

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Abbeville County

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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1 across the street and spoke with these individuals and asked
2 them to go beat up her ex-husband and then it went too far.
3 Is that something that could have happened. At that point
4 she responded yes in the affirmative, that that's what
5 happened.

6 Q So ultimately after you indicate there's
7 inconsistencies and say how can this be explained, she
8 latches onto this hypothesis, I guess, or suggestion that
9 you were mad and have him go beat him up?

10 A Yes, sir. This is what we refer to as an out.

11 Q And was she willing to write that?

12 A Yes.

13 Q Write a new version of what happened?

14 A I asked her to in her own words write that -- the
15 statement of what transpired. What actually transpired that
16 night.

17 Q Did you get her another statement form?

18 A I did.

19 Q And that's State's 54?

20 A That is correct.

21 Q Did she write that in her own writing?

22 A She did write it in her own writing.

23 Q Was it during this statement she was eating a hamburger
24 from McDonald's?

25 A That's correct.

1 MR. STUMBO: Permission to publish State's 54, Your
2 Honor.

3 THE COURT: You may proceed.

4 MS. BOLEN: Subject to my --

5 THE COURT: Subject to the earlier objection.

6 Q If you could, Lieutenant Barton, read --

7 A Okay.

8 Q -- what the Defendant wrote.

9 A This is the second statement. "On March 24th, 2013,
10 after seeing my apartment broke in, and I seen that all the
11 jewelry that Dale bought me was gone, and my other jewelry
12 was still there, I felt in gut that he had something to do
13 with it. This was my breaking point. Every since we
14 separated he kept Abbeville Sheriff at my house, and he was
15 trying to make me look like a bad person. So the crowd of
16 young guys was across the parking lot. I asked them had
17 they seen anybody around the apartment. They said no.
18 Well, after the Sheriff left I called Purp to ask him about
19 those guys that was breaking in the apartments in
20 Georgetown. He said maybe. But I told him they didn't take
21 all my jewelry, just only what Dale bought me. He said if
22 it was one -- if it was those dudes from Georgetown all my
23 jewelry would be gone -- would been gone. So then I said my
24 husband did it then, dammit. He makes me sick. I wish I
25 had someone to just beat his ass good and maybe he would

1 leave me the hell alone for good. Purp rely I can make it
2 happen. Me, okay. Purp, I'm serious. You know my boys
3 don't play no games. We can do it. He said where he live
4 and be at. I stated he work at Eaton but you can't go out
5 there jumping on nobody. You will go to jail. Probably be
6 better to jump him at his house. We can do it Monday. That
7 day I really didn't -- I really didn't think Purp was going
8 to do it. But my daughter said they will -- they will.
9 They love fighting and jumping on people. As it was getting
10 darker I figured okay, it's not happening today. But I did
11 want him jump on. Me and my daughter had just came back in
12 the house. Purp knocked at the door and said they will
13 handle this nigga. He will remember this ass whopping. Me
14 replied good. Hell, I'm still mad about my jewelry and
15 everything that this man put me through and I was with him
16 14 years. I keep repeating that I only wanted him beat up.
17 Purp was laughing. But I was serious because my daughter --
18 some of those boys say they shot people. I will say I
19 didn't see any gun if he had it. I told him address and
20 directions to the house, because from my house to their
21 house is straight shot from Hodges. I told him Dale drive a
22 white Cadillac and he is short and on the heavy side. He
23 said okay. He said I need -- I ask why because I don't need
24 my car to be seen near here -- near there. He said it won't
25 have to get -- it won't have to get rest of boys. Mike car

1 wasn't big enough. Mike drove off in his car, Purp in
2 mine's, and I was at the house with daughter. I started
3 drinking my Straw-Ber-Ritas when Purp returned. He knocked
4 on door, gave me my key and walked very fast as if he
5 heading to Georgetown. I was wondering did they jump him or
6 not because he left in a hurry and just gave me my keys.
7 Then when Tamika called me and said police at Dale house I
8 was like they beat him up and I know he will say my wife did
9 it, in my mind. Then she called me back and Jamil was
10 killed. I didn't know what to say, but I told my daughter
11 Jamil is dead, Day. Purp didn't jump Dale. What the hell
12 they did. Then SLED came around 3:00 a.m. Purp never
13 really said anything else and I didn't ask no questions, and
14 nothing else was said until I got arrested on Wednesday
15 morning. I never wanted my ex-husband murdered by Purp.
16 Just jump on him. Everything else that occurred he did on
17 his own."

18 Q Thank you, Lieutenant Barton. After she writes this
19 statement out do you conclude the interview?

20 A I do.

21 Q Any time she's writing this statement and you coming in
22 and out of the room did you make any threats to her?

23 A No, sir.

24 Q She wrote this statement of her own free will?

25 A She did.

1 MR. STUMBO: Beg the Court's indulgence, Your Honor.

2 THE COURT: Yes.

3 MR. STUMBO: No further questions, Lieutenant Barton.

4 Please answer any questions the Defense may have.

5 THE COURT: Cross.

6 CROSS-EXAMINATION

7 BY MS. BOLEN:

8 Q Lieutenant Barton, you just met with Karlita on
9 December 20th, right?

10 A Yes, ma'am.

11 Q And that was your one time meeting with her, right?

12 A Yes, ma'am.

13 Q And I think you said you had looked at her prior
14 statements?

15 A I did. One of the prior statements.

16 Q The written one?

17 A Yes, ma'am.

18 Q You never looked at the -- you never listened to the
19 audio recordings?

20 A No, ma'am.

21 Q And you met with her on the 20th, and all told it was
22 about three and a half hours, right?

23 A Three and a half hours. Yes, ma'am.

24 Q And she was willing to talk to you, right?

25 A Yes, ma'am.

1 Q And she never said she didn't want to talk or said she
2 wanted a lawyer, right?

3 A No, ma'am.

4 Q You said on direct that one of the phrases or words you
5 were concerned about was her -- that she wrote, "I wasn't
6 the triggerman," right? You talked about that?

7 A Yes, ma'am.

8 Q But you hadn't listened to the audio interview that
9 were conducted on the 18th and the 19th, right?

10 A No, ma'am.

11 Q So you weren't aware that that was the words used by
12 law enforcement to her?

13 A No, ma'am. It was just the words that were written on
14 the statement.

15 Q And when you spoke with her in between the two
16 statements, before she writes the second statement, you said
17 that you suggested things to her, correct?

18 A Yes, ma'am.

19 Q And you suggested she was angry about her apartment
20 being broken into, right?

21 A That's correct.

22 Q That jewelry had been taken? That she was angry about
23 that, right?

24 A I don't remember the jewelry. I do remember the
25 breaking in.

1 Q The break-in.

2 A The break-in. Yes, ma'am.

3 Q And you suggested to her that she was upset and that
4 she went to these boys, I think, across the apartment
5 complex or something like that?

6 A Yes, ma'am.

7 Q And you said maybe you asked them to jump on your
8 husband, right?

9 A Yes, ma'am.

10 Q And then the statement she ends up writing she
11 maintains throughout that that she asked them to jump on her
12 ex-husband, correct?

13 A Yes, ma'am.

14 Q And it's clear from her statement, or conversation with
15 you, that she meant beat him up, right?

16 A Yes, ma'am.

17 Q So never any mention of anyone getting killed, right?
18 She never says I asked them to kill someone?

19 A She never says she asked them to kill someone.

20 Q And in her written statement she tells you, she writes
21 in that statement twice, she didn't Purp with a gun,
22 correct?

23 A She says she did not see Purp with a gun.

24 Q And your involvement pretty much ended on the 20th,
25 right?

1 A Yes, ma'am.

2 Q You never sought out a warrant for Karlita after
3 speaking with her, correct?

4 A No, ma'am. She was already in custody at that point.

5 Q And so, you never got a warrant on her, correct?

6 A No, ma'am.

7 MS. BOLEN: Thank you, Your Honor.

8 THE COURT: Thank you, sir. You may step down, or do
9 you have --

10 MR. STUMBO: I don't have any redirect.

11 THE COURT: Thank you, sir. And you are free to go.

12 THE WITNESS: Thank you.

13 (Whereupon, the witness stepped down from the witness
14 stand.)

15 THE COURT: Call your next witness.

16 MR. BROWN: The State calls Dale Phillips, Jr.

17 DALE PHILLIPS, JR., having been
18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. BROWN:

21 Q Mr. Phillips, what's your full name?

22 A Dale Cleveland Phillips, Jr.

23 Q Mr. Phillips, do you recognize the lady sitting at the
24 Defense counsel table?

25 A Yes.

DALE PHILLIPS JR-DIRECT EXAMINATION

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- 1 Q Who is that?
- 2 A My ex-wife.
- 3 Q What's her name?
- 4 A Karlita Desean Phillips.
- 5 Q How long were you all married?
- 6 A Nine and a half years.
- 7 Q How long were you all together overall?
- 8 A Fourteen years.
- 9 Q Now, Mr. Phillips, March 25th, 2013 were you still
- 10 technically married to Karlita?
- 11 A Yes.
- 12 Q Were you all going through a divorce at that time?
- 13 A Yes.
- 14 Q Were you and Karlita still living together at that
- 15 time?
- 16 A No, sir.
- 17 Q Where were you living?
- 18 A [REDACTED], Abbeville, South Carolina.
- 19 Q And who were you living with?
- 20 A My parents, Martha and Dale Phillips.
- 21 Q Was anybody else living there with you at that time?
- 22 A Yes. My brother Jamil Phillips.
- 23 Q How close in age are you and Jamil?
- 24 A Me and Jamil are about five years apart.
- 25 Q I show you State's evidence 42. Do you recognize that

1 picture?

2 A Yes, sir.

3 Q Who's in that picture?

4 A Me and my brothers, Kareem Phillips and Jamil Phillips.

5 Q Dale, with you all living together at that location,

6 what was -- generally what time of night did you all get

7 home together? Where do you work?

8 A Eaton Corporation.

9 Q Where did Jamil begin working at?

10 A CarMax.

11 Q And what time of night would you normally get home?

12 A Different times. That particular night I had a

13 meeting. I do a business in which I see life insurance and

14 do financial services. So the meeting started at 7:30 and

15 was over about a little after 9:00 that night. I would have

16 probably would have got home close to 10:00.

17 Q Did you get home after Jamil got home that night?

18 A Yes, I did.

19 Q How close in time did you get home that night after

20 Jamil did?

21 A It was maybe 10 to 15 minutes after him.

22 Q Which way on [REDACTED], or [REDACTED], did you

23 drive from Greenwood?

24 A I came from -- if the house was sitting facing the

25 road, I was coming from the left side.

1 Q Would that be the Hodges' side?

2 A From Abbeville.

3 Q From Abbeville?

4 A Yeah.

5 Q If you had gotten home at 9:50 would you pass that pull
6 off area the car was parked in?

7 A Yes, sir.

8 Q Would you have seen that car?

9 A Yes, sir.

10 Q What kind of car did Karlita drive?

11 A 2004 Toyota Camry.

12 Q Was that car registered to both you and Karlita?

13 A Yes, sir.

14 Q But in fact, you actually got home after Jamil, right?

15 A Yes, sir.

16 Q By the time you got home law enforcement was already
17 there?

18 A Yes, sir.

19 Q Dale, that night you talked to law enforcement and tell
20 them what you were going through in your divorce?

21 A Yes, sir. I did.

22 Q Told them what kind of car Karlita had?

23 A Yes, sir.

24 Q Dale, working at Eaton Corporation, are you insured
25 there?

1 A Yes, sir.

2 Q Do you have life insurance?

3 A Yes, sir.

4 Q March 25th, 2013 did you have life insurance?

5 A Yes, sir. I did.

6 Q Did you have a beneficiary named on that policy at that
7 time?

8 A No, sir. I did not.

9 Q So based on your understanding of the policy you had
10 with Eaton, you had no beneficiary listed, who is your
11 beneficiary?

12 A My current spouse.

13 Q And who is your current spouse?

14 A Karlita Desean Phillips.

15 Q And she is your current spouse because you had not yet
16 been divorced, or had been a final order or family court
17 ruling on your divorce, right?

18 A Yes, sir.

19 Q How much life insurance did you have?

20 A It was around half a million.

21 Q Had you and Karlita talked over your nine and a half
22 years of being married, did she know that you had that life
23 insurance?

24 A Yes, sir.

25 Q After your brother, Jamil, was gunned down on the front

1 porch did you later change who the beneficiary was on that
2 policy?

3 A Yes, sir.

4 Q When did you change who the beneficiary was?

5 A It was in April.

6 Q April 3rd, 2013?

7 A Yes, sir.

8 Q Who is your beneficiary now?

9 A My mother, Martha C. Phillips.

10 Q So at the time your brother was shot and killed and
11 murdered Karlita was the beneficiary?

12 A Yes, sir.

13 MR. BROWN: Beg the Court's indulgence.

14 Q Dale, that night when you got home and you saw the area
15 roped off, who did you believe that intended bullet was for?

16 A At the time I thought --

17 MS. BOLEN: Objection as to speculation.

18 THE COURT: I'm sorry. What was the question again,
19 please?

20 MR. BROWN: Who did he believe the intended bullet --
21 who that bullet was intended for.

22 THE COURT: Sustained.

23 Q Dale, you were going through a divorce with Karlita?

24 A Yes, sir.

25 Q Was it a contentious divorce?

1 A Yes, sir.

2 Q You were living with your parents at the time?

3 A Yes, sir.

4 MR. BROWN: No further questions.

5 CROSS-EXAMINATION

6 BY MS. BOLEN:

7 Q Mr. Phillips, you had actually been separated from
8 Karlita since May of the previous year, right?

9 A May the 12th.

10 Q May the 12th of 2012?

11 A 2012.

12 Q So that was about 10 months?

13 A Roughly.

14 Q And you had been living with your parents that time --
15 that whole time?

16 A Yes, sir -- yes, ma'am. Excuse me.

17 Q And you all had a family court -- family court case
18 that was ongoing, correct? The divorce?

19 A Yes.

20 Q And that started in November of 2015, right?

21 A I don't remember exactly --

22 Q I mean 2012. I'm sorry. November, 2012?

23 A Yes -- no. It started in June.

24 Q In June?

25 A Yes.

1 Q And Karlita was the one to file the first set of family
2 court documents, right?

3 A She filed for divorce in May.

4 Q Okay. She filed for divorce in May?

5 A 2012.

6 Q And you all didn't have any kids together, correct?

7 A No.

8 Q And in November of 2012 you went to court and you
9 worked out some property ownership of some cars, correct?

10 A I believe so.

11 Q And a timeshare?

12 A Yes.

13 Q And you didn't have any like real estate together,
14 correct?

15 A Just a home. That's it.

16 Q And there was no -- at the time of this incident there
17 was no named beneficiary on your life insurance policy,
18 correct?

19 A It did not have to be an actual name. By default my
20 spouse would receive the benefits. But there was no actual
21 name, no.

22 MS. BOLEN: Thank you. Nothing further.

23 THE COURT: Thank you, sir. You may step down.

24 (Whereupon, the witness stepped down from the witness
25 stand.)

1 THE COURT: Solicitor, call your next witness.

2 MR. BROWN: The State calls Amanda Fallaw.

3 THE COURT: I'm assuming Ms. Fallaw is a brief witness?

4 MR. BROWN: Yes, sir.

5 AMANDA FALLAW, having been first

6 duly sworn, testified as follows:

7 (Whereupon, State's Exhibit No. 55 was marked for
8 identification.)

9 DIRECT EXAMINATION

10 BY MR. BROWN:

11 Q Good afternoon, Ms. Fallaw. Ms. Fallaw, where do you
12 work?

13 A Wesley Commons.

14 Q How long have you worked at Wesley Commons?

15 A Since March of 2007.

16 Q Do you know Karlita Phillips?

17 A Yes, I do.

18 Q How do you know Ms. Phillips?

19 A We worked together at Wesley Commons.

20 Q And, Ms. Fallaw, what is your job description at Wesley
21 Commons?

22 A I'm human resources manager; hiring, firing,
23 discipline.

24 Q As human resources manager do you also deal with the
25 records of your employees?

1 A Yes, I do.

2 Q Are you family with whether or not -- does Wesley
3 Commons provide insurance --

4 A We do.

5 Q -- for your employees?

6 A Uh-huh.

7 Q And were you familiar if Karlita Phillips had insurance
8 as an employee of Wesley Commons?

9 A Yes, she did.

10 Q Ms. Fallaw, what is open enrollment at Wesley Commons
11 for employees to sign up for insurance for that next year?

12 A September. Our benefits run October the 1st through
13 September 30th, so we have open enrollment every year during
14 September.

15 Q And that year did Karlita Phillips fill out insurance
16 paperwork?

17 A Yes. She was a full-time employee and all full-time
18 employees are required to complete paperwork each year.

19 Q I show you what's been marked for ID purposes as
20 State's ID 55. Can you tell me what that paperwork is?

21 A This is our enrollment election form that we use for
22 our employees at that time for open enrollment purposes.

23 Q And at that time did all the employees handwrite their
24 signature on those forms?

25 A Yes.

1 Q Now, what is it? What's the method?

2 A Last year we started electronic open enrollment where
3 they elected everything and had an electronic signature with
4 their submissions.

5 Q But again, at that time they handwrote their name?

6 A That's correct.

7 Q Did they also check their own boxes of what they
8 elected to have their insurance?

9 A Yes, they do, or they did at that time.

10 Q And are these records kept in the ordinary course of
11 business there at Wesley Commons?

12 A Yes.

13 Q Does that clearly and accurately reflect the records
14 that are kept at Wesley Commons based on their insurance?

15 A Yes, it is.

16 MR. BROWN: Judge, at this time State moves State's ID
17 55 as Evidence 55.

18 THE COURT: Any objection?

19 MS. BOLEN: Your Honor, we still have an objection as
20 to relevance.

21 THE COURT: Objection as to relevance?

22 MS. BOLEN: Yes, sir.

23 THE COURT: May I see the document, please. Objection
24 is overruled and I'll put the reasoning on the record at a
25 later point in time.

1 So State's 55 is in evidence.

2 (Whereupon, State's Exhibit 55 was admitted into
3 evidence.)

4 Q Ms. Fallaw, down at the bottom, second to the last
5 block, states "Voluntary Life." Can you check -- or can you
6 check -- or can you say what boxes Ms. Karlita Phillips
7 checked during open enrollment?

8 A For voluntary life employee only, the amount of
9 \$75,000, spouse, 25,000, and children -- children or
10 children coverage \$10,000.

11 Q So spouse coverage she requested a \$25,000 life
12 insurance on her husband?

13 A Yes.

14 Q And is that her signature?

15 A Yes.

16 Q And the date?

17 A September 14th, 2012.

18 Q And benefit enrollment for 2012 signed on September
19 14th of that year. What year would that cover?

20 A Those benefits would have been effective October 1st of
21 2012 until September the 30th of 2013.

22 Q So it would cover March 25th, 2013?

23 A That's correct.

24 MR. BROWN: No further questions.

25

CROSS-EXAMINATION

1 BY MS. BOLEN:

2 Q Ms. Fallaw, you've been the HR manager at Wesley
3 Commons since 2007?

4 A Yes.

5 Q And Karlita has worked there for quite a few years,
6 right?

7 A Uh-huh.

8 Q And did you -- you always did open enrollment?

9 A I helped with that, yes, in my position.

10 Q And in addition to how they -- the \$25,000 policy in
11 2012, Karlita also had that \$25,000 spousal life insurance
12 policy in 2011, correct?

13 A She did.

14 Q And that was part of open enrollment, right?

15 A That's correct.

16 Q Just check the box. And she had the same policy in
17 2010, correct?

18 A I'm pretty sure. I would need to refer to her
19 employment file. But I don't think there were any changes
20 during that time.

21 Q So there were no changes?

22 A Uh-huh.

23 Q From when you took HR management in 2007 there were no
24 changes in her insurance policy, correct?

25 A for the '11 to '12 and '12 to '13, those enrollment

AMANDA FALLAW-REDIRECT EXAMINATION

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1 forms I know there was not a change. I would need to refer
2 back to her file.

3 Q Would it help to refresh your memory if I showed you
4 her open enrollment form?

5 A Sure.

6 MS. BOLEN: Permission to approach the witness, Your
7 Honor.

8 THE COURT: Go ahead.

9 Q Ms. Fallaw, just to refresh your memory I'm handing up
10 some forms to you. Can you look at them and tell me if you
11 recognize them?

12 A Yes. These are annual forms that we use during open
13 enrollment.

14 Q And are those Karlita Phillips' annual forms?

15 A Yes, it is.

16 Q And what years were those from?

17 A 2010 -- '09, '10 -- '07, '08, '09 and '10.

18 Q And on all of those she has checked the \$25,000 spousal
19 insurance, correct?

20 A She did.

21 Q So that was the same insurance policy she had --

22 A Yes. She continued the coverage each year during open
23 enrollment.

24 MS. BOLEN: No more questions. Thank you.

25 MR. BROWN: One follow-up question.

1 THE COURT: Please.

2 REDIRECT EXAMINATION

3 BY MR. BROWN:

4 Q Ms. Fallaw, how many employees work at Wesley Commons?

5 A Approximately 285.

6 Q Is it common for an employee who is going through a
7 divorce to elect the life insurance on their spouse at that
8 time?

9 MS. BOLEN: Your Honor, it calls for speculations what
10 someone may or may not do.

11 THE COURT: I'm going to sustain. Everybody had
12 different reasons for something like that, and she can only
13 speak to employees at Wesley Commons who perhaps -- I can't
14 say that she has enough knowledge what's going on in an
15 employee's personal life, all the employees, in order to
16 answer that question --

17 MR. BROWN: I'll withdraw the question.

18 THE COURT: -- at least for statistical accuracy.

19 MR. BROWN: Withdraw the question. Nothing further.

20 THE COURT: Thank you. You may step down. Thank you
21 very much for coming.

22 (Whereupon, the witness stepped down from the witness
23 stand.)

24 THE COURT: Ladies and gentlemen, we're going to take a
25 break for the evening. We've covered a great deal of ground

1 today on this case. I want to ask that you continue to
2 abide by the rules that I've set down. Don't talk to anyone
3 about the case, but do have a pleasant evening. Okay? I
4 will ask that you be back in the jury room, if you would,
5 tomorrow morning at 9:15. I anticipate resuming with the
6 trial of the case at that particular point in time, and
7 there may be a few housekeeping matters I need to take up
8 with the attorneys before we begin. So if you would be back
9 in the jury room at 9:15. I'll see you in the morning.
10 Don't talk about the case with anyone and have a great
11 evening.

12 (Whereupon, the jury was released for the day at 4:56
13 p.m.)

14 THE COURT: All right. The jury is out. We'll be at
15 ease for the evening. But if I could see -- I don't need to
16 see all four of you, but maybe just one could meet aside
17 briefly just to clarify one quick point. Okay? But we'll
18 be at ease until tomorrow morning.

19 (Whereupon, court adjourned at 4:56 p.m.)

20 (Whereupon, court came back on the record at 5:02 p.m.)

21 THE COURT: I think there was one more matter that the
22 State requested we address this afternoon before we break
23 for the day. Mr. Brown, do you all want to speak to that,
24 of where we are?

25 MR. STUMBO: Judge, we want to proffer the testimony of

1 Tavarious Settles outside the presence of the jury.

2 Obviously I think we probably need to put him under oath and
3 put him on the stand. Subject to cross-examination, I
4 guess, tonight, or we can do that, and then we will -- he
5 has agreed to testify. So he will be offered to testify.

6 THE COURT: All right. So it's the State's desire to
7 go ahead and proffer his statement?

8 MR. STUMBO: Correct, Judge.

9 THE CROSS: Any objection at this point in time for the
10 Defense? No?

11 MS. BOLEN: Not to a proffer, no.

12 THE COURT: Very good. Mr. Settles is -- the record
13 should also reflect that Mr. Settles' counsel on the charges
14 that he's facing in Abbeville, Mr. Nassrollahi, he is also
15 present as well.

16 TAVARIOUS SETTLES, having been
17 first duly sworn, testified as follows:

18 MR. NASSROLLAHI: Judge, for the record, Mr. Tinsley is
19 here. He was Mr. Settles' counsel on the Greenwood cases,
20 as Your Honor knows. We have gone over -- prior to his
21 taking the stand today we have gone over his Fifth Amendment
22 rights.

23 THE COURT: I'd assumed as much from the statements you
24 made on Monday. But, Mr. Settles, you do understand that
25 anything you say under oath here in this courtroom, of

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1 course, can be used against you in any subsequent
2 proceedings? You do understand that, sir?

3 MR. SETTLES: Yes, sir.

4 THE COURT: And you are Tavarious Settles, correct,
5 sir?

6 MR. SETTLES: Yes, sir.

7 THE COURT: Mr. Stumbo.

8 MR. STUMBO: Thank you, Your Honor.

9 PROFFER IN-CAMERA

10 DIRECT EXAMINATION

11 BY MR. STUMBO:

12 Q Mr. Settles, we were here Monday. You stood with your
13 attorney, Mr. Nassrollahi, and indicated that you were not
14 going to testify in this case and exercising the Fifth.
15 You've changed your mind today?

16 A Yes, sir.

17 Q And go back to March 25th, 2013. Who were you with
18 that day?

19 A Karlita.

20 Q Earlier that day who were you with?

21 A School.

22 Q You went to school that day? I believe it was a
23 Monday?

24 A I don't know.

25 Q You were in school that day, right?

1 A (Non verbal response)

2 Q And later that evening you said you ended up with
3 Karlita, the Defendant?

4 A Yeah.

5 Q And what kind of conversation did you have with her
6 that day?

7 A It was arranged about a murder.

8 Q You say arranged about a murder. What was she asking
9 you to do?

10 A Kill her husband.

11 Q Do you know her husband's name?

12 A No.

13 Q What was the nature of your relationship with Karlita
14 at that time?

15 A I mean, we had a sexual relation a couple of times.

16 Q So you had sex with Karlita before that time?

17 A Yeah.

18 Q She asked you to kill her husband. Did she offer to
19 give you anything to kill her husband?

20 A Yeah, insurance money.

21 Q How much?

22 A Like \$13,000.

23 Q Now, you said you were with her at that time. Who went
24 to Abbeville?

25 A Me and her.

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- 1 Q Whose car were you in?
- 2 A Hers.
- 3 Q Had you ever been over there on that road before?
- 4 A No, sir.
- 5 Q Who was driving?
- 6 A Her.
- 7 Q By her you mean Karlita?
- 8 A (Non verbal response)
- 9 Q Anybody else in the car?
- 10 A No, sir.
- 11 Q Now, if you could, just on the record here, how did
- 12 this -- what was the plan when you got there?
- 13 A Kill her husband.
- 14 Q Where did you park the car?
- 15 A On a road. I don't know.
- 16 Q Was it off on the other side of the woods; is that
- 17 right?
- 18 A (Non verbal response)
- 19 Q And where did you hang out and wait for her husband to
- 20 get home?
- 21 A The bushes.
- 22 Q Did you smoke some cigarettes?
- 23 A Yeah.
- 24 Q Well, what happened after you smoked those cigarettes?
- 25 A A car pulled up. I just ran up and started shooting.

1 Q Whoever got out of the car, you went and shot whoever
2 that was?

3 A (Non verbal response)

4 Q Who did you think that was?

5 A Her husband.

6 Q Make sure when I ask yes or no, so she can take it down
7 just say yes or no. You said you thought it was her husband
8 --

9 A Yes.

10 Q -- that you shot? What kind of gun did you use?

11 A A .38.

12 Q Revolver or semiautomatic?

13 A Revolver.

14 Q .38 revolver. Is that your gun?

15 A Yeah.

16 Q Where was Karlita Phillips when you ran up and shot
17 this person in the yard?

18 A The car.

19 Q She was sitting in the car?

20 A Yeah.

21 Q In the driver's seat?

22 A Yeah.

23 Q Where did you all go after you got back in the car?

24 A I got dropped off.

25 Q Where did she drop you off that night?

1 A In Georgetown.

2 Q Is that where you were living at the time?

3 A No.

4 Q Who were you going to see in Georgetown?

5 A I just got dropped off out there.

6 Q Now, Mr. Settles, the first time I've ever had a
7 conversation with you was downstairs just a few moments ago,
8 correct?

9 A Yeah.

10 Q Now, did I make you any promises down there for you to
11 tell the truth in this case?

12 A No.

13 Q You're doing this on your own free will and accord?

14 A Yes.

15 Q Now, there was some discussion that your attorneys
16 raised about the statute, where there's a state statute
17 where you could get possibly a downward departure in a
18 sentence, right?

19 A No.

20 Q Well, that was mentioned by your attorneys or by me at
21 the time?

22 A That was before the other trial.

23 MS. BOLEN: We can't hear.

24 MS. STUMBO: He said that was before the other trial.

25 Q You sitting up here today, I have not made you any

1 promises to what might happen to you on these charges or
2 what might happen to the Greenwood sentence or anything like
3 that, have I?

4 A No.

5 Q Now, I did tell you, Tavarious, I think you're doing
6 the right thing. Did I tell you that?

7 A Yeah.

8 Q I did tell you that I didn't think by doing the right
9 thing that could hurt you in any way. Did I tell you that?

10 A No.

11 Q One more question, Mr. Settles. Did Karlita ever tell
12 you why she wanted to have her husband killed?

13 A (Nonverbal response.)

14 Q Can you say yes or no? She didn't tell you that?

15 A No.

16 MS. BOLEN: I'm sorry. We're having a hard time
17 hearing. Could you just repeat what your question was?

18 Q Did she ever tell you why --

19 A No.

20 Q -- she wanted her husband killed? But she did tell you
21 there would be life insurance money that she would pay you?

22 A Yeah.

23 Q And that was \$13,000?

24 A Yeah.

25 Q How old were you the night you shot this man down at

1 this house?

2 A Sixteen.

3 Q How old were you when you shot the fellow over in
4 Greenwood? Or how old were you when you were alleged that
5 incident to occur? Was it after this or before this?

6 A After.

7 Q Did you turn 17 by that time?

8 A Yeah.

9 Q You were 16 on this night though, right?

10 A Yes.

11 Q Do you know how old Karlita was?

12 A No.

13 Q Is she older than you?

14 A Yeah.

15 MR. STUMBO: I don't have anything else for the
16 purposes of the proffer.

17 MS. BOLEN: No cross at this time, Your Honor.

18 THE COURT: Mr. Nassrollahi, I know it's a little
19 unusual. You're not really a party to this action. But is
20 there anything you need to clarify with your client at this
21 point in terms of the questioning, or would you --

22 MR. NASSROLLAHI: If I could confer with Mr. Tinsley
23 briefly.

24 THE COURT: Sure.

25 (Whereupon, there was a pause in the proceedings.)

1 MR. NASSROLLAHI: I have no questions for him, Your
2 Honor.

3 THE COURT: Mr. Settles, thank you. You can step down,
4 sir.

5 (Whereupon, the witness stepped down from the witness
6 stand.)

7 THE COURT: Very good. Please stand at ease until
8 9:15.

9 MR. STUMBO: Thank you, Judge.

10 (Whereupon, court was adjourned at 5:15 p.m.)

11 TRIAL DAY 4-07/23/15

12 THE COURT: We'll go back on the record in State vs.
13 Ms. Phillips. I'm told the jury is present. The Defendant,
14 of course, is present with counsel. And I'm assuming
15 everyone is ready to proceed, correct?

16 MR. STUMBO: We are, Your Honor.

17 THE COURT: Very good.

18 MS. BOLEN: I think we have a few brief things for the
19 record.

20 THE COURT: Certainly.

21 MS. BOLEN: Our first matter, Your Honor, is that it is
22 our understanding, based on yesterday, that Tavarious
23 Settles would be testifying for the State today. We're
24 objecting to his testimony on due process grounds as Mr.
25 Settles came in on Monday, was sworn in on the record,

1 testified asserted his Fifth Amendment rights, Your Honor,
2 that he would not be testifying in this trial. The defense
3 -- our defense has been tailored based on the fact that he
4 would not be testifying, and it's our position that it's,
5 therefore, a due process violation to now allow him to
6 testify after the record was open and he said he would not
7 be testifying. So we'd ask that he be not permitted to
8 testify.

9 THE COURT: Your objection is noted. Obviously he has
10 changed his mind and is now electing to testify, and he has
11 that right. He was named as a witness. He was called out
12 on the witness list and he may testify.

13 MS. BOLEN: Thank you, Your Honor.

14 MS. NELSON: One other thing in relation to Mr.
15 Settles' testimony. We have been informed at all times up
16 until yesterday that the State was not offering any
17 consideration in exchange for Mr. Settles' plea. We filed a
18 Rule 5 Brady request early on in this case, as we always do,
19 and that -- if there is any kind of deal, Your Honor, that
20 information would certainly be discoverable under Rule 5
21 Brady, *Kyles vs. Whitley*. Nothing like that has been
22 disclosed to us. It seemed that from Mr. Settles' proffer
23 yesterday, and discussions that I have had both yesterday
24 and in the past with his attorney, Josh Nassrollahi, that at
25 least prior to the trial in Greenwood, where he was

1 convicted, that there was discussion of some deal or
2 agreement at that time that has never been disclosed to us.
3 My understanding is that if Mr. Settles pled to both the
4 Greenwood and Abbeville charges and allocuted on the record
5 against Ms. Phillips, that the State was kind of giving a
6 wink and a nod or a know -- and an understanding that they
7 would not object to him receiving the minimum 30 year
8 sentence. Your Honor probably knows more about it than I
9 do, because it's also my understanding you were involved in
10 all those in chambers discussions since you, I believe, were
11 the trial judge in that Greenwood case. So as I've said,
12 Your Honor may have more information about the situation.

13 What we find in our circuit is that often when there is
14 a testifying co-defendant there is kind of -- it's always
15 the State's position that there is no deal, yet there's
16 always some sort of implicit understanding with the attorney
17 representing the testifying co-defendant that there is going
18 to be consideration after they take the stand. I've
19 represented people in that situation. Ms. Bolen has
20 represented people in that situation. I actually have -- I
21 have one of the co-defendants who testified against Mr.
22 Settles in his Greenwood trial who I am certain is going to
23 -- has not yet been, but I am certain will be given some
24 sort of consideration for taking the stand and helping the
25 State convict Mr. Settles in that case.

1 Your Honor, I am just trying to make a record of what
2 our understanding is, that nothing has ever been disclosed
3 to us, and that we heard at one point that Mr. Settles was
4 going to come in and pled guilty this morning. It appears
5 that's not happening. So now there are all kinds of
6 possibilities left open to him that this case -- charges
7 could even potentially be dismissed. He could be -- he is
8 in a position if he testifies for the State to file a motion
9 for downward departure, as the Court well knows. I have
10 ever reason to believe that one or both if his attorneys is
11 going to ask the State to do just that and reduce the 45
12 year sentence that he is currently serving.

13 Your Honor, I'm asking you to allow us to keep a record
14 open on this case. We can file a motion for -- if Ms.
15 Phillips, that we can file a motion for new trial and/or
16 motion for reconsideration. that motion not be heard until
17 Mr. Settles' Abbeville charges are resolved so that if the
18 State does end up giving him some consideration in exchange
19 for his testimony that that could be -- that could be a part
20 of our motion for new trial. Because if he ends up getting
21 something, anything less than 45 years at the end of all
22 this, that would have been something that we should have
23 known about at the time of Ms. Phillips trial when he's
24 testifying against her and that is our only opportunity to
25 cross him on bias.

1 So, Your Honor, I'm asking that you retain jurisdiction
2 of this case, that we -- that the record be held open, and
3 that any motion -- any post-trial motion that we might make
4 if Ms. Phillips is convicted, that that be not heard until
5 Mr. Settles' case is resolved before Your Honor. Not in
6 some other county. Not in front of some other judge, but --
7 so that the record is clear on whatever benefit he may end
8 up ultimately getting that the State is not disclosing at
9 this point.

10 THE COURT: All right. Well, I can speak to the
11 discussions that were had concerning the Greenwood charges
12 involving the Sis case, S-I-s is how you spell Sis, and the
13 discussions that I had with the attorneys in chambers, just
14 so that the record is clear. At some point in time, and I
15 cannot give you an exact day, but I did have discussion with
16 the lawyers involved concerning both cases and indicated
17 that if a plea was entered on both cases, if Mr. Settles was
18 inclined perhaps to accept responsibility on both cases,
19 that the Court would be open to the minimal sentence on the
20 charges. So you are correct in your discussions that you've
21 had with other attorneys. Obviously Mr. Settles elected to
22 proceed to trial, which is his right. The sentence which
23 was imposed in Greenwood after trial obviously took into
24 account a number of factors and the Court decided that a 45
25 year sentence was most appropriate. At no point in time did

1 the Court punish Mr. Settles for exercising his
2 constitutional rights. But contrary, the Court had an
3 opportunity to get a full picture of how heinous that
4 particular homicide was and elected to impose a 45 year
5 sentence on that charge. So what you are referring to, Ms.
6 Nelson, is essentially water under the bridge as it related
7 to Mr. Settles because, quite honestly, there was no deal
8 arrived at. There was no understanding, and he proceeded to
9 trial in Greenwood some months ago, I can't recall when that
10 was, and elected to exercise his constitutional rights as is
11 his right, of course.

12 The testimony yesterday did indicate that Mr. Settles
13 acknowledged that he could get a downward departure of that
14 45 year sentence. And I'm looking at the provisions of
15 17-25-65 which allow for a downward departure of a sentence,
16 and under that section it would appear to be discretionary
17 with the Court. The State may make the motion within one
18 year of sentencing. The Court may reduce the sentence of
19 the Defendant's -- of a Defendant after sentencing provided
20 it provides substantial assistance in investigating or
21 prosecuting another person. And then subsection two doesn't
22 apply here. So it would look like we would be under
23 subsection A. It looks like whether or not the Court were
24 to elect to reduce his sentence, that would be entirely
25 discretionary with this Court. I would like to believe that

1 it would be most appropriate for this judge to hear that
2 matter. Since I was the trial judge, I doubt some other
3 judge is going to mess with my sentence. I'm not going to
4 mess with some other judge's sentence. So clearly that
5 matter would be brought back in front of me.

6 The other point that you raised about what might happen
7 post-trial assuming a conviction, let me suggest that
8 perhaps the appropriate time to make that motion or put that
9 on the record would be assuming that the State is able to
10 meet its burden of proof in this case. So I think that
11 motion is premature.

12 With regard to her inquiry, Solicitor, about any
13 additional deals, guarantees, et cetera, would you care to
14 speak to that for the record.

15 MR. STUMBO: Your Honor, I think that it's based on --
16 I think we asked these questions of Mr. Settles yesterday
17 and it's consistent with what we told the defense. There's
18 been no plea offer. I mean, there is none. Just like there
19 was none from our office initially on the Greenwood charges.
20 I believe there was a chambers meeting as Your Honor
21 indicated. I think you indicated to some degree if he was
22 cooperative at that point what you would be open to
23 sentencing him to. But that certainly, even at that point,
24 we had not made an offer to Mr. Settles. We indicated that
25 we'd let -- you know, we wouldn't ask for any amount of time

1 and sentencing would obviously be at your discretion, just
2 like it would in any straight out plea.

3 I think we're in the same position here, Your Honor.

4 In fact, yesterday the one thing I told Mr. Settles when I
5 entered the room -- which was the first time I'd ever met
6 him yesterday evening after we broke. Mr. Tinsley was there
7 and Mr. Nassrollahi was there. Both this lawyer on the
8 Greenwood case and the Abbeville case. And the first thing
9 I told him is quite frankly, you know, we didn't need his
10 testimony to convict Ms. Phillips here. Certainly doing the
11 right thing can never hurt you. And that's the only
12 indication I gave him, Judge. If that was -- you know,
13 that's -- what I said, if they want to interpret that as a
14 wink and a nod or giving him a deal, they can certainly
15 cross him on that. I want to make that clear for the record
16 that that's essentially the way we went forward. But I
17 couldn't promise him anything in terms of sentencing. In
18 terms of downward departure, that came up in the room just
19 in the sense that I know he had discussed it with his
20 attorneys. And essentially we said we can't make any
21 promises as to what you got on the Greenwood case. I can't
22 make -- I'm not making you any deals right now as to what's
23 going to happen on the Abbeville case. And so, that's where
24 we are at this point.

25 Certainly that's -- I think that this is kind of a

1 reveal the deal motion. I think that's -- I'm not putting
2 on the record what we said. I'm sure that Mr. Nassrollahi
3 and Mr. Tinsley would verify all that and all the other --
4 Sheriff Watson and all the other folks in the room. But no
5 deals have been made.

6 Quite frankly, Your Honor, I think what I'm hearing
7 from Ms. Nelson, it's almost wanting to ask the Court to
8 force me as the prosecutor to exercise my discretion as to
9 what's going to happen to Mr. Settles now, and I'm not
10 really sure I'm in a position to do that at this point,
11 Judge. Certainly we're not going to make a decision on this
12 until we have a good opportunity to sit down with the
13 Phillips family, with law enforcement on the Abbeville case.
14 As to the Greenwood case, then sit down with the victim and
15 law enforcement in that case, if there's anything to be done
16 on that case. And we just haven't had an opportunity to do
17 that. So I don't know if I can prospectively reveal a deal
18 that hasn't been made. I just -- I don't think we're -- I
19 don't know if I artfully argued that, Judge, but I'm not
20 sure exactly what Ms. Nelson is asking.

21 THE COURT: Well, I believe I understand what she is
22 asking.

23 MR. STUMBO: And I'm not sure how -- you know, I know
24 we're putting the cart before the horse as Your Honor said,
25 that that motion needs to be made maybe after a conviction

1 and sentence if we have one. But I'm not sure how a
2 conviction and sentence as to Ms. Settles, as we sit here
3 today if there is one, affects -- has anything to do with
4 what's done with Mr. Settles at some point in the future.
5 I'm not sure we can tie those --

6 THE COURT: Well, here is how I am taking everything
7 that's being said and everything that has been represented
8 to the Court. The Court has -- obviously Mr. Tinsley, who
9 represented Mr. Settles on the Greenwood charges, he was
10 present yesterday and had conversations with Mr. Settles. I
11 don't see him in the courtroom today, although I see his
12 son. Clearly Mr. Tinsley has informed -- I would anticipate
13 that he has informed Mr. Settles that cooperation in this
14 case would respectively entitle him to relief under that
15 portion of Title 17 where he could request a downward
16 departure of his 45 year sentence. The Solicitor has
17 represented that obviously there are no deals in this case,
18 but his testimony can't hurt him at this point in time. It
19 would appear to me that based upon the evidence that's been
20 presented, the case against Mr. Settles, to put it mildly,
21 is not the weakest case in the world in Abbeville on these
22 charges that we are currently trying. His DNA has been
23 found on cigarette butts. He's given confessions to police.
24 They're case is clearly not the weakest against Mr. Settles,
25 just based on what I have heard so far. And as we discussed

1 in chambers earlier this week, when I had suggested that the
2 State was going to -- if Mr. Settles was going to testify,
3 perhaps some kind of immunity or something like that would
4 have to be given to him, and I saw the shock on Mr. Brown's
5 face when I even suggested that, and I took his reaction to
6 mean that obviously the State of South Carolina would not be
7 inclined to give an individual who has admitted to killing
8 two people within a three month period of time a great deal
9 of leniency. So I think that's where we stand.

10 Apparently Mr. Settles is clearly going to be entitled
11 to a downward departure if he were to testify. Under Title
12 17, that's discretionary with the trial court. I'm trying
13 to avoid becoming a witness in this case, but that's my
14 understanding of what he would be entitled to. There have
15 been no assurances made on this particular case is what the
16 Solicitor has represented to the Court. But obviously Mr.
17 Settles can't hurt himself by testifying in the Solicitor's
18 viewpoint.

19 I'll take under advisement or address your motion to
20 delay sentencing or new trial, what have you -

21 MS. NELSON: If we would need to.

22 THE COURT: -- if we get to that point.

23 MS. NELSON: I understand that, Your Honor. Just -- I
24 understand what your ruling is. Just so the record is
25 clear, my understanding -- and I don't dispute that they

1 have a strong case against Mr. Settles. But my
2 understanding is that he has not confessed, and that the
3 first time he actually admitted to anything was yesterday
4 afternoon during the proffer.

5 THE COURT: I haven't seen the statements that Mr.
6 Settles gave to law enforcement, so I do not know. You all
7 are privy to that. I am not.

8 MR. STUMBO: They weren't a full confession, Your
9 Honor. He did give a statement where he indicated a
10 conversation with Ms. Phillips where she offered to pay him
11 to kill her husband. But he ultimately said I didn't do it
12 at that point. So that's where it's changed now. But
13 certainly we agree with Your Honor that based on the
14 physical evidence and the other witnesses, we feel like we
15 had a strong case on Mr. Settles before he came in here
16 yesterday and admitted he did it.

17 THE COURT: All right. Apparently he did not confess
18 to law enforcement and I was mistaken and assuming that he
19 had.

20 Ms. Bolen, you have something else?

21 MS. BOLEN: Just out of abundance of caution, Your
22 Honor, I just want to put this on the record to serve as a
23 motion in limine. But yesterday when Solicitor Stumbo was
24 doing the proffer of Mr. Settles, and then again today when
25 Solicitor Stumbo was talking about his conversations with

1 him, he said that he had told Mr. Settles yesterday that he
2 thought he was doing the right thing to come and testify,
3 and we would obviously ask that that not be something that
4 is part of his testimony or any questions of that nature are
5 asked in front of the jury as I think it improperly is a
6 comment on both one's Fifth Amendment right, and it's
7 hearsay, and it's also a comment on one's right to a jury
8 trial. So we would ask that that sort of questioning not be
9 elicited.

10 THE COURT: I would agree, and the main reason I would
11 agree is it sounds like the Solicitor would be making a
12 comment on the veracity of the witness who is testifying and
13 that he is doing the right thing. So I would ask that that
14 question not be put to Mr. Settles.

15 MR. STUMBO: At most I may ask him why he's doing this
16 today and let him say whatever he says.

17 THE COURT: Why he's doing it is something I'm sure
18 that's going to be explored at length --

19 MR. STUMBO: Yes, sir.

20 THE COURT: -- on direct and cross.

21 MR. STUMBO: Yes, sir.

22 THE COURT: Let's have the --

23 MS. NELSON: Thank you, Your Honor.

24 MS. BOLEN: Thank you.

25 THE COURT: Let's have the jury, please.

1 (Whereupon, the jury entered the courtroom at 9:47
2 a.m.)

3 THE COURT: Ladies and gentlemen, I apologize for
4 keeping you all waiting back there. The bailiff did tell me
5 you were here at 9:15, 9:20. I thank you very much for
6 being on time. There were a few matters that I did need to
7 take up with the attorneys.

8 The bailiff also told me this morning that some of you
9 desired to perhaps take notes while the case continues, and
10 that's perfectly fine. If you want to take notes, that's
11 fine. We can provide you with notepads. I don't see any in
12 your laps at this point in time. But if you want to take
13 notes, that's perfectly okay. I would simply ask that you
14 not allow any note taking to affect your attention that you
15 give to any witnesses involved in this particular case.
16 Okay? And obviously your notes are your private property.
17 So if you do take notes, take them with you and dispose of
18 them, or keep them as a souvenir, what have you, when you
19 get home. But they're private property for your eyes only.
20 Okay?

21 We are still in the State's case in chief. At this
22 point in time, Solicitor, if you'll call your next witness,
23 sir.

24 MR. STUMBO: Thank you, Judge. The State calls
25 Tavarious Dequan Settles.

1 THE COURT: Mr. Settles, if you'll come forward and be
2 sworn, please.

3 MS. NELSON: Subject to our motion, Your Honor.

4 THE COURT: Subject to your earlier objection.

5 MS. NELSON: Thank you, Your Honor.

6 TAVARIOUS DEQUAN SETTLES, having
7 been first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. STUMBO:

10 Q Good morning, Quan. You go by Purp?

11 A Yes, sir.

12 Q Okay. Make sure you speak up in the microphone so this
13 young lady here in front of you can hear you.

14 Purp, how old are you today?

15 A Nineteen.

16 Q When is your birthday?

17 A [REDACTED].

18 Q [REDACTED]?

19 A Yes, sir.

20 Q So in March of 2013 that would have made you 16-years-
21 old at the time, correct?

22 A Yes, sir.

23 Q Back in that time period did you know Karlita Phillips?

24 A Yes, sir.

25 Q What was the nature and how did you meet her? Who did

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1 you meet her through?

2 A Well, I'm kin of her children.

3 Q And what was the nature of your relationship with Ms.
4 Phillips back in March of 2013?

5 A Sexual relation.

6 Q You all were having sex?

7 A Yes, sir.

8 Q And was she older than you?

9 A Yes, sir.

10 Q Now, Purp, right now you're serving a 45-year sentence;
11 is that correct?

12 A Yes, sir.

13 Q And that was from a conviction over in Greenwood? The
14 city of Greenwood?

15 A Yes, sir.

16 Q And when that incident happened it was allegedly after
17 March of 2013, correct?

18 A Yes, sir.

19 Q Purp, I'm going to ask you this question. If you could
20 tell the jury who killed Jamil Phillips?

21 A I did.

22 Q And how did you kill Jamil Phillips?

23 A Shot him.

24 Q What did you shoot him with?

25 A A revolver.

1 Q Do you remember what caliber?

2 A .38.

3 Q Was Jamil Phillips your intended target that night?

4 A No.

5 Q Who was your intended target?

6 A His brother.

7 Q Jamil's brother?

8 A Yes, sir.

9 Q And who was he -- how is he related to Karlita?

10 A Her husband.

11 Q Purp, who, if anyone, asked you to do this?

12 A Karlita.

13 Q And did she tell you why she wanted her husband killed?

14 A Insurance money.

15 Q Insurance money?

16 A Yes, sir.

17 Q Did she promise you anything for killing him?

18 A Like 13,000.

19 Q \$13,000?

20 A Yes, sir.

21 Q Now, you said you shot Jamil that night. And where did

22 -- this was out towards Abbeville; is that correct?

23 A Yes, sir.

24 Q Had you ever been out in that area before?

25 A No.

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1 Q Who took you out there?

2 A Karlita.

3 Q Who was driving the car?

4 A Karlita.

5 Q And who's car was it?

6 A Her's.

7 Q Now, how did you -- how did you do this? Where were
8 you at before you shot Jamil?

9 A The bushes.

10 Q And where was that in relation to the car? Were you
11 between the car and the house?

12 A Out on the side.

13 Q And where the car was parked was on the other side of
14 some woods from the house?

15 A Yeah.

16 Q Did you smoke any cigarettes that night?

17 A Yes, sir.

18 Q How many?

19 A I don't know.

20 Q And where did you smoke them?

21 A Right there by the bushes.

22 Q Where you were hiding?

23 A (Non verbal response.)

24 Q Now, if you could, tell the jury what you did when you
25 saw a car pull in the driveway.

- 1 A I ran up and started shooting.
- 2 Q Just ran up and started shooting at him?
- 3 A Yes, sir.
- 4 Q Where was he standing when you shot him?
- 5 A The porch.
- 6 Q On the front porch?
- 7 A Yes, sir.
- 8 Q Was the front porch dark when you shot him?
- 9 A Yes, sir.
- 10 Q There was no light on the front porch at that time?
- 11 A (Non-verbal response.)
- 12 Q Where was Karlita Phillips when you were hiding in the
- 13 bushes and then afterwards ran up to shoot Jamil?
- 14 A In the car.
- 15 Q The car was parked some distance away?
- 16 A Yes, sir.
- 17 Q And that was on the other side of some trees?
- 18 A Yeah.
- 19 Q When did you find out that who you shot was the wrong
- 20 guy?
- 21 A Later on that night.
- 22 Q Who told you that?
- 23 A Karlita.
- 24 Q Is there anything else you all talked about?
- 25 A No.

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1 Q Was there anybody else in the car with you all when you
2 went over to Abbeville?

3 A No.

4 Q It was just you and Karlita?

5 A Yeah.

6 Q She was driving?

7 A Yeah.

8 Q Would you have known how to find that house if she
9 wasn't driving?

10 A No.

11 Q Now, you keep -- you've referred to Karlita and said
12 what kind of relationship with her. Is she in the courtroom
13 here today?

14 A Yes.

15 Q Where is she sitting?

16 A Over there.

17 (Whereupon, the witness identifies the Defendant.)

18 Q Over at the Defense table?

19 A Yeah.

20 Q Beside her lawyer?

21 A Yes, sir.

22 MR. STUMBO: Let the record reflect, Your Honor, the
23 witness has identified the Defendant.

24 THE COURT: The record shall so reflect.

25 Q Now, Purp, yesterday late evening is the first time you

1 and I have ever met or talked, correct?

2 A Yeah.

3 Q And yesterday evening for the first time you disclosed
4 this to law enforcement and to my office, correct?

5 A Yes, sir.

6 Q And you had given a statement to law enforcement
7 sometime back, right?

8 A Yes, sir.

9 Q But you didn't admit all that you've told us here
10 today?

11 A No.

12 Q And when you talked to law enforcement before that was
13 while you were charged with this Greenwood crime, too,
14 correct?

15 A Yes, sir.

16 Q Have I made you any promises of any kind of plea offer
17 in exchange for you doing this here today?

18 A No, sir.

19 Q Do you hope to get some kind of plea offer?

20 A No, sir.

21 Q Why did you change your mind last night to come and do
22 this?

23 A Honestly, I ain't trying to withstand another trial.

24 Q You're coming in and admitting your guilt --

25 A Yes.

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1 Q -- to this today?

2 A Yes, sir.

3 Q Manning up for it?

4 A Yes, sir.

5 MR. STUMBO: No further questions, Your Honor.

6 THE COURT: Ms. Bolen.

7 CROSS-EXAMINATION

8 BY MS. BOLEN:

9 Q Mr. Settles, you're charged with murder in this case,
10 correct?

11 A Yes, sir.

12 Q And that charge is still --

13 A Yes, ma'am.

14 Q Sorry. And that charge is still pending, correct?

15 A Yes, ma'am.

16 Q You haven't pled to it, right?

17 A No, ma'am.

18 Q And you haven't gone to trial on it, right?

19 A No, ma'am.

20 Q And just to make clear, the Greenwood crime that you're
21 serving a 45-year sentence on is murder, correct?

22 A Yes, ma'am.

23 Q You were convicted of murder a few months ago, right?

24 A Yes, ma'am.

25 Q And that probably was what, March or April?

1 A It was March.

2 Q And since March you've been in the Department of
3 Corrections, right?

4 A Yes, ma'am.

5 Q Which is prison?

6 A Yes, ma'am.

7 Q I want to talk to you a little bit about where you're
8 saying here today. Okay? Back in March of 2013 you were in
9 high school, right?

10 A Yes, ma'am.

11 Q You were a sophomore?

12 A Yes, ma'am.

13 Q You went to Greenwood High?

14 A Yes.

15 Q And you knew Karlita and her family and are related to
16 her children, right?

17 A Yeah.

18 Q And those are her children over there, right?

19 A Yes, ma'am.

20 Q And you're saying now that you were also in a sexual
21 relationship with her, right?

22 A Yes, ma'am.

23 Q And that day, the 25th, you went to her house after
24 school, right?

25 A Yes, ma'am.

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1 Q You got out of school, what, 2:15-ish?

2 A 3:00.

3 Q 3:00, okay. And you went straight to her house?

4 A No. Not straight there. I went -- it was later.

5 Probably around 6:00.

6 Q So you got to her house around 6:00?

7 A (Non-verbal response.)

8 Q Okay. And your testimony today is that sometime after

9 you get to her house she talks to you about doing this?

10 That's what you're saying today?

11 A No. We talked about it before.

12 Q And then you testified just now that you were the one

13 to shoot Jamil, right?

14 A Yes, ma'am.

15 Q And the car was parked next to the bushes, right?

16 A On the other side.

17 Q And you were in the bushes?

18 A Yes, ma'am.

19 Q And you saw a car drive up, right?

20 A Yes, ma'am.

21 Q And you ran up to the porch, right?

22 A Yes.

23 Q And you started shooting, right?

24 A Yeah.

25 Q So you intended to shoot the person that was on the

1 porch, right?

2 A Yes.

3 Q And you were 16-years-old at the time?

4 A Yeah.

5 Q And then the Greenwood murder was a few months later,

6 right?

7 A Yes.

8 Q And in that case you were convicted of gunning down a

9 Hispanic man by the name of Mr. Sis?

10 A Yes.

11 Q Now, the first time you have given this statement that

12 you shot Jamil was yesterday, right?

13 A Yes.

14 Q But it's not the first time you've talked to law

15 enforcement about this case, right?

16 A No.

17 Q And just to make clear. You were in police -- state

18 custody from the time you were arrested in May, 2012, right?

19 A June, 2013.

20 Q June. I'm sorry. So June, 2013 you were arrested on

21 the Greenwood murder, right?

22 A Yeah.

23 Q And you've been in state custody ever since, right?

24 A Yes.

25 Q And back on December 10th of 2013, you've already

TAVARIOUS SETTLES-CROSS-EXAMINATION

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1 talked a little bit about this, but you've met with law
2 enforcement, right?

3 A Yes.

4 Q And you've met with them in the Greenwood Sheriff's
5 Office conference room?

6 A Yes.

7 Q And you met with Agent Collins, right, with SLED, Agent
8 Gamble with SLED, right?

9 A Yes.

10 Q And one of your lawyers, Mr. Tinsley, right?

11 A Yes, ma'am.

12 Q And the purpose of that meeting was to talk to you
13 about this case, right?

14 A Yes, ma'am.

15 Q And you remember talking with them, right?

16 A Yes, ma'am.

17 Q And in that meeting you told them that Karlita had
18 approached you, right?

19 A Yes.

20 Q And you said I turned her down, right?

21 A Yes.

22 Q That you did not do any kind of shooting, correct?

23 A Yes.

24 Q That you did not take her up on any kind of offer,
25 correct?

1 A Yes, ma'am.

2 Q And then you started talking about how, although you
3 turned it down and didn't do it, that you told one of your
4 friends, a Markece Moore, about her offer, correct?

5 A Yes.

6 Q And so, you tell the two SLED agents and your attorney,
7 I told Markece about this, right?

8 A Yes.

9 Q And you tell them that Markece said give her my phone
10 number, right?

11 A Yes.

12 Q And you gave it to her, right? That's what you told
13 them back then?

14 A Yep.

15 Q And you also told them that Markece was a friend of
16 yours, right?

17 A Uh-huh.

18 Q You guys would hang out together after school?

19 A Yeah.

20 Q That you smoked, right? You smoked cigarettes?

21 A Yeah.

22 Q And that Markece didn't often have a lot of money,
23 right?

24 A Yes.

25 Q And you told them back on December 10th that sometimes

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1 Markece would pick up your cigarette butts and kind of mush
2 them together and form a cigarette that he could smoke,
3 right?

4 A Yep.

5 Q And you told them that you think -- thought that that's
6 how cigarette butts with your DNA ended up there, right?

7 A Yep.

8 Q And you also told them that someone else in the
9 Greenwood jail, a guy by the name of Trey, and told you that
10 Markece told you that, right?

11 A Yep.

12 Q That he told this Trey fellow who then told you that he
13 had killed Jamil Phillips and had framed you with cigarette
14 butts, right?

15 A Yep.

16 Q And then you also told the agents and your lawyer that
17 Markece himself came by to your jail cell and apologized for
18 framing you with cigarette butts, right?

19 A Yep.

20 Q And it turns out that none of that was true, right?

21 A Nope.

22 Q Because Markece was in New York, right?

23 A No.

24 Q And you went to trial, you said, in April, right?

25 A March 30th.

1 Q March 30th. That was in Greenwood, right?

2 A Yes.

3 Q And at that time there was some discussion between you
4 and your lawyers and the State's lawyers who are the same --
5 the same Solicitor's Office, right?

6 A Yeah.

7 Q There was some discussion of you pleading to both
8 murders, correct?

9 A Yeah.

10 Q And at that time you did not, correct?

11 A No.

12 Q And you never told them at that time anything about
13 being involved in this, right?

14 A No.

15 Q You maintained you were not involved, correct?

16 A Yes.

17 Q And that was just a few months ago?

18 A Yes.

19 Q And then you got convicted and you went down to prison,
20 right?

21 A Yep.

22 Q And you're serving a 45-year sentence, right?

23 A Yep.

24 Q And this charge is still pending, correct?

25 A Yes.

1 Q And you're aware that there is a statute that allows
2 you to seek what's called a downward departure, correct?

3 A Yeah.

4 Q Which would allow your sentence to be reduced based on
5 your testimony today, correct?

6 A No.

7 Q You're not aware that that statute exists knowing your
8 attorneys told you about that?

9 A Yes, but it has nothing to do with my testimony.

10 Q But you are aware that --

11 A Yes.

12 Q -- such a motion could be filed, correct?

13 A Yes.

14 Q And your sentence of 45 years could be reduced, right?

15 A Yeah.

16 Q And since your charge here is still pending, you
17 haven't pled to it, you haven't gone to trial on it, right?

18 A No.

19 Q So you are also aware that that charge could be
20 reduced, correct?

21 A Yeah.

22 Q It could be dismissed, right? It could be, correct?

23 A Could.

24 Q And, in fact, when you talked to the officers on
25 December 10th, you remember telling them that the only way

1 you knew Karlita Phillips was through her daughter,

2 DW [REDACTED] ?

3 A Yeah.

4 Q You didn't mention anything about any kind of a
5 relationship with her, right? You just said I know her
6 through her kids, correct?

7 A I did mention it.

8 Q But you also denied having any involvement in this
9 murder, correct?

10 A Yeah.

11 MS. BOLEN: Nothing further. Thank you, Your Honor.

12 THE COURT: Redirect.

13 MR. STUMBO: None, Your Honor.

14 THE COURT: Thank you, Mr. Settles, 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: Your Honor, that's the State's case. We
19 rest at this time.

20 THE COURT: Ladies and gentlemen of the jury, I need to
21 take up a few motions. I don't anticipate this will take
22 terribly long. Probably about five or 10 minutes. I need
23 you to adjourn to the back while I address those. And, of
24 course, don't talk about the case.

25 (Whereupon, the jury exited the courtroom at 10:07

1 a.m.)

2 THE COURT: The record should reflect that the jury is
3 out. At this point in time the Defense moves for a directed
4 verdict; is that correct?

5 MS. BOLEN: Yes, Your Honor. If I may just pull up on
6 case, Your Honor.

7 THE COURT: Certainly.

8 MR. NASSROLLAHI: While Ms. Bolen is doing that is it
9 okay if we release Mr. Settles?

10 THE COURT: Does anyone intend to recall Mr. Settles at
11 some future point at this --

12 MS. BOLEN: No, sir.

13 THE COURT: -- juncture?

14 MR. STUMBO: We don't, Your Honor. Now, I would say
15 that, I guess, it's always theoretically possible that
16 before the end of business tomorrow or sine die tomorrow
17 where you may deal with a plea with him. I don't know. I
18 just don't know the answer to that right now. Maybe as long
19 as -- and we'll take care of that, Judge. Make sure that
20 he's released from Court here, but that we'll have him
21 retained at Greenwood for the next couple of days.

22 THE COURT: That's what I was going to suggest. Just
23 ask for them to hold him in Greenwood until tomorrow and
24 then they can ship tomorrow afternoon at SCDC if we do not
25 address this case.

1 MR. NASSROLLAHI: I apologize for --

2 THE COURT: No, quite all right.

3 MR. STUMBO: And I think Sheriff Watson can make that
4 happen, Judge. Very good.

5 THE COURT: Ready when you are.

6 MS. BOLEN: Thank you, Your Honor. The State is moving
7 for a directed verdict at this time on both charges.
8 Specifically, Your Honor, to bring this in both a directed
9 verdict motion, as well as a corpus delicti motion, Your
10 Honor, the State has not presented sufficient evidence, or
11 really any evidence at this point, of my client's absence
12 from the scene, which is a requirement for accessory after -
13 - before the fact. The two cases, Your Honor, that discuss
14 the absence from the scene is part of the corpus delicti of
15 accessory before the fact are *State vs. Gentry*, 363 S.C. 93.
16 That's a 2005 case. And *State vs. Smith*, 316 S.C. 53. Both
17 of those require that the State, to survive a DV and as part
18 of their corpus delicti, have to show proof that the accused
19 in an accessory charge has to be absent. And, Your Honor,
20 the reason I bring up corpus delicti is for the purposes of
21 DV the state has to establish the elements of the crime
22 without the Defendant's statement. So removing her
23 statement from the State's case, Your Honor, the only
24 evidence about her absence or presence is Mr. Tavarious
25 Settles saying that she was present, which is -- there's not

1 even conflicting evidence about this, Your Honor. When the
2 corpus delicti line of cases that discuss corpus delicti say
3 that, you know, if there's conflicting evidence then, you
4 know, it can maybe go to jury here. When you consider the
5 requirement that the State has proof aliunde of the corpus
6 without the Defendant's statements or admissions there is no
7 other conclusion when you take out her statement then that
8 she was there. That's the only thing they presented on
9 that. That is an essential element of the accessory before
10 the fact, Your Honor. So we would ask for a directed
11 verdict on that charge, and we'd also ask for a directed
12 verdict on both charges on the basis that there have not
13 been sufficient evidence of the elements charge.

14 THE COURT: And the Defense also renews all prior
15 motions, correct?

16 MS. BOLEN: Yes, sir, Your Honor. I renew prior -- all
17 prior motions pretrial and trial and all of our objections
18 both pretrial and trial.

19 THE COURT: Solicitor, would you care to speak to the
20 corpus delicti argument?

21 MR. STUMBO: I would, Your Honor. I think that even if
22 you take -- and this is obviously one of the reasons why I
23 wanted to clarify this with Mr. Settles on the stand is
24 where Ms. Phillips was located while he lie in wait and then
25 ultimately ran across the yard to shoot Jamil Phillips who

1 he thought was Dale Phillips. And, Your Honor, we put into
2 evidence -- this was introduced as State's 43 through one of
3 the neighbors. And, Your Honor, if you look at this
4 property, 1522, which I believe Mr. Gary Parrman who
5 testified identified this being their property, here's the
6 property line and the woods are very thick here, Your Honor.
7 And I've walked this property and it's as it appears on here
8 and as it was described by the witnesses. The woods between
9 where the car was parked on a separate piece of property and
10 the house are very thick. There's absolutely no way you can
11 even see really through these woods to where the murder
12 occurred. So I think it's a matter of fact, and really
13 there's an argument here, quite frankly, that she wasn't
14 present at the scene. She was parked some distance away
15 where she couldn't even see what was going on. And she
16 essentially -- my argument would be, Judge, is if she were
17 present Jamil may not have even been shot, because she would
18 have known the difference between Jamil and Dale. She knew
19 what cars they drove and so forth. So, in fact, I would
20 argue here, Judge, that it's still a dispute of fact for the
21 jury to -- it's a matter of fact for the jury to determine.
22 I think it goes to weight. But essentially, Judge, I would
23 say based on Mr. Settles' testimony there's still a fact
24 issue for the jury to have to determine even whether she was
25 technically present at the scene or not, if that makes

1 sense. And according to her testimony she wasn't.

2 MS. BOLEN: She didn't testify.

3 MR. STUMBO: I'm sorry. According to statements that
4 were introduced and admissible, Your Honor, she wasn't
5 present. So quite frankly, Judge, I think that these would
6 be the fact issues that need to be determined by the jury.
7 There is a -- I think we're in kind of a little gray area
8 here. Is she an accomplice and a principal, or is she an
9 accessory who wasn't present. I mean, based on Mr. Settles'
10 testimony, quite frankly, the jury could find -- could still
11 find, based on the facts, that she was not present at the
12 scene. That would be our argument on the corpus delicti.

13 THE COURT: Follow-up?

14 MS. BOLEN: Thank you, Your Honor. And our response is
15 that she's not charged as an accomplice to murder. She's
16 charged with accessory before the fact which has specific
17 elements which have to be met.

18 Responding to what Solicitor Stumbo has brought up.
19 The neighbors said that the car was parked by the tree line
20 facing out. And Purp testified that he could not have
21 gotten there without her. She drove him there. She was on
22 the other side of the bushes, by his testimony, and he said
23 he couldn't have gotten there without her. I don't know how
24 that makes her absent from the scene. And so, by the
25 State's own witnesses, Your Honor, there is -- and again,

1 for the corpus delicti argument, which goes to directed
2 verdict, her statements have to be taken out of
3 consideration. The State has to prove the corpus
4 independent of her statements, and there's simply nothing to
5 say that she was absent. So we would ask for a directed
6 verdict on that ground, Your Honor.

7 THE COURT: All right. Your motion is noted. The
8 Court will deny the Defense motion for a directed verdict.
9 I do find there is substantial circumstantial evidence and
10 direct evidence which would indicate that the Defendant, Ms.
11 Phillips, could be found guilty of both of the charges for
12 which she's accused. Clearly the jury is entitled to
13 believe a part of the testimony of a witness and reject the
14 remaining part of the testimony of that same witness. I'm
15 quite certain that if the Defense presents a Defense then
16 that would be something that would be addressed. And
17 obviously I realize that we are at the directed verdict
18 stage at this point. But there is evidence for which the
19 jury could conclude that she was not present at the scene of
20 the crime, even independent of her statements. So the Court
21 would deny your motion under *Gentry* and *Smith* and we will
22 submit both charges to the jury.

23 I assume that you have discussed at length your
24 client's right to testify or to present a defense, Ms.
25 Bolen?

1 MS. BOLEN: We have. Yes, sir, Your Honor.

2 THE COURT: Would you care for me to review that with
3 her or do you feel that it's necessary?

4 MS. BOLEN: We've been over with her fairly
5 extensively. I just feel like for the record we should
6 probably have Your Honor do it on the record as well.

7 THE COURT: You want me to do it?

8 MS. BOLEN: Yes, sir. It's my understanding that she
9 does not intend to testify, but I think it's probably better
10 to do that on the record.

11 THE COURT: Ms. Phillips, if you would, you may stay
12 seated. Just raise your right hand. Okay?

13 KARLITA PHILLIPS, having been first
14 duly sworn, testified as follows:

15 THE COURT: Ma'am, are you Karlita Phillips?

16 THE DEFENDANT: (Inaudible response.)

17 THE COURT: And if you could, try and speak up just a
18 little bit louder. Okay, Ms. Phillips? Now, Ms. Phillips,
19 at this point in time I have to explain certain rights to
20 you, and if you don't understand something I'm telling you I
21 want you to stop me and I'll let you talk to either of your
22 attorneys or to me and ask me about anything that I review
23 with you. Okay? Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Now, we've reached that point in the trial,

1 Ms. Phillips, where you can present a defense, and
2 understand that you have the right to claim the protections
3 under the Fifth Amendment to the U.S. Constitution and the
4 Corollary Amendment under the South Carolina Constitution.
5 These amendments basically state that you cannot be
6 compelled to be a witness against yourself in any criminal
7 case. Do you understand that, ma'am?

8 THE DEFENDANT: Yes.

9 THE COURT: This means that you cannot be required to
10 testify in this case. Your attorneys cannot make you
11 testify. I cannot make you testify. Certainly the State
12 cannot make you testify. Do you understand that, Ms.
13 Phillips?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: This is a personal right and nobody can
16 waive this right except for you. Now, if you decide to
17 testify, Ms. Phillips, you'll be subject pretty much to the
18 same rules of cross-examination as any other witness. I
19 don't -- she does not have any prior record, right?

20 MS. BOLEN: I think she may have one fraudulent check
21 from like 1998, perhaps.

22 THE COURT: If you testify, Ms. Phillips, again, you
23 might be able to be cross-examined about prior convictions
24 like that fraudulent check. I haven't made the ruling on
25 that. Maybe, maybe not. I don't know. But obviously you

1 would be able to tell your own side of the story if you
2 testified, but at the same time you would be subject to
3 cross-examination by the State if you testify. Do you
4 understand that, ma'am?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, Ms. Phillips, if you decide to
7 testify, this decision on your part has to be made freely,
8 voluntarily and knowingly, fully understanding all the
9 protections guaranteed to you under our law. Do you
10 understand that, ma'am?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And if you decide not to testify, Ms.
13 Phillips, I'll explain to the jury that they cannot give the
14 fact that you didn't testify any consideration whatsoever
15 and there's to be no prejudice to you because you failed to
16 testify. Do you understand that now?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now, you can talk to your lawyers. You can
19 talk to family members. You can discuss this with friends,
20 anyone else who's here in the courtroom here in support of
21 you, but ultimately the final decision is yours to make on
22 whether you choose to testify. Do you understand that,
23 ma'am?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, do you have any questions about

1 anything I've gone over with you concerning your Fifth
2 Amendment rights?

3 THE DEFENDANT: No, sir.

4 THE COURT: You fully understand them?

5 THE DEFENDANT: I do.

6 THE COURT: All right. Do you intend to testify in
7 this case, Ms. Phillips?

8 THE DEFENDANT: No, sir.

9 THE COURT: We're going to take a brief break in a
10 moment, Ms. Phillips. I'm assuming that you're going to
11 stick with that decision. However, if at any point in time
12 you change your mind before the Defense rests you just need
13 to let me know through your attorneys. Okay?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: If Ms. Phillips is not going to testify, do
16 you all anticipate presenting a defense?

17 MS. BOLEN: No, sir.

18 THE COURT: All right. Let's take a few moments.
19 We'll discuss jury charges. My clerk has already made some
20 changes to those charges and we will be trying to get those
21 to you shortly. We're at ease.

22 (Whereupon, a recess was held from 10:20 a.m. to 10:54
23 a.m.)

24 THE COURT: My clerk and I finalized the jury
25 instructions and I asked her to email those to you all. It

1 looks as if you're still reviewing them from the Defense
2 side. So just let me know when you're ready to proceed.

3 MS. BOLEN: I think -- I think we can proceed, Your
4 Honor.

5 THE COURT: We were discussing in the hallway a number
6 of things. Let me go ahead and hear the objections that the
7 Defense has to the instructions.

8 MS. BOLEN: Thank you, Your Honor. We're objecting to
9 the transferred intent instruction, as well as the
10 accomplice liability instruction. I think, Your Honor, the
11 accomplice liability goes against any theory the State has
12 had with the case and goes against the accessory charge.
13 And so, we'd ask that that not be added. And the
14 transferred intent, Your Honor, we would argue is not
15 applicable here. This is not a case where Mr. Settles
16 testified that he shot the wrong person. He testified, in
17 fact, that he intended to shoot the person he shot. He
18 intended to shoot the person on the porch. Therefore, I
19 don't believe a transfer of intent applies, so we would
20 object to that. To that instruction as well.

21 THE COURT: Solicitor?

22 MR. STUMBO: Your Honor, I do believe that's an
23 incorrect statement just in the sense that Mr. Settles did
24 not testify that he shot who he intended to shoot. He said
25 he intended to shoot Dale, Jr., or Karlita's husband. So he

1 acknowledged that he shot the wrong guy and found that out
2 later, which I think makes the transferred intent charge
3 appropriate. Judge, as far as that transferred intent and
4 accessory before the fact, I know we sent you this case.
5 And I'm quoting from -- I'm going to cite the case of *State*
6 *vs. Kennedy*, 85 S.C. 146. And we're going all the way back
7 to, believe it or not, Your Honor, 1910. It's a State
8 Supreme Court case. And this was the jury charge that was
9 reviewed in that case and upheld. The jury was charged if
10 one -- and quoted in page, I think, three of this opinion.
11 "If one intends to murder another and misses the intended
12 victim and kills a third person, a bystander, he would be
13 just as guilty as if he had killed the man who he meant to
14 kill." And this is why it's appropriate to accessory,
15 Judge. The next sentence of the charge was, "The same is
16 true of the law of accessory before the fact or after the
17 fact." And so, Your Honor, the State Supreme Court -- from
18 what I could tell, this is still good law in this state that
19 the theory of transferred intent, as was upheld in *State vs.*
20 *Kennedy*, still applies to an accessory before the fact or
21 accessory after the fact.

22 MS. BOLEN: If I could just respond briefly, Your
23 Honor. The case which Solicitor Stumbo references and the
24 facts in this case are transferred intent. He talks about
25 when someone shoots at someone and a bystander is mistakenly

1 shot, that is transferred intent, and we've agreed to that
2 transferred intent. The *Kennedy* case also references
3 another case where someone was shooting at someone on a
4 horse to scare them and ends up shooting and killing someone
5 that they don't see. And that again would be transferred
6 intent. But neither of those is a situation we have here,
7 Your Honor, where I asked Mr. Settles did you intend to
8 shoot the person on the porch and he said yes. There was no
9 third party. There's no bystander. There's no he's
10 shooting and there's a crowd of people, he means to hit one
11 person and hits someone else, or he's shooting out of a car
12 window and he shoots the wrong person. There's no one else
13 there. And the doctrine of transferred intent goes to
14 shooting a bystander. Shooting someone that the other
15 person is unaware was there, or someone who moves quickly or
16 something like that and none of those circumstance are
17 present here. And I think based on his testimony from the
18 stand where he agreed that he meant to shoot the person on
19 the porch, transferred intent just doesn't apply. And going
20 by the State's -- the case that the State cited, *Kennedy*,
21 which talks about the doctrine of transferred intent as a
22 mistake in who the bullet hits rather than any sort of
23 mistaken identity, Your Honor.

24 THE COURT: Well, as we all know, under the law of
25 malice follows the bullet. So if the gun is fired with

1 malice then whoever is struck, whether that is a bystander
2 or an individual whose identity the shooter mistook, there
3 is still malice present and I would think that transferred
4 intent would still apply.

5 I tend to agree with you, however, Ms. Bolen, on the
6 argument that you put forward about accomplice liability.
7 This is a peculiar case because obviously Ms. Phillips had -
8 - the State had the benefit of Mr. Settles' statement that
9 he gave today and yesterday. Had they had the benefit of
10 that before trial she would be guilty not as an accomplice
11 but as a principal. The language that you are asking the
12 Court to put in there, Solicitor, seems to relate to those
13 situations where the classic example, I'm an accessory to an
14 armed robbery and there's no intent to shoot the store clerk
15 before the robbery, before we go in to rob the convenience
16 store, but I know that we're going in with guns. I know
17 that we're going to rob the place and my co-defendant shoots
18 the clerk. So I'm going to decline -- I'm inclined to
19 decline to charge the accessory language which you are
20 requesting.

21 MR. STUMBO: I understand the Court's ruling, Your
22 Honor. I think our only, I guess, concern here would be if
23 the jury as a fact-finder determines that Ms. Phillips --
24 the Defendant's last statement to law enforcement is what
25 actually happened and not what Mr. Settles testified to here

1 today, then there would be some argument that she wanted to
2 go severely beat or severely injure them and that wasn't her
3 intended result. I guess we're just trying to cover our
4 bases either way. But I do agree with Your Honor. I think
5 -- I could not find a case that really imported the theory
6 of accomplice liability to accessory before the fact.

7 THE COURT: I am --

8 MR. STUMBO: It's in Judge Anderson's charge book. But
9 there again, I couldn't find any of the cases he cited as
10 the standard for that principal. So I would acknowledge
11 that we're probably on some shaky ground.

12 THE COURT: Under the facts of this case, I just don't
13 feel that that's an appropriate instruction to give the
14 jury, so I'm agreeing with the Defense on that.

15 MS. BOLEN: Thank you, Your Honor.

16 MR. STUMBO: I understand your ruling, Judge. Thank
17 you.

18 THE COURT: Did you all look at the verdict form? That
19 was sent last night, I think.

20 MS. BOLEN: Yes, sir.

21 MS. NELSON: I'm sorry, Your Honor. Your ruling on the
22 transferred intent was that it stays?

23 THE COURT: Yes.

24 MS. NELSON: Thank you.

25 THE COURT: I believe that the statement and the

1 instructions is a correct statement of the law under these
2 facts.

3 MR. STUMBO: Judge, we're fine with the verdict form.
4 I was able to review it again.

5 MS. BOLEN: And no objection from us either, Your
6 Honor.

7 THE COURT: Nothing further before we bring the jury
8 out. Of course, the State would argue first. The Defense
9 second. Let's have the jury, please. When they come out,
10 I'll turn to you all and you rest on the record.

11 MS. BOLEN: Yes, sir.

12 (Whereupon, the jury entered the courtroom at 11:07
13 a.m.)

14 THE COURT: Ladies and gentlemen, sorry to keep you
15 waiting. I went ahead and addressed a few issues of law
16 with the attorneys that relate to this case. Still, of
17 course, involved in the trial of this case.

18 At this point in time, Ms. Bolen, the Defense case.

19 MS. BOLEN: Thank you, Your Honor. At this time the
20 Defense rests and we renew all of our previous objections
21 and motions both pretrial and trial.

22 THE COURT: Very good. Ladies and gentlemen, we've
23 reached that portion of the trial where you have received
24 all the evidence that you're going to have in order to judge
25 this case. Okay? So the testimony and evidentiary aspect

1 of this trial has concluded. At this point in time you'll
2 have the opportunity to hear the closing arguments of
3 counsel for the State. The way we'll proceed is -- from the
4 State and Defense, of course. The way that we'll proceed is
5 that the State will argue to you first to be followed by the
6 Defense. Okay? As I mentioned to you on Tuesday, I
7 believe, you understand that, of course, what the attorneys
8 say during their closing arguments is not evidence. It's
9 simply their contention as to what has been proven or has
10 not been proven. It's perfectly normal for them to refer to
11 facts or testimony during the course of their closing
12 argument. However, if at any point in time any of the
13 lawyers say something about the facts and their statement
14 about the facts differs from what you recall the facts
15 being, you should go with your recollection of the facts
16 because, again, you are the sole judges of the facts in this
17 particular case. For example, if the lawyers were to say
18 that yesterday it was a very cold 50 degrees and you recall
19 the weather yesterday being closer to 95 or 100 degrees, you
20 should go with your recollection of the weather yesterday as
21 opposed to what the attorneys say it was. Okay? Just by
22 way of an example.

23 With that, Solicitor, you are acknowledged for your
24 closing, sir.

25 MR. STUMBO: Yes, sir.

1 CLOSING ARGUMENT

2 BY MR. STUMBO: Wake up. Wake up. Isn't that what we
3 tell ourselves when we're in the middle of a nightmare?
4 Isn't that what we tell ourselves when something is going
5 through our head? We just want to wake up and everything is
6 back to normal. I guarantee you, ladies and gentlemen, that
7 over the past two plus years Mr. Dale Phillips, Sr., and
8 Mrs. Martha Phillips have told themselves over and over and
9 over again to wake up. The problem is, they're awake and
10 this isn't just a bad dream. This really happened and this
11 is really something that they've been living in day, after
12 day, after day. And if I could do anything in this case to
13 bring Jamil Phillips back, and a lot of people in this
14 courtroom, if we could just say wake up, snap our fingers,
15 wave a wand and have these three brothers standing together
16 again, if we could wave a wand and snap our fingers and have
17 Ms. Phillips able to cook dinner for Jamil again as she did
18 that night. He never made it inside that night. If I could
19 bring him back, folks, I would do it, but I can't. This is
20 real life. This is as horrific as it gets. And all we're
21 left with, ladies and gentlemen, are the four walls of this
22 courtroom, the 12 of you, and Mr. Brown and I with a high
23 burden of proof to prove to you who's responsible for
24 creating the nightmare that took that young man on the right
25 side of that screen away from his brothers, away from his

1 momma, away from his daddy. That's what we're left with.

2 We can't say wake up and snap our fingers and have him back.

3 What we can do is we can seek justice. We can seek the
4 truth. And we can make sure that the evidence that's been
5 put before you with the people that have sat on the stand
6 have convinced you beyond a reasonable doubt that the person
7 responsible for this nightmare is sitting right over there
8 by her lawyer. Without her none of this happens.

9 Now, beyond a reasonable doubt. Mr. Brown talked a
10 little bit about this in his opening statement to you about
11 what does that mean. And I'm sure you've all heard of it.
12 You've watched law TV shows. The Judge told you at the
13 beginning this isn't TV. This is real court. But I'm sure
14 you've heard the term proof that leaves you convinced beyond
15 a reasonable doubt. But what is that? It's not something
16 you all have heard every day. It's probably not something
17 that just comes to mind in daily conversation. Proof beyond
18 a reasonable doubt, simply, ladies and gentlemen -- and
19 we're going to talk a little bit about the law here. I'm
20 going to refer you to the screen. That you remember two
21 words when the Judge instructs you about what proof beyond a
22 reasonable doubt is. And it's our burden to prove each and
23 every element to you to the point that you are firmly
24 convinced. Okay? I want you to remember those two words,
25 firmly convinced. This is not -- the Judge is going to say

1 that twice. This phrase in his instructions to you which
2 we'll hear in a few moments. The term proof that leaves you
3 firmly convinced in the Defendant's guilt. This is not some
4 kind of mathematical equation. This is not some kind of
5 scientific experiment in the lab where you can put stuff
6 together and it come out and spit out this firm answer.
7 When we're in court and the way we work in here is that some
8 of those, ladies and gentlemen, you're taking a 20,000 foot
9 view. You're in an airplane going over an area and you get
10 to see the whole picture. And after you see the whole
11 picture what does that tell you. What do you see below you.
12 If you focus in -- I know you've heard the term before, you
13 can't see the forest through the trees. What firmly
14 convinced means is after you've taken a look back, a step
15 back from those individuals trees and look at the whole
16 forest, you're firmly convinced that Karlita Phillips did
17 what we said she did and what she's charged with. That's
18 all it means. Don't make this burden any difficult than
19 what it is. It's not complicated, folks. What it is, is
20 after you've seen all this evidence and have heard from all
21 these witnesses, you're firmly convinced that she did what
22 we said she did, what she's alleged to have done. That's
23 all it means.

24 Now, what are the elements of these crimes? Accessory
25 before the fact. The Judge will charge you that if a person

1 aids in the commission of a felony, or is an accessory
2 before the fact of a felony my counseling, hiring or
3 otherwise procuring the felony to be committed is guilty of
4 a felony. Now, that's a lot of -- it says felony a lot in
5 there, and that's kind of a word to say that essentially
6 that the person didn't actually commit the crime themselves,
7 but they planned it and they got someone else to carry it
8 out for them. And that's what this means to be an accessory
9 before the fact, ladies and gentlemen. Now, there's three
10 elements to this. The person that did the -- is the
11 accessory who advised, agreed, urged, counseled, hired or in
12 some way aided or abetted some other person to commit the
13 crime. The Judge is going to unpack some of those terms for
14 you, what aiding and abetting means and that sort of thing.
15 The second element was not present when the crime was
16 committed. And thirdly, that the principal carried out the
17 crime. So, in other words, if someone asked someone to kill
18 someone and they don't actually do it, that's still a crime.
19 And that's what's called a solicitation to commit a murder
20 if an act is not complete. Here the act, you heard, ladies
21 and gentlemen, here the actually target of transferred
22 intent which we'll talk about in a second. The target in
23 this crime was lucky. He's sitting out here. Dale, Jr.,
24 the brother of the victim in this case.

25 Now, the other things we have to prove to you is what

1 murder is. The Judge is going to explain in our law what
2 murder is. It's the killing of another person, a homicide.
3 That's the first one. That's the easy part. The second
4 element, in South Carolina what we have to prove is that the
5 killing is done with malice aforethought. And you may have
6 seen TV shows where they talk about premeditated murder.
7 Well, premeditation is not what we go by in South Carolina.
8 Our law says aforethought, which is similar in concept to
9 premeditation. But what is malice? Let's talk about that.

10 Simply malice is often commonly defined as hate, but
11 under the law it's an intentional doing of a wrongful act
12 without just cause or excuse and with the intent to inflict
13 an injury. So there has to be some kind of intent that's
14 formed in the mind of the person who wants to commit this
15 crime beforehand. And aforethought, we use instead of
16 premeditation, is that it can actually be conceived -- look
17 at this last line, at the moment the assault occurs. So
18 this doesn't have to be some long plan. Now, we would argue
19 and propose, ladies and gentlemen, based on the facts of
20 this case and what you've heard, this was planned out long
21 before it actually happened. And you've seen that from the
22 witnesses, and we're going to talk a little bit more about
23 that as the facts apply here in a moment. But it's malice
24 aforethought. That's what it takes to have a murder here in
25 South Carolina.

1 Transferred intent. Where a defendant with malice
2 aforethought intends to unlawfully kill or seriously injure
3 one person but by mistake or inadvertence kills a different
4 person from the one he intended to kill, the law holds that
5 the defendant is responsible for his felonious intent.
6 Merely transferring the intent from the original person the
7 defendant intended to kill to the person that they actually
8 killed. So folks, what this means is -- and we believe this
9 is -- the Judge is going to charge you on this is completely
10 appropriate to this case. The intended person here that
11 Karlita Phillips wanted dead, and she said several times in
12 her statement, I want her dead, was her husband, Dale
13 Phillips, Jr. Now, what kind of nightmare do you think Dale
14 Phillips, Jr. has been living the last couple of years? The
15 brother that he loved took a bullet for him. Do you think
16 he wants to wake up right about now? He was the intended
17 target here. That's clear from the statements, even from
18 Ms. Phillips that were put into evidence. She wanted her
19 husband dead. She said he makes me sick. She said at some
20 point he can eat shit and die. You all remember seeing
21 that? She wanted Dale Phillips, Jr. dead. So the intent
22 that she had to kill him was transferred to his brother,
23 Jamil, and it makes him just as guilty as if Dale, Jr. had
24 been killed.

25 The second charge here is using a minor to commit a

1 felony. This is fairly straightforward, folks. You
2 solicit, direct, hire, persuade, induce, entice, coerce or
3 employ a person under the age of 18 to commit a violent
4 crime. And the Judge will charge you that murder is defined
5 as a violent crime in South Carolina.

6 Now, ladies and gentlemen, the facts that we believe in
7 this case, and the Judge is going to talk to you about
8 direct evidence versus circumstantial evidence. Okay? And
9 the direct evidence and the circumstantial evidence in this
10 case, ladies and gentlemen, will leave you firmly convinced
11 that she's guilty of each and every element of these crimes.

12 Now, how about direct evidence? What is that? The
13 Judge is going to tell you that direct evidence is from an
14 eyewitness. Someone who actually saw what happened. Now, I
15 would submit to you, ladies and gentlemen, there's only two
16 people in this world -- well, there's one person left in
17 this world. But there were only two people that saw and
18 were eyewitnesses to this murder. One person is no longer
19 with us, and that's Jamil Phillips. He's the one that saw
20 Purp Settles coming at him. Charging him with the gun and
21 shooting him three times. And the other one is Purp
22 Settles. Now, we heard from Purp Settles at the end of this
23 case. Now, ladies and gentlemen, I'm going to tell you.
24 He's charged with murder in this case and he is the one that
25 killed him. Already been convicted of one over in

1 Greenwood. The evidence is very, very strong here.
2 Obviously he's charged with the murder in this case, and his
3 day in court will come. But, ladies and gentlemen, he saw
4 what happened, and he sat up here and very calmly told you
5 what happened. And he told you that he wasn't doing that
6 because he was getting some kind of plea offer or a deal.
7 He was doing it -- I said why are you doing this. He said
8 just not go to trial. I think he just brought up his hands
9 and said I'm admitting to this. I'm not contesting it
10 anymore. That's what I heard from him.

11 But who is the other direct evidence from in this case?
12 It's the person who conspired with Purp Settles to carry
13 this event out. And who is that? The person that asked
14 Purp Settles to commit this murder was Karlita Phillips, and
15 what did she say? Let's go through her statements here,
16 folks and talk about that. Think that shows a malice
17 intent? I'm going to call this Karlita Phillips' journey to
18 a confession and I'll put a question mark by it because of
19 this, folks. I don't think she's arrived. When you look at
20 these statements she never really arrived at what happened.
21 She told the officers what they wanted to hear.

22 Let's go to the first statement. What did she say?
23 First statement, don't know anything about it. First she
24 didn't even answer the door. She had said she went out that
25 afternoon to get an incident report about someone breaking

1 into her apartment, which she was accusing her husband of
2 doing that, without any evidence. She came home to watch
3 TV. And very firmly said I did not go to Abbeville on the
4 night in question. I do not have any knowledge of anyone
5 shooting Jamil Phillips. And thirdly, no one borrowed my
6 car. That's the night that this happened. Complete denial.
7 Let's see how her story changes. After she's arrested on
8 the initial charge, December 18th, this is months later, she
9 sits down for an interview. And what you've all heard from
10 the officers in this case some of the stuff she said, and
11 we've seen it in the State's exhibit. You all will have
12 that in the jury room. That written statement from her own
13 words that contains the statements from the next day. But
14 the officers testified as to what she said here. And she
15 said Dale made me sick. I wish he were dead. She confirms
16 that she was over at Shay Higgins' house for a party. You
17 all heard from Shay Higgins. She testified and corroborated
18 that. Purp left in the car from my house and said he was
19 going to get up with Mike. So now for the first time she's
20 bringing Purp into this. Of course, the first night don't
21 know who did this. Don't have any connection to it. And
22 now she's saying Purp left in her car, but continued to deny
23 that she had anything to do with this. But oh, yeah. Maybe
24 my daughter knows something. So this night she's going to
25 throw her daughter under the bus. The next day she has

1 another interview and submits this written -- four page
2 written statement which you all will have in the jury room.
3 She said the bastard can eat shit and die. She says I can
4 say that I never meant for Jamil to die. There again, going
5 back to our transferred intent doctrine. Denies a sexual
6 relationship with Purp Settles, which now we have not only
7 Purp himself admitting to this sexual relationship, but we
8 have other witnesses who have testified to that. Shay
9 Higgins says that Karlita told her herself she was sleeping
10 with Purp. Messing around with Purp. Listen to this
11 though. This is when things change a little bit. For the
12 first time Karlita says I took him to the house. I got the
13 ball rolling, I think, as she says as one sheriff says. She
14 affirmed something that she said to her. So she's starting
15 to come off with a little bit of truth here. She says twice
16 -- and this is in the written statement. You all will have
17 this back in the jury room. She says, I didn't pull the
18 trigger. I wasn't the triggerman. She says it twice. Now,
19 if someone says that, isn't there an implicit statement
20 there that she knows who is the triggerman? Why would she
21 say I'm not -- I wasn't the triggerman unless she had some
22 knowledge of who was? Does that make sense? That's what
23 she said twice in that statement on the 19th. She said it
24 was like Purp was high all the time and was bad, but I never
25 brought the crime of murder to him. So there again, she's

1 starting to get a little bit closer. She's talking in
2 circles, but starting to come around to involvement in what
3 happened here. Now, we get to the 20th and Lieutenant
4 Barton from SLED comes in the room and interviews here.
5 Ladies and gentlemen, I wish you could review that whole
6 three and a half hour videotape, but quite frankly, as
7 Lieutenant Barton testified to, you can't really hear
8 anything she says on it. But she does give two witnessed
9 statements during that interview, which took most of the
10 interview, and what does she say. She said in the first
11 written statement -- there again, she's backing up, because
12 before she said, well, Purp borrowed my car. Well, now
13 she's saying the next day she's reversing course and going
14 back to Karlita Phillips and her silver Camry was in
15 Greenwood, South Carolina and all I was doing was at home
16 drinking Straw-Ber-Ritas and smoking cigarettes. That's in
17 the written statement, folks. You all will have that back
18 in the jury room. But after Lieutenant Barton comes back in
19 the room and says basically I saw inconsistencies in this
20 statement and I was going to offer her something to maybe
21 latch onto. So what we get is Karlita now agreeing with
22 something that even she knows is not true, but something she
23 can say, well, at least I can admit to this and maybe I
24 won't be in trouble for it. But what she didn't realize at
25 that time was she was admitting to knowledge. She was

1 admitting to sending Purp over there. And she even admits
2 in this statement, folks, and we'll get into this here. She
3 says, I called Purp to talk about missing jewelry. She said
4 my husband makes me sick. I wish someone would beat his ass
5 good. Gives details of this agreement and conversation she
6 has with Purp Settles. What does Purp say in response? He
7 said I can make it happen. I'm serious. You know my boys
8 don't play no games. We will handle this nigga. He will
9 remember this ass whipping. Can you all picture the guy you
10 all saw sitting on this stand saying that? He's a hard
11 killer, guys, and that's exactly the kind of -- kind of
12 statements he would make. Now, all of that to say, we think
13 it went beyond that. It wasn't just about an ass whipping
14 here. Karlita says at this point, I kept repeating I only
15 wanted him beat up. Purp was laughing but I was serious.
16 Some of those boys say they shot people. So you're going to
17 send somebody over there who says they're going to beat him
18 up good and you know they're known to shoot people, but you
19 didn't do anything wrong. Did you? And that's what Karlita
20 was trying to say there. What -- this just got out of hand.
21 But she acknowledged in her own words there, folks, that she
22 knew these guys were known to shoot people. So even if you
23 believe her version of what happened she's guilty of these
24 crimes. I told Dale -- I told him the address, the
25 directions to the house. She acknowledges aiding and

1 abetting him in going over there and committing this act. I
2 told him that Dale drives a white Cadillac and he's short --
3 he's short and on the heavy side. And she describes that
4 Purp left in her car and this guy named Mike left in his
5 own.

6 Folks, that's the direct evidence in this case. But
7 you have seen a large amount of circumstantial evidence in
8 this case that backs up and corroborates not only the direct
9 evidence that came from Purp Settles and him telling you
10 what happened that night, but what she said herself.

11 A buccal swab from Tavarious Settles. We've got
12 cigarette butts found at the crime scene. A match here. A
13 confirmed match the SLED agent told you about that this was
14 one in 140 quadrillion. Folks, what that means is the guy
15 that smoked the cigarettes that night was Purp Settles.

16 Now, he came in to court this morning and told you
17 something that we completely didn't expect. That he was
18 there. He smoked the cigarettes. We already knew that.
19 But that Karlita was the one sitting behind the wheel in the
20 car on the other lot. The bullets are circumstantial
21 evidence. The Judge will tell you what circumstantial is.
22 It's facts that lead to -- tend to prove another fact.
23 Okay? That's, in a nutshell, what that is. I would submit,
24 ladies and gentlemen, that the direct evidence in this case,
25 circumstantially, the bullets are .38 caliber bullets. Look

1 at the pictures off Purp Settles' gun. All of the
2 circumstantial evidence corroborates exactly what Purp
3 Settles sat up here and coldly told you he did this morning.
4 That he murdered Jamil Phillips. That he meant to murder
5 Dale Phillips, Jr. That he did because she asked him to.
6 And he confirmed why. Because there was money behind it.
7 How much money? Dale Phillips, Jr. testified to you his job
8 at Eaton provides him through his benefits with over a half
9 million dollar insurance policy. By default, if he were to
10 die, that insurance money would have gone to Karlita
11 Phillips on March 25th, 2013. Karlita herself, even after
12 they were separated -- think about this. Dale testified on
13 the stand that Karlita initiated divorce proceedings and
14 they were filed May of 2012. You heard from Karlita
15 Phillips' employer over at Wesley Commons that said she
16 actually elected this \$25,000 insurance policy with her as
17 the beneficiary four or five months after that. September
18 and October of 2012. So after they're separated and she's
19 filing for divorce she's actively going and getting an
20 insurance policy on her still husband that she's going to
21 benefit from. Is that \$13,000 figure that Purp Settles
22 talked about now mean something? They're going to basically
23 split the money. Even if she didn't know about the half
24 million that Dale, Jr. had. Let's just assume she didn't
25 know about that. There's still \$25,000 here on the line.

1 She's going to keep 12, Purp's going to get 13. Something
2 went wrong. She didn't get that money. And why? Because
3 Purp ran up and shot Jamil Phillips. Killed him in cold
4 blood with malice. It was premeditated. There was malice
5 aforethought. Folks, the direct and circumstantial evidence
6 in this case points conclusively to the guilt of this woman.

7 Folks, you're going to have an opportunity in a few
8 minutes to go back into the jury room, and what the Judge is
9 going to instruct you on is that when you go back and you
10 reason together as 12 people as the consciousness of this
11 community in Abbeville County, you'll reason together and
12 you will ultimately decide on a verdict in this case. A
13 verdict is a word that comes from two Latin words, verus
14 dictum, which simply means to speak the truth. It's all
15 verdict means. Verdict means that you as the jury are
16 coming back in the courtroom when you have a verdict and
17 that verdict will speak the truth. And folks, there is
18 absolutely no question what the truth is in this case. That
19 Karlita Phillips decided to kill her husband, Dale Phillips,
20 Jr. That she started sleeping with a 16-year-old boy, and
21 having sex with a 16-year-old tenth grader in high school
22 named Purp Settles, that she offered to pay him \$13,000 to
23 kill her husband, that she drove him over, parked in the lot
24 across the woods, sat in the driver's seat. So she wasn't
25 present at the crime. There again, there's that element.

1 I'm sure -- Ms. Bolen and Ms. Nelson are fine attorneys.
2 And I'm sure what they're going to get up here and try to
3 argue here is, well, he wasn't -- she was actually present
4 at the scene, so she's not an accessory before the fact of
5 murder, if you believe Purp Settles.

6 Folks, these woods here, as the neighbors testified,
7 separate these thick -- thick woods separate the house and
8 the front porch where Jamil Phillips was killed. The car
9 was parked over here on the other side of those woods. So
10 we would propose to you, ladies and gentlemen, she wasn't
11 present at the scene. And, in fact, if she had been, if she
12 had been sitting there with Purp Settles in the woods while
13 he was smoking those cigarettes, Jamil Phillips may still be
14 alive. She wasn't present. But she said I want you to go
15 kill Dale, and he puts three bullets in Jamil Phillips
16 killing him dead.

17 Folks, that is a parents worst nightmare to bury your
18 child. One that was completely innocent. Had done no wrong
19 in this case, and was killed in cold blood because of what
20 she did.

21 (Whereupon, audio of 9-1-1 call played for the jury)

22 Now, do you think that Ms. Martha Phillips would have
23 been any less distraught if that had been Dale, Jr. laying
24 on that porch? It's a nightmare either way, folks.

25 As I said before, we don't have the opportunity at this

1 point to snap our fingers and wake up from this nightmare.
2 But what we do have the opportunity to do here today is to
3 at least have a dawn of a new day for this family where the
4 court part of this is behind them and they can focus on
5 healing and grieving the loss of Jamil. I'm going to ask
6 you to go back in that jury room and reason, 12 minds coming
7 together as one, and come back with a verdict that speaks
8 the truth that Karlita Phillips is guilty. Thank you.

9 THE COURT: Thank you, Solicitor. Ms. Bolen, you are
10 recognized for your closing.

11 MS. BOLEN: Thank you, Your Honor.

12 CLOSING ARGUMENT

13 MS. BOLEN: The statements prove two things. There's
14 two things you should be firmly convinced about. Number
15 one, Tavarious Settles is a murderer. And number two,
16 Tavarious Settles is a liar. The State has proved both of
17 those. Remember when I talked to you a few days ago in
18 opening and I said right off the bat, we are not contesting
19 at all that this is an awful tragedy that no family should
20 not have to go through, and the Phillips family shouldn't
21 have to go through. And we're not contesting that Karlita
22 did something she shouldn't have done. Okay? And we're
23 still not contesting this. But what the State has shown
24 you, that Tavarious is a liar and he's a murderer.

25 Tavarious didn't need anyone, Karlita or anyone else,

1 to tell him to go kill Jamil. Tavarious did that on his
2 own. And you know that from the State's own evidence. He's
3 already serving a 45-year sentence for a murder that
4 happened in Greenwood that he did after this. Three months
5 after. And you heard from one of the State's witnesses,
6 Officer Kenya Griffin, that in that case he was convicted of
7 gunning a man down as he was walking down the sidewalk.
8 Just gunning him down. And he testified to you today that
9 he ran up to the porch and just started shooting. He didn't
10 care. He didn't care who he kills. He's a murderer. He
11 doesn't need anyone to tell him to do that. That's
12 something he did on his own. And yet Tavarious Settles,
13 this murderer and this liar, this is the person that the
14 State wants you to believe.

15 The State has presented you with 24 witness. 24 people
16 came up and took the stand and told you what they knew about
17 this case. Of those 24 we've heard from only one person,
18 only one person said that Karlita talked to Tavarious and
19 asked him to kill her husband, and that one person was
20 Tavarious, and that was this morning.

21 Now, I'm going to show you how you know Tavarious is a
22 liar, but I first want you to look at the circumstances of
23 him testifying. Okay? He came up here this morning and he
24 said, yep, Karlita asked me to kill her husband for
25 insurance money and we went there and I ran up on the porch

1 and I just started shooting. He also said the first time
2 he's said this to anyone was yesterday. Yesterday, well
3 after trial had started. And he admitted he had plenty of
4 time to talk to police. He's been in state custody since
5 June of 2013. So why did he come up here and talk about
6 this today? Well, he's been in prison for the past couple
7 of months. He's gotten convicted of murder for gunning down
8 that guy in Greenwood. He's spent a couple of months in
9 prison. He knows what prison now feels like, and he knows
10 he's facing 45 years of that. And it's important to know he
11 hasn't pled guilty to this charge. He hasn't received a
12 sentence. And he acknowledged that, yeah, his attorneys can
13 file what's called a downward departure motion to get that
14 45 years reduced. But yeah, after today his charges could
15 get reduced. They could get dismissed. He's got everything
16 to gain and nothing to lose by coming in here and talking to
17 you today. He's got nothing to lose. He's already doing
18 45. He had everything to gain. He can get that sentence
19 reduced.

20 Now look at what he actually told you. Let's discuss
21 why what Karlita says is the truth and is credible and why
22 what Tavarious says is -- there's a number of reasons.
23 First of all, we didn't need Tavarious to come in here today
24 and say that he's the one that shot Jamil. We already knew
25 that. Again, we told you that in opening. It's pretty

1 clear. His cigarette butts were there. Pretty clear that
2 he did.

3 Now, let's talk about how he said he gets there. He
4 says Karlita drove him and that he was in the bushes and she
5 was parked on the other side. Imagine that. Remember the
6 State's own witnesses, two of the neighbors came in and said
7 they saw the car parked outward facing the street and it was
8 close enough to the road that they noticed it. It's not
9 where he says it is. It's absolutely not. It can't be,
10 because we've got those neighbors, Mr. Parrman and Ms.
11 Stamps who say it's parked there facing out and they see it
12 as they're driving in.

13 Think about the rest of his statement. Not only is
14 today the first time that he says he killed Jamil, it's also
15 the first time he's made any mention of Karlita driving him
16 there. You already know from what he told you today that
17 Purp, Tavarious is capable of making up incredible stories.
18 He made one up on December 10th, 2013. Remember what he
19 tells the officers that day? He tells them I don't know
20 anything. I didn't do that. Yeah, she approached me about
21 it. I turned it down. I turned it down. But hey, I told
22 my friend Markece about it, and then Markece starts smoking
23 my cigarette butts and, hey, I think he jammed them together
24 and framed me. And, in fact, he told -- Markece told the
25 guy in the jail, yeah, I framed him. And then Markece came

1 and apologized to me in jail for framing me with cigarette
2 butts. That's an incredible story, right? So is the one he
3 tells you today.

4 The State's own witnesses prove to you that what he's
5 saying isn't true. He says she drove him there. He says
6 she parked on the other side of the trees. We know from the
7 neighbors that's not true. We also know that from another
8 one. Remember they called 24 witnesses. One of them was
9 Ashanti Polk. You may not remember who she is. She was in
10 the middle. I think she was around number 18. Ashanti Polk
11 came and took the witness stand and she told you she had
12 dated Tavarious Settles for about three years off and on.
13 That she had broken up with him sometime in the spring of
14 2013 and she tells you that she broke up with him because
15 she heard he was cheating on her. And then she tells you
16 that she and Tavarious met one day after school in June,
17 before he was locked up on the Greenwood charge, and they
18 talked and he said, yeah, I'm cheating on you with an older
19 woman named Karlita, and, hey, I killed a guy named Jamil.
20 And then what she said he said. Mike drove me there. Mike
21 drove me there. That's what he tells Ashanti, his
22 girlfriend, in the privacy of her own home. Not in front of
23 law enforcement. But that's a believable statement. Mike
24 drove me there. He has no reason to lie to her about that.
25 He's already telling her he killed someone. Why would he

1 lie about her driving him there. No reason. No reason for
2 him to lie about what he tells her, which is that Mike drove
3 him there. Remember that's what Karlita says, too. Purp
4 comes to her house. She gives him the car and he leaves
5 with a guy named Mike.

6 Now, think about what Karlita says happened and look at
7 the evidence and see. They match up. Now, what she's
8 saying that all she asked Purp to do was go beat up her
9 husband, that's the truth. Okay? First of all, look at the
10 circumstances about that. Did she really ask this 16-year-
11 old kid to go murder her husband, she's going to send him
12 out to do it at his own home where she knows his parents are
13 home, the neighbors are about. Is she going to do it where
14 there's going to be witnesses? No. That doesn't make any
15 sense at all to say, hey, I want you to go kill this person.
16 Go do it on the front porch. Parents are home, neighbors
17 are about. Do it there. That doesn't make any sense that
18 what you're doing is telling somebody to go do. It does
19 make more sense if you're saying, hey, go beat him up. Go
20 beat him up there. That makes sense. Killing him on the
21 porch? No.

22 Let's look at Karlita's statement when she talks to
23 police a couple of times. She talks to them most
24 extensively on the 18th, 19th and 20th of December, 2013.
25 She also talks to him the night of. Remember that's a

1 situation where you can look at her statement on March 26th
2 and know she did not intend for Purp to kill anyone. Why?
3 Because she called the police out to her house that night.
4 If she had been there to the scene, or she had told Purp to
5 go kill him, would she really have called the police and
6 said come to my house? No. And let's look at the evidence
7 that the State's witnesses gave you about the circumstances
8 of them going to her house. Her car -- again, what the
9 State wants us to believe is true, that either she drove him
10 there -- they want you to believe that's true because that's
11 what Purp says today, right? That's what he says today.
12 She drives me there. Well, if that's true, is she going to
13 park her car right out in front of her apartment? Is she
14 going to not wash off mud from her wheels? No. Her actions
15 that night show it's much more consistent with what she's
16 saying. No reason to try to cover it up because she thinks
17 all Purp has done is what she asked him to do, which is to
18 beat up Dale. And again, I am not -- from the beginning she
19 has said that that's bad. Shouldn't have done that and that
20 was bad. But that does not mean she asked him to go kill
21 anyone.

22 Look at her statements on the 18th, 19th and 20th. And
23 if you put those altogether you're looking at something like
24 eight and a half hours of her talking to law enforcement.
25 She doesn't say no, I'm not going to talk to you. She

1 doesn't say no, I want a lawyer. She talks to them. She
2 keeps talking to them. She keeps giving the statements.
3 She's willing to talk to them. On the 18th she gives a
4 verbal statement. An oral statement only, not written, and
5 she tells them, and you know this from Detective Nick
6 Marshall and Captain Natalie Talbert, she says yeah. Yeah,
7 I had said to my daughter back in November I wish he was
8 dead. And yeah, I talked to someone about beating him up.
9 Jumping on him I think is the term she used on the 18th. I
10 had talked to someone about jumping on him. And yeah, I let
11 Purp use my car. On the 19th she says the same thing. The
12 important statement, the important interview, happens on the
13 20th with Lieutenant Bo Barton with SLED. Remember the
14 State presented Lieutenant Bo Barton to you. He's got 27
15 years of experience. He's a criminal behaviorist profiler
16 and he's brought in to talk to people, right? And he said,
17 yeah, I was just called in that day. That's it. I was
18 called in. I reviewed some of the statements. And what
19 does he tell you? He said I reviewed the statements and
20 there was some stuff that wasn't right. There was some
21 issues that we have in some of the statements. He pointed
22 towards the triggerman language and some other pieces of the
23 language and he said just something wasn't right. I needed
24 to clarify. So he talks to her. Right? She gives the
25 first of her written statements, and then he tells you he

1 reviews them. He reads her own statements. And what did he
2 tell you after that? That he notices more issues in that
3 written statement. He says, Karlita, you're not telling me
4 everything. You're not telling -- this isn't all of it.
5 You got to tell me -- you're not telling me everything.
6 Remember this is a man with 27 years experience. Criminal
7 profiler, criminal behavior, says this isn't -- this isn't
8 it, and talks to her some more. Talks to her about how
9 maybe she asked these guys to go over and beat up her
10 husband because she was mad about this burglary. Then she
11 writes a two page statement, which you'll have in evidence.
12 She writes it out, and Lieutenant Barton comes back in the
13 room, and what does he do. Does he review it and say nope.
14 Nope. You're not telling me everything, Karlita. There's
15 stuff missing. I've still got issues. Does he do that like
16 he did with the other ones? No. He stops. He stops
17 talking to her. You can draw your own inference from that.
18 All of you can draw your own inference from that. This is a
19 man who's looking at these other statements and saying nope,
20 not enough. This isn't it. He looks at this one and -- He
21 knows that's the statement. That's what she did. She asked
22 Purp to go beat him up, jump on him because she was made.
23 And again, that's not a good thing. But he knows that's
24 what she did. That's her involvement. And we further know
25 that by how law enforcement charges her. You've heard

1 testimony that the only thing she was understand arrest for
2 was solicitation of a minor to commit a felony. A violent
3 crime. That's what law enforcement got a warrant for. I
4 think on the 17th was the testimony. December 17th. They
5 talked on the 18th, 19th and 20th. Did they go get any more
6 warrants? No. Not a single one of those officers tell you
7 that after that they go and get another warrant on her for
8 accessory. So that warrant is the correct one.

9 Let's look also -- we've talked a little bit about how
10 we know Tavarious is lying. We know he's a liar. Okay? He
11 tells one thing to Ashanti, which I think is probably
12 closest to the truth, that he killed Jamil and that Mike
13 drove him there. He said something else on December 10th
14 and he says another thing to you here today. How do you
15 know that what he's saying now just doesn't make any sense?
16 Let's look at some more that the State introduced that came
17 out of the State's witnesses. Karlita and Dale had been
18 separated since May, 2012. Karlita initiated the court
19 proceedings. You heard that from Dale. They had some kind
20 of family court hearing that resolved issues of property
21 months before this. There was not a custody dispute. They
22 did not have children together. You didn't hear any -- you
23 didn't hear any testimony about any building animosity or
24 anything like that. They'd been separated for 10 months.
25 They were on their way to a divorce. They had both moved

1 on. She had clearly moved on. I've seen no reason, no
2 reason for her to wanting to kill her husband at that point.
3 None.

4 The State has tried to distract you with his insurance
5 money. Well, you need to look at that really critical. You
6 heard from Ms. Fallaw, who's the Wesley Commons Human
7 Resources manager. Been there since 2007. Karlita didn't
8 take out a \$25,000 policy on Dale weeks or months or days
9 before this. No. Every year annual enrollment, which is
10 something all employees go through of pretty much every job,
11 she checked the box that she had checked every other year.
12 She didn't do anything to change her policy. She just
13 checked the same boxes that she had checked. If she was in
14 this for insurance money don't you think she would have made
15 it something more than 25,000? Taken out a policy two
16 months before? It just doesn't make any sense that when
17 they'd been separated for this long and they've moved on and
18 they don't have any custody disputes, they don't have any
19 property disputes, that she would decide she needed to kill
20 her husband. That wouldn't make sense that she would go and
21 ask Purp, Tavarious, to go do this. So you know from those
22 circumstances both the implausibility of asking someone to
23 go kill someone on their front porch as opposed to saying,
24 yeah, all right, beat him up. You wouldn't ask him to go
25 kill someone that way. You know that what she's saying is

1 what happened. She talked to Purp. She asked him to go
2 beat Dale up, and he did what he did in the Greenwood case.
3 He just decided I'm going to go gun this guy down.

4 The State also released to you some pictures from
5 Tavarious' cell phone. And again, look at the witness who
6 introduced those pictures. His name was David Grubbs. He
7 was a forensic -- certified forensic cell phone expert from
8 SLED. He told you about his qualifications. Tells you he
9 gets two cell phones from Tavarious Settles, and he tells
10 you he does a forensic analysis of those phones. And what
11 does he pull that's of evidentiary value? Four pictures.
12 Four pictures of evidentiary value he finds on Tavarious'
13 phone. Those pictures are guns and there's a picture of
14 Tavarious. And he tells you date of those pictures. One of
15 them was January 1st, 2013. One is February, I think, 2nd,
16 2013. One is early March, 2013, one is April, 2013.
17 Tavarious had these pictures of guns on his phone long
18 before this. He didn't need anyone to tell him, hey, take a
19 gun and go kill this person so I can get some money. No.
20 He did that on his own. He likes guns and he likes killing
21 people. Nothing to look at with Mr. Grubbs' testimony. If
22 this really happen the way the State wants you to think it
23 did, if Karlita really arranged this with Tavarious, there
24 would be more. There would be more corroboration. There
25 would be text messages. There would be emails. There would

1 be a call log. Karlita would at least be listed as a
2 contact in his phone. You didn't hear any testimony about
3 that. She's not even listed. No evidence she's even listed
4 as a contact. No evidence of any money. Anthony Moss, a
5 cousin, says, oh, yeah, Tavarious said she got him shoes and
6 paid him twenty bucks. Tavarious didn't get up here and say
7 yeah, she gave me a down payment, or we had a payment plan.
8 There's nothing on those phones indicating anything like
9 that happened. There's nothing else to corroborate what he
10 is saying. All the evidence shows that what she says, what
11 she tells Lieutenant Barton, and what she tells the officers
12 on the 18th is the truth. She asked him to go beat up Dale
13 and he just went further than she ever could have imagined.
14 He just went and gunned him down like he did in Greenwood.

15 Another thing to think about when you're considering
16 what the State wants you to think happened. If it really
17 happened the way Purp said, she really drives him there and
18 is sitting in the car the way the neighbors say so, she
19 would have known that it wasn't Dale. Right? You heard
20 testimony from Dr. Woodard Dale was just over -- that Jamil
21 was just over six feet and over 300 pounds. You saw Dale.
22 He's not that stature. Again, that just shows the
23 implausibility of what the State is trying to make you
24 believe here. Trying to make you believe from the mouth of
25 someone that we know is a murderer and a liar.

1 In addition to not having any emails, text messages,
2 call logs, payment, there's no evidence, no testimony that
3 Karlita did anything to get Tavarious a gun. In fact, the
4 evidence is to the contrary. He has guns on his own. He
5 didn't say anything about anybody actually got me a gun or
6 she gave me money for a gun. And the reason that's
7 important is that shows you he is the kind of person where
8 you can say, hey, go beat him up and he decides I'm just
9 going to go -- I'm just going to do something a little
10 different. He doesn't need anyone to entice him or coerce
11 him or help him in any way. He just does that on his own.

12 So as you're reviewing all the evidence, and there's
13 some physical exhibits you'll have and then there's the
14 testimony you heard, what you know is that Tavarious is a
15 murderer, Tavarious is a liar. What you know is that
16 Karlita asked him to go jump on or beat up her husband. And
17 what you know is that that's what those law enforcement
18 officers got a warrant for. Solicitation of a minor to
19 commit a violent crime. That's the warrant they got. At
20 best -- there hasn't been any testimony about what
21 constitutes a violent crime. If you feel like beating
22 someone up is a violent crime, jumping on them is a violent
23 crime, then at best what the State has proven to you is that
24 Karlita is guilty of solicitation of a minor to commit a
25 violent crime. At best that's the most you can find her

1 guilty of. She is not guilty of the accessory before the
2 fact of murder. She just isn't. Her statement, Lieutenant
3 Barton, shows she's not guilty of asking Purp to kill
4 anyone. She maintains that throughout. Never intended no
5 murder. Never asked him to kill anyone. His statement is
6 all over the place. You know he lies because of what
7 Ashanti says. I killed a guy named Jamil. Mike drove me
8 there. That statement that he makes Ashanti -- again, not
9 to law enforcement, not to his lawyer, but to a friend of
10 his in the privacy of their own home where he has no reason
11 to lie to her. That's probably the most credible thing that
12 came out of his mouth. And you know what, it's also totally
13 consistent with what she's saying, because she tells them --
14 she tells law enforcement, I asked him to go beat him up. I
15 gave Purp my car and Mike went with him.

16 As you review all the evidence, review all the
17 testimony, we're asking you to do your duty as jurors and to
18 find that the State has not proved to you beyond a
19 reasonable doubt that Karlita ever asked Purp or did
20 anything to encourage Purp to kill anyone, and at best what
21 she did was ask Dale -- ask Tavarious to beat Dale up, which
22 at best makes her guilty of the solicitation of a minor
23 charge. Thank you.

24 THE COURT: Thank you very much, Ms. Bolen. Let me see
25 y'all briefly over here at the side, please.

1 (Whereupon, a sidebar was held.)

2 THE COURT: Now, ladies and gentlemen, as I mentioned a
3 moment ago, you've received all the evidence that you have
4 in this particular case. You've now heard the arguments of
5 counsel and it's my obligation to instruct you on the law
6 that applies. Just a few things at first here, ladies and
7 gentlemen.

8 At this point in time, of course, it's not possible to
9 reintroduce -- or to reopen the record and reintroduce
10 additional evidence in this case, so you're going to have to
11 judge this case based solely on the evidence that has been
12 presented. If you have any questions about the evidence,
13 odds are I'm not going to be able to assist you, okay, for
14 that very reason. Because you'll have to rely upon your
15 recollection of the testimony and things of that nature in
16 deciding this case. But if you have any questions or any
17 issues with these instructions I can -- I'll be more than
18 happy to try and help you if there's some part of these
19 instructions that you do not understand.

20 Additionally, when I first started practicing law 22
21 years ago the way that this had been always done and the way
22 that some judges still do it, is that basically the judge
23 would sit up here and read you numerous pages of what the
24 law is and you're supposed to sit there and simply absorb it
25 all and get it right on the first try. Well, I always found

1 that a little bit unreasonable, because like most people it
2 took me three years to get through law school and I don't
3 think it's fair to ask you all to learn something in 15
4 minutes that it took me three years to learn. So long story
5 short, you'll have a copy of these instructions in the jury
6 room that you can refer to during your deliberations if you
7 need to. Please don't pay just attention to part of the
8 instructions to the detriment of the other instructions but,
9 of course, read these as a whole. And again, if you have
10 any problems understanding any of this or anything that I
11 say about the law, you can send me out a note and I'll try
12 and help you along those lines. Okay?

13 Now, ladies and gentlemen, I instruct you that the
14 indictments in this case charge the Defendant, Ms. Phillips,
15 with the offense of accessory before the fact of murder and
16 using a minor to commit a felony. I remind you of the fact
17 that Ms. Phillips was charged, arrested and indicted in this
18 case is not evidence and cannot be considered by you as
19 evidence of guilt. Nor does it create any presumption or
20 inference of guilt. These indictments, these documents, are
21 simply the formal written instruments which contain the
22 charges made against Ms. Phillips. They're the formal
23 documents by which this case is brought to court.

24 In this case, ladies and gentlemen, the Defendant has
25 pled not guilty to these indictments and that plea puts the

1 burden of proof on the State to prove the Defendant guilty.
2 I instruct you that a person charged with committing a
3 criminal offense in South Carolina is never allowed to prove
4 herself innocent. It's an important rule of law that the
5 Defendant in a criminal trial, no matter what the
6 seriousness of the charge may be, will always be presumed to
7 be innocent of the crime for which the indictments were
8 issued unless guilt has been proven by evidence satisfying
9 you of her guilt beyond a reasonable doubt. This
10 presumption of innocence does not end when you begin your
11 deliberations but accompanies the Defendant throughout the
12 trial until you reach a verdict of guilt based upon evidence
13 of satisfying you of that guilt beyond a reasonable doubt.

14 Ladies and gentlemen, the presumption of innocence is
15 like a robe of righteousness placed about the shoulders of
16 the Defendant. It remains with her until it's been stripped
17 from her by evidence satisfying you of her guilt beyond a
18 reasonable doubt. The presumption of innocence, ladies and
19 gentlemen, is not merely a legal theory. It's not just a
20 legal phrase. It's a substantial right to which every
21 defendant is entitled unless you, the jury, are satisfied
22 from the evidence of her guilt beyond a reasonable doubt.

23 Well, what is a reasonable doubt in the eyes of the
24 law. A reasonable doubt is the kind of doubt that would
25 cause a reasonable person to hesitate to act. The State has

1 the burden of proving the Defendant guilty beyond a
2 reasonable doubt. And some of you may have served as jurors
3 in civil cases where you were told that it's only necessary
4 to prove that a fact is more likely true than not true, such
5 as by the greater weight or the preponderance of the
6 evidence. In criminal cases the State's proof must be more
7 powerful than that. It must be beyond a reasonable doubt.
8 Proof beyond a reasonable doubt is proof that leaves you
9 firmly convinced of the Defendant's guilt.

10 Now, there are very few things in this world that we
11 know with absolute certainty, and in criminal cases the law
12 does not require proof that overcomes every possible doubt.
13 If, based upon your consideration of the evidence, you're
14 firmly convinced that the Defendant is guilty of the crime
15 charged, you must find her guilty. If, on the other hand,
16 you think there is a real possibility you think the
17 Defendant is not guilty, you must give the Defendant the
18 benefit of the doubt and find her not guilty.

19 Now, ladies and gentlemen, I remind you that during
20 this trial you and I have certain duties to perform. As the
21 trial judge it's my responsibility to preside over the trial
22 of this case, and I also have the obligation to rule on the
23 admissibility of evidence offered during the trial. You are
24 to consider only the competent evidence before you. Any
25 testimony which was ordered stricken from the record you

1 must disregard that testimony because you're to consider
2 only the testimony which has been presented from the witness
3 stand and any exhibits which have been made a part of the
4 record in this case. The additional duty to charge the law
5 applicable in this case, and as the presiding judge I'm the
6 sole judge of the law. It's your duty to accept and apply
7 the law as I now state it to you. So if you already have
8 any ideas as to what the law is or what the law ought to be
9 and it disagrees with what I now tell you the law is, you
10 must abandon the idea this idea because you're sworn to
11 accept and apply the law exactly as I state it to you now.

12 Every case tried in this Court before a jury the jury
13 becomes the sole and exclusive judge of the facts in a case.
14 A trial judge cannot intimate, state, comment on or make any
15 statement to a trial jury about the facts in a case. And
16 since you, the jury, are the sole judges of the facts,
17 you're not to infer from what I've said during the progress
18 of this trial in ruling upon the admissibility of evidence
19 or otherwise, or anything that I say to you now during the
20 course of these instructions that I have any opinion about
21 the facts in this case. Ladies and gentlemen, the law does
22 not permit me to have an opinion about the facts in this
23 case. This is a matter solely for you to determine, as it
24 is your duty to determine the effect, value, weight and
25 truth of the evidence presented during the trial.

1 Now, ladies and gentlemen, there are two types of
2 evidence which are typically presented during a trial.
3 Direct evidence and circumstantial evidence. Direct
4 evidence directly proves the existence of a fact and does
5 not require deduction. Circumstantial evidence is proof of
6 a chain of facts and circumstances indicating the existence
7 of a fact. I instruct you that crimes may be proven by
8 circumstantial evidence. The law makes no distinction
9 between the weight or value to be given to either direct or
10 circumstantial evidence. However, to the extent the State
11 relies upon circumstantial evidence, all the circumstance
12 must be consistent with each other and when taken together
13 point conclusively to the guilt of the accused beyond a
14 reasonable doubt. If these circumstances merely portray the
15 Defendant's behavior as suspicious then the proof has
16 failed. The State has the burden of proving the Defendant
17 guilty beyond a reasonable doubt and this burden rests with
18 the State regardless of whether the State relies upon direct
19 evidence, circumstantial evidence, or some combination of
20 the two.

21 Now, necessarily, ladies and gentlemen, you must
22 determine the credibility of the witnesses who have
23 testified in this case. Credibility simply means
24 believability. It becomes your duties as jurors to analyze
25 and to evaluate the testimony in determining which evidence

1 convinces you of its truth. In determining the
2 believability of witnesses who have testified, you may
3 believe one witness over several witnesses or several
4 witnesses over one witness. You may believe a part of the
5 testimony of a witness and reject the remaining part of the
6 testimony of that same witness. You may believe the
7 testimony of a witness in it's entirety or reject a witness
8 in its entirety. You may consider whether any witness has
9 exhibited to you any bias, prejudice or other motive in this
10 case, and you may also consider the way that a witness acts
11 or the appearance or manner of a witness while on the
12 witness stand.

13 Now, as I've previously instructed you, ladies and
14 gentlemen, normally the rules of evidence do not permit
15 witnesses to testify to opinions or conclusions, but an
16 exception to this rule exists for witnesses known as expert
17 witnesses. A witness who by education and experience has
18 become expert in some art, science, profession or calling
19 may state an opinion as to relevant and material matters in
20 which the witness claims to be an expert, and they may also
21 state the reasons for their opinion. You should consider
22 any expert opinion received in evidence in this case, and
23 like any other evidence, give it the weight you think it
24 deserves. If you decide the opinion of an expert witness is
25 not based upon sufficient education and experience, or if

1 you conclude that the reasons given in support of the
2 opinion are not sound, or that the opinions are outweighed
3 by other evidence, you can disregard the opinion entirely.
4 An expert witnesses testimony is to be given no greater
5 weight than that of any other witness simply because the
6 witness is an expert. Further, you're not required to
7 accept an expert's opinion even though it's not
8 contradicted.

9 Now, ladies and gentlemen, I further instruct you that
10 a person who has a past criminal record is competent to
11 testify during a trial. A past record does not effect the
12 ability of that witness to testify. A past record may only
13 be considered by you, if at all, in determining the
14 witnesses believability. Remember you're the sole judges of
15 the facts in this case and of the believability of any and
16 all of the witnesses.

17 Furthermore, I instruct you and emphasize that the fact
18 the Defendant in this case did not testify is not a factor
19 to be considered by you in any way in your deliberation and
20 in your consideration on the question of the guilt or the
21 innocence of the Defendant. It must not be considered by
22 you in any manner whatsoever. A Defendant has the
23 constitutional right to remain silent, and the assertion of
24 this right must not be considered by you in your
25 deliberations. I repeat, under your oath you are to draw no

1 conclusions whatsoever from the fact that the Defendant in
2 this case did not testify. The fact that she did not
3 testify should not even be discussed in the jury room. The
4 burden of proof, as I have stated to you, is on the State.
5 The Defendant is not required to prove her innocence. The
6 burden of proof remains on the State to proof guilt beyond a
7 reasonable doubt.

8 Now, ladies and gentlemen, in this case, several
9 statements made by the Defendant have been introduced or
10 admitted into evidence. And while the Court has determined
11 that the statements are admissible, I instruct you that you
12 may make the ultimate decision of whether or not the
13 Defendant made the statements. If the Defendant did make
14 the statement, determine whether the statement was made by
15 the Defendant voluntarily and of your own free will. This
16 means that the statement was not caused by pressure, force,
17 fear, threats, coercion or intimidation, or by hope or a
18 promise of leniency or reward of any kind in determining
19 whether the statement was voluntary. You should consider
20 both the characteristics of the Defendant and the details of
21 the questioning. Some of the factors that you must consider
22 are the age of the Defendant, the Defendant's education or
23 lack thereof, the Defendant's mental ability or capacity,
24 her IQ or intelligence, her background and environment, the
25 place and length of detention, the nature of the

1 questioning, and the advice or lack thereof to the Defendant
2 of her constitutional rights including, but not limited to,
3 the right to remain silent, that any statement could be used
4 against her in court, the right to have a lawyer present,
5 and that if she couldn't afford a lawyer, a lawyer would be
6 appointed to represent her without cost, and that she could
7 stop making statements at any time. You must carefully
8 consider all the surrounding circumstances before you give
9 any weight to an alleged statement. The State has the
10 burden of proving beyond a reasonable doubt that the alleged
11 statement was voluntary. If you determine it was, you may
12 give a statement any further consideration you deem proper.
13 You must decide what weight, if any, should be given to the
14 alleged statement. If you determine the alleged statement
15 was not a free and voluntary statement of the Defendant, you
16 shouldn't consider the statement at all.

17 Now, ladies and gentlemen, in this case the Defendant,
18 Ms. Phillips, is charged with being an accessory before the
19 fact of murder. In order to prove this crime the State must
20 prove beyond a reasonable doubt the Defendant either
21 advised, agreed, urged, counseled, hired or in some way
22 aided or abetted another person to commit a crime, and that
23 the Defendant was not present when the offense was
24 committed. Aid means to help, to promote, to coerce, or
25 accomplish of, to give support to or give assistance to.

1 Abet means to encourage, to appear to favor or support. To
2 prove accessory before the fact the State must also prove
3 beyond a reasonable doubt that the crime of murder was, in
4 fact, committed. Murder is defined as the killing of
5 another person with malice aforethought. Malice is defined
6 is hatred, ill will or hostility towards another person.
7 The intentional doing of a wrongful act without just cause
8 or excuse and with an intent to inflict an injury or under
9 circumstances that the law will infer enable intent. Malice
10 aforethought does not require that malice exists for any
11 particular time before the act is committed, but malice must
12 exist in the mind of the Defendant just before and at the
13 time the act is committed. Therefore, there must be a
14 combination of the previous evil intent and the act. Malice
15 aforethought may be expressed or inferred. Now, these terms
16 express or inferred do not mean different kinds of malice
17 but merely the manner in which malice may be shown to exist.
18 That is either by direct evidence or by inference from the
19 facts and circumstances which are proved. Expressed malice
20 is shown when a person speaks words which express hatred ill
21 will for another person, or when the person prepared
22 beforehand to do the act which was later accomplished. For
23 example, laying in wait for a person or any other act of
24 preparation going to show that the deed was within the
25 Defendant's mind with the expressed malice. Malice may be

1 inferred from conduct showing a total disregard for human
2 life. Inferred malice may also arise when the deed is done
3 with a deadly weapon. A deadly weapon is any articular
4 instrument or substance which is likely to cause death or
5 greatly bodily harm. Whether an instrument has been used as
6 a deadly weapon depends upon the facts and circumstances of
7 each case. The following, ladies and gentlemen, are
8 examples under the law of instruments which may be deadly
9 weapons. A pistol, shotgun, rifle, dirk, dagger, knife,
10 slingshot, metal knuckles, a razor, gasoline, fire bomb or
11 Molotov cocktail, and lighter fluid. A gun may be a deadly
12 weapon even if it's not operative. If facts are proven
13 beyond a reasonable doubt sufficient to raise an inference
14 of malice to your satisfaction, this inference would simply
15 be an evidentiary fact to be considered by you along with
16 the other evidence in this case and you may give it the
17 weight you think it deserves.

18 Now, ladies and gentlemen, I instruct you that if the
19 Defendant in this case with malice aforethought -- or if a
20 defendant with malice aforethought attempted to kill another
21 person but by mistake injures or kills a different person,
22 that defendant still has the intent to kill. The intent to
23 kill is merely transferred from the original person, the
24 person they attempted to kill, with the actual person who
25 was killed or injured. The individual would be guilty of

1 murder just as if the attempt had resulted in the death of
2 the person the defendant attempted to kill.

3 Ladies and gentlemen, I instruct you that the Defendant
4 is charged with using or employing a minor to commit a
5 felony. In order to prove this crime, the State must prove
6 beyond a reasonable doubt that the Defendant in this case,
7 Ms. Phillips, was at least 18 years of age and knowingly and
8 intentionally used, solicited, directed, hired, persuaded,
9 induced, enticed, coerced or employed a person under the age
10 of 18 years of age to commit a violent crime. Under the
11 laws of our state murder is classified as a violent crime.

12 Ladies and gentlemen, finally, you've heard testimony
13 concerning the penalty a person may receive or a person can
14 serve for the crimes alleged in the indictments in
15 determining the guilt or the innocence of the Defendant.
16 You cannot consider any possible penalty for any particular
17 crime. The punishment for the crimes is a matter for me to
18 determine and should never be considered by you in any way
19 whatsoever in arriving at an impartial verdict as to the
20 guilt or the innocence of the Defendant.

21 Now, ladies and gentlemen, there are basically two
22 possible verdicts which you can find in this case and what -
23 - Madam Forelady, I've worked up this verdict form that you
24 can use to help guide your deliberations. Okay? The first
25 part of the verdict form makes the following statement. "We

1 the jury in the above-captioned case on the charge of
2 accessory before the fact of murder unanimously find Karlita
3 Phillips," and then there are two blanks for you to initial.
4 Okay? Either guilty or not guilty. Now, there's no
5 significance to the order in which I state these verdicts.
6 It's just that one's got to be said first. Okay? If you
7 find that the State has met its burden of proving the
8 Defendant is guilty beyond a reasonable doubt on the
9 accessory charge, you would initial guilty. If you find,
10 however, that the State has failed to meet its burden of
11 proving the Defendant's guilt beyond a reasonable doubt, you
12 would initial not guilty and move on to the second question
13 or the second statement.

14 The second statements says, "We the jury in the above-
15 captioned case on the charge of using a minor to commit a
16 felony unanimously find Karlita Phillips," and again the
17 same two options. The same two things. If the State has
18 proven her guilt beyond a reasonable doubt, initial guilty.
19 If they fail to prove it beyond a reasonable doubt, initial
20 not guilty. And then there's a spot here for you to sign,
21 okay, as the foreperson.

22 Now, ladies and gentlemen, your verdict has to be a
23 unanimous one. That means all 12 of you agree. We do not
24 have in South Carolina majority verdicts and I do believe we
25 should never have majority verdicts. So all 12 of you must

1 agree on the verdict.

2 I remind you, ladies and gentlemen, you have no enemies
3 to punish in this case. You have no friends to award.
4 You've been selected as fair and impartial jurors, fair and
5 impartial citizens who have no interest in the outcome of
6 this case other than to judge the facts of this case and
7 render a true verdict.

8 Now, at this time, ladies and gentlemen -- excuse me.
9 At this time I'm going to -- or in a few moments I'm going
10 to ask you to return to the jury room, but don't start your
11 deliberations yet. Okay? I want to make sure I've reviewed
12 everything. I think I've gone over everything with you I
13 need to go over with you. But I want to review everything
14 that I've instructed you on the law with the attorneys.
15 Your cue to begin your deliberation will be receipt of these
16 instructions in the jury room, as well as the verdict form,
17 and the other items of evidence which have been introduced
18 into the record and my asking the alternate to step out.
19 Okay? So that will be your cue to begin your deliberations.

20 We're bumping up against the lunch hour here. If you
21 want to you can adjourn to the back and take a quick survey
22 and see if you all want to begin your deliberations or if
23 you want to break for lunch. I have a basic rule, and that
24 is once the jury gets the case our timetable is entirely up
25 to the jury. So you get to dictate whether we take a break

1 for lunch or you want to begin your deliberations. And if
2 you start your deliberations and it looks like it's going to
3 take a little bit, then we can break for lunch. Okay? So
4 it's going to be entirely up to you on how you want to
5 proceed with that.

6 So at this point in time go ahead and adjourn to the
7 jury room, but don't begin your deliberations until we send
8 the evidence in and these instructions, and I ask you all to
9 step out.

10 (Whereupon, the jury exited the courtroom at 12:28
11 p.m.)

12 THE COURT: The jury is out. Additions or exceptions
13 from the State?

14 MR. STUMBO: No objections, Your Honor.

15 THE COURT: With the exception of the earlier motions
16 that you put on the record, any additions to make?

17 MS. BOLEN: No, other than the objection to
18 transferring.

19 THE COURT: Very good. Let's be very careful with the
20 evidence and make sure that only what is supposed to go back
21 there is, in fact, going back there, because I know we have
22 some stuff that's just for the Court's record and some stuff
23 that has already been introduced for purposes of the jury.
24 So you all do look through that, please.

25 (Whereupon, there was a pause in the proceedings.)

1 (Whereupon, the jury entered the courtroom at 12:32
2 p.m.)

3 THE COURT: The bailiff tells me that you all want to
4 go ahead and break for lunch, and I think that's probably a
5 good idea because I'm a little bit hungry, too. So if you
6 would, we'll take about an hour for lunch. Just try and be
7 back here at 1:30. Obviously the same rules go as before.
8 Don't discuss the case with anyone over the lunch break.
9 And when you get back here don't begin discussing the case.
10 I need you to come back just in case something -- in case
11 one of them gets sick all of a sudden over lunch. Okay? So
12 I need you to come back again. So don't start talking about
13 the case until all 13 of you are in there, I've pulled her
14 out and I've sent the evidence in. Okay?

15 Enjoy your lunch. I'll see you all back at 1:30.

16 (Whereupon, the jury exited the courtroom at 12:32
17 p.m.)

18 THE COURT: The jury is out. If you all want, you can
19 go ahead and grab something to eat and we can review the
20 evidence after lunch. However you want to do it.

21 MR. STUMBO: I think what's on the table here will be
22 ready to go back when they get back.

23 THE COURT: Good enough. Around 1:30 we'll confirm
24 that and get it square. We're at ease.

25 (Whereupon, a lunch break was taken from 12:32 p.m. to

1 1:40 p.m. Jury began deliberations at 1:40 p.m.)

2 THE COURT: I'm informed that the jury has reached a
3 verdict. Anything before the jury is received back in the
4 courtroom, Solicitor?

5 MR. STUMBO: Nothing from the State.

6 THE COURT: Ms. Bolen?

7 MR. STUMBO: Let me just caution anyone. And I
8 typically say this any time we've had an emotional case or
9 perhaps a case that invokes strong emotions. You're welcome
10 to stay here. Obviously I do not want to see the jury's
11 decision -- I don't want to see any displays of disrespect
12 by the -- of the jury's decision when they do render their
13 verdict. So, of course, no audible signs of pleasure or
14 displeasure of the verdict. If you find yourself to contain
15 your emotions just feel free to quietly stand where you are
16 and exit through the back of the courtroom. So if anybody
17 feels that they have difficulty controlling their emotions,
18 feel free to simply exit the courtroom. Okay? Let's have
19 the jury in, please.

20 (Whereupon, the jury entered the courtroom at 3:21
21 p.m.)

22 THE COURT: Let the record reflect that the jury is
23 back and seated. Madam Forelady, I am told that the jury
24 has reached a verdict. Is that correct?

25 MADAM FORELADY: Yes, sir.

1 THE COURT: If you would, hand the verdict form,
2 please, to the bailiff. And Madam Clerk, will you publish,
3 please.

4 MADAM CLERK: State of South Carolina, County of
5 Abbeville, case number 2014-GS-01-212, 2014-GS-01-213. The
6 State of South vs. Karlita D. Phillips. We the jury in the
7 above-captioned case on the charge of accessory before the
8 fact of murder unanimously find Karlita Phillips guilty. We
9 the jury in the above-captioned case on the charge of using
10 a minor to commit a felony unanimously find Karlita Phillips
11 guilty. Marquita D. Donaldson, Forelady, July 23rd, 2015.

12 Madam Forelady, ladies and gentlemen of the jury, is
13 this your verdict, so say you? Please signify by raising
14 your right hand.

15 (Whereupon, jury raises hands.)

16 THE COURT: All right. Let the record reflect that all
17 12 jurors did indicate this was their verdict by raising
18 their right hand. Anything further from the jury before
19 they're discharged from the State?

20 MR. STUMBO: Nothing from the State.

21 THE COURT: From the Defense?

22 MS. BOLEN: No, sir.

23 THE COURT: Ladies and gentlemen of the jury, I want to
24 thank you for your service here this week. I sincerely
25 appreciate it. I know that this was a difficult case and

1 clearly you all had a lot of work to do in arriving at your
2 verdict. I will tell you that at this point in time you are
3 free to speak to anyone about the case, and that includes
4 friends, family members, whoever you might want to talk to
5 about it. As a general rule, what happens in the jury room
6 stays in the jury room. Okay? Sometimes lawyers will
7 contact you or others will contact you after the case is
8 over just to get feedback on how they did, how their
9 presentation went, and very often this helps a lawyer get
10 better at their job. Get better at what they do by getting
11 honest feedback from a jury. So if you're comfortable
12 talking to anyone after this case, you're certainly free to
13 do so. If you don't want to talk to them, simply say I'd
14 rather not speak to you, and I assure you that they'll leave
15 you alone. If they don't, they have to answer to me. Okay?
16 So they'll leave you alone if you ask not to speak to them.

17 So at this point in time your service is complete this
18 week. If you need excuses for work or from school --
19 downstairs or should they just get them here?

20 MADAM CLERK: The bailiff will give them to them
21 outside.

22 THE COURT: The bailiff will give those to you outside.
23 At this point in time I'll handle -- or I'll take a brief
24 break and then I'll handle any post-trial motions and just
25 proceed on to the sentencing. So if you would like to

1 remain for sentencing, that's perfectly fine. What we'll do
2 is I'll ask that you simply exit through this door over here
3 and you'll go down the back stairway. Okay? And then just
4 come up through the front area, and we'll have some area
5 over here to the side in the gallery where you can sit if
6 you want to stick around for sentencing.

7 So if you want to stick around, that's perfectly fine.
8 The bailiff will escort you out this way and you can get
9 your work excuses and then come up the other way. Take them
10 out this way, if you would. And, Madam Forelady, I need you
11 to stick around for two seconds. Come on up and sign off on
12 the verdict, on the sentencing sheets, and we'll proceed
13 from there.

14 Again, good work with you guys this week. You are
15 excused. Thank you very much for coming.

16 (Whereupon, the jury was excused at 3:28 p.m.)

17 THE COURT: We'll be at ease for about five minutes or
18 so and you all can tell me at a later point in time, get
19 everybody in position as far as victim impact, and anything
20 from Ms. Phillips or her family that you all might want to
21 say. And this, of course, will be after you make motions
22 for a new trial.

23 MS. BOLEN: Yes, sir.

24 THE COURT: We're at ease.

25 (Whereupon a recess was held from 3:28 p.m. to 3:42

1 p.m.)

2 THE COURT: Ms. Bolen, Ms. Nelson, you move for a new
3 trial and you also renew all previous motions?

4 MS. BOLEN: Yes, sir. We're renewing all our previous
5 motions and objections. And I believe Ms. Nelson has
6 something else to put on the record.

7 MS. NELSON: We also mentioned earlier, Your Honor, the
8 fact that Mr. Settles' case remains outstanding and would
9 ask Your Honor to differ sentencing until such time as Mr.
10 Settles' sentence is determined so that we could see what
11 impact that might have on the Court's position. Would also
12 ask that if you deny our request to do that, that you retain
13 jurisdiction over this matter in Mr. Settles' case and that
14 we be allowed to -- obviously we can file a motion for new
15 trial and/or reconsideration of sentence, but that we be
16 allowed to hold that matter open until such time as his
17 cases are resolved and until we see whether there is a
18 motion for downward departure, that you retain jurisdiction
19 of that issue as well, Your Honor.

20 THE COURT: All right. I assume that the State would
21 argue that it would be appropriate to go forward with
22 sentencing today, correct?

23 MR. STUMBO: We would, Your Honor.

24 THE COURT: All previous rulings and previous motions
25 will remain the same. The Defendant's motion for a new

1 trial is denied. With regard to the motion for differed
2 sentencing, we're going to proceed with sentencing today.
3 Ms. Nelson, if you would -- after sentencing is completed,
4 if you would care to file a motion for reconsideration what
5 the Court may be inclined to do is to simply allow that to
6 remain outstanding. The Court may not necessarily
7 immediately rule upon that. And I would imagine that I will
8 be asking and I will be retaining jurisdiction over Mr.
9 Settles' case. I've already been involved in one of his,
10 and I think I'm going to probably see a motion on the
11 Greenwood charge involving the Sis case. So I may as well
12 continue to maintain jurisdiction over the other case that
13 Mr. Settles is involved in. So I will do that.

14 MS. NELSON: Yes, Your Honor. Thank you.

15 MR. STUMBO: And we would prefer that, too, Judge, at
16 this point.

17 THE COURT: Very good. Ms. Nelson, before I hear from
18 you, Solicitor, I'm happy to entertain anything that the
19 victim's family may want to say. And I think that you
20 indicated to me that Ms. Phillips' prior criminal history is
21 comprised of a fraudulent check from '98 and that's all that
22 you indicated?

23 MR. STUMBO: Judge, it was actually a driving under
24 suspension in '98 and a DUI in 2013.

25 MS. BOLEN: I'm sorry, Your Honor. I think I was the

1 one who mentioned fraudulent check in '98. I think I had
2 that wrong, Your Honor.

3 MR. STUMBO: Both appear to be magistrate level.

4 THE COURT: Very good. Solicitor, I'm happy to hear
5 from the family at this point.

6 MR. STUMBO: Thank you, Your Honor. This case, as you
7 well know, has been very, very heart wrenching for this
8 entire family. I think they have decided, as a group here,
9 that Dale Phillips, Jr. is going to speak on behalf of his
10 mother and father and brother, Kareem, here today. So he is
11 the only one from the family as a representative that's
12 going to address the Court here in sentencing, Judge.
13 Here's Dale Phillips, Jr.

14 THE COURT: Mr. Phillips, I'm happy to entertain
15 anything that you may want to tell me, sir.

16 MR. PHILLIPS: Thank you, Your Honor. I just want to
17 thank everybody for their hard work, effort. I thank
18 everybody for their prayers, love and support they have
19 shown my family during this nightmare. I would just like to
20 ask that you give this person the absolute maximum because
21 they've been found guilty. That's what they deserve. They
22 do not deserve to see the light of day, because they've
23 taken a precious part of our family away that we can never,
24 ever replace. And it was not fair. It was all her fault
25 and no one else is to blame. And I would like to ask that

1 justice be served to my family in that regard. Thank you.

2 THE COURT: Thank you, sir.

3 MR. STUMBO: Judge, that's all from the family.

4 Obviously they loved Jamil and miss him very much. And,
5 Judge, you've heard the facts of this case. It's horrific.
6 It's a very despicable act that was committed here. We
7 would leave sentencing in your discretion, obviously, Judge.
8 But we -- our position on behalf of this family and law
9 enforcement, the community, is that really there's no
10 sentence great enough because it's not going to bring Jamil
11 back. But we would ask Your Honor to take into
12 consideration the horrific nature of this case and sentence
13 Ms. Phillips appropriately.

14 THE COURT: All right. Very good. Ms. Bolen?

15 MS. BOLEN: Thank you, Your Honor. Your Honor, Karlita
16 is 41-years-old. We understand and respect the jury's
17 decision in this matter. We're just asking you to consider
18 some things in mitigation. She is 41 with basically no
19 criminal history, Your Honor. She has a daughter and a son
20 and a nephew who is like another son to her. They've been
21 with her all week. There's DW [REDACTED], Deandre and then
22 Drae. When this happened, Your Honor, she was working at
23 Wesley Commons. She was a contributing member of society.
24 It's kind of -- you know, obviously anytime I defend a
25 client I'm never there. I don't know what happens. But I

1 do know the person that I've gotten to know over the past
2 year and a half meeting with Karlita in the jail, and I can
3 tell Your Honor that she is a redeemable person. She has
4 some very good qualities, and we're asking you to show her
5 some degree of leniency and mercy and take into
6 consideration her age, her very minimal record, and the kind
7 of person she was up until this event, Your Honor.

8 And I think -- I don't know if any of her family
9 members or if she would like to speak at all. Her nephew
10 may want to. But we'd ask Your Honor to allow them, if
11 possible.

12 THE COURT: I'm happy to hear anything that anybody
13 wants to tell me. I know --

14 MR. WIDEMAN: She ain't the person y'all trying to make
15 her out to be, man. You know what I'm saying? I ain't have
16 no where to go she looked out for me and let me come stay
17 with her for nothing.

18 MS. BOLEN: And that's true, Your Honor. She did take
19 him in.

20 MR. WIDEMAN: And I call her my momma. She ain't my
21 mom. She's my cousin mom.

22 THE COURT: And just so the record is clear, what's
23 your name, sir?

24 MR. WIDEMAN: Drae Wideman.

25 THE COURT: Your last name, sir?

1 MR. WIDEMAN: Wideman.

2 THE COURT: Wideman. Thank you, Mr. Wideman. Ms.
3 Phillips, is there anything that you would care to say,
4 ma'am?

5 THE DEFENDANT: No.

6 THE COURT: No?

7 THE DEFENDANT: No.

8 THE COURT: I believe your client was taken into
9 custody December the 19th?

10 MS. BOLEN: I believe it was the 18th. Yes, sir.

11 THE COURT: Sorry, 18th. All right. Ms. Phillips,
12 I've taken into account all the evidence that has been
13 presented throughout the course of this trial and I agree
14 with your attorney that there are redeemable aspects to you,
15 that you do in all likelihood possess good qualities. Ms.
16 Phillips, candidly, ma'am, for you to involve a child in the
17 commission of any crime, even if, as your attorney argued,
18 your only intention was to have your husband beaten up, the
19 Court finds that, candidly, ma'am, quite reprehensible. And
20 I'm at a loss for words how you could be of the mindset, or
21 how one could come to be of the mindset where this seemed
22 like anything remotely like a good idea. By their verdict,
23 the jury clearly indicated that you had the primary hand in
24 planning this, encouraging this, making sure that this
25 happened. And I have to think that this is not some split

1 second decision where one evening you decide to encourage
2 Mr. Settles to take retribution against your husband. This
3 clearly had to have required some thought, some planning on
4 your part. And the Court, Ms. Phillips, has a very, very
5 difficult time showing leniency to someone who, although
6 they have led largely a crime free life, and obviously you
7 have been a special person to many people and you have many
8 good qualities, the Court is at a loss for words as to how
9 you can all of a sudden decide that this is a good idea or a
10 good thing to do to involve someone who's only 16. And it's
11 not lost upon the Court that only three months after this
12 incident took place Mr. Settles took it upon himself to kill
13 someone else. And it occurs to me that maybe he thought,
14 well, I'd gotten away with it once before for three months.
15 They're not going to catch me the second time.

16 Ms. Phillips, by your actions you've destroyed the life
17 of Mr. Phillips. You've wrecked the life of his parents and
18 his brothers. And it's a hard thing for any parent to have
19 to bury their child, ma'am, and I know that. And, Ms.
20 Phillips, by your actions you may very well have set Mr.
21 Settles on a course where another life ended up getting
22 taken and he ended up getting a sentence of 45 years. At
23 least on the Greenwood charge.

24 The Court finds that truly reprehensible, Ms. Settles.
25 Therefore, on indictment -213, that's the accessory before

1 the fact to murder charge, the sentence of the Court is that
2 you're to be committed to the Department of Corrections for
3 life. On the use of a minor to commit a violent crime, the
4 sentence of the Court is 15 years concurrent.

5 Ms. Phillips, good luck, ma'am.

6 MS. BOLEN: Thank you, Your Honor.

7 MR. STUMBO: Thank you, Judge.

8 THE COURT: We'll be at ease on this case. I'd ask
9 that the bailiff escort the jury out first and the family
10 have a seat over to the side. Ms. Bolen, if you'll have
11 them go to the back, please.

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Certificate of Reporter

I, the undersigned, Tara T. Scott, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Abbeville County, South Carolina, on the 20th-23rd days of July, 2015.

I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

Tara T. Scott

Tara T. Scott, CVR
Circuit Court Reporter
Abbeville, South Carolina
March 9, 2016

COUNTY OF Abbeville

IN THE COURT OF COMMON PLEAS

Karlita Dorian Phillips

Plaintiff(s)

CIVIL ACTION COVERSHEET

2018 -CP- 1 - 059

vs.

State of SC

Defendant(s)

Submitted By: Plaintiff, The SCAddress: Leath (Competence)2809 W. 1st St.Brownwood, SC 29649

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 ____ -NI- ____
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Label (380)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☒ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature:

Karlita Phillips

Date:

2-15-18

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act. S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)

County of Abbeville)Karlita Desean Phillips)

Full name and prison number (if any) of Applicant)

364809)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2018-CP-01-059

APPLICATION FOR

POST-CONVICTION RELIEF

2018 FEB 20 PM 3:12

FILED
STATE OF SOUTH CAROLINA
CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Leath Correctional, 2809 Airport Rd,
Greenwood, SC 29649
2. Name and location of Court which imposed sentence Abbeville County
Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Tavarious Settles
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: Case # 2014GSC100312, 213
 - (a) Life - Accessory before the fact of murder -
 - (b) 15 years - Using a minor to commit felony

TRUE COPY
BY [Signature]
ABBEVILLE COUNTY CLERK OF COURT

TRUE COPY
BY [Signature]
ABBEVILLE COUNTY CLERK OF COURT

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 23, 2015
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SC Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied - Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 12/28/17
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion - 2017-UP-2169
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
- (b) Excessive Sentence/Wrongful Sentence Based on
- (c) Facts of Case

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Counsel failed to properly submit proper challenges
- (b) to court for consideration and to properly argue
- (c) motion for Directed Verdict.
- The facts of case do not support Sentencing

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

- (b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. Court's error in allowing only 5 peremptory
- ii. challenges & error in denying Motion for Directed
- iii. Verdict.

(b) the proceedings in which each ground was raised:

- i. Appeal
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Patricia A. Baker & Janna Nelson
Office of the Public Defender
 ii. Suite 708, Park Plaza - 600 Monument St, Box P-133
Greenville, SC 29646
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial

 ii. _____

 iii. _____

19. State clearly the relief you seek in filing this application:

Resentencing / Modification of Sentence
Release from Confinement
Parole Eligibility

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Greenwood)

VERIFICATION

I, Karlita Descan Phillips, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Karlita D. Phillips

SWORN to and subscribed before me this 15th
 day of February, 2018.

Sandra Deorgette Hill (L.S.)
 Notary Public

My Commission Expires: Jan. 8, 2023

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Karla Desera Phillips, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Karla D. Phillips
Applicant

SWORN or affirmed to and subscribed before me this
15th day of February, 2018.

Sandra Dorothea Hill
Notary Public

My Commission Expires: Jan. 8, 2023

STATE OF SOUTH CAROLINA,)
) IN THE COURT OF COMMON PLEAS.
 COUNTY OF ABBEVILLE.)

Karlita Desean Phillips, #364809,)
)
 Applicant,)
)
 v.) CERTIFICATE OF SERVICE BY MAIL
)
 State of South Carolina,) 18-CP-01-059
)
)

The undersigned, an employee of the Abbeville County Clerk of Court's Office, does hereby certify that a copy of Application for Post-Conviction Relief in the above-referenced matter was made upon the following persons by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 20th day of February, 2018, addressed as follows:

Justin J. Hunter, Esq.
 Office of the Attorney General
 Habeas Corpus
 Post Office Box 11549
 Columbia, SC 29211-1549

Solicitor's Office (hand delivered)
 ATTN: Yates Brown/Micah Black
 P.O. Box 516
 Greenwood, SC 29648

Karlita Desean Phillips
 Leath Correctional, A3, 104
 2809 Airport Rd
 Greenwood, SC 29649


 Melinda Kennedy, Common Pleas Clerk

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ABBEVILLE	)	
	)	2018-CP-01-0059
	)	
KARLITA D. PHILLIPS, 364809	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Carson McCurry Henderson, Esquire
The Henderson Law Firm, PC
109-B Oak Avenue
Greenwood, South Carolina 29646

DATED this the 6th day of June, 2018.


 Carlotta L. Weaver, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ABBEVILLE	)	FOR THE EIGHTH JUDICIAL CIRCUIT
	)	
Karlita Desean Phillips, #364809	)	Case No.: 2018-CP-01-0059
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on February 20, 2018, would respectfully show this Court:

I. Procedural History

Karlita Desean Phillips (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Abbeville County Clerk of Court. In December of 2013, Applicant was arrested following an investigation into the shooting death of her estranged husband's brother. In May 2014, the Abbeville County Grand Jury indicted Applicant for using a minor to commit a felony (2014-GS-01-0212) and accessory before the fact of murder (2014-GS-01-0213).

Assistant Public Defender Patricia Bolen and Circuit Public Defender Janna Nelson represented Applicant. Solicitor David Stumbo and Assistant Solicitor Yates Brown prosecuted the case. On July 20-23, 2015, Applicant proceeded to trial before the Honorable Frank R. Addy, Jr. The jury found Applicant guilty as indicted. Judge Addy sentenced Applicant to imprisonment for concurrent terms of fifteen years for using a minor to commit a felony and life for accessory before the fact.

Applicant filed a timely notice of appeal and an appeal was perfected on her behalf by

Appellate Defender Robert M. Pachak of the South Carolina Commission on Indigent Defense—Office of Appellate Defense. On appeal, Applicant raised the following issues:

1. The trial court erred in only allowing 5 peremptory challenges for the charge of accessory before the fact of murder because it carries the same penalty as murder which allows 10 peremptory challenges.
2. The trial court erred in denying defense counsel's motion for a directed verdict to the charge of accessory before the fact of murder when Applicant was present at the scene of the murder.

(IBOA). Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction on December 28, 2017. State v. Phillips, Op. No. 2017-UP-649 (S.C. Ct. App. filed December 28, 2017). The remittitur was returned to the circuit court on January 18, 2018.

II. Summary of Facts Adduced at Trial

On the night of March 25, 2013, Dale Phillips, Sr. was watching television in his home located in Abbeville, South Carolina, while his wife, Martha Phillips, cooked dinner for Jamil Phillips, one of their three sons. (Tr. pp. 142-146; pp. 155-158). That night, Jamil was scheduled to finish working at his job in Greenville, South Carolina, at 9:00 p.m., and Martha and Dale, Sr. were expecting him to arrive home around 10:00 p.m. (Tr. p. 146; p. 159). Likewise, they were expecting one of their other sons, Dale Phillips, Jr., to also arrive home from work around that same time. (Tr. p. 147; p. 159).

Just after 10:00 p.m., Martha heard one of their sons arrive home and put a key into the door. (Tr. p. 146; p. 159). Immediately after that, several gunshots rang out, and Martha and Dale, Sr. quickly rushed to their front porch to see what was going on. (Tr. pp. 146-147; p. 160). When they did so, they found Jamil lying face down on the porch trying to catch his breath and suffering from gunshot wounds.¹ (Tr. p. 148; p. 160). At that same time, Martha and Dale, Sr. heard

¹ Initially, Martha believed Jamil was Dale, Jr. due to the fact Dale, Jr. was going through a contentious divorce at the time. (Tr. p. 147; p. 160; p. 163).

someone running away from the home and, shortly after that, observed a car speed off from the area.² (Tr. p. 149; p. 162). Martha then quickly called 911 while Dale, Sr. held Jamil, who was crying and gurgling, and tried to comfort him until help could arrive. (Tr. p. 148; p. 160). However, within just a few minutes, Jamil stopped breathing and died in his father's arms before paramedics were able to make it to their location.³ (Tr. p. 148; p. 150; p. 161; p. 163).

Shortly thereafter, law enforcement officers from the Abbeville County Sheriff's Office arrived on the scene along with emergency medical personnel, the scene was secured, and the paramedics unsuccessfully attempted to revive Jamil. (Tr. p. 179; p. 183; p. 185; p. 187; p. 189). Crime scene investigators then arrived at the scene, discovered and collected fresh cigarette butts that had been left at a nearby wooded area, located tire marks in the same area, and took impressions of those marks. (Tr. pp. 191-192; pp. 200-202; p. 214; pp. 345-347). Additionally, Detective Nick Marshall from the Abbeville County Sheriff's Office interviewed witnesses and family members at the scene and learned a silver or light-colored car was believed to have been involved in the shooting. (Tr. pp. 238-242). Furthermore, based on the information he gathered, Detective Marshall determined Karlita Desean Phillips, who was the estranged wife of Dale, Jr., was a person of interest in the investigation based on the fact she drove a car similar to the one observed speeding away from the scene.⁴ (Tr. pp. 241-243; pp. 347-348; p. 406; p. 408).

² On the night of the shooting, Martha and Dale, Sr.'s neighbors noticed a light-colored car parked next to a wooded area near Martha and Dale, Sr.'s home and observed the same car speeding away from the area shortly after the shooting occurred. (Tr. pp. 165-167; pp. 169-176).

³ During trial, Dr. Brett Woodard, the expert forensic pathologist who conducted Jamil's autopsy, testified Jamil had gunshot wounds to his forehead, armpit, and hip. (Tr. p. 223; pp. 225-227). He further explained the bullet that struck Jamil's armpit travelled through Jamil's lungs and aorta and rapidly led to his death by causing fatal hemorrhaging and blood loss. (Tr. pp. 230-232).

⁴ Applicant was thirty-nine years old at the time of the shooting. (Tr. p. 275).

In response, Detective Marshall travelled to Applicant's apartment in Greenwood, South Carolina, along with Investigator Michael Collins from SLED. (Tr. p. 243; p. 345; pp. 348-349). Upon arriving, the investigators observed Applicant's light-colored Toyota Camry parked in front of her apartment and noticed the vehicle had what appeared to be fresh mud on its wheels and side. (Tr. p. 203; p. 244; pp. 347-350; p. 354). Additionally, the investigators noticed the lights were on inside of Applicant's apartment, but someone turned the lights off shortly after they arrived at the scene. (Tr. pp. 246-247; pp. 349-350). The investigators then attempted to make contact with whoever was inside, but no one responded to their knocks or requests. (Tr. pp. 246-247; p. 350). However, shortly thereafter, a local police officer was dispatched to the scene in response to a 911 call placed by Applicant, and Applicant allowed the investigators to enter her home once the officer arrived on the scene. (Tr. p. 247; pp. 350-352). The investigators then informed Applicant of her rights and spoke with her about the shooting. (Tr. pp. 248-250; p. 352). During the conversation, Applicant denied any involvement in Jamil's death and prepared a written statement indicating she did not go to Abbeville on the date of the shooting, she did not have any knowledge of the shooting, and no one borrowed her car that night. (Tr. pp. 250-251; pp. 353-354; State's Ex. # 1A (Statement)).

Following the interview, the investigators took custody of Applicant's car and obtained a warrant to search the vehicle. (Tr. p. 355). Tire impressions were then taken from the car and compared to the tire impressions collected at the scene, and Agent Vickie Hallman, a crime scene investigator from SLED and an expert in tire impressions, determined one of the tire impressions from the scene could have been made by Applicant's car, which she noticed had mud and dirt on its tires. (Tr. pp. 191-192; p. 196; pp. 211-214). However, she was unable to conclusively determine Applicant's car left that impression. (Tr. p. 215).

Subsequently, the investigation into Jamil's murder continued but did not lead to any arrests until Tavarious Settles, a juvenile who had been involved in a murder in Greenwood a few days after Jamil was shot and killed, was connected to the shooting through a DNA analysis of the cigarette butts collected from the crime scene.⁵ (Tr. pp. 200-201; pp. 234-236; p. 302; p. 306; p. 309; p. 314; p. 443; p. 444; p. 450). After the connection was made, investigators met with Settles on December 10, 2013, and spoke with him about the crime. (Tr. pp. 453-454). During the interview, Settles denied any involvement in Jamil's killing but indicated Applicant had made an offer to him in regard to the crime. (Tr. pp. 453-454; p. 459). Additionally, Settles insisted he declined the offer and stated he informed a friend about it before providing the friend with Applicant's contact information. (Tr. pp. 454-455). Furthermore, Settles stated his friend committed the murder and framed him by planting the cigarette butts at the scene. (Tr. p. 456).

Based on Settles's statements coupled with the other evidence obtained during the investigation, Applicant was placed under arrest for using a minor to commit a felony. (Tr. pp. 357-358). Following her arrest, officers interviewed her for several hours on the afternoon of December 18, 2013. (Tr. p. 252; p. 256; p. 277). During that interview, Applicant waived her rights, admitted she knew Settles through her daughter, stated she had told her daughter she wanted Dale, Jr. to be dead, and indicated she let Settles use her car on the night of the shooting while claiming he left in it with an individual named "Mike." (Tr. p. 280; p. 284; pp. 364-367). Furthermore, Applicant admitted she had talked to someone about "jumping" Dale, Jr. and indicated she believed her daughter asked Settles to commit the crime. (Tr. p. 376; p. 378).

Then, on the following morning, officers interviewed Applicant again and she again waived her rights before speaking with the officers. (Tr. pp. 368-370). During that interview,

⁵ Settles was sixteen years old at the time of Jamil's killing. (Tr. p. 274; p. 443).

Applicant provided a written statement in which she indicated her car was only used to go to the store on the night of the incident, claimed she had said “things” in “the heat of the moment” but had never spoken of them again, denied driving Settles to Abbeville, denied going to Abbeville herself, blamed the incident all on Settles and “Mike,” and insisted she never asked Settles to commit murder or do anything that involved going to Abbeville on the date of the incident. (Tr. pp. 370-373; State’s Ex. # 51 (Statement)). However, Applicant also inconsistently wrote she “took him to house” and “got the ball rolling” while again insisting she did not force or tell Settles to do “anything.” (Tr. p. 373; p. 375; State’s Ex. # 51).

Thereafter, on December 20, 2013, Lieutenant Bo Barton from SLED interviewed Applicant again after reviewing her prior written statements. (Tr. pp. 381-384). During the interview, Applicant again waived her rights and provided the investigator with an additional written statement. (Tr. p. 385; p. 388). In that statement, Applicant indicated she went to the store, gave her daughter a driving lesson, and got a car wash on the night of the incident. (Tr. pp. 393-395; State’s Ex. # 53 (Statement)). She further insisted both she and her car were in Greenwood as opposed to Abbeville on the date of the shooting. (Tr. pp. 395-396; State’s Ex. # 53). After Applicant finished her statement, Lieutenant Barton called a number of inconsistencies to her attention. (Tr. p. 397). Applicant then prepared a final written statement. (Tr. p. 385; p. 399). In that statement, Applicant indicated she believed Dale, Jr. had burglarized her apartment, asked Settles to beat him up in response, provided Settles with directions to Dale, Jr.’s home, and let Settles borrow her car on the night of the incident. (Tr. pp. 399-401; State’s Ex. # 54 (Statement)). After that, Applicant indicated Settles returned the car and she later learned Jamil had been killed instead of Dale, Jr. (Tr. p. 401; State’s Ex. # 54).

Subsequently, Applicant was indicted for accessory before the fact to murder and using a minor to commit a felony, and she proceeded forward to trial. (Tr. p. 7; Indictments). At the outset of trial, the trial judge conducted the jury selection process and indicated the defense would be entitled to ten peremptory challenges while the State would be entitled to five. (Tr. p. 25). However, after holding a sidebar with the parties, the trial judge realized the defense was only statutorily entitled to five peremptory challenges and corrected the parties on that matter. (Tr. p. 26). Thereafter, the jury selection process was conducted, a jury was selected for the trial, and neither the defense nor the State exhausted all of their peremptory challenges in doing so. (Tr. pp. 26-31).

Once a jury was selected, the trial judge indicated a matter needed to be placed on the record, and defense counsel indicated she had raised an objection during the jury selection process because she believed the defense was entitled to ten peremptory challenges instead of five. (Tr. pp. 36-37). In support of that position, defense counsel asserted the defense should have been granted ten peremptory challenges because the indicted offense of accessory before the fact to murder carried the same penalty as murder, which was an offense for which the defense would have been statutorily entitled to ten peremptory challenges. (Tr. p. 37). Defense counsel further contended there were jurors seated on the jury the defense would have stricken if it had more peremptory challenges available and maintained the defense was saving one strike for a specific individual who was not called during the selection process.⁶ (Tr. pp. 37-38). However, defense counsel conceded the defense did not exhaust all available peremptory challenges in selecting the jury. (Tr. pp. 37-38). Regarding the matter, the trial judge confirmed he showed defense counsel

⁶ Specifically, defense counsel stated the defense would have exercised a peremptory strike on one particular juror who was allegedly seated on the jury based on the fact the juror's grandfather was formerly the Abbeville County Sheriff. (Tr. pp. 37-38). Notably though, the juror who indicated her grandfather was formerly the Abbeville County Sheriff was neither called during the jury selection process nor seated on the jury. (Tr. p. 20; pp. 26-31).

the statutory provision that established the defense was not entitled to ten peremptory challenges in Applicant's case, noted defense counsel's objection for the record, and proceeded forward with the trial. (Tr. pp. 37-38).

Subsequently, during trial, Martha and Dale, Sr. recounted the horrific events they experienced on the night of March 25, 2013, and the investigators and other law enforcement personnel who responded on the night of the shooting discussed the details of their ensuing investigation into Jamil's killing, which culminated in the arrests of Settles and Applicant for their involvement in the crime after Applicant gave a number of differing statements. (Tr. pp. 141-153; pp. 155-163; pp. 179-183; pp. 191-221; pp. 238-291; pp. 300-314; pp. 345-358; pp. 363-378; pp. 381-401). Additionally, two of Settles's cousins indicated Settles was engaged in a sexual relationship with Applicant around the time of the killing, and, significantly, Ashanti Polk, who formerly dated Settles, recounted Settles admitted to her he was cheating on her with Applicant and had killed Jamil after "his friend" drove him to the crime scene. (Tr. pp. 331-342). Furthermore, testimony was presented establishing Applicant would have received the proceeds from Dale, Jr.'s \$500,000 life insurance policy, which Dale, Jr. indicated Applicant was fully aware of, and personally renewed a \$25,000 life insurance policy on Dale, Jr. several months after the two had separated. (Tr. pp. 406-411; pp. 416-418).

In addition to that testimony and evidence, Settles elected to testify for the prosecution and candidly admitted he shot and killed Jamil on the night of the crime while attempting to kill his intended target, Applicant's husband, at the request of Applicant, who was engaged in a sexual relationship with him at the time. (Tr. pp. 443-445). Regarding his motive for the shooting, Settles indicated Applicant asked him to kill her husband because she wanted insurance money and offered him \$13,000 to commit the killing. (Tr. p. 445). He further stated Applicant drove him to

the scene of the crime in her car, he waited for his victim to arrive home while hiding in some bushes and smoking cigarettes, and he shot and killed Jamil after Jamil walked onto the front porch of his home. (Tr. pp. 446-447). After that, he indicated they fled from the area and Applicant later informed him he killed the wrong person. (Tr. p. 447).

Thereafter, at the conclusion of the evidentiary phase of trial, defense counsel moved for a directed verdict on both charges. (Tr. pp. 459-461). In regard to the accessory before the fact charge, defense counsel argued no evidence had been presented to establish Applicant was not present at the scene of the shooting and contended the State was required to prove she was absent at the time without relying on her statement in any way based on the requirements of the corpus delicti rule. (Tr. pp. 461-462; pp. 464-465). Similarly, in regard to the using a minor to commit a felony charge, defense counsel generally contended the evidence that had been presented was insufficient to prove that charge. (Tr. p. 462). In response, the solicitor contended the evidence presented during trial other than Applicant's statements was sufficient to establish Applicant was guilty of the charged offenses and was not present at the scene of the shooting. (Tr. pp. 463-464). Furthermore, the solicitor asserted Applicant's statements directly established she was not present at the scene of the crime and, when taken together with the other evidence presented during trial establishing the crime had occurred, constituted sufficient evidence to require submission of the case to the jury. (Tr. p. 464). After considering the arguments of counsel, the trial judge denied the directed verdict motion as to both charges and concluded there was evidence even independent from Applicant's statements from which the jury could find Applicant was not present at the time of Jamil's killing. (Tr. p. 465).

Subsequently, at the conclusion of trial, the jury convicted Applicant of both indicted offenses. (Tr. p. 526). Following the verdict, the trial judge sentenced Applicant to life

imprisonment for accessory before the fact to murder along with a concurrent term of imprisonment of fifteen years for using a minor to commit a felony. (Tr. pp. 535-536).

III. Allegations Raised and Relief Sought in Application

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. “Ineffective Assistance of Counsel”
 - a. “Counsel failed to properly submit proper challenges to court for consideration and to properly argue motion for directed verdict”
2. “Excessive sentence/wrongful sentence based on facts of case”
 - a. “The facts of case do not support sentencing”
3. “Court failed to properly charge jury”
4. “Court’s failure to grant Defendant’s motion for directed verdict”

As requested relief, Applicant has asked for “resentencing/modification of sentence, release from confinement, parole eligibility.” Respondent notes that none of these are valid forms of relief available through post-conviction relief.

Attached to this Return and incorporated by reference are the records of the Abbeville County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Response to Allegation of Ineffective Assistance of Counsel

Applicant has alleged her attorney “failed to properly submit proper challenges to court for consideration and to properly argue motion for directed verdict.” Respondent submits Applicant’s allegation of ineffective assistance of counsel is without merit.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668

(1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that

the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. Motion for Summary Dismissal of Remaining Allegations

Respondent submits Applicant's remaining allegations for post-conviction relief should be summarily dismissed for failing to state claims cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. Aside from the allegation of ineffective assistance of counsel, Applicant raises various allegations pertaining to her sentence length and trial court error. These are not proper issues for post-conviction relief. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.

S.C. Code Ann. § 17-27-20. Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Challenges to the sufficiency of the evidence from trial is not a cognizable claim. Post-conviction relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Rather, these allegations constitute direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could

have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The failure to do so has waived this allegation as grounds for relief. Therefore, Respondent submits that all allegations, with the exception of ineffective assistance of counsel, should be summarily dismissed.

V. Any Future Amendments

Applicant must specify any claims she intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII. Request for an Evidentiary Hearing

WHEREFORE, Respondent requests that an evidentiary hearing be held solely on the claims of ineffective assistance of trial counsel. Respondent moves for summary dismissal of all remaining allegations.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 6, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF ABBEVILLE)
KARLITA D. PHILLIPS (#364809),)
Plaintiff,)
v.)
STATE OF SOUTH CAROLINA,)
Defendant.)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

**ORDER CONTINUING CASE AND
SETTING CASE FOR DATE CERTAIN**

C/A No. 2018-CP-01-0059

TRIAL JUDGE:
COURT REPORTER:
PLAINTIFF'S ATTORNEY:
DEFENDANT'S ATTORNEY:
DATE OF HEARING:

HON. DONALD B. HOCKER
NOT APPLICABLE (VIRTUAL)
CARSON M. HENDERSON
MICHAEL NEUBAUER
THURSDAY, JUNE 10, 2021

2021 JUN 21 PM 2:35

FILED
STATE OF SOUTH CAROLINA
CLERK OF COURT

This virtual status conference came before the Court on Thursday, June 10, 2021, at the appointed time of 10:00 a.m. upon the Plaintiff's motion for a continuance. The Plaintiff was represented by Carson M. Henderson, and the State was represented by Assistant Attorney General Michael Neubauer.

After hearing arguments from the attorneys about the Plaintiff's motion, the Court hereby rules as follows:

1. The PCR hearing scheduled for 2:00 p.m. on Tuesday, June 22, 2021, shall be continued for good cause shown; and
2. This case shall be scheduled for a date certain on Tuesday, October 26, 2021; Wednesday, October 27, 2021; or Thursday, October 28, 2021. Mr. Henderson anticipates the case will last at least one (1) day.

#1
DBA

IT IS SO ORDERED.



HON. DONALD B. HOCKER
Presiding Circuit Court Judge
Eighth Judicial Circuit

Laurens, South Carolina

June 14, 2021

FILED
STATE OF SOUTH CAROLINA
2021 JUN 21 PM 2:35
SHANDAL BOGGS
CLERK OF COURT



STATE OF SOUTH CAROLINA)
COUNTY OF ABBEVILLE)
KARLITA D. PHILLIPS (#364809),)
Plaintiff,)
v.)
STATE OF SOUTH CAROLINA,)
Defendant.)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

**ORDER CONTINUING CASE AND
SETTING CASE FOR DATE CERTAIN**

C/A No. 2018-CP-01-0059

TRIAL JUDGE:

HON. DONALD B. HOCKER

PLAINTIFF'S ATTORNEY:

CARSON M. HENDERSON

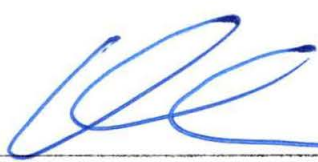
DEFENDANT'S ATTORNEY:

MICHAEL NEUBAUER

The PCR hearing scheduled for 9:30 a.m. on Friday, October 29, 2021, shall be continued for good cause shown; and

This case shall be scheduled for a date certain on Tuesday, March 22, 2022; Wednesday, March 23, 2022; Thursday, March 24, 2022; or Friday, March 25, 2022. Mr. Henderson anticipates the case will last one (1) day.

IT IS SO ORDERED.


HON. DONALD B. HOCKER
Presiding Circuit Court Judge
Eighth Judicial Circuit

Laurens, South Carolina

October 14, 2021

SHANDAL BOGGS
CLERK OF COURT

2021 OCT 19 AM 8:15

FILED
STATE OF
SOUTH CAROLINA
COUNTY OF ABBEVILLE

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669

STATE OF SOUTH CAROLINA)
)
COUNTY OF ABBEVILLE)
)
KARLITA D. PHILLIPS (#364809),)
)
Petitioner,)
)
v.) **FIRST AMENDED APPLICATION FOR**
) **POST-CONVICTION RELIEF**
)
STATE OF SOUTH CAROLINA,) C/A No. 2018-CP-01-0059
)
Respondent.)
)

FILED
STATE OF
SOUTH CAROLINA
COUNTY OF ABBEVILLE
2022 MAR -7 PM 10:55
SHANDAL E. JOHNSON
CLERK OF COURT

The Petitioner, while reserving motions filed and to be filed, and while reserving her right to further amend her Application for Post-Conviction Relief, would respectfully allege and show unto the Court as follows:

INCORPORATION OF PETITIONER'S PRIOR PLEADINGS

1. The Petitioner hereby incorporates into this her First Amended Application for Post-Conviction Relief all allegations contained in her pro se Application for Post-Conviction Relief dated February 15, 2018, and filed with the Court on February 20, 2018.

FOR A FIRST ALLEGATION

2. The Petitioner hereby incorporates Paragraph 1 into this her First Allegation as if fully set forth herein verbatim.

3. The Petitioner is informed and believes that her trial attorney was ineffective because she failed to object to the following preliminary opening remarks from the trial judge: "I ask you to leave so that anything I say about the comments I can be -- about the facts, I can be sure that those comments don't ultimately affect what you determine those true facts to be." (Trial transcript page 128, 1-4.); "In determining what the true facts are in this case, ladies and

gentlemen, you have to decide whether or not the testimony of witnesses is believable or not.” (Trial transcript page 128, 8-11.); and “Instead, give strict attention to the testimony so that at the conclusion of the trial you’ll be in as best a position as possible to determine what the true facts are and thus render a verdict.” (Trial transcript page 129, lines 1-4.) Trial counsel had no objections to the trial judge’s opening remarks. (Trial transcript page 129, line 11.) See State v. Beaty, "Op. No. 27693 (S.C. Sup. Ct. filed Dec. 29, 2016), substituted opinion after rehearing 813 S.E.2d 502, 512 (S.C. 2018) (“We instruct trial judges to omit any language, whether in remarks to the jury or in an instruction, which might have the effect of lessening the State’s burden of proof in a criminal case. Such language includes, but is not limited to, any language suggesting to the jury that its task is to “search for the truth” or to find “true facts,” or that the jury should render a “just verdict.””). Furthermore, trial counsel didn’t ask for a curative instruction, for the statements to be stricken from the record, and/or for a mistrial.

FOR A SECOND ALLEGATION

4. The Petitioner hereby incorporates Paragraphs 1-3 into this her Second Allegation as if fully set forth herein verbatim.

5. The Petitioner is informed and believes that her trial attorney was ineffective because she failed to object to the following testimony from State’s witness Martha Phillips: Q: “And, Ms. Martha, when you first went out the door and you saw Jamil laying there you initially thought it was Dale?” A: “First thing I said, Dale, Dale, Dale.” Q: “And why did you think it was Dale?” A: “Because he was having a nasty divorce. That’s all. He was going through -- he was having problems.” (Trial transcript page 163, lines 6-12.) Furthermore, trial counsel didn’t ask for a curative instruction, for the testimony to be stricken from the record, and/or for a

mistrial. This was rank speculation by the witness. The fact that Dale was involved in nasty divorce proceedings in no way should have led this witness to conclude that the body on her front porch was Dale's. There is no evidence in the record that this witness, on the night of Jamil's death, had any knowledge that the Petitioner intended to harm or kill Dale.

FOR A THIRD ALLEGATION

6. The Petitioner hereby incorporates Paragraphs 1-5 into this her Third Allegation as if fully set forth herein verbatim.

7. The Petitioner is informed and believes that her trial attorney was ineffective because she failed to object to the expert and opinion testimony from State's witness SLED agent Vickie Hallman. The State presented testimony as to this witness' expertise in the area of tire tread impression comparison, and trial counsel didn't object. (Trial transcript page 191, line 15 - page 196, line 21.) The State then introduced this witness' computer generated sketch of the crime scene without objection (State's trial exhibit #44; Petitioner's exhibit #1). (Trial transcript page 198, line 23 - page 199, line 20.) The State then introduced photographs of the crime scene and the Petitioner's vehicle subject to trial counsel's objection. (Trial transcript page 201, line 8 - page 203, line 17.) The witness testified about how she made molds of the tire marks at the crime scene and the Petitioner's vehicle tires, and how she compared the two.

8. The solicitor then asked this question: "Do you have an opinion as to the comparison of the mold at the scene and the tread from the Toyota Camry?" (Trial transcript page 214, lines 12-13.) Trial counsel didn't object, even though this wasn't a proper question to elicit an expert's opinion. The proper question should have been, "To a reasonable degree of tire tread impression comparison certainty, more likely than not, do you have an opinion as to"

Without the “reasonable degree” and “more likely than not” language, the witness was merely speculating and offering a non-expert opinion. Later in the trial, the State demonstrated that it somewhat knows how to elicit expert testimony. (Trial transcript page 232, lines 13-15.)

9. This witness testified about one comparison she made from the front driver’s tire: “... which basically means that the impression could have been made by my known standard, or if somebody else had those same tires, it could have been their tires” (Trial transcript page 215, lines 10-13.) and “So it could have made it but it could have been made by another tire that looked the same.” (Trial transcript page 215, lines 23-25.) This opinion wasn’t to a reasonable degree of certainty, more likely than not. If anything, this opinion was 50-50, meaning that it wasn’t relevant and didn’t have the tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Trial counsel should have objected to this testimony, asked for a curative instruction, asked for the testimony to be stricken from the record, and/or asked for a mistrial. This was rank speculation by the witness.

FOR A FOURTH ALLEGATION

10. The Petitioner hereby incorporates Paragraphs 1-9 into this her Fourth Allegation as if fully set forth herein verbatim.

11. The Petitioner is informed and believes that her trial attorney was ineffective because she failed to raise the state constitutional right to privacy prior to testimony about law enforcement visiting the Petitioner’s home, knocking on her door in the early morning hours after the shooting, interviewing the Petitioner, and obtaining a written statement from the Petitioner (State’s trial exhibit 1-A; Petitioner’s exhibit #2).

12. The State first presented testimony from Nick Marshall, who was the Abbeville County Sheriff's Office deputy who travelled to Greenwood (along with SLED agent Michael Collins) to speak to the Petitioner.

13. Prior to travelling to Greenwood, Deputy Marshall didn't have any suspects, only a person of interest (the Petitioner). (Trial transcript page 241, lines 14-22.) The decedent's family members provided the Petitioner's name. (Trial transcript page 242, line 24 - page 243, line 1.) Different people described the car at the crime scene as "either a silver car or a light in color car." (Trial transcript page 242, lines 22-23.) Nobody told this witness that the Petitioner "drove a light colored car." (Trial transcript page 243, lines 4-6.)

14. Deputy Marshall learned from DMV that the Petitioner owned a 2004 Toyota Camry (no color provided) and then drove to her residence where he located the vehicle. (Trial transcript page 244, lines 5-15). He didn't notice anything of significance (i.e., mud or dirt) on the outside of the vehicle. (Trial transcript page 244, lines 16-18; page 246, lines 10-13.) Deputy Marshall and Agent Collins then knocked on the Petitioner's door, interviewed the Petitioner, and obtained a written statement from the Petitioner.

15. The State presented the following testimony from SLED agent Michael Collins: he "received that same information, as far as who may have possibly been in possession or driving a light in color or silver colored car." (Trial transcript page 347, line 24 - page 348, line 1.); Q: "After your received that information that -- about the color of the car, and then also based that a similar kind of car belonging to Ms. Phillips, Karlita Phillips, did you go to that apartment complex?" A: "We did." (Trial transcript page 348, lines 10-14.); "We observed a silver in color vehicle sitting near the apartment that we thought we were going to." (Trial

transcript page 349, lines 14-16.); “I notice that there’s mud around the wheels and a little bit down the side of the silver colored car that was of interest to us at the time.” (Trial transcript page 349, line 24 – page 350, line 2.); and “It looked relatively fresh, just from my knowledge and experience of analyzing mud. It looked like it had just been put on there.” (Trial transcript page 354, lines 19-21.) On cross, the witness testified that he learned that the Petitioner and her husband were “in the midst of a divorce.” (Trial transcript page 361, lines 6-10.)

16. There’s no evidence in the record that the Petitioner owned or drove a “similar kind of car,” as testified to by Agent Collins. Trial counsel didn’t object to this testimony, ask for a curative instruction, ask for the testimony to be stricken from the record, and/or for a mistrial.

17. Trial counsel didn’t object to Agent Collins’ mud testimony, even though there’s no evidence in the record about his prior dealings with and expertise regarding mud. Furthermore, trial counsel didn’t ask for a curative instruction, for the testimony to be stricken from the record, and/or for a mistrial.

18. Agent Collins testified about the DNA report regarding the cigarette butts found at the crime scene, even though he has no expertise in DNA analysis and didn’t prepare the report. (Trial transcript page 356, lines 10-17.) This report never should have been entered into evidence for the reasons set forth in the Sixth Allegation, *infra*. Furthermore, this witness’ testimony was hearsay. Trial counsel didn’t object to this testimony, ask for a curative instruction, ask for the testimony to be stricken from the record, and/or for a mistrial.

19. As a result of the knock and talk, the Petitioner wrote a statement (State’s trial exhibit #1-A; Plaintiff’s exhibit #2).

20. The leading case on the intersection of “knock and talk” with the state constitutional right to privacy is State v. Counts, 776 S.E.2d 59 (S.C. 2015). Counts was decided on July 8, 2015, and the Petitioner’s trial started on July 23, 2015. The S.C. Constitution provides citizens an express right to privacy. S.C. Const. art. I, § 10. “Because the privacy interests in one’s home are the most sacrosanct, we believe there must be some threshold evidentiary basis for law enforcement to approach a private residence. Otherwise, we foresee the potential for abuse if law enforcement targets a neighborhood and indiscriminately knocks on doors with the hope of discovering contraband without a search warrant.” Counts, 776 S.E.2d at 69.

21. “[W]e hold that law enforcement must have reasonable suspicion of illegal activity at a targeted residence prior to approaching the residence and knocking on the door. As with our previous right-to-privacy decisions, we find this rule safeguards the express constitutional right against unreasonable invasions of privacy and does not hamper law enforcement in their investigative efforts.” Id. at 70. “[W]e hold that law enforcement must have reasonable suspicion of illegal activity before approaching the targeted residence and conducting the ‘knock and talk’ investigative technique.” Id. at 71..

FOR A FIFTH ALLEGATION

22. The Petitioner hereby incorporates Paragraphs 1-21 into this her Fifth Allegation as if fully set forth herein verbatim.

23. The Petitioner is informed and believes that her trial attorney was ineffective because she failed to object to the expert and opinion testimony from state’s witness SLED agent David Grubbs and the evidence that was introduced through this witness (State’s trial exhibits

#38-41; Petitioner's exhibits #3-6). Agent Grubbs testified that he works in the SLED computer crime unit, has taken numerous classes in computer forensics and mobile cell phone forensics, is certified to conduct computer forensics, retrieved four (4) photographs from two (2) cell phones associated with the case, and testified the photographs were clear and accurate copies prior to being introduced into evidence. (Trial transcript page 291, line 16 - page 297, line 4.) Furthermore, trial counsel didn't ask for a curative instruction, ask for the testimony to be stricken from the record, and/or for a mistrial.

24. The State never qualified this witness as an expert. Clearly, any person who can do what this witness testified he could do (and did) is an expert witness in the field of cell phone forensics. Furthermore, this witness testified that the photographs entered into evidence were clear and accurate copies of the photographs received from the cell phones.

FOR A SIXTH ALLEGATION

25. The Petitioner hereby incorporates Paragraphs 1-24 into this her Sixth Allegation as if fully set forth herein verbatim.

26. The Petitioner is informed and believes that her trial attorney was ineffective because she failed to object to the expert and opinion testimony from state's witness SLED agent Lilly Gallman and the evidence that was introduced through this witness (State's trial exhibit #52, which was a large board with chart). Agent Gallman was qualified as an expert witness in the fields of forensics, DNA analysis, and population frequencies. Trial counsel didn't object, ask for a curative instruction, ask for the testimony to be stricken from the record, and/or for a mistrial. (Trial transcript page 300, line 6 - page 302, line 7.) This witness then testified about

her analysis of DNA retrieved from the cigarette butts located at the crime scene as compared to a known DNA sample from the shooter.

27. The witness testified as follows: Q: “And with comparing those two items what were your results?” A: “My results was that the DNA profile developed from the cigarette butts matched the DNA profile of Mr. Settles.” (Trial transcript page 309, lines 10-13.) Trial counsel didn’t object to this testimony and didn’t object to this witness’ report coming into evidence. This witness further testified as follows: “And in this particular case the DNA profile available from the cigarette butts match the DNA profile of Mr. Settles (Trial transcript page 311, lines 4-6.) and Q: “And your results say the probability of randomly selecting another individual having that same DNA profile is one in 140 quadrillion?” A: “That’s correct.” (Trial transcript page 312, lines 6-9.) Trial counsel didn’t object, ask for a curative instruction, ask for the testimony to be stricken from the record, and/or for a mistrial.

28. The State’s proper question to the expert should have been, “To a reasonable degree of DNA analysis (or population frequencies) certainty, more likely than not, do you have an opinion as to” Without the “reasonable degree” and “more likely than not” language, the witness was merely speculating and offering a non-expert opinion. The witness’ opinions weren’t to a reasonable degree of certainty, more likely than not.

FOR A SEVENTH ALLEGATION

29. The Petitioner hereby incorporates Paragraphs 1-28 into this her Seventh Allegation as if fully set forth herein verbatim.

30. The Petitioner is informed and believes that her trial attorney was ineffective because she failed to object to the expert and opinion testimony from state’s witness SLED agent

Michelle Eichenmiller and the evidence that was introduced through this witness. Agent Eichenmiller was qualified as an expert witness in the field of firearms identification. Trial counsel didn't object. (Trial transcript page 315, line 4 - page 318, line 16.)

31. This witness answered the following questions on direct: "Did you generate a report from the analysis which you did on those two bullets?" (Trial transcript page 321, lines 16-17.); "And as to the bullet jacket and the whole bullet, did they appear to be the same caliber, the same type of gun?" (Trial transcript page 321, lines 19-20.); "What caliber were these bullets?" (Trial transcript page 322, line 2.); "Did you weigh the bullets?" (Trial transcript page 322, line 9.); "And would the weights of the bullets be consistent with a revolver or a semi-automatic type gun?" (Trial transcript page 322, lines 18-19.); and "What manufacturers could those have come -- could the bullets have been fired from?" (Trial transcript page 323, lines 3-4.)

32. The witness answered direct questions based upon her review of photographs obtained from Mr. Settles' cell phones (State's trial exhibits #38-41; Petitioner's exhibits #3-6). (Trial transcript page 324, lines 19-20.) These photographs never should have been entered into evidence for the reasons set forth in the Fifth Allegation, *supra*.

33. Regarding the photographs, the witness testified as follows on direct: "There's no way for me to tell from these pictures if it's a .38 caliber. I can't see the diameter of the barrel" (Trial transcript page 326, lines 21-22.) and "But based on your training and experience they would be consistent with a .38 Special? Correct." (Trial transcript page 327, lines 5-7.) On cross, the witness testified as follows: Q: "And it's true that you can't identify what make of gun that is, right, or a brand?" A: "No. It's a little blurry. Just based on general characteristics I

can make an educated guess.” Q: “But if I were to print a picture of a .38 off the Internet and hand it to you, your testimony would be the same, right? That the bullet could have been from that gun as well, right?” A: “Possibly.” (Trial transcript page 329, lines 1-9.)

34. Regarding paragraph 31, *supra*, the State’s proper questions to the expert should have been, “To a reasonable degree of firearms identification certainty, more likely than not, do you have an opinion as to” Without the “reasonable degree” and “more likely than not” language, the witness was merely speculating and offering a non-expert opinion. The witness’ opinions weren’t to a reasonable degree of certainty, more likely than not.

35. Regarding paragraph 33, *supra*, this opinion wasn’t to a reasonable degree of certainty, more likely than not. If anything, this opinion was 50-50, meaning that it wasn’t relevant and didn’t have the tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Trial counsel should have objected to this testimony, asked for a curative instruction, asked for the testimony to be stricken from the record, and/or asked for a mistrial.

FOR AN EIGHTH ALLEGATION

36. The Petitioner hereby incorporates Paragraphs 1-35 into this her Eighth Allegation as if fully set forth herein verbatim.

37. The Petitioner is informed and believes that her trial attorney was ineffective because she failed to object to the testimony from state’s witness SLED agent Bo Barton and the evidence that was introduced through this witness (State’s trial exhibits #53-54; Petitioner’s exhibits #7-8).

38. The State elicited testimony from this witness that he's been "trained as a criminal profiler" and is "in charge of the behavioral science unit at SLED." (Trial transcript page 382, lines 3-7.) Trial counsel didn't object to this testimony, didn't ask for a curative instruction, for the testimony to be stricken from the record, or for a mistrial. The State bolstered this witness' credentials but never offered him as an expert witness. See State v. Tillman, 856 S.E.2d 168, 173 (S.C. Ct. App. 2021) ("The trial court's curative instruction was lengthy and unequivocal in dispelling any notion that it had qualified Agent Barton as an expert in any legally legitimate scientific field."). To put the Court of Appeals' observation into layman's terms, criminal profiling is junk science.

39. This witness testified about his interview of the Petitioner on December 20, 2013. Two (2) written statements from the Petitioner were entered into evidence (State's trial exhibits #53-54; Petitioner's exhibits #7-8). The witness testified that he read Miranda rights to the Petitioner prior to the beginning of the interview as follows: "She has a right to remain silent. Anything she can -- anything she says can and will be used against her in a court of law. She has a right to an attorney. If she cannot afford an attorney, one will be appointed to represent her, if she wished. She could stop answering any questions at any time until she's retained an attorney. Having those rights in mind, did she wish to talk to me." (Trial transcript page 388, 11-23.)

40. The Petitioner was in custody as she had already been arrested, the interview took place at the Abbeville County Sheriff's Office, and the Petitioner was being interrogated. This witness never informed the Petitioner that she had the right to an appointed attorney prior to any questioning, which is required under Miranda. Trial counsel didn't object on this ground to this

witness' testimony and two (2) written statements coming into evidence. In these statements, the Petitioner made multiple incriminating statements.

41. The week prior to trial, the Court held a Jackson v. Denno hearing regarding the Petitioner's statements. The Court ruled as follows: "The *Jackson vs. Denno* hearing, I indicated to counsel that I would be leaning towards admitting the statements, because from the testimony that was presented last week, the Miranda rights were read. . . . But clearly my ruling is going to stand from last week, that Miranda was given[.]" (Trial transcript page 39, lines 2-15.) Regardless of what was testified to during the Jackson v. Denno hearing, this witness, based upon his trial testimony, never informed the Petitioner that she had the right to an appointed attorney prior to any questioning, which is required under Miranda.

42. Trial counsel timely objected when this witness testified that the Petitioner made statements "which indicated to me a deception that you're not telling the whole truth. That you're holding --." (Trial transcript page 392, lines 2-12.) The Court sustained the objection. However, based upon one witness accusing another witness of lying, trial counsel should have asked for a curative instruction, for the testimony to be stricken from the record, and/or for a mistrial.

FOR A NINTH ALLEGATION

43. The Petitioner hereby incorporates Paragraphs 1-42 into this her Ninth Allegation as if fully set forth herein verbatim.

44. The Petitioner is informed and believes that her trial attorney was ineffective because she failed to seek full relief from the Court after objecting to the following question asked to state's witness Dale Phillips, Jr.: Q: "Dale, that night when you got home and you saw

the area roped off, who did you believe that intended bullet was for? At that time I thought --." Trial Counsel: "Objection as to speculation." Court: "I'm sorry. What was the question again, please?" Q: "Who did you believe the intended bullet -- who that bullet was intended for." Court: "Sustained." (Trial transcript page 410, lines 14-22.) Based upon the speculative and prejudicial nature of the State's question, trial counsel should have asked for a curative instruction, for the testimony to be stricken from the record, and/or for a mistrial.

FOR A TENTH ALLEGATION

45. The Petitioner hereby incorporates Paragraphs 1-44 into this her Tenth Allegation as if fully set forth herein verbatim.

46. The Petitioner is informed and believes that her trial attorney was ineffective because she failed to seek full relief from the Court after objecting to the following question asked to state's witness Amanda Fallaw.: Q: "Is it common for an employee who is going through a divorce to elect the life insurance on their spouse at that time?" Trial Counsel: "Your Honor, it calls for speculations what someone may or may not do." Court: "I'm going to sustain." (Trial transcript page 419, lines 6-11.) Based upon the speculative and prejudicial nature of the State's question, trial counsel should have asked for a curative instruction, for the testimony to be stricken from the record, and/or for a mistrial.

FOR A ELEVENTH ALLEGATION

47. The Petitioner hereby incorporates Paragraphs 1-46 into this her Eleventh Allegation as if fully set forth herein verbatim.

48. The Petitioner is informed and believes that her trial attorney was ineffective because she failed to object to the following statement during the solicitor's closing argument:

“What we can do is we can seek justice. We can seek the truth. And we can make sure that the evidence that’s been put before you with the people that have sat on the stand have convinced you beyond a reasonable doubt that the person responsible for this nightmare is sitting right over there by her lawyer. Without her none of this happens.” (Trial transcript page 478, lines 3-8.) Furthermore, trial counsel didn’t ask for a curative instruction, for the statement to be stricken from the record, or for a mistrial. The jury’s duty isn’t to determine the truth. The jury isn’t composed of detectives whose job is to solve crimes and determine what happened. The jury’s sole duty is to determine whether the State has proved the allegations contained in the indictments beyond a reasonable doubt. The solicitor’s statement lowered the State’s burden of proof. The solicitor understood the difference because he told the jury that he believes the evidence presented supported a conviction beyond a reasonable doubt.

49. The Petitioner is informed and believes that her trial attorney was ineffective because she failed to object to the following statement during the solicitor’s closing argument: “So she’s starting to come off with a little bit of truth here.” (Trial transcript page 486, lines 14-15.) Furthermore, trial counsel didn’t ask for a curative instruction, for the statement to be stricken from the record, or for a mistrial. The solicitor was referring to the Petitioner’s written statement dated December 19, 2013 (State’s trial exhibit #51; Petitioner’s exhibit #9). This time, the solicitor is telling the jury what the truth is, when it’s not the jury’s duty to determine the truth. Also, the solicitor is vouching for and bolstering the Petitioner’s credibility.

50. The Petitioner is informed and believes that her trial attorney was ineffective because she failed to object to the following statement during the solicitor’s closing argument: “So after they’re separated and she’s filing for divorce she’s actively going and getting an

insurance policy on her still husband that's she's going to benefit from." (Trial transcript page 490, lines 18-21.) Furthermore, trial counsel didn't ask for a curative instruction, for the statement to be stricken from the record, or for a mistrial. This is a misstatement of evidence presented to the jury. Evidence presented to the jury indicated that the Petitioner had had the same life insurance policy with the same beneficiary (her husband) for years through her place of employment.

51. The Petitioner is informed and believes that her trial attorney was ineffective because she failed to object to the following statement during the solicitor's closing argument: "[W]hat the Judge is going to instruct you on is that when you go back and you reason together as 12 people as the consciousness (sic) of this community in Abbeville County, you'll reason together and you will ultimately decide on a verdict in this case." (Trial transcript page 491, lines 8-12.) Furthermore, trial counsel didn't ask for a curative instruction, for the statement to be stricken from the record, or for a mistrial. A prosecutor may not urge jurors to convict a defendant in order to protect community values, preserve civil order, or deter future lawbreaking. The evil lurking in such prosecutorial appeals is that a defendant will be convicted for reasons wholly irrelevant to the defendant's guilt or innocence.

52. The Petitioner is informed and believes that her trial attorney was ineffective because she failed to object to the following statement during the solicitor's closing argument: "And folks, there is absolutely no question what the truth is in this case." (Trial transcript page 491, lines 17-18.) Furthermore, trial counsel didn't ask for a curative instruction, for the statement to be stricken from the record, or for a mistrial. The jury's duty isn't to determine the truth. The jury isn't composed of detectives whose job is to solve crimes and determine what

happened. The jury's sole duty is to determine whether the State has proved the allegations contained in the indictments beyond a reasonable doubt. The solicitor's statement lowered the State's burden of proof.

FOR A TWELFTH ALLEGATION

53. The Petitioner hereby incorporates Paragraphs 1-52 into this her Twelfth Allegation as if fully set forth herein verbatim.

54. The Petitioner is informed and believes that her trial attorney was ineffective because she failed to object to the following portion of the trial judge's jury charge: "This presumption of innocence does not end when you begin your deliberations but accompanies the Defendant throughout the trial until you reach a verdict of guilty based upon evidence of satisfying you of that guilt beyond a reasonable doubt." (Trial transcript page 510, lines 9-13.) Furthermore, trial counsel didn't ask for a curative instruction, for the statement to be stricken from the record, or for a mistrial. The proper language should be "unless you reach a verdict of guilty." The trial judge's charge suggested that the jury has to convict the Petitioner and/or suggests that the trial judge believes the jury should convict the Petitioner.

55. The Petitioner is informed and believes that her trial attorney was ineffective because she failed to object to the following portion of the trial judge's jury charge: "If, based upon your consideration of the evidence, you're firmly convinced that the Defendant is guilty of the crime charged, you must find her guilty." (Trial transcript page 511, lines 13-15.) Furthermore, trial counsel didn't ask for a curative instruction, for the statement to be stricken from the record, or for a mistrial. The trial judge should never instruct a jury that it must find any defendant guilty. A jury can acquit for any reason.

56. The Petitioner is informed and believes that her trial attorney was ineffective because she failed to object to the following portion of the trial judge's jury charge: "This is a matter solely for you to determine, as it is your duty to determine the effect, value, weight and truth of the evidence presented during the trial." (Trial transcript page 512, lines 23-25.) Furthermore, trial counsel didn't ask for a curative instruction, for the statement to be stricken from the record, or for a mistrial. See State v. Beaty, "Op. No. 27693 (S.C. Sup. Ct. filed Dec. 29, 2016), substituted opinion after rehearing 813 S.E.2d 502, 512 (S.C. 2018) ("We instruct trial judges to omit any language, whether in remarks to the jury or in an instruction, which might have the effect of lessening the State's burden of proof in a criminal case. Such language includes, but is not limited to, any language suggesting to the jury that its task is to "search for the truth" or to find "true facts," or that the jury should render a "just verdict."").

57. The Petitioner is informed and believes that her trial attorney was ineffective because she failed to object to the following portion of the trial judge's jury charge: "It becomes your duty as jurors to analyze and to evaluate the testimony in determining which evidence convinces you of its truth." (Trial transcript page 513, line 24 - page 514, line 15.) Furthermore, trial counsel didn't ask for a curative instruction, for the statement to be stricken from the record, or for a mistrial. See State v. Beaty, "Op. No. 27693 (S.C. Sup. Ct. filed Dec. 29, 2016), substituted opinion after rehearing 813 S.E.2d 502, 512 (S.C. 2018) ("We instruct trial judges to omit any language, whether in remarks to the jury or in an instruction, which might have the effect of lessening the State's burden of proof in a criminal case. Such language includes, but is not limited to, any language suggesting to the jury that its task is to "search for the truth" or to find "true facts," or that the jury should render a "just verdict."").

58. The Petitioner is informed and believes that her trial attorney was ineffective because she failed to object to the following portion of the trial judge's jury charge: in determining whether the Petitioner made statements voluntarily and of her own free will, "Some of the factors you must consider are . . . the advice or lack thereof to the Defendant of her constitutional rights including, but not limited to, the right to remain silent, that any statement could be used against her in court, the right to have a lawyer present, and that if she couldn't afford a lawyer, a lawyer would be appointed to represent her without cost, and that she could stop making statements at any time." (Trial transcript page 516, line 21 - page 517, line 7.) Furthermore, trial counsel didn't ask for a curative instruction, for the statement to be stricken from the record, or for a mistrial. The trial judge failed to inform the jury that the Petitioner had the right to an appointed attorney prior to any questioning, which is required under Miranda. The trial judge's instruction suggests that the Petitioner had the right to an attorney only after questioning had started.

59. The Petitioner is informed and believes that her trial attorney was ineffective because she failed to object to the following portion of the trial judge's jury charge: "You've been selected as fair and impartial jurors, fair and impartial citizens who have no interest in the outcome of this case other than to judge the facts of this case and render a true verdict." (Trial transcript page 522, lines 4-7.) Furthermore, trial counsel didn't ask for a curative instruction, for the statement to be stricken from the record, or for a mistrial. See State v. Beaty, "Op. No. 27693 (S.C. Sup. Ct. filed Dec. 29, 2016), substituted opinion after rehearing 813 S.E.2d 502, 512 (S.C. 2018) ("We instruct trial judges to omit any language, whether in remarks to the jury or in an instruction, which might have the effect of lessening the State's burden of proof in a

criminal case. Such language includes, but is not limited to, any language suggesting to the jury that its task is to “search for the truth” or to find “true facts,” or that the jury should render a “just verdict.””).

PRAYER

WHEREFORE, the Petitioner prays:

1. That this Court grant judgment to the Petitioner, vacate the Petitioner’s convictions, and grant the Petitioner a new trial.
2. For such other and further relief as this Court deems just, proper, and equitable.

THE HENDERSON LAW FIRM, P.C.
Attorney for the Petitioner

By: s/Carson M. Henderson
109-B Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 953-0011
Fax: (864) 229-8001

Greenwood, South Carolina

March 7, 2022

STATE OF SOUTH CAROLINA)
COUNTY OF ABBEVILLE)
KARLITA D. PHILLIPS (#364809),)
Plaintiff,)
v.)
STATE OF SOUTH CAROLINA,)
Defendant.)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

**ORDER CONTINUING CASE, RELIEVING
COUNSEL, AND APPOINTING NEW
COUNSEL**

C/A No. 2018-CP-01-0059

**CHIEF ADMINISTRATIVE JUDGE:
PLAINTIFF'S ATTORNEY:
DEFENDANT'S ATTORNEY:**

**HON. DONALD B. HOCKER
CARSON M. HENDERSON
ZACHARY JONES**

This PCR hearing was scheduled to come before the Court during the week of March 6, 2023. The hearing was continued for good cause shown, as Mr. Henderson was in the process of being appointed as a Greenwood County magistrate and winding down his law practice.

IT IS THEREFORE ORDERED that Mr. Henderson is hereby relieved as counsel for Ms. Phillips.

IT IS FURTHER ORDERED that the Abbeville County Clerk of Court shall appoint new counsel for Ms. Phillips.

IT IS FURTHER ORDERED that Mr. Henderson shall provide a copy of his file to the new counsel immediately when requested to do so.

IT IS SO ORDERED.


HON. DONALD B. HOCKER
Chief Administrative Judge
Eighth Judicial Circuit

Laurens, South Carolina

July 10, 2023

FILED
STATE OF
SOUTH CAROLINA
CLERK OF COURT
2023 JUL 21 PM 2:33
SHANDAL BOGGS
CLERK OF COURT
COUNTY OF ABBEVILLE

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

Karlita D Phillips #364809,

Plaintiff(s),

-vs-

State of South Carolina,

Defendant(s).

) IN THE COURT OF (Select one.)
) ☒ COMMON PLEAS ☐ FAMILY COURT
) JUDICIAL CIRCUIT

) CASE NO.: 2018-CP-01-059

) APPOINTMENT OF COUNSEL OR GAL
) (Select one.)

) ☒ ORDER

) ☐ AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

☒ Post-Conviction Relief (PCR)/habeas case

☐ Adoption

☐ Juvenile

☐ SVP case

☐ Custody and/or Visitation

☐ Abuse and Neglect

☐ Minor Name Change

☐ Other:

It appears that Karlita D Phillips, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- ☐ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- ☒ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on: _____
- ☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- ☐ court appointed counsel has obtained _____, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- ☐ Other: _____.

Therefore, it is ordered that Ashley A. McMahan, Esq, hereby is appointed as (Select one.) ☒ counsel ☐ lead counsel (if capital PCR case) ☐ guardian ad litem

for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

☐ (If Death Penalty PCR Case) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 31st DAY OF July, 2023.

Shandal Boggs
☐ Circuit Judge ☒ Clerk of Court

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

Karlita D. Phillips, #322450

Applicant,

v.

State of South Carolina.

COURT OF COMMON PLEAS
FOR THE 8th JUDICIAL CIRCUIT
Case No.: 2018-CP-01-00059

**AMENDED POST-CONVICTION
RELIEF APPLICATION**

The Applicant, by and through her undersigned attorney, hereby amends her PCR application filed on February 20, 2018, to add the following allegations:

1. Ineffective Assistance of Counsel of Patricia Bolen and Janna

Gregory:

- a. Failure to call Applicant's daughter, DW [REDACTED],
as an alibi witness.

Furthermore, the Applicant requests that she be permitted to amend her PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



ASHLEY A. MCMAHAN

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Columbia, SC 29250

803-219-1110

ashley@mcmahanlawsc.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

August 13, 2024
Columbia, South Carolina

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Zachary W. Jones
Assistant Attorney General
zacharyjones@scag.gov

This 13th Day of August, 2024.



ASHLEY A. MCMAHAN
Attorney for Applicant

STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
 *
 COUNTY OF ABBEVILLE * TRANSCRIPT OF RECORD

-----X
 KARLITA DESEAN PHILLIPS, *
 *
 Applicant, *
 *
 vs. * Case No. 2018-CP-01-00059
 *
 STATE OF SOUTH CAROLINA. *
 *
 -----X

August 19, 2024
 (Held in Laurens County)

POST-CONVICTION RELIEF HEARING

B E F O R E:

The Honorable J. Derham Cole, Presiding Judge

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

Ashley McMahan, Esq.
 Attorney for the Applicant

Zachary Jones, Esq.
 Attorney for the State

Recorded by: Court Reporter Tara Scott

Court Transcriber: Bobbi Fisher, RPR
 SC Official Court Reporter III

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE</u>
KARLITA DESEAN PHILLIPS	
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JANNA GREGORY	
Direct Examination By Mr. Jones	12
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PATRICIA BOLAND	19
Direct Examination By Mr. Jones	19
Cross-Examination By Ms. McMahan	25
Redirect Examination By Mr. Jones	40

E X H I B I T S

(None.)

COURT REPORTER/TRANSCRIBER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[sic]	Indicates the word is written as said
(Indiscernible)	Indicates word(s) is not known due to poor audio recording quality

P R O C E E D I N G S

(The following proceedings started at 11:08 AM:)

MR. JONES: Your Honor, this is the matter of Karlita Phillips versus the State of South Carolina, Case Number 2018-CP-01-59.

My name is Zachary Jones for the State of South Carolina. Ms. Phillips is present along with her attorney, Ashley McMahan.

Ms. Phillips was indicted in May of 2014 by the Abbeville County Grand Jury for soliciting a minor to commit a felony, Indictment No. 2014-GS-01-212, and for accessory before the fact to murder, Indictment No. 2014-GS-01-213.

She proceeded to trial before Judge Addy on July 23rd -- excuse me -- July 20th through the 23rd, 2015, where the jury found her guilty as indicted. Judge Addy sentenced her to imprisonment for concurrent terms of 15 years for soliciting a minor to commit a felony and for life for accessory before the fact to murder.

Ms. Phillips filed a timely Notice of Appeal. An appeal was perfected on her behalf by Appellate Defender Robert M. Pachak of the South Carolina Commission on Indigent Defense, Office of Appellate Defense.

The South Carolina Court of Appeals ultimately affirmed Ms. Phillips' conviction on December 28th, 2017. In an unpublished opinion, the Remittitur was returned to the

1 Circuit Court on January 18th, 2018, and this application
2 followed on February 20th, 2018.

3 THE COURT: Ms. McMahan, what allegations does the
4 applicant wish to proceed on?

5 MS. McMAHAN: Judge, there's two amended applications.
6 The allegations are on both of those. There is one from March
7 2022 that Mr. Henderson filed before I was substituted as
8 counsel, and then there is one that I recently filed.

9 MR. JONES: And, Your Honor, the packet that was prepared
10 for you may not include the most recent one, which I believe
11 was --

12 THE COURT: Well, see, I've got the first one, but I do
13 not have the second one.

14 All right. Ms. McMahan.

15 MS. McMAHAN: Your Honor, the applicant calls
16 Ms. Phillips.

17 THE COURT: You're Karlita D. Phillips?

18 THE WITNESS: Yes, sir.

19 KARLITA DESEAN PHILLIPS,
20 having been duly sworn, was examined and testified to as
21 follows:

22 THE COURT: All right. Get closer to that microphone.

23 THE WITNESS: To the mic? Okay. Is this far enough? Is
24 this good enough?

25 THE COURT: Well, let's wait.

1 DIRECT EXAMINATION

2 BY MS. McMAHAN:

3 Q Ms. Phillips, did you file this PCR application?

4 A Well, I had help. Somebody helped me in prison, but I
5 did file it.

6 Q But you filed it and all that on your behalf?

7 A Yes.

8 Q But you had assistance filling out the application?

9 A Yes.

10 Q Okay. And who were your -- was your attorney -- your
11 main attorney that represented you?

12 A Patricia Boland.

13 Q Ms. Boland?

14 A Yes, ma'am.

15 Q Was there another attorney that helped you at trial, too?

16 A Jenny (ph) Nelson was there.

17 Q And were you out on bond? Were you detained the entire
18 time?

19 A No, I had bond, but I stayed in the county.

20 Q Was it, you couldn't make the bond?

21 A No, it wasn't that. I just stayed in the county because
22 that's -- I had to have an ankle monitor and stuff, so I just
23 stayed in the county.24 Q Was it because the ankle monitor was going to cost some
25 money?

1 A It wasn't that.

2 And then the family wasn't okay with where I was going to
3 stay. It was going to be in McCormick with my kids.

4 Q Okay. So you just opted to stay?

5 A I just opted to stay, mm-hmm.

6 Q Okay. And do you recall the first time you met with
7 Ms. Boland?

8 A Well, she was appointed to me. I can't remember exactly.
9 I just can't recall, but probably met with her three to six
10 times maybe --

11 Q Okay.

12 A -- before the trial, yeah.

13 Q And when you guys met, did you talk about any possible
14 plea offers or anything like that?

15 A No. She stated that they said -- is it Yates Brown?

16 Q Mm-hmm.

17 A -- said he would not offer me a plea, but I could make a
18 plea, and he would take it to the family.

19 Q So Ms. Boland let you know the solicitor said they
20 weren't going to give you a plea deal, but if you were opting
21 to plead to something, that he would let the family know?

22 A Mm-hmm.

23 COURT REPORTER: You have to say yes or no, ma'am.

24 A Yes. Oh, I'm sorry. Yes, ma'am.

25 BY MS. McMAHAN:

1 Q Did you guys have a discussion about that, you and
2 Ms. Boland about --

3 A That was the only time we had any discussion about it.

4 Q Well, was the discussion about possibly taking that or --
5 and pleading to something, or was it always you wanted a
6 trial?

7 A No, because she said the case was weak. So we just
8 didn't further discuss anything about me offering a plea to
9 the family, so we didn't discuss that anymore.

10 Q And when she said the case was weak, what were you guys
11 talking about --

12 A Well, because it's mostly based on my co-defendant's
13 testimony.

14 Q And the co-defendant, the minor?

15 A Yes.

16 Q Did she talk about the amount of time that you were
17 facing for these charges?

18 A I can't recall her saying that the -- the accessory
19 before the fact. Because, at first, I wasn't indicted on
20 that. I was just indicted on the -- using the minor to commit
21 a felony, and then afterwards came the accessory before the
22 fact.

23 Q So you were initially charged with the use of the minor?

24 A Yes, that was the initial charge.

25 Q And that's what you were arrested on?

1 A Yes.

2 Q And then they indicted you later on accessory before the
3 fact?

4 A Yes, that's correct.

5 Q And when you guys were getting ready for trial, what were
6 you guys talking about in terms of defenses and stuff for your
7 trial? Do you remember?

8 A I don't recall us really talking about anything, like me
9 testifying. Like I said, my son didn't live with me at the
10 time, so he couldn't be a witness. And it was me and my
11 daughter.

12 Q So was there a conversation about having your daughter
13 testifying?

14 A No, it was not.

15 Q And what was the issue with your daughter and her
16 testimony?

17 A Well, at the time and everything when I was arrested,
18 both of my kids was minors. Okay.

19 Q So how old was she at the time?

20 A Let's see. This is 2013. 15, 16.

21 Q So, at the time of the trial, she would have been what?
22 17 -- 16 or 17?

23 A 17.

24 Q Okay. And was the issue that your daughter was going to
25 say that you were at the house even though the car was gone or

1 what was -- do you recall?

2 A She was going to tell that, that day, we had went to the
3 pawn shops. My apartment was broken into. I thought that my
4 ex-husband was behind it because all the jewelry that he
5 bought was gone, but my other jewelry was there.

6 So we went to the pawn shops and then we went to
7 Chick-fil-a and we went to Captain D's, and then I was
8 teaching her how to drive, and I was at home, until SLED came.
9 And SLED arrived later that night, yes.

10 Q Okay. So that would have been the summary of what she
11 would have said?

12 A Mm-hmm.

13 Q Okay. But, ultimately, she didn't testify at the trial.

14 A No, she did not.

15 Q And you don't recall having a conversation with
16 Ms. Boland about that?

17 A No.

18 Q Do you remember ever talking to Ms. Nelson about that?

19 A No, I don't recall talking to her about that.

20 MS. McMAHAN: Judge, just for the record, Ms. Nelson's
21 name is now Janna Gregory. So if I use them interchangeably,
22 that's who I'm referencing.

23 BY MS. McMAHAN:

24 Q And did Ms. Nelson ever come meet with you at the jail?

25 A To be honest, I don't remember.

1 Q Okay.

2 A I'm not going to say she didn't, but I -- I remember
3 Patricia coming because she was pregnant at the time, so I
4 remember that. But I don't remember Ms. Nelson. She might
5 have, but it's been a long time ago, and I don't remember.

6 THE COURT: You're going to need to speak up.

7 THE WITNESS: Okay.

8 BY MS. McMAHAN:

9 Q So Ms. Nelson may have met, but you don't have a
10 recollection?

11 A Yes, I just remember. Yes, correct.

12 Q Okay. But you said you do remember talking to Ms. Boland
13 because she was pregnant at the time.

14 A Yes. And I remember her coming back and forth to the
15 jail.

16 Q Okay. And how long were you in the detention center
17 prior to your trial?

18 A Eighteen months.

19 Q And you said you probably met anywhere from three to six
20 times with her?

21 A Correct. Yes, that's correct.

22 Q And you said there was never a situation where you wanted
23 to plead guilty to any of this?

24 A No. I never wanted to plead guilty to it. And so we
25 only talked about it when she brought it up, when she said

1 Yates said he would not offer me a plea, but if I wanted to
2 make a plea to the family, he would take it to the family and
3 then they would talk about it.

4 Q Was there anything that Ms. Boland did or didn't do that
5 you wanted her to do?

6 A Well, I feel like she could have objected more because I
7 think they was misleading the jury.

8 Q And why did you feel that?

9 A Well, they tried to show a picture of my car in the
10 impound, but they gave my car back before I was initially
11 arrested on the first charge. And they let her -- let
12 Tavirous Settles, my co-defendant, say I was there in the car.

13 And they took the tire tracks from the car back. I just
14 think it was misleading to the jury, and I think she could
15 have -- I think she could have objected to that.

16 Q And if she didn't object, do you feel like she could have
17 presented that testimony or at least cross-examined on that
18 testimony a little bit more accurately?

19 A Yes.

20 Q Did you ever have a discussion with Ms. Boland or
21 Ms. Nelson about -- about a right to privacy or anything like
22 that as a defense?

23 A I'm sorry. A what now?

24 Q Or a right to privacy or anything about them knocking on
25 your door that night, like not having a search warrant or

1 anything like that? Did you ever have a conversation about
2 that?

3 A No, I did not.

4 Q Is there anything else you want the Court to know about
5 your PCR application?

6 A No.

7 Q Answer any questions the attorney has for you.

8 MR. JONES: Beg the Court's indulgence.

9 Ms. Phillips, I don't believe I have any questions for
10 you.

11 THE WITNESS: Okay.

12 THE COURT: Okay. Step down.

13 MS. McMAHAN: No further witnesses, Your Honor.

14 MR. JONES: Thank you. The State would call Janna
15 Gregory.

16 JANNA GREGORY,

17 having been duly sworn, was examined and testified to as
18 follows:

19 DIRECT EXAMINATION

20 BY MR. JONES:

21 Q Thank you, Ms. Gregory. Could you state your name for
22 the record, please.

23 A It's Janna Gregory. At the time that we represented
24 Ms. Phillips, it was Janna Nelson.

25 Q All right. Thank you.

1 A Mm-hmm.

2 Q And do you recall how you became involved in Ms. Nelson's
3 case?

4 A Ms. Phillips.

5 Q Ms. Phillips' case. I apologize.

6 A Patricia covered Abbeville at the time. I was circuit
7 defender. I really did not become heavily involved in the
8 case until it approached trial. We usually try to have two
9 attorneys sitting at the table during a trial.

10 So Patricia and I discussed -- Ms. Boland and I discussed
11 a few things here and there as the case was proceeding, but --
12 and I did go meet with Ms. Phillips one time while Ms. Boland
13 was on maternity leave. And we mainly talked about her
14 bond -- the status of her bond at that time.

15 And then I went again with Ms. Boland shortly before
16 trial to go meet with her at the detention center. But
17 Patricia was definitely lead counsel on the case and had
18 primary involvement. You can see in the transcript I hardly
19 -- I didn't say very much. Patricia handled the whole trial,
20 really.

21 Q Do you recall, in your own words, in general, the factual
22 allegations against Ms. Phillips?

23 A Yes. She was -- she was accused of -- of basically
24 asking Tavirous Settles to -- the accusation was that she
25 asked Tavirous to kill her estranged husband, and his brother

1 was accidentally -- was not -- his brother was shot instead.

2 Q The nature of the State's evidence -- well, did
3 Ms. Phillips give a statement to law enforcement?

4 A She gave several, yes.

5 Q Would you characterize those as inconsistent statements?

6 A There were some inconsistencies, but ultimately, the --
7 the theory that we used at trial was that she had -- that she
8 did know who Tavirous was, that she had asked him to beat up
9 her ex-husband and never intended for -- that these decisions
10 he made to shoot someone that night were his alone and that
11 she had never asked him to go that far, to kill anyone for
12 her.

13 Q So you never denied that Tavirous Settles was the party
14 who fired the gun that ultimately killed the decedent?

15 A The trial strategy was that we were embracing that as a
16 fact, that he was -- that he was the one who did that. His
17 DNA was present on cigarette butts at -- near the scene. And
18 we were basically trying to paint him as kind of a
19 blood-thirsty kid because he had -- at the time of
20 Ms. Phillips' trial, he had already been convicted of murder
21 in Greenwood.

22 Q And that came out at this trial; correct?

23 A Yep. Yes.

24 Q Did Mr. Settles testify at Ms. Phillips' trial?

25 A Unfortunately, yes. We did not think he was going to.

1 He came in at the beginning of the trial and took the Fifth,
2 and then, kind of at the 11th hour, decided that he was going
3 to testify. And we -- I don't -- I'm relying a lot on the
4 notes that were made in our file for my memory since it's been
5 a while, but the notes do indicate that we -- Ms. Boland
6 and/or I talked to her about -- about it -- that we felt like
7 it would be devastating for us if he testified, and we were --
8 we had our fingers crossed the whole time, hoping that he
9 wouldn't because we felt our case without him was decent --
10 still problematic, but -- but that kind of was the nail in the
11 coffin.

12 Q What he did testify, do you recall the substance of his
13 testimony?

14 A He said that -- that Ms. Phillips had driven him over
15 there in her vehicle, that he stayed -- that she stayed in the
16 vehicle, and he -- I believe, when he saw someone pull up in a
17 car and go up on the porch, that he shot that person.

18 Q Believing it was Mr. Phillips?

19 A I -- I think that's what he said, yes.

20 Q Do you recall if he stated anything about any life
21 insurance payout?

22 A I believe it was that he said that she was going to pay
23 him approximately \$13,000 and that she would get it from a
24 life insurance policy. And that -- I mean, we -- we denied
25 that, of course. And that was not something Ms. Phillips ever

1 -- ever admitted to at all.

2 Q Were you aware of any discussions about potential plea
3 offers in this case?

4 A I personally did not have any until we were in the trial.
5 The notes indicate that Ms. Boland had had a conversation with
6 Yates Brown, who was one of the prosecutors, where he
7 indicated -- where he said to her -- Patricia's note says that
8 Mr. Brown indicated that, if she would come to him with a
9 30-year offer on accessory, that he would take that to the
10 family and would try to get them to accept it.

11 Ms. Boland's notes indicate that she told Ms. Phillips
12 about that, and Ms. Phillips wasn't ever interested in
13 pleading to the accessory charge either -- either before trial
14 or during the trial, is what -- is what the notes indicate and
15 what my memory is at the trial as well.

16 Q All right. Did Ms. Phillips ever discuss her daughter
17 being a potential witness with you or, to your knowledge, with
18 Ms. Boland?

19 A I don't have any independent recollection of that. There
20 is a note in the file where we did talk about the daughter
21 potentially being called as an alibi witness. And like so
22 many things in trial, things can cut both ways.

23 And, like I said, I don't -- I don't remember the
24 conversation, but the note indicates that Ms. Boland and
25 Ms. Phillips talked about that. I was probably in the room

1 when they talked about it.

2 The daughter -- ultimately, in one of Ms. Phillips'
3 statements, she had initially said she did not lend Tavirous
4 her car. She then later changed that statement and said, "I
5 did lend him the car" that day or that night; I don't remember
6 the timing. The daughter was going to say that the car had
7 not been borrowed by anybody, so that was a contradiction.

8 There's also an element of the accessory charge where
9 it's required that the person cannot be present at the scene
10 of the crime. That's one of the elements of accessory. And
11 so there was this, you know, kind of do we let the jury think
12 she was there? Do we let the jury believe she was at home?

13 There's also issues with a family member testifying as an
14 alibi, that was the jury going to believe that.

15 And one of the biggest things was that we would lose last
16 close and really wanted to be able to have the last word to
17 the jury so -- and primarily what Ms. Boland talked about in
18 closing was Tavirous choosing to do this on his own and...

19 But we did talk about calling her, and in hindsight, you
20 know, maybe that's what we should have done.

21 Q Thank you, Ms. Gregory.

22 A You're welcome.

23 Q I don't have any further questions for you.

24 A Okay.

25 CROSS-EXAMINATION

1 BY MS. McMAHAN:

2 Q You said you were sitting second chair, essentially?

3 A Yes.

4 Q So you wouldn't have been the one making the main
5 objections or anything?

6 A That's right.

7 Q And when you sit second chair, is it sort of like you're
8 kind of taking notes and you guys discuss back and forth about
9 things you need to talk about?

10 A Exactly. I took a ton of notes. I was available for
11 Ms. Phillips if she had questions or, you know, if I needed to
12 ask her something. I was sitting between Ms. Phillips and
13 Ms. Boland.

14 I did say a few things during the trial when we were
15 making -- I don't know if I ever said anything in front of the
16 jury. When we were making legal arguments about a variety of
17 things, I said a few words, but I did not make any objections
18 during any witness testimony, if I recall correctly.

19 Q So your main job was, I guess, essentially running
20 interference between Ms. Boland and everything else going on?

21 A Trying to be a second pair of eyes and ears.

22 MS. McMAHAN: I have no further questions, Your Honor.

23 MR. JONES: Nothing further from the State.

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

25 MR. JONES: And, Your Honor, as for Ms. Boland -- I have

1 a message by her. If we could perhaps take a small recess and
2 I can try to get her into the virtual courtroom.

3 THE COURT: Okay. How much time you want? 15 minutes?

4 MR. JONES: Ten minutes should be fine, Your Honor.

5 THE COURT: Okay.

6 MR. JONES: Thank you, Your Honor.

7 THE COURT: We'll be at ease for 15 minutes.

8 (A recess was taken.)

9 THE COURT: All right. You are Patricia Boland?

10 THE WITNESS: Yes, sir.

11 PATRICIA BOLAND,

12 appearing virtually, after having been duly sworn, was
13 examined and testified to as follows:

14 DIRECT EXAMINATION

15 BY MR. JONES:

16 Q Thank you, Ms. Boland. Can you hear me?

17 A I can hear you but kind of faint.

18 Q I'll speak up, Ms. Boland. And if you can't hear me,
19 just let me know, please.

20 A Yes. Thank you.

21 Q Could you just briefly describe how you became involved
22 in Ms. Phillips' case?

23 A Yes. Back in the -- at the time, I was a public defender
24 in the Eighth Circuit Public Defender's Office in South
25 Carolina.

1 Q And Janna Gregory helped you with this matter?

2 A Yes. She was a public defender at the time, and so she
3 was my co-counsel on the matter.

4 Q All right. And how many times did you meet with
5 Ms. Phillips prior to trial?

6 A I would say quite a few. I don't have access to my full
7 file because I have been in Virginia as a public defender
8 since 2017, but I do have some printouts.

9 I would say I was at the jail seeing her on a regular
10 basis, probably, you know, once every month or two, and then,
11 you know, up to trial, more often than that.

12 But I would have to have full access to my full file to
13 completely know. I know, in the last month or so leading up
14 to trial, Ms. Nelson and I went together to see her, but I did
15 the majority of the jail visits on my own prior to that.

16 Q All right. Thank you.

17 Were there any plea negotiations in this case?

18 A My memory is that there were not. Ms. Phillips was
19 charged with solicitation of a minor as well as the homicide
20 -- the homicide (indiscernible), and I think our position was
21 she would have been interested in pleading to the criminal
22 solicitation of a minor but not the homicide, and that's not
23 something that the prosecutor was interested in. So I don't
24 think they ever had any really meaningful plea discussions
25 because we (indiscernible).

1 Q All right. And can you describe basically the factual
2 scenario and the factual allegations against Ms. Phillips?

3 A Yes. It took a while for law enforcement to charge
4 Ms. Phillips. Basically, the individual was found shot to
5 death in his parents' essentially porch or driveway in
6 Abbeville County.

7 Law enforcement had collected a -- talked to her that
8 night so she was sort of identified as a person of interest
9 but not charged with anything.

10 And then later -- a couple of months later or maybe even
11 a year later, after they had analyzed some forensic evidence,
12 some cigarette butts left at the scene, they identified
13 another individual, Mr. Settles, as having been present.

14 And then from there, I think law enforcement sort of
15 pieced together that Ms. Phillips and Mr. Settles may have
16 been involved together.

17 The -- I want to say Commonwealth Attorney, but that's
18 not what it's called in South Carolina. The Solicitor -- I
19 think their theory of the case was that Ms. Phillips had
20 talked to Mr. Settles about killing her estranged husband for
21 an insurance payout of about \$13,000. There wasn't ever any,
22 you know, insurance payout or anything like that.

23 The evidence tended to show that Mr. Settles did kill
24 someone but killed the husband's brother instead of the
25 husband. He ended up testifying to that at trial. But their

1 theory of the case was that Ms. Phillips was the one to get
2 Mr. Settles to do the shooting and that she did it with the
3 promise of paying him money. That was not our -- that was not
4 our version of events. But that was the basic facts that the
5 solicitor was trying to (indiscernible).

6 Q All right. And what was your version of events?

7 A Our version was that she was not involved in the killing.
8 She had given a statement to law enforcement prior to her
9 having an attorney where she did tell law enforcement that she
10 had asked Mr. Settles to essentially "rough him up" -- Dale,
11 the ex-husband, to rough him up a little bit. There had been
12 some kind of bad blood between them, so she asked him to rough
13 him up.

14 So our position was that that was the extent of what she
15 had done. She had simply asked him to, like, essentially go
16 beat up her ex-husband but that she didn't ever try and get
17 him to kill anyone and she never promised any money or did
18 anything like that.

19 So our version was she basically did criminal
20 solicitation.

21 Q And Mr. Settles did end up testifying at trial; correct?

22 A He did. He initially, prior to trial, was asserting his
23 Fifth Amendment rights not to testify, and then on day two or
24 three of trial, he apparently changed his mind, and he came
25 back and testified against Ms. Phillips.

1 Q All right. And what was the substance of his testimony?

2 A If I recall correctly, the substance of his testimony was
3 that I believe that they had actually gone to the home
4 together. So the home was out in the country, and it was
5 where Dale, I think was his name, the ex-husband or estranged
6 husband and the brother lived with their parents. That they
7 had gone there together. That he had waited in a treeline.
8 He saw someone come home and he shot, and then they drove away
9 together.

10 That, I believe, was his testimony at trial, was that he
11 had done the shooting. I definitely know he testified that he
12 did the shooting, but if memory serves correctly, he said that
13 Ms. Phillips was, I guess, in the car with him.

14 Q Do you recall Ms. Phillips' daughter's involvement as a
15 potential witness?

16 A I do and I just --

17 THE WITNESS: Judge Cole, I don't think I've ever been in
18 front of you. When I handle these at my current for which I
19 work, their sort of policy is that, if we are going to go into
20 anything that reveals client confidences, that we essentially
21 ask to be ordered by the Court to go into that so that there's
22 no ethical issue.

23 In order to discuss her daughter's involvement, I would
24 have to waive confidentiality and would just ask that the
25 Court tell me I need to waive confidentiality.

1 THE COURT: All right. The applicant, by making the
2 allegations, has waived her right to confidentiality.

3 THE WITNESS: Okay. Thank you, Your Honor.

4 A I -- I remember talking to the daughter. I know I talked
5 to her in court. I am pretty sure I talked to her beforehand.
6 I did -- I have some of the notes from our system, and there
7 is a notation -- I think it's on day three or -- two or three
8 of trial that we talked to the daughter about possibly
9 testifying that Ms. Phillips had not left the house that
10 night, but we ultimately decided not to call her as a witness.

11 But that decision -- my notes and my memory indicate that
12 decision was made at trial.

13 Q And do you recall any potential reason why that decision
14 might have been made, why that change in strategy occurred?

15 A Yeah, so I didn't recall independently, but looking at my
16 notes, it appears that what Ms. Phillips had said in her
17 testimony to law enforcement and what the doctor said,
18 although they were substantially the same, there were some
19 differences, and I think I was concerned that the differences
20 would make one of the two statements look less credible, and I
21 didn't know that that would play well.

22 In retrospect, maybe that was a strategic mistake. Who
23 knows. Maybe I should have called her. I don't know. But
24 that was the reason at the time.

25

1 Q All right. Did you see any potential meritorious defense
2 regarding the fact that, when law enforcement initially
3 charged Ms. Phillips' house to speak to her, they did not have
4 a search warrant?

5 A No, I don't think so. I think -- I know -- if memory
6 serves, we did a search warrant suppression hearing on the car
7 a few weeks prior to the trial. I didn't think the, you know,
8 initial act of going up and talking to her was something that
9 they should have had a search warrant for just under the
10 current case law at the time regarding sort of
11 knock-and-talks.

12 And, also, I don't know that they gained anything of
13 evidentiary value during that, so I don't know what there
14 would have been to suppress. I think the larger suppression
15 issue would have maybe been on her statement. But I honestly
16 don't remember thinking anything from that night's
17 conversation.

18 Q All right, Ms. Boland. Thank you very much. I think
19 that's all the questions I have for you. Thank you.

20 CROSS-EXAMINATION

21 BY MS. McMAHAN:

22 Q Good morning, Ms. Boland. This is Ashley McMahan.

23 A Hi, Ms. McMahan.

24 Q So just a few follow-ups. Did you have a chance to
25 review the trial transcript?

1 A I have reviewed it in the past. I have been essentially
2 under subpoena for this case several times. It was always
3 continued. I did not separately review it for this hearing
4 just due to my current caseload and thinking it would get
5 continued again, but I have -- I have reviewed it in the past.

6 Q Okay. So, at some point, there was an amendment to the
7 application regarding some issues with the trial. One of them
8 was going to object to the opening remarks from the trial
9 judge, stating "I ask you to leave so that anything I say
10 about the comments can -- about the facts, I can be sure those
11 comments don't ultimately affect what you determine those true
12 facts to be. And in determining what the true facts are,
13 ladies and gentlemen, you have to decide whether or not the
14 testimony of the witnesses is believable or not."

15 It does get into some more -- a little bit more after
16 that. That starts on the trial transcript on page 128.

17 Did you see any reason to object to that instruction from
18 the judge?

19 A I guess at the time I didn't. Looking back on it, maybe
20 I should have. I don't -- you know, I -- would I have
21 objected today? I don't know. But at the time, I guess I
22 didn't see a reason to object.

23 But I think there is now some case law about, you know,
24 the truth is not -- that that could have been an improper
25 remark. I'm not sure. I really haven't kept up with South

1 Carolina case law that much.

2 Q Understandable, given that you're not in the state right
3 now.

4 The second issue was some testimony from the State's
5 witness, which was Martha Phillips. This is on transcript
6 page 163. Essentially, Martha Phillips testifies -- the
7 question is: "And, Ms. Martha, when you went out the door and
8 you saw Jamil laying there, you initially thought it was
9 Dale?"

10 And her answer was: "The first thing I said was, 'Dale,
11 Dale, Dale.'"

12 And then the State says, "And why did you think it was
13 Dale?"

14 She responds, "Because he's having a nasty divorce.
15 That's all. He was going through problems."

16 Did you see any reason to request a curative instruction
17 and ask that it be stricken from the record, the issue about
18 the divorce, since that really wasn't the factual issue that
19 needed to be brought out?

20 A I guess, since I didn't object, I didn't see anything at
21 the time. I mean, again, in retrospect, maybe I should have
22 -- I don't know if it's spec- -- maybe I should have objected
23 on speculation. I think maybe it would have fit under present
24 sense impression. Who knows.

25 But I honestly can't remember how much the divorce we

1 really got into. I know that we got into some of it because
2 it was sort of present, overarching, but at the time, I didn't
3 see a reason, but maybe I should have objected.

4 Q Was the divorce still pending at the time of the incident
5 or had it been finished?

6 A I don't think it had been finished. I know they had been
7 through a number of, you know, hearings and stuff, but my
8 memory said they were actually still married but they hadn't
9 been living together, you know, for quite some time.

10 And there was an incident prior to this where he had
11 broken into her house and stolen jewelry and stuff like that.

12 So my memory is that they weren't officially divorced
13 but, again, without access to my full file, I don't -- I don't
14 know for sure, but that's my memory.

15 Q And the third issue would be about the State's witness,
16 which was a SLED agent named Vicki Hallman. She was presented
17 as an expert in the area of tire tread comparison. You didn't
18 object to her as an expert. Do you have any independent
19 recollection about why?

20 A Yeah. So, we didn't object to the expert witnesses
21 because, quite honestly, going into trial, our strategy was
22 not that Settles wasn't involved and not that he had taken her
23 car. Our theory going into trial was that Settles had taken
24 her car and had done this but entirely on his own, without her
25 involvement.

1 So -- and I think I even said in opening that Mr. Settles
2 did this but that he did it on his own. So I think, you know,
3 at that time -- and who knows, maybe I made the wrong
4 strategic call, but at the time, it didn't seem hopeful to
5 object to the expert stuff because it sort of undercut our
6 theory, which is that Mr. Settles had done this independently
7 without any asking for assistance from Ms. Phillips.

8 Q Okay. And then the tire tread would basically just kind
9 of go along with Mr. Settles' statements that he was the one
10 that --

11 A Yeah, yeah. Yes. And I think also that because I think
12 she had presented her statement about somebody having taken
13 her car. So I think, you know, somebody had taken her car
14 would strengthen our case that, you know, she would have --
15 she wouldn't have known, you know, necessarily who
16 (indiscernible) or anything like that.

17 Q And I think the solicitor had some improper questioning
18 of that, just that, at one point, the solicitor said, "Do you
19 have an opinion," not -- is it -- not to a reasonable degree
20 of certainty kind of question. You didn't object to that.

21 Any independent recollection as to why on that one?

22 A I think the witness -- with regard to the SLED expert?

23 Q Yeah.

24 A I think probably the same objection, that he wasn't at
25 that time -- and I think that was well before Mr. Settles

1 testified -- at the time, that testimony was not inconsistent
2 with our theory of the case and what we were hoping the jury
3 would find, which was that she wasn't at fault.

4 Q And the next issue -- I think you kind of talked about
5 this earlier of the knock-and-talk, of constitutional right to
6 privacy, about when law enforcement visited her home and did a
7 knock on her door.

8 A Mm-hmm.

9 Q I believe you alluded to that already, but could you just
10 go over that again?

11 A Yeah. At the time -- and, honestly, this was quite a
12 while ago so I don't remember the -- you know, what the case
13 law would have been at the time, but at the time, I didn't --
14 I didn't see an issue with law enforcement coming up to talk
15 to her. I remember there was even a line of cases about how
16 law enforcement could do whatever Girl Scouts selling cookies
17 could do.

18 Maybe I should have made an objection, particularly
19 because it was late at night so there would have been a
20 heightened expectation of privacy, but at the time, since she
21 wasn't taken into custody and I don't think anything was
22 seized from her house, it was -- at the time, it seemed more
23 like more a sort of, you know, knock to see if she was willing
24 to say anything, a sort of consensual encounter.

25 You know, should I have challenged it and maybe even --

1 maybe the case law after it would have gave that a stronger
2 challenge, I don't know.

3 Q And that ultimately ended up relating to, I guess, the
4 car -- the silver-colored car and --

5 A Yes.

6 Q -- that kind of thing.

7 Did that also go along with your strategy regarding the
8 experts and all that kind of stuff?

9 A I think so. I think the only thing that they got was
10 that her -- if memory serves correctly, that, when they went
11 to her apartment complex that evening, that her car was there
12 and had mud on the tires maybe.

13 Q Yes.

14 A But that's something -- I mean, unfortunately, I wish I
15 could have contested that, but that, I think, would fall
16 squarely under plain view if her car is in the parking lot.

17 Q Did you see any reason to object to the DNA report
18 regarding cigarette butts?

19 A So, no, I did not because we had -- I'm pretty sure I
20 told the jury in opening that, you know, Mr. Settles' DNA was
21 on the scene; if Mr. Settles did this, he did this entirely on
22 his own without the help or, you know, request of
23 Ms. Phillips. And so having his DNA and his DNA alone on the
24 scene was not something I was going to object to.

25 Q And, again, I guess there's another allegation regarding

1 what the SLED agent (indiscernible) and his evidence. His
2 presented the SLED computer crime unit with cell phone
3 forensics, that there were four photographs in cell phones
4 associated with the case. But that person was never qualified
5 as an expert. Did you see any reason to object to that and/or
6 request that they get qualified as an expert to make an
7 opinion?

8 A So that is one area that I actually don't really remember
9 why we made that decision not to object. I don't know if it
10 was something where, again, it fell into our theory of the
11 case, which was that it was Mr. Settles and not Ms. Phillips
12 or, you know, if you -- if you can refresh my memory about
13 what the -- the pictures derived from the phone and what they
14 were -- what they...

15 Q They were -- one second.

16 So this is on page 291 and 297.

17 A Okay. Yeah, I think it was just that that wasn't
18 inconsistent with our current strategy at the time.

19 Q Okay. And, again, Agent Lilly Gallman, she was qualified
20 as an expert in the field of DNA analysis and forensics.
21 Didn't object or ask for any of her testimony to be stricken
22 when she testified about receiving -- retrieving the DNA off
23 the cigarette butts located at the crime scene as compared to
24 the known sample from the shooter.

25 Her questioning begins on page 309.

1 "In comparing those two items, what were your results?"

2 ANSWER: "My results were that the DNA profile developed
3 from the cigarette butts matched the DNA profile of
4 Mr. Settles."

5 Basically didn't object to that or the objection of the
6 introduction of the DNA profile. I'm just going to go out on
7 a limb here and assume that goes along with your theory of the
8 case that it was Mr. Settles independently doing this.

9 A Right, right. So we didn't -- I mean, the DNA at the
10 scene was all his, and our theory of the case was that he had
11 done this, and so I didn't -- I actually felt it would hurt
12 her if we objected to that testimony because, if that
13 testimony didn't come in, we'd have a much less strong
14 argument that Mr. Settles had done this. So, yeah, I didn't
15 object to that.

16 Q And the wording of the State's questions, I guess, also
17 didn't match to a reasonable degree of certainty kind of
18 questioning, but based on what you're telling me today is that
19 there wouldn't have been a reason to object to that because it
20 would have just bolstered the fact that Mr. Settles was the
21 one that did all this?

22 A Correct.

23 Q And there's just another couple -- basically, the SLED
24 agent, Michele Eichenmiller, and then Bo Barton for the same
25 reason. Eichenmiller testified as to firearms identification.

1 You guys didn't object to her.

2 And also Agent Bo Barton also with SLED, that he's
3 trained as a criminal profiler. Did you see any reason to
4 object to the profiling situation?

5 A I didn't at the time. I mean, maybe I should have, but I
6 didn't at the time, no.

7 Q He was never offered as an expert, but I guess his
8 credentials are actually bolstered by the fact that he was
9 testifying as a profiler. Do you recall anything about that?

10 A I don't. I'm sorry.

11 Q There was also some -- you did object to a question
12 involving Dale Phillips but you didn't ask for -- you didn't
13 ask for a curative instruction for the testimony to be
14 stricken off the record.

15 And that was when Dale testified -- this is on page 410.

16 "Dale, the night you got home and you saw the area roped
17 off, who did you believe that the intended bullet was for?"

18 "At the time I thought --

19 And then you objected.

20 The Court says, "I'm sorry. What was the question
21 again?"

22 "Who did you believe the intended bullet was for?"

23 They sustained your -- the Court sustained your
24 objection, but you didn't ask for that to be stricken or a
25 mistrial based on that. Did you see any reason to?

1 A I mean, at the time, no, because he hadn't answered it,
2 and so I don't -- you know, I think the -- I guess with me
3 asking the question to be stricken.

4 In terms of a mistrial, at that -- at that time, you
5 know, again, our strategy was that Settles had done this, and
6 we were fairly confident in our ability to, you know,
7 essentially convince the jury that Settles had done it.

8 At that time, if memory serves correctly as to when Dale
9 testified, Mr. Settles hadn't testified yet, and so we had a
10 strong legal defense that we were working with that became
11 different once Mr. Settles testified. Basically, our entire
12 strategy in terms of a legal defense had to change once
13 Settles testified.

14 So I think if that had -- you know, in terms of asking
15 for a mistrial, it's the kind of thing where you're a defense
16 attorney, you're weighing how is the trial going, and if it's
17 going, you think, well, you don't really want necessarily a
18 mistrial.

19 And I think, at that point, because Settles hadn't
20 testified, that was our analysis. I can't swear to that, but
21 that is sort of where I think I would have been -- what my
22 thought process would have been.

23 Q So, mentally, you -- and I don't want to put words in
24 your mouth, but I'm just trying to rehash what you just said.
25 So you guys --

1 A Right.

2 Q - in your mind, you're like, "Okay, well, if I move for a
3 mistrial, then we're going to have to start over, but there is
4 a good possibility maybe at this point because Settles hasn't
5 testified that we could get a not guilty on something"?

6 A Correct.

7 Q Okay.

8 A Yeah, yeah. It's kind of like when, you know, there's
9 hearsay admitted in court all the time, and sometimes it's
10 hearsay that's good for you. So even though you have an
11 objection, you just let it in.

12 I can't swear that that's what I was thinking then, but
13 in terms of asking for a mistrial, if it was prior to
14 Mr. Settles testifying, I think we were not because we were
15 under the understanding, based on his formal waiver of the
16 Fifth Amendment, that he was not testifying. So we were
17 trying to, you know, go with that. Of course that changed
18 when he decided to testify.

19 Q There's another time where you objected to a question and
20 it was sustained, and it was when Amanda Fala was questioned
21 about "Is it common for an employee who is going through a
22 divorce to elect life insurance on their spouse at the time?"

23 You objected for speculation and that was sustained.

24 Did you see any reason to ask for a curative instruction
25 or stricken from the record and/or a mistrial on that one?

1 A I guess I didn't because I didn't ask for a curative
2 instruction. Maybe I should have. I don't know. I don't
3 remember why I made that strategic decision.

4 Q And then, throughout the solicitor's closing argument,
5 there's some issues about seeking the truth that weren't
6 objected to in the closing, particularly at page 478, lines 3
7 through 8, "All we can do is seek justice and seek the truth,
8 and we can make sure that the evidence that's put before you
9 and what the people have said on the stand convince you beyond
10 a reasonable doubt that this nightmare is over." That was not
11 objected to.

12 At some point, the solicitor alludes to the fact that,
13 "So she's starting to come off a little bit of truth here,"
14 "she" being Ms. Phillips.

15 Again, the solicitor says -- refers to the divorce,
16 "Thereafter, separating and filing for divorce, she's actively
17 going and getting an insurance policy on her husband to
18 benefit for him." It's not objected to.

19 And then there was a statement from the solicitor about
20 "The judge is going to instruct you" -- "what the judge is
21 going to instruct you on is that, when you go back and you
22 reason together as 12 people, as the consciousness of this
23 community of Abbeville County, you'll reason together and come
24 up with a verdict on this case." That was not objected to or
25 a mistrial requested.

1 Then, again, the solicitor states, "And, folks, there's
2 absolutely no question of the truth as in this case."

3 And I know this is a long time ago. Do you have any
4 independent recollection as to why any of those were not
5 objected to?

6 A I'm sorry. I really don't, other than I think -- I
7 remember this being an issue in South Carolina case law, but I
8 don't remember specifically why I didn't object, no.

9 Q And at one point, there's the judge's jury charge.
10 That's on page 510. "This presumption of innocence does not
11 end when you begin your deliberation but accompanies the
12 defendant throughout the trial until you reach a verdict of
13 guilty based upon the evidence of satisfying the guilt beyond
14 a reasonable doubt." Did you see any reason to object to that
15 -- that jury charge?

16 A I guess I didn't at the time. I mean, now, maybe I would
17 have objected that, you know, "unless and until you find her
18 guilty" or something like that because it kind of sounds like
19 you should find her guilty, but I didn't at the time,
20 apparently.

21 Q And then, again, the judge says, "If, based upon your
22 consideration of the evidence, you are firmly convinced that
23 the defendant is guilty of the crime, you must find her
24 guilty." There was no objection to that or request for that
25 to be stricken. So you don't --

1

2 A No, I don't recall why I didn't object to that. So the
3 reasonable doubt instruction is one that, in my memory when I
4 was practicing in South Carolina, is one that we did litigate,
5 and then the sort of preferred instruction on reasonable doubt
6 theory sort of varied by judge and then also the appellate
7 courts.

8 It honestly is not something that's litigated here
9 because it's handled a little bit differently. So I just
10 don't remember at the time what the current sort of preference
11 was for the definition of reasonable doubt, so I don't recall
12 a good reason for not objecting.

13 Q And there were a couple of more issues in here on
14 page 512, lines 23 through 25; page 513, lines 24 to 514, line
15 15, essentially in these instructions, it's our position that
16 -- that the judge is trying to lessen the State's burden of
17 proof in a criminal case. But since this was so long ago, I
18 guess you just -- you wouldn't have an independent
19 recollection one way or another of why you did or did not?

20 A I don't have any independent. I'm sorry.

21 MS. McMAHAN: Court's indulgence, Your Honor.

22 I have nothing further, Your Honor. Thank you.

23 THE WITNESS: Okay. Am I -- am I released or --

24 THE COURT: No. We've got some redirect.

25 THE WITNESS: Oh, okay.

REDIRECT EXAMINATION

BY MR. JONES:

Q Just very briefly, Ms. Boland. Thank you for your patience.

A No problem.

Q So your strategy at trial was initially just to say that you did not deny that Tavirous Settles had committed the murder. Your strategy --

A Correct.

Q -- was to deny that he had been induced to commit it by Ms. Phillips?

A Yes. That is exactly correct.

And, honestly, I believe even to this day that that's what -- that's what the evidence showed, that he did go and do the shooting, but that he did it independently and she didn't ask him to kill anyone and that she had merely asked him to beat someone up.

Q And the testimony and evidence which corroborated the fact that he had been present at the scene and committed the shooting was consistent with the defense's theory; correct?

A Right. So the cigarette -- to my memory, SLED picked up cigarette butts from the treeline of the house. Again, this house is out in the country. And the cigarette butts came back with DNA that matched him.

And my memory is that no -- no forensic evidence at the

1 scene at the actual house -- Dale's house matched
2 Ms. Settles (sic). So it would all be consistent with -- I
3 mean, Ms. Phillips. I'm sorry.

4 So everything collected at the scene would be consistent
5 with Settles doing it and inconsistent with Ms. Phillips doing
6 it, which is consistent with our defense theory that he did it
7 on his own without her assistance or her request.

8 Q Thank you, Ms. Boland. That's all the questions I have
9 for you.

10 A Okay. Thank you, everybody.

11 THE WITNESS: Your Honor, am I free to leave?

12 MS. McMAHAN: I have no questions.

13 THE COURT: Yes, you are. Thank you for your
14 participation.

15 THE WITNESS: Thank you, Your Honor.

16 MR. JONES: And, Your Honor, the State rests.

17 THE COURT: All right. Anything else?

18 MS. McMAHAN: Nothing else, Your Honor.

19 THE COURT: All right. I'll review it and issue an
20 Order.

21 MR. JONES: Thank you, Your Honor.

22 (The hearing concluded.)
23
24
25

Certificate of Transcriber

CASE NAME: Karlita Phillips v. State

DATE OF HEARING: 8/19/2024

RECORDING METHOD: CR Tara Scott

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/s/ Bobbi Fisher_____

Bobbi Fisher, SC Official Court Reporter III, RPR

Transcript Prepared: 9/17/25

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ABBEVILLE	)	THE EIGHTH JUDICIAL CIRCUIT
Karlita Desean PHILLIPS, #364809,	)	
	)	
Applicant,	)	ORDER OF DISMISSAL
	)	
v.	)	
	)	Civil Action No. 2018-CP-01-00059
The STATE of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter comes before the Court on application for post-conviction relief ("PCR") filed by Karlita Desean Phillips ("Applicant") on February 20, 2018, and amended on March 7, 2022, and August 13, 2024. An evidentiary hearing was held at the Laurens County Courthouse on August 19, 2024. Applicant was present and represented by Ashley A. McMahan, Esq. Assistant Attorney General Zachary W. Jones represented Respondent.

After reviewing all records and evidence before the Court, this Court finds Applicant has not met the requisite burden of proof and, therefore, is not entitled to PCR. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Abbeville County Clerk of Court. At the May of 2014 term, the Abbeville County Grand Jury returned indictments against Applicant for Using a Minor to Commit a Felony (2014-GS-01-0212) and Accessory Before the Fact of Murder (2014-GS-01-0213).

Assistant Public Defender Patricia Bolen and Circuit Public Defender Janna Nelson represented Applicant. Circuit Solicitor David Stumbo and Assistant Circuit Solicitor Yates Brown prosecuted the case. Applicant went to trial before Circuit Judge Frank R. Addy, Jr. and a jury on July 20-23, 2015. Applicant was found guilty of both charges and sentenced to concurrent terms of imprisonment of fifteen years for each conviction.

#1

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 ABBEVILLE COUNTY CLERK OF COURT

Applicant filed a timely notice of appeal, and the South Carolina Court of Appeals affirmed Applicant's conviction on December 28, 2017. *State v. Phillips*, Op. No. 2017-UP-649 (S.C. Ct. App. filed December 28, 2017). The remittitur was returned to the circuit court on January 18, 2018.

Factual Summary

On the night of March 25, 2013, Dale Phillips, Sr. was watching television in his home located in Abbeville, South Carolina, while his wife, Martha Phillips, cooked dinner for Jamil Phillips, one of their three sons. (Tr. pp. 142-146; pp. 155-158). That night, Jamil was scheduled to finish working at his job in Greenville, South Carolina, at 9:00 p.m., and Martha and Dale, Sr. were expecting him to arrive home around 10:00 p.m. (Tr. p. 146; p. 159). Likewise, they were expecting one of their other sons, Dale Phillips, Jr., to also arrive home from work around that same time. (Tr. p. 147; p. 159).

Just after 10:00 p.m., Martha heard one of their sons arrive home and put a key into the door. (Tr. p. 146; p. 159). Immediately after that, several gunshots rang out, and Martha and Dale, Sr. quickly rushed to their front porch to see what was going on. (Tr. pp. 146-147; p. 160). When they did so, they found Jamil lying face down on the porch trying to catch his breath and suffering from gunshot wounds.¹ (Tr. p. 148; p. 160). At that same time, Martha and Dale, Sr. heard someone running away from the home and, shortly after that, observed a car speed off from the area.² (Tr. p. 149; p. 162). Martha then quickly called 911 while Dale, Sr. held Jamil, who was crying and gurgling, and tried to comfort him until help could arrive. (Tr. p. 148; p. 160). However, within just a few minutes, Jamil stopped breathing and died in his father's arms before paramedics were able to make it to their location.³ (Tr. p. 148; p. 150; p. 161; p. 163).

¹ Initially, Martha believed Jamil was Dale, Jr. due to the fact Dale, Jr. was going through a contentious divorce at the time. (Tr. p. 147; p. 160; p. 163).

² On the night of the shooting, Martha and Dale, Sr.'s neighbors noticed a light-colored car parked next to a wooded area near Martha and Dale, Sr.'s home and observed the same car speeding away from the area shortly after the shooting occurred. (Tr. pp. 165-167; pp. 169-176).

³ During trial, Dr. Brett Woodard, the expert forensic pathologist who conducted Jamil's autopsy, testified Jamil had gunshot wounds to his forehead, armpit, and hip. (Tr. p. 223; pp. 225-227). He further explained the bullet that struck Jamil's armpit travelled through Jamil's lungs and aorta and rapidly led to his death by causing fatal hemorrhaging and blood loss. (Tr. pp. 230-232).

Shortly thereafter, law enforcement officers from the Abbeville County Sheriff's Office arrived on the scene along with emergency medical personnel, the scene was secured, and the paramedics unsuccessfully attempted to revive Jamil. (Tr. p. 179; p. 183; p. 185; p. 187; p. 189). Crime scene investigators then arrived at the scene, discovered and collected fresh cigarette butts that had been left at a nearby wooded area, located tire marks in the same area, and took impressions of those marks. (Tr. pp. 191-192; pp. 200-202; p. 214; pp. 345-347). Additionally, Detective Nick Marshall from the Abbeville County Sheriff's Office interviewed witnesses and family members at the scene and learned a silver or light-colored car was believed to have been involved in the shooting. (Tr. pp. 238-242). Furthermore, based on the information he gathered, Detective Marshall determined Karlita Desean Phillips, who was the estranged wife of Dale, Jr., was a person of interest in the investigation based on the fact she drove a car similar to the one observed speeding away from the scene.⁴ (Tr. pp. 241-243; pp. 347-348; p. 406; p. 408).

In response, Detective Marshall travelled to Applicant's apartment in Greenwood, South Carolina, along with Investigator Michael Collins from SLED. (Tr. p. 243; p. 345; pp. 348-349). Upon arriving, the investigators observed Applicant's light-colored Toyota Camry parked in front of her apartment and noticed the vehicle had what appeared to be fresh mud on its wheels and side. (Tr. p. 203; p. 244; pp. 347-350; p. 354). Additionally, the investigators noticed the lights were on inside of Applicant's apartment, but someone turned the lights off shortly after they arrived at the scene. (Tr. pp. 246-247; pp. 349-350). The investigators then attempted to make contact with whoever was inside, but no one responded to their knocks or requests. (Tr. pp. 246-247; p. 350). However, shortly thereafter, a local police officer was dispatched to the scene in response to a 911 call placed by Applicant, and Applicant allowed the investigators to enter her home once the officer arrived on the scene. (Tr. p. 247; pp. 350-352). The investigators then informed Applicant of her rights and spoke with her about the shooting. (Tr. pp. 248-250; p. 352). During the conversation, Applicant denied any involvement in Jamil's death and prepared a written statement indicating she did not go to Abbeville on the date of the shooting, she did not have any knowledge of the

⁴ Applicant was thirty-nine years old at the time of the shooting. (Tr. p. 275).

shooting, and no one borrowed her car that night. (Tr. pp. 250-251; pp. 353-354; State's Ex. # 1A (Statement)).

Following the interview, the investigators took custody of Applicant's car and obtained a warrant to search the vehicle. (Tr. p. 355). Tire impressions were then taken from the car and compared to the tire impressions collected at the scene, and Agent Vickie Hallman, a crime scene investigator from SLED and an expert in tire impressions, determined one of the tire impressions from the scene could have been made by Applicant's car, which she noticed had mud and dirt on its tires. (Tr. pp. 191-192; p. 196; pp. 211-214). However, she was unable to conclusively determine Applicant's car left that impression. (Tr. p. 215).

Subsequently, the investigation into Jamil's murder continued but did not lead to any arrests until Tavarious Settles, a juvenile who had been involved in a murder in Greenwood a few days after Jamil was shot and killed, was connected to the shooting through a DNA analysis of the cigarette butts collected from the crime scene.⁵ (Tr. pp. 200-201; pp. 234-236; p. 302; p. 306; p. 309; p. 314; p. 443; p. 444; p. 450). After the connection was made, investigators met with Settles on December 10, 2013, and spoke with him about the crime. (Tr. pp. 453-454). During the interview, Settles denied any involvement in Jamil's killing but indicated Applicant had made an offer to him in regard to the crime. (Tr. pp. 453-454; p. 459). Additionally, Settles insisted he declined the offer and stated he informed a friend about it before providing the friend with Applicant's contact information. (Tr. pp. 454-455). Furthermore, Settles stated his friend committed the murder and framed him by planting the cigarette butts at the scene. (Tr. p. 456).

Based on Settles's statements coupled with the other evidence obtained during the investigation, Applicant was placed under arrest for using a minor to commit a felony. (Tr. pp. 357-358). Following her arrest, officers interviewed her for several hours on the afternoon of December 18, 2013. (Tr. p. 252; p. 256; p. 277). During that interview, Applicant waived her rights, admitted she knew Settles through her daughter, stated she had told her daughter she wanted Dale, Jr. to be dead, and indicated she let Settles use her car on the night of the shooting while claiming he left in it with an individual named "Mike." (Tr. p.

⁵ Settles was sixteen years old at the time of Jamil's killing. (Tr. p. 274; p. 443).

280; p. 284; pp. 364-367). Furthermore, Applicant admitted she had talked to someone about "jumping" Dale, Jr. and indicated she believed her daughter asked Settles to commit the crime. (Tr. p. 376; p. 378).

Then, on the following morning, officers interviewed Applicant again and she again waived her rights before speaking with the officers. (Tr. pp. 368-370). During that interview, Applicant provided a written statement in which she indicated her car was only used to go to the store on the night of the incident, claimed she had said "things" in "the heat of the moment" but had never spoken of them again, denied driving Settles to Abbeville, denied going to Abbeville herself, blamed the incident all on Settles and "Mike," and insisted she never asked Settles to commit murder or do anything that involved going to Abbeville on the date of the incident. (Tr. pp. 370-373; State's Ex. # 51 (Statement)). However, Applicant also inconsistently wrote she "took him to house" and "got the ball rolling" while again insisting she did not force or tell Settles to do "anything." (Tr. p. 373; p. 375; State's Ex. # 51).

Thereafter, on December 20, 2013, Lieutenant Bo Barton from SLED interviewed Applicant again after reviewing her prior written statements. (Tr. pp. 381-384). During the interview, Applicant again waived her rights and provided the investigator with an additional written statement. (Tr. p. 385; p. 388). In that statement, Applicant indicated she went to the store, gave her daughter a driving lesson, and got a car wash on the night of the incident. (Tr. pp. 393-395; State's Ex. # 53 (Statement)). She further insisted both she and her car were in Greenwood as opposed to Abbeville on the date of the shooting. (Tr. pp. 395-396; State's Ex. # 53). After Applicant finished her statement, Lieutenant Barton called a number of inconsistencies to her attention. (Tr. p. 397). Applicant then prepared a final written statement. (Tr. p. 385; p. 399). In that statement, Applicant indicted she believed Dale, Jr. had burglarized her apartment, asked Settles to beat him up in response, provided Settles with directions to Dale, Jr.'s home, and let Settles borrow her car on the night of the incident. (Tr. pp. 399-401; State's Ex. # 54 (Statement)). After that, Applicant indicated Settles returned the car and she later learned Jamil had been killed instead of Dale, Jr. (Tr. p. 401; State's Ex. # 54).

Applicant was indicted for Accessory Before the Fact to Murder and Using a Minor to Commit a Felony and proceeded to trial. (Tr. p. 7; Indictments). During trial, Martha and Dale, Sr. recounted the

horrific events they experienced on the night of March 25, 2013, and the investigators and other law enforcement personnel who responded on the night of the shooting discussed the details of their ensuing investigation into Jamil's killing, which culminated in the arrests of Settles and Applicant for their involvement in the crime after Applicant gave a number of differing statements. (Tr. pp. 141-153; pp. 155-163; pp. 179-183; pp. 191-221; pp. 238-291; pp. 300-314; pp. 345-358; pp. 363-378; pp. 381-401). Additionally, two of Settles's cousins indicated Settles was engaged in a sexual relationship with Applicant around the time of the killing, and, significantly, Ashanti Polk, who formerly dated Settles, recounted Settles admitted to her he was cheating on her with Applicant and had killed Jamil after "his friend" drove him to the crime scene. (Tr. pp. 331-342). Furthermore, testimony was presented establishing Applicant would have received the proceeds from Dale, Jr.'s \$500,000 life insurance policy, which Dale, Jr. indicated Applicant was fully aware of, and personally renewed a \$25,000 life insurance policy on Dale, Jr. several months after the two had separated. (Tr. pp. 406-411; pp. 416-418).

In addition to that testimony and evidence, Settles elected to testify for the prosecution and candidly admitted he shot and killed Jamil on the night of the crime while attempting to kill his intended target, Applicant's husband, at the request of Applicant, who was engaged in a sexual relationship with him at the time. (Tr. pp. 443-445). Regarding his motive for the shooting, Settles indicated Applicant asked him to kill her husband because she wanted insurance money and offered him \$13,000 to commit the killing. (Tr. p. 445). He further stated Applicant drove him to the scene of the crime in her car, he waited for his victim to arrive home while hiding in some bushes and smoking cigarettes, and he shot and killed Jamil after Jamil walked onto the front porch of his home. (Tr. pp. 446-447). After that, he indicated they fled from the area and Applicant later informed him he killed the wrong person. (Tr. p. 447).

At the conclusion of trial, the jury convicted Applicant of both indicted offenses. (Tr. p. 526). Following the verdict, the trial judge sentenced Applicant to life imprisonment for accessory before the fact to murder along with a concurrent term of imprisonment of fifteen years for using a minor to commit a felony. (Tr. pp. 535-536).

Present Application

In her initial application for post-conviction relief, Applicant raised the following allegations:

1. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to properly submit proper challenges to court for consideration and to properly argue motion for directed verdict"
2. "Excessive sentence/wrongful sentence based on facts of case"
 - a. "The facts of case do not support sentencing"
3. "Court failed to properly charge jury"
4. "Court's failure to grant Defendant's motion for directed verdict"

As relief, Applicant requested "resentencing/modification of sentence, release from confinement, parole eligibility."

On March 7, 2022, Applicant amended her application to allege that counsel was ineffective for the following reasons:

1. Failure to challenge trial court's opening remarks concerning "true facts";
2. Failure to object when Martha Phillips testified she initially thought the victim was her son Dale because Dale "was having a nasty divorce," as speculation by the witness;
3. Failure to object to testimony from Vickie Hallman, the State's expert in tire tread impression comparison, on the ground that the solicitor did not specifically use the phrases "to a reasonable degree of certainty" or "more likely than not" in his questions, and on the ground of relevancy because Hallman acknowledged the tire tread impression at the crime scene could have come from any car using the same tires as Applicant's car;
4. Failure to object to evidence obtained pursuant to the "knock and talk" interview conducted by Deputy Marshall and SLED Agent Collins on the ground that those officers lacked "reasonable suspicion" to approach Applicant's residence as required by *State v. Counts*, 413 S.C. 153, 776 S.E.2d 59 (2015);
5. Failure to object to SLED Agent David Grubbs' authentication of photographs taken from two cell phones associated with the case, where Agent Grubbs had not been qualified as an expert in cell phone forensics;
6. Failure to object to testimony from SLED Agent Lily Gallman, the State's expert in DNA analysis, on the ground that the solicitor did not specifically use the phrases "to a reasonable degree of certainty" or "more likely than not" in his questions;
7. Failure to object to testimony from SLED Agent Michelle Eichenmiller, the State's expert in firearms identification, on the ground that the solicitor did not specifically use the phrases "to a reasonable degree of certainty" or "more likely than not" in his questions, and on the ground of relevancy where Eichenmiller explained testified she could not positively identify whether a gun depicted in a photograph was a .38 special or not;
8. Failure to object to testimony by SLED Agent Bo Barton on the ground that he was never qualified as an expert witness; that "criminal profiling is junk science" according to *State v. Tillman*, 433 S.C. 58, 67, 856 S.E.2d 168, 173 (Ct. App. 2021); and on the ground that he interviewed Applicant without informing her that she had a right to an appointed attorney prior to any questioning;
9. Failure to move to request a curative instruction, move to strike, or request a mistrial after the trial court sustained Counsel's objection to the solicitor's questioning of Dale Phillips, Jr.—"Who did you believe . . . that bullet was intended for[?]"—as a call for speculation;
10. Failure to move to request a curative instruction, move to strike, or request a mistrial after the trial court sustained Counsel's objection to the solicitor's questioning of the Amanda Fallaw—

- “Is it common for an employee who is going through a divorce to elect the life insurance on their spouse at that time?”—as a call for speculation;
11. Failure to object to the solicitor’s references to “truth,” to his comment about Applicant seeking a life insurance policy on the victim, and to his reference to the “community” of Abbeville County during closing argument;
 12. Failure to object to trial judge’s jury instructions that used the phrase “until you reach a verdict of guilty” rather than “unless you reach a verdict of guilty,” that informed the jury it must find Applicant guilty if it was “firmly convinced that the Defendant is guilty of the crime charged,” that included references to “truth,” and that failed to expressly mention Applicant’s right to have an appointed attorney prior to any questioning.

On August 13, 2024, Applicant again amended her application to allege that counsel was ineffective for “failure to call Applicant’s daughter, DW [REDACTED], as an alibi witness.”

At the evidentiary hearing, Applicant proceeded only on the allegations of ineffective assistance of counsel raised in her amended applications.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Before the Court are Applicant’s record from the South Carolina Department of Corrections, the transcript of Applicant’s trial, the record from the Abbeville County Clerk of Court regarding the subject convictions, Applicant’s appellate record, and the record of the present PCR action. This Court has considered the evidence presented, the record and any legal argument by counsel. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Counsel, Generally

In a PCR action, Applicant bears the burden of proving the allegations in her application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove her factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-

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pronged test outlined in *Strickland*. First, Applicant must prove that Counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons Counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Second, Applicant must prove that Counsel's deficient performance prejudiced her such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is "a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. "This does not require a showing that counsel's actions more likely than not altered the outcome, but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783,

858 (4th Cir. 2011)).

The evidence establishing Applicant's guilt in this case is overwhelming. Tavarious Settles testified at length that he killed the victim following Applicant's instructions to murder her husband and share in the proceeds from his life insurance policy. Settles claimed Applicant drove him to the scene of the crime in her car, and Settles remained in the car smoking cigarettes and waiting for his target to arrive. Settles' testimony was corroborated by the fact his DNA was discovered on cigarette butts found at the scene of the crime, a car that looked like Applicant's car was seen leaving the area shortly after the shots were fired, tire marks left in the mud near the spot where the cigarette butts were found matched the tread pattern on Applicant's car, and police observed fresh mud on the wheels of Applicant's car when they went to her house shortly after the shooting. In addition, Applicant was going through a contentious divorce at the time, and she was the beneficiary of two life insurance policies on her estranged husband. Finally, Applicant gave a series of starkly inconsistent statements during the investigation and, at one point, admitted that she asked Settles to attack her husband, although she claimed she did not want her husband killed. To prove prejudice, Applicant must show a reasonable likelihood—one that is "substantial, not just conceivable"—that the outcome of her trial would have been different but for Counsel's alleged errors. *Harrington*, 562 U.S. at 112. Accordingly, any purported prejudice resulting from Counsel's allegedly deficient performance must be considered in light of the considerable evidence of guilt in this case.

The Court also notes the record of this case indicates that Counsel was attentive and engaged throughout the trial, interposing numerous objections, introducing numerous exhibits, extensively cross-examining the State's witnesses, raising various legal issues before the trial court, and vigorously arguing the case before the jury. This record reflects that Counsel put up an effortful, thorough, and professional defense in the face of an extremely challenging case. The Court must now consider all the individual allegations of ineffective assistance raised by Applicant. However, in doing so, the Court stresses that the Sixth Amendment "guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6. The Court will not lightly conclude that isolated errors or omissions will suffice to render Counsel's otherwise conscientious performance constitutionally inadequate.

1. Trial court's references to "true facts"

Applicant claims Counsel was ineffective for failing to object when the trial court explained the role of the jury in determining the "true facts" of the case. This allegation is meritless.

The trial court's challenged comments were all made in the context of the jury's role as the trier of fact in this case and its prerogative to evaluate witness credibility. At the time of Respondent's trial, controlling Supreme Court precedent held that such statements were not error in that context: *State v. Aleksey*, 343 S.C. 20, 27–29, 538 S.E.2d 248, 251–53 (2000) ("There is not a reasonable likelihood the jury applied the challenged instruction in a manner inconsistent with the burden of proof beyond a reasonable doubt. The trial court's instructions concerning seeking the truth were given in the context of the jury's role in determining the credibility of witnesses.").

Applicant claims the trial court's comments were improper under the holding of *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018). In that decision, the Supreme Court held "a trial judge should refrain from informing the jury, whether through comments or through a charge on the law, that its role is to search for the truth, or to find the true facts, or to render a just verdict." *Id.* at 34, 813 S.E.2d at 506. However, the Court acknowledged that the general sessions benchbook promulgated by the Court to all circuit judges contained language virtually identical to the disapproved language used in the lower court. *Id.* at 34 n.2, 813 S.E.2d at 506 n.2. Although it held the trial court's use of "seek the truth" language was improper, the Court in *Beaty* ultimately held the error did not merit reversal. *Id.* at 34, 813 S.E.2d at 506.

The trial in this case occurred in 2015, many years before *Beaty* was decided. Counsel could not have known that, years afterward, a change in the law would render the trial court's instructions objectionable. This Court cannot find Counsel was ineffective for failing to object to comments that, under the law existing at the time, were perfectly proper. *Teamer v. State*, 416 S.C. 171, 183, 786 S.E.2d 109, 115 (2016); *see Gilmore v. State*, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994) ("We have never required an attorney to be clairvoyant or anticipate changes in the law. . . ." (citing *Thornes v. State*, 310 S.C. 306, 309–10, 426 S.E.2d 764, 765 (1993))), *overruled on other grounds by Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999).

In addition, "jury instructions should be considered as a whole, and if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error." *Aleksey*, 343 S.C. at 27, 538 S.E.2d at 251. The transcript reflects that the trial court's jury instructions as a whole adequately and correctly conveyed the State's burden of proof, the presumption of innocence, and the reasonable doubt standard to the jury. Applicant has not met her burden of proving that the trial court's isolated references to "truth" were likely to mislead the jury, where the jury instructions as a whole were free from error.

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. *Strickland v. Washington*, 466 US 668 (1984) and *Cherry v. State*, 300 SC 115 (1989).

2. "Speculation" concerning Dale Phillips, Jr.'s divorce

Applicant claims Counsel was ineffective for failing to object when Martha Phillips, the victim's mother, testified that when she first found the victim's body on her front porch, she initially believed it was the body of her other son, Dale Phillips, Jr. Martha Phillips testified she jumped to that conclusion because Dale was going through "a nasty divorce." Applicant argues this testimony was "rank speculation" because "the fact that Dale was involved in nasty divorce proceedings in no way should have led this witness to conclude that the body on her front porch was Dale's."

The Court is unable to perceive any prejudice from the mere fact that Martha Phillips briefly "speculated" that the body belonged to Dale Phillips, Jr. Martha Phillips acknowledged that her initial conclusion was mistaken, and the fact that body on the front porch actually belonged to the victim was undisputed at trial. The fact that Applicant and Dale Phillips, Jr., were going through a contentious divorce at the time was also uncontested at trial, and Martha Phillips' testimony on that point was merely cumulative to substantial other testimony in the record and could not reasonably have impacted the outcome of the trial.

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is

no reasonable probability that but for counsel's performance the result of the proceeding would have been different. *Strickland v. Washington*, 466 US 668 (1984) and *Cherry v. State*, 300 SC 115 (1989).

3. Vickie Hallman's testimony

Applicant claims Counsel failed to object to Vickie Hallman's expert testimony because the solicitor did not specifically use the phrases "to a reasonable degree of certainty" or "more likely than not" in eliciting her expert opinion that the tire tread impression found at the scene of the murder was consistent with the tread pattern found on the tires of Applicant's car. This allegation is meritless.

Applicant has cited no authority for her oft-repeated claim that expert testimony is improper unless couched in language reflecting "a reasonable degree of certainty." However, Applicant appears to be relying on the rule that medical experts, testifying in civil court on the issue of proximate cause in negligence cases, must ordinarily express their conclusions "to a reasonable degree of medical certainty." See *Armstrong v. Weiland*, 267 S.C. 12, 16, 225 S.E.2d 851, 853 (1976) ("[W]hen the opinions of medical experts are relied upon to establish causal connection of negligence to injury, the proper test to be applied is that the expert must, with reasonable certainty, state that in his professional opinion the injuries complained of most probably resulted from the alleged negligence of the defendant."). However, this rule does not apply to expert testimony in other contexts. See *id.* ("When the testimony of an expert witness is not relied upon to establish proximate cause, it is sufficient for plaintiff to put forth some evidence which rises above mere speculation or conjecture."); see also *State v. Rowland*, 444 S.C. 84, 101–04, 905 S.E.2d 825, 834–35 (Ct. App. 2024) (holding trial court did not err in admitting handwriting expert's opinion that it was "probable" defendant wrote the challenged document; such testimony met the threshold for reliability and sufficed to merit consideration by the jury).

Moreover, "there is nothing magical about the phrase, 'to a reasonable degree of scientific certainty.' It is not derived from the language of Rule 702 itself, and this Court has been unable to find any authority to support the position that questions regarding the expert's 'degree of scientific certainty' categorically renders expert testimony inadmissible." *United States v. Mornan*, 413 F.3d 372, 381 (3d Cir. 2005). In the case of *United States v. Cyphers*, 553 F.2d 1064, (7th Cir. 1977), the defendants argued:

that the district court erred in admitting opinion testimony of a government witness that hairs recovered from articles used by the robbers were "microscopically like" hair samples taken from the defendants. According to the witness, "microscopically like" means that the hairs found on the items used in the robbery definitely "could have come" from the defendants, but that there was an insufficient basis for saying that the hairs did come from the defendants.

[D]efendants argue that the testimony was inadmissible because it was not "to a reasonable scientific certainty. As we understand their rather opaque argument, defendants appear to be saying that an expert's opinion testimony must be expressed in terms of a reasonable scientific certainty in order to be admissible. There is no such requirement. . . . We adhere to the rule that an expert's lack of absolute certainty goes to the weight of his testimony, not to its admissibility.

Id. at 1071-73; *see also United States v. Longfellow*, 406 F.2d 415, 416 (4th Cir. 1969) ("A government witness testified that the paint on one stolen vehicle had similar characteristics to paint seized under the search warrant. We reject as absurd the defendant's contention that such expert testimony cannot be received in evidence because lacking scientific certainty that the paint on the car was in fact the same paint seized under the warrant.").

Applicant also argues Hallman's testimony that the tire tread impression "could have been" caused by Applicant's tires was not probative and, therefore, not relevant. This argument is also meritless. Hallman was able to narrow the range of cars that could have left the tell-tale tire marks at the crime scene from the vast universe of all possible cars to a specific, identifiable group of cars: those with a certain tire tread pattern. That identifiable group included Applicant's car. This testimony may not have been damning by itself, but it was at least probative of Applicant's involvement in the murder.

There was, therefore, no proper ground for objecting to Hallman's testimony, and Applicant has not met her burden of proving either deficiency or prejudice as to this allegation. Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. *Strickland v. Washington*, 466 US 668 (1984) and *Cherry v. State*, 300 SC 115 (1989).

4. Constitutional right to privacy

Applicant claims Counsel failed to move to suppress the evidence obtained following the “knock and talk” procedure used by Deputy Marshall and Agent Collins. Applicant contends the evidence was inadmissible because, by walking up to her front door and knocking on it, Deputy Marshall and Agent Collins violated her constitutional right to privacy. This argument is meritless.

Applicant claims the officers involved did not have “reasonable suspicion” to target her residence, as required by *State v. Counts*, 413 S.C. 153, 776 S.E.2d 59 (2015). However, Applicant herself acknowledges that she was a “person of interest,” that her name was provided to Deputy Marshall, that multiple people described seeing a silver or light-colored car leaving the crime scene, that Applicant’s silver car was visibly parked in front of her residence, and that Agent Collins noticed fresh mud on the wheels, and that Collins knew Applicant and Dale Phillips, Jr., were getting a divorce.

Counts held that, under the right to privacy guaranteed by S.C. Const. art. I, § 10, “law enforcement must have reasonable suspicion of illegal activity at a targeted residence prior to approaching the residence and knocking on the door.” *Counts* then found the “reasonable suspicion” standard had been satisfied, under the facts of that case, because the officers received two anonymous tips of Counts’ drug use and corroborated some details of those tips before approaching his residence. The *Counts* Court found, based on this evidence, that the officers had not “randomly” targeted Counts’ residence but had reasonable suspicion to support the knock and talk. *Counts*, 413 S.C. at 173, 776 S.E.2d at 70.

Here, it is likewise clear that officers did not approach Applicant’s residence “randomly” or “indiscriminately,” but did so based on substantial evidence specifically connecting Applicant to the murder. That evidence certainly met the threshold for “reasonable suspicion”; therefore, law enforcement did not unreasonably invade Applicant’s privacy by going up to her front door and knocking on it. There was, accordingly, no ground on which Counsel could have challenged the resulting evidence.

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel’s performance the result of the proceeding would have been different. *Strickland v. Washington*, 466 US 668 (1984) and *Cherry v. State*, 300 SC 115 (1989).

5. Authentication of cell phone photographs

Applicant claims Counsel was ineffective for failing to object to the authentication of certain photographs through SLED Agent David Grubbs on the ground Grubbs had not been qualified as an expert in cell phone forensics. However, Grubbs merely testified that State's exhibits 38, 39, 40, and 41 were true and accurate copies of the photographs he had extracted from the cell phones. This constituted testimony of a witness with knowledge, which is sufficient to authenticate evidence pursuant to Rule 901(b)(1), SCRE. No technical or specialized opinion testimony was called for, nor did Grubbs offer any. Therefore, the Court finds there was no valid objection to be made.

Regardless, the authenticity of the cell phone photographs was never disputed. Even if it had been, authentication is a low bar, which was easily met here. *See, e.g., State v. Benton*, 435 S.C. 250, 262, 865 S.E.2d 919, 925 (Ct. App. 2021) (the burden to authenticate evidence is not high and requires only that the proponent offer a satisfactory foundation from which the jury could reasonably find that the evidence is authentic).

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. *Strickland v. Washington*, 466 US 668 (1984) and *Cherry v. State*, 300 SC 115 (1989).

6. Lily Gallman's testimony

Applicant claims Counsel failed to object to Lily Gallman's expert testimony because the solicitor did not specifically use the phrases "to a reasonable degree of certainty" or "more likely than not" in eliciting her expert opinion regarding DNA analysis. This allegation rests on the same incorrect legal premise as the allegation concerning Vickie Hallman's testimony discussed above. Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. *Strickland v. Washington*, 466 US 668 (1984) and *Cherry v. State*, 300 SC 115 (1989).

7. Michelle Eichenmiller's testimony

Applicant claims Counsel failed to object to Michelle Eichenmiller's expert testimony because the solicitor did not specifically use the phrases "to a reasonable degree of certainty" or "more likely than not" in eliciting her expert opinion regarding identification of the firearms depicted in State's exhibits 39, 40, and 41. This allegation rests on the same incorrect legal premise as the allegations concerning testimony of Vickie Hallman and Lily Gallman discussed above.

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. *Strickland v. Washington*, 466 US 668 (1984) and *Cherry v. State*, 300 SC 115 (1989).

8. Bo Barton's testimony

Applicant claims Counsel was ineffective for failing to object to testimony by SLED Agent Bo Barton on the ground that he was permitted to testify as to his credentials as a trained criminal profiler and head of SLED's behavioral science unit but was never qualified as an expert witness. Applicant claims *State v. Tillman*, 433 S.C. 58, 67, 856 S.E.2d 168, 173 (Ct. App. 2021), stands for the proposition that "criminal profiling is junk science." This proposition is not supported by the portion of *Tillman* cited by Applicant or by any other language in that opinion. Regardless, Applicant has failed to prove either deficiency or prejudice on this ground. The transcript reveals that Agent Barton never offered any opinion testimony; rather, his testimony was limited to the circumstances of his December 20, 2013, interview with Applicant and of Applicant's two subsequent written statements. Therefore, qualified or not, there was no improper expert testimony to which Counsel could have objected.

Applicant also claims Counsel should have objected to the introduction of Applicant's written statements on the ground Agent Barton did not properly read Applicant her *Miranda* rights.⁶ However, Applicant acknowledges that Agent Barton explained the following rights to Applicant prior to the

⁶ *Miranda v. Arizona*, 384 U.S. 436 (1966).

interview:

She has a right to remain silent. Anything she can—anything she says can and will be used against her in a court of law. She has a right to an attorney. If she cannot afford an attorney, one will be appointed to represent her, if she wished. She could stop answering any questions at any time until she's retained an attorney.

(Tr. p.388, lines 17–22). Agent Barton's testimony reflects that he adequately explained the *Miranda* rights to Applicant before taking her interview.

Even if there had been some hyper-technical defect in Agent Barton's recitation of the *Miranda* rights, Applicant had already been read her *Miranda* rights multiple times before she was interviewed by Agent Barton. Agent Barton interviewed Applicant on the 20th of December, 2013; both Deputy Marshall and Sergeant Talbert testified that Applicant was read her *Miranda* rights on the 18th and the 19th as well. Taking all these facts into consideration, there is no reasonable likelihood that Applicant's interview with Agent Barton or her subsequent written statements would have been deemed inadmissible, had Counsel objected.

In addition, Applicant acknowledges that Counsel *did* demand a *Jackson v. Denno* hearing⁷ on the ground that Applicant's statements were taken in violation of *Miranda*, and the trial court ruled that law enforcement complied with *Miranda*. (Tr.pp.38–39).

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. *Strickland v. Washington*, 466 US 668 (1984) and *Cherry v. State*, 300 SC 115 (1989).

Counsel's objection to "speculation" by Dale Phillips, Jr.

Applicant claims Counsel was ineffective for failing to request a curative instruction, move to strike, or request a mistrial after the trial court sustained Counsel's objection to the solicitor's questioning of Dale Phillips, Jr., regarding who he believed the bullet was actually intended for. This allegation is

⁷ *Jackson v. Denno*, 378 U.S. 368 (1964).

without merit. Counsel clearly interposed a timely objection to the question, and the court sustained the objection before the witness was able to answer. Therefore, there was no testimony to strike, no reason for the court to give a curative instruction, and no ground for seeking a mistrial.

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. Strickland v. Washington, 466 US 668 (1984) and Cherry v. State, 300 SC 115 (1989).

9. Counsel's objection to "speculation" by Amanda Fallaw

Applicant claims Counsel was ineffective for failing to request a curative instruction, move to strike, or request a mistrial after the trial court sustained Counsel's objection to the solicitor's questioning of Amanda Fallaw regarding whether it was common for employees going through divorce to seek life insurance for their spouses. This allegation is without merit. Counsel clearly interposed a timely objection to the question, and the court sustained the objection before the witness was able to answer. Therefore, there was no testimony to strike, no reason for the court to give a curative instruction, and no ground for seeking a mistrial.

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. Strickland v. Washington, 466 US 668 (1984) and Cherry v. State, 300 SC 115 (1989).

10. Closing arguments by Solicitor

Applicant claims Counsel was ineffective for failing to object to the solicitor's references to "truth" during his closing argument. Applicant complains that "the jury's duty isn't to determine the truth," but to decide "whether the State has proved the allegations contained in the indictments beyond a reasonable doubt." This argument is meritless. Immediately after using the phrase "seek the truth," the solicitor expressly acknowledges the reasonable doubt standard in the very next sentence. (Tr. p.478, lines 3-8). Mere isolated uses of the word "truth" do not, by themselves, imply that Applicant should not enjoy the

presumption of innocence, that the State does not bear the burden of proof, or that the jury should apply any standard less stringent than reasonable doubt. Counsel need not reflexively object to every mention of "truth," as though the very concept of truth should be excluded from the jurors' deliberations. In a criminal trial, the jury is the finder of fact and the arbiter of credibility; to exercise those roles appropriately, the jury must consider whether a given evidentiary fact is true, or whether a given witness is telling the truth. These duties are not inconsistent with the jury's ultimate responsibility to determine whether the State has proven guilt beyond a reasonable doubt. The Court finds Counsel was not ineffective for failing to object to isolated references to "truth" in the solicitor's closing argument.

Applicant also claims the solicitor misrepresented the evidence in stating that Applicant had requested a life insurance policy on her husband after she initiated the divorce. The Court finds the solicitor did not misrepresent the evidence. During the trial, the solicitor elicited from Amanda Fallaw, human resources manager at Applicant's workplace, Wesley Commons, that in September of 2012, Applicant had elected a \$25,000 life insurance policy on her husband covering the period of October 1st, 2012 – September 30th, 2013. (Tr.pp.413–16). On cross-examination, Counsel elicited from Fallaw that Applicant had made the same election for several preceding years. (Tr.p.417–18). The mere fact that Applicant had made the same election in past years, however, did not rebut the solicitor's claim. The evidence supported the solicitor's claim that Applicant had requested a life insurance policy on her husband after initiating a divorce. The solicitor was entitled to comment on this fact in his closing argument and to argue the implication that Applicant sought to profit from her husband's death. Although Applicant's previous pattern of electing the same kind of coverage in prior years weakens that inference, the solicitor was within his rights, in closing argument, to portray the evidence in the light most favorable to the State. The comment did not misstate the evidence and was not objectionable.

Finally, Applicant claims Counsel should have objected to the solicitor's reference to the jury as the "consciousness of this community in Abbeville County." Applicant complains that a prosecutor should not urge the jury to convict a defendant merely "to protect community values, preserve civil order, or deter future lawbreaking. The evil lurking in such prosecutorial appeals is that the defendant will be convicted

for reasons wholly irrelevant to his own guilt or innocence."

Although Applicant cites no authority for this proposition, the language is taken verbatim from *United States v. Monaghan*, 741 F.2d 1434, 1441 (D.C. Cir. 1984). In that case, however, the appellate court held there was no error in the prosecutor's comment urging the jury to issue "a public condemnation of Mr. Monaghan for his behavior with respect to Todd Bart by finding him guilty in a public forum by citizens of his own community of guilt beyond a reasonable doubt on each of the five charges." *Id.* The court held this comment "clearly lay within the range of advocacy permitted to the prosecutor." *Id.*

South Carolina likewise recognizes that appeals to the needs of the community do not, in and of themselves, overstep the legitimate bounds of prosecutorial argument:

So long as he stays within the record and its reasonable inferences, the prosecuting attorney may legitimately appeal to the jury to do their full duty in enforcing the law, or to return the verdict which he conceives it to be their duty to return under the evidence, and may employ any legitimate means of impressing on them their true responsibility in this respect, as by stating that a failure to enforce the law begets lawlessness. Thus, he may in effect tell them that the people look to them for protection against crime, and may illustrate the effect of their verdict on the community or society generally with respect to obedience to, and enforcement of, the law; he has the right to dwell on the evil results of crime and to urge a fearless administration of the criminal law; and he may ask for a conviction, or assert the jury's duty to convict. He may argue with reference to any matter which the jurors may properly consider in arriving at their verdict, and may point out as well the matters which they should not consider.

301, 320 (1971) *State v. Darden*, 264 S.C. 86, 92, 212 S.E.2d 587, 590 (1975).

The solicitor's brief, isolated reference to the "community in Abbeville County" was plainly within the scope of such legitimate subjects of comment. It was not an attempt to play on the passions and prejudices of the jury. Nor would it have induced any reasonable jury to disregard the State's burden of proof beyond a reasonable doubt, which the solicitor repeatedly articulated in his closing argument. The overall thrust of the solicitor's argument was properly based on the considerable evidence of Applicant's guilt.

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is

no reasonable probability that but for counsel's performance the result of the proceeding would have been different. *Strickland v. Washington*, 466 US 668 (1984) and *Cherry v. State*, 300 SC 115 (1989).

11. Trial court's jury instructions

Applicant claims Counsel should have objected when the trial court instructed the jury that "the presumption of innocence does not end until you reach a verdict of guilty based upon evidence satisfying you of that guilt beyond a reasonable doubt." Applicant complains that the trial court erred in using the word "until" rather than "unless." The Court finds this allegation is without merit. There is simply no reasonable probability that the jury somehow inferred, from the subtle semantic difference between "until" and "unless," that the trial court expected the jury to convict Applicant, notwithstanding the trial court's lengthy discussion of the presumption of innocence, the State's burden of proof, and the reasonable doubt standard. The trial court's instructions as a whole clearly conveyed the correct law to the jury.

Next, Applicant claims Counsel should have objected when the trial court instructed the jury that, if it was "firmly convinced that the defendant is guilty of the crime charged," it "must find her guilty." Applicant claims, citing no authority, that this is an incorrect statement of law, because "a jury can acquit for any reason."

Applicant appears to be referring to the "popular myth" of the right to jury nullification—the idea "that the jury has a right to acquit a criminal defendant on bad as well as good grounds." *United States v. Kerley*, 838 F.2d 932, 937 (7th Cir. 1988). However, there is no such "right"; rather, as a practical matter, the jury "has the power to acquit on bad grounds, because the government is not allowed to appeal from an acquittal by a jury. But jury nullification is just a power, not also a right." *Id.* at 937–38. Notwithstanding the power of the jury to bring in a verdict of acquittal in defiance of the law and the facts, the duty of the jury "is to apply the law as interpreted and instructed by the court." *United States v. Trujillo*, 714 F.2d 102, 105 (11th Cir. 1983). There is no error in the trial court's instruction to the jury to do its duty.

Applicant also claims Counsel should have objected to the trial court's use of "truth" language in its jury instructions. This allegation rests on the same faulty premise as the allegation concerning the trial court's mention of "true facts" in its opening remarks to the jury. This claim is meritless for the reasons

already discussed in the Court's response to that allegation.

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. Strickland v. Washington, 466 US 668 (1984) and Cherry v. State, 300 SC 115 (1989).

12. Failure to call alibi witness

Applicant claims Counsel failed to call her daughter, DW [REDACTED], as an alibi witness. Applicant testified at the PCR hearing that DW [REDACTED] could have corroborated Applicant's statement that her apartment had been burglarized and that Applicant thought her husband was responsible. However, DW [REDACTED] did not testify at the PCR hearing. Therefore, Applicant has failed to meet her burden of proof as to this allegation. See, e.g., Martin v. State, 427 S.C. 450, 455, 832 S.E.2d 277, 279-80 (2019) (holding a PCR applicant who claims trial counsel was ineffective for failing to call certain witnesses must produce those witnesses or their testimony at the PCR hearing). In addition, the mere fact that Applicant blamed her husband for breaking into her apartment is not inconsistent with Applicant's guilt. If anything, it would have been further proof of the bad blood between Applicant and her husband.

Applicant has failed to establish deficient performance on the part of counsel under prevailing professional norms and/or any prejudice resulting from counsel's performance in this particular, as there is no reasonable probability that but for counsel's performance the result of the proceeding would have been different. Strickland v. Washington, 466 US 668 (1984) and Cherry v. State, 300 SC 115 (1989).

III. CONCLUSION

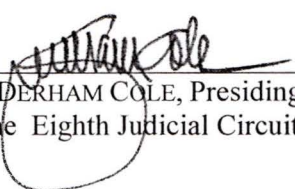
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violation or deprivation that would entitle her to post-conviction relief.

The APPLICATION for post-conviction relief should be and IS therefore DENIED and DISMISSED with prejudice and Applicant remanded to custody for service of the sentence imposed.

This Court notifies the Applicant that she must file and serve a notice of appeal within thirty (30)

days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

AND IT IS SO ORDERED this 4th day of June, 2025.


J. DERHAM COLE, Presiding Judge
The Eighth Judicial Circuit Court

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2025 JUN 12 P 1:24
SHANDAL BOGGS
CLERK OF COURT

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TRUE COPY
BY Shandal Boggs
ABBEVILLE COUNTY CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

Karlita Desean Phillips, # 364809
Plaintiff,

v.

State of South Carolina
Respondent,

)
)
)

IN THE COURT OF COMMON PLEAS

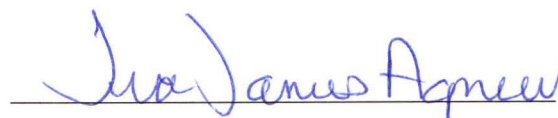
) CERTIFICATE OF SERVICE BY MAIL

2018- CP -01 -00-059

The undersigned, an employee of the Office of the Clerk of Court for Abbeville County, hereby certifies that this certificate of service, and clocked Order of Dismissal was made upon the following by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this 12th day of June, 2025.

Asst. Attorney General
Post Conviction Relief
Post Office Box 11549
Columbia, SC 29211

Ashley A. McMahan, Esq
Post Office Box 50536
Columbia, SC 29250



Tra Tanus Agnew, Common Pleas Clerk

WITNESSES

Natalie Talbert
Abbeville County Sheriff

WARRANT NUMBER

2013A0110200162

TRUE BILL

Jacob Carter
Foreman of the Grand Jury
Date: MAY 23 2014

VERDICT

Guilt
Margaret Dumb Donald
Foreman
Jag 23, 2015

760

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

May Term, 2014
Indictment # 14GS01-0212

THE STATE

vs.

Karlita Desean Phillips

INDICTMENT FOR

USING A MINOR TO COMMIT A FELONY
16-03-1045

CDR: 2443

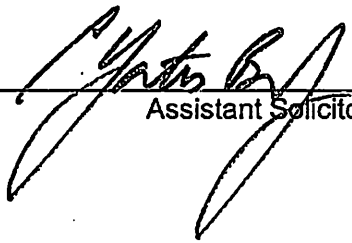
TRUE COPY
BY *Shandae Booge*
ABBEVILLE COUNTY CLERK OF COURT

THE STATE OF SOUTH CAROLINA**INDICTMENT FOR****USING A MINOR TO COMMIT A FELONY
16-03-1045****COUNTY OF ABBEVILLE**

At a Court of General Sessions, convened on the 23rd day of May, 2014, the Grand Jurors of Abbeville County present upon their oath:

That Karlita Desean Phillips, in Abbeville County, on or between the dates of February 1, 2013 and March 25, 2013, did willfully, unlawfully and knowingly being a person at least eighteen (18) years of age, did use, solicit, direct, hire, persuade, induce, entice, coerce, or employ a person under eighteen years of age, to wit: Taviros Dequan Settles, to commit a violent crime as defined in Section 16-1-60, murder, in violation of Section 16-3-1045 of the South Carolina Code of Laws, 1976 as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Assistant Solicitor

WITNESSES

Natalie Talbert
Abbeville County Sheriff

WARRANT NUMBER

2014D0100100121

TRUE BILL

Joel Cochran
Foreman of the Grand Jury
Date: MAY 23 2014

VERDICT

Guilty
Margaret Denise Donald
Foreman
July 23 2015

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

May Term, 2014
Indictment # 14GS01-0213

THE STATE

vs.

Karlita Desean Phillips

INDICTMENT FOR

ACCESSORY BEFORE THE FACT
§16-01-0040

CDR: 0002

TRUE COPY
BY *Shandae Bump*
ABBEVILLE COUNTY CLERK OF COURT

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

ACCESSORY BEFORE THE FACT

§16-01-0040

COUNTY OF ABBEVILLE

At a Court of General Sessions, convened on the 23rd day of May, 2014, the Grand Jurors of Abbeville County present upon their oath:

That Karlita Desean Phillips, on or between the dates of February 1, 2013 and March 25, 2013, in Abbeville County, did feloniously, willfully and unlawfully aid in the commission of a felony or was an accessory before the fact in the commission of a felony by counseling, hiring, or otherwise procuring the felony to be committed, to wit: murder, in violation of Section 16-01-0040 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Assistant Solicitor