

VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable R. Scott Sprouse, Circuit Court Judge S.C. SUPREME COURT

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KELVIN JACKSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-002115

APPENDIX

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1 house. He was at Masako's house. That's what I was
2 trying to point out. So, if that was unclear, I
3 apologize.

4 MR. JOHNSON: Okay.

5 BY MR. JOHNSON:

6 Q Agent Johnson, I just, just for purposes of the
7 record, did you do an investigation of whose name on the
8 title of the house?

9 A No.

10 Q Okay. If I would suggest to you that his name was
11 on the title of the house, along with Ms. Miller, would
12 you disagree with me?

13 A If you're suggesting.

14 Q Okay.

15 A I don't have any knowledge.

16 Q And also, he said his house. That wouldn't be
17 incorrect, if it was. If it was on the title.

18 A If it's on the title.

19 MR. JOHNSON: Thank you, sir.

20 THE COURT: Anything further?

21 MR. THORNTON: No, your Honor. I don't know if Mr.
22 Johnson's going to introduce the title or not, but the
23 State has no objection. That really wasn't my argument
24 with it. I just wanted to be clear for the record. So,
25 I'm happy to let him introduce that, if he wishes.

1 MR. JOHNSON: No. No. If I wanted to introduce the
2 title, I'd introduce it. He answered my question. He
3 said if I told him, he didn't have any reason to
4 disbelieve me.

5 MR. THORNTON: Nothing further, Judge.

6 MR. JOHNSON: Nothing further, Judge.

7 THE COURT: You may step down, Mr. Johnson. Thank
8 you.

9 MR. THORNTON: Your Honor, ask that he be excused.

10 THE COURT: Yes, sir. Agent Johnson, you're
11 excused. Is there any objection, Mr. Johnson?

12 MR. JOHNSON: Your Honor, my maybe distant cousin, I
13 won't make him stay. He can be excused.

14 THE COURT: Thank you, Mr. Johnson.

15 MR. THORNTON: Chauncey Solomon -- not Chauncey
16 Solomon. I'm sorry. Lieutenant Shaun Harley.

17 BAILIFF: Just come this way, please. If you would,
18 go right up there and be sworn, please.

19 MADAM CLERK: Would you place your left hand on the
20 Bible and raise your right hand for me, please.

21 LIEUTENANT SHAUN HARLEY: Yes, ma'am. Oh. I'm
22 sorry.

23 MADAM CLERK: Do you solemnly swear to truthfully
24 answer all questions asked of you by this Court, so help
25 you God?

1 LIEUTENANT HARLEY: I do.

2 MADAM CLERK: You may be seated. State your name
3 and spell it for the Court, please.

4 A Shaun Harley. H/a/r/l/e/y.

5 LIEUTENANT SHAUN HARLEY

6 DIRECT EXAMINATION BY MR. THORNTON:

7 Q Mr. Harley, who do you work for?

8 A South Carolina Law Enforcement Division, better
9 known as SLED.

10 Q What rank are you, sir?

11 A Lieutenant, over the Lowcountry Region.

12 Q All right. Lieutenant Harley, did you work for SLED
13 in May of -- excuse me -- in June of 2011?

14 A Yes, sir.

15 Q All right. Specifically, June 7, 2011, were you
16 working for SLED?

17 A Yes, sir.

18 Q And did you have an occasion to sit in on an
19 interview with Richard Johnson of Kelvin Jackson?

20 A Yes, sir.

21 Q And is Mr. Jackson here in the courtroom?

22 A Yes, sir.

23 Q Where is he?

24 A Sitting to Mr. Korey, the attorney, Mr. Korey, in
25 the black suit.

1 Q All right, sir. So, you've indicated the defendant?

2 A Yes, sir.

3 Q I'm going to hand you what's already been entered
4 into evidence as Plaintiff's -- excuse me -- State's
5 Exhibit 31. Can you identify that document for me?

6 A Yes, sir. It's a South Carolina Law Enforcement
7 Division, SLED Miranda Rights Form.

8 Q And is that the form that was read to Mr. Jackson on
9 June 7th?

10 A It wasn't read to him. It was given to him, but --

11 Q Did he read it?

12 A Yes, sir, he did.

13 Q And did he sign it?

14 A Yes, sir, he did.

15 MR. JOHNSON: Your Honor, may I, please, the Court,
16 just note my objection for the record.

17 THE COURT: Yes, sir. Your pretrial objection.

18 MR. JOHNSON: Yeah. Yeah.

19 THE COURT: My ruling still stands. Thank you.

20 BY MR. THORNTON:

21 Q Lieutenant Harley, were you present during this
22 interview?

23 A Yes, sir.

24 Q All right. So, is your name -- does your name
25 appear as a witness on the signature line for the *Miranda*

1 interview, State's, I believe that's 32?

2 A Yes, sir. Under Agent Richard Johnson.

3 Q And I'm not going to go into the details.

4 Obviously, you weren't in court, but those have already
5 been testified to. But in general terms, during the
6 course of this interview, did Kelvin Jackson agree to
7 talk to you and Agent Johnson?

8 A Yes, sir, he did.

9 Q And did his story change?

10 A Yes, sir, it did.

11 Q Did you make sure that when you witnessed that, that
12 he did understand his rights?

13 A Yes, sir, he did.

14 Q And was it a free and voluntary statement?

15 A Yes, sir.

16 MR. THORNTON: I don't have any further questions.
17 Please answer any questions that Mr. Johnson has.

18 LIEUTENANT SHAUN HARLEY

19 CROSS-EXAMINATION BY MR. JOHNSON:

20 Q Agent Harley, number one, you wasn't at the first
21 statement with Agent Johnson; were you?

22 A No, sir.

23 Q You only went the second time. Is that correct?

24 A Second and third time.

25 Q Second. Okay. Okay. Second and third?

1 A Well, the third time -- second time was during June
2 the 7th.

3 Q Okay. So, you were there on -- you were there on
4 June the 7th.

5 A Right. And then we try -- attempted to interview
6 him again, but he requested his attorney, or he decided
7 not to talk to us.

8 Q Right.

9 A So, there was no interview.

10 Q Right. Right. But I'm talking June the 7th.

11 A Yes, sir, I was there.

12 Q You were there.

13 A Yes, sir.

14 Q Okay. And I think you all took some more
15 information that you all didn't have the first time, on
16 the second time. Is that correct?

17 A I wasn't there. I was just given a brief from
18 previous interview. I was just there for that one time.

19 Q You all kind of, for a better choice of words, bear
20 down on him, not physically in that, but just kind of had
21 a very serious conversation with him about telling you
22 all what happened. Is that fair?

23 A Yes, sir. We confronted him with some information.

24 Q And at some point in time, he broke. And when I say
25 broke, at some point in time, he admitted to you what he

1 did. Is that correct?

2 A He admitted about, yes, sir, going to the -- Ms. --
3 the victim's house.

4 Q And the statement that was signed, he admitted to
5 being to the house. He admitted to being Ms. -- the
6 house where Masako lived.

7 A Yes, sir.

8 Q He admitted that he had her card.

9 A Yes, sir.

10 Q He admitted that he used the card.

11 A He attempted to use the card.

12 Q Attempted to use the card. He admitted that he went
13 to the Shell station.

14 A Yes, sir.

15 Q He admitted all that to you.

16 A Yes, sir.

17 Q And even after that, you all said -- you all said,
18 look, did you do this? And from then on, he continually
19 said I did not; I was not the one that killed her.

20 A Yes, sir.

21 Q He continued to say I was not the one that committed
22 this crime. Didn't he say that?

23 A Yes, he said he did not do anything.

24 Q And he repeated that; didn't he?

25 A Yes, sir, he did.

1 Q And he said, all that other stuff, I didn't tell the
2 truth; but this time, I'm telling you all the truth. Is
3 that correct?

4 A Yes, sir, that's what he said.

5 Q Okay. And even with the further question, that's
6 the one point he never changed. Is that correct?

7 A Yes, sir, he never changed that.

8 MR. JOHNSON: Thank you.

9 THE COURT: Anything further?

10 LIEUTENANT SHAUN HARLEY

11 RE-DIRECT EXAMINATION BY MR. THORNTON:

12 Q In general terms, Lieutenant, and I mean in the very
13 broadest of terms, is there anything illegal about me
14 giving you my debit card and telling you, you can go use
15 it? Is that illegal?

16 A Unless -- unless he's authorized to do it.

17 Q Just listen carefully to what I'm asking you. If I
18 give you my debit card and say, Shaun, since our first
19 name is the same, take my card; have at it; and go get
20 yourself \$20.00 for lunch, because I made you sit here
21 for two days. Is that okay?

22 A Not to me.

23 Q Okay.

24 A I let you do it.

25 Q What if I said, Shaun, I want you to come over to my

1 house, and we're going to sit down and watch the ball
2 game together. So, you admit to being in my house. Is
3 there anything wrong with that?

4 A No, sir.

5 Q All right. And the defendant in this case, after he
6 lied to you all two or three times, when he finally told
7 you the truth, he admitted to being at the house, right?

8 A Yes, sir.

9 Q Is there anything illegal about being at somebody's
10 house?

11 A No, sir.

12 Q As long as they -- he claimed that she knew he was
13 there and had let him in?

14 A Yes, sir.

15 Q That's not illegal; is it?

16 A No, sir.

17 Q I understand you may not like it. Is there anything
18 illegal about voluntarily using somebody's debit card, if
19 they gave it to you? If they gave it to you.

20 A No, sir.

21 Q All right. Is murder illegal?

22 A Yes, sir.

23 Q All right. Do you find it unusual that somebody
24 might admit to stuff in an interview that wasn't illegal,
25 and still deny that they killed somebody?

1 A In our profession, yes, sir.

2 Q Okay. So, does that happen from time to time?

3 A Yes, sir.

4 Q And I know this is going to be a stunning question
5 for you. But do people who have committed murder, in
6 your experience, sometimes lie repeatedly when they give
7 you a statement?

8 A Oh, yes, sir.

9 Q Do they sometimes not admit to the killing?

10 A Yes, sir. They don't want to admit.

11 Q And do they sometimes admit to other things, but
12 still not admit to the killing?

13 A Yes, sir.

14 Q Is any of that unusual?

15 A No, sir.

16 MR. THORNTON: Thank you very much. I have no
17 further questions.

18 THE COURT: Anything further, Mr. Johnson?

19 MR. JOHNSON: Just a re-cross.

20 LIEUTENANT SHAUN HARLEY

21 RE-CROSS-EXAMINATION BY MR. JOHNSON:

22 Q In this particular case, other than speculation, do
23 you all -- do you know who committed this murder? At
24 this point, do you know who did this?

25 A Do I know?

1 Q Yes.

2 A Kelvin Jackson.

3 Q Okay. Other than you specu -- were you there?

4 A No, sir.

5 Q Did you see him?

6 A No, sir.

7 Q Okay. Other than your speculation, do you know who
8 committed this murder?

9 A The defendant, Kelvin Jackson.

10 Q So, are you saying he committed it because of what?

11 A Line of questioning we asked.

12 Q Okay. So, you believe he -- what you're saying, in
13 your opinion, you believe he did it.

14 A Yes, with the questions we asked him.

15 Q Okay. Did you actually see him do it?

16 A No, sir.

17 Q So, you don't know if he did or not. You're just
18 speculating.

19 A No, I wasn't there, no, if that's what you're
20 getting at.

21 Q So, other words, you was being police-like. You
22 wanted to make sure you stick up your side, because that
23 was your opinion.

24 MR. THORNTON: Objection, your Honor. Asked and
25 answered. He's now badgering the witness. He's asked

1 the question three times. He can't keep asking it just
2 because he doesn't like the answer.

3 MR. JOHNSON: Your Honor, I changed the question. I
4 was just trying to establish the difference between him
5 knowing a fact and him believing a fact.

6 THE COURT: Gentlemen, why don't we approach for a
7 second.

8 ON-THE-RECORD BENCH CONFERENCE,
9 OUT OF HEARING OF JURORS.

10 PRESENT: THE COURT, JUDGE MULLEN,

11 MR. THORNTON, MR. JOHNSON:

12 THE COURT: Mr. Johnson, you need to ask him
13 questions as to the ultimate issue before the jury. I
14 don't think that's proper.

15 MR. JOHNSON: Yes, ma'am.

16 THE COURT: I don't think you can form the
17 questions --

18 MR. THORNTON: I really haven't objected. I didn't
19 like the answer.

20 MR. JOHNSON: Yes, ma'am. Yes, ma'am.

21 END BENCH CONFERENCE.

22 BY MR. JOHNSON:

23 Q All you know about this case is what you heard in
24 the interview that you had with Agent Johnson. Is that
25 correct?

1 A That's correct.

2 THE COURT: Anything further?

3 MR. THORNTON: Nothing further, Judge. Ask that
4 Lieutenant Harley be allowed to step down, and ask that
5 he be excused.

6 MR. JOHNSON: No objection.

7 THE COURT: You may be excused. Thank you.

8 LIEUTENANT HARLEY: Thank you, ma'am. Appreciate
9 it.

10 MS. DEYSACH: State calls Stephanie Williams. Your
11 Honor, may me and Mr. Johnson approach, please, just
12 briefly?

13 THE COURT: Sure.

14 ON-THE-RECORD BENCH CONFERENCE,

15 OUT OF HEARING OF JURORS.

16 PRESENT: THE COURT, JUDGE MULLEN,

17 MS. DEYSACH, MR. JOHNSON:

18 MS. DEYSACH: I just didn't want it to be a surprise
19 that Stephanie Williams is going to testify a little bit
20 to some prior history. However, in the confines of your
21 ruling.

22 THE COURT: Okay.

23 MS. DEYSACH: So, I just wanted you to be aware that
24 -- Mr. Johnson and the Court to be aware. She's not
25 going to testify to anything outside of what has been

1 allowed previously.

2 MR. JOHNSON: Okay.

3 END BENCH CONFERENCE.

4 BAILIFF: Go right up there to be sworn, please,
5 ma'am.

6 MADAM CLERK: Would you place your left hand on the
7 Bible and raise your right hand for me, ma'am. Do you
8 solemnly swear to truthfully answer all questions asked
9 of you by this Court, so help you God?

10 STEPHANIE WILLIAMS: Yes, ma'am.

11 MADAM CLERK: Please be seated. State your name and
12 spell it for the court reporter.

13 STEPHANIE WILLIAMS: My name is Stephanie Williams.
14 It's S/t/e/p/h/a/n/i/e, W/i/l/l/i/a/m/s.

15 STEPHANIE WILLIAMS

16 DIRECT EXAMINATION BY MS. DEYSACH:

17 Q Ms. Williams, how are you doing?

18 A I'm fine. Yourself?

19 Q Fine. Thank you. Where do you live, Ms. Williams?

20 A Currently, I reside at Augusta Highway, in
21 Martin, South Carolina.

22 Q Back in 2011, where did you live?

23 A I lived at Willard Street in Hampton, South
24 Carolina.

25 Q And what do you do for a living?

1 A I'm a database manager for Allendale, Bamburg, and
2 Barnwell County Adult Education Programs.

3 Q How do you know Masako Miller?

4 A I met Masako about 14 years ago when she came to
5 live with Dianne Dunbar, who is my aunt.

6 Q So, you've known her for awhile.

7 A Yes.

8 Q Were you close to Ms. Miller's family?

9 A To her family?

10 Q Yes, ma'am. Her children or --

11 A Yes, her children. Her daughter, S.D. , I became
12 close with her. When she had S.D. , I would babysit for
13 her, and S.D. became like a part of my family, going on
14 family vacations and church with my family.

15 Q Do you know Kelvin Jackson?

16 A Yes.

17 Q In what capacity do you know Kelvin Jackson?

18 A I just know Kelvin as Masako's boyfriend.

19 Q Did Masako ever talk to you about Kelvin Jackson?

20 A She did.

21 Q Did she ever ask to come stay with you?

22 A She did.

23 Q Okay. Can you please tell us a little bit about
24 that.

25 A I can't remember when it was, but she came --

1 THE COURT: Just one second, Ms. Williams.

2 MR. JOHNSON: At this point, just for purposes of
3 renewing my other motion, I object.

4 THE COURT: Yes, sir. Thank you. My ruling still
5 stands.

6 A Go ahead?

7 BY MS. DEYSACH:

8 Q Yes, made.

9 A Okay. Masako would come by my house. When I was
10 living in Fairfax, she would come after work sometimes.
11 And she came by on one particular day with her wrist
12 wrapped up. And I asked her what happened, and she told
13 me.

14 Q Okay. Without saying what she said.

15 A Okay. She told me, and she asked could she come,
16 she and her children, come stay with me for a few days.

17 Q Was she frightened of Mr. Jackson?

18 A She seemed that day she did.

19 Q And has Kelvin Jackson ever contacted you?

20 A He did on one occasion.

21 Q Okay. And what did he say to you when he contacted
22 you?

23 A He said to me to keep his f-ing name out of my
24 mouth.

25 Q Did her relationship with Kelvin Jackson cause a

1 rift between you two?

2 A That day that he contacted me, Masako and I did not
3 speak from that day on, until maybe almost two years.

4 Q Okay. And at some point, did you all become friends
5 again?

6 A Yes. I arrived home one afternoon, and there was a
7 note on my door. And I opened it, and it was from
8 Masako.

9 Q Was it an apology?

10 A Yes. She had apologized and asked -- said that she
11 missed our friendship and asked that I forgive her.

12 Q Once you all became friends again, did she loan some
13 money to you?

14 A Yes.

15 Q Okay. And tell us what that was about.

16 A I was getting married on May 14, and my sister
17 called me on May 13th and told me that she did not have
18 the money, all of the money to get her children attire
19 for the wedding. I, um, I had already -- I had a budget
20 for myself for my wedding. It was going to be very
21 small, so I didn't have any extra money. So, I called
22 Masako, and I asked Masako could she loan me \$300.00 and
23 I would pay her back on the 25th of May, which was the
24 day I got paid. And she -- I was in Bamburg at the time,
25 picking up my dress. And she asked me what time would I

1 be back, and I told her, and she told me to meet her at
2 the bank in Hampton on that day. I don't recall the
3 exact time.

4 Q Okay. So, she did lend you the money. And did you
5 pay her back on May the 25th?

6 A I did.

7 Q Okay. Do you remember how you paid her back?

8 A I do.

9 Q Okay. Can you please tell us.

10 A I paid her back \$260.00 in 20-dollar bills, and a
11 50-dollar bill.

12 Q And how much is that? Was that a little over
13 what --

14 A It was \$310.00, but I didn't have anymore change.
15 So, I asked -- I can't recall which child she sent in,
16 because she was sitting in the truck when I arrived, on
17 the phone, and I sent it back, and I said just tell her
18 I'll get the \$10.00 later. But then, Kelvin, the middle
19 child, brought the \$10.00 back to me.

20 Q Okay. So, she came over to your house on Wednesday,
21 May the 25th and collected the cash from you.

22 A She was at the park across from my house, and she
23 had called me in between me leaving work and coming back.
24 And I told her to meet me there for the money. So, she
25 was parked where she normally parks when she walks in the

1 afternoon.

2 MS. DEYSACH: Okay. Thanks, Ms. Williams. Just one
3 moment, please. Thank you, Ms. Williams. Please answer
4 any questions that the Defense may have for you.

5 A Yes.

6 STEPHANIE WILLIAMS

7 CROSS-EXAMINATION BY MR. JOHNSON:

8 Q Ms. Williams, how you doing? The loan of the money
9 was in May of 2011, or something like that. Is that
10 correct?

11 A Correct.

12 Q But the time, the phone, where you said he cursed
13 you, whatever you said on the phone, that was like two
14 years prior to that. Was that correct?

15 A Almost, yes.

16 Q And the time she lived with you was what? Three
17 years prior to that? Is that correct?

18 A She never lived with me.

19 Q I thought -- the time she asked to live with you.
20 Was that about three years prior?

21 A I'm not a hundred percent sure. It was --

22 Q But it was more than two years.

23 A Probably. Yeah.

24 Q Okay. Okay. So basically, the only thing you're
25 testifying about, around May, is that you lent her 200 --

1 or \$300.00.

2 A She loaned me.

3 Q She loaned you.

4 A Yes.

5 MR. JOHNSON: Yes, ma'am. Okay. Thank you.

6 MS. DEYSACH: No re-direct. Thank you, your Honor.

7 THE COURT: May she be excused?

8 MS. DEYSACH: From the State, yes.

9 MR. JOHNSON: Oh, she want to go? Yes.

10 THE COURT: You may be excused, Ms. Williams. Thank
11 you.

12 MS. DEYSACH: Thank you, your Honor. State calls
13 Charles Drake.

14 BAILIFF: Come right this way, please, sir. You go
15 right up there to be sworn..

16 MADAM CLERK: Right here, sir. Would you place your
17 left hand on the Bible and raise your right hand for me.
18 Do you solemnly swear to truthfully answer all questions
19 asked of you by this Court, so help you God?

20 MR. CHARLES DRAKE: I do.

21 MADAM CLERK: Please be seated. State your name and
22 spell it for the Court.

23 MR. DRAKE: Charles Drake. C/h/a/r/l/e/s,
24 D/r/a/k/e.

25 CHARLES DRAKE

DIRECT EXAMINATION BY MS. DEYSACH:

1
2 Q Hello, Mr. Drake. How are you?

3 A Fine.

4 Q So, you've got an eye patch. Did you just have
5 surgery yesterday?

6 A Yes.

7 Q And you're good enough to be with us today?

8 A Yes.

9 Q Where do you live, Mr. Drake?

10 A Hampton, South Carolina.

11 Q All right. And where in Hampton? What street?

12 A Williams Street.

13 Q I'm going to show you a map. And actually, if I
14 could have you step down, Mr. Drake. I apologize. I
15 know you just got up there. But you and I spoke a little
16 bit earlier. And just make sure you face the jury.

17 A Oh. Okay.

18 Q Yeah. Just stand right like that.

19 A Okay.

20 Q And can you point out your residence. We actually
21 have it labeled.

22 A Right here.

23 Q I know you've only got use to one eye.

24 A Right.

25 Q Okay. And that's Williams Street?

1 A Williams Street. Um-hmm.

2 Q Okay. And do you know where the Bottom is?

3 A The Bottom is -- well, the whole area is called the
4 Bottom.

5 Q Okay. Were you interviewed by SLED agents?

6 A Correct.

7 Q Okay. And was it regarding Wednesday, May the 25th
8 of 2011?

9 A Correct.

10 Q Okay. What happened that evening?

11 A Well, me and Kevin -- got another guy called Kevin,
12 a friend of mine, called Kevin White.

13 Q Uh-huh.

14 A Which he's deceased now.

15 Q Okay.

16 A Me and him was standing beside the road talking, and
17 this guy come walking by. And Kevin White spoke to him.
18 Said, *Hello, Kelvin.*

19 Q Okay. So, Kevin White knew the gentleman that was
20 walking by?

21 A Correct. Correct.

22 Q Okay. And who did he identify him as?

23 A Well, after Kevin -- well, he identified him as
24 Kelvin, right? And he said, *That's Kelvin Jackson.*

25 Q Okay.

1 A And that was --

2 Q In which direction was Kelvin Jackson heading when
3 you saw him?

4 A Well, he coming -- we was stand -- standing, and he
5 was walking toward, I think it's Highway 363.

6 Q Okay. And is this Highway 363?

7 A Correct.

8 Q Okay. So, he was walking this way.

9 A Walking toward -- correct.

10 Q Okay. All right, Mr. Drake, you can have a seat.

11 A Okay.

12 Q About what time -- I'm sorry. I'll let you sit down
13 first.

14 A Oh, okay.

15 Q About what time were and Mr. White standing by your
16 mailbox talking?

17 A I say between 9:00 and 10:00, cause it was dark
18 during that time.

19 MS. DEYSACH: Okay. Beg the Court's indulgence.
20 Judge, I have nothing further. Please answer any
21 questions that the Defense may have for you.

22 CHARLES DRAKE

23 CROSS-EXAMINATION BY MR. WILLIAMS:

24 Q Good morning, Mr. Drake.

25 A Good morning.

1 Q Mr. Drake, you didn't know Kelvin Jackson prior to
2 that day?

3 A No, sir. Not whatsoever.

4 Q In the area that you live, you live in that we call
5 the Bottom.

6 A Correct.

7 Q To Highway 63, it's about half a mile from your
8 house to the road? If that.

9 A I think -- I think it's not -- not -- not quite a
10 half a mile.

11 Q And it's about maybe a five-minute walk, around
12 there. Five or ten minutes around the corner?

13 A I say around, what, five minutes. A period of five
14 or ten minutes.

15 Q And people walk through there all the time; don't
16 they?

17 A People -- people does.

18 MR. WILLIAMS: Thank you. No further questions for
19 Mr. Drake.

20 MS. DEYSACH: No re-direct.

21 THE COURT: Thank you.

22 MS. DEYSACH: May Mr. Drake be excused?

23 THE COURT: Yes, ma'am.

24 MR. WILLIAMS: No objection.

25 THE COURT: Thank you, Mr. Drake.

1 A You're welcome.

2 MS. DEYSACH: May we approach, your Honor?

3 THE COURT: Yes.

4 OFF-THE-RECORD BENCH CONFERENCE,

5 OUT OF HEARING OF JURORS. PRESENT:

6 THE COURT, JUDGE MULLEN, MS.

7 DEYSACH, MR. JOHNSON.

8 END BENCH CONFERENCE.

9 THE COURT: Ladies and gentlemen of the jury, we're
10 trying to figure out the most convenient way to either
11 get you fed, or push through for a little bit. There are
12 several witnesses that are still to be called today, but
13 they're short witnesses. If you all are okay, we could
14 push through and get you home right here in about an
15 hour, if you'd like. If you're starving, we can let you
16 have a quick five-minute break, and get you some crackers
17 or something. Or if you all are okay with pushing
18 through, we plan on just pushing through, if that's okay.

19 FOREMAN: That's fine.

20 THE COURT: Thank you. Does anybody need a five-
21 minute quick break? Restroom, crackers, anything? How
22 about for the State or the Defense? Anybody?

23 MR. THORNTON: State's ready to proceed, Judge.

24 MR. JOHNSON: Defense is ready, your Honor.

25 THE COURT: All right. Well, let's push on through.

1 MS. DEYSACH: The State calls Marvin Coker.

2 MR. THORNTON: Your Honor, it'll be just a second.

3 THE COURT: Okay.

4 BAILIFF: Would you go up there to please be sworn,
5 sir.

6 MADAM CLERK: Right here, sir.

7 BAILIFF: Right up there, sir.

8 MADAM CLERK: Would you place your left hand on the
9 Bible and raise your right hand for me, please, sir.
10 Sir? Place your left hand on the Bible and raise your
11 right hand for me. Do you solemnly swear to truthfully
12 answer all questions asked of you by this Court, so help
13 you God?

14 MR. MERVIN COKER: I do.

15 MADAM CLERK: Please be seated. State your name and
16 spell it for the Court, please.

17 MR. COKER: My name is Mervin Coker.

18 MERVIN COKER

19 DIRECT EXAMINATION BY MS. DEYSACH:

20 Q Thank you for being here today, Mr. Coker. How are
21 you doing?

22 A I'm doing fine.

23 Q And what do you do for work, Mr. Coker?

24 A Heating and air.

25 Q In what area?

1 A Hampton.

2 Q Are you familiar with Masako Miller?

3 A Right.

4 Q Did you go look at an air conditioning unit for her?

5 A I looked at it.

6 Q Okay. Was that in May of 2011?

7 A That was it.

8 Q Okay. Was that May the 25th of 2011?

9 A That's correct.

10 Q About what time did you stop by her house?

11 A About 10:30.

12 Q Okay. And tell me where her house is located.

13 A Middle Street, Hampton.

14 Q Middle Street in Hampton. What did you drive over
15 to her house on that evening?

16 A A Jeep.

17 Q Okay. Is that your work truck?

18 A That's -- that's not the work truck.

19 Q Okay. Why didn't you drive your work truck?

20 A Transmission was leaking oil, and I didn't want to
21 drive it up on people driveway.

22 Q So, you parked in her driveway.

23 A That's right.

24 Q And did you go inside the residence?

25 A I went inside.

1 Q Do you remember who let you in?

2 A A small child.

3 Q Did you see anyone when you got inside of the
4 residence?

5 A Another child was sit -- laying over there on a
6 chair.

7 Q Did you see a man in the residence?

8 A No, ma'am.

9 Q What did you end up doing after that? Did you go
10 look at the A/C unit?

11 A Went outside and look at the condenser.

12 Q Okay. And did you give Masako any advice about the
13 unit?

14 A Right, I give her advice.

15 Q Okay. About what time did you leave?

16 A It was around 11:00 o'clock.

17 Q And that's at night?

18 A At night.

19 MS. DEYSACH: Beg the Court's indulgence. Thank
20 you, Mr. Coker. Please answer any questions that the
21 Defense may have for you.

22 MERVIN COKER

23 CROSS-EXAMINATION BY MR. WILLIAMS:

24 Q Mr. Coker.

25 A Yes, sir.

1 Q Mr. Coker, other than going to check the air
2 conditioning unit at Masako Miller's house, you have no
3 knowledge of this case; do you?

4 A No knowledge.

5 MR. WILLIAMS: Thank you. No further questions, Mr.
6 Coker.

7 MS. DEYSACH: Thank you. May Mr. Coker be excused?

8 THE COURT: Any objection? You may be excused.

9 MR. WILLIAMS: Yes, without objection.

10 MS. DEYSACH: The State calls Tara Roberts.

11 BAILIFF: This way, ma'am. If you would, please go
12 right up there to be sworn.

13 MADAM CLERK: Would you place your left hand on the
14 Bible and raise your right hand for me, please ma'am. Do
15 you solemnly swear to truthfully answer all questions
16 asked of you by this Court, so help you God?

17 MS. TARA ROBERTS: I do.

18 MADAM CLERK: Please be seated. State your name and
19 spell it for the Court, please.

20 A Tara Roberts, R/o/b/e/r/t/s.

21 TARA ROBERTS

22 DIRECT EXAMINATION BY MS. DEYSACH:

23 Q Ms. Roberts, thank you for being here today. Where
24 do you live, Ms. Roberts?

25 A Fairfax.

1 Q And how do you know Kelvin Jackson?

2 A We was going together. We got a baby together.

3 Q Okay. How old is that baby?

4 A She's six.

5 Q And are you familiar with Masako Miller?

6 A Yes.

7 Q How are you familiar with Masako?

8 A We knew each other off and on, because we was dating
9 the same guy.

10 Q Okay. Before Masako went missing, when was the last
11 time you had seen Kelvin?

12 A Wednesday morning.

13 Q And what did you guys do Wednesday morning?

14 A We went to get gas for him to go back to Columbia to
15 work.

16 Q Did he have any money that morning?

17 A I don't know whether he had any or not. He say he
18 didn't, so I paid for the gas.

19 Q Okay. So, you -- how much gas did you pay for that
20 morning?

21 A I think it was \$25.00.

22 Q And were you concerned about him possibly losing his
23 job if you didn't put the gas in?

24 A I was making sure he'd get back to work, yes.

25 Q After you put gas in his car that Wednesday morning,

1 and that would be May 25th of 2011, correct?

2 A Right.

3 Q When was the next time you spoke to him?

4 A Thursday afternoon.

5 Q Okay. Did he spend -- so, he did not spend the
6 night with you Wednesday night.

7 A Wednesday night? No, ma'am.

8 Q And you did not see him later that evening?

9 A No.

10 MS. DEYSACH: Thank you, Ms. Roberts.

11 A Um-hmm.

12 TARA ROBERTS

13 CROSS-EXAMINATION BY MR. JOHNSON:

14 Q Ms. Roberts, you said you knew Ms. Miller because
15 both of you all were dating Mr. Jackson. Is that true?

16 A Yes.

17 Q And I guess both of you all have had some
18 disagreement about Mr. Jackson. Is that true?

19 A Yes.

20 Q Okay. And when Mr. Jackson left you Wednesday
21 morning, he wasn't supposed to be back down here, was
22 that? Is that true?

23 A No, sir. He had to work.

24 Q And he went to Columbia to go to work.

25 A Yes, sir, I assume.

1 Q And then he snuck back down here.

2 A I guess.

3 Q Okay. Okay. Well, from what we know now, he was
4 down here seeing Ms. Miller. Is that correct?

5 A Yes.

6 Q Okay. Have you had problems with him like that
7 before?

8 A Yes. Back and forth.

9 Q Okay. Okay. And were you about fed up with him?

10 A Yes, sir.

11 Q Okay. And you talked with Agent Johnson. Is that
12 correct?

13 A Agent Johnson?

14 Q Right.

15 A Yes.

16 Q This young man sitting in the back with the blue
17 coat right here.

18 A Yes, sir.

19 Q Okay. You talked -- and he talked with you about
20 this. Is that correct?

21 A Yes, sir.

22 Q And after talking to him, you further thought you
23 needed to stay away from Kelvin. Is that correct?

24 A Yes, sir.

25 Q Okay. And is that uncommon for -- in your mind,

1 would it be uncommon for Kelvin to hide his car and try
2 to walk to see a woman?

3 A Mmm-mmm.

4 Q Is that something you think he'd do?

5 A It all depend.

6 Q Okay. Did he want you to catch him at Masako?

7 A No, sir.

8 Q Okay. Okay. So, and also, you drive a bus; don't
9 you?

10 A Well, I used to work transportation.

11 Q Okay. And the transportation buses, one of the
12 routes is not the route would go by where you could look
13 down the road and see her house. Is that correct?

14 A The way I goes to work, my route, yes, sir, I can
15 see her home.

16 Q So, and you go early in the morning; don't you?

17 A Yes, sir.

18 Q So, you could have possibly went down there. If his
19 car was parked, you could have seen his car. Is that
20 possible?

21 A Yes, sir.

22 Q Okay. So, would it be reasonable that he wanted to
23 hide his car from you?

24 A Yeah.

25 MR. JOHNSON: Okay. Thank you, ma'am.

1 MS. DEYSACH: Beg the Court's indulgence just one
2 moment, please.

3 Thank you, Ms. Roberts. May Ms. Roberts be excused?

4 THE COURT: Any objection?

5 MR. JOHNSON: No objection, your Honor.

6 THE COURT: Thank you, Ms. Roberts. You're excused.

7 MS. DEYSACH: State calls Mary Parks.

8 BAILIFF: This way, please, ma'am. If you'd go
9 right up there to be sworn.

10 MADAM CLERK: Would you place your left hand on the
11 Bible and raise your right hand for me, ma'am. And raise
12 your right hand.

13 MS. MARY PARKS: Oh.

14 MADAM CLERK: Do you solemnly swear to truthfully
15 answer all questions asked of you by this Court, so help
16 you God?

17 MS. PARKS: I do.

18 MADAM CLERK: Please be seated. State your name and
19 spell it for the Court, please.

20 MS. PARKS: Mary Parks.

21 MARY PARKS

22 DIRECT EXAMINATION BY MS. DEYSACH:

23 Q Ms. Parks, where do you work?

24 A EconoLodge.

25 Q Does that also go by another name?

- 1 A Palms Inn.
- 2 Q Palms Inn and Suites.
- 3 A Un-huh.
- 4 Q Okay. And where is that located, Ms. Parks?
- 5 A In Walterboro, South Carolina.
- 6 Q Were you working on the night of May 25, 2011?
- 7 A Yes, I was.
- 8 Q All right. And would that include into the early
9 morning hours of May 26?
- 10 A Yes, it does.
- 11 Q Can you explain what your typical shift was running,
12 back in 2011. What hours were you working?
- 13 A Oh, 12:00 to 8:00.
- 14 Q From 12:00 --
- 15 A 12:00 a.m. to 8:00 a.m.
- 16 Q Okay. I'm going to show you what I've previously
17 marked as State's Exhibit Number 19. Just one minute.
18 I'm sorry. And if you could just take a look at this
19 picture, ma'am, and tell me what that is.
- 20 A It's a picture of the sign at the EconoLodge where I
21 work.
- 22 Q Okay. And the Palm Inn and Suites.
- 23 A It's now Palms Inn and Suites, yes.
- 24 Q Okay.
- 25 A Yeah. Yeah. Um-hmm.

1 Q Okay. Is that an accurate and fair representation
2 of how it appeared when you were working there back in
3 2011?

4 A Yeah, it's about the same. Yes, it is.

5 Q Okay. Thank you.

6 MS. DEYSACH: At this time, the State would move
7 State's Exhibit Number 19 into evidence.

8 THE COURT: Any objection?

9 MR. JOHNSON: No objection, your Honor.

10 THE COURT: Thank you.

11 ITEM IDENTIFIED AS PHOTOGRAPH
12 OF PALMS INN AND SUITES MARKED
13 STATE'S EXHIBIT NUMBER 19,
14 ADMITTED AS EVIDENCE.

15 BY MS. DEYSACH:

16 Q I'm also going to hand you what's been marked as
17 State's Exhibits 20 and 21, and ask you to describe these
18 items.

19 A Okay. This is the registration that he fills out
20 when he come in.

21 Q That's a registration card --

22 A Uh-huh.

23 Q -- that a patron fills out when they rent a room?

24 A Right.

25 Q Okay. And then, Number 20 is what?

1 A This?

2 Q Yes.

3 A Duplicate of this.

4 Q Okay. Is it just a blown-up version of that?

5 A Yes, it is.

6 Q Okay. And are these records that you guys keep at
7 the hotel in the regular course of business?

8 A Yes, we do.

9 Q Okay.

10 MS. DEYSACH: The State would move 20 and 21 into
11 evidence at this time.

12 MR. JOHNSON: Without objection.

13 THE COURT: Thank you.

14 ITEM IDENTIFIED AS COPY OF
15 REGISTRATION CARD MARKED STATE'S
16 EXHIBIT NUMBER 20, ADMITTED AS EVIDENCE.

17 ITEM IDENTIFIED AS ORIGINAL
18 REGISTRATION CARD MARKED STATE'S
19 EXHIBIT NUMBER 21, ADMITTED AS EVIDENCE.

20 BY MS. DEYSACH:

21 Q And if you could just hold onto those, Ms. Parks,
22 I'm going to ask you some questions about them.

23 A Okay.

24 Q What information do you get from a patron when they
25 check into the hotel?

1 A The name and address.

2 Q Okay.

3 A And driver's license.

4 Q And did Kelvin Jackson check into the Palm Inn and
5 Suites, or EconoLodge?

6 A Yes, he did.

7 Q And what day did he check in?

8 A On May the 25th.

9 Q Now, you have May the 25th there. Would that also
10 include the early morning hours?

11 A Yes, it would.

12 Q What room did he check into?

13 A It's 254.

14 Q How did he pay for the room?

15 A Cash.

16 Q And how do you know that he paid cash for the room?

17 A How do I know?

18 Q Yes, ma'am.

19 A It's just --

20 Q Did you notate it on the registration card at all?

21 A Oh, yes, I did. Yes. I'm sorry.

22 Q And how much did he pay for the room?

23 A \$28.85.

24 Q What name did Mr. Jackson give you when he checked
25 in?

1 A I couldn't read it, so I wrote down Kevin Sanders.
2 But then, I asked him for his driver's license, and it
3 was a different name. So, on the registration sheet, I
4 put Jackson.

5 Q Okay. So, he originally gave you the name Kelvin
6 Sanders.

7 A Uh-huh.

8 Q And he wrote that on the registration card himself?

9 A Yes, he did.

10 Q Did he also write his driver's license number?

11 A Yes, he did.

12 Q And was his driver's license number incorrect?

13 A Yes, it was. It wasn't the same as his license.

14 Q Okay. But you actually wrote down the corrected
15 number?

16 A Yes, I did. I wrote down the one that was on his
17 driver's license.

18 Q And I'm going to show you what has been marked as
19 State's Exhibit 22, and have you describe that for me,
20 please.

21 A I went by his driver's license, and wrote down
22 Jackson on the registration.

23 Q Okay. So, the name next to Room 254 is?

24 A It's the one that was on his driver's license.

25 Q And that was Jackson.

1 A Jackson.

2 Q Okay. Beg the Court's indulgence. Thank you, Ms.
3 Parks. Please answer any questions -- oh, I'm sorry.
4 Did I -- State moves -- is this guest register something
5 that you keep in the ordinary course of business?

6 A Yes.

7 MS. DEYSACH: Okay. State moves Exhibit 22 into
8 evidence, if I neglected to do so before. Okay. Thank
9 you.

10 THE COURT: Any objection?

11 MR. JOHNSON: No objection on that or any of the
12 other that she presented.

13 THE COURT: Thank you.

14 MS. DEYSACH: Thank you.

15 ITEM IDENTIFIED AS GUEST REGISTRATION

16 CARD MARKED STATE'S EXHIBIT NUMBER

17 22, ADMITTED AS EVIDENCE.

18 MS. DEYSACH: Please answer any questions that Mr.
19 Johnson may have for you.

20 MARY PARKS

21 CROSS-EXAMINATION BY MR. WILLIAMS:

22 Q Ms. Parks.

23 A Yes.

24 Q I believe the State showed you a copy, State's,
25 what's been marked as Plaintiff's Exhibit Number 20, a

1 copy of the registration card. Is that correct?

2 A Um-hmm.

3 COURT REPORTER: Is that yes? You said um-hmm.

4 A Yes, ma'am.

5 COURT REPORTER: Thank you.

6 A Yes, sir.

7 Q And Mr. Jackson signed and filled out this card. Is
8 that correct?

9 A Yes, sir.

10 Q And you couldn't read his name. Is that right?

11 A No. No, I couldn't.

12 Q And then, you wrote in what you thought it was.

13 A Kevin -- what I thought it was.

14 Q And on this registration card, it says Kelvin
15 Sanders out to the right?

16 A Uh-huh. That's what I wrote on it.

17 Q And that's your handwriting.

18 A Uh-huh. That's what I thought it said.

19 Q Okay.

20 A Until I got his driver's license.

21 Q And may I, your Honor, begging the Court's
22 indulgence.

23 And I'm going to show you what's been marked as
24 Plaintiff's Exhibit Number 29. In the normal -- let me
25 back up. In the normal course of your business, you will

1 look at a customer's driver's license. Is that correct?

2 A Uh-huh.

3 Q When they check in.

4 A Yes, sir.

5 Q And he presented to you his driver's license. Is
6 that correct?

7 A After I asked him for it, yes.

8 Q Okay. And on that driver's license, on State's
9 Exhibit Number 29, what does it say? What's the name on
10 it?

11 A Oh. Kevin [sic] Jackson.

12 Q Okay. And you also, on the registration, they will
13 put down their driver's license number.

14 A Yes, sir.

15 Q Or you will enter it. Is that correct?

16 A Yes, sir.

17 Q And on this registration card, you wrote in -- or
18 Mr. Jackson wrote in his driver's license number. Is
19 that correct?

20 A That's right.

21 Q And after looking at it, can you tell me what is the
22 driver's license number on there?

23 A .

24 Q Is that the same that's on State's Exhibit Number 3
25 -- I mean Number 20?

1 A Yes, sir, same thing that I wrote down.

2 MR. WILLIAMS: Thank you. No further questions,
3 your Honor.

4 THE COURT: Anything further?

5 MS. DEYSACH: Just briefly, on re-direct.

6 MARY PARKS

7 RE-DIRECT EXAMINATION BY MS. DEYSACH:

8 Q Ms. Parks?

9 A Uh-huh. Yes.

10 Q Can you please tell the Court what Mr. Jackson wrote
11 down as his driver's license number?

12 A Read out the license number?

13 Q Yes, ma'am.

14 A .

15 Q And is that different than the one that Mr. Williams
16 just read out for you?

17 A Yes, it is.

18 Q That you wrote down.

19 A That he wrote down. The one I wrote is the same one
20 that was on the license.

21 Q Yes, ma'am. And his is different than what was on
22 the license.

23 A Yes.

24 MS. DEYSACH: Okay. Thank you.

25 MR. WILLIAMS: Just briefly, your Honor, on re-

1 cross.

2 MARY PARKS

3 RE-CROSS-EXAMINATION BY MR. WILLIAMS:

4 Q Ms. Parks, do you remember -- was Mr. Jackson
5 looking at his license when he wrote down the number when
6 he signed in?

7 A I don't remember.

8 Q Okay. Ms. Parks, you take a lot of driver's
9 licenses, right? Is it unusual for a customer to have to
10 look up their number?

11 A Most of the time they pull it out and write down
12 what's on it.

13 MR. WILLIAMS: Okay. Thank you. No further
14 questions.

15 MS. DEYSACH: Thank you, your Honor. No further
16 questions. May Ms. Parks be excused?

17 THE COURT: Any objection?

18 MR. JOHNSON: No objection.

19 THE COURT: Ms. Parks, you're excused. Thank you.

20 A Uh-huh.

21 MS. DEYSACH: The State calls Hazel Easterlin.

22 BAILIFF: Come right this way, please, ma'am. If
23 you would, go up there to be sworn.

24 MADAM CLERK: Would you place your left hand on the
25 Bible and raise your right hand for me, ma'am. Do you

1 solemnly swear to truthfully answer all questions asked
2 of you by this Court, so help you God?

3 MS. HAZEL EASTERLIN: I do.

4 MADAM CLERK: Please be seated. State your name and
5 spell it for the Court, please.

6 HAZEL EASTERLIN

7 DIRECT EXAMINATION BY MS. DEYSACH:

8 Q Can you please spell your name for the Court.

9 A H/a/z/e/l, E/a/s/t/e/r/l/i/n.

10 Q Ms. Easterlin, thank you for being here with us
11 today. Where do you work?

12 A Palms Inn.

13 Q And where is that located?

14 A Walterboro.

15 Q What is your title?

16 A The property manager.

17 Q Ms. Easterlin, I'm going to show you what has been
18 entered as State's Exhibit Number 22. And if you could,
19 please describe that, what that document is and what sort
20 of information it has on it, please.

21 A That's the guest registry sheet, where we write the
22 last name of the guest.

23 Q Is it separated by rooms or?

24 A Room number and name.

25 Q Okay. And for what date is that registration?

1 A May the 25th, '11.

2 Q May the 25th, '11.

3 A Um-hmm.

4 Q And would that also include the early morning hours
5 of May the 26th?

6 A Yes.

7 Q Like when it turned midnight, it would also include
8 the people on May the 26th.

9 A Until 6:00 a.m.

10 Q Okay. So, at the hotel, from what time to what time
11 do you use the same date?

12 A Like on February -- I mean, May the 25th, it would
13 have been 1:00 p.m. that day, until 6:00 a.m. the next
14 morning.

15 Q Okay. And so, on May the 25th, or early morning
16 hours of May the 26th, who occupied Room 254?

17 A Last name was Jackson.

18 Q Okay. I'm going to show you what's been marked as
19 State's Number 23, and ask you to identify this. This is
20 open, so, you can take this document out.

21 A That's the locks report on the room.

22 Q The locks report.

23 A Um-hmm.

24 Q Okay. And what does that document show?

25 A I can't see that. I'm going to get this one out.

1 It shows --

2 Q Just in general, and then I'll point you to a
3 specific date, please.

4 A The times that the key is used in the door, to
5 unlock the door.

6 Q Okay. So, it's a record of when someone swipes a
7 card to get in a door.

8 A Yes.

9 Q Okay. And it reports the time?

10 A Yes.

11 Q Is that the report from May the 20 -- does it
12 include May the 26th of 2011?

13 A Yes.

14 Q Is that the report that you gave to SLED
15 investigators?

16 A Yes.

17 Q Okay. And do you guys keep that report in the
18 ordinary course of business?

19 A If anything should go wrong in a room, and you have
20 to read the audit report or the locks report to find out
21 if like if a housekeeper had to go in the room or
22 anything, it would tell you what key was used and what
23 time.

24 Q Okay. And so, you all retain those reports?

25 A Yes.

1 MS. DEYSACH: Okay. State moves, I believe it's 23,
2 into evidence.

3 MR. JOHNSON: Without objection.

4 THE COURT: Thank you.

5 MS. DEYSACH: Thank you.

6 DOCUMENT IDENTIFIED AS LOCKS

7 REPORT MARKED STATE'S EXHIBIT

8 NUMBER 23, ADMITTED AS EVIDENCE.

9 BY MS. DEYSACH:

10 Q If I can turn your attention to May 26 of 2011, does
11 it show when anyone swiped the card on Room 254?

12 A Yes.

13 Q And what time does it say?

14 A It says 5:36.

15 Q Is that an accurate time stamp?

16 A No. The locks were not updated, and it was actually
17 4:36.

18 Q Okay. And why were they not updated?

19 A We had a -- a new owner and everything, and the
20 locks hadn't been updated.

21 Q Okay. Was it just that they hadn't been updated
22 from Daylight Savings?

23 A Yes.

24 Q Okay. Were there any other card swipes from that
25 guest on May the 26th?

1 A No. Only one, when he went -- first went in one
2 time.

3 Q And this may be obvious, but I want it to be clear
4 for everyone. Does it give a time stamp when a guest
5 leaves?

6 A No.

7 Q And why is that?

8 A The key is not used in the door when you leave. You
9 open it from inside.

10 Q Okay. Just to go back to the time stamp, was that
11 4:36 a.m. or p.m.?

12 A A.m.

13 Q A.m. Okay. Thank you.

14 A You're welcome.

15 MS. DEYSACH: Please answer any questions that the
16 Defense may have for you. Okay?

17 A Okay.

18 MR. WILLIAMS. Thank you. May it please the Court.

19 HAZEL EASTERLIN

20 CROSS-EXAMINATION BY MR. WILLIAMS:

21 Q Ms. Easterlin.

22 A Yes.

23 Q You ran the report that you provided to the State.
24 Is that correct?

25 A Uh, actually, the owner ran the report.

1 Q Do you have the State's exhibit still? Thank you.
2 And it records when the key is used, you stated?

3 A Yes.

4 Q You weren't present on May the 25th or 26th when Mr.
5 Jackson checked in; were you?

6 A No.

7 Q And this may be -- when -- I think you told -- you
8 told the State that it records when the key is -- when
9 the card is swiped. Is that correct?

10 A Yes.

11 Q In your system, do you swipe the card when a guest
12 checks in, to activate it?

13 A Yes.

14 Q Does your system record what time they check-in, or
15 what time they activated the card?

16 A No. No.

17 Q No way to tell, but you do swipe it.

18 A Um-hmm.

19 Q And your system hadn't been updated, had it?
20 Because of the new owners, you testified?

21 A Right.

22 Q And just one other question now I want to get clear,
23 Ms. Easterlin. You're the manager there at Palms Inn, or
24 EconoLodge, in Walterboro, right?

25 A Correct.

1 Q In the evening/early morning hours, for a person to
2 check into the motel, are they at a window outside of the
3 motel?

4 A From 12:00 to 8:00, yes, they were outside, at a
5 night window.

6 Q So, they never even come inside and see your guests;
7 do they? They're talking through a window.

8 A Correct.

9 MR. WILLIAMS: Thank you. No further questions.

10 THE COURT: Anything further?

11 MS. DEYSACH: Nothing further, your Honor. May Ms.
12 Easterlin be excused?

13 THE COURT: Any objection?

14 MR. WILLIAMS: Without objection, your Honor.

15 THE COURT: Thank you, Ms. Easterlin. You're
16 excused.

17 A You're welcome.

18 MS. DEYSACH: The State calls Chuck Fallow.

19 BAILIFF: Come this way, please, sir. Go over there
20 to be sworn.

21 MADAM CLERK: Would you place your left hand on the
22 Bible and raise your right hand for me, please. Do you
23 solemnly swear to truthfully answer all questions asked
24 of you by this Court, so help you God?

25 MR. CHUCK W. FALLAW II: I do.

1 MADAM CLERK: Please be seated. State your name and
2 spell it for the Court.

3 MR. FALLAW: My name is Charles W. Fallaw II.

4 CHARLES W. FALLAW II.

5 DIRECT EXAMINATION BY MS. DEYSACH:

6 Q Thank you. Can you spell your last name for the
7 court reporter, please.

8 A F as in Frank, a/l/l/a/w.

9 Q Thank you for being here, Mr. Fallaw. Who do you
10 work for?

11 A Automation Personnel Services.

12 Q And what is your title?

13 A I am the branch manager.

14 Q Where is that business located?

15 A 1350 C, Bush River Road, Columbia, South Carolina.

16 Q And was Kelvin Jackson an employee of yours in May
17 of 2011?

18 A Yes, ma'am.

19 Q I'm going to hand you what's been marked as State's
20 Exhibit Number 33, and ask for you to identify this
21 document.

22 A This is a payroll summary.

23 Q Okay. Is that a document that your business holds
24 in the regular course of business?

25 A Yes, ma'am.

1 Q Okay. What does it show?

2 A It shows the date and gross pay, as well as all
3 federal withholdings for an employee.

4 MS. DEYSACH: Okay. State moves Item 33 into
5 evidence.

6 THE COURT: Any objection, Mr. Johnson?

7 MS. DEYSACH: I'm sorry.

8 MS. DEYSACH SHOWING DOCUMENT TO

9 MR. JOHNSON.

10 MR. JOHNSON: No objection.

11 MS. DEYSACH: Thank you.

12 DOCUMENT IDENTIFIED AS PAYROLL

13 SUMMARY MARKED STATE'S EXHIBIT

14 NUMBER 33, ADMITTED AS EVIDENCE.

15 BY MS. DEYSACH:

16 Q I'm going to refer you back to what's been marked as
17 State's 33, and ask you what day of the week did your
18 employees get paid?

19 A After 2:00 p.m., on Thursdays.

20 Q Okay. Did Kelvin Jackson get paid on Thursday, May
21 the 26th?

22 A Yes, ma'am.

23 Q Of 2011.

24 A Yes, ma'am.

25 Q Okay. And that would have been some time after 2:00

1 p.m. that day.

2 A Yes, ma'am.

3 Q All right. When would his pay check have been --
4 when was the last pay check, prior to the pay check on
5 the 26th?

6 A It would have been the 19th.

7 Q The 19th. And that would have been the previous
8 Thursday?

9 A Yes, ma'am.

10 MS. DEYSACH: Okay. Thank you. Please answer any
11 questions that the Defense may have.

12 MR. JOHNSON: No questions for Mr. Fallaw.

13 A Thank you, sir.

14 MS. DEYSACH: May Mr. Fallaw be excused?

15 THE COURT: Yes, sir. You're excused. Thank you.

16 A Thank you, ma'am.

17 MR. THORNTON: May we approach, your Honor?
18 Scheduling.

19 OFF-THE-RECORD BENCH CONFERENCE,

20 OUT OF HEARING OF JURORS. PRESENT:

21 THE COURT, JUDGE MULLEN, MR.

22 THORNTON, MS. DEYSACH, MR.

23 JOHNSON, MR. WILLIAMS:

24 END BENCH CONFERENCE.

25 THE COURT: Ladies and gentlemen of the jury, what

1 we will do now is, we will take a recess in this case
2 until tomorrow at noon. So, you get a little bit of a
3 break in the morning.

4 And once again, I will instruct you not to discuss
5 the case whatsoever with anybody or look at news media or
6 read the newspaper. And we'll have the same process of
7 the oath in the morning.

8 Also, you've heard additional testimony here today
9 regarding locations of where this case allegedly took
10 place. I don't want you to drive by or do any kind of
11 outside investigation on your own.

12 So, if you would retire to your jury room, but come
13 on back tomorrow at noon. Maybe eat an early lunch, and
14 we can just work through the testimony.

15 Also, there is a chance, depending on how the
16 testimony goes tomorrow, how lengthy it will be, that we
17 may be here tomorrow evening, depending if you get the --
18 start deliberating tomorrow afternoon or, you know, late
19 in the afternoon. So, I just want to make sure nobody
20 has any kind of conflict, just in case we're here, you
21 know, in the evening tomorrow. If so, maybe discuss that
22 with Mr. Foreperson, and just let the bailiffs know, so
23 that we can make sure that we're all on the same page and
24 can proceed accordingly when you come back.

25 So, if you'd retire to your jury room, and just let

1 us know.

2 JURORS LEAVE COURTROOM 1:10 P.M.

3 BAILIFF: The jury is clear, your Honor.

4 THE COURT: Any exceptions or objections?

5 MR. JOHNSON: None from the Defense, your Honor.

6 THE COURT: From the State?

7 MR. THORNTON: None from the State, Judge.

8 THE COURT: So, we'll be in recess till noon. Thank
9 you.

10 MR. THORNTON: Thank you, your Honor.

11 MR. JOHNSON: Thank you, your Honor.

12 MR. THORNTON: Your Honor, I will go and check with
13 -- obviously, I know the court reporter and everybody
14 needs lunch. I will go and check with Ms. Lempesis with
15 our office to see what matters -- court's still in
16 session -- to see what matters she may be able to bring
17 before your Honor this afternoon. If that is okay with
18 your Honor, I'll go check with her, and have her come
19 back to you this afternoon.

20 THE COURT: That's fine. Actually, I think Judge
21 Mullen's going to handle the pleas this afternoon.

22 MR. THORNTON: Okay.

23 THE COURT: So, if you don't mind, just check in
24 with her office.

25 MR. THORNTON: Yes, ma'am.

1 THE COURT: So, she's expecting that.

2 MR. THORNTON: Thank you, your Honor.

3 THE COURT: Thank you.

4 MS. DEYSACH: Thank you, your Honor.

5 END DAY THREE, WEDNESDAY,

6 JULY 31, 2011, 1:11 P.M.

7 BEGIN DAY FOUR, THURSDAY,

8 AUGUST 1, 2013, 12:20 P.M.

9 BY THE COURT:

10 DISCUSSION REGARDING EXPERT

11 WITNESS ISSUE:

12 THE COURT: Thank you. You may be seated. Good
13 afternoon, everybody. I understand we have an issue with
14 the witness. Is there something you'd like to place on
15 the record?

16 MR. THORNTON: We do, your Honor. Because frankly,
17 this case hasn't been complicated enough for me to deal
18 with, so they've given me another witness issue that has
19 reared it's ugly head. I have, basically -- and Mr.
20 Johnson knows this. I've apprised him that I had an
21 issue. The witness --

22 I have two pieces of physical evidence in this case.
23 One is a DNA issue, which Mr. Johnson's aware of, which
24 was the witness we had flying in from Vermont. She's
25 here. She's ready to go. She's a forensic analyst with

1 SLED. We've gotten her back from Vermont timely. She
2 literally was met at the airport by an agent in a car,
3 and driven straight here.

4 However, at about -- starting at about 5:00 to 6:00
5 o'clock last night, and really didn't get confirmation
6 until almost 10:00 o'clock last night, and then again at
7 7:00 in the morning, our document examiner. Obviously,
8 there was an issue where there was a note left.
9 Allegedly -- the note itself alleged that it would have
10 been from Masako, the victim. However, I have a document
11 expert who has indicated -- and I don't want to get --
12 overstate what it says. There are some semantic issues
13 in there, but certainly, she says it is, I think probably
14 it was one or two levels above indications that we had an
15 argument about the other day. But basically, that it's
16 Kelvin Jackson's handwriting, and not Masako's that she's
17 excluded, and it is likely his handwriting, which of
18 course, matches up with information that S.D. had
19 already provided the jury. And it literally is one of
20 two real pieces of physical evidence that I have. It's
21 absolutely crucial to my case. Can't get it in any other
22 way, because -- or the opinion in that it's his by an
23 expert witness.

24 SLED really only has one of those experts. There is
25 a part-time person, however, who also does that. I have

1 two alternatives for the Court, because I had a nasty
2 suspicion that my first alternative was not going to
3 work, which is having her Skyped in. I've provided the
4 Court and Mr. Johnson with the case. And forgive me; I
5 don't have it memorized yet. I've read over it. It's
6 U.S. I think it's *Pusztia*, and it's 438 F.3d 1307. I
7 think it's a Court of Appeals for the 11th Circuit where
8 they let one in. And basically, it's judicial
9 discretion. You can have the confrontation clause
10 without having the physical face-to-face.

11 Obviously, in South Carolina, we're starting to do
12 bond hearings and other things via video cam. I was
13 going to try to have her -- Gail is the forensic person
14 I'm talking about, Gail Heath. I was going to have her
15 Skyped in from right around the corner from her home.
16 She was in the hospital last night. She's been let out
17 of the hospital, but she's heavily medicated. She
18 couldn't even drive to get here. It's some type of
19 gastrointestinal problem that creates a lot of pain.
20 It's a condition that she has flare ups with from time to
21 time, without going into too much detail. I am satisfied
22 that it is virtually impossible, if not impossible, for
23 her to get here.

24 And so, I would ask the Court to allow me one of two
25 things. Either allow me to have her Skyped in, or they

1 have a backup examiner. Her name is Joyce Lauterbach,
2 L/a/u/t/e/r/b/a/c/h, who I have right now examining the
3 documents and handwriting samples out of Gail's file.
4 They basically just pulled the file. She's reviewing
5 them. She can be here by tomorrow at 10:00 a.m. It
6 takes her a few hours to look this stuff over and issue
7 an opinion.

8 I either have one of those two, Judge, or I can't
9 introduce the evidence, and I have to go forward with
10 what I have, which I think deals a very big blow to my
11 case, because again, it's such a circumstantial case,
12 with such a small amount of physical evidence. It
13 certainly isn't intentional on the State's part. I've
14 done literally everything I can do. We contacted a guy
15 in North Carolina, who would take even longer to review
16 it.

17 So, the State would request either that I be allowed
18 to Skype Gail Heath in, which I understand is probably
19 not the best option, but it's an option. Or, we've got
20 the other three witnesses that I have left. They're
21 here, ready to proceed. Go through those three
22 witnesses. And then, I would ask the Court for
23 continuances till 10:00 a.m. in the morning. Put her up.
24 She would be a very brief witness. And go right into
25 argument and closing.

1 THE COURT: Let me ask you this. Where is that
2 witness?

3 MR. THORNTON: She's in Columbia.

4 THE COURT: She can't be here this afternoon?

5 MR. THORNTON: No, ma'am. I've been told it takes
6 her -- it's going to take several hours to pull the file
7 to review the information, to be able to be competent to
8 come in here and testify.

9 THE COURT: Well, can't somebody drive her while
10 she's looking at documents?

11 MR. THORNTON: I can ask, Judge. I was told she
12 could not be here before 10:00 a.m. I'll do whatever the
13 Court instructs me.

14 THE COURT: I think that would be the best course of
15 action. If somebody can drive her, we can save some time
16 and get her in here. Mr. Johnson, what's your position
17 on all this?

18 MR. JOHNSON: Your Honor, my position, the Solicitor
19 was good enough to hand me up the same case that he was
20 talking about. And of course, that case holds that a
21 face-to-face confrontation, unless there is some dire
22 necessity, that it should be a face-to-face
23 confrontation.

24 My first argument would be, if she's not here, your
25 Honor, as -- you know, the State has the job of producing

1 the case, calls the case. I have no control over that.
2 And as far as this witness, if she's unable to testify,
3 and if she's under medication, to Skype her in, your
4 Honor, would -- to me, that's a serious issue, because we
5 don't know if she's in a position where she can handle
6 it.

7 The second thing is, if we get a new expert, and in
8 theory, that new expert could testify different from how
9 she testified, because she got to review the material and
10 form her own opinion. And in this particular case,
11 without going too far in the case, because of the opinion
12 of Ms. Heath, we decided not to hire an expert. So, now
13 if the other expert comes and testifies different from
14 Ms. Heath, then, we're in a position, because of what was
15 presented to us, where, then, we're going to need, your
16 Honor, a continuance to bring us an expert.

17 I just think at this point in time, it's the State's
18 case. And I can tell you, Solicitor Thornton has done
19 everything he could and gave us what he should, but I
20 just think the State either has to proceed with this
21 witness or without.

22 I have serious objections of somebody under
23 medications that's been in the hospital. And then, I
24 have more serious objection, because -- objection. I
25 also think that we should get some notice of an expert,

1 so I can check out their background, see their vitae. I
2 just think that we're in a position where they can't
3 produce this witness, and then that takes us another
4 step, because this is a circumstantial case, and if they
5 can't produce that witness, I mean, at some point in
6 time, I think that does shoot a much, much bigger hole in
7 this case, shoot such a big hole till it may not be a
8 case.

9 THE COURT: Well, Mr. Johnson, I certainly agree
10 about the Skype issue and your confrontation clause. I
11 think that's certainly a very valid concern. And I'm
12 concerned about the witness being on medication, as well.
13 So, based on your argument, though, what I'm thinking is,
14 you know, I'm thinking, all fairness, obviously, you want
15 to have the opportunity to talk to this expert, prior to
16 the expert testifying. Is that correct?

17 MR. JOHNSON: Yes, ma'am, with this caveat. If I
18 talk to the expert, and the expert's opinion is different
19 from Dr. Heaton's opinion, there -- I've learned a lot
20 about this. It's got an ASTM, different levels of
21 opinions that a handwriting expert give. Well, if her
22 opinion from her review is different, and each expert can
23 have difference opinion, then, I'm going to be before the
24 Court saying, Judge, look, the reason we didn't bring an
25 expert was because their expert, their opinion we gave,

1 we thought, strategically, we could deal with that,
2 because I understand it. But now, if this person gives
3 another opinion that's much more detrimental, then, I'm
4 going to be before the Court saying, Judge, look, I need
5 to go out and hire me an expert that would counteract
6 what that expert says. I just think we have a point.

7 THE COURT: I understand your position. And
8 certainly, I think that's -- why don't we cross that
9 bridge when we get to that point?

10 MR. JOHNSON: My concern, Judge, because at that
11 point, it's going to be much more -- I just think any
12 testimony now, other than the people who were supposed to
13 testify, who we had notice of, prejudicial not on our
14 case, but our strategy. And I'm terrified of that,
15 because this is a circumstantial case. And of course,
16 her Honor knows that, you know, that I've made some other
17 motions that I was trying to protect, and this just takes
18 us one more step closer to allowing more prejudicial,
19 what I consider, circumstantial evidence. And at some
20 point in time, your Honor, the circumstantial evidence is
21 almost getting like -- the circumstantial evidence is the
22 -- we keep allowing them to put in evidence that's
23 circumstantial that seems to identify my guy, but it
24 doesn't. And the jury can take that evidence as
25 substantial and convict him off the circumstantial

1 inferences.

2 THE COURT: Would the original expert, you think, be
3 in a healthier position in the morning to be here in the
4 morning?

5 MR. THORNTON: Your Honor, I ask that very question.
6 I can't tell the Court one way or the other. She was
7 trying to get -- you know, she was going to try to come
8 earlier. I don't think -- it's not a medication that
9 affects her mental faculties. It's just an issue with --
10 it's a gastrointestinal issue. That's all I can tell
11 you. I will certainly ask.

12 I will tell you the reason I checked with Mr.
13 Heaton, who has been helping me and been on the phone
14 with them all through the evening and early-morning hours
15 trying to figure this out. The reason the ex -- the
16 other person that we just have notified you need to go
17 ahead, I don't think the Skype thing is going to happen
18 as a backup. The reason they can't get in a car and come
19 now, is because they have to sit down with magnifying
20 glasses to be able to compare everything. That's how
21 they reach their decision. If they're in a moving car,
22 they can't do it.

23 THE COURT: Right.

24 MR. THORNTON: We did ask that question, and we were
25 told it would do them no good to do that, because then,

1 they would just be driving down here, burning two-and-a-
2 half hours, and then get here, and then have to start.
3 And by the time they could get to it, it would be, you
4 know, well into the evening already anyway. So, that was
5 why they told me they could get them here by 10:00 a.m.
6 And if we need to try at 9:30 or something, I mean, I can
7 -- obviously, I'll do whatever the Court tells me to do.
8 But that's why they can't just have somebody else drive
9 them and head down, because they have to sit down with
10 magnifying glasses to compare the different documents.

11 THE COURT: Okay. Well, really, truly, I think in
12 all fairness to both sides, and I certainly am concerned
13 about the defendant's concerns, being able to have the
14 accurate information as to how he prepared for trial. I
15 think what we'll do is, we can find out from your
16 original person if she will be available in the morning.
17 10:00 o'clock is fine with me, if that works for
18 everybody else, if it's going to be the original person.
19 If not, then, your new expert needs to make herself
20 available to the Defense, so he has an opportunity to
21 discuss and review her findings and see where we go from
22 there.

23 MR. THORNTON: Yes, your Honor. And I apologize to
24 the Court. I'm doing everything I can to get it done.

25 THE COURT: Right. Because -- and Mr. Thornton,

1 just heads up to you, if her opinion is different, I
2 mean, truly, I think that is of great prejudice to the
3 defendant.

4 MR. THORNTON: Your Honor, I agree and understand.
5 Like I said, I'm doing what I can with what I've got to
6 work with.

7 THE COURT: And I'm not faulting you for it. I
8 understand the circumstance.

9 MR. THORNTON: She may end up just concurring with
10 the opinion, because it's almost like a tech review.
11 She's going to take all the documentation, all the
12 things, and issue an opinion. And it may be something
13 where she says, I concur or I don't concur with you. I
14 just don't know.

15 I've asked Investigator Heaton to go get in touch
16 with both of them. We're going to say that the Court's
17 strong preference is that if that Gail is physically able
18 to get down here with a driver -- I mean, the driver
19 thing was already handled. She was going to be driven.
20 If she's able to get down here in the morning, then,
21 let's have her here by 10:00 a.m. That, if somebody
22 else, we're getting the C.V. now. I'm having it emailed
23 to my office for the other expert on the off chance that
24 she can't make it, so that Mr. Johnson can have a copy of
25 her C.V.

1 I think she's actually -- I want to say she's
2 retired FBI, but that's just -- I've talked to eight
3 different people today, so I don't know which one of them
4 she is. But at any rate, I believe that she, obviously,
5 is qualified, but I will get her C.V., so that Mr.
6 Johnson has it, and I'll have that for him within the
7 hour.

8 THE COURT: Okay.

9 MR. JOHNSON: Your Honor, whatever the Court's
10 ruling, I'm going to respect the Court's ruling and sit
11 down. I just would like, at the proper time, would the
12 Court allow me, because Mr. Thornton was kind enough to
13 call me and kind enough about ten minutes ago to hand me
14 this case. I need to read this case. I wasn't expecting
15 this. Think about my objections. I would ask the Court
16 at the proper time to allow me to come back and put on
17 the record my objections before this witness testifies.

18 THE COURT: Sure. Absolutely. I have no problem
19 with that. I'll give you plenty of time to read the case
20 and when we have a break. And if you want to put
21 whatever you want on the record, we'll certainly do that.

22 MR. THORNTON: And for the record, your Honor, the
23 case that I handed was the case I referenced to the
24 Court, which you've already ruled on, and ruled against
25 me. So, I mean, just, I understand Mr. Johnson thinks he

1 needs to protect the record, but you've already ruled
2 against me on it. And that was the Skype issue, so.

3 THE COURT: Right. So, I think you're okay, Mr.
4 Johnson. I ruled in your favor, so.

5 MR. JOHNSON: Okay.

6 THE COURT: You don't need to read that case.

7 MR. JOHNSON: I don't. Your Honor, -- your Honor, I
8 know. Please, bear with me. If she can't be Skyped in,
9 so, are we saying, then, we using the other -- are we
10 saying we're just going to the other expert?

11 THE COURT: No. What we're doing is, we're going to
12 try to get the original expert here. If we can't get the
13 original expert here in the morning, --

14 MR. JOHNSON: Yes, ma'am.

15 THE COURT: -- then, you will have an opportunity to
16 meet with the new expert.

17 MR. JOHNSON: Yes, ma'am. Thank you.

18 JUDGE MULLEN: And then, if she has opinions that
19 are different, then, you will have an opportunity, again,
20 for the record, to ask that she be excluded.

21 MR. JOHNSON: Thank you, ma'am.

22 JUDGE MULLEN: So, we'll just -- we'll visit that
23 when it comes.

24 MR. JOHNSON: All right.

25 JUDGE MULLEN: If that is the case.

1 MR. JOHNSON: Oh. All right. Okay.

2 THE COURT: Any other issues we need to take up,
3 before we bring up the jury?

4 MR. THORNTON: No, your Honor. That was enough for
5 me to deal with this morning. So, thankfully, there
6 haven't been any others.

7 THE COURT: All right. Anything from the Defense?

8 MR. JOHNSON: No, ma'am.

9 THE COURT: All right. Let's have our jury.

10 BAILIFF: Yes, your Honor.

11 THE COURT: Would the parties approach?

12 OFF-THE-RECORD BENCH CONFERENCE,

13 OUT OF PRESENCE OF JURORS.

14 PRESENT: THE COURT, JUDGE MULLEN,

15 MR. THORNTON, MS. DEYSACH, MR.

16 JOHNSON, MR. WILLIAMS.

17 END BENCH CONFERENCE.

18 BAILIFF: Your Honor, the jury is entering.

19 JURORS ENTER COURTROOM 12:48 P.M.

20 BAILIFF: Your Honor, the jury is seated.

21 BY THE COURT:

22 JUDGE MULLEN: Good afternoon ladies and gentlemen.

23 Good to see you.

24 THE COURT: Good morning, ladies and gentlemen of
25 the jury. Sorry to keep you waiting. We had other

1 matters we needed to take care of. Once again, as you
2 recall, yesterday, I asked you to remain under oath and
3 not discuss the case with anybody or drive by or do any
4 independent research on the matter. So, I will ask you
5 if anybody has discussed the case with anybody, reviewed
6 any media or newspaper, whether it's T.V. or newspaper
7 articles or driven by the scene. If anybody has a
8 positive answer, please let me know right now.

9 I find that nobody has violated the order of the
10 Court, and we will proceed with the case. Solicitor, you
11 may call your next witness.

12 MR. THORNTON: Thank you, Judge. Dr. Tormos,
13 please.

14 MADAM CLERK: Would you place your left hand on the
15 Bible and raise your right hand for me. Do you solemnly
16 swear to truthfully answer all questions asked of you by
17 this Court, so help you God?

18 DR. LEE MARIE TORMOS: I do.

19 MADAM CLERK: Please be seated. State your name and
20 spell it for the Court, please.

21 DR. LEE MARIE TORMOS, FORENSIC PATHOLOGIST

22 DIRECT EXAMINATION BY MR. THORNTON:

23 Q Dr. Tormos, could you please state your name and
24 position for the record, and spell your last name.

25 A My name is Dr. Lee Marie Tormos. It's T/o/r/m/o/s.

1 And I am a forensic pathologist.

2 Q Dr. Tormos, what is a forensic pathologist? What do
3 you do?

4 A A forensic pathologist is a doctor that has a
5 specialty in pathology and a sub-specialty in forensic
6 pathology. And our main function is to perform
7 autopsies, which is a surgical procedure performed after
8 death, to determine cause and manner of death.

9 Q What kind of education -- obviously, your title is
10 doctor. Does that mean you have a medical doctorate?

11 A Yes, I do. I am a doctor, which entails four years
12 of medical school after college. And then, after medical
13 school, I have a four-year specialty degree in pathology
14 and atomic and clinical pathology. I am board certified
15 in both. And then, I have an additional year as a
16 forensic pathology sub-specialty, which I'm also board
17 certified in.

18 Q Doctor, how long have you been at MUSC?

19 A I've been at MUSC for three years.

20 Q And did you do pathology work prior to starting to
21 starting to work for MUSC?

22 A Yes, I did. I am originally from Puerto Rico, and I
23 worked as a medical examiner in Puerto Rico for two years
24 before moving to the States.

25 Q Doctor, how many autopsies, in your years of

1 experience, do you think you've conducted?

2 A Over a thousand.

3 Q And how many times, if ever, have you been qualified
4 to testify in court as an expert witness?

5 A Four or five times in the state of South Carolina.

6 Q All right. And how about in other places?

7 A No.

8 Q Dr. Tormos, could you also talk about what other
9 professional associations or things you belong to.

10 A I'm also an active member of the National
11 Association of Medical Examiners. And I'm also a member
12 of the American Association of Blood Banking, as I also
13 practice blood banking and transfusion medicine at the
14 hospital.

15 Q Your Honor, at this time, I'd ask that Dr. Tormos be
16 qualified as an expert in the field of forensic
17 pathology.

18 THE COURT: Any objection?

19 MR. WILLIAMS: Yeah, your Honor, we agree that Dr.
20 Tormos is an expert in the field of forensic pathology.

21 THE COURT: Thank you. She's so qualified. Thank
22 you.

23 MR. WILLIAMS: Thank you very much.

24 BY MR. THORNTON:

25 Q Dr. Tormos, you indicated you work for MUSC. Did

1 you work for MUSC in August, May, actually, starting in
2 May of 2011?

3 A Yes, I did.

4 Q And did you perform an autopsy on one Masako Miller?

5 A Masako Yamaguchi Miller?

6 Q Yes.

7 A Yes, I did.

8 Q All right. And were you one of the pathologists who
9 performed that autopsy?

10 A I was the main preceptor for that autopsy.

11 Q Could you, based on your examination of Ms. Miller,
12 the victim in this case, were you able to determine a
13 cause of death?

14 A The cause of death in this case is undetermined.

15 Q And what does that mean? And especially with regard
16 to this case, why was it undetermined?

17 A There are several limiting factors to this autopsy.
18 The first and foremost being that the body was
19 decomposed. She had been exposed to the elements for a
20 approximately one week. The body was markedly bloated.
21 The body had defects that may have been associated to
22 exposure to the elements and, also, animal activity. And
23 as such, I could not determine for certain, even the
24 examination, exactly how she died.

25 I can tell you, from the autopsy, that I did not

1 find any evidence of natural disease that would explain
2 why she was dead. And I also could not find any evidence
3 in the toxicology that told me that she was under the
4 influence of a lethal amount of any drug or substance.

5 Q So, would it be fair to say, Dr. Tormos, based on
6 what you just testified to that she didn't -- based on
7 your expert opinion and your examination, and to a
8 reasonable degree of medical certainty, that she did not
9 die of natural causes and she did not die of any kind of
10 drug overdose?

11 A That is correct.

12 Q Let me ask you this, Dr. Tormos. Based on
13 everything you looked at -- I realize you can't say as an
14 absolute what she died of --

15 A Um-hmm.

16 Q -- would it be consistent with strangulation or
17 suffocation?

18 A Yes, it would.

19 Q Now, Dr. Tormos, are you provided with background
20 information by law enforcement and by other folks with
21 regard to how a decedent was found and other items in
22 regards to doing the autopsy?

23 A That is an integral part of what we do. We actually
24 get provided with scene information and other information
25 from the investigative authorities, and from the Coroner.

1 And we take all that information into consideration when
2 formulating the cause and the manner of death.

3 Q Based on where the body was located, the information
4 provided to you by officers, and also, the condition of
5 the body itself, would it be consistent with someone who
6 had been floating in a river?

7 A It would have been consistent, based on the location
8 and some findings on the -- on the body itself.

9 Q Doctor, let me ask you again. You talked about the
10 cause of death being undetermined. Could you explain the
11 difference between, say, cause of death and manner of
12 death.

13 A Okay. The cause -- the cause of death is that which
14 we find immediately caused a death. For example, a
15 gunshot wound or a drug overdose or a heart attack. The
16 manner of death can -- is based on the circumstances,
17 mostly. There are five manner of death. One is
18 undetermined. One is homicide. One is something that
19 happens with the actions or inactions of another
20 individual. One is accident. One is suicide. And
21 suicide is when the damage is self-inflicted. And the
22 other is natural. A natural death, such as illness or
23 disease.

24 Q Thank you, Dr. Tormos. Based on all of the
25 information you received both in actually conducting the

1 autopsy, the condition of the body, and the information
2 provided to you by law enforcement, in your expert
3 opinion, were you able to come to a determination as to
4 manner of death?

5 A The manner of death in this case, based on the
6 circumstances provided, was the homicide.

7 Q Dr. Tormos, just, of course, indulgence for a
8 moment. I think just one or two more questions. Dr.
9 Tormos, just one or two brief questions.

10 If you could, in reviewing the pathology report, --

11 A Um-hmm.

12 Q -- there was -- I did not see it. If I missed it,
13 please correct me. I did not see any markings or
14 ligature markings, which would be associated with
15 strangulation. Is it possible that someone can be
16 strangled or suffocated without leaving marks, say, by
17 the use of a pillow?

18 A Oh, absolutely.

19 MR. WILLIAMS: Objection.

20 A Actually, there are several ways that an autopsy can
21 negative, even in a fresh body. Now, remember that this
22 body had marked composition, which limits the evaluation.
23 But even suffocation, strangulation, can have a
24 completely negative autopsy. And that would be based on
25 the -- the -- the determination of that would be based on

1 the investigative information provided by law
2 enforcement.

3 Q And just to make sure, one last question, that I
4 understand what your opinion is. You cannot say for an
5 absolute medical certainty as to the cause of death,
6 which is why it's undetermined. Is that correct?

7 A That is correct.

8 Q But something that everything that you know of that
9 would be consistent with this would be some type of
10 suffocation or strangulation. Would that be correct?

11 A This autopsy would be consistent with a suffocation
12 or strangulation, the findings in the autopsy.

13 MR. THORNTON: Thank you very much, Dr. Tormos. I
14 have no further questions. Please answer any question
15 Mr. Walters [sic] has.

16 DR. LEE MARIE TORMOS, FORENSIC PATHOLOGIST

17 CROSS-EXAMINATION BY MR. WILLIAMS:

18 Q Thank you, Dr. Tormos. Good to see you again. Dr.
19 Tormos.

20 A Yes.

21 Q You conducted a thorough medical examination of the
22 body of Masako Miller; didn't you?

23 A Yes, I did.

24 Q And you use scientific factors to determine in your
25 examination of Ms. Miller. Is that correct?

1 A I use the scientific procedure to examine the body,
2 yes.

3 Q Procedure. In your examination, you were unable to
4 determine the time of death. Is that correct?

5 A That is correct.

6 Q You were also unable to determine the cause of
7 death, as you and the Solicitor talked about. Is that
8 correct?

9 A That is correct.

10 Q You and the Solicitor talked about consistencies,
11 but in your evaluation, you were not able to determine
12 that Ms. Miller was smothered. Is that correct?

13 A Smothering autopsies generally do not have any
14 findings. So, I do not have any findings in this
15 autopsy.

16 Q So, in your medical -- with your report, you don't
17 know how she died. Is that correct?

18 A I have no explanation as to why she died or she was
19 found where she was found.

20 Q Thank you. And your determination, I think you
21 testified that your determination was based on some
22 historical data, as provided by law enforcement. Is that
23 correct?

24 A That is correct.

25 Q And with that data is how you came up with that that

1 this was a homicide?

2 A Yes.

3 Q Doctor, were you able to determine -- let me re-
4 phrase. You were not able to determine how long Ms.
5 Miller was in the water; were you?

6 A The -- the decomposition is consistent with the
7 number of days that she was missing. However, I cannot,
8 with scientific certainty, tell you exactly when and
9 where she died.

10 Q Dr. Tormos, you remember we met at your office, and
11 we talked about this autopsy some months prior. Is that
12 correct?

13 A Yes.

14 Q And there was a great deal of decomposition in this
15 body. Is that right?

16 A Yes.

17 Q This body could have been in that water at Broad
18 River for as little as 72 hours, and had that amount of
19 decomposition. Is that correct?

20 A Yes.

21 Q Begging the Court's indulgence. Also, Dr. Tormos,
22 you said there was some decomposition from animals or --

23 A There were some defects on the skin that due to
24 animal activity on the body.

25 Q And other than the animal defects that you found on

1 the body, you didn't determine any other injury to this
2 body. Is that correct?

3 A There are injuries that are unexplained, but I
4 cannot call them injuries. There are defects that are
5 unexplained and that have animal activity superimposed on
6 those defects.

7 Q Dr. Tormos, without the historical data provided to
8 you by law enforcement, could you have deemed this, your
9 autopsy report, a homicide?

10 A I would have deemed it an undetermined manner, as
11 well.

12 MR. WILLIAMS: Thank you. No further questions.

13 MR. THORNTON: No further questions. I'd asked Dr.
14 Tormos be allowed to head back to Charleston, your Honor.

15 THE COURT: Any objection?

16 MR. WILLIAMS: No objection.

17 THE COURT: Thank you, Doctor. You're excused.

18 MR. THORNTON: Agent Adrienne Hefney.

19 BAILIFF: Come right this way, please, ma'am. Would
20 you go up there to be sworn.

21 MADAM CLERK: Would you place your left hand on the
22 Bible and raise your right hand for me, please, ma'am.
23 Do you solemnly swear to truthfully answer all questions
24 asked of you by this Court, so help you God?

25 AGENT ADRIENNE HEFNEY: I will.

1 MADAM CLERK: State your name and spell it for the
2 Court, please.

3 AGENT HEFNEY: Adrienne Hefney. Last name
4 H/e/f/n/e/y.

5 SLED AGENT ADRIENNE HEFNEY,
6 FORENSIC DNA ANALYST

7 DIRECT EXAMINATION BY MR. THORNTON:

8 Q Agent Hefney, obviously, I've talked to you a number
9 of times in the past, so I know these are always kind of
10 silly questions, but who do you work for?

11 A I work for the South Carolina Law Enforcement
12 Division, more commonly known as SLED.

13 Q And what do you do for SLED?

14 A I'm a forensic DNA analyst.

15 Q What kinds of education did you have to go through
16 to become a forensic DNA analyst?

17 A I have a bachelor of science degree in biology from
18 the University of South Carolina. I also have a master's
19 in business administration from Winthrop University. I
20 was trained on the job by a court-qualified analyst. And
21 since joining SLED, I've taken post-graduate courses in
22 the field of molecular biology, genetics, and population
23 statistics.

24 Q Agent Hefney, let me ask you this. How long have
25 you been at SLED?

1 A Since November of 1997, so a little shy of 16 years.

2 Q And in that time, have you always been a forensic
3 analyst?

4 A Yes, sir. I joined SLED as a forensic technician in
5 the DNA Department. I worked as a technician from
6 November 1997, till March of 1999, and was promoted to
7 DNA analyst at that time.

8 Q How many DNA analysis -- analyses, I guess would be
9 the plural -- do you think you've conducted in that time?

10 A A lot. It's probably a thousand. At least a
11 thousand. Thousands of cases at this point.

12 Q And how many times, if ever, have you been allowed
13 to testify, and confirmed by a Court to be an expert in
14 the field of DNA analysis and testified in court in South
15 Carolina.

16 A I've testified in both South Carolina and federal
17 courts approximately about 62 times.

18 MR. THORNTON: Your Honor, at this time, I'd ask
19 that Agent Hefney be Court recognize as an expert at the
20 field of DNA analysis.

21 MR. JOHNSON: Without any objection.

22 THE COURT: Thank you. She's so qualified.

23 MR. THORNTON: Thank you.

24 BY MR. THORNTON:

25 Q Agent Hefney, let me ask you this. Obviously, you

1 said you've been there since 1997. Were you employed by
2 SLED since May of 2011 to now?

3 A Yes, sir.

4 Q And did you work on the case of the State versus
5 Kelvin Jackson, the victim being Masako Miller?

6 A Yes, sir, I did.

7 Q And is that referenced as Lab Number L11-05975?

8 A Yes, sir, it is.

9 Q I'm going to hand you -- first of all, did you
10 analyze several items in this case?

11 A I did.

12 Q And what kind of analysis is that, just in general
13 terms?

14 A Forensic DNA analysis.

15 Q I'm going to hand you, first of all, State's
16 Exhibit, which has already been introduced into evidence,
17 27, and ask you if you can identify that for me on your
18 SLED Item Number. The SLED Item Number is still up
19 there, Agent. I know that's what you need to go by.

20 A Yes, sir. The SLED Number Item on this case is Item
21 Number 29. And Item 29 is, according to my report, is a
22 pillowcase.

23 Q All right. And that pillowcase, it's already been
24 testified to as to where it was collected from. Do you
25 see your initials on some of the items as to where you

1 would have opened it and tested it, and then re-sealed
2 it?

3 A Okay. My initials would not be on this one. It
4 would be on the swabs and the cuttings from the
5 pillowcase. This was processed by Evidence Processing
6 Department.

7 Q Right.

8 A They take the larger items, make swabs or cuttings
9 from them, and then send them to DNA to be processed or
10 analyzed.

11 Q And when that is done, is that referenced in the
12 SLED-certified chain of custody?

13 A Yes, sir, it is.

14 Q All right. And we heard some testimony yesterday.
15 Obviously, you weren't in here. In general, what is the
16 SLED-certified chain of custody? What does it entail as
17 to when anybody touches any item?

18 A It's -- it's just a chain of custody that shows
19 where that item traveled once it came to SLED, who
20 touched it, how long they had it, and where they put it
21 after they were done with it.

22 Q And were cuttings taken from -- and would you re --
23 tell me what that Item Number was from that again? The
24 pillowcase.

25 A This is Item Number 29.

1 Q Yes, ma'am. And were cuttings taken from Item 29?

2 A Yes.

3 Q That you tested?

4 A Yes, they were.

5 Q All right. And did you test those items?

6 A Yes, sir, I did.

7 Q All right. If you'll put that one down for me for
8 just a second. I'm going to hand you what's already been
9 introduced as evidence into State -- it's State's 25 and
10 26.

11 A Um-hmm.

12 Q And ask you if you can identify those. And again, I
13 know you need to refer to them by their SLED item
14 number.

15 A All right. This is Container C. It's like, it
16 contains various specimens from the autopsy.

17 Q Which would have been the victim in this case. Is
18 that correct?

19 A Yes. Yes, sir.

20 Q And is one of those a blood spot and --

21 A Yes, sir, the blood spot from Masako Miller's here.

22 Q All right.

23 A And my initials are at the top, along with my -- the
24 date.

25 Q You've been doing this long enough now, you answer

1 my question before I even asked it.

2 A Oh.

3 Q Thank you, Agent. And is that part of the SLED
4 protocol that you had talked about earlier, where every
5 time anything is opened or -- it's initialed, and then
6 re-sealed?

7 A Yes, sir.

8 Q And does everything, as to the first two items I've
9 handed you, appear to have been followed protocol, both
10 by the SLED Chain of Custody Form and your official
11 inspection?

12 A Yes, sir.

13 Q And did you use a -- is that what's called a
14 standard? In other words, you have a known standard from
15 the victim now that you then use to examine against
16 possible pieces of evidence?

17 A Yes, sir.

18 Q Okay. And is that what -- and forgive me. I want
19 to refer to it by the exhibit number -- what State's 26
20 is?

21 A Yes, sir, it is.

22 Q And is that the standard that you used to determine
23 whether or not there was potential evidence as it related
24 to Masako Miller, the victim in this case?

25 A Yes, sir.

1 Q All right. And if you would, go to the other item
2 number, which I believe is twenty --

3 A This is State's Exhibit 25.

4 Q Thank you very much. State's Exhibit 25. What does
5 that contain?

6 A This is our Item Number 8, which appears to be a
7 suspect evidence collection kit. And on the back here,
8 on the envelope, what I preserved Mr. Kelvin Jackson's
9 standard on. And his standard is known as our Item 8.1.

10 Q Is that the standard or the known DNA that you used
11 to compare to potential items of evidence?

12 A That is correct, a known blood standard.

13 Q And if I could hand you one more. This is State's
14 Exhibit 24. I believe it's SLED Item 1. If you could
15 tell me what that is.

16 A This is a swab from -- excuse me. Trying to read
17 through the package here.

18 Q I believe it was --

19 A Slight rare --

20 Q It's hard to read. The testimony was slight react,
21 meaning slight reaction.

22 A Slight reaction from LCV.

23 Q All right. Would you --

24 A And I have this listed of that swab from the
25 bathroom sink at the Palms Inn and Suites Hotel.

1 Q Again, you answered it before I asked it to you.
2 Agent, let me ask you this. Did you prepare a report as
3 to the items -- some of these items that you tested?

4 A I did.

5 Q All right. And as to Item Number 1, the swab from
6 the bathroom sink at the Palms Inn and Suites Hotel, were
7 you able to make a determination as to whose DNA that
8 was?

9 A Yes, sir, I was.

10 Q And could you tell me what that is, please.

11 A I'll read directly from my report regarding Item 1.

12 Q Yes, ma'am.

13 A *The DNA profile developed from Item 1*
14 *matches the DNA profile of Kelvin Jackson.*
15 *The probability of randomly selecting an*
16 *unrelated individual having a DNA profile*
17 *matching this item is approximately one*
18 *in two hundred and ten trillion.*

19 Q So basically, what you're saying is that Kelvin
20 Jackson's DNA was on the swab taken from the Palms sink
21 room that SLED Item Number 1 was taken from. Is that
22 correct?

23 A Within a reasonable degree of scientific certainty,
24 that's correct.

25 Q Yes, ma'am. And you said the number was one in

1 what? Two hundred and ten how many?

2 A Trillion.

3 Q All right. Now, let me ask you this. I know there
4 were cuttings done from the pillow. Were they -- and
5 there was -- first of all, let me ask you this. Are
6 there different types of DNA? And when I ask that, what
7 I mean is, a lot of people may have watched some of the
8 -- I know, I'm sure they're the bane of your existence,
9 these CSI shows and things like that.

10 A Yes, sir.

11 Q Touch DNA versus DNA, you know, off of blood, could
12 you kind of explain the difference in that, please.

13 A Sure. Well, I want to start a little bit with the
14 background of -- of what we do at SLED as far as DNA is
15 concerned. You know that DNA, it stands for
16 deoxyribonucleic acid, and it's the genetic information
17 we get from each one of our parents. And we get half of
18 our DNA from our mother, and half of our DNA from our
19 father.

20 Now, a lot of our DNA is the same, because it's
21 going to be the DNA that codes us for being human. It
22 gives us two arms and two legs, a nose, eyes. But of
23 course, we look around this courtroom, and we know
24 everyone looks different. And so, from there, that's
25 what we use in forensics, because no two people have the

1 same two DNA, except identical twins.

2 Now, another type of test that we do at SLED is
3 known as YSTR testing. What YSTR testing is, is just
4 like I say, you get half of your DNA from your mother and
5 half from your father. Well, the part that you get from
6 your father will have what's known as a Y chromosome,
7 because girls are XX; boys are XY. So, you have that Y
8 chromosome, and it's male-inherited. And so, that means
9 that the male got it from his father. And then, his
10 grandfather would have that same profile, as well,
11 because it's -- it's lineage. It's the same thing
12 throughout the paternal side of the family. So, any male
13 relative on the paternal side of the family could
14 possibly have the same DNA with YSTR's. With the other
15 type of testing that we do most commonly at SLED, that is
16 commonly not the case. Okay? So, that is what I did in
17 this case, on these items.

18 Q All right. Now, let me ask you this. We talked
19 about SLED Item 29. And just so we keep the record
20 clear, that is State's Exhibit 27, but it's SLED Item 29,
21 the pillowcase taken from the victim's room. You
22 indicated what you tested were the cuttings from that.
23 When SLED does cuttings, do they take the number of the
24 item number, and then just decimal point? In other
25 words, 29 is your item number. What were the two

1 cuttings that you tested in this case?

2 A That is correct. When they make a cutting in
3 evidence processing, they'll what's called a sub-itemize
4 it. So, the cutting will then become 29.1. And then, if
5 they take a swab from it or another cutting, it will
6 become 29.2.

7 Q And in this case, did you have a 29.1 and a 29.2
8 that you tested off the pillowcase?

9 A Yes, sir, I did.

10 Q And what were your results? And first of all, can
11 you be specific about what type of DNA and where on the
12 pillow they came from.

13 A I sure will. Before we do any type of DNA analysis,
14 too, we're going to screen to see what we're working
15 with, basically, whether it's blood, semen, saliva. And
16 so, in this case we did, on Item 29.2, was a cutting from
17 the pillowcase from the victim's bed. There was blood
18 indicated on Item 29.2. And I'm going to go to my point
19 and read what that is. And then, I'll come back and
20 cover 29.1.

21 29.2, there was no DNA profile pointing to the
22 victim, Masako Miller, was developed from Item 29.2.

23 Q And what does that mean? Does that mean that it was
24 her blood, her DNA?

25 A Her DNA, her blood, on her pillowcase.

1 Q All right. So, her blood is on her pillow. And I'm
2 not trying to put words in your mouth. I'm just asking
3 to make sure we understand it. So, Masako -- and I know,
4 I looked at the spelling, too, and her daughter kept
5 correcting me, and I kept saying Masako. But it's the
6 victim's blood on her pillowcase. Is that correct?

7 A That is correct.

8 Q And okay. As to 29.1, first of all, what kind of
9 DNA did we test that came back positive and where did it
10 come from?

11 A 29.1, what Evidence Processing did, is they scraped
12 the edges, the outer edges, of a pillow -- of the
13 pillowcase. And then, they swabbed the scraping of the
14 pillowcase. That's known as touch DNA. That's where so
15 may have handled the edges of the pillowcase, or someone
16 may have touched in some way, or laid on it. Some part
17 of that person has been on that pillowcase. And so,
18 that's how we were able to get the DNA profile from Item
19 29.1, which is labeled as swab from outer edges of
20 pillowcase from the victim's bed.

21 Q So, this came from the edges of the pillowcase.

22 A Yes, sir, it did.

23 Q Go ahead.

24 A So, I'm going to read from my report. And there are
25 two conclusions what I found from Item 29.1. One will be

1 from that normal type of DNA testing that we do, that I
2 explained. And the other will be from the YSTR testing.
3 And we do YSTR testing when we have certain cases where
4 there's a over-abundance, maybe a female DNA, and we may
5 see male DNA, but we want to strictly amplify or strictly
6 look at the male DNA, that's what we use YSTR, we reserve
7 that for.

8 So, I'm going to read again:

9 *The DNA profile developed from Item*
10 *29.1, is a mixture of at least three*
11 *individuals: Kelvin Jackson, and Masako*
12 *Miller cannot be excluded as possible*
13 *contributors to this mixture.*

14 *The probability of randomly*
15 *selecting an unrelated individual who*
16 *could contribute to this mixture is*
17 *approximately one in 1,600.*

18 Q Now, did you -- I'm sorry to interrupt you. Did you
19 go on then and do a further test for the YSTR DNA?

20 A Yes, sir, I did. The next paper:

21 *The YSTR DNA profile developed from*
22 *29.1 is a mixture of two male individuals.*
23 *The YSTR DNA profile of the major contributor*
24 *to this mixture matches the YSTR DNA profile*
25 *of Kelvin Jackson. Paternal male relatives*

1 of Kelvin Jackson cannot be excluded as a
2 major contributor of DNA to this profile.

3 This profile is found zero times in a
4 population database of 8,487 male individuals.

5 The partial DNA profile of the minor
6 contributor to this mixture is not suitable
7 for a CODUS entry.

8 Q Now, let me ask you a few questions. Is it fair to
9 say -- and again, Agent Hefney, you've known me a long
10 time.

11 A Um-hmm.

12 Q I'm not trying to put words in your mouth. I don't
13 understand half of what you say sometimes, so I'm just
14 trying to clear this up. Is what you're saying, there's
15 two male individuals' DNA on the edges of the pillowcase.
16 Is that correct?

17 A That's correct.

18 Q Which one is the stronger DNA footprint, for lack of
19 a better word, of the two?

20 A Kelvin Jackson. He's known -- the DNA profile
21 matching Kelvin Jackson is considered the major
22 contributor to this profile.

23 Q And that came from what part of the pillowcase?

24 A The outer edges, the swabbing and the scrape -- the
25 scraping and the swabbing of the outer edges.

1 MR. THORNTON: Thank you very much, Agent Hefney. I
2 have nothing further. Please answer any questions Mr.
3 Johnson might have for you.

4 SLED AGENT ADRIENNE HEFNEY,

5 FORENSIC DNA ANALYST,

6 CROSS-EXAMINATION BY MR. JOHNSON:

7 Q Good morning.

8 A Hello.

9 Q I can't say, like the Solicitor, that I've known you
10 all those years, but I think we did one or two cases
11 together.

12 A We have.

13 Q I was always taught, don't ask the expert about
14 their fields, but I need you to help me understand some
15 things.

16 A Okay.

17 Q All right? Please? When you say from your report,
18 *cannot be excluded as a major contributor*, you're not
19 saying that he is a contributor. You're just saying he
20 -- he cannot be -- somebody cannot be excluded from that
21 class, but there could be other people in that class,
22 also. Is that also -- is that correct?

23 A That is correct. That's when I look at -- if it's a
24 mixture, I look at all the DNA that's in that mixture.
25 And I look at what we have, the standards that we have.

1 Q Okay.

2 A And from looking over -- we look at 15 different
3 loci, or locations of -- or genetic markers, if you say.
4 So, I look at that, and I see where -- I go through each
5 one, where he cannot be excluded. And then, we apply
6 statistical weight to that, which is the one in 1,600
7 that I told you about.

8 Q And the Number 29 -- your 29.1, it's amazing what's
9 in that. When you do -- when it's a Y chromosome, like
10 you say, that only comes from the male side of your
11 family. Is that correct?

12 A That is correct.

13 Q Okay. So, if you would use me, my father would have
14 it; I would have it; and my son would have it; all of us
15 would have that same Y chromosome.

16 A You would have the same Y -- you would definitely
17 would have the same Y chromosome. And you would have the
18 YSTR profile, as well.

19 Q Okay. So, if -- I guess what I'm trying to say, so,
20 you wouldn't be able, if, in the same situation, you
21 couldn't exclude my dad and me or my son, because we all
22 got the same profile.

23 A In this case or?

24 Q Well, in -- I'm asking -- well, let's do it in this
25 case. Yeah, in this case. Could you do that?

1 A I could -- I would say any paternal, male
2 relative --

3 Q Right.

4 A -- of Kelvin Jackson cannot be excluded as a major
5 contributor to this profile.

6 Q But I want to -- I just want to help and make sure
7 the jury understand. Cannot be excluded, meaning that
8 there are other people who could be included.

9 A Paternal male relatives of Kelvin Jackson, yes, sir.

10 Q Okay. All right. Then, my next question is, if
11 Kelvin Jackson had a son, would he be included in that
12 category?

13 A In the YSTR profile, yes, sir.

14 Q Right.

15 A But his son and him will not have the same profile.
16 It's called what -- nuclear autosomal DNA. That -- don't
17 get caught up on the words. That's just DNA that we look
18 at normally, and that you get from both your mother and
19 your father that makes you unique. So, Kelvin Jackson
20 and his son would not have the same profile in that
21 respect. They would have the same YSTR profile.

22 Q Okay. But you, on 29.1, you did the YSTR. Is that
23 correct?

24 A Yes, sir.

25 Q And that's the one where you said Kelvin Jackson's

1 was the stronger. Is that correct?

2 A Yes, sir. I did both autosomal from both what makes
3 us unique, as well as Y.

4 Q Okay.

5 A I did the first one first. And then, I went back,
6 because I had a overabundance, and I saw that there was a
7 male there, and I wanted to enhance profile. So, I did
8 the YSTR profile from there.

9 Q Okay.

10 A So, both were done.

11 Q Okay. Both were done. But now -- but it was -- I
12 just want to make sure I'm correct. But it was the YSTR
13 was the one that you said was the stronger one. Is that
14 correct?

15 A That's where he was the major contributor.

16 Q Right.

17 A Because in the other one, it's a mixture, but it's
18 almost like a equal mixture, which was why I had to go
19 and do the next step, which was Y. And that way, it's
20 just looking at any male DNA that was there. And then, I
21 could see whether there was a stronger one and a weaker
22 one. And in this case, there was.

23 Q Okay. But what you're doing is -- and I know you
24 know this, and I don't, so you're confusing me. I just
25 want to establish about the Y. Let's just -- let's walk

1 through it. I just want to establish with the YSTR DNA,
2 29.1, the one that you said were the stronger one, you
3 said if there was another male, that they would have that
4 same YSTR. Is that correct?

5 A No, sir, not if there was another male. If there's
6 another male relative of Kelvin Jackson, then they could
7 have it.

8 Q Okay. Let's stop right there. Let's stop right
9 there. So, on the stronger one, if Kelvin Jackson has a
10 son, would his be included in the YSTR on the strong one?

11 A Yes, sir. If you're only looking at STR's, yes,
12 sir.

13 Q Okay. Okay. Now, now, let's go to the other. You
14 said there was a major contributor and a minor
15 contributor meant that there was somebody else DNA on the
16 pillow.

17 A That is correct.

18 Q Okay. So, Kelvin's was not the only one.

19 A That is correct.

20 Q Okay. When you did Kelvin's profile on Number --
21 your Honor, may I approach?

22 THE COURT: Yes, sir.

23 Q Where's the question number that this go with?

24 A That was Item 1, sir.

25 Q Okay. Thank you. Okay. And when it identify

1 Kelvin's profile, it identified that one in two hundred
2 trillion. In other words, there's no way for him to say
3 that wasn't him on Item 1. Is that correct?

4 A Pretty much.

5 Q Yeah. And that was the one from the hotel in
6 Walterboro, the swab from the sink.

7 A Yes, sir. I'm not sure where the hotel is. Just a
8 Palm Inn Suites.

9 Q Right. Right. So, other words, there's no question
10 it was him in the hotel room at Palms Inns and Suites.

11 A Because that was a single source profile. It was
12 not a mixture. It was one person's DNA on that swab, and
13 that matched Kelvin Jackson.

14 Q Okay.

15 A In one in two hundred and ten trillion.

16 Q I notice in 29.1, though, it's approximately one in
17 one 1,600. Why is the -- why is such a less of a
18 deduction?

19 A Because that's a mixture. And what it is, when you
20 have a mixture, you have so much more DNA than you do in
21 a single-source profile. And what we do, we take into
22 account all of the DNA that's present in the mixture.
23 And when you have that much, your number is going to be
24 significantly less than if it was a single source profile
25 that we were drawing a statistic from.

1 And also, with mixtures, we interpret those a little
2 bit more cautiously. Like, for example, if something
3 falls below a certain level, what we look at -- and it's
4 called a stochastic region or a relative fluorescent unit
5 level. Meaning, if it's below, say, 150 relative --
6 relative fluorescent units -- that's a lot to say --
7 then, we capture it in like a parenthesis, and we don't
8 use it in stats, because we have to interpret that with
9 caution.

10 So, taking all of that into consideration is why the
11 stat can be a lot less than if we had a single-source
12 profile.

13 Q So, is it fair to say you interpreted the one with
14 the pillowcase with caution?

15 A Now, that's the one --

16 Q That's the one in one and 1,600.

17 A When we review the DNA from both to get from both
18 your mother and your father, --

19 Q Right.

20 A -- yes, sir, there were about, let's see, one, two,
21 three, four, five out of the 15 located -- 16 locations
22 that had DNA in that range. And not all of the DNA was
23 in that range. Only, say, one of the alleles, which is a
24 type of DNA, just another word for DNA, one of those
25 where, say, in the region that we interpret with caution.

1 And we -- if that's the case, we don't use any of it at
2 that location. So, that can significantly decrease your
3 statistics, as well.

4 As far as the one with the YSTR sample, there was
5 none in that region. Everything was above threshold, and
6 nothing was interpreted with that type of caution.

7 Q You have no question he was at the motel, but for
8 the others, there's -- we were cautious in the
9 interpretation.

10 A Well, we're cautious in all interpretation, but when
11 it comes to statistics, and you asked why we had one in
12 1,600 with one, --

13 Q Right.

14 A -- and one in two hundred trillion in the other,
15 that is why. Because we cannot use all of those genetic
16 markers that we could in the one that there was nothing
17 in the -- that range.

18 Q All right. Now, you -- I guess not only these two
19 items, not only the pillowcase, and not only the hotel; I
20 think there were collections of other items. Is that
21 correct?

22 A Yes, sir, there was.

23 Q And in the collection of those other items -- I
24 could go through the whole list -- but in the collection
25 of those other items, I think you collected from the

1 trunk of his car?

2 A I did not collect them.

3 Q I understand.

4 A Okay.

5 Q Received what was collected in the chain of -- in
6 the chain from the car?

7 A There were swabs from the trunk liner of the suspect
8 vehicle submitted for analysis.

9 Q Right. Right. And you did the analysis and all on
10 there. I'm just trying to get out, everything that came,
11 you did the analysis on it. That's what I'm trying to
12 get out.

13 A Most items. There were some items that I did not --
14 that we received that I did not perform analysis on.

15 Q Was there anything in the car that, from your
16 analysis, that connected Ms. Miller to his car?

17 A Let's see. Okay. Those items that he's referring
18 to are items 20.3, 20.4, 20.5, 20.6, and I did DNA on all
19 of those. And there was no human DNA obtained from any
20 of them.

21 Q And here's what I need to do. I need you to help me
22 explain to them, so they'll understand. That means in
23 those locations, in that automobile, specimens were
24 taken, collected and submitted, and they were tested, and
25 they found none of Ms. Miller's DNA in that automobile.

1 A In those samples that you have, not only did they
2 not find hers, they didn't find anyone's DNA.

3 Q Okay.

4 A There was no DNA obtained from any of those items.

5 Q Okay. Well, there's no DNA, but what we're here
6 today about Ms. Miller, there was none of hers. Is that
7 correct?

8 A There was no DNA, no human DNA obtained.

9 Q Okay. All right. And I think you checked the -- I
10 think, also, inside the car was checked, and there was
11 none found there.

12 A Let's see. Now, I received swabs from a Tahoe. Is
13 this the car we're talking about?

14 Q No.

15 A Okay. Then, all of the swab that I have were those
16 items from the trunk liner that you asked me about
17 earlier. I'm going to make sure. Now, there was
18 something from the center of floorboard, front passenger
19 area, but I'm not sure what car they were from.

20 Q Okay. It doesn't identify in the report which one?

21 A And it says, *Swabs from center of floorboard, front*
22 *passenger area.*

23 Q Well, out of an abundance of caution, was any of her
24 DNA found there?

25 A Let's see. That's Item Number 26.

1 Q Let's look at it.

2 A In Item Number 26, there was no human DNA obtained
3 from that item, as well.

4 Q Okay. Let's put it this way. Other than the
5 pillowcase and the motel, that was the only DNA
6 information you collected, other than the standards, that
7 tied Mr. Jackson to Ms. Miller in this particular case.

8 A I suppose. I don't know what tied Mr. Jackson to
9 who.

10 Q Okay. Out of your testing, --

11 A But the DNA that I have from her, --

12 Q Okay.

13 A -- I mean, I also have DNA from stuff that came from
14 her autopsy samples, like her fingernail scrapings.

15 Q Out of her standard and his standard, I think the
16 analysis you did included both of the standards. Is that
17 correct?

18 A Yes, sir.

19 Q Okay. But with your analysis with both of the
20 standards, other than the pillowcase, and other than --
21 well, you didn't even use the mix for the motel; you just
22 used his. Other than the pillowcase, is there anything
23 that you found their standards were tied together?

24 A Now, I used her -- I mean, I compared her and him to
25 everything in this case, including the one from the

1 hotel.

2 Q Okay.

3 A But it matched him.

4 Q Right. Okay.

5 A In that case.

6 Q Okay. Only thing I'm trying to get is her, if
7 you'll just tell me about him and her, that's the only
8 thing I'm trying to get at.

9 A That's the only thing that -- well, I guess, tied
10 them.

11 Q Okay. The DNA on the pillow.

12 A The DNA on the pillow.

13 Q And the DNA on the pillow had --

14 A Both.

15 Q -- had him, her, and another unknown male.

16 A That is correct.

17 Q Okay. And because it was tested with the Y, --

18 A Um-hmm.

19 Q -- it could have been his son, also, or any male.

20 A Or any male paternal relative.

21 Q Okay. And none of Ms. Miller's DNA was found in the
22 motel; was it?

23 A I only received one swab from the motel, and that
24 was Item 1, and that matched him.

25 Q Out of the swabs, you found that none, other than

1 hers, that's all that was reported to you.

2 A That's all that was submitted, and that's what I
3 found, yes, sir.

4 MR. JOHNSON: Thank you, ma'am.

5 SLED AGENT ADRIENNE HEFNEY,

6 FORENSIC DNA ANALYST,

7 RE-DIRECT EXAMINATION BY MR. THORNTON:

8 Q I want to make sure that you get a chance to
9 actually fully answer some of your answers, because it
10 seems to me it strikes me as important. You were talking
11 about all the swabs from the trunk liner that was done.

12 A Yes, sir.

13 Q 20.3, .4, .5, .6. So, there's multiple trunk
14 liners. Also, if you'll look in your report, Item 26,
15 swabs from center floorboard, front passenger area; Item
16 27, swabs from front passenger side floor corner at
17 center of car; Item 28.1.1, hair from a wash cloth; Item
18 45, swab from a passenger side door handle outside of the
19 Tahoe; Swab Number 47, swab from a driver's side, inside
20 of the Tahoe, which is, obviously, not the suspect's car;
21 that was separated out in the trunk liner that we talked
22 about earlier.

23 But my point is, on your report, would it be fair to
24 say that there are one, two, three, four, five, six,
25 seven, eight, nine, ten, eleven, twelve things that you

1 tested, including hair from a hair brush, that had no
2 human DNA. Would that be a fair statement?

3 A Yes, that is correct.

4 Q So, now, I know Mr. Johnson didn't care about
5 anybody's DNA except his client, the defendant. My
6 question to you is, so, is it unusual to have swabs come
7 in and not just -- we didn't just have the victim's DNA
8 not being in Mr. Jackson's trunk, but even his own DNA
9 wasn't found in his trunk. Is that correct?

10 A That is correct.

11 Q So, is it unusual to test a lot of swabs, and not
12 come back with DNA on them?

13 A That's not unusual.

14 Q All right. So, and again, I understand Mr. Johnson
15 just wanted to hear about the victim's DNA, but the
16 defendant's DNA wasn't even in his own car on some of the
17 swabs. Is that fair?

18 A That is correct.

19 Q All right. Now, as to the questions that Mr.
20 Johnson had for you about the YSTR and the other DNA, you
21 actually didn't just do one test on the DNA from the
22 pillowcase; did you?

23 A That's correct, I did not.

24 Q All right. So, you did two tests. Is that right?

25 A Yes, sir.

1 Q And again, I'm not trying to put words in your
2 mouth, so, you know, how many tests did you do?

3 A Yes, sir. I did two tests, which I explained
4 earlier about one that we get the DNA from both the
5 mother and the father. Then, one that's the male-
6 inherited DNA.

7 Q Was Kelvin Jackson included in both of those?

8 A Yes, sir, he was.

9 Q All right. So, the YSTR is the one where the
10 paternal relatives are. Is that correct?

11 A That is correct.

12 Q But that's not correct in the other one that he was
13 included in, also, and the other one being the other test
14 off the same item, the pillowcase. Is that correct?

15 A That's correct, unless he has an identical twin.

16 Q So, you found him twice.

17 A Yes, sir.

18 MR. THORNTON: Thanks.

19 MR. JOHNSON: Re-cross, your Honor.

20 SLED AGENT ADRIENNE HEFNEY,

21 FORENSIC DNA ANALYST,

22 RE-CROSS-EXAMINATION BY MR. JOHNSON:

23 Q I thought we were saying the same, but the one you
24 found where it wasn't the Y, that was the one also with
25 another male, also. Is that correct?

1 A That's the one where it's just at least two
2 individuals, and I couldn't exclude Kelvin Jackson and
3 Masako Miller --

4 Q Right.

5 A -- as possible contributors --

6 Q Right.

7 A -- to this. It was one with the YSTR profile that I
8 saw someone else. And it could be minor contribution
9 from someone else on that first one. But from what I
10 say, I only saw two, you know, at least two people.

11 Q Okay. Which one was the minor contribution? I
12 thought you said it was -- which one was the minor
13 contribution?

14 A That's the one, the YSTR profile.

15 Q Okay. All right. The YSTR was the minor
16 contribution. All right. The other one you checked, did
17 you check the other male in the other one, or did you
18 enter the --

19 A I only had Mr. Kelvin Jackson's standard and Ms.
20 Masako Miller.

21 Q So, the other --

22 A Masako Miller.

23 Q The other male standard was there, but you could do
24 nothing with it, then. There was a male -- you say there
25 was another unknown male contributor, minor contributor.

1 A A minor contributor in the YSTR profile, yes, sir.

2 Q Okay. But with that minor contributor, that was a
3 person that you could not identify.

4 A That is correct. It was so partial that I could not
5 identify it. It was not suitable for --

6 Q It was partial, but it was on the pillow.

7 Q It was on the edges of the pillowcase, yes, sir.

8 Q Okay. Okay. And it wasn't a hair brush. Was that
9 her hairbrush? Didn't they get that hairbrush from the
10 house? Where did they get that hairbrush from? Did it
11 come out of the car? Did that come out of her car, her
12 house?

13 A The hairbrush that I have is Item 6. It was from
14 the victim's house.

15 Q Okay. And so, and there was no DNA on the
16 hairbrush. And we know that was her hairbrush, I would
17 think. Would that be correct?

18 A Well, there were hairs in the hairbrush, and I sub-
19 itemized those as Item 6.1. And I'll read my findings on
20 that.

21 *The DNA profile developed from Item*

22 *6.1 is from an unidentified female individual.*

23 So, this may have been another female that lived in
24 the house that had hairs on the hairbrush.

25 Q Okay. But there was other things, I guess, from the

1 house or the car that you found no -- you didn't do an
2 analysis, because you found no identifying mark, I guess.
3 Is that correct?

4 A I'm not sure what you're asking me, sir.

5 Q Solicitor Thornton read a list of things. Number
6 11, pubic hair of unknown origin, female, no analysis.
7 Clip nails, no analysis. Oral swab of unknown female, no
8 semen. Rectal swab, no semen. Vaginal swab, no semen
9 All of those. The point I'm trying to get at is, I think
10 he alluded to the fact that it was kind of strange --

11 MR. THORNTON: Your Honor, I would have an
12 objection. That's not a correct assessment of the list I
13 read. What I was reading from was a list that was
14 analyzed, and no human DNA was found. And I may have
15 been confusing, because the item number I was referring
16 to was 28.1.1. I said hair from a hairbrush. It was
17 actually hair from a washcloth. The list I read is the
18 very last thing on her report, Mr. Johnson, which says:

19 *No human DNA was obtained.*

20 So, I apologize if I created any confusion. That's
21 the list I read from, meaning things that were analyzed,
22 but came back as no human DNA.

23 MR. JOHNSON: Okay. Okay. Okay.

24 THE COURT: Does that help you, Mr. Johnson?

25 MR. JOHNSON: Your Honor, begging the Court's

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF GENERAL SESSIONS
CASE NO. 2011-GS-07-01329

STATE OF SOUTH CAROLINA

PLAINTIFF

BINDER THREE

VERSUS

KELVIN JACKSON

DEFENDANT

JULY 29 THROUGH AUGUST 2, 2013

TRANSCRIPT OF TRIAL

BEAUFORT, SOUTH CAROLINA

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Wanda H. Rowe, CVR-M
Official Court Reporter

1 indulgence.

2 THE COURT: Sure.

3 BY MR. JOHNSON:

4 Q Okay, Ms. Hefney. Ms. Hefney, my partner gave me a
5 question so I could ask and sit down. Numbers 20.5,
6 20.6, 26, 27, I think, were from Mr. Jackson's vehicle.
7 No DNA was found of Ms. Miller's in that automobile.

8 A That is the one that there was no human DNA obtained
9 from Items 20.3, which was a swab from the trunk liner of
10 the suspect vehicle. 20.4, swabs from the trunk liner of
11 the suspect vehicle. 20.5, swabs from the trunk liner of
12 the suspect vehicle. 20.6, swab from the trunk liner of
13 the suspect vehicle. And the Item 20.7 he referred to is
14 debris from the trunk liner, and there was no hair
15 suitable for STRPCR DNA analysis.

16 MR. JOHNSON: Thank you, ma'am. That's what I was
17 trying to get across.

18 THE COURT: Anything further?

19 MR. THORNTON: Nothing from the State, your Honor.
20 I ask that she be excused.

21 THE COURT: Any objection?

22 MR. JOHNSON: No objection, your Honor.

23 THE COURT: Thank you. You may be excused.

24 END VOLUME TWO.

25 SEE VOLUME THREE.

BEGIN VOLUME THREE:

MR. THORNTON: Your Honor, at this time the State calls David Williams to the stand.

MADAM CLERK: Would you place your left hand on the Bible and raise your right hand for me, please. Do you solemnly swear to truthfully answer all questions asked of you by this Court, so help you God?

DAVID WILLIAMS: I do.

MADAM CLERK: Please be seated. State your name and spell it for the court.

MR. THORNTON: Sorry for the delay, your Honor.

SLED SPECIAL AGENT DAVID WILLIAMS

DIRECT EXAMINATION BY MR. THORNTON:

Q Mr. Williams, who do you work for?

A I work for the South Carolina Law Enforcement Division, also known as SLED.

Q And what is it that you do for SLED?

A I'm a special agent.

Q And what does that mean?

A I conduct criminal investigations in the state of South Carolina.

Q And do you stick with a particular region?

A Yes, sir. I'm assigned to the Lowcountry Region, which consists of twelve counties.

Q All right, Mr. Williams. Now that I've finished

1 shuffling enough paper, is SLED your first job as a
2 police officer?

3 A No, sir.

4 Q And how many other jobs as a police officer have you
5 had?

6 A I started out as -- as a deputy in West Virginia for
7 a year and a half. Went to Charleston, South Carolina.
8 I was a city police officer there for almost seven years.
9 I joined DEA, and --

10 Q And when you say DEA, what is that?

11 A That's the U.S. Drug Enforcement Administration. I
12 had a career there of 20 years, including offices in
13 Miami, Quantico, and Birmingham, Alabama. I retired from
14 there in December of 2005, and I started this job at SLED
15 in February of 2006.

16 Q So, you've been in law enforcement roughly how long?

17 A About 33 or 34 years.

18 Q Agent Williams, a couple questions for you. Did you
19 work for SLED on or about May of 2011?

20 A Yes, sir, I did.

21 Q At some point after that, were you assigned a case
22 of the State versus Kelvin Jackson, involving the victim,
23 Masako Miller?

24 A Yes, sir, I was.

25 Q And are you the case agent?

1 A Yes, sir.

2 Q And you have been here, have you not, the entire
3 time?

4 A Yes, sir, I have.

5 Q I've got some questions I want to ask you, Agent
6 Williams, in regards to some of the things that other
7 folks, you know, may or may not have been able to testify
8 to. One of the things that I want to talk to you about
9 is, there's been a reference about a call made the night
10 -- early morning hours, actually, where she vanished, to
11 her mother, who lives in Japan, I believe. Is that
12 correct?

13 A Yes, sir, that's correct.

14 Q Do you have an approximate time, based on your
15 review of the file and your review of all the documents
16 obtained as to the approximate time that call took place?

17 A Yes, sir. It was about 12:30 a.m., on May the 26th,
18 2011.

19 Q So, that would have been in the early morning hours
20 of May the 26th?

21 A Yes, sir, it was.

22 Q And I'm going to ask you in just a moment --

23 MR. THORNTON: Court's indulgence, your Honor,
24 please, one moment. Your Honor, may I have him come
25 down, please?

1 THE COURT: Yes, sir.

2 MR. THORNTON: And I will, your Honor, I will get
3 him arranged in just a second. I want to go ahead and
4 get this introduced first, but Agent Williams, if you'd
5 come around.

6 BY MR. THORNTON:

7 Q At my request, did you visit each one of the places
8 that are pictured on this map and verify that the map is
9 accurate? And did you drive the route -- or a possible
10 route between these points?

11 A Yes, sir, I did.

12 Q All right. And are the locations -- I realize
13 they're going to be slightly approximate, just because of
14 the scale of the map -- but are these the correct
15 locations with regard to the Shell gas station; Masako's
16 residence, where Masako's phone was found; the Palm Inn
17 and Suites; and where Masako's body was discovered at the
18 Broad River?

19 A Yes, sir.

20 Q All right. Has it been altered or changed in any
21 way, based upon your review of both the file and actually
22 driving this distance?

23 A No, sir.

24 Q All right.

25 MR. THORNTON: Your Honor, at this time I'd ask that

1 State's Exhibit 34 be moved into evidence.

2 THE COURT: Any objections?

3 MR. JOHNSON: None. None, your Honor.

4 MR. THORNTON: All right.

5 MAP MARKED STATE'S EXHIBIT

6 NUMBER 34 ADMITTED AS EVIDENCE.

7 BY MR. THORNTON:

8 Q Agent Williams, if you'd stay where you are, I'm
9 going to hold this up. If you would kind of --
10 obviously, they're labeled. I know the jury can read,
11 but if you'd kind of go through each one and what the
12 significance of them is. And then, I'll ask you a few
13 questions.

14 A Okay. The first location here is Masako Miller's
15 residence. It's located in Hampton, South Carolina.
16 This is the Shell gas station that, at 2:30, about 2:30,
17 2:26 a.m., on the morning of the 26th that Mr. Jackson,
18 Kelvin Jackson, was captured on the video camera as
19 attempting to use Masako Miller's card.

20 Q Agent Williams, before you continue, is that where
21 the still shots that have been introduced into evidence
22 came from, the pictures of Kelvin Jackson's inside the
23 Shell station?

24 A Yes, sir, it was.

25 Q Go ahead, sir.

1 A From there, you have a picture of -- or a location
2 marked on this map of where Ms. Miller's body was found,
3 in Beaufort County, down here next to Archer's Creek.
4 This is the Broad River right here. And then, here, you
5 have I-95 going this way. This is Highway 21 right here.
6 This is approximate location where Ms. Miller's telephone
7 was found.

8 Q Is that by Al Jarvis of the SLED dive team, who
9 testified yesterday?

10 A Yes, sir, it was. And here you have the Palms Inn
11 Suites, where we know that approximately 4:36 a.m. that
12 the defendant, Mr. Kelvin Jackson, went to that hotel on
13 the morning of the 26th of May, 2011.

14 Q All right. If you'd take your seat again, Agent
15 Williams. Thank you, sir.

16 MR. THORNTON: Your Honor, Court's permission, I'm
17 going to go ahead and publish to the rest of the jury in
18 case anybody could not see.

19 BY MR. THORNTON:

20 Q Agent Williams, at my request, did you drive between
21 the Shell gas station, where the defendant was seen using
22 the victim's debit card at slightly before 2:30 in the
23 morning, down to -- well, first of all, let me ask you a
24 couple of other questions. What is the closest car-
25 accessible road, or anything else, to where Masako

1 Miller's body was found? What's the closest thing there?

2 A There's a bridge that goes across the Broad River on
3 Highway 170.

4 Q Is that what Cary Furman was testifying to when he
5 was in here on the first day about that area, about being
6 a mile from the Broad River Bridge? Is that the bridge
7 you're referring to?

8 A Yes, sir, it is.

9 Q Now, did -- and I realize there are boat landings
10 there, but are there also cameras on that bridge?

11 A Yes, sir.

12 Q And well, if -- did you go and check the cameras for
13 any video footage?

14 A Yes, sir, we did.

15 Q And what was your -- what was the result of your
16 checking?

17 A I was told that it's a real-time camera. They can
18 check, DOT, has the camera's on the bridge to check real-
19 time traffic to see if there's any problems or anything,
20 but they do not record. There is absolutely no
21 recordings of any of the traffic on that bridge.

22 Q But you did, however, go and check those cameras.
23 Is that correct?

24 A Yes, sir, I did.

25 Q Now, let me ask you this question. The Broad River

1 Bridge, as it is on 170, is that a bridge with that has
2 very high walls or low? I mean, I'm sure probably
3 everybody on the jury's been over it. But is it high
4 walls or knee-high walls, or how is it from the lane to
5 the water?

6 A It's about waist-level or lower.

7 Q Let me ask you this question. Did you, at my
8 request, ride, first starting at the Shell gas station,
9 where Kelvin Jackson was seen, and ride out to the Broad
10 River Bridge?

11 A Yes, sir, I did.

12 Q And did you stop on the bridge for a few minutes?

13 A Yes, sir.

14 Q And did you -- what time of the day was this?

15 A This was about 7:00 to 7:30 p.m.

16 Q And did you see any traffic at that time?

17 A Yes, sir.

18 Q All right. And did you then go from the Broad River
19 Bridge, to near where the phone was located, on your way
20 through to Walterboro?

21 A Yes, sir, I did.

22 Q All right. And how long was -- how long did that
23 trip take you, including your stop on the bridge for a
24 few minutes?

25 A The trip, starting at the Shell gas station, going

1 down to 170 Bridge, going back up 95, to the -- and
2 getting off on Highway 21 Exit off of 95, where the phone
3 was found; and then, going on to Walterboro, stopping at
4 the Palms Inn and Suite, took me one hour and 53 minutes,
5 and some change.

6 Q And that's including the stop.

7 A. Yes, sir, it is.

8 Q So, it took you under two hours.

9 A Yes, sir, that's correct.

10 Q All right. And if you don't recall, and you need to
11 refer back to something, please remind me. What time --
12 you testified earlier that Kelvin Jackson was caught on
13 video, and that's what the still shots were pulled from,
14 at a little bit before 2:30 in the morning, at the Shell
15 in Hampton. Is that right?

16 A That's correct.

17 Q What time did he swipe his key card in at the hotel
18 in Walterboro?

19 A I believe it was 4:36. It's around 4:30.

20 Q All right. So, it's a little after 4:30. Is that
21 correct?

22 A Yes, sir.

23 Q So, in excess of two hours.

24 A That's correct.

25 Q By my count, roughly two hours and ten minutes, two

1 hours and twelve minutes.

2 A Yes, sir.

3 Q Now, when you were driving this at 7:00 o'clock at
4 night, were you driving this with lights going, sirens
5 on, and all that kind of stuff?

6 A No, sir, I wasn't.

7 Q All right. Now, have you traveled that route closer
8 to the time when the defendant would have been driving
9 that route? In other words, later in the -- much later
10 in the evening/early morning hours?

11 A Yes, sir. About a week or so after, I became the
12 case agent in this investigation, I drove from the Shell
13 station, down to the -- the Broad River Bridge at about
14 the same time frame, just to see how long it would take
15 me. I didn't -- I didn't time it. To see what kind of
16 traffic was on the road.

17 Q What kind of traffic was on the road at that time of
18 morning?

19 A Very little.

20 Q All right. Let me ask you this. So, after you did
21 this, you timed it when I -- was that at my request?

22 A Yes, sir.

23 Q And that's where you came up with was under two
24 hours. An hour, 53 minutes.

25 A Yes, sir.

1 Q And you testified that did include a stop. Is that
2 correct?

3 A Yes, sir. About a two-minute stop on the bridge.

4 Q And we know that Kelvin -- do we know where Kelvin
5 Jackson was at about 2:25 to 2:26 in the morning?

6 A Yes, sir.

7 Q Where was he?

8 A He was at the Shell gas station, attempting to use
9 Masako Miller's debit card.

10 Q All right. And at 4:36, or roughly, -- I think
11 there's -- I think it's already into evidence, but I
12 believe it's 4:36, do we know where Kelvin Jackson was?

13 A Yes, sir, we do.

14 Q And where was he?

15 A He was at the Palms Inn and Suites Motel in
16 Walterboro, South Carolina.

17 Q And there is a reason I went to law school, and not
18 engineering school, but I believe my math would put that
19 at over two hours, correct?

20 A Yes, sir.

21 Q Mr. Williams, let me ask you -- or Agent Williams,
22 let me ask you this. Based on your review, your driving
23 the distances, would you have, with a fair amount of time
24 to spare, the ability to drive from the Shell gas station
25 in Hampton, without any kind of excessive speeding, dump

1 a body off the Broad River Bridge, go by where the
2 victim's phone was located, toss it, and get to the Palm
3 Inn and Suites and check in in two hours and ten or
4 twelve minutes?

5 A I -- what did -- what'd you start the question?
6 Yes, sir, you could do that.

7 Q I'm sorry. Let me -- that was the one question
8 you're never supposed to ask as a lawyer, which is a
9 compound question. Let's back up.

10 Is it possible, based on your review of everything
11 and your driving of this route, is it possible to leave
12 the Shell gas station in Hampton, end up at the Palm Inn
13 and Suites, with time to dump a body off the Broad River
14 Bridge, in less than two hours?

15 A Yes, sir.

16 Q I'm going to show you what's been marked now as --
17 this is testified to, as you know, earlier, by other
18 folks. And I'm going to ask you, at my request, have you
19 also been at these two locations in this area, on this
20 case?

21 A Yes, sir, I have.

22 Q All right. And this is Charles Drake, who testified
23 yesterday his residence and the residence of Masako
24 Miller. Is that correct?

25 A That's correct.

1 Q Is that area also known as the Bottom, or the
2 Bottoms?

3 A Yes, sir.

4 Q And is this Ms. Miller's house and Charles Drake's
5 house?

6 A Yes, sir, it is.

7 Q And is this an accurate representation of the
8 Bottoms and both Ms. Miller's house and Charles Drake's
9 house?

10 A Yes, sir, it is.

11 Q All right. Has it been altered or changed in any
12 way?

13 A No, sir.

14 MR. THORNTON: Your Honor, I'd ask that State's
15 Exhibit 35 be moved into evidence.

16 THE COURT: Any objection?

17 MR. JOHNSON: No, objection, your Honor.

18 THE COURT: Thank you.

19 POSTER MAP IDENTIFIED AS AN
20 ACCURATE REPRESENTATION OF THE
21 BOTTOMS, MS. MILLER'S HOUSE, AND
22 MR. CHARLES DRAKES HOUSE MARKED
23 STATE'S EXHIBIT NUMBER 35,
24 ADMITTED AS EVIDENCE.
25 BY MR. THORNTON:

1 Q I know I'm sure the jury probably remembers it, but
2 was there testimony that put Kelvin Jackson here, near
3 Charles Drake's residence, on foot, on the night and
4 early morning hours of when Masako Miller disappeared?

5 A Yes, sir, there was.

6 Q Did he also place himself there in a statement he
7 gave to Richard Johnson?

8 A Yes, sir, he did.

9 Q I'm going to hand you what will be marked as State's
10 Exhibit 36, which is a collection of documents I'm going
11 to ask you to identify.

12 A Okay.

13 MR. JOHNSON: Your Honor, at this time, rather than
14 interrupt the witness, at this time, I'd like to renew my
15 previous motion.

16 THE COURT: And subject to my previous ruling pre-
17 trial, my ruling stands.

18 MR. JOHNSON: Yes, ma'am.

19 THE COURT: Thank you.

20 MR. THORNTON: Your Honor, for the record purposes,
21 I am -- I've clipped this together. I'm hoping this will
22 help the court reporter. We've introduced a lot of
23 different things, and rather than mark each one of these
24 documents that the jury, then, is going to have to keep
25 up with as far as numbers, I'm just clipping them all

1 together as State's 36 for identification.

2 THE COURT: All right, sir.

3 BY MR. THORNTON:

4 Q Can you identify the documents that I've handed you
5 and put together as State's 36?

6 A Yes, sir, I can.

7 Q All right. And what are they, sir?

8 A These are writings obtained from the cell of Kelvin
9 Jackson at the Beaufort County Detention Center.

10 Q And were those received by you pursuant to a search
11 warrant?

12 A Yes, sir.

13 Q And are those the writings that you pulled that day?

14 A Yes, sir.

15 Q Have they been altered or changed in any way, or are
16 those the actual originals that were taken?

17 A These are the originals.

18 Q And were those submitted to SLED for some possible
19 analysis as to handwriting?

20 A Yes, sir, they have been.

21 Q And have they been altered or changed in any way?

22 A No, sir.

23 MR. THORNTON: Your Honor, I'd ask that State's
24 Exhibit 36, the writings pulled pursuant to a search
25 warrant of Kelvin Jackson, be admitted into evidence.

1 THE COURT: Subject to your objection?

2 MR. JOHNSON: Yes.

3 THE COURT: Thank you.

4 DOCUMENTS IDENTIFIED AS WRITINGS
5 PULLED PURSUANT TO A SEARCH WARRANT
6 OF KELVIN JACKSON MARKED STATE'S
7 EXHIBIT NUMBER 36, ADMITTED AS EVIDENCE.
8 BY MR. THORNTON:

9 Q Agent Williams, when you pulled these records, where
10 did you pull them from?

11 A From the Beaufort County Detention Center.

12 Q Okay. Where, specifically, did you get them from?

13 A From the cell of Mr. Kelvin Jackson.

14 Q All right. More specifically than that.

15 A Under his mattress.

16 Q Because I'm going to keep asking you these questions
17 until you tell me what I think you need to tell me. so,
18 from where?

19 A From under his mattress.

20 Q All right. So, you pulled them from under Mr.
21 Jackson's mattress. Is that correct?

22 A That's correct.

23 Q All right. I'm going to hand you what's been marked
24 for identification as State's Exhibit 37.

25 Your Honor, I apologize. I should have asked.

1 Court's indulgence for just a moment. I just want to
2 confer with co-counsel -- or excuse me -- with Counsel.

3 I'm going to hand you an envelope containing
4 multiple documents. It's marked for identification as
5 State's 37, and ask you if you can identify the documents
6 in there. And there may be two groups, if you need to
7 refer to them, but we'll call them all State's 37.

8 A Yes, sir, I recognize those documents.

9 Q And what are those documents?

10 A Well, like you said, there's two separate things.
11 The first set of documents, including this Competition
12 book; and some writings; and a bag, I believe, were
13 obtained from Ms. Miller's residence.

14 Q And what were they for?

15 A For handwriting analysis.

16 Q All right. And did you get -- so, there were some
17 -- was it some of Ms. Miller's handwriting?

18 A Yes, sir, there's Ms. Miller's writings.

19 Q All right. And was that for a comparison to the
20 note?

21 A Yes, sir, it was.

22 Q And what's the other? You said there were two
23 groups in there. It's amazing how I knew that before I
24 asked you that question, isn't it, Agent Williams?

25 A Yes, sir, it is.

1 Q All right. What else was in there?

2 A There's three handwritten sheets of paper that, at
3 my request of -- of Kelvin Johnson [sic], that I asked
4 him for a handwriting sample. And I asked him to write
5 the words that were on the note that was found -- found
6 at Ms. Miller's house the next morning.

7 Q All right. Now, let me ask you. I know this is
8 silly. I'm sure the jury understands that you just used
9 the wrong last name, but you said Kelvin Johnson. Who
10 did these writings come from?

11 A I'm sorry. Kelvin Jackson.

12 Q And is that the defendant in this case, sir?

13 A Yes, sir, it is.

14 Q All right. And are those writings -- did you
15 witness Mr. Jackson write those?

16 A Yes, sir.

17 Q And so, he did this in your presence. Is that
18 correct?

19 A Yes, sir.

20 Q And you used those to compare with -- not you
21 personally, but you pulled those, in addition to the ones
22 that you pulled from under his mattress. Is that
23 correct?

24 A That's correct.

25 Q Now, let me ask you this. Have they been -- have

1 any of those documents, do they appear the same way as
2 they did when you retrieved them, either from the house
3 or from Mr. Jackson himself?

4 A Yes, sir, they do.

5 Q Have they been altered or changed in any way?

6 A No, sir.

7 MR. THORNTON: Your Honor, I'd ask State's 37 be
8 moved into evidence.

9 MR. JOHNSON: Without any objection, your Honor.

10 THE COURT: Thank you.

11 MR. THORNTON: Your Honor, Court's indulgence just
12 one moment. I want to publish.

13 GROUP OF ITEMS CONSISTING OF THREE
14 YELLOW SHEETS FROM KELVIN JACKSON;
15 A COMPOSITION BOOK; A BAG; SOME
16 WRITINGS BELIEVED TO BE FROM MS.
17 MILLER, MARKED STATE'S EXHIBIT
18 NUMBER 37, ADMITTED AS EVIDENCE.

19 BY MR. THORNTON:

20 Q Now, one of these on the top, is that what -- is
21 that what Kelvin Jackson gave you as his handwriting
22 sample?

23 A Yes, sir, it is.

24 Q This first yellow sheet. Actually it's several
25 yellow sheets. Is that correct?

1 A That's correct, Three yellow sheets.

2 Q And you basically -- let me not put words in your
3 mouth. What did you tell him when you told him you
4 needed -- or you wanted handwriting samples?

5 A I told him I needed handwriting samples in his
6 normal handwriting, and I told him exactly what to -- to
7 write.

8 Q All right. And is that:

9 *I'll be right back. Get ready for*
10 *school. Went with someone. Love you*
11 *all guys.*

12 A Yes, sir, it is.

13 Q All right. So, in other words, my point is, when he
14 wrote this, he knew what it was for, and you gave him
15 clear instructions. Is that correct?

16 A Yes, sir, it's correct.

17 Q And you told him to write in his normal handwriting,
18 because you were going to compare it. And obviously,
19 that's the language in the note. Is it not?

20 A Yes, sir.

21 Q All right. Now, this is -- I'm going to try to keep
22 this clear for record purposes. I am holding -- am I
23 holding one sheet from 36, which is one of the pages of
24 documents that you received from under his mattress?

25 A Yes, sir.

1 Q Am I also holding Exhibit 37?

2 A Yes, sir.

3 Q Or one page of 37, which is what he provided you, is
4 it not, when you asked him to write in his normal
5 handwriting?

6 A That's correct.

7 Q I'm not even going to ask you if you think those
8 look the same, Agent. I'll just show them to the jury
9 and see if they look the same.

10 Now, Agent, is my left hand containing the writings
11 you pulled from his mattress?

12 A Yes, sir.

13 Q In my right hand, is the:

14 *I'll be right back. Get ready for*
15 *school --*

16 *or,*

17 *get ready school. Went with someone.*

18 *Love you all guys.*

19 And you asked him to provide that for comparison?

20 A That's correct.

21 Q I'll let the jury make the decision on whether they
22 think he was honestly trying to write in his normal,
23 quote/unquote, handwriting.

24 DOCUMENTS PUBLISHED TO JURORS.

25 Q As to State's 36, I'm going to pull another sheet

1 and make sure that I am pulling from the right stack. I
2 now have two sheets from Exhibit 36. Would those be the
3 same accurate representations of the items you pulled
4 from his cell?

5 A Yes, sir, they would.

6 Q So, these were both things that you didn't -- he
7 didn't know you were going to come get; did he?

8 A No, sir.

9 Q Would those pages appear to bear a lot of similarity
10 to you, as far as the handwriting?

11 A Yes, sir.

12 Q Do they look anything like what State's 37, which he
13 gave you as his, quote/unquote, normal handwriting?

14 A No, sir, they don't look anything like it.

15 Q If you would, Agent Williams, would you place all of
16 the items that came out of 37, back in 37, please?

17 A Yes, sir.

18 Q Did you submit all those State's 36 and 37 for
19 analysis, Agent Williams?

20 A Yes, sir, I did.

21 Q I'm going to hand you what's been marked for
22 identification as State's Exhibit 38, and ask if you can
23 identify that picture.

24 A Yes, sir, I can.

25 Q And what is that picture, sir?

1 A It's a -- that's a photograph of the driver's
2 license of Masako Yamaguchi Miller.

3 Q And is that what's pulled off of the South Carolina
4 DMV website?

5 A Yes, sir, it is.

6 Q And based on your investigation of this case and a
7 review of all the documents, is that an accurate
8 reflection of what is on the SCDMV website?

9 A Yes, sir, it is.

10 Q Has it been altered or changed in any way?

11 A No, sir.

12 MR. THORNTON: Your Honor, I'd ask that State's
13 Exhibit 38 be moved into evidence.

14 MR. JOHNSON: Without any objection.

15 THE COURT: Thank you.

16 ITEM IDENTIFIED AS PHOTOGRAPH
17 OF DRIVER'S LICENSE OF MASAKO
18 YAMAGUCHI MILLER MARKED STATE'S
19 EXHIBIT NUMBER 38, ADMITTED AS EVIDENCE.

20 BY MR. THORNTON:

21 Q What does it -- what does that driver's license --
22 does that have like different physical characteristics?

23 A Yes.

24 Q In other words, you know, hair color, height,
25 weight, that kind of stuff? I mean, unless it's mine.

1 And obviously, it wouldn't have hair color. But other
2 than mine, does it have different characteristics?

3 A Yes, sir. It gives you the date of birth, height
4 and weight, but it doesn't give you hair color or eye
5 color. You have to see that from the driver's license
6 picture.

7 Q What does it list Masako's height and weight at?

8 A 5-2, 130 pounds.

9 Q I'm going to hand you what's already been introduced
10 into evidence as State's 29. What is that, that I'm
11 handing you?

12 A This is the driver's license of Kelvin Jackson.

13 Q And although the jury can, obviously, see Mr.
14 Jackson, is Mr. Jackson a touch bigger on his driver's
15 license than 5-2, and 130 pounds?

16 A Yes, sir. He's listed as 6-2, 245 pounds.

17 Q Your Honor, Court's indulgence, please, one moment.

18 Just a couple more things, Agent Williams. I'm
19 handing you what, I believe, is was out of State's 36,
20 which has already been admitted into evidence. Would you
21 please read, as best as you can, that page from State's
22 36.

23 A Yes, sir.

24 Q And please make sure -- you're doing great, as you
25 usually do, with speaking up, but please make sure, since

1 you're going to be reading a couple of pages, to speak up
2 so that the court reporter can take it down.

3 A The top of the page is entitled:

4 This What Really Happened: the
5 Truth. My Side As I Know It.

6 I got off work about 4:30 to 5:00. Went
7 to take wash over to my roommate house.
8 After I wash, I went to go get something
9 to eat from Sonic, I believe -- I believe
10 so.

11 I rode downtown for awhile, just riding.
12 I seen where Masako text about I need to
13 come to DMV to show them that I have
14 insurance on my car. I said to myself, I
15 can do that Tuesday when I'm off.

16 I heard on the radio that Club
17 Brash (phonetic spell) --
18 I believe,
19 -- was having a party. This was about 8:00
20 or 9:00. I went there. I stay for awhile,
21 till about 10:00 or so. I left, got in my
22 car, said I'm going to Tara house. So, I
23 came down, rode by Tara house, but did not
24 stop, for some reason. I don't know.

25 Went Hampton, rode through Bottom,

1 parked my car, and was walking in out
2 into our house. I saw Kevin White, and
3 said, 'What's up?'

4 Went to the house. She opened the
5 door, and we talked for awhile. Can't
6 remember what time it was. She call her
7 mom. They talked for awhile. When she
8 got off the phone, I told her I was going
9 to wash, because I was sweating. She went
10 in the other bathroom, doing something.
11 I heard her say, S.D. , is someone at the
12 door or something like that. S.D. said,
13 'No, Mom.'

14 While I was drying off, she was coming
15 back in the room. She told me she heard
16 someone at the door. I look around.
17 Didn't see anything.

18 I got a piece of thread and was
19 rubbing it across the kids' face. Masako
20 said, 'No, don't do that; don't wake them up.'

21 We went back in the room. Started
22 messing around for awhile. Her period was
23 on. After we finished playing, I said,
24 'Baby, I need some gas,' just to see if
25 she give it to me. She did. I went

1 outside. She say, 'Where your card?'
2 I said, 'I left it in the Bottom.' She
3 said, 'Why don't you -- why don't want
4 to cause no problem.' I walked to --
5 he -- the card. Went to the store to
6 use it, but I didn't. I paid for the
7 gas, two smokes, with cash.

8 Went back to the house. Gave her
9 the card, her card, and said that I didn't
10 use it.

11 We talked for a few minutes. We hug
12 each other. Told her tell the kids I love
13 them. I left. Went to Walterboro. Got
14 a room. Paid cash. Went to sleep. Got
15 up about 6:15. Left to go to work. Got
16 to work about 8:30. I believe I got off
17 at 3:30 or 4:00. I check my phone and
18 see where my sister had called me three
19 times.

20 I called her back, and she told me,
21 'No one's seen or heard from her all day.'
22 I said, 'She probably went to the store
23 with -- or with someone.' I told her to
24 call me back. I called Masako about
25 three or four times. She didn't answer.

1 I call my brother and told him what my
2 sister said. He said he didn't hear
3 anything like that.

4 I took my co-work to the store, get
5 a battery for his car, because his was
6 no good. Took him back to his job to his
7 car. I asked him was he straight. He
8 said, 'Yes.' I left to go take my supervisor
9 his check, because he left work early while
10 I waited on him.

11 I stopped by the car wash. Spray the
12 car down. I call him to see where he was.
13 He told me to have his -- to leave his check
14 with his kids, and I did, and left.

15 Went to my roommate apartment. I told
16 him about no one knew where my kids' mom was.
17 My sister call saying that I need to come.
18 I told her I'm on the way. I called Masako
19 phone again, and still no one answered. I
20 said to myself, I just seen her last night
21 and we were together. She let me use her card.
22 We mess around a little. It was that time
23 of the month for her, but we had our ways.

24 When I realized that this was no joke,
25 I said to myself, everybody going to think

1 I know where she is. And that's all -- and
2 that's what's happening.

3 I got to the house. My sister and some
4 of Masako's friends were there. We went in
5 our room. I sat on the bed. They told me
6 what was going on, on the police come by
7 and asked me a few questions. And my sister
8 went to get her kids, and came right back.
9 When I -- when she did, I told I was going
10 to see Tara. Went there. She was at her
11 grandmama house. We talked, drink a little
12 beer for awhile. I left.

13 I was going back to Hampton. Sis called
14 me and said the police want to talk to me again.
15 One guy said, 'Just want you to come and fill
16 out some papers saying you the kids' father and
17 stuff,' but it always a whole nother thing.
18 They won't admit it. They question him over
19 and over again. I lie at first, because I
20 didn't know what to do or where this was going.
21 They locked me up for the identity fraud.
22 That Thursday, Friday, heard nothing. The
23 whole weekend, nothing.

24 Tuesday, seen the judge. Say I had
25 to wear a GPS monitor before I can get out.

1 *Made bond, but still lockup --*

2 I'm not sure what that last word is -- Wednesday or
3 weekday.

4 Q All right. Agent Williams, so, even by this latest
5 in series of stories, so, after, according to his own
6 writing, after he hears that the mother of his children
7 is missing and nobody's seen or heard from her, he --
8 just go back, if you have to look at it again -- he goes
9 to a car wash, and drops off a friend, and drops off a
10 check for a supervisor, and then comes by for a little
11 while, and then goes and has some beer with his other
12 girlfriend.

13 A That's correct.

14 Q Now, let me ask you this. He says in there that he
15 left. We know he's at the Shell station at roughly what
16 time?

17 A A little after 2:30 a.m.

18 Q Or --

19 A Or a little bit before 2:30 a.m.

20 Q All right. So, a little before 2:30 a.m., he's at
21 the Shell station. Is it more than just a few minutes to
22 -- and I mean very few, like less than five minutes back
23 to Masako's house from the Shell station?

24 A Yes, sir.

25 Q All right. So, he's back there within a couple of

1 minutes, if you believe what he's saying in here. Would
2 that be correct?

3 A Yes, sir, that's correct.

4 Q And then, he says he talks to her for just a couple
5 minutes, and then drives to Walterboro.

6 A Yes, sir.

7 Q So, by his own -- by this version of the events that
8 he's talked about, which is version what, five, six,
9 something like that, --

10 A Yes, sir.

11 Q -- he leaves Masako's at 2:35-ish? Would you say
12 that's accurate, based on what he said?

13 A That's close enough, yes, sir.

14 Q And what time does he check into the -- what time
15 does he swipe his card to get into his room, the only
16 time the card is swiped in Walterboro?

17 A 4:36 a.m.

18 Q Did it take two hours to drive from Hampton to
19 Walterboro?

20 A No, sir.

21 Q You could just about walk to Walterboro from Hampton
22 in two hours; couldn't you?

23 A Yes, sir.

24 Q I think, Agent Johnson -- or I forget. Excuse me.
25 It may have been one of the other agents. But would you

1 agree it's less than 30 minutes between the two, most
2 likely?

3 A Thirty minutes is a good time, yes, sir. Probably
4 less at that time of night.

5 MR. THORNTON: Court's indulgence one more time,
6 Judge. I don't have any further questions. I would --
7 before we switch off, I would like to make sure all the
8 exhibits are back together before I step down.

9 Your Honor, the court reporter tells me I have
10 successfully put them back together in the right order.

11 Please answer any questions Mr. Johnson has for you,
12 sir.

13 SLED SPECIAL AGENT DAVID WILLIAMS

14 CROSS-EXAMINATION BY MR. JOHNSON:

15 Q Agent Williams, how you doing?

16 A Good, sir.

17 Q I was going to start someplace else, but I want to
18 start with the letter you just read. Was that letter the
19 letter you got from the Beaufort County Jail?

20 A Yes, sir.

21 Q Okay. Was that letter one of the letters you talked
22 about you wasn't -- he wasn't expecting you to come and
23 get it?

24 A Yes, sir.

25 Q Okay. So, so, when he wrote that ltr, he had no

1 idea you were going to get your hand on it.

2 A I have no idea. I would assume so.

3 Q Okay. Okay. Well, I mean, you said he was in the
4 jail, between his mattress, and he didn't realize you
5 were coming to get it until you all came and got it. Is
6 that correct?

7 A That's correct, yes, sir.

8 Q Okay. Okay. Now, you're the case officer, right?

9 A Yes, sir.

10 Q And as the case officer, you were the one in charge
11 of the investigation.

12 A Yes, sir.

13 Q Okay. And you would probably know as much or more
14 about this case as everybody, because you're the one that
15 pulled it together.

16 A Yes, sir, probably.

17 Q Okay. All right. Now, I want to start with the
18 trip from Hampton. Did somebody -- did Kelvin tell you a
19 route that you had some evidence that give you a route,
20 or you selected a route yourself to go from the Shell
21 station to Beaufort?

22 A Selected the route -- the route myself. It's most
23 direct route, probably.

24 Q Okay.

25 A There's -- there's many routes. We just took -- I

1 just took a route.

2 Q Okay. And did -- you investigated this case, so,
3 did you review all the documents?

4 A Yes, sir.

5 Q Okay. Did you review all of the videos, the tapes?
6 Anything in this case, did you review it all?

7 A Pretty much, yes, sir.

8 Q Okay. Then, tell me how Kelvin Jackson got to this
9 Shell station, please.

10 A I don't understand the question. What route he
11 took?

12 Q Tell me the route that Kelvin Jackson took to get to
13 the Shell station from Ms. Miller's house.

14 A There's a couple of ways he could have gone.

15 Q No, sir. I'm ask you, can you tell the jury which
16 route he took? If you don't know, you can say you don't
17 know, and I'll move on.

18 A No, sir, I don't know exactly what route he took.

19 Q Okay. Can you tell me, pulling up to the Shell
20 station, which tank he stopped at -- he stopped at?

21 A No, sir, not without reviewing the -- the pictures
22 or the tape.

23 Q Okay. Would you like to review them, so, you can
24 answer these questions?

25 A Yes, sir.

1 MR. JOHNSON: I have no objection if he want to
2 review them.

3 DISCUSSION BETWEEN MR. THORNTON
4 AND MR. JOHNSON.

5 MR. THORNTON: Your Honor, may we have a moment?

6 ON-THE-RECORD BENCH CONFERENCE,
7 OUT OF HEARING OF JURORS. PRESENT:
8 THE COURT, JUDGE MULLEN, MR.
9 THORNTON, MR. JOHNSON:

10 THE COURT: Sure. Do you know which specific --

11 MR. JOHNSON: Yes, ma'am, I know the specific.

12 MR. JOHNSON: I asked him a question about the
13 video. He said he didn't know; he'd like to review it.
14 There is no way he can review it. I'm just asking him if
15 he wanted to review it to answer the question.

16 THE COURT: Which is?

17 MR. THORNTON: Which is his responsibility to give
18 it to him. He's looking at me like it's my job, and it
19 isn't.

20 MR. JOHNSON: The only thing I'm asking now is the
21 last time we had a ruling, I was under the -- all I'm
22 doing is letting him review that evidence, but yet, I'm
23 not putting it into evidence.

24 THE COURT: Which video?

25 MR. JOHNSON: Ma'am?

1 THE COURT: Which video?

2 MR. JOHNSON: Ma'am, the one from the Shell station,
3 and that he might can do it from the pictures. I haven't
4 introduced the video, so.

5 THE COURT: The video is not in evidence?

6 MR. JOHNSON: No. It was some of the information
7 you reviewed. I could cross-examine him from it.

8 MR. THORNTON: And Judge, I'll stick the video in
9 evidence. I won't care. I'm not trying to prevent Mr.
10 Johnson from doing that. The only time I do that is when
11 Mr. Johnson does like what if the title says such and
12 such. Well, then give me the title, but I'll put the
13 video in evidence, if it'll help.

14 MR. JOHNSON: Okay.

15 THE COURT: Do you want to stipulate to that? Then,
16 we'll just stipulate it as evidence?

17 MR. THORNTON: I don't know. We'll put it in, and
18 the jury will have it in there. I'll be happy to put the
19 video in.

20 END BENCH CONFERENCE.

21 BAILIFF: Excuse me, your Honor. May I approach?

22 DISCUSSION BETWEEN THE COURT AND BAILIFF.

23 BY THE COURT:

24 THE COURT: Ladies and gentlemen of the jury, I
25 understand it's a good time for a little break. So,

1 we'll go ahead and take a quick recess and allow you to
2 have a quick restroom break. Just let us know when
3 you're ready. Will ten minutes be enough, Mr. Foreman?

4 FOREMAN: Yes. Yes, your Honor.

5 THE COURT: All right. Thank you.

6 BAILIFF: Thank you, your Honor.

7 OFF THE RECORD 2:50 P.M.

8 BACK ON THE RECORD 2:52 P.M.

9 BY THE COURT:

10 THE COURT: So, gentlemen, what we'll do, when the
11 jury comes back, we'll just announce it's been stipulated
12 that the next exhibit is being introduced by the State.

13 MR. THORNTON: Yes, ma'am.

14 MR. JOHNSON: Yes, ma'am.

15 THE COURT: During this break, Mr. Johnson, do you
16 want to look at the video, so you know exactly which area
17 you want to question?

18 MR. JOHNSON: No, ma'am.

19 MR. THORNTON: And do I need to have it -- is it
20 okay to pull Mr. Williams down and let him review the
21 video, so he doesn't have to do it while he's --

22 THE COURT: All right.

23 MR. THORNTON: If there's no objection to that,
24 we'll go ahead and fire it up right now.

25 THE COURT: That way he can be familiar with it, and

1 save us a little time when we come back.

2 MR. THORNTON: Mr. Williams, remember, you're still
3 under oath on the stand. I can't talk to you, but just
4 come down here and view the video.

5 MR. JOHNSON: May I step out?

6 THE COURT: We'll be at quick recess until about ten
7 minutes.

8 MR. THORNTON: Thank you, your Honor.

9 OFF THE RECORD 3:00 P.M.

10 BACK ON THE RECORD 3:05 P.M.

11 BY THE COURT:

12 THE COURT: Thank you. You may be seated. The
13 parties ready to proceed?

14 MR. JOHNSON: Yes, ma'am.

15 MR. THORNTON: Your Honor, I have one thing. I was
16 just informed, SLED just called. The original analyst is
17 likely being put back in the hospital with dehydration.
18 The alternate analyst is gathering up -- she's already
19 begun her examination. She's gathering everything up.
20 She's coming here tonight. I've already given a card to
21 the investigator to go get a room for her, so she can
22 stay here tonight. Therefore, she will be available.
23 I'm going to have her in the courthouse by 8:30 a.m. I
24 just wanted the Court to know that I've let Defense
25 counsel know that, so they'll have an opportunity to talk

1 to her. And then, obviously, I understand what their
2 position is likely going to be, which is fine, but I just
3 wanted the Court informed.

4 She'll be here by 8:30. So, my request is going to
5 be that we start at 9:30, and that gives us, with the
6 jury, if we go there. And that, obviously, gives us an
7 hour for them to talk to her, me to talk to her, and the
8 Court to make whatever decision it needs to make.

9 THE COURT: Is that okay with you?

10 MR. JOHNSON: Yes, ma'am. Yes, ma'am. No problem.

11 THE COURT: Thank you. Let's have our jury.

12 BAILIFF: Yes, your Honor.

13 Your Honor, the jury is entering.

14 THE COURT: Thank you.

15 JURORS ENTER COURTROOM 3:07 P.M.

16 BAILIFF: The jury is seated, your Honor.

17 THE COURT: Mr. Johnson, you may proceed.

18 MR. THORNTON: Your Honor, did you want us to do the
19 stipulation first?

20 THE COURT: Right.

21 MR. THORNTON: I'll be happy to publish it, if you'd
22 like, Judge.

23 THE COURT: Go ahead.

24 STIPULATION REGARDING VIDEOTAPE THAT

25 STILL SHOT PHOTOGRAPHS WERE TAKEN FROM:

1 MR. THORNTON: Your Honor, we -- frankly, I didn't
2 realize we hadn't put the tape into evidence. I know we
3 put the still shots into evidence that were pulled from
4 the tape. In order to go ahead and speed this process
5 up, the State will stipulate as to the authenticity, and
6 the State will introduce the videotape that these still
7 shots that have already been introduced into evidence.
8 We'll go ahead and do the whole video into evidence, in
9 case the jury wishes to hear it.

10 To aid Agent Williams, during the break, we've had
11 him review this, your Honor, at Mr. Johnson's request. I
12 also have it cued up again, in case any other questions
13 need to be answered. So, it's ready. And as soon as
14 he's done, I'll tag it and put it into evidence. I think
15 it would be State's 39? But I'm not positive about that.

16 COURT REPORTER: That's correct.

17 THE COURT: Is that correct, Mr. Johnson?

18 MR. JOHNSON: That's correct, your Honor. And I
19 also told Agent Williams, if he doesn't need it, we won't
20 use it, but if he needs it, it'll be cued up so he can,
21 if he needs to review it.

22 THE COURT: Okay, sir.

23 MR. JOHNSON: That'll give him time to do that.

24 THE COURT: You need to proceed.

25 SLED SPECIAL AGENT DAVID WILLIAMS

1 CONTINUE CROSS-EXAMINATION BY MR. JOHNSON:

2 Q Okay. Agent Williams, I asked you about which gas
3 tank. I think that's my last question. Let's start
4 right back there. Do you remember which tank he went to?

5 A Yes, sir. After looking at the video, the -- it's
6 going to be one of the two closest to the store. I
7 cannot see it from the tape, so I know Number 4 is in the
8 foreground. I know Number 3 is on the other side,
9 because I got gas there the other night. So, it's either
10 going to be 1 or 2. And I'm assuming it's 2, since
11 probably the two even numbers would be on the same side.

12 Q All right. And here's what I ask. Did you view the
13 tape as to what direction he came into the store from?

14 A Yes, sir.

15 Q Okay. And all right. And I'm this -- this desk is
16 the store, would he have come from behind the store and
17 come over to the tank here?

18 A That's what it appears that he did, yes, sir, from
19 the headlights.

20 Q Right. And then, at the tank, it shows where he
21 tried to get some gas with the credit card. Didn't work.
22 And then, he went inside to paid for it.

23 A Yes, sir, that's correct.

24 Q And then, he came out. And once he came out, he
25 cranked up, hit his brakes. And then, it said -- then he

1 turned, I think, left, and went back behind the store.

2 A Yes, sir, that's correct.

3 Q Okay. Okay. Good. Now, which direction did you
4 take to Beaufort? From the store? You ran the route
5 from the Shell station to the spot where Ms. Miller was
6 missing. Which direction did you take?

7 A I went from the Shell station, down 278, to the
8 Interstate.

9 Q Okay. Now, help us. When you say 278, is that like
10 you take a right and go to the -- I think that's Elm
11 Street. I think that's Elm Street, they call it, which
12 is 278. That goes straight on up by the courthouse. Is
13 that the street you took?

14 A Yes, sir, it was.

15 Q Okay. So, in other words, you took a right from the
16 gas tank. He took a left from the gas tank. Is that
17 true?

18 A Yes, sir.

19 Q Okay. Okay. Now, the right would be the shortest
20 way to Beaufort. Is that true?

21 A That's a hard question to ask.

22 Q Okay.

23 A Because it's not that -- he could go -- if he went
24 behind the gas station, he can go out down to the next
25 intersection. I don't know what street that is. And

1 then, he can go left or right, either way there.

2 Q Well, I think it's Mulberry Street. I think it's
3 Mulberry Street. The point I'm trying to make, now, in
4 leaving the station, the shortest route is just like you
5 did -- to take a right on 278, and go straight to
6 Yemassee, straight to Beaufort. I'll agree. Is that the
7 shortest direction?

8 A Yes, sir, it is.

9 Q Okay. But he took a left. And also, the left heads
10 us back to towards Ms. Miller's house; doesn't it?

11 A He could get there from there, yes, sir.

12 Q And he could get -- even though he said he went to
13 Ms. Miller's house, Ms. Miller's house, he also could get
14 to Walterboro from that direction; couldn't he?

15 A Yes, sir.

16 Q Okay. All right. So, even with your time and --
17 and it could be add or subtract; we could either add a
18 little; add some time to your time, and/or it could take
19 some time off from your time. And is that correct? Your
20 driving time.

21 A Yes, sir, that's correct.

22 Q Okay. That's good. And in your driving time, did
23 you consider his walk from Ms. Miller's house to his car?

24 A I didn't consider it, because he -- he left from the
25 Shell station.

1 Q Okay.

2 A In his vehicle.

3 Q Okay. And that's a good point. So, you wouldn't
4 include that time. But when you left the Shell station,
5 you selected the route to get to Broad River, and I
6 think, as you've testified, there's more than one route
7 to get to Broad River.

8 A Yes, sir, that's correct.

9 Q Okay. Okay. Okay. As the case officer, you would
10 know everybody that was -- probably that the law
11 enforcement had contact with in this matter. Would that
12 be a fair assessment?

13 A I don't understand your question, sir.

14 Q You would know all of the potential witnesses that
15 are the people that got statement from the people that
16 they talked with about this matter. Would that be a fair
17 statement? You would know who they are. I didn't say
18 you talked to every one of them, but you would know who
19 they are.

20 A For the most part, yes, sir.

21 Q Okay. And during the investigation, did you talk to
22 a -- and I'm not asking you what was said. I shouldn't
23 ask what either one of these people said. I'm just going
24 to ask you, did you, in your investigation, talk to a Mr.
25 -- did you interview a Mr. Leon Miller?

1 A I don't remember that name. I would have to see
2 either the -- either the interview or the statement to --
3 to tell you if that's true or not.

4 Q Okay. And Mr. Miller -- and okay. Well, then you
5 can verify that Mr. Leon Miller was her husband. Is that
6 correct?

7 A He was interviewed, yes, sir, but not by me.

8 Q Okay. But I mean, I didn't say you interviewed him,
9 but I just wanted to bring to the fact he was
10 interviewed. Is that correct?

11 A Yes, sir, that's correct.

12 Q And he was interviewed -- again, I don't want you to
13 say what he said -- but he was interviewed, because you
14 all received information that he was in --

15 MR. THORNTON: Objection, your Honor. May we
16 approach?

17 ON-THE-RECORD BENCH CONFERENCE,
18 OUT OF HEARING OF JURORS.

19 PRESENT: THE COURT, JUDGE MULLEN,

20 MR. THORNTON, MR. JOHNSON:

21 MR. THORNTON: Objection one is, you all received
22 information. That's hearsay, if he's not asking what
23 information they received about somebody from another
24 person, so. And you all received information, then, he
25 whatever, in court, would have to have to be hearsay,

1 because if he received information from somebody else,
2 and they're not in court to testify, it's hearsay.

3 Number two, I'm afraid we're about to get into
4 casting dispersions of third-party guilt. And there are
5 very strict rules about third-party guilt, which I do not
6 think he can in any way lay a foundation for. And what I
7 don't want is to go through a laundry list of any other
8 possible male suspects.

9 MR. JOHNSON: Judge, that was exactly what I was
10 planning to do.

11 THE COURT: Well, then, you need to proffer it
12 before we hear it before the jury.

13 MR. THORNTON: Yeah, there are strict rules.

14 MR. JOHNSON: I'll go ahead and finish it, and then
15 proffer it after, if it's all right with the Court.
16 Because here's what I'm talking about. I am doing
17 exactly what he said I'm about to do. I know that, so.
18 I mean, that's what's going to happen, so I can just as
19 well proffer it afterward, and go on to some other
20 question.

21 THE COURT: Do you want to go ask all the questions,
22 and --

23 MR. THORNTON: I want to object at this time. And
24 then, letting the jury in. And then, proffering it, if
25 he wishes. And then re-calling him back to the stand

1 tomorrow, I'm not going to object to that.

2 THE COURT: Okay. Let's do that.

3 MR. THORNTON: Okay. Let's do that, yeah.

4 MR. JOHNSON: I'll tell you what I'll do. I'll just
5 go to the other questions, and then afterward, I'll
6 proffer them, and you can even tell them that, well, we
7 need to call him back tomorrow.

8 THE COURT: What we'll do is, go straight with your
9 questions. I'll have the jury come in a little bit later
10 than we started, and you can proffer, without the jury
11 waiting.

12 END BENCH CONFERENCE.

13 MR. THORNTON: Thank you, Judge.

14 BY MR. JOHNSON:

15 Q And I've been trying to determine when -- is it your
16 contention -- and if it's not, just say no -- is it your
17 contention that Mr. Williams murdered Ms. Miller before
18 getting the gas or after getting the gas?

19 MR. THORNTON: Objection, your Honor. I don't know
20 who -- what Mr. Williams he's talking about.

21 BY MR. JOHNSON:

22 Q I'm sorry, Mr. Jackson. I'm sorry. Mr. Jackson.
23 I'm thinking about you, and talking about -- I apologize.
24 I know you didn't commit the murder, okay? All right.
25 Okay. Okay. Okay. I apologize, Agent Williams.

1 Was it before Mr. Jackson got the gas or after Mr.
2 Jackson got the gas? What's your contention on that?

3 A It was our contention that it was before he got gas.

4 Q So then, it's your -- and I just want to lock this
5 down. It's your position that after they left -- after
6 he left the gas tank, that was when he some time
7 thereafter went to Beaufort?

8 A Yes, sir, that's correct.

9 Q Okay. Okay. Okay. I want to go back, just one
10 question back to the gas tank. So, therefore, are you of
11 the opinion while he was at the gas tank that the body
12 was in the car at that time?

13 A Yes, sir, that's our contention.

14 Q Okay. Where do you think the body was at this time
15 in the car?

16 A I have no way of knowing where exactly, but I
17 suspect the trunk area.

18 Q Now, would it be reasonable, would it be reasonable
19 -- and if you say you don't know, that's fine -- would it
20 be reasonable that if you had a body in the car, and
21 you're trying to get to Beaufort, you would take the
22 shortest route?

23 A I have no reference -- form of reference, because
24 I've never killed anybody and had them in my trunk. So,
25 I don't know what some person would do in that position,

1 sir.

2 Q Okay. Well, and thank God you didn't. But here's
3 what I'm saying. At the gas station, the route you took
4 you said was the -- you thought was the shortest route
5 was the right. You just got on 278, which is right down
6 through Yemassee, which runs us right to Beaufort, which
7 is one straight, quick shot, versus going back towards
8 Ms. Miller's house. I mean, and the direction you went
9 didn't go toward Beaufort; it went towards Ms. Miller's
10 house; didn't it?

11 A He went behind the station. Now, the most direct
12 route would have been make a left-hand turn onto 278 and
13 go to Beaufort. But if he went behind the gas station,
14 as he did, that street connects onto another street,
15 which then connects to 278, which would have been an easy
16 access, also.

17 Q And did you ever determine the amount of gas that he
18 bought at the station?

19 A No, sir.

20 Q So, therefore, you don't know how much gas in his
21 car. That was in his car.

22 A No, sir.

23 Q Okay. When the collections were done for the car,
24 did anybody document, to your knowledge, how much gas was
25 in the car?

1 A No, sir, I don't believe anybody would have document
2 that specific item. It may be on a photograph, but I
3 would -- it would -- the car would probably be off, so it
4 probably was not documented, no, sir.

5 Q Okay. All right. And also, what he said in the
6 papers you read was, he went to Walterboro, and then went
7 to Columbia. So, therefore, if he bought gas, would it
8 be reasonable to say he would have to have enough gas to
9 go to Beaufort, come back, go to Walterboro, and go to
10 Columbia?

11 A No, sir, not just for that one fill-up. There's
12 plenty of gas stations in Walterboro that he could have
13 gotten gas over anyplace between there and Columbia that
14 day.

15 Q Do you have any evidence or any information that he
16 stopped anyplace else that night and bought gas?

17 A No, sir, I don't have any evidence.

18 Q Okay. I want to go to -- I want to go to the house
19 -- I want to go to the house just a minute. I think in
20 the letter you [sic] wrote, Kelvin testified that he
21 parked his car in the Bottom, and walked up to the house.
22 Is that correct?

23 A Yes, sir, that's correct.

24 Q Okay. And after getting to the house, he knocked on
25 the door, and she let him in. Is that correct?

1 A Yes, sir, I believe that's correct.

2 Q And I think you all did an investigation of the
3 house, and there was no breakings or no damage to the
4 doors and no damage to the locks. Is that correct?

5 A Yes, sir, that's correct.

6 Q So, the odds are, was she let him in. Is that
7 correct?

8 A That's probably a correct assumption, yes, sir.

9 Q Okay. And not only did she let him in the house, I
10 think there was some mention by somebody of some -- maybe
11 by S.D. about some perfume bottles being out of place or
12 something. But were there any damage in the house that
13 looked like violence occurred?

14 A No, sir, none that we could see.

15 Q Okay. And he admitted to -- I think his words was
16 *fooling around*, which means he admitted to being in her
17 bedroom. Is that correct?

18 A He didn't specify where, but I believe that's what
19 he implied, yes, sir.

20 Q Okay. And if they were fooling around in their
21 bedroom, there definitely is going to be something where
22 he was in there. Is that correct?

23 A I don't understand your line of questioning.

24 Q They're fooling -- there's some -- I know all these
25 jurors are adults, but I'm trying to be delicate with my

1 words. There would be some idea, if people were fooling
2 around, there would be some signs left that they were
3 fooling around in the bedroom. Some semen or something
4 like that, or something. There would be some --
5 something to show that they were fooling around.

6 A To the best of my knowledge, there was no semen
7 collected at that residence.

8 Q Well, I mean, something that the person would show
9 that the person was in the bed. Even if it wasn't semen,
10 something to show that person was in the bed.

11 A Rumpled up sheets. I'm not sure where you're going
12 with that, sir.

13 Q Well, the only place I'm going is, if I'm in
14 somebody's bedroom, if I'm on the bed, there's going to
15 be some contact of me being on the bed.

16 A Yes, sir.

17 Q Okay. And so, is it the State's position that -- I
18 think the State -- there's this inference, and there's an
19 inference that -- and from the questions I heard, that
20 maybe there might be --

21 MR. THORNTON: Objection, your Honor. He's asking
22 about what the State's position is based on the question.
23 I'm the one from the State asking the questions; not
24 Agent Williams. He's got no idea to know what my
25 position is, which is why we have closing arguments.

1 MR. JOHNSON: Your Honor, he can tell me what his
2 inference of the facts is.

3 THE COURT: Why don't you re-phrase your question.

4 MR. JOHNSON: Okay.

5 BY MR. JOHNSON:

6 Q Do you have any idea whether she walked out of the
7 house, or whether she was toted out of the house?

8 A I believe she was carried out of the house.

9 Q Okay. If you remember S.D. testimony, she said
10 the back door was locked from -- do you remember her
11 saying the back door was locked from the inside?

12 A No, sir, I don't recall that testimony.

13 Q Okay. If the back door was locked from the inside,
14 then that would mean you couldn't go out the back door
15 and then lock it from the inside. That would mean you
16 would have to carry the person out of the front door.
17 Would that be a fair assumption?

18 A In that scenario, yes, sir.

19 Q Okay. And to go out of the front door, you would
20 have to carry the person by three kids that were asleep
21 out someplace on the front room chair. Is that correct?

22 A Yes, sir.

23 Q Okay. And also, I think -- I think he said --
24 which, isn't it reasonable, in that letter, he said she
25 stopped him from playing with S.D. . You know how kids

1 sleep -- you do those things on the strings to wake them
2 up and mess with them. Didn't you -- didn't she --
3 didn't you just testify that -- or just read from the
4 letter that he was -- he admitted to doing the little
5 string to try to wake them up to say that they were on
6 the chair asleep?

7 A Yes, sir.

8 Q Okay. So, he would have known that they were on the
9 chair asleep if he in the event was trying to take Ms.
10 Miller out, he would have known he'd had to walk by those
11 kids by the door.

12 A Yes, sir.

13 Q Okay. And the other thing that really caught my
14 attention was the place where Ms. Miller body was found.
15 Wasn't the test -- wasn't the testimony that there is no
16 automobile access there?

17 A Directly where the body was found, no, sir, there's
18 no automobile access to that location.

19 Q Okay. So now, then, so would we say for anybody to
20 determine how the body got there, would that be an
21 assumption?

22 A I would call it educated guess, but yes, sir.

23 Q Okay. Well, educated guess, but the key word would
24 be guess, educated or not. It would be an educated
25 guess. In other words, basically, you don't know how the

1 body got there. Is that the truth?

2 A I know she was put in the water.

3 Q Well, --

4 A Into the Broad River.

5 Q Well, if you would just answer my question, then you
6 can explain. You don't know how the body got there. Is
7 that true?

8 A No, sir.

9 Q Okay. And there was no -- now, I know you can do
10 like Agent Harley and give an opinion and assume, but
11 there's no evidence, no actual evidence, that you can
12 show this jury, other than your opinion, whether or not
13 Mr. Miller [sic] took the body there. Is that true? I
14 mean -- Mr. Miller -- I meant Mr. Jackson. Please Lord,
15 let me hurry up and finish this case. Mr. Jackson.

16 A Can you re-phrase the question again.

17 Q What I'm asking is, other than your guess, your
18 educated guess, and your opinion, you have no data or no
19 facts or anything that says how the body got to the Broad
20 River, or wherever the body was at, because we don't even
21 know if it was at the Broad River. Is that true?
22 Because that's an educated guess, also; isn't it?

23 A No, sir, because it was found at the mouth of the --
24 at the mouth of Archer Creek, which runs off of Broad
25 River.

1 Q Okay. But I think the Coroner -- and you correct me
2 if I'm wrong. I think the Coroner talked about in this
3 inference of floating. Actually, everybody is guessing.

4 MR. THORNTON: Your Honor, objection. Now, he's
5 pitting the witnesses. The jury heard the testimony and
6 the Coroner, what the Coroner testify to. If we're going
7 to do this, we at least ought to be accurate. What the
8 Coroner testified to was, in his expert opinion, she was
9 floating in the Broad River.

10 MR. JOHNSON: Your Honor, this --

11 MR. THORNTON: What the Coroner testified to was
12 that everything she had was consistent with. For Mr.
13 Johnson to continue to characterize it as guessing, is,
14 frankly, misleading to the jury. You know, the testimony
15 speaks for itself. That's why we have it. And he's
16 asking Agent Williams about the prior testimony, and he's
17 getting it wrong. So, if we're going to do it, which is
18 improper in the first place, because he's attempting to
19 pit the witnesses against each other, at least let's get
20 it accurate. That would be my objection.

21 MR. JOHNSON: Your Honor, I thank the Solicitor for
22 his objection, but this is cross-examination. I get to
23 ask about anything that was -- that I can think can be
24 biased towards -- biasness towards my client. And if I
25 can't cross-examine him about the facts that were already

1 asked, then, your Honor, I'll just quit and sit down.
2 This is cross-examination of testimony that has already
3 been given.

4 THE COURT: Mr. Johnson, though, you still have to
5 follow the evidentiary rules with your cross-examination.
6 I do sustain the objection, and that it's pitting the
7 witnesses. I think you can ask him anything you want on
8 cross-examination, as long as it's within the proper
9 scope.

10
11 MR. JOHNSON:

12 Q You don't know how her body got there; do you?

13 A No, sir.

14 Q Okay. We do know the only way to get to where her
15 body was, you had to go by boat.

16 A To recover her body, yes, sir.

17 Q Went by boat.

18 A That's correct, yes, sir.

19 Q And is it illegal to use someone debit card with
20 permission?

21 A No, sir.

22 Q Your Honor, I'm sorry. I beg the Court's
23 indulgence.

24 I think we know that Mr. Jackson was at Mr. Miller's
25 house -- at Ms. Miller's house at about 12:23. Is that

1 correct?

2 A Around that time, yes, sir.

3 Q I think we know that Mr. Jackson purchased gas, or
4 attempted to purchase gas, at 2:26. Is that correct?

5 A Yes, sir, that's correct.

6 Q And I think that we know for sure that he was in the
7 Palm Motel, someplace between 3:00 and 4:30. Is that a
8 correct statement?

9 A 4:36 is when the door key was used on the door that
10 morning. Yes, sir, that's correct.

11 Q Right. Right. And just for the door key, it's
12 amazing. Did you notice the door key was just open one
13 time?

14 A Yes, sir.

15 Q Okay. It would be reasonable if you go in the room,
16 you at least got to come out. Is that correct?

17 A You don't need the key when you come out, according
18 to the manager at the motel, sir.

19 MR. JOHNSON: Your Honor, thank the Courts for its
20 patience. That's all my questions.

21 THE COURT: Okay. Any re-direct?

22 MR. THORNTON: Yes, ma'am. Just very briefly.

23 SLED SPECIAL AGENT DAVID WILLIAMS

24 RE-DIRECT EXAMINATION BY MR. THORNTON:

25 Q You talked about -- Mr. Johnson asked you several

1 questions about whether he turned left out of the gas
2 station or right. You kept mentioning a street. Is
3 there a street directly behind the gas station?

4 A Yes, sir, there is.

5 Q So, I realize it's going to be an estimate, but
6 let's say he turned a different way than you did, how
7 many -- would it be less than a minute of time difference
8 to go the exact same route you did, with the exception of
9 turning the other direction out of the gas station?

10 A About a minute would be correct, yes, sir.

11 Q So, it would not make a great deal of difference in
12 the times that you talked about earlier one way or the
13 other?

14 A No, sir, it wouldn't.

15 Q This thing about the back door. And I believe Joyce
16 Loadholt testified about the back door. And again, the
17 jury can re-hear that if they need to. But for
18 argument's sake, let's say that the back door was locked
19 when folks got there. When S.D. said the back door was
20 locked that morning. Again, I don't believe that's true,
21 but let's say it is true. Is it possible to carry a body
22 out the back door and come back in, lock it, and go out
23 the front?

24 A Yes, sir.

25 Q Is it possible that S.D. , in fact, didn't testify

1 to that, and that Joyce maybe testified the door was
2 unlocked?

3 A Yes, sir.

4 Q All right. But regardless of whether it was locked
5 or not, that doesn't require you to go out the front
6 door; does it?

7 A No, sir.

8 Q Mr. Johnson asked you about what other evidence you
9 might have had about if he got gas, or did he get all
10 this gas at the Shell, and wouldn't he had had to get all
11 that gas at the Shell in order to do this driving. Do
12 you remember that question?

13 A Yes, sir, I do.

14 Q Agent, do you travel a good bit between Columbia and
15 Walterboro in your job?

16 A Yes, sir.

17 Q All right. Within the city limits of Columbia, and
18 the Interstate, and the inner-city limits of Walterboro,
19 would you say there's more than one or two gas stations?

20 A Yes, sir, I would.

21 Q Would you say there's more than a couple hundred gas
22 stations?

23 A Yes, sir, I would.

24 Q And how did Mr. Jackson pay for the gas at the Shell
25 station?

1 A He paid with cash.

2 Q Is there any way to track cash like that?

3 A No, sir.

4 Q So, had he not attempted to use the victim's debit
5 card and been declined, would we have even known where he
6 was at 2:20 something in the morning?

7 MR. JOHNSON: Your Honor, that's speculation. You
8 don't know, because you could have got some evidence from
9 someplace else. That's just speculation. Okay?

10 THE COURT: Overruled. I think you can answer the
11 question, if he knows.

12 MR. THORNTON:

13 Q Would you likely have been able to track him to that
14 Shell station, except for the fact that he used the
15 victim's debit card?

16 A No, sir.

17 MR. THORNTON: Thank you. I don't have anything
18 further.

19 THE COURT: Any further?

20 MR. JOHNSON: One question.

21 SLED SPECIAL AGENT DAVID WILLIAMS

22 RE-CROSS-EXAMINATION BY MR. JOHNSON:

23 Q It would make a great difference with him turning
24 left or him going behind the station if he was going back
25 to Ms. Miller's house, because that would mean he didn't

1 go to Beaufort. Is that correct?

2 A Can you ask the question again, sir?

3 Q If we believe what you said, or if we believe we
4 believe what Kelvin said, Kelvin said when he left, he
5 went back to her house, the route he take would make a
6 great big -- a lot of difference, because it's showing
7 him going back towards her house, and showing him not
8 going to Beaufort. That's one assumption you could have
9 draw from that trip. Not -- the only assumption is not
10 to just go back the back street, and then turn and go to
11 Beaufort. He could have gone the back street where he
12 came, and turned and go right back to her house. Isn't
13 that possible?

14 A Yes, sir.

15 Q Okay. We don't know what he did. Is that correct?

16 A I don't know what route -- route he took, no, sir.

17 MR. THORNTON: Okay. And I'll leave it at that.
18 You don't know what route he took. Thank you. That's
19 all.

20 THE COURT: Thank you.

21 MR. THORNTON: Your Honor, at this time, the State
22 would go ahead and introduce State's 39, which is a copy
23 of the video tape.

24 MR. JOHNSON: Without objection.

25 THE COURT: Thank you.

1 ITEM IDENTIFIED AS COPY OF VIDEOTAPE
2 MARKED STATE'S EXHIBIT NUMBER 39,
3 ADMITTED AS EVIDENCE.

4 BY THE COURT:

5 THE COURT: Anything further at this time?

6 MR. THORNTON: No, ma'am.

7 THE COURT: Ladies and gentlemen of the jury, we are
8 going to go ahead and recess for the day, and continue on
9 in the morning. We have some other matters that we need
10 to take up. You've been so patient with us, and I truly
11 appreciate that. So, I really want to try to make it as
12 little of a wait as possible for you. So, I think if
13 it's convenient for you, we'll start at 10:00 o'clock for
14 you to be present in your jury room.

15 Once again, please do not discuss this case with
16 anybody or allow anybody to discuss the case with you or
17 do any research or look at the media or newspapers.
18 Thank you.

19 BAILIFF: Thank you, your Honor.

20 JURORS LEAVE COURTROOM 3:40 P.M.

21 BAILIFF: The jury is clear, your Honor.

22 THE COURT: Any exceptions or additions from the
23 State?

24 MR. THORNTON: Nothing from the State, Judge.

25 THE COURT: From the defendant?

1 MR. JOHNSON: Your Honor, no exceptions. Does the
2 Court want me to proffer those questions? When does the
3 Court want me to do that?

4 THE COURT: Let's do it in the morning.

5 MR. JOHNSON: Yes, ma'am.

6 THE COURT: Okay?

7 MR. THORNTON: You want to start at -- Mr. Johnson,
8 is 9:00 o'clock okay?

9 MR. JOHNSON: Okay.

10 MR. THORNTON: Would 9:00 o'clock suit the Court,
11 your Honor?

12 THE COURT: Sure, at 9:00 o'clock, that's fine.

13 MR. THORNTON: Okay. I'll have the witness here by
14 8:30 in the morning, and that'll give Mr. Johnson a good
15 half hour for us to both talk to her. And then, he can
16 make whatever motions he needs to make.

17 THE COURT: Okay.

18 MR. JOHNSON: Thank you, your Honor.

19 THE COURT: And the only other thing, too. I've got
20 my proposed charge. I've got one copy here, if you guys
21 want to share it and look at it ahead of time.

22 MR. THORNTON: Yes, ma'am.

23 MR. JOHNSON: Yes, ma'am.

24 THE COURT: That way, if you have any additions or
25 anything, we can deal with that tomorrow, as well. We'll

1 print another copy. That way, you'll each have one.

2 MR. THORNTON: Okay.

3 MR. JOHNSON: Your Honor, may we have permission to
4 leave? I want to go right on and start working. We have
5 permission, after I look at this and hand this back, do I
6 have permission to leave?

7 THE COURT: Absolutely. Hey, if you want to keep
8 that copy, we'll do an extra one for you.

9 MR. JOHNSON: Thank you, ma'am. Thank you, ma'am.

10 THE COURT: All right. So, Court is in recess till
11 9:00 o'clock.

12 MR. THORNTON: Thank you, your Honor.

13 MS. DEYSACH: Thank you, your Honor.

14 END DAY FOUR, THURSDAY,

15 AUGUST 1, 2013, 3:42 P.M.

16 BEGIN DAY FIVE, FRIDAY, AUGUST 2,

17 2013, 9:15 A.M.

18 BY THE COURT:

19 ARGUMENT AND RULING REGARDING

20 EXPERT WITNESS:

21 BAILIFF: All rise. Court is now in session. Hon.
22 Maité Murphy presiding.

23 THE COURT: Good morning, everybody. You may have a
24 seat. Looks like we have a couple of issues to take up
25 first. You want to discuss the expert first, or the

1 proffered testimony?

2 MR. THORNTON: I'd like to go ahead, and since we've
3 got an expert here, and depending on the Court's ruling
4 as to whether she stays or not, I'd like to go ahead and
5 deal with that first, unless Mr. Johnson disagrees.

6 MR. JOHNSON: That's fine. We can do that.

7 MR. THORNTON: Your Honor, Joyce Lauterbach is here.
8 And I'm going to make absolutely sure that I ask her
9 again, the pronunciation, so I don't do that incorrectly,
10 when I call her to the stand, if we get to that point.

11 She has reviewed everything. She's been here. She
12 was available for Mr. Johnson to talk to. Her opinion
13 matches that of the prior expert, in that it is -- in
14 that Masako Miller did not, in her opinion, write the
15 questioned entry on the front of that note; and that it
16 is probable that Kelvin Jackson did write that note.

17 We've discussed, Mr. Johnson and I, I think he's
18 going to ask three questions. I'll probably ask five or
19 six, once I get her qualified. You know, I don't think
20 there's any issue with that. I understand he's got an
21 objection, which I'll let him get to in a second. If
22 it's all right with the Court, I'll just go ahead and put
23 our position on the stand -- excuse me -- on the record.

24 Judge, you know, one of the issues always in cases
25 like this, is, well, you have to turn over discovery.

1 Obviously, this would be -- I'm viewing it as, in
2 essence, as a discovery issue, meaning there is a witness
3 that we're going to have to ask to qualify to the jury.

4 I gave him the C.V. within less than an hour of me
5 finding out this was likely going to happen. He has her
6 C.V. I think she's over-qualified, if anything. She's
7 testified numerous times. She's worked on hundreds of
8 cases in multiple states. Testified in multiple states.
9 Testified, I think, in Turks and Caicos, as well. She's
10 done federal work. She's done state work.

11 You know, what it, in essence, boils down to is, her
12 opinion's the same as before. If Mr. Johnson felt like
13 -- and it's something he brought up yesterday, and I
14 totally understand that -- if her opinion had been
15 markedly different, to my benefit, I think that he, you
16 know, he might have made a different decision on hiring
17 his own expert. But the opinion is, in essence, the same
18 as the prior opinion was. The only thing that's changed
19 is the person, meaning the C.V. I will ask the Court to
20 take a look at this case. I'll hand it to Mr. Johnson.

21 MR. JOHNSON: May I see it?

22 MR. THORNTON: I've got a couple, Judge. But this,
23 I think, is a pretty good example. It's *State versus*
24 *Whipple*, which is 324 South Carolina 43. And if memory
25 serves, Judge, this is actually a death penalty case,

1 where I think it was four hundred and some odd pages of
2 discovery were turned over. And you know, right as --
3 I'll probably find it here, Judge, so I don't exaggerate
4 that.

5 During jury selection, defense counsel requested to
6 start -- to delay the start of the trial to review
7 discovery materials, and he noted he had received 479
8 pages of new materials. And they granted him until 4:00
9 o'clock the same afternoon to review the materials, and
10 the Court found that that was proper.

11 In this case, literally, the only thing that has
12 changed, since the opinion is the same, is the identity
13 of the person doing it. I've handed him a C.V. She's
14 clearly qualified. The State would ask -- obviously, I
15 would put forth to the Court that this was not
16 intentional on the part of the State. I've got an expert
17 who has been in and out of the hospital, and just
18 physically is unable to come. Done everything, and
19 really, Judge, in my opinion, we've taken extraordinary
20 measures to get somebody here in a timely fashion and
21 ready to talk to Mr. Johnson. The opinion's the same. I
22 would ask that we qualify the jury as to Ms. Lauterbach,
23 and allow her to testify.

24 I don't think it's undue -- being prejudicial at all
25 to Mr. Johnson, since both the opinion is the same, and

1 she clearly is qualified, and obviously, he has a chance
2 to, you know, voir dire her as to her qualifications, if
3 he feels like she isn't. So, that will be the State's
4 position, your Honor. And I'd ask that she be allowed to
5 testify as to the -- her examination of -- and forgive
6 me, I don't know the State's exhibit number, but it's the
7 note that was left ostensibly from the victim in the
8 case, Masako Miller. Thank you, your Honor.

9 THE COURT: Thank you. Mr. Johnson?

10 MR. JOHNSON: Your Honor, may it please the Court?
11 Your Honor, I just kind of wrote down the issues for the
12 motion to suppress and how your Honor rule, I just kind
13 of wrote them down. Number one, your Honor, I agree with
14 the Solicitor that it is a discovery issue. It violates
15 the defendant's right under Rule 5 in *Brady*, which these
16 are documents we should have gotten ahead of time. We
17 say, number one, that we didn't get proper notice.

18 Number two, it further deny the right to review her
19 findings, report, credentials, opportunity to inquire,
20 independent review by its own expert's information. And
21 here's the concern. He made her available. I have even
22 talked with her this morning, but there's no question
23 about that. But the only other expert, we had a written
24 report. On this one, she's just going to give a verbal
25 report. And here is my concern, again. I don't know --

1 this case will boil down, I guess, to the mantics [sic]
2 of word on the standards that are on the back. And if
3 you read the standards, it says *for probable* -- it's a
4 strong -- your Honor, let me read it for the Court.

5 Okay. If you read the standards, it says:

6 *Probable. The evidence contained*
7 *in the handwriting points rather strongly*
8 *toward the question and known writing*
9 *having been written by the same individual.*
10 *However, it falls short of virtually*
11 *certain degree; virtually being certain*
12 *and degree of confidence.*

13 My concern is, one expert, I think -- I talked to
14 her. She's basically -- she's going to say it is a very
15 strong probability. Some experts determined this because
16 this a number and above that says strong possibility.
17 Some experts determine probable as weaker than a strong
18 possibility. Even though the word *strongly* points
19 strongly towards the question, the one above says strong
20 possibility. Probable and strong possibility could cause
21 some kind of confusion.

22 I don't know what the other expert was going to say.
23 I have to admit that to the Court. I am concerned with
24 her wording if she is going to say it is a strong
25 probability that he was the person that wrote this,

1 whereas the probable says:

2 *The evidence contained in the*
3 *handwriting, rather strongly, --*

4 not a strong possibility. So, I don't know if I had
5 my own expert, if he could give me questions; he could
6 have told me how to deal with it. There's just some
7 things that I don't know that I think would prejudice my
8 client, and that's just -- I wanted to say that. And if
9 she had a written report, I could have gotten an expert,
10 and I probably would have gotten an expert, because I did
11 talk with a handwriting expert about this case, but I
12 didn't go further with it, because we didn't have the
13 problem way back yonder.

14 And it says *opportunity*. I need an opportunity to
15 inquire or acquire independent review by my own expert.
16 If she did a written report, I don't know how an expert
17 that I would have would look at it. And yes, your Honor,
18 I'm guessing what might happen. I don't know. But I
19 think -- the burden of proof is not on us, so I think,
20 you know, we should have some deference about that.

21 And then, under *Rule 404, Admittance of Testimony*,
22 it's highly prejudicial -- highly prejudicial to the
23 defendant. And that's because most of the State case
24 rests solely on this handwriting. So, we would ask that
25 you suppress any information about this note. And that's

1 our motion for the record on that.

2 THE COURT: Thank you, Mr. Johnson. Obviously,
3 under Rule 5, you know the State does have a continuing
4 duty to disclose materials as they become available. And
5 I don't find that the State did anything intentional, and
6 obviously, emergencies happen, and people get sick, and
7 people go to the hospital. I think upon acquiring that
8 information, they immediately provided to the defense the
9 C.V. and the qualifications of an alternate expert. I'm
10 going to allow the expert to testify because of the fact
11 that the opinion, as stated by the State, remains the
12 same; that the findings of the expert have not varied in
13 any way, so the Defense counsel has had an opportunity to
14 review the same materials, in essence.

15 So, if, for any reason, the opinion's different from
16 the first opinion, I would exclude it. However,
17 considering it's the same opinion, I find that the
18 defendant is not prejudiced in any way. The defendant
19 has had an opportunity to review the C.V., has had an
20 opportunity to talk to the expert this morning. And if
21 you need any further time to talk to her this morning,
22 I'll be happy to grant that for you, if you feel you
23 haven't had sufficient time to question her and go over
24 the definitions that you're concerned with.

25 Certainly, I think that matter can be covered during

1 cross-examination, as far as how she finds probability in
2 those issues that you brought up. So, I think the State
3 has abided by Rule 5, and it's not a *Brady* violation, and
4 I think the expert's testimony is proper.

5 MR. JOHNSON: Thank you, ma'am.

6 MR. THORNTON: Thank you, your Honor.

7 ARGUMENT AND RULING REGARDING

8 THIRD-PARTY GUILT:

9 MR. THORNTON: The next issue, Judge, is, I think we
10 have -- well, third-party guilt would be the next issue.
11 And Hunter Swanson with or office is going to handle that
12 one, your Honor.

13 THE COURT: Okay. Ms. Swanson?

14 MS. DEYSACH: Thank you, your Honor. I did hand a
15 case to the Court. It's *State v. Mansfield*. I also
16 provided it to Mr. Johnson. It's located, for record
17 purposes, at 343 S.C. 66.

18 Your Honor, I'd just point out that I believe it's
19 Mr. Johnson's intention to proffer some evidence
20 testimony from David Williams regarding Leon Miller, who
21 was Masako Miller's husband. She had been separated from
22 him for a long period of time. He was questioned in the
23 investigation, but there was no evidence that he had the
24 means, motive, or opportunity to commit the murder.
25 Additionally, he was polygraphed, and passed a polygraph,

1 so he was not ever developed as a suspect. The fact that
2 we cannot get into the results of the polygraph would
3 potentially mislead the jury, if Mr. Williams was going
4 to be questioned about him.

5 Additionally, pursuant to *State v. Mansfield*, the
6 Supreme Court has imposed very strict limitations on the
7 admissibility of third-party guilt. And it would have to
8 be evidence that would tend to exculpate the defendant to
9 show that he's actually innocent of this crime. When the
10 defendant was polygraphed, he failed his polygraph.

11 There is nothing in the investigation of Leon Miller that
12 would tend to show that the defendant did not commit this
13 crime, and that Leon Miller did. There's no evidence of
14 that. So, I just prefaced the proffer with those
15 statements, and I believe the burden would be on Mr.
16 Johnson to show that it would be proper.

17 THE COURT: Mr. Johnson?

18 MR. JOHNSON: Your Honor, may it please the Court?

19 THE COURT: Yes, sir.

20 MR. JOHNSON: And yes, I would like to say to the
21 Court, my intention was to cross-examine about Mr.
22 Miller. Your Honor, here's what I was going to ask. I
23 was going to ask, in the investigation, did they talk
24 with him. In the investigation, does he live in
25 Beaufort. I think he does have a connection. The fact

1 that they polygraphed him was because he very seldom come
2 to Hampton. Out of the clear, blue sk, he was in Hampton
3 during the same time she went missing. So, my connection
4 to the case was, during the same time she went missing,
5 he was in Hampton. He said -- and then he said he came
6 to Hampton about a marriage license, and that's my
7 understanding from -- that's my understanding from the
8 information.

9 So, he has a direct connection. The day she went
10 missing, or during the time she went missing, he was in
11 Hampton. A body shows up in Beaufort. He lives in
12 Beaufort; he doesn't live in Hampton. He lives, from my
13 understanding, a few miles from where the body was found.
14 I think it has -- it's relevant and has a bearing on the
15 fact that somebody else could have done this. When you
16 add that -- and we'll get to this, your Honor -- but when
17 you add that to the fact of the State is doing the same
18 thing with the -- they have no identity of -- this case
19 is a little unique that they had no identity of the
20 perpetrator, other than their speculation or their
21 assumption.

22 And then, when we brought in the idea about keeping
23 out the charge in Hampton, they said it was
24 interconnected as a link. Well, this guy is
25 interconnected being in Hampton at the same time, or in a

1 reasonable time, during the time this murder occurred.
2 And I think the jury needs to know her ex-husband, who
3 she hadn't seen, from my understanding, from a long time,
4 during the time she was murdered was in Hampton. Lives
5 in Beaufort. Lives near where the body was found. And
6 Mr. Williams -- I mean -- Mr. Jackson doesn't live in
7 Beaufort, and from his own testimony, and everything that
8 has been read, didn't come to Beaufort. I think that's
9 relevant evidence.

10 THE COURT: So basically, what you're saying -- and
11 hopefully we have the timing -- is the timing correct as
12 to what Mr. Johnson's saying? Was the husband in town at
13 the same time?

14 MS. DEYSACH: Your Honor, we're looking for some
15 documentation of that. It was my understanding that the
16 husband went to go get a marriage license after Masako
17 was found dead, because he thought he might be able to
18 stake some claim to some insurance, or you know, what
19 have you or benefits or something. The only person that
20 puts himself with Masako at the time of her death and
21 when she went missing, is Kelvin Jackson, by his own
22 admission.

23 THE COURT: Well, let's do this. Why don't we --
24 let's put --

25 MS. DEYSACH: Yes, ma'am.

1 THE COURT: -- Agent David Williams on the stand,
2 and we'll go ahead and proffer the testimony real quick
3 and see what's said.

4 MS. DEYSACH: Yes, ma'am.

5 MR. JOHNSON: Your Honor, just for the sake of that
6 argument, Kelvin is the only one who admitted it, but we
7 know that there is a second contributor, so. And we just
8 think, because there is a second unknown contributor,
9 that we should be able to let the jury, now that there
10 are other people that were -- that could have been there
11 and could have been -- could have been involved with this
12 murder.

13 THE COURT: Sure. Well, I think you've established
14 that. I mean, through the DNA testimony, obviously,
15 there was another contributor there. So, you've
16 established that.

17 MR. JOHNSON: Yes, ma'am.

18 THE COURT: However, the third-party guilt -- what
19 you have to connect the dots is that there's evidence
20 inconsistent with your client's guilt. So, that's where
21 we can proffer the testimony.

22 MR. JOHNSON: Okay.

23 THE COURT: Let's see if it leads to there.

24 MR. JOHNSON: All right.

25 MADAM CLERK: Place your left hand on the *Bible* and

1 raise your right hand for me, please. Do you solemnly
2 swear to truthfully answer all questions asked of you by
3 this Court, so help you God?

4 SLED SPECIAL AGENT DAVID WILLIAMS: I do.

5 MADAM CLERK: Please be seated. State your name and
6 spell if for the court.

7 MR. JOHNSON: Your Honor, may I --

8 SPECIAL AGENT WILLIAMS: David Williams. D/a/v/i/d,
9 W/i/l/l/i/a/m/s.

10 PROFFER, SLED SPECIAL AGENT DAVID WILLIAMS

11 DIRECT EXAMINATION BY MR. JOHNSON:

12 Q Okay. Agent Williams, I'm going to start right back
13 where the Court stopped me. And I just kind of stopped
14 questioning you yesterday, because I didn't want to do
15 other than what the Court tell me. So, the questions
16 that I didn't ask about everything, I'm going to ask you
17 right now.

18 A Okay.

19 Q Okay. All right. All right. And here's what I was
20 going to do. I was going to ask you, during your
21 investigation, was there an investigation done of a Leon
22 Miller?

23 A The -- yes, sir.

24 Q Okay.

25 A The Beaufort County Sheriff's Office handled that

1 portion of the investigation.

2 Q Okay. Okay. And I was going to ask you during --
3 and if I interpret the information wrong, please correct
4 me. I was going to ask you, during that investigation,
5 didn't it was determined that he was in Hampton during
6 the same time she was murdered. Now, I hear the
7 Solicitor said it was after. But to your knowledge,
8 wasn't it before? I could have misread the --

9 A I'm trying to find the exact report. I've got the
10 report for the Sheriff's Department.

11 Q They did a recording, I think, of him. I think they
12 did a tape recording of him, and I think that is on a
13 recording.

14 A Could I retrieve my --

15 MS. DEYSACH: Judge, I would actually even object to
16 this, because Mr. Williams is not the proper person to
17 even get into this about. He wasn't the one to interview
18 Leon Miller. If Mr. Johnson wants to get into all that,
19 then, he needs to call Investigator Rice, who actually
20 conducted the interview of Mr. Miller. And I don't think
21 he even had him on his witness list.

22 THE COURT: Well, the defendant's not required to
23 put forth their full witnesses. The burden of proof is
24 not on them. I think the proper questioning for Agent
25 Williams is, was this person looked into, and whether or

1 not anything tends to prove any type of logical
2 connection that would exculpate the defendant, rather
3 than Mr. Miller. So, if he can establish that with Agent
4 Williams, that's fine. If he can't, he can't. But I
5 think he's allowed to at least question him on that.

6 MR. JOHNSON: Right.

7 BY MR. JOHNSON:

8 Q And Agent Williams, if you say no, I'll -- if you
9 say no, I'll move on. But and I don't want to give the
10 Court incorrect testimony. I read this thing two or
11 three times. I read it a ways back. And if I'm
12 incorrect, tell me, and let's move on.

13 Wasn't he questioned about being in Hampton before
14 she died? Because if it was after she died, I shouldn't
15 be up here doing this.

16 A It's my recollection -- I don't have the report in
17 front of me --

18 Q Okay.

19 A -- but it's my recollection that he went to check on
20 his marriage license after her death.

21 Q Okay. And if that's the correct testimony, your
22 Honor, then, I shouldn't be asking him question.

23 THE COURT: Okay. Well, that resolves the issue,
24 then.

25 MR. JOHNSON: Oh, and but your Honor, let me finish

1 what I -- and then the next thing I was going to do is,
2 Mr. Wrice testified. He was the boyfriend. He admitted
3 to being to the house that night. I was going to go
4 through the same question about did you -- was there an
5 investigation from Mr. Wrice who testified. And I was
6 going to say, during the investigation, did you take
7 fingerprints of Mr. Wrice? I was going to ask during
8 investigation, did you take any DNA of Mr. Wrice? That's
9 what I was going to ask about Mr. Wrice.

10 THE COURT: Well, and certainly, you can go ahead
11 and ask Agent Williams that.

12 MR. JOHNSON: Okay. Okay.

13 THE COURT: If he interviewed him and investigated.

14 BY MR. JOHNSON:

15 Q During the investigation, did you take any
16 fingerprints -- request any fingerprints from Mr. Wrice?

17 A No, sir.

18 Q During your investigation, did you request any
19 fingerprints from -- I mean, any DNA information from Mr.
20 Wrice?

21 A I'm not sure on that. I'd have to -- I'd have to
22 see all our exhibits to see if he -- if he was given a
23 buccal swab.

24 Q Okay. But if I tell you there wasn't none given to
25 me, that would mean they didn't, because I don't think if

1 you had it, you would -- I thought you would give it to
2 me.

3 A Yeah, sure.

4 Q So, if I tell you there wasn't none given to me, it
5 wasn't any requested.

6 A That's correct.

7 Q And Mr. Coker, who came to the house, did you
8 request any fingerprints information on him?

9 A No, sir.

10 Q Any DNA information on him?

11 A No, sir.

12 Q Okay. During your investigation, there was a Ms. --
13 Ms. Loadholt testified about she and Ms. Miller was going
14 to go get a warrant on the air conditioning man, because
15 he wouldn't do what he was suppose to do. And I think
16 S.D. -- if I'm not wrong -- S.D. testified that there
17 was some problems about the air conditioner man. The
18 mama was going to take a warrant, because he wouldn't
19 come do what he was suppose to do. Did you request any
20 fingerprints on him?

21 A No, sir.

22 Q Did you request any DNA on him?

23 A No, sir.

24 Q Other than Mr. Williams -- other than Mr. Jackson,
25 was there any fingerprint or DNA information requested

1 from anybody else?

2 A Yes, sir.

3 Q Who?

4 A We -- we got DNA swabs from his sister, I believe.
5 We got it from his mother to eliminate any possibility
6 from the vehicles when we were checking the Tahoe.

7 Q Let me ask you. Was there another man? Any men
8 that were involved with her that night, did you request
9 any DNA information or any fingerprint information?

10 A No, sir, not that I recall.

11 MR. JOHNSON: That was the extent of my questions,
12 your Honor.

13 THE COURT: I think that's proper. But do you have
14 an argument on that?

15 ARGUMENT ON PROFFER ON BEHALF
16 OF THE STATE BY MR. THORNTON:

17 MR. THORNTON: I do have an argument on that, Judge.
18 As to the first part we were just talking about with Leon
19 Miller, unless he's given up that line of questioning, --

20 MR. JOHNSON: No. No.

21 THE COURT: He's given up that line of questioning.

22 MR. THORNTON: And just for the Court's information,
23 apparently, Mr. Johnson, when you read it two or three
24 times, did read it wrong. Because in the report, it
25 clearly says, when they interviewed Mr. Miller, that --

1 that:

2 I asked Miller why he went to the
3 Hampton County Courthouse for his marriage
4 license. He said he believes he is still
5 married to Masako. He went to get the
6 marriage license, because his sister told
7 him to do so. He wasn't sure why she
8 wanted him to get the license, but she
9 believes it would be in reference to
10 receiving death benefits.

11 Well, you know, there's no reason to go see about
12 death benefits, unless she's already dead when he goes to
13 the courthouse.

14 Additionally, I've got Chief McAlhaney here, who's
15 the chief of the Hampton Police Department, who remembers
16 when he was at the courthouse, and it was after her body
17 was discovered, four days after her death. And you know,
18 and that's happened a couple of times in this trial,
19 Judge. And that's the thing that I'm most afraid of.
20 And I know Mr. Johnson's not doing it intentionally, but
21 you, as an attorney, cannot get up and try to get people
22 to agree with you to stuff that you know not to be true.

23 THE COURT: I think he's acknowledged --

24 MR. THORNTON: And, you know, I mean, we've had this
25 happen over and over again, Judge.

1 THE COURT: Well, he's acknowledged that he made a
2 mistake on the timing of that, and basically withdrew his
3 request for third-party guilt on Mr. Miller.

4 MR. THORNTON: As long as we're talking about Mr.
5 Miller, Judge, I'm fine. I understand he can ask what
6 other DNA, you know, if they pulled any DNA from Mr.
7 Coker or other people, you know. As long as he doesn't
8 start casting -- you know, other than questioning him
9 about that very limited circumstance, I think it violates
10 the rules against third-party guilt. I certainly think
11 he's entitled to ask an officer did you do this or not.

12 THE COURT: Correct.

13 MR. THORNTON: But to try and infer guilt on a third
14 party with no evidence of it, is absolutely in violation
15 of the third-party guilt rules.

16 THE COURT: And I agree with you. I think Mr.
17 Johnson's questions, as he proffered them, are proper.

18 *Did you obtain the DNA?*

19 MR. THORNTON: Yes, ma'am.

20 THE COURT: *Did you obtain fingerprints?*

21 *Did you do this? Did you do that?*

22 I think that's proper, considering the people that
23 were present and around the victim at the time. So, Mr.
24 Johnson, I think your line of questioning is proper, but
25 it's as --

1 MR. JOHNSON: Mr. Miller -- your Honor, the minute
2 he told me it was after -- I mean, I realized I shouldn't
3 asked the question. And let me say this for the Court,
4 and Solicitor Thornton and my friends. I would never
5 intentionally mislead the Court with any information.
6 I've been doing this for a long time. Everybody that
7 knows me, I'm pretty down-to-earth, calmer than -- I try
8 to do the right thing. But I do have to zealously
9 represent Mr. Jackson.

10 And my friend, Mr. Thornton, has been doing this a
11 long time, and Sean knows the exact time to jump up, when
12 to object to throw me off-balance. I mean, all I'm
13 trying to do, your Honor, is try to keep what's going
14 ongoing. There's some other things that could go on. If
15 I object about everything Sean did, we would be here for
16 hours, but the case have to kind of move on.

17 I agree with the Court that I shouldn't ask about
18 Miller. I want to ask about the others. But I do think,
19 your Honor, that because there is -- and if this is
20 another issue -- I do think that because there were two
21 contributors on that pillow, I should be able to talk
22 about who the other guy is, because they don't know who
23 the other guy is; we don't know who the other guy is; but
24 we don't have the burden of proof. I don't want the jury
25 to think that because there's another guy, we should have

1 to prove who the other guy is, and get the burden shift
2 to us. I think they should know that there's two
3 contributors, and it's not our job to determine who the
4 other contributor is. It's their job to show it that
5 there's not another contributor, and we don't have to say
6 nothing. And that's what I'm trying to get out.

7 THE COURT: I understand, Mr. Johnson. I think
8 that, clearly, has already been established in the DNA
9 testimony, and your, you know, in your closing argument,
10 certainly, you can argue that as much as you like --

11 MR. JOHNSON: All right.

12 THE COURT: -- that there was a third contributor of
13 DNA evidence on the pillowcase.

14 MR. JOHNSON: All right. Thank you.

15 THE COURT: So, I think that's already been
16 established. I don't think you've been prejudiced in any
17 way by any kind of limitation that the Court has put on
18 you.

19 MR. JOHNSON: And your Honor, I do, at the proper
20 time -- and you tell me when it is -- I did bring a
21 third-party charge, but if that's later on, I will bring
22 that up at the Court at the proper time.

23 THE COURT: Well, let's get through the testimony.

24 MR. JOHNSON: Okay. Your Honor, that's all I --

25 THE COURT: Okay.

1 MR. JOHNSON: I mean, that's it. That's what I'm
2 going to ask him, and I'm going to do that, and I'll sit
3 down.

4 MR. THORNTON: The State has nothing else, other
5 than just to clear up the record, Judge. Again, I've
6 known Mr. Johnson a long time. I know he would never
7 intentionally do that, but my fear is, and why sometimes
8 I get a little heated about it is, had I not stopped him
9 yesterday, and you know, and I'm playing a guessing game
10 trying to get in front of it; had I not stopped him
11 yesterday, he would have asked that, and it would have
12 been absolutely false information. And Mr. Williams
13 would have no way of knowing that, because it's in the
14 report that he didn't do.

15 And I'm just asking everybody to please be careful
16 when we're in front of the jury, you know, making sure
17 we're correct. Because had I not jumped in front of this
18 to stop it, inadvertently, Mr. Johnson would have given
19 absolutely incorrect information to the jury that I
20 didn't have. I can't un-ring that bell. That was my
21 point. Mr. Johnson would never do that intentionally.

22 THE COURT: Well, I think all the attorneys have
23 done an excellent job and have been very professional and
24 courteous to each other. And I don't think anybody's
25 done anything intentionally to do that. I think people

1 just must be mindful when they're trying a case to only
2 put forth evidence that's properly before the jury.

3 MR. JOHNSON: And I thank him, your Honor, because
4 he was absolutely right. I'd have done it if he didn't
5 jump up. I mean, there's no question about that. I'd
6 have done it. So, he's absolutely right.

7 THE COURT: I wish we had a crystal ball, but we
8 don't. So, we will try to --

9 MR. THORNTON: Your Honor, the State has nothing
10 else, other than the charge. We had a couple of charge
11 issues, which Hunter will handle at the appropriate time.
12 And the State -- when I was up yesterday with Mr.
13 Johnson, obviously, I'm not going to object, and I
14 concurred with his ability to, after the testimony was
15 proffered, continue his, hopefully, brief cross-
16 examination of Agent Williams. And I don't have anything
17 further before the jury comes in, your Honor.

18 Once we do that, my intention would be, as soon as
19 he's done with Mr. Williams, I'm going to call Ms.
20 Lauterbach, and ask her to get on the stand. And Mr.
21 Johnson indicated, because she's the last witness, he
22 didn't object to her just remaining here with us, instead
23 of going back to the jury assembly room.

24 MR. JOHNSON: She can sit in the courtroom, your
25 Honor.

1 MR. THORNTON: So, she's right back there, easily
2 accessible, Judge.

3 THE COURT: Okay.

4 MR. THORNTON: And then, after she's called, unless
5 I come up with something at the last second to re-call
6 Mr. Williams to the stand, the State's going to rest.

7 THE COURT: Okay. All right. So, what? We've got
8 about 15 minutes. We can check and -- are all the jury
9 members here?

10 BAILIFF: Yes, ma'am. I'm pretty sure, but I will
11 check again.

12 THE COURT: I know I told them 10:00, but we could
13 go ahead and get rolling, if everybody's here.

14 MR. THORNTON: We can. Your Honor, may we -- just a
15 scheduling matter. Mr. Johnson and I were talking
16 earlier. My request to the Court would be, once we get
17 done, unless a directed verdict motion is granted, which
18 I certainly hope is not going to happen; that would be
19 only the second one in my career; but as long as that
20 doesn't happen, your Honor, and we do proceed after that,
21 once the Court has questioned Mr. Johnson's client,
22 depending on when he puts his case up, I am going to ask
23 for about ten minutes. I always ask for, you know, just
24 ten or 15 minutes to kind of gather my thoughts, get
25 everything squared away and ready. I may have a short

1 PowerPoint. Get that set up and ready. So, I just
2 wanted the Court to know, I am going to ask for ten or 15
3 minutes.

4 THE COURT: Oh, sure.

5 MR. THORNTON: Mr. Johnson joined me in that just to
6 kind of together, also.

7 MR. JOHNSON: I join. I joined him.

8 THE COURT: Absolutely.

9 MR. JOHNSON: Okay.

10 THE COURT: And Mr. Johnson, have you already talked
11 to you client about testifying? He knows I'll be
12 questioning him regarding that?

13 MR. JOHNSON: Yes, ma'am, he knows that. Yes,
14 ma'am, he knows that.

15 THE COURT: All right. So, we'll --

16 BAILIFF: Judge, we're still missing three jurors.

17 THE COURT: Okay. So, we'll take a quick break
18 until all the jurors are gathered.

19 MR. THORNTON: Thank you, your Honor.

20 MR. JOHNSON: Thank you, your Honor.

21 OFF THE RECORD 9:45 A.M.

22 BACK ON THE RECORD 9:57 A.M.

23 BY THE COURT:

24 BAILIFF: All rise. Come to order. This Court is
25 now back in session.

1 THE COURT: Thank you, everybody. Have a seat.
2 Looks like all the members of the jury are present. And
3 Mr. Thornton, what's the witness's name? I want to make
4 sure that we have it for the jury.

5 MR. THORNTON: Joyce Lauterbach. And I'm going to
6 make sure of that pronunciation, Judge, if you'll allow
7 me one second. It's Lauterbach.

8 THE COURT: Lauterbach.

9 MR. THORNTON: And your Honor, I don't know how you
10 want to -- do you want Mr. Williams to go ahead and get
11 back on the stand now, or do you want to just have me re-
12 call him, for cross-examination purposes? How would you
13 prefer to do that?

14 THE COURT: What we can do is, we can go ahead and
15 have him on the witness stand and say we're going to
16 finish up the cross-examination.

17 MR. THORNTON: Yes, ma'am.

18 THE COURT: Is that okay? Any objections to that
19 Mr. Johnson?

20 MR. JOHNSON: No, ma'am.

21 THE COURT: Okay. Okay. Can we have our jury?

22 BAILIFF: Yes, ma'am.

23 THE COURT: Thank you.

24 BAILIFF: Your Honor, the jury is entering.

25 JURORS ENTER COURTROOM 9:59 A.M.

1 BAILIFF: The jury is seated, your Honor.

2 THE COURT: Thank you. Good morning, ladies and
3 gentlemen of the jury. I hope everyone had a nice
4 evening. And once again, I'll ask you each, as you are
5 still under oath, whether anyone has done any
6 investigation or research, or seen any news media
7 accounts of this case whatsoever, or done any kind of
8 drive-by's. So, please let me know now.

9 I find that no one has violated the Court's order.

10 And ladies and gentlemen of the jury, we have had a
11 change in one of the witnesses. And so, I'll need to ask
12 you if any of you know by blood or marriage, or are
13 connected in any way, shape, or form, with the witness by
14 the name of Joyce Lauterbach. And she's with the South
15 Carolina Law Enforcement Division. Does any member of
16 the jury have any connection to Ms. Lauterbach?

17 I find that nobody does, and so, we can proceed.

18 At this time, ladies and gentlemen of the jury, what
19 we will do is, we will continue with the cross-
20 examination of Agent Williams. Mr. Johnson?

21 MR. JOHNSON: Thank you, your Honor.

22 SLED SPECIAL AGENT DAVID WILLIAMS

23 CONTINUE RE-CROSS-EXAMINATION BY MR. JOHNSON:

24 Q Agent Williams, good morning.

25 A Good morning.

1 Q Just a few questions. Agent Williams, during your
2 investigation, did you do any handwriting samples of Mr.
3 Wrice that testified?

4 A No, sir, I didn't.

5 Q Did you do any DNA samples of Mr. Wrice?

6 A No, sir, I didn't.

7 Q Okay. Did you do any handwriting samples of Mr.
8 Coker that testified?

9 A No, sir, I didn't.

10 Q Did you do any DNA samples of Mr. Coker that
11 testified?

12 A No, sir, I didn't.

13 Q Okay. Did you do -- there was a air-condition man
14 that I think was a warrant was going to be taken out on.
15 Did you do any handwriting samples on him?

16 A No, sir, I didn't.

17 Q Did you do any DNA samples on him?

18 A No, sir, I didn't.

19 Q Did you do any handwriting or DNA samples on any
20 other male, except for Mr. Jackson?

21 A No, sir.

22 MR. JOHNSON: Your Honor, that's all I have.

23 THE COURT: Thank you. Anything further, Solicitor?

24 MR. THORNTON: No, your Honor.

25 THE COURT: Agent Williams, you may step down.

1 Thank you.

2 MR. THORNTON: The State calls Joyce Lauterbach to
3 the stand, your Honor.

4 BAILIFF: Come right this way, ma'am. If you would,
5 stand right up there to be sworn.

6 MADAM CLERK: Would you place your left hand on the
7 Bible and raise your right hand for me, please, ma'am.
8 Do you solemnly swear to truthfully answer all questions
9 asked of you by this Court, so help you God?

10 JOYCE LAUTERBACH: Yes, ma'am.

11 MADAM CLERK: Please be seated. State your name and
12 spell if for the court.

13 MR. JOHNSON: Your Honor, if it please the Court?

14 THE COURT: Yes, sir.

15 MR. JOHNSON: I would just like to renew my motion.

16 THE COURT: Yes, sir. And my ruling stands pursuant
17 to our previous ruling.

18 MR. JOHNSON: Yes, ma'am. Thank you, ma'am.

19 THE COURT: Thank you.

20 AGENT JOYCE LAUTERBACH

21 SLED HANDWRITING ANALYST

22 DIRECT EXAMINATION BY MR. THORNTON:

23 Q Ms. Lauterbach, -- and please correct me if I
24 mispronounce your name. I know you've told me twice now.
25 Hopefully, I will get it correct. Who do you work for

1 currently?

2 A I'm currently employed at SLED, South Carolina
3 Department of --

4 Q Is that otherwise known as South Carolina Law
5 Enforcement Division?

6 A South Carolina Law Enforcement Division, yeah.

7 Q And let me ask you a question. Are you full-time
8 with them or part-time?

9 A I work two days a week. I'm part-time.

10 Q And have you worked for a number of police agencies
11 over the years?

12 A Yes, I have.

13 Q Could you please name some of them for me?

14 A Originally, I worked --

15 MR. JOHNSON: May it please the Court.

16 THE COURT: Yes, sir.

17 MR. JOHNSON: May it please the Court. I will
18 stipulate that she's qualified. That'll save you some
19 time.

20 MR. THORNTON: Your Honor, the State, basically, is
21 going to submit her as an expert in handwriting analysis.
22 And while I appreciate the stipulation, just for the
23 Court's information, as well as the jury's, I always
24 think it's important that they hear some of the
25 qualifications. I'll try to be quick, though.

1 THE COURT: Thank you.

2 BY MR. THORNTON:

3 Q Ms. Lauterbach, how many different agencies do you
4 think you worked for, in law enforcement?

5 A Iowa Division of Criminal Investigation, South
6 Carolina Law Enforcement Division, and the Internal
7 Revenue Service in their Question Document Section.

8 Q Have you worked over 20 years in handwriting and
9 document analysis?

10 A Yes, I have.

11 Q And have you testified numerous times in both
12 federal and state court?

13 A Yes, I have.

14 MR. THORNTON: All right. Your Honor, at this time,
15 -- again, I appreciate Mr. Johnson stipulating -- I'd ask
16 that she be recognized by the Court as an expert in
17 handwriting and handwriting analysis.

18 THE COURT: I find that she's qualified as an expert
19 in that field.

20 BY MR. THORNTON:

21 Q Ms. Lauterbach -- or Agent Lauterbach, did you
22 examine some paperwork in this case, the case of the
23 *State versus Kelvin Jackson*?

24 A I examined copies of a file in this case. Yes, I
25 did.

1 Q All right. And I realize what I am going to be
2 handing you, obviously, are the originals. Would it be
3 fair to say that you looked at copies of original
4 documents?

5 A That's correct.

6 Q I'm going to hand you what's been marked as State's
7 Exhibit Number 2. It's already in evidence. And I
8 realize that it's not the easiest thing to read, and ask
9 you, did you review a copy of that document? And the
10 document that I'm specifically referring to is a note
11 left in the victim's home, ostensibly, from her.

12 A Yes, I did review this document.

13 Q All right. And on the front page of that -- and if
14 you need to refer back to your copy that I'm sure is
15 cleaner -- is that the -- where that says:

16 *I will be right back; go to school,*
17 *or something to that effect?*

18 A The note states:

19 *I'll be right back. Get ready for*
20 *school. Went with someone. Love you all.*
21 *And then, Gap, G/a/p.*

22 Q Okay. Now, did you examine a accurate photocopy of
23 that note?

24 A The photocopies that I have on file accurately
25 represent what's on this note.

1 Q And I'm going to ask you -- this has been entered as
2 State's Exhibit 36 -- and ask you basically the same
3 question. If you need to take a minute to look through
4 some of these documents, which are the writings pulled
5 from the defendant's cell, under his mattress. Did you
6 also look at photocopies of those documents for analysis?

7 A Yes, sir, I did.

8 Q All right. Outstanding. And I'm going to hand you
9 what's been marked as State's Exhibit 37. And I'll let
10 you put those back together. So far, we've done a
11 relatively good job of keeping everything together, so
12 I'll try not to mess that up now.

13 I will hand you what's been marked as State's 37.
14 Are those some additional writings? And I realize those
15 are the originals. Did you also look at accurate
16 photocopies of those documents for your analysis?

17 A With the exception of a brown envelope, which
18 contains writing on it, I have seen all of the remaining
19 documents in here. I've seen copies of them.

20 Q All right. And are those, with the exception of the
21 brown envelope, are those the documents that you used in
22 your analysis?

23 A Copies of those documents, yes.

24 Q And were the copies, based on your review of the
25 originals, are the copies accurate photocopies?

1 A Yes, they are.

2 Q Now, just a couple of really brief questions for
3 you. When you look at handwriting analysis, or when
4 you're examining to try to tell if two documents were
5 written by the same person, what types of things are you
6 looking for?

7 A Basically, it's a side-by-side comparison to
8 determine if a question and a known document contain the
9 same features; the same writing impulse; the same
10 characteristics; the same letter formation size, height,
11 relationships; how they're formed. Those sorts of
12 things.

13 Q All right. And are there different levels of -- in
14 other words -- you weren't here. We heard DNA testimony
15 that were positive DNA results, and there are some that
16 are much higher numerically than others, and that the
17 analyst explained why that is, and what goes into it.
18 Are there different levels of identification with regard
19 to handwriting analysis?

20 A Yes, sir, there are.

21 Q All right. And in this case, were you able to come
22 to a conclusion as to whether or not Masako Miller is the
23 author of:

24 I'll be right back. Get ready for
25 school. Went with someone.

1 A Yes, sir.

2 Q And what is your opinion?

3 A It was my opinion that Miller did not write the note
4 on State's Exhibit 2, which says, *I'll be right back*.

5 Q Okay. So, as to State's Exhibit 2, it's your expert
6 opinion, Masako Miller did not write this note.

7 A I don't believe that Miller wrote that note.

8 Q And were you able to reach a conclusion as to
9 whether or not Kelvin Jackson, the defendant in this
10 case, wrote that note?

11 A Yes, sir, I did.

12 Q All right. And what is your opinion -- what is --
13 excuse me -- what is your expert opinion?

14 A It's my opinion that it's probable that Kelvin
15 Jackson, the author of known writing submitted to me as
16 Kelvin Jackson, was the author of the hand-printed note
17 on State's Exhibit 2, which begins, *I'll be right back*.

18 Q And could you -- let me -- I don't want to put words
19 in your mouth. Obviously, we've talked about this
20 earlier. Would probable mean strong evidence, in your
21 opinion, that he wrote the note?

22 A Yes, sir.

23 MR. THORNTON: I don't have anything further.

24 Please answer any questions Mr. Johnson has.

25 AGENT JOYCE LAUTERBACH

1 SLED HANDWRITING ANALYST

2 CROSS-EXAMINATION BY MR. JOHNSON:

3 Q And rather than pronouncing your wrong -- your name
4 wrong, we did talk this morning; didn't we?

5 A Yes, we did.

6 Q Thank you, ma'am. And I've just got a couple of
7 questions. In doing handwriting analysis, there are
8 standards. I think they call them ASTMs, or something
9 close to that?

10 A Yes, sir.

11 Q Okay. And you take those standards, and what you do
12 is, in your opinion, you give your opinion, based upon
13 some standards, when you do your interpretation. I guess
14 that's -- is that a proper way to say it?

15 A I think you're referring to the standard language in
16 the field.

17 Q Yes, ma'am.

18 A From the ASTM standard. Yes, sir.

19 Q Okay. And -- and your Honor, may I approach?

20 THE COURT: Yes, sir.

21 MR. JOHNSON: Okay. Well, I can read it. I mean,
22 you probably know them by heart. The standards are,
23 number one, is identification. And if I'm reading
24 anything wrong, you correct me as I do it.

25 *Identification. This is the highest*

1 degree of confidence expressed. Based on
2 the evidence contained in the handwriting,
3 the examiner has no reservation that the
4 known writing actually -- the known writer
5 actually wrote the writing in question.

6 And that would be like an absolute identification of
7 the writing. Is that correct?

8 A That's correct.

9 Q And then, the next level down under that from
10 absolute would be strong probability:

11 The evidence is very persuasive,
12 yet some critical features or quality is
13 missing, so that an identification is not
14 in order. The examiner is virtually
15 certain that the question -- the examiner
16 is virtually certain that the question
17 and known writings were written by the
18 same individual.

19 That would be the next step down. Is that correct?

20 A That's correct.

21 Q All right. Now, the third step down is what you
22 said about Kelvin Jackson -- probable.

23 The evidence contained in the handwriting
24 points rather strongly towards the question
25 and known writings having been written by the

1 same individual. However, it falls short of
2 virtually certain degree of -- with a virtually
3 certain degree of confidence.

4 Is that saying it's probable he wrote it, but you're
5 not certain he wrote it?

6 A That's correct.

7 Q Okay. So, somebody else could have written it.

8 A That's possible.

9 MR. JOHNSON: Thank you, ma'am. Thank you, ma'am. .

10 THE COURT: Anything further?

11 MR. THORNTON: Just one question.

12 AGENT JOYCE LAUTERBACH

13 SLED HANDWRITING ANALYST

14 RE-DIRECT EXAMINATION BY MR. THORNTON:

15 Q Ma'am, on that indications that Mr. Johnson was
16 talking about, there's actually one, two, three, four,
17 five, six, seven, eight, nine, all the way down to
18 elimination, correct?

19 A That's correct.

20 MR. THORNTON: So, of the nine, we're at three.

21 A That's correct.

22 MR. THORNTON: Thank you. No further questions,
23 your Honor. I ask that she be excused, and allowed to go
24 back to Columbia.

25 MR. JOHNSON: Without objection.

1 THE COURT: Thank you. You may be excused.

2 MR. THORNTON: Your Honor, could I have the Court's
3 indulgence for one moment?

4 Your Honor, with that, the State rests.

5 STATE RESTS.

6 BY THE COURT:

7 THE COURT: Thank you. Ladies and gentlemen of the
8 jury, at this time, we'll ask you to go to your jury room
9 for a brief break, and we'll get you back in here in just
10 a few minutes.

11 BAILIFF: Thank you, your Honor.

12 THE COURT: And again, please remember, don't
13 discuss with anyone or talk about it.

14 JURORS LEAVE COURTROOM 10:16 A.M.

15 MOTION FOR DIRECTED VERDICT

16 BY MR. JOHNSON:

17 BAILIFF: Jury is clear, your Honor.

18 THE COURT: Thank you. Mr. Johnson, I'll be happy
19 to hear any motions.

20 MR. JOHNSON: Your Honor, may it please the Court?
21 Your Honor, as the Court know, I think the elements of
22 murder is the unlawful killing of another with malice
23 aforethought, express or implied. The first thing I
24 would argue is that the State did not produce any
25 evidence of that Mr. Jackson was the person that

1 committed the murder.

2 The State put Mr. Jackson in the house by Mr.
3 Jackson's own statement. The noise in the house. No
4 fighting in the house. The only thing the State has from
5 the house is a pillow with some kind of DNA on it, and
6 they say it's on the corner. But with that, you also
7 have another contributor. The State has provided a lot
8 of lay witnesses to say that Mr. Jackson was in some kind
9 of -- Ms. Miller was in some kind of fear of Mr. Jackson.
10 But the State has not produced any evidence, to my
11 knowledge, that Mr. -- in this case, that Mr. Jackson
12 committed a murder on Ms. Miller.

13 Matter of fact, the State hasn't proved anybody
14 committed a murder on Ms. Miller, because the State
15 hasn't proved that Ms. Miller was killed by any murderous
16 act.

17 The pathologist testified that she would not exclude
18 suffocation, but she couldn't testify that it was
19 suffocation. She said when bodies like that, you could
20 be suffocated, and it now show up. I think that's a long
21 ways from saying that somebody did the suffocation.
22 That's on that element. It didn't do any lawful killing.
23 There has been no -- no malice proven. People have
24 testified that maybe she was afraid of him, but she
25 called him to the hospital. She was texting him that

1 day. He text her. They got -- from all the testimony,
2 they got together that night. From his statement that he
3 gave, he told her to tell the kids he love them. He told
4 her to tell the kids -- something to the kids -- he loved
5 them or something, and he left. There is no testimony
6 that there was any malice.

7 There was no testimony that he had any aforethought
8 of where that for some reason where the State provided
9 proof that he premeditated or in any way planned to do
10 any kind of harm. There was no testimony where he
11 planned to do any kind of harm to her on that night.

12 Most of the testimony from the parties was something
13 happened a week or two weeks or months or years earlier.
14 And I just don't think what happened a month or year
15 earlier can be attributed to what happened that night,
16 particularly when we can't identify the perpetrator, when
17 there are two contributors of DNA in the house, if you
18 take the State's evidence, given it in a light most
19 favorable to them.

20 And I certainly hadn't -- don't see where the State
21 showed any express malice. I mean, -- I mean, it may be
22 implied, but I have not seen any express. Of course, the
23 Court could find it might have been implied from some
24 action, but I definitely haven't seen any express malice.

25 And I would move that the -- at this point in time,

1 that this -- that the Court grant us a directed verdict,
2 because the State has not proved every element of the
3 case beyond a reasonable doubt. What we have proved is
4 that she -- she is dead. They haven't proved how she got
5 to Beaufort. They haven't proved whether she -- somebody
6 toted her out of the house or whether she walked out of
7 the house. They haven't proved when she died. They
8 haven't proved how she died. And if the Court remember,
9 the pathologist said her reasoning for saying it was a
10 homicide was the information received from the law
11 enforcement. From the scientific evidence, she said --
12 and I think Mr. Williams asked her, and she said, Look,
13 from the scientific evidence, I would have ruled it
14 undetermined, but when you add the information given by
15 the law enforcement, that's what made it a homicide. And
16 I think you can play that back. That's on the tape.

17 So, your Honor, I just don't think -- we don't know
18 when. We don't know where. The autopsy said I don't
19 know when she was killed; I don't know how she was
20 killed; I don't know where she was killed; all we've got
21 is kind of speculation, innuendo, and conjecture, and
22 we're basing it on he was the last person in the house.
23 Well, being the last person in the house does not present
24 evidence that he murdered her.

25 And the second thing is, he did lie. And if the lie

1 within itself is enough to hold it over, but I don't
2 think the lie itself is dispositive of this, because
3 there's testimony as to he didn't want his other
4 girlfriend, Ms. Roberts, to catch him at the house, so he
5 parked his car down the road and walked up to the house.
6 And there has been no testimony any violence, anything,
7 after he walked up to the house. And evidently, he
8 walked back from the house, because he went to get the
9 gas. And from the video, he turned to go back towards
10 the house, and not towards Beaufort, from the still shot
11 at the Shell station, your Honor.

12 So, I was -- looking at all evidence in light
13 favorable to the State, and they have not proved every
14 element beyond a reasonable doubt in this case. And if
15 the Defense was issuing that as we go, or --
16 circumstantial evidence said there's some evidence. We
17 just don't see the evidence of every element.

18 THE COURT: Thank you, Mr. Johnson. Mr. Thornton?

19 RESPONSE ON BEHALF OF THE STATE
20 TO MOTION FOR DIRECTED VERDICT,
21 BY MR. THORNTON:

22 MR. THORNTON: Your Honor, first of all, the
23 standard is not beyond a reasonable doubt at the directed
24 verdict stage. It's any evidence taken in the light most
25 favorable to the State as to each element. And Mr.

1 Johnson is correct. It is the unlawful killing of
2 another with malice aforethought.

3 Judge, I can put him in the house during a -- you
4 know, Mr. Johnson keeps saying, well, they don't know
5 when she was killed. Well, I know she was okay when she
6 talks to her mom at 12:30. And I know her phone is
7 found. And she's not in the house when J.S. gets
8 there, it's between 5:30 and 6:00. So, there's five-hour
9 window, when I know she goes missing.

10 His client, in one of the many stories he tells, and
11 there was testimony on this, puts himself in that window.
12 So, he's the last person I have absolute evidence of with
13 a grudge against her. And you know, again, they're on
14 again/off again. There's clearly testimony that at times
15 she's afraid of him. At times, he's been physically
16 abusive to her and to the kids.

17 There's clearly motive. The day before this
18 happened, she cuts him off their checking account. She's
19 cut him off of the insurance account, according to his
20 own statement. I got a photograph in evidence right now
21 where there's a DSS lien, because he's a deadbeat dad, in
22 addition to all of his other wonderful qualities. I have
23 all of that evidence in there.

24 I've clearly got motive. I've got a lot more motive
25 than I normally have, which again, is not an element, but

1 it goes to some of the other elements.

2 As to malice, I don't know what could be more
3 malicious than what likely is an asphyxiation or
4 strangulation death and dumping her body into the river.
5 I think you can certainly -- and the jury could certainly
6 infer malice from both the act of strangulation itself or
7 asphyxiation, of itself, as well as the disposal of the
8 body.

9 Additionally, your Honor, I've got his DNA on the
10 edges of a pillow. You know, there isn't -- there's a
11 minor contributor that wasn't suitable for
12 identification. You know, they couldn't do it. That's
13 what she testified to. There wasn't enough of it to
14 test. His DNA, there was plenty of it to test. And
15 here's what's important. His DNA's on the edge of the
16 pillow. Her blood DNA is in the middle. It's not his
17 blood on the outside edges; it's touch DNA. So, his
18 touch DNA is on the outside of the pillow. The victim's
19 blood is in the middle of the pillow.

20 He probably -- according to the testimony, there are
21 strong -- and I realize it's semantics -- but there's
22 strong evidence that he wrote the note, ostensibly left
23 by her, saying I will go off somewhere or I've gone off
24 with someone. She didn't write the note. So, for Mr.
25 Johnson to get up and say, well, they haven't proved she

1 was killed is ludicrous.

2 The pathologist said she did not die of natural
3 causes. She didn't die of any kind of an overdose or
4 poisoning.

5 And the note left at the scene, supposedly from her,
6 is written by somebody else, and her body's found four
7 days later floating next to the river. That, in and of
8 itself, proves that this is a homicide, regardless of
9 what the pathologist said.

10 I can put him in the house at the time she vanishes.
11 I've got his DNA on what is likely the murder weapon. I
12 have him, with strong evidence, that he wrote a note,
13 ostensibly from her. I've got the numerous lies he's
14 told over and over again.

15 I've got him acting very strangely afterwards, your
16 Honor. You know, one thing, is why I went back up and
17 questioned her about it, there's no human DNA at all
18 found at all in the trunk.

19 Where is he right after this happened in his great
20 concern of the mother of his children, that he just
21 visited the night before, is missing and hasn't been seen
22 all day and nobody knows where she is? Well, he runs by
23 the car wash. You know, I wonder why that is? I wonder
24 why he'd feel the need to go wash his car? Maybe to get
25 some of that DNA evidence out of it.

1 There is more than enough evidence, your Honor, for
2 this jury to find that he is guilty. And Mr. Johnson
3 keeps talking about, well, the only evidence is
4 circumstantial evidence. I've seen your Honor's charge,
5 and as your Honor well knows, there is no weight
6 difference given between circumstantial evidence and
7 direct evidence. Evidence is evidence. There's more
8 than enough for the jury to believe that Masako Miller
9 was murdered, and that Kelvin Jackson did it.

10 That's the State's position. Thank you, your Honor.

11 RULING ON MOTION FOR DIRECTED

12 VERDICT, BY THE COURT:

13 THE COURT: Thank you, gentlemen. Gentlemen, as you
14 know, my position is to have to look at it in light most
15 favorable to the non-moving party. And at this stage,
16 the Court concerned with existence of evidence, and not
17 it's weight. And although, certainly, it's
18 circumstantial evidence, I find that there is substantial
19 evidence which would reasonably tend to prove the guilt
20 of the defendant. So, I respectfully deny your motion,
21 Mr. Johnson.

22 MR. JOHNSON: Thank you, your Honor.

23 DEFENDANT'S FIFTH AMENDMENT RIGHTS,

24 BY THE COURT:

25 THE COURT: Mr. Johnson, have you discussed with

1 your client whether or not he wishes to testify?

2 MR. JOHNSON: Yes, sir. Would the Court questioned
3 him as to that matter, ma'am.

4 THE COURT: Yes, sir. Mr. Jackson, if you would,
5 please stand and raise your right hand. Do you swear or
6 affirm the testimony you're about to give be the truth,
7 the whole truth, and nothing but the truth, so help you
8 God?

9 COURT REPORTER: I'm sorry. Did he say yes?

10 THE COURT: You must answer audibly, instead of
11 shaking your head. So, either yes or no.

12 DEFENDANT JACKSON: What was the question?

13 THE COURT: Do you swear or affirm that the
14 testimony you're about to give is the truth, the whole
15 truth, and nothing but the truth, so help you God?

16 DEFENDANT JACKSON: Yes, ma'am.

17 THE COURT: All right, sir. Thank you. Mr.
18 Jackson, at this time, I'm going to explain to you
19 certain rights. If you do not understand anything I say,
20 please let me know. If you want me to explain anything
21 more in detail, also, please let me know. Do you
22 understand so far?

23 DEFENDANT JACKSON: Yes, ma'am.

24 THE COURT: We have now reached the stage of the
25 trial where you may present your defense. You have the

1 right to claim protections given to you by the *Fifth*
2 *Amendment* of the *Constitution of the United States*.
3 This amendment states, in part, that no person shall be
4 compelled in any criminal case to be a witness against
5 himself. This means that you cannot be required to
6 testify in this case. You have the right to testify on
7 your own behalf. However, no one can make you testify.

8 This is a personal right, and no one can waive this
9 right, except for you.

10 If you decide to testify, you will be subject to the
11 same rules that govern other witnesses, and you may be
12 examined and cross-examined on any relevant issue in this
13 case.

14 In addition, if you have any convictions involving
15 dishonesty or false statement or crimes punishable by
16 imprisonment for more than one year, and this Court
17 determines that the probative value of admitting this
18 evidence outweighs it's prejudicial effect to you, the
19 Solicitor will be able to introduce your record, and
20 attack your credibility.

21 If you decide to testify, this decision on your part
22 must be freely, voluntarily, and intelligently made, with
23 knowledge of the protections given to you by the *Fifth*
24 *Amendment* and the consequences of your decision to
25 testify.

1 If you decide not to testify, I will instruct the
2 jurors that they cannot give that fact that you did not
3 testify any consideration whatsoever, and that there is
4 to be absolutely no prejudice to you because you did not
5 testify.

6 It is left entirely up to you whether or not you
7 want to testify. You may talk to your attorney, your
8 family, your friends, or anyone else, but the final
9 decision is entirely yours.

10 Do you understand what I've explained to you?

11 DEFENDANT JACKSON: Yes, ma'am.

12 THE COURT: Do you have any questions about what
13 I've explained to you?

14 DEFENDANT JACKSON: No, ma'am.

15 THE COURT: And you've discussed this decision with
16 your lawyer?

17 DEFENDANT JACKSON: Yes, ma'am.

18 THE COURT: Do you wish to talk to your lawyer
19 anymore at this time?

20 DEFENDANT JACKSON: No, ma'am.

21 THE COURT: No, sir. Do you wish to testify in your
22 case, or do you wish to not testify?

23 DEFENDANT JACKSON: Not testify.

24 THE COURT: All right, sir. Thank you. And Mr.
25 Johnson, you've gone over this with the client, Mr.

1 Jackson?

2 MR. JOHNSON: Yes, ma'am.

3 THE COURT: And your understanding is that he
4 understands his right and his protections.

5 MR. JOHNSON: Yes, your Honor.

6 THE COURT: And you concur with his decision not to
7 testify.

8 MR. JOHNSON: Yes, ma'am.

9 THE COURT: Thank you, gentlemen. Anything else at
10 this time?

11 MR. THORNTON: Your Honor -- and if Mr. Johnson
12 doesn't want to say this, that's fine. Just for my
13 planning purposes for the next few minutes, I just want
14 to know if he's going to put up any evidence, or is he
15 going to rest when they come out? I was just curious
16 about that.

17 MR. JOHNSON: I'm happy to tell him, and we've
18 talked. Yes, I'm going -- yes, I'm going to rest.

19 MR. THORNTON: Okay.

20 THE COURT: Okay. So, Mr. Johnson, what we can do
21 is, for scheduling purposes, however you all would like
22 to do it. We can go ahead and bring the jury out now,
23 and you rest, and then have some time before your closing
24 arguments.

25 MR. THORNTON: I would greatly appreciate that,

1 Judge. I don't need a lot of time, maybe a 15-minute
2 break. Allow me to go to the bathroom, kind of collect
3 my thoughts. As long as that's okay with Mr. Johnson. I
4 think we probably should go ahead and bring them out,
5 have him rest on the record, then excuse them while we do
6 our matters on the record. And then, I can kind of get
7 my thoughts together, if that would be okay with the
8 Court.

9 THE COURT: That's fine with me. Is that okay with
10 you, Mr. Johnson?

11 MR. JOHNSON: Your Honor, yeah, that's fine. That's
12 fine with me. And I just want to, just for the record, I
13 think it's clear to the Court that the Defense didn't put
14 up any kind of evidence at all in this case.

15 THE COURT: Yes, sir.

16 MR. JOHNSON: All right.

17 DISCUSSION REGARDING JURY CHARGES:

18 MR. THORNTON: Oh, your Honor. Before we do that,
19 we probably should talk about charges at some point.

20 THE COURT: Yes, we can do that.

21 MR. THORNTON: And Mr. -- excuse me -- Ms. Swanson
22 just reminded me of that, because I had completely
23 forgotten it.

24 THE COURT: And gentlemen, we have -- I gave you
25 some potential jury instructions. I've also added the

1 mere presence charge, which we'll give you a copy.

2 MR. THORNTON: Your Honor, with the Court's
3 permission, I'm going to step out. Hunter is going to
4 handle this for me, if that would be okay with you.

5 THE COURT: Sure. Absolutely.

6 MS. DEYSACH: And your Honor, I have reviewed the
7 charges that you provided us with, and we're in agreement
8 with all of those charges. However, we would request
9 that voluntary manslaughter as a lesser included be
10 charged. It is the State's position that there is
11 evidence from which the jury could infer that he
12 committed the lesser offense; that, you know, somehow,
13 when he was with Masako in that five-hour window, that
14 he, in the heat of passion, decided to kill her, you
15 know, during some argument or something.

16 There has been evidence that he was in the
17 neighborhood, on foot, when her new boyfriend was
18 visiting. So, I do believe it would be appropriate to
19 charge. And because it is a lesser included, I believe
20 that the Court would have to charge it, if there is any
21 evidence.

22 I do have a case on that. It's *State v Heyward*,
23 that I can hand to Mr. Johnson and the Court. And for
24 record purposes, that is a Court of Appeals case, 350
25 S.C. 153, and it outlines the standard.

1 We would just ask for the standard voluntary
2 manslaughter charge. Nothing unusual.

3 Also, we would object to a mere presence charge.
4 Mere presence is typically used in crimes where there is
5 an accomplice or a co-defendant. That is absolutely not
6 the situation here. There has been no testimony that he
7 was merely present during the actual homicide. There has
8 been no testimony that he was present at the homicide.
9 All we can do is point to the five-hour window. Now,
10 that is a circumstantial case, but there would have to be
11 something in the record to garner a mere presence charge.

12 Again, like I said, this is a charge that would
13 apply to an aider or abettor, where the participant must
14 have knowledge of the principles of criminal conduct.
15 Mere presence at the scene is not sufficient to establish
16 guilt as an aider or abettor. It just simply doesn't
17 apply here, Judge.

18 And I assume there's not going to be a request for a
19 third-party guilt charge, but we would object to that, as
20 well.

21 THE COURT: Yes, sir.

22 MR. WILLIAMS: Your Honor..

23 THE COURT: Counsel.

24 MR. WILLIAMS: On the issue of the mere presence
25 charge, we do think that mere presence is applicable in

1 this case. The State's entire case rests on the fact
2 that Mr. Jackson was present in the house. His presence
3 in the house does not make the defendant guilty of
4 committing the crime of which he charged -- of which he's
5 charged. The burden of proof of that is on the State to
6 prove that each and every element of the crime of murder.
7 And we do request that charge of mere presence be
8 included in the jury charge, your Honor.

9 THE COURT: What's your position on the voluntary
10 manslaughter charge?

11 MR. JOHNSON: Your Honor, could I have a -- I have
12 not explained that to him. I didn't know that going to
13 -- and I think he needs to understand what's going on,
14 and I have not explained that to him.

15 THE COURT: Sure.

16 MR. JOHNSON: I would ask the Court to give me some
17 time, but there's ramification both ways for him on this.

18 THE COURT: Absolutely. Why don't we do this. Why
19 don't we bring the jury in, and I'll allow you to rest in
20 front of the jury. And then, we'll take a break, allow
21 you to gather your thoughts. And then, you can let me
22 know what your position is.

23 MR. WILLIAMS: One more, your Honor, before we --

24 THE COURT: Yes, sir.

25 MR. WILLIAMS: May it please the Court, your Honor.

1 Can I briefly address the third-party concern, your
2 Honor?

3 THE COURT: Yes.

4 MR. WILLIAMS: Your Honor, in this particular case,
5 we would ask for a charge of third-party guilt, given the
6 evidence presented in this case. There's circumstantial
7 -- the State's entire case is a circumstantial case. All
8 the evidence against the defendant is circumstantial,
9 which calls for an inference. And as the Court is well
10 aware, that the position of the State of South Carolina,
11 only the third party-guilt rests in the *State v Gregory*.
12 And the evidence in this case has been presented by the
13 pathologist that there is DNA evidence on what the State
14 has deemed the murder weapon of a third person, which was
15 not tested, not identified by any person. Therefore, we
16 say that the entire -- that any assertion -- any
17 assertion would call for inference by the party. And in
18 this case, the evidence presented on the stand would
19 arise to the level higher than just the inference, and
20 that a charge of third-party guilt should be granted by
21 the Court.

22 THE COURT: All right. So, here's what we'll do.
23 We'll wait for you to discuss voluntary manslaughter with
24 your client. However, I don't think the third-party
25 guilt charge is appropriate in this case. Basically,

1 there must be proof and evidence of connection with
2 circumstances that clearly point evidence of somebody
3 else's guilt, other than the defendant.

4 The probative value, basically, of any evidence that
5 was submitted, there's nothing -- there is really no
6 testimony in the record showing clear evidence that would
7 exculpate the defendant. So, I'm going to deny your
8 motion to charge third-party guilt. None of the evidence
9 was inconsistent with the defendant's guilt. And
10 certainly, I think you can argue to the jury as much as
11 you want what wasn't done or other people that weren't
12 interviewed or the DNA, but I don't think that rises to
13 the level of being able to charge third-party guilt.

14 I think the mere presence charge is appropriate, and
15 I will charge the mere presence.

16 MR. WILLIAMS: Thank you, your Honor.

17 MR. JOHNSON: Your Honor, and just to do this now,
18 so the Court won't have to deal with it. If the Court
19 will consider -- as the Court knows, when I got up and
20 said I renew his objection, I should have simultaneously,
21 at that time, put the whole thing on the record. But I
22 think we kind of were under the agreement not to keep
23 jumping up in front of the jury. I made the objection at
24 the proper time. So, I'm asking the Court now just to
25 let me put what my argument on the record for the

1 objections I made at the proper time, because we'd have
2 had the jury bouncing up and down every time I made an
3 objection, and I thought we were trying to avoid doing
4 that.

5 THE COURT: Right. I'll be happy to let you put
6 whatever you need to on the record.

7 MR. JOHNSON: Your Honor, -- your Honor, and I can
8 make it -- I'm not even going to explain it. I'm just
9 going to read it from the brief that I handed to the
10 Court. In the pretrial argument, on the issue of the
11 autopsy when I object, and I said, *renew my motion*, just
12 before the pathologist testified, that was my number one
13 in my pretrial motion. I stand by that -- that was
14 number two in my -- number one in my pretrial motion. I
15 stand by it. I still stand by number one. I renew my
16 motion, and this was going to the pathologist to manner
17 of death. I stand by that same information that I put in
18 the pretrial brief that, that goes into the record now.

19 I made the motion about the credit card shouldn't
20 been brought up, and the Court denied that. And I now --
21 I renewed that motion. So, all I'm doing is standing up
22 and say my same argument. I want to place that same
23 argument on the record.

24 And the five, six, seven -- I argued about the prior
25 bad acts, and the Court denied it. And when they -- I

1 just said, *I renew my motion*, when they were going to the
2 stand, and now I've put those on all of the prior bad
3 acts.

4 And the custodial investigation, the Court listened
5 to the tapes herself. I renewed that motion, I think
6 when Agent Johnson got on the stand. And I make the same
7 identical motion. I don't want to do any further
8 arguments with the Court.

9 Your Honor, and that's it. When I stood and say, *I*
10 *renew my motions*, these are the arguments on each motion
11 that I renewed to make sure it's properly and correctly
12 done now. So, they could be --

13 THE COURT: Thank you, Mr. Johnson.

14 MR. JOHNSON: Thank you, ma'am.

15 THE COURT: And for the reasons as stated before,
16 I'll maintain my position in overruling your objections.
17 However, Mr. Johnson, I know that you handed me copies of
18 your motions. I probably scribbled and --

19 MR. JOHNSON: Okay. Get another one.

20 THE COURT: So, you may want to actually file them,
21 so they are part of the Court record.

22 MR. JOHNSON: Yes, ma'am. I'll do that.

23 THE COURT: That way, they can be included in the
24 court record.

25 MR. JOHNSON: Your Honor, I'm not sure if these are

1 the originals. May I be able -- I don't -- I thought I
2 might have given you the original, and maybe I didn't.

3 THE COURT: Did you give me the originals?

4 MR. JOHNSON: But if not, if the Court will allow me
5 to file a signed copy -- a second copy.

6 THE COURT: Does the State have any objection to the
7 filing of a copy?

8 MR. THORNTON: No, ma'am. Your Honor, I think the
9 record should be as complete as possible.

10 MR. JOHNSON: Your Honor, actually, this one wasn't
11 signed, so I can sign it. Your Honor, for benefit of the
12 pretrial motions, that's just the -- my motions for
13 pretrial, the arguments for -- the written arguments.

14 COURT REPORTER: The Court's next exhibit is 12.

15 THE COURT: Yes, ma'am. Thank you.

16 DEFENDANT'S BRIEF ON MOTION TO

17 SUPPRESS MARKED COURT'S EXHIBIT

18 NUMBER 12.

19 THE COURT: Anything further from either party at
20 this time?

21 MR. JOHNSON: No, ma'am, your Honor.

22 THE COURT: All right.

23 MR. THORNTON: Not from the State, your Honor.

24 THE COURT: Let's have our jury.

25 BAILIFF: Yes, ma'am.

1 JURORS ENTER COURTROOM 10:44 A.M.

2 BAILIFF: All right, your Honor.

3 THE COURT: Thank you, ladies and gentlemen of the
4 jury. At this point, as you heard when you were last in
5 here, the State has rested it's case.

6 Mr. Johnson.

7 MR. JOHNSON: Your Honor, the Defense rests at this
8 time.

9 DEFENSE RESTS.

10 BY THE COURT:

11 THE COURT: All right. Ladies and gentlemen of the
12 jury, the Defense has rested it's case at this time. So,
13 what we will do is, before we give you further
14 instructions on how to proceed, we will take a brief
15 moment. And when you come back, what we will do is, I'll
16 charge you on the law. And then, of course, the parties
17 will have an opportunity to give closing arguments to
18 you.

19 But at this point, before we begin any of that,
20 we'll take a quick recess before we come back in here.
21 And again, please do not discuss this case or begin your
22 deliberations in any way, until we have concluded all the
23 matters before the Court. Thank you.

24 BAILIFF: Thank you, your Honor.

25 JURORS LEAVE COURTROOM 10:45 A.M.

1 BAILIFF: The jury is clear, your Honor.

2 THE COURT: Any exceptions or additions to the
3 State?

4 MR. THORNTON: Nothing from the State, your Honor.

5 MR. JOHNSON: None from the Defense, your Honor.

6 THE COURT: Thank you, gentlemen. Just let me know
7 when you're ready.

8 MR. THORNTON: Thank you, your Honor.

9 MS. DEYSACH: Thank you.

10 THE COURT: And lady. I'm sorry.

11 OFF THE RECORD 10:46 A.M.

12 BACK ON THE RECORD 11:13 A.M.

13 ARGUMENT AND RULING ON VOLUNTARY

14 MANSLAUGHTER CHARGE:

15 BAILIFF: All rise.

16 THE COURT: Thank you. You may have a seat.

17 Mr. Johnson, have you had an opportunity to discuss
18 voluntary manslaughter charge with your client?

19 MR. JOHNSON: Your Honor, we discussed that in
20 detail. And it's our position that, in this particular
21 case, there was no evidence at all as to voluntary
22 manslaughter. I mean, I think it's either murder or
23 nothing.

24 MS. DEYSACH: Your Honor.

25 THE COURT: Ms. Swanson?

1 MS. DEYSACH: Pursuant to the case that I handed up
2 earlier, *State v Heyward*, to warrant eliminating a
3 lesser-included offense, it must be very clear that there
4 is no evidence whatsoever from which the jury could infer
5 that a voluntary manslaughter took place, and I just
6 don't believe that that's the case here. I think that
7 there is certainly evidence from which they can infer
8 that Mr. Jackson, somehow, in the heat of passion, when
9 he had seen the boyfriend's car, or seen the conversation
10 with the victim and the boyfriend on the porch, talking
11 for about an hour; and then saw, perhaps, what he thought
12 might have been the boyfriend's car, the gold Jeep that
13 Mr. Mervin Coker drove, instead of his work truck, that
14 those things could have set him off and set this thing
15 into motion.

16 I think that there certainly is an abundance of
17 evidence in the record that when he was losing control,
18 he resorted to violence. And there was a lot of
19 testimony about his relationship with Masako and how
20 violent it was; and when things weren't going well, he
21 resorted to violence.

22 And so, it is the State's position that voluntary is
23 certainly appropriate, and that there absolutely evidence
24 in the record from which a jury could infer that a
25 voluntary manslaughter was committed, and that it

1 actually must be charged under the case law as a lesser-
2 included offense.

3 I'm not sure if Mr. Johnson had any case law to the
4 contrary, but I have not seen any.

5 MR. JOHNSON: Your Honor, I didn't hand up any case
6 law. I just went through the evidence of what they said
7 happened at the house that night. Of course, there was
8 evidence of prior incidents back down the road, and of
9 course, there were evidence of -- in the record about
10 alleged abuse down the road. But on the night in
11 question, in the situation in question, there is no
12 evidence that there was any heat of passion.

13 You can assume it or speculate that it was, but
14 there was no evidence given that you could draw an
15 inference from, because nobody knew what happened in the
16 house. The fact that the Court is -- I mean, the fact
17 that the State is alleging because of the pillow that she
18 was strangled, even if they did that, who's to say it was
19 heat of passion? And then, it's an inference to believe
20 that it's a strangulation, because there's no -- the
21 pathologist said that wouldn't be excluded. The
22 pathologist did not say she was strangled.

23 We're drawing inference, from inference, from
24 inference. We just think there's none in the record that
25 support this. And of course. your Honor, any way the

1 Court rules, you know, we got to deal with that, but
2 that's just our position.

3 THE COURT: Well, Mr. Johnson, I agree with you. I
4 don't think there's been any evidence that would -- that
5 supports or has been presented there's been any kind of
6 sufficient legal provocation or any sudden heat of
7 passion. The evidence was -- the defense is: it wasn't
8 me; I didn't do it.

9 The sudden heat of passion, there was time to cool
10 off and reflect, apparently, from the time that the
11 defendant was there and the time he had seen the other
12 gentleman that was in the house, to go back. So, I don't
13 think it rises to the level of sudden heat of passion. I
14 don't think there's been sufficient evidence presented to
15 warrant a voluntary manslaughter charge.

16 Is there anything else? I know I gave the jury
17 instruction to both parties prior, as of yesterday, to
18 give you an opportunity to review everything. And I
19 believe everybody's had a chance to do so. So, is there
20 anything else regarding the jury instructions?

21 MR. THORNTON: Nothing from the State, your Honor.

22 MR. JOHNSON: Your Honor, nothing from the State
23 [sic]. Other than your rule on that third party, your
24 charges are fine.

25 THE COURT: Thank you, sir. Now, how long do you

1 each anticipate arguing?

2 MR. THORNTON: Judge, I rarely go over 20 minutes,
3 but you know, this case, there's a lot of bits and
4 pieces. I would say certainly no longer to 30 to 35, and
5 probably shorter than that.

6 THE COURT: Okay. You, as well, Mr. Johnson?

7 MR. JOHNSON: I would like to say 10 or 15, but I'm
8 pretty sure Solicitor Thornton will get up and say a
9 hundred things that I think I'm going to need to cover.
10 So, I, honestly, your Honor, I would like to reserve
11 myself at least 45 minutes.

12 THE COURT: And you're welcome to argue as much as
13 you need to. I just want to, you know, for scheduling
14 purposes. And I don't think we're for ordering lunch in
15 for the jury. So, we can make sure we take care of
16 everything.

17 MR. JOHNSON: About 45 minutes. I'll tell the Court
18 about 45 minutes or less.

19 THE COURT: And we will print out a verdict form.
20 I'll give you an opportunity to look at the verdict form
21 here in a second.

22 If you all would just take a quick look at the
23 verdict form and make sure nobody has any objections.

24 BAILIFF: Judge, can I approach for a second?

25 THE COURT: Sure.

1 DISCUSSION BETWEEN BAILIFF AND THE COURT.

2 THE COURT: Gentlemen, the other thing I thought
3 about, too. I'm not sure what your -- and lady. I'm
4 sorry, Ms. Swanson. I can't see you over there.

5 What I was planning on doing -- I think sometimes
6 it's helpful for the jury to actually have the written
7 instructions with them in the jury room. Do either of
8 you object to that?

9 MR. THORNTON: I do not object, your Honor.

10 THE COURT: How about you, Mr. Johnson?

11 MR. JOHNSON: Your instruction, your jury?

12 THE COURT: Right.

13 MR. JOHNSON: No, ma'am. No, ma'am.

14 THE COURT: I think sometimes that's helpful for the
15 jury to what law they have.

16 MR. JOHNSON: Yes, ma'am. No, ma'am. No, ma'am.

17 THE COURT: So, I'll let them know, too, that we'll
18 submit that. And we'll mark it as a Court's exhibit.

19 MR. JOHNSON: Yes, ma'am.

20 JURY INSTRUCTIONS MARKED COURT'S

21 EXHIBIT NUMBER 13.

22 THE COURT: Nothing further before we bring the jury
23 in?

24 MR. THORNTON: Nothing from the State, Judge.

25 THE COURT: All right.

1 MR. JOHNSON: Judge, I just want you to know,
2 whenever he stops with the screen, I'm just going to walk
3 around behind and stand where I can see it.

4 THE COURT: Sure.

5 MR. JOHNSON: Okay.

6 THE COURT: All right. Let's have our jury.

7 BAILIFF: Yes, your Honor.

8 JURORS ENTER COURTROOM 11:23 A.M.

9 BAILIFF: Your Honor, the jury is entering.

10 COURT'S CHARGE TO JURORS:

11 THE COURT: Ladies and gentlemen of the jury, you
12 have now heard all of the testimony that will be
13 presented to you in this case. And at this time, before
14 I instruct you on the law, the State and the Defense will
15 have an opportunity to present any closing arguments in
16 this case.

17 Solicitor?

18 MR. THORNTON: Thank you, your Honor. May it please
19 the Court, Mr. Johnson.

20 CLOSING ARGUMENT ON BEHALF OF

21 THE STATE, BY MR. THORNTON:

22 MR. THORNTON: Early morning hours of May the 26th,
23 2011, Masako Miller was taken from her home. And when
24 she was taken from her home, she was dead, and she'd been
25 murdered. And four days later, she's found in an oyster

1 rake attached to Broad River as the tide was going out.

2 You know, in any case like this, there are lots of
3 pieces of evidence. I've been doing this a long time,
4 and I will tell you that there are very few times in this
5 business where you have the Matlock moment; you know,
6 that moment where the witness is on the stand, and
7 Matlock or Perry Mason is questioning them, and they just
8 break down on the stand, and admit that they've done
9 everything. That doesn't happen in criminal court, not
10 in the real world.

11 In the real world, it's small pieces of information
12 that the Prosecution, the State, has to put before the
13 jury to give you the entire picture. You shouldn't
14 consider any one piece of evidence in isolation by
15 itself. And we're going to go through the evidence in
16 just a few moments, but it's the total picture that's
17 important.

18 Now, in this case, there were a lot of pieces to
19 this puzzle. Some of them, as we were going through it,
20 maybe didn't even make sense to you. Hopefully, by now,
21 you at least have an understanding of what the State's
22 position is occurred in this case, and why some of these
23 things were put before you on the stand.

24 One of the things we'll just take out of order that
25 springs to mind is Mr. Coker, the HVAC man that got up.

1 And you know, one of the questions that was asked was:
2 Well, did you drive your work truck that day? And some
3 of you may -- on the jury may have wondered, well, why in
4 the world would anybody care whether he drove his work
5 truck today? Well, where was Kelvin Jackson when Mr.
6 Coker was out there at 10:00 or 11:00 at night? He was
7 in the area, walking around. What had he told repeatedly
8 over the phone and in the text message?

9 *Don't let me catch the new boyfriend*
10 *over at the house.*

11 You heard testimony from her new boyfriend, Mr.
12 Wrice. And you know, I say boyfriend. I think they --
13 everybody got up and said she had a new friend. He had
14 been over there and talked to Masako for an hour. And
15 now, there's a vehicle, a strange vehicle, not a work
16 truck, not marked, that's over there. Is that something
17 he would have seen, while he was in the area walking
18 around, and by his own statement -- and we'll get into
19 all the statements he made shortly. He's there, he's in
20 that area walking.

21 His argument is, of course, is because he doesn't
22 want Tara, his other girlfriend, to know that he's over
23 there. But one of the things you as a jury have to
24 determine is credibility. And that's just a fancy way of
25 saying who is telling the truth and who isn't. And it's

1 not just about the truth that you got from the stand, but
2 it's about truth from any of this, including statements
3 from the defendant.

4 Now, what do you know about Kelvin Jackson, the
5 defendant in this case? You know he's a deadbeat daddy.
6 There's a DSS lien we've got photographs of. You know,
7 he's got locked up for forgery. That was testified to on
8 the stand. Is a forger somebody whose story you should
9 believe?

10 How many stories did he tell law enforcement? Did
11 he behave like someone who is innocent would behave?
12 Let's go through some of this stuff right now.

13 I've prepared a brief slide show that may highlight
14 some of the things. Hopefully, all of you will be able
15 to see this. And I have a backup plan, because sometimes
16 technology doesn't work, but it appears it's going to
17 cooperate today.

18 You know, one of the things Mr. Johnson kept talking
19 about was that, you know, that people weren't absolute
20 about this, that, or the other, and the State. And he
21 even mentioned one time, or kind of inferred, that we
22 couldn't even prove that it was a murder. That's a
23 ridiculous statement. If you had to prove everything,
24 dealing with every murderer to the nth degree, how could
25 you prove somebody had been murdered, if you didn't have

1 a body? The State doesn't even have to produce a body to
2 convict someone of murder. All I have to do is prove
3 that Masako Miller was killed, and that the defendant in
4 this case, Kelvin Jackson, did it. It's the
5 unintentional killing of another with malice
6 aforethought. And the Judge is going to explain to you
7 all the legal terminology involved in that when she does
8 her charge on the law. That's what I have to prove.

9 But we do have a body in this case. Now, Kelvin
10 Jackson did his best to make sure we didn't have a body.
11 Don't give him credit for being a good killer. Don't cut
12 him a break because he took the extra step to try to
13 dispose of Masako's body and throw her away like a piece
14 of trash. He doesn't get credit for that. He deserves
15 to pay for what he's done.

16 You know he's a deadbeat dad. You know he's a check
17 forger. Been abusive to Masako in the past. That was
18 testified to. It's uncontroverted. How many people got
19 up on the stand and said she's been scared of him in the
20 past? It's a back-and-forth relationship, and when he
21 feels like it's not going his way, what's his default
22 setting? Violence.

23 You remember S.D. ? Got up and testified he's even
24 shoved her down while she was trying to protect her
25 mother. How credible is this person? How credible is

1 S.D. :? How credible are the actions of Kelvin Jackson?
2 That's what you, as the jury, have to determine.

3 How many different stories did he tell police? You
4 know, Mr. Johnson like to get up and tell you, oh, well,
5 you know, but he lied because his girlfriend this, or he
6 lied because of this, but then he told you the whole
7 truth. And almost all his questions were, but he did
8 this, or he did that, right? Yeah. If you believe him.

9 If Kelvin Jackson wanted to sell you a bridge
10 somewhere, would you buy it from him? If he wanted to
11 sell you a home, would you buy it from him? Is he the
12 kind of person that you would believe?

13 How many stories did he tell police? Here's the
14 first one: I have no idea what you're talking about. I
15 wasn't even in the county.

16 Wait a minute, Kelvin, we got you on video. Which
17 you'll have, and you got the still shots from it. We got
18 you on video tape, at the Shell station, in Hampton
19 County, using a murdered woman's debit card.

20 Then what does he tell them? Oh, well, wait, wait.
21 Yeah. You're right. I did do that, but I hadn't seen
22 her in weeks, and that's the card off our joint account
23 that I have all the time.

24 What did Beth Chafin get up here and testify to?
25 You know, Mr. Johnson wanted to ask the police and

1 everybody else about it. That's why Ms. Chafin was here
2 from Palmetto State Bank. What did she tell you about
3 the debit card? It's from an account that she's always
4 had; that is a single account; and it's the only debit
5 card she had that was active.

6 He had nothing to do with that account. That's
7 another lie.

8 They confront him with more information. Wait a
9 minute, now, Kelvin, we have a witness -- remember Mr.
10 Drake that got up -- we have a witness that saw you
11 walking around her neighborhood that night. Oh, yeah.
12 That's right. I forgot. Well, here's what actually
13 happened. Now, what actually happened was, I went over
14 there and she let me in, and everything was fine, and we
15 messed around, and then I asked her for the debit card,
16 and she gave it to me because she knew I needed gas. And
17 then I went to the gas station, and then I came back, and
18 then I handed her the card back.

19 Ask yourself this. If you're Masako, and if that's
20 true, and you all are getting along, and you've messed
21 around, and he says, you know, I just need some gas;
22 could you give me your debit card? Would you give him a
23 debit card if you knew it didn't have any money in the
24 account? Because remember, when he went, it didn't work.

25 Also significant, he never used a PIN. Didn't have

1 to use a PIN, but he didn't. Why would you give somebody
2 a debit card didn't have any money on it; didn't have any
3 money in the account? If that's, in fact, what happened.
4 The debit card was never found the next day.

5 Now, I'm sure Mr. Johnson will tell you that's
6 because, you know, it was somebody else. And so, because
7 he went back and gave it -- drove the card back, and then
8 he leaves, and takes a 30-minute trip to Walterboro that
9 takes over two hours. Somehow. That's his story.

10 You remember the cash -- and again, I'm sure a lot
11 of you are really wondering why in the world is it
12 significant that some woman had borrowed money from her
13 earlier, and then she had given it back? Do you all
14 remember that? We talked about the wedding and the
15 \$300.00? She knew exact -- she knew to the dollar bill
16 what she had given Masako. Why is that important? May
17 25, in the morning, Tara Roberts got up -- and I know she
18 didn't want to be there; she didn't want to testify. I
19 found it interesting, however, that when Mr. Johnson was
20 getting her to agree with a lot of stuff he was talking
21 about, the last thing he said was -- and she said, well,
22 *I just don't have anything to do with him anymore.* Real
23 interesting that she went over there and was sitting with
24 his family; isn't it?

25 Anyway, when she got up here, what'd she say? He

1 *didn't spend the night with me. Because you remember,*
2 *that was the first lie he told police. Well, I was with*
3 *Tara. I spent the night over there. I didn't even come*
4 *to this county. No, he didn't. She testified he didn't.*
5 *The last time she saw him was May 25th, in the morning,*
6 *which is Wednesday. Everybody remember that? We all*
7 *good with that date? What was the last thing she had to*
8 *do for him? She had to put gas in his car. Why?*
9 *Because he was broke and had no money. Okay? Wednesday,*
10 *the 25th, in the morning, he's got not enough money to*
11 *even put gas in his car to get to work.*

12 You remember Chuck Fallaw? Came and testified. His
13 boss? When does he get paid? Thursday afternoon, which
14 is, obviously, after Masako is missing, after she's been
15 murdered, and after he's gone to Columbia, because it's
16 after 2:00 o'clock. So, ask yourself this: how did he
17 have cash at 2:30 in the morning, on Thursday, to buy
18 smokes and buy gas? How did he have cash to then go to
19 Walterboro and pay cash for a room? And ask yourself
20 this: where's the \$300.00 that Masako had gotten that
21 afternoon, the afternoon before she was killed? There's
22 \$300.00 in cash missing, and it just happens to be just a
23 miracle that Kelvin Jackson just happens to come up with
24 cash at the same time.

25 Now, you're going to have his statements, which

1 we'll get into a little bit more in a minute. Look at
2 the differences between what the writing said, months and
3 months and months, obviously, later, after he's charged
4 with this crime; as opposed to what he told police
5 originally, and how many different times he lies.

6 You know Masako's dead. She was identified by
7 dental records. You know she's found next to the Broad
8 River. You know for a fact, despite Mr. Johnson's best
9 efforts to the contrary, you know she was floating in the
10 river. You can look, ladies and gentlemen, at the
11 picture of her body that was introduced, and common sense
12 would tell you she's been floating in the river. Not
13 only the Coroner, but the pathologist, both said she's
14 been floating in the river, which makes sense, because
15 she's right next to the river.

16 You know, one thing I want to tell you about -- and
17 you all forgive me -- you know, as a prosecutor, when you
18 get up here in front of a jury, even though I've been
19 doing this for awhile, you're always terrified you're
20 going to leave something out that's important. So, if I
21 -- as my daddy would have said before he passed -- plow
22 the same ground twice, you just have to forgive me. I
23 just want to make sure nothing gets left out, because
24 this is the last time I'm going to get to speak to you.
25 When I sit down, Mr. Johnson's going to get up and talk

1 to you, and then the judge is going to charge you, and
2 that'll be it. So, this is my one and only opportunity
3 to speak to you.

4 Circumstantial evidence, you've heard that phrase
5 used a lot. Circumstantial evidence and direct evidence.
6 Now, the judge is going to charge you. That's actually
7 in her charge. She'll explain to you the difference.
8 Here's what I want you to remember. Circumstantial
9 evidence is just as good as any other evidence. It
10 actually says that in the law, in South Carolina, in the
11 charge. In other words, it's not lesser evidence. It's
12 not given a different weight. It's the same as direct
13 evidence, as far as the weight goes. The difference is
14 what type of evidence it is.

15 My father used to tell a real interesting story, and
16 I kind of was -- when I was a young lawyer, you know, I
17 was talking to him about things I was doing, and he gave
18 me this example many years ago, and even though he's
19 passed now, I still use it from time to time. And if you
20 walk out and you watch somebody take a turtle and pick
21 him up and set him on a five-foot fencepost, you have
22 direct evidence that a turtle has been put up on a
23 fencepost, because you saw it; you witnessed it. It's
24 something you saw. If you walk out into the middle of a
25 flat field with a five-foot fencepost sitting out there,

1 and you see a turtle on top of it, as daddy would say,
2 somebody helped him. Okay? That's something that is
3 circumstantial evidence. You have circumstances that you
4 can then deduct that something happened. That's the
5 difference between circumstantial and direct evidence.
6 It doesn't mean I have less of a burden. I have the same
7 burden. What I want you to remember is, it doesn't mean
8 I have more of a burden, either.

9 You have a woman who is dead, who's found floating
10 next -- or found next to, after being floating in the
11 river, the Broad River, two counties over from her home.
12 You have everybody that got on the stand just about that
13 knew her testify she would not leave her children in the
14 middle of the night. This is a mama. She's not going to
15 leave her kids unattended in the middle of the night.

16 What else do you have that's important? And I'll
17 talk about this two or three times. You have a note that
18 says:

19 *I'll be right back. You all get*
20 *ready for school. Went with someone.*

21 Does that even make sense? Does that sound like a
22 note a mother would leave, number one. Number two, she
23 didn't write it. Is there really any question in your
24 minds that she was not murdered?

25 What did the pathologist say? Could she say

1 absolutely this is how she died? No. But she could say
2 absolutely how she didn't die. She didn't die of natural
3 causes; she didn't die of an overdose or any kind of
4 toxicology, meaning poison. So, it's not natural causes;
5 it's not a drug overdose or any kind of poison. There's
6 a note left at the scene written by someone else that
7 says:

8 *I'll be right back. I've gone off*
9 *with someone,*

10 and her kids are left unattended in the middle of
11 the night. Is that circumstantial evidence that she is
12 murdered? The State submits to you it is absolutely
13 rock-solid, circumstantial evidence that she is murdered.

14 Motive, you know, a lot of this case, ladies and
15 gentlemen, circumstantial cases a lot of times are, you
16 know, I call it old school, for lack of a better word.
17 Obviously, I'm using a PowerPoint. We've had some DNA.
18 We've had some other things, which I'll talk about, but a
19 lot of this goes back to what you would think in the old
20 whodunits. Okay. Motive, means, and opportunity. Who
21 has it? She's got another boyfriend. Kelvin had
22 threatened her a couple of times. Three different people
23 overheard it.

24 *Don't have him over there at the*
25 *house with the kids.*

1 Remember another phrase that you'll hear, that you
2 heard two or three times on the stand -- disrespect.

3 *You're disrespecting me by talking to*
4 *him. You're disrespecting me by doing this.*

5 What about the disrespect for manhandling a woman?
6 Oh, by the way, while we're talking about that, I want to
7 remember five-foot, two-inch, 135-pound Masako. Six-
8 foot, two-inch, 245-pound Kelvin Jackson. How about that
9 disrespect? How about the disrespect from being a
10 deadbeat daddy? How about that disrespect? How about
11 the disrespect for somebody that won't even pay for his
12 own kids, but he still wants to come over and interfere
13 with everything? How about that disrespect? How about
14 the disrespect of taking a woman from her children and
15 dumping her in the river? That's not the disrespect that
16 Mr. Jackson's concerned about. He's just worried about
17 the disrespect that somebody's showing him.

18 Kevin's -- or excuse me -- Kelvin's on foot in the
19 neighborhood. Mr. Coker's there. He's not in his work
20 truck. DSS lien, which you have a photograph of, filed
21 by Masako. He'd been removed off the car insurance.

22 The day before Masako is murdered, she pulled him
23 off of the joint account, closed it, and opened her own
24 account, because that's the only way -- I don't know how
25 many of you have done that; that's why I asked Ms. Chafin

1 that question -- that's the only way you can get somebody
2 off of a joint account, unless they agree to it. You
3 close it, and open a new account.

4 Coincidence that that's the day before she's
5 murdered? And even kicked out of the house. He's losing
6 control.

7 You know, I don't know, ladies and gentlemen, how
8 many coincidences you can have in one case. Here are
9 some things that we know. We know Masako talks to her
10 mother at 12:30 a.m., on the 26th. J.S. comes over at
11 5:30. And the phone is found at 6:30, some ways away,
12 off of the Interstate, Highway 21. You remember Mr.
13 Stephens got up and testified.

14 Now, I believe Mr. Johnson got up and asked him:

15 *Well, did they take your fingerprints?*

16 Now, you all saw Mr. Stephens. You decide if you
17 think he was over at Masako's house that night, that
18 early-morning hours, killing her, and his wife just got
19 up and lied, or does he look like somebody who pretty
20 much does what his wife tells him to? Because I believe
21 he was pretty clear about that, but I'll let you all make
22 that call.

23 So, what are the circums -- what does the
24 circumstantial evidence tell you? You know she's alive
25 at 12:30. How? Because she's talking to her mom. That

1 was testified to. It's uncontroverted. You know J.S.
2 comes in somewhere between 5:30 and 6:00. And the phone
3 is found at 6:30. So, you know some time between 12:30
4 and 5:30, Masako is gone. Who's with her? Who do we
5 absolutely, without a shred of doubt, know is with her?
6 Kelvin Jackson's with her.

7 Now, just because he's present at the scene, does
8 that make him guilty of anything? Absolutely not. If
9 you look at all this evidence that I'm going to talk to
10 you about this afternoon -- or this morning, excuse me --
11 and all you think is, well, he was there, but I'm sure he
12 did nothing else, then you need to find him not guilty,
13 because just being there is not enough.

14 But he is there. And that's not just that he's
15 there. You're talking about a -- you know, Mr. Johnson
16 wants to talk about we don't -- you don't know this for
17 sure; you don't know that for sure. I do know a lot of
18 things for sure. And as a jury, you should know a lot of
19 things for sure, too. You know she's gone between 12:30
20 and 5:30. That's a five-hour window. You know that
21 during that time she's killed, because you know she's not
22 there at 5:30; she was there at 12:30. And she didn't
23 write the note that was left.

24 What evidence do we got? By his own statement,
25 Kelvin Jackson is there during the vast majority of this

1 window. Even if you believe that he went back, the
2 State's position is, he didn't go back. Mr. Johnson
3 talked a lot about this, well, he turned left when he
4 should have turned right. There's street that runs both
5 ways right behind the gas station. And I asked David
6 Williams how much difference that would make. He said
7 less than a minute. You're not talking about --
8 literally, you can go around and go either way.

9 He wrote the note. Now, could the expert witness --
10 I mean, look at this thing. It's written in crayon.
11 Could the expert say, I am absolutely sure that Kelvin
12 Jackson wrote that note. No, she can't. She didn't try
13 to shade it one way or the other. What she did say was,
14 there is strong evidence he wrote it. You remember what
15 I told you earlier, it's almost never that -- that
16 Matlock moment. That Perry Mason moment. If all I had
17 for you was this; if I just brought this case and said
18 Kelvin Jackson, there is s strong evidence that he wrote
19 this note. And you know, the killer had to be the one
20 that wrote that note. You know that. Because somebody
21 other than Masako wrote this note trying to explain it to
22 her kids why she wasn't there and they should just go to
23 school. You know the killer wrote this note. That,
24 there could be no controversy on. The question is, did
25 Kelvin write it or not? If all I had for you was this

1 note, then I would say, you know what, we shouldn't even
2 be here; you ought to just find him not guilty, and go
3 home. But that's not all we have. We have so many other
4 pieces of the puzzle.

5 Don't forget, by the way, you know -- I almost did,
6 and I'm glad I didn't. That's why I write stuff down.
7 Who else said this was Kelvin's handwriting? S.D. did,
8 and she's seen his writing for -- you know, she said
9 she's known him for how many years? And think about it,
10 over the course of her life how many times she's seen his
11 writing and seen him sign things. She said -- and you
12 know, she didn't need an expert to tell her this wasn't
13 her mama's handwriting, and that it was Kelvin's. S.D.
14 and an expert.

15 Masako's blood is on the middle of that pillow. Not
16 touch DNA. Okay. Everybody says, well, she was sleeping
17 on it. Her blood is on the middle of the pillow. The
18 pillowcase. It's seen in this photograph, State's 1.
19 And State's 27 is the actual pillowcase. Masako's blood,
20 the victim's blood, is in the middle of this pillow.
21 Kelvin's DNA, touch DNA, is on the outer edges of the
22 pillow. Now, if my DNA is on the outer edges of the
23 pillow, and your blood is in the middle of that pillow,
24 and your death is consistent with strangulation or
25 asphyxiation, what is that circumstantial evidence of?

1 Kelvin Jackson murdering her and smothering her to death
2 with that pillow. Or strangling her first, and then
3 finishing her off with the pillow. But that is certainly
4 evidence, and it's evidence you need to consider.

5 Oh, but there's another -- there's somebody else's
6 DNA. A piece that is so small they couldn't even test
7 it. Who was the major contributor? Kelvin Jackson. Oh,
8 but wait a minute, now, because Mr. Johnson kept asking,
9 wait a minute; it could have been -- remember, he's got
10 kids in the house; it could have been one of his sons.
11 Only as to the YSTR. Remember, there were two DNA tests.
12 One DNA test said Kelvin Jackson is included in this DNA.
13 And then a further test of just the male DNA, and he came
14 back to that one, too. Tested positive twice.

15 And in the first one, it's not his paternal
16 relatives. It's only him.

17 We talked about the money. He's broke Wednesday in
18 the morning. Gets gas from -- gas money from Tara -- or
19 actually, not gas money. She puts gas in his car.
20 Doesn't get paid until Thursday afternoon, but somehow,
21 miraculously, he is able to pay for gas and a hotel room
22 in cash.

23 By the way, another thing we talked about all the
24 lies he told. Started off wasn't in the county. Then,
25 he spent the night with Tara in Fairfax. Then it was,

1 oh, I haven't seen her in weeks, even though I was there
2 and getting gas. Then says, ah, well, you know, I did
3 use the card. But did he just volunteer this
4 information? No. Only after they said, wait a minute,
5 man, we know you're lying; we can prove you were there
6 because of this.

7 Every time they gave him another piece of
8 information, his story changed to fit it.

9 Now, think about all the evidence that the State has
10 presented today. And you know, one thing that Mr.
11 Johnson talked to you about, this is in State's 36, this
12 story that he told. Read this story and think about
13 this. This was pulled out of his jail cell, after he's
14 been arrested for this crime. Look and see if it looks
15 like this is weaving, trying to explain every possible
16 piece of evidence that we have. Just read it.

17 He talks about -- and by the way, he also quotes --
18 excuse me -- the note. It says: *I went with someone.* In
19 one of his writings -- it may not be this one, but one of
20 them in here, he says, well, she probably went off with
21 someone.

22 There are just too many coincidences for this to be
23 a coincidence, ladies and gentlemen.

24 What else do we know for sure? Well, he gives the
25 wrong driver's license number. Aw, it was an accident.

1 , that's my South Carolina driver's license
2 number. I haven't had a South Carolina driver's license
3 number in two years, because I live in Georgia. If I
4 wasn't so sure about it, I'd pull it out and look at it,
5 and use it. So, he flipped a number on his driver's
6 license. You look at the signature; you think if that
7 looks like Sanders to you, or him giving a false name or
8 not. I'll leave that up to you. You're the finders of
9 fact.

10 But what do we know? We know that at 2:30, he's
11 very close to Masako's house, using her -- attempting to
12 use her debit card in Hampton. We know at 4:36, he is in
13 Walterboro, checking into a hotel, paying cash for it.
14 We know all of those things.

15 Mr. Johnson got up and talked to you about, but you
16 don't know -- you don't know what route he took. Don't
17 need to. Don't need to show you which route he took.
18 Don't know. The State has no clue of what the exact
19 route he took. Could have been several, and all of them
20 would do about the same thing. What I do have to show
21 you is, it's possible. That it's possible.

22 Is it possible? It absolutely is. David Williams
23 drove one of the routes that he could have taken,
24 including a stop in time to dump a body off the 170
25 Bridge. Did he do it? He did it with almost 20 minutes

1 to spare, and that was during daytime traffic. That was
2 not at 2:00 o'clock in the morning. You remember when I
3 asked him, you know, what time was it that you drove the
4 second time -- well, actually, it was the first time.
5 It's the second one we talked about. He said right after
6 he got the case, he just drove out there. What did he
7 tell you about traffic, at 2:00 in the morning? There
8 wasn't any.

9 The testimony involved in that route was not to tell
10 you I'm positive that's the route he took. I don't care
11 what route he took. What I care is that he murdered a
12 woman. That's what I care about. That's what the State
13 cares about. The State has to show you that it's
14 possible that he did it. Means, motive, and opportunity.
15 Did he have the opportunity to do it? Absolutely. He's
16 the last person to see her alive. Did he have the means
17 to do it? He is six-foot-two, and 245 pounds. She is 5-
18 foot-two, and 130 pounds. Any doubt in your mind? I
19 mean, I'm going to move this out of the way, and you can
20 look at him. Any doubt in your mind that he's a big
21 enough man to strangle a 5-foot-two-inch woman to death?

22 Did he have the means? Did he have the opportunity?
23 Yeah, he had it with about 20 minutes to spare. And
24 that's a conservative estimate.

25 You know the cameras don't record, because we, you

1 know, figured that was going to come up, at one time.
2 Well, if that's your theory, then why don't you have him
3 on videotape? There's cameras, and every Beaufort juror
4 I know, knows there's cameras out there, but they don't
5 record. They're for live traffic viewing, not to record.

6 Ladies and gentlemen, I'm going to tell you again,
7 in any, in any case, you don't have that Matlock moment.
8 It'd be a lot more entertaining if you did. Jurors would
9 be a lot more entertained if that happened, but it
10 doesn't. What the State has to do is put all the pieces
11 of the puzzle together.

12 And in this case, what are the pieces that -- what
13 do we really have? We have a deadbeat daddy, a check
14 forger, and a liar. And all of those things are without
15 any controversy. All of them are accurate, factual.
16 They were all testified to on the stand.

17 Kelvin Jackson will lie to save his own behind, to
18 keep himself out of trouble. Did it repeatedly. Talked
19 to Major Bolton. He talked to Richard Johnson. He
20 talked to Shaun Harley. Told different stories. And Mr.
21 Johnson wants to point out, well, he never admitted to
22 murder. Is anybody in here shocked that he admitted to
23 being there, but didn't admit to the murder? Of course,
24 not.

25 There is strong evidence that he wrote this note,

1 and you know that the killer wrote this note. His DNA is
2 on a pillow with the victim's blood on it. He has
3 unexplained amounts of cash at the same time that Masako
4 has missing amounts of cash. He is the last person that
5 we absolutely, unequivocally know is with her during a
6 very small window of time when she goes missing.

7 One of the other things that jumped out at me when
8 we were going through this case was, no human DNA was
9 found. Do you remember that testimony? And Mr. Johnson
10 wanted to talk specifically about, well, but I'm just
11 asking about the victim's DNA. But nobody's DNA was
12 found, even wouldn't you expect some DNA to be on your
13 own car of yours? If you're going in and out of your
14 trunk, wouldn't you expect some? Where was Kelvin
15 Jackson when he found out, he got the news, that the
16 mother of his children is missing and nobody knows where
17 she is? What was he doing? Washing his car. Isn't that
18 interesting? Wonder how much DNA was cleaned off the car
19 that day? Is that something you find credible? Is that
20 something you think is a reasonable thing for someone to
21 do when they find out the person you just were messing
22 with, and oh, everything's fine now; we may get back
23 together; we're just messing with her; and the mother of
24 your children is missing, and you don't have time to come
25 back, because you have to take somebody to get a battery

1 for their car, you have to drop your boss' check off, and
2 you need to stop by the car wash for you come home.

3 And when you get there, you are laughing and cutting
4 up and shaking hands and talking to folks, and appear
5 normal and nonchalant, were the two different witnesses'
6 testimony. Is that consistent with someone who is
7 concerned and wonders where they are?

8 How much DNA would have been in that trunk? You
9 know, ladies and gentlemen, what this case really boils
10 down to is, it's a puzzle. The State's position is, you
11 have enough pieces. You've got the receipts. You've got
12 the photographs. You've got the blood evidence that was
13 testified to, and you've got ten times the motive. you
14 know, we don't have to prove motive, but juries always
15 like to know why. And the State understands that. How
16 much motive do you need in this case? The day before
17 she's murdered, she cuts him off the account. There's an
18 active DSS lien against him by her. She's got a new
19 boyfriend. He's over at the house after Kelvin said,
20 don't have him there.

21 Taken off the car insurance. Strong evidence that
22 he wrote the note. She absolutely didn't write the note.
23 So, any one of those things in isolation? No. That's
24 not enough. All of those things taken together is more
25 than enough to convict someone of murder.

1 One other thing I wanted you to point -- wanted to
2 point out to you, ladies and gentlemen. I showed this to
3 you earlier. Now, you're going to have all the writings
4 back there. This is State's 37. This is the writing
5 that he submitted when asked, we want you to write this,
6 because we're looking at this note. And then, compare it
7 to the writings that they pulled out of his jail cell.
8 And ask yourself, is this what an innocent person does to
9 submit? Does that look like his writing? Is he credible
10 as having not committed this crime? Or is he not
11 credible?

12 You know, ladies and gentlemen, at the end of the
13 day, all we can ask you to do it speak the truth. That's
14 what, in essence, a verdict means. It means to speak the
15 truth, and that's all any of us can ask of you. But
16 ladies and gentlemen, Masako Miller was taken from her
17 family in the early morning hours of May the 26, 2011,
18 and she was taken from her family by Kelvin Jackson. She
19 was murdered, and she was thrown off the 170 Bridge. Or
20 dumped off one of the landings on the 170 Bridge, because
21 that's the only landing. You heard Cary Furman. That's
22 the only place there is with car accessibility.

23 And it was done, ladies and gentlemen, because she
24 was disrespecting Kelvin Jackson. And when you
25 disrespect Kelvin Jackson, that's what happens to you.

1 That's how you end up. All five-foot-two, 130 pounds of
2 Masako Miller, versus six-foot-two, 240 pounds of
3 disrespected, deadbeat daddy, check forger, liar, and now
4 murderer, Kelvin Jackson.

5 At the end of the day, ladies and gentlemen, there's
6 more than enough evidence to convict Kelvin Jackson, and
7 I'd ask you to return a verdict of guilty. Thank you.

8 THE COURT: Mr. Johnson?

9 CLOSING ARGUMENT ON BEHALF OF
10 DEFENDANT, BY MR. JOHNSON:

11 MR. JOHNSON: Your Honor, may it please the Court?
12 Solicitor's table, to both Solicitors. Mr. Foreman,
13 ladies and gentlemen of the jury.

14 There's a saying: two buckets went to the well, and
15 one came back happy because it was half full. Another
16 came back sad because it was half empty. There are
17 different points of views about this evidence, and I'll
18 be quite frank with you, I sat over there, and I started
19 listening to Solicitor Thornton, and I thought to myself,
20 I thought to myself, I said, wow, that's a lot. But that
21 key word, *circumstantial*, keeps coming up in my mind.

22 There was never a question whether or not somebody
23 killed Ms. Miller. That was never the question. That's
24 a given. That's done. There's no way we can hide from
25 that. We weren't trying to hide from that. The only

1 question was, who did it? That's the question.

2 All of the evidence to prove she was killed, that's
3 a given. You heard me repeatedly -- no objection, put it
4 in; no objection, put it in -- because that wasn't the
5 question. The question is, can the State of South
6 Carolina prove to you beyond a reasonable doubt. Because
7 ladies and gentlemen, there are times you can get into a
8 situation where you cannot prove yourself innocent.
9 That's why the law is like that. There are times you
10 can't prove yourself innocent, and the circumstances will
11 turn on you.

12 Now, is Kelvin guilty of womanizing? Yes. Did
13 Kelvin lie? I think in my opening I got up and said,
14 look, there's no doubt that he lied. But the question
15 is, who killed Ms. Miller?

16 Is he a deadbeat dad? What does being a deadbeat
17 dad have to do with a murder charge? And guess what? If
18 the papers were filed, he wasn't just a deadbeat father,
19 if you want to categorize him like that. He'd have had
20 to been like that for awhile. So, if he was like that,
21 why didn't he do it some time in the future? And there
22 were like all of these people got up and testified about
23 how abusive he was to her, over a 15-year period. He
24 didn't kill her over the 15 years. What, on this night,
25 drove him to do it so particular?

1 And they keep alleging that, well, he saw this other
2 boy at the house. You all heard the testimony. The
3 three -- there was a triangle going on between Ms.
4 Roberts, Ms. Miller, and Mr. Jackson for a long time.
5 They knew about one another.

6 You heard the testimony. Mr. Wrice said he called
7 to the hospital. Kelvin was there. Kelvin knew about
8 him. Kelvin was staying with Ms. Roberts. The whole
9 reason he parked his car and walked, because he was
10 hiding his car so he wouldn't get caught. Now, is he
11 wrong about -- yeah. Is he wrong for womanizing? Yes.
12 Did he lie about the car? Yes. But what does that have
13 to do with killing Ms. Miller? Okay.

14 I kept asking the question: All right, when did she
15 die? Well, they say it's a five-hour window. Okay. Who
16 else was in that window besides Kelvin? Now, they only
17 brought Kelvin. And I notice how he kind of glossed over
18 the second DNA on the same pillow, on the edges. You
19 know, two separate DNAs, it's no doubt Kelvin's DNA was
20 on it. He said they messed around. Is he guilty of
21 womanizing, because the night before, he messed around
22 with Ms. Roberts? Yes. But he's not here charged with
23 messing around. He's charged with murder. And what
24 they're doing is focusing you on all of the bad stuff
25 they say he's done. And they are little pieces of bad

1 stuff, but what did that have to do with the murder?
2 Tell them to tell you, beyond a reasonable doubt, how he
3 murdered her.

4 The pathologist said -- guess what she said? She
5 said, it is consistent with strangulation or suffocation;
6 not, he strangled her. Not he suffocated her. It is
7 consistent with it; in situations like that, I have seen
8 strangulation.

9 What else did she say? She said, had it not been
10 for the information I received from law enforcement, I
11 would have determined this an undetermined situation. We
12 wouldn't have been here, other than -- I want you all to
13 understand that. Other than the information given to her
14 by the law enforcement, she said, I did my scientific
15 tests, and with my scientific tests, I would have
16 determined it was undetermined; but when I got the other
17 information from the law enforcement, the fact that he's
18 a deadbeat dad, the fact that he was supposed to be
19 abusive, the fact that she was fearful of him; I took
20 that and add it with the scientific stuff, and I said,
21 well, yeah, this is a homicide. You heard her. It
22 wouldn't have been a homicide, other than for that
23 information. But guess what? The people who are
24 prosecuting him gave her the information that caused her
25 to determine it was a homicide.

1 Mr. Harley. I asked Agent Harley, who is a friend
2 of mine, I asked him, I said, look, of your own
3 knowledge, do you know who killed her? He didn't. You
4 think they are trying to help him? No. Because they
5 have made a case against him now. They're going to prove
6 that case.

7 And look at the little things that they used. Prior
8 bad acts. Since something that happened three months
9 ago, six months ago, years ago. Should that have a
10 determination on why you're guilty today? No. But we'll
11 use that to paint a bad pictures, so you can get caught
12 up in the picture and say, well, if he did all of that,
13 then he must have did this. And that's why we have the
14 standard of beyond a reasonable doubt.

15 Now, Kelvin didn't testify. Everything he said was
16 into the record. Officer Johnson testified that about
17 what he said. The letter that was read with Agent -- I
18 said Officer Johnson -- Agent Johnson and Agent Williams,
19 and all of those are good agents. Everything they said,
20 they read what he said. Nothing else to say. He said, I
21 didn't do it.

22 Kelvin should not have lied. But if he wasn't
23 sneaking around, if he wasn't creeping, he wouldn't have
24 had to lie. And he is here today, not because he
25 murdered -- you can't charge him with murdering Ms.

1 Miller -- but he's not here because he murdered her.
2 He's here because he was playing two women, and he got
3 caught in his own trap. And no, he should not be
4 convicted for murder for being caught for his morals,
5 misgivings.

6 The Judge is going to charge you in the
7 instructions, a reasonable doubt is a doubt which would
8 cause you to hesitate to act. In other words, you look
9 at evidence. And when you look at it, you've got to
10 question. Well, you say, I don't know. It causes you to
11 hesitate to act. There's one thing in this case that
12 should cause everybody to hesitate to act. Please, when
13 you do your deliberation, ask yourself, there are two
14 different DNA on the pillow. So, that means there's the
15 possibility, since he's talked about the possibility, and
16 the standard is beyond a reasonable doubt. The
17 standard's not a possibility. But since there's a
18 possibility, is it possible that whoever supplied the
19 other DNA did it? How do you get beyond the two? Yes, I
20 asked questions. Yes, I did ask questions about did his
21 sone, if both of them have Y, because he had a son there.
22 Maybe the son sat on the bed with his mama, and if it's
23 just the Y chromosome, then maybe it's his son. But I
24 mean, the forensic person came back and said, well, we
25 did two tests. I can't argue with that. Said, we did

1 two tests. But in the second test, there's two DNA. And
2 guess what? We can determine Kelvin's, but we can't
3 determine the others. Well, guess what? What if the
4 other was the one that committed the murder? What's to
5 stop -- the State never mentioned -- what's to stop the
6 fact of when Kelvin left, somebody else coming? How
7 about somebody else lurking? How about the other
8 boyfriend, who lived around the corner watching Kelvin
9 leave? All of those are the possibilities.

10 Ms. Miller is dead. Somebody should be punished,
11 but how about the right person? Do we just punish
12 Kelvin, because somebody should be punished? S.D. is
13 without a parent. Somebody is guilty of it. His DNA
14 can't be determined yet.

15 We got two creepers. And all this deal about Ms.
16 Roberts say, yeah, I used my card because he say he had
17 no money. But, and if I tell you something that goes
18 against what you heard, forget about what I said.
19 Remember what you heard from the stand. Or ask this
20 young lady, if you've got a question, because she's been
21 taking everything. So, I could mis-characterize, I can
22 misinterpret what I heard, but use your -- what you
23 heard. Use it.

24 Ms. Roberts said, Kelvin will do that. I don't know
25 if he had money or not. I did it. I love him. I don't

1 know if he had money or not. But yeah, it's possible for
2 him to try to get my credit card. That's like Kelvin is.
3 Same thing with Ms. Miller.

4 You remember, if you read in the letter of somebody
5 said, he just said because he could do it. He just
6 wanted to know if he could do it. And is that wrong?
7 Yes. Was he taking advantage of maybe both women? Yes.
8 But did he murder? No.

9 And it's going to be (clapped hands twice). You sit
10 as the judges of the facts. The Court sits as the judge
11 of the law. You have to determine from the facts, and
12 you have to use the law as she give it to you. Sometimes
13 you may not want to use it, but you took an oath. You
14 said, I will follow the law as it is given to me by you.
15 And she's going to tell you he has a presumption of
16 innocence. In other words, he is presumed innocent. And
17 even right now, he is innocent. He won't be found guilty
18 until the twelve of you all say guilty or not guilty.
19 And nobody else in here can find him guilty.

20 I don't believe nothing is by accident. I believe
21 from the design of the world, you all are supposes to be
22 here today to make a decision. And you promised that you
23 would be fair, and not biased, and wouldn't get caught up
24 in emotion. And this is an emotional case, because
25 nobody wants to let a murderer go. But what if the

1 person is accused is not the murderer? What if the real
2 murderer is on the street, and he's laughing at us,
3 because everybody got tied up in emotion? And that's the
4 fear today. Forget the facts; somebody has to be
5 punished.

6 And you promised. When you raised your hand and you
7 swore, you promised to be fair, and you promised to look
8 at all of the evidence, and you promised not to be biased
9 to either side.

10 I sat back there, and I said, *God, Sean is good.* I
11 said, *God.* But whether he's good or whether I'm good is
12 irrelevant. He said he want the truth to be spoken. For
13 the truth to be spoken, you must sift through these
14 facts. And then, you must take these facts, and you've
15 got to make some kind of sense of them. And then, you
16 got to use the standard of presumption of innocence.
17 You've got to use the standard of reasonable doubt.

18 You have to realize and not hold it against him,
19 because he didn't testify. You can't even consider the
20 fact he didn't testify. And in this case, wasn't no need
21 to, because everything was in that record, every letter
22 he wrote, what he said. He gave three statements. He
23 did it. I wish I could stand here and say he didn't lie,
24 but being -- telling a lie is different from being a
25 liar. Because common sense will tell us, everybody, at

1 some times, tells a lie. And people who are messing
2 around get caught up in their lies. That's a prime
3 example of womanizing, and he paid for it, because they
4 arrested him, and they kept him till today. He paid for
5 it. It may be rightfully so, but he didn't -- he didn't
6 murder her.

7 The handwriting. Here's what the handwriting expert
8 said. And I want you all, if I'm wrong, forget what I
9 say; go with your all's opinion. The handwriting expert
10 said, and I read it to her, and she said -- I read two,
11 and then Mr. Thornton got up and told you about the nine,
12 and there are nine; but the third one was the one that
13 affect us. I was trying to get to there. But there are
14 nine.

15 I asked identification. Identification is the one
16 that she got confidence that it was handwriting. The
17 second one is strong probability.

18 *Evidence is very persuasive, yet,*
19 *some critical feature or quality is missing,*
20 *as not to being able to identify. The*
21 *examiner is virtually certain that the*
22 *question and known writing were written*
23 *by the same individual.*

24 That's one and two. But let's read number three.
25 It says, probable.

1 The evidence contained in the
2 handwriting rather strongly point
3 towards the question and the known
4 writing having been written by the
5 same individual; however, it falls
6 short of virtually certain degree
7 of confidence.

8 In other words, it could be, or it could not be.
9 And then, just to clinch it, I asked one other question.
10 Could somebody else have written this? Yes.

11 Is that a doubt? That's a doubt. That's something
12 to cause you to hesitate that. Wouldn't it? If another
13 person could have written this, wouldn't that cause you
14 to hesitate, or someone to hesitate to act? Wouldn't it
15 cause you to hesitate to act if you know all of the
16 scientific evidence would have pointed this case be
17 undetermined, and just the biased evidence that came from
18 the law enforcement was the bridge that kicked it over
19 for it to be a homicide? Would that not cause you to act
20 -- hesitate to act?

21 Justice sometime is tough. To do the right thing
22 sometime is tough, because a lot of times, you get
23 criticized for being right and for standing up, because
24 don't look good to society. But right is right, and if
25 there was a charge in this courtroom today for

1 womanizing, if there was a charge for -- if you want to
2 use the word *deadbeat dad*; if there was a charge for
3 emotionally abusing a woman, Kelvin would be guilty. But
4 there is no proof of murder. All that other stuff they,
5 you know, generally say the defense do the smoke and
6 mirrors. The prosecuting doing the smoke and the mirrors
7 this time, because it's a circumstantial case, and they
8 need to move you emotionally. They need to do that to
9 make sure they get this conviction.

10 Solicitor Thornton talked about the direction for
11 the gas tank, and I wanted that, I wanted that, I wanted
12 that tape to get -- it got in, because it shows him
13 coming up round the back of the building, pulling to the
14 tank. And if you remember, Agent Williams said they
15 believe that the body was in the back of the car at that
16 time. Well, if you take a left, you're going back behind
17 the building, on Mulberry Street. If you take a right,
18 you're going on 278, which go to Beaufort. He didn't
19 take the right. Would you ride around in your car with a
20 body in the trunk? Would you be so calm and cool, you go
21 in there. And they show a still shot of him wiping his
22 face. Would you be that -- if you're riding around with
23 a body in your trunk?

24 And here's the thing that I want you to watch. He
25 went back towards her house. Let's suppose even he went

1 and turned and went -- even if he went and turned and
2 went another way to come to Beaufort, the direction he
3 left the Shell station went towards her house, and not
4 necessarily Beaufort. Now, there are other ways to go to
5 Beaufort, just like he said. But why wouldn't he just
6 take the shortest route, the route they traveled? Why
7 wouldn't he take that?

8 And I like that. They chose the route. They chose
9 the route. They said, this must have been the route he
10 traveled. And you know what? They chose the spot they
11 placed the body in the water. They didn't have one, so
12 they chose one. And they told you all, he put it in by
13 the bridge. And when they testified, they said the only
14 way to get to the body is you need a boat. So, because
15 you need a boat to get there, he had to throw it off one
16 of these bridges.

17 And another thing I want you to note about those
18 little handwritings. You know, I don't know -- I don't
19 know if he had access to paper or whatever in jail. If
20 you notice, they were teenie-tiny. There wasn't that
21 much -- when you watch these handwritings, look and see
22 if they're difference in style, or if they're teenie-
23 tiny. Because in the jail, you don't get a lot of paper
24 to write, so you've got to write a lot on that little
25 bit. When he was doing it in Hampton, he was writing a

1 statement; he had as much papers as he want. Look at
2 that; you all make the decision. I don't know.

3 But to come here today, and to infer that he threw
4 her off the bridge, because nobody got up and testified
5 he threw her off the bridge. To infer that the body
6 floated down the river. Everybody can give an opinion
7 about they think it started floating down the river, but
8 nobody knows. So, do you convict him with nobody
9 knowing? Is it just because he's the one they brought
10 here and decided they didn't have enough DNA to do the
11 other person? Should you just convict him? Is it easy?
12 Let's do it. Let's do it and go. It's easy to do it.
13 He had to be the one. They say he's the one. He was
14 with her. He was creeping, yes. He's a deadbeat dad,
15 yeah. Well, what that got to do with murder?

16 And here's what I like, that letter from that --
17 that Agent Williams read that they got from the jail.
18 They got a search warrant. They got it from under his
19 bed. And Agent Williams testified that he wasn't
20 expecting us -- and I'm wrong, you listen to the test --
21 if I'm wrong, forget what I'm saying -- they wasn't
22 expecting us to come get it. So, if he wasn't expecting
23 them to come get it, so then, why would he try to write a
24 lie for somebody to get? He wrote what he did. And that
25 the same thing that letter is the same thing he told

1 Agent Johnson.

2 And I thought about this, and I thought about he
3 said in the -- they were talking about he said, well, he
4 stayed there about five minutes. You know, I could bring
5 my wife in, because my wife and my kids, when we always
6 go eating, it's always somebody stopping me to talk. And
7 I say, hold it, you all; I'm going to be there in a
8 minute. I'm say, I'm going to be there in a minute. And
9 they get furious, because my minute that I think I'm
10 standing there talking turns into 15, 20, 25, 30 minutes.
11 And my daughter will come and get me sometimes. She
12 said, daddy, you said you were going to be five minutes.
13 Well, I said, I was. She said, no, daddy; you talking;
14 you don't realize what the time is.

15 I mean, they're trying to pin him down to every
16 time. How far it is. I'm like them -- it don't make no
17 difference how long it took him to get to Walterboro. If
18 he wasn't the one, so what? How many of you, when you
19 ride around in the nighttime, plan for a murder trial two
20 years down the road? You don't. Who can remember where
21 they were two years ago, what they were doing? I
22 couldn't.

23 So, no. Every detail is not exact. And if you're
24 talking now, it'll change, because that's normal.

25 And the thing about, of course, because there's no

1 DNA in his car, he washed it out. What else could
2 happen? He had to do that, right? Could it not have
3 been in the trunk? How many people ride around in their
4 trunk?

5 You know how Agent Williams say her body got. He
6 say, we think that he put her body in the trunk. Not: we
7 got evidence that he put her in the trunk.

8 And I love that. Solicitor Thornton dad remind me
9 lot of my dad. I just want to add a little bit to his
10 scenario. Yes, if you walk out to the fencepost, and a
11 turtle is on the post, there's no question somebody
12 helped put that turtle up there, because the turtle
13 didn't get on the post. But the next step is -- and
14 that's the step you just can't -- who put the turtle on
15 the post? Yes, he's up there, but who did it? Somebody
16 murdered her, but who did it? Do you have enough
17 evidence beyond a reasonable doubt that say he did it?
18 Now, you've got enough to say he had some prior bad acts.
19 You got enough to say he don't pay his child support.
20 You got enough to say he's a womanizer. Got enough to
21 say some -- got some child support papers, like half of
22 our country with this different value system. What does
23 that have to do with murder, other than inciting how you
24 feel?

25 Now, I'm going to sit down, and if I have said or

1 done anything that have offended either one of you today,
2 allow me to apologize, because I don't want my actions to
3 influence how you see Kelvin. Because if you put every
4 charge, every deadbeat dad with murder, I don't know
5 where the world would be. Wouldn't have jail room. If
6 you charged every womanizer with murder, I don't know
7 where the world would be. We wouldn't have room.

8 So, in my antics, in my voice, in my inferences, in
9 my conversation, even during this trial, there were some
10 times that I didn't say things clear. Please don't
11 charge that to Kelvin. Charge it to me.

12 If there's more you want to know, and you think I
13 didn't give it, please don't charge that to Kelvin.
14 Charge that to me and Korey.

15 Now, as I sit down, the Judge is going to charge.
16 And you know, out of all the talking we done, the Judge
17 is going to charge you, and I think she's going to give
18 you the charges, but murder is the intentional, the
19 intentional, killing of another, with malice
20 aforethought, express or implied. Have they presented to
21 you any evidence that Kelvin Jackson intentionally killed
22 Ms. Miller?

23 They say circumstantially, they believe somebody put
24 a pillow over her face, because there was blood in the
25 middle, and some kind of DNA print from two different men

1 on the outside. And you all please forgive me for saying
2 it like this, but I think Kelvin mentioned, and I think
3 Mr. Wrice might have mentioned something about it was her
4 time of month. I think Mr. Jackson must have said they
5 were messing around. I mean, I don't know how people
6 mess around and what they do, but it is uncommon for
7 blood to be on a pillow? I don't know.

8 And I'm almost embarrassed to say it, but that's a
9 point I think I need to bring out. I don't know. But is
10 that something that would cause you to hesitate to act?
11 Because if it causes you to hesitate to act, the law says
12 you must. Now, you don't have to follow the law. Nobody
13 can tell you all what to do. Other than Judge giving you
14 instructions, she's not going to tell you how to review
15 the facts. But the law says if you have a issue that
16 causes you to hesitate to act -- and read it -- she's
17 going to -- listen to what she charges you about hesitate
18 to act. Listen. If it causes you to hesitate to act,
19 you must. If you want to do your duty, you must.

20 Sometimes you don't like what you have to do, but
21 you must. And sometimes you're not sure. But if it's a
22 tie, it goes to him. The tie doesn't go to the State,
23 because they have the responsibility of proving it. Not
24 only do they have the responsibility to prove every
25 element of this kind, but we don't have to prove

1 anything. That's why he didn't have to take the stand.
2 And she's going to tell you he didn't have to take the
3 stand. Even to the fact of -- we cannot -- and they
4 don't know and we don't know who the other DNA specimen
5 is, so how could we prove it? And we don't have the
6 responsibility of bringing -- they got the responsibility
7 by determining that. So, please don't hold that -- don't
8 make us accountable for that. They have to prove it. We
9 don't have to prove nothing. They have to prove about
10 this other DNA. And that -- it's just -- to me, it's
11 virtually impossible.

12 Please, I'm going to ask -- for two years -- well,
13 not for two years, because I got in this case late. For
14 about a year and a half, I have been involved with this
15 case. Kelvin -- Kelvin's family put their trust in me.
16 It's almost like -- it's almost like they took Kelvin and
17 put him in my hands. And I'm through now. I've done all
18 I can do. So, I guess all I can do now is transfer him.
19 I'm going to put him in the hands of the twelve of you,
20 and hope you follow the law, and hope you be fair, and
21 hope you don't get emotional and biased.

22 So, I'm done. My last thing is thank you, and
23 Kelvin's future in your all's hands.

24 JURY CHARGE, BY THE COURT:

25 THE COURT: Mr. Foreperson, ladies and gentlemen of

1 the jury, it's now my duty to charge you on the law of
2 this case. The State has charged the Defendant, Kelvin
3 Jackson, with murder, Indictment Number 2011-GS-07-1329.

4 I'll remind you that the fact that the defendant was
5 arrested, charged, and indicted in this case, is not
6 evidence in this case; nor does it create any presumption
7 or inference of guilt. These documents are merely and
8 simply the formal, written documents in which contain the
9 charges against the defendant. They are the formal
10 documents by which this case was brought into this Court.

11 The defendant has pled not guilty to this
12 indictment. And that plea puts the burden on the State
13 to prove the defendant guilty beyond a reasonable doubt.
14 A person charged with committing a criminal offense in
15 South Carolina is never required to prove himself
16 innocent. I charge you that this is an important rule of
17 law. The defendant in a criminal trial, no matter what
18 the seriousness of the charge may be, will always be
19 presumed innocent of the crime for which the indictment
20 was issued, unless guilt has been proven by evidence
21 satisfying you of that guilt, beyond a reasonable doubt.

22 This presumption of innocence does not end when you
23 begin your deliberations, but it accompanies the
24 defendant throughout the trial, until you reach a verdict
25 of guilt, based on the evidence, satisfying you of guilt

1 beyond a reasonable doubt.

2 The presumption of innocence is not a mere legal
3 theory. It is not just a legal phrase. It is a
4 substantial right, to which every defendant is entitled,
5 unless you, the jury, are satisfied from the evidence of
6 the defendant's guilt, beyond a reasonable doubt.

7 What is a reasonable doubt in the law? A reasonable
8 doubt is the kind of doubt that would cause a reasonable
9 person to hesitate to act. The State has the burden of
10 proving a defendant guilty beyond a reasonable doubt.
11 Some of you may have served as jurors in civil cases,
12 where you were told that it's only necessary to prove
13 that a fact is more likely true than not true, such as by
14 the greater weight or preponderance of the evidence.

15 In criminal cases, the State's proof must be more
16 than that. It must be beyond a reasonable doubt. Proof
17 beyond a reasonable doubt is proof that leaves you firmly
18 convinced of the defendant's guilt. There are very few
19 things in this world that we know with absolute
20 certainty, and in criminal cases, the law does not
21 require proof that overcomes every possible doubt. If
22 based on your consideration of the evidence, you are
23 firmly convinced that the defendant is guilty of the
24 crime charged, you must find him guilty. If, on the
25 other hand, you think there is a real possibility the

1 defendant is not guilty, you must give the defendant the
2 benefit of the doubt, and find him not guilty.

3 I remind you that during this trial, you and I have
4 had certain duties to perform. As a trial judge, it's my
5 responsibility to preside over the trial of this case,
6 and I also have the duty to rule on admissibility of the
7 evidence offered during this trial. You are to consider
8 only the competent evidence before you. If there was any
9 testimony ordered stricken from the record in this case
10 during this trial, you must disregard that testimony.
11 You are to consider only the testimony which has been
12 presented from this witness stand, and the exhibits which
13 have been made a part of the record in this case, and any
14 stipulations of counsel.

15 I have the additional duty to charge you the law
16 applicable to this case. As the presiding judge, I'm the
17 sole judge of the law of this case, and it's your duty as
18 jurors to accept and apply the law as I now state it to
19 you. If you already have any idea as to what the law is
20 or what the law ought to be, and it does not agree with
21 what I now tell you the law is, you must abandon this
22 idea, because you are sworn to accept the law and apply
23 the law exactly as I state it to you.

24 In every case tried in this court before a jury, the
25 jury becomes the sole and exclusive judge of the facts in

1 the case. A trial judge cannot intimate, state, comment
2 on, or make any statement to a trial jury about the facts
3 of the case. Since you, the jury, are the sole judges of
4 the facts in this case, you're not to infer from what I
5 have said during the progress of this trial, in ruling
6 upon the admissibility of evidence or otherwise, or
7 anything that I say now during the course of this
8 instruction to you, that I have any opinion about the
9 facts in this case. The law does not allow me to have an
10 opinion about the facts in this case. This is a matter
11 solely for you, the jury, to determine. As jurors, it is
12 your duty to determine the effect, value, weight, and
13 truth of the evidence presented during this trial.

14 There are two types of evidence, which are generally
15 presented during a trial. You have direct evidence and
16 circumstantial evidence. Direct evidence is the
17 testimony of a person who claims to have actual knowledge
18 of the facts, such as an eyewitness. It is the evidence
19 which immediately establishes the main fact to be proved.
20 Circumstantial evidence is proof of a chain of facts and
21 circumstances indicating the existence of the fact. It
22 is evidence which immediately establishes collateral
23 facts, from which the main fact may or may not be
24 inferred. Circumstantial evidence is based on inference,
25 and not on personal knowledge or observation.

1 The law makes absolutely no distinction between the
2 weight or value to be given, to either direct or
3 circumstantial evidence, nor is a greater degree of
4 certainty required of circumstantial evidence, than that
5 of direct evidence. You should weigh all of the evidence
6 in the case. After weighing all of the evidence, if you
7 are not convinced of the guilt of the defendant beyond a
8 reasonable doubt, you must find the defendant not guilty.
9 On the other hand, after hearing all of the evidence in
10 this case, if you are convinced of the guilt of the
11 defendant beyond a reasonable doubt, you must find the
12 defendant guilty.

13 Necessarily, you must determine the credibility of
14 witnesses who have testified in this case. Credibility
15 simply means believability. It becomes your duty as
16 jurors to analyze and to evaluate the evidence, and
17 determine which evidence convinces you of its truth. In
18 determining the believability of witnesses who have
19 testified in this case, you may believe one witness over
20 several witnesses, or several witnesses over one witness.
21 You may believe a part of the testimony of a witness, and
22 reject the remaining part of the testimony of that same
23 witness. You may believe the testimony of a witness in
24 its entirety, or reject the testimony of a witness in its
25 entirety. You may consider whether any witness has

1 exhibited to you any interest, bias, prejudice, or other
2 motive in this case. You may also consider the
3 appearance and the manner of a witness while on the
4 witness stand.

5 The rules of evidence ordinarily do not permit
6 witnesses to testify to opinions or conclusions. An
7 exception to this rule exists for witnesses we call
8 expert witnesses. A witness who, by education and
9 experience, has become an expert in some art, science, or
10 profession, may give an opinion as to the subject the
11 witness claims to be an expert in, and may also give the
12 reasons for that opinion. You should consider any expert
13 opinion given by a witness, and like any other evidence,
14 give it the weight you think it deserves. If you decide
15 that an expert witness's opinion is not based on
16 sufficient education and experience, or if you decide
17 that the reasons given in support of the opinion are not
18 sound, or that the opinion is outweighed by other
19 evidence, you may disregard the opinion entirely. An
20 expert witness's testimony is to be given no greater
21 weight than that of other witnesses simply because the
22 witness is an expert. And you do not have to accept an
23 expert's opinion, even though it's uncontradicted.

24 I instruct you and emphasize that the fact that the
25 defendant did not testify is not a factor to be

1 considered by you in any way in your deliberation, and in
2 your consideration on the question of guilt or innocence
3 of the defendant. It must not be considered by you in
4 any manner whatsoever. A defendant has the
5 constitutional right to remain silent, and the assertion
6 of this right must not be considered by you in your
7 deliberations. I repeat, your oath, you are to draw no
8 conclusion whatsoever from the fact that the defendant in
9 this case did not testify. The fact that this defendant
10 did not testify should not even be discussed in the jury
11 room. The burden of proof, as I have stated to you, is
12 on the State. The defendant is not required to prove his
13 innocence. The burden of proof remains on the State to
14 prove guilt beyond a reasonable doubt.

15 There has been evidence presented that a witness may
16 have made prior statements which are not consistent with
17 the witness's testimony. You may use this evidence to
18 decide whether to believe the witness. You may also use
19 evidence of the earlier contradictory statements to
20 determine the truth of those statements. It is up to you
21 to decide whether to believe the earlier statements, or
22 the testimony given at trial. If a witness is shown to
23 have knowingly testified untruthfully concerning any
24 material matter, you may consider this in determining
25 whether to trust the witness's testimony as to other

1 matters. You may reject all testimony of that witness,
2 or give all or part of the testimony the weight you think
3 it deserves.

4 The statement or statements alleged to have been
5 made by the defendant have been admitted into evidence in
6 this case. While the Court has determined that the
7 statements are admissible, I instruct you that you make
8 the ultimate decision of whether or not the defendant
9 made any statements. If the defendant didn't make a
10 statement or statements, you must determine whether the
11 statement or statements were made by the defendant
12 voluntarily and of his own free will. This means that
13 the statement or statements were not caused by pressure,
14 force, fear, threats, coercion, or intimidation, or by
15 hope or a promise of leniency, or a reward of any kind.

16 In determining whether the statement or statements
17 were voluntary, you should consider both the
18 characteristics of the defendant and the details of the
19 questioning. Some of the factors that you must consider
20 are the age of the defendant, the defendant's education,
21 or lack of education, the defendant's mental ability or
22 capacity, the defendant's I.Q. or intelligence, the
23 defendant's background and environment, the place and
24 length of the detention, the nature of the questioning,
25 and the advice, or lack thereof, to the defendant of his

1 constitutional rights, including but not limited, to the
2 right to remain silent; that any statement could be held
3 against him in a court of law; the right to have a lawyer
4 present; that if he could not afford a lawyer, a lawyer
5 would be appointed to represent him without any cost; and
6 that he could stop making the statement at any time. You
7 must carefully consider all of these surrounding
8 circumstances before you give any weight to an alleged
9 statement.

10 The State has a burden of proving beyond a
11 reasonable doubt that the alleged statement or statements
12 were voluntary. If you determine that they were, you may
13 give the statement or statements any further
14 consideration that you deem proper. You must decide what
15 weight, if any, should be given to the alleged statement
16 or statements. If you determine the alleged statement or
17 statements were not free and voluntary statement or
18 statements of the defendant, you shall not consider the
19 statement or statements at all.

20 Mere presence at the scene is not sufficient to
21 prove someone guilty of a crime. The defendant's
22 presence where a crime is being committed, or a mere
23 association with a person who commits a crime, does not
24 make a defendant an accomplice or an aider and abettor of
25 the person committing the crime. The burden is on the

1 State to prove every element of the crime charged. If
2 you find, after reviewing all of the evidence, that the
3 State has proved the defendant was only present at the
4 scene of a crime, and that they have not proved beyond a
5 reasonable doubt any other participation in the crime,
6 then you must find the defendant not guilty. The law is
7 that proof at the scene of a crime is not sufficient to
8 find someone guilty.

9 In order to establish criminal liability, criminal
10 intent is required. For example, the mental state
11 required to be proven by the State for a particular crime
12 might be purpose, intent, knowledge, recklessness, or
13 criminal negligence. Criminal intent must be proven by
14 the State beyond a reasonable doubt. Criminal intent is
15 always the matter that must be determined by the jury
16 from the circumstances surrounding the situation. There
17 is no way to prove intent to a mathematical certainty.
18 There's no medical science that can dissect a person's
19 brain and determine what the person had in mind, so the
20 law says that a criminal intent may be inferred, and
21 circumstances shown to have existed. This is how you
22 make a determination of whether or not the element
23 requiring intent was present. It is not necessary to
24 establish intent by direct and positive evidence, but
25 intent may be established by inference, in the same way

1 as any other fact, taking into consideration the acts of
2 the parties and all of the facts and circumstances of the
3 case, based on the evidence introduced during the trial
4 of this case.

5 Criminal intent is a mental state, a conscious
6 wrongdoing. It is up to you to determine what the
7 defendant intended to do, based upon the circumstances
8 shown to have existed. In this case, the defendant is
9 charged with murder. I will now define this offense for
10 you.

11 The State must prove beyond a reasonable doubt that
12 the defendant killed another person with malice
13 aforethought. Malice is hatred, ill will, or hostility
14 towards another person. It is the intentional doing of a
15 wrongful act, without just cause or excuse, or the intent
16 to inflict an injury under circumstances that the law
17 will infer an evil intent.

18 Malice aforethought does not require that malice
19 exist for any particular time before the act is
20 committed, but malice must exist in the mind of the
21 defendant just before and at the time of the act as
22 committed. Therefore, there must be a combination of a
23 previous evil intent and act.

24 Malice aforethought may be express or inferred.
25 These terms express and inferred do not mean different

1 kinds of malice, but merely the manner in which malice
2 may be shown to exist, that is either by direct evidence,
3 or by inference from the facts and circumstances, which
4 are proved. Express malice is shown when a person speaks
5 words with express hatred or ill will for another, or
6 when the person prepared beforehand to do the act, which
7 is later accomplished. For example, lying in wait for a
8 person, or any other acts of preparation, going to show
9 that the deed was within the defendant's mind would be
10 express malice. Malice may be inferred from conduct
11 showing a total disregard for human life. an inferred
12 malice may also arise when the deed is done with a deadly
13 weapon. A deadly weapon is any article, instrument, or
14 substance which is likely to cause death, or great bodily
15 harm.

16 Mr. Foreperson, ladies and gentlemen, I have now
17 charged you on the law in order to help guide you to a
18 fair and just result in this case. You are the judges of
19 the facts in this case. And so, based on your
20 determination of the facts in this case, and the law as
21 I've explained it to you, you will soon begin your
22 deliberations. You have been selected as fair and
23 impartial jurors. You are sworn to fairly and
24 impartially try and determine the facts of this case.
25 When you comply with your oath to do so, no one can

1 criticize your verdict. You are to decide the case based
2 solely upon the testimony you have heard from the sworn
3 witnesses who have testified before you, along with the
4 evidence in the case, and exhibits presented to you,
5 which you will all have in the jury room, and any
6 stipulations entered into, and nothing else. You must
7 decide the issues in this proceeding without any bias or
8 prejudice towards either party. You cannot allow
9 yourself to be covered by prejudice for or against any
10 person, by public opinion, or by any other arbitrary
11 factor.

12 Both the Defendant and the State have the right to
13 expect each of you will carefully and impartially
14 consider all of the evidence in this case, and that you
15 will follow the law as I have instructed you in reaching
16 your verdict in this case.

17 Mr. Foreperson, this will be the verdict form. And
18 there is no significance in order of the verdicts on the
19 verdict form. Simply one verdict has to be written
20 before the others.

21 The verdict form basically states:

22 *We, the jury, unanimously find the*
23 *following as to the Indictment 2011-GS-07-1329,*
24 *the charge of murder:*

25 *We, the jury, find the defendant, Kelvin*

1 Jackson --

2 the possible verdicts are either guilty or not
3 guilty.

4 Then, Mr. Foreperson, it would be your duty to write
5 the verdict on each of the charge on the appropriate
6 line. After the verdict has been written, please sign
7 your name on the line, where it says *Foreperson*, and
8 knock on the door to inform the Bailiff a verdict has
9 been reached.

10 Also, I further instruct you that your verdict must
11 be a verdict of each and every one of you. It must be
12 unanimous. So, do not begin your deliberations until we
13 instruct you to do so.

14 The parties, during their closings and throughout
15 the trial of this case, you've seen the court reporter
16 here. If there's any testimony that you think you need
17 to listen to or to review, it's not automatically
18 transcribed. So, if there is something that you want to
19 listen to, we can bring you back in. Just note that you
20 can't just hear excerpts of one witness. You must hear
21 that witness in the entirety for both sides, if you
22 choose to do that.

23 So, if you would return to your jury room. Again,
24 do not begin your deliberations before you have received
25 the verdict form and the exhibits. And I'm also going to

1 give you a copy of the actual jury instructions, so you
2 can have those to reference so you can follow the law s
3 I've instructed you.

4 Thank you.

5 JURORS LEAVE COURTROOM 12:53 P.M.

6 BAILIFF: The jury is clear, your Honor.

7 THE COURT: Any exceptions or additions from the
8 State?

9 MR. THORNTON: None from the State, your Honor.

10 THE COURT: Any from the Defense?

11 MR. JOHNSON: None from the Defense, your Honor.

12 THE COURT: Thank you. If you all would get
13 together and make sure we have all the exhibits.

14 The one thing I was concerned with is the cell phone
15 in the can with the water. I'm not sure if the jury's
16 going to want to look at that, or how you all want to
17 handle that particular piece of evidence. If we need to
18 give them gloves or --

19 MR. THORNTON: Your Honor, if they want to see it,
20 I'll, obviously, leave it up to the Court. I don't know
21 that they're going to need to see it. I mean, I don't
22 know that we want -- it's just water, as far as I know,
23 but it's still, you know, rusty water.

24 THE COURT: Right.

25 MR. THORNTON: So, we probably ought to just keep it

1 somewhere, maybe keep it with the -- somewhere separate.
2 I mean, I'm not suggesting that we keep it up here, but
3 keep it somewhere separate, and if they want to see it,
4 we do need to get them gloves. But that goes with any of
5 the evidence. I didn't unseal any of it, but all of it's
6 biohazard stuff, if they were to break the seal, so they
7 probably ought to be told that. And then, you know, give
8 them gloved in case they want to do it, would be my
9 suggestion, your Honor.

10 BAILIFF: We can provide them with gloves, Judge.

11 THE COURT: All right.

12 BAILIFF: And we'll keep the can separate, and I'll
13 instruct them that if they want to see it, to knock on
14 the door and give us a proper note, signed note, and
15 we'll let them have it.

16 THE COURT: Any objections from either party?

17 MR. THORNTON: None from the State, your Honor.

18 MR. JOHNSON: No, your Honor, none from the Defense.

19 THE COURT: So, I'll go ahead and let our alternate
20 go. Any objections?

21 MR. JOHNSON: None from the Defense.

22 THE COURT: All right. So, let's get our exhibits.

23 BAILIFF: You want to get the alternate? You want
24 to bring the alternate in now?

25 THE COURT: Yes.

1 COURT REPORTER AND ATTORNEYS

2 REVIEWING EXHIBITS ADMITTED

3 TO BE TAKEN TO JURORS.

4 OFF THE RECORD 12:56 P.M.

5 at 8-2-13 M35, 2135 GOING OVER EXHS with atys

6 BAILIFF TOOK EXHIBITS TO JURORS

7 AT 1:00 P.M.

8 BACK ON THE RECORD 2:02 P.M.

9 DISCUSSION REGARDING NOTE FROM JURORS:

10 BAILIFF: All rise.

11 THE COURT: Thank you. You may have a seat. Have
12 the parties had a chance to review the note from the
13 jury?

14 MR. THORNTON: We haven't reviewed the note, Judge.
15 I just was told they wanted to see the video.

16 THE COURT: Do you need to look at the note? That's
17 basically all it says, is that they wanted to see the
18 video.

19 MR. THORNTON: No, ma'am.

20 THE COURT: We'll make that a Court's exhibit.

21 MR. THORNTON: State's satisfied.

22 MR. JOHNSON: I'm satisfied. I'm satisfied.

23 THE COURT: All right. Is the video ready to go?

24 MR. THORNTON: Your Honor, it is, with one, I just
25 want to make sure we're all on the same page. The video

1 is actually more than one video, and it's the same CD
2 that Mr. Johnson has, and that I have, that we
3 introduced. It's actually a clip outside the store.
4 There's a shot inside the store, and then there's the
5 still images that were pulled off and printed in. So,
6 you know, I don't know if they want to see all of it.

7 I've cued up the one outside, is the one that most
8 talked about, and there's no -- and you know, there's
9 still images from both the outside and inside camera, so.
10 Whatever the Court wants me to do or Mr. Johnson wants,
11 but unless they differentiate, I think we have to play
12 all three clips.

13 MR. JOHNSON: And I'm fine, your Honor, if we need
14 to play them all.

15 THE COURT: I think, just to be on the safe side, we
16 should play the whole thing since it's important.

17 MR. JOHNSON: Yes, ma'am. Yes, ma'am.

18 MR. THORNTON: Yes, ma'am.

19 THE COURT: Are you ready to bring them out?

20 MR. JOHNSON: Yes, ma'am.

21 MR. THORNTON: Yes, ma'am.

22 THE COURT: Let's have our jury.

23 BAILIFF: Yes, ma'am.

24 COURT REPORTER: The note from the jury is Court's
25 Exhibit 14.

1 NOTE FROM JURORS MARKED COURT'S
2 EXHIBIT NUMBER 14.

3 JURORS ENTER COURTROOM 2:04 P.M.

4 BAILIFF: Your Honor, the jury is entering.
5 And the jury is seated, your Honor.

6 THE COURT: Thank you. Ladies and gentlemen of the
7 jury, I understand that you want to see the video of the
8 gas station, so we cued it up, and it should be ready for
9 you, and we'll go ahead and show that to you.

10 MR. THORNTON: Yes, your Honor.

11 VIDEO EXHIBIT BEING REPLAYED.

12 MR. THORNTON: Your Honor, that's the end of the
13 outer clip of the store. I'll switch it to the inside.

14 THE COURT: Thank you.

15 PROBLEMS WITH VIDEO.

16 MR. THORNTON: I apologize. It may take just a
17 second. Frankly, this is why I usually don't usually
18 play videos, if I have to in court, because they take up
19 a lot of memory. So, if you'll just bear with me one
20 moment.

21 Your Honor, I think it may be the computer. I've
22 got a backup one coming in, in a minute. Obviously, we
23 got through the outside shot, and I'll have the other one
24 done in just a second.

25 Your Honor, for purposes of the record, if we need

1 to -- actually, probably don't need to do the record just
2 yet. But I'm also pulling a separate copy of this. Just
3 in case it's not the computer and it's the disc, we'll
4 have a backup disc ready momentarily, so.

5 THE COURT: Thank you, Mr. Thornton.

6 MR. THORNTON: Yes, ma'am.

7 VIDEO EXHIBIT BEING RE-PLAYED.

8 MR. THORNTON: And your Honor, I'm going to double-
9 check, but those are the only clips on here that I'm
10 aware of. There are a couple of the same still shots
11 that have been introduced into evidence.

12 And that is all, Judge.

13 THE COURT: All right. Thank you. Ladies and
14 gentlemen of the jury, I hope this has assisted you. If
15 you have anything else, just let us know, but I will ask
16 you to return to your jury room to deliberate.

17 FOREPERSON: Thank you, your Honor.

18 JURORS LEAVE COURTROOM 2:20 P.M.

19 BAILIFF: The jury is clear, your Honor.

20 THE COURT: Thank you.

21 MR. THORNTON: Thank you, your Honor.

22 THE COURT: Any exception from the State?

23 MR. THORNTON: None from the State, Judge.

24 MR. JOHNSON: None from the Defense, your Honor.

25 BAILIFF: Want me to take the video back in there,

1 Judge?

2 THE COURT: Yes.

3 BAILIFF: All rise.

4 OFF THE RECORD 2:21 P.M.

5 BACK ON THE RECORD 2:35 P.M.

6 VERDICT:

7 THE COURT: Thank you, everybody. You may be
8 seated. It's my understanding that we have a verdict in
9 this case, and I'd like to caution members of the
10 audience, and on both sides that, obviously, we'll have
11 no outbursts or any kind of signs of emotional once the
12 verdict is read. If you feel that for any reason you
13 can't control your emotions when the verdict will be
14 read, I'll ask you to go ahead and leave the courtroom.

15 All right. Are we ready to have our jury?

16 MR. THORNTON: State's ready, your Honor. For the
17 record purposes, I've instructed all the victim's family,
18 basically what your Honor has already stated; that they
19 needed to make sure no matter which way the verdict went,
20 to not to have any outbursts.

21 THE COURT: Thank you.

22 MR. JOHNSON: Your Honor, Defense is ready. And I
23 have also instructed his family, same as the Court has
24 told everybody just now.

25 THE COURT: Thank you. Let's have our jury.

1 BAILIFF: Yes, your Honor.

2 JURORS ENTER COURTROOM 2:37 P.M.

3 BAILIFF: The jury is seated, your Honor.

4 THE COURT: Mr. Foreperson, have you reached a
5 verdict?

6 FOREPERSON: We have, your Honor.

7 THE COURT: May I have it, please, sir?

8 *The State of South Carolina versus*
9 *Kelvin Jackson, in Indictment Number*
10 *2011-GS-07-1429, we, the jury, unanimously*
11 *find the following:*

12 *As to indictment of the charge of*
13 *murder, we, the jury, find the Defendant,*
14 *Kelvin Jackson, guilty.*

15 Ladies and gentlemen of the jury, is this your
16 verdict?

17 FOREPERSON: It is, your Honor.

18 THE COURT: Ladies and gentlemen, this thus
19 concludes your jury service. I certainly thank you for
20 your time and away from your families and your work. And
21 you have done a tremendous service to the state of South
22 Carolina. This is the way we operate and resolve,
23 obviously, very important issues to our state. So,
24 again, I want to thank you for your time, and at this
25 time, you are excused.

1 You do have -- does the Defense want me to poll the
2 jury?

3 MR. JOHNSON: Your Honor, of course, I thought about
4 that. They've rendered their verdict, and you know, we
5 accept the verdict of the jury.

6 THE COURT: You don't want me to poll them?

7 MR. JOHNSON: No, ma'am.

8 THE COURT: We'll go ahead and poll them, just in
9 certain circumstances.

10 MR. JOHNSON: All right. All right.

11 THE COURT: Just to be on the extra safe side.

12 MADAM CLERK: Mr. Foreman, Edward Pappas, would you
13 please stand, please. Was this your verdict?

14 FOREMAN PAPPAS: Yes, it is.

15 MADAM CLERK: Is it still your verdict?

16 FOREMAN PAPPAS: It is.

17 MADAM CLERK: Jeffrey Sabatini. Was it still your
18 verdict?

19 JUROR SABATINI: Yes, ma'am.

20 THE COURT: Is it still your verdict?

21 JUROR SABATINI: It is.

22 MADAM CLERK: Thank you. Yvonne Park, was this your
23 verdict?

24 JUROR PARK: Yes, ma'am.

25 MADAM CLERK: Is it still your verdict?

1 JUROR PARK: Yes, ma'am.

2 MADAM CLERK: Dorothy Hundley, was this your
3 verdict?

4 JUROR HUNDLEY: Yes, ma'am.

5 MADAM CLERK: Is it still your verdict?

6 JUROR. HUNDLEY: Yes, ma'am.

7 MADAM CLERK: Thank you, ma'am. Veronica Gardener.

8 JUROR GARDENER: Yes, ma'am.

9 MADAM CLERK: Was this your verdict?

10 JUROR GARDENER: Yes, ma'am.

11 MADAM CLERK: Is it still your verdict?

12 JUROR GARDENER: Yes, ma'am.

13 MADAM CLERK: Angela Porteous. Was this your
14 verdict?

15 JUROR PORTEOUS: Yes, ma'am.

16 MADAM CLERK: Is it still your verdict?

17 JUROR PORTEOUS: Yes, ma'am.

18 MADAM CLERK: Shane Markworth. Was this your
19 verdict?

20 JUROR MARKWORTH: Yes, ma'am.

21 MADAM CLERK: Is it still your verdict?

22 JUROR MARKWORTH: Yes, ma'am.

23 MADAM CLERK: Kathy Toney. Was this your verdict?

24 JUROR TONEY: Yes, ma'am.

25 MADAM CLERK: Is it still your verdict?

1 JUROR TONEY: Yes, ma'am.

2 MADAM CLERK: Marvalyn Holmes. Was this your
3 verdict?

4 JUROR HOLMES: Yes.

5 MADAM CLERK: Is it still your verdict?

6 JUROR HOLMES: Yes, ma'am.

7 MADAM CLERK: Barbara Seymour. Was this your
8 verdict?

9 JUROR SEYMOUR: Yes, ma'am.

10 MADAM CLERK: Is it still your verdict?

11 JUROR SEYMOUR: Yes, ma'am.

12 MADAM CLERK: Veronica Smallheiser. Was this your
13 verdict?

14 JUROR SMALLHEISER: Yes, ma'am.

15 MADAM CLERK: Is it still your verdict?

16 JUROR SMALLHEISER: Yes, ma'am.

17 MADAM CLERK: And John Simmons. Was this your
18 verdict?

19 JUROR SIMMONS: Yes, ma'am.

20 MADAM CLERK: Is it still your verdict?

21 JUROR SIMMONS: Yes, ma'am.

22 MADAM CLERK: Thank you so much.

23 THE COURT: Thank you, ladies and gentlemen of the
24 jury. At this time, you may be excused back to your jury
25 room, and we'll release you, here in one second. You are

1 also welcome to stay. If you like to stay, you can, but
2 otherwise, you're free to go. The bailiff will let you
3 know when you can leave the jury room.

4 FOREPERSON PAPPAS: Thank you, your Honor.

5 JURORS LEAVE COURTROOM 2:40 P.M.

6 SENTENCING:

7 BAILIFF: The jury is clear, your Honor.

8 THE COURT: Solicitor, are we ready to proceed to
9 sentencing?

10 MR. THORNTON: State's ready to proceed, your Honor.

11 THE COURT: Do you have a sentencing sheet?

12 MR. THORNTON: I do, your Honor.

13 MR. JOHNSON: Your Honor, do you want us to walk to
14 the mic, or want us to stay right here?

15 THE COURT: Why don't you step forward.

16 MR. JOHNSON: Yes, ma'am.

17 MR. THORNTON: May I approach, Judge?

18 THE COURT: Yes, sir.

19 THE COURT: Solicitor, is there any victim impact
20 testimony, or any --

21 MR. THORNTON: Your Honor, I've spoken to the
22 family. Lorraine Moss has worked with me tirelessly on
23 this case, dealing with all of the members of the family.
24 They indicated that they are happy to have me go ahead
25 and handle it for them. So, if you want me to go ahead

1 and do that now, I'll put the State's position on the
2 record.

3 THE COURT: Yes, sir. Please proceed.

4 STATE'S POSITION ON SENTENCING

5 BY MR. THORNTON:

6 MR. THORNTON: You know, your Honor, as in many
7 cases that we deal with, with of domestic violence and
8 domestic violence issues, that's exactly what this case
9 is. You know, it starts out with the pushing and the
10 slapping and the pulling. And it, unfortunately, all too
11 many times, ends up with a death. And in this case,
12 that's what happened.

13 Kelvin Jackson is, as you can tell, a very large
14 individual. Masako Miller is 5-2 and 130 pounds. And
15 after a, frankly, long history that your Honor has
16 already heard that was testified to of abuse, and abuse
17 of S.D. , both verbally and physically, it culminated in
18 murder. And what is most heinous in this case to the
19 State is, that it is something that he protracted over
20 years, and re-committing abuse, and re-committing abuse.
21 And you know, Judge, after -- you've heard the testimony.
22 I mean, frankly, the State's position is he basically
23 strangled her to death, smothered her with a pillow, and
24 dumped her body off a bridge, with his kids and her child
25 in the room next to them. I don't know what could be

1 more heinous, more malicious, or more atrocious than
2 murdering someone, with their children right nearby. And
3 I don't know what would have happened, had one of them
4 woke up, and interrupted him, because we know what
5 happened the last time S.D. tried to protect her mother.
6 I don't know what would have happened to that child, had
7 any of them woke up while Kelvin Jackson was committing
8 this murder.

9 The only thing I would ask, your Honor, is that he
10 get the only sentence that, frankly, he deserves, which
11 is life in imprisonment without the possibility of
12 parole.

13 Thank you, your Honor.

14 THE COURT: Mr. Johnson.

15 DEFENDANT'S POSITION ON

16 SENTENCING, BY MR. JOHNSON:

17 MR. JOHNSON: Your Honor, may it please the Court?
18 I'm from the old school. The jury has decided a verdict.
19 Whether I agree with the verdict or not, or whether
20 anybody else agree, that's basically irrelevant now.

21 There's always two sides to a coin. The jury
22 believed the State's side. We thought the case was very
23 circumstantial. I thought it should have been a not
24 guilty. Well, they didn't do that, so I'm not going to
25 gripe against the jury. We appreciate the system we got

1 in this country, even though we don't like the decision
2 sometime.

3 But in the event, your Honor, if we look at the
4 facts, that's one interpretation of it. But if you
5 believe any of our facts, even the little letter where he
6 say he was walking out the door, and he told her that to
7 kiss the kids goodbye for him. It's like a night and a
8 day case, and the jury decided against us. I would ask
9 whatever he does, with his age now you give him, he'll be
10 in jail the rest of his life. I would ask that you give
11 the minimum sentence, which I think -- I think this is a
12 30 -- this is a 30-to-life sentence. Your Honor, I would
13 just ask give him 30 years. How old -- he 34 now. He'll
14 be 64 years. He'll spend the next half of his life, and
15 just as much time as he spent home, he'll spend in jail.
16 His family will be gone. Everything that he -- everybody
17 that he love will probably be gone. And his kids will be
18 gone and grown up.

19 And it's a tragedy. This case is a tragedy on both
20 side. How can I not sympathize with the other family
21 with their loss, and how can I not sympathize with this
22 family with the loss they are about to have right now?

23 Justice, sometimes, your Honor, requires us to do
24 tough things. And I know the State asked for life. And
25 quite frankly, if her Honor decides to do that, she's

1 justified in doing that. But what we are asking the
2 Court is, he's going to jail; he was in jail two years.
3 He's been in jail since this happened. He's going to be
4 in jail another 30 years, at least. I just ask for the
5 opportunity just at some point in his life that he may
6 have the possibility of getting out of jail. I don't
7 even know if he'll live out the 30 years, but I would
8 just ask for the possibility.

9 Sometimes when we're in church we always says -- we
10 talk about Grace, but a lot of times we overlook the
11 mercy. Grace has spoke. He's going to jail. The mercy
12 part of it now is how long, and that's in your hand, and
13 I trust your decision. And in deciding, I know it's
14 tough, because you want to be fair to everybody.

15 Judge John Anderson Smith was in Walterboro, if you
16 remember that, Sean, a long time ago. And the boy asked
17 -- the boy said, if you give me -- I don't want justice;
18 I want mercy. And today, I would ask the Court to give
19 him mercy. Justice has spoken; he's going to jail. We
20 just ask you temper that justice with as much mercy as
21 you possibly can. We respect whatever decision you give.
22 We are here now, but we just ask you to please consider
23 as much mercy as the Court can consider.

24 I don't know if it's good for Kelvin to talk now,
25 because I don't want him to say something and it's

1 misconstrued or he says it wrong, and it affects any
2 chance at mercy. So, unless he's just insistent upon
3 saying anything, you know, we just man up, and you know,
4 accept whatever the Court give us.

5 THE COURT: Mr. Jackson, obviously, this is your day
6 in court, and is there anything that you would like to
7 tell me?

8 BY THE DEFENDANT:

9 DEFENDANT JACKSON: Your Honor, I would just want to
10 say that I did not kill my children mother. I just want
11 to say to my family that -- I just ask them to take care
12 of my children until -- just take care of my children.

13 THE COURT: Solicitor, any prior record?

14 MR. THORNTON: None of any consequence, your Honor.
15 I believe he had some traffic offenses, some other
16 things, but nothing of any significance that I am aware
17 of.

18 MS. DEYSACH: That's correct.

19 THE COURT: Anything further from anybody?

20 MR. THORNTON: Nothing from the State, Judge.

21 MR. JOHNSON: Nothing from the Defense, your Honor.

22 SENTENCE, BY THE COURT:

23 THE COURT: On Indictment 2011-GS-07-1329, with the
24 conviction of murder, Mr. Jackson, it's the sentence of
25 this Court that you be sentenced to the State Department

1 of Corrections for a period of 45 years.

2 MR. JOHNSON: Thank you, your Honor. Thank you very
3 much.

4 MR. THORNTON: Thank you, your Honor.

5 THE COURT: Mr. Jackson, we'll give you credit for
6 your time you've already served.

7 MR. JOHNSON: Your Honor, may it please the Court?
8 Would the Court give me some time -- you know, I have
9 to --

10 THE COURT: Certainly.

11 MR. JOHNSON: I think you can give me up to ten days
12 to do the after-the-trial motion. Would the Court allow
13 -- it's probably going to be just the standard, but I
14 just need a day or so to think about it. And would the
15 Court please give us time, maybe the ten days, to make
16 those motions?

17 THE COURT: Absolutely. Mr. Thornton?

18 MR. THORNTON: Yes, ma'am.

19 THE COURT: Mr. Johnson has asked for some time to
20 make his post-trial motions. Any objection?

21 MR. THORNTON: I have no objection to that, Judge.
22 I would just like to get a copy. And I know Virgin will
23 copy me. I don't have any objection to that. I do
24 think, under the rules, I think it's -- I think you
25 maintain jurisdiction for ten days, your Honor, if memory

1 serves.

2 THE COURT: Right.

3 MR. THORNTON: I think it would have to be done in
4 that time, but I certainly have no objection whatsoever.

5 THE COURT: Okay.

6 MR. JOHNSON: Thank you, your Honor.

7 THE COURT: Thank you.

8 MR. JOHNSON: Thank you, ma'am.

9 MR. THORNTON: Thank you, your Honor.

10 MS. DEYSACH: Thank you, your Honor.

11 THE COURT: You all have a good day.

END VOLUME THREE.

END TRIAL 2:48 P.M.

CERTIFICATE OF REPORTER
JULY 29 THROUGH AUGUST 2, 2013
TRANSCRIPT OF TRIAL

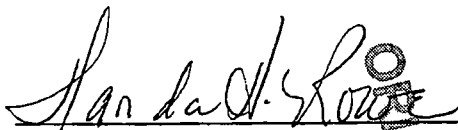
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing July 29 through August 2, 2013 Transcript of Trial is a true, accurate, and complete record of the proceedings had on said dates and evidence admitted in the case of State versus Kelvin Jackson, Beaufort County, South Carolina, Court of General Sessions, Case Number 2011-GS-07-01329.

I further certify that I am of neither kin, counsel, or interest to any party hereto.

The original of this transcript, nor any copy of same, is not certified, nor authorized for use by me, to be true, accurate, and complete without my original signature and stamp affixed hereto.

Witness my signature November 26, 2013.


Wanda H. Rowe, CVR-M
Official Court Reporter

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KELVIN JACKSON,

APPELLANT

APPELLATE CASE NO. 2013-001779

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether writings seized from appellant's jail cell that were reviewed *ex parte* and *in camera* by a magistrate judge were admitted in violation of appellant's due process rights and were protected by the attorney-client privilege?

STATEMENT OF THE CASE

On July 21, 2011, a Beaufort County grand jury indicted appellant for murder. R. 803. On July 29, 2013, appellant was tried before the Honorable Maite Murphy, the Honorable Carmen T. Mullen, and a jury. R. 1. Sean Thornton and Hunter Swanson Deysach represented the State. R. 2. Virgin Johnson, Jr. and Korey L. Williams represented appellant. R. 2. The jury convicted appellant of murder. R. 777, ll. 2 – 17. The court sentenced appellant to forty-five years' imprisonment. R. 786, l. 23 – 787, l. 1. On October 31, 2013, the court heard argument on and denied appellant's post-trial motions. R. 789. This appeal follows.

ARGUMENT

Writings seized from appellant's jail cell that were reviewed *ex parte* and *in camera* by a magistrate judge were admitted in violation of appellant's due process rights and were protected by the attorney-client privilege.

The State's case against appellant was entirely circumstantial. On May 30, 2011, a fisherman found the body of Masako Miller ("Miller") in the Broad River near Beaufort. R. 367, l. 5 – 370, l. 14. Appellant Kelvin Jackson ("Jackson") and Miller had what a friend of Miller's described as an "off-and-on relationship." R. 207, l. 25 – 208, l. 2. They lived together and had children together. R. 207, l. 19 – 208, l. 6.

Miller's oldest daughter ("Daughter") testified for the State. Daughter was fourteen at the time of trial. R. 264, ll. 11 – 12. The time of Miller's disappearance, Daughter lived with Miller and her two brothers who were ten and seven years old at the time of trial. R. 265, ll. 16 – 20. Daughter testified that Jackson "got kicked out" of Miller's house in early February 2011. R. 266, ll. 15 – 22. Daughter testified that Miller "was tired of his abusive acts" and that was the reason she kicked out Jackson. R. 266, l. 23 – 267, l. 3.

The day before Miller's disappearance, daughter testified that Miller had picked up her brothers and Miller went to the park. R. 270, ll. 10 – 19. After walking in the park, they went to a friend's house who owed Miller \$300 for something connected with her family's wedding. R. 270, ll. 10 – 25. After leaving this friend's house, they went to the grocery store in Miller paid with her debit card. R. 271, ll. 3 – 9. Miller cooked dinner and later Miller's new boyfriend came to their house. R. 271, ll. 3 – 9. Because of

a problem with the air conditioning, Daughter and her two brothers slept in the living room with all of the fans cooling them. R. 271, ll. 10 – 20.

Daughter had a friend named J.S. who came over to Miller's house every morning at approximately 5:00 AM. R. 271, l. 21 – 272, l. 9. Daughter was sleeping when J.S. arrived. R. 272, ll. 10 – 12. They woke up at approximately 8:00 AM and were worried they would be late for school. R. 272, ll. 13 – 16. Miller was not home. R. 272, ll. 13 – 25. They called her with no answer. R. 272, ll. 13 – 25. They saw a note that said, "I'll be right back. Get ready for school. Went with someone. Love you all guys." R. 274, ll. 18 – 22. The note was on the kitchen counter. R. 275, ll. 2 – 3. Daughter stated the note was not in Miller's handwriting. R. 276, ll. 12 – 14. She claimed the handwriting looked like Jackson's. R. 276, l. 24 – 277, l. 2. The State's handwriting expert opined that Miller did not write the note and that it was "probable" that Jackson wrote the note. R. 678, ll. 5 – 22. On cross-examination, the expert admitted there were two standards of handwriting identification that were stronger than "probable" and that she was not certain that Jackson wrote it. R. 679, l. 6 – 680, l. 8.

Daughter did not wake up nor hear anyone come in the house from 10:00 PM until the next morning at 8:00 AM when she awakened. R. 283, ll. 6 – 16. Daughter testified that their usual procedure would be to lock the doors at night when they went to bed and that her mother would awaken early in the morning and unlocked the door so J.S. could come in at approximately 5:00 AM. R. 283, l. 17 – 320, l. 11. The front door was usually unlocked for J.S. R. 284, ll. 2 – 6. Daughter testified that the back doors were always locked and that the only door the J.S. ever came in was the front door. R. 287, ll. 4 – 10. J.S. did not see Miller that morning. R. 293, ll. 2 – 3. The

front door was unlocked as usual. R. 295, ll. 1 – 3. R. 296, ll. 7 – 9. When Daughter left home that morning for school, the back door was locked. R. 288, ll. 5 – 8.

A co-worker at the factory where Miller worked was concerned when she did not show up for work. R. 213, l. 25 – 214, l. 15. The co-worker called Miller from work and received no answer. R. 214, 215, l. 7. She eventually went to the police with her concerns and they did a welfare check. R. 218, ll. 5 – 9. Two police officers and the co-worker entered Miller's house through the back door. R. 218, ll. 12 – 23. The back door was open. R. 229, l. 14. Miller's work shoes were in the washroom. R. 218, ll. 13 – 23. Miller's work bag that she brought to work every day was on the table. R. 218, ll. 12 – 24. Miller seemed packed and ready for work as normal. R. 227, l. 17 – 228, l. 4.

Clarence Wrice ("Wrice") was Miller's boyfriend at the time she disappeared. R. 241, ll. 20 – 23. Their relationship was also "on and off." R. 251, l. 17 – 19. Wrice knew that she was involved with Jackson. R. 242, ll. 6 – 8. The night before Miller's disappearance, Wrice stopped by Miller's house at approximately 9:00 PM and stayed for an hour. R. 243, ll. 4 – 14. After Wrice went home, they exchanged text messages at approximately 10:15 PM. R. 244, ll. 4 – 13. Wrice lived approximately two miles from Miller. R. 249, ll. 12 – 14.

Miller's debit card was used at a gas station in Hampton at 2:26 AM. R. 333, l. 5 – 334, l. 4. The police located video from the gas station showing Jackson attempting to use the debit card. R. 319, l. 24 – 320, l. 3.

Dennis Stephens ("Stephens") claimed that he was taking his morning walk in Yemassee near the interstate when he found a cell phone. R. 346, l. 11 – 347, l. 23. He found Miller's cell phone on the side of the road. R. 248, ll. 13 – 17. After charging the

phone, it began ringing and Stephens threw it in a pond near his house. R. 349, l. 1 – 350, l. 13. The police recovered the phone from the pond. R. 364, l. 11 – 366, l. 13. Stephens claimed he did not know Miller or Jackson. R. 353, ll. 6 – 16.

Jackson was placed at Miller's house that night as a result of his own statements. Jackson originally told the police that he was not in Hampton County that night. R. 319, ll. 14 – 19. He stated he was staying with his girlfriend in Allendale County. R. 321, ll. 1 – 8. Jackson later admitted to being at Miller's house that night and having sex with her to the police. R. 435, ll. 10 – 17. Jackson did not want to get caught cheating on his girlfriend with Miller. Jackson never admitted hurting Miller. R. 445, ll. 23 – 25. R. 469, ll. 17 – 25.

Appellant was arrested on May 27, 2011. On July 12, 2011, the police obtained a search warrant for writings in Jackson's cell at the jail. R. 805. The warrant affidavit stated the police were looking for samples of Jackson's handwriting to compare to the note left at Miller's residence. R. 805. The magistrate who issued the warrant directed the officer "not to look at any of the writings, just to determine that they were his handwritings." R. 91, ll. 20 – 22. The magistrate gave the officer a manilla envelope and told the officer to insert the writings into the envelope, seal it, and bring them to her for a determination if they were protected by the attorney-client privilege. R. 91, l. 19 – 92, l. 3.

The officer found some writings underneath Jackson's mattress. R. 92, ll. 10 – 15. He testified that he collected them pursuant to the magistrate's instructions and gave them to her. R. 92, ll. 10 – 15. Without any hearing or notice to the defendant, the magistrate judge then gave the writings to the police. R. 92, ll. 16 – 17. The writings

give a version of events that place Jackson with Miller on the night of her disappearance. State's Exhibit 36. R. 602, l. 3 – 607, l. 1. Jackson wrote that he talked with Miller, they had sexual relations, she gave him her debit card which he attempted to use to purchase gasoline and then returned it to her house. State's Exhibit 36. R. 602, l. 3 – 607, l. 1. Jackson admitted lying to the police about his whereabouts in the writings. State's Exhibit 36. R. 602, l. 3 – 607, l. 1. At the bottom of one of the pages, it states, "Please give this to the lawyers." Court's Ex. 11.

Appellant argued not only that the documents were protected by attorney-client privilege, but also that the process used was deficient. R. 110, l. 2 – 111, l. 7. Trial counsel argued that "independent of the defendant's counsel an independent some hearing," no determination should have been made about attorney-client privilege. R. 110, l. 2 – 111, l. 7. Appellant also argued that if Jackson was "saving evidence for something to give to his lawyer, I think it's more the concern and more of a problem." R. 110, ll. 23 – 25. The trial judge ruled the documents were admissible. R. 136, l. 11 – 137, l. 1. Appellant renewed his objection to the admission of the writings during the trial. R. 591, ll. 9 – 19. R. 593, ll. 1 – 3.

"In all criminal prosecutions, the accused shall. . . have the Assistance of Counsel for his defence." U.S. Const. amend. VI. "We have long recognized the attorney-client privilege against disclosure of confidential communications by a client to his attorney." State v. Love, 275 S.C. 55, 59, 271 S.E.2d 110, 112 (1980). "This privilege is based upon a wise public policy that considers that the interests of society are best promoted by inviting the utmost confidence on the part of the client in disclosing his secrets to his professional advisor, under the pledge of the law that such confidence should not be

abused by permitting disclosure of such communications.” Id. (internal quotations omitted).

The writings in this case could have little use but for information for an attorney. Inmates at a detention center have the right to correspond with their attorneys with the expectation that their correspondence will be free from seizure by law enforcement. As this rule applies to finalized letters, it should also apply to works in progress and memoranda written by prisoners for their attorneys. The State’s argument that Jackson had no expectation of privacy in his cell, while technically correct, does not apply to privileged communications.

The State exploited these writings in two ways. First, it used them to buttress its handwriting expert’s conclusions that Jackson likely wrote the note found at Miller’s home. R. 676, ll. 1 – 7. The State also used the writings to attack Jackson’s credibility in its closing argument. R. 730, ll. 7 – 21. The solicitor told the jury, “Read this story and think about this. This was pulled out of his jail cell, after he’s been arrested for this crime. Look and see if it looks like this is weaving, trying to explain every possible piece of evidence that we have. Just read it.” R. 730, ll. 12 – 16.

Furthermore, Jackson should have been given an opportunity to be heard on the writings before they were given to the police by the magistrate. “No person shall. . . be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. Due process requires notice and the right to be heard. State v. Dukes, 404 S.C. 553, 558, 745 S.E.2d 137, 140 (Ct. App. 2013). No excuse was given for the failure to give Jackson the right to contest the handover of privileged documents to the police. Jackson should have been given an opportunity to be heard and notice to his attorney before the

police were allowed to read these documents. Because of the prejudice suffered by Jackson from the admission of these documents in this close case, the Court should reverse.

CONCLUSION

For the foregoing reasons, appellant's conviction should be reversed and the case remanded for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Alexander', is written over a horizontal line.

David Alexander
Appellate Defender

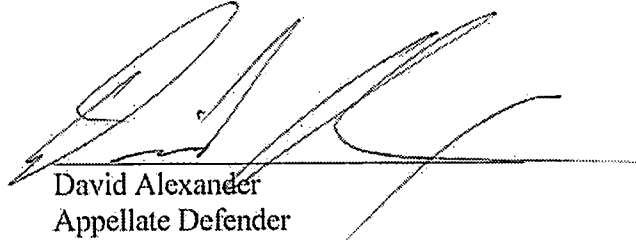
ATTORNEY FOR APPELLANT

This 21st day of May, 2015.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KELVIN JACKSON,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, via U.S. First Class Mail with the appropriate postage affixed thereto, this 1st day of June, 2015.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of June, 2015.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Beaufort County
Honorable Maite Murphy, Circuit Court Judge

THE STATE,

Respondent,

v.

KELVIN JACKSON,

Appellant.

Appellate Case No. 2013-001779

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The issues raised on appeal are not preserved because Jackson did not obtain a ruling from the trial court on them; further, the court did not err in admitting the handwritings of Jackson found under his jail cell bed because they were not protected by attorney-client privilege; Jackson’s due process rights were not violated; and, even assuming *arguendo* error in admitting this evidence, its admission was harmless and not prejudicial given the other overwhelming evidence of Jackson’s guilt; Jackson’s handwriting is not protected by any privilege, *and* the writings were cumulative to what Jackson told police, which was before the jury.

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Whether writings seized from appellant's jail cell that were reviewed *ex parte* and *in camera* by a magistrate judge were admitted in violation of appellant's due process rights and were protected by attorney client privilege?

STATEMENT OF THE CASE

During the early morning hours of May 26, 2011, Appellant murdered Masako Yamaguchi Miller. It is believed the victim was murdered in her home in Hampton County. It is certain her body was discovered in Beaufort County on May 31, 2011. Appellant was arrested for the victim's murder on June 10, 2011.¹ On July 21, 2011, the Beaufort County grand jury indicted appellant for the murder (Indictment Number: 2011-GS-07-01329). On July 29, 2013, appellant proceeded to trial before the Honorable Maite Murphy, Circuit Court Judge, and the Honorable Carmen T. Mullen, Circuit Court Judge, and a jury. (R. p. 2, Tr. p. 1). Sean Thorton and Hunter Swanson Deysach, Esquires, represented the State. Virgin Johnson and Korey Williams, Esquires, represented appellant on the charge. (R. p. 3, Tr. p. 2). At the conclusion of the trial, the jury found appellant guilty of murder. (R. p. 777, Tr. p. 812, ll. 2-17). Judge Murphy sentenced appellant to forty-five (45) years confinement. (R. pp. 786-87, Tr. pp. 821-22). On October 31, 2013, Judge Murphy heard argument on and denied appellant's post-trial motions. (R. pp. 789-802, Tr. October 31, 2013, pp. 1-14). This appeal followed raising only one (1) issue. (BOA).

¹ Appellant was arrested for the fraudulent use of the victim's bank card on May 27, 2011, and remained in jail until his arrest for murder on June 10, 2011.

RESPONDENT'S STATEMENT OF FACTS

The victim, Masako Yamaguichi Miller (hereinafter "the victim"), disappeared from her home in Hampton, S.C., after midnight on May 26, 2011. Her body was recovered four (4) days later in Beaufort County at the edge of the Broad River after having been submersed in water. (R. pp. 213-14, 240-47, 271-76, 338-42, 319-22, 348, 357, 427-42, 367-92, Tr. pp. 250-51, 277-84, 308-13, 374-78, 355-58, 384, 393, 463-78, 403-28).

Appellant, Kelvin Jackson (hereinafter "Jackson"), murdered the victim after a lengthy, tumultuous, "on again-off again," romantic relationship lasting approximately ten (10) years. Jackson and the victim had two (2) children together.

While the relationship was ongoing, police had been called to the couple's home several times over the years regarding domestic violence. The victim had also had police put a Vardar [motion detector] Security System in her house. In the same year the victim died, a co-worker and close friend of the victim overheard over the phone the victim and Jackson arguing. The following morning, the friend saw bruises on the victim's face and arm. Another friend saw Jackson and the victim argue and "tussle" at her home, and Jackson tried to force the victim to come with him; and, he attempted to check the friend's cell-phone thinking it was the victim's phone. The police were called to the friend's home with regard to this incident as well. The same friend had seen hand prints or bruises on the victim's arms and neck while the victim and Jackson were romantically involved. The victim's daughter testified she had witnessed Jackson hit her mother in the chest with a thick wooden block, and Jackson had done something to her mother on another occasion in the bathroom. Jackson had even pushed the daughter down on one (1) occasion when she tried to protect her mother from Jackson. The daughter also testified Jackson was jealous of the victim, and the daughter had to hide the victim's cell phone from

Jackson. Approximately two (2) weeks before the victim's murder, the victim was visiting with one (1) of her sons at the hospital when Jackson came to the hospital, and there was another incident. The close friend and co-worker mentioned above *and also* the victim's new boyfriend both overheard Jackson cursing the victim and accusing her of "disrespecting" him because she was seeing another man. The victim was approximately five (5) foot, (2) inches tall, and Jackson was approximately six (6) foot, one (1) inch tall and weighed approximately two hundred and fifty (250) pounds. The testimony at trial established the victim was afraid of Jackson. (R. pp. 206-31, 232-36, 242-43, 268-69, 285, 300, 302-04, 477-78, Tr. pp. 243-68, 269-73, 279-80, 305-06, 321, 336, 338-40, 513-14).

Jackson had lived with the victim until January/February of 2011, when the victim made Jackson move out of her home. The victim kicked Jackson out because of his abuse of her, and she had met the new boyfriend who was not abusive. Before leaving, Jackson argued with the victim about being evicted. Jackson then moved to Columbia, S.C. At the time of the victim's murder, Jackson both lived and worked in Columbia. The victim still lived at Middle Street in Hampton with her three (3) children. (R. pp. 206-31, 264-67, 448, Tr. pp. 243-68, 301-04, 484).²

The day before her disappearance, the victim closed a joint checking account she had with Jackson at Palmetto State Bank in Hampton, and she opened a checking account solely in her name. At that time, she was given one (1) debit card for the new account by the bank. The day before her disappearance, the victim also called Jackson and informed him she was taking him off of her insurance. The victim had also filed a DSS lien against Jackson for child support. Jackson also had a baby by another woman. Jackson had previously been to jail before for non-

² The victim's oldest child, a daughter, was not Jackson's child.

support. (R. pp. 324-36, 222, 230, Tr. pp. 360-72, 259, 267).

On the afternoon of May 25, 2011, the victim was at a local park with her children. A friend, Stephanie Williams, who lived across from the park, asked the victim to meet her there. Stephanie had previously borrowed money from the victim for wedding attire. On that afternoon, Stephanie paid the victim \$260.00 in cash. (R. pp. 476-82, Tr. pp. 512-18).

That night, May 25, 2011, the victim was at home with her children. The victim also saw her new boyfriend, face to face, at her residence that night and spoke with him on her back porch and then spoke with him again by text messages around 10:15 p.m., after he returned to his own residence. The victim's new boyfriend testified the victim was alive and well at both the time he left her home and at the time of their last text. (R. pp. 240-44, Tr. pp. 277-81).

The victim's oldest child, who was fourteen (14) years old at the time of trial, but twelve (12) at the time of her mother's murder, testified she and the other children went to bed at approximately 10:00 p.m. Her mother was alive and well at that time. (R. pp. 264-83, Tr. pp. 301-19).

That night, the victim's air conditioning was not working and a repairman had come to the home and worked on the unit. Rather than driving his work van, the repairman drove his personal vehicle and parked it in the victim's driveway. The repairman testified he last saw the victim at approximately 11:00 p.m., and the victim was alive and well when he left the residence. (R. pp. 488-91, Tr. pp. 524-27).

At approximately 10:00 p.m., on May 25, 2011, a couple of hours before the victim was murdered and disappeared, two (2) residents of Hampton who lived in the same area the victim lived in, an area called "the Bottoms," were standing by the side of the road talking. As they were talking, the two (2) men saw Jackson come walking up the road and spoke to him as he

walked past. Jackson was headed toward the victim's residence on foot. The two (2) men did not see Jackson's car. Jackson had in fact parked the car further down the road in the Bottoms so he could approach the victim's residence on foot without detection. (R. pp., 439-40, 482-86, 450-51, Tr. pp. 475-76, 518-22, 486-87, State's 32).³

The victim's usual morning routine was to get up around 5 to 6 a.m., open the front door for a friend's child who rode the school bus with the victim's children, and then leave and go to work at Scottsman United System. The victim trained employees there and had to be at work at 6:00 a.m. to 7:00 a.m. The usual routine was for the friend's child to come in the victim's home at about 5:00 to 5:45 a.m., go back to sleep on the couch, and then the victim's children would get up, eat breakfast, and catch the school bus together with the friend's child and attend school. The victim would wake up her children and the friend's child before leaving for work. Testimony at trial established Jackson knew the victim's usual morning routine. (R. pp. 271-73, 289, 291-92, Tr. pp. 308-10, 325, 327-28).

On the morning of May 26, 2011, the friend's child arrived at 5:30 a.m. as planned and the front door was unlocked, but the victim was not in her home. The child fell asleep as usual. The victim's children subsequently overslept for school. When they got up around 8:00 a.m., they noticed their mother was gone, but her oldest child found a yellow sticky note on the kitchen counter stating she [the victim] had gone off with someone, but she would be back. The note purported to be from the victim, but the handwriting on the note *was not the victim's*. The

³ One (1) of the men who saw Jackson walking toward the victim's residence, Kevin White, died before trial; however, Jackson later admitted in his 2nd statement to police that he saw Kevin White as he was on foot walking toward the victim's residence. Jackson claimed he parked some distance from the victim's residence so his new girlfriend [not the victim] would not see his car at the victim's residence. The other man who was talking with Kevin White and saw Jackson on foot walking toward the victim's residence shortly before her murder and disappearance testified at trial and identified Jackson. (State's Ex. 32, R. p. 591, Tr. p. 626).

victim's oldest child testified the handwriting on the note looked like Jackson's handwriting, with which she was familiar. A handwriting expert also testified at trial that portions of the note were most probably written by Jackson. A close friend of the victim's also testified the note was not in the victim's handwriting.⁴ And, the child who rode to school with the victim's children also testified the note was not in the victim's handwriting. On the morning of May 26, 2011, the victim's daughter also noticed the victim's bed was un-made, which was unusual, because the victim always made her bed before leaving for work; pillows were on the floor, and perfume bottles on the dresser were overturned in one (1) specific direction. She also located the victim's purse and wallet and did not see any cash in the same. (R. pp. 271-78, 219, 292-95, Tr. pp. 308-15, 256, 328-31).

When the victim did not appear for work or call her employer, a co-worker and friend was immediately suspicious and notified police. Failure to appear for work without notice was cause for termination. The co-worker and friend had talked to the victim the night before, and the victim had ended the phone conversation by telling the co-worker that she would see her the following morning at work. Police and the co-worker went to the victim's apartment to perform a welfare check but did not find the victim. The victim's new car, on which she was making payments, was parked in the driveway. Police and the co-worker found the victim's work-bag was packed, and her work shoes were still on the floor. The back door to the home was unlocked, which was unusual, because it was always kept locked. (R. pp. 206-31, 287, Tr. pp. 243-68, 323).⁵

⁴ The same friend also testified in the fifteen (15) years she had known the victim, she had never known her to leave her children at home alone at night. (R. pp. 232-36, Tr. pp. 269-73). The mother who dropped her child off every morning testified similarly. (R. p. 298, Tr. p. 334).

⁵ It is believed Jackson murdered the victim in her bedroom most probably on the bed. He then carried her body out the back door to avoid awakening the children and to avoid detection.

Police immediately began investigating the victim's disappearance. One (1) of the first things police did was to check to see if there was any activity on the victim's credit cards or bank accounts. Police discovered that on the night of the victim's disappearance, *May 26, 2011*, at *2:26 a.m.*, someone had attempted to use the victim's new bank debit card at a Shell Station in the city limits of Hampton. (R. pp. 318-22, 338-45, Tr. pp. 354-58, 374-81).

Police spoke with the clerk at the store and reviewed video surveillance footage and discovered Jackson was the person who attempted to use the victim's new bank debit card in an attempt to purchase gasoline at the station. The store clerk also testified at trial that Jackson, who she knew, attempted to use the debit card at *2:26 a.m.* on *May 26, 2011*, and after the pump would not accept the card, Jackson came into the store and purchased gas with cash. The store surveillance video showing Jackson attempting to use the card at the pump and purchasing gas in the store was also introduced at trial. (R. pp. 318-22, 338-45, Tr. pp. 354-58, 374-81).⁶

On the morning of *May 26, 2011*, around *6:30 a.m.*, Dennis Stephens of Yemassee was getting his morning exercise by doing his usual 2 mile walk from his home, off Highway 21, to Exit 42 on Interstate 95. On the walk to the I-95 Bridge, Mr. Stephens found a cell phone on the side of the road. He brought it home and got the phone to work, and there were several messages from people concerned about the whereabouts of the phone's owner. Mr. Stephens' wife was concerned about his picking up this phone, and she told him to get rid of it. Mr. Stephens took the phone and tossed it in some standing water. Police subsequently contacted Mr. Stephens and his wife, and Mr. Stephens took police to where he had thrown the phone. Police recovered it. It was the victim's cell phone that Mr. Stephens found on the morning of *May 26, 2011* at approximately *6:30 a.m.* on the side of Highway 21 near the I-95, Exit 42, bridge. (R. pp. 345-

⁶ The jury reviewed this video again shortly before returning with its verdict of guilty.

59, 362-66, Tr. pp. 381-95, 398-402).

Four (4) days later, the victim's decomposing body was discovered at the edge of the Broad River in Beaufort County by a fisherman. The body had previously been submersed in water. The location of the body was immediately down-stream from the Highway 170 Bridge where the Broad River and Archer's Creek intersect. The fisherman immediately contacted authorities, and the victim's body was recovered, identified by dental records, and the cause of death was determined to be most probably suffocation or strangulation. The manner of death was ruled homicide. (R. pp. 367-74, 375-81, 382-92, 533-43, Tr. pp. 403-10, 411-17, 418-28, 569-79).

Police subsequently discovered Jackson had stayed at a motel in Walterboro, S.C., at least some of the night-time hours of the victim's disappearance, May 26, 2011. Police eventually determined Jackson had rented a room at the *Palm Inn* in Walterboro well after midnight. (R. pp. 496-513, Tr. pp. 532-49).

The investigation revealed Jackson had rented the room under a false name, Calvin Sanders; however, the hotel clerk had required identification, and upon looking at the same realized Jackson's real name was Kelvin Jackson *not* Calvin Sanders. The clerk also noticed Jackson had registered under a false driver's license number. The clerk corrected the last name and the driver's license number on the motel registration form. Jackson paid *cash* for the room. Upon checking their computer records, the motel determined Jackson had checked in and first entered his motel room at the *Palm Inn* at 4:36 a.m. on May 26, 2011. (R. pp. 496-513, Tr. pp. 532-49).

At trial, the motel clerk testified and identified Jackson as the person who checked into the *Palm Inn* in the early morning hours of May 26, 2011. The clerk also testified Jackson paid

cash for the room. The State also introduced the motel's registration which showed Jackson had registered in his own handwriting using a false name and driver's license number, and that the motel clerk corrected the name and driver's license number after checking Jackson's i.d. The State also introduced the computer records of the motel which showed Jackson first swiped his motel room key card at 4:36 a.m. on May 26, 2011. (R. pp. 496-513, Tr. pp. 532-49).

Police questioned Jackson about his whereabouts the night of the victim's disappearance. Jackson initially lied to police and told them he was in another county the night of the victim's disappearance and stated he was not in Hampton County at all. Jackson claimed he was at his girlfriend's house in Fairfax in Allendale County and spent the night there. He also denied he used the victim's debit card that night. (R. pp. 310-21, 323, Tr. pp. 346-57, 359).⁷ Jackson also told police he had not seen the victim in about three (3) weeks, approximately sometime in early May. (R. pp. 427-29, Tr. pp. 463-65).

When confronted with the fact police could prove he was in Hampton that night through an eyewitness who saw him walking, and through video at the Shell station, Jackson admitted he was in Hampton that night. He claimed he drove to Hampton from Fairfax to get gasoline for the car. He claimed the victim had given him the debit card before that night. (R. pp. 320-21, Tr. pp. 356-57).

When told police could put him near the victim's home, Jackson admitted he had been with the victim starting around 11:00 p.m. on the 25th of May until the early morning hours of May, 26th. Jackson claimed when he arrived the victim was on the phone with her mother in

⁷ Jackson's girlfriend, Tara Evans, testified at trial that Jackson did not spend the night with her the night of the victim's disappearance. She testified he spent the night with her the night of May 24th/May 25th, 2011. On the morning of May 25, 2011, she had to give Jackson money to put gas in his automobile because Jackson had no money. (R. pp. 491-93, Tr. pp. 527-29). Jackson did not receive his paycheck at work until the afternoon of May 26, 2011. (R. pp. 514-16, Tr. pp. 550-52).

Japan or China. Jackson stated he and the victim “messed around,” [i.e. had sex] and the victim gave him the debit card, and he went to the Shell station to get gas for the car, and then returned to the victim’s home after 2:36 a.m. and returned the debit card to her telling her it did not work. He denied he killed the victim. However, he had no explanation why the victim would give him a debit card to an account that had no money in it as of yet. Jackson’s admission put him in the victim’s home with the victim from 11:00 p.m. May 25th until around 2:40 a.m. to 3:00 a.m. on May 26, 2011. (R. pp. 421-43, Tr. pp. 457-79, State’s Ex. 32).

Jackson admitted he then drove to Walterboro, a trip taking approximately thirty (30) minutes, and rented a room at the *Ramada Inn*. Police eventually determined he did not stay at the Ramada Inn but the *Palm Inn* where he gave the false identity. Jackson could not account for his whereabouts from the time he left the victim’s residence until he checked into the *Palm Inn* at 4:36 a.m. Upon searching the motel room at the *Palm Inn*, police discovered a blood stain in the motel room sink. D.N.A. testing confirmed the blood stain belonged to Jackson [1 in 2.2 trillion that it was someone else’s D.N.A. other than Jackson’s, i.e. a scientific match]. (R. pp. 421-43, 393-403, 544-57, 570-72, Tr. pp. 457-79, State’s Ex. 32, 429-39, 580-93, 606-08, Court’s 7).

In the victim’s home in Hampton, in her bedroom, police recovered a pillow. This pillow contained D.N.A. of both the victim, in a blood stain near the center of the pillow case, and of Jackson, on the edges of the pillow case, i.e. touch D.N.A.. (R. pp. 400-03, 405-08, 409-21, 544-57, 570-72, Tr. pp. 436-39, 441-44, 445-57, 580-93, 606-08).

S.L.E.D. Agent David Williams, who investigated the case, drove the route from the victim’s residence to the Hwy. 170 Bridge over the Broad River near where the victim’s body was recovered and then to the *Palm Inn* in Walterboro. Driving the speed limit, and driving in daytime traffic, the Agent was able to accomplish this complete trip in one (1) hour and fifty (50)

minutes, including a fifteen (15) minute stop on the bridge to theoretically dispose of the body. This meant Jackson could have murdered the victim and driven from Hampton, S.C. at approximately 2:26 a.m., [the time Jackson attempted to pass the victim's debit card at the Shell station] to the Broad River, and dumped the victim's body, and then drove to the *Palm Inn*, in Walterboro and checked in, well within the time period possible given his 4:36 a.m. check in time at the motel. This would also account for Jackson's whereabouts from 2:26 a.m., when he used the debit car, until 4:36 a.m. when he checked into the *Palm Inn* in Walterboro, which was only thirty (30) minutes from Hampton. (R. pp. 578-90, Tr. pp. 613-25).

At trial, the States' handwriting expert testified that the victim did not write the note found by her children the morning after her disappearance. The handwriting expert also testified the note was most probably written by Jackson. The expert also testified Jackson had attempted to disguise his handwriting when he gave a handwriting exemplar prior to trial. (R. pp. 672-82, Tr. pp. 707-17).

Witnesses also testified that Jackson came to the victim's grandmother's home the day after the victim went missing and was acting inappropriately for the victim being missing. Before coming to the home, Jackson had told his sister on the phone that he was on the way there but he was getting his car washed. (R. p. 247, Tr. p. 284).

ARGUMENT

The issues raised on appeal are not preserved because Jackson did not obtain a ruling from the trial court on them; further, the court did not err in admitting the handwritings of Jackson found under his jail cell bed because they were not protected by attorney-client privilege; Jackson's due process rights were not violated; and, even assuming *arguendo* error in admitting this evidence, its admission was harmless and not prejudicial given the other overwhelming evidence of Jackson's guilt; Jackson's handwriting is not protected by any privilege, *and* the writings were cumulative to what Jackson told police, which was before the jury.

What Occurred Below

In addition to the evidence previously listed, at trial the State also introduced writings that came from under the mattress of Jackson's jail cell. These writings were obtained pursuant to a lawful search warrant obtained by S.L.E.D. from Beaufort County Chief Magistrate Darlene Smith for writings of Jackson for handwriting comparison to the note, purportedly left by the victim the night she disappeared, on the kitchen counter of her home. (R. pp. 89-92, Tr. pp. 126-29, Court's Ex. 10, Search Warrant, R. pp. 591-99, Tr. pp. 626-34). The S.L.E.D. agent who executed the search warrant and seized these writings did not read them, but at Chief Magistrate Smith's direction, placed them in a manila envelope for review by the Chief Magistrate. (R. pp. 89-105, Tr. pp. 126-42). After the Chief Magistrate reviewed the recovered writings, she determined they were not protected by attorney-client privilege, and she turned them over to law enforcement. (R. pp. 89-95, Tr. pp. 126-32, Court's Ex. 10, Search Warrant Return). These were then submitted to a hand writing expert for comparison to the note found in the kitchen. (R. pp. 591-99, Tr. pp. 626-34).⁸ Relying in part on these writings, the expert opined portions of the

⁸ The writings, excluding the cover page, appear to be seven (7) separate documents on notebook paper in Jackson's handwriting. The first is a list of telephone numbers of his girlfriend and relatives. Another document is a diagram, apparently of the victim's home. There are five (5) additional separate writings in which Jackson writes separately about his whereabouts on the day or night of the disappearance and murder of the victim, explains his innocence or attempts to explain away evidence of his guilt, and also denies prior abuse of the victim. In one (1), at the

note found in the victim's kitchen were probably written by Jackson, and the note was not written by the victim.

Below, Jackson objected to the admission of these writings in evidence because he *alleged* the search warrant was without probable cause and the writings were covered by attorney-client privilege. Jackson also argued he had serious concerns given the fact in a murder case, the Chief Magistrate determined on her own the materials were not protected by attorney-client privilege, without a hearing at which Jackson's counsel was present. The trial court, after hearing the testimony on the matter, argument of counsel, reviewing the search warrant and writings themselves, and considering the matter overnight, found the search warrant was supported by probable cause; therefore, the writings were admissible in evidence against Jackson. (R. pp. 89-114, 136-37, Tr. pp. 126-51, 173-74).⁹ These writings were admitted in evidence in addition to the evidence previously set forth in Respondent's Statement of Facts. (R. pp. 136-37, Tr. pp. 173-74, State's Ex. 36, R. pp. 591-608, Tr. pp. 626-43). The writings are basically cumulative to Jackson's statements to law enforcement regarding his whereabouts the night of the victim's disappearance which were admitted before the jury. (R. pp. 310-11, 314-21, 422-43, 444-63, 465-75, Tr. pp. 346-47, 350-57, 458-79, 480-99, 501-11, State's 32, R. pp. 602-07, Tr. pp. 637-42). In the writings, Jackson does not admit to killing the victim and in fact denies his guilt. (R. pp. 602-07, Tr. pp. 637-42, State's Ex. 36).

Lack of preservation of the issues raised on appeal

The *issues* Jackson raises on appeal in his brief were not preserved below because they

end of that document, Jackson writes: "Please give this to the lawyers." (Court's Ex. 11). In another, Jackson states that if this is all the evidence police have against him, "my lawyer" will discredit police in front of the jury. The writings are not addressed to anyone or marked legal.

⁹ The Solicitor agreed prior to admitting any of the writings he would remove any writings containing unfairly prejudicial comments such as references to a polygraph test.

were not ruled on by the trial court. Pikaart v. A&A Taxi, Inc., 393 S.C. 312, 324, 713 S.E.2d 267, 273 (2011)(an issue must be both raised to and ruled upon by the court below to be preserved for appeal); I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000)(party must both present his issues and arguments to the trial court and obtain a ruling before those issues and arguments will be preserved); Wilder Corp. v. Wilkie, 330 S.C. 71, 497 S.E.2d 731 (1998); State v. McKnight, 352 S.C. 635, 646, 576 S.E.2d 168, 174 (2003)(an issue must be raised to and ruled upon by the trial court to be preserved for appellate review); State v. McEachern, 399 S.C. 125, 731 S.E.2d 604 (Ct. App. 2012); Appellate Practice in South Carolina, 2nd Ed., (2002), *Jean Hoefer Toal, et. al* (“The lower court must also rule upon the issue for it to be preserved for review.”), p. 58. As just discussed above, Jackson argued to the trial court that: (1) the search warrant lacked probable cause, (2) the materials were covered by attorney-client privilege, and (3) the magistrate should not have made an independent determination the writings were not protected by attorney-client privilege without participation from Jackson’s counsel. The trial court ruled on only one (1) of these objections, the probable cause challenge to the search warrant. (R. pp. 136-37, Tr. pp. 173-74).¹⁰

Jackson does not raise the probable cause challenge to the search warrant on appeal. (BOA). Jackson raises the two (2) issues that were not ruled on by the trial court. (R. pp. 136-37, Tr. pp. 173-74). As a result, the two (2) issues Jackson now raises on appeal (See BOA) are not preserved for appellate review. Wilder Corp. v. Wilkie, 330 S.C. 71, 497 S.E.2d 731 (1998); Fettler v. Gentner, 396 S.C. 461, 469, 722 S.E.2d 26, 30 (Ct. App. 2012)(appellate court cannot address an issue unless it was first raised to and ruled upon by the lower court); State v.

¹⁰ When the writings were offered into evidence, Jackson stated he renewed his previous motion; to which, the trial court responded: “And, subject to my previous ruling pre-trial, my ruling stands.” (R. p. 591, Tr. p. 626; See also R. p. 593, Tr. p. 628). As a result, the trial court did not rule and has never ruled on the two (2) issues raised by Jackson on appeal.

Liverman, 386 S.C. 223, 243, 687 S.E.2d 70, 80 (Ct. App. 2009)(issue must be both raised to and ruled on by the lower court); South Carolina Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E. Underwriters Risk-Retention Ground, 347 S.C. 333, 554 S.E.2d 870 (Ct. App. 2001); Hallsberg v. Berry, 302 S.C. 97, 104, 394 S.E.2d 7, 12 (Ct. App. 1990)(an issue not explicitly ruled on by the lower court was waived for appellate review where omission was not brought to the court's attention by proper motion); Appellate Practice in South Carolina, 2nd Ed., (2002), *Jean Hoefer Toal, et. al* ("The lower court must also rule upon the issue for it to be preserved for review."), p. 58.¹¹ Further, Jackson's due process argument that he was entitled to be present during the magistrate's determination whether any of the writings were protected by attorney-client privilege is not preserved for appellate review because it is argued in his brief in a short, conclusory statement, without any specific supporting authority for this proposition. (See BOA pp. 10-11). Fields v. Melrose Ltd. Parnership, 312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993). As a result, the issues Jackson raises on appeal are not preserved for appellate review. This appeal must be dismissed.

The Lack of Merit of Jackson's Argument

As a general rule, it is an exception to the hearsay rule that a defendant's out-of-court statement may be testified to by the witness who heard an oral statement or received a written statement. State v. Plyler, 275 S.C. 291, 270 S.E.2d 126 (1980); State v. Shorter, 85 S.C. 170, 67 S.E. 131 (1910); State v. Hambright, 310 S.C. 382, 426 S.E.2d 806 (Ct. App. 1992); State v. Good, 308 S.C. 313, 417 S.E.2d 643 (Ct. App. 1992). Anything a defendant has stated [or written], which is relevant to any question involved in the trial, is admissible in evidence against him. State v. Pittman, 137 S.C. 75, 134 S.E.515 (1926); State v. Turner, 117 S.C. 470, 109 S.E.

¹¹ In his post-trial motions, Jackson did not bring to the trial court's attention it had not ruled on the two (2) issues he raises in this appeal. (See Tr. August 31, 2013).

119 (1921). A statement, confession, or admission of a defendant may take many different forms, including a letter or letters to one or more persons, provided, that they come direct from the one charged with the commission of the crime. State v. Smith, 227 S.C. 400, 88 S.E.2d 345 (1955). It is a common occurrence that a defendant will communicate by letter to a co-defendant or other persons; and, if authenticated, the letter can be used and is admissible in evidence against a defendant. State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001); State v. Mathews, 296 S.C. 379, 373 S.E.2d 587 (1988); State v. Mercado, 263 S.C. 304, 210 S.E.2d 459 (1974); State v. Miller, 260 S.C. 1, 193 S.E.2d 802 (1973); State v. Hightower, 221 S.C. 91, 69 S.E.2d 363 (1952); State v. Dixon, 284 S.C. 526, 328 S.E.2d 89 (Ct. App. 1985). *See also* State v. Miller, 262 S.C. 369, 204 S.E.2d 738 (1974).

Although a jail or detention facility is under the control of law enforcement authorities, it lacks the essential ingredients of a police dominated atmosphere that is present in an interrogation setting, and therefore, the statements of an incarcerated person freely made to an inmate (who initially is not acting as an agent of the prosecution), are always admissible. Illinois v. Perkins, 496 U.S. 292, 110 S.Ct. 2394 (1990); Kuhlmann v. Wilson, 477 U.S. 436, 106 S.Ct. 2616 (1986); Thomas v. Cox, 798 F.2d 132 (4th Cir. 1983); State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000). Similarly, statements made to a friend or family member while in jail are admissible against the defendant. Arizona v. Mauro, 481 U.S. 520, 107 S.Ct. 1931 (1987); State v. Von Dohlen, 322 S.C. 234, 471 S.E.2d 689 (1996); State v. Good, 308 S.C. 318, 417 S.E.2d 643 (1992); In re Drolshagen, 280 S.C. 84, 310 S.E.2d 927 (1984). Likewise, so are statements made by a defendant who is a pre-trial detainee to other private individuals who are not law enforcement. State v. Commander, 384 S.C. 66, 681 S.E.2d 21 (Ct. App. 2009)(statement to fellow jail inmate who testified in murder prosecution that defendant

discussed possible trial strategies with him and suggested the possibility of relating to the defendant's attorney that the murder victim first struck defendant with a stick, knocking the defendant out, who in turn fell on the victim suffocating the victim to death); State v. Lynch, 375 S.C. 628, 654 S.E.2d 292 (Ct. App. 2007)(similar).

The issues raised on appeal

Jackson does not challenge the search warrant obtained by the State or the legality of the search of his cell under the Fourth Amendment or South Carolina's search warrant statute. (IBOA).¹² Jackson challenges the Court's admission of this evidence alleging the writings were covered by attorney-client privilege and were therefore inadmissible. (IBOA).¹³

Law/Analysis

The burden of establishing the attorney-client privilege rests upon the party asserting it. State v. Love, 275 S.C. 55, 271 S.E.2d 110 (1980); United States v. Tedder, 801 F.2d 1437 (4th

¹² There would be no merit to any such challenge, if made. The State did not seize Jackson's writings without a warrant. The State first sought and obtained a search warrant from a neutral and detached magistrate. (Court's Ex. 10, R. pp. 89-105, Tr. pp. 126-42). Compare State v. Ellefson, 266 S.C. 494, 224 S.E.2d 666 (1976)(where no search warrant was obtained). The search warrant in this case is supported by probable cause; there was a need for any handwritten materials of Jackson to compare to the handwriting on the note found in the victim's kitchen the morning after her disappearance; and the magistrate issued the search warrant for the same. (Court's Ex. 10, R. pp. 89-105, Tr. pp. 126-42.) Additionally, a prisoner, including a pre-trial detainee does not retain all of the rights available to free persons in our society. State v. Ellefson. Thus, a prisoner has no reasonable expectation of privacy or a reduced expectation of privacy in his cell. Hudson v. Palmer, 486 U.S. 517 (1984); United States v. Jeffus, 22 F.3d 554 (4th Cir 1994); State v. Matthews, 296 S.C. 379, 373 S.E.2d 587 (1988). See also Block v. Rutherford, 468 U.S. 5776 (1984); State v. Gaskins, 284 S.C. 105, 326 S.E.2d 132 (1985); State v. Mercado, 263 S.C. 304, 210 S.E.2d 459 (1974); State v. Henderson, 271 Ga. 264, 517 S.E.2d 61 (Ga. 1999).

¹³ In very brief fashion in his appellate brief, without citing any authority for his specific proposition, Jackson also argues he had a due process right to be represented by counsel and for counsel to be present and heard, before the Chief Magistrate made a determination whether any of the materials seized pursuant to the search warrant were covered by the attorney-client privilege. (BOA).

Cir. 1986). The privilege is **strictly construed** to protect only confidences disclosed within the attorney-client relationship. State v. Doster, 276 S.C. 647, 284 S.E.2d 218 (1981); State v. Love, 275 S.C. 55, 271 S.E.2d 110 (1980). The privilege is not absolute. Ross v. Medical University of South Carolina, 317 S.C. 377, 453 S.E.2d 880 (1994). "Once otherwise privileged information is disclosed to a third party by the person who holds the privilege, or if an otherwise confidential communication is necessarily intended to be disclosed to a third party, the privilege disappears." Oakland Co. Prosecutor v. Dep't of Corrections, 222 Mich. App. 654, 658, 564 N.W.2d 922 (1997). See e.g. People v. Simpson, 369 N.E.2d 1248 (1977)(no case is cited to us that would uphold the privilege where the very holder of that privilege consciously, and by his own act, reveals or confirms to third parties the content of a prior privileged communication), *citing as cf.* DeLeon v. Territory, 9 Ariz. 161, 80 P.2d 348 (1905).

Whether a communication is privileged is for the trial judge to decide after a preliminary inquiry into all of the facts and circumstances surrounding the communication. State v. Doster, 276 S.C. 647, 284 S.E.2d 218 (1981); State v. Love, 275 S.C. 55, 271 S.E.2d 110 (1980). The determination as to whether the privilege applies is within the sound discretion of the trial judge, and this determination by the trial judge is conclusive in the absence of any abuse of discretion. State v. Doster, 276 S.C. 647, 284 S.E.2d 218 (1981); State v. Love, 275 S.C. 55, 271 S.E.2d 110 (1980).

In order to establish the existence of the privilege, it must be shown that the relationship between the parties was that of attorney-client and the communications were of a confidential nature. Thus, where a client communicates a matter in the presence of others, and such other persons have not been employed to assist in the representation of the client, such communications cannot be considered confidential. The attorney-client privilege does not

extend to inmates known as “jailhouse lawyers.” State v. Owens, 309 S.C. 402, 424 S.E.2d 473 (1992). The attorney-client privilege does not extend to a friend, who happens to be an attorney, unless legal advice was actually sought. United States v. Tedder, 801 F.2d 1437 (4th Cir. 1986).

To establish the attorney-client privilege, the person asserting the privilege must show that the relationship between the parties to the communication was attorney and client and that the communications were confidential in nature. Crawford v. Henderson, 356 S.C. 389, 589 S.E.2d 204 (Ct. App. 2003); Marshall v. Marshall, 282 S.C. 534, 538-39, 320 S.E.2d 44, 47 (Ct. App. 1984)

Below Jackson utterly failed to meet his burden to show his jail house or jail cell writings were protected by the attorney-client privilege. Love. In fact, Jackson did not even testify at the pre-trial hearing regarding the same or establish who the writings were to. (R. pp. 89-114, Tr. pp. 126-51). Id. Jackson did not establish when the writings were made or when the attorney-client relationship began. Nor did Jackson’s attorneys testify at the pre-trial hearing and establish the writings were directed to them and were subject to the attorney-client privilege. (R. pp. 89-114, Tr. pp. 126-51). As a result, the trial court did not err [i.e. abuse its discretion] in admitting this evidence. Love.

Furthermore, “[t]he attorney-client privilege protects against disclosure of confidential communications by a client to his attorney.” State v. Owens, 309 S.C. at 407, 424 S.E.2d at 476. See Tobaccoville USA, Inc. v. McMaster, 387 S.C. 287, 692 S.E.2d 526 (2010)(same); Marshall, 282 S.C. at 539, 320 S.E.2d at 47 (the person asserting the privilege must show *the communications* were confidential in nature). Jackson was in possession of his own handwritings, and they had not been communicated to an attorney or any lawyer. His personal writings are not protected by attorney-client privilege. Id. See State v. Jones, 383 S.C. 535, 681

S.E.2d 580 (2009)(finding State did not violate attorney-client privilege because it did not seek confidential communications between client and his defense team).

Furthermore, the writings themselves show they were not directed to an attorney but to a third (3rd) party. In fact, the writings, which are basically Jackson's complaints or ranting about how he could be charged with murder, are clearly to a third (3rd) party. And, Jackson notes on the bottom of one (1) page, of one (1) writing, that he wants the third (3rd) party to eventually give that particular writing "to the lawyers." In another of the documents, Jackson states that if this is all the evidence police have against him, "my lawyer" will discredit police in front of the jury. Therefore, the writings are not protected by attorney-client privilege. Marshall v. Marshall, 282 S.C. 534, 320 S.E.2d 44 (Ct. App. 1984)(Any voluntary disclosure by a client to a 3rd party waives the attorney-client privilege if it did exist not only as to the specific communication disclosed but also to all communications between the same attorney and the same client on the same subject), *citing* Duplan Corp.v. Deering Milliken, Inc., 397 F.Supp. 1146 (D.S.C. 1975); United States v. Jones, 696 F.2d 1069 (4th Cir. 1982). *See also* Love; SEC v. Kingsley, 510 F.Supp., 561 (D.C. 1981); In Re Grand Jury Proceedings, 517 F.2d 666 (5th Cir. 1975)(disclosure must be to attorney without the presence of strangers or third parties); State v. Rook, 174 S.C. 225, 177 S.E. 143 (1934)(finding questioning defendant about letter he wrote to 3rd party about his conversations with his attorney was proper and did not violate attorney-client privilege); State v. Osie, 16 N.E.3d 588 (Ohio 2014)(letter written by defendant to 3rd party, which defendant and his attorneys claimed was written to or for attorneys, was clearly to 3rd party and not protected by attorney-client privilege).¹⁴

¹⁴ Jackson argues on appeal that the writings are protected because allegedly they could only be for the use of an attorney. This is not supported by the record. As counsel conceded below, and as the recording of Jackson's interviews shows, Investigator Johnson told Jackson several times

Because the writings are not protected by the attorney-client privilege, Jackson's due process argument fails. Further, Jackson's due process rights were not violated. The State obtained the writings pursuant to a lawful search warrant supported by probable cause. Jackson has not challenged this finding on appeal, and it is the law of the case. Furthermore, Jackson was arrested for this murder on June 10, 2011. Jackson was served with the search warrant on July 11, 2011. There is no evidence in the record Jackson was represented by an attorney on the murder charge on June 10 or July 11, 2011. Additionally, law enforcement did not read the writings when they were seized but, following the Chief Magistrate's instructions, placed them in an envelope and returned them to the Chief Magistrate. The Chief Magistrate conducted an independent judicial review and determined the seized writings were not subject to attorney-client privilege before turning them over to law enforcement pursuant to the lawful search warrant. Before the documents were admitted in evidence against Jackson, there was a suppression or *in camera* hearing before the Circuit Court where Jackson through counsel was able to raise objections to the admissibility of the writings themselves. Jackson could have testified at the hearing or called anyone he wished as a witness at the pre-trial *in camera* hearing. The trial court, determined the evidence was admissible before it was admitted against him at his criminal trial. As a result, Jackson's due process rights were not violated. See State v. Dukes, 404 S.C. 553, 745 S.E.2d 137, 140 (Ct. App. 2014), *relying on* Dangerfield v. State, 376 S.C. 176, 179, 656 S.E.2d 352, 354 (2008); S.C. Dep't of Soc. Servs. v. Wilson, 352 S.C. 445, 452, 574 S.E.2d 730, 733 (2002); and United States v. Morsely, 454 Fed. Appx. 191, 193 (4th Cir. 2011).

he [Jackson] needed to write down what occurred on the day before and day after the victim's disappearance so Jackson could remember all of the details of those two (2) days. In the second interview, Jackson states that: "there are some things that I need to write down." (Court's Ex. 7: Interview of June 2, 2011 and June 7, 2011; R. p. 110, Tr. p. 147, ll. 13-15).

Furthermore, even if the writings were addressed to his attorneys, **which they were not**, and the *substance* of *his communications* in the same were protected by the attorney-client privilege, *Jackson's handwriting* would not be protected by the attorney-client privilege and could be used by the State's expert in comparison to the note found in the victim's kitchen. See United States v. Weger, 709 F.2d 1151, 1156 (7th Cir. 1986)(attorney-client privilege does not prevent disclosure of "characteristics of the type style" of a letter written by client to her lawyer because, like a handwriting exemplar, they are "merely 'identifying physical characteristics'"); United States v. Pipkins, 528 F.2d 559 (5th Cir. 1976); In re Grand Jury Proceedings, 791 F.2d 663, 665 (5th Cir. 1986); State v. Regier, 621 P.2d 431 (Kan. 1980)(the disclosure of physical characteristics is not a confidential communication under attorney-client privilege); State v. Mingo, 363 A.2d 369 (N.J. Sup. 1976); People v. Paine, 33 Cal. App. 3d. 1048 (Cal App. 1973)(where defendant refused to give court ordered handwriting exemplar, his attorney could be compelled to turn over handwritten papers of the defendant in attorneys possession for handwriting comparison only); 3, Jones, Evidence, 6th ed., 1972, p. 791; 8 Wigmore, Evidence (McNaughton rev. 1961) Section 2306). The *handwriting* evidence was admissible regardless.

Harmless error / Lack of prejudice

There is no demonstrable prejudice from the admission of Jackson's jail cell writings. Even assuming *arguendo* the admission of these writings was error, their admission was harmless where the evidence of Jackson's guilt was overwhelming independent of the writings and Jackson's admissions in the writings are similar and cumulative to those statements he made to police, which were already admitted in evidence before the jury.

Even if this Court were to find the writings or some portion thereof were protected by attorney-client privilege, the State's obtaining the same [i.e. privileged documents] was

unintended. The purpose of the search warrant was to obtain handwriting samples of Jackson for comparison to the note left on the victim's kitchen counter found the morning of the victim's disappearance, not to intrude on any attorney-client relationship or obtain any material covered by the attorney-client privilege. In fact, the Chief Magistrate who issued the search warrant instructed the officer who obtained the warrant not to read the materials but place them in an envelope and return the same to her for inspection for any attorney-client privileged materials. The officer testified he followed the Chief Magistrate's instructions completely, and the materials were not turned over to police until after the Chief Magistrate had reviewed them and determined they were not protected by attorney-client privilege. As a result, even if this Court determines all or part of the writings are somehow protected by attorney-client privilege their acquisition was unintended. *See Brown v. Commonwealth*, 416 S.W.2d 302 (Ken. 2013)(finding detective's motives in obtaining the search warrant was proper and acquisition of any attorney-client material from defendant's jail cell papers was unintended which must be considered as a factor in determining prejudice to the defendant); *State v. Quattlebaum*, 338 S.C. 441, 527 S.E.2d 105 (2000)(in determining prejudice the court must determine whether the intrusion into the attorney-client relationship was intentional; if it was not, the defendant must make a prima facie showing of prejudice, and if he does, the State must then show there was no prejudice). *See also United States v. Morrison*, 449 U.S. 361 (1981)(recognizing even if the attorney-client privilege is violated, prejudice must be shown); *Weatherford v. Bursey*, 429 U.S. 545 (1977).

Jackson cannot show prejudice because the admission of the writings was harmless. In making a determination regarding harmless error, this Court will look at **the entire record**. *State v. Miller*, 367 S.C. 329, 626 S.E.2d 328 (2006). This Court will not set aside a conviction for an insubstantial error not affecting the result when **guilt is conclusively proven by**

competent evidence, such that no other rational conclusion could be reached. State v. Kelley, 319 S.C. 173, 460 S.E.2d 368 (1995). Jackson argues in his brief that this case should be reversed “[b]ecause of the prejudice suffered by Jackson from the admission of these documents in this close case...[.]” (BOA, p. 11). Jackson is wrong. This was not a close case. The evidence against Jackson was overwhelming. His guilt was conclusively proven, and no other rational conclusion could have been reached, independent of the challenged evidence.¹⁵ Even removing the challenged evidence, the evidence of Jackson’s guilt is still overwhelming.

The victim disappeared from her home in Hampton, after midnight on *May 26, 2011*. Her body was recovered four (4) days later in Beaufort County at the edge of the Broad River.

Jackson and the victim had previously been involved in a lengthy, tumultuous, “on again-off again,” romantic relationship lasting approximately ten (10) years. They had two (2) children together. Police had been called to the home several times over the years regarding domestic violence. The testimony established Jackson had physically abused the victim, left marks on her, and was jealous and angry she had a new boyfriend. The testimony also established the victim was afraid of Jackson.

Jackson had lived with the victim until the end of January/first of February of 2011, when the victim kicked Jackson out of her home. She was tired of his abuse of her. Jackson was not happy about being forced to leave the victim’s home, and there was an argument over the same. Jackson then moved to Columbia. At the time of the victim’s murder, Jackson both lived and worked in Columbia. The victim still lived at Middle Street in Hampton with her three (3) children.

¹⁵ Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained. Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)); State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002).

The day before her disappearance and murder, the victim closed a joint checking account she had with Jackson at her bank in Hampton and opened a checking account solely in her name. At that time, the bank gave her one (1) debit card for the new account. The day before her disappearance, the victim also called Jackson and informed him she was taking him off of her insurance. The victim had also filed a DSS lien against Jackson for child support. Jackson had previously gone to jail or prison for non-support. In a word, the relationship was coming to a complete end, and the victim was severing ties with Jackson. The victim also had a new boyfriend.

On the afternoon of May 25, 2011, the victim was given \$260 cash by a friend as repayment of a loan. After the victim disappeared, the \$260.00 in cash could not be found.

That night, May 25, 2011, the victim was at home with her children. A repairman had come to the home and worked on the air-conditioning unit. He drove his *personal vehicle* and parked it in the victim's driveway. Jackson would have seen a strange car parked in the victim's driveway if he came upon the victim's residence. The repairman testified when he left the residence the victim was alive and well. The victim also saw her new boyfriend, face to face, at her home that night and spoke with him on her back porch and then spoke with him again by phone [text]. The victim's new boyfriend testified the victim was alive and well at the time he left her residence and when he texted with her. The victim's oldest child, who was fourteen (14) years old at the time of trial, testified that when she and the other children went to bed her mother was alive and well at that time.

At approximately 10:00 p.m. that night, May 25, 2011, a couple of hours before the victim's disappearance and murder, two (2) residents of Hampton, who lived in the same area the victim lived in, were standing by the side of the road talking. As they were talking, the two (2)

men saw Jackson [who resided and worked in Columbia] come walking up the road and spoke to him as he walked past. Jackson was headed toward the victim's residence on foot. The two (2) men did not see Jackson's car. Jackson admitted to police he had in fact parked the car further down the road so he could approach the victim's residence on foot without detection.

The victim's habit was to get up around 5 to 6 a.m., open the front door for a friend's child who rode to school with the victim's children, and then to leave and go to work, where she had to be at work at 6 to 7 a.m. each morning. The usual routine was for the friend's child to come in at 5 a.m., go back to sleep on the couch, and then the children would get up, eat breakfast, and catch the bus together and attend school. The victim would awaken all the children immediately before she left for work.

On the morning of May 26, 2011, the friend's child found the front door to the victim's home open but the victim was not in her home. This was around 5:30 a.m. The child then went to sleep as usual. The victim's children overslept because their mother did not wake them and the friend as usual. When they got up, the victim's children noticed their mother was gone, but her oldest child found a hand-written note on the kitchen counter stating she [the victim] had gone off with someone, but she would be back. The note purported to be from the victim, but the handwriting on the note was not the victim's but Jackson's according to the oldest child. A handwriting expert also testified at trial that portions of the note were most probably written by Jackson. Several other witnesses also testified the note was not in the victim's handwriting. The daughter also noticed the victim's bed was un-made, which was unusual, because the victim's habit was to make her bed before leaving for work. The child also noticed perfume bottles on the dresser were overturned in one (1) specific direction.

When the victim did not appear for work, a co-worker and friend was immediately

suspicious and notified police. The victim had told the co-worker/friend the night before as she hung up the phone that she would see her the following morning at work. Police and the co-worker went to the victim's home to perform a welfare check but did not find the victim. They found her work-bag was packed, and her work shoes were still on the floor. The back door to the home was unlocked, which was unusual, because it was always kept locked.

Police immediately began investigating the victim's disappearance. Police immediately checked to see if there was any activity on the victim's credit cards or bank accounts and discovered that on the night of the victim's disappearance, *May 26, 2011*, at 2:26 a.m., someone had attempted to use the victim's *new* bank debit card at a Shell Station in Hampton. Police spoke with the clerk at the store and reviewed video surveillance footage and discovered **Jackson** was the person who attempted to use the victim's new bank debit card to purchase gas at the station. The store clerk also testified at trial that Jackson, who she knew, attempted to use the debit card at 2:26 a.m. on May 26, 2011, and after the pump would not accept the card, Jackson came into the store and purchased gas *with cash*. The store surveillance video showing Jackson attempting to use the card and purchasing gas in the store was also introduced at trial.¹⁶

Four (4) days later, the victim's decomposing body was discovered at the edge of the Broad River in Beaufort County. The location of the body was immediately down-stream from the Hwy. 170 Bridge, and the victim's body had previously been submerged in water. The body was recovered, identified, and the cause of death was determined to be most probably suffocation or strangulation. The manner of death was ruled homicide.

Police subsequently discovered Jackson had stayed at a motel in Walterboro, at least some of the night-time hours of the victim's disappearance, May 26, 2011. Police eventually

¹⁶ The jury reviewed this video again shortly before returning with its verdict of guilty.

determined Jackson had rented a room at the *Palm Inn* in Walterboro well after midnight. The investigation revealed Jackson had rented the room under a false name, Calvin Sanders; however, the hotel clerk had required identification, and upon looking at Jackson's i.d. realized Jackson's real name was Calvin Jackson *not* Calvin Sanders. The clerk also noticed Jackson had registered under a false driver's license number. The clerk corrected the last name and the license number on the motel registration form. Motel computer records showed Jackson checked in and first entered his motel room at the *Palm Inn* at 4:36 a.m. on May 26, 2011.

At trial, the motel clerk testified and identified Jackson as the person who checked into the *Palm Inn* in the early morning hours of May 26, 2011. The State also introduced the motel's registration which showed Jackson had registered in his own handwriting using the false name and driver's license number, and that the clerk corrected the name and license number after checking Jackson's i.d.. The State also introduced the computer records of the motel which showed Jackson first swiped his motel room key card at 4:36 a.m. on May 26, 2011. Additionally, Jackson paid *cash* for the room.

Police questioned Jackson about his whereabouts the night of the victim's disappearance. Jackson initially lied to police and told them he was in another county the night of the victim's disappearance and stated he was not in Hampton County at all. Jackson told police he had spent the night at his girlfriend's residence in Fairfax. He also denied he used the victim's debit card that night.

Jackson's girlfriend testified at trial that Jackson did not spend the night with her the night of the victim's disappearance but the previous night, May 24th/May 25th. She also testified the morning of May 25, 2011, Jackson had *no money*, and she had to purchase gas for Jackson to be able to use his car. Jackson did not receive his paycheck until the following afternoon, May

26, 2011, after 2:00 p.m. which he would had to have obtained in Columbia where he worked.

When confronted with the fact police could prove he was in Hampton the night of the victim's disappearance through an eyewitness who saw him walking, and through video at the Shell station, Jackson admitted he was in Hampton that night. He claimed he drove to Hampton from his girlfriend's to get gas for the car. He claimed the victim had given him her debit card sometime in the past.

When told police could put him in or near the victim's home, Jackson admitted he had been with the victim starting around 11:00 p.m. on the 25th of May until the early morning hours of *May, 26th*. Jackson claimed the victim gave him the debit card, and he went to the Shell station to get gas for the car, and then returned to the victim's home after 2:26 a.m. and returned the debit card to her telling her it did not work. While he denied he killed the victim, Jackson was the last person with her before her disappearance and murder, and he had no explanation why the victim would give him a debit card to an account that had no money in it as of yet.

Jackson admitted to police he then drove to Walterboro and rented a room at the *Ramada Inn*. Police eventually determined he did not stay at the Ramada Inn but the *Palm Inn* where he gave the false identity. Upon searching the motel room at the *Palm Inn*, police discovered a blood stain in the motel room sink. D.N.A. testing confirmed the blood stain belonged to Jackson.

In the victim's residence, in her bedroom, police recovered a pillow. This pillow contained D.N.A. of both the victim [in a blood stain near the center of the pillow case] and of Jackson [on the edges of the pillow case, touch D.N.A.]

S.L.E.D. Agent David Williams, who investigated the case, drove the route from the victim's residence to the Highway 170 Bridge over the Broad River near where the victim's

body was recovered and then to the *Palm Inn* in Walterboro. Driving *the speed limit*, and driving *in daytime traffic*, the Agent was able to accomplish this complete trip in **one (1) hour and fifty (50) minutes**, including a fifteen (15) minute stop on the bridge to theoretically dispose of the victim's body. This meant Jackson could have murdered the victim and driven from Hampton, S.C. at approximately **2:26 a.m.**, [the time Jackson attempted to pass the victim's debit card at the Shell station] to the Broad River, and dumped the victim's body, and then drove to the *Palm Inn*, in Walterboro and checked in, well within the time period possible given his **4:36 a.m. check in time at the motel**. This further explained Jackson's whereabouts from 2:26 a.m. until 4:36 a.m. when it only takes thirty (30) minutes to drive from Hampton to Walterboro.

Furthermore, even if the *substance* of his writings was protected by the attorney-client privilege, *Jackson's handwriting* would not be protected by the attorney-client privilege and could be used by the State's expert in comparison to the note found in the victim's kitchen. See United States v. Weger, 709 F.2d 1156 (attorney client privilege does not prevent disclosure of "characteristics of the type style" of a letter written by client to her lawyer because, like a handwriting exemplar, they are "merely 'identifying physical characteristics'"); United States v. Pipkins, 528 F.2d 559; In re Grand Jury Proceedings, 791 F.2d 665; State v. Regier, 621 P.2d 431 (Kan. 1980)(the disclosure of physical characteristics is not a confidential communication under attorney-client privilege); State v. Mingo, 363 A.2d 369 (N.J. Sup. 1976); People v. Paine, 33 Cal. App. 3d. 1048 (Cal App. 1973)(where defendant refused to give court ordered handwriting exemplar, his attorney could be compelled to turn over handwritten papers of the defendant in attorneys possession for handwriting comparison only); 3, *Jones*, Evidence, 6th ed., 1972, p. 791; 8 *Wigmore*, Evidence (McNaughton rev. 1961) Section 2306). This evidence would have been admissible regardless. At trial, the States' handwriting expert testified the

victim did not write the note found by her children the morning after her disappearance. The handwriting expert also testified the note was most probably written by Jackson. The expert also testified Jackson had attempted to disguise his handwriting when he gave a handwriting exemplar prior to trial.

Independent of Jackson's handwritten materials from his jail cell, the State proved Jackson had the *motive* to murder the victim [she had broken up with him, was severing all ties, and had a new boyfriend of whom Jackson was jealous]; Jackson had the *opportunity* to commit the murder [Jackson attempted to use her debit card just minutes from the victim's home & Jackson's admitted to police he was the last person with her before her murder and disappearance at the approximate time she disappeared and was murdered and inside the apartment where it is believed she was murdered and then disappeared]; and, Jackson had the *means* to commit the murder [the pillow from the victim's bedroom contained Jackson's D.N.A. on its edges and the victim's D.N.A. in the center of the pillow, and Jackson had a vehicle nearby which he could drive to the home and remove the victim's body from the back door and drive it to the Broad River and dump it]. Further, the State showed Jackson repeatedly lied to police and only admitted being with the victim at the time of her disappearance when confronted with evidence placing him in Hampton around the time of her murder and disappearance. Finally, the State showed Jackson had plenty of time to murder the victim, dump her body in the Broad River, and eventually arrive at and check into the Palm Inn under a false identity and false driver's license number at 4:36 a.m. This evidence also explained Jackson's whereabouts from 2:26 a.m. until 4:36 a.m. on the night in question, because Walterboro is only approximately 20 to 30 minutes from Hampton, and Jackson told police he left Hampton around 3:00 a.m.¹⁷

¹⁷ Jackson does not raise a directed verdict issue on appeal. Even if he did, it would have no

Furthermore, the substance of Jackson's jail cell writings were cumulative to his statements to law enforcement which were already before the jury. (R. pp. 310-11, 314-21, 422-43, 444-63, 465-75, Tr. pp. 346-47, 350-57, 458-79, 480-99, 501-11, State's 32, *Compare to* R. pp. 602-07, Tr. pp. 637-42). The substance of Jackson's jail cell writings are basically the same assertions he made to law enforcement to explain his whereabouts on the night in question and to explain away evidence. (See R. pp. 310-11, 314-21, 422-43, 444-63, 465-75, Tr. pp. 346-47, 350-57, 458-79, 480-99, 501-11, State's 32, *Compare to* R. pp. 602-07, Tr. pp. 637-42 & Court's Ex. 11). As a result, the admission of Jackson's jail cell writings was harmless. State v. Perry, 74 S.C. 551, 54 S.E.764 (1906)(finding admission not prejudicial in part because defendant made same confession to others); State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003)(admission of improper evidence is harmless where the evidence is merely cumulative to other evidence); State v. Braxton, 343 S.C. 629, 541 S.E.2d 833 (2001); State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978); State v. Williams, 321 S.C. 455, 469 S.E.2d 49 (1996)(error in admission of evidence is harmless where it is cumulative to other evidence properly admitted); State v. Douglas, 367 S.C. 498, 626 S.E.2d 59 (Ct. App. 2006). And, there is no evidence the State obtained any derivative evidence using the contents of the jail cell writings. As a result of all of the above, including the overwhelming evidence of Jackson's guilt, his handwriting is not protected by any privilege, and the cumulative nature of the writings to his statements to law enforcement which were already before the jury, Jackson cannot show prejudice from the admission of his jail cell writings. See United States v. Morrison; Quattlebaum.

merit. The evidence of his guilt was overwhelming.

CONCLUSION

For the above stated reasons, Jackson's conviction and sentence for the murder of Mashika Yamaguchi Miller must be affirmed.

Respectfully submitted,

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Attorney General

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Chief Deputy Attorney General

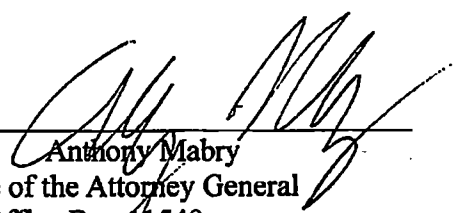
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May 28, 2015

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Beaufort County
Honorable Maite Murphy, Circuit Court Judge

THE STATE,

Respondent,

v.

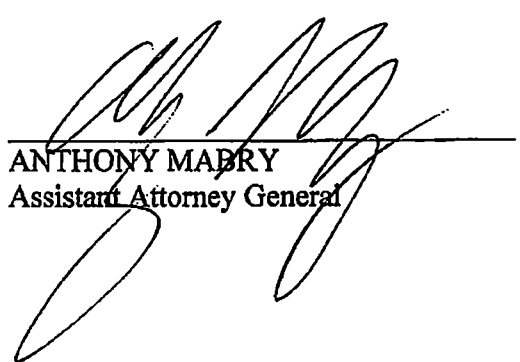
KELVIN JACKSON,

Appellant.

Appellate Case No. 2013-001779

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court entitled “Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.”



ANTHONY MABRY
Assistant Attorney General

May 28, 2015

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Beaufort County
Honorable Maite Murphy, Circuit Court Judge

THE STATE,

Respondent,

v.

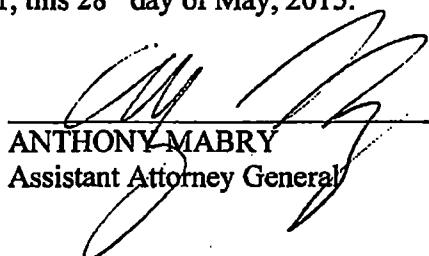
KELVIN JACKSON,

Appellant.

Appellate Case No. 2013-001779

CERTIFICATE OF SERVICE

I Anthony Mabry, hereby certify that I have served the **Final Brief of Respondent** in the foregoing action by depositing two copies of same in the InterAgency Mail to counsel for the Appellant, David Alexander, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Suite #401, Columbia, South Carolina 29201, this 28th day of May, 2015.



ANTHONY MABRY
Assistant Attorney General

**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.

Kelvin Jackson, Appellant.

Appellate Case No. 2013-001779

Appeal From Beaufort County
Maité Murphy, Circuit Court Judge

Unpublished Opinion No. 2015-UP-512
Submitted October 1, 2015 – Filed November 12, 2015

AFFIRMED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General J. Anthony Mabry, both of Columbia;
and Solicitor Isaac McDuffie Stone, III, of Bluffton, for
Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Buyers*, 392 S.C. 438, 444, 710 S.E.2d 55, 57-58 (2011)

(stating "the admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion"); *id.* at 444, 710 S.E.2d at 58 (finding "[t]o warrant reversal based on the wrongful admission of evidence, the complaining party must prove resulting prejudice"); *States v. Dukes*, 404 S.C. 553, 558, 745 S.E.2d 137, 140 (Ct. App. 2013) (stating due process requires notice and the right to be heard); *State v. Love*, 275 S.C. 55, 59, 271 S.E.2d 110, 112 (1980) (stating the determination of whether or not a communication is privileged and confidential is a matter for the trial court to decide after a preliminary inquiry into all the facts and circumstances); *id.* (explaining the burden of establishing the attorney-client privilege rests upon the party asserting it); *State v. Doster*, 276 S.C. 647, 651, 284 S.E.2d 218, 219-20 (1981) (explaining attorney-client privilege is applicable "(1) [w]here legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the protection be waived"); *Marshall v. Marshall*, 282 S.C. 534, 538, 320 S.E.2d 44, 46-47 (1984) ("Any voluntary disclosure by a client to a third party waives the attorney-client privilege not only as to the specific communication disclosed but also to all communications between the same attorney and the same client on the same subject.").

AFFIRMED.¹

HUFF, WILLIAMS, and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

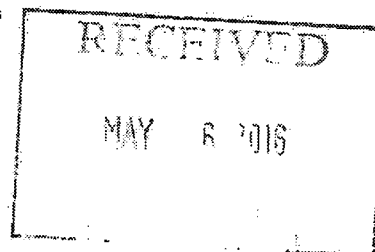
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May 06, 2016

The Honorable Jerri Ann Roseneau
PO Box 1128
Beaufort SC 29901-1128

REMITTITUR

Re: The State v. Kelvin Jackson
Lower Court Case No. 2011GS0701329
Appellate Case No. 2013-001779



Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Court's Exhibit #7 - CD Interview

State's Exhibit #36 - Writings

Court's Exhibit #11 - Writings pulled from the Mr. Jackson's Mattress

State's Exhibit #37 - three yellow sheets, a composition book, a bag, some writings

Please sign and return the enclosed copy of this letter acknowledging receipt of these items.

Exhibit Receipt Acknowledgment

Name: _____ Date: _____

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
David Alexander, Esquire
Donald J. Zelenka, Esquire
J. Anthony Mabry, Esquire
Isaac McDuffie Stone, III, Esquire

FORM 5

2016-CP-07-399⁸⁸⁹

STATE OF SOUTH CAROLINA)

COUNTY OF ~~Beaufort~~ Beaufort)Kelvin Jackson, Sr. SCDL # 356452)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS)

APPLICATION FOR)

POST-CONVICTION RELIEF)

2016 FEB 12 PM 3:31

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE Correctional Institution, Bishopville, S.C.
2. Name and location of Court which imposed sentence Beaufort County Court of General Sessions.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-07-01329 - Murder
 - (b) N/A
 - (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 2, 2013 Murder - forty five years
 - (b) N/A

Revised 3/2003

- (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 ✓
- (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. South Carolina Supreme Court
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. Applicant conviction were affirmed
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. _____
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. To rule 220(b), SCACR.
- ii. State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55-58 (2011)
- iii. _____
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:

10(a) Applicant's right to a fair trial guaranteed by the Sixth Amendment to the United States

Constitution and South Carolina law was denied as a result of misconduct and presentation of false evidence by law enforcement and solicitor with regards to photo's of the victim bedroom

11(a) Under *Brady v. Maryland*, 373 U.S. 83 (1963). The prosecution has an affirmative duty to make available to the defense any evidence which is exculpatory for the defendant in a criminal trial. In this case law enforcement officers took pictures of the victim bedroom that showed the victim bedroom in disarray pillows on the floor, bed mess up and stuff knock down. This was clear misconduct and presentation of false evidence do to the fact that this was not how the victim bedroom was found. State witness Joyce Loatholt testified Tr.P. 255 line 24-25, Tr.P. 265 line 3-20 also Tr.P. 266 line 7-12 in which she stated on record that her along with Major James Blue Botter and another officer went into the victim's that same day in which they did in fact did a search of the victim house. The witness also stated on record that the victim house was clean and the victim bedroom was clean as well no pillows on the floor nothing out of place everything looks fine the house was clean. These photo's of the victim bedroom in disarray was misconduct and presentation of false evidence which "poison" the hold case and investigation. Do to the fact that it help the pathologist change her initial report which was undetermined. Dr. Lee Marie Torme the pathologist testified Tr.P. 372 line 1-9 given the fact that the historal data provided by law enforcement she was able to change her findings of undetermined to homicide. Tr.P. 376 line 3-7, Tr.P. 377 line 1-23, Tr.P. 378 line 1-9 and also Tr.P. 379 line 7-11. This misconduct and presentation of false evidence was highly prejudice given the fact that it help the pathologist change her initial report. Also these photo's were given to the jury to have during their deliberation giving the jury the opportunity to make their own assumption as to something did happen in the victim bedroom. Therefore stopping applicant from having a fair trial do to this misconduct and presentation of false evidence. The state also allowed their witness S.D. the victim daughter to testify falsely that that was how the victim bedroom was that morning when she was shown the picture of the victim bedroom in disarray Tr.P. 309 line 13-25 and Tr.P. 310 line 7-23. The state knew the witness testimony to be false and still allowed their witness to make these false testimony. The state violated due process when the solicitor allowed their witness to testify falsely. This was completely error because "The issue is not why [the witness] failed to tell the truth; rather it is why the solicitor who knew [the] testimony to be false, failed to correct it." Id. at 75. Reversal was required because the failure to correct false evidence is as reprehensible as is presentation *Riddle v. Ozmint*, 631 S.E. 2d 70 (S.C. 2007). The state again violated due process of law when they allowed another one of their witness to testify falsely about the victim doesn't leave her kids home alone in the middle of the night. State witness Shaobay Hammond testified Tr.P. 273 line 7-9 also line 16-19 stated on record that the victim would never leave her kids home alone in the middle of the night and that she did not know of any incident that happen were the victim left her kids home alone in the middle of the night was again false testimony and the "state" knew this. Given the fact that the state had this incident report that had took place in the late morning hours between 2 and 3 a.m. in which both the victim and the witness were involve in. The state was aware of this incident report Tr.P. 175 line 12-15 and stated on record that they were not going to get into that incident. Yet still allowed their witness to testify falsely about the victim would never leave her kids home alone in the middle of the night was again error by the state and highly prejudice. Because again "the issue is why [the witness] failed to tell the truth; rather it is why the solicitor who knew [the] testimony to be false, failed to correct it." Reversal was required because the failure to correct false evidence is as reprehensible as is presentation *Riddle v. Ozmint*, 631 S.E. 2d 70 (S.C. 2007). The state also allowed another witness Joyce Loatholt to testify falsely Tr.P. 267 line 24 when she stated on record that applicant was arrested for child support was false applicant was never arrested for child support again false testimony. The state knew this but still allow their witness to make false testimony against applicant stopping applicant from having a fair trial do to this misconduct by the state. *Simpson v. Moore*, 627 S.E. 2d 70 (S.C. 2005). *State v. Huieff*, 271 S.C. 205, 246 S.E. 2d 862 (1978) *State v. King*, 222 S.C. 108, 116, 71 S.E. 2d 793 (1953).

The state also made false statements about law enforcement officer's testimony to various reports of isolated behavior was false presentation of false evidence Tr. P. 120 line 2-4. Do to the fact that there were never any police report of any kind of domestic violence or any kind of violence between the victim and the applicant. Tr. P. 342 line 1-6 State witness Captain Murcier testified that the report was concerning someone else and not the applicant. Also Tr. P. 344 line 22-24 the witness stated that in both incident report who ever the defendant was unknown in both report. The witness also testified that he never talk to the applicant Tr. P. 329 line 1. *Simpson v. Moore*, 627 S.E.2d 701 (S.C. 2006), *Spraus v. State*, 385 S.E.2d 278 (S.C. 2008), *Gibson v. State*, 514 S.E.2d 320 (S.C. 1999) *Washington v. State*, 478 S.E.2d 833 (S.C. 1996) *Hall v. Catoe*, 601 S.E.2d 333 (S.C. 2004) *State v. Pee Dee News Co., Inc.* 286 S.C. 562, 336 S.E.2d 8 (1985). The solicitor also offer evidence of applicant bad character by labling applicant as a deadbeat daddy Tr. P. 749 line 4-5 also Tr. P. 759 line 9-10 again calling applicant a deadbeat daddy in his closing. These improper comments were highly prejudice because it's affecting applicant character. In most situations evidence rules generally forbid prosecutors from presenting "bad" character evidence (unless) the applicant first opens the door by presenting evidence of good character which applicant (did not) is barred in this situation because it is too prejudicial. A judge or a jury might convict a defendant for being a "bad person" even if the evidence that the defendant committed the charge is weak. Solicitor comments made in his closing rise to the level of burden shifting do to these improper comments. *State v. Goodwin*, 384 S.C. 588, 683 S.E.2d (S.C. App 2009) *State v. Douglas*, 302 S.C. 397 S.E.2d 98 (1990) *State v. Johnson*, 293 S.C. 321, 360 S.E.2d 317, 319 (1987) *State v. Alexander*, 303 S.C. 377, 401 S.E.2d 146 (1991) *State v. Garner*, 304 S.C. 220, 403 S.E.2d 631 (1991) *State v. Pearson*, 223 S.C. 377, 76 S.E.2d 151 (1953) *State v. Lemire*, 753 S.E.2d 247 (S.C. App 2012) *State v. Mace*, 396 S.C. 516, 728 S.E.2d 497 (S.C. App 2013). *Payne v. Tennessee*, 501 U.S. 808 (1991). *State v. Diddlemeyer*, 296 S.C. 235, 371 S.E.2d 793 (1988).

10(b) Applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law was violated as a result of counsel's failure to investigate, develop, and present all available, relevant and admissible mitigating evidence.

11(b) Counsel was ineffective for numerous reasons: (1) Counsel failure to investigate when law enforcement officers took pictures of the victim bedroom which shows the bedroom in disarray. Had counsel done an investigation he would have discovered that the pictures of victim bedroom was taken a few days after the victim disappearance. Counsel also would have found out that the victim bedroom was not in disarray like the state and their witness claim it to be. Counsel also would have his own witness that would have testified that the victim bedroom was not in disarray like the state, law enforcement and their witness claim. This deficiency clearly prejudice applicant from having a fair trial because photo's should never been allowed into evidence do to the fact that this is not how the bedroom was. Had counsel known this misconduct by law enforcement and the state, Counsel could have object to the admission of the photo's of the victim bedroom in disarray that had no relevance to the offense for which applicant was charge because the photo's were false evidence. The failure to object to this clearly inadmissible evidence was ineffective assistance of counsel. *Holman v. State*, 674 S.E.2d 171 (S.C. 2009) *Counsel v. State*, 670 S.E.2d 336 (S.C. 2008). Counsel ineffectiveness deprived the jury from critical information, information that could have been used to impeach the state key witness and also challenge the state's law enforcement credibility do to this false evidence. Which would have made an difference in the hold case/trial do to the fact that the jury would have seen and heard that the state and their witness was not telling the truth and see the state was using false evidence. Counsel could have ask for a mistrial do to this misconduct and presentation of false evidence had counsel done an investigation. Counsel failure to investigate and present all available, relevant and admissible mitigating evidence is a classical form of ineffective assistance of counsel. *Stickland v. Washington*, 466 U.S. 668 (1984) *Wiggins v. Smith* 539 U.S. 510 (2003) *Griffin v. Warden*, 970 F.2d 1335, 1335 (4th Cir 1992).

(2) Counsel ineffective for failure to investigate the facts and circumstances surrounding the cause of the victim receiving bruises. Counsel failure to conduct such an investigation deprived the jury from critical information relevant to an accurate assessment of applicant guilt or innocence. Counsel fail to investigate on how did in fact the victim receive those bruises. In a case that was built a lot around domestic violence and had lots of testimony dealing with domestic violence. This should have been one of counsel main focal point to look into. An investigation would have reveal that the applicant was never the one that cause the bruises on the victim. This ineffectiveness was highly prejudice because the jury was allow to hear these damaging testimony which allow them to make an assumption that applicant was the one that cause the bruises on the victim, stopping applicant from having a fair trial. The superior push those issues to their witness through out the hold trial allowing the jury to hear these damaging testimony. The state capitalize on counsel deficiencies leaving the defense helpless doing cross-examination fighting an up hill battle. Had counsel done an investigation he would have found out who was the cause of the victim receiving those bruises and would have had his own witness to testify that they were the one that cause the bruises on the victim and not the applicant. This deficiency by counsel allow the state to parade before the jury a series of witness whose testimony was basically left without challenge. State witness Joyce Goodholt testified Tr.p. 245 line 22-25 that the victim had injuries coming to work after talking to the victim on the phone also Tr.p. 246 line 1-12 stating that the victim had bruises on her face and arm. State witness Shacoby Hammond testified Tr.p. 272 line 1-12 that she saw marks on the victim arm and neck. Shephonie Williams also testified the victim came to her house with her wrist wrapped up Tr.p. 514 line 11-13. These testimonies were very damaging and had counsel done an investigation none of these harmful testimonies would have gotten in. *McKnight v. State*, 661 S.E.2d 334 (S.C. 2008), *More v. Ozment*, 626 S.E.2d 878 (S.C. 2006).

3) Counsel was ineffective for failing to retain his own handwriting expert in a case ~~where~~ ⁸⁹⁴ ~~which~~ handwriting played a major role in this case. The state again capitalized on this deficiency because it allow the state writing expert to give her own opinion without ever being contested by someone of equal status. Prejudice because what the handwriting expert testified to basically stood as is without being challenged. Had counsel retain his own writing expert to challenge the state uncertainty as to who wrote the note. Writing expert testified Tr.P. 716 line 4-8 that applicant probably wrote the note but wasn't certain that applicant did and that someone else could have written the note. This deficiency stop applicant again from having a fair trial because the expert used the term highly probable instead of her just saying she wasn't certain that applicant wrote the note or not. *Stoffler v. Rexnold*, 214 F.3d 123 (10th Cir.2003) *Counsel v. State*, 670 S.E.2d 356 (S.C.2008) *And v. Coker*, 642 S.E.2d 390 (S.C.2007) *Miller v. Senkowski*, 268 F.Supp.2d 296 (E.D.N.Y.2002). (4) Counsel was ineffective for making harmful statements in his opening argument for stating to the jury that his client had lied Tr.P. 242 line 6-8, also in his closing argument for stating that his client lied again and for telling the jury that his client is a womanizer and that his client is guilty of womanizing Tr.P. 773 line 12-14. Counsel improper comments in the present of the jury was clearly ineffective assistance of counsel. Counsel abandoned his role as defense counsel and in fact help bolster the case against his client. Prejudice because counsel put his own client character at issue the comments made by counsel was unreasonable and stop applicant from having a fair trial do to counsel improper comments. *Ferguson v. State*, 507 S.O.2d 94 (Miss.1987) *Nance v. Frederick*, 396 S.E.2d 62 (S.C.2004) *Cupwood v. State*, 525 S.E.2d 314 (S.C.2000) *Lounds v. State*, 670 S.E.2d 646 (S.C.2008). (5) Counsel was ineffective for not putting into evidence a police report that, that could have been used to prove to the jury that the victim does in fact leave her kids home alone in the middle of the night. ~~The~~ The report also could had been used to impeach state witness *Shacoby Hammond* when she testified that she did not know of any incident report where the victim left her kids home alone Tr.P. 273 line 7-8 also line 16-19. was completely false testimony. Had counsel allow in this report he could have prove to the jury that the witness testimony was false and stop the jury from hearing these damaging testimony. Prejudice because counsel knew the state witness testimony to be false and still allow the witness to testify falsely against his client. Counsel deficiency help demolish the case against his client. The incident report would have reveal that the state witness was not telling the truth given the fact that the witness and the victim were involve in that report that took place in the late morning hours of 2nd 3am. Counsel deprive the jury from critical information do to this deficiency. Strategic choice not to allow this in and be address to the jury was clearly prejudice because the incident report could have been used to impeach state witness who denied that the victim would never leave her kids home alone. In which could have created doubt when the evidence of murder was all circumstantial. Given the fact that the state had already allow ~~their~~ ^{the} witnesses to make so many false ~~statement~~ ^{statements} / testimony damage applicant character. Trial counsel essentially would have had nothing to ~~lose~~ ^{lose} and everything to gain by presenting this into evidence. *Counsel v. State*, 670 S.E.2d 356 (S.C.2008) *Thomas v. State*, 419 S.E.2d 331 (S.C.1991) *Roberts v. State*, 602 S.E.2d 768 (S.C.2004) *Cobb v. State*, 408 S.E.2d 223 (S.C.1991) *Pauling v. State*, 503 S.E.2d 468 (S.C.1998) *Dove v. State*, 523 S.E.2d 459 (S.C.1999) Trial Counsel assistance was not reasonably effective because counsel breached his duty to investigate, develop and present all available relevant and non-statutory mitigating circumstances. The Sixth Amendment impose on counsel a duty to investigate, because reasonably effective assistance must be based on professional decisions and informed legal choices can he made only after investigation of options. The same duty exists if counsel relies at trial on only one line of defense, although others are available "it must include an independent examination of the facts and circumstances. Counsel failure to investigate resulted in actual and substantial disadvantage to the course of his defense." *Tordan v. State*, 297 S.C.32, 374 S.E.2d 683 (1988). *Lindstadt v. Keane*, 239 F.3d 191, 199 (2d Cir.2001) *Sneed v. Smith*, 670 F.2d 1348, 1354 (4th Cir.1981) *Lounds v. State*, 670 S.E.2d 646 (S.C.2008) *Florida v. Nixon*, 543 U.S.175 (2004) *Ingle v. State*, 570 S.E.2d 401 (S.C.2002) *Hicks v. State*, 443 S.E.2d 907 (S.C.1994) *Martinez v. State*, 403 S.E.2d 113 (S.C.1991) *Grier v. State*, 384 S.E.2d 722 (S.C.1989) ~~_____~~ *Holman v. State*, 674 S.E.2d 171 (S.C.2009) *Miller v. State*, 663 S.E.2d 596 (S.C.2008).

Counsel ineffectiveness was highly prejudicial and petitioner's conviction was obtained in violation of the Sixth Amendment due to counsel failure to discover and present all available relevant and admissible evidence. Counsel made little or no effort to draw exculpatory or mitigation evidence or develop and follow leads of other ~~sources~~ sources of such information. Counsel offered no witness for the defense also critically failed to investigate and effectively attack the state's case particularly with regard to the critical, yet vulnerable state witnesses. ~~Nevertheless~~ Nevertheless petitioner's counsel did virtually nothing to prepare an effective cross-examination to test their credibility. Significant grounds for such impeachment existed both as to the content of their testimony. But, through counsel's inaction and partly also through the state's "misrepresentation", counsel simply did not have these means of impeachment at his disposal during trial. Counsel disloyally impeached his own client, and failed to expose the state's relatively weak case. The prejudice flowing from such counsel error is magnified here by the crucial nature of the state's witnesses. Shacoby Hammond testified that she did not know of any incident where the victim left her kids home alone in the middle of the night was false testimony, counsel and the state knew about this incident still allowed the witness to testify falsely. S.D. testified that the victim's bedroom was in disarray was false testimony the state knew it was false, counsel failure to investigate as this was highly ineffective because the jury was allowed to hear ~~this~~ this damaging testimony. Force Loathat testified that petitioner was arrested for child support was again false testimony. Witnesses also claim that petitioner was the one that caused bruises on the victim and had counsel done an investigation would have discovered that his client were never the one that caused any kind of injury to the victim. All these statements were false and highly impeachable and would have shown the jury that the state key witnesses were all lying making the jury's task of discerning the ~~the~~ truth of petitioner's guilt beyond reasonable doubt even less attainable. State v. Smith, 230 S.C. 164, 94 S.E.2d 886 (1956). Further, for the ~~jury~~ to see so many witnesses lying would have destroyed the state's witnesses' credibility. Counsel disloyally and impeached his own client implicated here which is not abated by ~~that~~ that strategy. When counsel mocked petitioner as a womanizer and for stating that his client is guilty of womanizing. Counsel demonstrated a "fundamental" violation of his duty of loyalty by exhibiting actual doubt and hostility toward his client. In essence, counsel gratuitously called his client a liar by stating that his client lied in his opening and in his closing argument. Counsel's conduct "so undermined the proper functioning of the adversarial process that the trial cannot be relied on having a just result," and petitioner's consequent conviction is constitutionally invalid. Stickland, 466 U.S. at 686, 104 S.Ct. 2054. In light of the weakness of the prosecution's ~~trial~~ evidence and in combination with other points described. Had counsel performed in a constitutionally effective manner, there is a "reasonable probability" that petitioner would not have been convicted of the crime with which he was charged and for which he has been punished these past five years. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Simmons v. State, 308 S.C. 481, 419 S.E.2d 225 (1992). The duty to investigate is part of a defendant's right to reasonable competent counsel. "The principle is so fundamental that the failure to conduct a reasonable investigation may in itself amount to ineffective assistance of counsel." The ABA states the duty as follows: It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to the facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statements to the lawyer or facts constituting guilt or the accused's stated desire to plead guilty. The investigatory process should begin immediately on appearance as counsel for defendant. As soon as practicable the lawyer should seek to determine all relevant facts known to the accused. In ~~doing~~ so doing, the lawyer should ~~probe~~ probe for all legally relevant information without seeking to influence the direction of the client's responses. The commentary to this standard states: An adequate defense cannot be framed if the lawyer does not know what is likely to develop at trial. In criminal litigation as in other matters, information is the key guide to decisions and action. The lawyer who is ignorant of the facts of the case cannot serve the client effectively. The client may not be aware of the significance of facts regarding intent, mitigation, suppression of evidence, or impeachment of witnesses that only an independent investigation can uncover. The most able and competent lawyer in the world can not render effective assistance in the defense of his client if his ~~lack~~ lack of preparation for trial results in his failure to learn of readily available facts which might have afforded his client a legitimate justiciable defense. United State v. Tucker, 716 F.2d 576, 583 n.16 (9th Cir 1983).

10(C) Applicant's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and South Carolina law was violated when the court admitted evidence regarding witnesses' opinions about the defendant's demeanor and when the court admitted hearsay and character evidence concerning applicant's relationship with the victim.

11(C) Several witnesses testified regarding applicant's relationship with the victim. First, Joyce Loatholt testified regarding applicant relationship as off and on Tr.P 245 line 2 also line 7 stating that the applicant was kick out of his house which was false testimony. Witness also stated that the victim had injuries on her arm and face Tr.P. 246 1-3 although counsel object to the introduction of these statements of prior bad acts but was overrule by trial judge. The witness also stated the the victim was scared of the applicant again counsel object but again was overrule by trial judge Tr.P 248 line 17-20. Shaeby Hammond testified Tr.P. 271 line 19-20 describing a physical altercation between the victim and the defendant also Tr.P. 272 line 11-12 stating that the victim had bruises on her arm and neck also stating that the victim was afraid of the defendant line 21-23 again counsel object but once again was overrule on by the court. These testimony was again false applicant never cause any injuries to the victim. Clarence Wrice, testified that the victim was scared of the defendant Tr.P. 280 line 18-21 counsel did object again overrule by trial judge. The witness also describe applicant demeanor as being nonchalant Tr.P. 284 line 13-20. S.D. testified Tr.P 321 line 8 that the defendant would get very jealous line 12 the witness also stated that defendant would get jealous quick also line 17 stated that the defendant would get jealous because of other men line 20-21 states that the defendant was really jealous of the victim with someone else. Counsel should have object to this improper statements that were highly prejudicial which constitute ineffective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 - Supreme Court 1984. *Sanchez v. State*, 351 S.C. 270, 569 S.E.2d 363 (2002) *Matthew v. State*, 350 S.C. 272, 565 S.E.2d 766 (2002) *Dawkins v. State*, 346 S.C. 151, 551 S.E.2d 260 (2001) *Twale v. State*, 348 S.C. 467, 560 S.E.2d 401 (S.C. 2002) Pat White testified Tr.P. 336 line 3-10 describing the victim as being disturbed and stating that the victim was timid of the defendant. Stephanie Williams testified that the victim was frightened of the defendant Tr.P. 514 line 17-18. These statements were admitted in error, and the statements certainly prejudiced applicant because saving criminal defendants from prejudice is the whole, rational behind the exclusionary rules that should have kept these statements out. indicating that such statements as are the targets of these rules are inherently prejudicial. *State v. Cheeseboro*, 346 S.C. 326, 346, 552 S.E.2d 300, 311 (2001); *State v. Pierce*, 326 S.C. 176, 178, 485 S.E.2d 915, 914 (1997); *State v. Smith*, 322 S.C. 107, 470 S.E.2d 364 (1996); *State v. Parker*, 315 S.C. 230, 234, 493 S.E.2d 831, 833 (1993); *State v. (Terry) Smith*, 322 S.C. 107, 470 S.E.2d 364 (1996); *State v. (Grover Lee) Smith*, 300 S.C. 216, 218-19, 387 S.E.2d 245, 247 (1989); *State v. Lyle*, 125 S.C. 406, 118 S.E.2d 803 (1923); *State v. Hunt*, 313 S.C. 106, 432 S.E.2d 489 (Ct. App. 1993); Rule 802, S.C.R.E.; Rule 404(b), S.C.R.E. *State v. Smith*, 230 S.C. 164, 94 S.E.2d 886 (1956).

- (a) _____
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (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? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. N/A

- iv. n/a
- (d) the date of each such disposition:
- i. n/a
- ii. n/a
- iii. n/a
- iv. n/a
- (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?

NO

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

- (a) which grounds have been presented:

- i. n/a
- ii. n/a
- iii. n/a

- (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:

Because this is my first PCR Filing.

- (a) ~~On or about 1/1/00, the State of New York, through the District Attorney, filed a petition for a writ of habeas corpus in the Supreme Court of the State of New York, County of New York, in and to which I was named as respondent. The petition was denied on 1/1/00.~~
- (b) ~~On or about 1/1/00, the State of New York, through the District Attorney, filed a petition for a writ of habeas corpus in the Supreme Court of the State of New York, County of New York, in and to which I was named as respondent. The petition was denied on 1/1/00.~~
- (c) ~~On or about 1/1/00, the State of New York, through the District Attorney, filed a petition for a writ of habeas corpus in the Supreme Court of the State of New York, County of New York, in and to which I was named as respondent. The petition was denied on 1/1/00.~~

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
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (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. Mr. Virginia Taberson, Jr. & Mr. Corey L. Williams
- ii. Taberson & Williams 410 Summers Avenue
- iii. Orangeburg, S.C. 29115
- (b) the proceedings at which each such attorney represented you:
- i. On appeal, Applicant was represented by.
- ii. David Alexander South Carolina Division of Appellate Defense
- iii. 1330 Lady Street, Suite 401 Columbia, S.C. (803) 734-1330 29201-3332
19. State clearly the relief you seek in filing this application:
- Applicant seeks relief from his convictions and sentences.
20. Are you now under sentence from any other court that you have not challenged?
- NO

STATE OF SOUTH CAROLINA

County of

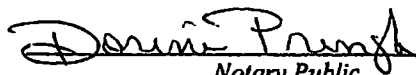
)
)
)

VERIFICATION

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.



SWORN to and subscribed before me this 5th
day of 5th Feb, 2016.

 (L.S.)
Notary Public

My Commission Expires: 9/27/2023

**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.



Applicant

SWORN or affirmed to and subscribed before me this
5th day of Feb, 2016.



Notary Public

My Commission Expires: 9/21/2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
	)	
Kelvin Jackson, Sr., #356452,	)	2016-CP-07-0399
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed on February 12, 2016, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Beaufort County Clerk of Court's orders of commitment. The Applicant was indicted by the July 2011 term of the Beaufort County Grand Jury for Murder (2011-GS-07-1329). Virgin Johnson, Jr., Esquire and Korey L. Williams, Esquire represented him. On July 29, 2013, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable Maité Murphy and the Honorable Carmen T. Mullen sentenced the Applicant to confinement for forty-five (45) years.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v. California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Jackson, Op. No. 2015-UP-512 (filed on November 12, 2015). The Remittitur was issued on May 11, 2016.

II.

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

1. "Ineffective Assistance of Trial Counsel"
 - a. "Failure to investigate, develop, and present all available, relevant, and admissible mitigating evidence"
 - i. "Failure to object to inadmissible evidence"
 - b. "Failure to retain own handwriting expert"
 - c. "Harmful statements in opening argument stating to the jury that his client had lied"
 - d. "Prejudice because counsel put his own client's character at issue"
 - e. "Failure for not putting a police report into evidence that could have been used"
2. "Prosecutorial Misconduct"
 - a. "Violation of Sixth Amendment Right to Fair Trial"
 - b. "Misconduct and presentation of false evidence by law enforcement and solicitor"
3. "The State violated due process when they allowed their witness to testify falsely"
 - a. "False presentation of false evidence"
 - b. "Fifth and Fourteenth Amendments"

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records, the record on appeal and Court of Appeals opinion. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent construes Applicant's allegation as alleging ineffective assistance of counsel. The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). 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 v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant also alleges counsel's failure to investigate and prepare. To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990).

This Court finds that the Applicant has failed to establish that trial counsel was ineffective with investigating and preparing for this matter. Trial counsel noted that he reviewed all of the discovery materials with the Applicant, and discussed possible defenses. It was the Applicant's decision to withdraw his motion for a more detailed DNA test. Also, it is obvious that Mr. Williams conducted an investigation into the DSS records, based on Respondent's Exhibit 5 which indicates that the Applicant's family obtained these records from Mr. Williams. Therefore, based on the foregoing, this allegation is denied.

V.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal.

Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is the Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

VI.

The Respondent interprets the Applicant's third claim as an allegation that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VII.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VIII.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

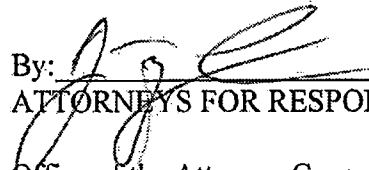
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

July 7, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

2016-CP-07-0399

KELVIN JACKSON, SR., #356452)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

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

James K. Falk, Esquire
 PO Box 1058
 Charleston, SC 29402

DATED this 7th day of July, 2016.


 Brianna Arnone, Legal Assistant
 For Respondent

8-26-16

2016-CP-07-399

Falk Law Firm

P.O. Box 1058

Charleston, S.C. 29402

Kelvin Jackson Sr. #356452

L.C.I. F4-A-2141

990 Wisoocky Hwy.

Bishopville, S.C. 29010

2016 AUG 30 PM 12:12
CLERK OF COURT
JULIA S. C.

Dear, Clerk of Court

I'm writing this letter with regards of you copying these documents and have them clock stamp. Forwarding one copy to my PCR counsel Mr. James K. Falk and send me a copy along with the letter that has been clock stamp. These letters are for my lawyer to "amend" to my PCR application. Thanks and thank you for your time.

Kelvin Jackson Sr.

10(a) Applicant's right to a fair trial guaranteed by the Sixth Amendment to the United State Constitution and South Carolina law was denied as a result of prosecutorial misconduct by allowing there witnesses to testify falsely during trial.

2016 SEP -3 PH 12 12

11(a) During applicant trial numerous testimonys were made by Prosecution and their witnesses regarding false testimonys and testimonys dealing with issues about the victim receiving injuries when in fact the witnesses doesn't even know how the victim receive those injuries. State witness Torree Leadhett testified Tr.P. 243 live 21-23 about the victim coming to work with injuries was misconduct by the state do to the facts that the witness doesn't know how the victim receive those injuries. Leaving the jury to speculate that the applicant was the one that cause the injuries to the victim when fact he was not. State witness also testified Tr.P. 267 live 22 that applicant went to jail for child support was completely false testimony and the state was very much aware of this and the trial judge do to the fact that they had applicant criminal record in their possession during trial. This was error by the state because the failure to correct false evidence is as reprehensible as its presentation. *Riddle V. Ozmint*, 631 S.E. 2d 70 (S.C. 2006). Shaeby Hammond testified Tr.P. 272 about 11-22 seeing injuries on the victim arm and neck. These testimonys should never been allowed in because state witness doesn't know how the victim got the injuries, but was allowed to testify about the injuries was highly prejudicial because you'll allow the jury speculate about the injuries making it as if the applicant was the one that causes the injuries. Tr.P. 273 live 16-19 Quote: Do you ever know of an instance, or do you know of an instance where she left her children at home alone in the middle of the night? live 19 answer by State witness No. No, was completely false testimony and the state knew this. Tr.P. 175. State attorney Ms. Deyssach live 7-13. Stated: just for the Court to be aware, I had mentioned pretrial that I was just going to try and call Chief Tyrone Smith from Varnum P.D. to testify about point and presenting incident. I decided not to try to go into that. This was the incident that took place in the late morning hours between 2 and 3am in which both the victim and the witness were involve in that incident while the victim children were home alone. This clearly misconduct by the state to allow their witness to lie under oath about the victim doesn't leave her kids home alone. This was clearly a due process violation because the solicitor "knew" the witness was not telling the truth. This was error because "the issue is not why the witness failed to tell the truth; rather, it is why the solicitor, who knew the testimony to be false, failed to correct it." This required reversal because the failure to correct false evidence is as reprehensible as its presentation (*Riddle V. Ozmint*, 631 S.E. 2d 70 S.C. 2006). S.D. testified Tr.P. 309 live 14-25 about the morning when she went into the victim bedroom. Quote: She--we--well, we woke up, and it was like 8:00 o'clock in the morning, and we was looking, my mom wasn't home, so i call her. we like just kept calling her constantly. And that's when we seen a note, and we went into the bedroom. And i was like J.S., all the perfume is knock down and the pillows was all on the floor. And, i was like, why is all the perfume knock down like in one direction? And she was like -- we didn't think of it right then, but later on it was like she was struggling, because all the stuff was knock down on that one side. Also on Tr.P. 310 live 7 question by state's attorney: When you woke up, and you went to go look for your mom in the bedroom, what did the bed look like? live. 9-13 answer: It was not

made, and she makes her bed every morning. It was not made. Pillows was on 911
the floor. Numerous pillows. It was in a stack. Perfumes was knocked ~~over~~
over in one direction. That was basically it. This false testimony was extremely
prejudicial allowing the jury to hear these testimony coming from the victim's
daughter that is completely false and jury could have convicted someone. This
misconduct by the state, to allow a testimony of this magnitude goes beyond
prosecutorial misconduct. Facts to support this is on Tr. P. 235 line 10 question by the
to state witness ~~Jace Lasholt~~. Okay. And did you go with the police? line 11 answer
Yes. line 12 question: And what did you all find when you got to the house? line 13-23
answer: I was with two police officers that came and went with me over there. And we knock on
the door, and I told them I had knock. And then me and the two officers, after they checked
the front door, the front door was locked, we walked around the back. We went in
through the back. When we went in through the back, her shoes was in the wash-
room. Her bag that she brings to work every day was on the table. So, I said, I told them
that I went to the school, but I said, There go her work ~~bag~~ shoes and there go her
work bag. And I said, And she's not at work. And so we went down into the bedroom.
line 24 question by state attorney: Did you see anything unusual in the bedroom? line 25
answer by state witness: No. On cross-examination by defense attorney Mr. Williams.
Tr. P. 265 line 56 question: Okay, You looked through the house. Is that correct? 7. answer: Yes.
line 8 question: You even went through the bedroom. Is that correct? 9. answer: Yes.
line 10 question: And you said everything seemed normal. Is that correct? 12. answer: Yes
line 13 question: You didn't find anything out of place. 14 answer: Not to my knowledge.
line 15 question: House wasn't torn up. 16 answer No. 17. Question: Nothing in disarray. 18. No.
line 19 question: Not even in the bedroom. 20 answer: No. Tr. P. 266 line ~~56~~ 56 Did you
know what officers went with you? You don't know? line 7. answer: Officer Blue, and
another one. 8 question: ~~Officer Blue and another one~~ You said Officer Blue. Is that
Major Bolton? line 9 answer: Yes. 10 And you and the two officers, you left the house
right? 12. answer: After they searched, Yes. Now for the state to allow their witness
to make such damasing false testimony clearly violate applicant Sixth Amendment right
to the United States Constitution to the right to have a fair trial. Misconduct by the
prosecution when she stated in her opening argument that applicant used a fake name.
Tr. P. 239 line 19-20 quote: A few hours later, he's at Watterboro checking in at the Palm
Inn and Suites under a fake name was false testimony by state's attorney. Given the fact
the state's witness testified that she was the one that wrote Kelvin Sanders on the receipt.
Tr. P. 539. State's witness Mary Parks testified line 10 question: And you couldn't read his name. Is that
~~correct~~ right. line 11 answer: No. No I couldn't. 12. And then you wrote in what you thought it was.
line 13 answer: Kelvin -- what I thought it was. line 14 question by defense counsel: And on
this registration card, it says Kelvin Sanders got to the right? line 16 answer by witness:
Oh-huh. That's what I wrote on it. They used this against applicant to show the jury that he
could not be trusted attacking applicant credibility when in fact applicant never wrote
the wrong name on the receipt. The state clearly ~~present~~ present evidence that was false leaving
the jury to speculate about applicant writing the wrong name on the receipt. Conviction
must be reversed if there is any reasonable likelihood that false testimony could have
affected judgment of the jury, even if the testimony relates only to the credibility of the

912 State's witness and other evidence also has called into question credibility of that witness
US. v. Kelly, a conviction acquired through the knowing use of perjured testimony by the
Government violates due process *Napue V. Illinois*, 360 U.S. 264, 269, 79 S.Ct. 1173, 1177
3 L.Ed 2d 1217 (1959). This is true regardless of whether the Government solicited testimony
it knew or should have known to be false or simply allowed such testimony to pass
uncorrected. *United States V. Ogurs*, 427 U.S. 97, 103. 96 S.Ct. 2392, 2397, 49 L.Ed 2d 342 (1976)
Gislo V. United States, 405 U.S. 150, 153, 92 S.Ct. 763, 765-66, 31 L.Ed 2d 104 (1972). In this
case there is a reasonable likelihood that the false testimony have affected the
judgement of the jury because jury's estimate of the truthfulness and reliability
of a given witness may well be determinative of guilt or innocence, and it is upon such
subtle factors as the possible interest of the witness in testifying falsely that a
defendant's life or liberty may depend *Napue* 360 U.S. at 269, 79 S.Ct. at 1177. The state's
case rested primarily on witnesses testimony by the state and thus unquestionably
their testimony was essential to applicant conviction. Without these testimony by
state witness it is questionably, whether sufficient evidence would have existed to
take the government case before the jury, given the lack of other evidence tending to
show that the defendant murder the victim. If the jury believed the state's witnesses
testimony it would convict, while if it disbelieve their testimony it would acquit. Moreover,
defendant's defense centered on the state's witnesses testimony. Accordingly, the state's
witnesses credibility and any reasons they may have testified falsely were critical to the
jury's resolution of the defendant guilt.

10(b) Applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law was violated as a result of Counsel's failure to investigate, develop, and present all relevant and admissible mitigating evidence. 913

11(b) Counsel was ineffective for numerous reasons (1) Counsel was ineffective for failing to investigate the facts and circumstances surrounding the cause of the victim receiving injuries. Counsel failure to conduct such an investigation deprived the jury from critical information relevant to an accurate assessment of applicant's guilt or innocence. This case that was built a lot around domestic violence and had lots of testimony dealing with domestic violence. This should have been one of counsel's main focal point to investigate on. Had counsel done an investigation he would have revealed that the applicant was never the one that caused any of the injuries that the state witnesses claim applicant had done. This ineffectiveness was highly prejudicial given the fact that the jury was allowed to hear these damaging testimonies which allowed them to speculate that applicant was the one that really caused the injuries on the victim, therefore stopping applicant from having a fair trial. The solicitor pushed those issues to their witnesses throughout the trial allowing the jury to hear these damaging testimonies. The state capitalized on counsel's deficiencies leaving the defense helpless during cross-examination fighting an uphill battle. Had counsel done an investigation he would have found out who was the cause of the victim receiving those injuries and would have had his own witness, who would have testified that they were responsible for the injuries that the victim had on her arm and face. This deficiency by counsel allowed the state to parade before the jury a series of questions to their witnesses whose testimony was basically left unchallenged. State witness Joyce Loadholt testified Tr. p. 245 line 21-25 ~~question by the state: Do you remember Masako coming to work with any injuries?~~ Question by the state: Do you remember Masako coming to work with any injuries? 23. Answer by witness: Yes. line 24-25 Describe those injuries that you remember her coming to work with. Tr. p. 246 line 1 answer by witness: She had one on her face and one on her arm. Although defense counsel objected to this but was overruled or, had counsel done an investigation in which he could have had his own witness to testify that they were the one and not the defendant's would have helped the defense given the totality of the testimony by the state witnesses. State witness Shacoby Hammond testified Tr. p. 272 line 10 question: Did you ever see any injuries on Masako? line 11 answer: Yes. She had like hand marks on her arm or either on her neck. Just bruises. Witness not sure where the bruises are. Stephanie Williams also testified that the victim came to her house with her wrist wrapped up. Tr. p. 514 line 11-12. These testimonies were very damaging and had counsel done an investigation would have done more good than harm. *Strickland v. Washington*, 466 U.S. 688, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *Martinez v. State*, 304 S.C. 39, 403 S.E. 2d 113 (1991).

(2) Counsel was ineffective for failing to retain his own handwriting expert in a case which handwriting played a major role in this case. The state again capitalized on this deficiency because it allowed the state writing expert to give her own opinion without ever being contested by someone of equal status. Which was highly prejudicial because what the handwriting expert testified to basically stood as is without being challenged by someone of equal status. Had counsel retained his own writing expert to challenge the state expert's uncertainty as to who wrote the note. Writing expert testified Tr. p. 716 line 4-8 that applicant probably wrote the note but wasn't certain that applicant did and that someone else could have written the note. Leaving the jury to speculate, this deficiency stopped applicant again from having a fair trial due to the fact that the expert used the term highly probable instead of her just saying she wasn't certain as to who

wrote the note. *Pauling v. State*, 331 S.C. 606, 503 S.E.2d 488 (1998); *Ord v. Cabe*, 642 S.E.2d 590 (S.C. 2007).

(3) Counsel was ineffective for making harmful statements in his opening argument for stating to the jury that his client had lied Tr. p. 242 line 6-8 also in his closing argument telling the jury that his client lied again and for telling the jury that his client is a womanizer and that his client is guilty of womanizing Tr. p. 773 line 12-14. Counsel improper comments in the presence of the jury was clearly ineffective assistance of counsel. Counsel simply abandoned his role as defense counsel and in fact help bolster the case against his own client. Counsel statements was highly prejudicial because counsel put his own client character at issue do to the comments made by counsel was unreasonable and clearly stop applicant from having a fair trial do to counsel improper comments. *Strickland v. Washington*, 466 US 668 Supreme Court 1984. (4) Counsel was ineffective for not putting into evidence a police report that, that could have been used to prove to the jury that the victim does in fact leave her kids home alone in the middle of the night. The report also could have been used to impeach state witness Shapobx Hammond when she testified that she didn't know of any incident where the victim left her kids home alone Tr. p. 273 line 7-8 also line 16-19. Was completely false testimony. Had counsel allow in this report he could prove to the jury that the witness testimony was false and also show the jury that this witness was not creditable, stopping the jury from hearing these damaging statements. This was highly prejudicial because counsel was aware of this incident report and still allowed the witness to testify falsely against his own client. Counsel demolish the case against his client. The incident report would have reveal that the state witness was not telling the truth, given the fact that the witness and victim were involve in that same report that took place in the late morning hours between 2 and 3 am. Counsel simply deprive the jury from critical information do to this deficiency. Strategic choice not to allow this incident report in to challenge the witness credibility. In which could have created doubt when the evidence of murder was all circumstantial. Given the fact that the fact that the state had already allow their witness to make so many false statements damaging applicant character. Trial counsel essentially would have had nothing to lose and everything to gain by presenting this into evidence. *Counsel v. State*, 670 S.E.2d 356 (S.C. 2008). Trial counsel assistance was not reasonably effective because counsel breach his duty to investigate, develop and present all available, relevant and mitigating circumstances. The Sixth Amendment impose on counsel a duty to investigate, because reasonably effective assistance must be based on professional decision and informed legal choices can be made only after an investigation of options. The duties exists if counsel relies at trial on only one line of defense, although others are available "it must" include an independent examination of facts and circumstances. Counsel failure to investigate "resulted in actual and substantial disadvantage through the course of his defense." Counsel ineffectiveness ~~was~~ prejudice applicant and conviction was obtained in violation of the Sixth Amendment do to counsel failure to discover and present all relevant and admissible evidence. Counsel made little or no effort to draw exculpatory or mitigation evidence or develop and follow leads of other sources of such information. Counsel offer no witness for the defense also critically failed to investigate and effectively attack the state's case particularly with regards to the critical, yet vulnerable state witnesses. Nevertheless applicant's counsel did virtually nothing to prepare any effective cross-examination to test their credibility. Significant grounds for such impeachment existed both as to the content of their testimony. But, through counsel inaction and partly also through the state's misrepresentation, counsel simply did not have these means of impeachment at his disposal during trial.

Counsel disloyalty, impeachment of his own client, and failed to expose the state's relatively weak case. The prejudice flowing from such counsel error is magnified here by the crucial nature of the state's witnesses. Shacoby Hammond testified that she did not know of any incident where the victim left her kids home alone in the middle of the night was false testimony. Counsel and state attorney knew about this report and still allowed the witness to testify falsely. S.D. testified that the victim bedroom was in disarray was false testimony. Counsel failure to investigate on this was clearly ineffective and highly prejudice because the jury was left to speculate after hearing this testimony by state witness which is the victim daughter. Joyce Leatholt testified that applicant was arrested for child support, was again false testimony. The state attorney, defense attorney and the judge allowed this testimony to go without either one of them correcting the witness, defense counsel and state attorneys along with the trial judge was in error for not correcting this false statement *Riddle v. Ozmint*, 631 S.E.2d 70 (S.C. 2006) Witness also claim that applicant was the one that cause the bruises on the victim and had counsel done an investigation would have discover that his client were never the one that cause any type of injuries to the victim. All these statements were false and highly impeachable, and would have shown the jury that the state's key witnesses were not telling the truth making the jury's task of discerning the truth of applicant's guilt beyond a reasonable doubt even less attainable. *State v. Smith*, 230 S.C. 164, 94 S.E.2d 886 (1956). For the jury to see so many witnesses lying would have destroyed the state's witnesses credibility. Counsel disloyalty and impeachment of his own client implicated here which is not deviated by that strategy. When counsel marked his client as a womanizer and for status that his client is guilty of womanizing. Counsel demonstrated a fundamental violation of his duty of loyalty exhibiting actual doubt and hostility toward his client. In essence counsel gradually called his client a liar by stating that his client lied in his opening and in his closing argument. Counsel's conduct "so undermined the proper functioning of the adversarial process that the trial cannot be relied on having a just result," and applicant's consequent conviction is constitutionally invalid. In light of the weakness of the prosecution's trial evidence and in combination with other points describe, Had counsel performed in a constitutionally effective manner, there is a reasonable probability that applicant would not have been convicted of the crime which he was charge and for which he has been punished over the years. The duty to investigate is part of a defendant's right to reasonably competent counsel. The principle is so fundamental that the fundamental that the failure to conduct a reasonable investigation may in itself amount to ineffective assistance of counsel. "The ABA states the duty as following, it is the duty of the lawyer to conduct a prompt investigation of the circumstance of the case and to explore all avenues leading to the facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should always includes effort to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statements to the lawyer or facts constituting guilt or the accused's stated desire to plead guilty. The investigatory process should begin immediately on appearance as counsel for defendant. As soon as practicable the lawyer should seek to determine all relevant fact known to the accused. In so doing, the lawyer should probe for all legally relevant information without seeking to influence the direction of the client responses. The commentary to this standard states: An adequate defense cannot be framed if the lawyer does not know what is likely to develop at trial... In criminal litigation as in other matters, information is the key guide to decisions and action. A lawyer who is ignorant of facts of the case cannot serve the client effectively. The client may not be aware of the significance of

816 regarding intent, mitigation, suppression of evidence, or impeachment of witnesses that only an independent investigation can uncover. The most able and competent lawyer in the world can not render effective assistance in the defense of his client if his lack of preparation for trial result in his failure to learn of readily available facts which might have afforded his client a ~~more~~ legitimate justiciable defense. State's witness S.D. testified Tr.P. 309 line 14-25 about the morning when she went into the victim bedroom. Quote: She--we--well, we woke up, and it was like 8:00 o'clock in the morning, and we was looking, my mom wasn't home. So i call her. We like just kept calling her constantly. And that's when we seen a note. And we went into the bedroom, and i was like J.S., all the perfume was knock down and the pillows was all on the floor. And, i was like, why is all the perfume knock down like in one direction? And she was like-- we didn't think of it right then, but later on it was like she was struggling, because all the stuff was knock down on that one side. Also on Tr.P. 310 line 7. Question by state's attorney: When you woke up, and you went to go look for your mom in the bedroom, what did the bed look like? line 9-13 answer: It was not made, and she make her bed every morning. I was not made. Pillows was on the floor, numerous pillows. It was in a stack. Perfumes was knocked ~~over~~ over in one direction. That's basically it. This testimony was clearly fake and extremely prejudicial allowing the jury to hear these testimony coming from the victim daughter and jury could have ~~been~~ convicted someone. This ineffectiveness by counsel not to investigate on how the victim bedroom was, was clearly ineffective assistance Strickland v. Washington counsel's errors "resulted in actual and substantial disadvantage to the course of his defense. Had counsel done an investigation into this matter would have found out that the victim bedroom was not how the witness claim it to be. Counsel would have had his own witness to testify to contradict the the state witness testimony. Also counsel could have used Torree Lootholt the state witness to attack the witness testimony giving the fact that the witness went to the victim house along with two officers in which they did in fact did a search of the victim house Tr.P. 266 line 10 Question: You and the two officer, you left the house right? line 12 answer: After they searched. This ineffectiveness by counsel allowed the jury to hear very damaging testimony that should have never gotten in had counsel done an investigation into how the victim bedroom was. Counsel was ineffective for not objecting to prosecutor closing argument statement when stated on record Tr.P. 746 line 22-25 State's attorney Mr. Thornton stated: Early morning hours of May the 26th, 2011 Masako Miller was taken from her home. And when she was ~~she~~ taken from her home, she was dead, and she'd ~~been~~ been murdered. Given the fact the victim lives in Hampton County counsel should have object to this because the indictment clearly states that ~~murder~~ in Beaufort County on or about May 26, 2011 Kelvin Jackson murder the victim. By states attorney changing the venue where the crime took place was highly prejudicial given the fact that the defense built their case on what was charge in the ~~the~~ indictment. Therefore, for prosecution to state that the crime happen at the victim house which is in Hampton County and not Beaufort County makes the indictment "Null". Counsel should have object and request ~~for~~ for a mistrial do to prosecutorial misconduct by changing what the ~~the~~ defense been call to defend. Was highly prejudicial given the defense was ~~call~~ call to challenge the allegation in the indictment which clearly stated ~~the~~

That in "Beaufort County" on or about May 26, 2011 Kevin Jackson did killed and murder Masako Miller. Prosecution stated in his closing argument Tr. P. 117 22-25 in early morning hours of May 26, 2011 Masako Miller was taken from her home. And when she was taken from her home. She was dead, and she's been murder. Now if she's been murder at her house that means the crime happen in Hampton County and the indictment is fatally deficient. Counsel was ineffective for not objecting to the state's attorney's statements when choose the venue of the crime, *Johnson v. State*, 325 S.C. 182, 480 S.E. 2d 733 (1997); *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); *Butler v. State*, 286 S.C. 441, 334 S.E. 2d 813 (1985). Also applicant is also arguing that his appellate counsel was ineffective for raising the issue of prosecution misconduct, although he did raised one issue. Prosecution misconduct should have been one of the issues raised since applicant wrote appellate attorney's request that he do in which he reply that he was going to raise the issues that he thought was best on my behalf.

10 (c) Applicant's rights to due process of law as guaranteed by the Fifth and Fourteenth Amendment to the United States Constitution and South Carolina Law and to confront witnesses against him, as guaranteed by the Sixth Amendment of the United States Constitution and South Carolina Law, were violated when the court admitted hearsay and character evidence concerning applicant's relationship with the victim.

11 (c) Several witnesses testified regarding applicant's relationship with the victim. First, Joyce Lootholt testified regarding seeing injuries on the victim. Tr. P. 245 line 21-25 question by states attorney: Do you remember Masako coming to work with any injuries, line 23, answer: Yes. line 24, question by states attorney: Describe those injuries that you remember her coming to work with. Tr. P. 246 line 1 answer by state witness: She had one on her face and one on her arm. Defense attorney object to this line 2-4 Mr. Williams: Your Honor, for the record, I object to the introduction of testimony of prior bad acts at this time. line 5 The Court: Your objection is overruled. The judge abuse her discretion by allowing in these testimony do to the fact that the witness does not know or saw how the victim got those injuries was highly prejudicial because your now leaving the jury to speculate on how the victim receive those injuries. Tr. P. 248 line 17 question by states attorney: Was Masako scared of Kelvin Jackson line 18 answer: Yes line 19. Mr. Williams: Objection speculative. line 20 The Court: again overruled. Similarly, Shaqby Hammping elaborated that the defendant and the victim had a physical altercation long before the death of the victim. Tr. P. 271 line 20: They started tossing in my living room line 24-25 and he just kept -- he was standing up over her -- over her, you know, like trying to get her up. Tr. P. 272 line 1-2, beating her arm back and just pulling her. You know how you can just take a person and shake them. line 21 was she afraid of Kelvin Jackson. line 23 answer by witness: Oh, Yes. line 24. Mr. Johnson defense attorney: Objection. Your Honor, Speculation. line 25 The Court again: Overruled. Clarence Wrice testified Tr. P. 280 line 18. Question by states attorney: Was Masako scared of Kelvin Jackson line 19 answer: Yes line 20. Mr. Williams: Objection. Your Honor 21. The court: Overruled. S.D. testified Tr. P. 303 about defendant being abusive and also describing an event that never happened in which counsel should have object to, line 7-21: Had Kelvin ever been abusive to your mom? line 8 answer Yes. line 9, question: Did you personally observe that? 10, answer Yes. 11, Question: Can you talk about what you observed. 12, answer: One time he took her into the bathroom by the laundry room and he locked the room, and she was screaming, and that's when I -- I have got a knife and i tried to bang on the door, but it wouldn't come unlocked. And he just, I know he did something to her, but i don't know exactly what. Now this is clearly hearsay and counsel was ineffective for not objecting to this testimony because the witness is speculating as to something happen. Leaving the jury also to speculate about whether something happen or not. This same witness describing another occasion Tr. P. 306 line 8. On one occasion he push me down, cause i tried to defend my mom. And i, I think i think i jump on his back or something. Well, I tried to, and he pushed me down. Again counsel was ineffective for not objecting to this testimony and for not challenging the witness credibility during cross-examination. line 14 witness stated that defendant was jealous, quote: He was real jealous. State witness? Lieutenant Shawn Harlex from South Carolina law Enforcement Division known as Sled. Testimony was in violation of due process of law as guaranteed by the Fifth and the Fourteenth Amendment to the United State Constitution were violated when the court allowed hearsay testimony in by Lieutenant Harlex. who repeatedly out burst that

that defendant kill the victim Tr.P. 508 line 22-24 Question by defense attorneys: In this particular case, other than speculation, do you -- do you know who committed this murder? At this point, do you know who did this? line 23 answer by witness: Do I know? Tr.P. 509 Question by defense attorneys: Yes line 22 answer: Kelvin Jackson. line 7-8 question: Okay. Other than your speculation, do you know who committed this murder? line 9 answer: The defendant, Kelvin Jackson. line 12-13 question: Okay, So, you believe he -- what you're saying, in your opinion, you believe he did it. line 14 answer: Yes, with the question we ask him. By witness, repeatedly statements about he knows who kill the victim basically insisting that the defendant prove his innocence which has no place before the jury. An accused is presumed innocent and the state has the burden to prove guilt beyond a reasonable doubt. Stephanie Williams State witness testified Tr.P. 514 line 11-12 about the victim hand being wrapped. Quote: She came by on one particular day, with her wrist wrapped up. Again allowing the jury to speculate in which all of these witnesses by the state testimony did. All of these statements were inadmissible hearsay, inadmissible character evidence, or both. The evidence of physical altercations between applicant and victim was evidence of prior bad acts, which is inadmissible under South Carolina law. For admission under either theory, cases have required that the relationship between the acts must have established such a connection between them as would logically exclude or tend to exclude the possibility that the present crime could have been committed by another person. The state evidence does not meet this test. Witnesses testified that they saw injuries on the victim but never saw how the victim received those injuries. Leaving the jury to speculate on how the victim actually received those injuries. Lieutenant Hoxley testimony was base on his own opinion not on facts or evidence. Not one witness testified as to what happens to the victim or who murder the victim. The Lyle court emphasized that evidence of other crimes must be strictly scrutinized before its admission, since "the inevitable tendency of such evidence is to raise a legally presumption of guilt in the minds of the jurors Lyle 412 S.C. 412, 118 S.E. at 807. "If there is any doubt as to the connection between the act, the accused is to be given the benefit of the doubt and the evidence should not be admitted." State V. Stokes, 279 S.C. 191, 304 S.E.2d 814 (1983); State V. Wilson, 274 S.C. 635, 266 S.E.2d 426, 427 (1980). State V. Rivers, 273 S.C. 75, 254 S.E.2d 299 (1979); State V. Wile, 125 S.C. 406, 118 S.E. 803 (1923); State V. Humphries, 346 S.C. 435, 451, 551 S.E.2d 286, 295 (Ct. App. 2001) State V. Henry, 313 S.C. 106, 432 S.E.2d 489 (Ct. App. 1993); Rule 802, SCRE; Rule 404 (b), SCRE. State V. Douglas, 302 S.C. 508, 397 S.E.2d 98 (1990). The six amendment includes an impartial jury clause, such that private communication, possibly prejudicial, between jurors and third person, are absolutely forbidden, and invalidate the verdict, at least unless harmlessness is made to appear in which did not, United States V. Basham, 54 F.3d 302, 305 (4th Cir. 2009). An abuse discretion occurs when "the district court judge acted arbitrarily or irrationally in admitting of evidence of other crimes, or acts solely to prove a defendant's bad character Federal Rule of Evidence 404(b). In addition, the evidence must be more probative than prejudicial citing Id. (Fed. R. Evid 403) This prohibition reflects the underlying premise of our criminal justice system that the defendant must be tried for what he did not for who he is. Thus, guilt or innocence of the accused must be established by evidence relevant to the particular offense being tried, not by showing that the defendant has engaged in other acts or wrongdoings. State V. Smith, 230 S.C. 164, 94 S.E.2d 886 (1956)

10(D) Applicant's rights to due process of law as guaranteed by the Fifth and Fourteenth Amendment to the United States Constitution and South Carolina Law was denied as a result Trial Judge ~~abusing~~ abusing her discretion by not granting a direct verdict at the end of trial.

110(D) Trial judge abuse her discretion by not granting applicant a direct verdict when requested by defense counsel. Tr. P. 725 line 13 through 20. The Court: Thank you, gentlemen. Gentlemen, as you know, my position is to have to look at it in light most favorable to the non-moving party. And at this stage, the Court concerned with existence of evidence, and not its weight. And although, certainly, it's circumstantial evidence, I find that there is substantial evidence which would reasonably tend to prove the guilt of the defendant. So, I respectfully deny your motion. Applicant challenges his conviction of murder to the state failure to present substantial circumstantial evidence of his involvement in the crime charge and, therefore, the court erred in denying his motion for a directed verdict. Applicant Kelvin Jackson challenges his conviction of murder and actual innocence and the state failed to present substantial circumstantial evidence of his involvement in this case. In the beginning Lieutenant Ryan Neill stated in his report on June 21, 2011 that this a very confusing investigation and the charges are based on circumstantial evidence. We have yet to find a piece of physical evidence tying Mr. Jackson to this crime other than the bank card. Just because applicant used the victim bankcard was insufficient to prove the ~~app~~ applicant guilt of murder. Given the fact that there was testimony that the victim would let the applicant use her debit card. Tr. P. 276 state witness Shacobi Hammond stated on record line 23 question: Okay, and it wasn't unusual for him to use her card. Answer line 25 "NO" To sustain a verdict in murder cases, every circumstance relied upon the state "must be proven" beyond reasonable doubt, all of circumstance so proven must be consistent with each other and taken together, point conclusively to the guilt of the accused to exclusion of every other reasonable hypothesis and it is not sufficient that they create a probability though strong one and if assuming them to be true they may be accounted for upon any reasonable hypothesis which does not include guilt of accused proof has fail. By bringing murder prosecution the state assumed the burden of proving that applicant was at the scene of the crime when it happen. In this case the state never prove where the crime took place or that applicant committed it. Here the evidence is extremely circumstantial nothing in the state's evidence can state where the crime took place. Thereby the state failed to fill the gaps in proof and left the jury to speculate as to where the crime happen. See *Buchanan*, 347 S.C. at 322-23, 555 S.E.2d at 405 (holding defendant was entitled to a directed verdict where none of the evidence presented by the state place defendant at the crime scene and the jury was left to speculate as to defendant guilt) Given the fact that, the state never prove where the crime took. The note that was found at the victim house in which writing expert Gaile Heath Forensic Scientist results of examination July 21, 2011 wrote: Based on the additional evidence examined, it is (Probable) that Kelvin Jackson wrote the question entries on Item 3.1 which is the front-side of the note beginning "I'll be ... y'all guys." Now

probable meaning the evidence contained in the writings points rather strongly toward the question and known writings have been written by the same individual; However, it falls short of a "Virtually Certain" degree of confidence. Writing expert also state witness Torce Lauterbach testified Tr.P. 716 line 4 question by defense counsel: Is that saying it's probable he wrote it, but you're not certain he wrote it? Answer by state witness: That's correct. The state fail again to fill the gap in proof and left the jury to speculate on whether applicant wrote the note or not see **State V. Ballenger, 322 S.C. 196, 199, 470 S.E. 2d 851, 853 (1996)**. When it comes to the DNA please let me explain because this is where the state's attorney ~~confuses~~ confuses the hotel court. State attorneys stated that the major contributor of the DNA that was found was the DNA belonging to the defendant Kelvin Jackson. Item (1) The DNA profile developed from item (1) matches the DNA profile of Kelvin Jackson. The probability of randomly selecting an unrelated individual having a DNA profile matching this item is approximately 1 in 210 trillion. This is the swab from the ~~bedroom~~ bathroom sink at the Palms Inn and Suites Hotel where the applicant stayed that night. This was the only DNA found in the Hotel room no one else of course my DNA is going to be 1 in 210 trillion in the only one in the room. Now item 21.1.1 cutting from black shorts that applicant was wearing that night. The DNA profile developed from item 21.1.1 is a mixture of at least three individuals. The DNA profile of the major contributor to this mixture and the DNA profile developed from item 21.1.2 which is also cutting from the black shorts worn by the applicant also matches Kelvin Jackson of course these are the clothes applicant wore that night. The victim Masako Miller was excluded as a possible minor contributor to item 21.1.1 meaning the victim DNA wasn't found in the Hotel room, on applicant clothes he wore that night. Also there was never any DNA of the victim in the applicant car as well. Again the jury was left to speculate about the DNA. **State V. Schrock, 283 S.C. 129, 133, 322 S.E. 2d 450, 452 (1984)**. This is where it ~~sets~~ tricks the DNA profile developed from item 29.1 is a mixture of at least three individuals this is the swab from aster edges of the pillowcase from the victim bed which been mark state's exhibit 27. Kelvin Jackson and Masako Miller cannot be excluded as possible contributors to this mixture. The probability of randomly selecting an unrelated individual who could contribute to this mixture is approximately 1 in 1,600 see how low the number is now 1 in 1,600. The Y-STR, DNA profile developed from item 29.1 is a mixture of "two male individual". The Y-STR, DNA profile of Kelvin Jackson has been enter into the Combined DNA Index System (CODIS). "Paternal male" relatives of Kelvin Jackson cannot be excluded as the major contributor of the DNA to this profile. This profile is found 0 times in a population database of 8,487 male individual. DNA Forensic Analyst Adrienne Helms testified Tr.P. 596 line 6 ~~through~~ through 8. But I want to -- I just want to help and make sure, the jury understand cannot be excluded, meaning that, there are other people who could be included. line 9 answer by state witness: Paternal male relatives of Kelvin Jackson, yes sir.

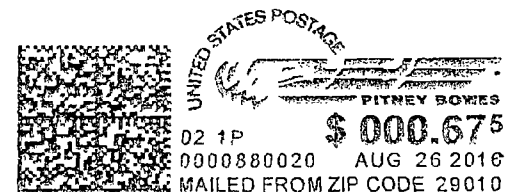
92210. Question: Okay, All right. Then, my next question is, if, Kelvin Jackson had a son, would he be included in that category? line 13 answer: In the Y-STR profile, yes, sir. There was also an unknown person DNA found on the pillowcase Tr.P. 593 line 14 question: Is what you're saying there's two male individual's DNA on the edges of the pillowcase. Is that correct, line 17 answer: That's correct. Tr.P. 605 line 13 forensic DNA analyst stated again that the pillow had an unknown male DNA on it line 14 answer: Both. line 15 question: had him, her, and another unknown male. line 16 answer: That is correct. Again the state is constantly failing to fill the gap in proof and leaving the jury to speculate as to defendant guilt. Findings touch DNA evidence is insufficient to prove the defendant's guilt do to the fact that the victim and defendant had an relationship. Also the state offered no timing evidence to contradict reasonable explanations for the presence of the touch DNA was made at the time of the victim disappearance or could it have been there before the victim disappearance. See ~~State~~ **V. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)**. "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances [that] do not amount to proof. **State V. Buckman, 347 S.C. 316, 322, 555 S.E.2d 402, 404-05 (2001)**. holding defendant was entitled to a directed verdict where none of the evidence presented by the state placed defendant at the crime scene and the jury was left to speculate as to defendant guilt because the state never prove where the crime took place. Which leave to the question were and how the victim died. The forensic autopsy final report clearly states (Place of Injury) "Undetermined" (If injury has occurred) "Undetermined" (Date of injury) "Undetermined" (Time) "Undetermined" (Cause of Death) "Undetermined" All done by the Medical University of South Carolina by Dr. Lee Marie Thomas, MD attending pathologist Cynthia A. Schwall, MD PhD. on May 31, 2011 at 9:00 a.m.. The state failed to fill gaps in proof and clearly left the jury to speculate as to how the victim died and the defendant guilt. See **State V. Ballenger, 322 S.C. 196, 199, 470 S.E.2d 851, 853 (1996)**; **State V. Hyder, 242 S.C. 372, 379, 131 S.E.2d 96, 100 (1963)** A defendant is entitled to a judgment of acquittal "where [the] evidence merely raises a suspicion of guilt, or is such as to permit the jury to conjecture or to speculate as to the accused's guilt." **State V. Brown, 267 S.C. 311, 316, 227 S.E.2d 674, 677 (1976)**. Trial Judge abuse her discretion by not granting a mistrial when state's attorneys deliberate change the venue where the crime suppose to have happen. States attorneys Mr. Thornton stated in his closing argument to the jury Tr.P. 746 line 22-25 stated, "Early morning hours of may the 26th, 2011 Masako Miller was taken from her home. And when she was taken from her home, she was dead and she'd been murder." Given the fact that the victim lives in Hampton County and the charge in the indictment clearly states that the murder was in Beaufort County on or about May 26, 2011 Kelvin Jackson murder the victim. Is an automatic mistrial do to this misconduct by the state. By changing the venue

where the crime suppose to have happen was highly prejudicial given the fact⁶²³ the defense was call to challenge the allegation in the indictment which clearly state's that in "Beaufort County" on or about May 26, 2011 Kelvin Jackson did killed Masako Yamisuchi Miller. Now if she's been murder at her house which is in Hampton County then the ~~indictment~~ indictment is fatally defective and trial judge should have granted an mistrial right then when the state made this improper comment to the jury. Trial judge abuse her discretion by not allowing defense counsel to argue ~~or~~ or charge third party guilt which should have been granted by the court. Do to the fact that there was an unknown person DNA found on the victim pillowcase that no one knows who's it belongs to or how it got on the victim pillowcase. There's also two unidentified female DNA developed from item 6.1 and item 7.1 which is one blue and one green toothbrush that was taken from the victim house. Also the DNA profile developed from item 44 which is the swab from the passenger side door handle (inside) Tahoe of the victim truck is a mixture of at least two individuals. No conclusive statement can be made as to the inclusion or exclusion of Kelvin Jackson, Masako Miller, Cassandra Jackson, and Nellie Jackson are excluded as possible contributors to this mixture. Given the fact that the state never found who's DNA that was found on the two toothbrush that was at the victim house along with the partial print found on the victim pillowcase and two ~~unidentified~~ unidentified partial DNA found in the victim truck which is the gear shift. The 60 items that were sent to Sled for analysis only two items came back with some kind of result but neither of those two result can say for certain as to applicant guilt. The writing expert stated the handwriting points rather strongly toward the questioned and known writings having been writings by the same individual, however, it falls short of a virtually certain degree of confidence. The swabs from the outer edges of the victim bed was a mixture of at least three individuals. Kelvin Jackson and Masako Miller cannot be excluded. The Y-STR DNA profile is a mixture of two male individual. Kelvin Jackson cannot be excluded as the major contributor to this DNA. However Kelvin Jackson two sons could have been the major contributor to this mixture as well given the fact that they have the same Y-STR DNA profile as well. Given the lack of evidence and the gaps in the evidence the state clearly did not meet the elements that applicant murder the victim. In which trial judge should have granted an direct verdict that was requested by defense counsel. Given the fact that the state never ~~met~~ met the elements that is require in murder trial.

State v. Schrock, 283 S.C. 129, 133, 322 S.E.2d 450, 452 (1984) State v. Pearson 410 S.C. 392, 764 S.E.2d 706 (2014).

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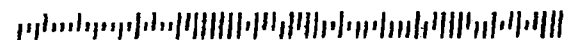
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STATE OF SOUTH CAROLINA
FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NUMBER 2016-CP-07-00399

KELVIN JACKSON, SR.

PETITIONER

VERSUS

STATE OF SOUTH CAROLINA

RESPONDENT

**TRANSCRIPT OF
POST-CONVICTION RELIEF HEARING**

BEFORE HON. R. SCOTT SPROUSE JUDGE

FEBRUARY 15, 2017

BEAUFORT, SOUTH CAROLINA

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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BY THE COURT

1 BEGINNING 9:45 A.M.

2 BY THE COURT:

3 THE COURT: We're ready? Proceed. Okay. Call
4 your first case.

5 MR. NEELY: Thank you, your Honor. The State would
6 call the case of Kelvin Jackson, Sr. versus the State of
7 South Carolina. Case Number 2016-CP-07-0399. Applicant
8 is currently incarcerated in the South Carolina
9 Department of Corrections pursuant to the orders of the
10 Beaufort County Clerk of Court. Applicant was indicted
11 on July 2011 term of court by the Beaufort County Grand
12 Jury for murder, on Indictment Number 2011-GS-07-01329.
13 Virgin Johnson, Jr. represented the applicant at trial
14 on July 29, 2013. It proceeded to a jury trial,
15 pursuant to which he was found guilty as indicted. The
16 Honorable Judge Murphy, with the Honorable Carmen
17 Mullen, sends the applicant to confinement for a 45-year
18 period.

19 An appeal was filed pursuant to *Anders*. South
20 Carolina Court of Appeals did affirm the applicant's
21 conviction and sentence. The remittitur was entered on
22 May 11, 2016.

23 THE COURT: All right. Mr. Falk.

24 MR. FALK: Yes, your Honor. We'll call the trial
25 counsel to the stand.

1 MADAM CLERK: Put your left hand on the *Bible* and
2 raise your right, please. Do you solemnly swear or
3 affirm the testimony you give to the Court in this case
4 to be the truth, so help you God?

5 VIRGIN JOHNSON: Yes, I do.

6 MADAM CLERK: You may be seated.

7 VIRGIN JOHNSON: Thank you. Good morning, your
8 Honor.

9 THE COURT: Good morning.

10 VIRGIN JOHNSON, JR.

11 DIRECT EXAMINATION BY MR. FALK:

12 Q Yes. Please state your name for the record.

13 A Virgin Johnson, Jr.

14 Q Mr. Johnson, how did you come to be representing
15 Mr. Jackson in this case?

16 A I was hired by his family and him.

17 Q Okay. Can you tell me a little about what you did
18 in order to review the discovery in this case.

19 A You mean before the trial or coming today?

20 Q No, before the trial.

21 A Gracious goodness. Talked to witnesses; did -- got
22 the issues; had a brief; had a pretrial motion; had a
23 brief done. I mean, it -- it wasn't -- this case kind
24 of -- I don't want to say unique. This case just had a
25 number of issues that required a bunch of work.

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1 Q Wasn't there a jurisdictional issue right at the
2 beginning of this case?

3 A Yes. The problem was, she was missing from her
4 home in Hampton. Nobody know -- but the body was found
5 here in Beaufort County. Nobody knew how she got from
6 Hampton to Beaufort. I tried -- to be honest with you,
7 Hampton is a better venue for a criminal case, but it
8 didn't get moved. So, I mean, there was nothing else I
9 could do.

10 Q Did you seek to quash the indictment based on
11 failure of jurisdiction?

12 A What I did, I questioned the jurisdiction. I don't
13 remember -- I say quash the indictment. I just -- my
14 argument was that if she was missing from Hampton, he
15 should have been tried in Hampton. And the ruling was,
16 I think, was that because the body was found in Beaufort
17 County, that it could be tried in either county.

18 Q There was considerable evidence in this case about
19 injuries that the victim had suffered prior to the
20 event. Is that not correct?

21 A Yeah.

22 Q Prior to her disappearance.

23 A When they found the body, no, there wasn't
24 considerable evidence. When they found the body, they
25 found the body, after some days, in Beaufort. Nobody

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1 knows how the injuries got to the body. From our
2 perspective, when we tried the case, the last thing we
3 know is, when Kelvin left her, she was supposed to have
4 been well. How the injuries got to the body, when the
5 got to the body, where they got to the body, nobody knew
6 that.

7 Q Okay. But didn't witnesses -- weren't there
8 witnessed called who testified that she had showed up at
9 work and she had bruises?

10 A I don't remember that, but I do remember objecting
11 to all those witness testimony because it would be
12 prejudicial, because it had nothing -- it wasn't
13 relevant to what was going on with the trial.

14 Q Okay. How about the testimony regarding that he'd
15 been in jail for child support?

16 A To my knowledge, I object to anything that -- I
17 would say yes, I don't remember well -- what I said
18 about the child support, but I would be sure that I did.
19 I don't remember about the child support. That was in
20 2012 or '13.

21 MR. FALK: One moment. If I could approach the
22 witness, your Honor?

23 THE COURT: Yes, sir.

24 BY MR. FALK:

25 Q At the bottom of Page 267.

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1 A Yes, sir.

2 Q Did the witness -- I'm sorry, what is the -- let me
3 make sure so we've got it for the record, because
4 there's two different page numbers there. What I'm
5 showing you is what's in the trial record. Record on
6 Appeal is Page 230. And it's this witness at the bottom
7 of that page, Lines 22, I guess.

8 A At the bottom of that page, Line 22 through 25.
9 That was something that went on during the trial, and if
10 it doesn't show an objection, I didn't do an objection.

11 Q Okay. So, and so, that was -- so, the jury heard
12 that he had charges of failure to pay child support and
13 forgery charges?

14 A Yes, sir. If I didn't do an objection, I'm pretty
15 sure the jury heard it.

16 Q Okay. And that would be, I mean, I guess sometimes
17 stuff floats through, but that would clearly be 404(b)-
18 type information, right? There was no relevance of that
19 information through the prior bad acts; didn't have any
20 really relevance towards this case, did it?

21 A And I would -- I would agree with you, they don't.

22 Q Okay. Thank you.

23 A I would also say -- now, I can't say we didn't deal
24 with that someplace else in the transcript. I didn't
25 read the transcript.

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1 Q Sure. No, I understand.

2 A Okay.

3 Q Were there any type of plea negotiations that
4 happened in this case?

5 A Yes, sir, there was. He was offered, I think it
6 was an 18-year plea, and I got -- the solicitor allowed
7 me to allow his family, himself, myself, and Attorney
8 Korey Williams, who assisted me, who is a prosecutor
9 now, we all sat down with him, and he made a decision
10 that he was going to trial, because he said he wasn't
11 guilty.

12 Q Okay. So, about how many times did you meet? He
13 was in custody at the time; was he not?

14 A Yeah, I probably -- yes, sir, he was, and he was in
15 custody the whole time. I think they tried to get bond.
16 He couldn't get bond. My partner at the time, Solicitor
17 Korey Williams, lived in Hampton. I lived in
18 Orangeburg. Korey did most of the jail visits, but if
19 you check the record, I probably was over there probably
20 three, four times.

21 Q Okay.

22 A But Korey did most of the visits.

23 Q All right. Now, was an autopsy report ever
24 introduced into this case?

25 A It was, and if you look at the transcript, I had --

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1 matter -- first -- first thing I did I objected to the
2 autopsy report coming in.

3 Q Yeah.

4 A The second thing I did was argue to the fact of
5 whether it was indication -- my position was, since it
6 didn't clearly say it was -- they determined it a
7 homicide, solely based upon what I would consider not
8 relevant material. They based it upon his prior -- the
9 expert that was testifying based it -- her findings of
10 homicide upon other facts, rather than the facts
11 surrounding the -- the murder. And of course, I
12 objected to that.

13 In the autopsy report, they couldn't tell when,
14 where, who, how. They couldn't -- none of that was
15 known.

16 MR. FALK: May I approach, your Honor?

17 THE COURT: Yes, sir.

18 BY MR. FALK:

19 Q I'm showing you a document that my client supplied.
20 Can you tell me what that document says.

21 A *Cause of death undetermined. Manner of --*

22 Q What's the title of the document?

23 A Oh. This is the autopsy information from MUSC.

24 Q Okay. And who signed that document?

25 A It looks like Dr. Lee Marie Tormos.

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1 Q And as I look through the witness list, it doesn't
2 appear as though the doctor who signed the autopsy
3 report testified at trial.

4 A Well, I honestly don't remember whether that doctor
5 testified or who testified, but I did a thorough cross-
6 examination of it, because I had serious concerns about
7 this. Matter of fact, did a brief arguing against this
8 autopsy report.

9 Q But did you object to the autopsy report on the
10 grounds that it is a report written by Dr. Tormos and
11 was admitted through another State's expert?

12 A I would say yes, sir. I think I objected to any --
13 I just made objection to anything I could on this case.

14 Q Because I don't see an objection based on the
15 confrontation clause issue that would be presented by a
16 report from one expert being admitted through that of
17 another expert.

18 A And not only did I object to it in the pretrial,
19 when we did the -- after the trial, when we did a post-
20 trial motion, I went back and objected to it again. All
21 I can tell you is I objected to the report. Now, I
22 don't remember the reason. I objected several times
23 during trial, pretrial, and post-trial.

24 Q Okay.

25 MR. FALK: Your Honor, I apologize. This is a new

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1 item that my client brought me, and I'm just trying to
2 find where the autopsy report came in.

3 I'm sorry, we withdraw the last -- that was my --
4 that was my -- it did appear that the autopsy was
5 brought in by the pathologist that performed the report.

6 BY MR. FALK:

7 Q I'm sorry. So the plea agreement, was that ever --
8 was that ever communicated with my client?

9 A Yes, sir. And not just with your client, his whole
10 family. Out of abundance of precaution, because of the
11 seriousness of this case, I asked the Solicitor and law
12 enforcement for permission. And I think it was in the
13 room, the next room over, Room Number -- Courtroom
14 Number 2. We went in that little chamber on that side,
15 and his family sat with him, and we discussed it. And
16 he made a decision that he wanted to go forward with the
17 trial, with his family's approval. And of course, I had
18 to do whatever he said.

19 Q Now, I notice that there were no defense witnesses
20 called in this case.

21 A No, sir, there was not. This is a very
22 circumstantial case. We talked about whether or not we
23 wanted to do closing arguments. He decided that he
24 wanted to do the closing arguments. He was questioned
25 about whether or not he wanted to we've putting any

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1 evidence in, having the closing argument, and that's
2 what was agreed on. That's what we agreed on.

3 Q Okay. And what was your recommendation on that?

4 A My recommenda -- well, I -- it was a 50/50, but I
5 mean, I would have -- I wouldn't have disagreed with it.

6 Q Um-hmm.

7 A I wouldn't have disagreed with it. I mean, it was
8 a very circumstantial case.

9 Q Did you have witnesses that you had already
10 interviewed that you could have called?

11 A Well, I talked to -- the ones that would talk to
12 me, and/or Korey, we talked with them. But no, I didn't
13 really have anybody I could call. Because, again, when
14 she went missing, she went missing -- somebody talked to
15 her about 8:00 o'clock that night. A day and a half,
16 two days later, somebody determined she was missing.
17 They found her body in Beaufort County. There was
18 nobody to talk to. There wasn't no witnesses, other
19 than the ones that basically that the State was calling,
20 and I went and talked to those who would talk to me.

21 Q There were no alibi witnesses called?

22 A No. But you couldn't have last argument and call
23 alibi witness.

24 Q No, I know, I know. I mean, did you interview any
25 alibi witnesses?

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1 A Well, I talk -- who I talked with specifically
2 right now, I don't remember, other than his family
3 members. But yes, I did.

4 Q Okay.

5 MR. FALK: One moment.

6 BY MR. FALK:

7 Q Now, there was DNA evidence used in this case. Is
8 that not correct?

9 A Yes, sir.

10 Q And in a circumstantial case, the DNA evidence
11 certainly has a significant impact; does it not?

12 A I would believe so, yes, sir.

13 Q Now, did you consider hiring your own DNA expert in
14 this case to evaluate it?

15 A No, sir, I didn't. Number one, 'cause he couldn't
16 afford the DNA expert.

17 Q Okay.

18 A I mean, the expenses, quite frankly -- I knew
19 Kelvin. We grew up in the same area. He's younger than
20 me, but I know his family well. And I spent personal
21 money trying this case.

22 Q Um-hmm.

23 A This is one of those cases I didn't get paid. The
24 brief you saw me do, the two-thousand-some dollars, I
25 paid for that. The other one, I paid for that, because,

1 yeah, I thought it was circumstantial, and I wanted to
2 make sure I did everything I could to help him. It's
3 just, the jury found otherwise.

4 Q But there was no -- I mean, the DNA evidence wasn't
5 -- couldn't really place a time as to when --

6 A No, sir. It couldn't place the time. That's the
7 problem. Everything was undetermined, and it became a
8 homicide. That was one of my biggest arguments. How
9 can it be a homicide if it can't be determined how it
10 happened?

11 Q Would Mr. Jackson have qualified, do you think, for
12 indigent defense?

13 A To be honest, he probably would have. But once I
14 started it, generally, the rule is, we start a case and
15 don't get paid, it's your responsibility. But even in
16 this case beyond, I knew his family, and I just didn't
17 -- I took the position that I needed to do the best I
18 could do.

19 Q But did you consider asking for funding from the
20 court for a DNA expert?

21 A I did not. No, sir.

22 Q Because he was --

23 A No, sir. I did not.

24 Q In your practice, have you ever done that?

25 A In cases --

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1 Q Where you -- when you had a paying client.

2 A No, sir.

3 Q In a situation like that, but have sought funding
4 from the court, for an expert through Indigent Defense.

5 A No, sir. The only time I've done that is when I
6 was appointed an indigent. I've never done that with a
7 paying client, no.

8 Q If you would have had an unlimited budget in this
9 case, do you think a DNA expert could have made a
10 difference in this case as far as at least drawing doubt
11 or raising doubt as to when DNA evidence was imparted
12 onto the -- the DNA was put onto the evidence?

13 I mean, again, because, you know, the issue here is
14 the timing. She's gone for several days.

15 Q I think I started interrupting you when you were
16 answering my questions. I asked you, did you think it
17 would have made a difference. Or do you think it could
18 have caused doubt in this case?

19 A I don't -- anything generally in the case with a
20 jury sometime can cause doubt. In this particular case,
21 I don't know if a DNA expert would've made a big
22 difference, because the only DNA information was, I
23 think, some DNA off the side of a pillow that was in the
24 house. And they -- they stayed together, they slept
25 together, so his DNA was going to be in the house.

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1 Q Right.

2 A I just don't think it was going to make a
3 difference.

4 Q Okay.

5 A But if I had an unlimited budget, would I try to do
6 something else? I mean, I don't know what all I'd tried
7 to do if I had unlimited budget.

8 Q No, and my concern was --

9 A Yeah. Yeah.

10 Q I guess that was a little glib question.

11 A Right.

12 Q I just meant if you would have been able to get
13 funding for a DNA expert, do you think it would have
14 made a difference?

15 A I don't know.

16 Q Okay.

17 MR. FALK: No further questions.

18 THE COURT: Mr. Neely.

19 VIRGIN JOHNSON

20 CROSS-EXAMINATION BY MR. NEELY:

21 Q Just to clarify a few issues, Mr. Johnson. There
22 was some evidence of injuries that could happened the
23 night of the murder, for the State's case at least, with
24 blood on the pillow of the home where the victim was at.

25 A Yes, but let me tell you how I viewed that

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1 information. Number one, they slept together. He
2 stayed in -- he was in and out of the house with her off
3 and on. So, but it was blood, yes.

4 Q That was the victim's blood, correct? And then,
5 his -- was his DNA not found on the side of the pillow?

6 A His DNA was found on the side of the pillow, yes.

7 Q And that would have been expected because he lived
8 there for a period of time.

9 A Off and on, yes, sir.

10 Q And again, just to clarify. In the pretrial brief
11 you submitted to the Court, you objected to the autopsy
12 coming in?

13 A Yes, sir.

14 Q And the pathologist's testimony?

15 A Yes, sir.

16 Q And then, you objected again. At the time of the
17 pathologist's testimony --

18 A Yes, sir.

19 Q -- you renewed your objection.

20 A Yes, sir.

21 Q And then, I believe your question on alibi
22 witnesses. She was missing for a period of two or three
23 days; was she not?

24 A Yes, sir.

25 Q So any alibi witness would have had to cover a two-

1 to three-day period of time --

2 A Correct.

3 Q -- to completely absolve him of any potential
4 guilt.

5 A Correct.

6 Q And you had the discussion with him about the
7 strength of an alibi witness versus the strength of a
8 closing argument?

9 A Yes, sir.

10 Q And you came to a strategy decision to have last
11 argument and not present evidence.

12 A Yes, sir, we did. That was discussed with him in
13 detail.

14 MR. NEELY: That's all the questions I have.

15 THE COURT: Re-direct?

16 MR. FALK: No, your Honor.

17 THE COURT: Thank you, Mr. Johnson.

18 A Thank you, your Honor. Your Honor, may I be
19 excused?

20 THE COURT: Yes, sir. Any objection to this
21 witness being excused?

22 MR. FALK: No, your Honor.

23 MR. NEELY: If you would, would you just hold on.

24 VIRGIN JOHNSON: Oh, yes. Yes, sir.

25 MR. FALK: I call Kelvin Jackson to the stand.

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1 MADAM CLERK: Come right here. I'm going to swear
2 you in. Place your left hand on the *Bible* and raise
3 your right, please. Do you solemnly swear or affirm the
4 testimony you give to the Court in this case shall be
5 the truth, so help you God?

6 KELVIN JACKSON, SR.: Yes, ma'am.

7 MADAM CLERK: You may be seated.

8 KELVIN JACKSON, SR.

9 DIRECT EXAMINATION BY MR. FALK:

10 Q Mr. Jackson, can you recall -- you were in custody
11 prior to the trial of this case?

12 A Yes. Yes, sir.

13 Q Can you recall what types of conversations you had
14 with your trial counsel as far as a trial strategy?

15 A Well, we basically talked about, like, where I was,
16 what questions the detective asked me, things of that
17 nature.

18 Q Do you feel that there was some investigation that
19 he should have conducted on your behalf?

20 A Yes.

21 Q And could you explain what you believe should have
22 happened?

23 A Well, one, I felt that he should have investigated
24 on how the victim bedroom was found.

25 Q Okay.

1 A Cause you have different testimony from different
2 witness saying different things.

3 Q For example?

4 A Like, one witness stated that the victim house was
5 -- where her bedroom was messed up.

6 Q Okay.

7 A And you have two other witnesses saying -- the
8 witness statement saying that the victim house bedroom
9 wasn't messed up.

10 Q Okay.

11 A And I felt that Counsel should have did a proper
12 investigation on looking into that matter.

13 Q Did you ask him to hire his own investigator to
14 talk to the witnesses in advance?

15 A I think he had an investigator at that time.

16 Q Okay.

17 A I believe. But I don't think that he looked into
18 that aspect of the investigation, as to how the victim
19 house bedroom was found.

20 Q How soon after the body was found were you
21 arrested?

22 A I was arrested three days before the body was
23 found.

24 Q Okay. And when did you contact your lawyer?

25 A I did hire me -- me a public defender.

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1 Q Okay.

2 A And I believe Mr. Johnson got on my case, what?
3 prior, about five, six months after, I believe he was my
4 attorney.

5 Q Okay. And was anybody living in the house after
6 the body was found?

7 A My sister and my kids was staying there.

8 Q Okay. Did they testify as to the condition of the
9 bedroom?

10 A No, nobody did.

11 Q Would they have been available to testify?

12 A Yes.

13 Q Okay.

14 A Yes.

15 Q What are some of the other concerns that you have?
16 Did you have concerns about some of the speculative
17 testimony that came in?

18 A Yes. It was testimony about the victim having
19 bruises, seeing the victim with bruises, but none of the
20 witnesses could testify as to how the victim had the
21 bruises.

22 Q Right.

23 A So basically, they was testifying to -- to --to
24 something that they don't have no knowledge of. But the
25 testimony made it look as if I was the one that caused

1 the bruises.

2 Q Sure.

3 A When, in fact, had Counsel would have looked into
4 that, investigation into that, he would have found out
5 that I was never the cause of the victim's --

6 Q Do you know what the cause of the bruising was?

7 A Yes. I had -- my daughter mother, her and the
8 victim had got into a -- a couple of disputes, and where
9 they got into some fights a of couple times. That's
10 where the injuries came from, but during the witness
11 testimony, they all made it look like as if I was the
12 one that caused the bruises.

13 Q So let me go back. You were living in the house
14 with the victim on and off?

15 A Yes.

16 Q And then, you also have a female who was the mother
17 of your daughter. Is that correct?

18 A Yes, yes.

19 Q And you were continuing to see her,

20 A Yes.

21 Q While you were with the victim. Is that correct?

22 A Yes.

23 Q And so, there was some animosity between the two of
24 them?

25 A Yes.

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1 Q Okay. And was she available? And now, would she
2 have been available to testify as to this bruising?

3 A Yes.

4 Q Okay. Did you ask her to testify?

5 A No, I didn't ask her, no.

6 Q Okay. Did you tell your lawyer that she could have
7 testified to this fact?

8 A No. I didn't find out to the bruises 'til we were
9 in trial. Prior to trial, when all this came about by
10 seeing the victim with injuries and bruises, bruises on
11 her arm and stuff, that -- it came out during trial.

12 Q So did you have an opportunity -- did your lawyer
13 not review the victim's -- the witness statements prior
14 to the trial?

15 A I have no knowledge of whether he did or not, but
16 I'm pretty sure if he -- if he would have, I would have
17 been aware of this.

18 Q But did he advise you that there were victims --
19 that there were witnesses who testified that they saw
20 the victim having bruises?

21 A No, sir.

22 Q Okay. Had you known that at the time, that that
23 testimony would have been there, would your strategy
24 have been different as far as waiting for the last
25 argument or calling your own witnesses?

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1 A Yes, sir.

2 Q Okay. So are there some other issues that you had
3 concerns with the presentation?

4 A Yes. Counsel, they was a note filed. There was a
5 note found, and I felt -- I fee as though my counsel, my
6 trial counsel, should have hired his own handwriting
7 expert.

8 Q Okay.

9 A To challenge the writing.

10 Q Because there was a handwriting -- all right, so
11 let's go back. This note was found -- and this was a
12 note that you were planning to send to your lawyer. Is
13 that correct?

14 A No. This was a note found at the victim house.

15 Q At the victim's house. I'm sorry. Okay.

16 A Yes, yes.

17 Q And what did this note say?

18 A To my knowledge, it said something about I'll be
19 back; I went with somebody; I'll be back. Something
20 like that. Or something like that.

21 Q Okay. And there was a handwriting expert at the
22 trial. Is that correct?

23 A Yes, yes.

24 Q And that handwriting expert was able to tie that
25 note to you. Is that correct?

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1 A No. She -- on her findings, she said it was -- she
2 was uncertain as to who wrote the note.

3 Q Okay.

4 A Yes. But it was two handwriting experts who came
5 with the same thing, saying they both was uncertain as
6 to who wrote the note.

7 Q But the note was still admitted into evidence?

8 A Yes. Yes.

9 Q Without any proof that you had written the note.
10 Is that correct?

11 A Yes, yes.

12 Q Okay. But you had discussed -- when did you
13 realize that this note was going to be --

14 A I haven't find -- I didn't find that out 'til, I
15 think, prior to trial.

16 Q So you didn't know about this?

17 A I heard about it, but I -- I wasn't aware of where
18 -- when it go -- was it going to come in as evidence or
19 what.

20 Q And were you aware that the State had hired
21 handwriting experts in this case?

22 A Not at the time, no.

23 Q Okay. Are there other issues that you have
24 concerns with?

25 A Yes. It was a issue --

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1 Q You had concerns about the DNA, correct?

2 A Yes, yes.

3 Q What were your concerns about that?

4 A My concern was, the State, they didn't ever offer
5 no timely evidence as to where the DNA -- when the DNA
6 got on the victim pillow.

7 Q Okay. And did you discuss possibly hiring your own
8 independent DNA expert in this case?

9 A Well, at that time, during prior to trial, no, sir.

10 Q Okay.

11 A No, sir. But my -- I think Counsel was ineffective
12 for not challenging the State on that, because you had
13 -- you also had a State witness who wrote a statement,
14 prior to the night, when she stated in her written
15 statement she gave, she saw me sitting on the victim
16 bed.

17 Q Yes.

18 A Now, it's possible my touch DNA could have got on
19 the -- on the victim bed during that time.

20 Q Sure.

21 A So my -- my thing is how can the State use that
22 evidence against me when you have a witness stating that
23 they saw me sitting on the victim bed, when it's a
24 possibility that DNA could've got on the victim pillow
25 when I was sitting on the victim bed. But they used

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1 that pillow to make it look as if I smothered the
2 victim, because my touch DNA was on -- was on the
3 pillow.

4 Q Do you have any information as to what caused the
5 disappearance and death of the victim in this case?

6 A No, sir.

7 Q Are there other issues that you have concern with
8 your counsel?

9 A Yes. It was -- the victim -- well, I call her my
10 stepdaughter, she stated that when she got up that
11 morning, the -- the bedroom was messed up. You know,
12 the bedroom messed up, perfume bottles knocked down.
13 But you also had two other State witnesses who wrote a
14 statement saying when they went to the house, the house
15 was clean.

16 Q Um-hmm.

17 A You know, the bed wasn't messed up, no perfume
18 bottles on the floor, no pillows on the floor. And I
19 feel as though if Counsel would've looked into that a
20 little more, he could have discovered -- I mean, they
21 wrote -- they written statements on this saying that
22 this was not how the victim house was, along with two
23 officers who went to the victim house with them. So how
24 can this witness get on the stand and say when she got
25 up, the house was messed up? But you got witnesses

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1 saying this is not how the house was.

2 Q And were those witnesses who made those statements
3 that the house was clean, were they ever called to
4 testify?

5 A No, sir.

6 Q So now the statements regarding the condition of
7 the house, again, were you aware of those prior to the
8 --

9 A No. I -- I -- I didn't heard no statements until
10 trial -- during trial. That's when I heard about this
11 witness, her testimony.

12 Q Okay. So, if you had the information that there
13 was conflicting -- or that you had -- that you could
14 have had witnesses who could have challenged the State's
15 witnesses on it --

16 A Yes, sir.

17 Q -- would you then have had a different trial
18 strategy as far as --

19 A Yes, sir.

20 Q -- whether to call witnesses --

21 A Yes, sir.

22 Q -- or just relying on the closing argument?

23 A Yes, sir.

24 Q Okay. I think that had covered it, unless there's
25 another item..

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1 A Yes. At the -- my trial counsel, during his
2 closing argument, when he stated to the Court that --
3 well, he labeled me as a -- a -- a womanizer, and he
4 also stated that I had lied to officers. And I felt
5 that, how can you put -- how can a attorney put his own
6 client character at issue, you know. I felt as though
7 that was completely ineffective assistance of counsel
8 for no -- no -- no [[sic] comments.

9 Q Oh, and on that point, were you concerned when the
10 jury heard some of your --

11 A Yeah. Yes.

12 Q -- prior arrest records?

13 A Yes, yes.

14 Q Okay. But your point is that you believe that your
15 trial counsel mis-characterized your personality or your
16 reputation before the jury?

17 A Yes. Yes, sir.

18 Q Was that a -- was there a trial -- was there a
19 discussion between you and your trial counsel as to the
20 reasons why he was going to sort of take that path
21 during closing argument?

22 A No, sir. No, sir.

23 Q I have no further questions, unless you have
24 anything.

25 A None on ineffective assistance of counsel. No more

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1 on that. But I have other issues that I would like to
2 raise, present to the Court.

3 Q I think those are issues that needed to have been
4 addressed on the appeal.

5 A Um-hmm.

6 MR. FALK: We have no further questions.

7 THE COURT: All right. Mr. Neely?

8 MR. NEELY: Thank you, your Honor.

9 KELVIN JACKSON, SR.

10 CROSS-EXAMINATION BY MR. NEELY:

11 Q Just briefly, Mr. Jackson. You spoke about your
12 daughter -- or your stepdaughter, I believe.

13 A Yes.

14 Q And that she was fighting with the victim in this
15 case, and that's where the bruising came from? Isn't
16 that what you testified?

17 A Can you repeat that again?

18 Q You testified to earlier that you believed the
19 bruising on the victim came from her fighting with her
20 older stepdaughter?

21 A No.

22 Q No?

23 A No. I said the bruising came from when her -- when
24 the victim and my daughter mother got into a
25 altercation..

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1 Q Okay. So not the daughter. The daughter's mother?

2 A My daughter mother.

3 Q Okay. If you would, just clarify for me who was
4 living in the house at the time, whenever you were asked
5 to leave and you had left the house? It was --

6 A It was my two sons and her daughter. The victim
7 daughter.

8 Q Right. And then the victim?

9 A Yes.

10 Q Okay. So you were saying that it was the victim
11 and her daughter?

12 A No. No, no, no, no.

13 Q So it wasn't somebody in the house that was getting
14 in a fight?

15 A It was my son mother, which is the victim, and my
16 daughter mother.

17 Q Okay. And where was your daughter's mother
18 staying?

19 A She was staying in Allendale. Allendale, South
20 Carolina.

21 Q Okay. And this is the same daughter that was
22 staying in the house?

23 A No.

24 Q Okay. So it was a different daughter?

25 A Yeah.

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1 Q Okay. I'm sorry. I was just trying to get
2 clarification there. I didn't understand what you were
3 saying.

4 And when you testified about the handwriting
5 expert, the handwriting expert couldn't positively
6 identify your handwriting. Isn't that -- is that
7 correct?

8 A Yes.

9 Q However, the handwriting expert did say there was a
10 strong indication that it was your handwriting. Isn't
11 that correct?

12 A She said it was strong indication, but however, it
13 falls short to a virtual certainty as to --

14 Q She couldn't say that it was you for certain.

15 A Yeah. She couldn't say -- she couldn't say I did
16 wrote it or I didn't wrote it.

17 Q But she said there was a strong indication.

18 A That what the second handwriting say.

19 Q And then --

20 A The first handwriting expert say she was -- it was
21 just probable; it's probable that I wrote it.

22 Q It was probable that you wrote it, but not certain.

23 A Yeah.

24 Q So neither one of the handwriting experts was able
25 to pinpoint you.

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1 A Yes.

2 Q They both said probably.

3 A Yeah.

4 Q And then, I believe, so, as your stepdaughter in
5 the house that also testified to your handwriting, and
6 she said it was your handwriting as well.

7 A Yeah. She also said that the letter was signed,
8 but it was never signed.

9 Q Right, but that was your daughter that said she
10 thought it was your handwriting?

11 A That was my stepdaughter.

12 Q Your stepdaughter.

13 A Yeah.

14 Q Okay. And it was your stepdaughter that also
15 testified that you and her mother had got in fights and
16 altercations.

17 A Yes, that's what she tell.

18 Q Isn't that correct? Okay. And I believe it was
19 your stepdaughter that also testified that the condition
20 of the room was not -- was the messed up -- was the
21 messed-up condition of the bedroom?

22 A Yes, yes.

23 Q Is that correct?

24 A Yes.

25 Q And when you spoke about the DNA expert, that you

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1 wanted a DNA expert, you wanted a DNA expert to argue
2 that they couldn't show when or how the DNA got on the
3 pillow. Is that correct?

4 A Yes.

5 Q But didn't your attorney make that argument anyway;
6 that they couldn't say when or where the DNA got there?

7 A I don't -- I don't think so. I don't recall.

8 Q You don't recall?

9 A No.

10 MR. NEELY: Okay. I believe that's all the
11 questions I have, your Honor.

12 THE COURT: Mr. Falk, any re-direct?

13 MR. FALK: No re-direct.

14 THE COURT: Thank you, Mr. Jackson. You may step
15 down.

16 MR. FALK: No additional witnesses.

17 THE COURT: Any evidence from the State Mr. Neely?

18 MR. NEELY: None, your Honor.

19 SUMMATION:

20 THE COURT: All right. Mr. Falk, I'll allow you to
21 make a summation, and then I'll allow the State to
22 respond.

23 MR. FALK: Well, your Honor, the trial counsel
24 testified that this was a very close case. And the fact
25 that the jury was able to hear of his prior bad acts,

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1 evidence, you know, if it was a close case, you know, we
2 have concern that that might have been sufficient to tip
3 the balance in favor of a finding of guilt. So I have
4 concerns about the fact that the statements that should
5 have been excluded under 404(b) were admitted into
6 evidence by my client's prior criminal record.

7 I have concerns about the way trial counsel chose
8 to elect and characterize my client as a womanizer. And
9 again, in a close case, we feel that that's a
10 prejudicial remark, especially under these facts with
11 where it's the death of a girlfriend.

12 We also have concerns about the State was able to
13 hire two expert witnesses in this case. Or at least two
14 different types of witnesses, I guess a total of three.
15 Or actually four. There's the pathologist, as well.
16 But the DNA testimony and the handwriting experts we
17 feel were certainly significant in a finding of guilt in
18 this case. And granted, I appreciate trial counsel's
19 issue with being retained in a case where there's
20 insufficient funds from the family to hire these
21 experts, but I do believe that this is something that,
22 when you've got somebody who is potentially indigent,
23 trial counsel are able to go and submit a request for
24 funding to indigent defense to hire experts. I've done
25 it in cases. I know it's done in Charleston, and I know

1 that there's a case on cert before the Supreme Court
2 right now in the case of, I think it's *Orlando*. That's
3 a summary. That issue is being before the South
4 Carolina Supreme Court right now on the issue about
5 whether or not counsel can be prejudiced -- I mean, a
6 client can be prejudiced when they sort of get out-
7 experted in a case. And the fact that they have hired
8 counsel, but they don't have enough money to go against
9 the State's unlimited budget for resources, there is at
10 least -- that should, at least, be a duty on trial
11 counsel to at least ask the State for funding in this
12 situation. And failure to do that, we believe is a
13 significant problem in this case.

14 So the 404(b); the characterization of my client in
15 the closing argument; the failure to obtain -- oh, and
16 yes, the trial strategy, we can appreciate that a lot of
17 latitude should be given to trial strategy, but it would
18 appear that my client's sort of agreement in the trial
19 strategy to go last and get the last word. We certainly
20 can recognize that was not a necessarily well-informed
21 trial strategy decision on his part, because he was not
22 made aware of statements that he felt that he should
23 have had a witness to challenge. And that would be
24 whether, certainly, the testimony that was given at
25 trial that the victim had shown up with bruising, and

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1 the obvious conclusion that the State wanted the jury to
2 draw; that he was the source of this bruising; the fact
3 that there was a witness that could have rebutted that;
4 and the fact that the condition of the house, that there
5 would have been another person, that there would have
6 been other witnesses who could have testified as to the
7 condition of the house to challenge the State's
8 witnesses on that.

9 So we believe that those are two issues that
10 probably should have been rebutted by defense witnesses.
11 My client was unaware of the fact that that testimony
12 would be coming in, so he had no opportunity to advise
13 the court or to advise the jury of those facts.

14 THE COURT: Thank you, Mr. Falk. Mr. Neely?

15 MR. NEELY: Thank you, your Honor. I'm just going
16 to address the expert issue first. I think under
17 *Dempsey v. State*, which is cite 363 S.C. 365, I believe,
18 for a post-conviction relief hearing, for a post-
19 conviction relief judge to find that trial counsel or
20 plea counsel was ineffective based on not calling an
21 expert witness, there needs to be expert witness
22 testimony showing what the expert would have said to
23 rebut the State's expert. Without that, it's
24 speculation. So I think that's not proper for your
25 Honor, there being no expert that testified they would

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1 have disagreed and rebutted the State's handwriting
2 experts.

3 Furthermore, the handwriting experts were not able
4 to say, you know, without a, you know, to a degree of
5 certainty that it was his handwriting. There was a
6 strong probability that it was his handwriting.

7 I do want to have this made a court exhibit. This
8 is the defense counsel's pretrial brief and objections.
9 I was not going to have it made, but he did object to
10 the credit card forgery coming in, in the pretrial
11 motion. And then, during the trial, during various, I
12 guess, parts of the trial, renewed his pretrial motion.
13 And I believe that Deputy Sean Thornton even agreed that
14 his pretrial motion, and then his renewable, were
15 timely. So, I don't believe that matters on a PCR
16 review. That would have been on a direct appeal matter,
17 because it was objected to.

18 THE COURT: Does Mr. Falk have a copy of the brief?

19 MR. FALK: Your Honor, I will note that the
20 pretrial brief's not signed, although I did speak with
21 trial Counsel ahead of time. He did say that this was
22 his.

23 THE COURT: Mark that State's Exhibit.

24 ITEM IDENTIFIED AS DEFENSE COUNSEL'S

25 PRETRIAL BRIEF AND OBJECTIONS

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1 MARKED STATE'S EXHIBIT NUMBER 1

2 ADMITTED AS EVIDENCE.

3 THE COURT: Okay. Anything further, Mr. Neely?

4 MR. NEELY: I would just like to note that we can
5 have no testimony from the witness who applicant asserts
6 would have said that the bruising was from fights with
7 somebody other than the defendant, and there was
8 testimony that applicant was fighting with the victim
9 prior to the victim's disappearance.

10 THE COURT: Okay. Thank you, Mr. Neely. Anything
11 in -- do you have burden of proof, Mr. Falk? I'll allow
12 you to reply to the State's submission. If you have
13 anything you'd like to add, I'm giving you the last
14 word.

15 MR. FALK: We have nothing further your Honor.

16 THE COURT: Okay. Thank you. Gentlemen, there's a
17 lot of materials for me to review. I'm going to take
18 this under advisement, and I'll have my law clerk email
19 you my decision.

20 MR. FALK: Thank you, your Honor.

21 MR. NEELY: Thank you, your Honor.

22 THE COURT: Thank you for your presentation.

END PROCEEDING 10:37 A.M.

2-15-17 JACKSON V STATECERTIFICATE OF REPORTER

CERTIFICATE OF REPORTER

FEBRUARY 15, 2017 TRANSCRIPT OF PCR HEARING

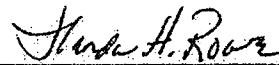
STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing February 15, 2017 Transcript of PCR Hearing is a true and accurate record of the proceedings had the exhibit admitted on said date, in the case of Kelvin Jackson, Sr. versus State of South Carolina, Beaufort County, Court of Common Pleas, Case Number 2016-CP-07-00399; that I am of neither kin, counsel, nor interest to any party hereto.

This Certificate of Reporter contains my signature and is attached to the original of this transcript requested by SCCID. Pursuant to SCACR 607, requests for copies of transcripts must be made to the court reporter. Unauthorized copying/ mailing is prohibited.

Witness my signature December 26, 2017.



Wanda H. Rowe, CVR-M
Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Case No.

STATE OF SOUTH CAROLINA

v.

**DEFENDANT'S TRIAL BRIEF IN
SUPPORT OF MOTIONS TO SUPPRESS**

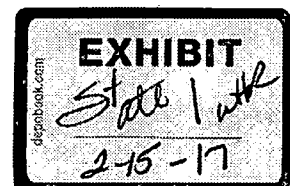
KELVIN JACKSON

NOW COMES Defendant, Kelvin Jackson, by undersigned counsel, and offers the following brief in support of his motions to suppress:

FACTS

Defendant, Kelvin Jackson ("Defendant") is charged with the murder of Masako Yamaguchi Miller, age thirty-four, and the mother of Defendant's two sons. She may have been last seen alive in her home by an air conditioning repairman, Mervin Coker, on May 25, 2011 at or after 11:00 p.m. that night. Her body was found in a marsh on Parris Island on May 30, 2011. The Coroner found no signs of trauma and the cause of her death is undetermined. The Coroner did not determine the manner of death to be homicide, until after he received "historical information" from investigating officers, stating that the Defendant was charged with credit card fraud using the decedent's credit card, and, that one or more witnesses reported that the decedent told the witnesses that Defendant had abused her at unknown points in the past, unconnected to the days surrounding her disappearance and death.

While the Defendant was in custody on charges related to credit card use, the Defendant was interrogated on several occasions, in particular, on June 2, 2011 and June 7, 2011, by S/A Johnson. The audiotape of the interrogations is mostly unintelligible; but the Defendant can be



heard, on three separate occasions, requesting an attorney. Each request was disregarded and the interrogation continued.

Defendant moves the Court to suppress the evidence described below, on the grounds pertaining to each, that:

- (1) It is inadmissible hearsay not subject to any exception;
- (2) It violates U.S. Constitution 6th Amendment Confrontation Clause;
- (3) It is irrelevant (SCRE Rule 402);
- (4) It is highly unfairly prejudicial to Defendant (SCRE Rule 403);
- (5) Its scant probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury (SCRE Rules 403 and 404);
- (6) It is not admissible as expert testimony under SCRE Rules 702 and 703; and,
- (7) it is inadmissible under *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

Defendant requests that the trial court conduct an on-the-record examination, to determine exactly what State's evidence is derived from its improper custodial interrogation; and, that the Court state its findings on the record, with specificity, to preserve all related issues for appellate review.

Defendant further requests that the trial court conduct an on-the-record SCRE Rule 403 balancing test, pursuant to *State v. Spears*, 403 S.C. 247, 254, 742 S.E.2d 878, 881 (Ct. App. 2013), to determine if the probative value of the evidence of prior bad acts, described herein, is substantially outweighed by the danger of unfair prejudice to the defendant.

Finally, Defendant requests that the Court state its findings on the record, with specificity, to preserve all issues related to this balancing test for appellate review. If, as

expected, the court determines that the probative value of the evidence is substantially outweighed by the danger of unfair prejudice to the Defendant, or other factors listed in SCRE Rules 403 and 404, the U.S. Constitution, and/or our jurisprudence, it is requested that the Court suppress the following evidence:

1. FINAL AUTOPSY REPORT: The portions of the August 17, 2011 Beaufort County Coroner's "Correction to Final Autopsy Report FA 11 325"" which state: "*Manner of Death Homicide*" (autopsy report, p 1 of 7); and, "*Furthermore the manner of death is best deemed homicide*" (autopsy report, p 7) on grounds explained below.

2. MANNER OF DEATH AND DATA UNDERLYING THAT CONCLUSION: Any and all testimony as to the Coroner's conclusion that the manner of death is homicide, or to the underlying data used to reach that conclusion should be suppressed. Undersigned has been informed that the conclusion of the manner of death is based on certain "*historical information provided*" (autopsy report, p 7 of 7). That "historical information" is not described or listed in the report itself. It is unreliable, irrelevant, inadmissible, prejudicial and non-scientific unverified interview and charging data funneled to the Coroner by law enforcement, stating that the decedent was abused by the Defendant and that the Defendant fraudulently used decedent's credit card – none of which required "scientific, technical, or other specialized knowledge [that] will assist the trier of fact to understand the evidence or to determine a fact in issue" per SCRE Rule 702. Further, these bases for the conclusion of homicide as the manner of death are not "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject" per SCRE Rule 703.

Cause of death is undetermined because there is no evidence of trauma, violence or injury to the decedent from which the pathologist could determine cause or manner of death. (See autopsy report p 3: "*There is no definitive evidence of premortem or perimortem injury.*")

Such testimony that the manner of death is homicide, and the basis for that conclusion is, therefore, not admissible as expert testimony under SCRE 702 because it is not based upon "facts reasonably relied upon by experts in the field" per SCRE Rule 703.

And "this type of evidence will overly influence the finders of fact and thereby persuade them to prejudge [Defendant] and deny him a fair opportunity to defend against a particular charge." *Michelson v. United States*, 335 U.S. 469, 475–76, 69 S.Ct. 213 (1948); *United States v. Hernandez*, 975 F.2d 1035, 1038 (4th Cir.1992). There is no other evidence of a crime here; and admission of the official, but unscientific conclusion of homicide, by the Coroner and/or pathologist cannot be harmless error, corrected by a curative jury instruction, or avoided by use of cross-examination.

The offending portions of the report cannot be fairly addressed in cross-examination, because, to do so would require the Defendant to open the door to the specifics of the inadmissible and prejudicial data on which the pathologist relied in reaching the homicide conclusion. Forcing the Defendant into such a position unfairly deprives him of the ability to present his defense in this matter, which is, that the State has no evidence of the second element of the *corpus delicti*. [T]he corpus delicti consists of two elements: (1) the death of a human being; and (2) the criminal act of another in causing that death. *State v. Weston*, 367 S.C. 279, 293, 625 S.E.2d 641, 648 (2006); *State v. Blakely*, 402 S.C. 650, 655-56, 742 S.E.2d 29, 32 (Ct. App. 2013). Without knowing that the conclusion of manner of death as homicide was based on unscientific conjecture, the jury may well believe that the autopsy report establishes homicide as

a matter of fact and law. But the determination of the fact is only within the purview of the jury; and the determination of the law is only with the purview of the Court.

Distinguish these facts to those in the recent decision on this issue in *State v. Commander*, 396 S.C. 254, 721 S.E.2d 413 (2011): In *Commander*, *supra*, the Court allowed the autopsy report conclusions based upon historical data, after conducting a harmless error analysis, finding admission of the report to be "harmless in view of the overwhelming evidence of Petitioner's guilt." *Id.* 396 S.C. at 262, 721 S.E.2d at 418 (here, there is no evidence of guilt and the case is entirely circumstantial); the cause of death in *Commander* was determined to be asphyxiation, *Id.* at 396 S.C. at 258, 721 S.E.2d at 415 (here cause of death is undetermined); *Commander's* investigation revealed that, in the days prior to the body's discovery, Defendant stole Victim's purse, mobile telephone, and vehicle from her home, sent text messages from Victim's phone to her family members pretending to be Victim, withdrew money from her bank account, used her credit cards, made calls on Victim's behalf from her mobile telephone, and used that telephone number as a contact number for a telephone chat line (here Defendant may have used a credit card on an account he and the decedent shared; and the Defendant, who is the father of two of her children, and had an ongoing relationship with her, may have visited her home before she disappeared); and, crucial evidence of guilt, the *Commander* Defendant admitted killing Victim (here the Defendant staunchly maintains his innocence).

Another crucial difference is that the historical data relied upon by the Coroner in *Commander* had nothing to do with any particular suspect:

Given the fact that this woman died under suspicious circumstances, that the history I was given was that her—she was already in her house, no one had talked to her for a period of time, her car was missing, her purse was missing, there was some indication that somebody was sending text messages to family members indicating that the dead woman ... was still alive, this indicated an

extremely suspicious circumstance, and I felt that we were dealing with a homicide.

Id. at 396 S.C. at 259, 721 S.E.2d at 416.

Here, the Coroner based his homicide conclusion on information that this Defendant is charged with fraudulent use of decedent's credit card and that witnesses say he abused her. That kind of historical data crosses the line demarcated (albeit vaguely) in *Commander*. That Court noted that a Coroner's reliance on historical information may be inadmissible under SCRE Rule 702 and it may invade the province of the jury:

However, we recognize that, in certain circumstances, expert medical testimony of this type has the potential to invade the province of the jury. Petitioner urges that the line is crossed where the physician gives an opinion outside of his medical expertise where he is in reality only enhancing the circumstantial evidence available to the jury with the prestige of a forensic pathologist. While we agree with the spirit of Petitioner's contention, no such line was crossed in this case.

Commander, 296 S.C. at 268, 721 S.E.2d at 420 (emphasis added, citation omitted). Here, the historical information relied upon by the Coroner expressly, directly relates to the Defendant. The Coroner concluded the manner of death was homicide because the Defendant is charged with credit card fraud and is said to have abused the decedent.

This, *Commander* does not permit:

Consequently, we adopt a rule whereby an expert in forensic pathology's opinion testimony as to cause and manner of death is admissible under Rule 702, SCRE, so long as the expert does not opine on the criminal defendant's state of mind or guilt or testify on matters of law in such a way that the jury is not permitted to reach its own conclusion concerning the criminal defendant's guilt or innocence.

Id. 296 S.C. at 269, 721 S.E.2d at 421 (emphasis added). Here, the Coroner's conclusion takes the non-scientific, circumstantial basis for manner of death away from the jury as if it were a scientific, expert determination.

Defendant, thus, seeks suppression of any and all evidence (testimony, documents, etc) as to the underlying historical 'evidence' on which the Coroner's homicide conclusion was based; and suppression of the portion of the report which states manner of death as homicide. But, in the alternative, Defendant seeks three curative instructions: (1) an instruction defining homicide, (2) an instruction that the jury is free to disregard the Coroner's conclusion of homicide as the manner of death because it is not based on any scientific process and the jury is equally qualified to interpret the "historical information" on which that conclusion is based; and (3) an instruction that the jury may find that death resulted from accident or misadventure not caused by the Defendant. In the interest of clarity, Defendant reiterates that, on the basis of the totality of the circumstances of this case, and the many legal precedents related to unfair prejudice and expert testimony, Defendant does not believe such instructions will prevent the cumulative and overwhelming unfair prejudice the autopsy report and underlying historical facts will cause at trial.

3. CREDIT CARD FRAUD: The State should be prevented from offering any documentary or physical evidence or testimony related to credit card charges pending against the Defendant in an adjacent county, as unfairly prejudicial, irrelevant and inadmissible under Rule 404(b). There is no "logical relevance between the prior bad act and the crime for which the defendant is accused". *State v. Adams*, 322 S.C. 114, 470 S.E.2d 366 (1996). And "this type of evidence will overly influence the finders of fact and thereby persuade them to prejudge [Defendant] and deny him a fair opportunity to defend against a particular charge." *Michelson v. United States*, 335 U.S. 469, 475-76, 69 S.Ct. 213 (1948); *United States v. Hernandez*, 975 F.2d 1035, 1038 (4th Cir.1992). Defendant is an owner of the credit card account in question and he cannot defend the charge as it is not before this jury. Further, the same balancing test must be

applied to the evidence even if it is offered under the *res gestae* theory. *State v. Dennis*, 2013 WL 1316999, *4 (S.C. Ct. App. Apr. 3, 2013).

4. DECEDENT'S PAST STATEMENTS IN GENERAL: The State should be prevented from offering any evidence of any kind, recounting decedent's alleged statements of abuse or wrongdoing by the Defendant. Such testimony or other evidence of decedent's statements are hearsay; the declarant, being deceased, cannot be cross examined; and, in this way, any evidence as to what the decedent may have said violates Defendant's 6th Amendment due process right to confront witnesses against him. Remote statements are also subject to mistake due to memory lapses or intentional mischaracterization by the witness. Further, there is no "logical relevance between the prior bad act and the crime for which the defendant is accused". *State v. Adams*, 322 S.C. 114, 470 S.E.2d 366 (1996). It is anticipated that the State will attempt to offer testimony and/or witness interview evidence, of *inter alia*, Adam A. Pressie; Stephanie D. Williams; Joyce Loadholdt; Shacoby Hammond; Clarence C. Wrice; Mervin Coker; and S.D. (decedent's minor daughter), to the effect that the decedent told the witness that Defendant abused her or committed other bad acts with regard to the decedent. None of the purported statements by the decedent were reported to have been made as excited utterances; they are not sworn or otherwise accurately preserved; and no indicia of reliability apply.

Because of the inflammatory nature of accusations of abuse, "this type of evidence will overly influence the finders of fact and thereby persuade them to prejudge [Defendant] and deny him a fair opportunity to defend against a particular charge." *Michelson v. United States*, 335 U.S. 469, 475–76, 69 S.Ct. 213 (1948); *United States v. Hernandez*, 975 F.2d 1035, 1038 (4th Cir.1992).

5. MINOR DAUGHTER'S HEARSAY AS TO DECEDENT'S STATEMENTS: The State should be prevented from offering any testimony or other evidence related to undated statements allegedly made by the decedent to her minor daughter, to the effect that Defendant allegedly abused decedent. These statements were first reported to law enforcement when the child was twelve years old (S.D. ; DOB 1998) shortly after her mother's death, in a June 10, 2011 law enforcement interview; and were repeated in one or more later interviews. In addition to the analysis in point 4, above, the hearsay testimony delivered by the decedent's minor child would carry with it even less reliability and even more tendency to inflame the emotions of the jury. It violates Defendant's right to confront witnesses against him and its scant probative value is substantially outweighed by its unfairly prejudicial nature.

6. THE MINOR DAUGHTER'S OTHER TESTIMONY: The State should be prevented from offering any testimony or other evidence related to the minor child's statements to law enforcement that she witnessed the Defendant abusing the decedent at undated times in the past. The child was twelve years old at the time of her initial interview by law enforcement, making her easily manipulated by the interviewer; and she was suffering the shock of new grief, having just lost her mother. She did not give any time frame or dates for the alleged abuse, except to indicate that they were in the distant past; and, there are no indicia of reliability of her testimony as to undated acts she allegedly witnessed as a small child. The Defendant was never charged and convicted for these acts and there is no "logical relevance between the prior bad act and the crime for which the defendant is accused". *State v. Adams*, 322 S.C. 114, 470 S.E.2d 366 (1996). And, because of the inflammatory nature of accusations of abuse, "this type of evidence will overly influence the finders of fact and thereby persuade them to prejudge [Defendant] and deny him a fair opportunity to defend against a particular charge." *Michelson v. United States*, 335

U.S. 469, 475–76, 69 S.Ct. 213 (1948); *United States v. Hernandez*, 975 F.2d 1035, 1038 (4th Cir.1992).

7. CUSTODIAL INTERROGATION AND DERIVATIVE EVIDENCE: The State should be prevented from introducing all evidence of Defendant's statements to law enforcement, after he requested an attorney. This request is audible at least three times over the course of his audiotaped custodial interrogation, on June 2, 2011 and/or June 7, 2011. Likewise, the State should be prevented from offering the testimony of the interrogator, S/A Richard Johnson or any other person present or observing; the State should be prevented from introducing any and all video or audio recording of the interrogation; and, further, the State should be prevented from introducing any other derivative evidence of any kind, following a hearing to determine exactly what evidence was derived from questioning after the first request for counsel.

Admission of any such evidence would violate Defendant's constitutional right to counsel, to remain silent, and to end questioning per *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880 (1981).

The Defendant was arrested on May 27, 2011 and, while in custody, he was questioned on several occasions (5/27/2011; 5/31/2011; 6/2/2011; 6/7/2011) by law enforcement over the coming weeks. He signed several waivers of his rights at various times; but during his June 2, 2011 and/or June 7, 2011 interrogation by S/A Johnson, the Defendant clearly, audibly, requests a lawyer three separate times, each of which is disregarded by S/A Johnson. *Edwards, supra*, requires that custodial interrogation "**must cease**" once an accused requests counsel.

Here, the audiotaped interview of the Defendant reveals that he unequivocally requested counsel three times, saying "*I think I need a lawyer*"; and each time, the officer continued to interrogate him. The State has the burden to show by the preponderance of the evidence that a

defendant has voluntarily waived his right to counsel. *State v. Binney*, 362 S.C. 353, 359, 608 S.E.2d 418, 421 (2005). It is anticipated that the State will claim that the Defendant himself resumed the interview after each request for counsel, but the State's unintelligible recording should be carefully scrutinized; and the Defendant should have the benefit of the doubt on this issue. The State cannot bear its burden of proof of voluntariness of any statement made after the audible request(s) for counsel.

To give force to the Constitution's protection against compelled self-incrimination, the United States Supreme Court established in *Miranda* "certain procedural safeguards that require police to advise criminal suspects of their rights under the Fifth and Fourteenth Amendments before commencing custodial interrogation." *Duckworth v. Eagan*, 492 U.S. 195, 201, 109 S.Ct. 2875, 106 L.Ed.2d 166 (1989). The *Miranda* court held that a suspect in custody must be warned of the following rights:

He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

384 U.S. at 479, 86 S.Ct. 1602.

The court also explained that "[o]nce warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease." *Id.* at 473-74, 86 S.Ct. 1602. Furthermore, if the suspect decides, after receiving the *Miranda* warnings, that he wishes to remain silent, the custodial officers must "scrupulously honor[]" his "right to cut off questioning." *Michigan v. Mosley*, 423 U.S. 96, 104, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975).

State v. Hoyle, 397 S.C. 622, 626, 725 S.E.2d 720, 722 (Ct. App. 2012), reh'g denied (May 31, 2012) (emphasis in original). S/A Johnson did not scrupulously honor the request, but instead, he continued to interrogate the Defendant. "Interrogation is the express questioning, or its functional equivalent which includes words or actions on the part of the police ... that the police should know *are reasonably likely to elicit an incriminating response*." *State v. Sims*, 304 S.C. 409, 417, 405 S.E.2d 377, 381 (1991) (citing *Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S.Ct. 1682, 1690 (1980)(internal quotation marks omitted)). S/A Johnson's questioning is nearly

unintelligible at most points in the recording; but the fact that questioning continues after each of three requests – “I think I need a lawyer”, is clearly heard.

The *Hoyle* Court again emphasized the law on this point:

Furthermore, pursuant to *Miranda*, the right to terminate an interrogation arises after warnings are given. *See id.* at 473–74, 86 S.Ct. 1602 (“Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must **cease**.”).

State v. Hoyle, 397 S.C. at 628, 725 S.E.2d at 723 (emphasis in original). Here, the Defendant was unequivocal in his request – “I think I need a lawyer” – and our Courts have recognized this language sufficiently invokes the right:

The United States Supreme Court has held the trial court is to consider whether the accused's statement “can reasonably be construed to be an expression of a desire for the assistance of an attorney.” *McNeil v. Wisconsin*, 501 U.S. 171, 178, 111 S.Ct. 2204, 2209, 115 L.Ed.2d 158 (1991). If the desire for counsel is presented “sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney,” no ambiguity or equivocation exists, and all questioning must **cease** until the person can consult counsel or the accused voluntarily reinitiates conversation. *Davis*, 512 U.S. at 459, 114 S.Ct. at 2355.

Here, it is obvious from the record the solicitor and everyone involved viewed petitioner's request as an invocation of his right to counsel. In *State v. Jackson*, 348 N.C. 52, 497 S.E.2d 409 (1998), the North Carolina Supreme Court held that **when a defendant stated, “I think I need a lawyer present,” he unambiguously invoked his right to counsel.**

State v. Kennedy, 333 S.C. 426, 430, 510 S.E.2d 714, 715-16 (1998) (some emphasis added). Here, Defendant's request was nearly identical to that in *Kennedy*, *supra*; but here, Defendant repeated it three times; and still the interrogation continued.

A reasonable and faithful interpretation of the *Miranda* opinion must rest on the intention of the Court in that case to adopt “fully effective means ... to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored....” **The critical safeguard identified in the passage at issue is a person's “right to cut off questioning.”** Through the exercise of his option to terminate questioning he can control the time at which questioning occurs, the subjects discussed, and the duration of the interrogation.

The requirement that law enforcement authorities must respect a person's exercise of that option counteracts the coercive pressures of the custodial setting. We therefore conclude that the admissibility of statements obtained after the person in custody has decided to remain silent depends under *Miranda* on **whether his "right to cut off questioning" was "scrupulously honored."**

State v. Benjamin, 345 S.C. 470, 476, 549 S.E.2d 258, 261(2001) (citing *Michigan v. Mosley*, 423 U.S. 96, 102-104, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975) (emphasis in original). In *Benjamin*, *supra*, Officers testified that the Defendant never requested counsel. Yet the Court emphasized: "What is paramount is that police, under the totality of the circumstances, "scrupulously honor" the suspect's right to remain silent." *State v. Benjamin*, 345 S.C. at 478, 549 S.E.2d at 262 (noting that *Miranda* violations occur when "police wear down defendant by repeatedly questioning on same subject after invocation" *Id.* 345 S.C. at 477, 549 S.E.2d at 262 (citation omitted).

And that is exactly what occurred when S/A Johnson continued to interrogate the Defendant after he said "*I think I need a lawyer*", not once, or even twice, but three separate times over the course of sustained questioning. For Defendant, who had languished in jail for several weeks, the length of the interrogation seemed like an eternity; and the increasingly coercive message S/A Johnson delivered each time Defendant requested an attorney, was that the Defendant *must* answer, because his requests for counsel would continue to be ignored. Under the totality of the circumstances, S/A Johnson wore him down, with the cumulative weight of weeks in detention, on top of the increasingly coercive impact of each successive ineffectual request for counsel, compounded by further questioning.

Thus, pursuant to *Miranda*, *Kennedy*, *Hoyle* and *Benjamin*, *supra*, any and all testimony or other evidence related to this interview; and any evidence of any kind derived, discovered or obtained by the State as a result of the interview (fruit of the poisonous tree), must be suppressed

to protect the Defendant's constitutional rights to counsel, to remain silent and to end questioning.

The exclusionary rule prohibits the admission of evidence that is the fruit of an unlawful search. Specifically, it prohibits the admission of evidence (1) directly acquired during an unlawful search and (2) later discovered and derivative of the unlawful search. *State v. Adams*, 397 S.C. 481, 489-90, 725 S.E.2d 523, 528 (Ct. App. 2012), reh'g denied (July 28, 2012) (citations omitted.)

[O]urs is an accusatorial and not an inquisitorial system[.] [A]ccordingly, tactics for eliciting inculpatory statements must fall within the broad constitutional boundaries imposed by the Fourteenth Amendment's guarantee of fundamental fairness. Indeed, even after holding that the Fifth Amendment privilege against compulsory self-incrimination applies in the context of custodial interrogations, and is binding on the States, the Court has continued to measure [voluntariness] against the requirements of due process. *Miller v. Fenton*, 474 U.S. 104, 110, 106 S. Ct. 445, 449 (1985) (internal quotation marks and citations omitted).

CONCLUSION

On the basis of all of the above and foregoing, it is hereby requested that this honorable Court suppress each item of evidence meeting the descriptions herein; that the Court conduct a Rule 403 balancing test on the record; that the Court conduct an examination, on the record, to determine what State's evidence is derivative of the improper interrogation; that the Court state all of its findings on the record, with specificity, to preserve all issues for appellate review; and/or it is requested that the following curative instructions be given to the jury:

(1) an instruction defining homicide, (2) an instruction that the jury is free to disregard the Coroner's conclusion of homicide as the manner of death because it is not based on any

scientific process and the jury is equally qualified to interpret the "historical information" on which that conclusion is based; and (3) an instruction that the jury may find that death resulted from accident or misadventure not caused by the Defendant.

All of which is respectfully requested.

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Orangeburg, South Carolina
July 29, 2013

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Case No.

STATE OF SOUTH CAROLINA

v.

DEFENDANT'S MOTIONS TO SUPPRESS

KELVIN JACKSON

NOW COMES Defendant, Kelvin Jackson, by undersigned counsel, and offers the following motions to suppress:

Defendant moves the Court to suppress the evidence described below, on the grounds pertaining to each item or category, that:

- (1) It is inadmissible hearsay not subject to any exception;
- (2) It violates U.S. Constitution 6th Amendment Confrontation Clause;
- (3) It is irrelevant (SCRE Rule 402);
- (4) It is highly unfairly prejudicial to Defendant (SCRE Rule 403);
- (5) Its scant probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury (SCRE Rules 403 and 404);
- (6) It is not admissible as expert testimony under *State v. Commander*, 396 S.C. 254, 721 S.E.2d 413 (2011), harmless error analysis or SCRE Rules 702 and 703; and,
- (7) it is inadmissible under *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966) and its progeny.

Defendant requests that the trial court conduct an on-the-record examination, to determine exactly what State's evidence is derived from its improper custodial interrogation; and,

that the Court state its findings on the record, with specificity, to preserve all related issues for appellate review.

Defendant further requests that the trial court conduct an on-the-record SCRE Rule 403 balancing test, pursuant to *State v. Spears*, 403 S.C. 247, 254, 742 S.E.2d 878, 881 (Ct. App. 2013), to determine if the probative value of the evidence of prior bad acts, described herein, is substantially outweighed by the danger of unfair prejudice to the defendant.

In the alternative to suppression, Defendant seeks three curative instructions: (1) an instruction defining homicide, (2) an instruction that the jury is free to disregard the Coroner's conclusion of homicide as the manner of death because it is not based on any scientific process and the jury is equally qualified to interpret the "historical information" on which that conclusion is based; and (3) an instruction that the jury may find that death resulted from accident or misadventure not caused by the Defendant.

Defendant further requests that the Court state its findings on the record, with specificity, to preserve all issues related to the balancing test for appellate review. If, as expected, the court determines that the probative value of the evidence is substantially outweighed by the danger of unfair prejudice to the Defendant, or other factors listed in SCRE Rules 403 and 404, the U.S. Constitution, and/or our jurisprudence, it is requested that the Court suppress the following evidence, on the grounds more fully developed in Defendant's Brief in Support of Motions to Suppress (submitted herewith):

1. FINAL AUTOPSY REPORT: The portions of the August 17, 2011 Beaufort County Coroner's "Correction to Final Autopsy Report FA 11 325"" which state: "*Manner of Death Homicide*" (autopsy report, p 1 of 7); and, "*Furthermore the manner of death is best deemed*

homicide" (autopsy report, p 7) on grounds explained below, in point 2, all of which is incorporated herein by this reference.

2. MANNER OF DEATH AND DATA UNDERLYING THAT CONCLUSION: Any and all testimony as to the Coroner's conclusion that the manner of death is homicide, or to the underlying data used to reach that conclusion should be suppressed. Undersigned has been informed that the conclusion of the manner of death is based on certain "*historical information provided*" (autopsy report, p 7 of 7), which is not described or listed in the report itself. It is unreliable, irrelevant, inadmissible, prejudicial and non-scientific unverified interview and charging data funneled to the Coroner by law enforcement, stating that the decedent was abused by the Defendant and that the Defendant fraudulently used decedent's credit card – none of which required "scientific, technical, or other specialized knowledge [that] will assist the trier of fact to understand the evidence or to determine a fact in issue" per SCRE Rule 702. Further, these bases for the conclusion of homicide as the manner of death are not "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject" per SCRE Rule 703, and per *State v. Commander*, 396 S.C. 254, 721 S.E.2d 413 (2011).

"T[h]is type of evidence will overly influence the finders of fact and thereby persuade them to prejudge [Defendant] and deny him a fair opportunity to defend against a particular charge." *Michelson v. United States*, 335 U.S. 469, 475–76, 69 S.Ct. 213 (1948); *United States v. Hernandez*, 975 F.2d 1035, 1038 (4th Cir.1992).

Defendant, thus, seeks suppression of any and all evidence (testimony, documents, etc.) as to the underlying 'historical information' on which the Coroner's homicide conclusion was based; and suppression of the portion of the report which states manner of death as homicide. But, in the alternative, Defendant seeks three curative instructions: (1) an instruction defining

homicide, (2) an instruction that the jury is free to disregard the Coroner's conclusion of homicide as the manner of death because it is not based on any scientific process and the jury is equally qualified to interpret the "historical information" on which that conclusion is based; and (3) an instruction that the jury may find that death resulted from accident or misadventure not caused by the Defendant.

3. CREDIT CARD FRAUD: The State should be prevented from offering any documentary or physical evidence or testimony related to credit card charges pending against the Defendant in an adjacent county, as unfairly prejudicial, irrelevant and inadmissible under Rule 404(b). There is no "logical relevance between the prior bad act and the crime for which the defendant is accused". *State v. Adams*, 322 S.C. 114, 470 S.E.2d 366 (1996). And "this type of evidence will overly influence the finders of fact and thereby persuade them to prejudge [Defendant] and deny him a fair opportunity to defend against a particular charge." *Michelson v. United States*, 335 U.S. 469, 475-76, 69 S.Ct. 213 (1948); *United States v. Hernandez*, 975 F.2d 1035, 1038 (4th Cir.1992). Further, the same balancing test must be applied to the evidence even if it is offered under the *res gestae* theory. *State v. Dennis*, 2013 WL 1316999, *4 (S.C. Ct. App. Apr. 3, 2013).

4. DECEDENT'S PAST STATEMENTS IN GENERAL: The State should be prevented from offering any evidence of any kind, recounting decedent's alleged statements of abuse or wrongdoing by the Defendant. Such testimony or other evidence of decedent's statements are inadmissible hearsay; they violate Defendant's 6th Amendment due process right to confront witnesses against him; there are no indicia of reliability; and there is no "logical relevance between the prior bad act and the crime for which the defendant is accused". *State v. Adams*, 322 S.C. 114, 470 S.E.2d 366 (1996). It is anticipated that the State will attempt to offer testimony

and/or witness interview evidence, of *inter alia*, Adam A. Pressie; Stephanie D. Williams; Joyce Loadholdt; Shacoby Hammond; Clarence C. Wrice; Mervin Coker; and S.D. (decendent's minor daughter). "[T]his type of evidence will overly influence the finders of fact and thereby persuade them to prejudge [Defendant] and deny him a fair opportunity to defend against a particular charge." *Michelson v. United States*, 335 U.S. 469, 475–76, 69 S.Ct. 213 (1948); *United States v. Hernandez*, 975 F.2d 1035, 1038 (4th Cir.1992).

5. MINOR DAUGHTER'S HEARSAY AS TO DECEDENT'S STATEMENTS: The State should be prevented from offering any testimony or other evidence related to undated statements allegedly made by the decedent to her minor daughter. Such evidence carries little or no reliability and is highly likely to inflame the emotions of the jury. It violates Defendant's right to confront witnesses against him and its scant probative value is substantially outweighed by its unfairly prejudicial nature.

6. THE MINOR DAUGHTER'S OTHER TESTIMONY: The State should be prevented from offering any testimony or other evidence related to the minor child's statements to law enforcement that she witnessed bad acts by the Defendant at undated times in the past. The Defendant was never charged and convicted for these acts and there is no "logical relevance between the prior bad act and the crime for which the defendant is accused". *State v. Adams*, 322 S.C. 114, 470 S.E.2d 366 (1996). And, because of the inflammatory nature of the accusations, particularly coming from a child, "this type of evidence will overly influence the finders of fact and thereby persuade them to prejudge [Defendant] and deny him a fair opportunity to defend against a particular charge." *Michelson v. United States*, 335 U.S. 469, 475–76, 69 S.Ct. 213 (1948); *United States v. Hernandez*, 975 F.2d 1035, 1038 (4th Cir.1992).

7. CUSTODIAL INTERROGATION AND DERIVATIVE EVIDENCE: The State should be prevented from introducing all evidence of Defendant's statements to law enforcement, after he requested an attorney. This request is audible at least three times over the course of his audiotaped custodial interrogation, on June 2, 2011 and/or June 7, 2011; but questioning continued thereafter. Likewise, the State should be prevented from offering the testimony of the interrogator, S/A Richard Johnson or any other person present or observing; the State should be prevented from introducing any and all video or audio recording of the interrogation; and, further, the State should be prevented from introducing any other derivative evidence of any kind, following a hearing to determine exactly what evidence was derived from questioning after the first request for counsel.

Admission of any such evidence would violate Defendant's constitutional right to counsel, to remain silent, and to end questioning per *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880 (1981).

WHEREFOR, on the basis of all of the above and foregoing, it is hereby requested that this honorable Court suppress each item of evidence meeting the descriptions herein; that the Court conduct a Rule 403 balancing test on the record; that the Court conduct an examination, on the record, to determine what State's evidence is derivative of the improper interrogation; that the Court state all of its findings on the record, with specificity, to preserve all issues for appellate review; and/or it is requested that the following curative instructions be given to the jury:

(1) an instruction defining homicide, (2) an instruction that the jury is free to disregard the Coroner's conclusion of homicide as the manner of death because it is not based on any scientific process and the jury is equally qualified to interpret the "historical information" on

which that conclusion is based; and (3) an instruction that the jury may find that death resulted from accident or misadventure not caused by the Defendant.

All of which is respectfully requested.

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Orangeburg, South Carolina
July 29, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
THE FOURTEENTH JUDICIAL CIRCUIT

Case no. 2016-CP-07-0399

Kelvin Jackson, Sr., #356452,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

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S.C. SUPREME COURT

This Court convened an evidentiary hearing into the matter on February 15, 2017, at the Beaufort County Courthouse. Applicant was present at the hearing and represented by James K. Falk, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant's trial counsel, Virgin Johnson Jr. (Counsel), Esquire, and Applicant were present and testified. This Court also had the opportunity to listen to their testimony and rule on their credibility. This Court had before it a copy of the trial transcript, the records of the Colleton County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the direct appeal records, and the pleadings in this matter. This Court finds as follows:

I. PROCEDURAL HISTORY

Applicant was indicted by the July 2011 term of the Beaufort County Grand Jury for Murder (2011-GS-07-1329). Virgin Johnson, Jr., Esquire and Korey L. Williams, Esquire represented him. On July 29, 2013, Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable Maite Murphy sentenced Applicant to confinement for forty-five (45) years.

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A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v. California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Jackson, Op. No. 2015-UP-512 (filed on November 12, 2015). The Remittitur was issued on May 11, 2016.

II. ALLEGATIONS

Applicant alleged the following grounds in his application:

1. "Ineffective Assistance of Trial Counsel"
 - a. "Failure to investigate, develop, and present all available, relevant, and admissible mitigating evidence"
 - i. "Failure to object to inadmissible evidence"
 - b. "Failure to retain own handwriting expert"
 - c. "Harmful statements in opening argument stating to the jury that his client had lied"
 - d. "Prejudice because counsel put his own client's character at issue"
 - e. "Failure for not putting a police report into evidence that could have been used"
2. "Prosecutorial Misconduct"
 - a. "Violation of Sixth Amendment Right to Fair Trial"
 - b. "Misconduct and presentation of false evidence by law enforcement and solicitor"
3. "The State violated due process when they allowed their witness to testify falsely"
 - a. "False presentation of false evidence"
 - b. "Fifth and Fourteenth Amendments"

III. SUMMARY OF FACTS

The victim, Masako Yamaguichi Miller (hereinafter "the victim"), disappeared from her home in Hampton, S.C., after midnight on May 26, 2011. Her body was recovered four (4) days later in Beaufort County at the edge of the Broad River after having been submersed in water. Tr. pp. 250-251, 277-284, 308-313, 374-378, 355-358, 384, 393, 463-478, 403-428.

Applicant, Kelvin Jackson (Applicant), murdered the victim after a lengthy, tumultuous, "on again-off again," romantic relationship lasting approximately ten (10) years. Applicant and the victim had two (2) children together.

While the relationship was ongoing, police had been called to the couple's home several times over the years regarding domestic violence. The victim had also had police put a Vardar [motion detector] Security System in her house. In the same year the victim died, a co-worker and close friend of the victim overheard over the phone the victim and Applicant arguing. The following morning, the friend saw bruises on the victim's face and arm. Another friend saw Applicant and the victim argue and "tussle" at her home, and Applicant tried to force the victim to come with him; and, he attempted to check the friend's cell-phone thinking it was the victim's phone. The police were called to the friend's home with regard to this incident as well. The same friend had seen hand prints or bruises on the victim's arms and neck while the victim and Applicant were romantically involved. The victim's daughter testified she had witnessed Applicant hit her mother in the chest with a thick wooden block, and Applicant had done something to her mother on another occasion in the bathroom. Applicant had even pushed the daughter down on one (1) occasion when she tried to protect her mother from Applicant. The daughter also testified Applicant was jealous of the victim, and the daughter had to hide the victim's cell phone from Applicant. Approximately two (2) weeks before the victim's murder, the victim was visiting with one (1) of her sons at the hospital when Applicant came to the hospital, and there was another incident. The close friend and co-worker mentioned above *and also* the victim's new boyfriend both overheard Applicant cursing the victim and accusing her of "disrespecting" him because she was seeing another man. The victim was approximately five (5) foot, (2) inches tall, and Applicant was approximately six (6) foot, one (1) inch tall and weighed approximately two hundred and fifty (250) pounds. The testimony at trial established the victim was afraid of Applicant. Tr. 243-68, 269-73, 279-80, 305-06, 321, 336, 338-40, 513-14.

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Applicant had lived with the victim until January/February of 2011, when the victim made Applicant move out of her home. The victim kicked Applicant out because of his abuse of her, and she had met the new boyfriend who was not abusive. Before leaving, Applicant argued with the victim about being evicted. Applicant then moved to Columbia, S.C. At the time of the victim's murder, Applicant both lived and worked in Columbia. The victim still lived at Middle Street in Hampton with her three (3) children. Tr. 243-68, 301-04, 484.¹

The day before her disappearance, the victim closed a joint checking account she had with Applicant at Palmetto State Bank in Hampton, and she opened a checking account solely in her name. At that time, she was given one (1) debit card for the new account by the bank. The day before her disappearance, the victim also called Applicant and informed him she was taking him off of her insurance. The victim had also filed a DSS lien against Applicant for child support. Applicant also had a baby by another woman. Applicant had previously been to jail before for non-support. Tr. 360-72, 259, 267.

On the afternoon of May 25, 2011, the victim was at a local park with her children. A friend, Stephanie Williams, who lived across from the park, asked the victim to meet her there. Stephanie had previously borrowed money from the victim for wedding attire. On that afternoon, Stephanie paid the victim \$260.00 in cash. Tr. 512-518.

That night, May 25, 2011, the victim was at home with her children. The victim also saw her new boyfriend, face to face, at her residence that night and spoke with him on her back porch and then spoke with him again by text messages around 10:15 p.m., after he returned to his own residence. The victim's new boyfriend testified the victim was alive and well at both the time he left her home and at the time of their last text. Tr. 277-281

¹ The victim's oldest child, a daughter, was not Applicant's child.

The victim's oldest child, who was fourteen (14) years old at the time of trial, but twelve (12) at the time of her mother's murder, testified she and the other children went to bed at approximately 10:00 p.m. Her mother was alive and well at that time. Tr. 301-319.

That night, the victim's air conditioning was not working and a repairman had come to the home and worked on the unit. Rather than driving his work van, the repairman drove his personal vehicle and parked it in the victim's driveway. The repairman testified he last saw the victim at approximately 11:00 p.m., and the victim was alive and well when he left the residence. Tr. 524-527.

At approximately 10:00 p.m., on May 25, 2011, a couple of hours before the victim was murdered and disappeared, two (2) residents of Hampton who lived in the same area the victim lived in; an area called "the Bottoms," were standing by the side of the road talking. As they were talking, the two (2) men saw Applicant come walking up the road and spoke to him as he walked past. Applicant was headed toward the victim's residence on foot. The two (2) men did not see Applicant's car. Applicant had in fact parked the car further down the road in the Bottoms so he could approach the victim's residence on foot without detection. Tr. 475-476, 518-22, 486-487.²

The victim's usual morning routine was to get up around 5 to 6 a.m., open the front door for a friend's child who rode the school bus with the victim's children, and then leave and go to work at Scottsman United System. The victim trained employees there and had to be at work at

² One (1) of the men who saw Applicant walking toward the victim's residence, Kevin White, died before trial; however, Applicant later admitted in his 2nd statement to police that he saw Kevin White as he was on foot walking toward the victim's residence. Applicant claimed he parked some distance from the victim's residence so his new girlfriend [not the victim] would not see his car at the victim's residence. The other man who was talking with Kevin White and saw Applicant on foot walking toward the victim's residence shortly before her murder and disappearance testified at trial and identified Applicant. (State's Ex. 32, R. p. 591, Tr. p. 626).

6:00 a.m. to 7:00 a.m. The usual routine was for the friend's child to come in the victim's home at about 5:00 to 5:45 a.m., go back to sleep on the couch, and then the victim's children would get up, eat breakfast, and catch the school bus together with the friend's child and attend school. The victim would wake up her children and the friend's child before leaving for work. Testimony at trial established Applicant knew the victim's usual morning routine. Tr. 308-310, 325, 327-328.

On the morning of May 26, 2011, the friend's child arrived at 5:30 a.m. as planned and the front door was unlocked, but the victim was not in her home. The child fell asleep as usual. The victim's children subsequently overslept for school. When they got up around 8:00 a.m., they noticed their mother was gone, but her oldest child found a yellow sticky note on the kitchen counter stating she [the victim] had gone off with someone, but she would be back. The note purported to be from the victim, but the handwriting on the note *was not the victim's*. The victim's oldest child testified the handwriting on the note looked like Applicant's handwriting, with which she was familiar. A handwriting expert also testified at trial that portions of the note were most probably written by Applicant. A close friend of the victim's also testified the note was not in the victim's handwriting.³ And, the child who rode to school with the victim's children also testified the note was not in the victim's handwriting. On the morning of May 26, 2011, the victim's daughter also noticed the victim's bed was un-made, which was unusual, because the victim always made her bed before leaving for work; pillows were on the floor, and perfume bottles on the dresser were overturned in one (1) specific direction. She also located the victim's purse and wallet and did not see any cash in the same. Tr. 308-315, 256, 328-331.

³ The same friend also testified in the fifteen (15) years she had known the victim, she had never known her to leave her children at home alone at night. (R. pp. 232-36, Tr. pp. 269-73). The mother who dropped her child off every morning testified similarly. (R. p. 298, Tr. p. 334).

When the victim did not appear for work or call her employer, a co-worker and friend was immediately suspicious and notified police. Failure to appear for work without notice was cause for termination. The co-worker and friend had talked to the victim the night before, and the victim had ended the phone conversation by telling the co-worker that she would see her the following morning at work. Police and the co-worker went to the victim's apartment to perform a welfare check but did not find the victim. The victim's new car, on which she was making payments, was parked in the driveway. Police and the co-worker found the victim's work-bag was packed, and her work shoes were still on the floor. The back door to the home was unlocked, which was unusual, because it was always kept locked. Tr. 243-268, 323.⁴

Police immediately began investigating the victim's disappearance. One (1) of the first things police did was to check to see if there was any activity on the victim's credit cards or bank accounts. Police discovered that on the night of the victim's disappearance, *May 26, 2011*, at *2:26 a.m.*, someone had attempted to use the victim's new bank debit card at a Shell Station in the city limits of Hampton. Tr. 354-358, 374-381.

Police spoke with the clerk at the store and reviewed video surveillance footage and discovered Applicant was the person who attempted to use the victim's new bank debit card in an attempt to purchase gasoline at the station. The store clerk also testified at trial that Applicant, who she knew, attempted to use the debit card at *2:26 a.m.* on *May 26, 2011*, and after the pump would not accept the card, Applicant came into the store and purchased gas with cash. The store surveillance video showing Applicant attempting to use the card at the pump and purchasing gas in the store was also introduced at trial. Tr. pp. 354-358, 374-381.⁵

⁴ It is believed Applicant murdered the victim in her bedroom most probably on the bed. He then carried her body out the back door to avoid awakening the children and to avoid detection.

⁵ The jury reviewed this video again shortly before returning with its verdict of guilty.

On the morning of *May 26, 2011*, around 6:30 a.m., Dennis Stephens of Yemassee was getting his morning exercise by doing his usual 2 mile walk from his home, off Highway 21, to Exit 42 on Interstate 95. On the walk to the I-95 Bridge, Mr. Stephens found a cell phone on the side of the road. He brought it home and got the phone to work, and there were several messages from people concerned about the whereabouts of the phone's owner. Mr. Stephens' wife was concerned about his picking up this phone, and she told him to get rid of it. Mr. Stephens took the phone and tossed it in some standing water. Police subsequently contacted Mr. Stephens and his wife, and Mr. Stephens took police to where he had thrown the phone. Police recovered it. It was the victim's cell phone that Mr. Stephens found on the morning of *May 26, 2011* at approximately 6:30 a.m. on the side of Highway 21 near the I-95, Exit 42, bridge. Tr. 381-395, 398-402.

Four (4) days later, the victim's decomposing body was discovered at the edge of the Broad River in Beaufort County by a fisherman. The body had previously been submersed in water. The location of the body was immediately down-stream from the Highway 170 Bridge where the Broad River and Archer's Creek intersect. The fisherman immediately contacted authorities, and the victim's body was recovered, identified by dental records, and the cause of death was determined to be most probably suffocation or strangulation. The manner of death was ruled homicide. Tr. 403-10, 411-17, 418-28, 569-79:

Police subsequently discovered Applicant had stayed at a motel in Walterboro, S.C., at least some of the night-time hours of the victim's disappearance, May 26, 2011. Police eventually determined Applicant had rented a room at the *Palm Inn* in Walterboro well after midnight. Tr. 532-549.

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The investigation revealed Applicant had rented the room under a false name, Calvin Sanders; however, the hotel clerk had required identification, and upon looking at the same realized Applicant's real name was Kelvin Applicant *not* Calvin Sanders. The clerk also noticed Applicant had registered under a false driver's license number. The clerk corrected the last name and the driver's license number on the motel registration form. Applicant paid *cash* for the room. Upon checking their computer records, the motel determined Applicant had checked in and first entered his motel room at the *Palm Inn* at 4:36 a.m. on *May 26, 2011*. Tr. 532-549.

At trial, the motel clerk testified and identified Applicant as the person who checked into the *Palm Inn* in the early morning hours of *May 26, 2011*. The clerk also testified Applicant paid *cash* for the room. The State also introduced the motel's registration which showed Applicant had registered in his own handwriting using a false name and driver's license number, and that the motel clerk corrected the name and driver's license number after checking Applicant's i.d. The State also introduced the computer records of the motel which showed Applicant first swiped his motel room key card at 4:36 a.m. on *May 26, 2011*. Tr. 532-549.

Police questioned Applicant about his whereabouts the night of the victim's disappearance. Applicant initially lied to police and told them he was in another county the night of the victim's disappearance and stated he was not in Hampton County at all. Applicant claimed he was at his girlfriend's house in Fairfax in Allendale County and spent the night there. He also denied he used the victim's debit card that night. Tr. 346-357, 359⁶ Applicant also told police he

⁶ Applicant's girlfriend, Tara Evans, testified at trial that Applicant did not spend the night with her the night of the victim's disappearance. She testified he spent the night with her the night of May 24th/May 25th, 2011. On the morning of May 25, 2011, she had to give Applicant money to put gas in his automobile because Applicant had no money. (R. pp. 491-93, Tr. pp. 527-29). Applicant did not receive his paycheck at work until the afternoon of May 26, 2011. (R. pp. 514-16, Tr. pp. 550-52).

had not seen the victim in about three (3) weeks, approximately sometime in early May. Tr. pp. 463-465.

When confronted with the fact police could prove he was in Hampton that night through an eyewitness who saw him walking, and through video at the Shell station, Applicant admitted he was in Hampton that night. He claimed he drove to Hampton from Fairfax to get gasoline for the car. He claimed the victim had given him the debit card before that night. Tr. 356-357.

When told police could put him near the victim's home, Applicant admitted he had been with the victim starting around 11:00 p.m. on the 25th of May until the early morning hours of May, 26th. Applicant claimed when he arrived the victim was on the phone with her mother in Japan or China. Applicant stated he and the victim "messed around," [i.e. had sex] and the victim gave him the debit card, and he went to the Shell station to get gas for the car, and then returned to the victim's home after 2:36 a.m. and returned the debit card to her telling her it did not work. He denied he killed the victim. However, he had no explanation why the victim would give him a debit card to an account that had no money in it as of yet. Applicant's admission put him in the victim's home with the victim from 11:00 p.m. May 25th until around 2:40 a.m. to 3:00 a.m. on May 26, 2011. Tr. 457-479.

Applicant admitted he then drove to Walterboro, a trip taking approximately thirty (30) minutes, and rented a room at the *Ramada Inn*. Police eventually determined he did not stay at the *Ramada Inn* but the *Palm Inn* where he gave the false identity. Applicant could not account for his whereabouts from the time he left the victim's residence until he checked into the *Palm Inn* at 4:36 a.m. Upon searching the motel room at the *Palm Inn*, police discovered a blood stain in the motel room sink. D.N.A. testing confirmed the blood stain belonged to Applicant [1 in 2.2

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trillion that it was someone else's D.N.A. other than Applicant's, i.e. a scientific match]. Tr. 457-479.

In the victim's home in Hampton, in her bedroom, police recovered a pillow. This pillow contained D.N.A. of both the victim, in a blood stain near the center of the pillow case, and of Applicant, on the edges of the pillow case, i.e. touch D.N.A.. Tr. 436-439, 441-444, 445-457, 580-593, 606-608.

S.L.E.D. Agent David Williams, who investigated the case, drove the route from the victim's residence to the Hwy. 170 Bridge over the Broad River near where the victim's body was recovered and then to the *Palm Inn* in Walterboro. Driving the speed limit, and driving in daytime traffic, the Agent was able to accomplish this complete trip in one (1) hour and fifty (50) minutes, including a fifteen (15) minute stop on the bridge to theoretically dispose of the body. This meant Applicant could have murdered the victim and driven from Hampton, S.C. at approximately **2:26 a.m.**, [the time Applicant attempted to pass the victim's debit card at the Shell station] to the Broad River, and dumped the victim's body, and then drove to the *Palm Inn*, in Walterboro and checked in, well within the time period possible given his **4:36 a.m. check in time at the motel**. This would also account for Applicant's whereabouts from 2:26 a.m., when he used the debit car, until 4:36 a.m. when he checked into the *Palm Inn* in Walterboro, which was only thirty (30) minutes from Hampton. Tr. 613-625

At trial, the States' handwriting expert testified that the victim did not write the note found by her children the morning after her disappearance. The handwriting expert also testified the note was most probably written by Applicant. The expert also testified Applicant had attempted to disguise his handwriting when he gave a handwriting exemplar prior to trial. Tr. 707-717.

Witnesses also testified that Applicant came to the victim's grandmother's home the day after the victim went missing and was acting inappropriately for the victim being missing. Before coming to the home, Applicant had told his sister on the phone that he was on the way there but he was getting his car washed. Tr. p. 284.

IV. SUMMARY OF TESTIMONY

Counsel testified he was hired to represent Applicant by Applicant's family. He reviewed Applicant's discovery. In preparation for trial, he interviewed witnesses, prepared legal briefs, as well as pre-trial motions. He attempted to have the jurisdiction moved to Hampton, as he believed it was a better venue. Applicant had a plea offer of 18 years' incarceration, but he insisted he wasn't guilty. He and Applicant discussed whether to call witnesses or have last argument. They both agreed that last argument was preferable to calling witnesses. There were no alibi witnesses with proof that could have been called. The DNA evidence was not harmful as it could not be narrowed to a specific time frame and it was undisputed Applicant resided at that location for periods of time.

Applicant testified Counsel spoke with him concerning the questions law enforcement asked him. Counsel should have looked into why the bedroom was messed up. Counsel used an investigator, but didn't investigate why the bedroom was messed up. No one testified as to how the victim got bruises. Counsel should have investigated how she got the bruises. He lived with the victim on and off. Counsel did not tell me about the bruising, I would have called daughter to testify the bruises came from my daughter. Counsel should have hired a handwriting expert. Handwriting expert was uncertain that it was Applicant's handwriting.

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V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that Applicant has failed to satisfy his burden to prove that Counsels were deficient or that he was prejudiced by Counsels' alleged deficiencies. Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984). The proper measure of performance is whether Counsels provided representation within the range of competence required in criminal cases. Id.

This Court finds Applicant's testimony lacked credibility. This Court finds that Applicant has failed to satisfy his burden to prove that Counsel's actions were deficient. Applicant also failed to prove he was prejudiced by the alleged deficiencies. This Court finds Counsel properly prepared for Applicant's trial. This Court finds Counsel elucidated valid trial strategies in defending Applicant. This Court finds Counsel rendered adequate assistance and exercised professional judgment his decisions at trial. This Court dismisses Applicant's application for the reasons set out below:

A. Ineffective Assistance of Counsel

In evaluating allegations of ineffective assistance of counsel, the court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the

attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, Counsels' 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. "[E]very effort be made to eliminate the distorting effects of hindsight" and to evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689. Accordingly, courts must be wary of second-guessing counsel's tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

1. Failure to investigate.

Applicant failed to show how further investigation by Counsel would have benefited Applicant at trial. Applicant's assertion Counsel should have investigated the bedroom being messed up and bruises is spurious. Applicant did not prove what Counsel would have found if his expert had further investigated the bruises or the room being messed up. Further, the State provided evidence the bruises on the victim came from Applicant. Tr. 209-211. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." State v. Glover, 318 S.C. 496, 498-499, 458 S.E.2d 538, 540. Moorehead v. State,

329 S.C. 329, 496 S.E.2d 415 (1998) ("Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result").

Accordingly, this Court finds Applicant failed to prove Counsel failed to properly investigate or that Applicant was prejudiced by Counsel's lack of investigation. Accordingly, this Court denies and dismisses this allegation.

2. Failure to obtain handwriting expert.

Applicant failed to call a handwriting expert to provide evidence of the testimony that would have been helpful to Applicant's case. Without an expert's testimony at the hearing, this Court can only speculate as to whether their testimony would have been helpful at trial. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. Applicant failed to show how further investigation by Counsel would have benefited Applicant at trial. "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." State v. Glover, 318 S.C. 496, 498-499, 458 S.E.2d 538, 540. Accordingly, Applicant has failed to prove deficiency or prejudice under Strickland.

Accordingly, this Court finds Applicant failed to prove Counsel should have hired a handwriting expert or that Applicant was prejudiced by Counsel's failure to hire a handwriting expert. Accordingly, this Court denies and dismisses this allegation.

3. Harmful statements in opening argument.

Applicant did not present any evidence on this allegation at the PCR hearing. Further, Applicant made several statements to law enforcement that were proven to be false. Counsel's decision to address that weakness in his opening argument and attempt to lessen its effect was a reasonable trial strategy. "Where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

Accordingly, this Court finds Applicant failed to prove Counsel's opening statement was deficient or that Applicant was prejudiced by Counsel's opening statement. Accordingly, this Court denies and dismisses this allegation.

4. Placed Applicant's character at issue.

Applicant did not present any evidence on this allegation at the PCR hearing. Further, Counsel did not place Applicant's character at issue. In the first instance, the trial court ruled the testimony only showed a "tumultuous relationship." Tr. 124. Counsel argued vigorously against further evidence coming in showing the difficulties between Applicant and the victim. Tr. 187-190. The Court limited the State on the breadth of its questioning after listening to Counsel's argument Tr. 190. This Court finds Counsel did not place Applicant's character at issue and competently argued to prevent Applicant's acts from being admitted into evidence.

Accordingly, this Court finds Applicant failed to prove Counsel placed Applicant's character at issue. Further, Counsel's argued against the introduction of Applicant's prior acts of violence against the victim. This Court finds Applicant also failed to prove he was prejudiced by Counsel's arguments against the evidence's introduction. Accordingly, this Court denies and dismisses this allegation.

5. Failed to put police report into evidence.

Applicant did not present any evidence on this allegation at the PCR hearing. Further, law enforcement reports are not evidence. They are summaries written by law enforcement for purposes of investigation and record. As with any written statement of a testifying witness, the statement itself is not admissible. "When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney." Rule 613, SCRE.

Accordingly, this Court finds Applicant failed to prove Counsel should have admitted the law enforcement report or that Applicant was prejudiced by its lack of admission. Accordingly, this Court denies and dismisses this allegation.

6. Overwhelming Evidence

The evidence of Applicant's was overwhelming. See Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008) (applicant cannot prove prejudice where there is overwhelming evidence of guilt). His guilt was conclusively proven, and no other rational conclusion could have been reached. The State proved Applicant had the *motive* to murder the victim [she had broken up with him, was severing all ties, and had a new boyfriend of whom Applicant was jealous]; Applicant had the *opportunity* to commit the murder [Applicant attempted to use her debit card just minutes from the victim's home & Applicant's admitted to police he was the last person with her before her murder and disappearance at the approximate time she disappeared and was murdered and inside the apartment where it is believed she was murdered and then disappeared]; and, Applicant had the *means* to commit the murder [the pillow from the victim's bedroom contained Applicant's D.N.A. on its edges and the victim's D.N.A. in the center of the pillow,

and Applicant had a vehicle nearby which he could drive to the home and remove the victim's body from the back door and drive it to the Broad River and dump it].

Further, the State showed Applicant repeatedly lied to police and only admitted being with the victim at the time of her disappearance when confronted with evidence placing him in Hampton around the time of her murder and disappearance. Finally, the State showed Applicant had plenty of time to murder the victim, dump her body in the Broad River, and eventually arrive at and check into the Palm Inn under a false identity and false driver's license number at 4:36 a.m. This evidence also explained Applicant's whereabouts from 2:26 a.m. until 4:36 a.m. on the night in question, because Walterboro is only approximately 20 to 30 minutes from Hampton, and Applicant told police he left Hampton around 3:00 a.m.

This Court finds the evidence against Applicant was overwhelming. Therefore, this Court finds Applicant is unable to prove there was a reasonable probability any deficiency of Counsel would have changed the result of the proceeding. Accordingly, this Court denies and dismisses these allegations.

B. Prosecutorial Misconduct and False Testimony

Applicant's allegation that there was prosecutorial misconduct and false testimony is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith,

490 U.S. 794, 109 S. Ct. 2201 (1989). Further, Applicant failed to provide any credible evidence the State offered any evidence in bad faith or elicited perjury testimony. Applicant's own assertion a witness failed to tell the truth is not sufficient evidence on which to base this allegation. No evidence was presented or testimony elicited proving the State used false testimony in convicting Applicant.

Therefore, this Court finds Applicant has failed to show why this allegation is appropriate for PCR. Further, this Court finds Applicant failed to prove the State presented any false testimony. Accordingly, this Court dismisses this allegation.

VI. CONCLUSION

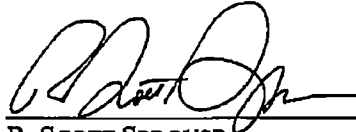
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 14 day of September, 2017.



R. SCOTT SPROUSE
Presiding Judge
14th Judicial Circuit

Waltham, South Carolina

1009

WITNESSES

S/A David Williams, SLED

ARREST WARRANT NUMBER

M056874

ACTION OF GRAND JURY

Bruce H. Hester
Foreperson of Grand Jury
Date: JUL 21 2011

VERDICT

Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2011GS0701329

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

July Term 2011

THE STATE

VS.

Kelvin Jackson

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code:0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2011GS0701329

At a Court of General Sessions, convened on July 21, 2011, the Grand Jurors of Beaufort County present upon their oath:

Murder / Murder

That in Beaufort County on or about May 26, 2011, with malice aforethought, Kelvin Jackson did kill and murder Masako Yamiguchi Miller by means of choking, strangling, suffocating or smothering or by other unknown means, and that Masako Yamiguchi Miller did die in Beaufort County as a proximate result thereof on or about May 26, 2011; and that her body was disposed of in Beaufort County; in violation of Section 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

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
 STATE VS.
Kelvin Jackson

AKA:

Race: B Sex: M Age: 34DOB: SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Murder / Murder

INDICTMENT/CASE#: 2011GS0701329A/W#: M056874Date of Offense: 5/26/2011S.C. Code § : 16-03-0010; 16-03-0020CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Non CC, Sean

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 45 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.50</u>
TOTAL	\$	\$ <u>133.50</u>

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther:

[Signature]
 Jewell Ann R. - Clerk of Court
 Beaufort County, SC - LaSalle, Young

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Wanda Rose

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2146Sentence Date: 8/2/13