

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

v.

WILLIAM JOSEPH PHILLIPS,

APPELLANT

Appellate Case No. 2013-001339

RECORD ON APPEAL

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CLOSING ARGUMENTS - MS. GORTON

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1 know whether he was at Carolyn Lollis' house waiting for
2 Christina to wake up or whether he was in the car looking
3 for a motorcycle. Well, it matters a great deal. And I can
4 finally explain to you why. I can finally show you that
5 course.

6 We know the time of death of Charlie Roberts by the
7 cell phone records, the cell phone calls and the movement of
8 his phone northward from the shed. It was explained to you
9 by one of the two lead detectives that we had. And I
10 honestly don't recall whether it was Hammett or Miller.

11 But one of them explained to you, I think his words
12 were, under the totality of the circumstances it was
13 apparent that Charlie Roberts was dead when the first call
14 was made from Charlie Roberts' cell phone to Joe Phillips'
15 cell phone. Now, we also know that Charlie worked that
16 night. His cousin testified. She was there.

17 And we know he was still alive at 9:22. So the time of
18 death is somewhere between 9:22 am and 10:05 am. For these
19 purposes, I agree with the State, probably minutes before
20 10:05.

21 Now, as to whether or not Joe was there, it depends on
22 who -- where Joe was. We agree he wasn't there, but where
23 he was. Was he in the car with the motorcycle hunt or was
24 he on the porch talking with Carolyn Lollis? Well, that
25 depends on who you believe. Now, stay with me here because

CLOSING ARGUMENTS - MS. GORTON

610

1 where Joe was is important.

2 Emily Gentry and Christina Gentry are enemy ex-
3 girlfriends. They told you that. They got in a fight.
4 They don't get along. They're jealous of each other. They
5 were both called as the State's witnesses against Joe.
6 They're not trying to protect him. They're not trying to
7 cover for him.

8 Both agree that the day Charlie's truck was found on
9 the day he was killed, Joe was at their mother, mother-in-
10 law's house, same person, Carolyn Lollis. Christina said
11 she woke up around 11:00 or noon and when she did her mama
12 told her that Joe had been there, what, a good while?
13 That's what she said, a good while.

14 Emily verifies this story telling you that he was
15 already there when she called. And we have phone records
16 backing up Emily's testimony that Joe's -- that in Joe's
17 phone records, which you will have in the jury room, that
18 Emily called him at 9:38 am.

19 Both Tina and Emily agree that Joe went and ran
20 errands. First, he went and ran errands with Emily. They
21 went up to the Mountain View Store. They got drinks for the
22 kids. They came back. And then Christina got up.

23 And then as Emily was leaving Christina and Joe were
24 leaving to run errands with the kids. They were going to go
25 to the park and they were going to have some pictures

CLOSING ARGUMENTS - MS. GORTON

611

1 developed. And they had with them some cousins. All of
2 these would explain Joe's cell phone movements that day, the
3 cell phone movements that Detective Whitmire talked to you
4 about, including those to the north.

5 Well, we know that Joe can't be two places at once, but
6 why is it important? Jimmy Poole claims that on the day
7 Charlie's truck was found, on the day he died, Joe was with
8 him, JoAnn, Billy, riding around in a car looking for Jimmy
9 Poole's motorcycle.

10 Now, Jimmy Poole told you that he was sure that the
11 time-frame was from around 8:30 am until noon. He says it
12 may have started earlier, but there was the fan, they had to
13 fix it. But we'll be conservative and say 8:30 to noon.

14 Jimmy Poole says he's sure of these time-frames because
15 when his old lady, there's that term, it's not just Joe's,
16 old lady, when his old lady takes a break at her work,
17 although he wasn't certain which day this occurred when he
18 wrote his statement two years ago, he wrote I'm not sure,
19 he's telling you now, two years later, that he's sure it's
20 the same day.

21 Now, unfortunately no effort was made to obtain phone
22 records that would verify when Jimmy's call was made to
23 JoAnn that started all this. But the phone records, we do
24 have. The phone records that you will have with you
25 strongly suggest that, I would go so far as to say prove,

CLOSING ARGUMENTS - MS. GORTON

612

1 that Mr. Poole is mistaken about his days.

2 Joe's records show his mother, JoAnn, calling Joe at
3 9:52 for twenty-five seconds, Joe calling JoAnn right back,
4 Joe calling JoAnn right back at 10:03 for seventeen seconds.
5 And they bypassed each other. You can see that because then
6 JoAnn calls Joe right back at 10:03 for fifty-three seconds.
7 Three calls going both directions. Ladies and gentlemen,
8 this isn't pocket dialing.

9 So if JoAnn and Joe are riding around with Jimmy Poole
10 in the same car together, why would they be calling each
11 other? Jimmy Poole is mistaken. It wasn't that day.

12 Why is this important? Well, because it is. You've
13 heard what JJ said. He heard that whole discussion about
14 the motorcycle going on outside his room. There was no need
15 for that. They could have waited to pull him. They knew he
16 was in that room. He heard it. Now, whether that was
17 intentional or careless, I don't know. And it doesn't
18 matter.

19 But you know that if that motorcycle run did not occur
20 on that day, then everything he says, everything he says is
21 a lie. You also heard him explain to you he wanted to keep
22 with his story about that five am phone call. One statement
23 he calls Joe, the other statement Joe calls him at five am.

24 He still came here today and told you that. I got in
25 trouble for asking him are you sure, are you really sure,

CLOSING ARGUMENTS - MS. GORTON

613

1 are you really, really sure? He was sure. Was he telling
2 you the truth? No.

3 Does it make sense to you that they would have this
4 plan, three different plans that they made together and Joe
5 wouldn't have minutes on his phone? It's not a suggestive
6 argument because we know JJ lied. He didn't call Joe. Joe
7 didn't call him.

8 How about this, shooting someone in the back of the
9 head is certainly consistent with someone who is reluctant,
10 with being pressured, bullied into doing something they
11 don't want to do, but that's not consistent with our facts.
12 The facts in our case is that Charlie Roberts was shot in
13 the face, in the eye, straight on. And that kind of killing
14 is more the work of a hardened killer. JJ did not tell you
15 the truth about how Charlie died. Why is that? Does he
16 know the truth?

17 The reason for this case is love. That's why we're
18 here. A sick, sick kind of love. But it's JJ's brotherly
19 love for Jobo. Crazy people do crazy things. You heard the
20 call. When did Joe first learn of JJ's history and mental
21 hospitals? It wasn't until after Charlie was dead. You
22 heard that. Where had he been? How many times?

23 At some point does why even matter? Let me ask you
24 this as far as why JJ lied. Let me ask you this. If you go
25 to a car dealer and he says I'll sell you this car. It's

CLOSING ARGUMENTS - MS. GORTON

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1 only got fifteen thousand miles on it. And you buy the car.
2 You take it to a mechanic. The mechanic says this car's got
3 fifty thousand miles on it.

4 And you take the car back to this dealer and you say
5 this car has fifty thousand miles on it. Does it really
6 matter what that dealer tells you? Does it matter whether
7 he tells you it was an honest mistake? There's a switching
8 of the paperwork? He had to make the quota to feed his
9 kids? Does it really matter?

10 Are you going to go to the dealer, the same dealer and
11 buy a second car? Well, in this case the answer was yes.
12 They bought another car.

13 And this time the dealer said this car has only twenty
14 thousand miles on it. But when they took it to the mechanic
15 the mechanic said, oh, no, this is even worse than the first
16 one. This one has a hundred thousand miles on it.

17 So what happened? Bought a third car. Would you do
18 that? Would you go back to the same dealer and buy a third
19 car?

20 Well, the decision that you're making here today is
21 even more important than that. You are deciding a man's
22 life literally, permanently. He deserves the same judgment
23 you would apply in deciding to buy a car. He deserves that
24 much.

25 I realize you may not like him. He doesn't make

CLOSING ARGUMENTS - MS. GORTON

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1 himself very likeable. His language is atrocious. He
2 treats women like that. But he is a person. And he
3 deserves to be judged fairly and by our laws. And he
4 deserves to be judged by the same standards as everyone
5 else.

6 You know what kind of dealer you are dealing with. He
7 tells you he was reluctant, pressured and bribed into doing
8 this. But after taking Charlie's life, shooting him
9 directly in the eye, life went back to normal for JJ. He
10 told you that. In his words, I went back to my regular
11 routine. He wrote that in his statement, the statement that
12 you will have with you when you go back there.

13 Now, he also told you something that was really
14 incredible. He said he did this for drugs, but after he did
15 it he felt so bad he didn't do drugs for two weeks after.

16 He burnt the pants and the boots and he kept the t-
17 shirt as a souvenir. Today he decided he didn't keep the t-
18 shirt, but yesterday he told you this statement is a hundred
19 percent accurate. And I would submit to you that as to that
20 item, it probably is. He kept it as a souvenir and he went
21 around town carrying the murder weapon.

22 The solicitor tells you that JJ lied in his first
23 statement, his second statement, but he wants you to believe
24 this third statement is the truth. Why is that exactly?
25 It's not like JJ suddenly decided to come clean on his own.

CLOSING ARGUMENTS - MS. GORTON

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1 When he decided to come -- decided to go forward on his
2 own, what did he do? He lied some more. It was all Joe.
3 Remember that? The second statement? He was just an
4 innocent bystander. Joe did it all.

5 But what happened is law enforcement bought the first
6 car. They bought the second car. And after they realized
7 the second car had a hundred thousand miles on it they went
8 back to the same dealer and bought a third car.

9 There was no apology. There was no releasing him even
10 when they realized the second statement was a lie because
11 they wanted Joe Phillips. He was their suspect from day
12 one, and they weren't going to let it go.

13 What if JJ had just shrugged his shoulders when law
14 enforcement confronted him with his lies on the second
15 statement? How would things have changed for JJ? What was
16 his motivation?

17 He told you over and over again what his motivation is.
18 He told you over and over again. I said that because that's
19 what they wanted to hear. I said that because that's what
20 that person wanted to hear. I said that because that's what
21 they wanted to hear.

22 JJ told you he lied when Mr. Steinberg was talking to
23 him yesterday. And he asked him why he gave that second
24 statement that was so full of lies. And JJ told you he lied
25 because he was angry.

CLOSING ARGUMENTS - MS. GORTON

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1 Well, let me ask you this. Was he any less angry when
2 he gave this third statement? Can you believe that one? If
3 he gave his second statement simply because he realized he
4 had been duped, if that was the reason he gave that second
5 statement, he was angry, he realized he'd been duped, why
6 would he not simply tell them the truth?

7 He wasn't telling that statement because he'd been
8 duped. He was telling that statement because he wanted
9 something. He wanted the charges dropped. And it's only
10 when he was confronted and only when he knew what it was the
11 officers wanted him to say about the motorcycle pick-up,
12 hunt, being picked up by Jimmy Poole that he said it.

13 What if JJ explained that the first statement was
14 actually the truth except for the part about the guns? And
15 also explained that in that statement he had lied about the
16 guns so no one would go looking for them, that he didn't
17 want them found because they belonged to Joe and that it
18 wasn't Joe's fault that JJ had taken upon himself to use
19 Joe's guns. Doesn't that make sense, too?

20 But that's just my theory. And it's only one of many
21 that it could be. The thing about reasonable doubt is we
22 don't have to be right. We don't even have to be probably
23 right. It just has to be reasonable.

24 Because the other thing is the State has the burden of
25 eliminating each and every reasonable possibility for each

CLOSING ARGUMENTS - MS. GORTON

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1 and every one of you. Your reasons for having a doubt, they
2 don't have to be unanimous. You can disagree as to what
3 bothers you about this.

4 For some of you it may be the factual problems and then
5 the way Charlie was killed, kind of the back of the head
6 versus through the eye. Why the mystery? Why the mystery
7 as to the second gun, the 9mm being buried? Why would it be
8 buried?

9 Or the fact that JJ was known to go out wandering and
10 that the only reasonable explanation that a trained
11 forensics team would miss a shell casing given where it was
12 found was if it wasn't there when they looked. The more
13 plausible explanation might be that JJ returned to the crime
14 scene before turning himself in the next day. Keep in mind,
15 that was all the same day they find the body. JJ turns
16 himself in the next day.

17 They find the body, they leave the crime scene. No
18 one's guarding it. This is huge news in Marietta. Huge
19 news. Anybody could have been there. There probably were
20 people there.

21 And after all, we do know one thing. We know JJ had
22 the guns that night because he buried them that night. They
23 were in his pants.

24 Especially, and I don't want to go off on a tangent
25 here, but this is an example of reasonable doubt that you

CLOSING ARGUMENTS - MS. GORTON

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1 might have that you may not share. I've got to address all
2 points. Especially given the fact that Bobby Sweet says
3 there were four or five rounds when he -- when he sold the
4 gun. And we know from the officers there was only one round
5 left.

6 Now, lawyers are notoriously bad about math, but I
7 think I can figure that doesn't add up. One bullet to kill
8 him, one bullet left does not equal four or five, but it
9 might explain why that shell casing was suddenly there.

10 Last night I kept coming up with more. Five hundred
11 dollars over time, a year's time. He's saying he was paid
12 to do this. How much were you paid? Five hundred dollars.

13 But when I asked him, what did he say? That was five
14 hundred dollars over the whole year. Does this make sense
15 to you? He was paid? But he was including money that he
16 got a year ago or a year prior before Charlie was even in
17 the picture. How is that being hired to kill somebody?

18 And what did JJ say when I asked him, no more, no less,
19 before Charlie's death or after JJ -- Joe treated him the
20 same. That's not murder for hire.

21 The State mentioned about JJ saying pick me up alone.
22 Don't have people in the car. And Joe shows up with people
23 in the car. Let's think about that. If Joe were part of a
24 plan would you want people in the car? Heck, no. If he
25 knew what was going on he would have shown up alone. He

CLOSING ARGUMENTS - MS. GORTON

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1 wouldn't want witnesses.

2 For others of you the shirt might be a big deal. For
3 some of you, maybe it's not. But yesterday he told you this
4 statement was a hundred percent accurate. And in this
5 statement he talks about wearing the same shirt -- the same
6 shirt right here. That's the same shirt I used to wrap up
7 the guns with when I buried them.

8 And here he says I burned my boots and my pants. And
9 Joe -- I burned them -- my pants so you couldn't see it. I
10 had a black ET shirt, black pants and brown boots on. The
11 shirt was the same shirt I used to wrap the guns in. These
12 are in his words in this statement that's a hundred percent
13 accurate. So why, why is he changing that now? A hundred
14 percent accurate. I am one hundred percent sure there's
15 only twenty thousand miles on that car.

16 One of your biggest jobs as a jury is to determine
17 witness credibility. Every adult witness is presumed to be
18 competent to testify. And the Judge is not permitted to
19 evaluate witness credibility. It's not his job. It's your
20 job and yours alone. Even with those who are mentally ill.

21 And it's entirely up to you as to who you believe and
22 who you don't. You can even choose to believe a witness
23 about some things who you believe has lied about other
24 things.

25 If you want to buy this third statement from JJ you are

CLOSING ARGUMENTS - MS. GORTON

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1 free to do so. The law permits it. It's your right as a
2 juror, but I hope that you will not. I hope you will judge
3 him by at least the same standards you would apply in buying
4 a car.

5 The Judge will tell you not to give any weight to the
6 fact that my client did not testify. And I ask you to
7 uphold that duty as hard as I know that is. It's natural.
8 I'm a mother. I want to hear both sides. But our system
9 prohibits that. You can't do that.

10 And I would ask you to consider for a moment why he
11 might elect not to testify. You know he's illiterate. You
12 have seen the volumes of paperwork that this case involves.
13 And I'd ask you to be compassionate and think about how
14 terrifying that would be to take the stand in any case, but
15 particularly in a case where you can't read all those
16 papers.

17 We know that Joe did play a part in this tragedy. He
18 continued to harbor and protect Charlie's killer even after
19 he learned what he had done. That's pretty clear. And I
20 make no effort to deny it.

21 He had done something that was going to get him in big
22 trouble and he got caught. But I have -- but I never have
23 denied that. And if that were the issue, we probably
24 wouldn't be here today. But remember that that is a
25 different charge and a different issue.

CLOSING ARGUMENTS - MS. GORTON

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1 Our issue here today is accessory before the fact,
2 being treated the same as if he had committed the murder
3 himself. And what you have to decide is whether the State
4 has proven beyond a reasonable doubt that Joe intentionally
5 counseled or commanded JJ to kill Charlie Roberts and that
6 he did that intentionally.

7 JJ and only JJ tells you Joe provided him with drugs.
8 What JJ actually says in his one hundred percent accurate
9 statement is that Joe gave him money that JJ then used to
10 buy drugs. But here at trial he says Joe gave him money --
11 the drugs directly.

12 The salesman is doing what he can to try to get you to
13 buy the third car. And as sad as he is, again, we agree
14 he's pathetic, JJ just doesn't seem to know what the truth
15 is. He knew what was on the line to testify here today.
16 But he got caught. He's not just contradicting facts and
17 other witnesses, he's contradicting himself.

18 I want -- we have -- so if we decide we can't -- the
19 salesman can't believe -- be believed, what is left? Well,
20 we have some other things.

21 We have the gun sale. There's only one witness of this
22 gun sale that has anything incriminating to say about it.
23 And that was the wrecker truck driver guy. The guy, the one
24 guy, the one and only guy who was talking about throw-away
25 gun and having a man to do a job, the big guy with the white

CLOSING ARGUMENTS - MS. GORTON

623

1 shirt and the jeans.

2 And I'm looking at your faces. Didn't he seem like the
3 least credible of all the witnesses that we've heard over
4 the last couple of days? Is it really plausible that T-Bird
5 or Star-Bird, whatever his name was was standing right there
6 with Roy Barrett and somehow missed trigger words, pun-
7 intended, trigger words like paid a man to do a job, need a
8 gun?

9 This is the same guy who also said the conversation
10 occurred the day before Charlie was on the news in his
11 written statement. You're going to have that. He said this
12 conversation occurred the day before Charlie was on the
13 news.

14 Well, we know that's impossible because that would have
15 meant that this occurred on Friday afternoon when Charlie
16 was already dead. Whereas all the others claimed it was a
17 couple of weeks or a month or two prior, or after.

18 So we don't have just a knit-picky discrepancy of a
19 couple of days. It's not like some said a couple of days
20 before, a day before, a week before. We've got a difference
21 of days and months. What did he tell you when the police
22 come knocking? You start talking, okay?

23 Taken by itself, the gun purchase is not an issue.
24 People buy guns all the time. JJ and Joe lived together in
25 the same house. And JJ told himself -- told you that he,

CLOSING ARGUMENTS - MS. GORTON

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1 not Joe, was the one who carried the .380 around.

2 And let me ask you this. The testimony was that Joe
3 already had a so-called clean 9mm. Detective Hammett
4 confirmed that. Both guns had the same clean history.
5 Nothing on NCIC.

6 So if Joe had wanted to kill Charlie he could have done
7 it without purchasing that .380. He already had a gun, the
8 9mm. He didn't need to purchase a gun at all.

9 So what else do they have? Well, we have jail calls.
10 Lots of jail calls. Lots of talk about JJ keeping his
11 mouth shut. Lots of assurances that JJ -- to JJ that Joe
12 would continue taking care of him. How? As he always had.
13 Is that a change from the past? Is that a consequence of JJ
14 doing something for him? No. It's exactly the way it has
15 always been. My house is your house. I will be here for
16 you. Despite this mess you've gotten me into, I will be
17 here for you.

18 JJ's statement to Joe, to me, this is the biggest
19 thing. When we're talking about murder for hire, JJ saying
20 to Joe repeatedly, to other people as well, but Joe, I
21 really appreciate everything you're doing for me. When I
22 get out I'm going to get a job and pay you back. Is this a
23 statement of a hired killer?

24 If Joe were paying him to do the deed and take the
25 wrap, who would be owing who? JJ would be saying, bro,

CLOSING ARGUMENTS - MS. GORTON

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1 you'd better load me up.

2 So why would Joe be scared of going down the road if JJ
3 talked? Joe had been -- been called in and gave a statement
4 from very early on. You know that. You've heard that they
5 talked to Christina first, they talked to Joe. Joe gives a
6 statement.

7 Does he ever say, you know, funny thing, I don't know
8 where my .380 is. Funny thing, JJ told me. And we know
9 that JJ did tell him afterwards. JJ told you that.

10 He tells you that that occurred immediately after he
11 killed Charlie. That's his first call. At 10:05 he calls
12 -- at 10:05. 10:06 he calls Joe. And what does he say? I
13 killed Charlie.

14 And what did he tell you Joe's reaction was? That he
15 broke down, and cried and got sick to his stomach. Does
16 that sound right to you? Or does it sound more like the
17 reaction of someone who's just been told that somebody you
18 loved like a son, like a brother has done something
19 absolutely horrible, something unexpected, something really,
20 really horrible and they did it for you?

21 Tammie Timmons told you that she didn't take what Joe
22 said seriously, that no one would. That's just the way
23 people talk. She has talked that way herself. But crazy
24 people do crazy things. And you've heard the jail call
25 where Joe is learning for the first time just how crazy JJ

CLOSING ARGUMENTS - MS. GORTON

626

1 is.

2 And in this case the element of criminal intent is
3 huge. If I confess that I am so angry at my neighbor I wish
4 she were dead, it may reveal a flaw in my character, but it
5 does not mean that I intend for you to kill her.

6 Even if you and I are roommates and I'm complaining to
7 you every day, that's not what it means. And if you
8 suddenly take it upon yourself to end the matter
9 permanently, well, it cannot be said that was my intent.
10 Even if you use my gun to do it.

11 JJ loved Joe like a brother. And he was very much
12 aware of the pain and frustration that Joe was in. He knew
13 that. And he loved him. He didn't want him to hurt. He
14 had all the motive that Joe had. He wanted the pain to end.
15 And how was that going to happen? Get rid of Charlie. Be
16 the hero.

17 Joe was the one person who had taken JJ in and cared
18 for him. And he did this long before there was a Charlie.
19 He did this long before there was a Tina and Charlie. He
20 did this out of love, not payment. He'd been doing it for
21 more than a year. And as JJ told you, no more, no less,
22 before or after.

23 Did JJ kill Charlie for William Joseph Phillips?

24 Probably. Did he do it because Joe was upset over

25 Christina? Probably. Did he do it because Joe

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1 intentionally counseled or commanded him to do so? Uh-uh.
2 (negative), uh-uh (negative). Joe -- JJ appreciates Joe's
3 staying true. And he's going to pay Joe when he gets out.

4 I know some of you can still see the frog. It's there.
5 But the question is is do you also see the horse now? Do
6 you see the reasonable doubt? And that, ladies and
7 gentlemen, that has to be your verdict. William Joseph
8 Phillips is not guilty.

9 **THE COURT:** All right. No one in or out of the
10 courtroom during my charge. So if you need to leave, now is
11 the time to do it.

12 (Pause)

13 **THE COURT:** Ladies and gentlemen, I'm having a little
14 difficulty with my voice today. And I hope that you will
15 bear with me during the course of my charge.

16 Ladies and gentlemen, as jurors in this case you have a
17 function or a responsibility that is entirely separate and
18 distinct from my function as the trial judge. I am the
19 judge of the law in this case. You are the judges of the
20 facts.

21 The Constitution of our State does not allow me to
22 charge you on the facts of this case or to discuss the facts
23 with you or in any way or manner let you know what my
24 personal feelings, if any, are about this case. You and you
25 alone are the judges of the facts. Therefore, if during the

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1 course of this charge or if during the -- the course of my
2 charge you have a feeling or you've been left with the
3 impression that I have a personal feeling about this case
4 one way or another, then you disregard that feeling or that
5 impression.

6 Now, it's your duty and your duty alone to weigh the
7 testimony and the evidence presented in this case and to
8 pass upon the credibility or the believability of the
9 witnesses you heard testify. In this connection you have
10 the right to believe all that a witness told you or you can
11 disbelieve all a witness told you. You can believe a part
12 of what a witness told you and disbelieve a part of what a
13 witness told you.

14 You can believe one witness as against several or you
15 can believe several as against one. You also have the right
16 to take into consideration any bias, or prejudice or
17 interest you feel a witness in the case might have.

18 Ladies and gentlemen, with respect to witnesses, I
19 charge you that the rules of evidence ordinarily do not
20 permit witnesses to testify as to opinions or to
21 conclusions. Now, there is an exception to this rule as to
22 those whom we call expert witnesses. Witnesses who by
23 education and experience have become expert in some art,
24 science, profession or calling may state an opinion as to
25 relevant and material matters in which they profess to be

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1 expert and may also state their reasons for their opinion.

2 Now, you should consider any expert opinion received in
3 the evidence in this case and give it such weight as you
4 think it deserves. If you should conclude that the opinion
5 of an expert is not based upon sufficient education or
6 experience or if you conclude that the reasons given in
7 support of that opinion are not sound, then you -- and it is
8 outweighed by other evidence, then you may disregard that
9 opinion in its entirety. An expert's testimony is to be
10 given no greater weight than that of any other witness
11 simply because that person has been declared to be an
12 expert.

13 Now, as I told you, ladies and gentlemen, I'm the judge
14 of the law in this case. And you are judges of the facts.
15 It is my duty in this case to charge you on the law of the
16 case. And I tell you that it is not a question of what you
17 feel the law might be or what it should be. It is not
18 necessarily what the lawyers may have told you because under
19 your oath you are required to take the law as I give it to
20 you, apply that law to the facts as you determine those
21 facts to be and to write your verdict accordingly.

22 It's also my duty to see that this trial is conducted
23 according to the rules of court and the rules of evidence
24 applicable to the facts in the case. Therefore, I charge
25 you that you are not to consider in any way testimony or

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1 evidence that was ruled out by me as being not admissible.

2 In the trial of a case the State is permitted to rely
3 on direct evidence, on circumstantial evidence or on a
4 combination of the two. Direct evidence proves the
5 existence of a disputed fact by using one or more of our
6 five senses without the aid of any inferences. For example,
7 the testimony of a person who asserts or claims to have
8 actual knowledge of a fact, that is an eyewitness. That is
9 an example of direct evidence.

10 Circumstantial evidence, on the other hand, is where
11 certain facts which are known through using one or more of
12 our five senses produces a logical inference that other
13 facts exist without directly proving those facts.

14 Circumstantial evidence, ladies and gentlemen, is proof of a
15 chain of facts and circumstances indicating the existence of
16 a fact.

17 Now, as I've told you, the State may rely on either or
18 both of this type of evidence, direct or circumstantial.
19 And neither is inferior to the other. One is as good as the
20 other if equally convincing to you. And they're entitled to
21 the same weight.

22 You should weigh all evidence in this case. And after
23 doing so if you're not convinced of the Defendant's guilt
24 beyond a reasonable doubt, then you must find him not
25 guilty.

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1 Now, in this case, as in all criminal cases, this
2 Defendant comes into this courtroom presumed to be innocent.
3 And this presumption continues and carries through the
4 entire trial until and unless it is removed by evidence that
5 satisfies you of his guilt beyond a reasonable doubt. The
6 burden is on the State in this case to prove this Defendant
7 guilty and to prove each and every element of the offense
8 with which he is charged beyond a reasonable doubt.

9 Now, some of you may have in the past served as jurors
10 on civil cases. And if so you were most likely told it was
11 only necessary to prove that a fact was more likely true
12 than not true. But in criminal cases the State's proof must
13 be more powerful. As I've told you, it must be beyond a
14 reasonable doubt.

15 Now, proof beyond a reasonable doubt is proof that
16 leaves you firmly convinced of this Defendant's guilt.
17 There are very few things in this world that we know with
18 absolute certainty. And in criminal cases our law does not
19 require proof that overcomes every possible doubt.

20 If, based on your consideration of the evidence in this
21 case, you are firmly convinced that this Defendant is guilty
22 as charged, then you must find him guilty. If, on the other
23 hand, you think there is a real possibility that he's not
24 guilty, then you must give him the benefit of that doubt and
25 find him not guilty.

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1 Now, as you know, as I told you, the Defendant in this
2 case is indicted for being an accessory before the fact, and
3 in this case, that being murder. Now, in this case -- in
4 this case I charge you that an accessory before the fact is
5 one who while being absent at the time a crime is committed
6 did nevertheless procure, counsel or command someone else to
7 commit that crime.

8 Now, the Defendant in this case is not charged with
9 murder. He is charged with being an accessory before the
10 fact of murder. Therefore, the evidence in this case must
11 satisfy you beyond a reasonable doubt that this Defendant
12 counseled, hired or otherwise procured Mr. Allen to commit
13 the murder.

14 Now, murder, ladies and gentlemen, is the killing of
15 any person with malice aforethought either express or
16 implied. And as a necessary element of murder it must have
17 been committed without just cause or excuse. Stated
18 differently and in other words, ladies and gentlemen, an
19 accessory before the fact is one who aids, or abets
20 principal alleged to have committed the offense, but who was
21 not present at its commission.

22 The Defendant cannot be convicted unless you find that
23 Mr. Allen actually committed the murder. However, it is not
24 necessary that he, being Mr. Allen, has been convicted of
25 the crime, only that he committed it.

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1 So for the Defendant in this case to be convicted, the
2 State must prove three things. First of all, that this
3 Defendant either procured, counseled, hired or commanded
4 some other person to commit the crime, in this case, murder,
5 that the Defendant was not present at the time it was
6 committed, and, third, that Mr. Allen committed the murder.

7 Now, ladies and gentlemen, if from the evidence in this
8 case you have a reasonable doubt whether the Defendant is
9 guilty as charged in the indictment, then it would be your
10 duty to acquit him. Under the oath you took in this case
11 you swore to try this case based only and solely on the
12 testimony and evidence presented in this courtroom. I tell
13 you that it is your duty to lay aside all outside opinions,
14 bias, prejudice or sympathy you may have in reaching your
15 verdict.

16 The word verdict is taken from the Latin word
17 veredicto. It means to speak the truth. Now, you have no
18 friends to reward in this case or enemies to punish. I
19 charge you to abide by your oath and return a verdict that
20 speaks the truth.

21 Now, you'll have in the jury room with you the
22 indictment in this case. This indictment is the legal
23 document that brings this case into the courtroom and
24 presents it to you for your determination.

25 There are one of two possible verdicts in this case,

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1 guilty or not guilty. And whatever that verdict is, it must
2 be unanimous, that is, all twelve of you must agree.

3 Now, Madame Foreman, you will find a place on the back
4 where the word verdict is printed. Whatever the unanimous
5 verdict of the jury is, guilty or not guilty, write it out
6 in that space and then sign your name on the line where it
7 says foreperson of the petit jury and then date it. All
8 right.

9 Now, I've got to go over my charge with the lawyers. I
10 need you to go back into the jury room, but don't begin
11 deliberating until I send word in for you to do so. When I
12 tell you to begin deliberating, you can do so. And we'll
13 try to gather up all the evidence and get it into the room
14 with you. Okay. Take the jury out, please.

15 (Whereupon the jury exited the courtroom at 2:22 pm)

16 **THE COURT:** All right. Anything further?

17 **MS. GORTON:** Judge, I really apologize, but I didn't
18 hear you cover the Defendant not testifying. Did you do
19 that?

20 **THE COURT:** No, I did not. And I need to do that.
21 Thank you ---

22 **MS. GORTON:** Okay.

23 **THE COURT:** --- for telling me that. Anything else?

24 **MR. STEINBERG:** I don't recall anything else, Your
25 Honor.

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1 **THE COURT:** All right. Now, normally I would discharge
2 the alternate in a case like this.

3 **MS. GORTON:** Okay.

4 **THE COURT:** If you think I need to retain him in case
5 something happens, they can't reach a verdict today and it
6 carries over, then I can keep him separated and ---

7 **MS. GORTON:** I'd rather do that. I don't want to do
8 this again.

9 **MR. STEINBERG:** I agree, Your Honor.

10 **THE COURT:** Okay.

11 **MS. GORTON:** So charging the jury on that instruction
12 ---

13 **THE COURT:** Yeah, I'm going -- bring the jury back,
14 please.

15 (Whereupon the jury entered the courtroom at 2:25 pm)

16 **THE COURT:** Ladies and gentlemen, I completely
17 overlooked charging you on the Defendant's right not to
18 testify in this case. If you'll give me your attention.

19 Our law does not compel a defendant in a criminal case
20 to take the witness stand and testify or present evidence.
21 And no presumption of guilt may be raised and no inference
22 of any kind can be drawn from this Defendant's decision not
23 to testify.

24 Our law never imposes upon a defendant in a criminal
25 case the burden or duty of calling any witnesses or

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1 producing any evidence or of testifying. Therefore, I
2 charge you that the decision of this Defendant not to take
3 the stand and testify in his behalf cannot be taken, held,
4 discussed or considered against him in any manner
5 whatsoever. All right. Ladies and gentlemen, if you will
6 retire and begin your deliberations. We'll get the evidence
7 in for you.

8 (Whereupon the jury exited the courtroom at 2:26 pm and
9 began deliberations)

10 **THE COURT:** Would you bring Laura Jenkins out for me.

11 **MADAME CLERK:** She's already been seated. It's the
12 other one.

13 **THE COURT:** Yep. It's ---

14 **MADAME CLERK:** It's Jason Hudson.

15 **THE COURT:** I'm sorry. Jason Hudson.

16 (Whereupon Jason Hudson, the alternate, entered the
17 courtroom)

18 **THE COURT:** Mr. Hudson, our jurors have so far made it
19 through this trial and normally it would conclude your
20 service in this case. What I need for you to do, I'm going
21 to have to keep you until the jury deliberates and reaches a
22 verdict so that in the event we lose another juror, then you
23 will be called in to become a member of the panel and to
24 consider the case.

25 So it's going to be necessary for me to keep you

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1 separated from the rest of the jury. So as best you can,
2 just relax. And I hope we can get a verdict today so you
3 can go home tonight and then come back tomorrow.

4 **MR. HUDSON:** Okay.

5 **THE COURT:** So just be at ease. Thank you so much.

6 (Whereupon Mr. Hudson exited the courtroom).

7 **THE COURT:** All right. Now get all the exhibits and
8 take them in when you can.

9 (Whereupon the exhibits were taken to the jury and
10 court was in recess at 2:29 pm)

11 (Whereupon court resumed at 3:04 pm)

12 **THE COURT:** We got a note from the jury saying they
13 would like to hear all the phone conversations again.

14 **MR. STEINBERG:** Yes, sir.

15 **THE COURT:** How long is that? I can't remember.

16 **MR. STEINBERG:** It's going to be well over an hour.

17 **THE COURT:** All right. We need to get the disks from
18 the jury.

19 **MR. STEINBERG:** And one disk is kept with the court
20 reporter.

21 **THE COURT:** Well, how many -- how many different disks
22 were there?

23 **MR. STEINBERG:** Probably, maybe, ten disks, Judge.

24 **MS. GORTON:** There's one disk that you had that we had
25 to patch together because we didn't have the cropped

1 version. And I think it started at 13:00, right? It was
2 everything you had and then 13:00 to 14:30? It was very
3 short. It was only a minute and a half.

4 **THE COURT:** Okay.

5 **MS. GORTON:** It's just all the clicking back and forth.
6 is going to take a bit of time.

7 **THE COURT:** Okay. I need how many back -- all the CDs,
8 all the disks.

9 (Whereupon Court's exhibit 2 was marked)

10 **THE COURT:** All right. They've sent in two more ---

11 **MS. GORTON:** Two more questions?

12 **THE COURT:** --- questions having to do with the
13 evidence, which I cannot answer. All right. Now, how are
14 we going to present these disks?

15 **MR. STEINBERG:** We're going to playing the disks,
16 Judge, ---

17 **THE COURT:** I mean, have you got them in order?

18 (Whereupon the attorneys were conferring off the record
19 with the bailiff)

20 **MS. GORTON:** So what were the two additional questions?

21 **THE COURT:** Was it disputed by the defense that Jobo
22 drove JJ to Charlie's house on the morning of the 8th or is
23 this a fact agreed to by both prosecution and defense?

24 **MS. GORTON:** It's not agreed to.

25 **MR. STEINBERG:** Your Honor, I would say that you can't

1 answer that question.

2 THE COURT: No, I can't, I know, unless y'all agree.

3 MR. STEINBERG: No, sir.

4 THE COURT: Was Jobo offered a plea deal with so much
5 evidence from the prosecution? If so, why didn't he take
6 it?

7 MS. GORTON: I'd say this looks good for you.

8 MR. STEINBERG: I mean, we can't answer that, Judge.

9 THE COURT: Obviously, can't answer that. All right.
10 Are you ready to play them?

11 MS. GORTON: I want them to hear this because this was
12 something I fought for them to listen to.

13 MR. STEINBERG: Are these the only disks they sent
14 back?

15 THE BAILIFF: (Affirmative nod).

16 MR. STEINBERG: Okay. Ms. Gorton, they sent these
17 disks back.

18 MS. GORTON: But if their request is to listen to all
19 the calls and we're withholding one of the calls from them,
20 I think that they need to hear this call. And this is the
21 call that you and I argued about, this portion being in
22 there, which was very, in my opinion, exculpatory.

23 THE COURT: Let me find out if that's all ---

24 MR. STEINBERG: This is what they sent back. They
25 might not realize there's another ---

1 **THE COURT:** I understand that.

2 **MR. STEINBERG:** I guess they could tell us.

3 **THE COURT:** Bring the jury.

4 (Whereupon Court's exhibits 3 and 4 were marked)

5 **THE COURT:** How many you got there?

6 **MR. STEINBERG:** Judge, I have five here.

7 **THE COURT:** There were supposed to be nine.

8 **MR. STEINBERG:** They only want to hear five, Judge.

9 **MS. GORTON:** If they want to hear all the calls, then
10 there's more than that.

11 **MR. STEINBERG:** The bailiff, they said -- they brought
12 these out, they selected these to listen to.

13 **THE COURT:** Well, I intend to find that out.

14 **MR. STEINBERG:** Yes, sir.

15 (Whereupon the attorneys were conferring off the
16 record)

17 **THE COURT:** One of the jurors has a nose bleed and is
18 trying to get it dried out.

19 **MR. STEINBERG:** Thank you, Your Honor. Judge, may we
20 approach?

21 (Whereupon a bench conference was held off the record)

22 (Whereupon the bench conference was ended)

23 (Whereupon the jury entered the courtroom at 3:17 pm)

24 **THE COURT:** Okay. Madame Foreman, you sent in three
25 questions. You first want to hear, you said, all of the

1 tapes.

2 **MADAME FOREMAN:** Well, the ones we brought in.

3 **THE COURT:** Just the ones you brought in. Okay. And
4 two other questions, was Jobo offered a plea deal with so
5 much evidence from the prosecution? If so, why didn't he
6 take the stand

7 **MADAME FOREMAN:** No, no, why didn't he take the plea if
8 it was offered.

9 **THE COURT:** Take the -- take the plea? All right. Was
10 it disputed by the defense that Jobo drove JJ to Charlie's
11 house on the morning of the 8th or is it a fact agreed upon
12 by both prosecution and defense? I can't answer either of
13 those questions. I'm sorry.

14 **MADAME FOREMAN:** Okay.

15 **THE COURT:** They involve issues of fact. And I told
16 you I can't charge you on that. So if the question
17 concerning whether or not Jobo drove JJ to Charlie's house,
18 if that question can be answered at all, it must be answered
19 by your recollection of the testimony, okay?

20 And with the other -- respect to the other question, I
21 don't know the answer to that question. Even if I did know,
22 I could not talk to you about that.

23 **MADAME FOREMAN:** That's fine.

24 **THE COURT:** All right. And the solicitor's going to
25 play the tapes that you have sent in.

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1 **MADAME FOREMAN:** Could you tell us the date and the
2 time?

3 **MR. STEINBERG:** Yes. This is State's exhibit number 3,
4 which is marked as August 24th, 2011 at 18:15 hours, JJ to
5 Jobo.

6 (Whereupon the CD was played for the jury)

7 (Whereupon the CD was ended)

8 **JUROR:** Could you just play the last half again?

9 **MR. STEINBERG:** Your Honor, a juror has asked me to
10 play the last half again.

11 **THE COURT:** Okay.

12 **MR. STEINBERG:** Playing it at the halfway mark.

13 (Whereupon the CD was played for the jury)

14 (Whereupon the CD was ended)

15 **MR. STEINBERG:** Playing State's exhibit number 39,
16 September 3rd, 2011, 17:55 hours, Jobo to Courtney.

17 (Whereupon the CD was played for the jury)

18 (Whereupon the CD was ended)

19 **JUROR:** What was the date on that one?

20 **MR. STEINBERG:** Reading it again, this is September
21 3rd, 2011, 17:55 hours, Jobo to Courtney, State's exhibit
22 number 39.

23 Putting in State's exhibit number 4, September 3rd,
24 2011, 19:25 hours, number 2, JJ to Christina.

25 (Whereupon the CD was played for the jury)

1 (Whereupon the CD was ended)

2 **JUROR:** Can you play that again?

3 **MR. STEINBERG:** Juror's asking to play this again.

4 **THE COURT:** All right.

5 (Whereupon the CD was played for the jury)

6 (Whereupon the CD was ended)

7 **MR. STEINBERG:** Playing State's exhibit number 3,
8 September 3rd, 2011, 19:25 hours, number 1, JJ to Christina.

9 (Whereupon the CD was played for the jury)

10 (Whereupon the CD was ended)

11 **MR. STEINBERG:** Putting in State's exhibit 40,
12 September 3rd, 2011, 23:50 hours, Jobo to Courtney and
13 JoAnn.

14 **MADAME FOREMAN:** What's the date again?

15 **MR. STEINBERG:** September 3rd, 2011, 23:50 hours.

16 (Whereupon the CD was played for the jury)

17 (Whereupon the CD was ended)

18 **MR. STEINBERG:** Your Honor, I'm stopping this. I
19 believe in trial we had it sped up to the 3:30 mark.

20 **THE COURT:** Okay. So that's -- that's it. Okay.

21 (Whereupon the CD was played for the jury)

22 (Whereupon the CD was ended)

23 **MR. STEINBERG:** Your Honor, that's the last disk. I
24 think Ms. Gorton would like to approach.

25 **MS. GORTON:** Yes, Judge, there's additional ---

1 **THE COURT:** There's ...

2 **MS. GORTON:** Additional calls that they listened to
3 during the trial.

4 **THE COURT:** All right. Where is that?

5 **MS. GORTON:** It's on the ---

6 **THE COURT:** This is -- is this the one that only part
7 was ---

8 **MS. GORTON:** Yes, Your Honor, that we had to ---

9 **MR. STEINBERG:** But we need to ask if they want to play
10 it first.

11 **MS. GORTON:** Was the request for all calls?

12 **MR. STEINBERG:** Your Honor, I think, should ask the
13 jury -- Ms. Gorton.

14 (Whereupon a bench conference was held off the record
15 in the presence of the jury, but out of their hearing)

16 **THE COURT:** Okay. Ladies and gentlemen, is there
17 anything else now that you want to hear?

18 (Pause)

19 **MADAME FOREMAN:** No, I think that's it.

20 **THE COURT:** Is that it?

21 (Whereupon the attorneys were still at the bench
22 speaking to the Judge off the record, in the presence of the
23 jury, but out of their hearing)

24 **THE COURT:** Go back and begin your deliberations.

25 **JUROR:** Well, is there more than one of those disks

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1 that was played at trial?

2 THE COURT: All right.

3 MADAME FOREMAN: Yeah, we had brought them all out.

4 JUROR: No, I mean, out of the four that we have, that
5 one part that was stopped and fast-forwarded, did we hear
6 something in the trial?

7 (Whereupon a bench conference was held off the record
8 in the presence of the jury, but out of their hearing)

9 THE COURT: All right. Take the jury out, please. Let
10 me resolve this.

11 (Whereupon the jury exited the courtroom at 3:47 pm)

12 THE COURT: All right. Tell me what it is that's in
13 evidence that they did not hear.

14 MS. GORTON: They did hear it, Your Honor, but we
15 didn't send it back to them and ---

16 THE COURT: All right. I'm sorry, ---

17 MS. GORTON: --- they don't know ---

18 THE COURT: --- I misspoke. Tell me what it is that
19 they heard that I have not yet played at their request.

20 MS. GORTON: Judge, it's the 8/19 phone call, the one
21 that I argued that we needed to hear more than was on Mr.
22 Steinberg's redacted version.

23 THE COURT: All right.

24 MS. GORTON: And you ruled that it ---

25 THE COURT: Can you set up and play what was actually

1 put into the record?

2 **MR. STEINBERG:** I can get very close to it, Judge. I
3 would ask that the jury be asked -- they only asked to hear
4 certain phone calls. They should be informed there was one
5 disk that was not sent back to them, August 19th, from JJ to
6 Jobo. We can play that, but they have not asked to play
7 that disk. I think they ---

8 **THE COURT:** So they didn't hear that?

9 **MR. STEINBERG:** They heard it during the trial proffer.
10 They have not asked to listen to it ---

11 **THE COURT:** Well, I don't care about that. I'm going
12 to play that. So ---

13 **MR. STEINBERG:** Yes, sir.

14 (Whereupon the attorneys were conferring off the
15 record)

16 **THE COURT:** All right. So how long is this?

17 **MR. STEINBERG:** It's two separate sections. They're
18 both about a minute or two each.

19 **THE COURT:** Okay. And you can play only that?

20 **MR. STEINBERG:** Yes, sir.

21 **MS. GORTON:** Well, no, there's a second call as well,
22 8/19 at 15:54.

23 (Whereupon the attorneys were conferring off the
24 record)

25 **THE COURT:** All right. You got it?

1 **MR. STEINBERG:** Yes, sir.

2 **THE COURT:** All right. Bring them back.

3 (Whereupon the jury entered the courtroom at 3:53 pm)

4 **THE COURT:** Okay. Now, ladies and gentlemen, I'm at
5 this time playing you a portion of another tape. I excluded
6 the tape that you're hearing now -- only what you're going
7 to hear is what I admitted into evidence. The balance of
8 the tape, I've ruled out. So this is what was made a part
9 of the record that you heard. All right.

10 **MR. STEINBERG:** Playing the August 19th, 2011 phone
11 call from the -- JJ to Jobo, starting 19:42 hours at the
12 thirty-nine percent mark. This is State's exhibit 48.

13 (Whereupon the CD was played for the jury)

14 (Whereupon the CD was ended)

15 **MR. STEINBERG:** Stopping at the fifty-two percent mark,
16 moving to the eighty-four percent mark.

17 (Whereupon the CD was played for the jury)

18 (Whereupon the CD was ended)

19 **MR. STEINBERG:** Starting at the eighty-two percent
20 mark.

21 (Whereupon the CD was played for the jury)

22 **MR. STEINBERG:** Stopping at the ninety-five percent
23 mark.

24 (Whereupon the CD was ended)

25 **THE COURT:** All right. Is that it?

1 **MR. STEINBERG:** Yes, sir, Your Honor.

2 **THE COURT:** All right. Ladies and gentlemen, please
3 retire and continue with your deliberations.

4 (Whereupon the jury exited the courtroom at 3:58 pm)

5 **THE COURT:** All right. Be at ease.

6 (Whereupon court was in recess at 3:58 pm)

7 (Whereupon court resumed at 4:05 pm)

8 **THE COURT:** There's another question from the jury.

9 Can we have JJ's first and second statements? Those are not
10 in evidence. So I can't give them to them. All right.

11 Bring the jury.

12 (Whereupon the jury entered the courtroom at 4:07 pm)

13 **THE COURT:** Madame Foreman, you have asked can we have
14 JJ's first and second statements. Those statements are not
15 a part of the exhibits in this case.

16 **MADAME FOREMAN:** Okay.

17 **THE COURT:** And, therefore, I'm sorry, but I can't send
18 those in to you at this time.

19 **MADAME FOREMAN:** Okay. We couldn't remember if it was

20 ---

21 **THE COURT:** So please retire and continue with your
22 deliberation.

23 **MADAME FOREMAN:** Okay.

24 **THE COURT:** Thank you.

25 (Whereupon the jury exited the courtroom at 4:08 pm)

VERDICT OF THE JURY

649

1 (Whereupon Court's exhibit 5 was marked)

2 (Whereupon court was in recess at 4:08 pm)

3 (Whereupon court resumed at 5:02 pm)

4 **THE COURT:** All right. Anything before I bring the
5 jury?

6 **MR. STEINBERG:** No, sir, Your Honor.

7 **MS. GORTON:** No, sir.

8 **THE COURT:** For the benefit of everyone in the
9 audience, I need to tell you that, of course, we don't know
10 what this verdict is, but I need for you to understand that
11 regardless of the verdict, I will not permit or condone any
12 displays of emotion, no crying, no yelling, no clapping,
13 nothing of that nature.

14 And should there be any, it will constitute contempt of
15 court. And I will punish accordingly, which may very well
16 be serving time in jail. Now, does anyone not understand
17 what I just said? If so, stand up.

18 (No response)

19 **THE COURT:** All right. Bring the jury.

20 (Whereupon the jury entered the courtroom at 5:04 pm)

21 **THE COURT:** Madame Foreman, if you've reached a
22 verdict, would you hand it to the bailiff, please, ma'am.

23 (Pause)

24 **THE COURT:** Okay. Would you please publish the
25 verdict.

VERDICT OF THE JURY

650

1 **MADAME CLERK:** Yes, sir, Your Honor. Your Honor, this
2 is case number 2013-GS-23-094A, William Joe Phillips,
3 indictment for accessory before the fact. We, the jury,
4 find the Defendant guilty, signed foreperson, Elaine Trakas.
5 If this is your verdict, please raise your right hand.

6 (Whereupon all jurors raised their right hand)

7 **THE COURT:** Anything further from the jury, counsel?

8 **MR. STEINBERG:** We thank the jury for their service.

9 **THE COURT:** Thank you, ladies and gentlemen, for your
10 service on this case. And thank you for your service this
11 week. Insofar as you're concerned, you're free. You don't
12 have to come back tomorrow or Friday.

13 So let me take this opportunity to thank you for coming
14 and serving. I want you to know that I am well aware of the
15 fact that jury service is a burden to you. I know that it's
16 difficult for you to take time off from your jobs and
17 families and spend it with us on jury duty.

18 But I do hope you understand the importance of being
19 here this week. For without your presence we simply could
20 not get off from our docket the cases that we do.

21 So thank you so much for your service. Do I have any
22 question that I can try to answer for you before letting you
23 go?

24 (No response)

25 **THE COURT:** All right. Do they need to report

SENTENCE OF THE COURT

651

1 downstairs?

2 **THE BAILIFF:** Do you have the statements?

3 **MADAME CLERK:** I don't have the statements.

4 **THE COURT:** All right. What I need you to do right now
5 is to report downstairs to the jury assembly room and
6 they'll have a slip to give you for your service. Thank you
7 so much.

8 **THE BAILIFF:** We still have the alternate next door.

9 **THE COURT:** Yeah, I'm -- bring him in too.

10 **THE BAILIFF:** Yes, sir.

11 (Whereupon the jury exited the courtroom at 5:07 pm)

12 **THE COURT:** All right. Any motions?

13 **MS. GORTON:** Judge, move for a verdict not to -- an
14 acquittal notwithstanding the verdict. Again, it appeared
15 to be relied upon JJ Allen's statements, which were not
16 credible.

17 **THE COURT:** All right. I'm sorry, I could not grant
18 that motion.

19 **MR. STEINBERG:** Ready ---

20 **THE COURT:** Yeah.

21 **MR. STEINBERG:** --- for sentencing?

22 **THE COURT:** All right. Does he have a prior criminal
23 record?

24 **MR. STEINBERG:** Yes, sir. He has a simple assault and
25 battery from '97, another assault and battery from '98, a

SENTENCE OF THE COURT

652

1 receiving stolen goods from 2002, a contributing to the
2 delinquency of a minor in 2002, appears to be an unlawful
3 carrying of a pistol in 2002, also in that same year,
4 driving under suspension, in 2005 he has a DUS, second, and
5 a failure to stop for blue lights, appears to be another
6 unlawful weapons charge, and he has a failure to comply with
7 HIP in 2006, a grand larceny in 2006, a petty larceny in
8 2007, distribution of meth in 2009.

9 He's currently on probation for that. He has a
10 probation violation hearing coming up on that. He has a
11 cock fighting conviction from 2010. In addition to the 2009
12 distribution of meth, he has a pending distribution of meth
13 from when he was out on bond as of last month.

14 Your Honor, we do have the victim's family here. I'm
15 not sure if they wish to speak. They do not want to speak.
16 They have been here.

17 The only thing I want to inform the Court, I think
18 there's enough for a life sentence. But I also want to tell
19 the Court, Your Honor's heard the jail phone calls, I've
20 made opposing counsel aware that I was going to bring this
21 up in sentencing, but throughout the jailhouse phone calls
22 we hear the Defendant making mention of drug deals, using
23 code, it's very easy to break code. He's talking about
24 fraud, everything from foodstamp fraud to other frauds. I
25 would ask Your Honor to consider all that when you fashion

SENTENCE OF THE COURT

653

1 on this:

2 The one other thing I want to say, Your Honor, I've
3 interviewed over a hundred people in Marietta. And
4 everybody says the same thing about Charlie Roberts. He's
5 the best person in Marietta. Not just a good person, he was
6 the best person in Marietta. And that's what was taken away
7 from Marietta in this case.

8 **THE COURT:** Okay. Ms. Gorton.

9 **MS. GORTON:** Judge, I would ask you to consider the
10 minimum sentence. As you are well aware, the trigger-man,
11 the one who actually took Charlie Roberts' life, is getting
12 a recommendation of thirty years.

13 And you heard Mr. Phillips' reaction through JJ,
14 breaking down crying, being sick to his stomach. I think he
15 immediately began to feel remorse. And we would ask for a
16 minimum sentence accordingly.

17 **THE COURT:** Okay. Now, you didn't testify, Mr.
18 Phillips, but you have a perfect right to address the Court
19 now with respect to your sentence. Is there anything you'd
20 like to say before I sentence you?

21 **MR. PHILLIPS:** No, sir.

22 **MS. GORTON:** Judge, probation is here to address that
23 violation.

24 (Pause)

25 **THE COURT:** All right. Mr. Phillips, the sentence of

SENTENCE OF THE COURT

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1 the Court is you be committed to the Department of
2 Corrections for life.

3 **PROBATION AGENT:** Terminate the probation, Your Honor?
4 I can terminate, revoke or whatever you want to do.

5 **THE COURT:** Yeah, do terminate it, whatever you want to
6 do.

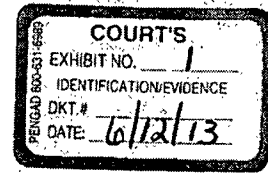
7 **PROBATION AGENT:** We'll just terminate it.

8 **THE COURT:** Okay.

9 (Hearing ended at 5:12 pm)

10 (End of Volume Three of Three)

11 (End of requested transcript of record)



ACCESSORY BEFORE THE FACT

AN ACCESSORY BEFORE THE FACT IS ONE WHO, WHILE BEING ABSENT AT THE TIME A CRIME IS ACTUALLY COMMITTED, DID, NEVERTHELESS, PROCURE, COUNSEL OR COMMAND SOMEONE ELSE TO COMMIT THE CRIME.

THE DEFENDANT IN THIS CASE IS NOT CHARGED WITH MURDER. HE IS CHARGED WITH BEING AN ACCESSORY BEFORE THE FACT OF MURDER. THEREFORE, THE EVIDENCE MUST SATISFY YOU, BEYOND A REASONABLE DOUBT, THAT THIS DEFENDANT, COUNSELED, HIRED OR OTHERWISE PROCURED _____ TO COMMIT THE MURDER. MURDER IS THE KILLING OF ANY PERSON WITH MALICE AFORETHOUGHT, EITHER EXPRESS OR IMPLIED. ~~AS A NECESSARY ELEMENT OF MURDER, IT MUST HAVE BEEN COMMITTED WITHOUT JUST CAUSE OR EXCUSE.~~

IN OTHER WORDS, AN ACCESSORY BEFORE THE FACT IS ONE WHO AIDS OR ABETS THE PRINCIPAL ALLEGED TO HAVE COMMITTED THE OFFENSE, BUT WHO WAS NOT PRESENT AT ITS COMMISSION. THE DEFENDANT CANNOT BE CONVICTED UNLESS YOU FIND THAT _____ ACTUALLY COMMITTED THE MURDER. HOWEVER, IT IS NOT NECESSARY THAT HE HAS BEEN CONVICTED OF THE CRIME, ONLY THAT HE COMMITTED IT.

~~SO, FOR THE DEFENDANT TO BE CONVICTED IN THIS CASE, THE STATE MUST PROVE THREE THINGS:~~

- ~~(1) THE DEFENDANT EITHER PROCURED, COUNSELED, HIRED OR COMMANDED SOME OTHER PERSON TO COMMIT CRIME, IN THIS CASE, MURDER.~~
- ~~(2) THE DEFENDANT WAS NOT PRESENT WHEN IT WAS COMMITTED, AND~~
- ~~(3) THAT _____ COMMITTED THE MURDER.~~

next pages

Defendant's proposed jury instructions for
ACCESSORY BEFORE THE FACT TO MURDER
(As opposed to Accessory Before the Fact)

TO BE GUILTY OF ACCESSORY BEFORE THE FACT, THE DEFENDANT MUST
HAVE ACTED IN THE PROSCRIBED MANNER PRIOR TO THE COMMISSION
OF THE MURDER

Defendant's Proposed Jury Instruction
Accessory Before the Fact
(Specific Criminal Intent)

IN ORDER TO ESTABLISH CRIMINAL LIABILITY FOR ACCESSORY BEFORE
THE FACT TO MURDER, THE DEFENDANT'S SPECIFIC INTENT THAT A
MURDER BE COMMITTED BY ANOTHER MUST BE PROVEN BEYOND A
REASONABLE DOUBT

Defendant's Proposed Jury Instruction
Accessory Before the Fact to Murder
Elements

SO, FOR THE DEFENDANT TO BE CONVICTED IN THIS CASE< THE STATE
MUST PROVE ~~THREE~~ ^{FIVE} THINGS:

- 1) THE DEFENDANT EITHER PROCURED, COUNSELED HIRED OR
COMMANDED SOME OTHER PERSON TO COMMIT A CRIME, IN THIS
CASE MURDER;
- 2) THAT THE DEFENDANT DID SO PRIOR TO THE MURDER BEING
COMMITTED;
- 3) THAT THE DEFENDANT DID SO WITH THE SPECIFIC INTENT THAT A
MURDER BE COMMITTED;
- 4) THAT THE DEFENDANT WAS NOT PRESENT WHEN IT WAS
COMMITTED;
- 5) THAT JERRY ALLEN COMMITTED THE MURDER

THE STATE OF SOUTH CAROLINA

In the Appellate Court

APPEAL FROM GREENVILLE COUNTY

Court of General Sessions

C. Victor Pyle Jr., Circuit Court Judge

Case No(s): 2013 GS 23 00094A

The State, Respondent.

v.

William Joseph Phillips, Appellant.

FILED IN THE
APPELLATE COURT
2013 JUN 17 AM 9:10

NOTICE OF APPEAL

William Joseph Phillips appeals his conviction and sentence in this case. The verdict was rendered on June 12, 2013 and sentence was imposed by the Honorable C. Victor Pyle Jr. on that same day.

Date: 6-17-13

Cassandra Gorton, Esq. #100096
1754 Woodruff Rd #144
Greenville, SC 29607
SCCID Attorney for Appellant

Other Counsel of Record:
Howard Steinberg, Esq. Attorney for Respondent

RECEIVED
JUN 20 2013
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Appellate Court

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v.

William Joseph Phillips, Appellant.

FILED
2013 JUN 17 AM 9:10
CLERK OF COURT

PROOF OF SERVICE

I hereby certify that I have served the Notice of Appeal on the below listed respondents by

Hand delivery or by depositing a copy of it in the United States Mail, postage prepaid, on June __, 2013, addressed to:

Howard Steinberg, Esq. Office of the Solicitor, 305 E. North Street Greenville, SC 29601

Alan Wilson, Esq. Office of the Attorney General P.O. Box 11549 Columbia, SC 29211

Date: 6-17-13

Cassandra Gorton

Cassandra Gorton, Esq.

1754 Woodruff Rd #144

Greenville, SC 29607

SCCID Attorney for Appellant

RECEIVED

JUN 20 2013

SC Court of Appeals

WITNESSES

Henry Hammett
Greenville County Sheriffs Office
8/28/2011

CJM

DOCKET NO. 2013-GS-23-
HLS

0800074A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

January TERM 2013

THE STATE

vs.

WILLIAM JOE PHILLIPS

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

DOB: 12-19-1979 W/M SSN: 248-45-1730

ACTION OF GRAND JURY
TRUE BILL

[Signature]

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury

Date: June 12, 2013

Indictment for

6002

ACCESSORY BEFORE THE FACT

VIOLATION § 16-01-0040, § 16-01-0050,
and § 16-03-0010

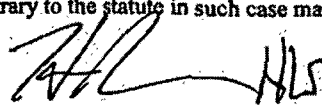
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ACCESSORY BEFORE THE FACT

At a Court of General Sessions, convened on **JAN 08 2013** the Grand Jurors of Greenville
County present upon their oath:

That WILLIAM JOE PHILLIPS did in Greenville County, on or about the 8th day of July 2011, aid, hire,
counsel, or procure the commission of a felony, to wit: MURDER OF CHARLES ROBERTS by JERRY
LEONARD ALLEN, JR. This is in violation of §16-1-40 and §16-1-50 and §16-3-10 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 case made and provided.


SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 28th, 2014



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

RECEIVED

JUL 28 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

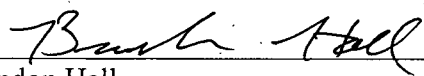
WILLIAM JOSEPH PHILLIPS,

APPELLANT

APPELLATE CASE NO. 2013-001339

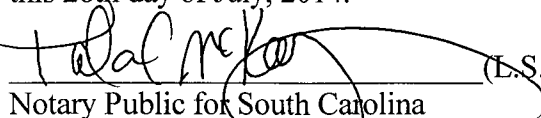
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Kaycie S. Timmons, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 28th day of July, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 28th day of July, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.