

VOLUME III OF III

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

V.

JOHN CHRISTOPHER HART,

APPELLANT

APPELLATE CASE NO. 2017-001291

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

Court's Exhibit #3 (compact disk of discovery received April – May of 2017);
Court's Exhibit #16 (compact disk of discovery provided August 2016 and April 2017)

1 A. Yes, sir.

2 Q. And that's Tevin Deloach, right?

3 A. Yes, sir.

4 Q. At Lexington Medical Center?

5 A. Yes, sir.

6 Q. And that's what he was wearing when he came to meet
7 you there on April 10th?

8 A. I can't remember everything he wore, but, I guess,
9 yes.

10 Q. All right. And you told Detective Spivey and
11 Detective Stout that that was your people, right?

12 A. Yes, sir, I said that.

13 Q. All right. How come later on during that interview
14 after they told you that Deloach was pointing the finger at
15 you, you said you didn't know who he was?

16 A. I was nervous, scared, and honestly I didn't -- I
17 didn't know what to say.

18 Q. What was wrong with saying the truth?

19 A. As I said before, I was scared, and I didn't want to
20 snitch. I didn't say anything about Deloach, Wallace or
21 anything.

22 Q. Well, I got that you don't want to snitch, but you
23 already said that this was Deloach, you said that was your
24 people, right?

25 A. Yes, sir, I said that.

1 Q. / It was only after your people pointed the finger at
2 you that you said you didn't know them, right?

3 A. Yes, sir. I told them I called everybody my peoples.

4 Q. They asked you about Paula and you told them you
5 didn't know who Paula was, correct?

6 A. Yes, sir.

7 Q. That was a lie, right?

8 A. That was a lie.

9 Q. They talked to you about having phone records with
10 numerous people that put you and him and her together and
11 you said you didn't have any phone records in your name,
12 right?

13 A. Yes, sir.

14 Q. Which is true.

15 A. That is true.

16 Q. That is true. We then told him that we had the
17 Lincoln that they were shown in picking up the victim. He
18 said that we didn't have a picture of him picking her up.
19 That's -- why did you say that? You did pick her up.

20 A. I was nervous.

21 Q. You were nervous. So that was a lie?

22 A. Yes, sir.

23 Q. I showed him the pictures at the Waffle House and he
24 said that they didn't have him on camera. So you just
25 don't want to tell them anything, do you?

1 A. Yes, sir. I preferred at that time to not say
2 anything.

3 Q. Okay. I told him that him and the victim's phone
4 records put them together at the Waffle House when she got
5 there at approximately 10:48. I told him that we had
6 spoken with his co-defendant and we know his co-defendant,
7 the guy in the picture, and that's when you said you didn't
8 know his people. Any time they asked you anything you just
9 kept saying you don't have any proof, right?

10 A. I was under the influence. I was -- like I said, I
11 was under the influence of alcohol and marijuana and Xanax
12 bars. I was very confrontational when they were asking me
13 questions. I was mad.

14 Q. When did you get arrested in Utica?

15 A. In Utica? In Oneida.

16 Q. When they picked you up -- I'm sorry, yeah. When they
17 picked you up in that restaurant, the pizza restaurant or
18 whatever it was, and they picked you up, how long of a time
19 period was it before Sergeant Spivey came up to see you?

20 A. I honestly don't remember the exact time, but I know
21 it had to be -- they came early that morning, like two or
22 three in the morning, if I can remember. I'm not sure.

23 Q. So how long a time period was it between when you got
24 arrested and then?

25 A. I couldn't give a specific time.

1 Q. Okay. You'd agree with me that it's at least a
2 fifteen hour drive?

3 A. Yes, sir, it is.

4 Q. All right. So you would agree with me that he
5 wouldn't have known to come until his sergeant told him to
6 get on the road and go?

7 A. Yes, sir.

8 Q. So you were in custody in New York at least fifteen
9 plus hours before they spoke with you?

10 A. Maybe so. I don't know. I didn't keep up with the
11 time.

12 Q. So after fifteen hours in custody you're still drunk,
13 you're still high?

14 A. Yes, sir, I was. I was very intoxicated.

15 Q. Okay. On the ride back, they read you Miranda again
16 in the car before you drove. Is that true?

17 A. I honestly don't remember that. All I remember is
18 when I got into the Explorer there was a leash -- like a
19 dog leash that hooked up from my leg irons to the back
20 where Spivey was sitting and Stout was driving. I don't
21 remember being read any rights. I just remember them
22 trying to get me to confess to something I didn't do and
23 nagging me about certain things, which I would switch the
24 conversation and talk about other --

25 Q. So on that day though on the ride back in

1 fifteen hours you had a chance to tell the story, didn't
2 you?

3 A. Yes, sir, I did.

4 Q. And you chose not to?

5 A. I chose not to.

6 Q. You had been served with a murder warrant at that
7 time, right? You knew you were charged with murder?

8 A. Oh, yes, sir, I knew I was charged. I don't remember
9 the affidavit in my hand though.

10 Q. Okay. And you knew that Tevin Deloach had already
11 said -- at least the police had told you that you're the
12 one who did it?

13 A. Yes, sir.

14 Q. Okay. Why did you ask them if you wanted to be put --
15 if you could be put in a room with him?

16 A. I honestly don't remember why. Like I didn't say it
17 to get to him or do anything to harm him. I just wanted
18 to be with the man and find out what was going on and why
19 he implicated me in the situation.

20 Q. You weren't mad that somebody lied and was saying you
21 did a murder you didn't do?

22 A. Well, I was frustrated.

23 Q. Frustrated. What does that mean, you were frustrated?

24 A. Frustrated, I was annoyed. I was angry a little bit,
25 but not angry to where I would hurt somebody.

1 Q. They asked you why didn't you pick up Jessica from
2 the hospital when she was discharged, didn't they? Do you
3 remember that?

4 A. Honestly, I don't remember.

5 Q. You told -- do you remember telling them that Jessica
6 had a ride home from the hospital?

7 A. No, I don't remember telling them that.

8 Q. Do you remember telling them that you know that
9 talking isn't going to help you?

10 A. Yes, sir, I remember that.

11 Q. Talking would have helped you, wouldn't it?

12 A. I don't know. I couldn't say if it would have, if it
13 wouldn't.

14 Q. All right. You'd agree with me though that you told
15 them talking isn't going to help. That's what you told
16 them?

17 A. Yes, sir, I said that.

18 Q. All right. If you would have told them I didn't kill
19 her, I just threw away the gun, would you be sitting here
20 today facing a murder charge?

21 **THE COURT:** That's not a fair question.

22 **THE WITNESS:** I did tell them that I did not do it
23 and I denied it when they tried to blame me for it.

24 **THE COURT:** That's not a fair question. You can't
25 ask him what would have happened, but what has happened.

1 He doesn't know the law. You're trying to impugn law to
2 him.

3 BY MR. GRAHAM:

4 Q. Did you also tell Detective Spivey that you would
5 never forget him because he had been all over your ass?

6 A. Yes, sir, I did say that.

7 Q. Did you also tell him that -- did he also tell you
8 that they weren't talking about a petit larceny charge,
9 they were talking about a murder charge?

10 A. Yes, sir.

11 Q. And did you tell him that if it was a petit larceny
12 charge you would have confessed over the phone to him?

13 A. Yes, sir, I said that.

14 Q. Alex Wallace, let's talk about him. He's at least
15 ten years younger than you, right?

16 A. At least, yes, sir. At least.

17 Q. You testified that you'd been in prison, right?

18 A. Yes, sir.

19 Q. He was, what, sixteen?

20 A. I don't know his exact age at the time.

21 Q. January 11th of 2016, does that sound about the right
22 time that you first saw him on the same wing, in the same
23 pod?

24 A. I can't give an exact date, but it -- I can't give an
25 exact date. I don't remember the exact date.

1 Q. And did you confront him and tell him that you were in
2 there charged with murdering Paula?

3 A. I told him specifically whenever we crossed paths I
4 was -- I was mad and I told him you need to own up to what
5 you did, I'm locked up for something that I did not do,
6 that you need to own up. That's specifically what I said.

7 Q. And that would have been -- does January sound wrong?

8 A. I can't say wrong or right, sir.

9 Q. Okay. And what was his response?

10 A. His response was nonchalant, he kind of blew me off
11 because at the time and place where we were housed at we
12 have memos on our door, house alone, rec alone, meaning we
13 can't interact with any inmates on recreation or anything.
14 We're housed by ourselves and we come out by ourselves.
15 We're not allowed to be around each other.

16 Q. So he blew you off?

17 A. Yes, sir.

18 Q. Do you remember him saying anything specific?

19 A. No, sir, I don't.

20 Q. Okay. I mean, did he even have a comment?

21 A. That was basically the comment.

22 Q. He dismissed you?

23 A. Yes, sir.

24 Q. How many other times did you talk to him about owning
25 up to this charge?

1 A. We wasn't able to cross paths. That time happened
2 when I saw him, I was on rec in full restraints, and they
3 were bringing him through. That's how I saw him.

4 Q. So is that the only time you ever talked to him about
5 taking your charge?

6 A. Taking my charge?

7 Q. For owning up --

8 A. I've never spoken to him about taking a charge.

9 Q. Owning up for what he --

10 A. I spoke to him about owning up to his charge that he
11 did.

12 Q. One time?

13 A. One time that I remember, yes, sir.

14 Q. And that's it?

15 A. Yes, sir.

16 Q. And he dismissed you?

17 A. Yes, sir. He acted nonchalant, blew me off.

18 Q. All right. When he blew you off, that had to make you
19 more frustrated or more mad, right?

20 A. When he blew me off, it hurt.

21 Q. It hurt?

22 A. It hurt.

23 Q. It didn't make you mad?

24 A. Inside it kind of made me mad, but I was more hurt to
25 the fact that he blew me off.

1 Q. All right. So you got a sixteen-year-old kid who you
2 had some minor dealings with on the street -- with drugs,
3 right, who's ten years more or younger than you, true?

4 A. Yes, sir.

5 Q. He kills somebody in your presence, you get arrested
6 for it, you see him the beginning of January 2016 and you
7 say kid, you need to own up for what you do and he blew you
8 off, right?

9 A. Yes, sir.

10 Q. What did you owe him at that point?

11 A. Owe him? What are you referring to?

12 Q. Why didn't you tell the truth at that point? You gave
13 him a chance and said you need to own up to this and he
14 disrespected you and he blew you off and walked away saying
15 you take the charge. Why didn't you tell the police at
16 that time what you're saying today?

17 A. I honestly didn't know how to go about speaking to
18 law enforcement from back there because I'd never done it
19 before. It's not common to me.

20 Q. You never sent any letters to anybody saying you
21 wanted to speak to them?

22 A. I sent -- I sent a letter -- before Mr. Phillips was
23 assigned to my case, I had Walter Whitmire and I did send
24 him and Shanika Wilson a letter saying I would come forth
25 about what happened.

1 Q. But you didn't contact law enforcement?

2 A. I didn't -- I didn't know how to go about it because
3 I'd never done it before.

4 Q. You would agree with me that you could have asked
5 other inmates or asked a CO what you need to do to get a
6 letter to Sergeant Spivey or to get a letter to the
7 solicitor's office?

8 **THE COURT:** What -- how does that -- that didn't
9 happen. Move on.

10 BY MR. GRAHAM:

11 Q. Would you agree with that?

12 **THE COURT:** No, not a fair question. It didn't
13 happen. You can't tell him all these hypothetical things
14 he didn't do. Just ask him what he did do.

15 **MR. GRAHAM:** I'm trying to ask him why he didn't do
16 it, Judge.

17 **THE COURT:** He's answered your question. He didn't
18 give any statements. He's been very, very consistent in
19 four years not giving any statements and why. It's been
20 answered. Move on.

21 BY MR. GRAHAM:

22 Q. Did you ever discuss your case with AJ Wallace?

23 A. No, sir.

24 Q. Did you ever pressure him in any way?

25 A. No, sir, I didn't.

1 Q. Did you promise him any help in prison if he took
2 this charge for you?

3 A. I couldn't promise him anything because he's not
4 taking a charge for me for something he did. It's his
5 charge, not mine. I'm the one charged with something I
6 didn't do, sir.

7 Q. Did you brainwash him in any way?

8 A. No, sir, I didn't.

9 Q. Why did you throw your 348 number away?

10 A. When that -- because that was one of my -- what we
11 call dirty phones and that was the number that Paula called
12 me on and I was trying to get rid of any connection. I was
13 nervous, I was scared. I did break up the phone and throw
14 it out. I did do that.

15 Q. So Tevin Deloach is right when he said that he bought
16 weed and met you that day, right?

17 A. Yes, sir.

18 Q. And Tevin Deloach is correct when he says y'all went
19 out and served three people?

20 A. Yes, sir. It could have been more. We always do
21 that.

22 Q. He's correct when he said that his car was shaking and
23 you had to go to Black's house or Chance Belton's house to
24 get the Lincoln, right?

25 A. Yes, sir.

1 Q. And that's this Lincoln right here in State's Number
2 30, right?

3 A. Yes, sir.

4 Q. When you left there, you told him to drive to the
5 Waffle House, correct?

6 A. Yes, sir.

7 Q. When you went into the Waffle House, you told him that
8 you were setting this girl up and that you were gonna kill
9 her, didn't you?

10 A. No, sir, I didn't. I never went inside the Waffle
11 House.

12 Q. I didn't say you did. I said when you drove into the
13 Waffle House parking lot with Tevin Deloach, you told Tevin
14 Deloach that you were setting Paula up and you were gonna
15 kill her?

16 A. No, sir, I didn't.

17 Q. Tevin was driving and you were in the front passenger
18 seat, correct?

19 A. Correct.

20 Q. Paula got in the back seat?

21 A. Yes, sir, behind me.

22 Q. And you took her out to Lumberjack Drive?

23 A. I don't remember if it -- I'm not familiar with that
24 area at all. I just followed directions. I couldn't say
25 if it was Lumberjack or any roads. I only saw the road

1 Lumberjack when I got my discovery.

2 Q. How did you get directions out there?

3 A. I was led there by Wallace and I used my phone, as
4 Deloach said, and followed directions there. I'm not
5 familiar with the area at all.

6 Q. So what phone did you talk with Wallace on?

7 A. I talked -- I talked to Wallace -- as I said, I had
8 more than one throwaway phone. I talked to Wallace on all
9 of the phones.

10 Q. Okay. So the records that we have in should have
11 Wallace's number on them?

12 A. It should, yes, sir, but I don't -- I couldn't tell
13 you which number. I really don't remember his number.

14 Q. So you got out to Lumberjack Drive and tell me what
15 happened.

16 A. When we pulled up, the lights were on, but when Paula
17 and -- me and Paula got out of the car Tevin turned the
18 lights off. When I saw Wallace come out of the cut as he
19 calls it, me and him were walking side by side and he told
20 her to walk ahead because me and her -- she looked shocked
21 at first when she saw him, I guess because they had a
22 situation, and in the midst of that conversation he shot
23 her in the head.

24 Q. So she looked scared?

25 A. When?

1 Q. As soon as she saw AJ Wallace there, she got scared?

2 A. I wouldn't say scared, but she was -- she was shocked.
3 Paula -- Paula was kind of -- when she's speaks, she's
4 loudmouthed and she's jumpy, so like that's normal. When
5 she saw him, she was like oh, but she wasn't scared like
6 thinking somebody set up her up or something. It wasn't
7 like that.

8 Q. She wasn't expecting to see him?

9 A. No, sir, she wasn't.

10 Q. So when Tevin Deloach says that you left the car with
11 Paula and hears one gunshot and you ran back with the gun,
12 that's true?

13 A. I picked it up. Yes, sir, I did.

14 Q. But you deny that when you got back in the car you
15 told him that you shot Paula?

16 A. I didn't say anything like that. My words when I got
17 back into the car was drive off, I don't know what the fuck
18 happened. That was my exact words.

19 Q. But you knew what happened because AJ just killed her.

20 A. I'm referring to as in I brought her there for
21 prostitution. That's street terminology. When I'm like
22 what the fuck happened is like I was confused. I didn't
23 know that was gonna happen when we pulled up.

24 Q. Did you tell Tevin Deloach that AJ Wallace killed her?

25 A. No, sir, I didn't.

1 Q. But you deny that you told him that you killed her?

2 A. Sir?

3 Q. You deny telling him that you killed her?

4 A. I never told -- I never told him anything like that,
5 sir.

6 Q. You deny telling him that Paula was a snitch on
7 Jeremy?

8 A. Yes, sir, I deny that. I knew nothing about her and
9 Jeremy's situation. Nothing at all.

10 Q. You and Tevin Deloach were friends, right?

11 A. Yes, sir.

12 Q. He knew Paula, didn't he --

13 A. Yes, sir.

14 Q. -- from serving with you? Did he know Jeremy as well?

15 A. No, sir, he didn't. Any time I had interaction with
16 Jeremy, I was by myself.

17 Q. Do you have any idea how Tevin Deloach would have
18 known to tell the police about Jeremy Washington wanting
19 Paula dead for being a snitch if you didn't do it?

20 A. No, sir, I have -- I couldn't -- I couldn't say
21 because I don't know.

22 Q. You would agree with me though that he was a good
23 enough friend he would have warned you to be careful
24 selling to Paula because she was a snitch if that was
25 something he knew at the time, right?

1 A. If he -- I couldn't say. People change every day.

2 Q. Tevin Deloach is a liar, correct?

3 A. In reference to what?

4 Q. Saying you killed Paula.

5 A. Yes, sir, he is.

6 Q. Deandre Staley is a liar?

7 A. Yes, sir, he is.

8 Q. The truth is AJ Wallace didn't have anything to do
9 with this, did he?

10 A. Yes, sir. He's the one that shot Paula.

11 Q. The truth is you took this gun and you lured Paula
12 into that Lincoln to take her out and kill her for Jeremy
13 Washington, didn't you?

14 A. No, sir, I didn't.

15 Q. The truth is you put the gun to the back of Paula's
16 head pointing downward and executed her, didn't you?

17 A. No, sir, I didn't.

18 Q. But everybody's just lying, right?

19 A. Yes, sir.

20 **MR. GRAHAM:** Nothing else, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. PHILLIPS:

23 Q. There was a lot of talk about Deloach and what's true.
24 You've been here for the entire trial. The State's theory
25 is that you were paid five circles of crack to kill Paula.

1 A. Yes, sir.

2 Q. Did you ever tell Deloach what he testified to here
3 today, that Jeremy Washington was gonna pay you \$10,000?

4 A. No, sir, I never told him that.

5 Q. That you would pay him \$5,000?

6 A. No, sir, I never told him that.

7 Q. That seems to be inconsistent with what the State even
8 said; is that right?

9 A. Yes, sir.

10 Q. Deloach is testifying for the State?

11 A. (No verbal response.)

12 Q. You were here in opening statements. They said there
13 was an eyewitness. Deloach testified that he didn't see
14 it. He was pointed the other direction; is that right?

15 A. Yes, sir.

16 **MR. GRAHAM:** Your Honor, can we stop the leading
17 questions, please?

18 **THE COURT:** Sustained as to leading.

19 BY MR. PHILLIPS:

20 Q. Where was he in the car?

21 A. Deloach, he was driving.

22 Q. Was he truthful about not being able to see?

23 A. Yes, sir.

24 **MR. GRAHAM:** Objection. One, leading; two, calling
25 for speculation.

1 **THE COURT:** Rephrase that question. I sustain the
2 objection.

3 **MR. PHILLIPS:** Yes, Your Honor.

4 BY MR. PHILLIPS:

5 Q. All this talk about Jeremy Washington. Was he called
6 as a witness to testify?

7 A. Not -- not that I'm aware of, sir. He hasn't come in
8 yet.

9 Q. This has been -- I mean, you were the one arrested.
10 You saw, like you said, what you called the affidavit,
11 the arrest warrant. What they accused you of is Jeremy
12 Washington is paying you to kill Paula. Was he arrested
13 and in jail with you and Mr. DeLoach?

14 A. No, sir, he wasn't. Never.

15 Q. Until you found out recently he's in jail as of this
16 Saturday right before your trial?

17 A. Yes, sir.

18 Q. But he's not here today?

19 A. Yes, sir.

20 Q. They talked about all this discovery. Do you remember
21 Deandre Staley wrote a letter saying that he wanted help on
22 his case?

23 A. Yes, sir.

24 **MR. GRAHAM:** Objection, Your Honor. I don't even
25 understand -- he has no personal knowledge of any of this.

1 He's already crossed Deandre Staley on this. I don't
2 understand what we're doing here.

3 **THE COURT:** I allowed some latitude on your cross,
4 but I tend to agree. Let's get to the point.

5 **MR. PHILLIPS:** And I'll move on.

6 **THE COURT:** All right.

7 BY MR. PHILLIPS:

8 Q. The solicitor asked you why didn't you tell the
9 solicitor's office or the police the truth. Their
10 contention is that Deloach is telling the truth. What is
11 Tevin Deloach charged with?

12 A. Murder.

13 Q. So what did you think would happen if you tried to
14 say -- without having someone else to support your
15 statement that another person did the crime, what do you
16 think would happen other than tying yourself to the crime?

17 A. That they would think I was lying.

18 Q. And that letter would be used as evidence against you?

19 A. Yes, sir.

20 Q. And they talk about all this time and dates. What's
21 time like in jail?

22 **MR. GRAHAM:** Objection. Relevance.

23 **THE COURT:** Sustained.

24 BY MR. PHILLIPS:

25 Q. It's been four years since you were arrested?

1 A. Yes, sir.

2 MR. GRAHAM: Objection. Leading.

3 THE COURT: Sustained. I believe we've gotten to that
4 fact. I won't allow that question.

5 BY MR. PHILLIPS:

6 Q. Paula knew that you also knew Jeremy Washington?

7 A. I can't say that she knew. I can't say. I really
8 don't -- I don't think she knew.

9 Q. Okay. Did that ever come up? Did she ever tell you
10 about Jeremy Washington?

11 A. No, sir, she didn't.

12 Q. Did Jeremy Washington ever tell you to kill Paula
13 Justice?

14 A. No, sir, I've never spoken with him about Paula
15 Justice at all.

16 Q. You talked about being afraid, you talked about
17 Detective Spivey calling you and telling you that they're
18 investigating a murder. Why were you afraid? Why did you
19 run?

20 A. I was really afraid because, as I say, I'm not -- I
21 don't know the law, but when they called me and said that
22 I felt -- because I knew I was at the scene and I saw when
23 it happened that I was gonna be arrested and charged just
24 like I am now. I didn't know anything about anything
25 that was --

1 Q. You and Mr. Deloach were pulled over by a Lexington
2 County police officer not too long after this happened; is
3 that right?

4 A. Yes, sir.

5 Q. And there was nothing that that police officer would
6 notice about you if you were shooting someone at close
7 range?

8 A. No, sir, he didn't -- didn't say anything. He let us
9 go actually.

10 Q. There was nothing on you. You were gone?

11 A. Yes, sir.

12 Q. You've answered all these questions. I'm just gonna
13 finish up with the main two. Did you kill Paula Justice?

14 A. No, sir, I did not kill Paula Justice.

15 Q. Did you know Alex Wallace was going to kill Paula
16 Justice?

17 A. I had no knowledge at all, sir. I didn't.

18 **MR. PHILLIPS:** No further questions.

19 **MR. GRAHAM:** Nothing, Your Honor.

20 **THE COURT:** You may step down.

21 (Witness excused.)

22 **MR. PHILLIPS:** No further witnesses, Your Honor. The
23 defense would rest at this time.

24 **THE COURT:** All right. Any rebuttal witnesses,
25 Mr. Graham?

1 **MR. GRAHAM:** Yes, Your Honor.

2 **THE COURT:** All right. Y'all come up and tell me
3 about how the time's looking.

4 (Proceedings held at the bench; not reported.)

5 **THE COURT:** All right. The defense has put up all
6 they're gonna put up. The State has an opportunity to
7 present some rebuttal witnesses. They want to make
8 certain they have them organized. We're gonna start
9 tomorrow morning at the same time. Y'all be in the jury
10 room at 9:15. I promise not to keep you back there so
11 long. So we'll see y'all back here at the same time in
12 the morning. You still can't discuss the case.

13 All right.

14 (Whereupon, the jury was excused for the day at
15 5:03 PM.)

16 (The following proceedings were held at the court
17 reporter's desk.)

18 **JUROR:** Excuse me. Do you think we'll go into next
19 week? I just need to let my work know if we'll be going
20 into next week.

21 **THE COURT:** I'm hopeful we will not. I think we're
22 gonna be done tomorrow.

23 **JUROR:** Thank you.

24 (End of in-camera discussion.)

25 **THE COURT:** That juror wanted to know if we were going

1 into next week and I told her I was fairly confident we'll
2 be done tomorrow.

3 **MR. PHILLIPS:** I will do everything in my power to
4 make sure.

5 **THE COURT:** The juror that I just talked to in-camera,
6 I made a record of it, she wanted to know if she needed to
7 call work about potentially being off next week. I said I
8 thought we would get done tomorrow, so that was my response
9 and Stacy's got a record of it. And I'm going to determine
10 what her name is because Stacy didn't look at her. I know
11 which one she was and I'll identify her. It doesn't really
12 matter, but I'm gonna put her name on the record.

13 (Pause in proceedings.)

14 **THE COURT:** Dee Branham. That was the juror.

15 **THE COURT REPORTER:** Thank you.

16 **MR. PHILLIPS:** Can we put something real quick on the
17 record?

18 **THE COURT:** Sure.

19 **MR. PHILLIPS:** If one of the rebuttal witnesses is the
20 co-defendant in Alex Wallace's case, Flagler, I would --
21 the Defendant moves for any impeachment-type evidence,
22 specifically anything that would be like a Kyles v. Whitley
23 impeachment evidence or credibility evidence as to Flagler
24 since there's a whole set of discovery, a murder case, and
25 I only have, I think, three or four pages referenced as far

1 as this case Flagler's discussion with Detective Spivey.

2 If there's a --

3 **THE COURT:** This is Wallace's co-defendant in the
4 other -- the break-in?

5 **MR. PHILLIPS:** Yes.

6 **THE COURT:** Is he potentially the one you're gonna
7 call?

8 **MR. GRAHAM:** What would you want out of --

9 **THE COURT:** I don't want -- I don't want to try that
10 case tomorrow. Answer that question. That was a good
11 question.

12 **MR. PHILLIPS:** Impeachment evidence. Anything that's
13 inconsistent with what he said. So anything that he said
14 and then changed, just like you've done with all my
15 witnesses.

16 **THE COURT:** No, no. Flagler's not testified yet. Are
17 you talking about Wallace?

18 **MR. PHILLIPS:** No, Flagler. If they're gonna call him
19 as a witness and there's a bunch of impeachment evidence,
20 credibility evidence, that's in that discovery that's in
21 the State's -- that the State's prosecuting and I don't
22 have it in my possession to cross-examine him when he
23 testifies tomorrow for the State, that's denying my right
24 to confrontation.

25 **THE COURT:** Y'all do the best you can to try to

1 determine that. And Flagler's got a lawyer, doesn't he?

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

3 **MR. PHILLIPS:** I'd imagine the lawyer's not gonna tell
4 me the good stuff to beat up a client. I mean, they --
5 they have a duty actually not to tell me.

6 **MR. McNAIR:** You're asking for anything inconsistent
7 he told the police regarding his own case?

8 **THE COURT:** He might not testify.

9 **MR. PHILLIPS:** That would be a hurdle for them.

10 **THE COURT:** I mean, y'all -- that's for y'all to
11 figure out.

12 **MR. PHILLIPS:** But if he does, I've got to be ready.

13 **THE COURT:** Who's his lawyer? Who's been appointed
14 to him or hired by him?

15 **MR. McNAIR:** Brad Kirkland.

16 **THE COURT:** And Brad was sitting in here Monday and
17 Tuesday.

18 **MR. PHILLIPS:** I will say Brad represents Deloach, so
19 that right there's a conflict. All the conflict lawyers
20 have conflicts of conflicts of conflicts in this case.

21 **THE COURT:** Imagine that.

22 **MR. PHILLIPS:** And all paid \$900.

23 **THE COURT:** Y'all get him whatever impeachment
24 evidence you have that you're aware of on Flagler.

25 **MR. McNAIR:** Okay.

1 (Whereupon, the proceedings were concluded for
2 May 25, 2017, at 5:10 PM.)

3 (The following proceedings were held on May 26, 2017,
4 beginning at 9:23 AM.)

5 **BAILIFF:** All rise.

6 **THE COURT:** All right. Y'all tell me what we've got
7 left to do this morning so we can get a little preview.
8 The jury is picking lunch from the menu. Myra provided
9 that and got it back in there and everybody just got it.

10 **MR. McNAIR:** We've got one witness, Your Honor, and
11 I don't expect it will take longer than thirty minutes.

12 **MR. PHILLIPS:** The only issue that I would have, and
13 we're trying to hash that out, is yesterday I was asking
14 for the discovery in the other murder case, and this is
15 Alex Wallace's co-defendant, Flager --

16 **THE COURT:** Flagler.

17 **MR. PHILLIPS:** Flagler. So the -- the discovery file
18 was too large to e-mail, so it was here. It is 224 pages
19 of discovery, which I haven't picked up yet, but the audio
20 interview is here. I've got it on my desk, so obviously I
21 haven't been able to review the 224 pages of discovery or
22 listen to the audio interview. There is several pages --
23 what is it, like three, four -- in the discovery that
24 covers Flagler's direct involvement with the detectives in
25 this case as far as what he's gonna testify to.

1 **MR. McNAIR:** Right.

2 **MR. PHILLIPS:** The argument I made yesterday was
3 needing the documents from his other case as impeachment
4 if he's to prove his trustworthiness, his credibility, to
5 the jury. And obviously these 224 pages and the audio
6 interview is possibly impeachment evidence, contains it,
7 and I spoke with Assistant Solicitor McNair about it and
8 he was trying to remember himself what's all on the audio
9 interview and that's kind of -- that's where we're at. I
10 don't know. I haven't been able to listen to it.

11 **THE COURT:** What's the crux of Flagler's testimony,
12 that some of the things that Mr. Wallace said was
13 inconsistent from what they said otherwise?

14 **MR. McNAIR:** Yes, sir. That and he did have a
15 conversation with Mr. Hart where Mr. Hart made some
16 comments, but, yeah.

17 **THE COURT:** Well, I don't want to get too in-depth
18 with what was said about the other case inconsistent
19 because this is getting further and further away from the
20 relevance as to this trial --

21 **MR. McNAIR:** I agree with that.

22 **THE COURT:** -- and the further you get away the more
23 I'm gonna push it along.

24 **MR. McNAIR:** I informed Mr. Phillips of the one
25 inconsistent statement that I think Mr. Flagler made during

1 his case, but I agree it's confusing and misleading to the
2 jury to get more into the facts of that case than we
3 already did yesterday with Mr. Wallace a good bit.

4 **THE COURT:** Yeah.

5 **MR. PHILLIPS:** The confrontation issue that I would
6 have is if he has provided a bunch of inconsistent
7 statements in the discovery that's in his case with
8 Mr. Wallace, all of that would be things that I could
9 attack his credibility on. Because, I mean, the only
10 reason they're putting him up there is for credibility
11 purposes for the jury to believe what he's gonna testify
12 to and that's -- that's the importance of what could be
13 contained in the 224 pages and the audio interview.

14 **THE COURT:** Well, I don't know how to fix that
15 because this is -- that's another case and there are
16 discovery issues and confrontation about another case
17 that's not related to this one. I'm -- it concerns me
18 greatly that we're gonna go into statements of another
19 case. I guess I was under the impression that y'all
20 might put the detective back up and ask him some of the
21 inconsistencies about Wallace's statement and what he
22 gave. But, I mean --

23 **MR. PHILLIPS:** And as to that I would argue that that
24 wouldn't even be -- I don't know that that would be true
25 rebuttal since they --

1 **THE COURT:** I don't either, but getting into the
2 burglary/robbery case -- burglary/murder case, it just
3 seems problematic.

4 **MR. PHILLIPS:** And it's not a road that I want to
5 try his case. The whole thing is if there's land mines
6 of impeachment evidence that attacks his credibility
7 and his credibility will be at issue when he's on the
8 witness stand, I don't know which things to show that he's
9 a liar to prove to the jury that he's unreliable and that
10 anything that he says cannot be taken as true. That's the
11 confrontation clause issue.

12 **THE COURT:** I get it.

13 **MR. PHILLIPS:** I know, Your Honor.

14 **THE COURT:** Oh, I get it. I'm just -- I'm worried
15 about this jury being confused why we're calling a
16 co-defendant of a co-defendant of a guy who's -- I mean,
17 we're getting way off the path of this case against
18 Mr. Hart.

19 **MR. McNAIR:** Your Honor, Mr. Flagler is charged with
20 murder and burg first, too. I think that's plenty of
21 impeachment material for Mr. Phillips.

22 **THE COURT:** Well, Mr. Wallace was cross-examined for
23 over an hour and a half yesterday. It's the Court's
24 observation sometimes less is more, but, I mean, he was
25 cross-examined more than Mr. Hart was.

1 **MR. PHILLIPS:** Line by line.

2 **THE COURT:** Oh, I know. I was here.

3 **MR. McNAIR:** Your Honor, I talked to Investigator
4 Spivey, who also investigated the Wallace and Flagler case,
5 I've spoken to him and what I told you earlier about the
6 statements he made -- the inconsistent statement was the
7 only inconsistent statement that we're aware of.

8 **MR. PHILLIPS:** The only thing that I would say is if
9 we do go forward and I haven't had the opportunity to
10 review the 224 pages and the audio interview would be to
11 mark them as a Court's exhibit and if any impeachment
12 evidence was found, I could file a motion for new trial.

13 **THE COURT:** That's fair. You can do that. I think
14 that's a fair way to protect your client's interests.
15 That's about the only way we can go forward. We're not
16 gonna adjourn for a half a day to let you go review it and
17 make this jury wait into a holiday weekend because...

18 Now, Mr. McNair, I'm telling you I want a narrow
19 scope on Mr. Flagler. I don't want getting all into what
20 happened in the back room and what did y'all --

21 **MR. McNAIR:** I'm not -- I'm not getting into that,
22 Your Honor.

23 **THE COURT:** I want it very focussed.

24 **MR. McNAIR:** It will be.

25 **MR. PHILLIPS:** And to be clear for PCR purposes, that

1 would be subject over my -- over the objection and that
2 would be my response.

3 **THE COURT:** Absolutely.

4 All right. Are we ready to go?

5 **MR. GRAHAM:** I think so.

6 **THE COURT:** All right. So the discovery you've gotten
7 will be marked as a Court's exhibit before we -- whenever
8 they rest.

9 **MR. PHILLIPS:** I don't have the paper discovery yet.
10 I do have just the heading and then I've got the audio CD.
11 I can go ahead and mark that. Oh, it's on the disk, too?

12 **THE COURT:** The disk will be marked as a Court's
13 exhibit for both.

14 **MR. PHILLIPS:** Yes, Your Honor.

15 **THE COURT:** That will be the audio and the two hundred
16 and something pages.

17 (Court's Exhibit Number 8, 5/25/17 Discovery, was
18 marked for identification.)

19 **THE COURT:** All right. Bring in the jury, please.

20 (Whereupon, the jury enter the courtroom at 9:32 AM.)

21 **THE COURT:** All right.

22 **MR. McNAIR:** Your Honor, the State calls Terrance
23 Flagler.

24 (Whereupon, Terrance Flagler was duly sworn by the
25 Clerk of Court.)

1 **THE CLERK:** If you will have a seat over here, please,
2 and state your name for the record.

3 **THE WITNESS:** Terrance Flagler.

4 TERRANCE FLAGLER,
5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MCNAIR:

8 Q. Spell your last name, Mr. Flagler.

9 A. Huh?

10 Q. Spell your last name.

11 A. F-L-A-G-L-E-R.

12 Q. Terrance, how old are you?

13 A. Nineteen.

14 Q. Why are you in jail?

15 A. Murder and first degree burglary.

16 Q. And who's your co-defendant on that case?

17 A. Alex Wallace.

18 Q. Now how long have you known Alex Wallace for?

19 A. Since February 2012.

20 Q. All right.

21 A. Five years.

22 Q. And how would you describe your relationship with
23 Mr. Wallace?

24 A. He was like a brother.

25 Q. Were y'all best friends?

1 A. We were.

2 Q. When were you arrested?

3 A. November 17, 2014.

4 Q. So from 2012 up until the point you were arrested,
5 were you best friends with Mr. Wallace?

6 A. Yes, sir.

7 Q. Did you see or talk to him just about every -- talk
8 to him about every day?

9 A. Yes, sir.

10 Q. All right. Were you aware of who his friends were?

11 A. Yes, sir.

12 Q. Did y'all have the same friends?

13 A. Yes, sir.

14 Q. Now around November of 2016, were y'all housed
15 together in the Lexington County Detention Center?

16 A. Yes, sir.

17 Q. Did you have a conversation with Mr. Wallace at that
18 time about him trying to take somebody else's charge?

19 A. Yes, sir.

20 Q. Whose charge was he trying to take?

21 A. Bhريس's.

22 Q. And what did he say about that?

23 A. He said well, if you see the paper --

24 **MR. PHILLIPS:** Your Honor, hearsay.

25 **MR. McNAIR:** I'll rephrase it.

1 **THE COURT:** Rephrase it. Sustained.

2 BY MR. McNAIR:

3 Q. He told you he was trying to take Bhris's murder
4 charge; is that correct?

5 **MR. PHILLIPS:** That's a hearsay answer and a leading
6 question.

7 **MR. GRAHAM:** Your Honor, can we approach?

8 **THE COURT:** Yeah.

9 (Proceedings held at the bench; not reported.)

10 BY MR. McNAIR:

11 Q. Did Alex Wallace tell you he was taking Bhris's murder
12 charge?

13 A. Yes, sir.

14 Q. Did you ask him why he was doing that?

15 A. Yes, sir.

16 Q. When you asked him that, what did he do?

17 A. He put his head down and shook his head.

18 Q. Did Alex Wallace tell you that Bhris had brainwashed
19 him and convinced him to take the charge?

20 A. Yes, sir.

21 Q. Did Wallace tell you he didn't really want to take
22 Bhris's charge?

23 A. Yes, sir.

24 Q. And after you had that conversation with Mr. Wallace,
25 what was your understanding of whether or not he was gonna

1 take the charge?

2 A. I thought I had convinced him not to.

3 Q. All right. And did you later learn otherwise?

4 A. Yes, sir.

5 Q. Did Mr. Wallace tell you he had Bhريس's discovery?

6 A. Yes, sir.

7 Q. Now while you've been in jail, have you also had an
8 opportunity to speak to Mr. Hart?

9 A. Yes, sir.

10 Q. And did Mr. Hart make any comments to you about your
11 case or his case?

12 A. Both.

13 Q. What did he say?

14 A. He asked me if I had cooperated and I told him I
15 didn't want to talk about it and he pretty much said that
16 -- he said -- he told me that he did a lot more in his
17 case, but he did not cooperate with the police.

18 Q. And you were charged with murder and burglary first?

19 A. Yes, sir.

20 Q. And he said he did a lot more than you and he did not
21 cooperate in his case?

22 A. Yes, sir.

23 Q. Now during the time you knew Alex Wallace from 2012
24 up until y'all's arrest, you testified y'all were best
25 friends, correct?

1 A. Yes, sir.

2 Q. And that you talked or saw him pretty much on a daily
3 basis?

4 A. Yes, sir.

5 Q. Is it fair to say you were generally aware of where he
6 was going and what he was doing during that timeframe?

7 A. Yes, sir.

8 Q. Did you ever hear Alex Wallace mention the name Chris
9 Hart or Bhريس?

10 A. No, sir.

11 Q. Did you ever hear him mention -- talk about somebody
12 he knew named KG?

13 A. His self.

14 Q. He referred to himself as KG sometimes?

15 A. Yes, sir.

16 Q. Was that one of his nicknames?

17 A. Yes, sir.

18 Q. Did ever use that nickname --

19 **MR. PHILLIPS:** Your Honor, this has nothing to do as
20 far as rebuttal. He didn't --

21 **THE COURT:** It kind of doesn't.

22 **MR. McNAIR:** Your Honor, Mr. Wallace --

23 **THE COURT:** I'm gonna allow a limited amount. I
24 agree. Don't go too far astray. This is rebuttal, but...

25 BY MR. McNAIR:

1 Q. To your knowledge, did Mr. Wallace know Chris Hart
2 prior to going to jail?

3 A. Not to my knowledge. As far as I know, he didn't know
4 him.

5 Q. Did you ever hear him mention the name Paula, Tina or
6 Crystal?

7 A. No, sir.

8 Q. Was he involved in prostitution in any way to your
9 knowledge?

10 A. As far as I know, he wasn't.

11 Q. Did you ever know him to go to any motels such as the
12 Delta Motel or America's Best Value Inn?

13 A. As far as I know, he didn't.

14 Q. Did you know him to sell drugs when you knew him?

15 A. As far as I know, he didn't.

16 Q. Do you remember any females driving him around?

17 A. No, sir.

18 Q. Did he have a phone when you knew him?

19 A. He did, but it wasn't on.

20 Q. What do you mean by it wasn't on?

21 A. He didn't have service on it. He had to use wi-fi.

22 Q. So if he contacted somebody, he'd have to have access
23 to wi-fi?

24 A. Yes, sir.

25 Q. And that's through like Facebook messenger or

1 something like that?

2 A. Yes, sir.

3 Q. If he did call you, whose phone would he call you
4 from?

5 A. His landline phone or his mother's.

6 Q. And the landline would be his mother's phone?

7 A. Yes, sir.

8 Q. Or his mother's cell phone?

9 A. Yes, sir.

10 Q. All right. And did you know his mother?

11 A. Yes, sir.

12 Q. Would she let him take her phone with him?

13 **MR. PHILLIPS:** Your Honor --

14 **THE COURT:** All right. This is rebuttal now. I kind
15 of agree.

16 BY MR. McNAIR:

17 Q. Did you ever know Alex Wallace to have a phone that
18 began with the number 773 or 704?

19 A. As far as I know, he didn't.

20 Q. Did Alex Wallace ever mention to you or talk to you
21 about a murder that he had committed prior to the one you
22 were arrested for?

23 A. No, sir.

24 **MR. McNAIR:** That's all the questions I have. Thank
25 you.

1 CROSS-EXAMINATION

2 BY MR. PHILLIPS:

3 Q. When it got time for you to answer the question about
4 what Mr. Hart told you, you stopped and shook your head.
5 Were you really trying to remember what you needed to say?

6 A. I was trying to remember what he told me.

7 Q. Because it didn't happen?

8 A. It did happen.

9 Q. In this case, going to your credibility, y'all were --
10 you and Alex Wallace were on keepaway; is that right?

11 A. Yes, sir.

12 Q. So how were you talking to him if y'all are on
13 keepaway?

14 A. We both was on lockup.

15 Q. And if you're on lockup, how were you talking to him
16 every day?

17 A. Through the door and through kites.

18 Q. Through kites. And that's where, what, you and other
19 people exchange messages?

20 A. Yeah. See, this is what we do. We take a toothpaste
21 and we break it and we put soap in there and then smash it
22 and tie it to a rope and put it on an envelope and we slide
23 it through each other's door and we were right across from
24 each other.

25 Q. So you can know what to say about cases, right?

1 A. Sir?

2 Q. What you're here today for?

3 A. I don't understand.

4 Q. What you're facing in this case is life without
5 parole. You could die in prison?

6 A. Yes, sir.

7 Q. You know that?

8 A. Yes, sir.

9 Q. Have you been sentenced?

10 A. No, sir.

11 Q. So you know that by you testifying that could be
12 favorable on you, that you might not die in prison by
13 sitting up there?

14 A. I mean, I hope so, but --

15 Q. It crossed your mind?

16 A. -- but I don't -- I didn't have any promises.

17 Q. Right. And then later when you get sentenced, that's
18 when it comes?

19 A. I don't know.

20 Q. Right. But that's why you're up there?

21 A. I mean, I'm up here because I'm doing the right thing.

22 Q. Right. Same as when the other guy got murdered. When
23 you burglarized a home and a man was murdered.

24 A. What about it?

25 Q. You admit that Alex Wallace grew up on Greenwood

1 Drive?

2 A. Yes, sir.

3 Q. That's right beside the murder scene in this case,
4 right?

5 A. Yes, sir.

6 Q. So he did grow up right beside where this happened?

7 A. Yes, sir.

8 Q. And he wasn't selling drugs, he wasn't doing anything
9 bad. The first crime he ever does is the execution-style
10 murder during a burglary.

11 **MR. McNAIR:** Objection. Mischaracterizing the
12 testimony.

13 **THE COURT:** Sustained. Rephrase that.

14 **MR. PHILLIPS:** Yes, Your Honor. In reply though, the
15 solicitor did use the word "execution."

16 **THE COURT:** No, he didn't. I stopped that because
17 that wasn't part of the testimony then either.

18 **MR. PHILLIPS:** Not McNair, but earlier in the trial.

19 **THE COURT:** I remember.

20 BY MR. PHILLIPS:

21 Q. In this case, Wallace told you to get rid of the gun.
22 We've got the same issue.

23 A. No, he didn't.

24 Q. Oh. You didn't tell the investigator he said Wallace
25 told him that he had to get rid of the gun?

1 A. He didn't tell me to, sir. He told me he had to.

2 Q. And you told him to get rid of it?

3 A. Yes, sir.

4 Q. To conceal evidence?

5 A. Yes, sir.

6 Q. Because it's the right thing to do after a man's been
7 murdered?

8 A. And your point is?

9 Q. It's been made. After the man was murdered, just like
10 in this case, y'all ran. True?

11 A. Yes, sir.

12 Q. Ran away. And just like this case, you knew Wallace
13 had that gun and it was stolen the day before you went
14 there, right?

15 A. It was stolen.

16 Q. It was a stolen gun, right, and it was Wallace's?

17 **MR. McNAIR:** Your Honor, how is this impeachment
18 information? I'd object. He's getting into the facts of
19 an unrelated case.

20 **MR. PHILLIPS:** His credibility is at issue.

21 **THE COURT:** All right. His credibility's an issue,
22 so he can cross-examine him, but I don't want to get too
23 far astray of the facts of this case. We're dealing with
24 the credibility of a rebuttal witness.

25 **BY MR. PHILLIPS:**

1 Q. And doing the right thing you told the investigators
2 in this case originally that the other co-defendants,
3 DeMichael or -- and Chase knew Wallace had a gun and that
4 they were gonna do a lick; is that right?

5 A. Yes, sir.

6 Q. And what's a lick?

7 A. A burglary.

8 Q. But now you're saying they don't know?

9 A. I'm saying that they knew from their own assumption,
10 sir.

11 Q. Now you've told the solicitors in that case -- your
12 stories changed because you do the right thing -- that
13 they didn't know, you were trying to protect Chase and
14 DeMichael. Is it fair to say your morality only suits you
15 when it's needed?

16 A. No, sir.

17 Q. So why would you change your story about Chase and
18 DeMichael? Because it's not true? Because you are lying?
19 Because you're facing life in prison?

20 A. No, sir.

21 Q. That didn't cross your mind that you could die in
22 prison?

23 A. No, sir.

24 Q. So you don't dispute that you've made lies to police
25 -- that you've lied to police?

1 A. No, sir. See, I was confused.

2 Q. But you see everything clear today. So what you
3 characterize as a lie is confusion?

4 A. Yes, sir.

5 Q. And you were on keepaway from Alex Wallace and it's
6 your testimony that all of this is going on under the
7 doors, that people are yelling out their entire case, that
8 they're taking murder charges under their door?

9 A. Yes, sir.

10 Q. So where's your door from his door?

11 A. Right across.

12 Q. So they have y'all on keepaway, but you're literally
13 right across from each other?

14 A. Yes, sir.

15 Q. So if y'all were conspiring to do something, you could
16 easily do it?

17 A. If we were.

18 Q. If you were. You've made statements that you didn't
19 know Alex Wallace had a gun when they went in there
20 originally, right, and you changed it?

21 A. I knew he had a gun, but we got into an argument the
22 night before about him selling the gun. I told him not to,
23 but he told me that he did. So when he pulled out the gun
24 inside the house, I was fooled. I told him I thought he'd
25 sold the gun.

1 Q. You said he -- you knew that he stole the gun?

2 A. I mean, sold. Sold the gun.

3 Q. And the issue is the first time he's ever getting in
4 trouble according to you is stealing a gun and burglarizing
5 a home and murdering man?

6 A. I never said that.

7 Q. Oh. But he just happened to not be selling drugs,
8 which he's testified to.

9 A. I told you as far as I know he wasn't selling any
10 drugs.

11 Q. Well, you don't know a whole lot. When he moved away
12 to Columbia -- when he lived on Greenwood Drive and then
13 he moved away to Columbia, what type of relationship did
14 you have with him then?

15 A. He was still my best friend.

16 Q. Best friend. But you don't know what he was up to?

17 A. He was in the juvenile detention center.

18 Q. In and out, right?

19 A. Yes, sir.

20 **MR. PHILLIPS:** No further questions.

21 **THE COURT:** Anything on redirect?

22 **MR. McNAIR:** Very quickly.

23 **REDIRECT EXAMINATION**

24 **BY MR. McNAIR:**

25 Q. Mr. Flagler, you testified that Alex was like a

1 brother to you. Do you care about him?

2 A. Yes, sir.

3 Q. Were you concerned about what he was trying to do by
4 taking Bhريس's charge?

5 A. Yes, sir.

6 Q. Did you want it to be known about why he was doing
7 that because you felt it was wrong?

8 A. Yes, sir.

9 Q. To protect Mr. Wallace?

10 A. Yes, sir.

11 Q. Now when you were arrested on your case, did you
12 cooperate with the police?

13 A. Yes, sir.

14 Q. Did you immediately tell them about your involvement?

15 A. Yes, sir.

16 Q. And now how long were you housed across from
17 Mr. Wallace?

18 A. No more than a week.

19 Q. And there's windows you can talk through?

20 A. Yes, sir, doors. We talk through the cracks or the
21 bottom.

22 Q. And you're directly across the hallway, correct?

23 A. Yes, sir.

24 Q. How far is that?

25 A. Like two yards.

1 Q. Close quarters?

2 A. Yes, sir.

3 Q. So y'all were just talking through the doors, right?

4 A. Yes, sir.

5 Q. And passing notes back and forth?

6 A. Yes, sir.

7 **MR. McNAIR:** No further questions.

8 **THE COURT:** Okay.

9 RE CROSS EXAMINATION

10 BY MR. PHILLIPS:

11 Q. When you said you cooperated with police, in that
12 cooperation you lied to the police, yes? Or you were
13 confused as you would say?

14 A. I'm confused now.

15 Q. You're confused now?

16 A. From your questions.

17 Q. Because you told so many lies?

18 A. I didn't tell any lies.

19 Q. You haven't told any lies?

20 A. I didn't tell any lies.

21 Q. You haven't lied to police?

22 A. See, what I'm saying is I didn't remember telling
23 them that.

24 Q. You don't remember a lot and that's where the
25 confusion comes in because one lie builds on another and

1 you can't remember it, right?

2 A. No.

3 Q. And you expect the jury to believe knowing that you
4 were Alex Wallace's co-defendant that when you have contact
5 with Chris Hart that the first thing out of his mouth is
6 gonna be I did worse than you, I've done worse than you?
7 Why would he -- why would he say that?

8 A. To get me to answer his question.

9 Q. Right. So you can write a statement to the
10 solicitor's office that you have information in a case so
11 you can testify, so you don't have to die in prison in a
12 murder?

13 A. That wasn't the case.

14 **MR. PHILLIPS:** No further questions.

15 **THE COURT:** All right. You can step down.

16 (Witness excused.)

17 **MR. McNAIR:** That's all the State has in reply, Your
18 Honor.

19 **THE COURT:** All right.

20 All right. We're gonna take a short break. I'm
21 gonna talk to the lawyers. They've presented what they're
22 gonna present as far as evidence and testimony goes. I
23 want to talk to them about the closing summaries, as well
24 as my instructions, and so y'all step in the jury room.
25 You can't discuss the case yet. We're getting close. The

1 last three things to do is they'll summarize, each, and
2 then I instruct and y'all begin deliberations, but only
3 when I tell you to, okay? So y'all step back in the jury
4 room and I'll have you right back in here.

5 (Whereupon, the jury retires to the jury room at
6 9:55 AM.)

7 **THE COURT:** All right. Do you want to make your
8 motions and then we'll talk about jury instructions?

9 **MR. PHILLIPS:** At this point the defense would renew
10 all prior motions and objections from pre-trial, as well
11 as during trial, specifically the motion for the mistrial.
12 All motions, objections, we would renew them.

13 **THE COURT:** And I respectfully and consistently deny,
14 but all timely made.

15 **MR. PHILLIPS:** One thing that just occurred to me is
16 yesterday during cross-examination of Alex Wallace, I
17 objected and I think it was sustained about the
18 characterization of the trajectory of the bullet.

19 **THE COURT:** Yes.

20 **MR. PHILLIPS:** I would like a curative on that.
21 That's a very big issue in the case because in closing I
22 would imagine the solicitor's office is gonna argue that
23 when he held the gun there that the trajectory was not the
24 same as what was testified to by Ms. Ross, the pathologist,
25 because the bullet ended up in the jawbone and it was clear

1 that the gun was pointing down and anything beyond that is
2 a mischaracterization. You can't testify as to the exact
3 trajectory based on him holding a rubber gun.

4 **THE COURT:** And I -- I sustained your objection on
5 that and Mr. Graham quit asking questions. He said where
6 did you hold the gun, here, and that's about it.

7 **MR. GRAHAM:** He held it and the jury saw it.

8 **THE COURT:** Right.

9 **MR. PHILLIPS:** But the --

10 **THE COURT:** If you can suggest a way to comment
11 without me commenting on the facts.

12 **MR. PHILLIPS:** Right. The only harm that I see is
13 they now in their head believe that the trajectory is
14 different.

15 **THE COURT:** I don't. I mean, I don't -- I think
16 that's for y'all to argue. I don't think I can comment
17 on that. I mean, I'm willing to consider something you
18 can suggest, but how would I suggest without commenting
19 on the facts?

20 **MR. PHILLIPS:** I understand. It's just one of those
21 things you can't undo. It's already done.

22 **THE COURT:** Well, I mean, I didn't think it was
23 improper for Mr. Graham to say show me where you were
24 standing.

25 **MR. PHILLIPS:** No, that was all proper.

1 **THE COURT:** Rhonda -- I can't think of her last name,
2 she's about the same height; show me what you did, how did
3 you hold the gun..

4 **MR. PHILLIPS:** All of that was proper, a hundred
5 percent, but when he's holding the gun in a downward angle
6 and Solicitor Graham says now that bullet would have went
7 straight out of her forehead, that's him essentially
8 asserting -- he's testifying at that point and that is --
9 that was why I objected to it.

10 **THE COURT:** All right. I sustained your objection,
11 so I don't know what I can do to cure that with an
12 instruction without me commenting on the facts, which I'm
13 reluctant to do.

14 **MR. PHILLIPS:** I guess in the standard jury charges
15 you will discuss the fact that comments by the lawyers are
16 not evidence, so I guess --

17 **THE COURT:** Absolutely.

18 **MR. PHILLIPS:** -- that's the closest we can get.

19 **THE COURT:** Absolutely. Does the State have any
20 particular charges they want? Because Mr. Phillips
21 submitted two. One was third-party guilt, which you
22 already had, and the other one was confidential informant.

23 **MR. PHILLIPS:** Like an informant's charge of --
24 basically there's no true confidential informant in this
25 case, but under the informant charge that I did provide

1 the Court, it essentially uses the language of any
2 personal advantage and when somebody says they don't
3 have a deal and they haven't been sentenced yet, that is
4 very perilous to a defendant because the jury gets to
5 believe that it's out of the goodness of their heart as
6 they just testified to when Lord knows if they haven't
7 been sentenced yet it's in hopes of having a personal
8 advantage by testifying.

9 **THE COURT:** I mean, I'm not even sure you need an
10 instruction on that. That's common sense. Who doesn't
11 know that?

12 **MR. McNAIR:** I agree, Your Honor.

13 **THE COURT:** That's presumption almost is you're here
14 for some benefit of your own.

15 **MR. PHILLIPS:** I'm still making the request.

16 **THE COURT:** Okay. I'm just kind of concerned about
17 the confidential informant language not fitting the
18 co-defendant I'm here for my own benefit. Certainly you
19 can argue that. I mean, heck, yeah. If you don't, I'd be
20 surprised.

21 **MR. PHILLIPS:** It's coming.

22 **THE COURT:** Oh, it would be a shock to me if you
23 didn't argue a lot of that, so I would anticipate it, and
24 I would expect the State to try to explain it away
25 otherwise. So that's not a hard pitch to call. Here

1 comes a fastball right here. I mean, it's a full count,
2 throw your best stuff. I know what's coming. I'll read
3 over it and consider it, but -- the third-party guilt
4 certainly I'm gonna charge, but the confidential informant
5 language I'm gonna read it. And we'll talk again before
6 I give the instructions. I just wanted to talk about it
7 right now while we had the jury in the back.

8 **MR. PHILLIPS:** One thing that I forgot to submit as
9 a proposed jury instruction now that I'm thinking about
10 it is there wasn't any jail phone calls available for
11 Deandre Staley. I would request a spoliation charge. I
12 think I have some case law that I can cite, but I believe
13 the reason why they weren't available is because they had
14 basically been at that point unavailable because it's been
15 over a year at the jail and they -- you know, he certainly
16 had been a witness for them for a while. And I know we had
17 that back and forth in pre-trial about it, but I argue that
18 they're discoverable if there's any impeachment evidence,
19 which under *Kyles v. Whitely* I would argue that jail phone
20 calls are -- falls square.

21 **THE COURT:** Okay. Well, I'm --

22 **MR. GRAHAM:** Judge, just to be heard on that, we
23 informed him about Mr. Staley in August of 2016. I
24 think the calls he was looking for were not even from
25 Lexington, they were from the South Carolina Department

1 of Corrections. What he's saying is any time there's a
2 witness he's telling me that it's my job to search
3 everywhere in the United States for phone calls to
4 preserve them for him. He could have contacted the
5 Department of Corrections back in 2016 and asked for them.
6 I have no idea whether the Department of Corrections keeps
7 their records for thirty days, one year or three years. I
8 don't think the charge is -- what he's requesting is
9 appropriate.

10 **THE COURT:** I understand your request for spoliation.
11 I don't see that. I'm very reluctant to give that
12 instruction, but I'll think about it while y'all are
13 closing. I'm probably not gonna do it.

14 **MR. PHILLIPS:** The only argument would be that in
15 addition Kyles v. Whitley says that any evidence that's
16 in the possession of a state government agency or any
17 government agency is imputed to the prosecutor and when
18 you have a witness, it's imputed. It's something that I
19 don't believe I have to specifically request. And then
20 by the time I did specifically request it, they weren't
21 available, I don't believe. I mean, he did spend time in
22 Lexington County Detention Center, right, as well?

23 **MR. GRAHAM:** At some time, yes.

24 **MR. PHILLIPS:** And then South Carolina Department of
25 Corrections, so it's both.

1 **THE COURT:** I understand your request. I'll probably
2 not give it.

3 Are we comfortable with the presentation of the
4 closing summaries?

5 **MR. McNAIR:** The order?

6 **MR. PHILLIPS:** Yeah, I guess let's hash that out. I
7 sent State v. Beatty last night in case there was an issue.
8 I don't think there is.

9 **THE COURT:** We're going consistent with Beatty?

10 **MR. PHILLIPS:** That's what we're --

11 **MR. GRAHAM:** Do we have a choice? I guess that's what
12 we do.

13 **THE COURT:** I was assigned Beatty and there at the
14 last minute they shipped me out.

15 **MR. GRAHAM:** Judge, your standard charge in the bench
16 book, the third-party guilt charge, how does that compare
17 to what Mr. Phillips has proposed?

18 **THE COURT:** Jacob's in charge of that. I haven't seen
19 it yet. I don't know.

20 **LAW CLERK:** It's the same one we've charged in all the
21 other trials we've had here.

22 **THE COURT:** How about that? That's a good answer.
23 It's the same one we used before when y'all were here in
24 that other trial that I can't remember the name of.

25 **MR. PHILLIPS:** The circumstantial evidence charge had

1 the --

2 **THE COURT:** All circumstances point consistent to the
3 same result?

4 **MR. PHILLIPS:** Yes.

5 **THE COURT:** It does. That's not a problem.

6 **MR. McNAIR:** Judge, do you also charge the standard
7 reasonable doubt charge in the bench book?

8 **THE COURT:** I charge my charge. I charge it both
9 ways. I charge firmly convinced and cause a reasonable
10 person to hesitate to act. I say it both ways.

11 **MR. McNAIR:** All right. I guess also in this trial
12 that's been brought up a lot is potential sentences that
13 people are facing. Can we craft some type of instruction
14 for the jury that that is not for their consideration in
15 determining guilt or innocence, it just goes towards
16 credibility -- their determination of the credibility of
17 a witness, their motive to lie, and I guess on the other
18 hand preclude Mr. Phillips from bringing that up in
19 closing to somehow imply the jury has anything to do with
20 sentencing Mr. Hart. That's an improper argument to the
21 jury.

22 **THE COURT:** I don't think he can argue that.

23 **MR. PHILLIPS:** No, I absolutely would not argue
24 anything about Mr. Hart's sentence, but I will be yelling
25 about thirty years to life in prison without parole for

1 about five different -- what, four witnesses, three
2 witnesses.

3 **THE COURT:** There weren't many witnesses --

4 **MR. PHILLIPS:** Or two witnesses. Wallace and --

5 **THE COURT:** They both had pretty substantial
6 sentences looking them in their face. There were only a
7 few people who testified that didn't have charges.

8 **MR. PHILLIPS:** Right. Because Wallace was facing
9 life, Mr. Flagler was facing life in prison.

10 **THE COURT:** Staley's already out, right?

11 **MR. McNAIR:** I guess just some instruction that -- so
12 they're aware that they are not to consider sentencing in
13 determining guilt or innocence. It just goes towards bias
14 or motive to misrepresent.

15 **MR. PHILLIPS:** And I don't know of a case --

16 **THE COURT:** And part of my -- the verdict form is up
17 or down, right? There's no lesser includes?

18 **MR. PHILLIPS:** No, Your Honor.

19 **THE COURT:** That's what I thought.

20 **MR. McNAIR:** That's the way I understand it.

21 **THE COURT:** It's all or nothing, right?

22 **MR. GRAHAM:** Yeah.

23 **THE COURT:** I don't remember any testimony about
24 anything other than up or down.

25 **MR. PHILLIPS:** That's correct.

1 **THE COURT:** All right. I'll think about that
2 Mr. McNair. There may be something I can say along those
3 lines that they determine the questions of fact and I
4 determine the questions of law, including any sentencing
5 imposed. I'll consider that.

6 **MR. McNAIR:** Exactly.

7 **MR. PHILLIPS:** If it's that -- I like it where it's
8 not just hammered on since it's so unusual.

9 **THE COURT:** Yeah.

10 **MR. GRAHAM:** One other thing that I would ask, Your
11 Honor, is that during the trial Mr. Phillips on multiple
12 occasions talked about Mr. Washington and Mr. Washington
13 testifying or not testifying. Mr. Washington is arrested,
14 represented and has invoked his Fifth Amendment right. I
15 think it's totally improper for him to say we can call him
16 when he knows that's not true. It's a misrepresentation
17 to the Court and to the jury.

18 **MR. PHILLIPS:** In reply, he has not invoked his
19 Fifth Amendment right. The State has the burden of proof.
20 They did not call him to the witness stand. That has not
21 officially happened.

22 **MR. GRAHAM:** It's what his attorney told me and I
23 can't call a witness to the stand that I know is gonna
24 invoke their right.

25 **MR. PHILLIPS:** I don't think that's the standard.

1 **THE COURT:** I'm not sure to be honest with you. I
2 mean, I'm confident it's been represented in this courtroom
3 that he was going to invoke his right. And, Ms. Zmroczek,
4 was she appointed?

5 **MR. McNAIR:** Yes, sir.

6 **THE COURT:** It wouldn't surprise me that she gave that
7 advice.

8 **MR. McNAIR:** Judge, I'm pretty sure there's case law
9 on that that we can't call somebody to the stand in front
10 of the jury for the sole purpose of them invoking their
11 right to remain silent. I'm pretty sure there's a case
12 out there that says that. I can't think of the name of
13 it right now.

14 **MR. PHILLIPS:** The problem in this case is their
15 whole case is that Jeremy Washington set the murder up.
16 He initially denied it in November. What I'm saying is
17 he's the crux of their case, he's this link that's the
18 chain, and they don't -- there's no way for me to attack
19 it other than the fact that they don't have it. It would
20 severely impede my ability during close to argue the fact
21 that their case --

22 **THE COURT:** All right. Let's do this. If we
23 stipulate -- y'all stipulate that he invoked his Fifth
24 Amendment right, was going to, why can't you then comment
25 on that?

1 **MR. GRAHAM:** I mean, if the Court wants, I have a
2 text or e-mail from her saying we'll be asserting his
3 Fifth Amendment right if called to testify. I got a
4 strange e-mail from Jacob, Griffith's law clerk,
5 indicating he was going to be called to testify. Please
6 call or clear this up.

7 **MR. PHILLIPS:** I think the State would need to find
8 a case that says that they can't call the witness because
9 that didn't happen in front of the jury with it being a
10 credibility case.

11 **THE COURT:** Will you look for that?

12 **MR. PHILLIPS:** With it being a credibility case, it's
13 such a close call.

14 **MR. McNAIR:** I'll look it up.

15 **MR. PHILLIPS:** Let me get these marked.

16 (Court's Exhibit Numbers 9 through 13 were marked for
17 identification.)

18 **MR. GRAHAM:** Your Honor, if I can put something on
19 the record while we're doing this. The ABA standards
20 relating to the administration of criminal justice,
21 Standard 3-5.7(c) of the prosecution function advises a
22 prosecutor should not call a witness in the presence of
23 the jury who the prosecutor knows will claim a valid
24 privilege not to testify.

25 **MR. PHILLIPS:** The defense response is that the ABA

1 standards are not controlling law in South Carolina and
2 their standards on the continuing duty to disclose
3 discovery, which I've hammered on, beat the dead horse,
4 is very strict.

5 **MR. MCNAIR:** Your Honor, I think I have a case here.

6 **MR. PHILLIPS:** Do you have the cite, Rob?

7 **MR. MCNAIR:** Yeah.

8 **MR. GRAHAM:** Your Honor, I think it's State versus
9 Hughes.

10 **THE COURT:** Well, it appears to me that the Court
11 may instruct if the witness is unavailable is what that
12 case is saying, isn't it?

13 **MR. PHILLIPS:** What's the citation?

14 **MR. MCNAIR:** Hold on. I just lost it.

15 **LAW CLERK:** 328 South Carolina 146, 1997.

16 **THE COURT:** Does that not seem to indicate that the
17 comment to the jury is that Mr. Washington was unavailable
18 for either side?

19 **MR. PHILLIPS:** Just a moment, Your Honor.

20 **THE COURT:** That's how I'm reading it. That's kind
21 of my leaning, to allow y'all to say Washington --
22 Washington, that's the unavailable witness -- he was
23 unavailable.

24 **MR. PHILLIPS:** They made him unavailable by arresting
25 him on Saturday four years later.

1 **MR. GRAHAM:** Because we finally had probable cause to
2 arrest him, Your Honor.

3 **THE COURT:** He's unavailable. I think that should
4 be the comment that will be allowed by either side or
5 both sides is that Washington is unavailable to testify.

6 **MR. McNAIR:** I don't know what you can argue regarding
7 that, Your Honor, though because this case does say that
8 neither party is entitled to draw any inference from the
9 invocation of his rights.

10 **THE COURT:** Correct.

11 **MR. McNAIR:** So I don't think he can argue against
12 us that Washington's unavailable because he invoked his
13 rights. I mean, I don't know how you'd argue that at all.
14 It's improper to draw any inference from that.

15 **MR. PHILLIPS:** And then we turn into another almost
16 confrontation clause issue. They presented all this
17 evidence that Washington's done all these things and I
18 think a lot of the hearsay that's come in and I can't then
19 argue in closing that they can't tie their chain up, they
20 can't link the chain, because he's nowhere to be found,
21 he's unavailable, and I can't -- I wouldn't be able to
22 make that argument.

23 **MR. GRAHAM:** And we wouldn't be able to try them
24 together either.

25 **THE COURT:** No. I think -- I think it can be said

1 that Washington's not available, so we don't have his
2 testimony, and not go any further that would rise to what
3 would he have said, it would have been this, that and the
4 other. You can't run with that and draw inferences, but I
5 think it -- I think it would be proper to say he was not
6 available for this trial. We have the evidence we've got
7 in this trial and that's what the jury has got to consider.
8 I don't mind giving that in my instructions. There were
9 comments made about some witnesses who didn't testify,
10 Mr. Washington was unavailable, you're to draw no inference
11 from that, you've got to consider and determine guilt or
12 innocence beyond a reasonable doubt on what was presented.

13 **MR. McNAIR:** He can't say, you know, Washington was
14 charged and the State never called him to the stand and
15 that's why -- I think that's what he wants to argue and I
16 don't think he can argue that. You never heard from
17 Mr. Washington like it's our fault when it's not when he
18 invoked his Fifth Amendment rights.

19 **MR. PHILLIPS:** Bear with me, Your Honor. You know
20 what's coming under. Crane v. Kentucky, Washington v.
21 Texas, State v. Mays. I have a right -- an opportunity to
22 present a complete defense and part of that is through my
23 arguments and that would deny that ability to present a
24 present a complete defense, as well as deny Mr. Hart the
25 right of a fair trial, and that would be the Fifth, Sixth

1 Fourteenth amendments to the United States Constitution and
2 Article 1, Sections 3, 12 and 14 of the South Carolina
3 Constitution. I don't get to respond to the fact that
4 they've now implied through an assistant solicitor through
5 another county that here's a man who had a charge with
6 this woman, that he -- that their whole case is he killed
7 -- or he hired John Hart to kill Paula Justice. There's
8 all this information that they get to hammer about
9 Washington and I can't say anything but he's not here.

10 **THE COURT:** Why can't you argue what motive he had to
11 set this up? Because they presented that, didn't they?

12 **MR. PHILLIPS:** Argue what motive Washington had?

13 **THE COURT:** Yeah.

14 **MR. PHILLIPS:** Well, I mean, that's not good for me.
15 That would mean that he set up a murder and that is --

16 **THE COURT:** And paid the wrong guy. I don't know.

17 **MR. PHILLIPS:** I mean, that would support the State's
18 theory that Washington hired John Hart to kill Paula
19 Justice. I mean, that's the problem. They're gonna be
20 able to hammer all this Washington evidence in their
21 closing and then I would be hamstrung to say that he's
22 unavailable, he's not here.

23 **THE COURT:** I don't know what to do for you. I
24 mean, he's not here, he's unavailable, I can't fix it.
25 I understand it's frustrating, but --

1 **MR. PHILLIPS:** I'm just trying to ask where can I
2 go with it? That's the problem. I mean, it ends the
3 defense. If we're saying that's not true and I have no
4 way to rebut any of the State's allegations. Because it's
5 all based off suspicion, mere suspicion. It's all clouded
6 through having an assistant solicitor testify that she
7 talked to a defense attorney who didn't testify for Paula
8 Justice.

9 **THE COURT:** I can't -- I can't fix it for you. I'm
10 sympathetic to you. I wish everybody could testify, but
11 what --

12 **MR. PHILLIPS:** But the disability is limiting me in
13 closing from defending my client.

14 **THE COURT:** I've got to apply the law that says no
15 inference. He's unavailable. I think that's all I can
16 do. I can't fix it.

17 **MR. PHILLIPS:** Well, the law says from the case is
18 that you can't call somebody to make that inference. This
19 is me defending my client in closing. I'm not calling
20 the witness, they're not calling the witness. Those
21 inferences aren't being called -- they're not calling the
22 witness to make that inference. Those cases say nothing
23 about what I get to argue in defense of my client in
24 closing.

25 **THE COURT:** All right. I don't know what you're

1 asking me to do for you.

2 **MR. PHILLIPS:** I will not say why didn't they call
3 Washington. I can say that there's no evidence to support
4 anything that Washington said.

5 **THE COURT:** You can say that. Why can't you say
6 that?

7 **MR. PHILLIPS:** That it's mere suspicion, just a
8 bunch of stuff that they've tried to throw up without any
9 evidence to support it. If that's -- I mean, I won't
10 say --

11 **THE COURT:** Why can't you say that?

12 **MR. PHILLIPS:** Okay.

13 **THE COURT:** Why can't he say that?

14 **MR. McNAIR:** We don't have any statements of
15 Washington in evidence. I mean, that was circumstantial
16 evidence of motive and then Hart got up there --

17 **THE COURT:** That's what he's saying. Say what you
18 said again.

19 **MR. PHILLIPS:** I don't know. It's in the spur of the
20 moment. Let me see.

21 **THE COURT:** They didn't present any evidence about
22 what Washington had in mind or something along those lines.

23 **MR. PHILLIPS:** Exactly.

24 **MR. McNAIR:** Well, and then Hart took the stand
25 yesterday and he admitted he knew Washington and Washington

1 was his drug supplier and that he did make phone calls to
2 Washington. That doesn't mean Washington hired him to
3 commit a murder. I mean, he can argue that all day long.

4 **THE COURT:** Yeah.

5 **MR. PHILLIPS:** Right, and they haven't tied anything
6 together. That's why I wanted to make sure that I
7 couldn't -- that I was limited to basically say nothing
8 about Washington other than he was unavailable. I just
9 wanted to make sure I can go into all the other things
10 about it other than --

11 **THE COURT:** I think you can say Washington's
12 unavailable, we didn't hear testimony from him, but what
13 we did hear was, it never got tied together. I think you
14 can say that. Why can't he say something along those
15 lines?

16 **MR. McNAIR:** I think if he said we didn't hear
17 testimony from him, the jury's wondering why didn't they
18 call Washington.

19 **THE COURT:** Because he's unavailable. I mean, we're
20 gonna say he's unavailable. Either side. Y'all can both
21 say that.

22 **MR. McNAIR:** Due to no fault of the State?

23 **THE COURT:** Washington is unavailable to either side
24 because of a ruling of the Court. How about that?

25 **MR. PHILLIPS:** Can we actually go back to the opening

1 statements? A lot was said about Washington during opening
2 statements.

3 **THE COURT:** Well, you're hamstringing me on that. You
4 don't want Graham to say anything about his demonstration
5 in closing arguments and stuff and now you're wanting to go
6 back and open up the opening arguments and --

7 **MR. PHILLIPS:** No, I'm saying as far as where we're
8 at with -- where my scope is. If the State in opening
9 promised a bunch of things with Washington, I should be
10 able to discredit the fact that they weren't able to do it.

11 **MR. GRAHAM:** We never promised them Jeremy Washington
12 was gonna testify.

13 **MR. McNAIR:** I talked about statements Hart made to
14 Deloach and statements Hart made to the State. I didn't
15 talk about any statements of Jeremy Washington in opening
16 statement.

17 **THE COURT:** I don't remember anything said about
18 Washington.

19 **MR. PHILLIPS:** Okay.

20 **THE COURT:** I really don't. I think both of y'all
21 can say within the bounds of the case law that Washington
22 is unavailable to testify, but what we did hear was from
23 witnesses who did testify and that's what we're working
24 on and here's -- I think that's what you go with for
25 either side.

1 **MR. GRAHAM:** Are you gonna give an instruction?

2 **MR. PHILLIPS:** I would ask for an instruction that he
3 wasn't made unavailable by the Defendant in case there's
4 some type of inference that could be made in the defense
5 of -- I mean, in the jurors own minds because, you know,
6 they fill in the gaps themselves.

7 **THE COURT:** All right. We can say he was unavailable
8 due to no fault of anyone in this trial.

9 **MR. PHILLIPS:** Thank you.

10 **THE COURT:** How about that? That's fair.

11 **MR. McNAIR:** That's fair.

12 **MR. PHILLIPS:** I agree.

13 **THE COURT:** All right. I told the jury they would be
14 back there a short amount of time and y'all are making a
15 liar out of me.

16 **MR. GRAHAM:** If we're done, I'd like five minutes to
17 set up for closing.

18 **MR. PHILLIPS:** I need to use the restroom.

19 **THE COURT:** Sure.

20 (Recess taken.)

21 **THE COURT:** All right, Stacy. Regarding closing
22 arguments, Mr. Phillips is suggesting that Mr. Graham may
23 demonstrate with the toy pistol. The relevant locations
24 and trajectory or the handling of the gun, he's objecting
25 to that, but I'm going to allow it and also allow

1 Mr. Phillips to do any type of demonstration he wishes
2 with the pistol -- the play pistol, the toy pistol.

3 **MR. PHILLIPS:** And so it's clear, Your Honor,
4 we're doing this prior to closing so I don't have to
5 contemporaneously do that for the record so he can do
6 his closing and we know that's coming up.

7 **THE COURT:** Yes. Because it's like a motion in
8 limine and I'm gonna allow him to do it. Now if he
9 doesn't want -- he just explained to the Court and if
10 you need to object, then that will be that, but I'm
11 anticipating Mr. Graham to be within the bounds of what
12 he just explained to us.

13 **MR. PHILLIPS:** And the argument would be that the
14 jury got to view how Alex Wallace held the gun, you know,
15 they made their contention, again, which I -- Your Honor
16 sustained my objection about his comment of the trajectory.
17 They got to view how he was holding the gun. Since Your
18 Honor sustained my objection regarding the trajectory, any
19 comment during closing regarding the trajectory would then
20 be improper because Your Honor sustained my objection, so
21 he can't make any comment regarding the trajectory.

22 **MR. GRAHAM:** The pathologist testified what the
23 trajectory was and I can -- I believe in my closing I can
24 talk about just exactly what she said, that the gun is in
25 line with the hole where the bullet ended up.

1 **MR. PHILLIPS:** I agree that he can testify as to what
2 Ms. Ross said, but not the way he held that gun and what
3 the jury saw because the gun was pointing down and that's
4 an issue.

5 **THE COURT:** He can argue anything that's factually
6 in the evidence, he can, and that's what you're saying is
7 you don't want him to argue something that's outside the
8 scope of evidence, which I sustained you and I agree with
9 you.

10 **MR. PHILLIPS:** Right.

11 **THE COURT:** He'll argue the facts of the case and
12 that's my direction to him. You made a clear record and
13 you'll be protected and you won't have to object during
14 the closing unless he diverts from that and you've got to
15 make your own decision then.

16 **MR. PHILLIPS:** Thank you, Your Honor.

17 **THE COURT:** All right. Are we about ready? Are
18 y'all ready?

19 **MR. GRAHAM:** Yes.

20 **THE COURT:** Very good. Bring in the jury.

21 (Whereupon, the jury enters the courtroom at
22 10:38 AM.)

23 **THE COURT:** All right. So now is the opportunity
24 for the attorneys to make their closing summaries to you.
25 Y'all please remember what they're doing is they're gonna

1 tell you what they believe the evidence and the testimony
2 has shown or what they think they've proved. Those are
3 the questions y'all are gonna answer, so these are
4 arguments. These aren't -- y'all take them as summaries.
5 This is what -- they're gonna make comments to that effect;
6 that is, you heard testimony from, you saw evidence that,
7 we believe it shows this. That's how it works. So what
8 they say is not facts. They're arguing the facts they
9 believe they presented or not.

10 So with that mind, Mr. Graham.

11 **MR. GRAHAM:** Thank you, Your Honor. Paula Justice
12 had a right to live. Just like everybody else. Did she
13 live the best life? It doesn't sound like it from what
14 we heard. She used drugs. She was a prostitute living
15 day by day in hotels turning tricks. Worked as a
16 confidential informant for Richland County. Doing the
17 best she could, but she didn't deserve to be executed.
18 She didn't deserve to have a bullet put through the back
19 of her head and left on a dirt road to die. It was a
20 cold-blooded execution. And like you heard in the opening,
21 that ride in that Lincoln, that was a ride to her death,
22 which she didn't even know was coming. But John
23 Christopher Hart did. He says he didn't, and that's
24 gonna be for you to decide.

25 The State has to prove murder. That's what Mr. Hart

1 is charged with. What is murder? Murder is the unlawful
2 killing of another with malice aforethought, express or
3 implied. Unlawful killing just means it's not justified,
4 it's not self-defense. Malice aforethought, express or
5 implied. Express means you say it, implied means by your
6 actions. Aforethought means it can be premeditated like
7 in this case or it can be just at the moment when you pull
8 the trigger. But right before and at the time the trigger
9 is pulled you meant to do it and you meant for her to die.
10 Malice. That's a dark word. That's an evil word. It's a
11 word that talks about, in this case, an execution. Not
12 just ill will between two people, not an argument between
13 somebody that went bad. Not even a robbery that goes bad,
14 but pure evil. Evil walks the streets. Evil lives in
15 Lexington County.

16 **MR. PHILLIPS:** Objection. The evil characterization
17 is improper.

18 **THE COURT:** Malice is an element the State's got to
19 prove. He can argue what he thinks he's proved.

20 **MR. GRAHAM:** What was your ruling on it? I'm sorry.

21 **THE COURT:** I'm gonna allow you to argue malice and
22 the definition of it.

23 **MR. GRAHAM:** Thank you.

24 Evil is in this courtroom. John Christopher Hart,
25 premeditated, filled with malice with an evil heart, put

1 a gun to the back of Paula Justice's head, pulled the
2 trigger and left her for dead. What's undisputed is there
3 were two people. Through testimony the State would dispute
4 there was only one person there when Paula Justice was
5 killed. The testimony talks about two. Either Alex
6 Wallace killed her, killed Paula Justice, if you believe
7 him, and if he didn't, the only person there was Chris
8 Hart. Through his own testimony he said it was him and
9 Alex Wallace. If Alex Wallace isn't there, he killed her.

10 **MR. PHILLIPS:** Mischaracterization.

11 **THE COURT:** All right. Y'all come here.

12 (Proceedings held at the bench; not reported.)

13 **MR. GRAHAM:** If I can continue, Your Honor?

14 **THE COURT:** Yes, you may.

15 **MR. GRAHAM:** The case is about credibility.
16 Believability. There's no forensics. I wish there was
17 a thumbprint found on the gun. I wish there was DNA on
18 the gun. We looked. It wasn't there because it was thrown
19 in a pond. What we've got is a casing at the scene that
20 matches the gun found in the pond, so we have the murder
21 weapon. And this trial is about proving who the murderer
22 is.

23 So let's talk about Alex Wallace. Alex Wallace came
24 into this courtroom and said I killed Paula Justice. And
25 for everybody, every witness who got up there, you've got

1 to look for a motive to lie and you're gonna have to
2 evaluate, each and every one of you and as a group, are
3 gonna have to decide are they telling the truth or are
4 they lying? And even if you think that they lied about
5 something, did they lie about everything? Just because
6 they lied about something in the past, doesn't mean
7 they're lying about this today with their hand on the
8 Bible sitting in that chair when you heard them testify.

9 Alex Wallace was sixteen years old when he was
10 arrested for a burglary and a murder. And you heard him
11 talk about that case. That wasn't an execution. That was
12 he and Terrance Flagler going into a house and getting
13 caught and trapped inside by a homeowner in a back room.
14 He told the homeowner to get down, the homeowner wouldn't
15 do it, and he shot him one time and they fled and he bled
16 to death. It's a murder, it's a burglary, but is it a
17 cold-blooded execution? A sixteen-year-old boy facing a
18 murder charge, thirty to life. You've heard that thrown
19 out here numerous time with different witnesses. At
20 sixteen years old what does that sound like to him? It
21 sounds like the rest of his life. He doesn't have anything
22 to lose by taking another charge. And you've heard the
23 word "take". Take is different than owning up. Owning up
24 is saying I did something wrong, I'm responsible. It's my
25 fault. Taking a charge means taking somebody else's charge

1 that you have nothing to do with. That's what that means.

2 So why would he take Chris Hart's charge? He's got
3 nothing to lose. To help a friend. Somebody ten years
4 older, a man, who by his own admission was in prison. Can
5 he give him guidance on what to do in prison? Can he give
6 him protection in prison? Who knows?

7 Terrance Flagler testified today. He's the
8 co-defendant with Alex Wallace. He said he was his friend.
9 He said that Alex told him he was taking his charge. He
10 said that Bhريس or the Defendant had him reading his
11 discovery. He said that he had him brainwashed and he
12 said he thought he had him talked out of doing it, but he
13 obviously didn't because he came up and testified. But if
14 he was gonna own up and he was gonna be a good citizen
15 like he said he was at the end of the day, wouldn't he
16 know the facts? Wouldn't he know what he did when he
17 killed Paula Justice like he claims?

18 We went through that statement that he gave, and
19 you'll have it back there, nine pages, and I don't even
20 know how many things were wrong compared to how many
21 things were right and I'm gonna miss some of them, but you
22 will remember more. Wallace says he calls Paula on the
23 363 number. And there are phone records. You'll have the
24 records, you can pour through them, but the testimony is
25 there's no phone calls. No phone calls to Hart either.

1 Wallace calls Hart to bring Paula. That's what he says
2 and that's what Mr. Hart testified to, but let's talk a
3 little bit of difference about it.

4 The story for Mr. Wallace was it was one trick that
5 Paula was gonna turn for \$150. He was gonna keep 75, he
6 was gonna give 50 to Hart, and Paula, who was doing the
7 work, was gonna get \$25. Mr. Hart testified the only
8 reason he took Paula over there, it wasn't to kill her,
9 the only reason he took her over there was a business deal
10 with Wallace. He testified that there were two men who
11 were gonna be tricked and Paula was gonna get \$150 apiece.
12 Doesn't it seem like if that was really what happened that
13 both of them would have agreed on how many men and how much
14 money? But they didn't. The stories aren't straight, so
15 is that just a mistake or a lie? That's for you to decide.

16 He said Paula was wearing sweatpants and a white
17 shirt. He walks up on her on the road and he's gonna
18 execute her. You saw what Paula was wearing. It was a
19 black shirt with pink on the front and blue jeans. He said
20 that the car was tan or beige. It was a Lincoln Town Car
21 and it was a blue-ish -- blue-silver. Hart got out on the
22 driver's side. That's what he wrote in the statement.
23 Hart got out on the driver's side, Paula got out on the
24 passenger side. Tevin Deloach says that's not true and
25 I'm pretty sure that John Hart said that wasn't true, that

1 Deloach was driving that car. How did he get that wrong
2 if he was there? Why not say I don't remember as opposed
3 to making up lies? He said nobody was with Hart and Paula,
4 but on testimony then he has them changed and now they're
5 both getting out on the passenger side, so he's putting a
6 third person there. Maybe it's because he knows that now
7 Tevin Deloach was driving the car.

8 / He shot Paula on the 8th or the 9th. It was the 10th.
9 I know it was a long time ago. Maybe he couldn't remember
10 the date. Four to five feet away with the arm extended.
11 When he started the conversation with Detective Spivey, it
12 was five or six, I believe, then it got to four to five and
13 then in front of you it got to three. It got closer and
14 closer as it needed to be for the facts. That's because he
15 wasn't there.

16 Shot in the back of the head. This is that same gun.
17 Not a real gun, it's just a mock. He said he shot her in
18 the back of the head. He said he was standing still. You
19 all saw the angle and saw people standing here. If I do
20 something that's wrong or different from what was said, you
21 remember the way you saw it. He held his arm out. He said
22 he was three feet away, that he was standing still and that
23 she was walking away and turned at an angle with the left
24 side of her head. Supposedly they were walking down the
25 road, so why she would be going off at an angle, I don't

1 know. Or maybe it was just to fit the fact that she was
2 shot in the left side of her head. She's walking away and
3 he had the gun, I believe, four inches away from her head
4 and she's walking away, but the pathologist said it was
5 contact wound or a close wound.

6 He said the gun was a Glock. Positive about it being
7 a Glock. It wasn't a Glock, it was a Karr. He said it was
8 chrome. We all know what chrome is and what chrome means.
9 It was stainless or brushed nickel, not chrome. He said
10 the gun was full-size and you saw exactly what he saw. You
11 saw Sergeant Spivey with the baby Glock, the small one,
12 which is the same size or close to the same size as the
13 Karr, the murder weapon in this case. You saw the mid-size
14 gun on his hip and then you saw Detective Stout came up
15 with a full-size gun on his hip. He saw the gun. Were
16 they in holsters? They were. But he saw the guns and he
17 told them it was full-size gun. That is not a full-size
18 gun.

19 On cross-examination we talked about how many rounds
20 were in it. He said seventeen. If any of you have
21 knowledge of a Glock and a full-size Glock, the bigger they
22 are the more they hold. This is from the Karr. You can't
23 put seventeen in that. He was still sticking with his
24 full-size gun story because he'd never seen that gun
25 before. He said he threw the gun in the pond. We know

1 that's not true. Tevin Deloach told you it wasn't true and
2 Mr. Hart told you it wasn't true. Why did he lie about
3 that?

4 You've got to remember when he wrote his story.
5 June of 2016. Not today, not after the testimony. Maybe
6 he's just trying to get Mr. Hart out of all the trouble.
7 Mr. Hart didn't do anything at all. If I'm gonna lie, I'm
8 gonna lie big. And that's something to remember for every
9 one of these witnesses. If you're gonna lie, make it good,
10 make it the best you can be.

11 The description of the pond. He described it as round
12 with trees and he missed everything else around it. You'll
13 have his statement back there. You can look. He didn't
14 talk about the tennis courts, he didn't talk about other
15 ponds being around, he didn't talk about a parking lot, he
16 had an extra road in there. He wasn't there. But under
17 oath he maintains that he is the one that threw it away.
18 Is there any doubt that he lied on the stand? No. He's a
19 liar.

20 He's wrong on the brass casing. It was nickel or
21 steel. You'll have that back there. What else couldn't
22 he do to keep his story straight? If you'll remember when
23 he talks about coming down the road, he said he lived on
24 Greenwood Drive, Greenwood Circle, and we talked -- I
25 pointed it out and had him come down right in front of you

1 and show you. Here's Greenwood. He said he was emerging
2 from Greenwood onto Lumberjack. Greenwood's right here,
3 Lumberjack's right here. He said that the car pulled all
4 the way up to Lowry with the headlights pointed at Lowry
5 and they were right there at the intersection of Lowry and
6 Lumberjack. He said Paula and Mr. Hart got out of the car
7 and walked toward him, so they would be walking up the
8 street. I think he actually put the shooting up here, if
9 I remember right. If you-all remember different, you go
10 with your memories, but I think that's where he said it
11 happened. That's not where it happened. The testimony
12 has got it back over here, way further down Lumberjack.

13 Deloach testified that he parked the car here. He
14 came up this road, pulled down. This is Gator Road,
15 Lumberjack goes way back up here, and then you've got Lowry
16 and then it goes up to Greenwood. This is a shot. Do you
17 remember when she talked about -- Ms. Derrick put her hands
18 in the bloody sand looking for a projectile? That's where
19 Paula died. You can see Gator Road in the background. He
20 didn't have the location right. So if he's here to tell
21 the truth and he's here to own up for what he did versus
22 taking the charge, wouldn't you have expected him to know
23 exactly what happened, know exactly how Paula was killed,
24 exactly how Paula was executed and have every detail right?
25 Or at least say I don't remember. So why did he need to

1 lie? Because he's trying to convince you of something
2 that's not true. Because that's what a liar has to do.

3 He talks about -- let's see. Do you remember the guy
4 who was doing the repo, one of the first witnesses? He
5 said he was up on Greenwood Drive, heard a gunshot, turned
6 onto Lumberjack, drives down and finds Paula's body. Did
7 he say anything about seeing a car on Lowry? Did he say
8 anything about seeing somebody in the road? He didn't.
9 Because the car was over by Gator Road and was gone that
10 Tevin Deloach and Chris Hart were in and Alex Wallace
11 wasn't there. None of the phone records, none of the
12 numbers that he gave, matched any numbers on John Hart's
13 phone or on Paula's phone.

14 Terrance Flagler, who's a co-defendant, what motive
15 does he have to lie? Sure, he's a co-defendant on Alex
16 Wallace's burglary and murder. He's not the one that
17 pulled the trigger though, is he? Alex Wallace told you
18 Terrance said he wanted to go into the house and he tried
19 to talk him out of it. Terrance Flagler though said he
20 was in there and he's guilty of that stuff. Does he want
21 help on his case? Sure he does. Everybody does. But has
22 he been promised anything? No. He's hoping that he'll get
23 help, but does that make you a liar? You've still got to
24 look at them. You look at their face, you look at their
25 eyes and you listen to their story and see if it makes

1 sense. Why would he come in now to say that a friend of
2 his is lying? To help himself and to help this case?
3 Maybe. Maybe he's also trying to save a friend from doing
4 something stupid, for taking on somebody's case that's not
5 his. Maybe he's trying to help his friend have a future.

6 Let's talk about the Defendant for a moment. What's
7 his motive to lie? He testified. You heard him, you saw
8 him. He's facing a murder charge. He could have cleared
9 that up from the beginning. He had an opportunity when
10 Sergeant Mefford called him on the phone in extradition
11 and he could have said no, no, no, you've got the wrong
12 guy. He didn't do that. He just wanted to know do you
13 have my thumb on a gun. Sergeant Spivey and Chris Stout
14 drive up to New York. Fifteen hours. He wants to tell you
15 that he's drunk and he's high and that they violated his
16 rights. Fifteen hours. I don't know whether he was doing
17 drugs before, he says he was, but he's in there for
18 fifteen hours. I don't think he's doing drugs in the jail
19 waiting for them. I don't think he's still drinking
20 waiting for them. If y'all believe that, then give it what
21 weight you think it deserves. He's facing a murder charge.
22 He has every reason in the world to lie to get himself off.

23 He picked up Paula Justice that night. He admits
24 everything but pulling the trigger. Everything but pulling
25 the trigger. He went by KG so all the people he sold drugs

1 to and all the prostitutes knew him as KG. They didn't
2 know him as Chris Hart. They didn't have his home address,
3 they didn't have his date of birth or his Social Security
4 number. They had access to him through a prepaid phone
5 that was unregistered. He knew that and they knew that.

6 Do you remember what he told Detective Spivey during
7 their interview? He didn't admit to anything. He just
8 kept asking questions. What you got? You don't have a
9 picture of me on video killing her. You don't have a
10 picture of me in the Waffle House with her getting in my
11 car. Well, they did have that. You don't have my name on
12 a phone. Lie, lie, lie to keep himself out of trouble just
13 like he's doing now. Don't buy the lies.

14 He told Detective Spivey that if it was a petit
15 larceny, I can tell you over the phone, but this isn't a
16 petit larceny, this is a murder, and he wasn't gonna tell
17 them he did it. He told the police and he admitted on the
18 stand that he doesn't like snitches. Paula Justice was a
19 snitch. If he doesn't like snitches, what's he doing with
20 a snitch? Why is he dealing with her? Why would he deal
21 drugs to a snitch? Why would he take a snitch on a
22 prostitution? Wouldn't he be worried about getting set
23 up? Wouldn't he be worried about the police being there?

24 What about that call to Jessica, Jessica Ussery?
25 That's his baby momma. She just had a baby on the [REDACTED] and

1 was in the hospital on the 10th. You heard it in court and
2 you can hear it back there adamantly denying that he had a
3 348 number to her unless you told them. You hear me? You
4 feel me? You can decide if he's threatening her or
5 bullying her. Why is he doing that? He was supposed to be
6 at the hospital to take her home. We all make choices in
7 life. We spend our time and our money and our energy on
8 the things that we value. He had a brand new child born,
9 the baby's momma needed a ride home, he told her he was
10 gonna do it and he doesn't show, so he must have been doing
11 something really important. And it wasn't to make fifty
12 bucks to take Paula to a prostitution. Something important
13 though would be Jeremy Washington saying I need her dead.
14 And now's the time.

15 Did he ever tell the police that he threw the gun into
16 the pond? He had opportunity to tell them and never did.
17 I don't know nothing. You don't have my print on a gun.
18 You don't have photos of me doing anything. Four years
19 later he gets to read his discovery. And discovery is
20 nothing more than all the police reports and all the
21 statements and all the testing, everything on the case, and
22 you get to review everything, you get to come to court and
23 then he says I threw the gun in the pond. Because all the
24 evidence put him there at Paula's murder. He's trying to
25 limit the amount of lies that he has to tell because that

1 would have been too much, so I'm gonna keep it small, but
2 it's still a lie. The phone records put him there, Tevin
3 Deloach puts him there. He now admits to the phone numbers
4 that he gave Jessica that he denied earlier, the two
5 different phones; the business phone and the personal
6 phone. He admits to calling Washington afterwards.

7 Jeremy Washington and Paula Justice in May of 2012
8 were arrested for trafficking in crack cocaine,
9 twenty-eight to a hundred grams. You heard Meghan Walker.
10 She was the prosecutor in Richland County. That charge
11 carried, I think she said, seven to twenty-five years.
12 Paula had pled, had her sentencing deferred, and was gonna
13 testify against Jeremy Washington. She got out on bond on
14 March 15, 2013, and she's dead April 10, 2013. She didn't
15 live a month on the streets before she was executed. And
16 you can't call this anything other than an execution.

17 Terrance Flagler tells you that he didn't know Paula,
18 he didn't know Chris. We know who knows Jeremy Washington
19 though. These are all the phone calls between Jeremy
20 Washington and Chris Hart. 44 I think is the count from
21 [REDACTED], the day his baby was born, to April 11th. 44
22 calls. Then when he switches his number, there's none.
23 When the man runs to New York, there's none. Why is he
24 running? The police are looking for him. He even talked
25 to Tina on the phone that very night, Tina Perry. She was

1 one of the ladies that lived at the Delta Motel where that
2 Lincoln was parked. She said you need to come here,
3 they're saying that you killed Paula, you've done something
4 to Paula, and he acted like he didn't know her and hung up.
5 He didn't go there to straighten this out. What did he do?
6 He got a hotel room under Tevin Deloach's girlfriend's name
7 and he got bus ticket under Tevin Deloach's name, and he
8 ran. And he went up there and he even admitted that he
9 told his family he was gonna be going away for a while.

10 He told you that he was scared when this happened.
11 That's his testimony. He didn't know it was gonna happen
12 that AJ pulled out that gun and shot and he was scared.
13 You'll have this back there with you along with all the
14 phone records. The red number was the phone that he called
15 Paula on and he admitted that after this murder, after this
16 execution, he took the battery out and he threw the phone
17 away because he didn't want a connection with Paula.
18 Because he thought that him being KG and that phone was
19 enough; otherwise, he would have kept the phone. He knew
20 the only connection to him were the dealers -- I mean, the
21 people he sold to and the prostitutes at the hotels he went
22 to and the name KG. He threw the phone away. The yellow
23 phone is his personal phone. That's his family phone.
24 That's his friend phone. His drug supplier, Jeremy
25 Washington, which phone was he on? Was he on his business

1 phone or was he on his friend phone? He's on his friend
2 phone. 11:14:52. The chart goes from 11:02 to 11:22.
3 Look at the time when Paula was killed, when the shots
4 were heard. The first call is right there at 11:14:52.
5 And who does he call when he's scared and upset and AJ
6 pops up out of the woods and kills Paula Justice? Jeremy
7 Washington. Why? Why would he call Jeremy Washington?
8 He says he doesn't even tell Tevin Deloach what happened.
9 He just comes in and says it's all messed up. Why does he
10 call Jeremy Washington? Tevin Deloach told you why. And
11 I don't know his exact words. I believe he testified to
12 it's done. You put that phrase with who he called, what
13 do you got? What do you got? You've got Chris Hart
14 executing her for Jeremy Washington, not AJ Wallace coming
15 out of the woods.

16 Deandre Staley. The young man sitting up there said
17 that he and Mr. Hart were like brothers, had known him for
18 years. Mr. Hart said the same thing. Mr. Hart said I have
19 no reason to know why he would make up this story on me.
20 That's the one who said I do not want to be here. Did he
21 look afraid? Did he look scared? Did he look like he
22 wanted to be here? Did he look like he had anything to
23 gain? He's got charges, but are they here in Lexington?
24 Can we do anything with them? No. What did he tell you?
25 He said that he had been stabbed and he told you why. He

1 said, to use his words, that John Hart told him I bodied
2 the bitch and then he talked about Paula and then he talked
3 about Jeremy Washington. That's the conversation he had
4 with Chris Hart. How did Deandre Staley know about Jeremy
5 Washington? The only evidence we have is it came from
6 Chris Hart. They put up a private investigator to say oh,
7 he said something different to them. He told us that he
8 shot her twice in the chest and we know that's not true,
9 she was shot in the head. I don't know what he told them
10 and I don't even really remember exactly what Mr. Staley
11 said other than I would have told them anything because I
12 didn't want to talk, but you believe his credibility. But
13 why would he say that his friend did it if he didn't?

14 Let's talk about Tevin Deloach for a second. Tevin
15 Deloach is charged with murder in this case under the hand
16 of one, hand of all. Because he knew what was gonna happen
17 and because he was there when Hart pulled the trigger, he's
18 guilty, just as if he pulled the trigger, and that's why he
19 got charged. You know why he got charged? Because that's
20 what he told the police. As we were pulling into the
21 Waffle House, John Hart told me -- Bhris told me we're
22 gonna -- I'm setting her up and I'm gonna kill her, and he
23 went along with it. He drove the car out there. How did
24 the police know that? Through him.

25 Did any other witness testify that that was said?

1 Just him. He could have got up on the stand during this
2 trial and said I never said that. He jumped in the car
3 and he told me that AJ did it. He could have lied and
4 said that, and he didn't, to try to get himself off. He
5 implicated himself, he told the truth. Does he want help
6 for helping his truth -- for testifying here in the
7 courtroom? Of course he does. He's not the shooter. But
8 why would he lie? Why would he lie and implicate himself?
9 Why would he get on the stand under oath and continue to
10 incriminate himself when he could have jumped on the AJ
11 Wallace bandwagon and say maybe I'll get off? Maybe it
12 really is because he's doing the right thing. Maybe it is
13 because he's telling the truth.

14 John Hart said that Tevin Deloach was a good friend of
15 his and he had no reason to think of why he would lie, why
16 he would say bad things about him. He said on the way
17 there, Deloach testified, I'm gonna set her up, I'm gonna
18 kill her as they were pulling in. He said as they were
19 driving down the road they were talking about Paula,
20 Washington and Munchkin, Jeremy Washington, and the drug
21 deal they had and the arrest they had. How would he know
22 about those things when he told the police that when he got
23 arrested? Through John Christopher Hart. He said -- as
24 they were driving away he said that Paula set Munchkin up
25 and paid me to kill her and offered him \$500. Why would

1 he make that up? All he had to do was say I don't know
2 nothing. He could have said he jumped back in the car and
3 said something messed up just happened and we drove off,
4 that's all I know. If that were the truth, why didn't he
5 say that? Because it's not the truth. He told you the
6 truth. The truth is that John Christopher Hart is nothing
7 but a cold-blooded murderer. The phone records show you
8 that he had no contact with Jeremy Washington.

9 The traffic stop, what did he tell you happened at
10 the traffic stop? He said there was a Lexington County
11 and the highway patrol were out there pulling them over,
12 he knew that gun was in the car, he knew Paula was dead,
13 he knew John Christopher Hart killed her, and what does he
14 say John Hart said? If they find the gun, take my charge.
15 Just like Alex Wallace is trying to do. Hart had a chance
16 to tell the police about Alex Wallace and he didn't do it
17 because it's not true and it didn't happen until between
18 January of 2016 and June of 2016 when he had the chance to
19 convince him to say it. He got lucky. He found somebody
20 younger, he found somebody impressionable, he found
21 somebody he could manipulate, he found somebody who lived
22 at -- near Greenwood Drive, near the area.

23 What doesn't make sense about what John Hart said?
24 Because he had to pretty much adopt the whole story. He
25 was there, he picked her up, he got stopped by police.

1 That's kind of hard to deny. They parked the car at the
2 Delta Motel. Four years before you heard the story that I
3 threw the gun in the pond. And why tell that story? It
4 could be the truth. That's what he wants you to believe.
5 He didn't do anything but throw the gun in the pond. It
6 could be he's just trying to narrow down the part of I
7 didn't shoot her and everything else is right. It could be
8 he didn't want to make Tevin Deloach that big of a liar
9 because Tevin Deloach only implicates him in a little bit.
10 The most important part, maybe he wants to tell you I threw
11 the gun in the pond and admits to that so he can explain
12 why he ran, why he was scared. I wasn't running from
13 murder, I was running because I threw the gun in the pond.
14 Nobody would have known that if he didn't tell you that
15 other than Tevin Deloach said it. But Tevin Deloach has
16 got to be a liar. He's got to lie about saying John Hart
17 said I'm setting her up and I'm gonna kill her. He's got
18 to be a liar about saying Paula set Jeremy Washington up
19 and Jeremy Washington paid me to kill her. Here, take
20 \$500. Because if you believe Tevin Deloach, John Hart is
21 guilty of murder.

22 When Mr. Hart was on the stand, we talked about his
23 interactions with Alex Wallace. He admitted that he met
24 him in January of 2016 and said -- he said I didn't say
25 take my charges, he said you need to own up for what you

1 did. He said that he didn't tell the police before
2 because Alex was his friend and he didn't want to be a
3 snitch. He felt like he owed him some loyalty, they had
4 some business dealings together, which Terrance Flagler
5 says he doesn't know anything about. In that meeting in
6 January of 2016, what he says happened was they recognized
7 that they both knew the story. AJ saying he killed Paula,
8 Hart knew it and he'd been in jail for murder, and he was
9 just frustrated. He goes up to him and says you need to
10 own up to it and what did he tell us -- what did he tell
11 you that AJ did? He blew him off, he disrespected him,
12 and he walked away. What does he owe Alex Wallace then?
13 Nothing. He still doesn't snitch on Wallace. He's sitting
14 on a murder charge and coming to court. Alex Wallace said
15 when he shot her, he threw the gun away, so he obviously
16 didn't drop the gun. Chris Hart testified that Alex
17 Wallace shot her, Alex dropped the gun, and he's scared.
18 That's what he said. Does a scared man pick up a murder
19 weapon and take it with him? Does that make sense or does
20 that just explain why he threw the gun in the pond? Maybe
21 just to make up that's why he's an accessory. That's what
22 he said. He said he picked it up. He's scared, he took
23 the gun and calls Jeremy Washington with the murder weapon
24 of Paula Justice in his hand. He says that he came in the
25 car with Deloach and he told him something bad happened and

1 nothing more. Does that makes sense? Does that make
2 sense? He feels like he just got brought into a murder.
3 That's what he's saying. He didn't know it was gonna
4 happen. AJ jumped out and killed them. He picked up the
5 gun and he doesn't tell his friend Tevin anything. Or did
6 the cold-blooded killer come in the car and say I killed
7 her because Paula set Munchkin up and then called Munchkin
8 and say it's done. They talked 44 times in two days or
9 three days, the 8th through the 11th. He wants you to
10 believe that he didn't know anything about Washington's
11 charges, that he didn't know anything about Paula's
12 charges. That's his supplier.

13 Only one of two people were there when Paula was
14 killed from the testimony you have. Tevin Deloach didn't
15 see AJ Wallace, the tow truck driver didn't see AJ Wallace.
16 AJ Wallace puts himself there, Chris Hart puts himself
17 there, and they both put each other there. You get to
18 decide if you believe AJ Wallace. If you think he killed
19 her, then Chris Hart's not guilty. If we didn't prove
20 beyond a reasonable doubt his guilt, he's not guilty.

21 Look at the credibility of AJ Wallace. I asked him to
22 come down and step down and hold this gun and show us how
23 it happened and y'all remember -- if I don't show the gun
24 in the right spot, you remember how he showed it. He said
25 that he had it pointed out and it was in a downward angle.

1 Not like that, but a downward angle. He said he was
2 four inches away. He had to move it to three to get
3 closer. The gun was four inches away from her head. It
4 was testified by the pathologist as a contact wound.

5 That's Paula Justice. That's how she was executed.
6 That's how she was left on Lumberjack Drive to die. You
7 can see where the wound is. The pathologist told you
8 there was soot in there. That's what makes it close. The
9 pathologist talked about the tearing of the skin. That's
10 from the gas going underneath the skin and bursting out.
11 It's not a clean bullet hole that you'd have from a
12 distance. What else did she talk about? Look how round
13 that hole is. She told you that it came in here and the
14 bullet was found here and that you can draw a straight line
15 through that to where the gun had to be. You remember how
16 AJ Wallace showed you that he held that gun and how he had
17 Rhonda stepping in for Paula. Is that the way it happened,
18 the way that AJ Wallace says? No. To get that path that
19 the pathologist talks about the gun has to be pointed down
20 and Paula's head has to be down here. Was she put on her
21 knees? We don't know. Did he hold the hand -- did he hold
22 the gun up above her head like that? We don't know, but
23 the pathologist told you that's how it has to be. The gun
24 to the entry hole to where the bullet was found.

25 Paula Justice had a right to live. Chris Hart took it

1 away from her, a stealer of lives. She was executed. He
2 took this and turned it into that. If that's not evil and
3 if that's not malice and if we haven't proved to you beyond
4 a reasonable doubt, you find him not guilty. But if you go
5 back there and you decide that Alex Wallace is a liar and
6 Chris Hart's a liar and Tevin Deloach told you the truth,
7 he's guilty of murder, and that's what I ask that your
8 verdict say. Thank you.

9 **THE COURT:** Okay, Mr. Phillips.

10 **MR. PHILLIPS:** I wholeheartedly agree that this case
11 is about credibility. That is the common sense part of
12 this that I said I agreed with at the very beginning of the
13 trial. In talking about credibility, the solicitor stated
14 about remembering every detail and that it's been over the
15 course of four years and in that -- in preparing for trial,
16 they spoke to these witnesses and they presented evidence
17 to you in opening statement, specifically promises made
18 during opening that there was an eyewitness. That these
19 solicitors had spoke to Tevin Deloach and they had an
20 eyewitness. You heard that in opening. It's about
21 credibility. In preparing for trial they spoke to Deloach.
22 The solicitor told you in opening that what turned into
23 done or it's done was, in opening, watch the news. Jeremy
24 Washington.

25 In opening statements this was their case. Tevin

1 Deloach clearly testified that he didn't see it, that his
2 car was pointed the other direction, and that there was a
3 three-minute gap. Yet the prosecutor told you in opening
4 that there was an eyewitness in this case and he told you
5 that Tevin Deloach would say that the phone call to Jeremy
6 Washington was gonna say watch the news. If that is true
7 in what was provided, why was that the first thing the
8 prosecutor's told you? Believing Jeremy Washington, the
9 person that the prosecutors say set all this up, this is
10 all mere suspicion. There is no evidence whatsoever that's
11 been presented, especially no credible evidence, about
12 Jeremy Washington. He's unavailable, arrested on Saturday,
13 not here today. You have to believe that all this is true
14 because that's what the prosecutor said was gonna happen,
15 and it didn't.

16 And this was their own witnesses. They were gonna
17 link up the evidence with Washington, that there was gonna
18 be an eyewitness and that Tevin Deloach would say that what
19 John Hart said was watch the news, and that didn't happen.
20 It is about credibility. It is just like prosecutor said
21 about remembering every single detail. And you know they
22 met with these witnesses plenty in preparation for trial
23 over four years and this is what they presented in a very
24 strong opening statement, and that's not what happened in
25 this trial.

1 There's this old story about a farm boy asking his
2 father, the farmer, why does the mule have the blinders on
3 and he said son, that's because I only want that mule to go
4 in one direction, I only want him to see what I want him to
5 see, and what we're gonna walk through is this trial as the
6 prosecutor did in his closing argument was list all the
7 things exactly the way they want to. They don't say that
8 Tevin Deloach made multiple statements and clearly lied to
9 them. They don't say that Staley made multiple statements.
10 And, of course, you get to assess the credibility, but all
11 of these things is a -- and, of course, they put it in the
12 very best light of themselves, these are the people that
13 are telling you that this is the exact truth, but not
14 presenting it as it is. But that's where I said that's the
15 one --

16 **MR. GRAHAM:** Judge, I'm gonna objection. He's
17 attacking us personally, which is inappropriate.

18 **THE COURT:** Argue the facts that have been presented.
19 I sustain that.

20 **MR. PHILLIPS:** That's when I said in opening that the
21 one thing I agreed with was use your common sense. You
22 get to piece all the things together and the one thing
23 you swore to do was to hold them to their burden whether
24 they've linked all the evidence together sufficient to
25 where there's not any real possibility that John Hart is

1 innocent. It's mere suspicion. And with that go down the
2 rabbit hole of a bunch of circumstantial evidence that,
3 again, as we walk through you will see we don't deny. And
4 this is the things that are very clear we said in opening
5 statement; that he was there, that those were his phone
6 numbers and that, yes, he threw it in the pond. And you
7 can take that for whatever you will. I mean, that's your
8 role as the jurors, but those are the things that we are
9 admitting to. He testified right there in that chair, and
10 you get to assess everything he said, you get to decide
11 whether he's telling the truth. We don't deny that.

12 We do have somebody who has confessed in this case.
13 It's unquestioned he testified to all kinds of things,
14 there's no denying that, but he confessed. But he also
15 walked through how he had killed another person in cold
16 blood and was pretty unequivocal about that. You got to
17 see how when I did the demonstration with him when he put
18 the gun to the back of my head, you got to see how
19 calculated he was, how sure he was about the angle of
20 turning my body. You have to take all of that into
21 account.

22 And all this talk about him being a sixteen-year-old
23 boy and that it's not an execution, a burglary, when you
24 explain that a man is told to get on the ground and he
25 doesn't and he's shot to death, there's no other way you

1 can explain that. There's no other way that you can
2 explain that there was testimony that the first thing they
3 did was run away, just like he testified in this case.
4 There's no other way to say what we heard, that first talk
5 of what in the burglary case Alex Wallace said, we need to
6 get rid of the gun. Except in that case Flagler said I'm
7 not getting rid of the gun.

8 Tevin Deloach did not see what happened. That is
9 undisputed based on his testimony that you heard
10 differently in opening statement. He says he didn't see
11 what happened, it was probably a three minute gap between
12 when they got out of the car and when he heard a gunshot.

13 Motives. Going back to Jeremy Washington, the State's
14 motive that they said for John Hart is that there's this
15 link with Washington, but there's no credible evidence
16 linking that. They have the one phone call that they say
17 is beyond a reasonable doubt proof of his guilt. There's
18 no other linking evidence.

19 The solicitor said in his closing there wasn't any
20 DNA on the gun. We all know that's not true because the
21 prosecutor put a person up on the stand from SLED who
22 said there was DNA on the gun. And, again, this is
23 about credibility. This was the argument that was just
24 presented to you. They're the one who called the person
25 and there was DNA on the gun. There was at least two

1 people's DNA on the gun. They said it could have been more
2 and Paula Justice's DNA was excluded. What was told to
3 you in closing was that there was no DNA on the gun and we
4 heard that there was at least two people's DNA on the gun.

5 Again, it's about holding the prosecution to their
6 burden. The judge is gonna tell you mere suspicion is not
7 enough. If there's a real possibility that he's innocent,
8 you can't do it. We have these standards to prevent,
9 innocent people from being convicted. It's that serious.
10 And if you really sit back and think of how their witnesses
11 were, it's no different than what they tried to spin
12 regarding Alex Wallace. It's this cloud of suspicion. I
13 could certainly admit that. Anybody that was in this room
14 all week can certainly admit that. There are no shoe
15 prints. There was a detective that was put on the stand
16 that said they didn't take any pictures of the footprints.
17 We would be able to quickly exclude whether there was this
18 other person if they could. Now she did say there was a
19 lot of heavy foot traffic and it wasn't available, but we
20 don't have that and if we did that could be valuable, but
21 we don't have it. What we do have is that there are at
22 least two people's DNA on that gun and it's not Paula
23 Justice's.

24 Let's talk about close range. The SLED DNA analyst
25 said that it could have been exactly on, but could have

1 been slightly off, and that -- I did ask if that wasn't in
2 her report, and she said no. What that means is the first
3 time she ever said that was today -- or when she testified.
4 And there's no blood. If John Hart is standing right over
5 her, gun to the head and he shoots her as they said
6 execution style, and just a little while later he's
7 standing between us and a Lexington County deputy and that
8 deputy doesn't have any idea that he had shot somebody,
9 that there's no evidence on him that he just executed
10 somebody from pointblank range, that further shows that
11 things aren't always as they seem. It's not as clearcut as
12 they made it.

13 Lies. Something also forgotten to bring up from
14 opening statement. The solicitor said that the link with
15 Washington was that John Hart was gonna get paid in five
16 circles of crack. Again, in four years preparing for
17 trial, Tevin Deloach being their key witness, he testified
18 that John -- that Jeremy Washington was gonna pay John Hart
19 \$10,000. And not \$500 as the solicitor described in his
20 opening, he said that he was gonna be paid \$5,000.
21 Entirely different from what's been presented. Again, it's
22 just one side of the story and that's why we have this
23 system because when you start matching it up their stuff
24 doesn't look as clean as they said in their argument.
25 Tevin Deloach, their key witness, the one who tells the

1 truth says it's \$10,000 Jeremy Washington was gonna pay
2 Mr. Hart, yet during opening the solicitor said he was paid
3 with five circles of crack. The only person that says five
4 circles of crack is Deandre Staley and we'll get to him.
5 You obviously got to view all the different problems, and
6 we'll go there. The fact that he wrote a letter to the
7 solicitor's office saying I've got information, but you've
8 got to help me, you've got to either get me out of jail or
9 you've got to get rid of my charges, and then once he gets
10 wrapped up into it he said I'll be willing to say anything
11 to my investigators when he said that John Hart confessed
12 to him within twenty-four hours of walking into the
13 detention center or walking into his wing. So under
14 Staley's point of view, John Hart's in the same place
15 where he is and within twenty-four hours while he's doing
16 pushups, he walks up to him and says he bodied the bitch.

17 In a land of snitches in the jail where you got to
18 see all week where anybody had any piece of information,
19 especially in a murder trial, the first thing they're gonna
20 do is write a letter to the solicitor's office and you got
21 to see it. That in that land of the snitches, John Hart's
22 gonna walk up to another inmate and within twenty-four
23 hours confide into him and say that he is a trustworthy
24 person that I can -- that I can tell that I killed a
25 person. They also want you to do that with Flagler. You

1 didn't hear about him until today. You didn't hear about
2 this other confession. Again, they want you to think that
3 John Hart is this calculated, cold-blooded killer, yet he
4 would walk up to the co-defendant of Alex Wallace and say
5 I've done so much worse than you and confess to him as well
6 and also would want you to think that he's confessed to
7 other people. That he's somehow sharing his discovery and
8 that everybody knows everything about his case. That
9 they're all yelling this critical information under the
10 door back and forth.

11 As far as Deloach, when we're assessing credibility,
12 when I have LWOPs up here -- that's life without patrol
13 sentences, that means you die in prison, that's what's
14 potentially facing him, and you've got to ask why did he
15 get bond on a murder case? Was it because he said what
16 they wanted to hear?

17 **MR. GRAHAM:** Objection, Your Honor. That's not in
18 evidence.

19 **THE COURT:** All right. Argue the facts in evidence.

20 **MR. PHILLIPS:** He got out after being charged with
21 murder and he picks up, what is in evidence, the solicitor
22 asked him these questions, another life without parole
23 potential sentence in Richland County, a burglary first
24 degree. He's on an ankle monitor and he gets another life
25 without parole potential crime when he's already charged

1 with murder, and this is the star credibility witness. If
2 he had nothing to lose -- if he had nothing to gain, if he
3 was just hoping to get the best, why hasn't he plead guilty
4 and been sentenced? There's a reason he hasn't been
5 sentenced. Yeah, he hasn't been fully promised anything,
6 but if there was nothing to hide, nothing to gain, why
7 hasn't he been sentenced? He's trying to make sure he
8 doesn't die in prison because while already having a murder
9 charge facing life without parole, he picks up another life
10 without parole charge. He has a lot to lose.

11 Where does the solicitor get the "watch the news"
12 statement? Where does the \$10,000 versus the five hits
13 of -- or five circles of crack? It's not clean-cut. You
14 were here. You saw it. You saw the tug of war with each
15 witness. It went back and forth and it didn't make sense.
16 It's a big cloud of suspicion. And the judge is gonna tell
17 you in his instructions that's not enough. That's not
18 enough. I agree wholeheartedly with what the prosecution
19 said. Paula did not deserve to die. She did not. She
20 did not. But what doesn't need to happen and what John
21 Hart deserves is not to be convicted based off mere
22 suspicion, the web of lies that's been spun here in this
23 courtroom. You can't tell what's been said.

24 There's an old classic move -- it's called -- it's a
25 Japanese movie, Rashomon, and the reason it's a classic is

1 because it tells the story very much like this trial. A
2 person's murdered and there's a trial that's put on in the
3 case and all the witnesses come up before the judges and
4 they all tell a different story and the whole purpose --
5 and it leaves you hanging. The whole purpose of the movie
6 is to say everybody has a reason to say what they're gonna
7 say and the ending is inconclusive. And the judge is gonna
8 tell you in this cloud of suspicion, that's not enough.

9 But you get to access his credibility and he told you
10 that he didn't do it, but you have to be firmly convinced
11 that he's guilty. Firmly convinced. If you have any
12 hesitation in making that decision, the judge is gonna
13 tell you you can't do it. If you have a hesitation,
14 hesitate to act, you can't do it. He's gonna tell you
15 that.

16 Deloach said there was a three minute gap. A lot
17 can happen in three minutes and he said he didn't see
18 what happened. Watch the news turned into it's done.
19 And there was this discussion about Zeke. Talking about
20 credibility, Deloach testified that the person he heard
21 John Hart call on the way to the murder scene was a man
22 named Zeke, something along those lines. Then I looked
23 in the incident report or the report that he gave to
24 Investigator Spivey and he said it absolutely didn't sound
25 like Zeke. They're saying he's truthful and it got proven

1 time and time again that he will lie and say anything
2 that's necessary, so why would he lie about that one
3 little thing? That's inconsequential about this whole
4 trial. The only reason I'm pointing it out is it's just
5 another lie. Lying is not a big deal to him.

6 Deloach did say that he never saw John Hart with a
7 gun prior to the murder. He testified to that. He never
8 saw him with a gun. We're going at face value, the
9 prosecutors say he's telling the truth, and he never saw
10 John Hart with the gun. The only time he says he sees the
11 gun is when he comes back the to car. Again, Deloach said
12 he didn't see any blood on John Hart when he got back in
13 the car. If you take it at face value, when he gets in
14 the car there should have been blood on him if he shoots
15 her at pointblank range. He says he doesn't see it. He
16 wants you to believe that their usual business of John Hart
17 paying him fifty sucks to drive him around to sell drugs,
18 that with this \$50 driver fee while they're pulling into a
19 Waffle House, John Hart throws out I'm going to kill this
20 woman. Out of nowhere without any lead-in and only being
21 paid \$50 and all he's ever done is drive him around to
22 sell drugs that it quickly escalates with no warning that
23 they're gonna go murder somebody. That just doesn't make
24 sense. It supports the fact that he never saw a gun,
25 supports the fact that everything -- that other specific

1 facts that he testified to is a lie, supports the fact
2 that he didn't see what happened.

3 We talked about Deandre Staley, about his letter. I
4 have information, but I want you to help me. I'll spare
5 you me going back to get it, but I need your help or
6 something along those lines. I either want you to set my
7 bond to a PR, which means I get out, or want you to do
8 something with my charges. Then he sounded pretty raw
9 because he said well, they didn't help me, I went to jail.
10 Maybe that's because they didn't believe him. Then he's
11 gonna say well, I didn't tell your investigator that Hart
12 told me he shot her twice in the chest, but I would admit
13 that I would say anything, and he certainly -- and you
14 heard from my investigator, who I think when you saw
15 him and you got to assess his credibility, he was a
16 disinterested party. There was no way to question his
17 credibility as to Staley's with his teardrop tattoos like
18 Alex Wallace. In assessing that, again, Staley says
19 within twenty-four hours --

20 **MR. GRAHAM:** Your Honor, I'm gonna objection. I
21 don't know if there's been any testimony about the teardrop
22 tattoos and what they mean, so I don't know what he's
23 trying to imply with that.

24 **THE COURT:** You know what, he can argue facts in
25 evidence.

1 **MR. PHILLIPS:** Within twenty-four hours in jail John
2 Hart walks up to him and just confesses. The same as the
3 solicitor's done. Why? Why would you do that if you're
4 in jail for murder? Why would you walk up to somebody and
5 confess within twenty-four hours when they're not part of
6 your case and you know they would have a reason to try to
7 help themselves because they're in jail.

8 Again, he also added in that he found out before
9 sometime that Paula was actually somehow related to him
10 through family members; that he had some type of personal
11 relationship with Paula. He has another reason in addition
12 to his pending charge to try to help the fact that he wants
13 to get Chris Hart. That he has motive.

14 I know the phone evidence is certainly one of the big
15 issues in this case. You got to hear from, I believe it
16 was, Detective Travis who did the cell site location maps,
17 that the number that was provided by Wallace there is no
18 cell site location map. We could quickly disprove that
19 Wallace wasn't there if we had a cell site location map of
20 that phone, but you don't have that. Staley provided a
21 number for John Hart that's not one of the numbers on all
22 of the boards that you have and all of the things that the
23 prosecution put together. He provided a number for John
24 Hart that's not included in all of that. You've got to ask
25 why don't we have the cell phone records for that number.

1 The burden is not on us to put this together. Why
2 don't we have the map? Why don't we have the cell phone
3 records? They knew which room Paula was staying in. Why
4 don't we have the numbers from the hotel? Between these
5 three things their phone records would be complete and
6 there would be no way for us to argue around it, but here's
7 three phones, a set of phone records that would clearly
8 establish the credibility of the witnesses, and we don't
9 have it.

10 And that's for you to determine when you go back there
11 to decide in putting these links in the chain together. If
12 we had the cell site location map for Wallace, if we had
13 the cell phone records that were provided of the number of
14 Hart from Staley and if we had the phone records from the
15 hotel room Paula was staying in.

16 Wallace. Why would he take another murder? That's
17 what I asked him. I said why on God's good Earth would you
18 do that? It makes no sense. He has nothing to gain.

19 You got to hear from Mr. Flagler as well. He lived
20 basically a street away and even he testified that he came
21 through the woods. He certainly testified about all kinds
22 of stuff. None of it made sense for the most part, but I
23 wouldn't imagine a lot would make sense from a man who
24 could kill two people in cold blood that was fifteen and
25 sixteen years old who's confessed to two murders and it

1 was four years ago. Why would he do it? Why would he sit
2 there and do that? You have to assess that. And if he had
3 John Hart's discovery and he studied it and studied it, why
4 so many things wrong? He did say that -- or at least in
5 the other case, the other murder that he has, that he tried
6 to get the co-defendant to get rid of the gun, that he ran
7 away just like he did in that case, and that the pistol was
8 stolen. The facts are basically as far as the way his
9 actions were and what was used, the stolen pistol, running
10 away, trying to get the co-defendant to throw away the gun.

11 Washington, the cloud of suspicion is around this
12 person who we can't link. There's no evidence supporting
13 what they've accused John Hart of doing and conspiring with
14 this person. He ultimately pled guilty to that charge in
15 Richland County. The solicitor said she thought she had
16 great evidence on the case and, of course, she did because
17 even after the co-defendant in that case died he still pled
18 guilty. Mere suspicion. Again, you're gonna hear from the
19 judge that mere suspicion is not enough, that we have that
20 standard for a reason. We have that standard to make sure
21 an innocent man is not convicted.

22 There's no do-overs. When you go back there, if
23 you're gonna have doubts, have them today. Don't wait
24 until next week. You wake up in the morning having your
25 coffee and you go I don't know, there was so much lies told

1 during that trial, there was so much back and forth, there
2 was so much inconsistent information, I don't know. Am I
3 truly and firmly convinced that he was guilty? Is there a
4 real possibility that he might be innocent? There are no
5 do-overs. Today's the day. When you go back in that room
6 it's grave, take it serious, please. I know you will.
7 You've been very attentive.

8 Opinion. Each of you have your own opinion and the
9 judge will say you're entitled to each and every one of
10 them. Don't change your opinions, don't change you firmly
11 held beliefs, the judge will tell you this, and please be
12 in conformity with everyone else. That's the reason why we
13 have a jury. We all come from different places, different
14 backgrounds, we have different life experiences. Each of
15 us get to make these choices because we see things
16 differently. We grow up in different places, we know
17 different people. Certainly the world that people that
18 testified in this trial lived in most people don't live in
19 that world. It's another world that most people don't
20 understand. The only reason us lawyers know anything about
21 it and the police is because that's the world that we have
22 to deal with with criminal activity. And you got a good
23 glimpse into that world through this trial.

24 But the judge is gonna tell you that each of you are
25 entitled to your firmly held beliefs and to not be swayed

1 simply because other people want you to go in that
2 direction. I want you to be convicted either way. If
3 that's what you believe, stick with it. Again, there's
4 no do-overs and the judge is gonna tell you if there is a
5 real possibility -- if there is a real possibility that
6 he could be innocent, you can't find him guilty.

7 Mr. Hart, would you come here. In a trial the
8 Defendant sits way over there and can get lost in this
9 craziness; that there is another person on the other side.
10 Fortunately, in this case he testified, so you got to see
11 him up close and personal, you got to hear him answer
12 questions, but I want to always implore to you that there
13 is a man on the other side of this decision you've got to
14 make today. He's admitted he's a drug dealer, he's
15 certainly admitted he's no saint, but the one thing he has
16 not admitted to is being a cold-blooded killer and we had
17 somebody under oath say I am a cold-blooded killer, I did
18 kill Paula Justice and I killed someone else, and the facts
19 are very similar about the cases. A stolen pistol, running
20 away, trying to get another person to throw the gun away.
21 But there's a real person on the other side to this and
22 that's why I brought him over here so make sure it's not
23 lost, the fact that he's way over there, removed from you.

24 You have this big decision. All the evidence,
25 assessing the credibility of the witnesses, there's no

1 disputing that. And when you go through that and you look
2 at this cloud of mere suspicion, can you honestly say that
3 you wouldn't have any hesitation about finding him guilty?
4 Because the judge is gonna say if you hesitate to act in
5 saying that you are firmly convinced of his guilt, you've
6 got to find him not guilty. And there is no way from the
7 evidence that's been presented in this trial that anyone
8 could be firmly convinced without a real possibility and
9 have no hesitation that he is absolutely guilty of this
10 crime. It hasn't been linked.

11 All this Washington talk. Washington, Washington,
12 Washington. Where is it? Where is this linking evidence
13 other than two people, Deloach and Staley. And we walked
14 through the long list of things that they didn't tell the
15 truth on, specifically the person who was there, Deloach,
16 and clearly I would submit explained that he was an
17 eyewitness and that -- again, there's the dispute about the
18 \$10,000, that's the first time you heard about that versus
19 the five circles of crack. There's things they admit to,
20 there's things they didn't, but the one thing you have in
21 this is that you will, I submit, be able to say there's a
22 hesitation saying you're firmly convinced of his guilt.

23 I want to just implore that he stands before you
24 presumed innocent. It's not just a phrase, it's not just
25 an idea. Blood, sweat and tears. American soldiers have

1 died for us to have constitutional rights. It means
2 something. It's the law that protects us from the
3 Government, from being convicted of crimes we did not
4 commit. He's admitting to his role in this. He testified
5 under oath. He had an absolute right not to testify, but
6 he went up there and you get to decide a hundred percent
7 his credibility, but at the end of the day I pray that
8 after you review all of the evidence, after you go through
9 these web of lies, this cloud of mere suspicion, that you
10 do hesitate, you do see the hesitation, there is the real
11 possibility that you cannot be firmly convinced in this
12 five-day craziness of he said, she said, back and forth,
13 and that you render the only fair and just verdict because
14 it is inconclusive that he's not guilty, that you don't
15 send an innocent man of murder a guilty verdict. He's
16 admitting to what he did and his day will come for that.
17 Thank you.

18 **MR. GRAHAM:** The State has nothing in reply, Your
19 Honor.

20 **THE COURT:** All right. I forgot to tell y'all that.
21 All right. We'll take a short break and I'll have
22 you back in here to give you my instructions.

23 Ms. Counts, have we got lunch ordered for them?

24 **THE CLERK:** I think so.

25 **THE COURT:** All right. Anyway, in a few minutes

1 I'm gonna give you my instructions on the law. The reason
2 I hesitated with the prosecutor just then is the law
3 recently changed right after Christmas. The order of)
4 closing and the options that people had and part of my job
5 is to make certain procedure is followed and the correct
6 law's instructed and I'm telling y'all that's why I looked
7 at the prosecutor. There was nothing wrong, but the rules
8 have changed as to how it was presented and they had an
9 opportunity, but they decided not to put any more rebuttal
10 in, which is fine.

11 So y'all step in the jury room. You can't discuss the
12 case yet. I'll have my instructions ready for you and get
13 you right back in here and then I'll give you those and
14 then lunch will be here and then we'll start working on
15 that, okay?

16 (Whereupon, the jury retires to the jury room at
17 12:07 PM.)

18 **THE COURT:** All right. We'll stand at ease for a few
19 minutes and then I'll give them the instructions. I'm
20 confident they will come back and take instructions and
21 then eat, but we'll see what they say, all right?

22 **MR. PHILLIPS:** And, Your Honor, if I can just put
23 on the record what we -- as far as my objections during
24 closing?

25 **THE COURT:** Sure. Go ahead and put it on the record.

1 **MR. PHILLIPS:** I did object to numerous references
2 to the word "evil" during closing. The argument would
3 certainly be that the cumulative prejudicial effect of
4 saying that the Defendant is evil denies him his right to
5 a fair trial and I felt the only remedy of that in closing
6 argument is to make the motion for a mistrial.

7 **THE COURT:** Okay. I deny that. The definition of
8 malice is evil, wicked, depraved heart and I think the
9 State's allowed to argue their posture as to that. I
10 understand.

11 **MR. PHILLIPS:** And the only other thing is with the
12 trajectory. The trajectory evidence invades the province
13 of the jury. They heard the evidence and that they can
14 decide without --

15 **THE COURT:** I agree with that. And I don't --
16 Mr. Graham didn't -- he said something about trajectory,
17 but he didn't demonstrate on anybody, he held the gun out
18 at arm's length and did not make any type of elaborate
19 demonstrative actions with the gun.

20 **THE COURT:** All right. Mr. Graham, do you have any
21 objections?

22 **MR. GRAHAM:** No, Your Honor.

23 **THE COURT:** All right. We'll stand at ease for a
24 couple of minutes.

25 **MR. GRAHAM:** And, Judge, we would ask based on

1 Mr. Phillips's arguments about our credibility that you
2 would repeat -- I don't know if it's in the closing. I
3 know at the beginning you told them that opening and
4 closing are not evidence, just statements by the lawyers.

5 **THE COURT:** Right. I did say that in the preliminary
6 instructions.

7 All right.

8 (Whereupon, a luncheon recess was taken.)

9 **BAILIFF:** All rise. Court's in session.

10 **THE COURT:** All right. Are you ready?

11 **MR. GRAHAM:** Yes, Your Honor.

12 **THE COURT:** All right. We're ready bring in the jury.
13 Stacy's already gone through the exhibits and they're
14 in order.

15 (Whereupon, the jury returns to the courtroom at
16 2:42 PM.)

17 **THE COURT:** All right. Ladies and gentlemen of the
18 jury, it's now my opportunity to give you my instructions
19 on the law as I understand it currently.

20 Ms. Williams, and members of the jury, the State
21 of South Carolina has charged the Defendant, Charles
22 Christopher Hart, with the crime and offense of murder.
23 You must bear in mind that he has pled not guilty to the
24 offense and by that plea denies all of the allegations in
25 the indictment. I told you earlier during my preliminary

1 instructions that Mr. Hart comes into court clothed with
2 the presumption of innocence and this presumption remains
3 with him and continues throughout the case and entitles
4 him to a verdict of not guilty unless and until it is
5 dispelled by evidence satisfying you, the jury, beyond a
6 reasonable doubt of his guilt of the offense charged.

7 Now I'll remind you the State must prove each and
8 every element of this crime beyond a reasonable doubt, and
9 I will define that in a moment. The same constitution and
10 law which makes you, the jury, the finders of fact, makes
11 me, the judge, the sole and only instructor of the law. I
12 asked you during the qualification process would you be
13 willing to accept an oath as allowing the Court to instruct
14 the law, so I tell you now that you must accept the law as
15 I instruct it, apply it to the evidence which has been
16 presented and as you find the facts and reach a unanimous
17 verdict. I tell you that if you have an understanding of
18 what the law is or what it might be or what you have heard
19 it was that's in conflict or disagrees with the law as I am
20 instructing it, please disregard your understanding and
21 accept it as I am currently instructing it. If I should
22 make an error in instructing the law, there's another time
23 and another place where that error can be considered and,
24 if necessary, corrected, but for our purposes today you
25 must accept the law as I'm instructing it in its current

1 fashion.

2 In every criminal prosecution the State has the
3 burden of proving the defendant's guilt. A defendant in
4 a criminal case has no burden whatsoever because the
5 Defendant, Mr. Hart, in this case is presumed innocent.
6 Now if the State fails to meet its burden of proving the
7 case beyond a reasonable doubt, then Mr. Hart would be
8 entitled to a verdict of not guilty.

9 As I described for you, the Constitution which makes
10 me the instructor of the law makes you, the group of
11 jurors, the sole finders of fact in this case. I'm not
12 allowed to suggest in any way what I may think about any
13 of the evidence and testimony which has been presented or
14 on the guilt or the innocence of Mr. Hart. That is within
15 your province and sole discretion as a group. You are the
16 judges -- by virtue of making findings of fact are the
17 judges of the credibility and believability of the
18 witnesses and the evidence which has been presented in this
19 trial.

20 Now in passing upon a person's credibility or a
21 witness's credibility, you can take into account anything
22 in your collective common experiences and good judgment
23 you wish. The court's have observed that several things
24 you can take into account in consideration of evaluating a
25 person's believability or credibility are the following.

1 What was the manner and the appearance of any of the
2 witnesses who testified? Was a witness straightforward or
3 was a witness hesitant in answering? How did the witness
4 come to know the facts to which he or she testified to?
5 What was their ability to know or to recollect the facts
6 to which they gave testimony on? Is there some reason a
7 witness would want to give testimony which would help or
8 hurt one side or the other? In other words, were any of
9 the witnesses biased or prejudiced in any way towards one
10 side or the other? Was the testimony of the witness
11 strengthened or weakened by other testimony or other
12 evidence? You, the jury, may believe as much or as little
13 of each witness's testimony as you deem appropriate. You
14 can believe the testimony of a single witness against that
15 of many or just the opposite. You can believe part of a
16 witness's testimony and disbelieve the rest. The fact
17 that testimony is not controverted does not mean you must
18 accept it as true and undisputed. You still have the
19 responsibility of judging and gauging the credibility of
20 all of the witnesses who have testified in determining
21 their believability or the truth of the facts which they
22 have offered to you through their testimony.

23 I tell you also that several witnesses testified
24 who had past criminal records. A person who has a past
25 criminal record is competent to testify during any trial.

1 A past record does not affect the ability of that witness
2 to testify, it can only be considered by you, if at all,
3 in determining their believability. You, as a group, are
4 the judges of the facts and the believability of any and
5 all of the witnesses who have testified.

6 Now during this trial there were several witnesses
7 qualified as expert witnesses. Our rules of evidence
8 ordinarily do not allow or permit witnesses to testify as
9 to opinions or conclusions. Experts are allowed to do
10 just that because they are qualified to be experts in some
11 art or science or profession because of their education
12 and experience. They may state opinions as to relevant
13 and material matters to the fields in which they claim to
14 be an expert and they may also provide the reasons for
15 those opinions. You may consider any expert's opinion
16 received in evidence just like the other evidence and other
17 testimony. Give it the weight you deem it deserves. If
18 you decide that an opinion of an expert witness is not
19 based upon sufficient education or experience or if you
20 conclude the reasons given in support of the opinion are
21 not sound or that the opinion's outweighed by other
22 evidence, then you may disregard that opinion entirely.
23 An expert witness's opinion is to be given no greater
24 weight than that of other witnesses simply because they're
25 an expert and you're not required to accept an expert's

1 opinion even though it's not contradicted.

2 Now as the sole factfinders in this case, you -- and
3 I observed you doing this -- listened closely to the
4 evidence presented. I tell you that weighing evidence is
5 entirely a mental process and you must weigh the evidence
6 using your good judgment and your common sense. Weighing
7 evidence is entirely a mental process. Evidence weighing
8 with you is that which convinces you of its truth
9 regardless of whether it came from the State or the
10 defense.

11 Now there's generally two types of evidence presented
12 in trials. There's direct evidence and circumstantial
13 evidence. Both were presented in this case. I tell you
14 that direct evidence is testimony of a person who asserts
15 or claims to have actual firsthand knowledge of a fact,
16 such an eyewitness, and they can testify to what they saw,
17 what they smelled, things of that nature, within the
18 purview of their own being.

19 Now circumstantial evidence, on the other hand, is
20 proof of a chain of facts and circumstances indicating the
21 existence of another fact. Our law makes no distinction
22 whatsoever between the weight or value to be given to
23 either direct evidence or circumstantial evidence, nor is
24 a greater degree of proof required of circumstantial
25 evidence than that of direct evidence. I tell you that

1 you should just weigh all of the evidence whether it
2 be direct or circumstances evidence. Now I do tell
3 you to the extent that the State relies its case upon
4 circumstantial evidence, all of the circumstances must
5 be consistent with each other and when taken together
6 point conclusively to the guilt of the accused beyond a
7 reasonable doubt and if these circumstances merely portray
8 his behavior as suspicious, then the State's proof will
9 have failed. Thus, I tell you after weighing all of the
10 evidence if you're not convinced of the Defendant's guilt
11 beyond a reasonable doubt, you have the responsibility to
12 find him not guilty.

13 Reasonable doubt. What is a reasonable doubt? It
14 is simply this. A reasonable doubt is the kind of doubt
15 which would cause a reasonable person to hesitate to act.
16 Reasonable doubt may arise from evidence which is in the
17 case or from a lack or absence of evidence in this case.
18 Proof beyond a reasonable doubt is proof that leaves you
19 firmly convinced of the Defendant's guilt. It is a doubt
20 to which one can assign a reason if the assignment can be
21 done reasonably and firmly. A reasonable doubt is the
22 kind of doubt which would make a reasonable conscientious
23 person hesitate to act in the matters of importance of
24 their own affairs. I charge you further that Mr. Hart is
25 entitled to every reasonable doubt that may arise in this

1 case. And what that means is if you have any doubt about
2 anything during the trial, you're required to resolve that
3 doubt in his favor.

4 Now I tell you also the very fact that a jury engages
5 in a full and free discussion of the issue of guilt or
6 non-guilt in this case does not automatically mean that a
7 reasonable doubt exists. You, as a group of twelve, must
8 make the determination as to whether or not a reasonable
9 doubt exists as to his guilt. If you find the State's not
10 met that burden of proving the case in each and every
11 element beyond a reasonable doubt, then Mr. Hart would be
12 entitled to a verdict of not guilty.

13 The State has alleged in its indictment that John
14 Christopher Hart committed the offense of murder. In
15 order to prove the offense of murder, the State must prove
16 beyond a reasonable doubt that he killed another person
17 with malice aforethought. Malice is hatred or ill will or
18 hostility towards another person. It is the intentional
19 doing of a wrongful act without just cause or excuse or
20 with the intent to inflict an injury or under the
21 circumstances that the law will infer an evil intent.
22 Malice aforethought does not require that the malice exist
23 for any particular time before the act is committed, but
24 malice must exist in the mind of the Defendant just before
25 and at the time the act is committed. Therefore, there

1 must be a combination of the previous evil intent and the
2 act of killing itself.

3 I tell you that malice aforethought may either be
4 expressed or it may be inferred. These two terms do not
5 mean different kinds of malice, but the manner in which
6 the malice may be have shown to have existed, that is
7 either by direct evidence or by inference from the facts
8 and circumstances which have been proven by the State. I
9 tell you that express malice is when a person speaks words
10 which express hatred or ill will for another person or when
11 a person prepared beforehand to do the act which was later
12 accomplished. For example, lying in wait for a person
13 or any other acts of preparation going to show that the
14 deed was within the Defendant's mind would be examples of
15 express malice. Malice can also be inferred from conduct
16 showing a total disregard for human life.

17 Inferred malice can also be shown when the deed has
18 been done with a deadly weapon, and I tell that you a
19 deadly weapon is an article or an instrument which is
20 likely to cause death or great bodily injury. Whether an
21 instrument has been used as a deadly weapon depends on the
22 facts and circumstances of each case. I tell you that
23 several examples of instruments which may be deadly weapons
24 are a pistol, a shotgun or rifle. I tell you that a gun
25 may be a deadly weapon even if it's not operating.

1 I instruct you also that criminal intent is a
2 necessary element of each crime that must be proven by
3 the State beyond a reasonable doubt. Criminal intent is
4 always a matter that must be determined by the jury from
5 the circumstances surrounding the situation. I tell you
6 that there is no way to prove intent to a mathematical
7 certainty. There's no way medical science can dissect a
8 person's brain and determine what he or she had in mind,
9 but our law states that criminal intent may be inferred
10 from the circumstances shown to have existed both before
11 and after the fact. That's how you, the jury, make the
12 determination of whether or not the element of intent was
13 present. I tell you that criminal intent is a state of
14 mind that operates jointly with an act or an omission in
15 the commission of a crime. Criminal intent is a call --
16 I'm sorry -- is a conscious state of wrongdoing -- a state
17 of conscious wrongdoing. It's up to you, the jury, to
18 determine what the Defendant intended to do based upon the
19 circumstances which are shown to have existed at that time.
20 The State must prove criminal intent beyond a reasonable
21 doubt just as they must prove the other elements of this
22 offense beyond a reasonable doubt.

23 I tell you also that if a crime is committed by two
24 or more people who are acting together in committing a
25 crime, the act of one is the act of all. A person who

1 joins with another to commit an unlawful act is criminally
2 responsible for everything done by the other which happens
3 as a probable and natural consequence of the acts done in
4 carrying out the common plan and purpose. For example,
5 two people can be guilty of killing another when only one
6 of the two had a gun, there is only one bullet and only one
7 of the two fired the shot that caused the death. If the
8 two are together, acting together, assisting each other
9 committing the offense, the act of one is the act of all
10 or, as is said, the hand of one is the hand of all.

11 Prior knowledge that a crime is going to be committed
12 without more is not sufficient to make a person guilty of
13 that crime. Mere knowledge that another person is going
14 to commit a crime, even if the Defendant was present when
15 the crime was committed, is not sufficient to convict the
16 Defendant as a principal. Guilt as a principal is shown
17 by an actual or constructive presence at the scene as a
18 result of a prior agreement. A finding of a prior arranged
19 plan or common scheme is necessary for a finding of guilt
20 as a principal and the State must prove reasonable doubt by
21 competent evidence of the theory of the hand of one is the
22 hand of all. A principal of a crime is one who either
23 actually commits the crime or is present aiding, abetting
24 or assisting in committing the crime. When a person does
25 an act in the presence of and with the assistance of

1 another, the act is done by both. So when two or more
2 people acting with a common plan or intent are present at
3 the commission of a crime, it does not matter who actually
4 commits the crime, both are guilty.

5 Present at the commission of the crime means into be
6 sufficiently near to aid, abet and assist in the commission
7 of the crime; however, mere presence at the scene of a
8 crime is not sufficient to convict one as a principal in
9 that theory of aiding and abetting. Intent is also a
10 necessary element. It must be a common intent to commit
11 the crime and the crime must have been committed pursuant
12 thereto with the person aiding by some overt act. Intent
13 means intending the result which actually occurs and not
14 accidentally, nor voluntarily. Intent may be shown by acts
15 and conduct of the Defendant and other circumstances which
16 you may naturally and reasonably infer intent. I instruct
17 you that mere presence at the scene of the crime is not
18 sufficient to prove someone guilty of the crime. A
19 defendant's presence where a crime is being committed or
20 mere association with a person who commits a crime does not
21 make him an accomplice or aider or abetter of that person
22 committing the crime.

23 Now there's also been testimony and the defense has
24 contended that there is evidence before you indicating that
25 someone other than Mr. Hart may have committed the crime

1 and that evidence raises a reasonable doubt with respect to
2 his guilt. In that regard, I charge you that a defendant
3 in a criminal case has the right to rely on any evidence
4 produced at trial that has a rational tendency to raise a
5 reasonable doubt with respect to his guilt. I previously
6 instructed you with regard to the State's burden of proof
7 and it never shifts to the Defendant. A defendant does not
8 have to produce evidence that proves the guilt of another,
9 but may rely on evidence that creates a reasonable doubt.
10 In other words, there's no requirement that the evidence
11 prove or even raise a strong probability that someone other
12 than the Defendant committed the crime. You must decide
13 whether the State has proven the Defendant's guilt beyond
14 a reasonable doubt and not whether the other person or
15 persons may have committed the crime.

16 Now I instruct you that one witness was not called as
17 a witness by either side. That one was referred to in
18 the testimony of several witnesses and it was, I believe,
19 Mr. Jeremy Washington. I tell you that he was unavailable
20 due to no fault of either party, neither the State, nor
21 the defense. You are to draw no conclusions or inference
22 from his not appearing as a witness in this trial.

23 Now I told you early on that some of you could take
24 notes if they wished. Now I've noticed some of you have
25 and some of you haven't, which is fine. When you retire

1 to the jury room and you begin discussing the case, please
2 understand that some people are better listeners and some
3 people rather take notes. A person's taking notes does not
4 override a person's listening ability, nor the converse.
5 Everyone is on equal footing. If, for instance, y'all
6 begin discussing well, that witness said thus and so and
7 someone says well, I took notes and I wrote down that he
8 said this and so, the listener hearing what the witness
9 said versus the notetaker's notes of what he said are
10 equal. One does not override the other. Everyone has the
11 ability to say this is what I heard, this is what I wrote
12 down. The notes don't trump the listening, the listening
13 does not trump the notes. It must be a unanimous decision
14 as to the facts you find, thus, the notes will be given no
15 greater weight than the recollection of any of the jurors,
16 nor the recollections be considered any more reliable or
17 less reliable than the notes.

18 Now I tell you also, again, that the opening comments,
19 the opening arguments and summaries, the closing arguments
20 and summaries, the objections the lawyers made during the
21 trial, those aren't evidence. Those are the lawyers'
22 opinions as to what they believe the evidence has shown.
23 Please do not take by anything I did or said during the
24 trial that I have a preference or have any impact on what
25 facts you should find. You twelve -- and once I put you

1 in the jury room, I'll pull the three alternates out --
2 but the twelve original jurors, since we didn't have
3 anybody substituted in, are tasked with the findings of
4 facts in this case and your verdict must be unanimous.

5 So, Ms. Williams, as y'all retire to begin your
6 deliberations, I hope and I express that each of you
7 will be mindful of the importance you have in your
8 responsibility here today. You're not called on very
9 often to sit as jurors. You and I, as the trial judge
10 and the jury, are imparted -- or we are tasked with the
11 responsibility that we find a fair and just verdict. It's
12 been my responsibility to make certain that the trial's
13 been conducted fairly. I'm not trying to tell y'all how
14 to decide the case or what facts you should find, but what
15 I am telling you is this. You need to go into the jury
16 room, consider the evidence which has been presented, the
17 instructions which I have given you and make a unanimous
18 decision and not letting anything from outside the
19 courtroom or outside the jury room impact your decision.
20 You are to decide the case on what's been presented to you
21 and what's been instructed to you. I'm certain y'all will
22 do that.

23 All right. I think those are my instructions. Now
24 here's what happens. I'm gonna put all fifteen in the jury
25 room. I'm gonna talk with the attorneys and make certain

1 that my instructions were complete and tell you a couple
2 of extra things. If you have some questions about
3 anything, can we see thus and so, the evidence is gonna
4 be sent to you.

5 Now most of the time we leave the pistol out here.
6 If you want it, we'll send it back and when you get through
7 looking at it we'll take it back out. That way it's not
8 sitting there causing anybody any discomfort and so that's
9 probably what I'll do. But it is for y'all to see and
10 handle. I'm confident it's secured, but sometimes it just
11 makes for an awkward device sitting on the table. If you
12 have a question about anything, I want you to write it
13 down and give it to the bailiff.

14 If you want additional instructions on the law
15 because my instructions were lengthy, I doubt many of you
16 have heard those type of instructions before, and so if
17 they were confusing to you or not clear I can clear them
18 up. So if you have a question, give me the definition
19 again of reasonable doubt, give me again the elements of
20 the offense of murder, I'll be happy to do that again.

21 If you need to hear testimony be played, write down
22 who you want to hear. We've got to let Stacy find it on
23 her recording device, and she'll do that, but she needs a
24 few minutes to find it though. You can't say send us the
25 testimony of thus and so and expect in two minutes we can

1 play it for you. She's pretty quick, but not quite that
2 quick.

3 So if you have a question like that and you want to
4 hear something different or instructions, that's generally
5 a good time to take a break. You can discuss the case and
6 deliberate as long as all twelve of you are in the room.
7 If somebody needs to go to the restroom, stop, come back
8 out, begin your discussions again. That's basically your
9 main job is to preside over these discussions. Once you
10 start deliberations, you're on your time. If y'all want
11 a break and step outside and get some fresh air, see the
12 blue sky that's out there today, you can do it. We're on
13 your time, okay? Because we'll be here waiting. And if
14 you want to deliberate for forty-five minutes to an hour
15 and take few minutes break and step outside, certainly
16 that is allowable. Just let the bailiffs know we'd like to
17 take a break. You don't have to ask. Just tell them you
18 want to take a ten minute break and y'all take a ten minute
19 break. But unless everybody's in the jury room don't
20 continue deliberations. Only with the group.

21 All right. Y'all step in the jury room. As soon as
22 you get the evidence and the indictment, that's when you
23 will begin your deliberations, okay? So everybody go in
24 and once you start the deliberations I'll pull the three
25 alternates out.

1 (Whereupon, the jury retires to the jury room at
2 1:08 PM.)

3 **THE COURT:** All right. Any exceptions to the
4 instructions?

5 **MR. PHILLIPS:** None to the instructions. The only
6 issue I would have is because the -- a jury issue is the
7 size of the pistol --

8 **THE COURT:** Is the what?

9 **MR. PHILLIPS:** Is the size of the pistol.

10 **THE COURT:** I just don't like to leave it back there.

11 **MR. PHILLIPS:** And I totally understand, but I would
12 hate they don't get to view it because that is an issue
13 before the jury is the size of the pistol.

14 **THE COURT:** And I'm gonna make that clear through my
15 bailiffs when they want it, as long as they want it, they
16 can have it.

17 **MR. PHILLIPS:** But they won't be able to see it up
18 close if it's staying in the courtroom. That would be my
19 only argument.

20 **THE COURT:** I'm gonna -- I've done all my trials the
21 same way and I'm gonna keep doing them that way, but
22 they'll have ample time to handle it and manage it,
23 whatever.

24 Mr. Graham.

25 **MR. GRAHAM:** I think Your Honor forgot to instruct on

1 the form of the verdict.

2 **THE COURT:** What do you mean?

3 **MR. GRAHAM:** Telling them how to designate their
4 verdict or guilt or innocence. You didn't discuss the
5 form of the verdict. You just said the verdict had to be
6 unanimous, but you didn't show them here's the sheet and
7 you need to sign.

8 **THE COURT:** Okay. I think that's gonna be
9 self-explanatory on the sheet because there's only one
10 verdict. Normally when I have lesser includeds I do that.

11 **MR. GRAHAM:** And then under State versus Belcher
12 since there was no indication of self-defense or accident
13 or anything like that, there should be an instruction, I
14 believe, that the use of a gun can be drawn as an inference
15 of malice.

16 **THE COURT:** I did. I said that.

17 **MR. PHILLIPS:** He did.

18 **MR. GRAHAM:** Oh, I didn't hear that. That's my fault.

19 **THE COURT:** Here's what I did. Malice may be inferred
20 from conduct showing a total disregard for human life. The
21 next sentence, because I went back and took my Belcher
22 footnote out, inferred malice may also arise when the deed
23 is done with a deadly weapon and then I gave the examples
24 of the gun, pistol, rifle, that kind of thing.

25 **MR. GRAHAM:** Thank you, Your Honor. I missed that.

1 The third one that I had a question on was the
2 third-party guilt charge. At some point in there you
3 talked about reasonable doubt and then you switched to and
4 said any doubt and it seems to me that it should continue
5 say reasonable doubt throughout it. And I don't have a
6 copy, so I can't tell you exactly where that was, Your
7 Honor.

8 **THE COURT:** I don't remember saying that and in my
9 written instructions, which I was talking from and reading
10 from kind of in combination, it has reasonable doubt in
11 there three times. It doesn't have any doubt in there. If
12 I said that, that was -- I don't know that I said it. I
13 think in the totality of the entire instructions reasonable
14 doubt was said so many times I think we're safe. If they
15 ask for this instruction I generally give it to them in
16 writing, what I read. I've just re-read what I did and
17 it's in there three times. In third-party guilt it says
18 reasonable doubt all three times, it never refers to
19 anything other than reasonable doubt.

20 **MR. GRAHAM:** Okay.

21 **THE COURT:** All right.

22 Jacob, do you still have that verdict form? Show the
23 verdict form to them.

24 **MR. PHILLIPS:** Thank you, Judge. I always have to
25 make the argument that I want the not guilty first and the

1 judges go no, no.

2 **THE COURT:** All right. Are we good?

3 **MR. McNAIR:** Yes, sir.

4 **THE COURT:** Okay. I've got the alternate jurors.

5 All right. We'll stand at ease until we hear from
6 them.

7 (Whereupon, the evidence was submitted to the jury at
8 1:13 PM.)

9 (Recess taken.)

10 (Court's Exhibit Number 14 was marked for
11 identification.)

12 **THE COURT:** They're looking for some maps. These
13 didn't go back because we wrote on them and they weren't
14 exhibits, but all the maps that were big all went back is
15 my understanding.

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

17 **THE COURT:** I'll write back all the maps that were
18 used went back. There were a few exhibits that were
19 smaller that weren't introduced. Something like that?

20 **MR. PHILLIPS:** Or just say it's not in evidence.

21 **MR. GRAHAM:** Well, the testimony is the evidence.

22 **MR. PHILLIPS:** Well, yeah. I don't want to confuse
23 them.

24 **THE COURT:** Okay.

25 (Recess taken.)

1 (Proceedings held at the bench; not reported.)

2 (Court's Exhibit Number 15 was marked for
3 identification.)

4 (Recess taken.)

5 **MR. GRAHAM:** I want to make this a Court's exhibit.

6 (Court's Exhibit Number 16 was marked for
7 identification.)

8 **MR. GRAHAM:** Your Honor, I have a disk that's been
9 marked as Court's Exhibit 16 that I'd like to make part
10 of the record. What it contains is discovery that was
11 initially sent on June 20th of 2013 to Mr. Hart's prior
12 lawyer, which is specifically pages 54 to 86, which is
13 thirty-two pages of Detective Spivey's report. It was
14 re-sent to Mr. Phillips on August 16, 2016. What it
15 would show -- and then there's another file on there as
16 well that's discovery date-stamped 4-7 of 2017 that
17 contains Detective Spivey's original thirty-two pages
18 and only four additional pages of discovery. It also
19 contained a Word-formatted document, which is pages 37
20 through 41 of the 4-7-17 discovery that is five pages,
21 which was specifically to Alex Wallace.

22 I'm just trying to clear up the -- to make sure for
23 the Court, for the record on appeal, that there be no
24 confusion about what Spivey sent and when.

25 **THE COURT:** Okay.

1 **MR. PHILLIPS:** And my recollection is if you look at
2 -- it better be in there, State's Exhibit 3, all the
3 discovery that I received. Because even though things are
4 dated discovery packet of April 7th or even a March 16th,
5 I started receiving all the new discovery that I made in
6 my argument on April 12th. I got a bunch of paper handed
7 to me at the end of the supplemental discovery motion
8 hearing. That's how I know the exact date is April 12th.
9 When you look at Investigator's Spivey's notes or
10 supplemental reports, the way I had it marked was the
11 original report of Spivey ended before July 8, 2014, and
12 with the new discovery I received in April every
13 supplemental report from July 8, 2014, and on, that was
14 the pages I referenced, were all new, and any of that
15 information was not in that original report.

16 **THE COURT:** Okay.

17 **MR. PHILLIPS:** And that's my recollection of it.

18 **THE COURT:** Okay. That's about as clear as we're
19 gonna get it. Okay. It's all received as Court's
20 exhibits.

21 (Recess taken.)

22 (Court's Exhibit Number 17 was marked for
23 identification.)

24 (Whereupon, the jury returns to the courtroom at
25 2:47 PM.)

1 **THE COURT:** We had some technical difficulties and
2 we've got those mostly ironed out. Y'all asked for Tevin
3 Deloach and then Detective Jones, I believe it was?

4 **MR. PHILLIPS:** I believe that's correct, Your Honor.

5 **THE COURT:** Okay.

6 **MR. McNAIR:** Deputy Jones.

7 **THE COURT:** All right. And Stacy has got those cued
8 up and she's gonna play them in the order they were
9 testifying to you, I believe. Go ahead, Stacy, when you're
10 ready. Now if y'all are just listening for a particular
11 part and you get past that and have heard enough, y'all can
12 stop. You don't have to sit here and endure the whole
13 thing.

14 **FOREPERSON:** Can I ask a question?

15 **THE COURT:** Sure. I mean, we're kind of in y'all's
16 way. I mean, if y'all want us to leave --

17 **FOREPERSON:** No, it's just a very general question.
18 Do any of y'all need notepads before you hear the
19 testimony? I just wanted to make sure.

20 **THE COURT:** Once you've heard enough, you say we've
21 heard enough, go to the next witness, and Stacy will get it
22 cued up, okay?

23 (Whereupon, the testimony of Tevin Deloach and Jason
24 Jones were played for the jury.)

25 **THE COURT:** Was that enough?

1 **FOREPERSON:** Yeah, that was it.

2 **THE COURT:** All right. You can resume your
3 deliberations. If you need something else, let the
4 bailiff know.

5 (Whereupon, the jury retires to the jury room at
6 3:07 PM.)

7 (Recess taken.)

8 (Court's Exhibit Number 18 was marked for
9 identification.)

10 (Court's Exhibit Number 19 was marked for
11 identification.)

12 **BAILIFF:** All rise. Court is now in session.

13 **THE COURT:** Be seated.

14 (Whereupon, the jury returns to the courtroom at
15 5:27 PM.)

16 **THE COURT:** All right. Very good. We've got all
17 twelve in the courtroom.

18 All right. Ms. Williams, have y'all reached a
19 verdict?

20 **FOREPERSON:** Yes, Your Honor, we have.

21 **THE COURT:** Was it unanimous?

22 **FOREPERSON:** Yes, Your Honor, it was.

23 **THE COURT:** Hand it to my bailiff, please.

24 You may publish the verdict, please, ma'am.

25 **THE CLERK:** 2014-GS-32-1421, the State versus John

1 Christopher Hart. We, the jury, find the following on
2 the charge of murder, guilty. It is so-signed this
3 26th day of May, 2017.

4 Ladies and gentlemen of the jury, was this your
5 verdict and is this still your verdict?

6 **FOREPERSON:** Yes.

7 **THE COURT:** All right. Any further issues for the
8 jury, Mr. Phillips?

9 **MR. PHILLIPS:** Standard polling, Your Honor.

10 **THE COURT:** Okay. And just out of an abundance of
11 caution, I'd like them pooled by juror number.

12 **THE CLERK:** Yes, sir.

13 Ladies and gentlemen, when I call your juror number,
14 I'm gonna ask you was this your verdict and is this is your
15 verdict and if you will just raise your hand in response,
16 please.

17 Juror Number 26, was this your verdict and is this
18 still your verdict?

19 **JUROR:** Yes.

20 **THE CLERK:** Juror Number 269, was this your verdict
21 and is this still your verdict?

22 **JUROR:** Yes.

23 **THE CLERK:** Juror Number 87, was this your verdict and
24 is this still your verdict?

25 **JUROR:** Yes.

1 **THE CLERK:** Juror Number 123, was this your verdict
2 and is this still your verdict?

3 **JUROR:** Yes.

4 **THE CLERK:** Juror Number 187, was this your verdict
5 and is this still your verdict?

6 **JUROR:** Yes.

7 **THE CLERK:** Juror Number 291, was this your verdict
8 and is this still your verdict?

9 **JUROR:** Yes.

10 **THE CLERK:** Juror Number 111, was this your verdict
11 and is this still your verdict?

12 **JUROR:** Yes.

13 **THE CLERK:** Juror Number 44, was this your verdict and
14 is this still your verdict?

15 **JUROR:** Yes.

16 **THE CLERK:** Juror Number 93, was this your verdict and
17 is this still your verdict?

18 **JUROR:** Yes.

19 **THE CLERK:** Juror Number 200, was this your verdict
20 and is this still your verdict?

21 **JUROR:** Yes.

22 **THE CLERK:** Juror Number 258, was this your verdict
23 and is this still your verdict?

24 **JUROR:** Yes.

25 **THE CLERK:** Juror Number 245, was this your verdict

1 and is this still your verdict?

2 **JUROR:** Yes.

3 **THE CLERK:** All jurors polled, Your Honor.

4 **THE COURT:** Very well.

5 All right. You've done your job. I greatly
6 appreciate it. I'd like y'all to step back in the jury
7 room. I want to come back and speak to you briefly and
8 then I'm gonna send you on your way, but y'all's service
9 is done. And thank y'all for doing a very tough and
10 difficult job, but the consensus of twelve is what I
11 tasked you to do and y'all brought back a unanimous
12 verdict.

13 All right. We'll be right back.

14 (Whereupon, the jury was dismissed at 5:30 PM.)

15 **BAILIFF:** All rise.

16 **THE COURT:** All right. Y'all be seated.

17 Mr. Phillips, are y'all ready to go forward now?

18 **MR. PHILLIPS:** Yes, Your Honor.

19 **THE COURT:** All right. Very well.

20 **MR. PHILLIPS:** At this point, the Defendant moves
21 for a new trial and we would renew all prior motions and
22 objections, again, specifically the mistrial. Having the
23 four jury notes or five jury notes, re-listening to the
24 testimony and then several hours of deliberations, we'd
25 say that since it is a credibility case and having the

1 questions that were in the jury notes regarding
2 circumstantial evidence that that further highlights the
3 prejudice that I -- the cumulative nature of the prejudice
4 that I argued during the motion for mistrial which further
5 supports that in this close call with that inverse
6 vouchering, bolstering, when it came down to the
7 credibility.

8 We did have Investigator Spivey testify at three
9 different points and with the vouching, like I said, the
10 inverse, we don't know how to say it, the discrediting of
11 the key witness, Alex Wallace, by the investigator as far
12 as his personal opinion that because of that that swayed
13 the day.

14 What you look at in the motion for mistrial is whether
15 it substantially affected the verdict and then it affected
16 the trial with prejudice such that it couldn't cure it and
17 as said that the curative instruction could not cure it and
18 couldn't un-ring the bell, and I renew that motion now.

19 **THE COURT:** Having -- I mean, I've considered the
20 motions as we've gone and, again, post-verdict. I'm very
21 reluctant to disturb a unanimous verdict of a jury of
22 twelve citizens who've considered everything, deliberated
23 with great patience a little more than five years. The
24 record is very well protected, but respectfully I'm gonna
25 decline to grant you a new trial on that basis.

1 **MR. PHILLIPS:** Thank you, Your Honor. That was for
2 preservation purposes.

3 **THE COURT:** Okay.

4 All right. Mr. McNair, I've done the preliminary
5 hearings, discovery, the status conferences, I've observed
6 the -- I think it to be the victim's mother in here.

7 **MR. McNAIR:** It is, Your Honor.

8 **THE COURT:** Anyway, I'll hear whatever you'd like
9 me to hear, but I'm well aware of the facts that were
10 presented through all the testimony of the witnesses y'all
11 called. The record is open.

12 **MR. McNAIR:** Yes, sir. I don't think I can add
13 anything to the facts. You heard that. The facts, they
14 speak for themselves. The evidence was this was a
15 premeditated murder for hire and that's as cold-blooded as
16 it gets. The State feels like if any case deserves a life
17 sentence, this is one of them. Ms. Justice's mother is
18 here and would like to address the Court.

19 **THE COURT:** Go ahead.

20 **MR. McNAIR:** Your Honor is aware of his prior record.
21 If you'd like me to read that again for you, I will,
22 but --

23 **THE COURT:** Don't worry about it. That's fine.

24 All right. I'll hear from -- is it Ms. Justice?

25 **MR. GRAHAM:** Donna Stowe, Your Honor.

1 **THE COURT:** Good afternoon, ma'am. Tell me your name
2 again.

3 **MS. STOWE:** My name is Donna Stowe. I'm Paula's
4 mother. I thank you, Your Honor, for letting me speak in
5 your courtroom. I wanted to thank all the DA's for their
6 work and all the State for their evidence and how hard they
7 worked. It took me four years -- it took me nine years to
8 get pregnant with this child. She was the only child I
9 had. I'm just so thankful to y'all and to the jury and
10 everybody. I just think, Your Honor, that it was -- and I
11 know my daughter was into prostitution and I knew she
12 smoked pot at home, but down here I can't believe with her
13 weight that she did cocaine or crack and I just have never
14 seen powder around up in North Carolina and I believe that
15 someone maybe forced her into doing what she was doing. I
16 know that she's been in prison. We didn't even know that
17 because I have a disabled husband, a veteran, with motor
18 neuron disease for nineteen years. And I just think that
19 this young man over here done what he done and it was just
20 cold-blooded murder. And I want life for him. I say a
21 life for a life. I mean, that was my only child and I
22 don't care, anybody can put a label on her, but she was
23 mine and I love her and I miss her so bad. I just -- I
24 don't know. I just -- I'll just leave it in your hands,
25 Your Honor, and I just thank everybody for everything that

1 they've done.

2 **THE COURT:** Yes, ma'am.

3 All right, Mr. Phillips.

4 **MR. PHILLIPS:** Thank you, Your Honor.

5 Mr. Hart was arrested in New York on April 18th of
6 2013. I have not done the actual amount of days yet. I
7 know the statutory he will get credit for all time served.

8 **THE COURT:** I'll write on the sentence he's due for
9 days since April 18, 2013, and that should accommodate
10 that.

11 **MR. PHILLIPS:** Yes, Your Honor.

12 With this, this is obviously four years later. Since
13 I've represented him in the last almost nine months he has
14 not wavered in his discussions with me as to what happened.
15 I can say that's the case we presented. I came in in mid
16 or late July of 2016 and so he has not wavered in the
17 defense we presented.

18 He is twenty-eight years old now as he stands before
19 you. As you heard, he was taking the GED program with
20 Deloach and I believe he did complete -- he did complete
21 his GED program. He has four children; ages ten, nine,
22 eight and four. There was no disputing, as you heard,
23 the lifestyle that he lived and ultimately it's his
24 downfall. Being convicted is the lifestyle. Obviously
25 the jury made their decision as far as what they factually

1 found and with that being the case, I can tell you I've
2 never seen anything in my discussions with him, he's never
3 acted in any violent way with me, and he's never acted any
4 disrespect towards the victim in discussing this case with
5 me, and I want to make sure that's conveyed to Your Honor
6 in the sense that in meeting with him and in preparing for
7 trial there's never been any -- he's taken this very
8 seriously and in my discussions with him he accepted
9 responsibility with what he told me to be true and that's
10 the defense we presented.

11 Again, just to highlight, I never seen any violent
12 nature to him, at least to me. Obviously there's facts
13 that say different, but I can tell you with my
14 conversations with him and my law clerk can tell you he's
15 been very courteous, respectful; yes, sir, very easygoing
16 and very easy to get along with. Having a five-day murder
17 trial obviously is very taxing on everyone.

18 He was born and raised in Columbia, Your Honor. He
19 -- in the sixth grade -- we did talk about his prior --
20 having any mental health issues. He said he did attend an
21 area mental health around the sixth grade, but that there
22 wasn't any follow-up. I believe he was put on ADHD
23 medication and his mom decided to take him off of it. I
24 can positively one hundred percent say I didn't feel there
25 was any mental health issues in this case. I didn't ask

1 for a Blair hearing, I didn't have him evaluated for
2 competency. I think a prior attorney did and he was found
3 competent, but I'd have to go back and look. I can tell
4 you that myself as an officer of the court has no hesitancy
5 in saying that I believe he's competent and he testified
6 and Your Honor was able to see he's of sound mind.

7 **THE COURT:** He was very lucid in his testimony.

8 **MR. PHILLIPS:** One of the things that's tragic that
9 Your Honor got to see in one of the letters is that his
10 life -- his father is serving life in prison as well. And
11 having his father serve life in prison, and now me being a
12 father myself, I can see how important it is to have role
13 models in your life, especially a father figure, a male
14 role model, and we discussed that. We discussed that
15 element of his life and he said how much his father meant
16 to him and it was something that he always tried to help
17 his dad and, of course, it sad that now both him -- he'll
18 be joining his father in the Department of Corrections,
19 that's inevitable, and that's a sad thing that the life he
20 was living has resulted in that to happen.

21 With that being the case, we certainly would request
22 mercy and any leniency that Your Honor can provide. I
23 think you were able to visually see him for five straight
24 days, as well as the hearings, and we never had any issues
25 with him. We never -- he took it very serious and he

1 hasn't wavered to me with what happened. I would say that
2 he's absolutely remorseful for her death, but he's never
3 admitted it. And that's where we're at, Your Honor.

4 And I know that's a tough position when we're in the
5 sentencing phase and presenting mitigation. He will have
6 his chance to speak in just a second and, of course, when
7 he gets to address the Court he gets to decide how he
8 wishes to address the Court and I explained to him that
9 he'll have his opportunity to speak. But I can just tell
10 you that as far as mitigation is concerned I would
11 certainly request any mercy or leniency that Your Honor
12 can give.

13 **THE COURT:** All right. Mr. Hart, I'm glad to hear
14 from you.

15 **THE DEFENDANT:** I spoke in my testimony, Your Honor,
16 that I was innocent. I can't -- I can't take back the
17 verdict. I mean, there's not too much I can say. I feel
18 bad for the victim's family, that they found me guilty,
19 and obviously I'm considered the bad guy. There's nothing
20 I can say, but I appreciate everybody's patience,
21 especially my attorney and the assistant's work. I
22 appreciate every bit of it. There's really nothing I can
23 say.

24 **THE COURT:** All right.

25 All right. Anything else?

1 **MR. McNAIR:** No, Your Honor.

2 **THE COURT:** All right. Considering everything I've
3 heard in the trial the whole week, the sentence of the
4 Court is that he be confined to the Department of
5 Corrections for fifty years. He gets days earned since
6 April 18, 2013. I hope this brings closure for everyone.

7 (Whereupon, the proceedings were concluded for
8 May 26, 2017, at 5:59 PM.)
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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned case in Circuit Court on the 22nd - 26th days of May, 2017.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

December 4, 2017

Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
State of South Carolina)
v.)
JOHN HART,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS

ELEVENTH JUDICIAL CIRCUIT

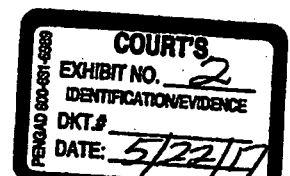
**DEFENDANT'S MOTION FOR
CONTINUANCE, OR IN THE ALTERNATIVE,
MOTION TO SUPPRESS TESTIMONY AND
EVIDENCE**

Indictment No.: 2014GS3201421

The Defendant, by and through the undersigned attorney, respectfully moves for a continuance of the scheduled trial date on May 22, 2017, or in the alternative, suppression of testimony and evidence. *See* U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§§ 3, 8, 14. Specifically, Counsel for the Defendant needs additional time to prepare for trial based on the following reasons: (1) the voluminous amount of discovery; (2) the significant number of potential witnesses; (3) the recently received new discovery containing critical witnesses and evidence; and (4) evidence not provided by the State. *See Strickland v. Washington*, 466 U.S. 668 (1984); *see also Wiggins v. Smith*, 539 U.S. 510 (2003). Accordingly, the Defendant requests that the jury trial scheduled on the above-referenced indictment be continued to a future term of court. *See State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012); *see also McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008) (finding "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.").

PROCEDURAL HISTORY

- (1) On April 20, 2013, the Defendant was arrested for Murder and subsequently indicted on June 9, 2014.
- (2) The Eleventh Circuit Public Defender's Office originally represented the Defendant on the



above-referenced charge and on numerous unrelated charges.

- (3) On July 18, 2016, Eleventh Circuit Public Defender Robert M. Madsen appointed the undersigned counsel to represent the Defendant because of a conflict of interest with the Public Defender's Office (608 Conflict Appointment).
- (4) On January 5, 2017, a *Schmerber* hearing was held based on the State's motion to obtain a handwriting sample from the Defendant.
- (5) The Defendant's trial was originally scheduled for the month of March, but was unilaterally continued without a hearing by the Solicitor's Office due to "a conflict".
- (6) On April 12, 2017, the Defendant appeared before the Court on his Motion for Supplemental Discovery and Inspection of Evidence, requesting Electronically Stored Information (emails from the Lexington County Sheriff's Department).
- (7) On April 18, 2017, the Court denied the motion and instructed the Solicitor's Office to draft a proposed order for the Court's review.
- (8) Counsel for the Defendant was recently in a week-long trial (April 24 through 28, 2017) for attempted murder, burglary, and criminal sexual conduct.
- (9) On May 8, 2017, the Defendant appeared before the Court on his Motion for Continuance. At the hearing, Defense Counsel marked the Defendant's written motion as a Court's exhibit.
- (10) On May 9, 2017, the Court denied the Defendant's motion requesting a continuance of the scheduled trial date.
- (11) On May 12, 2017, the Court denied the Defendant's *ex parte* request for funding to obtain a copy of the transcript from the Motion for Continuance hearing.

DISCOVERY RECEIVED SINCE APRIL 12, 2017

On April 12, 2017, Defense Counsel received the following new discovery that contained additional, material witnesses and critical evidence:

- (1) SLED and Fire Service reports
- (2) Michael Young (written statement)
- (3) Phone summary
- (4) Carlos Watkins (statement)
- (5) Supplemental Reports, updated reports from July 8, 2014 to current (Spivey)
- (6) Alex Wallace (written statement)
- (7) Jessica Ussery (written statement)
- (8) Demory James Robinson (FBI Statement)
- (9) Jamel Jerome Pugh (FBI Statement)
- (10) Jeremy Washington (FBI Statement)
- (11) Michael Young (federal proffer)
- (12) Jeremy Washington (FBI Statement)
- (13) Dr. Janice E. Ross, M.D. Pathology Report
- (14) SLED Lab Report, Gaile Heath, Forensic Scientist,
- (15) Case Supplemental Report, Investigator Mefford
- (16) Case Supplemental Report, Investigator Spivey
- (17) SLED Lab Report, Blood Toxicology of Victim
- (18) Cremation Permit, Office of the Coroner
- (19) Death Certificate
- (20) Numerous LCSD Press Releases

- (21) Numerous Medical Records

On April 20, 2017, Counsel received the following additional discovery:

- (22) Case Supplemental Report, Investigator Stoner
(23) FBI Proffer of Jeremy Washington
(24) Case Supplemental Report, Investigator Spivey

On May 3, 2017, Counsel received the following additional discovery:

- (25) SLED DNA analysis report
(26) SLED Serology report
(27) Report from Rome Police Department
(28) Supplemental report from meeting with Flager

On May 8, 2017, Counsel received the following additional discovery:

- (29) LCSD Chain of Custody
(30) SLED Chain of Custody
(31) Questioned Documents for Handwriting Analysis

On May 9, 2017, Counsel received the following additional discovery:

- (32) Michael Young (breach of proffer)
(33) Rap Sheets (1-55)
(34) CDV Report on Chris Hart

On May 16, 2017, Counsel received the following additional discovery:

- (35) DVD with examples of maps to be used as exhibits

On May 17, 2017, Counsel received the following additional discovery:

- (36) SLED Documents
- (37) Rap Sheets of Potential Witnesses

On May 18, 2017, Counsel received the following additional discovery:

- (38) Report by Investigator Spivey(?) regarding Jeremy Washington's Polygraph and Statements to the Solicitors Graham and McNair.
- (39) Report by Investigator Spivey? Regarding Polygraph and Statement from the Defendant.
- (40) Alex Wallace's Juvenile Records.
- (41) John Hart Juvenile Records.
- (42) John Hart Sentencing Sheets and Indictments

On May 19, 2017, Counsel received the following additional discovery:

- (43) Housing Reports and Certified Convictions
- (44) Housing and Discipline Reports
- (45) Michael Young District Court Order, Housing and Discipline Records from LCDC
- (46) Richland County documents regarding Paula Justice

SUPPLEMENTAL REQUESTS FOR DISCOVERY

- (1) On May 15, 2017, Defense Counsel filed a Supplemental Motion for Discovery and Inspection of evidence, requesting DNA records from SLED.
- (2) On May 16, 2017, Defense Counsel filed a Supplemental Motion for Discovery and Inspection of evidence, requesting information related to Jeremy Washington.
- (3) On May 17, 2017, Defense Counsel filed a Supplemental Motion for Discovery and Inspection of evidence, requesting Jail Phone Calls of potential witnesses, written statements, and additional criminal records (Rap Sheets) of Potential Witnesses.

- (4) On May 18, 2017, Defense Counsel filed a Supplemental Motion for Discovery and Inspection of evidence, requesting housing and disciplinary records of potential witnesses.
- (5) On May 20, 2017, Defense Counsel requested via email criminal records for Jeremy Washington and Michael Young, and the Polygraph report (records and results) for Jeremy Washington.

DISCOVERY REQUESTED, BUT NOT RECEIVED

The following evidence has been specifically requested, but not received by Defense Counsel:

- (1) Recorded jail telephone calls for numerous potential witnesses; including, but not limited to Jeremy Washington, Michael Young, Alex Wallace, and Carlos Watkins. Note: Some of the requested calls of other inmates/potential witnesses have been deleted due to the Lexington County Detention Center's retention policy of one year.
- (2) Criminal records for Jeremy Washington and Michael Young.
- (3) Jeremy Washington's Polygraph report (records and results).

ARGUMENT

The Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 3 and 14 of the South Carolina Constitution guarantee criminal defendants the right to a fair trial, effective assistance of counsel, substantive and procedural due process, confrontation of witnesses, compulsory process, and the opportunity to present a complete defense.

Our Supreme Court has ruled that Section 1-7-330 of the South Carolina Code of Laws violates the separation of powers doctrine embodied in Article 1, Section 8 of the South Carolina Constitution. *See State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012) (finding S.C. Code Ann. § 1-7-330 (2005) unconstitutional because it vested exclusive control of the criminal docket in the circuit solicitors).

Continuance

In *Winkler v. State*, 418 S.C. 643, 795 S.E.2d 686 (2016), our Supreme Court decided a case concerning the granting of a continuance and found that the trial judge erred in failing to grant the defendant an extension of time to investigate evidence of brain damage. The *Winkler* Court explained that the PCR statute, same as the Rules of Criminal Procedure, provided additional time should be granted “if ‘good cause is shown to justify a continuance.’” *Id.* (quoting S.C. Code Ann. § 17-27-160(c)).

Specifically, the *Winkler* Court found that the PCR judge abused its discretion in denying the defendant’s second motion for additional time because he presented “**good cause**” for the continuance. *Id.* (emphasis added). The *Winkler* Court emphasized the diligence with which counsel acted at each stage and found no evidence to support the PCR judge’s finding that PCR counsel had “‘ample opportunity’” to investigate and develop the evidence related to potential brain damage. *Id.* Notably, the PCR judge’s denial of the continuance request “left PCR counsel in a position from which they could not present evidence to support the claim that trial counsel was ineffective for failing to investigate Winkler’s brain damage.” *Id.*

In *Williams v. Bordon's, Inc.*, 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980), our Supreme Court held, “The authority of the court to grant continuances and to determine the order in which cases shall be heard is derived from its power to hear and decide cases ... This adjudicative power of the court carries with it the inherent power to control the order of its business to *safeguard the rights of litigants*.” (emphasis added). Notably, the South Carolina Rules of Criminal Procedure also provide that a presiding judge may grant a continuance based upon “*a showing of good and sufficient legal cause*.” Rule 7(c), SCRCrimP (emphasis added).

Effective Assistance of Counsel and Duty to Conduct a Reasonable Investigation

To provide effective assistance of counsel, the undersigned counsel must be prepared to challenge the State's witnesses and evidence. *See Strickland*, 466 U.S. at 688 ("Counsel also has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process."); *Nix v. Williams*, 467 U.S. 431, 453 (Stevens, J., concurring in the judgment) ("The Sixth Amendment guarantees that the conviction of the accused will be the product of an adversarial process, rather than the ex parte investigation and determination by the prosecutor.").

The Supreme Court of the United States has held that "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691; *See Lounds v. State*, 380 S.C. 454, 460, 670 S.C. 646, 649 (2008) (citation omitted) (finding "while the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.").

The Fourth Circuit Court of Appeals has addressed the issue of reasonable investigation by defense counsel and held: "To meet this standard, an attorney must at a minimum, 'conduct appropriate investigations, both factual and legal, to determine if matters of defense can be developed, and to allow himself enough time for reflection and preparation for trial.'" *Sneed v. Smith*, 670 F.2d 1348, 1353 (4th Cir. 1982) (quotation cite omitted).

It is well-settled that the due process guarantees of the federal and state constitutions "require[] that a criminal defendant be afforded a meaningful opportunity to present a complete defense." *State v. Mabe*, 306 S.C. 355, 358, 412 S.E.2d 386, 388 (1991) (citing *California v. Trombetta*, 467 U.S. 479 (1984)); *See Crane v. Kentucky*, 476 U.S. 683, 690 (1986). The opportunity to present a complete defense requires that a defendant be "fully informed of the nature

and cause of the accusation[s]" against him," and be able to exercise his "privilege to request and obtain material evidence from the state" prior to trial. *Id.*; see also *Town of Fairfax v. Smith*, 285 S.C. 458, 330 S.E.2d 290 (1985); S.C. Code Ann. § 17-23-60 (2003).

In *Washington v. Texas*, 388 U.S. 14, 19 (1967), the Supreme Court of the United States explained that the Sixth Amendment right to compulsory process "is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. . . . This right is a fundamental element of due process of law." This right to compel witnesses and present evidence so critical to the administration of justice, it can override duly enacted state laws, rules of evidence, or virtually any rule that prevents the presentation of a complete defense. See *Id.*; see also *Chambers v. Mississippi*, 410 U.S. 284 (1973).

DISCUSSION

In this case, Defense Counsel must be provided additional time to conduct a reasonable investigation and an opportunity to provide a complete defense in preparation for trial. See *Elmore v. Ozmint*, 661 F.3d 783, 857-64 (4th Cir. 2011) (finding counsel's performance deficient where counsel for the defendant failed to investigate the State's forensic evidence); *State v. Von Dohlen*, 322 S.C. 234, 471 S.E.2d 689 (1996). Specifically, the State has provided defense counsel with a plethora of late discovery since April 12, 2017, which contains material witnesses and critical evidence (e.g., impeachment).

More than three years after the Defendant's arrest, Defense Counsel became the fourth attorney appointed to represent the Defendant because of Assistant Public Defender's leaving the office and ultimately a conflict with the Public Defender's Office. Counsel has previously informed the Court that virtually no investigative work had been performed on this case (e.g., no

investigator listed or investigative reports in the file). In due candor to the Court, it appeared that prior counsel spoke to an investigator, but never followed-up with the investigator.

Simply put, the discovery in this case is voluminous. Specifically, there are over 1,000 pages of discovery, 100–200 potential witnesses, approximately 14 video recordings, hundreds of photographs, and over 300 jail phone calls. In addition to the significant amount of discovery, there has been a constant drip of new discovery containing material witnesses (numerous informants) and critical evidence (phone summary and SLED DNA analysis).

There is also discoverable evidence that has not been provided by the State based on Defense Counsel's review of the recently received discovery, resulting in Defense Counsel filing numerous Supplemental Motions for Discovery. In sum, it is nearly impossible to provide effective assistance of counsel or to ensure the Defendant's right to a fair trial when defense counsel lacks discoverable evidence, or is given insufficient time to conduct a reasonable investigation.

It is also fundamentally unfair for the Eleventh Circuit Solicitor's Office to arbitrarily receive a continuance without a hearing in February, and then to deny Defense Counsel of the same request when Counsel has only been involved in the case for approximately nine months, and the State arrested the Defendant on April 20, 2013, and failed to disclose critical evidence until April of 2017. The prejudice to the Defendant is evident upon reviewing the discovery provided to the defense after the State's unilateral, self-imposed continuance of the March trial date.

In addition to having four years to prepare for trial, the Solicitor's Office has an incredible amount of resources: Lexington County Sheriff's Department, its own investigators, multiple attorneys, and case managers. Counsel is the only criminal defense attorney in a two-attorney law firm who recently had a week-long trial for attempted murder, burglary, and criminal sexual

conduct with a minor trial in Lexington County General Sessions Court (April 24 to 28, 2017).

Despite being unconstitutional, the Eleventh Circuit Solicitor's Office still retains exclusive control of the criminal docket. *See State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012) (holding exclusive control of the criminal docket by one party violates the separate powers doctrine). The Defendant requests the continuance not for purposes of delay, but to provide a competent, zealous defense that John Hart deserves and is provided by the federal and state constitutions. Fundamental fairness supports Defense Counsel's request for a continuance because the State received a continuance in February of this year without a hearing.

Notably, we should never forget that "[t]he very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free." *Herring v. New York*, 422 U.S. 853, 862 (1975). Therefore, the Defendant respectfully moves for a continuance for good cause shown based on the prejudice created by the untimely disclosure of material witnesses and critical evidence.

Suppression

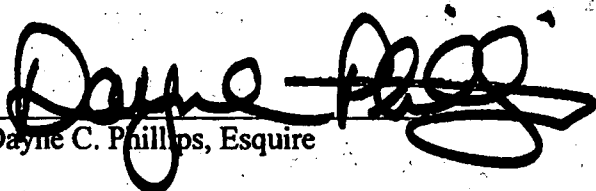
If the Court denies this motion for continuance, Defense Counsel moves for the Court to suppress the recently received new discovery and related testimony because of the prejudice created by its untimely disclosure.

CONCLUSION

Based on the foregoing reasons, the Defendant respectfully requests that this Court grant his motion for a continuance to a term of court determined at the Court's discretion, or in the alternative, that the Court suppress the applicable testimony and evidence. *See* U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3, 14.

IT IS SO MOVED.

Respectfully Submitted,



Dayne C. Phillips, Esquire

The Michael Jeffcoat Firm
4723-A Sunset Blvd.
(PO Box 1860)
Lexington, South Carolina 29072
Phone: (803) 808-9600
Fax: (803) 808-2240

May 22, 2017

Lexington, South Carolina



Lexington County Sheriff's Department Statement Form



DATE 4/12/13 PLACE _____ TIME STARTED 1935 9 M

I, the undersigned, John Christopher Hart, am _____ years of age, my date

and place of birth being the _____ day of _____, 19____, at _____

My present address is _____

I completed _____ grade(s) in school. I can read and write. JCH (Initials)

CONTACT NUMBERS: H) _____ W) _____ C) _____

ALTERNATE CONTACT: Name _____ Phone Numbers: _____

Before answering any questions or making any statements, _____

a person who identified him/herself as a _____

duly warned and advised me that:

- 5 5 1) I HAVE THE RIGHT TO REMAIN SILENT. JCH
- 5 5 2) ANYTHING I SAY, CAN AND WILL BE USED AGAINST ME IN A COURT OF LAW. JCH
- 5 5 3) I HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE ASKED ANY QUESTIONS AND TO HAVE HIM OR HER PRESENT WITH ME DURING QUESTIONING. JCH
- 5 5 4) IF I HAVE NO MONEY FOR LAWYER'S FEES, THE COURT WILL APPOINT ONE TO REPRESENT ME WITHOUT COST TO ME IF I WISH. JCH
- 5 5 5) IF I DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER PRESENT, I WILL STILL HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME. I ALSO HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANYTIME UNTIL I TALK WITH A LAWYER. JCH
- 5 5 I HAVE READ THIS STATEMENT OF MY RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE. JCH I MAKE THE FOLLOWING STATEMENT:

Refused to write a statement

Witness

Notary Public

My Commission expires

Person giving Statement

Date



Lexington County Sheriff's Department Statement Form



DATE 6-22-16 PLACE Lexington County TIME STARTED 13:45 P M

I, the undersigned, Alex J. Wallace, am 18 years of age, my date

and place of birth being the [redacted] day of [redacted] at Lexington Medical Center

My present address is [redacted], Columbia, S.C. 29205

I completed 8 grade(s) in school. I can read and write. AW (Initials)

CONTACT NUMBERS: H) 803-309-3784 W) [redacted] C) [redacted]

ALTERNATE CONTACT: Name [redacted] Phone Numbers: [redacted]

Before answering any questions or making any statements, Sgt. Spivey & Det. Stout
a person who identified him/herself as a Investigators at Lex. County Sheriff's Dept.
duly warned and advised me that:

- SS 1) I HAVE THE RIGHT TO REMAIN SILENT. AW
- SS 2) ANYTHING I SAY, CAN AND WILL BE USED AGAINST ME IN A COURT OF LAW. AW
- SS 3) I HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE ASKED ANY QUESTIONS AND TO HAVE HIM OR HER PRESENT WITH ME DURING QUESTIONING. AW
- SS 4) IF I HAVE NO MONEY FOR LAWYER'S FEES, THE COURT WILL APPOINT ONE TO REPRESENT ME WITHOUT COST TO ME IF I WISH. AW
- SS 5) IF I DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER PRESENT, I WILL STILL HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME. I ALSO HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANYTIME UNTIL I TALK WITH A LAWYER. AW
- S I HAVE READ THIS STATEMENT OF MY RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE. AW I MAKE THE FOLLOWING STATEMENT:

AW II, Alex Jermaine Wallace, confess to the murder of Paula Justice. Any ^{AW} ~~and~~ allegations against John Hart are incorrect. I know Hart from selling drugs out of motels in the West Columbia area. Me & Hart both know Paula Justice because she was a prostitute. Paula owed me 1250\$ at the time. I would call her phone, in which was a 803 #, & she would constantly ignore my calls. I knew that Hart knew Paula as well so I called him & told him to bring Paula to me. I told him that it was a money meeting about getting Paula to do prostitution. He called me back & told me he was on the way. I was walking down Greenwood dr emerging onto Lumberjack when I saw the car pull up. I walked down Lumberjack & greeted Hart & Paula. Paula didn't say anything to me & Hart asked me where was the customer & told him it was a few houses up. I told Paula to walk ahead of AW

Witness

Notary Public

Person giving Statement

Date



Voluntary Statement (con't.)

☐ Victim/Witness

☒ Suspect/Defendant

Page 2 of 9 pages

Date 6/22/16

up so me & Hart could talk. When she did that's when I pulled my .45 caliber gun out & shot her once in the back of the head. As soon as I shot her I ran up Lumberjack back to my house on Greenwood. I didn't hear anything from Hart afterwards & I wasn't notified if anyone was looked up for it or not so I thought the case went cold.

Hart did not murder Paula Justice.

- Gun - All black w/ chrome cartridge w/ black clip

- The car Hart & Paula came in was tan or beige

- I was wearing a dark green & beige camo hoodie w/ black pants & black & beige Jordans.

I am owning up to the murder of Paula because an innocent man should not be charged for something he honestly didn't do. AW

Q - What kind of gun was it used on this day?

A - Glock - .45 caliber AW

Q - Who shot Paula?

A - I did AW

Q - How far ~~were~~ you from Paula when you pulled the trigger?

A - 4 or 5 feet away w/ my arm extended AW

Q - How do you know it was a Glock and how certain are you to it being a Glock?

A - When I bought it that's what I was told it was. I'm positive. AW

I have read this page, initialed any corrections or changes, and received a copy of this page. I certify that the facts contained herein are true and correct to the best of my knowledge.

Sworn to before me this 22 day of June, 2016

☐ Witness or ☐ Notary Public

My Commission expires

S. B.

Signature of person giving voluntary statement



Voluntary Statement (con't.)

☐ Victim/Witness

☒ Suspect/Defendant
Page 3 of 9 pagesDate 6/22/16

Q - What color was the gun?

A - All black chrome cartridge (top part - not magazine) AW

Q - How did you contact Hart to come meet you with Paula?

A - By phone AW

Q - What number did you call Hart from and whose phone does this number belong to?

A - (803)-822-8057, it did belong to me, in my mom's name (Rhonda Wallace) it was then stolen when it got locked up in June of 2013. AW

Q - How big was the Glock gun you said you shot Paula with? We talked about mine being a mid size on my hip, a small one on my leg and the size that Det. Stant has being a full size?

A - Full size AW

Q - What number did you call Paula on and when did you last try to call her prior to her being shot?

A - The same number I called Hart on. The night before, & several other times AW

Q - How many times did you try to call Paula the night before the incident?

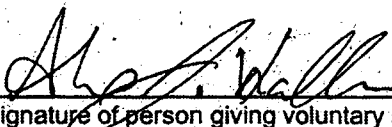
A - twice AW

I have read this page, initialed any corrections or changes, and received a copy of this page. I certify that the facts contained herein are true and correct to the best of my knowledge.

Sworn to before me this _____ day of _____, 20____

☐ Witness or ☐ Notary Public

My Commission expires _____


Signature of person giving voluntary statement



Voluntary Statement (con't.)

☐ Victim/Witness

☒ Suspect/Defendant

Page 4 of 9 pages

Date 6/22/16

Q - What was Paula wearing on this night?

A - I'm not sure but I believe it was a gray or white short & sweatpants. AW

Q - Who else was with Hart and Paula and how did they get here?

A - Nobody. They drove. AW

Q - What did they drive?

A - A ton or berge car. Maybe a Lincoln or crown vic. AW

Q - Where was the car parked at & where did they get out of the car?

A - On the dirt road. Hart got out of the driver side & Paula got out of the opposite side. AW

Q - Where did they come from? prior to getting here?

A - I don't know. AW

Q - What did Hart do after you shot Paula?

A - I don't know because I ran. AW

Q - What did you say to Hart before you supposedly pulled the trigger?

A - Hart asked me where was the customer, & I told him just a few houses up. He asked again & I did not reply. AW

Q - Tell me what you did with the gun? After the incident?

A - Got rid of it. AW

I have read this page, initialed any corrections or changes, and received a copy of this page. I certify that the facts contained herein are true and correct to the best of my knowledge.

Sworn to before me this _____ day of _____, 20____

☐ Witness or ☐ Notary Public

My Commission expires _____

Signature of person giving voluntary statement



Lexington County Sheriff's Department



VOLUNTARY STATEMENT

(Not Under Arrest)

I, [Signature], am not under arrest, nor am I being detained for any criminal offenses concerning the events I am about to make known to Sgt. Spivey / Det. Shaw. I volunteer the following information of my own free will, for whatever purposes it may serve. I am years of age, and I live at

Alternate Contact Name: Phone (H) (W) (C)

Alternate Contact Name: Phone (H) (W) (C)

Q - Where did you get rid of it at? Describe the place completely?

AN A - A pond in Illinois. A couple trees - near a railroad track, and there was a relatively close housing or apartment complex. AN

Q - How did you get there?

AN A - A friend gave me ride since home. It was going to friend's house. AN

Q - Who is your friend and what kind of ^{SS} vehicle were you to in?

AN A - I don't know his government name. Black Honda AN

Q - What else was around this pond?

AN A - It just some trees AN

Q - ^{SS} What did you do with the gun when you got to the pond?

AN A - Threw it in the pond AN

Q - Where was your friend when you threw the gun in the pond?

AN A - In the car AN

I have read each page of this statement consisting of page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained here in are true and correct.

Dated at 6/22/16 this day of 20

[Signature]

[Signature]
Signature of person giving voluntary statement.



Lexington County Sheriff's Department



VOLUNTARY STATEMENT

(Not Under Arrest)

I, [Signature], am not under arrest, nor am I being detained for any criminal offenses concerning the events I am about to make known to Sgt. Spivey / Det. Starn. I volunteer the following information of my own free will, for whatever purposes it may serve. I am _____ years of age, and I live at _____

Alternate Contact Name: _____ Phone (H) _____ (W) _____ (C) _____

Alternate Contact Name: _____ Phone (H) _____ (W) _____ (C) _____

Q - ^{SS} How did you find this place?

AW A - On the way to my friends house I saw it. AW

Q - Where does your friend live?

AW A - He does live on Long Creek dr. AW

Q - What time of day was this when you threw the gun in the pond?

AW A - Nighttime maybe 10 or 10:30pm AW

Q - How long after you shot Paula did you get rid of the gun in the pond?

AW A - A couple days later. Maybe 3. AW

Q - When did you shoot Paula?

AW A - Around 11:30pm somewhere around the 8th or 9th of April of 2013 AW

Q - What was Paula doing when you shot her and how many times did you shoot her?

AW A - She was slowly walking. Once. AW

I have read each page of this statement consisting of _____ page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained here in are true and correct.

Dated at 6/22/16, this _____ day of _____ 20____

[Signature]
Signature of person giving voluntary statement.



Lexington County Sheriff's Department



VOLUNTARY STATEMENT

(Not Under Arrest)

I, _____, am not under arrest, nor am I being detained for any criminal offenses concerning the events I am about to make known to Sgt. Spivey / Det. Stout. I volunteer the following information of my own free will, for whatever purposes it may serve. I am _____ years of age, and I live at _____

Alternate Contact Name: _____ Phone (H) _____ (W) _____ (C) _____

Alternate Contact Name: _____ Phone (H) _____ (W) _____ (C) _____

Q - What was Hart wearing?

AW A - I don't remember. AW

Q - What phone number did you call Hart on?

AW A - (803) 822-8057 AW

Q - What is Hart's phone number that you called him on?

AW A - I don't remember. I think it was long distance. AW

Q - At the pond, how far were you from your friend and could he see you?

AW A - About 30 or 35 yards & no because the car was parked w/ it's trunk towards me. At an angle so he could pull out. AW

Q - Did the guy know what you were doing since he was parked ready to pull out?

AW A - No, ~~because~~ ^{AW} He was ready to go to a party & he parked like how he did cause it was along the turn around. AW

I have read each page of this statement consisting of _____ page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained here in are true and correct.

Dated at 6/22/16, this _____ day of _____ 20____

[Signature]

[Signature]
Signature of person giving voluntary statement.



Lexington County Sheriff's Department



VOLUNTARY STATEMENT

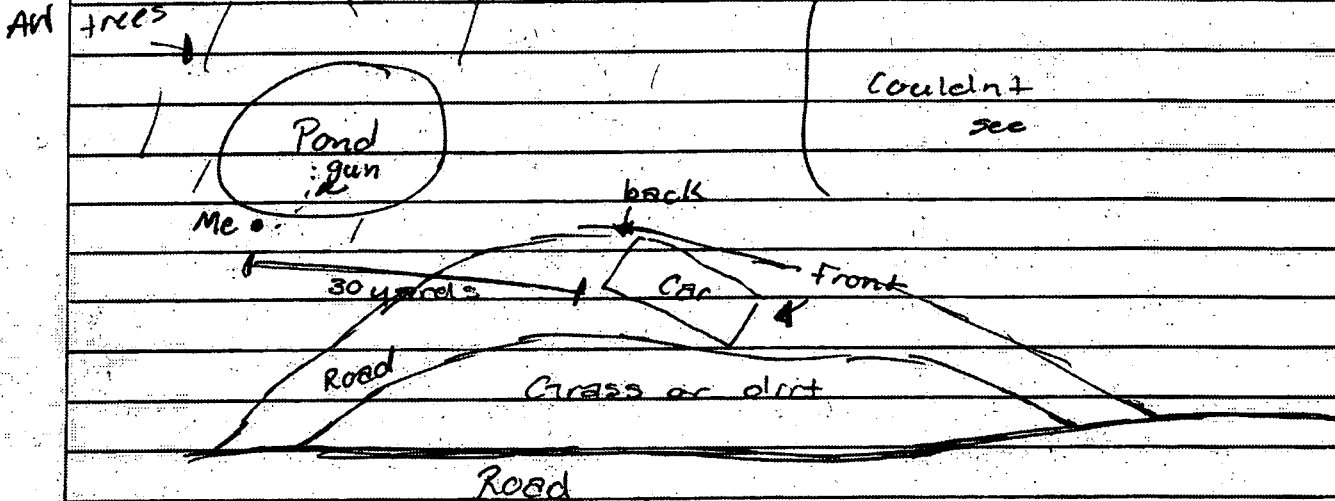
(Not Under Arrest)

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Alternate Contact Name: _____ Phone (H) _____ (W) _____ (C) _____

Alternate Contact Name: _____ Phone (H) _____ (W) _____ (C) _____

Q - Draw me the pond and everything around it like it was on the night you got ride of the gun.



couldn't see

Don't Remember

AW

I have read each page of this statement consisting of _____ page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained here in are true and correct.

Dated at C/22/12, this _____ day of _____ 20____

[Signature]

[Signature]
Signature of person giving voluntary statement.



Lexington County Sheriff's Department



VOLUNTARY STATEMENT

(Not Under Arrest)

I, [Signature] am not under arrest, nor am I being detained for any criminal offenses concerning the events I am about to make known to Sgt. Spive / Det. Stout. I volunteer the following information of my own free will, for whatever purposes it may serve. I am _____ years of age, and I live at _____

Alternate Contact Name: _____ Phone (H) _____ (W) _____ (C) _____

Alternate Contact Name: _____ Phone (H) _____ (W) _____ (C) _____

- Q - How long have you known Hart and Paula?
 AN A - I knew them for maybe 7-8 months before ^{AN} the incident AN
- Q - Where is Hart at in LCDC in comparison to you?
 AN A - Same Floor AN
- Q - How often do you see or talk with Hart?
 AN A - I see him once a day if I'm not asleep, we don't talk that often. AN
- Q - Were you promised anything today by Det. Stout or myself in anyway?
 AN A - No AN
- Q - Were you threatened by anyone here to make a statement?
 AN A - No AN
- Q - Did Hart threaten you or promise you anything to make a statement?
 AN A - No AN
- Q - Did you make a request to talk with us and why?
 AN A - Yes, because someone innocent is locked up for something I committed AN

I have read each page of this statement consisting of _____ page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained here in are true and correct.

Dated at 6-22-16, this _____ day of _____ 20____

[Signature]

[Signature]
 Signature of person giving voluntary statement.

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
State of South Carolina)
v.)
JOHN CHRISTOPHER HART,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
ELEVENTH JUDICIAL CIRCUIT
SUPPLEMENTAL MOTION FOR
DISCOVERY & INSPECTION OF EVIDENCE
BRADY AND Rule 5, SCRCrimP
Indictment No.: 2014GS3201421

JP

2017 MAY 15 AM 10:44

FILED

CLERK OF COURT
SOUTH CAROLINA

TO: DEPUTY SOLICITOR SHAWN GRAHAM
ASSISTANT SOLICITOR ROBERT MCNAIR

THE DEFENDANT, by and through the undersigned counsel, moves for the disclosure, production, and inspection of the evidence requested in this supplemental motion for discovery. See U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3 and 14; Rule 5(a), (c), and (d), SCRCrimP. The requested information is necessary in providing the Defendant with a meaningful opportunity to present a defense. See *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972); *Kyles v. Whitley*, 514 U.S. 419 (1995); *United States v. Bagley*, 473 U.S. 667 (1986); *Napue v. Illinois*, 360 U.S. 264 (1959); *Crane v. Kentucky*, 476 U.S. 683 (1986); *Giles v. Maryland*, 386 U.S. 66 (1967); *United States v. Agurs*, 427 U.S. 97 (1976); *Strickler v. Greene*, 527 U.S. 263 (1999); *Youngblood v. West Virginia*, 547 U.S. 867 (2006); *State v. Gullette*, 326 S.C. 220, 487 S.E.2d 590 (1997); Appellate Court Rule 407, Rules of Professional Conduct, Rule 3.8(d); and Model Rule 3.8(d) of the American Bar Association's Standards for Criminal Justice.

DISCUSSION

Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. See *State v. Bryant*, 307 S.C. 458, 415 S.E.2d 806 (1992). The

due process rights recognized by *Brady* apply not only to exculpatory evidence, but also to impeachment evidence. See *United States v. Bagley*, 473 U.S. 667 (1985). The Court further held, "[e]ven absent a request, prosecutors have a constitutional duty to give the defendant exculpatory evidence which would raise a reasonable doubt about his guilt." *State v. Jackson*, 302 S.C. 313, 396 S.E.2d 101 (1990) (citing *United States v. Agurs*, 427 U.S. 97 (1976)).

In *Bagley*, the United States Supreme Court reiterated the importance of specific requests for undisclosed *Brady* material: "When the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable." *Id.* at 681. *Brady* itself involved the State's failure to disclose evidence that had been specifically requested by the defense, and the Court noted that the nondisclosure was constitutional error if the evidence would "tend to exculpate" the defendant. *Brady*, 373 U.S. at 88. Notably, the Court found in *Kyles v. Whitley* "that the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police." *Id.* 514 U.S. 419.

"Due process requires that a criminal defendant be afforded a meaningful opportunity to present a complete defense." *State v. Mabe*, 306 S.C. 355, 358, 412 S.E.2d 386, 388 (1991) (citing *California v. Trombetta*, 467 U.S. 479 (1984)). The opportunity to present a full and complete defense includes "a defendant's privilege to request and obtain material evidence from the state." *Id.*; see also *Town of Fairfax v. Smith*, 285 S.C. 458, 330 S.E.2d 290 (1985). U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3, 14.

Pursuant to Rule 5(a)(1)(C) of the South Carolina Rules of Criminal Procedure, the Defendant respectfully demands the right to be furnished or to examine, inspect, copy, photograph or make other facsimile copies of the following documents or tangible objects, which are within the possession, custody or control of the prosecution, and which are material to the preparation of

his defense. Rule 5 requires the prosecution to respond to a defendant's request for disclosure "no later than thirty (30) days after the request is made, or within such other time as may be ordered by the court." SCRCP 5(a)(3) & (c).

REQUESTED DISCOVERY

The Defendant specifically moves for the disclosure of the following evidence:

1. All electropherograms, including known electropherograms for those individuals involved in the case.
 - a. Ladder
 - b. 9947A
 - c. Negative Blank
 - d. MJB Sample
 - e. Case samples
 - f. DNA profile for each analyst involved in testing
2. Population genetics calculations.
3. Complete copy of the DNA case file, including but not limited to:
 - a. Complete chain of custody documentation
 - b. All communications involving the testing of DNA in this case (including, but not limited to phone records, emails, text messages, and letters)
 - c. All bench notes, worksheets, and summary sheets created during the analysis of all evidence associated with this case
 - d. Copies of any evidence photographs taken
 - e. Hard copy of DNA data (electropherograms)
 - f. Mixture interpretation worksheets, if applicable
 - g. Statistical calculations, if applicable
 - h. CODIS upload worksheets, if applicable
 - i. Case Report(s)
4. Table of allele calls (for each sample).
5. Electronic copy of all GeneScan/Genotyper or GeneMapperID files on CD-ROM including the appropriate Matrix files used to analyze the data.
6. Standard Operating Procedures and Quality Assurance Manual (hard copy or electronic copy) in use at the time of the case completion.
7. Corrective Action log for the analyst and for the DNA section of the lab.

8. A copy of the Unexplained Profile/Carryover/Contamination log and/or Corrective Action log covering a period of at least one year prior to the completion of the case and one year after the completion of the case (or to the present).
9. Curriculum Vitae from all technicians, analysts, and reviewers associated with this case.
10. Proficiency test records from all technicians, analysts, and reviewers associated with this case covering a period of at least one year prior to the completion of the case to one year after the completion of the case (or to the present).
11. Internal and external DNA audits reports, including any findings, from at a minimum two years preceding the completion of the case.
12. A disk containing raw data, including but not limited to the sample files, project files, injection lists, sample sheets and injection logs.
13. Graphs or electropherograms that were generated based on the analyst's review and interpretation of the raw data (the reported DNA profile for each sample is depicted on these graphs);
14. The software program used for forensic STR DNA analysis under the laboratory's protocol.
15. Copies of the DNA typing results.
16. Copies of real-time, slot blot or other quantitation data.
17. Case notes, including handwritten bench notes, chain-of-custody record, and descriptions of the evidence.
18. Serology reports.
19. Correspondence between lab personnel and any law enforcement, prosecutorial or other state/county/jurisdictional officials.
20. All documents routinely kept in the type of case file referenced.
21. Documents related to the case that were referenced regularly but are kept in a place other than the case file.
22. A copy of all documentation regarding corrective action when casework errors are detected pursuant to the QAS (July 1, 2009 revision), Standard 14.
23. The quality assurance review (administrative and technical reviews).

24. Data from the original case file if the case is based on a convicted offender match, a case-to-case match or a forensic match.
25. Documentation stating that the laboratory has searched for the casework DNA profile(s) in its staff DNA database, including the results of that search.
26. Documentation from the three most recent laboratory accreditation assessments/audits, including DNA Quality Assurance Standards audits and ongoing communications from the most recent assessment/audit.
27. References to summaries of developmental validation studies for each of the DNA testing methodologies used in the case, if conducted by an organization other than the DNA testing laboratory, and to summaries of the laboratory's internal validation studies (and developmental studies, if applicable) of DNA testing methodologies used in the case and the supporting documentation.
28. Proficiency testing results of analysts, technical reviewers and technicians in the case.
29. Reference for, or a copy of, the document population database(s) used to generate the statistical interpretation of autosomal (STR) loci testing results (commonly displayed as allele frequency tables) and a summary or notation of what statistical method was used; if applicable, a summary or notation of the documented interpretation guidelines/procedures for reporting of statistics for mixtures; and, if applicable, for analyses involving nonautosomal testing, such as mitochondrial or Y-STR DNA testing, a summary or notation of the laboratory's documented statistical interpretation guidelines for such testing.
30. Laboratory protocols used for all analytical procedures, including evidence-handling procedures; serology/evidence screening testing procedures; reagent preparation and use methods; sample preparation methods; extraction and quantitation methods; autosomal STR methods and/or other relevant DNA testing methods; instrument calibration, maintenance and operating methods; software operation methods; data analysis, interpretation and reporting methods; processes for monitoring of analytical procedures using controls and standards; and administrative and technical review procedures for case files and reports.
31. The quality assurance program manual.
32. All reports for the case issued by the laboratory.
33. Any other information in the form of documentation, or encompassed in some other manner, that the lab has in its possession or control, or knows of and can access regarding the case.

PART II

34. All scientific conclusions the State intends to offer at trial.
35. All bases for said scientific conclusions.
36. All procedures and tests used to reach said conclusions.
37. All data generated by the procedures and used to reach said conclusions.
38. All procedures the State's expert should have used to reach said conclusions; such procedures generally being termed "protocols."
39. A complete record of the manner in which all evidence items, whether or not attributed to the accused, were located, developed and obtained and by whom, including but not limited to evidence items used in "DNA" extraction and/or analysis.
40. A complete record of all bench notes maintained by DNA evidence collectors and DNA examiners in the course of analyzing any and all evidence in this case.
41. Copies of all quality assurance and training guidelines and protocols used in the laboratories that collected and/or analyzed the DNA evidence.
42. A complete record of chain of custody, including time and date of collection, name and affiliation of custodian personnel, treatment and handling of all DNA evidence, including but not limited to any DNA collection kits, such as Sexual Offense Evidence Collection (SOEC) kit, "Rape Kit", or similar, from point of sample collection up to and including current disposition of the evidence.
43. A complete list of all automated and/or manual DNA extractions, DNA purification, amplification (PCR), electrophoresis kits, reagent expiration dates, testing and analysis hardware and software used in this case, including the name of the software program, manufacturer and version used, and laboratory equipment calibration and validation as per the prescribed guidelines for each instrument and lab procedure used.
44. A complete hard copy and raw data record of any and all DNA quantitation for each sample, standard curves used for DNA quantity determination, PCR sample plate layouts, electrophoresis sample plate layouts, electropherograms or "trace" data obtained from analyzing all the DNA evidence in connection with this case, including but not limited to positive controls, negative controls, internal "known" controls such as DNAs from lab or clinic personnel who were involved in sample identification, extraction, and analysis.
45. Internal standards, ladders, including the 250 bp standard for equipment calibration, any indications whether samples underwent reruns or longer injection times as pertaining to electrophoresis equipment, software allele calls including peak heights, manual allele calls, including an explanation of such calls for known or ambiguous peaks, complete data used

to analyze allele frequencies for all relevant ethnic populations used in calculating match probabilities and odds of inclusion/exclusion for any and all match or mismatch correlations used in connection with this case.

46. A copy of all licenses or other certification of accreditation in DNA sample collection and analysis held by the laboratory(ies) or clinics involved in any DNA evidence collection and/or DNA analysis in the present case.
47. The complete resume or curriculum vita of each individual involved in the collection, preservation, and analysis of the DNA evidence, including but not limited to job description, education and training, proficiency and competency testing and results, and testimony reviews.
48. Copies of certification exam results for each analyst, technician and reviewer responsible for preparation or analysis of subject specimens or review of analysis, including, but not limited to: each letter specifying the results of the exam and a list of topics where the analyst missed more than 20% of the questions (the second page of the second letter from the American Board of Criminalistics).
49. Copies of all documentation related to corrective actions for each analyst and technician responsible for preparation of analysis of subject specimens.
50. Copies of the corrective action report and corrective action tracking, quality assurance review tracking and non-conformity tracking for the DNA Section and all sections of the State Crime Lab.
51. Copy of the Unexpected Results Log and instances of unintended DNA transfer or sample contamination. Copies of all records maintained in the laboratory that document instances of unintended transfer of DNA or sample contamination, such as instances of negative controls that demonstrated the presence of DNA or the detection of unexpected extra alleles in the control or reference samples, and any corrective measures taken.

These records should include all the data necessary to conduct an independent analysis of the raw data and to reconstruct the analysis performed in the present case. In other words, the requested information/documentation is critical to ensuring that the Defendant's rights to effective assistance of counsel, confrontation and cross-examination, and due process are provided.

If the State intends to introduce expert opinion testimony regarding the DNA evidence at trial based on the SLED DNA analysis lab report, the Defendant would be prejudiced if the methods and procedures used by the expert to reach said opinion were not disclosed to the defense.

Specifically, the Defendant could not adequately prepare to confront the expert witness for cross-examination unless he has access to the requested information.

The disclosure, production, and inspection of this requested information is essential to ensuring the Defendant's constitutional rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution (due process, compulsory process, confrontation of witnesses, effective assistance of counsel, and fair trial). *See Kyles v. Whitley*, 514 U.S. 419, 442 n.134, 445-451 (1995) (finding due process requires disclosure of any evidence that provides grounds for the defense to attack the reliability, thoroughness, and good faith of the police investigation, to impeach the credibility of the state's witnesses, or to bolster the defense case against prosecutorial attacks).

WORK-PRODUCT / PRIVILEGED EVIDENCE

The Defendant further moves for the State to make available to the Court all evidence that may be subject to a claim of "work product" privilege for the Trial Judge to make an *in camera* inspection of any evidence not produced to the defense. *See Pennsylvania v. Ritchie*, 480 U.S. 39 (1987) (finding that due process entitles a criminal defendant to have potentially privileged records reviewed *in camera* to determine whether they contain material evidence). By permitting the Trial Judge to examine potential "work product" evidence, it serves to protect the legitimate interest of the State and ensures that the State has complied completely with the requirements of *Brady* and its progeny.

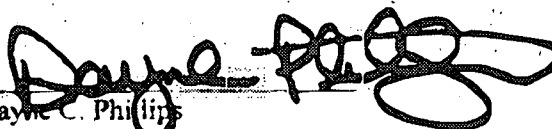
CONCLUSION

This evidence is essential to ensure the Defendant's right to a fair trial; specifically, his right to confrontation of witnesses, to compulsory process, and to present a full and complete defense under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitutions,

and Article I, Sections 3 and 14, of the South Carolina Constitution. If the requested evidence is not received within a reasonable amount of time after the filing and service of this motion, the undersigned counsel will move for an Order compelling disclosure. Accordingly, the undersigned counsel respectfully moves for the State to produce all the requested evidence and allow the Defendant the right to examine, inspect, copy/photograph such materials and information, and if necessary, at a specific time and place fixed by the Court.

IT IS SO MOVED.

Respectfully Submitted,


Dayne C. Phillips

The Michael Jeffcoat Firm
4723-A Sunset Blvd.
(PO Box 1860)
Lexington, South Carolina 29072
Phone: (803) 808-9600
Fax: (803) 808-2240
Email: dayne@thejeffcoatfirm.com

ATTORNEY FOR DEFENDANT

Lexington, South Carolina

May 11, 2017

ORIGINAL CERTIFICATE OF SERVICE

I hereby certify that I have this date served the within and foregoing Rule 5 and Brady Supplemental Motion for Discovery and Inspection by depositing a true and correct copy of the same via first-class mail, postage prepaid, upon all parties as follows:

The Honorable Lisa M. Comer
Lexington County Clerk of Court
205 East Main Street
Lexington, SC 29072

Shawn Graham, Deputy Solicitor
and
Robert E. McNair, III, Assistant Solicitor
Eleventh Circuit Solicitor's Office
Marc Westbrook Judicial Center
205 East Main Street
Lexington, South Carolina 29072

LISA COMER
CLERK OF COURT
JPM 11/1/17

2017 MAY 15 AM 10:44

11 11 17

This 12th day of May, 2017

By:

Kristi P. Kohl

Kristi P. Kohl
Legal Assistant to Dayne C. Phillips

Dayne C. Phillips, Esquire

The Michael Jeffcoat Firm
Post Office Box 1860
Lexington, South Carolina 29071
(803) 808-9600
(803) 808-2240 facsimile
dayne@thejeffcoatfirm.com

ORIGINAL**FILED**

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON)

ELEVENTH JUDICIAL CIRCUIT

State of South Carolina)

ISA M. COMER
CLERK OF COURT

LEXINGTON, SC

v.)

**SUPPLEMENTAL MOTION FOR
DISCOVERY & INSPECTION OF EVIDENCE
BRADY AND RULE 5, SCRCrimP****JOHN CHRISTOPHER HART,**)

Indictment No.: 2014GS3201421

Defendant.)

2013 A3210 200740

**TO: DEPUTY SOLICITOR SHAWN GRAHAM
ASSISTANT SOLICITOR ROBERT MCNAIR**

THE DEFENDANT, by and through the undersigned counsel, moves for the disclosure, production, and inspection of the evidence requested in this supplemental motion for discovery. See U.S. Const. amends. V, VI, XIV; S.C. Const. art. 1, §§ 3 and 14; Rule 5(a), (c), and (d), SCRCrimP. The requested information is necessary in providing the Defendant with a meaningful opportunity to present a defense. See *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972); *Kyles v. Whitley*, 514 U.S. 419 (1995); *United States v. Bagley*, 473 U.S. 667 (1986); *Napue v. Illinois*, 360 U.S. 264 (1959); *Crane v. Kentucky*, 476 U.S. 683 (1986); *Giles v. Maryland*, 386 U.S. 66 (1967); *United States v. Agurs*, 427 U.S. 97 (1976); *Strickler v. Greene*, 527 U.S. 263 (1999); *State v. Gullede*, 326 S.C. 220, 487 S.E.2d 590 (1997); Appellate Court Rule 407, Rules of Professional Conduct, Rule 3.8(d); and Model Rule 3.8(d) of the American Bar Association's Standards for Criminal Justice.

DISCUSSION

Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. See *State v. Bryant*, 307 S.C. 458, 415 S.E.2d 806 (1992). The due process rights recognized by *Brady* apply not only to exculpatory evidence, but also to

impeachment evidence. See *United States v. Bagley*, 473 U.S. 667 (1985). The Court further held, "[e]ven absent a request, prosecutors have a constitutional duty to give the defendant exculpatory evidence which would raise a reasonable doubt about his guilt." *State v. Jackson*, 302 S.C. 313, 396 S.E.2d 101 (1990) (citing *United States v. Agurs*, 427 U.S. 97 (1976)).

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Pursuant to Rule 5(a)(1)(C) of the South Carolina Rules of Criminal Procedure, the Defendant respectfully demands the right to be furnished or to examine, inspect, copy, photograph or make other facsimile copies of the following documents or tangible objects, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense. Rule 5 requires the prosecution to respond to a defendant's request for disclosure "no

later than thirty (30) days after the request is made, or within such other time as may be ordered by the court." SCRCP 5(a)(3) & (c).

REQUESTED DISCOVERY

The Defendant specifically moves for the disclosure of the following evidence:

1. When did Jeremy Washington's initial interview with law enforcement and/or the Solicitor's Office / U.S. Attorney's Office occur? Specifically, what was date and where was Mr. Washington located?
2. Was that statement and the subsequent statement recorded?
3. The subsequent statement indicated that details were not provided in the initial statement. What details were omitted and/or added to his statement?
4. Has Jeremy Washington ever denied being involved in the murder of Paula Justice?
5. Transcript of Jeremy Washington's Polygraph Examination. If a transcript is not available, a list of the questions asked and his answers.
6. A copy of the Polygraph Examination report.
7. All notes regarding Jeremy Washington's statements.

The disclosure, production, and inspection of this requested information is essential to ensuring the Defendant's constitutional rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution (due process, compulsory process, confrontation of witnesses, effective assistance of counsel, and fair trial). *See Kyles v. Whitley*, 514 U.S. 419, 442 n.134, 445-451 (1995) (finding due process requires disclosure of any evidence that provides grounds for the defense to attack the reliability, thoroughness, and good faith of the police investigation, to impeach the credibility of the state's witnesses, or to bolster the defense case against prosecutorial attacks).

WORK-PRODUCT / PRIVILEGED EVIDENCE

The Defendant further moves for the State to make available to the Court all evidence that

may be subject to a claim of "work product" privilege for the Trial Judge to make an *in camera* inspection of any evidence not produced to the defense. See *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987) (finding that due process entitles a criminal defendant to have potentially privileged records reviewed *in camera* to determine whether they contain material evidence). By permitting the Trial Judge to examine potential "work product" evidence, it serves to protect the legitimate interest of the State and ensures that the State has complied completely with the requirements of *Brady* and its progeny.

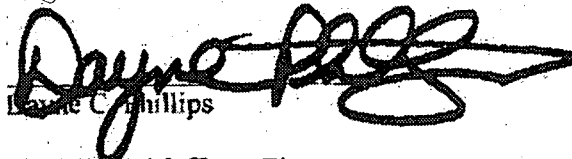
CONCLUSION

This evidence is essential to ensure the Defendant's right to a fair trial; specifically, his right to confrontation of witnesses, to compulsory process, and to present a full and complete defense under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitutions, and Article I, Sections 3 and 14, of the South Carolina Constitution. If the requested evidence is not received within a reasonable amount of time after the filing and service of this motion, the undersigned counsel will move for an Order compelling disclosure. Accordingly, the undersigned counsel respectfully moves for the State to produce all the requested evidence and allow the Defendant the right to examine, inspect, copy/photograph such materials and information, and if necessary, at a specific time and place fixed by the Court.

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IT IS SO MOVED.

Respectfully Submitted;


Dayne C. Phillips

The Michael Jeffcoat Firm
4723-A Sunset Blvd.
(PO Box 1860)
Lexington, South Carolina 29072
Phone: (803) 808-9600
Fax: (803) 808-2240
Email: dayne@thejeffcoatfirm.com

ATTORNEY FOR DEFENDANT

Lexington, South Carolina

May 16, 2017

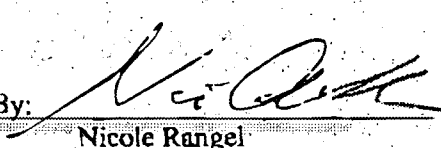
CERTIFICATE OF SERVICE

I hereby certify that I have this date served the within and foregoing Rule 5 and Brady
Supplemental Motion for Discovery and Inspection via hand-delivery, upon all parties as follows:

The Honorable Lisa M. Comer
Lexington County Clerk of Court
205 East Main Street
Lexington, SC 29072

Shawn Graham, Deputy Solicitor
and
Robert E. McNair, III, Assistant Solicitor
Eleventh Circuit Solicitor's Office
Marc Westbrook Judicial Center
205 East Main Street
Lexington, South Carolina 29072

This 16th day of May, 2017.

By: 

Nicole Rangel
Legal Assistant to Dayne C. Phillips

Dayne C. Phillips, Esquire

The Michael Jeffcoat Firm
Post Office Box 1860
Lexington, South Carolina 29071
(803) 808-9600
(803) 808-2240 facsimile
dayne@thejeffcoatfirm.com

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

2017 MAY 16 AM 8:44

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

State of South Carolina)

v.)

JOHN CHRISTOPHER HART,)

Defendant.)

SUPPLEMENTAL MOTION FOR
DISCOVERY & INSPECTION OF EVIDENCE
BRADY AND RULE 5, SCRCrimP

Indictment No.: 2014GS3201421

2013 A 3 210 200 740

TO: DEPUTY SOLICITOR SHAWN GRAHAM
ASSISTANT SOLICITOR ROBERT MCNAIR

THE DEFENDANT, by and through the undersigned counsel, moves for the disclosure, production, and inspection of the evidence requested in this supplemental motion for discovery. See U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3 and 14; Rule 5(a), (c), and (d), SCRCrimP. The requested information is necessary in providing the Defendant with a meaningful opportunity to present a defense. See *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972); *Kyles v. Whitley*, 514 U.S. 419 (1995); *United States v. Bagley*, 473 U.S. 667 (1986); *Napue v. Illinois*, 360 U.S. 264 (1959); *Crane v. Kentucky*, 476 U.S. 683 (1986); *Giles v. Maryland*, 386 U.S. 66 (1967); *United States v. Agurs*, 427 U.S. 97 (1976); *Strickler v. Greene*, 527 U.S. 263 (1999); *State v. Gullett*, 326 S.C. 220, 487 S.E.2d 590 (1997); Appellate Court Rule 407, Rules of Professional Conduct, Rule 3.8(d); and Model Rule 3.8(d) of the American Bar Association's Standards for Criminal Justice.

DISCUSSION

Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. See *State v. Bryant*, 307 S.C. 458, 415 S.E.2d 806 (1992). The due process rights recognized by *Brady* apply not only to exculpatory evidence, but also to

impeachment evidence. See *United States v. Bagley*, 473 U.S. 667 (1985). The Court further held, "[e]ven absent a request, prosecutors have a constitutional duty to give the defendant exculpatory evidence which would raise a reasonable doubt about his guilt." *State v. Jackson*, 302 S.C. 313, 396 S.E.2d 101 (1990) (citing *United States v. Agurs*, 427 U.S. 97 (1976)).

In *Bagley*, the United States Supreme Court reiterated the importance of specific requests for undisclosed *Brady* material: "When the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable." *Id.* at 681. *Brady* itself involved the State's failure to disclose evidence that had been specifically requested by the defense, and the Court noted that the nondisclosure was constitutional error if the evidence would "tend to exculpate" the defendant. *Brady*, 373 U.S. at 88. Notably, the Court found in *Kyles v. Whitley* "that the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police." *Id.* 514 U.S. 419.

"Due process requires that a criminal defendant be afforded a meaningful opportunity to present a complete defense." *State v. Mabe*, 306 S.C. 355, 358, 412 S.E.2d 386, 388 (1991) (citing *California v. Trombetta*, 467 U.S. 479 (1984)). The opportunity to present a full and complete defense includes "a defendant's privilege to request and obtain material evidence from the state." *Id.*; see also *Town of Fairfax v. Smith*, 285 S.C. 458, 330 S.E.2d 290 (1985). U.S. Const. amends. V, VI, XIV; S.C. Const. art. 1, §§ 3, 14.

Pursuant to Rule 5(a)(1)(C) of the South Carolina Rules of Criminal Procedure, the Defendant respectfully demands the right to be furnished or to examine, inspect, copy, photograph or make other facsimile copies of the following documents or tangible objects, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense. Rule 5 requires the prosecution to respond to a defendant's request for disclosure "no

later than thirty (30) days after the request is made, or within such other time as may be ordered by the court." SCRCP 5(a)(3) & (c).

REQUESTED DISCOVERY

The Defendant specifically moves for the disclosure of the following evidence:

1. All audio recordings of jail phone calls from the witnesses below:
 - a. Jeremy Washington (LCDC and Federal Prison)
 - b. Michael Young
 - c. Alex Wallace
 - d. DeAndre Staley (LCDC and SCDC)
 - e. Tevin DeLoach (updated to current)
 - f. Jarius Byrd
 - g. Shikym Williams
 - h. Carlos Watkins
 - i. Clyde Hunt
 - j. Daniel Everhart
2. All statements provided by the witnesses below:
 - a. Don Timmons
 - b. Connie Ashe
3. All NCIC criminal records (rap sheets), including but **not limited to** the following witnesses:
 - a. Jeremy Washington
 - b. Michael Young
 - c. Alex Wallace

- d. DeAndre Staley
- e. Tevin DeLoach
- f. Jarius Byrd
- g. Shikym Williams
- h. Carlos Watkins
- i. Clyde Hunt
- j. Daniel Everhart

The disclosure, production, and inspection of this requested information is essential to ensuring the Defendant's constitutional rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution (due process, compulsory process, confrontation of witnesses, effective assistance of counsel, and fair trial). *See Kyles v. Whitley*, 514 U.S. 419, 442 n.134, 445-451 (1995) (finding due process requires disclosure of any evidence that provides grounds for the defense to attack the reliability, thoroughness, and good faith of the police investigation, to impeach the credibility of the state's witnesses, or to bolster the defense case against prosecutorial attacks).

WORK-PRODUCT / PRIVILEGED EVIDENCE

The Defendant further moves for the State to make available to the Court all evidence that may be subject to a claim of "work product" privilege for the Trial Judge to make an *in camera* inspection of any evidence not produced to the defense. *See Pennsylvania v. Ritchie*, 480 U.S. 39 (1987) (finding that due process entitles a criminal defendant to have potentially privileged records reviewed *in camera* to determine whether they contain material evidence). By permitting the Trial Judge to examine potential "work product" evidence, it serves to protect the legitimate interest of the State and ensures that the State has complied completely with the requirements of *Brady* and

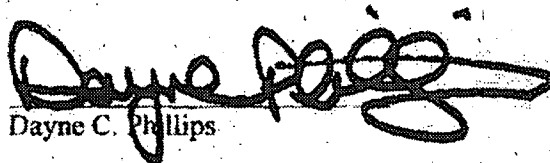
its progeny.

CONCLUSION

This evidence is essential to ensure the Defendant's right to a fair trial; specifically, his right to confrontation of witnesses, to compulsory process, and to present a full and complete defense under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitutions, and Article I, Sections 3 and 14, of the South Carolina Constitution. If the requested evidence is not received within a reasonable amount of time after the filing and service of this motion, the undersigned counsel will move for an Order compelling disclosure. Accordingly, the undersigned counsel respectfully moves for the State to produce all the requested evidence and allow the Defendant the right to examine, inspect, copy/photograph such materials and information, and if necessary, at a specific time and place fixed by the Court.

IT IS SO MOVED.

Respectfully Submitted,



Dayne C. Phillips

The Michael Jeffcoat Firm
4723-A Sunset Blvd.
(PO Box 1860)
Lexington, South Carolina 29072
Phone: (803) 808-9600
Fax: (803) 808-2240
Email: dayne@thejeffcoatfirm.com

ATTORNEY FOR DEFENDANT

Lexington, South Carolina

May 17, 2017

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the within and foregoing Rule 5 and Brady
Supplemental Motion for Discovery and Inspection via hand-delivery, upon all parties as follows:

The Honorable Lisa M. Comer
Lexington County Clerk of Court
205 East Main Street
Lexington, SC 29072

Shawn Graham, Deputy Solicitor
and
Robert E. McNair, III, Assistant Solicitor
Eleventh Circuit Solicitor's Office
Marc Westbrook Judicial Center
205 East Main Street
Lexington, South Carolina 29072

2017 MAY 17 AM 10:29
CLERK OF COURT
LEXINGTON COUNTY
SC

JP

This 17th day of May, 2017

By:


Nicole Rangel
Legal Assistant to Dayne C. Phillips

Dayne C. Phillips, Esquire

The Michael Jeffcoat Firm
Post Office Box 1860
Lexington, South Carolina 29071
(803) 808-9600
(803) 808-2240 facsimile
dayne@thejeffcoatfirm.com

ORIGINAL

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON)

ELEVENTH JUDICIAL CIRCUIT

State of South Carolina)

**SUPPLEMENTAL MOTION FOR
DISCOVERY & INSPECTION OF EVIDENCE
BRADY AND RULE 5, SCRCrimP**

v.)

JOHN CHRISTOPHER HART,)

2013A3210200 740

Defendant.)

Indictment No. 2014GS3201421

2017 MAY 18 PM 1:30
CLERK OF COURT**TO: DEPUTY SOLICITOR SHAWN GRAHAM
ASSISTANT SOLICITOR ROBERT MCNAIR**

THE DEFENDANT, by and through the undersigned counsel, moves for the disclosure, production, and inspection of the evidence requested in this supplemental motion for discovery. See U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3 and 14; Rule 5(a), (c), and (d), SCRCrimP. The requested information is necessary in providing the Defendant with a meaningful opportunity to present a defense. See *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972); *Kyles v. Whitley*, 514 U.S. 419 (1995); *United States v. Bagley*, 473 U.S. 667 (1986); *Napue v. Illinois*, 360 U.S. 264 (1959); *Crane v. Kentucky*, 476 U.S. 683 (1986); *Giles v. Maryland*, 386 U.S. 66 (1967); *United States v. Agurs*, 427 U.S. 97 (1976); *Strickler v. Greene*, 527 U.S. 263 (1999); *State v. Gullette*, 326 S.C. 220, 487 S.E.2d 590 (1997); Appellate Court Rule 407, Rules of Professional Conduct, Rule 3.8(d); and Model Rule 3.8(d) of the American Bar Association's Standards for Criminal Justice.

DISCUSSION

Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. See *State v. Bryant*, 307 S.C. 458, 415 S.E.2d 806 (1992). The due process rights recognized by *Brady* apply not only to exculpatory evidence, but also to

impeachment evidence. See *United States v. Bagley*, 473 U.S. 667 (1985). The Court further held, "[e]ven absent a request, prosecutors have a constitutional duty to give the defendant exculpatory evidence which would raise a reasonable doubt about his guilt." *State v. Jackson*, 302 S.C. 313, 396 S.E.2d 101 (1990) (citing *United States v. Agurs*, 427 U.S. 97 (1976)).

In *Bagley*, the United States Supreme Court reiterated the importance of specific requests for undisclosed *Brady* material: "When the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable." *Id.* at 681. *Brady* itself involved the State's failure to disclose evidence that had been specifically requested by the defense, and the Court noted that the nondisclosure was constitutional error is the evidence would "tend to exculpate" the defendant. *Brady*, 373 U.S. at 88. Notably, the Court found in *Kyles v. Whitley* "that the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police." *Id.* 514 U.S. 419.

"Due process requires that a criminal defendant be afforded a meaningful opportunity to present a complete defense." *State v. Mabe*, 306 S.C. 355, 358, 412 S.E.2d 386, 388 (1991) (citing *California v. Trombetta*, 467 U.S. 479 (1984)). The opportunity to present a full and complete defense includes "a defendant's privilege to request and obtain material evidence from the state." *Id.*; see also *Town of Fairfax v. Smith*, 285 S.C. 458, 330 S.E.2d 290 (1985). U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3, 14.

Pursuant to Rule 5(a)(1)(C) of the South Carolina Rules of Criminal Procedure, the Defendant respectfully demands the right to be furnished or to examine, inspect, copy, photograph or make other facsimile copies of the following documents or tangible objects, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense. Rule 5 requires the prosecution to respond to a defendant's request for disclosure "no

later than thirty (30) days after the request is made, or within such other time as may be ordered by the court." SCRCP 5(a)(3) & (c).

REQUESTED DISCOVERY

The Defendant specifically moves for the disclosure of the following evidence:

1. Michael Young's housing and disciplinary records in LCDC.
2. Jarius Byrd housing and disciplinary records in LCDC.
3. Daniel Everhart housing and disciplinary records in LCDC, including but not limited to any records related to incidents with John Hart and Everhart's allegation that Hart had a knife and offered oral sex.

The disclosure, production, and inspection of this requested information is essential to ensuring the Defendant's constitutional rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution (due process, compulsory process, confrontation of witnesses, effective assistance of counsel, and fair trial). *See Kyles v. Whitley*, 514 U.S. 419, 442 n.134, 445-451 (1995) (finding due process requires disclosure of any evidence that provides grounds for the defense to attack the reliability, thoroughness, and good faith of the police investigation, to impeach the credibility of the state's witnesses, or to bolster the defense case against prosecutorial attacks).

WORK-PRODUCT / PRIVILEGED EVIDENCE

The Defendant further moves for the State to make available to the Court all evidence that may be subject to a claim of "work product" privilege for the Trial Judge to make an *in camera* inspection of any evidence not produced to the defense. *See Pennsylvania v. Ritchie*, 480 U.S. 39 (1987) (finding that due process entitles a criminal defendant to have potentially privileged records reviewed *in camera* to determine whether they contain material evidence). By permitting the Trial Judge to examine potential "work product" evidence, it serves to protect the legitimate interest of the State and ensures that the State has complied completely with the requirements of *Brady* and

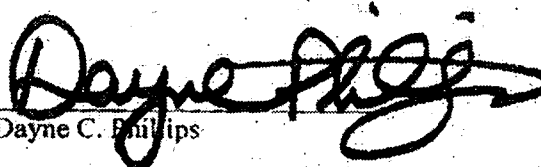
its progeny.

CONCLUSION

This evidence is essential to ensure the Defendant's right to a fair trial; specifically, his right to confrontation of witnesses, to compulsory process, and to present a full and complete defense under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitutions, and Article I, Sections 3 and 14, of the South Carolina Constitution. If the requested evidence is not received within a reasonable amount of time after the filing and service of this motion, the undersigned counsel will move for an Order compelling disclosure. Accordingly, the undersigned counsel respectfully moves for the State to produce all the requested evidence and allow the Defendant the right to examine, inspect, copy/photograph such materials and information, and if necessary, at a specific time and place fixed by the Court.

IT IS SO MOVED.

Respectfully Submitted,



Dayne C. Phillips

The Michael Jeffcoat Firm
4723-A Sunset Blvd.
(PO Box 1860)
Lexington, South Carolina 29072
Phone: (803) 808-9600
Fax: (803) 808-2240
Email: dayne@thejeffcoatfirm.com

ATTORNEY FOR DEFENDANT

Lexington, South Carolina

May 18, 2017

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the within and foregoing Rule 5 and Brady Supplemental Motion for Discovery and Inspection via hand-delivery, upon all parties as follows:

The Honorable Lisa M. Comer
Lexington County Clerk of Court
205 East Main Street
Lexington, SC 29072

Shawn Graham, Deputy Solicitor
and
Robert E. McNair, III, Assistant Solicitor
Eleventh Circuit Solicitor's Office
Marc Westbrook Judicial Center
205 East Main Street
Lexington, South Carolina 29072

This 18th day of May, 2017

By: 

Nicole Rangel
Legal Assistant to Dayne C. Phillips

Dayne C. Phillips, Esquire

The Michael Jeffcoat Firm
Post Office Box 1860
Lexington, South Carolina 29071
(803) 808-9600
(803) 808-2240 facsimile
dayne@thejeffcoatfirm.com

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2014GS3201421

The State,

Respondent,

v.

John C. Hart,

Appellant.

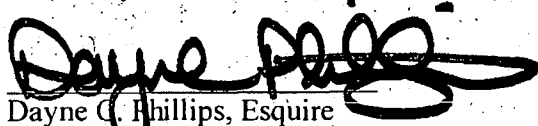
RECEIVED

JUN 05 2017

SC Court of Appeals

NOTICE OF APPEAL

John Christopher Hart appeals his conviction for murder and sentence of fifty (50) years. On May 22, 2017, Mr. Hart proceeded to trial before the Honorable Eugene C. Griffith, Jr. and a jury. The jury returned a verdict of guilty on May 26, 2017, and Judge Griffith imposed a sentence of fifty (50) years. Judge Griffith denied the undersigned counsel's motion for a new trial.



Dayne C. Phillips, Esquire
The Michael Jeffcoat Firm
PO Box 1860
Lexington, SC 29071
Phone: (803) 808-9600
Fax: (803) 808-2240
ATTORNEY FOR APPELLANT

June 1, 2017

Other Counsel of Record:

Deputy Solicitor Shawn Graham
Eleventh Circuit Solicitor's Office
205 East Main Street
Lexington, South Carolina 29072
Phone: (803) 785-8352

cc:
John Hart

Chief Appellate Defender Robert M. Dudek
South Carolina Commission on Indigent Defense
1330 Lady Street, Suite 401
Columbia, SC 29201

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2014GS3201421

The State,

Respondent,

v.

John C. Hart,

Appellant.

RECEIVED

JUN 05 2017

SC Court of Appeals

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Shawn Graham, Robert Dudek, and John Hart, by depositing a copy in the United States Mail, postage prepaid, on June 2, 2017, addressed to:

Deputy Solicitor Shawn Graham, Eleventh Circuit Solicitor's Office,
205 East Main Street, Lexington, SC 29072.

Chief Appellate Defender Robert Dudek, S.C. Commission on Indigent Defense,
1330 Lady Street, Suite 401, Columbia, SC 29201

John C. Hart, Kirkland Correctional Institution,
4344 Broad River Rd, Columbia, SC 29210.



Dayne C. Phillips, Esquire
The Michael Jeffcoat Firm
PO Box 1860
Lexington, SC 29071
Phone: (803) 808-9600
Fax: (803) 808-2240
Attorney for Appellant

June 2, 2017

WITNESSES

Lexington County Sheriffs Department

Shawn Spivey

Law Enforcement Case #: 13006204

DSG

ARREST WARRANT NUMBER

2013A3210200740

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 6/11/14

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS3201421**The State of South Carolina**

County of Lexington

COURT OF GENERAL SESSIONS

JUNE TERM 2014

THE STATE

vs.

John Christopher Hart

CDR #: 0116**Indictment for**

Murder

§ 16-03-0010

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

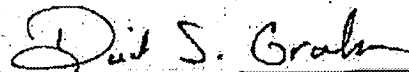
INDICTMENT FOR
Murder

§ 16-03-0010

At a Court of General Sessions, convened on May 2014, the Grand Jurors of Lexington County present upon their oath:

That **John Christopher Hart along with Tevin Xavier Deloach** did in Lexington County on or about April 10, 2013, willfully, feloniously and with malice aforethought kill one Paula Justice by shooting the victim in the head and the victim died as a proximate result thereof, in violation of § 16-3-10, Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.John Christopher Hart

AKA:

Race: Black Sex: M Age: 28DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / MurderINDICTMENT/CASE#: 2014GS3201421A/W#: 2013A3210200740Date of Offense: 4/10/2013S.C. Code § 16-03-0010CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

[Signature]
Solicitor72860
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☒ ~~County Detention Center~~for a determinate term of 50 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 paymentof \$; 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. Since April 18 2013☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 61.6 (Public Def/Probation) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ § 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114 (BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ TOTAL \$ Clerk of Court/ Deputy Clerk [Signature]Court Reporter: [Signature]

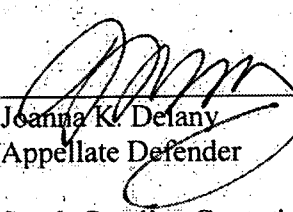
SCCA/217 (07/2016)

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
§ Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.Presiding Judge [Signature]Judge Code: 7154Sentence Date: 5-26-17

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,



Joanna K. Delany
Appellate Defender

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

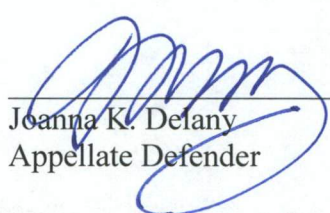
ATTORNEY FOR APPELLANT

This 7th day of February, 2019.

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,



Joanna K. Delany
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 7th day of February, 2019.

RECEIVED
FEB 07 2019
SC Court of Appeals