Q Now, did you observe any of that? Anything of note on
11 the outside of her car when you saw it in the parking lot
12 that night?

13 A That night I myself did not look on it to see that.

14 Q Now, did anybody answer the door at the apartment?

15 A Yes, sir.

16 Q Tell the jury about how that went.

17 A So we pulled up at Ms. Phillips' apartment. Like I
18 said, we verified that the vehicle was hers. The lights
19 inside the apartment were on, and Agent Collins went to the
20 front door to try to get contact with somebody. I did go
21 around to the backside of the apartment. You know, we
22 stayed out there for a few minutes, you know, trying to get
23 somebody to the door. Couldn't get anybody to answer.
24 Agent Collins was announcing himself as state law
25 enforcement while he was knocking. A short while later the

1 lights turned off, and I did call Greenwood dispatch to
2 request a marked unit to come over there with us. One of
3 their guys. Because we were out of our -- I was out of my
4 jurisdiction, but I was a SLED agent. A short time after
5 that, when I called them, they advised me that Ms. Phillips
6 was actually on the phone with them at the same time. But a
7 marked unit did eventually come to the apartment with us and
8 we did get her to the door.

9 Q How long did that take for all of that to happen?

10 A It could have been 30 minutes. Thirty, 35 minutes.

11 Q At least 30 minutes?

12 A I would say at least thirty minutes.

13 Q When the marked unit came Ms. Phillips answered the
14 door and you were able to -- she did let you all into the
15 apartment?

16 A Yes, sir.

17 Q Did you and Agent Collins speak with her at that point?

18 A Yes, sir. We did.

19 Q Was she --

20 MS. BOLEN: Just renewing our previous objection.

21 Q Was she arrested at that point?

22 A No, sir.

23 Q Had you -- I mean, she wasn't in handcuffs or anything?

24 A No, sir.

25 Q She was in her own home?

1 A Sitting on her furniture in the livingroom.

2 Q At that point in this case if she had asked you all to
3 leave what would you have done?

4 A We would have left.

5 Q She gave you all a statement?

6 A Yes, sir. She did.

7 Q I'm going to show you for State's ID purposes as
8 Exhibit 1A. Do you recognize that document?

9 A Yes, sir. I do.

10 Q And is this a statement she wrote out for you all that
11 night?

12 A Yes, sir. It is.

13 Q At the top of that statement, what's in the printed
14 portion, not her handwritten portion, could you read that
15 for the jury?

16 A Yes, I will. "A person who identified himself as SLED
17 Agent Michael Collins duly warned and advised me and I know
18 and understand that I have the following rights. That I
19 have the right to remain silent and I do not have to answer
20 any questions or make any statements at all. That any
21 statement I make can and will be used against me in a court
22 of law for the offense or offenses concerning which the
23 following statement is hereinafter made. That I have the
24 right to consult with a lawyer of my own choice before or at
25 any time during any questioning or statements I make. That

1 if I cannot afford to hire a lawyer I may request and have a
2 lawyer appointed for me by the proper authority before or at
3 any time during any questioning or statements that I make
4 without cost or expense to me. That I can stop answering
5 any questions or making any statements at any time that I
6 choose and call for the presence of a lawyer to advise me
7 before continuing any more questioning or making any more
8 statements whether or not I have already answered some
9 questions or make some statements. I do not want to talk to
10 a lawyer and I hereby knowingly and purposely waive my right
11 to remain silent and my right to have a lawyer present while
12 I make the following statement to the aforesaid person.
13 Knowing that I have the right and privilege to terminate any
14 interview at any time hereafter and have a lawyer present
15 with me before answering any more questions or making any
16 more statements if I choose to do so. I declare the
17 following and voluntary statement is made of my own free
18 will without promise or hope of reward without fear or
19 threat of physical harm, without coercion, favor, without
20 leniency or offer of leniency by any person or persons
21 whomever."

22 Q And then the handwritten portion of that statement is
23 written in whose handwriting?

24 A That would be Karlita Phillips' handwriting.

25 Q And did she sign the statement?

1 A Yes, sir.

2 Q Is your signature on there anywhere?

3 A Yes, sir. Down here as a witness.

4 Q Is this a fair and accurate copy of the statement that
5 you got that night?

6 A Yes, sir.

7 MR. STUMBO: Judge, we'd offer State's Exhibit 1A into
8 evidence at this time.

9 THE COURT: Subject to the earlier objection last week?

10 MS. BOLEN: Yes, sir.

11 THE COURT: Very good. It is in evidence.

12 (Whereupon, State's Exhibit No. 1A was admitted into
13 evidence.)

14 Q Let's go ahead and read what she wrote for the jury,
15 please, Detective Marshall.

16 A Yes, sir. It states, "I woke up around 12:35 p.m.
17 Around 2:30 p.m. left with daughter. We went to Greenwood
18 County Sheriff. Got incident report for break-in that
19 occurred in Apartment --" I can't read that word. I can't
20 read that word.

21 Q That's fine.

22 A "Around --" oh, it says went. "Went around to local
23 pawn shops and went to Chick-fil-A and Captain D's. Came
24 back home. Watched TV. Then me and daughter went up and
25 down driveway teaching her to drive. Been in house watching

1 TV. Was in and when police was knocking at door called
2 Greenwood County Sheriff and let them in and talking about
3 what occurred in Abbeville County. I've been at home scared
4 to leave my aunt home alone. Apache Gun and Pawn, Greenwood
5 Pawn Brokers, Lakeland's Gun and Pawn, we buy -- we buy gold
6 pawn shop up - alley. I did not go -- I did not go
7 Abbeville, South Carolina on the night in question. I do
8 not have any knowledge of anyone shooting Jamil Phillips and
9 no one borrowed my car."

10 Q The last line was no one borrowed my car?

11 A Yes, sir. That's correct.

12 Q Thank you. Did you stay on this case after that point?
13 After the night of the incident?

14 A My involvement was not as direct as I would say SLED's
15 involvement. I was aware of things that were going on with
16 it, but --

17 Q Okay. You stayed involved though? Is that --

18 A Yes, sir.

19 Q -- fair to say? Who was the lead agency --

20 A SLED was the lead agency.

21 Q Did you participate in any other interviews with the
22 Defendant, Karlita Phillips?

23 A Yes, sir. I did.

24 MR. STUMBO: Beg the Court's indulgence.

25 THE COURT: Yes, sir.

1 Q What date was the next time that you interviewed Ms.
2 Phillips?

3 A My next encounter with her would have been on December
4 18th, 2013.

5 Q Where did that take place?

6 A This would have been at the Abbeville County Sheriff's
7 Office.

8 Q And at that point was she in custody?

9 A Yes, sir. She was.

10 Q She had been charged?

11 A Yes, sir.

12 Q Who interviewed Ms. Phillips on December 18th?

13 A It would have been myself and Captain Natalie Talbert
14 with the Abbeville County Sheriff's Office.

15 Q On the 18th were you able to advise Ms. Phillips of her
16 Miranda rights?

17 A Yes, sir. She was advised of her Miranda rights.

18 Q I'm going to hand you what's been marked for ID as
19 State's 49. Do you recognize that document, Detective
20 Marshall?

21 A Yes, sir. I do.

22 Q What is that?

23 A This is the Miranda form that we filled out and
24 presented to her and had her sign. Read to her.

25 Q Did you read her her rights?

1 A I did not. Captain Talbert did.

2 Q Were you there when Captain Talbert --

3 A Yes, sir. I was present during that time.

4 Q What rights were read to Ms. Phillips?

5 A A statement of Miranda rights. "You have the right to
6 remain silent. Anything you say can and will be used
7 against you in a court of law. You have the right to talk
8 to a lawyer. If you cannot afford to hire a lawyer one will
9 be appointed to represent you before any questions, if you
10 wish. You can decide at any time to exercise these rights
11 and not answer any questions or make any statements."

12 Q Okay. And did she appear to understand her rights?

13 A Yes, sir.

14 Q Did she exercise her right to a lawyer?

15 A No, she did not.

16 Q Did she exercise her right to remain silent?

17 A No, she did not.

18 Q Did she initial those on that page?

19 A Yes, sir.

20 Q Who signed it at the bottom?

21 A My Captain, Captain Talbert, signed it, and I also
22 signed it. And she signed it here as well.

23 MR. STUMBO: Judge, we move State's 49 into evidence.

24 THE COURT: Subject to the earlier objection?

25 MS. BOLEN: Yes, sir.

1 THE COURT: State's 9 is in evidence.

2 MR. STUMBO: It's 49, Judge.

3 THE COURT: Sorry. 49? State's 49 is in evidence.

4 (Whereupon, State's Exhibit No. 49 was admitted into
5 evidence.)

6 Q I'm going to hand you what's been marked as State's 50.
7 After the 18th did you have an opportunity to review Ms.
8 Phillips?

9 A Yes, sir.

10 Q When was that?

11 A That would have been December 19th, 2013.

12 Q And were her rights read to her again?

13 A Yes, sir.

14 Q Did she appear to understand them?

15 A Yes, sir.

16 Q Did she exercise her right to a lawyer?

17 A No, sir. She did not.

18 Q Did she appear to understand those rights as they were
19 read to her?

20 A Yes, sir.

21 Q And what were those rights again, if you could --

22 A State Miranda rights. "You have the right to remain
23 silent. Anything you say can and will be used against you
24 in a court of law. You have the right to talk to a lawyer.
25 If you cannot afford to hire a lawyer one will be appointed

1 to represent you before any questions, if you wish. You can
2 decide at any time to exercise these rights and not answer
3 any questions or make any statements."

4 Q Did she appear to understand those rights?

5 A Yes, sir.

6 Q And who's signature is on the bottom of that --

7 A Ms. Phillips. Karlita Phillips, and my signature.

8 Q This is, I believe, the original of that waiver form --

9 A Yes, sir. I believe so.

10 Q -- out of your file?

11 MR. STUMBO: We move State's 50 into evidence, Your
12 Honor.

13 THE COURT: State's 50 is just the Miranda form?

14 MR. STUMBO: It is.

15 THE COURT: Okay. Subject to your earlier objections,
16 State's 50 will be in evidence.

17 (Whereupon, State's Exhibit No. 50 was admitted into
18 evidence.)

19 Q Now, during these interviews on the evening of the 18th
20 and the morning of December 19th, 2013, who were -- who was
21 asking the questions? Who was talking to Ms. Phillips?

22 A Both myself and the Captain. Captain Talbert.

23 Q Did you all record either of these interviews, or both
24 of them?

25 A Yes, sir. We recorded both interviews.

1 Q How did you record them?

2 A I used my county issued -- it's like a little Sony
3 digital recorder.

4 Q And did that document from beginning to end both
5 interviews of Karlita --

6 A Yes, sir.

7 Q How long did these interviews last?

8 A They're very long. I believe the first one is just shy
9 of three hours long.

10 Q The one on the 18th that was --

11 A Yes, sir.

12 Q -- three hours?

13 A Yes, sir.

14 Q How about the one on the morning of the 19th?

15 A I want to say it's over two hours long as well.

16 Q And as part of those audio recordings, is there any
17 dead time during either one of those interviews?

18 A In both really, yes. But the majority of the dead
19 space is in the second one. It would be the 19th.

20 Q And what's going on during the dead space?

21 A It would be when Ms. Phillips is filling out a
22 statement form.

23 Q And would it be fair to say two plus hours of that
24 video, a good portion of that was silence with her writing
25 out the statement for you all?

1 A Yes, sir.

2 Q And Captain Talbert also was there with you for the
3 taking of that written statement --

4 A Yes, sir.

5 Q -- on the 19th? You mentioned the audio recordings.

6 I'm going to show you what's been marked just for ID at this
7 point as State's 2A. Do you recognize that disk?

8 A Yes, sir.

9 Q Does it have anybody's initials on the front of it?

10 A It has mine and Captain Talbert's initials on the
11 front.

12 Q You had an opportunity to review the contents?

13 A Yes, sir.

14 Q Does it fairly and accurately depict the interviews on
15 the 18th and the 19th?

16 A Yes, sir.

17 Q And this would be just five hours -- or five hours
18 worth of --

19 A Yes, sir.

20 Q -- audio recordings?

21 MR. STUMBO: Your Honor, we'd offer 2A into evidence at
22 this time, although we're not publishing it. But we would
23 move it into evidence.

24 THE COURT: All right. Very good. Ladies and
25 gentlemen of the jury, I do need to address one point of law

1 with the attorneys involved in this, and it's probably a
2 good time for a break because you've been there roughly an
3 hour. So we'll go ahead and take a brief break, and I hope
4 to have you back out here in 10 minutes. Okay? Don't
5 discuss the case.

6 (Whereupon, the jury exited the courtroom at 10:11
7 a.m.)

8 THE COURT: You may step down.

9 THE WITNESS: Okay, thank. You.

10 (Whereupon, the witness steps down from the witness
11 stand.)

12 THE COURT: The record should reflect that the jury is
13 out. Solicitor, just one point of clarification. Are you
14 introducing this -- the way you seem to be moving State's 2A
15 into evidence, is it your intention that the jury have
16 access to this, or are you simply making it an exhibit for
17 identification purposes for future reference? Because this
18 is the tape that we had that email exchange about over the
19 weekend and we haven't addressed redaction or anything like
20 that.

21 MR. STUMBO: That's correct, Judge. I was moving it in
22 essentially -- as I said, not publishing it. Because
23 ultimately I think there's a number of ways you can play it
24 and not have -- and do redactions. If that makes sense.
25 You can play a tape out in open court, kill the volume

1 during the periods where we're redacting, and then cut it
2 back on when it's coming on. I mean, that's one way to do
3 it.

4 I'll be honest with you, Judge, we don't have very
5 sophisticated audio and video editing software, that I know
6 of, in my office. I've done it that way before. I've also
7 done it where other agencies have cut up the tape for us.

8 Essentially though, Judge, as you suggested in, I
9 believe, our chambers conference the other day, that it
10 would be introduced, not published. If it's ultimately used
11 by Defense counsel in cross-examination, or in their case in
12 chief, they can play specific portions out of it. If the
13 jury ultimately wants to hear the evidence when it's -- when
14 they're deliberating because it's in evidence, then I think
15 at that time we would have the times that have been noted by
16 the Defense, the ones that we can agree on, where we just
17 kill the volume during those portions of the audio.

18 That would be my preference, Judge, because it's
19 certainly evidence in the case. It's five hours worth of
20 audio that, quite frankly, I don't think it needs to be
21 played.

22 THE COURT: I don't disagree with you. I understand -

23 MR. STUMBO: To be efficient with our time.

24 THE COURT: I do understand what you're suggesting. My
25 concern is -- obviously I don't want to send a CD-ROM back

1 to the jury room and then give them the capacity to play an
2 unredacted CD-ROM. Obviously by telling them that there's a
3 recording here that has five hours of stuff on it, I think
4 that you may have peaked their interest, Solicitor, and it's
5 entirely possible that at some point in the future, perhaps
6 even during their deliberations, they're going to request to
7 hear the tape.

8 MR. STUMBO: Correct.

9 THE COURT: And that's of concern to me, because
10 obviously I have not addressed any of the arguments that Ms.
11 Bolen made concerning --

12 MR. STUMBO: In my suggestion --

13 THE COURT: -- redaction.

14 MR. STUMBO: I'm sorry, Judge. Just my solution to
15 that problem would be if it were requested to be played, we
16 would need to do that in open court to insure that the
17 portions that the Defense has asked for it to be redacted,
18 the volume would be killed during those times, if that makes
19 sense. A number of trials I've had before where that's the
20 way we've actually redacted a disk in its entirety is we've
21 just killed the volume during those portions of the audio
22 and, you know, turn the speakers back up during the times --
23 time of the audio as it's being played. And obviously, we
24 have very specific minutes and times that are being cut out.
25 That should not be difficult to do.

1 THE COURT: All right. Ms. Bolen has already indicated
2 to us the minutes and times that she feels need to be
3 redacted. My concern in doing it the way that you suggest,
4 Solicitor, is it gives the impression that the Court, or
5 that somebody here is trying to keep something from the jury
6 or hide something from the jury. It flows a lot more
7 smoothly if those sections can actually be edited out. And
8 with the ample dead time that is on the CD, what I would
9 suggest is that you perhaps get your IT person this evening
10 to take a look at typing this up and perhaps --

11 MR. STUMBO: Well, Judge, I understand your concerns
12 there. I don't think we have the software currently to do
13 it. I mean, I could -- and I know there's a Defense motion
14 asking for it to be redacted. I mean, I don't mind if they
15 do the editing on it. I mean, I understand your concerns,
16 Judge.

17 THE COURT: There's an app or a tool that I think you
18 could use. It's called Audacity that perhaps could be used
19 to redact the audio. And it's free.

20 MR. STUMBO: Well, that's good. That's good to know.

21 THE COURT: I have it on good authority from someone
22 that it is of no cost and is very useful. So I'm going to
23 hold off admitting State's 2A for the reasons that we've
24 discussed. And again, there might be portions, Solicitor,
25 that you take issue with. There may be portions that the

1 Defense wants out that you might feel are entitled to be in,
2 and the Court might agree with you. And if you're just
3 telling me, okay, we're agreeing with everything that
4 they're objecting to, then that's perfectly fine. Just edit
5 out all that stuff and take out the dead time and we're
6 okay, if there is no need for me to address those questions.

7 We'll be at ease for a few -- anything that you all
8 wanted to bring up, Ms. Bolen?

9 MR. STUMBO: Judge, the only other thing would be at
10 some point through Detective Marshall or Captain Talbert
11 we'll be introducing the four page written statement.

12 THE COURT: Correct.

13 MR. STUMBO: Of course, we talked about redactions on
14 that. I think Ms. Bolen mentioned a few places, but we
15 never really settled on what was and was not -- or what
16 needed to be redacted, I guess, under the Court's ruling.
17 So I guess we can do that during the break.

18 THE COURT: Sure. Let's do it this way. Stuff that
19 you guys can agree on -- and you know which way I've gone or
20 which way I'm leaning on these kinds of issues. You all get
21 together, or take a look at what her suggested redactions
22 are. She wanted some additional time anyway on Monday. She
23 asked for a little bit more time to double check and make
24 sure that she's hit all the spots she feels are improper.
25 So I'll give you guys a few moments to go over that. And if

1 you can agree to some portions, then that's fine, and then
2 we'll hear from all concerned on those items that are in
3 dispute. The portions that are in dispute.

4 We'll be at ease.

5 (Whereupon, a brief recess was held.)

6 (Whereupon, State's Exhibit No. 3A was marked for
7 identification.)

8 THE COURT: Mr. Brown is not here. He is basically --
9 as the Solicitor said a moment ago off the record, on the
10 fourth page of the statement dated December the 19th, six
11 lines from the bottom, we discussed in chambers that the
12 statement -- and I'm just going to read it. "Even the
13 Sheriff believed I didn't pull the trigger. I took him to
14 the house. I got the ball rolling, as one Sheriff said."
15 That will -- the phrase "as one Sheriff said," and "I didn't
16 pull the trigger, I took him to the house, I got the ball
17 rolling, as one Sheriff said," all that will be admissible.
18 That portion is not going to be redacted. And that was my
19 ruling in chambers over the objections of the Defense. The
20 Defense's position was essentially that -- go ahead and put
21 your objection on the record.

22 MS. NELSON: Yes, sir. Just for the record, our
23 position -- in listening to the audio in context with this
24 statement, our position was that Ms. Phillips was merely
25 regurgitating something that had been said to her. I

1 understand the Court views it differently the way it is
2 written. But that was our position and the reason for our
3 objections is that sentence, or two sentences coming in.
4 But we understand your ruling.

5 THE COURT: All right. And obviously I'm just reading
6 this as it is written, and if there is any explanation that
7 can be offered for it, it would behoove someone to clarify
8 that. But I'm not in a position to discuss weight or
9 address the weight or accuracy of what was written. I'm
10 simply addressing what was written and what is admissible
11 based upon what was written.

12 The other portions of this statement of December the
13 19th, the parties agreed on portions to be redacted and
14 those parts are being blocked -- blackened out.

15 I'm going to ask that we introduce as a Court's exhibit
16 an unredacted version of the voluntary statement. So I'm
17 going to hand my copy up to the clerk and ask that --

18 MR. STUMBO: Judge --

19 THE COURT: -- she staple it and hand it to the court
20 reporter.

21 MR. STUMBO: I would say that it's already in as
22 State's 3A that we talked about in chambers -- or in our
23 *Jackson v. Denno* hearing last week. If we want to use that
24 as the copy that Ms. Scott already has in evidence. I think
25 it's in the record.

1 THE COURT: Very good.

2 MR. STUMBO: Judge, just to clarify, too, while we're
3 waiting on Mr. Brown to get back in the room. Our position,
4 just for the record, on the statement is the Defense
5 objected to on page four. Just essentially that "I took him
6 to the house. I got the ball rolling as one Sheriff stated
7 would just be an affirmative statement. And that was our --
8 I know Your Honor is ruling for us on that, but just for the
9 position that we argued in chambers. But essentially it's
10 not -- there's no, I don't think, inherent reference there
11 to any inadmissible hearsay, I guess the best way to argue
12 that.

13 THE COURT: And as I explained in chambers, obviously
14 the question has no context independent of the answer. The
15 question means nothing and cannot be used as evidence
16 independent of an answer. So for example, if I was
17 approached by law enforcement and they said that I had
18 conspired with person X to rob a store, if I say that's
19 nonsense and I deny that, then the question does not -- the
20 question cannot be used as substantive evidence. Obviously
21 the question itself can't be used as substantive evidence.
22 However, if I were to admit that I did conspire with person
23 X to rob a store and affirmatively agreed that that is a
24 true statement, then that would be able to be used against
25 me as substantive evidence. So that's the reasoning behind

1 my thought. My ruling.

2 Additionally we discussed in chambers the videotape and
3 basically I think we were all in agreement that the
4 videotape is unintelligible. The audio. We cannot hear
5 what is said on that tape. I intend to allow that to be
6 introduced just as an exhibit but not for purposes of
7 allowing the jury to review it, because we all agree that it
8 is unintelligible. When that witness testifies, if you all
9 want to go into that, that's perfectly fine, but I do not
10 want to be put in a position of having to play two hours of
11 a videotape where you cannot hear what is said just because
12 the jury is curious and feels like maybe they would want to
13 watch it. So since everybody is in agreement we can't hear
14 what's being said on that tape, I'm going to allow it to be
15 an exhibit, but not to go back to the jury and -- if that's
16 -- if there's any objection to that, you all let me know.

17 MR. STUMBO: And just for the record, Your Honor, to
18 make clear, we do believe the SLED Agent's words can be
19 ascertained very clearly. Words of the Defendant are not.
20 And quite frankly, because of that, Judge, despite our best
21 efforts and use of equipment to try to ascertain essentially
22 unintelligible language by the Defendant in this videotape,
23 that we were not intending to play it anyway because of
24 that. I think it would be effort and frustration for the
25 jury and for the Court and, quite frankly, not a very good

1 use of our time.

2 THE COURT: If you cannot hear her answers, then
3 there's nothing relevant on the tape.

4 MS. BOLEN: That's our position, Your Honor, that
5 hearing just the investigator -

6 MR. STUMBO: And essentially, since there's two written
7 statements that from it, it would, in our minds, be the best
8 evidence that resulted from that particular interview.

9 MS. NELSON: And I'll just add for the record, we have
10 a 30(b) version of it where you could hear everything that
11 Special Agent Martin was saying. I would hear words here
12 and there, but I never did hear anything clearly.

13 MS. BOLEN: Your Honor, I just want to make sure I'm
14 clear before we get back started in front of the jury about
15 the -- I'm clear on the videotape. I want to make sure I'm
16 clear on the audiotapes.

17 I know that Solicitor Stumbo was moving to have the
18 December 18th admitted, but it hadn't yet been redacted.

19 THE COURT: Correct. Exhibit 2 -- sorry, State's 2A,
20 the audio recording of the interview, that would be a -- it
21 will be in evidence but not -- it won't go back to the jury.
22 So if we want to make that a Court's exhibit or just
23 whatever, but it's not going to be in evidence for the
24 jury's review. That's my ruling on that. If we can tighten
25 up the audio and if we are in agreement that the objections

1 that Ms. Bolen placed on the record in that email -- and I'm
2 going to make the email -- you all give me a second. I'm
3 going to clean up the record here a little bit.

4 I've printed out Ms. Bolen's email to the Court dated
5 Friday, July 17th and Saturday, July 18th at 2:25 and
6 Saturday, July 18th at 4:16. Those are the three emails
7 that I did print out. I've written on the margins in blue
8 numbers one through 45 which detail the objections. And
9 then in a separate notebook on Sunday I went through and kin
10 do of put down my basic thoughts on where those objections
11 lay. For purposes of this hearing, and if need be, I'm
12 going to have this marked as a Court's exhibit, the email
13 that outlines Ms. Bolen's objections and the grounds for
14 those objections to the various parts of the audio. So all
15 three of those emails are going to be marked as one Court's
16 exhibit.

17 MS. BOLEN: Yes, sir. And, I guess, the only other
18 clarification I'm thinking, Your Honor, and maybe I'm just
19 not understanding properly. But with the actual audio being
20 a Court's exhibit, if -- and we may not get to this. But if
21 the officers, in the course of cross-examination, either
22 deny statements being made or don't recall it, would I be
23 permitted to play just the --

24 THE COURT: Yes.

25 MS. BOLEN: -- redacted. Not the entire statement

1 obviously --

2 THE COURT: You would.

3 MS. BOLEN: -- subject to redaction?

4 THE COURT: Correct. You would be.

5 MS. BOLEN: I just wanted to make sure that was
6 available.

7 THE COURT: That is available. Make that Court's 1.

8 (Whereupon, Court's Exhibit No. 1 was marked for
9 identification.)

10 THE COURT: I think we've covered all the housekeeping
11 matters. Let's have the jury back in, please.

12 (Whereupon, the jury entered the courtroom at 11:21
13 a.m.)

14 THE COURT: Let the record reflect that the jury is
15 back and is seated. Ladies and gentlemen, when we left off
16 -- and I realize that that was a little bit longer than 10
17 minutes that I promised you. What I've basically done, when
18 we left off the State was moving into evidence State's 2A,
19 which was an audio recording of several interviews which
20 were conducted of Ms. Phillips. Because -- as the witness
21 testified, because there are substantial gaps and breaks and
22 other parts that discuss just irrelevant information and
23 inadmissible information, stuff that's not important, what
24 I'm asking the Solicitor to do is to basically -- they're
25 not going to play that tape for you. I don't anticipate the

1 actual audio interview being played for you at this
2 particular point in time. But we're not going to introduce
3 the one that has all the dead space in it. They're going to
4 clean it up tonight is what's going to happen. Okay?
5 They're going to try and clean up those audiotapes, and
6 those will come into evidence at some point in the future.
7 And we also dealt with some additional housekeeping matters
8 concerning evidence going forward. So I think we may have
9 actually helped by taking that 50 minutes. We may have
10 actually helped move things along a little bit for you. So
11 I think my ruling is clear with regard to State's 2A.

12 The last witness who was up here, Mr. Marshall -- is he
13 around?

14 DET. MARSHALL: Right here, Your Honor.

15 THE COURT: Oh, I'm sorry. Have a seat. You're still
16 under oath, Mr. Marshall. And you may continue your direct,
17 Solicitor.

18 MR. STUMBO: Thank you, Judge.

19 Q Detective Marshall, I'm going to hand you what's been
20 marked for ID as State's 51. Take a look at that document,
21 please, sir. The interview on the 19th of the Defendant,
22 Ms. Phillips. Is there a written statement produced from
23 that?

24 A Yes. Yes, sir.

25 Q State's 51 contains the written statement?

1 A Yes, sir.

2 Q Now, with the exceptions of the blocked out portions,
3 blocked out as being inadmissible, is this a fair and
4 accurate --

5 A Yes, sir.

6 Q -- copy of the statement that was given by the
7 Defendant on the 19th?

8 A Yes, sir.

9 Q Is your signature at the bottom?

10 A Yes, sir.

11 Q Signed as a witness on all four pages? Now, when Ms.
12 Phillips wrote this statement out did you threaten her in
13 any way?

14 A No, sir. I did not.

15 Q Did you promise her a bunch of rewards if she wrote a
16 statement to you all?

17 A No, sir.

18 Q Did she ever ask for a lawyer at any time while she was
19 writing this statement?

20 A No, sir.

21 Q Is it your estimation it was freely and voluntarily
22 given?

23 A Yes, sir.

24 Q The other people in the room at the time. You
25 mentioned Captain Natalie Talbert, correct?

1 A Yes, sir.

2 Q Did anybody else come in the room during either
3 interview -- on the 18th. Let's start there. Did anybody
4 else come in the room?

5 A Yes, sir. Sheriff Watson, Ray Watson, came in. Two or
6 three times came in the door.

7 Q And on the 19th who was in the room?

8 A I believe it was just myself and Captain Talbert on the
9 19th.

10 Q When the Defendant was writing out this four page
11 statement were both of you all in the room the entire time?

12 A I believe we were. I believe we were in there the
13 whole time.

14 Q How long did it take her to write this? An estimate?

15 A It's over an hour, I would say.

16 Q It's a good portion of that audio recorded interview;
17 is that correct?

18 A Yes, sir.

19 MR. STUMBO: Judge, we offer State's 51 into evidence.

20 MS. BOLEN: Just subject to our previous motion.

21 THE COURT: Subject to the previous *Jackson vs. Denno*
22 and the other ruling that was made a short while ago, it is
23 into evidence, State's 51.

24 MR. STUMBO: Thank you, Your Honor.

25 (Whereupon, State's Exhibit No. 51 was admitted into

1 evidence.)

2 MR. STUMBO: Thank you, Your Honor.

3 Q And just to clarify, I think we identified before the
4 break, this State's 2A for ID. You initialed that disk?

5 A Yes, sir.

6 Q And that's around five hours of audio recorded --

7 A Yes, sir.

8 Q -- footage? During the course of that five hours, did
9 this Defendant ever admit to you having any involvement with
10 the death of Jamil Phillips?

11 A No direct involvement.

12 Q During the time you all interviewed her did she ever
13 draw any connection between herself and Purp Settles?

14 A Yes, sir.

15 Q Did she ever draw any connection between her and Purp
16 Settles back in March, the night this thing happened, when
17 you and Agent Collins talked to her?

18 A Yes, sir.

19 Q She said she didn't have any knowledge?

20 A You're asking me did she say that the night --

21 Q Right, back in March.

22 A No, she did not.

23 Q The first --

24 A No. I'm sorry. I misunderstood your question. I'm
25 sorry. No, she did not.

NICK MARSHALL-CROSS-EXAMINATION

274

1 MR. STUMBO: Beg the Court's indulgence, Your Honor.

2 THE COURT: Yes, sir.

3 Q Just to clarify, Detective Marshall, what we just
4 discussed. The night of the incident when you and Agent
5 Collins go to Karlita Phillips apartment, that night did she
6 give any admission that she had any knowledge of the killing
7 of Jamil Phillips?

8 A No, sir.

9 Q When you talked with her on December 19th, or the 18th
10 and 19th, ultimately she does say she had some involvement,
11 correct?

12 A Yes, sir.

13 Q To people that could have been involved with --

14 A Right. Yes, sir.

15 Q One last bit of information here for the jury,
16 Detective Marshall. How old was Tavarious Settles on March
17 25th, 2013?

18 A Sixteen.

19 Q Do you know his date of birth?

20 A I believe it's [REDACTED].

21 Q So he was going to turn 17 on April 18th --

22 A The next month he would have turned -

23 Q The next month.

24 A -- 17. Yes, sir. I believe that's correct.

25 Q How old was Karlita Phillips, the Defendant, the night

1 of the murder?

2 A She was born [REDACTED]. So she would have been
3 39-years-old.

4 MR. STUMBO: No further questions at this time,
5 Detective Marshall. Please answer any questions that
6 Defense counsel may have for you.

7 THE COURT: Cross.

8 CROSS-EXAMINATION

9 BY MS. BOLEN:

10 Q Mr. Marshall, going back to March -- I think it was
11 March 26th. It was when you went out to Karlita's apartment
12 in Greenwood. That was, you said, between 12:30 and about
13 3:00 --

14 A Yes, ma'am. I believe.

15 Q -- in the morning?

16 A Yes, ma'am.

17 Q And you went out there with Agent Collins, right?

18 A Yes, ma'am.

19 Q And you said you all got there first and knocked on the
20 door?

21 A Yes, ma'am.

22 Q And you actually went to the back door and Agent
23 Collins went to the front door, right?

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

25 Q And again, this is sometime 1:00, 2:00, 3:00 in the

NICK MARSHALL-CROSS-EXAMINATION

276

1 morning?

2 A Yes, ma'am.

3 Q And you said that Karlita had actually called the
4 Greenwood 9-1-1, right?

5 A That's correct.

6 Q And Greenwood 911 arrived at her apartment where you
7 were, right?

8 A Yes. Yes. Greenwood County.

9 Q Greenwood County.

10 A I think it was Greenwood County Sheriff's Office, I
11 think.

12 Q And she answered the door, right?

13 A Yes, ma'am. She came to the door.

14 Q And the statement that Solicitor Stumbo asked you about
15 she gave that statement, the time on that is given as 3:50
16 in the morning, right?

17 A I believe that's correct. Yes, ma'am.

18 Q And she told you that she had been going to some pawn
19 shops that day, right?

20 A Yes, ma'am.

21 Q And she said that was because she was looking for
22 jewelry that had been stolen from her house --

23 A Yes, ma'am.

24 Q -- earlier that week; is that right?

25 A Yes, ma'am.

1 Q Moving on to when you spoke with Karlita. You said
2 first on December 18th, correct?

3 A Yes, ma'am.

4 Q 2013?

5 A Yes, ma'am.

6 Q And that was at the Abbeville County Sheriff's Office,
7 right?

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

9 Q And that was with you, Captain Talbert, correct?

10 A Yes, ma'am.

11 Q And I think Sheriff Watson is in and out a little bit,
12 right?

13 A Yes, ma'am.

14 Q And at that time she was already under arrest, right?

15 A That's correct.

16 Q And she was under arrest for solicitation of a minor to
17 commit a felony, right?

18 A Yes, ma'am.

19 Q And that's the only warrant she was under arrest for?

20 A I believe so. I believe that's correct.

21 Q And she was willing to talk to you on the 18th,
22 correct?

23 A Yes, ma'am.

24 Q And you testified on direct that you read her her
25 rights. You had her -- showed her a form. She signed that

1 form, correct?

2 A Yes, ma'am.

3 Q And at no time did she say, "I don't want to talk to
4 you. I want a lawyer." right?

5 A No, ma'am.

6 Q She never said that? She was willing to talk to you,
7 right?

8 A Yes, ma'am.

9 Q And she talked to you for about three hours, just
10 under?

11 A It was roughly three hours. Yes, ma'am.

12 Q And that started sometime in the afternoon, right,
13 maybe 3:00 or so?

14 A I believe it was around 3:30.

15 Q Okay. And it ended sometime between 5:30 and 6:00?

16 A That's fair to say.

17 Q And it's also fair to say that the conversation ended
18 because you and Captain Talbert a little tired, wanted to go
19 home. It was the end of the day, right?

20 A Yes, ma'am.

21 Q And you went back to meet with her the morning of
22 December 19th, right?

23 A That's correct.

24 Q And that, again, is at the Abbeville County Sheriff's
25 Office?

1 A Yes, ma'am.

2 Q And you went to meet with her at about 7:00, 7:30 in
3 the morning?

4 A Roughly 7:30. Yes, ma'am.

5 Q And that's another two hours, 20 minutes though, two
6 and a half?

7 A I believe so, yes.

8 Q And again, she's willing to talk to you, right?

9 A Yes, ma'am.

10 Q And you again read her her rights? Tell her she
11 doesn't have to talk to you and can get a lawyer, right?

12 A Yes, ma'am.

13 Q And at no time did she invoke those rights, right?

14 A That's right.

15 Q She was willing to talk to you?

16 A That's correct.

17 Q And it was both you and Captain Talbert who were doing
18 the majority of the questioning, correct?

19 A Yes, ma'am.

20 Q So the two of you, and you're in uniform, right, and
21 she knows you're officers?

22 A Yeah. I would have been wearing a Polo shirt with a
23 badge on it and khakis.

24 Q And the she's the only other one in the room, right?

25 A Yes, ma'am.

NICK MARSHALL-CROSS-EXAMINATION

280

1 Q I want to talk a little bit about what you all talked
2 about. On the 18th she gives you some background
3 information, right? She said she works as a CNA in Wesley
4 Commons?

5 A Yes, ma'am.

6 Q She had worked there, I think, 12 years? Twelve, 14
7 years?

8 A Yes, ma'am. A long time.

9 Q And you mentioned on direct that she said she knows
10 Tavarious Settles, right?

11 A Yes, ma'am.

12 Q And he also goes by Purp?

13 A Purp.

14 Q So interchangeably --

15 A That's the way -- yes, ma'am.

16 Q -- Tavarious, Purp? Okay. And she tells you that she
17 knows Tavarious because he's related to her kids, correct?

18 A Yes, ma'am. I don't recall the exact relation, but I
19 do remember she says --

20 Q They're some sort of cousin but not first cousin
21 relationship?

22 A Yes, ma'am.

23 Q And, in fact, Tavarious and her daughter are about the
24 same age, right?

25 A I believe that's correct.

1 Q So Tavarious would have come over to her house before
2 to see her kids, right?

3 A Yes, ma'am.

4 Q During this two and a half to three hours that you
5 talked to her on December 18th she denies having any
6 involvement with having anyone murder Jamil Phillips,
7 correct?

8 A She -- yes, ma'am.

9 Q She does admit to talking to Purp about going and
10 jumping on him, jumping on Dale, correct?

11 A She first stated that she had talked to a guy named
12 Derrick.

13 Q About just jumping on him?

14 A About beating him up or jumping on him.

15 Q But it was always in the context of jumping on him,
16 correct?

17 A Yes, ma'am.

18 Q Beating him up. And she said over and over, "I never
19 intended no murder," correct?

20 A Yes, ma'am.

21 Q And she denied ever, ever talking to anyone about
22 murdering anyone, correct?

23 A The only time I remember -- you know, not murder. But
24 I do remember that she told us that she told her daughter
25 that she wished Dale was dead.

1 Q And she -- and at this point she gets -- she gets kind
2 of emotional in the interview, right? She starts crying at
3 one point?

4 A Yes, ma'am.

5 Q And at one of the points where she's crying she tells
6 you that she and Dale were involved in a divorce, right?

7 A Yes, ma'am.

8 Q That she had -- they had separated in May of 2012?

9 A I can't remember the exact dates. But they were
10 separated and going through a divorce.

11 Q And she does tell you, while crying, that yeah, one
12 time she said to her daughter, "I wish he was dead," right?

13 A I do -- yes, I do remember her saying that. That she
14 told her daughter that.

15 Q And she tells you that she said that on November -- I
16 believe it was November 12th of 2012, correct, after a court
17 hearing in her family court case? It was a good while
18 before the incident, correct? She said that she said that
19 because of some stuff that was going on in family court?

20 A I do recall her saying something about a court hearing,
21 too, involved with that. Yes.

22 Q But it had been a good couple of months prior, right?

23 A Yeah, I suppose. If that was -- if that's the date of
24 it.

25 Q And again, she's crying while telling you that, right?

1 A Yes, ma'am. She cried a good bit, yeah.

2 Q And she does admit though at one point she talked to at
3 least one person about wanting somebody to jump on Dale,
4 right?

5 A Yes, ma'am.

6 Q But she keeps saying, "I never meant no murder, I never
7 intended no murder," correct?

8 A She kept saying, "I never just went to anybody and said
9 I wanted him dead," basically is what she was saying.

10 Q And she said she didn't know anything about a gun,
11 right?

12 A She did mention that Derrick -- I think she -- this
13 Derrick individual she kept referring to. She said that he
14 had told her he could get her a gun.

15 Q And she said no, right?

16 A I believe she said --

17 Q She said --

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

19 Q And then she said she didn't know anything about Purp
20 having a gun, right?

21 A Not that I recall.

22 Q Do you recall her saying that about one hour, 53
23 minutes into the interview on December --

24 A What did she say? Can you repeat it? I'm sorry.

25 Q She didn't know anything about a gun?

NICK MARSHALL-CROSS-EXAMINATION

284

- 1 A Right. Yes, ma'am. Yes, ma'am.
- 2 Q Also on the 18th -- so the 18th is the first since
- 3 March you've talked to her, right?
- 4 A That's correct. Yes, ma'am.
- 5 Q And this is the one that takes place kind of in the
- 6 late afternoon, early evening?
- 7 A That's right.
- 8 Q And at that time she does tell you that she had let
- 9 Purp use her car?
- 10 A She did say that. Yes, ma'am.
- 11 Q And that he had left with a guy named Mike, correct?
- 12 A She said that she had let Purp take it and with Mike
- 13 and some guys, I believe is what she said. The night of the
- 14 incident.
- 15 Q And she also says several times, "I didn't bring it to
- 16 him," right? I didn't bring this to Tavarious, correct?
- 17 She said that about two hours, 19 minutes in?
- 18 A When you say this, you mean like --
- 19 Q The murder.
- 20 A The proposition, I guess, or whatever?
- 21 Q Right, yeah.
- 22 A Right. Yes, ma'am. Correct.
- 23 Q So she said multiple times I did not bring this
- 24 proposition to him?
- 25 A Yes, ma'am.

1 Q To Tavarious. She said, "I can't tell you I told him
2 to do that," right?

3 A Yes, ma'am.

4 Q And she tells you that after letting Tavarious, or
5 Purp, use the car, that later that evening he came back to
6 her house, gave her her keys and left, right?

7 A That's correct.

8 Q And other than the time that you spoke to Karlita in
9 March and then these two conversations you had with her on
10 the 19th you didn't have a lot of direct involvement in this
11 case, correct?

12 A Besides, you know, responding that night and then that
13 -- yes, ma'am. That's correct. That's fair to say.

14 MS. BOLEN: If I could just have a moment, Your Honor.

15 THE COURT: Certainly.

16 Q Mr. Marshall, on the 18th, that's again the first time
17 you talked to her at the Sheriff's Office, about halfway
18 through there you get a little agitated with her, correct?

19 A We get frustrated.

20 Q Okay. And at one point you tell her that you could get
21 a search warrant for her person and strap her down and make
22 her take a polygraph, correct?

23 A Yes, ma'am. I did.

24 Q And she does agree to take a polygraph, right?

25 A She does.

NICK MARSHALL-CROSS-EXAMINATION

286

1 Q And one is never offered to her?

2 A Not to my knowledge.

3 Q And that's about halfway through the interview?

4 A That's fair to say.

5 Q So even after you tell her I can strap you down and do
6 this to you, she's still willing to keep talking to you,
7 right?

8 A That's correct.

9 Q Then on the 19th -- and the 19th I think you've already
10 testified a good portion of that is her writing her
11 statement, right?

12 A Yes, ma'am.

13 Q But on the 19th you go and talk to her about 7:00, 7:30
14 in the morning, correct?

15 A That's correct.

16 Q And that's you and Captain Talbert, right?

17 A Yes, ma'am.

18 Q And again she's willing to talk to you?

19 A Uh-huh.

20 Q And again she maintains, I did not tell him to do this,
21 right?

22 A Yes, ma'am.

23 Q And she said that she did not take him to the house,
24 correct?

25 A That's correct.

1 Q And again, she talks about what she told you the
2 previous night, right?

3 A It was pretty much a continuance, basically, I guess
4 what you would say. But yes, ma'am.

5 Q And you all --

6 A The same type of stuff. I'm sorry. Go ahead.

7 Q I'm sorry. I didn't mean to interrupt you. I'm sorry.

8 A Go ahead. I'm sorry.

9 Q You all went to her on the 19th, right?

10 A Yes, ma'am.

11 Q And you went to her on the 18th?

12 A Yes, ma'am.

13 Q So you went to talk to her. She was willing to talk to
14 you?

15 A Yeah. We had her brought in when she was -- after she
16 had gotten arrested and come in.

17 Q But during both of those interviews -- and the total
18 time for that is somewhere around five hours, right?

19 A Yes, ma'am.

20 Q She maintains that she never asked anyone to kill her
21 husband, correct?

22 A That's correct.

23 Q That she ask somebody to go jump on him?

24 A Yes, ma'am.

25 Q And she never intended any kind of murder or anything

NICK MARSHALL-REDIRECT EXAMINATION

288

1 like that, correct?

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

3 MS. BOLEN: Nothing further, Your Honor.

4 THE COURT: Redirect.

5 REDIRECT EXAMINATION

6 BY MR. STUMBO:

7 Q Detective Marshall, polygraph evidence is inadmissible
8 in court, isn't it?

9 A Yes, sir.

10 Q It's not, is it?

11 A It's not.

12 Q So even if she had taken a polygraph we wouldn't be
13 putting into evidence whatever happened in that polygraph?

14 A That's correct.

15 Q Have you ever said that before in an interview with a
16 Defendant, that you could polygraph?

17 A Yes, sir. I have.

18 Q I want to talk about specifics of what happened in this
19 interview on the 18th. Remember at the two hour and 26
20 minute point that the Defendant said, "Dale made me sick"?

21 A Yes, sir. I do.

22 Q Two hour and 27 minute point where she said, "I wish he
23 was dead"?

24 A She stated she had told her daughter she wished he was
25 dead.

1 Q Two hour and 35 minute point she admits that she let
2 Purp borrow her car?

3 A Yes, sir. That's correct.

4 Q To take the car that night with a guy named Mike; is
5 that correct?

6 A Yes, sir. That's correct.

7 Q State's 51, which is in evidence, would you read for
8 the jury, Detective Marshall, what's said the sentence
9 beginning on page one of State's 51. It stays, "I said."

10 A "I said," quote, "the bastard can eat shit and die,"
11 end quote, "for all I care."

12 Q Thank you. Page four of State's 51, written in the
13 Defendant's own handwriting. Would you please read the
14 sentence that begins, "I didn't pull."

15 A "I didn't pull the trigger."

16 Q What's the next sentence?

17 A "I took him to the house" -- or, excuse me, "I took him
18 to house."

19 Q What's the next sentence?

20 A "I got the ball rolling."

21 MR. STUMBO: Thank you, Detective Marshall. No further
22 questions.

23 THE COURT: Recross.

24 MS. BOLEN: Yes, sir.

25

RECROSS-EXAMINATION

- 1 BY MS. BOLEN:
- 2 Q Detective Marshall --
- 3 A Yes, ma'am.
- 4 Q -- back on page four -- I'm sorry. Do you still have
- 5 that?
- 6 A I don't. I don't have it. No, ma'am.
- 7 MS. BOLEN: May I approach, Your Honor?
- 8 THE COURT: Please.
- 9 Q Page four of the statement you were just looking at.
- 10 A Uh-huh.
- 11 Q Actually, if I could just hold on a minute.
- 12 A All right.
- 13 MR. STUMBO: 51.
- 14 MS. BOLEN: Thank you.
- 15 A Page four, you said?
- 16 Q Yes, sir. And again, looking at where Mr. Stumbo just
- 17 directed your attention. "I didn't pull the trigger. I
- 18 took him to house. I got the ball rolling, as one sheriff
- 19 said," correct?
- 20 A Yes, ma'am.
- 21 Q And those terms, "pull the trigger, got the ball
- 22 rolling," those were terms that were used by one of you in
- 23 questioning her that day, correct?
- 24 A Yes, ma'am. We did say those things.
- 25 Q You said those phrases, correct?

1 A Yes, ma'am.

2 Q And then the next line she writes, "Again, I didn't
3 force or tell him to do anything," correct?

4 A That's correct.

5 Q She writes, "I've never been in no trouble like this in
6 my life," correct?

7 A That's correct.

8 MS. BOLEN: Nothing further. Thank you.

9 THE WITNESS: Yes, ma'am.

10 THE COURT: Thank you very much. You may step down.

11 THE WITNESS: Thank you, Your Honor.

12 (Whereupon, the witness steps down from the witness
13 stand.)

14 THE COURT: As far as the Court is concerned, you are
15 free to go. Call your next witness.

16 MR. STUMBO: Thank you, Judge. State calls David
17 Grubbs to the stand.

18 THE COURT: Solicitor, just for housekeeping, you did
19 not -- you have not yet moved, according to my records,
20 State's 2 through 9 into evidence. They were photographs
21 that were alluded to. I didn't know if you intended to.

22 MR. STUMBO: I believe we moved those in through -

23 THE COURT: Maybe I'm wrong.

24 MR. STUMBO: -- Mr. Birchmore yesterday, Judge.

25 THE COURT: They are in evidence? All right. We're

DAVID GRUBBS-DIRECT EXAMINATION

292

1 good.

2 MR. STUMBO: Without objection.

3 THE COURT: My apologies.

4 MR. STUMBO: Yes, sir.

5 DAVID GRUBBS, having first been
6 duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. STUMBO:

9 Q Good morning. You go by Agent Grubbs?

10 A Yes, sir.

11 Q Okay. Agent Grubbs, you work for SLED?

12 A Yes, sir.

13 Q And what division do you work at SLED?

14 A The computer crime unit.

15 Q And that's located in Columbia?

16 A Yes, sir.

17 Q How long have you been with SLED?

18 A Since 2013.

19 Q And have you worked in the computer crimes unit for
20 that entire time?

21 A Yes, sir.

22 Q What kind of training have you received in computer
23 crime?

24 A Numerous classes in computer forensics and mobile cell
25 phone forensics in the National White Collar Crime Center,

1 as well as the SANS Forensic Institute.

2 Q And you're certified to conduct computer forensics?

3 A Yes, sir. They provide certificates after the classes.

4 Q SLED's computer crimes lab, is it licensed, or
5 certified --

6 A We're currently going through CALEA certification.
7 Yes, sir.

8 Q CALEA, that's --

9 A Yes, sir.

10 Q -- stands for --

11 A It's our entire laboratory certification system through
12 SLED.

13 Q And they work nationwide?

14 A Yes, sir.

15 Q To certify. The work you do at the computer crimes
16 lab, do you all comply with those protocols?

17 A Yes, sir.

18 Q If you could, describe for the jury, just for their
19 education, on how you would -- if you take a computer or a
20 cell phone in to your division, what steps what you would
21 take to extract the data off of that.

22 A Yes, sir. We hook it up -- we have a multitude of
23 different ways that we can extract data from a cell phone or
24 a computer. We have one thing that's called a Cellebrite
25 UFED machine where you plug the cell phone into it and it

1 basically takes every bit of data that's on there and
2 extracts it off, if it's compatible. In this case, the
3 phones were not compatible with our machine, so what I had
4 to do was take the micro SD card that was within the cell
5 phones out and plug it into our computer to image it. What
6 we have in place to prevent us altering or changing any of
7 the data that's on any of these devices are things called
8 write blockers which will not allow our computer to send any
9 signal at all to that media. So when we plug it in, no
10 signal will go to it. It will only give us the data that's
11 on there. So we guarantee that we don't alter it in any way
12 doing that.

13 THE COURT: And what's the name of that program again,
14 or that device, Cellebrite?

15 THE WITNESS: That one was Cellebrite. Yes, sir. For
16 this particular case I used an EnCase program to image the
17 media.

18 Q And EnCase is spelled E-n --

19 A C-a-s-e.

20 Q -- C-a-s-e?

21 A Yes, sir.

22 Q Did you generate an EnCase report --

23 A I did.

24 Q From your exam in this case?

25 A Yes, sir.

1 Q And that's to preserve the integrity of the evidence --

2 A Correct.

3 Q -- is that correct? So, in other words, if you were to
4 use some kind of program that showed you going into it, or
5 going into the cell phone or computer, that it would -- that
6 would show up?

7 A Yes, sir. One thing that EnCase does is it runs all of
8 the data that is on the SD card in this case through a
9 mathematical algorithm, and that spits out a unique number.
10 It's kind of like a fingerprint for all that data. So if I
11 were to go in and alter anything at all in there it would be
12 a different number. So it gets that -- it's called a hash
13 value. It gets that at the beginning, and then it verifies
14 that again at the end to make sure that they're the same and
15 nothing was changed at all.

16 Q So if anything was changed it would come out with a
17 different hash value?

18 A Yes, sir.

19 Q All right. Did you take in evidence in relation to the
20 case we're here for today? The homicide of Jamil Phillips?

21 A I did not intake it personally, but I did examine it.

22 Q And the computer crimes unit -- in relation to this
23 case, who brought in evidence to be looked at?

24 A Special Agent Collins.

25 Q Michael Collins?

DAVID GRUBBS-DIRECT EXAMINATION

296

- 1 A Yes, sir.
- 2 Q And what did he bring your unit for analysis?
- 3 A Two cell phones.
- 4 Q And who was identified as the suspect on those cell
5 phones?
- 6 A On the intake sheet that I received it was Tavarious
7 Settles.
- 8 Q And I'm going to refer you -- basically hand you your
9 report to refresh your memory. What were these two cell
10 phones that were brought in?
- 11 A There was a Samsung SCHR390 cell phone and an HTC cell
12 phone as well.
- 13 Q Did you do an imaging of both of those phones?
- 14 A I did.
- 15 Q And generated an EnCase report?
- 16 A Yes, sir.
- 17 Q Were you able to extract anything of evidentiary value
18 off those phones?
- 19 A Yes, sir. Photographs.
- 20 Q I'm going to show you what's going to be marked for ID
21 as State's 38, 39, 40 and 41. Take a look at those, Agent
22 Grubbs. Do these photographs look familiar?
- 23 A Yes, sir. They are on the report I generated.
- 24 Q These are clear and accurate copies of what you
25 extracted off the cell phones?

1 A Yes, sir. They are.

2 MR. STUMBO: Your Honor, at this time we'd offer
3 State's 38 through 41 into evidence.

4 MS. BOLEN: That's without objection, Your Honor.

5 THE COURT: Without objection, State's 38 through 41
6 are in evidence.

7 (Whereupon, State's Exhibit Nos. 38 through 41 were
8 admitted into evidence.)

9 Q In the four photographs we've looked at what -- which
10 phone were those taken off of?

11 A They were taken off of item one, which was the Samsung
12 cell phone.

13 Q Okay. I'm going to show you State's 38. What -- are
14 you able to ascertain what file off the phone these are
15 taken out of? Is it kind of like a computer hard drive? It
16 has a file --

17 A Yes, sir. It's very similar. I can ascertain the path
18 of where it was taken. So where it was located on the
19 storage media.

20 Q And State's 38, which we're looking at, what file
21 folder off the Samsung phone were those taken off of -- or
22 was this image taken off of?

23 A It was located in his My Images folder.

24 Q My Images, you said?

25 A Yes, sir.

1 Q And is there some kind of other identifier in terms of
2 when the image was created and --

3 A Yes, sir.

4 Q When was that file created?

5 A The file was created at January 1st. It says at 12:00
6 a.m.

7 Q January 1st what year?

8 A 2013.

9 Q State's 39. What file fold off the Samsung phone was
10 this found?

11 A Yes, sir. That's also located in his my images folder
12 and was created on March 9th, 2013 at 9:51 in the morning.

13 Q March what day?

14 A 9th.

15 Q March 9th --

16 A Yes, sir.

17 Q -- 2013? State's 50. It appears to be a different
18 angle of the same as State's 39.

19 A Yes, sir.

20 Q When was that file created?

21 A Yes, sir. That one, it's stated, was created on
22 February 22nd, 2013 at 8:22 p.m.

23 Q And this was also found in my images?

24 A Yes, sir.

25 Q State's 41. And where was that found on the Samsung

1 phone?

2 A That one is found in his thumbnails folder and was
3 created April 23rd, 2013 at 9:31 p.m.

4 MR. STUMBO: Beg the Court's indulgence, Your Honor.

5 THE COURT: Yes, sir.

6 MR. STUMBO: Agent Grubbs, no further questions.

7 Please answer any questions that Ms. Bolen may have for you.

8 CROSS-EXAMINATION

9 BY MS. BOLEN:

10 Q Agent Grubbs, you said you did a thorough analysis of
11 the phone, right?

12 A Yes, ma'am.

13 Q And that the evidentiary value obtained from the phone
14 were the photographs, correct?

15 A Yes, ma'am.

16 MS. BOLEN: That's all I have. Thank you.

17 THE COURT: Thank you, sir. You may step down.

18 (Whereupon, the witness stepped down from the witness
19 stand.)

20 THE COURT: Call your next witness.

21 MR. BROWN: The State calls Lilly Gallman.

22 MR. STUMBO: Your Honor, I don't see him still in here,
23 but obviously we would ask that Agent Grubbs --

24 THE COURT: I think he's already left.

25 MR. STUMBO: -- be released so he can head back to

LILLY GALLMAN-DIRECT EXAMINATION

300

1 Columbia.

2 THE COURT: It looks like he's already gone.

3 LILLY GALLMAN, having been first
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BROWN:

7 Q Good morning, Ms. Gallman.

8 A Good morning.

9 Q Ms. Gallman, where do you work?

10 A I work for the South Carolina Law Enforcement Division,
11 better known as SLED.

12 Q And how long have you worked with SLED?

13 A I've been with SLED since January of 1990, so it's been
14 over 25 years.

15 Q And what's your job at SLED?

16 A I'm employed at SLED as forensic DNA analyst. I
17 receive evidence for the purpose of developing a DNA profile
18 from it and then I compare it to any standards that are
19 submitted in a given case.

20 Q Ms. Gallman, what's your educational background to be
21 able to be a DNA analyst?

22 A Well, I have a degree in biology from the University of
23 South Carolina. Once I received my degree I continued
24 working at the University in the area of research doing
25 genetics research, and then I began working with SLED. And

1 once I started working with SLED I attended the FBI DNA
2 typing class. I was also trained in the area of serology.
3 I was trained in being able to process forensic samples,
4 which is samples that come from a crime scene.

5 Q Now, have you ever been qualified as an expert in the
6 fields of serology and DNA analyst?

7 A Yes, I have.

8 Q And how many times?

9 A It's over 60.

10 Q And what's the -- since you brought up serology. What
11 is serology?

12 A Serology -- in serology we're testing for body fluids.
13 So we're looking for blood, semen, saliva, that sort of
14 thing.

15 Q And what is DNA?

16 A DNA we go further than just looking at the body fluids.
17 We identify who this body fluid is coming from by developing
18 a DNA profile from that body fluid.

19 Q And again, how many times -- have you ever been
20 qualified as an expert in a court of South Carolina?

21 A Yes. Approximately 16.

22 MR. BROWN: Your Honor, at this time we move Ms. Lilly
23 Gallman as an expert in the field of forensics and DNA
24 analysis.

25 MS. BOLEN: Without objection, Your Honor.

LILLY GALLMAN-DIRECT EXAMINATION

302

1 MR. BROWN: Judge, also add in an expert in the field
2 of population frequencies.

3 THE COURT: Population --

4 MR. BROWN: Population frequencies.

5 THE COURT: Population frequencies. Any objection to
6 that qualification as well?

7 MS. BOLEN: No, sir.

8 THE COURT: Again, ladies and gentlemen, the parties
9 agree that Ms. Gallman is an expert in these particular
10 fields so she can give opinion testimony that you use as you
11 deem appropriate. Go ahead, Solicitor.

12 Q Ms. Gallman, as it relates to this case, did you do any
13 DNA -- or did you receive evidence in this case to do a DNA
14 analysis?

15 A Yes, I did.

16 Q And what did you receive?

17 A Initially I received cigarette butts that were
18 collected from a crime scene.

19 Q And when you received cigarette butts what's the
20 standard practice for SLED? Is there a number assigned to
21 those items?

22 A Yes. Each case that is submitted from an agency is
23 given a SLED laboratory identification number.

24 Q And in this case was there an identification number
25 given?

1 A Yes.

2 Q What is that number?

3 A Well, this particular case is L13-4031.

4 Q And after that lab number is given -- does that lab
5 number cover all the evidence that's brought in for this
6 particular case?

7 A Under that particular case, yes.

8 Q And are the individual cigarette butts given other
9 itemized numbers?

10 A Yes they are. You break then down. So I received four
11 cigarette butts, and so they were given like item one, two,
12 three and four.

13 Q Now, Ms. Gallman, I'm going to show you what's been
14 marked State's ID 46. You can take a look at that and tell
15 me if you recognize those.

16 A Yes. These are the cigarette butts that were
17 submitted. You can tell that they were in my custody at one
18 time, because I sealed the envelop and then there's my
19 initials and the date that I sealed them. That I sealed it.

20 Q Now, Ms. Gallman, once these items are sent to SLED is
21 there a chain of custody generated to -- so you can identify
22 who's handled these items?

23 A Yes. When the evidence is submitted it's logged into
24 our evidence control area, and at that point the evidence is
25 put in a sealed pouch, just like that, and then it is sealed

1 by the submitting agency. And whoever would need to analyze
2 that evidence, it would be passed to that person, and you
3 would see that it's in their custody at a certain time.

4 Q And ultimately it came to your custody to do the
5 analysis on it?

6 A Yes, because there was a DNA request on the cigarette
7 butts. And I believe I was the only one that opened that
8 after it was sealed by the submitting agency.

9 Q And to go along with what you were saying about only
10 one to open that. When you get items such as these
11 cigarette butts, what do you look for in the packaging?

12 A Well, first thing, I look to see if the pouch is sealed
13 properly and initialed and dated properly. And if it is,
14 then I proceed with my testing. If it is not, then I would
15 backtrack, doing back to evidence control to try to
16 establish what could have happened that it's not sealed
17 properly.

18 Q And the purpose of doing that is to make sure that the
19 integrity of the evidence is intact and nobody's tampered
20 with it?

21 A That's correct. That the evidence is sealed and
22 intact, and also that the chain is proper.

23 Q And before you tested these cigarette butts was there
24 any appearance of these boxes or the pouches that they came
25 in were tampered with in any way?

1 A No.

2 Q And, Ms. Gallman, do you know who brought these items
3 to SLED, based on your internal chain at SLED?

4 A I could tell by the chain. The chain is computerized,
5 so whoever is -- whoever submitted it, their name would be
6 there and then it goes from person to person.

7 Q See if this refreshes your memory.

8 A Like I said, the cigarette butts were given a number
9 one, two, three and four. So each one of those items has
10 their own chain. And the chain would be the same for each
11 one because they're in the same packet. But when you
12 separate them out then they all have their own chain. The
13 chain starts with Michael Collins, and then it goes to
14 Vickie Hallman, then Nicky Hughes, which is pulls in
15 evidence log-in area. Evidence control area. And then
16 items eventually came to me.

17 Q And again, when items ultimately came in your
18 possession there was no damage to the packaging that these
19 came in?

20 A No, sir. It was not.

21 MR. BROWN: Judge, at this time State moves in State's
22 ID 46 as evidence.

23 THE COURT: Any objection?

24 MS. BOLEN: No, sir.

25 THE COURT: Without objection, State's 46 is in

1 evidence.

2 (Whereupon, State's Exhibit No. 46 was admitted into
3 evidence.)

4 Q Now, Ms. Gallman, when you received those cigarette
5 butts into your custody, what did you do with those
6 cigarette butts?

7 A The cigarette butts were submitted individually so I
8 can conduct the same testing on each one. I'm cutting from
9 the filter portion of the cigarette, the portion that would
10 have gone in the person's mouth, and I extract the DNA from
11 the cigarette portion -- the cigarette filter portion of the
12 cigarette butt, and then I develop a DNA profile from that
13 DNA that was extracted from there.

14 Q And when you say DNA profile, what does that mean?

15 A That means that I'm looking at -- everyone leaves some
16 portion of them every place they touch or where they go. It
17 depends on how many cells are there. So once I'm able to
18 extract the DNA, and as I said, I develop a DNA profile, I'm
19 looking at 16 different loci, or 16 different area on this
20 person's DNA. Part of the DNA is found from the person's
21 mother and part from the father. I can't tell you just by
22 looking at it. But if I had the mother and father there I
23 could compare it and say, well, you're getting this part
24 from your mother and this part from your father. And then
25 the DNA profile is developed from the evidence. And if

1 there's a standard submitted, meaning I have -- I'm able to
2 get a sample from the person in question, then I can compare
3 those two and tell you whether you have a match or you do
4 not have a match between the evidence.

5 Q And were these cigarette butts that were submitted
6 during your testing to get that DNA profile, did all four
7 cigarette butts match the same profile?

8 A Yes. All four cigarette butts came from the same
9 person.

10 Q And does everybody have the same DNA or everybody has
11 different DNA?

12 A Everyone except identical twins have different DNA.

13 Q Now, Ms. Gallman, you stated that this lab number of
14 this particular case was L13-4031.

15 A That's correct.

16 Q Now, were you able to ultimately get a standard -- test
17 a standard to your profile -- DNA profile generated off the
18 cigarette butts?

19 A Yes. Initially I did not have a standard that matched
20 the profile. There were other standards submitted but they
21 did not match that particular profile. And then I was able
22 to utilize a standard from another one of our lab number
23 cases and compare that to the cigarette butts.

24 Q I'm going to show you what's been previously marked as
25 State's ID 48. If you can take a look at that and see if

1 you can recognize --

2 A Yes. This is from our lab number L13-7501, item number
3 16. You can see where it's been in my custody because my
4 initials and the date that I sealed it is on the side.

5 Q Now, Ms. Gallman, that was -- that was generated -- or
6 that standard -- whose standard is that?

7 A This standard is from Tavarious Settles.

8 Q And that was from an unrelated case to this one?

9 A That's correct.

10 Q Generated out of Greenwood? The city of Greenwood
11 County -- or the city of Greenwood, South Carolina?

12 A That's correct.

13 Q Once you got that item were you able to get the profile
14 from Mr. Settles?

15 A Yes.

16 Q And after you generated that profile what do you do
17 next?

18 A Once I generate the profile then I did a comparison
19 between that profile and the DNA profile of the cigarette
20 butts.

21 MR. BROWN: Judge, at this time the State moves in ID
22 48. States Evidence 48.

23 THE COURT: No objection?

24 MS. BOLEN: None, Your Honor.

25 THE COURT: Without objection, 48 is in evidence.

1 (Whereupon, State's Exhibit No. 48 was admitted into
2 evidence.)

3 Q Now, Ms. Gallman, you said that once you get a profile
4 -- you had a DNA profile from the cigarette butts from this
5 particular case, the four cigarette butts, and then the
6 standard was submitted of Tavarious Settles to you to
7 generate a standard from Mr. Settles, you said you then
8 compared those two items?

9 A Yes, I did.

10 Q And with comparing those two items what were your
11 results?

12 A My results was that the DNA profile developed from the
13 cigarette butts matched the DNA profile of Mr. Settles.

14 Q Ms. Gallman, when you're looking to determine a match,
15 is there some type of printout or some type of analysis that
16 shows a match where you can compare them?

17 A Yes. We issue a report with the DNA profile of the
18 evidence, and a DNA profile of the standards, and all of
19 that information is placed in the chart.

20 Q I'm going to show you what's been marked for
21 identification purposes as State's ID 52. Can you identify
22 that?

23 A It's one of the pages of the chart from my report.

24 Q And does it -- even though it's blown up a bit, does it
25 clearly and accurately reflect your report, or a copy of it?

1 A Yes, it does.

2 MR. BROWN: Judge, at this time State moves in State's
3 Exhibit 52 as State's Evidence.

4 MS. BOLEN: No objection.

5 THE COURT: Without objection, 52 is in evidence.

6 (Whereupon, State's Exhibit No. 52 was admitted into
7 evidence.)

8 Q Ms. Gallman, I'm going to position myself here. If
9 you'd like to, if you'd like to, if you want to -- if you
10 can explain what this report chart shows.

11 A This is a blown up portion of my report which is --
12 we're talking about the chart. You can see that it's page
13 three of three. So when we issue a report and we send it
14 back and we make it available to the agency, the submitting
15 agency, they get all this information plus our results. On
16 here you can see -- if you look in the first column -- look
17 in the first column you'll see all the descriptions of
18 what's going across in the rows. So if you look down here
19 where you see Tavarious Settles and, as I said, he came from
20 L13-7501. That's where -- that's what case I got his
21 standard from. If you go across the -- across the row you
22 see his DNA profile. If you look at column number one you
23 see a 14-15, and then you go down to the cigarette butt you
24 see a 14-15 there also. You're also seeing other standards
25 that were submitted, but you can tell that they do not match

1 the cigarette butts. So what we do is develop a DNA profile
2 from the evidence, and then a DNA profile from the
3 standards, and then we compare them to see whether they
4 match or they do not match. And in this particular case the
5 DNA profile available from the cigarette butts match the DNA
6 profile of Mr. Settles.

7 Q Now, Ms. Gallman, after looking over that chart, you
8 said there were other pages in your report. Is there -- did
9 you printout or come to a result or a finding on probability
10 of randomly selecting another individual with that same DNA
11 profile?

12 A Yes, I did. The initial report that I submitted states
13 that the DNA profile developed from items one, two, three
14 and four matches the DNA profile of Tavarious Settles, and
15 also that he -- that it has been entered into the combined
16 DNA inmate system. It also gives you the probability of
17 that particular match. Because the first thing you have to
18 establish, that you have a match, and then we are required
19 to give a statistic value to that. The frequency of seeing
20 that particular profile. And at that time my report read as
21 one in 150 quadrillion. Since that time the database had
22 been updated and I recalculated the statistics and it's one
23 in 140 quadrillion.

24 Q Now, Ms. Gallman, when I hear 140 quadrillion, I know
25 that's a large number. How many people is the current

1 population of earth right now?

2 A Approximately seven billion.

3 Q How many earths would it take populated at seven
4 billion people to get the number of 140 quadrillion?

5 A Twenty million.

6 Q And your results say that the probability of randomly
7 selecting another unrelated individual having that same DNA
8 profile is one in 140 quadrillion?

9 A That's correct.

10 Q So another to say it, that's one in 20 million earths?

11 A Yes.

12 MR. BROWN: No further questions.

13 THE COURT: Cross.

14 CROSS-EXAMINATION

15 BY MS. BOLEN:

16 Q Ms. Gallman, when you analyze DNA, you say you analyze
17 them against standards that are submitted to you from law
18 enforcement, correct?

19 A When I compare them to --

20 Q Compare. Yes, compare.

21 A Yes.

22 Q So a law enforcement agency would give you a standard
23 to compare against, correct?

24 A Yes, it could be blood or what's called a buccal swab
25 where you swab on the inside of someone's mouth.

1 Q And that's from a known individual, correct?

2 A That's correct.

3 Q And in this case you compared -- you were looking at
4 the cigarette butts, right? The DNA on the cigarette butts?

5 A Yes. I developed the DNA profile from the DNA on the
6 cigarette butts.

7 Q And you compared that to, you said, more than one
8 standard, right? I think you said a few standards had been
9 submitted?

10 A That's correct.

11 Q And just looking at this chart --

12 MS. BOLEN: May I approach, Your Honor?

13 THE COURT: Please.

14 Q Looking back at the chart there's 16, 46, 47, 48,
15 correct? And 16 is Tavarious Settles, right?

16 A Uh-huh. Yes.

17 Q And then you also have a standard from a Deandrae
18 Wideman, correct?

19 A Yes.

20 Q And a standard from a James Jones?

21 A Yes.

22 Q And a standard from Avery Roman, right?

23 A That's correct.

24 Q So all of these would have been standards that law
25 enforcement asked you to compare against the cigarette

1 butts, correct?

2 A That's correct.

3 Q And the cigarette butts came back to matching with
4 Tavarious Settles, correct?

5 A That's correct.

6 MS. BOLEN: Nothing further, Your Honor.

7 THE COURT: Thank you, ma'am. You may step down.

8 (Whereupon, the witness stepped down from the witness
9 stand.)

10 THE COURT: Ladies and gentlemen, we're going to take a
11 very brief break and we'll back on the record for about five
12 minutes. Don't discuss the case.

13 (Whereupon, the jury exited the courtroom at 12:18
14 p.m.)

15 THE COURT: We're at ease.

16 (Whereupon, a recess was held from 12:18 p.m. to 12:35
17 p.m.)

18 THE COURT: We're going to go back on the record, if we
19 may. Let's go ahead and have the jury back in here, please.

20 (Whereupon, the jury entered the courtroom at 12:35
21 p.m.)

22 THE COURT: We're going to go back on the record.
23 Solicitor, if you could call your next witness, please, sir.

24 MR. STUMBO: Thank you, Your Honor. The State calls
25 Michelle Eichenmiller.

1 MICHELLE EICHENMILLER, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. STUMBO:

5 Q Good afternoon, Ms. Eichenmiller. Do you work with
6 SLED?

7 A I do.

8 Q How long have you been with SLED?

9 A I've been with SLED about nine and a half years.

10 Q What division do you work in there?

11 A I work in the forensic laboratory. I work in the
12 firearms department.

13 Q What kind of education, training, experience have you
14 received to work as a firearms analyst?

15 A To work at SLED you need a Bachelor's degree. I have a
16 Bachelor's degree in biology. I also have a Master's in
17 science and forensics science. In order to be a firearms
18 examiner you need to go through an in-house training
19 program. It's like an apprenticeship. It's three to five
20 years where I studied. I read a lot. I did a lot of
21 microscope practice. I worked with the examiners that were
22 already trained and I learned how they did their job. At
23 the end I took a competency test and they let me work on my
24 own after that.

25 Q Where did you go to school?

1 A I went to Case Western Reserve University in Cleveland,
2 Ohio for my undergrad, and Marshall University in West
3 Virginia.

4 Q Did you get a Master's at Marshall?

5 A Yes.

6 Q Now, in the time that you've worked nine and a half
7 years at SLED how many cases have you worked on, Ms.
8 Eichenmiller?

9 A Hundreds if not thousands by this point.

10 Q And was one of those cases that you worked in relation
11 to this case, the homicide of Jamil Phillips?

12 A Yes.

13 Q Have you ever been qualified as an expert in firearms
14 analysis, or I believe where it's called firearm
15 identification, in the courts of this state?

16 A Yes, I have. About 25 times.

17 Q That's been statewide in state courts?

18 A Yes.

19 Q And in those times that you've been qualified as an
20 expert have you made comparisons between projectiles and
21 particular guns and that sort of thing?

22 A Yes. That's what we do.

23 Q Could you explain to the jury just briefly what your
24 job consist of? If you get in an alleged projectile that's
25 come out of a gun, a bullet, or a gun itself, can you

1 explain to the jury how that process works?

2 A Firearms identification is a branch of forensic science
3 that deals with firearms and bullets and cartridge cases
4 that come from firearms. There's a couple other tests that
5 we can do, too. But primarily we're concerned with did this
6 firearm fire this cartridge case and/or this bullet. If we
7 don't get a firearm then we can look at the bullet, measure
8 the different characteristics that it has, and then generate
9 a list of manufacturers that use those, like widths and
10 height, and give that to the investigators.

11 Q So, in other words, not every case that you work is
12 there a firearm submitted that's alleged to be a possible
13 weapon used in --

14 A Correct.

15 Q But you can look at bullets that are given and tell
16 what caliber they are?

17 A Yeah, we would do -- if we didn't get a firearm, we
18 would look at what we received. We would measure it. We
19 would weigh it. We would look under the microscope at the
20 width of the lands and grooves. We can measure those as
21 well. Those are called general characteristics, and
22 manufacturers choose those just however they -- whichever
23 number or width they want. We have a database that we can
24 put in the measurements and it will give us a list of
25 possible manufacturers.

1 Q When you say lands and grooves, when a bullet that's
2 fired from a rifle or a pistol does it spin the bullet? Is
3 that what you're talking about? The markings where the
4 bullet passes through the barrel of the gun?

5 A Yeah. Manufacturers will put riffling in the barrel in
6 order to -- bullets accurately. It's like a football. A
7 quarterback is throwing a football. The rotary motion of
8 the football gets it to go to its target instead of flopping
9 end over end. So that's what riffling is for.

10 Q Microscopically you can examine the lands and grooves
11 and make comparisons?

12 A Yes.

13 MR. STUMBO: Your Honor, at this time the State would
14 offer Ms. Eichenmiller as an expert in the field of firearms
15 identification.

16 MS. BOLEN: No objection, Your Honor.

17 THE COURT: Again, ladies and gentlemen, Ms.
18 Eichenmiller has been certified as an expert in the field of
19 firearms identification, so she can give opinion testimony
20 in that area that you can use as you deem appropriate.

21 Go ahead, Solicitor.

22 MR. STUMBO: Thank you, Judge.

23 Q Ms. Eichenmiller, did you take in evidence in relation
24 to this case, the homicide of Jamil Phillips?

25 A I did.

1 Q And what evidence did you receive for analysis?

2 A In this case I received one fired bullet jacket and one
3 fired bullet.

4 Q I'm going to hand you what's been marked for ID at this
5 point as State's 47.

6 A This is what I examined.

7 Q And those containers have your markings on them?

8 A Uh-huh. I put my -- the case number, the IN numbers
9 and my initials on any packaging or evidence that I receive.
10 So those all have those identifiers.

11 Q So where it says, obviously, M.E. there, that's your
12 initials?

13 A My initials, yes.

14 Q And when you received this packet that contained these
15 -- the fired jacket and the -- it was in one -- or basically
16 two -- two tubes here?

17 A Correct.

18 Q Okay. But it was in one -- essentially what you've
19 done is we've packaged it up in one small bag?

20 A Yes.

21 Q So the jacket that's, I guess, somewhat damaged here
22 and the bullet that's intact are in the same small bag now
23 and resealed in this packet?

24 A Correct.

25 Q And when you received the two tubes in this case, who

1 submitted those to SLED lab for evidence -- or for analysis?

2 A According to our paperwork, Investigator Michael
3 Collins with SLED.

4 Q He's one of your all's field agents?

5 A Yes.

6 Q And essentially when you got the two bullets that were
7 in these containers did it look they had been tampered with
8 from the time that they had been submitted for evidence?

9 A No. We always receive sealed containers with initials
10 on the seals from evidence log-in.

11 Q And with you all's agency, Courtney L. Smith, does she
12 work for State Law Enforcement Division?

13 A She did at the time.

14 Q And Courtney Smith was a -- is a tech at SLED?

15 A Yes. She's in our log-in department.

16 Q How about Patricia Crooks?

17 A She's also in our log-in department. She primarily
18 deals with handing out evidence. Once evidence comes into
19 SLED they log it in, they put it in the vault, and then when
20 I get case assignment I'll go down there and pick it up.
21 And Ms. Crooks was the one that gave me the evidence.

22 Q Ms. Crooks is retired now?

23 A Yes.

24 Q And when you received SLED 17 and 18, which were in the
25 packet, which is State's 47, they had not been opened, from

1 what you can tell, by the attendants? By either Ms. Smith
2 or Patricia Crooks?

3 A Correct.

4 Q And if it appeared they had been tampered with you
5 would have tried to get to the bottom of that, correct?

6 A Right.

7 Q Now, and you did analyze the bullet and the bullet
8 jacket that's in this bag?

9 A I did.

10 MR. STUMBO: Your Honor, at this time the State would
11 offer State's 47 into evidence.

12 THE COURT: Any objection?

13 MS. BOLEN: No, sir.

14 THE COURT: Without objection, State's 47 is in
15 evidence.

16 Q Did you generate a report from the analysis which you
17 did on those two bullets?

18 A I did.

19 Q And as to the bullet jacket and the whole bullet, did
20 they appear to be the same caliber, the same type of gun?

21 A Item 17 is the -- well, my item 17, the jacket, was
22 pretty damaged. But based on the measurements that I could
23 do, it was consistent with being the same caliber as item
24 18, which is the fired bullet, which was pretty complete and
25 I could get really good measurements off of that. So they

1 both appear to be the same caliber.

2 Q What caliber were these bullets?

3 A They were either a .38 Special or a .357 Magnum. They
4 both have the same diameter. Basically the one -- they just
5 have different characteristics as to how the bullet is made
6 for their purposes. They were both the same though.

7 Q .38 or a .357 Magnum, is that a revolver type handgun?

8 A Typically it's a revolver caliber.

9 Q Did you weight the bullets?

10 A I did. As part of our general examinations we'll weigh
11 them. We'll measure them. I weighed both of them. The
12 jacket was missing its core, which is basically the inside.
13 The jacket is -- think of an M&M. It's like the shell. So
14 it would hold the core together. This one was missing the
15 shell -- or the core, and it weighed less than I would have
16 expected. But the complete bullet I was able to weigh as
17 well.

18 Q And would the weights of the bullets be consistent with
19 a revolver or a semi-automatic type gun?

20 A The weight of the bullet was consistent with being a
21 .38 Special or a .357 Magnum, which is consistent with being
22 a revolver caliber. That's the most common firearm that
23 would fire, a .38 Special or .357 Magnum.

24 Q What types -- or what manufacturers were you able to
25 ascertain that the gun could have been that fired these two

1 bullets? Did you compile a list, Ms. Eichenmiller?

2 A We did.

3 Q What manufacturers could those have come -- could the
4 bullets have been fired from?

5 A The manufacturers that make firearms, the .38 Special,
6 are Alamo, Alpha, Century Arms, Aris Body, Herbert Schmidt,
7 INA, Llama, Ruger, Smith and Wesson, Sport Arms or Taurus.
8 And then a .357 Magnum, the manufacturers that make firearms
9 with those measurements are Kunan Arms, Kassnar, Ruger,
10 Smith and Wesson and Taurus.

11 Q Thank you, Ms. Eichenmiller.

12 MR. STUMBO: If I may approach the witness, Your Honor.

13 THE COURT: Please.

14 Q I'm going to show you State's -- what's in evidence
15 already as State's 39, 40, 41. Take a look at those. In
16 State's 39, 40, 41 those are pictures of firearms, correct?

17 A Correct.

18 Q And one of these were submitted to you for analysis?

19 A No. I didn't receive a firearm in this case.

20 MS. NELSON: We have a matter of law at this time, Your
21 Honor.

22 THE COURT: All right. Ladies and gentlemen of the
23 jury, let me take a quick -- we need to take a quick break
24 to take up an issue of law. If you would, adjourn to the
25 back. I'll have you back out here as soon as possible.

1 Please don't discuss the case.

2 (Whereupon, the jury exited the courtroom at 12:49
3 p.m.)

4 THE COURT: The jury is out. You have an issue of law?

5 MS. NELSON: Your Honor, it seems like where they are
6 going to go is to ask Ms. Eichenmiller to comment or make
7 identifications about these pictures of guns that were taken
8 from Mr. Settles' home. Our objection would be that those -
9 - she's not actually looked at those guns, and she's already
10 testified as to what types of manufacturers make guns that
11 these -- that this casing and bullet she examined could have
12 come from. We object on 403 grounds that allowing the State
13 to elicit testimony from her that somehow connected what she
14 examined to these photographs would let the jury make
15 inferences that these are photographs of the actual gun that
16 was used when there's been no comparison, when we don't know
17 when those pictures were taken. We don't know if they were
18 before or after this incident. We don't know who they
19 belong to. We only know that they were on Mr. Settles'
20 phone. And we just -- it's just our position that allowing
21 this kind of connection would just go too far and
22 potentially allow the jurors to make inference that they
23 should not be making from the rest of the evidence, Your
24 Honor.

25 THE COURT: Solicitor, for purposes of this motion I'm

1 assuming that one of the photographs is a .38?

2 MR. STUMBO: Yes, sir. Well, there's three
3 photographs. Two of them are essentially the same. One of
4 them has what appears to be a different revolver that looks
5 to be a .38 caliber. Ms. Eichenmiller is an expert in this
6 area. She can identify by sight the type of gun it is.
7 Maybe not the manufacturer based on these pictures, but she
8 can identify the exact type of gun. That's the only kind of
9 identification she's going to --

10 THE COURT: All right. I think your objection goes to
11 perhaps the weight as opposed to the admissibility of this
12 testimony, Ms. Nelson. I'll permit the witness to testify,
13 to the extent that she is able, about the caliber of the
14 caliber of the firearms depicted, or firearm depicted in the
15 photos, if she's able to make that identification.
16 Obviously you can address your points on cross.

17 Let's have the jury back out.

18 (Whereupon, the jury entered the courtroom at 12:53
19 p.m.)

20 THE COURT: Solicitor, you may continue.

21 MR. STUMBO: Thank you, Judge. What we'll do, Judge,
22 is I'm going to pass these around to the jury so we don't
23 have to listen to that beep, if that's okay.

24 THE COURT: Sure.

25 Q Ms. Eichenmiller, in State's 39, 40 and 41, are there

1 any firearms in those pictures that would be consistent with
2 a .38 or a .357 Magnum?

3 A In both of these -- in all of these pictures, there's
4 one revolver and one semi-auto firearm. The .38 Special is
5 the revolver caliber.

6 Q And the bullets that you analyzed in State's 57 -- or,
7 excuse me, 47 that are in evidence, would they be consistent
8 with any of the revolvers in the pictures here?

9 A Without having to see it closer --

10 MS. BOLEN: Objection. Objection, Your Honor, 403
11 relevance. Ms. Eichenmiller did not examine these weapons
12 and can't testify with certainty that those bullets could
13 have been fired from either of those guns pictured.

14 MR. STUMBO: Your Honor, I think it's the same thing we
15 just talked about in the motion.

16 THE COURT: Overruled. You can --

17 MR. STUMBO: Thank you, Judge.

18 THE COURT: You can deal with that on cross.

19 Q Anything in these pictures that are consistent with a
20 .38 Special, Ms. Eichenmiller?

21 A There's no way for me to tell from these pictures if
22 it's a .38 caliber. I can't see the diameter of the barrel.
23 Based on my experience, I've seen firearms that look like
24 this in .38 caliber.

25 Q The revolvers, not the semi-automatic?

1 A Correct.

2 Q Obviously you've not been able to test these guns
3 because they weren't submitted for your analysis?

4 A Correct.

5 Q But based on your training and experience they would be
6 consistent with a .38 Special?

7 A Correct.

8 Q Okay. Thank you.

9 MR. STUMBO: No further questions at this time. Please
10 answer any questions Ms. Bolen may have for you.

11 THE COURT: Ms. Bolen.

12 CROSS-EXAMINATION

13 BY MS. BOLEN:

14 Q Ms. Eichenmiller, you testified on direct that you have
15 created a report, correct?

16 A Yes.

17 Q And in that report you said you analyzed item 17, which
18 is the jacket, and 18 which is the actual bullet, correct?

19 A Correct.

20 Q And in that report you said that you couldn't determine
21 if those were fired by the same firearm or two different
22 firearms, correct?

23 A Correct.

24 Q And you also talked about the possible makes of
25 firearms that that bullet could come from?

- 1 A Yes.
- 2 Q And you read out, I believe, 16 different types?
- 3 A I think 17.
- 4 Q Seventeen. You're right. It's 17. Seventeen
- 5 different types, correct?
- 6 A Yes.
- 7 Q And you also state in your report that those 17 are not
- 8 the only ones? That it could be from another kind beyond
- 9 that 17, correct?
- 10 A Correct.
- 11 Q And you have not examined any guns in this case, right?
- 12 A I have not.
- 13 Q None have been submitted to you to examine?
- 14 A I haven't received any.
- 15 Q And with respect to the pictures that Mr. Stumbo showed
- 16 you, you don't have any idea where those pictures were
- 17 taken, right?
- 18 A No.
- 19 Q Or when?
- 20 A No.
- 21 Q Or whose guns they are?
- 22 A No.
- 23 Q And you said you can't -- there's no way to tell if
- 24 that gun in that picture is a .38?
- 25 A Yeah, without having to see it a little bit closer.

1 Q And it's true that you can't identify what make of gun
2 that is, right, or a brand?

3 A No. It's a little blurry. Just based on general
4 characteristics I can make an educated guess.

5 Q But if were to print a picture of a .38 off the
6 Internet and hand it to you, your testimony would be the
7 same, right? That that bullet could have been from that gun
8 as well, right?

9 A Possibly.

10 MS. BOLEN: Nothing further. Thank you.

11 THE COURT: Thank you. You may step down and you are
12 free to go.

13 (Whereupon, the witness stepped down from the witness
14 stand.)

15 THE COURT: Ladies and gentlemen, we're going to go
16 ahead and take our lunch break at this point in time. I'm
17 going to ask that you be back in the jury room, if you
18 would, around 2:15 and we'll continue with the trial of the
19 case. The same rules as before. Don't talk about the case
20 with anyone, but I do hope you have the chance to have a
21 good lunch. All right? See you all back at 2:15. We are at
22 ease.

23 (Whereupon, the jury exited the courtroom at 12:58
24 p.m.)

25 THE COURT: We'll be at ease until around 2:15. See

LASHAY HIGGINS-DIRECT EXAMINATION

330

1 you all then.

2 MS. BOLEN: Thank you, Your Honor.

3 (Whereupon, court was in recess from 12:58 p.m. to 2:23
4 p.m.)

5 THE COURT: We'll go back on the record. The jury
6 isn't here. Let's go ahead and bring them in if there's
7 nothing to address the Court.

8 (Whereupon, the jury entered the courtroom at 2:24
9 p.m.)

10 THE COURT: The record should reflect that the jury is
11 back and is seated. The Defendant is present with counsel.
12 Solicitor, if you'll call your next witness, please, sir.

13 MR. STUMBO: Thank you, Your Honor. The State calls
14 Shay Higgins.

15 Lashay Higgins, having been first
16 duly sworn, testified as follows:

17 MS. BOLEN: Your Honor, I just wanted to, just for the
18 record, renew our previous objection.

19 THE COURT: Noted. Same ruling as before. You're
20 protected. You do not need to contemporaneously object.

21 Proceed Solicitor.

22 MR. STUMBO: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. STUMBO:

25 Q Shay, you came over here from Greenwood today; is that

1 correct?

2 A Yes.

3 Q And do you know, Tavarious Dequan Settles, also known
4 as Purp?

5 A Yes.

6 Q And how do you know Purp?

7 A He's my cousin.

8 Q And you've known Purp his whole life?

9 A Yes.

10 Q Now, you said he's your cousin. How is -- what's --
11 your father's side or your mother's side?

12 A Mother.

13 Q This was your mother's sister or brother that is his
14 parent?

15 A His mom is my first cousin.

16 Q His mom is your first cousin? Your second cousin?

17 A Yeah.

18 Q Got you. Now, Shay, do you know Karlita Phillips?

19 A Yes.

20 Q And she -- would you consider her a close friend, or
21 acquaintance, or how would you describe her?

22 A Acquaintance.

23 Q Acquaintance. How many times have you been around
24 Karlita Phillips?

25 A Probably about two or three.

LASHAY HIGGINS-DIRECT EXAMINATION

332

1 Q Do you know her by another last name before Phillips?

2 Her prior name Purdy; is that correct?

3 A Uh-huh.

4 Q Yes?

5 A Yes.

6 Q Now, to your knowledge, what relationship developed
7 between Purp and Karlita?

8 A To my knowledge they were seeing each other.

9 Q Seeing each other. What does that mean to you?
10 Describe to the jury what your understanding of them seeing
11 each other was.

12 A They was having some type of relationship.

13 Q Physical relationship?

14 A Yes, I guess.

15 Q And did you ask your cousin, Purp, about that, or did
16 he tell you?

17 A He told me about it.

18 Q He volunteered that information to you?

19 A Yes.

20 Q And that information was that he was physically
21 involved with Karlita?

22 A Yes.

23 Q Did he say we're messing around? I mean, how did he
24 say that?

25 A He just told me that -- he asked me what was she doing

1 at my house, and he was saying that they basically deal with
2 each other.

3 Q And she -- I'm going to give you, just maybe to refresh
4 your memory -- and you did give a statement to law
5 enforcement in this matter?

6 A Uh-huh.

7 THE COURT: Yes.

8 Q Say yes or no.

9 A Yes.

10 Q Okay. And the first line of that statement did you --
11 how did you describe your understanding of their
12 relationship?

13 A I said that they was messing around, or having sex.

14 Q So you did tell them you understand that they were
15 having sex, correct? Yes or no.

16 A Yes.

17 Q And did you ever have a conversation with Karlita
18 Phillips about this relationship between her and your
19 cousin?

20 A Yes. I asked her about it, and she basically confirmed
21 yeah, they was messing around.

22 Q That they were having a sexual relationship?

23 A She never said that they was having a sexual
24 relationship, but she pretty acknowledged the fact that they
25 were --

1 Q Messing around?

2 A -- seeing each other. Spending time with each other.

3 Q Now, Ms. Higgins, you said she had been at your house.

4 Purp approached you about her being at your house. Was she
5 there for -- what was she there for?

6 A For a couple of hours.

7 Q Okay. She was there for a couple of hours. But what
8 was the nature of this? Was it a party or did you privately
9 invite her over? Was it a get-together?

10 A It was a get-together.

11 Q Purp came, too, to that particular party?

12 A Yeah. Yes.

13 Q When did you find all this out? What was the time-
14 frame of this?

15 A The time-frame was -- what, the party?

16 Q Well, the party and these conversations that you had
17 with Purp and Karlita?

18 A This was earlier part of the year. Probably around
19 January, February. Something like that.

20 Q And when did you find out they were -- that was when
21 the party took place. When did you have these conversations
22 with them about them messing around with each other?

23 A Probably about a week or so afterwards.

24 Q Okay. Your prior statement, would that -- look at
25 that, if that would refresh your --

1 A That says early March.

2 Q Early March of 2013, correct?

3 A Yes.

4 MR. STUMBO: No further questions, Ms. Higgins. Answer
5 any questions that the Defense may have for you.

6 MS. BOLEN: No cross, Your Honor.

7 THE COURT: Thank you, ma'am. You may step down. Call
8 your next witness.

9 (Whereupon, the witness stepped down from the witness
10 stand.)

11 MR. BROWN: The State calls Anthony Moss.

12 MR. STUMBO: And, Your Honor, Ms. Higgins may be
13 released obviously at this time. I think she has a doctor's
14 appointment. Thank you.

15 MS. BOLEN: And, Your Honor, objection subject to our
16 prior motion.

17 THE COURT: Same objection. Same ruling. No need for
18 objections when she testifies. When he testifies.

19 ANTHONY MOSS "DRE", having been
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. BROWN:

23 Q Good afternoon, Mr. Moss. What's your full name?

24 A Anthony Moss.

25 Q And what do you go by?

ANTHONY MOSS-DIRECT EXAMINATION

336

- 1 A Dre.
- 2 Q Dre. Dre, do you know Tavarious Settles?
- 3 A My cousin.
- 4 Q And how old are you?
- 5 A Twenty-four.
- 6 Q How old is Tavarious Settles?
- 7 A Eighteen now.
- 8 Q So two years ago he would have been 16?
- 9 A Uh-huh.
- 10 Q And how long have you known him?
- 11 A My whole life.
- 12 Q And who is your sister?
- 13 A Shay.
- 14 Q Shay Higgins?
- 15 A Higgins, yeah.
- 16 Q Now, Dre, do you remember talking to law enforcement
- 17 about this case?
- 18 A Yes.
- 19 Q Did you ever have a conversation with your cousin,
- 20 Tavarious Settles -- what other names does he go by?
- 21 A Quan.
- 22 Q Does he also go by Purp?
- 23 A Yeah.
- 24 Q And did Tavarious ever tell you about a relationship he
- 25 had with Karlita?

- 1 A Yeah. He just told me they were having sex.
- 2 Q That they were having sex?
- 3 A Yeah.
- 4 Q What time did they start seeing each other? What time
- 5 of year was that and what year was it?
- 6 A I can't -- I can't remember exactly.
- 7 Q Was it 2013?
- 8 A Yeah.
- 9 Q Was it before Mr. Jamil Phillips was killed?
- 10 A Yes.
- 11 Q So was it a short time before that date, March 25th of
- 12 2013?
- 13 A Probably so.
- 14 Q Probably so. Did Tavarious, or Quan, or Purp -- what
- 15 do you call him, Quan?
- 16 A Yeah, I call him Quan.
- 17 Q Quan. Did Quan ever tell you of anything that Karlita
- 18 bought him or gave --
- 19 A Some shoes. Shoes.
- 20 Q Shoes?
- 21 A Yeah.
- 22 Q Did she ever give him any money?
- 23 A From time to time. That what he told me.
- 24 Q She'd just give them these kind of as gifts or
- 25 presents?

ASHANTI POLK-DIRECT EXAMINATION

338

- 1 A I guess. I guess so.
- 2 Q Again, at that time how old was Quan?
- 3 A Sixteen.
- 4 Q Had you ever seen Quan and Karlita at the same location
- 5 together?
- 6 A Yeah, once. At my sister's party. Like a kickback
- 7 like. A little get-together.
- 8 Q A little get-together at your sister's apartment?
- 9 A Yeah.
- 10 Q And were they together?
- 11 A No, they weren't together.
- 12 Q But you all were in this same apartment together?
- 13 A Yeah.
- 14 Q Did you know they were seeing each other then?
- 15 A Not then, no.
- 16 Q So it was after that you found out that they were -- or
- 17 that Quan and Karlita were having sex? And again, it was
- 18 after that you found out that Karlita bought your cousin,
- 19 Quan -
- 20 A Yeah.
- 21 Q -- shoes and gave him some money?
- 22 A Yeah.
- 23 Q And that's what Quan told you?
- 24 A Yeah.
- 25 Q Before Jamil Phillips died?

1 A Yeah.

2 MR. STUMBO: No further questions.

3 MS. BOLEN: No cross, Your Honor.

4 THE COURT: Thank you, Mr. Moss. You can step down,
5 sir.

6 (Whereupon, the witness stepped down from the witness
7 stand.)

8 THE COURT: Call your next witness.

9 MR. STUMBO: Ashanti Polk. Judge, we ask that Mr. Moss
10 be free to go.

11 THE COURT: Certainly.

12 ASHANTI POLK, having been first
13 duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. STUMBO:

16 Q Good afternoon. You go by Ashanti?

17 A Yes.

18 Q How old are you, Ashanti?

19 A Twenty.

20 Q And you live in Greenwood?

21 A Yes.

22 Q Tell me if you know an individual by the name of
23 Tavarious Purp Settles.

24 A Yes. We were dating.

25 Q What did you call him?

1 A Purp.

2 Q You called him Purp? Do you know where that nickname
3 came from?

4 A From friends in the neighborhood.

5 Q Now, how long -- when did you start dating Purp? How
6 old were you at the time?

7 A I was around 15, 16.

8 Q How old was he?

9 A Around 14, 15.

10 Q Now, Ashanti, how long did you and Purp go out?

11 A For about three years off and on.

12 Q Now, after that three years tell us why you all broke
13 up.

14 A Because it was rumors that he was cheating with
15 somebody else.

16 MS. BOLEN: Objection, Your Honor.

17 THE COURT: Sustained as to rumors, but she can testify
18 as to her understanding of why they broke up.

19 MR. STUMBO: Right.

20 Q Why did you all break up?

21 A Because he was cheating.

22 Q Did you confront him about this?

23 A Yes.

24 Q What did he tell you?

25 MS. BOLEN: And, Your Honor, just for the record,

1 subject to our previous motion.

2 THE COURT: Overruled.

3 MR. STUMBO: Thank you, Judge.

4 Q What did he tell you, Ashanti?

5 A He told me he was cheating and told me the person he
6 was cheating with.

7 Q He admitted to you he was cheating on you?

8 A Yes.

9 Q Who did he say he was cheating with?

10 A Karlita.

11 Q Did he describe her? Did you know Karlita at the time?

12 A No. He just said she was an older woman.

13 Q He was cheating with an older woman named Karlita?

14 A Yes.

15 Q What else did he tell you that was of note in relation
16 to this case? What did he tell you he had done?

17 A Told me that he shot Jamil.

18 Q So he told you he shot Jamil? That's the name he used?

19 A Yes.

20 Q Did he tell you who drove him there to do it?

21 A He told me his friend took him up there.

22 Q When did these conversations take place, or when did he
23 tell you these things? Do you remember what time it was?

24 A When?

25 Q Yeah.

1 A It was in June of 2013.

2 Q June of 2013. That was -- that date sticks out to you
3 why? What was like shortly before? What happened after
4 that?

5 A Well, the month -- the month does because he got locked
6 up a few days after that, so -- and I know he got locked up
7 in June.

8 Q He got locked up over in Greenwood?

9 A Yes.

10 Q And that was for the --

11 A For the --

12 Q -- murder of a Guatemalan person over there?

13 A Yes.

14 Q Did you know the Phillips family, Jamil's family at
15 all? Did you know Jamil Phillips?

16 A No.

17 Q Do you know anybody in his family?

18 A No.

19 Q And you said at the time you didn't know Karlita
20 Phillips either?

21 A No.

22 Q Never met her?

23 A No.

24 Q And you -- when law enforcement came to see you, you
25 were honest with them and tell them what you knew?

1 A Yes.

2 MR. STUMBO: No further questions, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. BOLEN:

5 Q Ms. Polk, you just said that you were honest when law
6 enforcement came to see you, correct?

7 A Yes.

8 Q But you didn't call law enforcement after Tavarious
9 told you --

10 A No.

11 Q -- you shot someone, correct?

12 A Correct.

13 Q And that conversation between you and Tavarious took
14 place in your house, right?

15 A Yes.

16 Q After school? You were already out of school, right?

17 A Yes, I was out of school.

18 Q He was still in school?

19 A Yes.

20 Q And that conversation took place in June?

21 A Yes.

22 Q And you didn't call the police, right?

23 A Right.

24 Q And you didn't make him leave your house or anything,
25 right?

MICHAEL COLLINS-DIRECT EXAMINATION

344

1 A Right.

2 Q And when you talked to law enforcement that was in
3 December of 2013, right?

4 A Yes.

5 Q Nothing further. Thank you.

6 THE COURT: Thank you, ma'am. You can step down.

7 (Whereupon, the witness stepped down from the witness
8 stand.)

9 THE COURT: Solicitor, call your next witness.

10 MR. STUMBO: The State calls Michael Collins. And,
11 Your Honor, we just ask that Ms. Polk be released at this
12 time.

13 MICHAEL JAMES COLLINS, having been
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. BROWN:

17 Q Mr. Collins, please state your full name.

18 A My name is James Michael Collins.

19 Q And where do you work?

20 A I work for the South Carolina Law Enforcement Division,
21 also known as SLED.

22 Q How long have you been with SLED?

23 A I've been with SLED two and a half years now. Before
24 that I was with Anderson County Sheriff's Department for six
25 years.

1 Q And what are your duties with SLED now?

2 A I'm an investigator with Piedmont Region Investigation
3 Division.

4 Q And were you in that same capacity back in March, 2013?

5 A That's correct. I was.

6 Q And, Investigator Collins, did you get called out on
7 March 25th, 2013 to a location at [REDACTED]
8 [REDACTED]?

9 A I was.

10 Q And what was the nature of that call?

11 A The nature of the call was my training officer at the
12 time contacted me and stated that they had received a
13 request for us to assist Abbeville County in a homicide
14 investigation.

15 Q And did you respond to that location?

16 A I did. I responded to [REDACTED] here
17 in Abbeville.

18 Q What time did you get there that night?

19 A It would have been sometime after midnight. It was a
20 little bit of a drive for me. I actually live in Oconee
21 County, and this would have happened after hours. I would
22 have had to get up, get dressed. Unfortunately I didn't
23 know my way around Abbeville County, so I had to rely on my
24 GPS and it actually put me a little bit further away than I
25 thought I was going to be. So I got there sometime 12:30,

MICHAEL COLLINS-DIRECT EXAMINATION

346

1 12:45, 1:00. Somewhere around there.

2 Q So 12:30, 1:00. So it would be March 26th when you got
3 there?

4 A That is correct.

5 Q It's actually the next day early?

6 A Yes.

7 Q Once you got to the location at [REDACTED]
8 [REDACTED] what did you find at that location?

9 A When I arrived at [REDACTED], basically
10 what I -- because of my capacity at the time of assisting, I
11 made contact with the investigators that were there on the
12 scene. They had already roped off the area of the crime
13 scene. Had already conducted a neighborhood canvas. Talked
14 to -- talked to some witnesses. So basically what I did was
15 I talked to them, what I call a briefing, and then they
16 provided me with the information that they had already
17 received at that point. Through that information, they
18 stated that they had some neighbors who said that they had
19 seen a either light in color car or a silver car speeding
20 away around the time of the gunshots, and also that they had
21 located some cigarette butts that were inside the wood line.
22 Just as part of what I do, I walked the crime scene.
23 Observed for myself what they were talking about. Observed
24 Mr. Phillips on the front porch of the residence. Observed
25 the cigarette butts. And also on the other side of the wood

1 line, also observed the tire treads.

2 Q Now, based on all of this information you were
3 gathering that night, were you -- did you ultimately become
4 the lead investigator on this case?

5 A That is correct. Originally I was in an assisting
6 capacity, but kind of as time went on and the transition
7 that the Sheriff's Office was going through at the time,
8 they had an interim Sheriff, I just kind of naturally became
9 the lead investigator on the case.

10 Q And after you all -- you and the rest of the
11 investigators that night, who else was there at the location
12 besides SLED?

13 A Abbeville County Sheriff's Office were there, SLED
14 crime scene was there, and then myself, and at the time,
15 Agent Kindley.

16 Q Now, Investigator Collins, after you received or kind
17 of gathered this information about the cigarette butts, the
18 color of the car, did you also talk with the Phillips
19 family?

20 A We did. As part of that briefing, when I spoke to the
21 Abbeville County Sheriff's Office investigator, they also
22 informed me -- informed me that they had spoken with members
23 of the family and received some information. I, myself,
24 spoke with the family and received that same information, as
25 far as who may have possibly been in possession or driving a

1 light in color or silver colored car.

2 Q Ultimately as part of the investigation, did you or
3 other law enforcement ultimately run to find out -- or run
4 through DMV to find out what cars belonged to who?

5 A We did. Investigator Nick Marshall with Abbeville
6 County, he ran some information. Got some information as
7 far as the vehicle that came back to Ms. Karlita Phillips
8 and Dale Phillips, Jr., and it was registered to an
9 apartment in Greenwood off [REDACTED].

10 Q After you received that information that -- about the
11 color of the car, and then also based that a similar kind of
12 car belonging to Ms. Phillips, Karlita Phillips, did you go
13 to that apartment complex?

14 A We did. After I did my walk-around of the crime scene
15 and the crime scene technicians came in, Ms, Vickie Hallman
16 and her -- and the other two technicians, they came in,
17 there really wasn't a lot for us to do as work but let them
18 just work the scene. At that point we decided that we would
19 follow up on the information. Because at that point in the
20 investigation our best source of information at that time is
21 the family and we are, at that moment, accepting any and all
22 information that we can get, so we have to follow-up on it.
23 We received that information, had a little bit more to do
24 with it, so we decided we'll go out and it'll be -- or try
25 to make contact with Ms. Karlita Phillips.

1 Q And ultimately that night -- where was her apartment?
2 Do you know what apartment complex that was, or what the
3 location?

4 A It's [REDACTED] in Greenwood and it's [REDACTED]
5 [REDACTED].

6 Q Now, what time of night or early morning did you all --
7 did you and -- who went with you at that location?

8 A Myself and Investigator Nick Marshall with the
9 Abbeville County Sheriff's Office. We actually went
10 together. He drove. Again, I didn't -- I don't know much
11 about Abbeville or Greenwood, so he drove. And he was going
12 to get outside of his jurisdiction, so it was nice to have
13 -- I have statewide jurisdiction, so we went together. We
14 arrived on -- we arrived at that apartment complex. We
15 observed a silver in color vehicle sitting hear the
16 apartment that we thought we were going to. Investigator
17 Marshall, he ran the information on the tag. It came back
18 to Ms. Karlita Phillips and Mr. Dale Phillips, Jr., and
19 registered to [REDACTED].

20 The way we parked, he pulled in, the car would have
21 been on my side. I was on the front passenger side. As
22 soon as I -- when we pulled in there were lights on inside
23 the apartment that we thought that we were going to. I get
24 out of the car and I -- I get out of his car. I notice that
25 there's mud around the wheels and a little bit down the side

MICHAEL COLLINS-DIRECT EXAMINATION

350

1 of the silver colored car that was of interest to us at the
2 time. He called in. Investigator Marshall was talking to
3 dispatch. When they relayed the information back to him he
4 had his radio turned up and then that's when the lights
5 inside the residence went off.

6 Q So when you first arrived lights were on inside the
7 apartment?

8 A That is correct.

9 Q [REDACTED]?

10 A Yes.

11 Q And when you arrived where did -- where did you go
12 after you noticed the car and kind of inspected the car,
13 what it had on it, there was mud around the tires and on the
14 side, what did you do?

15 A What I did was I just kind of looked at the vehicle for
16 a second. I told Investigator Marshall that the lights had
17 gone out. He said, "I saw that, too." At that point I went
18 to the front door. Yeah, he went around to the backside to
19 see if there was a back door or anything. I knocked on the
20 door. Announced who I was. I think I referred to myself as
21 state police. Knocked several times with no answer. At
22 that point, you know, a few minutes later, or a little while
23 later, a Greenwood County or City, I can't remember which
24 one he was, he arrived on the scene. And when we saw him
25 pull up he was coming to the same apartment that we were at.

1 And he said he had received a call from a female inside
2 saying that someone was banging on her door identifying
3 themselves as police.

4 Q Now, Investigator Collins, when you were knocking on
5 the door were you banging it down like you were going to
6 knock the door down or were you simply knocking on the door?

7 A I was simply knocking on the door.

8 Q What's your recollection? Was Nick Marshall with
9 Abbeville County, was he banging on any doors in the back or
10 was he simply around there to make sure nobody ran out the
11 back?

12 A From what I remember, he was -- he was not banging on
13 any doors. Basically the reason why he went around back is
14 just to make sure that no one ran out. At that time we
15 didn't know what we were getting into. And we knew that the
16 lights inside the house -- or inside the apartment had gone
17 off, so we had a reasonable suspicion that someone was
18 inside. And when the lights shut off we didn't know exactly
19 what was going to happen at that point, so he went around
20 back to make sure that nobody ran out. I was around front.
21 And I think -- pretty sure that was the only two exits out
22 of that apartment.

23 Q Now, once Greenwood responded, city police -- or county
24 deputies arrived, did Ms. Karlita Phillips come to the door?

25 A She did. The officer actually -- he knocked on the

MICHAEL COLLINS-DIRECT EXAMINATION

352

1 door, advised through the door who he was. She opened the
2 door. And at that point that's when we -- I made contact
3 with her.

4 Q Was Ms. Phillips placed under arrest or anything like
5 that?

6 A She was not.

7 Q Was she free to go if she wanted to?

8 A She was free to go. She was free to tell us to leave.
9 At that point we would have had to comply.

10 Q When you made contact with Ms. Karlita Phillips did you
11 tell her why you were there?

12 A Yes. Again, I'm knocking on somebody's door at 2:30,
13 3:00 in the morning, and I understood why she -- nobody
14 would want to open the door. At that point when she opened
15 the door I introduced myself again. Told her who I was.
16 Told her that we had -- there was an incident that happened
17 over in Abbeville County. That Mr. Jamil Phillips had been
18 killed. And that we had received some information that led
19 us to come talk to her.

20 Q Now, after you relayed that information to her,
21 ultimately that night did she give a statement?

22 A She did.

23 Q And she was not under arrest at this time?

24 A No, she was not.

25 Q Did she freely and voluntarily give this statement to

1 you?

2 A She did.

3 Q I'm going to show you what's been marked in as evidence
4 as Evidence 1A. If you can take a look at that and see if
5 you recognize it. If you can take a look at that and see if
6 you recognize it.

7 A I do.

8 Q And what is that?

9 A This is a statement that Ms. Karlita Phillips provided
10 written on a SLED statement form. Voluntary statement form.

11 Q And the jury has already heard what's in that
12 statement. But did she ever admit to having anything to do
13 with it that night?

14 A No. Initially when I talked to her it was basically
15 like a question and answer session, and that statement came
16 way after that -- way after those conversations, and this is
17 the information that she allotted. Even at the end where
18 there's a list of pawn shops and stuff where she went that
19 day, I specifically asked her if she had any knowledge or
20 information, you know, relevant to the investigation. At
21 that point she said that she didn't know anything about it.

22 Q What did she say about her car that night?

23 A Again, because of the tire treads that were seen and
24 the mud that I saw on her car, I did specifically ask her
25 where her car had been that night. She gave -- again, she

1 gave me a list of places that she had been. She ended up
2 being at home. She said that she and her daughter were
3 driving up and down the apartment complex, teaching her
4 daughter how to drive. And so, I asked her if anybody had
5 borrowed her car or used her car, and at that point, that's
6 in the statement, she said that nobody had used her car, or
7 borrowed her car.

8 Q Now, after -- and what time did that conversation end
9 or did she finish with this statement?

10 A She finished with that statement, I believe it's
11 indicated, at around 3:50.

12 Q So it's early morning hours?

13 A Yes, sir.

14 Q Now, Investigator Collins, after she gave that written
15 statement and you noticed the car being there with -- and
16 going back. When you first saw that car with that mud, did
17 it look like that mud had been there for a long time or did
18 it look fresh?

19 A It looked relatively fresh, just from my knowledge and
20 experience of analyzing mud. It looked like it had just
21 been put on there.

22 Q Now, after you got the statement from Karlita Phillips
23 and you'd seen the car, what did you do next?

24 A It's all kind of mix-matched together, because while I
25 was talking to her I was also speaking with the -- a

1 Solicitor at the Solicitor's Office about the car. Just
2 based on the fact that we had the tire tracks at the scene
3 and that it was a muddy situation, and then seeing the mud
4 on the vehicle itself, I did make contact with the
5 Solicitor's Office and advised them of the information. At
6 that time he actually typed up the search warrant as I was
7 giving him the information for the probable cause.

8 MS. BOLEN: Your Honor, we just renew our prior motion.

9 THE COURT: Same ruling as before.

10 Q Ultimately after you got that search warrant, did you
11 just leave the car there that night or did something -- did
12 you all get the car that night?

13 A No. It actually took a little while to get the search
14 warrant and get it signed. We had to wait for the judge,
15 you know, in the middle of the night and everything of that
16 nature. We actually left a -- again, I can't recall if it's
17 Greenwood city or Greenwood county. We left a deputy there
18 with the vehicle. Once we got the search warrant signed off
19 we went back and we had that vehicle towed to the Abbeville
20 County Sheriff's Office where they kept it in their impound.

21 Q After you had the car towed to the Abbeville County
22 impound did you go to attend the autopsy of Jamil Phillips
23 --

24 A I did attend --

25 Q -- that day?

MICHAEL COLLINS-DIRECT EXAMINATION

356

1 A I did attend the autopsy of Mr. Phillips.

2 Q And there's been talk about the bullets that were
3 retrieved from Jamil Phillips, State's Evidence 47. Did you
4 ultimately take that down to SLED?

5 A I did. That's indicated by my name and date, and
6 that's my handwriting and initials across the seal.

7 Q And Dr. Woodard would have given these to you after he
8 retrieved these from Jamil?

9 A Yes, sir. He would have.

10 Q Investigator Collins, ultimately was there -- when the
11 cigarette butts -- you alluded to cigarette butts.
12 Ultimately was there a comparison made on those cigarette
13 butts?

14 A There was a comparison made on those cigarette butts.
15 After some time we did receive a report that stated that
16 those cigarette butts -- the DNA on those cigarette butts
17 were a match to Tavarious Dequan Settles.

18 Q And during that investigation on Mr. Dequan Settles, or
19 Quan Settles, or he's been referred to here as Purp, was a
20 search warranted executed for phones belonging to Purp
21 Settles?

22 A That's correct. Once we got the information, as far as
23 the DNA match, I did do an interview with Mr. Settles. He
24 -- at the time he was at the Greenwood --

25 Q Just if you would go on to -- about the search warrant

1 on the phone.

2 A Yes. I did complete it and obtain a search warrant for
3 Mr. Settles' phone.

4 Q And that search was done -- a forensic search was done
5 by David Grubbs with SLED?

6 A That is correct.

7 Q I want to show you what's been marked as State's
8 Evidence 38. Do you recognize the person in that photo?

9 A That is Mr. Tavarious Settles.

10 Q And just through this investigation you know that to be
11 Tavarious Settles?

12 A That is correct.

13 MR. BROWN: Beg the Court's indulgence.

14 THE COURT: Yes, sir.

15 Q Now, Investigator Collins, after you received all the
16 information back from SLED testing did you ultimately make
17 an arrest in this case?

18 A We did.

19 Q And Purp Settles, what was he arrested for?

20 A He was arrested for the murder itself.

21 Q Of Jamil Phillips?

22 A Of Jamil Phillips.

23 Q And Karlita Phillips, was she ultimately arrested?

24 A She was ultimately arrested.

25 Q She was arrested in December -- I believe December

1 18th, or right around that date?

2 A Sometime around there. Yes, sir.

3 Q 2013?

4 A That's correct.

5 Q And what was she arrested for?

6 A The original arrest warrant was for using a minor to
7 commit a felony, and then a follow-up warrant was accessory
8 before the fact of murder.

9 MS. BOLEN: Your Honor, we have objection on a matter
10 of law actually at this time.

11 THE COURT: You all approach before we decide this.

12 (Whereupon, a sidebar was held.)

13 Q Investigator Collins, actually the accessory before the
14 fact of murder, that was actually a direct indictment,
15 correct, instead of a warrant being issued?

16 A I'm sorry. Yes, that's correct.

17 Q That was a direct indictment?

18 A That's right.

19 MR. BROWN: No further questions.

20 THE COURT: Cross.

21 CROSS-EXAMINATION

22 BY MS. BOLEN:

23 Q Investigator Collins, so you first got involved in this
24 case the 25th, 26th of March, right?

25 A Yes, ma'am.

1 Q And you went out to Karlita's apartment in Greenwood,
2 you said, sometime around 2:30 in the morning --

3 A That's correct.

4 Q -- on the 26th?

5 A That's about what time we would have been there.

6 Q And can you describe the apartment complex?

7 A There are -- I think they're brick apartments. You
8 pull in, and I think hers was somewhere back to the left, I
9 believe.

10 Q And you said her apartment was [REDACTED]? I believe that's
11 what you said.

12 A I believe it was.

13 Q And her car was parked up front, right?

14 A I don't know if it was right in front of the door of
15 [REDACTED], but it was pretty close to it.

16 Q And you said there was visible mud right on that car,
17 right?

18 A Yes.

19 Q And it was right out in the parking lot?

20 A Yes.

21 Q And you arrived there in an unmarked car, right? You
22 don't drive the police car with sirens and lights?

23 A To be honest with you, I didn't -- it wasn't my
24 vehicle, and I'm not sure what Investigator Marshall was
25 driving at the time.

1 Q And you testified you got there very early on in the
2 morning, somewhere around 2:30, you think?

3 A That would have been correct.

4 Q And you said you and Detective Marshall -- Detective
5 Marshall went to the back, you went to the front, and you
6 didn't know what was going to happen, right?

7 A Excuse me?

8 Q I think you testified on direct that Detective Marshall
9 went to the back and you knocked on the front door and you
10 said something about we didn't know what was going to
11 happen, right?

12 A Right. We didn't know what -- because the lights were
13 originally on inside the house until his radio -- until
14 dispatch got back in contact with him and that blared out
15 very loudly, that's when the lights went out inside that --
16 inside the apartment. At that point he saw it. I stated it
17 to him. He said that he saw it. And I went to the front
18 door and he went to the back door, and at that point I
19 knocked on the door. That's correct.

20 Q And what ended up happening is that Karlita called the
21 police herself, right? She called Greenwood 9-1-1?

22 A She did.

23 Q And then she opened the door for you, right?

24 A That is correct.

25 Q That's what ended up happening? And you said he first

1 went to the incident location, right?

2 A Yes, I did.

3 Q And you went there before going to her apartment,
4 right?

5 A Yes, ma'am.

6 Q And you talked a little bit about some information.
7 The information you had gotten is that she and Dale were
8 separated and in the midst of a divorce, right?

9 A That was part of the information that we received,
10 amongst other information.

11 Q And then moving onto -- after that night you continued
12 to work on this case, right? You were the lead
13 investigator?

14 A Yes, ma'am.

15 Q And it's fair to say this investigation didn't end that
16 night, right?

17 A Oh, it didn't. No, ma'am. It did not.

18 Q So you continued to investigate over the next couple of
19 months following up on leads, right?

20 A Yes, ma'am.

21 Q And at the end of that you said you arrested Tavarious
22 for murder, correct?

23 A Yes.

24 Q And you got a warrant for him, right?

25 A Yes.

NATALIE TALBERT-DIRECT EXAMINATION

362

1 Q And the procedure for getting a warrant is you go to a
2 magistrate judge, right?

3 A Yes, you go to a judge.

4 Q Okay. You go to a judge and you present the judge with
5 what you think is probable cause and a judge would return a
6 warrant, right?

7 A That's correct.

8 Q And the warrant you got for Purp was for murder, right?

9 A I didn't get it myself. Captain Talbert of the
10 Abbeville County Sheriff's Office, she actually presented
11 the case and obtained the warrants and signed the warrants.

12 Q But you worked with her, right?

13 A Yes.

14 Q Throughout the investigation?

15 A Well, not throughout. Again, there was a transition
16 happening --

17 Q I see.

18 A -- with the Sheriff's Office, so they came -- Sheriff
19 Watson and Captain Talbert, they came in on the later end of
20 the investigation. So when you said worked throughout, at
21 the point of which they took over the Sheriff's Office I
22 worked with them.

23 Q Okay. There was a transition in personnel, right, at
24 the Sheriff's Office during that time period?

25 A Yes, ma'am.

1 Q People leaving, other people coming in. Okay. But you
2 worked with Investigator Talbert and Investigator Marshall
3 the last couple of months of this investigation, right?

4 A Yes.

5 Q And got the -- went to a judge to get a warrant on Purp
6 for murder and you went to a judge to get a warrant on
7 Karlita for solicitation of a minor to commit a felony,
8 correct?

9 A Yes. Captain Talbert, actually presented that case.

10 MS. BOLEN: Nothing further. Thank you.

11 THE COURT: All right, sir. You may step down.

12 (Whereupon, the witness stepped down from the witness
13 stand.)

14 THE COURT: Call your next witness, please.

15 MR. BROWN: The State calls Captain Natalie Talbert.

16 NATALIE TALBERT, having been first
17 duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. BROWN:

20 Q Good afternoon, Captain Talbert.

21 A How are you?

22 Q Doing well. Captain Talbert, where do you work?

23 A The Abbeville County Sheriff's Office.

24 Q And how long have you been with the Sheriff's Office?

25 A For two years.

NATALIE TALBERT-DIRECT EXAMINATION

364

1 Q When did you actually begin at Abbeville County
2 Sheriff's Office?

3 A I'd say around May 22nd, 21st of 2013.

4 Q So after this incident had already taken place?

5 A That's correct.

6 Q And you came in at the same time who came in?

7 A Sheriff Watson.

8 Q That's when he was elected to be Sheriff here in
9 Abbeville County?

10 A That's correct.

11 Q Captain Talbert, after you were brought over to
12 Abbeville County did you have an opportunity to become
13 involved in this case?

14 A Yes, I did.

15 Q And did you have the opportunity to speak with Karlita
16 Phillips?

17 A Yes, I did.

18 Q And when did you speak with Karlita Phillips?

19 A The first time I spoke with her was December the 18th
20 of 2013.

21 Q And was that after she was already in custody?

22 A That's correct.

23 Q Ms. Talbert, when you spoke with Karlita Phillips that
24 day where did that conversation take place?

25 A That happened in the conference room at the law

1 enforcement center.

2 Q Who else was with you at that time?

3 A That would have been Sergeant Nick Marshall.

4 Q And at that time, as already stated, Ms. Phillips --
5 Karlita Phillips was in custody?

6 A Yes, she was.

7 Q And before you began interviewing her or had a
8 discussion with Karlita Phillips did you or Investigator
9 Marshall provide her with her Miranda rights, or read her
10 her Miranda rights?

11 A Yes. I actually did that.

12 Q I show you what's been marked State's Evidence 49 and
13 see if you recognize that.

14 A Yes. This is the Miranda rights that I read to Ms.
15 Phillips.

16 Q And did she freely and voluntarily speak with you all?

17 A Yes, she did.

18 Q And it appeared that she understood all of her rights?

19 A Yes, she did.

20 Q After she signed, and at the bottom of that -- whose
21 signature is at the bottom of the page of the Miranda
22 report?

23 A At the bottom of the page it would be my signature and
24 Sergeant Marshall.

25 Q Is Karlita Phillips' signature on there as well?

NATALIE TALBERT-DIRECT EXAMINATION

366

1 A That's correct. It is.

2 Q And what time of day was this interview conducted, or
3 when did she sign the Miranda form?

4 A That would have been 15:38 p.m.

5 Q So that's 3:38 in the afternoon?

6 A That's correct.

7 Q After she signed the Miranda form did you begin a
8 conversation with her?

9 A Yes, I did.

10 Q And was that conversation recorded?

11 A It was an audio recording.

12 Q During your conversation with Ms. Phillips was it hard
13 to understand her?

14 A It was very hard to understand her. She was sort of
15 mumbling in her words.

16 Q But how long did this conversation or this interview go
17 on?

18 A It was a very lengthy conversation. Almost three
19 hours.

20 Q Did during this -- or during this conversation did
21 Karlita Phillips give any type of written statement?

22 A On that particular day she did not. It was just
23 verbal.

24 Q During that conversation with Karlita Phillips did she
25 ever admit to sending Tavarious Settles over there that

1 night?

2 A Yes, she did.

3 Q Now, how -- in what context was that that she said, or
4 did she ever say she had a relationship with Purp Settles?

5 A Could you repeat that question?

6 Q How did that conversation come up or how did she say
7 she knew Purp and what she did? Give me a summary of what
8 she said.

9 A She said that she actually knew him through her
10 daughter. She said that she had spoken with her daughter
11 about how much she hated her husband. And she also said
12 that -- initially she actually sort of said that she -- she
13 indicated that her daughter may have been involved in this,
14 and she said that she spoke to her daughter about that. How
15 much she hated her husband. How she wanted him dead. And
16 she said that Mr. Settles was a friend of her daughter's.
17 Evidently her -- her daughter may have said something to him
18 is what she said initially.

19 Q Did she say anything about her giving her car to
20 Settles that night?

21 A Yes, she did.

22 Q During that first interview?

23 A She did.

24 Q Was that essentially what she said during that
25 interview?

NATALIE TALBERT-DIRECT EXAMINATION

368

1 A Yes.

2 Q Now, the next day did you interview Ms. Phillips again?

3 A Yes, I did.

4 Q And who was with you during that interview?

5 A That was also Sergeant Nick Marshall.

6 Q What time of day did this interview take place?

7 A That was in the morning, like 7:00-ish. Between 7:30,
8 8:00 in the morning. Early morning.

9 Q I show you what's been marked State's Evidence 50. If
10 you can tell me what that is.

11 A This is also a Miranda rights that was read to Ms.
12 Phillips at 7:57 a.m. on December the 19th, 2013, and
13 Sergeant Marshall actually gave her her Miranda rights on
14 that particular day.

15 Q Is that the same form that was filled out on December
16 18th, 2013? Is it essentially the same form as State's
17 Evidence 49?

18 A It's the same form, yes. It's the same form. It's
19 just --

20 Q It says the same rights?

21 A It says the same thing.

22 Q Can you read what you read to Karlita Phillips?

23 A Sure. This is Abbeville County Sheriff's Office
24 Statement of Miranda rights. "You have the right to remain
25 silent." She initialed that. "Anything you say can and

1 will be used against you in a court of law." She initialed
2 that, that she understood. "You have the right to talk to a
3 lawyer." She initialed that as well saying that she
4 understood her rights. "If you cannot afford a lawyer, to
5 hire a lawyer, one will be appointed to represent you before
6 any questioning, if you wish." She also initialed that.
7 "You can decide at any time to exercise these rights and not
8 answer any questions or make any statements," and she
9 initialed that. At the bottom is the waiver of her rights.
10 "I've read the above statement of my rights and I understand
11 each of those rights, and having these rights in mind I
12 waive them and willing make a statement." And she signed
13 that and was witnessed by Sergeant Marshall.

14 Q And that particular waiver of rights, that was which
15 day?

16 A That was in December the 19th, 2013.

17 Q And what was the date on that -- or the time on that?

18 A 7:57 a.m.

19 Q And she did the same thing for the day before on
20 initialing each right?

21 A That's correct. She did.

22 Q And her signature was on that as well?

23 A That's correct.

24 Q Captain Talbert, after you read her her Miranda rights
25 did Ms. Phillips write a statement on December 19th?

1 A Yes, she did.

2 Q I show you what's been marked --

3 MS. BOLEN: Subject to our objection, Your Honor.

4 THE COURT: Subject to the earlier objection and the

5 Court's earlier ruling on *Jackson v. Denno* on the other

6 issues. Go ahead.

7 Q I show you what's been marked State's Evidence 51. Do
8 you recognize that?

9 A Yes. This is the voluntary statement that was written
10 by Karlita Phillips.

11 Q And during the second -- on December 19th of 2013, was
12 that statement also audio recorded?

13 A Yes, it was.

14 Q But the majority of that time was it silence based on
15 her writing this statement?

16 A A very large portion of it was silent because she was
17 writing the statement. That's correct.

18 Q Captain Talbert, if you wouldn't mind, would you read
19 what Ms. Karlita Phillips wrote in her statement that day.

20 A I have to take my glasses off.

21 THE COURT: And this, of course, is subject to the
22 earlier objection.

23 A "On December 18th, 2013 I was arrested for using a
24 minor to commit a violent crime. I talked with two
25 Sheriff's yesterday and some things I said were not meant

1 the way it came out, like my conversation with my daughter.
2 Her and my son mean the world to me and they know that I say
3 things when I'm angry, like in reference to my ex-husband.
4 I said the bastard could sit and die for all I care.
5 Bringing up a person named Derrick and jumping my ex --" I
6 think that's ex-husband or something "-- never happened. I
7 never hang at the laundry mat. I can say I never meant to -
8 - meant for Jamil Phillips to die. I was not out just
9 asking people will you kill my husband. I'll give you some
10 money. And Purp was never alone. People was always around.
11 I'm not a bad person, and I know you say things in the heat
12 of the moment. But I never just took him to Abbeville and
13 said this is the house, because I didn't know if my husband
14 was staying there any longer or not. The only thing I'm
15 guilty of was looking for someone --" I cannot make out that
16 word right there, "-- after my apartment was broken in and I
17 was told I could get it out. That never occurred and I left
18 that conversation alone. I want to stress that I in no way
19 involved my daughter in this situation. I wasn't the
20 mastermind behind this plan. This is all on him and Mike.
21 They are already charged with murder. An unknown male. So
22 it's easy to lie. And, of course, the family wants me to be
23 in anyway possible. I want to take the lie detector but was
24 told no because I would fail. I want to do the right thing.
25 But the Camry left my house twice that day. In the store

NATALIE TALBERT-DIRECT EXAMINATION

372

1 and make a smoke run for cigarettes. I didn't pull the
2 trigger. I didn't drive no one to Abbeville that night.
3 After me and my daughter kept driving up and down the
4 parking lot we came and watched TV, and around 3:00 a.m. an
5 Abbeville came telling me Jamil dead and not Dale. They
6 took my car and at the end of the week I was told to come
7 get it. But I was told yesterday the soil on the car and
8 the soil from the crime scene matched. So why give me the
9 car back if it was involved in a murder. I never saw Purp
10 with a gun. I didn't bring it to him. It's all on him and
11 Mike. On the 9th of March 25th, 2013 a murder occurred in
12 Abbeville County at the parents' residence of my estranged
13 husband. At the time I was not in Abbeville when this
14 happened. I never took him to Abbeville, South Carolina.
15 He was making accusations of a sexual relationship, but it
16 wasn't that. I made statement that him and Mike was in the
17 car. That was earlier. The car was --" and I can't read
18 that. I'm sorry. "My apartment got broke in and I really
19 without -- I was at my breaking point because I felt my
20 husband was and is going on with everything that happened
21 since our separation. Things was said in the heat of the
22 moment but it was never spoken of again. Even when it
23 happened he never say anything to me that he did it, and no
24 questions were asked. I did say to my daughter the bastard
25 can eat shit and die for all -- for all he put us through,

1 but I never brought -- never brought the crime or murder to
2 him. It's like he was high all the time and he was mad, but
3 I never seen him with a gun or anything. In reference to
4 the page of a shooting that occurred, like I said, I wasn't
5 at the crime scene. I wasn't the trigger man. And if he
6 won't -- if he won't admit to the murder, that's on him.
7 But I never asked him to do anything that involved going to
8 Abbeville on that night. And this has involved my son,
9 daughter. Even the kids' father saying we was involved in
10 the murder. I truly want this over, but I'm not going down
11 for this, and it's not all on me. I put this on my life.
12 Even the Sheriff believe I didn't pull the trigger. I took
13 him to house. I got the ball rolling, as one Sheriff
14 stated. But again, I didn't force or tell him to do
15 anything. I never been in no trouble like this in my life."
16 End of statement.

17 Q After that statement was written was your interview
18 with Karlita Phillips done for the day?

19 A Yes, it was.

20 Q And is her name signed on each page, that this was her
21 complete statement?

22 A Her signature is on each page.

23 Q And on that particular day, December 19th, 2013, those
24 four pages is what she wrote that day?

25 A That's correct.

NATALIE TALBERT-CROSS-EXAMINATION

374

1 MR. BROWN: Beg the Court's indulgence. No further
2 questions.

3 CROSS-EXAMINATION

4 BY MS. BOLEN:

5 Q Ms. Talbert, you spoke with Karlita on December 18th
6 for about two and a half to three hours, right?

7 A That's correct.

8 Q And you spoke with her again the next morning for
9 another two, two and a half, right?

10 A It was a good while, yes.

11 Q And on the -- on the 18th it started sometime in the
12 mid-afternoon, 3:30 or so?

13 A That's correct.

14 Q And the next morning it started around 7:00, 7:30, I
15 think you said, right?

16 A 7:57.

17 Q That's when she initialed the Miranda form?

18 A That's correct.

19 Q All right. And at no time did she say she didn't want
20 to talk to you or invoke her right to an attorney, correct?

21 A That's correct.

22 Q So she talked to you on the 18th. She talked to you
23 again on the 19th, right?

24 A That's correct.

25 Q And, in fact, you got her on the 18th and then you went

1 back and talked to her more on the 19th, right?

2 A That's correct.

3 Q On the 18th, the first time you talked to her -- on the
4 18th you get a little bit of background from her, right?

5 She's a CNA at Wesley Commons, correct?

6 A That's correct.

7 Q She worked there for something like 12 years?

8 A Yes.

9 Q And she -- on the 18th and on the 19th she tells you
10 she didn't bring this to Tavarious, right?

11 A Yes, that's what she said.

12 Q That she never asked him to murder anyone, right?

13 A That's correct.

14 Q That she never intended any murder, she never wanted
15 anyone murdered, correct?

16 A That's what she said, yes.

17 Q She does tell you on the 18th, the first day you talked
18 to her, that she let Tavarious use her car, right?

19 A She did.

20 Q And she also told you on the 18th, the first time you
21 talked to her, that she had made this comment to her
22 daughter, right? This comment about I wish he would die, or
23 something like that, right?

24 A Yes.

25 Q But that was in the context of -- she told you she said

NATALIE TALBERT-CROSS-EXAMINATION

376

1 that sometime during some of their family court proceedings,
2 correct? That she had said it back in like November?

3 A I don't recall that part.

4 Q You don't recall that?

5 A No.

6 Q She said that her daughter was the only person she ever
7 said that to, correct?

8 A That's correct.

9 Q And she also tells you on the 18th, again the first
10 time you talk to her, that she had talked to someone about
11 jumping on her ex-husband, right?

12 A Yes, she did say that.

13 Q But she maintained she never talked to anyone about
14 killing anyone, right?

15 A That's correct.

16 Q And in the statement that she handwrote and you just
17 read, she said something in there about that she had been
18 told the day before. So she writes that on the 19th, right?

19 A That's correct.

20 Q And she puts in there that she had been told the day
21 before, which would be the 18th, that the soil matched,
22 right?

23 A Yeah, I did read that. Yes, that's what she said.

24 Q Do you recall telling her that the soil on her car
25 matched?

1 A I don't recall saying that. I could have. I mean,
2 three hours is a long time of talking.

3 Q Okay. But you don't -- the soil -- there was never any
4 analysis done on the soil, correct?

5 A That's correct.

6 Q When you go back to talk to her on the 19th -- so you
7 stop on the 18th because you and Detective Marshall are
8 getting tired? It's past 5:00, right, and everyone is
9 getting a little tired?

10 A Not because it was past 5:00.

11 Q Well, I didn't mean --

12 A It was exhausting. It was a long day.

13 Q It was a long interview, right?

14 A Yes.

15 Q So you go back the next morning, fairly early in the
16 morning, right?

17 A That's correct.

18 Q And it was another fairly lengthy interview, right?

19 A It was long, yes.

20 Q And she maintains on the 19th as well that she never
21 brought this to Tavarious, correct?

22 A That's what she said, yes.

23 Q She never asked anyone to kill anyone, correct?

24 A That's correct.

25 Q And that she never had any intent of any kind of

1 murder, correct?

2 A That's what she said, yes.

3 MS. BOLEN: Thank you. That's all I have.

4 REDIRECT EXAMINATION

5 BY MR. BROWN:

6 Q Captain Talbert, Ms. Bolen was asking about the
7 December 18th, 2013 questioning that the soil matched. Was
8 that said, that you stated? Told Karlita that the soil or
9 whatever had been matched or been compared? Was that
10 brought up?

11 A It could have been. Solicitor, there were a lot of
12 things that were said.

13 Q In that statement with Karlita, did Karlita make the
14 statement, "Dale made me sick"?

15 A Yes, she did.

16 Q She made the statement, "I wish he was dead"?

17 A Yes, she did.

18 Q She made the statement, "Purp left in a car from her
19 house and said he was going to get up with Mike"?

20 A Yes, she did.

21 Q And then she tried to put it on her daughter saying, "I
22 guess my daughter asked him to do it"?

23 A Yes, she did.

24 Q And then the following day, when she wrote her
25 statement, she then changed her mind and said her daughter

1 didn't have anything to do with it?

2 A She did.

3 Q And then she decided to say her car did leave her house
4 that day?

5 A That's correct.

6 Q So in a matter of hours between December 18th, that
7 night, December 19th, that morning, Karlita's mind is
8 already changed on what she wanted to tell you?

9 A That's correct.

10 MR. BROWN: No further questions.

11 MS. BOLEN: No, sir.

12 THE COURT: Ms. Talbert, thank you very much. You may
13 step down.

14 THE WITNESS: Thank you.

15 (Whereupon, the witness stepped down from the witness
16 stand.)

17 THE COURT: We're going to take a brief five minute
18 break. I need to confer with the attorneys. Don't discuss
19 the case, and I'll have you back out here probably in about
20 five or 10 minutes. Okay? So adjourn to the jury room.

21 (Whereupon, the jury exited the courtroom at 3:31 p.m.)

22 THE COURT: The jury was out. How many more witnesses
23 do you all have, three?

24 MR. STUMBO: Three, Judge.

25 THE COURT: Who are they?

BO BARTON-DIRECT EXAMINATION

380

1 MR. STUMBO: Bo Barton from SLED, Dale Phillips, Jr.,
2 we will probably call. I think we'll be calling him. And
3 Amanda Fallaw from Wesley Commons. And possibly -- there
4 again, Judge, we have -- and I asked during the lunch break,
5 or actually shortly after the lunch break, for Mr. -- for my
6 Investigator Courtney Smith to have Tavarious Settles
7 brought back over here. And quite frankly, the reason for
8 that is we heard from them Monday morning. I want to make
9 sure the record is clear. I know once we close our case his
10 opportunity to testify is done. So he was brought up here.
11 When I say we had three witnesses, that's assuming he
12 decides not to testify.

13 THE COURT: Those witnesses are present --

14 MR. STUMBO: They are.

15 THE COURT: -- and are ready to go this afternoon?

16 MR. STUMBO: Yes, sir.

17 THE COURT: All right. Very good. We'll be at ease
18 for a few moments and then we'll just keep moving.

19 (Whereupon, a recess was held from 3:31 p.m. to 4:02
20 p.m.)

21 (Whereupon, State's Exhibit Nos. 53 and 54 were marked
22 for identification.)

23 THE COURT: I think Yates is on his way back in,
24 Solicitor. Can we go ahead and bring the jury out and
25 start? Are you on --

1 MR. STUMBO: That's fine, Judge. I'm calling the next
2 witness, so we can do that.

3 THE COURT: All right. Let's have the jury then,
4 please.

5 (Whereupon, the jury entered the courtroom at 4:02
6 p.m.)

7 THE COURT: The record will reflect that the jury is
8 back and is seated. Defendant is present with counsel.
9 Solicitor, you may continue, sir.

10 MR. STUMBO: Thank you, Judge. The State calls Bo
11 Barton to the stand.

12 BO BARTON, having been first duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. STUMBO:

16 Q What's your rank with SLED?

17 A Lieutenant.

18 Q All right. So I'll refer to you as Lieutenant Barton,
19 if that's okay.

20 A Yes, sir.

21 Q How long have you been at SLED?

22 A Twenty-seven years.

23 Q And your time at SLED what divisions have you worked in
24 with the State Law Enforcement?

25 A I've been bloodhound tracking team, SWAT team. I was

1 in narcotics for 10 years. Then I was in the region --
2 Midlands region where I had Aiken, Edgefield, McCormick and
3 Saluda were my counties. Upon receiving notification that
4 I'd be trained as a criminal profiler I went through the
5 training for board certification as a criminal profiler.
6 And I'm now the Lieutenant in charge of the behavioral
7 science unit at SLED.

8 Q Behavioral science unit consists of -- how many agents
9 are in that?

10 A Three.

11 Q And you're one of three?

12 A Yes, sir.

13 Q You work statewide?

14 A Statewide. That's right.

15 Q You said you've been certified as a criminal profiler?

16 A Yes, sir. Board certified.

17 Q Have you had any other kind of advanced training in
18 interviews, interrogations, that sort of thing?

19 A Yes, sir. That's part of the board certification is
20 you have to be trained and you have to actually instruct as
21 well, and interview interrogation throughout the state I
22 teach, and Tennessee, Georgia and Florida I teach interview
23 interrogation.

24 Q You work homicide cases as a criminal profiler?

25 A Yes, sir.

1 Q Just in this state or other places?

2 A Other states. There are only 35 board certified
3 criminal profilers in the United States. Therefore, we do
4 work outside the state of South Carolina upon request from
5 the outside agency.

6 Q I believe you told me you ended up in Canada at one
7 point --

8 A I did.

9 Q -- on a witness stand?

10 A I did.

11 Q Now, Lieutenant Barton, did you have occasion to work
12 on a case involving the homicide of Jamil Phillips?

13 A I did.

14 Q And when were you called in to conduct work on this
15 case?

16 A I was called in on December the 20th, 2013.

17 Q Was that the -- at that point was the first day you
18 came into work on this case?

19 A That was the first day I came to Abbeville. I had seen
20 the -- one of the prior statements made by the Defendant,
21 and that was my only knowledge of that case to that point,
22 when I came here on the 20th.

23 Q You were given a statement that she had made before?

24 A Correct.

25 Q Were you briefed by other agents on the case?

1 A When I arrived in Abbeville I was briefed by Captain
2 Talbert.

3 Q Did you ultimately interview the Defendant?

4 A I did, on the 20th.

5 Q Okay. She's in the courtroom here today?

6 A She is.

7 Q And where is she sitting?

8 A In -- she has a blue shirt on.

9 (Whereupon, the witness identifies the Defendant.)

10 Q Where did you interview Karlita Phillips?

11 A At the Abbeville County Sheriff's Office.

12 Q And this was on December 20th; is that correct?

13 A Yes, sir.

14 Q And in the office was there an interview room of some
15 sort?

16 A There was. It was an interview room, or a room that
17 was set up with audio and video recording capabilities.

18 Q Had you ever used that room before? Had you ever come
19 to Abbeville and used that room?

20 A No, sir.

21 Q Were you the one in charge of the audio and video
22 recording part of this?

23 A No, sir.

24 Q Essentially you went in the room with her and your
25 understanding it was being video and audio recorded?

1 A I actually saw a separate room two doors down that --
2 where they could view live what was going on in the
3 interview room. It had a monitor with the recording
4 equipment, and I ensured that it was recording before I went
5 into the room.

6 Q Okay. Now, how long did this interview last?

7 A Three and half hours.

8 Q And were you interviewing her the whole three and a
9 half hours?

10 A No, sir. I interviewed her one hour and 25 minutes.

11 Q Total?

12 A Total.

13 Q Now, what were the breaks for? The break or breaks.

14 A It was a one hour break. It wasn't actually a break.
15 It was a point of which I asked her to provide a written
16 statement. That was the first written statement that she
17 gave me. We talked in between. And then she provided the
18 second statement which took an hour and five minutes for her
19 to write.

20 Q And while she's writing the statement were you with her
21 the whole time?

22 A No, sir.

23 Q So you did leave the room at times and come back?

24 A I did. Yes, sir.

25 MR. STUMBO: If I may approach the witness, Your Honor.

1 Q I'm going to hand you what's been marked just for ID
2 purposes as State's 5A. Do you know what's on this disk?

3 A Yes, sir. This is the interview that I conducted on
4 December the 20th. I know that because my initials were on
5 it where I viewed the tape -- or the DVD.

6 Q Now, tell the jury about, after reviewing it, what
7 ultimately was the audio quality of this disk.

8 A The audio quality was very poor. In that the -- it was
9 just low. You have to really strain to hear exactly what's
10 going on. Ms. Phillips doesn't speak really loudly, and I'm
11 not speaking really loudly as well either. So that was
12 compounded by the fact that the microphone was some distance
13 away. So it's -- you have to strain to understand what's
14 being said.

15 Q You have only used that room that day for the first
16 time?

17 A That was the first time.

18 Q You didn't realize the microphone was further away?

19 A I didn't.

20 Q And the audio quality was not very good?

21 A No, sir.

22 Q In reviewing the tape can you hear the things you say
23 on the tape?

24 A I can.

25 Q Can you hear everything that she says?

1 A No, sir.

2 Q Now, you said it was two periods of time where she's
3 writing a statement out. That's in her own handwriting?

4 A That is in her own handwriting. Yes, sir.

5 Q I hand you --

6 MR. STUMBO: If I may approach the witness, Your Honor.

7 THE COURT: Please.

8 Q -- what's been marked for ID, right now, as State's 53
9 and 54. If you could look at those.

10 A Yes, sir.

11 Q And if you could --

12 A Those are the statements.

13 Q -- identify those.

14 A Yes, sir. Those are the statements that Ms. Phillips
15 gave that day to me. 53 being the first statement that
16 started at 13:05, which is 1:05 in the afternoon, and
17 concluded at 14:05, which is 2:05 in the afternoon. It is
18 witnessed by me. That is my signature. That's how I can
19 identify that one. State's Exhibit 54 is a statement that
20 was -- the second statement that was given at -- beginning
21 at 14:50, which is 2:50 in the afternoon, and concluded at
22 15:55, which is 3:55 in the afternoon, and is witnessed by
23 me. That is my signature.

24 Q And these are fair and accurate copies of those written
25 statements that you took that day?

1 A Yes, sir. They are.

2 MR. STUMBO: Your Honor, we'd offer State's 53 and 54
3 into evidence at this time.

4 THE COURT: Subject to your earlier objection?

5 MS. BOLEN: Yes.

6 THE COURT: All right. Subject to your earlier
7 objection made under *Jackson vs. Denno* those will be in
8 evidence, 53 and 54.

9 (Whereupon, State's Exhibit Nos. 53 and 54 were
10 admitted into evidence.)

11 Q Now, before Ms. Phillips gives these statements did you
12 read her her rights?

13 A Yes, sir. I did.

14 Q How did you do that?

15 A Read it from a card.

16 Q And what were those rights?

17 A She has a right to remain silent. Anything she can --
18 anything she says can and will be used against her in a
19 court of law. She has a right to an attorney. If she
20 cannot afford an attorney, one will be appointed to
21 represent her, if she wished. She could stop answering any
22 questions at any time until she's retained an attorney.
23 Having those rights in mind, did she wish to talk to me.

24 Q How did she respond?

25 A She responded in the affirmative.

1 Q She waived her right to remain silent?

2 A She did.

3 Q She didn't ask for a lawyer?

4 A No, sir.

5 Q Did you make her any promises or any kind of reward for
6 her giving you that statement?

7 A No, sir. Did not.

8 Q Did you threaten to punish her in any way if she didn't
9 give you these statements?

10 A No, sir. Like I said, the entire interview process,
11 interrogation process, was a conversation tone. Was very
12 matter of fact, back and forth. No loud voices, no raised
13 voices, no threats or implied threats or coercion used at
14 all.

15 Q If she needed to use the bathroom, the facilities, were
16 those available to her?

17 A Yes, sir.

18 Q If she was thirsty, would you have given her something
19 to drink?

20 A We actually did give her something to drink.

21 Q If she was hungry would you give her something to eat?

22 A We gave her something to eat.

23 Q And is that recorded even on video?

24 A It is recorded on videotape.

25 Q What did she eat?

BO BARTON-DIRECT EXAMINATION

390

1 A I want to say it was McDonald's, but it's been a while.

2 But it was a hamburger. I do remember that.

3 Q And that was while she was writing one of her

4 statements?

5 A That's correct.

6 Q To the best of your perception of her -- everything she

7 did and writing these statements and talking to you, was it

8 freely and voluntarily done?

9 A Yes, sir.

10 Q Now, if you could, just summarize for the jury, what

11 was the progression of how you conducted this interview with

12 Ms. Phillips?

13 A When I initially went in, upon review of her initial

14 statement, the one that was provided to me by Captain

15 Talbert with Abbeville, was that her statement did not

16 really say what she did that night. It said a lot about

17 what she didn't do, or claims that she didn't do. But it

18 didn't really tell us what she actually did. So the first

19 purpose when I came in after introducing myself and telling

20 her why I was there was to find out what actually she claims

21 that she did that night. The night in question when the

22 victim was murdered. So that was what the initial

23 interaction was. Just write me a statement and tell me

24 exactly what you did that night so I can have a better

25 understanding, because right now I don't even know what you

1 did that night. So please write me a statement. At that
2 point she started the statement. I come in and out of the
3 interview room while she's writing the statement. That
4 would be the first statement that was an hour long. After
5 coming back in I spoke with her about her statement, after
6 reading her statement, and said that, you know, there were
7 some -- I saw some issues in her first statement to me that
8 I saw that were troubling where I detected some issues that
9 we needed to discuss. I actually introduced to her the idea
10 that there was -- that she did talk to these individuals.
11 That she did ask them to go because she was upset about her
12 house being broken into, and that she asked them to go over
13 there to take care of her ex-husband, and then it got out of
14 hand.

15 Q Now, Lieutenant Barton, you said some of the things she
16 said in prior statements is stuff she didn't do, and you
17 were able to review the written statement that she had given
18 the day before --

19 A Yes, sir.

20 Q -- to Captain Talbert?

21 A Right.

22 Q And in that statement she says twice I didn't pull the
23 trigger, or I wasn't the triggerman?

24 A That's correct.

25 Q What significance was that to you in how you conducted

1 you interview the second time?

2 A Because it, again, it doesn't say I wasn't involved.

3 It says I'm not the triggerman. Basically what she says to

4 the reader is -- you know, the questioning and why you're

5 being interviewed is are you involved and the answer

6 becomes, you know, I wasn't the triggerman. I didn't pull

7 the trigger. I wasn't there. Statements to that effect,

8 which indicate to me a deception that you're not telling the

9 whole truth. That you're holding --

10 MS. BOLEN: Your Honor, I have to object at this time

11 as it being testimony.

12 THE COURT: Sustained.

13 Q Okay. Well, let's back up to that. At that point, as

14 an interviewer, you're looking for more of the story?

15 A Correct.

16 Q And as part of your training, is that -- is that normal

17 to go in and say, okay, tell me everything that happened,

18 and then make a decision to go forward from there?

19 A Correct.

20 Q Is that an official technique that's used in law

21 enforcement?

22 A No. Parts of it. Some people refer -- or use what's

23 referred as to the Reid Technique. This -- what we usually

24 -- what we in behavioral science use is what we call a

25 hybrid. We use part of behavioral analysis interview as

1 well as the Reid Technique, as well as techniques that we've
2 learned over our years of experience that we integrate into
3 the interview process. And one of the things that I use
4 personally, and have used during my entire career, was I
5 need to establish what their story is so I can go through
6 and find out what -- what is inconsistent. What is not
7 consistent with the facts that we already know about the
8 case. And that's what I did in this case.

9 Q So the first statement at 14:05, the first part where
10 she writes out, that's two pages, that's essentially when
11 you just say tell me what happened?

12 A Literally open-ended question. Just tell me what
13 happened. No prompts, no anything. Just tell me what
14 happened.

15 MR. STUMBO: Permission to publish, Your Honor.

16 Q If you could -- if you could read the statement.

17 A Sure. "On the day my apartment was broken, me and my
18 daughter, DW [REDACTED], and her friend, SG [REDACTED],
19 went to Augusta, Georgia shopping. It was raining that day
20 and my car got muddy. When we arrived back home I found my
21 apartment had been broken in. I remained at the house until
22 the next day. On March 25th, 2013 I went out several times
23 throughout the day. Later that evening I went to the New
24 Way store by my house looking for the Straw-Ber-Ritas that
25 just came out. They didn't have them, so I went to the

1 Kangaroo store across from Taco Bell and found them there.
2 I came back to the house where my daughter and her friend
3 was in the livingroom. Then after a while me and DW got in
4 the car and he was letting her practice driving up and down
5 our parking lot until I got frustrated and told her we will
6 do this another day. I came -- I was watching TV and joking
7 with my daughter. Between 9:30 and 10:30 I went to car wash
8 to wash car. Always washes car at night. But only sprayed
9 car off. I started feeling sick from drinking beer and
10 those Straw-Ber-Ritas. Around 10:30 or so my friend,
11 Tamika, called me and told police was at my -- at estranged
12 husband's house. Come ride with her back through there. I
13 said hell, no. I'm not going near there. And then she
14 would call me back. She did and said that Jamil had been
15 killed, and we exchanged some more words and hung up. Then
16 around 3:00 a.m. SLED was about to knock my door down. I
17 was in bed but not asleep. I was watching Transformers. My
18 favorite movie. My daughter woke up scared. I called
19 Greenwood Sheriff to come out because this man keep
20 hollering state law enforcement and he wasn't going
21 anywhere. When Greenwood police arrived I let them in.
22 SLED Agent Collins immediately stated Jamil is dead, not
23 Dale, and he asked about car, where I'd been. That
24 witnesses stated they saw my car at scene. He asked me did
25 I smoke. I said yes. Because cigarettes was in the ash

1 tray. He asked me who driving my car. Have I shot a gun
2 recently. I said no. Go get the kit out car that show if I
3 fired a gun. He ignored me and kept stating witness saw me
4 and my car in Abbeville. He was very rude and getting on my
5 nerves, because he already was saying I did it. He asked
6 about my son. He was in McCormick at the time. Even the
7 Sheriff's Office checked son room and walked and checked the
8 other rooms. I can't recall everything he said because the
9 more he talked to me the more I didn't like him and he made
10 me angry. He kept saying that me and Dale having a nasty
11 divorce. Him and son had problems. Just a few examples.
12 Then around 6:00 a.m. a wrecker came and snatched my Camry
13 up. He had left a Sheriff outside until he came back with
14 the wrecker, I guess to make sure I didn't leave in car. So
15 from that Tuesday until Friday he called and told me to come
16 get the car. I didn't come get the car. I had a wrecker go
17 get it. I was stepping foot in Abbeville -- I wasn't -- was
18 stepping foot in Abbeville County because I knew from that
19 moment Agent Collins wasn't going to stop until he put this
20 murder on me. This family has hates me ever since me and my
21 ex-husband separated and they was out talking as well.
22 Between the house that this murder occurred, Karlita
23 Phillips and her silver Camry was in Greenwood, South
24 Carolina. I went to two stores, car wash, back home to [REDACTED]
25 [REDACTED], and a silver car is nowhere

1 near a white colored car witness seen driving up and down
2 [REDACTED] that night in question. At home
3 drinking and smoking my cigarettes."

4 MR. STUMBO: And, Your Honor, I hadn't moved in State's
5 53. I think I did but --

6 THE COURT: You did.

7 MR. STUMBO: Did I? Okay. I just wanted to make sure
8 it was officially in evidence.

9 Q Agent Barton, or Lieutenant Barton, is there anything
10 in this statement about Purp Settles?

11 A No.

12 Q Anything about Purp Settles borrowing Karlita's car?

13 A No.

14 Q Just to reiterate, she said something about going to a
15 car wash that night, right?

16 A She does.

17 Q Between 9:30 and 10:30?

18 A Yes, sir.

19 Q Now, at that point you had reviewed the statement she
20 had given the previous day, right?

21 A Yes, sir.

22 Q And was this statement consistent with that?

23 A Parts.

24 Q Did she say something the previous day about Purp
25 Settles borrowing her car that day?

1 A Yes.

2 Q Now, when you come back in the room you have a chance
3 to review State's 53 --

4 A Yes.

5 Q -- that you just read?

6 A Yes.

7 Q And at that point you reinitiate the interview again
8 with Ms. Phillips?

9 A That's correct.

10 Q You continue it --

11 A Just really continue. Because I'm in and out of the
12 room.

13 Q Would you tell the jury about how that back and forth
14 went after you come back in the room?

15 A Like I said, I come back in the room after reviewing
16 this latest statement that she had provided me. The first
17 statement that I just read to you. And there were some
18 glaring differences between the two statements that we had
19 already seen. It's at that point that I advise her that
20 there are some inconsistencies in her statements and that
21 she needs to explain herself. That this -- you know, this
22 won't go well if, you know, it continues in this way. That
23 people won't understand because of the inconsistencies if
24 she doesn't explain herself. And is it possible that after
25 the house was broken into that she was upset and she went