

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Honorable John C. Hayes, Circuit Court Judge

WILLIAM JOE PHILLIPS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000002

APPENDIX

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INDEX

INDEX.....	i
TRIAL TRANSCRIPT DATED JUNE 10, 2013 VOL. 1.....	1
TRIAL TRANSCRIPT DATED JUNE 10, 2013 VOL. 2.....	191
TRIAL TRANSCRIPT DATED JUNE 10, 2013 VOL. 3.....	465
AFFIRMED OPINION NO. 2015-UP-100	656
APPLICATION FOR POST-CONVICTION RELIEF FILED AUGUST 7, 2015	660
AMENDMENTS TO POST-CONVICTION RELIEF APPLICATIONS FILED OCTOBER 13, 2016.....	668
RETURN AND MOTION TO DISMISS DATED JANUARY 29, 2016.....	671
AMENDED RETURN DATED AUGUST 8, 2016.....	675
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED DECEMBER 6, 2016	681
ORDER FILED DECEMBER 21, 2016.....	708
INDICTMENT.....	714

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

501

1 to prior bad acts.

2 **THE COURT:** Yeah, let's move on.

3 Q. Do you have any prior convictions for felonies or ---

4 **MR. STEINBERG:** Your Honor, ---

5 **THE COURT:** I sustain the objection. Instruct the jury
6 to disregard that. If you can rephrase it, but not that
7 question.

8 **MS. GORTON:** Just a moment, Your Honor.

9 (Pause)

10 **MS. GORTON:** Just a moment, Your Honor.

11 **THE COURT:** All right. Take the jury out while ...

12 (Whereupon the jury exited the courtroom at 9:47 am)

13 **THE COURT:** All right. Now if you've got a record
14 there for offenses for which he can be impeached, that's
15 fine, but you don't ask him do you have felonies. If you
16 can ask it properly, you can do it, okay?

17 **MS. GORTON:** All right. My apologies, Your Honor.

18 **THE COURT:** All right.

19 **MS. GORTON:** I was following Florida rules, not local
20 rules. And I am sorry for that.

21 **THE COURT:** All right.

22 **MS. GORTON:** There was no deliberate intention. I
23 don't believe that there are. I'm looking at his priors. I
24 don't think there is any. I'm seeing a simple assault on a
25 teacher, it looks like. And I don't have access to his

1 juvenile record. My understanding is is that juvenile
2 records do come in if it's within ten years. Is that
3 incorrect?

4 **THE COURT:** I'm not sure about that. You'll have to
5 ---

6 **MS. GORTON:** I have reason to believe based on that
7 mental exam ---

8 **THE COURT:** I'm not familiar with the juvenile record.

9 **MR. STEINBERG:** I'm not familiar either, Judge.

10 **THE COURT:** I mean, if it was ---

11 **MR. STEINBERG:** I would not have access to it to even
12 give it to opposing counsel. It's a Florida record, pardon
13 me, Georgia record.

14 **MS. GORTON:** Can we just inquire and that way the
15 record will reflect ---

16 **THE COURT:** Go ahead and do that.

17 Q. Did you have any juvenile priors?

18 A. Yes. I was just on probation, informal probation for
19 running away.

20 Q. Okay. Did you ---

21 **MS. GORTON:** And again, the jury's not here. So I'm
22 trying to explore this fully.

23 Q. Did you tell the examiner upon your mental exam that
24 you were on probation for hitting a teacher and that you'd
25 been kicked out of three different schools for hitting

1 teachers?

2 A. No. I actually violated it by hitting a teacher.

3 Q. Did you get charged with hitting a teacher?

4 A. No, ma'am, I didn't.

5 Q. And -- okay. Are there any other juvenile offenses for
6 which you were found delinquent?

7 A. No, ma'am.

8 Q. So the only one was running away?

9 A. Yes, ma'am.

10 Q. What did Georgia call that?

11 A. I don't know.

12 **MS. GORTON:** Judge, as long as the jury's out can we go
13 ahead and do the proffer on the mental health?

14 **THE COURT:** All right.

15 **MS. GORTON:** Judge, I would first lay the record that
16 Mr. Steinberg and I both approached you before trial began
17 and indicated to you that Mr. Steinberg had agreed to waive
18 any hearsay objections as to the examination report. So any
19 objections that he's making are not based on hearsay, but
20 based on the content of the report.

21 And this is important because of the case law that I
22 have regarding this subject. First, I have Sellers. And
23 again, Mr. Steinberg and I have met frequently and often.
24 We both were aware that this was going to be an issue, but
25 we need to preserve the record.

1 In the Sellers case, Jane Sellers versus South
2 Carolina, 607 SE 82. It's a South Carolina Supreme Court,
3 2005. What that case was was where the -- where the
4 defendant challenged the presentation of a witness based on
5 mental illness. I believe it was based on schizophrenia,
6 which according to this report was Mr. Allen's prior
7 diagnosis. He's been hospitalized.

8 The jury has heard that he's been hospitalized at least
9 three times. And that's just up here. This doesn't count
10 Georgia. That he has been hospitalized twice in Patrick B.
11 Harris and once in Marshall Pickens or the other way around.
12 A. The other way around.

13 **MS. GORTON:** The other way around. So three
14 hospitalizations just since he's been in South Carolina,
15 which he has testified was just two years prior to his
16 incarceration. So in two years time he's been hospitalized
17 three times.

18 The mental exam that he was subjected to pulled those
19 records, the examiner pulled those records and noted that
20 his diagnosis had been schizophrenia. And further indicated
21 that he had reported hallucinations and went into specific
22 instances of conduct.

23 At the conclusion of this examination, based on his
24 records, based on a review of the jail records as well,
25 based on a review of those hospitalizations and the

1 complaints and observations made they concluded that Mr.
2 Allen was not actually schizophrenic, but was antisocial
3 personality disorder. And they gave a number of specific
4 instances as to why they were drawing that conclusion.

5 So let me go back to the case law. We've got Sellers
6 where the defendant was challenging the presentation of a
7 witness based on mental illness saying they weren't
8 competent to sit as a witness. The case law on that is
9 clear and that is that it goes to the weight of the
10 evidence. It doesn't go to exclude the witness, but it goes
11 to the weight of the evidence.

12 And what the South Carolina Supreme Court said in
13 Sellers is that a witness' mental illness is not enough to
14 rebut the presumption set forth in rule 601. A witness'
15 mental capacity could, however, affect the credibility of
16 that witness' testimony.

17 At trial counsel attacked the credibility of the
18 witness on several grounds, including mental illness. Trial
19 counsel cross examined Louie at length about his mental
20 illness. The jury was fully aware of the fact that Louie
21 was schizophrenic and, therefore, the jury could have
22 decided to believe all or none of his testimony.

23 Now, Your Honor, this isn't a hypothetical situation.
24 This is a situation where ---

25 **THE COURT:** Well, hold on just a minute. What's your

1 reply to that, solicitor?

2 **MR. STEINBERG:** Thank you, Your Honor. Sellers is one
3 point. There are so many cases in the State's favor where
4 it says courts have a right to stop cumulative evidence,
5 evidence that's gone too far afield. The Holmes decision,
6 Dickerson, Bigsby, all of these cases deal with we're not
7 going to make a whole separate trial of this matter.

8 Counsel raised an issue, said the jury has to be fully
9 aware. The jury is fully aware that he has mental problems,
10 he has been treated. And I've been allowing a little bit
11 more than, perhaps, I -- I should have made an objection
12 earlier. I just don't want this to go into issues of did he
13 ever kick a cat in Georgia, did he ever do this ---

14 **THE COURT:** All right. I'm -- but why does she not
15 have a right to discover the extent of that mental illness,
16 schizophrenia or the personality disorder? I agree with you
17 that all the details, kicking cats and all that, but the
18 conclusion that was made that he had a mental illness and
19 what that was.

20 **MR. STEINBERG:** Counsel has been going a little bit too
21 far. She's been saying other issues I just had to put a
22 stop to, the rest of the mental health thing.

23 I did want to put one thing on the record. Myself and
24 opposing counsel have been doing our best to limit improper
25 things. I have told every witness don't bring up Mr. Jobo's

1 prior criminal acts. We've been very clear about this. And
2 I'm trying to save the State some money.

3 My agreement as to hearsay is only that if Your Honor
4 allows the report in, I'm not going to make her bring in a
5 psychiatrist from Columbia. It's if you allow it in, the
6 report can come in. I don't think the report should come in
7 because the report has so much hearsay about kicking a cat,
8 that kind of thing, prior bad acts like that. It just is
9 getting a little bit too far afield, Judge. If she wants to
10 go over the actual titles of his -- of his diagnoses, that's
11 fine.

12 **MS. GORTON:** Your Honor, I think that in this
13 particular case where we have statement number one where he
14 says I flipped out and I did this because I flipped out that
15 I have to be able at a minimum to go into the fact that he
16 suffers from hallucinations and that he has a history that
17 was referred to by this examiner of flipping out on people.
18 He has a history of that. And there are no less than four
19 separate incidences.

20 Furthermore, in this report he specifically tells them
21 about an instance where he got angry at his sister and
22 threatened to kill her dog and eat it.

23 **THE COURT:** I'm not going to allow ---

24 **MS. GORTON:** Well, ---

25 **THE COURT:** Now listen, I'm going to make a ruling.

1 I'm going to let you put in the record that he has a mental
2 illness, what the conclusion is of that mental illness, but
3 not any details about that, okay?

4 MS. GORTON: I still need to make my proffer. And I'm
5 not arguing with you.

6 THE COURT: All right.

7 MS. GORTON: I'm really not. But I'm trying to make
8 all the points that I need to make to make this proffer.

9 We have this statement number one saying he freaked
10 out. The key issue in this case is whether or not Joe
11 Phillips told him to go do this. He suffers from
12 hallucinations. That is key.

13 Now, once you say that ---

14 THE COURT: You've already asked him that, haven't you,
15 that he suffers from hallucinations?

16 MS. GORTON: You sustained the objection, Your Honor.
17 You didn't allow me to ---

18 MR. STEINBERG: Yes, sir.

19 MS. GORTON: --- get that in.

20 THE COURT: All right. I'll reverse myself and allow
21 you ---

22 MR. STEINBERG: Your Honor, you're going to allow as to
23 the -- hallucination is not a diagnosis. Hallucination is a
24 symptom. Are you going to allow the hallucination to come
25 in?

1 **THE COURT:** Yeah, I'm going to allow that,
2 hallucinations. I'll allow you to ask him that. Okay.

3 **MS. GORTON:** Okay.

4 **THE COURT:** Move on.

5 **MS. GORTON:** Now, and in the spirit of what we agreed
6 to and that is that Mr. Steinberg was not going to make me
7 bring in the expert. Once we get to this report and we say
8 that it's relevant, which clearly under Sellers it is
9 relevant, once we say it's relevant, under rule 703, facts
10 used by an examiner as a basis for their opinion, are
11 admissible.

12 And what this is is State v. Slocum, 336 South Carolina
13 619. This is Court of Appeals, 1999. And in this case they
14 were talking about your hot button, polygraphs. And what
15 they said was in this report where the psychiatrist relied
16 upon the polygraph results, even the polygraph comes in.

17 So what I am arguing, for the proffer, for the record,
18 is that once we agree and it's apparent from the face of the
19 report that each of these instances were used by the
20 examiner to say I don't agree he's schizophrenic, I think
21 he's manipulating the system and that he suffers from
22 antisocial personality disorder.

23 Now, I agree there might be parts of this that need to
24 be proffered, but I think under the authority that I just
25 handed you, those specific instances, if the examiner were

1 here, I would be allowed to go into it. And if we are
2 treating this report as if the examiner is here, then these
3 specific instances come in.

4 **MR. STEINBERG:** Your Honor, again, this case law says
5 that courts are allowed and should restrict from going into
6 extraneous issues, going to misleading, potential for
7 confusion, marginally relevant, lack of probative value.
8 This document might be useful at some other type of hearing,
9 but not in a criminal trial where the other person is on
10 trial -- is actually on trial. This is too far afield.
11 This is just wrought with harm and lack of probative value.

12 **THE COURT:** Okay. I've made my ruling now. Continue
13 ---

14 **MR. STEINBERG:** Thank you, Your Honor.

15 **THE COURT:** --- your proffer.

16 **MS. GORTON:** And, Judge, so that I don't step on --
17 across anything, what was your ruling? I can bring in
18 hallucinations?

19 **THE COURT:** Yep.

20 **MS. GORTON:** And can I bring in any instances at all of
21 prior bad acts where he's flipped out on other people?
22 These were used by the examiner.

23 **THE COURT:** I'll allow that.

24 **MS. GORTON:** And, again, so that I'm clear, and I think
25 this is probably where your line is drawn, can I go into

511

1 where he had threatened his sister's -- he got angry at his
2 sister and threatened something she loved, her dog?
3 Threatened to kill something she loved, her dog.

4 In this particular case, Christina loves Charlie. And
5 he killed Charlie.

6 **THE COURT:** All right. I'll allow that one.

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

8 **THE COURT:** All right. Anything else?

9 **MS. GORTON:** No, Your Honor.

10 **THE COURT:** All right. We'll take about a five minute
11 recess. You can step down.

12 (Whereupon court was in recess at 10:02 am)

13 (Whereupon court resumed at 10:10 am)

14 **MR. STEINBERG:** Small problem, Judge.

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

16 (Whereupon the bench conference was ended)

17 **MS. GORTON:** Judge, before we -- this probably doesn't
18 -- maybe does need to be on the record. Howard and I were
19 talking. I just wanted to make sure I'm crystal clear on
20 the scope. Are you saying I cannot go into what antisocial
21 personality disorder is?

22 **THE COURT:** (Affirmative nod).

23 **MS. GORTON:** Okay. And then I'm looking at this. You
24 said yes on the sister and the dog. One of the things I had
25 asked him that Howard objected, that you sustained, also in

1 addition to the hallucinations was the fact that he said he
2 had been kept in dog cages as a child. That's actually in
3 this report. Are you saying no on that?

4 **THE COURT:** No.

5 **MS. GORTON:** It's not a huge point. I just want to
6 make sure. And I will tell you that in context of
7 threatening sister and threatening to kill her dog, in this
8 context as far as threatening to kill Charlie or killing
9 Charlie that she loved, he says, his words, not mine, I
10 mean, can't make this stuff up, that he's been having
11 flashbacks while in jail, hallucinations and obsessions with
12 eating people.

13 **THE COURT:** No, I'm not going to go ---

14 **MS. GORTON:** It is ---

15 **THE COURT:** --- into that.

16 **MS. GORTON:** --- a little bit over.

17 **MR. STEINBERG:** Thank you, Judge. And one more thing,
18 you're not trying to get in that Charlie said he's going to
19 beat, I mean, JJ says he's going to beat Charlie outside of
20 this, it's something to try to get in the fact that he
21 threatened to kill and eat his sister's dog?

22 **MS. GORTON:** I'm not even sure I'm going to put eat ---

23 **THE COURT:** No.

24 **MS. GORTON:** --- in there, but just that he got angry
25 at his sister and he threatened to kill ---

1 **THE COURT:** Kill the dog.

2 **MS. GORTON:** --- the dog that she loved.

3 **MR. STEINBERG:** But he didn't threaten to kill his
4 sister?

5 **MS. GORTON:** No.

6 **MR. STEINBERG:** Okay.

7 **MS. GORTON:** I don't think the report says that.

8 **MR. STEINBERG:** Okay. Very good. Thank you, Your
9 Honor.

10 **THE COURT:** All right. Now, Ms. Gorton, can you get
11 that person that the solicitor was talking ---

12 **MR. STEINBERG:** I'll go look for him again, Judge.

13 **MS. GORTON:** Howard, -- one more issue. Howard, on
14 this report it also talks about drug seeking behavior by him
15 at the jail, trying to get medication as reported by the
16 jail. Can I get that in?

17 **THE COURT:** No, no, no.

18 **MS. GORTON:** Okay.

19 **THE COURT:** No. Do you know the person's name?

20 **MS. GORTON:** The report?

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

22 **THE COURT:** No, I'm talking about the ---

23 **MS. GORTON:** Oh.

24 **MR. STEINBERG:** I believe his first name is Chris from
25 the jail phone calls. Actually, Mr. Phillips would know who

1 I'm talking about.

2 THE COURT: What's his name?

3 MS. GORTON: I don't know.

4 MR. PHILLIPS: Who you talking about?

5 MR. STEINBERG: The black gentleman who was with your
6 family.

7 MR. PHILLIPS: His name is Chris.

8 MR. STEINBERG: Chris?

9 MR. PHILLIPS: Yeah.

10 MR. STEINBERG: Okay. You know his last name?

11 MR. PHILLIPS: I don't know his last name. I have no
12 idea.

13 THE COURT: All right.

14 MR. STEINBERG: Deputy, he's been excluded from the
15 courtroom, actually from the courthouse.

16 (Pause)

17 MS. GORTON: This report says he has expressed vague
18 homicidal ideation. Can I get that in?

19 THE COURT: No.

20 MS. GORTON: In a homicide case, Your Honor?

21 THE COURT: No.

22 (Pause)

23 MS. GORTON: Oh, big one here. Howard, he also
24 reported a history of snorting gunpowder to make me mean and
25 use of marijuana. I'd like to get in that he reported

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

515

1 himself to this examiner that he snorts gunpowder ---

2 **THE COURT:** No.

3 **MS. GORTON:** --- for the sole purpose of making
4 himself mean.

5 **THE COURT:** No, I'm not going to go that far. Is the
6 man in the courthouse?

7 **MR. STEINBERG:** Your Honor, I think he was out taking a
8 smoke. Let me see if he's walking down the hall.

9 (Pause)

10 **MR. STEINBERG:** Your Honor, the gentleman is actually
11 outside smoking. One of the officers -- deputies is going
12 down there to tell him he can't come back in.

13 **THE COURT:** All right. Let's leave it like that and
14 see what, if anything, hopefully, doesn't happen.

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

16 **THE COURT:** Now, at noon today I promised to do a minor
17 settlement for lawyers. So I'm going to have to stop when
18 they arrive to do that. I've ordered lunch for the jury and
19 asked that it be here at noon. All right?

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

21 **THE COURT:** All right. Bring our jury.

22 (Whereupon the jury entered the courtroom at 10:19 am)

23 **THE COURT:** All right. You may proceed.

24 **Cross Examination by Ms. Gorton Continued:**

25 Q. You said yesterday when you were testifying for the

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

516

- 1 solicitor that Joe's reaction -- that you called Joe
2 immediately after you killed Charlie, is that correct?
3 A. Yes.
4 Q. And that's the first phone call you made on Charlie's
5 phone?
6 A. Yes.
7 Q. That phone call was at 10:05 am, correct?
8 A. Yes.
9 Q. And you say -- you said yesterday that when you told
10 Joe -- what was his reaction?
11 A. He was upset and sick to his stomach.
12 Q. You said he broke down crying, didn't you?
13 A. Yes.
14 Q. He was crying?
15 A. Yes.
16 Q. And he got sick to his stomach. What do you mean by
17 that?
18 A. By he couldn't believe it was done.
19 Q. Sick to your stomach, what do you mean?
20 A. That's all I know.
21 Q. Now, I asked you earlier about hallucinations, correct?
22 A. Yes.
23 Q. What was your answer?
24 A. I don't hallucinate.
25 Q. Huh?

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

517

1 A. I don't hallucinate.

2 Q. You don't hallucinate? But when you went for your
3 medical mental exam on these charges did you indicate that
4 you hallucinate?

5 A. Yes, I did.

6 Q. And, in fact, you already told us that you'd been at
7 Patrick B. Harris and Marshall Pickens and you reviewed this
8 report with your attorney, correct?

9 A. Yes.

10 Q. And the examiner in this report noted your records from
11 Patrick B. Harris and stated HPH records note a history of
12 auditory and visual hallucinations, is that correct?

13 A. Yes.

14 Q. Also said explosive and impulsive behavior, is that
15 correct?

16 A. Yes.

17 Q. And when this examiner asked you about these
18 hallucinations what did you say?

19 A. I told her exactly what -- I told her exactly what you
20 said on the report.

21 Q. Well, that's what the hospital said. That's what the
22 hospital records said about your prior hospitalization.
23 What did you tell this examiner?

24 A. I told them that I was having problems like I was
25 having problems sleeping and I was -- I told them that I

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

518

1 hear stuff. And I told them that I was seeing stuff, but
2 that was a lie.

3 Q. When asked about psychotic symptoms, example, hearing
4 voices, delusions, Mr. Allen reported visual and auditory
5 hallucinations in the context of excessive drug use and did
6 not endorse -- experience psychotic symptoms when sober, is
7 that correct?

8 A. Yes, ma'am.

9 Q. Now, this report also talks about you having --
10 reporting to the jail you were having flashbacks, is that
11 correct?

12 A. Yes, ma'am.

13 Q. Flashbacks to what?

14 A. To what I did.

15 Q. And the jail detention records indicate that you
16 continued to report hallucinations while you were in jail,
17 is that correct?

18 A. Yes, ma'am.

19 Q. Now, you weren't on drugs when you were in the jail,
20 were you?

21 A. No.

22 Q. But throughout your stay, up until recently, you were
23 reporting hallucinations?

24 A. Yes, ma'am.

25 Q. You were doing that why?

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

519

1 A. To be in the shoe, to not be around people.

2 Q. To get what you wanted?

3 A. No, to be in the shoe, to not be around people.

4 Q. Now, it does talk about this explosive and impulsive
5 behavior. And it talks about these prior episodes where you
6 have snapped. In the ninth grade did you snap?

7 A. Yes, I did.

8 Q. And that was in an alternative school, right?

9 A. Yes, it is.

10 Q. Prior to the alternative school you were in a private
11 school. Did you snap there?

12 A. No, I didn't.

13 Q. You didn't hit anyone there?

14 A. No, I didn't.

15 **MR. STEINBERG:** Your Honor, I have to object to these
16 new issues coming up, ninth grade cases.

17 **THE COURT:** Move on, please.

18 Q. This report also indicates that at one point you got
19 mad at your sister and threatened to kill something she
20 loved, is that correct?

21 A. Yes, it is. But you're talking about a totally
22 different sister.

23 Q. Okay. But you did get mad at your sister?

24 A. Yes, I did.

25 Q. And you threatened to kill something she loved?

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

520

- 1 A. Yes, I did.
- 2 Q. That was her dog?
- 3 A. Yes, I did.
- 4 Q. And Christina loved Charlie?
- 5 A. It was not Christina. That was not her dog.
- 6 Q. Did Christina love Charlie?
- 7 A. Yes, she did.
- 8 Q. Did you know she loved Charlie?
- 9 A. Yes, I did.
- 10 Q. And at the end of this report the examiner concludes
- 11 that you suffer from antisocial personality disorder,
- 12 correct?
- 13 A. Yes, ma'am.
- 14 Q. On 8/21 you make another call to JoAnn's house and you
- 15 talk to Snuffy, correct?
- 16 A. Yes, ma'am.
- 17 Q. And you tell him you're there to make sure somebody who
- 18 was innocent stayed out of jail?
- 19 A. Yes, I did.
- 20 Q. And you said that came from the heart, that's family?
- 21 A. Yes, I did.
- 22 Q. And, here again, as you did on many calls did you say
- 23 repeatedly I'm going to get a job and pay everyone back?
- 24 A. Yes, I did.
- 25 Q. You said that to Joe?

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

521

1 **THE COURT:** Now, that's been asked and answered several
2 times. Please move on.

3 Q. On August 22nd did you call JoAnn and tell her you were
4 back in the shoe?

5 A. Yes, I did.

6 Q. Did you tell her that you just went off again, you
7 didn't mean to, but you just exploded again?

8 A. Yes, I did.

9 Q. And did that actually happen?

10 A. No, it didn't. I mean, it actually did over the phone,
11 yes.

12 Q. Well, did you lose your temper, explode and break
13 something?

14 A. No. I cussed out a c.o.

15 Q. Did you break sprinkler heads?

16 A. I ---

17 **MR. STEINBERG:** Your Honor, I have to object.

18 **THE COURT:** I sustain the objection.

19 Q. So you lost your temper and you exploded?

20 A. Yes, I did.

21 Q. And you found yourself back in the shoe?

22 A. Yes, I did.

23 Q. Now you tried to call JoAnn four times after that phone
24 call, is that correct?

25 A. Yes, I did.

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

522

1 Q. And you tried to call Joe twice?

2 A. Yes, I did.

3 Q. And each of these calls starting 8/22 are not answered,
4 correct?

5 A. Yes, I did.

6 Q. So then we have your second statement. And we've gone
7 over your statement. And you've agreed that some parts of
8 that is true, is that correct?

9 A. Yes.

10 Q. Did we go over your second statement?

11 A. No, we didn't.

12 Q. Then why did you say yes, we had?

13 A. I wasn't even paying attention. I have ADHD.

14 (Whereupon Ms. Gorton exhaled loudly)

15 **THE COURT:** Now don't act like that.

16 Q. Mr. Allen, this is a really important trial. And I
17 need you to ---

18 **THE COURT:** Now -- now, please, ma'am, just ask
19 questions.

20 **MS. GORTON:** Okay.

21 Q. Second statement, is it true that Frank Eppes told you
22 he was going to make sure that you never got out and that
23 you were pretty much buried?

24 A. Yes, ma'am.

25 Q. In your second statement you say that on the morning of

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

523

1 Friday, July 8th Jobo calls you on your prepaid phone.

2 A. Yes, ma'am.

3 Q. What time did that occur?

4 A. I don't know.

5 Q. Let me ask this, just so that we're clear. Was that a
6 true statement?

7 A. Yes.

8 Q. Jobo called you?

9 A. On the -- on the prepaid phone, yes.

10 Q. What time did that occur?

11 A. I don't know.

12 Q. Was it before you killed Charlie?

13 A. It was way before that.

14 Q. Way before that? Okay. Was it after two am? Was it
15 during that five am time that you all are making ---

16 A. Yes, it was.

17 Q. --- three different plans? So Joe called you?

18 A. Yes.

19 Q. And you're saying today under oath that that's true?

20 A. Yes.

21 Q. Did you say in that second statement that Joe gave you
22 close to five hundred dollars in cash over a period of time?

23 A. Yes, I did.

24 Q. Did you specify what period of time that was?

25 A. No, I didn't.

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

524

1 Q. What period of time was that?

2 A. It was just at -- over the time I've been staying
3 there.

4 Q. Over the whole year?

5 A. Yes.

6 Q. You also made a statement in your second statement that
7 isn't in your third talking about shotguns, three 12 gauge
8 shotguns, a .410 bolt action and a .22 rifle. Were there
9 those shotguns available at the house?

10 A. Yes, there was.

11 Q. And in that statement you say that you hid those
12 shotguns on Joe's property, is that correct?

13 A. Yes, I did.

14 Q. And that is true?

15 A. Yes, it is.

16 Q. It's -- you're saying today that it's true, not just
17 that you said it, but that you're saying today that actually
18 occurred?

19 A. Yes -- yes, I did, but they were not my weapons.

20 Q. I'm sorry, what?

21 A. I said yes, they did, but they were not my weapons.

22 Q. All right. On June 27th, two days after you gave this
23 second statement did you call your sister's, Christina's
24 number and say if these charges don't get dropped like they
25 are supposed to be, I'll be in here forever?

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

525

- 1 A. Yes.
- 2 Q. So you thought by giving this second statement your
- 3 charges were going to be dropped?
- 4 A. Yes, I did.
- 5 Q. The second statement, as soon as law enforcement
- 6 realized it was a lie, they confronted you?
- 7 A. Yes, they did.
- 8 Q. You didn't ask to talk to them?
- 9 A. Not the third time, no.
- 10 Q. They went to you?
- 11 A. Yes, ma'am.
- 12 Q. What did they say?
- 13 A. They just told me they didn't believe me.
- 14 Q. Did they say why?
- 15 A. They said because this story don't make sense.
- 16 Q. Did they tell you about Jimmy Poole?
- 17 A. I already -- I heard them through the wall.
- 18 Q. So you already knew about Jimmy Poole when you gave
- 19 this third statement?
- 20 A. Yes, I did. I heard them through the wall when they
- 21 were speaking to him.
- 22 Q. Explain to the jury what you mean by through the wall.
- 23 A. You can hear -- you can hear through the walls.
- 24 They're not sound -- they're not sound barrier. You can
- 25 actually hear somebody speaking out real loud through the

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

526

1 walls. And Jimmy Poole talks very loud.

2 Q. So Jimmy Poole was near where you were?

3 A. He was on -- he was in the hallway. And I was in the
4 office.

5 Q. So -- so that I understand this. Jimmy Poole is
6 talking to law enforcement?

7 A. Yes.

8 Q. And you're in jail at that time?

9 A. Yes.

10 Q. They pull you out of the jail and set you in the room
11 right next to where Jimmy Poole is?

12 A. I was in the room and Jimmy Poole was in the hallway.

13 Q. They didn't wait for Jimmy Poole to be gone to pull you
14 out?

15 A. I was already out before Jimmy Poole was there.

16 Q. What were you out for?

17 A. I was out to give that statement, the last statement.

18 Q. And while they had you out to give that statement,
19 Jimmy Poole is in the hall talking about what he has to say?

20 A. He came up and told them that he was there getting his
21 motorcycle because that's what I heard him talking about.

22 Q. And you heard the whole thing?

23 A. I heard part of it.

24 Q. So you knew what they were looking for?

25 A. Yes.

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

527

1 **MS. GORTON:** The third statement has been entered into
2 evidence.

3 **MR. STEINBERG:** (Affirmative nod).

4 **MS. GORTON:** This is an unaltered copy of the third
5 statement. Do you have any objection to me using this?

6 (Whereupon the attorneys were conferring off the
7 record)

8 **MR. STEINBERG:** No objection to using this, Your Honor.

9 Q. Have you had a chance to review your third statement to
10 law enforcement? We've already talked about that. I
11 withdraw the question. You said two weeks ago, right?

12 A. (Affirmative nod).

13 Q. You reviewed it with your lawyer, talked to Mr.
14 Steinberg and it's one hundred percent accurate line for
15 line, correct?

16 A. (Affirmative nod).

17 Q. Well, I'm going to go over that. Now, you say this all
18 started when Joe Williams, Jobo, William Joe Phillips, found
19 out that Christina Gentry, Jobo's baby's mama and my sister
20 was dating Charlie Roberts, true?

21 A. (Affirmative nod).

22 Q. Is that true today?

23 A. Yes.

24 Q. I'm not asking whether you said that ---

25 A. Yes, it was true.

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

528

1 Q. True. Jobo was mad as hell about it and he wanted to
2 put up a front about it a couple of weeks and make it seem
3 like they were best friends.

4 A. Yes.

5 Q. You're saying today that's true?

6 A. Yes.

7 Q. A couple of weeks went by and Jobo bought a .380
8 pistol. I don't know where he got it from. Did you know
9 where he got it from?

10 A. No, I didn't.

11 Q. So that statement is true?

12 A. Yes.

13 Q. Jobo kept saying that he wanted -- that he had to do
14 something to get rid of Charlie because he loved Christina
15 and he never felt that way about a woman before?

16 A. Yes.

17 Q. A few hours went by and I started thinking on it. So I
18 volunteered myself to shoot Charlie?

19 A. No. I know it's in the statement. I know it's in the
20 statement.

21 Q. So that's not true?

22 A. But it's not true, no.

23 Q. Okay. I will cross that out. That's not true.

24 A. No, it's not.

25 Q. I told Jobo I would shoot Charlie for him. And Jobo

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

529

1 said, you can't choke on me, you've got to do this, correct?

2 A. Yes.

3 Q. Is that true?

4 A. Part of it is.

5 Q. Are you saying today under oath that that's true?

6 A. Part of it is, yes.

7 Q. What part's not true?

8 A. The part where I volunteered.

9 Q. Okay.

10 A. Where I told him I would.

11 Q. That's a period. I've crossed that out. My ---

12 A. Okay.

13 Q. --- next sentence is ---

14 A. Yes, it's true.

15 Q. --- I told Jobo I would shoot Charlie for him. And

16 Jobo said, you can't choke on me, you've got to do this. Is

17 ---

18 A. Yes, it's ---

19 Q. --- that your testimony today?

20 A. Yes.

21 Q. So after a couple of days I went to Charlie's house

22 about five am in the morning and was going to break in the

23 window.

24 A. Yes.

25 Q. True?

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

530

- 1 A. Yes.
- 2 Q. Did you know the window was open?
- 3 A. It was not open.
- 4 Q. How do you know that?
- 5 A. 'Cause I actually went there and I actually did come
- 6 back. I wasn't going to do it because there was too many
- 7 houses around.
- 8 Q. Jobo drove over -- drove me over to the end of the road
- 9 Charlie lived on and let me out. And I went down and got
- 10 between a building and the house and waited. True or false?
- 11 A. That's true.
- 12 Q. I was going in the -- I was going to go in the house
- 13 and be waiting for Charlie when he came home. True or
- 14 false?
- 15 A. True.
- 16 Q. Then I was going to take, a what, and wrap it around
- 17 his neck?
- 18 A. A tie.
- 19 Q. A towel?
- 20 A. A tie.
- 21 Q. A tie?
- 22 A. Yes.
- 23 Q. Did you bring a tie?
- 24 A. No.
- 25 Q. Did you know where Charlie kept ties?

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

531

1 A. No.

2 Q. Do you know if Charlie had any ties?

3 A. No, I don't.

4 Q. So you were going to take a tie, wrap it around his
5 neck after you held him at gunpoint and break his neck. Are
6 you saying today under oath that that was a true plan?

7 A. Yes.

8 Q. All of it?

9 A. Yes.

10 Q. Then after that I choked and didn't break in the house.

11 A. True.

12 Q. True?

13 A. Yes.

14 Q. I ran back up to the end of the road and called Jobo to
15 pick me up from a little AT&T prepaid phone I had. True?

16 A. Yes.

17 Q. Now, what time is that?

18 A. That was close to daylight, in the morning time.

19 **THE COURT:** Hold on. You need a recess?

20 **JUROR:** Yes, just to clear my throat.

21 **THE COURT:** Water? Yes. Get her some water, please.

22 (Whereupon the juror exited the courtroom)

23 **THE COURT:** Hold on, hold on.

24 (Pause)

25 **THE COURT:** All right. Take the jury back to the jury

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

532

1 -- in the second jury room. I think she's having some
2 difficulties right now.

3 (Whereupon the jury exited the courtroom at 10:40 am)

4 **THE COURT:** You can step down and go back in the --
5 we'll take a recess. All right. Let's take a short recess
6 and let me see if I can find out what's going on.

7 (Whereupon court was in recess at 10:41 am)

8 (Whereupon court resumed at 10:44 am)

9 (Whereupon the jury entered the courtroom at 10:45 am)

10 **THE COURT:** Okay. You may proceed.

11 **Cross Examination by Ms. Gorton Continued:**

12 Q. All right. Where we were is you say at around five am
13 you called Jobo to pick you up from the little AT&T prepaid
14 phone you have. So your testimony here today under oath is
15 that you used your AT&T prepaid phone to call Jobo, is that
16 right?

17 A. Yes.

18 Q. And this is around five am and prior to daylight?

19 A. Yes.

20 Q. And what time did it get daylight in July -- on July
21 8th, about?

22 A. About 5:30, 6:00.

23 Q. Okay. I ran all the way up to the end of Lions Park
24 Road and there's a little dirt road in the woods right
25 there. And I waited there for Jobo to pick me up. True or

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

533

1 false?

2 A. True.

3 Q. Jobo picked me up and we left. True or false?

4 A. True.

5 Q. I went and smoked a lot of ice and did a few pills and
6 got my guts up and went back to Charlie's after daylight.

7 How long did you spend -- first of all, is that true or
8 false?

9 A. Yes, it's true.

10 Q. How long did you spend smoking ice and popping pills?

11 A. Not long.

12 Q. Well, where did you do that at?

13 A. At the house.

14 Q. I went into the woods across from the road from
15 Charlie's and waited for Charlie to pull up. Is that true
16 or false?

17 A. That's true.

18 Q. I was going to run up to him and catch him at gunpoint
19 and make him go into his house, but I never made it out of
20 the woods because I choked up again, correct?

21 A. Yes.

22 Q. Is that true or false?

23 A. That's true.

24 Q. Then I walked all the way back to Chestnut and down to
25 276 -- down 276 to Long Shoals. True or false?

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

534

1 A. True.

2 Q. How long does it take to walk all the way down back to
3 Chestnut, 276 to Long Shoals?

4 A. About ten or fifteen minutes.

5 Q. I went into the house and woke Jobo up and told him
6 that I had choked again. True or false?

7 A. True.

8 Q. What time is it by this time?

9 A. About 8:00.

10 Q. Jobo said he was real disappointed and asked me if he
11 got me alone with Charlie would I choke up, and I said, no,
12 I would shoot him. True or false?

13 A. True.

14 Q. And that's when Jobo called Charlie the same morning
15 and bullshitted with him for a minute. True or false?

16 A. True.

17 Q. Was anyone else at the house when Joe made this call?

18 A. No.

19 Q. Where did Joe keep his cell phone?

20 A. In his pocket.

21 Q. When he was sleeping?

22 A. Yes.

23 Q. This is right after -- what did he sleep in?

24 A. His pants.

25 Q. And he slept all night with the cell phone in his

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

535

1 pants?

2 A. Yes.

3 Q. This was usual?

4 A. Yes.

5 Q. This was right after Charlie got home from work because
6 I had saw Charlie pull up at his house while I was waiting
7 in the woods. Is that true or false?

8 A. That's true.

9 Q. Okay. So what time did you leave the woods?

10 A. I left the woods after 8:15.

11 Q. After 8:15?

12 A. Yes.

13 Q. Well, if you didn't leave the woods until 8:15 what
14 time did you get to your house?

15 A. I got to my house about 8:45, 9:00.

16 Q. It was about nine or 9:30 in the morning when Jobo
17 called Charlie. True or false?

18 A. True.

19 Q. Jobo asked Charlie if he could take me to get an
20 alternator for the gray van, which wasn't tore up.

21 A. True.

22 Q. Now, in your other statements you had said you were
23 familiar with the Rider property, is that correct?

24 A. No. I've been there twice.

25 Q. You've been there twice?

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

536

1 A. Yes.

2 Q. And what do you do when you're there?

3 A. We went there one time to drop somebody off and went
4 there another time to just talk to the family when it was --
5 the house was still there.

6 Q. So you knew there were car parts in that shed?

7 A. There used to be..

8 Q. You knew that, though?

9 A. Yes.

10 Q. Charlie said, yes, and he was getting ready to go to
11 bed and that -- but that he would take me. True or false?

12 A. True.

13 Q. Jobo told Charlie to give me a few minutes and that I
14 would be up at Charlie's. True or false?

15 A. True.

16 Q. Jobo took me to Lions Park Road, the road that Charlie
17 lives on, and dropped me off at the end of the street. And
18 I walked to Charlie's and he met me at the mailbox. True or
19 false?

20 A. True.

21 Q. And that's when I offered Charlie ten dollars for gas,
22 and he told me not to worry about it. True or false?

23 A. True.

24 Q. We got in Charlie's truck and I directed him where to
25 go. True or false?

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

537

1 A. True.

2 Q. I directed Charlie to drive to Carl Rider's old place
3 across from Ingles. True or false?

4 A. True.

5 Q. I told him to bust a right at Ingles and it would be
6 the first right in the curve.

7 A. Yes. True.

8 Q. Now, yesterday -- I'm going to stop here for just a
9 minute. When you were testifying for the prosecutor, he
10 talked about all three plans. Did I understand you that you
11 were the one who said to each of those two prior plans, no,
12 it ain't going to work?

13 A. Yes.

14 Q. You were worried about getting caught?

15 A. Yes.

16 Q. So now the plan is to shoot Charlie near Ingles?

17 A. Yes.

18 Q. And this is after 9:00. Ingles is open?

19 A. Yes.

20 Q. Shoppers are there?

21 A. Yes.

22 Q. Certainly within sounding distance of Ingles, isn't it?

23 A. Yes.

24 Q. And there is a neighborhood also that backs up to this
25 property, correct?

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

538

1 A. Yes.

2 Q. Pretty fancy neighborhood?

3 A. Yes.

4 Q. Going back to your statement. Me and Jobo had already
5 made a plan to get to Charlie -- to get Charlie to Carl's
6 place so I could get him alone and pop him. True or false?

7 A. True.

8 Q. On the way there we were talking about fishing and
9 hunting. And Charlie said he hadn't been hunting last year.
10 So we were -- so we were getting -- it says alone, but does
11 it mean along?

12 A. Along.

13 Q. Okay. So you were pretending to be Charlie's friend?

14 A. Yes.

15 Q. And so you were getting along. And you told Charlie
16 that there was a deer stand and a feeder at Carl's. You
17 knew about that, right?

18 A. Yes.

19 Q. So when we got there there was a tree in the driveway.
20 True, right?

21 A. Yes.

22 Q. I said, hold on, I'm going to have to walk down there.
23 And Charlie volunteered to walk with me after I told him he
24 might have to walk with me to look for the alternator. I'm
25 going to stop there. Which was it? Did Charlie volunteer

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

539

1 or did you tell him he might have to come help you?

2 A. I told him he might have to come help me. And then he
3 walked down there with me.

4 Q. Okay. So did Charlie volunteer?

5 A. He just -- after -- after I said that, he, yeah, he
6 volunteered to walk with me.

7 Q. Okay. So you asked him first and then he doesn't say
8 no?

9 A. Yes.

10 Q. We got down there and I said it's supposed to be in one
11 of these buildings or sheds. And we started looking around.
12 Now, I'm not leaving this statement. We still have more
13 pages to go. But up here where you say I called Jobo to
14 pick me up from a little AT&T prepaid phone I had, at that
15 time was Jobo's number 436-5750?

16 A. I don't know. I believe so.

17 Q. You believe so? Can you tell me what time this says?

18 A. It says 1:09:18.

19 Q. That shows the time. What date is it?

20 A. 7/8/2011.

21 Q. What does it say here? Do you need me to bring it
22 closer?

23 A. You had a incoming call ---

24 MADAME COURT REPORTER: I can't ---

25 THE COURT: She can't hear the ---

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

540

1 A. Oh. You had an incoming call or attempted to make a
2 call, but the account has insufficient funds. Please add
3 money to your balance.

4 Q. What does it say at 1:11 on the same day?

5 A. Oh. Attention, your balance has been zero -- has
6 reached zero. Refill and save any minutes remaining and
7 extend your expiration date.

8 Q. So you didn't really call Joe at five am, did you?

9 A. No, but I tried to.

10 Q. No, actually you didn't. All right. Well, let's go
11 back and cross that off. And going back to statement number
12 two where you said it was true that Joe had called you
13 around five am, that wasn't true either, was it?

14 A. No.

15 Q. Page two, Charlie started with me and I was looking in
16 the building. I pretended to look -- oh, let me stop there.
17 Is that true or false?

18 A. It's true.

19 Q. I pretended to look and I stepped into one of the
20 buildings and cocked the gun. True or false?

21 A. True.

22 Q. The gun was a Hi-Point .380 semi-automatic and was
23 black in color with a silver streak below the slider. True
24 or false?

25 A. True.

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

541

1 Q. That was the same gun that Jobo had given me before to
2 shoot Charlie with.

3 A. True.

4 Q. Was it true that Joe gave you the gun?

5 A. Yes.

6 Q. Was it also true -- is it your testimony today that it
7 was also true that he told you to shoot Charlie with this
8 gun?

9 A. Yes.

10 Q. We supposedly couldn't find the alternator. So that's
11 when I got Charlie's attention over to the big shed. True?

12 A. Yes.

13 Q. I told Charlie it might be in there. And we walked in
14 there and I pretended to look for an alternator. True?

15 A. Yes.

16 Q. That's when Charlie said, I doubt it'll be in there.
17 True?

18 A. Yes.

19 Q. I said, somebody must have lied then.

20 A. Yes.

21 Q. So Charlie started walking off towards the right hand
22 corner of the building and he turned his back to me. And
23 that's when I pulled the gun and shot Charlie in the back of
24 the head. Is that true?

25 A. Yes.

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

542

1 Q. Is it your testimony today that you are one hundred
2 percent sure you shot him in the back of the head?

3 THE COURT: Now, that's been asked and answered several
4 times, please. Go ahead and answer it this time.

5 A. Yes.

6 Q. When I saw him laying on the ground, blood was coming
7 out the front of his head. I just shot him once from about
8 fifteen to twenty feet away. So when you testified
9 yesterday that it was twenty-five to thirty feet away, which
10 was it?

11 A. It was about twenty-five, thirty feet away.

12 Q. Which is it?

13 A. It's twenty-five, thirty feet away.

14 Q. So in your statement where you say you shot him just
15 once from about fifteen to twenty feet away, that's not
16 correct?

17 A. No, it's not.

18 Q. Okay. I freaked out after the gunshot and ran to
19 Charlie's truck. True or false?

20 A. True.

21 Q. That's when I looked for the keys to the truck and they
22 weren't in the truck.

23 A. True.

24 Q. So I went back to Charlie and rolled him over and got
25 the keys out of his pocket and grabbed his cell phone, too,

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

543

1 because Joe had wanted me to get the phone so he could look
2 through it and see what kind of messages was sent between
3 Charlie and Christine -- let me break that one down.
4 There's no period there, but I'm going to take one part at a
5 time. So I went back to Charlie and rolled him over and got
6 the keys out of his pocket. True or false?

7 A. True.

8 Q. And I grabbed his cell phone, too. True or false?

9 A. True.

10 Q. Because Joe had wanted me to get the phone so he could
11 look through it and see what kind of messages was sent
12 between Charlie and Christina to see if she loved Charlie or
13 if they were ...

14 A. Having sex.

15 Q. Yeah. Okay. Was that all true?

16 A. Yes.

17 Q. I got Charlie's wallet, too. And I got in the truck
18 panicking. Were you panicking?

19 A. Yes, I was.

20 Q. Did you get Charlie's wallet?

21 A. Yes, I did.

22 Q. What did you do with it?

23 A. Throw it in the river.

24 Q. You got Charlie's wallet and you were panicking. And
25 you couldn't get the truck started because you were flipping

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

544

1 out. Now, I want to stop. Is this the point where you call
2 Joe?

3 A. Yes.

4 Q. You make your first phone call to him?

5 A. Yes.

6 Q: Okay. Now, back on that first page you said that you
7 called Joe with your AT&T prepaid phone, is that correct?

8 A. No, it's not. I called from -- I called him from
9 Charlie's phone.

10 Q. Okay. But at five am were you saying that you called
11 him from the prepaid phone, that AT&T prepaid phone? Was
12 that in your statement that you used your prepaid phone to
13 do that?

14 A. Yes.

15 Q. Okay. And so why didn't you use your prepaid phone to
16 call Joe this time?

17 A. Because I had no minutes on it.

18 Q. Earlier you testified that it had ran out of minutes
19 the day after you got it.

20 A. Yes.

21 Q. When did it actually run out of minutes?

22 A. The day that I tried to call Jobo. The day -- the
23 morning that I tried to call Jobo at like 5:00 in the
24 morning.

25 Q. So you didn't actually call him?

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

545

1 A. No, it never went through.

2 Q. When I finally got it started I was barking tires
3 leaving out of there and I got on 276. I passed Ingles and
4 called Jobo from Charlie's phone and asked him where he
5 wanted me to put the truck at.

6 A. That's true.

7 Q. Is that at 10:05?

8 A. Yes.

9 Q. First call? Is that the first call or do you call from
10 the driveway first?

11 A. That was the first call. I believe it's the first
12 call. It's been -- it's been a while since it happened.

13 Q. Jobo told me to put it up at the end of Gap Creek Road
14 and that there was a pull-off spot. True or false?

15 A. True.

16 Q. Jobo told me it was steep and you could run the truck
17 off the bank. True or false?

18 A. True.

19 Q. So I pulled up to a different spot above where he was
20 talking about. I pulled behind the little roadbed behind
21 the hill in the bushes. True or false?

22 A. True.

23 Q. I grabbed a camouflage cloth and started wiping the
24 truck down. True or false?

25 A. True.

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

546

1 Q. Did you have a girlfriend that lived up off of Gap
2 Creek Road?

3 A. No, I didn't.

4 Q. Did you ever visit anyone up at Gap Creek Road?

5 A. No, I didn't.

6 Q. You never did odd jobs off of Gap Creek Road?

7 A. No, I didn't.

8 Q. That's your testimony today?

9 A. Yeah, it's one hundred percent testimony.

10 Q. After that I walked about a quarter of a mile down the
11 road to the light pole, got in the bushes and called Jobo.

12 Which call is that?

13 A. It's -- it's later on.

14 Q. Our choices -- when your first call is at 10:05, your
15 choice -- the choices are 10:06, 10:14 or 10:49. Do you
16 recall?

17 A. No, I don't.

18 Q. Now, in your statement you say you told Jobo to come
19 pick you up alone?

20 A. Yes, I did.

21 Q. Now, didn't you say that you guys had already made this
22 plan?

23 A. Yes.

24 Q. And that it was Joe's plan?

25 A. Yes.

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

547

1 Q. But you're telling Joe to come get you and to be alone?

2 A. Yes.

3 Q. And that's when his -- he got his mama, Jimmy Poole,
4 and Billy, Bojo's [sic] youngest son, and they came and
5 picked me up in Jobo's black -- mama's black Nissan Maxima.
6 Now when you called Jobo did he explain to you he was
7 already in the car?

8 A. He told me he was already in the car on his way, but he
9 didn't say his mama or anybody was with him.

10 Q. Jobo's mother, JoAnn, was driving. Jimmy Poole was in
11 the passenger's seat up front. And me and Jobo were in the
12 backseat and Billy was between us.

13 A. True.

14 Q. Okay. And you've already testified that you heard
15 Jimmy Poole. Did Jimmy Poole give all these details when
16 you heard him?

17 A. No. I don't know.

18 Q. You don't know?

19 A. I just heard just a glimpse of what he was saying to
20 the law about a motorcycle and that was it.

21 Q. When I got in the car I still had the gun. And it was
22 stuck in my pants so you couldn't see it. True or false?

23 A. True.

24 Q. Did you have a tool bag?

25 A. No, I didn't.

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

548

1 Q. I had a black ET shirt, black pants and brown boots on.

2 True or false?

3 A. That was false with the ET shirt.

4 Q. The black ET shirt?

5 A. Yeah. I wasn't wearing it.

6 Q. Okay. So this part in your statement where you say you
7 were wearing the black ET shirt, we're talking the XXL shirt?

8 A. Yes.

9 Q. You're saying now that that's not true, you weren't
10 wearing it?

11 A. That's not true.

12 Q. What about black pants and brown shoes?

13 A. Yes, I was.

14 Q. The shirt -- the very next sentence says, the shirt was
15 the same shirt I used to rap the gun with when I buried it.

16 A. It was the gun -- it was the shirt I used to wrap the
17 gun with when I buried it, but it wasn't the shirt I wore.

18 Q. Well, what did you mean then when you say the same
19 shirt? The shirt was the same shirt.

20 A. I guess they're talking about the same shirt in the
21 thing.

22 Q. What thing?

23 A. In the sand.

24 Q. So you didn't say this? You did say this or you didn't
25 say this?

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

549

- 1 A. I did say that, but it was a lie right there.
- 2 Q. It was a lie.
- 3 A. I was wearing a black long sleeved shirt at the time.
- 4 Q. Later on you talk about wearing a black long sleeved
- 5 shirt to move the body. We are talking right now about when
- 6 you shot Charlie.
- 7 A. I did use a long sleeved shirt to wear to move the
- 8 body, too.
- 9 Q. Same shirt?
- 10 A. Yes.
- 11 Q. Okay. So now you're saying that's a lie, you were not
- 12 wearing that black ET shirt?
- 13 A. I was not wearing it, no.
- 14 Q. The shirt was the same shirt I used to wrap the gun
- 15 with when I buried it. So is that a lie?
- 16 A. No. The shirt -- the shirt that I used to wrap the gun
- 17 with is not a lie.
- 18 Q. Okay. So we're going to cross off the same shirt,
- 19 correct?
- 20 A. Yes.
- 21 Q. I burnt the pants and the boots. After they picked me
- 22 up we rode around and looked for Jimmy's motorcycle. So
- 23 after that we went back home and -- what time did you get
- 24 home?
- 25 A. I don't know. It's been -- it's been a while since I

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

550

1 actually ...

2 Q. Well, let me back up. Did you really burn the pants
3 and boots?

4 A. Yes, I did.

5 Q. Where did you burn them?

6 A. In the backyard of Jobo's house.

7 Q. After they picked me up we rode around. True or false?

8 A. Yes, it's true.

9 Q. Looking for Jimmy's motorcycle?

10 A. Yes, it's true.

11 Q. So after we went back home and we left again and I
12 still had the gun.

13 A. Yes, I did.

14 Q. Okay. You testified yesterday it wasn't just that day,
15 you kept it all the way up until you buried it, is that
16 true?

17 A. Yes, it is.

18 Q. I kept it with me all the time for about a month after
19 that. True?

20 A. Yes, it is.

21 Q. Joe didn't use it?

22 A. No.

23 Q. We went and I bought some ice, probably about forty
24 dollars worth. Where did you go to buy ice?

25 A. Steve and Crystal's.

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

551

1 Q. Is Steve and Crystal's the same house as Dana

2 LaClair's?

3 A. No, it's not.

4 Q. Did you go to Steve and Crystal's house when you were
5 looking for the motorcycle?

6 A. Yes, I did.

7 Q. So did you get the drugs while you guys were still
8 looking for the motorcycle and the car was full of people?

9 A. Yes, I did.

10 Q. So that wasn't a separate trip, was it?

11 A. No, it wasn't.

12 Q. Joe didn't take you there, did he?

13 A. No.

14 Q. JoAnn took you there?

15 A. JoAnn took me there.

16 Q. And JoAnn has taken you to Steve and Crystal's to get
17 drugs before, correct?

18 A. Yes.

19 Q. Many times?

20 A. Yes.

21 Q. In fact, she took you the night before you turned
22 yourself in to get drugs, didn't she?

23 A. Yes.

24 Q. At three am?

25 A. Yes.

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

552

1 Q. It wasn't Joe?

2 A. No.

3 THE COURT: Now, please move on.

4 Q. When we got home I gave Jobo Charlie's phone. He went
5 and looked through it for any messages and didn't find any.
6 And he broke the phone and buried it behind Snuffy's house.
7 True or false?

8 A. True.

9 Q. I saw Jobo bury the gun while I was sitting on his back
10 porch. True or false?

11 A. True.

12 Q. Did you ever show law enforcement where that gun is?
13 Or where that phone is?

14 A. No, I told them, though.

15 Q. They took you out to have you show them ---

16 A. No, ---

17 Q. --- where ---

18 A. I told them where it was. They never -- they never
19 took me out there to look for it.

20 Q. Did they take you out to find the guns?

21 A. No. Yes, they did.

22 Q. And were the guns near Jobo's property?

23 A. Yes, they were.

24 Q. And that was on the same property that you say that the
25 cell phone was?

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

553

- 1 A. No.
- 2 Q. Snuffy's house is where in relation to Joe's?
- 3 A. Snuffy's old house is two houses down.
- 4 Q. Within walking distance?
- 5 A. Yes.
- 6 Q. Towards the river?
- 7 A. No.
- 8 Q. But you didn't go and show them where the cell phone
- 9 was?
- 10 A. No.
- 11 Q. Were you aware that if they had the cell phone they
- 12 could determine whether or not Joe checked for messages?
- 13 Were you aware of that?
- 14 A. No.
- 15 MR. STEINBERG: Your Honor, I object. She's ---
- 16 THE COURT: Yeah, ---
- 17 MR. STEINBERG: --- testifying to ---
- 18 THE COURT: --- I sustain ---
- 19 MR. STEINBERG: --- technical information.
- 20 THE COURT: --- the objection and instruct the jury to
- 21 disregard that.
- 22 Q. Everybody with Jobo thought they were picking me up
- 23 from doing some electrical work in River Falls. How do you
- 24 know that?
- 25 A. 'Cause that's what I was told to say. That's what I

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

554

- 1 was told to say the first time. That's what they -- that's
2 what they wanted to say.
- 3 Q. Who told you to say that?
- 4 A. Jobo.
- 5 Q. When did he tell you to say that?
- 6 A. When I was still on the streets.
- 7 Q. When you were still on the streets?
- 8 A. While I was still at home. Before I turned myself in.
- 9 Q. So this is -- when they picked you up, at the time they
10 picked you up ---
- 11 A. Oh, that's what Jobo told me to tell them.
- 12 Q. And when Jobo told you to tell them that, was that
13 while you guys were talking on the phone?
- 14 A. That was before it happened. We had already planned
15 it.
- 16 Q. I then threw Charlie's wallet in the river up in River
17 Falls. True or false?
- 18 A. True.
- 19 Q. Take anything out of it?
- 20 A. No.
- 21 Q. Was there anything in it?
- 22 A. No.
- 23 Q. No money?
- 24 A. No.
- 25 Q. No ID?

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

555

1 A. Yes. There was ID and there was cards in there, but I
2 didn't take none of that.

3 Q. About a week after I was still F'ed up on dope and
4 pills, me and Joe went back to where the body was. It says
5 me and Joe, correct?

6 A. Joe dropped me off, yes.

7 Q. We talked about that yesterday. And we're about to get
8 to that. Okay. So you're saying that's true?

9 A. Yes.

10 Q. To where the body was?

11 A. Yes.

12 Q. And Joe dropped me off, true?

13 A. Yes. That's true.

14 Q. I drug the body to the creek by myself.

15 A. Yes, that's true.

16 Q. The body was bloated and had maggots, and flies and
17 bees around it.

18 A. Yes.

19 Q. I didn't look at the face because I was scared to.

20 A. Yes.

21 Q. I grabbed him by his pant legs and his feet and drug
22 him.

23 A. Yes.

24 Q. I drug him to the creek-bed.

25 A. Yes.

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

556

- 1 Q. That's a sentence up here. You added that in, correct?
- 2 A. Yes.
- 3 Q. And is that true?
- 4 A. Yes.
- 5 Q. I covered the body up with the yellow round shovel and
- 6 was wearing red and black gloves and a black long sleeved
- 7 shirt. True?
- 8 A. Yes.
- 9 Q. And now you're saying it's the same shirt you used to
- 10 shoot him in?
- 11 A. Yes, it was.
- 12 Q. Well; how do you remember that?
- 13 A. How do I remember that? Because it was the -- because
- 14 I was told to wear the shirt because when I go to pull the
- 15 trigger the gunpowder residue wouldn't get on my arms.
- 16 Q. Now you say all that stuff is back in the woods about
- 17 two hundred yards. Did they ever try to recover that?
- 18 A. They tried to, but they -- we couldn't find it.
- 19 Q. Did they take you with you [sic] to try to recover
- 20 that?
- 21 A. Yes, they did.
- 22 Q. And that's not anywhere near Joe's house, is it?
- 23 A. No.
- 24 Q. Not anywhere ---
- 25 A. It's ---

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

557

1 Q. --- where the gun was found?

2 A. It's -- It's over there by Carl Rider's old property.

3 Q. And were you able to find any of it?

4 A. No, I wasn't.

5 Q. I took it all off there and walked down to White Horse
6 Extension and made my way to the phone. Well, what were you
7 wearing at that point?

8 A. I was wearing another shirt up under it. I was wearing
9 a wife-beater.

10 Q. Well, you called Jobo's phone from the Spinx. And I
11 seen Gerald Childs was in the parking lot.

12 A. Yes.

13 Q. You're still saying that's true?

14 A. Yes.

15 Q. All right. Why did you walk all the way to the Spinx
16 instead of using the phone at Ingles?

17 A. Because I was scared to go to Ingles and use the phone.

18 Q. Why?

19 A. I was -- because I had just got done dragging a body.
20 And when I come out of Long -- when I come out at White
21 Horse Extension I was already further on down past Ingles.
22 I was right across from the store.

23 Q. Gerald Childs was helping a girl get in her -- get her
24 car unlocked and he asked me if I needed a ride home. True
25 or false?

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

558

- 1 A. True.
- 2 Q. And I said, yes. And he took me home. And I woke Jobo
- 3 up and told him I buried the body. True or false?
- 4 A. True.
- 5 Q. Okay. You're saying that Jobo dropped you off to bury
- 6 the body, but no arrangements were made to get you back?
- 7 A. The arrangements were made, but he never answered his
- 8 phone. So he never even -- he never even -- he said he was
- 9 going to drive back around and never did come back around.
- 10 So I was left to walk.
- 11 Q. None of that's in here, is it?
- 12 A. No, it's not.
- 13 Q. After that I was back to my regular routine. So how
- 14 long did you stay freaked out?
- 15 A. I stayed freaked out for a while.
- 16 Q. How long is a while?
- 17 A. A while is a couple of weeks.
- 18 Q. Well, when did you go back to your regular routine?
- 19 A. Not too long after.
- 20 Q. What's not too long after?
- 21 A. When I was smoking ice.
- 22 Q. Well, ---
- 23 A. That wasn't too long. I mean, that was within a couple
- 24 of weeks.
- 25 Q. So it was a couple of weeks before you started smoking

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

559

1 ice again?

2 A. Yes.

3 Q. So you were clean and sober for those two weeks?

4 A. Yes.

5 Q. So Joe wasn't giving you any drugs during those two
6 weeks?

7 A. No.

8 Q. I just want everybody to know that Charlie was a good
9 guy. And from what I know in my sober state, I never would
10 have shot him, and I'm sorry. I felt like -- true or false?

11 A. True.

12 Q. Now, this is -- I felt like I was indebted to Joe for
13 everything he had done for me. So that's why I shot Charlie
14 Roberts. True?

15 A. That's true what I said in that statement.

16 Q. Jobo also paid me around five hundred dollars in all to
17 kill Charlie. True or false?

18 A. True.

19 Q. Okay. It's your statement today that's true. I want
20 to make sure we're talking about the same five hundred
21 dollars that you said was over time for the whole year that
22 you stayed with him.

23 A. Yes, that's true.

24 Q. Jobo gave me money over time to buy dope, and pills or
25 whatever I wanted to satisfy me. It says he gave you money,

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

560

- 1 correct?
- 2 A. Yes.
- 3 Q. Does it say that he gave you drugs or pills?
- 4 A. No, it don't.
- 5 Q. Is this a true statement?
- 6 A. Yes, it's -- part of it's true.
- 7 Q. Jobo also paid me money to confess to killing Charlie
- 8 to keep him out of it. How much more did he pay you for
- 9 that?
- 10 A. Two hundred dollars.
- 11 Q. So are we talking five hundred plus two hundred?
- 12 A. Yes.
- 13 Q. Did you say two hundred here?
- 14 A. No, I didn't.
- 15 Q. In what way were you paid two hundred?
- 16 A. I was paid two hundred dollars in cash right after the
- 17 drugs.
- 18 Q. You didn't mention that?
- 19 A. No, I didn't.
- 20 Q. Jobo put me up to killing Charlie over Christina
- 21 because he was in love or infatuated with Christina and he
- 22 didn't want nobody messing around with the love of his life.
- 23 A. True.
- 24 Q. Okay. Do you know if Joe was also seeing other women?
- 25 A. Yes.

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

561

1 Q. He was, wasn't he?

2 A. Yes.

3 Q. The day the body was found I dropped Christina off at
4 work and Jobo was with me. True or false?

5 A. True.

6 Q. We talked about me turning myself in. I told him I
7 would, but just give me some money, and some Roxies, and
8 some dope, and Joe did. Is this the first time your
9 statement says that Joe gives you drugs directly?

10 A. Yes.

11 Q. And that is when you are talking about turning yourself
12 in?

13 A. Yes.

14 Q. He gave me the money to get stuff. And I stayed up all
15 night smoking dope.

16 A. Yes.

17 Q. And that was when JoAnn took you to go get the dope?

18 A. Yes. The last time, yes.

19 Q. At three am?

20 A. Yes.

21 Q. I did call Frank Eppes and told him I was going to turn
22 myself in. And he told me to turn myself in at 9:30 the
23 next morning. True?

24 A. Yes.

25 Q. I went the same day and I buried the guns because Jobo

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

562

1 was afraid the police were going to come to his house. So I
2 buried the guns beside the river.

3 A. True.

4 Q. So why did you bury the 9mm?

5 A. Because I was told to. The 9mm's for Jobo's protection
6 from Leroy Roberts because he said Leroy Roberts carried a
7 .38 pistol in his pocket. He said he was threatening to
8 shoot him.

9 Q. Before Charlie died?

10 A. After.

11 Q. Well, when did the 9mm come out?

12 A. He bought it. I don't know when. And it was laid up
13 under his shed with a pair of pants above it.

14 Q. You don't know when he bought it?

15 A. No, I don't.

16 Q. Could have had it all along?

17 A. I have no idea when he bought any of his guns.

18 Q. So he could have had that 9mm all along?

19 **THE COURT:** That ---

20 **MS. GORTON:** I just ---

21 **THE COURT:** Move on, please, ma'am.

22 **MS. GORTON:** All right.

23 Q. That same day -- okay. This is my true statement and
24 there is nothing else to tell that I know of. The two other
25 statements I gave are partly false.

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

563

1 A. True.

2 Q. I didn't tell the truth because I was scared.

3 A. Yes.

4 Q. And this is the truth as God is my witness.

5 A. Yes.

6 Q. Now, yesterday did you say you didn't tell the truth
7 because you were angry?

8 A. The second one I didn't tell the truth because I was
9 angry. The first one, I was scared.

10 Q. This is my true statement and everything -- and is
11 everything I know and have to say about this case.

12 A. Yes.

13 Q. Okay. Everything you know, but the two hundred dollars
14 isn't in here, right?

15 A. Yes.

16 Q. Now, yesterday the solicitor was asking you about this
17 alternator story, right?

18 A. Yes, ma'am.

19 Q. And you told us yesterday that Joe dropped you off at
20 Charlie's in his mama's car. Isn't it true that before you
21 said that Joe dropped you off in his van and that he dropped
22 you off down the street so that Charlie wouldn't see the van
23 and Charlie would think the van needed an alternator?

24 A. Yes.

25 Q. And you were talking about Joe's van?

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

564

1 A. Yes.

2 Q. But yesterday you said it was -- the cover story was an
3 alternator for Tina's van?

4 A. Yes.

5 Q. And the prosecutor even followed up with some questions
6 on that and asked you, well, why was it Joe dropped you off
7 because your -- and you said it was because of the kids, he
8 had to go get the kids, correct?

9 A. He had to watch the kids.

10 Q. In your prior statement you said it was so Charlie
11 wouldn't know the van was working, correct?

12 A. Yes, correct.

13 Q. After you gave this third statement on August 29th did
14 you continue to call JoAnn?

15 A. Yes, I did.

16 Q. Did you -- did anyone tell you to do that?

17 A. No.

18 Q. Did you do it on your own?

19 A. Yes, I did.

20 Q. So in this statement you're saying that you did it all
21 because Joe set you up. Do you continue to tell JoAnn that
22 Joe had nothing to do with it?

23 A. Yes, I did.

24 Q. So you only come clean to law enforcement?

25 A. Yes, I did.

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

565

1 Q. You continued to tell JoAnn that Joe had nothing to do
2 with it?

3 A. Yes, I did.

4 Q. You tell Gail also, Joe's former wife?

5 A. Um-hum (affirmative).

6 Q. You tell her you don't know why Joe was arrested. Is
7 that true?

8 A. Um-hum (affirmative).

9 Q. But you did know why he was arrested, right?

10 A. Um-hum (affirmative).

11 Q. He was arrested because of your second statement,
12 correct?

13 A. Um-hum (affirmative).

14 Q. Did you tell Gail you were looking at death row?

15 A. Yes, I did.

16 Q. Why did you tell her that?

17 A. Because what some inmates in all of Greenville County
18 told me that I could be looking at.

19 Q. Right. So you believed that?

20 A. I believed it at the time, yes.

21 Q. You weren't deliberately lying to her?

22 A. No.

23 Q. Not because you thought that's what she wanted to hear,
24 but that's what you believed?

25 A. That's what I believed at the time, yes.

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

566

1 Q. Okay. And clarify what time we're talking about. Did
2 you believe that you were looking at death row when you gave
3 statement number one?

4 A. I was -- kept crying about it. I thought I was. I
5 kept thinking about it because of the way everything took
6 place.

7 Q. When you were on your way to turn yourself in, after
8 you'd been out doing drugs with JoAnn, did it occur to you
9 that you were looking at the death penalty?

10 A. No, I just kept thinking about it.

11 Q. So -- well, when did you start thinking about it? Once
12 you got to jail, after you gave the statement or before you
13 gave the statement?

14 A. After I gave the statement.

15 Q. After you gave the statement. So at the time you give
16 the first statement you're not worried about the death
17 penalty?

18 A. No.

19 Q. The time you give the statement are you worried about
20 the death penalty?

21 A. Yes, because I started sobering up.

22 Q. And good point, you'd sobered up. You'd been there for
23 nine days at that point, right?

24 A. Yes.

25 Q. At the time you gave the third statement were you

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

567

1 worried about the death penalty?

2 A. No, I wasn't.

3 Q. You weren't? What had changed?

4 A. I stayed in the shoe the whole time. When I gave that
5 statement -- I was in the shoe when I -- when I gave it.

6 Q. Did you think you were looking at the death penalty
7 when you gave the third statement?

8 A. In parts, yes and no.

9 Q. I'm going to have to ask for clarification on that.

10 A. Yes.

11 Q. Yes. Now after -- four days after this August 29th
12 statement do you call your aunt Pam for the first time?

13 A. Yes.

14 Q. And that's on September 3rd?

15 A. Yes.

16 Q. And you call her and you tell her you haven't called
17 her because you've been in solitary and haven't been allowed
18 to use the phone in three weeks, correct?

19 A. Yes.

20 Q. But that wasn't true, was it?

21 A. No.

22 Q. You had just called Gail?

23 A. Yes.

24 Q. A day or two before?

25 A. Yes.

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

568

1 Q. You tell Pam basically statement number three, correct?

2 A. Yes.

3 Q. You also tell her you're facing the death penalty. And

4 you tell her, don't you, that the detectives have been

5 behind you, that's what they told you. Is that what you

6 said to aunt Pam?

7 A. Yes.

8 Q. The detectives are behind you, what did that mean?

9 A. That's what I thought.

10 Q. Well, okay. Well, tell me what you thought ---

11 **THE COURT:** Now, that -- please move on.

12 Q. The detectives, did they tell you that Joe is guiltier

13 than you are?

14 A. Yes.

15 Q. A little over an hour after you hang up from talking to

16 aunt Pam you called JoAnn back?

17 A. Yes.

18 Q. And you continued to say you don't know why Joe's been

19 arrested, you have no idea?

20 A. Yes.

21 Q. In fact, you specifically tell her you didn't rat on

22 anybody?

23 A. Yes.

24 Q. And then you start talking to JoAnn about canteen

25 money.

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

569

- 1 A. Yes.
- 2 Q. You're wanting JoAnn to send you more money?
- 3 A. Yes.
- 4 Q. For your canteen?
- 5 A. Yes.
- 6 Q. And less than an hour later after that you go back to
- 7 calling Christine, correct?
- 8 A. Yes.
- 9 Q. And it's back to it was all Joe's fault? Yes?
- 10 A. Yes.
- 11 Q. And you tell her you felt like you owed him something?
- 12 A. Yes.
- 13 Q. And here as well you say he helped me get money so I
- 14 could get drugs. You never tell your sister that Joe gave
- 15 you drugs, do you?
- 16 A. She knew that he did.
- 17 Q. Do you ever say that in this ---
- 18 A. No, I don't.
- 19 Q. Huh?
- 20 A. I don't.
- 21 Q. You say he gave me money?
- 22 A. (No response).
- 23 Q. And you say you felt obligated?
- 24 A. Yes, I did.
- 25 Q. Five days later you call your aunt Pam. We're at

JERRY ALLEN - CROSS EXAMINATION BY MS. GORTON

570

- 1 September 8th. We're close to the end. On September 8th
2 you call your aunt Pam again. Did you tell her that you're
3 working with detectives to get leniency?
- 4 A. That's what I told her.
- 5 Q. Was it true?
- 6 A. No.
- 7 Q. Was it what you were hoping for?
- 8 A. It's what I was hoping for, yes.
- 9 Q. And that same day, or I'm sorry, three days later you
10 call JoAnn and you tell her you're looking to get ten to
11 fifteen years, is that correct?
- 12 A. Yes, ma'am.
- 13 Q. Is that what you were hoping for?
- 14 A. Yes, ma'am.
- 15 Q. That's what you thought that statement number three was
16 going to get you?
- 17 A. That's what I was hoping for.
- 18 Q. I'm wrapping it up here. After you gave your third
19 statement you kept calling JoAnn until she found out the
20 truth, correct?
- 21 A. Yes.
- 22 Q. You kept telling her you didn't know why Joe was
23 arrested?
- 24 A. Yes.
- 25 Q. You kept calling her and asking her for money ---

JERRY ALLEN - REDIRECT EXAMINATION BY MR. STEINBERG

571

- 1 A. Yes.
- 2 Q. --- when she had no idea?
- 3 A. Yes.
- 4 Q. You called her on 9/6, September 6th?
- 5 A. Yes.
- 6 Q. September 12th?
- 7 A. (Affirmative nod).
- 8 Q. So you never came clean with her?
- 9 A. No.
- 10 MS. GORTON: Nothing further.
- 11 MR. STEINBERG: Your Honor, I do have precise --
- 12 hopefully precise redirect.
- 13 **Redirect Examination by Mr. Steinberg:**
- 14 Q. Mr. Allen, did Jobo Phillips ever tell you not to speak
- 15 to Christina Gentry about this matter?
- 16 A. Yes.
- 17 Q. On the phone or in person? Or both?
- 18 A. In person and on the phone in code.
- 19 Q. Have I or anybody in law enforcement ever threatened
- 20 you with perjury charges?
- 21 A. No, y'all haven't.
- 22 Q. After conversations with myself or with Mr. Hammett
- 23 what's your understanding of how you had to answer questions
- 24 for Ms. Gorton? You have to tell her the truth as well?
- 25 A. Yes, I did.

JERRY ALLEN - REDIRECT EXAMINATION BY MR. STEINBERG

572

- 1 Q. You agree your first statement was a lie?
- 2 A. Yes, I do.
- 3 Q. You agree your second statement was a lie?
- 4 A. Yes, I do.
- 5 Q. Let me ask you a question -- a question about the
- 6 telephone calls. Just briefly, does JoAnn have a land line
- 7 and a cell phone?
- 8 A. No.
- 9 Q. Which one does she have? Do you know the numbers?
- 10 A. She had a cell phone. It's [REDACTED].
- 11 Q. Whose number is 836 -- 836?
- 12 A. 836?
- 13 Q. Yes, sir.
- 14 A. I don't know. I know my mama had a phone.
- 15 Q. There were a number of questions dealing with the word
- 16 volunteer. Did you just flat out volunteer, say, hey, why
- 17 don't I kill Charlie for you? Or were you asked before that
- 18 to kill him?
- 19 A. I was asked.
- 20 Q. By who?
- 21 A. Jobo.
- 22 Q. This Ingles, could you actually physically see the
- 23 Ingles from where you did the shooting?
- 24 A. No.
- 25 Q. Did Jobo ever give you drugs directly?

JERRY ALLEN - REDIRECT EXAMINATION BY MR. STEINBERG

573

1 A. Yes.

2 Q. What drugs?

3 A. Pills and ice.

4 Q. How would your sister, Christina, know if Joe would
5 have given you drugs?

6 A. She would -- when she lived with him she knowed before
7 because that's what he did before.

8 Q. Okay. But you have actually gotten drugs straight from
9 him?

10 A. Yes.

11 Q. Thank you. That's all the questions I have.

12 **THE COURT:** All right. Step down. All right,
13 solicitor.

14 **MR. STEINBERG:** Your Honor, at this point the State
15 does rest.

16 **THE COURT:** All right. Take the jury out, please.

17 (Whereupon the jury exited the courtroom at 11:31 am)

18 **THE COURT:** Okay. Any motions?

19 **MS. GORTON:** Yes, Your Honor. At this point I would
20 move for judgment of acquittal or directed verdict, the
21 basis of which, given Mr. Allen's background and the fact
22 that he is the only person to testify that Joe encouraged,
23 counseled or paid him to do this, that there's, in the light
24 most favorable to the State, there's not a case against Mr.
25 Phillips for accessory before the fact.

1 **THE COURT:** And I'd have to deny your motion.

2 **MS. GORTON:** I understand.

3 **THE COURT:** All right. Now, will you have some
4 testimony?

5 **MS. GORTON:** Will I be presenting testimony?

6 **THE COURT:** Yes.

7 **MS. GORTON:** No, Your Honor.

8 **THE COURT:** Is your client going to testify?

9 **MS. GORTON:** No, Your Honor.

10 **THE COURT:** And you have no other witnesses?

11 **MS. GORTON:** No, Your Honor.

12 **THE COURT:** All right. Put the Defendant under oath
13 for me, please.

14 **MADAME CLERK:** Would you raise your right hand. Do you
15 swear or affirm to tell the truth, the whole truth and
16 nothing but the truth so help you God?

17 **MR. PHILLIPS:** Yes, ma'am.

18 **MADAME CLERK:** Thank you.

19 **THE COURT:** You can sit down now. Mr. Phillips, we're
20 at a point in your trial where you need to make a decision
21 on whether or not you, yourself, will testify or otherwise
22 present other testimony. Do you understand that?

23 **MR. PHILLIPS:** Yes, sir.

24 **THE COURT:** Now, I have to tell you that you don't have
25 to take the stand and testify or present evidence because

1 that's your constitutional right.

2 MR. PHILLIPS: Yes, sir.

3 THE COURT: The burden is on the State and remains with
4 the State to prove you guilty beyond a reasonable doubt.
5 You understand that?

6 MR. PHILLIPS: Yes, sir.

7 THE COURT: Now, with that understanding I tell you
8 that you have a perfect right to take the stand and tell the
9 jury your side of the story.

10 MR. PHILLIPS: Yes, sir.

11 THE COURT: Or present other witnesses. You understand
12 that?

13 MR. PHILLIPS: Yes, sir.

14 THE COURT: Now, I'll tell you that if you take the
15 stand and testify, then you become like any other witness in
16 the case subject to cross examination by the solicitor.

17 MR. PHILLIPS: Yes, sir.

18 THE COURT: Understand that?

19 MR. PHILLIPS: Yes, sir.

20 THE COURT: I don't know whether you have any prior
21 record for which you can be impeached, but if you did, then
22 the solicitor could impeach you on that.

23 MR. PHILLIPS: Yes, sir.

24 THE COURT: You understand that?

25 MR. PHILLIPS: Yes, sir.

1 **THE COURT:** Now, have you made a decision in this case
2 whether or not you will testify or otherwise present
3 testimony?

4 **MR. PHILLIPS:** No, sir, I have ---

5 **THE COURT:** Have you made the decision?

6 **MR. PHILLIPS:** Yes, sir.

7 **THE COURT:** And what is that decision? You will or
8 will not testify?

9 **MR. PHILLIPS:** Will not.

10 **THE COURT:** Now, this is your decision?

11 **MR. PHILLIPS:** Yes, sir.

12 **THE COURT:** Ms. Gorton has not put any pressure on you
13 one way or the other?

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

15 **THE COURT:** You're doing so freely and voluntarily?
16 Made that decision?

17 **MR. PHILLIPS:** Yes, sir.

18 **THE COURT:** Are you under the influence of any alcohol,
19 drug or any other substance right at this moment?

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

21 **THE COURT:** You're sober, you know what you're doing
22 and you have made the decision alone not to testify?

23 **MR. PHILLIPS:** Yes, sir.

24 **THE COURT:** Are you satisfied with your lawyer's
25 services?

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

2 **THE COURT:** Got any complaint whatsoever to make
3 against her?

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

5 **MS. GORTON:** Judge, I would like, just for the record,
6 there were a number of witnesses that we subpoenaed. I
7 believe I issued seventeen total subpoenas. But Mr.
8 Phillips and I have discussed this and we've discussed the
9 advantage of not presenting any evidence or witnesses and
10 having last closing. And we've discussed that. And he is
11 fully informed of the decision not to present witnesses and
12 why that is.

13 **THE COURT:** All right. I find that you have knowingly
14 and intelligently waived your right to testify or otherwise
15 present evidence in this case. That being the situation,
16 then you will have the final argument. I will inform the
17 jury that's your decision and that you don't have to
18 testify. And I'll explain that right to the jury, okay?

19 **MR. PHILLIPS:** Yes, sir.

20 **THE COURT:** All right. Do you have any -- I'll tell
21 you, I'm going to charge the law with respect to accessory
22 before the fact. I'm going to charge circumstantial
23 evidence. I'm going to charge weight to be given to
24 testimony of an expert along with my general charge. Have I
25 overlooked anything?

1 **MR. STEINBERG:** Your Honor, I believe we have to, under
2 the circumstances, charge both murder and the definition of
3 malice to include a firearm.

4 **THE COURT:** I'm going to define murder.

5 **MR. STEINBERG:** Yes, sir. Thank you, Your Honor.

6 **MS. GORTON:** Judge, ---

7 **MR. STEINBERG:** I would ask that you define --
8 actually, I'll waive that issue, Your Honor.

9 **MS. GORTON:** Judge, I have a request as to accessory
10 before the fact. Given the specific facts and circumstances
11 that arose in this trial and -- forgive me, I'm fairly new
12 to this jurisdiction. A number of years in Missouri and
13 Florida, but not this jurisdiction.

14 I pulled this jury charge for accessory before the fact
15 off of the College of Charleston or Charleston Bar
16 Association. And what it says is the defendant is charged
17 with being accessory before the fact to murder. In order to
18 prove this crime the State must prove beyond a reasonable
19 doubt that the defendant either advised, agreed, urged,
20 counseled, hire or in some way aided or abetted another
21 person to commit the crime, that the defendant was not
22 present when the offense was committed.

23 And then it has two definitions. It has; aid means to
24 help, promote the course or accomplishment of, to give
25 support to or to give assistance to. And abet means to

1 encourage or appear to favor support.

2 Under the specific facts and circumstances of this
3 case, specifically the testimony of Tammie Timmons where she
4 testified that Joe came up and said I'll give you a hundred
5 dollars to knock this guy off, and she said I didn't take
6 him seriously, nobody would, I would ask for the additional
7 instruction to -- additional paragraph to this instruction
8 that says to be guilty of accessory before the fact the
9 defendant must have acted in the prescribed manner prior to
10 the commission of the offense.

11 I'm sorry, the factual basis for asking for that would
12 have been he clearly provided assistance after the fact. So
13 I think under the facts and circumstances that came out, we
14 need that clarification. To be guilty of accessory before
15 the fact, the defendant must have acted in the prescribed
16 manner prior to the commission of the prescribed offense or
17 the murder.

18 **THE COURT:** All right. I'm not going to charge that
19 specific language. All right. Any ---

20 **MS. GORTON:** I'm sorry, I have another one.

21 **THE COURT:** Sure.

22 **MS. GORTON:** I'm also asking for an instruction on
23 criminal intent. And this is the Tammie Timmons issue.

24 I believe that the facts could reasonably be construed
25 by the jury that Joe was upset about Christine and --

1 Christina and Charlie and that he made many, many comments
2 which caused JJ to ultimately act. But if he didn't have
3 the criminal intent to do so, then he can't be guilty of
4 this charge. If he complained about it and talked about how
5 upset he was and how something needed to be done about
6 Charlie, but he had no intent for anyone to kill Charlie.

7 **THE COURT:** Do you have a specific charge you want to
8 present to me that I can look at? If you've got a request
9 for a charge, then give it to me so it'll be a part of the
10 record and I'll consider it.

11 **MS. GORTON:** I would add to my other request where it
12 says before the fact, I would say, furthermore, in order to
13 be guilty ---

14 **THE COURT:** I want you to give me something in writing
15 so that I ---

16 **MS. GORTON:** I'm sorry.

17 **THE COURT:** --- can look at it, okay.

18 **MS. GORTON:** I'm sorry. Did you want me to give you in
19 writing the other one as well?

20 **THE COURT:** Yes. I want -- I want you to give me in
21 writing what you're requesting so that I can ...

22 **MR. STEINBERG:** Thank you, Your Honor. I'll hand up my
23 copy, accessory to murder, accessory before the fact. The
24 statute defines it properly. One who counsels, hires or
25 otherwise procures a commission of a felony is guilty of ---

1 **THE COURT:** That's the way I charge it.

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

3 **MS. GORTON:** I would also ask for the charge of
4 independent act. When two or more conspire to commit a
5 crime they're responsible for all incidental and
6 coincidental acts growing out of the same common design.
7 However, conspirators are not responsible ---

8 **THE COURT:** You want the hand of one, the hand of all.
9 Is that what you're requesting?

10 **MS. GORTON:** I don't think hand of one a hand of all is
11 appropriate in this case because they're not charged with
12 being co-conspirators per say.

13 **THE COURT:** Will you please ---

14 **MS. GORTON:** I'm sorry.

15 **THE COURT:** --- write out and give to me -- we're going
16 to recess now and I'll give you time to do that.

17 **MS. GORTON:** One more request.

18 **THE COURT:** Okay.

19 **MS. GORTON:** Accessory after the fact is a lesser
20 included.

21 **MR. STEINBERG:** Judge, that's excluded.

22 **THE COURT:** No, I'm not going to charge after the fact.
23 Okay. All right. We'll take a recess. And, like I say,
24 I've got to do this minor settlement at noon. Let's be back
25 in an hour. That'll give you time to write out -- is that

1 enough?

2 MS. GORTON: I think so. Well, do you want it typed?
3 Does it matter? I'm not a public defender. I'm a 608. So
4 ---

5 THE COURT: No.

6 MS. GORTON: --- my office isn't here.

7 THE COURT: If you can write it legibly where I can
8 read it, then ---

9 MS. GORTON: I'll try.

10 THE COURT: Okay. All right. Please be back in an
11 hour.

12 MR. STEINBERG: Thank you, Your Honor.

13 (Whereupon court was in recess at 11:42 am)

14 (Whereupon court resumed at 11:44 am)

15 MS. GORTON: Judge, in order to efficiently address the
16 issues that I'm concerned about addressing I would ask if
17 you could let me know which accessory before the fact charge
18 you are going to read. If there's a copy of it or what your
19 ---

20 THE COURT: Make her a copy of this, please, Joelle.

21 MS. GORTON: Thank you.

22 THE COURT: Make two copies of it.

23 MR. STEINBERG: Thank you, Your Honor. Yours is pretty
24 much in line with just the statute?

25 THE COURT: I think it is. It's the one I've been

1 using for thirty years.

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

3 **MADAME CLERK:** This is giving us a problem. I'll go
4 back and make a copy of it and be right back.

5 (Whereupon court was in recess at 11:45 am)

6 (Whereupon court resumed at 12:51 pm)

7 **THE COURT:** All right. You have your requests?

8 **MS. GORTON:** I do, Judge. And I even managed to type
9 them. It's basically your instruction with this added to
10 it. And I'm giving the State a copy.

11 As to the first requested change, it's simply deleting
12 the sentence; as a necessary element of murder it must have
13 been committed without ---

14 **THE COURT:** All right. Let me look to see what your
15 requests are.

16 (Pause)

17 **THE COURT:** All right. I'm going to charge as I showed
18 you. And I'm going to file these with the clerk so that
19 you'll be protected on the record.

20 (Whereupon Court's exhibit 1 was marked)

21 **THE COURT:** All right. Solicitor, you ready to talk to
22 the jury?

23 **MR. STEINBERG:** Yes, sir, I am.

24 **THE COURT:** Bring them on.

25 (Whereupon the jury entered the courtroom at 12:54 pm)

CLOSING ARGUMENTS - MR. STEINBERG

584

1 **THE COURT:** Ladies and gentlemen, in the trial of a
2 criminal case a defendant has absolutely no burden. A
3 defendant does not have to take the stand and testify or
4 otherwise present testimony or evidence. And that is
5 because that is a constitutional right of every defendant.
6 Now -- and I'll explain this right to you more fully during
7 the course of my charge.

8 The Defendant in this case has exercised his
9 constitutional right not to testify. So the evidence in
10 this case is complete. And what we have remaining is the
11 final arguments by the attorneys. And when they have
12 concluded their arguments, then I'll charge you the law with
13 respect to this case. Solicitor.

14 **MR. STEINBERG:** Thank you, Your Honor. May it please
15 the Court. Ladies and gentlemen of the jury, I appreciate
16 your time and consideration in this case.

17 Who would want Charlie Roberts killed? Who would want
18 Charlie Roberts out of the picture? Who wants Christina not
19 to have any other males involved? The answer to that is
20 quite clear.

21 We have charged Jobo Phillips with accessory before the
22 fact of murder. Accessory before the fact means that you
23 have done something to assist another human being in this
24 murder. It doesn't matter one percent or ninety-nine
25 percent responsible, you are responsible if you encouraged,

CLOSING ARGUMENTS - MR. STEINBERG

585

1 if you reenforced, you paid, you drive somebody someplace,
2 if you give them money, you give them drugs, you give them
3 advice on how to do something, you are equally guilty of
4 committing a crime if your crime is accessory before the
5 fact.

6 Let's talk about the facts in this case for a minute.
7 We know who shot Charlie Roberts. JJ admitted to it. All
8 the evidence shows he's the one that pulled the trigger.
9 You saw that he has some issues.

10 JJ Allen is pathetic. And I don't mean that in an
11 insulting term, I mean that in its most clinical term. Dr.
12 Ward is a pathologist, path, pathos, Greek term for
13 sickness. JJ is not all right. Jobo took advantage of him
14 knowing his issues.

15 We know who the trigger-man was, but who wanted Charlie
16 dead? Charlie, who apparently has no enemies outside of
17 Jobo. Charlie, who's had a steady job for two decades. Who
18 wants Charlie dead? JJ Allen has some problems. Charlie
19 Roberts was not one of his problems. Charlie Roberts was
20 Jobo Phillips' problem.

21 Jobo has a motive. Jobo, I don't mean no disrespect,
22 I'm not trying to just deride him, but he's not a forward
23 thinker. This is not a well laid plan. Jobo is not
24 thinking right in 2011, not when it comes down to Christina
25 and Charlie.

CLOSING ARGUMENTS - MR. STEINBERG

586

1 This is a case of a jealous ex-boyfriend arranging, and
2 planning, and encouraging, that's Jobo. And JJ, again, a
3 pathetic do-boy or a watch-dog in his own words, executing
4 the plan. I want you to listen to the phone calls. They
5 are yours. They are in evidence. You will come in here
6 mostly likely and play them if you need to hear them again.
7 Listen to the phone calls between Jobo and JJ.

8 Now, the defense attorney is going to put up her
9 defense and make a number of arguments. She gets the final
10 argument. I don't know exactly what she's going to say. I
11 think she's going to focus on cell phones during a very
12 particular period, that is, where was -- where was Jobo in
13 the time between 9:22 and noon or one?

14 Well, we have the relevant phone records. We know that
15 the relevant phone records are Charlie's. Obviously, he's
16 passed away, we can't talk to him. Jobo told a falsehood to
17 the officers on Saturday, July 9th. We've got his, too.

18 Another critical reason, those are the phone numbers
19 going back and forth. You've seen this, back and forth,
20 back and forth. Charlie to JJ, JJ to Jobo, pardon me. Jobo
21 to Charlie, then Charlie's phone call repeatedly to Jobo.

22 Finally, a final phone call from what's clearly JJ. It
23 can't be Charlie, Charlie's dead on the southern point. JJ
24 and Charlie's truck up on the very top. Jobo's already on
25 his way. We know that. 11:08, phone call. 11:10,

CLOSING ARGUMENTS - MR. STEINBERG

587

1 voicemail calls, I should say.

2 We do not need Jimmy Poole and Roy Barrett's telephone
3 calls from prior days. The officer's did what they were
4 supposed to. You're saying maybe they missed this, they
5 missed that. They checked for fingerprints. There are no
6 fingerprints. They missed a .380 shell casing. They're
7 familiar with this. They go back another time and they find
8 it.

9 Now, the Defendant's primary theory in this case is
10 what I'm going to have to refer to as the lone JJ theory.
11 JJ did this alone. He did this for no reason involving Jobo
12 Phillips.

13 Now, JJ's going to get what the law decides. He's
14 going to get between thirty years and life. You've heard
15 I've made a recommendation or will make a recommendation of
16 thirty years. There is no parole in this case.

17 For you to believe that JJ did this without any
18 assistance, any encouragement, any support from Jobo would
19 require you to disbelieve T-Bird Starling and Roy Barrett.
20 They both got together and both came up with this and both
21 continued to come up with this idea. Roy Barrett's
22 statement's in evidence. I urge you to read that word for
23 word.

24 You also have to disbelieve Roy White and Tammie
25 Timmons. They're obviously not a couple anymore. He's in

CLOSING ARGUMENTS - MR. STEINBERG

588

1 prison. But they would come up with this red headed MF-er,
2 threat, on a different date just decided to come up here.
3 Tammie Timmons wasn't even interviewed until well later.

4 You also have to disbelieve Bobby Sweet. Bobby Sweet
5 got nothing out of this. Bobby Sweet came in from the State
6 prison and testified to what happened. He has no dog in
7 this fight. We sent him a subpoena, they put him on a bus,
8 he has to testify. It's that simple.

9 You have to disbelieve all of those people and
10 Christina and JJ and you have to disbelieve JJ's, pardon me,
11 Jobo's own cell phone, pardon me, jailhouse calls. Listen
12 to Jobo's jailhouse phone calls. They're all in there for
13 you to listen to. They all scream Jobo's guilt alongside of
14 JJ.

15 The Defendant has also raised some issues involving
16 prescription pills. I submit to you Charlie Roberts was not
17 a drug dealer or drug user and this is not a drug deal.

18 Opposing counsel and I actually have a very good
19 relationship. So don't take this word incorrectly, but
20 there was some irrelevant questions that were asked, some
21 dwelling -- this is a common defense technique. You can
22 dwell on one small area. It has nothing to do with the
23 entirety of the case. You want to get the jury misled.

24 I urge you to look at the entirety of the case, not
25 focus on whether Jimmy Poole or Christina Gentry had a

CLOSING ARGUMENTS - MR. STEINBERG

589

1 different story than Christina and Emily Gentry as to the
2 time-line. We all agree, everybody in this room should
3 agree, Jobo Phillips was not available, not around and was
4 wisely not around when Charlie was murdered.

5 The defense attorney will have the final closing
6 argument. I'll remind you that the Judge will instruct you
7 on the law. Not anything I say or anything opposing counsel
8 says is the law. It is up to the Judge.

9 I also advise you if you hear something from me, if I
10 accidentally misstate something, within a two day trial
11 maybe I've made a mistake, you are not to follow what I have
12 to say or what opposing counsel has to say. The evidence is
13 your recollection and before you on the table.

14 I've presented a time-line, if Ms. McIntyre will assist
15 me. This time-line is designed primarily for my benefit.
16 It's easier for me to explain this to you.

17 Jobo and Christina break up their on again, off again
18 relationship in March of 2011. Christina moves out. Her
19 children move with her, although they have a lot of contact
20 with Jobo. Charlie and Christina start to date shortly
21 after that.

22 Jobo discovers Christina and Charlie are dating in the
23 Spring of 2011. You heard Jobo's not taking kindly to this.
24 Jobo is infuriated by this. We see where this is going. We
25 know what happens. We know what happened to Charlie after

CLOSING ARGUMENTS - MR. STEINBERG

590

1 this. That's his motive.

2 Emily Gentry, Jobo's recent girlfriend, clearly has a
3 dispute with Christina Gentry, confirms Jobo is distraught
4 over Charlie and Christina.

5 Jobo tells JJ that he and Jobo has to kill Charlie. He
6 has to get him out of the way. Dakota Oliver also hears
7 this conversation, recalls the conversation. He recalls it
8 a little bit different. He was the young man that goes to
9 Travelers Rest High School. He recalls, I've got to do
10 something, he said it more than once, about Charlie, about
11 the man seeing Christina.

12 Jobo's cousin was present. We obviously did not
13 present Jobo's cousin in this case, also a juvenile. Jobo
14 has JJ drive him past Charlie's house at the nighttime. You
15 heard that -- that's one of the functions JJ performed. JJ
16 cleans the house, he does various functions.

17 Apparently, he also drives Charlie past or drives Jobo
18 past Charlie's house in the nighttime to see if Christina
19 was there. Jobo said he's going to beat Charlie if he sees
20 him. We know where this goes. We know where this ends.

21 June 12th, Jobo threatens Charlie at Charlie's own
22 house at night. Jobo has the nerve, has the inclination and
23 has the motive to go over to another man's house, bang on
24 the door, threaten him, cuss him, called him that word,
25 pussy faggot.

CLOSING ARGUMENTS - MR. STEINBERG

591

1 Finally, Christina has to force Jobo to leave. Makes
2 him get in the car and drive away. That's June 12th.
3 Charlie Roberts has less than a month to live. He'll be
4 dead in a month because he made Jobo upset.

5 Deputy John Duncan responded to this location. Jobo
6 actually calls Charlie and is surprised when he gets Deputy
7 John Duncan. Jobo agrees not to bother Charlie anymore.
8 There were some questions as to whether this was an incident
9 or not.

10 Jobo agreed there had been an incident, involved a
11 female, we all know which female this was, and he agrees
12 he's not going to come by anymore. Well, he doesn't come by
13 anymore. He has somebody else go by for him.

14 That same night Jobo tells Christina that Charlie is,
15 quote, a pussy for not fighting me. Jobo tells JJ the same
16 thing on the same night. Emily also testified that Jobo
17 made similar comments. Shows he's not past it. He tells
18 Deputy John Duncan he's past it, but he's not past it.

19 Christina speaks with Jobo. This is July 4th. Jobo
20 calls Charlie, again, apologize for my language, a red
21 headed MF-er and you're busy seeing him instead of seeing
22 your family. He's not going to get past this. Jobo is
23 stuck on this. Like calls it a fantasy relationship. Jobo
24 still thinks that he's in a relationship with Christina.
25 She'd broken it off. She's moved on. She's past this.

CLOSING ARGUMENTS - MR. STEINBERG

592

1 Jobo is not.

2 Jobo walks up to Roy White at the TR Speedway and
3 offers him a hundred dollars to injure Charlie. I say
4 injure. The magic words were knock out Charlie. He wants a
5 man -- wants to hire a man to injure Charlie.

6 This is on July 4th. Tammie Timmons, you've heard
7 this, I told you at the very beginning you might hear some
8 hesitant witnesses. We had a couple. T-Bird was hesitant.
9 Tammie Timmons couldn't get off the stand fast enough. She
10 told you what she heard. She has no dog in the fight.
11 She's not facing anything from me. I'm not prosecuting her
12 for anything.

13 She also hears a hundred dollars to knock out that red
14 headed MF-er. Charlie has four days left on this planet.
15 Tammie told you she's from Marietta. Some of the other
16 people told you Marietta's a little bit different. She told
17 you that people talk like that in Marietta.

18 Well, when you have Jobo Phillips telling you, I want
19 you to knock out a man for a hundred dollars, it's serious.
20 He came to two people. He's been to the house before. This
21 is not an isolated or a random threat.

22 Jobo then calls Roy Barrett to buy a throw-away pistol
23 because he has a man to do a job. I believe I even asked
24 Mr. Barrett, who also did not want to be here. Apparently,
25 I and the marshals had a word with him. Roy Barrett gave a

CLOSING ARGUMENTS - MR. STEINBERG

593

1 statement dated August, pardon me, October 11th, 2011. We
2 said, is that Jobo's word, throw-away gun? Yes. Did he say
3 he has a man to do a job? Yes.

4 Roy recalls the date wrong, perhaps. Perhaps it was a
5 Wednesday, maybe it was a Tuesday, maybe it was a Thursday.
6 We don't know. But Roy recalls it was right before Charlie
7 went missing.

8 That might seal the deal right there, ladies and
9 gentlemen. Some of you might just decide to convict at that
10 point once you re-read that, Jobo telling a man who has no
11 dog in this fight and clearly does not want to be here for
12 the State, I've got a man to do a job, I need a gun.

13 On that same day Jobo drives up at the Spinx to Roy
14 Barrett and equally scared, T-Bird Starling, if you're
15 asking, yes, his name actually is T-Bird. His mother had a
16 sense of humor, I guess. They'd bought a gun.

17 T-Bird then tells Bobby Sweet that same day, hey,
18 Jobo's looking for a gun. They call Jobo. This is early
19 July of 2011. Jobo buys a black .380 Hi-Point pistol, which
20 you have before you for one hundred and twenty-five dollars.
21 He does not buy the 9mm at that time. It is not used in
22 this case.

23 Jobo gives that same gun to JJ Allen. Bobby Sweet
24 recalls it was right before Charlie went missing. Bobby
25 knew the brand and the caliber. The officers did not tell

CLOSING ARGUMENTS - MR. STEINBERG

594

1 him.

2 Jobo then tells JJ he wants him to kill Charlie
3 Roberts. It went from talking, talking to a very specific
4 request on the morning of Friday, July 8th. There were some
5 stupid attempts. Those are almost pathetic attempts. Those
6 are attempts designed by someone who has nothing to lose, to
7 have somebody else commit a stupid crime. That is Jobo
8 telling JJ, I want you to execute these idiotic plans in
9 front of the man's own house.

10 JJ has problems. JJ has mental problems. JJ has drug
11 problems. JJ is smart enough to realize these plans won't
12 work on Lions Park Road. Jobo comes up with a better idea,
13 lure him elsewhere.

14 Jobo calls Charlie Roberts 9:22 in the morning. Jobo's
15 phone calling Charlie's number, 9:22. Charlie has about a
16 half hour to live. Jobo drives JJ towards Charlie's house.
17 This is between 9:30 and ten. He drops him off, not too
18 close, he doesn't want his car seen. JJ walks up, gets a
19 ride from Charlie. They go to Carl Rider's old house, also
20 on Friday morning.

21 Now, Charlie is, of course, unlikely probably to go
22 anyplace with Jobo. Charlie would have to be incredibly
23 naive, incredibly naive to go anyplace with Jobo. Jobo
24 might be playing nice now, trying to be his friend, but he'd
25 be crazy to go with Jobo.

CLOSING ARGUMENTS - MR. STEINBERG

595

1 But surely he's going to go with JJ. JJ's tiny. Did
2 you see JJ? JJ didn't even come much taller than this
3 podium. JJ's a small person. He's not really a threat. JJ
4 himself is not a threat. Jobo's pistol there, the .380, is
5 a threat.

6 He's going to get a car part at a place where car parts
7 may well be. Also, it's Christina's brother. You heard
8 Christina and Charlie are in a relationship.

9 Charlie's then shot in the head by JJ Allen with the
10 pistol Bobby Sweet gave to Jobo. There's a discrepancy.
11 Dr. Ward, brilliant man, I wish I was half as smart as he
12 was. He said the bullet went in the front.

13 He said it could have been fired at a higher angle
14 'cause it went down, or the person's head could have been
15 tilted, or the body could have been tilted. That would --
16 that would have involved the bullet going in the front and
17 going at a very minor downward slant.

18 JJ took the stand and he said he believes, he is
19 confident, he shot him in the back of the head. We were not
20 there. Does anybody really believe JJ didn't pull the
21 trigger? Maybe JJ's mistaken. Maybe Charlie turned his
22 head, as quick as that was, took less than a second. I
23 don't know. I'm not going to dwell on that issue. JJ
24 pulled the trigger. And Charlie is dead.

25 Now, we know that JJ killed him, killed Charlie before

CLOSING ARGUMENTS - MR. STEINBERG

596

1 10:30. We know these phone calls were made by JJ Allen,
2 10:05, 10:06, 10:14, all going to Jobo. Jobo's receiving
3 these phone calls. It's his phone. These phone calls
4 continue on.

5 Charlie's phone goes from this area, farther south, and
6 then it starts traveling north. 10:17, he again calls.
7 Continues on up. All the way up to Zirconia, North
8 Carolina's tower, still on Gap Creek Road in South Carolina.
9 That is the path of Charlie's phone.

10 We know Charlie was not with his phone after 10:00
11 because Charlie's down here at the incident location near
12 the tower, the 10:05 tower. He doesn't travel with it, he's
13 dead.

14 JJ tells Charlie -- drives Charlie's truck to Gap Creek
15 Road, leaves it in the woods, but not far enough that people
16 can't see it. A person did see it and called in to law
17 enforcement.

18 JJ Allen, I say, is pathetic. And I don't mean to
19 insult. I really don't. But he is pathetic at following
20 directions because he was supposed to dispose of the body in
21 the well. And there's a picture of that well in this -- in
22 this collection of photos.

23 If he'd have dropped that body in the well, we probably
24 wouldn't have a case here. If he had dropped that car
25 farther in the woods, perhaps we wouldn't have a case here.

CLOSING ARGUMENTS - MR. STEINBERG

597

1 JJ doesn't follow directions well. He's a drug user. He
2 has mental problems. He did a bad job of hiding this car.
3 It was found that same day, that same day, 5:15.

4 Jobo gets a call from his do-boy. That's what JJ is.
5 Calls him on Charlie's cell phone. Jobo's getting phone
6 calls from Charlie's cell phone, comes into play. That's at
7 10:49.

8 Jobo goes to Gap Creek Road to pick up JJ Allen right
9 where Jobo told him to go. Jobo ensures he has people in
10 the car who will say he was not there at the time he pulled
11 the trigger. And we agree he's not there at the time he
12 pulled the trigger. The aerial maps confirm JJ's testimony.

13 Jobo and JJ go back to Jobo's house. Jobo provides JJ
14 with a home, that's a motive, drugs, money, that's a motive.
15 Jobo then searches Charlie's cell phone for the phone calls
16 between Charlie and Christina. He then breaks the phone.
17 The officers could not find the phone.

18 That's also on July 8th. Joe was obsessed with this.
19 This is not the first time he's looked through the phone for
20 messages. He's obsessed. That's the key word, he's
21 obsessed. When you're obsessed you don't let things die.

22 The same day Charlie Roberts is shot in the head, Jobo
23 has the nerve to ask Christina Gentry, quote, have you seen
24 your boy today? Well, of course, she hasn't seen her boy
25 today. The boy died at 10:00.

CLOSING ARGUMENTS - MR. STEINBERG

598

1 Jobo even texted her, the texts are in evidence, I love
2 you very much. He texted an ex-girlfriend, his ex-
3 girlfriend, who does not want to be with him, I love you
4 very much.

5 Jobo then asked Christina on a date the very next day,
6 Saturday, July 9th, 2011. Charlie's been dead for one day
7 and Jobo's asking her out. He thinks his mission is
8 accomplished. He thinks he's already won. Charlie's dead.

9 Jobo's interviewed by Investigator Chris Miller and
10 says, quote, I am friends with Charlie Roberts. Jobo's
11 statement is in -- in evidence. I want you to look at it.
12 Do any of you really believe that Charlie and Jobo were
13 friends at this point?

14 Jobo further stated, I don't want my friend to date my
15 ex-girlfriend, ex-girlfriend is the key word, but I do not
16 care who she dates. Again, does anybody here really think
17 that Jobo does not care who Christina dates?

18 Jobo also claimed that Charlie is -- well, he didn't
19 know that Charlie was dating Christina. However, we knew
20 that to be false. Christina has told him. Jobo has already
21 been to JJ -- to Charlie's house. So he knows about their
22 relationship. Jobo just doesn't want to accept that.

23 Emily Gentry even went so far to say that when Charlie
24 was killed Jobo continued to call Charlie names. And this
25 is postmortem. This is after Charlie's dead. And said,

CLOSING ARGUMENTS - MR. STEINBERG

599

1 Charlie should not have been seeing Jobo's old lady. That's
2 his term, Jobo's old lady, Christina. She can't go anyplace
3 'cause Jobo won't let her.

4 Jobo knows we're investigating the fact that Charlie
5 has not been seen, but Jobo does not tell the Sheriff's
6 Office that JJ called repeatedly on the day Charlie went
7 missing from Charlie's phone. That is huge, ladies and
8 gentlemen. That is massive.

9 Charlie's body's discovered on August 15th, by of all
10 people, Jobo's cousin or uncle, I believe, Carl Rider.
11 Jobo's familiar with the area. Jobo's upset that JJ didn't
12 dump the body where he was supposed to, which was a well.

13 Jobo then tells JJ to turn himself in because Jobo has
14 five kids. Jobo will get an attorney to take care of him
15 and is giving him drugs. And JJ's got a problem with drugs.

16 And JJ follows suit, follows orders, follows
17 directions. Like he did on July 8th, he did it on August
18 15th, he turns himself in. He has no reason, no reason
19 whatsoever to turn himself in other than Jobo told him to
20 and Jobo paid him to.

21 He gave the rather silly story that this was a shooting
22 over nothing, an argument over a motorcycle. He said it was
23 an illegal pill sale, but that wasn't the issue.

24 JJ in his statement admits, even though he was trying
25 to cover for Jobo, he was doing his best to not get Jobo in

CLOSING ARGUMENTS - MR. STEINBERG

600

1 trouble, but he calls himself a watch-dog. What does a
2 watch-dog do? A watch-dog protects his owner. As pathetic
3 as that sounds when you're dealing with human beings, Jobo
4 was JJ's owner.

5 JJ turns himself in to attorney Frank Eppes, who, as
6 you've heard, was earlier associated with Jobo. JJ's in
7 jail for a week. Jobo's not in jail yet. And JJ's upset.
8 And he's understandably upset. He's been played for a fool.

9 He gives the same scenario in this statement as what
10 the evidence shows except he puts Jobo in his shoes. Jobo's
11 the trigger-man. JJ is an outlying observer. The first
12 statement and the second statement clearly has some truth to
13 it, but they're totally false in their entirety when read in
14 their entirety.

15 That same day he gives a second statement. JJ goes
16 with officers and shows them the murder weapon. It's a
17 black .380 handgun. They also show him Jobo's 9mm buried
18 right there in the sand. We've got a picture of that.

19 He also shows where Charlie was murdered, how he was
20 murdered and where he dragged the body. The officers know
21 about this. They know where the mealworms were. They know
22 the body was here. They know the body had been drug because
23 of what Dr. Ward had said about the shirt being pulled over
24 the body.

25 James Armstrong confirms that the murder weapon, the

CLOSING ARGUMENTS - MR. STEINBERG

601

1 .380 that we have, State's exhibit number 2, is, in fact,
2 the same weapon that fired the shell casing found in the
3 murder site. The weapon's buried about a hundred or a
4 hundred and fifty yards from Jobo's house, I believe.

5 Jobo is then arrested for his role. The officers had
6 JJ's statement, Christina's statement, Deputy John Duncan's
7 information and Bobby Sweet's information on who actually
8 purchased the murder weapon, which was, of course, Jobo.

9 I don't even know if Bobby Sweet even knew JJ. In
10 fact, I think I may have asked him the question, but I don't
11 believe he said he knew him.

12 The State later indicted Jobo for a similar charge.
13 This is my decision. Maybe I made a wrong decision. Maybe
14 it should be murder as well, but I decided to go forward on
15 accessory before the fact.

16 August 29th, Jimmy Poole, who is related to Jobo, gives
17 a statement that Jobo had JoAnn Phillips, who was driving
18 Jimmy someplace to divert her trip to go pick up JJ from Gap
19 Creek Road. This shows that Jobo was involved. It shows he
20 was smart enough not to be the only person around.

21 He has witnesses. Verizon, not Jimmy Poole. Jimmy
22 Poole is off by about an hour or two, maybe an hour and
23 forty-five minutes. Christina, when she says noon, she
24 might be wrong about noon. Maybe noon to her means 12:30 or
25 one. Verizon gets it right. They're paid to get it right.

CLOSING ARGUMENTS - MR. STEINBERG

602

1 They bill on getting times right.

2 Investigators Hammett and Miller, they go back to JJ
3 Allen. They speak to him. They know he's told a falsehood
4 about something. They speak to him and he says Jobo was
5 obsessed with Christina. There shouldn't be much of a doubt
6 about that.

7 Jobo wanted Charlie out of the picture. And Jobo gave
8 JJ drugs and money to make this happen. I want to explain
9 this, ladies and gentlemen. This is not Jobo being thrown
10 under the bus by JJ. JJ, you'll have his statement, JJ's
11 confessing to a murder. He is confessing to unmitigated,
12 unbridled, one hundred percent murder.

13 He is not saying he did it, but look, he is saying I
14 did it, but you also, in addition, need to know about Jobo.
15 There were no offers, no promises. JJ makes a statement, he
16 had no plea offer, it's corroborated by the evidence, by the
17 cell phone information and the witnesses. They have nothing
18 to do with each other. That's on August 29th.

19 JJ Allen then speaks to his sister. I have two disks,
20 it's one call broken up into two pieces, this is JJ to
21 Christina. He confesses why he did it, how he did it and
22 that Jobo told him to do it. That's September 3rd of 2011.
23 Very important date. Remember that, September 3rd of 2011.
24 Again, no offer was made. This is a confession to the
25 victim's girlfriend, which is JJ's sister. It's not made to

CLOSING ARGUMENTS - MR. STEINBERG

603

1 Investigator Hammett.

2 Jobo on the street tells JJ over the jail phone, Jobo
3 is taking care of JJ. JJ says I take care of my shit here.
4 They know they're being recorded. They can't speak freely.
5 Jobo then says, you know what the hell is up. You're a man
6 of your GD word. We have that phone call as well.

7 Jobo's arrested on August 26th. He tells Christopher
8 Hammett, who's still at the table here, I don't know
9 anything. Jobo again, again fails to tell the officers,
10 hey, JJ called me from Charlie's phone on the day Charlie
11 went missing 'cause he can't, because if he tells that, the
12 case is over. He speaks to JJ and it's over.

13 Jobo tells his ex-girlfriend, Christina Gentry, his
14 motive. He is still in love with her. He tells her that in
15 person and over the phone, the jail phones. He proposes to
16 her, I believe, is the testimony. She does not agree.

17 He admits stealing her cell phone to look to see if she
18 is talking to Charlie. Here she only stole his cell phone
19 -- Jobo only stole the cell phone. On July 8th he stole the
20 man's life in order to get that cell phone and removed that
21 threat to him ever having Christina back again.

22 Jobo tells his mother and his half sister, Courtney, on
23 September 3rd, 2011 at 17:55 hours, these calls are here,
24 these are all in evidence. You will be able to play them in
25 a room or we'll play it in here in this courtroom.

CLOSING ARGUMENTS - MR. STEINBERG

604

1 Jobo says, tell mama, to JoAnn, JoAnn Johnson, to see
2 JJ, tell him I will talk to him when I get out. Tell him
3 his brother says he loves you. Is that a code or is that
4 just offhand remarks? Tell him we are going to help him
5 out. Jobo can, quote, help clear this. Tell JJ to keep
6 quiet and keep it true.

7 Again, Jobo's not a dummy. I've never said he's a
8 dummy. I'll never say he's a dummy. He knows to speak in
9 code, but he does not know enough code. He doesn't realize
10 we're actually paying attention to these jail phone calls.

11 September 3rd, again, a very important date, 2011 at
12 23:50 hours, Jobo, Jobo Phillips again says, tell JJ to keep
13 his mouth shut, two times. Now you've heard these phone
14 calls. I've had the opportunity to listen to them for
15 thousands of hours, these phone calls. I can understand
16 them. You might have had some trouble. The audio might not
17 be very good. We can play it for you again. You ask for
18 it, we will play these tapes for you again.

19 I've got a way around this so that he is not the main
20 one. Tell him I love him. Tell him not to say anything in
21 front of the GD sister. Tell him to keep his mouth shut.

22 Well, of course, JJ does speak to his sister that same
23 day. September 3rd Jobo says don't let JJ speak to his
24 sister. September 3rd JJ gives it up one hundred percent
25 and completely. Tell him I'll take care of it when I get

CLOSING ARGUMENTS - MR. STEINBERG

605

1 out. I got a way around this when I get out. Keep mouth
2 shut. He also says my shit goes to the grave with me.

3 Now, defense attorney is going to make an argument,
4 she's already hinted at it, that this is an accessory after
5 the fact. That's not what we're here about. Is he really
6 doing this because he wants to help his little buddy, JJ?
7 Or is he looking out for himself?

8 If you are finding out that he is -- if you decide that
9 he is looking out for himself, that he has himself to blame
10 here in this case, and he doesn't want himself to get in
11 trouble, then you have convicted him of accessory before the
12 fact.

13 He says my shit goes to the grave with me. I am going
14 to set someone up. You see, that's Jobo. Jobo will set
15 someone else up. Jobo does not get his hands dirty on this.
16 Tell him hang in there for me. Not for himself, but for me.

17 Tell JJ to keep his mouth shut, let nothing slip.
18 Well, what is there to slip other than that Jobo paid him to
19 do this, and assisted him in doing this, and gave him a gun
20 to do this?

21 And then tell him to keep his MF ass tight like he was
22 doing to start with. Well, why would Jobo Phillips want JJ
23 to keep quiet or keep with the first story, what he started
24 with? Well, the first story exonerates Jobo. It makes it
25 look like Jobo has nothing to do with this. That's what

CLOSING ARGUMENTS - MR. STEINBERG

606

1 Jobo wants.

2 September 9th, call from Jobo. Again, tell JJ to keep
3 his mouth shut. Jobo is going to try to pin it off on
4 someone else. Ladies and gentlemen, he's already telling us
5 he likes to deceive, he likes to mislead. That's what he's
6 doing. He is setting up a plan.

7 I will walk us both out of this. He also repeats he
8 will, quote, put this off on someone else. He is trying to
9 get JJ not to break because if JJ breaks, you listen to his
10 September 3rd call to his sister, it's over for Jobo. Tell
11 him not to say anything about me. He's looking out for
12 himself. He is an accessory before the fact to a murder.

13 JJ about a year, a year ago, I guess, accepted a guilty
14 plea to a murder with a recommendation of thirty years and
15 no parole. Today, Jobo Phillips has to answer. Could we
16 get the lights, please? Today, Jobo Phillips has to answer
17 for what he has done.

18 You're going to go back into the deliberations room and
19 you're going to ask yourself, did Jobo Phillips have
20 anything to do with this murder? Did he knowingly give a
21 gun, give instructions, give a bribe in the form of money or
22 anything to kill Charlie? Did he make a plan? Did he drive
23 JJ to where Charlie lived? Did he make plans ahead of time
24 about where to get rid of the body, where to get rid of the
25 truck? If he did any of those things, any one of those

CLOSING ARGUMENTS - MS. GORTON

607

1 things, he is actually guilty of accessory before the fact
2 of a murder.

3 JJ Allen may have used Jobo's .380 to commit this
4 crime, but I submit to you Jobo Phillips used JJ Allen as
5 the murder weapon. That's just a tool. JJ Allen is the
6 murder weapon.

7 I thank you for your time. I and the State of South
8 Carolina appreciate the attention you've paid in this case.
9 We thank you very much. Ms. Gorton.

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

11 **MS. GORTON:** It's back. I hope you'll forgive me.

12 After twenty years of this, I still get really nervous up
13 here. It's not that you all are that scary, it's also the
14 responsibility of having someone's life in your hands. For
15 that reason, I'm going to cling to this closing that I wrote
16 last night. And I'll try not to read from it too much.

17 There were some things I wanted to say to you on our
18 first day, but I wasn't able to do so. First, on behalf of
19 Mr. Phillips, I'd like to thank you for being here. We both
20 realize that your routines and your lives have been
21 disrupted. And being here this week has probably been a
22 huge inconvenience. Thank you for coming anyway because
23 without you our system would not work.

24 And as I started to say before, this is in many ways a
25 simple case. Charlie Roberts is dead. The State and I

CLOSING ARGUMENTS - MS. GORTON

608

1 agree as to who killed him, how and where.

2 JJ Allen shot and killed Charlie Roberts on Friday,
3 July 8th just before 10:05 am in that broken down shed that
4 you all saw, just north of Travelers Rest. We agree that
5 William Phillips was not present. We agree on that. The
6 issue before you is why.

7 I'm first going to explain to you some of the things
8 that may still seem random or irrelevant to you. That
9 wasn't a defense attorney's trick. In South Carolina we
10 don't have depositions in criminal cases. A lot of what you
11 heard over these last couple of days was the first time I
12 was hearing it, too. But I have an obligation to cover all
13 bases for my client not knowing how the case is going to
14 evolve.

15 I can't get into Jerry Allen's mind. I have no idea
16 what he's going to say. I don't know in advance what's
17 going to be relevant or irrelevant. And for each of you
18 that might be different. For some of you it might be huge
19 that Christina Gentry was denying that they were back
20 together when the phone calls and Emily seemed to suggest
21 they were. Maybe that's irrelevant, maybe it's not, but
22 it's no deliberate trick.

23 So I'm going to explain some of those things that we
24 spent a lot of time on. You might be thinking why all the
25 questions about this motorcycle? Why is it important to

CLOSING ARGUMENTS - MS. GORTON

609

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

614

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

615

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

616

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

617

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

618

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

619

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

620

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

621

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

622

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

624

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 Lot's 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

625

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

CHARGE OF THE COURT

627

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

CHARGE OF THE COURT

628

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

CHARGE OF THE COURT

629

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

CHARGE OF THE COURT

630

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.

CHARGE OF THE COURT

631

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.

CHARGE OF THE COURT

632

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.

CHARGE OF THE COURT

633

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,

CHARGE OF THE COURT

634

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.

CHARGE OF THE COURT

635

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

CHARGE OF THE COURT

636

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

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.

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

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

654

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)

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

William Joseph Phillips, Appellant.

Appellate Case No. 2013-001339

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

Unpublished Opinion No. 2015-UP-100
Heard February 12, 2015 – Filed March 4, 2015

AFFIRMED

David Lee Paavola, Nelson Mullins Riley &
Scarborough, LLP, of Columbia, and Chief Appellate
Defender Robert Michael Dudek, of Columbia, both for
Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, and
Assistant Attorney General Kaycie Smith Timmons, all
of Columbia; and Solicitor William Walter Wilkins, III,
of Greenville, for Respondent.

PER CURIAM: In July 2011, Jerry Allen shot and killed Charles Roberts. In connection with Roberts' death, the State indicted William Joseph Phillips on the charge of accessory before the fact of murder. Phillips appeals his conviction, arguing the trial court erred in refusing to give a proposed jury charge concerning the mental state required for liability as an accessory before the fact.

The trial court is required to charge the correct law applicable to the case. *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). "This court will not reverse a trial court's decision to refuse a specific request to charge unless the trial court committed an error of law." *State v. Marin*, 404 S.C. 615, 619, 745 S.E.2d 148, 151 (Ct. App. 2013). The trial court commits no error of law in refusing to give a proposed charge when "the charge requested is an incorrect statement of law." 404 S.C. at 620, 745 S.E.2d at 151.

A person is an accessory before the fact if he "aids in the commission of a felony" or commissions a felony "by counseling, hiring, or otherwise procuring the felony to be committed." S.C. Code Ann. § 16-1-40 (2003). In charging the jury on the crime of accessory before the fact, the trial court tracked the statutory language of section 16-1-40. Phillips argues, however, the court erred in refusing to instruct the jury regarding the mental state required for the crime—that Phillips specifically intended for Allen to kill Roberts.

The type of criminal intent that is required to prove a defendant guilty of a statutory offense is a question of legislative intent. *State v. Ferguson*, 302 S.C. 269, 272, 395 S.E.2d 182, 183 (1990). When a criminal statute does not express a particular mental state, courts "look to common law and the development of the statute to determine whether the legislature intended the crime to require" a particular mental state. *State v. Jefferies*, 316 S.C. 13, 18, 446 S.E.2d 427, 430 (1994).

Section 16-1-40 does not provide, and the State concedes South Carolina courts have not established, the mental state required to prove guilt as an accessory before the fact. Phillips argues the crime requires proof of a "purposeful" mental state, or specific intent. Our supreme court in *Jefferies* addressed a similar situation with respect to the statute criminalizing kidnapping, which contained no explicit mental state requirement. 316 S.C. at 18, 446 S.E.2d at 430; *see also* S.C. Code Ann. § 16-3-910 (1985). In that case, the appellant submitted proposed jury charges to the trial court that required the State to prove "specific intent" or "purpose." 316 S.C. at 19, 446 S.E.2d at 431. The supreme court first examined the statutory

development of the crime of kidnapping, which originally required two acts—the "act of carrying a [child] . . . out of the State" and "the act of procuring the child." 316 S.C. at 18 n.5, 446 S.E.2d at 430 n.5. The court held a mental state was implied in the original kidnapping statute, stating, "Implicit in the word 'procure,' as used in the statute, is taking possession of the minor with some degree of . . . knowledge." *Id.* The supreme court then rejected the appellant's argument that the requisite mental state should be "purpose," stating "'[p]urpose' is the highest level of *mens rea* known in criminal law and it is not required under the South Carolina kidnapping statute." 316 S.C. at 19, 446 S.E.2d at 431. Instead, the court held only "knowledge" was required under the statute because the legislature intended "to require a lesser *mens rea* than 'purpose.'" 316 S.C. at 19, 446 S.E.2d at 430-31.

In this case, we hold the General Assembly did not intend for the mental state of "purpose" to be an element of the crime. Similar to the court's interpretation of the kidnapping statute in *Jefferies*, the words of section 16-1-40—"counseling, hiring, or otherwise procuring" the commission of a felony—imply a degree of knowledge to be guilty as an accessory before the fact. However, the State did not have to prove Phillips specifically intended that Allen commit the felony he "counsel[ed], hir[ed], or otherwise procur[ed]" Allen to perform—murdering Roberts. Instead, it was sufficient for the State to show a lesser degree of criminal intent.¹ Our case law supports this conclusion, as decisions by our supreme court have never listed an intentional or purposeful mental state as an element of the crime. *See, e.g., State v. Bixby*, 373 S.C. 74, 75 n.2, 644 S.E.2d 54, 55 n.2 (2007); *Sellers v. State*, 362 S.C. 182, 188, 607 S.E.2d 82, 85 (2005); *State v. Prince*, 316 S.C. 57, 64, 447 S.E.2d 177, 181 (1993).

Because Phillips' requested charge did not reflect South Carolina law, the trial court properly refused to instruct the jury that Phillips must have intended for Allen to kill Roberts to be liable as an accessory before the fact of murder.² *See*

¹ We do not decide what level of intent was necessary for conviction.

² To the extent Phillips argues the trial court erred by not including in its charge *any* language regarding criminal intent, we find this argument not preserved. At trial, Phillips requested the trial court instruct the jury that Phillips "inten[ded] that a murder be committed by [Allen]," and Phillips neither requested a charge on a lesser mental state nor objected to the absence of such a charge. *See State v.*

Jefferies, 316 S.C. at 19-20, 446 S.E.2d at 431 ("Because the charges requested by [defendant] . . . included a level of *mens rea* not required under [the kidnapping statute], the trial judge correctly refused to give the requested charges."); *State v. Foust*, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996) ("[The defendant] sought only a specific intent . . . charge. As that is not the law of this State, the charge was properly refused.").

AFFIRMED.

FEW, C.J., and HUFF and WILLIAMS, JJ., concur.

Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("Issues not raised and ruled upon in the trial court will not be considered on appeal.").

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLEWILLIAM DE PHELPS #355787
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2015-CP-23-04911

APPLICATION FOR

POST-CONVICTION RELIEF

FILED-CLERK OF COURT
GREENVILLE S.C.
PAUL D. WILKINSON
2015 DEC 7 PM 2 25INSTRUCTIONS - 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 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 Kyle and Coe Inst 434 Sand Road Columbia SC 29210
2. Name and location of Court which imposed sentence Greenville County Court House
3. Name(s) of co-defendant(s) (if any) JEFFREY LEONARD ALLEN
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) MURDER
 - (b) POSSESS OF WEAPON DURING VIOLENT CRIME
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 11/4
 - (b) 11/4

- (c) N/A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
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. State of South Carolina in the Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. State of South Carolina in the Court of Appeals, Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. March 4, 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) I AM NOT AFFECTED BY THIS COURT ORDER OF REVERSAL

(b) SEEKING FILING ON OFFENSE PETITION

(c) _____

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

(a) OFFENSES ARE ON STAND

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? YES

(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)? YES

(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. PETITION FOR WRIT OF HABEAS CORPUS TO THE COURT OF APPEALS

ii. _____

iii. _____

iv. _____

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

i. STATE OF SOUTH CAROLINA IN THE SUPREME COURT, LOCATION COLUMBIA SC

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

- iv. 1/1
- (d) the date of each such disposition:
- i. 1/1
- ii. 1/1
- iii. 1/1
- iv. 1/1
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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?

yes

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

- (a) which grounds have been presented:
- i. I NEVER CONFESSED TO THIS CRIME, CIVIL OR WRITTEN
- ii.
- iii.
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. N/A
- iii. N/A

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) N/A
- (c) N/A

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

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

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. Cassandra Gorton, Esq. 1754 Woodruff Rd #144 Greenville SC. 29607
 - ii. David L. Penick, Nelson Milburn 1320 Main Street / 17th Floor Columbia SC 29201
 - iii. Bob Taylor - CO-COUNSEL
- (b) the proceedings at which each such attorney represented you:
 - i. my trial
 - ii. my appeal
 - iii. my appeal

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

new trial or take out

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

No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Greenville)

I, _____, 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.

William Jos Phillips #355187

SWORN to and subscribed before me this 13th
day of July, 2013

[Signature] (U.S.)
Notary Public

My Commission Expires: April 12, 2013

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

I, , 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.

William J. Phillips # 555-187
Applicant

SWORN or affirmed to and subscribed before me this

23rd day of July 2015.

[Signature]
Notary Public

My Commission Expires: April 12, 2022

355787

William Phillips 25

Mailroom

Kirkland Correctional Institution

4344 Broad River Road

Columbia, S.C. 29210

RECEIVED

JUL 30 2015

KIRKLAND R&E CENTER
MAILROOM

Greenville County Courthouse
305 North street
Greenville, SC 29601

2015-CP-23- 04910

LEGAL
MAIL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONS PLEAS
	)	CASE NO: 2015-CP-23-4910
COUNTY OF GREENVILLE	)	
	)	
William J. Phillips, SCDC # 355787,	)	AMENDMENTS TO
Applicant,	)	POST CONVICTION
	)	RELIEF APPLICATIONS
vs.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
Respondent.	)	
_____	)	

FILED-CLERK OF COURT
 CLERK OF COURT
 PAUL R. WILKINSON
 OCT 13 PM 10 33

The applicant hereby amends answers to number 9 and number 10 of his Application for Post-Conviction Relief to state the following:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(A) The Applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of The South Carolina Constitution.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) The applicant was provided with deficient representation by his attorney, in that the conduct of his attorney was objectively unreasonable under the circumstances. Strickland v. Washington, 466 U.S. 668 (1984). The outcome of the applicant's proceeding was prejudiced, and it is reasonable probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. Defense counsel was ineffective based on one or more of the following:

1. My defense attorney failed to conscientiously discharge his professional responsibilities while he was handling my case.
2. My defense attorney failed to effectively challenge the arrest and seizure of Applicant.
3. My defense attorney failed to act as my diligent, conscientious advocate.
4. My defense attorney failed to give me his complete loyalty.
5. My defense attorney did not have my best interest in mind while he was supposed to be investigating and preparing my case.
6. My defense attorney failed to serve my cause in good faith.
7. My defense attorney neglected the necessary investigations and the preparation of my case.
8. My defense attorney did not do the necessary factual investigations on my behalf.
9. My defense attorney did not do the necessary legal research.
10. My defense attorney did not conscientiously gather any information to protect my rights.
11. My defense attorney did not try to have my case settled in a matter that would have been to my best advantage.
12. My defense attorney did not advise me of all my rights or take any of the actions that were necessary to protect preserve them; knowing that I was not versed in the law.
13. My defense attorney, knowing I was illiterate in the law, never properly ascertained whether or not I actually understood or comprehended all of the issues that were involved in my case.
14. My defense attorney never properly consulted with me or kept me informed with what was going on as far as my case was concerned.

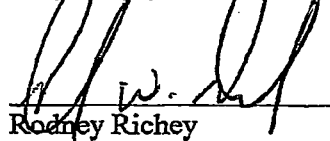
any adversarial litigation.

27. My defense attorney failed to function as the government's adversary in any sense of the word.
28. My defense attorney failed to pursue any of the legal recourse that were available to him.
29. The attorney that represented me on this charge in Court failed to function as the counsel that the Constitution's Sixth Amendment Guarantees.
30. My defense attorney failed to call alibi witnesses on my behalf which would have proven my innocence.
31. My defense attorney failed to appeal my case after I was convicted when I wanted to appeal.

His counsel's representation was not within the range and scope of competence demanded by Strickland and its progeny.

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction requires that the defendant show first, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Sosebee v. Leeke, S.C. 362, F. 2nd 221 (1987), citing Strickland v. Washington 46 S.E.2D. 813 (1984), See also Butler v. State 286 S.C. 441, 334 S.E. 2d 813 (1985), also, Hill v. Lockhart 474 U.S. 88 (1985).

Respectfully Submitted,



Rodney Richey
Richey and Richey, P.A.
Post Office Box 10916
Greenville, South Carolina 29603
Attorney for the Applicant

October 10, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2015-CP-23-4910
COUNTY OF GREENVILLE	)	
	)	
William Joe Phillips,	)	
S.C.D.C. No. 355787,	)	
	)	
Applicant,	)	
	)	RETURN AND MOTION TO DISMISS
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed August 7, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the January 2013 term of General Sessions for accessory before the fact to a felony¹ (2013-GS-23-0094A). Cassandra Gorton, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On June 12, 2013, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to life imprisonment.²

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense

¹ The underlying felony was murder.

² The State subsequently not prossed charges of murder (2012-GS-23-2841, count 1) and possession of a weapon during commission of a violent crime (2012-GS-23-2841, count 2).

and David L. Paavola, Esquire represented the Applicant on appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Phillips, Op. No. 2015-UP-100 (S.C. Ct. App. filed March 4, 2015). The remittitur was sent on March 24, 2015.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

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

1. "I never confessed to this crime, auto or written."
2. "General flaws in officers testimony."

III.

The Court should summarily dismiss this application for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act (the Act). S.C. Code Ann. §§ 17-27-10 et seq. (2003). Pursuant to the Act, 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 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; may institute, without paying a filing fee, a proceeding under this chapter to secure relief.

S.C. Code Ann. § 17-27-20(a) (2003).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The Respondent therefore moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return and Motion to Dismiss, the Respondent requests the matter be summarily dismissed.

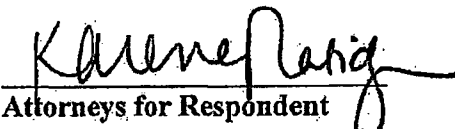
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

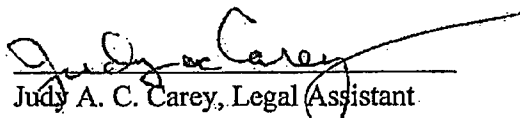
January 29, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2015-CP-23-4910
	)	
WILLIAM JOE PHILLIPS, 355787	)	
	)	
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 and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**William Joe Phillips, 355787
Kirkland Correctional Institution
4460 Broad River Road
Columbia SC 29212**

DATED this 29th day of January, 2016.


Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C.A. No. 2015-CP-23-4910

William Joe Phillips,
S.C.D.C. No. 355787,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

AMENDED RETURN¹

In an amended response to the post-conviction relief application filed August 7, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the January 2013 term of General Sessions for accessory before the fact to a felony² (2013-GS-23-0094A). Cassandra Gorton, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On June 12, 2013, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to life imprisonment.³

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense and David L. Paavola, Esquire represented the Applicant on appeal. The Court of Appeals

¹ Respondent requests that Applicant be appointed counsel.

² The underlying felony was murder.

³ The State subsequently not pressed charges of murder (2012-GS-23-2841, count 1) and possession of a weapon during commission of a violent crime (2012-GS-23-2841, count 2).

affirmed the Applicant's conviction and sentence. State v. Phillips, Op. No. 2015-UP-100 (S.C. Ct. App. filed March 4, 2015). The remittitur was sent on March 24, 2015.

Incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records (these documents were filed with the original Return, January 29, 2016).

II.

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

1. "I never confessed to this crime, auto or written."
2. "General flaws in officers testimony."

III.

a. Failure to State a Claim

The Court should summarily dismiss this application for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act (the Act). S.C. Code Ann. §§ 17-27-10 et seq. (2003). Pursuant to the Act, 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 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; may institute, without paying a filing fee, a proceeding under this chapter to secure relief.

S.C. Code Ann. § 17-27-20(a) (2003).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The Respondent therefore moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

b. Ineffective Assistance of Counsel

Alternatively, and to the extent that Applicant's claims could reasonably be construed as allegations of ineffective assistance of counsel, Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 80 L.E.2d 674). Second, counsel's deficient performance must have prejudiced 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. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, inasmuch as Applicant is alleging ineffective assistance of counsel, the probably raises questions of fact that cannot be conclusively refuted by the record. 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.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that counsel be appointed and an evidentiary hearing be held.

Respectfully submitted,

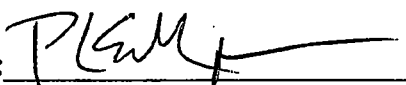
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

PATRICK SCHMECKPEPPER
Assistant Attorney General

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

By: 

ATTORNEYS FOR RESPONDENT

August 8, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2015-CP-23-4910

WILLIAM JOE PHILLIPS, 355787)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

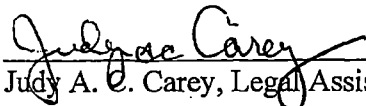
STATE OF SOUTH CAROLINA,)

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 Amended Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**William Joe Phillips, 355787
Kirkland Correctional Institution
4344 Broad River Road
Columbia SC 29210**

DATED this 8th day of August, 2016.


Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

WILLIAM J. PHILLIPS,)
)
 APPLICANT,)
)
 -VS-)
)
 STATE OF SOUTH CAROLINA,)
)
 RESPONDENT.)
 _____)

2015-CP-23-04910

TRANSCRIPT OF RECORD

DECEMBER 6, 2016
 GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN C. HAYES, III

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

ATTORNEY FOR APPLICANT:

RODNEY W. RICHEY, ESQ.

ATTORNEY FOR RESPONDENT:

PATRICK SCHMECKPEPER
 ASSISTANT ATTORNEY GENERAL

SUSAN W. HUDGINS
 CIRCUIT COURT REPORTER

INDEXWITNESSPAGE NO.

JOANN JOHNSON

DIRECT BY MR. RICHEY ----- 5

WILLIAM PHILLIPS

DIRECT BY MR. RICHEY ----- 7

CROSS BY MR. SCHMECKPEPER ----- 12

CASSANDRA GORTON

DIRECT BY MR. RICHEY ----- 14

CROSS BY MR. SCHMECKPEPER ----- 18

REDIRECT BY MR. RICHEY ----- 22

RECROSS BY MR SCHMECKPEPER ----- 23

CERTIFICATE OF REPORTER ----- 27

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No Exhibits Were Presented During This Hearing)

1 **MR. SCHMECKPEPER:** Thank you, Your Honor. May it
2 please the Court? This is William Phillips versus the State
3 of South Carolina, 2015-CP-23-4910.

4 The Applicant was indicted in January of 2013 for
5 accessory before the fact to a felony. That felony was
6 murder. He was represented by Cassandra Gorton. The
7 Applicant was found guilty after proceeding to trial and on
8 June 12th, 2013 was sentenced by Judge Pyle to life
9 imprisonment without the possibility of parole.

10 The Applicant filed a timely notice of appeal, which
11 was dismissed on March 4th, 2014 by the Court of Appeals.
12 The remittitur was sent on March 24th, 2015.

13 Your Honor, the State initially filed a return and
14 motion to dismiss this case arguing that this Applicant had
15 failed to present any grounds upon which relief could be
16 granted. The State subsequently filed an amended
17 application -- an amended application requesting that
18 counsel be appointed because his application was filed --
19 was timely and unsuccessful.

20 Your Honor, this case was continued last term. The
21 State requested that any additional allegations be filed, I
22 think, within thirty days of this hearing. My understanding
23 is there haven't been any additional allegations filed. So
24 I'm not a hundred percent sure of what the Applicant's going
25 forward on today.

5

JOANN JOHNSON - DIRECT EXAMINATION BY MR. RICHEY

1 THE COURT: All right. Mr. Richey.

2 **MR. RICHEY:** Thank you, Your Honor. I've discussed
3 with the attorney general we're going on ineffective
4 assistance of counsel because of his educational level.
5 That's all we're doing.

6 **THE COURT:** All right. You ready to call your first
7 witness?

8 MR. RICHEY: Yes, sir, we are. We're going to call
9 Joann Johnson.

10 **MADAME CLERK:** Left hand on the Bible and raise your
11 right hand. What is your name?

12 **MS. JOHNSON:** Joann Johnson.

13 **MADAME CLERK:** Joann Johnson?

14 MS. JOHNSON: Yes.

15 Joann Johnson, being duly
16 sworn testified as follows;

17 **MADAME CLERK:** Thank you. You may be seated.

18 Direct Examination by Mr. Richey:

19 Q. Ma'am, state your name loud and clear into that
20 microphone.

21 A. Joann Johnson.

22 Q. Now, Ms. Johnson, do you know William Phillips?

23 A. Yeah, that's my son.

24 Q. Okay. And can you -- are you familiar with his
25 education -- educational background?

JOANN JOHNSON - DIRECT EXAMINATION BY MR. RICHEY

6

1 A. He can't read and write. He went to the slow learning
2 class.

3 Q. Okay. And did he go to those all along his educational
4 life?

5 A. Yeah.

6 Q. He went to high school, isn't that correct? He
7 actually physically went?

8 A. Yeah.

9 Q. But is it your testimony during those times he was in
10 the, I'll use your phrase, slow learner classes?

11 A. Yeah.

12 Q. Okay. Was this a problem that you knew about his
13 entire life?

14 A. Yeah. He was -- he's ---

15 Q. And how did you know he couldn't read or write? How do
16 you know that?

17 A. 'Cause the teacher said he needed to be in the special
18 ed classes.

19 Q. Okay. And he was, in fact, in those classes?

20 A. Yeah.

21 Q. Okay. Did you try to seek any assistance for him or
22 was it done all through the school?

23 A. School.

24 Q. Okay. Thank you, ma'am. Answer any questions attorney
25 general has for you.

WILLIAM PHILLIPS - DIRECT EXAMINATION BY MR. RICHEY

1 **MR. SCHMECKPEPER:** I have no questions, Your Honor.

2 **THE COURT:** All right. Ms. Johnson, you can step down.

3 Thank you. Appreciate your time.

4 MR. RICHEY: We'll call Mr. Phillips.

5 William Phillips, being

6 duly sworn testified as follows;

7 **MADAME CLERK:** Thank you. You may be seated. Please

8 state your full name for the record.

9 MR. PHILLIPS: William Joe Phillips.

10 **MADAME CLERK:** Thank you.

11 Direct Examination by Mr. Richey:

12 Q. Mr. Phillips, first of all, state your full name,
13 please.

14 A. William Joe Phillips.

15 Q. And, Mr. Phillips, are you currently in the Department
16 of Corrections?

17 A. Yes, sir.

18 Q. And what are you there for?

19 A. For accessory before the fact of murder.

20 Q. Okay. And what was your sentence?

21 A. Life sentence.

22 Q. Okay. And are you asking this Court for a new trial?

23 A. Yes, sir.

24 Q. Okay. Based on ineffective assistance of counsel,
25 correct?

WILLIAM PHILLIPS - DIRECT EXAMINATION BY MR. RICHEY

8

1 A. Yes, sir.

2 Q. Okay. You heard your mama testify. Could you tell me
3 what's your educational background? Like, where did you go
4 to elementary school?

5 A. I went to Ebenezer School.

6 Q. Um-hum (affirmative).

7 A. Then I went from there to -- I think it was Slater,
8 then from Slater to Gateway because I was in a slow learning
9 class because they didn't have time to really help you with
10 nothing, throw you to the back and forget about you.

11 Q. Okay. Now can -- can you read and write right now?

12 A. No, sir. Like I say, the letters that I write you, I
13 had to get another inmate to, you know, I ask him how you
14 spell something and I'll write it down.

15 Q. At the time of this case, that this case happened,
16 could you read or write?

17 A. No, sir, I could not.

18 Q. And did you -- in your -- did you discuss this case
19 with your attorney?

20 A. Yeah. She knew I couldn't read or write.

21 Q. Okay. And tell -- was there a process done that
22 ensured you could understand the discovery?

23 A. Well, there was a girl that was with me at the time
24 supposed to have been my witness. She was with me at Ms.
25 Cass office. And she was helping me go over the statements

WILLIAM PHILLIPS - DIRECT EXAMINATION BY MR. RICHEY

9

1 and stuff.

2 And she would -- I took them home and she'd kind of go
3 over them with me and stuff. But then she -- I reckon the
4 State, Mr. Steinberg or whatever, got her to testify against
5 me.

6 Q. Okay. Let's go back to this. The actual discovery in
7 your case, ---

8 A. Uh-huh (affirmative).

9 Q. --- you met with your attorney, correct?

10 A. Yes, sir.

11 Q. And there was another individual there, correct?

12 A. Yes, sir.

13 Q. What was that individual's name?

14 A. Emily Gentry.

15 Q. Okay. And she was a part of this case eventually,
16 correct?

17 A. Yes, sir.

18 Q. You met with your attorney, Ms. Gentry was there, and
19 it was your testimony discovery was given to Ms. Gentry to
20 go over with you?

21 A. Yes -- yes, it is. That's what I said, yes, sir.

22 Q. So you and Ms. Gentry left the lawyer's office and went
23 to another place to talk about your discovery?

24 A. Yeah. Yes, sir. Yes, sir, at my -- at my home.

25 Q. And did you discuss your position on the discovery?

WILLIAM PHILLIPS - DIRECT EXAMINATION BY MR. RICHEY

10

1 What you thought about the case, did you explain to Ms.

2 Gentry?

3 A. Yeah. Yeah, that's what I'm saying. I mean, that's
4 the only way, I mean, I can't read and write. That's how I
5 was -- she would kind of explain it to me or break it down
6 to me what was going on and stuff. Yes, sir.

7 Q. And so that's where you got the understanding of your
8 case from was Ms. Gentry?

9 A. Yes, sir.

10 Q. And then at the time when this was going on were you
11 aware that Ms. Gentry was a potential witness for the State?

12 A. No, sir. She was supposed to have been my witness, but
13 Ms. Cass didn't call none of my witness to court.

14 Q. And do you -- do you believe that it was in your best
15 interest for Ms. Gentry to be talking to you and the State
16 at the same time?

17 A. No. I mean, how can she help me if she's going against
18 me at the same time? I mean, no, sir. I mean, ...

19 Q. I'm going to ask you this question. In terms of
20 understanding your case, and I want you to see if you can
21 understand this, was the -- was the moderm of the case for
22 Ms. Gentry to explain discovery versus the lawyer? Which
23 one did you believe was responsible for explaining your
24 discovery and your case to you?

25 A. Well, that's what I'm saying. Ms. Gentry had more time

WILLIAM PHILLIPS - DIRECT EXAMINATION BY MR. RICHEY

11

1 than my attorney did to go sit down and -- she was helping
2 me go over my case and stuff when she didn't have nothing to
3 do with all that.

4 Q. Did you talk -- did you and Ms. Gentry talk about the
5 strategy of your case when you were going over discovery,
6 like what you want to do and how you were innocent and all
7 that?

8 A. Yes, sir. Yes, sir.

9 Q. And you told Ms. Gentry everything you knew about the
10 case?

11 A. Yes, sir.

12 Q. And you ---

13 A. She knew everything.

14 Q. And you told her the weaknesses in the State's case
15 that you believed, right?

16 A. Yes, sir.

17 Q. And if you had known Ms. Gentry had direct access to
18 Mr. Steinberg, who was the prosecutor, you wouldn't have
19 told her that stuff, right?

20 A. No, sir. I mean, ---

21 Q. Right. And do you believe that your lawyer had the
22 time to go over the case with you?

23 A. Well, not really because -- because, I mean, first,
24 like I say, they were all -- they had me charged with murder
25 to start off with. Then they turned around and dropped

WILLIAM PHILLIPS - CROSS EXAMINATION BY MR. SCHMECKPEPER

12

1 that, then hit me with accessory before the fact. Then I
2 was going to court on that. Like I say, she didn't have
3 time to do nothing. I mean, ...

4 Q. Thank you. Answer questions the State has for you.

5 Cross Examination by Mr. Schmeckpeper:

6 Q. Good morning, Mr. Phillips. I've just got a couple of
7 questions for you.

8 A. Yes, sir.

9 Q. Who was Ms. Gentry?

10 A. Huh?

11 Q. Who was Ms. Gentry?

12 A. Who was Ms. Gentry?

13 Q. Yeah.

14 A. Well, she was my girlfriend.

15 Q. She was your girlfriend at the time?

16 A. Yes, sir.

17 Q. And when she testified for the State was she still your
18 girlfriend?

19 A. Yes, sir. She was my girlfriend when I got locked up.

20 Q. But during your trial when you testified or when she
21 testified for the State, ---

22 A. Uh-huh (affirmative).

23 Q. --- was she still your girlfriend?

24 A. Well, that's what I said. We was together, then I got
25 locked up. I mean, she was my girlfriend when I got locked

WILLIAM PHILLIPS - CROSS EXAMINATION BY MR. SCHMECKPEPER

13

1 up. I mean, ...

2 Q. Was she your girlfriend during the time ---

3 A. I was -- yes, sir. I was still talking to her. I was
4 talking to her on the phone. So, yes, sir.

5 Q. So you're telling -- and I just want to clarify a
6 couple of things. So your attorney never went over your
7 discovery with you in her office?

8 A. I didn't say she didn't go over discovery. I said she
9 was -- she went over some of it with me, with the -- over
10 some of the statements. And she gave it to us to go take
11 home and go over it.

12 Q. And then at home you and Ms. Gentry went over it
13 together?

14 A. Yes, sir.

15 Q. And whose idea was it to have Ms. Gentry in the office?

16 A. Well, it was my idea because I can't read or write. I
17 didn't know what -- I didn't know what was going on. I
18 mean, ...

19 Q. So you brought your girlfriend to the office to read
20 and write for you pretty much?

21 A. Yes, sir, to help -- help me explain what's going on
22 and all that stuff. Yes, sir.

23 Q. And then you and your girlfriend broke up or not?

24 A. That's what I'm saying, we never broke up. I got
25 locked up.

CASSANDRA GORTON - DIRECT EXAMINATION BY MR. RICHEY

14

1 Q. And at that point ...

2 MR. SCHMECKPEPER: I beg the Court's indulgence.

3 (Pause)

4 Q. Do you remember what Ms. Gentry testified to during
5 your trial?

6 A. No, sir, not right offhand.

7 Q. Did your attorney object to any of her testimony?

8 A. I can't remember, sir.

9 MR. SCHMECKPEPER: I have no further questions.

10 THE COURT: Any?

11 MR. RICHEY: No questions. We call Ms. Gorton.

12 THE COURT: You can step down. Thank you.

13 MS. GORTON: Is it all right if I leave my file back
14 here and then just get what I need?

15 MR. RICHEY: Yeah, that's fine.

16 MS. GORTON: Okay.

17 THE COURT: Come on up and be sworn. Good morning.

18 MADAME CLERK: Please place your left hand on the Bible
19 and raise your right hand.

20 Cassandra Gorton, being
21 duly sworn testified as follows;

22 MADAME CLERK: Thank you. Please state your full name
23 for the record.

24 MS. GORTON: Cassandra Parks Gorton.

25 Direct Examination by Mr. Richey:

CASSANDRA GORTON - DIRECT EXAMINATION BY MR. RICHEY

15

1 Q. Ms. Gorton, do you recall representing William
2 Phillips?

3 A. Yes.

4 Q. And did you represent him in Greenville County?

5 A. Yes.

6 Q. And you are a practicing attorney here in Greenville,

7 ---

8 A. Yes.

9 Q. --- correct? The issue -- now you were in the
10 courtroom when Mr. Phillips and his mama testified, correct?

11 A. When they testified?

12 Q. Yeah, at this hearing right now.

13 A. Yes, at this hearing.

14 Q. All right. In your representation did you find that --
15 did you find Mr. Williams' [sic] education level to be low?

16 A. Yes.

17 Q. Would you dispute that he couldn't read or write?

18 A. He could, you know, spell his name and maybe spell
19 simple words, but he was functionally illiterate.

20 Q. Okay. And because of that this Gentry girl was there
21 to assist him in understanding his discovery, is that
22 correct? Would that be a fair statement?

23 A. That was not my intent, but that was his stated intent.
24 And I, in fact, objected to her being in our meetings. She
25 was not only his girlfriend, she was the sister of the co-

CASSANDRA GORTON - DIRECT EXAMINATION BY MR. RICHEY

16

1 defendant, ---

2 Q. Okay.

3 A. --- the key witness against him. And I very strongly
4 objected to her being in there, but he insisted that she be
5 in there.

6 Q. And did you discuss with him her potential to be a
7 witness in the case against him?

8 A. Yes. And he insisted that she would not do that.

9 Q. Okay. Was there ever an opportunity where she and him
10 was given the discovery? Well, let me ask you this
11 question. Do you believe that Mr. Phillips could pick up
12 the discovery in this case and read it and understand it?

13 A. No. Nor did I initially give it to him. He requested
14 it.

15 Q. Okay. And so it would be reasonable to believe that he
16 would have to have assistance in doing that?

17 A. Yes. And I was available to do that with him, however,
18 he kept cancelling appointments, numerous appointments.

19 Q. Okay.

20 A. There were numerous appointments that I scheduled with
21 him to go over the discovery, and he repeatedly failed to
22 appear, did not come.

23 Q. But at some point you were able to discuss the stuff
24 with him to some degree, correct?

25 A. To some degree, yes.

CASSANDRA GORTON - DIRECT EXAMINATION BY MR. RICHEY

17

1 Q. Okay. And did -- do you believe that -- was there any
2 point in your mind that you believed that he did not fully
3 understand the evidence against him?

4 A. No. In fact, I told him flat out I didn't see any way
5 he wasn't going to be convicted. And I conveyed the offer
6 to him. I reduced it to writing. I read it out loud to him
7 what that said. And I believe it was Brian Smith's legal
8 secretary, Angela, who witnessed him hear that and then sign
9 what I read to him.

10 Q. Okay.

11 A. The key thing in my opinion was recorded jail calls.

12 Q. Um-hum (affirmative).

13 A. I believe Mr. Steinberg, the prosecutor, might disagree
14 with me, but as a defense attorney's perspective going into
15 it, the key bit of evidence in this case was a recorded jail
16 call between Mr. Phillips and his co-defendant, JJ Allen.

17 The overall theory was murder-for-hire. And in that
18 phone call he basically says, stay tight, stick with our
19 story, my house is yours ---

20 Q. Okay.

21 A. --- if you just keep up our plan.

22 Q. Okay. When -- at what point did you know Ms. Gentry
23 was cooperating with the State? Talking to Steinberg, Mr.
24 Steinberg?

25 A. I don't know that I knew until we went to trial. In

CASSANDRA GORTON - CROSS EXAMINATION BY MR. SCHMECKPEPER

18

1 fact, we had a hearing on it because Mr. Steinberg initially
2 was, I think, intending to have Emily testify as to Mr.
3 Phillips' reactions to contents of the discovery. I
4 objected to that. The judge ruled that he could not go into
5 that in any way, shape or form.

6 And I believe when she testified, and our trial was in
7 June, I believe when she testified she testified that they
8 had broke up in May or that he -- she was no longer his
9 girlfriend as of May. So it was a very late development.

10 Q. Thank you. Answer questions the attorney general has
11 for you.

12 **Cross Examination by Mr. Schmeckpeper:**

13 Q. Hi, Ms. Gorton.

14 A. Good morning.

15 Q. I've just got a few questions. And I think we've
16 already established there were some issues with the
17 Applicant being able to read and write?

18 A. Yes.

19 Q. And you knew that -- you knew that during the course of
20 your representation?

21 A. Yes.

22 Q. Now did you try to make special accommodations? And by
23 that I mean did you try and set up -- have him testify to
24 this -- time being with him to go over discovery more
25 thoroughly?

CASSANDRA GORTON - CROSS EXAMINATION BY MR. SCHMECKPEPER

19

1 A. Yes.

2 Q. And were they -- and I think you already testified to
3 this too. So forgive me for kind of beating a dead horse.

4 Did you have any problems meeting with him?

5 A. Yes. He did not come numerous times.

6 Q. And it sounds like he tried to find his own way to deal
7 with this inability to read, is that fair to say?

8 A. Yes. And he said to me -- you know, when he brought
9 Emily in, and I stated all my objections, the key objection
10 other than the fact that she was his girlfriend, and he'd
11 been through numerous girlfriends, and who knew how long
12 this was going to last, was that she was the sister of the
13 key witness against him. But despite that, he insisted that
14 she needed to be in there, that he trusted her even though I
15 didn't.

16 And when he asked for the discovery I had him sign
17 something saying he understood he was only entitled to one
18 copy. I have all my clients sign that so that I'm not ---

19 Q. Did you read that to him out loud?

20 A. Yes, I did. And I -- because I didn't know this was
21 going to be the issue that we addressed. I can't find it in
22 that purple tub. That purple tub is this case. It's one
23 sheet of paper.

24 But basically he insisted he wanted to take the
25 discovery home, that he was going to have her read it. I

CASSANDRA GORTON - CROSS EXAMINATION BY MR. SCHMECKPEPER

20

1 said, that's fine, but I'm not giving it to her, I'm giving
2 it to you. And what you do with it is up to you. I would
3 caution you not to do that.

4 Q. So just to reiterate, it wasn't your idea to have her
5 there to translate?

6 A. No.

7 Q. Now at some point -- and I believe the transcript would
8 reflect roughly around page, just for the record, 253, the
9 State did try to introduce testimony from the -- from the
10 Applicant's translator, from the girlfriend?

11 A. Yes. And I argued that that was like having a deaf
12 interpreter or a language interpreter testify against the
13 defendant. And the judge ruled that she could not testify
14 about any of that.

15 Q. And she did testify to her observations regarding other
16 things, but not her capacity as helping the Applicant with
17 the trial?

18 A. Correct. Or more importantly, and again, it's been
19 some time. So I don't remember the specific details. More
20 importantly that she couldn't testify as to his reactions or
21 his statements as to what that discovery contained.

22 **MR. SCHMECKPEPER:** I beg the Court's indulgence.

23 (Pause)

24 Q. We've talked about -- there's been some testimony about
25 the Applicant's educational background. Did you have any

CASSANDRA GORTON - CROSS EXAMINATION BY MR. SCHMECKPEPER

21

1 concern about the Applicant's ability to understand his
2 charges?

3 A. No. He's very street smart.

4 Q. Was he -- was he able to help you -- kind of help you
5 with strategy in this case?

6 A. Yes, he was. He was able -- one of the key issues in
7 this case had to do with where he was the morning the victim
8 was killed. It was agreed that he wasn't present.

9 But in discrediting -- it wasn't just JJ Allen who
10 testified against him. There were -- there was Jimmy Poole.
11 There were a number of people who testified about happenings
12 that morning. And it was critical to try to discredit their
13 scenario of the sequence of events in order to discredit
14 what they were implying.

15 Q. And just for the record, this case involved, I think,
16 the Applicant convincing his friend or according to the
17 State -- the State's allegation was that the Applicant
18 convinced a friend to murder his ex-girlfriend's then
19 boyfriend? Is that a fair characterization of what the
20 State was alleging?

21 A. Yes.

22 Q. And I think you -- you testified earlier that you were
23 almost sure he was going to be convicted?

24 A. Based on the jail call and the theory being murder-for-
25 hire, yes.

CASSANDRA GORTON - REDIRECT EXAMINATION BY MR. RICHEY

22

1 Q. Thank you, Ms. Gorton. I have no further questions.

2 MR. RICHEY: Just a couple of questions.

3 Redirect Examination by Mr. Richey:

4 Q. Did you ever have him evaluated by anybody?

5 A. I don't believe I did. He ---

6 Q. Thank you.

7 A. --- didn't appear to have any competency issues as far
8 as not being able to communicate with me. He refused to
9 keep some of his appointments, but when we did meet, like I
10 said, he was very helpful in helping me identify problems
11 with the witnesses who were saying they were out looking for
12 a motorcycle that morning. There -- the key witnesses were
13 saying there was something about looking for someone's
14 missing motorcycle. And he was very good and useful at
15 helping me discredit that or ---

16 Q. How many ---

17 A. --- tried to.

18 Q. How many appointments did you have with him that you
19 talked to him?

20 A. Well, again, I didn't realize this was going to be the
21 issue and I was trying to find my chart where I keep track
22 of appointments made and appointments kept. And I can't
23 find it yet.

24 Q. Would you say it was more than two?

25 A. Definitely more than two. This case was pending not

CASSANDRA GORTON - RECROSS EXAMINATION BY MR. SCHMECKPEPER

23

1 quite two years, maybe a year or a year and a half that I
2 had it.

3 Q. So you met with him several times probably?

4 A. I want to say -- I could probably say three or four at
5 least, maybe a couple more times.

6 Q. Okay. Thank you, ma'am.

7 A. Um-hum (affirmative).

8 **MR. SCHMECKPEPER:** Just briefly, Your Honor.

9 **Recross Examination by Mr. Schmeckpeper:**

10 Q. How long have you been an attorney?

11 A. I graduated in '93 and was licensed in '93. So twenty-
12 three years.

13 Q. And how much of that time has been criminal defense
14 work?

15 A. A hundred percent. And I did three years death penalty
16 defense prior to that as an intern.

17 Q. And then have you had the opportunity to represent
18 defendants who you felt might have mental health problems?

19 A. Yes. In fact, I also work as an attorney in probate
20 dealing with guardianships, conservatorships of mentally
21 incompetent. And I also do mental health hearings where I
22 represent the mentally ill.

23 Q. Now when you represent a criminal defendant and you
24 feel there are mental health problems or you feel there may
25 be competency questions, what's your general practice?

CASSANDRA GORTON - RECROSS EXAMINATION BY MR. SCHMECKPEPER

24

1 A. Well, the standard thing, I screen them anyway. I ask
2 about their schooling and what kind of classes they had and
3 also what their diagnosis was. Mr. Phillips didn't have any
4 history of mental health issues. He had a significant
5 history of learning disabilities, but none of mental health.

6 For example, he hadn't been involuntarily committed.
7 There had been no psychotropic medications that I was aware
8 of or made aware of. So competency was not an issue. I
9 didn't consider illiteracy to be an issue because I was
10 willing and able to go over the discovery with him.

11 Q. And if you had felt competency may have been an issue
12 what would you have done?

13 A. Well, I would have applied for him to be evaluated.
14 First, I would have got with the solicitor. And, of course,
15 Howard would not have agreed. So I would have filed a
16 motion and sought an order to have him evaluated.

17 Q. Thank you, Ms. Gorton. I have no further questions.

18 THE COURT: All right.

19 MR. RICHEY: No other questions.

20 THE COURT: You can step down and be excused.

21 A. Thank you.

22 THE COURT: We appreciate your time.

23 MR. RICHEY: No other witnesses.

24 THE COURT: All right. Anything from the State?

25 MR. SCHMECKPEPER: Nothing, Your Honor.

1 **THE COURT:** All right. Well, I'll take this one under
2 advisement. That's about all I can say at this point.

3 **MR. RICHEY:** Judge, ---

4 **THE COURT:** Yes, sir.

5 **MR. RICHEY:** --- could I do just a brief argument for
6 ---

7 **THE COURT:** You certainly may.

8 **MR. RICHEY:** Just for the record, if I could. Your
9 Honor, we'd ask the Court to consider granting this motion,
10 this PCR. My argument would be, number one, is that there
11 were two words that were said by the State that I think are
12 really compelling. The attorney general said special
13 accommodations and the lawyer said that she was dealt with
14 as an interpreter.

15 And it's my position that some other accommodations
16 should have been attempted by this lawyer to make sure that
17 Mr. Phillips understood the discovery because I think the
18 evidence was consistent by everybody that he had a very low
19 level education, couldn't read or write. I think that was
20 consistent.

21 And I believe that having this Ms. Gentry act as an
22 interpreter, which is -- that's what the ---

23 **THE COURT:** Well, her testimony was she didn't really
24 have her act as an interpreter and she advised against using
25 her as an interpreter and your client was the one who made

1 the decision to use her as an interpreter.

2 **MR. RICHEY:** No, I'm saying that because that was the
3 argument that was made to the court to exclude her testimony
4 by counsel. Counsel made the argument to the court at the
5 time of the trial is that, hey, you couldn't call an
6 interpreter to testify. That was the argument that was
7 made.

8 And I'm just saying if that's the argument that's going
9 to be made to suppress her statement -- to suppress her from
10 the trial, then it's my position other accommodations should
11 have been made. Thank you, Your Honor.

12 **THE COURT:** All right. Thank you.

13 **MR. SCHMECKPEPER:** Just briefly, Your Honor. The State
14 submits that counsel was reasonable in her efforts to
15 communicate with the Applicant. So we would ask the Court
16 to deny relief.

17 **THE COURT:** All right. I'll take it under advisement.

18 Thank you all.

19 **MR. SCHMECKPEPER:** Thank you, Your Honor.

20 (Hearing Ended at 10:51 am)

21 (End of Requested Transcript of Record)

Certificate of Reporter

I, The undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth 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/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 6th day of December 2016.

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

March 18, 2017

S/Susan W. Hudgins

Circuit Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

William Joe Phillips,
SCDC No. 355787,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2015-CP-23-4910

ORDER

ENTERED COMPUTER

FILED
GREENVILLE CO. S.C.
PAUL R. WICKENSIMMER
2016 DEC 21 PM 3 06

Applicant filed this application for Post-Conviction Relief August 7, 2015. This matter was heard December 6, 2016. Applicant was represented by Rodney W. Richey, Esquire. The State was represented by Patrick Schmeckpeper, Esquire.

Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the January 2013 term of General Sessions for accessory before the fact to a felony¹ (2013-GS-23-0094A). Cassandra Gorton, Esquire represented the Applicant at trial.

After the State called the case to trial, the Applicant was found guilty. On June 12, 2013, the Honorable C. Victor Pyle, Jr. sentenced Applicant to life imprisonment.²

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense

¹ The underlying felony was murder.

² The State subsequently *not proessed* charges of murder (2012-GS-23-2841, count 1) and possession of a weapon during commission of a violent crime (2012-GS-23-2841, count 2).

and David L. Paavola, Esquire represented the Applicant on appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. *State v. Phillips*, Op. No. 2015-UP-100 (S.C. Ct. App. filed March 4, 2015). The remittitur was sent on March 24, 2015.

In his application for post-conviction relief, Applicant alleges grounds he does not currently pursue. These are therefore considered abandoned.

At his hearing, Applicant pursued solely a claim that trial counsel was ineffective in not recognizing his limited mental abilities and therefore not making special accommodations based on same.

Applicant alleges ineffective assistance of counsel as a ground for relief. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland*, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove counsel's performance was deficient. Under this prong, attorney

Phillips

performance is measured by its "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2065). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2052).

Applicant's mother testified that Applicant cannot read or write and that he has, throughout his school years, been designated a "slow learner." She testified Applicant's teachers said he was "special" and needed classes in "special education."

Applicant testified he could not read or write and was in "slow learner" classes in school. He testified trial counsel, Cassandra P. Gorton, Esq. was aware of his limitations.

Trial counsel confirmed the testimony of Applicant and his mother and testified Applicant was functionally illiterate. However, she testified she did not see any need for a mental evaluation of applicant and that, in her opinion, he was competent to stand trial.

The crux of Applicant's complaint revolves around his use of his girlfriend, Emily Gentry, to assist him in preparing for trial. Ms. Gentry was Applicant's girlfriend at the time and the sister of his co-defendant. Ultimately, she testified for the State at trial. Applicant's claim is that trial counsel was ineffective in allowing him to utilize Ms. Gentry to assist Applicant in his trial preparations.

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Trial counsel testified she advised Applicant not to use Ms. Gentry in the preparation of his defense. She testified she told Applicant that Ms. Gentry may be a witness for the State, to which Applicant replied she would not do that.

Applicant's use of Ms. Gentry in assisting him was by his own choice. Applicant chose, over counsel's advice, to let Ms. Gentry attend meetings with trial counsel and to go over with and explain to him the discovery material.

Trial counsel testified that Applicant was "street smart," failed to show for numerous appointments with her, and was told by her that the possibility of a conviction was high based on a recorded jail call.

Applicant's post-conviction relief counsel argues that in spite of trial counsel's testimony, she knowingly allowed Ms. Gentry to act as a sort of "interpreter" for Applicant. This position, post-conviction relief counsel argues, is shown by trial counsel, in attempting to serve Applicant as best she could despite his ill-advised use of Ms. Gentry, comparing Ms. Gentry to an interpreter for the deaf.

Trial counsel analogizing Ms. Gentry to an interpreter for the deaf is just that, an analogy. The point trial counsel made, whether or not the trial judge bought it, was that in light of her role assisting Applicant, Ms. Gentry should, in fairness, be barred from offering any testimony as to incriminating conduct or statements made by Applicant in her presence. Such position of trial counsel, made out of necessity created solely by Applicant, does not rise to the level of lack of competent representation. The Applicant had hoisted himself on his own petard. Trial counsel's successful effort to protect Applicant from his own ill-conceived use of Ms. Gentry does not constitute trial counsel's approval of Applicant's reliance on Ms. Gentry. Rather, it is an act of

DC #14

forced acceptance of Applicant's conduct in an effort to save Applicant from himself. Fortunately for him, her intervention on his behalf saved him from the perhaps dire consequences of his rejection of counsel's advice regarding Ms. Gentry.

A review of Ms. Gentry's trial testimony reveals that she testified to facts within her own knowledge and not about any post-event (the murder) conduct or comments from Applicant. When she started to testify about her post-event trip to trial counsel's office with Applicant, trial counsel objected. After the objection, the State did not pursue this line of questioning. (Trial Record p. 286, ll. 12-20).

Application of the *Strickland* and *Cherry* tests make it inarguable that trial counsel's representation of Applicant passes these tests and that Applicant has failed to carry his burden of proof. The greater weight or preponderance of the evidence shows that trial counsel's representation of Applicant was well within the range of competence required of counsel in criminal cases. Further, trial counsel's representation of Applicant was well within the standard of reasonableness under professional norms.

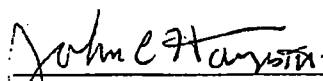
Therefore, Applicant's Application for Post-Conviction Relief is denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

John H. 5

IT IS SO ORDERED.

December 8th, 2016
Greenville, South Carolina



John C. Hayes, III
Presiding Judge #6

WITNESSES

Henry Hammett

Greenville County Sheriffs Office

8/26/2011

CHM

DOCKET NO. 2013-GS-23-
HLS

000074A

✓ 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: [REDACTED]-1979 W/M SSN: [REDACTED]

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

✓
0002 Indictment for

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

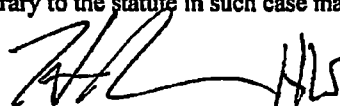
At a Court of General Sessions, convened on
County present upon their oath:

JAN 08 2013

the Grand Jurors of Greenville

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