ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Allendale County
R. Lawton McIntosh, Circuit Court Judge

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THE STATE,

RESPONDENT,

RECEIVED
JAN 24 2019
SC Court of Appeals

V.

ROBERT LEE MILLER, III,

APPELLANT.

APPELLATE CASE NO. 2017-001347

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RECORD ON APPEAL

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:**

**STATE'S EXHIBITS #34 (DISK)**

STATE OF SOUTH CAROLINA )
) IN THE FAMILY COURT
COUNTY OF ALLENDALE ) IND. NO.: 2014-JU-03-00021
2014-JU-03-00022

STATE OF SOUTH CAROLINA, )
)
)
vs. ) TRANSCRIPT OF RECORD
)
ROBERT LEE MILLER, III, )
)
DEFENDANT. )
)

March 24, 2015

Allendale, South Carolina

B E F O R E:

HONORABLE GERALD C. SMOAK, JR., JUDGE.

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

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1 **THE COURT:** All right, Solicitor?

2 **SOLICITOR STONE:** May it please the Court, Your

3 Honor?

4 First, this took place on June the 17th of 2014, and

5 that is relevant in this situation because that is roughly

6 six months shy of the juvenile's sixteenth birthday.

7 There are two other defendants charged with this. It is a

8 murder/burglary case.

9 The other two individuals, one is sixteen and one is

10 seventeen. Obviously, the seventeen was -- was an adult

11 at the time. The sixteen-year-old, because of the charge

12 of murder and burglary, was also considered at that time

13 an adult.

14 This individual at that time was fifteen, again, six

15 months prior to this. Now, I'm assuming Your Honor has,

16 and I'll check, the -- the Department of Juvenile Justice

17 Waiver Report?

18 **THE COURT:** Yes, I've already read it.

19 **SOLICITOR STONE:** You already have that. The crime

20 itself took place on June the 17th, and it took place in

21 the home of a man named Willie Johnson, who was at [redacted]

22 [redacted] here in Allendale.

23 The -- it was a -- it was a home invasion, in which

24 three people went in. Two of them, one being Mr. Miller,

25 charged into the defendant, took him, strapped him with

1 straps behind his back, took a plastic bag, put it over
2 his head, and then stomped him until he died.
3 The elements that Your Honor has to consider
4 obviously from the standpoint of a waiver to adult court,
5 which is what the State is asking for is outlined in State
6 versus Pittman, which is the King -- the King elements.
7 The first two or three of those, I think we can cover
8 simply by the -- by the nature of the crime.
9 The seriousness of the alleged offense, whether the
10 offense was committed in an aggressive, violent, or
11 premeditated manner, and whether it was against a person
12 or property. Obviously, the murder charge itself is
13 against Willie Johnson. It was a burglary.
14 (WHEREUPON, Court's Exhibit No. 1 was marked for
15 identification only.)
16 (WHEREUPON, Court's Exhibit No. 2 was marked for
17 identification only.)
18 (WHEREUPON, Court's Exhibit No. 3 was marked for
19 identification only.)
20 **SOLICITOR STONE:** I'll hand you up, Your Honor,
21 three, if I may, I've made these three Court's Exhibits,
22 crime scene photographs showing you the violent and
23 aggressive manner in which the crime was committed. And
24 these are Court's Exhibit One, Two, and Three, if I may
25 hand those to you.

1 Robert Miller, III, was questioned because he was
2 involved in a shooting of a juvenile on June the 24th, and
3 the timeframe on this, Your Honor, is particularly
4 relevant as to -- as the murder took place on June the
5 17th. The shooting of the juvenile on the 24th, which
6 caused law enforcement to -- to interview him was due to a
7 shooting with a shotgun, and the shotgun was believed to
8 be one of the items stolen from Mr. Johnson's home.
9 The defendant, along with one other codefendant, has
10 made statements to S.L.E.D. confessing to the crime. I
11 understand that is also as -- one of the elements as to
12 the -- as to the credibility or the merits of the
13 particular prosecution. Mr. Miller, himself, also made a
14 statement not only to S.L.E.D. but also to a civilian
15 witness, who also got this information.
16 Mr. Miller's prior criminal history I think also
17 gives us some insight as to -- as to what we're dealing
18 with. Again, he's being investigated for a shooting that
19 took place on June the 24th, when they make the link to
20 him and the murder that took place on June the 17th.
21 On June the 17th, he was -- he had just six -- four
22 months earlier, February the 25th, 2014, he was sentenced
23 to probation for a burglary in which he, along with a
24 codefendant, charged the victim in their house, pushed
25 them up against the wall, kicked -- or beat him in his

1 ribs, took his wallet and his telephone and then fled the
2 house. That took place June the 30th of 2013, but he was
3 sentenced on February the 25th of 2014.
4 His other prior criminal history, he has a burglary
5 that is still pending from prior to the previous burglary
6 that he has been -- that he had been adjudicated
7 delinquent on.
8 He also has a previous disturbing school, that being
9 November the 8th, 2012.
10 From his criminal history, just from the last two
11 years, Your Honor, were he in adult court, we would -- we
12 would have him prosecuted by the Career Criminal
13 Prosecution Team. He not only has prior criminal history,
14 but it seems that every one of them seems to be linked.
15 He's out of trouble one minute, he turns around and
16 gets in trouble the very next minute. In some cases he's
17 on probation. In some cases the previous offense hasn't
18 been adjudicated yet prior to -- prior to the next crime
19 that he commits.
20 As to the elements that Your Honor must consider from
21 the standpoint of the waiver, the seriousness of the
22 alleged offense, I can't imagine a more serious offense.
23 It was clearly, and I think the photographs give you some
24 indication of the aggressive and violent nature of the
25 actual crime. It was against a person, and it was a

1 murder case.

2 The prosecutorial merit of the complaint, Your Honor,
3 I think is also evident, not only in -- there was also a
4 witness who saw three individuals at the -- at the house
5 at around the time of the murder, and of course you have
6 the confession not only to S.L.E.D. but also to a
7 civilian, as well.

8 The record of the previous history of the juvenile I
9 think gives us a pretty good idea as far as Element Number
10 Seven.

11 And Number Eight, when we talk about the
12 rehabilitation, I think it's important at this point to
13 realize that if -- if this is an individual who was
14 involved in a shooting using the shotgun stolen from a
15 house of a murder only a few -- a few short months
16 earlier, I think that gives us some indication of the
17 rehabilitation, that and of course his previous probation
18 that he was on from February of the same year.

19 Finally, and this goes to the report that Your Honor
20 has received, the sophistication and the maturity of the
21 juvenile on Page Eighteen of the report, I think the
22 summary, the conclusion, concerning the maturity, his
23 cognitive ability is in the borderline to average range,
24 and he is -- and he met the standard expected level of
25 maturity for a fifteen-year-old.

1 Because of those factors, Your Honor, and also
2 because he was merely six months shy of being considered
3 an automatic adult, we would ask Your Honor to consider
4 using the King factors to waive him to the Court of
5 General Sessions, where we are prepared to go forward with
6 the prosecution of this matter.
7 **THE COURT:** Do you plan to call any other witnesses?
8 **SOLICITOR STONE:** We do not, Your Honor.
9 **THE COURT:** Ms. Jordan?
10 **MS. JORDAN:** Your Honor, I'm unsure of the King
11 factors. I'm going by the Kent factors. Is that the
12 same? Kent factors are what are familiar in juvenile
13 court.
14 **MS. GREFE:** That's correct. They are, indeed, the
15 Kent factors, Your Honor.
16 **MS. JORDAN:** Your Honor, I'm prepared to go through
17 each factor, because I think there's a lot more to it than
18 just a brief outline. Since Kent was a case which
19 outlines these factors here in juvenile court, it requires
20 a meaningful review. It should not be remitted to
21 assumptions, statements of the reasons motivating your
22 waiver should not be assumed, and statement of relevant
23 facts. So, it is essential that due process and fair
24 treatment be done at this stage.
25 There are several things elicited from the Solicitor,

1 and I'd just like to go through them one at a time, if
2 that would be okay with Your Honor. Number one speaks of
3 the seriousness of the alleged offense, but not only that
4 it says whether the protection of the community requires
5 waiver.
6 Obviously, any murder is a serious offense. Anything
7 that is violent against a person is a serious offense;
8 however, we believe the protection of the community can be
9 adequately addressed through the juvenile court system and
10 all the agencies and services and programs available
11 through DJJ. Therefore, this does not require waiver,
12 just because it's a serious offense.
13 And any murder -- in Section Two, any murder can be
14 addressed as aggressive or premeditated. We don't know if
15 it was premeditated, but anything in murder is always a
16 very serious offense, and that would be a given in this
17 charge.
18 And against a person would also cover Three. We just
19 covered that.
20 When we get to Section Four, the prosecutive merit of
21 the complaint and whether there is evidence in which a
22 Grand Jury may be expected to return an indictment. Under
23 the guidelines, -- under the National Prosecution
24 Guidelines, insufficient admissible evidence and the
25 failure of law enforcement to perform necessary duties or

1 investigation are some things to consider in whether or
2 not to go forward with an indictment. Insufficient
3 inadmissible evidence to support the conviction; and we
4 argue that there is a lot of inadmissible evidence at this
5 point.
6 I was -- we heard yesterday afternoon that there are
7 possibly a number of pages that have not been turned over
8 to us as of yet. I just want to clarify that, whether
9 there is more DNA analysis that has not been shipped over.
10 I currently have a report of three hundred and
11 ninety-three pages, and I don't know if there's anymore.
12 As of right now, the DNA analysis which has been
13 taken since June of last year, nothing has come back to
14 match Robert of anything. There's no -- he had
15 fingerprints taken and Items Number 0-0- -- Item Number
16 0707 and Item Number 072 were taken. Swabs were taken
17 from him during questioning, and they proved to be no
18 match. At least there is no evidence turned over to us
19 that there's a match of anything to Robert's DNA.
20 The Solicitor spoke of confessions and statements.
21 First of all, in reviewing the statements, there are a
22 number of statements, I'd say probably around ten, maybe,
23 and every statement that S.L.E.D. agent spoke to, and none
24 of them match up together. They are very inconsistent in
25 all statements. Some say guns, some say money, some say

1 safe.

2 The Solicitor said that there was a question because

3 of the gun that was stolen from the home that was involved

4 in the murder. There's been no connection with that.

5 There's been no evidence turned over that there was a

6 gun taken from the home or if there was even guns in the

7 home. No one has testified that there was even guns in

8 the home or they were taken or that was the gun that was

9 involved in the shooting or that my client was the one

10 with the gun.

11 Going to Robert's confession, he was brought into the

12 station around 2:00 or 3:00 o'clock with a Ms. Tiffany

13 Sabb and Jonathan Capers, Jonathan, who I -- I assume was

14 the person they said made -- the other person he made a

15 statement to. Obviously, if he made a statement against

16 Robert, not a person of interest, nor would his mother be

17 at that point, obviously protecting her son more than they

18 would protect Mr. Miller.

19 From 2:00 or 3:00 o'clock in the afternoon until he

20 was taken to DJJ, which he was booked into DJJ at 3:00

21 o'clock in the morning. During the period of questioning,

22 there was no parent. There was no Miranda.

23 There was no -- was not told he could leave. There

24 was a number of officers in and out of the room. The

25 iPhone that was used to record this incident continued to

1 shut on and off through -- at least three times.
2 There was no Miranda recorded during any of those
3 times, and all this time he was in custody alone with no
4 parent. They asked a person, Ms. Tiffany Sabb, if they
5 could speak to Robert, and they continued talking when she
6 said she agreed with that, which is not his parent.
7 So there's very -- there's a lot of issues that go
8 towards what would be actually presented at the Grand Jury
9 and whether or not it would be indicted or would be
10 admissible evidence.
11 Again, it obviously would go to the voluntariness of
12 that during another hearing, but that is part of the
13 issues that are raised, whether or not there was a
14 voluntary statement given. The latest case law under
15 Graham, Roper, JDB vs. North Carolina, and Miller have all
16 recently upheld that children cannot be viewed as
17 miniature adults, and it's common sense that a
18 seven-year-old is not a thirteen-year-old, and neither is
19 an adult, and courts are leaning more towards that than
20 they were in the past, that children are rehabilitative
21 and that they can be rehabilitated.
22 Regarding this report from the psychologist, I had
23 mentioned to Solicitor Christine Grefe that I felt -- I
24 found discrepancies within the report. Ms. Smart and I
25 were at the actual hearing, the initial interview, and our

1 notes had a conflict with what was written in the report
2 as to how he understood Miranda.
3 In the beginning of the report she said -- she asked
4 him if he understood what it meant that he had a right to
5 remain silent and a right to an attorney, in which he
6 answered he did not, and she had to explain it to him.
7 That was not listed in the report.
8 Upon contact of the psychologist, she said she would
9 write an addendum. I told her we had court today. I have
10 not received an addendum. She said she had to bring it by
11 her legal service before it was sent to us, and I got that
12 this morning before court started here.
13 There's also other discrepancies within the report.
14 As Your Honor is well-aware of reading through reports
15 that certain numbers are used in the WCIS scale, the
16 W-C-I-S scale, different ways of categorizing their
17 knowledge.
18 In all reports -- a report was done at CEC
19 evaluation, which came back that he is operating at a
20 fourth grade level. He is low average. He is years
21 behind his grade level in understanding comprehension.
22 His IQ is at 76. As Your Honor knows, 100 is average, so
23 that was below average.
24 There was a mistake, I alleged to the psychologist,
25 in that they said he had a different score in his reading

1 comprehension in a report that was done four months later
2 in July, which put him at the eleventh grade.
3 It is obvious to all that that child cannot jump from
4 fourth grade to eleventh grade reading, comprehension,
5 understanding within four months, especially during that
6 time he was expelled from school. So there's some
7 considerations of this voluntariness, the understanding,
8 and what happened in court that day.
9 Number Five talks about the desirability of a trial
10 and the disposition of the entire offense in one court.
11 Judicial economy, when we're dealing with a juvenile, we
12 feel should never be a reason to try a child in adult
13 court with other codefendants.
14 Again, in Number Six, the sophistication and maturity
15 of the child as determined by consideration of his home,
16 emotional attitude and living pattern.
17 Excuse me for a minute.
18 Robert entered the DSS system in 2001. He was born
19 in 1998. So, from 2001 had a history all the way through
20 2011 in which mental health services were sporadic, at
21 most.
22 He was bounced around in foster placement and was not
23 provided adequate medication or mental health to address
24 his diagnosed disorders, one being ADHD. It was addressed
25 to Mr. Grant. I spoke with him, and he said that he was

1 of the understanding his father didn't want him to have
2 mental health counseling and medication, and not that the
3 juvenile wasn't participating, but it made a great
4 difference in that when he was on it.
5 The Solicitor mentioned the child's record. Your
6 Honor should have the Form 5 in front of you, also the
7 adjudications. There are two adjudications, burglary
8 second and disturbing schools, starting in -- those are
9 the only two adjudications, 2012/2013.
10 The other cases mentioned to -- mentioned are still
11 pending. The cases are past the 365-day window, so,
12 therefore, there's a possibility of dismissals. The two
13 cases that went forward are not serious or violent
14 charges.
15 On probation with DJJ, he was compliant. He did what
16 he was supposed to, absent the mental health treatment and
17 -- and medication, but that was no fault of his own.
18 Excuse me, I'm a little stuffed. Excuse me, Your
19 Honor.
20 **MS. SMART:** May it please the Court, Your Honor?
21 With regard to the burglary charge dated June 30th of
22 2013 where the State has alleged the facts in that case or
23 have submitted to the Court for its attention the facts in
24 that case, that case can be distinguished from this
25 particular case because the victim in that case was Robert

1 Miller's mother's boyfriend.

2 Apparently during the time that he was dating Ms.
3 Binam, he was abusive to both Ms. Binam and her children.
4 Robert and his brother allegedly went into the man's
5 house, had an altercation with him.

6 Based on the previous relationship, that case is
7 distinguishable from the facts in this case in that Mr.
8 Johnson was a stranger. Robert, nor his brothers, knew
9 him. So I don't think that they are similar and that the
10 Court should consider that.

11 We believe that a Jackson v. Denno regarding the
12 voluntariness of his confession may be in order for the
13 Court to consider whether or not that confession is, in
14 fact, admissible. If the Court deems that confession
15 inadmissible, then the State cannot use that confession
16 with regard to it being -- this case being potentially
17 indicted by the Grand Jury.

18 As Ms. Jordan indicated to the Court prior, Mr. Binam
19 was interrogated by the Fairfax Police Department without
20 his mother being notified. He was subsequently, I believe
21 about two hours later, interrogated by S.L.E.D., South
22 Carolina Law Enforcement Division. They asked Ms. Sabb to
23 come in and asked her permission to interrogate Mr.
24 Miller.

25 If S.L.E.D. I believe asked Ms. Sabb for permission

1 to interrogate, I believe they were under the impression
2 that they should have asked a parent for that permission.
3 And if, in fact, they asked Ms. Sabb, they should have
4 sought out either Mr. Robert Miller or Ms. Enell Binam
5 prior to interrogating Robert.
6 So, I'd ask the Court to consider whether or not he
7 would do a Jackson v. Denno Hearing to determine the
8 admissibility of the confession prior to going forward.
9 **THE COURT:** Anything else from Ms. Jordan or Ms.
10 Smart?
11 **MS. JORDAN:** Your Honor, at the appropriate time I'd
12 like to address Number Eight, if you want me to go through
13 Number Eight, but if you want to address the Jackson v.
14 Denno issue first? I have more information for Number
15 Eight, to rehabilitate.
16 **THE COURT:** What's your position on that, Solicitor?
17 **SOLICITOR STONE:** Number Eight, or the Jackson/Denno?
18 **THE COURT:** The Jackson/Denno.
19 **SOLICITOR STONE:** The Jackson/Denno, Your Honor, is
20 something that we will, obviously, do before we try the
21 case itself; however, keeping in mind that not only did he
22 make a statement to S.L.E.D., he also made a statement to
23 a civilian witness, and in the statement to a civilian
24 witness, he said he put a bag on the old man's head and
25 stomped his head.

1 Your Honor has now seen a photograph of the crime
2 scene, which kind of begs the question: How would he know
3 there was a bag on the man's head, if he wasn't the one
4 that did it?
5 So, from the standpoint of the Jackson/Denno Hearing,
6 Your Honor, we will do that prior to -- prior to the
7 trial, but we don't believe that that is one of the Kent
8 factors. There is nothing in here that indicates that we
9 would do all of our pre-trial prior to that.
10 And I did leave out Element Number Five, which was
11 whether or not you should try all of these people, and
12 there is some interest in that. Obviously two of the
13 three are already in General Sessions Court.
14 And I would agree with Ms. Smart, there is a
15 difference between the burglary that took place on June
16 the 30th in Mr. Dwight Jabazz's home. The difference is
17 Mr. Jabazz wasn't murdered. He was punched. He was beat.
18 He was -- they invaded his home, and they stole from
19 him. They stole his wallet and his telephone. So, I
20 would agree that they aren't identical; however, I would
21 not agree that that is not a serious offense.
22 **THE COURT:** All right.
23 Anything else, Ms. Smart or Ms. Jordan?
24 Ms. Jordan, you want to be heard on Number Eight?
25 **MS. JORDAN:** Yes, Your Honor.

1 **THE COURT:** Now is the time to do it.

2 **MS. JORDAN:** Prospects for adequate protection of the
3 public and the likelihood of reasonable rehabilitation
4 goes towards the evaluation report. The evaluation done
5 by the State lists four negative reasons why they should
6 not evaluate, and that would be that serious antisocial
7 actions can be difficult to rehabilitate.

8 In that statement, it would be saying that a juvenile
9 under eighteen would have antisocial behavior, when we
10 know under Roper v. Simmons that it is not the case. A
11 psychologist cannot diagnose any patient under eighteen as
12 having antisocial personality behavior, and it is beyond
13 the scope of that to -- I would say to the Court to
14 disregard that.

15 Number Two, the previous charges of assault and
16 burglary indicate a history that demonstrate a willingness
17 to engage in violent behavior. A lack of maturity under
18 Roper also and from under-developed sense of
19 responsibility are found in more youth than adults. These
20 qualities are -- are -- often result in impetuous and
21 ill-considered actions.

22 A juvenile, again, is not an adult and should not be
23 treated as an adult. Their brains are not developed.
24 They don't develop until they're twenty-five, to the
25 extent under these cases, and an Amicus Brief attached to

1 the Roper decision that we have a lot of immaturity and
2 irresponsibility at a juvenile level.
3 Inconsistent -- and our number three reason for
4 negative was inconsistent expression of remorse and
5 empathy. Well, the client denies his involvement, so he's
6 -- you can take that what it is. He maintains his
7 innocence.
8 Admitted to the use of marijuana, which is illegal
9 and can impair judgment. I don't see how that's a
10 negative affect. Actually admitting is the first step to
11 recovery and rehabilitation, and that is done through DJJ
12 and all the services they provided there.
13 They have several counseling services at the DJJ
14 facilities that address juveniles in their youth in the
15 problems of drug and alcohol abuse, which in the side --
16 the other side in SCDC is very limited.
17 The family -- family support and concern; the family
18 is supportive of their son. Excuse me. That would be the
19 first thing.
20 Responded well to mental health and medications;
21 along time -- for most of his DSS history, which is most
22 of his life, he was not adequately medicated or treated.
23 Now he is and there's been vast changes.
24 DSS dropped the ball with him. Medications were
25 discontinued, and DJJ offers mental health services and

1 medication management.

2 SCDC gravely lacks mental health services, as seen in

3 a recent Baxley Opinion, Your Honor, where the Court found

4 SCDC's mental health programs are inherently flawed and

5 systematically deficient in all major areas. The program

6 was lacking sufficiently in any kind of treatment facility

7 towards mental health, and it says that inmates' mental

8 health illness are not receiving adequate treatment and

9 oftentimes leave prisoners worse off than when they

10 entered.

11 So, adolescents who are amenable to treatment have a

12 higher likelihood of rehabilitation. And that's showing

13 that he had -- is amenable to treatment. He can make

14 changes.

15 DJJ Probation Officer, Lewis Grant, I asked him. He

16 said he had no problems with him on probation.

17 I spoke with his social worker, Deborah Bennett York,

18 who referred him initially, he had a little bit of

19 problems, but once we got things going, he has

20 straightened out. He is working in programs.

21 He is actually well-liked within the DJJ facilities

22 and has given extra credits and assignments in the details

23 and on the floor. He attends school daily, participates

24 in religious activities, and is in counseling weekly.

25 DJJ engages juveniles in programs and activities,

1 unlike SCDC, who has a 23-1 policy.

2 Structure and support; structure and support is what

3 is mentioned throughout all the evaluations and throughout

4 all mental health for juveniles. He does well under

5 structure and support and extensive therapy and substance

6 abuse under one roof are found at DJJ. They keep the

7 juveniles engaged, and he has a better chance of being

8 rehabilitated through their program.

9 DJJ offers individual group family therapy, substance

10 abuse counseling, social skills training, assertiveness

11 training, tutorial programs, independent living skills,

12 vocational rehabilitation programs, psychiatric services,

13 medical services, religious and musical.

14 SCDC has inadequate mental health services, limited

15 drug counseling. He may get his GED and may be able to go

16 to religious services.

17 So, we ask that -- he has a great capacity of

18 rehabilitation. The courts are leaning more towards

19 rehabilitating juveniles than punishing juveniles.

20 All of the recent cases, Miller, Roper, Graham, and

21 JDB all address the issues that juveniles have a capacity

22 for rehabilitation and we should take on that capacity.

23 So, we ask that this child remain in the juvenile system,

24 a system that is adequately equipped to rehabilitate a

25 juvenile, rather than house him, a system that advocates

1 structure and therapy, in turn supplies the community with
2 the most protection.
3 When a child leaves the system, they will have this
4 training. Which child do we want next door to us; a child
5 who leaves the system with opportunities and training for
6 rehabilitation, or a child leaving without nothing from
7 SCDC?
8 **THE COURT:** Anything else, Ms. Smart?
9 **MS. SMART:** Nothing further, Your Honor.
10 **THE COURT:** Anything further?
11 **SOLICITOR STONE:** No, sir, not from the State.
12 **THE COURT:** All right. The Court first of all was
13 provided and has reviewed the Waiver Evaluation, the date
14 of the evaluation is December 30th, 2014, was ordered July
15 1st, 2014. The Court has reviewed that in its entirety.
16 The Court has also reviewed the file and also the
17 hearing today. The Court has also reviewed the Kent
18 factors concerning waiver, in particular this juvenile.
19 The Court, first of all, finds that there is and
20 continues to be probable cause that this juvenile
21 committed these offenses.
22 In regards to the Kent factors, the Court has
23 reviewed them. Based upon arguments of counsel, I will
24 further find that I have considered the serious nature of
25 the offense, and I've also considered whether or not the

1 community can be protected from this juvenile; I've also
2 considered the aggressive nature of the offense, based on
3 the exhibits and the file; I've also considered whether or
4 not this offense, no question it was committed against a
5 person, which it made it most egregious.
6 Also, I have considered the merit of the petitions.
7 I've considered the presentations. I further have
8 considered the fact that two other codefendants apparently
9 are now in General Sessions Court.
10 I've also considered that based on the review of the
11 report, I've considered the juvenile's sophistication and
12 maturity, the environmental situation in his home.
13 Obviously, his pattern of living over the past probably
14 thirteen or fourteen years, I think is covered in that
15 report in detail.
16 I've considered his record and his offenses. I've
17 also considered his likelihood of rehabilitation and the
18 protection of the public.
19 Based upon my review of all of the above and the Kent
20 factors, my review of the evaluation, this Court is going
21 to waive him up to General Sessions Court for these
22 charges.
23 He needs to be submitted to the magistrate to have a
24 bond set, Solicitor.
25 Anything else from the State?

1 **SOLICITOR STONE:** Nothing else from the State, Your
2 Honor. Thank you.
3 **THE COURT:** Anything else, Ms. Smart?
4 **MS. SMART:** May it please the Court, Your Honor? The
5 Family Court still has the authority to hold a preliminary
6 hearing. I know that he probably will not be able to have
7 a preliminary hearing by the magistrate because the
8 codefendants have already had a preliminary hearing, so we
9 would ask that the Court consider having a -- holding a
10 preliminary hearing.
11 **THE COURT:** No, ma'am.
12 **MS. SMART:** Thank you, Your Honor.
13 **THE COURT:** Thank you, ma'am.
14 Solicitor, draw me an order. I'll be glad to sign
15 it.
16 **MS. GREFE:** Yes, Your Honor. Thank you.
17 **THE COURT:** Mr. Miller, good luck to you.
18 The court has already ordered discovery. I'm sure
19 y'all have motions coming up. It will be taken up in
20 General Sessions Court.
21 **(END OF REQUESTED TRANSCRIPT OF RECORD.)**
22
23
24
25

1 In the Court of General Sessions for the
2 State of South Carolina, County of Allendale
3
4 Case No.: 2015GS030050
5 State of South Carolina,
6 Plaintiff(s),
7 vs. Transcript of Record
8 Robert Lee Miller, III,
9 Defendant(s).
10
11
12
13
14
15 July 11-14, 2016
16 Allendale, South Carolina
17
18
19
20
21 BEFORE:
22 The Honorable Lawton McIntosh
23
24
25

1 APPEARANCES

2

3 REPRESENTING PLAINTIFF(S):

4

5 Sean Thornton, Assistant Solicitor

6 Ann Fitz, Assistant Solicitor

7 14th Judicial Circuit Solicitor's Office

8 39 Sheridan Park Circle, Suite 2

9 Bluffton, SC 29910

10 843-255-5880

11

12

13

14 REPRESENTING DEFENDANT(S):

15

16 Stephanie Smart-Gittings, Public Defender

17 1905 Duke Street, Room 260

18 PO Box 525

19 Beaufort, SC 29901-0525

20 843-255-5000

21

22

23

24

25

1 Thereupon,

2 MARVIN WILLIAMS

3 was called as a witness, having been first duly sworn,

4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. THORNTON:

7 Q Obviously, Chief, I've asked you these kinds of

8 questions a number of times.

9 But is your full name Marvin Williams?

10 A Yes, sir, Marvin J. Williams.

11 Q And are you the chief, currently, of the Fairfax

12 Police Department?

13 A Yes, sir.

14 Q In June of 2014, were you still the chief of the

15 Fairfax Police Department?

16 A Yes, sir.

17 Q And in that capacity, sir, did you have occasion

18 to talk to the defendant in this case, Mr. Robert Lee

19 Miller, III?

20 A Yes, sir.

21 Q And I'm going to hand you what's been marked as

22 Court's 1, and ask you if you can identify that document for

23 me?

24 A Yes, sir.

25 Q And what is that document, Chief?

1 jury research is we want you to listen to the
2 testimony, to listen to the evidence that you hear
3 right here from the witness stand by the way of sworn
4 testimony, whether it direct examination or
5 cross-examination, and make your decision based on that
6 testimony and according to the law as I give it to you
7 at the end of this case unaffected by anything that you
8 may see outside.
9 That being said, anybody have a problem with being
10 here and starting at 9:30 in the morning?
11 (No response.)
12 All right. Thank you so much. We'll excuse you
13 for the day. If you will be in your jury room tomorrow
14 at 9:25, I'll get started at 9:30 or as close to it as
15 I can. Thank you.
16 (Jury exits the courtroom at 4:50 p.m.)
17 PRE-TRIAL HEARINGS
18 All right. Mr. Thornton, are you ready for your
19 first witness in the Jackson Denno hearing?
20 MR. THORNTON: I am, Judge, if I could just have
21 one second?
22 THE COURT: Yes, sir.
23 MR. THORNTON: Thank you, Your Honor. State's
24 ready to proceed. I call Chief Marvin Williams to
25 the stand, Chief of Fairfax Police Department.

1 A It's a Miranda warning.

2 Q Is that Miranda warning specific to any particular

3 person?

4 A Mr. Miller.

5 Q All right. And is that Mr. Miller, the defendant

6 in this case?

7 A Yes, sir.

8 Q And is that the Miranda form that you used on, I

9 believe it's -- what's the date referenced on that, Chief?

10 A June --

11 Q I know it's not the best copy, Chief.

12 A Yeah.

13 Q It's about 4:56 p.m., is that correct.

14 A Yeah, 4:56 p.m., signed by Robert Miller.

15 Q And, Chief, I am going to ask you if --

16 MR. THORNTON: The Court's indulgence?

17 THE COURT: Yes.

18 BY MR. THORNTON:

19 Q I'll show you a little better copy.

20 Would it be correct to say on or about June

21 the 24th?

22 A Yes, sir.

23 Q I realize that it's hard to read.

24 So on or about June 24th, sometime in the late

25 afternoon, about 4:56, is that when you Mirandised Robert

1 Miller?

2 A Yes, sir.

3 Q All right. Now, Chief, obviously, that's a

4 standard Miranda form. Would you go down, please, the

5 rights that you discussed that Mr. Miller had, that you told

6 him about?

7 A Yes, sir.

8 I explained to Mr. Miller that -- that he had

9 the right to remain silent, anything that you say can be used

10 against you in a court of law. As we was going down that I

11 had him initials -- his initials that he had the right to

12 have an attorney present anytime during any questioning.

13 That he can't afford a lawyer, one would be appointed for

14 him, for Mr. Miller. He decided to talk to officer without a

15 lawyer present. He has -- he also had that right also to

16 stop talking at any time.

17 Q And did you explain each of these rights to

18 Mr. Miller?

19 A Yes, sir, and he initialed the initials.

20 Q And I realize it's faint, but are his initials

21 present where he initialed each one of these?

22 A Yes, sir.

23 Q And did he do that, sir, in your presence?

24 A Yes, sir.

25 Q And did he do that as to each and every right that

1 appears on that form that's Court Exhibit 1?

2 A Yes, sir.

3 MR. THORNTON: Your Honor, first of all, let me

4 stop here with the Court's indulgence and just ask

5 that it be moved into evidence for the purposes of

6 this hearing as Court's 1?

7 THE COURT: Any objection?

8 MS. SMART-GITTINGS: No, objection, Your Honor.

9 THE COURT: Admitted for purposes of this

10 hearing.

11 *(Whereupon, Court's Exhibit No(s). 1 marked for*

12 *identification and received in evidence.)*

13 BY MR. THORNTON:

14 Q Chief, if you could tell me, what was Mr. Miller

15 doing at the -- was this at the police department, at the

16 Fairfax PD?

17 A Yes, sir.

18 Q And what was he doing there?

19 A It's in reference to a case we were working on, a

20 shooting incident that took place in Fairfax.

21 Q And that's actually separate from the incident

22 that he's on trial for regarding the murder of Willie

23 Johnson; is that correct?

24 A Yes, sir.

25 Q All right. Was he cuffed and brought in, or how

1 did he get there?

2 A He was -- I don't know exactly he was brought in

3 who brought him in.

4 Q Was there a Ms. Tiffany Sabb with him?

5 A Yes.

6 Q All right. And did -- did he at some point -- was

7 she present during the time he was being questioned?

8 A Yes.

9 Q And was he -- at this point, was he cuffed or

10 anything like that?

11 A No, sir.

12 Q All right. And had you charged him in reference

13 to the shooting?

14 A Not then, but he's been charged now.

15 Q Right. But at that time, had he been charged when

16 he came in to talk to you?

17 A No, sir.

18 Q All right. And did -- had he been charged at this

19 point with this incident, being the shooting of Willie

20 Johnson that he's on trial for today, had he been charged

21 for that?

22 A No, sir.

23 Q While you were talking to him, Chief, did you

24 threaten him in any way or make any promises to him for

25 leniency?

1 A No, sir.

2 Q At some point, Chief, and while you were with him,

3 did any of your officers or anyone else while in your

4 presence threaten him in any way or make promises of

5 leniency to him to try to get him to talk?

6 A No, sir.

7 Q Did you use any kind of force or any coercion on

8 him?

9 A No, sir.

10 Q All right. When you were talking to him about the

11 shooting incident, Chief, did he volunteer information as to

12 the murder that we're here about today?

13 A Yes, sir.

14 Q All right. Could you tell the Court, please, how

15 that occurred?

16 A In speaking to Mr. Miller in reference to the

17 shooting in Fairfax --

18 Q And let me stop you, Chief, real quick. And this

19 is a shooting of another -- of a juvenile in Fairfax that

20 you were investigating, is that correct?

21 A Yes, sir.

22 Q All right, sir. Go ahead.

23 A And he said that he didn't do the shooting in

24 Fairfax. He thought we wanted him for the incident that

25 took place in Allendale. And I stated, what are you

1 talking about. And he went into the situation of -- of the
2 beating of the old man in Allendale.
3 Q All right. And did he give you some details as to
4 what he was talking about as to the beating of the old man
5 in Allendale?
6 A He stated that they went there to rob the old man
7 and it just got out of hand. And stated that, you know, he
8 didn't mean to kill him, but the guy keep looking at him,
9 so he put a bag over his head.
10 Q And did he discuss the beating of or talk about
11 the beating of Mr. Johnson?
12 A Didn't go into any details, but just said that he
13 just kept hitting him, because he just kept looking at him.
14 So he was putting the bag over his head.
15 Q All right. So his statement to you was that they
16 went there to do a robbery, and it got out of hand. And
17 that -- and I'm not trying to put words in your mouth,
18 Chief --
19 A Right.
20 Q -- just to reiterate what you just said.
21 That the Defendant in this case said that he
22 was hitting him because he kept looking at him. And then he
23 put a plastic bag over his head so he wouldn't look at him
24 anymore?
25 A Right.

1 Q Is that the essence of what he told you?
2 A Yes, sir.
3 Q While you were talking to him, did he ever admit
4 to doing the shooting of the 14-year-old?
5 A No, sir.
6 Q All right. Now, at this point, was there any
7 other agency working the murder of Mr. Johnson, that we are
8 here about today?
9 A Yes, sir.
10 Q All right. And was SLED involved in that?
11 A Yes, sir.
12 Q And was SLED, then, notified that they might want
13 to come talk to him?
14 A Yes, sir.
15 Q All right. Chief, let me ask you this. Was
16 this -- when you were discussing this other shooting with
17 him and he made these statements with regard to this case,
18 was that recorded in any way, either video or audio?
19 A No, sir.
20 Q All right. And did he do any written statement or
21 anything?
22 A No, sir.
23 Q Once he told you that, did you question him any
24 more about the murder of Willie Johnson?
25 A No.

1 Q And at some point after you get done, does -- that
2 same day, does SLED come in and do an interview?
3 A Yes, sir.
4 Q Okay. And did you, Chief, did you write any
5 reports up about this, about this confession or anything?
6 A No, sir.
7 Q All right. And why was that?
8 A Because state law enforcement was handling that
9 case and it was outside -- it was at my office also.
10 Q Okay. And did he then -- is it your understanding
11 that he then gave a statement or admission of some
12 responsibility to SLED as well?
13 A Yes, sir.
14 Q All right. Now, again, Chief, while you were in
15 the room talking to him, had he been charged with anything
16 at this point?
17 A No, sir.
18 Q All right. And you said Tiffany Sabb, who -- I'll
19 ask somebody else about this in a minute -- but Tiffany Sabb
20 was with him?
21 A Yes, sir.
22 Q Did you use any kind of force, coercion or
23 promises of leniency?
24 A No, sir.
25 Q And were you even questioning him about the case

1 that we're here about today?
2 A Have I questioned him?
3 Q I'm sorry. At that time you were -- that he made
4 these statements, Chief, were you even asking him about the
5 murder in Allendale?
6 A No, sir.
7 Q All right. You were talking to him about a
8 completely different case?
9 A Yes, sir.
10 MR. THORNTON: I don't have any further
11 questions. Chief, if you would, please answer any
12 questions Ms. Smart-Gittings has.
13 CROSS EXAMINATION
14 BY MS. SMART-GITTINGS:
15 Q Chief Williams, do you have access to a recording
16 device?
17 A Yes, ma'am.
18 Q But you didn't have it that day?
19 A No, ma'am.
20 Q Did you initiate contact with SLED prior to your
21 investigation with -- or your interrogation of Mr. Miller?
22 A On this incident?
23 Q Yes.
24 A Yeah.
25 Q So SLED was already in your police department when

1 you began questioning Mr. Miller?

2 A Yes, sir.

3 Q And in total, how many officers were present while

4 Mr. Miller was there? Corporal Singleton?

5 A I think Corporal Singleton --

6 Q Don Williams?

7 A -- Sergeant Don Williams.

8 Q Natasha Merrell, Special Agent?

9 A Right.

10 Q Johnson, special agent?

11 A Yes, ma'am.

12 Q And was Tameaka Legette there, as well, assistant

13 solicitor?

14 A I think Legette came later on.

15 Q But she was there during the time that the

16 confession occurred?

17 A Not to my knowledge. I know she was outside

18 after I finished talking to Mr. Miller.

19 Q Okay. So she was there at the time he was being

20 interrogated?

21 A Uh-huh. (Indicating affirmatively.) Yes, ma'am.

22 Q Now, did you -- you gave us the Miranda form.

23 Did you ask him to read this form to you?

24 A Yes, ma'am, I asked him could he read and write.

25 He said, yes.

CROSS EXAMINATION OF M. WILLIAMS BY SMART-GITTINGS

1 Q Okay. So did he read each of these Miranda
2 warnings to you?
3 A Yes, ma'am.
4 Q And when he read them to you, after each
5 particular right or warning, did you ask him if he
6 understood?
7 A Yes, ma'am.
8 Q And what did he tell you?
9 A He said yes, and he initialed his initials on the
10 line.
11 Q So just for the record, he told you that he
12 understood his right to remain silent?
13 A Yes, ma'am.
14 Q He understood the word "right"?
15 A Yes, ma'am.
16 Q And he told you that he understood anything I say
17 can be used against me in court?
18 A Yes, ma'am.
19 Q He understood that he had a right to have an
20 attorney present at that time?
21 A Yes, ma'am.
22 Q And he didn't ask for an attorney?
23 A No, ma'am.
24 Q He didn't ask any questions about an attorney?
25 A No, ma'am.

1 Q Did he understand when it said, If you cannot
2 afford an attorney, one will be provided to you?
3 A Yes.
4 Q And he understood that if I decide not to talk to
5 an officer without an attorney present, he could stop at any
6 time?
7 A Yes, ma'am.
8 Q Okay. And he didn't have any questions about his
9 rights, whatsoever?
10 A No, ma'am.
11 Q Now, with regard to his parent being present.
12 Is Ms. Sabb his parent?
13 A I don't know.
14 Q Isn't it, in fact, true that Ms. Sabb's son gave a
15 statement against Mr. Miller's interest?
16 A In reference to?
17 Q This case.
18 A The shooting case?
19 Q Both cases, yes.
20 A Not to my knowledge.
21 Q Isn't it true that Johnathan Capers, Ms.Tiffany
22 Sabb's son, said that Robert Miller shot Rick Wright
23 (phonetic)?
24 A Yes, ma'am.
25 Q Isn't it also true that Johnathan Capers, Tiffany

1 Sabb's son, said that Robert Miller killed Willie Johnson?
2 A Not in my knowledge.
3 Q That's -- you're not aware of that?
4 A No, ma'am.
5 MR. THORNTON: Your Honor, I'll stipulate to
6 that. Mr. Capers did give a -- did give a statement
7 that -- basically saying that Mr. Miller had
8 confessed to him that we've turned over to Defense.
9 The Chief would probably not be aware of that. But I
10 just want to make that clear for the record that that
11 is correct.
12 And I believe her other statement is correct,
13 also. That Ms. Sabb -- I believe in his interview that
14 Ms. Smart gave me a transcript of, he said, she's like
15 a mother to me. That is --
16 THE WITNESS: Right.
17 MR. THORNTON: That is absolutely not his legal
18 guardian mother.
19 BY MS. SMART-GITTINGS:
20 Q And you were aware at the time that you were
21 questioning him he was 15-years-old?
22 A Yes, ma'am.
23 Q Did you ask him what grade he had completed in
24 school? Whether or not he had been attending school
25 regularly?

1 A No, ma'am.

2 Q Did you ask him about his grades in school?

3 A No, ma'am.

4 Q All right. Now -- so it's your testimony that you

5 have about five law enforcement officers there, an assistant

6 solicitor there.

7 Did he at any time tell you that he wanted to

8 leave?

9 A No, ma'am.

10 Q And none of this is recorded?

11 A No, ma'am.

12 Q In total, how long was he at the police

13 department?

14 A I'd say probably a couple of hours.

15 Q And during that time, in that couple of hours, was

16 he in that exact same room?

17 A No, ma'am.

18 Q He was moved from one room to another?

19 A After I finished talking with him, I don't know

20 who else talked with him after that.

21 Q Was he free to leave at any time?

22 A Yes.

23 Q He was free to leave? Isn't it true he was

24 arrested and he was not allowed to leave?

25 A No, ma'am. He was still --

CROSS EXAMINATION OF M. WILLIAMS BY SMART-GITTINGS

1 Q He was not --

2 A -- he was still being questioned.

3 Q -- arrested on June 24th at the Fairfax Police

4 Department?

5 A After the questions. After he'd been questioned,

6 he was arrested for the shooting in Fairfax.

7 Q So then he was arrested on June 24th at the

8 Fairfax Police Department?

9 A Right.

10 Q Okay. Now, did you at any time attempt to make

11 contact with Enell Bynum or Robert Miller, his father?

12 A No, ma'am. He always says Ms. Sabb is his

13 mother, he didn't have no other family.

14 Q Okay. So you're the chief of Fairfax?

15 A Uh-huh.

16 Q Tiffany Sabb, does she live in Fairfax or

17 Allendale?

18 A Fairfax.

19 Q And are you -- you know Tiffany Sabb, correct?

20 A I know of Tiffany Sabb.

21 Q But you knew that Robert Miller was not her son?

22 A I don't know who his parents are.

23 Q Okay. Did she tell you that Robert Miller was her

24 son?

25 A No, ma'am.

1 Q Did she tell you that Robert -- that she was a
2 legal guardian of Robert Miller?
3 A No, ma'am.
4 Q Okay. Now, did he tell you that his mother was at
5 home?
6 A No, ma'am.
7 Q So you didn't ask him?
8 A No, ma'am.
9 Q Was Ms. Sabb in the room when you were asking
10 questions of Robert?
11 A No, ma'am.
12 Q So there was no guardian in the room, at all?
13 A No, ma'am.
14 Q How many officers were in the room when you were
15 asking him questions?
16 A No one.
17 Q Just you?
18 A Yes, ma'am.
19 Q So you're the only officer there. Your questions
20 have not been recorded. You didn't write a police report.
21 He didn't write a written statement?
22 A Right.
23 Q So we just have your word for it?
24 A Yes, ma'am.
25 MS. SMART-GITTINGS: I don't have any other

1 questions.
2 THE COURT: Any redirect?
3 MR. THORNTON: Only thing, Judge, just to make
4 sure.
5 REDIRECT EXAMINATION
6 BY MR. THORNTON:
7 Q Chief, I did not ask you this. I know in another
8 statement that you didn't have anything to do with, we're
9 going to talk about, that there's some references to
10 Mr. Miller smoking marijuana.
11 While you were talking to him, did he appear
12 to be under the influence of any alcohol or drugs?
13 A No, sir.
14 Q Did he appear to understand your questions?
15 A Yes, sir.
16 Q And was he able to communicate with you in a way
17 that you understood what he was saying?
18 A Yes, sir.
19 Q And did he seem to understand all of his rights?
20 A Yes, sir.
21 Q Thank you.
22 MR. THORNTON: I have nothing further.
23 THE COURT: Thank you, sir. You may step down.
24 MR. THORNTON: Your Honor, I ask he be excused
25 out of the room so that we can maintain

1 sequestration.

2 Chief, if you'd do me a favor, don't go anywhere,

3 just have a seat out there. And would you tell Richard

4 Johnson to step in?

5 Thereupon,

6 RICHARD JOHNSON

7 was called as a witness, having been first duly sworn,

8 was examined and testified as follows:

9 MR. THORNTON: Your Honor, may we approach,

10 briefly?

11 THE COURT: Yes, sir.

12 (Off-the-record discussion held.)

13 DIRECT EXAMINATION

14 BY MR. THORNTON:

15 Q Agent Johnson, who do you work for, sir?

16 A South Carolina Law Enforcement Division.

17 Q Is it also known as SLED?

18 A Yes, sir.

19 Q All right. And were you working for SLED on or

20 about I believe it's June the 24th, 2014?

21 A Yes, sir.

22 Q And were you participating in an investigation

23 involving the death of Willie Johnson here in Allendale

24 County?

25 A Yes, sir.

1 Q And seated at defense table is the defendant,
2 Robert Lee Miller, III.
3 Did you have -- on the 24th of June, 2014, did
4 you have occasion to speak with Mr. Miller?
5 A Yes, sir.
6 Q And did -- was there a recording of that
7 interview?
8 A Yes, sir, it was.
9 Q And at the request of my office, have you been
10 involved with reviewing recordings and things to make sure
11 that they are accurate?
12 A I have not reviewed it in-depth.
13 Q After the revisions?
14 A Yes.
15 Q All right. Which we will play here in a minute.
16 A Yes.
17 Q Do you know how this recording was done?
18 A Agent Natasha Merrell recorded it on her cell
19 phone.
20 Q All right. So the audio quality, is it fair to
21 say, is not the best in the world?
22 A That's correct.
23 Q All right. And you have listened to it after -- I
24 realize not after the revisions, but you have heard it since
25 then --

1 A Yes.

2 Q -- to make sure it recorded --

3 A Yeah.

4 Q -- is that correct?

5 A Yes.

6 Q All right. Did you do any additional Miranda

7 warnings to the defendant in this case?

8 A No, sir, I don't recall doing any additional.

9 Q All right. Is it your understanding that Chief

10 Williams of the Fairfax Police Department had already done

11 Miranda?

12 A Yes, sir. It's normally -- it's the normal

13 procedure to Mirandise everyone.

14 Q And when you were talking with Robert Lee Miller,

15 did you threaten him in any way?

16 A No, sir.

17 Q All right. And did you make him any promises of

18 leniency?

19 A No, sir.

20 Q And did you go over --

21 MR. THORNTON: A couple of things, Your Honor,

22 so the Court knows, Ms. Smart-Gittings already knows.

23 BY MR. THORNTON:

24 Q In one section of the interview, did you talk

25 about that he -- you knew he smoked weed and you weren't

1 here about weed and you weren't the weed police or something
2 to that effect?
3 A That's correct, yes, sir.
4 Q Did he also provide a lot of information in
5 regards to, or at least discuss, the shooting incident that
6 the Fairfax Police Department had been asking him about?
7 A Yes, sir.
8 Q And those are all things that would not be
9 relevant to this case; is that correct?
10 A That's correct.
11 Q All right. At some point in the interview --
12 first of all, let me ask this, who was -- when you were
13 talking to him, who all was in the room?
14 A Myself, Agent Natasha Merrell. I want to say,
15 I'm thinking, Ms. Tiffany Sabb was in there at some point.
16 Q And at some point is she actually on the
17 recording?
18 A Yes, sir, she'll be on the recording.
19 Q And did Mr. Miller at some point indicate that
20 Ms. Sabb was like a mother to him or something like that?
21 A Yes, sir, he did.
22 Q And did you actually ask Mr. Miller is it -- are
23 you okay going forward without your mom here?
24 A Yes, sir, I did.
25 Q And did he at any time indicate, until you

1 concluded the interview, up until that point, did he
2 indicate that he didn't want to talk to you or that he
3 wanted to wait on his mom or anything like that?
4 A At that time, no, sir, no indication.
5 Q And did he ask for an attorney at any time?
6 A No, sir.
7 Q Did you at the beginning of this, of your talks
8 with him, have him read a certificate?
9 A Yes, sir.
10 Q And I think he did have trouble with one or two
11 words. But other than that, was he able to read the
12 certificate okay?
13 A Yes, sir.
14 Q All right. When you were talking with him, Agent
15 Johnson, I know that redacted portion is an half an hour.
16 So would it be fair to say that y'all talked
17 to him for roughly an hour?
18 A Yes, sir.
19 Q During that time, did he appear to have any
20 problem understanding you? He, being Robert Miller, III.
21 A No problem understanding.
22 Q And did he have any problem communicating to you?
23 A No, sir, no problem.
24 Q And you said that the Natasha Merrell was also in
25 the room.

1 Is that who's seated with me at counsel table?
2 A Yes, sir.
3 Q And does she also work for the South Carolina
4 State Law Enforcement Division?
5 A Yes, sir.
6 Q When Mr. Miller was first talked to, was he -- did
7 he want to talk to you, or did he want to talk to somebody
8 else to start with?
9 A Initially he wanted to talk with someone else.
10 Q All right. And who was that someone else?
11 A Agent Merrell.
12 Q And did he indicate why? Do you recall?
13 A I don't quite recall the exact wording.
14 Q Did Agent Merrell then start the interview?
15 A Yes, sir.
16 Q And did you step out?
17 A I stepped out.
18 Q And all that's recorded; is it not?
19 A Yes, sir.
20 Q At some point, did you re-enter the room where
21 Natasha was talking to him?
22 A Yes, sir, I did.
23 Q And to speed this up. For lack of a better word,
24 did you basically tell him he was full of it, and he was
25 just going to go to jail anyway?

1 A Well, not in those words.

2 Q More or less?

3 A Yes.

4 Q All right. And at some point, then, did he change

5 his story of he didn't know anything, didn't have -- didn't

6 know anything about this and make some admissions as regards

7 to the incident involving the murder of Willie Johnson?

8 A Yes, sir, he did.

9 Q And is all of that recorded on tape?

10 A Yes, sir.

11 Q All right. At any time, Agent Johnson, while

12 you -- or when you were out of the room, were you able to

13 hear what was going on?

14 A No, sir.

15 Q All right. While you were in the room, then, did

16 you threaten or did you see anyone else threaten or coerce

17 Mr. Miller in any way?

18 A No, sir.

19 Q Did you promise him anything, as far as leniency?

20 Any specifics? I realize there's some discussions, which

21 we'll play for the Court in a minute, about, you know,

22 minimizing your time if you're cooperative and things, if

23 you are convicted of anything. But did you give him any

24 specific promises of leniency?

25 A No, sir.

1 Q And did you tell him the amount of time he was --
2 he would get was not up to you?
3 A Absolutely.
4 Q Did he appear to be, he being Robert Lee Miller,
5 III, did he appear to be under the influence of drugs?
6 A No, sir, no appearance.
7 Q All right.
8 MR. THORNTON: Your Honor, at this time what I'd
9 like to do, as long as defense counsel has no
10 argument, rather than play the tape and then bring
11 another SLED agent up I'll stop questioning now.
12 Bring up the other SLED agent and then play the tape
13 when they're done.
14 THE COURT: Any objection to that procedure?
15 MS. SMART-GITTINGS: No objection. But I do
16 want to cross-examine him before he's --
17 MR. THORNTON: Absolutely. I just meant for
18 order purposes if that's okay with the Court.
19 I have no further questions. Please answer any
20 questions that defense counsel has.
21 CROSS EXAMINATION
22 BY MS. SMART-GITTINGS:
23 Q Agent Johnson --
24 A Yes, ma'am.
25 Q -- so you were at the Fairfax Police Department

1 when Chief Williams was interrogating Robert, correct? You
2 and Agent Merrell?
3 A Yes, I was there.
4 Q Okay. And when you initially began your
5 interrogation of Robert, he told you that he didn't want to
6 talk to you, correct?
7 A He didn't want to speak with me, but he would
8 speak with Agent Merrell.
9 Q And you asked him, am I intimidating you, am I
10 intimidating, correct?
11 A It may be. I'm not certain.
12 Q And he said, um, um. And he said he wanted you to
13 leave the room, correct?
14 A And I left, that's correct.
15 Q And you left.
16 So at that point when you asked him if he was
17 intimidating -- if you were intimidating to him, why did you
18 re-enter the room?
19 A At that point Agent Merrell came out and asked me
20 to step back in.
21 Q Okay. But he had told you that you intimidated
22 him, but you still re-entered the interrogation, correct?
23 A At that point Agent Merrell asked me to step back
24 in.
25 Q But you understood that you intimidated Robert

1 Miller; is that correct?
2 A Yes.
3 Q Okay. So when he told you during the line of
4 questioning that he didn't want to talk any more, but you
5 continued to ask questions; is that correct?
6 A I'm not quite sure. I need to listen to that
7 recording and look back at my notes there.
8 Q Prior to confession you don't recall him saying,
9 just stop, please stop, just please stop with me, please,
10 just please stop?
11 A No, let me listen to the recording.
12 Q Okay. And you don't recall telling him, now, come
13 on, boy, let's see what we can do to minimize your sentence?
14 A I know I more than likely have used the word
15 minimize, that, you know, coming clean would be the best
16 thing to do to minimize your time.
17 Q Would you not agree that that is promising
18 leniency?
19 A No, sir, that's not.
20 Q To a 15-year-old child who does not have a parent
21 present, who has been interviewed by Chief Williams, Agent
22 Merrell, you, possibly others, after he had been with you or
23 in police custody at least at this point for about two
24 hours, do you not believe that he meant -- by you telling
25 him that, that he wouldn't believe that you would be lenient

1 on him?

2 A No, I don't believe so.

3 Q Okay. Do you recall telling him that you were

4 going to talk to the solicitor if he cooperated with you?

5 A I don't recall.

6 Q Okay. If you did recall that, would you believe

7 that that would be promising leniency to him?

8 A No.

9 Q If he did -- if you recall him telling you to

10 please stop, would you believe that he wanted you to stop

11 questioning him?

12 A If he tells me to stop, then, yes.

13 Q And so if you continued to question him after he

14 said, please stop, would then you believe that that was

15 coercing him to continue talking?

16 A No, sir. He's not requesting an attorney.

17 Q But he said, please stop and you continued to

18 interrogate him, would that not be coercing him?

19 A No.

20 Q You said he told you you were intimidating, he

21 asked you to stop and you did not stop, you do not believe

22 that that's coercing him to continue?

23 A No, sir -- no, ma'am.

24 MS. SMART-GITTINGS: I don't have any other

25 questions.

1 THE COURT: Any further questions?
2 MR. THORNTON: No, Your Honor. I'll just rely
3 on the tape. I mean, it's -- obviously, without him
4 having a copy of the transcripts, I'll just -- we'll
5 just play the tape and then go from there.
6 THE COURT: Okay.
7 MR. THORNTON: At this time I'd ask that he be
8 able to step down. And Agent Johnson, if you don't
9 mind not leaving, but if you'll just step out since
10 we're still under sequestration.
11 At this time, Judge, I'd call Agent Natasha
12 Merrell to the stand.
13 Thereupon,
14 NATASHA MERRELL
15 was called as a witness, having been first duly sworn,
16 was examined and testified as follows:
17 DIRECT EXAMINATION
18 BY MR. THORNTON:
19 Q Agent Merrell, who do you work for?
20 A South Carolina Law Enforcement Division.
21 Q Is that also known as SLED?
22 A Yes, sir.
23 Q And were you working for SLED on or about June
24 the 24th of 2014?
25 A Yes, sir.

1 Q And are you what is commonly referred to as the
2 case officer in the case that we're here to try today?
3 A Yes, sir.
4 Q As part of your investigation in this matter, were
5 you with Agent Johnson, who just testified, in interviewing
6 Robert Lee Miller, III?
7 A Yes, sir.
8 Q And did you start the interview yourself when
9 Mr. Miller indicated he'd rather talk to you?
10 A Yes, sir.
11 Q And did you talk to him for a while?
12 A Yes, sir.
13 Q And during that talk, is that captured on the
14 recording that's been mentioned?
15 A Yes, sir.
16 Q And I'll ask you this question, because I think I
17 asked the wrong person.
18 At our request, have you gone through some of
19 the audio recordings with our office in trying to get ready
20 for court here today?
21 A Yes, sir.
22 Q And when you listened to those recordings, was
23 that -- were they accurate?
24 A Yes, sir.
25 Q And had they been altered or changed in any way?

1 Let me rephrase that, it's a bad -- that's a really poorly
2 phrased question.
3 Other than the things that we took out to play
4 here today that are directly related to this case, have they
5 been altered or changed in any way?
6 A Besides the phone stopping when it's ringing --
7 Q Right. And so the things that are --
8 A No.
9 Q -- limited -- go ahead and tell the Judge what
10 you're referring to.
11 A During the recordings, if I received an incoming
12 call, it would stop the voice recording. And I didn't
13 discover that until later on during the interview when I
14 looked down and it wasn't recording. So there's sections
15 where the recording was -- has stopped.
16 Q And what I meant to say was, since you turned that
17 over to us, other than us taking sections out that didn't
18 relate to this case, that related to the Fairfax shooting,
19 other than that, we haven't altered it in any way; is that
20 fair to say?
21 A That's correct.
22 Q And I'm sorry, I just didn't ask a very -- very
23 well-phrased question.
24 While you were in the room, Agent Merrell, did
25 you threaten or did you see anyone threaten Robert Miller in

1 any way?

2 A No, sir.

3 Q And you did not Mirandise him again either, did

4 you?

5 A No, sir.

6 Q All right. And is it your understanding that, as

7 you were obviously in here as case officer, that the chief

8 of Fairfax had Mirandised him?

9 A That's correct.

10 Q And I know that this question has been asked once

11 before by -- by Ms. Smart, but did -- at any time did he ask

12 you for an attorney?

13 A No, sir.

14 Q And did he even request that his mother be brought

15 in, or was he comfortable with Ms. Sabb being there?

16 A He was comfortable with Ms. Sabb.

17 Q And at least when this interview started, had

18 Ms. Sabb -- was she present in the room?

19 A Yes, sir.

20 Q At some point during this, does he refer to her

21 as, She's like a mother to me?

22 A Yes, sir.

23 Q But just so we're clear, you at no time attempted

24 to call his real mother or anything, did you, to get her

25 down there?

1 A No, sir.

2 Q All right. And while you were talking with him,

3 how many people were in the room, total? That you were

4 talking to Robert Lee Miller in?

5 A It started out with myself and Agent Johnson and

6 Robert.

7 Q Right.

8 A And then it was myself and Robert.

9 Q And at some point did you leave and go get Agent

10 Johnson and bring him back in?

11 A Yes, sir.

12 Q And was it -- and, again, I know that I'm

13 paraphrasing just for time purposes -- but was it at that

14 time that Agent Johnson basically told him that y'all didn't

15 believe what he was telling you and -- and he was going to

16 go to jail anyway or something to that effect?

17 A Yes, sir.

18 Q And during those conversations, did he then make

19 some incriminating admissions?

20 A Yes, sir.

21 Q And is that recorded on the tape?

22 A Yes, sir.

23 Q And I know Ms. Smart has asked about some things

24 that Agent Johnson, she's indicated he said. And, again,

25 we'll play the tape. But that he indicated -- when we

1 talked, obviously, I think y'all talked something about weed
2 or marijuana, that's been redacted, obviously, out of it
3 because it has nothing to do with this case. And all the
4 Statements he made about things people had said he did or
5 anything about this Fairfax shooting, all of that has been
6 redacted, to your knowledge, as well; is that correct?
7 A That's correct.
8 Q Other than saying things like if you cooperate,
9 we'll talk to the solicitor for you, because that clearly
10 was said, based on your review of everything; is that
11 correct?
12 A That's correct.
13 Q And, you know, you can help minimize your time if
14 you, you know, tell us the truth and you need to tell us
15 what went on and that sort of thing.
16 Those types of things were said, correct?
17 A Yes, sir.
18 Q Other than that, were there any specific promises
19 of leniency? Did you tell him you'd let him go or anything
20 like that?
21 A No, sir.
22 Q In fact, just the opposite. You told him he was
23 going to jail regardless, and he even said that; did he not?
24 A Yes, sir.
25 Q And that's also recorded on the tape; is it not?

1 A Yes, sir.
2 Q So other than those types of things that -- during
3 your interview that you conducted, did anybody threaten him
4 physically or threatened him in any other way?
5 A No, sir.
6 Q Did he appear to be under the influence of any
7 alcohol or drugs?
8 A No, sir.
9 Q Did he seem to understand the questions that you
10 asked him or the discussions you all had?
11 A Yes, sir.
12 Q There's a couple of times on the interview when
13 you're laughing with him a couple of times. I don't know
14 that it's recorded or in this section that we've redacted.
15 I think you were talking about the marijuana.
16 But did he at some point, was he relaxed
17 enough that he laughed with you or you laughed with him?
18 A Yes.
19 Q And did you -- in your discussion with him, did he
20 seem to be able to communicate effectively with you? In
21 other words, I know the audio quality's not great, but did
22 you understand what he was saying and were you able to
23 converse with him?
24 A Yes, I was.
25 Q Okay.

1 MR. THORNTON: Your Honor, I don't have any
2 further questions.
3 I'd ask you answer any questions
4 Ms. Smart-Gittings has, and I'll happy to play the tape
5 for Your Honor.
6 MS. SMART-GITTINGS: May it please the Court?
7 THE COURT: Yes, you may.
8 MS. SMART-GITTINGS: Will you pronounce your
9 last name, please?
10 THE WITNESS: Merrell.
11 MS. SMART-GITTINGS: Merrell, okay.
12 CROSS EXAMINATION
13 BY MS. SMART-GITTINGS:
14 Q Now, Ms. Merrell, you were in there the entire
15 time that the interrogation was going on with SLED, correct?
16 A Yes, ma'am.
17 Q Now, isn't it true that Mr. Johnson asked Ms. Sabb
18 to leave the room? Well, he said, Can we just talk to him,
19 just us?
20 A That's correct.
21 Q And she left?
22 A She stayed for a minute. But, yes, she did end
23 up leaving.
24 Q So she was not -- for the majority of the
25 interrogation she was not present, correct?

1 A That's correct.

2 Q Okay. And were you also there when Mr. Johnson

3 asked Mr. Miller did he intimidate him?

4 A I don't recall him using those exact words.

5 Q Okay. But he wasn't comfortable with Agent

6 Johnson, correct?

7 A That's correct. He said that he would feel more

8 comfortable with me.

9 Q Okay. And during the course of the time that you

10 interviewed, interrogated Robert, he never confessed to

11 anything to you, did he?

12 A No, he did not.

13 Q It wasn't until Agent Johnson came back in the

14 room and talked to him about talking to the solicitor that

15 he confessed?

16 A That's correct.

17 Q I only have one more question.

18 Isn't it also true that Mr. Johnson asked him

19 to read a certificate --

20 A Yes.

21 Q -- and he told him that he wanted to make sure

22 that he understood right from wrong?

23 A Yes.

24 Q But he didn't want to make sure that he understood

25 what he was doing there, correct? He was only concerned

1 with whether or not he knew right and wrong?

2 A That's what he said.

3 Q Okay.

4 MS. SMART-GITTINGS: I don't have any other

5 questions.

6 MR. THORNTON: Nothing further, Judge. If it's

7 okay with the Court, I'll play it.

8 And, Your Honor, I believe that we have already

9 handed -- if I haven't, let me grab it real quick --

10 I've already handed defense counsel this. And this is,

11 again, Judge, the redacted copy which takes out the

12 references that I've made -- I mean, I've given a copy

13 to defense counsel so she can follow along with it.

14 And we have it on the screen that will play which

15 matches the transcript that you have in front of you.

16 I just don't know how -- we're still trying to get this

17 audio right so . . .

18 Okay. We'll go as loud as you can for the Judge.

19 Make sure that he can hear it.

20 (Audio recording playing.)

21 THE COURT: You need to work on that audio.

22 It's not very --

23 MR. THORNTON: Yes, sir, we've got a different

24 speaker, Judge. I think it'll be much clearer. It's

25 just there's a lag form --

1 THE COURT: Yeah, is there any way to track that
2 when you're going through that when they're talking?
3 You remember when you watched cartoons as a kid, like
4 a bouncing ball?
5 MR. THORNTON: Yes, sir. It would be helpful.
6 We've got a better speaker that we'll have, Judge. I
7 apologize.
8 THE COURT: I'm going to read this. I mean, I
9 just have a hard time --
10 MR. THORNTON: Yes, sir.
11 THE COURT: All right. Anything further?
12 MR. THORNTON: Nothing further from the State,
13 Judge. We're ready for argument unless Defense has
14 anything.
15 THE COURT: Ms. Smart?
16 MS. SMART-GITTINGS: May it please the Court?
17 Defense calls Kimberly Jordan.
18 Thereupon,
19 KIMBERLY JORDAN
20 was called as a witness, having been first duly sworn,
21 was examined and testified as follows:
22 DIRECT EXAMINATION
23 BY MS. SMART-GITTINGS:
24 Q Ms. Jordan, would you state your name and spell it
25 for the record?

1 A Kimberly Jordan, J-O-R-D-A-N.
2 Q Where are you employed?
3 A I work -- I'm the juvenile public defender for
4 the 14th Circuit.
5 Q Were you employed as such in June of 2014?
6 A I was.
7 Q And do you know Robert Miller?
8 A I do.
9 Q How do you know Robert Miller?
10 A I began representing him as I took over the rest
11 of the circuit, the counties in the other circuit in -- on
12 around 2014.
13 Q So you were involved in representing him with this
14 case?
15 A Yes.
16 Q Do you have any information regarding Robert's
17 ability to understand his waiver?
18 A Yes.
19 Q Do you -- tell this Court your involvement with
20 Robert to this point.
21 A I began various -- shortly around the time that
22 we scheduled a pre-waiver evaluation. And we had the
23 pre-waiver evaluation with the DJJ psychologist.
24 Q And who was that psychologist?
25 A That Dr. Candice Dunn.

1 Q And how are you familiar with Dr. Dunn?
2 A She was the one conducting the pre-waiver
3 evaluation. We had scheduled for the hearing to take --
4 the evaluation to take place. And because he was in
5 Columbia and I was in -- we were in Beaufort, we scheduled
6 to have a video conference at the same time. So Dr. Dunn
7 and her assistant, and I was -- I was in part of the -- the
8 evaluation via video.
9 Q And what was your role in the evaluation, if any?
10 A Evaluation, at that point I was just taking
11 notes, monitoring what was going on, so that I could
12 further, you know, pursue whatever avenues we needed to
13 take.
14 Q What, if anything, did you observe with regard to
15 Robert?
16 A When we began the pre-waiver evaluation, Dr. Dunn
17 talked to him about the Statements he was going to make
18 during this evaluation process. And she said, told him
19 that, you know, any statement could not be used. Any
20 statements that he made here could not be used against him.
21 She further went on to talk to him right after that, she
22 said, you understand your Miranda right -- what your
23 Miranda rights were. And -- continue?
24 Q Yes.
25 A She went through each of the rights. And she got

1 to the right to remain -- do you know understand what the
2 right to remain silent was. Is it okay if I refer to my
3 notes?
4 Q Yes.
5 A Do you understand the right to remain silent.
6 And he said, I'm not sure what that means. And she had to
7 stop and explain that to him.
8 The next question, he came -- that she stopped
9 at was, you know you have a right to an attorney. Do you
10 understand what that right means, and he said no.
11 THE COURT: I will note your objection. For
12 purposes of this hearing I'm going to allow it.
13 MR. THORNTON: Thank you, Your Honor.
14 THE WITNESS: And he was not sure how an
15 attorney would be helpful to him.
16 BY MS. SMART-GITTINGS:
17 Q Did she have to explain that information to him?
18 A Yes, she did.
19 Q And did -- and after she explained that
20 information to him, did he understand how an attorney would
21 be helpful?
22 A I'm not sure if he did or not at that point. I
23 mean, but it was --
24 Q Did he --
25 A It took her to go through -- you mean -- after

1 she explained it step by step, yes, he did.

2 Q Okay. And did you have any other dealings with

3 Robert with regard to his Miranda warnings?

4 A Those were the only two that I remember.

5 MS. SMART-GITTINGS: I don't have any other

6 questions.

7 THE COURT: Cross-examination?

8 MR. THORNTON: None, Judge.

9 THE COURT: Okay. You may step down.

10 Any further witnesses, Ms. Smart?

11 MS. SMART-GITTINGS: Nothing further, Your

12 Honor.

13 THE COURT: Anything in response?

14 MR. THORNTON: Not from witnesses, Judge. I'm

15 just ready for argument whenever the Court is.

16 THE COURT: All right. I'll be glad to hear

17 from the State.

18 MR. THORNTON: Your Honor, as you know, I

19 certainly don't need to tell you, you've been on the

20 Bench a long time, it's the totality of the

21 circumstance. I would point out that under State

22 versus Pittman, which is 373 South Carolina 527. You

23 don't have to have anybody with a juvenile. There's

24 no requirement that you have anybody with a juvenile.

25 Age is one of the things that you take into

1 consideration. I would point out to the Court, I know
2 Ms. Smart-Gittings will correct me if I get this wrong,
3 Robert Lee Miller would not have even been considered a
4 juvenile I think in about a month. I think this
5 occurred a month before he turned 16. He would have
6 been ours without even having a waiver hearing. So he
7 wouldn't have even been a juvenile.
8 They did have Tiffany Sabb with him, at least, in
9 the room. I know the audio was terrible, Judge, but
10 you saw in the transcript that he was asked -- he made
11 several reference to she's like a mother to me. He was
12 asked several times if he wanted to stop. I would
13 point out a couple of the things, specifically, Judge.
14 One of the things that Ms. Smart-Gittings asked
15 Agent Johnson about was, but, yet, he told you, you
16 know, just please stop, and you kept questioning him.
17 What he says is, this is on page 11 of the transcript,
18 he said, Robert Miller says, I'm still going to be
19 doing the time. I'm still doing the time, man, and
20 just please stop. Just please stop with me. Please,
21 just please. And then Agent Johnson says, Well, like I
22 told you from the beginning. Then Miller says, I said
23 I've been honest with you. And then Johnson says,
24 Listen, it's like I told you from the beginning, it's
25 up to you to talk to us. You can stop talking to us at

1 any time.

2 So I think it was a mischaracterization that he

3 continued to question him. He stops and says, I told

4 you before, if you don't want to talk to us, you don't

5 have to talk to us. What do you want to do. And he

6 says, well, I want to go home. And he says, well,

7 you're not going home, what do you want to do. And her

8 client continues to talk to him. I don't think -- I

9 think it would be a mischaracterization to say that he

10 was, you know, that he had had some unequivocal

11 statement that he wanted to stop. He certainly never

12 asked for an attorney.

13 And, finally, at the end, Judge, he says, I just

14 want to leave here, I'm done talking. Whenever you all

15 are ready to lock me up, I'm ready. Let's go, please.

16 I'm ready. And he says, okay, when you're done talking

17 to us, and they stopped the interview.

18 A couple of other things I would point out. As to

19 Chief Williams' statement, the Statement that he gave

20 Chief Marvin Williams. You know, the test really is,

21 Judge, is his will overborne. Chief Williams is

22 talking to him about the shooting of a juvenile that he

23 never gives any information on. He's doesn't give that

24 up. I think that in and of itself is evidence that his

25 will is not overborne. He does give up his

1 participation in this case. And then he gives it up
2 again at the end when talking with Agent Johnson and
3 Agent Merrell. Under the totality of circumstances,
4 Judge, it's pretty clear his will was not overborne.
5 Again, I apologize for the quality of the audio.
6 We're going to take care of that. It was -- there was
7 not any yelling and screaming. Agent Johnson, which I
8 stipulated to and made sure it was on the record,
9 clearly says things like, you know, you can minimize
10 the time if you cooperate. We'll talk to solicitors.
11 But he also said, I can't tell you how much time you're
12 going to get. I'm not the Judge, I'm not the lawyer.
13 I don't think there's any -- anything even close
14 to an offer of leniency, Judge. He's trying to get him
15 to go ahead and be cooperative. And he said he would
16 tell the solicitor if he was. And there's nothing,
17 there's no case law that I'm aware of, Judge, that
18 makes him any promise of leniency. He clearly tells
19 him, I can't tell you how much time you're going to
20 get. I'm not the Judge.
21 Based on everything, Judge, he's got a Miranda.
22 He was given a Miranda. Chief Williams testified to
23 it. There's a Miranda form that's been made Court's
24 Exhibit 1. I think under the totality of the
25 circumstances, Judge, the State has met its burden at

1 least to get it in front of the jury, and it,
2 ultimately, will be up to them.
3 Thank you, Your Honor.
4 THE COURT: Thank you.
5 Ms. Smart?
6 MS. SMART-GITTINGS: May it please the Court,
7 Your Honor.
8 The Defense is going to rely on J.D. versus North
9 Carolina. And in that case the Court talks about
10 whether or not he was free to leave. And it is
11 clear --
12 THE COURT: What about he was reeled in?
13 MS. SMART-GITTINGS: He was free to leave.
14 THE COURT: Oh.
15 MS. SMART-GITTINGS: And looking at the totality
16 of the circumstances it is clear that he was not free
17 to leave. They told him he was not free to leave.
18 And the Court also has to take into consideration
19 the fact that Ms. Sabb was asked to leave the room, and
20 she did leave the room. Agent Johnson asked her to
21 leave. So at that point, Robert, a 15-year-old, and
22 although he's big now, at the time he was 15 and he was
23 much smaller. He was in the room by himself with at
24 least three police officers. None of whom he knew.
25 And that's clear from the audio. He said that he

1 didn't recognize any of the police officers. He didn't
2 know them.
3 From the onset he said he only wanted to talk to
4 one agent, and that he wanted to speak to Agent
5 Merrell. Agent Johnson clearly said, you find me
6 intimidating, and he said, yes. He should not have
7 entered the room once Robert told him that he thought
8 he was intimidating. That's the question that he
9 elicited, and Robert responded to that affirmatively.
10 At the end of the tape it's clear that he is
11 crying. Robert is crying at the end of the tape. So I
12 believe that not only was he intimidated by Agent
13 Johnson, he was coerced. He told him he never was
14 concerned about whether or not Robert understood his
15 Miranda, he was concerned whether or not Robert knew
16 right from wrong.
17 That indicates that he has some issue with
18 Robert's level of intelligence. Because he wouldn't
19 have queried as to whether or not he knew right from
20 wrong. And having him read a certificate of
21 appreciation has nothing to do with whether or not he
22 knew right or wrong. It had nothing to do with whether
23 or not he knowingly, intelligently and voluntarily
24 waived his Miranda rights that he didn't even reiterate
25 to him.

1 What was redacted from the tape is the initial
2 interrogation by Fairfax Police Department, had
3 something to do with a shooting that occurred. So
4 Robert thought he was there for a shooting when, in
5 fact, SLED was there to investigate a murder that
6 occurred in Allendale.
7 He told -- everything he told everybody was this
8 is what I heard. First I heard that SLED was going to
9 kick in the door. SLED was going to have guns. SLED
10 was going to kill me. I'm going to go to jail. So a
11 15-year-old who is in -- who is being interrogated by
12 at least five police officers, an assistant solicitor
13 is present, his mother isn't present, the person who is
14 like a mother was asked to leave the room, and he's in
15 the room by himself.
16 Investigator -- and I don't know whether it's on
17 the tape, but at some point Agent Williams said that he
18 actually goes to sleep. He lays down on the floor and
19 he goes to sleep. He was there from at least, at
20 least, 4:00 in the afternoon. SLED indicates that
21 their interrogation ends at someplace around 7:00.
22 So now you have a 15-year-old who was at the
23 hospital with his friend who had been shot. He's
24 brought to the Fairfax Police Department. He's there.
25 He doesn't have a parent. And all of these people in

1 the law enforcement are there. And he doesn't have one
2 person, one adult, who could reassure him. No one is
3 concerned about whether or not he understood what was
4 going on, whether or not he was coerced in any way.
5 He tells -- Agent Johnson says, oh, well, stuff
6 happens, you know, stuff happens. And he assures him.
7 As a matter of fact he says, well, that's right.
8 Whenever Robert was saying what Agent Johnson wanted to
9 hear, he said, that's right, yes, that's right. And
10 Robert says, what do I have to do, I just want to get
11 this done. And he was like, well, tell me the truth.
12 And Robert -- when Robert starts telling him something
13 that he doesn't want to hear, he says, no, no, no, man,
14 no, no, no. And so Robert changes his story. And
15 whenever he's in agreement with it, he says, yes, yes,
16 yes. He confirms whatever it is that Robert is saying.
17 In fact, on Page 10 he says, no, no, no, that's
18 the wrong answer. That's the wrong answer. And Robert
19 says, no, and he says something back. And then Johnson
20 says, look at me, look at me, stuff happens. You said
21 that you didn't want to be there, wanted to go home.
22 And then he goes on to tell him what he said. And then
23 after that he says, now, let's minimize it.
24 So what he's telling him is, you're not telling me
25 what I want to hear. When you tell me what I want to

1 hear, I can help you. He's 15. He doesn't understand.
2 An average adult probably wouldn't understand that the
3 people who Robert has in his mind are coming to kick in
4 his door and shoot him, kill him. How can he
5 understand as a 15-year-old what this agent is telling
6 him?
7 He can understand what he is being affirmed when
8 Agent Johnson is saying, yes, yes, yes. But he
9 understands when he's saying no, no, no, that he has to
10 change. And he tells him, he goes, well, your prints
11 are going to be all over stuff. I asked you did you
12 know what CSI is, your prints are going to be on the
13 wallet, your prints are going to be on the safe. And
14 then Robert says something, and he says, yeah, thank
15 you. So he's affirming what he wants Robert to say.
16 At this point I believe his -- not only was he
17 coerced, he was intimidated. I don't believe that this
18 confession was willing, that it was freely given, that
19 it was voluntarily given, that it was knowingly given.
20 I believe with that in mind, that taking that totality
21 of his circumstances, that the Court should suppress
22 this confession. I think that -- and I would ask the
23 Court, because it is -- the transcript is 12 pages, I
24 would ask that the Court at least take it under review
25 tonight and give us a ruling in the morning.

1 But particularly I think the Court should focus on
2 the fact that, number one, they asked Ms. Sabb to leave
3 the room. So they were not concerned about him having
4 someone there who could help him, who could advise him,
5 who could reassure him. They asked her to leave. And
6 that means that he was there without an adult, without
7 anyone that he could trust, without anyone that he
8 could feel safe with. And, particularly, pay attention
9 to the end of the tape when it's apparent that he's
10 crying. And, again, J.D. versus North Carolina of
11 2011, Supreme Court case.
12 THE COURT: All right. Thank you, ma'am. I
13 will take you up on your offer to let me look at the
14 transcript, because I have not read through it
15 thoroughly. I'll be quite frank with you, I do think
16 in the totality of the circumstances it probably errs
17 on the side of the State just because of the fact
18 it's not an error, that is a way of putting it. But
19 let me read it and I'll give you my decision first
20 thing in the morning.
21 We've got to have something better about that
22 audio.
23 MR. THORNTON: Yes, sir. We'll take care of it,
24 Your Honor.
25 THE COURT: All right, guys. Anything else from

1 the State?

2 MR. THORNTON: No, sir.

3 THE COURT: From the Defense?

4 MS. SMART-GITTINGS: Nothing, Your Honor.

5 THE COURT: All right. We'll see you all in the

6 morning at 9:30.

7 MR. THORNTON: Yes, sir.

8 THE COURT: Thank you.

9 (Trial concluded for the day.)

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1 7-12-2016 PROCEEDINGS

2 THE COURT: All right. Before we get started,
3 we have two matters. My law clerk tells me, I don't
4 know if he told her, but, apparently, one of the
5 jurors says that they're very good friends with Chief
6 Marvin Williams. Is that the one?

7 MR. THORNTON: Judge, Ms. Smart gave me that
8 information. She next texted me about it last night.
9 Apparently, she got word that one of the jurors is
10 very good friends with Chief Williams. It was the
11 witness that you did announce yesterday in Court. I
12 think she called Chief Williams and got that
13 confirmed that they are socially very good friends.
14 And she brought that to my attention, and I told her,
15 obviously, we would bring that to Your Honor's
16 attention.

17 THE COURT: Which juror is it?

18 MS. SMART-GITTINGS: I don't have his juror
19 number, but his name is Ellis Mew, 148.

20 THE COURT: All right. Also, we have another
21 juror, I think it's one of our alternates, who says
22 they have a traffic hearing today in the Branchville.
23 So I'm going to try to call and talk to whoever that
24 recorder is down there. So if you all could help me
25 find out who that may be -- let me see that ticket.

1 Quattlebaum? Do you all know a Quattlebaum in
2 Branchville's court, at all?
3 MR. THORNTON: I don't, Judge. But I can put
4 some people on it and try to figure it out and get
5 you a number.
6 THE COURT: You think you could do that for me?
7 MR. THORNTON: Yes, sir.
8 THE COURT: All right. I'll try to call.
9 MR. THORNTON: I'll get somebody to work on it
10 right now.
11 THE COURT: Okay. My clerk may have that up and
12 check and see.
13 MR. THORNTON: Now, Your Honor, do you need the
14 town of Branchville clerk's number, because I think
15 that we have that right now. Write it on a sheet of
16 paper. I'll get it to you when I have it.
17 THE COURT: Okay.
18 Okay. Now, let me tell you what my suggestion is,
19 and I'll be glad to hear from both sides and take any
20 other suggestions you may come up with, but, number
21 one, what I normally do when this comes up, and it's
22 not terribly unusual, unfortunately, but is to ask that
23 juror to come back to my chambers in the presence of
24 counsel for both sides, to then question that juror as
25 to whether or not their friendship with this particular

1 introduce through a former SLED agent who's now with
2 the Tennessee Bureau of Investigation and I will have
3 her testify afterwards.
4 THE COURT: Okay. Very good.
5 Are you in agreement with that, Ms. Smart?
6 MS. SMART-GITTINGS: I am, Your Honor.
7 THE COURT: All right. As to the Jackson-Denno,
8 I read through -- I was handed a case from defense
9 counsel last night. I did check that out. I don't
10 disagree with what they said. My understanding of
11 the case is, essentially, that you take age as a
12 factor in determining whether or not there is a
13 custodial interrogation. It's just one of the
14 factors you look at. But I don't think there's any
15 real issue in this case that there was custodial
16 interrogation going on.
17 But we had Miranda given. And so, you know,
18 that's what triggers the Miranda. There is the
19 custodial nature of the interrogation, especially given
20 the defendant's young -- his age, given at the time,
21 was 15 going on 16. I don't think any objective
22 person, especially somebody that age, felt like they
23 were free to leave in a room full of officers. But
24 there was Miranda given.
25 The next question is the voluntariness of the

1 statement. I have to tell you, I read this transcript
2 and it's difficult to read. I read it at least six
3 times, and it's hard for me to follow. Part of it is
4 vernacular that you use in low state that I'm not used
5 to. I should be, my mother's from Beaufort, my dad's
6 from Charleston, you'd think I'd know it.
7 But some of it's hard, and quite frankly, I think
8 some of it has to do with the education of the
9 defendant. I think that he is probably, with all due
10 respect, somewhat limited on an educational basis. But
11 on the other hand, I think he's pretty street smart,
12 because the way he set this thing up it appeared he was
13 trying to set up an alibi for himself. He wasn't
14 present. And I'm going to go through that a little
15 more.
16 The first factor that we look at, and this is
17 under State versus Miller, that's 652SE2nd444, from the
18 standpoint of the defendant whether there was police
19 coercion. Any time you have interrogation by law
20 enforcement, there's a certain coerciveness to the
21 questions. That's just the nature of the beast. Was
22 there undue coercion, I do not believe so.
23 I believe from the totality of the circumstances,
24 from a Jackson-Denno standpoint, that there was no
25 coercive nature of this interview that would lead to a

1 suppression. The length was entirely reasonable in the
2 circumstance. The place was fine. Although there was
3 multiple locations within the same place, apparently.
4 The maturity level of the Defendant, and the
5 education level of the defendant is a little bit
6 concerning to me, he's only in the eighth grade. But
7 reading through what he was saying, while he may not
8 have obtained or is capable of obtaining a higher level
9 of understanding based from an intellectual standpoint,
10 I thought that he was pretty street-wise in the way he
11 responded to the questions and set it up. There is no
12 indication the Defendant was not in good physical
13 condition at the time. No indication, whatsoever, one
14 side or the other about the mental health, so I'm not
15 considering that.
16 I don't know of his experience. I understand from
17 the State there's no record for this gentleman; is that
18 correct?
19 MR. THORNTON: Your Honor, I believe he had one
20 juvenile conviction.
21 THE COURT: Okay.
22 MR. THORNTON: But he has nothing -- nothing
23 other than that, Judge.
24 THE COURT: Well, you know, from a criminal
25 record standpoint, then, it's fairly limited. But I

1 did notice multiple times when he first got in to the
2 interview, he knew some of the officers there. When
3 they came to -- they questioned him about the
4 whereabouts of Gabriel or Gabrel (phonetic) -- how do
5 I pronounce that, Ms. Smart?
6 MS. SMART-GITTINGS: I think it's Gabriel.
7 THE COURT: Gabriel.
8 -- he knew one of the officers there. Apparently,
9 he didn't know the Caucasian officer, but he knew one
10 of the officers there. So it appeared to me that he
11 had had some experience with law enforcement by the
12 fact that they knew him and he knew them. And that may
13 just be from small town, not being any bigger than it
14 is, same as it is in Anderson.
15 There were no police misrepresentations. There
16 were some statements made that you need to help
17 yourself, but I -- there was no misrepresentations or
18 promises of leniency or threats of violence toward this
19 gentleman. They told him, in fact, you're going to
20 jail.
21 And this is all from the totality. You can take
22 certain statements in isolation and give them what
23 meaning that you want to prescribe to them. But from
24 the big picture there was no misrepresentations or
25 promises that you're going to get this, you're going to

1 get that.

2 In fact, Officer Johnson, I believe, said, look,

3 you can just say, for example, 30 years, I'm not the

4 Judge. I'm not the prosecutor. I can't tell you this,

5 but we will go to them and tell them that you helped us

6 out, which is not problematic as far as I'm concerned.

7 The isolation is minor, from his parents. We had

8 someone who was not a natural parent there, but

9 somebody who he claimed as being, you know, almost like

10 his mother. She was there. He was okay. Even after

11 she -- Ms. Sabb, I believe is her name, is asked to

12 leave, the officers then asked him if he's ready -- if

13 he's willing to go forward, and he says, yeah, I'm fine

14 to talk with them. But then I'm going to only talk to

15 Ms. Merrell, I don't want to talk to Mr. Johnson.

16 And so I'm finding from a totality of the

17 circumstances that the admission or confession, if you

18 will, is admissible and it'll be up to the jury to

19 decide further based on whether it meets the burdens of

20 beyond reasonable proof of being voluntary.

21 That being said, I note your objection, Ms. Smart,

22 to my ruling.

23 MS. SMART-GITTINGS: Thank you, Your Honor.

24 THE COURT: Okay. Anything further before we

25 get started?

1 MR. THORNTON: Your Honor, just so the record's
2 clear. Is Your Honor's ruling as to the statement
3 given that's recorded as well as the statement given
4 to Chief Marvin Williams, who testified yesterday?
5 THE COURT: My understanding -- yes. My
6 understanding, those all took place
7 contemporaneously. They are all there. And that's
8 when -- because the -- Williams only gave him
9 Miranda. And if there was a substantial break, and
10 then they came in from SLED and started questioning
11 him without re-Mirandising him, then I would have a
12 problem with it.
13 MR. THORNTON: Yes, it was all contemporaneous.
14 THE COURT: That's what I understood.
15 MR. THORNTON: I believe Ms. Smart even has
16 said, I think, between four and seven. So it was the
17 same day, within a couple of hours of each other.
18 THE COURT: All right. That being said, State
19 ready to the proceed?
20 MR. THORNTON: State's ready, Your Honor.
21 THE COURT: Defense ready to proceed?
22 MS. SMART-GITTINGS: Defense is ready, Your
23 Honor.
24 THE COURT: Very good. All right.
25 Would you bring the jury in, please?

1 (The jury enters the courtroom at 9:00 a.m.)

2 THE COURT: All right. Good morning ladies and

3 gentlemen: Before we get started, I will ask our

4 clerk of court to swear you in, please.

5 (Jury sworn by the clerk.)

6 THE COURT: Thank you, Madam Clerk.

7 All right. I'll ask you this every morning.

8 Before we get started, during the break, has anyone

9 spoken with anyone about this case, read, saw or

10 listened to anything about this case? If so, will you

11 raise your hand?

12 (No response.)

13 Let the record reflect that no one responded in

14 the positive. And thank you, I'm going to ask you that

15 every morning.

16 All right. Ladies and gentlemen, as you were

17 advised yesterday, this is case of the State of South

18 Carolina versus Robert Miller, III who has been

19 indicted for murder.

20 I don't know if any of you have ever been involved

21 in a trial before, whether you ever watched one,

22 participated in one, testified in one or been a

23 litigant. I would imagine, though, that each and every

24 one of you have watched on TV or at the movies with

25 something that purports to show a trial. Let me just

1 quickly dispel you, what you're about to embark on is
2 nothing like you've seen at the movies, it's nothing
3 like you've seen on TVs.
4 Trials are very slow. They're very deliberate,
5 and they're very methodical. They're certainly not
6 entertainment, but they are a fundamental part of our
7 democracy. They are a search of the truth to try to
8 make sure that justice is done.
9 Now, these attorneys who represent the State and
10 Defendant in this matter, when they were sworn in as
11 attorneys, they took an oath to zealously represent
12 their client to the best of their abilities. You can
13 expect no less of them during this trial. But they're
14 also officers of this court. What that means is you
15 can expect them to be professional, to be competent and
16 courteous to one another, to witnesses and to this
17 Court throughout these proceedings.
18 Likewise, you just took an oath that you would try
19 to reach a fair and a just verdict in this case. What
20 that means is that State, the Defendant and the Court
21 and their respective attorneys have a right to expect
22 of you that you will be fair and impartial and that you
23 abide by the rules of the Court as I give it to you and
24 you will perform your duties in a diligent manner.
25 Now, what I'm telling you now is not the law that

1 MS. SMART-GITTINGS: I am, Your Honor.
2 THE COURT: I thought you would.
3 (The jury returns to courtroom.)
4 THE COURT: State ready to proceed with opening
5 statements?
6 MR. THORNTON: State's ready, Your Honor.
7 THE COURT: Does Defense intend to have opening
8 statements?
9 MS. SMART-GITTINGS: Yes, Your Honor.
10 THE COURT: Mr. Thornton?
11 MR. THORNTON: Thank you, Your Honor, may it
12 please the Court?
13 THE COURT: Yes, sir.
14 OPENING STATEMENT BY MR. THORNTON
15 MR. THORNTON: Ms. Smart.
16 Good morning. June the 19th, 2014, 86-year-old
17 Willie Johnson has not been heard from in a couple of
18 days. You're going to hear from some people that went
19 to church with him and were checking on him, hadn't
20 been able to reach him. But on that day, June the
21 19th, it's a Thursday, 2014, one of his friends found
22 him, Willie Johnson, 86-years-old. Found him in his
23 home along Pickrum Street, it's [redacted], about a
24 mile from here. Rode by there last night.
25 And his friends found him face down in his own

1 home with his hands tied behind his back and a plastic
2 bag wrapped around his head. They knew Mr. Willie
3 Johnson had been murdered. He'd been beaten. He had
4 been bound with his hands behind his back. And he had
5 a plastic bag wrapped around his head. That's how
6 Willie Johnson was made to leave this world.
7 Robert Lee Miller, III is one of three people
8 charged in this case. And for reasons that are not
9 relevant here, they are being tried individually. But
10 this case is about Willie Johnson and what happened to
11 him. And you'll hear different testimony and evidence
12 about when he was last heard from, when people were
13 trying to get ahold of him, and he was found on the
14 19th. So between the afternoon of the 17th of
15 June 2014 and when he was found about noon, almost one,
16 on the 19th of June 2014.
17 But that's what this case is about. It's about
18 Willie Johnson. It's about Robert Miller, III. It's
19 about Mr. Johnson's murder. That's what this case is
20 about.
21 You are very likely to hear myself and Ms. Smart
22 and the Judge make -- say very similar things to you.
23 And one of the things that we'll probably all say or at
24 some point you'll hear us say is nothing the lawyers
25 tell you is evidence. The only evidence in this case

1 is something that comes from the witness stand or
2 whatever evidence you see that the Judge admits into
3 evidence.
4 And all anybody can ask you is to reserve your
5 judgment until every single witness has testified, and
6 until you've seen every exhibit and you've been given
7 all the pieces to look at as a complete picture.
8 That's all any of us can ask of you before you render
9 your decision.
10 One of the things that's always concerning to a
11 lawyer in a trial like this, it's not like it is on
12 television. I think that you heard the Judge tell you
13 that. It's not overly exciting. It's certainly not
14 for entertainment. Sometimes it moves a little slower
15 than we would like it to. And, frankly, this trial is
16 going to be a lot shorter than probably what you're
17 used to. Now, you've heard of those cases in
18 California that go on for six months and all of that
19 sort of thing, this case will be resolved this week.
20 But just because it doesn't take a long time,
21 please don't misunderstand that as it's not important.
22 Because it is important. Willie Johnson was murdered.
23 And he was left tied up with a bag over his head in his
24 own home at 86-years-old. That's what this case is
25 about and that's why it's important.

OPENING STATEMENT BY THE STATE

1 And one of the three men that did it sits at that
2 table over there (indicating). And when all of the
3 evidence has been put before you, we will come back and
4 we will argue at that time and I'll ask of you to find
5 him guilty. Thank you.
6 THE COURT: Ms. Smart?
7 MS. SMART-GITTINGS: May it please the Court,
8 Your Honor?
9 THE COURT: Yes, ma'am.
10 OPENING STATEMENT BY MS. SMART-GITTINGS
11 MS. SMART-GITTINGS: Mr. Thornton.
12 Good morning, ladies and gentlemen. I agree
13 wholeheartedly with Mr. Thornton. Although this case
14 is going to be short, it is very, very important. And
15 he is absolutely right, this case is about Mr. Willie
16 Johnson. But it's also about Robert Miller.
17 It's about a 15-year-old young man who lived in
18 Allendale, lived in Allendale his entire life. His
19 whole family is here in Allendale. But he's 15, and
20 this is not family court. Because in family court,
21 it's private. There's only a judge and the particular
22 juveniles who are charged with offenses.
23 But you're sitting in judgment of a 15-year-old.
24 He's 17 at this point, but at the time that he was
25 arrested he was 15. He was asked to do things that

1 adults are asked to do. And what's important is that
2 you keep in mind that at the time this occurred he
3 was 15.
4 I don't even remember when I was 15. But what I
5 do know is that when I was 15, I wasn't as savvy as I
6 am now. I didn't know the things that I know now,
7 because I was a child. And I need you to consider and
8 think that he's a child.
9 Well, why is that important. This is why it's
10 important. Because you're going to hear evidence,
11 Allendale -- our law enforcement officers, generally,
12 error on the side of caution if they call SLED in,
13 because SLED is the more specialized agency for the
14 state. They are trained to do more crime scene
15 investigation. They have more training than our law
16 enforcement officers in interrogation. They have
17 forensic scientists. So they have more resources. And
18 so what our police department does, is they -- whenever
19 they have a major case, and I appreciate that they
20 understand their limitations, but they call SLED in.
21 And they have SLED come in and they have SLED do the
22 investigation.
23 So you have a 15-year-old child who is bombarded
24 by five officers, and he's asked questions over and
25 over and over again. And what does a 15-year-old do?

1 What does a 15-year-old do when he's been interrogated
2 for hours, hours on end, without his mother, without
3 his father, without any adult that he knows and he
4 cares about. So just think, what do we expect him to
5 do. Reasonable people.
6 I know that you watched the jury qualification and
7 you probably thought this is not the Price is Right.
8 Why are they making me sit down. But the price is
9 right. We believe, the State and I believe, that you
10 are the most reasonable people to sit in judgment of
11 this. The fact that you're going to hear what we
12 believe that your experiences are what's going to be
13 best for both the State and Defendant. We believe that
14 your experiences will help you judge the credibility of
15 the witnesses, because that's why you were chosen.
16 Because you were the right ones for this trial at this
17 time.
18 We believe, we have faith, that you're going to
19 listen to the evidence. That you're going to judge the
20 integrity of the witnesses. You're going to use your
21 life experiences to say, well, did it really happen
22 like that, or do they have the wrong guy. We don't
23 doubt -- we don't doubt the circumstances that we're
24 hearing. We don't doubt, it's not called into
25 question, that Mr. Johnson was killed. But Robert

1 Miller said he didn't do it. That's why we are here.
2 Because if he admitted that he did it, we wouldn't be
3 here. But he says he didn't do it.
4 So the State's going to bring you witnesses that
5 are going to say he confessed. We're just going to go
6 ahead and put that out there. The State recorded an
7 interrogation and he confessed. But I want you to
8 listen very closely to the way in which the confession
9 was given, and ask yourselves would I have confessed.
10 Or if you have children and your children were in that
11 situation, would they have confessed. And that is how
12 you determine the credibility of that confession.
13 You determine whether or not he confessed because
14 he really did it or if he confessed because he wanted
15 to go home or because he was tired or because he was
16 intimidated by law enforcement and that is what he felt
17 like he should do.
18 Because he didn't have the advice of a lawyer. He
19 didn't have the advice of a parent to help him make
20 that critical decision at that important time in his
21 life. He didn't have that. The police didn't call his
22 mother. They didn't call his father. They just
23 decided to interrogate him for hours. And that is what
24 you need to be looking for and judging, those facts.
25 We don't -- we will never call into question the

1 integrity of our law enforcement. But what I will call
2 into question is the tactics that our law enforcement
3 used in order to get the interrogation -- to get
4 confession. So that's what we're asking, never will we
5 say that our law enforcement is distrustful or they
6 can't be trusted. But are their tactics sufficient for
7 juveniles, for a 15-year-old child.
8 And if you believe that Robert was coerced or
9 intimidated or just felt like he had to give in, then
10 you can't believe his confession. And if you can't
11 believe his confession, then you have to return a
12 verdict of not guilty. If there's any other evidence
13 that the State is going to present that is
14 questionable, then you have to judge it that way as
15 well.
16 But we submit that after you've heard all the
17 testimony, after you have seen all the pictures, we
18 believe that you're going to find Robert not guilty.
19 THE COURT: All right. Mr. Thornton, will you
20 call your first witness, please.
21 MR. THORNTON: Chastity Robinson.
22 THE COURT: Let's stop, do we have everyone
23 sequestered?
24 MR. THORNTON: We do, Your Honor. They're in a
25 room very close, so it shouldn't take long to -- the

1 sheriff's department has graciously agreed to help us
2 get them in.
3 THE COURT: Thank you, sir.
4 Thereupon,
5 CHASTITY ROBINSON
6 was called as a witness, having been first duly sworn,
7 was examined and testified as follows:
8 DIRECT EXAMINATION
9 BY MR. THORNTON:
10 Q Ma'am, what is your name?
11 A My name is Chastity Robinson.
12 Q And who do you work for?
13 A I am currently employed by the Allendale County
14 Magistrate's Office. I formerly used to work as an E9-1-1
15 dispatcher for Allendale County Communications.
16 Q All right. So in June of 2014, specifically
17 June 19th of 2014, did you work for the Allendale -- for
18 Allendale County as a dispatcher?
19 A Yes, sir, I did.
20 Q And I'm sure the jury probably already knows this,
21 but could you explain what a dispatcher is?
22 A Well, the main job of the dispatcher is to take
23 any type of emergency call whether it's for police, fire,
24 or EMS, and to take all the pertinent information that the
25 caller is giving you, could be a address, telephone number,

1 caller name, whatever the situation is, and to get the
2 appropriate personnel there.
3 Q Is it fair to say that if someone called 9-1-1 at
4 that time in Allendale, you were one of the people they
5 might talk to?
6 A Yes.
7 Q Ma'am, I'm going to hand you what's been marked
8 for identification as State's Exhibit 1, and that's a disk
9 I've handed you.
10 Can you identify that disk?
11 A Yes, sir, I can. This is the 9-1-1 call recorded
12 with the transcription, I initialed it and dated it, about
13 the call.
14 Q And is that call relating to the case we're here
15 about today, Mr. Willie Johnson?
16 A Yes, sir, it is.
17 Q And is that a call that you took?
18 A Yes, sir, it is.
19 Q And is it an accurate reflection, both the
20 transcript and the audio?
21 A Yes, sir, it is.
22 MR. THORNTON: Your Honor, I'd ask at this time
23 to move State's 1 into evidence.
24 THE COURT: Any objection?
25 MS. SMART-GITTINGS: Without objection.

1 THE COURT: Admitted.

2 MR. THORNTON: Your Honor, I've got a copy of

3 this, so we don't have to wait on the disk. With the

4 Court's permission, go ahead and publish to the jury?

5 THE COURT: Yes, sir.

6 MR. THORNTON: Thank you, Your Honor.

7 *(Whereupon, State's Exhibit No(s). 1 marked for*

8 *identification and received in evidence.)*

9 (Playing audio CD and showing transcription of

10 same on television screen.)

11 BY MR. THORNTON:

12 Q Now, after receiving a call like that, is part of

13 your job to dispatch law enforcement, EMS and, if necessary,

14 fire out?

15 A Yes, sir.

16 Q And did you dispatch some officers and EMS out

17 after that?

18 A Yes, sir, I did. I dispatched the police

19 department. They were actually coming up on scene as I was

20 dispatching them.

21 MR. THORNTON: Thank you, very much, ma'am.

22 THE WITNESS: You're welcome.

23 MR. THORNTON: Please answer any questions

24 Ms. Smart has for you.

25 THE COURT: Cross-examination?

1 CROSS-EXAMINATION

2 BY MS. SMART-GITTINGS:

3 Q Good morning, Ms. Robinson.

4 A Good morning.

5 Q You were familiar with that residence at Pickrum

6 Street?

7 A No, ma'am, I wasn't familiar with the address.

8 Q Okay. So you don't know whether or not you had

9 received calls about that address before?

10 A No, ma'am.

11 MS. SMART-GITTINGS: I don't have nothing

12 further.

13 THE COURT: Redirect?

14 MR. THORNTON: None, Your Honor.

15 THE COURT: May this witness be excused?

16 MR. THORNTON: We would ask that she be allowed

17 to go back to work, Judge.

18 MS. SMART-GITTINGS: No objection.

19 THE COURT: Thank you, ma'am. You're excused.

20 THE WITNESS: Thank you.

21 THE COURT: Please call your next witness.

22 MR. THORNTON: Yes, sir, Investigator Manor.

23 Thereupon,

24 QUANTIQUE MANOR

25 was called as a witness, having been first duly sworn,

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. THORNTON:

4 Q Mr. Manor, are you currently a detective?

5 A Yes, sir, I am.

6 Q All right. And So, Detective Manor, who do you

7 work for, sir?

8 A Allendale Police Department.

9 Q And did you work for the Allendale Police

10 Department on or about June the 19th of 2014?

11 A Yes, sir, I did.

12 Q And did you respond out to any particular location

13 about 1:00 or late -- early afternoon, say 12:50/1:00, on

14 June 19th, 2014?

15 A Yes, sir, I did.

16 Q Where did you go, sir?

17 A [redacted].

18 Q And who lived at that address at that time?

19 A Mr. Willie Johnson.

20 Q And when you arrived, sir, was there a -- was

21 there already somebody on scene?

22 A Yes, sir. There was a male in the yard, he was

23 waving towards us upon arrival.

24 Q And were you able -- at some point in going up to

25 the house, did you talk to that gentleman?

1 A Yes, sir, I did.
2 Q And do you remember what his name was?
3 A Yes, sir, his name was actually Mr. Robert
4 Miller.
5 Q All right. Now, any relation to the Robert Miller
6 that's on trial?
7 A No, sir, none.
8 Q And without saying specifically anything that he
9 told you, did -- was it your understanding he had been in
10 the house?
11 A Yes, sir.
12 Q And did you at some point, Detective, go into
13 [redacted]?
14 A Yes, sir, I did.
15 Q Let me ask you a quick question. First, let me
16 hand you what's been marked as State's Exhibit No. 2, and
17 ask you if you can identify that photograph for me?
18 A Yes, sir, this is [redacted]
19 Q Also, if I could ask you to look at State's
20 Exhibit No. 3?
21 A That's the side of the residence.
22 Q All right. Is that the same [redacted]
23 A Yes, that's correct.
24 Q Now, are these photos that you've seen, which
25 you've identified as State's 2 and 3 for identification, are

1 they accurate photographs of how [redacted] appeared
2 that day?
3 A Yes, sir, they are.
4 Q And, again, whose residence was that at that time?
5 A Mr. Willie Johnson.
6 Q And have these photographs appeared to have been
7 altered or changed in any way?
8 A No, sir.
9 MR. THORNTON: Your Honor, at this time the
10 State would ask to move in State's 2 and 3?
11 THE COURT: Any objection?
12 MS. SMART-GITTINGS: No objection, Your Honor.
13 THE COURT: Admitted.
14 *(Whereupon, State's Exhibit No(s). 2-3 marked for*
15 *identification and received in evidence.)*
16 BY MR. THORNTON:
17 Q All right. Is this the front of Mr. Willie
18 Johnson's house at [redacted]?
19 A Yes, sir, it is.
20 Q All right. And that's State Exhibit 2.
21 And State's 3 you identified as -- is that,
22 basically, like the side yard?
23 A Yes, it is.
24 Q Is that -- and I was going to say Toyota pickup,
25 because I haven't seen one -- a Chevrolet like that in a

1 long time -- but that pickup was parked in Mr. Willie
2 Johnson's yard; is that correct?
3 A Yes, sir.
4 Q Let me ask you a question. Where is [redacted]
5 [redacted] In what county?
6 A It's in Allendale County, sir.
7 Q I'm now going to hand you, just for
8 identification, what's been marked as State's Exhibit
9 Number 4, and I'm going to go ahead and give you 5 and 6, as
10 well.
11 And I'm going to ask you if you can identify
12 those three photographs?
13 A How we found Mr. Johnson when we entered the
14 residence.
15 Q And are those pictures accurate representations of
16 how Mr. Johnson appeared when you entered the residence?
17 A Yes, sir, they are.
18 Q Have they -- appeared to have been altered or
19 changed in any way?
20 A No, sir.
21 MR. THORNTON: Your Honor, at this time I'd ask
22 that State's 4, 5 and 6 be entered into evidence.
23 THE COURT: Any objection?
24 MS. SMART-GITTINGS: No objection, Your Honor.
25 THE COURT: Admitted.

1 *(Whereupon, State's Exhibit No(s). 4-6 marked for*
2 *identification and received in evidence.)*
3 BY MR. THORNTON:
4 Q Before we get to publishing these to the jury,
5 when you got to [redacted] that day, obviously you
6 were dispatched out; is that correct?
7 A Actually, sir, Mr. Willie Johnson's son arrived
8 at the police department around the same time that we
9 received a dispatch call also.
10 Q All right. So those two things happened
11 simultaneously?
12 A Yes, sir, around the same time.
13 Q All right. And, again, without saying what
14 Mr. Johnson's son, the victim in this case, Mr. Johnson's
15 son told you, did he relay information that he was concerned
16 about his father?
17 A Yes, sir, he did.
18 Q So that combined about, apparently the same time
19 that dispatch went out is that why you went out to
20 [redacted]?
21 A Yes, sir.
22 Q What did you do when you got there?
23 A I spoke to the gentleman in the yard for a brief
24 moment. I approached the --
25 Q And let me stop you real quick. And that was no

1 relation, but his name was Mr. Robert Miller also?
2 A Robert Miller, also. Yeah, Robert Miller also.
3 I spoke to Mr. Miller briefly. Myself and
4 Sergeant Tison, we walked toward the house, and we approached
5 the door and pushed the door open a little bit. And at that
6 time that's when I observed Mr. Johnson lying on the floor.
7 Q All right. And let me stop you right there.
8 MR. THORNTON: Mr. Hutto, if we could bring up
9 State's 4.
10 BY MR. THORNTON:
11 Q All right. And if you could, to the left I see a
12 door that's open with what appears to be a screen door.
13 Would that be the front door of the residence?
14 A Yes, sir.
15 Q All right. And when you walked in, you found
16 Mr. Johnson.
17 What condition was -- without saying anything
18 specific medically, but how did you find him when you walked
19 in?
20 A He was laying face down, his hands tied behind
21 his back and he had a bag tied over his head.
22 Q And are those the -- what appear to be the -- did
23 you notice what was tying his hands?
24 A At -- no, sir.
25 Q Okay.

1 A It was some type of -- just a tie, maybe it was
2 just something to tie his hands. I'm not sure what.
3 MR. THORNTON: Go to State's 5 for me.
4 BY MR. THORNTON:
5 Q All right. Now, in State's 5, would that be a
6 closer view? It shows, actually, it's of his torso and his
7 head, so that's what his hands were tied with. And he also
8 appears to have something on his head.
9 Were you able to look at that and determine
10 what it was?
11 A It was a plastic bag, a black plastic bag.
12 MR. THORNTON: And, Mr. Hutto, if you will go
13 to 6 for me, please?
14 BY MR. THORNTON:
15 Q All right. And I don't know if the jury can see
16 this well, but this is a closer view of the plastic bag; is
17 that correct, sir?
18 A Yes, sir.
19 Q Now, can you see this okay, Detective, what this
20 item is that looks like something brown?
21 A No, sir, if I could see the pictures.
22 Q All right. Let me bring this to you.
23 What is this item here over to the left-hand
24 side that I'm pointing to?
25 A That's Mr. Johnson's wallet.

1 Q All right. And that was found next to him?
2 A That's correct.
3 Q All right. And what is this item that appears to
4 be -- it looks like teeth, which are right next to the
5 wallet?
6 A It was pieces of dentures.
7 Q All right. And were there multiple pieces of his
8 dentures that had been scattered all about the room?
9 A Yes, sir.
10 Q Detective, at this point, you have walked in.
11 You've seen Mr. Johnson.
12 Did you see any signs of life from him at that
13 point?
14 A No, sir.
15 Q All right. He wasn't moving? He wasn't
16 breathing? Anything like that?
17 A No, sir.
18 Q Did you go up and do anything to him or feel for a
19 pulse, or was EMS already on the way or there?
20 A EMS was already there.
21 Q And is that John Johnson?
22 A That is correct.
23 Q What did you do at that point, Detective?
24 A Before EMS got on, came in, made a determination,
25 me and -- myself and Sergeant Tison, we went through and

1 cleared the residence just looking for anybody else that
2 might have been inside the residence.
3 Q Did you find anybody inside the residence?
4 A No, sir.
5 Q And did you set up, I guess, what they call crime
6 scene tape, or did somebody with your department set up
7 tape?
8 A We set up, myself and other sheriff's deputies,
9 which were called in, set up a perimeter around the house.
10 Q And was SLED also called?
11 A Yes, sir.
12 Q And is SLED the same thing as the South Carolina
13 State Law Enforcement Division?
14 A Yes, sir.
15 Q Is that -- for y'all, is that unusual to call SLED
16 out to emergencies like this?
17 A No, sir, not at all.
18 Q Detective, had you been out to that residence
19 before, or responded out to [redacted] before?
20 A Yes, sir, numerous times.
21 Mr. Johnson had an alarm. He was an older
22 gentleman, and he had problems with his alarm system. And
23 while working day shift, I would have to go there every
24 morning when he gets up, probably between 7:30 and 8:30. And
25 I would help him turn his alarm off, and we would talk

1 briefly and I'd go away. And, also, sometimes, at night,
2 also, it was common for us to go by and help him turn his
3 alarm off.
4 Q And did -- and these alarms, when these were going
5 off, was -- in your dealings with Mr. Willie Johnson, you
6 said he was an older man, but do you know how old he was?
7 A At the time he was maybe in his 80s, 90s. He was
8 older.
9 Q The reason I ask is, you know, 20 years ago I
10 didn't think -- I thought 50 was real old, you know, real
11 old, and now I don't think that anymore.
12 So when you say "an older man," somebody in
13 his --
14 A Later years.
15 Q -- later years, 80s? 90s?
16 A Yes, sir.
17 Q Let me ask you this. In your dealings with him
18 when you went out on these alarm calls or where his alarm
19 had been going off and you helped him.
20 Was he angry and agitated all the time, or was
21 he more of a calm person?
22 A No, he was very calm. He's a very nice guy.
23 Q Had you ever had any problems with him? As
24 they -- oftentimes, when we ask that question about have you
25 ever responded out to the scene, you hear all kinds of bad

1 things about the victim.

2 But in this case, had you ever had any

3 problems with Mr. Johnson himself?

4 A No, sir.

5 MR. THORNTON: The Court's indulgence, please,

6 Your Honor.

7 THE COURT: Yes, sir.

8 BY MR. THORNTON:

9 Q Did you notice anything about the air conditioning

10 that you found unusual?

11 A Well, upon going to Mr. Johnson's house on

12 different times in the morning, it would also be kind of

13 hot in the house. You know, he never turned the air

14 conditioning on. But -- so I was used to walking in the

15 house and I'd come out sweating, pretty much. This time I

16 went in the house, it was cold like a refrigerator, real

17 cold. And that was kind of unusual.

18 Q Now, when you backed back out of the house, you

19 talked about went out and the crime scene tape was set up.

20 At some point, did you do a search of the

21 surrounding area behind the house or around the house?

22 A Yes, sir, I assisted SLED, I believe it was a

23 short time later.

24 Q All right. And what -- did y'all find anything of

25 any significance outside?

1 A We found a safe outside the residence, behind the
2 residence, near the ditch.
3 Q All right. And when you say "a safe," you mean
4 like a floor safe?
5 A It was a big safe. A floor safe, yes, sir.
6 Q And did -- what condition was the safe in? What
7 did it look like?
8 A Someone had used some type of tool to try to open
9 it. It was open pretty much. They used a -- some kind of
10 saw, maybe. They cut it open with a power tool of some
11 sort.
12 Q So when you say that "it was open," it wasn't --
13 it didn't look like somebody just opened the door?
14 A The back of it or the side of it, as I can
15 remember, was cut open, not the door.
16 Q And do you recall whether or not there was any
17 sort of tools or anything left near the safe?
18 A I believe there were.
19 MR. THORNTON: Sorry, Your Honor, the Court's
20 indulgence one moment. I'll need to show this to
21 defense counsel.
22 BY MR. THORNTON:
23 Q I'm going to show you what's been marked as -- and
24 if you will just keep them down there with you right now --
25 7 and 8 for State's identification.

1 Do you recognize those photographs?
2 A Yes, sir, I do.
3 Q And what are those photographs of?
4 A It's the safe the way we found out.
5 Q And is -- right next to the safe is there a tool
6 of some sort?
7 A Yes, sir. A pair of shears, a pair of long
8 sheers.
9 Q Like you trim hedges with?
10 A Yes, sir.
11 Q And is that an accurate picture of the way that
12 appeared when you found it?
13 A Yes, sir.
14 Q You along with SLED -- SLED agents and other
15 folks?
16 A Yes.
17 Q Does it look like it's been altered or changed in
18 any way?
19 A No, sir.
20 MR. THORNTON: Your Honor, at this time I'd ask
21 that State's 7 and 8 be entered into evidence.
22 THE COURT: Any objection?
23 MS. SMART-GITTINGS: No objection, Your Honor.
24 THE COURT: Admitted.
25 *(Whereupon, State's Exhibit No(s). 7-8 marked for*

1 *identification and received in evidence.)*
2 MR. THORNTON: Your Honor, the --
3 unfortunately -- I apologize to the Court, when doing
4 these exhibits we got numbers backwards, that's
5 actually going to be State's Exhibit Number 8, for
6 the record. The screen is showing 7, I'll have that
7 changed.
8 THE COURT: Okay.
9 BY MR. THORNTON:
10 Q Detective Manor, that's the photograph you
11 referenced, which actually should be marked State's Exhibit
12 Number 8, which shows the safe as you described, cut open
13 with the large garden shears next it to; is that correct?
14 A That is correct.
15 Q All right. And if we can go to the other picture,
16 which is actually going to be State's Exhibit Number 7, and
17 that is a close-up view of where the safe has been cut open.
18 A That is correct.
19 Q And that is how you found it on that day; is that
20 correct?
21 A That's correct, yes, sir.
22 Q I realize any time that there's been investigation
23 like this there's lots of little things that you do.
24 Is that the majority of what you did on this
25 case, at least, with regard to the scene?

1 A Yes, sir, that is correct.

2 MR. THORNTON: I have nothing further for you.

3 Your Honor, I would ask that he be -- although

4 could be temporarily excused today to go back to work,

5 I am going to ask he be subject to recall.

6 And please answer any questions Ms. Smart puts

7 forth.

8 MS. SMART-GITTINGS: May it please the Court?

9 THE COURT: Yes, ma'am.

10 CROSS EXAMINATION

11 BY MS. SMART-GITTINGS:

12 Q Detective Manor, you were familiar with

13 Mr. Johnson?

14 A Yes.

15 Q And Allendale Police Department had responded to

16 numerous alarm calls at his house?

17 A That's correct.

18 Q Day and night?

19 A That's correct.

20 Q And, in fact, you or someone from your police

21 department had responded a burglary over there?

22 A Maybe.

23 Q The shed was burglarized?

24 A Yes, ma'am.

25 Q And the windows had been broken out the back of

1 his house?

2 A I'm not familiar with that incident.

3 Q So you weren't involved in -- you didn't

4 investigate when the windows were broken out of the back of

5 his house?

6 A I'm just not familiar with it. If you have a

7 report or anything I can go off of, I'd be happy to answer

8 that question.

9 Q Do you recall the back door being boarded up?

10 A Yes, ma'am.

11 Q Do you recall the window being boarded up?

12 A I remember the back door.

13 Q What about -- but you do know that the home had

14 been burglarized before?

15 A Yes, ma'am.

16 Q And that he had received threatening calls before?

17 A Well, the shed had been burglarized.

18 Q I didn't hear you.

19 A The shed.

20 Q The shed?

21 A In the rear of the house.

22 Q And he also called 9-1-1 and said that someone had

23 threatened him at some point earlier in the year?

24 A I'm not familiar.

25 Q You don't recall that?

1 A No, ma'am.

2 MS. SMART-GITTINGS: May I approach, Your Honor?

3 THE COURT: Yes, ma'am.

4 BY MS. SMART-GITTINGS:

5 Q Can you tell me if this document will refresh your

6 memory?

7 A This is actually --

8 Q Don't read from it, just tell me if it refreshes

9 your memory.

10 A Well --

11 Q If it doesn't, just say so.

12 A No.

13 Q Okay.

14 A No.

15 Q So you don't remember it? You weren't a part of

16 that call?

17 A No, ma'am, I was not.

18 Q Okay. Now, let's talk about the air conditioner.

19 Isn't it true that you said that Mr. Johnson

20 never turns his air conditioner on unless he has company?

21 A No, ma'am, I didn't say that.

22 When I went there for the alarm calls in the

23 morning, he didn't have his AC on. I'm not familiar with how

24 he conducted himself when other people come over or anything.

25 I just know when I went over there, it wouldn't be in the

1 morningtime.

2 Q Okay. He often forgot his alarm code, and you

3 guys had to go over there and reset it?

4 A Yes, ma'am.

5 Q Now, are you familiar with any of his family

6 members?

7 A I am.

8 Q Prior to this incident, were you familiar with his

9 family members?

10 A Yes, ma'am.

11 Q Okay.

12 MS. SMART-GITTINGS: Court's indulgence, please?

13 THE COURT: Yes, ma'am.

14 BY MS. SMART-GITTINGS:

15 Q Mr. Johnson would tell you when he went out of

16 town; is that correct?

17 A No, ma'am.

18 Q No?

19 A No, ma'am.

20 MS. SMART-GITTINGS: I don't have any other

21 questions for this witness.

22 THE COURT: Redirect?

23 MR. THORNTON: No, Your Honor. Again, just

24 subject to recall. But, obviously, he can go back to

25 work.

1 THE COURT: Detective, as you understand you are
2 free to go today. But you are subject to being
3 called back.
4 THE WITNESS: Yes, sir.
5 THE COURT: Thank you.
6 MR. THORNTON: Thank you, Your Honor.
7 The State calls Mr. Robert Miller, II.
8 Thereupon,
9 ROBERT MILLER II
10 was called as a witness, having been first duly sworn,
11 was examined and testified as follows:
12 DIRECT EXAMINATION
13 BY MR. THORNTON:
14 Q Good morning, Mr. Miller.
15 A Good morning.
16 Q Mr. Miller, do you know or did you know, before
17 his murder, Willie Johnson?
18 A Yes, sir, I know him.
19 Q And how did you know him?
20 A One of the church members, deacon of my church.
21 Q So he was one of the -- a church member in your
22 church?
23 A Yes, sir.
24 Q And how long had you known Mr. Johnson?
25 A Oh, I don't know, about, like about 20 years.

1 Q Twenty years?

2 A Yes.

3 Q All right. Mr. Miller, I'm going to ask you

4 something. If you would either pull that mike down to you a

5 little bit or lean a little closer, so we can all hear.

6 A (Witness complies.)

7 Q Thank you, sir.

8 So you know Mr. Johnson, you said, about

9 20 years?

10 A Yeah.

11 Q And you said you went to church with him?

12 A Yes, sir.

13 Q Okay. On -- and I know that it's been a little

14 while, but Thursday, June 19th of 2014, did you have

15 occasion to go over and check on Mr. Johnson?

16 A I called. I think it was Ms. Bowman called

17 Raymond, Deacon.

18 Q All right. And let me stop you real quick. You

19 said Ms. Bowman, and you referenced Raymond Simmons.

20 Is he also a deacon in you all's church?

21 A Yes.

22 Q And is Ms. Bowman, Mary Bowman, in your church?

23 A Yes.

24 Q We're talking about all folks go to the same

25 church?

1 A Right.

2 Q All right. So Ms. Bowman had made a phone call,

3 to your knowledge, to -- and is it okay to say Deacon

4 Simmons?

5 A Yeah.

6 Q Okay.

7 -- to Deacon Raymond Simmons in your church.

8 And then did Deacon Simmons call you?

9 A Right.

10 Q And what was the purpose of Deacon Simmons' call?

11 A Because Ms. Bowman was calling Deacon -- what his

12 name -- Deacon Johnson, was calling and couldn't get in

13 touch with him.

14 Q All right. So they were trying to reach

15 Mr. Johnson, the victim in this case, and they couldn't

16 reach him?

17 A Right.

18 Q So Deacon Raymond Simmons called you; is that

19 correct?

20 A Right.

21 Q And without saying exactly what he told you, did

22 he want you to do anything?

23 A Yes. They called me and said they were trying to

24 get in touch with Deacon Johnson, would I run around there

25 and check on him.

1 Q All right. Now, did you live, at the time, close
2 to --
3 A About --
4 Q -- Deacon Johnson?
5 A -- about two blocks.
6 Q All right. So you were very close?
7 A Yes, I was very close.
8 Q Distance-wise?
9 A Yes. Distance-wise, yeah.
10 Q Did you go over to his house?
11 A Yes.
12 Q All right, sir. And if you'll hang on for me just
13 a second, I'm going to show you what's already in evidence
14 as State's Exhibit Number 2.
15 And is that Deacon Willie Johnson's house?
16 A Yes.
17 Q Is that 300[redacted]?
18 A Yes.
19 Q And is that where you went that day?
20 A Yes, sir.
21 Q And what did you do when you got there?
22 A When I got there, I knocked on the door. I
23 didn't get no answer, so I heard the air conditioning
24 running.
25 Q Is that unusual?

1 A Yeah, that's unusual for him.

2 Q And what did you do then, sir?

3 A Then I turned the door knob.

4 Q And were you able to get into to the house?

5 A Yes, the door was unlocked and I walked right on

6 in, not all the way in, no farther than the door stop.

7 Q And what did you see and what did you find when

8 you got in there?

9 A When I got there, I seen a blanket on the floor.

10 Because when I got in there, my eyes were a little blurry.

11 Then I look and I saw Mr. Johnson on the floor with his

12 hands tied behind his back.

13 MR. THORNTON: Mr. Hutto, would you bring up

14 State's Exhibit Number 4, please?

15 BY MR. THORNTON:

16 Q I'm handing you State's Exhibit 4, Mr. Miller.

17 A Yes.

18 Q Over there to the left of the photograph, is that

19 the front door that you would have come in?

20 A That's the front door.

21 Q All right. And is that what you remember seeing?

22 I think that you mentioned the quilt.

23 A Yes, quilt.

24 Q And is that how you saw Deacon Johnson?

25 A Yes, sir.

DIRECT EXAMINATION OF ROBERT MILLER II BY THORNTON

1 Q Now, Mr. Miller, when you went in and found Deacon
2 Johnson with his hands tied behind his back laying on the
3 floor like that, what did you do then?
4 A I backed out, shut the door and then I hollered
5 to tell them to call 9-1-1, and I'm trying to get 9-1-1 on
6 my phone too.
7 Q Do you remember, and I know that I didn't show you
8 a picture of that, but do you remember, Mr. Miller, whether
9 Deacon Johnson when you saw him, whether you recall a
10 plastic bag or not? Or did you look long enough?
11 A I ain't look long enough. I didn't pay no
12 attention to it.
13 Q As soon you saw him you backed up?
14 A I backed right out of door.
15 Q And you may have already said this and I missed
16 it, did you call anybody?
17 A I tried to call 9-1-1. And some people was
18 sitting on the porch, and I said call 9-1-1, call 9-1-1,
19 because I was trying to get my 9-1-1 through.
20 Q All right. And did you at some point talk to
21 9-1-1?
22 A I probably did, I don't know. I was nervous and
23 shaken up then.
24 Q Were you pretty --
25 A No, I think I shut it down, because I saw the son

1 and cops, coming around the curve, you know, turning around
2 the curve.
3 Q Okay. Let me stop you here, please.
4 You saw the son, do you mean Mr. Willie
5 Johnson's son?
6 A Yeah.
7 Q You saw him, and you saw the police coming?
8 A Yeah, they was behind him.
9 Q And did they come up and --
10 A They come up.
11 Q Did they speak with you, and then --
12 A Yes, they asked me --
13 Q -- go in the house?
14 A They said what's -- I said, somebody in the house
15 dead. Mr. Johnson is dead, I think. That's all I said.
16 MR. THORNTON: Thank very much, Mr. Miller, I
17 appreciate it. If you'll answer any questions that
18 the Ms. Smart has for you.
19 THE WITNESS: Yes, sir.
20 THE COURT: Cross-examination?
21 MS. SMART-GITTINGS: I don't have any questions
22 at this time of Mr. Miller.
23 THE WITNESS: Thank you.
24 MR. THORNTON: Thank you, Mr. Miller.
25 Judge, I'd ask that he be excused.

1 THE COURT: Any objection?
2 MS. SMART-GITTINGS: No objection.
3 THE COURT: All right. Thank you, sir. You're
4 excused.
5 MR. THORNTON: John Johnson.
6 Thereupon,
7 JOHN JOHNSON
8 was called as a witness, having been first duly sworn,
9 was examined and testified as follows:
10 DIRECT EXAMINATION
11 BY MR. THORNTON:
12 Q Good morning, Mr. Johnson.
13 A Good morning.
14 Q Will you please give your full name for the
15 record?
16 A John Louis Johnson.
17 Q Mr. Johnson, in June, specifically June 19th of
18 2014, who did you work for at that time, sir?
19 A I was working with the Allendale County Rescue
20 Squad.
21 Q And what was your job title or job description
22 with the rescue squad?
23 A I was a paramedic.
24 Q And can you explain to the jury, I'm sure
25 everybody's heard of either EMS or fire rescue, are there

1 different levels of qualifications with regard to providing
2 emergency services?
3 A Yes, there are. It begins as a basic EMT.
4 There's also a advanced or now -- it's now advanced, at
5 that time it was intermediate EMT. And there is a
6 paramedic level. The paramedic level is the highest level
7 of certification in the state of South Carolina in
8 pre-hospital medicine.
9 Q All right, sir. And I know that I -- I think
10 that -- I'm trying to think how many times I've asked this
11 question and I already know the answer, but the jury's not
12 going to, or they may not.
13 What's the biggest difference, say, between a
14 paramedic -- what is a paramedic allowed to do that an EMT
15 basic or EMT advanced is not allowed to?
16 A Paramedic is allowed to administer drugs,
17 defibrillate patients. They're trained in cardio
18 resuscitation. We do defibrillations, that type of thing.
19 Very -- very similar to what's done in the emergency room
20 only it's done at the field level.
21 Q Yes, sir. Let me ask you a quick question. How
22 long and -- first of all, do you still hold all of your
23 certifications as a paramedic?
24 A I think about 18 years.
25 Q Okay. So about 18 years you were a certified

1 paramedic?

2 A Uh-huh. (Indicating affirmatively.)

3 Q On June 19th of 2014, did you respond out to

4 [redacted] here in Allendale?

5 A Yes, I did.

6 Q And when you got there, what, if anything, did you

7 do?

8 A When we got there, there was a -- there was

9 several police officers already present. One of the

10 officers escorted us into the house. Upon arriving in the

11 house, I observed what appeared to be a male that was

12 laying prone or face down on the floor. He had something

13 covering his head. I couldn't tell you what it was. His

14 hands were behind his back and were tied with something.

15 Q All right. And let me ask you real quick, this

16 has already been entered into evidence.

17 Is that an accurate depiction of how the

18 victim in this case, Willie Johnson, appeared when you

19 entered his home on Pickrum Street?

20 A Yes, it is.

21 THE COURT: What is exhibit number's that,

22 please?

23 MR. THORNTON: This is State's 6, Your Honor, I

24 apologize.

25 THE COURT: Okay.

1 BY MR. THORNTON:

2 Q So that is Mr. Johnson as you found him?

3 A Yes.

4 Q All right. And what, if anything, at that point

5 did you do once you walked in?

6 A It was obvious that something here was not right.

7 That this was probably a crime scene. We did as little as

8 we could to disturb that scene to determine his status. I

9 reached down and touched his arm with the back of my arm.

10 It was cold to the touch. When I attempted to move it, it

11 was rigid.

12 Q And let me ask you, and this is, obviously, going

13 to be a silly question, but we have to do it for record

14 purposes.

15 Did you see any signs of life?

16 A No.

17 Q Was it clear that he was dead?

18 A It was very clear that he was deceased.

19 Q To the extent that with your 18 years of

20 experience as a paramedic, you didn't feel it medically

21 necessary to do anything once you had confirmed?

22 A No.

23 Q And was that because, obviously, it's a crime

24 scene and you didn't want to disturb anything?

25 A Right, exactly.

1 Q So other than walking over and establishing that
2 he was cold to the touch and that -- stiff, that rigor had
3 started to set in or had set in --
4 A Uh-huh.
5 Q -- did you do anything else?
6 A No.
7 Q Did you then leave the residence?
8 A Yes, we did.
9 THE COURT: The Court's indulgence, please?
10 I don't have anything further for Mr. Johnson.
11 Mr. Johnson, please answer any questions that
12 Ms. Smart has for you.
13 MS. SMART-GITTINGS: I don't have any questions
14 for this witness.
15 THE COURT: May this witness be excused?
16 MR. THORNTON: Thank you, Your Honor. Yes, I'd
17 ask that he be excused. I would say go back to work,
18 but he reminded me the other day that he is now
19 retired.
20 THE COURT: All right. Thank you, sir. You are
21 excused.
22 THE WITNESS: Thank you.
23 MR. THORNTON: Thank you, Mr. Johnson.
24 Kiawah Cave.
25 Thereupon,

1 KIAWAH CAVE

2 was called as a witness, having been first duly sworn,

3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. THORNTON:

6 Q Good morning, Ms. Cave.

7 A Good morning.

8 Q Would you please give your full name for the

9 record?

10 A Kiawah Cave.

11 Q And, Ms. Cave, in June of 2014, where were you

12 living and working?

13 A I was living on Pickrum Street at that time, and

14 I was working with the PSA Healthcare in Savannah, Georgia.

15 Q So you lived on Pickrum Street, but you worked in

16 Savannah?

17 A Yes, sir.

18 Q And did you know or were familiar with Mr. Willie

19 Johnson that lived at [redacted]?

20 A I just knew him as my parents' neighbor.

21 Q Okay.

22 A Yes.

23 Q But you knew who he was to see him and where he

24 lived?

25 A Yes, sir.

Q Okay. On -- specifically -- and I realize that it's been awhile -- but Tuesday, June the 17th, 2014, were you going to work that evening about 8:00 or so?

A Yes, sir.

Q And did you see anything unusual or that you took note of at Mr. Johnson's house?

A When I passed by his house, I saw three guys in the yard. Two were -- are going around the house and one guy was standing at the gate, with dreads, locking the gate. And I didn't think anything of it, because he looked.

Q All right. Hang on. Let me stop you for a bit before you get to that part.

I'm going to show you State's Exhibit Number 2, and ask you if that's the house that you're talking about and is that the gate?

A Yes, sir.

Q All right. Mr. Hutto, State's Exhibit 2 please, if you will pull it up. You saw two guys at the house, one closing the gate?

A Yes.

Q At that time you said that you didn't think anything of it? Go ahead.

A I didn't think anything of it. He is an older guy and sometimes he gets people to help him out. My

1 father helped him cut hedges and I didn't think anything
2 about it. And I just kept going. And when I looked back
3 at the stop sign I didn't see anyone at the gate anymore.
4 Q All right. They were gone at that point?
5 A Yes, sir.
6 Q You couldn't see him?
7 A No, sir.
8 Q They weren't cutting grass or anything? You saw
9 them when you went by, and when you turned around at the
10 stop sign, they couldn't be seen?
11 A Yes, sir.
12 Q Now, based on everything that I have, you weren't
13 able to positively identify anybody at the house?
14 A No, sir.
15 Q But were you able to tell if they were older men
16 or younger men?
17 A They were younger guys, because I'm 30 and they
18 were way younger than that. They didn't look no more than
19 maybe 20 years old at the most.
20 Q Twenty years old or younger is what they looked
21 like?
22 A Yes, sir.
23 Q You said that there were three of them?
24 A Yes, sir.
25 Q That was about 8:00 on Tuesday, June 17th?

1 A Yes, sir.

2 Q All right. And you know that because why?

3 A Because I was on my way to watch my patient at

4 the hospital in Savannah and I was on nightshift.

5 Q Ma'am, I don't have any further questions for you.

6 Oh, just one quick thing. You said that your parents were

7 Mr. Johnson's neighbors; did they live just in the same

8 neighborhood, or right next door?

9 A They stay right next door. The only thing that

10 separates their yard is some hedges.

11 MR. THORNTON: Thank you very much. I have

12 nothing further. Answer questions of Ms. Smart.

13 MS. SMART-GITTINGS: May it please the Court.

14 CROSS EXAMINATION

15 BY MS. SMART-GITTINGS:

16 Q Ms. Cave, what is your parents' name?

17 A Rose and James Boynkin.

18 Q Still daylight when you drove past Mr. Johnson's

19 house?

20 A Yes, ma'am.

21 Q Did you recognize any of the people that you saw,

22 any of the three men?

23 A No, ma'am.

24 Q Did you see anything in their hand?

25 A No, ma'am.

1 Q Did you see any type of tool in their hand?

2 A No, ma'am.

3 Q Did you specifically see any bags in their hands?

4 A No, ma'am.

5 Q Did you see -- do you recognize Mr. Miller?

6 A No, ma'am.

7 Q He is not one of them that you saw that night?

8 A I didn't see exact faces, I just saw figures. I

9 was driving by, it shouldn't say it, but at a speed. So I

10 wasn't looking to see exactly whose face it was, I just saw

11 guys.

12 Q So, from what you can see, did you look at the men

13 that you saw?

14 A I didn't exactly see anyone's face.

15 MS. SMART-GITTINGS: I have nothing further.

16 MR. THORNTON: I don't have anything further. I

17 ask that she be excused. I ask to approach before we

18 call the next witness.

19 THE COURT: Thank you. You may be excused,

20 Ms. Cave.

21 MR. THORNTON: Thank you, may I approach Your

22 Honor?

23 THE COURT: Yes.

24 (Off-the-record discussion held.)

25

1 Ms. Smart.

2 MS. SMART-GITTINGS: I saw them, Your Honor.

3 And they are gruesome, but I know that they are

4 relevant. So I don't have any objections.

5 THE COURT: Okay. So, 9, 10, 11 and 12 will

6 come in without objection, is that correct?

7 MS. SMART-GITTINGS: Yes.

8 MR. THORNTON: And for the record, Judge. I

9 believe they are relevant because they show evidence

10 of injury, and I am putting them in through to the

11 pathologist. And, again, I've limited it to four

12 photographs.

13 THE COURT: Very good.

14 All right. You ready to proceed?

15 MR. THORNTON: Yes, sir.

16 THE COURT: Would you bring the jury in, please?

17 (The jury enters the courtroom at 11:40 a.m.)

18 THE COURT: Call your next witness, please, sir.

19 MR. THORNTON: Thank you, Your Honor.

20 Mary Bowman.

21 Thereupon,

22 MARY BOWMAN

23 was called as a witness, having been first duly sworn,

24 was examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. THORNTON:

2 Q Good morning, Ms. Bowman.

3 A Good morning.

4 Q Ms. Bowman, would you please state your whole name

5 for the record for me?

6 A My name Mary Alice Johnson Bowman.

7 Q Ms. Bowman, do you live here in Allendale County?

8 A Yes, I do.

9 Q And did you live here in Allendale in June of

10 2014?

11 A I did.

12 Q And are you familiar with or were you familiar

13 with Mr. Willie Johnson?

14 A Yes.

15 Q And did he live over on Pickrum Street --

16 A Yes.

17 Q -- [redacted]?

18 A Yes.

19 Q And I realize it's been a couple of years ago, but

20 on Tuesday, June 17th of 2014, did you get a voice message

21 or a call from Mr. Willie Johnson?

22 A I did.

23 Q And can you tell me what the voice message was

24 about?

25 A When I returned home, I had a message on my

1 phone. Mr. Johnson called me, asked me to return his call.
2 He wanted me to take him someplace the following day.
3 Q All right. Let me ask you a question. How do you
4 know or how did you know Mr. Johnson?
5 A We are a member of the same church, and I've
6 basically known him all of my life.
7 Q All right. And I know it's rude to ask, but how
8 long have you known him? You said "all of your life," how
9 long you think you've known him?
10 A Oh, over 50 years.
11 Q Okay. And has Mr. Johnson been in Allendale that
12 whole time?
13 A Well, you know, he was a merchant marine, so he
14 would go out to sea.
15 Q Yes, ma'am.
16 A And when he'd come home, yes.
17 Q But this was where he lived?
18 A He lived, yes.
19 Q So you've known Mr. Johnson over 50 years, and
20 y'all were both at the same church?
21 A Yes.
22 Q Now, was he also at some point a deacon at y'all's
23 church?
24 A Yes.
25 Q So was it unusual for Mr. Johnson to call you and

1 ask you for a ride to go somewhere like the grocery store or
2 things like that?
3 A No.
4 Q Was Mr. Johnson up in years?
5 A Yes, he was.
6 Q About how -- do you know how old he was?
7 A He was in his '80s.
8 Q You said he called you. It was Tuesday,
9 June 17th, when he called you.
10 Do you remember about what time it was?
11 A It was somewhere between three and four --
12 Q Okay. And --
13 A -- if I'm not mistaken. Because when I returned
14 home, I listened to my messages about four.
15 Q Okay. So between three and 4:00 in the afternoon?
16 A Yes.
17 Q Did you try to call Mr. Johnson back on Tuesday,
18 the 17th?
19 A Yes, I did.
20 Q And do you remember when you were calling him?
21 A When I returned home. Like I said, I listened to
22 my messages. I got this message, and I think my first call
23 to Mr. Johnson was about 8:00.
24 Q And did you get an answer or not?
25 A I did not.

1 Q Did it ring and ring or was it busy?
2 A It was a busy signal.
3 Q And did you call back again that night?
4 A I called him severals times. I called him until
5 11:00, was the last time I called. And I still had a busy
6 signal.
7 Q So you had a busy signal every time?
8 A Yes.
9 Q Did you try to call him any time after that?
10 A Not that night.
11 Q Okay.
12 A And when I didn't hear from him the following
13 morning, I assumed he had gotten someone else to take him.
14 So I didn't talk to him Wednesday.
15 Q So that was Wednesday the 18th?
16 A Yes.
17 Q On -- or sometime early on the morning of the
18 19th, which would have been Thursday, of 2014, did you get a
19 call from someone that morning asking about Mr. Johnson?
20 A I got a call from his son, Teddy Johnson --
21 Q Okay.
22 A -- asking me if I knew where his father was.
23 Q All right. And did he seem concerned?
24 A Yes.
25 Q Okay. And what did do you, if anything, after you

1 got the phone call from Mr. Teddy Johnson, Mr. Deacon
2 Johnson's son?
3 A I informed Ted that, no, I did not know where his
4 father was, but that I would make a call and see if maybe
5 John, another deacon of the church, had taken him
6 someplace. I called John, but I did not get John. So then
7 I hung up and I called Deacon Simmons, Raymond, and I asked
8 if he knew where Mr. Johnson was. And he said, no, but
9 that he would call Deacon Miller.
10 So when I hung up from Raymond, I called IGA
11 and I spoke to Mr. Taylor, and I asked him if he would please
12 check the store and make sure Mr. Johnson was in there for
13 me. He did. And when he returned to the phone, he told me
14 no. And when I hung the phone up from talking to IGA,
15 Mr. Taylor, my phone rang again and it was Deacon Simmons.
16 Q All right. And without specifically saying what
17 he told you, did he relate that something bad had happened
18 to Mr. Johnson?
19 A He told me, Come over to the house, that Deacon
20 Miller, you know, found him.
21 Q Okay. And, Ms. Bowman, do you know, had -- Deacon
22 Johnson, had his -- his home -- had he had break-ins or
23 something at his shed or some other things before this that
24 you are aware of? Take your time, Ms. Bowman.
25 A Yes.

1 Q Ms. Bowman, I tell you what, there's no other
2 question that I have that is important enough for me to
3 bother you any more. Thank you so much for answering my
4 questions. We're going to grab you some water real quick.
5 Please answer any question that Ms. Smart has for you.
6 Thank you, ma'am.
7 THE COURT: Any questions?
8 MS. SMART-GITTINGS: I don't have any questions
9 for this witness.
10 THE COURT: May she be excused?
11 MR. THORNTON: She may.
12 Your Honor, if I may approach?
13 THE COURT: Yes, you may.
14 MR. THORNTON: Ask she be excused, Judge.
15 THE COURT: Yes.
16 MR. THORNTON: Thank you.
17 THE COURT: Call your next witness, please.
18 MR. THORNTON: Deacon Raymond Simmons, please.
19 Thereupon,
20 DEACON RAYMOND SIMMONS
21 was called as a witness, having been first duly sworn,
22 was examined and testified as follows:
23 DIRECT EXAMINATION
24 BY MR. THORNTON:
25 Q Good morning, Mr. Simmons.

1 A Good morning.

2 Q Could you give your whole name for me for the

3 record, please?

4 A My name is Raymond Vernall Simmons, Sr.

5 Q Mr. Simmons, would it be appropriate for me to

6 call you -- we -- obviously, you weren't in here, we've

7 heard several people refer to you as Deacon Simmons; is that

8 fair?

9 A That's fine.

10 Q Okay. Deacon, do you know or did you know a man

11 named Willie Johnson?

12 A Yes, I do.

13 Q And how did you know Mr. Johnson?

14 A We've been members the same church. Ever since

15 I've been a child I've known Deacon.

16 Q Do you know about how old Mr. Johnson was when he

17 was murdered?

18 A No, sir, but I know he be up in the 80s, though.

19 He been oldest one in the church.

20 Q On Thursday, June 19th of 2014, did you get a call

21 from Ms. Mary Bowman?

22 A Yes, I did.

23 Q And is she a member of your church also?

24 A Yes, sir.

25 Q Did she have some concerns about not being able to

1 reach Mr. Johnson?
2 A Yes, sir.
3 Q And let me ask you this. You talked about
4 Mr. Johnson being a member of your church, is it -- at some
5 point, was he also a deacon of y'all's church?
6 A Yes, sir.
7 Q And did he do any other functions in the church,
8 as far as cleaning up or anything like that?
9 A Yes, sir. They ain't nothing he wouldn't do.
10 Q Okay.
11 A No one had to even ask him. If he come to the
12 church during week time, in the yard he would start
13 cleaning from the church all the way down Flat Street then
14 come back on the other side clean all the way down. He
15 didn't clean just in front of the church, he cleaned the
16 whole community.
17 Q Even at 80 something years old?
18 A Yes, sir.
19 Q What did you do when Mary Bowman called you
20 concerned that she couldn't reach Deacon Johnson?
21 A I told Sister Bowman, I said, I'll -- just wait,
22 I'll call Brother Miller and ask Brother Miller to go to
23 their home and see what is wrong, why he's not answering
24 any phone.
25 Q And is that Robert Miller?

1 A Yes, sir.

2 Q And not -- obviously, the gentleman here is Robert

3 Miller, III. But this is Robert Miller, a member of your

4 church, totally different person, correct?

5 A Yes, sir, a deacon.

6 MR. THORNTON: Well, the Court's indulgence,

7 please, Your Honor?

8 BY MR. THORNTON:

9 Q Did you get a -- without going into anything

10 specific about what he said, did -- once Robert Miller had

11 gone and checked and found Deacon Johnson had been murdered,

12 did he call you back and let you know?

13 A Yes, sir, he sure did.

14 Q And did you, then, place a call back to Mary

15 Bowman?

16 A I -- no, sir, I don't -- no, sir, I didn't

17 place -- I don't think I placed no call back to her.

18 Because I -- I was jumped out the house and went.

19 Q Okay. So did you go to Mr. Johnson's house?

20 A Yes, sir.

21 Q Deacon, thank you, sir. I don't have any other

22 questions. Please answer any questions Ms. Smart has for

23 you.

24 MS. SMART-GITTINGS: I don't have any questions

25 for Deacon Simmons.

1 THE COURT: May this witness be excused?

2 MR. THORNTON: Ask that he be excused, Your

3 Honor.

4 MS. SMART-GITTINGS: No objection.

5 THE COURT: Thank you, sir. You may be excused.

6 Call your next witness.

7 MR. THORNTON: Marquita Barron, Your Honor.

8 Thereupon,

9 MARQUITA BARRON

10 was called as a witness, having been first duly sworn,

11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. THORNTON:

14 Q Good morning, Ms. Barron.

15 A Good morning.

16 Q And can you state your full name for the record

17 for me, please?

18 A Marquita Barron.

19 Q Ms. Barron, in June, specifically -- well, let me

20 start off a little more general.

21 In June of 2014, who were you working for?

22 A Allendale Office on Aging.

23 Q Allendale Office of Aging?

24 A Yes.

25 Q And if you would, just lean a little bit into that

1 microphone so we make sure we can hear you.

2 What was -- what did you do for the Allendale

3 Counseling Agent?

4 A I was the driver, actually, for the meals on

5 wheels.

6 Q All right. And lots of folks I know are familiar

7 for that. So you were a driver for meals on wheels.

8 Does that mean you delivered meals out to, was

9 it generally, older folks?

10 A Yes, sir.

11 Q And do you know who Mr. Willie Johnson was?

12 A Yes, sir.

13 Q Okay. And is Mr. Johnson, was he one of the folks

14 that you delivered meals to?

15 A Yes, sir.

16 Q And was there a specific day that you delivered

17 those meals?

18 A Only on Wednesdays.

19 Q Only on Wednesdays?

20 A Uh-huh. (Indicating affirmatively.)

21 Q And so Wednesday, June 18th, do you remember going

22 out to deliver a meal to the Mr. Johnson's house?

23 A Yes, sir.

24 Q And is that -- here in Allendale County, I believe

25 it's [redacted]; is that right?

1 A Yes, sir.

2 Q I'm going to show you real quick a -- what's been

3 already put into evidence, State's Exhibit 2. As that's

4 being brought up on the screen, is that Mr. Willie Johnson's

5 house at [redacted]?

6 A Yes, sir.

7 Q And is that where you delivered the meals on

8 wheels to every Wednesday?

9 A Yes, sir.

10 Q There is -- let me ask you something. When you

11 got there that day, which is Wednesday, June, 18th, did

12 Mr. Johnson answer the door?

13 A No, he didn't.

14 Q And was there anything unusual about the door that

15 you noticed that's different than the times you'd been there

16 before?

17 A No, sir.

18 Q When -- normally, when you got to the -- when you

19 got to the door, was the screen door opened or closed?

20 A When I got to the door?

21 Q Not June 18th, prior times when you had been

22 there, would both doors be closed or just one or --

23 A The hard door would be open.

24 Q All right. Now --

25 A You could see through the screen door.

1 Q I know you and I have already had this
2 conversation, but and you had to -- help me explain. When
3 you say the "hard door," you mean the inside? The bigger
4 door?
5 A The house door.
6 Q Okay.
7 A Yeah.
8 Q And that would be open?
9 A Yes, sir.
10 Q And the screen door would be?
11 A Shut, but you can look in the inside.
12 Q Okay. Because it's got screen in it, obviously?
13 A Yes, sir.
14 Q Now, on June 18th when you got there, was that how
15 it was that day, or were both of them closed?
16 A Both of them were closed.
17 Q All right. And I'm sorry, when I asked that
18 question a few minutes ago, I probably didn't do a very good
19 job of asking it.
20 So when you got there on June 18th, was that
21 different than it normally was?
22 A Yes, sir.
23 Q All right. And so you when you got there on
24 June 18th, both doors were closed, and that's not normally
25 how he would have them when you were coming over?

1 A No, sir, because he'd always be home.

2 Q All right. And did you -- and you said it was

3 every Wednesday.

4 Was it different times or about the same time?

5 A Around about the same time.

6 Q Now, when you got there, you said you went up.

7 Did you knock on the door?

8 A Yes, sir.

9 Q And, again, June 18th which is a Wednesday, 2014?

10 A Yes, sir.

11 Q All right. Did Mr. Willie Johnson answer the

12 door?

13 A No, sir.

14 Q So at some point, did you leave and get back in

15 your car?

16 A Yes, I did.

17 Q And did you have other deliveries to make?

18 A Had -- yes, I had to -- other deliveries to make

19 around.

20 Q Did you come back to Mr. Johnson's house, at all,

21 that day?

22 A Yes, I did.

23 Q And did you go up to the house again and knock?

24 A Yes, I did.

25 Q Did he answer?

1 A No, sir.

2 Q And that's two times now you've been so far?

3 A Uh-huh. (Indicating affirmatively.)

4 Q Did you leave?

5 A Uh-huh, I did.

6 Q And did you come back again?

7 A I did. Before I actually went in to take the

8 agency cart in after I finished my route of my meals. I

9 did it one more last time before I run the car in, actually

10 at the end of the day, but I still didn't get no answer.

11 Q So you went back a total of three times on

12 Wednesday at different times during the day, and he never

13 came to the door?

14 A No, sir.

15 Q And would you say that was unusual?

16 A Yes, sir.

17 Q Had you ever had to come to the door more than

18 once before?

19 A No.

20 Q Did you ever see Mr. Johnson that day or any, at

21 all?

22 A No, I didn't.

23 Q He never answered the door?

24 A No, sir.

25 Q At the end of your shift, after you'd come back

1 the third time and knocked and got no answer, what did you
2 do then?
3 A I left. Went and took the agency cart with his
4 meals, because he wasn't there at the time. And I went and
5 I told my supervisor, which is Ms. Bennett, maybe he had a
6 doctor appointment, maybe he was in the hospital. Because
7 we have so many, you know, elderly people and sometime
8 individuals may have doctor appointments, many things. So
9 she said she would take care of it. And, actually, I
10 didn't hear any more from Ms. Bennett, which is my boss at
11 the time --
12 Q Right.
13 A -- until that Saturday what happened.
14 Q And then you found out that he'd been murdered?
15 A Yes, sir.
16 Q When -- at other times when you'd been there and
17 seen Mr. Johnson, had he ever given you any problems or
18 bothered you in any way?
19 A No, sir.
20 Q Would you consider him to be a easy-going person
21 and easy for you to talk to?
22 A Yes, sir.
23 Q And he was always there any other time you've been
24 there?
25 A Always.

1 Q And I'm sorry, your supervisor's name again, was
2 what?
3 A Ms. Jannette Bennett.
4 Q And did you let her know that you were concerned
5 because he didn't answer the door?
6 A Yes, sir.
7 Q Thank you so much, ma'am, I appreciate it. Please
8 answer any questions Ms. Smart has for you.
9 MS. SMART-GITTINGS: May it please the Court,
10 Your Honor?
11 THE COURT: Yes, ma'am.
12 CROSS EXAMINATION
13 BY MS. SMART-GITTINGS:
14 Q Ms. Barron, you met with Agent Merrell from SLED
15 back in 2014?
16 A Yes.
17 Q And she asked you for a statement?
18 A Yes.
19 Q And you did that on June 24th?
20 A Uh-huh, yes, ma'am.
21 Q Now, you wrote in your statement that nothing was
22 out of the ordinary when you arrived at the house, correct?
23 A Nothing, yes, ma'am.
24 Q You -- as a matter of fact, you addressed that
25 issue twice.

1 A Yes, ma'am.

2 Q Did someone ask you whether or not anything was

3 out of the ordinary?

4 A When I did the statement?

5 Q Right.

6 A Yes, ma'am.

7 Q And so that's why you answered that question

8 twice?

9 A Yes, ma'am.

10 Q Now, you didn't see any papers on the floor?

11 A No, ma'am.

12 Q You didn't see any papers in the yard?

13 A No, ma'am.

14 Q You didn't see any identification cards?

15 A No, ma'am.

16 Q You didn't see a safe?

17 A No, ma'am.

18 Q You didn't notice any scuff marks on the porch?

19 A No, ma'am.

20 Q The screen door wasn't broken? It didn't look

21 like anybody had tried to break in the house?

22 A No, ma'am.

23 Q You didn't see any blood drops?

24 A No, ma'am.

25 Q You didn't see any blood?

1 A No, ma'am.

2 Q Any bloody prints on the door?

3 A No, ma'am.

4 Q Nothing?

5 A Nothing.

6 Q It looked just like it would look other than the

7 door wasn't open?

8 A Yes, ma'am.

9 Q And Mr. Johnson was a creature of habit, like he

10 would get up and open his door, and his door would be open

11 all day, pretty much?

12 A Yes, ma'am.

13 Q So no matter what time you went, that front door

14 would be open?

15 A Yes, ma'am.

16 Q And he usually sat outside sometimes, or was he

17 always in the house?

18 A He was in the house at the time when I did meals.

19 Q Did you ever go in his house?

20 A No, ma'am.

21 Q Because he usually just met you at the door --

22 A Yes, ma'am.

23 Q -- and took the meals from the door?

24 A Yes, ma'am.

25 Q Okay. You don't know who did this? You don't

1 have any idea who went in Mr. Johnson's house, do you?
2 A No, ma'am.
3 Q Okay.
4 MS. SMART-GITTINGS: I don't have any other
5 questions.
6 THE COURT: Redirect?
7 MR. THORNTON: Very briefly, Judge.
8 REDIRECT EXAMINATION
9 BY MR. THORNTON:
10 Q Ms. Barron, did you go around and look in all the
11 windows of the house, or did you just go to the front door
12 and knock on it?
13 A I just went to the front door.
14 Q You didn't do a search of the yard or back yard or
15 walk back behind the house?
16 A No, sir.
17 Q Okay.
18 MR. THORNTON: I don't have anything further.
19 Thank you, ma'am.
20 THE WITNESS: Okay.
21 THE COURT: May this witness be excused?
22 MR. THORNTON: I'd ask she be excused, Judge.
23 MS. SMART-GITTINGS: No objection.
24 THE COURT: Thank you. You may be excused.
25 THE WITNESS: Thank you.

1 MR. THORNTON: Jannette Bennett.

2 Thereupon,

3 JANNETTE BENNETT

4 was called as a witness, having been first duly sworn,

5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. THORNTON:

8 Q Good morning, Ms. Bennett.

9 A Good morning.

10 Q Ms. Bennett, would you please give your entire

11 name for the record, please?

12 A Jannette Milton Bennett.

13 Q Ms. Bennett, in 2014, specifically, June 2014, who

14 did you work for?

15 A Allendale County Office on Aging.

16 Q And we just heard from Ms. Barron, Marquita

17 Barron, did she work for you at that time, or were you her

18 supervisor?

19 A Yes.

20 Q And is this part of what your responsibilities

21 are, is supervising the meals on wheels program?

22 A Yes.

23 Q Do you know or did you know who Willie Johnson

24 was?

25 A Yes.

1 Q And how did you know Mr. Johnson?

2 A He was one of our clients we deliver home

3 delivered meals to every day.

4 Q And was his -- were his deliveries set up to be on

5 Wednesdays?

6 A That's correct.

7 Q At some point on Wednesday, June 18, 2014, did

8 Ms. Barron come in and tell you that she was unable to get

9 Mr. Johnson to come to the door, and he wasn't there to pick

10 up his meals, or at least he didn't come to the door?

11 A Yes.

12 Q And did that concern you, ma'am?

13 A Yes.

14 Q Was it unusual?

15 A Yes.

16 Q All right. Did Mr. Johnson normally -- was he

17 normally there to receive his meals?

18 A Yes.

19 Q Are you aware of any other time that he wasn't

20 there on Wednesdays to get his meal?

21 A No.

22 Q What did you do once Ms. Barron came in and let

23 you know that Mr. Johnson had not come to the door any of

24 the times she'd been there?

25 A She came in the office and told me that he did

1 not come to the door to receive his meals, and I called.

2 Q Who did you call?

3 A I called Mr. -- at Mr. Johnson's house.

4 Q And did you get any answer?

5 A No, sir.

6 Q Was it -- did it just ring and ring, or was it a

7 busy signal?

8 A The phone line was busy.

9 Q All right. And did you call once or more than

10 once?

11 A More than once.

12 Q Did you ever get an answer, or was it always busy?

13 A Always busy, no answer.

14 Q Did you call him again?

15 A I did.

16 Q And did you call him the next day on the 19th?

17 A I did.

18 Q And did you get any answer then, or was it still

19 busy?

20 A No answer, still busy.

21 Q Thank you so much, Ms. Bennett. I appreciate it.

22 If you'll please answer any questions that Ms. Smart has.

23 CROSS EXAMINATION

24 BY MS. SMART-GITTINGS:

25 Q Ms. Bennett, what did you do when you were not

1 able to get in touch with Mr. Johnson?
2 A After I called and his line was busy, that was on
3 Wednesday, on Thursday morning, I arrived at work and I
4 told one of the staff that Mr. Johnson was on my mind. I
5 looked in his file. I got his niece telephone number. I
6 called his niece. I explained to her who I was, who I
7 worked for, and that Mr. Johnson did not receive his meals
8 on Wednesday, the day before.
9 Q And do you have -- how many numbers on file do you
10 usually have for your clients?
11 A Two.
12 Q Was that -- that was just the first number that
13 you called?
14 A Yes, his niece.
15 Q Okay. But you didn't call anyone else besides his
16 niece?
17 A No.
18 Q You didn't call his son?
19 A No.
20 Q Thank you.
21 MS. SMART-GITTINGS: I don't have any other
22 questions.
23 THE COURT: Any redirect?
24 MR. THORNTON: None, Your Honor. I'd ask she be
25 excused.

1 THE COURT: Ms. Bennett, you are excused. Thank
2 you, ma'am.
3 THE WITNESS: Thank you.
4 THE COURT: All right.
5 MR. THORNTON: Dr. Janice Ross.
6 Thereupon,
7 DR. JANICE ROSS
8 was called as a witness, having been first duly sworn,
9 was examined and testified as follows:
10 DIRECT EXAMINATION
11 BY MR. THORNTON:
12 Q Dr. Ross, if you would, please give your full name
13 for the record.
14 A Janice Edwards Ross, R-O-S-S.
15 Q Dr. Ross, can you tell me both right now and in
16 2014, June of 2014, who do you work for?
17 A Newberry Pathology Associates in Newberry, South
18 Carolina.
19 Q And I've called you, of course, by your correct
20 title which is doctor.
21 What are you a doctor of?
22 A Pathology.
23 Q All right. And could you explain to the jury what
24 a doctor of pathology does?
25 A Sure.

1 We have -- I'm a medical doctor. I have an MD
2 from Upstate Medical Center in Syracuse, New York. I went to
3 the University of South Carolina before that. A pathologist
4 as opposed to a surgeon or a pediatrician goes into a
5 specialty where we identify cancers, leukemias, different
6 diseases that people have. And we look at tissue under the
7 microscope, for one thing, in order to do that. We learn how
8 to do an autopsy to find a cause of death.
9 Further, a forensic pathologist, certified
10 forensic pathology, the word forensic means legal. So we use
11 our pathology knowledge in legal matters. We learn how to do
12 a legal, forensic autopsy in determining the cause of death
13 by identifying patterns of injury, photographing the injuries
14 and taking the materials for the purpose of the court of law
15 and submitting them to -- usually to SLED.
16 Q Dr. Ross, thank you. We'll -- speaking with
17 co-counsel, I'll try to speed this up, so we won't have to
18 go through your whole CV. I know sometimes we have to do
19 that.
20 How long have you been a forensic pathologist?
21 A Since 1985, but I've been doing forensic
22 autopsies since 1976.
23 Q All right. And have you ever been qualified as an
24 expert in the courts of South Carolina and/or other states
25 before?

1 A Yes.

2 Q Approximately how many times?

3 A Over 150 times.

4 MR. THORNTON: Your Honor, at this time I'd ask

5 that Dr. Ross be recognized as an expert in the field

6 of forensic pathology.

7 MS. SMART-GITTINGS: No objection, Your Honor.

8 THE COURT: Okay. Ladies and gentlemen of the

9 jury, normally a witness is not allowed to give their

10 opinion but in very limited circumstance. However, a

11 person because of their education or their experience

12 or a combination of the two, if they develop an

13 expertise in a certain area that would be helpful to

14 you, the jury, they're allowed to give their opinions

15 in their area of expertise.

16 In this case it is stipulated that Dr. Ross is an

17 expert is in the field of forensic pathology. She will

18 be allowed to give her opinion in that area. I will

19 tell you that expert testimony is like any other

20 testimony you will hear in this case. You may accept

21 it, reject it or give it as much weight as you think

22 that it deserves.

23 All right, sir.

24 MR. THORNTON: Thank you, Your Honor.

25

1 BY MR. THORNTON:

2 Q Dr. Ross, did you perform an autopsy in June,
3 specifically June the 21st of 2014 on a Mr. Willie Johnson,
4 an 86-year-old patient?

5 A Yes.

6 Q And I actually, probably, should have asked you
7 that instead of telling you. But is his age referenced on
8 your pathology report?

9 A Yes.

10 Q And is it 86-years-old?

11 A Yes.

12 Q All right. Dr. Ross, what were your findings as
13 far as any evidence of injury that Mr. Johnson had?

14 A The -- let me explain. The body is -- the
15 patient is brought to us in a body bag in the morgue at
16 Newberry County Memorial Hospital. We open the bag and
17 take photographs. We found that the -- the patient was --
18 had a plastic bag on his -- big garbage bag around his
19 head, which was tied in a knot around his neck.

20 Q If I could stop you, Doctor, briefly. I'm going
21 to hand you what's been marked as State's Exhibit Number 9
22 for identification, or at least show that to you.
23 Can you identify what that is a picture of?

24 A Yes. That is our patient Willie Johnson with
25 his -- still in the plastic bag around his neck and blood

1 stained T-shirt.

2 Q And is that a fair and accurate depiction of how

3 he appeared when you were performing your autopsy?

4 A Yes.

5 Q And does it appear to be altered or changed in any

6 way?

7 A No, it does not.

8 MR. THORNTON: Your Honor, I'd ask that State's

9 Exhibit Number 9 be introduced into evidence.

10 THE COURT: Any objections to Number 9?

11 MS. SMART-GITTINGS: No, objection, Your Honor.

12 THE COURT: It is admitted.

13 *(Whereupon, State's Exhibit No(s). 9 marked for*

14 *identification and received in evidence.)*

15 BY MR. THORNTON:

16 Q Doctor, I believe this is what you're referencing,

17 is Mr. Johnson, he has a -- what appears to be a plastic

18 bag, is that correct, that's been tied around his head or

19 placed around his head?

20 A That is correct.

21 Q And you indicated his blood-soaked T-shirt. Is

22 that where the blood pooled? If he was -- obviously, when

23 he was found it was -- the jury has seen photographs -- face

24 down, so that's where the blood would have collected?

25 A Yes.

1 Q I'm going to hand you what's been marked as -- or
2 show you State's Exhibit 10.
3 A Yes.
4 Q And is that a photograph of -- first of all, do
5 you recognize that photograph?
6 A Yes.
7 Q And what is it of, ma'am?
8 A It's a -- of Willie Johnson after we'd taken the
9 clothes off, before we cleaned all of the blood off of him.
10 Q And is that an accurate depiction of how he
11 appeared to you prior to you doing any cleaning of his face
12 or head?
13 A Yes.
14 Q And has it been altered or changed in any way?
15 A No.
16 MR. THORNTON: Your Honor, I'd ask State's 10 be
17 moved into evidence.
18 MS. SMART-GITTINGS: Without objection.
19 THE COURT: Admitted.
20 *(Whereupon, State's Exhibit No(s). 10 marked for*
21 *identification and received in evidence.)*
22 BY MR. THORNTON:
23 Q This is where, I think, Doctor, some of the
24 evidence of injury that I would ask you to talk about.
25 State's 11 and 12, are those photographs that

1 you recognize?

2 A Yes.

3 Q And are both of those photographs of some of the

4 evidence of injury that you found while you were examining

5 him?

6 A Yes.

7 Q And are they true and accurate depictions of what

8 you found in your autopsy?

9 A Yes, they are.

10 Q Been altered or changed in any way?

11 A No, they have not.

12 MR. THORNTON: Judge, I'd ask State's 11 and 12

13 be moved into evidence.

14 THE COURT: Any objection?

15 MS. SMART-GITTINGS: Without objection.

16 THE COURT: Admitted.

17 *(Whereupon, State's Exhibit No(s). 11-12 marked*

18 *for identification and received in evidence.)*

19 BY MR. THORNTON:

20 Q I'm sorry to have interrupted you, Doctor. If you

21 would, please, go through to the process as you're looking

22 for the evidence of injury what you found that was relevant

23 on Mr. Johnson.

24 A Yes. The other thing, besides the plastic bag

25 over his head, we found that his wrists were tied so that

1 his hands were behind his back. The wrists were tied with
2 something that looked like a shoelace wrapped around the
3 wrists several times. He had on a jump suit and underwear.
4 And then we -- we then take all his clothes
5 off and looked -- look at him externally to identify any
6 further injuries or any evidence of natural disease. We take
7 photographs front and back. And then we proceed with the
8 internal examination.
9 Q And what were your findings as far as the external
10 or internal, as to the head, what, if any, injury did you
11 find?
12 A There were multiple injuries. There was bruising
13 around the right eye. And once we deflected the scalp,
14 underneath the skin we found bruises on the right -- I'm
15 sorry, the left temple area and the left frontal area of
16 the scalp. We found this laceration (indicating) of the
17 lower lip was consistent with his teeth actually going
18 through his lip from blunt force injury of the mouth. The
19 piece of skin, it's called a frenum, inside the lip on the
20 top, that was lacerated also. And that's consistent with
21 being hit in the mouth or having very hard pressure against
22 the -- the mouth.
23 We found that he had two or three fractures of
24 the ribs on the left, ribs number seven, nine -- seven, eight
25 and nine. And he had some bruising around the left

1 collarbone.
2 Q Would it be fair to say, Doctor, that all those
3 injuries would be consistent with what is commonly referred
4 to as blunt force trauma?
5 A Yes.
6 Q And as part of your autopsy findings, Doctor, do
7 you look for the -- what's called the cause and manner of
8 death?
9 A Yes.
10 Q And were you able to determine a cause of death in
11 this case?
12 A Yes.
13 Q And what was the cause of death?
14 A The cause of death was asphyxia, which means to
15 be without oxygen due to smothering.
16 Q And I know this sounds like a dumb question, but
17 is that, in your medical opinion, a result of the bag being
18 placed over the head or consistent with the bag being placed
19 over the head and oxygen being cut off?
20 A Or it could -- that, plus it could be from
21 something being over his mouth and nose, like a hand or
22 something that would put so much pressure on his mouth
23 that -- that he couldn't -- mouth and nose that he couldn't
24 breath plus the bag.
25 Q And what are some of the other things you look for

1 to determine asphyxiation? Again, you've got the obvious
2 sign, which is there's a bag over his head. What other
3 things did you find on Mr. Johnson that would indicate that
4 he died, basically, from being smothered to death?
5 A In the white of the eye we found what's called
6 Petechia, the little red dots, and they indicate like
7 there's been a lot of pressure on blood vessels below the
8 eyes. So that pressure builds up in the blood vessels and
9 blood cells are allowed to leak out of little capillaries,
10 little tiny vessels. And they -- they are visible to the
11 eye as little red dots.
12 Q And you said "pressure," forgive me for trying to
13 kind of break it down so I understand what you're saying.
14 Is that consistent with like choking or pressure being
15 placed on the neck?
16 A Yes. It's mostly from the neck, from -- from
17 closing off of the veins, the jugular vein, you've heard
18 of, which allow blood to come down from the -- from the
19 brain and from the face to the heart.
20 Q Now, you've talked about what the cause of death
21 is, Doctor. You've talked about blunt force trauma, the
22 lacerations. And I don't know that you used this word, but
23 I believe that the internal under the skin bruising, is that
24 subdural hematoma? Is that -- or am I picking the wrong
25 word?

1 A The sub -- underneath the scalp, the subgaleal,
2 it's -- it's just an anatomic position. But internally
3 in -- around the brain itself there was indeed some blood
4 in a couple of spaces. So that -- indicating that his head
5 had -- he had been beaten. His head went back and forth a
6 little bit at some point.
7 Q And, Doctor, the other thing that I asked you
8 earlier was, in addition to cause of death, one of the
9 things that you generally do is also find a manner of death;
10 is that correct?
11 A Yes.
12 Q Were you able to find a manner of death based on
13 everything you had been provided as well as the medical
14 examination?
15 A Yes.
16 Q And what was it?
17 A Homicide.
18 Q Doctor, as part of your --
19 MR. THORNTON: The Court's indulgence one
20 moment, please, Judge.
21 BY MR. THORNTON:
22 Q Doctor, as part of your autopsy, both in general
23 and specifically with Mr. Johnson's autopsy, do you take
24 vials of blood, what would be called the blood standard or a
25 blood sample?

1 A Yes.
2 Q And did you do that in this case?
3 A Yes.
4 Q And was it properly sealed and turned over to
5 agents with the South Carolina Law Enforcement Division?
6 A Yes.
7 Q And I'm not going to put you on the spot, if you
8 don't remember. But if you do, do you recall the agents?
9 A Mr. Schenk and a female, Hezel.
10 Q All right. Schenk and Hezel?
11 A Yes.
12 Q All right. But you turned that blood over to law
13 enforcement, and it was in a properly sealed container that
14 followed all your normal protocols; is that right?
15 A Correct.
16 MR. THORNTON: Your Honor, Court's indulgence,
17 please.
18 Doctor, thank you very much, ma'am. I have no
19 further questions. If you would, please answer any
20 questions that Ms. Smart has for you.
21 THE COURT: Cross examination?
22 CROSS EXAMINATION
23 BY MS. SMART-GITTINGS:
24 Q Doctor, you also took fingernail clippings from
25 Mr. Johnson as well, didn't you?

1 A Yes, I did.

2 Q And you turned that over to SLED?

3 A Yes.

4 Q And why did you take his fingernail clippings?

5 A Just to indicate -- find out if there was -- if

6 there were a fight or something that some skin or cells

7 from the perpetrator could be underneath the fingernails,

8 and they could do DNA on that.

9 Q Okay. So you took the fingernails and sent that

10 to SLED so that they could test it to maybe find out the

11 identity of the person who afflicted those injuries on

12 Mr. Johnson?

13 A Yes.

14 MS. SMART-GITTINGS: I don't have any other

15 questions.

16 THE COURT: Redirect?

17 MR. THORNTON: Just one question.

18 REDIRECT EXAMINATION

19 BY MR. THORNTON:

20 Q Doctor, related to what Ms. Smart asked you. I

21 didn't notice in your report, did you see any on

22 Mr. Johnson's hands what would be called defensive wounds,

23 things that you would commonly associate with any type of

24 drawn-out struggle or anything?

25 A No, there were no injuries on the hands.

1 THE COURT: Anything from the defense?
2 MS. SMART-GITTINGS: Nothing, Your Honor.
3 THE COURT: All right. 2:30.
4 (Lunch recess.)
5 THE COURT: Please be seated.
6 Mr. Thornton, you ready for the next witness?
7 MR. THORNTON: Yes, sir. We are ready, Your
8 Honor and I would say that as before, I've shown some
9 photographs that I'll be introducing that are State's
10 Exhibit 13 through State's Exhibit 27, which are all
11 photographs mostly of the crime scene. There's a
12 couple of other ones in there. I have shown them to
13 defense counsel. She indicates that she has no
14 grounds for the objection. And State's 28 is the
15 crime scene diagram prepared by SLED. Crime scene
16 photos, one of which is my first/next witness. And
17 Ms. Smart-Gittings has stated no ground for objection
18 as to that. And we have other things to take up as
19 witnesses go, but I believe that everything has been
20 agreed to as far as no grounds for objections.
21 THE COURT: Is that correct?
22 MS. SMART-GITTINGS: That's correct, Your Honor.
23 THE COURT: So Exhibits 13 through 28 are
24 admitted into evidence at this juncture without
25 objection.

1 MR. THORNTON: Brittany Burke.

2 Thereupon,

3 BRITTANY BURKE

4 was called as a witness, having been first duly sworn,

5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. THORNTON:

8 Q Would you please state your entire name for the

9 record?

10 A My name is Brittany Nicole Burke.

11 Q And would it be proper to call you at this time

12 Agent Burke?

13 A Yes, it would.

14 Q And who do you work for, Agent Burke?

15 A I'm currently employed by the Tennessee Bureau of

16 Investigation.

17 Q Is that also known as TBI?

18 A Yes, it is.

19 Q And in June of 2014, who did you work for?

20 A I worked for the South Carolina State Law

21 Enforcement Division also known as SLED.

22 Q Okay. What do you do for the Tennessee Bureau of

23 Investigation?

24 A I work as a criminal investigator in the criminal

25 investigations division.

1 Q And does that lend itself to you going out to
2 crime scenes fairly frequently?
3 A Yes, it does.
4 Q And what did you do when you worked for SLED?
5 A I worked as a special agent in the crime scene
6 unit.
7 Q And as part of your duties in a crime scene unit,
8 what sorts of things would you do?
9 A I would respond to the crime scenes at the
10 request of other local, state and federal agencies, and
11 process the scene and collect evidence in relation to the
12 crime in question.
13 Q And would you do things like take photographs?
14 A Yes, I would document the scene with photographs,
15 notes, a sketch, and then identify and collect any items of
16 evidence that were there.
17 Q And let me ask you this, have you as a crime
18 scene -- would crime scene analyst, would that be a proper
19 term?
20 A It would be.
21 Q And have you ever been qualified as an expert in
22 the field of crime scene analysis?
23 A Yes, I have.
24 Q And has that ever been in the state of South
25 Carolina?

1 A Yes.
2 Q And have you ever testified before as an expert in
3 crime scene analysis?
4 A Yes.
5 Q How long did you work for SLED in crime scene
6 analysis?
7 A Approximately three and a half years.
8 Q And how many crime scenes do you think that you
9 visited?
10 A Well over 100.
11 MR. THORNTON: Your Honor, at this time I'd ask
12 that she be declared an expert in the field of crime
13 scene analysis.
14 THE COURT: Objection?
15 MS. SMART-GITTINGS: No objection.
16 THE COURT: No objection?
17 All right. Ladies and gentlemen, if you recall, I
18 told you normally witnesses are limited to not giving
19 their opinion about what they saw, they felt, they
20 heard, they smelt. In this case, this witness has been
21 stipulated to be an expert in crime scene analysis.
22 She will be allowed to give her opinion in that area.
23 Expert opinion is just like any other testimony you
24 will hear, you may accept it, you may reject it or give
25 it as much weight as you think it deserves.

1 All right, Mr. Thornton?

2 MR. THORNTON: Thank you, Your Honor.

3 Your Honor, to save some time, I'm going to do

4 this in bulk, with the Court's permission.

5 THE COURT: They have been admitted at this

6 juncture, have they not?

7 MR. THORNTON: They have, Judge, but I did want

8 to lay at least a brief foundation so that the jury

9 knows where they all came from.

10 THE COURT: I understand.

11 MR. THORNTON: Thank you, Judge.

12 BY MR. THORNTON:

13 Q I'm going to hand you a very large stack of

14 photographs. It is State's Exhibit 13 all the way through

15 State's Exhibit 28, and ask you just as a group if you can

16 identify whether or not you are familiar with these

17 photographs?

18 A Okay. (Witness reviews documents.)

19 Yes, I am.

20 Q All right. And before I ask you about those, as

21 part of your duties with SLED in June 2014, did you have

22 occasion to visit a crime -- actually, several scenes, but

23 specifically a crime scene at [redacted] here in

24 Allendale?

25 A Yes, I did.

1 Q And was that involving the murder of Willie
2 Johnson?
3 A Yes, it was.
4 Q And did you also go to, at some point, the home of
5 Robert Miller's mother?
6 A Yes, I did.
7 Q And are those items, are those photographs and I
8 believe one crime scene sketch, are those all in relation to
9 your trips to those various locations involved in this case?
10 A Yes, they are.
11 Q Okay. Are they all accurate representations?
12 A Yes.
13 Q Have they been altered or changed in any way?
14 A No, they have not.
15 Q All right.
16 MR. THORNTON: Your Honor, at this time -- I
17 believe they are in evidence. Just for the record
18 purposes I'd ask that State's I believe it's
19 13 through 28, Your Honor, be admitted into evidence.
20 THE COURT: Admitted without objection.
21 MR. THORNTON: Thank you, Judge.
22 BY MR. THORNTON:
23 Q Let's go through -- if you don't mind, let's just
24 go through them one at a time. I'll start with State's 13.
25 If you would, go through that photograph -- and are you

there by yourself, or does, generally, SLED crime scene have more than one person?

A No, we generally travel with more than one person. It's normally a two -- at least two people, if not more, depending on what -- what the scene dictates.

Q And did you have other crime scene people with you at these various locations?

A Yes. Special Agent Tiffany Hezel and Special Agent Todd Schenks traveled with me to these locations.

Q And, specifically, Agent -- and you said, Hezel, I always say Hazel (phonetic), I've probably gotten that wrong a number of times -- do you think it likely that Special Agent Hezel will be joining you to testify?

A No, she will not.

Q And why is that?

A She is on her honeymoon in California at the moment.

Q And is that why I brought you in from Tennessee to testify?

A That is.

Q All right. If you would, please, ma'am, go through -- we've got -- if we could do State's Exhibit 13 up here, Mr. Hutto -- is this the scene at [redacted]?

A Yes, it is.

Q All right. And could you go through what you did

1 as relates to what you found in this photograph and what was
2 relevant to you?
3 A Yes. In this photograph you can see -- we
4 photographed the scene taking this photograph, which
5 represents the victim. There's part of his dentures, is
6 what we believe to be his dentures, up in the corner by
7 what appears to be a wallet with some papers in it there.
8 All of which was collected.
9 Q And to your knowledge and while you were doing
10 your scene investigations, did -- was he bound in that
11 fashion and had the bag tied over his head when y'all got
12 there?
13 A Yes, when we -- this was exactly how the victim
14 was positioned upon our arrival.
15 Q All right. I'm going to ask you -- State's 14,
16 Mr. Hutto -- just go ahead and, if you would, explain
17 State's 14.
18 A This is a close-up photograph. It just better
19 shows the piece of denture and the wallet that were
20 represented in the last picture just above the head of the
21 victim.
22 Q Now, that's not the only place that you found
23 pieces of his dentures, was it?
24 A No, it was not.
25 Q Bring to your attention to State's Exhibit 15, if

1 you would go through that one?

2 A This is a picture of a piece of denture that was

3 located on top of the TV stand that was located just right

4 next to the victim.

5 Q State's Exhibit 16?

6 A This picture was taken after the victim was moved

7 and rolled over, so we could see what was underneath of

8 him. It -- the -- this object that you see underneath,

9 just kind of where the shirt is unbuttoned, is a tie

10 with -- a black tie with a white glazed-in color pattern

11 that was located underneath him.

12 Q We'll do 17 and 18 together. Is that the way that

13 you found the victim's phone when you entered the house?

14 A Yes, it is.

15 Q And if we could go to 18 as a close-up. So

16 without belaboring the point, when you photographed that and

17 found that, the victim's phone was off of the hook; is that

18 correct?

19 A Yes, that's correct.

20 Q And State's 19, if you would explain that picture,

21 please?

22 A This picture shows the wall. If you see the

23 certificate of appreciation there on the wall, the victim

24 was located just below that. That's the wall that was

25 behind him in the previous pictures. The area where there

1 is tape, it's scale tape actually on the wall there, is an
2 area of suspected blood that we observed on the wall that
3 we put tape up to mark there.
4 Q And any time that you find anything that would
5 appear to be suspected blood, especially, do you generally
6 put that tape up?
7 A We generally put the tape up to show the area,
8 the size of the area where the suspected blood is and to
9 show it in relationship to the other items.
10 Q And while I've got you talking about blood. Do
11 you do what they call presumptive tests for blood?
12 A Yes, we have the ability to do presumptive tests
13 for blood while we are on a scene.
14 Q And what do you do and what do you use and how
15 does it work?
16 A For something like a wall or a large area we use
17 LCV, which is known as liquid crystal violet. It reacts
18 with protein that are in blood. It's a kit that we get.
19 We mix all the chemicals together in a spray bottle, and we
20 spray it on the area. It turns a purple color when it
21 reacts, when it has a positive reaction, with something
22 that is presumably blood.
23 Q Let me ask you State's 20?
24 A This is a photograph of the TV -- the TV that was
25 located in the TV stand right next to the victim. All of

these scale tape that you see on there is marking areas of suspected blood that were located on the TV.

Q State's 21?

A This is a piece of paper, it was located next to the area where the phone was off of the hook, that has suspect blood splatter on the paper.

Q State's 22?

A This is an area where there -- there was suspected blood transferred on to a wall in the dining room area going in towards the kitchen.

Q Let me ask you another question. I see that there is a trash can located in that photograph; is that correct?

A That is correct.

Q And, obviously, the victim in this case was found with a black trash bag over his head?

A That is correct.

Q All right. And did the SLED crime scene folks, did y'all do a search of the residence? As you were going through, did you find anything or any boxes or any containers that would have contained a trash bag consistent with the one that was wrapped around his head?

A No, we did not. The one wrapped around his head was a black trash bag with a yellow drawstring. We did not find any trash bags that were consistent with that or boxes of trash bags that are consistent of that -- with that

1 trash bag at the residence.

2 Q I'm going to -- a couple of these are going to be

3 out of order. I'm going to ask you about State's 24.

4 A This is suspected blood that was located at

5 Marker H. And this blood has actually got what appears to

6 be, or appeared to be at that time, ridge detail that is in

7 the suspected blood.

8 Q All right. And when you say "ridge detail,"

9 explain that to me in regular people terms. What does that

10 mean?

11 A Ridge detail means that -- all of the little

12 lines that are on your hands form ridges and those are what

13 make up your fingerprints. And they can be transferred

14 through a substrate on to another sub -- or through another

15 substance on to another substrate, which means that if

16 there's something on your hands and you touch it, then they

17 can be transferred to that other item.

18 Q All right. Well, let me ask you this. Can -- for

19 instance, let's say that I have touched and left a palm

20 print on a wall and later on blood gets thrown on top of

21 that print, will that form a, for lack of a better word, a

22 bloody palm print?

23 A No, it will not. If there's not -- blood does

24 not adhere to palm prints in that fashion like a

25 fingerprint dust or something like that would.

1 Q So in order to get, if that is in fact a ridge
2 detail or a palm print in blood, if that's what that is,
3 there are -- what are the ways that that would -- it seems
4 like there'd be a pretty limited way on how that could get
5 there.
6 A There would be. It would have to be by a
7 substance being on the hand or suspected blood being on the
8 hand and touching the wall. Because, if you think about
9 it, if you paint your hands and you touch something, then
10 you leave those ridges there. The blood -- we know the
11 blood wasn't already there because if you touch the blood
12 or if you touched paint and then you picked it up, then it
13 would pick up that part of the paint. And since you can
14 clearly see ridges in this, then you know that they are on
15 the hand when the hand was placed on the wall.
16 Q Let me show you State's 23. And I'm not sure if
17 you can read that, but is the H that you just talked about,
18 is that in that photograph?
19 A Yes. The H is the -- if you're looking at the
20 monitor over there -- it is the farthest one to the left on
21 the top.
22 Q All right. So this would be a far away shot of
23 the H that you just showed us in the previous, I believe,
24 State's 24?
25 A That is correct.

1 Q And it -- the wall now looks like it has violet or
2 purple all over it.
3 Is that the LCV that you talked about?
4 A Yes, that is.
5 Q I'm going to show you what's been marked as
6 State's 27. Can you tell me what that is?
7 A This is Marker H that we looked at in the
8 previous picture, and this is after it had been processed.
9 The -- and the processing allowed us to see the ridges
10 clearer and more definitively to determine that it was
11 ridge detail in the suspected blood.
12 Q Now, after spraying that with the LCV it has a --
13 when it turns purple like that, would you explain what that
14 means again?
15 A Yes. The purple is the LCV reacting with the
16 proteins in the suspected blood, meaning that it did test
17 positive as a presumptive test to the blood that was
18 located on the wall there.
19 Q And did you do anything else with what appears to
20 be a print of some kind in what is suspected blood now or
21 presumptively blood based on your LCV test? Did you do
22 anything else with it?
23 A After we photographed it and then sprayed it with
24 the LCV for the presumptive test and photographed it again,
25 we collected swabs of the presumptive blood to be sent to

1 the laboratory for testing.

2 Q And since defense counsel and I have already

3 talked about this, to save a little time, were those labeled

4 as SLED Item 35 and collected by you and Tiffany Hezel and

5 Todd Schenks while you were at the crime scene?

6 A They would have been labeled at the crime scene

7 as two swabs of suspected blood, taken to a lab, logged in

8 where they would have been given Item No. 35. And then

9 from there sent for further testing at another department.

10 Q All right. And that would have gone to the DNA

11 department?

12 A That is correct.

13 Q Okay. And did you follow all of the protocols

14 that are required when you are collecting swabs?

15 A Yes, we did.

16 Q All right. And were those swabs properly labeled

17 and then transported to SLED and logged in?

18 A Yes. They were collected, labeled, sealed and

19 then transported and logged in.

20 Q I'm going to show you what's been marked as

21 State's 25, and ask you if there's any significance to that

22 photograph or what it conveyed to you when you were there?

23 A This photograph is of a, for lack of a better

24 word, a box that contained silverware that had been opened

25 and everything was disheveled and dismantled in it.

1 Q Basically, it looked like it had been gone
2 through?
3 A That is correct.
4 Q I'll hand you State's 28. All right. Can you
5 kind of go through where the front door is and all that, and
6 just kind of what you did as you went through the rooms?
7 A I can.
8 The front door is on the long wall at the
9 bottom. You can see the house kind of juts out, and there's
10 a long wall in the middle. The front door's the door that's
11 depicted on there. As you walk straight in the front door
12 there's a TV stand on the left, and the victim is positioned
13 straight in front of the door there. If you turn down to the
14 bedrooms towards the left, there's a small hallway which
15 would have been where the phone was located off of the hook
16 and two bedrooms. Back off the living room on the other side
17 was a dining room and off of that was the kitchen. Towards
18 the back of the house from the living room was a back room
19 and a third additional bedroom there.
20 Q All right. Let me ask you, at some point did
21 you -- I mentioned this earlier to you and you confirmed
22 it -- at some point, did you go out to [redacted] in
23 Allendale, the home of Robert Miller or his mother?
24 A Yes, I did.
25 Q All right. I'm going to ask you about State's

1 Exhibit 26.
2 A Okay. This is a picture that depicts a box of
3 black drawstring trash bags with yellow drawstrings that
4 was found at that residence.
5 Q All right. And would that -- would that -- would
6 the trash bags that were -- actually appear on the front of
7 that box, would those be consistent with the trash bag that
8 was wrapped around the victim's head?
9 A They are consistent in appearance with the bag
10 that was found around the victim's head.
11 MR. THORNTON: Your Honor, Court's indulgence,
12 please.
13 Okay. Just a couple more questions. If we could
14 bring up the crime scene sketch, please, I'm sorry, I
15 don't what -- it's Exhibit 28 for the record, Judge.
16 BY MR. THORNTON:
17 Q As we're looking at Exhibit 28 can you describe
18 for me, if the victim is laying here so -- there was a piece
19 of the dentures that was on top of the television as well as
20 next to him; is that correct?
21 A That is correct. There was a piece laying on top
22 of the television there. And if you go back to where the
23 wall juts out just slightly, above the head of the victim
24 there where -- on the other side of the door frame there --
25 Q Right there (indicating)?

1 A -- right there, it was located just to the right
2 of that, on the floor was another piece of dentures.
3 Q Okay. And that -- it says Marker H, ridge detail
4 in what is suspected to be blood. That is marked in that
5 same area; is that correct?
6 A That is correct.
7 Q And that's where the -- the ridge detail being
8 what would appear to be a print of some kind?
9 A That is correct.
10 MR. THORNTON: Your Honor, I believe that's it.
11 I would -- she's going to remain with me, I know,
12 until the end of today before driving back.
13 Obviously, I would ask her to be subject to being
14 recalled in case I missed something. But I think
15 that's it.
16 Thank you very much, ma'am. If you'd please
17 answer any questions that Ms. Smart has for you.
18 CROSS EXAMINATION
19 BY MS. SMART-GITTINGS:
20 Q Agent, you executed a search warrant on the Bynum
21 house, Bynum's house?
22 A Yes, ma'am.
23 Q But when you went there, Robert was not there,
24 correct?
25 A That is correct.

1 Q And you didn't find any of Mr. Johnson's
2 belongings in the house, did you?
3 A No, ma'am.
4 Q You didn't find any of the silverware that was
5 depicted in the picture, that wasn't there?
6 A No, ma'am.
7 Q No information from Mr. Johnson's wallet was at
8 the Bynums' house, correct?
9 A No, ma'am.
10 Q And, in fact, Ms. Bynum has two sons that were
11 charged with this crime, right?
12 A I do not know the names of --
13 Q You don't know the other two suspects?
14 A I know that -- I know who they are, I do not know
15 the relationship there.
16 Q Okay. Now, when you -- the photo of the trash
17 bag. Trash bags don't have individual characteristics, do
18 they?
19 A They're -- they do not have individual
20 characteristics based on one trash bag to the next, no.
21 Q Correct.
22 And so that box that you had a picture of does
23 not -- you cannot testify that the trash bag that was found
24 over Mr. Johnson's head came from that box that was at
25 Ms. Bynum's house, can you?

1 A No, I cannot.

2 Q You can't identify the trash bag or the box, even,

3 with Robert, can you?

4 A No, I cannot.

5 Q And, in fact, many stores carry black trash bags

6 with a yellow tie, yellow string, strap, piece?

7 A Yes.

8 Q That's nothing unusual?

9 A No, it is not.

10 Q And you are not saying that you know anything

11 about this particular Robert Miller, correct? It's not your

12 testimony? You're not saying that you know that he did this

13 or anything like that?

14 A I am just testifying as to what evidence was

15 collected at the crime scene.

16 MS. SMART-GITTINGS: Okay. Thank you. I have

17 nothing further.

18 THE COURT: Redirect?

19 MR. THORNTON: None, Your Honor. Again, just

20 subject to recall if she doesn't mind hanging out

21 with us for just a couple more hours. I don't want

22 to lose her back to Tennessee and then try to get her

23 back.

24 THE COURT: All right. Thank you, ma'am. Could

25 you stick around with us, please, ma'am?

1 THE WITNESS: Yes, sir.
2 THE COURT: But you will remain sequestered.
3 THE WITNESS: Okay. Thank you.
4 MR. THORNTON: Todd Schenk.
5 Thereupon,
6 TODD SCHENK
7 was called as a witness, having been first duly sworn,
8 was examined and testified as follows:
9 DIRECT EXAMINATION
10 BY MR. THORNTON:
11 Q Mr. Schenk, good afternoon.
12 A Afternoon.
13 Q Mr. Schenk, let me ask you a quick question.
14 Would you, please, state your full name, for the record?
15 A Yes, sir. My name is Todd Matthew Schenk.
16 Q Mr. Schenk, who do you work for?
17 A I would the South Carolina State Law Enforcement
18 Division, which is also called SLED.
19 Q And did you work for SLED back in June of 2014?
20 A I did.
21 Q And did you respond out along with -- and I think
22 I will pronounce her name right this time -- Tiffany Hezel
23 and with Brittany Burke?
24 A I did.
25 Q And, in fact, did you all go to several different

1 locations here in Allendale investigating the scenes
2 involved with the Willie Johnson murder?
3 A We did.
4 Q I'm going to hand you -- we'll start with the
5 small one first -- Exhibit -- States 29, which has been
6 marked for identification.
7 Can you identify what that is for me?
8 A Yes, sir. This is marked as Container O,
9 which -- may I refer to my notes?
10 Q Yes, sir.
11 A -- Container O -- yes, sir, I apologize for
12 taking so long.
13 Q That's okay. I was going to help you out.
14 A Thank you.
15 Q We were getting it out.
16 What are those items in Container O, which is
17 a clear plastic envelope?
18 A Actually, it's -- inside there -- or small manila
19 envelopes and it's marked with Item No. 48.1 -- and there
20 it is -- and Item No. 48 itself was the blood standard of
21 Mr. Willie Johnson.
22 Q All right. There's a blood standard of
23 Mr. Johnson.
24 Is there also a 46 and 47 in there, which are
25 fingernail clippings, all of which would have been collected

1 by you at the autopsy?

2 A The fingernail clippings would have been taken by

3 the pathologist, but we would have taken custody --

4 Q Yes, I didn't mean you physically took it.

5 A Oh, okay.

6 Q Did you take all of those things from the

7 pathologist, you along with Agent Hezel, and then transport

8 them to SLED?

9 A Yes, that is right.

10 Q And were those items in your care, custody and

11 control? And did you and Agent Hezel, then, get them logged

12 into evidence at SLED?

13 A They would have been in Special Agent Hezel's

14 custody --

15 Q Right.

16 A -- but, yes, they were. And we logged them all

17 in at SLED.

18 Q And you logged them all in to SLED. And you were

19 there with the pathologist and Agent Hezel when all this

20 stuff was turned over --

21 A Yes, sir.

22 Q -- is that correct?

23 Okay. And did follow all proper protocols --

24 did Agent Hezel follow all proper protocols with getting them

25 sealed up and logged into evidence?

1 A Yes, sir.

2 Q All right. And are they -- actually, have come

3 back now after testing and everything is still sealed up in

4 a SLED evidence bag; is that correct?

5 A Yes, all -- there are -- it is sealed all the way

6 around.

7 Q And does it have various signatures from people at

8 SLED who have tested it or done things to it?

9 A Yes, sir, it does.

10 Q All right.

11 THE COURT: Your Honor, at this time, unless

12 there's an objection, I'd ask that State's 29 be

13 moved into evidence, which is the blood standard of

14 the victim, as well as the fingernail clippings.

15 MS. SMART-GITTINGS: No, objection, Your Honor.

16 THE COURT: Admitted.

17 *(Whereupon, State's Exhibit No(s). 29 marked for*

18 *identification and received in evidence.)*

19 MR. THORNTON: Your Honor, at this time I will,

20 with Court's permission, approach?

21 THE COURT: Sure.

22 BY MR. THORNTON:

23 Q Show you what's marked as State's 30. And I

24 believe that it's got Items 63 and 64, and it's marked as

25 Container, I believe, L or one of the Container Ls.

1 Can you tell me what's inside that box. And
2 please don't open it, if there's a way for you to look at
3 your inventory list and tell me what it is.
4 A Yes, sir.
5 In Container L, it would contain Items No. 63
6 and 64, which is one black plastic bag from around the head
7 of Willie Johnson, and one white string from around the wrist
8 of Willie Johnson.
9 Q All right. Now, obviously, the jury has seen the
10 photographs in this case, although, you were not in the
11 room.
12 Is that why it's marked with a pink sticker
13 that says biohazard, meaning there's obviously blood?
14 A Yes, sir.
15 Q All right. And if we opened this box, it would --
16 A Yes, sir.
17 Q -- likely be unpleasant?
18 A Yes, sir.
19 Q All right. I'm going to ask you what's been
20 marked as State's Exhibit 31, if you can identify what is in
21 that box?
22 A Yes, sir. That should be Container K.
23 Q It is Container K, and it would appear to have
24 Items 55, 56, 57, 58, 59, 60 and 62.
25 A Yes, sir. So Items 55 was the broken dentures of

1 Mr. Willie Johnson. Items No. 56 was a white Hanes
2 undershirt, it was size large, from Willie Johnson. Item
3 No. 57 was one blue Dickey's jump suit, size large and
4 tall, from Willie Johnson. Item No. 58 was one pair of
5 green boxers from Willie Johnson. And Item No. 59 was one
6 pair of brown socks from Mr. Willie Johnson. And No. 60
7 was one pair of black workload boots from Willie Johnson.
8 And Item No. 62 was one white handkerchief and a napkin --
9 or one white handkerchief and napkin/paper towel from
10 Mr. Willie Johnson.
11 Q As with State's 29, did State's 30 and 31 get
12 turned over at the autopsy to Agent Hezel as well as
13 yourself, and were those items then transported, sealed and
14 then put into SLED evidence?
15 A Yes, sir, it was.
16 Q And are they still in sealed condition today?
17 A Yes, sir, they are.
18 MR. THORNTON: Your Honor, basically, because of
19 the -- the fact that these, basically, are the
20 victim's blood soaked clothes as well as the
21 dentures, I am going to ask that they be moved into
22 evidence. I'm not going to open them at this time.
23 Obviously, if the jury wants to open them at some
24 point, we can make arrangements and give them gloves
25 and all that. But I don't see the need to open them,

1 but I would ask that they be moved into evidence.
2 THE COURT: Any objection to the admission?
3 MS. SMART-GITTINGS: No objection, Your Honor.
4 THE COURT: Any objection to the procedure
5 outlined by Mr. Thornton?
6 MS. SMART-GITTINGS: No objection, Your Honor.
7 THE COURT: All right. They are admitted.
8 You may proceed.
9 MR. THORNTON: Thank you, Your Honor. The
10 Court's indulgence, please.
11 *(Whereupon, State's Exhibit No(s). 30-31 marked*
12 *for identification and received in evidence.)*
13 BY MR. THORNTON:
14 Q And just to -- sometimes I use terminology, and,
15 frankly, use it incorrectly.
16 One of the things we talked about in
17 State's 29 that you mentioned was a blood standard, and
18 that's basically the known blood sample that is collected
19 from, in this case, the victim, Willie Johnson at autopsy and
20 provided to you that you then transport along with Agent
21 Hezel to SLED?
22 A That is correct.
23 Q Okay.
24 MR. THORNTON: I don't have anything further.
25 Agent Schenk, if you'll, please, answer anything

1 that Ms. Smart has.

2 THE WITNESS: Yes, sir.

3 MS. SMART-GITTINGS: I don't have any questions

4 of Agent Schenk.

5 THE COURT: No questions.

6 MR. THORNTON: All right. Ashley Bell --

7 I'm sorry, Judge, I got ahead of myself. I ask

8 that he be excused, but I would ask that he stay with

9 me, I think they're all traveling together, until we

10 make sure we don't need anything else.

11 THE COURT: Very good.

12 Any objection to that, Ms. Smart?

13 MS. SMART-GITTINGS: No objection, Your Honor.

14 THE COURT: So you're excused.

15 Thereupon,

16 ASHLEY BELL

17 was called as a witness, having been first duly sworn,

18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. THORNTON:

21 Q Ma'am, would you, please, tell me your full name

22 for the record?

23 A It's Ashley Bell.

24 Q And Ms. Bell, is it okay to call you Agent Bell?

25 A Yes.

1 Q All right. And who do you work for?
2 A The South Carolina State Law Enforcement
3 Division, more commonly referred to as SLED.
4 Q And what do you do for SLED?
5 A I am a drug analyst at SLED.
6 Q And in 2014, specifically June 2014 until now,
7 have you been employed by SLED?
8 A Yes, I have been.
9 Q I'm going to ask you -- this is actually already
10 in evidence and this may be the shortest testimony you've
11 ever given -- but State's 29, I believe your name is on the
12 front of that bag?
13 A Yes, sir, I recognize the package. It has my
14 initials, the date that I sealed it as well as the unique
15 SLED lab number.
16 Q In this case, the case that we are here about
17 today, the murder of Mr. Willie Johnson, can you tell me
18 what you did in relation to this case as far as preparing
19 anything for analysis?
20 A Yes.
21 I would have stabilized the liquid blood
22 samples of the victim onto a sterile piece of paper and dried
23 that in a sterile hood and then packaged it into this
24 envelope to give to the DNA analyst.
25 Q So, basically, you took the known blood sample

1 that had been turned over from the autopsy. You created
2 a -- and I know you corrected me on this earlier, when I
3 asked you -- it's not a slide, but it's a piece of paper,
4 and you created a standard to be compared with anything else
5 that an analyst needed to compare it against; is that
6 correct?
7 A That is correct.
8 Q You didn't go out to the crime scene. You didn't
9 do anything else with this. You were there preparing and
10 assisting in the lab; is that right?
11 A That's correct. I did not go out to any crime
12 scenes. I simply stabilized the blood sample in the lab.
13 MR. THORNTON: I have, Judge, nothing else for
14 Ms. Bell. Same thing, though, I'd ask, she's
15 traveling with the other SLED folks, ask that she
16 remain with us.
17 But please answer any question that Ms. Smart has.
18 MS. SMART-GITTINGS: I don't have any questions.
19 THE COURT: Thank you, ma'am. You are excused
20 from the hearing. If you would please stay with us,
21 please, ma'am.
22 MR. THORNTON: Jennifer Bartman.
23 Thereupon,
24 JENNIFER BARTMAN
25 was called as a witness, having been first duly sworn,

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. THORNTON:

4 Q Could you please state your full name for the

5 record?

6 A My name is Jennifer Bartman.

7 Q And who do you work for?

8 A I work for the South Carolina Law Enforcement

9 Division, commonly known as SLED.

10 Q And what do you do for SLED?

11 A I am currently assigned to the DNA casework

12 department where we receive evidence from crimes that

13 happen all over the state of South Carolina. We perform

14 DNA analysis on the evidence as well as known standards,

15 and we make comparisons between them.

16 Q And how long have you worked for SLED as a DNA

17 analyst?

18 A I have worked there since October of 2012.

19 Q And what sort of training do you get when you're

20 doing DNA analyst work? In other words, what qualifies you

21 to be a DNA analyst?

22 A I have a bachelor's degree in biology, and I also

23 have a master's degree in forensic science with a

24 concentration in forensic biology. And I also received

25 approximately a year of training at SLED by a court

1 qualified analyst in the proper techniques and procedures
2 of the laboratory.
3 Q And as a DNA analyst, do you analyze known
4 standards against unknown to try to determine if the DNA
5 matches or doesn't match, those sorts of things?
6 A Yes. We make comparisons from known DNA
7 standards that are submitted to evidence that are submitted
8 from a crime.
9 Q And how many samples do you think you have
10 performed tests on since you've been at SLED?
11 A I have worked hundreds of cases, so hundreds of
12 samples.
13 Q And have you ever been qualified as an expert in
14 the state of South Carolina to testify in court?
15 A Yes, I have.
16 Q And was that as an expert in DNA analysis?
17 A Yes, it was.
18 MR. THORNTON: Your Honor, at this time I'd ask
19 that she be qualified as an expert in the field of
20 DNA analysis.
21 MS. SMART-GITTINGS: No objection.
22 THE COURT: All right. Ladies and gentlemen,
23 I'll remind you about expert testimony. This expert
24 has been stipulated to be an expert in DNA analysis.
25 Again, you are to treat it like any other testimony

1 you will hear in this case. You may accept it,
2 reject it, give it as much weight as you think it
3 deserves.
4 MR. THORNTON: Thank you, Your Honor.
5 BY MR. THORNTON:
6 Q I think probably everybody has seen shows like CSI
7 and all these other things, so we probably don't have the
8 same problem we used to with explaining DNA to people.
9 But could you just give us a brief -- kind of
10 explanation of DNA and what you're looking for?
11 A Okay. DNA stands for deoxyribonucleic acid, and
12 it's a chemical that is found in our bodies. And it
13 basically just makes up who we are. You get half of your
14 DNA from your mom and half of your DNA from your dad.
15 Q When -- in this case, did you perform some tests
16 on, actually, multiple items?
17 A That's correct.
18 Q And were you given -- and I'm just going to use
19 the SLED item numbers for you if that makes it simpler, if
20 that's okay?
21 A Yes, it does.
22 Q All right. There was a known standard, it's
23 actually in evidence already as State's 29, I believe.
24 There was a known standard which is SLED Item 48, I believe
25 it's actually 48.1, was a swab from the known standard that

1 Ashley Bell testified to already.

2 And did you take that and then compare it

3 against SLED Item No. 35, which was testified to earlier by

4 Agent Burke as the swabs from the ridge detail with suspected

5 blood?

6 A Yes, I did make that comparison.

7 Q And so at this point, what -- and, please don't

8 let me put words in your mouth -- but are you comparing what

9 we know to be the victim's blood or the victim's DNA with an

10 unknown? In other words, a swab collected at the scene,

11 which is Item H but SLED Item 35, the ridge detail?

12 A Yes, that's correct. Our SLED Item 48.1 is a

13 known dried blood standard from Willie Johnson.

14 Q And 35 was listed as swabs from documented ridge

15 detail at Marker H that the jury heard testimony on already?

16 A That's correct.

17 Q And were you able to reach any conclusion as to

18 the DNA or was there a match? Were you able to reach that

19 conclusion?

20 A Yes. The results regarding that item, the DNA

21 profile was developed from SLED Item 35, which were the

22 swabs from the documented ridge detail at Marker H, matched

23 the DNA profile of Willie Johnson. The probability of

24 randomly selecting an unrelated individual having a DNA

25 profile matching that item is approximately one in

1 210 trillion.

2 Q So the swab collected at 35, in your expert

3 opinion, contained, that substance, contains DNA belonging

4 to Willie Johnson?

5 A Yes, that's correct.

6 Q And it's a match?

7 A That's correct.

8 Q All right. Did you also test some fingernail

9 clippings, which are Item 46 and 47 -- it was actually

10 brought up earlier -- 46 and 47, fingernail clippings from

11 the right and left hand of Willie Johnson?

12 A Yes, I did.

13 Q And what were your results, if any, from testing

14 those?

15 A The DNA profiles developed from these two items

16 were mixtures of at least two individuals. So when we do

17 DNA analysis, sometimes we get a single source profile

18 which is just attributable to one person. But sometimes we

19 can get a mixture of more than one person's DNA in -- in a

20 sample.

21 And in this case, both of these DNA profiles

22 were mixtures of at least two individuals. The DNA profile

23 of the major contributor to these mixtures, so the person who

24 contributed more DNA than any other contributor to the

25 mixture, was consistent with the DNA profile of Willie

1 Johnson. And the partial DNA profile of the minor
2 contributors, so that second contributor, was insufficient
3 for comparison. I couldn't make any comparison to that
4 second contributor.
5 Q And so there were at least those two, and I
6 believe there were others -- I won't go through every single
7 item that you tested, you tested a bunch -- there were
8 several items that came back as either the victim's blood --
9 sorry, the victim's DNA, let me be precise, or a mixture
10 with the victim's DNA and some unidentified portion or
11 couldn't be identified because it was insufficient for
12 testing; is that right?
13 A That's right.
14 Q All right. And there was no -- in the testing
15 that you did, the Defendant's DNA was not identified on
16 anything that you recall testing; is that correct?
17 A I would have to check my results.
18 MR. THORNTON: The State will stipulate that her
19 answer if she went and checked her notes would be no,
20 his DNA -- it's not just for time purposes, Judge, I
21 don't want her to have to -- she did several reports.
22 THE COURT: You agree with that stipulation?
23 MS. SMART-GITTINGS: Yes, Your Honor.
24 BY MR. THORNTON:
25 Q But it is fair to say that there were several that

1 were a mixture of Mr. Johnson and another individual's DNA,
2 but it's just not enough there to test.
3 A That's correct.
4 MR. THORNTON: The Court's indulgence, please,
5 Judge.
6 Your Honor, I don't think that I have anything
7 else. I'd ask that she answer any questions that
8 Ms. Smart has.
9 THE COURT: Cross examination?
10 MS. SMART-GITTINGS: Court's indulgence one
11 moment.
12 I don't have any questions -- sorry, one moment.
13 CROSS EXAMINATION
14 BY MS. SMART-GITTINGS:
15 Q In some of the DNA testing that you did, and this
16 is the report dated January 28th, Robert was excluded as a
17 contributor; is that correct?
18 A On the report dated January 28th?
19 Q Yes, specifically page 3 of 6?
20 A For Item 26 Robert Miller was excluded.
21 Q And none -- Robert Miller's DNA was not in
22 Mr. Johnson's fingernail clippings?
23 A The profile of the minor contributor was
24 insufficient for comparison.
25 Q So, but it wasn't Robert's? You're not testifying

1 it was?

2 A I am not testifying that it was, no.

3 MS. SMART-GITTINGS: I don't have any other

4 questions.

5 THE COURT: Redirect?

6 MR. THORNTON: Just -- I want to be sure we're

7 clear on that.

8 REDIRECT EXAMINATION

9 BY MR. THORNTON:

10 Q When you say it's "insufficient," you can't -- you

11 certainly cannot say that it is Robert Miller's DNA as the

12 minor contributor; is that fair?

13 A That's correct.

14 Q Is it also fair to say you can't say that it isn't

15 his either?

16 A That's correct.

17 Q All right. It's unknown because it's insufficient

18 for comparison?

19 A That's correct.

20 Q As to the fingernail clippings --

21 A That's correct.

22 Q -- and other items that we talked about?

23 A Yes, sir.

24 Q Thank you.

25 MR. THORNTON: Nothing further, Judge.

1 7-13-2017 PROCEEDINGS
2 THE COURT: All right. Mr. Thornton, Ms. Smart,
3 we had a meeting in my chambers before we came out
4 here about some evidentiary matters.
5 MR. THORNTON: Yes, sir, Your Honor. I believe
6 Ms. Smart has two motions -- or two things she needs
7 to put on the record that we may have to have brief
8 argument on.
9 THE COURT: Okay. Ms. Smart, I'll be glad to
10 hear from you.
11 MS. SMART-GITTINGS: May it please the Court,
12 Your Honor.
13 Before the jury comes out and just in the interest
14 of time, I want to renew my motion to suppress the
15 confession given by Mr. Miller to Agent Johnson. Just
16 renew on the reason that I don't think it was
17 voluntary. I don't think that it was normally and
18 intelligently waived.
19 I also believe that there were two interrogations.
20 The first interrogation was done by Agent -- Chief
21 Williams of the Fairfax Police Department, and the
22 subject matter of that investigation was the shooting
23 of Ray Quan (phonetic) prior, which is one crime. The
24 second crime that SLED was interested in interrogating
25 Mr. Miller was the death of Mr. Johnson. So I believe

1 that those are two separate crimes which require two
2 different Mirandas. The second Miranda was not given,
3 and I believe that that's a violation of his rights.
4 THE COURT: I noticed that objection. In fact,
5 my law clerk and I were researching cases and looking
6 at the gap between time. The way I look at it,
7 although they might involve --
8 MS. SMART-GITTINGS: Judge, I'm sorry --
9 THE COURT: -- different topics --
10 MS. SMART-GITTINGS: -- I can't hear you.
11 THE COURT: I'm sorry.
12 -- although they might involve different topics,
13 and I looked at it as, basically, a contemporaneous
14 interrogation although two different groups.
15 We had State versus Simmons, there was a four-hour
16 gap in time that was found to be acceptable, twelve
17 hours in West versus Coxton. Two and a half in
18 (inaudible) versus US Frankston. And 30 minutes in
19 State versus Smith. I think the evidence in this case
20 shows it was around an hour or so gap in between the
21 two, maybe, more or less, somewhere in that time frame.
22 So I think it's acceptable under case law in this
23 case. But I note your objection for the record.
24 MS. SMART-GITTINGS: And just so -- just so we
25 won't hear argument, and I know that the objection

1 has to be contemporaneously with the testimony, can I
2 just say I renew my previous objection so it'd be
3 contemporaneous right before Agent Johnson --
4 THE COURT: As to the statement?
5 MS. SMART-GITTINGS: Right.
6 THE COURT: Yes, ma'am. You should be
7 protected.
8 MS. SMART-GITTINGS: So we don't have to take --
9 go out -- go back outside.
10 THE COURT: Yes, ma'am.
11 MS. SMART-GITTINGS: Oh, and --
12 THE COURT: You have some fingerprint issues, I
13 think?
14 MS. SMART-GITTINGS: Fingerprint issues.
15 Because I don't want to confuse the facts, I'll ask
16 Mr. Thornton to put on the record how we came to
17 this, and then I'll -- I'll give my argument.
18 THE COURT: Yes, ma'am.
19 MR. THORNTON: Thank you, Judge.
20 Basically, Your Honor, is -- and I think you know
21 this just from some conversations we've had, obviously,
22 both pretrial and this morning -- one of the pieces of
23 evidence the State intends to put on this morning
24 through SLED agent Kimberly Mears is a comparison of
25 the Defendant's, what I call case prints or standard

1 prints, his set of fingerprints that was done with
2 Item H, that I know the Court is familiar with, that
3 was testified yesterday by SLED contained the DNA of
4 suspected blood and was one in whatever, 240 trillion,
5 DNA of the victim.
6 THE COURT: And that's the palm print, right?
7 MR. THORNTON: Yes, sir. In laymen's terms it's
8 a palm print in the victim's blood.
9 THE COURT: Okay.
10 MR. THORNTON: That palm print was compared to
11 the prints of, the major case prints, of Robert Lee
12 Miller, III, as well as other individuals, Gabriel
13 Joiner, I think Keshawn Bynum. Mr. Robert Miller,
14 who found the Defendant, because he was in the
15 same -- they actually collected prints from him as
16 well. And the palm print from H was examined as --
17 against all of those. It was found to be a match to
18 the Defendant, Robert Lee Miller.
19 There was a report generated by Tiffany Hezel with
20 SLED, who is the person who took the prints both from
21 the scene, as Brittany Burke testified. Brittany Burke
22 as well as Tiffany Hezel did the crime scene. And
23 Tiffany Hezel actually collected the major case prints
24 from the defendant in this case, Robert Lee Miller,
25 then logged them into SLED.

As the Court knows, Tiffany Hezel is on her honeymoon this week. The protocol at SLED, Your Honor, is that when someone does -- and Tiffany Hezel actually did the initial identification. When Tiffany Hezel got a match, they are required to send it to another analyst who does their own independent examination. And if they agree with the other analyst, then the first analyst, in this case Hezel, generates a report.

The defense has gotten the fingerprint from H. They have gotten the report from Hezel. Mears, who is the one who will testify as to the print, did not generate a report because that's not their protocol. And Mr. Jordan asked what I thought was a very good question of me yesterday, well, you know, then how would the defense ever know if they disagreed. Well, it's easy. If they don't agree and they can't come to an agreement, then the print is not considered a match. I confirmed that with Kimberly Mears this morning.

So Kimberly Mears will be the one testifying to that today, because she did her own independent examination of the prints.

THE COURT: Go ahead.

MR. THORNTON: What the defense didn't get from my office was her client's set of fingerprints.

THE COURT: The standard?

1 But as to the Defendant, that Agent Hezel
2 collected what we call major case prints or
3 fingerprints for comparisons with items at the scene,
4 and that those were, then, transferred to SLED. And I
5 believe it is SLED Item No. 95.
6 THE COURT: Do you stipulate to that, Ms. Smart?
7 MS. SMART-GITTINGS: I do, Your Honor.
8 THE COURT: Very good.
9 MR. THORNTON: Thank you, Your Honor.
10 Thereupon,
11 KIMBERLY MEARS
12 was called as a witness, having been first duly sworn,
13 was examined and testified as follows:
14 DIRECT EXAMINATION
15 BY MR. THORNTON:
16 Q Would you please state your name for the record,
17 ma'am?
18 A Kimberly Mears.
19 Q And is it okay to call you Agent Mears?
20 A That's fine.
21 Q And who do you work for?
22 A The South Carolina Law Enforcement Division which
23 is commonly known as SLED.
24 Q And how long have you worked for SLED?
25 A I've been with SLED for almost nine years.

1 Q What do you currently do for SLED?
2 A I'm a forensic scientists in the latent print
3 department.
4 Q Let me ask you this. What kind of education do
5 you have in both school as well as whatever training you
6 have with SLED to qualify you to do the type of work that
7 you currently do?
8 A I have a bachelor of science degree in biology
9 from Winthrop University. Once I was hired into the latent
10 print department, I completed their in-house training
11 program. I was also accepted into a latent print examiner
12 training program sponsored by the National Institute of
13 Justice, which was a ten-week program with courses covering
14 all aspects of fingerprint work.
15 Q And how long have you been doing fingerprint --
16 would be fair to say fingerprint comparison or examination?
17 A Yes.
18 Q How long have you been doing that?
19 A A little over five years.
20 Q And how many sets of prints do you think you've
21 analyzed in your career?
22 A It would be in the thousands.
23 Q And have you ever been qualified as an expert to
24 testify in the field of fingerprint comparisons in --
25 A I have.

1 Q -- the courts of South Carolina?
2 A Yes, I have.
3 Q All right.
4 MR. THORNTON: Your Honor, at this time, I'd ask
5 that she be qualified as an expert in fingerprint
6 identification and comparison.
7 MS. SMART-GITTINGS: No objection, Your Honor.
8 THE COURT: Very good.
9 All right. Ladies and gentlemen, if you recall
10 throughout this case we've had various experts.
11 Experts are allowed to give their opinion in the area
12 of their expertise. This lady has been stipulated to
13 be an expert in the field of fingerprint identification
14 and comparison. She'll be allowed to give her opinion
15 in that area and state her reasons for her opinion is.
16 I'll remind you, expert opinions are like any other
17 testimony you'll hear in this case. You may accept it,
18 you may reject it or give it as much weight as you
19 think that it deserves.
20 All right. Mr. Thornton?
21 MR. THORNTON: Thank you, Your Honor.
22 BY MR. THORNTON:
23 Q Agent Mears, I'll try to keep this as
24 straightforward as possible.
25 When you are comparing fingerprints, is it

1 typically a known and an unknown?
2 A For the most part, yes.
3 Q All right. And in this case, the case of the
4 State versus Robert Lee Miller, III involving the murder of
5 Willie Johnson, is that what you were comparing is known
6 and -- knowns and unknowns?
7 A Yes, it was.
8 Q Okay. Specifically, and unfortunately SLED has
9 item numbers and sometimes there's multiple item numbers for
10 the same thing, but what we're talking about, I believe, is
11 what the jury has already been given is a ridge impression
12 from the home of the victim in this case, which is
13 referenced by Marker H.
14 Is that the unknown that you were looking at?
15 A Yes, it is.
16 Q And I think it was -- is your item number on that
17 71.1?
18 A That's correct.
19 Q And that's what you did your comparison off of?
20 A Yes.
21 MR. THORNTON: Your Honor, I apologize, Court's
22 indulgence, please, one moment.
23 BY MR. THORNTON:
24 Q All right. And is your designation -- would you
25 please read the designation that you have as far as the

1 description of what 71.1 is?

2 A Item 71.2 is a latent impression at Marker H

3 represented on, it's the file name, from Item 71.

4 Q All right. So it's Marker H. And the markers

5 that -- that refers to, is that the identifying letters or

6 numbers that they would give an item at the crime scene?

7 A Yes, it is.

8 Q Okay. And so what your testimony is, the unknown

9 you compared was at Marker H from this crime scene?

10 A That is correct.

11 Q Which is the ridge detail?

12 A Yes.

13 Q Now, when you compare one, an unknown, do you

14 leave it as the purple LCV, or do you print it out in

15 another fashion?

16 A No, our photography department changes it or

17 enhances it to a black and white copy of that to match the

18 known standards, so that it's black ridges with black

19 ridges.

20 Q All right. So when you say "black ridges versus

21 black ridges," when someone gets their fingerprints taken,

22 generally speaking and in this case, what color are they?

23 A They are black from the ink that's applied to the

24 hand.

25 Q Is it fair to say, then, that you just removed the

1 color from this so that you're comparing, my daddy would
2 say, apples to apples and oranges to oranges?
3 A Yes.
4 Q So black to black?
5 A Yes.
6 Q All right. Did you just examine Marker H, the
7 ridge print found with the victim's DNA, did you just
8 examine that as to the case prints, which I believe we've
9 got as item, by stipulation, 95, SLED Item 95? Is that the
10 only set of known prints that you compared this to?
11 A No, it is not.
12 Q What other prints did you compare it to?
13 A The names?
14 Q Please.
15 A Okay. They were compared to Willie Johnson,
16 William Johnson, Robert Miller Gabriel Joiner and Keshawn
17 Bynum.
18 Q Now, you just said Robert Miller, but that's --
19 your understanding, is that Robert Lee Miller, III or is
20 that a different person?
21 A No. Robert Lee Miller, III is the last person, a
22 different person that they were compared to.
23 Q Obviously you weren't in here, but the jury's
24 already heard testimony from Mr. Robert Miller who found the
25 victim.

1 A Okay.

2 Q So you compared this unknown meaning you don't

3 know who it belongs to at this point to all those

4 individuals?

5 A Yes.

6 Q As to -- would you read the names off one at a

7 time for me?

8 A Willie Johnson.

9 Q Was it a match or not?

10 A No.

11 Q So that's not the victim Willie Johnson's print?

12 A No, it's not.

13 Q All right. Who's next?

14 A William Johnson.

15 Q Is that Mr. William Johnson's print?

16 A No, it's not.

17 Q All right.

18 A Robert Miller.

19 Q All right. Is that Mr. Robert Miller, the person

20 that found the victim, is that his print?

21 A No.

22 Gabriel Joiner.

23 Q Is that his print?

24 A No.

25 Keshawn Bynum.

1 Q Is that his print?

2 A No, it's not.

3 Q Who's the last person that you can -- or who's the

4 other person that you compared it to?

5 A Robert Miller, III.

6 Q Is it his print?

7 A Yes, it is.

8 MR. THORNTON: Your Honor, the Court's

9 indulgence, please.

10 Your Honor, at this time I have no further

11 questions.

12 Please answer any questions that

13 Ms. Smart-Gittings has for you.

14 THE COURT: Cross examination.

15 MS. SMART-GITTINGS: May it please the Court?

16 THE COURT: Yes, ma'am.

17 CROSS EXAMINATION

18 BY MS. SMART-GITTINGS:

19 Q Agent Mears, you've indicated that you've also

20 compared prints from Robert Lee Miller.

21 You didn't collect those prints from Robert

22 Lee Miller, did you?

23 A No, I did not.

24 Q And so how were you able to distinguish which

25 Robert Lee Miller's prints you were examining?

1 A I do not have copies of the fingerprint cards
2 with me. But, generally, they have a date of birth, Social
3 Security, other identifying factors on the card other than
4 just the name.
5 MS. SMART-GITTINGS: May I approach the witness,
6 Your Honor?
7 THE COURT: Yes, ma'am.
8 BY MS. SMART-GITTINGS:
9 Q Do you recognize that?
10 A This is a copy of Item 95, which are the known
11 standards of Robert Lee Miller, III.
12 Q And does it also say Robert Lee Miller where it
13 says, name, first name, middle name?
14 A Yes, it does.
15 Q So in one spot it has Robert Lee Miller and in the
16 other it has the Robert Lee Miller, III; is that correct?
17 A Yes, it is.
18 Q And you don't have Item 70n with you so that you
19 could look at it?
20 A I do not.
21 Q And it does not have a date of birth on it, does
22 it?
23 A On this one or --
24 Q On this one?
25 A This does not have a date of birth listed.

1 Q And it does not have a Social Security number on
2 it, does it?
3 A No, it does not.
4 Q It only has in one spot Robert Lee Miller,
5 correct?
6 A Correct.
7 Q In another spot Robert Miller, III?
8 A Correct.
9 Q So it has, actually, both names, Robert Lee Miller
10 and Robert Lee Miller, III?
11 A Yes.
12 Q So you can't testify to this court that this is
13 the set of prints for Item 70 or there's another set of
14 prints for Item 70 because they don't have identifying
15 markers on them?
16 A This has Item 95.
17 Q As far as the individual with whom the prints were
18 taken --
19 A No, I do not --
20 Q -- you do not have a date of birth, it does not
21 have a Social Security number?
22 A No. I did not take these prints, I can't say.
23 Q It only has a name?
24 A Correct.
25 MS. SMART-GITTINGS: I don't have any other

1 questions.

2 May I approach the witness, Your Honor?

3 THE COURT: Okay.

4 Redirect?

5

6 REDIRECT EXAMINATION

7 BY MR. THORNTON:

8 Q You said it has Item 95 on it?

9 A Yes, it does.

10 Q I'm sorry, the -- the item that Ms. Smart just

11 handed you, which is -- it actually has Robert Lee Miller

12 and Robert Miller, III, and it has Item 95 --

13 A Correct.

14 Q -- correct?

15 And Item 95 is what we've already stipulated

16 to were the prints as one set of major case prints collected

17 from Robert Lee Miller, III?

18 A Correct.

19 Q And that is the print that matches the Defendant

20 to Item H, correct?

21 A Correct.

22 Q All right. So -- but you did not personally pull

23 these or see these get pulled, which is why we entered the

24 stipulation that there was a set of case prints pulled. You

25 didn't personally see these prints pulled, which are listed

1 as Item 95, correct?
2 A I did not.
3 Q All right. But there's no doubt that Item 95,
4 these prints are the ones that matched Item H?
5 A That's correct.
6 Q All right. Thank you.
7 MR. THORNTON: I have no further questions.
8 RE-CROSS EXAMINATION
9 BY MS. SMART-GITTINGS:
10 Q But you do not have the other set of prints that
11 you could testify what the identifying marks as to the
12 individual are, do you?
13 A The --
14 Q You don't have the -- Item 70, you don't have
15 those?
16 A I do not.
17 Q So you can't tell this jury what the identifying
18 markers are on Item 70?
19 A Correct.
20 MS. SMART-GITTINGS: I don't have any other
21 questions.
22 MR. THORNTON: No questions.
23 Judge, ask that she be excused.
24 THE COURT: Any objection, Ms. Smart?
25 MS. SMART-GITTINGS: No objection, Your Honor.

1 THE COURT: Thank you, ma'am. You may be
2 excused.
3 MR. THORNTON: The state investigator Donnie
4 Hutto to the stand.
5 Thereupon,
6 DONNIE HUTTO
7 was called as a witness, having been first duly sworn,
8 was examined and testified as follows:
9 DIRECT EXAMINATION
10 BY MR. THORNTON:
11 Q Investigator Hutto, I know they're really going to
12 be dumb questions since you work with our office, but who do
13 you work for, sir?
14 A I'm an investigator with 14th Circuit Solicitor's
15 office.
16 Q And how long have you been with our office?
17 A Three years now.
18 Q And where were you before that? Who'd you work
19 for?
20 A I was a detective with Allendale Police
21 Department.
22 Q And how long have you been with Allendale Police
23 Department?
24 A I was there six years.
25 Q All right. Now, before we go back any further,

1 how long have you been in law enforcement in one form or
2 another?
3 A Approximately 18 and a half years.
4 Q And as an investigator with the solicitor's
5 office, do you assist both SLED and local law enforcement
6 with cases that are being prosecuted by our office?
7 A Yes, I do.
8 Q I'm going to show you this set of case prints.
9 MR. THORNTON: And, Judge, there's no marker on
10 these. I'm not planning on introducing them as an
11 exhibit, but it's the same prints, for the record,
12 Ms. Smart showed Agent -- Agent Kimberly Mears a
13 moment ago.
14 THE COURT: Okay.
15 BY MR. THORNTON:
16 Q I'm going to show you that set of prints which has
17 been testified by the agent to be the prints from which a
18 match, matches H, which is the fingerprint found at the
19 scene in the victim's blood with his DNA on it.
20 Do you recognize those?
21 A I'm sorry, I left my reading glasses on the
22 corner of the table. I apologize.
23 Q I need mine too, no problem.
24 A Thank you.
25 Q Look at those and tell me if you can identify them

1 or if you have any knowledge of them.

2 A (Witness reviews document.) Yes, sir, I do.

3 Q All right. And they are labeled, are they not,

4 and I --

5 MR. THORNTON: The State will stipulate that one

6 place it says Robert Lee Miller and the other it says

7 Robert Miller, III on it. It also has Item 95, which

8 has already been stipulated to be the case prints, as

9 labeled, of Robert Lee Miller, III, the defendant in

10 this case, Your Honor.

11 BY MR. THORNTON:

12 Q Mr. Hutto, you said you know -- you recognize

13 those.

14 How do you recognize them?

15 A I was -- I was present when Agent Hezel took

16 these prints.

17 Q So you were present in the room when Agent Hezel

18 from SLED took those prints?

19 A Yes, sir.

20 Q And it's already been stipulated that she did take

21 these prints and transported it to SLED; is that correct?

22 A Yes, sir, that's correct.

23 Q Who else was in the room with you?

24 A Agent Johnson, and -- I'm not sure if Ms. Smart

25 was in the room or in the hallway, somewhere around, but --

1 and Agent Hezel. And that's the only ones I remember in
2 the room.
3 Q Any doubt in your mind that those items as labeled
4 and signed by Agent Hezel are the ones that she pulled from
5 Robert Lee Miller, III --
6 A No, I was there when she signed them.
7 Q -- the defendant in this case?
8 A That's correct.
9 MR. THORNTON: I don't have any further
10 questions. Please answer any questions Ms. Smart has
11 for you.
12 CROSS EXAMINATION
13 BY MS. SMART-GITTINGS:
14 Q Investigator Hutto, you weren't present when or if
15 the other Robert Miller was fingerprinted, were you?
16 A No, I was not.
17 Q And you were in here. He didn't testify that he
18 had been fingerprinted, did he?
19 A No, he did not.
20 Q And there hasn't been a witness to testify that
21 Robert Miller was finger -- the other Robert Miller was
22 fingerprinted?
23 A No.
24 Q And you can't testify that the other Robert Miller
25 was fingerprinted?

1 A Other than seeing his name on the report.
2 Q Seeing a Robert Miller's name on the report?
3 A Yes. I mean, I wasn't there when Robert Miller
4 was fingerprinted.
5 MS. SMART-GITTINGS: I don't have any other
6 questions.
7 THE COURT: Any redirect?
8 MR. THORNTON: None, Your Honor.
9 THE COURT: All right. Thank you, sir. You may
10 step down.
11 MR. THORNTON: Johnathan Capers. The State
12 calls Johnathan Capers to the stand.
13 Thereupon,
14 JOHNATHAN CAPERS
15 was called as a witness, having been first duly sworn,
16 was examined and testified as follows:
17 DIRECT EXAMINATION
18 BY MR. THORNTON:
19 Q Good morning, Mr. Capers.
20 A Good morning.
21 Q If you would, that's good that you're close to the
22 microphone, just make sure so everybody can hear what your
23 testimony is.
24 Can you do that for me?
25 A Yes, sir.

1 Q All right. Thank you.

2 Mr. Capers, could you state your full name for

3 the record?

4 A Johnathan Rasheen Capers.

5 Q Mr. Capers, do you know the defendant in this

6 case, Robert Lee Miller, III?

7 A Yes, sir.

8 Q And how do you know him?

9 A We growed up together.

10 Q You grew up together?

11 A Yes, sir.

12 Q Has he ever been to your house or stayed overnight

13 at your house?

14 A Yes, sir.

15 Q One time or a bunch of times?

16 A He stayed a couple of weeks.

17 Q He stayed for a couple of weeks?

18 A (Nods in the affirmative).

19 Q And you said you grew up together. So have you

20 known him pretty much all your life?

21 A Yes, sir.

22 Q Back in June of 2014, specifically on Thursday the

23 19th of June, did -- let me ask you this before I ask you

24 that.

25 So had y'all been friends in June of 2014?

1 Would you have considered Mr. Miller to be your friend?
2 A Yeah, he was like my brother.
3 Q He was like your brother.
4 Let me ask you this, on June 19th of 2014, did
5 Mr. Miller talk to you about his involvement in the case that
6 we're here today, about the murder of Mr. Willie Johnson over
7 on Pickrum Street?
8 A Yes, sir.
9 Q All right. And did you on the 24th, June 24th of
10 2014, did you give a statement to law enforcement where you
11 wrote out a statement to them about what he told you?
12 A Yes, sir.
13 Q All right. What did -- what, if anything, did the
14 defendant in this case, Mr. Miller, what did he tell you
15 about his involvement in the murder of Willie Johnson?
16 A It was like his brother -- his brothers came and
17 got him. Said they was going to hit a lick or something
18 like that.
19 Q All right. Hang on a second. I'm going to ask
20 you to slow down and speak up a little bit.
21 You said that his brother came by. Who is his
22 brother?
23 A Keshawn.
24 Q All right. Do you know Keshawn's last name?
25 A Bynum.

1 Q Keshawn Bynum.
2 So his brother, Keshawn Bynum, and who -- if
3 anybody else, who else?
4 A I guess his home boy.
5 Q All right. Do you know what his home boy's name
6 is?
7 A Gabriel.
8 Q Gabriel.
9 All right. So Keshawn and Gabriel come by his
10 house. And I think what you said was, to do a lick. They
11 were going to do a lick.
12 What does that mean?
13 A I guess like --
14 Q No, don't guess.
15 A Break in somebody's house.
16 Q What do you understand? If somebody says that
17 they're going to do a lick, what do you understand that
18 means?
19 A Go in somebody's house. Run in somebody's house.
20 Q Run in somebody's house?
21 A Yes, sir.
22 Q So do you mean with permission, or do you mean
23 like to do a burglary or a robbery?
24 A Yeah, like a burglary.
25 Q So Mr. Miller told you that his brother and his

1 home boy, Gabriel, came by his house and they were going to
2 do a lick.
3 What else did he tell you?
4 A He said they went in. And I guess he asked them
5 like -- he said something about some sugar or something
6 like that, yeah.
7 Q That he -- I'm sorry, what about sugar?
8 A No, he asked them, they're like did he have some
9 sugar. I mean, like when they knock on the --
10 Q Again, I need you to slow down for me. "He,"
11 meaning Robert Lee Miller?
12 A Yes, sir.
13 Q Asked Mr. Johnson?
14 A Yes, sir, I don't know the old man's name that --
15 Q You don't know his name.
16 Asked the man in the house for some sugar?
17 A Yes, sir.
18 Q All right. What else?
19 A And he said, the man said he couldn't -- he
20 couldn't give him none, because he was getting robbed
21 lately and before. So he said he wasn't -- he wasn't
22 trusting them. So I guess they said that they went up and
23 hit him and then he fought. The other two -- the other two
24 went and searched the house. And then I guess that's what
25 happened.

1 Q All right. Well, what else did he say? Did he
2 say anything else about he said -- you said -- you just
3 testified that the -- that Robert Lee Miller said that he
4 hit the old man.
5 So while they were searching, what did -- what
6 did they say they do with the old man?
7 A Beat him.
8 Q Beat him?
9 A Yes, sir.
10 Q Did they say anything about anything else? And if
11 I need to give you your statement so you can read it to
12 refresh your memory, that's fine. What else did the tell --
13 what else did they tell you that they did?
14 A Tie him up, put a bag on his head, beat him.
15 Q So they -- Robert Lee Miller told you that he and
16 Keshawn Bynum and his home boy Gabriel went and asked the
17 old man for sugar. And the -- you've testified that Robert
18 Lee Miller admitted to you that he beat him, they were
19 beating him. That they tied him up, and then they put a bag
20 on him?
21 A Yes, sir.
22 Q And did he say they put a bag somewhere
23 particular? In other words, where on his body did they put
24 the bag?
25 A I guess on his head.

1 Q Okay. And did he say whether or not they took
2 anything from the house or from the man himself?
3 A Some money. And, I don't know, a gun.
4 Q All right.
5 MR. THORNTON: Your Honor, may I approach?
6 THE COURT: Yes, sir.
7 BY MR. THORNTON:
8 Q Mr. Capers, I'm going to hand you your statement.
9 MR. THORNTON: And I'm not introducing it,
10 obviously, Judge. His testimony would be best unless
11 we can't get it this way.
12 BY MR. THORNTON:
13 Q And I want you to read your statement, sir, out
14 loud. Would you just read the bottom portion of that. You
15 seemed a little unclear, and you said money and guns. Just
16 read the rest of your statement. And when you're done, if
17 that refreshes your memory of what you told law enforcement
18 right after this happened, then I'll ask you the next
19 question. You let me know when you're done.
20 A You want me to read it out loud?
21 Q You've read it?
22 A Yeah, I read it. I already know.
23 Q Okay. All right. Mr. Capers, you said -- we left
24 off with that they took some money from the old man and some
25 guns.

1 Now, do you remember getting asked some
2 questions by the law enforcement person that you were talking
3 to? In other words, after you gave a statement, they asked
4 you some specific questions that you answered?
5 A Yes, sir.
6 Q All right. And was one of the things they asked
7 you, where did he, meaning the defendant, stomp the old man?
8 What did you say?
9 A Will you repeat that?
10 Q I'm sorry.
11 Was one of the questions where did he, meaning
12 the defendant, stomp the old man.
13 And what was your answer?
14 A You say where?
15 Q Yes, sir, where on him?
16 A I guess face, his face.
17 Q And did you also give them some information that
18 Mr. Miller had told you about the phone in the home?
19 A Yes, sir.
20 Q All right. What was that? What did he tell you
21 they did with the phone?
22 A He said -- he said that his brother -- the
23 brother took the phone off of the hook, so it couldn't
24 ring. And I think that's it.
25 MR. THORNTON: The Court's indulgence, please,

1 Your Honor?

2 THE COURT: Yes, sir.

3 BY MR. THORNTON:

4 Q Mr. Capers, I don't have any other questions for

5 you. Please answer any questions that Ms. Smart-Gittings

6 may have.

7 THE COURT: Cross examination?

8 MS. SMART-GITTINGS: May it please the Court?

9 CROSS EXAMINATION

10 BY MS. SMART-GITTINGS:

11 Q Isn't it true that Robert told you that he had

12 heard some stories in the street, and that he was accused of

13 doing something?

14 A Can you repeat that?

15 Q Isn't it true Robert had heard rumors that SLED

16 was looking for him?

17 A Yes, ma'am. Yes, ma'am.

18 Q And he told you that he was afraid because they

19 accused him of something?

20 A No, ma'am.

21 Q Okay. So you told law enforcement that Robert

22 told you that he tied the old man up with a Dollar General

23 bag?

24 A Yes, ma'am.

25 Q So Robert said, he put a Dollar General bag over

1 the man's head?

2 A Yes, ma'am.

3 Q And what do you believe a Dollar General bag to

4 be? Have you seen a Dollar General Bag?

5 A Yes, ma'am.

6 Q What does it look like?

7 A A regular bag.

8 Q What color is it?

9 A Yellow.

10 Q What does it have on it?

11 A Dollar General.

12 Q Now, Robert also told you that he tied the man's

13 feet up?

14 A He said his brother did.

15 Q But his feet were tied?

16 A I don't know, I ain't never seen the man.

17 Q But that's what you're saying that Robert told

18 you?

19 A Yes, ma'am.

20 Q And did you see Robert with any money?

21 A No, ma'am.

22 Q So he didn't have any money?

23 A No, ma'am.

24 Q And he came to your house on that -- on that

25 night --

1 A Yes, ma'am.

2 Q -- after it happened, but he didn't have any

3 money?

4 A He said that -- he didn't have any what?

5 Q Money?

6 A Yes, ma'am.

7 Q But he told you that he took money from the man?

8 A Yes, ma'am.

9 Q And you also --

10 MS. SMART-GITTINGS: The Court's indulgence?

11 BY MS. SMART-GITTINGS:

12 Q You said that he asked the man for some sugar?

13 A Yes, ma'am.

14 Q And he said the man said that he didn't have any

15 sugar because people were robbing him?

16 A Yes, ma'am.

17 Q He came to your house with your mother, right?

18 A Yes, ma'am.

19 Q And your mother is?

20 A Tiffany.

21 Q Tiffany Sabb?

22 A Yes, ma'am.

23 Q But you weren't with her when she picked him up?

24 A No, ma'am.

25 MS. SMART-GITTINGS: I don't have any other

1 questions.
2 THE COURT: Redirect?
3 MR. THORNTON: None, Your Honor. Ask that he be
4 excused.
5 THE COURT: All right. Sir, you are excused.
6 All right.
7 MR. THORNTON: Tiffany Sabb.
8 Thereupon,
9 TIFFANY SABB
10 was called as a witness, having been first duly sworn,
11 was examined and testified as follows:
12 DIRECT EXAMINATION
13 MR. THORNTON:
14 Q Good morning, ma'am.
15 A Good morning.
16 Q Would you please state your name for the record?
17 A Tiffany Sabb.
18 Q Ms. Sabb, do you know the defendant in this case
19 Robert Lee Miller, III?
20 A I do.
21 Q And how long have you known him?
22 A For a while now.
23 Q Did you know him back in June of 2014?
24 A Yes, sir.
25 Q Has -- is your son Johnathan Capers?

1 A Yes, sir.

2 Q And has your son been friends with Robert Lee

3 Miller, III?

4 A Yes, sir.

5 Q Has Mr. Miller, the defendant in this case, been

6 to your house or stayed at your house?

7 A Yes, sir.

8 Q And has he done that just every once in a while,

9 or has he done it for an extended period at some point?

10 A He was with me for a while.

11 Q He was with you for a while?

12 A Uh-huh. (Indicating affirmatively.)

13 Q So did he stay with you for some amount of time

14 back in 2014?

15 A Yes, sir.

16 Q Ms. Sabb, is it fair to say that you don't

17 particularly want to be here today?

18 A Yes, sir.

19 Q And I subpoenaed you to come to court; is that

20 correct?

21 A Yes, sir.

22 Q Ms. Sabb, did Robert Lee Miller, III ever give you

23 any information or tell you about his involvement in the

24 murder of Mr. Willie Johnson?

25 A Yes, sir.

1 Q And how did that come about? How'd that
2 conversation happen?
3 A One of my friends, they called me and told me
4 about it. And I went back to my residence to ask him about
5 it. Question him about it.
6 Q And did you ask him about it?
7 A Yes, sir.
8 Q And what did he tell you?
9 A Robert stated to me that if -- he was -- I
10 dropped him off at home this particular day to take -- me
11 and my kids was going off to Statesburg. When I dropped
12 Robert off to his house to go back to pick him up later
13 that night, I had spotted him across to the tracks when I
14 was at one of my girls, home girls' house. And during that
15 particular I started, you know, what -- what was going on
16 until I got a phone call: And then I asked Robert about
17 what happened. And at that time, he didn't want to talk.
18 And I asked him, can we ride down the road to speak about
19 what happened.
20 Q All right. And I'm sorry, Ms. Sabb, I'm going to
21 have to stop you every once in awhile just so -- because
22 when people have a conversation, sometimes you talk faster
23 than you think you do.
24 So you got a phone call, you had found out
25 about this. You questioned Robert about it. He said he

1 didn't want to talk right now, but he would later; is that
2 right?
3 A Yes, sir.
4 Q All right. So did you go off with him by yourself
5 and have a conversation with Robert Lee Miller, III about
6 the murder of Willie Johnson?
7 A Yes, sir.
8 Q And what did he tell you, or did he tell you
9 anything?
10 A It was not Robert idea, he was pulled into it.
11 Q Well, let -- let's talk about what he told you.
12 A Robert stated that the other two, the other two
13 gentlemen that was -- that's involved with the case, that
14 it was their idea. It was their planning. And he didn't
15 want to be involved in it, but it was too late.
16 Q All right. When you say "the other two that are
17 involved", are you referring to Gabriel Joiner and Keshawn
18 Bynum, who is, I believe, Mr. Miller's brother?
19 A Yes, sir.
20 Q And is that who he told you was involved?
21 A Uh-huh. (Indicating affirmatively.)
22 Q All right. You said that he told you it was -- is
23 that what he told you, that it was their idea?
24 A Yes, sir.
25 Q But did he go along and go to the house with them,

1 according to what he told you?

2 A After they drove him involved, yes.

3 Q All right. Ms. Sabb, I just need you to answer

4 the questions.

5 A Yes.

6 Q And what did they do when they got there? And

7 when I say -- I understand that you were not there,

8 Ms. Sabb, but what did he tell you that they did?

9 A According to what Robert said, that it was the

10 other two when they knocked on the door, they asked the old

11 man for some sugar. The young -- older man told them that

12 he could not -- he was not going to allow -- give them any

13 sugar, because he was already being robbed. Somebody

14 was -- already was trying to rob him. He was not to give

15 them no sugar.

16 So, apparently, the other two young gentlemens

17 must have kicked in the door. And Robert said it was too

18 late. The old man had done seen all three of them. She all

19 three of them went in the house together.

20 Q And what did they do when they got in the house

21 together?

22 A I guess they tortured the old man.

23 Q Don't guess. I want to know what he told you.

24 And if I need to give you your statement you gave the police

25 to refresh your memory now, I can. That's fine if you need

1 to refresh your memory.

2 But what did he tell you that they did?

3 A They beat him.

4 Q "They beat him," meaning the old man in the house?

5 A Uh-huh. (Indicating affirmatively.)

6 MS. SMART-GITTINGS: If it please the Court,

7 Your Honor, may we approach?

8 MR. THORNTON: Your Honor, may we take a short

9 break?

10 THE COURT: Yes, sir.

11 Madam forelady, ladies and gentlemen of the jury,

12 if you'd go back to the jury room, we'll resume trial

13 in just a few minutes.

14 (The jury exits the courtroom.)

15 MR. THORNTON: Your Honor, I believe Ms. Smart

16 has a matter she needs to take up with the Court.

17 MS. SMART-GITTINGS: Your Honor, I wasn't aware

18 of the other statement. Mr. Thornton just gave me an

19 email, it was sent to me on June 29th. I don't know

20 that I received it, because I don't have it. This is

21 the first time that I seen this. The only thing that

22 we were given in our discovery was the statement made

23 June 24th. Apparently this new statement was made

24 this year and was sent June 29th. I don't have it.

25 And I don't -- and usually I respond when I get

1 discovery. So I didn't respond to this email
2 indicating that I had got discovery.
3 THE COURT: All right. Just one second.
4 Take her back to the witness room, please. You're
5 still under subpoena, you can't leave. We will bring
6 you back. Okay.
7 All right. Are there material differences in the
8 statements?
9 MS. SMART-GITTINGS: Yes.
10 MR. THORNTON: Yes, sir. I mean, well, there's
11 not a -- she doesn't say one thing in one and one
12 thing in the other, but the statements are certainly
13 materially different.
14 THE COURT: How are they different?
15 MR. THORNTON: In the first one she just talked
16 about dropping him off. She didn't say that he had
17 confessed to her at all. This is all the stuff that
18 he told her.
19 What occurred was, just for -- for the Court's
20 record. When Mr. Hutto went to serve her with a
21 subpoena to testify, she, basically, reiterated that
22 she didn't want to do this. She didn't want to
23 participate. But now she was being served with a
24 subpoena, she knew he shouldn't have done this and, you
25 know, that he had told her about it. And at that point

1 he stopped her. He -- we got SLED to come down. They
2 re-interviewed her.
3 THE COURT: What date did they re-interview her?
4 MR. THORNTON: May 18th.
5 THE COURT: And so some three weeks later,
6 roughly?
7 MR. THORNTON: We -- yes, sir. And, you know,
8 Judge --
9 THE COURT: Why did it take so long to give her
10 the statement?
11 MR. THORNTON: Judge, I don't know. It was
12 three weeks. I'm not sure. All I can do, though,
13 Judge, is send it to her, and the email actually
14 says --
15 THE COURT: Let me see your email transmittal,
16 please.
17 MR. THORNTON: Yes, sir.
18 THE COURT: Is that your number on that email?
19 MS. SMART-GITTINGS: It says sent, that's all it
20 says, sent. That doesn't mean that I received it.
21 THE COURT: Should -- doesn't have a contact
22 number?
23 MR. THORNTON: No, it has to Smart-Gittings,
24 comma, Stephanie. She's in our email system, I mean,
25 we email back and forth and she --

1 MS. SMART-GITTINGS: Yes.
2 THE COURT: Okay. Let's bring back in Ms. Sabb.
3 MR. THORNTON: Yes, sir. If we could bring
4 Ms. Sabb back in please.
5 THE COURT: Ready to proceed, Mr. Thornton?
6 MR. THORNTON: State is ready, Your Honor.
7 THE COURT: Ms. Smart?
8 MS. SMART-GITTINGS: The Defendant is ready,
9 Your Honor.
10 THE COURT: Thank you. Bring in the jury.
11 (The Jury enters the courtroom.)
12 THE COURT: Ms. Sabb, you are still under oath.
13 You may proceed.
14 MR. THORNTON: Yes, sir. The State is ready,
15 Your Honor.
16 DIRECT EXAMINATION (CONTD)
17 BY MR. THORNTON:
18 Q Ms. Sabb, I know that you have already testified.
19 And clearly I know that you don't want to be here. But I
20 have a few more questions for you. Now, we were talking
21 about what Robert Miller III, the defendant in this case,
22 had admitted to you about his involvement with the murder of
23 Willie Johnson. You have already told us some of the
24 information that he had talked about striking the man, that
25 it was his brother and his friend's idea, according to you,

1 as to what he told you, and he went along with it. Did he
2 mention anything to you about a bag?
3 A The only part that he mentioned to me about the
4 bag was, when I asked him, How did you know that the old
5 man was still alive. He said that he was still breathing
6 because the bag was moving.
7 Q The reason that I asked you that, you hadn't said
8 that yet. He indicated they put the bag over his head?
9 A They didn't say who put it over his head. He
10 just said that it was moving.
11 Q So, there was a bag placed over the victim's head?
12 A Yes.
13 Q And did he tell you anything about some keys or
14 that they had taken keys or something?
15 A He didn't tell me anything about any keys, but
16 there was some keys found in my house.
17 Q Okay. Did he tell you anything about what they
18 were planning on doing with the keys?
19 A I guess they were going back to get the old man's
20 truck.
21 MS. SMART-GITTINGS: Objection.
22 THE COURT: Sustained.
23 BY THE COURT:
24 Q Don't guess. What did he tell you?
25 A That they were going to go back and get the old

1 man's truck.

2 Q That they were going to go back and get the old

3 man's truck?

4 A Yes.

5 Q Ms. Sabb, you originally talked to law enforcement

6 right after this happened, right after the murder occurred.

7 When I say "right after," within a week or two; is that

8 correct?

9 A Yes.

10 Q And when you originally talked to law enforcement,

11 you didn't mention any of this to them at that time; did

12 you?

13 A No.

14 Q You did not mention any of that until you

15 mentioned it this year; is that correct?

16 A Yes.

17 Q So, none of that would have been in your original

18 statement?

19 A No.

20 Q Why not?

21 A I forgot about it, the keys.

22 Q Why didn't you tell law enforcement at that time;

23 was it because you didn't want to be involved?

24 A Yes.

25 Q Ma'am, I don't have any further questions for you.

1 Please answer any questions that Ms. Smart-Gittings has for
2 you.
3 CROSS EXAMINATION
4 BY MS. SMART-GITTINGS:
5 Q You are not Rob's mother?
6 A No.
7 Q You know his mother?
8 A Yes.
9 Q And you know his stepfather?
10 A Yes.
11 Q And you know his father?
12 A Yes.
13 Q But you were close to him?
14 A Yes.
15 Q He was staying with you at the time?
16 A Yes, ma'am.
17 Q And your son is his best friend?
18 A Yes, ma'am.
19 Q You had heard rumors about Mr. Johnson's death in
20 the streets?
21 A Yes.
22 Q When you were first interviewed by the police on
23 June 24th, you told them what you heard about this incident?
24 A Yes.
25 Q And you told them that you asked Robert about it?

1 A Yes.
2 Q And he denied it?
3 A Yes.
4 Q And you also picked him up the night that this
5 incident happened, correct?
6 A Yes.
7 Q And the police asked you, Did you observe any
8 blood on him?
9 A Yes.
10 Q And you said no?
11 A Yes.
12 Q And the police asked you if they could search your
13 car?
14 A Yes.
15 Q And you gave them permission?
16 A Yes.
17 Q They didn't find any blood or anything that
18 belonged to the man in your car?
19 A No, ma'am.
20 Q And the police asked you if you had cleaned your
21 car?
22 A Yes, ma'am.
23 Q And you told them that you did?
24 A Yes, ma'am.
25 Q You didn't clean it with bleach or anything trying

1 to destroy evidence?

2 A No, I just cleaned it out.

3 Q In fact, if you had seen evidence you would have

4 told the police?

5 A Yes, ma'am.

6 Q Now, you also -- you indicated that Robert didn't

7 have any blood on his body?

8 A No, ma'am.

9 Q You told the police he didn't have any blood on

10 his hands?

11 A He didn't.

12 Q His shoes?

13 A No.

14 Q His clothes?

15 A No.

16 Q Anything?

17 A Nothing.

18 Q He wasn't acting nervous?

19 A No.

20 Q Wasn't acting suspicious?

21 A No, ma'am.

22 Q He wasn't acting any differently than he normally

23 does?

24 A No, ma'am.

25 Q Now, in 2014 did he have dreads in his hair?

1 A I think so.

2 Q He had dreads?

3 A Yes, ma'am.

4 Q Now, let's talk about the statement that you gave

5 to law enforcement in May of this year.

6 A I believe, yes, ma'am.

7 Q So, this was two months ago, maybe?

8 A Yes, ma'am.

9 Q And the only reason why you gave this statement

10 was because they came to serve a subpoena on you?

11 A Yes, ma'am.

12 Q And you felt like you needed to tell them

13 something?

14 A Yes, ma'am.

15 Q Now, you told -- did Robert tell you that he heard

16 stories about what was being said?

17 A Yes, ma'am.

18 Q That is what you told law enforcement initially,

19 that he had heard these stories?

20 A Yes, ma'am.

21 Q Now, you said that -- in this detail -- and you

22 admit that statement that you gave a couple of months ago is

23 much more detailed than the statement that you gave right

24 when it happened?

25 A Yes, ma'am.

1 Q Now, you didn't mention anything about keys in
2 this first statement?
3 A No, ma'am.
4 Q You didn't mention anything about a car in this
5 first statement?
6 A No, ma'am.
7 Q You didn't mention anything about a heater in this
8 first statement.
9 A No, ma'am.
10 Q But in this statement you mentioned or you
11 suggested that they dropped a heater on the old man?
12 A Yes, ma'am.
13 Q And he said that they asked the old man for sugar?
14 A Yes, ma'am.
15 Q And let's see what else. A lot of other details
16 that you didn't put in your first statement. Now, you met
17 with the SLED agent back in June 2014, right?
18 A Yes, ma'am.
19 Q Two of them, a female and a male?
20 A Yes, ma'am.
21 Q And you met with the same female in May?
22 A Yes, ma'am.
23 Q Now, let me direct your attention back to
24 June 2014, do you remember when you took Robert to Fairfax
25 Police Department?

1 A Yes, ma'am.
2 Q Do you remember who all was there when you took
3 him?
4 A Yes, ma'am.
5 Q Do you remember Chief Marvin Williams?
6 A Uh-huh. (Indicating affirmatively.)
7 Q Officer Singleton.
8 A Yes, ma'am.
9 Q Donald Williams?
10 A Yes, ma'am.
11 Q Agent, the female agent, the agent that is sitting
12 right here?
13 A Yes, ma'am.
14 Q A male agent?
15 A (Nods in the affirmative).
16 Q Did you also see Assistant Solicitor, Tameaka
17 Legette, a black female, long hair?
18 A I don't remember.
19 Q Now, you were in the room when they interviewed
20 Robert, they asked you for permission?
21 A I was in the room. When we got to the police
22 department they already had Robert in the back. I was on
23 one side and he was on one side. My son was on the other,
24 three separate rooms. And I asked him if I could see
25 Robert before I left. And they gave me a chance to see

1 him.

2 Q But they asked you for permission to interrogate

3 Robert?

4 A No, they asked Robert. They said that Robert

5 said it was okay to talk to him.

6 Q Now, were you in the room with Robert when they

7 were interrogating them?

8 A After the fact.

9 Q Isn't it true that Robert asked you to leave the

10 room?

11 A Yes.

12 Q And you didn't go back in the room?

13 A Actually it was time for us to leave.

14 Q Do you know about how long you were up at Fairfax

15 Police Department?

16 A We were there for some hours.

17 Q Probably about four hours?

18 A Total, yes, ma'am, around about that time.

19 Q Did you stay until when they took Robert away?

20 A No, I left.

21 Q You left before then?

22 A No, they were pulling off with him.

23 Q Okay. And do you remember the time?

24 A It was dark. I can't remember the time, but we

25 were up there for a minute.

CROSS EXAMINATION OF SABB BY MS. SMART-GITTINGS

1 Q Did they ever call -- to your knowledge, was
2 Robert's parents ever asked to come up there?
3 A His father was there.
4 Q Did law enforcement call his father?
5 A I don't know how his father got the news, but I
6 know that his father showed up before they took him.
7 Q While they were interrogating Robert?
8 A (Witness nods.)
9 Q Did they allow his father to go in the room?
10 A He was on the outside. We both was on the
11 outside.
12 Q So, his father was at the Fairfax Police
13 Department but not in the room with Robert when he was being
14 interrogated?
15 A I can't answer that. All I know, me and him both
16 on the outside at this particular time.
17 Q All right. Now, do you admit that your first
18 statement was totally different from your second statement?
19 A Yes, ma'am.
20 Q Had many more details in your second statement
21 than in your first statement?
22 A Yes, ma'am.
23 MS. SMART-GITTINGS: Nothing further.
24 THE COURT: Redirect?
25 MR. THORNTON: None, Your Honor.

1 THE COURT: May this witness be excused?

2 MR. THORNTON: I would ask that she be excused,

3 Judge.

4 THE COURT: Any objection, Ms. Smart?

5 MS. SMART-GITTINGS: No, Your Honor.

6 THE COURT: Ms. Sabb, you are excused. You are

7 free to go.

8 MR. THORNTON: The State calls Chief Marvin

9 Williams to the stand, Your Honor.

10 Thereupon,

11 CHIEF MARVIN WILLIAMS

12 was called as a witness, having been first duly sworn,

13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. THORNTON:

16 Q Chief, could you give your entire name for the

17 record please?

18 A Marvin J. Williams.

19 Q And are you currently Chief of the Fairfax Police

20 Department?

21 A Yes, sir.

22 Q Did you serve in that capacity, Chief, on or about

23 June -- I think that it was June 24th?

24 A Yes, sir.

25 Q Of 2014?

1 A Yes, sir.

2 Q And on or about June the 24th of 2014, Chief, did

3 you have occasion to interview the Defendant in this case,

4 Robert Lee Miller III?

5 A Yes, sir.

6 Q And prior to asking him any questions, did you do

7 a Miranda reading to him or a Miranda rights form?

8 A Yes, sir.

9 (Pause.)

10 MR. THORNTON: May I approach, Your Honor?

11 THE COURT: Yes.

12 BY MR. THORNTON:

13 Q Sir, I'll hand you what's been marked as State's

14 Exhibit 32. Are you familiar with that document?

15 A Yes, sir.

16 Q What is that document, Chief?

17 A It is a Miranda rights form.

18 Q Is that what you read to someone before you

19 question them?

20 A Yes, sir.

21 Q And is that Miranda rights form just a blank form,

22 or does it reference a specific person?

23 A It references Robert Miller.

24 Q Is that Defendant, Robert Lee Miller III, that is

25 seated at the defense table?

1 A Yes, sir.

2 Q Did you talk to him on that day after -- about the

3 rights in that form?

4 A Yes, sir.

5 Q Now, again, if you will look Chief, is it the

6 June 24th, 2014, I believe it's 4:56 p.m.; is that correct?

7 A Yes, sir.

8 Q Will you tell the jury what the rights form says

9 and whether or not you read those rights to the defendant in

10 this case, Mr. Miller?

11 A The Miranda rights stated that you have the right

12 to remain silent. Anything you say can and will be used

13 against you in a court of law. That he had the right to

14 have an attorney present during questioning and if he

15 couldn't afford one one would be appointed to him. And he

16 had the right to stop answering questions at any time if he

17 felt like he needed an attorney.

18 Q And are those rights referenced on that form?

19 A Yes, sir. On each line he put his initial. He

20 signed it and put his initial on each line as we went

21 through it.

22 Q So, after each right is there a blank where you

23 would have someone initial?

24 A Yes, sir.

25 Q And after going over each of those rights, did

1 Mr. Miller initial?
2 A Yes, sir.
3 Q And is there also a place at the bottom for him to
4 sign?
5 A Yes, sir.
6 Q And what does it say right above that signature
7 line?
8 A It states, Willing to make any statement or
9 answer any questions without waiving the right to silence
10 and the right to have a lawyer present. If he stopped
11 answering any questions, he still have that right at any
12 time to say he needed a lawyer.
13 Q Did you go over all of those rights with him?
14 A Yes, sir.
15 Q Did he initial by each right?
16 A Yes, sir.
17 Q Did he print or sign his name on the blank where
18 it says either, I don't know if it says witness or
19 defendant; what does it say Chief?
20 A Yes, he signed at the bottom line.
21 Q And is there a space for you to sign as well?
22 A Yes, sir.
23 Q And did you sign it?
24 A Yes, sir.
25 Q Now, Chief is that -- I know it is a photocopy,

1 but is that an accurate copy of the form that you used for
2 Robert Lee Miller III on June 24th, 2014?
3 A Yes, sir.
4 Q And has it been altered or changed in any way,
5 other than it is obviously a copy?
6 A No, sir.
7 MR. THORNTON: Your Honor, I ask that State's
8 Exhibit 32 be moved into evidence.
9 THE COURT: Any objection?
10 MS. SMART-GITTINGS: No objection, Your Honor.
11 THE COURT: Admitted.
12 *(Whereupon, State's Exhibit No(s). 32 marked for*
13 *identification and received in evidence.)*
14 BY MR. THORNTON:
15 Q Chief, I'm going to also ask you, it is
16 actually -- I know it's in evidence, but his name is
17 actually signed or printed in two different places, is it
18 not?
19 A Yes, sir.
20 MR. THORNTON: I'll publish it to the jury since
21 it is in evidence.
22 Q Chief, at the bottom of your form, after all of
23 the rights have been gone through it also says, I'm willing
24 to make a statement and answer questions. I hereby
25 knowingly and purposely waive my right to remain silent and

1 my right to have a lawyer present while I make statements
2 and answer questions. I have the right to terminate any
3 interview and stop answering questions at any time
4 hereafter. I can request to have a lawyer present with me
5 before I continue answering anymore questions or making
6 anymore statements if I choose to do so. No promises or
7 threats have been made to me and no pressure or coercion of
8 any kind has been used against me. Is that accurate that I
9 just read to you?
10 A Yes, sir.
11 Q And he signed under that as well, right?
12 A Yes, sir.
13 Q And then you signed it?
14 A Yes, sir.
15 Q Chief, during that interview on June 24th, did
16 Robert Lee Miller make any statements to you or admissions
17 to you about his involvement in the murder of Mr. Willie
18 Johnson?
19 A Yes, sir.
20 Q All right. Can you tell me please what he told
21 you about Mr. Johnson?
22 A I started asking him questions about the case
23 involving Fairfax.
24 MS. SMART-GITTINGS: Objection, Your Honor. May
25 we approach?

1 THE COURT: Yes, ma'am. Madam forelady, would
2 you take the jury to the jury room?
3 (The jury exits the courtroom.)
4 THE COURT: All right. The objection is that
5 there's a reference to another criminal investigation
6 in Fairfax; that is your objection?
7 MS. SMART-GITTINGS: I don't know if he said
8 that it was criminal. I think that he said the case
9 that he was involved in. I just don't want you to go
10 any further.
11 THE COURT: When you came up to the Bench, I
12 asked you if you wanted a curative instruction,
13 sometimes that is done.
14 MS. SMART-GITTINGS: I don't think that he said
15 enough to warrant a curative instruction, but I don't
16 want him to go into it.
17 THE COURT: Don't reference any other
18 investigation, okay. Do you understand what she's
19 saying?
20 MR. THORNTON: Yes, sir.
21 THE COURT: Anything that you want to put on the
22 record?
23 MR. THORNTON: I just want to say, Judge, that
24 is why I asked the question the way that I did with
25 regard, and I am going to ask it the same way, With

1 regard to Willie Johnson, what did he tell you, if
2 anything. So, I apologize to the Court, I tried to
3 steer it that way.
4 MS. SMART-GITTINGS: I have no objection to
5 that.
6 THE COURT: All right. If you will bring the
7 jury back, please sir.
8 (The jury enters the courtroom.)
9 THE COURT: Mr. Thornton.
10 MR. THORNTON: Thank you, Your Honor.
11 BY MR. THORNTON:
12 Q Mr. Williams, earlier -- let me just re-ask the
13 question. We have already talked about the Miranda that you
14 gave the defendant in this case, Robert Lee Miller. And
15 your interview of him, did he give you any information with
16 regard to his participation in the murder of Mr. Willie
17 Johnson?
18 A Yes, sir.
19 Q And what, if anything, sir, did he tell you?
20 A He stated that they pushed him down.
21 Q Let me slow you down, Chief, for just a second.
22 They pushed him down, meaning Robert Miller and the other
23 people?
24 A Right, stated that --
25 Q Pushed who down?

1 A Yes, stated that they pushed Mr. Johnson down.
2 Stated that him and other people, no names, stated that
3 they pushed him down, robbed him and beat him. And stated
4 that they beat him and put a bag over his head. And I
5 asked him, why you put a bag over his head. He said he, He
6 kept looking at him. That is why he put the bag over his
7 head.
8 Q Chief, is that more or less the substance of what
9 me admitted or confessed to you that he did to -- and I
10 don't know that he used Mr. Johnson's name, but to the old
11 man in Allendale on Pickrum Street which we now know as
12 Willie Johnson?
13 A Yes, sir.
14 Q Did you then have some SLED agents come in and do
15 an interview after that?
16 A Yes, sir.
17 Q And was one of those agents Natasha Merrell who is
18 seated at the table with me?
19 A Yes, sir.
20 Q Now, Chief, let me ask you some questions about
21 the mechanics or the process that you used when you were
22 talking to him; did you threaten him in any way?
23 A No, sir.
24 Q Did you promise him any leniency if he cooperated?
25 A No, sir.

1 Q And did anybody else in your presence physically
2 threaten him or anything to get him to talk?
3 A Not in my presence.
4 Q All right. How many -- there was a question
5 earlier, Chief, that you weren't obviously in the room
6 for -- how many people were in the room with you while you
7 were talking to Robert Miller when he confessed to his
8 participation to the murder of Willie Johnson?
9 A No one.
10 Q So just you and him?
11 A Yes, sir.
12 Q Now, Chief, was this interview recorded, written,
13 or was it just verbal to you?
14 A Just verbal.
15 Q Were there other officers -- where did this take
16 place at?
17 A In my office.
18 Q Your office, meaning inside the Fairfax Police
19 Department?
20 A Right.
21 Q So, what you testified is that it was just you and
22 Mr. Miller in the room after you Mirandised him and got his
23 confession?
24 A Yes, sir.
25 Q Were there other officers around, as far as in the

1 area?

2 A In the area. Not in my office.

3 Q Did any of them make any threats to him in your

4 presence?

5 A Not in my presence.

6 Q Did any of them make any promises to him about, he

7 could walk away or he can whatever while you were there?

8 A Not in my presence.

9 Q And within an hour or so, and I realize I'm not

10 asking a specific amount of time, did SLED then come into

11 your building and did they then do an interview with

12 Mr. Miller as well?

13 A Yes, sir.

14 Q All right.

15 MR. THORNTON: Your Honor, the Court's

16 indulgence please just a moment.

17 (Pause.)

18 BY MR. THORNTON:

19 Q Chief, while you were in your office talking with

20 the defendant in this case, Mr. Miller, did you -- I'm

21 trying to figure out the right way to ask this, Chief.

22 MR. THORNTON: Your Honor, the Court's

23 indulgence one moment.

24 (Pause.)

25

1 BY MR. THORNTON:

2 Q Chief, while you were talking to him, did he seem

3 to understand what you were saying to him?

4 A Yes, sir.

5 Q Did he seem to have any trouble at all

6 understanding when you went over his rights form with him?

7 A No, sir.

8 Q Did he appear to be under the influence of any

9 alcohol or drugs, to the point that he didn't know what was

10 going on?

11 A No, sir.

12 Q And when he was talking with you, was he able to

13 communicate to you clearly so you understood what he was

14 saying?

15 A Yes, sir.

16 Q Your Honor, at this time, I don't have any further

17 questions. I ask that you answer any questions Stephanie

18 has.

19 THE COURT: Cross examination.

20 CROSS EXAMINATION

21 BY MS. SMART-GITTINGS:

22 Q You didn't have to write a report about this?

23 A Huh?

24 Q You didn't write a report about your interview

25 with Mr. Miller?

1 A No, ma'am.

2 Q And you didn't record the interview?

3 A No, ma'am.

4 Q You didn't get him to write a statement?

5 A Excuse me?

6 Q He didn't write a statement?

7 A No, ma'am.

8 Q You are not familiar with him? He's not from your

9 town?

10 A No, ma'am.

11 Q You don't know his parents?

12 A No, ma'am.

13 Q You don't know anything about him?

14 A No, ma'am.

15 Q He didn't give you any specific facts about the

16 alleged offense, did he?

17 A No, other than what I told counsel.

18 Q Just general stuff?

19 A Yes, ma'am.

20 Q So, your office was pretty busy that day. You had

21 how many SLED agents there?

22 A I think two.

23 Q And Assistant Solicitor Legette came?

24 A Yes, ma'am.

25 Q Now, did you call Assistant Solicitor Legette to

1 come?

2 A Not to my knowledge.

3 Q But someone called her to come to your office?

4 A Yes, ma'am.

5 Q How many of your officers were present and

6 involved with Robert while he was there?

7 A I think two officers, Officer Donald Williams and

8 Officer Singleton.

9 Q From your experience in law enforcement, does

10 knowing right from wrong have anything to do with

11 understanding their Miranda rights?

12 A Yes.

13 Q So, their Miranda rights have something to do with

14 whether or not they are able to tell right from wrong?

15 A Yes, ma'am.

16 Q Explaining right from wrong helps someone

17 understand their Miranda rights?

18 A He acted like he understood everything. I also

19 asked if he could read and write and he said yes.

20 Q Does that mean that you understand your right to

21 remain silent?

22 A Yes. My understanding was that he understood it.

23 Q If you know right from wrong, does that mean that

24 you understand that you don't have to talk to the police?

25 A Right, he didn't have to talk but he did.

1 Q You are not understanding my question. Isn't it
2 true that knowing right from wrong does not assist in
3 understanding whether or not you have to talk to the police
4 or you don't have to talk to the police?
5 A Right. He didn't have to talk.
6 Q Does knowing right from wrong help him understand
7 how an attorney could help him?
8 A Not to my knowledge.
9 Q So, knowing right from wrong doesn't help you
10 understand how a lawyer can help you and it doesn't help you
11 understand whether or not you need to talk to the police or
12 whether or not you need to keep your mouth shut?
13 A Not to my knowledge.
14 MS. SMART-GITTINGS: No further questions.
15 THE COURT: Redirect?
16 MR. THORNTON: Just a couple of very quick
17 questions.
18 REDIRECT EXAMINATION
19 BY MR. THORNTON:
20 Q Ms. Smart-Gittings asked you about several other
21 people, officers, that he may have had involvement with --
22 he being Robert Lee Miller III. Nobody else was in the room
23 when you talked to him?
24 A No, sir.
25 Q You didn't have five or six officers standing in

1 there leering over him, did you?

2 A No, sir.

3 Q Assistant Solicitor Tameaka Legette has been

4 brought up two or three times. In your presence did she

5 ever interview or have anything to do with the interviews of

6 the defendant in this case?

7 A No, sir.

8 Q But she was there somewhere at the Fairfax Police

9 Department?

10 A Yes.

11 MR. THORNTON: I have nothing further.

12 THE COURT: May he be excused?

13 MR. THORNTON: I ask that he be excused to go

14 back to work, Judge.

15 MS. SMART-GITTINGS: No objection, Your Honor.

16 THE COURT: Thank you, Chief. You are excused.

17 MR. THORNTON: State calls Richard Johnson to

18 the stand.

19 Thereupon,

20 RICHARD JOHNSON

21 was called as a witness, having been first duly sworn,

22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. THORNTON:

25 Q Good morning, Agent Johnson.

1 A Good morning.
2 Q Would you please give your full name for the
3 record for me?
4 A Richard L. Johnson.
5 Q Is it proper to call you Agent Johnson?
6 A Yes, sir.
7 Q Why is that?
8 A I am an agent with the South Carolina State Law
9 Enforcement Division.
10 Q Is that also known as SLED?
11 A That's correct.
12 Q Agent Johnson, were you working with SLED back in
13 June 2014, specifically, June the 24th, 2014?
14 A Yes, sir, I was.
15 Q In what capacity were you working for them; what
16 did you do for them?
17 A Special agent.
18 Q Is that what you currently do?
19 A Yes, sir.
20 Q At some point was SLED called in to assist local
21 law enforcement in the case involving the murder of
22 Mr. Willie Johnson?
23 A Yes, sir.
24 Q And did you, along with Natasha Merrell, respond
25 out as one of the agents?

1 A Yes, although I wasn't directly called out. I
2 was coming through, stopped in and got involved with the
3 case at that point.
4 Q Did you at some point then get involved with the
5 case in your capacity with SLED?
6 A That is correct.
7 Q On or about June 24th of 2014, did you have
8 occasion to interview Robert Lee Miller III?
9 A Yes, sir.
10 Q Would you tell me where that was?
11 A At the Fairfax Police Department.
12 Q Can you tell us what transpired, as far as what
13 you started, his interview, or if you did or somebody else
14 did, who all was in the room while you were talking to
15 Mr. Miller?
16 A At the onset, myself, Agent Merrell, and
17 Ms. Tiffany Sabb. And at one point I think that it was
18 Officer, I want to say that it was Williams, was in the
19 room. And I introduced myself to Robert Miller, explained
20 to him why we were here and we needed to talk to him about
21 whatever. And asked Ms. Sabb if she minded if we talked
22 with him. I asked Mr. Miller if he would have a problem
23 talking to us. He was glad to speak with us at that point.
24 We continued to interview him.
25 Q Did you at that point, and again there's already

1 been testimony, and obviously you were not in the room,
2 regarding Miranda; did you do any Miranda?
3 A No, sir, I did not.
4 Q Was it your understanding that it had already been
5 done?
6 A Yes, the Fairfax PD would Mirandise everyone,
7 plus Chief Marvin Williams told me that he had already been
8 advised of his rights.
9 Q At some point you began your interview, you
10 mentioned that Tiffany Sabb, who the jury has already heard
11 testify, Tiffany Sabb was actually in the room?
12 A Yes, sir.
13 Q You asked her to step out; is that correct?
14 A Yes, sir.
15 Q At that point, did Robert Lee Miller want to talk
16 to you, or did he want to talk to somebody else with SLED?
17 A He wanted to talk to someone else.
18 Q All right. Someone specific?
19 A Yes, sir.
20 Q Who did he want to talk to?
21 A Merrell, Agent Merrell.
22 Q Agent Merrell. Is that who is seated with me at
23 counsel table?
24 A That's correct.
25 Q Would she be considered the case officer on this

1 case?
2 A Yes, sir.
3 Q Was your -- was your interview, along with
4 obviously Agent Merrell, was it audio or video recorded?
5 A Audio.
6 Q It was an audio recording?
7 A Yes, sir.
8 MR. THORNTON: Your Honor, if I may, I
9 apologize, may we approach real quick?
10 THE COURT: Yes, sir.
11 (Off-the-record discussion held.)
12 MR. THORNTON: Thank you, Your Honor.
13 BY MR. THORNTON:
14 Q Sorry, Agent Johnson. So, there is an audio
15 recording?
16 A Yes, sir.
17 Q And so statements that are made, if you get any
18 questions about that you don't know, it is going to be
19 referenced on the recording?
20 A Yes, sir.
21 Q All right. Are there -- and you may not be the
22 best person to ask about that, but I do think that you will
23 know this -- are there some times during the recording where
24 the recorder shuts off?
25 A Yes, sir, there is.

1 Q And let me ask you a question, was Agent Merrell
2 the one who was recording it?
3 A That's correct, yes, sir, she was.
4 Q What was she using to record it?
5 A Her SLED cell phone.
6 Q Apparently when a call comes in, if it's not in
7 airplane mode, the recording stops; is that correct?
8 A That's correct.
9 Q So, are there -- so, there are a couple of
10 occasions where it does cut off?
11 A Yes, sir.
12 Q Okay. Now, while you were talking with Robert Lee
13 Miller, and I know that you said that he wanted to talk to
14 Agent Merrell, but while you were in the room with him
15 talking to him, did you make any threats to him?
16 A No, sir.
17 Q Did you promise him any specific leniency or
18 deals?
19 A No, sir.
20 Q Did anybody else in your presence?
21 A No, sir.
22 Q When you asked Ms. Sabb to leave, you indicated
23 that Mr. Miller said that he wanted to talk to Agent
24 Merrell; did you step out of the room at that point?
25 A Yes, sir.

1 Q At some point did you step back in?
2 A Yes, sir, I did.
3 Q Why did you do that?
4 A Agent Merrell came outside and asked me to come
5 back in.
6 Q Did you go back in?
7 A Yes, sir, I did.
8 Q And I'll try to make this as quick and clean as
9 possible. I'll just paraphrase a little bit, because
10 obviously there's an audio recording of this. Did you give
11 the defendant some indication that he was going to be going
12 to jail?
13 A Yes, sir, I did.
14 Q And that you basically didn't buy what he was
15 selling?
16 A That's correct.
17 Q Is that a common tactic in interviewing?
18 A Yes.
19 Q And did he change his tune for -- that is what my
20 daddy would have said anyway. Did he change what he was
21 saying or story that he was giving at that point, or
22 beginning to change?
23 A Yes, sir, he started changing.
24 Q At some point did he make admissions to you with
25 regard to his involvement in the murder of Mr. Willie

1 Johnson?
2 A Yes, sir, he did.
3 Q When you came back in the room, did you make any
4 specific promises or deals with him?
5 A No, sir.
6 Q You did, did you not -- or let me rephrase that
7 question. Did you say anything about, You might try to
8 minimize your time or things of that nature?
9 A Yes, sir, I did.
10 Q Did he -- did you also, though, tell him that you
11 couldn't tell him how much time he was going to get because
12 you weren't the Judge?
13 A That's correct.
14 Q Did you mention something about that -- about CSI?
15 A Yes, sir, I did.
16 Q What did you tell him about CSI, or what reference
17 did you make about CSI?
18 A I asked him had he ever see the TV show CSI. He
19 indicated that, Yeah. And I went further to explain to him
20 some of the evidence that we had that he was looking at.
21 Q Now, this early in the investigation you typically
22 don't have any results. And the jury has heard about DNA
23 from the victim's results, they have heard about a match in
24 a print?
25 A Yes.

1 Q And I see you smiling up there because you know
2 the question that I'm going to ask you, on the 24th of June
3 you didn't have anything at that point, did you?
4 A No, sir.
5 Q All right. So you made a reference to CSI; is
6 that another common technique used in interviews?
7 A That is correct.
8 Q And is it at that point that he started, and I say
9 "he," Robert Lee Miller III started telling you or admitting
10 to you some involvement in his participation with Robert Lee
11 Miller -- I am sorry with the murder of Mr. Willie Johnson?
12 A Yes, sir, that's correct.
13 Q In general terms, again -- we have got the tape,
14 but in general terms what did he tell you about his -- what
15 did he confess to you about what he did to Mr. Willie
16 Johnson?
17 A He knocked on the door. Once they got in the
18 door --
19 Q Let me stop you for a second. "They," did he ever
20 say who they was?
21 A Yes.
22 Q Who did he say they was?
23 A Kashaun Bynum.
24 Q All right.
25 A And his brother. I forgot his name.

1 Q Kashaun Bynum is his brother, and who else?
2 A Gabriel Joyner.
3 Q Gabriel Joyner. Just as an aside, and again we
4 don't need any details because it is not pertinent to this
5 case, they will have their day in court, are both -- were
6 both of those people also charged in this case?
7 A Yes, sir, they were.
8 Q Again, I apologize for stopping you, but they,
9 meaning Robert Lee Miller III, Kashaun Bynum, his brother,
10 and Gabriel Joyner, tell me what he said they did.
11 A Young Miller put the emphasizes on Gabriel Joyner
12 as being, I guess, the mastermind behind it all. And when
13 he stood inside the room where Mr. Johnson was at, Gabriel
14 and the other two went through the house. He just stood --
15 Miller stood posted in the living room where Mr. Johnson
16 was at.
17 Q All right. Did he admit to striking Mr. Johnson
18 and beating him?
19 A Yes, he did.
20 Q Did he tell you who put the bag over Mr. Johnson's
21 head?
22 A Yes, sir, he did.
23 Q Who did he say did that?
24 A He did.
25 MR. THORNTON: I apologize, Judge, the Court's

1 indulgence one moment.
2 (Pause.)
3 BY MR. THORNTON:
4 Q Let me ask you this, Agent Johnson, is that more
5 or less the admissions that he made? Again, I'm not asking
6 you for every detail because it is on tape, but is that kind
7 of the substance that he confessed to you?
8 A Yes, sir.
9 Q So, he confessed to you that he did -- he was, you
10 know, the person who hit him and that he put the bag over
11 his head?
12 A That's correct.
13 Q Agent Johnson, how many people were in the room
14 with the defendant when he was confessing, or during the
15 whole process while you were there and stepped out and back
16 in? I mean, how many people are we talking about are in the
17 room with Robert Lee Miller III?
18 A If memory serves me correct, at the end it was
19 just myself and Agent Merrell.
20 Q What about at the beginning? In other words, When
21 y'all first started talking, who all was in the room?
22 A Myself, Agent Merrell, Ms. Tiffany Sabb, and I'm
23 still thinking that there was Officer Williams.
24 Q Okay. At some point in the beginning of this, did
25 you or Agent Merrell, did someone ask him to read a

1 certificate or something that was on the wall?
2 A Yes, sir, I did.
3 Q And did you do that in an effort to figure out
4 whether he was able to read and write? I am sorry, not
5 write, but read?
6 A I wanted to make certain, at least give me some
7 good indication that he could comprehend and he understood
8 what was going on, what we were saying.
9 Q And did he, during this entire process, both
10 before he actually admitted his responsibility in the murder
11 of Mr. Willie Johnson, before he did that and after, was he
12 able to communicate with you?
13 A Yes, sir.
14 Q Did he seem to understand what he was doing?
15 A Yes, sir.
16 Q Did he appear to be under the influence of any
17 alcohol or drugs or anything to where he couldn't understand
18 either what you were asking him or what his responses were
19 to you?
20 A No appearance.
21 Q And just so we are clear, you did talk to him and
22 mentioned to him that he could help himself and that you
23 would talk to the prosecutor and minimize the time, again,
24 all of which would be on tape?
25 A Yes, which is standard.

1 Q Did you ever make any, You can get out of this, we
2 can get you out of here, we are going to get you a bond or
3 anything like that?
4 A No, sir.
5 Q In fact, you told him, did you not, he was going
6 to jail either way?
7 A That's right.
8 MR. THORNTON: Your Honor, this would definitely
9 be a witness, due to his involvement, would be
10 subject to recall, but at this time I have no further
11 questions for Agent Johnson. Agent Johnson, if you
12 would please answer any questions that
13 Ms. Smart-Gittings has for you.
14 MS. SMART-GITTINGS: May it please the Court.
15 CROSS EXAMINATION
16 BY MS. SMART-GITTINGS:
17 Q Agent Johnson, we know each other.
18 A Yes, we do.
19 Q We have been through this many times before. So,
20 let's talk about your involvement. Captain Williams didn't
21 dispatch you to Allendale on the 18th, 19th, when this
22 initially occurred?
23 A No, ma'am.
24 Q So you became involved in this about June 24th?
25 A No, it was the date of the incident itself, the

1 date that Mr. Willie Johnson was discovered when I got
2 involved with it.
3 Q But you didn't come to the crime scene?
4 A Yes, I did.
5 Q Did you make a report about it?
6 A No, I was coming through Allendale on another
7 case.
8 Q And you just happened upon it?
9 A Yes.
10 Q Because you are so duteous, you wanted to be
11 involved in it?
12 A Not necessarily wanted to be involved.
13 Q You got pulled into it?
14 A Yes.
15 Q Typically, you do memorandums of interview; did
16 you do any in this case?
17 A I didn't in this case.
18 Q Now, typically when SLED does interviews, you use
19 a video camera; is that correct?
20 A No, ma'am.
21 Q You never have audio?
22 A We do, but it's not a typical thing. We don't
23 have access to one all of the time. So, there's cases when
24 we have access to at least audio and we try to remember to
25 use it.

1 Q So, you didn't have a regular tape recorder this
2 day?
3 A No, ma'am.
4 Q You all just used a normal Iphone?
5 A That's correct.
6 Q Okay. And you admit that during the process of
7 this interview with Mr. Miller, that Iphone stopped
8 recording several different times?
9 A I don't know if it was several different times,
10 but I know one time it stopped because Agent Merrell
11 indicated to me that it had stopped recording and she got
12 it back.
13 Q There is a difference in interviewing a person and
14 interrogating a person; is that correct?
15 A That's correct.
16 Q And generally you interrogate suspects, correct?
17 A That would be the normal thing. But often I
18 often interview suspects as well as non-suspect. It is a
19 matter of your own approach to the individual.
20 Q You have gone to the criminal justice academy, you
21 have taken training and things like that?
22 A Yes, ma'am.
23 Q And you have taken interviewing and interrogation
24 classes as well?
25 A Many years.

1 Q They teach you how to interrogate people to get a
2 confession, correct?
3 A They give you an overview.
4 Q So, basically your interrogation technique is
5 something that you have made up that works for you?
6 A I would say, yes, it works well for me.
7 Q Okay. So, in speaking of interrogations, let's
8 talk about June 24th. You were at Fairfax Police Department
9 and you and Agent Merrell went in and interrogated Robert?
10 A Yes.
11 Q Now, initially when you went in he didn't want to
12 speak to you, correct?
13 A That's correct.
14 Q And as a matter of fact, you tried to laugh it off
15 and say, Oh, I'm intimidating; correct?
16 A I asked him, I said, Why do you want to talk with
17 Agent Merrell, am I intimidating you? And he said, No, I
18 just don't -- I just want -- I respect women more.
19 Q That is what he said?
20 A Yes.
21 Q So he didn't want to talk to you?
22 A Yes.
23 Q He made it clear he didn't want to talk to you?
24 A That's correct.
25 Q So you left out of the room, but you didn't leave

1 the building?

2 A That's correct.

3 Q Now, then Agent Merrell she interrogated him, she

4 spent some time, she talked to him; but she couldn't get a

5 confession, could she?

6 A No, ma'am.

7 Q When she couldn't get a confession, she came to

8 you and then you went back in?

9 A That's correct.

10 Q And after you went back in you immediately,

11 immediately started talking to him and telling him, Look,

12 I'm not buying this; correct?

13 A Essentially.

14 Q And you said -- well, first of all, he told y'all

15 that he heard SLED was looking for him?

16 A Yes.

17 Q And said that he had heard that SLED was going to

18 kick in the door, that they were going to have weapons, and

19 they were going to shoot and kill him, correct?

20 A Correct.

21 Q He said that he had heard on the street that he

22 had been accused of a murder, correct?

23 A Correct.

24 Q And he said that there were several different

25 stories about that that he had heard?

1 A Correct.

2 Q All right. And he also said that they told him

3 that -- he heard that he kicked in the door, something to

4 that effect?

5 A Yes.

6 Q Okay. So, when you went back in the room after

7 agent -- was Agent Merrell in there with you as well?

8 A The second time?

9 Q The second time.

10 A Yes, ma'am.

11 Q So you just went on -- you initially came in and

12 said, You going to jail.

13 A That wasn't my first words. I came in and more

14 than likely just said, Robert, call somebody, it looks like

15 you are going to jail.

16 Q You didn't come in and just say, Look, this is BS,

17 you are going to jail?

18 A I don't about those exact terms, but it wasn't

19 long before I made it clear to him that he was going to

20 jail.

21 Q He asked, he said, Today?

22 A Yes.

23 Q And you said, Yeah. And you said, There ain't

24 nothing that you can do to stop it, correct?

25 A That's right.

1 Q But at that time he did not confess?
2 A No.
3 Q He had not confessed and you said, You are going
4 to jail and there's nothing that you can do to stop it,
5 correct?
6 A That's correct.
7 Q Then you also said, Do you know what an ass is?
8 A That's correct.
9 Q And he said, No. And you said, That is a lot of
10 time, right?
11 A Along those lines.
12 Q And you also said, You ever heard the prosecutor
13 say an ass of time?
14 A Say that again.
15 Q You ever heard the prosecutor say, An ass of time.
16 A No.
17 Q You don't recall saying that?
18 A No.
19 Q Okay. And Robert said to you, What can I do to
20 get me out of this situation; do you recall that?
21 A That's correct.
22 Q And your response is, You can't get out of it but
23 what you can do is minimize the kind of time; is that
24 correct?
25 A Correct.

1 Q And you told him how much time he was looking at.
2 You told him, You can come clean, you can lay it out on the
3 table, you can cooperate; correct?
4 A No, ma'am.
5 Q You didn't tell him that?
6 A I didn't tell him how much time he was looking
7 at.
8 Q No, I didn't say that, I said, you told him he
9 could come clean, and you said, possibly, if you were
10 looking at a specific amount of time?
11 A That's more likely.
12 Q Adn then you asked him, you said, Do you know who
13 the prosecutor is, correct?
14 A Correct.
15 Q He said, No, sir; correct?
16 A Yes, correct.
17 Q Then you had to explain to him that the prosecutor
18 was the person who was going to be against him?
19 A Before I completed the explanation, he injected
20 and said, That is the one against me.
21 Q Going against, yes?
22 A Yes.
23 Q And then you said, That is the one that is going
24 to try to send you to prison?
25 A I'm not sure if that is my exact words, but they

1 was along those lines.
2 Q Okay. And then there was communication back and
3 forth and you kept talking to him about the amount of time
4 that he was going to get and that it was a lot of time. And
5 still at this point, it wasn't until after you continued to
6 talk about him going to prison that he started to break down
7 and talk to you and he finally said, All right, all right, I
8 did it. Correct?
9 A Along those lines, yes.
10 Q But he never gave you specific details about
11 anything inside that house, did he?
12 A I didn't ask him.
13 Q So you weren't concerned about whether or not his
14 confession was consistent with the evidence that you had?
15 A I was very much concerned, it's just that he
16 terminated the interview before we could delve into it more
17 thoroughly.
18 Q So, he is the one that stopped the interview?
19 A Yes, ma'am.
20 Q As a matter of fact, when you continued to talk to
21 him about the time that he was going to receive he said,
22 Just please stop, just please stop, please, please just
23 stop; correct?
24 A No, ma'am.
25 Q Okay. And he said, I have been honest with you.

1 And your response was, I told you from the beginning if you
2 want to stop you can stop at any time, it's up to you. And
3 he said, I just want to go home.
4 A That's correct.
5 Q And you were like, Huh?
6 A No, ma'am.
7 Q And he said, I just want to go home?
8 A No, ma'am.
9 Q You don't recall that either? Do you recall
10 telling him, Well, you ain't going home?
11 A That's correct.
12 Q And you told him, We need a clear picture from
13 you. And he said -- so, this is what you told him -- he was
14 15 at the time, correct?
15 A Correct.
16 Q You said, When I talk to the solicitor, I'm going
17 to tell the solicitor, This is what Robert told us. He's
18 hurt. I can tell that he's hurt about it. Whatever you can
19 do to help him, you help him. Is that not what you told
20 him?
21 A No, ma'am.
22 Q That is not what you said?
23 A No, I told him. I said, This is what will
24 happen. You come clean with us and then when we go, when
25 we do talk to the prosecutor, we will let the prosecutor

1 know what you said, that you were cooperative and ask if he
2 could help you, help him.
3 Q You didn't say, Whatever you could do to help him
4 you would help him?
5 A Yes, but I didn't tell him that this is what I am
6 going to do, I said, This is what would happen or what
7 could happen.
8 Q Now, if Robert said, I only have two choices right
9 now, either go to jail or die, right?
10 A Correct.
11 Q He just said, I just want to leave, I just want to
12 leave, I am done, I just want to leave; correct?
13 A Yes.
14 Q And you went on to say -- because you are through
15 talking to us?
16 A That's correct.
17 Q I want to make sure that you don't want to talk to
18 us any more?
19 A That's correct.
20 Q Even after he told you he didn't want to talk to
21 you, he wanted to leave, he wanted to go home, you continued
22 to question him?
23 A That is the only time that he said he wanted to
24 leave and just wanted to go home. When he was telling me,
25 stop, stop, stop, he was not telling me that, I was telling

1 him to stop because he was saying that he wanted -- just
2 wanted to just die. I said, Stop, that is the wrong
3 answer.
4 Q Okay. So you did tell him -- you admit that you
5 kept telling him the wrong answer?
6 A No, I wasn't telling him the wrong answer. I
7 told him that his statement that he wanted to die is the
8 wrong answer or wrong response, so I was telling him to
9 stop.
10 Q Do you recall when he was talking to you, you
11 said, All right, so, Gabriel tied him down?
12 A I'm not certain.
13 Q Okay. And he said, I said -- and then you say,
14 No, no, that is the wrong answer, that is the wrong answer,
15 wrong. You don't recall that?
16 A Yes, I do recall that.
17 Q That does not have anything to do with him saying
18 he wanted to die?
19 A No, when he was saying stop in an earlier
20 question. When I was saying stop it was because he was
21 saying that he just wanted to just die, so I was telling
22 him to stop, you don't talk like that in public if you are
23 innocent.
24 Q Did you ever tell him that you were going to see
25 what you could do to minimize the charges that he would

1 receive?
2 A No, not like that. I told him that this was the
3 best thing that he could do, come clean and see if he could
4 minimize his time.
5 Q So, you don't -- you have had a chance to review
6 the video, correct?
7 A Yes, I have.
8 Q And you are aware that the video was transcribed?
9 A Yes.
10 Q And you are pretty much aware that that is what
11 I'm reading from?
12 A Yes.
13 Q So, you admit that the question that I'm asking
14 you from this document was transcribed from the audio?
15 A The questions are not verbatim from the audio.
16 Q This is not what the solicitor transcribed?
17 A Your question being asked to me is not the same
18 thing that took place.
19 Q So, Johnson: No, no, that is wrong. That is the
20 wrong answer. Wrong. Isn't it true that that would be
21 something that was transpired from the interrogation that
22 you said?
23 A Now, the way that you just said that, yes, that
24 is what I said.
25 Q So, Gabriel, he ain't. Johnson: Name. All right

1 who is he? Miller: He who? That is the only thing I just
2 want. All right. So you say Gabriel tie him down. Miller:
3 I said -- Johnson: No, no, that is wrong, that is wrong,
4 wrong answer.
5 A Yes.
6 Q So you didn't tell him then that the answers that
7 he was giving you were the wrong answers?
8 A Probably did.
9 Q Okay. So, that basically means that the
10 confession that he was giving you wasn't the confession that
11 you wanted?
12 A No, not the confession. He was not telling the
13 whole truth.
14 Q So, how do you know the whole truth?
15 A Experience with the information that I had. We
16 had already had -- I think that it was Caper who had
17 already conveyed to us what he told them. Just
18 investigative experience. It wasn't adding up.
19 Q Isn't it also true that the facts that Capers gave
20 you was not consistent with the facts at the residence?
21 A I can't say that. I don't know.
22 Q Okay. Now, did you call Solicitor Legette to come
23 to the Fairfax Police Department?
24 A I either called her -- I called someone from the
25 Solicitor's office at some point. I don't recall exactly

1 which one it was.

2 Q Okay. So you thought that it was important to

3 have the assistant solicitor who prosecutes cases to be at

4 the Fairfax Police Department, but not important to have an

5 attorney to represent him at the police department?

6 A Every case that we work, the homicide cases, we

7 always notify the Solicitor's office as quickly as possible,

8 as to what we have to give them a heads-up as to what is to

9 be expected. And if there's a time that we need legal

10 opinion, then we would ask them if they could come, yes.

11 Q Is there often times that the solicitor comes to

12 the interrogation?

13 A No, the solicitor wasn't at the interrogation.

14 Q Now, you talked to Robert about his parents?

15 A Yes.

16 Q About his mother, or Ms. Sabb, you asked him, was

17 this his mother and he said, No, she was like a mother?

18 A That's correct.

19 Q You were also the agent that asked Ms. Sabb to

20 step outside of the room?

21 A I asked her if she minded if we talk with Mr.

22 Miller outside of her presence and then I asked Mr. Miller

23 is that okay.

24 Q So, the only guardian that he had present, you

25 asked her to leave so you could have Robert by himself; is

1 that correct?

2 A No, I asked her do she mind if we talk to him

3 alone.

4 Q Does that mean that you wanted her to stay, or

5 does that mean that you want her to leave?

6 A Possibly leave, yes, ma'am.

7 Q So you admit that you wanted her to leave so you

8 could interrogate him by himself?

9 A Se we could question him, that's correct.

10 Q Also, his father came up there while you were

11 interrogating him, correct?

12 A I know his father came up at some point, but I

13 don't know if he came up while we was talking to him or

14 not.

15 Q But y'all never let his father come in the room

16 while y'all were interrogating him?

17 A If I'm in the middle of an interrogation, I don't

18 know whether his father is out there or not. I don't know,

19 I can't answer.

20 Q You indicated that when you finished interrogating

21 Robert, he laid down on the floor and went to sleep; did he

22 not?

23 A That's correct.

24 Q And at the end of the interview, he was crying; he

25 was in tears, correct?

1 A I think he was.

2 MS. SMART-GITTINGS: I don't have any other

3 questions.

4 MR. THORNTON: Just a couple of questions.

5 REDIRECT EXAMINATION

6 BY MR. THORNTON:

7 Q You have already answered the question about the

8 assistant solicitor. Do you call defense lawyers to ask

9 them legal opinions about your case?

10 A I don't just call them, no.

11 Q So, do you call assistant solicitors, or in some

12 cases, deputy solicitors to ask opinions about your case?

13 A Yes.

14 Q At any point did Robert Lee Miller ask for an

15 attorney?

16 A Never did.

17 Q Had he asked for an attorney, would you have

18 stopped the interview?

19 A Most definitely.

20 Q When she said he was tired of talking to you, did

21 you stop the interview?

22 A Certainly did, yes.

23 Q At any time was Tameaka Legette involved in your

24 questioning of Mr. Miller?

25 A No.

1 Q When I say "involved," was she in the room, was
2 she feeding you questions?
3 A She was not even there.
4 Q To your knowledge.
5 A I don't even recall her being there.
6 Q Ms. Smart-Gittings asked you about interrogation
7 techniques versus interviewing and when you are talking to
8 people and that you are a trained interrogator; are you in
9 there to get somebody to admit to something they didn't do
10 or are you after the truth?
11 A The truth.
12 MR. THORNTON: Subject to recall, Judge, I don't
13 have anything else from this witness at the moment.
14 THE COURT: Thank you, sir. You may step down
15 but don't leave.
16 MR. THORNTON: May we approach, Judge?
17 THE COURT: Yes, sir.
18 (Off-the-record discussion held.)
19 THE COURT: All right. Madam forelady, at this
20 juncture the lawyers tell me this is a good point to
21 take a break. Let's take a lunch break now. If you
22 will be back in the jury room at 1:30 we will return
23 to the trial at that time. Let me remind you not to
24 speak amongst yourselves or to anyone else about the
25 case. Leave your notes in the jury room if you will

1 please.

2 (Jury exits the courtroom.)

3 THE COURT: Do you have something?

4 MR. THORNTON: Briefly, if I may. It is

5 something that I talked to you at the Bench about.

6 One of the things that always concern me when we have

7 audio, and it's even worse with video recordings,

8 this one won't be as bad because there's been an

9 explanation that the tape cut off sometimes, but that

10 the jury thinks that we are hiding something form

11 them. And, of course, the case law requires me to

12 redact certain things, the stuff about the weed,

13 prior bad acts, the thing about the Fairfax shooting

14 that we obviously don't want to get into. My request

15 would be when I talk to or when I introduce the video

16 through -- or, excuse me, the audio through Agent

17 Merrell, I usually say something like, Your Honor,

18 this is the portion that has been redacted either by

19 order of the Court or by agreement of the parties,

20 because I'm required to redact it and I don't want to

21 be unfair -- have the jury think that I'm hiding

22 things from them that I'm forced to take out.

23 Normally I ask for permission to say, you know, as

24 redacted for time and with content as agreed by the

25 parties, or something like that. Because she can't say

1 that it hasn't been altered. It has been altered
2 because portions have been removed.
3 THE COURT: What is your feeling on that?
4 MS. SMART-GITTINGS: I don't have any. The only
5 thing that I'm going to ask her about is what she put
6 in her report, that it stopped. That is it. I mean,
7 I'm not going into anything redacted or about taking
8 anything out.
9 MR. THORNTON: If that's okay if I just say by
10 agreement of the parties that we are putting in the
11 redacted version. And the only other thing that I
12 mention, Judge, I just -- I apologize, I should have
13 talked to Ms. Smart-Gittings about this before and
14 made this clear. Obviously when we get these tapes,
15 and the audio is a thousand percent better than it
16 was when we did the pretrial, but it's still audio,
17 it is still a tape, there's still multiple people
18 talking. When we do these transcripts, it's done by
19 our office. And the only fair way I know to do it is
20 for them to listen and put down what they hear or
21 think they hear. I actually came across a 2016 case
22 that Your Honor did where you allowed the jury to use
23 the transcript and it was upheld and we used it many
24 times. But, as you know, there's generally
25 instructions that say you have to listen to it

1 before we bring the jury back?
2 MR. THORNTON: No, sir.
3 THE COURT: Ms. Smart?
4 MS. SMART-GITTINGS: No, sir.
5 THE COURT: All right. Bring in the jury.
6 (The jury enters the courtroom.)
7 THE COURT: Call your next witness.
8 MR. THORNTON: Thank you, Your Honor. The State
9 calls Natasha Merrell.
10 Thereupon,
11 NATASHA MERRELL
12 was called as a witness, having been first duly sworn,
13 was examined and testified as follows:
14 DIRECT EXAMINATION
15 BY MR. THORNTON:
16 Q Please state your full name?
17 A Natasha Merrell.
18 Q Are you the Case agent assigned to this case?
19 A Yes, I am.
20 Q Who do you work for?
21 A South Carolina State Law Enforcement Division,
22 also known as SLED.
23 Q Are you, basically, the lead officer or the one
24 who is responsible for this case?
25 A Yes, sir.

1 Q From SLED's perspective, obviously there has been
2 some testimony about this already. And obviously you have
3 been in here with me as case officer and you have heard a
4 lot of this. So, forgive me for asking some of the same
5 things that we have asked others. But as case officer, have
6 you made additional arrests in this case? Are there others,
7 other than Robert Lee Miller, arrested and pending trial?
8 A Yes.
9 Q Who are those individuals?
10 A Kashaun Bynum and Gabriel Joyner.
11 Q Are they currently charged and awaiting trial?
12 A Yes, sir, they are.
13 Q Are you one of the people with SLED who went out
14 to the scene at Mr. Willie Johnson's house?
15 A Yes.
16 Q And were you there with SLED's crime scene folks,
17 Brittany Burke and Tiffany Hezel -- who we heard was on her
18 honeymoon -- were you there when they came through doing all
19 of the LCV tests and that sort of thing?
20 A Yes, sir.
21 Q Is that part of your job as a case officer?
22 A Yes, it is.
23 Q Also, as part of your job as a case officer, did
24 you have any occasion to interview Robert Lee Miller III,
25 the defendant in this case?

1 A Yes, sir.

2 Q Were you interviewing him and did you talk to him

3 about what involvement he had, if any, with Mr. Willie

4 Johnson's murder?

5 A Yes.

6 Q And where were you located when you did that?

7 A Fairfax Police Department.

8 Q Were you with anyone else from SLED?

9 A I was with Special Agent Richard Johnson.

10 Q Is that who -- Agent Johnson that just testified

11 right before you?

12 A Yes.

13 Q And were you present for the total interview that

14 he had with y'all?

15 A Yes, I was.

16 Q At some point did -- does Agent Johnson step out

17 of the room?

18 A Yes, he did.

19 Q And again, you are probably the best person to ask

20 about this, but was this recorded, this interview?

21 A Yes, it was.

22 Q Was it recorded audio or video?

23 A It was audio.

24 Q What did you use to record it?

25 A My SLED Iphone.

1 Q At any time during this interview, at least once,
2 does the Iphone cut out, and if it does, could you explain
3 why?
4 A Yes, it cut out a couple of different times. As
5 the recording was going, I was receiving in-coming calls
6 and when I hit the ignore button the voice recording would
7 stop and I would have to manually restart it.
8 Q I'm going to show you a document. I'm going to
9 show you what's been marked as State's Exhibit 33 and ask
10 you, just, if you are familiar with that document?
11 A Yes.
12 Q And what is that document? Obviously, it is a
13 multi-page document. What is it?
14 A An audio interview transcription.
15 Q Now, just so we make this clear, did you prepare
16 that -- is that a transcript of the audio that we are going
17 to hear in a moment of Robert Lee Miller's interview or
18 portions of it?
19 A Yes, it is.
20 Q Now, was that transcript, was that done by you or
21 Agent Johnson or anybody from SLED?
22 A No, it was not.
23 Q Was that actually done by a member of my office?
24 A Yes, it was.
25 Q I apologize, it was an inartful way that I was

1 about to ask that question. I realize that there may be
2 some minor discrepancies, as far as what you hear on the
3 tape as to what the transcript is, because, obviously, it is
4 just someone listening, they weren't there; is that correct?
5 A That's correct.
6 Q Other than those minor things and the redactions
7 that were done that you were aware of that is done by
8 agreement of the parties, pursuant to the state law and the
9 Judge, with regard to relevance and time; other than those
10 things, has it been altered or changed in any way, or is it
11 a fairly accurate representation of what is heard on the
12 tape?
13 A Yes, it is.
14 MR. THORNTON: Judge, I would ask at this time
15 that the transcript be moved into evidence. And that
16 is State's 33, Your Honor.
17 MS. SMART-GITTINGS: No, objection, Your Honor.
18 THE COURT: I'll admit it. Ladies and gentlemen
19 of the jury, let me tell you this, this Exhibit 33
20 which is a purported transcript of audio. It is not
21 evidence in the sense that it was taken from the
22 scene, it was not witnessed by somebody, it was just
23 somebody with the Solicitor's office who did their
24 best to type down what was heard on the audio.
25 Therefore, when the audio is played, if you hear

1 something that differs from what you see in this
2 transcript, the audio would control. Okay?
3 In other words, if there's a discrepancy, the
4 audio is what you depend on and not necessarily the
5 transcript. With that being said, I'll further tell
6 you that certain aspects of this transcript have been
7 what we call "redacted", meaning there's not everything
8 to be in there. I require that certain parts not be in
9 there and the parties stipulate that certain parts not
10 be in there, but the relevant parts are in here.
11 MR. THORNTON: Thank you, Judge. For Your
12 Honor's edification, I'll ask her about a disc that
13 I'll place in evidence, that counsel is aware of, the
14 audio recording that has the transcript overlaid on
15 the screen. I will move that into evidence. I did
16 include a paper copy of the transcript so that the
17 jury will have it if and when we get to the
18 appropriate point.
19 *(Whereupon, State's Exhibit No(s). 33 marked for*
20 *identification and received in evidence.)*
21 BY MR. THORNTON:
22 Q. I'll show you what's marked as State's Exhibit 34,
23 which is the disc marked as the Miller statement; is that
24 correct?
25 A. That's correct.

1 Q Have you been with us and our office pretrial and
2 seen the transcription that is overlaid?
3 A Yes, I have.
4 Q And subject to what the Judge has instructed as
5 with regard to the necessary redactions for relevance and
6 time, other than that, is that an accurate recording and
7 recording that you made of Mr. Miller's interview that day
8 of his confession?
9 A Yes, it is.
10 MR. THORNTON: Your Honor, at this time I move
11 in State's 34, which is the audio recording as well
12 as the transcription laid over it.
13 THE COURT: It'll be admitted subject to prior
14 rulings.
15 MS. SMART-GITTINGS: Thank you, Your Honor.
16 THE COURT: Yes, ma'am.
17 (Whereupon, State's Exhibit No(s). 34 marked for
18 identification and received in evidence.)
19 BY MR. THORNTON:
20 Q I'll not ask you too many more questions, because
21 obviously, this is on tape. But just a few more things.
22 When you and Agent Johnson were in the room at Fairfax
23 Police Department with Mr. Miller, who all was in the room
24 that you recall?
25 A Myself, Agent Johnson, Tiffany Sabb.

1 Q And was there an Officer Williams in there at some
2 point in the very beginning?
3 A I do remember a Fairfax police officer being
4 there, but I do not recall his name.
5 Q Okay. So, there were you, a Fairfax officer,
6 Agent Johnson, Tiffany Sabb, and the defendant in the room;
7 is that correct?
8 A That's correct.
9 Q While you were talking to him, who was in the room
10 once you started your interview of Mr. Miller?
11 A In the beginning, it was myself, Agent Johnson
12 and Tiffany Sabb.
13 Q Did -- was she at some point asked to leave?
14 A Yes, she was.
15 Q And I -- I understand that -- I know that that
16 question was asked and you were in the room. Was she asked
17 if it was okay if y'all talked to him without her in the
18 room is probably a better way to put it?
19 A Yes, she was.
20 Q Did she say yes and left?
21 A Yes.
22 Q At that point did you and Agent Johnson both talk
23 to him or did y'all switch off, or was it just you; or how
24 did that work?
25 A Miller the III indicated that he only wanted to

1 speak to one of us and he would prefer to speak to me.
2 Q At that point did Agent Johnson leave the room?
3 A Yes, he did.
4 Q While you were doing your initial interview of the
5 defendant, Mr. Miller, did he stay out of the room?
6 A Yes, he did.
7 Q While you were talking with Mr. Miller, did you
8 ask him about his whereabouts on the night Mr. Willie
9 Johnson was killed?
10 A Yes, I did.
11 Q And was he giving you -- and again, I know this is
12 on the tape, but was he giving you consistent answers?
13 A Not exactly. He could not remember how he got
14 back to Ms. Sabb's residence that evening.
15 Q Did he talk to you about stories he had heard
16 about SLED was going to kick in his door and shoot him and
17 things like that?
18 A Yes, he did.
19 Q And what was your response, if any, to that?
20 A I said, Has it happened and he responded, No.
21 Q Did you ask him, Well, what does that tell you or
22 something to that effect?
23 A I don't recall.
24 Q That is okay. We will play the tape in a minute.
25 Is he admitting that he did anything at first?

1 A No, he is not.

2 Q Is he saying, Well, I heard this story in a dream;

3 is that what he said?

4 A No.

5 Q He point blanks says, I didn't do anything?

6 A That is correct.

7 Q Did you at some point go get Agent Johnson and ask

8 him to come back in?

9 A Yes, I did.

10 Q Once Agent Johnson comes back in, does he talk to

11 him about, Well, you are going to go to jail?

12 A Yes, we did.

13 Q And you can help yourself or minimize, things like

14 that; does he make those types of general statements?

15 A Yes, he does.

16 Q We will play the tape in a minute. But at some

17 point does Mr. Miller, as my daddy would have said, change

18 his tune?

19 A Yes.

20 Q Does he make some admissions or confessions as to

21 being responsible in the murder of Willie Johnson?

22 A Yes, sir, he does.

23 Q In general terms, what does he tell you?

24 A He told us that it was Gabriel's idea, the whole

25 thing, but he did hit Mr. Johnson and he did place the bag

1 over his head.
2 Q So when he confessed, he is still minimizing his
3 role?
4 A Yes.
5 Q And saying, Well, it was Gabriel's idea, I just
6 went along; is that correct? Is that accurate?
7 A That is accurate.
8 MR. THORNTON: The Court's indulgence please,
9 Your Honor.
10 (Pause.)
11 BY MR. THORNTON:
12 Q And there's been some -- there was actually a
13 question last time about, Well, he didn't give you any
14 details and I think that the jury will hear about Agent
15 Miller (SIC) himself stopping the interview when you tried
16 to do that. But he did talk about the bag over his head?
17 A Yes, he had did.
18 Q Did you already then have a statement from
19 Johnathan Capers?
20 A Yes, we did.
21 Q The jury has already heard Mr. Caper's testimony
22 and there was a discrepancy about it being a Dollar General
23 bag, but there was a bag over his head. Was the rest of
24 that mainly consistent?
25 A Yes, it was.

1 MR. THORNTON: Your Honor, at this time I think
2 that the best thing to do is play the tape, since it
3 speaks for itself. With the Court's permission, I
4 would like to publish?
5 THE COURT: Yes.
6 MR. THORNTON: I did, Your Honor, want to inform
7 the Court, we fixed our audio problems from earlier.
8 We don't have a lot of volume, but it's loud enough.
9 If it's too loud for any of the jurors, I'll have to
10 take the speaker and move it back. Hopefully it'll
11 be okay. I went through it earlier and listened to
12 the entire thing. You can hear it from the Bench and
13 jury box.
14 THE COURT: If during the course of it it
15 becomes too loud, raise your hand and we will adjust
16 it to minimize it. But apparently it is going to be
17 loud.
18 MR. THORNTON: There are places that a door
19 closes and that is much louder than the audio. But
20 that's not consistent.
21 (The audio disc was played.)
22 MR. THORNTON: Your Honor, I would point out to
23 the Court, as I'm following through, unfortunately,
24 it is a large file. I did hear the computer lag. If
25 the jury needs that replayed, we can replay portions

1 or all of it.

2 BY MR. THORNTON:

3 Q Agent Merrell, one other thing. One of the

4 questions asked earlier by Agent Johnson from defense

5 counsel: Well, if you talked to him, why didn't you do a

6 memorandum of interview. Again, were you the case officer?

7 A Yes, I was.

8 Q Are you generally the one that does the memorandum

9 of investigation as the case officer?

10 A I did the memorandum of investigation.

11 Q You have already answered my question. Did you do

12 that in this case?

13 A Yes, I did.

14 CROSS EXAMINATION

15 BY MS. SMART-GITTINGS:

16 Q Agent Merrell, you did several investigative

17 memorandums?

18 A Memorandum of investigations?

19 Q Yes.

20 A Yes.

21 Q And you interviewed seven, eight witnesses?

22 A That's correct.

23 Q And you had about 49 attachments in your file, a

24 lot?

25 A Yes.

1 Q Are you familiar with those attachments from your
2 memorandums?
3 A If I have my case file in front of me, yes.
4 Q Do you want to take a moment to get that?
5 A Sure.
6 Q You learned that Mr. Johnson lived alone on
7 Pickrum Street in Allendale?
8 A That's correct.
9 Q And basically the church folk took care of him?
10 A That's correct.
11 Q And he had an alarm system on his house?
12 A That's correct.
13 Q And as a result of that alarm system a lot of the
14 police reports or dispatch calls were generated?
15 A That's correct.
16 Q And I guess each time that the alarm went off they
17 notified the Allendale Police Department?
18 A I believe that's correct.
19 Q But on the date of the incident Allendale Police
20 Department was not notified of anything that occurred in
21 that house, on June 17th or 18th?
22 A June.
23 Q Like, nobody went out to investigate anything
24 suspicious at Mr. Johnson's house on June 17th, 2014?
25 A That's correct.

1 Q Or June 18, 2014?

2 A That's correct.

3 Q And even June 19th of 2014, the police department

4 was never dispatched by the alarm service?

5 A That's correct.

6 Q But these times they had been dispatched out there

7 by the alarm service --

8 A That is --

9 Q -- to your knowledge?

10 A To my knowledge, yes.

11 Q Now, you were there when the crime scene was

12 surveyed by Agents Hezel and the other one?

13 A Yes.

14 Q Did you observe the heater near Mr. Johnson's

15 body, the portable heater?

16 A No, I did not.

17 Q And you are familiar with the wallet that was

18 collected?

19 A Yes.

20 Q There weren't any prints of Mr. Miller's on

21 Mr. Johnson's wallet, correct?

22 A Correct.

23 Q So, the fact that Agent Johnson told him that his

24 prints were on the wallet, that wasn't true?

25 A That's correct.

1 Q Now, as far as you know, during the course of your
2 investigation you discovered that the last person -- a
3 neighbor saw Mr. Johnson about 8:00 on June 17th?
4 A That's correct.
5 Q And then at some point you all, I think it might
6 have been somebody from the Allendale Police Department, but
7 they received information from the alarm company about how
8 many times the door opened and the alarm went off and stuff
9 like that?
10 A Correct.
11 Q And within that information, was information about
12 the fact that Mr. Johnson had opened his door at about
13 12:00 on the 17th?
14 A Give me a second to get to that.
15 Q Do you need my copy?
16 A I'm with you.
17 Q Generally, he would open his door in the morning
18 time and it would stay open all day?
19 A Yes.
20 Q Because as we heard, the hard door?
21 A Yes.
22 Q He had a screen door and then he had the regular
23 door?
24 A Correct.
25 Q So, he opened that door like at 12:00 that day and

1 it stayed open all day, correct?

2 MR. THORNTON: Judge, may we approach?

3 THE COURT: Yes.

4 (Off-the-record discussion held.)

5 MS. SMART-GITTINGS: May I approach, Your Honor?

6 THE COURT: Yes, ma'am.

7 BY MS. SMART-GITTINGS:

8 Q So, during the course of your investigation you

9 learned that on the 17th of June at about 12:00 he opened

10 his door?

11 A Correct.

12 Q And it stayed open all day until about 8:00, 8:18,

13 and he closed the door?

14 A Correct.

15 Q And it opened again and closed at 8:35?

16 A Correct.

17 Q So, on June the 17th his door closed at 8:00 and

18 opens and closed again at 8:18, and didn't open any more;

19 correct?

20 A According to this document, yes.

21 THE COURT: Identify those documents, please

22 ma'am.

23 MS. SMART-GITTINGS: Oh, I am Sorry. It is the

24 Vivint Security description that was included in the

25 investigation file. We are done with that document.

1 BY MS. SMART-GITTINGS:
2 Q So, you also, during the course of your
3 investigation, you learned that Mr. Johnson -- you
4 interviewed a lady that worked at the bank?
5 A Can you give me her name please?
6 Q Ms. Bagwell (phonetic).
7 A Yes.
8 Q And -- well let me back up a minute. Has anybody
9 from Mr. Johnson's family been with us this week?
10 A Can you repeat the question?
11 Q Has anyone from Mr. Johnson's family been in court
12 with us this week?
13 A Yes.
14 Q And who is that?
15 A His son.
16 Q And is he located in the courtroom?
17 A Yes, he is currently in the courtroom.
18 Q Where is he?
19 A He is behind Agent Huff, Mr. Teddy Johnson.
20 Q Okay. So, during the course of your
21 investigation, you discovered that Mr. Teddy Johnson had
22 gone to the bank and wanted to know if his account would be
23 available --
24 MR. THORNTON: Objection, Your Honor. This is
25 just hearsay. She's couching it in, You learned that

1 this happened. And the only reason that it was
2 learned --
3 THE COURT: Just a moment. Would you take the
4 jury to the jury room.
5 (The Jury exits the courtroom at 2:29 p.m.)
6 THE COURT: Please ask the question again, Ms.
7 Smart.
8 MS. SMART-GITTINGS: During the course of your
9 investigation, you learned that Mr. Teddy Johnson
10 inquired about his father's account?
11 THE COURT: About his father's?
12 MS. SMART-GITTINGS: Bank account.
13 THE COURT: I don't necessarily have a problem
14 of you asking a question, couching a question, "As a
15 result of your investigation, you discovered", but
16 I'm not sure what the relevance is you are working up
17 to.
18 MS. SMART-GITTINGS: It was payable upon his
19 death to his son.
20 THE COURT: So? Is that relevant to what we are
21 doing today? You think that he had the --
22 MS. SMART-GITTINGS: I just wanted the jury to
23 be aware of all of the facts. Apparently they
24 thought that it was important, they put it in the
25 police report. I would not have --

1 MR. THORNTON: I have two objections, Judge.
2 THE COURT: That is not true. It is not
3 hearsay. I understand that it's based on hearsay
4 statements, but I don't think that that is an
5 objection that I am going to sustain. What is the
6 other?
7 MR. THORNTON: Trying to interject third-party
8 guilt, which is completely improper. There is no
9 indication whatsoever that his son had anything to do
10 with it. Frankly, I'm offended that she would bring
11 that up.
12 THE COURT: The law is clear on third-party
13 guilt.
14 MR. THORNTON: Yes, sir, I think that is
15 completely improper.
16 THE COURT: I agree. And I'll strike that
17 testimony from the record, strike the question. Did
18 you respond at all, Officer?
19 THE WITNESS: No, sir.
20 THE COURT: I didn't think so. All right. Do
21 you want to cure it with an instruction?
22 MR. THORNTON: I don't want a curative
23 instruction, and I don't want to beat a dead horse,
24 but I just want to know what the Court is going to
25 rule.

1 THE COURT: You never know what the Court is
2 going to rule, man, I will you that. I don't even
3 know what they are going to rule.
4 MR. THORNTON: What I don't want her to do is
5 say -- to use the words, As a result of your
6 investigation you learned that -- and the only way
7 that they learned that was because she interviewed a
8 person who has not been brought here to testify. And
9 I think that's back-dooring in hearsay by couching it
10 in a term -- instead of saying, What did the lady
11 from the bank tell you, what she says is, As a result
12 of your investigation, what did you learn about the
13 lady from the -- well, the only way that they got it
14 was talking to them.
15 THE COURT: I understand that is your objection,
16 I'm not going to sustain it.
17 MR. THORNTON: Yes, sir.
18 THE COURT: You ready to go, Ms. Smart?
19 MS. SMART-GITTINGS: Yes, sir.
20 THE COURT: All right. Bring the jury.
21 (The jury enters the courtroom at 2:34 p.m.)
22 MS. SMART-GITTINGS: I thought that you were
23 going to strike that.
24 THE COURT: I did already.
25 MS. SMART-GITTINGS: Sorry. May it pease the

1 Court.

2 BY MS. SMART-GITTINGS:

3 Q Just one other question. It was clear that the

4 tape recorder stopped a couple of times?

5 A Yes.

6 Q And that wasn't intentional.

7 A No, it was not.

8 Q And you did note that in the memorandum that it

9 stopped?

10 A Yes, I did.

11 Q And finally, after everything is over, he laid on

12 the floor and went to sleep?

13 A Yes, he did.

14 MS. SMART-GITTINGS: Nothing further.

15 THE COURT: Redirect.

16 MR. THORNTON: The Court's indulgence please,

17 Judge.

18 THE COURT: Yes, sir.

19 (Pause.)

20 BY MR. THORNTON:

21 Q Agent Merrell, just a question that I want to ask

22 you. And I can hand these to you, if I need to, if it would

23 help.

24 The alarm records that were referenced

25 earlier, I believe that she asked you a couple of questions.

1 Just to clarify. There is a front door closing at 8:18, and
2 this is on June 17th, 2014 at 8:18 and 51 seconds; is that
3 correct?
4 A That's correct.
5 Q According to this, the monitoring company?
6 A Correct.
7 Q And you have a front door -- you don't have the
8 front door opening and closing again for -- between 8:18
9 until 8:35, so 17 -- almost 20 minutes; is that correct?
10 A That's correct.
11 Q You don't have another -- there's a lot of modem
12 pings and other information, but there is no door opened or
13 closed after that 8:35 closure until the body of Mr. Willie
14 Johnson was discovered two days later on Thursday at 12:50
15 something; is that correct?
16 A Correct.
17 MR. THORNTON: I don't have any other questions.
18 Thank you.
19 THE COURT: Thank you, Officer. You may step
20 down.
21 THE WITNESS: Thank you, Judge.
22 MR. THORNTON: Your Honor, at this point the
23 State rests.
24 THE COURT: Okay. Ladies and gentlemen of the
25 jury, the State has advised me that they rest, which

1 means that they have presented their case-in-chief
2 against the defendant in this matter. I have to take
3 up administrative things now. Let's take an
4 afternoon break. It'll be about 15 or 20 minutes, at
5 the minimum, may be up to 30 minutes before we get
6 you back in here. You may go back to your jury room.
7 (The jury exits the courtroom at 2:38 p.m.)
8 MS. SMART-GITTINGS: Your Honor, we move for a
9 directed verdict in that the indictment as stated,
10 that the State failed to prove competent evidence
11 to --
12 THE COURT: Do you also renew your motion to
13 suppress the statement?
14 MS. SMART-GITTINGS: Yes.
15 THE COURT: Thank you. Those are denied. All
16 right. Ms. Smart, have you had an opportunity to
17 discuss with Mr. Miller whether or not he wishes to
18 testify or whether or not he wishes to exercise his
19 rights under the fifth amendment?
20 MS. SMART-GITTINGS: I have, Your Honor.
21 THE COURT: What does he wish to do?
22 MS. SMART-GITTINGS: He wishes to exercise his
23 fifth amendment rights.
24 THE COURT: Is that correct, Mr. Miller?
25 THE DEFENDANT: Yes, sir.

1 THE COURT REPORTER: No.

2 THE COURT: She has the chance to get the last

3 charge. I'll do whatever you want to do, it is a

4 short charge. I typically don't like to give the

5 case after 4:00, but I will. But I don't want them

6 to rush to judgment. What would be your pleasure?

7 Do you want to keep going?

8 MR. THORNTON: Your Honor, I don't have a strong

9 preference. I'll do whatever the Court wishes. I

10 don't like to give them murder cases like this this

11 late in the afternoon. By the time we get back,

12 bring them in, and she rests.

13 THE COURT: It'll be after 4:00.

14 MR. THORNTON: I would ask for at least, with

15 all due respect, 20 to 30 minutes to get the closing

16 together, then you have argument, charge. I would

17 rather come back in the morning but . . .

18 THE COURT: She is shaking her head. We are all

19 on the same page. Your motion is denied. Renewed,

20 but denied. I'll bring the jury in and release them,

21 9:30 in the morning like we have been doing.

22 Everybody good with that?

23 MR. THORNTON: Yes, Your Honor.

24 THE COURT: All right. Bring the jury.

25 (The jury enters the courtroom at 2:43.)

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2 THE COURT: Ms. Smart. Mr. Thornton requested a
3 charge on hand of one, hand of all. I think that
4 that's appropriate in this case.
5 MS. SMART-GITTINGS: I agree.
6 THE COURT: Are you still of the same mind,
7 charge first, argument second?
8 MS. SMART-GITTINGS: Yes.
9 MR. THORNTON: Yes. Your Honor. If I might,
10 this is the stipulation that you asked for. It's
11 been signed by both parties.
12 THE COURT: Very good. Excellent.
13 All right. Bring the jury in, please sir.
14 (The Jury enters the courtroom at 9:35 a.m.)
15 JURY CHARGE
16 THE COURT: Good morning ladies and gentlemen,
17 before I get started. Let me ask everyone, if anyone
18 has spoken with anyone about this case, during the
19 break or read, heard or seen anything about it during
20 the break? If so, would you raise your hand.
21 (No response.)
22 THE COURT: Very good. Let the record reflect
23 no one responded. Ladies and gentlemen, if you will
24 remember, at the beginning of this trial, I told you
25 that there's five phases. You have the opening

1 statements, you have the presentation of evidence,
2 and then you have closing arguments, and I charge you
3 on the law and you begin deliberations.
4 We have finished the presentation of the evidence
5 phase. With agreement of counsel, what I'm going to do
6 instead of having closing arguments now, I'm going to
7 charge you on the law that you must apply and then the
8 lawyers will give you their closing arguments. We will
9 have a meeting and then we will send word back to you
10 at the appropriate time to begin your deliberations.
11 So, Madam Forelady, until you get that message do not
12 begin your deliberations.
13 All right. Now, let me tell you this before we
14 get started, let me apologize to you, I'm neither smart
15 enough or articulate enough to tell you the law,
16 unfortunately a lot of this will be read to you so it
17 is very important, they are principles that you need to
18 be hearing, so just bear with me if you will.
19 If anyone needs to move around during the course
20 of this charge, you may stand up. But please pay close
21 attention. Mr. Bailiff, if you would, do not let
22 anyone enter or leave the courtroom during my charge or
23 during closing arguments, please sir.
24 With that being said, ladies and gentlemen, you
25 have heard all of the testimony and evidence that is

1 going to be admitted in this case, so let me tell you
2 this: At this juncture, a lot of times in other places
3 I have juries send a request to hear additional
4 information that is not put in the record. At this
5 juncture, there will be no more evidence presented to
6 you. We may replay evidence and watch certain parts of
7 the evidence that you have back with you, but there
8 will be no more testimony and no more additional
9 information placed on the record. You must make your
10 decision based on what is before you now and according
11 to the law as I give it to you.
12 My instructions to you will be in three parts.
13 The first part will be general instructions that define
14 and control your duties as jurors. The second will be
15 the instruction of the law or the rules of law that
16 apply in this case, that is the law of murder and
17 related doctrine to that. In other words, what the
18 State must prove in order to make out its case against
19 the defendant. Third, I'll give you general
20 instructions about your deliberations. I'll give you a
21 break after the first part of my charge because it's
22 somewhat lengthy, and let you move around so I don't
23 put you to sleep, hopefully.
24 Ladies and gentlemen, as I told you, you are the
25 judges of the facts, you and you alone will determine

1 what the facts are in this case and hopefully
2 ultimately reach a unanimous verdict. But you must
3 find the facts and the evidence presented to you in
4 this case thus far. To those facts you must apply the
5 law as I give it to you now. You must not and shall
6 not be concerned with what you would like the law to be
7 or what you think it should be, but only what it is.
8 Also, ladies and gentlemen, you must not be
9 influenced by any personal likes, dislikes, opinions,
10 prejudice or undue sympathy that you may have for one
11 side or the other. What that simply means is this:
12 You must decide the case solely on the evidence and
13 according to the law as I give it to you now. And I
14 will remind you at the beginning of this case, you took
15 an oath and you swore or affirmed to do just that.
16 In following my instructions, you must follow all
17 of the instructions as I give them to you. You must
18 not single out ones that you like and apply those and
19 ignore others. They are all equally important. And
20 also let me tell you this, if I have done anything
21 throughout the course of this trial to indicate to you
22 how you are to define facts, in other words the verdict
23 that you should reach, I'll instruct you that you shall
24 disregard that. Our Constitution doesn't allow any
25 judge to have a comment on the facts or opinion on the

1 facts, it's you and you alone who determine those
2 facts.
3 You determine what the facts are by evaluating and
4 weighing the evidence that you have heard throughout
5 this trial. Now, there's no way to weigh evidence in a
6 literal sense, you can't have a set of scales to weigh
7 it in its literal meaning, but it is entirely a mental
8 process and you will evaluate, judge, and weigh the
9 evidence simply by using good common and sound judgment
10 that you brought with you when you were sworn in.
11 Now, this is what the evidence is in this case:
12 The sworn testimony of the witnesses, whether it's on
13 direct examination or cross examination, it is
14 evidence. Also, any exhibits that have been admitted
15 into evidence is evidence.
16 Finally, there's a stipulation that was entered
17 into by the parties that has been submitted as evidence
18 and you must accept this as a fact. And this is the
19 following stipulation: Agent Tiffany Hezel collected
20 case prints that were taken from the defendant Robert
21 Lee Miller III. Those prints were transferred to SLED
22 and related to SLED item 95.
23 Now, Madam forelady, you may not debate whether or
24 not that's in fact true, that's been stipulated by both
25 parties as being true so you shall accept that as being

1 a fact in this case.
2 So, that leads me to what is not evidence. As I
3 told you at beginning of the case, lawyers are not
4 witnesses. Their arguments and their statements made
5 in the course of this trial are designed to help you
6 understand and interpret the evidence, but they have
7 not been sworn in or cross-examined so what they tell
8 you and what they will tell you in just a minute is not
9 evidence. What that simply means is if they tell you
10 something, either or both of them, that differs from
11 your memory of what the facts are, then your memory of
12 those facts will control.
13 Madam forelady, I'll remind you about the notes.
14 Just because something appears in one of the juror's
15 notes doesn't mean that it trumps somebody's memory as
16 to that particular fact or issue. That is why we call
17 it deliberations, you have to hash it out and come to a
18 collective decision about what that issue may be.
19 Also, ladies and gentlemen, questions or
20 objections by lawyers are not evidence. I'll remind
21 you again that lawyers have a duty, ethical duty, to
22 object whenever they feel like there's something
23 improper going on in the courtroom. You may not and
24 shall not consider any objection during the
25 deliberations or my ruling on that objection, to the

1 extent that I let you stay in the courtroom and see it.
2 And, madam forelady, if someone tries to raise the fact
3 of an objection and my ruling on that, it is your job
4 to make sure that that's not a topic of discussion in
5 deliberations.
6 Also, ladies and gentlemen, anything that you may
7 have heard in court while court is not in session is
8 not evidence. Only the testimony from the witness
9 stand and exhibits in evidence and stipulation is
10 considered evidence. Also, we had the one transcript
11 that was admitted for the limited purpose of being what
12 was on audio tape. If the audio differs from that
13 transcript, the audio will control.
14 So, ladies and gentlemen, that leads me to the
15 types of evidence that we recognize in South Carolina.
16 There are two types of evidence which are generally
17 presented during a trial. That is direct evidence and
18 circumstantial evidence. I'll tell you about each of
19 them.
20 Direct evidence directly proves the existence of a
21 fact and does not require deduction. For example, if
22 an issue in a case was whether or not I ran a stop sign
23 and my law clerk testified that she saw me run that
24 stop sign, that would be direct evidence because it
25 immediately establishes the issue of whether or not I

1 ran the stop sign. That is direct evidence.
2 Now, circumstantial evidence is a little more
3 tricky, but fairly understandable. This is it:
4 Circumstantial evidence is a proof of a chain of facts
5 and circumstances indicating the existence of a fact.
6 In other words, you infer a fact, it doesn't directly
7 establish it. For example, if we all went to bed at
8 night and we had a fresh sheet of snow in our front
9 yards, if you were to wake up in the morning and see
10 tracks in that snow you may reasonably infer that
11 someone or some thing walked through your yard in the
12 night although you didn't actually see it. That is
13 circumstantial evidence.
14 And I'll charge you ladies and gentlemen that
15 crimes may be proven by circumstantial evidence as with
16 direct evidence. The law makes no distinction between
17 the weight or value to be given either direct or
18 circumstantial evidence. However, to the extent that
19 the State relies on circumstantial evidence, all of the
20 circumstances must be consistent with each other, and
21 when taken together, point conclusively to the guilt of
22 the accused beyond a reasonable doubt. If the
23 circumstances merely portray the Defendant's behaviour
24 as suspicious, the proof has failed.
25 The State has the burden of proving the defendant

1 guilty beyond a reasonable doubt. And this burden
2 rests with the State regardless of whether the State
3 relies on circumstantial evidence, direct evidence, or
4 a combination of both.
5 Ladies and gentlemen, in deciding what the facts
6 are in this case or which verdict you wish to render,
7 you must consider all of the evidence. And in doing
8 this, you must decide which testimony you wish to
9 believe and which testimony you wish not to believe.
10 You may disbelieve all or part of any witness'
11 testimony. You may believe all of a witness'
12 testimony. In making this decision of the credibility
13 of a witness or credibility of the evidence, you may
14 take into account a number of factors which include the
15 following: Was a witness able to see or hear or know
16 things about which the witness testified. How well was
17 the witness able to recall and describe those things.
18 What was the witness' manner while they were on the
19 witness stand. In other words, what was their demeanor
20 while they were sitting on the witness stand.
21 You can ask yourself if there is some reason that
22 a witness would want to give testimony that would help
23 or hurt one side or the other. Did the witness have an
24 interest in the outcome of this case or any bias or
25 prejudice concerning any party or any matter involved

1 in the case? You may ask yourself how reasonable was
2 the witness' testimony considering in light of all of
3 the other evidence in this case and whether that
4 witness' testimony has been contradicted by what that
5 witness had said or done at another time, by the
6 testimony of other witnesses or by other evidence
7 submitted in this case.
8 Ladies and gentlemen, those are some of the
9 factors that you may consider in deciding which
10 testimony to believe or not to believe. Again, when
11 you are sworn in as jurors you don't check your common
12 sense at the door. You should use those things that
13 you use in your day to day lives that you find
14 indicative of truthfulness or indicative of lack of
15 truthfulness when you go through the issue of
16 credibility.
17 In assigning credibility, you may believe one
18 witness over many, you may believe many over one, but
19 what you do not do is add up the number of witnesses
20 who appeared on behalf of one side or the other in
21 making the issue of believability. Your sole objective
22 is to try to find the truth from the evidence presented
23 in this matter.
24 Also, ladies and gentlemen, you have heard
25 testimony from persons described as experts. People

1 who by their education or experience have become an
2 expert in some field may state their opinion in matters
3 in that field and may also state the reasons for their
4 opinion. Expert testimony should be judged just like
5 in any other testimony. You may accept it, you may
6 reject it or give it as much weight as you think that
7 it deserves, considering the witness' education and
8 experience and the reasons given for their opinion and
9 all of the other evidence in this case.
10 Ladies and gentlemen, I remind you that the
11 indictment in this case and the fact that this
12 defendant was arrested and charged is not evidence and
13 cannot be considered by you during your deliberations.
14 It does not create an inference nor a presumption of
15 his guilt. It's simply the charging mechanism by which
16 the State of South Carolina brings a defendant such as
17 this one before you for a trial and determination of
18 guilt or innocence. The indictment, madam forelady,
19 will not be sent back with you to the jury room.
20 Now, the fact is in this case the defendant has
21 pled not guilty to the indictment. Therefore, that
22 plea puts the burden on the State of South Carolina to
23 prove him guilty. I'll charge you that a person
24 charged with committing a criminal offense in South
25 Carolina is never required to prove himself innocent.

1 I charge you that it is an important rule of law that a
2 defendant in a criminal trial, no matter what the
3 seriousness of the charge may be, will always be
4 presumed to be innocent of the crime for which the
5 indictment was issued and its guilt has been proven by
6 evidence satisfying you of guilt beyond a reasonable
7 doubt.
8 This presumption of innocence does not end when
9 you begin your deliberations, but it accompanies the
10 defendant throughout the trial until you reach a
11 verdict of guilt based on evidence satisfying you of
12 guilt beyond a reasonable doubt. The presumption of
13 innocence is like a robe of righteousness which is
14 placed upon the shoulders of the defendant where it
15 remains until it has been stripped from his shoulders
16 by evidence satisfying you of guilt beyond a reasonable
17 doubt.
18 The presumption of innocence is not merely a
19 theory, it's not just a legal phrase, it is a
20 substantial right which every defendant is entitled
21 unless you the jury are satisfied from the evidence of
22 guilt beyond a reasonable doubt.
23 So, that leads me to what is reasonable doubt.
24 This is the definition of reasonable doubt: A
25 reasonable doubt is the kind of doubt that would cause

1 a reasonable, sincere, honest and conscience person to
2 hesitate to act in an important matter in their own
3 affairs.
4 Proof beyond a reasonable doubt is proof that
5 leaves you firmly convinced of the Defendant's guilt.
6 Now, there are very few things in this world that we
7 know with absolute certainty. In criminal cases the
8 law doesn't require proof that overcomes every possible
9 doubt. If based upon your consideration of the
10 evidence you are firmly convinced of the Defendant's
11 guilt, you need to find him guilty.
12 On the other hand, if you think that there's a
13 real possibility that the defendant is not guilty, you
14 must give him the benefit of the doubt and find him not
15 guilty. A reasonable doubt may arise from the evidence
16 or the lack of evidence. And I further instruct you
17 that the defendant is entitled to every reasonable
18 doubt that may arise in a case. What that simply means
19 is this: Is that upon any issue of fact essential to
20 conviction or a verdict of guilty, if you have any
21 reason to doubt about how that issue should be
22 resolved, it is your duty to resolve that issue or that
23 doubt in favor of the defendant.
24 Now, in order to establish criminal liability,
25 criminal intent is required. For example, the mental

1 state required to be proven by the State for a
2 particular crime might be purpose, intent, knowledge,
3 recklessness, or criminal negligence. Criminal intent
4 must be proven by the State beyond a reasonable doubt.
5 Criminal intent is always a matter that must be
6 determined by you the jury from the circumstances
7 surrounding the situation.
8 There's no way to prove intent to a mathematical
9 certainty. There's no way to dissect a person's brain
10 to see what that person had in mind. So, the law says
11 that criminal intent may be inferred from the
12 circumstances shown to have existed. This is how you
13 make a determination of whether or not the evidence
14 required for intent was present.
15 It's not necessary to establish intent by direct
16 and positive evidence, but intent may be established by
17 inference in the same way as any other fact, by taking
18 into consideration the facts and the actions of the
19 parties and all of the facts and circumstances of the
20 case.
21 Ladies and gentlemen, let me take a quick break.
22 I'll have a quick moment. Go to your jury room. I
23 have to take a quick break. I'm sorry. Five minutes.
24 (Brief recess.)
25 (The jury enters the courtroom.)

1 THE COURT: All right. Ladies and gentlemen of
2 the jury, let's try it one more time. I apologize, I
3 was trying to suppress a cough and it just wasn't
4 going to happen. All right. I was charging you on
5 the law of intent. I'll do that again since I kind
6 of stunk through it. Let me try again.
7 Ladies and gentlemen, in order to establish
8 criminal liability, criminal intent is required. For
9 example, the State -- the mental state required to be
10 proven by the State for a particular crime by purpose,
11 intent, knowledge, recklessness or criminal negligence.
12 Criminal intent must be proven by the State beyond a
13 reasonable doubt.
14 Criminal intent is always a matter that must be
15 determined by you, the jury, from the circumstances
16 surrounding the situation. Now, if there's no way to
17 prove intent to a mathematical certainty, there's no
18 way that medical science can dissect a person's brain
19 and determine what the person had in mind. So the law
20 says that criminal intent may be inferred from the
21 circumstances shown to have existed. This is how you
22 make a determination of whether or not the element
23 requiring intent is present.
24 It's not necessary to establish intent by direct
25 or positive evidence, but it may be established by

1 inference the same way as any other fact by taking into
2 consideration acts of parties and all of the facts and
3 circumstances of the case.
4 Criminal intent is a mental state, it is a
5 conscience wrongdoing. Now, ladies and gentlemen, it's
6 up to you to determine what the defendant intended to
7 do based on the circumstances shown to have existed.
8 Criminal intent can arise from action or a failure to
9 act. It may arise from negligence, recklessness, or
10 indifference to duty, or to the consequences that is
11 considered by law to be the equivalent of criminal
12 intent.
13 Now, madam forelady, ladies and gentlemen of the
14 jury, the fact that this defendant did not testify may
15 not and shall not be considered by you in your
16 deliberations. The burden remains with the State of
17 South Carolina at all times to prove each and every
18 element of murder by proof beyond a reasonable doubt.
19 You may not consider that or discuss it, okay.
20 All right. Ladies and gentlemen, a statement
21 alleged to have been made by the defendant has been
22 admitted into evidence in this case. While I have
23 determined that the statement is admissible, I instruct
24 you that you make the ultimate decision whether or not
25 the defendant made the statement. If the defendant did

1 make the statement you must determine whether the
2 statement is made by the defendant voluntarily and of
3 his own freewill.
4 That means that the statement was not caused by
5 pressure, force, fear, threats, coercion or
6 intimidation or by hope or a promise of leniency or a
7 reward of any kind. In determining whether the
8 defendant statement was voluntary, you should consider
9 both characteristics of the defendant and the details
10 of the question. Some of the factors that you must
11 consider are the age of the defendant, the Defendant's
12 education, or lack of education, the Defendant's mental
13 ability or capacity, the Defendant's IQ or
14 intelligence, the Defendant's background and
15 environment, the place and length of detention, the
16 nature of the questioning and the bias or lack thereof
17 to the defendant of his constitutional rights including
18 but not limited to the right to remain silent, that any
19 statement could be used against him in a court of law.
20 The right to have a lawyer present. That if he could
21 not afford a lawyer, that a lawyer would be appointed
22 to represent him without cost. And that he can stop
23 making the statement at any time.
24 You must consider carefully all of the surrounding
25 circumstances before you give any weight to an alleged

1 statement. The State has the burden of proof beyond a
2 reasonable doubt that the alleged statement was
3 voluntary. If you determine that it was voluntary, you
4 may give to the statement any further consideration
5 that you deem proper. You must decide what weight, if
6 any, shall be given to the alleged statement.
7 If you determine that the alleged statement was
8 not freely and voluntary, the statement -- excuse me,
9 if you determine that the statement was not a freely
10 and voluntary statement of the defendant, you shall not
11 consider the statement at all.
12 Now, ladies and gentlemen, this is the law of
13 murder that you must apply. In this case the defendant
14 is charged with murder, the State must prove beyond a
15 reasonable doubt that the defendant killed another
16 person with malice aforethought. Malice is hatred, ill
17 will, or hostility towards another person. It is the
18 intentional doing of a wrongful act without just cause
19 or excuse, and with intent to inflict an injury or
20 under circumstances that the law will infer an evil
21 intent.
22 Malice aforethought does not require that malice
23 exists for any particular time before the act is
24 committed, but malice must exist in the mind of the
25 Defendant just before and at the time the act is

1 committed. Therefore, there must be a combination of
2 the previous evil intent and the act.
3 Malice aforethought may be expressed or inferred.
4 These terms, "expressed" and "inferred," do not mean
5 different kinds of malice, but merely the manner in
6 which malice may be shown to exist. That is, either by
7 direct evidence or by inference from the facts and
8 circumstances which are proved.
9 Expressed malice is shown when a person speaks
10 words which express hatred or ill will for another, or
11 when the person prepared beforehand to do the act which
12 was later accomplished. For example, laying in wait
13 for a person or any other acts in preparation going to
14 show that the deed was within the Defendant's mind
15 would be expressed malice. Malice may also be inferred
16 from conduct showing a total disregard for human life.
17 Ladies and gentlemen, if a crime is committed by
18 two or more people who are acting together in
19 committing a crime, the act of one is the act of all.
20 A person who joins with another to commit an unlawful
21 act is criminally responsible for everything done by
22 the other person which happens as a probable or natural
23 consequence of the acts done in carrying out the common
24 plan and purpose.
25 For example, two people can be guilty of killing

1 another person when only one of the two had a gun,
2 there was only one bullet, and only one of the two
3 fired the shot that caused the death. If two or more
4 people are together, acting together, assisting each
5 other in committing the offense, the act of one is the
6 act of all, or as it is sometimes said, "the hand of
7 one is the hand of all".
8 Prior knowledge that a crime is going to be
9 committed, without more, is not sufficient to make a
10 person guilty of that crime. Mere knowledge that
11 another person is going to commit a crime, even if the
12 defendant is present when the crime is committed, is
13 not sufficient to convict the person as a principal.
14 Guilt as a principal is shown by actual or constructive
15 presence at the scene as a result of prior arrangement.
16 Therefore, a finding of a prior arranged plan or common
17 scheme is necessary for a finding of guilt as a
18 principal.
19 The State must prove beyond a reasonable doubt by
20 competent evidence the theory of the hand of one is the
21 hand of all. A principal in a crime is one who either
22 actually commits the crime or who is present aiding,
23 abetting, or assisting in committing the crime. When a
24 person does an act in the presence of and with the
25 assistance of another, the act is done by both.

1 Where two or more, acting with a common plan or
2 intent, are present at the commission of a crime, it
3 does not matter who actually commits the crime, all are
4 guilty. The hand of one is the hand of all. Present
5 at the commission of the crime means to be sufficiently
6 near to aid and abet and assist in the commission of
7 the crime.
8 However, mere presence at the scene of a crime is
9 not sufficient to convict one as a principal on the
10 theory of aiding and abetting. Intent is also a
11 necessary element. For there must have been a common
12 design or intent to commit the crime and the crime must
13 have been committed pursuant thereto with the person
14 aiding and abetting by some overt act. Intent means
15 intending the result which actually occurs; not
16 accidentally or involuntary.
17 Intent may be shown by acts and conduct of the
18 defendant and other circumstances from which you may
19 naturally and reasonably infer intent. The State must
20 prove these elements by proof beyond a reasonable
21 doubt.
22 Now, finally, ladies and gentlemen, let me tell
23 you this, you don't serve as jurors to be partisans for
24 one side or the other. In other words, you are not an
25 advocate for the State or for the defendant. In fact,

1 when you were selected, both sides picked you because
2 you represented to be fair and impartial and you would
3 make a decision based on the testimony and evidence and
4 according to the law as I give it to you.
5 You go back and you begin your deliberations. You
6 should use your experiences in life, your good common
7 sense, your sense of logic and reason in hopes of
8 ultimately reaching the verdict. In your
9 deliberations -- and let me tell you this.
10 Deliberation is defined as a careful consideration
11 weighed up with a view to a decision. Regardless of
12 what any of you may think about our system, I'll submit
13 to you that the genius of our jury system is that it
14 allows 12 men and women such as yourselves who come
15 from different walks of life, who have different
16 backgrounds, life experiences and perspectives, to
17 listen to the testimony, listen to the law, and
18 ultimately reach a unanimous decision as to what that
19 verdict is.
20 And you shall consider all of the evidence
21 carefully, courteously, and deliberately and discuss it
22 in a calm and deliberate manner. You are not partisans
23 or advocates for one side or the other. You are the
24 judges of the facts and your sole interest in this
25 matter is to find the truth from the testimony and

1 evidence that you have heard in this courtroom.
2 I'll ask you, and I'm also going to charge you
3 that you are to listen to the views of your fellow
4 jurors, consider their points, their points of view,
5 and talk through all of the evidence carefully and
6 considerately and do not be in a big hurry. This case
7 is important to both sides of this trial and this is
8 their only day in court.
9 They do not have another bite at the apple. In
10 order for your verdict to stand, you have to all agree
11 as to what that verdict should be. With that being
12 said, each of you have to decide this case for
13 yourselves, but you should only do so after you have
14 talked through all of the evidence with your fellow
15 jurors and listened to their points and points of view.
16 Don't be afraid to change your opinion if the
17 discussion convinces you that that is the right thing
18 to do. But on the other hand, do not come to a
19 decision simply to appease your fellow jurors.
20 Now, madam forelady, if at any time during your
21 deliberations you have any questions or you need any
22 explanations, if you would write down what the issue is
23 or what the question is, give it to the bailiff and we
24 will receive it here in the court and we will respond
25 in court. One thing, never ever let me, the lawyers,

1 the bailiffs know where the jury stands numerically,
2 6-6, 12-0, 11-1, it is none of our business. That is
3 entirely up to you, the jury.
4 With that being said, at the end of the closing
5 arguments I'll go over the verdict form with you and
6 make sure that you know how to fill it out. But before
7 we have closing arguments by the lawyers let me make
8 sure that I haven't made a mistake in my charge or
9 there's any objections. So, if you will go to the jury
10 room for a minute and then we will bring you back out
11 here for closing arguments.
12 (The jury exits the courtroom.)
13 THE COURT: Besides me choking up the whole time
14 I was doing my charge, additions or exception to the
15 charge?
16 MR. THORNTON: None, Your Honor.
17 THE COURT: From the defense?
18 MS. SMART-GITTINGS: No, sir, Your Honor.
19 THE COURT: I am sorry, I couldn't get the
20 tickle out of my throat. Do you need a minute, or
21 are you ready to go?
22 MR. THORNTON: The State is ready, Your Honor.
23 THE COURT: Are you ready?
24 MS. SMART-GITTINGS: We are ready, Your Honor.
25 THE COURT: Bring the jury back in.

1 (The jury enters the courtroom at 10:12 a.m.)

2 THE COURT: State ready for closing arguments?

3 MR. THORNTON: The State is ready.

4 THE COURT: Defense ready?

5 MS. SMART-GITTINGS: Defense is ready, Your

6 Honor.

7 THE COURT: Mr. Thornton.

8 CLOSING ARGUMENT BY THE STATE

9 MR. THORNTON: Thank you, Your Honor. May it

10 please the Court. Ms. Smart-Gittings. Good morning,

11 ladies and gentlemen.

12 Oftentimes in cases it is helpful to talk about

13 what we know for sure, what is not contradicted, and

14 then go from there. There are a lot of things in this

15 case that we know as an absolute certainty and it can't

16 be contradicted. We know who the victim in this case

17 is. You were introduced to him over and over again by

18 folks at his church, Mr. Willie Johnson, a deacon in

19 his church. You remember Ms. Mary Bowman said she had

20 known him over 50 years here in Allendale. So, we know

21 who the victim is in this case, no question who that

22 is.

23 We know that he lived at [redacted] right

24 here in Allendale. We know that as an absolute

25 certainty. What are some of the other things that we

1 know? We know that he's 86 years old. And we know
2 that he was murdered. We know that he was left either
3 dead or to die, depending on which of the four
4 confessions given by Robert Lee Miller III you believe.
5 Tied up and beaten with a bag over his head. We
6 know that. That is not in dispute.
7 Let's talk about the time line in this case,
8 ladies and gentlemen. You know that on June 17th, 2014
9 that somewhere around 3 in the afternoon or a little
10 bit after. I think that she said between 3 and 4, that
11 Ms. Bowman got a call from the victim in this case,
12 Mr. Willie Johnson. And Mr. Johnson called her, like
13 he had before, asking for a ride to the store. We know
14 that as a fact.
15 You also know that sometime between 8 and
16 11:00 p.m. she tried to call him back several times and
17 the line was always busy. You also know because of the
18 alarm codes that shortly after 8:00 the door is closed
19 and at 8:35 it is opened and closed again. But most
20 importantly you know that it is not opened again until
21 when? 12:56 on Thursday when Mr. Willie Johnson's body
22 is found.
23 You know that on Wednesday, the 18th, that
24 Ms. Barron with Meals on Wheels tried to deliver
25 Mr. Willie Johnson's meals three times. And for the

first time in all of the time that she had delivered his meals he did not come to the door. When she told Jeanette Bennett that, Ms. Bennett called two times that day and one time on Thursday morning. And what did she get each time? A busy signal. And we will talk about how important that is here in just a few minutes.

You know that on Thursday morning Ms. Bowman got a call from Mr. Johnson's son who was calling to check on his daddy. She then called and talked to one of the other church members, she talked to Deacon Raymond Simmons and Mr. Simmons then calls Robert Miller. No relation, obviously. Mr. Miller then goes over to the house, walks in, and what does he tell you? He says that he opened the door, he looked in, he saw the quilt, he saw Willie Johnson, he saw his hands bound and he backed out and called 911. And you heard his 911 call.

You know that that is an accurate time line. Now, let's talk about some of the evidence in this case. There's not one, not two, not three, but four separate confessions from the defendant, two made to law enforcement. And two made to Tiffany Sabb, one to her and one to Johnathan Capers. One of the things that you have to decide, as the Judge has already instructed

1 you, when it comes to the law enforcement statements,
2 did law enforcement coerce him into the statements?
3 You know, Ms. Smart asked a lot of questions about
4 intimidating and, you know, didn't you say this, didn't
5 you say that. Well, let me ask you a question. Let's
6 start with the first statement that we talked about.
7 How about Johnathan Capers and Tiffany Sabb, what
8 coercion did they use? What reason did they have to
9 get up and try to coerce it or get up on that stand and
10 not tell you the truth? Did either one of them look
11 like they wanted to be here answering my questions?
12 What did he say about Tiffany Sabb? Do you
13 remember? What did the defendant himself in his
14 interview say about Tiffany Sabb? "She is like a
15 mother to me." Now, how hard do you think that it was
16 for Tiffany Sabb to get up on that stand and give the
17 information that he gave her, his confession? Did it
18 look easy for her or did it look difficult?
19 Because one of the things that you as a jury have
20 to do is you have to decide the believability or the
21 credibility of what a witness has testified to. Did
22 she also try to minimize his involvement? Well, he
23 told me this but it wasn't his idea, it was that
24 Gabriel. Right? Isn't that what she said?
25 What about Johnathan Capers? When I asked

1 Johnathan Capers, did he look like he was cooperative
2 or wanted to be here? When I asked Johnathan Capers,
3 Were y'all friends, what did he say? "He is like my
4 brother." So, what coercion did they use to get him to
5 admit the crime that he committed, along with Gabriel
6 Joyner and his brother, Kashaun Bynum? There is no
7 coercion.
8 What about Chief Marvin Williams? Any evidence
9 presented or questions about coercion that Chief
10 Williams used? Because there wasn't any. There were
11 five officers that came in contact with him that day,
12 weren't they? Yes. And there was an assistant
13 solicitor somewhere floating about, yes. Do you find
14 it unusual that an assistant solicitor might be in a
15 police department at some point?
16 What is important is how many people were in the
17 room? Two. Chief Williams and the defendant, Robert
18 Lee Miller III. What coercion did he use? What
19 promises did he use? What testimony? Because,
20 remember, and I know the Judge has said this, and we
21 have both said it so please forgive me for plowing the
22 same ground. What I tell you is not evidence, I'm
23 simply telling you what I believe the evidence shows,
24 as Smart-Gittings will do.
25 So it's not what Ms. Smart-Gittings wants the

1 evidence to be, it is what it is. What did the Chief
2 say? What questions were asked? What issues were
3 brought up about any coercion on behalf of the Chief?
4 None, because there wasn't any.
5 The statement to Agent Merrell who is seated at
6 the table with me and Agent Richard Johnson. Now, that
7 is the one that is recorded, that is the one that you
8 can hear. And I would invite you to do this, if y'all
9 will remember, when I got up here and talked to you,
10 the first thing, one of the first things that I told
11 you was -- it may have been the last thing that I told
12 you, sometimes they blur together -- you have to listen
13 to everything.
14 We have to ask you to listen to every single piece
15 of evidence. That is why you are not allowed to
16 deliberate until everything is in and done. And even
17 when that happens, as the Judge told you, we still have
18 to come back and make sure that all of the exhibits are
19 lined up and everything is where it is supposed to be.
20 And then send those back. And you are not allowed to
21 deliberate until you get all of that. And here is why:
22 You have to look at the total picture. It is not one
23 piece or one part. You have to look at everything that
24 gets presented.
25 Now, one of the things that you get the benefit

1 of -- and I realize that the audio was not the best in
2 the world, and I apologize for that. Technology is
3 what it is. You can always listen to it again if you
4 want to. That is not a problem. That is why we
5 prepared the transcript, again, not as a replacement
6 for but as an assist.
7 But the audio is what the real evidence is and
8 what you need to pay attention to. One of the things
9 that you have the benefit of as far as that is, what
10 was the tone of the interview? And Ms. Smart-Gittings
11 called it interrogation, you can call it whatever you
12 want.
13 The name is not important. The conduct is what is
14 important. What did it sound like? Did you hear any
15 violence on behalf of the officers? Did you hear
16 screaming and yelling on behalf of the officers? Or
17 was it a fairly calm question and answer? Now, did
18 Agent Johnson say, Look, you are going to go to jail
19 today either way, I'm tired, I'm lazy, I'm ready to go
20 home? Absolutely, it is on there.
21 Is that coercing him? You know, you are probably
22 going to do a lot of time. You know, if you cooperate
23 and you talk to us, we will go tell the solicitor. I
24 can't tell you how much time you are going get, that is
25 up to the Judge. Any of that not true? Did he lie to

him about what was going to happen? He said, you are going to go to jail today. Guess what, he went to jail. He told him the truth.

What can I do to get myself out of this? What did he say? You can't get yourself out of it. The best thing you can do is try to minimize your time. You cooperate, we will go talk to the solicitor. I'm paraphrasing.

That is what he said. He didn't say, If you don't just confess to this whether you did it or not, I'm going to lock you up tonight. He said, You are going to jail, regardless. If you want to try to help yourself, now is the time to do it.

One of the things that Ms. Smart-Gittings pointed out or asking him about was, Well, he didn't give you a lot of detail. Well, that is a tricky statement. He certainly said he put the bag over his head. That is a pretty important detail considering that his death was caused by suffocation and choking. He said that he hit him. Also super important considering that he was beaten, which is what blunt force trauma is.

All of those things are details. But what happened when they wanted to get more detailed than that? "I'm done talking." And the agents did what they were supposed to do. What did they do? "Okay,

1 you sure you don't want to talk to us anymore"? Yes.
2 Interview is over.
3 And y'all forgive me, the older I get the less I'm
4 able to memorize, so I'm going to have to step back to
5 this podium on occasion, because there's a lot in here,
6 and I am not going to try to go through every single
7 thing. But unfortunately this is the only time that I
8 get to talk to you. Ms. Smart-Gittings gets to get up
9 in a minute and she has the last word to you as far as
10 the lawyers go, so this is the only opportunity that I
11 have.
12 A couple of other things about the statement.
13 There is no requirement that you have a parent. He was
14 15 at the time, nobody is trying to hide that from you.
15 But you are not legally required to have a parent
16 there. Is that something that you should consider?
17 Sure, just like you consider everything else. But what
18 was important about that was, where was his daddy?
19 According to the testimony, now, not what I want it to
20 be, but what it was. Daddy was right outside, was he
21 not? Wasn't that the testimony? Tiffany Sabb, who was
22 like a mother to him, right outside. Now, did they
23 say, Ms. Sabb, you need to get out because we are going
24 to get a confession out of him? No.
25 What did they say? Ms. Sabb, would you mind

1 stepping out so we can talk to him. And then they
2 turned to him and said, Is it okay if we talk to you
3 without Ms. Sabb? And everybody said yes. All right.
4 It is on the tape.
5 There was no coercion. And even if you decided
6 that there was, which certainly that is for you to
7 decide, not me. I don't see how you could, but if you
8 did, what about the other three statements? He
9 confessed four times.
10 Now, what is important about the hand of one is
11 the hand of all, on each confession no matter if
12 Gabriel did this or Gabriel did that, you know, I
13 didn't really want to do it, they wanted to go do a
14 lick, I was just kind of standing there and I agreed to
15 go along with it and then it went bad.
16 Well, what do you think is going to happen when
17 you beat, and tie up and put a plastic bag over an 86
18 year old man's head? What do you think is going to
19 happen? That is not going along. If you were there
20 and participated in any way you are as guilty as each
21 other person. Hand of one is the hand of all. The act
22 of one is the act of all. You heard Richard Johnson
23 tell him that on the tape. That is the truth. That is
24 what the law in South Carolina is.
25 Oh, another thing, minor thing but when you are

1 talking about, was this a coercive environment. The
2 total amount of time he was there was about three to
3 four hours according to the testimony. He was asked --
4 I don't know if you remember this, again, it is a minor
5 thing, Do you need to go to the bathroom, do you need a
6 bathroom break. All of those things are factors that
7 you should consider, and the tone of the interview.
8 What did it sound like.
9 One of the things that often get, I think, lost in
10 the shuffle in these cases when people are talking to
11 law enforcement, Well, you just wanted to get a
12 confession, you just wanted to get a confession. When
13 I asked Mr. Johnson, What do you want to get? He wants
14 to get the truth. Why? Because he wants to get the
15 right person.
16 So, let's talk about the other evidence in the
17 case and whether or not it ties in with the four
18 separate confessions given by Robert Lee Miller. All
19 right. One of the things that he says in just about
20 every statement, again, it is y'all's memory, not mine,
21 and not Ms. Smart-Gittings that counts. If I get
22 something wrong that differs from whatever and you need
23 to re-hear it, fine. What you have heard and what the
24 record says is what controls, not me.
25 But I believe that every statement says something

1 either about, It was supposed to be a lick or we were
2 going to do a robbery, or something of that nature.
3 So, is there anything that would indicate that that is
4 an actual statement, that that is actually what
5 occurred? Mr. Hutto, how about pulling up 13 for me?
6 Well, there's a wallet that has been taken out.
7 In one statement they asked, Well, who got the wallet?
8 I did.
9 Twenty-five. Testimony that stuff had been gone
10 through, rifled through, and things were missing,
11 right? Does that look like maybe there was a robbery,
12 somebody going through stuff? How about the biggest
13 one? Don't get much more robbery or burglary oriented
14 than that, does it? If you are going to do a lick, you
15 take the safe and you take the shears and you pry the
16 top of the safe open.
17 Now, do his confessions match things at the scene?
18 Because if they do, that makes them more believable,
19 right? First of all, there's four of them. Second of
20 all, he gave them to a person that he thinks of as a
21 mother and someone who felt like they were brothers,
22 and to Chief Williams and to SLED. Okay.
23 But it was in the statements. Does it look like
24 there was a lick or a robbery that went on?
25 Next, and before I go to the next ones, I have

1 been doing this almost 20 years now, sometimes we
2 forget how disturbing images can be to people, so in
3 showing you some of the photos, and I'm not going to
4 show any of the pathology photos today. I only put
5 four of them into evidence, they are there. I do feel
6 like they are, obviously, part of the case. They are
7 in evidence. You do need to consider them as you need
8 to consider everything else in the case. I'm not going
9 to put any of them up here.
10 Let me apologize to you for any of the images if
11 you found them disturbing, and I'm sure that you did.
12 But it is a disturbing case. A murder is a disturbing
13 crime. And the evidence is what the evidence is.
14 He says in his statements that the victim was
15 beaten and he admits that he beat him I believe in just
16 about every one. So, was there any evidence that the
17 victim was beaten?
18 Fourteen and then 15. Pieces of his dentures,
19 both next to the body and on top of the TV next to him.
20 Does that look like evidence of a beating? What about
21 what the pathologist got up and testified to? He had
22 injuries to his mouth, he had injuries to his eyes,
23 contusions, subdural hematomas, consistent with blunt
24 force trauma. Petechia in the eye, appeared that he
25 had been choked or asphyxiated, which is consistent

1 with both choking and with a bag tied over his head.
2 And what else? Three fractured ribs. Does that
3 sound like a beating occurred? Is that consistent with
4 the evidence? The State submits that it is.
5 In every statement he says that he's tied up.
6 Six. He's tied up. Now, Ms. Smart said, Well, but
7 Johnathan Capers, she said it before and I'm assuming
8 she is going to get up here and say it again. He said
9 it was also his feet and his feet weren't bound. That
10 is a discrepancy.
11 Now, did Johnathan just hear it wrong? I don't
12 know, I can't answer that for you. But I can tell you
13 in every statement he said that he was tied up. Is he
14 tied up? Yes. Now, is that consistent with his four
15 confessions? Yes.
16 He says that he has a bag over his head. Pretty
17 evident that is -- and remember, who put the bag over
18 his head? I did. And something else that is important
19 that I'll talk about in a little while, it is a little
20 bit of what I would call a self-serving statement,
21 meaning that you are trying to minimize what you did,
22 remember what Ms. Sabb said? When they left, the bag
23 was still moving. I believe it was Ms. Sabb, it was
24 either her or the Chief, forgive me, I don't remember
25 which one. But when they left, meaning when they left

him he was alive because the bag was moving.

Well, let me go ahead and tell you this now: In a lot of ways, if that's true, that is worse. Do you remember what the Judge said about inferring intent and inferring malice? He said that it can be because of action, in other words, what you do, or inaction, what you fail to do. And is it an evil heart? Is it an evil intent? How much more evil can you get than watching an 86 year old man that you have beaten and tied up and put a bag over his head and you know that he's still alive because the bag is moving, and why in God's name wouldn't you just pull the bag off of his head before you left?

What is going to happen to that 86 year old man laying in the floor that you put there? So, you are going to walk away while he's struggling and gasping his lasts breaths? If that's true, that is worse because they left him there to die knowing that is what was going to happen. So they either did that or they left him there dead, but one of the two had to happen. Clearly, he has a bag over his head.

Twenty-six. Interestingly enough, none of the bags in his house, Mr. Johnson's house, matched the bag over his head, did it? You saw it in the trash can, he had white trash bags. They searched, didn't find

1 anything. They did, however, find the Built Tough
2 black bags with the yellow drawstring. Nobody can say
3 that for absolute certainty that is the box that that
4 bag came out of, can't do it, that is not possible.
5 But it is something that you need to consider just like
6 every other piece of evidence. That is a heck of a
7 coincidence that they just happen to go to Robert
8 Miller's house and there just happens to be a box of
9 trash bags, empty box, with the same black trash bag
10 and yellow drawstring.
11 Now, Ms. Smart said earlier, may say again, yeah,
12 but Timothy -- excuse me, Johnathan Capers said, But he
13 said that it was a Dollar General bag. Again, did he
14 hear it wrong? I don't know. Did he mean an actual
15 yellow Dollar General bag with black writing on it? I
16 don't know. Could it be that he bought those or those
17 came from Dollar General? Because, you know, that's
18 not Hefty and that's not Glad. I don't know. Should
19 you think about that? Absolutely. But you have to
20 think of it in context of all of the other evidence.
21 One of the biggest ones in one of his statements,
22 one of his confessions, I think that it was to
23 Mr. Johnson, The phone is off of the hook.
24 Seventeen. And eighteen. If those weren't -- if
25 that wasn't a valid confession, how would he know that?

1 Remember he gave it to him the 19th of June, a couple
2 of days after it happened. How would you know that the
3 phone was off of the hook unless it was you, you were
4 there, and it is a true confession? How would you know
5 that that was done during the time that the murder
6 happened? Because nobody could get through.
7 How many people got up here and testified, I
8 called. Did it ring through? No, it was busy signal,
9 busy signal. What happens when you leave the phone off
10 of the hook? It is a busy signal. There is no answer
11 and there's no answer because they took the phone off
12 of the hook.
13 Twenty-eight. What is interesting about the crime
14 scene is this: There's actually -- there is a couple
15 of things, we will get into both of them right now.
16 One of two statements talk about, We went up and we
17 asked for sugar and he said that he couldn't give us
18 any because he had been robbed. We ran in and hit him.
19 And one of the things that Robert Miller said on the
20 tape is, and he is confirming to Mr. Johnson, you just
21 waited in the room, you know, he watched in a room.
22 Where is he at? Is he in a back bedroom? Is he
23 somewhere in the backside of the house? No, he's where
24 you would expect him to be, right opposite the front
25 door and he was rushed after he opened the door and was

1 asked for sugar. Is that consistent with what the
2 statements are? It would appear to be.
3 What is another piece of physical evidence that
4 would match up with Robert Lee Miller III being there
5 and participating and doing and beating and all of
6 these other things, and murdering Willie Johnson? SLED
7 items, originally 35, and when it was analyzed 71.1,
8 but marker H. That is why we give things numbers, so
9 we know exactly what it is and there is no confusion.
10 What do you have at SLED marker H? Victim's DNA. Do
11 you remember? One in 210 trillion that that is the
12 victim's DNA. It reacts positive for blood on the LCV.
13 Is it relatively obvious that there's a print of some
14 kind there once you LCV it? And it was examined by a
15 SLED expert.
16 Now, as the Judge told you, there's a stipulation
17 in this case which you must accept as a fact. That
18 both parties have to agree to, or did agree to and you
19 have to accept as fact. Robert Lee Miller III's prints
20 were taken by Tiffany Hezel with SLED. They are SLED
21 item 95. Again, we give things numbers so there is no
22 confusion. I asked the examiner, Did you examine these
23 different sets of prints, specifically his item 95.
24 Yes. Whose did it match? His, 95.
25 Now, Ms. Smart asked about, Well, did you bring

1 this other one because there is another Robert Miller.
2 It doesn't matter. His prints are 95. It is a fact.
3 It's stipulated to. I also had Investigator Hutto get
4 up on the stand to tell you, I watched them being
5 taken. And it says on the card it is 95. But it is
6 stipulated to. It is a fact. Ninety-five was compared
7 to that print, H, and it was a match. Well, yeah, they
8 were out to get somebody. Well, they also excluded two
9 of the people who were charged in the case. So, if we
10 are out to get people, why pick Robert Miller III?
11 They excluded Mr. Miller, Robert Miller who found
12 him. Here is another thing. Even, if you dismiss --
13 which you are not supposed to, the Judge told you you
14 have to accept it as fact, and didn't believe
15 Mr. Hutto, how about -- if you put the crime scene
16 sketch back up for me? I think that it's 28.
17 What was Mr. Miller's testimony? Because,
18 remember, it's not what Ms. Smart-Gittings nor I want
19 the evidence to be, it is what it is. What did he
20 testify to? He said, I opened the door. I saw him. I
21 saw the quilt, which is behind him or next to his feet,
22 and I saw that his hands were bound and I backed out.
23 If that's what he said and you believe him to be
24 honest, then that is a fact in this case, that is the
25 evidence because that is what the testimony was. If

that supposedly is his print, how did it get over there and how is it in the victim's blood? He would have had to walk over, touch something, either the victim or somebody else, because you remember what she said, you can't put a bloody handprint on something if it wasn't already there. The blood was on the hand when it got put on the wall. Do you remember that? Because that's how it works.

Walk between him and the TV to go stand over here and then walk out. Why would he lie to you about that? But again, I would remind you that it is a stipulation. That is Robert Lee Miller III's print. There is no doubt. It was examined by SLED. The expert came up, she gave her opinion, It is a match. Now, is that consistent with Robert Lee Miller being there and participating in the beating and murder of Willie Johnson? The State submits to you, Yes, it is.

His print with the victim's DNA on it at the crime scene a couple of feet from Willie Johnson's dead body. In his statements he also identified Gabriel Joyner and Kashaun Bynum, his brother. If he was just telling stories and submitting to the awful pressure that Richard Johnson was placing on him, why implicate his brother if he wasn't being honest and telling the truth? Why implicate Joyner? They have both been

1 arrested; they are pending trial.

2 You know, we have heard several things about,

3 Well, he also told you that he had heard stories. He

4 being the defendant, Robert Lee Miller III. He heard

5 stories. And maybe the defense is going to be, when

6 she gets up, Well, he was just repeating stories.

7 Because, you remember the other thing she said was, I

8 don't think law enforcement is lying, they were just

9 coercive. Well, where was the coercion from Chief

10 Williams? If he's not lying, he said that Robert Lee

11 Miller confessed to him or not, did he not? There's no

12 evidence of coercion.

13 There's no evidence of coercion from the SLED

14 statement either. What about the other two statements?

15 Well, they are stories. They are stories. You heard

16 him tell Agent Merrell, I heard this one and they said

17 I held him and I heard one where I didn't touch him.

18 Not one of those times did he say, Well, I heard this

19 story where I put a bag over his head. He didn't

20 mention that in any of the stories he was telling Agent

21 Merrell. He didn't mention that until he said, I am

22 going to be honest with you, I did it. Gabriel did

23 this, Gabriel did this, and I did this.

24 One of the more telling things -- I don't know if

25 you saw it or not. I would like you to search your

1 memories. Agent Johnson said, You are going to go to
2 jail. He said, Today? And Agent Johnson said, Yeah.
3 And what did he say? What would a reasonable person in
4 that scenario say? You are going to jail today. I
5 didn't do anything, why am I going to jail? What did
6 he say? I know. I know. Because he knows what he
7 did. Not, I didn't do it. Not, Why would you put me
8 in jail, I'm innocent. No. I know. I know I'm going
9 to jail. I have got two choices, I'm going to go to
10 jail or I'm going to die. I know. Because he knows
11 what he did.
12 I think that it's also pretty important to
13 remember that in all of the discussions with Agent
14 Merrell, I wasn't even in Allendale that week. And
15 then it was, Ooh, well, I mean, I was there on that
16 Tuesday, that Tuesday morning. Now, Wednesday I was in
17 Fairfax and I went to school. Well, what did you do
18 after you left that meeting in the morning, Tuesday
19 morning, or Tuesday afternoon all the way up to
20 Wednesday morning? I forgot. Now, this is just a week
21 after. I couldn't remember. Very detailed about what
22 he did Tuesday morning, what he did Wednesday morning,
23 but couldn't come up with what he had done Tuesday
24 night. And, of course, Tuesday the 17th is when this
25 murder occurred.

1 There's been a lot of discussion, there was a lot
2 of discussion by Ms. Smart-Gittings, and I can only
3 imagine that there will be again, Well, he's 15. One
4 of the things that she said was, Well, he was 15 and he
5 was asked to do adult things. Murder is an adult
6 crime. Beating and robbing an 86 year old man is an
7 adult crime. And those are things that you choose to
8 do. And that at 15 you know that it's wrong to beat a
9 man and to rob a man in his own home and to kill a man.
10 You know that that's wrong at 15.
11 So, if you are 15 and you choose to go into a
12 man's home who is 86 years old and you choose to beat
13 him and break his ribs and you choose to tie him up and
14 you choose to tie him and bag him and leave him like
15 yesterday's garbage, then you have chosen to commit
16 adult acts. And when you commit adult acts, there are
17 adult consequences. And Robert Lee Miller chose to do
18 those things. And if you believe that statement about,
19 The bag is still going, then he chose to let that man
20 die rather than to take a bag off of his head. He has
21 chosen an adult crime as his path. It is time for him
22 to pay an adult price. Thank you.
23 THE COURT: Ms. Smart.
24 CLOSING ARGUMENT BY THE DEFENSE
25 MS. SMART-GITTINGS: May it please the Court,

1 Your Honor. Mr. Thornton. Ladies and gentlemen of
2 the jury, I too am like Mr. Thornton, I cannot
3 remember much either, so I too have a pad.
4 Unfortunately I have a problem with my foot and I
5 generally speed a lot. And one of the things that I
6 hate to see is a blue light behind me. But what
7 happens whenever I look back and see a blue light, my
8 heart starts to beat and my palms start to sweat and I
9 get nervous. And I'm like, Oh goodness. Even if I
10 know the officer, I still get nervous. And it is even
11 worse when I'm charged with it. I'm good with it. But
12 the bottom line is, I am an adult and when I have
13 contact with law enforcement I am nervous. I don't
14 know what's going to happen. I have no idea what is
15 going to happen, but it physically affects me. So, can
16 you imagine what it must be like to be a child to
17 encounter the police? That is something to think about
18 it.
19 Now, Mr. Thornton talked about everything that he
20 expected that I would say, and he's known me long
21 enough. And he's right, there are some things that I'm
22 going to tell you. But this is one thing that we all
23 know because we are from Allendale. And we hear about
24 things moments after they happen. Let's be truthful.
25 I hear about things in Hampton that happened in

1 Allendale. I wasn't there, but by the time the facts
2 get to me, the things that I heard were pretty much
3 consistent. We are a small town. If you tell me and I
4 tell you, you are going to tell somebody else and you
5 are going to tell somebody else and you are going to
6 tell somebody else and the word is out. And that is
7 how we live, and that is the truth. And you can't get
8 around that. If it were Orangeburg, Columbia or New
9 York, then maybe, maybe you wouldn't have heard about
10 it, but it's Allendale. And you hear about it. And so
11 when Tiffany Sabb came in here and told you that people
12 were calling her and people were telling her. And when
13 Robert told you that he had heard about it. It is
14 very, very possible that he had heard about it.
15 So, if he heard about it would he not repeat what
16 he heard? But if he knew about it, would he not repeat
17 details about it? And that is what is important,
18 because if he was there and if he knew would he have
19 not said, I put a black bag over his head. Because
20 there's a stark difference between a black bag and a
21 Dollar General bag. But if you are familiar with a
22 Dollar General bag and you know or you heard that a bag
23 was placed over his head, then what kind of bag are you
24 going to put on his head? A Dollar General bag.
25 So, if he put a black bag over his head, wouldn't

1 he have said, I put a black bag or would he have said,
2 I put a Dollar General bag?
3 We talked about the alarm system on the door.
4 Now, what we can't dispute is the alarm system. The
5 alarm system says that on June the 17th the door was
6 open at 12:23. And that is consistent with the lady
7 that delivered the Meals on Wheels, because she said
8 Mr. Johnson would have his door open. Typically that
9 is what happened. He would get up, and he would open
10 the door and the door would be opened all day. It
11 didn't matter what time she came, the big door would be
12 open. So, why is that important? Because he opened it
13 in the morning.
14 Now, Ms. Cave said that she saw three people going
15 towards the house but none of them had bags. I
16 specifically asked her that for a reason because the
17 State wants you to believe that an empty black bag box
18 was the box that that trash bag came out of. That is
19 what they want you to believe but they can't tie that
20 bag to Robert because his DNA is not on it. His
21 fingerprints were not on it. But they want you to
22 believe that he took the last bag out of the box and he
23 took it with him when he went to Mr. Johnson's house.
24 But the lady didn't see him with a bag. So, you have
25 to decide. Did they prove to you that he took a bag

1 from his house to Mr. Johnson's house when the eye
2 witness that saw the people in the yard didn't see any
3 of the boys with a bag? She didn't even tell you that
4 it was Robert. She said that she couldn't tell, she
5 didn't know.
6 But we do know that that door opened at 12:23.
7 Now, listen, think about this. It closed at 8:18. It
8 didn't open and close again until 8:35. So, what does
9 that tell you? Did he go knock on the door and
10 Mr. Johnson opened the door? He couldn't have. It was
11 either already opened, but it couldn't have been he
12 knocked on the door and he opened the door and then he
13 come back and closed it because it only opened twice
14 that day. It only opened at 12:23. And it opened
15 again at 8:35. It opened and closed. So how could he
16 have done that? It couldn't have happened. The alarm
17 system checked it.
18 He closed it at 8:18. He didn't open it. It was
19 closed at 8:18. So, if that door was closed at 8:18,
20 what happened? Whatever happened to Mr. Johnson
21 happened when he closed his door. So that can't be
22 that they knocked on the door and he opened the door
23 and let them in. It couldn't have happened. The alarm
24 system would have told you that. So, that is not true
25 about his confession.

1 What else did he say? Tiffany Sabb. Now, when
2 she first talked to the police when this first happened
3 she said, When he got in the car he didn't have any
4 blood on him, she didn't notice anything. She said
5 somebody called her and told her about it and she asked
6 Robert and he denied it. But what happens almost two
7 years later when the police come to her house and serve
8 her a subpoena? Then she starts to tell you, Did you
9 know what her son had said? Who goes to somebody's
10 house and who tells you that, I don't have any sugar
11 because I have been robbed. You go to somebody's house
12 that you don't know and they tell you -- they open the
13 door, they let you in, and they tell you, I don't have
14 any sugar because I was robbed. Do they steal sugar
15 now? So, how much sense does that make? How real is
16 that, or is that real in the mind of a 15 year old who
17 is in a situation?
18 Then they say that his hands -- so, he told
19 Johnathan that his hands and feet were tied. Well, if
20 he was there, would he not have known that
21 Mr. Johnson's feet were not tied? Why would he add a
22 fact? He said that his feet were tied. He said that
23 he put a Dollar General bag over his head. That is not
24 consistent. So the other piece of evidence that might
25 cause you to think. The fingerprint, the palm print.

1 Well, what do we know for a fact? We know that they
2 took Robert's print. But do you know if they took
3 Mr. Miller's print? Did he tell you that from the
4 witness stand? Did anybody come in here and tell you
5 that they took his print? I don't recall that
6 testimony. But they want you to infer that they did
7 because they have two SLED reports that one says that
8 doesn't identify with the blood but then the other one
9 does. How do we know that they didn't test it twice?
10 And then I asked her, I said, How do you know that this
11 sheet is actually Robert Miller's sheet? She said, Oh,
12 we put Social Security numbers and we put dates of
13 birth on it. And I specifically asked her, Is there a
14 date of birth on this fingerprint card? She said, No.
15 I said, Is there a Social Security number on this
16 fingerprint card? She said, No. So, how do we know
17 that that was his card? How do we know that the cards
18 weren't mixed up? We don't know because y'all didn't
19 see the second fingerprint card.
20 So, they want you to jump to the conclusion that
21 that, in fact, that number 70 couldn't have been this
22 Robert Miller because it wasn't him. But they want you
23 to say 95, we know that that was Mr. Robert Miller's
24 because we took his blood. Well, we know what SLED's
25 item number is, but do we know that when they went in

1 the lab to test it, that this one and this one are the
2 same document? Nobody came in here and told you that.
3 They didn't tell you that, but that is what they want
4 you to believe. They want you to have a whole lot of
5 faith in what they do up in SLED.
6 So, I had thick paper, about this much, and I
7 said, Agent Merrell, that alarm system generated a lot
8 of calls to the police department because whenever the
9 alarm would go off they would dispatch law enforcement
10 over there, so there were a lot of calls over there,
11 but none on the night that he was killed. The alarm
12 didn't pick it up. It didn't pick anything up. It
13 picked up the opening and the closing of the door. But
14 it didn't pick up the scuffle, it didn't pick up any
15 type of -- anything. No alarm went off. No calls to
16 law enforcement. That is something to think about.
17 Money. Robert said that he took, I think, that
18 somebody somewhere said that he took $400 from the
19 wallet, Mr. Johnson's wallet. Who picks him up the
20 same night that we believe Mr. Johnson was killed?
21 Ms. Sabb. He was at her house. But she never saw any
22 money. How could a kid hide $400.00. She said all he
23 had on were basketball shorts or something like that.
24 So, where is the money? If he took $400 that night,
25 where is the money?

1 And another thing, 8:00, it is not dark outside.
2 8:30, it is not dark outside. So, why would three kids
3 take a safe outside of somebody's house in the
4 daylight? Because it's daylight at 8:00. How could
5 they have gotten that safe out of that man's house
6 without anybody seeing it? But they want y'all to
7 believe that they took that safe that they showed y'all
8 out of that man's house. Now, why did I ask the Meals
9 on Wheels lady about whether or not there were scuff
10 marks on the porch or whether or not anything was
11 different on the porch? Because if you are trying to
12 take a safe out of a house something is going to be
13 different because that is not a light safe. You can
14 use your life experience to know that is a heavy safe.
15 How did they get it out of the house without the
16 neighbor seeing them? There is a house right across
17 the street. There is a house right next door. How did
18 they get the safe out of the house? But that is what
19 they want y'all to believe, that they took it out of
20 the house. The safe was in the woods and the safe
21 looks rusty.
22 And did anybody ever say that is Mr. Johnson's
23 safe? His son is here. Did he tell you, That is my
24 dad's safe. I know that safe was in the house. I know
25 that my dad had $400 in his wallet. Did he come in

1 here and tell you that? He didn't, but that is what
2 the State wants you to believe. That is what they
3 proved to y'all, that those boys took that safe out of
4 that house and left it in the woods? Look at those
5 shears, they are old and rusted. But they want you to
6 believe that that is what they used to open that safe
7 that night. That is what you -- that is what they have
8 proven to you?
9 Let's talk about the confession. They are all
10 different. And if you would call a confession what he
11 gave Mr. Johnson. Was he not answering Mr. Johnson's
12 questions? Who did this, I did. Who did this, I did.
13 Who did this? He gave him the answers. So all he had
14 to do was say yes or no. We already know that there
15 was a bag, so of course he is going to say I put the
16 bag over his head because he knew that, he knew to say
17 that.
18 And then Chief Williams, why didn't he record it?
19 And even if he did say what he said to Chief Williams,
20 that is just what he had heard, that is what he stuck
21 to. He knew that there was a bag. He knew that there
22 was some ties involved. But did you notice, they
23 tested the string that was used to tie up Mr. Johnson,
24 but it didn't have Robert's DNA on it.
25 And the wallet that Agent Johnson told him that

his fingerprints, DNA was, would be on, it wasn't on there. Because you know if his DNA was on that chain, you would know it. If his DNA was on that wallet, you would know. If his fingerprints were on the bloody cards surrounding that wallet, you would know it. But it wasn't. I asked her, specifically, how much DNA did she test? Lots of it. None of it, none of it had Robert Miller's DNA on it. None of it. Not even the blood, the mixture of the handprint, it didn't have his DNA on it. But they want you to believe that it did. They want you to believe that he was in that house that night with those boys. And we don't even know if there were three boys. We know that Ms. Cave saw three boys, but what did she say? She said, It's not unusual because he gets people to do work for him, so it's not unusual to see people in his yard. We know that.

We don't really know when Mr. Johnson was killed. We know that he didn't answer his phone. Ms. Bowman, she said she called him at 8 and the line was busy at 8. But remember now, his door was still open at 8:00, because it didn't close until 8:18. So, think about it, did they really set it up, that three unknown boys would go into a strange man's house in broad daylight and beat him and nobody heard anything? Can you imagine the beating? Nobody heard anything. And y'all

1 know that we are nosy here. But nobody heard anything.
2 How strange is that? Three young teenagers they want
3 you to believe went in that man's house, beat him,
4 nobody heard or seen or speak, nothing.
5 What else? Reasonable doubt. Have you hesitated?
6 Are you firmly convinced? You are firmly convinced
7 that the State proved to you that Robert Miller put
8 that bag, that Dollar General bag, on Mr. Johnson's
9 head. Are you firmly convinced that Robert Miller tied
10 Mr. Johnson's hands and feet? Are you firmly convinced
11 or do you doubt it? Are you hesitant? Maybe he
12 didn't. Well, if maybe he didn't, he's not guilty.
13 But are you firmly convinced that even three
14 people went in that house? Didn't have fingerprints
15 from anybody in there. One. And did you see the
16 print? Did you see the picture of that print? One.
17 The entire house. All of that stuff moved. No
18 fingerprints anywhere, except for that one, second one,
19 second identification they say it is his. I submit
20 that you have a lot to think about. And in doing so if
21 you hesitate, if you hesitate, the correct verdict is
22 not guilty.
23 THE COURT: All right. Madam forelady, the
24 verdict form will be sent back to you with the other
25 evidence in just a few minutes and we will give you

1 word to begin deliberations. The verdict form, I
2 have to put your choices in some order and the order
3 in which they appear is of no significance, but your
4 options are this: As to the charge of murder, under
5 Indictment 2015-GS-0350, we the jury unanimously find
6 the defendant not guilty. If that's what the jury
7 unanimously decides, you will check beside A.
8 Then you will sign your name and knock on the door
9 and we will receive the verdict back here in the
10 courtroom.
11 The other option, under B, is as to the charge of
12 murder under Indictment 2015GS-0350, we the jury
13 unanimously find the defendant guilty. If you find
14 that he is guilty you will check B. Likewise, you will
15 sign your name. You will knock on the door and we will
16 receive your verdict back here in the courtroom.
17 That being said, I'll ask the two alternates to
18 stay right there. I'll send the jury back to the jury
19 room. And we will send the verdict form back with the
20 exhibits and then you may begin your deliberations.
21 (The jury exits the courtroom at 11:06 a.m.)
22 THE COURT: All right. Any additions or
23 exception from the State with regard to my
24 explanation of the verdict form?
25 MR. THORNTON: No, Your Honor.

1 THE COURT: From the defense?
2 MS. SMART-GITTINGS: Nothing, Your Honor.
3 THE COURT: Let me say this before we go over
4 exhibits, I'm really proud of both of these lawyers.
5 I go all over the State of South Carolina, and you
6 were prepared and did an excellent job to represent
7 your clients, you should be proud of yourselves. You
8 did very good. I don't say that often. If you
9 would, I'll talk to you in just a minute. Go over
10 the exhibits and make sure you agree. Once you agree
11 we will send the verdict form back to them and then
12 tell them to begin their deliberations. Okay?
13 MR. THORNTON: Yes, sir. Thank you, Your Honor.
14 (Jury deliberations begin.)
15 THE COURT: All right. I am advised that we
16 have a verdict. Bring the jury in, please sir.
17 (The jury enters the courtroom at 12:29 p.m.)
18 THE COURT: Madam forelady, my understanding is
19 that the jury has reached a verdict?
20 THE FOREPERSON: Yes, sir.
21 THE COURT: It is unanimous amongst all of the
22 12 jurors?
23 THE FOREPERSON: Yes, sir.
24 THE COURT: Publish the verdict.
25 THE CLERK: In the Court of General Sessions,

1 State of South Carolina; County of Allendale, the
2 7tate of South Carolina; versus Robert Lee Miller,
3 III. In Indictment 2015-GS-030050 as to the charge
4 of murder in Indictment of 2015-GS-030050 we the jury
5 unanimously find the defendant guilty.
6 THE COURT: All right. Madam forelady, ladies
7 and gentlemen of the jury, if that was your verdict
8 in the jury room and if that is your verdict now,
9 would you each raise your right hand.
10 (All 12 jurors raise their right hand.)
11 THE COURT: And let the record reflect that all
12 12 jurors responded affirmatively. All right.
13 Ladies and gentlemen, the Court is never concerned
14 what your verdict is, but concerned that you
15 performed your duty as jurors in a fair and impartial
16 manner and that you stayed diligent throughout the
17 course of the trial by watching the testimony and
18 listening to the evidence. And I looked at all of
19 you throughout the course of this trial and you did
20 that.
21 So I would thank you for your service. I am not
22 thanking you for your verdict but thanking you for your
23 service to the County of Allendale and the State of
24 South Carolina. Without people such as yourselves we
25 have no way to resolve our differences whether it be in

1 civil court or criminal court.

2 If you don't have this outlet, you can just look

3 on the news at night and see places who don't have the

4 judicial system and it creates a havoc that reigns down

5 on people.

6 With that being said, you are excused for the

7 week. You are excused for three years. You can't be

8 required to come back for three years.

9 Before you go, I would ask you to go to the jury

10 room. Madam forelady, I need you to sign some papers

11 and I would like to speak with you very briefly and

12 then you will be released.

13 THE CLERK: If you need an excuse for work you

14 can go to the clerk's office and one of my staff

15 members will gladly give you an excuse.

16 (The jury exits the courtroom at 12:33 p.m.)

17 THE COURT: Mr. Thornton, if you will prepare

18 the paperwork for sentencing.

19 MR. THORNTON: Yes, sir.

20 MS. SMART-GITTINGS: Your Honor, we would ask

21 for APB Buyers (phonetic) mitigation expert because

22 he was a juvenile at the age of the event and the

23 charge. We didn't do this pre-trial because they

24 wouldn't give us the funding, since they didn't know

25 what the verdict was. And so we would ask that the

1 sentence be held in abeyance until we can get a
2 mitigation.
3 THE COURT: So, you want to have that prior to
4 sentencing?
5 MS. SMART-GITTINGS: Yes, sir.
6 THE COURT: You know that he will be held?
7 MS. SMART-GITTINGS: Yes, sir.
8 THE COURT: Do I need to sign an order to have
9 the public defender cooperation pay you?
10 MS. SMART-GITTINGS: Yes, sir. We will have to
11 get -- I don't know if I have to get it from OID. We
12 will look into that. But I do know that we have to
13 get --
14 THE COURT: Since that's fairly new. I haven't
15 even done an Aikens (phonetic) case.
16 MS. SMART-GITTINGS: This is the first one. I
17 was talking with Judge Bloom and --
18 THE COURT: So, I think that it is a
19 pre-sentencing procedure as opposed to a post?
20 MS. SMART-GITTINGS: It is. It is
21 pre-sentencing.
22 THE COURT: Okay.
23 MS. SMART-GITTINGS: But they wouldn't fund us
24 prior to sentencing, because they didn't want to put
25 the money out.

1 In the Court of General Sessions for the
2 State of South Carolina, County of Allendale
3
4 Case No.: 2015GS03-0050
5 State of South Carolina,
6 Plaintiff(s),
7 vs. Transcript of Record
8 Robert Lee Miller III
9 Defendant(s).
10
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12 TRANSCRIPT OF SENTENCING
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16 June 5, 2017
17 Allendale, South Carolina
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21
22 BEFORE:
23 The Honorable R. Lawton McIntosh
24
25

1 APPEARANCES

2

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1 PROCEEDINGS

2 MR. HOLLEN: If it pleases the Court, Your Honor.
3 The State calls Robert Lee Miller, III. Mr. Miller is
4 coming before you under indictment 2015GS03-0050.
5 THE COURT: Here -- I have got it. I didn't mean
6 to interrupt you, I'm sorry.
7 MR. HOLLEN: No, no, that is all right.
8 THE COURT: Instead of setting him up as a
9 sentencing, I want to conduct it more like a hearing,
10 if that's okay. We will let him sit there. Is there
11 any reason that that will be a problem?
12 MS. SMART-GITTINGS: No, Your Honor.
13 MR. HOLLEN: Okay. For the record, this is Case
14 2015GS-03-0050. Mr. Miller was tried and found guilty
15 of the offense of murder during the July term of court
16 last year. It has been almost a year since that
17 happened. In terms of today's hearing, it is for
18 sentencing on that charge because he was a juvenile at
19 the time of the offense pursuant to State's Supreme
20 Court opinion in Aiken v. Byars.
21 THE COURT: I met -- and just for the record, I
22 met with counsel in my chambers in anticipation -- this
23 is my first such Aiken versus Byars hearing. I think
24 that the State -- I mean the Defense feels that the
25 standard that has to be established through the factors

1 to be considered based on Mr. Miller's youth is that --
2 what is the standard, did you say?
3 MS. SMART-GITTINGS: Irreparable -- Irreparably
4 corrupt.
5 THE COURT: Irreparably corrupt.
6 MS. SMART-GITTINGS: And that is the State's
7 burden to overcome. There is a presumption that he
8 isn't irreparably corrupt and the State has to prove to
9 the Court that he is irreparably corrupt. And that is
10 what we believe the first benchmark is, that first the
11 State has that burden. And once the State meets that
12 burden, then the Court is to consider the five other
13 factors.
14 THE COURT: Say that next to the last part of it
15 again.
16 MS. SMART-GITTINGS: After the State meets their
17 burden of showing that he is irreparably corrupt, then
18 that is when the Miller factors actually kick in, once
19 the State has met that burden.
20 THE COURT: So, you get your irreparably corrupt
21 standard based on the Federal Court standard --
22 MS. SMART-GITTINGS: This is the Miller versus --
23 the Alabama versus Miller, Miller versus Alabama case,
24 and that is what the Aiken v. Byars case actually
25 applies to South Carolina.

1 THE COURT: And in South Carolina, and I have
2 looked back, looked back over these cases, it seems to
3 me that although they certainly said Miller was
4 applicable to the extent that youth has a
5 constitutional aspect to it that because there was a
6 non-mandatory sentencing scheme of life without the
7 possibility of parole, that there is distinguishing
8 factors. I think that it was Chief Justice -- then
9 Chief Justice Toal and Kittredge said that they were
10 not entitled to a hearing at all.
11 But with that being said, I told both sides of the
12 case that I felt like there were distinguishing aspects
13 of it and that the factors set forth in Aiken Byars
14 case are the ones that should apply, that being the
15 irreparably corrupt standard.
16 With that being said, I'll give the State a chance
17 to address it and give the Defense a chance to come
18 back and add anything to the record that they want to
19 add at this juncture. Okay? Go ahead.
20 MR. HOLLEN: Just so I understand, Your Honor,
21 your reading of Aiken v Byars, I don't see irreparably
22 corrupt anywhere in that opinion. I think that comes
23 from Miller. And are you ruling that that is not the
24 standard? So I understand the irreparably corrupt
25 standard.

1 THE COURT: What they said in the Miller case is
2 that you had factors and the factors would be the
3 chronological age of defendant and hallmark features of
4 youth including the maturity, impetuosity, and failure
5 to appreciate the risk of the consequences, family and
6 home environment surrounding the defendant,
7 circumstances of the homicidal offense, including the
8 extent of the Defendant's participation in the conduct
9 and how familiar with the people and how it affected
10 him in that situation, and the competency associated
11 with youth.
12 And they gave examples like the inability of the
13 defendant to deal with law enforcement and prosecutors
14 to obtain a plea and the ability of the defendant to
15 assist his attorneys. And the possibility of
16 rehabilitation. And they further point out that
17 mitigation factors in a death penalty case would also
18 be relevant to this evaluation.
19 But I agree with the State, I haven't seen any
20 standards from our State that says irreparably corrupt,
21 with that being the burden upon you to show.
22 MR. HOLLEN: Yes, sir. I just wanted to --
23 THE COURT: So, with that being said, obviously
24 somebody is going to look at it again so we will find
25 out.

1 MS. SMART-GITTINGS: Thank you, Your Honor.
2 THE COURT: Are you ready to call your first
3 witness?
4 MS. SMART-GITTINGS: I think --
5 ATTORNEY1: Your Honor, however you would like to
6 go about it. You know, we can go first and then
7 Ms. Smart-Gittings can address our position. Or she
8 can present evidence and we can address it and she can
9 reply. I don't -- however Your Honor would --
10 THE COURT: Whatever you think would be most
11 appropriate.
12 MS. SMART-GITTINGS: I think that the State should
13 present their case and then I will come behind the
14 State.
15 THE COURT: Okay. Sorry, I know that this is not
16 a normal scenario. Call your first witness.
17 MR. HOLLEN: Your Honor, we are not going to have
18 any witnesses in this case. First of all, may I
19 approach and hand up the sentencing sheet in this
20 matter?
21 I simply plan to address the Court and refresh all
22 of our recollection about the facts of this case and
23 Mr. Miller's role in the murder of Mr. Johnson.
24 I would like to tell Your Honor, his son, Teddy
25 Johnson is here and I know he would to address the

1 Court. If you would like to go ahead and hear from
2 him, we would be happy to do that.
3 THE COURT: I will let you do what you need to do
4 now and then I'll call him after the hearing of the
5 case.
6 ATTORNEY1: All right. Yes, sir. First of all,
7 Your Honor, I have already said, you presided over this
8 case. You presided over the trial of the co-Defendant
9 in this case. You have heard the facts twice over.
10 But it has been almost a year since we were here for
11 Mr. Miller's trial.
12 So, I'm not going to take up a tremendous amount
13 of time but I would like to go through some o the facts
14 that came out in that case just so we are all clear on
15 what Mr. Miller's role was during the murder of
16 Mr. Willie Johnson.
17 The victim in this case was found on June 19th,
18 2014, about 1:00. The day prior he had been -- people
19 had been unable to communicate with him. Members of
20 his church, Meals on Wheels, and his son all had
21 trouble getting in touch with him. About 1:00, the
22 Allendale Police Department entered the home. They
23 found Mr. Johnson with his hands tied behind his back;
24 shoelaces were used to tie him up. A black plastic
25 trash bag was wrapped around his head. Mr. Johnson had

1 been severely beaten. The evidence of that was the
2 fact that his dentures were smashed all over the living
3 room where he was found. There was blood splatter on
4 the wall. His house had been ransacked. His wallet
5 had been gone through. And that was kind of the scene
6 that they found him.
7 The Defendant in this case, Robert Miller, was
8 developed as a suspect during the investigation along
9 with two other juveniles, one of whom was his brother
10 and one was a friend that lived across the street from
11 Mr. Johnson.
12 Mr. Miller was interviewed. He eventually
13 confessed to his part in the crime. And we are going
14 to get into that in just a minute. But he gave some
15 details that were unknown to law enforcement at the
16 time.
17 And then I am going to get into the factors. But
18 starting with the Aiken v. Byars case, the five
19 factors, you already laid those out. The first two of
20 those, Your Honor, as far as his chronological age and
21 his family and home environment we can address briefly,
22 but you know that investigation has been done by the
23 defense. His background is not something that I am
24 extremely familiar with, but I will tell you that no
25 matter how bad someone's upbringing might be it doesn't

1 mean that they automatically resort to murder. There
2 are people who overcome obstacles everyday despite how
3 they are brought up. So, I don't believe that that is
4 or should be a deciding factor in the length of his
5 sentence.
6 The third factor, the circumstances of the
7 homicide is what I would like to spend most of my time
8 addressing. So, talking about Mr. Miller's role here.
9 Our first position, Your Honor, would be that this was
10 premeditated. It required planning. Mr. Miller was
11 the one that took a bag with him from his home, the bag
12 that was wrapped around Mr. Johnson's head and
13 eventually suffocated him. They did this, Your Honor,
14 three defendants did this at -- shortly before 8:00 p.m
15 according to the testimony that we heard during the
16 case. That is when Ms. Cave saw three individuals
17 going into the house. Shortly before 8:00 p.m. in June
18 in South Carolina it's still daylight outside.
19 Despite the fact that one of the Defendants lived
20 across the street from Mr. Johnson, they made no
21 attempt to conceal their identity. They wore no masks,
22 they wore no gloves, they carried a plastic trash bag.
23 Our position is that this was a planned murder to begin
24 with. They did not want to leave any living witnesses,
25 and that is exactly what they did.

1 Mr. Miller, as I said, brought the trash bag. He
2 was one of the individuals that went to the door and
3 knocked. When Mr. Johnson came to the door, he pushed
4 it hitting Mr. Johnson, by his own admission. He
5 punched him. He, by his own admission, was the one
6 that wrapped the plastic trash bag around his head.
7 If you recall the pathologist, the cause of death
8 in this case was asphyxiation with attributing factor
9 of blunt force trauma. So, Mr. Miller, again according
10 to the testimony that we heard, was the one that
11 wrapped the trash bag around his head. He stayed with
12 Mr. Johnson. According to the alarm records that came
13 out during the trial we believe that they were inside
14 for about 20 minutes. For 20 minutes this defendant
15 sat there with an 86-year-old man with a trash bag
16 wrapped around his head and just left it there. The
17 other two ransacked the house. The other two found the
18 safe that they eventually dragged out. And then they
19 left.
20 I don't know exactly how old someone is when they
21 first realize that you can't breath through a plastic
22 bag, but it's certainly younger than 15. They knew
23 what was going to happen. Mr. Miller knew what was
24 going to happen when he left that bag on Mr. Johnson's
25 head. And probably the most disturbing fact that came

1 out of this trial is that when they left the home
2 Mr. Johnson was still alive. That trash bag was moving
3 in and out with his breath. All that it would have
4 taken was for Mr. Miller to just take the bag off of
5 his head. And Mr. Johnson would have been badly
6 beaten, but according to the pathologist he would have
7 survived. He didn't do that.
8 And we are going to get into his juvenile record.
9 I have got that, I have provided it to Your Honor and
10 Ms. Smart-Gittings, but a week after this crime
11 occurred Mr. Miller was charged with attempted murder
12 for shooting someone with a shotgun that we believe was
13 taken from Mr. Johnson's house.
14 THE COURT: This is on his record?
15 MR. HOLLEN: It was attempted murder. It was
16 dismissed by our office due to the murder charge.
17 Obviously we have leave to restore that and we would if
18 needed. But he has been found guilty of this murder,
19 so we don't plan to do that at this time.
20 Your Honor, our position is that due to the
21 brutality of this crime, due to planning it, due to
22 Mr. Miller's role in this crime, he should be sentenced
23 to life without the possibility of parole. And we are
24 going to get into his record. This is not his first
25 contact with law enforcement. You, I don't know if you

1 have it in front of you, but I'm happy to provide it to
2 you. His juvenile record consists of a 2012 disturbing
3 schools, a 2013 burglary second degree, assault and
4 battery third degree, and petty larceny.
5 Obviously he was convicted of this murder that
6 occurred on June 17th, 2014. And he was charged with
7 the attempted murder that occurred on June 24th, 2014.
8 That record, along with the brutality in this crime, I
9 think shows his propensity for violence. I think that
10 he still has that. And we believe that he should spend
11 the rest of his life behind bars.
12 Briefly, Willie Johnson was 86 years old when he
13 was murdered. He was a lifelong resident of Allendale.
14 He was a former Merchant Marine. He was a deacon in
15 his church. He was extremely active in his church.
16 But for intents and purposes, when you look at the rest
17 of his life, he was pretty much an invalid. He
18 depended on church members for transportation. He
19 depended on church members for taking him shopping,
20 that sort of thing. And he depended on Meals on Wheels
21 to bring him his meals once a week. He, as far as we
22 could tell, was very well regarded. He didn't have any
23 enemies in Allendale County and he didn't deserve this.
24 So, I would like you to take all of that into
25 account when you think about sentencing for this crime,

1 but as I already stated, we will -- we are asking Your
2 Honor to sentence him to life without the possibility
3 of parole. And I would like to, if Your Honor would
4 allow it, to listen to his son, Mr. Teddy Johnson, at
5 this time.
6 THE COURT: I'll be glad to let you come forward
7 now. Good to see you again, but not under these
8 circumstances. Would you mind giving the court
9 reporter your full name for the record, please sir, and
10 your address. Not address of where you live, but just
11 the town that you live in.
12 MR. T. JOHNSON: My name is William Johnson. My
13 nickname is Teddy and currently I'm residing in
14 Martinez, Georgia. I have been living in Martinez for
15 approximately 24 years. And I'm retired from the
16 Savannah River Site. I retired back in 2011. I was a
17 senior corporate planner. I began employment with
18 Savannah right after I got out of graduate school after
19 doing my MBA and I have been employed with them ever
20 since. But I'm from Allendale, born and raised, just
21 to give you all the higher points of, let's say, my
22 background.
23 THE COURT: And the victim in this case was your
24 father?
25 MR. T. JOHNSON: Yes, sir, that is correct, Your

1 Honor.
2 THE COURT: I'll be glad to hear from you,
3 anything that you would like to state.
4 MR. T. JOHNSON: Well, Your Honor, I'm not going
5 to take a lot of time in terms of my statement and be
6 very, let's say, redundant. I think Mr. Hollen the
7 prosecutor has pretty much set the stage for all of the
8 critical things that you need to hear. But just to
9 talk about a couple of items. My father was a Merchant
10 Seaman. He went into the Merchant Marines when he was
11 18 years old. He served in this assignment for
12 approximately four years.
13 And after his 40-year tenure he returned to
14 Allendale where he retired and he became very, very
15 active in his church. He became the lead deacon in the
16 church. And my dad always put God first, family
17 second. Coming up as a child, my dad was always there.
18 I mean, he was always there for me and my sister and my
19 mom. He took very good care of us. He
20 college-educated both of his children, myself and my
21 sister.
22 But the thing that concerns us today, Your Honor,
23 just the way that he left us. He didn't have to leave
24 us this way. I mean, it's just totally inconscionable
25 in terms of the way that he left us. I have a problem

1 processing this. I live with myself with a lot of
2 internal pain everyday saying my dad didn't have to
3 leave the world this way for such a senseless crime
4 that was so inhumane and just -- it makes no sense to
5 me.
6 I mean, I grew up in Allendale, this is where I am
7 from. I mean, I am a product of this town. But taking
8 the standards that my dad set in place for me and my
9 sister and also my mom, I couldn't imagine somebody
10 being so mean and cruel to an individual. And
11 basically just by saying those things to you, the
12 family today is asking for life in this case.
13 And we would like for you to, let's say, to
14 consider my father's character. I'm quite sure you
15 have been very well briefed in terms of the kind of man
16 he was, and those things are very true. I mean, you
17 know, from the standpoint of the dialogue that was
18 shared with you regarding his character as an
19 individual. And I brought a picture of my father today
20 that I would like to give to you. Could I walk around
21 and give it to you?
22 THE COURT: Give it to the clerk if you don't
23 mind, please sir.
24 MR. T. JOHNSON: So you can take a look at him.
25 He looks like a college professor, you know, somebody

1 that would be probably teaching at one of your
2 prestigious colleges and someone who was, let's say,
3 very very knowledgeable, very prowessed individual, and
4 someone that wouldn't even dare think about hurting
5 somebody.
6 So, this whole thing, Your Honor, like I just
7 spoke to you recently, I'm having a problem processing
8 this. It is very difficult for me. And this is pain
9 that I'm going to take to my grave. I mean, I would
10 never, let's say, overcome this. His grandchildren
11 will never overcome this. He has great-grands. The
12 great-grands the other day says, We really miss Papa.
13 Papa didn't have to leave us the way that he did.
14 So, with that being said, I am going to -- the
15 family is going to leave it in your hands to make the
16 decision in terms of what you have to do today. Thank
17 you, sir.
18 THE COURT: Thank you for being here. Anything
19 further?
20 MR. HOLLEN: Your Honor, I forgot to mention
21 just -- Mr. Miller has already been found guilty, but
22 the soul piece of physical evidence in this case was a
23 palm print in the victim's blood that was found on the
24 wall in the case. I failed to mention that. Thank
25 you.

1 THE COURT: I recall that. Is that it?
2 MR. HOLLEN: There's nothing further for the
3 State.
4 ATTORNEY1: May it please the Court, Your Honor.
5 First of all, I want to say that this is a very hard
6 day for all of us, for the citizens of Allendale
7 County, for Mr. Johnson, for Robert and for his
8 parents, his grandparents, for his -- his father is
9 here, his maternal aunt is here, his maternal
10 grandmother is here, his cousin, and his paternal
11 grandfather are all here to support him today.
12 I want to start with the Miller versus Alabama
13 case. 567 U.S. 2012 case. Just a couple of things
14 that I wanted to pull from that just to set a
15 background for the Court to understand. The concept of
16 proportionality is essential to the Eighth Amendment,
17 and that was held in the Graham case. We view the
18 concept as less than a historical precedent, but the
19 evolving standards of decency that mark the progress of
20 a maturing society.
21 And that is when they started looking at these
22 juvenile cases that were -- the juveniles that were
23 previously sentenced to life sentences. And now the
24 Court is re-evaluating that to determine whether or not
25 these juveniles should have the opportunity to have

1 their cases heard. And that is what South Carolina has
2 done in the Aiken V Byars case that is based primarily
3 on the Miller v. Alabama case.
4 And the Miller v. Alabama case cites Roper and
5 Graham and says, Children are constitutionally
6 different than adults for the purpose of sentencing
7 because juveniles have diminished culpability and
8 greater prospects for reform, and they are less
9 deserving of the most severe punishments. The decision
10 in -- and I think that the Court should take that into
11 consideration when they are making a decision regarding
12 Robert today.
13 Also, in the Graham case it noted that the
14 developments in psychology and brain science continue
15 to show the fundamental difference between juvenile and
16 adult minds. Those findings are transient rashness,
17 proclivity for risk, inability to assess consequences.
18 They lessen a child's moral culpability and enhance the
19 prospect that as the years go by the neurological
20 development occurs. So, Robert was 15 at the time that
21 this offense was committed. His brain wasn't fully
22 developed.
23 THE COURT: You said 16?
24 MS. SMART-GITTINGS: Fifteen. He was 15. The
25 distinctive attributes of youth diminish the

1 penological justifications for imposing the harshest
2 sentences on juveniles, even when they commit terrible
3 crimes. And we all agree that a murder is a terrible
4 crime. But the Roper Graham Courts recognize the
5 distinction of, Youth diminish the penological
6 justifications for imposing the harshest sentences on
7 juveniles.
8 Deciding that a juvenile forever will be a danger
9 to society will require making a judgement that he is
10 incorrigible and incorrigibility is inconsistent with
11 youths. Life without parole forswears altogether the
12 rehabilitative ideal. It reflects an irrevocable
13 judgment about an offender's value and place in
14 society.
15 Now I would like to move on to resubmit to the
16 Court that the presumption is still the irreparable
17 corruption, that the State has to prove that Robert was
18 irreparably corrupt. And that burden should be placed
19 on the State versus taking into consideration the
20 Miller factors. The first one would be chronological
21 age and hallmark features of youth.
22 As I said earlier, Robert was 15 at the time that
23 this crime was committed. And he is a true juvenile.
24 He loves cartoons. He had a security blanket at the
25 time that he was 12. His juvenile records indicate

1 that -- one of the things that he said when we asked
2 him how he's doing is -- his response is always,
3 Everything is Gucci. We had to figure out what that
4 means. It is just that, Everything is good.
5 THE COURT: Say that last sentence again, please.
6 MS. SMART-GITTINGS: Everything is Gucci,
7 G-U-C-C-I. That means everything is good. So, even
8 though his situation and his circumstances, in his mind
9 everything is good. He's not complaining about it.
10 Everything is good. He says that he loves it here at
11 the Allendale County Detention Center, Department of
12 Juvenile Justice has too many kids. He has excelled
13 himself.
14 Again, all of those are indicators of a juvenile
15 minds a person who doesn't understand the consequences
16 of his actions. He doesn't really understand the
17 severity of being incarcerated even two or three years.
18 He says, when asked how things are at the jail, he says
19 he's too young for a job. These are serious charges.
20 He is on the max side, so he can't even be a trustee.
21 So, even while he is in jail he is thinking that
22 his time would have been better suited if he could be a
23 trustee. But because he's too young he can't go out to
24 work. So, he has a mind that he needs to work and take
25 responsibility for himself. He says that he likes it

1 there at the Allendale County Detention Center because
2 it is calm and it's laid back and there are adults
3 there. But he also feels like he's young, but he
4 doesn't feel young. He's seen too much. He has
5 tried -- he wants to do more things. But now he wants
6 to do things differently. So, he has a sense of
7 remorse for what has happened. He feels like if given
8 the opportunity he would have made different choices,
9 he would do things different.
10 When we asked, What was it like when he was
11 growing up he said that he doesn't even remember the
12 first time that he saw his mother, whether or not it
13 was in foster care. His first involvement with DSS was
14 when he was four years old. There was an allegation
15 that his mom physically abused him. He and his
16 siblings were taken from his mom and placed in foster
17 care. He grew up in several different foster cares,
18 several different group homes.
19 He didn't learn well in the Allendale County
20 schools. He needed more individualized attention and
21 he didn't realize that until he was actually at DJJ and
22 he felt like he learned better at DJJ because the
23 classrooms were smaller and the teachers were able to
24 teach him individually. And so he said that they broke
25 it down more, and they didn't do that in Allendale

1 County schools. So, again, it talks to his
2 rehabilitative nature because he understood what went
3 wrong in Allendale after experiencing the structure
4 while he was at DJJ.
5 With regard to his family, the second prong of
6 Miller, the family and home environment as I have told
7 the Court in 2003 when he was four years old was the
8 first time that he ever had an educational evaluation.
9 His parents weren't married. They were together for a
10 little while, but they didn't stay together very long.
11 He lived with his mom and I think that he enjoyed
12 living with his mom because he said that he was his
13 mom's other half. He felt like he completed her. He
14 was her protector. He felt like he was his younger
15 sister's protector. But his mother should have been
16 the one protecting him and he didn't have that.
17 They all, all three children, loved their mom and
18 they wanted to stay with their mom because the dad was
19 the disciplinarian, the dad had the rules in their
20 home. The dad was the one, he said, who actually
21 punished them for things that they did while their mom
22 let them walk the street all night. She just -- she
23 wasn't able to supervise them because she has a history
24 of alcohol and drug abuse. And so most of the time the
25 three siblings raised themselves.

1 His sister did stay with his father longer, but
2 Robert didn't have a very good relationship with his
3 stepmother, so he constantly ran away from his dad's
4 house; he never really stayed there very long. He
5 talked more about loving his mom and having
6 conversations with his mom. And he actually said that
7 he was glad when his mom left Allendale because she had
8 a better life when she lived in Columbia, and now she
9 lives in Georgia. But he put everybody before himself,
10 even in this particular case. He felt like his brother
11 was more important than he.
12 He wanted to make sure that he took the blame for
13 this and not his brother. He wanted the State to know
14 that his brother didn't have anything to do with this,
15 that it was just him and he made all of the bad
16 decisions. He says that he gets his kindness and
17 forgiveness from his mom. He says that he is just like
18 Jesus, he forgives all. So he says that even when
19 people do him wrong, even though he knows that his
20 mother didn't do well by parenting him, he still loves
21 her and he forgives her for that.
22 He talked about when he stayed -- one of his
23 foster care homes, Ms. Human, she took him to church
24 and that is when he first understood about the Bible.
25 And since he has been in jail, he's been very -- he has

1 a lot of time to read. He likes to read books.
2 Ms. Russell has given him several books and he writes
3 poems. And I submit to the Court one of the poems that
4 he's written, he wrote.
5 When asked about his personal goals, he said that
6 he actually wanted to attend college. He wanted to
7 become a businessman. He wanted to work in
8 construction. But he said that he was working raking
9 yards, doing landscaping ever since he was 11, 12 years
10 old. He says that he has about six or seven friends he
11 plays basketball with. But there wasn't a lot to do in
12 Allendale, so they didn't have an activity center or
13 anything like that, any place to go.
14 We had several, several GS records, 911 calls to
15 the house, numerous. His mother indicated that it took
16 him until he was about five years old until he was
17 completely potty-trained. He does have prior mental
18 health. He has been taking medicine for ADHD. But his
19 father stopped that counseling and medication. He said
20 that the doctor stopped prescribing the medication, so
21 he stopped going to DSS. Our records indicated that
22 between 2004 and 2010 there were fifteen 911 calls made
23 from his mom's residence.
24 THE COURT: There was what now?
25 MS. SMART-GITTINGS: Fifteen 911 calls made. A

1 lot of them had to do with the siblings fighting or his
2 mother might -- being a little too strict. But there
3 were fifteen 911 calls. Most juveniles aren't -- have
4 not experienced that. But that is the life that he
5 had. That was the home environment that Robert had.
6 And again, in 2007, there was a finding of
7 physical abuse and neglect. DJJ recommended that he
8 continued monitoring by a psychiatrist and make sure
9 that he has the anger management training,
10 interpersonal skill building, substance abuse
11 treatment. We don't know that he received any of the
12 things that were recommended by DJJ. A lot of those
13 services weren't provided to him.
14 His dad had some concerns about him. He thought
15 that he was immature. He thought that he was
16 considered to be immature or off. He was overly
17 active. He rushed through activities without thinking.
18 And that he expressed that Robert expressed to his dad
19 a lot of feelings of being unhappy, of being sad, and
20 just being stressed at life. He was at risk for having
21 attention problems, so he was never really able to
22 focus. He was easily distracted. He couldn't
23 concentrate. And he struggled to complete simple
24 tasks. He had trouble completing those.
25 Factor four -- sorry, factor 3, the Court is

1 familiar with the facts of the case. So, we won't go
2 into the factor three because the Court, you heard the
3 facts of the case, Your Honor. We would -- the only
4 thing that I would bring up in regard to factor three
5 was the fact that he was interviewed without an adult
6 present. And so, we asked the Court to consider
7 keeping out the confession based on the fact that he
8 was interrogated by law enforcement at night for, I
9 don't know how many hours without an adult present.
10 But that was admitted into evidence. But it is
11 something that I would like the Court to consider.
12 With regard to peer pressure. Specifically with
13 this fact: His brother was his co-Defendant. Gabriel
14 Joyner, the other co-Defendant, was friends with his
15 brother. So, the three people involved, Robert wasn't
16 friends with Gabriel Joyner, so I would submit that he
17 had peer pressure. That is one of the reasons why he
18 was involved in this case. And I think just the fact
19 that he wants to show his brother was not culpable goes
20 to the pressure that he was under at the time of this
21 offense.
22 I think that I did relate there was an issue with
23 regard to custody. Sorry, jumping back to two. His
24 father was supposed to have physical custody of his
25 brothers and sisters, but I don't think that they

1 stayed with his father; they went back to their
2 mother's house. So, he stopped taking his medications,
3 and the issue of where he should have lived was also in
4 question.
5 And incompetency associated with youth. Inability
6 to deal with the criminal justice system. He had three
7 prior offenses with DJJ. He was unable to understand
8 Miranda. I believe when he did the psychological
9 evaluation, the evaluator had to continuously explain
10 to him what the Miranda warnings were. When we asked
11 law enforcement during the incarceration whether or not
12 they asked him if he understood, I think one of the
13 officers gave him a certificate and told him to read
14 the certificate that was his basis for determining that
15 Robert understood his Miranda warnings. But we would
16 like the Court to take into consideration that he did
17 not understand those Miranda warnings.
18 He was too immature to appreciate the consequence
19 of even being in law enforcement custody for so long
20 all of those hours by himself late at night. I think
21 that the Court will remember, he actually laid down on
22 the floor and went to sleep after all of the custody
23 interrogations were over.
24 His inability to deal with police officers, he did
25 exactly what they wanted him to do. They told him what

1 to do and he did that, just that. Because of his youth
2 he didn't understand that he didn't have to talk to
3 them, that he didn't have to answer their questions.
4 His IQ was 76, very low functioning. Undeveloped
5 cognitive and reasoning skills. Difficulty
6 understanding the consequences of his decision. He was
7 held for ten hours. Our records show that he was held
8 for ten hours with no parent and the report said that
9 he indicated, "No" to understanding Miranda.
10 Dr. Candace Dunn provided an addendum to her
11 evaluation. The educational assistance data from his
12 DJJ evaluation said that he had low intellectual
13 functioning, he was in the low to average range,
14 performing in the low grade level. He had symptoms
15 consistent to ADHD, being contributory to behavior
16 issues, poor school performance. He did well in a
17 structured environment. When he was at the teen after
18 school center he did very well there. Again, that was
19 just a structured environment that he didn't have at
20 home or at Allendale County schools.
21 He did make significant improvements when he was
22 at -- when he was at DJJ and at the Allendale jail, he
23 didn't have any type of disciplinary infraction. He
24 followed whatever the correctional officer said and he
25 did what he was told. He didn't cause any problems at

1 DJJ. He didn't cause any problems at the jail. That
2 goes to the possibility of rehabilitation. We believe
3 the fact that he hasn't gotten into any problems since
4 he has been incarcerated shows that he can be
5 rehabilitated.
6 The point that he might talk about his confidence
7 in the things that he wants to do is at -- at Allendale
8 jail he wasn't provided the opportunity to study for
9 his GED. I think that given the opportunity to get a
10 GED while he is in prison, I think that will go to his
11 ability to be rehabilitated. Zero disciplinary
12 problems. The correctional officers liked him. They
13 didn't have a problem with him. He attended bible
14 study. He read a lot.
15 We believe that and we would ask that the Court
16 seriously consider the 30-year sentence. I know that
17 it's a mandatory minimum but we believe that it's
18 sufficient under the circumstances. When we look at
19 proportionality, when we take into consideration
20 defendants who have gotten a life sentence we think of
21 people like Dylann Roof who certainly deserved the life
22 sentence because he killed nine people. The guy from
23 Spartanburg, Todd Kohlhepp who killed all of those
24 women, who raped all of those women, those people when
25 you look at the facts, Your Honor, of who deserves a

1 life sentence, when you compare those defendants to a
2 15-year-old who grew up in a house that was not
3 structured, who did not receive a good education, who
4 is not able to make decisions as an adult would, we
5 believe that they would deserve a life sentence versus
6 Robert. So, we would ask that you take into
7 consideration the proportionality of what he did
8 compared to others who have received a life sentence
9 have gotten. Thank you.
10 THE COURT: Anything further?
11 MS. SMART-GITTINGS: Nothing, Your Honor.
12 THE COURT: Anything in response?
13 MR. HOLLEN: Not really, your Honor. I think that
14 you know the facts. You have heard -- you have heard
15 everything that both sides have to say in this case.
16 So, I don't have anything to respond to. I mean, the
17 part about Miranda, you did find in this case, you
18 heard the facts and you found that he knowingly,
19 willingly and everything else waived his rights when he
20 spoke to officers that day, and that he did understand
21 his Miranda rights.
22 There was also an adult present, just if I
23 remember correctly. It was Ms. Sabb who -- Ms. Sabb
24 was present for a short time at the beginning of his
25 interrogation, who he said was like a mother to him.

1 That was Mr. Johnathan Caper's mother. But as far as
2 the remainder of it goes, Your Honor, I'll leave you
3 with this: In the Aiken case the Court says, Without
4 question the Judge may still determine that life
5 without parole is the appropriate sentence in some of
6 these cases in light of other aggravating
7 circumstances.
8 Again, we do believe that is the appropriate
9 sentence in this case and that is what the State would
10 ask for. Thank you.
11 THE COURT: Let me ask a couple of questions, if I
12 may. You mentioned that there was a psychological
13 evaluation pre-trial; is that correct?
14 MS. SMART-GITTINGS: He had a waiver hearing in
15 DJJ. And this was maybe about three to six months
16 after he was arrested, when he -- when they determined
17 whether or not they were going to waive him up to
18 general sessions court.
19 THE COURT: So, was part of their waiver hearing
20 an evaluation?
21 MS. SMART-GITTINGS: Yes.
22 THE COURT: Was he diagnosed with conditions? I
23 know that you mentioned ADHD, but what other diagnoses
24 did he have?
25 MS. SMART-GITTINGS: Oppositional defiant disorder

1 was one of the diagnosis, if I remember. If the
2 Court's indulgence, Your Honor.
3 (Pause.)
4 MS. SMART-GITTINGS: Unspecified disruptive
5 impulse control and conduct disorder. Cannabis abuse
6 ruled out. Specific learning disorder, mathematics,
7 ruled out.
8 THE COURT: Could you pass that and let me look at
9 it, please ma'am?
10 MS. SMART-GITTINGS: This is not the evaluation,
11 Judge. It is a note from the evaluation. But the
12 evaluation should be in the family court file and I
13 could go to the clerk's office and get that if the
14 Court would like to take that into consideration.
15 THE COURT: Tell me again what those were again.
16 Unspecified --.
17 MS. SMART-GITTINGS: Unspecified disruptive
18 impulse control and conduct disorder.
19 THE COURT: Okay. Now, let me ask you this:
20 Assuming that the Aiken case says, you know, the
21 mitigating circumstances in the death penalty phase of
22 the capital murder case would be a relevant
23 consideration as well?
24 MS. SMART-GITTINGS: I am sorry, I didn't hear
25 that last part.

1 THE COURT: I am saying that, according to what I
2 read today and before, in addition to the factors that
3 I placed on the record about youth and the facts of
4 this case, that also mitigating factors that would be
5 brought forth in the death penalty -- in a penalty
6 phase of a death penalty case would be relevant
7 inquiries?
8 MS. SMART-GITTINGS: That is correct, Your Honor
9 that is one of the reasons --
10 THE COURT: And the question that I had was,
11 assuming that there are mitigating factors under the
12 case law, who has the burden of establishing those
13 factors and isn't it on the Defendant by the
14 preponderance of the evidence?
15 MS. SMART-GITTINGS: It is, Your Honor.
16 THE COURT: Okay. Now, what grade did he get to?
17 MS. SMART-GITTINGS: Eighth grade.
18 THE COURT: Eighth. And he attempted the GED
19 subsequent to dropping out of school?
20 MS. SMART-GITTINGS: He was 15 in the eighth
21 grade, so he didn't attempt to get his GED.
22 THE COURT: And in eighth grade, how long had he
23 been out of school when this event occurred? In other
24 words, he was --
25 MS. SMART-GITTINGS: He was in school when this

1 happened.

2 THE COURT: You can speak. I know that you were

3 the investigator, you can give us the answers too to

4 me, if you want. Unless someone objects to it. I am

5 just trying to get the information.

6 MR. HOLLEN: I am not going to object.

7 MS. RUSSELL: It is my understanding that he was

8 15 years old and in eighth grade summer school at the

9 time of this happening. So, he went to DJJ until his

10 17th birthday awaiting pretrial. And at 17 they took

11 him back to the Allendale Detention Center where there

12 is no GED program. And he hadn't gotten enough credits

13 during his year and a half stint at DJJ to get a high

14 school diploma. So it was not involuntarily, you know,

15 it wasn't that he didn't want to get a GED, but it was

16 that there was no resources for him to be able to do

17 that.

18 THE COURT: And for the record, would you give us

19 your name please, ma'am.

20 MS. RUSSELL: Yes, Brie Russell. B-R-I-E

21 R-U-S-S-E-L-L.

22 THE COURT: I'm confused. Now, are you an

23 attorney or PD or an investigator?

24 MS. RUSSELL: I am a mitigation specialist for

25 Ms. Smart.

1 THE COURT: Ma'am?

2 MS. RUSSELL: A mitigation specialist.

3 THE COURT: Okay. So, you are not actually with

4 the Public Defender's Office?

5 MS. RUSSELL: No, Your Honor.

6 MS. SMART-GITTINGS: But she is an attorney, Your

7 Honor.

8 THE COURT: Okay. Do you know how many IQ tests

9 he had taken?

10 MS. SMART-GITTINGS: At least three, Your Honor,

11 if you consider his DJJ records.

12 THE COURT: I was just thinking through school or

13 otherwise as well, but what were the ranges of the

14 scores on IQ?

15 MS. SMART-GITTINGS: The last one was a 76. That

16 is when he was in the fifth grade.

17 THE COURT: What were the other two?

18 MS. SMART-GITTINGS: That is when he was in the

19 fifth grade. When he was in the fifth grade his last

20 one was a 76 and he hasn't had one since then.

21 THE COURT: Fifth grade?

22 MS. SMART-GITTINGS: Yes, sir.

23 THE COURT: Were those full IQ tests or Wechsler,

24 or do you know that?

25 MS. SMART-GITTINGS: Yes, sir.

1 THE COURT: And so I understand it from the
2 Solicitor's standpoint, the attempted murder charge
3 from Fairfax was dismissed?
4 MR. HOLLEN: It was dismissed in light of -- it
5 was dismissed with leave to restore in light of the
6 murder charge, Your Honor. It was dismissed with leave
7 to restore in light of the fact that he was arrested
8 and on trial for a murder.
9 THE COURT: And that was a separate alleged event;
10 is that correct?
11 MR. HOLLEN: That happened seven days exactly
12 after this murder.
13 THE COURT: And there was an assault and battery
14 third degree that was nolle prossed?
15 MR. HOLLEN: Your Honor, I --
16 THE COURT: The records that I'm reading say,
17 Nolle prossed.
18 MR. HOLLEN: Well it says dismissed, but I believe
19 that that -- I don't have a lot of experience with
20 juvenile records. I know that we have a couple of
21 juvenile lawyers in the courtroom. But he was
22 sentenced to probation for those offenses. I believe
23 that after the probation period they put dismissed on
24 it.
25 THE COURT: I got you.

1 MR. HOLLEN: And I have all of those -- I have a
2 write-up from our investigator regarding those charges,
3 so I know that he was found guilty of that burglary
4 second, assault and battery third and petty larceny and
5 disturbing schools.
6 THE COURT: Say that again.
7 MR. HOLLEN: He was found guilty of disturbing
8 schools in 2012 and then the burglary second degree,
9 assault and battery third degree, and petty larceny.
10 And in 2013 he was sentenced to probation.
11 THE COURT: If this was just, obviously, an adult,
12 straight adult case, I have no questions on what to do.
13 But in going through the factors in this case that I
14 have to, the defendant was 15 years old at the time.
15 The maturity, quite frankly, I recall during the course
16 of the trial that there was not a lot of direct
17 evidence but there was certainly little if any parental
18 guidance for him.
19 There was an older brother who seemed to influence
20 his actions or someone that he looked up to. Clearly,
21 the act itself was impetuous and his conduct, based on
22 even unconvicted charges, and he has a fairly extensive
23 record involving violence, so those kind of mitigate
24 against each other.
25 It is hard for me, even somebody with a 76 IQ, to

1 imagine that the -- to appreciate the risk of going in
2 and beating an 80 something year old man to the point
3 where his teeth were scattered, his dentures were
4 scattered around. That is one of the things that I
5 remember discussing with my wife, and it was a brutal
6 case, one of the more brutal that I have seen. The
7 teeth were scattered around the room. There were
8 fractured ribs, if I recall, and lacerations around the
9 head, mouth and face.
10 And as pointed out by the State, just putting a
11 bag over the man's head and cinching it and seeing him
12 breathing when they were walking out is just almost
13 beyond belief. That factors against him.
14 His home environment and family factors for him.
15 I mean, he hasn't had much of an opportunity coming up.
16 It's clear from the information that you presented to
17 me and it is clear from the information at trial from
18 the witness stand. His mom was not in the trial, if I
19 recall. Somebody else that cared for him for at least
20 just a little bit of time is who actually had him admit
21 or go forward with his confession, or at least got that
22 started.
23 Again, the circumstances of this case showed that
24 his involvement in this particular heinous crime, and
25 his involvement was pretty much up there with -- as

1 much as anybody's that I can tell. I have been
2 involved in two of the trials. If I recall, the second
3 trial, the person was older by somewhat, but he
4 allegedly stayed out and was watching and then came in
5 and ransacked the place and may not even have involved
6 himself in the actual beating and torture of this man.
7 I do feel like the big brother involvement there was --
8 and both of the codefendants being older, there was
9 both familial and peer pressure that could have an
10 affect on him.
11 I really didn't feel that he didn't have the
12 ability to deal with law enforcement. I know sometimes
13 by just the mere age you feel like you have to answer
14 everything, you have to tell them everything I would
15 suspect. But there's no indication that I have seen
16 through this date, through this hearing, that his
17 inability to understand and deal with law enforcement
18 on the proof basis, or assist with his attorneys. I
19 remember remarking after the trial both attorneys did
20 grand jobs in their preparation and presentation of the
21 case.
22 I don't know that I have heard anything about
23 rehabilitation. If you did, it passed by me. Do you
24 want -- I'll give you the opportunity to address that
25 again. Is there any evidence of rehabilitation in this

1 matter?

2 MS. SMART-GITTINGS: May it please the Court, Your

3 Honor, there's just case law that says that juveniles

4 are a protective class and there is a presumption and

5 expectation that they are rehabilitative. The

6 detention center didn't give him the opportunity to get

7 his GED or take any classes, so basically he hasn't had

8 the opportunity to go to school since he left Columbia.

9 So, for the last year or so he just has not had the

10 opportunity to get any classes. He has read a lot of

11 books. He is likely to get his GED, provided the right

12 assistance. Like he's going to have to have special

13 classes. He is going to have to have someone explain

14 it to him. Smaller classes where he seems to do

15 better.

16 And the fact that he hasn't had any problems since

17 he's been at the jail. He hasn't had any write-ups,

18 any referrals, anything since he's been in jail. He

19 will probably, now that he's older and once he is

20 convicted, he will be able to get education credits

21 while he is incarcerated. He will be eligible to maybe

22 work in the library or some type of job in the

23 institution.

24 I'm sure that he won't be on work release or

25 anything, but he will have the opportunity to work.

1 He's physically able to work. He has the ability to do
2 so. So, we believe alone -- the fact that he --
3 although he was in special needs classes, he does have
4 the ability to receive his GED and that he's physically
5 able to work, we believe that, taking those into
6 consideration, that he will be able to be
7 rehabilitated.
8 THE COURT: Thank you, ma'am. All right, anything
9 further from anyone?
10 MR. HOLLEN: Not for the State, Your Honor.
11 THE COURT: Mr. Johnson, I have your father's
12 funeral pamphlet. Do you want me to pass that back so
13 your family can keep it as a momento? I have looked
14 through it.
15 MR. T. JOHNSON: No, sir, you can keep it.
16 THE COURT: All right. And I say a lot of this,
17 with all due respect, for the victim's family in this
18 case. They are the ones that have suffered more than
19 anybody. Again, if this was an adult I would have no
20 qualms about anything, but he was at the tender age of
21 15 and he will be required to serve day for day, any
22 sentence that I give him. And he will have ten days,
23 as I'm sure that you have explained to him, to appeal
24 my sentence.
25 But at this juncture he is 18 years old. I am

1 going to sentence him to 55 years. I will give you ten
2 days to appeal. Good luck to you.
3 MS. SMART-GITTINGS: Your Honor, just for the
4 record, I have several objections I want to put on the
5 record.
6 THE COURT: Ma'am?
7 MS. SMART-GITTINGS: I have three objections that
8 I would just like to put on the record.
9 THE COURT: Certainly.
10 MS. SMART-GITTINGS: The first one, Judge's
11 failure to make a finding of irreparable corruption. I
12 know that the Court believes that that standard does
13 not apply because of the Miller v. Alabama, but we
14 wanted to put that objection on.
15 And also, we would object to a 55-year sentence
16 because we believe that that is a functional equivalent
17 to a life without parole. We believe that anything
18 above 38 would be equivalent to life without parole.
19 So, we would object to that.
20 THE COURT: So, you are arguing that in the
21 circumstances involving minors there is a mathematical
22 formula that should be applied based on their age?
23 MS. SMART-GITTINGS: Yes, sir.
24 THE COURT: Okay.
25 MS. SMART-GITTINGS: And of course we object to

1 the 30-year mandatory minimum sentence as well.
2 THE COURT: Yes. And I'm assuming that you are
3 also adopting your other objections laid out in the
4 brief?
5 MS. SMART-GITTINGS: Yes, Your Honor.
6 THE COURT: Would you make that brief a court
7 exhibit? We have our copy, so you can make it a court
8 exhibit.
9 MS. SMART-GITTINGS: Thank you, Your Honor.
10 THE COURT: In all deference to the State, I know
11 that the State would, if it had been an adult, would
12 have gone for death penalty in this matter, probably,
13 rightfully so, and I know that you wanted to go for
14 life without possibility, but under the circumstances
15 that is going to be my sentence. Thank you gentlemen.
16 MR. HOLLEN: Yes, sir, thank you.
17 THE COURT: Thank you, sir.
18 (Proceeding concluded.)
19
20
21
22
23
24
25

LED#31140052



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CHIEF

SHARON GOULD
VICTIM ADVOCATE

SGT. J. GINN
SGT. T. RIZER
CPL. R. POPE
PFC. J. SINGLETON
PVT. K. HARNEY
PVT. D. WILLIAMS
PVT. S. WATSON

***** MIRANDA RIGHTS FORM*****

My name is Robert Miller, Phone Number Jackson St., My address is _____, DOB DEC 30 1998

SSN _____

I have completed 8 years of education.

Circle the line that best applies to you. I can/ I cannot read and write.

Please carefully read each of your rights and initial after reading each line.

1. That I have the right to remain silent. Initial: RM
2. Anything I say, can be used against me in court. Initial: RM
3. That I have the right to have an attorney present at any time during questioning. Initial: RM
4. That if I cannot afford an attorney, I can apply to the court to have on appointed for me, at no cost to me. Initial: RM
5. That if I decide to talk to an officer without an attorney present, I may stop at any time, and request an attorney be present for further questioning. Initial: RM

I have read and initialed each line of my rights listed above, and I understand what my rights are.

Date: [illegible] Time: 4:56 PM Signed: Robert Miller

**WAIVER OF RIGHTS**

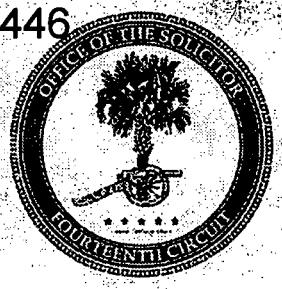
I am willing to make a statement and answer questions. I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while I make statements and answer questions. I have the right to terminate any interview, and stop answering questions at any time hereafter. I can request to have a lawyer present with me before I continue answering any more questions or making any more statements, if I choose to do so. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed: Robert Miller

Witness: [illegible]

Witness: _____

EXHIBIT
532
PERRAULT 800-631-6989




*State of South Carolina*
OFFICE OF THE SOLICITOR
FOURTEENTH JUDICIAL CIRCUIT
CAREER CRIMINAL INVESTIGATIVE UNIT

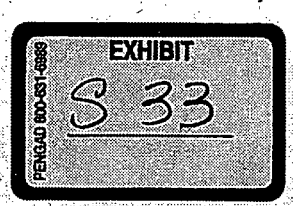
# State Vs. Robert Miller

## Audio Interview Transcription

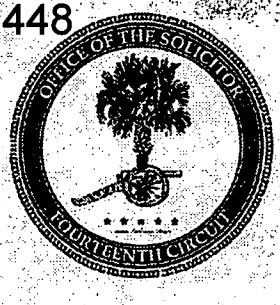
Present in the interview:

S/A Richard Johnson
S/A Natasha Merrell
Williams
Ms. Sabb
Robert Miller

Unknown: All right… sit right there.
Johnson: You straight Ms. (inaudible). You straight?
Unknown: I'm good.
Johnson: Rob… (inaudible)
Miller: (inaudible)
Johnson: Oh.. You alright? I'm Agent Johnson, I'm with SLED. You know what SLED is? What are we? What does SLED do?
Miller: Umm… I think (inaudible)
Johnson: Yeah that's part of it, but we also investigate all types of crimes. We are the state police essentially, that's what we are. We are the state police. Ok… and we need to talk to you about some things. And we have Ms. Sabb in, you know Ms. Sabb right?
Miller: Yes sir.
Johnson: And what relation Ms. Sabb is to you?
Miller: She like a mother to me.
Johnson: Like a mother to you…
Miller: Yes sir.
Johnson: Alright… umm… where is your mom?
Miller: She's at the house.
Johnson: Okay… alright… This is Ms. Umm… Agent Merrell. Alright. You know the other officers in here right?
Miller: Umm… I know 'em… (inaudible)
Johnson: What's your name?
Williams: Williams.
Johnson. Okay. We wanna talk to you and we have Ms. Sabb in here… You okay with talking to us?
Miller: Yes sir.
Johnson: Alright and your mom is not here. You're okay with that?
Miller: Yes sir.
Johnson: How far… What grade you in?
Miller: Eighth...



Johnson: Eighth… You can read and write?
Miller: Yes sir.
Johnson: Alright… umm… Let me get something… I want you to read it for me right quick…If you don't mind. Anything… A piece of paper.
Williams: (inaudible) get this certificate…
Johnson: Let me see what's that…
Williams: It's a certificate.
Johnson: Read what's on this certificate for me if you don't mind.
Miller: Umm…
Johnson: Read it out loud.
Miller: Appreciation to CPL Jamie Singleton for outstanding dedication, commitment, and contri…
Johnson: Contributions.
Miller: Contributions and your work for the Fairfax Police Department present, present on December 31st, 2013… (inaudible)
Johnson: All right. That's fine. Make me a copy of that. And the reason why we did that is to (inaudible) understand right from wrong. You understand whatever questions we are asking you and that…
(BREAK)
…Ms. Sabb you mind if we talk with him just, just the two of us…
Ms. Sabb: (Inaudible)
Johnson: You're okay if we talk to him…
Miller: (inaudible) talk to one person…
Johnson: Huh?
Miller: One person?
Johnson: Well that's fine if you want to… Who, which one you want to talk to?
Miller: (inaudible)
Johnson: Okay that's fine, you don't like males? I intimidate you?
Miller: I don't (inaudible)
Johnson: Alright well that's fine with me 'bo. I feel you.
(People talking in the background)
Johnson: You need to use the restroom or something man?
Miller: No.
Johnson: Alright, umm… You good with just what we have done? We don't need any…umm… I guess do anything else, just, talk with him, just, (inaudible) talk is fine…
Merrell: Alright.
Johnson: And I have already made it clear with you, it's up to you if you wanna talk to us now… You said you okay.. Isn't that right?
Miller: Yes sir.
Johnson: Okay.
Merrell: Alright Robert. Let me get some information from you. What is your date of birth?
Miller: December the 30th, 1998.
Merrell: Do you know your social security number?

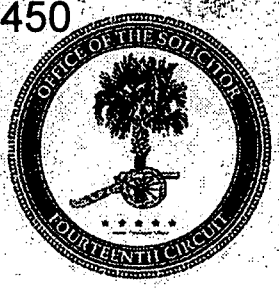





Miller: No ma'am (inaudible)
Merrell: Okay. What's your address?
Miller: I'm on Jackson St.
Merrell: Jackson St.?
Miller: It's a white house. Do you know where D&G at?
Merrell: Nah I'm not from here.
Miller: Oh. Yeah. It's umm, out in, it's on Jackson St. If you, if you, if you going to D&G, if you going to Allendale…
Merrell: Umm Hmm.
Miller: You first hit that right… just keep going straight, it will be that second street called Jackson St.
Merrell: Uhh huh.
Miller: That right, right there and you go down. It's going to be uhh a little white house, it's going to be a fence, an abandoned house on the other side… Just keep going straight, you gonna pass a house, you gonna pass a house, house close to the umm.. real real close… Matter of fact, a trailer right here on the right side when you uhh, a big trailer and a white trailer right there with a grey, green van, it will be parked with a picnic table on the side.
Merrell: Umm Hmm.
Miller: Hit that right, keep going, keep going down and you're gonna see a house… a fence around it on the right side… a big ole yard.. a black truck.
Merrell: Umm Hmm.
Miller: Where you see a lot of bushes and stuff at… Cross the street it's going to be another house who got a fence around it, but nobody been living there, but next to that house is where I stay at.
Merrell: Oh okay.
Miller: With a red bench on the porch.
Merrell: Next to the abandoned house, with the fence around it?
Miller: Yes ma'am.
Merrell: Alright. And you said that's Allendale?
Miller: Allendale, South Carolina.
Merrell: What's the zip, you know the zip?
Miller: 29810.

(BREAK)
Merrell: So you have a better connection with…
(11:49)
Miller: (Tiff)
Merrell: That's your mother… That's why you said she is like a mother figure to you. Okay. So when was the last time you were in Allendale?
Miller: Friday.
Merrell: Friday? This past Friday?
Miller: This last week, was Friday, last week.
Merrell: Today is Tuesday.

Miller: Last week.
Merrell: Last week?
Miller: Cause the police had came to my house and asked me did I saw Gabriel.
Merrell: You remember what day that was?
Miller: Day, day? I say it was like around the afternoon, something like that… Something around… It was hot but, it wasn't that much hot, but it looked like it was about to cool down.
Merrell: Umm Hmm.
Miller: I'd say around… got out of school, got out of school (inaudible) I'd say they came around there 3 or 4, 4 or 5, something like that. I know, I know, it was some down there, but it was still more heated then. … I didn't know what time it was… I'm just guessing the time. It was hot, but it wasn't that hot. It was around about 5 or 4.
Merrell: But do you remember what day it was?
Miller: Friday.
Merrell: Friday?
Miller: Yes ma'am.
Merrell: And you said the police came to your house looking for Gabriel?
(13:02)
Miller: Yes ma'am.
Merrell: Who is Gabriel?
Miller: Tasha's son.
Merrell: Was he there?
Miller: No ma'am.
Merrell: Did they say why they were looking for him?
Miller: (Inaudible) Only thing they said. It was Manor and a white police. I don't know the white police name. I know Manor for sure, so. (Inaudible) he said Rob, where umm, you know where Gabriel at? I said I don't know no Gabriel… I don't really know him, but I know his mom. Cause I ain't, now his momma I know cause… Well my street, she used to live across the street from me, but I ain't never saw him. I saw his momma, but I ain't never saw him. Right after that he said, he said, who are you again, who are you again? I said I'm Rob. He said, he said where your brother at, Kashawn? I ain't said nothing, I just kept quiet. (inaudible) unlocked the door… I said huh? He said have you seen Gabriel? I said no, I ain't seen no Gabriel. He said alright when you do, we looking for him man. Aight, aight I went in the house (inaudible) on the porch.
Merrell: Umm Hmm.
(14:43)
Miller: Then after that, that night I told (inaudible) I was about to walk to Fairfax, but Sonya came home.
Merrell: Sonya?
Miller: Sonya.
Merrell: Sonya. Who is Sonya?
Miller: Sonya Smith. Robert Miller, my, my father's wife. Not my father, my daddy's wife.
Merrell: Okay.
Miller: She ain't my real mom.
Merrell: So it's your step mother?

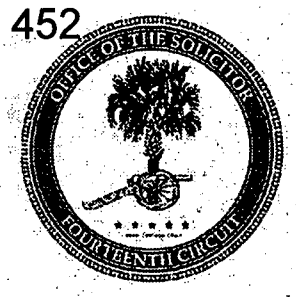





Miller: Yes ma'am.
Merrell: She came.
Miller: Yeah, no she saw me walking in the street, walking on the side walk... Her car going this way... (inaudible) I'm about to walk to Fairfax. Cause she was at the white house. (Inaudible) staying behind (inaudible) I stay on Jackson St. so I'm about to walk over there. Well, halfway I was on the sidewalk, I saw her, she turned around (inaudible). It was just her, her daughter, and my niece in the car and my Daddy's... (inaudible) my nieces until Sunday. Cause my sister there, she hold him, can he hold her til Sunday. Three days, three days that's it. So after that, I got, I ain't got in the car. I had said Sonya, I said, one favor, will you please take me to Fairfax? She said why you always wanting to go to Fairfax? I said cause I ain't really got nothing to do around here, (inaudible) see me down here. I mean seriously.
Merrell: Umm Hmm.
Miller: I don't even be coming outside like that. Only thing, only thing somebody, only time somebody coming to see me... I live in Allendale right now. The only time somebody come to see me (inaudible) going to the library, two o'clock leaving, not going to school... Seven... If I'm going to school, in uhh, alternative school, sometimes I walk to alternative school... 3:02 that's what time I get in there.
Merrell: Umm hmm.
Miller: I'm going straight to the library, the library closes around four six... Cause they got two different... It's a library but, but it's like, (inaudible) people that like go to college, yeah.
Merrell: Okay.
Miller: Yeah. They got computers in there for, you just write your name and you get a computer in there...
Merrell: Alright.
Miller: Other libraries you got to get a card... I don't got no card, so I just go to Denmark and they close around six.
Merrell: Umm hmm.
Miller: That library close around four, I just go, I just go around there til about six and I go back home.
Merrell: Ok. Do you know why we are here?
(BREAK)

Miller: It's about (inaudible) the dude that got killed?
Merrell: Umm hmm.
Miller: (Inaudible)
Merrell: I'm going to let you talk.
Miller: I wasn't there. That's all that happened. That's all I know. I was in Fairfax, I was in Fairfax that whole week until Friday when I got off that bus. You can ask Gail, the one that stay in that trailer.
Merrell: Umm hmm.
Miller: That trailer down the road, that... we got...at that trailer, at that trailer... her name, she drive, she drives a school bus.
(17:24)

Merrell: Okay, Rob, I'm asking you to… I'm trying to help you out, okay?
Miller: Yes ma'am.
Merrell: And I want you to be completely honest with me. I'm being completely honest with you.
Miller: Yes ma'am.
Merrell: Cause you told me you were in Allendale last week.
Miller: Friday.
Merrell: Friday?
Miller: That's when I got dropped off because I have been going to summer school in Fairfax the whole last week… You could ask the school… everybody… They dropped me off right in Fairfax.
Merrell: So you didn't get a ride from Allendale on Tuesday night back to Fairfax?
Miller: Tuesday night?
Merrell: Umm hmm.
Miller: Tuesday, last Tuesday?
Merrell: Umm hmm.
Miller: I was… I was in uhh Tuesday… I went to a hearing.
Merrell: You had a hearing?
(18:27)
Miller: Uhh at alternative school and I went to my hearing at 2.
Merrell: Umm hmm.
Miller: I remember I went to a hearing.
Merrell: Where was your hearing at?
Miller: Alternative school.
Merrell: Where is the alternative school?
Miller: Adult ed…
Merrell: Is that in Fairfax or Allendale?
Miller: That's in Allendale.
Merrell: That's in Allendale.
Miller: Yes ma'am.
Merrell: Okay. So Tuesday you said you had an alternative hearing?
Miller: Hearing. Cause I couldn't go to school until I go to the hearing. (Inaudible) me and my buddy had a hearing together.
Merrell: Umm hmm.
Miller: So all of the (inaudible) had a hearing that day.
Merrell: What time was that?
Miller: I'd say around, we came, the hearing started at 10 o'clock and we came about 9…
Merrell: In the morning?
Miller: 9:30-9:40 something, cause it started at 10.
Merrell: Okay. You said that was at the alternative school?
Miller: Yeah, adult ed, yes ma'am.
Merrell: Adult ed.
Miller: It's, it's called adult ed but, alternative school, that's adult ed now.






Merrell: Okay. So take me through your day on that day.
Miller: Took me back (inaudible).
Merrell: Leading with what time you got done...
Miller: With the hearing?
Merrell: Umm hmm.
(19:46)
Miller: Oh I ain't know (inaudible).
Merrell: Okay.
Miller: And he tried (inaudible). Yeah he gave me twenty dollars after we came from Hardee's... He gave me twenty dollars cause he, supposed to be (inaudible), last week or week before.
Merrell: Umm hmm.
Miller: I was in Fairfax for, for weeks... I was in Fairfax for weeks. I had (inaudible) been in Fairfax. He was supposed to give me my money, but I was never there to get it. So he gave me my twenty dollars that Tuesday... he came from Hardee's cause he bought me and my brother, and my sister... My sister was at the house with the baby so he bought her something to eat... Gave her ten dollars, gave my brother ten and gave me twenty. At twenty dollars I was had twenty dollars in my pocket just sitting there all day. After that, I caught a ride, trying to think... cause I had twenty dollars, that twenty dollars... Well you already know about that twenty dollars.
Merrell: (Laughing)
Miller: Yeah I got twenty dollars there... (inaudible) Fairfax...
Merrell: How'd you get back to Fairfax?
Miller: That's what I'm trying to think right now. If I did (inaudible)... I don't even (inaudible)... I don't... I can't really say who took me to Fairfax... I know that Wednesday I went to school from Fairfax.
Merrell: Okay.
Miller: So y'all just wanted to talk to me, that's it?
Merrell: Yeah I just wanna talk to you.
(22:02)
Miller: All this, all this right here crazy... I already know, you done heard me say, I been hearing things too... I was in school and I was home with my mom...
Merrell: Umm hmm.
Miller: She told me a lot of things.
Merrell: What have you been hearing?
Miller: I been hearing that if SLED catch me they gonna have the gun pointed on me cause I really do... I say, who did I murder and why would they do that for... that, that, that's what I'm hearing... Only thing they gonna do is take me off and slam and have gun points on me... That's right here on the bible. Somebody, somebody, somebody that I know, uhh, a grown person that has kids already, that, that know somebody in the force told me that.
Merrell: Has it happened?
Miller: No ma'am.
Merrell: And who were you talking to?
Miller: SLED.

Merrell: So what does that tell you?
Miller: There's too many stories I done heard.
Merrell: So what are some of the other stories that you heard?
Miller: Other stories say… other stories telling me, some people came to me, telling me that they had described everything what I said I did, they say it was old people… Then they said I had kicked in the door… They said I hold the person and after that those three are the one that I just told you… Those are the only four stories I heard. They say I had kicked the door open… One person said that I didn't kick the door open… I ain't touch the dude or nothing… The other person say I was holding the dude, like, like while he was getting beat up and umm (inaudible). The third person told me, the third person told me, shoot, the true story. I don't really know what to believe. I just heard three stories, four stories. I don't really even know what to believe… That's what I'm hearing… I heard this… I heard this is last night… Now last night is the one they said about they catch me they gonna come shoot me down. I heard that last night. The other three I was in school when I heard that.
Merrell: Umm hmm.
Miller: Cause some kids in Allendale, cause some of the kids that go to Allendale… They told me about it.
Merrell: So what is the truth?
Miller: I had nothing to do with it.
Merrell: That's the truth?
Miller: Yes ma'am.
Merrell: You sure?
Miller: Yes ma'am I had nothing to do with it I wasn't in… I was in Allendale but I was not in Allendale that long.
Merrell: But you said you don't know how you got back to Fairfax…
Miller: Yeah, I was it (inaudible) early that morning. Gail picked me up from Fairfax and you got to go ask her… She picked me up Wednesday morning at 7 o'clock from Fairfax to take me to school cause I went to school two times last week.
(25:07)
Merrell: I know but on Tuesday you said you didn't know how you got back here
Miller: Yeah I don't really know, I forgot, I feel like I was just… (inaudible)
Merrell: so from the time that… your hearing till Wednesday, you don't know what you did for the rest of the evening?
(BREAK)
Miller: But Wednesday morning 7 o'clock Gail, Gail in the trailer, she came and picked me and Sam up cause I was going to summer school. She pick us up from there and took us to school and she asked me "what you doing here Robert?" I was like "sitting out here" she was like "who you down here with?" and I was like "My Brother", Sams My brother.
Merrell: Sam is your brother?
Miller: (Inaudibile)
Merrell: And you said that was Friday when the police came to the house looking for Gabriel?
Miller: Yes ma'am.
Merrell: And you.. Who is Gabriel?

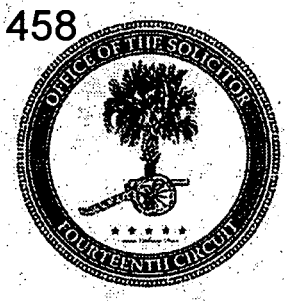
Miller: I don't really… I don't know nothing anything about him, to tell you the truth, nothing… The police, the police the main thing that know everything about him… Gabriel I might see his face, but other than that, streets wise? I don't know him, I know everybody in the streets but not him. I don't even mess with him. I ain't never been with him a day in my life, ask my mom that she aint.. nobody never seen me walking with him.
Merrell: Well, let me ask you this, why would the police come to your house looking for Gabriel if y'all don't ever…
Miller: Really…really they want my brother …
Stopped at 27:25
Miller: (Inaudible). They asked, they say, you seen Gabriel? I say, I don't know Gabriel. And they say, who is you again, and I say (inaudible) … I didn't say nothing. They really don't want me.They really want my brother. (Inaudible) I don't really know no Gabriel. That's the only thing they asked me. They didn't ask me nothing else.
Merrell: So does your brother hang with Gabriel?
Miller: Nah, um, I don't really know. Only (inaudible) the house.
Merrell: So you don't even hang with your brother?
Miller: My family, we cool. I love him no matter what, but otherwise when we leave the house, I'm the only one in there. I don't know where he go , what he do. Now, my momma, I know where she go. But, my sister, my brother? They be all over the county. If they don't be in Fairfax, they'd be all in Barnwell. If they don't be in Barnwell, they'd be right to to Augusa, n ot Augusta, but Hampton. That's all I know.
Merrell: Anything else you want to add or say?
Miller: No, ma'am.
(BREAK)
Merrell: Hang tight for me, please.
Miller: Ma'am?
Merrell: I said just hang tight for me, please, sir.
(Richard Johnson enters)
(BREAK)
Johnson: Now, I want you to listen to me carefully. What's that in your pocket?
Miller: Candy
Johnson: Oh okay, make sure there wasn't no gun in there.
Miller: Ah nah.
Johnson: Um, what we trying to get at? Here's the thing: You're going to jail.
Miller: Today?
Johnson: Yea, and there ain't anything we can do to stop it.
Miller: I know.
Johnson: Here's what we want to try and do is help you on the far end. Why? When you're young … Truth, you're the very first one we're talking to and that's why you getting that break. Cause in South Carolina, the hand of one is the hand of all. It doesn't matter which one of you did what, you were there. That makes you equal. Oh, if we charge you with assault and battery, everybody else is going to get charged with assault and battery.
Miller: Yes, sir.… If they charge me with murder … everybody is going to get murder.

Johnson: Everybody is getting the same amount time except for the one that is cooperating.
Johnson: I'm lazy.
Miller: So what will they ....
Johnson. Wait a minute.
Miller: Yes, sir.
Johnson: I'm lazy. I'm ready to go home. Alright? There's this thing that you don't know. That while you were here, we already got what we need. You ever watch CSI?
Miller: How many years I got?
Johnson: I don't know. I don't know. You know what an ass is? You know what an ass is? That's a lot of time. You ever hear the prosecutor say an ass of time?
Miller: So what can I do to get me out of this situation?
Johnson: You ain't getting out of this, but what you can do is minimize the kind of time. Look at it this way, alright, I don't know what kind of time you'll get. I can't tell you that. I'm not the judge or the lawyer. But here's what I'm getting at, I'm just throwing some hypothetical numbers out. Let's say if you were looking at 30 years and because you talked, let's say you tell the truth and come clean. One second. You come clean and you lay it out on the table, and you cooperate? What we do is, is let the prosecutor know. You know who the prosecutor is?
Miller: No, sir.
Johnson: The prosecutor is the one that...
Miller: Go against them.
Johnson: Yea, that's the one that's going to go up against you. That's the one who is going to try and send you prison.
Miller: Go by me?
Johnson: Yea.
Miller: Alright, alright. I'll tell you. I'll be honest with you. I ain't really wanting to do this. I ain't really wanting to do it. Tell you the truth, I was sitting on the porch (inaudible) and he came by me. He came at me and told me, he told me about the situation.
Johnson: Who's he?
Miller: Gabriel! The one, the one, the one, it's the, it's the main boy! The main one. He's the main one!
Johnson: Okay.
Miller. I ain't want to do none of this man. All I wanted to do was go to Fairfax cause I ain't want to stay in Allendale. I'm trying to tell y'all I love Fairfax... I love Tiff... I ain't want to stay in Allendale, man.
Johnson: Okay.
Miller: I knocked on the door and I opened it and (inaudible) after that and tied him down...
Johnson: Who is he?
Miller: Gabriel... He ain't (inaudible)
Johnson: Name names... Alright who is he... what else?
Miller: He who... That's the only... I just... I just wanna (inaudible)
Johnson: Alright, so you say Gabriel tie him down?
Miller: I say (inaudible)
Johnson: No, no that's the wrong, that's the wrong answer, wrong...

Miller: No (inaudible)
Johnson: Rob, look at me bo, look at me, look at me Rob... Shit happens... You said you didn't wanna be there and from what we was told it wasn't supposed to go down like that. Y'all was just doing a lick. Shit happens. Now the thing to do is let's see how we can minimize it. I told you...
Miller: I don't...
Johnson: I told you up front...
Miller: I don't... but listen...
Johnson: (Inaudible talking over each other) going to jail...
Miller: I don't really care... minimize or not... I'm still getting locked up... Ain't nothing changed about that...
Johnson: Yes it is.
Miller: No, I'm still getting locked up ain't nothing going to change about that... What's changed about it, tell me one thing that's changed about it?
Johnson: The length of time that you going to be looking at...
Miller: (Inaudible) It still don't mean nothing, I'm still going to be doing the time. I'm still doing the time man it's... just please stop, just please stop with me... please, just please...
Johnson: Well bo like I told you from the beginning...
Miller: I said... I been honest with you... (inaudible)
Johnson: Listen, it's like I told you from the beginning, it's up to you to talk to us. You don't have to talk to us... If you wanna stop at any time we can stop... It's up to you. What do you wanna do?
Miller: I just wanna go home man.
Johnson: Huh?
Miller: I just wanna go home man.
Johnson: Well you ain't going home, but what you wanna do?
Miller: I'm being honest with y'all... I told you...
Johnson: I understand that man...
Miller: I told you what I do...
Johnson: No, the only thing you told us was that you didn't want to be there and Gabriel planned... Gabriel did this, Gabriel did that... and... but you didn't tell us details.
Miller: I was just... told you... I knocked on the door, I went in and I hit him... And I hold him down.
Johnson: I didn't hear that... You say that?
Miller: I say that out of my mouth.
Johnson: (Inaudible) I'm sorry I didn't hear that, forgive me. I apologize...
Miller: Well he, he (inaudible) wanted to go searching the house... I know he (inaudible)... He was the main thing searching... (inaudible) I was just posted up the whole time.
Johnson: Yep. That's right.
Miller: (Inaudible)
Johnson: That's right... You stayed in the living room with him, with, with the old man.
Miller: Watching him.
Johnson: Watching him, that's right...

Miller: They kept coming back…
Johnson: Who put the bag over his head?
Miller: I did.
Johnson: Thank you. You did. Alright, who took the wallet out of his, umm, pocket?
Miller: I did.
Johnson: And you know your prints and stuff will be on that wallet…
Miller: (Inaudible)
Johnson: Thank you. That's why I asked you if you have ever seen CSI…
Miller: (Inaudible)
Johnson: Alright, so… All we, all we need is a clear picture from you, so when I talk with the Solicitor, this is what Robert told us. He's hurt… I can tell he is hurt about it… Whatever you can do to help him, you help him… But like I told you from the beginning, ain't nothing we can do about stopping jail time…
Miller: No that's what I said, just lock me up… I, I only got two choices in my life right now, either go to jail or die…
Johnson: Well…
Miller: I just wanna, I just wanna, I just wanna leave here… I'm done talking… Whenever y'all ready to lock me up, I'm ready… Let's go, please… I'm ready…
Johnson: Okay, alright… You, you through talking with us?
Miller: I already told you… I told y'all the details of what happened… I admitted I did it…
Johnson: I just wanted to make sure, I (inaudible)… You ain't wanna talk no more.
Miller: I ain't wanna talk no more. I say what I have to say, I just ready to go man.
Johnson: Alright, you um, can you do a Memorandum of Interview of what he said? Hang tight man.
(BREAK)

END OF INTERVIEW




*State of South Carolina*
OFFICE OF THE SOLICITOR
FOURTEENTH JUDICIAL CIRCUIT
CAREER CRIMINAL INVESTIGATIVE UNIT

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE FAMILY COURT OF THE FOURTEENTH JUDICIAL CIRCUIT |
| COUNTY OF ALLENDALE | ) | |
| IN THE INTEREST OF: Robert Miller, III | ) | ORDER OF WAIVER TO GENERAL SESSIONS |
| DOB: 12-30-98 | ) | 2014-JU-03-21, 22 |

FILED FOR RECORD
2015 MAR 26 AM 11:48
ELAINE SABB
CLERK OF COURT
ALLENDALE COUNTY, SC

This matter was before the Court on March 24, 2014, on a motion for waiver to the Court of General Sessions on the above-referenced petitions.

Present were Duffie Stone, Solicitor, Shawn Thornton, Deputy Solicitor, Christine Grefe, Assistant Solicitor; Lewis Grant of the Department of Juvenile Justice; Natasha Merrill, SLED, Respondent; his father, Robert Miller, II, and Respondent's counsel, Stephanie Smart Gittings and Kimberly Jordan.

Based on the argument presented by the State and Defense, the pre-waiver evaluation conducted by the Department of Juvenile Justice, as well as other evidence, the Court finds and concludes:

1. The Defendant Robert Miller, III was born on December 30, 1998, and is sixteen (16) years old.
2. The Defendant has been charged with Murder and Attempted Murder.
3. The alleged offenses occurred in Allendale County on or about June 17, 2014, when the Defendant was fifteen (15) years old.

(The following findings are based on the criteria listed by the United States Supreme Court in Kent v. United States, 383 US 541 (1966).)

4. There is probable cause to believe that the Defendant committed the crimes for which he has been charged.

5. The seriousness of the offenses is against persons and is of such gravity as to require waiver for the protection of the community.

6. The alleged offenses are of a violent, aggressive, and willful nature.

7. There is sufficient merit to warrant the Grand Jury to return a true bill on the charges.

8. The crimes for which the Defendant is charged are of a serious nature and if found guilty, would suggest he is capable of acting without regard for others.

9. It is the opinion of the pre-waiver evaluation team that it is not likely that the Defendant could be rehabilitated.

Conclusions of Law

1. The court has jurisdiction over this matter pursuant to South Carolina Code of Laws 63-19-1210.

2. Based upon the factors outlined above, the Court concludes that there is little likelihood that Robert Miller, III can be rehabilitated in the Juvenile Justice System.

3. It is in the best interest of Robert Miller, III that he be waived to the Court of General Sessions for proceedings on the charges alleged in petition numbers 2014-JU-03-21, 22.

IT IS THEREFORE ORDERED THAT jurisdiction of this matter shall be transferred to the Court of General Sessions.

IT IS FURTHER ORDERED THAT bail be denied at this time and that bail may be reconsidered by a Circuit Court Judge at the next term of General Sessions Court in Allendale County.

AND IT IS SO ORDERED

Gerald Smoak, Family Court Judge

Allendale, South Carolina

March 24, 2015

STATE OF SOUTH CAROLINA )
COUNTY OF ALLENDALE )

IN THE COURT OF GENERAL SESSIONS
THE FOURTEENTH JUDICIAL CIRCUIT

State of South Carolina,
Plaintiff,
vs.
Robert Miller,
Defendant.

Case No. ) 2015-GS-03-0050

**MOTION TO PRECLUDE LIFE WITHOUT PAROLE AS A PUNISHMENT**

FILED FOR RECORD
2017 JUN -5 PM 12:46
ELAINE SABB
CLERK OF COURT
ALLENDALE COUNTY

**THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE 1 § 15 OF THE SOUTH CAROLINA CONSTITUTION PRECLUDE LIFE WITHOUT PAROLE AS A PUNISHMENT FOR JUVENILE OFFENDERS.**

## I. Introduction.

Over the last decade, the Supreme Court of the United States has dramatically altered the legal framework governing the sentencing of juvenile offenders. In *Roper v. Simmons*, 543 U.S. 551 (2005), the Court held that the Eighth Amendment's prohibition against cruel and unusual punishment prevented states from sentencing juveniles to death. Next, in *Graham v. Florida*, 560 U.S. 48 (2009), the Court went a step further, holding that sentencing juvenile offenders to life imprisonment without the possibility of parole for non-homicide offenses was also barred by the Cruel and Unusual Punishment Clause. In 2012, the Court determined in *Miller v. Alabama*, 567 U.S. ___, 132 S.Ct. 2455 (2012), that even in homicide cases, states are precluded from imposing mandatory life without parole sentences on juvenile offenders. And most recently, in *Montgomery v. Louisiana*, 577 U.S. ___, 136 S.Ct. 718 (2016), the Court held *Miller* to be "a new substantive rule that, under the Constitution, must be retroactive" and effectively ordered new sentencing proceedings for hundreds of individuals who had been sentenced to mandatory

life without parole as juveniles. All four cases were grounded in one core Eighth Amendment principle: "children are constitutionally different from adults for purposes of sentencing." *Miller*, at 2464.

In *Aiken v. Byars*, 410 S.C. 534, 542–43, 765 S.E.2d 572, 576 (2014), the South Carolina Supreme Court embraced the reasoning of the United States Supreme Court that "youth has constitutional significance" and "must be afforded adequate weight in sentencing." After examining the sentencing hearings in cases where juveniles were sentenced to life without parole in this State in light of these decisions, the South Carolina Supreme Court concluded that the Eighth Amendment required that they be resentenced. The key defect in South Carolina's sentencing practices noted in *Aiken* was the failure to "fully explore the impact of the defendant's juvenility on the sentence rendered." *Id.* at 543. Defendant, one of the individuals whose sentence was vacated by the South Carolina Supreme Court in *Aiken*, is now before this Court for resentencing. He now moves that this Court remove life without parole as a sentencing option.

## II. Juvenile Offenders' Criminal Culpability is Diminished in Ways that Make Life Without Parole Excessive and Cruel and Unusual.

A closer examination of the Court's reasoning in *Miller* is of particular importance to the issues raised in this section of the motion: whether a juvenile offender can ever be sentenced to life imprisonment without the possibility of parole.[1] The Court first observed that the question presented implicated "two strands of precedent reflecting our concern with proportionate punishment." *Miller*, 132 S.Ct. at 2463. The first set of cases adopted "categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the

[1] The Court explicitly reserved judgment on whether the Eighth Amendment categorically prohibits sentencing juveniles to life imprisonment without parole regardless of the offense or the procedures used as this question was not presented to them. *Miller*, 132 S.Ct. at 2469.

severity of the penalty." *Id.* (citing *Kennedy v. Louisiana*, 554 U.S. 407 (2008) (holding that the death penalty is disproportionate for non-homicide crimes committed by adults), and *Atkins v. Virginia*, 536 U.S. 304 (2002) (holding that the death penalty may not be imposed upon persons with mental retardation)). After reaffirming that *Graham* "likened life without parole for juveniles to the death penalty itself," the Court turned to the second strand of relevant cases: those holding that mandatory imposition of capital punishment violates the Eighth Amendment. *Id.* at 2463–64 (citing *Woodson v. North Carolina*, 428 U.S. 280 (1976), and *Lockett v. Ohio*, 438 U.S. 586 (1978)). The Court then concluded that "the confluence of these two lines of precedent leads to the conclusion that mandatory life-without-parole sentences for juveniles violate the Eighth Amendment." *Id.* at 2464.

The Court in *Miller* explained that all its recent holdings regarding juveniles hinged on the now established constitutional maxim that juveniles have both "diminished culpability and greater prospects for reform" and are thus "'less deserving of the most severe punishments.'" *Id.* at 2464 (quoting *Graham*, 560 U.S. at 68). The lessened culpability and possibility of rehabilitation are grounded in three constitutionally significant differences between juveniles and adults:

- Children are less mature and developed than adults, leading to "recklessness, impulsivity, and heedless risk-taking," *id.*;
- Children are more "vulnerable . . . to negative influences and outside pressures," and have "limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings," *id.* (internal quotations omitted);
- Children's actions are "less likely to be evidence of irretrievable depravity" because "a child's character is not as well formed as an adult's" and "his traits are less fixed," *id.* (internal quotations omitted).

These differences, *Miller* noted, result in part from a consistently growing body of social science and neuroscience research conclusively establishing that: a) only a small percentage of adolescents who commit crimes, even serious crimes, "'develop entrenched patterns of problem behavior,'" *id.* at 2464 (quoting *Roper*, 543 U.S. at 570), and, b) there are fundamental differences between the brains of juveniles and adults in areas "'involved in behavior control.'" *Id.* at 2464–65 (quoting *Graham*, 560 U.S. at 68). Because the brains of juveniles are not "fully mature in regions and systems related to higher executive functions such as impulse control, planning andrisk avoidance," juveniles have a constitutionally different level of moral blameworthiness and, for that reason, the penological justifications for any criminal punishment—deterrence and retribution—are inconsistent with life without parole sentences. *Id.* at 2464 n.5 (quoting Brief of the American Psychological Association et al.). The same characteristics that make this category of offenders less culpable necessarily mean that "'an irrevocable judgment about a [juvenile] offender's value and place in society,' [is] at odds with a child's capacity for change."[2] *Id* at 2465.

*Miller* reaffirmed what the Court had previously established in *Graham* and *Roper*: "Children are constitutionally different from adults for the purposes of sentencing." *Id.* at 2464. This immutable constitutional fact led the Court in *Roper* and *Graham* to declare that juveniles may not be sentenced to death regardless of the circumstances of the crime, and to similarly ban

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[2] Laurence Steinberg, *A Behavioral Scientist Looks at the Science of Adolescent Brain Development*, 72 BRAIN AND COGNITION 160, 162 (2010) ("From this perspective, middle adolescence (roughly 14–17) should be a period of especially heightened vulnerability to risky behavior, because sensation-seeking is high and self-regulation is still immature. And, in fact, many risk behaviors follow this pattern, including unprotected sex, criminal behavior, attempted suicide, and reckless driving."); Sarah-Jayne Blakemore, *Imaging Brain Development: The Adolescent Brain*, 61 NEUROIMAGE 397 ("The plentiful data that consistently paint a picture of the adolescent brain as relatively immature might speak against the relatively young age of criminal responsibility and harsh sentences for adolescents.").

life without parole for non-homicide offenses, regardless of the underlying facts of the case. In *Miller*, the Court simply took the next logical step and held that the Eighth Amendment also bars mandatory life without parole sentences for homicides committed by juveniles.

For these reasons, the Court concluded that a sentence of life without parole, when imposed on a teenager as compared to an adult is the same "in name only." *Id.* at 2466. From a constitutional perspective, it is akin to the death penalty. *Id.* at 2466 ("[W]e viewed this ultimate penalty for juveniles as akin to the death penalty, we treated it similarly to that most severe punishment."). Thus, the Court held that the same constitutional protections afforded adults in capital cases must be provided in any case where a juvenile faces a possible sentence of life without parole. *Id.* at 2468 ("[A] similar rule [to capital cases] should apply when a juvenile confronts a sentence of life (and death) in prison"). The Eighth Amendment, in fact, demands "individualized sentencing . . . analogous to [that required in] capital punishment [cases].'" *Id.* It was both the fact that the sentences were mandatory as well as the absence of a process for allowing a juvenile to present the full range of mitigating evidence at a meaningful sentencing hearing similar to the penalty phase of a capital trial which rendered the life without parole sentences imposed upon the petitioners constitutionally infirm. *Id.*

Significantly, "[n]othing the Court said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific." *Id.* at 2465. Those characteristics are "evident in the same way, and to the same degree" in juveniles who commit homicide as they are in those who commit armed robbery, kidnapping or any other offense. *Id.* at 2465. In short, the constitutional difference between juvenile and adult offenders does not turn in any respect on the nature of the crime, and any purported distinction on that basis finds no support in the Court's recent decisions.

The Court's recent holding in *Montgomery v. Louisiana* emphasized how uncommon a juvenile life without parole sentence should be. The Court stated that is only "the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified." *Montgomery*, 136 S.Ct. at 733. However, as the Court has recognized, there is great difficulty in distinguishing between the "unfortunate" and the truly culpable offender: "To justify life without parole on the assumption that the juvenile offender forever will be a danger to society requires the sentencer to make a judgment that the juvenile is incorrigible. The characteristics of juveniles make that judgment questionable." *Graham*, 560 U.S. at 72–73. Elaborating on the cruelty of imposing a life without parole sentence on a juvenile, the Court noted "the great difficulty . . . of distinguishing at this early age between 'the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.'" *Miller*, 132 S.Ct. at 2469 (quoting *Roper*, 543 U.S. at 573); *see also Graham*, 560 U.S. at 68–69. Rather, "incorrigibility is inconsistent with youth." *Miller*, 132 S.Ct. at 2465 (internal quotation marks omitted).[3] Indeed, it is difficult

[3] Many individuals who committed serious crimes as juveniles have gone on to lead very productive lives. Wilbert Rideau, for example, was convicted of committing murder as a teenager and sentenced to death. *See Rideau v. Louisiana*, 373 U.S. 726 (1963). During his incarceration, he began writing for the prison newspaper and received numerous awards for his writing. Sometimes referred to as "the most rehabilitated man in America," (Life Magazine 1993), he was eventually released after his conviction was overturned by the federal courts. Post-release, he has authored several award-winning books. Erwin James, From Death Row Inmate to Acclaimed Author, THE GUARDIAN, (May 31, 2011), http://www.theguardian.com/society/2011/may/31/wilbert-rideau-rehabilitate-prisoners. Alan Simpson was convicted when he was seventeen years old of destroying government property. Facing years in prison, the judge instead decided to impose a sentence of two years of probation. With the help of a probation officer, Simpson turned his life around. He eventually went to college, graduated from law school, and after serving in the Wyoming state legislature was elected to the United State Senate. Brief of Former Juvenile Offenders Charles S. Dutton, Former Sen. Alan K. Simpson, R. Dwayne Betts, Luis Rodriguez, Terry K. Ray, T.J. Parsell, and Ishmael Beah as Amici Curiae in Support of Petitioners, Graham v. Florida, 560 U.S. 48 (2010) Nos. 08-7412, 08-7621.

for even highly-trained child psychologists and psychiatrists to differentiate juvenile offenders whose crimes are the product of permanent fixed character traits from those whose crimes are the result of circumstances and the transient qualities of youth.[4] *Id.* at 2469 (citing *Roper*, 543 U.S. at 573, and *Graham*, 560 U.S. at 68). It is equally difficult for a judge to make such a determination. This difficulty leads to the unacceptable risk that a juvenile may receive a constitutionally disproportionate sentence of life without parole. The fact that the judge took age into consideration is not enough to render such a sentence constitutional—if the sentence is disproportionate, it is necessarily unconstitutional. *Montgomery*, 136 S.Ct. at 734 ("Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects 'unfortunate yet transient immaturity.'") (quoting Roper, 543 U.S., at 573).

The potential for reform that is present in all juvenile offenders requires States to maintain the possibility of eventual release as a sentencing option. It would be constitutionally excessive to render a final, permanent judgment that a juvenile offender should never be released; a mechanism for future review must be available, because States cannot ignore the juvenile's "potential to attain a mature understanding of his own humanity." *Roper*, 543 U.S. at 573–74.

Because the Court was confronted only with cases involving mandatory sentences of life without parole, it did not reach the question of whether "the Eighth Amendment requires a categorical bar on life without parole for juveniles." *Miller*, 132 S.Ct. at 2469. However, the Court did establish a presumption against such sentences:

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[4] In this case, we have the benefit of hindsight to show us that defendant does *not* fall into the class of incorrigible juveniles for whom life-without-parole is an acceptable sentence. [If applicable give social history of rehabilitation]

> [G]iven all we have said in *Roper*, *Graham*, and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. That is especially so because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between "the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.

*Id.* (internal quotation marks omitted). The Court further emphasized in *Montgomery* that *Miller* had gone a long way towards eliminating life without parole for juveniles and re-iterated that such sentences should be scarcely given: "*Miller* did bar life without parole . . . for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Montgomery*, 136 S.Ct. at 734. The constitutional reasoning that drove the decisions in *Roper*, *Graham*, *Miller*, and *Montgomery* leads inexorably to the conclusion that any life without parole sentence imposed on a juvenile offender is cruel and unusual punishment proscribed by the Eighth Amendment. *See Montgomery*, 136 S.Ct. at 734 ("[T]he penological justifications for life without parole collapse in light of 'the distinctive attributes of youth.'") (quoting *Miller*, 132 S.Ct. at 2465). There can be no genuine doubt that the Supreme Court will eventually so hold. Thus, rather than wait for the High Court to act, this Court should now declare that life without parole sentences are barred for juvenile offenders by the Eighth Amendment of the United States Constitution and Article I § 5 of the South Carolina Constitution.

## III. The National and International Consensus Against Sentencing Juveniles to Life Imprisonment Without the Possibility of Parole.

The Eighth Amendment's prohibition on cruel and unusual punishment is measured against the "evolving standards of decency that mark the progress of a maturing society." *Trop*

*v. Dulles*, 356 U.S. 86, 101 (1958). While "the standard for extreme cruelty 'itself remains the same, . . . its applicability must change as the basic mores of society change.'" *Kennedy*, 554 U.S. at 419 (quoting *Furman v. Georgia*, 408 U.S. 238, 382 (1972)) (Burger, C.J., dissenting). In order to determine whether the language of the Eighth Amendment applies, the Court looks to contemporary societal norms. *See* Robert J. Smith et al., *The Way the Court Gauges Consensus (and How to Do It Better)*, 35 CARDOZO L. REV. 2397, 2406 n.43 (2014); *Atkins*, 536 U.S. 304 (prohibiting imposition of the death penalty on the intellectually disabled). Since 2002, the Court has measured "evolving standards of decency" by determining whether a "national consensus" supports a categorical prohibition of a given punishment.[5] *See Atkins*, 536 U.S. at 312. Legislative enactments constitute the "clearest and most reliable objective evidence of contemporary values." *Atkins*, 536 U.S. at 312 (quoting *Penry v. Lynaugh*, 492 U.S. 302, 331 (1989)). However, "actual sentencing practices are [also] an important part of the Court's inquiry into consensus." *Graham*, 560 U.S. at 62.

In *Roper*, the Court found a national consensus against the imposition of the death penalty on offenders under eighteen years of age at the time of their crime. 543 U.S. at 568. The Court concluded that:

> the objective indicia of consensus in this case—the rejection of the juvenile death penalty in the majority of States; the infrequency of its use even where it remains on the books; and the consistency in the trend toward abolition of the practice—provide sufficient evidence that today our society views juveniles . . . as "categorically less culpable than the average criminal."

[5] By contrast, the Court will typically only invalidate a term of years sentence for an adult if it is an "extreme punishment" that is "grossly disproportionate" to the crime. *Harmelin v. Michigan*, 501 U.S. 957, 997 (1991); *see* Jennifer S. Breen, John R. Mills, *Mandating Discretion: Juvenile Sentencing Schemes After* Miller v. Alabama, 52 AM. CRIM. L. REV. 293, 301–02 (2015).

*Id.* (citations omitted). Then, in *Graham*, the Court found a national consensus against sentences of life without parole for non-homicide offenses committed by persons less than eighteen years old at the time of the offense based on its infrequent use and "despite its widespread legislative authorization." Smith, *supra*, at 2451. The Court noted that six jurisdictions did not allow life without parole sentences for any juvenile offenders.[6] Next, in *Miller*, the Court rejected the state's argument that because twenty-nine jurisdictions statutorily authorized the punishment, there could be no consensus against it. *Id.* at 2471. The Court noted that in *Graham*, there were thirty-nine jurisdictions authorizing life without parole for juvenile offenders for non-homicide offenses and the Court nonetheless found a consensus against that punishment. The Court explained that "the statutory eligibility of a [juvenile life without parole sentence] does not indicate that the penalty has been endorsed through deliberate, express, and full legislative deliberation." *Miller*, 132 S. Ct. at 2473 (citing *Graham*, 560 U.S. at 67). In *Atkins*, the Court found consensus by relying on "not so much the number of the States . . . , but the consistency and the direction of the change." *Atkins*, 536 U.S. at 315.

South Carolina would not be the first jurisdiction to make life without parole unavailable for juveniles. Since *Miller*, nine states have abolished life without parole as a sentence for juveniles, bringing the current number of jurisdictions completely banning the sentence to sixteen.[7] Among the states that retain juvenile life without parole policies, the legislatures and courts have greatly diminished its impact via retroactivity rulings that allow every juvenile an

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[6] The Court referred to Alaska, Colorado, Montana, Kansas, Kentucky, and Texas. *Graham*, 560 U.S. at Appendix III.

[7] Since *Miller*, life without parole has been abolished as a sentence for juveniles in Connecticut, Delaware, Hawaii, Massachusetts, Nevada, Texas, West Virginia, Wyoming, and Vermont.

opportunity for a lesser sentence,[8] reforms that narrow the application of the sentence, or a combination of the two.

The sixteen jurisdictions barring juvenile life without parole are two fewer than the Court counted in *Atkins* when it barred imposing the death penalty on the intellectually disabled. *Atkins*, 536 U.S. at 313–15. However, the "consistency of the direction of change" in policy has even more significance than the number of states banning the sentence. *Id.* at 315. In the thirteen years between *Penry* and *Atkins*, sixteen states eliminated the death penalty for the intellectually disabled. *Id.* In the fifteen years between *Stanford v. Kentucky*, 492 U.S. 361 (1989), and *Roper*, five states eliminated the death penalty for juveniles. *Id.* at 565. The elimination rate for these respective punishments was roughly 1.23 and .33 jurisdictions per year.

In the years since *Miller*, the response in the states has been strong and uniform. On average 3.33 states per year have eliminated juvenile life without parole, and six jurisdictions eliminated the punishment since June 2014. In response to a case that restricts a punishment, states are eliminating the punishment all together, suggesting that *Miller* has caused states to examine their sentencing practices and, once scrutinized, abolish them. *Graham*, 560 U.S. at 66 (noting that existence of the possibility of a sentence via a provision transferring juveniles to adult court does not amount to an acceptance of the range of sentencing outcomes that a juvenile would be subject to in adult court). Moreover, as in *Atkins* and *Roper*, no states without juvenile

[8] At least two states, including South Carolina, have granted retroactive relief to persons serving discretionary juvenile life without parole sentences. Those states held that the sentences violated *Miller* because the statutory schemes at the time did not require consideration of youth as a mitigating factor. See *Aiken*, 410 S.C. at 578; *State v. Long*, 8 N.E.3d 890, 893–99 (Ohio 2014).

life without parole have chosen to enact it, and no state has expanded its application.[9] The direction, consistency, and rate of change all suggest a mounting consensus against the sentence.

Both overall and in recent years, states have limited their use of life without parole as a punishment for juveniles in actual practice, even if the sentence is statutorily available. In addition to the jurisdictions that have abolished the sentence, Indiana, Maine, New Jersey, New Mexico, New York, Rhode Island, and Utah currently have no one serving a juvenile life without parole sentence. An additional four states have five or fewer persons serving such a sentence from any time period,[10] and, in addition to those, five states have one or zero persons serving a juvenile life without parole sentence imposed in the last five years.[11] Further, the decision in *Montgomery v. Louisiana* ensures that hundreds, if not thousands of people will no longer be serving a sentence of life without parole. Given that only the exceedingly "rare juvenile offender" should receive such a sentence, only very few of those entitled to resentencing will again receive the ultimate penalty of life without parole. *Montgomery*, 136 S.Ct. at 733.

At the international level, universal human rights principles, including the American Declaration of the Rights and Duties of Man,[12] preclude the imposition of life without parole

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[9] Some states have amended their statutes to comply with *Miller* while retaining life without parole as a sentencing option for juveniles. The states that have retained the sentence after *Miller* have blunted its impact by narrowing the reach of their juvenile life without parole schemes beyond what is clearly required by *Miller*'s narrowest holding.

[10] Idaho (4), Ohio (5), New Hampshire, North Dakota (1).

[11] Alabama (0), Arkansas (1), Iowa (1), Maryland (1), Minnesota (0).

[12] The International Covenant on Civil and Political Rights, to which the United States is a party, prohibits a life without parole as a sentencing option in cases involving juveniles, International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171, Articles 7, 14, 24. Such sentences also constitute a violation of numerous human rights treaties. *See* American Declaration of the Rights and Duties of Man, Article VII; American Convention on Human Rights, Nov. 21, 1969, 1144 U.N.T.S. 143, Article

sentences for children on the basis that the unique characteristics of youth mandate a second opportunity for review. *See T. v. United Kingdom*, 170 Eur.Ct. H. R. ¶ 121 (1999) (holding that a sentence of detention is illegal under international law where no parole eligibility date is set, and relying upon many of the same reasons contemplated in United States' domestic case law concerning the need for a second chance of review in these cases). In *Graham*, the Court recognized that the U.N. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, ratified by every country except Somalia and the United States, represented evidence of international opinion that life without parole is not an appropriate sentence for juvenile offenders. 560 U.S. at 81. (quoting *Roper*, 543 U.S. at 572) (observing that "'the United States now stands alone in a world that has turned its face against'" life without parole sentences for juvenile non-homicide offenders); *see also id.* at 85 (Stevens, J., concurring) (reaffirming the Court's reliance on international law for at least a century when interpreting the Eighth Amendment's "evolving standards of decency") (internal quotation marks omitted).

## IV. Life Without Parole Sentences for Juveniles Serve No Penological Justification.

A punishment that lacks the penological justifications of retribution, deterrence, and rehabilitation violates the Eighth Amendment as a disproportionate sentence.[13] Relying on

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19; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc No. 95-20 (1922), 1465 U.N.T.S. 85. http://www.aclu.org/blog/criminal-law-reform-human-rights/seeking-second-chance-children-sentenced-life-without-parole.

[13] *See Graham*, 560 U.S. at 71. Several commentators have noted that the Court has never found a national consensus against a punishment where it did not also hold that its independent judgment required prohibition of the punishments and vice versa. *See* Edward A. Hartnett, *Questioning Certiorari: Some Reflections Seventy-Five Years After the Judges' Bill*, 100 COLUM. L. REV. 1643, 1730–31 (2000); Meghan J. Ryan, *Does the Eighth Amendment Punishments Clause Prohibit Only Punishments That Are Both Cruel and Unusual?*, 87 WASH. U. L. REV. 567, 590 (2010). Perhaps the best explanation for this consistent convergence is the Court's use

psychological and social science evidence, as well as what "any parent knows," the Court has consistently held that these purposes are greatly diminished in the context of imposing extreme sentences on juveniles. *Roper*, 543 U.S.at 569.

"[C]hildren are different" and inherently less culpable than their adult counterparts. *Miller*, 132 S.Ct. at 2469. Rationales of retribution are tied to blameworthiness and the idea that one is deserving of punishment. Because of their "vulnerability and comparative lack of control over their immediate surroundings . . . juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment." *Roper*, 543 U.S. at 570. Juveniles, in short, are less to blame for the crime-producing circumstances they have been exposed to. Thus, the retributive rationale is significantly diminished for all juvenile offenders.[14]

The hallmark features of youth also weaken the deterrence rationale. Because of the inherent features of youth such as "immaturity, impetuosity, and failure to appreciate risks and consequences," juveniles are "less likely to consider potential punishment" that may result from present conduct. *Miller*, 132 S.Ct. at 2465, 2468.

Finally, the Court has held that juveniles are uniquely well-suited to reform. As the Court has noted, "the character of a juvenile is not as well formed as that of an adult." *Roper*, 543 U.S. at 570. That a juvenile is still struggling to form her or his identity "means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character." *Id.* Moreover, a sentence of life without parole is a once and for all finding that a juvenile is among the very few "incorrigible juvenile offenders" rather than

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of discretion in granting certiorari in cases where the national consensus and its independent judgment are likely to align. S. Ct. Rule 10 (providing grounds for granting a writ of certiorari).

[14] No greater incapacitation for juveniles is authorized than life without parole. *See Roper*, 543 U.S. at 578. Thus, the incapacitation value is at its zenith for such sentences.

the "vast majority of juvenile offenders" who have the "capacity for change." *Graham*, 560 U.S. at 95, *Montgomery*, 136 S.Ct. at 734.

## V. Conclusion.

Given the direction of the Supreme Court's juvenile sentencing decisions, the legal principles it has established governing the sentencing of juvenile offenders, and the heightened capacity for change in all juvenile offenders, it is now evident that life without parole sentences for juvenile offenders violate both the United States and the South Carolina Constitutions. Therefore, this Court should declare that life without parole is not a sentencing option in this case.

Respectfully submitted,

By:_____

**Stephanie J. Smart Gittings**
P.O. Box 506
Hampton, SC 29924

*Counsel for Defendant*

June 5, 2017

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**WITNESSES**

Natasha Merrell- SLED

Richard Johnson, SLED

**ARREST WARRANT NUMBER**

2015A0310100028

Date of Arrest: April 6, 2015

**ACTION OF GRAND JURY**

True Bill

Paula K Wall 7-23-15

*Foreperson of Grand Jury*

**VERDICT**

Guilty

X Malicia Wright

*Foreperson of Petit Jury*

*Date:* 7-14-16

INDICT

**DOCKET NO. 2015GS0300050**

# The State of South Carolina

## County of Allendale

**COURT OF GENERAL SESSIONS**

**July Term 2015**

**THE STATE**

**vs.**

**Robert Lee Miller III**

**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 ALLENDALE )

INDICTMENT

**2015GS0300050**

At a Court of General Sessions, convened on July 23, 2015, the Grand Jurors of Allendale County present upon their oath:

**Murder / Murder**

That in Allendale County on or about June 17, 2014- June 19, 2014, with malice aforethought, Robert Lee Miller III did kill and murder Willie Johnson by means of blunt force trauma and/or suffocation, and that Willie Johnson did die in Allendale County as a proximate result thereof on or about June 17, 2014; 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.

Isaac M. Stone

**Isaac M. Stone, III**
Solicitor, 14th Judicial Circuit

(30 - Life)

STATE OF SOUTH CAROLINA

COUNTY OF Allendale

STATE

VS.

Robert Lee Miller III

AKA:

Race: B Sex: M Age: 18

DOB: [redacted] SS#: [redacted]

Address: [redacted]

City, State, Zip: Allendale, SC 29810

DL# * SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN T... COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015 -GS- 03 - 50

A/W#: 2015A0310100028

Date of Offense: 06/17/2014

S.C. Code §: 16-3-010

CDR Code #: 0116

## SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Murder

In violation of § 16-03-010 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor SC Bar # 101928 Defendant Robert Miller Attorney for Defendant SC Bar # 14207

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 55 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 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: $ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Obtain 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 Fund

Other:

Recipient:

| | | |
|---|---|---|
| *Fine: | | $ |
| §14-1-206 (Assessments 107.5%) | | $ |
| §14-1-211 (A)(1)(Conv. Surcharge) | $100 | $ 100.00 |
| §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 | $ 85.00 |
| §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 | $ |
| 3% to County (if paid in installments) | $ | $ 3.75 |
| TOTAL | | $ 188.75 |

☐ Appointed PD or appointed other counsel, §47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk Elaine Sabb

Court Reporter: Mona Manley

Presiding Judge

Judge Code: 21555

Sentence Date 6-5-17

SCCA/217 (03/2011)

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,

RECEIVED
JAN 24 2019
SC Court of Appeals

Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 24TH day of January, 2019.